Exhibit 1

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SUPERIOR COURT OF ARIZONA

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,

vs.

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.

No. CV2010-050624

OPPOSITION TO MOTION TO STRIKE AFFIDAVIT OF JOE COLLIER

AND

MOTION FOR SANCTIONS

(Oral Argument Requested)

(Assigned to the Honorable Linda Miles)

Defendant John Stuart opposes Plaintiffs' Motion to Strike the Affidavit of Joe Collier. The motion should be denied as the opinions are within Mr. Collier field of expertise, the opinions are supported by proper foundation and are admissible both at trial and for the purpose of the motion for partial summary judgment.

A. ***Joe Collier is Qualified to Testify about the Effects of Alcohol on the Human Body.***

Plaintiffs complain that Joe Collier is not qualified to testify about the issue of toxicology because he is not a doctor, medical provider, psychologist, nor does he have

experience treating patients. He does not have to be, however. Rule 702 requires that an expert witness qualify as such by reason of "knowledge, skill, experience, training or education." *Ulibarrie v. Gerstenberger*, 178 Ariz. 151; 871 P.2d 698 (App. 1993). Educational attainments are not a prerequisite and a person can be qualified as an expert by reason of experience alone. *Godwin v. Famers Ins. Co. of America*, 129 Ariz. 416, 631 P.2d 571 (App. 1981). Mr. Collier has been a forensic toxicologist for forty-seven (47) years. His Curriculum Vitae was attached to the affidavit. This objection is ridiculous.

To be clear, Mr. Collier's opinion is that someone with 15 shots of 100 proof whiskey in his system he is going to be aggressive, loud, and do and say things he would not ordinarily do or say. This is hardly some great revelation. If Plaintiffs want a more detailed summary of how Mr. Collier has become familiar with the effects of alcohol on a person, they should take his deposition. They would discover that this is textbook toxicology. (*See* Exhibit "1").

Plaintiffs also complain that the opinions do not coincide with the evidence. Namely, they claim that there is no evidence that Mr. Beasley was aggressive. They even deny the confrontation. This argument is absurd. There were multiple witnesses (Spade, Cantrell, and Strachan) to the incident who said Mr. Beasley was enraged, that he got out of his car, and physically attacked Mr. Stuart by reaching to the Stuart vehicle. After interviewing witnesses and conducting an investigation as the primary homicide detective, Detective Dalton testified:

> **During the physical confrontation between Mr. Beasely and Mr. Stuart, both could have stopped it Mr. Beasley walking away, you've had enough, or Mr. Stuart Driving away, I've had enough. So a specific criticism of Mr. Stuart, it works both ways. It's a criticism on both, so...**
>
> **Q. You agree with me that this was partially Mr. Beasley's fault; Correct?**

A. I can't blame fault on – the whole incident was both their faults. (132:12-23)

So it's kind of – you know? Is it his fault? Yeah. He came out of the car and he's now dead.

(132: l24-135:2 speaking of Beasley's contribution to the accident)

B. ***Joe Collier's Opinions have Appropriate Foundation.***

Plaintiffs' second criticism is that the opinions lack foundation because Mr Collier does not have "personal knowledge." Plaintiffs ignores Rule 703, which provides that an expert can base an opinion on (1) facts personally observed by the expert; (2) on facts received in evidence and made known to the expert at or before the hearing, and/or (3) on facts of a type reasonably relied by experts in the particular field which need not be admissible in evidence. *Cervantes v. Rijlaarsdam*, 190 Ariz. 396, 949 P.2d 56 (App. 1997). It is a basic axiom that experts are permitted to rely upon medical laboratory reports prepared by others. *State v. Villafuerte*, 142 Ariz. 323, 690 P.2d 42 (1984). Here, Joe Collier took the blood alcohol reading directly from the autopsy report and toxicology report by the medical examiner's office. He explains this in his affidavit.

C. ***Plaintiffs' Motion is Sanctionable.***

To make foundation objections to force one's adversary to "do it the hard way" wastes court time and client dollars. This conduct is sanctionable. *Theyppard v. Crow Barker Paul No. 1 Ltd. Partnership*, 192 Ariz. 539, 968 P.2d 612 (App 1998). Here, the two objections are directly contrary basic axioms of law. Plaintiffs are simply not forthright with the Court when discussing the evidence. They deny facts that are simply undeniable. The truth is Mr. Beasley was drunk, he verbally assaulted Stuart, and then he physically attacked him. The objections were made to harass, and were a waste of time.

DATED this 15th day of February, 2011.

ALLEN & LEWIS, PLC

By /s/Robert K. Lewis
Robert K. Lewis
Shannon O'Connell
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2011, 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. Theya, Suite A-106
Scottsdale, Arizona 85254
Attorneys for Plaintiffss

By /s/ Jamie Tanner

Exhibit 2

AFFIDAVIT OF WILLIAM JOE COLLIER

STATE OF ARIZONA)
) ss.
COUNTY of MARICOPA)

1. I, WILLIAM JOE COLLIER, under oath, hereby declare the following:

2. I was the Director in charge of the Phoenix Police Scientific Crime Detection Laboratory for over 29 years.

3. I have worked in the fields of toxicology, drugs, forensic chemistry and criminalistics for over 47 years.

4. I have 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.

5. I have been hired by the firm of Allen & Lewis, PLC, to provide opinions regarding the intoxication of Mr. Orville Thomas Beasley, III, on the evening of January 29, 2008.

