

COPY

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

Plaintiffs

v.

Defendant

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Case No.:

**MOTION IN LIMINE TO PRECLUDE USE OF VIDEO DEPOSITIONS
IN OPENING STATEMENTS AND TO PRECLUDE USE OF COMPUTER GENERATED
EVIDENCE NOT DISCLOSED IN ACCORDANCE WITH RULE 2-504.3**

COMES NOW Defendant,

(improperly named), and

(improperly named), by and through

undersigned counsel of record,

and

, and file the

following Motion *In Limine* to preclude the use of video depositions in opening statements, and to

Preclude Use of Computer-generated Evidence Not Disclosed in Accordance With Rule 2-504.3. For

cause, Defendant, Dr. states as follows:

1. Plaintiff has indicated an intention to use PowerPoint presentations, and upon information and belief, may intend to present portions of videotaped depositions of parties and non-party expert witnesses in the course of Opening Statements. Such presentation in Opening Statements is improper and should be precluded.
2. It is axiomatic that the *Opening Statements* of counsel are limited to providing an outline of evidence that the parties anticipate will be presented during the course of trial, and are not evidence. *See Wilhelm v State*, 272 Md. 404, 411-2, 326 A.2d 707, 714. (1974) At the time of opening, no evidence has been presented, not exhibits published and no testimony elicited. It is improper therefore, to publish or present actual evidence or

testimony, which may or may not be offered or admissible, prior to its presentation and determination of admissibility by the Court. Rather the Statements are just that: statements, not arguments or presentations of evidence through either exhibits or testimony.

3. In addition, many witnesses' discovery depositions were transcribed and videotaped. There are limits on the proper and appropriate use of discovery depositions, and given that there will likely be objections to the use of the depositions during the case in chief, it would be particularly prejudicial to allow their presentation during opening.
4. Permitting the presentation of video-taped testimony – whether a party or a non-party – is particularly prejudicial as it is undetermined which witnesses will in fact be called, what specific testimony offered and whether the testimony will be allowed in the parties' cases in chief or on cross-examination. Once testimony is played in opening, if the witness is not called or the portion of deposition itself is not permitted into evidence for any number of reasons, the prejudicial effect of its use during opening cannot be overcome.
5. While it *may* be proper to present portions of the videotaped depositions in closing arguments, assuming proper foundation during trial, their use in opening statements is improper and prejudicial.
6. Plaintiff also filed Notice of Intent to Use Computer-generated evidence in the form of PowerPoint presentations on or about September 3, 2013.
7. Rule 504.3(c) requires that “within five days after service of a notice under section (b) of this Rule, the proponent of any computer-generated evidence *shall* make the computer-generated evidence available to any party.” \

8. To date, Plaintiff has not made any such computer-generated evidence available to undersigned counsel as required by Rule 2-504.3(c) to allow reasonable time to allow evaluation so that objections may be raised in advance of use of that evidence.

WHEREFORE, For these reasons, Defendant respectfully requests that the Court preclude the presentation of evidence in the form of documents or videotaped deposition testimony in Opening Statements, and the preclude the use of computer-generated evidence not disclosed in accordance with Rule 20504.3.

Respectfully submitted,

Attorneys for Defendants,

REQUEST FOR HEARING

Defendant hereby requests a hearing on the foregoing Motion *In Limine*.

Attorneys for Defendants,