SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

SANTOS MENDIETA,

Plaintiff,

-against-

ADG-SOHO LLC AND
RYDER CONSTRUCTION INC.,

Defendants.

----------X

325 WEST BROADWAY OWNER, LLC f/k/a and
s/h/a ADG-SOHO, LLC and RYDER CONSTRUCTION
INC.,

Third-Party Plaintiff,

-against-

NORTHEAST SERVICES INTERIORS, LLC and
SWEEPING CLEAN SERVICES INC.,

Third-Party Defendants.

----------X

Index No.: 5328/12

NOTICE OF MEDICAL EXCHANGE AND EXPERT WITNESS

PLEASE TAKE NOTICE, that the following is the Notice of Medical Exchange and Expert Witness of the Attorneys for Third-party Defendants, NORTHEAST SERVICES INTERIORS, LLC and SWEEPING CLEAN SERVICES INC., pursuant to CPLR 3101(d) and the Court rules:

1. The Third-party Defendants intends to call Edmond A. Provder, 300-3 Route 17 South, Lodi, New Jersey, 07644, as an expert and examining vocational rehabilitation expert at the trial of this action.

2. Mr. Provder is expected to testify consistently with his findings based upon his vocational evaluation of the Plaintiff, **SANTOS MENDIETA**, performed on November 9, 2016.

3. For a summary of Mr. Provder's testimony regarding his evaluation of the Plaintiff, **SANTOS MENDIETA**, annexed hereto as **Exhibit "A"** please find a copy of Mr. Provder's report dated December 20, 2016.

4. Mr. Provder is a duly licensed and board certified Rehabilitation Counselor. For a more detailed summary of Mr. Provder's educational background, professional background and qualifications, see his curriculum vitae, annexed hereto as **Exhibit "B".**

5. Mr. Provder will base his testimony on his training and experience in all aspects of vocational rehabilitation, a review of the Plaintiff's medical and hospital treatment records, employment records, and the bill of particulars, his examination of the Plaintiff, as well as all of the documents, testimony and records which may be presented as evidence at the trial of this matter or exchanged during discovery.

PLEASE TAKE FURTHER NOTICE, that Third-party Defendants reserve the right to supplement this response based on continuing discovery up to and including the time of trial.

Dated: New York, New York
March 13, 2017

Yours etc.
CARTAFALSA, SLATTERY TURPIN & LENOFF

By:
LOUIS A. CAROTENUTO
Attorneys for Third-Party Defendants
NORTHEAST SERVICES INTERIORS, LLC

and SWEEPING CLEAN SERVICES INC
165 Broadway - 28th Floor
New York, New York 10006
(212) 225-7700
File No.: 323646

TO:
GORAYEB & ASSOCIATES
Attorney for Plaintiff
100 William Street, Suite 1900
New York, NY 10038
(212) 267-9222

BARRY, McTIERNAN & MOORE
Attorneys for Defendants/Third-Party Plaintiffs
325 WEST BROADWAY OWNER, LLC f/k/a and
s/h/a ADG-SOHO, LLC and RYDER CONSTRUCTION INC.
2 Rector Street, 14th Floor
New York, NY 10006
(212) 313-3600

EXHIBIT "A"

OAS
OCCUPATIONAL
ASSESSMENT
SERVICES, INC.

Executive Office
THE ROTHMAN CENTER
Second Floor • Suite 4A
300-3 Route 17 South
Lodi, New Jersey 07644-3810
973.365.2227 • 1.800.292.1919
Fax 973.365.2722 • E-mail oasinc@oasinc.org

Additional Locations
New York City
Toms River, NJ
Miami, FL

EMPLOYABILITY AND EARNING CAPACITY EVALUATION
on
Santos Mendieta

Prepared for the Law Offices of Cartafalsa Slattery Turpin & Lenoff

December 20, 2016

TABLE OF CONTENTS

	Page
Purpose of Referral	2
Referral Questions	2-3
Vocational Evaluation Methodology	3-5
Vocational Evaluation Assumptions	5
Formulation of Opinions	5-6
Records Reviewed	6-8
General Description	8
Background Information	9
Educational and Training Background	9
Work History	9-12
Analysis of Past Work Experience	12-13
Physical Complaints	13
Cognitive Complaints	13-14
Emotional Complaints	14
Medical Treatment	14-15
Activities of Daily Living	15
Residual Functional Capacity Self-Assessment	15-16
Evaluation Testing Methodology	16
Vocational Evaluation Results	17
Analysis of Test Results	17-18
Transferability Skills Analysis	18-19
Job Search Efforts	19
Employability and Earning Capacity Opinion	19-21

Appendix A: 5-Point Physical Demand Scale
Appendix B: Vocational Resources Consulted
Appendix C: Glossary of Terms-Employability
Curriculum Vitae of Expert

OAS

EMPLOYABILITY AND EARNING CAPACITY EVALUATION

on
Santos Mendieta

Mr. Mendieta was examined for the purpose of a comprehensive vocational evaluation, findings of employability, an assessment of any transferable skills learned from past occupations, evaluation of his earning capacity in the local labor market, and a determination as to the feasibility of Mr. Mendieta receiving vocational rehabilitation services.

He was evaluated on 11/9/16 at our office in New York City for about two hours. Mr. Mendieta attributes his condition to an on the job accident that occurred on 2/1/12 which resulted in an injury his head, right eye, neck, and low back.

CONFIDENTIALITY ISSUES

Mr. Mendieta was evaluated by the undersigned in compliance with the ethics of a Certified Rehabilitation Counselor, the American Board of Vocational Experts, and IARP Forensic member.

He was informed that the purpose of the evaluation was to assess his ability to return to work, specifically to provide an assessment of how his medical impairments and resultant functional limitations impact on his employability and earning capacity and that the information gathered in the evaluation would be included in a written report and forwarded to his attorney.

Mr. Mendieta was advised that Occupational Assessment Services abides by all federal laws dealing with medical records and that they would be confidential. He was told that once the report had been completed, it was our office policy to either send the records back to the referring attorney or shred the file.

He was told that any verbal information obtained in this forensic evaluation was not confidential. The evaluee indicated not recalling seeing me as a treating rehabilitation counselor at any time outside this forensic evaluation. He was advised that because this was a forensic evaluation, and that no rehabilitation counselor - client relationship exists or was implied, that this office would not be providing direct rehabilitation services to him.

Mr. Mendieta was told that no conclusions would be reached during the evaluation session as it was necessary to complete a review of all of the documents, the standardized vocational diagnostic interview, and observations which will be contained in a report with my final vocational opinions. Mr. Mendieta seemed to understand these parameters and agreed to continue.

PURPOSE OF REFERRAL

Mr. Mendieta was referred to Occupational Assessment Services for a comprehensive vocational evaluation to assess the effect of his medical conditions on his vocational capacity, employability, loss of access to the labor market, and earning capacity.

The information used to formulate the vocational opinions in this report are based on the specific facts about Mr. Mendieta.

The Vocational Evaluation consisted of a standardized Vocational Diagnostic interview to assess the level of the individual's vocational functioning and the effect of his exertional and non-exertional impairments on his vocational capacity.

The specific manner in which Mr. Mendieta's medical impairments may impede his ability to perform Sedentary, Light, Medium, Heavy, and Very Heavy types of occupations,(App. A) as they exist in the labor market, are explored in this report.

The results of the evaluation served as a foundation to assess Mr. Mendieta's employability, transferable skills, earning capacity, and vocational rehabilitation potential.

The vocational opinions expressed in this report are based on the various assumptions made in this report. These opinions were formulated using sound vocational principles for job-person matching and job placement.(App. B12)

Vocational experts familiar with the methodology employed and the career and rehabilitation theory cited in this report can replicate the findings by applying the assumptions, methodology, and supporting analysis.

