COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: April 6, 2010
Date Decided: June 18, 2010

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Re: *Javier Quereguan, et al. v. New Castle County, et al.*,
Civil Action No. 20298-VCP

Dear Litigants and Counsel:

This action, brought by a self-represented family for damages and injunctive relief based on actions allegedly taken by New Castle County and the State of Delaware that purportedly resulted in excess water coming onto Plaintiffs' residential property, is before the Court on a preliminary motion regarding exceptions Plaintiffs assert as to a final report issued by Master Glasscock in 2009 on the dispositive issue of causation (the "2009 Report"). On or about March 8, 2010, well after the time for filing an exception to the Master's 2009 Report had expired, Plaintiffs filed a document alleging that the Report

contained certain mistakes and other deficiencies. In addition, Plaintiffs submitted various exhibits for the Court's consideration in connection with their exceptions.

The matter is currently before me on the State of Delaware's (the "State") motion to strike and New Castle County's (the "County") motion to disallow the materials Plaintiffs submitted on March 8.[1] For the reasons stated in this Letter Opinion, I grant in part and deny in part the Defendants' motions.

I. BACKGROUND

A. The Parties

Plaintiffs are Javier Quereguan, his wife, Aurea E. Quereguan, and their daughter, Joanne Quereguan. They own a home in Wilmington, Delaware, which is the focus of much of this action.

Defendants are the State and the County. The State allegedly owns an adjoining property, which it leases to the County for use in operating a community center on the site. Plaintiffs allege that Defendants have caused a condition which has resulted in excessive amounts of water flowing from Defendants' property onto Plaintiffs' property. Plaintiffs further allege that Defendants' conduct has caused both property damage and medical problems for Aurea and Joanne Quereguan.[2]

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[1] Together, the State and County are referred to as "Defendants." As discussed *infra* note 9, I will address all of Defendants' objections to Plaintiffs' Submission in the course of my analysis of the State's motion to strike.

[2] In Plaintiffs' filings with this Court, it is often difficult to divine whether Plaintiffs make these allegations against the County, the State, or both.

B. Plaintiffs' Filings

On March 8, 2010, the Quereguans filed a document entitled, "Plaintiff Javier Quereguan and Aurea E. Quereguan Respond to the Answer of the State of Delaware and the County on Our Motion and Opening Brief for Summary Judgment on Permanent Injunction and Exceptions to the Draft of the Master" (the "Plaintiffs' Submission").[3] A key question presently before me is whether Plaintiffs filed a timely exception to the Master's 2009 Report. Plaintiffs' Submission is the only possible, substantive embodiment of such an exception.[4] By its terms, however, Plaintiffs' Submission appears to respond to (1) arguments made against their Motion and Opening Brief for Summary Judgment on Permanent Injunction filed on September 17, 2009 (before the 2009 Report) and (2) certain matters related to the Quereguans' Motion and Opening Brief for Summary Judgment on the Issue of Health and on the Permanent Injunction filed July 17, 2009. Because both of these sets of arguments pertain to proceedings before the Master, I begin by briefly reviewing the major aspects of those proceedings.

C. Proceedings Before the Master

By order dated December 18, 2007, I referred all issues regarding the natural flow of water in and around Plaintiffs' property, liability, and any related claim for injunctive

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[3] Docket Item ("D.I.") 267.

[4] Plaintiffs did file a two-page letter with the Court on December 21, 2009 seeking reargument. D.I. 260. This filing failed, however, to provide any details or notice of the grounds for any exception to the 2009 Report.

relief to Master Glasscock. The Master first entertained a motion by the County for summary judgment in its favor on Plaintiffs' claims for damages based on personal injuries allegedly suffered as a result of Defendants' conduct or omissions. The Master granted the County's motion because Plaintiffs failed to identify an expert or provide any expert opinion relating to the cause of the physical conditions of which they complained. Plaintiffs filed timely exceptions to that ruling and the parties briefed those exceptions. Thereafter, I stayed further proceedings related to Plaintiffs' personal injury claims until after the potentially dispositive issue of causation had been tried and resolved by the Master. A trial on the causation issue was held before Master Glasscock on May 5 and 6, 2008. After receiving post-trial briefing on that issue, the Master first issued a draft report, to which Plaintiffs took certain exceptions, and then the 2009 Report on October 8, 2009.

