

Exhibit 1

1 **DOYLE LAW GROUP**
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6 John C. Doyle, Esq. (Bar No. 010602)
7 Jonathan L. Sullivan, Esq. (Bar No. 026619)
8 *Attorneys for Plaintiff*

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

8 REBECCA BEASLEY, individually as the
9 surviving spouse of ORVILLE THOMAS)
10 BEASLEY III, and as personal representative)
11 of the ESTATE OF ORVILLE THOMAS)
12 BEASLEY III; and ORVILLE THOMAS)
13 II and ANNA ELIZABETH BEASLEY,)
14 husband and wife, and parents of ORVILLE)
15 THOMAS BEASLEY III.)
16 Plaintiffs,)
17 v.)
18 JOHN C. STUART and JANE DOE)
19 STUART, a married couple; JOHN and)
20 JANE DOES I-V; BLACK & WHITE)
21 CORPORATIONS VI-X; and ABC)
22 PARTNERSHIPS XI-XV;)
23 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)

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

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

3 16 10. Based on Mr. Beasley's blood alcohol level, my training, knowledge and
4 17 experience, it is my opinion to a reasonable degree of toxicological probability:

5 18 A. That Mr. Beasley would have had impaired judgment that would
6 19 cause him to make risky or foolish decisions he would not otherwise make sober;

7 20 B. That Mr. Beasley's normal inhibitions were severely reduced and/or
8 21 eliminated; and

9 22 C. That Mr. Beasley would experience exaggerated emotional states.
10 23 For example, Mr. Beasley's experience of anger would quickly turn into rage under the
11 influence of this much alcohol

12 (Exhibit 2).

13 Here, Defendant has not provided a foundation for Collier's statements regarding the effects
14 of intoxication on the human body or any correlation between blood alcohol content and mental or
15 behavioral conditions. Under Rule 702 a witness is qualified as an expert by knowledge, skill,
16 experience, training, or education. Collier's admitted expertise is in "scientific evidence,
17 toxicology, drugs, narcotics, criminalistics and firearm identification". (See Exhibit 2). Collier
18 does not have knowledge, skill, experience, training, or education in determining an intoxicated
19 individual's behavior. Collier is not a doctor, a medical provide, a psychologist, nor does he have
20 any experience treating patients with known alcohol blood levels. It appears Collier's experience
21 is strictly limited to determining an individual's blood alcohol content. Thus, Collier's conclusions
22 listed in paragraph ten are completely outside the scope of his scope of knowledge. Collier lacks
23 any foundation to offer testimony regarding an individual's blood alcohol content and an assumed
24 behavior or mental capacity. Because Collier does not qualify as an expert to make the statements
25 listed in paragraph ten such testimony should be struck.
26

1 Additionally, Collier's statements in paragraph ten are not reliable. Collier does not provide
2 the basis for his bold assertions regarding Mr. Beasley's behavior. Collier's statements are
3 definitive statements that individuals with a 0.19% blood alcohol concentration must express
4 anger that turns into rage and must engage in risky behavior. These statements take no account of
5 the factual difference between individuals or environments. Collier does not provide how his
6 knowledge, skill, experience, training, or education would support such statements, or that such a
7 conclusion is even accepted by any authority. Paragraph ten is speculation passed off as "expert"
8 testimony. Because there is no evidence that Collier's has the training or ability to correlate blood
9 alcohol concentration to human behavior it is unreliable testimony and should not be admitted into
10 evidence.
11

12 Additionally, any probative value of the statements in paragraph 10 Collier's is outweighed
13 by the prejudicial effect such baseless conclusions would have with the jury. Jurors could
14 potentially base a judgment on an "expert's" statements rather than the facts of the case.
15

16 **B. Collier's Affidavit Provides No Foundation For His Blood Alcohol Estimates.**

17 Collier affidavit fails to provide the foundation as to how he arrived at the blood alcohol
18 estimations listed in paragraph nine of his affidavit. Collier's affidavit plainly lists blood alcohol
19 concentrations and volume estimations without providing the mathematical or scientific basis for
20 arriving at such values. Plaintiff has no way of verifying Collier's estimations or the scientific
21 principles on which Collier bases his estimations. From the limited information provided it is
22 unknown the validity or accuracy of Mr. Collier's statements. As a result, the affidavit fails should
23 not be entered into evidence regarding the values contained within the affidavit.
24

25 **IV. Conclusion.**

26 Under Rule 702 Plaintiff moves to strike paragraphs 22-24 of Defendant's Statement of Fact,
and paragraphs 8 & 10, and all subparts, from Collier's affidavit. These statements are provided

1 without proper foundation. Additionally, if this affidavit were admitted, Plaintiff would object to
2 the values provided by Collier, as there is no foundation for how Collier arrived at his blood
3 alcohol concentration estimations listed in his affidavit.

