

MEMORANDUM IN SUPPORT OF MOTION

Civil Rule 26(C)(2) allows the Court to grant a protective order to the effect that “discovery may only be had on specified terms and conditions.” The Court has ordered that the immunity determination hearing of Paul Gullett, R.N., take place on January 14, 2014. *Entry Granting Continuance*, November 15, 2013. As the Court is aware, there is a connected action pending the Franklin County Court of Common Pleas. See, *Designation Form*, August 15, 2013, *Yong Hui Sheffield, et al., v. Medical Staffing Options, Inc.*, Case No. 13CV-006204. One of the defendants in that case is Paul Gullett, R.N., who was an agency nurse employed by Medical Staffing Options, Inc. (“MSO”), and who was assigned to Ohio State University Medical Center at the time of the incident. MSO is also a defendant in that action.

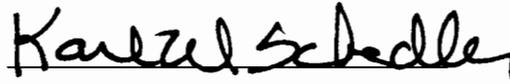
Plaintiff has requested that this Court hold an immunity determination proceeding as to Nurse Gullett. Because he was not a resident of Ohio when the complaint was filed, service of a summons and the complaint in the Common Pleas Court has been difficult. However, plaintiff indicates that they have recently been served on Mr. Gullett. Plaintiff and defendant have been able, with some effort, to arrange for the deposition of Nurse Gullett in this case on December 30, 2013. A notice was filed on December 4, 2013. The notice was served on defense counsel, and upon Attorney Andrew Wick who is apparently representing Mr. Gullett.

On December 10, 2013, defense counsel learned that Attorney Tom Hunter, who represents MSO, intends to attend the deposition, and that he intends to question the witness. *See, attached emails.* However, Mr. Hunter’s client, Medical Staffing Options, is not a party to any proceeding in this Court. While Mr. Hunter is free to question Mr. Gullett as part of the discovery in the Common Pleas Court action, he should not be permitted to participate in a

deposition conducted pursuant to this Court's jurisdiction. Mr. Gullett may not be available to testify in this Court on January 14, and it is possible that the transcript of the December 30, 2013, deposition may be offered as evidence in the immunity determination hearing. Allowing Mr. Hunter to participate in that deposition, and question the witness on behalf of MSO could create error, and certainly would be improper since he is not representing any party to the proceedings in this Court. In the past, this Court has limited discovery related to immunity proceedings in a similar fashion. For example, in *Frances Siegel v. Univ. of Cincinnati College of Medicine*, Case No. 2009-09531, this Court limited the questioning of the purported employee strictly to the issues of his employment, and prevented the plaintiff in that case from conducting a full-blown discovery deposition of a physician until his status had been determined. *Siegel*, Entry, November 7, 2012.

In order to cure this potential problem, defendant urges that the Court order that any questioning in the deposition of Nurse Gullett to be conducted conducted under the notice issued by this Court be limited to counsel who are representing a party in this Court. This would include plaintiff's counsel and defendant's counsel. In addition, once the record of the Court of Claims deposition is completed, Mr. Hunter may proceed to conduct whatever discovery of Nurse Gullett he chooses to conduct, but that testimony will not be part of the record in this case. Defendant also requests a conference on this issue and an accelerated pleading schedule so this matter can be resolved prior to December 30, 2013.

Respectfully submitted,
MICHAEL DEWINE
Ohio Attorney General



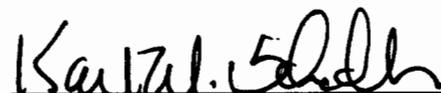
DANIEL R. FORSYTHE (0081391)
KARL W. SCHEDLER (0024224)
Assistant Attorneys General
Court of Claims Defense Section
150 East Gay Street, 18th floor
Columbus, Ohio 43215
(614) 466-7447
COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum was sent by regular U.S. mail, postage prepaid, this 12th day of December, 2013, to

Michael J. Rourke
Robert P. Miller
495 S. High St., Suite 450
Columbus, Ohio 43215
Counsel for Plaintiff

Andrew S. Wick
23 East High Street
Mt. Gilead, Ohio 43338
Attorney for Paul Gullett, R.N.



KARL W. SCHEDLER
Assistant Attorney General

Karl W. Schedler

From: Tom Hunter <thunter@tdhunterlaw.com>
Sent: Wednesday, December 11, 2013 9:45 AM
To: Karl W. Schedler
Subject: RE: Yong Hui Sheffield, et al. v. The OSU Medical Center

Karl:

If you like I will cross notice the deposition in the event I have questions.

Tom

604 East Rich Street
Columbus, Ohio 43215

T. (614) 224-0843
F. (614) 228-8811
thunter@tdhunterlaw.com
www.thomasdhunterlaw.com

Please note new address and fax

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From: Karl W. Schedler [mailto:karl.schedler@ohioattorneygeneral.gov]
Sent: Tuesday, December 10, 2013 5:30 PM
To: Tom Hunter
Subject: RE: Yong Hui Sheffield, et al. v. The OSU Medical Center

Tom. Hope things are going well for you. You say you plan to attend Gullett's deposition, but I assume that you do not intend to question him or to object to any questions since your client is not a party to the action in the Court of Claims. If I am incorrect, please let me know.