The Master also advised Plaintiffs in writing on October 8 that any exceptions to the Report would have to be filed in this Court by October 18, 2009. Nevertheless, Plaintiffs did not file any further papers until December 21, 2009, when Plaintiffs requested reargument and reconsideration by this Court as to liability for the alleged water trespass.[5] On March 4, 2010, I ordered Plaintiffs to submit any additional evidence with which they sought to supplement the record by March 8, 2010. I also directed Defendants to file any procedural objections they had to Plaintiffs' Submission, including

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[5] D.I. 260.

any challenge to it as untimely, by March 15. Consistent with that Order, the Quereguans filed Plaintiffs' Submission on March 8.

The July 17, 2009 motion referred to in the title of Plaintiffs' Submission contains arguments the Quereguans made in support of exceptions they took to a final report made by Master Glasscock on April 22, 2008 (the "2008 Report") that granted the County's motion for summary judgment as to the Quereguans' personal injury claims.[6] Plaintiffs' Submission contains arguments regarding their exceptions generally and, thus, deals with two distinct reports of the Master: the 2008 Report on the personal injury claims and the 2009 Report on the issues of liability and causation.

Plaintiffs' Submission consists of a document in the form of a brief or memorandum to which a number of exhibits are appended (the "Exhibits"). Many of the Exhibits are duplicative of documents in the record; others are new. The duplicative documents submitted by the Quereguans include prior opinions, case law, motions, transcripts, depositions, letters, and photographs that were presented, or, at least, available to the Master. The new Exhibits include additional pictures and video, a 1999 audio recording of an interview with Mr. Quereguan, a deposition of Debra Lawhead, a medical diagnosis for Joanne Quereguan, certain prescription drug information, and a letter by the County to the Quereguans dated January 30, 2008 regarding a discovery issue.

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[6] D.I. 247.

II. DEFENDANTS' OBJECTIONS TO PLAINTIFFS' SUBMISSION

On March 11, 2010, the County filed a motion to disallow consideration of the Plaintiffs' Submission.[7] The County urges the Court to disregard Plaintiffs' Submission and the Exhibits because they are untimely, immaterial, redundant, and not represented to be newly discovered or not available to Plaintiffs at the trial before the Master.

On March 16, 2010, the State moved to strike the Plaintiffs' Submission pursuant to Court of Chancery Rule 12(f) as being "redundant, immaterial, impertinent, and scandalous."[8] Specifically, the State argues that Plaintiffs' Submission is untimely, impertinent, inconsistent with the Court's scheduling order dated July 30, 2009, redundant of evidence in the record, and contains scandalous material. The State also asks the Court to examine and exclude the Exhibits under the Rule 60(b) standard for newly discovered evidence and to exclude the medical diagnosis and medication-related Exhibits under Rules 402 and 403 of the Delaware Rules of Evidence as irrelevant and unduly prejudicial.[9]

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7 D.I. 269.

8 D.I. 272.

9 Although the grounds for the State's motion to strike and the County's motion to disallow consideration of Plaintiffs' Submission may differ superficially, they overlap significantly on all relevant points. Thus, all of Defendants' objections to Plaintiffs' Submission properly may be handled in the discussion of the State's motion to strike and I have proceeded in that way.

A. Untimeliness

Before discussing the substance of Defendants' motion to strike Plaintiffs' Submission, I review their argument that the exceptions in that Submission to the 2008 and 2009 Reports were untimely filed. To that end, I begin by briefly addressing the pertinent procedural posture of this case.

