

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ELIZABETH THIERIOT Individually and as
Trustee of the Elizabeth Thieriot Revocable Trust,
and THE ELIZABETH THIERIOT REVOCABLE
TRUST,

Plaintiffs,

- against -

JASPAN SCHLESINGER HOFFMAN LLP,
STEPHEN P. EPSTEIN, LISA M. GOLDEN,
ALAN K. HIRSCHHORN and SETH H. ROSS,

Defendants.
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ORDER

CV 07-5315 (TCP) (AKT)

A. KATHLEEN TOMLINSON, Magistrate Judge:

Plaintiffs move to supplement their motion [DE 29] to compel production of materials furnished to Defendants' expert witness to include documents that have been recently identified by the expert and defense counsel. *See* DE 42. In addition, Plaintiffs seek production of the expert's retainer and bills as well as communications with Defendants' expert that occurred after his expert report was served. Plaintiffs also seek to re-open the expert's deposition.

Defendants' counsel opposes the motion, asserting that as to the communications with the expert after the expert report was prepared, such communications are exempt under Fed. R. Civ. P. 26(b)(3) and (4) because they contain counsel's opinions and mental impressions about this case. *See* DE 44. Likewise, Defendants' counsel states that Plaintiffs are seeking the expert's bills for the first time on this motion.

Having reviewed the motion and opposition, I am directing Defendants' counsel to produce the retainer letter for the expert and the expert's bills. *See Synthes Spine Co., L.P. v.*

Walden, 232 F.R.D. 460, 466 (E.D. Pa. 2006) (directing counsel to produce the expert's retainer letter and invoices/billing records). As to the other documents Plaintiffs' counsel seeks, I am holding my ruling in abeyance until the parties comply with the directives set forth in the accompanying Order issued today regarding expert disclosures. *See* DE 45. Once I have rendered a final decision on the motion at issue there, Plaintiffs' counsel is free to renew his request concerning the other items sought but not approved to date in this motion.

SO ORDERED.

Dated: Central Islip, New York
September 30, 2010

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge