1 THE STATE OF OHIO, 1 INDEX SS: LILLIAN GREENE, J. Page COUNTY OF CUYAHOGA. 2 Cross-Examination by Mr. Hupp Cross-Examination by Ms. Henry Further Cross-Examination by Mr. Hupp 29 37 3 IN THE COURT OF COMMON PLEAS 4 CHARLES TENNEY, III, etc., OBJECTIONS: 5 et al.. Page Plaintiffs, 6 By Mr. Mishkind 22, 23, 37 7 ٧, Case No. 448548 EXHIBITS: URMILA PATEL, M.D., et al., 8 Marked Defendant's Q Defendants. Vita. .4 2A 2B 2C 2D 10 Intake Form Intake Form . . . Intake Form
Slosson Intelligence Test - Dawn Davis.
Slosson Intelligence Test - Charles Tenney
VALE Report - First Page.
VALE Report - Second Page.
VALE Report - First Page.
VALE Report - Second Page.
Physical Therapy Report (not attached). Deposition of ROD W. DURGIN, Ph.D., taken by 11 ŽĒ 2F Defendant Southwest General Health Center, as if 12 13 upon Cross-Examination before Angela R. Zanghi, a Registered Professional Reporter and Notary Public 14 13 15 within and for the State of Ohio, at Vocational - - -Assessments, Inc., 600 East Superior Avenue, Suite 16 17 1300, Cleveland, Ohio, on Wednesday, the 27th day of November, 2002, commencing at 12:39 p.m. 18 19 . . . 20 20 21 21 22 22 23 23 24 24 25 25 2 4 1 APPEARANCES: 1 (Defendant's Deposition Exhibit 1 Becker & Mishkind Co., L. Howard D. Mishkind, Esq. 1660 West 2nd Street 600 Skylight Office Tower Cleveland, Ohio 44113 (216) 241-2600 2 L.P.A. 2 marked for identification.) 3 3 ROD W. DURGIN, Ph.D., 4 4 called by Defendant Southwest General Hospital, for 5 5 the purpose of cross-examination, as provided by the On behalf of the Plaintiffs. 6 Ohio Rules of Civil Procedure, being by me first 6 Bonezzi, Switzer, Murphy & Polito Co., L.P.A. Steven J. Hupp, Esq. 1400 Leader Building 526 Superior Avenue Cleveland, Ohio 44114 (216) 875-2767 7 7 duly sworn, as hereinafter certified, deposes and 8 8 says as follows: 9 9 - - -10 10 On behalf of Defendant Southwest General Health CROSS-EXAMINATION Center. 11 11 BY MR. HUPP: Weston, Hurd, Fallon, H Deirdre G. Henry, Esq. 2500 Terminal Tower 50 Public Square Cleveland, Ohio 44113 (216) 241-6602 Fallon, Paisley & Howley 12 Q. 12 Please state your full name for the record. 13 13 A. Dr. Rod W. Durgin. 14 14 Q. Dr. Durgin, my name is Steve Hupp. We've met 15 15 On behalf of Defendant Urmila Patel, M.D. before. You understand the process of a deposition 16 16 1 assume? 17 17 A. Yes, I do, sir. 18 18 Q. Question and answer session under oath. If you 19 19 answer a question, we presume that you understood 20 20 the question. Fair enough? 21 21 A. Fair enough. ٠*1*.E. 22 Q. 22 If you do not understand my question, please tell me 23 23 and I'll attempt to rephrase the question. Okay? 24 24 A. That will be fine. 25 25 Q. Doctor, we marked your current CV handed to us today

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1	as Defendant's Exhibit 1. Is that true?	1 Q.	7 If you can for us, would you please read the back of
2 A.	That's correct.	2	Defendant's Exhibit B. That will answer a lot of
3 Q.	Is that up-to-date in all aspects?	3	our questions I think.
4 A.	Yes, it is.	4 A.	Okay. At the top it says Dawn Davis (mother).
5 Q.	Exhibit 2 you said were some documents from your	5	Next it says Age: 21. Then the next is Education.
6	file which we'll go through. Could you just	6	It says Graduated Columbia High School/Columbia
7	describe I guess we should sort of submark these	7	Station, Ohio, in 1999. Then it says under
8	1 through whatever.	8	education, Has enrolled at Ocean County Community
	-		
9	(Defendant's Deposition Exhibits 2A through	9	College for January 2002, and then it says,
10	2H marked for identification.)	10	Interest: Forensic Science. Work Experience is the
11 Q.	(BY MR. HUPP) Doctor, I'm handing you what's been	11	next header. And it says for Dawn Davis since high
12	marked all of Defendant's Exhibit 2 and we've broken	12	school has worked several jobs. She was a nurse
13	it down by letters. Can you tell me essentially	13	assistant for the elderly. Temporary service/
14	what those documents are first?	14	receptionist, phones, etc., for American Greetings.
15 A.	Certainly. 2A is the first page of my intake form.	15	She was a cashier at Walmart. Presently a
16	All my intake notes were relative to my assessment	16	photographer at a portrait studio in Walmart, and
17	of Charles Tenney, III. So 2A is just a cover sheet	17	that was in New Jersey. She had been there for two
18	of standard form.	18	months.
19	2B that you marked is some of my intake notes	19	Then the next section is Charles E. Tenney
20	that are part of this form. The whole form is just	20	(father). Age: 29. Education: Completed 9th grade
21	my intake notes.	21	at Max Hayes Vocational Center in Cleveland. And
22 0.	Is that your handwriting on that form?	22	then right at the top you see 1989 with a question
23 A.	Yes, it is. So anyway, 2A and 2B is that. Let's	23	mark which means he wasn't sure but he thought it
24	find C for you. 2C is the answer sheet from the	24	was around '89. Then we go to Work Experience.
25	Slosson Intelligence Test of Dawn Davis, the mother.	25	Carpenter laborer for uncle one year. He worked at
	, ,		, , , , , , , , , , , , , , , , , , ,
			8
		4	
1	And 2D is the answer sheet from the Slosson	1	a fire damage company for three years. Mostly
1 2	Intelligence Test of Charles Tenney, Jr., the	2	a fire damage company for three years. Mostly demolition work there. And then the last one is at
			a fire damage company for three years. Mostly
2	Intelligence Test of Charles Tenney, Jr., the	2	a fire damage company for three years. Mostly demolition work there. And then the last one is at
2 3	Intelligence Test of Charles Tenney, Jr., the father. E is the Labor Market Analysis of Charles	2 3	a fire damage company for three years. Mostly demolition work there. And then the last one is at age 21 began collecting Social Security for learning
2 3 4	Intelligence Test of Charles Tenney, Jr., the father. E is the Labor Market Analysis of Charles Tenney, III post-injury. And 2G is the Labor Market	2 3 4	a fire damage company for three years. Mostly demolition work there. And then the last one is at age 21 began collecting Social Security for learning disability/can't read or write. Then the final
2 3 4 5	Intelligence Test of Charles Tenney, Jr., the father. E is the Labor Market Analysis of Charles Tenney, III post-injury. And 2G is the Labor Market Analysis so E is the Labor Market Analysis and F	2 3 4 5	a fire damage company for three years. Mostly demolition work there. And then the last one is at age 21 began collecting Social Security for learning disability/can't read or write. Then the final sentence it says he has a child from a previous
2 3 4 5 6	Intelligence Test of Charles Tenney, Jr., the father. E is the Labor Market Analysis of Charles Tenney, III post-injury. And 2G is the Labor Market Analysis so E is the Labor Market Analysis and F is the data that I put in to get to the Labor Market	2 3 4 5 6	a fire damage company for three years. Mostly demolition work there. And then the last one is at age 21 began collecting Social Security for learning disability/can't read or write. Then the final sentence it says he has a child from a previous situation, a daughter eight years.
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2 3 4 5 6 7 8 9 10 Q. 11 12 A. 13 Q. 14 15 16 A. 17 Q. 18 19 A. 20 21	<pre>Intelligence Test of Charles Tenney, Jr., the father. E is the Labor Market Analysis of Charles Tenney, III post-injury. And 2G is the Labor Market Analysis so E is the Labor Market Analysis and F is the data that I put in to get to the Labor Market Analysis. And that's post-injury. And then G, H, 2G and H, is the same thing except it's the pre-injury market. Non-injury, in other words, if the child weren't injured at all? Yes. Either way. Non-injury, pre-injury. Now, these answer sheets for Dawn and Charles Jr., those are the actual answer sheets for the I.Q. Test that you administered? Yes. Why did you choose to administer an I.Q. Test to the parents, Doctor? Because we have a child here that when I saw him is one year and three months and the best determination of a child's future capacity to work and earn money</pre>	2 3 4 5 6 7 q. 8 9 10 A. 11 q. 12 13 A. 14 q. 15 16 A. 17 18 19 20 21	a fire damage company for three years. Mostly demolition work there. And then the last one is at age 21 began collecting Social Security for learning disability/can't read or write. Then the final sentence it says he has a child from a previous situation, a daughter eight years. So the reason the father was on Social Security is because he had a learning disability and couldn't read or write? That's my understanding, yes. How was it, Doctor, he at least attempted to complete the I.Q. test? Was that read to him? Yes. The I.Q. test is verbally administered. Then he would just select Is that multiple choice answers? No. Well, depends on the question, you know. There are no multiple choice. On an I.Q. test you do a lot of things; you're asked to verbally perhaps solve a math problem in your head or you're asked a question like who was Thomas Edison, what did he do, or you're asked to recite numbers forward or
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2 3 4 5 6 7 8 9 10 Q. 11 12 A. 13 Q. 14 15 16 A. 17 Q. 18 19 A. 20 21 22 23	<pre>Intelligence Test of Charles Tenney, Jr., the father. E is the Labor Market Analysis of Charles Tenney, III post-injury. And 2G is the Labor Market Analysis so E is the Labor Market Analysis and F is the data that I put in to get to the Labor Market Analysis. And that's post-injury. And then G, H, 2G and H, is the same thing except it's the pre-injury market. Non-injury, in other words, if the child weren't injured at all? Yes. Either way. Non-injury, pre-injury. Now, these answer sheets for Dawn and Charles Jr., those are the actual answer sheets for the I.Q. Test that you administered? Yes. Why did you choose to administer an I.Q. Test to the parents, Doctor? Because we have a child here that when I saw him is one year and three months and the best determination of a child's future capacity to work and earn money is the intellectual capacity of the parents. We know that intelligence is over 80% hereditary and we</pre>	2 3 4 5 6 7 Q. 8 9 10 A. 11 Q. 12 13 A. 14 Q. 15 16 A. 17 18 19 20 21 22 23	a fire damage company for three years. Mostly demolition work there. And then the last one is at age 21 began collecting Social Security for learning disability/can't read or write. Then the final sentence it says he has a child from a previous situation, a daughter eight years. So the reason the father was on Social Security is because he had a learning disability and couldn't read or write? That's my understanding, yes. How was it, Doctor, he at least attempted to complete the I.Q. test? Was that read to him? Yes. The I.Q. test is verbally administered. Then he would just select Is that multiple choice answers? No. Well, depends on the question, you know. There are no multiple choice. On an I.Q. test you do a lot of things; you're asked to verbally perhaps solve a math problem in your head or you're asked a question like who was Thomas Edison, what did he do, or you're asked to recite numbers forward or backward, a string of numbers. It's all verbally administered.

		1	
1	test, is that true? 9	1	and we stop.
2 A.	Yes. How you would interpret this form is that	2 Q.	The mother Dawn had an I.Q. of 101?
3	there are basically 187 questions for the test	3 A.	She has an I.Q. of 101 and she's at the 52nd
4	beginning at for someone age 4 and going up through	4	percentile.
5	adult, depending on the age of the person. As an	5 Q.	Back when I took psychology when I was in college
6	administrator, you decide where you want to start	6	many, many years ago 100 was an average I.Q.
7	the testing, where you think the person might be.	7 A.	Dead average.
8	You don't have to give them all the questions. I	8 Q.	An I.Q. of 65 is mentally retarded, it that how
9	started it looks like with Charlie, the father,	9	that would classify?
10	Charles Sr., looks to me like I started at Item 86	10 A.	Yes, that would be.
11	and then he answered Items 87 and 88 correctly.	11 0.	Based upon your testing you did on the mother and
12	That's why you don't see any marks. Item 89 he	12	father of this child, do you have any opinions as to
13	missed.	13	what you believe this child, Charles III, will have
14 Q.	That's the horizontal line that we see?	14	in terms of an I.Q.?
15 A.	That's the negative, right. So for this to be valid	15 A.	I think heill fall as I stated in my report in the
16	I've got to get to a point where he answers ten in a	16	average range of intelligence.
17	row correctly, so that means after asking him three	17 Q.	In the range of 100 in other words?
18	questions I had to back up. And looks like I had a	18 A.	Somewhere within that range. The standard range,
19	couple of tries with him. I backed up to Question	19	it's a 15 point standard deviation. So he would
20	71, that didn't work, so I finally backed up to	20	fall between 85 and 115.
21	Question 52 which did work and I got 10 straight	21 Q.	Aside from the I.Q. test and taking a history from
22	answers.	22	these parents, did you do any other testing of the
23 Q.	Do you know what the significance of Question 52	23	parents?
24	would be, what age level that would be?	24 A.	No. That was basically the data that I needed.
25 A.	Not without going to the book, but 52 might be I	25 Q.	I'm looking at your report. I assume you have an
1	10 don't know, I don't like to guess, but it's not real	1	extra copy there. It's dated April 28th, 2002.
2	high, I'll tell you that.	2 A.	Yes.
- 3 Q.	What is the last question he would have been asked?	3 Q.	Doctor, is that the first and only report you
4	131?	4	generated in this case?
5 A.	131, he was asked that and missed it.	5 A.	Yes, it is.
6 Q.	Okay. Now, explain what you mean by these scores	6 Q.	Did you take any notes aside from what we have here
7	over here on the right-hand side.	7	during any of the testing of these parents?
8 A.	That's just straight. We look at the baseline 61.	8 A.	No. What you see is what I have.
9	61 was the last correct answer he had before he	9 0.	In terms of reviewing the case, I noticed that you
10	missed. Questions that he passed after 61, he	10	have other documents in your file. Could you tell
11	passed 36. So you add 61 and 36 and you get a 97.	11	us what those are?
12	Okay. Then you take this 97 to the This is a	12 A.	Certainly. Well, we've gone through the ones you've
13	standardized test so there are norming tables. You	13	asked about. I assume we can move on from there?
14	take the 97 to the standardized test and you find,	14 Q.	Right.
15	if you want to look here so you can finish this	15 A.	Then the next piece of data in my file would be all
16	form, that the 97 converts to a standard score of	16	the medical records that I reviewed in this case,
17	65, which puts him at the 1st percentile of people	17	and they're cited on Page 2 of my report. So that's
18	taking this test. Okay. That's how.	18	what those are. And then finally in my files since
19 Q.	The same methods were used on	19	I did the analysis I received the depositions, both
20 A.	Same. Except with her I started at 100, which is	20	Dawn Davis and Charles Tenney, Jr. in terms of
21	sort of a dead average start to start someone, and	21	their depositions. I received those, and they're
22	actually with her I was almost on target so I was	22	here. And I also received since I did the report a
23	four or five off. Actually, I was pretty close to	23	physical therapy report dated June 17th, 2002 from
24	her. 114 was her first missed and then you just	24	Southern Ocean County Hospital signed by a Kimberly
25	keep going and eventually she missed ten in a row	25	Sink, MPT, she's a physical therapist, and
		2	

