

Expert Witness Discovery in Personal Injury Litigation: Establishing or Challenging Admissibility of Expert Evidence

Tactics for Expert Designation, Cross-Examination, Deposition and Daubert/Frye Challenges of Liability and Damages Experts

WEDNESDAY, AUGUST 23, 2017

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

[REDACTED]

Plaintiffs,

v.

[REDACTED]

Defendants.

[REDACTED]

PLAINTIFFS' PRELIMINARY DESIGNATION OF EXPERTS

The Plaintiffs, pursuant to the Maryland Rules and the Court's Scheduling Order, hereby preliminarily designate their expert witnesses in the above-referenced matter as follows:

GENERAL RESERVATIONS

A. This Preliminary Designation of Experts sets forth the subject matter on which each expert is expected to testify, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion. Should Defendants desire further discovery of the findings and opinions to which these experts are expected to testify at trial, depositions may be taken in accordance with the rules of this Court.

B. To date, discovery remains open and ongoing. Plaintiffs reserve the right to supplement this Preliminary Designation of Experts to provide additional areas of testimony, additional opinions, and additional grounds for opinions based on continuing discovery and/or any additional research, study or publication by the experts. Supplementation may take the form of amendments to this Preliminary Designation of Experts, a further Expert Designation, deposition testimony, or any form sufficient to apprise Defendants of additional areas of testimony, additional opinions and additional grounds for opinions.

C. Plaintiffs reserve the right to produce rebuttal opinion testimony after further review of Defendants' Preliminary Designation of Experts(s) and/or depositions of Defendants' expert witnesses, and review of materials that were available to Defendants' expert witnesses in formulating their opinions.

D. This Preliminary Designation of Experts is not intended to contain an exhaustive recitation of all expert opinions and conclusions and grounds for same.

DESIGNATIONS

1. Plaintiffs preliminarily reserve the right to call each and every health care provider [REDACTED] has treated with subsequent to [REDACTED] at issue in the above-referenced matter. In particular, Plaintiffs hereby respectfully designate:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Based on their past, present, and/or future reports, the expert witnesses identified above are expected to render opinions to a reasonable degree of medical certainty as to: 1) the nature and extent of the injuries sustained by Plaintiff [REDACTED] as a proximate result of the occurrence taking place on or about June 7, 2013; 2) the relatedness of such injuries and the resultant medical treatment to the occurrence at issue in this lawsuit; 3) the necessity of the medical treatment Plaintiff [REDACTED] received subsequent to the occurrence at issue; 4) the permanent nature of

the injuries Plaintiff ██████████ sustained in the occurrence; 5) the fairness and reasonableness of the medical expenses incurred by Plaintiff ██████████; 6) the reasonableness of the length of Plaintiff ██████████'s absence from his usual and customary activities, including, but not limited to, work; 7) the nature and extent of any on-going and/or permanent impairment of Plaintiff ██████████'s usual and customary activities; 8) the nature and extent of any future medical treatment required by Plaintiff ██████████ as a result of the occurrence at issue in this lawsuit; and 9) the nature and extent of any scarring and/or disfigurement suffered by Plaintiff ██████████ ██████████ as a result of the occurrence at issue. The substance of and grounds for the opinions of the experts identified herein to date are contained in Plaintiff ██████████'s medical records/reports, which have been provided to the Defendants in the course of discovery and which are incorporated by reference as if fully set forth herein.

In particular, these experts are expected to testify to a reasonable degree of medical certainty that they were given a history of a burn accident involving Plaintiff ██████████; that such occurrence was the proximate cause of Plaintiff ██████████'s injuries; that various physical examinations and tests were performed; and that the diagnosis was that Plaintiff ██████████ sustained burns to approximately 35-40% of his total body surface area. Such injuries include, but are not limited to: burns of the face, head, and neck; a full thickness skin loss due to burn (third degree) of upper limb (bilateral); a full thickness skin loss due to burn (third degree) multiple sites of wrists and hands; a burn to ██████████ buttocks and posterior thighs; ectropion (bilateral eyes); injury to the vocal cords; late effect burn; status post excision burn scar with full thickness skin graft to the left hand webspaces, between second/third fingers; between fourth/fifth fingers on 4/1/2015; status post laser therapy and kenalog injections to burn scar on 3/18/2015; excision

