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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO. 50-2016-CA-010773-XXXX-MB

SCOTT ASWEGE,  
Plaintiff,

vs.

GENIE INDUSTRIES, INC.,  
TEREX CORPORATION, B & M  
EQUIPMENT RENTAL & SALES,  
INC., et al,

Defendants,

\_\_\_\_\_ /

- - -

PROCEEDINGS HAD BEFORE THE  
HONORABLE CYMONIE ROWE

- - -

DATE: JUNE 5, 2018  
TIME: 10:04 - 11:18 A.M.

Page 2

1 APPEARING ON BEHALF OF PLAINTIFF:  
2 Paul T. Reid, Esq.  
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3 201 South Biscayne Boulevard, Suite 3200  
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4  
5 APPEARING ON BEHALF OF DEFENDANT GENIE:  
6 Christen E. Luikart, Esq.  
MURPHY ANDERSON  
7 1501 San Marco Boulevard  
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9 APPEARING ON BEHALF OF DEFENDANT B & M EQUIPMENT:  
10 Justin Sorel, Esq.  
COLE, SCOTT & KISSANE  
11 222 Lakeview Avenue, Suite 120  
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13 APPEARING ON BEHALF OF DEFENDANT DISCOUNT RENTAL:  
14 G. Jeffrey Vernis, Esq.  
VERNIS & BOWLING  
15 884 U.S. Highway One  
North Palm Beach, Florida 33408  
16  
17 APPEARING ON BEHALF OF DEFENDANT BARRETT JACKSON:  
18 Kimberly M. Valashinas, Esq.  
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19 1000 Sawgrass Corporate Parkway, Suite 590  
Sunrise, Florida 33323  
20  
21  
22  
23  
24  
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1 of Genie Industries, and I had also noticed two  
2 hearings and provided them to chambers last  
3 week. It was Genie's amended motion to  
4 continue trial and our response to plaintiff's  
5 motion to strike experts.  
6 THE COURT: I have something from Cole,  
7 Scott & Kissane. Is that where you're from?  
8 MS. LUIKART: No, Your Honor.  
9 THE COURT: I don't have anything from  
10 you.  
11 MS. LUIKART: Okay. Do you want me to  
12 make copies? They were sent last week.  
13 THE COURT: We'll go through it and once  
14 we get to the motion, you'll just have to give  
15 me the materials because I don't have them.  
16 MS. LUIKART: Yes, Your Honor.  
17 MR. REID: Your Honor, there's also -- we  
18 noticed three objections to plaintiff's request  
19 for production by B & M.  
20 THE COURT: Is that the one dated  
21 April 25th, 2018?  
22 MR. REID: I have to look in the folder.  
23 THE COURT: There's a B & M motion to  
24 compel compulsory medical exam.  
25 MR. SOREL: They've given us the date.

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1 BE IT REMEMBERED, that the following  
2 proceedings were had in the above-entitled cause  
3 before the Honorable Cymonie Rowe, in Room 10C, in  
4 the Palm Beach County Courthouse, City of West Palm  
5 Beach, State of Florida, on Tuesday, the 5th day of  
6 June, 2018, to wit:  
7 ---  
8 THE COURT: This is Aswege vs. Genie  
9 Industries and there are all pending motions.  
10 I received one notebook. Looks like it's from  
11 the plaintiff with plaintiff's motion to  
12 expedite exchange of deposition designations,  
13 plaintiff's motion to strike nondisclosed  
14 opinion testimony of defendant's expert with  
15 their response and defendant's objections to  
16 request for production.  
17 Will the parties please announce their  
18 appearances?  
19 MR. REID: Yes, Your Honor. Paul Reid on  
20 behalf of the plaintiff, Scott Aswege, who is  
21 also here.  
22 THE COURT: Good morning.  
23 MR. SOREL: Justin Sorel on behalf of  
24 B & M.  
25 MS. LUIKART: Christen Luikart on behalf

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1 That's set for tomorrow.  
2 THE COURT: Okay. Based on what I have,  
3 let's start with the motion to expedite  
4 exchange of deposition designations.  
5 MR. REID: Your Honor --  
6 MR. VERNIS: Can I just make my  
7 appearance?  
8 THE COURT: I'm sorry, Mr. Vernis. I  
9 apologize. You're always such a fixture in  
10 another case.  
11 MR. VERNIS: Good morning. Jeff Vernis on  
12 behalf of Discount Rental.  
13 MS. VALASHINAS: And Kimberly Valashinas  
14 on behalf of Barrett Jackson.  
15 MR. REID: Your Honor, on behalf of all  
16 the parties, we appreciate having an hour and a  
17 half. I can advise the Court I don't think  
18 we're even going to get close to an hour and a  
19 half, that won't be necessary, but in that  
20 vein, I was hoping that -- we did this with  
21 Judge Sasser and she found it was very helpful.  
22 If I could just tell the Court in an  
23 unvarnishd, unbiased way a little bit about  
24 what this case is about, I think it might help  
25 in terms of going forward.

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1 THE COURT: Certainly.  
 2 MR. REID: Okay. Your Honor, I have some  
 3 pictures here -- everyone else has seen these  
 4 before but I have copies for them -- that just  
 5 show -- may I approach, Your Honor?  
 6 THE COURT: You may.  
 7 MR. REID: Five years ago in April, my  
 8 client, Scott Aswege, was working at the South  
 9 Florida Fairgrounds at what was Barrett Jackson  
 10 Auto Auction out there. I don't know if Your  
 11 Honor is familiar with those but it's a big  
 12 auto auction that goes on for about a week and  
 13 takes up the whole area. My client is involved  
 14 in an event planning business where they do the  
 15 chairs and the risers and all those other kinds  
 16 of things for big events like this and they  
 17 were hired by Barrett Jackson to do that.  
 18 There's three main defendants in this  
 19 case. One is Genie. Genie is the manufacturer  
 20 of what you see here on the front page. It's a  
 21 scissor lift, and I don't know if Your Honor is  
 22 familiar with those, but it's a 19' 30" scissor  
 23 lift. It means it goes up 19 feet and it's  
 24 30 inches wide. And as it goes up, as you can  
 25 see from the next picture, picture two, it's

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1 called a scissor lift because the gray items on  
 2 there come together in a scissor kind of manner  
 3 and they're attached at the front of the lift  
 4 by four bolts, what's called four carriage  
 5 bolts.  
 6 In this case, when the lift went up with  
 7 my client on board -- he was trying to hang a  
 8 banner for one of the vendors that was there on  
 9 behalf of Barrett Jackson. When he went up and  
 10 went to the back of the lift, the four bolts  
 11 that were attached, supposed to be attached on  
 12 the front of the lift were not attached and so  
 13 he went to the back of the lift to violently  
 14 tip that, kind of like a teeter totter, Your  
 15 Honor, and if you look at Page 3 of the  
 16 photographs, this is a recreation that our  
 17 expert did a couple of years ago with the same  
 18 make and model lift where they put a mannequin  
 19 and a dolly on a lift and they had some  
 20 sandbags approximating Mr. Aswege's weight.  
 21 These lifts are rated to 500 pounds and  
 22 when you move the dolly to the back, the lift,  
 23 without the bolts on, it tips back and the  
 24 difference that's in this one, we tethered the  
 25 front of the lift so the whole platform

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1 wouldn't fall off and we had to tip the whole  
 2 thing, but you can see exactly what happened  
 3 here.  
 4 And the fourth picture is a picture from  
 5 the South Florida Fairgrounds that shows what  
 6 happened with the platform on the date of the  
 7 accident. This is the actual lift that was  
 8 involved in this case. When it tipped,  
 9 Mr. Aswege went backward over the back rail and  
 10 did a 360, it's on the surveillance videos that  
 11 they have there, and he landed on his feet and  
 12 kind of with progression of shearing forces  
 13 severely fractured both feet and ankle and hurt  
 14 some other parts of his body, his head, but  
 15 we're not making a claim for those. It's just  
 16 his lower legs that we're talking about now.  
 17 He was air lifted to St. Mary's Hospital  
 18 by helicopter, spent almost a week there and  
 19 then was transported back by air ambulance to  
 20 Phoenix where he lives and since then, he's  
 21 been undergoing treatment with orthopedic  
 22 surgeons and so forth and all of those, other  
 23 than the doctors that were at St. Mary's, were  
 24 doctors that were selected or approved by his  
 25 Worker's Compensation carrier that's paid for

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1 all of his medical so far which are now in the  
 2 six hundred thousand dollar kind of range.  
 3 A year ago, Scott, his legs kept  
 4 deteriorating and particularly his right one  
 5 which necessitated an amputation of his lower  
 6 leg. That's what the doctors at worker's comp  
 7 recommended and he had the amputation at the  
 8 Mayo Clinic in Phoenix. And so he has a  
 9 prosthetic device now that he wears on his leg.  
 10 His other leg is deteriorating.  
 11 The defendants in this case are Genie and  
 12 Genie was the original manufacturer of the lift  
 13 and they sold it to a company that was based in  
 14 Georgia, and then some years later repurchased  
 15 the lift and then had it sent to defendant  
 16 B & M. B & M is a refurbishing company and  
 17 what they do is they look at the lifts, tell  
 18 Genie what they think needs to be done and then  
 19 they take it apart as necessary, replace parts  
 20 that are necessary to be replaced and paint it,  
 21 put it back together again and Genie was the  
 22 owner while all this happened. Genie then sold  
 23 the lift to Defendant Discount.  
 24 Discount is a company that rents lifts  
 25 commercially. They were the company that

