IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALDSON TWYMAN, Plaintiff, v. S&M AUTO BROKERS, INC., SAED IHMOUD and MOHAMMED IHMOUD, Defendants.	))))))))	No. 16-cv-04182 Honorable Virginia Kendall Magistrate Judge Sheila Finnegan

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS UNDER § 1927, RULE 30(d)(2), AND INHERENT POWER

I. Introduction

In this case, Defendant and its counsel have not followed the rules. They have filed frivolous motions (including sanctions motions) and other frivolous, pleadings. In violation 28 U.S.C.A. § 1927, Defense counsel has needlessly multiplied the proceedings with baseless motions and claims designed to harass Plaintiff and Plaintiff's counsel. In addition to filing frivolous pleadings, Defense counsel has falsely charged Plaintiff's counsel and expert with criminal misconduct. He also obstructed the deposition of Defendant's expert, Ayad Hasan, through coaching, improper instructions not to answer, conferencing with the witness, blocking the production of documents the witness had been instructed to produce and other misconduct.

§ 1927 is intended to deter and punish lawyers who are overly aggressive and needlessly multiply proceedings putting strain and expense on the court system and the adverse party and counsel. "It is precisely when animosity runs high that playing by the rules is vital. Rules of legal procedure are designed to defuse, or at least channel into set forms, the heated feelings that accompany much litigation." *Redwood v. Dobson*, 476 F.3d 462, 469–70 (7th Cir. 2007).

Defense counsel's misconduct has inhibited Plaintiff's right to proceed expeditiously to a jury trial in this relatively simple auto-fraud case. Defendant has: (i) delayed completion of discovery for many months; and (ii) precluded Plaintiff from properly deposing Defendant's expert Hasan and completing expert discovery thus blocking Plaintiff from filing Plaintiff's reply in support of Plaintiff's long pending motion for partial summary judgment.

The unprofessional conduct is part of a pattern by Defense counsel. In April 2013, he was disqualified in a case in the Circuit Court of Cook County for uncivil behavior, and last year he was warned by a Wisconsin federal court to stop his abuse of the Clerk's office staff. (See *infra.* at pp. 20-21). Further, as this Court is aware, it can enter other more severe sanctions, in addition to monetary sanctions, pursuant to its inherent powers and § 1927 should it deem them appropriate. *In re Maurice*, 167 B.R. 114, 127–28 (Bankr. N.D. Ill. 1994), *as amended* (Mar. 31, 1994), *subsequently aff'd sub nom. Matter of Maurice*, 69 F.3d 830 (7th Cir. 1995); *Chambers*, 501 U.S. at 43. Courts can consider a pattern of similar misconduct in other cases in determining whether to issues sanctions. See *Coulter*, No. CIV.A. 12-338, 2012 WL 4051239, at *2 ("Plaintiff has been warned in an earlier case that "by filing motions that she knows to be abusive, harassing, or meritless, she exposes herself to sanctions …").

Defendant and its counsel's abuse of process and pursuit of frivolous legal and factual positions calls for the entry of monetary and other sanctions the Court deems appropriate under §1927 and the Court's inherent power. *Jolly Grp., Ltd. v. Medline Indus., Inc.*, 435 F.3d 717, 720 (7th Cir. 2006); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see also *Coulter v. Butler Cty. Children & Youth Servs.*, No. CIV.A. 12-338, 2012 WL 4051239, at *2 (W.D. Pa. Sept. 13, 2012), aff'd, 512 F. App'x 145 (3d Cir. 2013) ("Rule 11 sanctions also may be issued if [plaintiff] persists

in the use of the vitriolic and harassing language that has been characteristic of her filings" following a warning by the Court to desist.)

Defense counsel should also be ordered to pay monetary sanctions under Rule 30(d)(2) of the Federal Rules of Civil Procedure for impeding the Hasan deposition. *Medline Indus. v. Lizzo*, No. 08 C 5867, 2009 WL 3242299, at *1–2 (N.D. Ill. Oct. 6, 2009); *Redwood*, 476 F.3d at 469–70. Further, as an addition sanction, under the Court's inherent powers, the Court should consider barring Hasan from testifying and striking his report as only that sanction would remediate the misconduct. Having heard Plaintiff's counsel's outline for the deposition, if the deposition were to resume, Defense counsel can now prepare Hasan for the questions and preclude the type of candid answers Hasan would have given at the original deposition. This would defeat the very purpose of depositions and reward Defendant for its counsel's misconduct. (See discussion and case cites infra. at pp. 29-30).

Monetary sanctions should also be awarded to Plaintiff's counsel and expert, who have now hired their own counsel to protect their reputations against the false claims and pending frivolous sanctions motion brought against them. *Dal Pozzo v. Basic Mach. Co.*, 463 F.3d 609, 614 (7th Cir. 2006); *Walter v. Fiorenzo*, 840 F.2d 427, 436 (7th Cir. 1988).

Should the court deem it appropriate, it can in its discretion enter monetary and other sanctions sua *sponte* under Rule 11 (without expiration of the safe harbor period) for the pending sanctionable conduct since the Court has provided notice of the June 9, 2017 sanctions hearing. *Copeland v. Tom's Foods, Inc.*, 456 F. App'x 592, 594 (7th Cir. 2012).

II. Factual Background

This is a straightforward case in which the Plaintiff claims he was defrauded by Defendant into purchasing a low mileage, luxury used Infiniti FX37 (the "FX37"). Plaintiff alleges that Defendant misrepresented and failed to disclose that the FX37 had been in a serious accident. Third-party documents show that, prior to Plaintiff's purchase of the vehicle, the FX37 was in a major accident. These documents were prepared by experts in the field – the Manheim Automobile Auction, Progressive Insurance, the largest Infiniti dealer in Indianapolis and an Indianapolis body shop that repairs Infiniti vehicles for that dealership. Defendant knew that the FX37 had been in an accident Because Manheim notified it that the FX37 had received a grade of 1.9 "Rough" before it bid on the vehicle at auction.

The attorney misconduct started in this case almost as soon as the court proceedings got underway. Defense counsel declined to engage in any settlement discussions falsely claiming the lawsuit was fabricated by Plaintiff's counsel and that the FX37 had never been in an accident because there was no accident report (before later adopting the conspiracy theory that Plaintiff's expert had enlisted Plaintiff's counsel in his long running scheme to defraud used car dealer victims through lawsuits he fabricates.)

While pursuing a baseless motion to dismiss, Defendant attempted to block third-party document discovery. This is the very discovery which definitively proves that: (a) the FX37 wasin a serious accident as shown in detailed Progressive Insurance photographs of the accident damage; and (b) Manheim Automobile Auctions notified Defendant that the FX37 had a grade of 1.9 "Rough" (meaning that it had been severely abused or in a major collision and had sub-standard body repairs as shown in Manheim photographs made part of the grade repot). Defendant pursued frivolous motions for a discovery stay (Dkt. Nos. 31, 33, 34), and for protective orders (Dkt. Nos.

41, 45, 46, 151, 153, 159, 160) attempting to bar Plaintiff from obtaining this and other essential written and oral third party and expert discovery. Defendant also filed a baseless motion *in limine* (Dkt. Nos. 96, 98, 102) seeking an advisory opinion to admit Defendant's conclusory expert reports into evidence before Plaintiff even had a chance to depose the experts and challenge their reports as being conclusory and also irrelevant in the case of Hasan's report. Hasan only opines as to the FX37's mechanical condition today as opposed to when Plaintiff purchased the FX37. Plaintiff had numerous mechanical repairs done which arose from the accident.

Defense counsel also refused to require Defendant to verify its interrogatory answers, requiring a motion to compel. (Dkt. No. 29). Defense counsel claimed that Rule 33 allowed Defense counsel and not Defendant to verify the answers. When presented with authority to the contrary in emails, he refused to provide authority supporting his position and sent uncivil emails. (Dkt. No. 29). He then attacked Plaintiff's counsel for purportedly sending too many emails in Motions to Stay and for a Protective Order (Dkt. Nos. 31, 34, 41, 46). Defense counsel also made improper objections to requests to admit and refused to answer them. (Dkt. No. 83). The Court granted Plaintiff's motion to compel Defendant to verify its interrogatory answers and overruled Defendant's baseless objections to the requests to admit. (Dkt. Nos. 71, pp. 7-8, 94).

Defense counsel pursued frivolous sanctions motions throughout these proceedings. (Dkt. Nos. 41, 46, 67, p. 3, 106, 128, 135, 136, 108, 121, 128, 135, 138, 142, 146, pp. 1-2., 150). He repeatedly made unfounded allegations of attorney misconduct, bad faith and fee churning against Plaintiff's counsel, which the Court has denied or rejected. Defense counsel falsely claimed and continues to falsely claim that Plaintiff's counsel is participating in the type of serious criminal activity that occurred during the corrupt Grey Lord years of the 1980's. Defense counsel claims

that Plaintiff's expert enlisted Plaintiff's counsel to participate in litigating a fabricated lawsuit as part of the expert's long running criminal enterprise. (Dkt. Nos. 106, 121, 128, 138, 142, 150).

In Defendant's first motion for a protective order, Defense counsel made the following false charge:

> Plaintiff does not consider a lawsuit as a way to redress a legitimate grievance by uncovering the truth and applying the law, but instead considers it to be a profit making, fee generating enterprise for attorneys. … Plaintiff should not be allowed to use multiple, duplicative, and unnecessary discovery tools to build up his hours in the hope of being able to be willfully blind as to the truth, fool a trier of fact, and take advantage of a fee shifting statute.

In that same motion, Defense counsel also charged, in a footnote, that Plaintiff's counsel appeared to be concealing and withholding from discovery documents produced by Progressive Insurance. This claim had no basis. Progressive Insurance hadn't produced any documents yet as Defense counsel was aware. Defense counsel knew that Plaintiff's counsel had an established practice to provide third-party documents to Defense counsel as soon as the documents were produced. (Dkt. No. 41, pp. 8-9).

With no basis in law for seeking such relief, Defense counsel later sought to initiate criminal contempt proceedings against Plaintiff's expert based on speculation and incompetent evidence. (Dkt. No. 108). He also filed a baseless motion to strike and for sanctions regarding Plaintiff's Statement of Additional Undisputed Facts (Dkt. Nos. 128, 135) (filed in opposition to Defendant's cross-motion for summary judgment) based upon nothing more than an obvious typographical error. In that motion, he also falsely accused Plaintiff's counsel of sandbagging and other attorney misconduct. *Id.* This Court rejected these claims and denied the motion. (Dkt. No. 164).

Defense counsel further unnecessarily multiplied the proceedings. He refused to cooperate in scheduling depositions and expert disclosures, and delayed and failed to cooperate in scheduling

discovery conferences. Defense counsel also accused Plaintiff's counsel in pleadings and emails of interfering with his vacations, despite Plaintiff counsel's written offers to provide extensions. This uncivil conduct led to unneeded emails, meet and confers or motion practice.

Defense counsel obstructed the deposition of Defendant's expert Hasan with coaching, instructions not to answer and other improper practices. (Dkt. Nos. 153, 159, 160). He also instructed Hasan not to produce documents called for in the rider to his deposition subpoena showing the amount of money Defendant has paid Hasan as part of his long-standing business relationship with Defendant.[1] (Dkt. Nos. 153, 160, pp. 27-32).

Even though he was the one who had disrupted the deposition and caused the court-reporter to walk out, Defense counsel filed a motion for a protective order attempting to cover-up his misconduct. (Dkt. Nos. 151, 155) As part of the cover-up, he also opposed Plaintiff's counsel's efforts to provide this Court with an audio tape of the Hasan deposition disclosing more fully his misconduct. (Dkt. No. 158). His opposition to that motion misstated what occurred at the deposition and falsely accused Plaintiff's counsel of lying. The transcript proves that Defense counsel first made the "criminal enterprise" charges in the conference room when he was trying to drag his client out of the room after his client suddenly started questioning Plaintiff's counsel regarding settling the case. (Ex. C, pp. 122-123)

Plaintiff's counsel told the truth that the defamatory comments were made in the conference room for everyone there to hear. Defense counsel did not try to the claim the comments were made in confidence when the subject came up at the deposition. (Ex. C, pp. 122-123). He

[1] The income Hasan generates from Defendant on an ongoing basis is particularly relevant to his bias as he has agreed to act as an expert here supposedly without being paid anything until the end of the case and with no set compensation amount set for providing his opinion. (Dkt. No., pp. 35-36).

made up this defense in his motion for a protective order, after the fact, to try to claim the comments were made in a confidential discussion so he could falsely accuse Plaintiff's counsel of eves dropping. Even though, he has no trouble attacking Plaintiff's counsel for all kinds it imagined transgressions, it is telling he didn't raise the eves dropping charge at the deposition.

In his opposition, Defense counsel showed no remorse for the "criminal enterprise" claims. He did not apologize for his demeaning attack on Plaintiff's counsel, but instead asserted them once again in the public court record:

> Either Plaintiffs attorney was trying to create an incident, or Defendants attorneys' low opinion of him really bothers him. If it is that he is bothered by the opinion of Defendants attorney, then he should change his ways, get a real and unprejudiced inspection of Plaintiffs car by a unimpeachable expert. When it comes back that the Plaintiffs car was not in a serious accident before it was sold to Plaintiff, and that the frame/unibody is not bent, he should then dismiss this case. Then his actions may change Defendants attorneys' opinion of him. (Dkt. No. 158, p. 2)

When his effort to stop the Court from listening to the audio tape failed, Defense counsel filed yet another frivolous motion. (Dk. No. 162) He requested that the audio tape be placed under seal, even though he had no grounds for the motion based on existing law or good faith advancement of the law. The case he relied upon did not support concealing the evidence of his uncivil behavior which cannot be discerned from a review of the transcript alone. (Dkt. No. 162).

At the Hasan deposition, as the audio recording and transcript (Dkt. No. 160) prove, Defense counsel threatened to end the deposition, constantly interrupted the questioning, sighed, shouted, rustled papers, pounded on the table, and engaged in other histrionics and rude and sarcastic behavior. He also made abusive comments about Plaintiff's counsel and used profanity. (See Dkt. Nos. 159, 160). His sustained filibustering and speaking over the witness and Plaintiff's counsel caused the court reporter to walk out of the deposition, thereby preventing its conclusion. *Id.*

This behavior is unacceptable. However, the most disturbing and serious aspect of Defense counsel's misconduct are the defamatory claims of criminal conspiracy leveled at Plaintiff's counsel and expert in publicly filed court pleadings. (Group Exhibit A). Defense counsel also made these claims in emails (Group Exhibit B) and at the Hasan deposition. (Exhibit C). Defense counsel's slander continued despite the Court warning him to stop filing "vitriolic" pleadings in an order (Dkt. No. 118) and at court appearances. At the end of one motion hearing, this Court took the time to point out to its law clerks in attendance that such conduct was unacceptable and that lawyers who engaged in such behavior were unprofessional. It asked counsel to stop this uncivil conduct.

Despite these warnings, Defense counsel has persisted in falsely claiming that Plaintiff's counsel and expert are misusing the legal system as part of a long running criminal conspiracy. He claims that Plaintiff's expert has convinced Plaintiff's counsel and other lawyers to join him in fabricating cases and churning fees to extort used car dealers and other defendants. (Dkt. No 102; Group Exhibit A2).

In its pending cross-motion for summary judgment and opposition to Plaintiff's motion for partial summary judgment, Defendant leveled the following false claims:

> The Plaintiff's Motion for Partial Summary Judgment is, like the entire Plaintiff's case, a total and complete fraud, submitted for the sole purpose of assisting the Plaintiff's attorneys in their attempt to use the legal system to extort money from the Defendant. ... Defendant's lawyer [hasn't] seen anything like this perpetrated by lawyers in a court of law. This is akin to a situation back in the 1980's where certain personal injury attorneys set up auto-staged accidents and then filed injury lawsuits based on those staged accidents. (Dkt. No. 106, p.1; and Group Exhibit A3).

These same baseless charges of criminal wrongdoing were repeated in Defendant's reply in support of its *motion limine* to admit its experts' reports with the added slur that Plaintiff's expert is a "scam artist." These false claims fly in the face of the record which proves that Plaintiff

conducted his own pre-suit investigation without the aid of Plaintiff's counsel or expert that justified his retaining counsel to file and pursue this case. This investigation included Plaintiff obtaining estimates from an Indianapolis Infiniti dealer and body shop detailing the extensive still existing damage to the FX37 caused by the accident. Defense counsel simply ignores the record to advance his conspiracy theories. (Dkt. No. 102, p. 4; Group Exhibit A2)

Defense counsel made these slanderous criminal conspiracy claims in emails not only to Plaintiff's counsel but to staff members at his law firm. (Group Exhibit B) Defense counsel continued to send these emails, even after Plaintiff's counsel asked him to stop on more than one occasion in emails and in a phone conference. Asking him to stop only encouraged the attacks:

> As to my remarks, the only thing unprofessional here is what you are doing, which is making up a bogus case and trying to run up hours to extort money through a lawsuit. If you don't like the truth, then stop doing what you are doing. I call a spade a spade. Group Exhibit B4.

Without any antecedent or comment that invited such uncivil attacks, Defense counsel also sent emails to Plaintiff's counsel mocking and demeaning Dmitry Feofanov for allegedly having filed for bankruptcy. There was simply no reason to bring up these private personal matters of which Plaintiff's had no knowledge and which didn't concern him. Plaintiff's counsel had not even raised any subject in any way related to Mr. Feovanov, who is the attorney prosecuting the other consumer fraud litigation pending against Defendant in the Circuit Court of Cook County. (Group Exhibit B7, B12).

Defense counsel also attacked a third-party witness, Michael Weber, who provided declarations in this case regarding the 1.9 "Rough" grade Manheim Automobile Auctions gave the FX37. He threatened to file a motion to have Weber held in contempt. (Group Exhibit B11). According to Weber's attorney, Jeff Hoffmeyer, Defense counsel berated Weber over the telephone and falsely accused him of committing perjury.

Hoffmeyer represented that Defense counsel threatened Weber with the prospect of perjury because Weber's first declaration inaccurately stated that Defendant purchased the FX37 at an online auction as opposed to in person at a live auction. This inadvertent mistake didn't change that fact that Manheim had notified Defendant of the 1.9 "Rough" grade received by the FX37 as Defendant admitted in response to requests to admit. (Dkt. No. 88-1, p. 187, Answers to RFA Nos. 6-7). This grade appears in the screen above the auction lane and in the Manheim grade report made available to all prospective bidders. (Dkt. No. 88-1, p. 12, 36, 166).

The charges of criminal conduct against Plaintiff's counsel have required him to retain counsel to protect his good name built over 30 years of practicing law. Plaintiff's counsel comes from a family of lawyers (his father Donald Lubin and brother Thomas Lubin are both attorneys). They have devoted their lives to the practice. They are well thought of in this community. Plaintiff's counsel's father Donald Lubin was the longtime Chairman of the law firm now known as Dentons. Defense counsel has sought to destroy Plaintiff's counsel's reputation in publicly filed pleadings. The damage cannot be undone.

As set forth in his resume (Exhibit D), Plaintiff's counsel is a graduate of Dartmouth College and the University of Chicago Law School. He is a member of the trial bar of the Federal Court for the Northern District of Illinois and of the bar for the Seventh Circuit Court of Appeals. He has been appointed lead counsel in many national or state-wide class actions. Plaintiff's counsel has successfully defended and settled "bet the company" class actions on behalf of large corporate or banking clients. He has also defended or prosecuted antitrust, franchise, securities fraud, defamation, legal malpractice, intellectual property, non-compete agreement and trade secret cases. He has assisted in the defense of complex white collar criminal cases working closely with

some of the top criminal attorneys in Chicago. For more than 15 years, Plaintiff's counsel has taught trial advocacy at the University of Chicago Law School's Mandel Legal Aid Clinic.

Automobile fraud cases make up only a small part of Plaintiff's counsel's practice. Plaintiff's counsel handles a select number of cases, like this case, at any given time. He only takes these cases after carefully screening the evidence, interviewing the plaintiff extensively and obtaining a preliminary consulting expert opinion on liability and damages issues. The consulting experts he has retained have all been approved as experts in prior court or arbitration cases.

Plaintiff's counsel proceeded with this case, first as an AAA arbitration matter and then in this Court (when Defendant refused to honor its arbitration agreement) only after and thorough pre-suit investigation. He interviewed Plaintiff, reviewed the repair estimate from the Indianapolis body shop (specializing in Infiniti work), and the Infiniti dealer. He also consulted with Plaintiff's expert who had inspected the FX37 and reviewed of the estimates obtained by Plaintiff.

Plaintiff's counsel also reviewed, before and after this suit was filed, evidence and court records showing that Defendant had a pattern of cheating consumers in the same manner as it had done to Plaintiff. See *Tate v. S&M*, Exhibit E, p. 6 ("Ihmoud incredibly denies he knew the Malibu had frame damage. Mannheim conspicuously disclosed the frame damage. Such damage is clearly material, affecting both the safety and the value of the car. There was no disclosure to Tate.") Plaintiff's counsel also interviewed Dmitry Feofanov regarding Defendant's practices. Mr. Feofanov was plaintiff's counsel in *Tate* and the other Cook County Circuit Court cases pending against Defendant.

Based on his pre-litigation investigation, Plaintiff's counsel concluded that there was a strong case that Defendant had defrauded Plaintiff into purchasing a rebuilt wreck worth substantially less than the purchase price. After Defendant refused to arbitration, Plaintiff's counsel concluded that the facts justified filing and keeping this case in federal court under diversity jurisdiction (just as this Court later concluded was proper after reviewing Plaintiff's

evidentiary submissions and the declaration of Plaintiff's expert.) *Twyman v. S&M Auto Brokers*, No. 16 C 4182, 2016 WL 6082357 (N.D. Ill. Oct. 18, 2016).

The merits of the decision to proceed with this case was later bolstered by new documents obtained after suit was filed. Plaintiff's counsel learned that Defendant was the subject of a consumer fraud investigation by the Illinois Attorney General's Consumer Fraud Division due to the large number of consumer complaints against it, some of which included selling rebuilt wrecks and turning off the check engine light.

In discovery, Plaintiff obtained a Manheim Automobile Auction condition report (made available to Defendant at the time it purchased the FX37) showing that the FX37 had substantial sub-standard body work and bald tires. (Dkt. No. 88-1, pp. 169-179) Plaintiff also obtained Progressive Insurance estimates and photographs showing the substantial damage to the FX37 from the accident. The photographs showed that the FX37 had been in hit in the back-end and front-end in what appeared to be a multi-car collision. (Dkt. No. 88-1, pp. 48-164). The damage from this major accident was not properly repaired before Plaintiff purchased the FX37 from Defendant, as proven by the documents produced by Manheim (Dkt. No. 88-1, pp. 169-179), the Infiniti dealer (Dkt. No. 88-1, pp. 215-224), and the independent Indianapolis body shop that specializes in repairing Infiniti cars (Dkt. Nos. 88, pp. 1-22; 125-2, pp. 138-172). This fact is also proven by the declaration of Plaintiff's expert (Dkt. Nos. 60; 88, pp. 25-132; 125-2, pp. 214-217) which this Court found to be competent for purposes of denying Defendant's motion to dismiss. *Twyman*, 2016 WL 6082357 at *2.

The conclusions of Plaintiff's expert are not an anomaly. They mirror those of Manheim, and of the Indianapolis Infiniti dealer and body shop, as shown in the estimates or reports prepared

by those entities *before* this case was filed and *before* the expert reached his conclusions in his declarations.

III. Argument

A. Summary of Pending Motions and Pleadings Warranting Entry of Sanctions.

Monetary and other appropriate sanctions are warranted under the Court's inherent powers and § 1927 as to: (a) Defendant's motions, sanction motions, and sanctions requests that the Court has already denied; and (b) Defendant's oppositions to Plaintiff's motions, which the Court has already rejected. The record supports that Defense counsel has needlessly multiplied these proceedings burdening Plaintiff, Plaintiff's counsel and expert and the court system in violation of § 1927.

Sanctions are also warranted under the Court's inherent power, and § 1927 for the following frivolous motions and pleadings, which are still pending and which the Court has not yet ruled on:

1. Defendant's motion for summary judgment (Dkt. No. 106) which doesn't comply with the local rules and advances frivolous factual and legal arguments as set forth in Plaintiff's opposition (Dkt. Nos. 127, 125);

2. Defendant's requests for sanctions in its opposition to Plaintiff's motion for summary judgment (Dkt. No. 106) falsely claiming that Plaintiff has misstated the record on matters that cannot be disputed such as Manheim arriving at a 1.9 "Rough" grade for the FX37 due to the large number of sub-standard repairs caused by an accident summarized in its report with photographs of the sub-standard work;

3. Defendant's motion for a protective order regarding the deposition of Defendant's expert, Hasan (Dkt. No. 151) which is contrary to established law, doesn't justify Defense

counsel's abusive and obstructive behavior at the deposition, and misstates what transpired as a review of the deposition transcript (Dkt. No. 160) and audio recording prove; see Dkt. Nos. 153, 158 for a detailed summary of the transgressions;

4. Defendant's opposition to Plaintiff's motion for a protective order regarding the Hasan deposition (Dkt. No. 155) which misstates what transpired at the deposition, is contrary to established law and continues to falsely accuse Plaintiff's counsel of fabricating this case instead of owning up to Defense counsel's misconduct;

5. Defendant's motion to place the Hasan audio recording under seal (Dkt. No. 162) as the case cited in support of the motion has nothing to do with sealing an audio recording of a deposition that reveals professional misconduct by an attorney, which cannot be fully determined from the transcript, such as shouting, pounding the table and sarcastic and antagonistic tone of voice;

6. Defendant's motion for sanctions against Plaintiff's counsel and Mr. Szczesniak (Dkt. Nos. 121, 138, 142, 150) which relies on frivolous legal arguments, speculation, and defamatory claims of criminal conspiracy, along with other false and speculative claims, which are refuted by Mr. Szczesniak, his wife, son and mother along with his mother's doctor, and third party documents. (Dkt. Nos. 137, 140, 149).

Sua sponte sanctions under Rule 11 are warranted, as to pending motions and pleadings which have not been withdrawn, if the Court deems entry of such sanctions appropriate, because the Court has provided notice that it may enter sanctions at the upcoming hearing set for June 9, 2017. *Copeland*, 456 F. App'x at 594.

Plaintiff is not yet seeking Rule 11 sanctions. Plaintiff will file an additional motion for Rule 11 sanctions twenty-one days after the service of this Motion, if Defendant does not

withdraw: (a) its false criminal conspiracy claims against Plaintiff's counsel and expert leveled in the following pleadings: Dkt. Nos. 106, 121, 138, 142, 150, 155; and (b) the following pending frivolous Defense motions and Defense opposition pleadings: Dkt Nos. 106, 121, 138, 151, 155, 121, 138, 142, 150, 155 and 162.

B. The Testimony of Plaintiff and Plaintiff's Counsel is Not Needed in Order to Enter Sanctions.

There is no evidence supporting Defense counsel's false claim that Plaintiff's expert induced Plaintiff's counsel to help fabricate this case as part of an ongoing criminal enterprise. The undisputed record demonstrates that Plaintiff contacted Plaintiff's counsel to ask him to represent him after conducting his own investigation in which Plaintiff's expert played no role. Plaintiff's counsel filed this case and has continued to prosecute it based on its legal and evidentiary merit. See, Plaintiff's Response to Defendant's Motion to Dismiss and Supplements thereto (Dkt. Nos. 23, 60, 65); Plaintiff's Summary Judgment Motion (Dkt Nos. 86, 87, 88, 88-1, 111); Plaintiff's Opposition to Defendant's Summary Judgment Motion (Dkt. Nos. 127, 125, 125-1).

The undisputed record in this case supports sanctioning Defendant and its counsel for the misconduct, false claims and frivolous motions and legal positions outlined in this Memorandum. There is no need for any testimony by Plaintiff or Plaintiff's counsel to refute the criminal enterprise claims, or to prove that Defense counsel has filed frivolous pleadings that lack basis in law or fact and has otherwise violated § 1927. The frivolous and false nature of Defense counsel's legal and factual positions and the unprofessional nature of his conduct is demonstrated by: (a) the pleadings he has filed and his emails (Group Exhibits A-B); (b) the evidentiary records submitted by Plaintiff as to the motion to dismiss and summary judgment motions (Dkt. Nos. 23, 60, 65, 86,

87, 88, 88-1, 111, 127, 125, 125-1); and (c) the Hasan deposition transcript (Dkt. No. 160) and audio recording.

C. Defense Counsel's False Claims that Plaintiff's Counsel and Expert are Running a Criminal Enterprise Call For Entry of Sanctions.

Monetary and other sanctions, which this Court deems appropriate, are called for to punish Defense counsel for hijacking this case, and attempting to destroy the reputations of Plaintiff's counsel and expert with false charges that they are operating a criminal enterprise. Excerpts from the pleadings containing these charges are attached as Group Exhibit A. Excerpts from emails containing these claims are attached as Group Exhibit B. Excerpts from the deposition of Hasan containing these claims are attached as Exhibit C.