REFERRAL QUESTIONS

The vocational evaluation focused on answering the following questions:

1. What is Mr. Mendieta's vocational capacity?

2. Could he return to his prior work as a Construction Laborer and perform the full range of required work activities?

3. Has his prior work as a Construction Laborer provided him with any transferable skills that could be used to perform work requiring less physical capability?

4. If he has no transferable skills, what other types of jobs could he perform on a sustained, competitive basis?

5. What is his residual earning capacity?

6. What effect have Mr. Mendieta's physical impairments had on his work life?

7. What is the feasibility of Mr. Mendieta participating in a vocational rehabilitation program?

VOCATIONAL EVALUATION METHODOLOGY

The Employability and Earning Capacity Evaluation used the RAPEL method which consists of five sections:

Rehabilitation Plan - Based on the injured person's vocational and functional limitations, vocational strengths, emotional functioning, and cognitive capabilities. Also this may include testing, counseling, rehabilitation technology, job analysis, job coaching, and vocational placement. Also considered is reasonable accommodations.

Access to the Labor Market - Computer programs, transferability analysis, statistics, and evaluator's work experience.

Placeability - Likelihood the evaluee will be successfully placed in competitive employment. Consideration is made of statistics, employment data (if any) for specific medical conditions, community economic situation (local unemployment rate), and availability of jobs.

Earnings Capacity - Based on the above information, a comparison is made regarding the evaluee's pre-incident ability to earn and post-incident earning capacity. Also considered are his earnings by education, and computer analysis based on worker traits.

Labor Force Participation - Evaluee's work life expectancy. Consideration is made regarding part-time versus full-time work, time lost due to the injury, medical treatment or follow-up, earlier retirement, etc.

This methodology is described by Roger Weed and Timothy Field in Rehabilitation Consultant's Handbook, 4th Revised Edition. The RAPEL methodology has been used by Vocational Experts for more than 25 years and has been peer reviewed numerous times.

In order to use this peer reviewed methodology generally accepted in the field of Rehabilitation counseling and commonly used in the discipline of rehabilitation counseling by rehabilitation and career professionals and vocational experts in litigation and non-litigation settings, the evaluation consisted of eight parts: (App B13)

1. The initial section involves *collecting data and facts specific to Mr. Mendieta* by reviewing the medical records and medical restrictions, as well as other documents that describe the evaluee's condition. This data provides background information to better understand the evaluee and his medical treatment and to make a determination as to the nature, extent, permanency, and functional limitations of his medical condition.

2. The second section consists of performing a standard Vocational Diagnostic Interview to obtain information on the evaluee's background, formal or informal education, past employment and earnings history, medical condition, medical treatment, and residual functional capacity.

3. A vocational analysis is performed on Mr. Mendieta's past relevant work as a Construction Laborer. This consists of classifying the evaluee's occupations using standard government codes from the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT")(App. B1) and O*Net (App. B2) to determine the physical demands, Worker Functions, Specific Vocational Preparation (SVP),skill level, and the General Educational Development (GED) of Mr. Mendieta's employment. From these government publications, information is obtained regarding the skills and competencies, the aptitudes, and the job temperaments required for job performance. This data helps the vocational expert to determine the evaluee's pre-injury vocational capacity.(App. B3)

4. Based on the information obtained in the document review, vocational interview, and vocational analysis, a vocational evaluation test battery is administered to measure the evaluee's post-injury vocational aptitudes, abilities, skills, and vocational capacity for competitive employment. It assists in determining the individual's functional capacities and limitations. The testing helps in determining the vocational significance of the injury on the person's employability and post-injury vocational capacity.

5. Using the Vocational Diagnosis and Assessment of Residual Employability (VDARE) process, a peer reviewed widely accepted methodology, a Transferability Skills Analysis is performed using the OASYS computer program, which uses the classic method (Work Field, SVP, MPSMS). Mr. Mendieta's work history is analyzed to determine his skills, aptitudes, and skill level.(App. B7) Such government publications as the Dictionary of Occupational Titles, O*Net - 2010 codes (974 occupations), the Guide For Occupational Exploration, and the Classification of Jobs 2000 (App. B1, B2, B5, B6) are used to analyze the skills inherent in Mr. Mendieta's past jobs. This information, along with the vocational test battery results, is used to make a determination regarding Mr. Mendieta's ability to transfer his skills learned from his previous employment or education to other employment, within his vocational capacity, in the competitive labor market. This involves *synthesizing data and information* with an emphasis on his ability to return to work.

6. A Labor Market Access (LMA) analysis was conducted though the development of the evaluee's pre and post injury worker trait vocational profile made to determine Mr. Mendieta's ability to enter the labor market given his skill level and vocational capacity.(App. B7) This involves *identifying the reasonable consequences and problems* related to the evaluee's work ability and noting jobs, if any, the evaluee can perform.

7. A review is made of all of the materials and a *vocational expert opinion* is formulated as to Mr. Mendieta's post-injury vocational capacity, transferable skills, employability, earning capacity, and the feasibility of his receiving vocational rehabilitation services.

8. If the individual is found to be employable given the results of the vocational evaluation, research is conducted regarding the evaluee's residual earning capacity and the number of such jobs in the local labor market using state and federal government statistics such as OES (Occupational Employment Survey) - State and Local, OOH (Occupational Outlook Handbook 2013-2014) - National or private labor studies to determine whether jobs exist that Mr. Mendieta can perform within his vocational capacity and the current wage rates for these occupations. This is the standard type of Labor Market Information used and relied upon in the field of Rehabilitation Counseling.

VOCATIONAL EVALUATION ASSUMPTIONS

The vocational opinions regarding Mr. Mendieta's employability, earning capacity, and vocational rehabilitation potential expressed in this report are based on the assumptions that:

1. The records reviewed were complete and accurately reflect Mr. Mendieta's physical condition and medical treatment.

2. The evaluee was cooperative and complied throughout the vocational evaluation process.

3. The evaluee did not intentionally exaggerate or give false information regarding his physical or psychological symptoms.

4. The history and information given during the standardized vocational diagnostic interview was truthful and accurate to the best of the evaluee's ability. That there is no significant discrepancy between the evaluee's claimed disability and the objective findings of the vocational evaluation.

5. Mr. Mendieta's pre-accident vocational functioning is estimated within the below average range based on his educational and occupational history.

6. Mr. Mendieta performed the vocational testing battery to the best of his ability.

7. Mr. Mendieta's physical conditions and resultant reduction of vocational capacity are permanent.

8. No opinion is reached by this expert as to the causality of Mr. Mendieta's medical condition.

FORMULATION OF OPINIONS

The vocational opinions expressed in this report are given within a reasonable degree of certainty or probability as a Rehabilitation Counselor and Vocational Expert.

Since Kerner v. Flemming, 283 F.2d 916 (2d Cir. 1960), Vocational Experts, who are professionals educated, trained, and skilled in job placement and knowledgeable about labor market conditions, have been asked to formulate vocational opinions about specific job opportunities of a person based on their age, education, background, work experience, and medical condition.

The vocational opinions in this report are based on my education, training, experience, and the information contained in various traditional vocational sources, (App B) including private, federal and state government publications. The current knowledge and methods used in the field of forensic vocational rehabilitation were applied in determining Mr. Mendieta's employability and earning capacity.

In addition, the opinions are based on the information available to me at the time of my evaluation, including medical and other records, the evaluee's history as obtained from the standardized vocational interview, my professional clinical judgement, labor market research, and the conclusions made.

