IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBIN HOUSTON,	:	
	:	
Plaintiff	:	
	:	CIVIL ACTION
v.	:	FILE NO. 1:13-CV-00206-TWT
	:	
PUBLIX SUPER MARKETS, INC.,	:	
	:	
Defendant	:	

RESPONSE OF PUBLIX SUPER MARKETS, INC.
TO PLAINTIFF'S MOTIONS IN LIMINE

Defendant Publix Super Markets, Inc. responds to Plaintiff's Motions in Limine as follows[1]:

1. COLLATERAL SOURCE

The Plaintiff has filed what can best be described as a boilerplate *Motion in Limine* regarding collateral source without any reference to the actual facts or evidence in this case. In addition, the Plaintiff does not attempt to identify for the Court what type of limits of the admission of evidence that she seeks.

In this case, the facts will show that the incident at Publix occurred on July 24, 2012. The Plaintiff went to work immediately following the incident on the date of

[1] For convenience, the numbers and headings correspond to the plaintiff's numbering and headings utilized in her Motions *in limine*.

loss and worked the very next day. On the third day, however, she met with her attorney and stopped working.

After stopping work, the Plaintiff's medical treatment, as testified to by her, has been directed by her attorneys. The three principal doctors for her alleged neck, shoulder and brain injuries were all selected by her attorneys with the assistance of ML Healthcare, an investor in litigation.

The selection of doctors and the involvement of ML Healthcare are of critical importance and goes directly to the heart of Publix's defense on the damages aspect of this case. Publix will challenge the Plaintiff's argument that her alleged injuries were caused by the incident at Publix. In assessing the credibility of the Plaintiff and most importantly her physicians, it will be critical for a jury to understand the financial scheme that the Plaintiff's attorneys, physicians and ML Healthcare are engaged. An example, will demonstrate why the jury's knowledge of the scheme will be crucial to an assessment of credibility.

Dr. Ugwonali and Peachtree Orthopedics

Dr. Ugwonali will apparently attempt to testify that the Plaintiff's right shoulder was allegedly injured in the fall at Publix. As the Court knows from Publix's Motion to Exclude Dr. Ugwonali's testimony, he has no basis for that opinion. [See Doc. 144-1]. He did not take any extensive medical history and did not review any Publix

CCTV of the fall. All Dr. Ugwonali allegedly knew was that Ms. Houston had fallen and pain medicine had masked her shoulder complaints, even though he did not know what medicines she was taking.

Dr. Ugwonali, did know, however, that Ms. Houston was a referral from ML Healthcare. The in-take form [Exhibit A] clearly discloses that to Dr. Ugwonali. Plaintiff's attorney had already had the Plaintiff execute documents releasing medical records to him even before the Plaintiff had ever seen Dr. Ugwonali. [Exhibit B].

Dr. Ugwonali first examined the Plaintiff on June 11, 2013. [Ugwonali Dep. at p. 20]. This examination was three hundred twenty-two (322) after the incident at Publix. When he first examined the Plaintiff, he had nothing other than the history she provided and an MRI of her right shoulder. [Ugwonali Dep. at p. 20]. The following colloquy occurred:

Q. When did you first meet Ms. Houston?

A. According to my records, June 11th, 2013.

Q. Prior to seeing Ms. Houston on June 11, 2013, had you been provided with any documents regarding Ms. Houston?

A. I don't think so.

(Ugwonali Dep. at p. 20, lines 9 - 12). The testimony continued:

Q. Okay. Prior to treating Ms. Houston on June 11, 2013, if I'm

understanding you correctly, you have not reviewed any of her medical records?

A. No.

Q. You had not reviewed any videotape of any fall or motor vehicle accident, or anything else involving Ms. Houston?

A. No.

Q. You had not communicated with Mr. Fryer?

A. No.

Q. You had not communicated with ML Healthcare?

A. No.

Q. So when she walked in to see you, she was a blank slate?

A. Absolutely.

Q. You had not reviewed any MRI?

A. Let me look at my note. I reviewed an MRI, according to my note, the day I saw her.

Q. Okay. Is that the only document, medical record, that you reviewed when you met with Ms. Houston?

A. Yes.

[Ugwonali Dep. at p. 21, lines 1-23].

