

IN THE COURT OF CLAIMS  
STATE OF OHIO

2014 MAR -3 PM 3: 15

LAURA A. MARTIN, Guardian of )  
 SARAH E. MARTIN, Incompetent, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 OHIO DEPARTMENT OF )  
 TRANSPORTATION, )  
 )  
 )  
 Defendant. )

Case Number: 2013-00432

**MOTION TO BIFURCATE OR  
CONTINUE TRIAL**

Now comes Defendant, the Ohio Department of Transportation (ODOT), and respectfully moves that the trial of this matter set for September 15, 2014 be bifurcated or continued. As of this date, Plaintiff has failed to provide Sarah Martin's medical records and prevented Defendant from preparing for a trial on damages.

This Court conducted a status conference on January 22, 2014 at which bifurcation was discussed. At that time, Plaintiff requested that the case be tried on liability and damages. Defendant's counsel, who was traveling out of state at the time, requested that the case be bifurcated because liability was hotly contested and because of the length, complexity and expense of trying an unbifurcated case. Upon questioning by the Court, the parties determined that there may be as many as 13 experts required to testify. Because counsel for Defendant was out of state during the conference and without the file, he did not realize or point out to the Court that Plaintiff had failed to provide medical records to Defendant to enable it to work-up a damages defense.

Upon his return to Ohio, Defendant's counsel realized that Plaintiff had not produced medical records even though she was asking that the case be tried on damages. Defense Counsel promptly asked Plaintiff to produce medical records in light of the possibility of a damages trial and

counsel for Plaintiff indicated that he would produce them (Attached). But to date, only six months before trial Plaintiff has not produced medical records which were first requested in September of 2013 (Attached). Plaintiff's failure to produce medical records has prejudiced Defendant's ability to prepare this matter for a damages trial. Medical records are the single most important documents required to demonstrate or refute damages claims. It should also be pointed out that Sarah Martin sustained broken legs, a traumatic brain injury and partial paralysis which has rendered her unable to work for an extended period. In other words, Plaintiff's damage claim will be extremely large and complex and most likely in to the millions of dollars. Plaintiff will call multiple medical experts, a life care planner and an economist.

It is unfair to expect Defendant to haphazardly throw together a damages defense in such a high-dollar case when Plaintiff has failed to provide medical records in a timely manner. Obtaining medical experts to review records, provide opinions, give depositions and testify at trial takes time and planning. Physicians typically need months in advance notice just to schedule court appearances. This cannot be done quickly or haphazardly. Plaintiff's delay in providing medical records has rendered it difficult if not impossible for Defendant to adequately prepare a damages trial. It should be pointed out that the parties have extensive discovery to perform just to prepare for the liability trial. Plaintiff requested an extension of time to provide expert reports on liability and those will not be produced until June, only three months before trial. If Plaintiff needed additional time to obtain liability experts, it seems only logical that preparing a damages case will be more difficult if not impossible. And Defendant's counsel has six other trials scheduled prior to the trial of this action.

Defendant respectfully requests a bifurcation of liability and damages so that the parties do not need to incur the expenses of preparing a damages case until liability is determined. Defendant also requests a bifurcation because Plaintiff has failed to produce medical records requested 6 months ago. Plaintiff's delay has prejudiced the Defendant and prevented it from preparing a damages case. In the alternative, Defendant requests a continuance of the trial to enable it to work

up a damages defense. Finally, Defendant moves to compel Plaintiff to produce medical records which were requested in September of 2013, six months ago.

Respectfully submitted,

MICHAEL DEWINE  
Attorney General of Ohio



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Counsel for Defendant Ohio Department  
of Transportation

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served upon the following party of record by ordinary U.S. mail, postage prepaid, this March 3<sup>rd</sup>, 2014.

