State Court of Fulton County
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Civil Division

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

[redacted], as administrator of the estate of [redacted] and as guardian of J.H. and T.H.,

Plaintiff,

v.

MARTIN-ROBBINS FENCE COMPANY, GEORGIA DEPARTMENT OF TRANSPORTATION, ARCADIS U.S., INC. and JOHN DOES 1-10,

Defendants.

Civil Action File No.: [redacted]

[redacted] and [redacted]

Plaintiffs,

v.

GEORGIA DEPARTMENT OF TRANSPORTATION, MARTIN-ROBBINS FENCE COMPANY, and ARCADIS U.S., INC.

Defendants.

Civil Action File No.: [redacted]

DEFENDANT MARTIN ROBBINS FENCE COMPANY'S MOTION TO EXCLUDE PLAINTIFFS' EXPERT WITNESS, J.P. GINGRAS AND BRIEF IN SUPPORT THEREOF

COMES NOW, Defendant Martin-Robbins Fence Co. ("Martin Robbins"), pursuant to O.C.G.A. §§ 24-4-403 and 24-7-702(b), and files this Brief in Support of its Motion to Exclude Plaintiffs' Expert Witness, J.P. Gingras, showing the Court as follows:

I. SUMMARY OF ARGUMENT

Plaintiffs [redacted] and [redacted] and [redacted] (collectively, "Plaintiffs") have retained accountant J.P. Gingras as an expert witness to give testimony as to the economic damages incurred by each of them related to the subject collision. Mr. Gingras's opinions and testimony, however, are based upon assumptions which are not sufficiently connected to the actual facts of the cases. More importantly, Mr. Gingras's analysis and presentation is misleading, likely to confuse the jury, and will unfairly prejudice Defendant. Mr. Gingras's testimony should be excluded on Daubert and Rule 403 grounds.

II. FACTUAL AND PROCEDURAL SUMMARY

This case arises from a motor vehicle collision on Interstate 85 South on the night of June 3, 2018. On that evening, Plaintiff [redacted] and her niece [redacted] were returning home from an evening out in Atlanta when [redacted] lost control of her vehicle and impacted a guardrail in an area where it was damaged.[1] Her vehicle went over the guardrail and hit a pole behind it, causing serious injury to [redacted] and killing [redacted]. Plaintiffs filed the subject civil lawsuits against the Georgia Department of Transportation, Martin Robbins, and another GDOT contractor, Arcadis U.S., Inc.

Plaintiffs hired accountant J.P. Gingras ("Mr. Gingras") as an expert witness to provide testimony as to the economic damages incurred by each of them. Mr. Gingras produced the attached expert reports for [redacted] and [redacted]. ("[redacted] Economic Analysis of Lost Wages, Lost Benefits Medical Lifecare Plan and Loss of Household Services

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[1] For a more detailed Statement of Material Facts, including citations to the record, please see the Statement of Material Facts accompanying Martin Robbins's concurrently-filed Motion for Summary Judgment.

Valuations," attached hereto as **Exhibit A**; "[redacted] Economic Analysis of Lost Wages, Lost Benefits and Loss of Household Services Valuation," attached hereto as **Exhibit B**.) Mr. Gingras has been deposed regarding his opinions and has been identified as an expert for trial by both [redacted] and [redacted]. (Deposition of J.P. Gingras, [redacted] case, 9/13/21, attached hereto as **Exhibit C**; Deposition of J.P. Gingras, [redacted] case, 9/16/21, attached hereto as **Exhibit D**.) Because Mr. Gingras's opinions regarding the economic damages incurred by [redacted] and [redacted] are based on faulty assumptions and will be misleading to the jury, Martin Robbins seeks their exclusion.

III. ARGUMENT

A. Standard for Admissibility of Expert Testimony

"[W]hether a witness is qualified to render an opinion as an expert is a legal determination for the trial court. . ." Moran v. Kia Motors America, Inc., 276 Ga. App. 96, 97, 622 S.E.2d 439 (2005). O.C.G.A. § 24-7-702(b) provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:
>
> (1) The testimony is based upon sufficient facts or data;
>
> (2) The testimony is the product of reliable principles and methods; and
>
> (3) The witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence before the trier of fact.

