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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRIAN D. ROGDE,)
)
 Plaintiff,)
)
 vs.) No. 98 C 7163
)
 NORTHEAST ILLINOIS REGIONAL)
 COMMUTER RAILROAD)
 CORPORATION, d/b/a/ METRA,)
 a corporation.)
)
 Defendant.)

AFFIDAVIT OF STANLEY HUNTON, PHD

COMES NOW, Stanley Hunton, PhD, being first duly sworn upon his oath states the following:

QUALIFICATIONS

1. I am a vocational rehabilitation professional with a Doctor of Philosophy degree awarded in Guidance and Counseling from Southern Illinois University. The emphasis was on vocational/career development and assessment.
2. From 1971 through 1976, I was a counseling psychologist at the Veteran Administration Regional Office, Washington, D.C. There I assessed eligibility for Vocational Rehabilitation programs; administered and interpreted interest, aptitude and ability tests to help disabled clients better accept and understand limitations to their employability. I motivated clients to attempt to move beyond their limitations and access unused capacities. I was also Veterans Administration representative at Walter Reed Army Medical Center where I helped injured service persons develop vocational alternatives in keeping with their employment impairments. I provided counseling services to clients at the Employment Office to reduce the anger they expressed at not being able to find work because of the lack of transferable skills.
3. From 1976 through 1992, I was employed at the Veterans Affairs Medical and Regional Office, White River Junction, Vermont, where I became

Chief of Vocational Rehabilitation and Counseling. I was responsible for all aspects of the rehabilitation program. This included determining whether or not a disability created an employment impairment by considering the nature of the disability and previous work experience; developing plans that would make use of previously developed skills to effect rehabilitation; using psychometrics to assess interests, aptitudes, and abilities; evaluating local employment markets and working with employers to restructure jobs to accommodate the handicapping effect of disabilities; and supervising clients in training and after placement in a job. I coordinated placement efforts with Employment and Training Offices and acted as a consultant to the Hospital Staff, developing vocational interventions for chronic psychiatric and pain patients. I was part of a multi-disciplinary treatment team, including a physiatrist, to develop "work-hardening" programs to prepare patients to return to work.

4. I have been retained by the Social Security Administration in several hundred cases where I have been called upon to render expert opinion on the effect of a person's disability on his ability to work. These cases require a transferable skills analysis to be performed.
5. I have testified as a vocational expert at trial in both state and federal courts regarding the diminishment of a person's earning capacity using precisely the same methodology used in the present case.

Data Used

6. Defense states that in preparing the report regarding Brian Rogde, I ("Hunton") concealed my true source for worklife expectancy, hiding the fact that I used The New Worklife Expectancy Tables ("Gamboa Tables"). In fact, I did not rely on the Gamboa Tables to prepare my report, but on data gathered and published by the U.S. government based on the government's own definition of work disability. The Gamboa Tables also draw from this same data to derive worklife expectancies.

Regarding the Article Entitled "Employment, Earnings, and Disability"

7. Defense further attempts to disqualify the worklife expectancy data used by me with an article by John McNeil ("McNeil") entitled "Employment, Earnings, and Disability." As attested to by McNeil's own affidavit (attached), This article is irrelevant to the work done by me for the following reasons:
 - a) McNeil's article studies results from the Survey of Income and Program Participation ("SIPP"), a survey conducted by the U.S. Bureau of the Census. *This is not the data used by me.* I use data from the Current Population Survey ("CPS"), also conducted by

the U.S. Bureau of the Census. The CPS survey is the primary source of employment data for persons in the United States, the source of the government's monthly unemployment rates, and is used by private researchers to study employment of the U.S. population.

- b) The SIPP uses a different definition of disability than the CPS. The SIPP definition is a much broader one that is consistent with the Americans with Disabilities Act, and it includes persons who do *not* have limitations in the kind or amount of work they can perform. For forensic purposes, when assessing loss of lifetime earnings, the most important and direct focus is on persons who have a work disability, the definition used in the CPS.
- c) In a recent presentation before the National Association of Forensic Economics ("NAFE"), McNeil reaffirmed the application of CPS data for the study of persons with a work disability. During this session, he also presented the definition of work disability used in the CPS (See Exhibit A). This definition was created and is controlled by the U.S. Bureau of the Census, *not* by Gamboa as defense asserts. As part of this definition, the government also created the "continuum of categories of disability" that defense asserts was "arbitrarily created" by Gamboa.

Reliability

- 8. Testing - The scientific testing criteria is principally directed at the "hard" sciences (e.g. engineering). It has less significance for vocational and economic testimony, since such testimony is concerned with the future experience of people, which can never be tested or known with absolute certainty. However, data from the CPS are produced and extensively tested by the U.S. Bureau of the Census and the U.S. Bureau of Labor Statistics. The probabilities of life are drawn from the life tables from the U.S. Department of Health and Human Services, National Center for Health Statistics, which produces and extensively tests the tables.
- 9. Peer Review and Publication – The Gamboa Tables, and the use of CPS data (used by Hunton) to measure employment rates of persons with a work disability are the subject of multiple articles. Exhibit B is a partial listing of these articles and shows that the Gamboa Tables have been extensively reviewed in scientific literature and that the CPS data have been used by researchers for both forensic and non-forensic purposes.
- 10. Error Rates - This criterion is primarily intended to apply to the "hard" sciences in conjunction with the testing performed there (e.g., reliability of a bolt securing a heavy sheet of metal). However, Ronald Missun has computed the standard error of worklife expectancy (See Exhibit C) in an

article that is currently in the peer review process with the *Journal of Legal Economics*. Statistically measured standard errors of the worklife expectancy statistics are insignificant.

11. General Acceptance - Forecasting a plaintiff's future earnings stream is not an exact science. As such, there is no single step in the loss computation process that enjoys universal acceptance in the relevant community. This is certainly true of determining discount rates, projecting earnings growth, defining earning capacity, and computing a worklife expectancy.
12. However, Exhibit B documents the wide acceptance of use of the CPS data to define work disability. In addition, a 1999 publication by Hugh Richards and Jon R. Abele, *Life and Worklife Expectancies*, looks at several generally accepted ways of computing a statistical worklife, including the method used by me. Finally, the Gamboa Tables themselves have been the subject of many articles (See Exhibit B), lending credence to their overall acceptance.
13. **Relevancy** – The CPS data used by me and the worklife expectancies presented in the Gamboa Tables are averages for the applicable disability population. It is critical that users of the table apply these statistics to a specific case with “intellectual rigor.” Experts must not blindly apply the data to a plaintiff without consideration of how it matches the plaintiff's circumstances.
14. The expert must have experience dealing with persons with work disabilities to understand how a particular plaintiff is similar to or different from the statistic's population. I have direct work experience in working with persons with disability. I am currently functioning as a Case Manager in the Vocational Rehabilitation and Employment Division of the Department of Veterans Affairs. In addition, my qualifications (See Exhibit D) include designation as a Vocational Expert with the U.S. Department of Health and Human Services, Social Security Administration, enabling me to provide expert testimony regarding the employment experiences of persons with disability. My application of the disability statistics was obviously the subject of studied consideration by me, as witnessed by my adjustment of the statistics to account for the plaintiff's pre-existing condition.

FURTHER THE AFFIANT SAYETH NAUGHT.

Stanley Hunton, PhD
Vocational Economic Analyst

Subscribed and sworn to before me, a notary public, in this ____ of January 2001.

Notary Public

My Commission Expires _____