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1 rented the lift to Barrett Jackson and then  
 2 Barrett Jackson used it at the auto auction for  
 3 whoever that was there qualified to use it and  
 4 needed to use it and that's when Scott was one  
 5 of the people using it, the first person that  
 6 actually went up that high with the lift and so  
 7 when he walked to the back it tipped over. So  
 8 that's who the parties are. Discount has then  
 9 filed a third party claim against Barrett  
 10 Jackson based on --  
 11 THE COURT: You didn't sue Barrett Jackson  
 12 though, right? I didn't see Barrett Jackson as  
 13 part of the usual pleadings.  
 14 MR. REID: We have not sued Barrett  
 15 Jackson. It's just strictly a third party  
 16 claim based on breach of contract and  
 17 contractual indemnity, so they're working out  
 18 that.  
 19 So anyway, that's what the case is about  
 20 and Scott has -- what we did though beforehand  
 21 is I had provided -- there's been a lot of  
 22 these catastrophic cases over my career. I  
 23 provided defendants, first the risk managers  
 24 and then the next group of risk managers and  
 25 then when they lawyered up, their lawyers with

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1 every single page of medical records. I  
 2 provided like 6,000 pages electronically with  
 3 indexes with a 20-page summary by one of our  
 4 nurses, you know, the medicals.  
 5 THE COURT: I think you told me this  
 6 before.  
 7 MR. REID: Okay. So what I want to do --  
 8 and then we had a mediation before Judge Crow  
 9 before we filed suit and then we had the case  
 10 and that's kind of where we are right now, Your  
 11 Honor. So I hope that was somewhat helpful.  
 12 THE COURT: It was. Thank you, Mr. Reid.  
 13 Now, plaintiff's motion to expedite exchange of  
 14 deposition designations.  
 15 MR. REID: I'm sorry, the motion to  
 16 strike...?  
 17 THE COURT: Plaintiff's motion to expedite  
 18 exchange of deposition designations.  
 19 MR. REID: Okay. Thank you, Your Honor.  
 20 That motion is really kind of straightforward.  
 21 We've taken a number of depositions of the  
 22 parties so far and some of them we videotaped  
 23 and I plan to show those on videotape. And  
 24 then there's also been a deposition of the  
 25 doctor that recommended the amputation in

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1 Phoenix and also the artificial leg, the  
 2 prosthetist. And there's a couple of other  
 3 depositions of some of the Barrett Jackson  
 4 people, so rather than -- Your Honor had a  
 5 schedule for this. The dates from your trial  
 6 order start at July 20th to serve the  
 7 deposition designations and then 11 days later,  
 8 there's supposed to be objections and counter  
 9 designations and another eight days later,  
 10 serve objections to the counter designations.  
 11 What I was hoping to do to avoid a lot of  
 12 congestion at the last moment when I know  
 13 everyone is busy getting ready for trial is if  
 14 we could somehow do this, with the Court's  
 15 permission, on a rolling basis where if we have  
 16 the depo designations done, we can go ahead and  
 17 file those, our proposed depo designations with  
 18 the Court and then they could respond within  
 19 the same time frame, 11 days after that.  
 20 THE COURT: Doesn't the trial order  
 21 already have that date certain?  
 22 MR. REID: Well, it has a certain date but  
 23 it starts July 20th.  
 24 THE COURT: You just want to change the  
 25 date to make them earlier?

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1 MR. REID: Yes, Your Honor, as is the  
 2 Court's availability, but if we get some done,  
 3 we could file it and then they could respond  
 4 and then get with their objections and then the  
 5 Court could rule on their objections and then  
 6 we could do our counter designations.  
 7 THE COURT: Well, you do that among  
 8 yourselves. The only time Court intervention  
 9 is necessary is when you can't agree. Then you  
 10 come to me but that's only after compliance  
 11 with Local Rule 4. I'm not going to get into  
 12 involved discussions regarding scheduling  
 13 depositions.  
 14 MR. REID: I misspoke, Your Honor. I  
 15 understand. Just rule on any objections that  
 16 we couldn't work out. Could we start that even  
 17 at an earlier date?  
 18 THE COURT: I would encourage you all to  
 19 do that at this time because if there's a lot  
 20 of depositions, it's going to take a lot of  
 21 time for you to file your designations and work  
 22 among yourselves as multiple parties. So I  
 23 encourage you to do that as soon as you  
 24 possibly can.  
 25 MR. REID: Thank you, Your Honor.

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1 THE COURT: Is there any issues from the  
 2 defense?  
 3 MR. SOREL: Your Honor, just for the dates  
 4 that he proposed, I mean he has certain  
 5 depositions and motions to enforce June 20th  
 6 which is two weeks and I'm out all next  
 7 week and --  
 8 THE COURT: That's why I want you all to  
 9 work together. Clearly this is the summer.  
 10 Everybody is trying to take vacations. I want  
 11 to make sure the parties that want to can enjoy  
 12 their vacation and not have emails in the  
 13 middle of their vacation other than emergencies  
 14 that need to be handled while people are on  
 15 vacation. So I'm expecting all of you to work  
 16 together with the understanding that you all  
 17 still have a trial deadline that comes in  
 18 August. So you all are professionals. I don't  
 19 think you need me to supervise that process.  
 20 MR. REID: Thank you, Judge.  
 21 MR. VERNIS: So are we just going to agree  
 22 on a date or are we going to talk about a date?  
 23 THE COURT: I only order stuff when you  
 24 guys can't agree so I'm hoping you all can  
 25 agree on a date. I think that was rather

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1 clear. Everybody is entitled to vacation and  
 2 entitled to enjoy their vacations. Work  
 3 together and if you have a problem, come to me  
 4 and I will deal with the problems as they  
 5 arise. But I'm sure, Mr. Reid, you're going to  
 6 go on vacation, you're not going to want them  
 7 to bombard you emails on your vacation and the  
 8 same with the defendants. So work together  
 9 with the understanding that the default date  
 10 would be the trial order.  
 11 MR. REID: Thank you, Your Honor. We  
 12 will.  
 13 THE COURT: Thank you. I appreciate that.  
 14 Plaintiff's motion to strike nondisclosed  
 15 opinion testimony of defendant's expert  
 16 witnesses.  
 17 MR. REID: Thank you, Your Honor. The  
 18 summary of this argument, this one is a little  
 19 bit more involved but it's fairly  
 20 straightforward. The plaintiffs have known  
 21 about the disclosure requirements for a long  
 22 time. We've had -- the easiest way to do this,  
 23 Your Honor, I have a summary chart here that I  
 24 color coded, if I might approach the bench?  
 25 THE COURT: Yes.

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1 MR. REID: And I have copies of this for  
 2 opposing counsel.  
 3 THE COURT: Thank you.  
 4 MR. REID: The summary of my argument,  
 5 Your Honor, is there were two scheduling orders  
 6 by Your Honor where all parties were supposed  
 7 to provide names for their expert witnesses and  
 8 then there was Your Honor's pretrial order. So  
 9 in this chart here, at the front it says on  
 10 August 17th, and I'm just doing this for a  
 11 historical basis, according to Judge Sasser's  
 12 pretrial order, the deadline was March 23,  
 13 2018, where the names of the experts of all  
 14 parties and the opinions and the basis of their  
 15 opinions were supposed to be provided.  
 16 When Your Honor took over this case, you  
 17 issued a trial scheduling order number one  
 18 February 13th requiring the names and that I  
 19 tabbed in green, Your Honor, which has the name  
 20 of each witness regarding expert witnesses and  
 21 sequence of their appearance and the short  
 22 answer to all of that is the plaintiffs  
 23 complied with that and we sent a letter saying  
 24 we'll go ahead and put the whole thing  
 25 together, just give us your expert names and so

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1 forth and we'll put it together. If you look  
 2 at the first green -- and we weren't able to  
 3 accomplish that so we filed our own, but what  
 4 the defendants, and this is true for every  
 5 single one of the defendants, what they did is  
 6 instead of listing the expert's name as you can  
 7 see on the first one, they listed, for  
 8 instance, B & M's liability expert and then  
 9 they listed B & M's forensic accountant damages  
 10 expert and they listed B & M's economist and  
 11 they listed B & M's life care planner and they  
 12 listed B & M's orthopedic surgeon.  
 13 The other defendants did exactly the same  
 14 thing. So then Discount requested an extension  
 15 to be able to respond to the scheduling order  
 16 and Your Honor granted that and on March 5th  
 17 you entered your scheduling order number two  
 18 and that required, once again, the names and  
 19 that's in blue. Plaintiff had already complied  
 20 with that, and I can show Your Honor that in a  
 21 minute, but if you look at the blue tabs, what  
 22 you get is exactly the same thing. You get  
 23 their forensic account, their economist, their  
 24 life care planner, their orthopedic surgeon,  
 25 but you get zero names from any of them. And

