

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:)	
)	
JOHNS MANVILLE, a Delaware corporation,)	
)	
)	
JM,)	PCB No. 14-3
)	
v.)	
)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,)	
)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on May 3, 2016, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, *Expert Report of Joseph R. Fortunato, Jr.*, a copy of which is attached hereto and herewith served upon you via e-mail. Paper hardcopies of this filing will be made available upon request.

Dated: May 3, 2016

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for JM Johns Manville

By: /s/ Lauren J. Caisman
 Susan Brice, ARDC No. 6228903
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on May 3, 2016, I caused to be served a true and correct copy of the attached *Notice of Filing and Expert Report of Joseph R. Fortunato, Jr.* upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address. Paper hardcopies of this filing will be made available upon request.

/s/ Lauren J. Caisman

Lauren J. Caisman

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Respondent.)	

EXPERT REPORT OF JOSEPH R. FORTUNATO, JR.

I. INTRODUCTION

I have been retained by Bryan Cave LLP to provide opinions regarding allegations made by Johns Manville in its Second Amended Complaint. My opinions pertain in general to Parcel No. 0393, as described more fully below, and the Illinois Department of Transportation's ("IDOT") interest in and operation of Parcel No. 0393, including the embankment thereon. My opinions also relate to the rights conveyed to the grantee and the responsibilities owed by such grantee when a permanent easement in the form of a Grant for Public Highway is conveyed, all such rights and responsibilities being essentially governed by the law pertaining to Easements. My opinion will touch upon the obligations of IDOT as such a grantee. My opinion also discusses limitations placed upon the grantor and third parties with respect to such conveyance. My opinion also rebuts the opinion of Keith Stoddard, IDOT's proffered expert on these issues. The hourly compensation I will receive is \$400.00. I have reached all of my opinions contained herein to a reasonable degree of certainty.

II. QUALIFICATIONS

The expert opinions contained in this report are based upon my forty-plus years of experience working as a practicing real estate attorney and representing clients in connection with real estate transactions. I am a licensed attorney who has practiced in the state of Illinois since 1973. I have obtained much of my information and knowledge regarding rights-of-way, grants for highway purposes, easements and other aspects of real estate transactions as a practitioner as well as a Special Assistant States' Attorney for DuPage County, negotiating land acquisition and such grants for highway purposes and easements on behalf of the DuPage Department of Transportation. I am an active member of local bar associations, including but not limited to, the Real Estate Law and Practice Committee of the DuPage County Bar Association. I have chaired or co-chaired the Real Estate Law and Practice Committee for the DuPage County Bar Association three times.

I have made several presentations to the local bar association, participated on behalf of the local bar association in liaison with the DuPage Board of Realtors® and served as a liaison with the Illinois State Bar Association and the Illinois Association of Realtors®, where I participated in committees dedicated to the drafting and promulgation of standardized real estate sales contracts for use by various local boards of Realtors®, including the successor to the DuPage Board, known today as the Mainstreet Organization of Realtors®. I have represented Mainstreet and its predecessor entities as outside general counsel since 2001.

I have taught real estate licensing for Coldwell Banker Real Estate and Century 21 Real Estate. I have taught the basics of title insurance and title insurance law to real estate students as part of the curriculum designed to prepare such students to take and pass the examination for state licensure.

Through these duties, I gained substantial experience dealing with many issues concerning land acquisition, highway grants, easements and title insurance issues, all of which arose in the context of the law governing easements in the context of residential and commercial transactions.

I have served on the Board of Directors of the Illinois Real Estate Lawyers Association (“IRELA”) and served as its Vice-President from 1999 to 2001 and as its President from 2001 to 2004. I continue to serve IRELA as a Director. In these leadership roles, I often addressed issues of easements and related law, among other areas of concern to real estate practitioners.

I was appointed to the Real Estate Section Council of the Illinois State Bar Association in 1995 and served as Chair of the Council in 2005 to 2006.