§ 1927 states:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

A court has discretion to impose § 1927 sanctions when an attorney, as here, has acted in an "objectively unreasonable manner" by engaging in "serious and studied disregard for the orderly process of justice,"; pursued a claim that is "without a plausible legal or factual basis and lacking in justification," or "pursue[d] a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound," *Jolly Grp., Ltd*, 435 F.3d at 720.

This Court also has the inherent power to sanction Defense counsel and Defendant for making false factual claims that lack evidentiary support and for engaging in abusive conduct. As the Supreme Court in *Chambers*, 501 U.S. at 43 held: "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." It is appropriate to enter

sanctions under the Court' inherent powers to punish a lawyer who makes repeated abusive and "vitriolic" statements about opposing counsel. *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1330 (11th Cir. 2002). "Sanctions meted out pursuant to the court's inherent power are appropriate where the offender has willfully abused the judicial process or otherwise conducted litigation in bad faith." *Salmeron v. Enter. Recovery Sys., Inc.*, 579 F.3d 787, 793 (7th Cir. 2009); *Maynard v. Nygren*, 332 F.3d 462, 470–71 (7th Cir.2003). "Though 'particularly severe,' the sanction of dismissal is within the court's discretion." *Montano v. City of Chicago*, 535 F.3d 558, 563 (7th Cir.2008); *Salmeron*, 579 F.3d at 793.

Rule 11 also calls for sanctions to be entered against a party or its lawyer who make factual claims in pleadings that lack evidentiary support, make abusive comments about opposing counsel and then fail to withdraw them pursuant to the Rule's safe harbor requirements. As the Fifth Circuit Court of Appeals has previously held, "[a]busive language towards opposing counsel has no place in documents filed with our courts; the filing of a document containing such language is one form of harassment prohibited by Rule 11." *Coats v. Pierre*, 890 F.2d 728, 734 (5th Cir.1989), *cert. denied*, 498 U.S. 821 (1990); see also *Redd v. Fisher Controls*, 147 F.R.D. 128, 132 (W.D. Tex. 1993) ("counsel was injured by the [abusive] statements as soon as they were filed and made a part of this file's public record.")

Plaintiff has provided Rule 11 notice through the filing of this sanctions motion and with the transmittal of the Rule 11 letter attached hereto as Exhibit F. Plaintiff will file a separate Rule 11 sanctions motion, if Defendant does not withdraw its offending pleadings on motions which remain pending, and ask the Court to strike from the record and put under seal other offending pleadings that defame Plaintiff's counsel and expert. At this point, however, the damage is already done as to the defamatory statements are already in the public record. This Court in the exercise

of its discretion can issue sanctions under Rule 11 *sua sponte* even without Plaintiff filing a Rule 11 motion. *Id.*; *Copeland*, 456 F. App'x at 594.

There is simply no evidence that Plaintiff's expert convinced Plaintiff's counsel to participate in a fraud on the court. Plaintiff's counsel filed this suit because of evidence gathered by Plaintiff which mirrors the declarations of Plaintiff's expert. Prior to the preparation of these declarations, the evidence of major accident damage had already been established by other experts who had inspected the FX37. The Indianapolis body shop, who inspected the FX37 for Plaintiff, pointed all this damage out to Plaintiff and provided him with a repair estimate of over $9,000 to fix the damage and substandard repairs. Shop (Dkt. No. 88, pp. 1-22; 125-2, pp. 138-172). He later prepared photographs in Plaintiff's presence showing all of the damage. (Dkt. No. 88, pp. 8-23).

The fact that the FX37 was a rebuilt wreck with substantial sub-standard body work and mechanical problems is proven by Manheim Automobile Auctions' grade report which details all that damage with photographs (Dkt. No. 88-1, pp. 169-179), Infiniti dealer, Dreyer & Reinbold's report (Dkt, No. 88-1, pp. 215-224), the estimate of Moorehouse Auto Body Shop (Dkt. No. 88, pp. 1-22; 125-2, pp. 138-172) and the deposition of its owner Donald Moorehouse (Dkt. No. 111) and the photographs taken by him of the damage (Dkt. No. 88, pp. 8-23). Plaintiff's expert's declarations cite to and mirror these other independent expert findings. (Dkt. Nos. 60; 88, pp. 25-132; 125-2, pp. 214-217).

This Court concluded that much of this same evidence justified finding that this case met the diversity jurisdiction threshold of over $75,000 in combined claimed actual and punitive damages. *Twyman v. S&M Auto Brokers*, No. 16 C 4182, 2016 WL 6082357 (N.D. Ill. Oct. 18, 2016). This Court held that "Plaintiff, using competent proof—including a declaration from a

proposed expert—has shown by a preponderance of the evidence that he may be entitled to actual damages approximating $30,000." *Id.* at *2.

Despite this Court's conclusion, Defense counsel, with the full knowledge and approval of Defendant, has persisted in claiming in pleadings that Plaintiff's counsel and expert fabricated this case. See Group Exhibit A2-A6. The Court *in Lockheed Martin Energy Sys., Inc. v. Slavin*, 190 F.R.D. 449, 458 (E.D. Tenn. 1999) issued sanctions when, like here, an attorney filed pleadings and motions that were "frivolous, baseless, irrelevant, meritless, abusive, offensive, and redundant", and which contained "vicious personal and uncivil attacks against opposing counsel."

Pleadings filed in bad faith with intent to harass, multiply proceedings, and cause unnecessary cost and delay violate 28 U.S.C.A. § 1927. *Ordower v. Feldman*, 826 F.2d 1569, 1574 (7th Cir. 1987). When "a lawyer pursues a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound, the conduct is objectively unreasonable and vexatious" and violates § 1927. *In re TCI Ltd.*, 769 F.2d 441, 445 (7th Cir. 1985).

The tactic employed by Defense counsel of attacking a contingency plaintiff's lawyer claiming he has manufactured a frivolous case to generate fees is one that courts roundly condemn. *Boren v. BOC Group, Inc.*, 385 Ill. App. 3d 248, 257 (5th Dist. 2008). Defense counsel plainly believes that if he files enough false charges and engages in enough unpleasant and acrimonious conduct; the increased costs and the stress of dealing with these tactics will deter or distract Plaintiff's counsel.

Use of these unprofessional tactics is part of a pattern by Defense counsel. *Salem et al v. Nesheiwat et al*, (Circuit Court of Count, Ill. April 24, 2013), Exhibit G (Defense counsel in this case disqualified as counsel for engaging in unethical *ex parte* communications and repeated

unprofessional and abusive interactions with opposing counsel); and *Price v. Adams Auto Sales, Inc.*, No. 16-CV-197-JDP, 2016 WL 3199546, at *1-2 (W.D. Wis. June 8, 2016) (Defense counsel in this case "telephoned and emailed the clerk's office, insisting that the entry of default was the court's error and demanding *ex parte* relief. Court staff reports that attorney Brodsky was demeaning, combative, unrelenting, and rude.")

These Rambo litigation tactics are universally condemned. Final Report of the Committee of the Seventh Federal Judicial Circuit, 143 F.R.D. 441 (1992) (condemning uncivil "Rambo-style" tactics and noting that "[a] lack of civility can escalate clients' litigation costs while failing to advance their interests or bring them closer to their ultimate goal of ending disputes."); *see generally* Brown, Lonnie T., Civility and Collegiality — Unreasonable Judicial Expectations for Lawyers as Officers of the Court?, 2 St. Mary's J. Legal Mal. & Ethics 324 (2012) (noting rise in complaints of uncivility in litigation and collecting scholarly literature on the topic).

As stated by Justice Simon, "Our system of justice requires that judicial proceedings be conducted with the dignity and decorum that are conducive to a rational and dispassionate determination of the facts at issue." *People v. Zyporim*, 106 Ill.2d 419, 423 (1985) (Simon, J. dissenting). Failure to conduct oneself with dignity and decorum toward the court and one's opponent is a sign of disrespect to the justice system. Absent dignity and decorum, the parties' right to a fair trial is jeopardized. *Offut v. United States*, 348 U.S. 11, 17 (1954).

Use of uncivil tactics damages not only the parties (warranting awarding them monetary sanctions to compensate for the costs and fees they have incurred) but also damages the judicial system. Payment of additional monetary sanctions to the Clerk of the Court to repay the tax payers is thus an available sanction. As the Court in *Lockheed Martin Energy Sys., Inc. v. Slavin*, 190

F.R.D. 449, 462 (E.D. Tenn. 1999), relying on Judge Aspen's opinion in *Cannon v. Loyola Univ. of Chicago*, 116 F.R.D. 243, 244 (N.D. Ill. 1987), observed:

> Where an attorney has repeatedly filed meritless and redundant materials in a case resulting in a needless waste of judicial resources, monetary sanctions payable directly to the Clerk of the Court are appropriate. *Cannon*, 116 F.R.D. at 244; *Advo System, Inc. v. Walters*, 110 F.R.D. 426, 433 (E.D.Mich.1986); *Olga's Kitchen of Hayward, Inc. v. Papo*, 108 F.R.D. 695, 711 (E.D.Mich.1985); *Itel Containers Int'l Corp. v. Puerto Rico Marine Management, Inc.*, 108 F.R.D. 96, 106 (D.N.J.1985). As stated by the district court in *Cannon* "[t]he taxpayers of the United States should not have to bear the burden of [Plaintiff's] 'penchant for harassing the defendants,' ... which has turned into a penchant for unduly burdening this Court as well." 116 F.R.D. at 244 (citation omitted). In this case the taxpayers should not have to bear the burden of Mr. Slavin's penchant for harassing Plaintiff.

Such misconduct also calls for additional sanctions to be crafted at the Court's discretion to meet the circumstances. *In re Maurice*, 167 B.R. 114, 127–28 (Bankr. N.D. Ill. 1994), *as amended* (Mar. 31, 1994), *subsequently aff'd sub nom. Matter of Maurice*, 69 F.3d 830 (7th Cir. 1995) (reporting the offending attorney to the appropriate professional disciplinary authorities and requiring ethics training).

Suspending an attorney's right to practice before it is within this Court's inherent power when the Court has directed the attorney to stop and where the misconduct is part of an ongoing pattern. As the Supreme Court has held:

> [A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it. … While this power "ought to be exercised with great caution," it is nevertheless "incidental to all Courts."

Chambers, 501 U.S. at 43; *Salem et al v. Nesheiwat et al*, (Circuit Court of Count, Ill. April 24, 2013), Exhibit G.

Defendant could have terminated its counsel after this Court indicated to Defendant in open court on April 12, 2017 that Defense counsel appeared to be acting unprofessionally and may be fraudulently attacking Plaintiff's counsel and expert (Exhibit G, pp. 4-6, 14). Defendant should have investigated its attorney's alleged misconduct and withdrawn the false claims of criminal

misconduct and its other frivolous pleadings on pending motions; it still has an opportunity to do so.

The Court made it clear to Defendant at the April 12, 2017 hearing that Defense counsel's charges of criminal misconduct, if false, were obstructionist. (Exhibit H, pp. 4-6, 14). The Court stated: "I have no problem levying the appropriate sanction against a lawyer who misrepresents or lies to the Court in such a manner to hijack a litigation" (Exhibit H, p. 5). The Court reiterated at the end of the hearing that it would "not permit my courtroom, ever, to be used as circus." (Exhibit H, p. 19).

However, Defendant did not withdraw the charges and frivolous pleadings. It left them in place, even though its owner, Mohammed Ihmoud had already admitted, at the Hasan deposition, that Defense counsel didn't mean to accuse Plaintiff's counsel of running a "criminal enterprise", appearing to try to excuse these defamatory claims as having been made in anger and not because they were true. (Exhibit C, p. 125) This is tantamount to an admission that Defendant knows the charges are false just as Ihmoud knew Defendant had committed consumer fraud in the *Tate* case as the Court found there. *Tate v. S&M*, Exhibit E, p. 6.

Defendant's knowledge that the charges are false is supported by the evidentiary record. As in *Tate*, Manheim had notified Defendant (Dkt. No. 88-1, p. 187-Answers to RFA Nos. 6-7, p. 12; Dkt. No. 88-1, p. 166) before it sold the FX37 to Plaintiff that the FX37 had received a 1.9 "Rough" grade with the grade report containing photographs depicting the sub-standard body work and describing that substandard work in detail. (Dkt. No. 88-1, pp. 169, 171-172). By now, Defendant has also seen the other evidence proving that the FX37 was in a serious accident and had substantial damage at the time Defendant sold it to Plaintiff, such as the Progressive

Insurance documents and photographs. Ihmoud saw these documents at the Hasan deposition as they were used as exhibits there.

Given that evidence, no reasonable used car dealership (who inspects used cars for damage for a living and inspected the FX37 before selling it) could believe that there was a good faith basis for the charge that Plaintiff's counsel, under the direction of Plaintiff's expert, fabricated this lawsuit to extort Defendant. *See Totz v. Cont'l Du Page Acura*, 236 Ill. App. 3d 891, 904 (2nd Dist. 1992) ("a cursory inspection would have revealed to one experienced in the automobile business that the Accord had been extensively damaged in an accident. The trial judge could reasonably have concluded that Buonauro was aware of this fact at the time he and Delvin sold the car to the Totzes despite his denial.")

Defendant has other civil suits for alleged fraud pending against it with the same Defense counsel representing it. No other court or opposing attorney should be vexed with what has occurred here. The unrelenting misconduct of Defense counsel (made without remorse and with ever greater vitriol even after he has been told to stop) foists significant stress on opposing counsel and does substantial damage to the judicial system. Accordingly, other sanctions, in addition to monetary sanctions, are available to punish and deter this ongoing misconduct, should the Court determine they are appropriate. *JFB Hart Coatings, Inc. v. AM Gen. LLC*, 764 F. Supp. 2d 974, 990 (N.D. Ill. 2011); see also *Chambers*, 501 U.S. at 45.

D. Sanctions Should Enter Against Defendant and its Counsel for Having Pursued Baseless Motions, Positions and Sanctions Requests which this Court Denied or Rejected.

This Court has denied the following baseless motions filed by Defendant:

1. Motion to Stay Discovery (Dkt. Nos. 31, 33, 34) which inaccurately claimed Plaintiff's counsel was interfering with Defense counsel's vacation to Florence, was serving too

much written discovery, and sending too many emails, and claimed without basis that Plaintiff should be barred from deposing the owner of the Indianapolis Auto Body Shop that had concluded the FX37 needed over $9,000 in body work;

2. Motion for a Protective Order (Dkt. Nos. 41, 45, 46, 48, 50) which again sought without legal or factual basis, to preclude Plaintiff from taking written discovery and bar Plaintiff without basis from deposing the owner of the Indianapolis Body Shop;

3. Motion in Limine (Dkt. Nos. 96, 98, 102) which improperly sought an advisory opinion to admit the entirely conclusory opinions of Defendant's experts before Plaintiff had a chance to test them by deposition or file a motion to bar their testimony based on a full record.

The Court denied the following baseless sanctions motions or requests brought by Defendant in the following motions or other pleadings: Reply In Support of Motion for Protective Order and For Sanctions (Dkt. No. 46, pp. 1-2); Motion to Strike Statement of Additional Facts and For Sanctions (Dkt. Nos. 128, 135, 136); Objection to Plaintiff's Motion to Make the Progressive Documents Part of the Motion to Dismiss Record (Dkt. No. 67, p. 3).

Plaintiff's simple motion to make the newly obtained Progressive Insurance documents part of the motion to dismiss record (Dkt. Nos. 65, 68) was met with the following frivolous sanctions request and slander of Plaintiff's counsel:

> Used car dealers are not fair game targets for unscrupulous attorneys who look at lawsuits as a means to commit "legal extortion", and not as a way to get at the truth and remedy a wrong. The Plaintiff's attorney must be sanctioned for his lies, misrepresentations and abusive litigation tactics in this small claims case. … [T]he Plaintiff's Attorney should be sanctioned not just for the amount of unnecessary attorney's fees he cost his intended victim, but more for his many misrepresentations to the Court in several pleadings, and for his abusive litigation tactics. (Dkt. No. 67, p. 3)

The Progressive Insurance documents (Dkt. No. 67, pp. 4-24) further proved that the FX37 had been in a major accident. The Progressive Insurance production included an $11,188.39 repair

estimate (Dkt. No. 67, pp. 6-11), and photographs (Dkt. No. 67, pp. 12-24) of all the damage. The estimate and photographs show the damage caused by a major multi-car collision with impact on the front and back ends of the vehicle. They show a cracked windshield, bent and split aluminum hood, other bent and damaged body panels and bumpers on the front and back of the vehicle, front end frame damage, bent and cracked metal, damaged steel or plastic parts inside the front of the FX37 including a bent upper radiator support, bent radiator, bent AC condenser, broken panel fasteners, and a cracked washer fluid bottle (all of which are behind a bent corrugated alloy bumper which is mounted to the front end of the frame)

Ironically, before Plaintiff obtained and filed the Progressive Insurance documents with the Court, Defense counsel maintained that Plaintiff's counsel should be sanctioned because he had filed the case before obtaining an accident report. (Dkt. No. 46, p. 2). After Plaintiff obtained the Progressive Insurance documents in the third-party discovery, whose production Defense counsel had sought to block, Defense counsel immediately changed counsel (even before Defendant's experts inspected the FX37) and came up with the mere fender bender defense. (Dkt. No. 67, 68).

The Court also rejected Defendant's baseless opposition to the following motions filed by Plaintiff: (a) Motion to Compel Signed Interrogatory Answers (Dkt. No. 29); (b) Motion to Compel Request to Admit Answers (Dkt. No. 83); (c) Motion to Obtain Audio Tape of Hasan Deposition (Dkt. Nos. 156, 158).

These motions and opposition pleadings, which were denied or rejected by the Court, lacked legal or factual basis and were filed or pursued for vexatious purposes. As such, monetary sanctions along with other sanctions the Court deems just should enter against Defense Counsel or Defendant under the Court's inherent powers, or § 1927.

E. Sanctions Should Enter Against Defendant and its Counsel for Continuing to Pursue Baseless Pending Motions After the Court Informed Them of its Preliminary Conclusions After Careful Review of the Record.

Monetary and other appropriate sanctions should enter against Defense counsel under § 1927 and against Defense counsel and Defendant under the Court's inherent power for Defendant pursuing and continuing to pursue: (a) a motion for summary judgment (Dkt. No. 106) whose frivolous arguments are exposed in Plaintiff's opposition (Dkt. No. 127); (b) a baseless motion for sanctions in its opposition to summary judgment (Dkt. No. 106, pp. 3, 4) which is also debunked in Plaintiff's opposition to summary judgment (Dkt. No. 127); (c) a motion to place the audio recording of the Hasan deposition under seal (Dkt. No. 162) which is not supported by any case on point or good faith argument for extension of the law; and (d) a motion for sanctions against Plaintiff's counsel and expert (Dkt. Nos. 121, 138, 142, 150) which is not supported by law, is based on pure speculation or contradicted by the record or competent evidence as demonstrated by the pleadings filed by Plaintiff and Plaintiff's expert in opposition to that motion. (Dkt. Nos. 127, 137, 140, 149)

F. Sanctions Should Enter With Regard to Defense Counsel's Obstruction of the Hasan Deposition and Attempts to Cover-Up That Misconduct.

Rule 30(d)(2) of the Federal Rules of Civil Procedure states in relevant part:

> **(2)** ***Sanction.*** The court may impose an appropriate sanction--including the reasonable expenses and attorney's fees incurred by any party--on a person who impedes, delays, or frustrates the fair examination of the deponent.

As the deposition transcript (Dkt. No. 160) and audio tape of the Hasan deposition prove, Defense counsel impeded, delayed and frustrated the fair examination of Hasan through coaching, instructions not to answer, conferencing with the witness and other improper conduct. (Dkt. Nos. 153, 159). Accordingly, entry of monetary and other appropriate sanctions against Defense counsel is appropriate under Rule 30(d)(2). *Medline Indus.*, No. 08 C 5867, 2009 WL 3242299, at *1–2.

Monetary and other appropriate sanctions should also enter against Defense counsel under § 1927, and against Defense counsel or Defendant under the Court's inherent powers for pursuing a cover-up of Defense counsel's misconduct at the deposition (which Defendant's representative attended) through: (a) a motion for protective order which misstated what transpired (Dkt. Nos. 151, 155); and (b) a baseless opposition to Plaintiff's motion for a protective order. (Dkt. No. 155). That opposition is contrary to law and misstates what occurred as demonstrated by Plaintiff's pleadings in support of a protective order (Dkt Nos. 153, 159) and the audio tape and transcript (Dkt. No. 160) of the deposition.

The opposition relies on the very same baseless arguments that the Court in *Lizzo*, No. 08 C 5867, 2009 WL 3242299, at *1–2 rejected when it awarded sanctions for the same type of deposition misconduct engaged in by Defense counsel. There, as here, Defense counsel argued that he properly instructed the witness not to answer under Rule 30(d)(3) which allows an attorney to block questioning at a deposition on the ground "that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party". The Court rejected that argument because to invoke Rule 30(d)(3) the Seventh Circuit in *Redwood*, 476 F.3d at 467 requires counsel to terminate the deposition and seek a protective order. *Id.* Defense counsel did not follow that procedure.

He cannot use this excuse to justify his coaching, instructions not to answer, conferencing with the witness or other obstructive and abusive behavior. As the Court in *LM Ins. Corp. v. ACEO, Inc.*, 275 F.R.D. 490, 491 (N.D. Ill. 2011) held:

> Of course, overt instructions to a witness not to answer a question are improper absent a claim of privilege, (citation omitted), coaching a witness during the deposition is equally prohibited— (citations omitted) Objections are to be stated "concisely and in a nonargumentative and nonsuggestive manner".

Defense counsel not only flouted these well-established rules; he brazenly insisted that no such rules existed at deposition when Plaintiff's counsel asked him to stop violating the rules. (Dkt. No. 159, p. 9). He continued his misconduct unabated, even after Plaintiff's counsel attempted to telephone the Court to obtain an emergency protective order.

In the opposition to Plaintiff's Motion for a Protective Order, Defense counsel further compounds his abusive conduct. He doubles down on his false charges that Plaintiff's counsel was part of criminal enterprise:

> [Plaintiff's counsel] is only interested in trying to trick, and mislead so he can continue with his fabricated case to try to get a large fee award from the Defendant who is totally innocent of any wrongdoing. Period. … Plaintiff's attorney talks about professionalism, but professionalism does not include pursuing a fabricated case with tricks, misrepresentations and underhanded tactics. …Defendant's attorney has never been faced with anything like this before with a totally made up case. We don't know what to do except to call a spade a spade. (Dkt. No. 155, pp. 4-5)

This is a transparent effort to divert from the actual issue at hand – Defense counsel's improper coaching, instructions not to answer, conferencing with the witness, and other misconduct.

As the Seventh has admonished:

> Because depositions take place in law offices rather than courtrooms, adherence to professional standards is vital, for the judge has no direct means of control. Sanctions are in order … *Redwood*, 476 F.3d at 469–70.

Defendant should not be rewarded for causing the court reporter to walk out of the deposition and by blocking Hasan from answering questions by now being able to coach Hasan for the next deposition session having learned in advance many of the points Plaintiff's counsel intends to go over. By blocking completion of the deposition and instructing Hasan not to answer many questions, Defense counsel gained an unfair advantage for his client at the next deposition session which is contrary to the purpose of depositions. *Hall v. Clifton Precision*, 150 F.R.D. 525, 528, 529 n.7 (E.D. Pa. 1993) ("Depositions serve another purpose as well: the memorialization,

the freezing, of a witness's testimony at an early stage of the proceedings, before that witness's recollection of the events at issue either has faded or has been altered by intervening events, other discovery, or the helpful suggestions of lawyers.")

Defense counsel's interference with obtaining truthful deposition testimony, and attempt to cover-up that misconduct by attacking Plaintiff's counsel and misrepresenting what transpired warrants the imposition of the sanction of striking Hasan's report from the summary judgment record and barring his testimony in this case. *Chambers*, 501 U.S. at 43. This is the only available sanction which can cure the misconduct and is entirely fair under the circumstances, especially since Hasan's report is entirely conclusory (See Dkt. No. 98) and should be disregarded in any regard as irrelevant since it doesn't opine on the mechanical condition of the FX37 at the time Plaintiff purchased it. *Wendler & Ezra, P.C. v. Am. Int'l Grp., Inc.*, 521 F.3d 790, 791–92 (7th Cir. 2008).

IV. Conclusion

For the foregoing reasons, this Court should sanction Defendant or its counsel under § 1927, and its inherent powers. Sanctions should include awarding Plaintiff, and Plaintiff's counsel and expert the substantial fees and costs incurred as a result of Defendant's vexatious pleadings, barring Hasan from testifying and striking his report, awarding costs to the Clerk of the Court and other sanctions the Court deems appropriate to deter and punish the misconduct and prevent it from ever happening again in this case or any other case, including the pending civil suits in Cook County Circuit against Defendant being defended by Defense counsel here.

DONALDSON TWYMAN

/s/ Peter S. Lubin
One of his attorneys

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GROUP EXHIBIT A

Twyman v. S&M Auto, No. 16 cv 4182

INDEX TO SANCTIONABLE PLEADINGS

Exhibit No.	Date and Docket No.	Title	Quote
1	10-14-2016 Dkt. 67	Objection and Response to Plaintiff's Motion to Supplement the Motion to Dismiss Record with Progressive Insurance Documents	But this has no effect, and Plaintiff's attorney keeps on filing false and misleading pleadings to try to run up exorbitant fees in a case in which the Plaintiffs attorney has proved by his actions that he has no interest in the truth, and just sees the litigation process as an extortion game, in which his goal is only to extort as much money as possible out of the Defendants, no matter what the truth is. Now the Plaintiff has gone above and beyond mere misrepresentations. He is flat out lying to the court. Used car dealers are not fair game targets for unscrupulous attorneys who look at lawsuits as a means to commit "legal extortion", and not as a way to get at the truth and remedy a wrong. The Plaintiffs attorney must be sanctioned for his lies, misrepresentations and abusive litigation tactics in this small claims case. …the Plaintiff's Attorney should be sanctioned not just for the amount of unnecessary attorney's fees he cost his intended victim, but more for his many misrepresentations to the Court in several pleadings, and for his abusive litigation tactics.
2	01-27-2017 Dkt. 102	Reply in Support of S&M Auto Brokers Motion *In Limine* Regarding Expert Witnesses and For Other Relief	Donald Szczesniak is a scam artist who works with attorneys to concoct and fabricate cases using fee shifting statutes to get the attorneys interested, with the reasonable expectation that most company's would rather pay some money quickly then pay their own attorney to fight and win, because paying their attorney will costs more then to settle. Sometimes Szezesniak is the plaintiff, and other times he is the "expert", but he is involved in the cases. However, the bottom line is that Szezesniak and the attorneys he finds to work with are not using the courts to pursue

Exhibit No.	Date and Docket No.	Title	Quote
			a legitimate claim, but are using the courts as a method of extortion. Defendant S&M Auto has said from the first that this case was an attempt at extortion by using false hyperbole and fabricated evidence. Defendant's experts, a regular working mechanics and auto body man, with their own businesses, have exposed this attempted abuse of the justice system, and the Plaintiff is desperate to get them excluded in some manner.
3	02-10-2017 Dkt. 106	Response to Plaintiffs Motion for Partial Summary Judgment and Defendants Cross-Motion for Summary Judgment	The Plaintiffs Motion For Partial Summary Judgment is, like the entire Plaintiffs case, a total and complete fraud, submitted for the sole purpose assisting the Plaintiffs' attorneys in their attempt to use the legal system to extort money from the Defendant. The entire motion is based on a premise that has no basis in law, and is further supported by a statement of uncontested facts that is anything but uncontested. Never, in over three decades of practice has Defendants lawyer seen anything like this perpetrated by lawyers in a court of law. This is akin to a situation back in the 1980's where certain personal injury attorneys set up auto staged accidents and then filed injury lawsuits based on those staged accidents.
4	02-20-2017 Dkt. 115	Motion to Reconsider Order of February 16, 2017, or for an Extension of Time to Provide Supplemental Expert Reports and to Produce the Experts for their Depositions or to Grant Other Relief	What is happening in this case is that the Plaintiffs' attorneys are fabricating a case, with the help of the unscrupulous Mr. Szczesniak, where there is none, and are trying to use the fee shifting provisions of the Illinois Consumer Fraud statute as a tool of extortion by running up an exorbitant amount of fees in the hope that they can fool a jury or put the Plaintiff at such risk he will rather pay something then risk losing his business built up over a decade. What Plaintiffs attorneys are doing reminds Defendant of cases in the 1990's where a group of personal injury attorneys were caught staging accidents to defraud insurance companies.