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1 then what Discount did is Discount filed  
 2 something that said we don't have any experts  
 3 in addition to the ones that were revealed by  
 4 the other defendants. So here we are on  
 5 March 23rd --  
 6 THE COURT: May I interject a minute? For  
 7 the defendants, it would seem to me that the  
 8 life care planner, forensic accountant,  
 9 economist, orthopedic surgeon would be experts  
 10 that you all were sharing, is that correct?  
 11 MR. SOREL: Correct, Your Honor.  
 12 THE COURT: All right. You may proceed.  
 13 MR. REID: Thank you, Your Honor. So  
 14 those were two trial orders that -- or two  
 15 trial scheduling orders they didn't comply  
 16 with. The third one is Your Honor's pretrial  
 17 order dated February 13th and for that, the due  
 18 date was April 12th, 2018, and that was to  
 19 provide, and I listed the tabs in yellow, Your  
 20 Honor, the first one is that they're supposed  
 21 to provide the facts and opinions which the  
 22 expert is to testify about and the grounds for  
 23 each opinion.  
 24 So what we've got there, we've got the  
 25 names finally but we didn't receive any

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1 opinions and we didn't receive any basis for  
 2 their opinions. For instance, the first tab  
 3 lists a Dr. Shahnasarian (phonetic) and it  
 4 discusses his area of testimony, vocational  
 5 rehabilitation and that sort of thing and  
 6 attaches his CV but it doesn't have any  
 7 opinions or basis of the opinion.  
 8 The same is true for James Clancy which is  
 9 their podiatrist ortho expert. Once again it  
 10 just talks about the area that he's going to  
 11 testify about but there's zero opinions and  
 12 there's zero basis for his opinions.  
 13 THE COURT: You said Dr. Shahnasarian and  
 14 Dr. Clancy. Who else are you missing?  
 15 MR. REID: Well, the next one is also  
 16 highlighted with the tab in yellow, Your Honor.  
 17 It's David Roberts, Ph.D., who is their  
 18 economist. There is --  
 19 THE COURT: I understand. It's zero.  
 20 MR. REID: Yeah. Same thing, Your Honor.  
 21 And then Scott Miguel on the next page who is  
 22 their forensic accountant. Once again, no  
 23 opinions, just the area of testimony, no basis  
 24 of opinions.  
 25 THE COURT: Anyone else?

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1 MR. REID: It was the same for each of the  
 2 defendants.  
 3 THE COURT: All right. I understand. So  
 4 these are the experts that have now been  
 5 articulated whose opinions you don't have.  
 6 MR. REID: I don't have their opinions, I  
 7 don't have the basis for their opinions.  
 8 THE COURT: All right. Let me hear from  
 9 the defense. What's going on with these  
 10 witnesses?  
 11 MR. SOREL: Your Honor, he's alleging we  
 12 violated some court orders.  
 13 THE COURT: I want to get to the meat of  
 14 the matter. I heard what he said. I just want  
 15 to know now -- he's identified folks. Do you  
 16 have opinions of folks and have you shared  
 17 those opinions with plaintiff?  
 18 MR. SOREL: What we don't have, Your  
 19 Honor, is the life care plan of the plaintiff  
 20 and the damages and reported calculations for  
 21 the plaintiff that our experts need to  
 22 formulate their opinions.  
 23 THE COURT: As to the four experts that  
 24 have been identified, have there been any  
 25 opinions exchanged as to any of them?

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1 MR. SOREL: There have not been opinions  
 2 exchanged yet because we need information --  
 3 THE COURT: As to each?  
 4 MR. SOREL: As to those four.  
 5 THE COURT: So you can't do it, from what  
 6 I'm hearing today, your experts can't do it  
 7 because plaintiff's expert hasn't given you  
 8 anything.  
 9 MR. SOREL: Correct.  
 10 THE COURT: And you're telling me the  
 11 plaintiff's expert hasn't given you anything to  
 12 use so therefore your hands are tied.  
 13 MR. SOREL: Correct.  
 14 THE COURT: That's all I needed to know.  
 15 Now we can go back to Mr. Reid.  
 16 MR. REID: Your Honor, what they're saying  
 17 is not accurate.  
 18 THE COURT: Show me the opinions that you  
 19 have shared so that I can see.  
 20 MR. REID: I have them right here. May I  
 21 approach, Your Honor?  
 22 THE COURT: You may. Now, you only handed  
 23 to me one document. That's the witness  
 24 disclosure. So am I going to see all of the  
 25 opinions?

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1 MR. REID: Yes, Your Honor.  
 2 THE COURT: One second, Mr. Reid. This is  
 3 the first time I'm reading it.  
 4 Krost is your life care planner?  
 5 MR. REID: Yes, Your Honor.  
 6 THE COURT: When was Dr. Krost's life care  
 7 plan shared with defense?  
 8 MR. REID: Your Honor, his first report  
 9 was shared before the amputation and his life  
 10 care plan before the amputation --  
 11 THE COURT: Can you give me a date,  
 12 Mr. Reid? When was the life care plan shared  
 13 with defense?  
 14 MR. REID: I don't have that off the top  
 15 of my head, Your Honor, but it was -- I believe  
 16 it was before our first mediation which was two  
 17 years ago.  
 18 THE COURT: Okay. So you're saying that  
 19 Dr. Krost gave a life care plan two years ago.  
 20 Has it ever been supplemented or updated in the  
 21 two years since?  
 22 MR. REID: Post amputation, his report has  
 23 been updated. We do not have a current life  
 24 care plan right now because I wanted to make it  
 25 timely in terms of when the trial date was

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1 going, but I can get that in very short notice  
 2 for them.  
 3 THE COURT: Right. If they need it, then  
 4 you need to get it to them.  
 5 MR. REID: Okay. But, Your Honor, under  
 6 1.280, they're saying we need your life care  
 7 plan guy before we can have our life care plan  
 8 guy say anything which is really against the  
 9 rules but it doesn't have any merit to it.  
 10 THE COURT: Well, in some instances, the  
 11 Supreme Court is a very wise body of people but  
 12 sometimes it's counter intuitive for a  
 13 defendant to determine what the life care plan  
 14 can be for a plaintiff when they don't know  
 15 what the plaintiff is saying that their life  
 16 care plan is. So I understand that the rules  
 17 are across the board that require that all  
 18 parties submit their opinions, but in an  
 19 instance where you're making a claim on behalf  
 20 of your client and you're claiming whatever the  
 21 issues may be, they're not necessarily going to  
 22 know those issues because they don't spend as  
 23 much time with Mr. Aswege -- I've been  
 24 mispronouncing your name, sir, I apologize --  
 25 as you do so they're not necessarily going to

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1 be privy to that.  
 2 So I understand what you're saying and I'm  
 3 not criticizing in any way but in this  
 4 particular instance, I'm hearing the defense  
 5 say we can't do anything because we don't have  
 6 a life care plan and I hear you concede that  
 7 you haven't given them a life care plan.  
 8 MR. REID: The only thing if I can add on  
 9 that is we've provided all the medicals.  
 10 They've taken some of the depositions of the doctors.  
 11 I did a direct examination of the main treating  
 12 orthopedic surgeon. I provided all that stuff,  
 13 some of it years ago.  
 14 THE COURT: And I understand. Again, I  
 15 understand that you've submitted stuff before  
 16 and I appreciate that and I applaud you for it,  
 17 but at this time we're getting ready for trial.  
 18 I need you to submit your life care plan to the  
 19 defense. How much time do you need to do that?  
 20 MR. REID: I have to check with them but I  
 21 would guess within two or three weeks.  
 22 THE COURT: That's 14 days. So then I  
 23 will give you 14 days within which to have your  
 24 experts review the life care plan to provide  
 25 whatever opinions they need. If you need more

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1 time -- I need to put you on a schedule so if  
 2 you need more time, come to us within the 14  
 3 day period and articulate with specificity how  
 4 much time that expert needs. Right now we're  
 5 all operating in a vacuum and we don't know  
 6 what the experts' vacation schedule is so I'm  
 7 giving you a time certain and you can come back  
 8 and let me know.  
 9 MR. SOREL: Your Honor, we came before you  
 10 a couple of weeks ago on a motion to compel the  
 11 CME --  
 12 THE COURT: I remember.  
 13 MR. SOREL: So that's set now for  
 14 June 28th. So that's going to need to occur  
 15 and then --  
 16 THE COURT: All right. So I'll give you  
 17 two weeks after that for Dr. -- that's Dr.  
 18 Shahnasarian, right?  
 19 MR. SOREL: Yes. I think it's due by  
 20 July 16.  
 21 THE COURT: Is that two weeks?  
 22 MR. SOREL: It's maybe a couple of days  
 23 over two weeks.  
 24 THE COURT: All right. Is that a problem,  
 25 Mr. Reid, a couple of days over two weeks?