The opinions reached in this report rely on the quality, accuracy, and honesty of the evaluee's reported history, complaints, symptoms, and functional capacity.

If any of the oral or documentary information provided is false, fictitious, fraudulent, incomplete, or misleading, it may change the conclusions and opinions reached in this employability evaluation. The opinions expressed are ***case specific*** to this evaluee. Should there be ***additional*** information that becomes available at a later time for my review that significantly changes my vocational opinions, I reserve the right to modify my opinions and issue a supplemental report.

RECORDS REVIEWED

The following hospital records were reviewed:

Elmhurst Hospital (2/2/12) states "Head trauma, traumatic neck pain."

Elmhurst Hospital (2/6/12) states "Neck pain."

Manhattan Eye, Ear & Throat Hospital (8/29/13) states "Excision of pseudopterygium right eye and conjunctival graft."

Surgicare Surgical Associates (8/11/14) states "ACDF C5-C6."

New York Presbyterian Hospital (10/27/15) states "Anterior/posterior lumbar fusion of the L4-L5 and L5-S1 levels."

The following physician records were reviewed:

Dr. Brisson (12/5/12-12/2/15) states "He is status post ACDF of C5-C6 on August 11, 2014. He is status post anterior and posterior lumbar fusion ofL4-S1 on October 27, 2015. He has residual muscular tightness and residual mild radiculopathy...He is totally disabled. He will not be returning to work and he does not require a vocational therapy program."

Dr. Lempert (2/17/12-5/16/12) states "HA, dizziness, neck pain, lower back pain. No focality on the neurological examination. Disability: 100, temporary."

Dr. Kaplan (3/26/12-10/2/13) states "Post-traumatic cervical pain. Post-traumatic low back pain."

Dr. Cohen, ophthalmologist (2/15/12-2/29/12).

Dr. Sisler (5/29/12-12/2/13) states "Post-traumatic pseudopterygium formation in the injured right eye, expected to develop further to the point of needing surgical excision, and possible intracranial nerve damage, causing some reduction in vision from the right eye only."

Dr. Thomas/Comprehensive Pain Management (3/23/12-1/9/14) includes injection records and states "Degeneration of cervical intervertebral disc. Cervical Radiculopathy. Cervical Arthropathy, unspecified, other (facet). Myofascial Pain. Occipital neuralgia. Degeneration of lumbar or lumbosacral intervertebral disc."

Dr. Kuhn (3/9/12-11/14/13) states "Depressive Disorder, secondary to a TBI and lingering disability. Attention, memory and cognitive disorder, NOS, post TBI. Personality changes NOS. GAF 45...He continues to be severely depressed and anxious. He is managed with medications however; the deterioration and tremors of his head and hands due to cervical discopathy and chronic pain have caused him a setback of his mental state. He is very depressed and anxious. He has chronic pain in the cervical area of the spine."

Dr. Alvarez, IME (7/3/12-7/12/12) states "Closed head injury. Contusion/sprain, cervical thoracic spine. Contusion/sprain, lumbosacral spine...He is able to return to work exerting up to 30 pounds of force occasionally and/or up to 15 pounds of force frequently in holding, lifting, pushing and pulling and with no repetitive bending, lifting and twisting motions of the neck and back."

Dr. DeLaChapelle, IME (8/9/12) states "Post traumatic stress disorder, depressive disorder NOS, postconcussion syndrome...there is a moderate (50%) partial work related disability."

Dr. Sciortino, IME (2/7/13) states "Apteryguim right eye this is not related to the accident."

Grzegorz Wolski PT (12/9/15-7/25/16) physical therapy treatment records.

The following diagnostic records were reviewed:

Dr. Wertheim (3/12/12) on MRI of the brain states "Unremarkable MRI of the brain."

Dr. Wertheim (3/13/12) on MRI of the cervical spine states "C5-C6 and C6-C7 mild disc bulges."

Dr. Wertheim (3/13/12) on MRI of the lumbar spine states "Mild degenerative disc bulges L4-L5 and L5-S1. Superimposed small central disc protrusion and annular tear at L5-S1, effacement of the epidural fat."

Dr. Finkel (11/1/13) on MRI of the lumbar spine states "Shallow, broad based disc protrusion L4-5 with facet joint hypertrophy, mild central narrowing of the canal and moderate lateral recess stenosis. Shallow, broad based disc protrusion L5-S1 with facet joint hypertrophy. Mild bilateral foraminal stenosis L4-5 and L5-S1."

Dr. Finkel (11/1/13) on MRI of the cervical spine states "Disc bulge C5-6. Mild left foraminal stenosis C2-3."

Dr. Winter (6/12/14) on MRI of the cervical spine states "Posterior disc bulges impressing the thecal sac at C5/6 and C6/7."

Dr. Milbauer (7/10/15) on MRI of the lumbar spine states "Midline posterior disc protrusion/herniation at L5-S1. Broad based midline posterior disc bulge/protrusion at L4-5. Mild facet arthropathy at L4-5, left more than right, and at L5-S1 on the left."

The following legal records were reviewed:

Verified Bill of Particulars (2/6/13, 10/31/13, 11/11/13); Second Supplemental Verified Bill of Particulars (8/20/14); Third Supplemental Verified Bill of Particulars (1/6/15); Fourth Supplemental Verified Bill of Particulars (11/5/15).

GENERAL DESCRIPTION

Mr. Mendieta arrived one half hour late for the appointment. He is neatly groomed and attired. He is ambulating with the assistance of a rolling walker. Mr. Mendieta came to the accident by Taxi which took about two hours. He reported experiencing low back pain.

He states being 5 feet, 9 inches in height and weighs 235 pounds.

The interview is conducted in Spanish. Henry Filo from Eiber translations translated from English to Spanish.

In addition, Mayelin Tavarev, a paralegal from the Plaintiff's attorney's office who also is Spanish speaking, assisted with translation.

BACKGROUND INFORMATION

He is 48 years of age, born 11/29/68 in Ecuador. He came to the United States in 2005. He is separated and resides in an apartment (173 Kingsborough Street, Brooklyn (Kings County), New York 11221) with his girlfriend.

EDUCATIONAL AND TRAINING BACKGROUND

Mr. Mendieta attended school in Ecuador up to the 2nd grade. He is able to read and write Spanish.

He reports not understanding or speaking any English.

Mr. Mendieta reports going to school for training to repair watches including Rolex Watches. He reports having his own business in Ecuador after going to school for three years.

He attended one day of classes to learn English.

Mr. Mendieta denies any other technical, vocational, or special rehabilitation training. He denies any military service.

He has not received any private or public vocational rehabilitation services for job training or placement.

WORK HISTORY

At the time of the accident, Mr. Mendieta was employed for several months until 2/1/12 as a Demolition Worker (Construction Laborer). He does not know who he worked for, how long he worked, or the dates of his employment. He reports working "on and off" in this job. He reported his job duties included taking apart buildings, breaking down walls, cleaning floors, carrying supplies, cleaning debris, and other demolition tasks. On the job he used tools such as hammers, crowbars, sledge hammers, and containers. This job is described in the Dictionary of Occupational Titles as followed:

CONSTRUCTION LABORER

Performs any combination of following tasks, such as erecting, repairing, and wrecking buildings and bridges; installing waterworks, locks, and dams; grading and maintaining railroad right-of-ways and laying ties and rails; and widening, deepening, and improving rivers, canals, and harbors, requiring little or no independent judgment: Digs, spreads, and levels dirt and gravel, using pick and shovel. Lifts, carries, and holds building materials, tools, and supplies. Cleans tools, equipment, materials, and work areas. Mixes, pours, and spreads concrete, asphalt, gravel, and other materials, using handtools. Joins, wraps, and seals sections of pipe. Performs variety of routine, nonmachine tasks, such as removing forms from set concrete, filling expansion joints with asphalt, placing culvert sections in trench,

assembling sections of dredge pipeline, removing wallpaper, and laying railroad track. Many of these jobs are not full time; project size and organization of work determine whether workers spend their time on one job or transfer from task to task as project progresses to completion. Some workers habitually work in one branch of industry, whereas others transfer according to availability of work or on seasonal basis. Work is usually performed with other workers. May be designated according to specific work performed.

