

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER
SCHLESINGER
Justice

PART 16

SCHLAU, STEVEN, ET AL.

INDEX NO.

111719/09

MOTION DATE

MOTION SEQ. NO.

11

MOTION CAL. NO.

- v -

MEYER KATIAN, M.D., ET AL.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion for a protective order
is granted to the extent provided in
the decision on the record in November 6,
2013. See Sequence 009.

FILED

NOV 15 2013

NEW YORK
COUNTY CLERK'S OFFICE

NOV 14 2013

Dated: _____

Alice Schlesinger
ALICE SCHLESINGER
J.S.C.

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY : CIVIL TERM : PART 16

STEVEN SCHLAU, an Infant by his Parent
and Natural Guardian, JENNIFER SCHLAU,
and JENNIFER SCHLAU, Individually,

Plaintiffs,

-against-

Index No.
111719/2009

MEYER KATTAN, M.D., NEW YORK
PRESBYTERIAN HOSPITAL, HUDSON VALLEY
PEDIATRICS, P.C., DOUGLAS L. KROHN,
M.D., KEITH J. BENKOV, M.D., MOUNT
SINAI MEDICAL CENTER, MICHAEL R. BYE,
M.D., LYNNE M. QUITTELL, M.D.,
MARGARET COLLINS, M.D., AUDREY H.
BIRNBAUM, M.D., MOUNT KISCO MEDICAL
GROUP, P.C., GEORGINA LESTER, M.D.,
BARBARA J. MCCABE, M.D., LESTER &
MCCABE, M.D.s, MATTHEW DUGAN, M.D.,
KATHRYN OEHLER, M.D., PHELPS MEMORIAL
HOSPITAL CENTER, KAREN MILLER, M.D.,
PHELPS RADIOLOGY ASSOCIATES, P.C.,
NORTHERN WESTCHESTER HOSPITAL, ALAN
BERNSTEIN, M.D. and WHITE PLAINS
RADIOLOGY ASSOCIATES,

FILED

NOV 15 2013

**NEW YORK
COUNTY CLERK'S OFFICE**

Defendants.

PROCEEDING

November 6, 2013

60 Centre Street
New York, New York

B E F O R E:

HON. ALICE SCHLESINGER, Justice

(Continued on the next page)

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A P P E A R A N C E S: (Continued)

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Anne Marie Scribano
Senior Court Reporter

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2 THE COURT: Let's go on the record.

3 All right. I have a lot of paper here, but the
4 motions are very straightforward.

5 I have a motion by Phelps and Dr. Miller, is that
6 right?

7 MS. LANDER: Yeah, Radiology.

8 THE COURT: And they're asking for additional
9 discovery.

10 Although it should be noted here that the note of
11 issue was filed March 15th, 2013 and we are already into
12 November, so this would be post note of issue discovery.

13 But it's the moving defendant's claim that this is
14 necessary because it would be relevant as to the claim of
15 damages.

16 As I understand it, this is a case where the
17 plaintiffs' attorneys will be asking for a considerable
18 amount of money, because they say that this child, who is
19 now 13, has to live with certain very -- very real and very
20 permanent injuries. So, I expect that this will be a case
21 where claims will be made for seven figure amounts. And
22 because of that, I think that defendants are entitled to a
23 little bit more discovery, but I don't want to go overboard.

24 Now, as I said in a written decision some months
25 ago, this is a child who is from a very affluent family and,
26 because of that, has been able to vacation to virtually

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every part of the world. And that includes Africa. He's been on a safari. It includes the east, Vietnam and Cambodia and China. And it includes South America, Chile and Peru. And also other, more traditional vacation spots, like the Caribbean. And I think he goes skiing, as well. So this is a child who, fortunately, from his perspective, has been lucky, at least in this regard, maybe not so lucky health-wise, which is the most important thing, but at least lucky to have been seeing the world with his family.

So he has been deposed and there's been two sessions of the deposition. And he's been asked about these various vacations and what he does in school and his various limitations, as he sees them, and all of that.

