1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
2 CIVIL DIVISION
3 ------------------------------x
4 MARC FIEDLER,
5 Plaintiff
6 vs. 2010 CA 1788
7 SIBLEY MEMORIAL HOSPITAL,
8 Defendant :
9 ------------------------------x
10 Washington, DC
11 February 18, 2011
12 The above-entitled action came on for a motions hearing before the Honorable TODD EDELMAN, Associate Judge, in
13 Courtroom Number 52 B at 1:45 p.m.
14 THIS TRANSCRIPT REPRESENTS THE PRODUCT OF
15 AN OFFICIAL COURT REPORTER ENGAGED BY THE COURT WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS
16 THE TESTIMONY AND PROCEEDINGS OF THE CASE.
17 APPEARANCES:
18 On behalf of the Plaintiff:
19 LEONARD DOOREN, Esquire
20 DANIEL SCIALPI, Esquire
Washington, DC
21 On behalf of the Defense:
22 KAREN KARLIN, Esquire
23 STEVEN HAMILTON, Esquire
Washington, DC
24 Thomas Ronan
25 Official Court Reporter 879-1033

RECEIVED
2011 FEB 25 A 10:22
COURT REPORTING DIVISION
DISTRICT OF COLUMBIA
COURTS

1 PROCEEDINGS

2 THE DEPUTY CLERK: Marc Fiedler versus Sibley
3 Memorial Hospital, Civil Action 1788-2010. Counsel, please come up
4 and state your names for the record.
5 MR. SCIALPI: Daniel Scialpi for the Plaintiff, Marc
6 Fiedler.
7 MR. DOOREN: Leonard Dooren also on behalf of the
8 Plaintiff.
9 THE COURT: All right. Good afternoon.
10 MS. KARLIN: Good afternoon, Your Honor.
11 Karen Karlin on behalf of Sibley Memorial Hospital.
12 MR. HAMILTON: Steven Hamilton also on behalf of
13 Sibley Memorial.
14 THE COURT: Good afternoon, Counsel.
15 We are here today on the motion filed by the Plaintiff
16 back on December 17 of 2010, the motion to compel the defendant to
17 designate the Rule 30 B 6 spokesperson for deposition.
18 The hearing was scheduled for yesterday. I believe that
19 someone unfortunately had a death in the family?
20 MR. HAMILTON: Your Honor, that's why I was standing
21 first and foremost. I want to express my appreciation for the
22 Court and Counsel to allow me the opportunity to go to a memorial
23 service. Thank you.
24 THE COURT: I'm sorry that you had to do it. I
25 appreciate you coming in this afternoon. I was hoping to get to

1 you by 1:30. But, sometimes, things take a little longer. I had a
2 lot more questions yesterday than I do today. I still have some.
3 I actually used the time yesterday afternoon to do more delving
4 into the matter than I had previously done.
5 I reviewed, of course, your motions and the cases cited
6 therein as well as some others and the Advisory Committee Notes
7 relating to the adoption of Federal Rule 30 B 6.
8 None of the case law that has been cited to me or that I
9 have found is binding. That's not surprising. This was not the
10 kind of an issue that would normally be making its way up to the
11 Court of Appeals.
12 I think that there is one Fifth Circuit case that the
13 plaintiff cited on it. I don't know if there is any other germane
14 Court of Appeals' rulings from anywhere on 30 B 6.
15 But, certain aspects of the way that other Judges have
16 viewed this has been persuasive to me in the way that I may frame
17 and evaluate the defendant's objections.
18 What I am going to do, I think that there are five or
19 six legal principles that flow from the rule and that are informed
20 by the cases interpreting it that are guiding my analysis of it.
21 I want to put those on the record.
22 You will see that those actually resolve a decent portion
23 of the defendant's objections and the plaintiff's motions although
24 there are then some other issues that I want to discuss with the
25 parties.

1 In terms of those legal principles that I think make up
2 the requirement of Rule 30 B 6 as it pertains to the dispute in
3 this case, first of all, I believe that there is no basis to
4 preclude the plaintiff from taking a 30 B 6 deposition simply
5 because it may be in some respects cumulative of other discovery.
6 All of the discovery rules, not just 30 B 6, contemplate
7 the discovery conduct stipulated that discovery may be obtained in
8 various ways.
9 Different types of discovery can be used in different
10 ways in preparing for trial and, of course, at trial and the
11 different means of discovery are meant to compliment each other.
12 To sustain the defendant's objection just on those
13 grounds, it would be to allow one party to control the means of
14 discovery employed by the other side.
15 I really do not see any logical distinction between the
16 defendant's objections in this case that there should not be a 30 B
17 6 deposition because they can get this by other means from other
18 situations in which somewhat cumulative information is sought, for
19 example, through interrogatories and depositions or even through
20 depositions, multiple or successive depositions of different fact
21 witnesses.
22 This is not to say that there are no limits at all to a
23 30 B 6 deposition and not to say that the cumulative nature of the
24 request might not factor into the analysis of whether a 30 B 6
25 deposition and the items noticed in it might impose an undue burden

1 on the other side.

2 But, the fact that the information is available by other

3 means is not in my view by itself a basis to sustain the

4 defendant's objection or any objection to a 30 B 6 deposition.

5 Secondly and more specifically, the fact that a defendant

6 can make multiple fact witnesses available for deposition does not

7 preclude a plaintiff from taking a 30 B 6 deposition.

8 In fact, looking back particularly at the Advisory

9 Committee notes and some of the cases that go back to what 30 B 6

10 depositions are supposed to be about, the argument that the

11 defendant is making here that you can provide multiple medical

12 professionals for fact depositions to be done in a series and,

13 therefore, should not have to provide a 30 B 6 deponent who can

14 identify which of these witnesses who were involved in certain

15 parts of the incident or who knows certain information, that

16 actually runs counter really to the primary reason for the rule.

17 The primary reason that the rule was adopted was in

18 response to the practice that the defendant is proposing in this

19 case; not that the defendant is doing it in bad faith but the idea

20 or bandying has a pejorative feel to it.

21 But, the exercise by which one party needs to impose a

22 series of organizational employees to determine who knows what,

23 that was determined when the rule was created as something that

24 frustrated discovery and that needlessly drove up costs.

25 The idea being that by having a 30 B 6 deposition at

1 which the organizational representative has to identify where the
2 organizational knowledge lies and the other parties can take more
3 streamlined discovery and then reduce costs for both sides.
4 I think that is the exact concept.
5 I don't think that the plaintiff even though the
6 defendant has diligently provided a list of who was involved in
7 this incident, I don't think that the defendant needs to go through
8 each of them and to say all right, what did you do?
9 Well, I actually was only there for three minutes and I
10 didn't do much. Let's get somewhere. Let's get somebody else in
11 for a deposition.
12 I know that I am characterizing the way that things go.
13 But, the idea is that they are entitled to use a
14 deposition to find out exactly that kind of information, which
15 witness know what so that it can make its choices as to how to
16 proceed with further discovery.
17 Thirdly, a response to a 30 B 6 deposition notice may
18 require a party to undertake investigation.
19 There has been discussion by the defense about how this
20 deponent will lack personal information about this.
21 Again, that's the exact idea of a 30 B 6 deposition or
22 one of them. The rule assumes that the deponent will have no
23 personal knowledge but is speaking for the organization.
24 As such, the rule presumes the organization will have to
25 do some preparation of the witness or even some investigation to

1 allow the deposition to occur.

2 The point here is that to put it sort of colloquially

3 that the corporation has no official memory.

4 Well, the organization has no official memory.

5 But, that should not give the organization an advantage

6 in litigation over individuals.

7 The cases that discuss the corporation's obligation to

8 prepare a component that I find most persuasive are Taylor which is

9 156 FRD 356 at 361 from North Carolina from 1996 and Judge

10 Lambert's opinion in Myrdal vs. DC from our District Court here

11 in Washington, DC in 2008.

12 Also, most specifically on this point, Wilson v. Lackner

13 228 FRD 524 from the Maryland District Court in 2005 which I find

14 to be both precisely on point and quite persuasive.

15 It was a medical malpractice case in which the plaintiff

16 had noticed the hospital for a 30 B 6 deposition in which the areas

17 noticed in that deposition notice were the facts surrounding the

18 incident underlying the case.

19 In fact, the notice in that case was phrased in a way

20 quite similar to what the plaintiff has done here.

21 The defendant objected. It did not need to do the

22 plaintiff's fact investigation for it and should not have to.

