

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DEEPAK KADEMANI, DMD, MD,
FACS,

Civil No. 09-219 (JRT/FLN)

Plaintiff,

v.

MAYO CLINIC; MAYO FOUNDATION;
MICHAEL SARR; and JOHN or JANE
DOE,

**ORDER GRANTING
MOTION IN LIMINE TO
EXCLUDE ARGUMENT
THAT THE SEPARATION BE
CONSTRUED AGAINST MAYO**

Defendants.

James H. Kaster, Matthew H. Morgan, and Sarah W. Steenhoek, **NICHOLS KASTER, PLLP**, 80 South Eighth Street, Suite 4600, Minneapolis, MN 55402, for plaintiff.

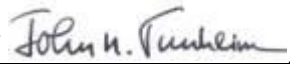
David P. Bunde, Norah E. Olson Bluvshstein, Andrew F. Johnson, and S. Jamal Faleel, **FREDRIKSON & BYRON, PA**, 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402; Joanne L. Martin, **MAYO CLINIC**, 200 1st Street Southwest, Rochester, MN 55905, for defendants.

Mayo Clinic (“Mayo”) seeks to preclude Kademani from arguing at trial that the doctrine of *contra proferentum* – which provides that contract ambiguities are construed against the drafter – obliges the jury to construe ambiguity in the term “Mayo” against Mayo, the alleged drafter of the term. The Court will grant the motion because this line of argument may confuse the jury. *See* Fed. R. Evid. 403. The jury will hear evidence as to the parties’ intended meaning of the ambiguous term. At the close of the evidence, if the evidence is conclusive, the Court may rule as a matter of law regarding the meaning of “Mayo.” *See James M. King & Assocs., Inc. v. G.D. Van Wagenen Co.*, 717 F. Supp.

667, 677 (D. Minn. 1989). If the evidence is not conclusive, however, the jury will decide the parties' intended meaning. *See Shaw Hofstra & Assocs. v. Ladco Dev., Inc.*, 673 F.3d 819, 827 (8th Cir. 2012).

Based on the foregoing and the records, files, and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's Amended Motion in Limine to Exclude Argument that the Separation Agreement be Construed Against Mayo [Docket No. 229] is **GRANTED**.

DATED: May 21, 2012
at Minneapolis, Minnesota.

s/ 

JOHN R. TUNHEIM
United States District Judge