Okay. What specifically is being requested here are pictures from all of his vacations. And, specifically, he's indicated that he has made power point presentations, which consist mainly of pictures, of at least some of his vacations. I don't know if he's done that with regard to all of his vacations, but at least some of them. That might make it easier for him to produce pictures.

Also, the moving defendant has asked for the video of his bar mitzvah when he turned 13, which I guess was in the somewhat recent past, because I think he's 13 now.

In any event, also, I have one other motion.

We have defendants who have just been brought in,

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2 even though a note of issue has been filed and the case
3 should be getting ready for trial. And that's Northeast
4 Radiology and Dr. Frazzini.

5 Apparently, the care that was given to the child
6 goes all the way back to, I think, when he was three years
7 old, but they were able to be brought in and they are now
8 new defendants.

9 They haven't really had the benefit of any
10 discovery, really, although they're getting copies of
11 everything, I assume.

12 Here, today, their attorney, Mr. Meisner, has
13 indicated that they do want depositions of the child, who,
14 again, has already been deposed for two sessions, as well as
15 his parents.

16 Mr. Merson, on behalf of the child, feels that
17 that's inappropriate.

18 And, well, Mr. Merson, I don't want to speak for
19 you, so let me give you an opportunity to address why you
20 feel that the child should not be subject to a further
21 deposition and also why you believe that any -- the pictures
22 of his vacations or his bar mitzvah shouldn't be turned
23 over. So why don't you briefly present your point.

24 And, Mr. Meisner, you can present your point.

25 Ms. Lander, if you have anything you want to say,
26 you can present your point.

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And then I'll decide.

Mr. Merson.

MR. MERSON: Thank you, Judge.

First, with regard to the depositions of the mother, father and infant.

Your Honor has made it clear in her rulings in the past that we've had on this case and generally that duplicative discovery is a waste of everybody's time. And I don't want to waste anybody's time. This is a child who's in school. This is a mother and a father, a nonparty father, who have already been deposed. The infant was deposed on two dates. And I fail to understand how, after being deposed by seven attorneys on the issue of damages over two days, and the fact that the infant was three years old at the time that the new defendant, Dr. Frazzini and his P.C., rendered treatment in this case, I fail to see how there could be any testimony elicited at a further deposition of the infant that was not already elicited in the more than two hundred pages of deposition testimony that the infant plaintiff provided.

Moreover, Dr. Frazzini was working at the time of the malpractice, which was Halloween of 2003, at Northern Westchester Hospital. Plaintiffs' -- the plaintiff, Jennifer Schlau, was deposed about -- thoroughly -- about what she remembered about what took place Halloween of 2003

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when Dr. Frazzini rendered treatment.

And she said -- "When is the next time after the" --

THE COURT: Are you reading a question?

MR. MERSON: I am.

THE COURT: If you're going to read a question, then tell us what you're reading from.

MR. MERSON: Sure.

THE COURT: And do question and answer.

MR. MERSON: Jennifer Guttman(p), which is her maiden name, page 225, line 1 through 13.

THE COURT: And what was the date of that deposition?

MR. MERSON: It was in September of 2009 -- September of 2010. I remember it. I don't --

THE COURT: 2010?

MR. MERSON: I believe so.

I don't have the transcript here.

THE COURT: It's okay. Go ahead.

MR. MEISNER: You said you don't have the transcript? You're reading from it.

MR. MERSON: Well, I have part of the transcript.

THE COURT: Why don't you continue, Mr. Merson.

MR. MERSON: "When is the next time that you recall" --

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2 THE COURT: Question.

3 MR. MERSON: "QUESTION: When is the next time
4 that you recall, after this fall from the changing table,
5 that your son was next seen in the emergency room at
6 Northern Westchester?

7 "ANSWER: For pneumonia, I think.

8 "QUESTION: Is that the Halloween visit that you
9 mentioned earlier?

10 "Yes."

11 THE COURT: Answer.

12 MR. MERSON: "ANSWER: Yes.

13 "QUESTION: Were you with him in the emergency
14 room for that visit?

