

NO.: FBT-CV-15-6048078-S : **SUPERIOR COURT**
JONATHAN SHAPIRO : **J. D. OF FAIRFIELD**
VS. : **AT BRIDGEPORT**
DELBOUNO, FRANK, ET AL : **NOVEMBER 3, 2016**

MEMORANDUM IN SUPPORT OF MOTION FOR TRIAL CONTINUANCE

The Defendants, Frank Delbouno and City of Bridgeport, respectfully move for a continuance of the jury trial, currently scheduled to take place on November 30, 2016 due to the following:

1. On January 12, 2015, the Defendants filed written Interrogatory and Production Requests (consisting of standard Practice Book forms 202 and 205) in accordance with Sections 13-6 and 13-9 of the Rules of Practice and served the same in accordance with Section 10-12 of said Rules.
2. On March 4, 2015, the Plaintiff filed a Motion for a 30-day extension of time until April 13, 2015 within which to file a response to said discovery.
3. Thereafter, on April 13, 2015, the Plaintiff filed an initial response to said discovery and thereafter filed Supplemental Compliance.
4. The Plaintiff's aforementioned initial and supplemental discovery compliance, however, was incomplete to the extent that it failed to comply, or

inadequately complied, to production requests 1 and 2 to the extent that the Plaintiff failed to provide a full and complete copy of all of the Plaintiff's medical records from all of the Plaintiff's medical treaters, particularly with regard to producing the initial intake/patient history forms for each treater.

5. The medical treatment records produced by the Plaintiff in his initial and supplemental responses to discovery reflected that the Plaintiff was claiming pain to the neck, back and upper extremity for which the Plaintiff was diagnosed as having an accident-related cervical and lumbar sprain and a related need for pain medication/ treatment premised upon the Plaintiff having no significant past medical history of relevance. Said medical records made no reference to anything of significance in the Plaintiff's past medical history that would be relevant to the Plaintiff's claims of pain, pain treatment and projected need for future pain treatment at the projected cost of "\$268,800+".

6. At the Plaintiff's March 2, 2016 deposition, the Plaintiff first disclosed a past history significant for drug/substance abuse and addiction, including heroin and cocaine, and related treatment at numerous rehab facilities, which, if the Plaintiff did not disclose the same to his treating doctors, could be relevant in questioning the validity of any accident related medical findings/conclusions and projected need for

future pain treatment, particularly to the extent that the same was premised upon the Plaintiff's subjective claims of pain – that could be equally if not more likely attributable to feigned symptomatology by the Plaintiff to ensure pain medication to meet the Plaintiff's drug addiction needs.

7. At the October 25, 2016 status conference (which was requested by the defense to provide the Court with an update on when the Court's pretrial settlement figure would be presented for the City Council's consideration and approval, and also to seek the Court to order the Plaintiff to provide all further required discovery compliance that would be relevant for the City Council's consideration on the proposed settlement), the Court ordered the Plaintiff to produce the Plaintiff's cervical MRI film and all of the patient intake forms from all of the Plaintiff's medical treaters, premised upon the determination (Bellis, J.) that the Plaintiff was obligated to produce these records in response to Plaintiff's outstanding discovery.

8. Pursuant to the Court's aforementioned October 25, 2016 status conference Order (Bellis, J.), the Plaintiff thereafter produced on October 26, 2016 the Plaintiff's patient intake forms from all of the Plaintiff's medical treaters (except for Physical Therapy of Southern Connecticut which is no longer in business), along with

an authorization for the defense to acquire the Plaintiff's December 20, 2013 cervical MRI/film.

9. A review of the Plaintiff's October 26, 2016 Court ordered disclosure of all of the Plaintiff's patient intake forms from all medical treaters has disclosed that the Plaintiff never advised any of his medical treaters as to a past medical history significant for drug/substance abuse and addiction, including the use of heroin and cocaine. Indeed, in the medical intake form for Valley Orthopedic Specialists, the Plaintiff affirmatively misrepresented his social history by checking the no box for "substance abuse?". These late disclosed documents are extremely relevant to the extent that it now establishes that the Plaintiff failed to disclose and/or affirmatively misrepresented to all of his treating physicians, the fact that he had a past history significant for drug/substance abuse and addiction, including cocaine and heroin use, which now puts into serious question, the validity of any accident-related medical findings/conclusions and projected need for future pain treatment by Plaintiff's doctors, to the extent that the same was premised upon the Plaintiff's subjective claims of pain which the doctors did not know could be equally if not more likely attributable to feigned symptomatology by the Plaintiff to ensure pain medication to meet the Plaintiff's drug addiction needs. Accordingly, and as a consequence of this