It is given the code number 869.687-026. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Very Heavy Work as it involved cleaning up the work area.

He reported earning $17-$22 an hour, working about 40 hours a week with some overtime.

Very Heavy Work is defined by the DOT, page 1013, as exerting in excess of 100 pounds of force occasionally (up to one-third of the time), and/or in excess of 50 pounds of force frequently (one-third to two-thirds of the time), and/or in excess of 20 pounds of force constantly (two-thirds or more of the time) to move objects. Physical demand requirements are in excess of those required for Heavy Work.

OTHER PHYSICAL DEMANDS:

CL - Climbing - Occasional
BA - Balancing - Occasional
ST - Stooping - Frequent
CR - Crouching - Frequent
CW - Crawling - Occasional
RE - Reaching - Frequent
HA - Handling - Frequent

COMMON ENVIRONMENTAL WORKING CONDITIONS (to which the worker is exposed):

WE - Exposure to weather - Frequent
NO - Noise Intensity Level - Loud
AT - Atmospheric Conditions - Occasional
OT - Other Environmental Conditions - Frequent

Every job requires a worker to function, to some degree, in relation to Data, People, and Things. The DOT has identified and defined these "Worker Functions," and the fourth, fifth, and sixth digits of the occupational DOT code reflect these relationships to Data (D), People (P), and Things (T). This occupation has been assigned the following relationships:

D6 - Comparing: Judging the readily observable functional, structural, or compositional characteristics (whether similar to or divergent from obvious standards) of data, people, or things.

P8 - Taking Instructions-Helping: Attending to the work assignment instructions or orders of supervisor. (No immediate response required unless clarification of instructions or orders is needed.) Helping applies to "non-learning" helpers.

T7 - Handling: Using body members, handtools, and/or special devices to work, move, or carry objects. Involves little or no latitude for judgment with regard to attainment of standards or in selecting appropriate tool, object, or materials.

The Department of Labor classifies occupations by Specific Vocational Preparation (SVP),[App. B1] which is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific work situation.
This occupation requires an SVP level of 2, which includes jobs that take more than a short demonstration and up to one month to learn.

The General Educational Development (GED) [App. B1] has been analyzed regarding those aspects of education (formal and informal) which are required of the worker for satisfactory job performance. The GED is composed of three divisions: Reasoning Development, Mathematical Development, and Language Development. Mr. Mendieta's occupation has the following GED classifications:

> Reasoning Development Level 2, which means a person must at least be able to "apply common sense understanding to carry out detailed but uninvolved written or oral instructions" and "deal with problems involving a few concrete variables in or from standardized situations."
>
> Mathematical Development Level 1, which means a person must at least be able to "add and subtract two digit numbers" and "multiply and divide 10's and 100's by 2, 3, 4, 5" and "perform the four basic arithmetic operations with coins as part of a dollar" and "perform operations with units such as cup, pint, and quart; inch, foot, and yard; and ounce and pound."
>
> Language Development Level 1, which means a person, when reading, must at least be able to "recognize meaning of 2,500 (two- or three-syllable) words" and "read at rate of 95-120 words per minute" and "compare similarities and differences between words and between series of numbers." When writing, he must at least be able to "print simple sentences containing subject, verb, and object, and series of numbers, names, and addresses." When speaking, he must at least be able to "speak simple sentences, using normal word order, and present and past tenses."

Other employment was as a Dishwasher and Delivery Person in a Restaurant for four to six months.

Mr. Mendieta has not worked or looked for work since his accident.

He is receiving $525 every two weeks in New York State Workers' Compensation Benefits.

This vocational information is consistent with the information contained in the standard occupational reference works listed in Appendix B.

ANALYSIS OF PAST WORK EXPERIENCE

An analysis of Mr. Mendieta's past work history indicates that his main occupation was in Demolition as a Construction Laborer. Based on the job description he gave, this work required Very Heavy Physical capability.

Based on the job description given by Mr. Mendieta, on a scale of unskilled (Specific Vocational Preparation 1-3), semi-skilled (Specific Vocational Preparation 4-6), and skilled or professional (Specific Vocational Preparation 7-9), his occupation would be classified as unskilled.

The competencies inherent in this occupation are the following:

MATERIAL MOVING

Conveying materials manually and by use of machines and equipment, such as cranes, hoists, conveyors, industrial trucks, elevators, winches, and hand-trucks.

Carrying. Dragging. Drawing. Dumping. Forking. Hanging. Hoisting. Lifting. Loading. Relaying. Shackling. Shoveling. Skidding. Throwing. Unloading. Wheeling.

According to Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, U.S. Department of Labor, Employment and Training Administration, 1993, COJ 2000 The Classification of Jobs, Fifth Edition, J. E. and T. F. Field, Elliott & Fitzpatrick, Inc., 1999, and Dictionary of Worker Traits, Volume I and Volume II, A. F. Kearns and R. E. Neeley, Vocational Research Institute, 1987, this occupation is found in the Worker Trait Group LOADING, MOVING, and is coded 05.12.03. This occupation is given the ONET98 code number: 87999 for All Other Construction and Extractive Workers, Except Helpers.

In analyzing aptitudes in occupations, the U.S. Department of Labor uses a five-point scale: 1 (highest 10 percent of the population), 2 (highest one-third of the population), 3 (middle one-third of the population), 4 (lowest one-third of the population), and 5 (lowest 10 percent of the population). Mr. Mendieta's prior work has contained the following aptitudes:

G-4 **Intelligence**: General learning ability.

V-4 **Verbal**: Ability to understand meanings of words and ideas associated with them.

N-4 **Numerical**: Ability to perform arithmetic operations quickly and accurately.

S-4 **Spatial**: Ability to comprehend forms in space and understand relationships of plane and solid objects.

P-4 **Form Perception**: Ability to perceive pertinent detail in objects or in pictorial or graphic material.

Q-5 **Clerical Perception**: Ability to perceive pertinent detail in verbal or tabular material.

K-4 **Motor Coordination**: Ability to coordinate eyes, hands, or fingers rapidly and accurately in making precise movements with speed.

F-4 **Finger Dexterity**: Ability to manipulate small objects and move the fingers rapidly and accurately.

M-3 **Manual Dexterity**: Ability of a person to work with the hands in a skillful manner, as well as work with the hands to perform placing and turning motions.

E-4 **Eye-Hand-Foot Coordination**: Ability to move the hand and foot coordinately with each other in accordance with visual stimuli.

C-5 **Color Discrimination**: Ability to perceive or recognize similarities or differences in colors, or in shades, or other values of the same color.

This occupation requires the following Temperaments or Situations to which the worker must adapt:

R - Performing repetitive work, or performing continuously the same work, according to set procedures, sequence, or pace.

PHYSICAL COMPLAINTS

Mr. Mendieta's current complaints include constant low back pain radiating down the left leg to the foot, constant neck pain radiating into the left shoulder, fatigue, intermittent pain in the right side of the head on bending down, difficulty sleeping (10-15 minutes), "weakness all over my body," and cramping in the left leg. He reports feeling worse when the weather is cold.

