THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. REISINGER,	**:**	**CIVIL ACTION – LAW**
Plaintiff	**:**	
	:	**JURY TRIAL DEMANDED**
v.	**:**	
	:	
THE CITY OF WILKES BARRE;	**:**	
THOMAS LEIGHTON;	**:**	
FRANCES KRATZ;	**:**	**(Honorable Richard P. Conaboy)**
GREGORY BARROUK;	**:**	
MICHAEL KERMEC and	**:**	
THE CADLE COMPANY II, INC.	**:**	
Defendants	**:**	**No. 3:09-CV-210**

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR RECONSIDERATION
OF THIS COURT'S ORDER DATED AUGUST 16, 2010
AND THIS COURT'S ORDER DATED AUGUST 17, 2010

Respectfully Submitted,

Joseph R. Reisinger, *pro se*
as Plaintiff
444 S. Franklin Street
Wilkes-Barre, PA 18702

DATED: August 31, 2010

TABLE OF AUTHORITIES

The Plaintiff, Joseph R. Reisinger, hereby submits this Memorandum of Law in support of his Motion for Reconsideration of both this Court's Order dated August 16, 2010 and this Court's Order dated August 17, 2010, requesting that this Court vacate its prior Orders, and issue an Order granting the relief requested in his Motion for Reconsideration.

A. PROCEDURAL HISTORY

Two motions were recently pending before this Court. The first was a Motion for Extension of Time to Complete Discovery and to Amend the Amended Case Management Schedule filed by Defendants City of Wilkes-Barre, Thomas Leighton, Francis Kratz and Gregory Barrouk (the "City Defendants");

The second motion before this Court, this time filed by the Plaintiff, was a Motion for Enlargement of Time to File (i) Motions to Compel Production of Documents; and (ii) a Response and Proposed Alternative Amended Case Management Plan in Opposition to City Defendants' Motion for Extension of Time to Complete Discovery and to Amend the Amended Case Management Schedule. The first motion will be referred to herein as the "City Defendants' Motion", and the second motion set forth above will be referred to herein as the "Plaintiff's Motion".

In the City Defendants' Motion, the City Defendants requested an extension of deadlines which they asserted were necessary due to the difficulty they allegedly have had conducting depositions, noting that depositions were routinely cancelled without justification at the Plaintiff's request. They also asserted that other depositions needed to be scheduled and that they were also allegedly awaiting further information from the Plaintiff.

For these reasons, the City Defendants requested the discovery deadline be extended until September 30, 2010, and that all of the other deadlines also be extended for the Defendants.

Further, they requested that the Plaintiff be prohibited from taking any depositions as specified in the Court's February 9, 2010 Order.

In the Plaintiff's Motion, the Plaintiff requested an extension of time to file an alternative amended schedule for discovery, in opposition to the City Defendants' Motion. The Plaintiff also sought an enlargement of time to file motions to compel production of documents. Further, the Plaintiff advised this Court of his disadvantaged position in this case due to (i) his poor health, (ii) the fact that his financial situation has been jeopardized because of the improper actions by the Defendants, (iii) the fact that he is a solo practitioner, and (iv) the sudden death of his son, as the reasons for his requests for an extension of time.

Also, the Plaintiff indicated that both the City Defendants and the Cadle Defendants had failed to respond adequately to the Plaintiff's requests for production of documents and the interrogatories that he sent to each of the Defendants, and were therefore acting in bad faith.

This Court then reviewed both the City Defendants' Motion and the Plaintiff's Motion, and granted the City Defendants' Motion, and denied the Plaintiff's Motion, and amended the Amended Case Management Plan according to the requests of the City Defendants.

In this case, the denial of the Plaintiff's Motion, denying him any additional opportunity to take depositions, in conjunction with this Court's denial by its Order dated August 16, 2010, of the Plaintiff's Motion to Compel the Production of Documents from the Defendants, effectively constitutes, in fact, the imposition of the "Death Penalty" to the Plaintiff's causes of action that are set forth in the Complaint that the Plaintiff filed in this case.

The Plaintiff is now filing his Motion for Reconsideration in respect to the above Order of this Court, dated August 16, 2010.

B. THE FACTORS RELIED UPON BY THIS COURT IN SUPPORT OF ITS DECISION DATED AUGUST 16, 2010

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I. The Factors Relied on by This Court in Support of the Above Order;

This Court in its above Order indicated that its decision in regard to both the City Defendants' Motion and the Plaintiff's Motion in regard to discovery, whereby this Court granted the City Defendants' Motion and denied the Plaintiff's Motion, was based upon the following factors:

a. that the Plaintiff was before this Court because he filed an action here;

b. that the Plaintiff had been routinely dilatory in compliance with deadlines; and

c. that there were scheduling difficulties which the Plaintiff's problems created for the Defendants, which certainly did not promote the efficient administration of justice.

Set forth below are the reasons why the Plaintiff is respectfully requesting that this Court reconsider the Court's above Order, after this Court has an opportunity to review all of the information set forth below, and all of the copies of the documents attached hereto.

II. First Factor: The Plaintiff Was Before this Court Because He Filed an Action Here;

In regard to the above first factor raised by this Court in reference to the Plaintiff being before this Court, as a reason for this Court denying the Plaintiff's Motion, it is respectfully submitted that the Plaintiff is only before this Court, not because of some fault attributable to himself, but (i) because of the conduct of the Defendants, who illegally closed both his law office and his rental office for almost a month to illegally aid Cadle in attempting to defeat the Plaintiff's appeal to the Pennsylvania Superior Court in regard to Judge Lokuta's prior Order, and (ii) because he is seeking relief under 72 U.S.C.A. §1983, and therefore, this Court has primary jurisdiction in this type of a case.

Therefore, coming to this Court for relief was not something that the Plaintiff brought on himself, in that the Plaintiff has a constitutional right to have access to this Court to seek justice, and it is obvious that, based on the conduct of the Defendants in this case as described in the Complaint filed in this case, the Defendants have acted illegally.

Further, it is believed that that this Court, by the above factor that it mentioned, implied that the Plaintiff, by filing a lawsuit in this Court, had assumed various responsibilities in regard to honoring the procedural mandates related to filing a case in this Court, and that in this Court's opinion, based on the Court's decision in this case adverse to the Plaintiff's Motion, the Plaintiff has not adhered to those responsibilities.

The Court correctly believes that any person being extended the privilege of having access to this Court, by filing a complaint in this Court, has the related procedural responsibilities that must be honored, and in that regard, it will be abundantly obvious after reading the facts set forth below, and the attachments hereto, that the Plaintiff has, in good faith, truly respected all the procedural responsibilities imposed on him related to this case since he replaced his attorney in March of 2010.

Consequently, contrary to all of the false representations by Mr. Brobst in the City Defendants' Motion in regard to the Plaintiff's alleged "dilatory actions", as they are refuted by all of the facts and copies of all the documents attached hereto, the Plaintiff has in fact respected all of his responsibilities imposed upon him by virtue of him having the privilege of bringing this case to this Court.

In sum, the Plaintiff is very thankful that he has had access to this Court to secure justice from the Defendants for (i) all of the constitutional rights violations that they have obviously

perpetrated in regard to him and his properties pursuant to 72 U.S.C.A. §1983, and (ii) all of the tortious acts by the Defendants as set forth in the Complaint.