Dr. Ugwonali then took a history from the Plaintiff and learned that she claimed she had injured her right shoulder in the fall at Publix and her problems had been masked by pain medications. The following colloquy occurred:

Q. Doctor, looking at your note, it says, Chief Complaint, "Right shoulder injury and pain."

A. That's correct.

Q. Is that what she told you?

A. Yes.

Q. At that time, you had no information until she relayed that information to you?

A. That's correct.

Q. That's the first time you had received any information from Ms. Houston, that she had a right shoulder injury and pain?

A. That's correct.

Q. Did she tell you when that pain had begun?

A. She says that she fell at a grocery store on July 24, 2012.

Q. Other than Ms. Houston telling you that she had fallen at a grocery store in June of 2012, you reviewed nothing else that established that fact; correct?

A. That's correct.

Q. And you had not reviewed any medical record that documented any right shoulder injury prior to her relaying that information to you; correct?

A. That's correct.

[Dr. Ugwonali Dep., p. 21, lines 24-25; p. 22, lines 1-23].

While Dr. Ugwonali was not sure when the pain had begun, he accepts the Plaintiff's claim the pain had been masked by medications. [Ugwonali Dep. at pp. 30-31, 32, 35]. Dr. Ugwonali testified as follows:

Q. Okay. With respect to the examination there's an indication that she believes that her shoulder pain was masked by medications she was taking when she was being treated for neck injuries. Was that your assessment, or her assessment?

A. Where did you see that?

Q. It's in the first page under History of Present Illness.

A. Well, that's what she told me.

Q. And do you take that at face value?

A. It's hard for me to – I don't - - I'm not in her head to determine what she's thinking. But a lot of times, patients will focus on the body area that is more painful. Once that area is treated, then other areas that are not as painful then become more painful, or their symptoms are magnified because they have not been addressed yet.

Q. Okay. But was that her statement, or was that your assessment?

A. That was her statement.

[Dr. Ugwonali Dep., p. 30, lines 14-24; p. 31, lines 1-8].

* * *

Q. And she indicated that the pain in her right shoulder had been masked; correct?

A. That's correct.

Q. At some point in time, the pain had become unmasked; correct?

A. That's correct.

Q. When did she tell you this pain had suddenly become unmasked?

A. I don't have any documentation as to when it started.

[Dr. Ugwonali Dep. at p. 32, line 25; p. 33, line 9].

* * *

Q. Okay. When did the pain in the biceps or the greater tuberosity begin?

A. Again, I don't know when it began.

Q. Did she tell you it had begun a week before she came to you?

A. No. I don't recall.

[Dr. Ugwonali Dep. at p. 36, lines 9-14].

* * *

Q. What steps did you undertake to determine if her right shoulder pain had actually been masked by medication?

A. I usually don't do that.

[Dr. Ugwonali Dep. at p. 34, lines 3-6].

* * *

Q. Do you know what medications had recently been decreased?

A. No.

Q. Do you know whether her medications had been increasing up until the time she came to you?

A. No.

(Dr. Ugwonali Dep., p. 34, lines 17-22].

Amazingly, Dr. Ugwonali has no explanation as to how the pain medication had masked the Plaintiff's primary problem, adhesive capsulitis/frozen shoulder that he was diagnosing. [Ugwonali Dep. at p. 35, lines 11-17]. He testified:

Q. What are the symptoms of adhesive capsulitis?

A. The symptoms of adhesive capsulitis are decreased range of motion in all planes, and clear blocked motion at all planes.

Q. Would that have been masked by medication?

A. I really don't know, to be honest. But maybe in her, maybe not. Patients are all different.

[Dr. Ugwonali Dep. at p. 35, lines 11-17].