I have been a continuing legal education instructor on behalf of the DuPage County Bar Association, the Illinois Institute for Continuing Legal Education, and the Illinois State Bar Association. For several years I have made a joint presentation on Case Law Update for the Illinois State Bar Association at its annual Real Estate Law Update Seminar, which included updates on case law involving land acquisition, highway grants and title insurance issues, all of which arose in the context of the law governing easements.

I am a registered title agent for four title insurance companies: Attorneys’ Title Guaranty Fund, Inc., First American Title Insurance Company, Inc., Chicago Title Insurance Company, Inc., and Greater Illinois Title Company.

My resume is attached as **Exhibit 1**. A list of the other cases for which I have testified as an expert in the last four years is attached as **Exhibit 2**. I have reviewed the materials listed in **Exhibit 3** in forming my opinions, and intend to rely upon those materials as exhibits to support them.

III. BACKGROUND

As disclosed in other reports in this case, I understand that IDOT caused and allowed the storage, burial, insertion of and disposal of asbestos-containing material (“ACM”) on and into Parcel No. 0393, located in Waukegan, Illinois. I also understand that Johns Manville has alleged in its Second Amended Complaint that IDOT “has operated and continues to operate a waste-storage, waste-treatment and/or waste-disposal operation” involving Parcel No. 0393 without a permit issued by IEPA and not in accordance with regulations adopted by the Board in violation of 415 ILCS 5/21(d). It is my understanding that IDOT used Parcel No. 0393 in part to construct an embankment to allow for access to a highway it was constructing in the early 1970s. According to the record, ACM is located within that embankment that IDOT constructed.

Based upon the documents reviewed, at all relevant times, Commonwealth Edison (“ComEd”) has owned Parcel No. 0393. In 1971, ComEd granted to the State of Illinois, by and through IDOT’s predecessor, “the right to use for highway purposes only” Parcel No. 0393; the document was entitled a Grant for Public Highway (“Grant”). The Grant was initially recorded on August 12, 1971 and then re-recorded on January 16, 1974. In 1984, the Grant was recorded again with the stated purpose to “correct the intent and legal descriptions of” the Grant. The 1984 Grant separated the temporary construction easements from the permanent easements, including Parcel No. 0393. It is undisputed that there have been no further conveyances or transfers of any interest in Parcel No. 0393 and that the State (by and through IDOT) still holds the interest in Parcel No. 0393 that it was granted in 1971.

From the documents I reviewed, the embankment constructed by IDOT on Parcel No. 0393 remains in place and, according to Keith Stoddard (IDOT’s expert), still serves its highway purpose.

Mr. Stoddard's Rule 213 Disclosure fails to identify a number of key opinions discussed in Mr. Stoddard's deposition testimony and also discusses a number of irrelevant points, such as a 1991 Jurisdictional Transfer, which has no bearing on Parcel No. 0393. Moreover, Mr. Stoddard's Disclosure fails to address the paramount issue in this case — whether IDOT holds an interest in Parcel No. 0393 and/or whether IDOT controls/operates the portions of Parcel No. 0393 containing ACM, which I understand to include the embankment. Although not stated in his Disclosure, Mr. Stoddard testified in his deposition that it is his opinion that IDOT currently holds a permanent easement over Parcel No. 0393 and that Parcel No. 0393 serves a current highway purpose, including the fact that it is “currently being used as part of the grade separation.” (Draft Stoddard Dep. 78.) Mr. Stoddard also testified that IDOT's rights include “using the property and modifying the highway for whatever is needed in order to maintain public safety, the traffic flow . . . basically gives us the right to do just about anything as it relates to highway purposes.” (Draft Stoddard Dep. 81.) Mr. Stoddard also testified that ComEd's rights were limited as to Parcel No. 0393 and that ComEd could not “come in and take out the embankment that currently exists on Parcel 0393.” (Draft Stoddard Dep. 121.) IDOT's Revised Responses to Complainant's Third Set of Interrogatories are inconsistent with Mr. Stoddard's testimony. Likewise, the depositions of various IDOT witnesses that I reviewed also conflict with Mr. Stoddard's testimony.