III. Second Factor; The Plaintiff had been Routinely Dilatory in Compliance With Deadlines;

Below are various factors for this Court's consideration. Factors Advanced by Mr. Brobst in the City Defendants' Motion is discussed in Part a. and other factors for this Court's consideration, related to the above, involving the Plaintiff's discovery effort, and all of the improper actions of the City Defendant, and their legal counsel, are described below in Part b., Other Relevant Factors Related to the above for This Court's Consideration.

a. Factors Advanced by Mr. Brobst in the City Defendants' Motion;

The second factor mentioned above by this Court is obviously based on various facts, and there is absolutely no factual support for this Court to have made the above decision other than based on the intentionally false assertions that were provided to this Court by Mr. Brobst, counsel for the City Defendants, that were included in the City Defendants' Motion, and to correct all of these intentional misrepresentations, set forth below are the actual facts and circumstances pertaining to the Plaintiff's participation in discovery since March 24, 2010, after his prior legal counsel ceased to provide representation of him.

Further, based on the uncontestable facts set forth below, it is without doubt that the Plaintiff has attempted in good faith, to the extent of his abilities, to fully comply with all of his responsibilities related to discovery in this case, and it is the Defendants, who have completely violated their respective responsibilities in regard to the discovery due to the Plaintiff in this case.

1. The Plaintiff's Depositions Were Routinely Rescheduled Without Justification;

More specifically, in support of the City Defendants' attempt to cause this Court to conclude that the Plaintiff was routinely dilatory, in paragraph 2 of the City Defendants' Motion, Mr. Brobst, the City Defendants' counsel, stated the following:

> " The conclusion of Plaintiff deposition was previously scheduled for May 20, 2010, June 17,2010, and June 23, 2010, each time the depositions were rescheduled at the insistence of the Plaintiff."

Further, in paragraph 3 of the City Defendants' Motion, Mr. Brobst, the City Defendants' counsel, stated the following:

> "The conclusion of Plaintiff's deposition was scheduled to take place on July 1, 2010, but had to be cancelled due to the death of Plaintiff's son on June 29, 2010."

Obviously, based on the above language, the inference Mr. Brobst wanted this Court to believe from same was that the Plaintiff had been routinely canceling, without justification, his scheduled depositions, and based on the Court's above decision in this case imposing the Death Penalty on the Plaintiff's case, it is obvious that Mr. Brobst has been very successful.

However, in fact, Mr. Brobst, by making the above statements, has intentionally misled this Court, because Mr. Brobst did not explain that each of the rescheduling of the above depositions was because of documented health issues related to the Plaintiff, which legally cannot inure into the Plaintiff's prejudice, because of his obvious disabilities.

More particularly, in regard to the deposition of the Plaintiff scheduled for May 20, 2010, which was a Thursday, early on Monday morning of that week, May 16, 2010, the Plaintiff lost the ability to see out of his left eye for about twenty-five minutes. However, because the Plaintiff's eyesight ultimately returned to normal, and because the above event occurred early Monday morning, the Plaintiff did not seek immediate professional assistance.

However, that evening, the Plaintiff coincidently met his ophthalmologist, Dr. David DeRose, in a social setting, and fortunately remembered to mention to Dr. DeRose that he had temporarily lost the sight in his left eye earlier that day, and Dr. DeRose advised him that he should schedule an appointment to meet with his personal physician as soon as possible, because the above loss of sight was serious and that it could be an indication of either pressure on the brain, due to the serious concussion injury the Plaintiff sustained the prior year, or heart issues, related to the inability of his heart to be able to pump the necessary blood to his left eye, either of which could have very well caused the above loss of sight in his left eye.

For example, as context, the Plaintiff had been admitted to an ambulatory surgery center for a colonoscopy in 2006, but because of the fact that his assigned heart monitor indicated that his heart at that time was only beating 29 times a minute, the facility refused to do the colonoscopy, and insisted that the Plaintiff leave, because of the liability associated with his heart condition.

The attending physician told the Plaintiff that he had never witnessed any adult with the above symptoms, but that he had heard that world class athletics, 18 to 22 years old, had very low heart beats, because of their extremely strenuous training regimen. Of course, it is obvious to all that the Plaintiff is not in that classification, having been engaged in the practice of law for over the last 35 years as a tax and commercial lawyer. For example, the Plaintiff being able to run a mile today is a medical impossibility.

Therefore, because of the potential seriousness of the above medical situation, coupled with the Plaintiff's prior injury and a history of serious heart issues, the Plaintiff then contacted his personal physician, early the morning of Tuesday, May 17, 2010, and was fortunate to be able to schedule an appointment with him later that morning, when it was determined, after

a comprehensive examination, that it appeared that the Plaintiff had not suffered a stroke, related to the above, but that further testing was mandated, and at that point, an MRI was scheduled for Thursday afternoon, May 20, 2010, based on the scheduling of the MRI Center.

Also, Mr. Brobst, counsel for the City Defendants, was advised of all of the above information on Tuesday afternoon, May 17, 2010, after the Plaintiff came from his appointment with his personal physician, and as a consequence, the deposition of the Plaintiff that was scheduled for Thursday, May 20, 2010 was then rescheduled to June 17, 2010.

Next, in regard to the Plaintiff's deposition that was scheduled for June 17, 2010, attached as Exhibit A, MJ Letter, is a copy of the correspondence, dated June 14, 2010, sent to Mr. Brobst in regard to the re-scheduling of the above deposition, which letter again clearly establishes the fact that the Plaintiff was asking for a rescheduling of his deposition because of additional medical concerns, this time because of the health issues related to his paralegal.

More specifically, in the above regard, the Plaintiff was requesting re-scheduling of the above deposition because of the medical illness on the part of his paralegal, M.J., who has Crohn's Disease, and was then suffering from rather serious dental issues that had numerous complications which required her to have multiple dental surgeries, and therefore to have then missed a substantial amount of workdays, causing severe scheduling difficulties for the Plaintiff in other matters.

Further, in regard to the Plaintiff's scheduled deposition for June 23, 2010, attached as Exhibit B, Cornea Letter, is a copy of the correspondence, dated June 22, 2010, that the Plaintiff sent to Mr. Brobst, which provided a medical justification why the Plaintiff could not attend.

More specifically, the Plaintiff had suffered a corneal abrasion on Thursday, June 17, 2010, as indicated by his attending optometrist, and had consequently lost the ability to see out of his right eye for a considerable period of time, and obviously had considerable discomfort because of that condition. As a consequence of the above, the Plaintiff's deposition was then rescheduled for July 1, 2010.

Finally, attached as Exhibit C, 6/30 Letter, is a copy of the letter that the Plaintiff sent to Mr. Brobst in regard to his deposition that had been scheduled for the Plaintiff on July 1, 2010, advising Mr. Brobst of the passing of the Plaintiff's son, earlier that week, making it impossible for the Plaintiff to then attend the above deposition.

In sum, of the above four scheduled depositions of the Plaintiff, two were rescheduled because of health issues related to the Plaintiff, one because of illness on the part of his office staff, and finally the fourth one because of the death of his son.

Also, Mr. Brobst deceitfully did not include the fact that the Plaintiff had initially had his deposition scheduled for January 26, 2010, and that it had to be rescheduled, because at that time, the Plaintiff was suffering from a fractured vertebra and various dislocated disks that he had recently suffered by attempting to lift his 15 year old black labrador retriever into the cab of his jeep, which is hardly a contrivance to avoid being disposed by Mr. Brobst in this case.

