

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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:
JAMES DE LEON MARQUEZ, et al.,:
:
Plaintiffs, :
:
v. : Civil No. 298673
:
HADI M. DO RASSAEL, et al., :
:
Defendants. :
:
-----X

EXCERPT FROM JURY TRIAL

Rockville, Maryland

June 16, 2010

DEPOSITION SERVICES, INC.
6245 Executive Boulevard
Rockville, MD 20852
(301) 881-3344

ORIGINAL

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HADI M. DO RASSAEL, et al., :
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Rockville, Maryland

June 16, 2010

WHEREUPON, the proceedings in the above-entitled
matter commenced

BEFORE: THE HONORABLE MARIELSA A. BERNARD, JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

ALAN J. BELSKY, Esq.
VALERIE A. GROVE, Esq.
Belsky, Weinberg & Horowitz, LLC
220 North Liberty Street
Baltimore, MD 21201

FOR THE DEFENDANT:

ROBERT S. MORTER, Esq.
D. LEE RUTLAND, Esq.
Wharton, Levin, Ehrmantraut & Klein
P.O. Box 551
104 West Street
Annapolis, MD 21404-0551

DEPOSITION SERVICES, INC.

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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(Jury Not Present)

For the Plaintiff:

Charles Citrin	28	--	--	--
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For the Defendant:

(None)

P R O C E E D I N G S

THE CLERK: Civil 298673, James Marquez, et al. v.
Dr. Hadi Rassael, et al.

MR. BELSKY: Alan Belsky on behalf of the plaintiffs.

THE COURT: Good morning, Mr. Belsky. Good morning,
Ms. Grove.

MR. BELSKY: Good morning.

MS. GROVE: Good morning, Valerie Grove on behalf of
plaintiffs.

MR. MORTER: Good morning, Your Honor. Bob Morter on
behalf of the doctors.

THE COURT: Good morning, Mr. Morter.

MR. RUTLAND: Good morning, Your Honor, Lee Rutland.

THE COURT: Good morning, Mr. Rutland.

Good morning, Doctor.

DR. RASSAEL: Good morning.

THE COURT: And good morning.

MS. GROVE: Your Honor, preliminarily, we have a
motion to strike and exclude the testimony of Charles Citrin.

THE COURT: Okay.

MS. GROVE: Before we get started, I did print out,
and have for the Court a copy of the transcript from last
night's deposition. If I may approach?

THE COURT: Certainly. Thank you.

MR. RUTLAND: Are the exhibits attached?

1 MS. GROVE: I have those. I'm going to reference
2 them and then I'll provide them to the Court.

3 THE COURT: Okay, go ahead.

4 MS. GROVE: Your Honor, as you know from the prior
5 motion that we argued, Dr. Citrin was subpoenaed and requested
6 to provide documentation of the income that he received 2008
7 and 2009, relative to the expert work that he's performed.

8 As the Court also knows, the first time he appeared
9 for the duces tecum deposition, he did not provide any of that
10 information.

11 After hearing on the motion, this Court signed an
12 order compelling him to provide certain documentation with
13 regard to the income that he earned, either personally or
14 through Washington Imagining Associations, for expert work in
15 2008 and 2009. And in the event he was unable to provide that
16 information, to provide an affidavit attesting to the
17 information being destroyed, unavailable, and as to the reasons
18 why he could not provide it.

19 Last night we conducted the deposition again. Dr.
20 Citrin appeared with two documents which were marked and I have
21 here today. One is entitled Exhibit 1, medical/legal accounts
22 receivable, and it lists a number of names which Dr. Citrin
23 testified are one of the parties' names in the cases. They're
24 all 2010; accounts receivable, meaning they're outstanding
25 accounts. There is one on there from 2009, 8/17/09, which he

1 says is still outstanding and that's why it's on the list. And
2 it lists the amount billed.

3 He did not provide any ledgers or billing invoices --
4 anything to document the 2008 or 2009 income that he received
5 as a result of doing expert work.

6 THE COURT: I saw that he indicated that if it was
7 paid, he would delete it or he would write it off as a bad
8 debt.

9 MS. GROVE: Right, right. He did say that.

10 In addition, he provided an affidavit signed by Brad
11 Greenstone, CPA, which states that he is Dr. Citrin's
12 accountant, and that his firm prepared the individual tax
13 returns for Charles Citrin for 2008 and 2009. And then it
14 says,

15 "To the best of our knowledge, we have received all
16 1099 miscellaneous forms and K1's on which Charles Citrin is
17 the named tax payer. Based on the representations made to this
18 office, it is the understanding of this office that the above
19 referenced form 1099 or form K1's do not directly reflect
20 income earned by Mr. Citrin as an expert witness for personal
21 injury matters, as such income was not paid directly to Mr.
22 Citrin."

23 These are the only two documents that we received and
24 I would submit them to the Court at this time.

25 THE COURT: Any objection in their doing that?

1 MR. MORTER: I have no objection to her showing you
2 the exhibits from, that Dr. Citrin produced. I'm not sure that
3 she needed -- I guess it doesn't matter. I mean, financial
4 information, even accounts receivable, I'm not sure should be
5 made part of a public record, but I certainly have no problem
6 with Your Honor looking at it.

7 THE COURT: I'll look at it; I don't know that it
8 should come in.

9 MS. GROVE: Okay. Your Honor -- I'll wait until
10 you're finished reviewing it.

11 THE COURT: All right.

12 MS. GROVE: All right, the affidavit that was
13 provided by the accountant, first of all, doesn't state that
14 the tax returns, the 1099's, or the K1's are unavailable and
15 they were not provided to us, which we asked for directly in
16 the order.

17 Mostly we're concerned about that accountant's use of
18 the word "directly related." Dr. Citrin testified at a prior,
19 at the first deposition --

20 THE COURT: "Directly related" or "directly reflect"?

21 MS. GROVE: "Direct" -- the word "directly."

22 THE COURT: Yes. It says, "do not directly reflect
23 income --"

24 MS. GROVE: Reflect. Right.

25 THE COURT: -- which doesn't make sense to me.

1 MS. GROVE: Well --

2 THE COURT: I don't understand how a 1099 could not
3 -- anyway, go ahead.

4 MS. GROVE: So, he testified at a prior deposition
5 that all the income he earned as an expert is paid through that
6 entity, Washington Radiology Associates. He didn't provide any
7 evidence of income received through that entity or any reason
8 why he couldn't provide it.

9 I asked him directly at page 10 if he received 1099's
10 for medical/legal work in 2009 and 2008; he states, "I don't
11 know."

12 Then, he then stated that there's a group of
13 radiologists who own Washington Imagining Associates, and that
14 he's --

15 THE COURT: And he's not one.

16 MS. GROVE: -- and he's not one of them. That he's
17 not an officer. And then he refused, when I asked him to tell
18 me what his relationship to Washington Imagining is, how he's
19 involved with that entity.

20 I then asked who at Washington Imagining collects the
21 information related to the payments that he, funnels through
22 them, as an expert. He replied, "nobody."

23 As the Court can see from the transcript, Dr.
24 Citrin's refused to provide any document or answer any
25 questions that's responsive to the information that we validly

1 sought, by the plaintiffs' in this case, or give a reason why
2 he couldn't collect that information.