23 The Court ruled that it did have to conduct that factual

24 investigation under the rule "if that preparation means tracking

25 much of the same investigative grounds that counsel and the risk

1 management and the peer review committee have already traversed
2 but independent of that investigation, so be it."
3 That's at page 529 of that opinion.
4 I think that the defendant's response to that case or the
5 attempt to distinguish it is not particularly convincing.
6 The problem in that case was not as the defendant argues
7 that the defendant did not provide live fact witnesses where here
8 the defendant is willing to do that.
9 But, the problem in that case was that the defendant
10 didn't provide a 30 B 6 witness with adequate knowledge and who had
11 done adequate investigation.
12 Again, I don't view this as a requirement of the
13 defendant having to do the plaintiff's work for the plaintiff.
14 As it is leveling the playing field so that an
15 organization can come in and say that we are an organization. We
16 don't have memory the way that an individual does. So, we cannot
17 answer your question.
18 Our organization was involved in this incident. Somebody
19 within the organization knows. It's in the record somewhere. But,
20 since we are an organization, we cannot do it.
21 The point is that that rule does require some
22 investigation.
23 Fourthly, a party may have to designate more than one
24 witness in order to respond to a notice.
25 There are a number of cases that do not necessarily make

this point. But, they do discuss how multiple 30 B 6 witnesses were deposed.

Judge Lambert speaks to it explicitly in that Myrdal case at page 317. He says that a deponent is under a duty to designate more than one deponent if it is necessary to do so in order to respond to the relevant areas of inquiry that are specified with reasonable particularity by the plaintiff.

Fifth, and this is one that I would not have assumed having done 30 B 6 depositions was the case. But, it is consistent throughout the published case law and having contemplated it, I find that case law persuasive.

A 30 B 6 deposition need not only seek facts.

But, it can seek subjective opinions even though what is being sought is the position of an organization rather than an individual.

The Fifth Circuit case that I referenced earlier, Gravos 469 Fed 3rd. 416 at pages 432 and 433, a Fifth Circuit case from 2006, it indicated that the 30 B 6 deposition permits inquiry into matters within the collective knowledge or subjective belief of an organization.

Taylor which I cited earlier held that a deponent must not only testify about facts within the corporation's knowledge but also subjectively, the opinions.

The corporation must provide its interpretation of events and documents.

1 Virtually, the same language appears in the case of
2 Lapena v. Upjohn, 110 FRD 15 at page 20 from the Eastern District
3 of Pennsylvania in 1986.
4 Again, there is the Wilson case from the District Court
5 in Maryland.
6 The Court there at page 530 stated the hospital must
7 produce live witnesses who know or who can reasonably find out what
8 happened in the circumstances.
9 So, there is some concept.
10 Whether or not this imposes undue burden, that's another
11 question.
12 But, that a 30 B 6 deponent can be deposed with regard to
13 an organizational position or opinion to the extent that the
14 organization has one.
15 Finally, the last point that I will make before I get
16 more specific is that as with all of the discovery, there are, of
17 course, limits on 30 B 6 depositions.
18 Under the rule itself, the deposition must be seeking
19 information either known or reasonably available to the
20 organization.
21 Again, under the rule, that notice must identify the
22 information sought with reasonable particularity. The discovery
23 like all discovery sought must be reasonably calculated to produce
24 or lead to the discovery of admissible evidence under Rule 26 C as
25 with all discovery and the deposition sought cannot create undue

1 burden or expense.

2 As I have mentioned earlier, this is where I think that

3 arguments about whether something is cumulative can be more

4 effectively raised in the response to the 30 B 6 deposition notice.

5 A burdensome request is less justifiable if it can be

6 obtained or already has been obtained through other means.

7 Now, 30 B 6 depositions are limited by privileges; here,

8 specifically by the work product and the peer review privilege; the

9 latter privilege coming from D. C. Code 44-801.

10 I am not convinced by the ruling of my colleague in the

11 Conner case in which the ruling essentially was that the peer

12 review or quality assurance privilege would be obliterated if a 30

13 B 6 deposition could cover the same ground.

14 I don't view it that way at all.

15 I think that the privilege exists so that the peer review

16 or the quality assurance investigation, the people participating in

17 that can know that that process is essentially one that they can

18 participate in openly without worrying about what is said or done

19 in that process being revealed in Court.

20 Just because investigations into the same incident may

21 cover the same ground, that does not obliterate the privilege such

22 that discovery needs to be barred.

23 I don't understand how I could rule that because a 30 B 6

24 deposition would go into the same subject matters maybe into the

25 exact same way as the peer review process did and I don't see how

1 that would be different than me saying well, I will bar the
2 deposition period or other inquiry period.
3 Because that will go into the exact same grounds as the
4 peer review process.
5 I don't find that argument to be convincing.
6 As I am sure that you have surmised listening to me go on
7 for the last 15 minutes about this, these principles will lead the
8 Court to overrule most of the defendant's objections or the bases
9 of most of the defendant's objections to the deposition notice in
10 this case.
11 I won't be repetitive.
12 But, for the reasons stated, I will overrule the
13 objections that are based on the claim that information has been
14 previously provided or is otherwise available.
15 Particularly, I will overrule the objection based on the
16 fact that treating professionals or other hospital employees may be
17 made available for deposition.
18 I overrule the objection based on the argument that the
19 response would require some investigation by the defendant.
20 I overrule the objection based on the argument that the
21 response would require designation or may require designation of
22 more than one deponent.
23 I overrule the objection based on the argument that what
24 is being requested is a subjective opinion which is made by the
25 defendant as a argument that an expert opinion which I don't think

1 that it particularly is.

2 But, to the extent that it's a subjective opinion or

3 position, I think that's a proper area of inquiry.

4 I will overrule that objection.

5 I overrule the objection based on the argument that it

6 would undermine peer review privilege to conduct the investigation

7 necessary to respond to the 30 B 6 notice.

8 I do have questions about whether some of these requests

9 are for information that are actually reasonably available to the

10 defendant or not or made with reasonable particularity or still

11 whether they would cause undue burden and expense.

12 Turning to the specific notice that both parties have

13 provided to me in their briefs and the Deputy Clerk does not have

14 to worry about getting this down because I will write a brief

15 written order when we are done that goes through, at least, what I

16 am ordering.

17 Under Number 1 A, the identity of all health care

18 providers or any involvement in treating Mr. Fiedler for those

19 dates, as I have stated, I find that is a proper basis or a core

20 basis for a 30 B 6 deposition.

21 I will grant the motion with regard to that.

22 Under B, the identity of supervisory personnel, again I

23 think that is the same thing.

24 I will grant the motion with regard to that.

25 Let me treat as a group and I will come back to C.

1 But, let me treat as a group D through I.
2 What is strange about these requests to me and I don't
3 know -- is it Mr. Dooren? Are you speaking for this?
4 MR. DOOREN: Your Honor, I was the author of the
5 document. But, Mr. Scialpi will argue today.
6 THE COURT: All right. Whichever one of you wants to
7 respond.
8 What I don't understand about these requests, I
9 understand your argument that the other side is free to disagree.
10 You are free to disagree with them.
11 But, all of these are phrased as things, information
12 about things that happened or the defendant's position about how
13 and when and why the pressure ulcer developed.
14 The defendant's position is simply that that did not
15 happen.
16 So, in my view, why can't they just have their deponent
17 say that that did not happen? It didn't happen.
18 For example, the defendant's position on the cause of the
19 ulcer that developed on Mr. Fiedler's buttocks while he was an
20 inpatient at Sibley from March 27 of 2007 to April 9 of 2007,
21 cannot their deponent just say to you that it did not develop
22 there?
23 MR. SCIALPI: Yes, Your Honor.
24 They absolutely could say that. But, that it just didn't
25 happen.

1 But, as you yourself have said earlier, the defendant
2 must give their subjective views and beliefs and to defend those
3 positions at a deposition.
4 Now, in their interrogatories and I should preface this
5 by saying that we did file this before we received some of the
6 answers to the interrogatories.
7 So, maybe things were a little bit broader then.
8 But, they have taken the position in their
9 interrogatories which I believe were attached as Exhibit 5 to our
10 motion stating not only that he was discharged without having a
11 wound on him.
12 But, in addition that his treating health care providers
13 provided proper care and proper treatment of him throughout his
14 visit.
15 I think that we have a right to probe these answers and
16 to find out what is the basis for this opinion?
17 THE COURT: I don't know if this notice gives them -- I
18 mean their deponent needs to be able to answer these questions
19 specifically.
20 The questions that you have propounded, the answers the
21 way -- maybe I am being, you know, overly precise about this or
22 overly dim about this, one of the two.
23 But, it seems to me that what you are arguing that they
24 should be able to provide is not an answer to these questions.
25 Their position on why they allowed the ulcer to develop,

1 the letter G.