IV. SCOPE

This report addresses the following issues:

A. The nature of IDOT's interest in Parcel No. 0393, as well as the rights, responsibilities and duties of IDOT as the holder of said interests in real property, which interests are less than fee title interests;

B. IDOT's recent exercise of its rights and duties as to Parcel No. 0393;

C. IDOT's control over and operation of portions of Parcel No. 0393, including the embankment thereon;

D. Rebuttal of Mr. Keith Stoddard's opinions, including but not limited to: (1) whether the 1965/1966 Resolution between the State and the City of Waukegan obligated the City of Waukegan to maintain Parcel No. 0393 and (2) whether the City of Waukegan has "jurisdiction," as referenced in the Highway Jurisdiction Guidelines published by IDOT, over Parcel No. 0393. My rebuttal opinions rely upon the distinction between the rights, responsibilities and duties concerning the common law of easements and those imposed by statute or agreement. My rebuttal opinions also include whether purported "jurisdiction" over Parcel No. 0393 could impact IDOT's duties under the Grant and whether an agreement to maintain between the City of Waukegan and the State, if one existed, could impact IDOT's common law duties under the Grant.

V. OPINIONS

A. The Grant Conveyed to IDOT¹ a Permanent Easement in Parcel No. 0393.

1. The Grant to IDOT in 1971, later re-recorded in 1974, gave IDOT the right to use Parcel No. 0393 in perpetuity, conditioned upon IDOT's use of Parcel No. 0393 "for highway purposes only." There were no temporal or other express limitations placed on IDOT's use of Parcel No. 0393 under the Grant. Under Illinois law, the Grant was a permanent easement and is a direct interest in Parcel No. 0393. This 1984 Grant further underscored IDOT's permanent interest in Parcel No. 0393 when the 1984 Grant distinguished the temporary construction easements (such as Parcel No. E393) that were subject to a time limitation, from the permanent easements (including Parcel No. 0393) granted to IDOT. The 1971, 1974 and 1984 Grants also did not limit IDOT's permanent, direct interest in Parcel No. 0393 to construction work or to the

¹ "IDOT" and the "State" are used interchangeably herein.

time in which IDOT was doing construction work on the Amstutz Project. The permanent easement conveyed to IDOT in Parcel No. 0393 has not been transferred, vacated, surrendered, or otherwise divested in any fashion and Parcel No. 0393 continues to be used by IDOT for “highway purposes” including, according to Mr. Stoddard, that “[i]t’s currently being used as part of the grade separation. So it’s necessary for --- it’s necessary for the flow of traffic and it’s --- it’s necessary, yes, the[] ramp is necessary to maintain the flow of traffic.” (Draft Stoddard Dep. 78:9-15.)

2. The rights afforded to a permanent easement holder for “highway purposes”, such as IDOT, enable the holder to use the real property for any highway purpose. These rights include both surface and subsurface rights. This would include the right to operate on the easement area; the right to construct improvements in, on, and under the easement area; the right to maintain the easement area and any improvements thereon; the right to access the easement area; the right to prevent third parties from interfering with the improvements or operations on the easement area; the right to control easement areas; and the right to repair the easement area. In this case, the Grant gave IDOT the rights, and IDOT used the rights, to gain access to, to operate, to construct and to control the embankment on Parcel No. 0393. Further, the Grant gave IDOT the rights to maintain and repair the embankment on Parcel No. 0393 and the right to prevent third parties from interfering with or removing the embankment on Parcel No. 0393. IDOT still holds these rights as the embankment on Parcel No. 0393 continues to be operated by IDOT.