3 We have also evidence from our own firm, Belsky,
4 Weinberg & Horowitz, who paid him as an expert, and this check
5 was paid 7/1/2004 and it was paid directly to Charles M.
6 Citrin, MD, to his 1201 Seven Locks Road business address in
7 Rockville, in the amount of \$1,000.00.

8 Now, Your Honor, he did provide at the first
9 deposition, and as we talked about, a list of all the 2004,
10 '05, '06, '07, '08, and '09 trials and depositions that he's
11 been involved in.

12 He was able to create this list, but cannot come up
13 with the 1099's, billing ledgers, receipts, anything as to what
14 he earned from each of these cases. And I think that after all
15 of this, and pursuant to the validly requested information the
16 plaintiffs' need in order to cross-examine this expert under
17 the statute and the Waldt case, which specifically says that,
18 "A health care provider who attests in a certificate of a
19 qualified expert or who testifies in relation to a proceeding
20 before an arbitration panel or court concerning compliance with
21 or departure from standard care, may not devote annually more
22 than 20 percent of the expert's professional activities to
23 personal injury claims."

24 Now, this also, the intent here is it's 20 percent
25 rule if you're an expert testifying. We are entitled to

1 determine that. We are entitled to cross him on the amount of
2 money he is earning as an expert. The jury is entitled to hear
3 that, and we're entitled to that information.

4 He is now in contempt of a court order. He's not
5 given one valid reason despite, you know, the opportunity on
6 multiple occasions to do so, as to why he -- he just
7 contemptuously refuses to provide the information.

8 And at this point, plaintiffs' are prejudiced in
9 their ability to effectively cross-examine this man, and I
10 would ask, for these reasons, that the Court preclude his
11 testimony.

12 THE COURT: Mr. Rutland?

13 MR. RUTLAND: Just a couple points, Your Honor. We
14 hired Dr. Citrin; we don't represent him. These are things
15 over which we have no control.

16 My understanding is that Dr. Citrin has testified,
17 and testified yesterday, that he doesn't have the documents
18 responsive to the request and to what was in Your Honor's
19 order. He has testified he doesn't have them.

20 This isn't anything we have any control over. We
21 represent Dr. Rassael; we hired him as a witness. This is not
22 a 20 percent rule case. He is not a certifying expert.

23 There is sufficient information from what has been
24 produced in this case to allow them to cross-examine him on
25 what he earns and how many cases he has and is he a paid

1 expert.

2 It's not like his opinions in this case are so out of
3 the realm of the expected that he's coming in here and only
4 doing it because he's getting paid. He's basically agreeing
5 with all the experts, all the radiology reports that are in
6 evidence. That's all he's saying.

7 To strike this witness on our behalf is extremely
8 prejudicial for, over matters of which we have absolutely no
9 control.

10 My understanding is Dr. Citrin has testified that I
11 have produced anything that's responsive to this.

12 THE COURT: Well, the only thing is, though, Mr.
13 Rutland, I mean, I don't know how many times your firm has
14 hired him before. But if I just allow this type of behavior to
15 continue then that pretty much sets him up to keep doing this
16 over and over again. And I really don't, I mean, I think just
17 reading this --

18 MR. RUTLAND: I can tell Your Honor that's not going
19 to be a problem, because these kinds of issues we don't -- this
20 is the last thing we want at trial. We're not going to run
21 into this problem again, I can guaranty you that. So this
22 proceeding itself is going to have an effect, because nobody
23 wants to run into this kind of thing doing these trials.

24 And I disagree that this will not have an effect,
25 just having had this come up at this point, because nobody who

1 hires him is going to want to have to deal with this in every
2 case and have him, what does he have, what does he not have --

3 And I understand the Court's concern. I'm just
4 concerned, here we are last day of trial, ready to go, and it
5 would be extremely prejudicial to have him stricken at this
6 point for something over which we really don't have any
7 control.

8 And at this point, he has said he doesn't have the
9 documents --

10 THE COURT: I mean, I think you had made actually a
11 good point yesterday when you said that you felt that his
12 behavior was going to discredit quite a bit of his testimony.
13 So --

14 MR. RUTLAND: And that's -- yes. And, unfortunately,
15 we don't have any control over that, either, and that's, it's a
16 concern.

17 THE COURT: What was the case that you cited?

18 MS. GROVE: It is Waldt, W-A-L-D-T. It's University
19 of Maryland Medical System v. Waldt, and the cite is --

20 THE COURT: No, wait. I think I have that.

21 MS. GROVE: Okay.

22 THE COURT: But, now -- and correct me if I'm wrong,
23 but I think that there's a difference in opinion as to whether
24 or not the 20 percent rule applies to him?

25 MS. GROVE: Well, we believe it does apply to him.

1 And besides that, Your Honor, besides the 20 percent
2 rule, part of cross-examination is showing, if we can, bias --

3 THE COURT: Certainly. I mean, I certainly
4 understand.

5 MS. GROVE: -- and the amount of money that someone
6 orders.

7 Now, I understand that defense counsel has no control
8 over Dr. Citrin's behavior, but they do have control over who
9 they hire as an expert, and that --

10 THE COURT: Well, that's what I was alluding to when
11 I said that I felt that if I allowed this to go without any
12 type of repercussion then certainly that means that other
13 people will think oh, we can just hire him and he can behave
14 like this.

15 MS. GROVE: And I appreciate Dr. -- I appreciate
16 counsel's representation that they don't plan to use him again,
17 but that doesn't help us out in this situation.

18 And the reason we're doing this on the last day of
19 trial is, again, because we've been trying to seek this
20 information for, like, 80 days now. That's -- and have been
21 met with road blocks put up by Dr. Citrin at every turn, from
22 evading service to failing to show up for the first deposition
23 to showing up for the second with just this list of cases,
24 having to argue -- file the motion days after he shows up
25 without the required information, arguing the motion, preparing

1 another order, resetting it after hours last night, and then
2 here we are again today.

3 This is not the plaintiffs' -- we're not stalling to
4 do this on, you know, the eve of, the moment before he's
5 scheduled to testify; we had no choice in this matter.

6 THE COURT: It's my understanding that Exhibit 1 just
7 shows money that is still outstanding, but he doesn't show
8 anything about money that he actually received in 2010.

9 MS. GROVE: That's correct.

10 THE COURT: And he says that he doesn't have any
11 record.

12 MS. GROVE: Exactly.

13 MR. RUTLAND: Just on the hiring issue, Your Honor,
14 but the time we hired Dr. Citrin, it's my understanding, this
15 had never come up. Had this been an issue before that, we
16 certainly wouldn't have touched him. But it's my
17 understanding, a hearing like this has not happened with Dr.
18 Citrin before.

19 So to say that we were aware that this would come up
20 and we shouldn't have hired him, I don't think is a valid
21 argument. This was years ago when he was hired --

22 THE COURT: Well, I don't know that that was
23 something that they were saying, but --

24 MR. RUTLAND: Well, that's what I'm saying. We have
25 control over who we hire -- when we hire an expert, we don't

1 know what records he keeps. We don't know what income he has.
2 Not having had it come up before.

3 And we've had plaintiffs' experts -- Dr. Battle who
4 came up in DC so everyone knows that he's got issues. And I'm
5 sure after this, everyone will know Dr. Citrin has issues.

6 But at the time we hired him, you can't say we know,
7 we shouldn't anticipated that this should've arisen.

8 MS. GROVE: Well, Your Honor, I will bring to the
9 Court's attention, there is a 2008 deposition transcript -- I
10 can get it for the Court within 15 minutes, if the Court wants
11 to see it -- when Dr. Citrin was directly asked about the
12 amount of income he's earned as an expert and he refused to
13 answer.