Exhibit No.	Date and Docket No.	Title	Quote
5	03-06-2017 Dkt. 128	Motion to Strike Plaintiff's Local Rule 56.1(c) Statement of Additional Facts and for Sanctions Against Plaintiffs Attorneys Pursuant to Federal Rule of Civil Procedure 56(h)	Judge Edward Dunkin of the Circuit Court of DuPage County has stated that "there comes a point in these consumer cases where the real party in interest is no longer the plaintiff, it is the plaintiffs' attorney". That is the case here. It is patently obvious what the Plaintiffs' attorneys are doing here. They are doing an exorbitant amount of unnecessary work in this case in order to run up a huge fee, with the goal of putting this huge fee onto the Defendant. The focus of an attorney's representation in a case is supposed to be best interest of the client, not what is going to make him the most money. The Plaintiffs' attorneys dove right into this litigation in with unfounded accusations and baseless causes of action. This is not hyperbole.
6	03-13-17 Dkt. 138	Reply in Support of Sanctions Motion for Sanctions Regarding Plaintiff's Declared "Expert" Donald Sczczesniak	Defendant asserts that to bring a lawsuit in U.S. District Court to extort money, based entirely on false evidence, and an expert who is tampers with witnesses and presents false declarations and/or engages in false lawsuit, (the declaration regarding the amount Szczesniak promised to charge Weinberger as an expert is false as the DuPage County lawsuit proves, or the DuPage County lawsuit is false) is no small matter. Because they have embraced Donald Szczesniak, the issues in the Motion for Sanctions, and the false statements in the Declarations attached to the Response need to be resolved.
7	09-21-16 Dkt. 41	Motion for a Protective Order	…Plaintiff does not consider a lawsuit as a way to redress a legitimate grievance by uncovering the truth and applying the law, but instead considers it to be a profit making, fee generating, enterprise for attorneys. Plaintiff should not be allowed to use multiple, duplicative, and unnecessary discovery tools to build up his hours in the hope of being able to be willfully blind as to the truth, fool a trier of fact, and take advantage of a fee shifting statute

Exhibit No.	Date and Docket No.	Title	Quote
8	03-29-17 Dkt. 155	Response to Twyman's Motion for a Protective Order	[Mr. Lubin] is only interested in trying to trick, and mislead so he can continue with his fabricated case to try to get a large fee award from the Defendant who is totally innocent of any wrongdoing. Period. Plaintiffs' attorney talks about professionalism, but professionalism does not include pursuing a fabricated case with tricks, misrepresentations and underhanded tactics. …Defendants attorney has never been faced with anything like this before with a totally made up case. We don't know what to do except to call a spade a spade.

EXHIBIT A-1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALDSON TWYMAN, **Plaintiff,**	)	
v.	)	**No. 16 cv 4182**
S&M AUTO BROKERS, INC., SAED IHMOUD and MOHAMMED IHMOUD **Defendants.**	)	**Hon. Virginia Kendall**

OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION TO SUPPLEMENT THE MOTION TO DISMISS RECORD WITH PROGRESSIVE INSURANCE DOCUMENTS BECAUSE PLAINTIFF MISREPRESENTS WHAT THEY SHOW AS THEY DO NOT SHOW THE CAR WAS IN A MAJOR ACCIDENT

NOWS COMES the Defendants, S&M Auto Brokers, Inc., Mohammed Ihmoud, and Saed Ihmoud, and as their Objection and Response to the Plaintiff's Motion To Supplement The Motion To Dismiss Record With Progressive Insurance Documents because the Plaintiff misrepresents to the Court what these documents show, and because Plaintiff is misrepresenting to the Court that these documents show the car the Plaintiff purchased was in a major accident, which in reality they do **not**. In support of this objection and response the Defendants state:

1. The Defendants are asking this Court for **HELP.** Plaintiff's abusive litigation tactics in this case, and his misrepresentations, have to be stopped. Back on September 21, 2016 the Defendants asked this Court for a protective order to keep the Defendant from his obsessive filings in the case. Before that, as the court will recall, on August 24, 2016 the Defendants attorney had file a motion while he was on vacation in Italy because Plaintiffs attorney could

not stop filing motions and sending emails. Since then this Court has denied Plaintiffs motions to supplement his response (Dkt. 36), and his motion for partial summary judgment (Dkt. 54). But this has no effect, and Plaintiff's attorney keeps on filing false and misleading pleadings to try to run up exorbitant fees in a case in which the Plaintiffs attorney has proved by his actions that he has no interest in the truth, and just sees the litigation process as an extortion game, in which his goal is only to extort as much money as possible out of the Defendants, no matter what the truth is.

2. Now the Plaintiff has gone above and beyond mere misrepresentations. He is flat out lying to the court. Plaintiffs' attorney has attached documents he says he has gotten from Progressive Insurance, which he states conclusively show that the car that Plaintiff purchased was in a "major accident". However, anyone with eyes to see, and the ability to read, and a little common sense, can see that the documents he attaches to his motoin say absolutely no such thing.

3. A review of the documents and pictures attached to the Plaintiff's shows that the car pictured in the documents **was in a fender bender and nothing more**. In newer cars the front fenders are made of plastic, and the fender and hood are designed to crumple and break away as safety features. Therefore, at first glance, the pictures may look worse than it really is, (which is what Plaintiff is counting on). However, if you the bill first, (Plaintiff's Exhibit "A" PROG002- PROG007), it clearly shows that the only things damaged and replaced were the front bumper, the front bumper cover, the front bumper support, the front hood, the grille, the front lights, a fender panel and the radiator. **Nothing material or structural was damaged or replaced!!! The air bag did not deploy!!!! No "frame damage" shown!!!!** This was a slow

speed front end fender bender and nothing more. Then when you look at the pictures, after you review the bill, you will see that the pictures confirm this fact. The statement that the car was in a major accident is a gross misrepresentation.

4. Plaintiff's misrepresentations and abusive litigation tactics have got to end. Plaintiff bought his car from a used car dealer with a written "As Is" provision. He did not buy a new car, and he has driven the car over 23,000 miles in the 10 months since he bought it. What more could he reasonably expect? (The Plaintiff and not his attorney that is). Used car dealers are not fair game targets for unscrupulous attorneys who look at lawsuits as a means to commit "legal extortion", and not as a way to get at the truth and remedy a wrong. The Plaintiffs attorney must be sanctioned for his lies, misrepresentations and abusive litigation tactics in this small claims case.

5. The Plaintiff has no case, and in reality is entitled to zero damages, actual or punitive. This is a small claims case at best, and there is no federal jurisdiction as the $75,000 amount in controversy amount cannot be met by any stretch of the imagination. The case should be dismissed, and Defendants granted leave to file their petition for sanctions.

WHEREFORE, the Plaintiff's Motion To Supplement The Motion To Dismiss Record With Progressive Insurance Documents should be denied, the Defendant's Motion For A Protective Order and Motion To Dismiss For Lack of Jurisdiction should both be granted, and the Plaintiff's Attorney should be sanctioned not just for the amount of unnecessary attorney's fees he cost his intended victim, but more for his many misrepresentations to the Court in several pleadings, and for his abusive litigation tactics.

Respectfully Submitted,

/s/ Joel A. Brodsky
Attorney for Defendants

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that the following statements set forth in this instrument are true and correct: that I caused to be served the above and foregoing Defendants Objection And Response to Motion To Supplement The Motion To Dismiss Record With Progressive Insurance Documents via the U.S. District Court's Electronic Filing System to all parties of record on the 14th day of October, 2016 before 12:00 midnight.

Defendants

By: /s/ Joel A. Brodsky
Their Attorney

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EXHIBIT A-2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Donaldson Twyman **Plaintiff** **vs.** **S & M Auto Brokers,** **Defendant.**	**16 cv 4182** **Hon. Virginia Kendall**

REPLY IN SUPPORT OF S&M AUTO BROKERS MOTION *IN LIMINE* REGARDING EXPERT WITNESSES AND FOR OTHER RELIEF

NOW COMES the Defendant S&M Auto Brokers, Inc., by and through its Attorney Joel A. Brodsky and in support of its motion pursuant to Federal Rules of Evidence 104 and 702, moves this Court to rule *In Limine*, that the Defendant's disclosed expert witnesses are qualified to give expert testimony at the trial in this cause, and that the disclosures of their opinions comply with FRCP 26(2)(B), states as follows:

1. In response to the Defendants S&M Auto's Motion *In Limine*, the Plaintiff states that S&M Auto is seeking an "advisory opinion". An advisory opinion is the opinion of a court where there is no case or controversy. *Chi. Reg'l Council of Carpenters Pension Fund v. Schal Bovis, Inc., 826 F.3d 397 (7th Cir. 2016)* In the instant case there is clearly a case and controversy between the Defendant and Plaintiff as to whether or not the expert reports tendered by, and supplemental expert disclosure by, the Defendants comply with FRCP 26(2)(B). There is also a controversy between the parties as to whether or not the Defendants experts, Ayad Hasan and Adrian Ramos, are qualified to give their opinions to the trier of fact. There is no

S&M Auto to Plaintiff was a rebuilt wreck, is now, and always has been a concocted and fraudulent case, based on fabricated evidence and hyperbole. Their hope was that the Defendant would rather settle and pay then fight. This is a tactic Mr. Donald Szczesniak knows well.[3] For example, in six (6) cases in the US District Court for the Northern District of Illinois (15cv4849, 15cv9401, 15cv2490, 14cv7331, 15cv5273, 14cv7189) Donald Szczesniak as plaintiff filed six (6) Fair Debt Collection Act cases against six (6) credit agencies and collection law firms over credit card debts he defaulted on. The lawsuits were all full of hyperbole, calling the debt collectors "scavengers" and "junk debt buyers". One (1) case was dismissed and the other five (5) were settled for nominal amounts in the area of one thousand dollars ($1000), and some fees for Szezeniak's attorneys. Szczesniak banked on the fact that rather than pay their attorneys to fight these cases, the defendants would rather pay him short money, and he was right. Donald Szczesniak is a scam artist who works with attorneys to concoct and fabricate cases using fee shifting statutes to get the attorneys interested, with the reasonable expectation that most company's would rather pay some money quickly then pay their own attorney to fight and win, because paying their attorney will costs more then to settle. Sometimes Szezesniak is the plaintiff, and other times he is the "expert", but he is involved in the cases. However, the bottom line is that Szezesniak and the attorneys he finds to work with are not using the courts to pursue a legitimate claim, but are using the courts as a method of extortion.

9. Defendant S&M Auto has said from the first that this case was an attempt at extortion by using false hyperbole and fabricated evidence. Defendant's experts, a regular working mechanics and auto body man, with their own businesses, have exposed this attempted abuse of the justice system, and the Plaintiff is desperate to get them excluded in some manner.

[3] Defendant has always wondered how Plaintiff, who lives in Indianapolis, found his Oakbrook Terrace attorneys. Defendant's research into Mr. Donald Szczesniak may have solved this mystery.

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that the following statements set forth in this instrument are true and correct: that I caused to be served the above and foregoing Defendants Reply In Support Of Motion In Limine Regarding Experts via the U.S. District Court's Electronic Filing System to all parties of record on the 27th day of January, 2017 before 12:00 midnight.

Defendants

By: /s/ Joel A. Brodsky
Their Attorney

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EXHIBIT A-3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Donaldson Twyman **Plaintiff** **vs.** **S & M Auto Brokers,** **Defendant.**	**16 cv 4182** **Hon. Virginia Kendall**

RESPONSE TO PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANTS CROSS-MOTION FOR SUMMARY JUDGMENT

NOW COMES the Defendant S&M Auto Brokers, Inc., by and through its Attorney Joel A. Brodsky and in response to the Plaintiffs Motion For Partial Summary Judgmnet and as it's Cross-Motion For Summary Judgment, states as follows:

I. Plaintiffs Purported Uncontested Facts:

1. The Plaintiffs Motion For Partial Summary Judgment is, like the entire Plaintiffs case, a total and complete fraud, submitted for the sole purpose assisting the Plaintiffs' attorneys in their attempt to use the legal system to extort money from the Defendant. The entire motion is based on a premise that has no basis in law, and is further supported by a statement of uncontested facts that is anything but uncontested. Never, in over three decades of practice has Defendants lawyer seen anything like this perpetrated by lawyers in a court of law. This is akin to a situation back in the 1980's where certain personal injury attorneys set up auto staged accidents and then filed injury lawsuits based on those staged accidents.

2. An example of how far the Plaintiffs' Attorneys are willing to go to attempt to

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that the following statements set forth in this instrument are true and correct: that I caused to be served the above and foregoing Defendants Response to Plaintiffs Motion For Partial Summary Judgment via the U.S. District Court's Electronic Filing System to all parties of record on the 10th day of February, 2017 before 12:00 Midnight.

Defendants

By: /s/ Joel A. Brodsky
Their Attorney

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EXHIBIT A-4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALDSON TWYMAN,	)	
Plaintiff,	)	
v.	)	**No. 16 cv 4182**
S&M AUTO BROKERS, INC.,	)	**Hon. Virginia Kendall**
Defendants.	)	

MOTION TO RECONSIDER ORDER OF FEBRUARY 16, 2017, OR FOR AN EXTENSION OF TIME PROVIDE SUPPLEMENTAL EXPERT REPORTS AND TO PRODUCE THE EXPERTS FOR THEIR DEPOSITIONS OR TO GRANT OTHER RELIEF

NOWS COMES the Defendant, S&M Auto Brokers, Inc., by and through its attorney, Joel A. Brodsky, and moves this Court to reconsider its Order of February 16, 2017, or for an extension of time to provide supplemental expert reports and produce its expert witnesses for their depositions. In support of this objection the Defendants state:

1. On Thursday, February 16, 2017, this Court entered an Order (which was received by email from the EM/ECF system at 3:44 p.m. on the Thursday before a three (3) day holiday weekend), which stated in relevant part:

> "Defendants experts may supplement their reports, if they wish to do so, by February 20, 2017, and Plaintiff is entitled to an opportunity to depose the Defendants experts. …… Defendant is ordered to make its experts available for deposition by March 3, 2017." (**Exhibit "A"**)

2. Then on Friday, February 17, 2017 (at 12:28 pm), and again on Monday, February 20, 2017, (a Federal holiday), the Attorney for the Plaintiff sent letters and a notice of deposition to the attorney for the Defendant for the experts deposition.

that the car was in a minor slow speed fender bender, which was not reported to the police, was therefore not disclosed in the Carfax or Autocheck reports on the car (or anywhere else) and therefore which the Defendant had no knowledge of. What is happening in this case is that the Plaintiffs' attorneys are fabricating a case, with the help of the unscrupulous Mr. Szczesniak, where there is none, and are trying to use the fee shifting provisions of the Illinois Consumer Fraud statute as a tool of extortion by running up an exorbitant amount of fees in the hope that they can fool a jury or put the Plaintiff at such risk he will rather pay something then risk losing his business built up over a decade. What Plaintiffs attorneys are doing reminds Defenant of cases in the 1990's where a group of personal injury attorneys were caught staging accidents to defraud insurance companies.

8. Also the entire premise that the Plaintiff needs to take the depositions of the Defendants expert witnesses in the partial summary judgment motion pending before the court is based on their misrepresentation of what the cases he cited are. In the Plaintiffs "*Motion For Extension Of Time To File Reply In Support Of Motion For Partial Summary Judgment To Allow Plaintiff Time To Depose Defendant's Proposed Expert Witnesses*", Plaintiff cites to the cases of *Weigel v. Target Stores, 122 F.3d 461 (7th Cir. 1997)* and *Mid-State Fertilizer v. Exchange Natl Bank, 877 F.2d 1333 (7th Cir. 1989)*, for the proposition that if the expert reports are not admissible then they cannot raises a question of material fact to defeat a summary judgment motion. However, this is not what the cases say.

> "The central issue in this appeal, then, is whether the expert report by Schutz was sufficient to raise a genuine issue of fact regarding Vollmert's ability to perform the job with accommodations. The parties do not dispute that the expert report was admissible evidence. That determination, however, is not dispositive of the summary judgment motion because the court must consider the weight of the evidence, not just its admissibility. On a few occasions, this court has recognized

reports, and until April 21, 2017,[2] to produce the experts for their depositions.

WHEREFORE, Plaintiff prays that this Court enter an Order;

a. Either reconsidering its Order of February 16, 2017, and denying the Plaintiffs request to take the depositions of the Defendants experts prior to replying in the current summary judgment proceedings, and further ordering that the depositions can wait until after the court rules on the pending motions for summary judgment;

b. Or denying the Plaintiffs Motion For Partial Summary Judgment in total as there is a question of fact, and/or because a trial is the more efficient way to resolve this case;

c. Or Grant the Defendant until March 17, 2017, to supplement its experts reports, and until April 21, 2017 to produce its expert witnesses for their depositions.

d. and for such other relief as the Court deems just.

Respectfully Submitted,

/s/ Joel A. Brodsky
Attorney for Defendants

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[2] Defendants attorney is scheduled for trial in the case of Mejia v. Cabrera, 15 D 79913 on March 14 and 15; Copeland v. Copeland 2014 D6 30100(where his client is incarcerated) in Markham, Illinois on March 27 and 28, People v. Pazmino, 16 MC5-001117, in Bridgveiw Illinois on March 30 and 31, and Harnack v. Fanady, 11 CH 7166 and 11 CH 35656, in Chicago, Illinois on April 4, 5 and 6.

EXHIBIT A-5

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Donaldson Twyman	
Plaintiff	**16 cv 4182**
vs.	**Hon. Virginia Kendall**
S & M Auto Brokers, Saed Ihmud, and Mohammed Ihmud	
Defendants.	

MOTION TO STRIKE PLAINTIFF'S LOCAL RULE 56.1(c) STATEMENT OF ADDITIONAL FACTS AND FOR SANCTIONS AGAINST PLAINITFFS ATTORNEYS PURSUANT TO FEDERAL RULE OF CIVIL PROCEEDURE 56(h)

NOW COMES the Defendant S&M Auto Brokers, Inc., by and through their Attorney Joel A. Brodsky and pursuant to F.R.C.P. 56, moves this Court for the entry of an Order striking the Plaintiffs "Local Rule 56.1(c) Statement Of Additional Facts". In support of this motion the Defendant states:

1. The Plaintiff's attorneys in this case filed their second (2nd) Motion For Partial Summary Judgment on December 14, 2016. (Dkt #86) They also filed their Local Rule 56.1(a) Statement of Undisputed Facts on December 14, 2016. (Dkt. #87). The Local Rule 56.1(a) Statement contained thirty-four (34) allegedly uncontested facts, and was **four hundred sixteen (416) pages long**, with four hundred nine (409) of those pages being exhibits.

2. On February 10, 2017, the Defendant filed its "Response to Plaintiffs Local Rule 56.1 Statement of Undisputed Facts". (Dkt. #107)

3. Then on March 3, 2017, the Plaintiff's attorneys filed Plaintiffs "Local Rule 56.1(c)

Plaintiff believes that, as the record stands now, there is a question of material fact regarding its Motion for Partial Summary Judgment.

7. Lastly, as the Court will recall, this case concerns the sale of a used 2013 Infiniti FX37 Automobile, the sales price of which was $34,995. Plaintiff purchased the car, "as is" and without a warranty, on October 14, 2015. Plaintiffs Interrogatory Answers show that he had driven the car 22,323 miles by August 8, 2016 and in less than ten (10) months the Plaintiff has more than doubled the miles on the car, and is averaging 2,232 miles a month. (Exhibit "A") Plaintiff again asserts that this is a small claims case, nothing more. The proceedings in this case should be proportional to the needs of the case. A motion with 798 pages of exhibits is not proportional to this case.

8. Pursuant to Federal Rule of Civil Procedure 56(f), the Plaintiffs' attorneys should be sanctioned for their submission of the "Local Rule 56.1(c) Statement Of Additional Facts". FRCP 56 states that where a declaration is submitted in bad faith, the "offending party or attorney may also be held in contempt or subjected to other appropriate sanctions". In this case the appropriate sanction is the denial of the Plaintiffs pending Motion For Partial Summary Judgment. (Dkt. 86) Should the Court deem that fees are also warranted as a sanction, the Defendant's attorney will submit a statement of fees and costs attributable to the wrongfully filed "Local Rule 56.1(c) Statement Of Additional Facts"

8. Judge Edward Dunkin of the Circuit Court of DuPage County has stated that "there comes a point in these consumer cases where the real party in interest is no longer the plaintiff, it is the plaintiffs' attorney". That is the case here. It is patently obvious what the Plaintiffs' attorneys are doing here. They are doing an exorbitant amount of unnecessary work in this case

in order to run up a huge fee, with the goal of putting this huge fee onto the Defendant. [1] The focus of an attorney's representation in a case is supposed to be best interest of the client, not what is going to make him the most money. The Plaintiffs' attorneys dove right into this litigation in with unfounded accusations and baseless causes of action. This is not hyperbole. Plaintiff has had to dismiss its "odometer rollback" counts when they saw that they were without merit, and he had to dismiss with prejudice two (2) of the three (3) Defendants after it was shown that the allegations which made them part of the case were entirely without any factual basis. Dkts. #71 and #82). Now Plaintiffs' attorneys have filed two (2) excessive, and one (1) entirely unauthorized and improper declaration in order to run up their bill in a fee shifting case. Enough is enough.

9. Plaintiffs entirely unauthorized and bad faith filing of the "Local Rule 56.1(c) Statement Of Additional Facts" (Dkt. 125), and his attempt to sandbag the Defendant in his pending Motion For Partial Summary Judgment proceedings, is unacceptable. The Plaintiff's "Local Rule 56.1(c) Statement Of Additional Facts", (Dkt. #125), and should be stricken, and his Motion For Partial Summary Judgment (Dkt. #86), should be denied, either on the merits or as a sanction under FRCP 56(h). Further, sanctions should be assessed against the Plaintiff pursuant to FRCP 56(h), and the Plaintiff be granted fourteen to submit its statement of fees and costs attributable to this the bad faith filing of the "Local Rule 56.1(c) Statement Of Additional Facts".

WHEREFORE, Defendants pray that this Court enter an Order:

(A). Striking the Plaintiffs Local Rule 56.1(c) Statement Of Additional Facts" (Dkt. 125)

(B). Denying Plaintiffs Motion For Partial Summary Judgment (Dkt. #86), either on the merits or as a sanction under FRCP 56(h);

[1] It its Order of October 18, 2016, this Court had already noted that "the Plaintiff appears to have propounded an unusually high number of subpoenas for a matter of this type."

(C). Assessing sanctions against the Plaintiffs' Attorneys under FRCP 56(h) for their bad faith declaration, and granting the Defendants attorneys fourteen (14) days to submit its statement of fees and costs attributable to this the bad faith filing of the "Local Rule 56.1(c) Statement Of Additional Facts";

(D). Such other relief as the Court finds necessary.

Respectfully submitted,

/s/ Joel A. Brodsky
Attorney for Defendants

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EXHIBIT A-6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Donaldson Twyman

Plaintiff

vs.

S & M Auto Brokers,

Defendants.

16 cv 4182

Hon. Virginia Kendall

REPLY IN SUPPORT OF SANCTIONS MOTION FOR SANCTIONS REGARDING PLAINTIFF'S DECLARED "EXPERT" DONALD SCZCZESNIAK

NOW COMES the Defendant S&M Auto Brokers, Inc., by and through their Attorney Joel A. Brodsky and as his Reply in Support of its Motion for the entry of an order applying sanctions for the actions of the Plaintiff's "expert" witness, Donald Szczesniak states:

1. Defendants are glad that Plaintiff have embraced Donald Szczesniak by preparing and filing a response to Defendants Motion For Sanctions, which include a "Declaration" signed by Mr. Szczesniak. An examination of the Declaration of Mr. Szczesniak only proves one thing, that he is a bad liar. As the old saying goes, when you tell the truth, you don't have to remember what you said. However, when you tell lies, you better have a good memory.

2. First, the Court should look at paragraphs 13, 14, 15, and 16, as well as exhibits C, D, and E, to Szczesniak Declaration. These state that Donald Szczesniak agreed to prepare and expert report for Diane Weinberger for $400, but that because his testimony would not be needed, he reduced the bill to $300, and that left a zero balance on the account. However, as we will show, Szczesniak's has submitted a false declaration to this Court.

car, and the admitted fact that the car was driven 23,000 miles in 10 months. Defendant asserts that this is because no legitimate and honest auto expert would give an opinion that there is any validity to the Plaintiffs lawsuit.

10. Defendant asserts that to bring a lawsuit in U.S. District Court to extort money, based entirely on false evidence, and an expert who is tampers with witnesses and presents false declarations and/or engages in false lawsuit, (the declaration regarding the amount Szczesniak promised to charge Weinberger as an expert is false as the DuPage County lawsuit proves, or the DuPage County lawsuit is false) is no small matter.

11. Because they have embraced Donald Szczesniak, the issues in the Motion for Sanctions, and the false statements in the Declarations attached to the Response need to be resolved. If a hearing is necessary for the Court to determine if Donald Szczesniak should be allowed to testify to a jury Defendant will be ready for such a hearing.

WHEREFORE, Defendants pray that this Court enter an Order either (A) granting the Defendant additional time to look into the Declarations made in Plaintiffs Response, or (B) setting Defendants Motion For Sanctions against Mr. Donald Szczesniak and the Plaintiff for hearing, or (C) based on the forgoing assessing sanctions and Ordering that Donald Szczesniak be barred from testifying or otherwise giving evidence in this case, his declarations be stricken from the record, and the Plaintiffs Motion for Partial Summary Judgment which relies upon these declarations should be denied or this Court should assess such other sanctions as the Court finds necessary.

Respectfully submitted,

/s/ Joel A. Brodsky
Attorney for Defendants

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that the following statements set forth in this instrument are true and correct: that I caused to be served the above and foregoing Defendants Reply In Support Of Motion For Sanctions via the U.S. District Court's Electronic Filing System to all parties of record on the 13th day of March, 2017 before 12:00 midnight.

Defendants

By: /s/ Joel A. Brodsky
Their Attorney

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EXHIBIT A-7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Donaldson Twyman	
Plaintiff	**16 cv 4182**
vs.	**Hon. Virginia Kendall**
S & M Auto Brokers, Saed Ihmud, and Mohammed Ihmud	
Defendants.	

MOTION FOR A PROTECTIVE ORDER

NOW COMES the Defendants S&M Auto Brokers, Inc., Saed Ihmud and Mohammed Ihmud (collectively, "Defendants") by and through their Attorney Joel A. Brodsky and pursuant to **Federal Rule of Civil Procedure 26(c)**, moves this Court for the entry of a Protective Order, limiting Plaintiffs discovery, limiting the number of depositions and barring other depositions, limiting the number of subpoenas for documents he may issue, and otherwise bringing Plaintiffs use of discovery under control. In support of this motion the Defendants states:

I. Preface:

1. Now that the Plaintiff has agreed to dismiss his claim that Defendants rolled back the odometer in the car he purchased, all this case concerns the sale of a used 2013 Infiniti FX37 Automobile, the sales price of which was $34,995. Plaintiff purchased the car, “as is” and without a warranty, on October 14, 2015, and according to his interrogatory answers he still has the car. Further, according to the service records produced in discovery, Plaintiff put 12,553 miles on the car in the five (5) months after he purchased the car, (i.e. through March 14, 2016). Plaintiff has almost doubled the miles on the car in the five (5) months after purchasing it.

depositions, hire experts, and subpoena documents, in order to find out if the Plaintiffs car had actually been in an accident, (which Defendant vehemently states it has not been). Defendant told Plaintiff that all he had to do was call the prior owner who drove the car the 17,000 miles, and ask if the car had been in an accident and if the collision was serious enough to cause frame or significant body damage. Defendant noted and told the Plaintiff that the name, address and phone numbers of the prior owner was in the documents tendered in discovery.

22. To Plaintiffs utter disbelief and amazement, Defendant told Plaintiff that he was not going to call the prior owners because they would lie to him. In later emails the Plaintiff said that there were many reasons a person would not want to report an accident, and not report it to his insurance company.[3] Defendant responded that he could not believe Plaintiffs willful blindness and refusal to do the simple and obvious to attempt to discovery the truth.

23. Defendant can think of no reason why a car owner (who is leasing the car) would not report a collision serious enough to cause frame damage, (especially to her insurance company), or why someone would lie about such a thing to an attorney investigation his case. Plaintiffs refusal to do this very basic investigation involving just making a telephone call to inquire if the auto in question was in a collision, but his seemingly total reliance on the speculative word of Donnie Moorehouse of Indianapolis, demonstrates that Plaintiff does not consider a lawsuit as a way to redress a legitimate grievance by uncovering the truth and applying the law, but instead considers it to be a profit making, fee generating, enterprise for attorneys. Plaintiffs use of discovery, and the relatively extreme efforts in a case where one of the claims is based on a statute with a fee shifting provision, confirms this view. Plaintiff should not be allowed to use multiple, duplicative, and unnecessary discovery tools to build up his

[3] Plaintiff has subpoenaed the prior owner's insurance company for documents, but no response to that subpoena has been served on the Defendants attorney by Plaintiff. It is not known if Plaintiff has received those documents.

hours in the hope of being able to be willfully blind as to the truth, fool a trier of fact, and take advantage of a fee shifting statute.

24. Defendant certifies that he and Plaintiff did speak in an attempt to work out the issues put forth in this motion, but were unable to reach a resolution.

