

IN THE CIRCUIT COURT FOR THE TWENTY-FIRST JUDICIAL CIRCUIT
KANKAKEE COUNTY, ILLINOIS

SHASTA LEDUC)	
)	
Plaintiff,)	
)	
vs.)	No. 2014-L-9
)	
PEDDINGHAUS CORPORATION,)	
)	
Defendant and)	
Third Party Plaintiff,)	
)	
vs.)	
)	
PKM STEEL SERVICES, INC., a Kansas)	
Corporation)	
)	
Third Party Defendant)	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DEPOSE PLAINTIFF’S
LIABILITY EXPERT IN PERSON**

Plaintiff Shasta Leduc, by and through her undersigned counsel, respectfully asks that this Court deny Defendant Peddinghaus’ request¹ that it conduct the deposition of her liability expert in-person during the global Covid-19 pandemic.

I. INTRODUCTION

1. Plaintiff’s counsel has made the reasonable request that counsel for Defendant Peddinghaus conduct the deposition of her liability expert by videoconference, as he has done with the depositions of her three damages experts, due to the current Covid-19 pandemic and related restrictions.

2. Defense counsel has refused, placing undersigned counsel in the difficult position

¹ For some reason, Peddinghaus’ counsel chose, in the first paragraph of its Motion, to include details of Plaintiff’s **confidential** settlement demand made for mediation purposes in this case. It is well established that offers to settle are confidential, privileged, and should not be disclosed in public court filings. Accordingly, this issue is addressed more fully in the contemporaneously filed Motion for Sanctions.

of being forced to either travel to South Carolina for the deposition or permit Peddinghaus' counsel to be physically present for her expert's deposition while she is not.

3. Plaintiff's counsel has additionally offered a compromise, that the deposition of her liability expert Jeffrey Warren be postponed until such a time that it is safe to travel. In the meantime, Peddinghaus could disclose its remaining experts, and Plaintiff could take their depositions by video. In two-to-three months, when it is safer to travel, Peddinghaus could depose Mr. Warren in person, and then disclose its own liability expert, which would be the last expert for both sides who would need to be deposed (See email suggesting compromise attached as Exhibit 1).

4. This compromise, with an alternative expert deposition schedule, would not significantly impact the timing of the discovery schedule the parties have already agreed to.

5. Peddinghaus has not yet responded with whether or not it agrees to this alternative schedule. However, it seems this is the best option, which will allow both Peddinghaus' counsel to depose Mr. Warren in person while protecting the health of all parties involved.

II. ARGUMENT

A. The Covid-19 Coronavirus Continues to Present a Danger to Human Health

6. In its Motion to Depose, Peddinghaus downplays the current state of the Covid-19 pandemic, by arguing that neither attorney is barred from traveling by either the Illinois Executive Order or the Missouri or South Carolina Orders instituting statewide restrictions.

7. However, scientific and medical experts are warning that the danger posed by the novel coronavirus is far from over. As of the date of this filing, the Centers for Disease Control continues to advise: "Travel increases your chances of getting and spreading COVID-19. CDC recommends you stay home as much as possible, especially if your trip is not essential." (**Exhibit**

2).

8. Courts around the country, including the Court where this case is venued, and the Courts where attorneys for both parties reside, have postponed jury trials through June or July. There is no trial date set in this case.

9. Courts continue to advise against in-person hearings and events. The Kankakee County Administrative Order 2020-17, entered April 29, 2020, and attached as **Exhibit 3**, explains how the Illinois Supreme Court has advised that non-essential, in-person court proceedings may pose a risk to participants, court staff, or the public, and how Courts can avoid this risk by holding proceedings via telephone or video remote appearance.

10. The Supreme Court of Missouri, where undersigned counsel resides, on May 4, 2020, entered an Order (**Exhibit 4**) regarding the State of Missouri easing its stay-at-home restrictions, finding that courts and judges are still encouraged to utilize all available technologies—including teleconference and video conferencing—to conduct court activities, in order to continue to limit the number of in-person proceedings.

11. Several Courts have been faced with issues in discovery related to Covid-19, and have entered Orders supporting depositions by video means:

- a. ***Klein v. Transguard Insurance Company et al., Sarasota County, Florida Circuit Court, (March 31, 2020)*** (denying Defendant’s motion requesting to have his attorney physically present, permitting deposition to go forward by video, explaining “Attorneys for many years prior to COVID-19 have successfully used video conferencing to conduct important depositions. Today is no different, except those video depositions are now becoming virtually ubiquitous.”) (**Exhibit 5**);
- b. ***Schulte v. Park Reserve, LLC, et al., Jackson County, Missouri Circuit Court***

(Filed April 14, 2020) (Defendant objected to the taking of depositions, and Court explained it “strongly urges all counsel during this time, to explore alternatives, that under different circumstances, would be unimaginable (remote depositions via telephone or videoconferencing). The Court relies on counsel’s experience, professionalism and discretion in working toward a resolution without the sacrifice of personal health and safety.”) (**Exhibit 6**);

- c. **New Jersey Asbestos Cases (Issued March 13, 2020)** (Orders plaintiffs’ counsel to make plaintiffs available for depositions by telephone or video and directs that any “expert, corporate representative or fact witness” that must be deposed “should also have video or telephonic opportunity made available,” but advises parties to “ascertain the necessity” of completing such depositions given the suspension of jury trials) (**Exhibit 7**);
- d. ***Lipsey v. Walmart, Inc.* (N.D. Ill. Mar. 20, 2020)** (orders parties to meet and confer to determine which medical provider depositions should go forward; institutes COVID-related protocol requiring proponent of deposition to report to court information regarding proposed deponent, including anticipated involvement in preparation or response to COVID-related public health efforts, and relative importance to case) (**Exhibit 8**), citing *Art Ask Agency v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified in Schedule A Hereto*, No. 20 C 1666 (N.D. Ill. Mar. 18, 2020), where the plaintiff demanded an emergency hearing on its motion for a temporary restraining order, holding:

Meanwhile, the world is in the midst of a global pandemic. The President has declared a national emergency. The Governor has

issued a state-wide health emergency. As things stand, the government has forced all restaurants and bars in Chicago to shut their doors, and the schools are closed, too. The government has encouraged everyone to stay home, to keep infections to a minimum and help contain the fast-developing public health emergency **The world is facing a real emergency. Plaintiff is not.**

(Exhibit 8, p. 3) (emphasis added).

B. Peddinghaus Should Either Take the Deposition By Video or Postpone It Until It is Safe to Travel

12. Peddinghaus fails to explain in its Motion why the deposition of Plaintiff's liability expert constitutes an emergency requiring immediate, in-person attendance.

13. First, Peddinghaus should take the deposition by videographic means, as ordered by the Courts cited above. Plaintiff's counsel does not feel comfortable traveling when the CDC continues to recommend against it, and Courts continue to discourage in-person hearings and trials.

14. Second, there is no trial date set in this matter. If Peddinghaus desires an in-person deposition of Plaintiff's expert, the deposition should occur at a later date. Expert discovery can continue with Peddinghaus disclosing its damages experts now. Plaintiff can then prepare to take their depositions, and the case can continue, with the depositions of Plaintiff's and Peddinghaus' liability experts occurring in-person at a later date, when it is safer for all parties to travel and be in close proximity to others.

15. Plaintiff's counsel does not want Peddinghaus' counsel to be present with her expert witness when she is not. Peddinghaus' Motion explains how its attorney needs to be in the same room as the expert due to the "large amount of documentary, testamentary, and demonstrative evidence" involved (Peddinghaus' Motion, p. 3). Plaintiff's counsel's ability to effectively defend the deposition will be hampered if she is not able to review the same evidence in the same way as opposing counsel and her retained expert.

16. Peddinghaus argues in its Motion that expert depositions are more effective when counsel is in-person with the witness. The undersigned counsel does not disagree with this position. However, it will be Plaintiff's counsel who is at a disadvantage if her expert witness, the court reporter, and defense counsel are all present, while she is not. In order for both counsel to be the most effective, both at taking and defending the deposition, they should either both be present physically, or both be present via videographic means.

III. CONCLUSION

17. No counsel should travel (from either Missouri or Illinois) to South Carolina for the deposition on May 20th. The CDC recommends against it, Covid-19 continues to present a true risk to human health, and there is no trial date in this matter requiring immediate action. Additionally, Plaintiff's counsel has proposed a compromise that will both protect counsel from unnecessary exposure, and permit Peddinghaus to depose her expert in-person.