14 THE COURT: And is that in -- What case is that in?

15 MS. GROVE: It's a transcript we have from another
16 case, but it's back in 2008. I mean, I'm sure these issues
17 have come up for Dr. Citrin before.

18 MR. BELSKY: The attorneys of Joseph, Greenwald &
19 Laake were the plaintiffs' counsel in the case and they
20 inquired extensively of the doctor about his income.

21 Dr. Citrin is a player, Your Honor, and we don't mean
22 that in a disrespectful way; we just are saying for the record
23 that the Court, if it looked at the dockets and looked at
24 designations of experts, particularly in this County, that you
25 would find that Dr. Citrin has been named as an expert

1 continuously for years in medical negligence cases and other
2 personal injury cases.

3 There is Westlaw information regarding experts who
4 have appeared in trials that we have access to at our firm, and
5 perhaps the Court has it as well, that lists Dr. Citrin
6 continuously as an expert in a case.

7 We were not undertaking this lightly, in terms of
8 inquiring about his income. We haven't done it to any other
9 one of their, we haven't been interested in any other expert
10 that they have identified or called in the case. We are
11 concerned with this particular expert, and now that we see his
12 demonstration of contempt, there's good reason for our concern,
13 and it will continue and continue and continue.

14 And if Dr. Citrin wants to redeem himself, and serve
15 as an expert in cases in the future, he has to keep records.
16 He has to be able to demonstrate upon being called upon to
17 prove that he does not comply or does comply with the 20
18 percent rule; and that he is subject to cross-examination, if
19 he does comply with the 20 percent rule, on the issue of how
20 much work he does.

21 So, I'm just dovetailing onto Ms. Grove's statements
22 to the Court, Your Honor, because I'm personally the one that
23 has direct knowledge of Dr. Citrin's involvement in cases. In
24 fact, as Ms. Grove stated, we used him one time and we went
25 back into our Quickbooks record, which was very easily

1 accessible, and we paid him directly in his name \$1,000.00 for
2 services rendered in the D'Angelo case, which everyone is
3 familiar with.

4 So, it's not as if we don't have knowledge of this
5 expert, in terms of what he has done, who he has testified for,
6 what law firms he has testified for, and on whose behalf he has
7 testified for, which is unanimously, for the most part, defense
8 work.

9 So these are all issues that, even if you were to
10 give us an opportunity to bring this up in front of the jury,
11 that that doesn't do anything for us in terms of impeaching his
12 credibility. They're not going to understand this. It's not
13 going to mean -- at this point, in this trial, not only are
14 they not going to understand it, but they probably aren't
15 interested in it. They're done. This jury is effectively done
16 with this case, as all of us are for the most part.

17 So, to say yes, well, I think it's prejudicial to
18 strike the man, but I'm going to give you an opportunity to
19 cross-examine him and to bring out the fact that he didn't show
20 up for all these things that we asked for -- it has no effect
21 in this case. It does not serve the purpose that the Maryland
22 Rules and the Courts and Judicial Proceedings Code with regard
23 to who may be an expert in a medical malpractice case were
24 designed to deal with. And that's exactly the point in this
25 case, is.

1 You know, we've got these motions to strike experts,
2 we've got these motions regarding the 20 percent, we have Court
3 of Appeals opinions that have said an expert that does 21.1
4 percent of his work as an expert is disqualified from the case.

5 THE COURT: But, again, that goes to the issue that
6 Mr. Rutland raised --

7 MR. BELSKY: Which is whether it's certifying or a
8 breach? Well, just for the record, Your Honor, I will say that
9 the underlying, that every case requires an expert to not only
10 provide testimony -- every malpractice case requires proof of
11 breach and proof of causation.

12 And despite the fact that it says "breach" in the
13 statute, our position is that the legislative intent in creating
14 the statute was that any expert that is testifying in court
15 because the case, the statute itself says, "Who certifies or
16 who testifies in relation to a proceeding before an arbitration
17 panel or a court --" and yes, it goes on to say -- "concerning
18 compliance with or departures from standard of care, may not
19 devote annually more than 20 percent of the expert's
20 professional activities."

21 In the trial in Waldt, that expert was, testified at
22 trial, and it wasn't based on his certification. It was his
23 trial testimony that was excluded in the case.

24 And the legislative intent here is we don't want a
25 hired gun expert coming in in a medical malpractice case, who

1 does more than 20 percent of his work, to offer an opinion,
2 period. And that's clearly what the legislature intended.

3 The amendments to the statute in '05 are not the
4 greatest because it was done by virtue of emergency
5 legislation. There are a number of problems with regard to the
6 way it was drafted.

7 And as Your Honor is aware from the Semsker opinion,
8 one of your colleague judges had determined did not place a cap
9 on the non-economic loss because of an infirmity with the
10 writing of the statute, that ultimately the Court of Appeals
11 reversed and said that, in fact, we know what it says, but we
12 know what they meant.

13 And the same thing applies here. We know what it
14 says, but we also know what they meant. They don't want
15 professional witnesses coming in to testify for or against
16 doctors in malpractice cases.

17 MR. RUTLAND: This is absolutely, 100 percent,
18 incorrect. There is no reasonable reading of that statute that
19 says the 20 percent rule applies to anything other than
20 certifying experts on the standard of care. If Your Honor
21 rules that way, I can guaranty you that's an issue we will take
22 up because there is no way that that is the law in the State of
23 Maryland.

24 THE COURT: How about the issue of bias, though? I
25 mean, really, how can they effectively determine --

1 MR. RUTLAND: They have a list of all the cases he's
2 been involved in. How many hours did you spend on that case?
3 What do you charge in those cases? They've got the information
4 they need to cross-examine him on that. That's the information
5 that we do every day in these trials.

6 It would be so unusual to have any actual documents
7 in these cases. We've been doing it for years and this issue
8 doesn't arise a lot.

9 He has said he doesn't have the records and to strike
10 him because he says he doesn't have the records, absent proof
11 he actually does have the records, I just don't think would be
12 appropriate.

13 They have sufficient information to cross-examine him
14 on the number of cases he does and that information. I think,
15 Your Honor, it would just be --

16 THE COURT: Well, actually that's not true. I don't
17 see how they have sufficient information to cross-examine him
18 on the cases that he has because the list that he's given them
19 is incomplete; it's only the cases that the money hasn't been
20 paid.

21 MR. RUTLAND: Oh, no, I'm talking about the different
22 list, Your Honor. Not this list.

23 THE COURT: Oh, the list of --

24 MR. RUTLAND: The list of cases.

25 THE COURT: The first list.

1 MR. RUTLAND: The first list that he produced, in
2 which --

3 THE COURT: But the first list --

4 MR. RUTLAND: Is that a part of the record, Your
5 Honor? Or does Your Honor have it just in case --

6 THE COURT: No, I don't have it. She just --

7 MR. BELSKY: We'll make it part of the record.

8 MR. RUTLAND: It's just that, I think if you're going
9 to strike him, that that should be included.

10 THE COURT: Okay, can I look at that then? And that
11 was the cases from --

12 MR. RUTLAND: It's my understanding -- I wasn't at
13 this deposition -- but it's my understanding this is the list
14 of cases in which he's appeared either in trial or deposition.

