

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

WILLIAM R. WOJCIKOWSKI

Plaintiff,

v.

CIVIL ACTION NO.: CL23000556-00

JEFFERSON AREA GROUP, LLC, et al.

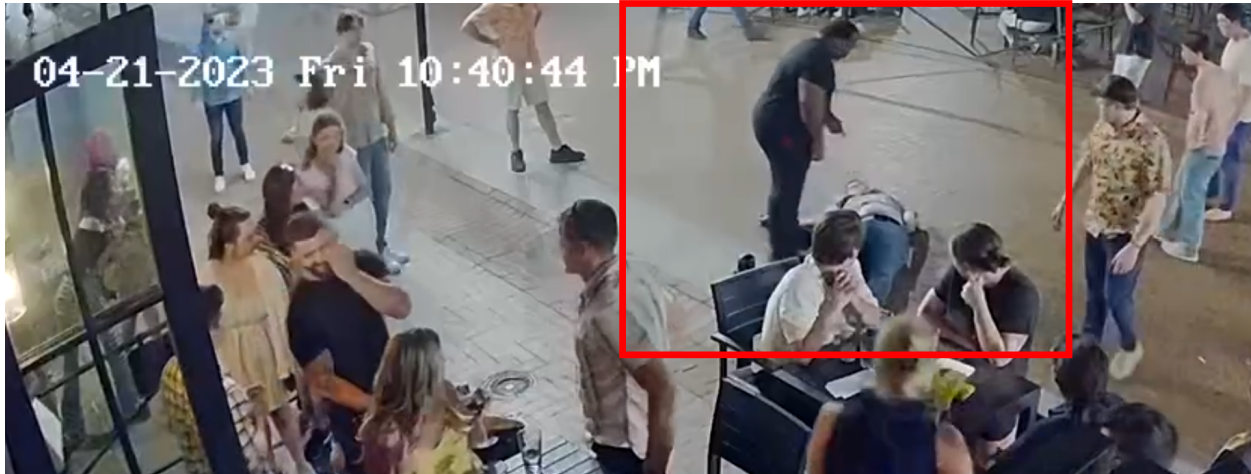
Defendants.

PLAINTIFF'S OPPOSITION BRIEF TO DEFENDANTS' MOTION TO CONTINUE

This is Defendants' third request to continue the trial. The Court denied Defendants' first motion to continue at the January 24, 2024 hearing on Defendants' motions to set aside the Court's Default Judgment Order (Exhibit 1: January 24, 2024 Motions Hearing Transcript, 30:20-21). Defendants requested a continuance a second time in April 2024, in which Plaintiff consented to moving the trial date 231 days from July 31, 2024 to March 19, 2025 (Exhibit 2: Original Pre-Trial Scheduling Order; Exhibit 3: Pre-Trial Scheduling Order). For the reasons explained in a prior correspondence to Defendants (Exhibit 4: January 6, 2025 Email to Defendants' Counsel) and in this Opposition Brief, Defendants do not have good cause to continue this case again. Plaintiff, by counsel, respectfully requests that this Court deny Defendants' Motion to Continue.

For context, this is a straightforward case: there is no legitimate dispute as to Defendants' liability or whether Plaintiff suffered a serious injury. Defendant Bland plead guilty in criminal court to the negligence Plaintiff has alleged in this case (Exhibit 5: Certified Criminal Conviction), and Defendant Bland's negligence was captured on video (Exhibit 6: Video of Wojcikowski Strike; Exhibit 7: Video of Matthews Strike). Defendant Jefferson Area Group also admitted to retaining Defendant Bland as a bouncer at its bar despite having knowledge (i.e., video evidence)

of him striking Daunte Matthews on February 12, 2023 and Plaintiff on April 21, 2023. (Exhibit 8: Corporate Representative Deposition Video Clip of Retention of Defendant Bland). There is clear, common-sense evidence of Plaintiff losing consciousness and suffering a traumatic brain injury:



And there is an independent witness who provided a statement the day after the strike:

Just arrived at the mall and was walking away from the pavilion towards millers. Was passing Fitzroy and as I was passing looked back, saw the bouncer pushing the victim away from the entrance (12-15 away) but clearly in the middle of the mall. Almost simultaneously the bouncer said I told you to stay back and threw a punch that knocked out the victim. He was unconscious before he hit the ground, Id estimate he was out for 5-10secs. He was disoriented when he came to so much so that I thought he was drunk. Was trying to stand up was struggling no one was helping but that was he people came out and got him, flagged down by his GF 5-7 mins later for contact info cause they didn't witness any of it, spoke to victim as I left the area and it was clear that he wasn't inebriated like I thought was just the effects of losing consciousness.