3. The duties imposed upon a permanent easement holder for “highway purposes”, such as IDOT, require the holder to maintain and repair the real property and not to damage the real property or cause diminution in value of the real property, including any improvements

thereon; to prevent waste; and to maintain public safety. These duties include the maintenance, repair, and obligation not to damage or cause diminution of value in both the surface and the subsurface of the property. *See Elmhurst National Bank vs. City of Chicago*, 157 N.E.2d 781 (1959). In this case, under the Grant, IDOT had the duties to maintain and repair Parcel No. 0393, including the embankment IDOT elected to construct thereon; not to damage or cause diminution in the value of Parcel No. 0393; to prevent waste on Parcel No. 0393; and to maintain public safety on Parcel No. 0393. Under Illinois easement law, IDOT cannot delegate these duties to a third party without the consent of the easement grantor and without an express assumption of the duties by a delegatee. In this case, there is no indication that ComEd has consented to the delegation of these duties to any third party, nor is there any indication that any third party or delegatee, including the City of Waukegan, has expressly assumed these duties. Therefore, IDOT still owes and is subject to these duties.

B. IDOT Has Recently Exercised its Rights and Duties as to Parcel No. 0393.

In or around 2010-2012, long after IDOT's construction work on the Amstutz Project concluded, IDOT contemplated doing a bridge conditioning project on the structure carrying Greenwood Avenue over the Amstutz Expressway. As part of that project, IDOT needed to initiate environmental studies and conduct certain activities in relation to wetlands, cultural resources, and biological resources in the surrounding area, including over Parcel No. 0393. In fact, according to Mr. Baczek, IDOT's Rule 206 designee regarding this project, field surveys were or may have been conducted on Parcel No. 0393; IDOT staff would have field checked and assessed the existing conditions on Parcel No. 0393; and IDOT would have conducted or initiated the environmental survey request process, including biological wetland and special waste assessment analysis. According to the record, on June 16, 2011, various soil samples were

taken for IDOT on Parcel No. 0393 incident to a wetlands study for this proposed project. For instance, IDOT 008302 notes that the sample was taken “on roadside embankment.” The map at IDOT 008331 in the project report shows that this soil boring, as well as many others, was taken on Parcel No. 0393 on that day. According to Mr. Baczek, no additional rights of way needed to be acquired for IDOT to access Parcel No. 0393. Rather, IDOT was able to, and did, access Parcel No. 0393 for this work because of rights afforded IDOT in the Grant.

C. IDOT Has the Ability to Operate and Control Areas on Parcel No. 0393, including the Embankment on Parcel No. 0393.

IDOT used the Grant to build the embankment of Parcel No. 0393 for highway purposes. The embankment on Parcel No. 0393 is still being used for highway purposes. IDOT admits that neither ComEd nor the City of Waukegan has the right to remove or modify the embankment on Parcel No. 0393. IDOT therefore is continuing to operate and maintains control over the entire embankment, including the surface and subsurface, on Parcel No. 0393. Parcel No. 0393 is depicted in numerous IDOT documents as “EX ROW,” or existing right of way, which is the equivalent of a permanent easement. There is no evidence that any other third party, including the City of Waukegan, has been given an interest in, operated, accessed, controlled or attempted to control any part of Parcel No. 0393. Under the Grant, IDOT has, at all times, had the ability to remove the ACM that it placed inside the embankment. Furthermore, to the extent the ACM can potentially diminish the value of the property owned by ComEd or poses a risk to public safety, IDOT has the duty to remove the ACM from the embankment on Parcel No. 0393.

D. I Disagree with Mr. Keith Stoddard’s Opinions Contained in Sections C, D, and E of his Rule 213 Disclosure, Many of Which are Irrelevant.

1. I disagree with Sections C and E of Mr. Stoddard's Rule 213 Disclosure. Mr. Stoddard relies upon a 1965/1966 City of Waukegan Resolution (the "Resolution") and a 1991 Jurisdiction Transfer to support his opinion that the City of Waukegan has jurisdiction over Greenwood Avenue and Sand Street. In his deposition, he extends this opinion to Parcel No. 0393. That Resolution, however, makes no mention of "jurisdiction" and the 1991 Jurisdiction Transfer does not concern the intersection of Greenwood Avenue and Sand Street at issue in this case. Therefore, these documents have no legal effect on jurisdiction.