WHEREFORE, Defendants pray that this Court enter a Protective Order:

(1) Striking Plaintiffs (A) Third Set of Interrogatories, (B) Amended Third Set of Interrogatories, (C) Third Request For Production, and (D) Second Set of Requests to Admit, and barring the Plaintiff from issuing any more written discovery requests

(2) Barring the deposition of Donnie Moorehouse without prejudice to reconsideration should this case proceed to expert discovery.

(3) Ordering that the Plaintiff can only receive documents from the Illinois Attorney General through subpoena documents which the AG already had prior to the issuance of the subpoena by the AG to the Defendant.

(4) Barring the Plaintiff further issuance of any more document subpoenas.

(5) Awarding the Defendant its reasonable fees for having to bring this motion.

(6) Such other relief as the Court finds necessary.

Respectfully submitted,

/s/ Joel A. Brodsky
Attorney for Defendants

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EXHIBIT A-8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Donaldson Twyman	**16 cv 4182**
Plaintiff	**Hon. Virginia Kendall**
vs.	
S & M Auto Brokers,	**Magistrate Shelia Finnegan**
Defendant.	

RESPONSE TO TWYMAN'S MOTION FOR A PROTECTIVE ORDER

NOW COMES the Defendant S&M Auto Brokers, Inc., by and through their Attorney Joel A. Brodsky and in response to Plaintiffs attorneys motion for a protective order sates as follows:

1. The Plaintiffs attorneys motion for a protective order was just received, and contains such fabrications and misinformation that a response is required.

2. In paragraph two (2) where the Plaintiffs' attorneys states that there was one (1) hour of breaks caused by the Defendants is a complete lie. There was one (1) 10 minute break called by the court reporter. The Plaintiffs attorney makes up the one (1) hour story in order to try to paint the Defendant's attorney as being at fault, which is false.

3. Paragraph four (4) of the Plaintiffs attorney's motion also contains a lie. The court reporter terminated the deposition because of both counsel. In fact when the Plaintiffs attorney asked her to put on the record that she was terminating the deposition because of Defendants attorneys conduct, the court reporter replied "**no, it's your fault too**". Call the court reporter to

the broken metal in the picture", when the picture showed a plastic part. It went on and on.)

8. The contents of paragraph eleven (11) of the Motion for Sanctions is also wrong and the example the Plaintiffs' attorney gives is a figment of his imagination. It never happened. Similarly the "coaching" episode in paragraph twelve (12) is false. The only time the Defendant's attorney pointed to any picture was to help the witness find the picture that the Plaintiffs' attorney was asking him about. That is not improper, unless Plaintiffs attorney wants the witness to testify about the wrong picture, which is probably what he wanted, which is most likely why this upset him.

9. This makes the quote of Plaintiffs attorney in paragraph thirteen (13) about "mocking the search for the truth" very curious. Defendant's attorney has said this, and will continue to say it without fear of being contradiction, because it is the absolute truth. The Plaintiffs case is complete and total fabrication, made of whole cloth. Already his allegations about the turning back of the odometer have been proved false and have been dismissed. Also, his allegations about Defendants Saed Ihmoud and Mohammed Ihmoud have been proved to be totally false, and they have also been dismissed. Just like the odometer and the individual defendants, Plaintiffs' attorneys allegations about the condition of the Plaintiffs car are also false. Despite their quotation, the Plaintiffs have no interest in what the truth is in this case. If he did he would have asked the witness about why he states that the frame of the car is not bent, and why he states that the car was never in any serious accident, and is in good condition. But he never asked that question because he is not interested in that information. He is only interested in trying to trick, and mislead so he can continue with his fabricated case to try to get a large fee award from the Defendant who is totally innocent of any wrongdoing. Period.

10. Plaintiffs' attorney talks about professionalism, but professionalism does not include

pursuing a fabricated case with tricks, misrepresentations and underhanded tactics. The only way this case can go forward to conclusion is for the US. Magistrate to be appointed to supervise the depositions of the Defendants experts. That way this fiasco can get to trial and be concluded, and the court will hear the evidence and see what the Defendant knows and be able to finally understand what is really going on here.

11. We are sorry and apologize to the Court that it has to be this way, but Defendants attorney has never been faced with anything like this before with a totally made up case. We don't know what to do except to call a spade a spade.

WHEREFORE, Defendant prays that this Court enter a Protective Order and refer this matter to U.S. Magistrate Shelia Finnigan for supervision of the depositions of Ayad Hasan and Adrian Ramos, in a manner the magistrate deems fit.

Respectfully submitted,

/s/ Joel A. Brodsky
Attorney for Defendants

Joel A. Brodsky
Attorney for Defendants
8 S. Michigan Ave., Suite 3200
Chicago IL 60603
(312) 541-7000
jbrodsky@joelbrodskylaw.com

GROUP EXHIBIT B

Twyman v. S&M Auto, No. 16 cv 4182

INDEX TO EMAILS

No.	Date	Time	Quote
1	03-29-2017	6:23 pm	I just read the pack of lies in your Motion for Protective Order… That is all your case is, a degradation of the search for the truth. How do you even call yourself a lawyer? You are an embarrassment to the profession.
2	09-20-2017	7:35 am	This means you have no interest in the truth and this is only a money making exercise. The law as a method of extortion. How can I work with an extortionist?"
3	01-09-2017	9:03 am	Your attempt to manufacture a case where none exists is deplorable and your attempt at using your law license to commit extortion will not succeed and we will be seeking fees from you after your ridiculous case is dismissed.
4	01-09-2017	12:39 pm	As to my remarks, the only thing unprofessional here is what you are doing, which is making up a bogus case and trying to run up hours to extort money through a lawsuit. If you don't like the truth, then stop doing what you are doing. I call a spade a spade.
5	01-09-2017	2:00 pm	You may think your building hours for your fee petition, but in fact you are only building my hours for my fee petition against you personally and I will collect every penny from you. This lawsuit is a total and complete disgrace and I am sure when Judge Kendall hears the facts she will be extremely upset with you.
6	01-25-2017	7:39 pm	Or are you too busy trying to find other potential victims to try your extortion scheme on? I have been doing some research on your expert Szczesniak. You are two peas on a pod for sure.
7	03-06-2017	6:33 pm	Say hello to your friend Dmitry. Terrible thing about the proceedings to disbar him. And so soon after his bankruptcy. Must be rough.
8	08-23-16	4:21 pm	I'm sorry your office only has just this one case.
9	08-23-16	10:56 pm	I'm sorry your office doesn't have any other cases.

No.	Date	Time	Quote
10	09-19-2016	9:51 pm	The car was never in an accident, and you will be paying my fees. Now go to sleep, and tomorrow try to stop obsessing about this case 24/7.
11	09-16-2016	8:32 pm	…you had better have a talk with Mr. Weber of Manheim Auctions. I make a motion to have Mr. Weber held in contempt, and for you to pay sanctions for submitting a false affidavit.
12	09-17-2016	3:47 pm	If your (sic) relying on your friend Dmitry, who went Chp 7 bankrupt in 2013, you will want to double check. He is wrong. So far you have… submitted an affidavit that contains a false statement of fact. Don't submit yet another false pleading.

EXHIBIT B-1

Anthony Claiborne

From: Joel A. Brodsky <jbrodsky@joelbrodskylaw.com>
Sent: Wednesday, March 29, 2017 6:23 PM
To: Peter Lubin
Cc: EService; Andrew Murphy
Subject: RE: Rescheduling the deposition of Mr. Ramos

Mr. Lubin,

I just read the pack of lies in your Motion for Protective Order, even your own reporter said it was your behavior that caused her to walk out. I love your quote about the degrading the search for the truth. That is all your case is, a degradation of the search for the truth. How do you even call yourself a lawyer? You are an embarrassment to the profession.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

From: Andrew Murphy [mailto:acm@ditommasolaw.com]
Sent: Wednesday, March 29, 2017 5:54 PM
To: jbrodsky@joelbrodskylaw.com
Cc: EService
Subject: Rescheduling the deposition of Mr. Ramos

Due to the fact that Judge Kendall will not be hearing motions until April 6, we are rescheduling the deposition of Mr. Ramos to April 7 to allow the judge to hear the parties' motions for protective order. Thank you.

DiTommaso ♦ Lubin

Andrew C. Murphy
acm@ditommasolaw.com

331-225-2129 Direct
312-880-9019 Cell
630-333-0333 Fax

Oakbrook Terrace
Chicago

EXHIBIT B-2

From: Joel A. Brodsky
Sent: Tue 09/20/2016 07:35 AM
To: Peter Lubin
Subject: Re: Twyman

How can I work with a lawyer who will not call the prior owner to see if car was in an accident? (It wasn't). This means you have no interest in the truth and this is only a money making exercise. The law as a method of extortion. How can I work with an extortionist? I doubt the court will feel that a lawsuit is not for getting at the truth, but only for making money for the lawyer, but you keep sending those emails. The admissions (or should I say confessions) will be very useful in my motion and fee petition.

Joel A. Brodsky - sent from my I-phone

On Sep 19, 2016, at 10:44 PM, Peter Lubin <psl@ditommasolaw.com> wrote:

> The court cannot order a deposition of an out of
> State witness to occur in Illinois as you demanded in our meet and confer and that was all I have said about what the court has the jurisdiction and power to do. So please don't misstate my position to the court.
>
> I want to attend in person having now obtained photographs from the witness and for other reasons. If you want to arrange for a video of the deposition so you can attend remotely when I am there In person I would cooperate in that process but i will be on site to take the deposition in Indiana and will not pay for the video. That would be an aspect of the deposition you would need to arrange. The witness has asked for the deposition to proceed at his place of business in the morning during regular hours. He is a third party occurrence witness and it is in my client's interest to accommodate him and take the deposition at the location that he has requested and at the time in the morning during regular business hours which he has requested.
>
> I suggest that you try to work with me to take the deposition so we get it done before the discovery close and arrange at your clients' cost for a service so you can attend remotely if you want to do that when I take the deposition in person.
>
> As to the attorney general documents we only want documents regarding substantially similar occurrences where accident damage or a dangerous condition was concealed by your clients. I will let the attorney general know that is our position.
>
> Also the car has been in accident and has frame damage. We will prove that fact in a number of ways including through retained expert testimony and do not have to call the prior owners to testify to do that. The Manheim report proves the accident

damage and proves your client knew about it. We have fully complied with our duty to investigate this case.

Sent from my iPhone

On Sep 19, 2016, at 9:58 PM, Joel A. Brodsky <jbrodsky@joelbrodskylaw.com> wrote:

> I am bringing a motion on Monday to prevent the deposition in Indianapolis,
> and based on your email, which I will attach to the motion, I will ask the
> Court to order that in the interim that you be enjoined from taking the deposition. You rejected my proposal that we take his deposition remotely
> in favor of taking the deposition in the back room of a body shop. You will
> get my motion tomorrow. Thank you for sending the below email. You have no
> idea how helpful it was for you to state that the Court cannot order where a
> deposition in a case before it can be taken.
> Also, your refusal to contact the prior owners to the car to see if the car has been in an accident only shows that you have no intention of doing an
> legitimate investigation into the facts, and is the most incredible statement I have heard in a long time. The car was never in an accident, and you will be paying my fees. Now go to sleep, and tomorrow try to stop
> obsessing about this case 24/7.
>
> Joel A. Brodsky
> Attorney at Law
> V(312) 541-7000
> F(312)541-7311
> jbrodsky@joelbrodskylaw.com
>
> -----Original Message-----
> From: Peter Lubin [mailto:psl@ditommasolaw.com]
> Sent: Monday, September 19, 2016 9:38 PM
> To: Joel A. Brodsky
> Cc: Andrew Murphy; James DiTommaso

Subject: Twyman

I will be proceeding with the deposition next week of the body shop owner as
you have declined to cooperate in offering any new dates. The fact witness
is outside the subpoena range and I am not required to bring him here nor do
I have the power to do that nor does the court. Rule 26 has provisions for
disclosing opinion testimony from fact witnesses which a party does not control. There is no rule requiring that the witnesses deposition proceed here or by video simply because he is giving an opinion in addition to testifying about facts as an occurrence witness. The court here lacks jurisdiction over the out of state witness and he can only be compelled to
testify at a deposition held in his jurisdiction. And Rule 26 does not require an expert report for such witness. Your failure to attend the deposition will be your responsibility as you have offered no alternative dates and discovery closes October 4. If you offer alternative dates and we
obtain court permission I am willing to reset the deposition for after the discovery close but absent provision of alternative dates by you we will proceed next week. I have attempted to resolve with you a new deposition
date through the meet and confer process and you have declined to do that.
I am not obligated to reset the noticed date and will not do that given your
refusal to cooperate.

I am also confirming that at the meet and confer you again declined to provide verified interrogatory answers so the motion to compel will proceed
on that issue next week.

You also declined to amend the non responsive request to admit answers which
will result in motion practice.

Sent from my iPhone=

EXHIBIT B-3

From: Joel A. Brodsky
Sent: Mon 01/09/2017 09:03 AM
To: Peter Lubin
Cc: Nicole Miller;James DiTommaso;Andrew Murphy
Subject: Re: Twyman v. S&M Auto

Peter

What do you mean you have produced Grismers reports in other cases you have had against S&M. You have not sued S&M before. If other lawyers have used him in another care that is not a disclosure in this case. Also attaching something to a response that was part of another case is not a disclosure in this case. Therefore it appears you have been withhildong relevant documents we specifically requested in discovery. This is sanctionable. Grismers name appears nowhere in prior discovey answers. We will beoving to bar him and for substantial discovery sanctions. Your attempt to manufacture a case where none exists is deplorable and your attempt at using yourlaw license to commit extortion will not succeed and we willbe seeking fees from you after your ridiculous case is dismissed.

Joel A. Brodsky - sent from my I-phone

On Jan 9, 2017, at 7:21 AM, Peter Lubin <psl@ditommasolaw.com> wrote:

> Grismer is the expert in the other cases against your client. We produced the reports from those cases some time ago. They were also attached to the motion to dismiss response we filed. Your client already had them in any event but we nevertheless produced them. Grismer may testify regarding the similar instances. He is not our retained expert and he is not designated to testify regarding the car Twyman purchased. He was designated as a witness by us from the start of this case as to the pattern and practice occurrences. Look at our disclosures and the prior discovery responses and you will see that you are mistaken in claiming his disclosure is a new matter.
>
> Can you please cooperate in scheduling the depositions we noticed. Thank you.
>
> Sent from my iPad
>
> On Jan 8, 2017, at 8:49 PM, Joel A. Brodsky <jbrodsky@joelbrodskylaw.com> wrote:
>
> > Peter,
> >
> > I just saw your Supplemental Answers to Interrogatories. In your supplemental answer to Interrogatory 21, in subsection (d) you reference an expert opinion by a “Phillip Grismer”, and you make reference to his

"reports". I have not received any opinions or reports from a Phillip Grismer, and therefore have no idea what you are referring to in that part of your supplemental answers.

There are other defects in your answer to interrogatories that I will address later, but I wanted to get this one point regarding Phillip Grismer out of the way right away

Joel A. Brodsky
Attorney at Law
8 S. Michigan Ave.
Suite 3200
Chicago IL 60603
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com
www.joelbrodskylaw.com

<image003.jpg>

EXHIBIT B-4

From: Joel A. Brodsky
Sent: Mon 01/09/2017 12:39 PM
To: Peter Lubin
Cc: Nicole Miller;James DiTommaso;Andrew Murphy
Subject: RE: Twyman v. S&M Auto

There are no "Bates Stamped" discovery responses of Grismers reports. What Bates stamped numbers are you referring to? If you did produce it you would have given me the bates numbers, but you didn't. As to my remarks, the only thing unprofessional here is what you are doing, which is making up a bogus case and trying to run up hours to extort money through a lawsuit. If you don't like the truth, then stop doing what you are doing. I call a spade a spade.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

From: Peter Lubin [mailto:psl@ditommasolaw.com]
Sent: Monday, January 09, 2017 9:14 AM
To: Joel A. Brodsky
Cc: Nicole Miller; James DiTommaso; Andrew Murphy
Subject: Re: Twyman v. S&M Auto

I am not the lawyer in the other cases. You have the reports from those cases. We produced them in our bates stamped discovery responses and disclosed Grismer in all the previous answers. We also attached his reports to the motion to dismiss response. Please read our previous discovery answers and you will see Grismer was disclosed as a witness from the start of the case. Also look at our document production. Grismer's reports from the other cases were produced by us. He is not testifying about the car my client purchased. Please refrain from the unprofessional remarks. That needs to stop. I expect to be treated with respect as I have done with you.

Sent from my iPhone

On Jan 9, 2017, at 9:03 AM, Joel A. Brodsky <jbrodsky@joelbrodskylaw.com> wrote:

Peter

What do you mean you have produced Grismers reports in other cases you have had against S&M. You have not sued S&M before. If other lawyers have used him in another care that is not a disclosure in this case. Also attaching something to a response that was part of another case is not a disclosure in this case. Therefore it appears you have been withhildong relevant documents we specifically requested in discovery. This is sanctionable. Grismers name appears nowhere in prior discovey answers. We will beoving to bar him and for substantial discovery sanctions. Your attempt to manufacture a case where none exists is deplorable and your attempt at using yourlaw license to commit extortion will not succeed and we willbe seeking fees from you after your ridiculous case is dismissed.

Joel A. Brodsky - sent from my I-phone

On Jan 9, 2017, at 7:21 AM, Peter Lubin <psl@ditommasolaw.com> wrote:

> Grismer is the expert in the other cases against your client. We produced the reports from those cases some time ago. They were also attached to the motion to dismiss response we filed. Your client already had them in any event but we nevertheless produced them. Grismer may testify regarding the similar instances. He is not our retained expert and he is not designated to testify regarding the car Twyman purchased. He was designated as a witness by us from the start of this case as to the pattern and practice occurrences. Look at our disclosures and the prior discovery responses and you will see that you are mistaken in claiming his disclosure is a new matter.
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> > There are other defects in your answer to interrogatories that I will address later, but I wanted to get this one point regarding Phillip Grismer out of the way right away
> >
> > **Joel A. Brodsky**
> > Attorney at Law
> > 8 S. Michigan Ave.
> > Suite 3200
> > Chicago IL 60603
> > V(312) 541-7000
> > F(312)541-7311
> > jbrodsky@joelbrodskylaw.com
> > www.joelbrodskylaw.com
> >
> > <image003.jpg>

From:
jbrodsky@joelbrodskylaw.com

You received this message because the sender is on your allow list.

EXHIBIT B-5

From: Joel A. Brodsky
Sent: Mon 01/09/2017 02:11 PM
To: Peter Lubin
Cc: Nicole Miller;James DiTommaso;Andrew Murphy
Subject: RE: Twyman v. S&M Auto

After talking to my experts after their inspection, and after taking your Indiana bodymans deposition, it is now 100% obvious that your entire case is concocted and without any factual basis. Neither Carfax or Autocheck show the car as being in an accident, and after this litigation started all that was discovered is that the car was in a minor fender bender. Your allegations about a rebuilt wreck, which you just repeated, is totally and completely a falsehood and lie, and you know it. Your theory that my client had an obligation to disclose the incorrect 1.9 rating of Manheim Auction is without any basis in law. You may think your building hours for your fee petition, but in fact you are only building my hours for my fee petition against you personally and I will collect every penny from you. This lawsuit is a total and complete disgrace and I am sure when Judge Kendall hears the facts she will be extremely upset with you.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

From: Peter Lubin [mailto:psl@ditommasolaw.com]
Sent: Monday, January 09, 2017 1:50 PM
To: 'jbrodsky@joelbrodskylaw.com'
Cc: Nicole Miller; James DiTommaso; Andrew Murphy
Subject: RE: Twyman v. S&M Auto

The Bates Stamp numbers for the three Grismer reports we produced in discovery are: JB001-JB007; MT001-MT008; CR001-CR-012. These documents were produced with a cover letter on August 15, 2016 via a 2:56 pm email. I have the email but am not resending it due to the size and because you got it then. If you dispute receipt then I will resend the email. In any regard, we also attached Grismer's reports to the motion to dismiss response brief which we also filed on August 15, 2016. The Bates Stamp numbered reports appear there as well with the same Bates Numbers as referenced above. You have had all the Grismer reports since that date and had them earlier as they were produced to your client in the litigation involving those reports.

I didn't provide you with the Bates numbers in my earlier email of today because I shouldn't have to cull through the correspondence and do that. I am doing so now only because you have claimed incorrectly that we withheld these documents which you and your client have always had and which your client should have produced to us. Please read the discovery responses and review the document production before making claims of withholding documents. I am also attaching our initial Rule 26 disclosure and you will see that Grismer is disclosed there at the start of the case. He was disclosed as a witness throughout the case in all of our discovery responses.

I will continue to treat you with respect and don't understand the need for the personal remarks you are making. You claimed in a brief that you only used the term extortionist with regard to me to be funny but now say you meant what you said. When we speak on the phone and in person you are always civil. Can you try to take that approach in the emails too. Discovery is nearly done and fees will go up less if there are fewer issues to resolve. If your client had offered to settle at the start the fees wouldn't be so high. Instead you stated that your client had no interest in any settlement as the car had never been in an accident.

I am certain given the respectful way that we interact in person that we can move forward civilly and efficiently. Thank you.

DiTommaso ♦ Lubin

Peter S. Lubin
psl@ditommasolaw.com
Bio

630-333-0002
Direct
630-710-4990 Cell
630-333-0333 Fax

Oakbrook Terrace
Chicago

From: Joel A. Brodsky [mailto:jbrodsky@joelbrodskylaw.com]
Sent: Monday, January 09, 2017 12:39 PM
To: Peter Lubin <psl@ditommasolaw.com>
Cc: Nicole Miller <nmiller@ditommasolaw.com>; James DiTommaso <jditommaso@ditommasolaw.com>; Andrew Murphy <acm@ditommasolaw.com>
Subject: RE: Twyman v. S&M Auto

There are no "Bates Stamped" discovery responses of Grismers reports. What Bates stamped numbers are you referring to? If you did produce it you would have given me the bates numbers, but you didn't. As to my remarks, the only thing unprofessional here is what you are doing, which is making up a bogus case and trying to run up hours to extort money through a lawsuit. If you don't like the truth, then stop doing what you are doing. I call a spade a spade.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

From: Peter Lubin [mailto:psl@ditommasolaw.com]
Sent: Monday, January 09, 2017 9:14 AM
To: Joel A. Brodsky
Cc: Nicole Miller; James DiTommaso; Andrew Murphy
Subject: Re: Twyman v. S&M Auto

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Sent from my iPhone

On Jan 9, 2017, at 9:03 AM, Joel A. Brodsky <jbrodsky@joelbrodskylaw.com> wrote:

Peter

What do you mean you have produced Grismers reports in other cases you have had against S&M. You have not sued S&M before. If other lawyers have used him in another care that is not a disclosure in this case. Also attaching something to a response that was part of another case is not a disclosure in this case. Therefore it appears you have been withhildong relevant documents we specifically requested in discovery. This is sanctionable. Grismers name appears nowhere in prior discovey answers. We will beoving to bar him and for substantial discovery sanctions. Your attempt to manufacture a case where none exists is deplorable and your attempt at using yourlaw license to commit extortion will not succeed and we willbe seeking fees from you after your ridiculous case is dismissed.

Joel A. Brodsky - sent from my I-phone

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> Can you please cooperate in scheduling the depositions we noticed. Thank you.
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> Sent from my iPad
>
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> > Peter,
> >
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"reports". I have not received any opinions or reports from a Phillip Grismer, and therefore have no idea what you are referring to in that part of your supplemental answers.

There are other defects in your answer to interrogatories that I will address later, but I wanted to get this one point regarding Phillip Grismer out of the way right away

Joel A. Brodsky
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Chicago IL 60603
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com
www.joelbrodskylaw.com

<image003.jpg>

EXHIBIT B-6

From: Joel A. Brodsky
Sent: Wed 01/25/2017 07:39 PM
To: Peter Lubin
Cc: Andrew Murphy;James DiTommaso
Subject: RE: Twyman v. S&M Auto

After the Judge rules on my motion in limine I will address the dates, if necessary. That is what I said in my motion in limine. Didn't you read it? Or are you too busy trying to find other potential victims to try your extortion scheme on? I have been doing some research on your expert Szczesniak. You are two peas on a pod for sure.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

From: Peter Lubin [mailto:psl@ditommasolaw.com]
Sent: Wednesday, January 25, 2017 7:08 PM
To: jbrodsky@joelbrodskylaw.com
Cc: Andrew Murphy; James DiTommaso
Subject: Re: Twyman v. S&M Auto

I am handling the deposition. Once again please provide dates for the deposition. Our position on the matter is stated in our response with regard to your failure to cooperate in setting the depositions.

Sent from my iPhone

On Jan 25, 2017, at 7:03 PM, Joel A. Brodsky <jbrodsky@joelbrodskylaw.com> wrote:

Peter,

I just glanced over your Response to my Motion In Limine. Please be advised that neither Mr. Hasan nor Mr. Ramos are available to give their depositions on February 1st. If you are to busy to do it another day, then I am sure that someone else at your firm can take them on an alternate date. I have no problem producing them after February 15th, even though expert discovery formally ends on that date. I hope to have my reply to your response on file by Friday.

Joel A. Brodsky
Attorney at Law
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Chicago IL 60603
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F(312)541-7311
jbrodsky@joelbrodskylaw.com

www.joelbrodskylaw.com

<image002.jpg>

Total Control Panel Login

To: psl@ditommasolaw.com Remove this sender from my allow list

From:
jbrodsky@joelbrodskylaw.com

You received this message because the sender is on your allow list.

EXHIBIT B-7

From: Joel A. Brodsky
Sent: Mon 03/06/2017 06:33 PM
To: James DiTommaso
Cc: Peter Lubin;Andrew Murphy
Subject: RE: Twyman v. S&M, Burgess Sup. Doc. Production
Attachments: ARDC Case to Discipline Dmitry Feofanov.pdf

Say hello to your friend Dmitry. Terrible thing about the proceedings to disbar him. And so soon after his bankruptcy. Must be rough.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

From: James DiTommaso [mailto:jditommaso@ditommasolaw.com]
Sent: Monday, March 06, 2017 5:49 PM
To: jbrodsky@joelbrodskylaw.com
Cc: Peter Lubin; Andrew Murphy; EService
Subject: Twyman v. S&M, Burgess Sup. Doc. Production

Counsel:

Attached are documents (JB100-JB168) in connection with Twyman v. S&M Auto.

Please let me know if you cannot open the attachment.

Thanks,

Jim

DiTommaso ♦ Lubin

James V. DiTommaso
jditommaso@ditommasolaw.com

630-333-0000 x25 Tel
630-333-0333 Fax

Oakbrook Terrace Chicago

To: psl@ditommasolaw.com Remove this sender from my allow list
From:
jbrodsky@joelbrodskylaw.com
You received this message because the sender is on your allow list.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

DMITRY FEOFANOV,

Attorney-Respondent,

No. 6224899.

Commission No. 2017PR00009

FILED --- February 9, 2017

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Jonathan Wier, pursuant to Supreme Court Rule 753(b), complains of Respondent Dmitry Feofanov, who was licensed to practice law in Illinois on November 10, 1994, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

(*Misrepresentation and dishonesty by failing to disclose the death of a client during pending litigation*)

1. On or about January 12, 2014, Respondent and Martin Krystek ("Krystek") agreed that Respondent would represent Krystek in matters related to a dispute involving a vehicle that Krystek purchased from Fergus Nissan, Inc. (d/b/a Martin Nissan, Inc.) ("Fergus Nissan") and financed with Nissan Motor Acceptance Corporation ("NMAC").

2. Pursuant to a written fee agreement, Respondent charged Krystek an initial fee of $2,300 to represent him in the dispute. In addition, Respondent and Krystek agreed that if Krystek obtained a recovery, Respondent would be compensated at his current hourly rate for work done on the case, not to exceed the total recovery. The agreement provided that Krystek had the authority to determine whether to settle the case at all times.

3. On January 15, 2015, Respondent sent a letter to JAMS, a private alternative dispute resolution provider, attaching a demand for arbitration against NMAC and proof that he had served NMAC with a copy of the demand.

4. On January 15, 2015, Respondent also sent a letter to Fergus Nissan purporting to revoke acceptance of the vehicle Krystek purchased from Fergus Nissan and to unilaterally cancel the contract. Respondent also made a demand for arbitration, but the letter did not provide a description of any issues that Krystek had experienced with the vehicle or his basis for demanding arbitration.

5. On February 10, 2015, counsel for Fergus Nissan advised Respondent that because Respondent had not provided details regarding any issues that Krystek experienced with the vehicle in his January 15, 2015 letter or thereafter, any demand for arbitration or filing of a lawsuit would be frivolous and sanctionable.

6. On March 11, 2015, counsel for NMAC advised Respondent that NMAC disagreed with Respondent's contention that any dispute between NMAC and Krystek was subject to arbitration, and that NMAC therefore objected to Krystek's demand for arbitration.

7. On April 1, 2015, Respondent sent a letter to JAMS attaching a demand for arbitration against Fergus Nissan and proof that he served Fergus Nissan with a copy of the demand.

