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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 THOMAS A. WAITE,

10 Plaintiff,

11 vs.

12 THE CORPORATION OF THE
13 PRESIDING BISHOP OF THE CHURCH
OF JESUS CHRIST OF LATTER DAY
14 SAINTS, a Utah corporation; THE
CORPORATION OF THE PRESIDENT
15 OF THE CHURCH OF JESUS CHRIST
OF LATTER DAY SAINTS, a Utah
16 corporation; DONALD C. FOSSUM; and
STEVEN D. BRODHEAD,

17 Defendants.
18

Case No.: CV-05-399-EFS

MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEFENDANTS'
MOTION TO CONTINUE
EXPERT DISCLOSURE DATES
CONCERNING
NEUROPSYCHOLOGY
OPINIONS

19 **I. RELIEF REQUESTED**

20 Given the complexity of this motor vehicle accident case, the critical
21 importance of the parties' expert evidence and the full schedules of trial counsel,
22 Defendants respectfully request the following changes to the current Amended
23 Scheduling Order as to expert disclosure dates concerning neuropsychological
24 opinions only:

25 Defense CR 26(a)(2) Expert Disclosures

26 concerning neuropsychological opinions: from 1/22/07 to 2/16/07

27 MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION
TO CONTINUE EXPERT DISCLOSURE DATES FOR
28 NEUROPSYCHOLOGY OPINIONS ... - 1

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Neuropsychology....wpd

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1 Defendants submit that the September 17, 2007 trial date will remain firm,
2 and this adjustment in dates will not impact the discovery cutoff of May 11, 2007.

3 The reason for the requested continuance is that Defendants'
4 neuropsychology expert is not able to conduct his IME until February 7-8, 2007.

5 **II. DISCOVERY STATUS**

6 **A. BACKGROUND**

7 This case arises out of a motor vehicle accident which occurred on or about
8 August 21, 2003, that resulted in plaintiff Thomas Waite sustaining an alleged
9 traumatic brain injury. The claims include negligence against the two defendant
10 drivers, Donald Fossum and Steven Brodhead, and additional claims against
11 defendant LDS Church.

12 **B. LAY WITNESS DISCOVERY**

13 The parties have worked diligently to provide initial disclosures, answer
14 discovery and schedule depositions. Defendants have deposed plaintiff Thomas
15 Waite and plaintiff's parents. The Plaintiff has taken the depositions of three (3)
16 persons identified by defendant LDS in Salt Lake City on November 9 and 10,
17 2006. Additional depositions have been scheduled for February 12-13, 2007 in
18 Arizona and February 20, 2007 in Salt Lake City. Despite the parties' collective
19 best efforts, it has taken, on average, two months to schedule the depositions
20 taken thus far due to counsel's trial calendar.

21 **C. EXPERT WITNESS DISCOVERY**

22 Plaintiff has identified five (5) experts on liability and damages. Two of
23 the Plaintiff's experts (neuropsychology and vocational rehabilitation) base their
24 opinions on their testing/evaluation of Thomas Waite.

25 Defendants will identify six (6) experts on liability and damages. As with
26

27 MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION
28 TO CONTINUE EXPERT DISCLOSURE DATES FOR
NEUROPSYCHOLOGY OPINIONS ...- 2

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1 Plaintiff, the defense neuropsychological opinions need to follow evaluation and
2 testing. For this reason, Defendants request that the date for this disclosure be
3 extended.

4 **III. AUTHORITY AND ARGUMENT**

5 The Amended Scheduling Order, FRCP 6, FRCP 26 and the inherent power
6 of the Court to manage discovery provide this Court authority to revise the
7 Scheduling Order. In particular, the Defendants have worked diligently and in
8 good faith to conduct discovery to date and intend to continue to do so. The
9 complexities of this case and scheduling, however, present difficulties in
10 complying with the current Amended Scheduling Order as the disclosure of
11 defense expert neuropsychological opinions that cannot be overcome by the
12 Defendants, despite their best efforts.

13 **IV. CONCLUSION**

14 Based on the good cause shown, Defendants respectfully request the Court
15 revise the Amended Scheduling Order from January 22, 2007 to February 16,
16 2007.

17 DATED this 16th day of January, 2007.

18 **WITHERSPOON, KELLEY, DAVENPORT
19 & TOOLE**

20 By: /s/ Brian T. Rekofke
21 Brian T. Rekofke, WSBA No. 13260
22 Ross P. White, WSBA No. 12136
23 Attorneys for LDS and Donald Fossum

24 **PAINE, HAMBLIN, COFFIN, BROOKE
25 & MILLER**

26 By: /s/ Andrew Smythe
27 Andrew C. Smythe, WSBA No. 7948
28 Attorneys for Steven D. Brodhead

27 MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION
28 TO CONTINUE EXPERT DISCLOSURE DATES FOR
NEUROPSYCHOLOGY OPINIONS ...- 3

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January, 2007:

- 1. I electronically filed the foregoing **Memorandum of Points and Authorities In Support of Defendants' Motion To Continue Expert Disclosure Dates Concerning Neuropsychology Opinions** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

(for Waite) Richard C. Eymann and Stephen L. Nordstrom;
 (for Brodhead) Andrew C. Smythe

- 2. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants at the address listed below: **None.**

- 3. I hereby certify that I have hand delivered the document to the following participants at the addresses listed below: **None.**



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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION
 TO CONTINUE EXPERT DISCLOSURE DATES FOR
 NEUROPSYCHOLOGY OPINIONS ...- 4

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