18. For all these reasons, this Court should deny Peddinghaus' Motion to Depose Plaintiff's Liability Expert in Person.

Respectfully Submitted,

/s/ Nichelle L. Oxley

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify on this 11th day of May, 2020, I emailed the foregoing to the following counsel of record:

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/S/ Nichelle L. Oxley

ATTORNEY FOR PLAINTIFF

EXHIBIT 1

From: [Nichelle L. Oxley](mailto:Nichelle.L.Oxley)
To: [Nichelle L. Oxley](mailto:Nichelle.L.Oxley)
Subject: FW: [EXTERNAL]Re: [EXTERNAL]RE: [EXTERNAL]Re: [EXTERNAL]RE: [EXTERNAL]RE: [EXTERNAL]LeDuc
Date: Monday, May 11, 2020 9:14:45 AM

From: Jordan M. Tank <jmt@lipelyons.com>
Sent: Friday, May 8, 2020 6:16 PM
To: Nichelle L. Oxley <nlo@hfmlegal.com>
Cc: Sahrish Moyeed <sm@lipelyons.com>; Liz Vela <liz@lipelyons.com>; Lindsey T. Gallman <ltg@hfmlegal.com>; David Mueller <dmueller@cassidymueller.com>; Kerry Cassidy <kcassidy@cassidymueller.com>; Toby P. Mulholland <tpm@rkminjurylaw.com>
Subject: [EXTERNAL]Re: [EXTERNAL]RE: [EXTERNAL]Re: [EXTERNAL]RE: [EXTERNAL]RE: [EXTERNAL]LeDuc

Thanks for reaching out about a compromise, I'll let you know next week if that'll work for us. My initial thoughts are that pushing Warren back too far may put his dep in the second wave of CV we're supposed to get - May 20 might be the best option bc it's right after the first wave has started to subside. Judge Albrecht might not want to push it back the dep either. In any event, I'll let you know.

Jordan M. Tank
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From: Nichelle L. Oxley <nlo@hfmlegal.com>
Sent: Friday, May 8, 2020 4:23:56 PM
To: Jordan M. Tank <jmt@lipelyons.com>
Cc: Sahrish Moyeed <sm@lipelyons.com>; Liz Vela <liz@lipelyons.com>; Lindsey T. Gallman <ltg@hfmlegal.com>; David Mueller <dmueller@cassidymueller.com>; Kerry Cassidy <kcassidy@cassidymueller.com>; Toby P. Mulholland <tpm@rkminjurylaw.com>
Subject: RE: [EXTERNAL]RE: [EXTERNAL]Re: [EXTERNAL]RE: [EXTERNAL]RE: [EXTERNAL]LeDuc

Jordan, I'm trying to think of a compromise with respect to Warren's depo. I don't disagree with you that in-person depositions are more effective, and I won't be arguing as such in my opposition to your motion.

Could we adjust our scheduling order a little, so expert discovery continues, except we wait a few months for you to depose Warren in person? It's unconventional, but I think the judge would support us due to the concerns surrounding covid-19.

So you would go ahead and disclose your damages experts, and I could start deposing them by video. Then in a couple months you could take Warren in person, and disclose your liability expert after that. All that would be left would be for me to depose your liability expert, and we'll wind up in around the same place in around the same time.

Let me know your thoughts, I'm hoping to reach a middle ground here.

EXHIBIT 2



Coronavirus Disease 2019 (COVID-19)

Coronavirus and Travel in the United States

The COVID-19 outbreak in United States is a rapidly evolving situation. The status of the outbreak varies by location and state and local authorities are updating their guidance frequently. The [White House's Opening Up America Again](#) plan means some parts of the country may have different guidance than other areas. Check with the [state or local authorities](#) where you are, along your route, *and* at your planned destination to learn about local circumstances and any restrictions that may be in place.

Travel Recommendations

Cases of coronavirus disease (COVID-19) have been reported in all states, and some areas are experiencing community spread of the disease. Travel increases your chances of getting and spreading COVID-19.

CDC recommends you [stay home](#) as much as possible, especially if your trip is not essential, and [practice social distancing](#) especially if you are at [higher risk of severe illness](#). **Don't travel if you are sick** or travel with someone who is sick.

Essential Errands (within your local area)

As communities across the United States take steps to slow the spread of COVID-19 by limiting close contact, people are facing new challenges and questions about how to safely run essential errands to meet basic household needs, like:

- Grocery shopping
- Getting delivery or takeout food
- Banking
- Getting gasoline
- Going to the doctor or getting medicine

CDC provides advice about how to meet these [essential household needs](#) in a safe and healthy manner.

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- Grocery shopping
- Getting delivery or takeout food
- Banking
- Getting gasoline
- Going to the doctor or getting medicine

CDC provides advice about how to meet these [essential household needs](#) in a safe and healthy manner.

Essential Travel (outside your local area)

Some travel may also be essential, like:

- Travel to provide medical or home care to others

- Travel necessary for a job considered an essential service

The following travel recommendations provide advice about how to prevent getting and spreading COVID-19 if you *must* travel. **Don't travel if you are sick** or plan to travel with someone who is sick.

Considerations if You *Must* Travel

CDC recommends you [stay home](#) as much as possible and avoid close contact, especially if you are at [higher risk of severe illness](#). If you *must* travel, there are several things you should consider before you go.

Protect yourself and others during your trip:

- Clean your hands often.
 - [Wash your hands](#) often with soap and water for at least 20 seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
 - If soap and water are not readily available, **use a hand sanitizer that contains at least 60% alcohol**. Cover all surfaces of your hands and rub your hands together until they feel dry.
- **Avoid touching your eyes, nose, and mouth.**
- Avoid close contact with others.
 - Keep 6 feet of physical distance from others.
 - Avoiding close contact is especially important if you [are at higher risk of getting very sick](#) from COVID-19.
- [Wear a cloth face covering in public.](#)
- Cover coughs and sneezes.
- Pick up food at drive-throughs, curbside restaurant service, or stores. Do not dine in restaurants if that is prohibited by state or local guidance.

Types of Travel

Some types of travel (bus, plane, train) may require sitting next to others for a period of time. Travel may also expose you to new parts of the country with differing levels of community transmission. And, if you're infected, your travel may put others at risk— along the way, at your destination, and when you return home.

If you *must* travel, consider the following risks you might face, depending on what type of travel you are planning:

- **Air travel:** Because of how air circulates and is filtered on airplanes, most viruses and other germs do not spread easily on flights. However, there may be a risk of getting COVID-19 on crowded flights if there are other travelers on board with COVID-19.
- **Bus or train travel:** Sitting or standing within 6 feet of others for a prolonged period of time can put you at risk of getting or spreading COVID-19.
- **Car travel:** The stops you need to make along the way could put you and others in the car with you in close contact with others who could be infected.
- **RV travel:** Traveling by RV means you may have to stop less often for food or bathrooms, but RV travelers typically have to stop at RV parks overnight and other public places to get gas and supplies. These stops may put you and those with you in the RV in close contact with others who could be infected.

State and Local Travel Restrictions or Orders

CDC recommends you [stay home](#) as much as possible and avoid close contact, especially if you are at [higher risk of severe illness](#). If you *must* travel, follow any state and local travel restrictions currently in place. It is possible that some state and local governments may put in place travel restrictions, stay-at-home or shelter-in-place orders, mandated quarantines upon arrival, or even state border closures while you are traveling. For more information and travel guidance, check with the [state or local health department](#) where you are, along your route, *and* at your planned destination. Just because there are no restrictions at the time you plan to leave does not mean there won't be restrictions in place when you arrive.

Restrictions at the time you plan to leave does not mean there won't be restrictions in place when you arrive.

Lodging

CDC recommends you [stay home](#) as much as possible and avoid close contact, especially if you are at [higher risk of severe illness](#). Staying in temporary accommodations (hotels, motels, and rental properties) may expose you to the virus through person-to-person contact and possibly through contact with contaminated surfaces and objects.

If you *must* stay in a hotel, motel, or rental property:

- Take the same [steps](#) you would in other public places—for example, avoid close contact with others, wash your hands often, and wear a cloth face covering.
- When you get to your room or rental property, [clean and disinfect](#) all high-touch surfaces. This includes tables, doorknobs, light switches, countertops, handles, desks, phones, remote controls, toilets, and sink faucets.
 - Bring an EPA-registered disinfectant and other personal [cleaning supplies](#), including cloths and disposable gloves.
- Wash any plates, cups, or silverware (other than pre-wrapped plastic) before using.

Road Trips

CDC recommends you [stay home](#) as much as possible and [practice social distancing](#), especially if you are at [higher risk of severe illness](#). However, if you must travel, be aware that many businesses (such as restaurants and hotels) may be closed.

Anticipate your needs before you go:

- Prepare food and water for the road. Pack non-perishables in case restaurants and stores are closed.
- Bring any medicines you may need for the duration of your trip.
- Pack a sufficient amount of alcohol-based hand sanitizer (at least 60% alcohol) and keep it in a place that is readily available.
- Book accommodations in advance if you *must* stay somewhere overnight.
 - Plan to make as few stops as possible, but make sure you rest when you feel drowsy or sleepy.
 - Bring an EPA-registered disinfectant and other personal [cleaning supplies](#).

