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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

MATTHEW SHAHEEN,)
)
Plaintiff,)
)
vs.) No. 00 L 14264
)
ADVANTAGE MOVING & STORAGE and)
WILLIAM T. URBAN,)
)
Defendants.)

Affidavit of Anthony M. Gamboa, Jr., PhD, MBA

COMES NOW, Anthony M. Gamboa, Jr., PhD, MBA, being first duly sworn upon his oath states the following:

Defense has filed a motion to exclude or limit my testimony. This motion centers around the following key areas:

1. The lifetime effect of work disability
2. Knowledge beyond the ken of the average juror
3. Effort to limit my testimony

Each of these points is refuted in the discussion that follows.

1. Lifetime Effect of Work Disability

Defense contends that Mr. Shaheen’s work disability does not have an effect on his ability to earn money or remain employed over his lifetime since he has returned to work and is earning more than he did prior to injury. Defense’s contention is contrary to published research on the effect of work disability on a person’s *lifetime* capacity to work and earn money.

The presence of a disability is widely known to affect both earnings and worklife expectancy. This finding is documented in results from various surveys, including the decennial Census, the Current Population Survey (CPS) and the Survey of Income and Program Participation (SIPP) from the Census Bureau,¹ the National Health Interview Survey (NHIS) from the National

¹ Data from the decennial Census, CPS, and SIPP can be found on the Census Bureau website at <http://www.census.gov/hhes/www/disability.html>

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Center for Health Statistics,² and the N.O.D./Harris Survey of Americans With Disabilities.³ The disability effect is the cause of such events as the passage of the well-known Americans with Disabilities Act (ADA),⁴ the existence of the Department of Labor's Office of Disability Employment Policy,⁵ and the practice of rehabilitation counseling, just to name a few.

Even if persons with a work disability find employment conducive to their disabilities, they face ongoing struggles to cope with their disabilities. These struggles may intensify with age, continuously making it more difficult to compete with their counterparts without disability (Gibson, 2000 and 2001, see Attachment A; also see U.S. Census Bureau website⁶). The impairments will place the individual at a disadvantage in the labor market compared to those without disability, and likely cause the person to have a harder time finding and/or maintaining comparable employment.

In assessing Mr. Shaheen's post-injury earning capacity, I considered the effects of his injuries and the impact that these limitations are likely to have on his capacity to work and earn money in the future. His return to work does not mean that he is as fully capable as he would have been had the injury of October 2000 not occurred. Evidence that he has received increases in his compensation since injury does not show that he is just as well off as if he had not been injured at all. The question at hand is what increases he could have reasonably expected absent injury – rates that government statistics suggest would have been higher than those actually realized by Mr. Shaheen.

Even if we were to assume that Mr. Shaheen's work disability has not had an impact in terms of past work, it is shortsighted of the defense to think that this will never impact work in the future. At the very least, his limitations make it reasonable to assume that he will not be able to function at an average, nondisabled level.

My report assumes that Mr. Shaheen will be able to continue functioning as a Lawyer, albeit at a reduced level. The analysis acknowledges his limitations in his ability to perform work as he could have done absent injury and factors those limitations into the assessment of his earning capacity and worklife expectancy. As noted previously in this section, this is consistent with US Census Bureau findings regarding the earnings and employment experiences of persons with a work disability. I used my vocational expertise in combination with government data in determining a reasonable outcome for Mr. Shaheen.

² One example is a study by Stapleton, et al. (1997) that accesses data from the NHIS.
<http://aspe.hhs.gov/daltcp/reports/eshccclit.htm>

³ <http://www.nod.org>

⁴ <http://www.usdoj.gov/crt/ada/adahom1.htm>

⁵ <http://www.dol.gov/odep/welcome.html>

⁶ <http://www.census.gov/hhes/www/disable/disabcps.html>

2. Knowledge Beyond the Ken of the Average Juror

Defense notes that expert testimony must provide knowledge “beyond the ken of the average juror.” We agree.