15 "ANSWER: No. My husband took him to the
16 emergency room."

17 She continues, page 227, line 12.

18 "QUESTION: Did your husband come back from
19 Northern Westchester Hospital with either a copy of the
20 chest x-ray that was done or a disk of the x-ray?

21 "ANSWER: No."

22 THE COURT: Is it your position, Mr. Merson, that
23 Dr. Frazzini treated the child in the emergency room?

24 MR. MERSON: The emergency room -- a film was
25 done, a chest x-ray was done.

26 THE COURT: So he read the film, Dr. Frazzini?

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MR. MERSON: Right.

THE COURT: Okay. Go ahead.

MR. MERSON: Page 228, line 8.

"QUESTION: Do you recall what was said in that discussion?

"ANSWER: That he had been to the emergency room and that there was a spot. They did an x-ray and there was a spot on his lung. And they gave him Rocephin injection and Pedialyte."

THE COURT: Okay. But what is -- is it your position that, therefore, everything that could have been asked about this has been asked?

MR. MERSON: Yes. There is nothing else further that Jennifer Schlau, Robert Schlau or Steven Schlau can add to this case.

Literally, thousands of authorizations have been disclosed. There have been four days of depositions of this plaintiff's family.

Here -- I mean, we already know what Robert Schlau is going to say.

Page 195, line 4.

"QUESTION: Do you recall anything about that emergency room visit, about who you saw, what was done?

"ANSWER: All that I remember was that it was a particularly bizarre day, because I am sitting in the

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2 emergency room with my young son and we are both in our
3 Halloween costumes, so we are getting all sorts of looks
4 from people."

5 Page 197, line 7.

6 "QUESTION: Do you recall leaving with anything in
7 writing from the emergency room, any discharge instructions
8 or referrals or anything else?

9 "ANSWER: They always give discharge instructions.
10 I don't recall what the discharge instructions were that
11 particular day.

12 "QUESTION: Do you keep -- do you keep those types
13 of instructions?

14 "ANSWER: No."

15 MR. MEISNER: What page and line a was that.

16 MR. MERSON: 197, line 11.

17 Now we're on Robert.

18 THE COURT: But let me say, Mr. Merson, you really
19 can't take the position -- I mean, you can take the
20 position, but I can't accept that position -- that by
21 bringing in a brand new defendant that they are kind of in a
22 lesser position than all the other defendants.

23 MR. MERSON: Judge --

24 THE COURT: They certainly didn't ask to be
25 brought into this case, but they are in the case, and
26 they're entitled to satisfy themselves that a particular

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2 contact that the parents of the child had with these
3 defendants has been exhausted to their satisfaction.

4 So, Mr. Meisner may well -- he or one of his
5 colleagues may well limit a lot of the questions that they
6 ask, not to be redundant, but they cannot be deprived of the
7 chance to depose the plaintiffs, they just can't.

8 MR. MERSON: But, Judge, I would give them the
9 nonparty father, because he was the one who took Steven to
10 the emergency room that night.

11 THE COURT: I appreciate that -- okay.

12 MR. MERSON: He's not a plaintiff. If we want to
13 limit it to the plaintiff, Jennifer Schlau, she's going to
14 know nothing, which is why I agreed to substitute the father
15 in for the mother, which I think makes complete sense,
16 because he was the one who brought Steven on that day.

17 THE COURT: I --

18 MR. MERSON: And anything the mother could testify
19 to, he could testify to.

20 THE COURT: Okay.

21 MR. MERSON: So if we're not going to be redundant
22 here -- I mean, Jennifer Schlau, the plaintiff, serves no
23 purpose.

24 THE COURT: Mr. Merson, you may well be correct,
25 but you can't make the decision in this case. I, as the
26 Court, have to be balanced in this.

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2 And, again, it seems to me that you choose -- when
3 I say "you," your office chooses to bring in a brand new
4 defendant and they are entitled to some discovery and,
5 therefore, they are entitled to depose both the mother and
6 the child.