1	apparently it was the discharge notice and her 13	1 Q.	Okay At this time that you avaning his or that 15
2	treatment of Charles III.	2	Okay. At this time when you examined him on that date, which was December 27th, 2001, he was 15
2 3 Q.	This letter that you've just described has a fax	3	months old I think?
	date to you of November 22nd at 9:14 a.m. on the	4 A.	Correct.
		5 Q.	
5	upper portion?	6	Could he follow commands like open your hand, close
6 A.	Yeah.	7	your hand, or he would be too young for that,
7 Q.	Is that in terms of your memory when you would have received that document?	i	wouldn't he?
8		8 A.	No. They asked him to do that. He understood that
9 A.	Yeah. It was after I did the analysis. I didn't	9	part. And I asked him to do that.
10	realize what the date was.	10 Q.	He did follow those commands to the best of his
11	(Defendant's Deposition Exhibit 3	11 12 A.	ability?
12	marked for identification.)		Yeah. His hand was always closed.
13 Q.	(BY MR. HUPP) Doctor, showing you what's been	13 Q.	He walked around with it closed?
14	marked as Exhibit 3, now that we've established that	14 A.	Yeah. Pretty much.
15	you had received that document after your report, do	15 Q.	Now that we're almost a year later, do you intend to
16	you need to make any amendments or changes to your	16	re-examine this child or view him again?
17	report as a result of having that physical therapy	17 A.	I don't have any plans to do that.
18	document?	18 Q.	Would a re-examination of the child a year later in
19 A.	No. This doesn't change my opinion nor my analysis.	19	any way impact your opinions in this case do you
20	It just basically states they're trying to work with	20	think?
21	him to give him a little more functionality relative	21 A.	Not unless there was something dramatic that
22	to his injury, but it doesn't effect my opinions.	22	happened. I mean, for my opinions to change this
23 Q.	On Exhibit 2A you have some other writing. I'm	23	child has to be able to have full function of his
24 25	going to bore us by making you read that if you	24 25	hand, he has to be able to close it, open it, he has
25	would.	22	to be able to straighten his arm and he has to be
	14		16
1 A.	Certainly. I would refer to read it off mine.	1	able to lift it over his head and he has to
2 Q.	Certainly. I would refer to read it off mine. Because mine doesn't look too good.	2	able to lift it over his head and he has to demonstrate increased strength in the arm beyond
2 Q. 3 A.	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth	2 3	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to
2 Q. 3 A. 4	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe	2 3 4	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly
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2 Q. 3 A. 4 5 6 7	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray	2 3 4 5 6 7 Q.	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your
2 Q. 3 A. 4 5 6 7 8	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both	2 3 4 5 6 7 Q. 8	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based
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2 Q. 3 A. 4 5 6 7 8 9 10	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in	2 3 4 5 6 7 a. 8 9 10	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that
2 Q. 3 A. 4 5 6 7 8 9 10 11	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result	2 3 4 5 6 7 Q. 8 9 10 11	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was
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2 Q. 3 A. 4 5 6 7 8 9 10 11 12 13 14	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result of injuries sustained at birth. The next says Parents, that word is parents underlined. Then first says, Arm constantly hangs	2 3 4 5 6 7 a. 8 9 10 11 12 13 14	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was pre-injury, the child would make a certain amount of money and would be eligible for a certain percentage of jobs in the U.S., is that right?
2 Q. 3 A. 4 5 6 7 8 9 10 11 12 13 14 15	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result of injuries sustained at birth. The next says Parents, that word is parents underlined. Then first says, Arm constantly hangs at side. Next is, Unable to fully straighten the	2 3 4 5 6 7 Q. 8 9 10 11 12 13 14 15 A.	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was pre-injury, the child would make a certain amount of money and would be eligible for a certain percentage of jobs in the U.S., is that right? That's right.
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2 Q. 3 A. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result of injuries sustained at birth. The next says Parents, that word is parents underlined. Then first says, Arm constantly hangs at side. Next is, Unable to fully straighten the arm. Unable to lift the arm to shoulder level. Hand is constantly fisted. Fingers must be manually opened. Cannot hold with his right hand. Unable to	2 3 4 5 6 7 Q. 8 9 10 11 12 13 14 15 A. 16 Q. 17 18	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was pre-injury, the child would make a certain amount of money and would be eligible for a certain percentage of jobs in the U.S., is that right? That's right. Then what you apply is the nature of his injury to that calculation, reduce the calculation and arrive at what your anticipation is that he would earn over
2 Q. 3 A. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result of injuries sustained at birth. The next says Parents, that word is parents underlined. Then first says, Arm constantly hangs at side. Next is, Unable to fully straighten the arm. Unable to lift the arm to shoulder level. Hand is constantly fisted. Fingers must be manually opened. Cannot hold with his right hand. Unable to rotate his wrist. In general, the right arm is very	2 3 4 5 6 7 Q. 8 9 10 11 12 13 14 15 A. 16 Q. 17 18 19	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was pre-injury, the child would make a certain amount of money and would be eligible for a certain percentage of jobs in the U.S., is that right? That's right. Then what you apply is the nature of his injury to that calculation, reduce the calculation and arrive at what your anticipation is that he would earn over the course of his lifetime, is that true in general
2 Q. 3 A. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result of injuries sustained at birth. The next says Parents, that word is parents underlined. Then first says, Arm constantly hangs at side. Next is, Unable to fully straighten the arm. Unable to lift the arm to shoulder level. Hand is constantly fisted. Fingers must be manually opened. Cannot hold with his right hand. Unable to rotate his wrist. In general, the right arm is very weak.	2 3 4 5 6 7 Q. 8 9 10 11 12 13 14 15 A. 16 Q. 17 18 19 20	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was pre-injury, the child would make a certain amount of money and would be eligible for a certain percentage of jobs in the U.S., is that right? That's right. Then what you apply is the nature of his injury to that calculation, reduce the calculation and arrive at what your anticipation is that he would earn over the course of his lifetime, is that true in general terms?
2 Q. 3 A. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 Q.	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result of injuries sustained at birth. The next says Parents, that word is parents underlined. Then first says, Arm constantly hangs at side. Next is, Unable to fully straighten the arm. Unable to lift the arm to shoulder level. Hand is constantly fisted. Fingers must be manually opened. Cannot hold with his right hand. Unable to rotate his wrist. In general, the right arm is very weak. Is that the continuation?	2 3 4 5 6 7 Q. 8 9 10 11 12 13 14 15 A. 16 Q. 17 18 19 20 21 A.	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was pre-injury, the child would make a certain amount of money and would be eligible for a certain percentage of jobs in the U.S., is that right? That's right. Then what you apply is the nature of his injury to that calculation, reduce the calculation and arrive at what your anticipation is that he would earn over the course of his lifetime, is that true in general terms? Yes.
2 Q. 3 A. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 Q. 22 A.	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result of injuries sustained at birth. The next says Parents, that word is parents underlined. Then first says, Arm constantly hangs at side. Next is, Unable to fully straighten the arm. Unable to lift the arm to shoulder level. Hand is constantly fisted. Fingers must be manually opened. Cannot hold with his right hand. Unable to rotate his wrist. In general, the right arm is very weak. Is that the continuation? Yeah, that's sort of a continuation. Then it says	2 3 4 5 6 7 Q. 8 9 10 11 12 13 14 15 A. 16 Q. 17 18 19 20 21 A. 22 Q.	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was pre-injury, the child would make a certain amount of money and would be eligible for a certain percentage of jobs in the U.S., is that right? That's right. Then what you apply is the nature of his injury to that calculation, reduce the calculation and arrive at what your anticipation is that he would earn over the course of his lifetime, is that true in general terms? Yes. To do that, you have a work table, a worklife
2 Q. 3 A. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 Q. 22 A. 23	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result of injuries sustained at birth. The next says Parents, that word is parents underlined. Then first says, Arm constantly hangs at side. Next is, Unable to fully straighten the arm. Unable to lift the arm to shoulder level. Hand is constantly fisted. Fingers must be manually opened. Cannot hold with his right hand. Unable to rotate his wrist. In general, the right arm is very weak. Is that the continuation? Yeah, that's sort of a continuation. Then it says It's my observation note. It says, When observed	2 3 4 5 6 7 Q. 8 9 10 11 12 13 14 15 A. 16 Q. 17 18 19 20 21 A. 22 Q. 23	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was pre-injury, the child would make a certain amount of money and would be eligible for a certain percentage of jobs in the U.S., is that right? That's right. Then what you apply is the nature of his injury to that calculation, reduce the calculation and arrive at what your anticipation is that he would earn over the course of his lifetime, is that true in general terms? Yes. To do that, you have a work table, a worklife probability table?
2 Q. 3 A. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 Q. 22 A.	Certainly. I would refer to read it off mine. Because mine doesn't look too good. This is just some intake notes. "During his birth on 12-13-2000 Charles Tenney, III sustained a severe brachial plexus injury of the right upper extremity. Additionally, he sustained multiple bruises to his face, the right eye, arms and chest. Chest x-ray taken shortly after his birth revealed that both lungs had collapsed. Additionally, he required a breathing tube, chest tubes and hospitalization in the ICU of Rainbow Children's Hospital as a result of injuries sustained at birth. The next says Parents, that word is parents underlined. Then first says, Arm constantly hangs at side. Next is, Unable to fully straighten the arm. Unable to lift the arm to shoulder level. Hand is constantly fisted. Fingers must be manually opened. Cannot hold with his right hand. Unable to rotate his wrist. In general, the right arm is very weak. Is that the continuation? Yeah, that's sort of a continuation. Then it says	2 3 4 5 6 7 Q. 8 9 10 11 12 13 14 15 A. 16 Q. 17 18 19 20 21 A. 22 Q.	able to lift it over his head and he has to demonstrate increased strength in the arm beyond what he had. I don't think that that's going to happen. If it were to happen, I would certainly want to re-evaluate him. But with this type of injury that rarely, if ever, occurs. Okay. Now, Doctor, I want to talk about your analysis and how you arrived at your analysis based upon this child's disability that we're talking about. My understanding from your report is that assuming there was no injury, assuming it was pre-injury, the child would make a certain amount of money and would be eligible for a certain percentage of jobs in the U.S., is that right? That's right. Then what you apply is the nature of his injury to that calculation, reduce the calculation and arrive at what your anticipation is that he would earn over the course of his lifetime, is that true in general terms? Yes. To do that, you have a work table, a worklife

1	for us.	1 A.	Yes. 19
2 A.	Sure.	2 0.	Explain how you arrived at that calculation for us.
3 Q.	I guess we'll start with it says age 19. It says	3 A.	Okay. Well, the Government classifies
<u> </u>	Obs 1. And then you have a probability life.	4	employability. When you talk about percentage of
5	That's his life expectancy I assume?	5	disabled, it's really not a way of looking at it.
6 A.	Yes.	6	You have to look at it by employability, how
7 Q.	Okay. Then you have probability of worklife	7	employable is this individual as a disabled worker.
8	expectancy which is .57 for pre-injury and .31 for	8	Are they fully employable on one end of the spectrum
9	the post-injury. Is that true?	9	or are they unemployable on the other or they're
9 10 A.	That's correct.	10	somewhere along being fully employable to
10 A. 11 Q.	What is the significance of those two numbers?	11	unemployable, and the Government says here are the
12 A.	Well, the significance is that as a disabled worker	12	number of categories you can use. You can use
13	he's going to experience reduced worklife. I mean,	13	disabled not severely, you can use average disabled
14	these are Government tables. Government says, you	14	or you can use disabled severely. Those are sort of
15		15	
	know, a couple things to us. Says that none of us		the degrees. In this case looking at the type of
16	work consecutive years, we work worklives which they	16	injury it is, it was my opinion that Charles Tenney,
17 18	call LPE, probability of; L being alive, P participating, and E being actually employed in the	18	III in terms of employability would be an average disabled worker in the workforce.
10	workforce. That's a worklife. And they've	19 Q.	You've mentioned a couple times the Government. Is
20	developed worklife tables for pre-injury and	20	there a specific location your attaining this
21	post-injury because their data and all the research	21	reference from?
22	shows once you're injured two things happen to you.	22 A.	Yes. The reference is on the back page, second page
23	One, you probably are not going to earn the same	23	of the report. The vital statistics of the United
23	amount of money you would have; two, and more	24	States that you see there in the current population
24	importantly, you're not going to be in the workforce	25	reports the selected characteristic for persons with
6. <i>1</i>	hiportantty, you're not going to be ni the workforce		reports the serected characteristic for persons with
4	18		a disability 16 to 74. Those are published annually
1	at the rate you customarily would have. You're not	2	•
2	going to have the same worklife. And that's what		basically by the Government, and that's where the
3	the Government says. That is what this table points	3	data comes from. Aside from the data that you've referenced on Page 2
4	out. And the way it's life participation,	4 Q. 5	,
5 6	employment, and it's generated by sex, age which	6	of the worklife probability tables, do you have any
0 7	we've talked about, and education. Now, in this case I've not included education.	7	other reference materials you've relied on in this case at all?
		8 A.	
8 9	Education doesn't come in. We don't know what his education is so we're not going to include it.	9	Well, I used to get the Labor Market Analysis. I use the worker trade characteristic from The U.S.
9 10 Q.	Okay. Well, by not including it, does that default	10	Department of Labor, their Dictionary of
10 4.	to something meaning less than high school	10	Occupational Titles Program, which essentially there
12	education?	12	are 12,000 different jobs that one can do in this
13 A.	No. Just means we just look at all the work that	13	country. And for each one of those jobs the
14	anybody can perform by, in this case, their	14	Government; A, has defined the work; and B, has
15	intelligence level, their age and their sex.	15	built a vocational profile as to what the physical
16 Q.	You could run this form again with a high school	16	and intellectual attributes are that are required to
10 Q.	education for instance and you would come up with	17	perform that work.
18	different income numbers?	18	So when I do my Labor Market Analysis like
10 19 A.	There would be a difference, correct.	19	these things that you marked here,
20 Q.	And you could run it with maybe two years Associate	20	pre-injury 2G, when I do the Labor Market Analysis,
20 a. 21	Degree or even a college education to get new	21	you know, I say give me all jobs, I want to look at
22	numbers?	22	all jobs that require G greater than 2, that means
fan fan	a consistent of both a		

numbers? 22 23 A. That's correct. 24 Q. Is there a percentage you have used to quantify this child as being disabled?

average degree of intelligence and below, that is average and below average, that is my opinion prior to the injury that was the pool of jobs available to

25

23

24

1	him. 21	1
2 0.	For the record, you're looking at 2H now?	2
3 A.	Yes. Now back to 2G, using the Government date from	3
4	the National Crosswalk Service, we found out, and we	4
5	used in this case incidentally a National Labor	5
6	Market. I could have used state. I used national.	6
7	Typically with children I use national because we	7
, 8	don't know whether or not they'll work. We find	8
9	60%, 60.87%, of all jobs in the country require at	9
10	least an average degree of intelligence, and so I	10
11	use this data.	11
12	To answer this question, I use some other	12
13	Government data. It's the Workers Trade	13 A.
14	Characteristic Program from the Dictionary of	14
15	Occupational Titles.	15
16 Q.	Is that a public document?	16
17 A.	Yeah. You can get it in print form or you can get	17
18	it on tape from the National Crosswalk Service at	18
19	The University of Iowa, which houses that data form.	19
20 Q.	Doctor, you have some calculations on 2G,	20
21	handwritten calculations. Explain what those are	21
22	for us.	22
23 A.	Okay. 2G is again pre-injury capacity to work. So	23
24	once I found out that 60.87% of all jobs were	24
25	average degree, there's data on here that says that	25
1	22 the median annual earnings that accrue to this work	1
2	-	2
2 3	is \$22,470.24 that you see in this form. So the	3
	writing that you're asking about, the 22,470, is in 1998 dollars. So I have to grow the money to the	4
	time that I saw Charles in 2001. So I grew the	5
5	money at the rate of 3% so that the \$22,470 in 1998	
6 7	in 2001 dollars would be the \$24,553.83. That's	6 7
8	what the handwriting is. Just growing the money.	8
9 Q.	At a 3% rate of growth every year?	9
		10
10 A. 11 Q.	Yes. And Exhibit E is the same calculation only with the	11
12	injury?	12
13 A.	That's correct.	13
13 A. 14 Q.	Okay.	14
15 A.	Same thing.	15
15 A.	Okay.	16
17	MR. MISHKIND: Off the record for one	17
18	second.	18
10	(Discussion had off the record.)	19
20 Q.	(BY MR. MISHKIND) Doctor, aside from the opinions	20
20 G. 21	that we've already discussed in this case, are there	21
21	any other opinions you intend to render at the time	22
22	of trial concerning Charles Tenney, III's loss of	23 Q.
24	future income or employability?	24
24	MR MISHKIND, Let me object. You may	25 A.

expressed in the report that I'm not sure you have, in fact, covered. I presume that you're not attempting to exclude that which is contained in his report. MR. HUPP: No. If anything, I'll say on the record it's an open-ended question to try to further move along the deposition and make sure the doctor gets to express all of his opinions today. MR. MISHKIND: Same objection, but go abead. What I'm going to express in terms of opinions at trial if I'm asked to is that I think that what best represents Charles Tenney, III's pre-injury capacity to work was those jobs that accrue or to individuals with an average degree of intelligence. That means that 60.8% of the jobs in the labor market fall within that, and in 2001 dollars the median income, median midpoint, 50% make higher, 50% make lower, which I chose the median for that reason, the median salary that accrued to the jobs pre-injury in 2001 dollars was 24,553.83. That's my opinion as to his pre-injury capacity to work and earn money. I'm also going to state that I believe he's now 24 restricted in the amount and the kind of work that

have skirted over there are opinions

23

restricted in the amount and the kind of work that he can perform. I think that as a result of his injury he's now restricted to a variety of work that is sedentary to light in nature, requires at least or no more than an average degree of intelligence, and the work that he performs should require a below average degree of manual dexterity and below average degree of finger dexterity. Such work comprises 12.23% of the national labor market and pays at the rate of \$23,785.59 in 2001 dollars.