(Exhibit 9: Cody Jones Witness Statement).

Defendants' Arguments

Defendants make three arguments in support of their motion to continue, none of which establish good cause to justify the Court continuing the trial for this case a second time.

Defendants' Argument 1: "Defendants have propounded and continue to propound subpoenas and authorizations for plaintiff[s] pre and post incident medical and educational

records. Records are beginning to come in, but this process will take several more weeks” (Defendants’ Motion to Continue ¶2).

Defendants’ representation is not accurate. Defendants issued 24 subpoenas starting in February 2024 (385 days before trial), as shown below and in Exhibit 10: Defendants Subpoenas. Defendants have obtained records by subpoena covering every aspect of Plaintiff’s life (e.g., childhood medical records, prior employers, school records, among others). And at no point has Plaintiff attempted to limit Defendants’ records requests. Unless Defendants have issued subpoenas without providing copies to Plaintiff, their statements that they “continue to propound subpoenas” and that “records are beginning to come in” are not correct. Plaintiff is also not aware of any motions Defendants filed to compel the production of records they requested by subpoena.

DEFENDANTS’ SUBPOENAS				
ENTITIES	Date Issued	Days Before Trial Date	Return Date	Days Before Trial Date
Anchor Health Properties	2/28/2024	385	3/25/2024	359
Concussion Care Center of Virginia	2/28/2024	385	3/25/2024	359
Martha Jefferson Hospital	2/28/2024	385	3/25/2024	359
Nasdaq, Inc.	2/28/2024	385	3/25/2024	359
OrthoVirginia	2/28/2024	385	3/25/2024	359
University of Virginia Health System	2/28/2024	385	3/25/2024	359
VCU Office of Records and Registration	2/28/2024	385	3/25/2024	359
Velocity Urgent Care	2/28/2024	385	3/25/2024	359
Virginia Episcopal School	2/28/2024	385	3/25/2024	359
Tavern & Grocery	2/28/2024	385	3/25/2024	359
Woodberry Forest School	3/27/2024	357	4/23/2024	330

E.C. Glass High School	3/25/2024	359	4/22/2024	331
Hargrave Military Academy	3/25/2024	359	4/22/2024	331
Developmental Assessment and Counseling Center	3/25/2024	359	4/22/2024	331
F. Read Hopkins Pediatric Associates	3/26/2024	358	5/15/2024	308
Piedmont Virginia Community College	3/27/2024	357	4/23/2024	330
UVA Health Adult Neurology Clinic	3/27/2024	357	4/23/2024	330
Carilion Roanoke Memorial Hospital	5/21/2024	302	6/17/2024	275
Express Scripts Pharmacy, Inc.	5/21/2024	302	6/17/2024	275
Lynchburg General Hospital	5/21/2024	302	6/17/2024	275
MedExpress Urgent Care	5/21/2024	302	6/17/2024	275
Bedford Memorial Hospital	5/21/2024	302	6/17/2024	275
Valley Urgent Care & Occupational Medicine	5/21/2024	302	6/17/2024	275
Charlottesville Psychological Associates	11/18/2024	121	12/16/2024	93

Defendants’ Argument 2: “Defendants believe that the Court should allow for Rule 4:10 examinations by Dr. Peck and Dr. Katz” (Defendants’ Motion to Continue ¶4).