late disclosure by the Plaintiff of medical intake forms which the Court determined the Plaintiff should have disclosed in response to the Defendant's standard January 12, 2015 discovery, the defense – in order to fully and properly defend against the Plaintiff's claims – must now move the Court, pursuant to Practice Book §13-14(a) and (b), to grant the Defendant's November 3, 2016 Motion for Trial Continuance so as to allow the defense the time necessary to fully and properly defend against the Plaintiff's claims by:

a. noticing the continuation of the Plaintiff's March 2, 2016 deposition to inquire among other things as to the information reflected on the recently disclosed patient intake forms (that were not available at the time of the Plaintiff's March 2, 2016 deposition) as to why the Plaintiff failed to disclose, concealed and/or affirmatively misrepresented to his treating doctors this significant past history of drug/substance abuse and addiction, including the use of cocaine and heroin, and whether it was done to ensure his ability to credibly claim accident related pain to acquire pain medication to satisfy his addition needs;

b. noticing the deposition of the Plaintiff's various treating doctors to question them on whether they were advised by the Plaintiff of his significant history for drug/substance abuse and addiction, including the use of cocaine and heroin, and if not, how if at all it would change their treatment, diagnoses, prognoses/projections as to future pain treatment (to the extent that it was premised upon the Plaintiff's subjective complaints of pain), and as to what if any portion would be attributable to the accident versus the Plaintiff's addiction status/needs;

c. filing supplemental discovery requiring the Plaintiff to provide all past drug rehab/treatment info/records (which we now know were concealed from Plaintiff's counsel's treating physicians) which would be particularly relevant for use in questioning both the Plaintiff at his re-continued deposition as well as for questioning the Plaintiff's treating doctors at their depositions;

d. retaining a drug rehab specialist for the purposes of pursuing an IMR or IME of the Plaintiff as to his past and current drug addiction status and its relevance/relatedness to the Plaintiff's present

accident claims, particularly the Plaintiff's subjective claims for ongoing pain and need for pain medication/treatment;

e. retaining a pain specialist to pursue an IMR or IME of the Plaintiff to assess the validity and relatedness to the accident of the Plaintiff's claims of pain and needed pain medication/treatment, particularly with respect to assessing the validity of the Plaintiff's current projected future pain treatment cost of \$268,800+", particularly given the fact that Plaintiff's own doctors have only assessed the Plaintiff as having a five percent (5%) PPD of the lumbar spine and a seven to eight percent (7 to 8%) PPD of the cervical spine from the accident, so as to raise serious issue as to whether the Plaintiff's claims of pain and needed pain treatment (at a projected cost of \$268,800+) are due to his accident as opposed to his significant past history of drug/substance abuse and addiction which the Plaintiff admitted at his deposition was still occurring after our February 27, 2015 motor vehicle accident;

f. pursuing a further IMR and/or IME performed by the defense Dr. Brown to reassess the validity of Plaintiff's PPD ratings and projected need for future pain treatment (at the cost projected of

\$268,800+) to the extent that said ratings and projections were premised upon the Plaintiff's subjective complaints of pain (which we now know may be equally if not more likely attributable to the Plaintiff's desire to acquire medication to satisfy his addiction needs in light of the Plaintiff's concealment and misrepresentation to his doctors as to his past history for significant drug/substance abuse and addiction (which continued after the February 27, 2015 motor vehicle accident which is the subject matter of this lawsuit).

In sum, and as reflected above, the aforesaid trial continuance until May 11, 2017, is required by the defense to fully and properly address the issues raised in the Plaintiff's newly disclosed patient intake forms so as to allow the defense to fully and properly defend against the Plaintiff's medical injury claims and significant projected future pain treatment costs of \$268,800. As a consequence, the denial of said continuance would significantly prejudice the undersigned Defendants' ability to fully and properly defend against the claims and positions of the Plaintiff. The Defendants further maintain that the continuance would not unfairly prejudice the Plaintiff since it was the Plaintiff's late disclosure of said records – which the Court determined (Bellis, J.) the Plaintiff should have disclosed in response to the Defendants' standard

January 12, 2015 discovery – which now warrants the continuance for the time necessary to properly address the significant injury/damage issues raised in these newly disclosed records so that the defense can fully and properly defend against the Plaintiff's claims.

THE DEFENDANTS:

BY: _____ /s/
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CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this 3rd day of November, 2015 to:

Kevin C. Shea, Esq.
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_____/s/
Lawrence A. Ouellette, Jr.