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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Liberty Life Insurance Company,

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Plaintiff,

No. CV 10-2024-PHX-JAT

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v.

ORDER

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Eric LungMyers, et al.,

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Defendants.

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Pending before the Court is Defendants Joan L. Myers and the Estate of Donald Myers' Motion for Correction of Clerical Error Re Order. (Doc. 281). Defendants move the Court to correct an error in the order (Doc. 274) granting Plaintiff's motion to exclude purported expert opinions of Robert Comeau (the "motion to exclude").

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In the order, the Court stated in a footnote that Defendants failed to file a response to the motion to exclude. (*Id.* at 8 n. 1). However, Defendants contend that they did file a response to the motion to exclude referenced in the Court's docket as document 244. Under Federal Rule of Civil Procedure 60(a), "[t]he Court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice."

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The Court finds Defendants' request is valid. Defendants filed a response to Plaintiff's motion to exclude and the Court mistakenly stated that they did not file a response. The Court notes that in addition to filing the required responsive memoranda,

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1 Defendants' counsel opposed Plaintiff's motion to exclude at oral argument on February
2 4, 2013. Accordingly, as the Court explained in the order, the substantive arguments
3 made in Defendants' response (Doc. 244) are in fact the same arguments addressed in
4 Defendants Anne Myers, Erin Myers Stoloff and Kirsten Myers Ruggiano's response to
5 Plaintiff's motion to exclude (Doc. 243) and those addressed at oral argument by
6 Defendants' counsel. The error has no bearing on the analysis or outcome of the order
7 because the Court addressed the merits of Defendants' arguments in the order.

8 Based on the foregoing,

9 **IT IS ORDERED** that Defendant Joan L. Myers and the Estate of Donald Myers'
10 Motion for Correction of Clerical Error Re Order (Doc. 281) is granted; footnote 1 at page
11 8 of the Order granting Plaintiff's motion to exclude (Doc. 274) is deemed deleted.

12 Dated this 17th day of September, 2013.

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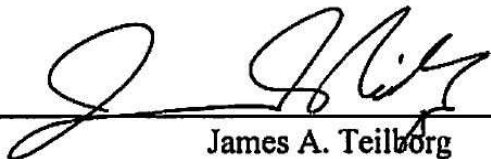
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James A. Teilborg
Senior United States District Judge