15 MR. BELSKY: And we also would like to note that, you
16 know, the tax returns were, without extension, were due on
17 April 15th of 2010, just a month and a half ago --

18 THE COURT: Well, it's kind of interesting that the
19 cases that he has here for 2010 --

20 MR. BELSKY: Yes, and he already has --

21 THE COURT: -- don't match up with the --

22 MS. GROVE: Right.

23 MR. BELSKY: Right.

24 THE COURT: -- with the ones that have accounts
25 receivable. At least, just from a very quick review, it

1 doesn't -- I see Napoli v. Gill -- I don't know -- okay, lots
2 of them.

3 MR. BELSKY: And you'll also note, Your Honor, that
4 thus far, six months into the year, he has as many cases listed
5 for this year that he had last. So he's on course to have
6 twice as many cases this year as he did last.

7 THE COURT: Mr. Rutland, do you have these documents
8 in front of you? Because this actually does cause concern to
9 me, because Exhibit 1, I guess is the document that he produced
10 to them last night, has all these people's names -- Ryan v.
11 Embassy Suites, Eileen Cronch --

12 MR. RUTLAND: Right.

13 THE COURT: -- Bernice Lewis, it goes on. And then
14 the list that was given to them in the second deposition -- I
15 don't recognize any of these names --

16 MR. RUTLAND: My understanding --

17 THE COURT: -- as being reflected in the list that
18 was provided to them last night, unless --

19 MR. RUTLAND: Well, my understanding is that this is,
20 the list that's Exhibit 1 is amounts billed, that have billed
21 in the past that have not been paid.

22 THE COURT: Right.

23 MR. RUTLAND: I don't necessarily, I don't think that
24 necessarily correlates with a case in which he has had a
25 deposition or trial; I don't know. I don't know how --

1 THE COURT: Well, how could -- okay, this -- My
2 understanding is that this is being proffered as a complete
3 list of the cases, because you just said that they could
4 effectively cross-examine on this list, because this list
5 apparently is reflective of all of the cases that he's been
6 involved in.

7 MR. RUTLAND: I'm not sure that he's been involved
8 in. I wasn't at the deposition. I think it's depositions --

9 THE COURT: But that's what you just represented to
10 me. That that was a way that they could effectively cross-
11 examine him.

12 MR. RUTLAND: I just looked at the title of it and it
13 says list of trials and depositions.

14 THE COURT: List of trials and depositions.

15 MR. RUTLAND: So I'm not sure if there's additional
16 cases where -- a lot of times you'll retain an expert --

17 THE COURT: So then how could they properly cross-
18 examine him on all the cases that involved him if he's
19 effectively just giving little tidbits here and there of the
20 extent of his practice.

21 MR. RUTLAND: We do it every day, Your Honor.
22 It's --

23 THE COURT: I'm going to take a short recess so I can
24 look at that Waldt case again, and does defense counsel have
25 any case that they want me to look at as well?

1 MR. RUTLAND: No, Your Honor.

2 THE COURT: Okay, thank you.

3 THE CLERK: All rise.

4 (Recess)

5 THE COURT: All right, please be seated.

6 All right, I was just, I wanted to take an
7 opportunity to look at the Waldt case, and also to review the
8 statute.

9 And I understand, certainly, that the plaintiff is
10 making the argument that the 20 percent, that I have to look
11 beyond the plain language of the statute and look to the
12 statutory intent, but --

13 And I don't think the Waldt case really gives me that
14 much guidance, either, as to the 20 percent. I think the 20
15 percent, on its face, does apply to someone who is testifying
16 as to the standard of care.

17 But it doesn't take away from the fact that I ordered
18 this doctor to provide that information. And if he's
19 purposefully evading a court order, that does give this Court a
20 lot of concern. A lot of concern.

21 So, I think what we should do is have Dr. Citrin come
22 in. I'd like to see him for myself, actually. I have no idea
23 -- I don't know anything about him. So, I think what I'd like
24 him to do is to come in, outside of the presence of the jury,
25 put him under oath.

1 I had mentioned to my law clerk that I wanted to see
2 the order that I signed. I don't have a copy of it, so I
3 assume that the Clerk has it. And I'm sure we have it, the
4 original, because I'm sure you guys just have copies.

5 And what? What Ms. Grove? Or Mr. Belsky?

6 MR. BELSKY: I just wanted, for the record, we did
7 locate that 2008 transcript in the case of, in the Circuit
8 Court for Frederick County, in the case of Starkey, S-T-A-R-K-
9 E-Y v. Kameroner, K-A-M-E-R-E-R, Case No. 10-C-04-001827.
10 Counsel in the case was Andrew Greenwald for the plaintiff, and
11 on behalf of the defendants, Shelly Bagoly, B-A-G-O-L-Y,
12 Timothy Altemus, A-L-T-E-M-U-S, and Angus Everton (phonetic
13 sp.).

14 There's a question asked on page 11 of Dr. Citrin,
15 was as follows, starting on page 10,

16 "Have you ever testified in a birth trauma case
17 before?"

18 Answer, "I believe I have.

19 "Can you tell me when that was?"

20 Answer, "No, sir."

21 Question, "How much have you earned in the last
22 couple of years doing medical/legal work?"

23 Answer, "I don't know the answer to that question.
24 Nor would I, if I did, I wouldn't tell it to you."

25 Okay?

1 THE COURT: Well, you know, Mr. Belsky, I mean
2 certainly, I think that's interesting, but I don't know how
3 relevant that is to this case. I mean, this is a different
4 case and his behavior in that case --

5 MR. BELSKY: Right.

6 THE COURT: -- might not be the same as in this
7 case, but certainly it does --

8 MR. BELSKY: Well, I believe the issue --

9 THE COURT: -- it seems to --

10 MR. BELSKY: The purpose of me advising the Court of
11 this is that he is on notice that he has been requested years,
12 or you know, during the years to provide the same information.
13 So it's not as if he shouldn't expect to be asked the question
14 and he should be expected to provide the information, and that
15 he shouldn't just be permitted to destroy the information so
16 that he will perpetually never be able to produce the
17 information and continuously be allowed to testify in court.

18 THE COURT: Well, I think certainly we can have him
19 come in and you can inquire based on the information that you
20 have as to what other cases perhaps he might be involved in.

21 I think in order for me to preclude him, certainly I
22 think that I have to find that he is purposefully evading my
23 court order. And I think really the only way to do that is to
24 have him come in and have you inquire of him.

25 And if he says I don't have it, I don't remember,

1 whatever -- because I certainly understand that this is a very
2 late time in the trial. I certainly think in some respects Mr.
3 Rutland's suggestion, I mean, if I'm having this reaction to
4 his responses, I'm sure the jury is going to have the same
5 reaction.

6 But I also think that the concerns that the plaintiff
7 outlined are in some respects valid in that maybe I'm
8 attributing too much to the jury's knowledge of what he should
9 be responding and what he --

10 So, certainly I think I'd like to hear from him and
11 then I'll make my decision. And then we'll see. At that
12 point, I'll hear argument from both of you. Okay?

