

DOCKET NO.: FBT-CV15-6048078-S : SUPERIOR COURT
JONATHAN SHAPIRO : JUDICIAL DISTRICT OF
: FAIRFIELD

PLAINTIFF

V. : AT BRIDGEPORT

FRANK DELBUONO, JR.
and CITY OF BRIDGEPORT : NOVEMBER 17, 2016

DEFENDANT

OBJECTION TO MOTION FOR PROTECTIVE ORDER

On November 16, 2016—the very day that the Court-ordered deposition of Dr. David Brown was to be taken by the plaintiff—the defendants filed a Motion for Protective Order, asking the Court to limit in some unspecified way the document request attached to the Re-Notice of Deposition and Subpoena that were issued for the deposition of Dr. David Brown on November 16, 2016. See Re-Notice of Deposition and Subpoena, attached hereto as Exhibits A and B. The defendants claim that the document requests seek extensive information and documentation that will be too difficult for the defendants to provide within fewer than the fifteen days required under Practice Book § 13-28(c). This Motion for Protective Order should be denied, as the plaintiff first

noticed Dr. Brown's deposition on September 1, 2016, and issued on September 8, 2016 a subpoena for his deposition, both containing the identical document request. See Notice of Deposition, attached hereto as Exhibit C and Subpoena attached hereto as Exhibit D.

I. Background

On July 21, 2016—only a little over two months before the original date for the commencement of trial—the defendants disclosed Dr. Brown as their expert. On September 1, 2016, the plaintiff noticed his deposition for September 23, 2016. See Exhibit C. This Notice of Deposition contained the exact same document requests as does the November 10, 2016 Re-Notice of Deposition. Despite plaintiff's counsel's efforts to arrive at a mutually agreeable date for the deposition, plaintiff's counsel and defendants' counsel were unable to do so, given the lack of response from defendants' counsel. See Objection to Motion for Protective Order, pp. 2-3 (Docket Entry No. 128). As such, the defendants filed a Motion for Protective Order on September 15, 2016, asking the Court to bar the plaintiff from taking Dr. Brown's deposition given the defendants' counsel's lack of availability. Docket Entry No. 127.

Notably, the defendants made no objection whatsoever to the document request contained within the September 1, 2016 Notice of Deposition.

At the status conference held with Judge Bellis on November 9, 2016, the parties agreed—and the Court ordered—that Dr. Brown’s deposition would go forward on November 16, 2016. See November 9, 2016 Order (Docket Entry No. 142). As such, the plaintiff re-noticed his deposition the next day on November 10, 2016 for November 16, 2016.

II. Legal Standard

Practice Book § 13-5 provides the following in relevant part:

Upon motion by a party from whom discovery is sought, and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had

Practice Book § 13-5(1). As the Court has held, “[t]he [trial] court’s inherent authority to issue protective orders is embodied in Practice Book § 13-5. . . .

The use of protective orders and the extent of discovery [are] within the discretion of the trial judge. . . .” (Internal quotation marks omitted.) *Cunniffe v. Cunniffe*, 150 Conn. App. 419, 440 (2014). Further, good cause is “a sound

basis or legitimate need to take judicial action ... Good cause must be based upon a particular and specific demonstration of fact.” *Welch v. Welch*, 48 Conn. Supp. 19, 20 (2003).

III. Argument

There is no reason for the Court to grant this Motion for Protective Order. First, the defendants have failed to specify how exactly they believe the Court should “limit the deposition production command” set forth in the Re-Notice of Deposition. As such, it is unclear what relief the defendants are even seeking.

Second, the defendants’ claim that obtaining the documents sought (again – it is unclear as to what documents they are referring) would be too burdensome in fewer than the fifteen days provided by the Practice Book should be given absolutely no consideration in light of the fact that the plaintiff first noticed and subpoenaed Dr. Brown’s deposition with identical document requests on September 1 and 8, 2016—two and one-half months before Dr. Brown was to be deposed on November 16, 2016. The defendants had ample time to arrange for the documentation to be produced by Dr. Brown. They cannot claim now that they were not given sufficient time to compile these documents, as that is simply not true.

Finally, to the extent the defendants are objecting to the substance of the document requests—and it is unclear if they are—plaintiff’s counsel was granted permission by the Court in another case to seek and obtain the very same documents the plaintiff has set forth in this document request. See August 17, 2015 Order of the Court, *Nazzaro, J.* and Re-Notice of Deposition of Dr. Herbert Hermele, attached hereto as Exhibit E. As such, these requests are perfectly reasonable and have been approved by the Court.

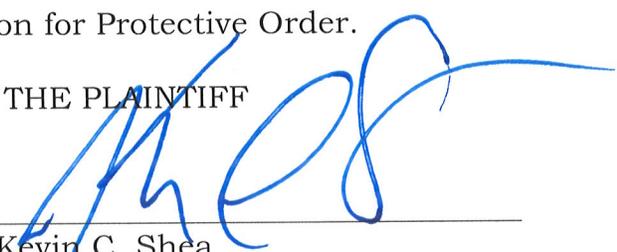
The defendants also stated in their motion that they have agreed to provide the plaintiff with “an opportunity to review and copy any portion of Dr. Brown’s file which has not already been provided to plaintiff’s counsel,” as well as with a list of all documents in the doctor’s file. Motion for Protective Order, p. 2. Practice Book § 13-4(b)(3) requires the party disclosing an expert witness, upon the request of an opposing party, to produce all materials obtained, created and/or relied upon by the expert in connection with his opinions in the case to the requesting party within fourteen days prior to that expert’s deposition. Further, plaintiff’s counsel made this request on September 1, 2016. See Email, attached as Exhibit F hereto. As such, it is clear that providing these documents listed by the defendants in their Motion for

Protective Order is only part of something the defendants are *required* to do, and which they failed to do timely in any event.¹

Simply put, the Court should deny this Motion for Protective Order. The defendants have had more than ample time to procure the documents requested of Dr. Brown, and the documents requested are either required by the Practice Book to be disclosed or have been approved by the Court. As such, the Court should deny the Motion for Protective Order.