burn scar right elbow, right wrist and right hand, removal of tissue expander, right lower quadrant; full thickness skin grafts to right elbow, right wrist and right hand, 12/17/2014; excision burn scar contracture, bilateral commissures and placement of tissue expander, right groin on 10/1/2014; full thickness skin graft to left eye lid, 6/23/2014; release burn scar contractures with full thickness skin grafts, bilateral upper eye lids and bilateral ears, repair burn scar scalp, revision left elbow and left thumb grafts, 5/21/2014; release left elbow, wrist, hand and thumb burn scar contractures with full thickness skin grafts, 4/2/2014; repair right eye ectropion with full thickness skin graft, 2/10/2014; excision burn to forehead and burns to bilateral ears, with autograft skin placed on forehead, 11/4/2013; post-traumatic stress disorder; major depressive disorder; and panic disorder. Further, these providers will opine as to the medical treatment Plaintiff [REDACTED] received for his injuries; that his injuries are permanent in nature; that the treatment rendered was medically necessary to manage said injuries; that the time Plaintiff [REDACTED] missed from work was medically authorized; that Plaintiff [REDACTED]'s medical bills were fair, reasonable, and necessary; that Plaintiff [REDACTED] will likely require medical treatment in the future for these injuries; that any medical bills or medical costs in the future are necessary to treat the injuries sustained in the accident; and that Plaintiff [REDACTED] will likely be forced to miss additional time from work in the future because of these injuries.

Additionally, these experts reserve the right to testify with respect to the debilitating effect of these injuries on the Plaintiff [REDACTED]'s personal life and daily activities. Such expected testimony may include, but is not limited to, an opinion as to the degree of pain Plaintiff [REDACTED] [REDACTED] can be expected to experience in the areas of his body affected by the occurrence at issue

in this action. These experts also are expected to testify as to the debilitating effect such injuries may have on the Plaintiff [REDACTED] in the future.

The experts identified herein may express additional rebuttal opinions after the designation and/or deposition of the Defendants' medical experts, if any such experts are named. The experts identified herein further reserve the right to supplement their opinions based on additional materials developed in the course of discovery.

The opinions of the experts identified herein are based on their education, training, and experience in their respective fields of expertise, as well as their knowledge and familiarity with relevant literature in their field(s) and their review of the materials in this case.

Curriculum vitae for Plaintiff [REDACTED]'s treating physicians will be provided under separate cover when obtained and are incorporated by reference as if fully set forth herein.

2. Plaintiffs reserve the right to call any and all experts named by Defendants for the purposes of substantive, expert, impeachment and/or rebuttal testimony.

3. Plaintiffs reserve the right to call any and all physicians who have provided medical treatment to Plaintiff [REDACTED] at any time prior to this occurrence for the purposes of substantive, rebuttal, impeachment, and/or expert testimony.

4. Plaintiffs reserve the right to call any and all physicians who have provided medical treatment to Plaintiff [REDACTED] at any time subsequent to this occurrence, not otherwise specifically designated herein, for the purposes of substantive, rebuttal, impeachment, and/or expert testimony.

5. Plaintiffs reserve the right to call any and all treating physicians, nurses, physical therapists, and health care providers whose names appear in Plaintiff [REDACTED]'s medical

records for the purposes of substantive, rebuttal, impeachment, and/or expert testimony.

6. Plaintiffs reserve the right to supplement or amend this Preliminary Designation pending further discovery and pending receipt of the Defendants' Answers to Interrogatories and Responses to Request for Production of Documents, neither of which have been received as of the time of this designation.

7. Plaintiffs reserve the right to call [REDACTED], for purposes of for the purposes of substantive, rebuttal, impeachment, and/or expert testimony. In particular, it is expected that [REDACTED] will testify consistent with the contents of his July 25, 2015 Incident Report regarding the occurrence at issue, which is incorporated by reference as if fully set forth herein. A copy of [REDACTED] report has been provided in the course of discovery.

[REDACTED]

[REDACTED] is an expert in vocational rehabilitation. A copy of his *curriculum vitae* will be provided under separate cover and is incorporated by reference as if fully set forth herein. Plaintiffs have retained [REDACTED] for purposes of an assessment as to Plaintiff's employability and his damages as a result as a result of his present condition and permanent occupational impairments. Based on these activities to be performed, [REDACTED] is expected to testify with reasonable probability in the field of vocational rehabilitation with respect to his findings. It is expected that [REDACTED] will produce a report, which is incorporated by reference as if fully set forth herein. [REDACTED] reserves the right to testify as to his opinions in a deposition, which may be taken at the option of the Defendants. [REDACTED] may express additional rebuttal opinions after the

designation and/or deposition of the Defendants' experts, if any such experts are named. [REDACTED] [REDACTED] further reserves the right to supplement his opinions based on additional materials developed in the course of discovery. [REDACTED]'s opinions are based on his education, training, and experience in his field of expertise as well as his knowledge and familiarity with relevant literature in his field and his review of the materials in this case.

