**CTA file no.: 2018-000194-001** **Atty no.: 20500**

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT – LAW DIVISION**

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| **SANDRA WHITE,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| | ) | |
| **v.** | ) | **Court No. 2019 L 002083** |
| | ) | |
| **CHICAGO TRANSIT AUTHORITY,** | ) | |
| **a Municipal Corporation, and** | ) | |
| **TYRONE BYNUM** | ) | |
| | ) | |
| **Defendants.** | ) | |

## DEFENDANTS' MOTION FOR A NEW TRIAL

Pursuant to 735 ILCS 5/2-1202, Defendants CHICAGO TRANSIT AUTHORITY (CTA) and TYRONE BYNUM, by their counsel, KENT RAY, the CTA's General Counsel, hereby move this Honorable Court to vacate the jury verdict rendered against them on February 27, 2023, and to grant them a new trial.

This Court "has inherent power and responsibility to safeguard the integrity of the judicial process." *Herington v. Smith*, 138 Ill. App. 3d 28, 31 (3d Dist. 1995). In this unique case, the integrity of the judicial proceedings before this Court has been severely compromised, thereby requiring a new trial. First, the jury rendered its $3 million verdict against Defendants *without hearing* all the relevant evidence because of the poor audio quality of the Plaintiff's evidence deposition which was taken at the Cook County jail. *Second*, Plaintiff had failed to disclose in discovery her *post-accident* social media postings, which portray her cliff-jumping, swimming with the dolphins, roller-skating, playing tennis, wearing high heels, and traveling to far-away destinations, such as Egypt, South Africa, and Mexico. These postings directly contradict Plaintiff's sworn testimony that, following the accident, the pain in her lower back and legs was

so severe – "10 out of 10" – that it prevented her from leading a normal life.[1] 2/23/23 Trial Excerpt, **Ex. 4,** 85:3-6, 93:2 – 96:16, 98-15-17, 115:16-18, 121:6-24. Plaintiff's perjured testimony amounted to a fraud on the Court. Additionally, several erroneous rulings exacerbated prejudice to Defendants. They include: (a) the court's refusal to allow Defendants to contest the value of Plaintiff's *future* loss of normal life, pain and suffering, and reasonable medical care, given her incarceration on charges of first degree murder and dismembering of a human being, (b) the court's refusal to instruct the jury that Plaintiff's absence from the courtroom had nothing to do with her March 1, 2018 accident, and (c) the court allowing Plaintiff's medical expert, Dr. Mark Sokolowski, to testify as her treating physician when, in actuality, Plaintiff retained him as a controlled expert in anticipation of trial. As we further explain below, cumulatively, these errors severely prejudiced Defendants and affected the integrity of the proceedings before this Court, thus warranting a new trial.

## I. THE JURY RENDERED ITS VERDICT WITHOUT HEARING ALL THE EVIDENCE BEFORE IT BECAUSE OF POOR AUDIO QUALITY OF THE PLAINTIFF'S EVIDENCE DEPOSITION.

Comments to the Supreme Court Rule 241 state that "the presentation of in-person testimony remains of utmost importance in trials" and, thus, remote video participation may be allowed only in "compelling circumstances" and only with the "adequate safeguards" in place to ensure "accurate transmission." Here, over Defendants' objection, Plaintiff was allowed to testify remotely, by a pre-recorded video evidence deposition, because, at the time of trial, she was held without bail at the Cook County jail on charges of first-degree murder and dismembering her landlord in October 2022. See **Exhibit** 7, the indictment filed against Plaintiff, and **Exhibit 8,** the

[1] Condensed Trial Transcripts have been attached as follows: 2/21/2023 Transcript as **Exhibit 1**, 2/22/23 Transcript as **Exhibit 2**, 2/23/23 Transcript as **Exhibit 3,** 2/23/23 Transcript Excerpt – Plaintiff's Evidence Deposition as played at trial as **Exhibit 4,** 2/24/23 as **Exhibit 5**, and 2/27/23 Transcript as **Exhibit 6.**

State's bond petition The court denied Defendants' request to evaluate Plaintiff's fitness to participate in these civil proceedings – just *three months* after these horrific events – and ordered her evidence deposition to be recorded in jail, for subsequent use at trial. See **Exhibit 9,** Judge Travino's January 13, 2023 order granting Plaintiff leave to take an evidence deposition. However, as we explain below, the "adequate safeguards" were not put in place to ensure the accurate transmission. As a result, the jury did not hear a substantial part of Plaintiff's testimony at trial.