I am also going to express an opinion in terms of his employability. I believe he's an average disabled worker and I think his lifetime loss of expected earnings is \$708,290.40. That includes fringe benefits at the national average of 27%. And those are the basic opinions that I will perform.

I'm not sure if you asked me this question because I am old, but it is my understanding this trial is going forward in 2003, so prior to that I probably would update the numbers to 2002 dollars. I have not done that yet but I will by the time we go to trial.

Q. I assume you will do that by adding another 3% growth?

MR. MISHKIND: Let me object. You may 25 A. To that and add the numbers again. Nothing will

		+	
1	25 change except I'm going to add 3% pre and post.	1	27 to the State Rehab, wherever he's living, and try to
2 Q.	Right. When you say 27% fringe benefits, what does	2	do that. The problem with this kind of injury, so
3	that include? Health insurance?	3	we understand it, is that over 80% of all work
4 A.	It includes your Social Security, includes your	4	requires bilateral use of the hands. That's the
5	Medicare, includes your health benefits. Those are	5	problem with the injury. There are not a lot of
6	the primary elements of a fringe package.	6	jobs you can do one handed. And that's the real
7 Q.	Would you agree, Doctor, if the child does obtain a	7	problem. They can probably try to get him in a
8	high school degree that would improve his overall	8	training program, whatever, but they can't give him
9	performance in the job market?	9	that hand to work with. So they can adapt, they can
10 A.	Performance in the job market?	10	do some things, but he's still going to have
11 Q.	Poorly phrased. I know.	11	employability problems because there are not that
12 A.	I know what you're asking.	12	many jobs. And people can obviously see the injury,
13 Q.	Hypothetically if the child is going to get a high	13	you know, that deters employability.
14	school education he's going to be in the market to	14 Q.	Based upon your worklife probability tables, Page 2
15	make more than somebody without a high school	15	of that table, a pre-injury worklife probability
16	education, would you agree with that?	16	with education not being considered, am I reading
17 A.	It's not so much make more. Look at it this way;	17	this right, is 36.5 years?
18	the more education you have it increases the	18 A.	That's correct.
19	probability you'll be participating in the job	19 Q.	In this child's case using his injury, he would be
20	market, in other words, it increases your worklife.	20	looking at 14.2 worklife expectancy years?
21	You may make more, you may make less. Traditionally	21 A.	That's correct.
22	you would make more. Logically you would make more.	22 Q.	Why is that so substantially different?
23	What education does is extends your worklife.	23 A.	Well, it's substantially different because that's
24	So as an example let's say with less than a	24	what an average disabled worker's worklife is in the
25	high school diploma you have a 20-year worklife.	25	workforce. That's what the numbers tell us.
	26	1.0	and that is the median of all of the notional 28
1	Those are not accurate numbers but to give you an	1 a.	And that's the median of all of the national
2	example with a high school diploma you might have 24 years, with college you might have 29 years. It	2 3 A.	sampling, if you will?
3 4	extends the amount of time you're going to be in the	4	Yes. That's of all the data that's collected, that's correct.
4 5	workforce thus making money.	5 Q.	Just to be clear here, the earnings for a non- or
6	Now, you could play all those scenarios. I	6	pre-injury situation would be the \$1.13 million and
7	didn't do that because we don't know what he's going	7	this child's situation would be \$431,161?
8	to be. And what we know now is that we can look at	8 A.	That's correct.
9	regardless of his education what he looks like. And	9 Q.	That's how you arrived at your 708 calculation?
10	it works both ways. You increase the education, you	10 A.	That's correct. Subtract one from the other.
10	also increase the dollars, increase the	11 Q.	Okay. Doctor, do you intend to do any other further
12	participation and probably increase the loss over	12	review or any other further research prior to your
13	time simply because he would be making more money	13	appearance at trial in this case?
13 14	than \$24,000. So when you have a child it's my	14 A.	Other than to adjust the numbers to 2002 dollars, at
15	opinion the best thing you do is you don't consider	15	this point I don't have any intention.
16	education. It's the fairest for everyone involved.	16 Q.	Do you have intention in re-examining the mother or
18 17 Q.	The same question, the same rationale would apply if	17	father or even Charles III prior to trial?
18	he were to obtain a Bachelor's Degree, true?	18 A.	No. There would be no reason to.
18 19 A.	Absolutely.	19 Q.	Do you have any other opinions in regard to this
19 A. 20 Q.	Absolutery. Are there certain programs or job training that this	20	case that you have not had a chance to discuss
20 Q. 21	child would be entitled to to assist him in	21	today?
21	obtaining employment because of the nature of his	22 A.	I don't believe so.
22	injury?	23 Q.	Okay.
25 24 A.	Well, when he gets to a certain age, typically after	23 9.	MR. HUPP: Doctor, I think that's all
24 A. 25	the age of 18, he would be eligible to go, you know,	25	the questions I have. Let me look over my
<u></u>	the age of 10, he would be cligible to go, you know,		the questions i have. Let me took over my

1	notes. 29	1	31 you're not going to see the jump when you start			
2	CROSS-EXAMINATION	2	saying you can't use his hands, because we know 8			
	. HENRY:	3	of the jobs require bilateral use of the hands.			
4 Q.	While I was listening intently, I have some. I	4 Q.	Regardless of the education?			
5	heard things I don't understand. There was a	5 A.	Regardless of the education. We're going to throw			
6	discussion about what happens if he has high school	6	education in there and it isn't going to impact that			
7	education, two-year or four-year degree. You said	7	as greatly on the other side as it will on the			
8	logically with education you have increased	8	pre-injury.			
9	probability, you'll be in the job market longer to	9	I don't think you understand that as I'm			
10	extend your worklife, logically you have the ability	10	answering the question.			
11	to make more money, correct?	11 Q.	Basically it seems like what you're saying is it			
12 A.	Yes.	12	doesn't matter what the educational level is, that			
13 Q.	You also said it increases the loss over time. What	13	basically because you have an injury like this his			
14	did you mean by that?	14	job availability and money-making ability does not			
15 A.	It's sort of a two-edged sword. You look at it and	15	expand with the more education he gets with this			
16	say if he's going to get a college degree, all	16	injury, is that what you're saying?			
17	right, then we would probably have to look at him in	17 A.	In a sense what I'm saying is when you look at			
18	terms of the median income that accrue to college	18	various educational levels, the variability is on			
19	graduates, particularly college males. So therefore	19	the front end more than the back end, the pre-injury			
20	you're raising the bar pre-injury from something	20	more than the post-injury. Okay. Because I can			
21	like \$24,000 to something like I think the median	21	increase the jobs on the front end if I go to give			
22	income of a college graduate's somewhere in the low	22	me all the jobs that require I put them all in			
23	40's right now, \$44,000. So pre-injury I got to say	23	there now. I didn't say any skill level. But if I			
24	44,000. Post-injury I've got to say, Well, he can	24	do put in a skill level, it's going to compress it			
25	do this and this is what we'll look at, skilled	25	more and probably raise the dollars. All right.			
	r					
1	30 work, we'll look at jobs that require a college	1	32 And on post-injury I don't have Right now we know			
2	degree and then we look at those numbers with his	2	that what we have is 12% of the jobs for people with			
- 3	disabilities and it's probably going to be	3	average intelligence, and that isn't going to			
4	somewhere, and I'm guessing, I'm trying to give you	4	change. It's not going to It's what it is. And			
5	an answer to your question, let's say it's going to	5	then I've got to say, Well, since we're talking			
6	be somewhere around \$29,000 or \$30,000 with jobs he	6	about a college degree, let's take out those jobs			
7	can now perform. You have 44 versus 24, 23. It	7	that require below average degree of intelligence			
8	cuts both ways for you. That's why we don't use	8	because that's not fair. So you raise the bar a			
9	education.	9	little. And as you're raising the bar you're			
10	The only thing we know is this young person,	10	diminishing or compressing the amount of jobs.			
11	this child, can perform work that's average	11	You're moving from 12% down to 8% or 7%, or			
12	intelligence and the work that he performs should	12	whatever. And that impacts, you know,			
13	require a below average degree of manual dexterity	13	employability.			
14	and below average degree of finger dexterity.	14 Q.	But he would be eligible for all the jobs that you			
15	That's all we know.	15	consider him eligible for with an average			
16 Q.	But if you increase the education level, then don't	16	intelligence with no education in addition to all			
17	you expand the jobs that are available for him in	17	those jobs that would come with an education. So			
18	the job market? As opposed to 12.3 now, don't you	18	you would have the 12.3% as well as all the ones			
19	have a lot more jobs available with the added	19	, that could come with an education, so it would			
20	education? Isn't it more equalized the more	20	expand in essence his potential job market, wouldn't			
21	education you get?	21	it?			
22 A.	No. In answer to your question, it would be more.	22 A.	No. Narrow it because you're making another cut at			
23	If I said skilled work, it would go from 60% to	23	the data. You're making another cut at the 12%.			
24	maybe 80%. Okay. And on the other side, the same	24	Let me explain now. Right now we don't look at			
25	thing happens; all right, if I say skilled work,	25	education. We look at all jobs.			
	- ,, , , , , , , , , , , , , , , , , ,		-			

1 Q.	33 So if you stop right there, you look at all jobs	1 Q.	Well 35
2	with no education and the average intelligence, you	2 A.	He's going to work in jobs that are support-type
3	have 12.3% of the jobs he could do, correct?	3	situations. He's not going to work as a precision
4 A.	No. That's post-injury. The 12.3% comes in adding	4	production craft and repair guy. He's not going to
5	below average, sedentary and below average manual.	5	work, you know, in service occupations, which is the
6 Q.	Let me go back. What we're looking at is the injury	6	fastest growing segment in our country, because they
7	with your consideration and an average intelligence	7	require two hands. He's going to work in some
8	and no education figured in you have 12.3% of the	8	administrative support. That's where he's going to
9	jobs available?	9	find the bulk of his opportunities, I should say.
10	MR. MISHKIND: Talking about	10	I'm not sure if he's going to work there. That's
11	post-injury, not pre-injury. I'm not sure	11	where he'll find the bulk of his opportunities.
12	you're following the difference.	12	He's not going to work as an operator, fabricator,
13	MS. HENRY: I am.	13	it's 1% of the job market. He might find a job
14 Q.	(BY MS. HENRY) What I'm saying is if we look at	14	there, but it's not highly probable.
15	this young man based on your calculations now, not	15 Q.	Cashier?
16	putting any education in and saying his average	16 A.	Cashier is typically a two-handed job. It's
17	intelligence with the condition of his arm	17	classified as a two-handed job.
18 A.	The disability.	18 Q.	Why is it a two-handed job?
19 Q.	he can have 12.3% of the jobs?	19 A.	Because most cashiers have to use both hands, not
20 A.	Right.	20	necessarily at the input of the data but total job
21 Q.	If he gets a high school education, he could choose	21	description. They've got to pack bags. They've got
22	to do one of those 12.3% of the jobs or he would	22	to lift things.
23	have a further expansion of job availability if you	23 Q.	Well, just so I understand, based on your training
24	put a high school education in there, wouldn't he,	24	and your background and your experience, because
25	because you're not considering any education here?	25	this is your thing, what are the jobs that we're
	34		36
1	You're saying with this intelligence and this injury	1	talking about in technical sales and administrative
2	anybody could do 12.3% of the jobs that has average	2	support that you say this young man can do when he
3	intelligence?	3	grows up?
4 A.	Right. But every additional add-on you want to do	4 A.	Well, I didn't run the data by specific jobs. I ran
5	cuts into the 12%. Right now we've considered	5	it by occupational category. I can tell you where
6	everything imaginable.	6	he's going to find his work.
7 Q.	You considered being a teacher?	7 Q.	But, Dr. Durgin, this is what you do for a living.
8 A.	That's in there because we didn't restrict the	8	This is your expertise, your background your
9	education.	9	training. Can't you tell me today based on these
10 Q.	All right. Then that clarifies it for me.	10	categories what kinds of jobs he can do based on
11 A.	If a teacher, which it isn't, the teacher was a job	11	what you know, retrain people for jobs I think you
12	that required an average degree of intelligence, it would in the 12% that we have right now.	13 A.	said in the past, or help people go into jobs?
13 14 Q.	-	13 A.	Yes. I don't run the data by specific jobs. I run
14 Q. 15	Give me some examples of what kinds of jobs you consider to be sedentary to light in nature and	15	the data by category, and I've given the categories. MR. MISHKIND: Let him finish his
16	average degree of manual and finger dexterity.	16	answer.
17 A.	Below average degree.	17 A.	And since I've not run the data, I don't feel
18 Q.	Below average degree.	18	comfortable listing jobs. And I don't do that. I
10 Q. 19 A.	I didn't cut the data from jobs in terms of specific	19	don't think that's the best way to look at these
20	jobs, but I can tell you if you look at the	20	things. I'm telling you what we know that is the
21	materials that I've provided for you, of the 12.3%	21	important data that we have is what's his access to
22	that the bulk of these jobs fall into an area called	22	jobs, not what's his access to a specific job.
23	technical sales and administrative support, 7.60%	23	What's his access to jobs in the national or local
24	fall into occupational categories, and the rest is	24	economy, and his access is he has 12% of the work.
25	nothing significant. The next highest is 1.63%.	25	We know over half of that is going to be in
			- +

