

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No.

Plaintiff,

TRIAL ORDER

-vs-

JUDGE JACK ZOUHARY

Defendant.

This case is scheduled for a jury trial beginning on _____ in the courtroom of the Honorable Jack Zouhary, United States District Judge, located on the second floor, Courtroom 204, United States Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio. Counsel may call Chambers (419-213-5675 or 419-213-5679) concerning trial protocol or procedures.

If a civil case settles within five (5) weeks of trial, \$5,000 in court costs will be assessed against the parties absent a showing of good cause. This represents the time and cost of summoning and preparing for a jury, including the preparation and mailing of juror questionnaires for voir dire, as well as the cost for attendance and accommodations for jurors.

A general Juror Questionnaire for mailing to the jury pool in advance of trial will be shared with counsel. Counsel may file proposed questions to be added to the Questionnaire or to be added to in-court voir dire examination conducted by the Judge. (Trial counsel are allowed brief follow-up examination in court of individual members of the venire.)

***DAUBERT* MOTIONS**

1. *Daubert* motions, to exclude or limit expert testimony or lay opinion, shall be filed by _____; responses due by _____. No replies unless requested by this Court. If more than one motion is made, all motions shall be filed in a single document with a ten (10) page limit. Motions will be ruled on in advance of trial. Counsel **must** meet and confer prior to filing such motions.

MOTIONS IN LIMINE

2. Motions in Limine shall be filed by _____; opposition due by _____; no replies unless requested by this Court. If more than one motion is made, all motions shall be filed in a single document with a ten (10) page limit. Motions will be ruled on in advance of trial. Counsel **must** meet and confer prior to filing such motions.

JOINT STATEMENT OF THE CASE, WITNESS LIST AND VOIR DIRE

3. Counsel shall consult with each other and submit a proposed Joint Statement of the Case (to be read to the jury at the beginning of the trial) which should include a brief statement of the facts, stipulations, and contested issues. The Joint Statement may note any disagreements and offer alternate language as appropriate, and shall be filed by _____.

4. Counsel shall submit a Joint List of Proposed Witnesses with a brief summary of their testimony and a brief discussion of any evidentiary issues likely to arise with respect to admissible testimony (*e.g.*, hearsay). This list shall be filed by _____.

JURY INSTRUCTIONS

5. Counsel shall consult with each other and file **Joint** Proposed Jury Instructions, noting those areas where the parties disagree and offering alternate language with supporting legal authority as appropriate. Counsel shall provide Chambers with a courtesy hard copy, with ECF header, which shall be filed and delivered by _____.

6. Counsel should review the District Court website for Judge Zouhary's standard voir dire questions and boilerplate jury charge:

<https://www.ohnd.uscourts.gov/content/judge-jack-zouhary>

DEPOSITION TESTIMONY

7. Parties are specifically directed to comply with the provisions of Local Rule 32.1. Counsel shall confer to determine which testimony will be offered by deposition (including videotape deposition), agree on the designation of those portions of the depositions to be offered into evidence, and also identify any objections. Counsel shall file a proposed order listing the page(s) and line(s) for each designation objection. Designations and counter-designations shall be marked in a full copy of the deposition transcript (not the condensed Min-U-Script format), with designations and counter-designations highlighted in different colors. Plaintiff's initial designations/counter-designations shall be highlighted or blocked in light yellow; Defendant's initial designations/counter-designations shall be highlighted or blocked in light green. Objections shall be highlighted or blocked in light red. Counsel shall note objections in the margins of the transcript, including the basis and legal support for any objections, and the offering party's responses to any objections. See attached sample proposed order and corresponding transcript.

8. Counsel shall file a complete written transcript of each deposition to be used at trial, including the designations and objections described above, by _____, and shall provide a hard copy, with ECF header, to Chambers. Objections will be ruled on in advance of trial. If a complete written transcript has already been filed, counsel need not file a duplicate copy, and may instead file only the relevant pages containing designations and objections.

EXHIBITS

9. Counsel shall exchange exhibits with each other, and provide Chambers with two complete sets to be used at trial -- one for the Bench and one for the witness stand. Counsel shall file a joint “List of Exhibits” by _____. Counsel shall also provide Chambers with a CD or flash drive containing all properly labeled exhibits corresponding with the “List of Exhibits.” See JERS Order. Counsel shall submit the JERS CD or flash drive by _____. If a party will use Realtime or order daily transcripts, the party shall provide the Court Reporter with a third set of exhibits. Do not file exhibits with the Clerk of Court.

10. Exhibits must be marked before trial with numbers, irrespective of which party is producing the exhibit. No duplicates are allowed. Sequence of numbers is not important. Counsel shall not label exhibits as “Plaintiff’s” Exhibit or “Defendant’s” Exhibit, but as “Trial Exhibit.”

11. Counsel are responsible for maintaining original trial exhibits, and for filing exhibits needed for appeal purposes.

NOTICE TO COURT REPORTER

12. In order to facilitate the creation of an accurate Realtime record, counsel shall provide a “Notice to Court Reporter” by _____ containing:

- Proper names, including those of witnesses;
- Acronyms;
- Geographic locations;
- Technical (*e.g.*, medical) terms, names, or jargon.

