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VIA EMAIL
September 17, 2015

Honorable Judge James R. Knepp, II
c/o Pamela A. Armstrong
Pamela_A_Armstrong@ohnd.uscourts.gov

RE: Jean A. Terek f.k.a. Jean A. Goff, et al. v. Winfield J. Finkbiner, et al.
U.S. District Court for the Northern District of Ohio
Case No. 3:14-cv-1391-JGC
Our File No. 2014115776 – Claim No. TF657096

Dear Judge Knepp:

In response to Plaintiff's counsel's letter dated September 16, 2012 concerning objections in the deposition transcripts. First, under Loc. R. 30.1(4) regarding conduct at depositions: speaking objections are improper and must not be made in the presence of the deponent. Counsel approaches witness depositions the same as if I were in front of the Court and simply state objection. Conversely, if Plaintiff's counsel had a concern or specific question about the basis for the objection, he could have asked for a conference outside the presence of the witness. I will address the objections in the same order as noted in Plaintiff's counsel's letter.

I have no objection to Plaintiff's request that we remove "housekeeping" portions, but the oaths administered to the witnesses are not housekeeping and necessary for the testimony to be considered under oath.

Dr. Raymond Candage:

Page 40, lines 4 and 10: Dr. Candage is a medical doctor and not a lawyer. He is not qualified to opine whether performing surgery or not constitutes medical malpractice.

Thomas Engle:

Page 10, line 2: Question from Plaintiff's counsel: "Did anything about her job change with you that week?"

Answer: "Well, just, you know, at the same time her husband was working, and I know that she'd been hurt. He said, you know, she'd be able to work. He didn't know for how long, but she'd be limited to lifting, wouldn't be able to lift the dogs. And I just told him, you know, we'd try to work around it."

First, the testimony contains hearsay from what Terek's husband said and the answer was non-responsive to the question asked. I request that the Court sustain the objection.

Dr. Peter Gerszten:

Page 13, line 22: Question from Plaintiff's counsel: And a book that's in its seventh edition, I would presume has a number of individuals who read and utilize the book as part of their education about managing spine injuries, is that fair?"

Dr. Gerszten cannot answer what other people have read or utilized.

Page 15, lines 10-Leading.

Page 53, line 8: Withdrawn;

Page 62, Lines 7-16: First, Dr. Gerszten notes he was aware of Plaintiff's prior medical history while Dr. Nolan was not aware of these conditions. Nolan's history is lacking and incomplete. One of the defenses is that Nolan jumped to conclusion that Terek sustained growth-hormone deficiency from the accident without all of the facts. Second, Defendants are not required to offer another expert to prove any affirmative defense. Cross-examination of any witness on a matter that would raise questions about the testimony and/or support an affirmative defense is proper. Terek's diabetes can also explain any numbness and tingling in her extremities. Finally, Defendants do not have to prove their affirmative defenses within the confines of one witness or one deposition.

Page 69, line 4-page 70, line 1: Same explanation as noted above.

Page 74, lines 3-10: There are two separate and distinct questions. The first involved recovery if involved in litigation and the second question was whether a person is more likely to develop chronic low back pain.

Page 78: Withdrawn.

Barbara Long:

Page 12, line 7: Long is not qualified to state the reason why she put her hands on the counter. Long claims it was to "try and relieve pressure from the back."

Page 18, lines 20-Page 19, line 10: Long testified that she worked 12 hours on Friday and Saturday suggesting that she observed Terek for 12 hours each day. But Long said at Line 13: “Well, not constant, but a better, yeah, probably a better part of it because we worked in the same room.” Line 18: But, you know, like, if she didn’t have a dog, she might go get something to eat, and I wouldn’t see her then, but most of the time we were.” So Long changed her testimony and the question was not asked and answered. She changed the amount of time that she directly observed Terek while at work.

Page 22, line 23-24 and Page 23, line 1: Relevance.

Michelle Mayes:

Pages 9, lines 7, 11, and 17: Mayes is not qualified to offer any medical opinions whether Terek was injured in the accident.

Page 11, line 23: Relevance.

Page 23, lines 15-17: On page 26, lines 11-12, Mayes testified that Terek’s ex-husband cheated on her.

Page 26 line 20, page 27, lines 5-6 and 12: Mayes is not qualified to offer a medical opinion that Terek is “downgrading fast” and “the more damage she’s actually pushing on it.” Both of these statements require medical expertise to state an opinion.

Page 28, line 9: Withdrawn;

Page 30, lines 6-11: The Court granted Defendants’ Partial Motion for Summary Judgment on all claims including for punitive damages. The only basis to interject this testimony is to prejudice Defendants with the jury and overcome the Court’s ruling on the motion for summary judgment. Moreover, whether or not Mayes was injured in the accident is not relevant. She is no longer a party. Defendants request that the Court strike lines 6-11.

Page 31 line 9: Withdrawn;

Page 31 line 11: Mayes is not qualified to offer any medical opinion that Terek will go into a depression. Moreover, Terek had depression before the accident.

Page 39, lines 15-23: Terek claims she cannot afford surgery.

