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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

REBECCA BEASLEY, individually as the
surviving spouse of ORVILLE THOMAS)
BEASLEY III, and as personal representative)
of the ESTATE OF ORVILLE THOMAS)
BEASLEY III; and ORVILLE THOMAS)
II and ANNA ELIZABETH BEASLEY,
husband and wife, and parents of ORVILLE)
THOMAS BEASLEY III.)

Plaintiffs,)

v.)

JOHN C. STUART and JANE DOE)
STUART, a married couple; JOHN and)
JANE DOES I-V; BLACK & WHITE)
CORPORATIONS VI-X; and ABC)
PARTNERSHIPS XI-XV;)

Defendants.)

CASE NO. CV2010-050624

**PLAINTIFF'S MOTION TO
PARTIALLY STRIKE JOE COLLIER'S
AFFIDAVIT**

(Tort: Non-Motor Vehicle)

(Assigned to the Honorable Linda Miles)

Plaintiff Rebecca Beasley, by and through undersigned counsel, files this Motion To Partially Strike Joe Collier's Affidavit. Mr. Collier's Affidavit was submitted as part of Defendant's Response to Plaintiff's Motion for Partially Summary Judgment Regarding Negligent Infliction of Emotional Harm. This Motion is based on the fact Mr. Collier's affidavit is outside the scope of his personal knowledge and outside the scope of his admitted expertise. Thus, Defendant is improperly using an "expert" affidavit to create evidence that is not admissible. As a result, Plaintiff requests that certain portions of Mr. Collier's affidavit should be struck from the record. This Motion is supported by the following memorandum and points of authority and the entire record before this Court.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. Factual Background.**

4 Defendant's Response to Plaintiff's Motion for Partial Summary Judgment (Exhibit 1)
5 included an affidavit by Joe Collier (Exhibit 2). Paragraphs 20-24 in Defendant's Statement of
6 Facts rely on Collier's affidavit.

7 **II. Legal Theory.**

8 Under the Arizona Rules of Evidence Rule 702:

9
10 If scientific, technical, or other specialized knowledge will assist the trier of fact to
11 understand the evidence or to determine a fact in issue, a witness qualified as an expert by
12 knowledge, skill, experience, training, or education, may testify thereto in the form of an
13 opinion or otherwise.

14 There are four requirements for admission of expert testimony. *See State v. Moran*, 151 Ariz. 378,
15 380, 728 P.2d 248, 250 (1986). Expert testimony generally must (1) come from a qualified expert,
16 (2) be reliable, (3) aid the trier of fact in evaluating and understanding matters not within their
17 common experience, and (4) have probative value that equals or outweighs its prejudicial effect.
18 *Moran*, 151 Ariz. at 380, 728 P.2d at 250; Ariz.R.Evid. 403, 702-03.

19 **III. Legal Argument.**

20 Plaintiff moves to strike paragraphs 22-24 of Plaintiff's Statement of Fact, and paragraphs
21 eight & ten from Collier's affidavit. Additionally, if this affidavit were admitted, Plaintiff would
22 object to the values provided by Collier, as there is no foundation for how Collier arrived at his
23 blood alcohol concentration estimations.

24 **A. Collier's Affidavit Falsely Asserts "Expert" Statements Concerning Mr. Beasley's**
25 **Conduct That Are Not Within His Knowledge, Skill, Experience, Training, or**
26 **Education And Therefore Inadmissible Under Rule 702.**

Paragraph ten of Collier's Affidavit creates the basis for Defendant's Statement of Facts
paragraphs 22-24. Paragraph ten states the follow:

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10. Based on Mr. Beasley's blood alcohol level, my training, knowledge and experience, it is my opinion to a reasonable degree of toxicological probability:

A. That Mr. Beasley would have had impaired judgment that would cause him to make risky or foolish decisions he would not otherwise make sober;

B. That Mr. Beasley's normal inhibitions were severely reduced and/or eliminated; and

C. That Mr. Beasley would experience exaggerated emotional states. For example, Mr. Beasley's experience of anger would quickly turn into rage under the influence of this much alcohol³

(Exhibit 2).