[REDACTED]

[REDACTED] is an expert in forensic economics. A copy of his *curriculum vitae* will be provided under separate cover and is incorporated by reference as if fully set forth herein. Plaintiff has retained [REDACTED] for purposes of an assessment as to Plaintiff's economic loss sustained as a result of the occurrence at issue herein. It is expected that [REDACTED] will testify with reasonable economic certainty regarding the projected economic loss and occupational impairment on Plaintiff's earnings and/or earnings capacity as a result of the occurrence giving rise to this litigation. He will also reduce to present value the cost of future medical expenses and life care services required by Plaintiff. It is expected that [REDACTED] will produce a report, which is incorporated herein by reference. [REDACTED] further reserves the right to testify as to his opinions in a deposition, which may be taken at the option of the Defendants. [REDACTED] may express additional rebuttal opinions after the designation and/or deposition of the Defendants' experts, if any such experts are named. [REDACTED] further reserves the right to supplement his opinions based on additional materials developed in the course of discovery. [REDACTED]'s opinions are based on his education, training, and experience in his field of expertise as well as his knowledge and familiarity with relevant literature in his field and his review of the materials in this case.

[REDACTED]

[REDACTED] is an expert in life care planning. A copy of her *curriculum vitae* will be provided under separate cover and is incorporated by reference as if fully set forth herein. Plaintiffs have retained [REDACTED] for purposes of an assessment as to Plaintiff [REDACTED]'s future medical needs and the costs associated therewith. Based on these activities to be performed, [REDACTED] is expected to testify with reasonable probability in the field of life care planning with respect to her findings. It is expected that [REDACTED] will produce a report, which is incorporated by reference as if fully set forth herein. [REDACTED] reserves the right to testify as to her opinions in a deposition, which may be taken at the option of the Defendants.

[REDACTED]

[REDACTED] is a registered nurse and a certified case manager. [REDACTED] has been the nurse case manager supervising [REDACTED]'s care arising out of the occurrence at issue in this case. A copy of her *curriculum vitae* is attached hereto as Exhibit 1 and is incorporated by reference as if fully set forth herein.

Based on her past, present, and/or future reports, as well as her involvement with [REDACTED] [REDACTED]'s care arising out of the occurrence at issue in this case, [REDACTED] is expected to render opinions to a reasonable degree of certainty in her fields of nursing and/or medical case management as to: 1) the nature and extent of the injuries sustained by Plaintiff [REDACTED] as a proximate result of the occurrence taking place on or about June 7, 2013; 2) the relatedness of

such injuries and the resultant medical treatment to the occurrence at issue in this lawsuit; 3) the necessity of the medical treatment Plaintiff [REDACTED] received subsequent to the occurrence at issue; 4) the permanent nature of the injuries Plaintiff [REDACTED] sustained in the occurrence; 5) the fairness and reasonableness of the medical expenses incurred by Plaintiff [REDACTED]; 6) the reasonableness of the length of Plaintiff [REDACTED]'s absence from his usual and customary activities, including, but not limited to, work; 7) the nature and extent of any on-going and/or permanent impairment of Plaintiff [REDACTED]'s usual and customary activities; 8) the nature and extent of any future medical treatment required by Plaintiff [REDACTED] as a result of the occurrence at issue in this lawsuit; and 9) the nature and extent of any scarring and/or disfigurement suffered by Plaintiff [REDACTED] as a result of the occurrence at issue. The grounds for [REDACTED]'s opinions to date are contained in Plaintiff [REDACTED]'s medical records/reports, which have been provided to the Defendants in the course of discovery and which are incorporated by reference as if fully set forth herein.