Jamie R. Lebovitz, Esq. (0025000)  
Ellen M. McCarthy, Esq. (0046757)  
NURENBERG, PARIS, HELLER  
& McCARTHY CO., L.P.A.  
1370 Ontario Street - Suite 100  
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(216) 621-2300  
(216) 771-2242 (facsimile)  
Attorneys for Plaintiff



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PETER E. DeMARCO

**Stacy L. Hannan**

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**From:** Peter E. DeMarco  
**Sent:** Monday, January 27, 2014 9:40 AM  
**To:** Jamie Lebovitz  
**Cc:** Ellen McCarthy (emccarthy@nphm.com); Stacy L. Hannan; Tamara Brininger  
**Subject:** RE: medical records

Thank you

**From:** Jamie Lebovitz [mailto:jlebovitz@nphm.com]  
**Sent:** Monday, January 27, 2014 9:09 AM  
**To:** Peter E. DeMarco  
**Cc:** Ellen McCarthy (emccarthy@nphm.com); Stacy L. Hannan; Tamara Brininger  
**Subject:** Re: medical records

Tammie Brininger will work with you on this

Be well

Sent from my iPad

On Jan 27, 2014, at 8:04 AM, "Peter E. DeMarco" <[peter.demarco@ohioattorneygeneral.gov](mailto:peter.demarco@ohioattorneygeneral.gov)> wrote:

While we are waiting on word whether the ct will bifurcate the trial, I would greatly appreciate it if you would provide me copies of the medical records of your client.

LEGAL CONFIDENTIALITY NOTICE This transmission is: (i) subject to attorney-client privilege, (ii) contains attorney work product, and/or (iii) is confidential.

IN THE COURT OF CLAIMS OF OHIO

LAURA A. MARTIN, ETC., et al.	:	
	:	
Plaintiffs,	:	Case No. 2013-00432
	:	
v.	:	
	:	Judge Patrick M. McGrath
OHIO DEPARTMENT OF	:	
TRANSPORTATION	:	
	:	
Defendant.	:	

**DEFENDANT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS**

Defendant propounds the following interrogatories and requests for production of documents on Plaintiffs pursuant to Civ.R. 33 and Civ.R. 34. All terms used herein shall be presumed to have their plain and ordinary meaning unless stated otherwise. The term "documents" as used herein shall refer to all tangible and electronic information storage media, whether written, photographic, audio, video or otherwise. Production of documents in electronic form shall be made by compact disc in generally accepted formats unless otherwise agreed by the parties.

Responses to these interrogatories and requests are due within 28 days of service. These interrogatories and requests shall be deemed continuing so as to require supplemental answers as responsive information becomes available to Plaintiffs or counsel for Plaintiffs through the course of this litigation, up to the day of trial.

1. Please list the names, social security numbers, dates of birth, and all residential or mail addresses for the past five years for Sarah Martin.

ANSWER:

2. Please provide the names and ages of any spouse or children, whether by blood, marriage or adoption for Sarah Martin.

ANSWER:

3. With regard to the allegations in your Complaint, please describe in a brief, non-narrative fashion, the exact actions or failures to act on the part of the Defendant that you contend proximately caused the damages alleged in the Complaint.

ANSWER:

4. Please produce all photos, exhibits or any documents which you contend demonstrates, proves or establishes that Defendant was negligent or caused the accident in issue.

ANSWER:

5. Please identify any communication that you or any other person may have had with any employee or agent of the defendant, which you contend is an admission or acknowledgment of fault or legal responsibility on the part of the defendant with respect to the allegations and claims made in the Complaint.

ANSWER:

6. Please produce any documents reflecting the communications addressed in your response to the preceding interrogatory.

ANSWER:

7. Please produce any and all incident reports, police reports, insurance claim documents, witness statements, photographs, or other documents relating to or detailing the events alleged in the Complaint.

ANSWER:

8. Please identify each person who has personal knowledge of the facts and circumstances alleged in your Complaint.

ANSWER:

9. Please identify all persons who were present with Sarah Martin at the time of the incident alleged in the Complaint.

ANSWER:

A. Please identify all persons who witnessed the accident or who were present at the accident scene after the accident.

10. Please describe the nature of any temporary or permanent mental or physical injury that you contend was caused by or aggravated by the Defendant's acts or omissions.