4
5 RESPECTFULLY SUBMITTED this 28th day of January, 2011.

6 **DOYLE LAW GROUP**

7 /s/ John C. Doyle, Esq.

8 John C. Doyle, Esq.

9 Jonathan L. Sullivan, Esq.

10 5010 E. Shea Blvd., Ste. A-106

11 Scottsdale, AZ 85254

12 *Attorneys for Plaintiffs*

13 **ORIGINAL** of the foregoing electronically
14 filed this 28th day of January, 2011 with:

15 Clerk of Court
16 Maricopa Superior Court
17 Northeast Regional Center
18 18380 N. 40th Street
19 Phoenix, AZ 85032

20 **COPY** of the foregoing distributed by electronic
21 filing this 28th day of January, 2011 to:

22 The Honorable Linda Miles
23 Maricopa Superior Court
24 Northeast Regional Center
25 18380 N. 40th Street
26 Phoenix, AZ 85032

COPY of the foregoing emailed
this 28th day of January, 2011 to:

Robert K. Lewis, Esq.
Allen & Lewis, PLC
3300 North Central Ave. Ste. 2500
Phoenix, Arizona 85012
Attorney for Defendant

By: /s/ Whitney Stricker

Exhibit 1

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6 SUPERIOR COURT OF ARIZONA
7 COUNTY OF MARICOPA

8 REBECCA BEASLEY, individually as the
9 surviving spouse of ORVILLE THOMAS
10 BEASLEY, III, and as personal
11 representative of the ESTATE OF ORVILLE
12 THOMAS BEASLEY, III; and ORVILLE
13 THOMAS, II and ANNA ELIZABETH
14 BEASLEY, husband and wife and parents of
15 ORVILLE THOMAS BEASLEY, III,

16 Plaintiffs,

17 vs.

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

23 Defendants.

No. CV2010-050624

**DEFENDANT STUART'S
SEPARATE STATEMENT OF
FACTS**

(Assigned to the Honorable Linda
Miles)

19 Defendant John Stuart ("Mr. Stuart") respectfully submits his Separate Statement of
20 Facts in opposition to Plaintiffs' Separate Statement of Facts:

21 1. On January 29, 2008 Mr. Stuart was driving an FJ Cruiser westbound on
22 Pinnacle Peak Road toward Tatum Road in Scottsdale. Cynthia Cantrell was a passenger
23 in the vehicle. See Affidavit of Cynthia Cantrell, dated December 7, 2010 attached as
24 Exhibit 1, ¶¶ 1-2.

25 2. When Mr. Stuart stopped the FJ Cruiser at the red traffic light at Tatum
26 Road, a white SUV was in the left hand turn lane. The driver of the white SUV, identified

1 as Orville Thomas Beasley, III ("Mr. Beasley"), began to yell from his car at Mr. Stuart.
2 Exhibit 1, ¶ 3.

3 3. After Mr. Stuart and Mr. Beasley exchanged angry words from their
4 respective vehicles, Ms. Cantrell observed Mr. Beasley exit his vehicle and charge the FJ
5 Cruiser in a rage. Exhibit 1, ¶¶ 3-5.

6 4. Mrs. Beasley, Mr. Beasley's wife and a passenger in their white SUV, will
7 confirm that Mr. Beasley became "upset and opened his door" to get out of their SUV.
8 Mrs. Beasley told the Police she "grabbed Tom [her husband] and told him 'No! No! No!'
9 He told her to let go of him" and he left their SUV to confront Mr. Stuart in the FJ Cruiser.
10 Phoenix Police Department Report #2008-80169255, dated 1/30/2008, pp. 8-9, attached as
11 Exhibit 2; [Defendant will supplement this citation with relevant portions of Rebecca
12 Beasley's deposition transcript when it has been transcribed].

13 5. Mrs. Beasley further told Police she had to try to restrain her husband from
14 leaving their SUV to go after Mr. Stuart, describing her husband as "'mad, really mad."
15 Exhibit 2.

16 6. Mr. Beasley was demonstrably angry as he walked in front of the SUV
17 toward the Mr. Stuart's car window. Exhibit 1, ¶¶ 5.

18 7. Joshua Spade, the driver of a vehicle stopped directly behind Mr. Stuart's FJ
19 Cruiser at the intersection of Pinnacle Peak and Tatum Road also observed the fight
20 between Mr. Beasley and Mr. Stuart. Deposition of Joshua Spade, p. 12, l. 1-3, attached as
21 Exhibit 3.

22 8. Mr. Spade confirmed Mr. Beasley exited his SUV and approached Mr.
23 Stuart's vehicle at the driver's side window and that Mr. Beasley was walking more
24 aggressively than normal and appeared to be angry and agitated as he approached Mr.
25 Stuart's FJ Cruiser. Exhibit 3, p.16, ll. 5-14, p. 17, ll. 9-15.