Under Rule 144, when making their report, Masters in Chancery first provide a draft version of the report to the parties.[10] The parties have one week to take exception to the draft report and, if they fail to take exception, they waive their right to do so. The Master then accepts memoranda on those exceptions and makes a final report, changing whatever portions of the draft he feels appropriate. Following the Master's filing of the final report, the parties again have a week to file exceptions. This time, however, the permissible exceptions are limited to those that were filed to the draft plus any exceptions to portions of the final report that were not in the draft report.

Whether or not a party files an exception, the Master submits his final report to the presiding Chancellor or Vice Chancellor for review. The Court reviews *de novo* the legal and factual findings of the Master.[11] Where the final report is based upon testimony taken on the record before the Master, proceedings on any exception to that report are on

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[10] Ct. Ch. R. 144.

[11] *Serv. Corp. of Westover Hills v. Guzzetta*, 2009 WL 5214876, at *1 (Del. Ch. Dec. 22, 2009) ("The standard of review for a Master's findings of fact is *de novo* where exceptions are taken pursuant to Court of Chancery Rule 144.").

that record, unless for good cause shown the Court elects to take additional testimony.[12] "[A] new trial [typically] is not necessary if this Court 'can read the relevant portion of the factual record and draw its own conclusions.'"[13]

Defendants object to the Court's consideration of Plaintiffs' Submission because it was untimely filed. Master Glasscock issued his 2009 Report in final form on the causation issue, among others, on October 8, 2009. In a cover letter attached to the 2009 Report, he advised the parties to submit any exceptions by October 18. No exceptions were filed by that date. Indeed, it was not until December 21, 2009 that Plaintiffs filed any documentation with this Court.[14] During a status conference with both parties on February 26, 2010, however, I allowed Plaintiffs to supplement the record with a proffer of any additional evidence they sought to introduce and issued an order to that effect on March 4. Plaintiffs delivered their Submission to the Court on or about March 8. Because parts of that Submission relate to exceptions to the 2009 Report and others relate

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12 Ct. Ch. R. 144(a)(2). Rule 144(a)(2) further provides in pertinent part: "If no exceptions are filed to the final report, the Court may in its discretion thereafter confirm such report as described in Part 2 of this Rule or set the matter down for further proceedings. If exceptions to the final report are filed, the Court may make such order as it deems appropriate. In either instance, upon the confirmation of a final report, the Court shall make such order thereon as it deems appropriate."

13 *Guzzetta*, 2009 WL 5214876, at *1.

14 D.I. 260.

to alleged personal injury claims that were the subject of the 2008 Report, I analyze the timeliness of the Plaintiffs' Submission as to each of those reports separately.[15]

The Quereguans' sole argument in support of their plea for this Court to accept their Plaintiffs' Submission, despite it being filed well after the October 18 deadline set by the Master, is that Mr. Quereguan could not file these documents due to health problems he experienced as a result of stress related to this action. This Court, of course, is sensitive to a litigant's health concerns and takes them seriously. Nevertheless, the Quereguans failed to avail themselves of procedural mechanisms this Court extends to all litigants in such circumstances, such as filing a timely request for extension of the deadline. By filing the portion of Plaintiffs' Submission regarding the 2009 Report long after the time they were allotted, the Quereguans placed additional burdens upon their adversaries.

Although they are self-represented, Plaintiffs have been reminded on numerous occasions during the course of the tortuous history of this case of the importance of meeting deadlines. Thus, the reasons given by Plaintiffs to excuse their delay are not very compelling and this Court reasonably could exercise its discretion as suggested by Defendants and exclude all portions of Plaintiff's Submission relating to the 2009 Report

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[15] Throughout this case, Plaintiffs have submitted briefs with titles that make it unclear as to which motion or action the brief applies. Because many of the arguments within the briefs fail to correspond to the title, I generally consider the subject matter of the briefs controlling, as in this case.

as untimely. Based on the totality of the surrounding circumstances, however, I decline to do so in this case. While I do not condone Plaintiffs' delays in filing exceptions to the 2009 Report, I have reviewed Plaintiffs' Submission and find that none of the arguments and allegations within it appear likely to raise new issues that have not been explored adequately in the extensive record created before the Master. Therefore, I do not see any material prejudice to Defendants from considering Plaintiffs' Submission and decline to exclude Plaintiffs' exceptions to the 2009 Report as untimely.