Defendants do not have good cause for the Court to extend their January 18, 2024 expert designation deadline (Exhibit 3: Pre-Trial Scheduling Order). In the Spring of 2024, Defendants told Plaintiff that they may request to schedule a Rule 4:10 examination. Several months later, on November 18, 2024 (61 days before Defendants’ expert designation deadline), Defendants informed Plaintiff during a phone call that Defendants would likely be requesting a Rule 4:10 examination. Plaintiff asked Defendants to send Plaintiff a draft order that included the standard conditions, to include video recording. That same day, Defendants sent the following to Plaintiff:

I understand your client has multiple claims, chief among them a diagnosis of POTS and a TBI. My understanding is that he has not had a neuropsych assessment by his treating providers. Based on our conversation, we will likely request a Rule 4:10 neuropsych assessment. We will do our best to coordinate this for a time when your client is in Virginia but much of this will be dependent on expert schedules. Once we have providers lined up, I will send you a proposed Rule 4:10 order.

(Exhibit 11: Defendants November 18, 2024 410 Order Correspondence).

Defendants, however, chose to wait until December 10, 2024 (39 days before Defendants' expert designation deadline) to send a proposed 4:10 order, and the order they sent did not include the video recording condition they were told Plaintiff would require (Exhibit 12: Defendants December 10, 2024 410 Order Correspondence; Exhibit 13: Defendants December 10, 2024 Proposed 410 Order). Three days later (36 days before Defendants' expert designation deadline), Plaintiff wrote to Defendants explaining Plaintiff's requested conditions, to include the following: "Finally, the interview and examination will be video recorded in its entirety." (Exhibit 14: Defense Mental Examination and Meet and Confer) (emphasis added). However, instead of filing a motion to compel a 4:10 examination without the video condition, Defendants chose to ask Plaintiff to reconsider his position multiple times. Plaintiff reaffirmed that he would not agree to a 4:10 examination without it being video recorded in its entirety. Plaintiff explained to Defendants:

As your expert is aware, the Centers for Medicare and Medicaid Services (CMS) approved the provision of psychological and neuropsychological testing services via telehealth/videorecording. More, the Inter Organizational Practice Committee (IOPC) developed guidelines allowing for teleneuropsychology and video recording practices. As previously stated, your expert's own billing codes and practice guidelines permit telehealth neuropsychological testing and assessments using video recording. It seems an endorsement of video recording by the federal government and professional organizations that set the standards for practice should be sufficient to allow a recording of this forensic assessment.

You still have not addressed the fact that Dr. Peck has recently been compelled by courts in Virginia to allow video recording of neuropsychological assessments. He voluntarily entered into this litigation to gain a financial benefit and thus must adhere to the rules of court. It is imperative to fairness and transparency that the

assessment is video recorded as test administration, time limits, verbal instructions, addressing tester questions, compliance with the test manual, pattern of test administration, verbal tester responses, rapport, interruptions, and scoring can only be validated and observed with video recording.

We again request you reconsider Plaintiff's request to allow video recording of the entire testing process. Once we reach an agreement, we will produce our client for the examination without delay. Please do not hesitate to contact the undersigned to further discuss.

(Exhibit 15: Defense Mental Examination and Continued Meet and Confer).

A few days later, on January 7, 2025 (as shown on the Virginia Courts Case Information website), Defendants filed a motion to compel a 4:10 examination of Plaintiff by Dr. Peck without the video condition. Defendants then attempted to schedule a hearing on its motion for a day that did not comply with Virginia Supreme Court Rule 4:15, which mandates that "the required notice and the brief must be filed and served at least 14 days before the hearing." As a result, no hearing was scheduled. And at no time before Defendants' January 18, 2024 expert designation deadline did Defendants mention or request that Plaintiff also submit to a 4:10 examination by Dr. Katz.

Defendants have been on notice that Plaintiff suffered a traumatic brain injury since the day of the strike, April 21, 2023 (638 days prior to Defendants' expert designation deadline). Defendants retained counsel on November 1, 2023 (444 days prior to Defendants' expert designation deadline). The Complaint stated that "[a]s a result of the Strike, Mr. Wojcikowski suffered a traumatic brain injury." Plaintiff's many medical records both provided to Defendants and subpoenaed by Defendants (as early as February 2024) made it clear that Plaintiff suffered a traumatic brain injury. On November 18, 2024 (61 days prior to Defendants' expert designation deadline), Defendants wrote to Plaintiff: "I understand your client has multiple claims, chief among them a diagnosis of POTS and a TBI [Traumatic Brain Injury]" (Exhibit 11: Defendants November 18, 2024 410 Order Correspondence). Yet Defendants chose to wait until December

10, 2024 (39 days before Defendants' expert designation deadline) to begin to attempt to schedule a 4:10 examination of Plaintiff. Defendants then chose not to proceed with a 4:10 examination of Plaintiff because the doctor Defendants chose was not willing to allow it to be video recorded.