Contrary to defense’s apparent belief, however, the issues involved in an analysis of lifetime lost earnings are much greater than a simple reiteration of the plaintiff’s experiences in the short time since injury. What is important is the *lifetime* effect of injury on his ability to work and earn money. Defense arguments ignore extensive scientific research on the issues faced by persons with disability. In conducting the analysis, I use my specialized knowledge (Section 2.1), which is supported by both neuropsychological opinion (Section 2.2) and by published research regarding the employment experience of real people with a work disability (Section 1).

2.1. My specialized knowledge

The requirement that expert opinion provide specialized knowledge “beyond the ken of the average juror” is in keeping with my vocational economic assessment regarding Mr. Shaheen. This is true both in the context of understanding the evidence of work disability and in determining the economic impact of that disability.

My knowledge, skill, experience, training, and education all combine to qualify me as an expert. As noted in my Curriculum Vitae (see Attachment B), I have a PhD in Guidance and Counseling, specializing in vocational counseling, and have since completed post-doctoral study in vocational rehabilitation and the economics of disability. I have 25 years experience within the field of disability as a vocational counselor, researcher, university professor, and vocational expert with the US Department of Health and Human Services. I have completed postdoctoral study in economics and finance at multiple universities and was awarded an MBA from the University of Chicago. I have provided expert economic testimony throughout the United States on the vocational and economic consequences of disability.

My education and experience provide me with specialized knowledge pertaining to the immediate and ongoing needs of persons with disability in finding and maintaining employment. In addition, data are available from the U.S. Census Bureau’s Current Population Survey (CPS) that pertain specifically to the earnings and worklife expectancy of persons with and without a work disability. These data are analyzed in various government publications and scientific articles, demonstrating the impact of work disability on earnings and employment. This combination of education, experience, and technical data enables me to assess the loss of lifetime earnings of Mr. Shaheen in a way that is beyond the realm of common knowledge.

2.2. Support from medical opinion

The report of Dr. Steven E. Rothke (November 5, 2001) notes that, even though Mr. Shaheen has experienced no drop in his overall intellectual functioning, that he retains difficulties in “complex problem solving, dual/divided attention, prospective memory (ability to carry out the intention to remember or to write something down), verbal fluency, and visuomotor speed and dexterity.”

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These impairments clearly impact Mr. Shaheen’s ability to perform his work as well as he would have been able to perform the work had he not been injured. They also demonstrate that he meets the US Census Bureau’s definition of work disability which is (in simplified form), anyone who has “a health problem or disability which prevents them from working *or which limits the kind or amount of work they can do.*”⁷

In my assessment of Mr. Shaheen’s lifetime lost earnings, I have used information pertaining specifically to Mr. Shaheen in combination with known statistical data regarding the lifetime effects of disability on earnings and employment. This information and its proper application are definitely beyond the realm of common knowledge.

3. Effort to Limit My Testimony

As an alternative to excluding my testimony, defense is attempting to limit the bases of my opinion solely to tax records and the report of Dr. Rothke. These documents are valuable in establishing not only Mr. Shaheen’s earnings history, but the residual cognitive difficulties that he is experiencing.

As noted by defense in the first paragraph of section three, however, my analysis also included an interview with Mr. Shaheen. The standard vocational interview that I conducted in April 2002 established other valuable information pertaining to Mr. Shaheen’s age, education, and work history. In addition, Mr. Shaheen’s discussion of his limitations helped to verify the residual difficulties noted by Dr. Rothke and to establish the likely effects of his difficulties on his future ability to work.

FURTHER, THE AFFIANT SAYETH NAUGHT.

Anthony M. Gamboa, Jr., PhD, MBA
Senior Vocational Economic Analyst

Subscribed and sworn to before me, a notary public, in this ____ of September, 2003.

Notary Public

My Commission Expires _____

⁷ The complete definition of work disability can be found on the Census Bureau web site at <http://www.census.gov/hhes/www/disable/cps/cpsworkd.html>.