

STATE OF OHIO
 IN THE COURT OF COMMON PLEAS
 COUNTY OF CUYAHOGA

ANTHONY JANISSE, et al,

Plaintiff,

vs

Case No. 363913

Hon. Anthony Calabrese, Jr.

BRUSH WELLMAN, INC., et al,

Defendants.

DEPONENT: ROBERT ANCELL

DATE: Thursday, April 20, 2000

TIME: 11:20 a.m.

LOCATION: 23077 Greenfield Road, Suite 185

Southfield, Michigan

REPORTER: Susan K. Jones, CSR-0717

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Southfield, Michigan

Thursday, April 20, 2000

At about 11:20 a.m.

* * *

ROBERT ANCELL

was thereupon called as a witness herein, and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. DIVENERE:

Q. Would you state your name?

A. Robert Bruce Ancell.

Q. And where is your office?

MR. PARIS: Can you guys speak up or get closer to the phone, please?

THE WITNESS: My office is at 23077 Greenfield Road in Southfield, Michigan.

Q. (By Mr. DiVenere) What is your occupation?

A. I am a vocational rehabilitation counselor in private practice.

Q. What does a vocational rehabilitation counselor do?

A. That's an individual who has been trained to evaluate and provide services to individuals who have either physical

1 or emotional problems and we have to determine to what
 2 extent, if any, their problems affect their ability to
 3 get a job, keep a job or be retrained for employment and
 4 where we feel it appropriate and we have authorization we
 5 provide services to try to help people keep their jobs,
 6 find new employment or be retrained.

7 Q. Is your education in the medical field?

8 A. My education is in the counseling field although part of
 9 my education includes the impact of medical problems on
 10 peoples' ability to work.

11 Q. I see. Where did you get your undergraduate education?

12 A. I went to Wayne State University which is in the City of
 13 Detroit.

14 Q. And what was your major?

15 A. Psychology.

16 Q. And then you got a masters?

17 A. Yes. I then went on and earned a masters degree in
 18 counseling from the University of Detroit which is also
 19 within the City of Detroit.

20 Q. Is that in industrial psychology?

21 A. No, it was in counseling. I have a minor in industrial
 22 psychology from the same institution.

23 Q. And then you have a Ph.D.?

24 A. Yes, I have a Ph.D. in human services from Walden
 25 University which is in Minneapolis, Minnesota,

Q. Would you describe what the field of human services is?

A. Yes. It's an umbrella discipline that deals with the study of human behavior, sociology, counseling, social work, criminology, those areas that fall under the aegis of human services.

Q. So, Doctor, I take it that your background is in counseling people who have been injured or have some difficulty, physical or emotional, to get back to work basically?

A. Yes, that's essentially what I have done for the last 30 some odd years.

Q. Okay. And in doing that is part of your work the evaluation of their limitations?

A. It is from the aspect of vocational limitations, not medical limitations, so, for instance, in this case the dexterity testing would be a vocational assessment of a medical problem.

Q. But you rely on the medical providers with regard to any medical conditions that the individual may have?

A. That's a fair statement, yes, sir.

Q. Okay. Do you have any background in economics?

A. Yes. I have some general university background in terms of taking classes at an undergraduate level in economics and as part of my continuing education units I study aspects of earning capacity and the calculation of the

1 loss of earning capacity but I'm not an economist and I
2 typically don't opine what the future of the economy is
3 going to be.

4 Q. To what extent does the calculation of earning capacity
5 play a role in your work?

6 A. Well, in all the cases that we deal with we're dealing
7 with a change in a person's earning capacity, typically
8 because they're not able to do what they were doing
9 before, those are the kinds of cases that we see. So
10 there typically is some impact on the person's earning
11 capacity although there may not be a whole lot of
12 difference in their earnings at any given time or there
13 may be a whole lot of difference in their earnings.

14 Q. Now, when did you first see Tony Janisse?

15 A. I'm looking for my notes here. Just give me a moment.

16 I saw him on August the 20th of 1999.

17 Q. And when was the last time you saw him?

18 A. August 20th of 1999.

19 Q. So you saw him only one time?

20 A. Yes, sir.

21 Q. And can you tell me what you did, what your visit
22 consisted of?

23 A. Yes. I interviewed him and took a history regarding what
24 had happened to him and the subsequent treatment in the
25 course of his life. I discussed with him his background,

educationally, socially, vocationally. We talked about his symptoms, problems that he was having, his limitations, his activities of daily living and basically how he saw the future in terms of his work situation and then I gave him a series of vocational tests which looked at aptitude, ability, interests, those types of things.