4	37		39
1	administrative support. What job it's going to be	1	semi-skilled because that's pretty much there are
2	there is irrelevant. We know that's where it's	2	skilled jobs with a high school diploma no question,
3	going to be.	3	but you probably would look at jobs that are
4 Q.	(BY MS. HENRY) I understand you consider it to be	4	marginally skilled because you can't have one
5	irrelevant. I'm asking you based on your	5	without the other. I can't change the one without
6	background, your training, all the experience you	6	changing the backside. And I could do that. I
7	have, what you're saying is you can't tell me what	7	think the numbers would be not what you think they
8	type of job he could go out in the market and get	8	would be. I think the loss would be higher.
9	out in the administrative or the service or sales	9 Q.	I guess that's what prompted the question because if
10	area today, you can't tell me that?	10	the worklife increases and if the amount of money he
11	MR. MISHKIND: Let me object.	11	can earn increases, why would it be that the loss
12 A.	No. I can only tell you where he should be looking	12	would be higher?
13	and what the opportunities are.	13 A.	Because right now you got a difference between
14 Q.	(BY MS. HENRY) Okay. That's right. Thanks.	14	pre-injury 24, and post-injury \$23,000. If I did
15	FURTHER CROSS-EXAMINATION	15	the median income If I want to limit him to high
16 <u>BY</u>	MR. HUPP:	16	school diploma, then logically I should look at what
17 Q.	Just a quick follow-up, Doctor. The worklife	17	males with high school diploma make. I can tell you
18	probability that you calculated for this child is 14	18	it's going to be somewhere in the low 30's. So then
19	years?	19	I go to the post-injury side. On the post-injury
20 A.	Yes.	20	side I've got to then look at jobs that are
21 Q.	To follow up with what you said, if he had school	21	marginally skilled, average to below intelligence
22	education do you have any idea what his worklife	22	and all these other things. Those jobs I can tell
23	probability would be?	23	you are probably going to run somewhere around, and
24 A.	Not without running it. I believe it would be from	24	this is a guess, but it's a good illustration, let's
25	past experience slightly higher. I don't think it	25	say it's \$26,000. So you've increased the
	38 would be significant. I think where it takes a hit	1	difference between the two already pre and post
 1 2	would be significant. I think where it takes a hit	1	difference between the two already pre and post
2	would be significant. I think where it takes a hit is if you put him into a college degree.	2	difference between the two already pre and post \$4,000. Thus, regardless of when we run the
2 3 Q.	would be significant. I think where it takes a hit is if you put him into a college degree. When you say takes a hit, means it would go up?	2 3	difference between the two already pre and post \$4,000. Thus, regardless of when we run the worklife, you're going to have a larger loss because
2 3 Q. 4 A.	would be significant. I think where it takes a hit is if you put him into a college degree. When you say takes a hit, means it would go up? More significant than between education not	2 3 4	difference between the two already pre and post \$4,000. Thus, regardless of when we run the worklife, you're going to have a larger loss because you're dealing with a different variance between the
2 3 a. 4 A. 5	would be significant. I think where it takes a hit is if you put him into a college degree. When you say takes a hit, means it would go up? More significant than between education not considered and high school or education not	2 3 4 5	difference between the two already pre and post \$4,000. Thus, regardless of when we run the worklife, you're going to have a larger loss because you're dealing with a different variance between the pre- and the post-earnings.
2 3 Q. 4 A. 5 6	would be significant. I think where it takes a hit is if you put him into a college degree. When you say takes a hit, means it would go up? More significant than between education not considered and high school or education not considered with a two-year. There will be some	2 3 4 5 6 Q.	difference between the two already pre and post \$4,000. Thus, regardless of when we run the worklife, you're going to have a larger loss because you're dealing with a different variance between the pre- and the post-earnings. Okay. So the way it is you have about a \$1,000
2 3 Q. 4 A. 5 6 7	would be significant. I think where it takes a hit is if you put him into a college degree. When you say takes a hit, means it would go up? More significant than between education not considered and high school or education not considered with a two-year. There will be some variance but not great. I think there will be a	2 3 4 5 6 Q. 7	difference between the two already pre and post \$4,000. Thus, regardless of when we run the worklife, you're going to have a larger loss because you're dealing with a different variance between the pre- and the post-earnings. Okay. So the way it is you have about a \$1,000 difference in pre- and post-earnings. If we did
2 3 Q. 4 A. 5 6 7 8	would be significant. I think where it takes a hit is if you put him into a college degree. When you say takes a hit, means it would go up? More significant than between education not considered and high school or education not considered with a two-year. There will be some variance but not great. I think there will be a little more variance with a college-type situation.	2 3 4 5 6 Q. 7 8	difference between the two already pre and post \$4,000. Thus, regardless of when we run the worklife, you're going to have a larger loss because you're dealing with a different variance between the pre- and the post-earnings. Okay. So the way it is you have about a \$1,000 difference in pre- and post-earnings. If we did high school, potentially it could be \$4,000 a year
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2 3 a. 4 A. 5 6 7 8 9 a. 10	would be significant. I think where it takes a hit is if you put him into a college degree. When you say takes a hit, means it would go up? More significant than between education not considered and high school or education not considered with a two-year. There will be some variance but not great. I think there will be a little more variance with a college-type situation. On the other hand, if you added a high school education, the earnings on the pre-injury earnings	2 3 4 5 6 Q. 7 8 9 10 A.	difference between the two already pre and post \$4,000. Thus, regardless of when we run the worklife, you're going to have a larger loss because you're dealing with a different variance between the pre- and the post-earnings. Okay. So the way it is you have about a \$1,000 difference in pre- and post-earnings. If we did high school, potentially it could be \$4,000 a year for pre- and post-earnings? Yes.
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•	41		43
1	intelligence, below average degree of manual and	1 A.	I don't know how many. A number.
2	finger dexterity, sedentary to light, I would do the	2 Q.	(BY MR. HUPP) Is the number 100? Is it 200 a year?
3	same thing and change the skill level. Right now I	3	300? Any idea?
4	don't have any skill level.	4 A.	I don't know. It's more than 50. I don't count.
5 Q.	I guess what I was asking was is there a certain	5 Q.	Aside from doing what you're doing in this case as
6	number you would have to apply to it? It's not	6	a vocational expert, do you have any other
7	number-based, it's based on all those jobs and the	7	employment in your profession as a vocational
8	median income of those jobs?	8	assessment person? I know that was a very poorly
9 A.	Absolutely. That's exactly right. And I don't know	9	phrased question. Bear with me.
10	what that is unless I run the data.	10	MR. MISHKIND: I think he knew what
11 Q.	For us to reproduce your work I would have to go to	11	you were getting at.
12	these sources you cited and type in different	12 A.	I have two companies, one is Vocational Assessments,
13	calculations, education, for instance. If you're	13	which we talked about here, and then I have another
14	saying one wanted to do that reproduction?	14	company call COIN, C-O-I-N, COIN Educational
15 A.	Yes.	15	Products. And what COIN does is it develops and
16 Q.	Have you ever testified in Federal Court?	16	markets educational materials all in the area of
17 A.	Yes.	17	career to schools and libraries and agencies in the
18 Q.	When is the last time you testified in Federal	18	country. They're all proprietary, they're all
19	Court?	19	products I developed. Some are tests I developed.
20 A.	I don't know. A couple weeks ago up in Michigan.	20	I have computerized databases. I have internet
21 Q.	In Michigan. Was that for a plaintiff or defendant?	21	databases. It's a national company. We have it
22 A.	That was for plaintiff.	22	housed in Toledo with a bunch of people working
23 Q.	And do you know whose room you were in, what judge?	23	there, then we have a national salesforce. And
24 A.	No, I don't, sir. It was a visiting judge. I know	24	that's my other enterprise.
25	that.	25	MR. HUPP: I think that's all the
	A2	1	questions I have
: 1 Q.	Do you know what district or city?	 1 2	questions I have.
2 A.	Do you know what district or city? Flint, Michigan.	2	questions I have. MR. MISHKIND: You don't want to read
2 A. 3 Q.	Do you know what district or city? Flint, Michigan. And how much do you charge for reviewing a case such	2 3	questions I have. MR. MISHKIND: You don't want to read or waive?
2 A. 3 Q. 4	Do you know what district or city? Flint, Michigan. And how much do you charge for reviewing a case such as this per hour?	2 3 4	questions I have. MR. MISHKIND: You don't want to read
2 A. 3 Q. 4 5 A.	Do you know what district or city? Flint, Michigan. And how much do you charge for reviewing a case such as this per hour? Well, I don't have an hourly charge for a case.	2 3 4 5	questions I have. MR. MISHKIND: You don't want to read or waive? THE WITNESS: I will waive signature.
2 A. 3 Q. 4 5 A. 6	Do you know what district or city? Flint, Michigan. And how much do you charge for reviewing a case such as this per hour? Well, I don't have an hourly charge for a case. It's a set fee.	2 3 4 5 6	questions I have. MR. MISHKIND: You don't want to read or waive?
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2 A. 3 Q. 4 5 A. 6 7 Q. 8 A.	Do you know what district or city? Flint, Michigan. And how much do you charge for reviewing a case such as this per hour? Well, I don't have an hourly charge for a case. It's a set fee. How much is that? It's \$2,300.	2 3 4 5 6 7 8	questions I have. MR. MISHKIND: You don't want to read or waive? THE WITNESS: I will waive signature.
2 A. 3 Q. 4 5 A. 6 7 Q. 8 A. 9 Q.	Do you know what district or city? Flint, Michigan. And how much do you charge for reviewing a case such as this per hour? Well, I don't have an hourly charge for a case. It's a set fee. How much is that? It's \$2,300. And does that include deposition testimony?	2 3 4 5 6 7 8 9	questions I have. MR. MISHKIND: You don't want to read or waive? THE WITNESS: I will waive signature.
2 A. 3 Q. 4 5 A. 6 7 Q. 8 A. 9 Q. 10 A.	Do you know what district or city? Flint, Michigan. And how much do you charge for reviewing a case such as this per hour? Well, I don't have an hourly charge for a case. It's a set fee. How much is that? It's \$2,300. And does that include deposition testimony? No. Today, for example, it's an hourly rate,	2 3 4 5 6 7 8 9 10	questions I have. MR. MISHKIND: You don't want to read or waive? THE WITNESS: I will waive signature.
2 A. 3 Q. 4 5 A. 6 7 Q. 8 A. 9 Q. 10 A. 11	Do you know what district or city? Flint, Michigan. And how much do you charge for reviewing a case such as this per hour? Well, I don't have an hourly charge for a case. It's a set fee. How much is that? It's \$2,300. And does that include deposition testimony? No. Today, for example, it's an hourly rate, minimum of two hours, it's \$300 an hour.	2 3 4 5 6 7 8 9 10 11	questions I have. MR. MISHKIND: You don't want to read or waive? THE WITNESS: I will waive signature.
2 A. 3 Q. 4 5 A. 6 7 Q. 8 A. 9 Q. 10 A. 11 12 Q.	Do you know what district or city? Flint, Michigan. And how much do you charge for reviewing a case such as this per hour? Well, I don't have an hourly charge for a case. It's a set fee. How much is that? It's \$2,300. And does that include deposition testimony? No. Today, for example, it's an hourly rate, minimum of two hours, it's \$300 an hour. And what about for trial, what is your rate for	2 3 4 5 6 7 8 9 10 11 12	questions I have. MR. MISHKIND: You don't want to read or waive? THE WITNESS: I will waive signature.
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1	THE STATE OF OHIO,) 45	
2) SS: CERTIFICATE	
- 3		
4	I, Angela R. Zanghi, a Notary Public within and	
5	for the State of Ohio, duly commissioned and	
6	qualified, do hereby certify that ROD W. DURGIN,	
7	Ph.D. was by me, before the giving of his	
8	deposition, first duly sworn to testify the truth,	
9	the whole truth and nothing but the truth; that the	
10	deposition as above set forth was reduced to writing	
11	by me by means of Stenotype and was subsequently	
12	transcribed into typewriting by means of	
13	computer-aided transcription under my direction;	
14	that the reading and signing of the deposition by	
15	the witness were expressly waived, and that I am not	
16	a relative or attorney of either party or	