THE PLAINTIFF

BY

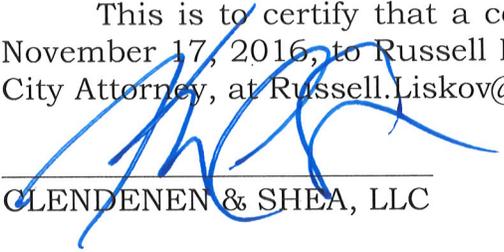


Kevin C. Shea
CLENDEEN & SHEA, LLC
400 Orange Street
New Haven, CT 06502
203/787-1183

¹ It bears noting that the “list of all documents in the doctor’s file” provided by the defendants on November 16, 2016, is woefully inadequate in any event. Indeed, it provides that the file contains, *inter alia*, “[a]dditional medical records sent by Attorney Kevin Shea dated October 26, 2016,” “Medical records received in January 2016,” “4 Letters addressed to Dr. David Brown from the City Attorney’s Office” and “[a]dditional medical information received in the form of a disc from Advanced Radiology Cervical Spine Dated December 30, 2013.” See November 15, 2016 list, attached hereto as Exhibit G. There is absolutely no detail provided, thereby rendering this list useless.

CERTIFICATION:

This is to certify that a copy of the foregoing was sent via email this of November 17, 2016, to Russell D. Liskov, Associate City Attorney, Office of the City Attorney, at Russell.Liskov@bridgportct.gov.



CLENENEN & SHEA, LLC

EXHIBIT A

DOCKET NO.: FBT-CV15-6048078-S : SUPERIOR COURT
JONATHAN SHAPIRO : JUDICIAL DISTRICT OF
PLAINTIFF : FAIRFIELD
V. : AT BRIDGEPORT
FRANK DELBOUNO, JR. : NOVEMBER 10, 2016
and CITY OF BRIDGEPORT
DEFENDANT

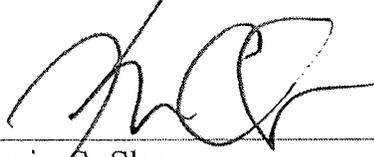
RE-NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that plaintiff, through counsel, will take the deposition of defendants' expert Dr. David B. Brown, pursuant to Section 13-26 et. seq. of the Connecticut Practice Book on Wednesday, November 16, 2016 at 9:30 a.m., at the offices of Ortho Care Specialists, 4747 Main Street, Bridgeport, CT 06606 before Bonita Cohen or other officer authorized by law to administer oaths, which deposition shall continue until completed.

PLEASE TAKE FURTHER NOTICE that the said deponent is instructed to produce at the time and place of his deposition any and all documents described in Schedule A attached.

You are invited to attend and cross-examine.

THE PLAINTIFF

By: 

Kevin C. Shea
Cledenene & Shea, LLC
400 Orange Street
New Haven, Connecticut 06511
203/787-1183

CERTIFICATION:

This is to certify that a copy of the foregoing was sent, November 10, 2016, via e-mail to Russell D. Liskov, Associate City Attorney, Office of the City

Attorney at:

Russell.Liskov@bridgeportct.gov


CLENDENEN & SHEA, LLC

SCHEDULE A

"Document" means the original and any non-original copy, regardless of origin or location, of any book, pamphlet, diary, calendar, periodical, letter, telegram, cable, telex, correspondence, report, record, study, notebook, note, handwritten note, contract, minutes, memorandum, notice, working paper, diary, chart, paper, graph, sketch, drawing, photograph, telephone record, microfilm, index, data sheet, data processing card, sound recording or any other written, recorded, transcribed, filmed or graphic material, and/or other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, however produced or reproduced, to which deponent has or has had access.

"Concerning" means relating to, referring to, describing, evidencing or constituting.

"You" or "Your" means David B. Brown, M.D., or any agents, assistants, employees, representatives, partners or any persons acting on behalf of David B. Brown, M.D..

1. A copy of your current professional resume and curriculum vitae;
2. A listing of all publications you have authored;
3. All publications, whether authored by you or not, on which you intend to rely in whole or in part for any of your opinions in this matter, or to which you have referred in connection with your work on this matter;
4. All time records, diaries and bills maintained, prepared, and/or rendered in connection with your retention in this matter and/or your investigation and evaluation of this case;
5. Any and all documents, records, reports, analyses, file materials, correspondence and any other pertinent information concerning your work on

the above-captioned matter, including all correspondence with the defendants or the defendants' counsel in connection with this matter and all agreements between you and the defendants or the defendants' counsel in connection with your work on this matter;

6. A listing of all court cases or arbitrations from January 2010 through the present in which you have served as an expert witness and/or consultant, whether or not you have testified at trial or during a deposition;

7. Your entire file regarding this matter, your investigation, evaluation, and opinions, including but not limited to, any and all documents, correspondence, records, research materials, the file itself, and any documents on which you base your opinions, including but not limited to the following:

(a) all documents and other tangible things furnished to you by the defendants, defendants' counsel, or any third person including specifically all correspondence, notes of conversations, memoranda, and the like;

(b) all documents obtained or created by you or any person acting on your behalf;

(c) all documents you reviewed, referred to, or relied upon in reaching any opinion or conclusion in this matter and a list of those materials, including but not limited to all treatises, books, articles, publications, codes, standards, and other literature;

(d) all documents you reviewed which are, in whole or in part, not consistent with the opinions or conclusions you arrived at in this matter and a list of those materials, including but not limited to all treatises, books, articles, publications, codes, standards, and other literature;

(e) all illustrations, charts, graphics, or other tangible things, exhibits or documents of any kind which you intend or contemplate using to explain, illustrate, or support your testimony in this matter, if you are called to testify.