Dr. Ugwonali did review the Plaintiff's MRI of her right shoulder. [Ugwonali Dep. at pp. 22-26]. The MRI, however, did not show any acute injuries that could be traced to the incident at Publix that occurred three hundred twenty-two days before

Dr. Ugwonali ever laid eyes on the Plaintiff. [Dr. Ugwonali Dep. at pp. 23-28]. Dr. Ugwonali admitted that the MRI did not show any rotator cuff or labral tears. [See Exhibit C]. The MRI only showed, according to Dr. Ugwonali, some edema; but he could not date the edema. In fact, the edema could have been one week in age. [Ugwonali Dep. at pp. 46-48]. And while the MRI showed some arthritis, that finding was not indicative of a trauma. [Dr. Ugwonali Dep. at p. 83]. Regarding the MRI, Dr. Ugwonali testified as follows:

> **Q.** And while she was in your office on June 12 - - on June 11th, 2013, the only medical record you had was the MRI; correct?
>
> **A.** That's correct.
>
> **Q.** Did you have the actual MRI film?
>
> **A.** My – I would assume so. Because usually if the MRI is not available, I would dictate that the MRI was not available for review, and this is based on a report. So I make it a point to always look at the MRI films. So, yes, I did review the MRI.

[Dr. Ugwonali Dep. at p. 23, lines 3-93].

* * *

> **Q.** -- did you see any evidence of a rotator - -
>
> **A.** No, I did not indicate any rotator cuff tear or labral tear on the imaging study.
>
> **Q.** Did you see any minor degenerative changes of the AC joint?

A. Yes.

Q. And minor degenerative changes are not necessarily indicative of a traumatic injury; correct?

A. No, not necessarily.

Q. So the fact there was noted minor degenerative changes of the AC joint did not lead you to believe there was a traumatic injury, or not a traumatic injury; correct?

A. That's correct.

[Dr. Ugwonali Dep. at p. 25, lines 9-23].

* * *

Q. Okay. Would that be there was not any sign of a tear? You didn't see a tear?

A. Right. There was not a significant indication to me on the MRI that there was a tear there at that time.

Q. Okay. So with respect that you could not see either a partial or full-thickness tear of the rotator cuff, it would not lead you to believe there was an acute injury, or a degenerative injury; correct?

A. Well, you can't always tell from an MRI whether there is an acute or a chronic injury. A lot of times, you can tell whether there are clear things like a rotator cuff tear or a labral tear. So you can only interpret what you see on the MRI.

Q. And with respect to this MRI, there wasn't any labral tear or rotator cuff tear; correct?

A. That's correct.

Q. You did see some fluid in the subacromial bursa; correct?

A. That's correct.

Q. Okay. And that's not necessarily indicative of any type of traumatic injury; correct?

A. Not necessarily, no.

[Dr. Ugwonali Dep., p. 26, line 10 – p. 27, line 8]. And regarding the edema that Dr. Ugwonali says is shown in the MRI, he bases his opinion that it is related to the fall at Publix because the Plaintiff says it is. He testified:

Q. You can't say with a reasonable degree of medical certainty, that that edema is related to a fall of July 2012, can you?

A. THE WITNESS: In the absence of any other history of trauma, or significant trauma, my **assumption** is still that – at a reasonable degree of medical certainty – that this was caused by that fall.

Q. Take Ms. Houston's history out of the equation, looking at the MRI, can you say when that edema was caused?

A. No.

[Dr. Ugwonali Dep., p. 48, line 14 – p. 49, line 7].

Notwithstanding the foregoing, Dr. Ugwonali wants to testify that the Plaintiff's right shoulder complaints and subsequent surgery are caused by the slip and fall at Publix on July 24, 2012.[2] Dr. Ugwonali explains his thinking as follows:

[2] As the Court is aware Dr. Ugwonali and his associates at Peachtree Orthopedic have a significant financial relationship with Ms. Houston's financial investor in this lawsuit. Dr. Ugwonali and his associates are paid thousand, indeed hundreds of thousands of dollars by ML Healthcare to link medical treatment to accidents and in return Dr. Ugwonali provided hundreds, indeed, most likely millions of dollars in inflated medical invoices to ML Healthcare as its profit.

Q. Doctor, you indicated, "The problems were all caused by the fall which she experienced at the grocery store on July 24, 2012"?