The court's order allowing Plaintiff's remote deposition provided for the use of a microphone and USB hub to ensure the audio's quality. **Ex. 9,** 1/13/23 Order, and **Exhibit 10,** 1/25/23 Order. Plaintiff's counsel was given a microphone for the explicit purpose of recording the evidence Deposition. See **Exhibit 11,** 3/9/23 Tr., 35:4-24. That microphone, however, was not used. The prison authorities did not allow the use of an external microphone (**Ex. 11,** 3/9/23 Tr., 35:15-24) – a fact, of which Plaintiff's counsel did not inform either the court, or the videographer. ("Nemeroff: So you were aware there was no external microphone other than what was on the Cook County computer at the time, correct? MAIGAN HOGAN: I was not aware of your setup at all"). **Ex. 12,** 3/20/23 Tr. 51:10-13. Neither the court reporter, nor videographer were present in prison to record the Plaintiff's deposition. Instead, they participated remotely via Zoom, with the *Zoom application* performing the recording. See **Exhibit 12,** 3/20/23 Tr., 30:16 – 32:11, 51:6 – 9. Plaintiff's evidence deposition was recorded on a Cook County computer, without the use of any equipment, which would have amplified the sound.[2]

[2] At some point, it seems that the Cook County Dept. of Corrections was aware of the order permitting the microphone. See **Ex. 14,** a 1/27/23 letter from S. Wilensky, First Assistant Executive Director, CCDOC Legal, indicating receipt of the 1/25/23 Order permitting Plaintiff's counsel to access the Department of Corrections with a laptop computer, USB hub, and USB microphone. What happened after this letter was sent, is unclear.

Further, Plaintiff's deposition was taken in a room that was not conducive to a deposition. See Kaplan Aff., attached as **Ex. 14.**. It was a large room, with cement walls and glass partitions. Id. at 7. The only furniture in the room was a plastic rectangular folding table and plastic chairs. Id. The table was approximately 8 feet long and three feet wide. Id. at 78. Plaintiff and her counsel sat at one side of the table, with the laptop recording her testimony in front of them. Id. at 8. Defense counsel sat across the table, approximately three feet away from Plaintiff. Id. Plaintiff -- an accused murderer -- was allowed to sit for her deposition unhandcuffed. Id. at 9. A security guard sat 10 to 15 feet away from the table. Id. at 9. Because of personal safety considerations, defense counsel conducted cross-examination from his seat, 3 feet away from Plaintiff, instead of moving closer, as suggested by counsel for Plaintiff. Id. at 10.

As a result, the sound quality was subpar. As the videographer, Maigan Hogan, acknowledged, Defendants' counsel sounded "clear, but distant." **Ex. 12,** 3/20/23 Tr. 62:21-23. Hogan later explained: "I do think that [Plaintiff's counsel's voice] was louder than [defense counsel's], and it just kind of created a bit of a distant effect in the sound . . . in comparison to [Plaintiff's counsel's] and Sandra White, he did sound a bit distant." **Ex. 12,** 3/20/23 Tr. 57:17 – 58:2. The record reflects Ms. Hogan interrupting Plaintiff's cross-examination, requesting counsel to repeat his objection, which sounded "very distant." **Ex. 12**, 3/20/23 Tr. 131:2-15.

Indeed, the only way a transcribing service was able to transcribe the Plaintiff's evidence deposition was by listening to the entire audio "with very good headphones" and loading it into a program called Express Scribe, which allowed the transcriber to use a foot pedal to "go back and forth, rewind, control the speed of the deposition," to make out the phrases that were otherwise hard to hear. **Ex. 12,** 3/20/23 Tr. 36:12 – 37:5. Additionally, after the deposition was transcribed, it went through an extra editing step, where Erin Marshall, the editor, listened to the entire audio

from start to finish, and performed additional research, to confirm that the transcription was accurate. **Ex. 12**, 3/20/23 Tr. at 33:17 – 34:6.

