

Plaintiff * IN THE
v. * CIRCUIT COURT
Defendants * FOR
* BALTIMORE CITY
* Case No.

**DEFENDANTS MOTION TO COMPEL THE DEPOSITIONS
OF PLAINTIFF'S EXPERT WITNESSES**

NOW COMES Defendants and
by and through their counsel and

and files the within Motion to Compel and in support thereof states as follows:

1. This is a medical malpractice action filed on December 19, 2012 by Plaintiff against Defendants

and in connection to
care and treatment Mr. received while a patient in the emergency department at
on December 3, 2010.

2. Specifically, Plaintiff claims the Defendants were negligent in failing to diagnose that he allegedly sustained an injury to the popliteal artery in his left leg following a work related injury. He claims he later had to undergo an above the knee amputation of his left leg and had this alleged popliteal artery injury been diagnosed on December 3, 2010, he would not have lost his leg. He is claiming economic and non-economic damages.

3. Defendants deny each and every allegation of liability, causation and damages and contend that their care and treatment of Mr. at all times met the standard of care and further, that no negligent conduct on their part caused Mr. injuries.

4. In accordance with this Court's Scheduling Order, on May 13, 2013, Plaintiff designated experts he intends to call to testify at the trial of this matter. Among others, Plaintiff designated experts in the fields of emergency room nursing, emergency medicine and vascular surgery to testify as to breaches of the standard of care and causation in support of his claims. (See Plaintiff's Expert Designation attached as Exhibit 1).

5. Almost immediately thereafter on May 17, 2013 the undersigned counsel requested that Plaintiff's counsel provide dates for the depositions of his expert witnesses to be taken once the depositions of the Parties were completed. (See Letter dated May 17, 2013 addressed to _____ attached as Exhibit 2).

6. On May 22, 2013, another letter was sent to Mr. _____ updating him on the scheduling of the Defendants' depositions. One was overseas in India and would not be returning until early July. Therefore, the expectation was that the Parties' depositions could be completed by sometime late July or early August. (See letter dated May 22, 2013 addressed to Mr. _____ attached as Exhibit 3).

7. After receiving Plaintiff's late Answers to Interrogatories on June 28, 2013 (they were one and a half months overdue), the Defendants learned for the first time that there were four additional fact witnesses who Plaintiff claims has personal knowledge of the events that transpired in the emergency department on December 3, 2010. Therefore, a letter was sent to Plaintiff's counsel on July 12, 2013 requesting dates for the depositions of these individuals. (See letter dated July 12, 2013 addressed to _____ attached as Exhibit 4).

8. The depositions of _____ and _____ were completed on August 5th and 9th, 2013—as expected. At this time, it was intended that Mr. _____ deposition would go forward on August 16, 2013.

9. On August 1, 2013, Mr. [redacted] wrote a letter indicating he was willing to obtain dates from his experts for deposition once dates could be coordinated with counsel. He made no suggestion at this time that he was unwilling to put his experts up for deposition nor did he place any limitations on scheduling their depositions—other than the usual expectation the depositions would go forward only if everyone was available. However, also contained in the letter is Counsel's statement that he was not available to schedule anyone for deposition until September 16, 2013 even though he had previously offered the date of August 16, 2013 for the deposition of Mr. [redacted].

10. On August 2, 2013, notices of deposition were sent scheduling Mr. [redacted] for August 16, 2013 as previously agreed upon and also unilaterally scheduling a number of Plaintiff's experts for deposition. With regard to the expert depositions, it was expected that if the dates noticed did not work for the experts, then Plaintiff would have to provide new dates so that they could be rescheduled.

11. According to the Court's scheduling order, the discovery cutoff for this case is October 15, 2013 so needless to say, Plaintiff's counsel unavailability from August 1 through September 16, 2013, placed tremendous constraints on discovery and put into doubt whether discovery can be completed. Further complicating matters, Mr. [redacted] cancelled the deposition of Mr. [redacted] scheduled for August 16, 2013 stating he could not reschedule it until September 16, 2013.

12. The impact of cancelling Mr. [redacted] deposition was that now expert discovery cannot start until after September 16, 2013—leaving us with only a month to complete the depositions of approximately twenty (20) plus experts.

13. Thereafter on August 14, 2013, Plaintiff's counsel wrote indicating that now he was available on August 30, 2013 for the deposition of his vascular surgery expert

(even though he claimed he was unavailable for Mr. deposition in August) who was unavailable in September for deposition. (See correspondence from Mr. dated August 15, 2013 attached as Exhibit 5).

14. Given Counsel's unusual request that we depose one of his experts before the Plaintiff's deposition was taken, on August 16, 2013 counsel for the Parties held a conference call to discuss taking Dr. deposition out of turn and the scheduling of all other experts' depositions.