8. Any and all work papers obtained or created by you concerning your expected testimony in this matter if you are called to testify.

9. All Form 1099 documents showing your income from January 2010 to the present time from (i) performing Independent Medical Examinations (“IMEs”); (ii) performing Medical Records Reviews (“MRRs”); (iii) testifying in Court; and (iv) testifying in depositions.

10. A document evidencing the number of times, from January 2010 to the present, that you have (i) testified in Court; and (ii) testified at depositions, including the names of the cases in which such testimony was given.

11. A list identifying (i) the number of IMEs performed by you at the request of the defendants from January 2010 to the present; and (ii) the number of MRRs performed by you at the request of the defendants from January 2010 to the present.

12. A list identifying the cases in which you have consulted with the defendants (including related entities such as its Office of the City Attorney) from January 2010 to the present.

13. All correspondence between you and any member of the Bridgeport Office of the City Attorney and/or the defendants regarding Jonathan Shapiro.

These Requests are intended to reach materials and things in your possession, care, custody, or control, and that of your agents, servants, and employees. They are also intended to reach materials, which you have provided to other individuals, including defendants’ counsel, not presently in your possession but subject to your control.

EXHIBIT B

SUBPOENA DUCES TECUM

To: Dr. David B. Brown
Ortho Care Specialists
4747 Main Street
Bridgeport, CT 06606

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to appear before Bonita Cohen, Notary Public for a deposition to be held at Ortho Care Specialists, 4747 Main Street, Bridgeport, Connecticut on Wednesday, November 16, 2016, at 9:30 o'clock in the morning, to testify what you know in a certain Civil Action pending in the Superior Court between

JONATHAN SHAPIRO

plaintiff(s)

and

FRANK DELBOUNO, JR. AND
CITY OF BRIDGEPORT

defendant(s).

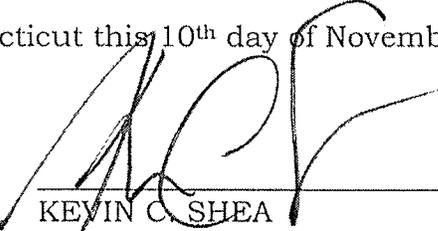
AND YOU ARE FURTHER COMMANDED to bring with you and produce at the same time and place, the following:

See attached Schedule A

HEREOF FAIL NOT, UNDER PENALTY OF THE LAW.

To any proper officer or indifferent person to serve and return.

Dated at New Haven, Connecticut this 10th day of November, 2016.



KEYVIN C. SHEA
COMMISSIONER OF THE SUPERIOR COURT
400 Orange Street
New Haven, Connecticut 06511
203/787-1183

STATE OF CONNECTICUT)
) ss.:
COUNTY OF)

Then I made due service of the within Subpoena by reading the same in the presence and hearing of and leaving a true copy thereof with the following person(s) at the address indicated:

Name	Address
------	---------

and paid/tendered (to each) the fees allowed by law.

The within is a true copy of the original Subpoena.

Witness Fee _____ \$
Service
Travel _____
Endorsement _____
\$ _____

Attest,

State Marshal
Constable
Indifferent Person

SCHEDULE A

"Document" means the original and any non-original copy, regardless of origin or location, of any book, pamphlet, diary, calendar, periodical, letter, telegram, cable, telex, correspondence, report, record, study, notebook, note, handwritten note, contract, minutes, memorandum, notice, working paper, diary, chart, paper, graph, sketch, drawing, photograph, telephone record, microfilm, index, data sheet, data processing card, sound recording or any other written, recorded, transcribed, filmed or graphic material, and/or other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, however produced or reproduced, to which deponent has or has had access.

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"You" or "Your" means David B. Brown, M.D., or any agents, assistants, employees, representatives, partners or any persons acting on behalf of David B. Brown, M.D..

1. A copy of your current professional resume and curriculum vitae;
2. A listing of all publications you have authored;
3. All publications, whether authored by you or not, on which you intend to rely in whole or in part for any of your opinions in this matter, or to which you have referred in connection with your work on this matter;
4. All time records, diaries and bills maintained, prepared, and/or rendered in connection with your retention in this matter and/or your investigation and evaluation of this case;
5. Any and all documents, records, reports, analyses, file materials, correspondence and any other pertinent information concerning your work on the above-captioned matter, including all correspondence with the defendants or the defendants' counsel in connection with this matter and all agreements between you and the defendants or the defendants' counsel in connection with your work on this matter;
6. A listing of all court cases or arbitrations from January 2010 through the present in which you have served as an expert witness and/or consultant, whether or not you have testified at trial or during a deposition;
7. Your entire file regarding this matter, your investigation, evaluation, and opinions, including but not limited to, any and all documents, correspondence,

records, research materials, the file itself, and any documents on which you base your opinions, including but not limited to the following:

(a) all documents and other tangible things furnished to you by the defendants, defendants' counsel, or any third person including specifically all correspondence, notes of conversations, memoranda, and the like;

(b) all documents obtained or created by you or any person acting on your behalf;