8. On June 8, 2015, JAMS sent a letter to Respondent and the attorneys for Fergus Nissan and NMAC requesting payment of the initial case management fee of $1,200 in order to proceed. Because Respondent took the position in the demand for arbitration that Fergus Nissan and NMAC were responsible for the case management fee, JAMS requested that Fergus Nissan or NMAC pay the $1,200 fee.

9. On June 23, 2015, Respondent emailed Krystek to advise him that Respondent planned to file a lawsuit on his behalf against Fergus Nissan and NMAC to compel arbitration. Krystek emailed Respondent on June 30, 2015 and did not object to filing the lawsuit.

10. Krystek died on July 30, 2015. As of that date, Respondent had not yet filed any lawsuit against Fergus Nissan or NMAC.

11. Krystek's death terminated Respondent's employment with Krystek, ended their attorney-client relationship, and revoked any authority for Respondent to take action on Krystek's behalf.

12. On August 5, 2015, Respondent filed a complaint on Krystek's behalf against Fergus Nissan and NMAC ("Defendants") in the Circuit Court of Cook County seeking to compel arbitration and alleging that the Defendants had violated the Illinois Consumer Fraud Act. The case was docketed as *Krystek v. Fergus Nissan, Inc. (d/b/a Martin Nissan, Inc.) and Nissan Motor Acceptance Corp.*, Cook County case number 2015 CH 11758. Bruce Terlep of Swanson, Martin & Bell, LLP (the "Swanson firm") represented NMAC, and Karr Eggert, LLP (the "Karr firm") and Hardt, Stern & Kayne, P.C. (the "Hardt firm") represented Fergus Nissan.

13. On or about September 3, 2015, Respondent learned that Krystek had died.

14. Upon learning of the death of Krystek, Respondent knew that he could take no further action in the lawsuit on behalf of Krystek because his death had terminated the attorney-client relationship.

15. At no time following Krystek's death did Respondent substitute Krystek's estate as plaintiff in the litigation or consult a representative of Krystek to pursue the claims on behalf of the estate. Rather, Respondent continued to litigate the claims against NMAC and Fergus Nissan as though Krystek had not passed away.

16. On September 21, 2015, NMAC filed a motion to dismiss the lawsuit contending that it had paid the arbitration fee and had tried to advise Respondent of this payment prior to the filing of the complaint.

17. On September 21, 2015, Respondent sent a letter to Terlep with a non-negotiable settlement offer on behalf of Krystek. The offer provided that Krystek would agree to settle the lawsuit against NMAC if NMAC delivered a check in the amount of $1,000 to Respondent's office within 30 days of accepting the offer. When Respondent sent the letter, he knew that Krystek was dead and had not authorized Respondent to settle his claim against NMAC for $1,000, or for any amount.

18. On September 23, 2015, Respondent appeared in court, purportedly on behalf of Krystek. At that hearing, the court considered Fergus Nissan's motion for additional time to answer or otherwise plead. At that court appearance, Respondent did not disclose to Defendants' counsel or the court that Krystek had died in July and that Respondent had learned of his death on or about September 3, 2015.

19. On September 24, 2015, Respondent appeared in court, purportedly on behalf of Krystek. At the hearing, the court set a briefing schedule on NMAC's motion to dismiss and for sanctions, which was based on NMAC's assertion that it had paid the arbitration fee and attempted to provide notice to Respondent. At that court appearance, Respondent did not disclose to Defendants' counsel or the court that Krystek had died in July and that Respondent had learned of his death on or about September 3, 2015.

20. On October 19, 2015, Respondent sent a letter to the Hardt firm with a non-negotiable settlement offer on behalf of Krystek. The offer provided that Krystek would agree to settle the lawsuit against Fergus Nissan if

Fergus Nissan delivered a check in the amount of $2,500 to Respondent's office within 30 days of accepting the offer. When Respondent sent the letter, he knew that Krystek was dead and had not authorized Respondent to settle his claim against Fergus Nissan for $2,500, or for any amount.

21. On October 27, 2015, Respondent appeared in court, purportedly on behalf of Krystek. At that hearing, the court set a briefing schedule for Fergus Nissan's motion to dismiss. At that court appearance, Respondent did not disclose to Defendants' counsel or the court that Krystek had died in July and that Respondent had learned of his death on or about September 3, 2015.

22. On October 30, 2015, Respondent sent a letter to Terlep with a non-negotiable settlement offer on behalf of Krystek. The offer provided that Krystek would agree to settle the lawsuit against NMAC if NMAC delivered a check in the amount of $500 to Respondent's office within 30 days of accepting the offer. When Respondent sent the letter, he knew that Krystek was dead and had not authorized Respondent to settle his claim against NMAC for $500, or for any amount.

23. On December 18, 2015, the court heard the Defendants' motions to dismiss. Respondent appeared in court and advised the court that he was there "for the plaintiff." At that hearing, counsel for NMAC commented that the litigation had evolved into a consumer case where the real party in interest was no longer the plaintiff, it was plaintiff's counsel. Respondent argued against the motions to dismiss, but he did not disclose to Defendants' counsel or the court that Krystek had died in July and that Respondent had learned of his death on or about September 3, 2015. Judge Kathleen M. Pantle entered an order granting both motions to dismiss and imposing sanctions against Respondent.

24. On December 30, 2015, Mr. Terlep sent Respondent a letter enclosing a notice pursuant to Illinois Supreme Court Rule 237 compelling the appearance of Krystek at a February 19, 2016 evidentiary hearing on the amount of the sanctions. When Respondent received that notice, he knew that Krystek had died in July and that if Terlep insisted on enforcing the notice, Respondent would have to disclose to him and the court that he did not disclose Krystek's death and that he had been acting without Krystek's authority.

25. On January 5, 2016, Respondent sent a letter to the Hardt firm asking whether Fergus Nissan would arbitrate Krystek's claim. When he sent the letter, Respondent knew that Krystek had died in July 2015 and that he was no longer authorized to pursue a claim on Krystek's behalf against Fergus Nissan.

26. On February 12, 2016, Respondent filed a motion to reconsider the order granting Fergus Nissan's motion to dismiss. When he filed the motion, Respondent knew that Krystek had died and that he was no longer authorized to pursue a claim on Krystek's behalf against Fergus Nissan.

27. On February 19, 2016, Respondent appeared in court, purportedly on behalf of Krystek. At that hearing Respondent argued the motion for reconsideration, but the court denied the motion. At the court appearance, Respondent did not disclose to Defendants' counsel or the court that Krystek had died in July and that Respondent had learned of his death on or about September 3, 2015.

28. On December 14, 2016, Respondent filed several motions including a motion to vacate the sanctions against him. In that motion, Respondent revealed for the first time to the court and to the Swanson firm that Krystek had been dead since July 29, 2015, and that Respondent knew that he was deceased since at least September 3, 2015.

29. After Krystek's death, Respondent was not authorized to take action on Krystek's behalf and no longer represented him. The actions that Respondent took on behalf of Krystek after learning of his death on or about September 3, 2015, as alleged in paragraphs 15 and 17-27 above, were false because Respondent's actions and statements constituted representations to the court and opposing counsel the he continued to be authorized by Krystek and that he was representing him.

30. At the time Respondent took the actions and made the statements alleged in paragraphs 15 and 17-27 above, Respondent knew that he could not appear in court on Krystek's behalf nor could he make or accept settlement offers to Fergus Nissan or NMAC without Krystek's authority, and he knew that his statements and conduct alleged in paragraphs 15 and 17-27 constituted false statements.

31. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. knowingly making a false statement of fact or law to a tribunal, by appearing in court on September 23, September 24, October 27, December 18, 2015, and February 19, 2016 and stating that he was appearing on behalf of Krystek when Respondent knew that he was dead, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010);

b. knowingly making a false statement of material fact or law to a third person, by conduct including his representation to opposing counsel that he continued to represent Krystek when Respondent knew that Krystek was dead, his representation to opposing counsel that Krystek wished to settle the case after he had died, and his misrepresentation by omission of the material fact of Krystek's death to opposing counsel during settlement negotiations, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and

c. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including (1) appearing in court in case number 2015 CH 11758 and stating that he was appearing on Krystek's behalf when Respondent knew that Krystek was dead, (2) failing to disclose the material fact of Krystek's death to the defendants or their attorneys, (3) making unauthorized settlement demands on behalf of Krystek by falsely claiming that Krystek wanted to settle his lawsuit, and (4) misrepresenting Krystek's continuing involvement in the case after Krystek died, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct.

WHEREFORE, the Administrator requests that this matter be referred to a panel of the Hearing Board of the Commission, that a hearing be conducted, and that the Hearing Panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: Jonathan M. Wier

Jonathan M. Wier
Counsel for Administrator
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601-6219
Telephone: (312) 565-2600
Email: jwier@iardc.org

EXHIBIT B-8

From: Joel A. Brodsky
Sent: Tue 08/23/2016 04:21 PM
To: Anthony Claiborne
Cc: Peter Lubin;Andrew Murphy;EService
Subject: RE: Twyman v. S&M Auto, No. 16-cv-4182
Attachments: ATT00001.htm
Importance: Normal

I'm sorry your office only has just this one case.

Joel A. Brodsky Sent from my Samsung Galaxy smartphone from somewhere in Italy.
-------- Original message --------
From: Anthony Claiborne <abc@ditommasolaw.com>
Date: 8/23/2016 23:01 (GMT+01:00)
To: jbrodsky@joelbrodskylaw.com
Cc: Peter Lubin <psl@ditommasolaw.com>, Andrew Murphy <acm@ditommasolaw.com>, EService <EService@ditommasolaw.com>
Subject: Twyman v. S&M Auto, No. 16-cv-4182

Mr. Brodsky,

Attached is Plaintiff's Second Set of Request to Admit with a more legible copy of Exhibit B.

ABC

DiTommaso ♦ Lubin

Antonio B. Claiborne
Litigation Paralegal Specialist
abc@ditommasolaw.com

630-333-0000 x28 Tel
630-333-0333 Fax

Oakbrook Terrace
Chicago

I'm sorry your office only has just this one case. Â
Joel A. Brodsky Â Sent from my Samsung Galaxy smartphone from somewhere in Italy.-------- Original message --------From: Anthony Claiborne <abc@ditommasolaw.com> Date: 8/23/2016 23:01 (GMT 01:00) To: jbrodsky@joelbrodskylaw.com Cc: Peter Lubin <psl@ditommasolaw.com>, Andrew Murphy <acm@ditommasolaw.com>, EService <EService@ditommasolaw.com> Subject: Twyman v. S&M Auto, No. 16-cv-4182

Mr. Brodsky,
Â
Attached is Plaintiffâ€™s Second Set of Request to Admit with a more legible copy of Exhibit B.
Â
ABC
Â

Antonio B. Claiborne
Litigation Paralegal Specialist
abc@ditommasolaw.com

630-333-0000 x28Â Tel

630-333-0333Â Â Â Â Â Â Â Â Â Fax

Oakbrook Terrace
Chicago

Â
Â
PRIVILEGED AND CONFIDENTIAL

EXHIBIT B-9

From: Joel A. Brodsky
Sent: Tue 08/23/2016 10:56 PM
To: Peter Lubin
Cc: Andrew Murphy;James DiTommaso
Subject: Re: Twyman

I'm sorry your office doesn't have any other cases. I'm going to figure a way to file a motion to stay discovery and rule 37 until I return because you don't seem to be able to restrain yourself.

Joel A. Brodsky - sent from my I-phone

On Aug 24, 2016, at 12:17 AM, Peter Lubin <psl@ditommasolaw.com> wrote:

> When you get back we need to discuss the failure to answer the second set of interrogatories and document requests. You objected to and didn't answer the requests relating to average time a car is on the lot. We think the subject car remained on the lot much longer then the average and that as a result Defendants would have learned of the accident damages. We need to complete the rule 37 process and have a meet and confer on the issue. I would like to avoid a motion to compel and we can do this when you get back. Just get me times and dates when you can do the meet and confer. thanks

<image001.png>

Peter S. Lubin
psl@ditommasolaw.com
Bio

630-333-0002
Direct
630-710-4990
Cell
630-333-0333
Fax

Oakbrook Terrace
Chicago

EXHIBIT B-10

From: Joel A. Brodsky
Sent: Mon 09/19/2016 09:51 PM
To: Peter Lubin
Cc: Andrew Murphy;James DiTommaso
Subject: RE: Twyman

I am bringing a motion on Monday to prevent the deposition in Indianapolis, and based on your email, which I will attach to the motion, I will ask the Court to order that in the interim that you be enjoined from taking the deposition. You rejected my proposal that we take his deposition remotely in favor of taking the deposition in the back room of a body shop. You will get my motion tomorrow. Thank you for sending the below email. You have no idea how helpful it was for you to state that the Court cannot order where a deposition in a case before it can be taken.
Also, your refusal to contact the prior owners to the car to see if the car has been in an accident only shows that you have no intention of doing an legitimate investigation into the facts, and is the most incredible statement I have heard in a long time. The car was never in an accident, and you will be paying my fees. Now go to sleep, and tomorrow try to stop obsessing about this case 24/7.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

-----Original Message-----
From: Peter Lubin [mailto:psl@ditommasolaw.com]
Sent: Monday, September 19, 2016 9:38 PM
To: Joel A. Brodsky
Cc: Andrew Murphy; James DiTommaso
Subject: Twyman

I will be proceeding with the deposition next week of the body shop owner as you have declined to cooperate in offering any new dates. The fact witness is outside the subpoena range and I am not required to bring him here nor do I have the power to do that nor does the court. Rule 26 has provisions for disclosing opinion testimony from fact witnesses which a party does not control. There is no rule requiring that the witnesses deposition proceed here or by video simply because he is giving an opinion in addition to testifying about facts as an occurrence witness. The court here lacks jurisdiction over the out of state witness and he can only be compelled to testify at a deposition held in his jurisdiction. And Rule 26 does not require an expert report for such witness. Your failure to attend the

deposition will be your responsibility as you have offered no alternative dates and discovery closes October 4. If you offer alternative dates and we obtain court permission I am willing to reset the deposition for after the discovery close but absent provision of alternative dates by you we will proceed next week. I have attempted to resolve with you a new deposition date through the meet and confer process and you have declined to do that. I am not obligated to reset the noticed date and will not do that given your refusal to cooperate.

I am also confirming that at the meet and confer you again declined to provide verified interrogatory answers so the motion to compel will proceed on that issue next week.

You also declined to amend the non responsive request to admit answers which will result in motion practice.

Sent from my iPhone=

EXHIBIT B-11

From: Joel A. Brodsky
Sent: Fri 09/16/2016 08:32 PM
To: Peter Lubin
Subject: RE: Twyman

Peter,

Before we talk about the outstanding discovery issues you had better have a talk with Mr. Weber of Manheim Auctions. The Infiniti at issue was **not** purchased online by S&M Auto, but was purchased in person or "on the block". The auction receipt shows this unequivocally. You don't want to submit a false affidavit and Mr. Weber I am sure does not want a false affidavit bearing his signature filed in federal court. (Especially as you have already admitted to filing the odometer claim without a basis in fact.) You will want to get this affidavit corrected and a corrected affidavit submitted right away before I make a motion to have Mr. Weber held in contempt, and for you to pay sanctions for submitting a false affidavit.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

ACCREDITED BUSINESS
BBB Rating: A+

From: Peter Lubin [mailto:psl@ditommasolaw.com]
Sent: Friday, September 16, 2016 3:35 PM
To: Joel A. Brodsky (jbrodsky@joelbrodskylaw.com)
Subject: Twyman

If you got too busy today we can do the meet and confer in the afternoon on Monday too. I can still do today it if you call me on either my direct dial or cell. Or I can call you if your give me the number and the time. Hope you are better and have a good weekend.

DiTommaso Lubin

Peter S. Lubin
psl@ditommasolaw.com
Bio

630-333-0002
Direct
630-710-4990 Cell
630-333-0333 Fax

Oakbrook Terrace
Chicago

EXHIBIT B-12

Peter Lubin

From: Joel A. Brodsky <jbrodsky@joelbrodskylaw.com>
Sent: Saturday, September 17, 2016 3:47 PM
To: Peter Lubin
Cc: James DiTommaso; Andrew Murphy
Subject: RE: Twyman

Peter,

I would not be so sure about what was available at the auction to a person that attends in person. If your relying on your friend Dmitry, who went Chp 7 bankrupt in 2013, you will want to double check. He is wrong. So far you have filed the odometer count which didn't have any factual basis, and submitted an affidavit that contains a false statement of fact. Don't submit yet another false pleading.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

From: Peter Lubin [mailto:psl@ditommasolaw.com]
Sent: Friday, September 16, 2016 9:05 PM
To: jbrodsky@joelbrodskylaw.com
Cc: James DiTommaso; Andrew Murphy
Subject: Re: Twyman

I have verified that the information was not only available online but onscreen at the auction and at computer kiosks there. I will find out from Manheim if your client attended the auction but all the condition information was available and disclosed to them before purchase. Whether they bought it in person or online isn't relevant. Also I haven't submitted the affidavit in any pleading and after having learned this additional information will pass it on to Manheim and if it is correct I will ask if Weber will correct the affidavit on that one point. We still need to have meet and confer on the issues I have been requesting. What time can you do it Monday afternoon. Thanks.

Sent from my iPhone

On Sep 16, 2016, at 8:30 PM, Joel A. Brodsky <jbrodsky@joelbrodskylaw.com> wrote:

> Peter,
>
> Before we talk about the outstanding discovery issues you had better have a talk with Mr. Weber of Manheim Auctions. The Infiniti at issue was **not** purchased online by S&M Auto, but was purchased in person or "on the block". The auction receipt shows this unequivocally. You don't want to submit a false affidavit and Mr. Weber I am sure does not want a false affidavit bearing his signature filed in federal court. (Especially as you have already admitted to filing the odometer claim without a basis in fact.) You will want to get this affidavit corrected and a corrected affidavit submitted right away before

I make a motion to have Mr. Weber held in contempt, and for you to pay sanctions for submitting a false affidavit.

Joel A. Brodsky
Attorney at Law
V(312) 541-7000
F(312)541-7311
jbrodsky@joelbrodskylaw.com

<image001.jpg>

From: Peter Lubin [mailto:psl@ditommasolaw.com]
Sent: Friday, September 16, 2016 3:35 PM
To: Joel A. Brodsky (jbrodsky@joelbrodskylaw.com)
Subject: Twyman

If you got too busy today we can do the meet and confer in the afternoon on Monday too. I can still do today it if you call me on either my direct dial or cell. Or I can call you if your give me the number and the time. Hope you are better and have a good weekend.

<image004.png>

Peter S. Lubin	630-333-0002 Direct	Oakbrook Terrace
psl@ditommasolaw.com	630-710-4990 Cell	Chicago
Bio	630-333-0333 Fax	

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALDSON TWYMAN,	)	
Plaintiff,	)	Case No.
vs.	)	16-cv-04182
S&M AUTO BROKERS, INC.,	)	
SAED IHMOUD and MOHAMMED IHMOUD,	)	
Defendants.	)	

The deposition of AYAD HASAN, called as a witness herein for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before ELIA E. CARRIÓN, CSR No. 084.004641, a Certified Shorthand Reporter of said state, at Joel Brodsky Law, 8 South Michigan Avenue, Suite 3200, Chicago, Illinois, on Wednesday, the 29th day of March, 2017, at 8:59 A.M.

say that?
A. At that time, I was talking to Mohammed. I wasn't paying attention.
Q. So you didn't hear me say anything to Mr. Brodsky when you were talking to him?
A. I heard you say something, but I didn't understand what you were saying.
Q. So you did hear me?
MR. BRODSKY: Objection.
A. I don't know what you said.
MR. BRODSKY: Are we going to move on to a deposition question? Or are we going to --
Q. (By Mr. Lubin) Did you hear me tell Mr. Brodsky --
MR. BRODSKY: If you ask one more question about that, I'm terminating the deposition. Ask questions about the -- what he's here to do or we're done.
Q. (By Mr. Lubin) What did you say to Mr. Brodsky --
MR. BRODSKY: We're done.
Q. (By Mr. Lubin) -- and what did he say to you?
MR. BRODSKY: We're terminating the deposition.

We're done.

MR. LUBIN: All right.

MR. BRODSKY: We're done.

Q. (By Mr. Lubin) You're not going to tell me what you -- what you discussed with Mr. Brodsky?

MR. BRODSKY: We're -- we are -- we're done. We're done. We're done. We're done.

MR. LUBIN: Okay.

MR. BRODSKY: We're done. We're done. We're done. I... We're done.

MR. LUBIN: Okay. Well, before we do the next deposition, we're going to go to court and seek a protective order.

MR. BRODSKY: Well, go ahead. Because I think the protective orders will be mine because you're asking misleading questions.

MR. LUBIN: We need to get the transcript fairly expedited. I'll talk to you about it, and you can call my office.

THE COURT REPORTER: Are we off the record?

MR. LUBIN: Uh-huh.

THE COURT REPORTER: Yes? Off the record?

MR. BRODSKY: I guess.

MR. LUBIN: Mr. Brodsky, can I have my copies

of the witness's exhibits back?

(WHEREUPON, discussion was had off the record.)

MR. LUBIN: Can you put on the record that he just said I'm a criminal enterprise?

MR. BRODSKY: It is. This is all a criminal enterprise.

MR. LUBIN: Did you put -- so did you hear -- did you get that, that Mr. Brodsky said --

MR. BRODSKY: I thought we were off the record.

MR. LUBIN: I want --

MR. BRODSKY: If you want it on the record, my opinion -- my opinion, this entire case is totally concocted, fabricated in an attempt to make money where there is no case at all.

MR. LUBIN: And you just said this case is a criminal enterprise. Is that --

MR. BRODSKY: I think I did. And I've said it before.

MR. LUBIN: And that was when your client asked me about settlement; correct?

MR. BRODSKY: And your client -- my client wants to put an end to this --

MR. M. IHMOUD: I say -- I say --

MR. BRODSKY: He doesn't want to settle. He doesn't want to settle. He doesn't want to settle.

MR. LUBIN: Now, you're just -- let the record -- you dragged the client out as he was trying to talk about settlement.

MR. BRODSKY: My client doesn't get to talk to you. You talk to me.

MR. LUBIN: No, your client did talk to me. He said --

MR. M. IHMOUD: I'm not talking about settlement, sir. I'm talking both of you is going over the argument and finish this one today.

MR. LUBIN: That's --

MR. M. IHMOUD: That's what I said.

MR. LUBIN: Let's finish it.

MR. M. IHMOUD: We are going to finish the settlement deposition. The deposition, finish the deposition.

MR. BRODSKY: Then ask relevant questions.

MR. LUBIN: Okay.

MR. M. IHMOUD: Yeah.

MR. BRODSKY: Don't put stuff in the record --

MR. M. IHMOUD: The questions is the same thing all over again.

MR. LUBIN: Sir, we can ask questions.

MR. M. IHMOUD: That's all --

MR. BRODSKY: Well, don't ask questions about what --

MR. M. IHMOUD: I said with the coming here to do this for you, just take --

MR. LUBIN: I'm happy to ask him questions.

MR. M. IHMOUD: Just ask him questions.

MR. BRODSKY: But don't ask questions along the lines of --

MR. LUBIN: Well, we have a disagreement. I respectfully disagree with you, Mr. Brodsky. If you talk to the witness about his deposition during the break, I'm entitled to --

MR. BRODSKY: No, you're not.

MR. M. IHMOUD: Just let's --

MR. LUBIN: All right. Okay. I'm not going to going to get into a dispute.

First of all, he's not your client. He's an independent witness. And even if he was your client, you're not allowed to talk to him --

MR. BRODSKY: Yes, I am.

MR. LUBIN: -- during a deposition.

MR. BRODSKY: Yes, I am.

MR. LUBIN: No, you're --
THE COURT REPORTER: Please.
MR. LUBIN: Okay. I'm sorry, ma'am.
Very respectful to Mr. Brodsky who has already said I'm part of a criminal enterprise --
MR. BRODSKY: I can prove it too.
MR. LUBIN: Let's take a --
THE COURT REPORTER: All right. I'm just going to --
MR. M. IHMOUD: He does not mean it either.
MR. LUBIN: I hope not.
MR. M. IHMOUD: No, he does not mean it.
MR. BRODSKY: I've said it in writing.
MR. LUBIN: Could you please get that down?
MR. BRODSKY: Get this one down too. You keep putting it in there like I'm trying to hide it. I've said it in writing.
MR. LUBIN: Mr. Brodsky is repeatedly -- you keep saying that my -- this is part of a criminal enterprise, and your client disagrees with that.
MR. BRODSKY: No. This client doesn't. He just wants to get this deposition over with so he doesn't have to come back.
MR. M. IHMOUD: Just get this deposition over

with.

MR. LUBIN: Okay. But you don't think this is a criminal enterprise?

MR. BRODSKY: You don't get to ask him questions.

MR. M. IHMOUD: Sir, I'm not in deposition. Okay? I'm just asking, please, you guys finish. This is wasting the man's time, and he want to go.

MR. LUBIN: Okay. Just so the record -- so the record reflects, without them interrupting. It's our position that when Mr. Brodsky talks to the witness during the breaks about the deposition, that that's discoverable and I'm entitled to ask him questions about that. Mr. Brodsky has not allowed those questions to be asked and said --

MR. BRODSKY: You didn't ask those questions. You didn't ask him what was said out there. You never asked him that question. You kept trying to put words in his mouth.

MR. M. IHMOUD: Mr. Hasan --

MR. BRODSKY: Tell him what I said when --

MR. M. IHMOUD: What exactly were you talking about?

THE WITNESS: Talking about the questions being

repeated all the time.

Q. (By Mr. Lubin) Did you talk about other things with Mr. Brodsky?

A. No.

Q. How long did the conversation last?

A. I don't know. We just sat out there a few minutes, not even --

MR. M. IHMOUD: Not even a --

A. I was in the washroom.

Q. (By Mr. Lubin) Sir, I was here. It went on for an extended period of --

A. Okay. Well, three to four --

MR. BRODSKY: You don't get to -- you don't get to testify. You get to ask questions.

Q. (By Mr. Lubin) You were talking to him for four or five minutes?

A. I can't -- I don't know. I don't know.

THE COURT REPORTER: If you want to continue the deposition, let me start up my file again.

MR. LUBIN: Okay.

(WHEREUPON, a recess was had.)

EXAMINATION [resumed]

BY MR. LUBIN:

Q. Sir, did you look at the bumper cover

the picture?

MR. BRODSKY: It's on the picture --

A. If there's an arrow on the car?

Q. (By Mr. Lubin) Yeah, this red arrow that's in this picture --

MR. BRODSKY: It was never on the car.

THE COURT REPORTER: Okay. You know what? I'm going to call the office to find a reporter who can get all of you down. That's what I'm going to do.

MR. BRODSKY: Go ahead.

THE COURT REPORTER: Maybe they'll find a reporter who's capable of getting five people at the same time.

(WHEREUPON, a recess was had.)

(WHEREUPON, the deposition was adjourned sine die.)

EXHIBIT D

PETER S. LUBIN
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(630) 333-0000

Admitted to the Illinois Bar, 1983; Admitted to United States District Courts, Northern District of Illinois, Eastern Division, Southern District of Illinois, Central District of Illinois, Peoria and Rock Island Divisions, District Court of Maryland, and Western District of Michigan; United States Courts of Appeal for the Second, Third, Fifth, Seventh, Tenth, Eleventh and District of Columbia Circuits; United States Supreme Court.

EDUCATION

University of Chicago Law School
(J.D. 1983)

Dartmouth College
(A.B. 1980)

PROFESSIONAL AFFILIATIONS

AV rating in Martindale-Hubbell; Super Lawyers; Leading Lawyers Network; American Inns of Court, Markey-Wigmore Chapter (selected by then Chief Judge of Seventh Circuit to be a charter member); Chicago Council of Lawyers (past member, Committee on Professional Responsibility); DuPage County and Chicago Bar Associations; Illinois State Bar Association.

AWARDS AND APPOINTMENTS

Commendation from DuPage Legal Assistance Foundation due to First Cy Pres Award provided to the Foundation of over $260,000 from certain class-actions.

Trial practice skills teacher to students at the University of Chicago Law School Mandel Legal Aid Clinic.

Member of the Visiting Committee of the University of Chicago Law School. 2006-2010.

In 2008, DiTommaso ♦ Lubin received the first "Law Firm of the Year" awarded by the DuPage County Bar Legal Assistance Foundation for the Firm's "commitment to the ideals of the legal profession."

PROFESSIONAL EXPERIENCE

Sole, Lead or Co-Lead Attorney:

Dealer Termination, Franchise, Securities, Trademark, Copyright or Trade Secret Litigation

Flynn Beverage Inc. v. Joseph E. Seagram & Sons, Inc., United States District Court Central District of Illinois, Rock Island Division, Judge McDade. 1992-1994. Wrongful termination of 27-year liquor distributorship involving statutory and common law franchise claims. Represented Flynn Beverage. Sought over $2 million in damages and recovery of attorney fees. Seagram's fifty-page motion to dismiss denied. See 815 FSupp 1174. Case settled: terms confidential. Opposing counsel: David W. Ichel (Simpson Thacher & Bartlett) and T. Mark McLaughlin (Mayer Brown Rowe & Maw).