As for the portions of Plaintiffs' Submission dealing with the Quereguans' personal injury claims, I find that any exceptions to the 2008 Report were timely filed. In a letter dated May 1, 2008, I stayed further briefing on potential exceptions to the 2008 Report regarding the Quereguans' personal injury claims pending resolution of the liability and injunctive relief issues ultimately addressed in the 2009 Report. Based on the complicated procedural history of this case and the fact that Plaintiffs are representing themselves, I do not consider their March 8 Submission untimely to the extent it relates to their personal injury claims. Further, Plaintiffs' personal injury claims may be rendered moot if the Court, after its *de novo* review, confirms the Master's recommendations. For these reasons, I deny Defendants' request to strike this aspect of Plaintiffs' Submission. If I determine that any material in Plaintiffs' Submission pertaining to the 2008 Report, including the proffered Exhibits regarding alleged personal injuries, is new and material to resolution of this matter, I will notify Defendants and give them an opportunity to respond.

B. Motion to Strike

Defendants also argue that Plaintiffs' Submission should be stricken or excluded because it contains redundant, impertinent, and scandalous material that is immaterial to the issues before this Court. For the reasons addressed below, I hold that, in most cases, Defendants have not met the high standard of showing that the Plaintiffs' Submission "can have no possible bearing upon the subject matter of the litigation."[16]

Pursuant to Rule 12(f), "the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."[17] Motions to strike are not favored,[18] and "the granting of such a motion is permissive, not mandatory";[19] thus, such motions "are granted sparingly and only when clearly warranted with all doubt being resolved in the nonmoving party's favor."[20] "The test employed in

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16 *Topps Chewing Gum, Inc. v. Fleer Corp.*, 1986 WL 538, at *1 (Del. Ch. Dec. 12, 1986).

17 Ct. Ch. R. 12(f).

18 *Salem Church (Del.) Assocs. v. New Castle Cty.*, 2004 WL 1087341, at *2 (Del. Ch. May 6, 2004); *Topps Chewing Gum*, 1986 WL 538, at *1.

19 *Topps Chewing Gum*, 1986 WL 538, at *1.

20 *Salem Church*, 2004 WL 1087341, at *2 (citing *Shaffer v. Davis*, 1990 WL 81892, at *4 (Del. Super. June 12, 1990)).

determining a motion to strike is: (1) whether the challenged averments are relevant to an issue in the case and (2) whether they are unduly prejudicial."[21]

In addressing the merits of Defendants' motion to strike, it is helpful to consider the meaning of the terms immaterial, impertinent, and scandalous as used in rule 12(f). A matter is immaterial if it "has no essential or important relationship to the claim for relief or the defenses being pleaded, or a statement of unnecessary particulars in connection with and descriptive of that which is material."[22] A matter is impertinent if it contains "statements that do not pertain, and are not necessary, to the issues in question."[23] A matter is scandalous if it "improperly casts a derogatory light on someone, most typically on a party to the action."[24]

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[21] *Id.* The degree of relevance that is necessary to overcome a motion to strike is low. As previously detailed by the Court,

> [a] matter will not be stricken from a pleading unless it is clear that it can have no possible bearing upon the subject matter of the litigation. If there is any doubt as to whether under any contingency the matter may raise an issue, the motion [to strike] should be denied.

Topps Chewing Gum, 1986 WL 538, at *1 (quoting 2A MOORE'S FEDERAL PRACTICE § 12.21[2] (2d ed. 1985)).

[22] *Salem Church*, 2004 WL 1087341, at *2.