(c) all documents you reviewed, referred to, or relied upon in reaching any opinion or conclusion in this matter and a list of those materials, including but not limited to all treatises, books, articles, publications, codes, standards, and other literature;

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EXHIBIT C

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JONATHAN SHAPIRO : JUDICIAL DISTRICT OF
PLAINTIFF : FAIRFIELD
V. : AT BRIDGEPORT
FRANK DELBOUNO, JR. : SEPTEMBER 1, 2016
and CITY OF BRIDGEPORT
DEFENDANT

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that plaintiff, through counsel, will take the deposition of defendants' expert Dr. David B. Brown, pursuant to Section 13-26 et. seq. of the Connecticut Practice Book on Friday, September 23, 2016 at 10:00 a.m., at the offices of Ortho Care Specialists, 4747 Main Street, Bridgeport, CT 06606 before Bonita Cohen or other officer authorized by law to administer oaths, which deposition shall continue until completed.

PLEASE TAKE FURTHER NOTICE that the said deponent is instructed to produce at the time and place of his deposition any and all documents described in Schedule A attached.

You are invited to attend and cross-examine.

THE PLAINTIFF

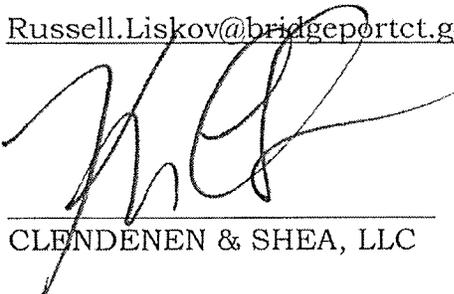
By: 

Kevin C. Shea
Clendenen & Shea, LLC
400 Orange Street
New Haven, Connecticut 06511
203/787-1183

CERTIFICATION:

This is to certify that a copy of the foregoing was sent, September 1, 2016, via e-mail to Russell D. Liskov, Associate City Attorney, Office of the City Attorney at:

Russell.Liskov@bridgeportct.gov


CLENDENEN & SHEA, LLC

SCHEDULE A

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3. All publications, whether authored by you or not, on which you intend to rely in whole or in part for any of your opinions in this matter, or to which you have referred in connection with your work on this matter;
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the above-captioned matter, including all correspondence with the defendants or the defendants' counsel in connection with this matter and all agreements between you and the defendants or the defendants' counsel in connection with your work on this matter;

6. A listing of all court cases or arbitrations from January 2010 through the present in which you have served as an expert witness and/or consultant, whether or not you have testified at trial or during a deposition;

7. Your entire file regarding this matter, your investigation, evaluation, and opinions, including but not limited to, any and all documents, correspondence, records, research materials, the file itself, and any documents on which you base your opinions, including but not limited to the following:

(a) all documents and other tangible things furnished to you by the defendants, defendants' counsel, or any third person including specifically all correspondence, notes of conversations, memoranda, and the like;

(b) all documents obtained or created by you or any person acting on your behalf;

(c) all documents you reviewed, referred to, or relied upon in reaching any opinion or conclusion in this matter and a list of those materials, including but not limited to all treatises, books, articles, publications, codes, standards, and other literature;

(d) all documents you reviewed which are, in whole or in part, not consistent with the opinions or conclusions you arrived at in this matter and a list of those materials, including but not limited to all treatises, books, articles, publications, codes, standards, and other literature;

(e) all illustrations, charts, graphics, or other tangible things, exhibits or documents of any kind which you intend or contemplate using to explain, illustrate, or support your testimony in this matter, if you are called to testify.

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EXHIBIT D

SUBPOENA DUCES TECUM

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Ortho Care Specialists
4747 Main Street
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JONATHAN SHAPIRO

plaintiff(s)

and

FRANK DELBOUNO, JR. AND
CITY OF BRIDGEPORT

defendant(s).

AND YOU ARE FURTHER COMMANDED to bring with you and produce at the same time and place, the following:

See attached Schedule A

HEREOF FAIL NOT, UNDER PENALTY OF THE LAW.

To any proper officer or indifferent person to serve and return.

Dated at New Haven, Connecticut this 8th day of September, 2016.



KEVIN C. SHEA
COMMISSIONER OF THE SUPERIOR COURT
400 Orange Street
New Haven, Connecticut 06511
203/787-1183

STATE OF CONNECTICUT)
) ss.:
COUNTY OF)

Then I made due service of the within Subpoena by reading the same in the presence and hearing of and leaving a true copy thereof with the following person(s) at the address indicated:

Name	Address
------	---------

and paid/tendered (to each) the fees allowed by law.

The within is a true copy of the original Subpoena.

Witness Fee _____ \$
Service
Travel _____
Endorsement _____
\$ _____

Attest,

State Marshal
Constable
Indifferent Person

SCHEDULE A

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6. A listing of all court cases or arbitrations from January 2010 through the present in which you have served as an expert witness and/or consultant, whether or not you have testified at trial or during a deposition;
7. Your entire file regarding this matter, your investigation, evaluation, and opinions, including but not limited to, any and all documents, correspondence,

records, research materials, the file itself, and any documents on which you base your opinions, including but not limited to the following:

- (a) all documents and other tangible things furnished to you by the defendants, defendants' counsel, or any third person including specifically all correspondence, notes of conversations, memoranda, and the like;
- (b) all documents obtained or created by you or any person acting on your behalf;
- (c) all documents you reviewed, referred to, or relied upon in reaching any opinion or conclusion in this matter and a list of those materials, including but not limited to all treatises, books, articles, publications, codes, standards, and other literature;
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12. A list identifying the cases in which you have consulted with the defendants (including related entities such as its Office of the City Attorney) from January 2010 to the present.