15. During the phone conference, Mr. took the unusual and unnecessary position that he would not put his liability experts up for deposition before the defense experts were deposed. Rather, he requested that immediately following each of his experts' depositions, he be permitted to depose defense experts within the same specialty regardless of whether the scope of their testimony is consistent or inconsistent.

16. For example, he wanted to schedule the depositions of the defense vascular surgery experts following Dr. even though Dr. was not going to testify on standard of care and the defense vascular surgeons intend to. The effect of this suggestion would mean the defense experts would be forced to give their standard of care opinions without first hearing Plaintiff's criticisms on standard of care.

17. Obviously, defense counsel would not agree to this but offered to compromise and schedule the defense experts who will be testifying strictly on standard of care immediately following ALL of Plaintiff's standard of care experts. We also offered to put up our causation

experts thereafter after ALL of the Plaintiff's causation experts were deposed. Plaintiff's counsel would not agree to this compromise and gave no reason for not doing so.

18. The Defendants object to Plaintiff's counsel's artificial, tortured and unnecessary constraints on expert discovery on multiple levels. First of all, plaintiffs in a medical malpractice action are required to articulate their claims in an intelligible manner so that a defendant can reasonably respond. These Defendants are entitled to hear Plaintiff's experts' opinions about the manner in which these Defendants purportedly breached the standard of care so that they can respond and prepare a defense. Practically speaking it would be unmanageable to require a defense expert to comment on standard of care where Plaintiff's criticisms have yet to be articulated. Additionally, there is no good reason to complicate expert discovery in this way as Plaintiff is not prejudiced in any manner by putting up his liability experts before the defense experts testify.

19. Additionally, Plaintiff's plan is completely unfeasible as scheduling expert depositions is largely dependent on the availability of the expert—not counsel. In other words, even the best laid discovery plan can come undone by the experts' schedule. This is readily apparent in this case given the fact we were forced to take one of Plaintiff's experts' depositions out of turn because he was unavailable the entire month of September (Dr.).

20. On August 26, 2013, the undersigned counsel sent Mr. a letter summarizing the August 16 conference call and once again requesting that he provide dates for the depositions of his experts unfettered by his onerous and unyielding constraints on scheduling. (See August 26, 2013 letter addressed to Mr. attached as Exhibit 6).

21. Then again on August 30, 2013, the undersigned counsel wrote to Mr. office seeking dates for the depositions of his experts. These follow up requests for dates have

been ignored by Mr. (See email dated August 30, 2013 addressed to attached as exhibit 7).

22. Discovery is set to close on October 15, 2013 and because of Plaintiff's Counsel's delay in responding to written discovery, his delay in scheduling the deposition of Mr. and the delay created by his unavailability from August 1 through September 16, the parties are now forced to complete the depositions of twenty plus experts in only a month's time. This is unfeasible even under the best of circumstances. Similarly, Plaintiff's counsel's inexplicable, confusing, convoluted and unnecessary request to place artificial demands on the order of expert discovery has caused a log jam in the process and has denied the Defendants the right to take Plaintiff's experts' depositions.

23. Plaintiff cannot articulate a legitimate reason why expert discovery should be conducted in this case so bizarrely and contrary to the normal order of discovery. Moreover, to compel Defendants to put their liability experts up for deposition BEFORE hearing medical expert opinion testimony on how they breached the standard of care and how those breaches caused Plaintiff's injuries puts them in an untenable position of having to guess or speculate as to what the claims are. Further, once the Plaintiff's experts are deposed, the defense experts may have supplemental or modified opinions that Plaintiff's counsel will no doubt want to explore. As seen, Plaintiff's proposed discovery plan serves no legitimate purpose as well as being unmanageable and inefficient.

WHEREFORE, these Defendants respectfully request that this Honorable Court grant their Motion to Compel and enter an Order directing that Plaintiff's counsel forthwith provide dates where his experts are available for deposition prior to October 15, 2013. The Defendants

would consider consenting to a thirty or sixty day extension for discovery so that these depositions can be completed.

CERTIFICATION PURSUANT TO RULE 2-431

I certify that I made a good faith to resolve this discovery dispute by discussing it with counsel for Plaintiff on August 16, 2013. All agreed this dispute could not be resolved absent intervention by the Court. (*See Exhibit 5*).

Certificate of Service

I hereby certify this 12 day of September, 2013 that copies of the foregoing Defendants Motions to Compel the Depositions of Plaintiff's Expert Witnesses was emailed and mailed to:

Plaintiff * IN THE
v. * CIRCUIT COURT
Defendants * FOR
* BALTIMORE CITY
* Case No.

REQUEST FOR HEARING

Now comes Defendants

by and through their counsel

, respectfully requests a hearing on its Motion to Compel the Depositions of Plaintiff's

Expert Witnesses

Attorneys for Defendants,