Don't travel if you are sick or plan to travel with someone who is sick.

Frequently Asked Questions

Is it safe to travel to visit family or friends?

CDC recommends you [stay home](#) as much as possible and [practice social distancing](#). Traveling to visit friends and family increases your chances of getting and spreading COVID-19. It is possible for someone to have COVID-19 and spread it to others, even if they have no symptoms. Getting infected may be especially dangerous if you or your loved ones are at [higher risk for severe complications from COVID-19](#). People at higher risk for complications need to take [extra precautions](#).

Although it can be hard to remain apart from loved ones during challenging or stressful times, try to connect with them in other ways, using video chats or phone calls.

Is it safe to travel to campgrounds/go camping?

CDC recommends you [stay home](#) as much as possible and avoid close contact, especially if you are at [higher risk of severe illness](#). Going camping at a time when much of the United States is experiencing community spread of COVID-19 can pose a risk to you if you come in close contact with others or share public facilities at campsites or along the trails. This is because it is possible for someone to have COVID-19 and spread it to others, even if they have no symptoms. Exposure may be especially unsafe if you are at [higher risk for severe complications from COVID-19](#) and are planning to be in remote areas, far away from medical care. Also be aware that many local, state, and national public parks have been temporarily closed due to COVID-19.

More Information

- [Cases in the U.S](#)
- [CDC's COVID Data Tracker: Maps, charts, and data provided by CDC](#)
- [Running Essential Errands](#)
- [Visiting Parks & Recreational Facilities](#)
- [People Who Need to Take Extra Precautions](#)

Page last reviewed: May 8, 2020

EXHIBIT 3

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE TWENTY-FIRST CIRCUIT
KANKAKEE COUNTY, ILLINOIS

ADMINISTRATIVE ORDER 2020-17

WHEREAS, the Judges of the 21st Judicial Circuit have been monitoring and responding to the COVID-19 pandemic. This is an ever-changing situation with daily, if not hourly updates. The Illinois Supreme Court recommends that courts follow the CDC's directives to avoid large gatherings and practice "social distancing."

WHEREAS, the Supreme Court granted Chief Judges of each circuit the authority to further extend the timeframe for trial continuances; and

WHEREAS, Governor Pritzker has stated he will enter a modified executive order extending his previous Stay At Home Order to May 31, 2020; and

WHEREAS, the Governor has indicated his modified executive order will contain the following provisions: *FACE COVERINGS: Beginning on May 1, individuals will be required to wear a face-covering or a mask when in a public place where they can't maintain a six-foot social distance. Face-coverings will be required in public indoor spaces, such as stores. This new requirement applies to all individuals over the age of two who are able to medically tolerate a face-covering or a mask.*

The Illinois Supreme Court has advised all courts that non-essential in-person court proceedings may pose a risk to participants, court staff, or the public. Courts may avoid risk by rescheduling court events to a later date, especially jury trials and large docket calls, or, alternatively, by holding proceedings via telephone or video remote appearance where possible.

Furthermore, essential proceedings, such as criminal proceedings, juvenile temporary custody hearings, temporary restraining orders/temporary injunctions, juvenile detention hearings, family violence protective orders, and certain mental health proceedings, shall occur in a manner consistent with the policy of mitigating the impact of COVID-19. While keeping the courts available to the fullest extent, all proceedings must be consistent with public safety as well as any further policy directives from the Supreme Court and the local chief judge, as well as federal, state, and local public health advisories.

As a result of, and consistent with the recommendations of the Illinois Supreme Court, many of the civil and criminal cases in the 21st Judicial Circuit, consisting of Iroquois and Kankakee Counties, will be postponed until no sooner than June 1, 2020.

THEREFORE, IT IS HEREBY ORDERED:

- No jury trials in civil or criminal matters will begin until June 1, 2020.
- For all adult criminal cases, felony, misdemeanor, and traffic, most trials and hearings scheduled for a date before June 1, 2020, are postponed to a future date. *See Court Schedule Exhibit A, B, & C.* Hearings that will proceed prior to June 1, 2020, include bail hearings, arraignments, preliminary hearings, initial and second-look bail hearings, statutory summary suspension

hearings, victim orders of protection, emergency motions, medical recognizance hearings, juvenile detention hearings, shelter care hearings, mental health hearings, bond reduction motions, continuation of subpoenas, proceedings involving in custody defendants, and Saturday/Holiday morning bond call hearings.

- In addition, until June 1, 2020, low-risk and medium-risk adults on probation do not need to meet with their probation officer in person. Probation officers have contacted clients to inform them that they will schedule meetings to be held by phone conversation. Clients deemed high-risk will still be required to report to their probation officers in person.
- For delinquency and criminal proceedings involving juveniles, the only matters that will occur prior June 1, 2020, are juveniles in custody and detention hearings that determine if a juvenile is held in custody while the case is pending.
- Judges will hear cases of child abuse or neglect in which the state seeks protective custody of a child, and judges will hear emergency motions in which children are allegedly abused in foster care.
- For domestic violence matters, petitioners may seek orders of protection at any time. Litigants may also seek an order of protection related to an existing civil domestic relations case (such as dissolution of marriage).
- For the period of time prior to June 1, 2020, all civil matters not deemed an emergency are postponed to a future date. Emergency requests in civil matters will be permitted if allowed by the presiding judge.
- No orders for an eviction or foreclosure will be entered prior to June 1, 2020.
- Civil lawsuits may still be filed in person or via electronic filing.
- Marriages will not be performed at the courthouse until further notice.
- All courthouse tours, teen court, mock trials or other public events, scheduled between now and Friday, May 29 are canceled. Future tours may be scheduled through the Circuit Clerk.
- Some Courtrooms have standing orders governing their cases.
 - For further information on court dates for **Kankakee County**, contact your attorney, public defender, or Circuit Clerk at (815) 936-5700, Ext. #1 for criminal and civil cases or Ext. #2 for traffic cases. Please update your current address for notification of future court dates. Check Courtview (<http://eaccess.k3county.net/eservices/>) for updates of court hearings.
 - For further information on court dates for **Iroquois County**, contact your attorney, public defender or Circuit Clerk at (815) 432-6950 for criminal and civil cases and please call (815) 432-6952 for traffic cases. Please update your current address for notification of future court dates. Check JUDICI.COM for updates of court hearings

The following individuals **should not** enter the courthouse:

- Those who have been out of the country within the last 21 days
- Reside or have close contact with anyone who has been out of the United States within the last 21 days;
- Have been directed with, or have had close contact with anyone diagnosed with, COVID-19, or
- Have flu-like symptoms including fever, cough or shortness of breath

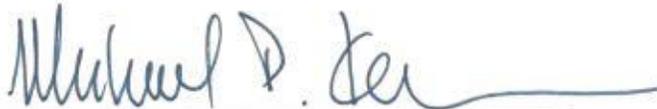
IT IS FURTHER ORDERED in the case of criminal proceedings, any delay resulting from this emergency continuance order shall not be attributable to either the State or the defendant for purposes of section 103-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5 (West 2018)).

IT IS FURTHER ORDERED, pursuant to the authority granted to Chief Judges in Supreme Court Oder M.R. 30370, trial continuances may be further extended as stated in Order M.R. 30370.

IT IS FURTHER ORDERED that the general public shall make a good faith effort to comply with the Governor's mandate to wear a face-covering or mask when entering the Kankakee and Iroquois County Courthouse.

This order supersedes the Court's previously entered Administrative Orders 2020-5, 2020-6, 2020-8, 2020-9, and 2020-15.

Dated: April 29, 2020

A handwritten signature in blue ink, appearing to read "Michael D. Kramer", with a long horizontal flourish extending to the right.