A. Yes.

Q. Walk me through all your reasoning for linking her symptoms to the fall at the grocery store?

A. Well, first of all, she described a fall that caused significant injury to her neck, or, you know, head that required her to undergo surgery. There was no other history of shoulder injury that I was told at the time. Her exam was consistent with shoulder injury. So based on that and my years of experience in treating shoulders, that was my **assumption**, that it was caused by this fall.

(Dr. Ugwonali Dep., p. 36, line 15 - p. 37, line 4]. But Dr. Ugwonali cannot tell anyone how the Plaintiff fell. He testified regarding the fall as follows:

Q. Describe for me how she told you she fell.

A. She said that she slipped on a wet floor. What I had written is that. "She says there was a solution on the floor. And when she reached to get milk, she slipped and fell, hitting her head."

Q. Okay. She slipped and fell. Describe the fall for me. Where were her hand positions?

A. I didn't indicate it in my notes.

Q. Well, tell us now how she described the fall. Did she fall forward?

A. She – I don't specify exactly how she fell. She fell and struck her head. I don't – she may not have given me details because she may not – often patients, especially with head injury, may not remember exactly how she fell.

Q. Okay. And I'm asking, what you do recall about the mechanism of her fall? Did she fall forward or fall backwards?

A. Everything that she told me, I documented. So I don't have a recollection of all the thousands of patients I may have seen between her and now. So I wish I can. I mean –

Q. The full sum and substance of your recollection is that there was a solution on the floor, and when she reached to get milk, she slipped fell, hitting her head?

A. That's correct.

[Dr. Ugwonali Dep., p. 37, line 6 – p. 38, line 9].

In a nutshell, Dr. Ugwonali's causation opinion testimony is based on nothing more than assumptions. In fact, Dr. Ugwonali did not consider the testimony of a physician, Dr. Chitale, who treated the Plaintiff from August 9, 2012 through May 10, 2013, two hundred seventy-five days, and never heard a complaint of right shoulder problems. Dr. Chitale testified as follows:

Q. And now, in May of 2013, she's complaining of some adhesive capsulitis?

A. Yes.

Q. And this is the first complaint of shoulder problems; correct?

A. On that side; yes.

Q. On the right side; correct?

A. Yes.

Q. Up until May of 2013 we're not having any complaints of right shoulder problems; correct?

A. Yes.

Q. And adhesive capsulitis, Doctor, in layman's terms, that's frozen shoulder; correct?

A. Yes.

Q. And up until May of 2013 you had not seen any indication that she had any adhesive capsulitis; correct?

A. Correct.

Q. You had no indication whatsoever that she had any restrictive range of motion in the right shoulder; correct?

A. Correct.

* * *

Q. Doctor, you weren't overmedicating Ms. Houston so that she wouldn't be able to recognize adhesive capsulitis; correct?

A. No. She was properly given medications.

Q. Okay.

A. Not overmedicated.

Q. If she couldn't move her shoulder because she had restricted range of motion, she would've known that; correct?

A. I hope so.

Q. And you would've known that; correct?

A. Yes.

Q. But, again, the first complaint of any right shoulder problems is May 10, 2013; correct?

A. Correct.

[Chitale Dep., at pp. 58-60, excerpts attached as Exhibit D].

Despite a dearth of evidence that the Plaintiff's shoulder complaints are related to the incident at Publix, Dr. Ugwonali is willing to testify that the shoulder problems were caused by the fall at Publix and his surgery on the Plaintiff right shoulder was necessary and related to the fall. Dr. Ugwonali's opinions, Publix submits, are the direct result of the interrelated financial relationship that he, the Plaintiff, the Plaintiff's attorney and ML Healthcare have with each other.

