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Defendant's Motion to Exclude Experts

William D. Mason
Cuyahoga County Prosecutor

Marilyn B. Cassidy
Cuyahoga County Assistant Prosecutor

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Mason, William D. and Cassidy, Marilyn B., "Defendant's Motion to Exclude Experts" (1999). *1995-2002 Court Filings*. 46.
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COURT OF COMMON PLEAS

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

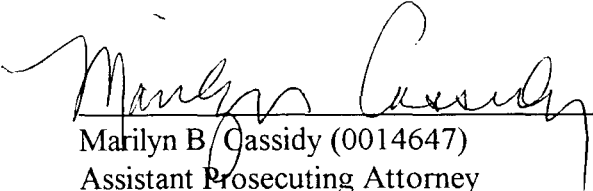
ALAN DAVIS, EXECUTOR,	:	CASE NO. 312322
Plaintiff	:	
V	:	JUDGE RONALD SUSTER
STATE OF OHIO,	:	<u>DEFENDANT'S MOTION TO EXCLUDE</u>
Defendant	:	<u>EXPERTS CHAPMAN, WILSON AND</u>
	:	<u>CHAKRABORTY</u>

Defendant, by and through counsel, William D. Mason, Prosecuting Attorney for Cuyahoga County, and Assistant Prosecuting Attorney, Marilyn B. Cassidy, moves this honorable court to exclude both the reports and the testimony of experts Chapman, John Wilson, Rajit Chakraborty. The grounds for this motion are that the court, by way of case management order dated February 16, 1999 , ordered plaintiff to submit expert reports to defendant on or before May 3, 1999. Plaintiff's expert reports were received by defendant approximately four weeks following that

date, in June of 1999. Plaintiff's submission of three additional expert reports seven months after the court's deadline, and only six weeks prior to trial, is impermissible under the rules and prejudices the defendant, all as is set forth fully in the memorandum attached hereto and expressly incorporated herein.

Respectfully Submitted,

WILLIAM D. MASON, PROSECUTING
ATTORNEY, CUYAHOGA COUNTY



Marilyn B. Cassidy (0014647)
Assistant Prosecuting Attorney
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7785

MEMORANDUM IN SUPPORT OF MOTION

As has been previously briefed by the parties, Ohio Civil Rule 16(6) provides that the court may issue a case management order to establish, *inter alia*, the exchange of expert reports. Pretrial procedure relative to expert reports addressed by Cuyahoga County Court of Common Pleas, Loc. R. 21.1, which states specifically, “ The parties shall submit expert reports in accord with the time schedule established at the case management conference. Upon good cause shown, the court may grant the parties additional time within which to submit their expert reports.”

In this case, it is significant that plaintiff was already granted a lengthy extension of time in which to submit his expert reports. The court initially directed plaintiff to submit his expert reports by May 3, 1999. As plaintiff’s experts were unable to meet that time requirement, the court extended the date approximately four to six weeks, until June, 1999. Thereafter, the state moved for a continuance of trial, based in part upon the late arrival of plaintiff’s expert reports and in part upon the state’s plan to exhume the body of Marilyn Sheppard in October, 1999.

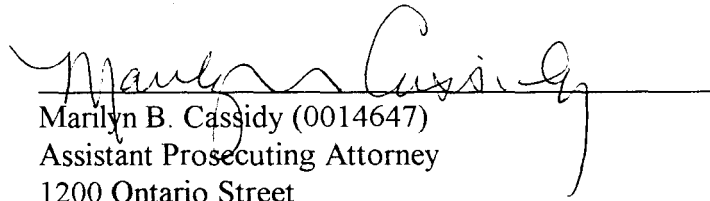
At the court’s direction, the parties briefed the issue of production of expert reports under Civil Rule 16 and Local Rule 21.1. Despite the Cuyahoga County Local Rule’s clear language providing that the party with the burden of proof first submit reports, and despite plaintiff’s unequivocal representations that his reports must be supplemented, the court ordered the state to submit its list of expert witnesses by December 1, 1999.(See case management order dated Nov. 5, 1999) .

The plaintiff has had defendant's list of expert witnesses since April , 1999. Plaintiff now seeks to add three experts, six months out of rule and only six weeks prior to trial. Defendant cannot reasonably expected to locate a rebuttal expert and secure a responsible report in that short period of time. Accordingly, defendant's case is unfairly prejudiced.

For all of the foregoing reasons, the State of Ohio respectfully requests that its motion to strike experts Chapman, Wilson, and Chakraborty, or in the alternative, motion to exclude testimony of excluded in the trial of this matter.

Respectfully Submitted,

WILLIAM D. MASON, PROSECUTING
ATTORNEY, CUYAHOGA COUNTY

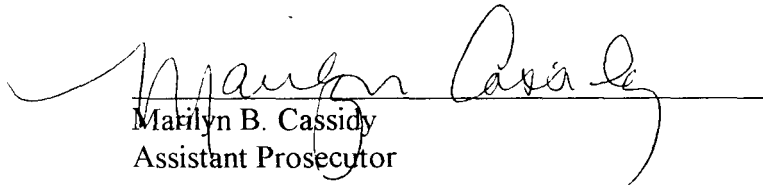

Marilyn B. Cassidy (0014647)
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Strike or in the Alternative Motion to Exclude Testimony has been served this 3rd day of December, 1999, upon Terry Gilbert , 1370 Ontario Street, Suite 1700, Cleveland, Ohio 44113.

Respectfully Submitted,


Marilyn B. Cassidy
Assistant Prosecutor