2 By the way, I called my father-in-law this morning to get

3 the correct pronunciation of that. But, I still cannot say it

4 correctly.

5 MR. SCIALPI: It's a decubitus.

6 THE COURT: I think that I will still call it a pressure

7 ulcer.

8 Their position on why they allowed it to develop, their

9 position is we did not allow it to develop.

10 It seems right now you are asking different questions.

11 I am not saying that you could not ask those different

12 questions. But, it seems to me that this notice does not ask those

13 questions.

14 MR. SCIALPI: Your Honor, I think that perhaps the

15 questions as you grouped them, some of these inquiries would cover

16 some of the same grounds.

17 For example, when and over what period of time the

18 decubitus ulcer developed.

19 Your Honor, they are saying that it didn't.

20 But, we have medical records showing the beginning of

21 skin breakdown weeks before Mr. Fiedler was discharged.

22 So, where we are getting contradictory evidence or

23 contradictory evidence and a contradictory answer to the

24 interrogatory, I think that our focus of our inquiry will be well

25 why is that?

1 Why are you coming to this conclusion despite this
2 evidence?
3 THE COURT: Ms. Karlin, are you speaking or
4 Mr. Hamilton?
5 MR. HAMILTON: Your Honor, I am here as an observer.
6 So, it is her.
7 THE COURT: What's your response specifically on
8 those?
9 Maybe you have no intention of sort of responding the way
10 that I would think that you would respond to these questions or may
11 be you have a different objection?
12 MS. KARLIN: No, Your Honor.
13 I think that to the extent that our 30 B 6 deponent would
14 respond to these would be essentially what you said. To them, it's
15 a hypothetical question because our position is that it did not
16 occur.
17 So, it's a hypothetical question and so is G, the
18 position on when did it develop.
19 Our answer will be the same for all of them.
20 It's our position that it did not develop.
21 You cannot probe a denial.
22 That's the end of the inquiry as far as I'm concerned.
23 There is no way to probe a negative response. That's the
24 end of the inquiry. A negative response --
25 THE COURT: I never like these little games that perhaps

1 I am promoting now.

2 But, it seems to me that you are allowed to ask

3 subjective questions and you have asked subjective questions.

4 I think that numbers D through I are proper.

5 But, the way that I view it is that their answer can be

6 what Ms. Karlin just said and for the reason that Ms. Karlin just

7 said.

8 I don't know if you can revise your notice.

9 But, the way that these are phrased, I don't see as

10 permitting the inquiry that you, Mr. Scialpi, are saying that you

11 feel entitled to make.

12 I will tell the parties that I view it as and it would be

13 proper in my view, a proper 30 B 6 question and I don't mean for

14 you to take the language that I am about to use as the precise

15 language that you should use.

16 MR. HAMILTON: We will start writing.

17 THE COURT: Well, it's something like the defendant's

18 position on why the plaintiff was not exhibiting signs and the

19 symptoms of the decubitus ulcer.

20 Or their position as to why x, y and z did not

21 demonstrate the development of the decubitus ulcer.

22 Now, I think that you can ask these things. I think that

23 your answers -- I don't know how useful of an exercise that this

24 is. I will permit you to do that if you want to do that.

25 I don't know how useful that it is. It's not something

1 that I would assuming that the trial will be in front of me. I
2 believe that we are scheduled for trial in September or so in front
3 of me. That's not something that I would -- if a 30 B 6 deposition
4 is of some administrator who does not state things exactly the same
5 or in the statement -- well, omissions are not going to be
6 particularly effective for you.
7 I think that I can't imagine a circumstance in which I
8 would allow you to impeach with an omission from a 30 B 6
9 deposition under these circumstances. Okay.
10 So, I will grant the motion with regard to the D through
11 I if the parties understand the way that I'm viewing this or
12 assuming that the parties understand the way that I view it.
13 Now, C, Mr. Scialpi, even if you got answers that were
14 sufficiently in depth to satisfy you on D through I , I think that
15 letter C is overly broad and not reasonably particular.
16 It is one thing to ask the defendant's position.
17 But, phrasing it as "all knowledge of the defendant," to
18 me this seems to be not reasonably particular and that it would
19 impose a burden on the defendant particularly in light of the other
20 discovery that you can take.
21 This is basically asking, it speaks to literally everyone
22 and tell me what they have to say about virtually everything.
23 I will look and as I said, I would allow you to revise
24 this to ask these subjective or positional questions as long as
25 they are specific about specific topics.

1 Am I making myself somewhat clear on that?
2 MR. SCIALPI: Yes, Your Honor.
3 THE COURT: Hopefully, at least, somewhat clear.
4 MR. SCIALPI: If I can add one thing in terms of letter
5 C. First of all, that's with the caveat of all knowledge
6 reasonably available to the defendant as the rule allows us to
7 take.
8 But, the issue is here that we have a man who was in this
9 unit for about two weeks. We claim that there were individuals who
10 saw this wound on him who said that they would get somebody to
11 follow-up with him.
12 That never happened.
13 I think that what the focus of the question is and maybe
14 you are correct, it is not specific enough.
15 But, that is what happened with this allegation?
16 If Sibley says that never happened and that no such
17 conversation ever happened, then that's the answer. That's fine.
18 But, we have throughout his time in the hospital, we have
19 events that show that he is starting to develop this pressure
20 wound.
21 THE COURT: I understand your position.
22 But, it's the all knowledge of the defendant is what I am
23 focused on.
24 MR. SCIALPI: We can amend that, Your Honor.
25 THE COURT: All right. So, I will deny your motion to

1 compel with regard to that question or phraseology.

2 MR. HAMILTON: Court's indulgence.

3 THE COURT: Yes, sir?

4 MR. HAMILTON: Your Honor, this is a motion to compel.

5 The last grouping of questions, I think on the record you

6 said I think that to the effect of denying the motion to compel.

7 But, I think that you used the word that you were

8 granting it.

9 THE COURT: I am denying it with regard to C, the motion

10 to compel.

11 With regard to D through I, I am granting the motion to

12 compel.

13 They can ask your deponent these questions.

14 But, it's also my position that your deponent complies by

15 saying in response to all of these essentially a one sentence

16 answer of no.

17 MR. HAMILTON: I apologize. That's why I was

18 supposed to be here and to be quiet.

19 MS. KARLIN: See how hard my job is?

20 THE COURT: Now, J and K, I understand the defendant's

21 position to be that they have provided all of the protocols and

22 policies. Again, it is cumulative.

23 But, I still think that the 30 B 6 deponent can be asked

24 about those policies and what is in effect and how they apply.

25 So, I will grant the motion with regard to those two.

1 With regard to reports and documents not contained in his
2 official hospital record, the problem that that creates is with
3 regard to the privilege, the peer review privilege and the quality
4 assurance privileges as well as if there is any attorney work
5 product.
6 Now, is your objection to that other than the objection
7 that you have already made and that we have already discussed,
8 Ms. Karlin, is your remaining objection anything other than
9 privilege with regard to that?
10 MS. KARLIN: Your Honor, it's all privilege because
11 anything that is not in his formal record is going to be peer
12 review. It is going to be attorney work product privilege.
13 Any reports or documents not contained in the official
14 hospital records, by definition, that will be privileged documents.
15 THE COURT: What are you looking for here?
16 MR. SCIALPI: Your Honor, there was some suggestion
17 that our client had called in previously before his admission
18 raising concerns about the possibility of developing pressure
19 wounds while he was at the hospital.
20 We did not see anything. There was a notation about that
21 in the medical record.
22 We were basically at the time, we were looking to see if
23 there were any additional records. I will say that in the meantime
24 I have been down to the hospital and I have seen what I have been
25 told is the complete records on this matter.