The Notice to Court Reporter need **not** be filed but shall be provided in person or via e-mail to [Zouhary Chambers@ohnd.uscourts.gov](mailto:Zouhary_Chambers@ohnd.uscourts.gov).

COURTROOM ELECTRONICS

13. Well in advance of trial, counsel should be trained and familiar with the electronic presentation of evidence and the use of courtroom equipment. Counsel may contact Chambers to schedule an appointment. Training the eve of trial is **not** permitted.

14. It is essential that counsel utilize the courtroom electronics to educate the jury about the case. This Court strongly recommends that you not only use the electronics, but that you know how to use them. For example, jurors have complained that lawyers will utilize a PowerPoint, but that it is not readable from the jury box. You should test your presentations. If the jury can't see it (or hear it), it is of little use.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

,

Case No.

Plaintiff,

[PROPOSED] RULINGS ON
OBJECTIONS TO TESTIMONY
OF XXXX

-vs-

,

JUDGE JACK ZOUHARY

Defendant.

<u>Page</u>	<u>Line No.</u>	<u>Ruling</u>
26	Lines 8–25	[to be completed by Court]
27	Lines 1–5	[to be completed by Court]

12 I allowed him to respond in Spanish on one particular
13 test.

14 Q. But I assume you believe that the -- his -- his
15 English abilities did affect his test scores?

16 A. Absolutely.

17 Q. Okay. Low education, how would his -- his
18 relative lack of education affect his test scores?

19 A. The lower the education, they're highly
20 correlated with test scores. So when you have a low
21 education, it certainly impacts the scores. Now, some
22 of the scores have corrections for education, so you
23 look at norms that are normed to somebody with a
24 sixth-grade education. Not all the tests are normed --
25 norm reference to that. Some of the tests like the

26

1 Wechsler test doesn't have a norm based on -- or doesn't
2 have a norm correction based on education. Some of the
3 tests that I use do.

4 Q. Okay.

5 A. But nevertheless, education impacts scores.
6 The higher your education, the higher your
7 neuropsychological scores in general.

8 Q. Okay. The next thing that you mentioned was
9 the physical, mental, and emotional affects of his toxic
10 condition. First of all, what do you mean by that?

11 A. If, in fact, this gentleman has toxic
12 condition, as was reported in some of the physicians
13 reports, it -- it's going to result in those symptoms.
14 He's going to show physical limitations, which he has
15 described. He's going to struggle mentally. What I
16 mean by that is it could be concentration, it could be
17 attention, it could be memory. Any of those factors
18 that we talk about will be depressed if -- if there is a
19 toxic condition or can be depressed. And emotionally,
20 some of these toxic conditions can cause depression.

21 Q. Okay. So the symptoms that he presented to you
22 with that you noted in your report and the cognitive
23 impairment that you described would be consistent with a
24 toxic exposure?

25 MR. COHEN: Object to the form.

27

1 Q. (BY MR. HILL.) Would it be consistent with a
2 toxic exposure?

3 MR. COHEN: Object to the form.

D's Obj: P 26 L 8-P 27 L 3; he did not make a diagnosis to a reasonable degree of neuropsychological certainty. Therefore, discussion of his "diagnosis" should be excluded. Speculation as well. Leading.

Pl response: these objections are without merit. Furthermore, Defendants did not file a Daubert motion on Dr. Schmitt and are improperly trying to back door this untimely objection.

4 Q. (BY MR. HILL) You can answer

5 A. Could be

6 Q. Now, let's go back to the -- to the issue of
7 variable effort, and you described that not only in your
8 summary here on page -- what's page 10 --

9 A. Uh-huh.

10 Q. -- according to the --

11 A. Okay.

12 Q. -- Bates numbers at the bottom.

13 A. Okay.

14 Q. And in a couple of other -- other places as
15 well in the -- the specific testing results that you
16 noted, I think you've used either the same term or a
17 similar term to describe little effort or a lack of
18 effort perceived on his part during the testing?

19 A. To my perception, yes.

20 Q. But you have a sentence here in your summary
21 that says that you don't think that what you perceived
22 as a lack of effort should be considered a purposeful
23 attempt to thwart the results of the examination.

24 A. Correct.

25 Q. What does that mean?

28

1 A. Sometimes patients come in with the intention
2 of doing just that. You see that in litigation --

3 Q. Uh-huh.

4 A. -- with the intent to underscore in order to
5 produce some effect on the litigation. For example --
6 there are other reasons why people might want to
7 underscore.

8 It was my perception at the time that it
9 wasn't purposeful to affect the results of the test.
10 My impression was only that I questioned his effort at
11 times. I don't usually make any judgment as to why
12 someone is producing suboptimal results. Even when I
13 administer standardized effort measures, I generally
14 don't make a subjective opinion as to why someone's
15 effort is strong or weak. What I use that for is
16 validity of the findings. If effort is suboptimal, it's
17 suboptimal and it affects the validity and I leave it at
18 that, and that's generally --

19 Q. Sure.

20 A. Does that answer the question?

21 Q. Yeah, it does.

22 But in this case specifically, you did note