As explained by a Virginia court that handled a similar situation:

[Defendants] took the risk that the requirements of the Scheduling Order could not be met. [They] lost that gamble. The effect of that gamble was unilaterally to truncate the [plaintiff's] period to designate experts to respond to [Defendants'] experts and to prejudicially affect [plaintiff's] trial preparation time. There might be some simpler cases in which the effects of such conduct might not be prejudicial. This is not such a case given the number of experts belatedly identified and the seriousness of the injuries and the magnitude of the damages claimed.

....

The inference drawn from all the circumstances before the Court is that [Defendants] disregarded this Court's Scheduling Order and disregarded the effect this conduct would have on [Plaintiff]. If such unexplained conduct is countenanced, this Court's Scheduling Orders may not be relied upon by litigants. They become -- at best -- precatory or aspirational.

Belshe v. Pinecrest Cluster Ass'n, 68 Va. Cir. 89, 93 (Fairfax Cir. Ct. 2005) (modified parties).

Importantly, even if Defendants had timely filed their motion to compel a 4:10 examination of Plaintiff without video recording, there is no guarantee that the Court would have granted Defendants' motion, especially when considering that this exact issue concerning Dr. Peck was recently decided by the Circuit Court of the City of Hampton in *Davidson v. Leroy Trucking* (CL22002330) in favor of permitting video recording which resulted in Dr. Peck removing himself as an expert witness in that case. Also, it is common for courts across the country to permit videographers to record defense medical examinations. *McDonald v. Southworth*, No. 1:07-cv-217-JMS-DFH, 2008 U.S. Dist. LEXIS 52830, at *18 (S.D. Ind. Jul. 10, 2008) (ordering that plaintiff may engage videographer to record a defense medical examination at his own expense); *Metro. Prop. & Cas. Ins. Co. v. Overstreet*, 103 S.W.3d 31, 38, 41 (Ky. 2003) (permitting

videorecording of defense medical examination based on recognition that “expert witnesses are often compensated handsomely and it is widely believed that they may be expected to express opinions that favor the party who engaged them and who pays their fees”); *Zabkowitz v. W Bend Co.*, 585 F. Supp. 635, 636 (E.D. Wis. 1984) (“The defendants’ expert is being engaged to advance the interests of the defendants; clearly, the doctor cannot be considered a neutral in the case. There are numerous advantages, unrelated to the emotional damage issue, which the defendants might unfairly derive from an unsupervised examination. In sum, I do not believe that the role of the defendants’ expert in the truth-seeking process is sufficiently impartial to justify the license sought by the defendants. Accordingly, the plaintiffs, at their option, are entitled to have a third party (including counsel) or a recording device at the examination.”); *Boswell v. Schultz*, 175 P.3d 390, 398-99 (Okla. 2007) (“A videographer has the ability to accurately record the physical aspects of the examination, and the use of technology is becoming more prevalent in the legal field. The examination is a discovery examination, not one in which a plaintiff is being treated. A defense-selected physician should not have the right to dictate all the terms under which a plaintiff’s examination will be held.”).

Defendants’ representation to the Court that Plaintiff did not appear for his scheduled 4:10 examination is not accurate. Defendants requested Plaintiff to provide a tentative date for the 4:10 examination in the context of stating that “[w]e can hammer out the wording of the order later” (Exhibit 16: Tentative 410 Examination Date Correspondence). Plaintiff provided January 15, 2025 as the tentative date, because Plaintiff was scheduled to be in Virginia that week for his deposition on January 16, 2025. And when Defendants asked whether Plaintiff would appear for a non-video recorded 4:10 examination on the tentative date with no agreed order, Plaintiff told Defendants:

As you know, the examination was contingent on video recording the assessment. Your office declined this condition despite our continued requests from December 13, 2024 to January 2, 2025. Consequently, it was obvious the parties would not proceed

with the assessment. To be clear, there was never an agreement that our client would appear for a mental examination without the conditions being met (i.e., video recording).

