

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

DEFENDANT'S OPPOSITION TO PLAINTIFF'S FIRST MOTION IN LIMINE TO PRECLUDE CUMULATIVE EXPERT WITNESS TESTIMONY

Defendant , by and through his attorneys,
and , hereby submits this
Opposition to Plaintiff's First Motion in Limine to Preclude Cumulative Expert Witness
Testimony and states as follows:

Introduction

Plaintiff incorrectly argues that Defendant's expert witnesses,
and will offer "identical opinions" at trial. When initially
presented with this objection Defendant offered to call as to the standard of
care, causation and damages and to limit testimony to the limited issues of
biliary anatomical abnormalities, his past surgical experience with this
phenomenon, and the proper approach to take when such abnormalities are encountered.
See Letter from to Rodney Gaston of July 21, 2010, attached hereto as
Exhibit A. Plaintiff's counsel rejected the Defendant's offer and subsequently filed the
instant motion in limine. See Letter from Rodney Gaston to of July 22,
2010, attached hereto as Exhibit B.

As discussed in further detail below, [redacted] and [redacted] will not be offering the same testimony at trial. Therefore, there is no danger of cumulative expert testimony. Accordingly, Plaintiff's First Motion in Limine to Preclude Cumulative Expert Witness Testimony should be denied.

Argument

[redacted] and [redacted] will not be offering the identical opinions at trial. At trial, Defendant anticipates that [redacted] will testify that:

1. [redacted] **gallbladder removal surgery was indicated;**
2. [redacted] **complied with the standard of care;**
3. **No alleged breach in the standard of care caused [redacted] injuries;**
4. [redacted] **used the appropriate surgical techniques during gallbladder removal surgery;**
5. **The standard of care did not require [redacted] to perform an intra-operative cholangiogram or convert to an open procedure;**
6. **Performing an intra-operative cholangiogram or converting to an open procedure carries risk;**
7. [redacted] **could be reasonably assured that the duct he transected was the cystic duct because it was attached to the gallbladder;**
8. **There are various anatomical abnormalities associated with the biliary system, one of which includes a short cystic duct or absent cystic duct;**
9. [redacted] **likely had a rare anatomical abnormality in which she had a short cystic duct or an absent cystic duct;**
10. **Bile duct injuries are an inherent risk of a gallbladder removal surgery;**
11. [redacted] **appropriately and timely identified [redacted] bile duct injury;**
12. [redacted] **bile duct injury was appropriately remediated; and**
13. [redacted] **bout of cholestatic jaundice in August of 2006 was likely attributable to an antidepressant medication she had been prescribed**

because recovered after the medication was discontinued without mechanical intervention.

With respect to Defendant's other expert witness, Defendant anticipates that will testify that:

1. There are various anatomical abnormalities associated with the biliary system, one of which includes a short cystic duct or absent cystic duct;
2. likely had a rare anatomical abnormality in which she had a short cystic duct or an absent cystic duct; and
3. He has personally encountered this rare anatomical abnormality during a gallbladder removal surgery in which one of his former patients presented without a cystic duct, a fact which he did not realize until after the patient's accessory hepatic duct had been transected.

As outlined above, the Defendant's expert witnesses will not be offering the same testimony at trial. testimony is narrowly limited to anatomical abnormalities, anatomical abnormality, and his personal experience treating such an abnormality. testimony will expand upon testimony that anatomical abnormalities exist and that likely had an anatomical abnormality in that she likely had a short cystic duct or an absent cystic duct. As to each expert, this testimony is necessary in order to give context to their respective opinions, and Defense counsel does not anticipate spending a copious amount of time with either expert on the topic.

opinions differ from in that personal experience will corroborate to the jury that these rare abnormalities not only exist in medical textbooks, but that they also sometimes present in real life while a patient is on the operating table. In that sense, testimony is extraordinarily unique because other than no other physician in the case has actually witnessed an absent

cystic duct during a gallbladder removal surgery. For this reason, limited testimony is not cumulative expert witness testimony.

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that this Court deny Plaintiff's First Motion in Limine to Preclude Cumulative Expert Witness Testimony.

Attorneys for Defendant,

Plaintiff

v.

Defendant

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ORDER

UPON CONSIDERATION of Plaintiff's First Motion in Limine to Preclude Cumulative Expert Witness Testimony, and Defendant's opposition hereto, it is this ____ day of _____, 2010, hereby ORDERED that Plaintiff's First Motion in Limine to Preclude Cumulative Expert Witness Testimony is **DENIED**.

Judge, Circuit Court for Baltimore City

cc: Rodney M. Gaston, Esquire