[23] *Id.*

[24] *Id.*

1. Impertinent

In this case, Defendants' argue that Plaintiffs' decision to file their Submission more than twenty weeks after the deadline set by the Court is impertinent, "particularly when that filing relates back to issues raised at trial some twenty-two months prior to the filing."[25] Because Defendants do not challenge any specific statements as being impertinent, however, I find that they failed to meet their burden of demonstrating that a portion of Plaintiffs' Submission should be stricken on that basis.[26]

Although it sometimes rambles, Plaintiffs' Submission contains factual allegations attacking the key findings in the 2009 Report regarding causation. Furthermore, Plaintiffs' Submission includes arguments regarding sovereign immunity, liability of the County and State, credibility of witnesses, Plaintiffs' alleged personal injuries, and the fairness of the hearing before the Master. While many of the arguments are duplicative of arguments previously proffered by the Quereguans, they still have a "possible bearing upon the subject matter of the litigation." Therefore, they are not impertinent for purposes of a Rule 12(f) motion to strike.

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[25] D.I. 272.

[26] Indeed, while such arguments may reinforce Defendants' argument that Plaintiffs' Submission was untimely filed, they do not support a motion to strike based on impertinence, which refers to "statements that do not pertain, and are not necessary, to the issues in question." *Salem Church*, 2004 WL 1087341, at *2.

2. Redundant

Defendants also urge the Court to exclude the Exhibits as redundant of evidence already available in the record. Because I deal with objections to each of the proferred Exhibits in Part II.B.4 below, I need not address that argument here.

3. Scandalous

Defendants next seek to have the Court strike certain material in Plaintiffs' Submission they consider to be "scandalous." Specifically, Defendants point to language that accuses both the State and County of "turning away the eyes" of the courts from "seeing the lease between the State and the County. . . ."[27] Plaintiffs further accuse Defendants of "misinform[ing] the Court in the beginning" concerning their knowledge of the retaining wall's disrepair.[28] Finally, Plaintiffs' Submission alleges that the State's expert, Terrance Haskins, perjured himself when testifying about his knowledge of how to fix cracks in the retaining wall.[29] The State's objection to these harsh allegations as scandalous is understandable, but Plaintiffs' averments arguably have some relevance to the issues addressed in the 2009 Report. Therefore, this case is distinguishable from cases where courts have stricken statements tending to show disreputable character as

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[27] Pls.' Subm'n 1.

[28] *Id*. at 3.

[29] *Id*. at 8. In support of these derogatory allegations, the Quereguans rely solely on evidence already in the record and known to the Master at the time of the 2009 Report.

unduly prejudicial because the legal question at issue was unrelated to a party's character.[30]

The purportedly scandalous allegations here conceivably could have some bearing on the litigation and, thus, meet the relatively low standard of relevance on a motion to strike. Additionally, I do not consider the statements so egregious that they would cause undue prejudice to any of the persons involved. Therefore I deny Defendants' motions to strike all or part of Plaintiffs' Submission for being scandalous.

4. Immaterial

Finally, Defendants argue that Plaintiffs' Submission should be excluded because it is "not material to the operative facts considered and decided by the Master." As to a number of the statements in Plaintiffs' Submission, I cannot say that they have "no essential or important relationship to the claim for relief" pled by the Plaintiffs.[31] Indeed, most of the information in the Plaintiffs' Submission likely can clear the low hurdle required to withstand a motion to strike. Because that information also poses no threat of material prejudice to Defendants, I see no basis to exclude the body of Plaintiffs' Submission as immaterial.

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30 *See Bd. of Educ. of Sussex Cty. Vocational-Technical Sch. Dist. v. Sussex Tech Educ. Ass'n*, 1998 WL 157373 (Del. Ch. Mar. 18, 1998) (allegations of sexual misconduct with students held unduly prejudicial and irrelevant in proceeding to determine whether an arbitrator properly could decide issue of lawful termination).

31 *Salem Church*, 2004 WL 1087341, at *2.

C. Objections to Exhibits Accompanying Plaintiffs' Submission

Hand in hand with their motion to strike the information contained in the body of Plaintiffs' Submission, Defendants seek to exclude all of the Exhibits attached to that Submission as being immaterial to the operative facts considered by the Master and for failing to meet the requirements for the admittance of newly discovered evidence under Court of Chancery Rule 60(b).