Per your request and to rephrase the communication between the parties more formally, the administration of the examination was predicated on the video documentation of the assessment process. Your rejection of this requirement resulted in the parties being unable to reach an agreement regarding the process, and thus, our client's participation was never confirmed, established, or settled upon. It is our understanding that there is no assessment scheduled for this week.

Please do not hesitate to contact me if your position has changed and Dr. Peck will allow video recording of the assessment.

(Exhibit 17: January 13, 2025 Correspondence to Defendants).

Any delay and resulting prejudice is of Defendants' creation. Plaintiff has been explicit and firm on the conditions he would require for a 4:10 examination. It was incumbent on Defendants to timely file a motion to compel if Defendants disagreed with Plaintiff's conditions. Defendants, however, chose to wait until the month before their expert designation deadline to attempt to schedule a 4:10 examination, despite knowing about Plaintiff's traumatic brain injury for more than a year.

Defendants' Argument 3: "[D]efendants believe that the Court should . . . allow the defendants to re-open and conclude plaintiff[']s deposition" (Defendants' Motion to Continue ¶4).

Defendants deposed Plaintiff for 5 hours and 28 minutes on January 16, 2025 (Exhibit 18: Defendants Deposition of Plaintiff). Defendants are requesting that the Court re-open Plaintiff's deposition for one reason: to force Plaintiff to watch the video of Defendant Bland striking him in the head causing Plaintiff to lose consciousness. Plaintiff has limited memory of what the video shows because, as Plaintiff explained (Exhibit 19: Excerpt from Plaintiff's Deposition), he lost consciousness. Dr. Nathan Zasler, Plaintiff's treating physician, addressed this issue in a letter:

I have reviewed that video in the context of my medicolegal involvement in this case, so I am well aware of its' specific contents. I would further note, given the fact that the patient is otherwise amnesic for the event in question, as he has

testified to repeatedly during his deposition, there is no perceived benefit from the defense perspective to have him review this as the record stands for itself. The process of viewing the video of his own assault could have detrimental effects on the patient's psychological status which would only potentially worsen his clinical condition.

More specifically, it is known that individuals after traumatic brain injury, even those who are amnesic for the events of the assault, can develop PTSD. Additionally, certain triggers may exacerbate or aggravate their affective distress including PTSD symptoms. Mr. Wojcikowski has persistent symptoms of avoidance, and hypervigilance from this traumatic life event. Watching such a video could also cause PTSD de novo, even if one argued, contrary to the facts, that he had no PTSD symptoms at all as a consequence of his assault.

(Exhibit 20: Letter from Dr. Zasler about Plaintiff watching the Video of the Strike; *see* Exhibit 21: Traumatic Brain Injury and Mental Health Literature at pg. 25 (Forensic Psychiatrist Dr. John Bradford explained “[w]hat people do not realize is the power of video to affect certain people, to cause vicarious trauma or full-blown PTSD.”)). That said, if the Court finds it necessary to re-open Plaintiff's deposition to have Plaintiff watch the video of Defendant Bland striking him in the head causing him to lose consciousness, the Court can order that without continuing the trial date.

Contrast Between Plaintiff and Defendants' Diligence

Plaintiff has produced discovery in compliance with Defendants' requests and the Virginia Supreme Court's Rules; see the table below detailing the documents Plaintiff has produced. Of note, there have been instances when Defendants requested information and Plaintiff provided it that same day. For example, on January 10, 2025, Defendants requested the imaging files from the advanced MRI (Exhibit 22: Defendants Second Set of Requests for Production of Documents to Plaintiff). That same day, Plaintiff requested the imaging from the provider and then sent it to Defendants (Exhibit 23: January 10, 2025 Discovery Production of Advanced MRI Images).

