



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
INS10002

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
SHELLY MURRAY 304-558-8801

VENDOR

*429132316 814-536-8908
 SARGENTS COURT REPORTING SERVI
 210 MAIN STREET

JOHNSTOWN PA 15901

SHIP TO

INSURANCE COMMISSION

 1124 SMITH STREET
 CHARLESTON, WV
 25305-0540 304-558-3707

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
01/26/2010				

BID OPENING DATE: **02/24/2010** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		961-72		
<p>OPEN END CONTRACT</p> <p>THE WEST VIRGINIA PURCHASING DIVISION, FOR THE AGENCY, THE WEST VIRGINIA OFFICES OF THE INSURANCE COMMISSIONER, IS SOLICITING BIDS FOR TRANSCRIPTION AND DECISIONS TYPING SERVICES PER THE ATTACHED SPECIFICATIONS.</p> <p>TECHNICAL QUESTIONS MUST BE SUBMITTED IN WRITING TO SHELLY MURRAY IN THE WEST VIRGINIA PURCHASING DIVISION VIA MAIL AT THE ADDRESS SHOWN AT THE TOP OF THIS RFQ, VIA FAX AT 304-558-4115, OR VIA EMAIL AT SHELLY.L.MURRAY@WV.GOV. DEADLINE FOR ALL TECHNICAL QUESTIONS IS 02/10/2010 AT THE CLOSE OF BUSINESS. ALL TECHNICAL QUESTIONS RECEIVED, IF ANY, WILL BE ADDRESSE BY ADDENDUM AFTER THE DEADLINE.</p>						
<p>TRANSCRIPTION SERVICES</p> <p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE UPON AWARD AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE</p>						

RECEIVED

2010 MAR -8 AM 10:09

WV PURCHASING DIVISION

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
<i>J. F. N...</i>	814-536-8908	3/5/10
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE
DIRECTOR OF STRATEGIC PLANNING	25-1794603	

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.htm and is hereby made part of the agreement. Provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).



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BUYER

*429132316 814-536-8908
 SARGENTS COURT REPORTING SERVI
 210 MAIN STREET

 JOHNSTOWN PA 15901

SHIP TO

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<p>ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>J. P. N...</i>	TELEPHONE 814-536-8908	DATE 3/5/10
TITLE DIRECTOR OF STRATEGIC PLANNING	FEIN 25-1794603	ADDRESS CHANGES TO BE NOTED ABOVE

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ROCKY MOUNTAIN

*429132316 814-536-8908
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 JOHNSTOWN PA 15901**

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<p>THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>EXHIBIT 6</p> <p>PRICE ADJUSTMENT PROVISION: THE STATE OF WEST VIRGINIA WILL CONSIDER BIDS THAT CONTAIN PROVISIONS FOR PRICE ADJUSTMENTS PRIOR TO THE ORIGINAL EXPIRATION OF THE CONTRACT, PROVIDED THAT SUCH PRICE ADJUSTMENT COVERS BOTH UPWARD AND DOWNWARD MOVEMENT OF THE COMMODITY PRICE, AND THAT ADJUSTMENT IS BASED ON THE "PASS THROUGH" INCREASE OR DECREASE OF RAW MATERIALS AND/OR LABOR, WHICH MAKE UP ALL OR A</p>						

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SIGNATURE <i>J.P. Nish</i>	TELEPHONE 814-536-8908	DATE 3/5/10
TITLE DIRECTOR OF STRATEGIC PLANNING	FEIN 25-1794603	ADDRESS CHANGES TO BE NOTED ABOVE

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<p>SUBSTANTIAL PART OF A PRODUCT. ADJUSTMENTS ARE TO BE BASED UPON AN ACTUAL DOLLAR FIGURE, NOT A PERCENTAGE. ALL PRICE ADJUSTMENT REQUESTS MUST BE SUBSTANTIATED IN A MANNER ACCEPTABLE TO THE DIRECTOR PURCHASING, E.G. GOVERNMENTAL BENCH MARKS, GENERAL MARKET INCREASE, PUBLISHED PRICE LISTS. SUCH REQUESTS FOR AND INCREASE SHOULD BE RECEIVED IN WRITING BY THE DIRECTOR OF PURCHASING AT LEAST 30 DAYS IN ADVANCE OF THE EFFECTIVE DATE OF THE INCREASE. ANY TIME THE VENDOR REQUESTS A PRICE ADJUSTMENT, THE PURCHASING DIVISION MAY EITHER ACCEPT THE PRICE ADJUSTMENT AND AMEND THE CONTRACT ACCORDINGLY OR REJECT THE ADJUSTMENT IN ITS ENTIRETY AND CANCEL THE CONTRACT.</p> <p>PREFERRED TERMS: IT IS PREFERRED THAT THE PRICES ON THIS CONTRACT ARE FIRM FOR LIFE OF THE CONTRACT, AS INDICATED IN THE LIFE OF CONTRACT CLAUSE CONTAINED HEREIN, NOT TO EXCEED ONE (1) YEAR.</p> <p>PASS THROUGH PRICE INCREASES WILL BE CONSIDERED AT TIME OF CONTRACT RENEWAL ONLY.</p> <p>EXHIBIT 4</p> <p>LOCAL GOVERNMENT BODIES: UNLESS THE VENDOR INDICATES IN THE BID HIS REFUSAL TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO COUNTY, SCHOOL, MUNICIPAL AND OTHER LOCAL GOVERNMENT BODIES, THE BID SHALL EXTEND TO POLITICAL SUBDIVISIONS OF THE STATE OF WEST VIRGINIA. IF THE VENDOR DOES NOT WISH TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO ALL POLITICAL SUBDIVISIONS OF THE STATE, THE VENDOR MUST CLEARLY INDICATE SUCH REFUSAL IN HIS BID. SUCH REFUSAL SHALL NOT PREJUDICE THE AWARD OF THIS CONTRACT IN ANY</p>						

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SIGNATURE <i>J.P. Nish</i>	TELEPHONE 814-536-8908	DATE 3/5/10
TITLE DIRECTOR OF STRATEGIC PLANNING	FEIN 25-1794603	ADDRESS CHANGES TO BE NOTED ABOVE

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<p>MANNER.</p> <p>PURCHASING CARD ACCEPTANCE: THE STATE OF WEST VIRGINIA CURRENTLY UTILIZES A VISA PURCHASING CARD PROGRAM WHICH IS ISSUED THROUGH A BANK. THE SUCCESSFUL VENDOR MUST ACCEPT THE STATE OF WEST VIRGINIA VISA PURCHASING CARD FOR PAYMENT OF ALL ORDERS PLACED BY ANY STATE AGENCY AS A CONDITION OF AWARD.</p> <p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: SHELLY MURRAY</p> <p>RFQ. NO.: INS10002</p> <p>BID OPENING DATE: 02/24/2010</p> <p>BID OPENING TIME: 1:30 PM</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE *[Signature]* TELEPHONE **814-536-8908** DATE **3/5/10**

TITLE **DIRECTOR OF STRATEGIC PLANNING** FEIN **25-1794603** ADDRESS CHANGES TO BE NOTED ABOVE

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PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID: <i>814-539-7579</i> ----- CONTACT PERSON (PLEASE PRINT CLEARLY): <i>JESPER P. NIELSEN</i> -----						
***** THIS IS THE END OF RFQ INS10002 ***** TOTAL:						_____

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>J.P. Nielsen</i>	TELEPHONE <i>814-536-8908</i>	DATE <i>3/5/10</i>
TITLE <i>DIRECTOR OF STRATEGIC PLANNING</i>	FEIN <i>25-1794603</i>	ADDRESS CHANGES TO BE NOTED ABOVE

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Purpose: To obtain a contractor to provide Transcription and decision typing services to the West Virginia Workers' Compensation Office of Judges.

OPERATING ENVIRONMENT:

Location: Agency is located at One Players Club Drive, Charleston, WV 25311.

Background: The Workers' Compensation Office of Judges conducts hearings, receives and weighs evidence and arguments and then issues written decisions in appeals from initial claim management decisions made by insurance carriers or by self-insured employers or their agents. Transcription and decision typing services are needed in order to process pending appeals in a timely manner.

PROCUREMENT SPECIFICATIONS

1) General Requirements of the Vendor:

- a) Vendor is to provide professional transcription services to the Workers' Compensation Office of Judges.
- b) The successful vendor will transcribe, from cassette tapes, hearings conducted by the Office of Judges regarding disputed Workers' Compensation claims.
- c) The successful vendor will provide a system allowing for Office of Judges employees to dictate decisions or orders via the telephone or other electronic transmission system and typing these documents within required time periods.
- d) The successful vendor shall have the ability to securely transfer electronically the transcribed documents to Office of Judges for printing at their location.