13. All correspondence between you and any member of the Bridgeport Office of the City Attorney and/or the defendants regarding Jonathan Shapiro.

These Requests are intended to reach materials and things in your possession, care, custody, or control, and that of your agents, servants, and employees. They are also intended to reach materials, which you have provided to other individuals, including defendants' counsel, not presently in your possession but subject to your control.

EXHIBIT E

No. 6039165

PATRICIA ARIDA

VS.

ELIZABETH BALLANTINE, ET AL

*

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*

SUPERIOR COURT

AT NEW HAVEN

August 17, 2015

BEFORE: The Honorable John J. Nazzaro

Judicial District of New Haven
SUPERIOR COURT
FILED

SEP 02 2015

APPEARANCES:

CHIEF CLERK'S OFFICE

FOR THE PLAINTIFF:

Kevin C. Shea, Esq.
400 Orange Street
New Haven, Connecticut 06511

FOR THE DEFENDANT:

Eric B. Caines, Esq.
108 Leigus Road
Wallingford, Connecticut 06492

Judgment entered _____ 20
Counsel/self-rep. ind. notified 9/4 20 15
By JDNO copy of memo Other - *Counsel present*
 Copy to Reporter of Judicial Decisions

Robin L. Kolodecik

Court Recording Monitor

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2 THE COURT: All right. Well, I'm prepared to rule at this time, and
3 I'm cognizant of the cases referenced by counsel and—with regard to this
4 particular issue at hand. And I—I think it's, frankly, good that I'm going to
5 mark off the motion to preclude. I think that deserves argument, and that
6 argument will be had at another time and will be in the context of my
7 ruling on this motion to quash. Just by way of comment, it's unfortunate,
8 and maybe things will change, we're moving toward this individual
9 calendaring, although this case probably won't be subject to it, but that's a
10 whole procedure that is being implement where one judge will track a
11 case from its beginning for then three years out, and obviously from the
12 plaintiff's perspective and sometimes the defense prospective, they want
13 to resolve it within that window. With regard to a situation like this, in the
14 absence of a scheduling order, we had the disclosure, obviously, a month
15 prior to the original trial date, and now the trial date has been moved to
16 December 4 for jury selection and then evidence purposes January 4 of
17 2016. Regarding the specifics here in the motion to quash, the court will
18 rule as follows: Clearly the plaintiff is entitled to take the deposition of this
19 Dr. Herbert Hermele. With regard to the specific bulleted items at issue, I
20 understand the plaintiff is now modifying their requests to shorten the
21 window of time for the requested information from January, 2005 to the
22 present, to January of 2010 to the present. I think that is a sensible
23 modification. With regard to the request to quash bullet item number six,
24 a listing of all court cases or arbitrations from January, 2010 (sic) through
25 the present in which you have served as an expert witness and/or
26 consultant, whether or not you have testified at trial or during a
27 deposition, the court is going to deny that motion to quash. Suffice to

1 say, the witness is to make best efforts at complying with this request as
2 with the other requests thirty days prior to the date of an agreed upon
3 scheduled deposition, assuming that takes place. And all I can say is, the
4 responding party can do the best he can in making such a list. In so
5 ruling, the court finds that this information is reasonably to be calculated
6 to lead to the discovery of admissible evidence. It is not burdensome.
7 Certainly when an individual, in this case a professional witness, avails
8 himself to opine on a pending claim for money damages, this is certainly
9 fair fodder for cross examination, and the plaintiff ought to be provided
10 this information. With regard to bulleted item number nine, which
11 requests tax returns or other documents sufficient to show your income
12 from 2005 to the present time, from (i) performing independent medical
13 examinations, IME's, or (ii) performing independent medical records
14 review, IMRR's, and then triple i in parens., testifying in court; and then
15 (iv), Roman Numerals, testifying in depositions, the court rules as follows,
16 understanding there's been a modification of the timetable to be from
17 January, 2010 to the present: the court is going to sustain—or rather
18 grant the motion to quash insofar as the request seeks tax returns. The
19 court finds that to be intrusive, invasive and burdensome, indeed the
20 disclosure of which would likely have a chilling effect on professional
21 witnesses and their ability to serve as reviewing experts for the purpose
22 of review and opinion by way of deposition and/or trial. However, with the
23 modification of the timetable from January of 2010 to the present, the
24 court is going to grant disclosure and required disclosure in the timetable
25 that I've already described, thirty days prior to the deposition, of all 1099
26 tax documents or other documentation specific to the bulleted areas
27 requested, and I'm talking about independent medical evaluations, IME's,

1 independent medical reviews, IMRR's, testifying in court, and testifying
2 in depositions. Now, I'm mindful we are not the Federal Court, and
3 although authority from Federal Court is helpful, they have a different
4 standard in Federal Court. The court's going to remark, obviously Judge
5 Nevas was a very respected U.S. District Court judge for whom I worked
6 as a clerk in the U.S. Attorney's Office back in 1982; just anecdotally.
7 The scope of what is discoverable for experts is broader in the Federal
8 Court than it is in state court. Having said that, I do believe that it's not
9 burdensome to require a reviewing expert to produce this type of financial
10 information where it's tailored, it's specific to review for purposes of
11 litigation, and it can be obtained in an unburdensome fashion, if that's a
12 word. And again, the responding party is to do the best it can. We're
13 talking about a window of five years roughly, and I don't think that's too
14 burdensome. The information can be obtained if he doesn't have that on
15 file by, obviously, contacting his accountant, I presume he has one, a
16 professional accountant who can produce the 1099's, and if—worst case
17 scenario, requesting documents from the I.R.S. I see no need to order
18 disclosure of authorizations to the plaintiff. I think that would be seriously
19 invasive, intrusive, and not necessary at this juncture. So I think I'm clear
20 with respect to bulleted item number nine. With regard to bulleted item
21 number ten, the court is going to deny the motion to quash,
22 understanding—and I don't recall the specific term now in the Federal
23 Court that they use where witnesses keep these documents on file, but
24 we're going to grant the request to have the witness produce from 2010 to
25 present, and as far as a document, some type of a document—a listing, if
26 you will, of that. It's going to include the names of the case, which will
27 include the time so-called, the number of times the individual has testified