Here, Defendant has not provided a foundation for Collier's statements regarding the effects of intoxication on the human body or any correlation between blood alcohol content and mental or behavioral conditions. Under Rule 702 a witness is qualified as an expert by knowledge, skill, experience, training, or education. Collier's admitted expertise is in "scientific evidence, toxicology, drugs, narcotics, criminalistics and firearm identification". (See Exhibit 2). Collier does not have knowledge, skill, experience, training, or education in determining an intoxicated individual's behavior. Collier is not a doctor, a medical provide, a psychologist, nor does he have any experience treating patients with known alcohol blood levels. It appears Collier's experience is strictly limited to determining an individual's blood alcohol content. Thus, Collier's conclusions listed in paragraph ten are completely outside the scope of his scope of knowledge. Collier lacks any foundation to offer testimony regarding an individual's blood alcohol content and an assumed behavior or mental capacity. Because Collier does not qualify as an expert to make the statements listed in paragraph ten such testimony should be struck.

Additionally, Collier's statements in paragraph ten are not reliable. Collier does not provide the basis for his bold assertions regarding Mr. Beasley's behavior. Collier's statements are definitive statements that individuals with a 0.19% blood alcohol concentration must express

1 anger that turns into rage and must engage in risky behavior. These statements take no account of
2 the factual difference between individuals or environments. Collier does not provide how his
3 knowledge, skill, experience, training, or education would support such statements, or that such a
4 conclusion is even accepted by any authority. Paragraph ten is speculation passed off as “expert”
5 testimony. Because there is no evidence that Collier’s has the training or ability to correlate blood
6 alcohol concentration to human behavior it is unreliable testimony and should not be admitted into
7 evidence.
8

9 Additionally, any probative value of the statements in paragraph 10 Collier’s is outweighed
10 by the prejudicial effect such baseless conclusions would have with the jury. Jurors could
11 potentially base a judgment on an “expert’s” statements rather than the facts of the case.

12 **B. Collier’s Affidavit Provides No Foundation For His Blood Alcohol Estimates.**

13 Collier affidavit fails to provide the foundation as to how he arrived at the blood alcohol
14 estimations listed in paragraph nine of his affidavit. Collier’s affidavit plainly lists blood alcohol
15 concentrations and volume estimations without providing the mathematical or scientific basis for
16 arriving at such values. Plaintiff has no way of verifying Collier’s estimations or the scientific
17 principles on which Collier bases his estimations. From the limited information provided it is
18 unknown the validity or accuracy of Mr. Collier’s statements. As a result, the affidavit fails should
19 not be entered into evidence regarding the values contained within the affidavit.
20

21 **IV. Conclusion.**

22 Under Rule 702 Plaintiff moves to strike paragraphs 22-24 of Plaintiff’s Statement of Fact,
23 and paragraphs 8 & 10, and all subparts, from Collier’s affidavit. These statements are provided
24 with proper foundation. Additionally, if this affidavit were admitted, Plaintiff would object to the
25 values provided by Collier, as there is no foundation for how Collier arrived at his blood alcohol
26 concentration estimations listed in his affidavit.

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RESPECTFULLY SUBMITTED this 27th day of January, 2011.

DOYLE LAW GROUP

/s/ John C. Doyle, Esq.
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ORIGINAL of the foregoing electronically filed this 27th day of January, 2011 with:

Clerk of Court
Maricopa Superior Court
Northeast Regional Center
18380 N. 40th Street
Phoenix, AZ 85032

COPY of the foregoing distributed by electronic filing this 27th day of January, 2011 to:

The Honorable Linda Miles
Maricopa Superior Court
Northeast Regional Center
18380 N. 40th Street
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COPY of the foregoing emailed this 27th day of January, 2011 to:

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By: /s/ Whitney Stricker