26

1 9. Stacey Strachan was also a witness to Mr. Beasley and Mr. Stuart's
2 alteration. Ms. Strachan was sitting in the driver's side of her vehicle at the intersection
3 of Pinnacle Peak and Tatum Road traveling eastbound when she observed Mr. Beasley, on
4 the other side of the intersection, exit his white SUV to approach the driver's side of the FJ
5 Cruiser. Deposition of Stacey Strachan, p. 10, ll. 3-24., p. 13, ll. 7-25; attached as Exhibit
6 4.

7 10. Ms. Strachan observed Mr. Beasley and Mr. Stuart engage in a verbal
8 argument and then observed Mr. Beasley reach for what appeared to her to be the handle
9 of the driver's side door of the FJ Cruiser to try to open it. Exhibit 4, p. 21, ll. 2-14.

10 11. After Mr. Beasley confronted Mr. Stuart at his car door window, Ms.
11 Cantrell observed Mr. Beasley attempt to punch Mr. Stuart several times through the
12 driver's side window while Mr. Stuart blocked the punches. Exhibit 1, ¶ 7.

13 12. Ms. Cantrell observed Mr. Beasley attempting to break Mr. Stuart's arm,
14 strangle Mr. Stuart, and pull him out of the FJ Cruiser. Mr. Stuart tried to pull Mr.
15 Beasley's hands off of his throat. Exhibit 1, ¶¶ 8-10.

16 13. Ms. Cantrell heard Mr. Beasley threaten to kill Mr. Stuart and Cynthia
17 Cantrell. Ms. Cantrell believed that Mr. Beasley would have killed Mr. Stuart if he were
18 not stopped. Exhibit 1, ¶¶ 11-12.

19 14. Mr. Spade confirmed that Mr. Beasley reached into Mr. Stuart's FJ Cruiser
20 through the driver's side window and appeared very angry while doing so. It appeared to
21 Mr. Spade that Mr. Stuart tried to open his driver's side door to get out of the vehicle,
22 presumably away from Mr. Beasley, but was unable to do so. It was at this point that Mr.
23 Spade observed Mr. Beasley was shot. Exhibit 3, p. 18, ll. 21-25; p. 19, ll. 2-8; p. 23, l. 2-
24 11.

25 15. Ms. Cantrell also observed a firearm in Mr. Stuart's FJ Cruiser discharge and
26

1 saw Mr. Beasley shot while he was within an inch of the FJ Cruiser. Exhibit 1, ¶ 13.

2 16. Ms. Strachan will also confirm that when she observed what looked like
3 sparks and sounded like the pop of a gun, Mr. Beasley was standing "close" to the FJ
4 Cruiser. Exhibit 4, p. 29, ll. 5-13.

5 17. According to the Maricopa County Examiner's Autopsy Report Case # 08-
6 00640, 1/31/2008, prepared by Robert E. Lyon, D.O., Mr. Beasley had a blood alcohol
7 concentration of .19% at the time of his death. Maricopa County Medical Examiner's
8 Report, Case # 08-00640, 1/31/2008, prepared by Robert E. Lyon, D.O., attached as
9 Exhibit 5.

10 18. Mrs. Rebecca Beasley, Mr. Beasley's wife, admits that Mr. Beasley had
11 consumed alcohol at Greasewood Flats, the bar from which they were on their way home.
12 Exhibit 2; [Defendant will supplement with relevant portions of Rebecca Beasley's
13 deposition transcript].

14 19. Ms. Cantrell will confirm that Mr. Beasley's rage appeared to be fueled by
15 either intoxication or drugs. Exhibit 1, ¶ 5.

16 20. Toxicologist, William Joe Collier, holds the opinion to a reasonable degree
17 of toxicological probability that Mr. Beasley had 10.64 oz of 100 hundred proof alcohol in
18 his body at the time of death. See Affidavit of William Joe Collier, 12/21/2010, attached
19 as Exhibit 6, ¶¶ 5-7.

20 21. It is Mr. Collier's opinion to a reasonable degree of toxicological probability
21 that Mr. Beasley consumed anywhere from 12.65 to 15.68 oz of 100 hundred proof
22 alcohol, depending upon the time he began drinking, to achieve a blood alcohol
23 concentration of .19%. Exhibit 6, ¶ 9a-e.

24 22. It is Mr. Collier's opinion to a reasonable degree of toxicological probability
25 that Mr. Beasley's level of intoxication would have caused him to experience impaired
26

1 judgment, resulting in foolish and risky decision-making. Exhibit 6, ¶ 10.a.

2 23. It is Mr. Collier's opinion to a reasonable degree of toxicological probability
3 that Mr. Beasley's normal inhibitions would be severely reduced or eliminated as a result
4 of his intoxication. Exhibit 6, ¶ 10.b.