Flynn Beverage Inc. v. Jim Beam Brands Inc., Circuit Court of Rock Island County, Judge Conway. 1993-1995. Similar claims to those discussed above except claimed over $2.5 million in damages. Beam's motion to dismiss denied in a 5-page memorandum opinion. Case settled: terms confidential. Opposing counsel: Kimball R. Anderson and Scott Szala (Winston & Strawn).

Dedicated v. Volkswagen, United States District Court Northern District of Illinois, Judge Kennelly. 2001. Termination of Volkswagen parts carrier. Represented Dedicated. Volkswagen's motion to dismiss, asserting lack of written evidence of a contract, denied. See 201 FRD 337. Case settled: terms confidential. Opposing Counsel: Randall Oyler (Barrack Ferrazzano).

McVicker v. John Doe Corp., Texas Arbitration through American Arbitration Association. 1990-1992. Wrongful termination of and fraudulent inducement to purchase franchises for entire New York City area. Represented former franchisee. At outset of case defendant, a multi-billion dollar international conglomerate, offered $10,000 to settle. After extensive discovery and shortly before the start of the hearing, defendants agreed to a settlement whereby they returned the entire purchase price of the franchises of $300,000 along with an additional $50,000. Opposing counsel: David Butler (Piper Rudnick).

Meade v. VirtualSellers.com, Circuit Court of Cook County Chancery Division, Judge Nowicki. 1999-2000. Represented co-founder of start-up internet company who was allegedly defrauded out of his interest in the company just before it was sold to a publicly traded company. Seeking 1,000,000 shares in publicly traded company worth between 2 and 7.5 million dollars based on then market prices. Settled after an injunction hearing and denials of defendants' motions to dismiss. Terms confidential. Opposing Counsel: Ceasar Tabet (Tabet, DeVito & Rothstein) and Stephen Voris (Burke Warren Mackay & Serritella)

Asch and Associates v. Churilla, Circuit Court of Cook County, Chancery Division, Judge Foreman. 1993-1994. Former employee charged with stealing a customer list to start a rival insurance agency. Represented former employee defendant. Court denied plaintiff's motion for a temporary restraining order. Court later granted summary judgment dismissing plaintiff's claims with prejudice, and awarded defendant sanctions (half the attorneys' fees billed to defendant and all of his costs). Defendant later filed claims for malicious prosecution against Asch and his

counsel in federal court. That case was settled for $45,000. Opposing counsel: James D. Montgomery (former Corporation Counsel of the City of Chicago).

McCool v. Strata Oil Company, United States District Court Northern District of Illinois, Eastern Division, Judge Bua. 1989. Securities fraud and RICO: purchasers of oil and gas partnerships claim to have been defrauded into purchasing oil and gas partnerships. Represented ten plaintiffs. Case dismissed by trial court without any discovery being permitted. Overturned on appeal; *see* 972 F2d 1452. Co-lead counsel: David Roston (Altheimer & Gray). Opposing counsel: Cary Fleischer (Chuhak & Tecson).

Berthold v. FKPT, United States District Court Northern District of Illinois, Judge Andersen. 1999. Represented plaintiff who terminated its German licensee of trademarked typeface fonts for use in computer software. The fonts were part of a large German font library that was over 140 years old. Claims and counter-claims included claims under German and American law, and international discovery issues. Settlement permitted plaintiff to terminate German licensee and licensee waived all claims to rights in fonts. Opposing Counsel: Caroline Clark (Pennie & Edmonds); Chuck McGirdy (DLA Piper).

Virtual Realty Group v. Virtual Realty Network, United States District Court Northern District of Illinois, Eastern Division, Judge Nordberg, 1995. Represented owner of "Virtual Realty" mark in trademark infringement action. Defendant and its partner Intel had invested hundreds of thousands of dollars in advertising and promoting the "Virtual Realty" mark that did not belong to them. They claimed there was no possibility of consumer confusion between their computerized home loan mortgage brokerage services, and plaintiff's Internet based real-estate brokerage services. Case settled before injunction hearing. Defendant agreed to immediately discontinue using the mark, and to pay money damages and plaintiff's attorneys fees. Opposing Counsel: Russell Pelton (Oppenheimer Wolff & Donnelly).

ROI v. Translogic, United States District Court Northern District of Illinois, Eastern Division, Judge Norgle. 1988. Attempted Monopolization Claims. Represented defendant Translogic. Motion to dismiss half of plaintiff's antitrust claims granted. Case settled. See 702 FSupp 677. Co-counsel: Arnold & Porter. Opposing counsel: Paul Slater (Sperling Slater & Spitz).

DevTech v. Rolfes, Circuit Court of DuPage County, Judge Wheaton. 1992. Claim that computer software designer/former employee stole trade secrets and acted in a manner that damaged plaintiff and defendant's joint copyright in certain software. Represented defendant (software designer/former employee). Plaintiff dismissed all claims on the verge of a preliminary injunction trial when judge indicated that she intended to rule in defendant's favor on a motion to exclude key witnesses for plaintiff. Plaintiff agreed to divide equally with defendant all profits from jointly owned software. Opposing counsel: Edward Ruberry (Bolinger Ruberry & Garvey).

Berthold v. Linotype, United States District Court for the Northern District of Illinois, Eastern Division. 2002. Represented plaintiff. Claim that font software company violated copyright laws in illegally copying software code for its own font software. Case settled. Opposing Counsel: Jim McGurk, Paul Stack and Robert Filpi (Stack & Filpi).

Berthhold v. FKPT, United States District Court for the Northern District of Illinois, Judges Lindberg and Gettleman. 2001. Represented Plaintiff. Obtained default judgment and injunctive relief against German Company for trademark infringement and breach of settlement agreement

and then enforced such judgment against third-party German corporations and nationals living and doing business here. Case settled with third parties agreeing to injunctive relief protecting plaintiff's trademarks and discontinuing sale of infringing products here and in Germany. Opposing Counsel: Robert Filpi and Paul Stack (Stack & Filpi) and Robert Joseph (Dentons).

Berg v. CI Investment Co., United States District Court for the Northern District of Illinois, Eastern Division. Judge Kocoras. Pending. Represent Defendant the largest mutual fund company in Canada. Claims that Defendant engaged in trade secret and copyright infringement of complex trading software seeking over $2,000,000 in damages. After expedited discovery, partial summary judgment entered in our client's favor as to all infringement claims based on implied license. Opposing Counsel: Michael Childress (Childress, Loucks & Plunkett)

Breach of Contract, Partnership, Corporate Control Disputes, Probate and Employment Litigation

Glaser and Sapyta v. Collins, Hamilton and the College of DuPage, United States District Court for the Northern District of Illinois, Eastern Division. Judge Alonso. Pending. Claims for wrongful termination, violation first amendment rights and 1983 as to former Treasurer and Controller of the College of DuPage. Co-Counsel: Shelly Kulwin (Kulwin Masciopinto & Kulwin, LLP) Opposing Counsel: Sidley & Austin; Schiff Hardin & Waite; and Schuyler, Roche & Crisham.

IPC v. Edward Gray Corporation, Circuit Court of Peoria County, Judge McDade. 1988-1989. Construction Contract: local Peoria sub-contractor claimed that Chicago based general contractor entered into a $3 million sub-contract from a car telephone. Represented general contractor defendant. Court entered summary judgment in defendant's favor on all of plaintiff's claims based on "smoking gun" documents uncovered by defendant in discovery. Opposing counsel: Stephen Gay (Husch & Eppenberger).

DiMucci v. DiMucci, Circuit Court of Cook County, Chancery Division, Judges Forman, Flynn and Billik. Arbitration before Judge Casciato. Judge Casciato ordered refund of tens of millions of dollars to jointly owed entities. This was a family partnership and corporate control dispute involving hundreds of millions of dollars in real-estate development assets. Represent 50% owner allegedly frozen out of companies. Involved questions of alleged breach of fiduciary duty and issues involving Florida and Illinois corporate law and issues. Conducted accounting trial before Judge Billik and then arbitration before Judge Casciato. Filed a supervisory order before the Presiding Judge of the Chancery Division regarding the alleged improper additional appearance of Mr. Cherry as co-counsel for defendants. The Court entered a lengthy opinion requiring Mr. Cherry to withdraw his appearance and get permission to refile his appearance. Co-Counsel: Brian Garelli (Garelli & Associates). Opposing Counsel: George Collins and Adrian Vuckovich (Collins & Bargione), Myron Cherry (Myron Cherry & Associates).

Leslie Hindman and Salvage I v. Beale, Circuit Court of Cook County, Chancery Division, Judge Siebel. 2003. Represented plaintiffs Hindman and Salvage I in alleged breach of fiduciary duty case involving multi-million dollar damages claims. Case Settled. Terms Confidential. Co-Counsel: Michael Froy (SNR Denton). Opposing Counsel: Larry Karlin and Ben Randall (Katz, Radall, Weinberg & Richmond).

Estate of Hudson, Circuit Court of DuPage County, Probate Division. Judge Popejoy. Complex estate case. Representing guardian of minor child. Dispute over personal and business assets against estate administrator and surviving spouse. Case involved local and overseas proceedings with claims seeking to recover millions of dollars in funds and business assets allegedly owned by the Estate. Case settled with business returned to the Estate and defendant agreeing pay a substantial portion of our client's fees. Opposing Counsel: Douglas Tibble (Brooks Adams & Tarilis) and Richard Cowen (Stahl Cowen)

Heatherly and Newton v. Rodman & Renshaw, NASD Arbitration. 1993-1996. Represented former Sales Managers of Rodman's Mortgage Backed Securities Department on claims for breach of substantial bonus contracts, and failure to pay finders fees. 2-day hearing. Arbitration award for claimants; claimants awarded all actual damages sought. Heatherly's appeal on statutory attorneys' fees denied with dissent supporting our position. 678 NE2d 591. Opposing Counsel: John Murphy (Baker & McKenzie).

Bark v. Emsco, United States District Court for the Northern District of Illinois, Eastern Division. Judge Kokoras. 1994. Represented plaintiff, doctor who had headed emergency room of large Chicago Hospital in sex discrimination, libel and retaliatory discharge claim seeking over $1 million in damages and attorneys' fees. Defendants' motion to dismiss denied. Case settled for a confidential sum following several written opinions by the Court adopting plaintiff's positions. See 1994 WL 502786; 1994 WL 280077. Defendants also provided a full written retraction and apology regarding all libelous statements. Opposing Counsel: Donald C. Shine (Nisen & Elliott).

Jane Doe v. John Doe Corp., United States District Court for the Northern District of Illinois, Eastern Division. 1997. Represented plaintiff, assistant to CEO of a subsidiary of a Fortune 500 company. Sexual battery and hostile environment sex discrimination claims against the President of a subsidiary of the Fortune 500 Company that worked at the headquarters. $100,000 settlement for emotional distress without filing suit after executive admitted the crux of the charges in pre-filing mediation.

Jane Doe v. John Doe Car Dealer, United States District Court for the Northern District of Illinois, Eastern Division. 1998. Represented plaintiff, who was top performing salesperson at car dealership in sex discrimination case. Case settled for $45,000.

Cusack v. Paul Revere Insurance, United States District Court for the Northern District of Illinois, Eastern Division, Magistrate Judge Guzman. 1995. Represented plaintiff. Paul Revere refused to pay employment disability benefits of over $200,000. Brought declaratory judgment and bad faith failure to pay insurance claims. Case settled immediately after the complaint was filed: terms confidential. Opposing Counsel: Joseph Hasman (Peterson & Ross).

Shelton v. Will County, United States District Court for the Northern District of Illinois, Eastern Division. 1999. Race Discrimination. Client reinstated to his job with full credit towards his pension benefits and received settlement of $50,000 in back pay for the period he was off the job. Opposing Counsel: Michael Condon (Hervas, Sotos, Condon & Bersani)

Hirst v. Rockwell International, EEOC Charge. 1995-1996. Represented senior executive in breach of contract and sex and age discrimination claims. Rockwell demoted executive based on trumped up conflict of interest charges because her husband worked for a competitor, even

though executive/wife had fully disclosed the nature of her husband's relationship each year during the over 10 years that she worked for Rockwell, and Rockwell had always agreed that there was no conflict. Case settled: terms confidential. Co-Counsel: Holly Hirst (Piper DLA).

North American Philips v. Filson et al., United States District Court for the Northern District of Illinois, Eastern Division, Judge Grady. 1996. Represented defendants, former No. 2 and 3 executives at Philips's most profitable American subsidiary in a case charging those executives, the former president of the subsidiary, and their three wives with forming a travel agency to wrongfully take $900,000 from Philips. Executives filed counterclaims for libel for Philips falsely accusing them of selling millions of dollars in defective product, and retaliatory discharge for reporting alleged antitrust violations and price-fixing. Case settled immediately after counter-claims filed: terms confidential. Co-lead Counsel: Matthew Kennelly (Cotsirilos Stephenson Tighe & Streiker). Opposing Counsel: Robin Cohen (Anderson Kill Olick & Oshinsky).

Duncan v. Baxter Healthcare Corp., Circuit Court of Lake County, Judge Hoogasian. 1990. Wrongful termination: plaintiff claimed that she was fired because she filed a workers' compensation claim and sought over $100,000 in lost wage damages and punitive damages and attorney fees. Represented defendant Baxter. After discovery, plaintiff agreed to dismiss all her claims with prejudice in return for Baxter agreeing not to file a sanctions motion seeking recovery of attorneys' fees from plaintiff and her counsel due to plaintiff's fraudulent damages claims. Opposing counsel: Alan Blum.

Appleby v. Mrs. Illinois Pageant, Circuit Court of Cook County, Chancery Division. Judge Hett. 1999. Represented Mrs. Illinois Pageant in suit filed by runner-up to reverse pageant results, and crown her the winner. Plaintiff's lawsuit thrown out on summary judgment. Plaintiff paid a large portion of defendant's attorneys' fees to settle sanctions claim.

Obos v. Cubs, Circuit Court of Cook County, Law Division. 2003. Represented plaintiff in battery and reckless retention of security guard claims. Case settled. Terms confidential. Motion to add punitive damages detailed 9-year history of abuse by Chicago Cubs security guard who attacked numerous other patrons and used excessive force resulting in repeated lawsuits. This case was featured in an investigative report on Fox News regarding the Cubs' failure to fire this rogue security guard. Opposing counsel: Scott Bentivenga (Bollinger Ruberry & Garvey).

Karth v. McConnell, Circuit Court of Cook County, Law Division. Judge Goldberg. 2006-2007. Represented defendant in breach of contract, equitable and wage claim dispute involving alleged damages of $700,000. Breach of contract claim dismissed as violating statute of frauds. Case dismissed with prejudice based on motions to dismiss and for summary judgment. Opposing Counsel: Michael D. Gerhardt (Gerhardt, Gomez, and Haskins).

Biancos v. Eggert, Freeland and CMR Interiors, United States District Court, Northern District of Illinois, Magistrate-Judge Valdez. Representing a real estate owner in his breach of contract case against lessees who performed renovations to the leased premises. Plaintiffs allege that defendants failed to obtain proper building permits and that the renovation does not comply with Chicago building codes. Settlement with certain defendants agreeing to increase rental payments and paying a large share of clients' fees and costs, and other defendants agreeing to pay money damages. Opposing Counsel: Terrance Buehler (Buehler & Williams), Peter Berk (McDonald Hopkins, LLC) and Robert Rosenfeld.

Costello v. Orozen, Circuit Court of DuPage County, Judge Abraham. 2007. Represented construction company defendant in a breach of contract case involving the installation of a practice putting green on the grounds of plaintiff's mansion. Case settled for a small fraction of money sought after we obtained evidence rebutting plaintiff's claims from one of his own experts. Opposing Counsel: Greg Adamo and Ken Vanko (Clingen, Callow & McLean, LLC).

Motorola v. Aderhold, Circuit Court of Cook County, Chancery Division, Judge Arnold. 2009-2010. Represented defendant former Motorola vice-president in covenant not to compete and trade secret case. Case settled on confidential terms, before any discovery, after court granted motion to dismiss and ordered re-pleading of trade secret claims. Opposing Counsel Arthur Howe (Schopf & Weiss)

BleuChip International Inc. v. Aulds, Circuit Court of DuPage County, Chancery Division, Judge Popejoy. 2009. Represented corporation and its CEO as plaintiffs in a claim against the corporation's President. Case settled on confidential terms shortly after suit was filed. Opposing Counsel: Bruce Menkes (Mandel, Menkes LLC)

Anderson et al v. Moy-Gregg, Circuit Court of DuPage County, Chancery Division, Judge Popejoy and Judge Sheen. 2010-2011. Represented corporation and alleged majority owners in a corporate control dispute regarding the intent and meaning of stock gift. Opposing Counsel: Louis Bernstein.

Rubocki, et. al. v. Equity Risk Partners, Inc., Federal Court for the Northern District of Illinois, Judge Kendall. Alleged breach of contract and wage action and defense of covenant not to compete claims. Case settled on confidential terms. Opposing Counsel: Steven L. Gillman, Malcolm H. Brooks (Holland & Knight LLP).

Eastco International Corporation v. Addax Technologies, LLC, Federal Court for the Northern District of Illinois, Magistrate Judge Cole. 2013. Represented Defendant/Counter-Plaintiff in breach of contract action alleging that florescent ballast production units differed from sample units. Plaintiff purported to unilaterally cancel all outstanding contracts with defendant giving rise to a countersuit for breach of those contracts. Case settled with Plaintiff/Counter-Defendant dropping all claims and agreeing to pay Defendant/Counter-Plaintiff a confidential amount. Opposing Counsel: Peter Carey (Carey & Hartman LLC).

Defamation, First Amendment and Cyberbullying

Wuttke v. Fitzsimmons, Circuit Court of Cook County, Law Division. Judge McNamara. Represented real-estate lawyer plaintiff in libel action against lawyer who is also City of Chicago Police Captain, for false and malicious statements made to ARDC and University of Illinois and other parties, which, plaintiff alleges, is part of longstanding pattern and practice by defendant of defaming and attempting to intimidate lawyers and others. Default judgment on liability entered in favor of plaintiff for discovery violations. Case settled in plaintiff's favor. Opposing Counsel: Vincent J. O'Brien.

Chicago Motor Car Corp., et al. v. David Bates, Federal Court for the Northern District of Illinois, Judge Lee. 2012-2013. Represented Defendant in a lawsuit alleging defamation, false

light, tortious interference with contract, false advertising, and cybersquatting. A used car dealer sued Defendant as a result of a sucks.com, buyer beware Facebook page and 120 YouTube videos he posted on the internet criticizing the car dealer. Obtained settlement. Our client the Defendant withdrew his motion for Rule 11 sanctions against the car dealer and its owners and they dismissed all claims against Defendant with prejudice. Opposing Counsel: Serena Pollack (Gonzalez Saggio & Harlan LLP)

John Doe v. Jane Doe, Jane Doe allegedly made numerous posts about John Doe on the internet containing false and misleading information. Represented John Doe in action alleging that Jane Doe's statements in the internet posts constituted defamation per se, cyberbullying, and invasion of privacy.

Mercado v. Levy et al, American Arbitration Association. Arbitrator James S. Montana Jr. Represented Defendants, a school and their owners in a lawsuit alleging defamation arising from a partnership and employment suit. We obtained substantial video-taped evidence from multiple witnesses supporting that our clients did not defame the Plaintiff and that all of their statements were supported by various eye witnesses. Case settled.

Williams v. Marder et al, United States District Court, Northern District of Illinois, Eastern Division. Judge Guzman. 2012. Represented Defendant in a lawsuit claiming defamation, tortious interference with inheritance expectancy and employment and malicious prosecution. Defendant was sued as a result of his alleged efforts to try to protect his father who suffered from dementia and Alzheimer's from alleged abuse and neglect by a nurse who had sought to obtain a $3 million bequest from the father. Summary judgment entered in Defendant's favor on all counts.

Burmeister v. Gentile, Circuit Court of Cook County, Law Division. Judge Henry. Represented the Defendant one of Loyola University's largest contributors to the sports program. Loyola's head basketball coach sued Defendant for defamation and tortuous interference with contract when he was fired. Case dismissed with prejudice based on the motion to dismiss we filed.

Nebel v. Modory, United States District Court, Northern District of Illinois, Eastern Division. Judge Coleman. 2016. Represented Defendant. Defendant posted a flyer regarding a problem employee class in his office with a photoshopped photograph of Plaintiff appended to it. All claims against our client were dismissed under the innocent construction. Opposing Counsel: Jessica Fayerman.

Legal Malpractice Litigation

Rykaczewski v. Cesario & Walker, Circuit Court of DuPage County. 1999. Attorney malpractice claim. Represented plaintiffs, litigants whose trial attorney allegedly improperly hired their expert witness for trial on a contingency fee despite ethical rule prohibiting such an arrangement. The trial court ruled that the expert witness could not testify thus causing the litigants to lose their case. Malpractice case against litigant's attorney settled for $375,000 following non-binding mediation. Opposing Attorney: Jeffrey Zehe (Clausen Miller).

Markel v. Weiss, Circuit Court of Cook County, Law Division, Judge Gillis. 1996. Attorney malpractice claim. Represented plaintiff, the buyer of a business who lost over $300,000 due to his attorney's alleged failure to follow the form book in the sale of a business transaction. After deposing the attorney defendant, defendant requested a non-binding mediation with former Judge

Brian Crowe acting as mediator. Case settled for $200,000 which represented nearly all that remained in the attorney malpractice insurance policy. Opposing Counsel: Thomas Browne (Hinshaw & Culbertson).

Ettswold v. Economy Ins. and Orner & Wasserman, Circuit Court of Cook County, Law Division, Judge Gillis. 1996. Insurance bad faith and legal malpractice claims arising from $350,000 judgment entered against Ettswold in a car accident case. The judgment entered against Ettswold was $250,000 in excess of her insurance policy limits. One month after filing suit on Ettswold's behalf, her insurance company, Economy settled by paying the plaintiff in the car accident case $190,000 to release all his claims against Ettswold for the $250,000 in excess of her insurance policy limits. As part of the settlement, Economy also agreed to pay all of Ettswold's attorneys' fees. Opposing counsel: Norton Wasserman (Orner & Wasserman) and Jack Martin (Touhy & Martin).

Ardebili v. Taha, et al, Circuit Court of Cook County, Chancery Division, Judge Mason. 2007-2008. Representing business purchaser plaintiff in Legal Malpractice, Consumer Fraud, Rescission, Negligent Misrepresentation, Breach of Contract and Common Law Fraud claims stemming from the attempted purchase of a business. Case settled financial terms confidential. Opposing Counsel: Nicholas Albukerk (Law Offices of J. Nicholas Albukerk), Sana'a Hussien (Cohen & Hussien) and Amy Ezeldin.

Consumer Fraud

Butera v. General Motors et al, United States District Court Northern District of Illinois, Judge Coar. 2005-2006. Client purchased a certified used Cadillac Escalade SUV for $45,000 which turned out to be a rebuilt wreck with hidden frame damage. Case settled with General Motors and Dealer paying client $25,000 for loss in value to car and excess interest payments (which was $4,000 in excess of the loss amount determined by our expert). The remainder of the amount paid to our client was for his time and energy spent to rectify situation. Defendants also paid all of our attorneys' fees and costs so that client received all his damages since our fees and costs were paid by the defendants. Opposing Counsel: Toby Schisler (Dinsmore & Shohl, LLP); John P. Palumbo (Langhenry, Gillen & Lundquist)

Browns v. Corvette Collection, Circuit Court Will County, Judge Kinney. 2006-2007. Client purchased what was advertised as a "collector's numbers' matching" 1965 Corvette for an investment. Car in fact was not a "collector's" car and its numbers were not matching. Case settled. Client returned car and received full refund of $30,000 purchase price plus $10,000 in damages for lost investment opportunity and aggravation. All of our attorneys' fees and costs were paid by the defendant. Opposing Counsel: Douglas Ziech.

Werth v. Lux Cars Chicago, American Arbitration Association. Client purchased a Cadillac which had suffered from hail damage and been declared a total loss vehicle. Case settled on confidential terms immediately after it was filed. Opposing Counsel: Edward Rothschild.

Class Action Litigation

Woodsmoke v. Woodsmoke, United States District Court Northern District of Illinois, Eastern Division, Judge Kocoras, 1992.
Woodsmoke v. Woodsmoke, Circuit Court of La Salle County, Judge Denny, 1993.

Condominium association brought in excess of $10 million claim for alleged construction defects, fraudulent sale of condominiums, embezzlement and RICO violations against developers. Represented developer defendants. Federal claims dismissed with prejudice for lack of standing. State case dismissed for lack of standing. Co-counsel: Michael Siavelis (Johnson & Bell). Opposing counsel: Marshall Dickler.

Consolidated Dartmouth Class Action Litigation, Circuit Court of Cook County, Chancery Division, Judge Curry. 1990-1993. Consumer fraud, RICO, and Truth in Lending Act: low and middle income homeowners claimed that money center banks conspired to sell at least half a billion dollars in second mortgages to them at inflated prices. Represented the NBD Banks. In a 32-page opinion, Judge Curry consolidated all the cases to his docket, and then dismissed the class action claims with prejudice. Co-lead defense counsel/Citibank: Craig Varga and John Ledsky (Varga Berger Ledsky & Hayes). Opposing counsel: Lawrence Walner (Walner & Associates), Daniel Edelman and Catherine Combs (Edelman Combs & Latturner).

Downing v. the NBD Banks and Oxford Credit Co., Circuit Court of Cook County, Chancery Division, Judge Hofert. Consumer fraud and Truth in Lending Act: same allegations as above involving a smaller and different loan portfolio. 1991-1992. Represented the NBD Banks. Case settled without any pleadings being filed. Another defendant paid the entire settlement amount. The NBD Banks received a complete release of all claims without contributing any settlement monies. Co-lead counsel/Oxford: Arthur Radke (Hefter & Radke). Opposing counsel: Lawrence Walner (Walner & Associates) and Daniel Edelman (Edelman Combs & Latturner).

EEOC v. Enco, United States District Court Northern District of Illinois, Eastern Division, Judge Norgle. 1987. Race discrimination in hiring practices: EEOC brought a class action alleging over $5 million in actual damages. Represented defendant, a local Chicago manufacturer. Moved to dismiss based on EEOC's inexcusable delay in waiting to file action. EEOC settled for $30,000, without taking any discovery, rather than having to explain its inexcusable delay to the Court. Co-Lead counsel: Bennett Epstein (Foley & Lardner).

Stamos v. Prime Cable of Chicago, Circuit Court Cook County, Chancery Division, Judge Schiller. 1999. Lead counsel in class-action against cable company for return of millions of dollars in excessive late fees. Case settled with a substantial reduction in late fees and refunds worth millions of dollars paid to the class. Opposing counsel: John George (Daley & George); Kevin M. Forde (Kevin M. Forde, Ltd.) Richard Patch (Coblenz Patch Duffy & Bass).

Marszalek v. Mutimedia, Circuit Court of Kane County, Judge Nottolini. Lead counsel in same type of class-action as ***Stamos*** against a different cable company. 1998. Case settled with a substantial reduction in late fees and refunds worth millions of dollars paid to the class after class certified in contested proceedings. Opposing counsel: Jack Crowe (Winston & Strawn); Richard Patch (Coblenz Patch Duffy & Bass).

Beckman v. Triax, Circuit Court of Kane County. 2000. Lead counsel in same type of class-action as ***Stamos*** against Triax. Case settled with a substantial reduction in late fees and refunds worth millions of dollars paid to the class. Opposing counsel: Jack Crowe (Winston & Strawn); Richard Patch (Coblenz Patch Duffy & Bass).

Chmils v. TCI, Circuit Court of Cook Count, Judge Jaffe. 1999. Lead counsel in same type of class action as ***Stamos*** against TCI. Statewide class action with over a million class members

certified in contested proceedings. Directed verdict for defendants following 17-day trial. When appeal was pending, case settled as part of nationwide settlement where we were lead counsel. Late fees in Illinois and across the country reduced substantially as a result of settlement. Opposing counsel: Richard Werder (Jones Day Reavis & Pogue) and Paul E. Freehling (Seyfarth Shaw).

