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January 25, 2012

VIA ELECTRONIC FILING

Hon. George H. Lowe, U.S.M.J.
U.S.D.C. Northern District of New York
Northern District of New York
Syracuse, New York 13261

Re: *Yoder, et al. v. Town of Morristown, et al.*
Civil Case No.: 09-cv-0007 (NPM/GHL)

Dear Magistrate Lowe:

We are regrettably compelled to respond to last evening's ECF filings by plaintiffs' counsel on the subject of the deposition of defendant Kay Davis.

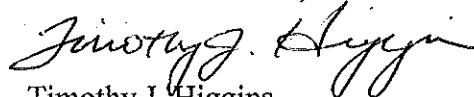
The fact of the matter is that Ms. Davis was present at the deposition of plaintiff Andy Miller on January 18, 2012 for no more than 20-30 minutes. Ms. Davis' ability to drive a short distance, walk into a restaurant dining area and sit for 20-30 minutes to observe the deposition is hardly an indication of her fitness to appear for a deposition or multiple depositions of up to seven (7) hours or more.

As reflected by our letter of January 23, 2012, we (as directed by the Court) contacted Ms. Davis' treating physician and reported back on the physician's response to the question of her health and ability to be deposed. Contrary to the assertions of plaintiffs' counsel, we are not interested in delaying the Davis deposition. However, based on our observations of our client⁰⁸ in recent weeks, we believe her treating doctor is the most qualified party to determine when she is capable of safely appearing for a deposition in light of her health and the impact that her current medication regime is having on her. If Your Honor thinks it appropriate, we could arrange an *ex parte* telephone conference to allow the Court to speak directly to Ms. Davis about her condition.

Thank you in advance for your consideration.

Respectfully submitted,

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cc: Proskauer Rose LLP