The procedural context here is similar to, but not the same as, a motion for a new trial. Under Court of Chancery Rule 144, this Court may, for good cause shown, elect to take additional testimony or receive additional evidence on any exception to a Master's final report.[32] Even in the absence of an exception, the Court as part of its *de novo* review can decide to set the matter down for further proceedings.[33] Where a party to proceedings before a Master proffers new evidence, however, I consider it helpful, in determining whether to accept that evidence, to examine the considerations discussed in *Missouri-Kansas Pipe Line Co.* regarding the admissibility of newly discovered evidence.[34]

In *Missouri-Kansas Pipe Line Co.*, the Supreme Court noted that a litigant is "required to make the fullest possible preparation of his case before trial" because of the

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32 Ct. Ch. R. 144(a)(1)

33 Ct. Ch. R. 144(a)(2)

34 2 A.2d 273 (Del. 1938).

"danger of perjury" and "manifest injustice in allowing a party to allege that which may be the consequence of his own neglect to defeat an adverse verdict."[35] The Court then listed several requirements that a party must demonstrate before being allowed to admit new evidence. The Court stated:

> The applicant is required to show that the newly discovered evidence has come to his knowledge since the trial; that it could not, in the exercise of reasonable diligence, have been discovered for use at the trial; that it is so material and relevant that it will probably change the result if a new trial is granted; that it is not merely cumulative or impeaching in character; and that it is reasonably possible that the evidence will be produced at trial.[36]

Whether a court grants a party's request to admit new evidence "is not . . . of right, but rests in the sound, reasonable and legal discretion of the court."[37]

When the Masters in Chancery try a matter under Rule 144, it is important that the parties proceed diligently on the assumption that the evidentiary record they create likely will be the record under which the Chancellor or Vice Chancellor assigned to that case will review each party's claims. With that proposition and the teaching of the *Missouri-Kansas Pipe Line Co.* case in mind, I next examine Defendants' arguments for excluding each of the Exhibits.

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35 2 A.2d 273, 277-78 (Del. 1938).

36 *Id.* at 278.

37 *Id.* at 277.

1. Exhibits A-H

Exhibit A to Plaintiffs' Submission consists of copies of four previous rulings I made in this case. Those letter opinions constitute part of the official docket. To the extent they are relevant to any issue that might arise in the course of my *de novo* review of the Master's Reports, I would not hesitate to consider them, whether or not they were part of Plaintiffs' Submission. Accordingly, the portion of the motion to strike directed to Exhibit A is denied.

In Exhibit B, the Quereguans submit four cases referred to in their Submission. They cite the cases on the issues of water trespass, sovereign immunity, and the standards for motions for reargument and summary judgment. Having concluded to accept Plaintiffs' Submission for the most part, I also will consider these cases to the extent they are relevant. These cases may have been mentioned in the proceedings before the Master and addressed in that context by Defendants. In any event, if Defendants wish to submit something further regarding these cases, they must do so within ten days of the date of this Letter Opinion.

Exhibit C consists of three motions filed in this action in 2008, while the matter was before Master Glasscock. If these motions are relevant to the Court's *de novo* review of the Master's 2008 and 2009 Reports, they will be reviewed, whether or not Plaintiffs have taken any exceptions. Therefore, Defendants will not be prejudiced by the Court's consideration of these materials and the motion to strike as to them is denied.

Exhibit D consists of excerpts from a transcript of a scheduling conference before Vice Chancellor Strine, excerpts of trial testimony, and a deposition. The excerpts from the scheduling conference relate to the unsuccessful attempt to mediate this matter. As these excerpts relate to settlement discussions and mediation in general, they are not admissible for purposes of this court's review of the Master's Reports and, therefore, will be stricken.[38] The excerpts from the trial testimony concern the testimony of an expert witness, Lucjan Zlotnicki, on May 6, 2009. Because the trial transcript will be reviewed by this Court *de novo*, there is no need to strike this evidence. Finally, the Lawhead deposition in Exhibit D was taken on April 9, 2008 in connection with the proceedings before the Master. I see no prejudice to Defendants from allowing this document to be considered part of the record for review and, therefore, deny the motion to strike as to it.