PLAINTIFF'S DOCUMENTS PRODUCED			
DOCUMENT(S)	DATE SERVED	Days Before Trial Date	BATES STAMP NUMBER
Video Footage of Before Strike	2/16/2024	397	WW0000001
Video Footage of Strike	2/16/2024	397	WW0000002
Recording of November 27, 2023, Phone Call with Defendant Atilole Bland	2/16/2024	397	WW000003
Atilole Bland: Certified Conviction for Assault and Battery of Plaintiff	2/16/2024	397	WW000004- WW000005
Statement from Witness Cody Jones	2/16/2024	397	WW000006
Transcript of Commonwealth v. Atilole Bland as heard before Judge Kenneth Sneathern	2/16/2024	397	WW000007
University of Virginia Medical Center Records (4.22.23)	2/16/2024	397	WWMED000001- WWMED000073
Sentara Martha Jefferson Hospital Records (4.24.23-5.7.23)	2/16/2024	397	WWMED000074- WWMED000158
OrthoVirginia Records (9.8.23, 9.15.23, 9.22.23, 10.31.23, 11.30.23)	2/16/2024	397	WWMED000159- WWMED000174
OrthoVirginia Records (8.25.23, 8.18.23, 8.10.23, 8.4.23, 7.17.23, 6.29.23, 6.27.23)	2/16/2024	397	WWMED000175- WWMED000198
Concussion Care Centre of Virginia (1.18.24)	3/2/24	382	WWMED000199
Concussion Care Centre of Virginia Dr. Zasler and Sara Etheredge, DPT Records (3.6.24, 3.26.24, 4.22.24)	5/28/2024	295	WWMED000199- WWMED000223
Concussion Care Centre of Virginia: Dr. Theis Records (4.22.24, 5.1.24)	9/30/2024	170	WWMED000224- WWMED000278
Concussion Care Centre of Virginia Sara Etheredge PT Records (6.3.24, 8.7.24)	9/30/2024	170	WWMED000279- WWMED000282
Dr. Zasler Clinic Notes (1.18.24, 3.6.24, 4.22.24, 6.3.24, 8.7.24)	9/30/2024	170	WWMED000283- WWMED000243
Referrals from Dr. Zasler	9/30/2024	170	WWMED000244- WWMED000249
Dizziness Handicap Inventory Test	9/30/2024	170	WWMED000250

CNS Vital Sign Test 1	9/30/2024	170	WWMED000251- WWMED000252
CNS Vital Sign Test 2	9/30/2024	170	WWMED000253- WWMED000254
Epworth Sleepiness Scale	9/30/2024	170	WWMED000255
Modified Fatigue Impact Scale	9/30/2024	170	WWMED000256
Personality Assessment Inventory (PAI)	9/30/2024	170	WWMED000257- WWMED000269
Pain Catastrophizing Scale (PCS) SF-13	9/30/2024	170	WWMED000270
Pittsburgh Sleep Quality Index Report	9/30/2024	170	WWMED000271
The PTSD Checklist (PCL-5) SF-20	9/30/2024	170	WWMED000272
Concussion Care Centre of VA Questionnaire	9/30/2024	170	WWMED000273- WWMED000294
Prescription Request	9/30/2024	170	WWMED000295
Lab Results (2.23.24)	9/27/2024	170	WWMED000296- WWMED000297
Bilateral Nerve Block Consent Form	9/30/2024	170	WWMED000298
VNG and Rotary Chair Referral	9/30/2024	170	WWMED000299
Virginia Cox Evans Counseling Records (2021-2024)	12/13/2024	96	WWMED000300- WWMED000356
Four Pines Physical Therapy Records (10.31.24, 11.14.24, 11.21.24, 11.27.24, 12.2.24)	12/13/2024	86	WWMED000357- WWMED000410
Advanced MRI – Actual Images (1.10.25)	1/10/2025	68	Exhibit 23
Concussion Care Centre of Virginia Dr. Zasler Records (1.14.2025)	1/24/2025	54	WWMED000411- WWMED000415
Four Pines Physical Therapy Records (12.10.2024, 12.12.2024, 12.20.2024, 1.6.2025)	1/24/2025	54	WWMED000416- WWMED000424
Personality Assessment Inventory (1.13.25)	1/24/2025	54	WWMED000425- WWMED000437
Procedure Consent Form (1.13.25)	1/24/2025	54	WWMED000438
Injection Procedural Note (1.13.25)	1/24/2025	54	WWMED000439
Stop Bang Test (1.13.25)	1/24/2025	54	WWMED000440

