

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

NO.

and DEFENDANTS

RESPONSE IN OPPOSITION TO PLAINTIFF'S AMENDED MOTION IN LIMINE

COMES NOW Defendant and responds to Plaintiff's requesting prohibition of certain evidence and testimony as follows:

Plaintiff's Motion:

1. That any portion of plaintiff's medical bills incurred as a result of the incident made the subject of this suit were paid by insurance, pursuant to Eaton V. Gilliland, 537 So. 2d 405 (Miss. 1989).

Defendant's Response:

Defendant does not oppose this request; however, because Plaintiff's counsel have represented that no entity whatsoever has a subrogation interest arising out of the subject accident. requests an order be entered by the Court declaring that there are no such claims arising out of this accident and that Plaintiff is the only real party in interest. Attached to this Response is a copy of a proposed order.

Plaintiff's Motion:

2. That the issuance of a patent on any of the products made the subject of this suit in any way constitutes "approval of the product itself by the U.S. Government.

Defendant's Response:

The Defendant, , has two patents relating to the which is a pertinent issue in this lawsuit. The Plaintiff is claiming, inter alia, that the was a factor contributing to the Plaintiff's injury. The patents contain a great deal of relevant information in regard to the history and design of the . As such, this Defendant will offer them into evidence during the trial of this cause, and will rely upon the information contained therein in its defense of this case. The patents are relevant evidence, and should not be excluded under any rule whatsoever.

Plaintiff's Motion:

3. That no reference for any purpose be made to the deposition of _____, if taken, as such deposition would be taken in violation of M.R.C.P. 30 and 45.

Defendant's Response:

See response to No.4 below.

Plaintiff's Motion:

4. That no reference be made to the alleged conduct of the parties or their representatives regarding the conduct of pre-trial discovery, pursuant to Rules 402 and 403 of the Mississippi Rules of Evidence.

Defendant's Response:

Without more specificity, it is difficult for this Defendant to address what particular conduct the Plaintiff and his attorneys are referring to; nevertheless, any conduct by the parties or their representatives which would show any bias or prejudice on their part or which would show any ethical violations or misconduct would for all purposes be relevant evidence and admissible under the rules. In particular, it will be shown that the Plaintiff and/or his representatives prevented their fact witnesses from speaking with defense counsel and that their conduct and their witnesses' conduct will be shown to the jury in order that the jury will be allowed to fully weigh their credibility.

Plaintiff's Motion:

5. That no reference be made to plaintiff's refusal to submit to a vocational rehabilitation examination by _____, pursuant to the Mississippi Rules of Civil Procedure and Rules 402 and 403 of the Mississippi Rules of Evidence.

Defendant's Response:

The refusal of the Plaintiff to submit to an examination by this Defendant's vocational rehabilitation expert should be allowed into evidence at the trial of this cause. In order to weigh the Plaintiff's credibility and this Defendant's vocational rehabilitation expert's credibility, the fact that the Plaintiff refused to submit to such an examination should be allowed into evidence during trial. In the alternative, should the Court find this fact is inadmissible, and if Plaintiff's counsel "opens the door" by attempting to impeach _____'s vocational rehabilitation expert by the fact that he has not examined the Plaintiff, then _____ requests it be allowed to rebut this proposition by introducing the fact that it was because of the Plaintiff's refusal to submit to said examination that one never occurred.

Plaintiff's Motion:

That no evidence be made to this motion or to the fact that plaintiff has sought to exclude from proof any matter bearing on the issues in this cause or the rights of the parties to this suit, pursuant to Rules 402 and 403 of the Mississippi Rules of Evidence.

Defendant's Response:

Defendant does not oppose this request.

WHEREFORE, PREMISES CONSIDERED, this Defendant requests that the Court deny Plaintiff's Motion in Limine in whole or in part.

Respectfully submitted,

Attorney for

Of Counsel:

Telephone:
MSB #
Attorney for

CERTIFICATE

I, , of counsel for , do hereby certify that I have this day served true and correct copies of the above and foregoing response via facsimile and U.S. Mail, postage prepaid, to:

This the day of , 20 .

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ORDER

THIS DAY this cause having come on for hearing on Plaintiff's Amended Motion in Limine and Defendant 's Responses thereto, and the Court having considered said Motion and Response, and being fully advised in the premises, finds as follows:

IT IS ORDERED AND ADJUDGED that Plaintiff, , is the only real party in interest in this action and that there are no subrogation claims or rights held by any individual or entity arising out of or associated with this accident.

SO ORDERED AND ADJUDGED this the day of , 20 .

CIRCUIT COURT JUDGE