1 THE COURT: Would you be willing to withdraw that notice
2 item?
3 MR. SCIALPI: Yes, Your Honor.
4 THE COURT: All right. The motion on that is denied as
5 moot.
6 Now, letter M, all steps taken to locate and to produce
7 documents. This is pretty standard and boring 30 B 6 ground.
8 Is this something that you still want to do having seen
9 the records?
10 Is this something that I know that people do in these
11 things is that they ask what did you do to obtain records and did
12 you look here and did you look there and how do we know that this
13 record is the full record?
14 You are entitled to do that if you want. Is that what
15 you want to do even though you have seen it?
16 MR. SCIALPI: Yes, Your Honor.
17 THE COURT: That will be granted.
18 Any other objection to that?
19 MS. KARLIN: Your Honor, part of our concern about the
20 way that the notice was framed, Counsel is now talking about the
21 time, I believe, in the Renaissance Unit.
22 But, when we discussed this with him, he does not
23 actually identify specifically the Renaissance Unit as the time
24 period at issue.
25 That would certainly help us from our perspective.

1 The plaintiff was admitted initially to the hospital for
2 the surgery and was in the hospital for about two days.
3 Then he was transferred to the Renaissance Unit.
4 This is a whole separate staff, policies, issues that
5 relate to the hospital for those two days as compared to the
6 Renaissance Unit which is a skilled nursing rehab facility for the
7 remaining two weeks.
8 It would simplify matters from our standpoint to, at
9 least, limit it to the Renaissance Unit and to cut out the
10 hospital.
11 That's one of the problems that we were looking at. All
12 steps taken to locate and produce the documents.
13 We would have to do that not only for the Renaissance
14 Unit but for the hospital, for the policy, for the beds and for
15 everything.
16 But, if they are now limiting it, that would be helpful
17 if he could on the record limit it to the Renaissance Unit.
18 THE COURT: He is not limiting it. This is something
19 that they are entitled to do.
20 They are entitled to probe a deponent about the location
21 of documents and the means by which they were secured in response
22 to the discovery requests.
23 MS. KARLIN: I think that I heard that he was limiting
24 it. Maybe I misunderstood?
25 MR. SCIALPI: No, Your Honor.

1 From the day that Mr. Fiedler was in the hospital until
2 he was discharged which would be March 27th to April 9th which is
3 in the notice. That's what we are looking for regardless of which
4 unit it was.
5 THE COURT: I understand that it is burdensome.
6 But, I don't think that it is unduly burdensome.
7 In my experience, these things rarely yield much. But,
8 they have the right to try and the types of beds and again, the
9 defendant stated that -- well, that is something that the plaintiff
10 can go through again in the 30 B 6 deposition.
11 The last area of questioning, the medical data, you want
12 to have a deposition in which you ask somebody about computer
13 medical data?
14 MR. SCIALPI: Yes, Your Honor, if it does exist.
15 THE COURT: You would ask -- are you going to go
16 through record by record?
17 What is strange about this to me is and different from
18 everything else is that medical data is something that is produced
19 by a machine or the act of recovering this is not the act of
20 interviewing people and finding out information or looking through
21 documents.
22 It is having a machine produce the background of the
23 medical data. I guess while it's possible to have someone to go
24 through to have somebody deposed who says for this document, if you
25 find the medical data, you will find the following X number of

1 things. That is the deposition that you want to take?
2 MR. SCIALPI: Your Honor, I think that it's an inquiry
3 about just like everything else about the primary sources.
4 We are going to be asking about things that are contained
5 in the medical records that, of course, they were not generated by
6 the designee and similarly, if those records have been altered or
7 changed, then that is something else that we would be looking for.
8 That is the medical data.
9 THE COURT: But, I mean I am just saying technically,
10 what you want to have is a deposition in which somebody goes
11 through -- the medical data can apply to, it applies to every
12 computer generated document.
13 MR. SCIALPI: Yes.
14 THE COURT: You will go through and ask somebody
15 about the medical data on all of those documents?
16 MR. SCIALPI: Your Honor, we can narrow this inquiry if
17 that would please the Court.
18 THE COURT: I think that is one area where the fact --
19 not only that it's, I have already stated the fact that it is
20 available by other means and that it is not by itself a ground to
21 sustain the objection to the deposition.
22 This is something that is so much more easily available
23 by other means and, you know, this is something -- I don't want to
24 make any assumptions about anybody's age. But, people who are
25 younger than me and I am not really pointing at you.

1 MR. HAMILTON: That's a good sign. You are pointing at
2 her.
3 THE COURT: I'm pointing at myself. You know, Sibley
4 Hospital has their computer geeks and you have your computer geeks.
5 They get together and you can make discovery, you can
6 make written discovery requests for this. It's gets produced.
7 That seems to me and then you have a stack of information
8 that seems to me so much easier than the process of deposing
9 somebody on this and so much.
10 It is something where the balance of the burden on the
11 defendant versus what you are getting out of it is so tipped in the
12 other direction, that it's hard for me to see how this can be
13 effective 30 B 6.
14 MR. SCIALPI: Your Honor, I understand.
15 I do not have all of our requests for production of
16 documents in front of me. I'm not sure if we requested these or
17 not.
18 If this is the Court's ruling, I think that our time has
19 come and gone for written discovery requests.
20 I would just ask leave for us to request the medical data
21 in that way.
22 THE COURT: Do you have any objection to that?
23 MS. KARLIN: Your Honor, I guess that I'm not sure what
24 type of request that you are asking for when you say medical data
25 in that way?

1 MR. SCIALPI: I mean it as a request for production of
2 documents. That's what I meant in that way.
3 MS. KARLIN: Well, I still think that to be the same
4 process that we have to go through internally to do.
5 THE COURT: I am not saying that the process of looking
6 for medical data that is unduly burdensome. We do it now in every
7 business dispute case, every IT case. It's something that is
8 do-able.
9 I think that having a deposition about it where somebody
10 has to talk about it, about the medical data, I think that is very
11 cumbersome and burdensome on you to have to produce somebody
12 who can do that when you can usually do this with a flash drive.
13 Do you have any objection to allowing that additional
14 requests phrased as or styled as requests for documents for the
15 medical data?
16 MS. KARLIN: May I consult with Counsel?
17 THE COURT: Yes.
18 MS. KARLIN: Your Honor, I think at this point we have
19 been on notice of this issue since they filed the 30 B 6 notice.
20 What I would like to do is reserve the right to file an
21 objection when we receive whatever the plaintiff puts in writing.
22 It's something that we have never had to deal with with
23 the hospital or at looking it personally, I have not had to deal
24 with it. I can't answer whether it's something that they would
25 find that it's a simple matter and maybe in IT cases, it something

1 that they do routinely.
2 But, I don't know if the hospital would have as easy a
3 time of doing it and based on the information that they give us, we
4 may want to file a response.
5 THE COURT: My understanding from having done this as
6 an attorney is the medical data, the simplest form of medical data
7 is when you create a Word document and you can go in and look at
8 the changes. You can look at the earlier versions of it because it
9 is never really gone from the file.
10 There are various ways that we have been obtaining the
11 medical data from any type of document and once you get the medical
12 data, probably what you do with it is difficult to determine.
13 I will allow you to make any objections to that as you
14 would make had it been normally served upon you.
15 But, I don't see a basis given that I think it is so much
16 easier and so much more productive for them to respond to it that
17 way than having somebody actually testify about this.
18 MR. SCIALPI: Understood.
19 THE COURT: I will deny the motion with regard to O.
20 On the request for documents, 1 and 2, as I have
21 previously stated, I will grant the motion to compel those.
22 Number 3, that is I take it that is withdrawn as part of
23 the earlier representations that you made.
24 How about Number 4? Is that also withdrawn?
25 MR. SCIALPI: I actually inspected them at this point

1 myself.

2 THE COURT: I will issue a written order in the next day

3 or two. I am not going through the reasoning again.

4 But, just to confirm what the ruling has been with regard

5 to each of those items. Anything further on this or any other

6 matters or issues in this case right now?

7 MR. HAMILTON: I don't think so.

8 I will inform the Court that we had to, out of necessity,

9 we had to delay some of the discovery. Mr. Fiedler had to have

10 surgery and I got a call from Mr. Malone because his deposition was

11 scheduled. Obviously, that's very important.

12 We have canceled the deposition to give him time to

13 recuperate. I am not requesting anything at this time.

14 But, at some point in time, it is possible that we may

15 have to come with a joint motion to revise the scheduling order if

16 because of that or some discovery that we will have to undertake

17 now. But, I am not making such a request right now.

18 THE COURT: Everything seemed on track now for the

19 September 19th still being the trial date.

20 MR. HAMILTON: I am not anticipating about changing the

21 trial date. I don't anticipate doing that. I'm not certain of

22 the particular date that we have now. But, I'm alerting the Court

23 to the possibility that since we are here to update the Court on

24 the status.

