



Plaintiff's hiring an expert, receiving and sending the evidence to the expert, and filing its expert's report, Plaintiff respectfully refers the Court to its Motion in Limine at [CM/ECF 163] which lays out the timeline of events in its entirety. As stated therein, Plaintiff has at all times litigated in good faith and has never unnecessarily delayed or attempted to delay or frustrate the progression of the litigation.

The last page of Defendant's Response attempts to impugn Plaintiff's Response to Order to Show Cause [CM/ECF 152] by claiming that Plaintiff's request that Mr. Cinquanto make himself available for deposition was an "attempt to, once again, take additional discovery which . . . indicates his bad faith by conditioning the appointment upon his request and supposed right to depose the Court's expert." Response, p. 4. Plaintiff's request was based upon Fed. R. Evid. 706 (b)(2) which states that "[t]he expert may be deposed by any party." The plain language of the Rule formed the basis for Plaintiff's request, not a "supposed right." Plaintiff's request pursuant to the Federal Rules of Evidence was not in bad faith or improper. Indeed, this issue has been mooted by the Court's Order that both parties shall have the opportunity to depose Mr. Cinquanto tomorrow.

Accordingly, Plaintiff respectfully requests this Court grant both Plaintiff's Motion for Sanctions.

Dated: June 5, 2013.

Respectfully submitted,

LIPSCOMB, EISENBERG & BAKER, PL

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ M. Keith Lipscomb