Further, [REDACTED] will testify as to the medical treatment Plaintiff [REDACTED] received for his injuries; that his injuries are permanent in nature; that the treatment rendered was medically necessary to manage said injuries; that the time Plaintiff [REDACTED] missed from work was medically authorized; that Plaintiff [REDACTED]'s medical bills were fair, reasonable, and necessary; that Plaintiff [REDACTED] will likely require medical treatment in the future for these injuries; that any medical bills or medical costs in the future are necessary to treat the injuries sustained in the accident; and that Plaintiff [REDACTED] will likely be forced to miss additional time from work in the future because of these injuries.

[REDACTED] may express additional rebuttal opinions after the designation and/or

deposition of the Defendants' experts, if any such experts are named. [REDACTED] further reserves the right to supplement her opinions based on additional materials developed in the course of discovery.

[REDACTED]'s opinions are based on her education, training, and experience in her respective fields of expertise, as well as her involvement in [REDACTED]'s care, her knowledge and familiarity with relevant literature in her field(s), and her review of the materials in this case.

[REDACTED]

[REDACTED] is a licensed professional engineer in and has a Bachelor of Science in Mechanical Engineering and Master of Science in Mechanical Engineering from the University of South Carolina.

[REDACTED] is a Certified Fire and Explosion Investigator by the National Association of Fire Investigators, has more than 22 years of experience in the design of industrial process equipment, and is extremely knowledgeable in ICC, NFPA and OSHA codes and standards. He pairs more than 13 years of experience supervising manufacturing operations with deep knowledge in areas such as applied industrial heat transfer in oven design, industrial electrical process and motor control systems, material handling systems and fire protection systems. In addition he has designed paint finishing systems, and commercial and consumer gas fired cooking appliances.

[REDACTED] has more than 22 years' experience managing outside contractors in site safety requirements and installation of industrial process equipment and is well versed in federal and state worker safety and environmental regulations and standards. A copy of [REDACTED]'s *Curriculum vitae* is attached as Exhibit 2.

Based on his education, experience, training, review of the premises, and review of records and documents in this action, including activities to be performed, [REDACTED] is expected to testify to a reasonable degree of probability in his field with respect to his findings. It is expected that [REDACTED] will explain the design, use, and maintenance of the paint booth at issue, describe the various processes and procedures of its use, and opine as to the standard of care for paint booth and those servicing them. It is expected that [REDACTED] will testify as to the failures of Defendants to meet the appropriate standards. It is expected that [REDACTED] will testify as to the cause, source, and origin of the explosion. It is expected that [REDACTED] will prepare a report, which is incorporated by reference as if fully set forth herein. [REDACTED] reserves the right to testify as to his opinions in a deposition, which may be taken at the option of the Defendants. [REDACTED] may express additional rebuttal opinions after the designation and/or deposition of the Defendants' experts, if any such experts are named. [REDACTED] further reserves the right to supplement his opinions based on additional materials developed in the course of discovery.

[REDACTED]

[REDACTED] is a licensed professional engineer and has a B.S., Mechanical Engineering, from Virginia Polytechnic Institute and State University and a Ph.D., Mechanical Engineering, from Virginia Polytechnic Institute and State University.

[REDACTED] has extensive experience in Forensic analysis and experimental evaluations; fire origin and cause analysis; fire spread analysis; fire dynamics principles and models in applications of fire analyses; smoke alarms and fire detection systems; and fire protection code

assessments. A copy of his *curriculum vitae* will be provided under separate cover and is incorporated by reference as if fully set forth herein.

Based on his education, experience, training, review of the premises, and review of records and documents in this action, including activities to be performed, [REDACTED] is expected to testify to a reasonable degree of probability in his field with respect to his findings. It is expected that [REDACTED] will explain the design, use, and maintenance of the paint booth at issue, describe the various processes and procedures of its use, and may opine as to the standard of care for paint booth and those servicing them. [REDACTED] may testify as to the failures of Defendants to meet the appropriate standards. It is expected that [REDACTED] will testify as to the cause, source, and origin of the explosion. It is expected that [REDACTED] will testify regarding his site visit and inspection of the property and review of the relevant records. [REDACTED] may prepare a report, which is incorporated by reference as if fully set forth herein. [REDACTED] reserves the right to testify as to his opinions in a deposition, which may be taken at the option of the Defendants.

14. This Preliminary Designation of Experts should be considered a supplement to any Answers to Interrogatories by the Plaintiffs.

15. This Preliminary Designation of Experts does not necessarily include possible rebuttal and/or impeachment witnesses, which may be further supplemented.

16. The Plaintiffs expressly reserve the right to supplement or amend this Preliminary Designation of Experts.