

IN THE COURT OF CLAIMS FOR THE STATE OF OHIO

MATTHEW RIES, Admr., et al.,

Plaintiff,

vs.

THE OHIO STATE UNIVERSITY  
MEDICAL CENTER,

Defendant.

Case No. 2010-10335

Judge Joseph T. Clark

FILED  
COURT OF CLAIMS  
OF OHIO  
2011 NOV -4 PM 3:17

**PLAINTIFF'S MEMORANDUM CONTRA DEFENDANT OSU'S  
MOTION FOR PROTECTIVE ORDER**

Now comes Plaintiff and respectfully moves this Court to deny Defendant OSU's Motion for a Protective Order, on the grounds that there lacks sufficient reason to deny Plaintiff the right to proceed with discovery depositions. The basis for Plaintiff's position is set forth more fully in the accompanying Memorandum in Support.

Respectfully submitted,



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**ON COMPUTER**

## MEMORANDUM IN SUPPORT

After repeated efforts to schedule the discovery deposition of Syed Husain, M.D., by agreement, a Notice of Deposition Duces Tecum was served upon defense counsel on October 14, 2011, scheduling said deposition for November 9, 2011 at the Ohio State University Medical Center. This provided advanced notice of three (3) weeks and furthermore, was scheduled for a location most convenient to the deponent himself. Defendant OSU has now advanced four reasons for the issuance of a Protective Order pertaining to the noticed deposition of Syed Husain, M.D.

- 1: It would be "unfair" for Dr. Husain to be deposed before he knows whether or not he is potentially facing personal liability.

Plaintiff asserts that it is beyond imagination that Dr. Husain's testimony, under oath, would in any way be impacted by the knowledge that he is facing personal liability. The truth is the same regardless of the consequences. Accordingly, this assertion for not proceeding with Dr. Husain's deposition on November 9<sup>th</sup> is without merit.

- 2: The discovery deposition as noticed would proceed under the Rules of the Common Pleas Court and not the Court of Claims.

The Ohio Rules governing depositions are the same for both venues. This argument is also without merit. Furthermore, Counsel for the Plaintiff is willing to proceed in a fashion that would meet both sets of rules should there be a nuance of which the undersigned is unaware.

- 3: It is unclear whether or not Dr. Husain needs personal counsel.

It is Dr. Husain's prerogative whether he wishes personal counsel at his deposition, or not. Plaintiff does not object to Dr. Husain having personal counsel present, as it is his right should he decide to assert same. If Dr. Husain needs more time to retain counsel, Plaintiff would

agree to a short continuance, with a rescheduled date for his deposition set in the immediate future.

4: Defendant OSU argues that the Court should follow the finding in the Dewiel case, however, this Court has already stated in the within matter that discovery should proceed.

The Court held an evidentiary hearing in this matter on April 21, 2011. At the conclusion of the hearing, the Court indicated in response to a specific question from the undersigned that pending a ruling, discovery in this matter should proceed.

For the foregoing reasons, Plaintiff, by and through Counsel, respectfully requests that the Court overrule Defendant OSU's Motion for a Protective Order and permit the noticed deposition of Dr. Husain to proceed on November 9, 2011.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following counsel of record by regular U.S. Mail, postage prepaid, this 4<sup>th</sup> day of ~~October~~ <sup>November</sup>, 2011:

Karl W. Schedler, Esq.  
Principal Attorney  
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