17	otherwise interested in the event of this action.	
18	IN WITNESS WHEREOF, I hereunto set my hand and	
19	seal of office at Cleveland, Ohio, this 20th	
20	day of December, 2002.	
21		
22	Angela R. Zanghi, RPK, Notary Public Within and for the State of Chio 1511 Terminal Tower Cleveland, Chio 44113	
23 24	Cleveland, Ohio 44113	
24 25	My Commission Expires: June 8, 2004.	
25		
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ė	2A 3:10, 5:9, 5:15, 5:17 5:23, 13:23 2B 3:10, 5:19, 5:23 2C 3:11, 5:24 2D 3:11, 6:1, 8:24 2E 3:12 2G 3:13, 6:4, 6:8, 20:20, 21:33, 21:20, 21:33 2H 3:13, 5:10, 21:23 2H 3:13, 5:10, 21:23 2H 3:13, 5:10, 21:23	36:24	16:11	18:14, 19:15, 20:7, 21:5, 22:21, 27:19, 28:13, 28:20, 42:3, 42:5, 42:23, 43:5 cases 42:15, cashier 7:15, 35:15, 35:16 cashier 5:19	companies 43:12	í.
\$		accrue 22:1	attached 3:14		company 8:1	1
¢1 000 /0.4		accrue 22:1, 23:16, 29:18 accrued 23:22,	attached 3:14 attaining 19:20 attempt 4:23		company 8:1, 43:14, 43:21	Į.
\$1,000 40:6 \$1.13 28:6	20 3110, 3119,	38:19	attempted 8.11	20:10,20:20,	complete 8:12 Completed 7:20	i
\$1.13 2010 \$2.700 / 2.8	20 3 11 5.24	accurate 26:1	attempted 8:11	15.52 47.2.5		i
\$22 470 22.6	56 3 11 6 1	action 45.17	attempting 23:4 attorney 45:16 attributes 20:16	Cacae 12.15	compress 31:24	i.
\$55 770 57 32 2	8 76		attributes 20.16	cases 42.15	compressing 32:10 comprises 24:8	
\$55 000 30 12	2F 3 12	adapt 27.9		25 15 25 16	computer-aided	
\$23 785 40.20	2F 3 12	action 45:17 actual 6:14 adapt 27:9 add 10:11,	31:14, 33:23 available 20:25, 30:17, 30:19,	cashiers 35:19	45:13	
\$23 785 59 24 10	26 3.13. 6.4.	24:25 25:1	available 20:25	categories	computerized	
\$24.000 26.14.	6.8.20.20.	add on 34:4	30:17. 30.19.	19.12. 34.24.	43:20	
29:21, 38:18	21:3, 21:20,	24:25, 25:1 add-on 34:4 added 30:19, 38:9, 38:12, 38:15 added 24:27	33:9	categories 19:12, 34:24, 36:10, 36:14	concerning 22:23	
\$24,553 40:19	21:23	38:9, 38:12,	Avenue 1:16, 2:8	category 36:5,	concerning 22:23 concluded 44:6	
\$24,553.83 22.7	2H 3:13, 5:10,	38:15	Avenue 1:16, 2:8 average 10:21,	36:14	condition 33:17	
\$26,000 39:25	_21:2 _	adding 24:20,	11:6, 11:7,	Center <u>1</u> :12,	L concecutive 17-16	
\$29,000 30:6	2nd 2:3	33.4	11:16, 12:13,	2:10, 7:21	consider_26:15,	
\$1:13 28:6 \$2,300 42:8 \$22,470 22:6 \$22,470 22:6 \$23,000 39:14 \$23,785.59 24:10 \$23,785.59 24:10 \$24,000 26:14, 29:21.38:18 \$24,553.83 22:7 \$26,000 39:25 \$29,000 30:6 \$30,000 30:6 \$300 42:11.42:14		addition 32:16	12:17, 20:27,	Certain 6:17	consider 26:15, 32:15, 34:15, 37:4	
\$300 42:11, 42:14 \$4,000 40:2, 40:8 \$431,161_28:7	3	additional 34:4		16:13, 26:20, 26:24, 41:5	37:4	į.
\$4,000 40:2,40:8	7 7.4/ 17.11	Additionally	$\{21, 10, 21, 20, \dots \}$	20:24, 41:5	consideration	
\$431,101,201/ \$77,600,20,27	3 3:14, 13:11, 13:14, 22:6, 22:9, 24:23, 25:1 30 40:12 30's 39:18 300 43:3 31 17:8 36 10:11 10:11	14:6, 14:9 adjust 28:14, 38:23, 38:24 administer 6:17	57: 11 . 57: 50	certainly 5:15, 12:12, 14:1, 16:4 CERTIFICATE 45:2	33:7	
\$44,000 29:23 \$708,290.40 24:14	22.0 2/.23		5/ 15 -5/ 15	14:1,		
J/00,270.40 24.14	25.1	administer 6.17	57.26 30.11	CERTIFICATE 45.2	34.7 38.5 38.6	
1	30 40-12	administered	30:13' 30:14'	certified_4:7	considering 33-25	
	30'-5 39-18	administered 6:15, 8:13, 8:23	32:3 32:7	certify 45.6	constantly	
1 3:9, 4:1, 5:1,	300 43:3	administering	32:15. 33:2.	chance 28:20	14:14, 14:17	
5.8, 8:24,	31 17:8	8:25	33:5, 33:5,	certified 4:7 certify 45:6 chance 28:20 change 13:19, 15:22, 25:1, 32:4, 39:5, 41:3 changes 13:16 changeng 30:6	considered 27:16, 34:5, 38:6 considering 33:25 constantly 14:14, 14:17 contained 23:5 continuction	
17:4, 35:13	36 10:11, 10:11 36.5 27:17 37 3:3, 3:6	administrative	33:7, 33:16,	15:22, 25:1	continuation	
1.63 34:25	36.5 27:17	34:23, 35:8,	34:2, 34:12,	32:4, 39:5, 41:3	14:21, 14:22	
10_9:21	37 3:3, 3:6	36:1, 37:1, 37:9	34:16, 34:17,	changes 1 <u>3:</u> 16	converts_10:16	
100]0:20, 11:6,		administrative 34:23, 35:8, 36:1, 37:1, 37:9 administrator 9:6	average 10:21, 11:16, 19:13, 19:17, 20:23, 20:24, 20:24, 23:17, 24:5, 24:12, 24:5, 24:12, 24:5, 24:12, 24:5, 24:14, 30:11, 32:31, 32:7, 32:15, 33:5, 33:7, 33:16, 33:7, 34:12, 33:7, 34:12, 34:12, 34:12, 34:14, 39:21, 40:25, 41:1		correct 5:2,	
11:1/, 43:2	4	adult 9:5	4U:20, 41:1	characteristic 19:25, 20:9, 21:14	19:7, 19:4	
101 11:2, 11:3	1 2.2 2.0 0.1		B	17:47, 20:7,		
115 11:20	1016 20-23 YEA	8 3/ 7 17 3 Y 10	قبيلد	61114 charge /2+7 /2+5	27:18, 55:12,	
12 22.2 23.11		14551 14:14	Bachelor's 26:18	Charles 1.4	28.1.28.2	
$\begin{array}{c} 1\\ 3:9, 4:1, 5:1, \\5:8, 8:241 \\17:4, 35:13 \\1.63, 34:25 \\100, 21 \\100, 20, 11:6, \\11:17, 43:2 \\101, 11:2 \\115, 11:2 \\114, 10:24 \\115, 11:2 \\123:223, 34:5, \\34:13, 36:24 \\12, 000, 20:12 \\12:13-2000, 14:4 \\12.23, 24:9 \\12:13, 30:18 \\32:18, 33:3, \\33:14, 33:8, \\33:19, 33:22 \\34:21, 34:21 \\12:39, 1:18 \\133:14 \\1300, 11:17 \\1900, 11:17 \\1900 \\111, 17 \\1100 \\111, 17 \\1100 \\1$	4 3:2, 3:9, 9:4 40's 29:23 44 30:7 44,000 29:24 44113 2:4, 2:13, 45:23 44114 2:8 4412 2:8	adult 9:5 age 7:5, 7:20, 8:3, 9:4, 9:5, 9:24, 17:3, 18:5, 18:15, 26:24, 26:25 arenciec 4:17	backed 9:19, 9:20	21:14 charge 42:3, 42:5 Charles 1:4, 3:11, 5:17, 6:2, 6:3, 6:13, 7:19, 9:10, 11:13, 12:20, 13:2, 14:4, 19:16, 22:5, 22:23, 23:15, 28:17 Charles 0:9	continuation 14:21 14:22 converts 10:16 correct 5:2, 10:9, 15:4, 17:10, 18:19, 18:23, 22:13, 27:18, 27:21, 28:4, 28:8, 28:10, 29:11, 33:3 correctly 9:11	
えたこうえ えんこうん	22113 2.4 2.13	agencies 43:17	hackground	5.2' 6.3' A. 13		
12 000 20 12	45.23	agree 25:7, 25:16	background 35:24, 36:8, 37:6	7 10 0 10	correctly 9:11,	
12-13-2000 14:4	44114 2:8	ahead 23:12	37:6	11:13. 12:20.	9:17	
12.23 24.9	448548 1:7	agencies 43:17 agree 25:7, 25:16 ahead 23:12 al 1:5, 1:8 al ive 17:17		13:2. 14:4.	couldn't 8:8	
12.3 30:18,		alive 17:17	backward 8:22	19:16, 22:5,	couldn't 8:8 count 43:4	
32:18, 33:3,	5	MIILUNCIS 46:64; .	backside 39:6 backward 8:22 bags 35:21 bar 29:20, 32:8, 32:9	22:23, 23:15,	County 1:2, 7:8,	
33:4, 33:8,		42:25	bar 29:20, 32:8,	28:17	12:24, 45:3	
33:19, 33:22,	5_3:10,_3:10,	already 22:21,	32:9	Charlie 9:9	couple 9:19,	
_34 <u>;</u> 2, 34;21	3:11, 3:12,	40:1		ches <u>t</u> 14:7	16:25, 17:15,	
12:39,1:18	5 3:10, 3:10, 3:11, 3:12, 3:13 50 2:13, 23:20, 23:20, 43:4 52 9:21, 9:23, 9:25 526 2:8 52nd 11:3 57 17:8	amendments 13:16 American 7:14 amount 16:12, 17:24, 24:1, 26:4, 32:10, 39:10 amount 16:2	basic 24:16 basic 24:16 11:24, 13:20, 20:2, 31:11, 31:13 Boor 43:0	chest 14:7, 14:7, 14:10 child 6:10, 6:19, 8:5, 11:12, 11:13, 15:16, 15:18	count 45:4 County 1:2, 7:8, 12:24, 45:3 couple 9:19, 16:25, 17:15, 19:19, 41:20 course 16:19 Court 1:3 41:16, 41:19 cover 5:17 cover cd 23:3	
13 3:14	20 2:12, <u>2</u> 3:20,	American /:14	Dasically y 5	child of ly,	course 10:19	
	23:20, 43:4 53 0.21 0.27		11:24, 13:20,			
1300 1:17 131 10:4, 10:5 14 37:18 14.2 27:20 1400 2:7 16 11:10 15:2	0.26 7:21, 7:23,		24.42 DICII,		41:10, 41:19	
16 2 27.20	526-2-8		Bear 43:9	15:05 12:19	covered_23:3	
1205 5.75	52nd 11.3	analysis 6-3		18:55 25:7	croft 35.4	
15 11:19, 15:2	57 17.8	39:10 analysis 6:3, 6:5, 6:5, 6:7, 12:19, 15:8, 16:8, 20:8, 20:18, 20:20, 38:15, 40:24 Angela 1:13, 45:4, 45:22 annual 22:1 answered 9:11 answered 9:11 answered 9:11 answers 8:15, 9:16, 9:22 anticipation	Becker 2:2 beginning 9:4 behalf 2:5, 2:10, 2:15 benefits 24:15, 25:2, 25:5 best 6:20, 15:10, 23:14, 26:15, 36:19, 38:17, 38:18 beyond 16:2 bilateral 27:4, 31:3	11:12, 11:13, 15:16, 15:18, 15:23, 16:12, 25:21, 26:7, 25:21, 30:11, 37:18, 40:19 child's 6:21, 16:9, 27:19, 28:7 children's 14:11	cross-examinatio 1:13, 3:2, 3:3, 3:3, 4:5, 4:10, 29:2, 37:15 Crosswalk 21:4, 21:18 current 4:25	
15 11:19, 15:2 1511 45:23		12:19, 13:9,	behalf 2:5.	26.21. 30.11	1:13 3:2 3:3	
	6	13.19. 16.8.	2:10. 2:15	37.18, 40.19	3:3, 4:5, 4:10,	r i
1660 2:3		16:8, 20:8,	benefits 24:15.	child's 6:21.	29.2.37.15	
17th 12:23	60 21:9. 30:23	20:18, 20:20,	25:2, 25:5	16:9, 27:19	Crósswalk 21:4.	
18 26:25	60.8 23:18	38:15, 40:24	best 6:20,	28:7	21:18	
187 8:24, 9:3	60.87 21:9, 21:24	Angela'1:13,	15:10, 23:14,	Children's 14:11	current 4:25.	
<u>19_17:3</u>	600,1:16, 2:3	45:4, 45:22	26:15, 36:19,	choice 8:1 <u>4</u> , 8:17	current 4:25, 19:24	
1660 2:3 17th 12:23 18 26:25 187 8:24, 9:3 19 17:3 1989 7:22 1089 7:22	60 21:9, 30:23 60.8 23:18 60.87 21:9, 21:24 600 1:16, 2:3 61 10:8, 10:9, 10:10, 10:9, 10:10, 10:11 65 10:17, 11:8	annual 22:1	38:17, 38:18	Children's 14:11 choice 8:14, 8:17 choose 6:17,	customarily 18:1 cut 32:22, 32:23, 34:19 cuts 30:8, 34:5 CUYAHOGA 1:2,	
1998 22:4, 22:6 1999 7:7 1:42,44:6	10,10,10,11	annually 20:1	beyond 16:2		cut 32:22,	
1999 (1)	65 10:17, 11:8	answered 9:11	bilateral 27:4,	chose 23:21 cited 12:17, 41:12 city 42:1 Civil 4:6 clarifies 34-10	32:23, 34:19	
	7	answering 51:10	31:3	cited 12:17,		
1st 10:17			1/1.8 1/1.10	41:12 oity /2+1	112, COTABOGA 1:2,	
2	7 32.11	anticipation	Bonezzi 2.6		cv 4:25	
	7 32:11 7.60 34:23 708 28:9	16:18	5:13 5:14:14:3, 14:8, 14:12 Bonezzi 2:6 book 9:25 bore 13:24 brachial 14:5 brachial 14:5	clarifies 34-10		
2 5:5, 5:12.	708 28:9	anyway 5:23	bore 13:24	clarifies 34:10 classified 35:17	D	
12:17. 20:4.	71 9:20 74 20:1	anyway 5:23 apparently 13:1 appearance 28:13 APPEARANCES 2:1 apply 16:16, 26:17, 41:6 April 12:1 arm 14:14, 14:16, 14:16, 14:19, 14:24, 15:25, 16:2, 33:17 arms 14:7 arms 14:7	brachial 14:5	classified 35:17 classifies 19:3 classify 11:9 clear 28:5 Cleveland 1:17, 2:4, 2:8, 2:13, 7:21, 45:19, 45:23 close 10:23.	1	
20:22, 27:14	74 20:1	appearance 28:13	breathing 14:10 broken 5:12 bruises 14:6 Building 2:7 built 20:15 bulk 34:22 35:9, 35:11 bunch 43:22	classify 11:9	damage 8:1	
20-year_25:25		APPĘARĄŅCĘS 2:1	proken 5;12	ciear 28:5	data_ <u>6</u> :6,_1 <u>1</u> :24,	
200,43:2	8	app1y_16;16,	pruises 14:6	Lieveland 1:17,	1 12:10, 17:21, 1	
2001 12:2, 22:2,	9 70,44 /E-3/	20:17, 41:0	built 20.45	5:31 6:2: 6:13,		
55:05 57:14	80 6 27 27 2	arm 14-14	bulk 34+22	1121, 47:19, 25-23	21.10' 21.25'	
2002 1:18 7.0	30.22 '21'2'	14.16 14.16	35.0 35.1	close 10+23	58:31 25.551	
12-1 12-23	85 11:20	14:19' 14:24'	bunch 43:22	15.5. 15.24	34 19 35 26	
24:20 28:14	86 9:10	15:25. 16:2.		closed 15:12	36:4, 36:13	
45:20	8 32:11, 45:24 80 6:23, 27:3, 30:24, 31:2 85 11:20 86 9:10 87 9:11 875-2767 2:0	33:17	C	45:23 close 10:23, 15:5, 15:24 closed 15:12, 15:13 co 2:2, 2:6 COIN 43:14, 43:14, 43:15 collapsed 14:9 collected 28:3 collecting 8:3	36:14, 36:17.	
2003 24:19	875-2767 2:9 88 9:11 89 7:24, 9:12	arms 14:7		Co 2:2, 2:6	36:21, 41:10	
2004 45:24	88 9:11	arrive 16:17	C-O-I-N 43:14 calculated 37:18	COIN 43:14	databases 43:20,	
20th 45:19_	89 7:24, 9:12	arrived_16:8,	calculated 37:18	43 14, 43 15	43:21	
Z1,7:5, 8:3		19:2, 28:9	calculation	collapsed 14:2	date 15:4	
210 2:4, 2:9,	9	aside 11:21,		collected 28:5	13:10, 15:2,	
25 2.4	97 10.11 10.13	35.56 4X + 4	28.6, 76.14		6113 dated 12.1 12.27	
55 /70 22.2	97 10:11, 10:12, 10:14 10:16	asking 0.17	calculations	11.5 18.21	daughter 8-6	
22nd 13-4	97 10:11, 10:12, 10:14, 10:16 9:14 13:4 9:th 7:20	arms 14:7 arrive 16:17 arrived 16:8, 19:2, 28:9 aside 11:21, 12:6, 20:4, 22:20, 43:5 asking 9:17, 22:3, 25:12, 37:5, 38:16, 41:5 aspects 5:3	21:20 21:21	26:3: 20:14	Davis 3-11	
23 3-6-7	9th 7:20	37.5. 38.15	33:15' 21:14	20:18 -20:10	5.25 7.4	
40:12	·····	41:5	can't 27:8	29:22: 30:1	7 11 12 20	
24 26 2 30 7	A	aspects 5:3	31:2. 36.9	32.6. 38.2	Dawn 3:11 5:25	
39:14, 40:12		aspects 5:5 assessment 5:16, 42:21, 43:8	calculation 16:17, 16:17, 19:2, 22:11, 28:9, 40:18 calculations 21:20, 21:21, 33:15, 41:13 can't 27:8 31:2, 36:9, 37:7, 37:10, 39:4, 39:5 Cannot 14:18 capacity 6:21.	collected 28:3 collecting 8:3 college 7:9, 11:5, 18:21, 29:18, 29:16, 29:18, 29:19, 29:22, 30:1, 32:6, 38:2 college type 38:8 Columbia 7:6 comes 20:3, 33:4 comfortable 36:18 commonds 15:5.	6:13. 7:4.	
24,553,83 23 23	a.m.13:4	42:21. 43:8	39:4, 39:5	Columbia 7:6	7.11, 11.2	
241-2600 2.4	ability 15:11.		Cannot 14:18	comes 20:3, 33:4	12:20	
241-6602 2:14	29:10 31:14	1:16, 43:12	capacity 6:21	comfortable 36:18	dead 10:21, 11:7	
2500 2:12	able_15:23,	assist 26: <u>2</u> 1	6:22, 21:23,	commands 15:5, 15:10	dealing 40:4,	
26 49:12	ability 15:11, 29:10, 31:14 able 15:23, 15:24, 15:25,	1:16, 43:12 assist 26:21 assistant 7:13 Associate 18:20	23:15, 23:24	15:10	42:15	
2/ 24:15, 25:2		Associate 18:20	capacity 6:21, 6:22, 21:23, 23:15, 23:24 career 43:17	commencing 1:18 Commission 45;24_	damage 8:1 data 6:6, 11:24, 12:15, 17:21, 20:3, 20:4, 21:11, 21:13, 21:19, 21:25, 28:39, 32:23, 34:19, 35:20, 36:14, 36:17, 36:14, 36:17, 36:14, 36:17, 36:14, 36:17, 36:21, 41:10, databases 43:20, 43:21, date 13:4, 13:10, 15:2, 21:3, dated 12:1, 12:23, daughter 8:6 Davis 3:11, 5:25, 7:4, 7:11, 12:20, Dawn 3:11, 5:25, 6:13, 7:4, 7:11, 11:2, 12:20, dead 10:21, 11:7, deal ing 40:4, 42:15, December 15:2,	
<u> </u>	ADSOLUTELY	assume 4:10,		commission 45:24	1 HJ . CV	
48T9 14:1, 20	20:19, 41:9		Case 117, 12:4,	commissioned 45:5 COMMON 1:3	decide 9:6	
2 5:5, 5:12, 12:17, 20:4, 20:22, 27:14 20.year 25:25 2001 15:2, 22:5, 23:22, 23:19 23:22, 24:19 2002 1:18, 7:9, 12:11 12:23, 24:20, 28:14, 45:20, 28:14, 2003 24:19 2004 45:19 2004 45:19 2004 45:19 2004 45:19 21 7:5, 8:3 216 2:4, 2:9, 22:14, 2:9, 23:6 30:7, 40:12 24 26:2, 30:7, 39:14, 83 23:23 241-2600 2:4 241-2600 2:4 241-2600 2:4 241-2600 2:14 2500 2:12 24 26:12, 25:2 27 24:15, 25:2 27 25:2 27 24:15, 25:2 2	Absolutely 26:19, 41:9 access 36:21, 36:22, 36:23,	assume 4:16, 11:25, 12:13, 17:5, 24:23 assuming 16:11,	case 1:7, 12:4, 12:9, 12:16, 15:19, 18:7,	Community 7-8	default 18:10	
2013	30122, 30123,	assummy lot 11,	12117, 1017,	Community 7:8	defendant 1:12,	
735	MT77NITNI DED	ORTING SERVI	CE. INC.		Pages 1 to 4	F