2) Scope of Work:

- a) Decisions/Orders from Cassette Tapes – The successful vendor will transcribe decisions/orders from cassette tapes if telephone communication or other electronic means is unavailable due to malfunction of equipment. If vendor's equipment malfunctions, it must be repaired within a maximum of three (3) working days. The cassettes shall be delivered via U. S. Mail to the successful vendor at the mailing address specified by the vendor, unless other arrangements are mutually agreed to by the vendor and the Office of Judges. It is also a requirement that the vendor be available for in-person pick-up of cassettes at One Players Club Drive, Charleston, West Virginia.
- b) Searchable Data Base Program – It is the desire of the Office of Judges for the vendor to provide and maintain a searchable database program of all decisions and transcripts available on either Boolean or natural language search which will produce a listing of all files having the search criteria, as well as a highlighted display of the searched words with the file. For example, all the transcripts with the words "fatal" and "cardiac" will be listed in a directory-style listing and the transcripts will come up one at a time with the keywords fatal and cardiac highlighted every time they appear in each document.

- c) Electronic Transfer of Documents – The vendor must have the ability to electronically mail decisions/transcripts to Office of Judges in a format compatible with the Office of Judges software. Currently Word is being used but it will soon be upgraded to Word 2007.

The vendor must have the ability to electronically mail the typed decisions/orders to the electronic mail address provided by the Office of Judges for printing at the local site within 48 hours of receiving the dictation. For example, a decision dictated by 5:00 p.m. on Friday, must be transcribed and returned to the Office of Judges no later than 5:00 p.m. on Tuesday. The vendor selected must indicate the security in place for electronic transfer of information. The vendor must accommodate the requirement of the Office of Judges to prioritize the order in which the dictations of decisions are typed.

The successful vendor will retain a "copy" of the electronically transmitted documents for a 45-day period. The successful vendor will provide to the Office of Judges the previous month's transcription of decisions/orders on a mass magnetic storage device (such as a compact disc) within ten (10) days of the end of each month.

If electronic mail is unavailable for a 24-hour period, the successful vendor shall deliver the transcribed decisions/orders to the Office of Judges by magnetic mass storage device (such as a compact disc).

- d) Confidentiality – The successful vendor agrees to keep all dictation of decisions/orders, and storage of those decisions/orders confidential and as secure as possible.
- e) Accuracy – The quality of the decisions/orders/transcripts shall be subject to a quality review by the Office of Judges. If the quality of the documents falls below 95% accuracy or if there is a consistent loss of dictation material (either to or from the Office of Judges and the successful vendor) the contract may be terminated as defined in section I of this RFQ. The Office of Judges considers three or more errors per page of typed decision/order/transcript to exceed an acceptable level. This includes typing, grammar and English context or spelling errors. If the vendor fails to cure and the contract is terminated, all work in progress shall be delivered to the Office of Judges.
- 3) **Project:**
- a) Transcribing of Hearings – The Office of Judges conducts hearings that are recorded on cassette tape to be transcribed. These include (but may not be limited to) evidentiary hearings, occupational pneumoconiosis board hearings, final permanent total disability hearings and other assigned types of hearings. The specific number of hearings held varies from month to month. The Office of Judges estimates 70 hearings recorded on cassette to be transcribed per month.

Transcripts shall be typed in the following manner:

- The first page shall have 1" margin at top.
- All subsequent pages shall have header on line 5 leaving 5/8" margin at top. All pages shall have 1" margin on left and 5/8" margin on the right side.
- Single spacing Questions and Answers format.
- Arial 12 point Font type size.
- Index of Direct, Cross, Redirect, Recross, etc. on second page.
- Certification on last page
- Header with claimant name and claim number
- The first typing line is line 8 on all pages after first and end on line 59 leaving 51 typing lines on page.

The completed transcripts shall be printed on 8.5" by 11", 20# White bond as "mini-pages" using four-to-a-page compatible with existing MS Word 2003 and MS Word 2007.

- b) Typing of Decisions/Orders – The Office of Judges has approximately 20 individuals reviewing claim files and dictating decisions. These decisions vary in length from 2 pages to as many as 18 pages. A "typical" decision is 5 – 7 pages. The Office of Judges issues approximately 375 decisions per month.

Decisions shall be typed in the following manner:

- The first page shall have 1" margin.
- All subsequent pages shall have header on line 5 leaving 5/8" margin at top. All pages shall have 1" margin on left-hand side and a 3/4" margin on the right hand side of each page.
- The first typing line on page 1 is "7" and shall end at approximately "59", for 52 typing lines on page 1.
- All subsequent pages shall begin on line "8" and end approximately on line "59" leaving 51 typing lines per page.
- Single space with appropriate paragraphing.
- Arial 12 point Font type size.

"Standard" decisions are attached to this RFQ for the Office of Judges (**Attachment A**) to show the form of the respective decisions/orders.

The persons dictating the decisions/orders will reference certain preformatted language. The Office of Judges uses approximately 55 of the preformatted "paragraphs". The Office of Judges will update and change the preformatted language as necessary.

The successful bidder must provide toll-free receipt of the dictation of decisions/orders by employees of Office of Judges from locations in Charleston, Beckley, and Fairmont, West Virginia via the telephone and such other electronic communication means as is compatible with the Dictaphone Enterprise System.

The vendor must have the ability to accommodate the possibility that all decisions/orders writers may be dictating simultaneously. All cost necessary to accommodate this level of dictation, is a cost of doing business with the agency similar to all other overhead and must be calculated within the vendor's price/cost per page quotation.

4) General Terms and Conditions:

By signing and submitting their proposal, the successful Vendor agrees to be bound by all the terms and requirements contained in this RFQ.

a. *Conflict of Interest:*

Vendor affirms that it, its officers or members or employees presently have no interest and shall not acquire any interest, direct or indirect, which would conflict or compromise in any manner or degree with the performance or its services hereunder. The Vendor further covenants that in the performance of the contract, the Vendor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the Agency.

b. *Prohibition Against Gratuities:*

Vendor warrants that it has not employed any company or person other than a bona fide employee working solely for the vendor or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract.

For breach or violation of this warranty, the State shall have the right to annul this contract without liability at its discretion or to pursue any other remedies available under this contract or by law.

c. *Certifications Related to Lobbying:*

Vendor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant,

loan or cooperative agreement, the Vendor shall complete and submit a disclosure form to report the lobbying.

Vendor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers, including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements, and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this contract was made and entered into.

d. *Vendor Relationship:*

The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents.

Vendor shall be responsible for selecting, supervising and compensating any and all individuals employed pursuant to the terms of this RFQ and resulting contract. Neither the Vendor, nor any employees or contractors of the vendor, shall be deemed to be employees of the State for any purposes whatsoever.

Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, and licensing fees, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including but not limited to the foregoing payments, withholdings, contributions, taxes, social security taxes and employer income tax returns.

The Vendor shall not assign, convey, transfer or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Agency.

e. *Indemnification:*

The Vendor agrees to indemnify, defend and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication,

translation, reproduction, delivery, performance, use or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws.

f. *Contract Provisions:*

After the successful Vendor is selected, a formal contract document will be executed between the State and the Vendor. In addition, the RFQ and the Vendor's response will be included as part of the contract by reference. The order of precedence is the contract, the RFQ and the Vendor's proposal in response to the RFQ.

g. *Governing Law:*

This contract shall be governed by the laws of the State of West Virginia. The Vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws and regulations, Federal, State and Local Government.

h. *Compliance with Laws and Regulations:*

The vendor shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body.

The Vendor shall pay any applicable sales, use or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant here to shall be borne by the contractor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this contract.

i. *Subcontracts/Joint Ventures:*

The Vendor is solely responsible for all work performed under the contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. The State will consider the Vendor to be the sole point of contact with regard to all contractual matters. The Vendor may, with the prior written consent of the State, enter into written subcontracts for performance of work under this contract; however, the vendor is totally responsible for payment of all subcontractors.

j. *Term of Contract & Renewals:*

This contract will be effective (date set upon award) and shall extend for the period of one (1) year, at which time the contract may, upon mutual consent, be renewed. Such renewals are for a period of up to one (1) year, with a maximum of two (2) one year renewals, or until such reasonable time thereafter as is necessary to obtain a new contract. The "reasonable time" period shall not exceed twelve (12) months. During the "reasonable time" period Vendor may terminate the contract for

any reason upon giving the Agency ninety (90) days written notice. Notice by Vendor of intent to terminate will not relieve Vendor of the obligation to continue to provide services pursuant to the terms of the contract.