In adopting this standard for reliability of expert testimony, the Georgia legislature has adopted the strict standard found under federal law. O.C.G.A. § 24-7-702(f) states:

> It is the intent of the legislature that, in all civil proceedings, the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible

> in other states. Therefore, in interpreting and applying this Code section, the courts of this state may draw from the opinions of the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric Co. v. Joiner, 522 U.S. 136 (1997); Kumho Tire Co. Ltd. v. Carmichael, 526 U.S. 137 (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases. (emphasis added).

Rule 702 requires the trial court to scrutinize expert testimony to ensure that only reliable and relevant evidence is admitted. Daubert v. Merrell-Dow Pharmaceutical, Inc., 509 U.S. 579, 592, 113 S. Ct. 2786, 2795 (1993); Kumho Tire Company, Ltd. v. Carmichael, 526 U.S. 137, 146, 119 S. Ct. 1167 (1999); United States v. Great Lakes Dredge and Dock Co., 259 F.3d 1300 (11th Cir. 2001). This requires "the trial court to inquire into both the expert's relevance and reliability." McDowell v. Brown, 392 F.3d 1283, 1298 (11th Cir. 2004); United States v. Paul, 175 F. 3d 906, 910 (11th Cir. 1999). The burden is on the proponent of the expert evidence to establish the admissibility of that evidence by a preponderance of the evidence. Daubert, 509 U.S. at 592 n. 10.

Under Daubert, a three-prong test determines the admissibility of expert opinion testimony. Hudgens v. Bell Helicopters, 328 F. 3d 1329, 1338 (11th Cir. 2003). Expert testimony is admissible when:

> (1) The expert is qualified to testify competently regarding the matters he intends to address;
> (2) The methodology by which the expert reaches his conclusion is sufficiently reliable as determined by the sort of inquiry mandated in Daubert; and
> (3) The testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue.

City of Tuscaloosa v. Harcros Chem., Inc., 158 F. 3d 548, 565 (11th Cir. 1998). The third prong of Daubert, "helpfulness, or fit—'goes primarily to relevance.' Seamon v. Remington Arms Co., LLC, 813 F.3d 983, 988 (11th Cir. 2016) *quoting* Daubert at 591. The trial court has broad discretion to exclude proffered expert testimony which does not meet the Daubert test. Ida Jack v. Glaxo Wellcome, Inc., 239 F. Supp. 2d 1308, 1314 (N.D. Ga. 2002).

However, the Court's inquiry does not end there. The trial court may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." O.C.G.A. § 24-4-403. Interfinancial Midtown, Inc. v. Choate Constr. Co., 806 S.E.2d 255, 266 (Ga. App. 2017). Expert testimony can have a "powerful and potentially misleading effect" and the Court must exercise "more control over experts than over lay witnesses" to exclude evidence which might otherwise survive Daubert but which confuses or misleads the jury. U.S. v. Frazier, 387 F.3d 1244, 1263 (11th Cir. 2004). The admission or exclusion of expert testimony "rests in the broad discretion of the trial court, and consequently, the trial court's ruling thereon cannot be reversed absent an abuse of discretion." Cotton v. Phillip, 280 Ga. App. 280, 283 (2006).

In the case of Mr. Gingras, the Court should consider the interplay of Rule 403 with the third prong of Daubert and exclude his testimony on the grounds that it is based on assumptions not connected to the Plaintiffs in these cases and presented in a way that is intentionally misleading to the jury.

B. The Testimony of J.P. Gingras is Misleading to the Jury

On its face, Mr. Gingras's testimony appears to be standard-issue expert opinions regarding the future value of money and the appropriate growth and discount rates to apply. The underlying techniques for doing these calculations are non-controversial and generally consistent between experts, including Mr. Gingras. He takes a sum of money, projects it into the future using a growth rate, and then discounts that sum to present-day value.[2] In Mr. Gingras's depositions, he repeatedly claimed that because his assumptions were reasonable and his sources "unimpeachable," he would pass muster with the Court. (Ex. C, p.34, ll. 14-20; Ex. D, p.78, ll. 15-19.) However, there are two

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[2] Martin Robbins does not object to either Mr. Gingras's qualifications as an accountant or to the methodology of calculating present value of money.

things wrong with Mr. Gingras's assertions. First, his assumptions are based on generic sources instead of the actual facts of [redacted] and [redacted] lives; and second, his resulting opinions about the value of their future earnings/care are misleading.