Q. What did he tell you about his history?

A. He told me that he was 35 years of age at the time that I saw him and that he was burnt by hydrofluoric acid on September the 29th of 1997 and his fingers were burnt with the acid. He was treated at St. Vincent's Hospital in Toledo and admitted to the burn unit and treated with pain medication along with other drugs. He was in the hospital for about 11 days.

He continued to treat at the University of Michigan. Ultimately he underwent a series of surgeries and attempts to save his fingers and ultimately the tips of the fingers were amputated. He continued to see Dr. Chung who is the plastic surgeon at the U of M and he has continued to have ongoing problems with swelling and numbness in his fingers of both hands. He was able to return to an accommodated job back with the employer on January 8th of '99.

His previous medical history was not significant for any real vocationally limiting problems. He was a high

1 school graduate and had taken some auto mechanics
 2 training at Monroe Community College. He was married,
 3 his wife was employed as a dispatcher and they had two
 4 children at home, one 19 and 16. He was currently
 5 working at Abtrex, a-b-t-r-e-x, Industries and he had
 6 started there in January of 1997 earning about twelve
 7 fifty an hour. He said there was a lot of overtime.
 8 When he returned he was earning \$13.00 an hour but there
 9 was very little overtime. He also had done other work in
 10 the past. He'd been and iron worker for about a year, he
 11 had worked at Metro Trailer doing welding, he had worked
 12 at Ryder Car Carrier as a welder, he had worked at Speedy
 13 Muffler, worked at a brake shop, worked as a mechanic
 14 before they went out of business, he worked for Muffler
 15 Man, and for a period of about four years he worked out
 16 of Local 41 of the Iron Workers.

17 He also shared with me that he was still having
 18 problems with numbness and swelling of the stumps and
 19 sharp wrist pain in the palm area and that sometimes it
 20 feels like it's going to explode and he had problems both
 21 with his left and his right hand. He spent his day
 22 working. He started at 7:00 in the morning and he
 23 dispatched people to jobs. He worked in the shipping and
 24 receiving department. Drove a forklift. He would order
 25 supplies, do the daily report and time cards and answer



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1 the phone. He indicated that he had gone to Work Wise,
2 which is really a work hardening program here at the U of
3 M, and they helped him with his return back to work.

4 He was limited in that he was unable to weld, bowl,
5 bow hunt or gun hunt, fish, work on cars. He indicated
6 with pride that he had a '68 Barracuda and that he used
7 to snowmobile but it's too cold to do that or to golf.
8 He indicated to me that he really didn't like the job he
9 was doing from an interest standpoint but "I have no
10 choice". Then I essentially gave him a series of tests.
11 He did indicate that he did see a mental health
12 professional for about six to eight months starting twice
13 a week and then it tapered off to once per week.

14 Q. Doctor, did Tony Janisse tell you that he made contact
15 with the hydrofluoric acid because he was wearing cotton
16 gloves rather than rubber gloves at the time he was
17 working?

18 A. No, sir, he did not.

19 Q. Did he tell you about a prior injury he had had to the
20 right finger in his hand?

21 A. Yes. He indicated he had had -- his right little finger
22 had been caught in a chain saw sometime in his early
23 life.

24 Q. And did you determine whether that injury to the right
25 little finger gave him any kind of limitation or

1 restriction?

2 A. No. Typically the function of the little finger, as far
3 as the type of work that he's done, is really
4 inconsequential. It becomes more important if you're a
5 concert violinist or a pianist or musician or some other
6 fields but certainly not in the fields that he has been
7 qualified for.

8 Q. Now I want to ask you specifically about each of the
9 tests that you gave him.

10 A. Yes, sir.

11 Q. Can you describe each test?

12 A. Yes. The first test that I gave him is called the Wide
13 Range Achievement test and it's a test of achievement
14 which measures what you can do now based on what you've
15 learned in the past and of that instrument he is asked to
16 read words that are printed on the page and when he gets
17 ten wrong in a row we stop the instrument and on this
18 instrument an average score is a hundred. He received a
19 score of 75 which is below average and is at the 5th
20 percentile which means he did better than five percent of
21 the population and 95 percent did better than he did.