MICHAEL D. KRAMER
Chief Judge

COURT SCHEDULE, EXHIBIT A*

CURRENT COURT DATE:		NEW COURT DATE:
Monday, March 23, 2020	————>	Monday, May 18, 2020
Tuesday, March 24, 2020	————>	Tuesday, May 19, 2020
Wednesday, March 25, 2020	————>	Wednesday, May 20, 2020
Thursday, March 26, 2020	————>	Thursday, June 04, 2020
Friday, March 27, 2020	————>	Friday, June 05, 2020
Monday, March 30, 2020	————>	Monday, June 1, 2020**
Tuesday, March 31, 2020	————>	Tuesday, June 09, 2020
Wednesday, April 01, 2020	————>	Wednesday, June 10, 2020
Thursday, April 02, 2020	————>	Thursday June 4, 2020
Friday, April 03, 2020	————>	Friday June 5, 2020
Monday, April 06, 2020	————>	Monday, June 1, 2020
Tuesday, April 07, 2020	————>	Tuesday, June 02, 2020
Wednesday, April 08, 2020	————>	Wednesday, June 03, 2020
Thursday, April 09, 2020	————>	Thursday, June 04, 2020
Friday, April 10, 2020	————>	Friday, June 05, 2020
Monday, April 13, 2020	————>	Monday, June 08, 2020
Tuesday, April 14, 2020	————>	Tuesday, June 09, 2020
Wednesday, April 15, 2020	————>	Wednesday, June 10, 2020
Thursday, April 16, 2020	————>	Thursday, June 11, 2020
Friday, April 17, 2020	————>	Friday, June 12, 2020
Monday, April 20, 2020	————>	Monday, June 15, 2020
Tuesday, April 21, 2020	————>	Tuesday, June 16, 2020
Wednesday, April 22, 2020	————>	Wednesday, June 17, 2020
Thursday, April 23, 2020	————>	Thursday, June 18, 2020
Friday, April 24, 2020	————>	Friday, June 19, 2020
<p>*This schedule applies to all criminal and traffic proceedings pending in Courtrooms 109, 200, 300 and 309 of the Kankakee County Courthouse. Statutory Summary Suspension hearings are not continued pursuant to this schedule and will proceed on their originally scheduled court date.</p>		
<p>** May 25, 2020, is a court holiday.</p>		<p>Indicates Jury Week</p>

COURT SCHEDULE, EXHIBIT B*

CURRENT COURT DATE:		NEW COURT DATE:
Monday, April 27, 2020	————>	Monday, July 06, 2020
Tuesday, April 28, 2020	————>	Tuesday, July 07, 2020
Wednesday April 29, 2020	————>	Wednesday, July 08, 2020
Thursday, April 30, 2020	————>	Thursday, July 09, 2020
Friday, May 1, 2020	————>	Friday, July 10, 2020
Monday, May 4, 2020	————>	Monday, July 13, 2020
Tuesday, May 05, 2020	————>	Tuesday, July 14, 2020
Wednesday, May 06, 2020	————>	Wednesday, July 15, 2020
Thursday, May 07, 2020	————>	Thursday, July 16, 2020
Friday, May 08, 2020	————>	Friday, July 17, 2020
Monday, May 11, 2020	————>	Monday, July 20, 2020
Tuesday, May 12, 2020	————>	Tuesday, July 21, 2020
Wednesday, May 13, 2020	————>	Wednesday, July 22, 2020
Thursday, May 14, 2020	————>	Thursday, July 23, 2020
Friday, May 15, 2020	————>	Friday, July 24, 2020
<p>*This schedule applies to all criminal and traffic proceedings pending in Courtrooms 109, 200, 300 and 309 of the Kankakee County Courthouse. Statutory Summary Suspension hearings are not continued pursuant to this schedule and will proceed on their originally scheduled court date.</p>		
<p>** May 25, 2020, is a court holiday.</p>		<p>Indicates Jury Week</p>

COURT SCHEDULE, EXHIBIT C*

CURRENT COURT DATE:		NEW COURT DATE:
Monday, May 18, 2020	————▶	Monday, July 06, 2020
Tuesday, May 19, 2020	————▶	Tuesday, July 28, 2020
Wednesday May 20, 2020	————▶	Wednesday, July 29, 2020
Thursday, May 21, 2020	————▶	Thursday, July 30, 2020
Friday, May 22, 2020	————▶	Friday, July 31, 2020
Monday, May 25, 2020	————▶	XXXXXXXXXX
Tuesday, May 26, 2020	————▶	Tuesday, August 04, 2020
Wednesday, May 27, 2020	————▶	Wednesday, August 05, 2020
Thursday, May 28, 2020	————▶	Thursday, August 06, 2020
Friday, May 29, 2020	————▶	Friday, August 07, 2020
*This schedule applies to all criminal and traffic proceedings pending in Courtrooms 109, 200, 300 and 309 of the Kankakee County Courthouse.		
** May 25, 2020, is a court holiday.		Indicates Jury Week

EXHIBIT 4



SUPREME COURT OF MISSOURI

en banc

May 4, 2020
Effective May 16, 2020

In re: Operational Directives for Easing COVID-19 Restrictions on In-Person Proceedings

ORDER

This Order supersedes this Court's order regarding COVID-19 dated April 17, 2020.

On March 13, 2020, national and state emergencies were declared following the classification of COVID-19 as a pandemic. In response, the Supreme Court of Missouri announced the implementation of precautionary measures to combat the spread of the disease to the public and the employees of the Missouri judiciary, while ensuring that essential services remained available and Missouri courts continued to fulfill their constitutional responsibilities.

Now, as the State of Missouri and local governments begin the process of easing stay-at-home, social distancing, and other restrictions, the Court enters the following Order and Operational Directives applicable to all appellate and circuit courts – including all associate, family, juvenile, treatment, municipal, and probate divisions. Effective

May 16, 2020, and pursuant to this Court's constitutional authority to supervise the administration of the state judicial system, *see* Mo. Const. art. V, §§ 4.1, 8, court activity in all appellate and divisions of the circuit courts shall be limited and restricted pursuant to the attached Operational Directives. Despite these restrictions, the primary goal and principal purpose of this and all prior COVID-19 related orders is that the courts of the State of Missouri shall remain open, available, and able to carry out the core, constitutional functions of the Missouri judiciary as prescribed by law and continue to uphold the constitutional rights of litigants seeking redress in any Missouri court. Each circuit court should work with local law enforcement, judiciary partners, and county health agencies to ensure that, to the extent possible, courthouses remain accessible to carry out time-sensitive in-person proceedings and other essential constitutional functions.

In all judicial proceedings, courts and judges are encouraged to utilize all available technologies – including teleconferencing and video conferencing – to conduct court activities remotely in order to limit the number of in-person proceedings conducted in courthouses. Any local, criminal, or civil rules that would impede a court clerk or judge's ability to utilize such technologies are hereby suspended for the duration of this Order.

During the duration of this Order, judges presiding over a civil case or matter may exercise their discretion to waive, for good cause shown, any filing deadlines or time limitations set through Missouri's e-filing system or by court order, local rule, or Missouri Supreme Court Rules 41 through 81. This authorization does not apply to any deadline or time limitations set by a statutory or constitutional provision. Each circuit and

appellate court should adopt measures to ensuring timely filing by pro se litigants who lack access to Missouri's e-filing system. Likewise, courts with public access computer terminals should devise procedures for allowing litigants otherwise lacking internet access to be able to use such computers for matters pertaining to pending litigation.

If it becomes necessary to temporarily close any courthouse during the duration of this Order, the presiding judge of that circuit or chief judge of that court shall develop procedures for ensuring the court remains accessible by telephone, e-mail, and regular mail to the extent possible during regular business hours. The Supreme Court of Missouri should be notified immediately of the closing of any courthouse, and notice of such closings should be disseminated to the local media, posted on the courthouse doors, and made available electronically.

Furthermore, for the health and safety of its employees, each court is instructed to post on the courthouse doors and make available electronically a COVID-19 Notice prohibiting access to the premises for individuals who have been exposed to or are exhibiting symptoms of COVID-19. The COVID-19 Notice should list necessary contact information for individuals not authorized to enter the premises to have remote access to the administration of justice. In addition, the COVID-19 Notice should advise of the social distancing, occupancy rate and other precautionary restrictions taken inside the court facility.

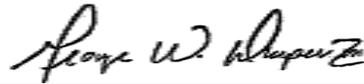
In-person Supreme Court committee meetings and judicial education seminars sponsored by the Coordinating Commission for Judicial Education are suspended. If

possible, such seminars and meetings should be conducted by teleconferencing or rescheduled to a later date.

This Order will remain in effect until rescinded or amended by order of this Court as circumstances warrant.

This Order is intended to be interpreted broadly for protection of the public from the risks associated with COVID-19.

Day – to – Day



GEORGE W. DRAPER III
Chief Justice

EXHIBIT 5

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

ROBIN KLEIN ,

Plaintiff,

v.

CASE NO.: 2018 CA 006742 NC

TRANSGUARD INSURANCE
COMPANY OF AMERICA, INC., et
al.,

Defendants.

**ORDER DENYING JEROME PIVNIK’S MOTION FOR
A PROTECTIVE ORDER REGARDING HIS APRIL 2, 2020 DEPOSITION**

BEFORE THE COURT without a hearing in 2018-CA-6742 is Defendant Jerome Pivnik’s Motion for a Protective Order Regarding his April 2, 2020 Deposition [DIN 131].[1] The Court also received and reviewed Plaintiff Robin Klein’s opposition [DIN 133]. The Court is very familiar with this case and the extensive procedural history in not only in the 2018 case but in the 2013 case as well.

Mr. Pivnik seeks to delay his deposition to allow his attorneys to physically be present with him during his deposition, which cannot be accomplished due to on-going COVID-19 pandemic as well as various executive branch agency orders restricting travel and assembly. In contrast, Plaintiff’s opposition lays out well the struggles associated with setting Mr. Pivnik’s deposition.