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1 MR. REID: No, Your Honor. I'm fine with  
2 that.  
3 THE COURT: All of these dates are now  
4 written in pen so make sure your experts are  
5 aware that we need these reports so we can move  
6 this matter along. So that takes care of one  
7 of the experts. What's the other expert?  
8 MR. REID: Your Honor, as you can see from  
9 ours, I listed the opinions of even people who  
10 weren't retained experts, but in terms of their  
11 other experts, they have a forensic accountant.  
12 For the life of me, Your Honor, we provided tax  
13 returns from his company and financial records,  
14 tax returns for him individually a long time  
15 ago. So saying that some financial expert --  
16 THE COURT: I got it. Who's your forensic  
17 accountant?  
18 MR. SOREL: Scott Miguel.  
19 THE COURT: What's going on with him?  
20 MR. SOREL: We don't have -- if you look  
21 at his disclosures and you look at  
22 Mr. Oppenheimer which is Number 4 on his list,  
23 it again says updated figures for the life care  
24 plan and that's his --  
25 THE COURT: But if you have the tax

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1 returns and financial records, why can't you at  
2 least prepare some type of preliminary report  
3 and have your expert then say I'll reserve the  
4 opportunity to supplement it once I get the  
5 report. And I won't get a time certain from  
6 you to get that report but there certainly  
7 should be something your forensic accountant  
8 can at least do at this time.  
9 MR. SOREL: Here's the issue, Your Honor.  
10 It's confusing as to what they are alleging, if  
11 they're alleging lost wages, if they're only  
12 alleging loss of future earning capacity,  
13 because there is an issue as to whether -- for  
14 years his --  
15 THE COURT: This is not a pristine case.  
16 Are you telling me you have not articulated or  
17 identified whether this is a lost wage claim  
18 and/or a loss of earning capacity claim?  
19 MR. SOREL: No. I'm saying earlier in the  
20 case there was an allegation that the lost  
21 wages, loss of earning capacity was going to be  
22 a devaluation of his shares in the company.  
23 That apparently is no longer an issue. That  
24 changed in the middle of the case. Apparently  
25 they're not alleging that anymore. So now it

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1 seems like they're going back to the typical  
2 lost wages, loss of earning capacity. And so  
3 we've been trying to hammer that down as to  
4 what is the damages calculation, what are you  
5 alleging as to --  
6 THE COURT: Have you submitted  
7 supplemental discovery to the plaintiff to nail  
8 that issue down?  
9 MR. SOREL: We have, Your Honor.  
10 THE COURT: And when did you do that?  
11 MR. SOREL: A couple of -- I think it's  
12 actually due in a couple of days.  
13 MR. VERNIS: It was right after the  
14 depositions of the people we took in Phoenix.  
15 THE COURT: When is the response due from  
16 the plaintiff?  
17 MR. SOREL: Well, I did it two ways, Your  
18 Honor. I did expert discovery to hammer  
19 down -- that has been objected to. Everything  
20 was supposed to be in front of Your Honor  
21 today.  
22 THE COURT: I'm doing that next because  
23 that's going to address all of the other issues  
24 that seem to be attendant to these expert  
25 reports.

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1 MR. SOREL: I did it a couple of ways. I  
2 did the expert discovery and then individually  
3 I did interrogatories and request for  
4 production for additional tax returns for 2017  
5 because that's the first time apparently that  
6 his salary has been decreased in 2017.  
7 THE COURT: That wasn't produced already?  
8 MR. SOREL: In all fairness to them, if  
9 it was all timely filed April 15, 2018, it  
10 would have been in the tax returns. I don't  
11 know if that has been filed or not. But we've  
12 requested that, we've requested the updated  
13 financials from the company. We don't know --  
14 and another thing that's unclear is they've  
15 argued that the reason that his salary  
16 decreased is because the company can't afford  
17 to pay him and the issue is that we need to see  
18 his calculations because if they're going to  
19 get into --  
20 THE COURT: Don't you -- I'm gathering  
21 from what you all are saying is Mr. Aswege owns  
22 a business.  
23 MR. SOREL: Correct.  
24 THE COURT: Isn't there some type of  
25 QuickBooks production profit and loss, some



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1 type of earning capacity in lieu of the actual  
 2 tax returns so you can get what you need?  
 3 MR. SOREL: We have some of that, Your  
 4 Honor. The question is whether they are simply  
 5 relying on the W-2s and saying he had X amount  
 6 of salary this year, this year is decreasing  
 7 and --  
 8 THE COURT: It sounds like you need an  
 9 updated deposition of the plaintiff.  
 10 MR. SOREL: Well, the plaintiff says -- we  
 11 took the deposition of the plaintiff in  
 12 January. He doesn't know. He couldn't tell  
 13 me. He said I lost wages. I don't know how  
 14 much I made, I don't know how much --  
 15 THE COURT: So from whom do you need that  
 16 information to drill that down?  
 17 MR. SOREL: I need the damages  
 18 calculations from his experts as to what  
 19 they're claiming as it relates to lost wages,  
 20 lost earning capacity so I can figure out with  
 21 my expert...  
 22 MR. REID: Your Honor, may I respond?  
 23 THE COURT: You may.  
 24 MR. REID: Thank you, Your Honor. We told  
 25 them our claim is not his past lost wages.

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1 THE COURT: How have you told them?  
 2 MR. REID: I've told them on the phone  
 3 several times and in our disclosure, what we  
 4 listed by Mr. --  
 5 THE COURT: I need it to be done via some  
 6 type of response from Mr. Aswege because your  
 7 experts can say they can rely on it and  
 8 Mr. Aswege can testify on the stand that that's  
 9 not really what I meant. So we need to get  
 10 some affirmative response from Mr. Aswege as to  
 11 what he is seeking as his damages including  
 12 lost wages in the past and loss of future  
 13 earning capacity. That will at least then  
 14 drill down as to what they would be entitled to  
 15 or not entitled to. The expert -- unless  
 16 you're telling me the expert is now speaking  
 17 for Mr. Aswege. I don't see how that's going  
 18 to --  
 19 MR. REID: I'm representing to the Court  
 20 on behalf of Mr. Aswege as I listed in our  
 21 expert disclosure on April 12, what we're  
 22 claiming is plaintiff's diminished earning  
 23 capacity and he's listed the range of that in  
 24 the expert disclosure. So what they're  
 25 complaining about now, I mean they can look at

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1 the expert returns, they can do whatever  
 2 analysis they want and come up with whatever  
 3 opinion. My guy could be deposed and they  
 4 could look at his opinion and then they have a  
 5 chance for rebuttal or where their differences  
 6 of opinions are, that's something they can  
 7 testify about at trial. But to say you have to  
 8 disclose everything you're going to do by your  
 9 experts before we disclose any of our experts  
 10 including our forensic accountant or  
 11 economist --  
 12 THE COURT: I hear what you're saying,  
 13 Mr. Reid, and I agree with you in part, but I  
 14 think there has to be some disclosure from the  
 15 plaintiff's perspective in order to allow the  
 16 defense to defend whatever your disclosure is.  
 17 I somewhat agree with you that you shouldn't  
 18 have to wait until your expert has put the last  
 19 period on his last report, but there has to be  
 20 some ebb and flow so the exchange of  
 21 information can proceed so that we can get to  
 22 the point where we can try this case.  
 23 MR. REID: Well, I can tell you that the  
 24 flow has always been plaintiff to them and we  
 25 receive virtually nothing back. There's been

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1 no ebb coming back. We've provided a ton of  
 2 those financial records, the tax returns from  
 3 the company, the tax returns from Mr. Aswege.  
 4 Without any request for those, we provided  
 5 those things a long time ago and I even did an  
 6 inhouse damages model before we had the first  
 7 mediation so they could kind of understand  
 8 that, but what we're doing now is just  
 9 diminished earning capacity claim for damages  
 10 for his economic damages that way, besides his  
 11 medicals and so forth.  
 12 THE COURT: Well, having Mr. Reid saying  
 13 that on the record in the presence of  
 14 Mr. Aswege, you now know what the damages claim  
 15 includes, so let's, with that understanding --  
 16 yes, ma'am.  
 17 MS. LUIKART: The only other thing I would  
 18 like to add -- Christen Luikart on behalf of  
 19 Genie -- is that we have now requested depo  
 20 dates for his experts twice and he hasn't given  
 21 us dates. So we are making efforts to try and  
 22 figure out this information so we can get our  
 23 reports finalized. We asked for CME dates that  
 24 would have already been done had it been given  
 25 to us and we hadn't had to file a motion to

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1 compel and we have now requested dates for his  
2 expert depos twice with no response.  
3 MR. REID: Your Honor, this is not  
4 accurate. What they did was they requested a  
5 CME six days before the deadline where the exam  
6 ordered was to take place two months after the  
7 deadline. After all of this time, after  
8 knowing all of these medicals, after knowing  
9 all of the issues in the case, it's just been a  
10 delay and stalling routine by them and now  
11 they're asking to be rewarded for delaying this  
12 long. There were your scheduling orders, there  
13 was Judge Sasser's pretrial order, there was  
14 your pretrial order, and they haven't complied  
15 with any of those deadlines and I just think --  
16 and I know you have in your pretrial order that  
17 failure to comply with this can result in  
18 serious types of sanctions.  
19 So they waited forever to do this kind of  
20 stuff and the scheduling of this, these exams  
21 would be after the deadline, way after the  
22 deadline and it would be certainly after the  
23 time where I'm supposed to provide some type of  
24 rebuttal to their experts. So that's why --  
25 they could have done this a long, long time ago