25 MR. SCIALPI: We will absolutely work with Mr. Hamilton

1 to get everything done.

2 THE COURT: As long as everyone is getting along, I

3 really don't mind changing dates as long as the September 19th date

4 will hold.

5 Is it too clearly to be asking about whether Mediation

6 has been contemplated yet?

7 MR. HAMILTON: Mediation has not been contemplated

8 yet.

9 I can inform the Court generally what could possibly

10 occur once we get a better handle on the case in terms of the

11 evidence and their experts and deposition and what they are saying.

12 There may come a point in time if my client chooses to,

13 that we might be able to look at Mediation before we take our

14 defense expert depositions and things of that nature and to curtail

15 expenses. We have done that before. That's certainly a

16 possibility.

17 MR. SCIALPI: That's fine. We have worked extremely

18 well with Mr. Hamilton's office. If we need to take a break to

19 explore, we will. But, we will keep things moving in order to meet

20 our trial date.

21 MR. HAMILTON: Normally, if we do something like that,

22 rather than the Mediation that is on the scheduling order at the

23 end of the discovery, we will just reverse the process and we will

24 stop and do the mediation.

25 Then if it does not work, we will complete the discovery

1 process and we still may end up at the end point where we were in
2 terms of the Mediation. Obviously, we can continue the effort
3 doing the balance of discovery in any event.
4 I am not contemplating and I know that Mr. Dooren will be
5 more concerned about this. But, we are certainly not
6 contemplating that that will involve a change in the trial date
7 unless something were to happen to Mr. Fiedler that would cause
8 that.
9 THE COURT: All right. Anything further from either
10 side? All right. Thank you all for coming in. Have a good
11 weekend, everyone.
12 (PROCEEDINGS CONCLUDED AT 2:33 PM)
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Thomas Ronan, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by computerized machine shorthand, the proceedings held and testimony adduced upon the motion hearing in the case of FIEDLER vs. SIBLEY, 2010 CA 1788 in said Court, on the 18th day of February, 2011.

I further certify that the foregoing 32 pages constitute the official transcript of said proceedings as taken from my computerized machine shorthand notes together with the back up tape of said proceedings.

In witness whereof, I have hereunto subscribed my name, this the 25th day of February, 2011.

OFFICIAL COURT REPORTER

RECEIVED
2011 FEB 25 A 10:22
COURT REPORTING DIVISION
DISTRICT OF COLUMBIA
COURTS

-x [1] 1/3

1

1033 [1] 1/25
110 [1] 10/2
15 [2] 10/2 12/7
156 [1] 7/9
17 [1] 2/16
1788 [2] 1/5 33/6
1788-2010 [1] 2/3
18 [1] 1/9
18th [1] 33/6
1986 [1] 10/3
1996 [1] 7/9
19th [2] 30/19 31/3
1:30 [1] 3/1
1:45 [1] 1/11

2

20 [1] 10/2
2005 [1] 7/13
2006 [1] 9/18
2007 [2] 14/20 14/20
2008 [1] 7/11
2010 [4] 1/5 2/3 2/16 33/6
2011 [3] 1/9 33/7 33/13
228 [1] 7/13
25th [1] 33/13
26 [1] 10/24
27 [1] 14/20
27th [1] 25/2
2:33 [1] 32/12

3

30 [39]
317 [1] 9/4
32 [1] 33/8
356 [1] 7/9
361 [1] 7/9
3rd [1] 9/17

4

416 [1] 9/17
432 [1] 9/17
433 [1] 9/17
44-801 [1] 11/9
469 [1] 9/17

5

52 [1] 1/11
524 [1] 7/13
529 [1] 8/3
530 [1] 10/6

8

801 [1] 11/9
879-1033 [1] 1/25

9

9th [1] 25/2

A

able [4] 15/18 15/24 28/8 31/13
about [41]
above [1] 1/10
above-entitled [1] 1/10
absolutely [2] 14/24 30/25
act [2] 25/19 25/19
action [2] 1/10 2/3
actually [8]
add [1] 20/4
addition [1] 15/12
additional [2] 22/23 28/13
adequate [2] 8/10 8/11
administrator [1] 19/4
admissible [1] 10/24
admission [1] 22/17
admitted [1] 24/1
adopted [1] 5/17
adoption [1] 3/7
advantage [1] 7/5
Advisory [2] 3/6 5/8
afternoon [5]
again [9]
age [1] 26/24
alerting [1] 30/22
all [29]
allegation [1] 20/15
allow [7]
allowed [3] 15/25 16/8 18/2
allowing [1] 28/13
allows [1] 20/6
along [1] 31/2
already [5]
also [6]
altered [1] 26/6
although [1] 3/23
am [22]
amend [1] 20/24
analysis [2] 3/20 4/24
another [1] 10/10
answer [9]
answers [5]
anticipate [1] 30/21
anticipating [1] 30/20
any [15]
anybody's [1] 26/24
anything [6]
anywhere [1] 3/14
apologize [1] 21/17
Appeals [1] 3/11
Appeals' [1] 3/14
APPEARANCES [1] 1/16
appears [1] 10/1
applies [1] 26/11
apply [2] 21/24 26/11
appreciate [1] 2/25
appreciation [1] 2/21
April [2] 14/20 25/2
April 9 [1] 14/20
are [54]
area [3] 13/3 25/11 26/18
areas [2] 7/16 9/6
argue [1] 14/5
argues [1] 8/6
arguing [1] 15/23
argument [8]
arguments [1] 11/3
as [53]
ask [12]
asked [2] 18/3 21/23
asking [5]
aspects [1] 3/15
Associate [1] 1/11
assumed [1] 9/8
assumes [1] 6/22
assuming [2] 19/1 19/12
assumptions [1] 26/24
assurance [3] 11/12 11/16 22/4
attached [1] 15/9
attempt [1] 8/5
attorney [3] 22/4 22/12 29/6
author [1] 14/4
available [9]

B

back [5]
bad [1] 5/19
balance [2] 27/10 32/3
bandying [1] 5/20
bar [1] 12/1
barred [1] 11/22
based [7]
bases [1] 12/8
basically [2] 19/21 22/22
basis [6]
be [50]
because [11]
beds [2] 24/14 25/8
been [14]
before [7]
beginning [1] 16/20
behalf [5]
being [6]
belief [1] 9/19
beliefs [1] 15/2
believe [5]
better [1] 31/10
between [1] 4/15
binding [1] 3/9
bit [1] 15/7
boring [1] 23/7
both [3] 6/3 7/14 13/12
break [1] 31/18
breakdown [1] 16/21
brief [1] 13/14
briefs [1] 13/13
broad [1] 19/15
broader [1] 15/7
burden [6]
burdensome [5]
business [1] 28/7
buttocks [1] 14/19

C

CA [2] 1/5 33/6
calculated [1] 10/23
call [2] 16/6 30/10
called [2] 16/2 22/17
came [1] 1/10
can [35]
can't [3] 14/16 19/7 28/24
canceled [1] 30/12
cannot [6]
care [3] 13/17 15/12 15/13
Carolina [1] 7/9
case [27]
cases [6]
cause [3] 13/11 14/18 32/7
caveat [1] 20/5
certain [4] 3/15 5/14 5/15 30/21
certainly [3] 23/25 31/15 32/5
CERTIFICATE [1] 33/1
CERTIFIED [1] 1/14
certify [2] 33/3 33/8
change [1] 32/6
changed [1] 26/7
changes [1] 29/8
changing [2] 30/20 31/3
characterizing [1] 6/12
choices [1] 6/15
chooses [1] 31/12
Circuit [3] 3/12 9/16 9/17
circumstance [1] 19/7
circumstances [2] 10/8 19/9
cited [4] 3/5 3/8 3/13 9/21
CIVIL [2] 1/2 2/3
claim [2] 12/13 20/9
clear [2] 20/1 20/3
clearly [1] 31/5
CLERK [2] 2/2 13/13