6. My opinions are based on my review of the following: (1) Phoenix Police Department Report No. 2008-80169255; (2) Maricopa County Medical Examiner's Autopsy Report Case # 08-00640, dated 01/31/2008, prepared by Robert E. Lyon, D.O. ("Autopsy Report"); (3) Report of Toxicological Examination, dated 03/03/2008, prepared by Norman A. Wade, Laboratory Director.

7. According to the Autopsy Report, Mr. Beasley weighed 210 pounds on the evening of January 29, 2008, and had a blood alcohol concentration of .19%.

8. Based on statements from the Police Report, Mr. Beasley was at work from 6:00 a.m. until 2:30 p.m. Beasley then went home, picked up his wife, Rebecca Beasley, and arrived at the FBR Open by 3:30 p.m. Mr. Beasley left the FBR and arrived at Greasewood Flats near Sunset. A receipt from Greasewood Flats in Mr. Beasley's pocket indicates he bought food at 6:23 p.m. at Greasewood Flats. Mrs. Beasley stated to police that Mr. Beasley consumed at least 1 ½ Jack Daniel's whiskey and soda at Greasewood Flats.

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

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

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

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

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

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

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

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

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

OFFICIAL SEAL
ERICA CARTWRIGHT
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Aug. 28, 2013

Exhibit 3

TABLE 33-11
STAGES OF ACUTE ALCOHOLIC INFLUENCE/ INTOXICATION IN NONTOLERANT INDIVIDUALS

BLOOD ALCOHOL CONCENTRATION (% w/v)	STAGE OF ALCOHOL INFLUENCE	CLINICAL SIGN/SYMPTOM
0.01–0.05	Sobriety	No apparent influence Behavior nearly normal by ordinary observation Slight changes detectable by special tests
0.03–0.12	Euphoria	Mild euphoria, sociability, talkativeness Increased self-confidence; decreased inhibitions Diminution of attention, judgment, and control Loss of efficiency in finer performance tests
0.09–0.25	Excitement	Emotional instability; decreased inhibitions Loss of critical judgment Impairment of memory and comprehension Decreased sensory response; increased reaction time Some muscular incoordination
0.18–0.30	Confusion	Disorientation, mental confusion; dizziness Exaggerated emotional states (fear, anger, grief, *etc.*) Disturbance of sensation (diplopia, *etc.*) and of perception of color, form, motion, dimensions Decreased pain sense Impaired balance; muscular incoordination; staggering gait, slurred speech
0.27–0.40	Stupor	Apathy; general inertia, approaching paralysis Markedly decreased response to stimuli Marked muscular incoordination; inability to stand or walk Vomiting; incontinence of urine and feces Impaired consciousness; sleep or stupor
0.35–0.50	Coma	Complete unconsciousness; coma; anesthesia Depressed or abolished reflexes Subnormal temperature Incontinence of urine and feces Embarrassment of circulation and respiration Possible death
0.45 +	Death	Death from respiratory paralysis

Adapted from Dubowski KM: Alcohol determination in the clinical laboratory. Am J Clin Pathol 1980;74:749. Used with permission.

The plasma/whole blood ethanol ratio is approximately 1/1.18. If the blood specimen was centrifuged and the cellular elements removed, then the resultant reading for the plasma or serum must be reduced by 16%–18% to convert the value to a blood ethanol level. Proper collection technique involves the use of nonalcohol skin antiseptics, although at least one study found no significant difference between alcohol and nonalcohol preps in measurement of the blood ethanol level.[68] Another study also showed that performing the venipuncture through a pool of 100% ethanol on the skin did not affect ethanol results as determined with the DuPont automatic clinical analyzer.[69]

Postmortem Blood Alcohol Specimens

Blood ethanol produced by postmortem decomposition rarely exceeds 50 mg/dL.[70] Fluoride ion, mercuric ion, and cold storage inhibit the tissue formation of ethanol by microorganisms. Femoral and jugular veins are the best postmortem blood sampling sites. Intracardiac samples may demonstrate falsely elevated ethanol levels compared with femoral blood samples.[71] Because of diffusion of ethanol from the stomach, pleural or pericardial samples may contain ethanol levels up to 190 mg/dL higher than those of corresponding femoral blood samples.[72]

Within 24 hours of death, little ethanol is formed even at room temperature. No blood specimen from bodies refrigerated within 4 hours of death and stored up to 28 hours contained more than 10 mg ethanol per deciliter.[73] The use of vitreous humor for postmortem ethanol analysis helps distinguish endogenous from exogenous ethanol sources, because bacterial infiltration occurs late in the putrefaction process.[74]

Preservation of Blood Samples

Mechanisms of ethanol decomposition in stored samples include diffusion from improperly sealed containers, ethanol metabolism by microorganisms (inhibited by sodium fluoride), and a temperature-dependent ethanol oxidation reaction. This enzymatic process varies from zero under frozen conditions to 0.29 mg/dL/d at 22°C and 43 mg/dL/d at 62°C.[75] Temperature, fluoride concentration, and length of storage are the most important variables in ethanol loss during storage, but very little ethanol deteriorates when the sample is stored over a month at 4°C.[76,77] The presence of bacterial flora and enzymes released from traumatized organs also can affect ethanol decomposition under adverse storage conditions.

Breath Samples

Portable ethanol breath detection devices were developed as rapid, simple, and noninvasive methods that analyze arterial ethanol levels based on the blood/breath ratio of 2,100. This ratio varies between individuals and within one person over time.[78] Variables altering accuracy include recent use of alcohol or alcohol-containing products (within 15–30 minutes), recent belching or vomiting, inadequate end expiratory specimen (i.e., poor cooperation), presence of obstructive pulmonary disease, and poor technique. Variability in the blood/breath ratio indicates that breath ethanol concentra-