22 On the arithmetic test he got an 86 which is just
23 one point above the cut-off for average and that placed
24 him at the 18th percentile which is at a 7th grade level.
25 So his skills in reading and math are really not in the

average range or really competitive.

Q. What other tests did you give him besides the reading?

A. I gave him two tests of intelligence. One is a verbally loaded test, it's called a vocabulary abstraction test, and on that test he scored 107. Again a hundred is average. That's the 68th percentile. The next test I gave him of intelligence is a test of nonverbal intelligence and on that test he scored 116 which is at the 86th percentile and is above average so he tends to do better at things that he can see and figure out than he does in things that are in the written word so to speak.

I then gave him two dexterity tests. One of them is called the groove pegboard test which is a test of complex visual motor dexterity and on that test -- he's left handed dominant, so with his left hand he scored at the 7th percentile -- I'm sorry, he scored at the mean or the average for the male population. My report is not correct. He was below average with the left hand and he was very frustrated with it. He was also significantly below average with his right hand and let me give you the numbers so we get some understanding here. With his left hand he did the task in 73 seconds and you have to add on another 25 because there's 25 pegs. With his right hand, the same task, it took him 186 seconds to do and he

1 dropped two of the pegs so he's much worse off with his
 2 left hand than he was with his right hand. When I gave
 3 him the Perdue pegboard test with his left hand again he
 4 was faster than he was with his right. He was at the 7th
 5 percentile when compared to industrial norms and with his
 6 right hand, which again is the one that's more affected,
 7 he was below the first percentile and when asked to do
 8 the task with both hands he also was below the first
 9 percentile, so he has much more problem with his right
 10 hand than with his left hand.

11 The last instrument that I gave him is an interest
 12 inventory which is not a test. It's basically I like
 13 chocolate, you like vanilla, but it looks at the world of
 14 work as it relates to making sense for the client and in
 15 Anthony's case he seems to like jobs that are realistic,
 16 which means jobs where you work with your hands, you work
 17 with tools, you work with things, as opposed to other
 18 types of jobs like jobs that are scientific or sales or
 19 office, those types of jobs. And he liked jobs like
 20 truck driver and telephone repair and pipe fitters and
 21 plumbers and painters and machinists, janitors, those
 22 types of jobs. Auto mechanics the best. Those were all
 23 the tests and all the results, sir.

24 Q. Now, Doctor, in regard to the tests that were aimed at
 25 specifically measuring his physical limitations I take it



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1 those were the two pegboard tests?

2 A. That's correct.

3 Q. And did that involve his gripping objects with his
4 fingers and putting them on a peg board?

5 A. Yes.

6 Q. Did you give him any other tests that would measure his
7 physical limitations?

8 A. No, sir.

9 Q. Were you able to determine from those tests what, in
10 fact -- what activities he could still do?

11 A. Well, he can do a lot of things with his hands. The
12 issue is how fast and efficiently he can do them and
13 where he can do them and that was determined in part by
14 his history when he indicates that he can't be out in the
15 cold because it bothers his hands. You would not want to
16 look at jobs out there. You would not want to look at
17 jobs who put a premium on the use of both of his hands in
18 repetitive activities which really encompasses about 95
19 percent of the job titles in the Dictionary of
20 Occupational Titles so he's able to do things but he's
21 not able to do them to competitive norms.

22 Q. So he's going to have difficulty in picking things up and
23 gripping them as fast or as fastly as you and I, someone
24 who doesn't have those limitations, is that right?

25 A. I don't know about you and I. I mean, we would both have

1 to be 35 and I passed 35 a long time ago.

2 Q. So did I.

3 A. But in terms of norms he is not able to work in an
4 environment where he has to either occasionally,
5 frequently or constantly use his hands in a bimanual way
6 in occupations but he is able to use his hands because he
7 was able to pick up these pegs and put them in the board.

8 Q. And, in fact, he had told you that he had been working at
9 his employer since January of 1999, some eight months
10 before you saw him?