2. I disagree with Mr. Stoddard's reliance upon and interpretation of the 1991 Jurisdiction Transfer. Mr. Stoddard has failed to point to any evidence in the record that Greenwood Avenue and Sands Street, currently or in the past, are or have been under the City of Waukegan's jurisdiction. Though the 1991 Jurisdiction Transfer covers a different part of Greenwood Avenue and though the project that led to that Jurisdictional Transfer did not involve the section of Greenwood Avenue abutting Parcel No. 0393 (or Sand Street), Mr. Stoddard suggests that the 1991 Jurisdiction Transfer, by implication, proves the City of Waukegan has jurisdiction over the section of Greenwood Avenue abutting Parcel No. 0393 as well as Sand Street. However, Mr. Stoddard admits, "Greenwood and Sands east of the railroad was not included in the jurisdictional transfer." (Draft Stoddard Dep. 105.) Therefore, the 1991 Jurisdiction Transfer is irrelevant to the question of who has jurisdiction over the portion of Greenwood Avenue east of the railroad. This is particularly so where Mr. Stoddard has no idea what entity initially had jurisdiction over the relevant portion of Greenwood Avenue or Sand Street and cannot point to any agreements transferring jurisdiction over these streets. IDOT does not seem to contend that jurisdiction over the relevant portions of Greenwood Avenue and Sand Street were ever transferred, but appears to argue that the City of Waukegan always had

jurisdiction over these streets. However, Mr. Stoddard could not provide any documentation that the City of Waukegan had jurisdiction over the intersection of Greenwood Avenue and Sands Street or Parcel No. 0393 in the 1970s, 1980s or today. Mr. Stoddard further concedes that he does not understand the meaning of “jurisdiction” as it was used, if at all, in the 1970s, or when IDOT began to use “jurisdiction” as a concept. He admitted that his opinion regarding jurisdiction is based upon conversations with another IDOT employee, “who has a better understanding of jurisdictional issues than I do.” (Draft Stoddard Dep. 116.)

3. According to IDOT and IDOT’s own Highway Jurisdiction Guidelines, property rights are distinct from jurisdiction. Even if City of Waukegan had jurisdiction over Parcel No. 0393, which it does not, the law of easements would control and IDOT would still owe the duties under the common law and the Grant set forth above. As noted above, in order for IDOT to have delegated these duties, ComEd would have had to consent and the City of Waukegan would have had to expressly assume them. There is no evidence that this ever occurred.

4. I disagree with Section D of Mr. Stoddard’s Rule 213 Disclosure. Mr. Stoddard relies upon the Resolution to support his opinion that IDOT was no longer responsible for maintaining Greenwood Avenue and Sand Street after IDOT’s construction work on the Amstutz Project concluded. His opinion is refuted by the fact that, though work on the Amstutz Project was completed in 1976, IDOT re-recorded the Grant in 1984 and in 2011 and 2012, IDOT undertook certain environmental studies referenced in Section B above.

5. Mr. Stoddard relies solely upon paragraph I.A.6 of the Resolution to support his opinion that IDOT was not responsible for maintaining the Grant. This paragraph only states “[t]he CITY will maintain the improvement along Greenwood Avenue in its entirety as indicated on the attached exhibit. This will include the wearing surface of the grade separation structure

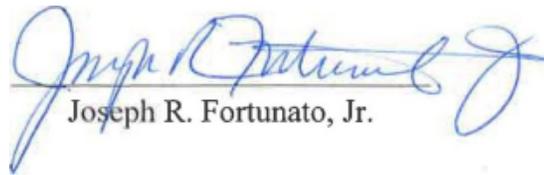
over the expressway (excluding the structure proper), the railway structure (including the wearing surface) and that portion of Sand Street which is reconstructed.” This paragraph says nothing about rights-of-way, and the exhibit referenced in this paragraph identifies only the surface of the land encompassed by the two named streets. It does not identify abutting land, including Parcel No. 0393. Thus, the Resolution itself has no legal effect on Parcel No. 0393. Nevertheless, even if this paragraph related to Parcel No. 0393, which it does not, this paragraph, at most, pertains to maintenance responsibilities. Control/operation and maintenance are not the same.

