

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION**

**KIMBERLEY D. BRANTLEY, Administratrix  
of the Estate of Benjamin Brantley, Deceased**

**PLAINTIFF**

**v.**

**No. 3:16-cv-352-DPM**

**UPS GROUND FREIGHT, INC.;**  
**OPTIMUM STAFFING, INC., d/b/a**  
**Optimum Logistic Solutions; and**  
**ROBERT L. WOODALL**

**DEFENDANTS**

**ORDER**

1. The Court much appreciates Brantley's clarification of Barry Grant's treatment of income taxes in his calculations, and Optimum's response. *No. 361 & 362*. It's best to ventilate this issue now. Grant did not use after-tax dollars in his calculations of Benjamin Brantley's lost wages, lost rental income, or the sale of the family business. He accounted for income taxes in the discount rate he used to determine the present value of future damages, but not in figuring the underlying amount of those damages. As the Court stated at the 28 June 2019 hearing, and explained in its Order on similar issues in the *Herron* case, *No. 358* (attachment), Arkansas law requires a calculation of lost income based on after-tax dollars. And the Court is not inclined to allow Grant to do a third set of calculations this close to our first-out trial setting. That step would prejudice UPS, Optimum, and Woodall. Grant's

testimony on the loss of financial contributions is therefore excluded. Grant may testify on other topics not dependent on numbers affected by income taxes.

2. The Court has viewed the animation videos produced by Jackson Reconstruction. They're well done. But, after reconsideration, the Court confirms its bench ruling excluding them. The conditions shown in the animations aren't substantially similar to the conditions at the time of the accident; there's no cloud of dust; and Brantley's case is all about that extraordinary condition. These animations risk misleading the jury into deciding the case partly based on what a reasonable driver could and would have done with unobstructed vision. *McKnight v. Johnson Controls, Inc.*, 36 F.3d 1396, 1401-02 (8th Cir. 1994); *see also Swift Transportation Co. of Arizona, LLC v. Angulo*, 716 F.3d 1127, 1138 (8th Cir. 2013) (applying Arkansas law).

So Ordered.

W.P. Marshall Jr.  
D.P. Marshall Jr.  
United States District Judge

30 July 2019