[redacted] *Life Care Plan*

To better understand the nature of Mr. Gingras's analysis and why it is misleading, we can begin with one example of his calculations: the value of [redacted] life care plan. For inputs, Mr. Gingras was given the costs of the life care plan as determined by one of Plaintiff's other experts, Cathy Gragg-Smith. He then purports to calculate the present value of her future care and presents two summary scenarios for the jury:

Future Cost of Medical Life Care Plan Valuation	
Future Cost of Medical Life Care Plan Valuation (Beginning January 1, 2022)	
Present Value of Future Cost of Medical Life Care Plan - Scenario # 1 (Lower / Lower / Lower)	$ 9,216,436
Present Value of Future Cost of Medical Life Care Plan - Scenario # 2 (Higher / Higher / Higher)	29,921,799
Rounded Average	$ 19,570,000

(**Ex. A**, p.1.) According to his deposition testimony, the first scenario, for approximately $9 million, was calculated by using a life expectancy for [redacted] of 83 years, the number given by standard mortality tables. The second scenario, of approximately $30 million, was calculated using a life expectancy for [redacted] of 98 years. (**Ex. C**, p. 83, ll.17-22). Mr. Gingras acknowledges that mortality tables show a 3.89% chance that a woman [redacted] age will live to be 98 years old. (Id., p.127, ll.2-19).[3] Significantly, he also acknowledges that he knows nothing about [redacted] pre-accident medical condition and gave no consideration to the likelihood that she would reach either an average life expectancy or an extraordinary life expectancy:

> Q: Are you aware of any health issues [redacted] had that were not related to this incident?

[3] It is worth noting that Mr. Gingras insisted that [redacted] herself did not necessarily have a 3.89% chance of living to be 98 years old. Apparently, in the case of life expectancy, he finds it necessary to distinguish the individual from the statistical model. This is the opposite of what he did for much of the rest of his analysis.

A: Generally speaking, everyone has health issues at some point or another. So it's not necessarily for me as an accountant to make the determination if a medical condition will affect her lost wages or not.
Q: That is not my question. Please listen to my question.
A: It is for the trier of fact to determine that.
. . .
Q: Are you aware of any other health issues [redacted] had outside of any injuries sustained in this accident?
A: Not specifically, no.

(Id. at p.43, ll.7-18; p.45, ll.12-17). So to begin, we can see that Mr. Gingras's assumptions are suspect as they relate to [redacted] specifically. Then Mr. Gingras attempts to paper over any concerns about his assumptions by claiming that the jury can just "redo" his calculations by using his formulae to adjust the outputs based upon whatever life expectancy they find reasonable. He testified:

> …I've also given the trier of fact that, if you want to make sure that you are 95 percent sure you're accomplishing your role in capturing 100 percent of somebody's healthcare needs, that would be an assumption of 98.15 years old; but it is for the trier of fact to understand all those assumptions and value those facts in terms of all of the data points before up to 98.15 years old and value the Medical Life Care Plan as 100 percent certainty because they are using the actual life span as they see it based on my calculation. They have all the data points from year one for life expectancy all the way to 98 years old. I will not make a determination at trial that [redacted] would in fact live until 86, 87, 88. I'm just giving the trier of fact a tool to value once they determine the actual life span what the value of the value of the Medical Life Care Plan is.

(Id. at p.120, l.8 – p.121, l.4).

Mr. Gingras wants the Court to believe that a jury of laypeople will return to the jury room, methodically review all of his economic assumptions, and if they determine that [redacted] life expectancy is different than 83 years or 98 years, use his accounting formulae to recalculate the present value of her future health care costs and arrive at their own value. That seems vanishingly unlikely, something Plaintiffs and Mr. Gingras obviously anticipate, as they conveniently provide the jury with a bolded, highlighted "rounded average" of his 83-year-old value and his 98-year-old value to arrive at an "average" value of $19.5 million. However, this "average" is not even a calculation of

the present value of her life care plan if she lived to be 90 years old, but just a straight average of $9 million (average life expectancy) and $30 million (extremely unlikely life expectancy). By pegging one end of the guideposts to an unrealistically high number, Mr. Gingras can show an "average" that is much higher than it would have otherwise been. In short, that $19.5 million figure is underpinned by none of the methodology that went into the calculation of either the $9 or $30 million present values.