Mr. Mendieta reports no difficulty hearing. He reports not wearing glasses.

He reports having no usable vision in his right eye, noting seeing double. He has light perception.

COGNITIVE COMPLAINTS

Mr. Mendieta reports experiencing impaired remote and short-term memory. He notes having diminished concentration.

Mr. Mendieta does not appear to comprehend or respond to any of the other questions in this section.

EMOTIONAL COMPLAINTS

Emotionally, Mr. Mendieta reports feelings of depression.

He complains of anger, as well as frustration, with respect to his chronic pain, functional restrictions, and restricted lifestyle.

Mr. Mendieta is receiving individual counseling sessions on a monthly basis from Dr. Kuhn (3/9/12-11/14/13) who states "Depressive Disorder, secondary to a TBI and lingering disability. Attention, memory and cognitive disorder, NOS, post TBI. Personality changes NOS. GAF 45...He continues to be severely depressed and anxious. He is managed with medications however; the deterioration and tremors of his head and hands due to cervical discopathy and chronic pain have caused him a setback of his mental state. He is very depressed and anxious. He has chronic pain in the cervical area of the spine."

MEDICAL TREATMENT

Hospitalizations and Surgeries

Mr. Mendieta was hospitalized at Elmhurst Hospital - Emergency Room (2/2/12) for head trauma, traumatic neck pain; Elmhurst Hospital (2/6/12) for neck pain; Manhattan Eye, Ear & Throat Hospital (8/29/13) for excision of pseudopterygium right eye and conjunctival graft; Surgicare Surgical Associates (8/11/14) for ACDF C5-C6; New York Presbyterian Hospital (10/27/15) for anterior/posterior lumbar fusion of the L4-L5 and L5-S1 levels.

Physicians

His surgery was performed by Dr. Brisson (12/5/12-12/2/15) who states "He is status post ACDF of C5-C6 on August 11, 2014. He is status post anterior and posterior lumbar fusion of L4-S1 on October 27, 2015. He has residual muscular tightness and residual mild radiculopathy...He is totally disabled. He will not be returning to work and he does not require a vocational therapy program." He was discharged by this physician in 10/16.

He is treated by Dr. Kaplan (3/26/12-10/2/13) who states "Post-traumatic cervical pain. Post-traumatic low back pain." He is seen one to two times per month.

His right eye condition is treated by Dr. Sisler (5/29/12-12/2/13) who states "Post-traumatic pseudopterygium formation in the injured right eye, expected to develop further to the point of needing surgical excision, and possible intracranial nerve damage, causing some reduction in vision from the right eye only." He is scheduled to see this physician every two months.

Therapy Treatment

He received several periods of Physical Therapy but he did not want it as it made him "feel bad."

Pain Management Treatment

He is treated by Dr. Thomas of Comprehensive Pain Management (3/23/12-1/9/14) which includes injections. This physician states "Degeneration of cervical intervertebral disc. Cervical Radiculopathy. Cervical Arthropathy, unspecified, other (facet). Myofascial Pain. Occipital neuralgia. Degeneration of lumbar or lumbosacral intervertebral disc." This physician monitors his pain medication.

Medication Regimen

Mr. Mendieta takes the following medications: Endocet 10-325 for pain, Oxycodone HCL ER 20 mg B.I.D. for pain, Bacitracin Ophthalmic Ointment 500 U/GM 3.5 gm, Duloxetine HCL DR 30 mg B.I.D., Prazosin HCL 2 mg Cap B.I.D., Clonazepam 0.5 mg Q.I.D., Bupropion XL 150 mg B.I.D., Zolpidem Tartrate 10 mg, Lidocaine Ointment 5% 100 gm, Systane Long Lasting drops 0.4-.03% Liq 15 ML, and Omeprazole DR 40 mg.

Orthotic and Positioning Devices

He is ambulating with the assistance of a rolling walker.

ACTIVITIES OF DAILY LIVING

He can independently wash, dress, and bathe himself. He performs these activities "with difficulty."

Mr. Mendieta reports having a computer which he uses to listen to music.

He is able to do the light shopping. His girlfriend performs the household chores.

Mr. Mendieta reports that he does not have any hobbies, sports, or special interests. Prior to his accident, he used to go jogging and play volleyball.

RESIDUAL FUNCTIONAL CAPACITY SELF-ASSESSMENT

Mr. Mendieta gives the following as his current physical capacity: able to sit one to two hours experiencing low back pain, able to stand one hour using a walker for support experiencing low back and left leg pain, able to walk one hour using his walker for support noting low back and left leg pain, able to slowly climb one flight stairs, able to lift and carry five to six pounds, and able to use both hands to grasp and manipulate. The dominant hand is the right. He reports difficulty bending due to low back pain.

Mr. Mendieta does have not have a driver's license. He is able to use public transportation such as the bus, train, and taxi.

EVALUATION TESTING METHODOLOGY

The vocational evaluation test battery was designed to assess Mr. Mendieta's future vocational capacity and earning capacity.

Selection of the tests administered were based on Mr. Mendieta's prior work experience as a Construction Laborer, educational level, and medical condition.

The vocational evaluation work area consisted of Mr. Mendieta seated at a table, where he had the option of sitting or standing. The evaluator was seated at the same table observing him throughout the testing session.

Standardized tests and work samples were administered for observing the impact and effect of Mr. Mendieta's disabling condition on his ability to perform Sedentary, Light, Medium, Heavy, and Very Heavy types of work activities, as they exist in the labor market and are defined in the DOT. Work samples are "hands on" tasks whereby the person works with the actual tools, equipment, or work processes of a particular occupation.

Instructions for the tests were given in a standardized manner to replicate an actual work environment either orally, in writing, or through demonstration. All tests have a sample section which Mr. Mendieta had to successfully complete before beginning the task. Time limits were set for each task.

Emphasis was placed on observing such worker characteristics as the quality and quantity of work, work tolerance, reaction to job changes, work pressure, ability to comprehend directions, physical stamina, ability to concentrate, ability to work under supervision, and ability to work at an even, sustained pace.

An analysis of the Vocational Evaluation involves an interpretation of the score of each test (objective finding) and relating it to the observations made of the effect of Mr. Mendieta's disabling condition while the test was performed. Norm groups consisting of industrial or employed workers were used to assess his rate of productivity in the competitive labor market.

Scores are reported using a scale of above average (Aptitude Level 1 & 2; 68th to 99th percentile), average (Aptitude Level 3; 34th to 65th percentile) and below average (Aptitude Level 4 & 5; 1st to 33rd percentile) compared to people in the norm group. A score of above average signifies a competitive level of performance and the production level required of persons employed in this capacity. An average score indicates a level of production approaching a competitive level, which indicates potential employability. A below average score denotes a level of production below that for competitive employment.

VOCATIONAL EVALUATION RESULTS

Purdue Pegboard is designed to measure gross movements of the arms, hands, and fingers, as well as fine finger dexterity. This test is related to jobs involving the workers' trait factor Handling (.887). He stated being unable to perform this test as he reportedly could not see the holes in which to place the pegs.

Vocational Aptitude Battery - Manual Dexterity Test assesses the individual's ability to work with his hands in placing and turning motions. This manipulative test requires the person to assemble large, three-piece fittings on an assembly board. The size of the fittings requires the person to use only his whole hands or wrists to perform this task. Mr. Mendieta obtained a below-average score compared to the competitively employed norm group.

Vocational Aptitude Battery - Form Perception Test assesses the individual's ability to notice details in objects and drawings, such as shape and shading. This is a multiple-choice test in which large photographs of actual tools and work-related materials are matched to the stimulus photograph. This task requires abilities similar to those found in inspection, machine shop, and mechanical jobs. Mr. Mendieta reportedly could not complete the test samples, and thus, the test was not administered.

