

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NO. 03-05-379

RANDY HUGHES, Individually
and as Personal Representative
for the ESTATE OF SHILOH
HUGHES; CLINT ROYSE,
Individually and as Personal
Representative for the ESTATE
OF AFTON HUGHES ROYSE; and as
Next Friend of JAGR ROYSE;
WILLIE WATKINS; Individually
and as Personal Representative
for the ESTATE OF JOYCE
WATKINS; SHIRLEY RITCHEY;
CAROLYN LARGENT; BETTY GENTRY
and JOHNNY WATKINS
Plaintiffs,

) IN THE DISTRICT COURT

) OF WISE COUNTY, TEXAS

TXI TRANSPORTATION COMPANY;
AURELIO MELENDEZ; and RICARDO
REYNA RODRIGUEZ
VS.
WILLIE WATKINS, Individually
and as Personal Representative
for the ESTATE OF KIMBERLY
WATKINS HUGHES

) 271st JUDICIAL DISTRICT

(EXHIBIT VOLUME 13)

On the 4th thru 13th days of May, 2004, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable John H. Fostel, Judge
presiding, held in Decatur, Wise County, Texas:

Proceedings reported by Computerized Stenographic
Method.

1 A P P E A R A N C E S

2 FOR THE PLAINTIFFS:

3 SIMPSON, BOYD & POWERS
4 BY: MR. MICHAEL A. SIMPSON
SBOT No: 18403650
5 MR. DERRICK S. BOYD
SBOT No: 00790350
6 MR. G. ALAN POWERS
SBOT No: 24005089
7 P.O. Box 685
SIMPSON, BOYD & POWERS, PLLC
8 P.O. Box 957
Decatur, Texas
Telephone: (940) 627-8308
9 Fax: (940) 683-3122

10 FOR THE DEFENDANTS:

11 MR. MARK STRADLEY
12 MR. TOM MURTO (Not Appearing)
STRADLEY & WRIGHT
13 Abrams Centre, 9330 LBJ Freeway,
Suite 1400
14 Dallas, Texas 75243

15 MR. CHARLES W. HURD
16 MS. ALISON WEBSTER
17 FULBRIGHT & JAWORSKI L.L.P.
1031 McKinney
18 Houston, Texas 77010-3095

19 MR. MICHAEL C. STEINDORF
20 MR. BEN TAYLOR
21 FULBRIGHT & JAWORSKI L.L.P.
22 2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784

23 SEWELL & FORBIS
24 BY: CHRISTOPHER M. FORBIS
25 SBOT No.: 07223900
P.O. Box 534
Decatur, Texas 76234
Telephone: (940) 627-2143
Fax: (940) 627-6147

26 MILLER & BROWN, LLP
27 By: MR. ROB MILLER
28 MR. KAI HECKER (Not Present)
29 400 South Ervay Street
30 Dallas, Texas 75201-5513

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHRONOLOGICAL INDEX

VOLUME 1 OF 15
MASTER INDEX

VOLUME 2 OF 15
SECOND SCHEDULING CONFERENCE, MOTIONS
January 29, 2004

(No witnesses/no exhibits)

VOLUME 3 OF 15
MOTION TO COMPEL
April 12, 2004

(No witnesses/no exhibits)

VOLUME 4 OF 15
FINAL PRETRIAL
April 27, 2004

(No witnesses/no exhibits)

VOLUME 5 OF 15
TRIAL ON MERITS
May 4, 2004

CHRONOLOGICAL INDEX

May 4, 2004

Qualifications and Exemptions of Jury Panel.....	13
Announcement of Ready.....	23
Voir Dire of Jury Panel by Mr. Simpson.....	29
Voir Dire of Jury Panel by Mr. Steindorf.....	127
Batson hearing.....	197
Jury seated.....	203
Rule invoked.....	217
Opening Statement by Mr. Boyd.....	218
Opening Statement by Mr. Stradley.....	229

1 CHRONOLOGICAL WITNESS INDEX

2
3 PLAINTIFFS' WITNESSES:

	Direct	Cross	Voir Dire	Volume
4 RODRIGUEZ, RICARDO	279, 281	264, 280		5
6 Adjournment				297
7 Court Reporter's Certificate				299

9
10 VOLUME 6 OF 15
11 TRIAL DAY NO. 2
12 TRIAL ON MERITS
13 May 5, 2004

14 CHRONOLOGICAL INDEX

14 May 5, 2004	Page
15 Objections to Arthur Bensmiller videotape deposition....	10

16 PLAINTIFFS' WITNESSES:

	Direct	Cross	Voir Dire	Volume
18 Videotaped Oral Depo.				
19 Bensmiller, Arthur	31			
20 Kennemer, Jonathan	122, 176	74, 156, 181		6
21 Quinn, Ashton	183	188		6
22 Boner, Tiffany	194			6
23 Watkins, Johnny	205			6
24 Videotaped Oral Depo.				
Raney, Wanda		246		6
25 Marshek, Kurt	257			6