Out of State Cable Late Fee Class-Actions. 2001-2004. Same type of class-action as ***Stamos***. Participating as lead or co-counsel in over 20 such cases against various cable companies including TCI/AT&T, Cox, Time-Warner, Comcast, Charter/Marcus and Jones Cable. I was in charge of coordinating all the different cases across the country, and my partner took the lead role in the national settlement negotiations with TCI/AT&T and Charter/Marcus. Two TCI cases in Washington DC and Maryland where we assisted lead counsel Philip Friedman (who is our co-lead counsel in all the cable late fee cases) were tried to multi-million dollar verdicts in plaintiffs' favor with injunctive relief barring the illegal fees. The first Maryland case went up to the Court of Appeals (Maryland's highest court) where the judgment in the class's favor of over $6,000,000 and injunctive relief reducing the $5 late fee to 10 cents was affirmed. ***Burch v. United Cable Television of Baltimore Ltd.***, 732 A2d 887 (Md 1999). The judgment in the Washington DC case was also affirmed on appeal. ***District Cablevision Ltd. Partnership v. Bassin***, 2003 WL 21664513 (DC). Since the victories in Maryland and Washington DC, loss in Illinois at the trial level, and appellate victories and losses in other states including victories in Louisiana, Texas and Minnesota (***TCI Cablevision of Dallas, Inc. v. Owens***, 8 SW3d 837 (Tex 2000) and a loss in Mississippi following class certification (***Hill v. Galaxy***, 184 FRD 82, and 176FSupp2d 636 (ND Miss 1999 and 2001), we entered in two separate national settlements involving over 10 million cable customers with AT&T and Charter/Marcus, which have resulted in permanent reduction of cable late fees throughout the country, and vouchers paid for overcharges resulting in millions of dollars in savings and voucher payments to the classes. We also reached state wide class-action settlements against Cox Cable in Nevada and Arizona, and a state-wide class-action settlement with TCI in California. We currently have a class-action pending against Time Warner in Indiana, following our victory in the Indiana Supreme Court on the voluntary payment issue. ***Time-Warner v. Whiteman***, 802 NE2d 886 (Ind Sup Ct. 2004). In December 2003, following the ruling in ***Dua v. Comcast Cable of Maryland, Inc.***, 805 A2d 1061 (Md 2002), and the trial court granting the class's motion for partial summary judgment and on the eve of trial, Comcast entered into a class-wide settlement of ***Maisonette v. Comcast*** an identical case to ***Dua*** with a larger number of class members. Comcast agreed to refund 97% of the class's money damages, including prejudgment interest, for a total payment of 13.589 million dollars to the class fund. Co-counsel included: Philip Friedman and Michael Hyman (Much Shelist Freed Denenberg Ament & Rubinstein). Opposing Counsel on the above cases included: Jones Day Reavis & Pogue, LeBoeuf, Lamb, Greene & MacRae, White & Case, Coblenz Patch Duffy & Bass, and Sullivan & Cromwell.

Oakbrook Terrace Hotel Overcharge Class Actions, Circuit Court of DuPage County. 2000-2004. Claims against all Oakbrook Terrace Hotels (Hilton, Marriott, La Quinta, Comfort, Wyndham and Starwood) for including non-tax ordinary vendor charges in the tax line item of customer bills. Class certified in ***Comfort*** and ***Hilton*** cases following a contested hearings, and appointed lead class counsel in that case; appellate court rejected Hilton's statutory occupancy tax defense in an interlocutory appeal to the 2nd District Appellate Court. 788 NE2d 789. Comfort, Wyndham, Marriott, Starwood and La Quinta cases settled on a class-wide basis with between 60% and 70% of damages paid into the settlement fund. Summary judgment was entered in the class's favor in the Hilton case and was affirmed on appeal with the class receiving all of its

damages and Hilton being ordered to pay all of class counsel's fees as additional damages. Opposing counsel: Howard Foster (Johnson & Bell); Dennis Powers and Sonya Naar (DLA Piper); Mark Blocker (Sidley Austin, Brown & Wood); Ira Helfgot; Peter Ordower.

Extended Warranty Class Actions. 1995-2001. Represented plaintiffs in approximately 25 class-actions in state and federal court in Illinois against car dealers, finance companies and car manufacturers regarding alleged misrepresentations in financing documents. All 25 cases have settled following a favorable ruling we received from the 2nd District Appellate Court. *See* 683 NE2d 1194.

Leiner v. Century, Circuit Court of Dupage County. Lead counsel in certified national class-action against maker of child car seats regarding alleged consumer fraud in misrepresenting the safety of the car seats. Settled following certification of nationwide class in contested proceedings.

Erickson v. Ameritech, Circuit Court of Cook County. Judge Flynn. 2004. Consumer fraud claims for failure to disclose that voice mail includes phone charges in addition to the monthly fee. Case settled on class-wide basis with refunds available to all class members along with injunctive relief barring the deceptive practices. Appointed co-lead counsel after spear heading efforts with the Citizens Utility Board to have a class-wide settlement (providing unsatisfactory relief) rejected by the Court. Crain's Chicago Business listed the new settlement we helped achieve as the 3rd highest settlement/verdict in Illinois in 2004. Co-Counsel Robert Kelter (General Counsel Citizens Utility Board) Opposing Counsel: Leslie Smith (Kirkland & Ellis).

Johnson v. US Bank, Circuit Court of Dupage County. Judge Popejoy. 2004. Consumer fraud and Illinois statutory claims relating to repossessing cars without providing statutorily mandated disclosures. Case settled with 541 class members receiving the right to collect a $400 refund, and to have their substantial deficiency balances with US Bank averaging approximately $6,600 each written off.

Sampson v. Western Sierra, Federal Court for the Northern District of Illinois, Judge Zagel. Represented defendant. 2003-2004. Fair Credit Reporting Act class-action claims against national finance company. Case settled on individual basis on terms favorable to defendant following court granting Western Sierra's motion for summary judgment rendering judgment in Western Sierra's favor dismissing the class-action claims with prejudice. See: 2004 WL 406992. Opposing Counsel: Daniel Edelman and Adam Berger (Edelman Combs & Latturner).

Ramsell v. Infinity Broadcasting, Circuit Court of Dupage County. Judge Webster. 2002-2004. Consumer Fraud and breach of contract claims relating to Infinity refusing to provide a refund to concert goers after it cancelled a Doobie Brothers's concert. Defense summary judgment motions denied. Class certified in contested proceedings. We were appointed lead class counsel. Case settled with full cash refunds to class members. Opposing Counsel: Peter John and Summer Heil (Williams Montgomery & John)

Dale v. Daimler Chrysler Corporation, Circuit Court of Boone County, Missouri. Judge Roper. Consumer Fraud and breach of warranty claims relating to defective window motors in Durangos for a five-year period. Chrysler's motion for summary judgment denied. State-wide class certified. We were appointed lead class counsel. Chrysler's appeal of class certification rejected

by Missouri appeals court. 2006 WL 1792414. Opposing Counsel: John W. Rogers (Bryan Cave)

Hyde v. Aspen Marketing Services, Inc., Federal District Court of Maryland. 2004-2006. Judge Bennett. Settled. Represented defendant.one of the largest marketing companies in the country. Plaintiff sought $100,000,000 in damages in a Fair Credit Reporting Act putative class action. Opposing Counsel: Scott Borison (Legg Law Firm)

Crandall v. Mobile Management Co., Inc. et al, Circuit Court Lake County Illinois. 2004. Judge Tonigan. Case settled. Represented defendant one of the largest mobile home companies in the Mid-West regarding alleged illegal late fees. Opposing Counsel: Daniel Edelman (Edelman, Combs and Latturner)

Walsh v. Suisse Bancorp. Inc., Circuit Court of DuPage County. Judge Elsner. 2005-2007. Represented plaintiff class in consumer fraud action concerning improper liening of workers' compensation claims by loan and finance company. Case settled for removal of liens and reductions in the amounts due on the loans. Cy pres monies for uncollected class claims paid to Mandel Legal Aid Clinic.

Krey v. Aspen Marketing Services, Inc., Grace v. Aspen Marketing Services, Inc., Connolly v. Aspen Marketing Services, Inc., Federal District Court Northern District of Illinois. 2005-2007. Settled. Judges Kennelly, Coar and Filip. Cases settled. Defended Aspen, a national marketing firm, in Fair Credit Reporting Act Class Actions. Opposing Counsel: Edelman, Combs and Latturner.

Boundas v. Abercrombie & Fitch, Federal Court for the Northern District of Illinois, Judge Feinerman. Pending. Representing plaintiffs that received a $25 purchase reward card that did not contain an expiration date but which defendant claimed should have contained an expiration date and will no longer honor. Class certified and request for appeal of class certification denied by the 7th Circuit. 2011 WL 1676053. Opposing Counsel: Brian J. Murray (Jones Day).

Daniels v. Hollister Co., Superior Court of New Jersey. Pending. Same fact pattern as Abercrombie case above but against sister corporation of Abercrombie, Hollister. Superior Court certified a nationwide class. Defendant appealed class certification arguing that the class was not ascertainable. Plaintiff argued that New Jersey law does not require level of ascertainability argued by defendant and that class was sufficiently ascertainable. Appellate court agreed with plaintiff's arguments and rejected defendant's arguments. 113 A.3d 796 (N.J. App. 2015). Opposing Counsel: Brian J. Murray (Jones Day) and Richard A. Grossman (Grossman, Heavey & Halpin).

Jane Doe v Modeling School, Circuit Court of Cook County, Chancery Division. Represented plaintiff putative class representative/student who took a modeling and acting course. Plaintiff alleged violations of the Illinois vocational schools and consumer fraud acts involving alleged misrepresentations concealing that the course would not lead to work in the field. Case settled on a class wide basis with class members being able to claim a partial refund on their tuition.

Jane Doe et al v. Trade School, Circuit Court of DuPage County, Chancery Division. Class Certified in contested proceedings. We represented a class of students who took a medical sonography course for claimed violations of the Illinois vocational schools and consumer fraud

acts involving alleged misrepresentations concealing that the course would not lead to work in the field. The Class prevailed in motions to appeal class certification to the Appellate Court and Illinois Supreme Court. Case settled on a class wide basis with class members receiving a substantial tuition refund.

Jane Doe et al v. Electronics Retailer, Circuit Court of Cook County, Chancery Division. Represented Plaintiffs who received a $500 gas and grocery card that retailer allegedly would not honor. Class certified. Case settled on a class-wide basis with approximately 7,000 class members being able to claim up to $1000 depending on the number of claimants who participate in the settlement.

Takova v. S37, Circuit Court of Cook County, Chancery Division, Judge Riley and Judge Mikva. Represented defendant landlords in putative class action claiming violations of Illinois security deposit statutes. Case settled on an individual non-class basis following motion to dismiss for mootness. Opposing Counsel: Aaron Krolik and Mark Silverman.

Klimo v. S37, Circuit Court of Cook County, Chancery Division, Judge Hall. Represented defendant landlords in putative class action claiming violations of Illinois and Mt. Prospect security deposit statutes. Case settled on an individual non-class basis following granting of S37's partial summary judgment motion. Opposing Counsel: Mark Silverman.

Junk Fax Class Actions, Circuit Courts of Cook, McHenry and DuPage Counties. Pending. Representing plaintiffs in a number of class actions involving alleged violations of the Telephone Consumer Protection Act. Cases include ***Dembo v. McAssey Corporation***, Circuit Court of Cook County, Chancery Division, Judge McGann. Case settled for $1.4 million to the class. Each class member had a right to claim $225.

Walczak v Onyx Acceptance Corporation, Circuit Court of Lake County, Chancery Division, Judge Hoffman. Class Certified. Class certification order affirmed by the Appellate Court. 365 IllApp3d 664. Represented class with co-counsel in claims involving alleged violations of Illinois automobile repossession laws. Case settled with each of the over 7,600 class members able to claim up to $2000, forgiveness of automobile debt totaling $11.5 million and credit repair for each class member worth $1500 per class member. Opposing Counsel: Joshua Threadcraft and Rik Tozzi (Burr & Forman)

Booking Fee Class Actions, Federal Court for the Northern District of Illinois. We prosecuted a number of class actions against various Chicago area towns for charging arrested persons with a booking fee and then not providing for hearing to contest the right to charge the fee. Two of the cases settled on a class wide basis. We obtained class certification and defeated motions to dismiss in some of these cases. We appealed dismissal of one case to the 7th Circuit and ultimately were granted an *en banc* rehearing by the entire 7th Circuit which resulted in a tie vote.

Music v. Beta Electric, et al., Circuit Court of Cook County. 2014-2016. Judge Patrick Sherlock. Represented defendant company and its owner against putative overtime wage class action. Defeated class action by successfully picking off putative class representative. Case settled on an individual basis. Opposing Counsel: Ernest T. Rossiello (Ernest T. Rossiello & Associates).

Assisted my former partner Francis J. McConnell:

White Collar Criminal and Civil Securities Litigation

United States v. Lytle, United States District Court Northern District of Illinois, Eastern Division, Judge Shadur. 1984-1988. Criminal: federal wire fraud and misapplication of bank funds. Represented defendant Lytle with John Powers Crowley and Matthew Kennelly. Government attorneys were Joseph Duffy, Ted Helwig and Mark Rotert. Five-week jury trial. Hung jury. Lytle subsequently pled guilty to a single count of misapplication of bank funds.

Continental Illinois National Bank Securities Litigation, United States District Court Northern District of Illinois, Eastern Division, Judges Grady and Shadur. 1982-1989. Securities and negligence: class derivative action alleging misrepresentation in financial reporting in purchase of Penn Square oil and gas participation loans (underlying litigation); suit by D&O Carriers to deny coverage based on alleged dishonesty of Lytle. Represented defendant Lytle, former head of Continental's Mid-Continent Division. Case settled. Opposing counsel: Lowell Sachnoff (Sachnoff & Weaver) for FDIC; Keck Mahin & Kate for D&O Carriers.

United States v. Mark P. Fontana and Dieter Mueller, United States District Court Milwaukee, Wisconsin, Judge Evans. 1985. Criminal: claim of federal wire fraud and misapplication of bank funds relating to international banking transactions, and sale of airplanes in various countries. Represented defendant Fontana. Three-week jury trial. Principal defendant found guilty. Fontana found not guilty.

Class Action and Antitrust Litigation

Will v. Comprehensive Accounting Corp., United States District Court Northern District of Illinois, Eastern Division, Judge Plunkett. 1983-1985. Antitrust tying and breach of franchise contracts. Claim that franchisor improperly forced 13 of its accounting practice franchisees to purchase unwanted and overpriced data processing services. Represented all 13 franchisees. Six-week jury trial. Not guilty on antitrust tying count. Six plaintiffs won and six plaintiffs lost on breach of contract claims. *See* 775 F2d 665. Opposing counsel: Edward Foote and Duane Kelly (Winston & Strawn).

Fontana Aviation v. Cessna Aircraft, United States District Court Northern District of Illinois, Eastern Division, Judge Bua. 1983-1984. Antitrust: claimed that Cessna acted in restraint of trade when it destroyed a custom avionics dealership. Represented plaintiff. Three-week jury trial. Not guilty. *See* 617 F2d 478. Opposing counsel: Alan Becker (Kirkland & Ellis).

Corrugated Container Antitrust Litigation, United States District Court Houston, Texas, Judge Singleton. 1983-1985. Antitrust: price fixing conspiracy. Represented opt-out corporate plaintiffs, Pillsbury, Green Giant, U.S. Gypsum and Dean Foods Company. Settled as to all defendants except CCA. Pillsbury earned half its corporate profits for one year from the settlements. Settlement amounts: Pillsbury ($8.5 million); U.S. Gypsum ($1 million); Dean ($850,000). Twelve-week jury trial as to CCA. Jury found price fixing conspiracy, but no damages. *See* 756 F2d 411. Opposing counsel: CCA-Sanford Litvak (former head of the Antitrust Division of the United States Department of Justice and former General Counsel of the Walt Disney Company).

Pillsbury v. Conboy, United States Supreme Court. 1983. Constitutional Law/Fifth Amendment Privilege: Whether prior grant of immunity extends to a civil deposition? See 459 US 248. Represented Pillsbury. Supreme Court upheld assertion of privilege. Opposing counsel: Michael Coffield (Coffield Ungaretti & Harris).

Dean Foods Company v. Clinton, State Court Arkansas. 1984. State Constitutional Law/Interference With Property Rights: Whether Arkansas minimum milk pricing statute was an unconstitutional infringement on property rights? Represented Dean Foods Company. Court found statute unconstitutional. Attorney General's office did not appeal court's finding.

Assisted Lead Counsel:

Antitrust Class-Action Litigation

Vinegar Antitrust Litigation, United States District Court Northern District of Illinois, Western Division, Judge Roszowski. 1989-1992. Antitrust price fixing case. Represented plaintiff class. Settlement achieved prior to trial worth at least $6 million to the class. Lead Counsel: Perry Goldberg (Altheimer & Gray). Opposing counsel: Howery & Simon; Whitman & Ransom; Jones Day Reavis & Pogue; and Caldwalader Wickersham & Taft.

Glass Containers Antitrust Litigation, United States District Court Northern District of Illinois, Eastern Division, Judge Will. 1989-1982. Antitrust price fixing case. Represented plaintiff class. Settlement achieved prior to trial worth at least $70 million to the class. Lead counsel: Gig Specks (Altheimer & Gray). Opposing counsel: SNR Denton; Kirkland & Ellis; Brown & Bain; Sidley Austin, Brown & Wood.

NCAA Rules Violation Hearing

NCAA v. Iowa State, NCAA Disciplinary Board. 1986. Represented Iowa State as special counsel in six-month investigation of numerous and serious alleged recruitment violations involving the football and basketball programs. Purpose of investigation, in the case of the football program, was to find further violations so that the University could strengthen its settlement position with the NCAA by showing its commitment to enforcing the NCAA's rules. Purpose of the investigation, in the case of the basketball program, was to refute the NCAA's meritless charges. Defended the University at two day NCAA disciplinary hearing. Basketball program found not guilty. Football program found guilty, but only put on probation because the University self-disclosed significant new evidence uncovered in our investigation, and thus demonstrated its commitment to the NCAA's rules. Lead counsel: Michael Slive (later became Commissioner of Southeastern Conference). Opposing counsel: David Burst (Chief Investigator for the NCAA)

EXHIBIT E

IN THE CIRCUIT COURT OF COOK COUNTY
FIRST MUNICIPAL DISTRICT

MARY M. TATE,	)	
	)	
Plaintiff,	)	
v.	)	No. 2014 M1 132291
	)	
S&M AUTO BROKERS INC.,	)	
	)	
Defendant.	)	

Memorandum Opinion and Order

Plaintiff Mary M. Tate (Tate) brought this action against S&M Auto Brokers Inc. (S&M), alleging that S&M sold her a car with frame damage. In addition to alleging common law fraud, Tate claimed a violation of the Consumer Fraud Act (CFA) (815 ILCS 505/2). After a jury trial, the jury returned a verdict for $46,000 in favor of Tate on common law fraud (fraudulent concealment), assessing $4,000 in actual damages, $2,000 for aggravation and inconvenience, and $40,000 in punitive damages. S&M moved the court to enter judgment notwithstanding the verdict. The court denied the JNOV motion. S&M moves the court to reconsider its denial. It argues that Tate failed to establish a duty to disclose.

Additionally, the CFA count must be decided by the court. Tate asks the court to enter judgement on the CFA count in the amounts duplicating the amounts entered by the jury: $4,000 actual damages, $2,000 for aggravation and inconvenience, and $40,000 punitive damages.

Facts

S&M bought a 2011 Chevrolet Malibu (Malibu) at an auto auction on November 1, 2012, at Mannheim Auto Auction for $8,000. In the upper left hand portion of the single–page sales contract, Mannheim disclosed to S &M that the car had "frame/unibody damage." This statement appears just below the year and model name and almost directly above the signature

lines. However, S&M's manager Mohamed Imoud claimed he had never seen the disclosure and did not know that the Malibu had frame damage.

Tim Reynolds, assistant manager of Mannheim Auto Auction, testified regarding frame damaged vehicles. Frame damage can never be repaired. Because the frame will always be imperfect and bent, it raises safety concerns for the integrity of the frame's unibody construction. John DeMort, general manager of Webb Chevrolet, also testified. Webb never sells frame damaged cars at their retail stores. Such structural damage creates a safety issue because the car will not track straight. Additionally, Phillip Grismer, an independent inspector testified. He agreed that frame damage creates a significant safety issue and lowers the value of the Malibu to $3,000.

Tate bought this car "AS IS" from S&M November 21, 2012, for $11,995. S&M never told her that the car had frame damage. Close to a year after she bought the car, she began experiencing problems. First, she complained to S&M, but they told her that they would not take the car back. When she took it to a Chevrolet dealer, they obtained a CARFAX report regarding the car's history. The dealer gave her the CARFAX that revealed that the car had been in a prior accident where it had sustained frame damage. S&M sold another car with undisclosed frame damage in 2014. S&M sells 700-800 cars each year.

Motion to Reconsider Denial of JNOV

S&M moves the court to reconsider its denial of its motion for judgment notwithstanding the jury's verdict on common law fraud. Its sole argument is that Tate failed to establish a duty to disclose. Motions to reconsider bring to the court's attention newly discovered evidence, changes in existing law, or errors in the court's application of the law. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 36.

Generally, common law fraud requires a false statement of material fact. *Connick v. Suzuki Motor Company, Ltd,* 174 Ill. 2d 482, 496 (1996). However, in certain instances fraudulent concealment suffices. To prove fraudulent concealment, defendant must conceal a material fact when he was under a duty to disclose that fact to plaintiff. *Id.* at 500. Such a duty arises when the parties are in a fiduciary or confidential relationship, or where plaintiff places trust and confidence in defendant, thereby placing defendant in a position of influence and superiority over plaintiff. *Id.* This position of superiority arises only where buyer places trust and confidence in seller because of their friendship, agency, or experience, so that the seller gains influence and superiority over the former. *Kurti v. Fox Valley Radiologists, Ltd.*, 124 Ill. App. 3d 933, 938 (1984).

S&M made no false statement. No fiduciary relationship exists between Tate and S&M. Lastly, no evidence suggests that S&M established a relationship of trust and confidence with Tate. Before the purchase, she test drove the Malibu and had a conversation with a "gentleman." She did not even recall his name. Because no fiduciary relationship or relationship of trust or confidence existed, no duty to disclose the frame damage existed.

While Tate argues that a duty to disclose arises from other law, her arguments are groundless. She makes seven arguments. First, she claims that such a duty to disclose arises pursuant to statute. She claims that the statute requiring motorists to maintain their vehicles in safe condition (625 ILCS 5/12-101(a)) causes a duty to disclose to arise for S&M, but cites no authority for this proposition. She also alleges that a federal regulation that forbids used car dealers from misrepresenting "the mechanical condition of a used vehicle" gives rise to a duty. 16 C.F.R. § 455.1(a)(1). Again, she cites no authority for how this gives rise to a duty to disclose. She also claims the implied warranty of merchantability gives rise to a duty to speak.

810 ILCS 5/2-314. But she again gives no authority showing this gives rise to a duty. She claims the CFA also gives rise to a common law duty to disclose without citing any cases that support this paradoxical assertion. Second, she claims superior knowledge gives rise to a duty. She relies on precedent involving active concealment by the seller in a home sale. *Illinois Central Gulf Railroad Company v. the Department Of Local Government Affairs,* 169 Ill. App. 3d 683, 690, (1988) *citing Posner v. Davis,* 76 Ill. App. 3d 638, 642, 644 (1st Dist.1979) (heightened duty in home sales and defendants actively concealed the defects). No active concealment was proven here.

Third, she argues that certain misrepresentations may give rise to a duty to disclose more facts. *Buechin v. Ogden Chrysler-Plymouth*, 159 Ill. App. 3d 237, 247 (2nd Dist. 1987) (telling buyer that a used car was "new" amounted to a misrepresentation of a material fact). However, she concedes there were no misrepresentations by S&M. Fourth, she argues that suppressing material facts by active concealment may constitute a fraudulent concealment. *Mitchell v. Skubiak*, 248 Ill. 100, 1005 (1st Dist. 1993). Again, no evidence of active concealment was offered at trial. Fifth, she argues that in the negligence context the failure to warn of a defective product gives rise to a negligence action. (*Kirk v. Stineway Drug Store Co*. 38 Ill. App. 2d 415, 428-29 (1st Dist. 1963). Tate fails to explain how this applies to a fraud case. Sixth, she argues non-disclosure of basic facts may give rise to contractual cause of action under Wisconsin law. *Harley-Davidson Motor Co. v. Powersports, Inc.*, 319 F.3d 973, 991 (7th Cir. 2003) (citing Wisconsin "tort misrepresentation law"). She cites no Illinois case adopting this in the fraud context. Seventh, she again claims that Wisconsin law of contracts requires such disclosure. *Id.* Tate cites no Illinois case applying this rule in the fraud context.

Absent evidence of a fraudulent misrepresentation or evidence establishing a special duty, no common law fraud verdict may stand. *Connick v. Suzuki Motor Company*, Ltd, 174 Ill. 2d 482, 496, 500 (1996). Because Tate failed to establish either a misrepresentation or a special duty, the court must grant the motion for reconsideration and enter a judgment notwithstanding the verdict as to common law fraud.

Consumer Fraud

To sustain a cause of action under the CFA, Tate must prove: (1) a deceptive act or practice by defendant; (2) defendant's intent that plaintiff rely on the deception; and (3) that the deception occurred in the course of conduct involving trade and commerce. *Connick v. Suzuki Motor Company, Ltd,* 174 Ill. 2d 482, 501 (1996). An omission of a material fact in the conduct of trade or commerce constitutes consumer fraud. *815 ILCS 505/2*. Failing to disclose frame damage may constitute deceptive conduct under the CFA. *Crowder v. Bob Oberling Enterprises, Inc.*, 148 Ill. App. 3d 313, 315-17 (seller concealed water damage, frame damage, and salvage history).

A fact is material if the buyer would have acted differently if she had known it. *Totz v. Continental DuPage Acura,* 236 Ill. App. 3d 891, 902 (2nd Dist. 1992). A used car dealer that conceals, suppresses or fails to disclose a material fact commits consumer fraud, if the seller intends the buyer to rely on the fraud. *Id.* at 902-03. The seller need not have intended to deceive buyer; innocent misrepresentations or material omissions intended to induce the plaintiff's reliance are actionable. *Miller v. William Chevrolet/Geo, Inc.*, 326 Ill. App. 3d 642, 655 (1st. Dist. 2001). In addition to actual damages, the court may award damages for inconvenience and aggravation. *Roche v. Fireside Chrysler-Plymouth, Mazda Inc.*, 235 Ill. App. 3d 70, 86 (2nd Dist. 1992) (upholding an award for $750).

Punitive damages may properly be awarded in an action for fraud. *Black v. Iovino*, 219 Ill. App. 3d 378, 393 (1st Dist. 1991). The nature and the enormity of the wrong, the financial status of the defendant and the potential liability of the defendant must be considered in imposing punitive damages. *Id.* Where plaintiff fails to elicit evidence of defendant's financial status, however, any punitive damage award must be limited to what would be imposed on a defendant with no money: $ 1,000. *Id.* at 395.

Imoud incredibly denies he knew the Malibu had frame damage. Mannheim conspicuously disclosed the frame damage. Such damage is clearly material, affecting both the safety and the value of the car. There was no disclosure to Tate. By not telling Tate about the frame damage, S&M intended to induce her reliance. Telling her about the damaged frame would have likely lost S&M this sale. Frame damage matters. Not telling Tate made the sale possible. The omission occurred in the course of trade and commerce. Consequently, Tate has established S&M's liability under the CFA.

While Grismer testified that the Malibu's value with the damaged frame was $3,000, S&M bought it for $8,000 with knowledge of the frame damage. Grismer arrived at his figure by reducing the sale price by 70 percent, but did not state the basis for such a reduction in value. It seemed more of a guess, than a calculation based on data. The actual sale price with full disclosure strongly indicates the fair market value of the car. Consequently, Tate's damages are properly calculated by subtracting the $8,000 S&M paid from the cash price she paid, $11,995. Hence, her actual damages amount to $3,995.

Tate asks for a damage award for aggravation and inconvenience. The court finds that the failure of S&M to accept the return of the car caused Tate aggravation and inconvenience and

awards her $750. *See Roche v. Fireside Chrysler-Plymouth, Mazda Inc.*, 235 Ill. App. 3d 70, 86 (2nd Dist. 1992).

The bent frame imperiled Tate's safety. It also appears that S&M may have sold frame damaged cars without disclosure on other occasions. Punitive damages are appropriate. However, Tate introduced no evidence of S&M's financial status. While Imoud admitted S&M sells 700-800 cars a year, sales data alone fails to establish S&M's financial status. Thus, the punitive damage award must be limited to what would be imposed on a defendant with no money: $ 1,000. *Black v. Iovino,* 219 Ill. App. 3d 378, 395 (1st Dist. 1991).

Conclusion

The court grants S&M's motion to reconsider and enters judgment in favor of S&M as to common law fraud. Under the CFA, however, the court enters judgment in favor of Tate in the amount of $5,745 plus costs.

Entered the 26th of September 2016

Chicago, Illinois

Associate Judge Thomas More Donnelly

SEP 26 2016

Thomas More Donnelly
Associate Judge
Circuit Court - 1803
Circuit Court of Cook County

EXHIBIT F

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April 27, 2017

VIA EMAIL

Joel A. Brodsky
8 S. Michigan Ave.
Suite 3200
Chicago Illinois 60603
jbrodsky@joelbrodskylaw.com

Re: *Twyman v. S&M Auto Brokers, Inc.*, No. 16-cv-4182

Dear Mr. Brodsky:

This letter is written pursuant to Rule 11 of the Federal Rules of Civil Procedure. I am attaching Plaintiff's Motion for Sanctions Under § 1927, Rule 30(D)(2), and Inherent Power and to File Memorandum in Support Thereof in Excess of 15 Pages.