Further, in reference to the above, attached as Exhibit D, Dr. Clearfield Letter, is a copy of the letter provided to Mr. Brobst, dated January 22, 2010, from the Plaintiff's attending physician, attesting to the above, making the Plaintiff's appearance at the above deposition scheduled for January 28, 2010, not possible at this time.

Also, the Plaintiff has already made himself available for eight hours of depositions in March of 2010, and had also previously fully complied with all of the discovery requirements

requested of him by the Defendants, in regard to their respective requests for production of documents. More specifically, the Plaintiff has sent over hundreds of pages of documentation to the Defendants, in full compliance with all their requests of the Plaintiff in that regard, and that full compliance by the Plaintiff is in stark contrast to the complete stonewalling that the Defendants have employed by failing to respond to any of the Plaintiff's discovery requests in reference to any of the Plaintiff's request for the production of documents, or the interrogatories that were served on each of the Defendants.

Finally, based on all of the above, in regard to the rescheduling of all the Plaintiff's depositions, because of the documented health care reasons, and the Plaintiff's full compliance with all of the other discovery requirements imposed on him, there is absolutely no factual basis to support the conclusion that the Plaintiff has been intentionally routinely dilatory in regard to respecting his responsibilities in regard to the discovery aspects of this case.

It is axiomatic that no party involved in litigation can in any way be prejudiced because of health issues, and therefore, the Plaintiff's case cannot be prejudiced because of the intentionally false misrepresentations by Mr. Brobst, on behalf of the City Defendants, as were set forth in the City Defendants' Motion, because in fact the Plaintiff did not in any way ever intentionally avoid his responsibilities, by being intentionally dilatory, in regard to the depositions that had been scheduled for him, as demonstrated by the above Exhibits A through D attached hereto.

2. The Plaintiff Routinely Rescheduled Dawn's Depositions, Without Justification;

Additionally, other intentionally deceptive false misrepresentations by Mr. Brobst, the City Defendants' counsel, this time in paragraph 4 of the City Defendants' Motion, reads as follows:

> " The deposition of Dawn McQuade was previously scheduled for January 28, 2010, March 9, 2010, May 20, 2010, June 16, 2010, June 24, 2010, and July 2, 2010, each time the deposition was rescheduled at the insistence of Plaintiff ."

The above is obviously drafted in support of the conclusion that Mr. Brobst wanted this court to formulate, being that the Plaintiff had been "routinely dilatory" by arbitrarily canceling scheduled depositions.

Again Mr. Brobst, the City Defendants' counsel, does not truthfully explain that each of the rescheduling of the above depositions was either because of health issues related to the Plaintiff, or the Plaintiff's office staff, or based on a decision made by Mr. Brobst, the City Defendants' counsel, himself.

More particularly, in regard to Dawn's scheduled deposition for January 28, 2010, it was rescheduled because of the above injuries suffered by the Plaintiff whereby his vertebra had recently been fractured and he had dislocated various discs. As stated above, because of the above injury, the Plaintiff's deposition had been rescheduled from January 26, 2010, and therefore that was the same reason why Dawn's deposition had to be rescheduled from the above date.

Obviously, because of the fact that Mr. Brobst had the above attached letter, Exhibit D, Dr. Clearfield Letter related to this issue, he again was very obviously not being truthful to this Court by allowing this Court to make the wrong inference from the above, i.e., that the

above postponement of Dawn's deposition was again simply another example of the Plaintiff just being "routinely dilatory". As disclosed above, nothing could be further from the truth.

Additionally, in regard to Dawn's deposition scheduled for March 9, 2010, that deposition was not rescheduled because of something the Plaintiff did. In fact, it was rescheduled solely because of the fact that the amount of time allocated for depositions by the parties for that date included the deposition not only of the Plaintiff, but also three other witnesses, including Dawn McQuade.

Further, the actual time allocated for the above depositions was expended by the Defendants' legal counsel themselves choosing to depose the Plaintiff and the other two witnesses, and therefore, Mr. Brobst chose not to depose Miss McQuade at the above scheduled deposition. Therefore, based on the above, the Plaintiff had absolutely nothing to do with the rescheduling of Dawn's deposition. Further, this is another instance where allowing the above inference that the above deposition was rescheduled because of the Plaintiff's "routinely being dilatory" again is evidence of the intentional attempt by Mr. Brobst to mislead this Court in regard to the above issue.

Also, in regard to the depositions of Dawn scheduled for May 20, 2010, June 16, 2010, and June 24, 2010, in each of those instances they were all rescheduled for the same reasons that the Plaintiff's above depositions for each of the same dates or approximate dates were rescheduled, all being related to either the Plaintiff's health, or the health of his paralegal, M.J., who has Crohn's Disease, and at that time, was suffering substantial dental problems, which, as stated above, had created many scheduling conflicts for the Plaintiff independent of this case, and thus triggered the request for the rescheduling.

Again, Mr. Brobst lied to this Court by not providing to the Court a copy of the documentation he has related to the above, which clearly indicates that the rescheduling of any of the above three depositions were not without justification. Again, none of them were rescheduled because the Plaintiff was being "routinely dilatory".

Finally, in regard to Dawn's deposition scheduled for July 2, 2010, because the Plaintiff was notified on June 30, 2010 that his son had died on June 29, 2010, the Plaintiff was not in the capacity to be able to attend Dawn McQuade's above deposition, and therefore the Plaintiff requested that it be rescheduled by correspondence to Mr. Brobst, dated June 30, 2010, a copy previously attached as Exhibit C, 06/30 Letter.

Therefore, again it was a false representation by Mr. Brobst that would allow this Court to believe that the Plaintiff had, without justification, sought the rescheduling of the above deposition of Dawn from July 2, 2010, when Mr. Brobst himself was very much aware of the fact that the above was rescheduled because of the death of the Plaintiff's son, and therefore, was clearly not an indication that the Plaintiff again was "routinely dilatory".

Further, it is respectfully submitted that Mr. Brobst addressing the above July 2, 2010 date in the City Defendants' Motion is most hurtful, because the Plaintiff had believed that addressing directly or indirectly the death of the Plaintiff's son in this matter would have been "sacred ground", for purposes of this case.

It is therefore very hurtful that the Plaintiff is now being forced to respond in this regard to the above date of July 2, 2010, being used by Mr. Brobst to inappropriately attempt to influence this Court. There is a limit on advocacy, and I believe that Mr. Brobst, in the City Defendants' Motion, has far exceeded appropriate ethical bounds. Finally, I pray that I am the only person whoever reads this paper that ever has to suffer the loss of a child because God

decided to call that child home early. At this point, I know the heartache related to the above will be life-long, and therefore I hope that no one else related to this case has to also endure the aftermath of the above type of family calamity.

3. The Plaintiff Refused to Provide to the Defendants the Information Repeatedly Requested from Him;

Next, in the City/Defendants' Motion, in paragraph 6, Mr. Brobst, on behalf of the City Defendants, has alleged the following:

> "Defendants are still waiting for Plaintiff to provide us with the name and address of the secretary of Plaintiff and the name and address of an employee who worked in the Plaintiff's realty business in order to schedule their depositions, the names of which Plaintiff promised to provide but has yet to provide to Defendants."

In response to the above, in Exhibit E, 6/9 Letter, attached hereto, which is dated June 9, 2010, the Plaintiff has already provided to counsel for the City Defendants, Mr. Brobst, all of the information referenced above, other than the fact that Mr. Brobst had already been told that the employee in the rental office was John Popovich. Consequently, again, the above statement by Mr. Brobst, on behalf of the City Defendants, is another intentional lie.

