

PLAINTIFFS' DESIGNATION OF DR. BANJI AJAKA
(Counter-Designations in italicized text)
Deposition TAKEN November 8, 2005
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Page/Line Cite	Objection (Include specific page and line numbers of material objected to and objection(s))	Response
5:2-4		
7:1 (starting with "please")-8:6		
9:3-5		
9:10-16		
10:6-12		
10:13-19		
27:1-2	<p>Exhibit 1618 (7/1/00 "summary" of treatment made well after treatment at request of Bowoto and after filing of lawsuit) is unduly prejudicial and would mislead the jury. FRE 401-403. It is inadmissible expert opinion from a non-designated expert and improper lay opinion because it purports to summarize diagnosis and treatment over a two year period without any reference to medical records or other documentation. FRE 701-702. Plaintiffs have not designated Ajaka as an expert. It is not</p>	<p>There is nothing prejudicial about this summary which would allow for treatment by subsequent physicians and which was prepared by Dr. Ajaka, Mr. Bowoto's treating physician. It is based on Dr. Ajaka's personal knowledge as the lead treating physician and as one of the founders and medical director of Medway Hospital (8:16-9:16). Contrary to</p>

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	<p>based on personal knowledge and is speculative because Ajaka admits (29:7-15) he was only 1 of 6 doctors who treated Bowoto in 1998 and 1999 and it does not state it was based on a review of the medical records. FRE 602. The statements in the letter regarding Bowoto's claims about what happened to him and how he was treated at Eku Baptist Hospital are hearsay, speculative and inadmissible opinion testimony. FRE 602, 70-702, 802. The record is not authentic as a foreign business record because plaintiffs have not laid proper foundation or provided the declaration required by Fed. R. Evid. 902(12)(C). Nor does plaintiffs' citation to 167:18-169:5 establish that Ajaka reviewed or relied upon Bowoto's medical records in preparing the letter, but only that he "pulled" the records. Furthermore, Bowoto did not request copies of his medical records from Medway when he asked for the letter or at any time. <i>See</i> 70:4-8, 21-24. Contrary to plaintiffs' assertion, there is no testimony that Ajaka was the "lead treating physician" and Ajaka does not even remember how often he was in the hospital in 1998. <i>See</i> 129:17-130:8. Nor does Ajaka know or remember details about Bowoto's treatment. For example, he cannot remember the first time he saw Bowoto after he was admitted (156:12-22); he does not know if he discharged him the first time (159:3-12); he does not</p>	<p>Defendants' assertion, Dr. Ajaka testified that he prepared this letter from a review of medical records and that this kind of record was an ordinary record. (167:18-169:5).</p>

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	<p>know particular medications that were prescribed (157:20-24); he did not admit Bowoto to the hospital a second time (160:15-24); and cannot remember when he saw him or how many times he saw Bowoto during the second admission (160:25-161:11). Hereafter objections based on hearsay, more prejudicial than probative, improper opinion and unauthenticated documents will be referenced as the "Unqualified Witness/Inadmissible Records Objection"</p> <p>Defendants' counterdesignate the testimony showing that Ajaka saw the Eku Baptist Hospital Records for the first time at the deposition: 95:16-18</p>	<p style="text-align: center;"><i>OK</i></p>
27:16-20	<p>Unqualified Witness/Inadmissible Records Objection.</p>	<p>This authenticates a letter Mr. Ajaka wrote by reviewing his own records.</p>
27:23	<p>Unqualified Witness/Inadmissible Records Objection</p>	<p>This authenticates a letter Mr. Ajaka wrote by reviewing his own records.</p>
27:25-28:6	<p>Unqualified Witness/Inadmissible Records Objection</p>	<p>This describes the document he wrote after reviewing his own records and explains why he did so.</p>

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29:2-6		
29:7-15		
29:16-17		
36:4-5	Unqualified Witness/Inadmissible Records Objection.	This is direct testimony based on personal knowledge about what Dr. Ajaka saw and his personal review of his own records of his treatment of Mr. Bowoto.
36:8-11	Unqualified Witness/Inadmissible Records Objection	This is direct testimony based on personal knowledge about what Dr. Ajaka saw and his personal review of his own records of his treatment of Mr. Bowoto.
36:13-15	Unqualified Witness/Inadmissible Records Objection Plaintiffs acknowledge that this is expert testimony, but plaintiffs have not designated Ajaka as an expert witness.	This is expert testimony about the effects of a bullet injury and is not relying upon the record.

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	Accordingly, the testimony is inadmissible.	
44:11-14	Unqualified Witness/Inadmissible Records Objection	Testimony is based on his personal knowledge and his review of his own records.
44:18-19	Unqualified Witness/Inadmissible Records Objection	Testimony is based on his personal knowledge based on review of his own records.
45:5-9	Unqualified Witness/Inadmissible Records Objection Contrary to plaintiffs' assertion, the skin graft discussed in the testimony was not performed by <i>Ajaka</i> but by <i>another</i> surgeon (46:11-14); the testimony is not based on <i>Ajaka's</i> personal knowledge. FRE 602, 802. Nor is the testimony about this admission based on personal knowledge because <i>Ajaka</i> did not admit <i>Bowoto</i> the second time (160:15-24) and cannot remember when he saw him or how many times he saw <i>Bowoto</i> during the second admission (160:25-161:11). FRE 602, 802.	45:5-7 is testimony about a document created after personal review of his own records. 45:7-8 is direct testimony about admission.
45:12-20	Unqualified Witness/Inadmissible Records Objection Contrary to plaintiffs' assertion, the skin graft discussed in the	This is direct testimony about what happened during Mr. <i>Bowoto's</i> hospital admission of December 22 nd -January