████████ *Future Earnings*

Every single one of Mr. Gingras's "expert calculations" relies on the same flawed process of generalized assumptions, specific outputs, and an assumption that the jury can simply "fix" his work. For the value of ████████ future earnings, he provides two scenarios based on growth rates of 2.65% and 5%:

Lost Earnings Valuation	Scenario # 1	Average	Scenario # 2
Lost Wages and Lost Benefits	Scenario # 1	Average	Scenario # 2
Present Value of Lost Wages	$ 623,205	$ 724,289	$ 825,373
Present Value of Lost Benefits (Note 1)	264,800	307,750	350,701
Present Value of Total Lost Earnings	$ 888,005	$ 1,032,040	$ 1,176,074
Rounded	$ 890,000	$ 1,030,000	$ 1,180,000

(**Ex. A**, p.1; p.4, n.1; p.7, n. 1.) These scenarios are presented without consideration of whether those growth rates reflect the growth of ████████ actual earnings, and relies on the jury to decide which growth rate they think is more likely:

> Q: Okay.· And, again, based on your education and training, is -- what -- is the 2.65 or the 5 percent number more – which one is most reasonable to the highest degree of economic certainty?
>
> A: They are both reasonable degrees of -- of -- reasonable -- reasonable degree economic probability. The issue and the power of my calculation is that the -- the trier of fact can adjust my assumptions to fit the facts of this case. So my best scenario is the scenario that the trier of fact will select.

(Id. p.70, l.19 – p.71, l.7). Like he did with the life care plan calculation, Mr. Gingras also produces a spurious bolded, highlighted "rounded average" of his two scenarios, which again does not represent

the calculation of the present value using a growth rate of 3.83% (the average rate between 2.65% and 5%) but a straight average of the output values, which pegs the jury to a higher number that is not underpinned by any methodology.

[REDACTED] and [REDACTED] Fringe Benefits and Lost Services

Mr. Gingras's other calculations have the same lack of connection to the actual parties in this case. With regard to [REDACTED] and [REDACTED] fringe benefits included in his calculations of lost earnings, he does not base those on the benefits they were actually receiving. Instead, he just assumes a blanket 41% to 42% of earnings as a value for the benefits, and leaves it to the jury to somehow decide if they should use a different percentage instead:

> The 42.49 percent is an assumption and will be described as such for the trier of fact. As long as the trier of fact understands my assumptions and the bases for my assumptions, they can make the determination of the facts of this case as they see them and adjust my assumptions to value those facts with certainty, which is ultimately my role in this matter. (Id., p.89, ll.10-18).
>
> The only way for you to specifically know if the 41.98 percent, which is actually very low in terms of percentage, would -- would be accurate or not is for you to determine actually what she was receiving in terms of benefits. (**Ex. D**., p.85, ll.15-20).

For the value of [REDACTED] and [REDACTED] lost services, Mr. Gingras presents a range of "limitation or contribution percentages" from 5% to 95% in summary form:

For [REDACTED]:

Present Value of Lost Household Services at 5% Limitation	$ 498,988	$ 500,000
Present Value of Lost Household Services at 25% Limitation	2,494,938	2,490,000
Present Value of Lost Household Services at 50% Limitation	4,989,876	4,990,000
Present Value of Lost Household Services at 75% Limitation	7,484,815	7,480,000
Present Value of Lost Household Services at 95% Limitation	9,480,765	9,480,000

(**Ex. A**, p.2.)

For [REDACTED]:

Loss of Household Services Valuation (Beginning January 1, 2022)	Hourly Rate	Rounded
Present Value of Lost Household Services at 5% Contribution	$ 740,598	$ 740,000
Present Value of Lost Household Services at 25% Contribution	3,702,990	3,700,000
Present Value of Lost Household Services at 50% Contribution	7,405,980	7,410,000
Present Value of Lost Household Services at 75% Contribution	11,108,970	11,110,000
Present Value of Lost Household Services at 95% Contribution	14,071,362	14,070,000

(**Ex. B**, p.1.) Mr. Gingras testified that this "limitation percentage" meant spending between 1.2 hours and 22.8 hours a day doing household services: i.e. a 5% limitation/contribution was 1.2 hours a day and a 95% limitation/contribution was 22.8 hours a day. (**Ex. C**, p.131, l.24 – p.132, l.5.) As with the rest of his analysis, Mr. Gingras has no specific information about what household services ███ ████ and █████ actually did during their lives; he just assumes that replacing any of them should cost approximately $30 an hour. This is in spite of the fact that research shows $30 an hour to be nearly double the average rate for personal services:

