

IN THE COURT OF CLAIMS OF OHIO 2013 DEC 23 PM 3: 51

DARLENE LANE FERRARO

Plaintiff

v.

THE OHIO STATE UNIVERSITY
MEDICAL CENTER

Defendant

CASE NO. 2011-10371

JUDGE PATRICK M. McGRATH

MAGISTRATE
ROBERT VAN SCHOYCK

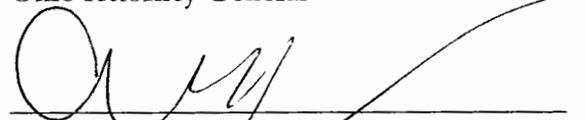
**DEFENDANT'S MOTION FOR LEAVE TO DEPOSE PLAINTIFF'S EXPERT
OR, IN THE ALTERNATIVE, MOTION IN LIMINE REGARDING SAME**

Defendant, The Ohio State University Medical Center, respectfully asks this Court for leave to depose James Crawford, a crash reconstruction expert retained by the plaintiff in this case. In the alternative, plaintiff should be prohibited from introducing any testimony relating to the untimely "supplemental" report produced by Mr. Crawford.

A Memorandum in support is attached.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



JEFFREY L. MALOON (0007003)

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CHRISTOPHER P. CONOMY (0072094)

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COUNSEL FOR DEFENDANT

MEMORANDUM IN SUPPORT

The plaintiff has submitted a “supplemental” expert report covering all-new matters, and the defense should not be prohibited from deposing him.

On the eve of trial, counsel for the defense learned that the crash reconstruction expert retained by the plaintiff in this matter was conducting a new investigation. Counsel was contacted by the Brook Park Police Department, with notice that James Crawford of Introtech asked on December 4, 2013 for access to the vehicles involved in the accident that is the subject of this litigation. At that time, the trial was scheduled for December 9 even though plaintiff lacked standing due to her removal as the dismissal of the estate proceedings in the Cuyahoga County Probate Court. It appeared that Mr. Crawford was seeking to inspect the lights of the tow dolly and/or truck involved in the accident, even though his original and untimely report had not addressed them at all.

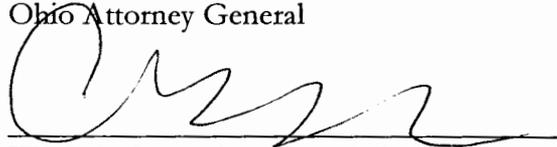
On December 10, the day after that trial was postponed, plaintiff’s counsel sent a copy of Mr. Crawford’s “supplemental” report addressing all-new issues, including inspection of the lights and his attempts to measure the lighting at the accident scene. Counsel for the defense sought to arrange Mr. Crawford’s deposition but counsel for plaintiff objected. It seems that, even though plaintiff had previously ignored this court’s order regarding the discovery schedule, plaintiff now chose to use that very schedule to oppose discovery regarding this untimely report. (Email, exhibit A.)

Given that there is not yet any trial scheduled, and that the new trial date will not be until March of 2014 at the earliest, the defense should be given an opportunity to conduct discovery regarding these new matters. In the alternative, since plaintiff now seeks to adhere to the original trial schedule, plaintiff should be prohibited from introducing any of Mr. Crawford’s

testimony regarding these new matters for failure to provide a “supplemental” report 30 days before trial as required by Loc.R. 7.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

A handwritten signature in black ink, appearing to read 'Jeffrey L. Maloon', written over a horizontal line.

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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

On December 23, 2013, a copy of this document was served via email and regular mail

on the following:

W. Craig Bashein
cbashein@basheinlaw.com
Thomas J. Sheehan
tjs@basheinlaw.com
Terminal Tower, 35th Floor
50 Public Square
Cleveland, Ohio 44113

Counsel for Plaintiff



CHRISTOPHER P. CONOMY (0072094)
Assistant Attorney General

Christopher P. Conomy

From: Craig Bashein <wcb@basheinlaw.com>
Sent: Saturday, December 14, 2013 1:32 PM
To: Shelley A Athey; JCrawford@IntrotechCrash.com
Cc: Christopher P. Conomy; Jeffrey Maloon; paula.paoletti@osumc.edu
Subject: RE: Darlene Lane Ferraro etc v. The Ohio State University Medical Center

Dear Ms. Athey,

Please do not contact my expert directly regarding any communications relative to this case. It is not appropriate to make ex parte communications with an opponent's expert. I am not available for deposition on January 20th and the court issued a discovery cut off in this case previously. In the future, all communications with either my expert or client must be made directly to me.

Thank you for your anticipated cooperation.

W. Craig Bashein
Bashein & Bashein Co., L.P.A.
The Terminal Tower, Suite 3500
50 Public Square
Cleveland, Ohio 44113
216-771-3239
216-781-5876 (facsimile)
cbashein@basheinlaw.com

From: Shelley A Athey [mailto:Shelley.Athey@ohioattorneygeneral.gov]
Sent: Friday, December 13, 2013 2:54 PM
To: JCrawford@IntrotechCrash.com; Craig Bashein
Cc: Christopher P. Conomy; Jeffrey Maloon; paula.paoletti@osumc.edu
Subject: RE: Darlene Lane Ferraro etc v. The Ohio State University Medical Center

Okay very good. Mr. Bashein can you please let me know what your schedule looks like beginning on January 20th.

Thank you!

From: Jim Crawford [mailto:JCrawford@IntrotechCrash.com]
Sent: Friday, December 13, 2013 2:51 PM
To: Shelley A Athey; cbashein@basheinlaw.com
Cc: Christopher P. Conomy; Jeffrey Maloon; paula.paoletti@osumc.edu
Subject: RE: Darlene Lane Ferraro etc v. The Ohio State University Medical Center

Ms. Athey,

Right now the entire week of 27 January is free for me. I have two trials scheduled for the week prior to that.

Our company charges a flat fee of \$1010.00 for up to 3 hours of deposition time if done here.

Jim Crawford

James B. Crawford
ACTAR #1030
Introtech Crash Reconstruction
1006 Vivian Drive West
Grafton, Ohio 44044
Phone: 440-926-2627
Cell: 440-315-5313
Fax: 440-926-2684

From: Shelley A Athey [<mailto:Shelley.Athey@ohioattorneygeneral.gov>]
Sent: Friday, December 13, 2013 2:10 PM
To: JCrawford@IntrotechCrash.com; cbashein@basheinlaw.com
Cc: Christopher P. Conomy; Jeffrey Maloon; paula.paoletti@osumc.edu
Subject: Re: Darlene Lane Ferraro etc v. The Ohio State University Medical Center

Hello Mr. Crawford,

Assistant Attorney General Chris Conomy would like to take your deposition. He has requested that this take place on or after January 20, 2014 at your office. Can you please provide me with a couple of dates and times that work for you so that I can coordinate this with Mr. Bashein and Mr. Conomy.

Also, can you please let us know what you will charge for this.

Mr. Bashein,

Once I have the above dates and times, I will contact you to find out which day and time is the best.

Thank you,

Shelley Athey

Shelley Athey – Legal Secretary
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