Exhibit E consists of an affidavit of Zlotnicki dated June 9, 2005. To the extent it was used or referred to in the proceedings before the Master, I deny the motion to strike. If the affidavit was not used or referred to in the proceedings before the Master, I will exclude it as hearsay and untimely.

Exhibit F consists of medical records of Joanne Quereguan dated November 7, 2009, and certain prescription drug information relating to one or more of the Plaintiffs. If this Court confirms the 2009 Report regarding causation and liability, these documents will be irrelevant. If the Court decides not to confirm the 2009 Report, it will review *de*

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[38] *See* Ct. Ch. R. 174; D.R.E. 408.

novo the 2008 Report regarding the alleged personal injuries. In that regard, Exhibit F of Plaintiffs' Submission may be relevant. Therefore, I will deny Defendants' motion to strike as to Exhibit F, but will defer any consideration of that exhibit until after my review of the 2009 Report.[39]

Exhibit H[40] includes a letter to Javier Quereguan from the County's attorney dated January 30, 2008 discussing a discovery issue. Fifteen photographs dated on or about December 12, 2009 that appear to relate to the claimed water problems on the Quereguan property are attached to this letter. The Plaintiffs' Submission alleges that the January 30, 2008 discovery letter shows that the County withheld evidence during discovery. To the extent the information in the letter is already part of the record created during the proceedings before the Master, this Court will include it in the course of my *de novo* review and deny the motion to strike it. If not, I will exclude the letter as irrelevant.

The photographs appear to relate to the claimed water problems on Plaintiffs' property and may be relevant to the causation issues addressed in the 2009 Report. Those photographs, however, were created after the completion of the trial and post-trial proceedings before the Master. In that sense, they are untimely. In addition, the photographs are merely cumulative of the evidence already presented by Plaintiffs

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[39] If Defendants consider it important to respond to Plaintiffs' Submission as it relates to Exhibit F, they may do so within ten days.

[40] There is no Exhibit G to Plaintiffs' Submission.

regarding the nature and extent of the water problem on their property. Therefore, I will grant Defendants' motion to strike as to all the pictures in Exhibit H.

2. Additional exhibits

In addition, the Quereguans submitted two CDs with the Plaintiffs' Submission. The first CD contains a video purportedly taken on February 24, 2010, that shows water seeping through a crack that runs the height of the retaining wall. Because the condition shown in this video is consistent with the evidence before the Master, I consider it to be merely cumulative. Furthermore, the video is not linked to or supported by any expert testimony and, thus, is not likely to be so material as to alter the result of this Courts *de novo* review of the record before the Master. Based on these factors, which were identified in *Missouri-Kansas Pipe Line Co.* as relevant to the evaluation of new evidence,[41] I grant the motion to strike as to the video.

The second CD contains an interview conducted on May 14, 1999 in which Plaintiff Javier Quereguan answers questions regarding his property, the retaining wall, and his interactions with the County. If this interview was referred to in connection with the proceedings before the Master subject to this Court's review, it will be considered. In any event, however, I see no prejudice to Defendants from allowing this recording to be considered part of the record for review. Therefore, I deny the motion to strike as to the second CD.

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41 *Missouri-Kansas Pipe Line*, 2 A.2d at 278.

III. CONCLUSION

For the foregoing reasons and to the extent stated in the Letter Opinion, I grant in part and deny in part the State's motion to strike and the County's motion to disallow consideration of the Plaintiffs' Submission and its accompanying Exhibits. If Defendants wish to submit something further regarding the aspects of Plaintiffs' Submission that have not been stricken, they must do so within ten days of the date of this Letter Opinion.

IT IS SO ORDERED.

Sincerely,

/s/ Donald F. Parsons, Jr.

Vice Chancellor

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