As stated in the attached Memorandum, Plaintiff will be filing a Rule 11 sanctions motion against Defendant and its counsel on May 19, 2017, unless they withdraw all of the offending and sanctionable pending motions, opposition pleadings, and false and defamatory statements contained in those pleadings. I am attaching a copy of the Rule 11 motion that we will file on May 19, 2017, if the withdrawals requested herein have not been made before that date.

We also request that Defendant and Defense counsel retract in a stipulation filed in the Court record all of the defamatory charges they have leveled at Plaintiff's counsel and expert.

Sincerely yours,

Peter S. Lubin

PSL/mcc
Enc.

cc: Lance Northcutt (via e-mail)

EXHIBIT G

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FAHRED SALEM, MARIAM SALEM and JROUGH AL-DAOUD	)	
	)	11 L 1348
Plaintiffs,	)	
	)	Calendar S
v.	)	
	)	Judge Raymond W. Mitchell
RABI NESHEIWAT and GEORGE NESHEIWAT,	)	
	)	
Defendants.	)	

Memorandum Opinion and Order

The case is before the Court following a routine case management conference where the parties appeared through counsel. Counsel's report on the status of the case included what has become an all too frequent occurrence in this matter: a recitation of an egregious pattern of inappropriate behavior and misconduct by *both* Plaintiffs' and Defendants' respective counsel.

To date, the Court has taken a series of progressive steps to curb counsel's deplorable behavior in the hope that these two attorneys would conform their conduct to the requirements of our profession. These measures have included scheduling the case for times when the courtroom would be empty, increasing the visibility of court security (at times as many as four deputy sheriffs have had to be present), holding depositions in the courtroom attended by court security, and repeated admonitions from the Court on the risk of provoking a direct criminal contempt and a referral to the Attorney Registration and Disciplinary Commission, and a reminder that a lawyer owes a fiduciary duty to his client. All these words and actions have proved unavailing: the attorneys' bad behavior persists.

In order to protect the judicial process, court personnel and the parties themselves, the appearances of Plaintiffs' attorney Joel Brodsky and Defendant's attorney Michael Meschino are stricken. For the following reasons, Mr. Brodsky and Mr. Meschino are disqualified from these proceedings — a ruling to which neither attorney objects.

I.

The following is a summary of some (but not all) of the bad behavior and misconduct that has been perpetrated by the attorneys in this case as observed by the Court, recounted by court personnel or reported by counsel themselves. In mid-

2012, after outbursts in open court by both Mr. Brodsky and Mr. Meschino, the Court immediately admonished the attorneys that their behavior was unacceptable and would not be tolerated. On a subsequent occasion, the Court ended a case management conference prematurely because counsel could not conform their behavior to even the most basic requirements. The Court again admonished Mr. Brodsky and Mr. Meschino that their behavior was disruptive and inappropriate. A sheriff's deputy escorted Mr. Meschino from the courtroom. From that time to the present, the Court has requested the presence of additional courtroom security whenever these lawyers are scheduled to appear.

Despite the presence of additional sheriff's deputies in the courtroom, on January 28, 2013, after the Court recessed and the judge left the bench, Mr. Brodsky and Mr. Meschino exchanged a variety of insults and deputies again escorted Mr. Meschino from the courtroom. Mr. Brodsky by motion brought this to the Court's attention. When the motion was presented, each attorney admitted to his role in the exchange.

At that time, the Court warned Mr. Brodsky and Mr. Meschino that this course of conduct was grounds for disqualifying them for the case. The attorneys were instructed to consider the interests of their clients and their fiduciary duties. The attorneys were also warned that Court could exercise its contempt power and could report their conduct to the ARDC. Both attorneys assured the Court that they would proceed in professional manner and they could work together as they prepared for trial.

Despite all of the admonitions and the repeated attempts to dissuade the attorneys from engaging in further misconduct, these attorneys have, to this day, continued to act wholly improperly. These attorneys have proved impervious to reason and to a show of force. The presence of additional courtroom deputies has done nothing to curb their bad behavior. Indeed, not only has the required presence of additional security personnel proved unsuccessful in dissuading the egregious conduct of Mr. Brodsky and Mr. Meschino, the idea of diverting security personnel from other areas of the courthouse to deal with attorneys on a repeated basis is completely unacceptable.

The attorneys have also acted wholly improperly in conducting discovery including exchanging threatening and insulting voicemails and emails. In reviewing the various motions to compel and motions for sanctions filed in this case, it is abundantly clear that Mr. Brodsky and Mr. Meschino are incapable of any form of cooperation. The animus between the lawyers is so great that the depositions of their clients had to be conducted in the courtroom with court security present throughout. The depositions, while just a sample, demonstrated the complete lack of civility that has characterized the attorneys' conduct throughout this case. The deposition was witnessed by sheriff's deputies and court personnel and was

transcribed by a court reporter. The transcript is laden with personal attacks, insults and threats.

All of this was bad enough, but now Mr. Brodsky has compounded his share of what was at best "bad behavior" by outright attorney misconduct when he sent two *ex parte* letters to the Chief Judge referencing this case and seeking judicial action in favor of Mr. Brodsky's clients. *See* Ill. Sup. Ct. R. Prof'l Conduct, R 3.5(b); *see also*, Ill. Sup. Ct. R. Prof'l Conduct, R 3.5 cmt. 2. Neither letter was copied to opposing counsel (or this Court). Administrative personnel delivered these letters to this Court. At no time has this Court had any communication with the Chief Judge about this or any other pending case. When confronted in open court, Mr. Brodsky confirmed that he authored the letters. The letters are attached in an appendix to this opinion, and are made part of the record in this case.[1]

II.

In light of this outrageous behavior by each attorney, the Court is striking the appearances of Mr. Brodsky and Mr. Meschino and disqualifying them from these proceedings. This decision is not made lightly, but is made after careful deliberation and found to be necessary to protect the administration of justice and the parties' right to a fair trial.

The Court is particularly mindful of the importance of the right to counsel, including the right to counsel of one's choosing. However, this right is not absolute. *See People v. Troutt*, 172 Ill. App. 3d 668 (holding that, even in a criminal case, the right to counsel of one's choosing is not unlimited); *In re Estate of Wright*, 377 Ill. App. 3d 800, 808-09 (affirming the disqualification of an attorney for conflict of interest). In this case, the Plaintiffs' and Defendants' rights to be represented by these counsel must yield to important institutional considerations. It is not just that Mr. Brodsky and Mr. Meschino do not like each other — they *literally* cannot stand to be in each other's presence. For the good of their clients and for the sake of maintaining an orderly process, these attorneys must be disqualified from this case.

A trial judge has the inherent authority to maintain decorum and to require the civility of parties to the case and their attorneys. *People v. Davilla*, 236 Ill. App. 3d 367, 380 (1st Dist. 1992). Indeed, in the Code of Judicial Conduct, the Illinois Supreme Court has placed an affirmative duty on judges in this state to maintain order and decorum in proceedings before them. Ill. Sup. Ct. R. 63(3)(A)(2). Further, the Illinois Attorney Act provides that "any judge of a Circuit Court shall . . . have power to suspend any attorney or counselor at law from practice in the court over which he presides, during such time as he may deem proper...." 705 ILCS 205/6.

[1] This is not the first time Mr. Brodsky has run afoul of the Rules of Professional Conduct. *See In re Joel Brodsky*, 01 CH 42 (three-month suspension).

While a trial court cannot properly bar an attorney from appearing in all cases before the court, *In re General Order of March 15, 1993*, 258 Ill. App. 3d 13, 21-22 (1st Dist. 1994), a trial court has the authority to disqualify a lawyer on an individualized basis in a specific case, *Burnette v. Terrell*, 232 Ill. 2d 522 (2009).

By striking the appearances of Mr. Brodsky and Mr. Meschino, this Court is not seeking to "discipline" counsel or to regulate the legal profession. Rather, the Court is endeavoring to fulfill is its fundamental obligation to protect the judicial process, the court's personnel and the parties' right to a fair trial. Significantly, after again being advised of this litany of bad conduct in open court today, neither Mr. Brodsky or Mr. Meschino raised an objection to disqualification in this case.

III.

For the forgoing reasons, it is hereby ORDERED:

(1) In light of a pattern of persistent and repeated misconduct, the appearances of Plaintiffs' attorney Joel Brodsky and Defendants' attorney Michael Meschino are stricken. Mr. Brodsky and Mr. Meschino are disqualified from these proceedings.

(2) Mr. Brodsky's *ex parte* letters are attached in an appendix and made part of the court record.

(3) Plaintiffs and Defendants have 21 days, until May 16, 2013, to retain new counsel.

(4) Defendants are granted leave to file their amended answer *instanter*.

(5) The trial date of June 3, 2013 at 10:30 a.m. is stricken.

(6) The case is continued to May 23, 2013 at 10:30 a.m. for a case management conference.

(7) A copy of this Memorandum Opinion and Order shall be transmitted to the Attorney Registration and Disciplinary Commission.

Judge Raymond W. Mitchell

APR 24 2013

ENTERED,

Circuit Court – 1992

Judge Raymond W. Mitchell, No. 1992

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALDSON TWYMAN, Plaintiff,	)	Docket No. 16 C 04182
	)	Chicago, Illinois
	)	April 12, 2017
v.	)	10:12 a.m.
	)	
S&M AUTO BROKERS, INC., SAED IHMOUD and MOHAMMED IHMOUD, Defendants.	)	

TRANSCRIPT OF PROCEEDINGS - STATUS/MOTION
BEFORE THE HONORABLE VIRGINIA M. KENDALL

APPEARANCES:

For the Plaintiff:	DiTOMMASO LUBIN PC by MR. PETER SCOTT LUBIN 17 W 220 22nd Street, Suite 410 Oakbrook Terrace, Illinois 60181
For the Defendants:	LAW OFFICE OF JOEL A. BRODSKY by MR. JOEL ALAN BRODSKY 8 South Michigan Avenue, Suite 3200 Chicago, Illinois 60603
For the Respondent Donald Szczesniak:	NORTHCUTT FIRM, PC by MR. LANCE D. NORTHCUTT 105 West Adams Street, Suite 2800 Chicago, Illinois 60603
Also Present:	Mr. Donaldson Twyman Mr. Mohammed Ihmoud Mr. Daniel Konicek Mr. Donald Szczesniak
Court Reporter:	GAYLE A. McGUIGAN, CSR, RMR, CRR Federal Official Court Reporter 219 South Dearborn, Room 2318-A Chicago, Illinois 60604 (312) 435-6047 Gayle_McGuigan@ilnd.uscourts.gov

(Proceedings heard in open court:)

THE CLERK: 16 C 4182, Twyman versus S&M Auto Brokers.

MR. LUBIN: Good morning, your Honor. Peter Lubin for the plaintiff. This is my client, Donaldson Twyman.

THE COURT: Good morning, Mr. Twyman.

MR. LUBIN: I also brought counsel to represent me, because you indicated that you might be putting us on the witness stand.

So this is Dan Konicek, who, if you do that -- if you don't do that, he's not going to file his appearance.

THE COURT: That's fine.

Good morning, Mr. -- Tonicek was it?

MR. KONICEK: Konicek.

THE COURT: Spell it for the court reporter.

MR. KONICEK: K-O-N-I-C-E-K.

THE COURT: Okay.

MR. NORTHCUTT: Good morning, your Honor. Lance Northcutt, N-O-R-T-H-C-U-T-T, on behalf of Mr. Donald Sczczesniak. He's here, your Honor -- I appreciated the Court's consideration excusing us for today.

Insofar as his interests are implicated, he came here. There's been some developments, which I can inform the Court at the appropriate time, that required me to be here.

THE COURT: Okay. Good morning.

Can we get his name spelled on the record? I think

it's in the filings, but -- for the court reporter today.

MR. SZCZESNIAK: Donald Szczesniak. S-Z, as in zebra, C in cat, Z in zebra, E-S-N, as in Nancy, I-A-K.

THE COURT: Okay.

MR. BRODSKY: Good morning, your Honor. Joel Brodsky on behalf of S&M Auto. One of the principals of S&M Auto is here with me today. That would be Mike Ihmoud, Mohammed Ihmoud.

THE COURT: Good morning, Mr. Mohammed.

MR. IHMOUD: Good morning.

THE COURT: All right. So I have a status here. And I required the parties to bring their clients in, because I rarely have such a situation where there is such an aggressive confrontation occurring between the parties.

I've had a chance to go through the docket in great detail and to listen to the tape recording of the deposition that is the subject of dispute here.

And the reason that I want the lawyers -- I mean, the parties to be present is because if I move forward with determining whether sanctions are appropriate, I'm going to have a hearing. And if I have a hearing, I'm going to allow both sides to call witnesses, and the witnesses are going to tell the story about whether or not all of these accusations are true or false. And what that means is it's going to cost you money. It's going to cost you money to do that.

And the case that is before the Court is a case that is not a large dollar amount case, potentially; and if we start talking about having hearings that last more than a day or two, then that money is going to come from someplace, and it will be -- obviously, you'll have to pay your attorney to represent you during the process.

I'll focus on you primarily, Mr. Mohammed, as the person to be aware that the cost of putting on this hearing could increase, primarily on your side, because after reading everything and reviewing everything, it is my strong opinion that Mr. Brodsky has been overly aggressive in this case, that he's not following the rules of professional conduct, and that he is filing a lot of motions to exacerbate the discovery process. And so it's going to be a hearing primarily to determine whether sanctions should be applied to him.

And, of course, because I am an open-minded judge, I need to look into accusations against the expert, which are very serious, if that expert is to be used. And if they're false, that is more of a situation for you, because if he made false accusations against the witnesses in the case, that also is an obstructive behavior.

So, you see, we've taken what is an odometer-fixing case and we've blown it into an enormous disciplinary matter.

And I just want everyone to be aware of my perspective regarding it, because I have to do my work once those

accusations are levied, and they're very serious accusations.

MR. BRODSKY: Ms. Weinberger, Diane Weinberger, who couldn't make it here today, she's elderly and lives a long way away, is available by telephone. I asked her if she would be available by telephone, and she said she could be.

THE COURT: For what reason?

MR. BRODSKY: Because she's the one that signed the affidavit that Mr. Szczesniak was out at her house and --

THE COURT: The purpose of this status today is to really inform the parties about where we're heading, and because -- because I have concerns about the level of acrimonious behavior on the part of the lawyers -- primarily Mr. Brodsky. I mean, after reading everything and listening to everything, it looks like Mr. Lubin is defending himself 99 percent of the time, trying to maintain a level of decorum that is appropriate.

But that doesn't mean I don't take Mr. Brodsky's accusations frivolously. I have to look into them because they've been made by an officer of the court. And, believe me, if they're false, I have no problem levying the appropriate sanction against a lawyer who misrepresents or lies to the Court in such a manner to hijack a litigation.

So I want the principals who are in this, what I think is almost like what we would call the tail-wagging-the-dog type of situation, to understand that if I go down this path, it's

going to be a costly venture, and it's one that you should be aware of. All right?

Do you understand that, Mr. Mohammed?

MR. IHMOUD: I do, yes.

THE COURT: Okay. All right.

MR. BRODSKY: Also --

THE COURT: Hold on.

And do you understand that, sir?

MR. TWYMAN: Yes, ma'am, I do.

THE COURT: Okay. All right. So the reason that I do this is because in the Civil Rules of Procedure, we talk about the cost of litigation, and judges are obligated to take into account what that means to you. And because I have this unfortunate unprofessional behavior that I have to dig into, I wanted to make sure that you're hearing it from the judge and not from someone who I'm not quite sure is conveying it. All right?

All right. Go ahead, Mr. Brodsky. What do you have to say?

MR. BRODSKY: We're talking about cost. There is a declaratory judgment action brought by Erie Insurance Company about whether or not they were going to cover this loss -- or this claim. The judge in the Circuit Court is going to be ruling on that issue I believe on April -- I'm sorry -- the 20th, yes, the 20th, next week, Thursday of next week, on

whether or not there's --

MR. LUBIN: Judge, I'd like to comment on that.

MR. BRODSKY: -- whether or not there's insurance coverage.

THE COURT: Gentlemen, do you have availability on either May 9th or May 10th for a hearing on this matter?

MR. BRODSKY: On which -- on which issue, your Honor?

THE COURT: I'm sorry?

MR. BRODSKY: On what -- what would be the hearing?

THE COURT: It's going to be on whether sanctions should be levied. It's on your flying sanctions back and forth.

MR. LUBIN: I haven't filed any motion for sanctions, just so it's clear, Judge.

THE COURT: Well, you have to defend yourself, unfortunately, against his accusations, and so does the -- and so does the expert, he has to defend himself against the accusations.

MR. LUBIN: That's correct. I just want to be clear. We have not filed any motions for -- what is the -- what's the date, your Honor, that you said --

THE COURT: May 9th or 10th.

MR. LUBIN: May 9th or 10th are fine, either one, with me.

Judge, the only thing I had asked to file, which

wasn't part of the record that you reviewed, there's about -- I think there's 12 -- 11 emails that I received from Mr. Brodsky that are extremely unprofessional that I would like to make part of the record at some point.

THE COURT: Yeah, we can do that during my hearing.

MR. LUBIN: Okay.

MR. BRODSKY: Judge, I -- two things:

First of all, I think we should then -- I have an opportunity to get my own counsel.

THE COURT: Absolutely, you should.

So right now we have the defendants' motion for sanctions regarding Mr. -- is it Szczesniak? Is that how you say it?

MR. SZCZESNIAK: Yes, your Honor.

THE COURT: Okay. So it's appropriate that you have representation because the accusations against you are strong, and the accusations against you in that he's affiliating you with the improper expert --

MR. LUBIN: I think the gist of it is that I didn't fire -- that I haven't fired Mr. Szczesniak.

THE COURT: Right -- well, that you were essentially presenting perjured testimony to the Court would be the accusation, you know, the idea that Mr. Donald Szczesniak is a sham.

MR. LUBIN: If that's going to be the case, then we

would need to subpoena for the hearing the Mannheim report that inspected the car before they bought it. I can subpoena the Mannheim witness. Their report matches to the word, that they received before they sold the car to Mr. Twyman, matches to the word in Mr. Szczesniak's report --

THE COURT: And where is the Mannheim report?

MR. LUBIN: That -- it's in -- it's in the record, but Mannheim rated this car 38 --

THE COURT: No, we're not going to go there --

MR. LUBIN: All I'm saying is that if I need to defend Mr. Szczesniak and say whether I manufactured the case, then there's a Mannheim witness who will say that they did the same thing before I even got involved in the case.

THE COURT: Okay.

MR. BRODSKY: But there's nothing in that report --

THE COURT: The defendants' motion to strike the Rule 56 statement of additional facts is denied, because it was merely a mistake in the reference to the rule, as opposed to 56.1(b)(3)(C), he said 56.1(c). So that's denied.

The issue regarding the protective order on the expert deps is taken under advisement with the motion for sanctions, in the same way as plaintiff's motion for protective order is also taken under advisement.

Mr. Brodsky believes that the deposition audio tape should be sealed.

MR. BRODSKY: Yes.

THE COURT: And that's because why?

MR. BRODSKY: Well, as I state in the motion, your Honor, the Seventh Circuit in the case of *Smith versus United States District Court Officers* has ruled that a Court's -- that the tape or -- or a court reporter's audio recording of a deposition is not an official judicial record and, therefore, should not be filed as part of the record --

THE COURT: Yeah, that's a little bit different than what we're doing here. What we're doing here is to determine whether you're being professional. I'm much less concerned about whether the deposition, which is the transcript of the -- I mean, the -- yes, the transcript of the deposition is the official record, and I don't think anyone is disputing that.

However, the tape recording is evidence of behavior that I'm going to take under advisement when I review whether your motion for sanctions against the plaintiffs actually is sanctionable based upon whether you are engaging in misconduct.

So did you tell me whether the 9th or the 10th is available for you?

MR. BRODSKY: First, I'll need opportunity, if you're not striking their statement of additional facts, which has I think 391 pages of exhibits with new affidavits that weren't in the initial statement of facts, I'm going to need time to respond -- to file a response to that, to either contest those

new additional facts, admit or deny them, and also have an opportunity to present counter-affidavits.

THE COURT: No. I will take a look at that and make a determination as to whether it's appropriate, but that's not my big concern right now.

So are you available on the 9th or the 10th?

MR. BRODSKY: Well, Judge, I need -- that would depend upon -- I'm going to be out of the country from April 20th to May 5th, and I, as I said, will need to inquire --

THE COURT: Where are you going?

MR. BRODSKY: Paris.

THE COURT: On vacation?

MR. BRODSKY: A short trip. Ten days. So I would need an opportunity to get --

THE COURT: April 20th to the 5th is actually 15 days.

MR. BRODSKY: I'll be out of the -- I'll be out from the 24th to May 5th, not in the office, so I need an opportunity to get that attorney, and so I don't think that one week I have before I leave --

THE COURT: Okay. June 9th. The hearing will be June 9th at 10:00 o'clock --

MR. BRODSKY: Can I just take a quick look --

THE COURT: -- and I will frame the parameters of it in a docket entry today.

All of you lawyers should be present.

You don't have to be present at it -- because this is a sanction issue -- if you are too busy.

MR. TWYMAN: (Nods affirmatively.)

THE COURT: And you don't have to be present either, sir. I wanted you to know what we're going to be doing.

MR. IHMOUD: Thank you.

THE COURT: And the hearing will be scheduled for that day, so don't schedule anything else that day.

And if there's subpoenas that need to be issued pursuant to your accusations and your defense, you're permitted to do so.

MR. BRODSKY: Will Ms. Weinberger be able to testify telephonically?

THE COURT: It's complete -- oh, where is she?

MR. BRODSKY: Ms. Weinberger lives in -- I forget the town, but it's about 80 miles out of Chicago, and she is elderly. And we will need her -- definitely will need her testimony. Her testimony is going to be absolutely required. I can get her exact address, if you give me one second.

THE COURT: You look into whether she can get to a place where we can do video, and we can have her by video. We have the opportunity to do that, so see if she could.

MR. LUBIN: I would actually object to that, Judge, because, you know, this is a serious accusation against me, and even more serious against Mr. Szczesniak, and her credibility

is at issue. Cross-examining someone by video on something this serious -- she's not that elderly. There's nothing about her medical condition that's put in. She's leveled very serious accusations against --

THE COURT: Okay.

MR. LUBIN: -- Mr. Szczesniak, and I think it should be here --

THE COURT: You can file -- you can file a motion. Pursuant to the rules, if you don't -- if you don't want her to appear in person.

MR. BRODSKY: I'd like her to appear. I'm just concerned --

THE COURT: You can file a motion pursuant to the rules if you don't want her to appear in person. And when it comes in, I'll give you a time to respond, and I'll rule. Okay?

Is everybody understanding the purpose of today?

Did you have something else you wanted to add, sir?

MR. NORTHCUTT: Your Honor, there are a couple brief issues I wish to address with the Court.

First, if -- and I understand the Court's concern about taking these allegations at face value for purposes of determining where to go from here.

There are a litany of accusations, including manufacturing a son, doctor's note. We are in a situation

where my client will have to spend tens of thousands of dollars bringing doctors, family members, other people to disprove --

THE COURT: Right, I understand this. This is why I brought everybody here. This is why I brought everyone here.

So, for example, imagine the two ways it can play out:

It can play out poorly for your client, and then that plays into whether or not a summary judgment is granted when I go forward with the substantive case;

But it could also play out in such a way that the accusations are false, and somebody has committed such misconduct that the sanction is the dismissal of the case or all of the attorneys fees paid for by the individual who created the false accusations.

Those are all on the table right now.

MR. NORTHCUTT: And, your Honor, for our purposes, because I had said last time in the interest of restraint, we would -- we did not file the sanctions motion.

I have put Mr. Brodsky on notice, and he's not responded to my email on Monday, that now that he's actually going to go forward with this, we will be filing an appropriate motion subject to the 21-day parameters of Rule 11.

THE COURT: That's fine.

MR. NORTHCUTT: The other --

THE COURT: We have -- you know the date now. It's June 9th. So you need to do that by the 19th.

MR. NORTHCUTT: Your Honor, with respect to that, I teach a Trial Advocacy course with the Chicago Kent College of Law in Ireland that bleeds into that week.

I think I will be back by then, but I can't be assured of that.

If there is any opportunity to perhaps go to the following week, I would beg the Court's indulgence. Otherwise, I have to make appropriate arrangements --

THE COURT: I'll be teaching in China the next week, so I don't think we're going to do it that week. And then I start a jury trial --

MR. LUBIN: How do I get one of those assignments?

THE COURT: You have to be a very professional and hard-working judge.

MR. LUBIN: I was talking about the Ireland trip, too.

THE COURT: So it's June 5th is the week that you're in Ireland?

MR. NORTHCUTT: I am either going to be coming back on the 8th or coming back on the 5th, tentatively. The travel arrangements have not been finalized, your Honor.

THE COURT: Yeah, if you can -- so my unfortunate situation is that I'm on trial for three days the 5th through the 7th, and then I only have the 8th and the 9th available. I'm gone the week of the 12th. And then I begin a two-week jury trial, and then I begin another two-week jury trial, and

now we're looking at July 17, 18, right in there. So that would be the time frame.

MR. NORTHCUTT: Your Honor, I don't want to go that far out or try to disrupt the Court's schedule.

If we could just maintain the June 9th date --

THE COURT: We'll hold onto it; but if there's some conflict, let me know sooner rather than later.

MR. BRODSKY: May I just say one thing?

For example, I looked at that motion again, and at no time did I say that Mr. Szczesniak made up a son. All I said was that when I ran his background search, all his other family members came up on the LexisNexis background search, but the son that gave the affidavit didn't show up, and that I wanted more time to look into that.

So when somebody says that I created a son or -- or said that he doesn't have a son, that's not what the motion says.

THE COURT: I think it says that the son who submitted an affidavit does not exist.

MR. BRODSKY: No, that's not what the motion says at all. It doesn't say anything close to that. And this is why --

THE COURT: Well, that's why we're going to have a hearing.

MR. BRODSKY: Yeah, I understand, but just -- I mean

just one second. It's going to be in the -- here.

MR. NORTHCUTT: Your Honor, while Mr. Brodsky is looking for that, whatever the characterization is, the insinuation was he made up a son.

MR. BRODSKY: No. It's not.

MR. NORTHCUTT: And for my purpose --

MR. BRODSKY: If I may, I wasn't -- I didn't interrupt counsel.

An examination of the LexisNexis public record search that was done on Donald Szczesniak states that while he does have a wife named Jennifer, a mother named Ruthann, and a son named Zachary, there is no son named Luke. And then two paragraphs later, also paragraph 8, I go to -- I -- plaintiff is replying very quickly because this Court sometimes rules very quickly before I've had an opportunity to file a reply. Defendant would like an opportunity to try to verify facts and declarations to see, for example, if the letter from C. Ronald Lindberg is genuine or to verify if other information, like does Luke exist, does he own a car, if that's all true.

So I'm not accusing him of creating a son. What I'm saying is it doesn't appear in the very -- usually very accurate background search, and I want an opportunity to see if it does exist -- if he does, in fact, exist. I don't know if he does or not. That's all I said.

I never at any time accused him of creating a son --

THE COURT: That, I think, is maybe the least of your issues --

MR. BRODSKY: Well --

THE COURT: -- that we're looking at.

MR. BRODSKY: -- that seems the one that comes up all the time, though.

THE COURT: So I highly recommend that if you feel the need, that you get a lawyer to represent you --

MR. BRODSKY: Uh-hum.

THE COURT: -- because as someone who is considering whether sanctions should be levied, you do have a right to have representation at that hearing. Okay?

MR. BRODSKY: Yes, your Honor.

THE COURT: All right. Thanks, folks.

MR. LUBIN: Judge, our reply in support of summary judgment, since we need it to take the expert, we just need it entered and continued, our -- the date -- due date for our reply brief, until we get the expert's deposition.

THE COURT: You will have it entered and continued until I make a ruling on these motions.

MR. LUBIN: Thank you so much, your Honor.

MR. NORTHCUTT: Finally, your Honor, with respect to the procedural posture of the hearing, are we to provide whatever witnesses the Court may require?

THE COURT: That's right. It's up to you to defend

yourself against the accusations. Currently, it is you as being -- defending your clients against accusations. I understand you'll be filing something, which, if you're doing so, you need to do quickly. And then Mr. Brodsky will have to defend against your accusations. So you each have a burden of moving forward.

But I'm the one who is going to make this call, and I'm not going to permit my courtroom, ever, to be used as a circus. So we'll make the call.

MR. BRODSKY: You did see the exhibits that I attached to my response?

THE COURT: I will take a look at them.

Thank you very much.

(Proceedings concluded at 10:34 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/ GAYLE A. McGUIGAN *April 17, 2017*

Gayle A. McGuigan, CSR, RMR, CRR Date
Official Court Reporter