1 Adjournment 300
 2 Court Reporter's Certificate 302

3

VOLUME 7 OF 15
 TRIAL DAY NO. 3
 TRIAL ON MERITS
 May 6, 2004

6

CHRONOLOGICAL INDEX

7 May 6, 2004

8

PLAINTIFFS' WITNESSES:

9

	Direct	Cross	Voir Dire	Volume
10 Marshek, Kurt (cont)	10	65, 126		7
11 Abbott, Leon	212	222		7
12 Campbell, Roberta	224			7
13 Oates, Leslie	233	240		7
14 Ritchey, Shirley	244			7
15 Gentry, Betty	250			7
16 Largent, Carolyn	254			7

17

18

Adjournment..... 257

19

Objections to Dr. Flynn videotape depo..... 259

20

Court Reporter's Certificate..... 279

21

22

23

24

25

1 VOLUME 8 OF 15
 2 TRIAL DAY NO. 4
 3 TRIAL ON MERITS
 4 May 10, 2004

5 CHRONOLOGICAL INDEX

6 May 10, 2004

7 PLAINTIFFS' WITNESSES:

8	Direct	Cross	Voir Dire	Volume
9 Melendez, Aurelio	54	12, 64		8
10 Needham, Allyn	67	67		8
11 Flynn, Michael	96			8
12 Hughes, Randy	141	146		8
13 Fallin, Kenneth	174			8
14 Royse, Clint	196			8

15 DEFENDANTS' WITNESSES:

16	Direct	Cross	Voir Dire	Volume
17 Rodriguez, Ricardo	219, 248	236		8

18 VOLUME 9 OF 15
 19 TRIAL DAY NO. 5
 20 TRIAL ON MERITS
 21 May 11, 2004

22 CHRONOLOGICAL INDEX

23 May 11, 2004

24 DEFENDANTS' WITNESSES:

25	Direct	Cross	Voir Dire	Volume
26 Larance, Jerry	16, 35	21, 42		9
27 Wilton, George	46, 63	51, 64		9

1	Jobe, Cody	66	68	9
2	Jackson, Lee	82, 109, 117	97, 112, 120	9
3	Wyndham, Michelle	125	133	9
4	Real, Roland	140		9
5	Melendez, Aurelio	153, 166, 168, 170	162, 167 169	9
6				
7	Raney, Wanda	178	200	9
8	Gold, Charles Video Deposition	206, 231	223	9
9	Painter, John	232, 358	302, 365	9

10

11

VOLUME 10 OF 15
 TRIAL DAY NO. 6
 TRIAL ON MERITS
 May 12, 2004

12

13

CHRONOLOGICAL INDEX

14

May 12, 2004

15

16 DEFENDANTS' WITNESSES:

17		Direct	Cross	Voir Dire	Volume
----	--	--------	-------	-----------	--------

18	Battles, Tonya (For Bill only)	26, 39	37		10
----	-----------------------------------	--------	----	--	----

19

Page

20

Both sides rest & close..... 45

21

Objections to Charge..... 46

22

Charge of the Court.....117

23

Closing Statement by Mr. Boyd.....162

24

Closing Statement by Mr. Steindorf.....185

25

Closing Statement by Mr. Simpson.....210

1 Adjournment.....218

2 Court Reporter's Certificate.....220

3

4

5

VOLUME 11 OF 15

TRIAL DAY NO. 7

6

TRIAL ON MERITS

May 13, 2004

7

CHRONOLOGICAL INDEX

8

May 13, 2004

9

Jury Note..... 8

10

Verdict of Jury..... 9

11

Dismissal of Jury..... 22

12

Adjourn..... 25

13

Court Reporter's Certificate..... 26

14

15

16

17

18

19

20

21

22

23

24

25

ALPHABETICAL WITNESS INDEX

	Direct	Cross	Voir Dire	Volume
1				
2				
3	Abbott, Leon	212	222	7
4	Battles, Tonya	26, 39	37	10
5	Videotaped Oral Depo. Bensmiller, Arthur	31		6
6	Boner, Tiffany	194		6
7	Campbell, Roberta	224		7
8	Fallin, Kenneth	174		8
9	Flynn, Michael	96		8
10	Gentry, Betty	250		7
11	Hughes, Randy	141	146	8
12	Largent, Carolyn	254		7
13	Kennemer, Jonathan	122, 176	74, 156, 181	6
14	Marshek, Kurt	257		6
15	Marshek, Kurt (cont)	10	65, 126	7
16	Melendez, Aurelio	54	12, 64	8
17	Needham, Allyn	67	67	8
18	Oates, Leslie	233	240	7
19	Quinn, Ashton	183	188	6
20	Videotaped Oral Depo. Raney, Wanda		246	6
21	Ritchey, Shirley	244		7
22	Rodriguez, Ricardo	279, 281	264, 280	5
23	Rodriguez, Ricardo	219, 248	236	8
24	Royse, Clint	196		8
25	Watkins, Johnny	205		6

EXHIBIT INDEX

(All exhibits are shown in the Exhibit Volume under the appropriate tab number.)