13 MR. RUTLAND: May I be excused to --

14 THE COURT: Certainly. And so you all are ready to
15 just inquire of him?

16 MR. BELSKY: Yes, we'll just wing it, Your Honor.
17 What else is new, right?

18 THE COURT: Now, one of the responses is the scope of
19 the deposition, so we can address that, as well.

20 Good morning, doctor. If you want to come forward,
21 please.

22 MR. CITRIN: Yes, ma'am. Thank you.

23 THE COURT: Just raise your right hand, please, to be
24 sworn.

25 CHARLES CITRIN

1 called as a witness on behalf of the plaintiff, having been
2 first duly sworn, was examined and testified as follows:

3 THE COURT: Thank you. Go ahead and take a seat.

4 THE WITNESS: Thank you, ma'am.

5 THE COURT: Ms. Grove or Mr. Belsky.

6 DIRECT EXAMINATION

7 BY MR. BELSKY:

8 Q Good morning, Dr. Citrin. Alan Belsky on behalf of
9 the plaintiffs.

10 A Good morning, Mr. Belsky.

11 Q Good morning. Dr. Citrin, you're here to be
12 questioned about your responses to the inquiries that the
13 plaintiffs have made as to your income.

14 Let me ask you first, in the course of your career,
15 how many times have you been asked to produce income
16 information relative to your medical/legal work?

17 A You mean of the nature that's being asked presently,
18 or in a --

19 Q I mean would you say that it fairly regularly comes
20 up during your depositions, for example, that the counsel is
21 interested in knowing what you earn as an expert in
22 medical/legal work?

23 A No, I've never, well, I shouldn't say never, but I,
24 I've rarely been asked any amount. It's usually a percentage.
25 It's always been a percentage of my income.

1 Q Okay. And is it fair to say that you have, on
2 occasion, not been willing to share that information with
3 counsel?

4 A No, I've always, well, I shouldn't, to my
5 recollection, I've always shared what I estimated to be the
6 percentage of my income generated from this type of work.

7 Q Okay. And you have refused, on occasions, to provide
8 the income information if you're specifically asked for that.

9 A If I have been asked for it, that is correct, I would
10 not. Since I was always willing to give a percentage, I felt
11 if I gave a number, then my total income is easily calculated,
12 and I didn't think anybody was entitled to know my total
13 income. So, I didn't, I was reluctant, and have been
14 reluctant, and I'm still reluctant to reveal any figures that
15 will demonstrate my total income. I don't think that's, should
16 be out in the, in the public.

17 Q Well, when you say that if you were to reveal your
18 medical/legal income that that would reveal your entire income,
19 how is it that you come to that conclusion?

20 A Well, I'm, I think, I pretty consistently have stated
21 that my medical-related income, medical/legal-related income
22 was about 15 to 20 percent of my total income. So, if I said
23 what my medical/legal income was, which I really don't know,
24 but if I even estimated it, then you could take that estimate
25 and divide it by either point 15 or point 20, and you would

1 have my total income. And I didn't think that should be
2 available, quite frankly, to anybody, except, you know, the
3 United States Government and the State of Maryland Government.

4 I, I don't, I, I mean I would not, and will not
5 reveal my income. It's nobody's business, quite frankly.

6 Q Well, you understand that the Court had ordered you
7 to do so in this case?

8 A And, no, I don't think the Court ordered me to do
9 that. I may have misread the order, but I don't think I was
10 asked to reveal my total income.

11 Q Well, you were aware that the order that was signed
12 by the Judge required that you produce your income tax -- your
13 personal income tax returns for at least two years?

14 A No.

15 MR. MORTER: Objection, Your Honor. I don't think
16 that's in the order.

17 THE WITNESS: I, I didn't see that in the order. I,
18 I --

19 BY MR. BELSKY:

20 Q I thought that it was.

21 THE COURT: It was not the full income. It was the
22 income earned as an expert witness.

23 MR. BELSKY: Right.

24 BY MR. BELSKY:

25 Q Which would include the schedules that you would file

1 with your income tax returns that would contain that income
2 that was not earned as an employee of a practice, but was
3 earned as supplemental income either from an investment that
4 you may hold, or as expert where you have received 1099s, or
5 non-1099 income. You have those forms?

6 A I, I do. I don't know if I have those forms or not.
7 I, I do not have my 1099s. I do not keep my 1099s. All of my
8 1099 income is combined, and it's a one 1099 number that is
9 submitted by my accountant.

10 Q So, is it your testimony that you destroy those?

11 A I don't keep them. I wouldn't say I destroy them. I
12 discard them, I guess, is the right word.

13 Q You throw them out?

14 A Yes.

15 Q And what happens if you were --

16 BY THE COURT:

17 Q Well, can I just ask you something?

18 A Yes, ma'am.

19 Q Because you just said that you don't discard them,
20 but --

21 A I do discard them. I said I, I --

22 Q You do discard, but I'm sorry you don't destroy them.

23 A -- didn't destroy them. I didn't, well, maybe it's
24 the same thing. Discard is slightly different than destroyed.
25 It's not like I take them, and I tear them up, or, and burn

1 them. I just don't keep them. After I record them --

2 Q You throw them out in the trash? You don't shred
3 them?

4 A I don't have a shredder.

5 Q Okay.

6 A But maybe I do tear them up. I, now, as you ask me
7 in that sense, I guess that, perhaps, I do, but I, I don't, I
8 guess maybe I'm more trusting than most people. I'm not sure.
9 I don't specifically --

10 BY MR. BELSKY:

11 Q Have you --

12 A -- I'm sorry. I don't specifically remember tearing
13 them up.

14 Q -- filed your tax returns for tax year 2009? Did you
15 file them on time?

16 A You know, quite frankly, frankly, I don't remember if
17 I did or not. Well, I'm sure if they weren't on time, they're
18 on extension. I wouldn't not -

19 Q Well, that's what I'm asking you. I mean --

20 A Yeah. I don't remember.

21 Q You don't remember?

22 A I mean, I know I've paid my taxes, whether I signed
23 the forms or not, I don't, I don't know.

24 Q So, you've made -- are you testifying that you have
25 made estimated tax payments? Is that what you're talking

1 about?

2 A I always make estimated tax payments.

3 Q Okay. So, you're basically a K-1 -- you receive a
4 K-1 each year?

5 A You have exceeded my accounting knowledge, sir.

6 Q Okay. When you say 15 to 20 percent of your income
7 is derived from medical/legal work, how do you come up with
8 that number if you don't have anything to refer to?

9 A I said it was an estimate, sir. I don't have a
10 specific knowledge.

11 Q Do you know anything about the 20 percent rule in
12 medical/legal cases?

13 A I, I'm aware that there's a 20 percent rule, yes,
14 sir.

15 Q And what do you understand about that rule?

16 A That, well, I'm not an attorney, but I think what I
17 understand is that, that the amounts of income you earn
18 relative to trials and depositions should be under 20 percent
19 of your income. I think that's what I've been told in the
20 past. I, I don't, I've never read the rule --

21 Q Right.

22 A -- that's --

23 Q But you're aware of that rule?

24 A I am aware of that rule, yes, sir.

25 Q All right. And why is it that you are aware of that

1 rule, but you aren't in a position, if called upon, to produce
2 information that would allow a Court or an attorney to
3 determine whether what you say is your percentage is actually,
4 in numeric form, the actual percentage? How are we ever to
5 figure that out?

6 A Well, sir, I've never been asked to figure it out, so
7 I don't have -- I mean I can tell you that I will, after this,
8 I will retain these things, but I haven't done it in the past.
9 Just I didn't, it never came up. Nobody's ever asked me to
10 produce anything, and I've been doing this type of work for I
11 think over 10 years by now, maybe 10 or 15 years.

