

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**SHAINA PARKS, Individually and
as Special Administrator of the Estate
of BILLY PARKS, SR.; CASSIE PARKS;
and BILLY PARKS, JR.**

PLAINTIFFS

v.

No. 5:10-cv-240-DPM

**UNITED STATES OF AMERICA;
and JOHN DOES 1-10**

DEFENDANTS

ORDER

For the reasons stated on the record during the 27 October 2011 pre-trial hearing, and as supplemented, the Court makes the following rulings:

- Plaintiffs' motion *in limine*, Document No. 58, is denied without prejudice—Mr. Parks's emergency room medical chart is admissible in its entirety, and Dr. Zawada, as a treating physician, can testify as to the standard of care in the VA Hospital;
- the United States' motion *in limine*, Document No. 56, is granted, as agreed; and

- the United States' motion *in limine* to exclude the testimony of Stan Smith, *Document No. 25*, is taken under advisement—the Court will reserve ruling on the admissibility of his testimony until trial. Because there will be no jury, the Court's gate-keeper duty is somewhat relaxed. *In re Zurn Pex Plumbing Products Liability Litigation*, 644 F.3d 604, 613 (8th Cir. 2011).

The Court also considered the various objections to deposition designations, and made the following rulings:

- the United States' objection to Dr. Simpson's testimony regarding the MRI and standard of care, *Document No. 50*, is sustained, with a caveat: Dr. Simpson may testify as a treating physician regarding the standard of care at Jefferson Regional Medical Center, but he should not stray into expert opinion testimony regarding the care provided at the VA Hospital or elsewhere;
- Plaintiffs' objection to Shaina Parks's deposition testimony, *Document No. 54*, is overruled without prejudice;
- Plaintiffs' objection to Dr. Simpson's deposition testimony, *Document No. 55*, is sustained, as agreed;

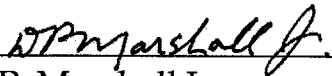
- Plaintiffs' objection to the counter-designation of Stan Smith's testimony, *Document No. 60*, is taken under advisement; and
- the United States' objection to the entirety of Stan Smith's testimony is taken under advisement, pursuant to the Court's ruling on the similar motion *in limine*.

Plaintiffs' oral motions to dismiss without prejudice all of the John Doe defendants, as well as Billy Parks, Jr. and Cassie Parks as named plaintiffs, are granted. In addition, Shaina Parks (Mr. Parks's daughter-in-law) has no individual claim either. Though this was not covered at the hearing, the Court dismisses her individual claims without prejudice too. If the Court has missed something here, the parties should raise it at the start of trial. The Clerk is directed to correct the docket so that only Shaina Parks, as special administrator of the estate of Billy Parks, Sr., and the United States remain as parties.

The Court finds that compelling circumstances exist to warrant taking Dr. Quintiliani's additional testimony by contemporaneous transmission from

Connecticut, FED. R. CIV. P. 43(a), and looks forward to an update from the parties on that matter. To accommodate the technology needed, trial will be held in Courtroom 2A beginning at 8:30 a.m. on 7 November 2011.

So Ordered.



D.P. Marshall Jr.
United States District Judge

31 October 2011