Publix will submit evidence that the shoulder complaints are not related to the incident at Publix and that Dr. Ugwonali performed an unnecessary surgery. Dr. Ugwonali's treatment and surgery are the result of financial relationships with the persons with direct financial relationships with the persons involved in this case. Publix must be permitted to place into evidence that entire financial relationship engaged in by the Plaintiff, her attorneys, Dr. Ugwonali and his practice as well as ML Healthcare so that the jury will understand why this surgery was performed and why

Dr. Ugwonali holds the opinions he wants to share with the jury. Bias and financial interest are always relevant on credibility. Publix submits that the financial relationships among Dr. Ugwonali, Peachtree Orthopedics, ML Healthcare and the Plaintiff's attorneys are at the heart of Dr. Ugwonali's opinions.

Publix has retained an expert who will testify that the Plaintiff did not have a shoulder injury and did not need surgery. Publix has retained an expert who has reviewed the medical bills and notes that many of the bills were miscoded to create higher fees and that Dr. Ugwonali and his practice actually was paid the usual and customary fee for the treatment he provided, albeit the treatment was unnecessary.

Notwithstanding that Dr. Ugwonali and his practice actually received payment in the range of the usual and customary fee for his treatment, he provided bills to ML Healthcare that are two and one-half to three times higher. Publix submits that Dr. Ugwonali's opinions are influenced because he has a direct financial interest with keeping ML Healthcare, his source of Plaintiff referrals happy. Publix submits that a jury must consider Dr. Ugwonali's relationship with ML Healthcare, the Plaintiff and her attorneys when considering how to evaluate and weigh his testimony.

A second example is Dr. Hunter. Dr. Hunter testified that ML Healthcare is his biggest referrer of patients. [Hunter Dep. at p. 42]. While ML Healthcare claims it has only referred 31 of its 5000 cases to Dr. Hunter, Dr. Hunter testified that between

300 to 600 patients have been referred by ML Healthcare. [Hunter Dep. at p. 34].[3] Dr. Hunter has never, not once, failed to find a post traumatic injury, usually a brain injury, that he has related to some type of trauma involving litigation. [Hunter Dep. at pp. 35 - 36]. The successful referral rate for brain injury patients to Dr. Hunter by ML Healthcare is 100% notwithstanding that ML Healthcare has no particular expertise in brain injury diagnosis. [Hunter Dep. at 34 - 36]. Dr. Hunter then begins to prescribe numerous medications that are filled by an ML Healthcare pharmacy. While the pharmacy is paid forty cents on the dollar, it provides a bill to ML Healthcare of $1.00. Dr. Hunter knows that he needs to opine that the brain was injured as a result of the fall at Publix so that he can continue to receive the steady stream of referrals from ML Healthcare. The financial scheme shows why Dr. Hunter is so willing to find causation, prescribe medications, and generate medical bills. Dr. Hunter is well paid for his services, referrals continue and a handsome profit is generated for ML Healthcare.

In considering Dr. Hunter's testimony the jury needs to be aware of the financial arrangement in determining whether to believe Dr. Hunter's opinion and whether the prescriptions were needed. If a jury understands the financial

[3] Publix notes that ML Healthcare did not provide the number of referrals to Independent Neurodiagnostic Clinic where Dr. Hunter was one of two physicians at that practice until relatively recently. It is clear, however, from the Declaration of Mr. Craver that such information can be easily retrieved and produced to Publix.

arrangement, it will understand why the opinions are reached and why the medications are prescribed.

Publix submits that the evidence being submitted is not collateral source, but the evidence goes directly to credibility. When Publix challenges the opinions of these doctors, the jury needs to understand the strong financial incentive to find causation and prescribe what Publix submits is unnecessary treatments, so that it can evaluate the testimony. The financial relationships drive the medical opinions and treatments in this case.

Further, payments and inflated invoices received by ML Healthcare are not collateral source. The Plaintiff has identified ML Healthcare and CIGNA in her motion. With respect to CIGNA, the plaintiff had health insurance. As part of a negotiated contract with Plaintiff's employer, CIGNA paid medical bills. If there were a difference in the amount billed versus the amount paid, the most that CIGNA could ever recover from the plaintiff if it were an ERISA plan or some other reimbursable plan would be the amount that CIGNA actually paid. Moreover, under Georgia law, unless it is an ERISA plan, a healthcare insurance carrier does not recover any monies unless the Plaintiff has been fully compensated for all economic and non-economic damages.

