

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
Baltimore Division

ALBERT SNYDER,	:	
	:	
Plaintiff	:	Civ. No. 1:06-cv-01389-RDB
	:	
FRED PHELPS, et al,	:	
	:	
Defendant.	:	

DEFENDANTS FRED PHELPS AND WESTBORO BAPTIST CHURCH'S MEMORANDUM  
OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR MORE TIME  
REGARDING EXPERT WITNESSES

Defendants Fred Phelps and Westboro Baptist Church respectfully move for more time to designate certain experts and to have their expert reports filed for the following grounds:

1. The Scheduling Order sets a February 20, 2007, initial expert witness disclosure filing deadline for Defendants, and March 12, 2007, to file a supplemental disclosure.

2. Defendants timely filed their initial expert witness disclosure, on February 20, 2007.

3. To defend themselves, Defendants need the following categories of experts: (a) a psychiatrist, to counter Plaintiff's claim that Defendants' activities exacerbated his depression; (b) an endocrinologist, to counter Plaintiff's claim that his diabetes symptoms returned as a result of Defendants' activities; and (c) a theology and religion expert, to show that Defendants' alleged wrongful actions were based on their good-

faith interpretation of scripture -- rooted in many centuries of scholarly biblical interpretation -- and not with any ill-will, nor with any communication of untruths.

Defendants have selected psychiatrist Neil Blumberg, M.D., as their psychiatric expert. Dr. Blumberg has advised undersigned counsel that he may or may not have sufficient expertise to testify as to Plaintiff's diabetes. Consequently he recommended some endocrinologists, and the results of Defendants' calls to endocrinologists is detailed further *infra*.

For theology and religion experts, Defendants have named Defendant Fred W. Phelps, Sr., and WBC members Fred W. Phelps, Jr., and Brent Roper. It is important for Defendant to name a theology and religion expert who does not have the appearance of bias that a WBC member will have. Consequently, undersigned counsel awaits the response of theology experts Timothy George and Harry Stout as to their willingness and availability to serve as experts for Defendant.

4. WBC needs more time to name an endocrinology expert, after two of them told undersigned counsel that they do not wish to testify on behalf of Defendants, due to the activities of WBC. Those experts are David Madoff, M.D., Baltimore, MD 21239 410-464-5663, and Simeon Margolis, M.D. (to undersigned counsel's best recollection), Baltimore, Maryland, 410-955-1777.

Undersigned counsel awaits a reply to his phone calls to the following (to undersigned counsel's best recollection, Dr. Mersey's assistant left a message that he is too busy currently): James Mersey, M.D., 410-828-7417; Philip A. Levin, MD; James Dicke, M.D.

In the meantime, undersigned counsel is seeking the names of more endocrinology experts, including through asking Dr. Blumberg for additional references.

5. Defendant's psychiatry expert Neil Blumberg has asked undersigned counsel for Plaintiff's discovery responses and medical records, and his deposition transcript. Plaintiff's counsel Sean Summers confirmed to undersigned counsel, when scheduling depositions, that Mr. Summers preferred for Plaintiff Snyder to be deposed last. However -- through undersigned counsel's experience litigating at least approximately seventy to one hundred personal injury cases since 1997 -- it is clear that Dr. Blumberg will be best able to render a reliable expert report after reviewing Plaintiff's deposition transcript, and then conducting an independent medical examination with the benefit of having reviewed the deposition transcript.

Dr. Blumberg's time is expensive (a \$5000 non-refundable initial deposit, \$400 hourly out of court and \$500 hourly for testimony), and he anticipates spending approximately twelve

hours minimum for work leading up to a final expert report (which report will follow an independent medical examination).

Consequently, Defendants request until April 5 (the discovery cutoff, which is twenty-four days past the current date to supplement expert disclosures) to file Dr. Blumberg's expert report, when considering that a March 7 deposition scheduled for Plaintiff (even though undersigned counsel offered Plaintiff's counsel earlier dates than that, many weeks ago), court reporting companies' ordinary regular transcript turnaround time is ten business days, and Dr. Blumberg's independent medical examination will need to be set around the schedules of him and Mr. Snyder.

Defendants are amenable to liberally extending discovery deadlines in Plaintiff's favor if Defendant's Motion is granted.

Defendants note that, if Plaintiff's Motion to Amend the Complaint to add new parties is granted, the new defendants will need discovery deadlines later than those currently set, which means that a brief extension of any discovery cutoff will not cause any real delay of this litigation if the Plaintiff's Motion to Amend is granted. (It is true that Defendants plan to file an opposition to Plaintiff's Motion to Amend).

6. Defendants' ability to determine the types and names of medical experts to designate was affected by the Court's

January 30 mail delivery of Plaintiff's medical documents submitted to the Court under seal, and provided to undersigned counsel, other than the documents the Court determined should be kept under seal. Defendants respectfully ask that this be taken into consideration in deciding this Motion.

7. This Motion is brought in good faith. Undersigned counsel did not know until receiving Plaintiff's discovery responses around January 22 about Plaintiff's claim of the extent of his psychological damages, and his claim of diabetes exacerbated by Defendants' actions. Subsequently, on January 30, the Court sent undersigned counsel medical records that it decided not to seal. Those records were received in the mail around January 31, which left just twenty calendar days to identify medical experts.

Although Neil Blumberg was willing to testify, and has been designated as a psychiatric expert, his resume reveals that he is accustomed and willing to testify in controversial cases for the controversial side (e.g., capital cases, on both sides). However, it cannot be expected that endocrinologists are as accustomed to testifying in controversial cases as psychological professionals -- let alone the likelihood the endocrinologist population probably is dwarfed by the psychiatrist population -- and Defendants are now seeking more expert names, now that two

endocrinologists have refused to testify on the side of WBC, and another is too busy.

8. Consequently, Defendants respectfully request the following additional time for naming experts and providing their reports, and is fully amenable to similar or longer reasonable time extensions being provided to Plaintiff: (a) March 12, 2007, deadline to name endocrinology and theology experts; (b) March 30 to provide the written report of the theology expert; and (c) April 5 to provide the expert report and any other supplemental information of Defendants' psychiatric and endocrinology experts.

WHEREFORE, Defendants move for more time -- as detailed in ¶ 8 herein -- to designate certain experts and to have their expert reports and supplemental information filed.

Respectfully submitted

**MARKS & KATZ, L.L.C.**

    /s/ Jonathan L. Katz      
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**CERTIFICATE OF GOOD FAITH EFFORTS**

I HEREBY CERTIFY that I made the following good faith efforts to obtain the Plaintiff's consent to this Motion. On February 20, 2007, undersigned counsel and Mr. Summers communicated on this matter by e-mail. Mr. Summers indicated flexibility of at least a few days in extending the supplementing deadline if the rebuttal times were equally moved> He said to send the proposed motion, and that he will let undersigned counsel know what he concurs in. With February 20 having been the deadline for filing initial disclosures, out of covering risk, undersigned counsel is filing this motion now, and will inform the Court of any extent to which Plaintiff's counsel provides any agreements to narrow any issues in this Motion.

\_\_\_\_/s/ Jonathan L. Katz\_\_\_\_\_  
Jonathan L. Katz

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Motion was served by the CM/ECF filing system on February 21, 2007, to:

Paul W. Minnich, Esquire  
Rees Griffiths, Esquire  
Craig T. Trebilcock, Esquire  
Sean E. Summers, Esquire

\_\_\_\_/s/ Jonathan L. Katz\_\_\_\_\_  
Jonathan L. Katz