Karl W. Schedler
Principal Attorney
Court of Claims Defense Section
Office of the Ohio Attorney General
PHONE: 614-466-7447
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From: Tom Hunter [<mailto:thunter@tdhunterlaw.com>]
Sent: Monday, December 09, 2013 2:21 PM
To: 'Mike Rourke'; 'Andrew Wick'; Daniel R. Forsythe
Cc: 'Marla K. Blackburn'; Karl W. Schedler; 'Rob Miller'; 'Kim Cecil'
Subject: RE: Yong Hui Sheffield, et al. v. The OSU Medical Center

I do plan to attend
Thomas D. Hunter

604 East Rich Street
Columbus, Ohio 43215

T. (614) 224-0843
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Please note new address and fax

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From: Mike Rourke [<mailto:MRourke@RANDBLLP.com>]
Sent: Monday, December 09, 2013 2:19 PM
To: Andrew Wick; Daniel R. Forsythe
Cc: Marla K. Blackburn; Karl W. Schedler; Rob Miller; Kim Cecil; Tom Hunter
Subject: RE: Yong Hui Sheffield, et al. v. The OSU Medical Center

Andrew,

Coffee would be great. There is likely to be at least one more attendee. Tom Hunter represents Mr. Gullett's former employer Medical Staffing Options.

Michael J. Rourke
Rourke and Blumenthal LLP
495 South High Street
Suite 450
Columbus, Ohio 43215
Office: 614-220-9200
Fax: 614-220-7900
Email: mrourke@randbllp.com

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From: Andrew Wick [<mailto:attyandrewwick@gmail.com>]
Sent: Friday, December 06, 2013 8:38 AM
To: Daniel R. Forsythe
Cc: Mike Rourke; Marla K. Blackburn; Karl W. Schedler; Rob Miller; Kim Cecil
Subject: Re: Yong Hui Sheffield, et al. v. The OSU Medical Center

Is anyone a coffee drinker/ doughnut person if so I will try to play the good host and have something to offer those in attendance. Also I'm just a country attorney and want to make sure I have seats for all involved I am estimating 5 (Mr. Gullett, myself, Mr. Forsythe, Mr. Rourke, and the Reporter) please let me know if there are more.

Hope everyone is staying dry and warm with this "big blow" we are experiencing.

Andrew

On Thu, Dec 5, 2013 at 3:29 PM, Daniel R. Forsythe <daniel.forsythe@ohioattorneygeneral.gov> wrote:

Well since you put it that way, I guess we will be joining you to ring in the new year in Mount Gilead ☺ We'll be there.

Many thanks,

Dan



Daniel R. Forsythe
Assistant Attorney General – Court of Claims Defense Section
Office of Ohio Attorney General Mike DeWine
Office number: [614-466-7447](tel:614-466-7447)
Fax number: [866-422-9165](tel:866-422-9165)
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Daniel.Forsythe@OhioAttorneyGeneral.gov

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From:
Mike

Rourke [mailto:MRourke@RANDBLLP.com]

Sent: Thursday, December 05, 2013 2:42 PM

To: Daniel R. Forsythe; Marla K. Blackburn; Karl W. Schedler; Andrew Wick

Cc: Rob Miller; Kim Cecil

Subject: RE: Yong Hui Sheffield, et al. v. The OSU Medical Center

Dan,

If we do, we will have to reschedule the Immunity Hearing as that is the only date I have available between the 30th when Gullett arrives in Ohio and January 14. If you want to request a new hearing date, we could use the 14th for Gullett's deposition. Let me know.

Thanks,

Michael J. Rourke

Rourke and Blumenthal LLP

495 South High Street

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From: Daniel R. Forsythe [mailto:daniel.forsythe@ohioattorneygeneral.gov]
Sent: Thursday, December 05, 2013 11:31 AM
To: Marla K. Blackburn; Karl W. Schedler; Andrew Wick
Cc: Mike Rourke; Rob Miller; Kim Cecil
Subject: RE: Yong Hui Sheffield, et al. v. The OSU Medical Center

All:

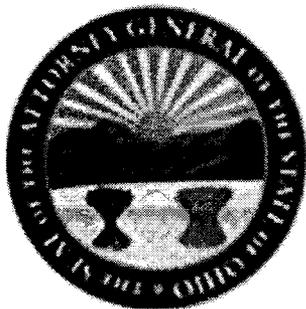
Is there any way to reschedule the deposition of Paul Gullett? With the holiday season, Dec. 30th is not the most convenient date. Also, we would very much like to participate in the scheduling of this matter.

Many thanks,

Dan

Daniel R. Forsythe
Assistant Attorney General – Court of Claims Defense Section
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From:
Marla K.

Blackburn [<mailto:MBlackburn@RandBLLP.com>]
Sent: Wednesday, December 04, 2013 9:37 AM
To: Karl W. Schedler; Daniel R. Forsythe; Andrew Wick
Cc: Mike Rourke; Rob Miller; Kim Cecil
Subject: Yong Hui Sheffield, et al. v. The OSU Medical Center

Counsel:

Please see the attached correspondence from Mr. Michael J. Rourke with regard to the scheduling of Paul A. Gullett, R.N.'s deposition in the *Yong Hui Sheffield, et al. v. The OSU Medical Center* case. This information has also been sent to each of you via facsimile.

Thank you!

Marla K. Blackburn

Secretary to Michael J. Rourke, Esq.

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Thank you for your assistance.

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