In contrast, ML Healthcare claims the right to recover the full amount of the inflated bill, even though it has paid substantially less and the doctor has actually received the usual and customary fee for the service. There is no collateral benefit to the Plaintiff. The benefit is solely to the Plaintiff's attorney and ML Healthcare.[4] Indeed for every dollar paid by ML Healthcare, the Plaintiff loses $2.50. Publix submits that the alleged medical damages in this case have been collusively manipulated by chosen physicians affiliated with ML Healthcare and the Plaintiff's attorneys so that the medical damages appear much higher than the usual and customary value of the treatment would be and that none of that difference benefits the Plaintiff, but that all of that difference goes directly to ML Healthcare as profit if the Plaintiff recovers.

The Plaintiff Robin Houston has no right or any interest in the sums being sought that will pass directly to ML Healthcare. Because the Plaintiff has become nothing more than a "pass through" device for ML Healthcare to collect money in this lawsuit, ML Healthcare is the real party in interest and the inflated medical invoices are not collateral source.

In addition, because Publix will offer evidence through experts that the treatment was not necessary and that even if necessary, the medical provider has

[4] In fact, the Plaintiff's attorney regularly does business with ML Healthcare.

received the usual and customary fee, the jury should be able to consider all the evidence in determining the reasonable and necessary value of the medical expenses, including evidence that the medical bills have been unduly inflated because of the financial relationship between the medical providers, ML Healthcare and the Plaintiff's attorneys.

Finally, if the Plaintiff opens the door to such evidence, Defendants reserve the right to revisit this issue with the trial court. Warren v. Ballard, 266 Ga. 408, 410, 467 S.E.2d 891, 893 (1996); Waits v. Hardy, 214 Ga. 495, 496, 105 S.E.2d 719 (1958); Mann v. State, 124 Ga. 760, 53 S.E. 324 (1905).

The Plaintiff's collateral source motion should be denied.

2. REASONABLENESS AND NECESSITY OF MEDICAL EXPENSES

During discovery Publix learned that the Plaintiff had not been provided with any medical bills other than a couple that the Plaintiff testified had been sent to her by mistake. The Plaintiff did not know the amount of the medical expenses. ML Healthcare keeps the medical expenses hidden from the Plaintiff. It is particularly galling that the Plaintiff's attorneys who have a long-standing relationship with ML Healthcare and refuse to make the argument that the ML Healthcare agreement that the Plaintiff's attorneys had the Plaintiff execute is in violation of Georgia law, but

now want the Plaintiff to authenticate and testify that the inflated medical invoices that she has never been privy to, had no knowledge of, or had any knowledge that the medical providers were being paid the usual and customary fee for their treatment of the Plaintiff, but were providing inflated and miscoded medical invoices to generate a profit for ML Healthcare, are reasonable and necessary. It would be absurd to claim that the Plaintiff can authenticate medical bills in this case.

If the Plaintiff is prepared to testify as the reasonableness and necessity of the medical bills, then Publix should be free to explore fully what the Plaintiff knows about the medical bills. Publix should be free to explore whether the Plaintiff has knowledge of what a usual and customary fee for a particular procedure would be and whether her physician has been paid a usual and customary fee. Publix should be free to explore how the medical invoice was created, was there any "special" relationships between her attorneys, the medical providers and ML Healthcare that led to the creation of the medical bills. Publix should be free to explore whether the Plaintiff knows whether the medical bills have been miscoded to generate inflated amounts..

Central to the defense of Publix on the Plaintiff's medical damages is that the Plaintiff's attorneys, ML Healthcare and the medical providers engage in a scheme to inflate medical invoices for the purpose of building damages. Publix submits that the evidence it intends to introduce at trial goes directly to the credibility of the witnesses.

Unless the jury hears all the evidence it will not be able to assess who to believe in arriving at a damages amount, if any amount, is owed. The Plaintiff's Motion in Limine should be denied to the extent she is seeking to limit a thorough cross-examination.