Employee Aptitude Survey - Visual Speed and Accuracy is a test of a person's ability to compare pairs of numbers and indicate whether they are the same or different. Mr. Mendieta reportedly could not see the test items so the test could not be administered.

Employee Aptitude Survey - Manual Speed and Accuracy is a test of an individual's ability to make quick and accurate movements with the hand. Mr. Mendieta reportedly could not see the test items so the test could not be administered.

Dynamometer Hand Testing is a measurement of an individual's gross grasping ability. Strength-of-grip measurements taken on three successive attempts with the Jamar Dynamometer, set at the third notch, revealed an average grip on the right of 4 Kg and 4 Kg on the left. Mr. Mendieta's grip measurements were compared to the male industrial workers' norm values of 48.5 Kg on the right and 44.6 Kg on the left from Hunter's Rehabilitation of the Hand.

ANALYSIS OF TEST RESULTS

Through the administration of several tests which measured the same vocational construct, as well as constant observation through the evaluation and a review of the test scatter, it was my opinion that the test battery was **NOT** internally consistent, reliable, or valid. It is my expert opinion that he did not make any effort to perform the tests administered to him. I have evaluated over 8,000 individuals, including those who have no vision in one eye. Mr. Mendieta is the only individual who noted being unable to perform the testing administered. He made no effort to complete any of the work samples. His performance on the Dynamometer Hand Testing just heightens my suspicion he was holding back on his performance during the evaluation.

In conclusion, it is my expert opinion that Mr. Mendieta did not work to the highest level of his capability given his past vocational experience, educational level, and medical condition. Mr. Mendieta's test results do not accurately reflect his vocational capacity for sustained, gainful employment.

Therefore, it is my expert opinion that little weight can be given to Mr. Mendieta's test scores, and thus, my opinion is based on the interview, transferability of skills analysis, and review of jobs he could perform in the local labor market.

TRANSFERABILITY SKILLS ANALYSIS

Transfer of skills involves an assessment of skills that a person used on one job which can be interchanged or substituted into another job to be used to determine the employability of the person. Skills are learned by doing. In the context of Social Security Disability, transferable skills are defined as the assessment of work functions acquired from performance of skilled or semi-skilled jobs which can be applied to meet the requirements of other skilled or semi-skilled jobs. This process is based on a synthesis of information from an evaluee's background history including medical, psychological, educational, social and vocational information. Using acquired skills has been proven to be the most cost-effective means of returning an injured worker back to gainful employment. Transferable skills can make the difference between a person working or not working. The Transferability of Skills Analysis (TSA) is the foundation to identify similar or related jobs that are consistent with or equal to the worker's capabilities and functional restrictions. The seven step process of Transferability of Skills Analysis involves Identifying jobs in a person's work history, Select an occupational code with title (using the DOT or O*Net), Profile the jobs, Create an unadjusted vocational profile, Create the residual functional capacity profile, Finding related or similar jobs, and locating jobs in the local labor market.

Mr. Mendieta's work history and the test results were analyzed using The Vocational Diagnosis and Assessment of Residual Employability (VDARE) process which is an organized or systematic way to assess transferable work skills and vocational potential for work. The VDARE process uses the evaluee's work history as the basis to build an assessment of the evaluee's vocational functioning. The analysis takes into account the factors of physical demands, working conditions, general educational development, specific vocational preparation, aptitudes, work activities, and work situations.

Research was conducted regarding the level and types of skills, aptitudes, and physical demands required of each job. A transferability of skills analysis was performed to determine which occupations in the labor market he could perform within his vocational capability.

Mr. Mendieta's past employment as a Construction Laborer is considered unskilled work.

If he is unable to return to his prior work as a Construction Laborer, Mr. Mendieta is capable of performing Assembly, Packaging, Filling Machine Operator, and Inspector type

occupations on a full-time basis which require Sedentary or Light Physical demands and are within his vocational capacity.

JOB SEARCH EFFORTS

There is no indication that Mr. Mendieta has conducted a reasonable job search or contacted the New York State ACCES - VR (Adult Career and Continuing Educational Services - Vocational Rehabilitation) for vocational rehabilitation services.

EMPLOYABILITY OPINION AND EARNING CAPACITY

Based on the results of the vocational evaluation performed on Mr. Mendieta and the conclusions made, as well as his age, 2nd grade education with illiteracy in English, and past work experience of unskilled work as a Construction Laborer, the following are my opinions, as a Vocational Expert, regarding his rehabilitation plan, access to the labor market, placeability, earning capacity, and labor force participation:

Rehabilitation Plan

An assessment was made regarding Mr. Mendieta's vocational potential and his ability to receive vocational rehabilitation services. In order to formulate this opinion, consideration was made regarding Mr. Mendieta's age, 2nd grade education with illiteracy in English, past work experience of unskilled work as a Construction Laborer, and vocational capacity secondary to his medical condition.

If he wants to change occupations, it is suggested that Mr. Mendieta contact the local city, state, or federal agencies that could assist him in job-seeking efforts or in obtaining civil service positions. These services would be provided at no charge to him. He is a candidate to receive vocational rehabilitation services at no cost from the local ACCES - VR (Adult Career and Continuing Educational Services - Vocational Rehabilitation).

Mr. Mendieta's employment efforts would be enhanced if he contacted employment agencies.

Access to the Labor Market

Given his exertional complaints, Mr. Mendieta's ability to access the labor market would be limited to work requiring Sedentary Physical demands.

Placeability

Given his age, 2nd grade education with illiteracy in English, and past work experience of unskilled work as a Construction Laborer, it is my expert opinion that Mr. Mendieta could be competitively placed in the job market on a full-time, competitive basis.

In order to reach this opinion, I considered Mr. Mendieta's background, the economic consequences in his community, local employment statistics, and the existence of suitable jobs. If Mr. Mendieta is able to perform the essential functions of a job, his job-search efforts will be helped by The Rehabilitation Act of 1973 and the Americans with Disabilities Act. These laws protect him from discrimination from potential employers. In addition, employers are required to make job modifications and reasonable accommodations at the job site. As an incentive for employers to hire persons such as Mr. Mendieta, targeted tax credits are available for the employer.

Selective job placement services are available to Mr. Mendieta through the local state vocational rehabilitation program.

Earning Capacity

Based on the results of the Vocational Evaluation, as well as his age, 2nd grade education with illiteracy in English, and past work experience of unskilled work as a Construction Laborer, the following are my opinions, regarding Mr. Mendieta's employability and earning capacity:

1. If he can no longer be employed as a Construction Laborer, it is my opinion that Mr. Mendieta has the vocational capacity to perform the following representative unskilled occupations which require Sedentary Physical capacity:

JOB TITLE	NUMBER OF JOBS	MEAN SALARY
Inspector	15,920	$40,970
Assembler	17,630	$27,720
Painting, Coating & Decorating Worker	720	$32,000
Packaging & Filling Machine Operator	18,970	$31,740
Hand Packager	43,720	$23,460

These jobs exist in the local (New York City, 5/15) area. In addition, these jobs exist in greater numbers in the national economy. It is my opinion, as a Vocational Expert, that he could perform these occupations on a sustained, full-time, regular, competitive basis.

2. Mr. Mendieta has the capacity to earn from $23,460 to $40,970 per annum on a full-time basis over his work life. (App. B14)

3. It is recommended that Mr. Mendieta contact the local New York State ACCES - VR (Adult Career and Continuing Educational Services - Vocational Rehabilitation) for

job retraining or selective job placement. These services would be provided to him for free.