7 And as far as the father, I'm glad you're
8 producing him, Robert, if that's the father's name. But if
9 you hadn't produced him, I would direct that he be produced.

10 So those people are entitled to be deposed.

11 But I want to make it clear that, with regard to
12 Steven, who I expect, pursuant to what Mr. Merson said,
13 would have no independent recollection of this visit at all,
14 if he was three years old, and also considering the fact
15 that he has been deposed now two different sessions, I would
16 really urge counsel for the new defendants to closely read
17 those 200 pages and to try as hard as they can not to be
18 redundant or duplicative with regard to the material asked.

19 But saying that, that's really the only
20 restriction I'm going to put on them, although, of course,
21 they shouldn't be redundant with regard to any of these
22 witnesses.

23 So, Mr. Meisner, having said that, do you want to
24 say anything more?

25 MR. MEISNER: Well, Judge, I think you said it
26 very well, actually.

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2 We -- as I mentioned before, you know, we'll take
3 note of your urging us to avoid duplication. And, you know,
4 we don't feel we should be limited in the deposition in any
5 way and it's my understanding that that is not a limitation,
6 it's an urging.

7 THE COURT: Right. I'm not going to limit you.

8 But I have a feeling that Mr. Merson might call or
9 object or -- let me say, Mr. Merson, I know -- I read the
10 first session of Steven, and you object a lot, although you
11 do then say that he can answer it. It might go a lot faster
12 if you didn't object as much as you do. But that's -- all
13 I'm doing is urging you to consider that. I'm not -- I'm
14 not telling you not to object. But these things go a lot
15 faster if there are no objections --

16 MR. MEISNER: Judge -- I'm sorry. I didn't mean
17 to interrupt.

18 THE COURT: It's all right.

19 MR. MEISNER: May I just also state for the
20 record, we're also reserving our right to do any IMEs.

21 THE COURT: Sure. Although, from what I gather,
22 no IMEs have been done at this point.

23 MS. LANDER: But we've reserved the right.

24 THE COURT: But reserving the right, you know, the
25 next time, probably, when I put this case on for a final
26 conference, we're going to set a trial date, folks. So, you

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know, we're coming to the conclusion of one phase and beginning another phase. So we'll get to that in a moment.

Now, we still have the outstanding discovery.

MR. MERSON: Judge, can I just say one thing?

THE COURT: Okay.

MR. MERSON: Obviously, while I appreciate and respect you, I take exception to your ruling, but --

THE COURT: Which ruling, as far as deposing --

MR. MERSON: With regard to the three depositions.

But it's my understanding, and I am going to object if there is a lot of -- if there is duplicative information that is requested from the -- the point of these depositions is to be -- to gather information with respect to his client and any damages. If there is -- if he's going to start from day one of this kid's life, I am going to be objecting to that, because that is completely redundant and been done four times.

Moreover, in the spirit of cooperation, may I make a suggestion, since discovery, as your Honor as noted, has gone on for four years now, that we pick one day and I will produce the mother in the morning, the father in the afternoon and bring in the infant after school and just let's get this done?

MR. MEISNER: Absolutely not.

MR. MERSON: If we're going to do it, let's get it

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2 done.

3 MR. MEISNER: I can't agree to that because I
4 don't know how long these depositions are going to take.

5 MR. MERSON: He's going to reinvent the wheel.

6 MR. BELLANTONI: Your Honor, may I be heard
7 briefly on that?

8 THE COURT: Just state who you are and who you
9 represent.

10 MR. BELLANTONI: Rory Bellantoni, Dr. Krohn.

11 Your Honor, in reviewing the depositions -- and
12 you don't have to do that, because counsel just stated on
13 the record that he intends, notwithstanding your Honor's
14 suggestion, to object to any question that's posed that he
15 feels is duplicative.