3. PLAINTIFF'S CONTINGENT FEE CONTRACT OR PAINTIFF'S ATTORNEYS SHARING IN ANY JUDGMENT

No objection. The Plaintiff is not seeking attorney's fees as an element of damages in this case.

4. THE TIMING OF HIRING COUNSEL OR FILING SUIT OR NUMBER OF LAWYERS INVOLVED FOR PLAINTIFF

Defendants object to this Motion in Limine. In this case, the facts will show that the incident at Publix occurred on July 24, 2012. The Plaintiff went to work following the incident and worked the very next day. On the third day, however, she met with her attorney and stopped working.

After stopping work, the Plaintiff's medical treatment, as testified to by her, has been directed by her attorneys. The three principal doctors for her alleged neck, shoulder and brain injuries were all selected by her attorneys with the assistance of ML Healthcare, an investor in litigation.

Moreover, the Plaintiff will allege that she sustained a brain injury. Notwithstanding this brain injury, she was able to enter into contracts such as hiring,

firing, and hiring other attorneys. In addition, the Plaintiff and her daughter, along with her attorneys surreptitiously traveled to the Publix store and took photographs of the store.

The fact that the Plaintiff hired attorneys and then stopped working as well as the attorneys directing her medical treatment, including generating alleged medical special damages well in excess of the usual and customary expense for such treatment or services is all relevant and admissible. Those facts tell part of the whole story and have a direct bearing on whether a jury will believe the Plaintiff, believe her injuries, believe what her medical providers have to say, and believe the amount of medical special damages she seeks. While hiring an attorney, in and of itself, may say little; in this case the central role of the attorneys in determining when to stop work, who to treat with, and what contracts to enter into for the payment of "medical treatment" is central to the case. Again, Publix's defense on damages is that the Plaintiff's alleged injuries were not caused by the incident at Publix, but her attorneys have been primarily involved in selecting doctors affiliated with ML Healthcare that would provide testimony for her in exchange for payment. The jury must be told the entire story as it is central to believability and credibility.

5. EXCLUDING EVIDENCE OF THE COURSE OF THE PLAINTIFF ROBIN HOUSTON'S REFERRAL TO HEALTHCARE PROVIDERS

Publix disputes the Plaintiff's alleged injuries and medical expenses. The three principal doctors for the Plaintiff's alleged neck, shoulder and brain injuries were all selected by her attorneys with the assistance of ML Healthcare, an investor in litigation. These doctors were located more than fifty miles from the Plaintiff's home. The doctors were all chosen, Publix submits, because of the interrelated financial relationship among ML Healthcare, the plaintiff's attorneys and the medical provider. In determining whether the Plaintiff's alleged injuries were caused by the fall, whether the Plaintiff is exaggerating her injuries, whether the Plaintiff's medical providers are credible, requires the jury to hear all the facts. The jury must be told the entire story as it is central to believability and credibility.[5]

6. FINANCIAL CIRCUMSTANCES OF THE PARTIES

Publix has no objection to not commenting on the financial circumstances of the parties. However, Publix submits that interrelated financial relationship among ML Healthcare, the plaintiff's attorneys and the medical provider as described above is relevant and admissible. That type of evidence goes directly to believability and

[5] See previous discussions.

credibility and goes directly to one of Publix defenses on damages that this is a trumped up injury and damages case.

7. EVIDENCE OF ANY OTHER CLAIMS MADE BY PLAINTIFF

This motion should be denied. The Plaintiff does not indicate the claims to which she refers. However, to the extent there are other claims, such as a motor vehicle accident resulting in a neck injury, then that claim and complaints are relevant, especially in light of the Plaintiff's allegation that she is disabled.

8. PLAYING THE LOTTERY

Publix does not intend to make any playing the lottery type arguments.