ROD W. DURGIN, Ph.D.

AZ02735

MIZANIN REPORTING SERVICE, INC.

Pages 1 to 45

ROD W. DURGIN, Ph.D.								
2:10, 2:15, 4:4, 41:21	24:20, 26:11, 28:14, 31:25 Dr 4:13, 4:14, 36:7	expand 30:17, 31:15, 32:20 expansion 33:23 expectancy 17:5, 17:8, 27:20 expected 24:14 experience 7:10, 7:24, 17:13, 35:24, 37:6, 37:25 expert 43:6	graduate's 29:22 Graduated 7:6 graduates 29:19 greater 20:22 greatly 31:7 GREENE 1:1 Greetings 7:14 grew 22:5	11:21 ICU 14:11 Idea 37:22, 43:3	25:19, 26:20, 29:9, 30:18 31:14, 32:26, 33:23, 34:11, 35:13, 35:13, 35:16, 35:20, 36:22, 37:1, 37:8 jobs 6:25, 7:12			
Defendant's 3:8, 4:1, 5:1, 5:9, 5:12, 7:2, 13:11 Defendants 1:9	Dr 4:13, 4:14,	expansion 33:23	graduates 29:19	idea 37:22, 43:3	31:14, 32:20,			
5:12 7:2 13:11	56:/ dramatic 15:21	expectancy 17:5, 17:8, 27:20	greater 20:22 preatly 31.7	identification	33:23, 34:11,			
Defendants 1,9	driving_6:24	expected 24:14	GREENE 1:1	111 1:4, 5 17,	35:16, 35:17,			
defined 20:14 degree 18:21	dramatic 15:21 driving 6:24 duly 4:7, 45:5, 45:8	7:24, 17:13	Greetings 7:14	6:4, 11:13,	35:18, 35:20,			
20:23, 21:10,	Durgin 1:11, 4:3, 4:13, 4:14, 36:7, 45:6 dystocia 42:18	35:24, 37:6,		Idea 37:22, 43:3 identification 4:2, 5:10, 13:12 III 1:4, 5:17, 6:4, 11:13, 13:2, 14:4, 19:17, 28:17 III's 22:23, 23:15 illustration	37:8			
24:5, 24:7,	4:14, 36:7, 45:6	27:25 expert 43:6	growing 22:8, 35:6	23:15	16:14, 20:12,			
24:8, 25:8	dystocia 42:18	expertise 36:8	grows 36:3 growth 22:9,	illustration 39:24	20.13, 20.21			
29:16: 30:2;	E	explain 10:6,	24:24	i imaginable 54:6	21:9, 21:24,			
Defendants, 1:9 defined 20:14 degree 18:21 20:23, 21:10, 21:25, 23:117, 24:8, 25:7, 26:18, 20:7, 30:13, 30:2, 30:14, 32:6, 32:16, 34:16, 34:17, 34:18, 38:2, 44:18, 38:2, 4	earn 6:21,	37:25 expert 43:6 expertise 36:8 Expires 45:24 explain 10:6, 19:2, 21:21, 32:24 expres 23:0	guarded/limp 14:24	impāct 15:19, 31:6	23:16, 23:18,			
34:12, 34:16,	earn 6:21, 16:18, 17:23, 23:24, 39:11 earning 38:12	23:13, 24:11 express 23:9, 23:13, 24:11 expressed 23:2 extpressly 45:15 extend 29:10 extends 25:23, 26:4 extend 12:1	guess 5:7, 10:1, 17:3, 39:9, 39:24, 41:5	Suma a 44 a 70.60	27:12, 30:1,			
38:2 41:1	earning 38:12	23:13, 24:11 expressed 23:2	39:24, 41:5	importantly 1/:25	30:10 31.3			
degrees 19:15 Deirdre 2:12 demolition 8:2	earning 36:12 earnings 22:1, 24:14, 28:5, 38:10, 38:10, 38:13, 38:17, 40:14, 40:22, 42:19 50:11,14	expressly 45:15	guessing 30:4	imports 32:12 importantly 17:25 improve 25:8 incidentally 21:5 include 18:9, 25:3, 42:9 included 18:7 included 18:7	31.21, 31.22,			
demolition 8:2	38:10, 38:10,	extends 25:23,	H	25:3, 42:9	32:10, 32:14.			
demonstrate 16:2 Department 20:10 depending 9:5 depends 8:16,	38:13, 38:17, 40:14, 40:22	26:4 extra 12:1	half 36.25	included 18:7	32:17, 32:25,			
depending 9:5	42:19	extremity 14:5 eye 14:7	handed 4:25, 27:6	included 18:7 includes 24:14, 25:4, 25:4, 25:5	33.9, 33.19,			
depends 8:16, 38:13	EASE 1110	************	handing 5:11 hands 27:4.	including 18:10	33:22, 34:2, 34:14' 34:10			
1	economy 36:24 Edison 8:20	F	31:2, 31:3,	22:24, 23:19,	34:20, 34:22,			
deposes 4:7 deposition 1:11, 4:1, 4:15, 5:9, 13:11, 23:8, 42:9, 44:6, 45:8, 45:10, 45:14 depositions	education 7:5, 7:8, 7:20,	fabriçator 35:12	half 36:25 handed 4:25, 27:6 handing 5:11 hands 27:4, 31:2, 31:3, 35:7, 35:19 handwriting 5:22, 22:8 handwritten 21:21 hangs 14:14 happen 16:4.	25:4, 25:4, 25:5 including 18:10 income 18:18, 22:24, 23:19, 29:18, 29:22, 38:19, 39:15,	30:2, 30:20, 36:4, 36:10,			
13:11, 23:8,	18:6, 18:7,	1 tace 14:/	5:22, 22:8	41:8 increase 26:10	36:11, 36:12,			
45.é, 45.10,	18:12, 18:17,	fair 4:20, 4:21, 32:8	hangs 14:14	increase 26:10, 26:11, 26:11, 26:12, 30:16, 31:21, 38:11, 38:13	36:22, 36:23,			
45:14 deposítions	18:21, 25:14, 25:14, 25:18,	fairest 26:16 fall 11:15.	18-6 17-22	26:12, <u>30:16</u> , 31:21, <u>38:11</u>	<u>38:25, 39:2,</u> 39:3, 39:20			
depositions 12:19, 12:21 describe 5:7	25:23, 26:9,	11:20, 23:18,	happened 15:22	38:13	39:22, 40:25,			
described 15.5	27:16, 29:7,	Fallon 2:11	happened 15:22 happens 29:6, 30:25	29:8, 39:25	Jr 6:2, 6:13.			
description 35:21	29:8, 30:9, 30:16 30:20	fairest 26:16 fall 11:15, 11:20, 23:18, 34:22, 34:24 Fallon 2:11 fastest 35:6 fax 13:3 Federal 44:14	having 13:17	increases 25:18, 25-20 20-13	36:22, 37:1, 37:8, 6:25, 7:12, 16:14, 20:12, 20:22, 20:25, 21:2, 20:25, 21:2, 20:25, 21:2, 20:25, 21:2, 20:25, 21:2, 20:25, 21:2, 20:27, 20:22, 21:24, 23:22, 20:25, 23:22, 20:17, 30:10, 30:17, 30:10, 30:17, 30:10, 30:17, 30:10, 30:17, 30:14, 31:22, 30:14, 32:35, 30:14, 32:25, 30:14, 32:25, 30:14, 32:25, 33:22, 44, 33:22, 35:24, 34:22, 35:24, 34:22, 35:24, 34:22, 35:24, 35:12, 36:14, 36:12, 36:14, 36:12, 36:12, 36:12, 36:13, 12, 12:20, 1			
determination 6:20	30:21, 31:4,	[Feuerat 41,10,	he 11, 11:15,	39:10, 39:11				
developed 17:20,	31:15, 32:16,	41:18 fee 42:6 feel 36: <u>17</u>	be's 17:13,	30:13 increased 16:2, 29:8, 39:25 increases 25:18, 25:20, 29:13, 39:10, 39:11 individual 19:7 individuals 23:16 individuals 23:16	jump 31:1 June 12:23, 45:24			
43:19, 43:19	32:17, 32:19,	feel 36:17	23:25, 24:3,	injured 6:11 17:22, 42:21	K			
deters 27:13 developed 17:20, 43:19, 43:19 develops 43:15 deviation 11:19 deviation 11:19	33:8, '33:16,	figured 33:8 file 5:6, 12:10, 12:15	26:7, 27:1,7	injuries 14:12				
24:8, 30:13.	33:25, 34:9,	12:15 files 12:18	27:10, 29:16, 35:2, 35:3,	14:5, 16:6,	Kimberly 12:24 kinds 6:25			
deviation 11:19 dexterity 24:7, 24:8, 30:13, 30:14, 34:16, 41:2	37:22, 38:4,	files 12:18 final 8:4 finally 9:20,	35:4, 35:7,	injuries 14:12 injury 13:22, 14:5, 16:6, 16:11, 16:16, 19:16, 20:25,	Kimberly 12:24 kinds 6:25, 34:14, 36:10			
41:2 Dictionary 20:10, 21:14 didn't 9:20, 31:24, 34:8, 34:19, 36:4 difference 18:19, 33:12, 39:13, 40:1, 40:7 diminishing 32:10	education 7:5, 7:8, 7:20, 18:7, 18:7, 18:8, 18:9, 18:12, 18:17, 18:21, 25:14, 25:16, 25:18, 25:23, 26:9, 26:10, 26:16, 27:16, 30:9, 30:21, 31:4, 31:5, 32:19, 32:17, 32:19, 32:21, 33:24, 33:24, 33:24, 33:24, 33:24, 33:24, 33:24, 33:24, 33:10, 41:13 educational	1 1 2 1 2	he'll 11:15, 35:11 he's 17:13, 23:25, 24:3, 24:12, 25:14, 26:7, 27:10, 29:16, 35:2, 35:3, 35:4, 35:10, 35:12, 36:6 header 1:12, 2:10, 25:3, 25:5 health 1:12, 2:10, 25:3, 25:5 health 1:12, 2:11, 25:3, 25:5 health 1:12, 3:3:14, 37:4, 37:14, hereby 45:6, an	16:11, 16:16, 19:16, 20:25, 22:12, 24:3, 27:5, 27:27, 27:5, 27:12, 31:16, 33:6, 34:1, 38:23, 38:24, 42:22, input 35:20 instance 18:17,	Г			
20:10, 21:14 didn't 9:20.	educational 31:12, 31:18, 43:14, 43:16 effect 13:22	fine 4:24 finger 24:8, 30:14, 34:16,	header 7:11 health 1:12.	27:5, 27:12,	L.P.A 2:2. 2:6			
13.9 26.7	43:14, 43:16	30:14, 34:16, 41:2	2:10, 25:3, 25:5	27 12, 31 13,	L.P.A 2:2, 2:6 labor 6:3, 6:4, 6:5, 6:6, 20:8, 20:10, 20:18, 20:20, 21:5, 23:18, 24:9, 40:24 laborer 7:25			
34:19, 36:4	eight 8:6	Fingers 14:17 finish 10:15,	held 14:24	34:1, 38:23,	20:10, 20:18,			
18:19, 33:12.	eight 8:6 either 6:12, 40:17, 42:21, 45:16		Henry 2:12, 3:3, 29:3, 33:13	38:24, 42:22, 42:22,	20:20, 21:5,			
39:13, 40:1,	45:16	50:15 fire 8:1 fisted 14:17 five 10:23 Flint 42:2 follow 15:5, 15:10, 37:21 follow-up 37:17 follows 4:8 force 6:24	33:14, 37:4,	input 35:20	40:24			
diminishing 32:10	elderly 7:13 elements 25:6 eligible 16:13, 26:25, 32:14, 32:15	five 10:23	hereby 45:6 hereditary 6:2 <u>3</u>	41:13	laborer 7:25 larger 40:3 later 15:15, 15:18			
diminution 42:19	eligible_16:13, 26:25_32:14	Flint 42:2 follow 15:5	hereditary 6:23	$100000000 25 \cdot 3$	later 15:15,			
26.2, 38.15,	32:15	15 10, 37 21	hereunto 45:18	3:10, 5:15,	Leader 2:7			
diminishing 32:10 diminution 42:19 diploma 25:25, 26:2, 38:15, 39:2, 39:16, 39:17 diploma 28:30		follows 4:8	nereinatter 4:7 hereunto 45:18 higher 23:20, 37:25, 39:8, 39:12	intake 3:10, 3:10, 5:15, 5:16, 5:19, 5:21, 14:3 intellectual	Leader 2:7 learning 8:3, 8:8 least 8:11, 21:10, 24:4 less 18:11, 25:21, 25:24 let's 5:23, 25:24, 30:5, 32:6, 39:24 letter 13:3 letters 5:13			
	19:4, 19:6, 19:17, 22:24, 24:12, 27:11, 27:13, 32:13 employable 19:7,	force 6:24	39:12 highest 3(+25	intellectual	21:10, 24:4			
direction 45:13 disabilities 30:3	27:13, 32:13	Forensic 7:10 forth 45:10	highly 35:14	intelligence	25.21, 25.24			
disability 8:8, 16:9, 20:1, .33:18	employable 19:7, 19:8, 19:10	TOFWARG 0:21,	hit 38:1, 38:3	3:11, 3:11, 5:25, 6:2,	25:24, 30:5.			
33:18 disability/can't	19:8, 19:10 employed 17:18	four-year 29:7	hold 14:18	6:23, 6:24	32.6, 39.24			
8:4	employment 18:5, 26:22, 43:7 enrolled 7:8	25:2, 25:6	Hospital 4:4,	20:23, 21:10,	letters 5:13			
disabled 17:12, 18:25, 19:5,	0010000100 / 51/6	four-year 29:7 fringe 24:15, 25:2, 25:6 front 31:19, 31:21 full (12, 15:23	59:12 highest 34:25 highly 35:14 history 11:21 hit 38:1, 38:3 hold 14:18 horizontal 9:14 Hospital 4:4, 12:24, 14:11 hospital ization 14:10	30:12, 32:3	14:16, 18:15			
19:7, 19:13,	entitled 26:21	full 4:12, 15:23	14:10	$\frac{32:7}{32:10}, \frac{32:16}{32:10}$	30:16, 31:12,			
18:25, 19:5, 19:7, 19:13, 19:13, 19:14, 19:18, 24:13, 27:24	entitled 26:21 equalized 30:20 Esq 2:2, 2:7, 2:12	full 4:12, 15:23 fully 14:15, 19:8, 19:10	hour 42:4 42:11, 42:14 hourly 42:5, 42:10	33.17, 34.1,	letters 5:13 level 9:24, 14:16, 18:15, 30:16, 31:12, 31:23, 31:24, 41:3, 41:4 levels 31:18 libraries 43:17			
27:24 discharge 13:1		TUNCTION 10:20	hourly 42:5, 42:10	34:3, 54:12, 39:21, 41:1	levels 31:18 Libraries 43:17			
discharge 13:1 discuss 28:20 discussed 22:21	essentially	functionality 13:21 future 6:21	hours 42:11	intellectual 6:22, 20:16 intelligence 3:11, 3:11, 5:25, 6:2, 6:22, 6:24, 11:16, 18:15, 20:23, 6:24, 30:12, 32:3, 30:12, 32:3, 32:7, 32:16, 33:17, 34:1, 33:17, 34:1, 33:17, 34:1, 34:3, 34:12, 33:17, 34:1, 34:3, 34:12, 39:21, 41:1 intend 15:15, 22:22, 28:11 intent ion 28:15, 28:16,	Libraries 43:17 Libraries 43:17 Lifetime 16:19, 24:13 Lift 14:16, 16:1, 35:22			
discussion 22:19, 29:6	established	future 6:21, 22:24	houses 21:19	intention 28:15,	lift 14:16,			
22:19, 29:6 district 42:1	essence 32:20 essentially 5:13, 20:11 established 13:14, 38:18 et 1:5, 1:8 etc 1:4, 7:14 event 45:17 event 41:17	G	Howard 2:2 Howley 2:11	28:16 intently 29:4	16:1, 35:22 LILLIAN 1:1			
district 42:1 doctor 4:25, 5:11, 6:18, 8:11, 12:3, 13:13, 16:7, 21:20, 22:20	etc 1:4, 7:14		Hupp 2:7, 3:2,	intently 29:4 Interest 7:10	limit 20.15			
8:11, 12:3,		general 1:12, 2:10, 4:4, 14:19, 16:19 generated 12:4,	4.14, 5:11,	interested 45:17 internet 43:20	listing 36:18			
13:13, 16:7,	everyone 26:16	14:19, 16:19	13:13, 23:6.	interpret 9:2	living 27:1, 36:7			
23 9, 25 7, 1	exactly 41:9	18:5	4 <u>0 18</u> , 42 20, 1	Iowa 21:19	location 19:20			
21:20, 22:20, 23:9, 25:7, 28:11, 28:24, 37:17	example 25:24,	18:5 gets 23:9 26:24, 31:15, 33:21 given 36:14	43:25	interpret 9:2 involved 26:16 Iowa 21:19 irrelevant 37:2, 37:5	Listening 29:4 Listing 36:18 Living 27:1, 36:7 Local 36:23 Location 19:20 Logically 25:22, 29:8, 29:10,			
document 13:8, 13:15, 13:18, 21:16	26:2, 42:10		Hurd 2:11	isn't 30:20, 31:6, 32:3, 34:11	Longer 20-0			
21:16'	except 6:8,	giving 45:7 gone 12:12	42:10 hours 42:11 houses 43:22 houses 21:19 Howard 2:2 Howley 2:11 Hupp 2:7, 3:2, 3:3, 4:11, 13:13, 23:6, 28:24, 37:16, 40:18, 32:20, 42:25, 43:2, 43:25 Hurd 2:11 hypothetically 25:13, 40:12	34:11	looking 6:25,			
	10:20, 25:) exclude 23:4	gone 12:12 Government	I	Item 9:10, 9:12 Items 9:11	19:15; 21:2;			
doesn't 13:19,	Exhibit 4:1	17:14, 17:14, 18:3 10:3		J	Locking 6:25, 11:25, 19:5, 19:15, 21:2, 27:20, 33:6, 37:12			
18 8, 31, 12	7:2, 8:24,	19:11, 19:19,	8.12, 8,13,		looks 9:9, 9:10,			
documents 1:10 5:14, 12:10 doesn't 13:19, 13:22, 14:2, 18:8, 31:12 dollars 22:4, 22:7 23:19, 23:23, 24:10,	13:23, 22:11	17:14, 17:14, 18:3, 19:3, 19:11, 19:19, 20:2, 20:14, 21:3, 21:13 grade 7:20	I.Q 6:14, 6:17, 8:12, 8:13, 8:17, 11:2, 11:3, 11:6, 11:8, 11:14,	January 7:9 Jersey 7:17 job 25:9, 25:10,	Looks 9:9, 9:10, 9:18, 26:9 Loss 22:23, 24:13, 26:12,			
23:23, 24:10,	everyone 26:16 everything 34:6 exactly 41:9 examined 15:1 example 25:24, 26:2, 42:10 examples 34:14 except 6:8, 10:20, 25:1 exclude 23:4 Exhibit 4:1, 5:1, 5:5, 5:12, 7:2, 8:24, 13:11, 13:14, 13:23, 22:11 Exhibits 3:7, 5:9			Job 25:9, 25:10,				
	5 PN 77 5 5 5 7 5 7 5 7 5 7 5 7 5 7 5 7 5 7	ODTING CEDVIT			Dampe 1 to /5			