11 A. Yes, that's correct.

12 Q. Okay. Now I want to ask you about some of the comments
13 that you made in your report, Doctor, about his earning
14 capacity.

15 A. Yes, sir.

16 Q. If you would refer to page 2 of your report?

17 A. Yes, sir.

18 Q. You indicate in the third paragraph that Mr. Janisse
19 indicated that he had earned about \$45,000.00, is that a
20 misprint?

21 MR. LUTJEN: This is George. I'm having a hard time
22 hearing you.

23 Q. (By Mr. DiVenere) In his report, Doctor, you indicated
24 in the third paragraph of page 2 that Mr. Janisse told
25 you that he had earned about \$45,000.00, do you see that

- 1 in your report?
- 2 A. I do.
- 3 Q. Is that a misprint, is that a typographical error?
- 4 A. No, it's not.
- 5 Q. Did you have an occasion to review his W-2 forms?
- 6 A. Yes.
- 7 Q. And did you see, in fact, that he never earned
- 8 \$45,000.00?
- 9 A. Yes.
- 10 Q. Did you question him about that?
- 11 A. No. First of all, I don't look at the material before I
- 12 see the individual so I can't -- you know, I'm not aware
- 13 of that. What he told me was that there was a lot of
- 14 overtime and that's what he said he indicated, that he --
- 15 he said approximately \$45,000.00 according to my notes.
- 16 Q. According to the W-2 forms that I've seen and I think you
- 17 have copies of, Mr. Janisse earned about \$27,000.00 in
- 18 1995 and approximately \$20,000.00 in 1996?
- 19 A. Right. And he earned twenty-eight thousand in 1997 up
- 20 until the time of this accident.
- 21 Q. That would be through September 29?
- 22 A. Right. And I haven't done the math, the algebraic
- 23 equation. I can do that to see what it extrapolates out
- 24 to.
- 25 Q. I'd like to carry that forward because in your report you

1 make a statement that -- let's see where it is. I think
2 it's the last page of your report where you indicate he's
3 losing approximately \$10,000.00 per year and I want to
4 ask you how you calculated that? Do you see that?

5 MR. LUTJEN: Speak up, Tony.

6 Q. (By Mr. DiVenere) I want to ask you, Doctor, how you
7 calculated that Mr. Janisse was losing \$10,000.00 per
8 year as your report states on the last page?

9 A. I calculated it based on page number 5, the last
10 paragraph, which said in my opinion his previous earning
11 capacity was in the area of \$40,000.00 per year and that
12 he was currently capable of earning thirty thousand per
13 year based on what he indicated his salary to be and
14 therefore I just made a simple subtraction. I see that
15 he earned in -- I've subsequently received data for '99
16 and he earned \$36,000.00 so that number would change at
17 this point.

18 Q. All right. Let's talk about that. You know from talking
19 to Mr. Janisse that he was putting a lot of overtime in
20 in 1997, correct?

21 A. That's what he indicated to me, that's correct.

22 Q. Do you know whether the overtime would have continued at
23 the same pace or lessened for the months of October,
24 November and December of 1997?

25 A. No, sir, I don't know.

Q. If we assume that the overtime would have continued at the same rate for the last three months of the year as they had been for the first nine months of the year, \$28,000.00 divided by nine is about \$3,200.00 per month, is that correct?

A. Well, I have a calculator here and I can do the algebraic equation. I got it right here. So that if we do the algebraic equation of nine months equals 28,000, how much does 12 months equal. Then it's 12 times 28,000 divided by nine will give you \$37,333.00 if my math is --

Q. I think that's correct.

A. Thank you.

Q. So if Mr. Janisse had continued to work at the same pace and, of course, we don't know --

MR. LUTJEN: Can't hear you, Tony.

Q. (By Mr. DiVenere) If he had continued to work at the same pace for the last three months of 1997 with the same overtime, with the understanding that there was no guarantee that he would have the same overtime, but if he did then he would have earned about \$37,000.00, correct?

A. Yes.

Q. Okay. Now, do you know how much, in fact, he earned in 1999?

A. Yes.

Q. You said about thirty-six six?

1 A. Yes.

2 Q. So that's about eleven hundred dollars less than what he
3 would have earned in 1997 had he worked the entire year,
4 correct?