16 Clearly, your Honor, the case law in this state,
17 you cannot direct a witness not to answer a question.

18 THE COURT: Well, he doesn't do that, no, he
19 doesn't do that.

20 MR. BELLANTONI: Your Honor, there are instances
21 of that in the transcript.

22 THE COURT: Maybe there are, but I recall, for the
23 most part, that Mr. Merson was objecting but then saying
24 that the child could answer. Maybe I'm not remembering all
25 of it, but that's my recollection.

26 But I think we're spending much too much time and

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burdening the record.

The fact is that, again, I've said, I'm being redundant now, plaintiff made a choice to bring in two new defendants and they have rights, as well. And they do have rights to depose these people and they don't have to beforehand limit themselves as to what they want to ask. Mr. Meisner or his colleagues may have a new creative line to further with these witnesses. I have no idea. But I'm not going to sensor them beforehand. I'm just not going to do that. So that's that.

And now, with regard to the outstanding discovery asked by Ms. Lander, and I think the others join in, we're talking about a bar mitzvah video and certain power point presentations which include pictures.

Now, very, very briefly, Mr. Merson, since you made a protective order, tell me why you believe that none of this should be forthcoming.

And then, Ms. Lander, you'll have the last word briefly.

Go.

MR. MERSON: Well, it was actually Ms. Lander who was the initial movant and I cross-moved.

THE COURT: So we'll do it -- Ms. Lander, you go first. Why are these necessary?

MS. LANDER: Well, the bills of particulars allege

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that the claims are the loss of enjoyment of life and inability to participate in activities with peers.

The infant testified, as we discussed before, to his extensive travel history and how he climbed the Great Wall of China and Machu Picchu, but that he was very, very sad.

And he also had a bar mitzvah and that there was dancing. So it's clearly material and relevant to this case and the claims of loss of enjoyment of life and inability to participate in activities with peers that there was dancing and other peer activities at the bar mitzvah.

And the photographs of his family trips, which he has arranged into power point presentations, are very easy to copy on to a disk and send to us, so it's not in any way burdensome, but it's certainly material and relevant to the claims.

THE COURT: So, Mr. Merson, the last word.

MR. MERSON: Thank you, Judge.

Judge, the seven or eight defense firms in this case had a chance to depose plaintiff mother, nonparty plaintiff father and Steven on two separate days.

There is no dispute that this child traveled all over the world. There is no claim here that he cannot travel. There is no claim that he cannot walk around and see sights. There is no claim that he can't sit near an

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ocean and enjoy the surroundings in the Caribbean.

THE COURT: Even do snorkeling.

MR. MERSON: And even -- he's testified to all those things, so they have that information. Very clearly, there's no dispute about it.

I fail to see -- and I'm quoting from defendant's motion -- this is Ms. Lander's motion, page 6. I fail to see how a picture of Steven and his family visiting the Taj Mahal in India helps their case at all.

THE COURT: Well, you're right, because I'm not directing that that be turned over, so I agree with you there.

MR. MERSON: I fail to see how a picture of him and his family standing in front of the Colosseum in Italy --

THE COURT: I agree there, too.

But let's not go over those, because the fact is we've discussed this beforehand and I'm going to direct only with regard to two particular vacation spots. And I'm doing that because, with regard to those two, there may be some indication of more of an expenditure of energy than what Steven has testified to. So, that being the case, the two that I have selected is Machu Picchu in Peru -- the child has been asked about that. He said he had to take it very slow because of his limitations. There could be pictures,

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perhaps, of his power point presentation of his running someplace or strenuous climbing, things of that sort. I have no idea. But I think that's a possibility. And, if so, it would be relevant to what Ms. Lander said, his enjoyment of life and the rest of that.

And, also, as far as his bar mitzvah, I think we all have been to bar mitzvahs and, nowadays, party planners are hired to entertain the children and they're kept very busy. To the extent that Steven has participated in those activities and -- and, perhaps, in a very strenuous manner, that could be relevant.

And it's not sufficient, Mr. Merson, for you to say "I've seen it and there's really nothing there." You're an advocate.

MR. MERSON: Judge, Judge, I didn't say I saw it.