The Court notes the *only* basis for Mr. Pivnik’s motion is to permit the physical contact between himself and his attorneys. He concedes, though, there is no rule of law requiring this. Attorneys for many years prior to COVID-19 have successfully used video conferencing to conduct important depositions. Today is no different, except those video depositions are now becoming virtually ubiquitous. Mr. Pivnik will still have his attorney “present,” it just will be by video.

Mr. Pivnik's motion lays out no prejudice to Mr. Pivnik should the deposition continue as scheduled for a video deposition. The Court denies Mr. Pivnik's motion.

DONE AND ORDERED in Sarasota County, Florida, on March 31, 2020.

[1] The Court is filing this Order in both cases.


3/31/2020 12:21 PM 2018 CA
006742 NC
e-Signed 3/31/2020 12:21 PM 2018 CA 006742 NC
CIRCUIT JUDGE

SERVICE CERTIFICATE

On Monday, March 31, 2020, the Court caused the foregoing document to be served via the Clerk of Court's case management system, which served the following individuals via email (where indicated). On the same date, the Court also served a copy of the foregoing document via First Class U.S. Mail on the individuals who do not have an email address on file with the Clerk of Court:

Jordan M. Thompson, Esq.
jthompson@flalawyer.net

Zachary Williams, Esq.
zwilliams@flalawyer.net
cbaker@flalawyer.net
jdearborn@flalawyer.net

Daniel Shapiro, Esq.
daniel.shapiro@csklegal.com

D. Michael Arendall, Esq.
dennis.arendall@csklegal.com

James D. Dreyer, Esq.
jimdreyer@verizon.net

Jeffrey M. Liggio, Esq.
jliggio@liggiolaw.com
emailservice@liggiolaw.com
jcornell@liggiolaw.com

EXHIBIT 6

Interrogatory 3 to Park Reserve, LLC sought the identity of members of Park Reserve, LLC, along with basic information about each member:

For each person or entity who is or was a member of Park Reserve, LLC at any time on or after February 28, 2013, identify the following:

- a. Their name;
- b. If member of Park Reserve, LLC, before or after² February 28, 2013;
- c. Whether they are a current or former member;
- d. If they are a former member, did membership terminate before or after³ February 28, 2013;
- e. Their last known address; and,
- f. For each current member of Park Reserve, LLC, identify their current membership share (percentage);
- g. Whether they have, or had at any time, authority to make decisions on behalf of Park Reserve, LLC independent of any other member.

Park Reserve, LLC objected on temporal scope grounds, on relevance grounds, and on the grounds that this request has more than two sub-parts. These objections are all **OVERRULED**.

Interrogatory 4 asked Park Reserve, LLC to describe the nature of its relationship with Interstate Underground:

Describe the nature of YOUR relationship, if any, with Interstate Underground Warehouse & Industrial Park, Inc. If that relationship has changed at any time on or after February 28, 2013, describe the date, nature, and reason for each change.

Park Reserve, LLC did not object to this request, but it also has not responded. It is ordered to respond within **FOURTEEN (14) DAYS** of the date of this Order.

Interrogatory 5 asked Park Reserve, LLC to identify the individuals responsible for handling consumer complaints:

Identify, by name and job title, all persons who were responsible for reviewing, investigating, and/or responding to consumer complaints YOU received on or after February 28, 2013. If any of these persons are no longer in YOUR employ, also identify their last known cell phone number (or home phone, if cell phone is unavailable) and last known residential address.

Defendant objected to the temporal scope of this request, along with a relevance objection, and as having more than two subparts. These objections are **OVERRULED**.

² If on or after February 28, 2013, specify date of membership.

³ Same as footnote 2

Interrogatory 6 is the same for both Park Reserve, LLC and Interstate Underground, and asked for any statements made by Plaintiffs which contradict any allegations in the Petition:

If YOU contend one or both of PLAINTIFFS⁴ made any statements against interest, admissions, and/or statements which contradict, in any way, any of the allegations made in the Petition, identify what was said, the date and time one or both of PLAINTIFFS made the statement/admission, and all persons who were present at the time of the statement/admission.

Missouri Supreme Court Rule 56.01(b)(3) expressly entitles Plaintiffs to this discovery, and accordingly any objection to this request is **OVERRULED**.

Interrogatory 7 asked for the identity of any architects, engineers, and consultants used as part of the conversion of the Trinity Lutheran Hospital into Park Reserve:

Identify any and all architects, engineers, and consultants YOU used at any phase during the remodel or construction of Park Reserve. For each such person or entity, provide their name, last known address, last known telephone number, date(s) of work, and nature of work done.

Defendants objected on the basis of temporal scope and as seeking irrelevant information in that it relates to the other buildings of Park Reserve. These objections are **OVERRULED**.

Interrogatory 8 was the same for Park Reserve, LLC and Interstate Underground, and asked for the identification of any policies which, if followed, could or would prevent false disclosures or representations about issues such as amenities, roof leaks, and/or mold:

Identify and describe in detail all policies, practices, and procedures, written or unwritten, which, if followed, could or would have prevented a false and/or inaccurate disclosure of property amenities, failure to disclose water leakage from the roof, and/or failure to disclose the presence of mold at Park Reserve to PLAINTIFFS prior to their purchase of the CONDO from YOU, including what steps were to be taken, by whom, when, and any oversight or enforcement mechanism(s) for the policies, practices, and/or procedures.

Defendants objected to this request as argumentative, speculative, assuming facts not in evidence, and as having more than 2 sub-parts. These objections are **OVERRULED**.

Interrogatory 9 asked for the identity of any of Park Reserve, LLC's employees or agents

⁴ PLAINTIFFS was defined to refer individually and collectively to the two named Plaintiffs.

who interacted with Plaintiff, along with the training they received (if any):

For each of YOUR employee(s), agent(s) (or other persons acting on YOUR behalf) who interacted with one or both of PLAINTIFFS, identify and describe all training they received concerning disclosure of property amenities and potential issues at a property to potential buyers, including when they received that training, what that training entailed, how long that training lasted, who trained them, and any oversight measures to ensure that the training was effective.

Defendant objected to this request only on the basis that it contains more than 2 sub-parts. This objection is **OVERRULED**.

Interrogatory 10 asked for the identification of anyone who interacted with Plaintiffs while acting at Park Reserve, LLC's instruction. If Defendants cannot produce those people without the need for a subpoena, this request also asked for their contact information:

Identify each of YOUR employee(s), agent(s), independent contractor(s), and other persons acting on YOUR behalf or instruction who interacted with one or both of PLAINTIFFS. For each person whom YOU cannot or will not produce for a deposition without the need for a subpoena, also identify their last known cell phone number and last known address.

Defendant did not object to this request, it simply did not respond. It is ordered to respond within **FOURTEEN (14) DAYS** of the date of this Order.

Interrogatory 11 asked Park Reserve, LLC to identify what representations it made to Plaintiffs about the amenities, roof leak, and mold, along with the date of each representation and who made the representations:

Identify all representation(s) YOU, or any person(s) or entity(ies) acting on YOUR behalf or instruction, made to one or both of PLAINTIFFS concerning property amenities, water leakage from the roof, and/or the presence of mold at Park Reserve, the date of the representation, and who made the representation.

Defendant objected to this request only on the basis that it contains more than 2 sub-parts. This objection is **OVERRULED**.

Interrogatory 12 asked Park Reserve, LLC to identify all steps it took to maintain, repair, upgrade, or replace the roof of the Yellowstone building (in which Plaintiffs reside). If those steps involved outside contractors, it requires the identification of the contractors and basic information

about those contractors:

Identify all steps taken to repair, maintain, upgrade, and/or replace the roof of the Yellowstone building at Park Reserve, along with the date of each step and who took the step. If any outside contractors were used, identify the name, last known address, last known telephone number, date(s) of service, and nature of work done, for any and all such contractors.

Defendant objected to this request only on the basis that it contains more than 2 sub-parts. This objection is **OVERRULED**.

Interrogatory 13 asked Park Reserve, LLC to identify everything it did to attempt to remediate mold at Park Reserve, including in any common areas:

Identify all steps taken to remediate the presence and/or growth of mold in any condo and/or common space at Park Reserve, along with the date of each step and who took the step. If any outside contractors were used, identify the name, last known address, last known telephone number, date(s) of service, any mold remediation certifications, and nature of work done, for any and all such contractors.

Defendant objected to this request on the basis of temporal scope, relevance, and as having more than 2 sub-parts. These objections are **OVERRULED**.

Interrogatory 14 asked Park Reserve, LLC to identify all of its agents and employees who participated in mold remediation at Park Reserve:

For any of YOUR agents and/or employees who assisted, supervised, or otherwise participated in mold remediation, including drywall removal, within the CONDO⁵ or any other condo and/or common space within Park Reserve, identify any mold remediation certifications and mold remediation training for each person.