5 A. Based on the assumptions you gave me the answer is the
6 difference in his earnings, that difference is correct.

7 Q. So based upon the information that you learned after you
8 did your report you would have to readjust your opinion
9 that he was losing \$10,000.00 per year, correct?

10 A. No. My opinion is based on earning capacity, not
11 earnings, so the math is the math. Earning capacity is
12 different than earnings so my opinion stands. It would
13 only be subject to change based on the subtraction of
14 earnings based on that but his earning capacity was still
15 \$40,000.00, that hasn't changed.

16 Q. Well, I don't understand earning capacity then.

17 A. Earning capacity is the power to earn money.

18 Q. And didn't you establish his earning capacity before his
19 injury based upon what, in fact, he was working, what he
20 was earning?

21 A. Yes, but if you take the 37,000 and run it up to today's
22 numbers you're dealing with a 40,000 a year earning
23 capacity so his power to earn money in that particular
24 job was approximately \$40,000.00 a year in my opinion.
25 He has yet to reach that in terms of going back to work

1 and even after returning back to work he has not reached
 2 what we calculated in '97 he would have been able to earn
 3 assuming those factors to be the case, so my opinion
 4 stands as it relates to what his earning capacity is.
 5 Subtractions would certainly be based on the W-2's and
 6 they've all so far been below 40,000.

7 Q. Do you know what increase he might have earned from 1997
 8 to 1998 in his earnings?

9 A. Are you talking about hourly rate or what?

10 Q. His earning capacity. If, in fact, he had not been
 11 injured how would you determine what his earning capacity
 12 would have been for 1998?

13 A. Well, you don't do it by year, you do it by what is he
 14 capable of doing and looking at the type of work he's
 15 done and the type of earnings he's had as it relates to
 16 that work, \$40,000.00 is a fair representation of his
 17 earning capacity based on those factors of the work he
 18 did as a welder, as the work he did as an iron worker, as
 19 the work he did when he worked in his previous capacity
 20 with this company. His earning capacity was in the area
 21 of \$40,000.00 per year.

22 Q. All right. So to clarify then just so I understand what
 23 you're saying, you were addressing the earning capacity,
 24 you were not addressing the actual lost earnings?

25 A. That's correct.

1 Q. Okay. Did you know, in fact, that Dr. John Burke, the
2 economist who rendered a report in this case, based his
3 report in large measure upon your report and
4 calculations?

5 A. I've not seen any reports from Dr. Burke. I don't know
6 what assumptions he used.

7 Q. You have not seen Mr. Janisse at all during the year
8 2000?

9 A. That's correct.

10 Q. So you don't know at this point whether his condition has
11 in anyway improved as to his ability to perform any of
12 the work functions?

13 A. I only have the information that's been provided to me
14 which is any up-to-date medical. I have no specific
15 information directly from Mr. Janisse.

16 Q. Based on your evaluation did you arrive at any opinion as
17 to what specific activities relating to his work that Mr.
18 Janisse would not be able to perform?

19 A. I did not specifically do that. I relied on the Work
20 Wise records that specifically point out the job duties
21 and testing for those job duties and it's well laid out
22 in their report, but I didn't do anything independent of
23 that other than to do my own independent testing.

24 Q. Okay. Did you render any opinion as to what limitations,
25 if any, Mr. Janisse had as a result of these HF burns

relating to his private life as opposed to his work life?

A. The only limitations would be from his own history as to the type of activities that he used to enjoy doing that he's incapable of doing now or no longer does to the extent to which he does and that's on the limitations section of my report where he talks about welding and bowling and hunting and fishing, working on cars, those are all activities that have been affected by his problems with his hands.

Q. But you did not administer any tests to measure the extent of limitation with regard to any of those activities, is that correct?

A. I did not simulate bow hunting or gun shooting or fishing. I just looked at his ability to use his fingers when compared to other individuals in his age group.

Q. Okay. I'm going to ask that this Work Wise evaluation be marked as an exhibit so that it can be attached to the deposition and all counsel can get a copy of it.

MR. PARIS: It's already part of the Ann Arbor records which are going to be marked as an exhibit but do what you want.

MR. DIVENERE: David, that's not the same as the record that you provided for the Center of Occupational Rehabilitation. Oh, here it is. I see. It's attached. Never mind. It's attached to the -- mine is only one

1 page though.