12 I've never been asked to produce it in all these
13 years, and, so, this is, nor have I ever been queried by the
14 Court in this fashion ever in, you know, many appearances in
15 this courtroom. Not in this courtroom, but in the, in a
16 courtroom.

17 Q You provided a list of cases for 2010 that you are
18 presently working on as part of the list that you produced in
19 what I'm going to call Deposition No. 2, which was not the
20 deposition yesterday, but the one --

21 A Right.

22 Q -- before that?

23 A I had, when we had met, the first time, Mr. Belsky,
24 you and I had met, you had asked me if I had maintained a list
25 of, of trials and depositions. I said I had had one. And I

1 think maybe you had asked me if I can, you know, get it again,
2 or, so I did find it, and I tried to update it as best I could.

3 And that's when I presented, when we met the second
4 time, I offered that spontaneously. I wasn't asked for it,
5 because that was the only document I, I had brought, you know,
6 I brought with me.

7 Q Yes.

8 BY THE COURT:

9 Q I'm sorry. You said you wanted to update the list of
10 the cases that you had provided in the second deposition?

11 A No, ma'am. I'm sorry. I didn't explain that. I had
12 had, I had found a list that I had. Mr. Belsky, at the first
13 deposition, had asked me if I had a list of trials and
14 depositions, for federal court, I think you had asked me. And
15 I said I, I had had one in the past.

16 Q For federal court, not state court?

17 A Yes, ma'am, for federal court. And I said, but I
18 will try to get that, and try to update it as best I could --

19 Q Okay.

20 A -- which I did, as best I could.

21 Q Okay.

22 A And then I, I offered that spontaneously to --

23 MS. GROVE: Ms. Grove.

24 THE WITNESS: -- to this --

25 BY MR. BELSKY:

1 Q Ms. Grove.

2 A Thank you. I forgot your name. I apologize.

3 Q You're welcome. Well, you offered it spontaneously
4 after you failed to produce it through counsel during the
5 discovery phase of the case after being asked for it, and after
6 failing to show up for your first deposition that was served
7 upon you and properly noted.

8 And, then, only at your second deposition where you
9 showed up did you produce that document, and it was
10 specifically asked for in the notice of deposition. So, I
11 wouldn't -- with all due respect, sir -- say that you
12 spontaneously produced that.

13 A Well, I, I did spontaneously produce it at that time
14 without request. And I don't recall not showing up at the
15 first deposition. I think I showed up exactly for the first
16 deposition when you deposed me.

17 Q Yes. Are you also aware, on a related issue, that
18 you were required to produce all correspondence that your
19 received back and forth from attorneys who hire you as an
20 expert?

21 MR. MORTER: Your Honor, this is getting a little --

22 THE COURT: I don't think that we're going to go into
23 that --

24 MR. BELSKY: All right.

25 BY MR. BELSKY:

1 Q Well, I'm trying to --

2 THE COURT: -- query.

3 BY MR. BELSKY:

4 Q -- figure out, you know, you understand that
5 attorneys are interested in -- attorneys and the courts are
6 interested in this information, because the medical malpractice
7 situation in this state is such that the courts don't want law
8 experts testifying or certifying cases where they exceed
9 percentage. Are you aware of that?

10 A Sir, I'm not sure I understand what the, why the rule
11 is. I can only tell you that my experience over 10 years now,
12 and maybe approaching 15 years, is that I've never, ever been
13 quizzed in this, in anything even approaching this fashion ever
14 before. This is, this exceeds any type of request for
15 information that I've ever gotten by any attorney or any court
16 by a factor of five or ten.

17 I mean, I think it's highly excessive compared to
18 previous inquiries. So, I must say I am unprepared for it in
19 that regard, because I've never been asked for it before,
20 despite multiple other appearances over the years. And, so, I,
21 I don't have the information, because I've never been asked to
22 produce it before. I've never kept it. I didn't know I had to
23 keep it. And I produced what I have available, and that's the,
24 that's the best I can do. I'm sorry.

25 Q Since being advised by Defense counsel that the Court

1 entered an order that required that you obtain the information
2 from both Washington Imaging, your personal, and your
3 accountant, what effort did you make to go to Washington
4 Imaging or contact them to obtain the information from
5 Washington Imaging that would relate to the income you earned
6 through that entity in connection with medical/legal work?

7 A I made no inquiry to Washington Imaging, because I'm
8 not an agent of Washington Imaging. I'm not a, I'm an
9 employee, but not a partner of Washington Imaging, and I didn't
10 think that I was, it would be appropriate for me to get that
11 information not being a partner of that organization.

12 Q So, you didn't even inquire?

13 A I did not inquire.

14 Q Okay. But if you were to need it for purposes of
15 filling out your tax returns, how would -- you would feel
16 comfortable getting it for that reason, would you not?

17 A If I need it for that reason? Well, the only thing I
18 would have asked for would be whatever, you know, document I
19 would need for the government. I wouldn't go ahead and ask
20 them for the types of information that were requested, were
21 requested --

22 Q And the document --

23 A -- 1099s and things of that sort.

24 Q Okay. So, the document you would need for the
25 government, if inquired upon you, would be, in fact, your

1 1099s, would you know?

2 A I, I don't know. I guess --

3 Q Have you ever been audited before by the IRS?

4 A Never.

5 Q Okay. Have you ever been asked to provide supporting
6 documentation by your accountant to prepare your tax returns?

7 A I don't know what supporting documentation is.
8 Whatever I need to supply to my accountant, I always do.

9 Q Okay.

10 A My taxes are always paid promptly. And I must say I
11 probably overpay my taxes.

12 Q Yes. So, your accountant doesn't get the information
13 directly from whatever entities you work for or work through.
14 You get the information for your accountant and supply it to
15 your accountant, is that correct?

16 A I, I, I don't know. I'm not sure how it happens. I
17 presume if I have any documents they are sent to them. I
18 don't, whether they keep them or not, I don't know.

19 Q I'm not asking about whether you keep them. What I'm
20 asking you is when you --

21 A Whether they keep them or not, I don't know.

22 Q No, no, no. I'm not asking about keeping.

23 A Okay. I'm sorry.

24 Q What I'm asking you is getting your accountant the
25 documents that will allow your accountant to finalize --

1 A Yes.

2 Q -- and prepare your return, you're responsible for
3 getting the accountant the documents, correct?

4 A Or, or providing the numbers, which I think, which I
5 think is what, probably what I've done in the past.

6 Q Okay. So, you have, in the past, gotten those
7 numbers from somewhere, if, in fact, you haven't possessed them
8 on your own, right?

9 A I presume so, yes, sir.

10 Q You presume so?

11 A Well, if I, well, I, I don't have a direct
12 recollection of where I get my numbers from, but wherever they
13 come from, they, the numbers get to the accountant, and the
14 taxes are properly filed.

15 Q So, is it your testimony under oath here today that
16 you so not have any information on your computer, or any
17 information in a file cabinet in your home that would allow us
18 to look and see what it is that you earned as an expert in
19 personal injury and medical/legal cases?

20 A That is correct.

21 Q And is your testimony that you have not, because you
22 didn't feel the right, to make inquiry on Washington Imaging,
23 after the Court entered an order directing you to do so, to
24 find out what it is that you had billed through that entity for
25 services as an expert?