4. Mr. Mendieta has sustained no loss of capacity due to his accident.

5. Mr. Mendieta's earning capability is dependent on his motivation to return to gainful employment.

Labor Force Participation

In formulating my opinion regarding Mr. Mendieta's employability and earning capacity, I considered the various factors which affect an injured person's work life expectancy in the competitive labor market.

Prepared by:

Edmond Provder
Certified Rehabilitation Counselor
Diplomate, American Board of Vocational Experts

5-POINT PHYSICAL DEMAND SCALE

***Sedentary Work** involves:*

- **EXERTING 10 pounds of force occasionally, and/or a negligible amount of force to lift, carry,**
- **push, pull, or otherwise move objects, including the human body.**
- **SITTING most of the time, walking and standing occasionally.**

***Light Work** involves:*

- **EXERTING 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects.**
- **Even if weight exertion is negligible, WALKING OR STANDING to a significant degree, and/or**
- **SITTING most of the time but with pushing and/or pulling of arm or leg controls, and/or**
- **Working at a production rate pace entailing constant pushing and/or pulling of materials.**

***Medium Work** involves:*

- **EXERTING 20 to 50 pounds of force occasionally, and/or up to 10 to 25 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.**

***Heavy Work** involves:*

- **EXERTING 50 to 100 pounds of force occasionally, and/or up to 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects.**

***Very Heavy Work** involves:*

- **EXERTING in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 20**
- **pounds of force constantly to move objects.**

Occasionally = up to ⅓ of the time
Frequently = ⅓ to ⅔ of the time
Constantly = ⅔ or more of the time

U.S. Department of Labor's Dictionary of Occupational Titles, Fourth Edition, Revised 1991, page 1013

Appendix B

VOCATIONAL RESOURCES CONSULTED

1. Dictionary of Occupational Titles, Fourth Edition-Revised, U.S. Department of Labor, Employment and Training Administration/JIST Works, Inc., 1991.

2. O*Net (Occupational Information Network) On Line http://online.onetonline.org

3. Job Browser Pro, Version 1.6.6 Skilltran, Spokane, Wa., 2012.

4. Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, U.S. Department of Labor, Employment and Training Administration, 1993.

5. The Guide For Occupational Exploration, 2000 Edition, Farr, Ludden & Shatkin, Published by JIST Works Inc., 2000.

6. The Transitional Classification of Jobs, 6th Edition, J. E. and T. F. Field, Elliott & Fitzpatrick, Inc., 2004.

7. OASYS - Transferable Skills Program, VERTEK, Washington.

8. The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, Employment and Training Administration/JIST Works, Inc., 1991.

9. Occupational Outlook Handbook, 2013-2014 Edition, U.S. Department of Labor, Bureau of Labor Statistics Bulletin 2700/JIST Works, Inc., 2013 also at http://www.bls.gov/ooh/

10. Rehabilitation Consultant's Handbook, 4th Revised Edition, Roger O. Weed and Timothy F. Field, Athens, GA 2012.

11 A Guide to Rehabilitation Volume I and II, Deutsch, Paul M. & Sawyer, Horace Ahab Press, Purchase, New York 2000.

12. A Theory of Work Adjustment, Dawis, R.V., England, G.W., & Lofquist, L.H.; Minnesota Studies in Rehabilitation XV, Bulletin #38, St. Paul, MN: University of Minnesota, 1964.

13. A Theoretical Model for Rehabilitation Counseling, Rehabilitation Counseling Bulletin, 33 (4), pp268-278.

14. Occupational Employment Statistics, May 2015 Metropolitan Area Occupational Employment and Wage Estimates New York-Northern New Jersey-Long Island, NY-NJ-PA at http://stats.bls.gov/oes/current/oes_35620.htm#43-0000

15. The Vocational Expert, Revised and Updated (2005), Blackwell, Terry L, Field, Timothy F et.al. Jenkins. William M, Amderson Robert M, Dietrich Wilson, L., Elliott & Fitzgerald, Inc, Athens, Georgia 2005.

16. Foundations of Forensic Vocational Rehabilitation, Robinson, Rich H, Editor, Springer Publications, New York, 2014

17. Work & Disability, 2nd Edition, Szymanski, Edna M, Parker, Randal M., E. Pro-ed Publishing Company, Austin, Texas 2003.

18. A Guide to Vocational Assessment, 2nd Edition, Power, Paul W., Pro-ed Publishing Company, Austin, Texas 1991.

19. The Quick Desk Reference for the Forensic Rehabilitation Consultants, Field, Janet E, Elliott & Fitzgerald, Inc, Athens, Georgia 2002.

20. Advanced Issues in Forensic Rehabilitation, Volume I & II, Havranek, Joseph E., Elliot & Fitzpatrick, Inc, Athens, Georgia 2007.

21. The Vocational Expert, Field, T, and Sink, J., Athens, Ga; Elliott & Fitzpatrick, 1981

22. Vocational Assessment: Evaluating Employment Potential, Havaranek, J. Field, T., Grimes, J. W.: Athens, GA: Elliott & Fitzpatrick Inc. 2001.

23. Vocational Assessment and Rehabilitation Outcomes, Caston, H. L. & Watson, A. L., Rehabilitation Counseling Bulletin, 43 (1), 61 66 1990.

Appendix C

Employability - Glossary of Terms

Aptitude - the specific capacities or abilities required of an individual in order to facilitate the learning of or carrying out of some task or job duty.

Disability - any physical, mental, or emotional condition that is chronic or long-lasting, which is severe enough to limit the individual's functioning and which results in a handicap to productive activity.

Earnings Loss - the individual's expected loss of earnings, if any, which results from the injury. Loss of earnings is based on history whereas loss of earnings capacity is projected into the future.

Earnings Capacity - ability of individual to obtain and hold the highest paying of jobs to which he might have access. Access is determined by worker traits, work skills and amount of training.

Employability - exists if a person possesses skills, abilities, and traits necessary to perform a job; the kinds and types of jobs which a person with a disability might be able to perform.

Essential Functions - (an Americans with Disabilities Act and 1973 Rehab. Act term) fundamental job duties of the employment position the individual with a disability holds or desires.

Exertional Level - physical abilities necessary for certain types of jobs; includes sedentary, light, medium, heavy, and very heavy.

Functional Limitations - results from physical, mental, and emotional disabilities which adversely affects the workers capacity to function at a job.

Handicap - the effect of the disability on the ability to perform gainful work.

Illiteracy - inability to read or write; generally little or no formal education.

Intelligence Quotient - **(IQ)** it is a measure of general intelligence obtained by testing.

Job Description - narrative description of activities and requirements of a job; does not necessarily accurately reflect what a worker will actually do in that job.

Limited Education - some ability in reasoning, arithmetic, and language skills, but not enough to perform semi-skilled or skilled job; generally the 7^{th} to 11^{th} grades according to definition by the Social Security Administration.

Labor Market Access - **(LMA)** a method for determining the employability and loss of access to the labor market of an individual with a disability. Utilizes the Vocational Diagnosis and Assessment of Residual Employability process (VDARE) to determine residual functional capacity.

Loss of Access - generally related to the loss of access to the labor market. Persons with injuries may suffer a reduction in the numbers of jobs which are available to them as a result of reduced work life expectancy (such as earlier retirement, or part-time rather than full time work) or due to functional limitations which prevent the client from choosing certain occupations.

Marginal Education - ability in reasoning, arithmetic, and language skills sufficient to perform simple, unskilled types of jobs; generally, 6^{th} grade & below.

Mental Limitation - retardation and learning disabilities are grouped as a functional limitation, although the casual circumstances are quite different; both refer to a hindrance or negative effect in the learning and performance of activities and to other overt manifestations of inadequate mental function.