Any change in Federal or State law, or court actions which constitute binding precedent in West Virginia, and which significantly alters the Vendor's required activities or any change in the availability of funds, shall be viewed as binding and shall warrant good faith renegotiation of the compensation paid to the Vendor by the Agency and of such other provisions of the contract that are affected. If such renegotiation proves unsuccessful, the contract may be terminated by the State upon written notice to the Vendor at least thirty (30) days prior to termination of this contract.

k. *Non-Appropriation of Funds:*

If the Agency is not allotted funds in any succeeding fiscal year for the continued use of the service covered by this contract by the West Virginia Legislature, the Agency may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The Agency shall give the vendor written notice of such non-allocation of funds as soon as possible after the Agency receives notice. No penalty shall accrue to the Agency in the event this provision is exercised.

l. *Contract Termination:*

The State may terminate any contract resulting from this RFQ immediately at any time the Vendor fails to carry out its responsibilities or to make substantial progress under the terms of this RFQ and resulting contract. The State shall provide the Vendor with advance notice of performance conditions which are endangering the contract's continuation. If after such notice the Vendor fails to remedy the conditions contained in the notice, within the time period contained in the notice, the State shall issue the Vendor an order to cease and desist any and all work immediately. The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

The contract may also be terminated by the State with thirty (30) days prior notice.

m. *Changes:*

If changes to the original contract become necessary, a formal contract change order will be negotiated by the State, the Agency and the Vendor, to address changes to the terms and conditions, costs of work included under the contract. An approved contract change order is defined as one approved by the Purchasing Division and approved as to form by the West Virginia Attorney General's Office, encumbered and placed in the U.S. Mail prior to the effective date of such amendment. An approved contract change order is required whenever the change affects the payment provision or the scope of the work. Such changes may be necessitated by new and amended Federal and State regulations and requirements.

As soon as possible after receipt of a written change request from the Agency, but in no event more than thirty (30) days thereafter, the Vendor shall determine if there is an impact on price with the change requested and provide the Agency a written statement to identifying any price impact on the contract or to state that there is no impact. In the event that price will be impacted by the change, the Vendor shall provide a description of the price increase or decrease involved in implementing the requested change.

NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER.

n. *Invoices:* The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract.

o. *Record Retention (Access & Confidentiality):* Vendor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Vendor. The Vendor shall maintain such records a minimum of five (5) years and make available all records to Agency personnel at Vendor's location during normal business hours upon written request by Agency within 10 days after receipt of the request.

Vendor shall have access to private and confidential data maintained by Agency to the extent required for Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and Agency against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors or individuals permitted access by Vendor.

Vendor agrees to protect the decisions/orders and any personal health information and financial information contained therein from oral or written disclosure and to that end should implement and maintain policies to safeguard and protect this information from inappropriate use or disclosure by its employees, agents, subcontractors and any other individuals permitted by Vendor to have access to the information. Vendor shall take industry best security practices to protect the confidentiality of the electronic transmission of this information. Should Vendor be confronted with any legal action to disclose any portion of this information, Vendor shall notify the Office of Judges within two (2) business days of such action.

p. *License Requirements:* Successful Vendor must present evidence of certification or licensure with the West Virginia Workers Compensation and Unemployment Funds, a copy of its W. Va. Business Certificate and any other

licenses it may be required to hold by the nature of its operation.

- q. *Debarment and Suspension:* Successful Vendor must certify that no entity, agency or person associated with the Vendor is currently debarred or pending suspension from conducting business with any governmental unit.
- r. *Purchasing Affidavit:* West Virginia Code §5A-3-10a requires that all bidders submit an affidavit regarding any debt owed to the State. The affidavit must be signed and submitted prior to award. It is preferred that the affidavit be submitted with the proposal.
- s. *Resident Vendor Preference:* West Virginia State Code §5A-3-37 provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia State Code. A certificate of application is used to request this preference. Generally, a West Virginia vendor may be eligible for two 2.5 preferences in the evaluation process. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.
- t. *RFQ Sections:* There are two sections required for vendor response to this request for quotations. Attachment B: Acknowledgment of Mandatory requirements and Attachment C: Cost proposal.

Attachment B: Mandatory Requirements Acknowledgement and Signature Page

By signing this page vendor certifies that they have read and understand all requirements of this request for quotations and can provide the services in the manner requested by the agency.

Attachment C: Cost Proposal

Cost must be all inclusive. The price(s) quoted in the bidder's proposal will not be subject to any increase and will be considered firm for the life of the contract unless specific provisions have been provided for adjustment in the original contract. All cost associated with the provision of this service must be included in the cost per page.

Attachment B

**CERTIFICATION OF UNDERSTANDING
MANDATORY REQUIREMENTS**

1. All transcripts will be formatted/typed in the exact manner detailed in the RFQ.
2. Toll free lines will be provided for receipt of dictation from Office of Judges employees located in Charleston, Beckley and Fairmont, West Virginia. This system must be compatible with the Dictaphone Enterprise System equipment owned by the Office of Judges.

A sufficient number of lines will be available in place to accommodate all employees dictating simultaneously.
3. Hearing transcribed from cassettes and those transcribed from phone or other electronic format will be prepared in the format specified of the RFQ.
4. In the event telephone communication or other electronic means are unavailable, vendor shall transcribe decision orders from cassette tapes. If required these tapes will be picked up daily at the Office of Judges offices located at One Players Club Drive, Charleston, WV.
5. Vendor shall maintain a searchable database program of all decisions and transcripts. This database will be available to the Office of Judges at all times for search.
6. Vendor shall be able to electronically mail decisions/transcripts to the agency. System used to transmit electronically must provide absolute security of the documents content and format.
7. Vendor must accommodate the requirements of the Office of Judges to prioritize work and comply with special requests regarding the order in which dictations are transcribed.
8. Vendor must provide the agency with a magnetic storage disc (such as compact disc) of all the previous months transcriptions within ten days of the end of each month.
9. Vendor agrees to maintain strict confidentiality and security of dictation system, cassettes and all transcripts.
10. Successful Vendor must certify that no entity, agency or person associated with the Vendor is currently debarred or pending suspension from conducting business with any governmental unit.

I certify that I have read and understand the requirement of this request by signing this certification; I agree that the terms outlined in the request for quotations are non-negotiable and must be met or the contract may be cancelled.

Vendor Name: SARGENT'S COURT REPORTING SERVICE, INC.

Representative: JESPER P. NIELSEN

Signature: *Jesper P. Nielsen*

Date: 3/5/10

Attachment C

COST PROPOSAL

TRANSCRIBING HEARINGS FROM CASSETTE TAPES \$ 1.24 PER PG.

TRANSCRIBING TELEPHONE DICTATION \$ 3.94 PER PG.

Vendor Name: SARGENT'S COURT REPORTING SERVICE, INC.

Representative: JESPER T. NIELSEN

Signature: J. T. Nielsen

Date: 3/5/10

RFQ No. INS10002

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code §61-5-3*), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: Sargent's Court Reporting Service, Inc.

Authorized Signature: [Signature] Date: 3/4/10

State of West Virginia

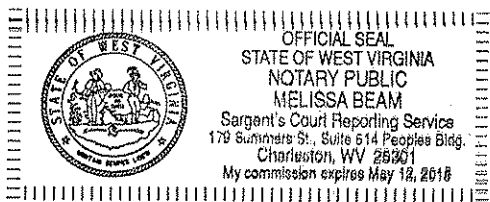
County of Kanawha, to-wit:

Taken, subscribed, and sworn to before me this 4th day of March, 2010

My Commission expires May 12, 2018.