Defendant objected to this request on the basis of temporal scope, relevance, and as having more than 2 sub-parts. These objections are **OVERRULED**.

Interrogatory 15 asked Park Reserve, LLC to identify all of its maintenance personnel who performed any maintenance, repair, or remediation work at Park Reserve:

Identify all of YOUR maintenance personnel who have performed any maintenance, repair, and/or remediation work at Park Reserve on or after February 28, 2013. If any of those personnel are no longer in your employ, identify the date they left, the reason they left, and their last known address.

⁵ CONDO was defined to refer to the specific unit in which Plaintiffs reside.

Defendant objected to this request on the basis of temporal scope, relevance, and as having more than 2 sub-parts. These objections are **OVERRULED**.

Document Requests

Document Request 2 asked Park Reserve, LLC to produce all advertisements pertaining to amenities at Park Reserve dating back to February 28, 2013:

A copy of all advertisements YOU posted and/or utilized at any time on or after February 28, 2013, which discuss or disclose any current or future amenities at Park Reserve.

Defendant objected to this request on the basis of temporal scope and relevance as to the other buildings. These objections are **OVERRULED**.

Document Request 4 asked for Park Reserve, LLC's Operating Agreement, including any modifications:

A copy of YOUR current LLC operating agreement. If YOUR operating agreement has been modified at any time on or after February 28, 2013, produce a copy of each modification.

Defendant initially objected to this request, but later produced portions of the Operating Agreement. Plaintiffs posit that the Operating Agreement, as produced by Defendant, is incomplete. To the extent there are missing pages, Defendant is ordered to produce a complete copy. Further, if there have been any modifications to the Operating Agreement, Defendant shall produce those modifications.

Document Request 5 asked for a copy of Park Reserve, LLC's bylaws:

A copy of YOUR current bylaws. If YOUR bylaws have been modified at any time on or after February 28, 2013, produce a copy of each modification.

Defendant initially objected, and then later supplemented "without waiving" its objections, claiming that there are no responsive documents. The Court orders Defendant produce (if any) all documents withheld on the basis of the objections.

Document Request 6 asked for all disclosure documents Park Reserve, LLC gave to

Plaintiffs:

A copy of all disclosure documents YOU (and/or anyone acting on your behalf or instruction) provided to PLAINTIFF(S) concerning the CONDO and/or Park Reserve.

Defendant objected to the phrase “disclosure documents” as vague. This objection is **OVERRULED**, as in the context of this case.

Document Request 8 asked Park Reserve, LLC to produce statements made by Plaintiffs, and was the same as Document Request 4 to Interstate Underground:

All written or recorded statements made or given by PLAINTIFFS, including but not limited to, emails, text messages, recorded phone calls, recorded in-person meetings, notes from phone calls, notes from in-person meetings, deposition transcripts, affidavits, and declarations. If known, identify the date and time of each statement.

Rule 56.01(b)(3) entitles Plaintiffs to this information, so all objections to these requests are **OVERRULED**.

Document Request 9 asked for conversations Park Reserve, LLC had with its seller’s agent concerning amenities, code violations, elevators fire alarm systems, fire suppression systems, leaks, and/or mold at Park Reserve:

All conversations on or after February 28, 2013 between YOU and any of your Seller’s Agents (i.e. realtors) concerning the current and/or future amenities, any code violations, the elevators, the fire alarm systems, the fire suppression systems, leaks, and/or mold at Park Reserve.

Defendant objected to the temporal scope of this request, and to the fact that it requests information to multiple buildings. Defendant also objected that “conversations” was vague. These objections are **OVERRULED**.

Document Request 10 asked Park Reserve, LLC to produce all conversations it had with the Homeowner’s Association about amenities:

All conversations on or after February 28, 2013 which YOU have had with the Park Reserve Homeowner’s Association concerning the current and/or future amenities at Park Reserve.

Defendant objected to the request based upon its temporal scope and the fact that it seeks

information as to the other buildings. Defendant also objected to “conversations” as vague. These objections are **OVERRULED**.

Document Request 11 asked Park Reserve, LLC to produce all notices given to residents and potential residents about amenities:

All notices YOU have given to any resident and/or potential resident of Park Reserve concerning the current and/or future amenities at Park Reserve.

Defendant objected to the temporal scope of this request and to the fact that it seeks information about other buildings. Defendant also objected to “notices” as vague. The Court **SUSTAINS** Defendant’s vague objection.

The Court orders the Defendants to produce any written, documented, recorded, or verifiable correspondence, advertisement or reference concerning the current and/or future amenities at Park Reserve.

Document Request 12 asked Park Reserve, LLC to produce conversations it had with the Kansas City Fire Department concerning the elevators, occupancy certificates, fire code, fire suppression systems, and/or fire alarm systems at Park Reserve:

All conversations on or after February 28, 2013 which YOU have had with the Kansas City Fire Department concerning the elevators, occupancy certificates, fire code compliance and violations, fire suppression systems, and/or fire alarm systems at Park Reserve.

Defendant objected to the temporal scope of this request, and insofar as it seeks information about multiple buildings. Defendant also objected to “conversation” as vague. These objections are **OVERRULED**.

Document Request 13 mirrors request 12, but seeks conversation with the Kansas City Fire Marshal:

All conversations on or after February 28, 2013 which YOU have had with the Kansas City Fire Marshal concerning the elevators, occupancy certificates, fire code compliance and violations, fire suppression systems, and/or fire alarm systems at Park Reserve.

Defendant made the same objections as to request 12. They are similarly **OVERRULED**.

Document Request 14 mirrors requests 12 and 13, but seeks conversations with the City of

Kansas City, Missouri:

All conversations YOU have had with the City of Kansas City, Missouri concerning the elevators, occupancy certificates, fire code compliance and violations, fire suppression systems, and/or fire alarm systems at Park Reserve.

Defendant made the same objections as to request 12 and 13. They are similarly **OVERRULED**.

Document Request 18 asked for a copy of any complaints alleging similar misconduct to what Plaintiffs alleges in this case:

All complaints YOU received during the TIME PERIOD⁶ from any person or entity, including from any state or federal attorney general or agency, any consumer watchdog group(s), any branch of the better business bureau, and/or from consumers or their attorneys, in which YOU were alleged, in any way, to have misrepresented amenities available at any one or multiple of YOUR properties, failed to disclose the presence of mold, fire code violations, flooding, and/or water leakage from a roof prior to the sale of one of YOUR properties, and/or failed to provide timely and/or adequate maintenance and/or repairs at any one or multiple of YOUR properties, along with a copy of YOUR response to those complaints.

Defendant objects to the temporal scope of this request, and to the relevance as it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 19 asks Park Reserve, LLC for a copy of other lawsuits alleging violations of the Missouri Merchandising Practices Act, and is the same as Document Request 15 to Interstate Underground:

If YOU have been a party to any lawsuit or arbitration (other than this lawsuit) which was commenced or in any state of pendency during the TIME PERIOD, and in which YOU were alleged, in any way, to have violated the Missouri Merchandising Practices Act, produce a copy of all pleadings in those lawsuit(s) and arbitration(s).

Defendants objected to the temporal scope of these requests, and to the extent they seek information about other buildings. These objections are **OVERRULED**.

Document Request 21 asked Park Reserve, LLC to produce all remodel designs, blueprints, and plans, including drafts:

⁶ TIME PERIOD was defined as February 28, 2013-present.

A copy of all remodel designs, blueprints, and/or plans for Park Reserve. This is to include both the Yellowstone and the Grand Teton buildings, and also includes drafts.

Defendant objected to the temporal scope of this request and to the extent it seeks documents pertaining to other buildings. Plaintiff also posits that this request also seeks the as-built drawings.

These objections are **OVERRULED**.

Document Request 22 asked for all engineering inspections and reports for Park Reserve:

A copy of all engineering inspections and/or reports for Park Reserve.

Defendant objected to the temporal scope of this request and to the extent it seeks information for other buildings. These objections are **OVERRULED**.

Document Request 23 asked for all architectural inspections and reports for Park Reserve:

A copy of all architectural inspections and/or reports for Park Reserve.

Defendant made the same objections as it did to Document Request 22, and they are similarly **OVERRULED**.

Document Request 24 seeks amenities plans:

A copy of all plans, designs, and/or blueprints for all amenities at Park Reserve.

Defendant objected to temporal scope and to the extent the request seeks information about other buildings. Plaintiff also posits that this request also seeks the as-built drawings. These objections are **OVERRULED**.

Document Request 25 seeks permits and applications:

All permits and permit applications for Park Reserve, including for construction, remodeling, designing, demolition, the elevators, and the fire suppression and alarm systems.