ANSWER:

11. Please identify any physicians or health care providers who examined or treated Sarah Martin for the injuries or conditions set forth in your response to the preceding interrogatory.

ANSWER:

12. Please produce any and all documents and medical records regarding the treatment provided by the health care providers identified in your response to the preceding interrogatory.

ANSWER:

13. For the period of five years prior to the incident alleged in your Complaint, please state each chronic illness, disease, or condition Sarah Martin has suffered including, but not limited to, accidental injuries, back pain, joint pain, neck pain, bone fractures, surgeries, heart disease, hypertension, diabetes, cancer, ulcer, hernia, neurological disorder, mental illness, mental retardation, fainting spell, congenital defects, arthritis, rheumatism, or diseases of the skin that she has been afflicted with or suffered, and the dates for each condition.

ANSWER:

14. Please identify any physicians or health care providers who examined or treated Sarah Martin for each chronic illness, disease, or condition set forth in your response to the preceding interrogatory.

ANSWER:

15. Please state the amount of income you claim Sarah Martin has lost as a result of the incidents alleged in the Complaint, and identify the source of such income, the amount of work time missed, and the amount of wages and/or income lost.

ANSWER:

16. Please identify and produce all documents that you contend supports your claim for loss of income identified in response to the previous interrogatory.

ANSWER:

17. Please identify each employer or source of income that Sarah Martin had for the past five years, and state her annual income, dates of employment, and describe the nature of the duties or service performed for each such employer or source of income.

ANSWER:

18. Please produce complete tax returns for Sarah Martin and any business she owned for the past five years.

ANSWER:

19. Please identify the sources, date, and amount of any money, payments, entitlements, benefits, settlements, damages, or other collateral recovery, you have received from any person, organization, corporation, fund, insurance company, governmental agency, or any other source for any injury, condition, loss or damage alleged in the Complaint to have been caused by or aggravated by the negligence of the defendant or any other person or entity.

ANSWER:

20. Please identify and produce all documents reflecting your receipt of any money, payments, entitlements, benefits, settlements, damages, or other collateral recovery that you identified in response to the proceeding interrogatory.

ANSWER:

21. Please identify each lay witness you intend to call to testify in this case.

ANSWER:

22. Please identify and produce all documents that you expect to seek to introduce into evidence in this action.

ANSWER:

23. Please identify each expert witness that you expect to call to testify in this action and the subject matter on which each expert is expected to testify.

ANSWER:

24. Please identify and produce all documents including expert reports that you have sent to or received from each expert witness identified in response to the foregoing interrogatory.

ANSWER:

25. Please produce all documents relating to the Plaintiff's speed from 30 minutes prior to the accident until the accident, including speed data from the vehicle involved in the accident.

26. Please produce all of Sarah Martin's cell phone or phone records for 24 hours prior to the accident until after the accident.

27. Please produce all records showing texting, phone usage, phone photos, Internet usage, social media usage by Sarah Martin for 24 hours prior to the accident until the accident.

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



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COUNSEL FOR DEFENDANT

IN THE COURT OF CLAIMS OF OHIO

LAURA A. MARTIN, ETC., et al.	:	
	:	
Plaintiffs,	:	Case No. 2013-00432
	:	
v.	:	
	:	Judge Patrick M. McGrath
OHIO DEPARTMENT OF	:	
TRANSPORTATION	:	
	:	
Defendant.	:	

VERIFICATION

I, \_\_\_\_\_, have read the answers to Defendant's first set of interrogatories and state, to the best of my knowledge and belief, that they are true and accurate answers.

Signature: \_\_\_\_\_

Sworn and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

CERTIFICATE OF SERVICE

On September 3, 2013, a copy of this document was served via electronic and regular mail  
on the following:

Jamie R. Lebovitz  
Ellen M. McCarthy  
Nurenberg, Paris, Heller & McCarthy Co. L.P.A.  
1370 Ontario St.  
Cleveland, OH 44113

Counsel for Plaintiffs



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ASHLEY L. OLIKER (0085628)