4. The Plaintiff was Estopped from Seeking Additional Discovery by Depositions;

Next, in paragraph 8 of the City Defendants' Motion, Mr. Brobst asserts the following:

> " The City Defendants request that the Plaintiff continue to be prohibited from scheduling depositions in this matter as set forth in the Court's February 9, 2010 Order since Plaintiff failed to schedule any depositions on or before January 31, 2010 which was the discovery deadline before the Court's extension thereof, unlike the City Defendants who scheduled the depositions of Plaintiff and the other people Plaintiff has identified in Answers

> to Interrogatories for taking their depositions within the discovery deadline."

In regard to the above, the Plaintiff has two responses to same. First, one cannot attempt to comment on the above, without realizing that this is simply an inserted paragraph in the City Defendants' Motion that is the last of a series of paragraphs that contained intentionally false statements by Mr. Brobst, obviously designed to cause this Court to reach the unfounded conclusion that the Plaintiff has been "routinely dilatory" in regard to deadlines, most particularly, dealing with discovery.

With the intentions of Mr. Brobst now obvious, in that he intends to attempt to deceive this Court, it would appear that the above language, consistent with that intention, would be designed to cause this Court to believe that the Plaintiff had already intentionally not sought depositions in the past, and therefore, should be estopped from being allowed to secure permission to take depositions etc. in the future.

In fact, Mr. Brobst's above assertion creates an inference that is absolutely not correct, because the Plaintiff terminated his relationship with his prior attorney for exactly the above reason, which is why the Plaintiff then filed with this Court a request to be permitted to secure discovery, all of the above was clearly previously known by Mr. Brobst.

In response to the Plaintiff's motion requesting that he be extended an opportunity to have discovery, this Court granted the Plaintiff's motion for the Plaintiff to be allowed to have discovery until June 30, 2010, which right included the right to take depositions. Therefore, Mr. Brobst's, again by the above language, has attempted to mislead this Court by making the false assertion that the Plaintiff has somehow been estopped from requesting additional discovery now, based on his "waiver" of that right in the past, by not requiring that it be included, is in this regard, in one of the earlier drafts of the Case Management Plan in this case.

b. Other Relevant Factors Related to the above for This Court's Consideration;

1. Plaintiff's Discovery Efforts since March24, 2010;

As stated above, on March 24, 2010, the Plaintiff made a request of this Court for an amendment to the Case Management Plan to request 99 days to conduct discovery, from March 24, to June 30, 2010 (the "99 Day Discovery Period").

The above request was because of the fact that the Plaintiff's prior legal counsel had not provided for any discovery efforts to be undertaken on behalf of the Plaintiff in regard to taking depositions, etc., in the prior Case Management Plan filed in this case, which as stated above, was one of the reasons why the Plaintiff discontinued his relationship with his prior lawyer.

Also, it is now clear that the above 99 Day Discovery Period requested by the Plaintiff was based on the Plaintiff's very obvious lack of trial experience, because it is now very obvious that it was completely unrealistic for him to expect that within the above 99 Day Discovery Period, he could have accomplished anything meaningful in regard to securing discovery from the Defendants , for the reasons described below.

First, as context, attached as Exhibit F, Discovery Schedule, is a schedule that reflects all of the various activities that were undertaken by the Plaintiff during the above 99 Day Discovery Period, as the Plaintiff attempted to fully comply with what he believed to have been his responsibilities to secure the needed information from the Defendants that he needed to prove his case.

As further context, it is important to note that the Plaintiff has never drafted interrogatories or a request for production of documents before, and therefore, there is a

tremendous amount of time inefficiently expended in the "learning curve" to accomplish the tasks that the Plaintiff attempted to accomplish in regard to securing the above needed information from the Defendants.

Looking at the Discovery Schedule, it reflects that during the first 14 days of the 99 Day Discovery Period, the Plaintiff undertook attempting to secure possession of all of the documentation that the Plaintiff's prior legal counsel had received from the Defendants, in addition to copies of the requests for the production of documents and the interrogatories that the Plaintiff's prior legal counsel had served on the Defendants.

In the above instance, there was receipt of approximately 500 pages of documents (95% of which was absolutely irrelevant junk) provided by the City Defendants, and almost nothing was provided by the Cadle Defendants previously to Plaintiff's prior legal counsel.

Then, after possession of the above information was secured, 17 days of the 99 Day Discovery Period were then spent by the Plaintiff and his staff dedicated to reviewing that information, cataloging it, and then beginning an analysis of that information.

Included in that period was a review of the Complaint, with a view towards preparing a list of documents that were believed that would be capable of being discovered from the Defendants that could assist the Plaintiff in proving his case. Additionally, during the above period, the Plaintiff also began the preparation of a list of questions to be posited to each of the Defendants, in the form of interrogatories.

Then, after the above documents were secured, fully reviewed and analyzed, and the information to begin the preparation of the interrogatories and the request for production of documents was completed, 19 days of the 99 Day Discovery Period were then dedicated attempting to draft the 126 pages of discovery documents.

Also, as set forth above, the Plaintiff, never having drafted either interrogatories or request for production of documents before, was obviously extremely inexperienced, and took a substantially much greater period of time, for him to attempt to accomplish that task, than even the time that would have been expended by a person who had only minimal trial experience.

Therefore, in sum, the Plaintiff spent 14 days of the 99 Day Discovery Period, trying to secure possession of the documentation previously provided by the Defendants, 17 days doing the review of that documentation etc. to prepare the list of questions for purposes of the interrogatories and the requests for the production of documents, and then 19 days in the drafting of the documents that were to be served on the Defendants. Of course, all the above three time periods are clearly reflected on the attached Exhibit F, Discovery Schedule.

Then, because the Plaintiff was required to extend to the Defendants 30 days for them to respond to the interrogatories and the requests for the production of documents he had prepared, the Plaintiff then submitted the discovery documents to all of the Defendants on the date set forth on Exhibit F, Discovery Schedule, which also reflects the expiration of each of those 30-day discovery periods.

In regard to the Discovery Documentation, attached hereto as Exhibit G, Discovery Documentation, is a copy of a schedule that lists all of the documentation, prepared, including all of the interrogatories, the request for production of documents and all of the notice of depositions, that the Plaintiff prepared, and all of which total 126 pages.

Also, as set forth on the attached Discovery Schedule, the Plaintiff had expected to review the documentation provided by the Defendants over a very limited period of time, approximately five days, assuming that the Defendants had fully complied with all of the Plaintiff's discovery requests.

Additionally, the Plaintiff, when the discovery documentation was sent to the Defendants, also then scheduled depositions for all of the Defendants on the dates noted on the Discovery Schedule, which was done solely to comply with the now very obvious incredibly artificially short expiration date of the 99 Day Discovery Period that the Plaintiff had unwisely requested of this Court, which ended on June 30, 2010.

Basically, the Plaintiff was attempting to use a four or five day period, after the receipt of the discovery information, to prepare advance lists of questions, to be posited to each of the Defendant's at their deposition, again, condensed because of the above schedule.

In sum, the Plaintiff was forced to use the above condensed timetable in the 99 Day Discovery Period, simply because of the fact that the Plaintiff had used an extremely unrealistic discovery period that was projected to expire on June 30, 2010, and therefore, by the above deposition schedule, the Plaintiff was doing everything possible to comply with this Court's mandate by utilizing the above abbreviated timetable, so as to have everything completed, related to this discovery, by the end of June, 2010.