COURT'S

4 NO.	DESCRIPTION	OFFERED	ADMITTED	VOL.
5 1	Plaintiffs' Attorneys Jury Notes	200	200	5
7 2	Plaintiffs' Attorneys Jury Notes	200	200	5

9 PLAINTIFFS'

10 NO.	DESCRIPTION	OFFERED	ADMITTED	VOL.
11 1	Employment Application	18	18	6
12 2	Judgment	20	21	6
13 3	Sentencing	21		6
14 4	Rodriguez's Statement to Immigration	21	22	6
16 5	Rodriguez's Statement to TXI investigator	25	26	6
18 6	Rodriguez's Response To WI's	29	29	6
20 7	Rodriguez's Statement to DPS	28	28	6
21 8	Driver Qualification Of Perez	171	171	6
23 9	Driver Qualification Of Soto	171	171	6
24 10	Driver Qualification Of Rico	171	171	6
25 11	Blowup Photo of Accident Scene	260	260	6

1					
2	12	Blowup Diagram of Site Survey	263	264	6
3	13	Blowup of Exhibit 12	265	266	6
4	14	Blowup Diagram	265	266	6
5	15	Blowup Diagram	265	266	6
6	16	Blowup Photo	276	276	6
7	17	Blowup Photo	278	278	6
8	18	Blowup Photo	278	278	6
9	19	Blowup Photo	279	279	6
10	20	Blowup Photo	279	279	6
11	21	Blowup Photo	279	279	6
12	22	Blowup Diagram	282	282	6
13	23	Blowup Diagram	283	283	6
14	24	Blowup Photo	289	289	6
15	25	Blowup Photo	289	289	6
16	26	Blowup Diagram	13	13	7
17	27	Blowup Diagram	20	20	7
18	28	Blowup Diagram	20	20	7
19	29	Wyndham Statemnt	33	33	7
20	30	Diagram	42	42	7
21	31	Aerial	51	51	7
22	32	Marshek CV	61	61	7
23			318	318	9
24	33	Blowup Diagram	207	207	7
25	34	Picture Collage	246	246	7

1	35	CDL Exam	249	249	7
2	36	Ag Haulers info	16	16	8
3	37	WIs of Data Document	17	--	8
4	38	TX traffic Law manual	21	21	8
5	39	TMC safety regs	23	24	8
6	40	Drawing	44	44	8
7	41	Drawing	44	44	8
8	42	Suburban model	66	67	8
9	43	Truck model			
10	44	Highway model			
11	45	Life tables	83	83	8
12	46	Afton Royse Medical bills	83	88	8
13	47	Kim Hughes Medical bills	94	94	8
14	48	Jagr Royse Medical bills	83	88	8
15	49	Afton Royse Medical bills	89	89	8
16	50	Kim Hughes Medical bills	94	94	8
17	51	Collage of pics	143	144	8
18	52	Collage of pics	143	144	8
19	53	Jagr Royse Medical bills	198	198	8
20	54	Collage of pics	200	200	8
21	55	Scrapbook	204	205	8

1	56	Blowup photo Jagr	203	204	8
2	57	Shiloh Hughes Funeral bills	206	206	8
3	58	Afton Royse Funeral bills	206	206	8
4					
5	59	Kim Hughes Funeral bills	206	206	8
6	60	Joyce Watkins Funeral bills	207	207	8
7					
8	61	Photo	104	104	9
9	62	Survey notes	104	104	9
10	63	Sketch	115	115	9
11	64	System Status at Deployment	303	303	9
12	67	Photo	337	337	9
13	68	Photo	337	337	9
14	69	Photo	337	337	9
15	70	Photo	337	337	9
16					
17	71	Photo	342	342	9
18	72	Sketch	349	349	9
	73				
19	74	Painter's Website	357	---	9
20					
21	DEFENDANTS'				
	NO.	DESCRIPTION	OFFERED	ADMITTED	VOL.
22	49	Photo	86	86	9
23	50	Photo	86	86	9
24	55	Photo	86	86	9
25	56	Photo	86	86	9