1 in court, that's bulleted item I; bulleted item II, testified at depositions.
2 I'm going to deny triple I, testified in court for plaintiffs. I'm going to deny
3 IV; testified in court for defendants. And I'm going to deny Roman
4 Numeral V and VI, testified at depositions for plaintiffs, and VI,
5 depositions for defendants. It's my belief that that can be inquired about,
6 assuming the other information is provided and that it's going to be a list
7 of the cases in which the expert has testified at deposition or at trial.
8 The—the responding party needn't specify in writing whether it was for
9 the plaintiff or the defendant. I believe that information, as the court has
10 framed and permitted the disclosure, is reasonably calculated to lead to
11 the discovery of admissible evidence. To a degree it's burdensome, but
12 it's not overly burdensome. Again, when a person, a doctor, a witness,
13 steps into this arena as a professional witness, this is reasonable
14 discovery and certainly intended to lead to the discovery of admissible
15 evidence. With regard to eleven, documents identifying each individual or
16 entity that hired you to perform IME's and IMRR's from 2005 to the
17 present, understanding that the window of time has been narrowed to
18 2010 to present, the court is going to grant the motion to quash this
19 request. This is somewhat duplicitous of the foregoing information and
20 counsel can inquire based upon the other items produced. The
21 responding party, in this case Dr. Hermele or his office manager,
22 etcetera, ought not be required to produce a separate list or identify each
23 individual or identity, that information may be obtained through other
24 means. Bullet number twelve, documents evidencing (i) the number of
25 IME's performed by you or at the request of the Law Offices Of Meehan,
26 Turret, Rosenbaum from 2005 to the present; and the number of IMRR's
27 performed by you at the request of the same law office from 2005 to the

1 present. That request has been modified to the window of 2010 to
2 present. I do believe that's legitimate information in a sense. And what I
3 mean specifically, I'm going to grant the motion to quash the term
4 documents, which is somewhat vague and all inclusive, and require the
5 witness to provide a list of the number of cases that the witness has
6 opined in by way of deposition or court testimony. Beyond that, the
7 witness is not required to produce any other documents. Having said
8 that, it's anticipated plaintiff's counsel will inquire about monetary sums
9 paid, etcetera. I believe the court's previous rulings regarding 1099's,
10 etcetera, will certainly permit counsel to inquire as to the amount of
11 income derived by this particular law office. That's legitimate inquiry, and
12 I think this is somewhat duplicitous. I understand the purpose of the
13 inquiry, but I—as I said, I'm going to grant the motion to quash this, I
14 believe counsel will obtain the information in previous requests. With
15 regard to thirteen, documents evidencing the number of item IME's
16 performed by you at the request of Liberty Mutual from 2005 to the
17 present, that's bulleted request I; and then II, the number of IMRR's
18 performed by you or at the request of Liberty Mutual from 2005 to the
19 present. That request has been modified to include the window of 2010
20 to the present. Again, I'm going to grant the motion to quash the term
21 documents because I think that's very broad. Having said that, I am
22 going to require the responding party to make a list of cases for which he
23 has consulted with Liberty Mutual for the purpose of IME's or IMRR's,
24 understanding that Liberty Mutual may be a related entity, if not an entity
25 in fact, related to the firm of the Law Offices of Meehan, Turret and
26 Rosenbaum, the details of which I needn't remark on further other than
27 there is a relationship between the two. Suffice to say, sometimes the

1 Law Offices of Meehan, Turret and Rosenbaum is referred to as captive
2 counsel so-called for Liberty Mutual. Assuming there is a nexus, and I
3 believe it probably is conceded that there is a nexus between Liberty
4 Mutual and the firm, and the insurer may be on the risk for the conduct
5 or—or—complained about, I'm going to order that disclosure, again in the
6 same timetable, thirty days predating the agreed upon date of a
7 deposition. Now, having remarked on all this, I have a question for Mr.
8 Vontell. Off the record.

9 **OFF THE RECORD**

10 THE COURT: So that's my ruling in this regard. I'm going to
11 request a transcript of my remarks be made available for my signature, it
12 shall constitute a memorandum in lieu of a written memorandum of
13 decision, I'll sign it, it'll become part of the record. Just by way of
14 commentary, this is not part of the ruling, none of what I say and what I've
15 done in the way of ruling in any way binds another judge on the motion to
16 preclude. I think you ought to have argument on that and I won't even
17 weigh in on that at this time. I wanted to thank the lawyers for their
18 patience. Mr. Caines, I understand your predicament in coming into the
19 case at the time you did. And, Mr. Shea, thank you for your patience and
20 you were able to accomplish some things today. So I think—I think we're
21 all set. I wish you both the best.

22 MR. SHEA: Okay.

23 THE COURT: And good luck to the both of you.

24 MR. SHEA: Thank you, your Honor.

25 MR. CAINES: Best of luck up in Hartford.

26 MR. SHEA: I'd like—I'd like to say I hope to see you in Hartford,
27 but that would mean I'd be in criminal court at least for the next couple of

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years, and I probably won't, but maybe I'll see you up there some other time.