1 A That's correct.

2 Q Okay. And it's not simply that it's not available to
3 you, it's not simply that it's not accessible, it's just that
4 you chose not to access it?

5 A I, I think I said what I've said, which is I didn't
6 think it was under, within my purview as a non-partner of that
7 organization to ask them to produce documents.

8 Q Would you agree that most of the income that you have
9 earned is charged through Washington Imaging Associates in
10 terms of expert fees, and medical/legal expert services?

11 A Yes, sir.

12 Q Okay. So, that would be the treasure trove, shall we
13 say, of information would be located at Washington Imaging, and
14 you're aware of that?

15 A I don't, I don't know if that's the right term for
16 it.

17 Q Did Washington Imaging ever advise you that they were
18 also served with a subpoena in connection with the same
19 information?

20 A No.

21 Q You never spoke with them about that?

22 A No.

23 Q Okay. How much work -- your cases for 2010 reflect
24 that you're on par to have twice as many cases this year as you
25 had in 2009. Do you find that you have had an upswing in your

1 medical/legal work in 2010 as it relates to 2009?

2 THE COURT: Well, can I ask you? What are you
3 basing that on? Because what you have is the deposition,
4 Exhibit 1.

5 MR. BELSKY: May I approach?

6 THE COURT: That's just a list of trials, so that
7 might not be cases where he was actually retained in and
8 consulted as an expert. So --

9 MR. BELSKY: Okay.

10 BY MR. BELSKY:

11 Q Well, I guess what I'm asking is, you provided a list
12 of trials in 2010, depositions and dates, and, according to my
13 count, there are 11 listed between January and June of 2010.
14 And in '09, there were 12 for the entire year.

15 A And how, and how many were there in 2008?

16 Q Fifteen. So, my question is --

17 A I think, I think --

18 Q -- in the six months that have gone by, it seems to
19 me that you have more legal work, in terms of the trials and
20 depositions, than you've had in past years for the first six
21 months of the year, anyway. Would that be so?

22 A I think it's so, if it says it. I think that
23 reflects more timing of courts, and, you know, the way cases
24 mature over time. Sometimes you have more trials and
25 depositions. Sometimes trials get canceled. Sometimes

1 depositions are, I mean, for instance, I've had three
2 depositions in this case.

3 Q You've had four now.

4 A Four depositions in this case, but I don't think
5 it's, I don't think it's any significantly different. Let me
6 answer it that way. I think it's pretty, pretty much the same.
7 It varies from year-to-year.

8 Q Well, let me ask you specific to this particular
9 case, because I'm sure you're not going to forget this case
10 anytime soon. How have you billed Wharton, Levin for your
11 services, meaning how have you issued bills to them?

12 THE COURT: Well, that's actually reflected in
13 Exhibit 1. I don't know --

14 MR. BELSKY: Well, that's the amount, but I want to
15 know like in what form this bill comes, meaning --

16 THE COURT: Okay.

17 THE WITNESS: It's a, it's a typed, a typed out bill
18 on a computer. Then --

19 BY MR. BELSKY:

20 Q Do you type the bill?

21 A Yeah.

22 THE COURT: Do you want to have that so that you can
23 inquire as to the --

24 BY MR. BELSKY:

25 Q So, you --

1 MS. GROVE: Yes, Your Honor.

2 THE COURT: -- discrepancy?

3 BY MR. BELSKY:

4 Q -- type the bill out, you type the bill out for
5 purposes of sending it to Wharton, Levin. And is it fair to
6 say that you have been responsible for keeping track of your
7 time and typing your bills out for a good number of years?

8 A Yes, sir.

9 Q Okay. And your testimony is you don't have any of
10 that information?

11 A No, sir. Once that information, well, once it's been
12 paid, I delete, delete it. I just don't have any reason to
13 keep it on my computer. There's, you know, there's no, as I
14 expressed yesterday, I don't mark it myself. There's no reason
15 for me to keep a list of attorneys, or list of cases beyond the
16 time that they are paid for, because it just clutters up my
17 computer, and clutters up my desk top. And, so, once it's been
18 paid, I delete it. It just, it's very simple, so I know what's
19 not been paid.

20 Q Well, you're aware that there is a reason for you to
21 keep that information.

22 A Well, as I said, sir, the reason seems to be
23 evolving, because this is a very unique and unusual experience.
24 Well, I'll just say unique experience for me. You can see the
25 number of cases I've been involved in over the last 10, or 15

1 years, or whatever's reflected there. And, as I said
2 earlier --

3 BY THE COURT:

4 Q Well, can I just ask you --

5 A Yes, ma'am.

6 Q -- in response to that statement that you just made,
7 are you saying that that is a list of all of the cases that you
8 have been involved in, including cases that didn't go to
9 trial --

10 A No, ma'am.

11 Q -- where you were just consulted? So, that's an
12 incomplete list that you've provided to the plaintiff, is that
13 correct?

14 A That, you're talking about the one that I gave
15 (unintelligible)?

16 Q Where you gave at the --

17 A That's just a list --

18 Q -- not last night, but at the deposition prior to
19 that?

20 A Yeah. It's not an incomplete list. It's the list of
21 trials and depositions that would normally be presented if you
22 were to appear in federal court. The request is --

23 Q Okay.

24 A -- the request would be for trials --

25 Q So, that is --

1 A -- and depositions.

2 Q And those cases are only federal court cases; they're
3 not state?

4 A No, ma'am. Those, those are, no, ma'am, I'm sorry.
5 I didn't express it clearly. Those are all cases in which I've
6 done either a deposition or a trial --

7 Q Okay.

8 A -- in any, in any court.

9 Q Okay. So, that does not include cases where you are
10 already consulting as an expert that actually have not gone
11 forward to trial that are still pending, or that were settled,
12 resolved short of trial?

13 A That is correct.

14 MR. BELSKY: I have nothing further, Your Honor.

15 THE COURT: Okay.

16 MR. MORTER: No, no questions.

17 All right.

18 THE COURT: Thank you, doctor. You may step down.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: You can go back out, please.

21 THE WITNESS: May I take my water with me?

22 THE COURT: Certainly.

23 THE WITNESS: Because the water fountain's outside
24 only go about that high.

25 THE COURT: Okay.

1 THE WITNESS: Thanks.

2 (Witness excused.)

3 MS. GROVE: Your Honor, if I may return this to you.

4 THE COURT: Certainly. Thank you. All right. Any
5 argument?

6 MR. BELSKY: Your Honor, it's very clear that the
7 doctor has intentionally kept these records. He's aware of the
8 rule. He's aware of what he's required to do. He knows the
9 reason why he's supposed to keep them.

10 THE COURT: Well, when you say he's aware of the
11 rule, you're saying the 20 percent rule, but I think we've
12 already -- I mean I don't know that the 20 percent rule -- I
13 mean I agree in some respects that the statute's not very well
14 written --

15 MR. BELSKY: All right. Well --

16 THE COURT: -- but, certainly --

17 MR. BELSKY: -- Your Honor's heard --

18 THE COURT: -- I mean Fallic (phonetic sp.) certainly
19 says that the Court has the ability to inquire into the income
20 that a physician earns. And, now, I note that this case just
21 came out in April, you know, so, the inquiry was is he
22 purposefully evading.