AFFIX SEAL HERE

NOTARY PUBLIC Melissa Beam



State of West Virginia VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. *N/A* Application is made for 2.5% resident vendor preference for the reason checked:
Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,

N/A Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,

N/A Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,

2. *N/A* Application is made for 2.5% resident vendor preference for the reason checked:
Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

3. *N/A* Application is made for 2.5% resident vendor preference for the reason checked:
Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

4. *N/A* Application is made for 5% resident vendor preference for the reason checked:
Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,

5. *N/A* Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:
Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,

6. *N/A* Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:
Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (*West Virginia Code*, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: SARGENT'S COURT REPORTING SERVICE, INC. Signed: *J. T. Nish*
Date: 3/5/10 Title: DIRECTOR OF STRATEGIC PLANNING

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
INS10002

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
SHELLY MURRAY 304-558-8801

VENDOR

*429132316 814-536-8908
 SARGENTS COURT REPORTING SERVI
 210 MAIN STREET

JOHNSTOWN PA 15901

SHIP TO

INSURANCE COMMISSION

1124 SMITH STREET
 CHARLESTON, WV
 25305-0540 304-558-3707

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
02/21/2010				

BID OPENING DATE: 03/09/2010 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
----- ADDENDUM NO. 1 -----						
THIS ADDENDUM IS ISSUED TO ADDRESS THE QUESTIONS RECEIVED PRIOR TO THE QUESTION SUBMISSION DEADLINE OF 02/10/2010.						
THE BID OPENING DATE IS EXTENDED:						
FROM: 02/24/2010						
TO : 03/09/2010						
0001	1	LS		961-72		
TRANSCRIPTION SERVICES						
EXHIBIT 10						
REQUISITION NO.: INS10002						
ADDENDUM ACKNOWLEDGEMENT						
I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.						
ADDENDUM NO.'S:						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>J.P. Nantz</i>	TELEPHONE 814-536-8908	DATE 3/5/10
TITLE DIRECTOR OF STRATEGIC PLANNING	FEIN 25-1794603	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the **West Virginia Code**.
7. Vendor preference will be granted upon written request in accordance with the **West Virginia Code**.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the **Legislative Rules** of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.htm and is hereby made part of the agreement. Provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
INS10002

PAGE
2

ADDRESS CORRESPONDENCE TO ATTENTION OF
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DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
02/21/2010				

BID OPENING DATE: **03/09/2010** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
	NO. 1 .. ✓					
	NO. 2					
	NO. 3					
	NO. 4					
	NO. 5					
<p>I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF BIDS.</p> <p>VENDOR MUST CLEARLY UNDERSTAND THAT ANY VERBAL REPRESENTATION MADE OR ASSUMED TO BE MADE DURING ANY ORAL DISCUSSION HELD BETWEEN VENDOR'S REPRESENTATIVES AND ANY STATE PERSONNEL IS NOT BINDING. ONLY THE INFORMATION ISSUED IN WRITING AND ADDED TO THE SPECIFICATIONS BY AN OFFICIAL ADDENDUM IS BINDING.</p> <p>..... <i>J. F. Nitch</i> SIGNATURE SARGENT'S COURT REPORTING SERVICE, INC. COMPANY</p> <p>..... 3/5/10 DATE</p> <p>NOTE: THIS ADDENDUM ACKNOWLEDGEMENT SHOULD BE SUBMITTED WITH THE BID.</p> <p>----- END OF ADDENDUM NO. 1 -----</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>J. F. Nitch</i>	TELEPHONE 814-536-8908	DATE 3/5/10
TITLE DIRECTOR OF STRATEGIC PLANNING	FEIN 25-1794603	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
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3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.htm and is hereby made part of the agreement. Provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).

INS10002

Addendum No. 1

1. Is dictation done via the Dictaphone Enterprise system?

Answer: Currently, dictation is being done through digital Dictaphone Boomerang in the decision process and cassette tapes are being used in the hearing process. However, we anticipate that we will be going to a new digital system in the near future. The exact system is unknown at this time.

2. If dictation is done via the Dictaphone Enterprise system, would another system also be needed for dictation?

Answer: Refer to answer from question #1.

3. There is mention of an Attachment A. It was not included in the RFQ package. Can this be sent out?

Answer: Yes, Attachment A was inadvertently omitted from the original RFQ.

4. Is there a current contract for this work?

Answer: Yes

5. If so, who is the vendor and what is the current contracted pricing?

Answer: Current vendor is LS Services, Inc. Current contract pricing is as follows:
Transcribing hearings from cassette tapes \$1.25 per page; Transcribing telephone dictation \$4.00 per page.

6. Does the vendor have to register with the Purchasing Division prior to submitting a bid, or can we register after notification of award?

Answer: A Vendor does not have to be registered to submit a bid to the State of West Virginia. If you are an apparent low bidder on this project, you will be notified to become registered if you are not. A Vendor must be registered prior to award.

7. Part 2 a of the SOW states that the vendor must be available to pickup cassettes in person. Is it acceptable for the vendor to use a courier service to pick up the tapes?

Answer: Yes

8. In the past, how often did you actually require the vendor to pick up in person?

Answer: Once per week.

9. What is the approximate length of the hearings tapes (in minutes or pages after transcription)?

Answer: The average hearing transcript consists of 16 pages.

10. Can you provide a sample of the "mini pages" used for the hearings?

Answer: Yes

11. The RFQ requires a searchable database. Do you envision that database being on-line, or do you want updates sent to you for downloading onto your computer?

Answer: No

12. Who is the incumbent supplier?

Answer: Refer to answer from question #5.

13. What are the current per page rates for dictation and transcription respectively?

Answer: Refer to answer from question #5.

14. Are there any opportunities for selling copies to the parties involved or is that not permitted?

Answer: No

15. Are you exclusively using the Dictaphone Enterprise System for your dictation?

Answer: Refer to answer from question #1.

16. Will the chosen supplier only be required to have the ability to accept information from the Dictaphone Enterprise System or will the supplier be required to send information to your Dictaphone Enterprise System as well?

Answer: The successful vendor will be required to accept information from Dictaphone Enterprise System only.

17. How heavily does the previous experience of a supplier factor into your decision making regarding the choice of a supplier?

Answer: Previous experience is not a factor. The lowest bid meeting the requirements set forth in the specifications will be awarded the contract.

18. Is it possible to receive samples of a transcript and a decision (The RFQ refers to an attached example of a decision, yet none was found in the packet received)?

Answer: Yes, Attachment A was inadvertently omitted from the original RFQ.

19. Can you please make available the following information about the current contract:

a) The Vendor name:

Answer: Refer to answer from question #5.

b) The per page pricing (for hearings and decisions/orders):

Answer: Refer to answer from question #5.

- c) Spending under this contract for 2009:

Answer: The expenditures for calendar year 2009, was approximately \$75,000.00

- d) The length of the contract?

Answer: The original contract was 12 months with two, one year renewals for a total of 36 months.

20. How will cassette tapes for hearings (as distinct from recordings of decisions/orders) be delivered to the vendor? Like decisions/orders that are recorded to cassette due to technical malfunction, will this delivery be via postal mail?

Answer: Cassette tapes for hearing are picked up by the vendor once per week.

21. In what situation would the requirement for "in-person pick-up be exercised? How frequently will you require this service?

Answer: Refer to answer from question #20.

22. Is a third-party messenger, such as FedEx or a messenger service, an acceptable form of "in person pick-up?"

Answer: Yes

23. Do we need to return tapes you send us under the contract? If yes, please specify your preferred delivery method, frequency and timeframe.

Answer: Yes. Transcribed tapes may be dropped off by the vendor in their weekly pick-up of hearing tapes.

24. Is there a deadline for transcription of hearings? Decisions/orders are due to be delivered in 48 hours, does this deadline also apply to hearings?

Answer: No, but our preference is within two weeks from receipt.

25. What shipping methods are acceptable for the delivery of the hearing transcripts, which we are required to print on "20# White bond" paper?

Answer: Any reliable delivery method is acceptable.

26. Do you have a preferred security method for electronic document transfer (file password-protection/secure FTP/PGP encryption)? What security method is currently in use?

Answer: The Office of Judges currently receive documents from the vendor through a secure site with password protection/encryption.

27. On average, what is the length (number of pages) of a hearing transcript?

Answer: Refer to answer from question #9.

28. Attachment A was not included in the downloaded document. Can this be sent out?

Answer: Refer to answer from question #3.

29. While I can find information regarding the volume of work for Decisions and Orders, I can not find anything for Hearings other than there are approximately 70 Hearings per month. Would you please give us some additional information on estimated volume?

Answer: Refer to answer from question #9.

30. With mention of a required Certification and an index indicating Direct, Cross, Redirect, and Re-cross, I wonder if the Hearings need to be transcribed Verbatim?

Answer: Yes

31. Would you please give us the name of the current Vendor, and their rate?

Answer: Refer to answer from question #5.

32. Who is the current vendor?

Answer: Refer to answer from question #5.