2 MR. PARIS: Tony, this is David again. You will be
3 receiving a complete copy of the University of Michigan
4 Hospital record which contains all that information. I
5 just received it yesterday after Dr. Chung's deposition.

6 MR. DIVENERE: Yeah, David, the Work Wise report
7 that he has here is different from the Work Wise report
8 that you had previously given us that is dated --

9 MR. PARIS: Mark what you want.

10 MR. DIVENERE: Okay. We'll mark it.

11 Q. (By Mr. DiVenere) Doctor, did you make any evaluation as
12 to what types of jobs Mr. Janisse would, in fact, be
13 capable of performing should he decide to leave his
14 present job or should he terminate, for whatever reason,
15 his present position?

16 A. Well, I looked at the fact that people now many times are
17 getting eight, nine different jobs in their lifetime and
18 that he may well have to go out in the workplace and look
19 for work. When I looked at the world of work as it
20 relates to reaching, handling, fingering and feeling,
21 which are dexterity issues, over 95 percent of the job
22 titles in the Dictionary of Occupational Titles require
23 bimanual dexterity to an occasional, frequent or constant
24 degree. So when I looked at that group you have what's
25 called a bimodal distribution, in other words there's a

1 lot of job titles that are highly skilled, don't require
 2 a lot of dexterity and then there's a lot of job titles
 3 that are in the unskilled and low end semi-skilled
 4 category so certainly a large number of jobs, you know,
 5 monitoring TV sets in a security company would be an
 6 example of one, information type person. There's a
 7 number of service occupations that he would qualify for
 8 and as I indicated in my report they would obviously pay
 9 less money than he is currently earning or had earning
 10 capacity for prior to the incident with his fingers.

11 Q. Now, Doctor, you're not saying that he's not capable of
 12 doing 95 percent of those jobs, are you?

13 A. I'm saying -- well, yeah, in part I am. I am saying
 14 that these jobs require dexterity that he's not capable
 15 of doing and therefore he's incapable of doing the
 16 functions of the job. He may well be able to do, you
 17 know, a lot of the aspects of the tasks required but in
 18 terms of performing the duties with his fingers the
 19 answer is no. I am saying he would be incapable of doing
 20 it from a dexterity standpoint.

21 Q. Are there many jobs in those categories that he would be
 22 able to do but perhaps with greater difficulty than
 23 perhaps other workmen?

24 A. That's the point. He is able to do them with greater
 25 difficulty and therefore if he can't keep up with norms

1 that are required, the competitive norms, then he's
2 incapable of doing the job competitively but he certainly
3 is able to do aspects of the job certainly. I mean, we
4 know, for instance, that people with disabilities in the
5 United States, 67 percent of them are not working because
6 they have limitations that employers are not willing to
7 accommodate so his chances of successful placement are
8 extremely limited when he would leave the current
9 position he has.

10 Q. Were you able to determine to what extent his
11 difficulties in doing the pegboard test were due to the
12 swelling and the symptoms that he described to you he was
13 still suffering and what was due to the restriction as a
14 result of the amputation of the fingertips?

15 A. No, that's really a medical question and I'm really not
16 qualified to address that.

17 Q. Is it then probable that to the extent he had limitations
18 at the time that you administered the test that were due
19 to the swelling in his hands, that in the future if that
20 swelling were to be reduced that he might not have as
21 much limitation as when you tested him?

22 MR. PARIS: Objection. Runs counter to the testimony
23 of Dr. Chung who opined that the swelling and the pain
24 are permanent in nature.

25 THE WITNESS: My answer to that is if someone could

1 tell me when it would be swollen and when it wouldn't be
 2 swollen then I could look at how that may or may not
 3 affect his ability to work. In my experience I've not
 4 been able to learn that information typically with hand
 5 injuries so I tested him on a day and he indicated that
 6 this was a worsening problem with him and that he was
 7 experiencing it daily in his current work situation so I
 8 had no reason to believe that it was intermittent.

9 Q. (By Mr. DiVenere) Are there expert providers that would
 10 be able to help Mr. Janisse in vocational rehabilitation
 11 if he were to lose his present job so that he could find
 12 another job?

