

EXHIBIT A

1 (The following occurred at sidebar.)

2 THE COURT: State your name, counsel, because he's
3 relatively new to the game.

4 MS. FADDIS: Hannah Faddis, Your Honor.

5 Dr. Simela is plaintiff's orthopedic expert who I
6 anticipate, based on this report, is going to testify
7 regarding the nature and causation of plaintiff's orthopedic
8 injuries which the defendants, a few hours ago, moved to
9 dismiss as claims for damages in this action. We wanted to
10 bring it to the Court's attention, obviously, before that
11 testimony begins, since that application is still pending.

12 THE COURT: What's the response?

13 MR. LUMER: Your Honor, first the issue of which
14 incident might -- they're seeking to dismiss is the 2015
15 motorcycle accident. We're beginning with Dr. Simela with the
16 2012 accident which nobody is disputing. And I would say it
17 would be -- the motion hasn't been ruled on -- as an initial
18 matter, defendant's motion from earlier today has not been
19 formally ruled on, so to prevent us from putting in our case
20 would be extremely prejudicial to us. The doctor here is no
21 small cost to plaintiff. I don't want to bother the Court by
22 renewing our response to the Rule 37 motion that was made
23 earlier today. But I think that this evidence goes directly
24 to -- and let me back up one sec.

25 There's no real issue here. We're not arguing that

1 the hand fractures were caused by this defendant. It's really
2 a question of exacerbation of injuries in terms of pain,
3 suffering, and the reasonableness of claiming that he could
4 hold onto the fence the way he has been alleged to have been
5 holding onto the fence. I think that not allowing this
6 testimony would be grossly disproportionate to the motion that
7 was made earlier and very unfair to the plaintiff.

8 THE COURT: What's the response?

9 MS. FADDIS: Yes, Your Honor. Plaintiff is claiming
10 a series of orthopedic injuries as damages in this case which
11 includes injuries to is left leg and left hand. Those
12 injuries were initially in sustained in 2012. He reinjured
13 those body parts in 2015 --

14 THE COURT: Slow it down.

15 MS. FADDIS: As the Court is aware, there was
16 evidence in the plaintiff's possession relating to the
17 condition of both of those body parts in February of 2015
18 following his second accident that has now been spoliated. So
19 to allow the plaintiff to pursue these claims and to present
20 expert evidence on injuries to those body parts that is going
21 to attribute to the conduct of the defendant should not be
22 permitted when the defendants have been precluded of entering
23 entirely by the conduct of the plaintiff from ascertaining the
24 condition of those body parts immediately proceeding this
25 arrest.

1 THE COURT: What's the response?

2 MR. LUMER: First, putting aside our objection to
3 the idea that plaintiff has withheld material, that's for
4 another day.

5 THE COURT: No, that's for this day.

6 MR. LUMER: Well, for this day, but not necessarily
7 for this specific moment.

8 THE COURT: It's for this specific moment.

9 MR. LUMER: Okay. Then we deny that, and we would
10 argue that there was an issue about that. But I think more
11 importantly, the 2015 accident had nothing to do with his leg.

12 MS. RAMEAU: Hip.

13 MR. LUMER: Hip and leg. I'm using hip to mean --

14 THE COURT: You have to slow down. Vader, not Chris
15 Rock, not Woody Allen.

16 MR. LUMER: The 2015 accident injured his hand, not
17 his leg. And I use the term leg to mean help, leg, knee.

18 MS. RAMEAU: Because he had issues --

19 MR. LUMER: So what is relevant here is the claim is
20 is that when he was slammed to the ground, the hardware that
21 had been surgically implanted years earlier was damaged and
22 that caused him injury. The expert reports that were
23 exchanged by the parties go to whether there's a causal
24 connection between that trauma and the damage to the hardware.
25 And that is the principle part of this testimony. That is the

1 bulk of what this doctor is going to testify to. And there's
2 no suggestion here that I'm aware of and maybe counsel thinks
3 there is, that the -- whatever Ms. Philander was referring to
4 would have impacted upon that or changed that in any way.

5 THE COURT: Ms. Philander said specifically that she
6 had the 2/12 and the 2/15 medical reports. She said it very
7 clearly, she said is repeatedly, and she was your witness.

8 MR. LUMER: Absolutely, Judge.

9 THE COURT: I am granting the defense motion with
10 respect to spoliation, and I am precluding this witness from
11 testifying.

12 You have your objection preserved, for the record.

13 MR. LUMER: About anything, Your Honor? I just want
14 to make sure --

15 THE COURT: Without anything? You know who did
16 without anything? You. You did without anything. You made
17 those documents disappear. You called that witness -- excuse
18 me, you called that witness as your second witness. You
19 called that witness.

20 You better remember where you, okay. You called
21 that witness. And you had better step back. Because I'll
22 call those marshals up here if you get any closer.

23 Okay. You called that witness. She said she had
24 the documents, and they made them disappear. The motion is
25 granted. Step back.

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MR. LUMER: Can I make my record?
THE COURT: You've made your record. Step back.
MR. LUMER: I have not made my record.
THE COURT: Step back.
MR. LUMER: I have not made my record.
THE COURT: You're about to be held in contempt.
MS. RAMEAU: It's okay. It's all right.
(End of sidebar conference.)
(Continued on the next page.)