> Q: But my question was: Are you aware of any recently published research that states $15 to $16 an hour is the average wage for household services?
> A: No, and I wouldn't use that.
> Q: And I think this is obvious but I obviously if you use a lower wage your estimate would go down; correct?
> A: Of course. If you use a higher wage, my estimate would go up. It's for the trier of fact to determine that;

(**Ex. C**, p.144, ll.10-21).

Mr. Gingras's 5 percent to 95 percent “range" in his summary is purportedly offered so that the jury can determine how many hours ██████ and █████ spent doing household services, and then calculate a value for every 1.2 hours they believe she spent doing them:

> Q: Turning to the loss of household services amount, what are you attempting to measure in that analysis?
> A: Just like the lost wages or the loss of the Medical Life Care Plan of certain value, it is a tool for the tier of fact to further determine but for the jury what would this individual have contributed to the household but because of the jury can no longer contribute. Once they have determined in terms of number of hours per day, weeks, months, or year, they can

> Q: ... use my table and determine with certainty what the value of those services are.
>
> Q: Okay. Based on your education and experience, what is your opinion as to the present day cash value of the loss of household services?
>
> A: Well, if you would tell me what the trier of fact sees in terms of facts of this case, I could tell you that.

(Id., p.131, ll.1-22).

> Q: [Y]ou list I think it's 19 different limitations. It's limitations and different percentages. There's 19 of them. Which one in your -- based on your expertise reflects the highest degree of economic probability?
>
> A: The one that the trier of fact will select.

(**Ex. D.**, p.133, ll.1-8). According to Mr. Gingras, the jury is supposed to decide if [REDACTED] and [REDACTED] were spending 1 or 24 hours a day doing household services, for a range of $500,000 up to $14 million. Obviously, the likelihood they were doing 24 hours of household services a day is slim to none. However, like the misleading summaries for the life care plan and earnings, the value of services for [REDACTED] and [REDACTED] are presented to the jury as though any number of hours spent is equally likely, thus inviting the jury to select a "compromise" middle number that has been artificially pegged high by an unreasonable upper value.

[REDACTED] *Future Earnings*

Similarly, with regard to [REDACTED] future earnings, Mr. Gingras presents his analysis as simply the projection of future costs and discounting those costs to present value. However, he based [REDACTED] future earnings on two untethered assumptions: first, that she was working full time, and second, that she would obtain an associates' degree:

Lost Wages and Lost Benefits	$13.34 / Hour	Average	Associate Degree
Present Value of Lost Wages	$ 1,132,766	$ 1,574,846	$ 2,016,926
Present Value of Lost Benefits (Note 1)	475,535	661,120	846,705
Present Value of Total Lost Earnings	$ 1,608,301	$ 2,235,966	$ 2,863,631
Rounded	$ 1,610,000	$ 2,240,000	$ 2,860,000

(**Ex. B**, p. 1.) Neither of those assumptions are in evidence, but when confronted with those facts, he fell back to the safety net of assuming the jury can just fix his flawed work for him:

> However, I still did it in this calculation to show the trier of fact that, if they believe that the 17,945 would be what she actually earned in that year, they can adjust my calculation to fit the facts of this case and value those facts with certainty. The only thing you have to do is divide 17,945 by the 27,474 to determine a percentage and then apply that to my total calculation.

(**Ex. D**, p.52, l.15 – p.53, l.2).

> So, now, let's assume that it was factually decided or somebody tells me "JP, actually, this individual never graduated, she did some but never graduated;" okay?· So the trier of fact could do either what her actual level of education is between actual diploma and Associates Degree. I have disclosed in my notes what would be -- high school diploma would be in terms of, if you go to Scenario Number 1, the Bureau of Labor Statistics would tell you that an individual with a high school diploma would have earned $1,566,133. In Scenario 2, I've disclosed for the trier of fact based on my calculation and the Bureau of Labor Statistics an individual would -- would make with an Associates Degree 2,071,042. Therefore, the trier of fact could say "We believe that the total earnings over the rest of her" -- "the remaining work life expectancy would be somewhere in between." Either they would agree on the data point or take the average of the two, which would be approximately $1,750,000; or they could adjust my calculations to fit the fact of this case.