5 24. It is Mr. Collier's opinion to a reasonable degree of toxicological probability
6 that Mr. Beasley's level of intoxication would have caused him to experience exaggerated
7 emotional states. For example, if Mr. Beasley was angry, his anger would quickly turn to
8 rage under the influence of all the alcohol he consumed. Exhibit 6, ¶ 10.c.

9 25. Homicide Detective Paul Dalton investigated Mr. Beasley's death and
10 concluded that Mr. Beasley was partially at fault for his death. Deposition of Detective
11 Paul Dalton, p. 133, 18-25; p. 134-135, l. 4, attached as Exhibit 7.

12 26. With respect to fault, Detective Dalton testified: "So it's kind of--you know?
13 Is it his fault? Yeah. He came out of the car and he's now dead. Is it Stuart's fault? Yes,
14 he shot an unarmed man. So where do we go from here?" Exhibit 7, p. 134, ll.23 - p.
15 135, ll 1-4.

16 DATED this 23rd day of December, 2010.

17 ALLEN & LEWIS, PLC

18
19 By /s/ Shannon O'Connell
20 Robert K. Lewis
21 Shannon O'Connell
22 Attorneys for Defendants
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ALLEN & LEWIS, PLC

CERTIFICATE OF SERVICE

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I hereby certify that on December 23, 2010, I electronically filed the foregoing document with the Court and mailed a copy this same date to the following:

John C. Doyle
Jonathan L. Sullivan
Doyle Law Group
5010 E. Shea, Suite A-106
Scottsdale, Arizona 85254
Attorneys for Plaintiffs

By /s/ Jamie Tanner

Exhibit 2

1 9. Based upon my experience, training and review of the documents listed
2 above, I have come to the following opinions to a reasonable degree of toxicological
3 probability:

4 A. If Mr. Beasley had started drinking at the FBR Open five (5) hours
5 before his death, he would have had to consume 15.68 oz of 100 proof alcohol to reach a
6 blood alcohol concentration of .19% at the time of the shooting.

7 B. If Mr. Beasley had started drinking four (4) hours before his death, he
8 would have had to consume 14.67 oz. of hundred proof alcohol.

9 C. If Mr. Beasley had started drinking three (3) hours before his death,
10 he would have had to consume 13.66 oz. of hundred proof alcohol.

11 D. If Mr. Beasley had started drinking two (2) hours before his death, he
12 would have had to consume 12.65 oz. of hundred proof alcohol.

13 E. Mr. Beasley had 10.64 oz. of hundred proof alcohol in his body at the
14 time of his death.

15 F. Because Mr. Beasley's vitreous reading revealed a .19% blood
16 alcohol concentration, I know that Mr. Beasley's body was still absorbing alcohol at the
17 time of his death and that he must have just recently consumed an alcoholic beverage.

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

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

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

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

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11. The above opinions are true to a reasonable degree of toxicological probability and correct based on my experience, training and review of the above records.

William Joe Collier
William Joe Collier

SUBSCRIBED AND SWORN TO BEFORE ME this 21st day of December, 2010, by William Joe Collier.

Erica Cartwright
Notary Public

My commission expires:

Aug. 28, 2013



BIOGRAPHY

WILLIAM JOE COLLIER CONSULTANT IN FORENSIC SCIENCE

Mr. Collier was the Director in charge of the Phoenix Police Scientific Crime Detection Laboratory for over 29 years. For eight years he was on the staff of the Department of Police Science at Phoenix College where he taught courses on Drugs, Narcotics and Criminalistics. He also taught courses at Glendale Community College, lectured at Arizona State University and the Phoenix Police Academy. He is a graduate of Baylor University and has attended several FBI Academy Seminars.

Mr. Collier worked in the fields of Toxicology, Drugs Forensic Chemistry and Criminalistics for over 47 years and is a nationally recognized expert in Forensic Science.

Mr. Collier has consulted on Forensic Science evidence in Arizona, California, Nevada, Montana, Florida, Texas, Utah and New Mexico. Cases have been examined for a number of Federal Agencies, The D.E.A., F.B.I., U.S. Customs, U.S. Postal Service, Military Investigative Units as well as state and local government and Police Agencies.

He has appeared as an expert witness in Military Courts, U.S. District Court, Federal Immigration Hearings, Superior Courts, Justice and Municipal Courts on Scientific evidence, toxicology, drugs, narcotics, Criminalistics and firearm identification.

He has lectured on the combined effects of alcohol and drugs on driving skills and Dram Shop evidence.

Mr. Collier is a Fellow in the American Academy of Forensic Sciences, a member of the California Association of Criminalists, Association of Firearm and Tool Examiners, American Chemical Society and other professional and scientific organizations. He has presented a number of scientific papers in Forensic Science and Law Enforcement.