9. EXCLUDE UNPROVEN SUGGESTIONS OF FRAUD, COLLUSION AND CONSPIRACY AMONGST PLAINTIFF, HER MEDICAL PROVIDERS, THEIR ATTORNEYS AND ML HEALTHCARE TO ARTIFICIALLY INFLATE MEDICAL BILLS

For the reasons stated above, the interrelated relationship among the Plaintiff's attorneys, medical providers and ML Healthcare is relevant and central to the defense of Publix on damages. The three principal doctors for the Plaintiff's alleged neck, shoulder and brain injuries were all selected by her attorneys with the assistance of ML Healthcare, an investor in litigation. These doctors were located more than fifty miles from the Plaintiff's home. Publix will submit evidence that the Plaintiff's alleged injuries were not proximately caused by the incident at Publix, that Plaintiff's

medical providers provided unnecessary medical treatment, that the Plaintiff's medical providers did so to continue a lucrative source of referrals from ML Healthcare and Plaintiff's attorneys, that the medical providers were paid the customary and reasonable value of the unnecessary medical services, but in return provided medical invoices greatly inflated and provided causation testimony for the Plaintiff, her attorneys and ML Healthcare. Publix will present evidence that many of the medical bills have been miscoded to create larger invoices and that the invoices are inflated to create a profit to an investor. This is not a collateral source matter where the Plaintiff may potentially be the beneficiary in the difference between an amount billed and the amount paid. In this case, the only beneficiaries are ML Healthcare and the Plaintiff's attorneys. The Plaintiff's attorneys have a long standing relationship with ML Healthcare and the medical providers that they desire to keep hidden from the jury because the relationship necessarily strikes at believability and credibility of the Plaintiff's case. The evidence is admissible and relevant and strikes at the core as whether a jury should believe the testimony of key witnesses, including some of the Plaintiff's primary medical providers.

10. UNRELATED MEDICAL CONDITIONS

The Plaintiff contends that she is unable to return to work and hurts all over. Publix disputes her assessment. However, Publix is not aware of any "unrelated

medical conditions" and the Plaintiff certainly does not identify any "unrelated medical conditions" in her motion. The Plaintiff's medical condition is directly related to this lawsuit and evidence regarding her past, present and future medical conditions are relevant. This motion should be denied.

11. PRIOR OR SUBSEQUENT SETTLEMENTS, SUITS OR CLAIMS

This motion should be denied and the Plaintiff does not identify what settlements, suits or claims to which she refers. Publix is aware of the fact that the Plaintiff had a prior motor vehicle accident and injured her neck. The Plaintiff alleges a neck injury in this case and as such the neck condition is relevant to this lawsuit.

12. THE EFFECT UPON INSURANCE RATES

As Publix understands this motion, Publix states that it does not anticipate making those types of argument.

13. ALTERNATIVE CAUSATION ARGUMENTS

The Plaintiff again asks the court to preclude Publix from advancing arguments, but does not provide any information as to what the Plaintiff specifically is requesting to be precluded. Publix has filed a number of expert reports and has deposed some of the Plaintiff's physicians such as Dr. Hunter, Dr. Ugwonali and Dr. Chitale. The Plaintiff knows that Publix is challenging a whole host of the Plaintiff's contentions in this case. The motion should be denied. The Plaintiff's motion would be analogous to

Publix moving to preclude the Plaintiff's attorneys from commenting on the Plaintiff's alleged injuries until a doctor actually testified at trial. That type of motion would be absurd and the Plaintiff's motion falls into that category.

FAIN, MAJOR & BRENNAN, P.C.

BY: */s/Richard W. Brown*
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CERTIFICATION

Pursuant to LR 7.1(D) NDGa., I certify that this document has been prepared in Times New Roman Font 14 point, as approved by the Court in LR 5.1B, NDGa.

FAIN, MAJOR & BRENNAN, P.C.

BY: */s/Richard W. Brown*
RICHARD W. BROWN
Georgia State Bar No. 089279

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBIN HOUSTON,	:	
	:	
Plaintiff	:	
	:	CIVIL ACTION
v.	:	FILE NO. 1:13-CV-00206-TWT
	:	
PUBLIX SUPER MARKETS, INC.,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that on the this date, I electronically filed the foregoing **RESPONSE OF PUBLIX SUPER MARKETS, INC. TO PLAINTIFF'S MOTIONS IN LIMINE** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

This 4th day of May, 2015.

FAIN, MAJOR & BRENNAN, P.C.

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