Mobility Limitations - function of getting from one place to another is limited; may be caused either by physical disability or environmental barriers.

Non-Exertional Impairment - does not limit physical exertion and does not directly affect ability to sit, stand, walk, lift, carry, push, or pull; does have impact on ability to work.

Employability - Glossary of Terms

Pain Limitation - pain refers to an unpleasant sensation characterized by throbbing, aching, shooting or other unpleasant feelings associated with bodily injury or disorder. When pain is continuing, unremitting, uncontrollable, and severe, it may constitute a severe functional limitation to normal living.

Partial Disability - exists if the individual cannot perform some or all of the work for which he or she was fitted prior to the injury.

Physical Demands - the physical requirements made on the worker by the specific job worker situation.

Placeability - economic conditions and employer attitudes are such that a person can actually be placed in a job; the difficulty in placing a person with a disability in a job.

Psychometric Instruments - standardized instruments which measure correlative mental functioning of a cognitive, psychomotor, or effective nature purported to be important to specific job performance utilizing abstracted tasks.

Residual Functional Capacity - a disabled person's remaining physical and mental work potential and capacity.

Sheltered Workshop - It provides transitional and/or long-term employment in a controlled and protected working environment for those who are unable either to compete or to function in the open job market due to their handicap.

Skill Level - level of knowledge of work activity and degree of judgment required to perform a certain job; includes unskilled, semi-skilled, and skilled.

Temperament - personal traits consisting of the individual's characteristic mode or inclination of emotional response.

Total Disability - exists if the individual is unable to return to preinjury employment and unable (due to an injury) to obtain employment with similar livelihood.

Transferability of Skills - skills that were used in one job can be interchanged or substituted into another job; used to determine the employability of a person.

VDARE Process - (Vocational Diagnosis and Assessment of Residual Employability) uses client's work history as a basis upon which to build an assessment of client vocational functioning capabilities.

Vocational Assessment - process by which vocational expert determines loss of vocational functioning due to a disability and helps clients to correlate their characteristics as workers with the characteristics of occupations.

Vocational Rehabilitation Services - services designed to enable a handicapped person to secure and retain employment.

Wage Loss Analysis - a procedure which addresses the amount of wages lost to a worker as a result of an injury.

Work Tolerance - ability to sustain a work effort for a prolonged period of time, ability to maintain a steady flow of production at an acceptable pace and acceptable level of quality, ability to handle a certain amount of pressure.

Work Samples - a well defined work activity involving tasks, materials, and tools which are identical or similar to those in an actual job or cluster of jobs. It is used to assess an individual's vocational aptitude, worker characteristics, and vocational interest.

Worker Trait - the requirements made of the worker in terms of aptitudes, general educational development, vocational preparation, physical demands, and personal traits.

Resources: Vocational Evaluation and Work Adjustment Standards With Interpretive Guidelines and VEWAA Glossary, Copyright, 1977.
All rights reserved by the Vocational Evaluation and Work Adjustment Association.

EXHIBIT "B"

PROFESSIONAL QUALIFICATIONS OF EDMOND A. PROVDER

300-3 Rt 17 South, Lodi, NJ 07644 - (800) 292-1919 - www.oasinc.org

EDUCATION

1971	B.S. Rehabilitation Counseling, Pennsylvania State University
1973	M.Ed. Rehabilitation Counseling, Pennsylvania State University
1977-1987	Rehabilitation Counseling Doctoral Candidate, 60 credits, N.Y.U.
2003	University of Florida/Intelicus Life Care Planning Program for Catastrophic Case Management, 128-post graduate hours

PROFESSIONAL EXPERIENCE

Vocational Expert/Life Care Planner — *August 1981 to Present*
Occupational Assessment Services

Evaluate the vocational potential and employability of able-bodied and disabled individuals through interviewing, reviewing records, and/or administration of vocational testing to provide a vocational appraisal as to the individual's ability to work in the competitive labor market. Develop and implement Life Care Plans for catastrophic individuals. Consult with industry and government agencies regarding Americans with Disabilities Act. Provide initial assessment, vocational evaluation, counseling, case management, and job-placement services to assist industrial-disabled and able-bodied clients return to gainful employment, given their residual functional capacity.

Vocational Expert/Physician Life Care Planning — *December 2011 to Present*

Evaluate the employability and earning capacity of disabled individuals through interviewing, reviewing records, and/or administration of vocational testing to provide a vocational appraisal as to the individual's ability to work in the competitive labor market.

Director/Rehabilitation Counselor/Phoenix Rehabilitation Center — *July 2007 to December 2010*

Develop Rehabilitation Center for poor, physically disabled children in the Vidigal Favela in Rio de Janeiro Brazil which involved community coordination, volunteer recruitment, fund raising, and government liaison.

Vocational Consultant — *June 1997 to September 2000*
Social Security Administration — *October 1977 to September 1985*

Provided impartial vocational testimony in Social Security Disability hearings as to claimants' ability to perform substantial gainful activity, given their residual functional capacity.

Supervisor Vocational Facilities — *December 1979 to December 1981*
Mount Sinai Hospital — *July 1974 to August 1978*

Supervised and administered the Sheltered Workshop and Vocational Evaluation Programs, which included the provision of supervision, counseling, work adjustment services, and job placement services to the physically disabled, mentally ill, visually impaired and industrially disabled.

Vocational Consultant — *February 1975 to December 1979*

Administered and developed vocational rehabilitation programs for South Beach Psychiatric Center, Staten Island Association for the Visually Handicapped and the Contemporary Guidance Service.

Rehabilitation Counselor/Federation of the Handicapped — *March 1973 to July 1974*

Provided individual and group counseling, vocational evaluation, work adjustment, and job placement services to severely physically disabled, visually impaired and developmentally disabled clients.

PROFESSIONAL AFFILIATIONS

Certified Rehabilitation Counselor (#18792); Diplomate, American Board of Vocational Experts (#00448)
Certified Life Care Planner (#0501)

Professional Member of ABVE, IARPS, AREA, NAFE, RESNA

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

SANTOS MENDIETA,

Plaintiff,

-against-

ADG-SOHO LLC AND
RYDER CONSTRUCTION INC.,

Defendants.

----------X

Index No.: 5328/12

AFFIDAVIT OF SERVICE

(THIRD PARTY ACTION)

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

1. MARGARET DAMITZ, being duly sworn, deposes and says; that deponent is not a party to this action, that she is of 18 years and upwards; and that she is a Clerk in the offices of CARTAFALSA, SLATTERY TURPIN & LENOFF attorneys for Third-Party Defendants, NORTHEAST SERVICES INTERIORS, LLC and SWEEPING CLEAN SERVICES INC. in the above entitled action; that the office address of said attorneys is 165 Broadway, New York, New York 10006;

2. That on March 15, 2017 deponent served upon:

GORAYEB & ASSOCIATES
100 William Street, Suite 1900
New York, NY 10038

BARRY, McTIERNAN & MOORE
2 Rector Street, 14th Floor
New York, NY 10006

a true copy of the annexed **NOTICE OF MEDICAL EXCHNAGE AND EXPERT WITNESS** by depositing same properly enclosed in a postpaid wrapper in the U.S. Post Office Box at 165 Broadway, New York, New York on said date, directed to said attorneys at the above address(es) designated by said attorneys in the last paper served herein.

MARGARET DAMITZ

Sworn to before me this date,
March 15, 2017

NOTARY PUBLIC

Michelle Yanes
Notary Public, State of New York
No. 01YA6336169
Qualified in Nassau County
Commission Expires 01/25/20 20