23 MR. BELSKY: Well, it's not just -- I mean it, you
24 know, he's not being truthful.

25 THE COURT: Well, I would agree. I don't think he is

1 being truthful, but is he purposely evading the court order? I
2 mean he testified that he never kept the records, because he
3 didn't, you know --

4 MR. BELSKY: He didn't take effort to inquire with
5 Washington Imaging, because he felt he didn't have the
6 authority to do so. That's not a good excuse. He's entitled
7 to the information. He was under court order to do exactly
8 that, and he just didn't do it. So, he did intentionally fail
9 to act, because he doesn't want to do it, because he knows what
10 the ramifications are.

11 If he's not disqualified in this case, when he comes
12 out with that information, I would guess that he will be
13 disqualified from all further cases. So, with that, Your
14 Honor --

15 THE COURT: Well, I mean I do have to say that I
16 certainly thing there's a reasonable basis just quoting from
17 the Fallic case to come to a conclusion that he is a
18 professional witness. And, certainly, I think that the
19 plaintiffs were entitled to ask about the amount of income that
20 he's earned in connection with him being retained as an expert
21 witness.

22 And, even in response to my questions, it's clear
23 that he hasn't put forward that information, because what he
24 provided to them is an incomplete list of the cases that he has
25 been involved in. I mean he basically said, yes, these are

1 just the cases that have gone forward to trials or depositions.

2 So, there could be hundreds of other cases where he's
3 been consulted as an expert, which haven't come to trial yet,
4 or which were resolved somewhere along the line that he's been
5 paid for his services, because, you know, and how much money
6 has he made? We have no idea, because this is the only other
7 exhibit that I have, just outlines money that is pending to
8 him.

9 And I note that most of these cases -- I noted that I
10 misspoke earlier, and that, apparently, the Mills v. Miraglia
11 case is listed in both exhibits, and Marquez is listed, as
12 well, but the other ones I don't see. So, he has billed for
13 things that have not come to trial or to depositions in 2010,
14 so how much other cases are there that are out there floating
15 around? I have no idea.

16 MR. MORTER: Your Honor, may I inquire? From what I
17 understand, I was the late comer into this case. I understand
18 that there was a subpoena apparently issued to Washington
19 Imaging Associates. I don't know if they responded with
20 documents. It seems to be that that would have been
21 appropriate place to go to have someone from them if they
22 didn't respond or if they didn't produce documents, I think
23 that can be considered. I don't know if they produced
24 anything.

25 MR. BELSKY: Well, he was ordered to get those

1 documents, because Washington Imaging isn't here to deal with
2 that, even though they were served. He is entitled to those
3 documents.

4 THE COURT: Well, if they were served properly, then
5 I'm not sure why that was not the subject of some type of
6 motion to compel them to --

7 MR. BELSKY: Well, because Dr. Citrin, he has access.
8 He is entitled to those documents, and why, how in three
9 different entities when Dr. Citrin is the one who files the
10 returns, has all the information necessary, who's testified
11 that he's the one responsible for compiling the information and
12 getting it to his accountant, and then he doesn't have any
13 copies, he doesn't keep them, he just discards them, doesn't
14 shred them.

15 I mean the testimony is simply not credible, Your
16 Honor. And we're prejudiced in this case. I understand that
17 they may be prejudiced, but they're on notice of Dr. Citrin's
18 expert work. This firm has used him on a number of occasions
19 before.

20 There have been inquiries both on the plaintiffs'
21 side, as well as the defense side about this expert and his
22 propriety in terms of the work that he's done. This comes as
23 no surprise to anybody. He was ordered to do what he was
24 ordered to do, and he didn't do it. And he didn't do it on
25 purpose. It's not like he gave it his good faith effort; he

1 just didn't do it.

2 THE COURT: Mr. Rutland, or Mr. Morter, any argument
3 as to prejudice that would be sustained if I precluded him from
4 testifying?

5 MR. RUTLAND: Yes, I think there would be significant
6 prejudice. Mr. Morter in opening statement said you're going
7 to hear as to what those show. We're prepared to show what the
8 MRIs show, and in support of our position that it doesn't show
9 the damage that they say occurred. I think it would be
10 significant.

11 Dr. Thompson said, oh, I reviewed an MRI, but
12 couldn't even identify which one it was, said it was abnormal.
13 We're going to have him show the MRI, you know, have him
14 testify that, you know, the reports that came out were correct,
15 and this is why.

16 So, I think that's a part and parcel of our case that
17 Ms. Marquez did not suffer the damages that she suffered as
18 described.

19 MR. BELSKY: They've already -- at this point, this
20 is their last witness. They have identified during opening
21 statement a number of witnesses that they're not calling.
22 They're not calling Dr. Panigoss (phonetic sp.). They're not
23 calling Dr. Zach. They're not calling Thomas Grogan (phonetic
24 sp.). They're not calling many of the experts that they
25 mentioned in opening statement.

1 So, the fact that there was reference in opening
2 statement to that is this is just one of another experts that
3 would not have been called. Dr. Winfrey (phonetic sp.)
4 yesterday spoke to some extent on the absence of MRI findings
5 that would suggest that this young lady was injured. So, some
6 of this testimony that they're seeking to elicit, has already
7 been elicited through other experts.

8 So, I would argue that the prejudice they would
9 suffer is not so severe that the Court could not impose the
10 sanction of striking this expert since there was already
11 evidence and testimony in this case that allows them to argue
12 it before the jury in closing, which we would not object to,
13 that the MRI findings were negative.

14 And we have no objection to that, but the prejudice
15 here to the plaintiff is clearly harmful in our ability to
16 impeach this witness who is clearly impeachable to a
17 significant extent based on his professional conduct as a
18 professional witness.

19 MR. RUTLAND: I just think on balance, Your Honor,
20 the prejudice of striking the witness versus the prejudice of
21 not having 1099s, the question about how much he earns --

22 THE COURT: But that doesn't go just to the 1099s. I
23 mean it really goes much deeper into his bias, into his motive,
24 into whether he's a professional witness. And it is a dilemma,
25 I think, that the Court is being presented with, because,

1 certainly, I understand the prejudice that the Defense could
2 argue, and I also understand the prejudice that the plaintiff
3 could argue.

4 I will say that if I do allow him to testify,
5 depending on what the outcome is, it is something that I would
6 consider in a motion for a new trial if it was an adverse
7 outcome.

8 I am struck, though, by the fact that he says that he
9 did not try to get that information from -- I mean that's
10 disingenuous. The order very clearly said for him to get it.
11 I know that the order in Fallic that was the issue in the case
12 went into a lot more detail than -- well, actually, there were
13 two cases that were at issue, but I certainly think that he
14 could have been much more forthcoming.

15 And did I find him to be credible in his assertions?
16 No, I didn't. So is he purposely evading? You know, looking
17 at it, I think I am going to say that I think he is. I think
18 he, he's a smart man. He knows what he was supposed to do.
19 For him to come into Court and respond the way he did, and to,
20 the artfulness that he's shown in how he presents these trials,
21 these depositions, and than the artfulness he's shown in the
22 other exhibit of the medical/legal accounts receivable, it
23 smells. So, you know, I'm going to follow the smell test and
24 say I'm going to preclude him, okay, at this point.

25 (End of requested portion of the proceeding.)

✓ Digitally signed by Teresa Kolf

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the foregoing pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Civil No. 298673

JAMES DE LEON MARQUEZ, et al.

v.

HADI M. DO RASSAEL, et al.

By:

Teresa Kolf

Teresa Kolf
Transcriber