Defendant objected to the temporal scope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 26 seeks occupancy certificates and applications:

All occupancy certificates and applications for Park Reserve.

Defendant objected to the temporal scope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 27 seeks the plans for fixing any water leaks at Park Reserve:

All plans, designs, and/or blueprints for fixing any water leaks at Park Reserve.

Defendant objected to the temporal scope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 28 seeks the plans for mold remediation at Park Reserve:

All plans, designs, and/or blueprints for mold remediation at Park Reserve.

Defendant made the same objections as to document request 27, and they are similarly **OVERRULED**.

Document Request 31 seeks communications with the Kansas City Fire Department about inspections and fire code violations:

All communications on or after February 28, 2013 between YOU or any of YOUR agents and/or employees and the Kansas City Fire Department discussing inspections and/or fire code violations at Park Reserve.

Defendant objected to the temporal scope of this request to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 32 seeks communications with the City of Kansas City, Missouri about the elevators, elevator inspections, and/or elevator code violations at Park Reserve:

All communications on or after February 28, 2013 between YOU or any of YOUR agents and/or employees and the City of Kansas City, Missouri discussing any elevator, elevator inspection, and/or elevator code violation at Park Reserve.

Defendants objected to the temporal scope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 33 asked Park Reserve, LLC for policies and procedures for the handling of complaints, and is the same as Document Request 29 to Interstate Underground:

All policies, procedures, and practices YOU have implemented or used at any time during the TIME PERIOD which govern or affect the way consumer complaints are handled,

investigated, and/or answered. If any of those policies, procedures, and/or practices have been modified in any way during that time, produce a copy of each such modification and identify the date each such modification became effective.

Defendants objected to the temporals cope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Defendants Park Reserve, LLC and Interstate Underground shall supplement their discovery responses in accordance with the dictates of this Order within **FOURTEEN (14) DAYS** of the date of this Order. Defendants shall file a Certificate of Compliance with this order within **FIVE (5) DAYS** of completion of the supplements. The Parties may agree to extend these deadlines without seeking Court permission, but any such agreement must be in writing.

At the conclusion of the hearing, the Court and counsel also addressed issues concerning depositions. Defendant objected to the taking of depositions due to the COVID-19 pandemic. The Court, due to the current and obvious circumstances, is cognizant and not rigid as it pertains to counsel's concerns and dilemma. However, the Court strongly urges all counsel during this time, to explore alternatives, that under different circumstances, would be unimaginable (remote depositions via telephone or videoconferencing). The Court relies on counsel's experience, professionalism and discretion in working toward a resolution without the sacrifice of personal health and safety.

IT IS SO ORDERED.

April 14, 2020
DATE



KEVIN D. HARRELL, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing was delivered to:

PHILIP A KLAUHN, Attorney for Defendant, 10150 N AMBASSADOR DR, KANSAS CITY, MO
64153

(816) 891-7474, phil@philklaw.com

BRYCE BRUCE BELL, Attorney for Plaintiff, BELL LAW, LLC, 2600 GRAND BLVD STE 580,
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CITY, MO 64108

-, ms@BellLawKC.com

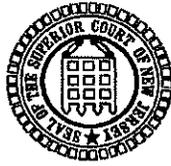


Law Clerk or JAA, Division 18

EXHIBIT 7

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
Ana C. Viscomi
JUDGE



MIDDLESEX COUNTY COURT HOUSE
P.O. Box 964
NEW BRUNSWICK, NEW JERSEY 08903-0964

March 13, 2020

To: All Asbestos Counsel

Dear Counsel,

Yesterday I wrote to you with regarding to how we are proceeding in consideration of the current Coronavirus concern. Today I need to update you with regard to my communication relating to trials and also address the issues of: depositions; and the request to e-file.

1. Trials: In furtherance of Chief Justice Rabner's directive of March 12, 2020, jury trials will be suspended until further notice. This directive does not affect the current ongoing trial before me. At the conclusion of this trial, I am available for bench trials assuming parties are amenable. We will be contacting counsel for the upcoming trial ready cases to offer this option.
2. Depositions: With regard to any depositions of plaintiffs, plaintiffs' counsel shall make appropriate arrangements for counsel to be able to appear telephonically or by some video-conferencing capability. Any expert, corporate representative or fact witness deposition that need to be completed should also have video or telephonic opportunity made available. Please first ascertain the necessity of completing these latter three types of depositions at this time. Consider the fact that jury trials are now suspended until further notice and the likelihood that a plaintiff and defendant would agree to a bench trial is slim to none. (No offense taken.) We will adjust case management orders accordingly after the Coronavirus concern has passed and the Chief Justice rescinds his directive.
3. E-File: As you are aware, we are not filing on e-courts because of "space" issues; the exhibit page length for many motions exceeds space capacity. Many of you have contacted us requesting to be able to e-file in consideration of the Coronavirus concerns. I hope to be able to respond to you shortly. Please continue present filing procedures of hard copies until further notice.

Very truly yours,

ANA C. VISCOMI, J.S.C

ACV:ss

EXHIBIT 8

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BONITA LIPSEY,)	
)	
Plaintiff,)	Case No. 19 C 7681
)	
v.)	
)	Magistrate Judge Gabriel A. Fuentes
WALMART, INC.)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

This matter is before the magistrate judge on consent. (D.E. 10, 12.) This order imposes a protocol for the depositions of medical professionals or treatment providers in the current environment, which includes a public health emergency amid community spread of COVID-19.

Introduction

This is an action sounding in negligence. It is before the Court on defendant Walmart, Inc.’s notice of removal, the basis for federal jurisdiction being diversity of citizenship in an action with more than \$75,000 at issue. Plaintiff alleges that on August 23, 2017, she was walking in a Walmart store at 4720 S. Cottage Grove Avenue in Chicago when she slipped and fell on what she alleges was a “wet and/or slick store floor.” (D.E. 1, Exh. B.) Plaintiff describes her injuries as severe and permanent, and she alleges that she has incurred “large sums of money for medical care and services.” (*Id.*)

On December 17, 2019, the Court entered the parties’ proposed discovery schedule, which provided that all non-medical fact discovery – that is, fact discovery excluding medical treating physicians – was to be completed by May 11, 2020. (D.E. 15.) The parties have not yet advised

the Court of how many medical treating physicians or other health-care personnel they plan to depose.

Since the Court's December 17, 2019 scheduling order, much has changed. The growing coronavirus pandemic is sweeping across the world, and the United States is among nations scrambling to prepare for and cope with the impact of the virus. On March 16, 2020, this Court, per the Chief Judge of the United States District Court for the Northern District of Illinois, issued an order extending all deadlines in civil matters by 21 days in response to the COVID-19 public health emergency. *See Amended General Order* No. 20-0012 (N.D. Ill. Mar. 16, 2020). That order effectively extended the deadline for the completion of the non-medical fact discovery in this case to June 1, 2020. Also in the meantime, the magistrate judge has developed concerns about whether the depositions of medical providers should continue to go forward without scrutiny from the Court with respect to the question of the burden that deposition participation places or may place on medical providers during the COVID-19 public health emergency. *See DeVine v. XPO Freight Logistics*, No. 18 C 1264, 2020 WL 1275087, at *2-3 (N.D. Ill. Mar. 17, 2020). This memorandum opinion expands on the concerns expressed in *DeVine* amid additional information about how health care providers and courts are reacting to the fast-developing COVID-19 public health emergency.

Discussion

Federal Rule of Civil Procedure 26(b)(1), as amended in 2015, provides:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). In addition, Rule 45 authorizes courts to quash or modify a subpoena where compliance with it would subject a person to “undue burden.” Fed. R. Civ. P. 45(d)(3)(A)(iii), (iv). Accordingly, district courts have wide discretion in managing civil discovery. *Geiger v. Aetna Life Ins. Co.*, 845 F.3d 357, 365 (7th Cir. 2017).

The Court’s discretion includes taking steps that, notwithstanding their impact on the speed of the ultimate determination of the matter, recognize the severity of the public health crisis and the role of courts and litigants in being public citizens during the crisis. For example, in *Art Ask Agency v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified in Schedule A Hereto*, No. 20 C 1666 (N.D. Ill. Mar. 18, 2020) (Seeger, J.) (unpublished), a party moved for a temporary restraining order alleging trademark infringement arising from certain allegedly counterfeit drawings of unicorns. When a district judge of this Court did not set an immediate hearing, the plaintiff moved to reconsider, demanding a hearing over the unicorn drawing claims that very week, and then filed a motion before the designated emergency judge. The judge presiding over the matter denied the motion and responded:

Meanwhile, the world is in the midst of a global pandemic. The President has declared a national emergency. The Governor has issued a state-wide health emergency. As things stand, the government has forced all restaurants and bars in Chicago to shut their doors, and the schools are closed, too. The government has encouraged everyone to stay home, to keep infections to a minimum and help contain the fast-developing public health emergency The world is facing a real emergency. Plaintiff is not.