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1 and they didn't do that and now they're saying  
2 reward us and give us all this stuff at the  
3 last moment.  
4 THE COURT: There is one commentary that  
5 I'm going to make for you all just to let you  
6 understand how I operate. The trial order is  
7 there and it is there for a reason. However,  
8 the trial order is done somewhat in a vacuum  
9 because I don't know what's really going on in  
10 day-to-day operations of each of your cases to  
11 be restrictive and optimal. I'm not saying  
12 anyone here is dilatory to your respective  
13 clients because you're going to come back here,  
14 the case law is the case law and yes, my order  
15 says that failure to comply will result in the  
16 striking of pleadings and, guess what, if I  
17 strike somebody's pleadings, you come back and  
18 I'm going to have to hear you out because the  
19 4th will say I was being too harsh on you  
20 because I have to allow for the opportunity for  
21 both sides to try the case on the merits.  
22 Ultimately that's the goal, is to try the case  
23 on the merits, to allow each side to have their  
24 respective discovery so we're not having a  
25 trial by ambush and we're having a trial that

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1 is fair to both sides. So that's my only  
2 speech.  
3 I hope going forward you all will factor  
4 that into how you handle your day-to-day  
5 operations of the case. No side should be any  
6 more obstinate than the other because frankly  
7 it's a long life. Trust me, my gray hairs have  
8 been done by Clairol. But it is a long life  
9 and you all are going to have to work together  
10 for a long time, so six days outside of the  
11 trial deadline -- and again, I'm not  
12 criticizing you at all, Mr. Reid -- you've got  
13 to make sure that we're all trying to get to  
14 the ultimate goal because ultimately this Court  
15 has to try the case on the merits and be fair  
16 to both sides.  
17 So with that understanding, let's now get  
18 into the -- what were you asking for, Ms.  
19 Luikart? The CME, that's already been done.  
20 What's the next issue that you all are saying  
21 that you don't have?  
22 MR. SOREL: I think what we need is, like  
23 we did for the life care plan, I think we need  
24 a date for them to give us the calculations or  
25 report from their damages expert.

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1 THE COURT: As to that, Mr. Reid, where  
2 are you with that process? Have you given  
3 everything to them?  
4 MR. REID: Well, I've given the financial  
5 records, Your Honor. In terms of my client,  
6 his expert disclosure indicates how he's  
7 calculating this, the figure that it's above.  
8 He said approximate range about two million  
9 dollars present money value for the reduced  
10 earning capacity. In terms of everything that  
11 he's looked at and all those sorts of things,  
12 this gets into our next hearing on the request  
13 for production which they're not entitled to on  
14 expert stuff, but it's my position they have  
15 plenty of stuff in order for their person to be  
16 able to base what they need --  
17 THE COURT: Let me put another clause in  
18 there. You may think they have plenty of  
19 stuff. They don't think they have plenty of  
20 stuff. They have to defend their case. Just  
21 like you may think they haven't given you  
22 everything and they think that they've given  
23 you everything. Again, you all -- what I'm  
24 seeing is that there seems to be some sort of  
25 rigidity here in this case, and you can't be

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1 that rigid in this case because Mr. Aswege has  
2 a claim.  
3 And I want to make sure, Mr. Aswege, your  
4 case goes to a jury and a jury of your peers  
5 tries your case, but the defense also is  
6 entitled to defend their respective positions  
7 and they need to get the evidence necessary to  
8 do that as well.  
9 So, again, some of this just means as  
10 though you all need to sit down and talk with  
11 each other and work it out and I'm here to  
12 listen until it's time for us to break for  
13 lunch, but a lot of this doesn't really need a  
14 whole lot of court intervention. We have this  
15 trial deadline. I need this from you. Please  
16 give me this so we don't have to go to court.  
17 You need this from them. Please give me that.  
18 You know, it's six days outside of the trial  
19 deadline but no, this is the reason why it's  
20 six days out. I wasn't sitting on my hands or  
21 watching whatever on Netflix and that's the  
22 reason it didn't happen. These are just things  
23 that it seems to me that it just requires a lot  
24 of --  
25 MR. REID: Yes, Your Honor. I'll agree to

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1 confer with them on that in terms of available  
2 deposition dates and those sorts of things.  
3 THE COURT: And, again, I put these trial  
4 deadlines in place because I want to get you  
5 all talking. I want you all to start working  
6 together so that you can get this case ready to  
7 be tried because your clients deserve it. They  
8 asked you to represent them.  
9 Mr. Aswege, you asked Mr. Reid to  
10 represent you. You want your case set for  
11 trial, but we also have the ultimate rule which  
12 is you can't try by ambush and everybody is  
13 entitled to discovery.  
14 MR. REID: I just want to -- I understand  
15 that but in terms of you want both of us, and I  
16 understand that part of it, Your Honor, but I  
17 just want to stress to the Court we have done  
18 that.  
19 THE COURT: I hear you. I hear you have  
20 done your part. And I'm just asking you,  
21 Mr. Reid, to listen to them and while you may  
22 not like it or agree with it, if they're  
23 entitled to it, you need to give it to them. I  
24 hope you understand.  
25 And that's the same for you all. You may

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1 not like what he's asking you for, you may not  
2 agree with what he's asking you for, but in the  
3 end, he's going to get it because we ultimately  
4 have to try the case on the facts and each side  
5 is entitled to their respective discovery.  
6 So let me do this. I'm going to allow you  
7 all to have that chat with each other to confer  
8 with each other to decide what it is each of  
9 you want court intervention for because when I  
10 start intervening, it's an order and last I  
11 checked, the governor says that my orders mean  
12 something, so you're going to have to comply  
13 with them.  
14 So I want you to sort of -- my philosophy  
15 is I want you all to work with each other so  
16 you don't need me, but if you need me, I'm  
17 here, and you may not like it when you need me  
18 because I'm going to do what I need to do.  
19 MR. REID: Okay. I think Mr. Sorel has  
20 been point for the defendants on that and so I  
21 will follow through with him.  
22 THE COURT: And again, if there are  
23 issues, you're invited to come. I know you're  
24 set for trial in August. I want to allow for  
25 your case to be tried in August, although I do

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1 have in August some tobacco cases so if you  
2 need to come in on short notice because you all  
3 ultimately want to get this case, you know, you  
4 want to comply with the court order, you can  
5 come in on short notice. I'll let my judicial  
6 assistant know you all can be somewhat relieved  
7 from the obligation of online scheduling and  
8 the like. I still may put you at the end of  
9 the list to allow for the other folks that did  
10 comply with the online scheduling, but I want  
11 to make sure that you all are talking to each  
12 other because a lot of these things are just  
13 communication deficiencies, is what I'll call  
14 them. Okay?  
15 MR. SOREL: Thank you, Your Honor.  
16 THE COURT: All right. Mr. Reid, anything  
17 further?  
18 MR. REID: Your Honor, I have here B & M's  
19 objections to three particular requests for  
20 production. It's very simple.  
21 MR. SOREL: Your Honor, excuse me. I  
22 thought you wanted to do the expert objections  
23 first.  
24 THE COURT: I did say that. What is the  
25 expert objections? You have some objections,

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1 Mr. Reid?  
2 MR. SOREL: Your Honor, it's actually we  
3 have objections to their expert responses.  
4 THE COURT: Okay. What are those?  
5 MR. SOREL: Well, they didn't respond to  
6 any of them, Your Honor.  
7 THE COURT: Collectively just give me  
8 bullet points as to what it is without going  
9 into each one.  
10 MR. SOREL: Sure. I'll start with the  
11 request for production.  
12 THE COURT: And you all conferred before  
13 you came in, right?  
14 MR. SOREL: Yes.  
15 THE COURT: And when I say conferred, it's  
16 not exchanging a bunch of emails saying send me  
17 what I want, right?  
18 MR. SOREL: Well, I reached out to them  
19 saying you haven't given me anything, you  
20 object to all these things; if you're willing  
21 to drop any of these objections, I'm willing to  
22 talk about it.  
23 THE COURT: And what did you say, Mr.  
24 Reid, in response?  
25 MR. REID: Well, there's two types of

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1 discovery, the interrogatories and request for  
2 production, the expert ones. The  
3 interrogatories, our objection was it exceeds  
4 the numerical limits without leave of Court.  
5 THE COURT: How many interrogatories have  
6 they filed?  
7 MR. REID: They have beforehand, Your  
8 Honor, they have 27 interrogatories plus  
9 subparts, and now there's an additional 12  
10 expert interrogatories plus subparts --  
11 THE COURT: Wait a second. So it's 27,  
12 that was general interrogatories?  
13 MR. REID: Yes.  
14 THE COURT: And then how many expert?  
15 MR. REID: Twelve.  
16 THE COURT: And then what else?  
17 MR. REID: Our position is it violates  
18 Rule 1.340, but in terms of our responses to  
19 it, we responded to that so we're saying we  
20 didn't --  
21 THE COURT: Give me an example of what you  
22 conveyed as a response.  
23 MR. REID: Your Honor, if I can give you  
24 my copy.  
25 THE COURT: You may.