client [2] 22/17 31/12
Code [1] 11/9
colleague [1] 11/10
collective [1] 9/19
colloquially [1] 7/2
COLUMBIA [2] 1/1 33/3
come [6]
coming [4] 2/25 11/9 17/1 32/10
committee [3] 3/6 5/9 8/1
compared [1] 24/5
compel [7]
complete [2] 22/25 31/25
complies [1] 21/14
compliment [1] 4/11
component [1] 7/8
computer [4] 25/12 26/12 27/4 27/4
computerized [2] 33/4 33/10
concept [2] 6/4 10/9
concern [1] 23/19
concerned [2] 17/22 32/5
concerns [1] 22/18
CONCLUDED [1] 32/12
conclusion [1] 17/1
conduct [3] 4/7 7/23 13/6
confirm [1] 30/4
Conner [1] 11/11
consistent [1] 9/9
constitute [1] 33/8
consult [1] 28/16
contained [3] 22/1 22/13 26/4
contemplate [1] 4/6
contemplated [3] 9/10 31/6 31/7
contemplating [2] 32/4 32/6
continue [1] 32/2
contradictory [3] 16/22 16/23 16/23
control [1] 4/13
conversation [1] 20/17
convinced [1] 11/10
convincing [2] 8/5 12/5
core [1] 13/19
corporation [2] 7/3 9/24
corporation's [2] 7/7 9/22
correct [2] 16/3 20/14
correctly [1] 16/4
costs [2] 5/24 6/3
could [6]
counsel [6]
counter [1] 5/16
course [4] 3/5 4/10 10/17 26/5
COURT [23]
Court's [2] 21/2 27/18
Courtroom [1] 1/11
cover [3] 11/13 11/21 16/15
create [2] 10/25 29/7
created [1] 5/23
creates [1] 22/2
cumbersome [1] 28/11
cumulative [5]
curtail [1] 31/14
cut [1] 24/9

D

DANIEL [2] 1/18 2/5
data [17]
date [6]
dates [2] 13/19 31/3
day [4] 25/1 30/2 33/6 33/13
days [2] 24/2 24/5
DC [5]
deal [2] 28/22 28/23
death [1] 2/19
December [1] 2/16
December 17 [1] 2/16
decubitus [4] 16/5 16/18 18/19 18/21
defend [1] 15/2
defendant [24]
defendant's [14]
defense [3] 1/20 6/19 31/14
definition [1] 22/14
delay [1] 30/9
delving [1] 3/3
demonstrate [1] 18/21
denial [1] 17/21
denied [1] 23/4
deny [2] 20/25 29/19
denying [2] 21/6 21/9
deponent [16]
deposed [3] 9/2 10/12 25/24
deposing [1] 27/8
deposition [39]
depositions [9]
depth [1] 19/14
DEPUTY [2] 2/2 13/13
designate [3] 2/17 8/23 9/4
designation [2] 12/21 12/21
designee [1] 26/6
despite [1] 17/1
determine [2] 5/22 29/12
determined [1] 5/23
develop [7]
developed [3] 14/13 14/19 16/18
developing [1] 22/18
development [1] 18/21
did [18]
didn't [5]
different [9]
difficult [1] 29/12
diligently [1] 6/6
dim [1] 15/22
direction [1] 27/12
disagree [2] 14/9 14/10
discharged [3] 15/10 16/21 25/2
discovery [26]
discuss [3] 3/24 7/7 9/1
discussed [2] 22/7 23/22
discussion [1] 6/19
dispute [2] 4/2 28/7
distinction [1] 4/15
distinguish [1] 8/5
DISTRICT [6]
DIVISION [1] 1/2
do [40]
do-able [1] 28/8
document [5]
documents [13]
does [10]
doing [4] 5/19 29/3 30/21 32/3
don't [25]
done [10]
DOOREN [6]
down [2] 13/14 22/24
drive [1] 28/12
drove [1] 5/24
duty [1] 9/4

E

each [3] 4/11 6/8 30/5
earlier [6]
easier [2] 27/8 29/16
easily [1] 26/22
Eastern [1] 10/2
easy [1] 29/2
EDELMAN [1] 1/11
effect [2] 21/6 21/24
effective [2] 19/6 27/13
effectively [1] 11/4
effort [1] 32/2
else [4] 6/10 25/18 26/3 26/7
employed [1] 4/14
employees [2] 5/22 12/16
end [5]
ENGAGED [1] 1/13
enough [1] 20/14
entitled [6]
Esquire [4] 1/18 1/18 1/21 1/21
essentially [4] 11/11 11/17 17/14 21/15
evaluate [1] 3/17
even [6]
event [1] 32/3
events [2] 9/24 20/19
ever [1] 20/17
every [3] 26/11 28/6 28/7
everyone [3] 19/21 31/2 32/11
everything [6]
evidence [5]
exact [4] 6/4 6/21 11/25 12/3
exactly [2] 6/14 19/4
example [3] 4/19 14/18 16/17
exercise [2] 5/21 18/23
Exhibit [1] 15/9
exhibiting [1] 18/18
exist [1] 25/14
exists [1] 11/15
expense [2] 11/1 13/11
expenses [1] 31/15
experience [1] 25/7
expert [2] 12/25 31/14
experts [1] 31/11
explicitly [1] 9/3
explore [1] 31/19
express [1] 2/21
extent [3] 10/13 13/2 17/13
extremely [1] 31/17

F

facility [1] 24/6
fact [12]
factor [1] 4/24
facts [3] 7/17 9/12 9/22
factual [1] 7/23
faith [1] 5/19
family [1] 2/19
far [1] 17/22
father [1] 16/2
father-in-law [1] 16/2
February [3] 1/9 33/7 33/13
Fed [1] 9/17
Federal [1] 3/7
feel [2] 5/20 18/11
FIEDLER [9]
Fiedler's [1] 14/19
field [1] 8/14
Fifth [4] 3/12 9/8 9/16 9/17
file [4] 15/5 28/20 29/4 29/9
filed [2] 2/15 28/19
Finally [1] 10/15
find [11]
finding [1] 25/20
fine [2] 20/17 31/17
first [3] 2/21 4/3 20/5
five [1] 3/18
flash [1] 28/12
flow [1] 3/19
focus [2] 16/24 20/13
focused [1] 20/23
follow [1] 20/11
follow-up [1] 20/11
following [1] 25/25
foregoing [1] 33/8
foremost [1] 2/21
form [1] 29/6

formal [1] 22/11
found [1] 3/9
Fourthly [1] 8/23
frame [1] 3/16
framed [1] 23/20
FRD [3] 7/9 7/13 10/2
free [2] 14/9 14/10
front [3] 19/1 19/2 27/16
frustrated [1] 5/24
full [1] 23/13
further [4] 6/16 30/5 32/9 33/8

G

games [1] 17/25
geeks [2] 27/4 27/4
generally [1] 31/9
generated [2] 26/5 26/12
germane [1] 3/13
get [11]
gets [1] 27/6
getting [4] 13/14 16/22 27/11 31/2
give [4] 7/5 15/2 29/3 30/12
given [1] 29/15
gives [1] 15/17
go [13]
goes [2] 13/15 26/10
going [7]
gone [2] 27/19 29/9
good [5]
got [2] 19/13 30/10
grant [5]
granted [1] 23/17
granting [2] 21/8 21/11
Gravos [1] 9/16
ground [4] 11/13 11/21 23/7 26/20
grounds [4] 4/13 7/25 12/3 16/16
group [2] 13/25 14/1
grouped [1] 16/15
grouping [1] 21/5
guess [2] 25/23 27/23
guiding [1] 3/20

H

had [13]
HAMILTON [4] 1/21 2/12 17/4 30/25
Hamilton's [1] 31/18
handle [1] 31/10
happen [5]
happened [6]
hard [2] 21/19 27/12
has [19]
have [68]
having [10]
he [11]
health [2] 13/17 15/12
heard [1] 24/23
hearing [3] 1/10 2/18 33/5
held [2] 9/21 33/4
help [1] 23/25
helpful [1] 24/16
her [2] 17/6 27/2
here [13]
hereby [1] 33/3
hereunto [1] 33/12
him [6]
his [7]
hold [1] 31/4
Honor [23]
Honorable [1] 1/11
Hopefully [1] 20/3
hoping [1] 2/25
hospital [20]
how [13]

I

I'm [8]
idea [4] 5/19 5/25 6/13 6/21
identify [4] 5/14 6/1 10/21 23/23
identity [2] 13/17 13/22
imagine [1] 19/7
impeach [1] 19/8
important [1] 30/11
impose [3] 4/25 5/21 19/19
imposes [1] 10/10
incident [5]
independent [1] 8/2
indicated [1] 9/18
individual [2] 8/16 9/15
individuals [2] 7/6 20/9
indulgence [1] 21/2
inform [2] 30/8 31/9
information [13]
informed [1] 3/19
initially [1] 24/1
inpatient [1] 14/20
inquiries [1] 16/15
inquiry [10]
inspected [1] 29/25
intention [1] 17/9
internally [1] 28/4
interpretation [1] 9/24
interpreting [1] 3/20
interrogatories [4] 4/19 15/4 15/6 15/9
interrogatory [1] 16/24
interviewing [1] 25/20
investigation [10]
investigations [1] 11/20
investigative [1] 7/25
involve [1] 32/6
involved [3] 5/14 6/6 8/18
involvement [1] 13/18
is [130]
issue [5]
issues [3] 3/24 24/4 30/6
it [99]
it's [20]
item [1] 23/2
items [2] 4/25 30/5
its [3] 3/10 6/15 9/24
itself [3] 5/3 10/18 26/20