CNS Vital Signs Report (1.13.25)	1/24/2025	54	WWMED000441- WWMED000442
Adult ADHD Self-Report Scale (1.13.25)	1/24/2025	54	WWMED000443
Epworth Sleepiness Scale (1.13.25)	1/24/2025	54	WWMED000444
Modified Fatigue Impact Scale (1.13.25)	1/24/2025	54	WWMED000445
Pain Catastrophizing Scale (1.13.25)	1/24/2025	54	WWMED000446
Pittsburg Sleep Quality Index Report (1.13.25)	1/24/2025	54	WWMED000447
PTSD Checklist (1.13.25)	1/24/2025	54	WWMED000448
BRIEF-A (1.13.25)	1/24/2025	54	WWMED000477
IOP-29 (1.13.25)	1/24/2025	54	WWMED000478- WWMED000480

In contrast, Defendants chose not to timely respond to Plaintiff's Complaint, despite retaining counsel two days after service of a copy of the Complaint (Exhibit 24: Default Judgment Order). Defendants chose not to timely respond to Plaintiff's initial discovery requests; they were approximately five weeks late (Exhibit 25: Defendants Responses to Plaintiff's First Discovery Requests). Defendants chose not to fully comply with Plaintiff's January 17, 2024 discovery requests in that they required Plaintiff to file a motion to compel and then conceded the issue the afternoon before the hearing (Exhibit 26: Defendants Production of Financial Information). Defendants chose not to depose Plaintiff until two months before the trial date.

Defendants also had advance notice of Plaintiff's treating physicians and expert witnesses, as described in the correspondence sent to Defendants on January 6, 2025:

Dr. Nathan Zasler. Dr. Zasler is our client's treating physician and has not written an expert report; his expert designation is based almost entirely on his medical records. You have had his medical records for many months. We produced records to you each time we received them as early as February 16, 2024 (337 days before your expert designation deadline), and you have received records by subpoena as early as March 19, 2024 (305 days before your expert designation deadline). You were also given formal notice that Dr. Zasler would be serving as an expert witness

in this case in our November 6, 2024 supplemental discovery response (73 days before your expert designation deadline).

Dr. Jacqueline Theis. Dr. Theis is our client's treating physician and has not written an expert report; her expert designation is based almost entirely on her medical records. You have had her medical records for many months. We produced records to you each time we received them, and you have received records by subpoena. You were also given formal notice that Dr. Theis would be serving as an expert witness in this case in our November 6, 2024 supplemental discovery response (73 days before your expert designation deadline).

Dr. Sara Etheredge. Dr. Etheredge is our client's treating physician and has not written an expert report; her expert designation is based almost entirely on her medical records. You have had her medical records for many months. We produced records to you each time we received them, and you have received records by subpoena. You were also given formal notice that Dr. Etheredge would be serving as an expert witness in this case in our November 6, 2024 supplemental discovery response (73 days before your expert designation deadline).

Russell Kolins. Mr. Kolins is a security expert. We received Mr. Kolins' report the evening of December 18, 2024. You received it from us later that same night. You were also given formal notice that Mr. Kolins would be serving as an expert witness in this case in our November 6, 2024 supplemental discovery response (73 days before your expert designation deadline).

Dr. Travis Snyder. Dr. Snyder is a neuroradiologist. Our client underwent advanced imaging on November 19, 2024. We received the completed radiology report on December 19, 2024. We sent it to you that same day.

(Exhibit 4: January 6, 2025 Correspondence to Defendants' Counsel; Exhibit 27: November 6, 2024 Supplemental Discovery Response). In contrast, Defendants chose not to provide advance notice of their expert witnesses; they notified Plaintiff of their experts on January 17, 2025 (Exhibit 28: Defendants' Designation of Expert Witnesses and Supplemental Discovery Response).

Plaintiff produced his expert designations in compliance with the Court's Pre-Trial Scheduling Order (Exhibit 3). Plaintiff sent Dr. Etheredge and Dr. Theis's expert designations to Defendants on December 13, 2024 (Exhibit 29: Dr. Theis Expert Designation Correspondence; Exhibit 30: Dr. Etheredge Expert Designation Correspondence). Plaintiff sent Dr. Zasler and

Mr. Kolin's expert designations to Defendants on December 18, 2024 (Exhibit 31: Dr. Zasler Expert Designation Correspondence; Exhibit 32: Mr. Kolins Expert Designation Correspondence). Plaintiff sent Dr. Snyder's expert designation to Defendants on December 19, 2024 (Exhibit 33: Dr. Snyder Expert Designation Correspondence). Plaintiff also kept Defendants informed of the progress of his expert designations (Exhibit 34: Plaintiff's Expert Designations Correspondence).