THE COURT: I -- okay, I thought --

MR. MERSON: I haven't watched his bar mitzvah video.

THE COURT: Well, so that's what I'm going to do.

I'm going to grant the discovery, only to the extent of directing that the plaintiff turn over the video of the bar mitzvah and also the power point presentations, which include photographs, but only for those two vacations and that's not the entire vacation -- but we're talking about China and the Great Wall, if that can be separated

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2 out, and Machu Picchu. That's it. The rest of it, I really
3 think is getting to be excessive and impinging on the
4 privacy of this child and his family and I don't see that it
5 would serve any good.

6 But let me just say one other thing.

7 Because there was testimony by Steven that he
8 can't do scuba diving, for example, because it involves a
9 tank of oxygen. And I think he also said something about,
10 perhaps, an Alaska trip where he also needed oxygen in a
11 little plane, something like that. And he said he can't do
12 that, he's not allowed to do that.

13 Mr. Merson, you're an officer of the court here,
14 so to the extent that there are pictures of those things, I
15 am not directing that you turn them over, but I am directing
16 that you yourself look at those. And I'm talking now about
17 where they went to the Caribbean or a similar place and
18 scuba diving was done by others and also the Alaska trip.
19 And if there is anything there which suggests that he did go
20 scuba diving or did use oxygen in this Alaska trip, then I
21 am directing that you turn that over. But in the first
22 instance, I'm just directing that you look at those two
23 things yourself.

24 Is that understood, Mr. Merson?

25 MR. MERSON: Yes, Judge.

26 THE COURT: Okay, yeah?

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MR. MEISNER: Judge --

MS. NIKICIUK: Can I just --

THE COURT: Yes?

MS. NIKICIUK: A minor point.

If we could insure that the video or power points we receive are unedited and unaltered in any fashion, that they are exact duplicates from beginning to the completion of the Machu Picchu, the Great Wall of China and the bar mitzvah --

THE COURT: Right.

MS. NIKICIUK: -- without any -- if we could have some assurance that there were no clips that were removed?

THE COURT: I agree.

MS. NIKICIUK: Maybe Mr. Merson wouldn't even know, but just in the copying of these materials, that they be preserved in their entirety for us.

THE COURT: Their entirety, within the limitations that I set.

MS. NIKICIUK: Right.

THE COURT: With this bar mitzvah, I have no idea if there was an adult party later on that maybe Steven didn't attend or attended maybe in a sedentary manner or if there was only one celebration.

But, in any event, Mr. Merson, what I think should be turned over is clearly the celebration involving

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2 children. If there was another party, adults only or where
3 it was -- with no party planners or anything of that sort, I
4 don't think you have to turn that over, I really don't.
5 But, certainly, the one involving all the children and the
6 like, that has to be turned over. Okay?

7 And I think you should turn it over -- only you
8 moved, Ms. Lander?

9 MS. LANDER: Everybody.

10 MR. MEISNER: We moved, as well.

11 THE COURT: All did?

12 Well, let's go off the record a second.

13 (Discussion held off the record)

14 THE COURT: Back on the record.

15 So that's it, folks.

16 And I'm going to put this matter on one more time
17 and I'm hoping, at that point, that all discovery has been
18 accomplished, even with the new defendant, and Mr. Meisner
19 has decided whether or not he wants an IME or not.

20 And so I'm wanting to set a trial date, so on that
21 occasion when you come next, please have calendars of the
22 people who are going to be trying this case available so we
23 can choose a date, perhaps in the spring of 2014.

24 So we'll put this over, at this point, to January.
25 And we'll say January the -- January the 8th, which is a
26 Wednesday.

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MR. MEISNER: Judge, can we have the end of January, please?

THE COURT: Sure.

So, instead of January the 8th, we'll put it on for January the 29th. January 29th, okay?

MR. MEISNER: Thanks, Judge.

THE COURT: And I'm really hoping --

MR. MERSON: And, Judge, if we're putting the outstanding discovery issues -- we have not received any discovery from Phelps Radiology Associates, Dr. Frazzini and his P.C. So, obviously, I'm reserving our right to get medical records, insurance information and the like during that period.