33. When does the current contract expire or is it being terminated for other reasons?

Answer: The current contract expires February 28, 2010 and we have exhausted all renewals options.

34. Were any special terms and conditions negotiated beyond the general terms and conditions provided in the RFP?

Answer: No, all terms and conditions are defined in the RFQ.

35. What is the current contract pricing per page for:

a) Transcription from cassettes for Office of Judges hearings.

Answer: Refer to answer from question #5.

b) Transcription from decisions and orders.

Answer: Refer to answer from question #5.

c) Any additional charges from contractor.

Answer: No.

36. What is the annual budget approved for this contract?

Answer: This information is not available.

37. How much was billed and paid in the last year of the current contract?

Answer: Refer to answer from question #19 c.

38. Section 3 "Project" describes volume estimates and format requirements. Office of Judges hearings estimates 70 hearings per month recorded on cassettes.

a) What is the average length in minutes per hearing?

Answer: Varies

a) How many cassettes per month are provided?

Answer: Varies

b) Average number of pages per hearing produced in the format required?

Answer: Refer to answer from question #9.

39. Can you provide sample transcriptions of Office of Judges hearings and Decisions/Orders (meant to be Attachment A to the RFQ?) in the required format?

Answer: Refer to answer from question #3.

40. How are the cassettes for Office of Judges hearings delivered to vendor and with what frequency?

Answer: Refer to answer from question #20.

41. Scope of Work states that "...vendor be available for in-person pickup of cassettes..."

a) Is vendor required to have a local office?

Answer: No

b) May vendor provide pickup services via an accredited courier service?

Answer: Yes

c) Under what circumstances and how often is on-site pickup required?

Answer: Vendor picks up tapes from hearings once per week and no additional on-site pickup is required.

42. When does the 48 hour turnaround time (TAT) commence?

Answer: The turnaround time commences when a decision is electronically delivered. (48 hour rule does not include weekends during the period 5:00 p.m. Friday to 8:00 a.m. on Monday.)

43. Searchable database requirement

- a) Where does the database reside – at the vendor site or on Insurance Commission hardware on their premises?

Answer: Vendor site

- b) Who operates and administers the database?

Answer: Vendor

- c) As the vendor is required to retain a “copy” of the electronically transmitted documents for only a 45 day period, how would the vendor provide search capability as desired for the required data after that time?

Answer: Whatever method the vendor chooses to use.

44. If a bidder is not currently registered with the state Purchasing website, how will we receive updates and amendments to the RFQ? We are currently in the registration process but do not want to miss timely information while that is accomplished.

Answer: If you are not currently registered, you may obtain copies of all addendums by contacting our bid request line at 304-558-2306.

45. What are the evaluation criteria for this bid?

Answer: Lowest bid meeting the requirements set forth in the specifications for this RFQ. By submitting a bid, the vendor is agreeing to meet all requirements.

46. Prior to any award, the apparent successful vendor must be properly register with the Purchasing Division and have paid the required \$125.00:

a) How do we pay the fee? Answer: The successful vendor must complete a WV-1 Vendor Registration and Disclosure Statement and submit a check or money order made payable to "State of West Virginia" in the amount of \$125.00. To expedite the process, credit card payments are also accepted, please call 304-558-2311.

b) What exactly does this fee do? Answer: Being registered with the WV Purchasing Division, you gain access to the WV Purchasing Bulletin which contains information on purchasing requirements in excess of \$25,000.00.

c) Is it for this RFP? Answer: No, but if you are the apparent low bidder, you will be required to become registered prior to receiving the award.

47. LICENSING: Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirement by any state or local agency of West Virginia, including but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Dept., and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities. Is there anything we need to complete?

Answer: It is the Vendor's responsibility to ensure proper licensing.

48. Is the vendor's FEIN number mandatory? Will the vendor's social security number suffice?

Answer: No, an FEIN number is not mandatory. The vendor may use a social security number.

49. Do licensing and registration requirements need to be verified prior to the vendor submitting quotation, February 24, 2010??

Answer: A Vendor must be properly licensed to do business in the State of West Virginia prior to submitting their bid.

50. Does the vendor have to conduct operations in a commercial space or will a residential office suffice?

Answer: No requirement

51. Is a reporter required to attend and record the hearings? If not, are cassettes the only media used for recording hearings and is an annotation of the proceedings provided with the recordings, along with names of parties, et cetera?

Answer: No. Currently we are using cassettes but the OOJ is investigating possibility of digital recording. No annotation provided.

52. What is the turnaround time for the delivery of hearing transcripts; i.e., 10 business days?

Answer: Refer to answer from question #24.

53. Is a teleconferencing service acceptable to record dictation of decisions?

Answer: No, the current system (DES) used by the judges requires them to dictate into Boomerang and the digital recording is stored on their computer and goes to the vendor who has the DES set up on their end.

54. Please clarify what pages of the RFQ are required to be returned? Would pages 6, 16-19 be correct?

Answer: These pages would be acceptable.

Attachment A

**STATE OF WEST VIRGINIA
WORKERS' COMPENSATION OFFICE OF JUDGES
P.O. Box 2233, Charleston, WV 25328
Telephone (304) 558-0852**

IN THE MATTER OF:

RE: OOJ Case ID: OOJ-A

CLAIMANT

JCN:

and

CRN:

EMPLOYER

D.O.I.:

DECISION OF ADMINISTRATIVE LAW JUDGE

PARTIES:

Claimant, by counsel,
Employer, by counsel,

ISSUE:

The claimant protested the Claim Administrator's Order dated January 20, 2009 that denied a reopening of this claim for temporary total disability benefits.

DECISION:

It is ORDERED that the Order dated January 20, 2009, is AFFIRMED.

RECORD CONSIDERED:

Please see attached Record to be Considered.

FINDINGS OF FACT:

1. The claim administrator issued an Order January 20, 2009, denying the December 15, 2008, request to reopen this claim for temporary total disability benefits, as the evidence submitted did not establish that the claimant's condition was caused by the compensable injury. The Order further stated, "There is insufficient objective medical evidence to relate the current complaints to the compensable injury of March 27, 2007. This Decision was based primarily on the following: Claim Reopening Application for Temporary Total Disability/Wage Replacement Benefits signed by Dr. Stephen Mascio on December 15, 2008." The claimant protested this Order.

2. The employer submitted the Employee's and Physicians' Report of Injury dated March 19, 2007. The claimant twisted his back at work on March 7, 2007. Dr. Stephen Mascio, D.O., treated the claimant on March 19, 2007, and diagnosed him with lumbosacral strain with bilateral lower radiculopathy due to an occupational injury. He noted the claimant would be off work for less than four days and could return to modified work including no lifting of over 25 pounds and no repetitive bending/climbing.

3. The employer submitted the Claim Administrator's Order dated March 27, 2007, holding this claim compensable for 724.4, unspecified thoracic/lumbar neuritis and 846.0, sprain/strain lumbosacral region.

4. The employer submitted the MRI report dated March 28, 2007, by Jae M. Koh, M.D. The impression was mild degenerative desiccation of intervertebral disc at L5-S1 but was otherwise negative.

5. The employer submitted the report from Mark A. Fye, M.D. dated April 12, 2007. The claimant was referred by Dr. Mascio status post work-related injury occurring a month ago. He twisted his low back and had been off work for the last month. The claimant's MRI is normal with mild disc desiccation at L5-S1, but no disc herniation or neurologic compression. There was no instability noted. On examination, gait was normal. He could heel and toe walk without difficulty and range of motion was normal. The claimant had some discomfort to palpation over the left paraspinal musculature from L2 through L4. There was no obvious spasm. He was neurologically intact in both lower extremities. Based on his examination and the claimant's MRI, Dr. Fye recommended continued non-operative management with physical therapy and anti-inflammatories.

6. The claimant submitted the report of the independent medical evaluation by Dr. Waleed Mansour dated July 27, 2007. Under the clinical synopsis, it was stated "The claimant followed up with Stephen Mascio, D.O., on March 19, 2007. He presented with continued low back pain, numbness radiating down his right lower extremity." The diagnoses were thoracic or lumbosacral radiculitis/neuritis, unspecified, and lumbosacral sprain. Dr. Mansour found the claimant to not be at maximum medical improvement as his condition had not stabilized and fundamental, functional and physiological change could be expected in the condition with continued medical treatment and rehabilitation. The claimant was working without the necessity for modified work. Dr. Mansour deferred an impairment rating and recommended the claimant undergo an FCE and an EMG/nerve conduction studies.