1	57	Photo	86	86	9
2	184	Photo	297	297	9
3	185	Photo	297	297	9
4	203	Photo	294	294	9
5	204	Photo	294	294	9
6	216	Photo	294	294	9
7	271	Photo	114	115	7
8	295	Photo	97	97	7
9	297	Photo	97	97	7
10	298	Photo	97	97	7
11	302	Photo	273	273	9
12	305	Photo	136	138	6
13	306	Photo	293	293	9
14	310	Photo	136	138	6
15	314	Photo	140	141	6
16	340	Photo	136	138	6
17	345	Photo	117	117	7
18	353	Photo	117	117	7
19	378	Sketch	245	245	9
20	378A	Sketch	250	250	9
21	384	Sketch	272	272	9
22	416	Clearance Pole	128	131	6
23	417	DPS report			
24	417A	DPS report, pg.3	174	---	9
25	417B	DPS report, cover	174	---	9

1	418	Bumper	156	156	9
2	419	Video of hwy	123	124	9
3	420	Rodriguez Phone bill	233	233	8
4	423	TXI net worth	16	---	10
5	425	911 call record	233	233	8
6	426	DPS report amended	143	---	9
7	427A	DPS letter	56	56	6
8	430	DPS Report W/ opinions	20	---	10
10	438	Driver Record	57	57	8
11	439	Driver Record	57	57	8
12	440	Cell phone records	151	---	8
13	441	Cell phone records	151	---	8
14	442	Driver Record	57	57	8
15	446	Driver Record	57	57	8
16	505	Drug test form	161	161	9
17	508	Rodriguez Depo Corrections	293	293	5
18	509	Sketch	93	93	7
19	510	Photo	107	107	7
20	520	Sketch	270	270	9
21	550	Accident Report	21	21	10
22	570	Page from Marshek depo.	18	18	10
23	600	Yukon tire	214	215	9
24	601	Photo	219	219	9

1	602	Photo	219	219	9
2	603	Photo	219	219	9
3	604	Wheel	220	220	9
4	605	VOD Clint Royse	43		10
5	606	VOD Ashton Quinn	43		10
6	607	Defendant's 8th Supp. Response	43		10
7					
8	608	Defendant's 10th Supp. Response	43	43	10
9	609	Plaintiffs' Response To Production	43	43	10

10

11

12

JURY NOTES

13	NO.	DESCRIPTION	Marked	VOL.
14	1	Requesting Economist video	216	10
15				
16	2	Liquor list	8	11
17	3	Pad & markers	8	11
18	4	Lunch menus	8	11

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

L E G E N D

"Uh-huh" is an affirmative response while
"Huh-uh" is a negative one.

Words, phrases and/or spellings are underscored to emphasize that, while they may be incorrect as they are transcribed in their underscored state, the Court Reporter has transcribed them exactly as the speaker uttered them.

EXHIBIT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(This exhibit marked for indentification is an
item of physical evidence or too large for
inclusion and is retained by the Court Reporter.
Please see the Exhibit Index for reference.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NO. 03-05-379

RANDY HUGHES, Individually
and as Personal Representative
for the ESTATE OF SHILOH
HUGHES; CLINT ROYSE,
Individually and as Personal
Representative for the ESTATE
OF AFTON HUGHES ROYSE; and as
Next Friend of JAGR ROYSE;
WILLIE WATKINS; Individually
and as Personal Representative
for the ESTATE OF JOYCE
WATKINS; SHIRLEY RITCHEY;
CAROLYN LARGENT; BETTY GENTRY
and JOHNNY WATKINS
Plaintiffs,

) IN THE DISTRICT COURT

) OF WISE COUNTY, TEXAS

TXI TRANSPORTATION COMPANY;
AURELIO MELENDEZ; and RICARDO
REYNA RODRIGUEZ
VS.
WILLIE WATKINS, Individually
and as Personal Representative
for the ESTATE OF KIMBERLY
WATKINS HUGHES

) 271st JUDICIAL DISTRICT

COURT REPORTER'S EXHIBIT CERTIFICATE

I, Jeffery M. Goodwyn, Official Court Reporter in and
for the 271st District Court of Wise County, Texas, do hereby
certify that the included exhibits constitute true and complete
duplicates of the original exhibits, excluding large blowups
and physical evidence, admitted into evidence during the
Pretrial, Post-trial Hearings and/or the Trial on the Merits in

1 the above-entitled and numbered cause as set out herein before
2 the Honorable John H. Fostel, Judge of the 271st District Court
3 of Wise County, Texas, and a jury trial, beginning May 4, 2004.

4 *I further certify that the total cost for the
5 preparation of this Reporter's Record is \$ _____ and was
6 paid/will be paid by _____.

7 WITNESS MY OFFICIAL HAND on this, the _____ day of
8 _____, _____.

9

10

11 _____
JEFFERY M. GOODWYN, Texas CSR #1283
Expiration Date: 12/31/06
12 Official Court Reporter, 271st District Court
Wise County, Texas
13 Post Office Box 623
Decatur, Texas 76234
14 (940) 627-3200

15

16

17

18

19

20

21

22

23

24

25