THE COURT: I mean, I don't mind saying it's been a real pleasure being here in New Haven. It's a great bar and, you know, the lawyering is outstanding, the cases are very interesting from a judge's perspective, you can't ask for much more.

MR. SHEA: Well, we certainly enjoyed having you here.

THE COURT: Well, thank you so much.

MR. SHEA: Okay. Thanks, Judge.

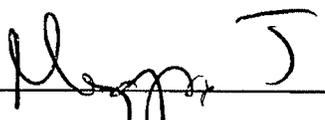
THE COURT: I would expect you to say nothing but that.

MR. SHEA: Thank you. Bye, bye.

THE COURT: All right. Have a great day, sincerely.

MR. CAINES: Thank you, your Honor.

THE COURT: All right, take care.



Hon. John J. Nazario, Judge

* * * * *

No. 6039165

PATRICIA ARIDA

VS.

ELIZABETH BALLANTINE, ET AL

*

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SUPERIOR COURT

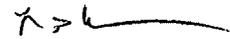
AT NEW HAVEN

August 17, 2015

CERTIFICATION

I, Robin L. Kolodecik, hereby certify that the foregoing is a true and correct transcript of the tapes of the testimony given at the hearing in the above-entitled case heard before the Honorable John J. Nazzaro, in Superior Court, for New Haven County, Connecticut on the 17th day of August, 2015.

Dated this 31st day of August, 2015.



Robin L. Kolodecik

Court Recording Monitor

NO. NNH-CV-13-6039165-S

PATRICIA ARIDA : SUPERIOR COURT

V. : JUDICIAL DISTRICT OF NEW
HAVEN AT NEW HAVEN

ELIZABETH BALLATINE, ET AL : JULY 1, 2015

RE-NOTICE OF DEPOSITION

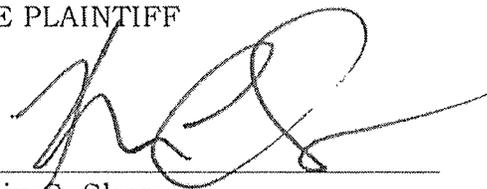
PLEASE TAKE NOTICE that plaintiff, through counsel, will take the deposition of Dr. Herbert Hermele, pursuant to Section 13-26 et. seq. of the Connecticut Practice Book on Friday, July 17, 2015 at 10:00 a.m., at the offices of Clendenen & Shea, LLC, 400 Orange Street, New Haven, CT before Bonita Cohen or other officer authorized by law to administer oaths, which deposition shall continue until completed.

PLEASE TAKE FURTHER NOTICE that the said deponent is instructed to produce at the time and place of his deposition any and all documents described in Schedule A attached.

You are invited to attend and cross-examine.

THE PLAINTIFF

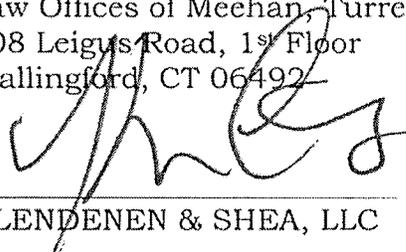
By: _____


Kevin C. Shea
Clendenen & Shea, LLC
400 Orange Street
New Haven, Connecticut 06511
203/787-1183

CERTIFICATION:

This is to certify that a copy of the foregoing was mailed postage prepaid on the 1st day of July 2015 to:

Michael F. Edwards, Esq.
Law Offices of Meehan, Turret & Rosenbaum
108 Leigus Road, 1st Floor
Wallingford, CT 06492



CLENDENEN & SHEA, LLC

SCHEDULE A

"Document" means the original and any non-original copy, regardless of origin or location, of any book, pamphlet, diary, calendar, periodical, letter, telegram, cable, telex, correspondence, report, record, study, notebook, note, handwritten note, contract, minutes, memorandum, notice, working paper, diary, chart, paper, graph, sketch, drawing, photograph, telephone record, microfilm, index, data sheet, data processing card, sound recording or any other written, recorded, transcribed, filmed or graphic material, and/or other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, however produced or reproduced, to which deponent has or has had access.

"Concerning" means relating to, referring to, describing, evidencing or constituting.

"You" or "Your" means Herbert Hermele, or any agents, assistants, employees, representatives, partners or any persons acting on behalf of Herbert Hermele.

1. A copy of your current professional resume and curriculum vitae;
2. A listing of all publications you have authored;
3. All publications, whether authored by you or not, on which you intend to rely in whole or in part for any of your opinions in this matter, or to which you have referred in connection with your work on this matter;
4. All time records, diaries and bills maintained, prepared, and/or rendered in connection with your retention in this matter and/or your investigation and evaluation of this case;
5. Any and all documents, records, reports, analyses, file materials, correspondence and any other pertinent information concerning your work on

the above-captioned matter, including all correspondence with the defendants or the defendants' counsel in connection with this matter and all agreements between you and the defendants or the defendants' counsel in connection with your work on this matter;

6. A listing of all court cases or arbitrations from January 2005 through the present in which you have served as an expert witness and/or consultant, whether or not you have testified at trial or during a deposition;

7. Your entire file regarding this matter, your investigation, evaluation, and opinions, including but not limited to, any and all documents, correspondence, records, research materials, the file itself, and any documents on which you base your opinions, including but not limited to the following:

(a) all documents and other tangible things furnished to you by the defendants, defendants' counsel, or any third person including specifically all correspondence, notes of conversations, memoranda, and the like;

(b) all documents obtained or created by you or any person acting on your behalf;

(c) all documents you reviewed, referred to, or relied upon in reaching any opinion or conclusion in this matter and a list of those materials, including but not limited to all treatises, books, articles, publications, codes, standards, and other literature;

(d) all documents you reviewed which are, in whole or in part, not consistent with the opinions or conclusions you arrived at in this matter and a list of those materials, including but not limited to all treatises, books, articles, publications, codes, standards, and other literature;

(e) all illustrations, charts, graphics, or other tangible things, exhibits or documents of any kind which you intend or contemplate using to explain, illustrate, or support your testimony in this matter, if you are called to testify.