7. The employer submitted the Claim Administrator's Order dated August 13, 2007, that closed this claim for temporary total disability benefits as medical evidence had not been received showing the claimant continued to be totally disabled.

8. The employer submitted the report from Sami Sakla, M.D. dated September 10, 2007. The claimant was treated for chronic low back pain. He denied any pain through his lower extremities and stated that the tingling and numbness he used to have in his lower extremities had completely resolved over the last four weeks. The claimant stated physical therapy had decreased his pain quite a bit. Dr. Sakla advised the claimant to continue with physical therapy since it had been helping to diminish his pain. He also recommended Dr. Mascio prescribe a non-steroidal anti-inflammatory medication.

9. The employer submitted the Claim Administrator's Order dated November 28, 2007, that closed this claim for rehabilitation services, as the claimant returned to work with the pre-injury employer and his pre-injury job.

10. The employer submitted the report from Joseph Grady, M.D. dated December 14, 2007. The claimant reported that he continued to have problems of lower back pain and indicated that he has some residual radiation of discomfort from the lower back into both of his lower extremities in the form of stabbing pain. The claimant was found to be at maximum medical improvement. It was noted he was currently working as a mechanic for the Department of Highways. Dr. Grady found 5% whole person impairment due to the compensable injury.

11. The employer submitted the Claim Administrator's Order dated January 23, 2008, granting the claimant a 5% permanent partial disability award pursuant to the December 14, 2007, report from Dr. Grady.

12. The claimant submitted the Office of Judges Order Dismissing Protest and Affirming Decision dated April 11, 2008, as the claimant withdrew his protest to the Claim Administrator's Order dated January 23, 2008 that granted the claimant a 5% permanent partial disability award.

13. The claimant submitted the report from Stephen Mascio, M.D. dated December 15, 2008. The claimant re-aggravated his lower back while putting on his socks. He felt a "pop" in his lower back, which is the same area as the previous injury. He has low back pain radiating down the right leg. He was taken off work and wants to reopen his old claim. The diagnoses were sprain of lumbosacral joint and lumbar radiculopathy.

14. The employer submitted the Claim Reopening Application for Temporary Total Disability/Wage Replacement Benefits signed by Stephen H. Mascio, D.O., on December 15, 2008. The claimant filed the application due to an aggravation and/or progression of his condition that occurred when he bent over to put socks and felt something "pop" in his back. The pain is located in the same area as the past injury. The claimant has pain in the low back radiating down the right leg. The claimant is temporarily and totally disabled from December 15, 2008, through December 22, 2008.

15. The claimant submitted the report from Stephen Mascio, M.D. dated December 22, 2008. The claimant continued to experience low back pain radiating down the right leg. He was taken off of work. The diagnoses were sprain of lumbosacral joint and lumbar radiculopathy.

16. The claimant submitted the report from Stephen Mascio, M.D. dated January 20, 2009. The claimant continued to experience low back pain. An MRI was scheduled. He remained off of work. It was noted he was awaiting his administrator to reopen his claim.

17. The claimant submitted the report from Stephen Mascio, M.D. dated January 26, 2009. The claimant continued to experience low back pain radiating into the right leg. He noticed slight improvement. He remained off of work. It was noted the administrator denied reopening of the claim.

18. The claimant submitted the report by Stephen Mascio, M.D. dated February 9, 2009. The claimant continued to experience low back pain radiating to both lower extremities. He continued off of work. He has an upcoming appointment with Dr. Bejjani.

19. The claimant submitted the report from Stephen Mascio, M.D. dated March 10, 2009. The claimant continued to experience low back pain radiating down the right leg. During his recent visit, Dr. Bejjani recommended physical therapy. He remained off of work and the reopening of the old claim was still pending.

20. The claimant submitted the report from Stephen Mascio, M.D. dated May 5, 2009. The claimant continued to experience low back pain radiating down the right leg. He had a second injection by Dr. Sakla and noticed improvement. He was currently off of work.

21. The claimant submitted the report from Stephen Mascio, M.D. dated June 30, 2009. The claimant continued to experience low back pain. He finished a series of three injections with Dr. Sakla. He recently saw Dr. Bejjani, who recommended a CT myelogram. The claimant was currently off of work.

22. The claimant submitted a closing argument dated July 27, 2009. It was the claimant's position that he is entitled to a reopening of his claim and temporary total disability benefits should be paid for the period December 15, 2008, through June 30, 2009, for an aggravation of this compensable injury, as the pain he suffered pulling on his socks was in the same area as his past injury.

23. The employer submitted a closing argument dated September 9, 2009. The employer argued the claimant suffered a new onset of right sided low back pain when he bent over to put on his socks. However, the pain following the

compensable injury was focal to the left. It was the employer's position that the evidence of record supported the conclusion that the claim administrator appropriately denied reopening of this claim for temporary total disability benefits.

DISCUSSION:

For purposes of obtaining a reopening of a workers' compensation claim under the provisions of *W. Va. Code* §§23-5-2 and 23-5-3 the claimant must make application in writing showing a progression or aggravation of the compensable condition or some other fact or facts which were not previously considered that would entitle the claimant to greater benefits than he/she has already received.

As defined in Harper v. State Workmen's Compensation Commissioner, 160 W.Va. 364, 234 S.E.2d 779 (1977), "cause" for further adjustment of an award has been interpreted as a showing of a *prima facie* cause which means nothing more than any evidence which would tend to justify, but not compel, the inference that there has been a progression or aggravation of the former injury.

The issue is whether the event that caused the progression or aggravation of the claimant's compensable injury was a normal consequence that flowed from the injury or if it were an independent intervening event. In Wilson v. Workers' Compensation Commissioner, 174 W.Va. 61, 328 S.E.2d 485 (1984), the West Virginia Supreme Court held:

"[A]s a general rule, if a worker's compensation claimant shows that he received an initial injury which arose out of and in the course of his employment, then every normal consequence that flows from the injury likewise arises out of the employment. If, however, a subsequent aggravation of the initial injury arises from an independent intervening cause not attributable to the claimant's customary activity in light of his condition, then such aggravation is not compensable."

The court found in Wilson, *supra*, that the claimant Wilson had suffered a progression or aggravation of his compensable back injury when he was lifting a child at his home. The claimant had testified that he had had continuing problems with his back upon lifting objects and his physician testified that the subsequent back problem was an aggravation of the compensable injury.

W. Va. Code §23-4-1g provides that the resolution of any issue shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. No issue may be resolved by allowing

certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. The resolution of issues in claims for compensation must be decided on the merits and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. If, after weighing all of the evidence regarding an issue, there is a finding that an equal amount of evidentiary weight exists for each side, the resolution that is most consistent with the claimant's position will be adopted.

Preponderance of the evidence means proof that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence, when considered and compared with opposing evidence, is more persuasive or convincing. Preponderance of the evidence may not be determined by merely counting the number of witnesses, reports, evaluations, or other items of evidence. Rather, it is determined by assessing the persuasiveness of the evidence including the opportunity for knowledge, information possessed, and manner of testifying or reporting.

At issue is whether the claimant suffered an aggravation or progression of his compensable injury rendering him temporarily and totally disabled. The claim administrator denied a reopening for temporary total disability benefits because the evidence submitted did not establish that the claimant's current condition was caused by his compensable injury. The claimant argued that he was entitled to temporary total disability benefits for the period December 15, 2008, through June 30, 2009, for an aggravation of his compensable injury because the pain he suffered while pulling on his socks was in the same area as the occupational back injury. The employer argued that the claimant experienced right sided back pain when he bent to put on his socks, and this pain is distinct from the prior left sided pain.

In this case, the preponderance of the evidence shows that the claimant did not suffer an aggravation or progression of his compensable injury. The claimant suffered a twisting injury to his back March 7, 2007. The claim was held compensable for unspecified thoracic/lumbar neuritis and sprain/strain lumbosacral region. The claimant reached maximum medical improvement and was granted a permanent partial disability award December 15, 2007. The December 15, 2008, report from Dr. Mascio indicated the claimant aggravated his lower back pain while putting on his socks. On December 22, 2008, Dr. Mascio diagnosed the claimant with lumbosacral joint sprain and lumbar radiculopathy. The act of putting on his socks constituted an independent intervening cause within the meaning of Wilson, *supra*, particularly in light of the MRI evidence made within weeks of the occupational injury showing mild degenerative desiccation of the lumbar spine. Also, the original injury, which occurred on March 7, 2007, was held compensable for thoracic/lumbar neuritis and sprain/strain lumbosacral region. The subsequent injury has a diagnosis of sprain of lumbosacral joint and lumbar radiculopathy. These diagnoses were not

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made until nearly two years after the original injury. Pursuant to 85 CSR 20, § 37.5, the estimated duration of care for a low back sprain/strain is zero to four weeks, not to exceed eight weeks. The record shows that the claimant's initial lumbar sprain had healed by December 14, 2007, the date Dr. Grady's independent medical evaluation report. Although the initial diagnosis of thoracic/lumbar neuritis is similar to the subsequent diagnosis of lumbar radiculopathy, the current symptoms are attributable to the mild degenerative desiccation of the lumbar spine, as opposed to the relatively minor initial injury.

