

1 Brian T. Rekofke
2 Ross P. White
3 Witherspoon, Kelley, Davenport & Toole
4 1100 US Bank Building
5 422 West Riverside
6 Spokane, WA 99201
7 (509) 624-5265

8 Attorneys for LDS and Donald C. Fossum

9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 THOMAS A. WAITE,

12 Plaintiff,

13 vs.

14 THE CORPORATION OF THE
15 PRESIDING BISHOP OF THE CHURCH
16 OF JESUS CHRIST OF LATTER DAY
17 SAINTS, a Utah corporation; THE
18 CORPORATION OF THE PRESIDENT
19 OF THE CHURCH OF JESUS CHRIST
20 OF LATTER DAY SAINTS, a Utah
21 corporation; DONALD C. FOSSUM; and
22 STEVEN D. BRODHEAD,

23 Defendants.

Case No.: CV-05-399-EFS

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

24 **I. RELIEF REQUESTED**

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

Defense CR 26(a)(2) Expert Disclosures

concerning neuropsychological opinions: from 02/16/07 to 03/05/07

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

G:\Church of Jesus Christ 14061\Waite 3\Pleadings\Motion (2nd) to Continue Expert Disclosure\Memo in Support of Motion to Extend Expert Disclosure Date 021307 (kth).wpd

WITHERSPOON, KELLEY, DAVENPORT & TOOLE
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS

1100 U.S. BANK BUILDING
422 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0302
(509) 624-5265

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 due to no fault of the
4 parties, Dr. Wise had a scheduling conflict for February 7-8, 2007. The testing
5 has been re-scheduled for February 23 and 24, 2007. Dr. Wise will be able to
6 complete his report no later than March 5, 2007.

7 **II. DISCOVERY STATUS**

8 **A. BACKGROUND**

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

14 **B. LAY WITNESS DISCOVERY**

15 The parties have worked diligently to provide initial disclosures, answer
16 discovery and schedule depositions. Defendants have deposed plaintiff Thomas
17 Waite and plaintiff's parents. The Plaintiff has taken the depositions of three
18 persons identified by defendant LDS in Salt Lake City on November 9 and 10,
19 2006. Additional depositions have been taken on February 2007 in Tucson,
20 Arizona and are scheduled for February 20, 2007 in Salt Lake City.

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 Plaintiff, the defense neuropsychological opinions need to follow evaluation and

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

G:\C\Church of Jesus Christ 14061\Waite 3\Pleadings\Motion (2nd) to Continue Expert Disclosure\Memo in Support of Motion to Extend Expert Disclosure Date 021307 (klh).wpd

WITHERSPOON, KELLEY, DAVENPORT & TOOLE
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS

1100 U.S. BANK BUILDING
422 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0302
(509) 624-5265

1 testing. For this reason, Defendants request that the date for this disclosure be
2 extended.

3 **III. AUTHORITY AND ARGUMENT**

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

12 **IV. CONCLUSION**

13 Based on the good cause shown, Defendants respectfully request the Court
14 revise the Amended Scheduling Order from February 16, 2007 to March 5, 2007.

15 DATED this 14th day of February, 2007.

16 **WITHERSPOON, KELLEY, DAVENPORT
17 & TOOLE**

18
19 By: /s/ Ross P. White
20 Brian T. Rekofke, WSBA No. 13260
21 Ross P. White, WSBA No. 12136
22 Attorneys for LDS and Donald Fossum

23 **PAINE, HAMBLÉN, COFFIN, BROOKE
24 & MILLER**

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

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

G:\C:\Church of Jesus Christ 14061\Waite 3\Pleadings\Motion (2nd) to Continue Expert Disclosure\Memo in Support of Motion to Extend Expert Disclosure Date 021307 (klh).wpd

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 2007:

1. I electronically filed the foregoing **Memorandum of Points and Authorities In Support of Defendants' Motion To Extend Expert Disclosure Date 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.**

/s/ Ross P. White
 Ross P. White
 Witherspoon, Kelley, Davenport & Toole, P.S.
 422 W. Riverside Ave., #1100
 Spokane, WA 99201-0300
 Phone: 509-624-5265
 Fax: 509-478-2728
 rpw@wkdtlaw.com

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

G:\C:\Church of Jesus Christ 14061\Waite 3\Pleadings\Motion (2nd) to Continue Expert Disclosure\Memo in Support of Motion to Extend Expert Disclosure Date 021307 (klh).wpd

WITHERSPOON, KELLEY, DAVENPORT & TOOLE
 A PROFESSIONAL SERVICE CORPORATION
 ATTORNEYS & COUNSELORS

1100 U.S. BANK BUILDING
 422 WEST RIVERSIDE AVENUE
 SPOKANE, WASHINGTON 99201-0302
 (509) 624-5265