13 A. Yes. There are state agencies all over the country in
 14 every state in the union whose charge it is to help
 15 people who are having difficulties or incapable of
 16 finding jobs who have disabilities, so I guess the simple
 17 answer is yes.

18 Q. And are you familiar with the type of vocational rehab
 19 services that might be available to Mr. Janisse
 20 particularly?

21 A. Yes. They provide -- having worked for the agency at
 22 least here in Michigan and I know the agency in Ohio is
 23 similar, they provide diagnostic services much like I
 24 have provided. They also provide counsel and help in job
 25 placement, retraining, job modification, equipment,

reasonable services to try to help individuals secure, keep or be retrained for employment.

Q. Did you review any other reports in formulating your report, Doctor?

A. I didn't review any other reports, medical reports or other reports. I have a body of knowledge that I have by virtue of my experience such as the employment rate for disabled people in the United States and the Dictionary of Occupational Titles but I didn't take them off the shelf and read them, no.

Q. Did you rely on Dr. Chung's report?

A. I looked at and accepted all of the medical reports that were provided to me which included reports from Dr. Chung.

MR. DIVENERE: That's all I have. Gentlemen?

MR. LUTJEN: This is George Lutjen. No questions. Here.

MR. VOZAR: Tom Vozar. No questions

EXAMINATION

BY MR. PARIS:

Q. Dr. Ancell, this is David Paris. I only have one question.

A. Yes, sir.

Q. The eight or nine dollars an hour that you expressed an opinion that if he was to go out into the marketplace now

1 and try to find a job only five percent of the jobs would
2 be available to him, 95 percent of job titles are closed
3 to him?

4 A. Right. Ninety-five percent of the job titles would
5 require dexterity that is beyond his capabilities in the
6 unskilled and semi-skilled category which is what he
7 qualified for before.

8 Q. So that means conversely there's only five percent of
9 those jobs that are available to him?

10 A. Job titles that are available to him and really what it
11 means is that his universe of options that he can
12 consider has been reduced by over 95 percent.

13 Q. Okay. And his earning capability, given those
14 situations, is eight to nine dollars per hour?

15 A. Yes.

16 Q. And if you use your calculator at a 40 hour week, 52
17 weeks a year, that brings him into an annual salary of
18 somewhere around \$18,000.00 to \$20,000.00?

19 A. Yeah. I used two thousand hours just because it's easy
20 to do the multiplication but, yeah, you're correct.

21 Q. And his present earnings, actual earnings, are about 36,
22 \$37,000.00 a year?

23 A. Yes, in '99 they were \$37,000.00.

24 Q. Leaving a differential loss of \$20,000.00 or so?

25 A. Yes. If I take the midpoint between \$8.00 and \$9.00 it's

1 eight-fifty and that's about \$17,000.00 a year so he's
 2 got about an eighteen or nineteen thousand dollar a year
 3 loss as we sit here right now.

4 Q. And that would be in his earning capacity?

5 A. That's in the loss of his earning capacity.

6 Q. And if an economist were to crunch those numbers at
 7 \$10,000.00 a year for the remainder of his statistical
 8 work life, that \$10,000.00 number would then be a
 9 conservative number?

10 A. Oh, yeah, definitely a conservative number.

11 MR. PARIS: Okay. I don't have anything further.

12 MR. DIVENERE: I've got a couple questions in
 13 relation to what you just asked, David.

14 MR. PARIS: Okay.

15 REEXAMINATION

16 BY MR. DiVENERE:

17 Q. The five percent of job titles that would be available to
 18 Mr. Janisse, how many jobs would that represent?

19 A. There's probably thousands of jobs within those titles
 20 so --

21 Q. So five percent could be what, a hundred, two hundred?

22 A. A thousand, over a thousand jobs. I'm not saying there
 23 are not jobs that exist. They do. They exist in
 24 significant numbers. We're talking about options here,
 25 not the number of jobs.

1 Q. So there are hundreds of job titles that would still be
2 available to Mr. Janisse that he would be able to do,
3 correct?

4 A. Well, if you take five percent of 12,741 job titles,
5 which is the universe we're talking about, and you take
6 five percent of that you come up with 637 job titles.

7 Q. Okay.

8 A. So, you know, that doesn't represent jobs, that
9 represents titles, and there are obviously hundreds if
10 not thousands of jobs that may exist in any community
11 within those six hundred and so job titles.