6. Further, the Resolution also envisioned the acquisition of rights-of-way east of the railroad by the City of Waukegan. This did not occur. In actuality, the State, instead of the City of Waukegan, acquired these rights-of-way, including Parcel No. 0393. In order for the City of Waukegan to have performed maintenance on Parcel No. 0393, either ComEd or IDOT would have had to grant the City of Waukegan access rights. Yet, IDOT admits that it has seen no agreements between the City of Waukegan and ComEd or between the City of Waukegan and IDOT granting the City of Waukegan access to Parcel No. 0393 for any purposes, including to maintain improvements. Further, there is no evidence that the City of Waukegan has ever performed or attempted to perform maintenance on Parcel No. 0393.

7. Even if the Resolution had delegated maintenance duties over Parcel No. 0393 to the City of Waukegan, which it did not, the law of easements would control and IDOT would still owe the duties under the common law and the Grant set forth above. As noted above, in order for IDOT to have delegated these duties, ComEd would have had to consent and the City of Waukegan would have had to expressly assume them. There is no evidence that this ever occurred. As such, the duties remain with IDOT. Even under the current Illinois Highway Code,

if IDOT has statutory maintenance duties (which are distinct from common law property duties), it can enter into written contracts with any municipal corporation to perform those statutory duties, but still under IDOT's supervision and at the expense of the State. *See* 605 ILCS 5/4-406. Based upon this language, IDOT would remain ultimately liable for failing to discharge its statutory maintenance duties.

I reserve the right to supplement this opinion after review of additional information and reports that may be forthcoming.


Joseph R. Fortunato, Jr.

Dated: May 3, 2016

EXHIBIT 1

JOSEPH R. FORTUNATO, JR.
MOMKUS McCLUSKEY LLC
ATTORNEYS AT LAW

EDUCATION:

1973	J.D., The John Marshall Law School, Chicago, Illinois
1970	B.A., Northern Illinois University, DeKalb, Illinois

**ADMITTED
TO BAR:**

1973	Illinois
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**PROFESSIONAL
EXPERIENCE:**

8/31/2009 - present	Partner, MOMKUS MC CLUSKEY LLC Engaged in the general practice of law with an emphasis in real estate matters; head of the Real Estate Practice Group
6/30/2007 – 8/28/2009	Principal, FORTUNATO, KNOBBE, DAVENPORT & ARNOLD, LTD. Westmont, Illinois Engaged in the general practice of law with an emphasis in real estate matters
1/1/1987 – 6/30/2007	Principal, FORTUNATO, FARRELL, DAVENPORT & ARNOLD, LTD. Westmont, Illinois Engaged in the general practice of law with an emphasis in real estate matters
1983 - 1986	Partner, DAVENPORT & FORTUNATO, Westmont, Illinois - Engaged in the general practice of law
1973 - 1983	Sole practitioner, Melrose Park, Illinois Engaged in the general practice of law

ASSOCIATIONS:

1997-present	Illinois Real Estate Lawyers Association (IRELA) Director – 1998 to present Vice-President – 2001-2002 President – 2002 – 2004
1996-2007, 2009-2011, 2013- present	Member, Illinois State Bar Association Real Estate Law Section Council

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2008-present	Member, ISBA Standing Committee on Legislation
2005-2006	Chair, ISBA Real Estate Section Council
2000-2004	Member, ISBA Assembly (18 th Judicial Circuit)
1997-present	Member, ISBA subcommittee in Liaison with Illinois Association of Realtors®
1999-2003	Associate Editor, ISBA Real Property Newsletter
2009-2013	Column Contributor (Real Estate Law), ISBA Journal
1985 - present	Du Page County Bar Association <ul style="list-style-type: none">- Real Estate Law & Practice Committee- Committee Chairman 1988-1989, 1995-1996, Co-Chair, 1994-1995,Member Broker/Lawyer Liaison - 1989-present
2001 – present	Member, IRELA Liaison with Illinois Association of Mortgage Brokers
1989 - present	Registered title agent for title insurers, including Attorneys' Title Guaranty Fund, Inc., First American Title Insurance Company, Chicago Title Insurance Company, Greater Illinois Title Company and Fidelity National Title
1984-present	Justinian Society of Lawyers, Du Page County Chapter <ul style="list-style-type: none">- Secretary/Treasurer, 1985-1987- Vice-President, 1988-1989- President, 1989-1990