Dr. Sean Nolan:

Page 12, line 17: Withdrawn;

Page 13, line 10-Page 12, line 17: There is no foundation about the “ever-growing body of literature that discusses growth hormone deficiencies.”

Page 29, line 18: Leading;

Page 39, line 3: Leading. Dr. Nolan testified that he ordered a test, but Plaintiff's counsel is leading him through the explanation of the test and what the test does;

Page 44, line 12: Withdrawn;

Page 46, line 21: Leading;

Page 48, lines 18-19: Withdrawn;

Page 49, lines 15-19: Leading and lack of foundation. Evid. R. 703: If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect. There is no reference to the literature or articles that provide the basis for Nolan's opinions.

Page 52, lines 22-23: Mischaracterization of Nolan's testimony and leading.

Page 53, line 8: Withdrawn;

page 54 line 11: Withdrawn;

Page 55, line 21: Nolan does not know the cost of the growth hormone. His basis for his opinion that the cost is \$800 is from his patients. Patients' statements about the cost of growth hormone are not made for medical diagnosis or treatment. Even Nolan understood that he was using hearsay. Defendants request that the Court strike page 55 lines 18-24 and page 56 lines 1-12.

Page 57, lines 4-16: Defendants agree with Plaintiff that these lines should be stricken;

Page 66, lines 9-20: The Court denied Plaintiff's Motion *in Limine* Number 3 regarding Plaintiff's pre-existing medical conditions.¹

Page 70, line 17 through page 73 line 11: The Court denied Plaintiff's Motion *in Limine* Number 3 regarding Plaintiff's pre-existing medical conditions.²

Page 77 lines 14-18: Nolan did not challenge the definition of idiopathically. As a medical doctor, he is in the best position to understand whether without a cause or unknown are similar.

Page 81, line 14: Nolan testified that the lack of growth hormone will shorten Terek's life expectancy. So does smoking cigarettes. The Court denied Plaintiff's Motion *in Limine* Number

¹ Plaintiff's Letter dated September 16, 2015 incorrectly refers to Motion in Limine Number 2.

² Plaintiff's Letter dated September 16, 2015 incorrectly refers to Motion in Limine Number 2.

3 regarding the past medical history. Moreover, Nolan took an incomplete medical history from Terek and this is relevant to show lack of credibility.

Page 82, line 24-Page 83, line 11: Nolan testified that Terek was leading a healthy life on Page 79 lines 2-7 and that her “life fell apart” Lines 8-11. Terek’s pre-existing medical conditions certainly show she was not leading a healthy life and this raises issues with Nolan’s credibility that he did not know about her extensive pre-existing conditions. Then he testified that Terek’s health went downhill after the accident. This is not credible;

Page 84, line 8-Page 87, line 5: The Court denied Plaintiff’s Motion *in Limine* Number 3 regarding Plaintiff’s pre-existing medical conditions.³

Page 87, line 16-Page 88, line 20: The Court granted Defendants’ Motion *in Limine* Number 2. Defendants request that the Court strike lines 17 on Page 87 beginning at “but the defendant’s attorney has refused to allow payment for the surgery” to lines 24 and lines 1-21 on Page 88;

Page 89, line 16-line 90 line 19: Nolan’s suspension of his medical license goes to his credibility as a witness.

Rose Witt:

Defendants’ object to Rose Witt’s testimony in total. First, Defendants’ admitted liability for the accident. So Witt’s testimony is not relevant and is merely to prejudice Defendants. Second, the Court granted Defendants’ Partial Motion for Summary Judgment. Witt’s testimony concerns more than the accident and discusses her “belief” that Finkbiner fled the scene of the accident. The Court has already ruled that there is no claim for punitive damages. The only reason for Witt’s testimony is to interject her belief that Finkbiner left the scene and prejudice Defendants. Without waiving the objection, Defendants will address each objection.

Page 15, line 1: Defendants request that the Court edit out Plaintiff’s counsel’s misleading statement that the truck jackknifed and continue with the remaining testimony;

Page 16, line 17: The Court granted the Partial Motion for Summary Judgment. Her testimony is only relevant seeking punitive damages;

Page 16, line 25: The Court granted the Partial Motion for Summary Judgment. Her testimony is only relevant seeking punitive damages. Moreover, she is testifying about what her husband allegedly felt;

Page 18, line 11: Hearsay;

Page 25, line 25: Witt admitted that she was past the point of the accident, so she is speculating about the point of impact. See Page 26 lines 1-6.

³ Plaintiff’s Letter dated September 16, 2015 incorrectly refers to Motion in Limine Number 2.

Page 27, line 24: Page 28, line 4 and 17, Page 29, line 1 and 14: Defendants' admitted liability. So this testimony is cumulative and not relevant. Moreover, she is speculating that Finkbiner should have realized that there was an impact. She has no first-hand knowledge for her testimony.

Please contact me if you have any questions.

Very truly yours,

/s/ Robert P. Lynch Jr.

Robert P. Lynch Jr.

cc: J. Zachary Zatezalo, Esq. (via email only)