AZ02735

MIZANIN REPORTING SERVICE, INC.

Pages 1 to 45

ROD W. DURGIN, Ph.D. expand 30:17, graduate's 29:22 11:21

ROD W. DURGIN, Ph.D.

ROD W. DURGIN, Ph.D.									
29:13, 39:8, 39:11, 40:3, low 29:22, 39:18 lower 23:20 LPE 17:17 lungs 14:9	8:17, 14:6 Murphy 2:6	14:13, 14:13	37:23	reports 19:25	signature 44:4 signed 12:24				
Low 29:22, 39:18		participating 17:18, 25:19	5/23 probable 35:14 probably 17:23, 24:20, 26:12, 27:7, 26:17, 30:3, 31:25, 39:3, 39:23 problem 8:19	represented 38:17, 38:19	significance				
lower 23:20	N	i participation	24:20, 26:12,	represents 23:15 reproduce 41:11	significance 9:23, 17:11, 17:12				
lungs 14:9	Narrow 32:22	18:4, 26:12 particularly 29:19	30:3, 31:25,	reproduction	significant				
M	national 21:4, 21:5 21:6	29:19 party 45:16	39:3, 39:23 problem 8:19	41:14 require 20:22	17:12 significant 34:25, 38:1, 38:4				
	21:7, 21:18,	l basséd 10:10.	problem 8:19, 27:2, 27:5, 27:7 problems 27:11	21:9, 24:6,	signing 45:14				
M.D 1:8, 2:15 making 13:24	28:1, 36:23	10:11 past 36:12, 37:25	Procedure 4:6	30:1, 30:13, 31:3, 31:22	signing 45:14 simply 26:13 Sink 12:25				
26:5, 26:13,	43:21, 43:23	Patel 1:8, 2:15	nrocess 4.15	32:7, 35:7	situation 8:6,				
52:22, 52:25 males 29:19,	24:4, 26:22,	past 36:12, 37:25 Patel 1:8, 2:15 pays 24:9 per 42:4	production 35:4 products 43:15, 43:19	20:16, 34:12	situations 35:3				
38:20, 39:17	Narrow 32:22 national 21:4, 21:5, 21:6, 24:7, 24:15, 28:1, 36:23, nature 16:16, 24:4, 26:22, 34:15 necessarily 35:20	percentage 16:13, 18:24,	43:19 profession 43:7	41:14 require 20:22, 21:9, 24:6, 30:1, 30:13, 31:3, 31:22, 32:7, 35:7 required 14:9, 20:16, 34:12 requires 24:4, 27:4 research 17:21	situation 8:6, 28:6, 28:7, 38:8 situations 35:3 skill 31:23, 31:24, 41:3, 41:4				
manner 14:25	needed 11:24	19:4	Professional 1:14 profile 20:15	research 17:21,	41:4				
M.D 1:8, 2:15 making 13:24, 26:5, 26:13, 32:22, 32:23 males 29:19 38:20, 39:17 malpractice 42:22 manuer 14:25 manual 24:7, 30:13, 33:5, 34:16, 41:17 marginal (y 39:4, 39:21, 40:25 mark 7:23 marked 3:8, 4:2, 4:25, 5:10, 5:12, 5:10, 13:12, 13:14, 20:19 market 6:3, 6:4,	negative 9:15 non 28:5	percentile 10:17, 11:4	profile 20:15 program 20:11	research 17:21, 28:12 rest 34:24 restrict 34:8	skilled 29:25, 30:23, 30:25, 39:21, 40:25 skirted 23:1				
34:16, 41:1	Non-injury 6:10,		program 20:11, 21:14, 27:8	restrict 34:8	39:2, 39:4				
manually 14:17 marginally 39:4.	Non-injury 6:10, 6:12 none 17:15 nor 13:19	24:2, 24:16.	programs 26:20 prompted 39:9	restricted 24:1, 24:3	skirted 23:1				
39:21, 40:25	nor 13:19	18:14, 20:17, 24:2, 24:16, 30:7, 30:11 performance 25:9, 25:10 performs 24:6,	proprietary 43:18 provided 4:5, 34:21	result 13:17, 14:11, 24:2 retarded 11:8	Skylight 2:3 slightly 37:25 Slosson 3:11, 3:11, 5:25, 6:1 Social 8:3, 8:7,				
marked 3:8, 4:2,	Notary 1:14,	25:9, 25:10	34:21	retarded 11:8	Slosson 3:11,				
4:25, 5:10,	45:4, 45:22		psychology 11:5	retrain 36:11	3:11, 5:25, 6:1				
13:12, 13:14,	nor 13:19 norming 10:13 Notary 1:14, 45:4, 45:22 note 14:23 note 5:16, 5:19, 5:21 12:6, 14:3, 29:1 nothing 24:25, 34:25, 45:9 notice 13:1 notice 12:9	perhaps 8:18 personal 42:22 persons 19:25 Ph.D 1:11, 4:3, 45:7	psychology 11:5 public 1:14, 2:13, 21:16, 45:4, 45:22 published 20:1	retrain 36:11 revealed 14:8 review 28:12	L L . 4				
20:19 market 6:3, 6:4,	5:19, 5:21, 12:6, 14:3, 29:1	personal 42:22 persons 19:25	45:4, 45:22 published 20:1	reviewed 12:16, 42:16	solve 8:19 somebody 25:15				
6:5, 6:6, 6:9,	nothing 24:25,	Ph.D_1:11, 4:3,	purpose 4:5 puts 10:17	reviewing 12:9, 42:3	somebody 25:15 someone 9:4, 10:21				
20:20, 21:6,	54:25, 45:9 notice 13:1	phones 7:14	putting 33:16	right-hand 10:7	somewhere 11:18,				
23:18, 24:9,	noticed 12:9 November 1:18,	photographer 7:16 phrased 25:11,	<u> </u>	Rod 1:11, 4:3,	19:10, 29:22,				
20:19' market 6:3, 6:4, 6:5, 6:6, 6:9, 20:8, 20:18, 20:20, 21:6, 23:18, 24:9, 25:9, 25:10, 25:14, 25:20, 29:9, 30:18, 32:20, 35:13, 37:8, 40:24, markets 43:16 marks 9:12 mathematical			· · · · · · · · · · · · · · · · · · ·	42:5 right-hand 10:7 Rod 1:11, 4:3, 4:13, 45:6 room 41:23 rotate 14:19 row 9:17, 10:25 RPR 45:22 Rules 4:6	somewhere (1:13, 19:10, 29:22, 30:4, 30:6, 39:18, 39:23 sort 5:7, 10:21, 14:22, 19:14, 29:15				
29:9, 30:18, 32:20, 35:13	number-based 41:7 numbers 8:21	physical 3:14, 12:23 12:25	qualified 45:6 quantify 18:24 quick 37:17	rotate 14:19	sort 5:7, 10:21,				
37.8, 40,24	8:22, 17:11,	physical 3:14, 12:23, 12:25, 13:17, 20:15 piece 12:15	quick 37:17	RPR 45:22	29:15				
markets 45:10 marks 9:12	number-based 41:7 numbers 8:21, 8:22, 17:11, 18:18, 18:22, 24:20, 24:25, 26:1, 27:25, 28:14, 30:27 39:7, 40:21 nurse 7:12	plaintitt 41:21,	R	Rules 4:6 run 18:16, 18:20, 36:4, 36:13, 36:13, 36:17, 39:23, 40:2, 40:24, 41:10	Southern 12:24				
materials 20:6,	26:1, 27:25, 27:25, 30.2	41:22		18:20, 36:4	Southwest 1:12, 2:10, 4:4				
math 8:19	39:7, 40:21	Plaintiffs 1:6, 2:5	Rainbow 14:11 raise 31:25, 32:8 raising 29:20,	36:17, 39:23,	specific 19:20,				
40:18		plans 15:17 play 26:6		40:2, 40:24,	36:13, 36:22				
matter 31:12 Max 7:21	0	playing 40:19 PLEAS 1:3	ran 36:4	running 37:24	specific 19:20, 34:19:36:4, 36:13:36:22 specifically 42:18:50:50				
maybe 18:20, 30:24	oath 4:18	please 4:12, 4:22, 7:1	ran 36:4 range 11:16, 11:17, 11:18, 11:18	S	spectrum 19:8				
30:24 meaning 18:11	object 22:25, 37:11		11:18 rarely 16:6	salary 23:22 salesforce 43:23 sampling 28:2 saying 31:2, 31:11, 31:16, 31:17, 33:14, 33:16, 34:1, 37:7, 41:14, 7:5, 7:6, 7:7, 7:9, 7:11, 8:5, 14:13, 14:14, 14:22, 14:23, 17:14, 17:15, 18:3, 19:11, 21:25 scenarios, 26:6	Square 2:13 Sr 9:10 Ss 1:1, 45:2 standard 5:18, 10:16, 11:18, 11:19 standardized				
meaning 18:11 means 7:23 9:17, 18:13, 20:22, 23:17, 38:3, 45:11, 45:12 median 23:1	objection 23:11 OBJECTIONS 3:4 Obs 17:4	point 9:16, 11:19, 28:15 points 18:3	rate 18:1, 22:6, 22:9, 24:10, 42:10, 42:12 rationale 26:17 rationale 26:17	salesforce 43:23	SS 1:1, 45:2				
20.22, 23 17	Obs 17:4	points 18:3	42:10, 42:12	saving 31:2,	10:16, 11:18,				
38:5, 45:11, 45:12	observation 14:23 observed 14:23 obtain 25:7, 26:18	Polito 2:6 pool 20:25 poorly 25:11, 43:8	rationale 26:17 re-evaluate 16:5	31:11, <u>51:16</u> , 31:17, <u>33:14</u> ,					
45:12 median 22:1, 23:19, 23:20, 23:21, 23:21, 28:21, 29:18, 29:21, 38:19, 39:15, 41:8, medical 12:16, 42:21 Medicare 25:5	obtain 25:7,	poorly 25:11,	re-examination 15:18	33.16, 34.1	10:13, 10:14 start 9:6, 10:21, 10:21, 17:3, 31:1				
23:21, 23:21,	obtaining 26:22 obviously 27:12	population 19:24	re-examine 15:16	says 4:8, 7:4,	10:21, 10:21,				
28:1, 29:18, 29:21 38:10	obviously 27:12	portion 13:5	re-examining 28:16	7:5, 7:6, 7:7	17:3, 31:1 started 9:9,				
39:15, 41:8	20:11, 21:15,	portrait 7:16 post 25:1, 40:1	reading 27-16	14:13, 14:14,	9:10, 10:20				
42:21	occupations 35:5	40:5, 40:7, 40:9	45:14 real 10:1, 27:6	17:3, 17:3,	4:12, 21:6.				
Medicare 25:5 memory 13:7 mentally 11:8	obviously 27:12 occupational 20:11, 21:15, 34:24, 36:5 occupations 35:5 occurs 16:6 Ocean 7:8, 12:24 office 2:3, 45:19 Ohio 1:1, 1:15, 1:17, 2:4, 2:8, 2:13, 4:6, 7:7, 45:10, 45:5 45:10, 45:22, 45:23 ones 12:12, 32:18 open 15:5, 15:24 open -ended 23:7	post 25:1, 40:1 post-earnings 40:5, 40:7, 40:9 post-injury 6:4, 6:7, 17:9, 31:20, 32:1, 33:4, 33:11, 39:14, 39:19, 39:19, 40:14, 40:20, 40:22 potential 32:20 potential 32:20	real 10:1, 27:6 realize 13:10 really 19:5 reason 8:7, 23:21, 28:18 received 12:19	17:14, 17:15,	started 9:9, 9:10, 10:20 state 1:1, 1:15, 4:12, 21:6, 23:25, 27:1, 45:1, 45:5, 45:22 ctated 11:15				
mentally 11:8	office 2:3, 45:19	17:21, 29:24,	reason 8:7,	21:25	45:22				
mentionéd 19:19 met 4:14	1:17, 2:4, 2:8,	33:4, 33:11,		scenarios 26:6 School/columbia					
methods 10:19	2:13, 4:6, 7:7,	39:14, 39:19,	12:21, 12:22, 13:8, 13:15 receptionist 7:14	7:6	states 13:20, 19:24 Station 7:7				
Michigan 41:20, 41:21, 42:2 midpoint_23:20	45:10, 45:22,	40:20, 40:22	receptionist 7:14	schools 43:17 Science 7:10 score 10:16	Station 7:7 statistics 19:23				
million 28:6	45:23 ones 12:12, 32:18	potential 32:20 potentially 40:8		score 10:16 scores_10:6	Stenotype 45:11 Steve 4:14				
million 28:6 mine 14:1, 14:2 minimum 42:11	open 15:5, 15:24	pre 25:1, 40:1	21:2, 22:17,	seal 45:19	Steven 2:7				
Minimum 42:11 Mishkind 2:2, 2:2, 3:6 22:17, 22:20, 22:25, 23:11, 33:10, 36:15, 37:11, 40:16, 42:17, 42:24, 43:10, 44:2 missed 9:13	open 15:5, 15:24 open-ended 23:7 opened 14:18 operator 35:12 opinion 13:19, 19:16, 20:24, 23:23, 24:11, 26:15 opinions 11:12	pre-injury 6:9	record 4:12, 21:2, 22:17, 22:19, 23:77 records 12:16 reduce 16:17 reduce 16:17	section 7:19 Security 8:3, 8:7, 25:4 sedentary 24:4, 33:5, 34:15, 41:2 security 24:4, 33:5, 34:15,	Stenotype 45:11 Steve 4:14 Steven 2:7 stop 11:1, 33:1 straight 9:21, 10:8				
222 3.6	operator 35:12	6:12, 16:12, 17:20	reduce 16:17 reduced 17:13,	8:7, 25:4 sedentary 24:4	10:8 straighten				
22:25, 23:11,	19:16, 20:24,	20:20, 21:23,	45:10	33:5, 34:15,	14:15, 15:25 Street 2:3				
37:11, 40:16,	26:15	23:24, 27:15,	refer 14:1 reference 19:21, 19:22, 20:6	41:2 seems 31:11 segment 35:6	strength 16:2				
42:17, 42:24,	opinions 11:12,	28:6, 29:20,	19:22, 20:6 referenced 20:4	segment 35:6 select 8:14	string 8:22 studio 7:16				
missed 9:13,	15:22; 22:20;	31:19, 33:11,	renard 28-10	selected 19:25	submark 5:7				
missed 9:13, 10:5, 10:10, 10:24, 10:25	23:10, 23:13,	38:13, 38:17,	regardless 26:9, 31:4, 31:5, 40:2 Registered 1:14	semi-skilled 39:1 sense 31:17	subsequently 45:11				
	20:15 opinions 11:12, 13:22, 15:19, 15:22, 22:20, 22:22, 23:11, 23:10, 23:13, 24:16, 28:19	potential 32:20 potentially 40:8 pre 25:1, 40:7, 40:9 pre-injury 6:9, 6:12, 16:12, 20:20, 21:23, 23:15, 23:22, 23:24, 27:15, 28:6, 29:20, 29:22, 31:8, 31:19, 33:11, 38:10, 38:12, 38:13, 38:17, 38:21, 39:14, 40:20 precision 35:3	Registered 1:14	service 7:13,	substantially				
modifies 40:13 money_6:21,	opportunities 35:9, 35:11, 37:13	precision 35:3 Presently 7:15	Rehab 27:1 relative 5:16,	sense 31:17 service 7:13, 21:4, 21:18, 35:5, 37:9	27:22, 27:23 Subtract 28:10				
16:13, 17:24,	37:13 opposed 30:18	Presently 7:15 presume 4:19	relative 5:16, 13:21, 45:16 relied 20:6 render 22:22	session 4:18 several 7:12 severe 14:4	Suite 1:16				
22.8, 23.24,	opposed 30:18 otherwise 45:17	presume 4:19, 23:3	render 22:22	severe 14:4	Superior 1:16, 2:8				
monry 6:21, 16:13, 17:24, 22:4, 22:6 22:8, 23:24, 26:5, 26:13, 29:11, 38:21, 38:22, 39:10	overall 25:8		repair 35:4 rephrase 4:23	severely 19:13,	support 34:23, 35:8, 36:2, 37:1 support-type 35:2 sustained 14:4, 14:6, 14:12 sustained 14:4				
38:22, 39:10'	P	primary 25:6 print 21:17 prior 20:24, 24:19, 28:12, 28:17	report 3:12,	sex 18:5, 18:15 she's 11:3, 12:25 sheet 5:17,	support-type 35:2				
X1+1/	p.m 1:18, 44:6 pack 35:21	24:19, 28:12,	3, 13, 3, 14,	sheet 5:17,	14:6, 14:12				
months 6:20, 7:18 15:3	pack 35:21 package 25:6	28:17 probability	12:3, 12:17		sword 29:15				
Mostly 8:1	package 25:6 pages 16:25 Paisley 2:11	16:23, 17:4,	12:22, 12:23,	sheets 6:13, 6:14 shortly 14:8 shoulder 14:16,	sworn 4:7, 45:8				
Months 6:20, 7:18, 15:3 Mostly 8:1 move 12:13, 23:8 moving 32:11 MPT 12:25 mUT 12:25	parents 6:18,	16:23, 17:4, 17:7, 17:17, 20:5, 25:19, 27:14, 27:15, 29:9, 37:18,	repair 35:4 report 3:12, 3:12, 3:14, 11:15, 11:25, 12:37, 12:17, 12:27, 12:17, 12:22, 12:17, 13:15, 13:17, 13:15, 13:17, 16:10, 19:23, 23:2, 23:5 Reporter 1:14	42:18	T				
MPT 12:25 multiple 8:14,	parents 6:18, 6:22, 11:22, 11:23, 12:7,	29:9, 37:18.	23:2, 25:5 Reporter 1:14	showing 13:13 shows 17:22	table 16:22,				
		· · · · · · · · · · · · · · · · · · ·			<u> </u>				