TEACHING EXPERIENCE:

1989 - 1995	Instructor for Century 21 of Northern Illinois Real Estate Licensing Course and Coldwell Banker School of Real Estate
1993 - 1996	Continuing Education Instructor -- Real Estate Licensing

1988-present Frequent speaker at seminars conducted by ISBA Law Ed Series (Case Law Update 2000 - present), Illinois Institute for Continuing Legal Education (2005-present), Du Page County Bar Association, Kane County Bar Association (2015), American Academy of Matrimonial Lawyers (2013) and Mainstreet Organization of Realtors®, f/k/a Realtor® Association of West/South Suburban Chicagoland (Realtor® Law Day 1996-present)

MISCELLANEOUS

1996-2001 Special Assistant States' Attorney/Negotiator for the County of Du Page Division of Transportation

2001 - present Outside Counsel to Mainstreet Organization of Realtors®, f/k/a Realtor® Association of West/South Suburban Chicagoland

1998-2000
2002-present Member, Ad Hoc committee to redraft the Multi-Board Residential Real Estate Contract (3.0, 4.0, 5.0 and 6.0 versions) approved by many suburban Bar Associations and Realtor® Associations

2000 Recipient – Outstanding Service Award from Realtor® Association of the Western Suburbs

2003, 2014 Recipient – Board of Directors Awards from the Du Page County Bar Association

2007-08, 2010 Served as expert witness for First American Title on issues related to their attorney-agent program

2008 Served as expert witness for the Attorney Registration & Disciplinary Commission in the Matter of Andrew Joseph Rukavina

2008 Recipient – ISBA Board of Governors' Award for Distinguished Service

2013 Served as expert witness for Chicago Title and Ticor Title on issues related to their attorney-agent program

A list of expert opinion cases is available upon request.

EXHIBIT 2

JOSEPH R. FORTUNATO, JR. – EXPERT TESTIMONY

A. EXPERT TESTIMONY AT TRIAL

1. In Re Andrew Joseph Rukavina: Matter before the Attorney Registration Disciplinary Commission of the Supreme Court of Illinois, No. 07 C 105801;
2. Protano vs. Becker, No.09 L 80, in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois (hired by Mulherin, Rehfeldt & Varchetto);
3. McGrath vs. Sorman, In the Circuit Court of Cook County, County Department, Law Division, No. 07 L 700 (hired by Attorney Nicholas Loizzi)
4. IRMO Adamczyk, In the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 2004 D 1418 - testimony in 2007 (hired by Attorney Neal W. Cerne)
5. Brannen vs. Seifert, In the Circuit Court of Cook County, County Department, Law Division, No. 10 L 9276 (hired by Mulherin, Rehfeldt & Varchetto)
6. Colella vs. Chicago Title Insurance Company; Chultum vs. Ticor Title Insurance Company (companion class actions) In the Circuit Court of Cook County, County Department, Chancery Division, 06 CH 9488 and 06 CH 9489 (testified on behalf of Chicago Title and Ticor Title; hired by Hahn, Loeser & Parks)
7. First 38 LLC, an Illinois Limited Liability Company, v. NM Project Company, LLC., Prism Real Estate Equities V, LLC, 664 N. Michigan LLC, Holly Geraci and Peter Geraci, Cook County Case No.: 14 CH 9942 (hired by P.F. Geraci)