Unfortunately, the Plaintiff was completely frustrated trying to secure the above discovery information from the Defendants, because counsel for all of the Defendants both advised the Plaintiff that they would not comply with any of the discovery requests the Plaintiff made in his request for the production of documents or the interrogatories, and further refused to provide the Plaintiff access to the Defendants to be deposed, until they, the City Defendants, had completed their depositions of the Plaintiff and Dawn, etc.

In sum, because of the extremely unrealistic discovery period that the Plaintiff had selected, coupled with counsel for the Defendant's universal refusal to cooperate with the Plaintiff, as described above, made impossible the Plaintiff securing any of the discovery

information that he had originally planned to receive in the above 99 Day Discovery Period that he had initially requested of this Court.

Further, it is now obvious that the Plaintiff attempted to fully comply with all of his responsibilities as he saw them in appreciation of this Court granting to him the opportunity to secure discovery in the Case Management Plan that he had requested, and therefore, it is obvious that the 99 Day Discovery Period should have been for a much longer period of time, for the Plaintiff to have secured any real benefit from his above endeavors to date.

2. Bad Faith by the Defendants in this Case;

a) The Defendants Stonewalled All of the Plaintiff's Discovery Efforts;

First, as is obvious based on the above, the Defendants' lawyers have completely stonewalled each of the Plaintiff's discovery efforts in regard to responding to either the interrogatories or the request for production of documents sent to each of them.

They simply potentially "screwed up the timetable", so that the Plaintiff could not secure the information he needed for discovery within the timetable they had requested from this Court by him only initially asking for a 99 Day Discovery Period, which, in light of what has transpired, as disclosed above, obviously indicates that the Plaintiff's complete lack of trial skill and experience created the very obvious opportunity for the Defendants to completely frustrate all of the Plaintiff's discovery efforts.

All the Defendants had to do was simply "stonewall" for a couple weeks, by not complying with the Plaintiff's discovery requests, and the clock "would simply run out on the Plaintiff", and that effort would have then caused the Plaintiff not to be able to complete his

discovery within the artificially short 99 Day Discovery Period, that the Plaintiff had requested of this Court. .

b) Brobst's Numerous Lies in the City Defendants' Motion; Additionally, all of the above false representations that Mr. Brobst made in the City Defendants' Motion in regard to the Plaintiff's alleged dilatory tactics indicates obvious bad faith, whereby Mr. Brobst had violated Rule 3.3 of the Professional Rules of Conduct, dealing with the conduct of legal counsel in drafting motions and pleadings that are submitted to this Court.

Further, Rule 11 of the Federal Rules of Civil Procedure apply here, and Mr. Brobst has also clearly violated that Rule, as far as truthful pleadings are concerned.

Next, below is a list of some of the lies by Mr. Brobst as reflected in the above paragraphs based on the documentation and other evidence submitted that are uncontroversial;

1. Mr. Brobst's lie in regard to setting forth facts that would allow this Court to believe that the continuance of the Plaintiff's deposition scheduled for May 20, 2010 was because the Plaintiff was being routinely dilatory, instead of for the justifications offered related to the Plaintiff's heart issues at that time.

2. Next, Mr. Brobst's lie in regard to setting forth facts that would allow this Court to believe that the continuance of the Plaintiff's deposition for June 14, 2010 was because the Plaintiff was being routinely dilatory, instead of for the justifications offered related to the Plaintiff's paralegal's illness.

3. Mr. Brobst's lie in regard to setting forth facts that would allow this Court to believe that the continuance of the Plaintiff's deposition for June 23, 2010 was because the Plaintiff was being routinely dilatory, instead of for the justifications offered related to the Plaintiff's corneal abrasion.

4. Mr. Brobst's lie in regard to setting forth facts that will allow this Court to incorrectly believe that the continuance of Dawn's deposition, from January 28, 2010, was because the Plaintiff was being routinely dilatory, instead of truthfully explaining to the Court that that rescheduling was because of the medical opinion of the Plaintiff's physician as contained in the letter forwarded to him dated January 22, 2010.

5. Mr. Brobst's lie in regard to setting forth facts that will allow this Court to incorrectly believe that the continuance of Dawn's deposition from March 9, 2010 was because the Plaintiff was being routinely dilatory, instead of truthfully explaining to the Court that that rescheduling was because of the fact that there was no time allocated on March 9, 2010 because of the decisions made by Mr. Brobst to depose Dawn at that time, and therefore, Mr. Brobst is the one who made the decision to reschedule Dawn's deposition for another date.

6. Mr. Brobst's lie in regard to setting forth facts that would allow this Court to believe that the continuance of Dawn's deposition scheduled for May 20, 2010 was because the Plaintiff was being routinely dilatory, rather than, as stated above in regard to the Plaintiff's deposition, being related to the Plaintiff's heart issues at that time.

7. Next, Mr. Brobst's lie in regard to setting forth facts that would allow this Court to believe that the continuance of Dawn's deposition for June 16, 2010 was because the Plaintiff was being routinely dilatory, instead of, as stated above, for the justifications offered related to the Plaintiff's paralegal's illness.

8. Mr. Brobst's lie in regard to setting forth facts that would allow this Court to believe that the continuance of Dawn's deposition for June 24, 2010 was because the Plaintiff was being routinely dilatory, instead of for the justifications offered related to the Plaintiff's corneal abrasion.

9. Mr. Brobst's lie in regard to setting forth facts that would allow this Court to believe that the continuance of Dawn's deposition from July 2, 2010 was because the Plaintiff was being routinely dilatory, instead of due to the fact that the Plaintiff's son had passed just days previously.

10. Mr. Brobst's lie in regard to the Plaintiff allegedly withholding the names of two employees whom he wanted to depose, when that information had previously been provided to him.

11. Mr. Brobst's lie in regard to the Plaintiff "waiving" his right to discovery as reflected in the Court's February 9, 2010 Order, when in fact this Court had granted the Plaintiff's request of March 24, 2010 to allow him additional time for discovery.

In sum, because of all of the above, Mr. Brobst has clearly violated all of the above rules of professional conduct by making all of the above obvious lies.

c) The City Defendants' Tortious Acts Towards the Plaintiff During This Case, Dealing With Illegal Citations etc.;

Further, attached as Exhibit H, City Harassment Schedule, is a copy of a second time schedule, and this schedule reflects what has transpired since February 9, 2009, the date of the filing of the Complaint in this case.

It reflects the fact that throughout that period, the City was illegally sending citations and notices to the Plaintiff in an attempt to (i) illegally harass the Plaintiff, (ii) to cause him to dissipate his minimal working capital to pay for certain property expenses for which he had no legal liability, so as to dissipate the Plaintiff's ability to financially maintain this lawsuit, and (iii) to make the Plaintiff spend a substantial amount of time to prepare all of the court pleadings necessary to stop the City Defendants from having the Plaintiff arrested by a constable,

for his failure to pay the illegal assessments that have been imposed on him, by the City Defendants' illegal actions, and if the Plaintiff failed to pay same, they would have the Plaintiff imprisoned.