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	testimony was not performed by Ajaka but by another surgeon (46:11-14); the testimony is not based on Ajaka's personal knowledge. FRE 602, 802. Nor is the testimony about this admission based on personal knowledge because Ajaka did not admit Bowoto the second time (160:15-24) and cannot remember when he saw him or how many times he saw Bowoto during the second admission (160:25-161:11). FRE 602, 802.	19 th .
45:22-23	Unqualified Witness/Inadmissible Records Objection Contrary to plaintiffs' assertion, the skin graft discussed in the testimony was not performed by Ajaka but by another surgeon (46:11-14); the testimony is not based on Ajaka's personal knowledge. FRE 602, 802. Nor is the testimony about this admission based on personal knowledge because Ajaka did not admit Bowoto the second time (160:15-24) and cannot remember when he saw him or how many times he saw Bowoto during the second admission (160:25-161:11). FRE 602, 802.	Question seeks direct knowledge about skin grafts.
46:1-2	Unqualified Witness/Inadmissible Records Objection Contrary to plaintiffs' assertion, the skin graft discussed in the testimony was not performed by Ajaka but by another surgeon	Answer is personal knowledge about skin grafts.

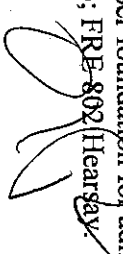
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46:11-18	(46:11-14); the testimony is not based on Ajaka's personal knowledge. FRE 602, 802. Nbr is the testimony about this admission based on personal knowledge because Ajaka did not admit Bowoto the second time (160:15-24) and cannot remember when he saw him or how many times he saw Bowoto during the second admission (160:25-161:11). FRE 602, 802.	
47:7-11		
47:14-19		
48:7-25	Unqualified Witness/Inadmissible Records Objection The testimony is based on his "impression of the surgeon" and thus is not based on Ajaka's personal knowledge. FRE 602, 802.	Personal knowledge testimony based on review of his own records.
49:1-15	Unqualified Witness/Inadmissible Records Objection	Personal knowledge testimony based on review of his own records.




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50:1-5		
50:7-9		
51:3-4		
51:6-9		
52:2-4	Unqualified Witness/Inadmissible Records. <i>Objection.</i> Plaintiffs have not taken the steps necessary to authenticate Ajaka's letter as a business record.	Question seeks personal knowledge of whether Mr. Bowoto was still being treated at that time.
52:6-8		
55:18-20		
56:2-5 208:7-13 <i>R 13</i>	Plaintiffs do not lay proper foundation for admission of the medical bills. FRE 902(12)(C). See 208:7-13 (Witness does not know when bill prepared or who prepared bills). This objection will be referenced as the Inadmissible Bills	Mr. Ajaka testifies that the bills bear his signature, identifies them as Mr. Bowoto's medical bills, and that bills are prepared and kept as a regular practice at or near the date shown on the bills. 55:18-57:13. This is sufficient

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	Objection"	authentication even if he didn't personally prepare and doesn't recall the exact date.
56:13-14	Inadmissible Bills Objection: FRE 802 hearsay; FRE 401-403 it is more prejudicial than probative to have this witness testify about these bills given his admission that he does not know when they were prepared or by whom	Mr. Ajaka testifies that the bills bear his signature, identifies them as Mr. Bowoto's medical bills, and that bills are prepared and kept as a regular practice at or near the date shown on the bills. 55:18-57:13: This is sufficient authentication even if he didn't personally prepare and doesn't recall the exact date.
56:21-22	Inadmissible Bills Objection: FRE 802 hearsay; FRE 401-403 it is more prejudicial than probative to have this witness testify about these bills given his admission that he does not know when they were prepared or by whom	Mr. Ajaka testifies that the bills bear his signature, identifies them as Mr. Bowoto's medical bills, and that bills are prepared and kept as a regular practice at or near the date shown on the bills. 55:18-57:13: This is sufficient authentication even if he didn't personally prepare and doesn't recall the exact date.
61:5-12	Plaintiffs do not lay proper foundation for admission of this record. FRE 902(12)(C); FRE 802 Hearsay 	Dr. Ajaka testifies that he authored the document and that it bears his signature (See 61:5-8). That is sufficient. He also explains why he wrote it and asked the radiologist to respond (See 61:15-24).

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63:24-25		
64:4-9	Plaintiffs do not lay proper foundation for admission of the medical bills. FRE 902(12)(C) 	Dr. Ajaka testifies that the document is the one he received from the radiologist after he requested it from the radiologist. That is sufficient foundation for the record (See 61:15-24).
74:25-75:3		
75:5		
75:7-8	Ajaka has not been qualified as an expert witness in this case and his commentary on Bowoto's mental and emotional state is improper opinion testimony. FRE 701. 	Dr. Ajaka is asked to describe what he observed personally.
75:13-76:3	Ajaka has not been qualified as an expert witness in this case and his commentary on Bowoto's mental and emotional state is improper opinion testimony. FRE 701. 	Dr. Ajaka is testifying based on his personal knowledge and observations of Larry Bowoto.
84:9-22		

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85:21-86:11		
95:16-18		
110:9-16		
129:17-130:8		
135:15-136:15		
139:11-13		
150:11-151:2		
170:16-24		
205:9-208:5 [only if bills admitted]		