AZ02735

MIZANIN REPORTING SERVICE, INC.

Pages 1 to 45

ROD W. DURGIN, Ph.D.

			OD W. DURGIN	i, Pn	.D.	 		
10	6:23, 18:3, 7:15	two-handed 35:16, 35:17, 35:18	45:4, 45:22 witness 44:4,					Γ
ta	/:15 bles 10:13, 7:14, 17:20, 0:5, 27:14 ken 1:11, 14:8 kes 38:1, 38:3 king 10:18 1:21, 40:11, 0:19 pe 21:18 rget 10:22 acher 34:7,	35:18	witness 44:4, 45:15, 45:18 worker, 17:12, 19:7, 19:18, 20:9, 24:13 workforce 17:19, 17:25, 19:18, 26:5, 27:25 worklife 16:22, 17:7, 17:13, 17:19, 17:20, 18:2, 20:5, 27:21, 25:25, 27:24, 25:25, 27:25, 25:25, 27:21, 25:25, 27:24, 27:15, 27:20, 18:2, 20:5, 25:25, 27:24, 27:24, 29:10, 37:17, 37:22, 39:10, 40:3 worklives 17:16 works 26:19 _					
1	7:14, 17:20,	two-year 29:7, 38:6	Worker 17:12, 10-7 10-18					
tal	ken 1.11, 14:8	type 16:5,	20 9, 24:13	}				
ta	kes 38:1, 38:3	type 16:5, 19:15, 37:8, 41:12, 42:22	worker's 27:24					[
1	1:21, 40:11,	41:12, 42:22 typewriting 45:12	workforce 17:19.					ł
40	0:19	typewriting 45:12 typically 21:7, 26:24, 35:16	17:25, 19:18,	1				
ta	pe 21:18	26:24, 35:16	26:5, 27:25					
tea	acher 34:7.	υ	17:7, 17:13,					j
34	acher 34:7, 4:11, 34:11 chnical 34:23,	U.C. 16-1/ 20-0	17:19, 17:20,					
tec	6;1	U.S 16:14, 20:9 Unable 14:15,	25:20. 25:23.					
te	lling 36:20	14:16, 14:18 uncle 7:25	25:25, 27:14,	1				
ler	mporary /:13			1	:			
Ter	nney 1:4,	understand 4:15,	37:17, 37:22,			:		
5	:17, 6:2, 6:4,	4:22, 27:3,						
12	4 4 19 16	35:23. 37:4	works 26:10					
_22	2:23, 23:15	40:15, 40:17	wouldn't 15:7,					
Ter	5:1 mporary 7:13 n 9:16,10:25 nney 1:4, :17, 6:2, 6:4, :19, 12:20, 4:4, 19:16, 2:23, 23:15 nney.5 3:11 rminal 2:12, 5:23 rms 11:14.	understand 4:15, 4:22, 27:3 29:5, 31:9, 35:23, 37:4, 40:15, 40:17 understanding 8:10, 16:10, 24:18 understand 4:19	Wouldn't 15:7, 32:20, 33:24, 38:22					
4	5:23	24:18	wrist 14:19 writing 13:23, 22:3, 45:10					
ter	rms 11:14, 2•0 12•20	understood 4:19, 15:8	Writing 13:23, 22-3 45-10					
13	5:23 rms 11:14, 2:9, 12:20, 3:7, 16:20, 9:17, 23:13, 4:11, 29:18, 4:19, 5:11, 3:11	unemployable				l.		
10	9:17, 23:13,	unemployable 19:9, 19:11 United 19:23	X					1
5	4:19	University 21:19	x-ray 14:7					
tes	st_3:11, 3:11,	University 21:19 unless 15:21,	Y					ļ
51	4:19 5:25, 6:2, 1:4, 6:17, 1:7, 9:1, 9:3, 0:13, 10:14, 0:13, 11:21, 5:161 41:16, 1:18 5:17, 45:8	41:10 up-to-date 5:3				l.		ĺ
ă	12, 8:13,	up-to-date 5:3 update 24:20 upon 1:13, 11:11, 16:9, 27:14	Yeah 13:6, 13:9, 14:22, 15:12, 15:14, 21:17 yet 24:21 you'll 25:19, 20:0	1				ļ
8:	17, 91, 935, 0:13, 10:14	upon 1:15 11:11 14:0	14:22, 15:12,	l				
10	0.18, 11,21,	27:14	yet 24:21					
ter	stified 41:16,	upper 13:5, 14:5 Urmila 1:8, 2:15 using 21:3, 27:19	ýou'll 25:19, 29:9					
tes	stify 45:8	using 21:3, 27:19	67,7					
tes	stimóny 42:9	<u> </u>	young 15:6, 30:10, 33:15,					
tes	sting 9:7		36:2	l				
17	stimony 42:9 sting 9:7, 1:11, 11:22, 2:7, 17:10	VALE 3:12, 3:12, 3:13, 3:13 valid 9:15	Z					
tes	sts 43:19 anks_37:14	3:13, 5:13 valid 9:15	Zanchi 1.13					
the	eranist 12+25 – I	variability 31:18 variabce 38:7, 38:8,40:4 variety 24:3 various 31:18	Zanghi 1:13, 45:4, 45:22					
the	erapy 3:14 2:23, 13:17 ere's 21:25 erefore 29:19	variance 38:7,						
the	ere's 21:25	variety 24:3						
the	erefore 29:19	various 31:18						
the the	evil 21:8	verbally 8:13, 8:18, 8:22 versus 30:7 view 15:16						
1	2 21, 13 20,	versus_30;7						
]9	ey'll 21:8 ey're 12:17, 2:21, 13:20, 7:9, 43:18, 3:18 3:18	View 15:16		ļ				
the	ey've 17:19.	visiting 41:24 Vita 3:9						
35	5:21, 35:21	vital 19:23						
22	2:15.26:15.	vital 19:23 vocational 1:15, 7:21, 20:15, 42:20, 43:6, 43:7, 43:12						
3	0:10, 30:25,	42:20, 43:6,						
 The	2:10 2:12 2:12 1:12 2:15							
thi	row_31:5	W						
thu	row 31:5 us 26:5, 40:2 tles 20:11, 1:15 day 4:25	waive 44:3, 44:4						
2	1:15	waived 45:15						
tog	day 4:25	walked 15:13		l				
30	6.9, 37.10,	Walmart 7:15.		1				
44	1:15 day 4:25 5:10, 28:21, 5:9, 37:10, 1:10, 42:16 1:17 1:17	waive 44:3, 44:4 waived 45:15 walked 15:13 walking 14:24 Walmart 7:15, 7:16 ward 41:16		1				
tor	0 7:4, 7:22	wanted 41:14 ways 26:10, 30:8		ļ				
toi	tal 35:20	weill 5:6, 17:3,		ļ				
101	wer_2:5, 2:12, [5:23	27:25, 50:1 We're 15:15						
tra	ade 20:9, 21:13	16:9, 18:9,		1				l I
Tga	aditionally	31:2, 32:34						
tra	áiĥing_26:20.	38:21, 42:15						
<u>27</u>	5:21 aining 26:20, 7:8, 35:23, 5:9, 37:6 anscribed 45:12 anscription 5:13 anslate 38:22 aatment 13:2 ial 22:23, 3:14, 24:19, 4:22, 28:13, 3:17, 42:12, 2:13 19, 42:12, 2:14 19, 42:12, 2:14 19, 42:12, 2:15 19, 42:12, 2:15 19, 42:12, 2:15 19, 42:12, 2:15 19, 42:12, 2:15 19, 42:12, 2:15	We've 4:14						
tra tra	anscribed 45:12	13:14, 18:6						
tŗ	inscription	22:21, 34:5						
45 tra	anslate 38:22	Wednesday 1:17		1				
tre	eatment 13:2	weeks 41:20						
t <u>ri</u> 27	1at 22:25 3:14, 24:19	Weren't 6:10 West 2:3						
22	22, 28:13,	Weston 2:11		ŀ				
28	5:17, 42:12,	what's 5:11, 13-13 - 26-51		ł				
tri	ies_9:19	36:22, 36:23						
tŗi	ue 5:1, 9:1,	whatever 5:8,		ļ		l		
10 26	6:18: 38:11	WHEREOF 45:18						
tř <u>i</u>	th 45 8,	wherever 27:1						
45 111	5:9,45:9 be 14:10	whether 21:8 whole 5:20, 45:9						
tui	2:13 ies 9:19 ue 5:1, 9:1, 5:19, 17:9, 5:18, 38:11 uth 45:8, 5:9, 45:9 0e 14:10 pes 14:10 pes 14:10 predged 29:15	whose 41:23						
tui tui	rn 16:25 p-edged 29:15	WITNIN 1:15, 11:18, 23:19.]		1		1
735	· ····· i	Walmart 7:15, 7:16 wanted 41:14 ways 26:10, 30:8 we'll 5:6, 17:3, 29:25 30:1 we're 15:15, 16:9, 18:9, 31:5, 32:5, 33:61, 42:15 we've 4:14, 5:32, 42:15 we've 4:12:12, 13:14, 18:6, 22:21, 34:5 we've 4:12, 13:14, 18:6, 22:21, 34:5 we've 4:12, 13:14, 18:6, 22:21, 34:5 we've 4:12, 13:14, 36:21, Wednesday 1:17 weeks 41:20 Wednesday 1:17 weeks 41:20 Wednesday 1:17 weeks 41:20 West 0:10 West	ORTING SERVI	<u>'</u> '	INC.	 Paqes 1	to 4	F
1 1 1			TANDER CARTERNAL	، التحمد .	ه مسل 13 بلد سع		[~]	

AZ02735