Also, because of the fact that the City Defendants started to attempt to have the Plaintiff arrested, pursuant to the improper illegal utilization of the City's various codes, the Plaintiff had to prepare (i) a complaint (the" City Complaint"), (ii) a petition for a preliminary injunction (the "Petition") (iii) a memorandum of law in support of the preliminary injunction, (iv) a motion for a judgment on the pleadings, and (v) a memorandum of law in support of the motion for a judgment on the pleadings, all taking a substantial amount of time of the Plaintiff away from being dedicated to completing his responsibilities in this case, which is of course one of the obvious goals of the City Defendants, in undertaking this above illegal activity

Further, in this regard, attached as Exhibit I, City Complaint, is a copy of the City Complaint that the Plaintiff has filed against the City Defendants, setting forth all of the allegations that established the bad faith by the City Defendants, that impact directly on this case.

In sum, it is obvious, based on the above language in the City Complaint, that the City Defendants have been utilizing the illegal actions related to the matters described in the City Complaint to accomplish the above three goals, all being related to the illegal interference in the Plaintiff's ability to prosecute this case, to represent himself and to have his right to a fair trial effectuated.

Further, related to this case, attached as Exhibit J, Petition, is a copy of the Petition, whereby the Plaintiff was requesting that the City Defendants be enjoined from further interfering with the Plaintiff so that the Plaintiff could properly prepare his documentation related to this case in addition to requesting that the City be mandated to reimburse the Plaintiff

with the funds he was forced to expend to pay for the illegal property repairs, so that he could continue to prosecute this lawsuit.

Finally, as is obvious, based on the above pleading, a review of the Petition will indicate that the Plaintiff was obliged to do all of the above so as to preclude himself from being arrested and impoverished, because of the illegal fines etc. that were being imposed on him by the City Defendants.

Further, attached as Exhibit K, Memorandum, is a copy of the Memorandum of Law filed in Support of the Petition for a Preliminary Injunction.

In sum, during the above 99 Day Discovery Period, it is obvious that, in reference to the City Defendants (i) their attorneys, on their own behalf, have refused in good faith to comply with the Plaintiff's discovery request (ii) have authorized Mr. Brobst's to make all of the above lies set forth in the City Defendants' Motion, and (iii) the City Defendants have also actively been attempting to frustrate and make difficult the Plaintiff's prosecution of this case, by virtue of all the illegal acts as set forth in the above Complaint in the Petition.

C. ISSUES

1. Should this Court reconsider its above decision in regard to the Plaintiff's Motion related to discovery based on the additional facts and circumstances that have now been brought to this Court's attention as set forth above?

Suggested answer: YES, the Plaintiff should be allowed to secure all of the documents requested, and the completed interrogatories, and be allowed an opportunity to take depositions of all of the Defendants, and any other parties in interest, because there is no basis to impose the Death Penalty on the Plaintiff's causes of action pursuant to Rule 37 of the Federal Rules of Civil Procedure.

2. Should this Court reconsider its above decision, in regard to the City Defendants' Motion filed related to discovery based on the additional facts and circumstances that have now been brought to this Court's attention as set forth above?

Suggested answer: YES, the City Defendants should be barred from any additional discovery, and should be precluded from using any information they have received by virtue of discovery conducted in this case, because of sanctions mandated pursuant to the provisions of Rule 37 of the Federal Rules of Civil Procedure.

3. Should Mr. Brobst be sanctioned for all of his intentional lies and misrepresentations that he has made to this Court about the Plaintiff?

Suggested answer: YES, Mr. Brobst has clearly violated Pennsylvania Rule of Professional Conduct, 3.3, Candor with a Tribunal.

4. Should the timetable to prepare for trial, and trial of this case, be structured in light of the Plaintiff's disabilities, or for the convenience of the Defendants' legal counsel?

Suggested answer: **No party in litigation should be prejudiced because of any disabilities they may have. The efficient administration of justice is case specific.**

D. ARGUMENT

1. SHOULD THIS COURT RECONSIDER ITS ABOVE DECISION IN REGARD TO THE PLAINTIFF'S MOTION RELATED TO DISCOVERY BASED ON THE ADDITIONAL FACTS AND CIRCUMSTANCES THAT HAVE NOW BEEN BROUGHT TO THIS COURT'S ATTENTION AS SET FORTH ABOVE?

As context, as set forth above, the Plaintiff's Motion that was pending before this Court was a motion for an extension of time to file motions (a) to compel discovery of certain documents, and the receipt of completed interrogatories, and also (b) to propose an amended case management plan, that was different than the one posited by the Defendants.

This Court denied the Plaintiff's Motion, and as a consequence, in this case, the Plaintiff is now prohibited from securing any additional discovery from the Defendants, either by requests for production of documents, interrogatories, or depositions.

The effect of the above denial of the Plaintiff's Motion imposes the "Death Penalty" on the Plaintiff's causes of action set forth in the Complaint. In this case, the Complaint makes clear that the Plaintiff is alleging that there is an expansive conspiracy between all of the Defendants, and to prove that conspiracy, the Plaintiff needed access to a substantial amount of documentation from the administrative officers of both of the Defendants, Cadle and the City, in addition to having the ability to take the depositions of all of the Defendants, and all of the persons that become of interest as a part of the discovery process by the Plaintiff.

By this Court denying the Plaintiff's Motion, the Plaintiff has minimal evidence to be able to establish his causes of action against all of the Defendants in the Complaint.

Further, in this case, the City Defendants are requesting that this Court impose the Death Penalty on the Plaintiff's causes of action in the Complaint, based on the false facts as alleged by Mr. Brobst in the City Defendants' Motion, indicating that the Plaintiff has been routinely dilatory, which indication is predicated upon Mr. Brobst falsely alleging that the Plaintiff had unjustifiably postponed the remaining hour of his deposition on three occasions over a three month period.

Even if the above facts were true, which of course they are not, based on all of the above documentation referenced in this Memorandum of Law, there would be no basis for this Court to

impose the Death Penalty on the Plaintiff's causes of action, based on the court precedents in the Third Circuit.

To begin with, in this case, as stated above, there was no violation of any discovery order by the Plaintiff, in that the City Defendants have only alleged that there has been difficulty in attempting to schedule the Plaintiff's remaining deposition.

Further, the cases in the Third Circuit indicate that even when a party has intentionally violated a discovery order, which is absolutely not the case in this situation, a Court should only impose the Death Penalty in extraordinarily extreme cases.

For example, the 3rd Circuit Court of Appeals in *Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir. 1984)* held that there are six factors for a court to consider in determining whether the trial court abused its discretion when dismissing a claim pursuant to Rule 37.

The appellate court is guided by the manner in which the trial court balanced the following six factors and whether the record supports its findings: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense. See *Poulis.*

These factors must be weighted by the district court "in order to assure that the extreme sanction of dismissal is reserved for only those few instances in which it is justly merited. *Poulis* at 870.

The examination of the above six factors in this case as discussed below demonstrates that the extreme sanction of dismissal of the Plaintiff's claim set forth in the Complaint was not

warranted in this present case, even if all of Mr. Brobst's lies in the City Defendants' Motion were true, which of course, based on the above, they are not.

Therefore, based on the actual facts of the Plaintiff's behavior in this case dealing with the scheduling of the remaining one hour of his deposition, there is no basis for this Court to be imposing any penalties pursuant to Rule 37(b).

Poulis Factor 1: The Extent of a Party's Personal Responsibility

Examining the first factor for the delay in completing the Plaintiff's one hour deposition, it is clear that the Plaintiff has had legitimate excuses for each of the three continuances of his scheduled deposition, all of which were given to Mr. Brobst, well in advance of his scheduled deposition, so that there was no prejudice to any of the Defendants.