12 Q. Right. And in all of those job titles are you saying
13 that none of them pay more than eight to nine dollars an
14 hour?

15 A. No, I'm not saying that. I'm saying that on the average
16 these jobs and their skill levels, the value for these
17 jobs based on data we get from the government regarding
18 that, pays in that area.

19 Q. So that's basically an average estimate on your part?

20 A. Yes. This is a range that I feel appropriate given his
21 skills and the open marketplace and data, you know, from
22 where he lives.

23 Q. And as far as the loss of earning capacity in the future,
24 obviously that's a guesstimate as well, isn't that
25 correct?

1 MR. PARIS: Objection. There's no guesstimate in
2 this man's testimony, that's your word.

3 THE WITNESS: No, this is not a guesstimate.

4 Q. (By Mr. DiVenere) It's an estimate?

5 A. This is a conclusion based on reasonable professional
6 certainty based on the data, what he's already
7 established and what the federal documents regarding
8 earnings and local documents are and is by far not a
9 guesstimate.

10 Q. But we don't know what job Mr. Janisse would actually get
11 should he leave his present job or what that job would
12 actually pay, is that correct?

13 A. That is correct.

14 Q. All right. Nothing further.

15 MR. LUTJEN: This is George Lutjen. Let me ask the
16 Doctor one question

17 EXAMINATION

18 BY MR. LUTJEN:

19 Q. Doctor, this is George Lutjen and I represent Abtrex
20 Industries.

21 In your conversation with Anthony Janisse did he
22 ever indicate in any manner, shape or form that his
23 employment with Abtrex Industries was not going to be
24 continued?

25 A. He didn't indicate that statement but we did talk about

1 the fact that companies are bought out, companies close,
 2 foremen or supervisors change, attitudes change, and that
 3 this was not something that was cast in stone but he did
 4 not indicate to me that, you know, that within five days
 5 or ten days or whatever he was going to be history, no.

6 Q. Was there any indication or sense at all that you had
 7 that Abtrex Industries and his immediate supervisors
 8 didn't have interest and concern enough with him to keep
 9 him on this job, did you get any sense of that at all?

10 A. He didn't indicate those words to me, no.

11 Q. And when you talk about companies changing, attitudes
 12 changing and that sort of thing, that's the same thing
 13 that can happen in my office or your office I guess?

14 A. That's my point. It's very unpredictable and there's
 15 nothing that's cast in stone and, you know, I deal in my
 16 business with a lot of people who had jobs for long
 17 periods of time and thought they were secure and they're
 18 on the street so that's a concern of his because his
 19 options are reduced and, in fact, he basically said as I
 20 indicated, I think, in my direct, that he made a comment
 21 that "I have no choice" so, you know, he's got some
 22 problems as it relates to what options are available to
 23 him.

24 Q. And you have no information from any source of any kind
 25 or nature that Abtrex Industries has done or will do

1 anything different than employ him in his current
2 position?

3 A. I have no other information other than what I've already
4 said, sir.

5 Q. And you got no information from him to that effect?

6 A. That's correct.

7 Q. Thank you very much.

8 MR. DIVENERE: I'm going to ask the Doctor if we can
9 mark his notes and the Work Wise report that we referred
10 to earlier as exhibits and they'll be made available with
11 the transcript.

12 (Marked for identification Deposition
13 Exhibit No. 1 - 2).

14 (Deposition concluded at about 12:15 p.m.)

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State of Michigan)
County of Oakland)

Certificate of Notary Public

I do hereby certify that the witness, whose
attached testimony was taken in the above-entitled
matter, was first duly sworn to tell the truth; the
testimony contained herein was reduced to writing in
the presence of the witness by means of stenography;
afterwards transcribed; and is a true and complete
transcript of the testimony given by the witness.

I further certify that I am not connected
by blood or marriage with any of the parties; their
attorneys or agents; and that I am not interested
directly, indirectly or financially in the matter of
controversy.

In witness whereof, I have hereunto set my
hand at Birmingham, Michigan, County of Oakland,
State of Michigan.


Susan K. Jones

Notary Public, Oakland, Michigan
My Commission Expires: 3-13-02

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A RECORD OF EXCELLENCE

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