THE COURT: Absolutely.

But, Mr. Merson, it's up to you -- Mr. Merson, it's up to you to make sure that you get what you need. I mean, you have to be proactive.

MS. LANDER: What about the authorizations?

THE COURT: What about the authorizations?

MS. LANDER: Should we send a letter to plaintiffs' counsel?

THE COURT: Obviously, here, as Mr. Merson pointed out before, there have been hundreds and hundreds of pages of discovery exchanged. I don't think anybody wants to withhold anything, except to the extent that these motions

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were made.

So let's get this really done because, again, on January 29th, I want to select a trial date.

Yes?

(Discussion held off the record)

THE COURT: Let's go back on the record.

At this point, Mr. Meisner has said only that he wants to reserve his right to an IME and to do this discovery, which you've already discussed. That's fine.

I am now going to say that, by January 29th, I want a definitive statement by him or by a colleague of his whether or not these new defendants, after completing discovery, want a -- want to make a dispositive motion. If so, I'm going to probably only give them an additional 30 days to do that, because they should be thinking of that right now, and I'm putting this over until the end of January. So I will consider, if they want to make a dispositive motion, giving them until some time in the end of February.

But that's really going to be it, folks.

And I want to learn from those new defendants that they're not going to be making the motion, if that's the case, so then, again, we can set a trial date on January 29th.

Okay? Yeah? Yes?

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MR. BELLANTONI: Judge, I apologize. Sometimes I don't hear so well.

With respect to the Court's order, the video from the bar mitzvah, your Honor mentioned the power point presentation and photographers?

THE COURT: Yes.

MR. BELLANTONI: To the extent there are additional videos that were not in the power point presentation of China and Machu Picchu --

THE COURT: It's not China. It's the Wall of China and Machu Picchu, that's it. Any pictures or videos involved in those two vacations should be turned over, because the video may be relevant.

MR. MEISNER: Judge, I -- I appreciate your addressing the issue of the dispositive motion.

All I can say at this time is we're very new to the case and we're not in a position to say yes or no.

THE COURT: I didn't ask you --

MR. MEISNER: I understand.

And the note of issue that was filed was before --

THE COURT: A long time, in March.

MR. MEISNER: Yes.

It was before we were a party to the action, so to the --

THE COURT: I'm understanding you.

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1
2 MR. MEISNER: I understand, Judge. I appreciate
3 it.

4 I want to make a statement for the record, just to
5 reserve my rights.

6 But I think that, should we choose to make a
7 dispositive motion, I don't know that it can be made in
8 30 days at the last conference.

9 THE COURT: Mr. Meisner, that's not being really
10 fair, because the fact is today is November 6th. Normally,
11 if you were one of the defendants, one of the original
12 defendants, you would have 60 days from the time of the note
13 of issue. Okay? I am giving you, at this point, more than
14 60 days to make a decision as to whether or not you want to
15 bring one. I'm giving you something like 70 or 75 days.
16 And then I'm giving you an additional 30 days to do it. So
17 I don't see any prejudice to your clients whatsoever.

18 MR. MEISNER: I understand, Judge and I appreciate
19 you explaining that.

20 But we haven't done any discovery yet and we're
21 very new to the case, we're still getting records, so --

22 THE COURT: But, frankly, Mr. Meisner --

23 MR. MEISNER: Please note my exception.

24 THE COURT: I'm noting your exception.

25 But let the record show, you say you haven't had
26 any discovery, I cannot believe that the depositions of this

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family will be the deciding factor as to whether or not you bring a dispositive motion. That should have virtually nothing to do with your decision. You either believe that they can't make out a prima facie case against your client or they can, and that's it.

MR. MEISNER: Well --

THE COURT: Okay. The record is now closed.

MR. MEISNER: -- note my exception.

(Proceedings adjourned)

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accurate transcript of the
foregoing proceedings

Anne Marie Scribano
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