Further, the Plaintiff has already subjected himself to eight hours of depositions by the Defendants, and has also completed all of the discovery required of him in regard to the request for production of documents, and the interrogatories that were served on him by all of the Defendants.

Surely, the fact that the Plaintiff suffers from poor health and has disabilities should not inure to his prejudice when pursuing his claims against the Defendants.

Also, as documented by all of the above information, the Plaintiff has been following all the rules in attempting to quickly and efficiently prosecute this case. Therefore, at this point, the Plaintiff has completed all of the discovery requirements imposed on him related to this case other than completing the remaining one hour deposition of himself, which is now scheduled for September 15, 2010.

Also, as context, and as illustrated by all of the above correspondence to Mr. Brobst, and prior documents filed to this case, the Plaintiff suffers from diminished health, for a whole host of

reasons, and they have to a certain extent precluded him from being able to complete the completion of the remaining one hour deposition.

Further, he has drafted and served all of the interrogatories and requests for production of documents that he prepared on all of the Defendants, and again, not only did he comply with all of the discovery requirements imposed on him by the Defendants, but he also took advantage of all of the discovery opportunities provided by this Court, by granting his request for discovery in March of 2010 in this case.

Of course, none of the Plaintiff's requests for production of documents or the interrogatories that the Plaintiff served on the Defendants had yet even been responded to.

Also, as mentioned above, the Plaintiff has been forced to spend a large portion of his time attempting to keep himself out of prison because of the bad faith actions undertaken by the City Defendants, which have made it much more difficult to effectively and efficiently prosecute this case.

At this point, the Plaintiff alleges that the above bad faith actions by the City Defendants were undertaken with the purpose of diminishing the Plaintiff's ability to prosecute this case before this Court by depleting all of his financial resources, and by also requiring him to spend substantial amount of time preparing all of the legal pleadings, including the City Complaint and the Petition, all as described above, which were all done in an attempt to ensure that he would not go to prison for something that he was not responsible for.

Poulis Factor 2: The Defendants Will Suffer No Prejudice if this Honorable Court Reconsiders its Order

The second factor is also not met in the present case because there is no prejudice to the City Defendants in this case if this Court reconsiders its Order. Here, the City Defendants have not

alleged that they have suffered any prejudice, or that they will suffer any prejudice if this Court reconsiders its Order by allowing the Plaintiff the discovery he requested.

As a matter of fact, the Plaintiff's proposed Amended Case Management Plan allowed opportunities for all parties to conduct discovery fairly. It did not unfairly burden one party at the expense of another. Here, if this Honorable Court reconsiders its Order then the Defendants will also be allowed to finish their discovery. There will be no prejudice to the Defendants if this Honorable Court reconsiders its Order.

Poulis Factor 3: The Plaintiff Has Not Been Dilatory in this Case

The third factor, i.e. a history of dilatoriness, is also not present in this case because, as mentioned above, the Plaintiff has reasonable and valid explanations for the delays in this case, in respect to rescheduling the remaining hour of his deposition.

As mentioned above, the Plaintiff had valid medical reasons for not being able to comply with the remaining deposition scheduled dates, documentation of which were provided to Mr. Brobst before each of the scheduled depositions, all indicating that the rescheduling was not because of any fault by the Plaintiff.

Also, the Plaintiff has provided depositions of 8 hours already to the Defendants, and has also provided all of the documents requested by the Defendants of the Plaintiff in regard to the request for production of documents, and has already fully answered all of their interrogatories, many months ago.

Therefore, at this point in time, the Plaintiff is 98% in compliance with all the discovery requirements due to the Defendants in this case by him.

Poulis Factor 4: The Defendants, and not the Plaintiff, Committed Willful and Bad Faith Conduct

Here, the Plaintiff did not commit willful or bad faith conduct. The Plaintiff attempted in good faith to fulfill all of his duties in regard to completing discovery, both by fully complying with all of the discovery requirements imposed on him by the Defendants in addition to him sending out timely his requests for production of documents and interrogatories on all the Defendants, all of which the Defendants have refused to respond to.

Conversely, it was the actions of the Defendants that constituted willful and bad faith conduct by failing to provide the Plaintiff with the information that had been requested, and also by continuously citing the Plaintiff for matters for which he had no legal responsibility to address.

In regard to willful and bad faith conduct, of course, based on the facts set forth above, the City Defendants have clearly evidenced bad faith, because of the following: (i) the eleven lies by Mr. Brobst in the City Defendants' Motion, (ii) all of the Defendants stonewalling all of the Plaintiff's discovery efforts, in reference to the request for production of documents, and the interrogatories, and finally, (iii) by the City Defendants prosecuting the illegal lawsuits and threatening the Plaintiff with fines and sanctions in reference to their illegal application of the building code and the property management code of the City of Wilkes-Barre, prejudicing the Plaintiff to the extent of at least $42,000, thereby compromising the Plaintiff's ability to prosecute this lawsuit.

Poulis Factor 5: The Effectiveness of Sanctions Other Than Dismissal, which Entails an Analysis of Alternative Sanctions

Based on the Plaintiff's review of this Court's Order, there was no analysis by this Court discussing the various alternative sanctions that this Court considered before imposing the "Death Penalty". Therefore, the Plaintiff cannot comment in reference to the above.

However, it would seem that since the Plaintiff is 98% in compliance with of all of his discovery requirements due to the Defendants, it hardly appears to be the situation where any sanctions should have been imposed, when his deposition is scheduled for September 15, 2010 to complete all discovery in this matter from the City Defendants' perspective.

Poulis Factor 6: The Meritoriouness of the Claim or Defense

Finally, based on all of the information set forth above, the Plaintiff has an extremely strong cause of action, against all of the Defendants. The only defense that the Defendants have is to preclude the Plaintiff from being able to secure the information he needs through discovery to be able to prove the conspiracy that obviously existed in this situation between the Defendants, which caused them to illegally conduct all of the activities disclosed in the Complaint. Therefore, the imposition of the "Death Penalty" is very prejudicial to the Plaintiff' because of the fact that he has a very valued causes of action in said Complaint.

2. SHOULD THIS COURT RECONSIDER ITS ABOVE DECISION IN REGARD TO THE CITY DEFENDANTS' MOTION FILED RELATED TO DISCOVERY BASED ON THE ADDITIONAL FACTS AND CIRCUMSTANCES THAT HAVE BEEN BROUGHT TO THIS COURT'S ATTENTION AS SET FORTH ABOVE?

The City Defendants should be barred from using any evidence that they have secured through discovery to date, and should be precluded from securing any additional discovery, as a penalty because of the behavior by the City Defendants in this case to date, pursuant to the above Rule 37(b), as applied by the Third Circuit Court of Appeals in *Ware v. Rodale Press, Inc. 322 F.3d 218 (2003).*

Basically, there is a list of six factors that the Third Circuit believes are relevant to an inquiry related to a motion requesting sanctions pursuant to Rule 37(b), and they are as follows:

> "Exclusion of evidence under *Fed. R. Civ. P. 37(b)(2)(B)* is particularly extreme when the sanction is tantamount to dismissing the claim. In exercising its appellate function to determine whether the trial court has abused its discretion in dismissing a claim an appellate court is guided by the manner in which the trial court balanced the following factors and whether the record supports its findings: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party of the attorney was willful or in bad faith; (5) the effectiveness of sanctions other that dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense. Each factor need not be satisfied for the trial court to dismiss a claim. They should be weighed by the district courts in order to assure that the extreme sanction of dismissal is reserved for the instances In which it is justly merited."