Therefore, the Claim Administrator's Order dated January 20, 2009, is affirmed.

CONCLUSIONS OF LAW:

The claimant did not suffer an aggravation or progression of his occupational injury.

Therefore, the Claim Administrator's Order dated January 20, 2009, is **AFFIRMED**.

APPEAL RIGHTS:

Under the provisions of *W. Va. Code §23-5-12*, any aggrieved party may file a written appeal within thirty (30) days after receipt of any decision or action of the Administrative Law Judge. The appeal shall be filed with the Board of Review at P.O. Box 2628, Charleston, WV, 25329.

DATE: November 30, 2009

Administrative Law Judge

cc:

WORKERS' COMPENSATION OFFICE OF JUDGES

and Claimant } OOJ ID No.
----- }
Employer }

Transcript of proceedings held in the Veterans Square, 320 Adams Street, Suite 102, Fairmont, WV, on the 14th day of January, 2010.

BEFORE: JOSEPH MANCUSO, Administrative Law Judge

APPEARANCES: Claimant in person & represented by: WILLIAM GALLAGHER, Atty at Law 1413 Eoff Street Wheeling, WV 26003

PATRICIA MCENTEER, Atty at Law 2500 Brooktree Road, Suite 100 Wexford, PA 15090 representing the Employer

cc: WILLIAM GALLAGHER
PATRICIA MCENTEER

L S Services
(740) 377-9411

FEB 02 2010

17

OOJ ID No.

2

INDEX

Witness Cross by
Ms. McEnteer
4

L S Services
(740) 377-9411

OOJ ID No. 3

1 JUDGE MANCUSO: This is claim number A309-002306.
2 The Claimant is the Employer is
3 We're here this morning on the
4 Claimant's protest to the Claim Administrator's
5 Order of October 15, 2009, which closed the claim
6 for temporary total disability benefits and medical
7 benefits. Let the reflect that the Claimant appears
8 in person but is represented by counsel, Mr.
9 William Gallagher out of Wheeling, West Virginia.
10 Let the record further reflect that the Employer
11 appears by counsel this morning.
12 MS. MCENTEER: Patricia McEnteer.
13 JUDGE MANCUSO: Address, please.
14 MS. MCENTEER: Wexford, Pennsylvania. Do you
15 need the street address?
16 JUDGE MANCUSO: It just helps for whenever they get...
17 MS. MCENTEER: It's 2500 Brooktree Road, Suite 100,
18 Wexford, Pennsylvania, 15090.
19 JUDGE MANCUSO: we're here this morning
20 on your protest. So if there's something you want
21 to say at this time, that's fine. If not, I believe the
22 Employer's counsel has some questions for you.
23 CLAIMANT: That's fine, yeah.

L S Services
(740) 377-9411

OOJ ID No. 4

1 JUDGE MANCUSO: Would you please raise your right
2 hand? Do you solemnly swear or affirm the
3 testimony you give this morning will be the truth?
4 Just say yes or no.
5 CLAIMANT: Yes.
6 JUDGE MANCUSO: You may inquire.
7 MCINGER: Okay, thank you.
8 (Claimant sworn)
9 THEREUPON,
10
11 the Claimant herein, being duly sworn, testified as follows:
12 DIRECT EXAMINATION
13 BY MS. MCENTEER:
14 Q since the order was issued on October 15,
15 2009, have you made any effort to obtain evidence
16 from Dr. Miller in support of your protest?
17 A Yes.
18 Q And what were those efforts?
19 A I have his whole written, and you should have received
20 also from the lawyer his findings, what he wanted
21 me to continue, treatment, going to therapy, do a
22 MRI which was received.
23 Q Okay, are you referring to the medical, just his medical

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1 records?

2 A Yes.

3 Q You didn't attempt to obtain any type of report from

4 him?

5 A I did attempt to get another appointment made as a

6 follow-up before the hearing, and they would not

7 request it. And my lawyer said he would take care

8 of it.

9 Q Now you would admit that you no longer have any rib

10 pain; correct?

11 A Right, yeah.

12 Q So your rib pain, your rib contusion, you'd admit you

13 have no problems with that?

14 A The rib problem is fine, yeah.

15 Q Okay. Now with respect to the medical records that

16 were submitted to you by your counsel, they reflect

17 that you didn't make any low back complaints from

18 June 1, 2009 through July 29, 2009. Would you

19 agree with that?

20 A No.

21 Q And why don't you agree with that?

22 A It's on the MonGeneral report, the EMT report, Dr.

23 Miller, physical therapy. Everything, very first day.

1 Right on the very first report from MonGeneral.

2 Q Okay, but I'm saying after June 1, 2009, that's when

3 you were seen at MonGeneral; correct?

4 A June 1st was the day I was seen at MonGeneral.

5 Q Yes.

6 A Yes.

7 Q From June...after June 9th through July 20th, when you

8 first saw Dr. Miller, you made no complaints of low

9 back pain during that period?

10 A No, all along I did. All along I made...JUDGE

11 GREENE:

12 Q Now you would agree that you made a difference

13 between your hip pain and your back pain to your

14 therapist; correct?

15 A Oh, yes.

16 Q And you would tell her, okay, my hip hurts compared to

17 oh, it's my back that's hurting; correct?

18 A Right. I always say it like this. Anytime anybody asks

19 me where the pain is, I go like this. They say well,

20 that's in your back. I get confused. I have a hard

21 time. I've always said my back is here and my butt

22 is here, but it's right in my back.

23 Q And you were pointing towards your back?

1 A Right in my back, yes.

2 Q And so if you had said oh, my back hurts to your

3 therapist that's what you would have informed her;

4 correct?

5 A Yes.

6 Q Okay. And now you admit that you also had a prior hip

7 injury; correct?

8 A Uh-huh.

9 Q And that resulted in surgery?

10 JUDGE MANCUSO: You have to say yes or no.

11 CLAIMANT: I'm sorry. Yes.

12 BY MS. MCINGER:

13 Q And that...you underwent surgery for that; correct?

14 A Yes, in '99.

15 Q And have you had any follow-up treatment with respect

16 to that, your ribs (sic) since then?

17 A No, that wasn't to do with my ribs. That was just my

18 hip.

19 Q I'm sorry, I apologize.

20 A No, no. I went to them and all and they finally informed

21 me that they could not do any more, that the

22 treatment there was done. That was in '99, and I

23 have not had any problem whatsoever with

1 anything since that was done.

2 Q So you had no hip complaints following 1999?

3 A No, ma'am.

4 Q And who did you treat with?

5 A Dr. Thrush in Fairmont.

6 Q Anybody else?

7 A I actually got hurt in Virginia. So there's a couple of

8 doctors out there. I don't know their names right

9 offhand. It's been like I said since '99 or '98. I had

10 other doctors out there. And actually when it

11 fractured it didn't show up on like x-ray right off. I

12 mean I was back to work the next day, fractured

13 rib...or fractured hip and everything else and by

14 the day...I worked that whole next day and that

15 evening I couldn't walk. It didn't show up on an x-

16 ray until like five weeks later.

17 Q Okay, that's fine. I don't want to get into it.

18 A Oh, okay.

19 Q I just wanted to know who you treated with with respect

20 to that injury.