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1 All right. So I'm looking at Number 2.  
2 You said something has been requested and will  
3 be provided obviously. Did you provide that,  
4 Mr. Reid? That seems to be the response to 3,  
5 4 and 5.  
6 MR. REID: Yeah. I said I would provide  
7 it, Your Honor. I'm trying to get it and --  
8 THE COURT: So how much time --  
9 MR. REID: I know it's a 1.280 kind of  
10 thing that you require --  
11 THE COURT: So how much time do you need  
12 to provide it?  
13 MR. REID: Well, we've retained experts so  
14 I think I can do that within two weeks or less.  
15 THE COURT: So 14 days would be sufficient  
16 for you, sir?  
17 MR. REID: Yes, Your Honor.  
18 THE COURT: All right. So 14 days, you  
19 will get those better responses. As to the  
20 interrogatories themselves, I counted 39.  
21 That's how many interrogatories were propounded  
22 by the defense?  
23 MR. SOREL: I don't have my original, Your  
24 Honor.  
25 THE COURT: Well, based on Mr. Reid's

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1 assertion that 27 and 12 --  
2 MR. SOREL: In all fairness, it's 13.  
3 THE COURT: And math is something I'm  
4 rather good at so that seems like it's 39. How  
5 many interrogatories has the plaintiff  
6 propounded?  
7 MR. SOREL: How many interrogatories has  
8 the plaintiff propounded? I don't know.  
9 Hundreds.  
10 THE COURT: To each party, not --  
11 MR. REID: Your Honor, I haven't  
12 propounded any expert interrogatories to them  
13 because I didn't even know who their experts  
14 were.  
15 THE COURT: I just want to know how many  
16 you propounded.  
17 MR. REID: I'm sure I propounded the  
18 standard interrogatories in the case, 30 or  
19 less, Your Honor.  
20 THE COURT: And that's to each defendant.  
21 MR. REID: That's my best recollection.  
22 THE COURT: All right. So the Court  
23 will --  
24 MR. VERNIS: If I can add something, Your  
25 Honor, that is absolutely not true. He's

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1 propounded at least five sets to me alone.  
2 THE COURT: How many interrogatories has  
3 he propounded to you alone, Mr. Vernis?  
4 MR. VERNIS: My guess would probably be a  
5 hundred because he did them -- one of them had  
6 50 questions, I believe. I mean, he's done  
7 that many to us.  
8 THE COURT: All right. Here's what I  
9 generally do when you all can't agree on the  
10 interrogatories. It's one of those things  
11 where I just don't understand why the Court  
12 needs to be here. Each side gets 60, so 60 to  
13 the plaintiff from this defendant, 60 from this  
14 defendant, and plaintiff can do 60 to each.  
15 What's the next one?  
16 MR. SOREL: The next one is --  
17 MR. REID: Your Honor, the ruling on that,  
18 I mean, I've answered some of those. I listed  
19 my expert disclosure.  
20 THE COURT: I understand. It's 39.  
21 They've already got 39 so 60 minus 39 would be  
22 21.  
23 MR. REID: But his motion is on the  
24 objections that I did, Your Honor, in terms  
25 of --

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1 THE COURT: I think one of the issues  
2 counsel articulated was that you objected  
3 because they exceeded the number of Rule 1.340  
4 so based on that objection, the objection is  
5 overruled. The parties equally can propound 60  
6 interrogatories, no more without leave of  
7 Court.  
8 MR. REID: Okay.  
9 THE COURT: What's the next issue?  
10 MR. SOREL: The next issue is their  
11 response to expert production which is similar,  
12 Your Honor.  
13 THE COURT: Mr. Reid, I'm going to give  
14 you back your interrogatories. Can I see  
15 something on the request for production,  
16 please?  
17 MR. SOREL: May I approach, Your Honor?  
18 THE COURT: You may.  
19 THE COURT: What is it that you're  
20 directing my attention to, sir?  
21 MR. SOREL: The objection -- I mean, he  
22 uses this objection basically every response,  
23 that we can't do expert request for production  
24 because we're going to end up deposing them.  
25 THE COURT: All right. Thank you. I

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1 think I get it.  
2 Mr. Reid, to their request that you give  
3 them everything that you gave your expert, what  
4 say you as to the objection? I see that it's a  
5 five-paragraph objection but I want you to  
6 articulate for the record the basis of your  
7 objection as to why defendants are not entitled  
8 to the file you provided to your expert.  
9 MR. REID: Your Honor, according to Rule  
10 1.280(B)4(a), there is a limited way that they  
11 can get materials from experts. It's by  
12 interrogatory according to the breakout of  
13 1.280 and by deposing the expert, and they  
14 can't even get financial records from the  
15 expert absent extraordinary circumstances or  
16 leave of Court. According to the 4th DCA  
17 opinion in 2012 of Smith vs. Elrod, Your Honor,  
18 it says, Smith noted his intent to serve a  
19 subpoena and notice of expert witness request  
20 for production for their expert that Rule 1.280  
21 did not allow a party to serve a subpoena or a  
22 request for production on an expert for their  
23 records, for their file.  
24 THE COURT: 1.280 -- let me just make sure  
25 I'm understanding you and you understand me.

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1 1.280 is a rule requesting documents to a  
2 party. I can understand potentially that you  
3 can't ask the expert because he's not a party.  
4 I'm presuming, although I didn't look, was this  
5 request to the plaintiff?  
6 MR. SOREL: Correct.  
7 THE COURT: So the request is asking the  
8 plaintiff and you're objecting. I think I  
9 understand your objection. The end goal is for  
10 them -- I think I told you this before,  
11 everybody is entitled to discovery here.  
12 Everybody is entitled to have the evidence  
13 necessary to defend or prosecute the claim.  
14 How is it that you would like them to get the  
15 reports from the experts since 1.280 that  
16 you're objecting to, it sounds as though you  
17 won't allow them to subpoena the expert to get  
18 the records from the expert directly so how is  
19 it that you propose the defendants -- because  
20 it's going to be the same way, if you want to  
21 get any of their reports or any of their files  
22 of any of their experts, you're going to get  
23 it. So if you all want to agree as to what  
24 mechanism we're going to use, each of you are  
25 going to get the file of each expert because,

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1 again, the rule is we're trying the case on the  
 2 merits and everybody is entitled to discovery  
 3 except that which is privileged in nature.  
 4 MR. REID: Okay. And I have some  
 5 overbroad objections as well as to those kind  
 6 of things. I will agree to provide them the  
 7 documentation that was provided by the  
 8 plaintiff to our retained experts. I have also  
 9 agreed to provide the stuff that's provided for  
 10 in 1.280 which would be like a list of cases  
 11 within three years that the Supreme Court said  
 12 is reasonable, those sorts of things, but what  
 13 they're asking for is everything that the  
 14 expert has. You know, if you look at the  
 15 request for production, it's so broad and  
 16 they're not entitled to do that.  
 17 THE COURT: Let me see if I understand  
 18 what you mean by everything the expert has.  
 19 You're not asking for the expert's books in his  
 20 file cabinet. You're asking for everything  
 21 that he has used in connection with this case.  
 22 MR. SOREL: Correct.  
 23 THE COURT: All right.  
 24 Yes, Mr. Reid? Now that I understand what  
 25 they're asking for, you may proceed.

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1 MR. REID: Well, if you look at what  
 2 they're asking though, it's all files  
 3 maintained by any expert you have listed to  
 4 testify in this matter, any materials your  
 5 experts have reviewed.  
 6 THE COURT: We'll limit it to any  
 7 materials that the expert has used or relied on  
 8 in connection with his opinions in this case.  
 9 What else?  
 10 MR. REID: Pursuant to a request for  
 11 production, they can --  
 12 THE COURT: I'm really not concerned with  
 13 the mechanism by which you exchange this  
 14 information. That's my ruling. Get it to each  
 15 other so we can move this matter along.  
 16 What's the next one? What's the next  
 17 discovery issue that you all can't seem to  
 18 agree to?  
 19 MS. LUIKART: Your Honor, I have a motion  
 20 to continue.  
 21 MR. REID: Your Honor, the next one was  
 22 three very simple --  
 23 THE COURT: You had one, Mr. Reid.  
 24 MR. REID: I do. Plaintiff is noticing  
 25 defendant B & M's objections to our written

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1 discovery, our request for production and there  
 2 is just three of them, Your Honor.  
 3 THE COURT: Is that the one April 25,  
 4 2018, sir?  
 5 MR. REID: The date of their objections is  
 6 a year ago, Your Honor.  
 7 THE COURT: All right. What I have before  
 8 me is plaintiff's objections to defendant B & M  
 9 Equipment Rental's expert interrogatories. So  
 10 show me what it is.  
 11 MR. REID: That's the one we just talked  
 12 about.  
 13 THE COURT: Okay. Show me the one that --  
 14 MR. REID: May I approach again, Your  
 15 Honor?  
 16 THE COURT: You may. Give me one moment  
 17 to review.  
 18 So one of the objections concerns  
 19 personnel -- seems like two of them -- the  
 20 personnel files of the employees of Genie,  
 21 correct?  
 22 MR. SOREL: He's looking for the personnel  
 23 files of all the people from B & M who I  
 24 represent who worked on the subject lift.  
 25 THE COURT: And this request is to B & M.