Conclusion

Defendants seriously injured Plaintiff at no fault of his own on April 21, 2023. Because of the strike, Plaintiff has suffered and continues to struggle with emotional dysregulation (e.g., anger outbursts), exercise intolerance, cognitive issues (i.e., memory), and vision issues. His life is not the same. Plaintiff's mother explained that "he is walking with a dark cloud over his life." Plaintiff is entitled to closure of his case and the ability to move forward with his life. The longer this case drags on, the harder it is on Plaintiff. Continuing the trial date again also increases the risk of lost evidence and fading memories, prejudicing Plaintiff's ability to effectively prosecute his case.

The reality is that Defendants have created this situation for themselves, and the Court should not reward them by continuing the trial in this case a second time to Plaintiff's detriment:

- Defendants chose not to timely respond to Plaintiff's Complaint, despite retaining counsel two days after service of a copy of the Complaint.
- Defendants chose not to timely respond to Plaintiff's initial discovery requests.
- Defendants chose not to take the deposition of Dr. Zasler, Plaintiff's treating physician.
- Defendants chose not to take the deposition of Dr. Theis, Plaintiff's treating physician
- Defendants chose not to take the deposition of Dr. Etheredge, Plaintiff's treating physician
- Defendants chose not to take the deposition of Dr. Snyder, Plaintiff's neuroradiologist.
- Defendants chose not to take the deposition of Mr. Kolins, Plaintiff's security expert.

- Defendants chose not to take the deposition of any fact witnesses, including: Cody Jones, Anne Wojcikowski, Alex Wojcikowski, Hunter Davis, Malan Jackson, Allie Gish, Jack Zipple, Caroline Spadaro, Christopher McGee, Conrad Wharton, Alyson Lynch, Alise Witt, Elizabeth Izler, Tripp Wray, Samuel Young, or Benjamin Ochs.
- Defendants chose not to retain expert witnesses until three months before the trial date.
- Defendants chose not to attempt to schedule a 4:10 examination of Plaintiff until approximately one month before Defendants' expert designation deadline.
- Defendants chose not to agree to video recording Plaintiff's 4:10 examination.
- Defendants chose not to file a motion to compel a 4:10 examination without video recording until 11 days before Defendants' expert designation deadline.
- Defendants chose not to depose Plaintiff until two months prior to the trial date.
- Defendants chose not to fully respond to Plaintiff's January 17, 2024 discovery requests by requiring a motion to compel and then conceding the issue the day before the hearing.
- Defendants chose not to make any of their expert witnesses available for discovery depositions before the Court ordered discovery deadline, which is the subject of Plaintiff's pending Motion to Preclude Defendant's Expert Witnesses from Testifying (Exhibit 35).

As explained in *Belshe* concerning a similar situation, “[t]he inference drawn from all the circumstances before the Court is that [Defendants] disregarded this Court’s Scheduling Order and disregarded the effect this conduct would have on [Plaintiff]. If such unexplained conduct is countenanced, this Court’s Scheduling Orders may not be relied upon by litigants. They become - - at best -- precatory or aspirational.” *Belshe*, 68 Va. Cir. at 93 (modified parties).

Consistent with the orderly requirements of justice, the Court should hold Defendants accountable to its deadlines and not reward them by condoning their “fight-and-delay approach to

claims handling.” *Nance v. Ky. Nat’l Ins. Co.*, 240 F. App’x 539, 544 (4th Cir. 2007) (explaining the insurance carrier practice of unreasonably delaying resolution of personal injury claims).

Plaintiff, by counsel, respectfully requests that this Court deny Defendants’ Motion to Continue.

WILLIAM R. WOJCIKOWSKI

By: 
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CERTIFICATE OF SERVICE

I certify that I sent a copy of this motion by e-mail and U.S. Mail on February 17, 2025

addressed as follows to:

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