J

job [1] 21/19
joint [1] 30/15
Judge [3] 1/11 7/9 9/3
Judges [1] 3/15
just [13]
justifiable [1] 11/5

K

KAREN [2] 1/21 2/11
KARLIN [16]
keep [1] 31/19
kind [2] 3/10 6/14
know [17]
knowledge [8]
known [1] 10/19
knows [3] 5/15 5/22 8/19

L

lack [1] 6/20
Lackner [1] 7/12
Lambert [1] 9/3
Lambert's [1] 7/10
language [3] 10/1 18/14 18/15
Lapena [1] 10/2
last [4] 10/15 12/7 21/5 25/11
law [4] 3/8 9/10 9/11 16/2
lead [2] 10/24 12/7
least [3] 13/15 20/3 24/9
leave [1] 27/20
legal [2] 3/19 4/1
LEONARD [2] 1/18 2/7
less [1] 11/5
let [2] 13/25 14/1
Let's [2] 6/10 6/10
letter [4] 16/1 19/15 20/4 23/6
leveling [1] 8/14
lies [1] 6/2
light [1] 19/19
like [6]
limit [2] 24/9 24/17
limited [1] 11/7
limiting [3] 24/16 24/18 24/23
limits [2] 4/22 10/17
list [1] 6/6
listening [1] 12/6
literally [1] 19/21
litigation [1] 7/6
little [3] 3/1 15/7 17/25
live [2] 8/7 10/7
locate [2] 23/6 24/12
location [1] 24/20
logical [1] 4/15
long [3] 19/24 31/2 31/3
longer [1] 3/1
look [6]
looking [9]
lot [1] 3/2

M

machine [4] 25/19 25/22 33/4 33/10
made [5]
make [11]
making [4] 3/10 5/11 20/1 30/17
Malone [1] 30/10
malpractice [1] 7/15
man [1] 20/8
management [1] 8/1
MARC [3] 1/4 2/2 2/5
March [2] 14/20 25/2
Maryland [2] 7/13 10/5
matter [3] 3/4 22/25 28/25
matters [4] 9/19 11/24 24/8 30/6
may [14]
maybe [7]
me [22]
mean [4] 15/18 18/13 26/9 28/1
means [9]
meant [2] 4/11 28/2
meantime [1] 22/23
mediation [6]
medical [22]
meet [1] 31/19
memorial [5]
memory [3] 7/3 7/4 8/16
mentioned [1] 11/2
might [3] 4/24 4/25 31/13
mind [1] 31/3
minutes [2] 6/9 12/7
misunderstood [1] 24/24
moot [1] 23/5
more [12]
morning [1] 16/2
most [4] 7/8 7/12 12/8 12/9
motion [17]
motions [3] 1/10 3/5 3/23
moving [1] 31/19
MR [16]
Mr. [9]
Mr. Dooren [2] 14/3 32/4

Mr. Fiedler [1] 32/7
Mr. Hamilton [2] 17/4 30/25
Mr. Hamilton's [1] 31/18
Mr. Malone [1] 30/10
Mr. Scialpi [2] 18/10 19/13
MS [11]
Ms. [3] 18/6 18/6 22/8
Ms. Karlin [3] 18/6 18/6 22/8
much [8]
multiple [4] 4/20 5/6 5/11 9/1
must [7]
my [14]
Myrdal [2] 7/10 9/3
myself [3] 20/1 27/3 30/1

N

name [1] 33/12
names [1] 2/4
narrow [1] 26/16
nature [2] 4/23 31/14
necessarily [1] 8/25
necessary [2] 9/5 13/7
necessity [1] 30/8
need [3] 7/21 9/12 31/18
needlessly [1] 5/24
needs [4] 5/21 6/7 11/22 15/18
negative [2] 17/23 17/24
never [5]
next [1] 30/2
no [11]
None [1] 3/8
normally [3] 3/10 29/14 31/21
North [1] 7/9
not [74]
notation [1] 22/20
notes [3] 3/6 5/9 33/10
notice [17]
noticed [3] 4/25 7/16 7/17
now [17]
number [6]
numbers [1] 18/4
nursing [1] 24/6

O

objected [1] 7/21
objection [18]
objections [7]
obligation [1] 7/7
obliterate [1] 11/21
obliterated [1] 11/12
observer [1] 17/5
obtain [1] 23/11
obtained [3] 4/7 11/6 11/6
obtaining [1] 29/10
Obviously [2] 30/11 32/2
occur [3] 7/1 17/16 31/10
office [1] 31/18
official [9]
Okay [1] 19/9
omission [1] 19/8
omissions [1] 19/5
once [2] 29/11 31/10
one [17]
only [6]
openly [1] 11/18
opinion [7]
opinions [2] 9/13 9/23
opportunity [1] 2/22
order [7]
ordering [1] 13/16
organization [13]
organizational [4] 5/22 6/1 6/2 10/13
other [23]
otherwise [1] 12/14
our [17]
out [7]
over [2] 7/6 16/17
overly [3] 15/21 15/22 19/15
overrule [8]

P

p.m [1] 1/11
page [4] 8/3 9/4 10/2 10/6
pages [2] 9/17 33/8
part [2] 23/19 29/22
participate [1] 11/18
participating [1] 11/16
particular [3] 19/15 19/18 30/22
particularity [3] 9/7 10/22 13/10
particularly [6]
parties [6]
parts [1] 5/15
party [4] 4/13 5/21 6/18 8/23
peer [9]
pejorative [1] 5/20
Pennsylvania [1] 10/3
people [4] 11/16 23/10 25/20 26/24
perhaps [2] 16/14 17/25
period [4] 12/2 12/2 16/17 23/24
permit [1] 18/24
permits [1] 9/18
permitting [1] 18/10
personal [2] 6/20 6/23
personally [2] 1/14 28/23
personnel [1] 13/22
perspective [1] 23/25
persuasive [4] 3/16 7/8 7/14 9/11
pertains [1] 4/2
phrased [4] 7/19 14/11 18/9 28/14
phraseology [1] 21/1
phrasing [1] 19/17
plaintiff [16]
plaintiff's [3] 3/23 7/22 8/13
playing [1] 8/14
please [2] 2/3 26/17
PM [1] 32/12
point [11]
pointing [3] 26/25 27/1 27/3
policies [3] 21/22 21/24 24/4
policy [1] 24/14
portion [1] 3/22
position [19]
positional [1] 19/24
positions [1] 15/3
possibility [3] 22/18 30/23 31/16
possible [2] 25/23 30/14
possibly [1] 31/9
practice [1] 5/18
precise [2] 15/21 18/14
precisely [1] 7/14
preclude [2] 4/4 5/7
preface [1] 15/4
preparation [2] 6/25 7/24
prepare [1] 7/8
preparing [1] 4/10
pressure [4] 14/13 16/6 20/19 22/18
presumes [1] 6/24
pretty [1] 23/7
previously [4] 3/4 12/14 22/17 29/21
primary [3] 5/16 5/17 26/3
principles [3] 3/19 4/1 12/7
privilege [11]
privileged [1] 22/14
privileges [2] 11/7 22/4
probably [1] 29/12
probe [4] 15/15 17/21 17/23 24/20
problem [3] 8/6 8/9 22/2
proceed [1] 6/16
proceedings [6]
process [9]
produce [6]
produced [2] 25/18 27/6
product [4] 1/13 11/8 22/5 22/12
production [2] 27/15 28/1
productive [1] 29/16
professionals [2] 5/12 12/16
promoting [1] 18/1
pronunciation [1] 16/3
proper [7]
proposing [1] 5/18
propounded [1] 15/20
protocols [1] 21/21
provide [6]
provided [5]
providers [2] 13/18 15/12
published [1] 9/10
put [2] 3/21 7/2
puts [1] 28/21