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1 So he's asking you for your employees'  
 2 personnel files for those individuals that  
 3 worked on the lift?  
 4 MR. SOREL: Correct.  
 5 THE COURT: Got it.  
 6 MR. REID: And 36 and 37 are almost  
 7 identical, Your Honor. One is the  
 8 inspection -- or participated in the  
 9 refurbishment and one is inspection and  
 10 testing.  
 11 THE COURT: Let me ask you this, Mr. Reid.  
 12 There are certain aspects of the personnel file  
 13 which I presume you would agree you're not  
 14 entitled to. So what specifically within the  
 15 personnel file is it that you're seeking?  
 16 MR. REID: I'm looking at their work  
 17 record, their training, those sorts of things,  
 18 any kind of certification they had, any of  
 19 their qualifications to be able to do this, any  
 20 disciplinary actions against them. I'm not  
 21 asking about any of their health insurance or  
 22 any of those sorts of areas.  
 23 THE COURT: Anything else other than the  
 24 categories you have articulated?  
 25 MR. REID: Any kind of performance

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1 evaluations.

2 THE COURT: Anything else?

3 MR. REID: I think that's broad enough to

4 cover it, Your Honor, and my position is --

5 THE COURT: I understand your position.

6 Response?

7 MR. SOREL: No problem with training,

8 certification or qualifications. The

9 disciplinary actions and performance

10 evaluations, I would request to limit it to

11 before the incident occurred because anything

12 after the incident occurred if it didn't relate

13 specifically to the incident is completely

14 irrelevant.

15 THE COURT: Okay. Anything further?

16 MR. REID: I suggest it would be relevant

17 in terms of what kind of employee they were and

18 one was -- we took the deposition. There are

19 two people. One was fired for threatening

20 another employee and one was fired for using

21 his phone too much unrelated to this

22 refurbishment.

23 MR. SOREL: Two years later.

24 MR. REID: Beyond all that, according to

25 the Florida Supreme Court in the Douglas case,

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1 they do not have standing as an employer to

2 raise the privilege kind of objections on

3 behalf of an employee. They just don't have

4 standing to do that. And this is a year ago

5 and so they haven't contacted the employee and

6 the bias --

7 THE COURT: But I have to protect the

8 employee who didn't volunteer to be part of

9 these proceedings who is not a party to this

10 action. So based on that, as to the request,

11 defendant B & M is going to produce all

12 training, certification, qualification,

13 disciplinary and performance matters before the

14 incident and anything related to the incident

15 on the day of the incident. How much time to

16 you need to do that, sir?

17 MR. SOREL: Fifteen days.

18 THE COURT: There you go, 15 days. What's

19 the next one?

20 MR. REID: Your Honor, it's Number 65.

21 THE COURT: Any media of any kind

22 depicting Mr. Aswege. Do you have any of that?

23 MR. SOREL: I was talking about this

24 before. What does it mean by media? Does he

25 mean pictures? Is he talking about

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1 surveillance, is he talking about Facebook?

2 THE COURT: This is one of those local 4

3 issues where you all can speak about this.

4 MR. SOREL: We talked about it before and

5 I said list for me what it is you're looking

6 for.

7 THE COURT: What is it you're looking for?

8 MR. REID: Any media, whether it's

9 Facebook, social media, surveillance. The

10 plaintiff has already been deposed so --

11 THE COURT: I hear you, Mr. Reid.

12 Articulate it with more specificity because

13 here's what I don't want to have happen. I

14 don't want your definition of media and their

15 definition of media to not intersect and you

16 come to me in the middle of trial asking for

17 some type of sanctions because you all did not

18 confer in compliance with Local Rule 4 to

19 identify what you all meant by media.

20 MR. REID: Thank you, Your Honor. Could

21 I define it on the record right now?

22 THE COURT: You certainly may.

23 MR. REID: Okay. So by media, I mean any

24 social media, Facebook, photographs,

25 surveillance of Mr. Aswege.

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1 THE COURT: Anything else, Mr. Reid?

2 MR. REID: No, Your Honor.

3 THE COURT: How much time do you need to

4 do that?

5 MR. SOREL: The same time, 15 days.

6 THE COURT: There you go. What's the next

7 one?

8 MR. SOREL: I just want to make sure I

9 comply with Your Honor's order. When you talk

10 about producing, you said the day of --

11 THE COURT: For example, here's where I'm

12 coming from. Let's say that something happened

13 on the day of the incident that your employee

14 was disciplined for. You need to produce all

15 of that.

16 MR. SOREL: Right. My question is, does

17 that relate to disciplinary performance or do

18 you want training after the incident and

19 certifications after the incident?

20 THE COURT: I don't think Mr. Reid asked

21 for that. He asked for everything before. The

22 concern was the disciplinary and performance

23 and as to the disciplinary and performance,

24 it's before and then anything related thereto.

25 MR. SOREL: Gotcha.

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1 THE COURT: Anything else?  
2 MR. REID: I think those are my motions,  
3 Your Honor.  
4 THE COURT: Thank you.  
5 Anything else from the defense?  
6 MS. LUIKART: Yes, Your Honor. Genie  
7 advised counsel that they were filing and then  
8 filed a motion to continue the trial due to  
9 pregnancy. They filed an objection. May I  
10 approach?  
11 THE COURT: Yes, ma'am. And who do you  
12 represent again, ma'am?  
13 MS. LUIKART: Genie Industries, the  
14 manufacturer. I'm told I'm due October 21st;  
15 however, my first daughter was a preemie and  
16 she was born six weeks early and I'm told I'm  
17 highly likely to go into labor early, although  
18 right now they have no indication that I am.  
19 My first daughter was due October 5th and I had  
20 her August 25th.  
21 THE COURT: Any objection?  
22 MR. REID: Yes, Your Honor, and I do not  
23 want to look insensitive on that. In fact, my  
24 firm and I have always been rated in the top 10  
25 of best places for women lawyers to work at and

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1 I respect all that. But what I -- my  
2 opposition to this is pretty simple. What  
3 prompted this was when I filed a motion based  
4 on them not produce the information on her  
5 experts and so then we got a continuance.  
6 THE COURT: She was pregnant then, wasn't  
7 she?  
8 MR. REID: I understand, Your Honor. In  
9 terms of the case law though -- and my position  
10 is that it's certainly doable for this case to  
11 be tried in August in the beginning of this  
12 trial period which would be away from her five  
13 week, before her delivery time.  
14 THE COURT: You're not going to be tried  
15 until mid September because Mr. Vernis' first  
16 case that he's spent a lot of time on has now  
17 settled. It was set on August 20th and now the  
18 tobacco cases are backup to that.  
19 MR. REID: Can I talk to them? It's my  
20 firm that's probably doing those.  
21 THE COURT: Tobacco?  
22 MR. REID: Yes.  
23 THE COURT: I don't know. They were here  
24 earlier this week so I really don't remember.  
25 I know that Searcy Denney --

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1 MR. REID: It's not me. It's probably  
2 Willie Gary.  
3 THE COURT: I don't remember. They have a  
4 lot of cases though. I think they may have one  
5 or two. Actually they have three, two of which  
6 they asked to be removed and one I think we're  
7 in flux about. So I don't think it will be any  
8 of yours but again, speak to Ms. James. She  
9 was here earlier this week.  
10 MR. REID: Yes, Your Honor. The other  
11 part of it though is throughout this case,  
12 there has been one request to delay this after  
13 another. The prejudice is my client was  
14 crippled five years ago and the amount of time  
15 that Ms. Luikart is asking for is exceptionally  
16 long, beyond the 90 days after her baby would  
17 be born and then we have a long trial period.  
18 THE COURT: Did Ms. Luikart's client file  
19 a motion to continue before?  
20 MR. REID: No, but every time we have a  
21 scheduling order --  
22 THE COURT: Stop. Did she file a motion  
23 to continue before?  
24 MR. REID: No, Your Honor, none that comes  
25 to mind.

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1 THE COURT: Now you can continue.  
2 MR. REID: But every time we've gone  
3 before Judge Sasser for when can we have this  
4 heard. We're supposed to be in trial by now.  
5 We would have been done by now according to  
6 Judge Sasser's old trial order. When you came  
7 in, we had that trial order and so they had  
8 asked to move it even further. Every time we  
9 have one of those things, they want it further.  
10 So it's an extreme hardship for my client to  
11 now be over five years out after the accident  
12 where he's crippled.  
13 And the other part of it is, there has  
14 been a number of lawyers that have participated  
15 from Ms. Luikart's firm. The named partner,  
16 Niels Murphy, was the lawyer who attended the  
17 deposition in Seattle of Genie's corporate  
18 representative.  
19 THE COURT: Who has been the attorney that  
20 has spent primarily most of the time litigating  
21 this matter and moving it forward?  
22 MR. REID: Candidly, it's been  
23 Ms. Luikart, but another lawyer was at the  
24 Discount depositions and then a number of the  
25 depositions that have been taken by videotape