B. EXPERT TESTIMONY AT DEPOSITION

1. In Re Andrew Joseph Rukavina: see A. 1 above (hired by the Administrator of the Attorney Registration and Disciplinary Commission for the State of Illinois);
2. Howland v. First American Title Insurance Company, in the Northern District of Illinois, Case No. 07-2628 (hired by Jones Day);
3. McGrath v. Sorman, see A. 3 above (hired by Attorney Nicholas Loizzi);
4. Grijalva v. Liebforth, In the Circuit Court of Cook County, County Department, Law Division, No. 09 L 01513 (hired by Attorney Steven D. Gerlter);
5. Kremer v. Sciblo, In the Circuit Court of Cook County, County Department, Law Division, No. 2006 L 2940 (hired by Mulherin, Rehfeldt and Varchetto);
6. Wandro v. Grimm, No. 08 L 205, In the Circuit Court for the 20th Judicial Circuit, St. Clair County, Illinois (hired by Ripplinger & Zimmer LLC);
7. Protano vs. Becker, see A. 2 above;
8. Brannen v. Seifert, see A. 5 above;
9. Illinois Real Estate Lawyers Association vs. One World Title Company, Case # 04 CH 232, In the Circuit Court for the Nineteenth Judicial Circuit (McHenry County) – deposed as representative attorney of association
10. Jones v. Traub, In the Circuit Court for the Eighteenth Judicial Circuit, 2011 L 353 (hired by Mulherin, Rehfeldt and Varchetto)

11. Hightower v. Delman, In the Circuit Court of Cook County, County Department, Law Division, No. 2009 L 15232 (hired by Cassidy Schade)
12. Colella vs. Chicago Title Insurance Company; Chultum vs. Ticor Title Insurance Company (see A. 6 above).
13. Gondeck, et al. vs. Chicago Title Insurance Company, et al., in the Northern District of Illinois, Case #11-cv-6341, (testified on behalf of Chicago Title and Ticor Title; hired by Hahn, Loeser & Parks)
14. First 38 LLC, an Illinois Limited Liability Company, v. NM Project Company, LLC., Prism Real Estate Equities V, LLC, 664 N. Michigan LLC, Holly Geraci and Peter Geraci, Cook County Case No.: 14 CH 9942 (hired by P.F. Geraci)

C. EXPERT OPINION PROVIDED - NO TESTIMONY

Woodstock Development Company, LLC v. Cunat, et al., No. 07 CH 581, In the Circuit Court for the 22nd Judicial Circuit (McHenry County, Illinois) (hired by Mason Wilson Elser & Moskowitz) – case settled prior to deposition.

Babolea vs. A-Plus Pest Control, 2009 L 12729, in the Cicuti Court of Cook County, County Department, Law Division (hired by Knell and O'Connor) – case settled prior to deposition.

EXHIBIT 3

Materials Relied Upon

1. JM's Second Amended Complaint
2. Grant for Public Highway 1971
3. Grant for Public Highway 1974
4. Grant for Public Highway 1984
5. 1965 Resolution
6. 1966 Resolution
7. 1991 Jurisdiction Transfer
8. Rule 213(f)(3) Disclosure of Keith Stoddard and Exhibits
9. Expert Report of Douglas J. Dorgan, Jr. and Exhibits
10. Expert Rebuttal Report of Douglas J. Dorgan, Jr. and Exhibits
11. IDOT Highway Jurisdictional Guidelines
12. IDOT's Responses to Complainant's First Requests for Admission, Second Requests for Production, and Third Set of Interrogatories, IDOT's Revised Responses to Complainant's Third Set of Interrogatories
13. Title Commitment obtained by Complainant
14. Title Commitment obtained by IDOT
15. Topographic Survey (JM 7092-7093)
16. Project Report Illinois Route 137 (Greenwood Avenue) over Illinois Route 137 (Amstutz Expressway) (IDOT 008186-008495)

17. Deposition Transcript of John Baczek and Exhibits
18. Deposition Transcript of Pam Broviak and Exhibits
19. Draft Deposition Transcript of James Stumpner and Exhibits
20. Draft Deposition Transcript of Keith Stoddard and Exhibits
21. Case law
22. Illinois Highway Code, 605 ILCS 5 *et seq.*