Q

quality [3] 11/12 11/16 22/3
question [7]
questioning [1] 25/11
questions [15]
quiet [1] 21/18
quite [2] 7/14 7/20

R

raised [1] 11/4
raising [1] 22/18
rarely [1] 25/7
rather [2] 9/14 31/22
really [5]
reason [3] 5/16 5/17 18/6
reasonable [3] 9/7 10/22 13/10
reasonably [7]
reasoning [1] 30/3
reasons [1] 12/12
receive [1] 28/21
received [1] 15/5
record [12]
records [8]
recovering [1] 25/19
recuperate [1] 30/13
reduce [1] 6/3
referenced [1] 9/16
regard [13]
regardless [1] 25/3
rehab [1] 24/6
relate [1] 24/5
relating [1] 3/7
relevant [1] 9/6
remaining [2] 22/8 24/7
Renaissance [7]
repetitive [1] 12/11
reported [1] 33/4
REPORTER [5]
reports [2] 22/1 22/13
representations [1] 29/23
representative [1] 6/1
REPRESENTS [2] 1/13 1/14
request [7]
requested [2] 12/24 27/16
requesting [1] 30/13
requests [9]
require [5]
requirement [2] 4/2 8/12
reserve [1] 28/20
resolve [1] 3/22
respects [1] 4/5
respond [7]

responding [1] 17/9
response [12]
revealed [1] 11/19
reverse [1] 31/23
review [9]
reviewed [1] 3/5
revise [3] 18/8 19/23 30/15
right [13]
risk [1] 7/25
Ronan [2] 1/24 33/2
routinely [1] 29/1
rule [16]
ruled [1] 7/23
rules [1] 4/6
ruling [4] 11/10 11/11 27/18 30/4
rulings [1] 3/14
runs [1] 5/16

S

said [11]
same [13]
satisfy [1] 19/14
saw [1] 20/10
say [11]
saying [9]
says [3] 9/4 20/16 25/24
scheduled [3] 2/18 19/2 30/11
scheduling [2] 30/15 31/22
SCIALPI [13]
Secondly [1] 5/5
secured [1] 24/21
see [9]
seek [2] 9/12 9/13
seeking [1] 10/18
seemed [1] 30/18
seems [7]
seen [3] 22/24 23/8 23/15
sentence [1] 21/15
separate [1] 24/4
September [3] 19/2 30/19 31/3
series [2] 5/12 5/22
served [1] 29/14
service [1] 2/23
shorthand [2] 33/4 33/10
should [7]
show [1] 20/19
showing [1] 16/20
SIBLEY [8]
side [4] 4/14 5/1 14/9 32/10
sides [1] 6/3
sign [1] 27/1
signs [1] 18/18
similar [1] 7/20
similarly [1] 26/6
simple [1] 28/25
simplest [1] 29/6
simplify [1] 24/8
simply [2] 4/4 14/14
since [3] 8/20 28/19 30/23
sir [1] 21/3
situations [1] 4/18
six [1] 3/19
skilled [1] 24/6
skin [1] 16/21
so [24]
some [19]
somebody [11]
someone [2] 2/19 25/23
something [20]
sometimes [1] 3/1
somewhat [3] 4/18 20/1 20/3
somewhere [2] 6/10 8/19
sorry [1] 2/24
sought [5]
sources [1] 26/3
speaking [3] 6/23 14/3 17/3
speaks [2] 9/3 19/21
specific [5]
specifically [6]
specified [1] 9/6
spokesperson [1] 2/17
stack [1] 27/7
staff [1] 24/4
standard [1] 23/7
standing [1] 2/20
standpoint [1] 24/8
start [1] 18/16
starting [1] 20/19
state [2] 2/4 19/4
stated [6]
statement [1] 19/5
stating [1] 15/10
status [1] 30/24
steps [2] 23/6 24/12
STEVEN [2] 1/21 2/12
still [9]
stipulated [1] 4/7
stop [1] 31/24
strange [2] 14/2 25/17
streamlined [1] 6/3
styled [1] 28/14
subject [1] 11/24
subjective [8]
subjectively [1] 9/23
subscribed [1] 33/12
successive [1] 4/20
such [4] 6/24 11/21 20/16 30/17
sufficiently [1] 19/14
suggestion [1] 22/16
SUPERIOR [2] 1/1 33/3
supervisory [1] 13/22
supposed [2] 5/10 21/18
sure [3] 12/6 27/16 27/23
surgery [2] 24/2 30/10
surmised [1] 12/6
surprising [1] 3/9
surrounding [1] 7/17
sustain [3] 4/12 5/3 26/21
symptoms [1] 18/19

T

take [9]
taken [4] 15/8 23/6 24/12 33/9
taking [2] 4/4 5/7
talk [1] 28/10
talking [1] 23/20
tape [1] 33/10
Taylor [2] 7/8 9/21
technically [1] 26/9
tell [2] 18/12 19/22
terms [4] 4/1 20/4 31/10 32/2
testify [2] 9/22 29/17
testimony [2] 1/14 33/5
than [13]
Thank [2] 2/23 32/10
that [302]
that's [20]
their [14]
them [9]
then [8]
there [24]
therefore [1] 5/13
therein [1] 3/6
these [22]
they [31]
thing [3] 13/23 19/16 20/4
things [13]
Thirdly [1] 6/17
this [72]
Thomas [2] 1/24 33/2
those [16]
though [3] 6/5 9/13 23/15
three [1] 6/9
through [18]
throughout [3] 9/10 15/13 20/18
time [12]
tipped [1] 27/11
today [3] 2/15 3/2 14/5
TODD [1] 1/11
together [2] 27/5 33/10
told [1] 22/25
too [1] 31/5
topics [1] 19/25
track [1] 30/18
tracking [1] 7/24
transcript [2] 1/13 33/9
transferred [1] 24/3
traversed [1] 8/1
treat [2] 13/25 14/1
treating [3] 12/16 13/18 15/12
treatment [1] 15/13
trial [8]
try [1] 25/8
Turning [1] 13/12
two [7]
type [2] 27/24 29/11
types [2] 4/9 25/8

U

ulcer [7]
under [8]
underlying [1] 7/18
undermine [1] 13/6
understand [9]
understanding [1] 29/5
Understood [1] 29/18
undertake [2] 6/18 30/16
undue [4] 4/25 10/10 10/25 13/11
unduly [2] 25/6 28/6
unfortunately [1] 2/19
unit [9]
unless [1] 32/7
until [1] 25/1
up [7]
update [1] 30/23
Upjohn [1] 10/2
upon [2] 29/14 33/5
us [4] 20/6 23/25 27/20 29/3
use [3] 6/13 18/14 18/15
used [3] 3/3 4/9 21/7
useful [2] 18/23 18/25
usually [1] 28/12

V

various [2] 4/8 29/10
versions [1] 29/8
versus [2] 2/2 27/11
very [2] 28/10 30/11
view [8]
viewed [1] 3/16
viewing [1] 19/11
views [1] 15/2
virtually [2] 10/1 19/22
visit [1] 15/14

W

want [12]
wants [1] 14/6
was [36]
Washington [4] 1/9 1/19 1/22 7/11
way [21]

ways [3] 4/8 4/10 29/10
we [64]
weekend [1] 32/11
weeks [3] 16/21 20/9 24/7
well [11]
were [16]
what [38]
What's [1] 17/7
whatever [1] 28/21
when [10]
where [8]
whereof [1] 33/12
whether [7]
which [22]
Whichever [1] 14/6
while [3] 14/19 22/19 25/23
who [16]
whole [1] 24/4
why [10]
will [47]
willing [2] 8/8 23/1
Wilson [2] 7/12 10/4
withdraw [1] 23/1
withdrawn [2] 29/22 29/24
within [3] 8/19 9/19 9/22
without [2] 11/18 15/10
witness [5]
witnesses [6]
won't [1] 12/11
word [2] 21/7 29/7
work [6]
worked [1] 31/17
worry [1] 13/14
worrying [1] 11/18
would [37]
wound [3] 15/11 20/10 20/20
wounds [1] 22/19
write [1] 13/14
writing [2] 18/16 28/21
written [4] 13/15 27/6 27/19 30/2

Y

Yes [8]
yesterday [3] 2/18 3/2 3/3
yet [2] 31/6 31/8
yield [1] 25/7
you [91]
younger [1] 26/25
your [37]
yourself [1] 15/1

RECEIVED
2011 FEB 25 A 10:22
COURT REPORTING DIVISION
DISTRICT OF COLUMBIA
COURTS