Id. Courts in this and other federal judicial districts have placed civil and even criminal jury trials on hold. *See Amended General Order* No. 20-0012 (N.D. Ill. Mar. 16, 2020) (effectively pausing civil litigation in this district for 21 days and striking from the Court’s calendar all civil jury trials set from March 17, 2020 until April 3, 2020); *In re Precautionary Measures in Response to*

Coronavirus Disease 2019, Admin. Order No 2020-0001, 2020 WL 1233434 (D.V.I. Mar. 13, 2020) (“No new civil or criminal jury trials will be conducted until further notice.”) One court approved all depositions being taken by “telephone, videoconference, or other remote means” in view of the COVID-19 national emergency. *Sinceno v. The Riverside Church in the City of New York*, No. 18-cv-2156 (LJL), 2020 WL 1302053 (S.D.N.Y. Mar. 18, 2020). Another court opened traditionally in-person civil hearings to the possibility of videoconferencing. *See Automatic Equip. Mfg. Co. v. Danko Mfg., LLC*, NO. 8:19-CV-162, 2020 WL 1182006, at *2 (D. Neb. Mar. 12, 2020) (offering to allow parties to hold *Markman* hearing in patent infringement case by videoconference). Still another court allowed witnesses to appear by video in a civil jury trial. *See ResCap Liquid. Tr. v. Primary Res. Mort.*, Nos. 13-cv-3451 (SRN/HB) and 16-cv-4070 (SRN/HB), 2020 WL 1280931, at *3 (D. Minn. Mar. 13, 2020) (“Under the circumstances, COVID-19’s unexpected nature, rapid spread, and potential risk establish good cause for remote testimony.”) Considered together, these judicial decisions demonstrate flexibility and sensitivity by courts in the face of a serious public health emergency and the threat it poses to the health and public safety of litigants, court staff and the general public.

In the meantime, the Court has before it a public record replete with references to the impact that community spread of COVID-19 could have, and is already having, on medical care providers, doctors, hospitals and staff. *See* Dr. Cornelia Griggs, “A New York Doctor’s Coronavirus Warning: The Sky Is Falling,” *The New York Times* (Mar. 19, 2020) (“Today, at the hospital where I work, one of the largest in New York City, Covid-19 cases continue to climb, and there’s movement to redeploy as many health care workers as possible to the E.R.s, new ‘fever clinics’ and ICUs. It’s becoming an all-healthy-hands-on-deck situation.”); Lisa Schenker and David Heinzmann, “How hospitals are preparing for flood of COVID-19 patients,” *Chicago*

Tribune (Mar. 19, 2020) (“Many [hospitals] have started reassigning medical staff, canceling elective surgeries to save resources, moving testing for COVID-19 outside typical patient areas and drawing up plans for how to house large numbers of patients.”).¹

As this Court noted in *DeVine*:

The medical community is very, very busy right now, and likely will be busy for weeks or months to come. And these doctors and nurses are busy preparing to take care of sick people. Soon they may be taking care of more sick people than they can handle. We all hope that conditions will not overwhelm our health care system, but at this writing, we do not know how significant the impact will be. Even if the system is not overwhelmed, it may be strained to at or near its limits. Physicians who do not normally practice emergency care may find themselves deployed to emergency rooms. Physicians who might never practice emergency medicine may find themselves immersed in logistical planning or other essential services. It is reasonable for all of us to expect that at this moment and at least for the next few weeks and possibly longer, the situation at hospitals and medical offices will be all hands on deck. All hands cannot be on deck if some of them are at a law office sitting for a deposition in a tort lawsuit.

DeVine, 2020 WL 1275087, at *2.

In applying Rule 26(b)(1)’s proportionality requirement including “whether the burden or expense of the proposed discovery outweighs the likely benefit,” the Court is imposing the following protocol on the parties in this case as part of its discretion in supervising discovery and

¹ See also Lindsey Tanner, “US hospitals brace for ‘tremendous strain’ from new virus”, *The Associated Press* (Mar. 13, 2020), <https://apnews.com/6c9b9686c4af21b9984341d330073979> (“U.S. hospitals are setting up circus-like triage tents, calling doctors out of retirement, guarding their supplies of face masks and making plans to cancel elective surgery as they brace for an expected onslaught of coronavirus patients.”); Jason Lemon, “New York Governor Asks Retired Doctors and Nurses to Sign Up and Be On Call Amid Coronavirus Crisis,” *Newsweek* (Mar. 17, 2020), <https://www.newsweek.com/new-york-governor-asks-retired-doctors-nurses-sign-call-amid-coronavirus-crisis-1492825>; John Daley, “Like Emergency Medicine Special Forces, Colorado Doctors and Nurses Get Ready To Combat Coronavirus,” *CPR News* (Mar. 15, 2020), <https://www.cpr.org/2020/03/15/like-emergency-medicine-special-forces-colorado-doctors-and-nurses-get-ready-to-combat-coronavirus/>; Morgan Lowrie, “COVID-19: Thousands of doctors, nurses rally to government call to fight coronavirus,” *National Post* (Mar. 17, 2020), <https://nationalpost.com/news/thousands-of-doctors-nurses-answer-call-to-help-with-covid-19-effort/>, (In Canada, “some provinces have begun reaching out to recently retired doctors and nurses to ask them to return to work if the pandemic worsens — and the answer is yes.”); Stephen Matthews, “Government ‘needs to get a move on’ with plans to recall retired doctors to bolster the NHS workforce during the coronavirus outbreak, top GP warns,” *Daily Mail* (Mar. 17, 2020), <https://www.dailymail.co.uk/news/article-8120653/Government-needs-plans-recall-retired-doctors.html> (U.K.).

with particular attention to weighing the burden and benefit of proposed deposition discovery from medical providers:

1. Before any deposition discovery of medical treaters is scheduled, and before any subpoenas are served on such witnesses, the parties, through counsel, shall meet and confer by telephone to discuss the intended list of medical treaters to be deposed. The parties shall attempt to reach agreement as to whether these depositions should proceed. Or, alternatively, if the parties conclude that settlement of the matter should be pursued actively at this time, they may reach an agreement to defer the medical provider depositions pending a settlement conference, and they shall make a report to Court as to any such agreements in a written status report on April 10, 2020.

2. As to each such provider whose deposition is still being sought after the foregoing meet and confer, the party seeking the deposition shall disclose to the Court the following in a written document styled as a “Response to Court’s Medical Provider Deposition Protocol”:

a. The proposed deponent’s name, hospital affiliation, and area of practice or specialty.

b. The proposed deponent’s current and anticipated involvement in preparation or response to the COVID-19 public health emergency. Counsel should obtain this information from the provider witnesses or their counsel.

c. The nature and extent of the proposed deponent’s involvement in the treatment of the plaintiff or other party, including the dates of treatment and the type of treatment provided.

d. The proposed deponent’s relative importance to the case, as stated by the party seeking the discovery. Such party should consider the proposed deponent’s relative role in the party’s treatment in comparison to other treaters whose depositions are sought. Parties should

consider this portion of their protocol response as their opportunity to set forth reasons why the burden of deposing a given medical treater at this time ought not to prevent the deposition under the concept of proportionality to the needs of the case under Rule 26(b)(1).

e. The degree to which alternative avenues might be available to obtain the same discovery or sufficient discovery, including but not limited to the depositions of other witnesses, the admissibility of summary medical records by stipulation, affidavits, or Rule 31 depositions by written questions.

3. The “Response to Court’s Medical Provider Deposition Protocol” shall be filed in advance of serving any subpoena on a medical provider, and the subpoena will not be permitted without order of court. If the subpoena already is served, the Response is to be filed with the Court before any deposition for a medical treater is confirmed or any notice of deposition is served. As to any depositions already noticed, the notices of deposition are to be considered vacated until the party files the Response and obtains a court order permitting the deposition.

4. A party opposing the taking of a medical treater deposition may file a “Reply As To Court’s Medical Provider Deposition Protocol” within 10 days of filing of the Response, and such Reply may include or incorporate any statement(s) by medical providers or their retained counsel.

5. The Court will rule promptly on requests made to depose medical treaters under this protocol. The Court may alter or eliminate this protocol as conditions dictate.

In this matter, the parties have ample time to consider and comply with the foregoing protocol. The Court has ordered the parties to file a status report on May 12, 2020, to address ongoing discovery progress in this matter. Before filing that report, the parties should consider

the foregoing protocol and confer telephonically so they may include in that report a plan for compliance with the protocol.

SO ORDERED.

ENTER:

A handwritten signature in black ink, appearing to read "G. A. Fuentes", written over a horizontal line.

GABRIEL A. FUENTES
United States Magistrate Judge

DATED: March 20, 2020