

1 there are genuine disputes as to numerous material facts (and the
2 inferences to be drawn from these facts) such that summary
3 judgment cannot be granted to either party in this case and that
4 this action must proceed to trial. For example, the following
5 facts go to the very core of this case and are genuinely
6 disputed:

- 7 1. Was Dr. Stenson's death caused by an accidental
8 overdose of drugs?
- 9 2. Did Dr. Stenson overdose with suicidal ideation?
- 10 3. Was Dr. Stenson addicted to opioids/narcotics?
- 11 4. Did the prescription medication impact Dr.
12 Stenson's cognition?
- 13 5. Is the Toxicology Report (ECF Nos.28-40, Ex. 5 to
14 Tara Blake Declaration) flawed?
- 15 6. What did Defendant review and consider in its
16 investigation of Plaintiff's claim and did
17 Defendant consider any evidence other than that
18 submitted by Plaintiff as part of investigation
19 of this claim?

20 Indeed, most of the most critical "undisputed facts"
21 submitted in support of the parties' motions are disputed and/or
22 objected to by the responding parties.¹ Also, Defendant's
23 Motions to Strike the Declarations of Plaintiff's Experts cannot
24 be decided by this Court in the absence of a Daubert hearing.

25 In short, the Court believes that if counsel had engaged in
26 a thorough discussion of these contemplated motions for summary
27 judgment before they were filed, they would have reached the same
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¹ The Court notes that Defendant's blanket objections to Plaintiff's statement of undisputed facts (116 "undisputed facts" and 94 "objections") and seven Declarations are particularly unhelpful and unnecessary given the evidentiary rules governing summary judgment motions and the Court's ability to self-police. Evidence that is obviously not admissible is not considered by the Court.

1 conclusion as this Court, i.e., neither party is entitled to
2 judgment as a matter of law given the numerous and genuine
3 disputes of material facts going to the heart of this case.
4 While the Court acknowledges that there are a number of legal
5 issues that have been raised by the parties in these motions,²
6 the resolution of those issues are largely dependent upon the
7 factual findings that either a jury or this Court will need to
8 make at the trial of this matter.

9 Plaintiff's Motion for Summary Judgment (ECF No. 26) and
10 Defendant's Cross Motion for Summary Judgment (ECF No. 28) are
11 therefore DENIED. This case will proceed to trial on February
12 26, 2018. The pretrial conference will be held on January 10,
13 2018 at 4:00 p.m.

14 IT IS SO ORDERED.

15 Dated: November 15, 2017

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17 JOHN A. MENDEZ,
18 UNITED STATES DISTRICT JUDGE
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23 ² For example: (1) which definition of accident should be applied
24 in this case, the Khatchatrian definition advocated by Defendants
25 (accident requires (1) an external event that is (2) unforeseen)
26 or the Weil, Jones, Olson, Pilcher definition advocated by
27 Plaintiff (accidental death is an unintended and undesigned
28 result even if caused by the insured's voluntary act); (2) Has
Defendant waived the sickness or disease exclusion and/or is this
exclusion unenforceable; (3) Is Plaintiff's claim barred by
delay; and (4) Is Plaintiff entitled to maintain her punitive
damages claim.