8. Any and all work papers obtained or created by you concerning your expected testimony in this matter if you are called to testify.

9. Tax returns or other documents sufficient to show your income from 2005 to the present time from (i) performing Independent Medical Examinations (“IMEs”); (ii) performing Independent Medical Records Reviews (“IMRRs”); (iii) testifying in Court; and (iv) testifying in depositions.

10. Document evidencing the number of times, from 2005 to the present, that you have (i) testified in Court; (ii) testified at depositions; (iii) testified in Court for plaintiffs; (iv) testified in Court for defendants; (v) testified at depositions for plaintiffs; and (vi) testified at depositions for defendants.

11. Documents identifying each individual or entity that hired you to perform IMEs and IMRRs from 2005 to the present.

12. Documents evidencing (i) the number of IMEs performed by you at the request of the Law Offices of Meehan, Turret & Rosenbaum from 2005 to the present; and (ii) the number of IMRRs performed by you at the request of the Law Offices of Meehan, Turret & Rosenbaum from 2005 to the present.

13. Documents evidencing (i) the number of IMEs performed by you at the request of Liberty Mutual from 2005 to the present; and (ii) the number of IMRRs performed by you at the request of Liberty Mutual from 2005 to the present.

14. All correspondence between you and Liberty Mutual and/or the Law Offices of Meehan, Turret & Rosenbaum regarding Patricia Arida.

These Requests are intended to reach materials and things in your possession, care, custody, or control, and that of your agents, servants, and employees. They are also intended to reach materials, which you have provided to other individuals, including defendants’ counsel, not presently in your possession but subject to your control.

EXHIBIT F

From: Ranger, Kathleen [<mailto:Kathleen.Ranger@Bridgeportct.gov>]
Sent: Friday, September 02, 2016 8:32 AM
To: Kevin Shea
Subject: RE: Shapiro v. Delbuono

Attorney Shea:

Attorney Liskov is not available on September 23, 2016. He has four status conferences in Bridgeport Superior Court and a Hearing on a Motion to Dismiss. Can you provide other dates for this deposition?

Many thanks.

Kitty Ranger
Secretary to Russell D. Liskov

From: Kevin Shea [<mailto:kcs@clenlaw.com>]
Sent: Thursday, September 01, 2016 4:59 PM
To: Liskov, Russell
Cc: Ranger, Kathleen; Maura Mastrony; Beverley Ostrosky; Bill Clendenen
Subject: Shapiro v. Delbuono
Importance: High

Russell: Please find attached a notice for the deposition of your expert, Dr. Brown, on September 23, 2016.

In addition to the requests contained in the attached Schedule A, pursuant to Practice Book Section 13-4(b)(3) please produce to us ***no later than September 9, 2016*** all materials obtained, created and/or relied upon by Dr. Brown in connection with his opinions in the case.

If you wish to have the deposition at a location other than Dr. Brown's office as noticed, please advise.

Thank you.

Kevin

Kevin C. Shea, Esq.
Clendenen & Shea, LLC
400 Orange Street
New Haven, CT 06511
Telephone: 203-787-1183
Fax: 203-787-2847
Email: kcs@clenlaw.com

Please visit Clendenen & Shea's new website: www.clenlaw.com

NOTICE: This e-mail and any attachments contain information from the law firm of Clendenen & Shea, LLC, and may contain privileged attorney/client communications or work product. This email and all attachments are CONFIDENTIAL and intended SOLELY for the recipients as identified in the "To", "Cc" and "Bcc" lines of this email. If you are not such recipient, your receipt of this email and its attachments is the result of an inadvertent transmittal. Sender reserves and asserts all rights to confidentiality, including all privileges which may apply. Pursuant to those rights and privileges, immediately DELETE and DESTROY all copies of the email and any attachments, in whatever form, and immediately NOTIFY the sender of your receipt of this email. DO NOT review, copy, or rely on in any way the contents of this email and any attachments. All rights of the sender for violations of the confidentiality and privileges applicable to this email and any attachments are expressly reserved.

EXHIBIT G



David B. Brown, M.D.
ORTHOPAEDIC SURGERY
FELLOW OF THE AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS
CERTIFIED BY THE AMERICAN BOARD OF ORTHOPAEDIC SURGERY

Sean R. Kelly, M.D., M.S.
PHYSICAL MEDICINE and REHABILITATION
FELLOW OF THE AMERICAN ACADEMY OF PHYSICAL MEDICINE & REHABILITATION
CERTIFIED BY THE AMERICAN BOARD OF PHYSICAL MEDICINE & REHABILITATION

November 15, 2016

Contents of the JONATHAN SHAPIRO medical chart include the following:

4 Letters addressed to Dr. David Brown from the City Attorney's office.

Additional medical information received in the form of a disc from Advanced Radiology Cervical Spine

Dated December 30, 2013.

Transcript of deposition dated March 2, 2016.

Complaint

Police Report

Additional medical records sent by Attorney Kevin Shea dated October 26, 2016.

Medical records received in January 2016.