(**Ex. D,** p.59, l.22 – p.61, l.2). Checking and correcting an expert's work is not the province of a lay jury.

C. The Testimony of Mr. Gingras Should be Excluded

Over and over again, Mr. Gingras claims that his assumptions are reasonable, but his assumptions are unconnected to the actual facts in the case. "[I]if an expert opinion does not have a 'valid scientific connection to the pertinent inquiry' it should be excluded because there is no 'fit.' Boca Raton Community Hosp., Inc. v. Tenet Health Care Corp., 582 F.3d 1227, 1232 (11th Cir. 2009) *quoting* Daubert at 591-92. Using flawed inputs means that the outputs will also be flawed. The "fit" of Mr. Gingras's analysis is not helpful to the trier of fact.

Under normal circumstances, "input/output" problems with an expert's assumptions go to

weight, not admissibility. See, e.g. Quiet Tech. DC-8, Inc. v. Hurel-Dubois UK Ltd., 326 F.3d 1333, 1345 (11th Cir. 2003). In this case, however, Mr. Gingras's presentation of his analysis, showing an unrealistically exaggerated range of potential values, is actively misleading to the jury. By signposting high "upper" values that are based on his unsupported assumptions, he invites the jury to use that number as a guide for their calculations. He then compounds the misdirection by creating facile "averages" of the two signposted values that are not underpinned by the methodology that he used to create the signposts.

Mr. Gingras tries to hide the flaws of his analysis by claiming that the jury can take his assumptions and methods and use them to create their own values that "fit" the facts of the case. Of course, to do so, the jury has to be able to determine which of Mr. Gingras's growth rates are more reasonable, how long [REDACTED] and [REDACTED] were likely to live, and other technical details that Mr. Gingras claims are up to the jury to decide.

Which is more likely, that the jury will have the ability and interest to do an accounting expert's work for him, or that they will be guided by the highlighted "average" numbers and make an award based off that exaggerated guidepost? Mr. Gingras's analysis is misleading in a very devious way, in that his underlying mathematics are sound, but the skewed inputs and exaggerated outputs are not. In effect, Mr. Gingras is handing the jury the answer key, but then asking them to go back and check all of his math and telling them they can change the answers if they find any errors. Asking the jury to change those answers would require a very close and technical refutation of the inputs into his analysis and an explanation of why the presentation of his outputs are misleading. This will be very difficult to do by cross-examination. The jury will be left instead to take the "easy out" of using

Mr. Gingras's summary values to guide their award.[4]

Expert witness testimony "may be assigned talismanic significance in the eyes of lay jurors, and, therefore, the district courts must take care to weigh the value of such evidence against its potential to mislead or confuse." U.S. v. Frazier, 387 F.3d 1244, 1263 (11th Cir. 2004). In this case, Mr. Gingras's testimony as to complicated accounting principles has not only the potential, but possibly the purpose to confuse and mislead the jury. The Court should exercise its power and responsibility under Daubert and Rule 403 to act as a gatekeeper to exclude Mr. Gingras's expert testimony in these cases.

IV. CONCLUSION

For the foregoing reasons, Defendant Martin Robbins Fence Company respectfully requests that the Court grant its motion and enter an order excluding the expert testimony of J.P. Gingras.

This 24th day of November 2021.

HUDSON LAMBERT PARROTT WALKER, LLC
/s/ Claire A. Williamson
Brad C. Parrott
Georgia Bar No. 595999
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Georgia Bar No. 474247

[4] This is similar to the circumstances in Langenbau v. Med-trans Corp., 167 F. Supp. 3d 983, 998–99 (N.D. Iowa 2016). In that case, the court disallowed the use of a particular metric for measuring wrongful death damages (the specifics of which are not relevant to our case) on Rule 403 grounds because even the "informational" presentation of an improper metric could case the jury to inflate the damages.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the within and foregoing **DEFENDANT MARTIN ROBBINS FENCE COMPANY'S MOTION TO EXCLUDE PLAINTIFFS' EXPERT WITNESS, J.P. GINGRAS AND BRIEF IN SUPPORT THEREOF** via File & Serve Xpress which will automatically serve the following counsel of record:

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This 24th day of November 2021.

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