(i) Factor: The Extent of the Party's Personal Responsibility in Regard to the Actions Related to the Motion Pertaining to the Above Sanctions,

In this case, the alleged conduct that constitutes grounds for the Plaintiff seeking a Rule 37(b) sanction against the City Defendants is because of the following:

(a) The City Defendants lawyer has intentionally repeatedly lied to this Court on 11 occasions in the City Defendants' Motion in an attempt to improperly influence this Court into imposing the Death Penalty to the Plaintiff's causes of action in this case, said effort being successful to date.

(b) The City Defendants' attorney has completely frustrated all the Plaintiff's discovery efforts related to the interrogatories and a request for production of documents that the Plaintiff had prepared and served on the City Defendants by refusing to comply with any of the above requests; and

(c) The City Defendants have clearly acted illegally in this case by virtue of doing all of the actions as described in the City Complaint and the Petition, which are undeniably illegal, and solely to continue to weaken the Plaintiff's position financially and otherwise, so as to preclude him from being able to prosecute this case successfully pursuant to his constitutional rights to have unfettered access to this Court, and not to have one of the Defendants, independent of this case, illegally causing the Plaintiff to utilize his working capital to pay for illegal notices and citations.

(ii) The Second Factor is the Prejudice to the Adversary Caused by the Failure of the Party at Fault to Properly Meet Scheduling Orders and Respond to Discovery;

The Plaintiff has been severely prejudiced because of the failure of the City Defendants and their attorney to assist the Plaintiff in regard to discovery.

More particularly, one of the actions complained of by the Plaintiff in reference to the City Defendants that deals with discovery is the stone walling by the City Defendants' attorney in failing to respond to all of the discovery efforts related to the interrogatories and their request for production of documents that the Plaintiff had previously served on all of the Defendants.

Additionally, Mr. Brobst's 11 lies in the City Defendants' Motion were all placed there so as to attempt to cause this Court to deny the Plaintiff any additional discovery related to the causes of action set forth in his Complaint, and therefore, instead of directly refusing to provide the requested information by the Plaintiff, as set forth above, the City Defendants' attorney has also attempted to eliminate the Plaintiff's ability to secure the additional information he needs through discovery, by virtue of his 11 lies that he listed in the City Defendants' Motion filed in this case.

Further, the illegal actions by the City Defendants that are set forth in the City Complaint and the Petition clearly indicate that the City Defendants were perpetrating all that illegal activity during the Plaintiff's period of prosecuting this case, and in particular, it became most accentuated during the discovery process period of this case, ultimately requiring the Plaintiff to spend in excess of 100 hours preparing the City Complaint, the Petition, and the Supporting Memorandum of Law, and all of the other related legal documents, either filed, or to be filed related to the matters the subject of the City Complaint.

(iii) That There Is A History of Being Dilatory;

Here, the only evidence of the City Defendants being dilatory was their intentional failure for them to produce the documents that the Plaintiff had requested related to the interrogatories and the documents referenced in the request for production of documents.

(iv) Whether the Conduct of the Party or the Party's Attorney, in the case, the City Defendants or the City Defendants' Attorney, was Willful and in Bad Faith;

In each of the above three situations, dealing with Brobst's 11 lies, the stone walling by Brobst, and the City Defendants' harassment of the Plaintiff in reference to all of the matters set forth in the City Complaint, clearly indicates that they were all illegal and in bad faith, all designed to compromise the Plaintiff's ability to prosecute this case, and in reference to the above 11 lies, by having the Plaintiff improperly subject to sanctions pursuant to the Rule 37 by this Court.

(v) The Effect of Sanctions Other Than Dismissal;

Here, the Plaintiff has been subjected to a very comprehensive multi faceted strategy of illegal conduct involving numerous persons, all attempting to cause the Plaintiff not to be able to secure justice in this Court, and only the penalty of precluding the City

Defendants from being able to use the discovery information found to date, and any additional discovery information, will cause the correct balance in this case.

The City Defendants, since 2005, have, from time to time, acted illegally in regard to the Plaintiff and the Plaintiff's properties, and some of that behavior is the subject of other litigation presently pending between the Plaintiff and the City, and certain representatives of the City. Consequently, the imposition of the above sanction is the only way that the Plaintiff can be protected from further illegal actions by the City Defendants.

(vi) The Meritorious Aspects of the City Defendants' Defenses;

In this case, the only defense that the City Defendants have is to successfully illegally preclude the Plaintiff from (i) securing all of the information and the documents that he had requested in the interrogatories and the request for the production of documents, and then (ii) deposing all of the Defendants and the administrative employees of both Cadle and the City of Wilkes-Barre. That is the only way the Plaintiff will not be able to prove all the causes of action that the Plaintiff has against all of the City Defendants, in a jury trial before this Court.

3. SHOULD MR. BROBST BE SANCTIONED FOR ALL OF HIS INTENTIONAL LIES AND MISREPRESENTATIONS THAT HE HAS MADE TO THIS COURT ABOUT THE PLAINTIFF?

As stated above, Mr. Brobst, in the City Defendants' Motion, has lied eleven (11) times, and in each instance, he knew his statements were false because he was already in possession of written documentation that had been submitted to him that fully informed him as to all of the circumstances surrounding the rescheduling of the Plaintiff's remaining one hour deposition. Obviously, making all of those above lies in a document submitted to the Court places Mr. Brobst in violation of Federal Rule of Civil Procedure 11(b)(3) regarding factual

contentions to the Court. It is also a violation of Rule 3.3, of the Pennsylvania Rules of Professional Conduct, which deals with candor toward the tribunal.

Further, paragraph a (1) in part of Rule 3.3 reads as follows:

> "**Rule 3.3. Candor Toward The Tribunal**.
> (a) A lawyer shall not knowingly:
> (1) make a false statement of material fact or law to a tribunal…"

Further, Rule 8.4, Misconduct, of the Pennsylvania Rules of Professional Conduct in part reads as follows:

> "**Rule 8.4. Misconduct**.
> It is professional misconduct for a lawyer to:
> (a)… violate or attempt to violate the Rules of Professional Conduct…
> (c)…engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) engage in conduct that is prejudicial to the administration of justice…"

Further, in the comment section of Rule 8.4, Misconduct, of the Pennsylvania Rules of Professional Conduct, paragraph (1) states in part as follows:

> **"Comment:**
>
> (1) Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct …."

Based on all of the facts and circumstances set forth above in this Memorandum of Law, it is obvious, based on all of the documentation attached, that Mr. Brobst is lying.

In sum, based on all the above, Mr. Brobst has violated Rule 11 of the Federal Rules of Civil Procedure and has also violated Rules 3.3 and 8.4 of the Pennsylvania Rules of Professional Conduct on behalf of his clients, the City Defendants, for which the Plaintiff believes they should be severely sanctioned, particularly because of the fact that the entire above endeavor was undertaken, solely to maximize the prejudice of the Plaintiff's case, by causing this

Court to be improperly influenced by their fraudulent misrepresentations to impose the "Death Penalty" on the Plaintiff's causes of action in this case pursuant to Rule 37.

Respectfully Submitted,

/s/ Joseph R. Reisinger
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as Plaintiff
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