21 A Right, okay.

22 Q And that would be Dr. Thrush from Fairmont.

23 A Yes, Dr. Thrush.

- 1 Q And did you treat with your family physician as a result
- 2 of that injury?
- 3 A I didn't have a family physician at that time.
- 4 Q Now you have had prior back injuries; correct?
- 5 A Yes, on the left side of my back. I've never had any
- 6 problem with the right side.
- 7 Q And you never reported when you first informed Dr.
- 8 Miller of back pain, you didn't differentiate between
- 9 left and right; you just said back pain, right? It
- 10 wasn't until later visits that you said oh, it was
- 11 only...my prior back pain was only on the left;
- 12 correct?
- 13 A That pain I had before was only on the left, yes. And
- 14 yeah, to him the only thing I ever said to him is
- 15 right back pain. And I never have dealt with back
- 16 pain on the right side before. And I never had any
- 17 pain my right side of my back even when I broke
- 18 my hip.
- 19 Q Who did you treat with as a result of your back injuries?
- 20 A With Dr. Miller who's an orthopedic doctor.
- 21 Q I'm not...
- 22 A Now, I did...oh, you mean from...
- 23 Q Prior, your prior back injuries.

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- 1 A Gosh, like I said that was the left side. That was
- 2 probably 20 years ago. I worked at Piedmont
- 3 Hospital in (inaudible). The doctor's name I cannot
- 4 remember his name.
- 5 Q There was also records to that work injury as well as to
- 6 two other injuries, one that happened on vacation.
- 7 A Yeah, that was after I got hurt on the job and stuff
- 8 there. I had just bought a new house, and I was
- 9 taking drywall down around it and I twisted, had a
- 10 real sharp pain in my back and went down on my
- 11 knees.
- 12 Q And who has been your family physician for the last ten
- 13 years?
- 14 A Peggy Phillips.
- 15 Q How long have you treated with her, the whole ten
- 16 years?
- 17 A Oh, my. Well, I was actually seeing a Dr. Parsons and
- 18 then I went back to Dr. Peggy Phillips, which she's
- 19 a nurse practitioner. Now they would not agree to
- 20 me seeing her as a doctor. They wanted me to go
- 21 to an orthopedic doctor, which was great. I mean I
- 22 didn't have a bit of a problem with going to him.
- 23 Q But prior she's been...how long has she been your

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- 1 family physician?
- 2 A Oh, boy, years and years ago. And then I left her and
- 3 went back. Probably for the good last...what, five
- 4 years, four or five years, something like that.
- 5 Q And you're also on medication for restless leg
- 6 syndrome; correct?
- 7 A Right.
- 8 Q And how long have you been taking medication for
- 9 that?
- 10 A Probably what, a couple of years probably. I didn't
- 11 even know what it was.
- 12 Q And who treats you for that?
- 13 A Peggy Phillips.
- 14 Q And you also have a history of back arthritis; correct?
- 15 A Low back, yes. Yes, I had lower back arthritis. They
- 16 classify it as arthritis, but it was always just on this
- 17 left side of my back. So I don't know...
- 18 Q And who did you treat with for that?
- 19 A I think it was Peggy Phillips on that, I do believe.
- 20 Q When was the last time you received treatment for that
- 21 condition?
- 22 A Oh, it's been a long time. I ain't never...it's just like
- 23 going away. I ain't had no problem with it.

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- 1 Q Now with respect to your hip, would you agree that your
- 2 hip has fully recovered?
- 3 A Oh, yes. Yeah, it was...I ain't had no problem with it.
- 4 I've worked, you know, where I work how almost
- 5 five years, going on five years.
- 6 Q I'm speaking right now currently.
- 7 A Yes.
- 8 Q Your hip is fully recovered?
- 9 A Yes. I never had no problem like I say. I'd say it is,
- 10 yes.
- 11 Q And so the only thing that you're complaining about is
- 12 low back complaints?
- 13 A Low back and my leg. My leg gets real weak, yes. I
- 14 twisted it like...the morning I fell it like twisted
- 15 under the asphalt roller I was running. They
- 16 thought I actually broke...rebroke my hip or broke
- 17 my leg, but it wasn't broke. But it like twisted in
- 18 there somehow. Because they told me I broke
- 19 something then, because I was laying on the
- 20 ground, you know.
- 21 Q You haven't had any...received any treatment for your
- 22 leg complaints?
- 23 A Just therapy and stuff like that, just because my leg is

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1 real weak. I can't put all my weight on my leg still.
 2 I mean I can't...like going up a set of steps or
 3 something like that, I walk like I'm some kind of
 4 invalid or something because I can't put my weight
 5 on that leg.
 6 Q And you acknowledge that your one leg, your right leg
 7 is shorter than your left leg; correct?
 8 A Yes.
 9 Q Now does that make you walk with a limp?
 10 A I never noticed it. When they checked it that day, I do
 11 have a certain amount of limp but I never noticed
 12 how bad it was until Dr. Miller and I think
 13 Brockmeyer (phonetic) said something about it
 14 being off a little bit, like a quarter of an inch or
 15 something like that.
 16 Q Do you wear any type of orthopedic device for your
 17 leg?
 18 A No.
 19 Q Are you on any medication for your leg?
 20 A Do you mean like just pain killers?
 21 Q Anything, any specific treatment for your leg?
 22 A No. I've been going to therapy, yeah. But pain killers,
 23 I'm taking like Dolobid, Dolobid two or three times

1 a day depending on the pain. And actually I've not
 2 been able to afford to get that since I was cut off.
 3 Like I say, I can't afford the prescription.
 4 Q What do your leg...I'm sorry.
 5 A That's okay.
 6 Q What do your daily living activities consist of?
 7 A Now?
 8 Q Yes.
 9 A Not much. I barely leave my house. I don't drive. I
 10 drive occasionally, but it just about kills me. It kills
 11 me to ride in a vehicle. I mean it just hurts so bad
 12 usually I can't get out and walk once I get out of
 13 the car. But usually my wife drives me or
 14 whatever. But like I said, I do drive; but I don't
 15 drive...to go anywhere very far from where I live, I
 16 just can't do it.
 17 Q Do you perform any type of household chores?
 18 A Not any more.
 19 Q Any activities?
 20 A Not really, no. I can count the number of times I've
 21 been out of my house to do anything on my hands.
 22 Q Have you looked for any type of work since your injury?
 23 A No.

1 Q Are you undergoing any type of therapy right now?
 2 A No, they cut everything off. And like I said, I basically
 3 cannot afford to do it on my income. They will not
 4 authorize anything else.
 5 MS. MCENTEER: I have no further questions. Thank
 6 you.
 7 JUDGE MANCUSO: Do you have anything you'd like to
 8 say,
 9 CLAIMANT: Just the result, like I said, the MRI
 10 and stuff like that, it being denied. That was the
 11 one thing. And my doctor did have an ongoing
 12 treatment plan, which they said based on the
 13 ongoing treatment plan it shouldn't have been cut
 14 off. And my file, it was denied. A copy of my file
 15 was denied (inaudible), and they said I'm entitled
 16 to whatever they have file-wise on me. They
 17 denied me that.
 18 Well, when they cut me off they
 19 called over the phone. They cut me off based on
 20 the e-mail that they got from the ones who had
 21 scheduled the IME. And the last check I got was
 22 on like the 15th of October, and I didn't anything in
 23 writing until like a week, a week and a half later,

1 that I was being cut off. That said that was okay,
 2 they wrote.
 3 And the other thing that...oh, my
 4 lawyer also told me they cannot...they can
 5 suspend your whatever and give your doctor a
 6 chance to say what he thinks about the medical
 7 maximum...you know, maximum medical
 8 improvement and all that, which was not done.
 9 And he said by law they cannot cut
 10 your medical benefits off if you're still needing
 11 treatment and all that. He said something about as
 12 long as you go to a doctor within five years they
 13 cannot cut that off. I don't know how, you
 14 know...I've never went all this stuff before. It's,
 15 you know, new to me.
 16 JUDGE MANCUSO: There is no evidence after the report
 17 of Dr. Brockmeyer, right? There's nothing to refute
 18 Dr. Brockmeyer?
 19 MS. MCENTEER: No, there isn't
 20 CLAIMANT: No, he was never given a chance.
 21 Dr. Miller was never given a chance to rebut that.
 22 JUDGE MANCUSO: Any further questions?
 23 MS. MCENTEER: No.

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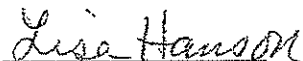
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- 1 JUDGE MANCUSO: Do you have anything further you
2 want to say?
3 CLAIMANT: No.
4 JUDGE MANCUSO: If there's nothing further, the matter
5 will be submitted.

STATE OF WEST VIRGINIA,
WORKERS' COMPENSATION OFFICE OF JUDGES, to
wit

I hereby certify that the foregoing proceeding was
transcribed from a recorded type.

This, the 30th day of January, 2010.



LISA M. HANSON

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