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1 are going to be played by videotape so  
2 Ms. Luikart's cross examination of those  
3 witnesses along with the other defendants is  
4 already done. So in terms of who's prejudiced  
5 in this case, no one is prejudiced if we can go  
6 early in the trial period, but as the case law  
7 states, if there's someone within the firm that  
8 is able to -- the Ziegler vs. Klein case, a  
9 Fourth D.C.A. 1991, if there's someone that is  
10 able to also participate in the trial  
11 effectively on behalf of the client, especially  
12 if it goes later in the trial period, they've  
13 already had two other lawyers that have been  
14 actively participating including at mediations  
15 and so forth that are well aware of what's  
16 going on in the case. So I don't mean to be  
17 insensitive about her pregnancy. Obviously I  
18 wish her all the best on that, but we could try  
19 it early. If it's tried later in the trial  
20 period, there's other people that are actively  
21 involved in this case that can do it. A number  
22 of the depositions and the testimony to be  
23 shown to the court on videotape, she has  
24 already been the one that was participating in  
25 that, at least in some of them, some other

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1 people in some of the other ones. That cross  
2 examination is already done.  
3 So the prejudice when you look at the  
4 Ziegler case is to my client who now is going  
5 to be forced to have to wait until presumably  
6 after the first of the year if Ms. Luikart gets  
7 her way on her motion and that's just an undue  
8 hardship, Your Honor, to my client. He's  
9 waited so long and there's been so many delays  
10 like that that we're just asking, if there's a  
11 way to work it early or there's a way to work  
12 it if it's later with other people in her firm  
13 who are very familiar with this case and the  
14 hardship would be on my client if it's delayed.  
15 THE COURT: Response?  
16 MS. LUIKART: Your Honor, I implore you to  
17 read the objection to my motion to continue.  
18 He not only compares my pregnancy to an  
19 illness, he minimizes my role as lead counsel.  
20 I have been to the presuit mediation and  
21 handled this from the beginning. I have been  
22 the contact person. He talks about videotape  
23 depositions. We went to Arizona and took six  
24 depos, two of which are videotaped. Those are  
25 the only two that were videotaped.

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1 The client chose me. I have a history of  
2 working with the client. I'm vice chair of the  
3 diversity committee. And that objection is not  
4 respectful in any way, shape or form. I'm not  
5 trying to delay anything. I did not get  
6 pregnant in response to his motion to strike.  
7 If we keep all the deadlines the same, that's  
8 fine. I physically can't tell anyone here that  
9 I will not go into labor at the end of August.  
10 I don't know. My doctors tell me it's highly  
11 likely.  
12 THE COURT: How much time are you seeking  
13 for the continuance?  
14 MS. LUIKART: From the time I go into  
15 labor, I'm out eight weeks.  
16 THE COURT: So give me some precision.  
17 MS. LUIKART: I am due October 21st, so I  
18 would be out eight weeks.  
19 THE COURT: So you're asking for the case  
20 to be tried in January?  
21 MS. LUIKART: Correct.  
22 MR. REID: Your Honor, can I just respond  
23 to this?  
24 THE COURT: May I hear from the other  
25 parties?

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1 MR. REID: Yes, Your Honor. Sorry.  
2 THE COURT: Thank you, sir. Does anyone  
3 else wish to be heard?  
4 MR. VERNIS: Your Honor, I do. I had  
5 filed a motion for case management conference  
6 and for a new trial setting. I bring this up  
7 for a couple of reasons. One, I respectfully  
8 agree with the continuance. Christen has been  
9 the lead person on behalf of Genie and as you  
10 can see from all the hearings that we had  
11 before, there was some significant delay in  
12 responding to real discovery that needs to be  
13 done in order for us to really be ready. For  
14 him to suggest we can be ready in the early  
15 part of the docket is just frankly  
16 unreasonable.  
17 But you said something earlier this  
18 morning when we were here and I want to clarify  
19 something. When we did the trial schedule and  
20 you ordered us to do a trial schedule, it came  
21 out to almost three full weeks, not two full  
22 weeks. So it wasn't just a ten-day trial, it  
23 was more than that and whether that matters or  
24 not to you, I wanted to make sure that you  
25 recognize the fact that I did file after you

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1 gave us time to do it and we put everyone's  
 2 together, I did a complete one --  
 3 THE COURT: This is with shared experts  
 4 now?  
 5 MR. VERNIS: This is with everything, with  
 6 the plaintiff, with B & M, with Discount, with  
 7 Genie, with everybody and Barrett Jackson, of  
 8 course, put it all together and it ended up  
 9 being truthfully three full weeks, not  
 10 accounting for delays and arguments. So this  
 11 isn't just a ten-day trial, at least  
 12 respectfully I don't believe it is, and based  
 13 on that schedule, I don't think it could be.  
 14 But we agree with the continuance to the extent  
 15 there is so much to be done between now and  
 16 August anyway, just to get the expert discovery  
 17 and then start trying to get the depositions. We've  
 18 been trying for a long time but there's been a  
 19 lot of pushback on providing information so we  
 20 can get their experts set and that delay is  
 21 really leading us to where we are now.  
 22 THE COURT: Ms. Luikart, one last  
 23 question. You are the one trying this case?  
 24 MS. LUIKART: Yes, Your Honor.  
 25 THE COURT: Anything further, Mr. Reid?

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1 MR. REID: Yes, Your Honor. Regarding  
 2 this illness thing, the Ziegler case says when  
 3 undisputed facts reveal that the physical  
 4 condition of either counsel or client prevents  
 5 fair and adequate presentation of the case,  
 6 failure to grant continuance is reversible  
 7 error, and goes on to say cases involving  
 8 illness of counsel -- and I'm not saying that  
 9 pregnancy is an illness. I'm saying the  
 10 factors, when someone is physically unable to  
 11 participate in a trial for whatever reason, are  
 12 enumerated in this case. Factors should  
 13 include the length of a requested continuance,  
 14 which we're saying is too long; whether counsel  
 15 who becomes unavailable for the trial has  
 16 associates adequately prepared to try the case,  
 17 which we're saying they do and it's in the  
 18 record including with their most important  
 19 witness; whether other continuances have been  
 20 requested or granted. There's not a formal  
 21 continuance by Ms. Luikart in terms of when you  
 22 want this case scheduled whether it's before  
 23 Judge Sasser or you, they have always pushed it  
 24 further down the road. And the inconvenience  
 25 to all involved in the trial which is the

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1 inconvenience to Mr. Aswege who's been crippled  
 2 now for over five years.  
 3 Sitting here, I have no desire to  
 4 inconvenience Ms. Luikart with respect to the  
 5 birth of her child, but under the circumstances  
 6 of this case, it's not a compelling reason when  
 7 you have an opportunity, one, to try the case  
 8 earlier on in the trial period; two, if it's  
 9 later in the trial period, there's two other  
 10 lawyers from her firm that have been very  
 11 involved in this case as well. I'm not saying  
 12 they have attended as many things as  
 13 Ms. Luikart but --  
 14 THE COURT: It sounds like you're  
 15 repeating yourself. Is there anything new you  
 16 would like the Court to hear?  
 17 MR. REID: That's all I have.  
 18 THE COURT: Concerning defendant's motion  
 19 to continue, while it has been articulated on  
 20 the record that the case has been pending for  
 21 five years, this case was filed in 2016. Based  
 22 on the factors articulated in the Ziegler case,  
 23 the Court is compelled to continue the case.  
 24 The case will be rolled to the January 21st,  
 25 2019 docket.

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1 Mr. Aswege, I want to alert you --  
 2 MR. ASWEGE: It can't.  
 3 THE COURT: The Court has to consider both  
 4 sides and I understand that you want to get  
 5 your case tried.  
 6 MR. ASWEGE: I understand but it can't  
 7 happen in January.  
 8 THE COURT: Mr. Aswege, if I can speak,  
 9 and you can speak to your counsel and if your  
 10 counsel needs the Court to hear something, you  
 11 can articulate it to him. I'm speaking to you  
 12 right now to let you know that the Court has to  
 13 consider both sides. I don't believe  
 14 Ms. Luikart got pregnant in response to this  
 15 case. I do believe that Ms. Luikart is  
 16 entitled to have some time for her to deliver  
 17 her child and take care of her child before  
 18 coming back to resume her duties as an  
 19 attorney. I would treat all counsel the same.  
 20 If a male attorney came to the Court and asked  
 21 for a reasonable period of time to spend time  
 22 with their child, I would do that as well  
 23 because the Court has to look above the fray  
 24 and not the individual issues concerning the  
 25 case.

1 So while I'm very sympathetic to the  
2 severity of your injury -- and trust me, I  
3 understand your injury. I have a family member  
4 who was also paralyzed because of issues  
5 concerning a work related injury so I  
6 completely understand your position, but I also  
7 have to consider Ms. Luikart's position and  
8 because of that, the Court will continue the  
9 matter. The matter will be continued.

10 If there are any issues that arise in the  
11 January period that you feel the Court needs to  
12 be apprised of, then Mr. Reid will come to the  
13 Court, I will consider it. I will give you the  
14 same hearing and opportunity and consideration  
15 as I've given all the defendants and every  
16 party that comes to this Court. We're  
17 adjourned.

18 (The hearing was concluded.)  
19  
20  
21  
22  
23  
24  
25

1 STATE OF FLORIDA  
2 COUNTY OF PALM BEACH  
3

4 I, DEBORAH MEEK, Registered Professional  
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<p><b>0</b></p>	<p><b>21</b> 46:22</p>	<p><b>6</b></p>	
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