The jury, however, did not have an ability to use "very good headphones" when listening to the Plaintiff's evidence deposition at trial, or to use a special software program and a foot pedal to go back and forth and rewind the deposition, if they had not heard something. As a result, a large part of the Plaintiff's deposition was inaudible. Specifically, following the playing of Plaintiff's testimony, one juror wrote to the Court: "Will we be able to ask for a transcript at some point for questions that couldn't be heard or understood correctly?" **Ex. 3,** 2/23/23 Tr. 132-33. In response to this inquiry, the Court ordered a Court Reporter to transcribe the Plaintiff's deposition, as played in open court. **Ex. 5**, 2/24/23 Tr. 4:3 – 5:24. Then, on Monday morning, the next court date, the Court informed the parties that it decided against submitting the transcript to the jury. **Ex. 6**, 2/27/23 Tr. 4:5 – 6:12. The court disclosed that the transcript prepared at its request contained approximately 124 instances of "indecipherable," or inaudible, speech. **Ex. 12**, 3/20/23 Tr. at 9:21 – 10:4. A review of the trial transcript excerpt reveals the problem to be even greater -- the word "indiscernible" appears 146 times throughout the transcript, including both Plaintiff's direct and cross examination. See **Ex. 4**, 2/23/23 Tr. Excerpt.

Instead, the Court ordered the entire deposition to be played to the jury again, instructing the jurors to raise their hands if they had difficulty hearing the testimony, at which point it would be replayed. **Ex. 6,** 3/27/23 Tr. 4:5 – 6:12. And indeed, the jurors raised their hands multiple times. **Ex. 12** 3/20/23 Tr. 79:25 – 80:10 (Nemeroff: " I think there was about probably three or four times . . . when a juror raised their hands." THE COURT: "It was more times than that."). Moreover, there is no assurance that all jurors raised their hands every time they did not hear some portion of the deposition. Thus, it is highly unlikely that the second playing of the video remedied the audio problem.

The subpar audio quality of the Plaintiff's video deposition severely prejudiced Defendants because the jury rendered its verdict without hearing all the evidence before it. This deprived Defendants of a fair trial, thus warranting a new trial in this case.

## II. PLAINTIFF'S PERJURED TESTIMONY AMOUNTED TO A FRAUD ON THE COURT, THUS WARRANTING A NEW TRIAL.

Additionally, it has recently come to Defendants' attention that Plaintiff – a key witness at her own trial -- perjured herself, thereby effecting a fraud on the court and warranting a new trial. Specifically, a post-trial Internet search revealed a Facebook account under the name of Sandra Kolalou, which portrays Plaintiff engaging in rigorous activities, such as cliff-jumping, riding a camel, swimming with dolphins, roller-skating, playing tennis, wearing high heels, and traveling to far-away destinations -- all during the time period following her bus accident. See **Ex. 15,** posts and photographs from Plaintiff's Facebook account.[3] This new evidence – which Plaintiff had failed to disclose in discovery -- directly contradicts her sworn testimony that, following the accident, the pain in her lower back and legs was so severe that it prevented her from leading a normal life.

This court "has inherent power and responsibility to safeguard the integrity of the judicial process." *Herington v. Smith*, 138 Ill. App. 3d 28, 31 (3d Dist. 1995). "Where perjured testimony so permeates that process as to constitute a fraud upon the court, false testimony by a material witness may alone be sufficient to warrant a new trial." *Id.* In *Herington*, the Appellate Court affirmed a grant of new trial where it was discovered, post- trial, that a key medical expert lied under oath about his credentials. *Id.* at 30. The court explained that the chiropractor's testimony

[3] Plaintiff's Facebook Account can also be accessed in full at the following URL: https://www.facebook.com/mzdrizzy.rozay. The account also contains several videos: A February 13, 2021 post shows Plaintiff climbing out of a caged jeep while on a private safari in South Africa, a February 15, 2021 post shows Plaintiff in South Africa standing on a bridge with monkeys crawling over her shoulders, and an August 28, 2022 video shows Plaintiff playing tennis.

was "devastating" to Plaintiff case, and that the jury believed him based on the strength of his credentials – which he "misstated to the extent of being a fraud upon the Court." *Id.*

During discovery, Defendants requested Plaintiff to produce "any and all social media or other electronic postings, bios, conversations, photographs, tweets, feeds, comments, or websites authored by or concerning the Plaintiff for the one year prior to the accident through the present date." In her 9/20/19 response, Plaintiff acknowledged that she "maintained a Facebook account under the name 'Sandra Kolalou,'" but stated that she deactivated it "some time in August 2019." See **Exhibit 16,** Plaintiff's answers to Rule 214 Requests to Produce, Request 36. **Plaintiff** did not produce any information or documents responsive to this discovery request, and never supplemented her response prior to trial.

A recent Internet search revealed an *existing* Facebook account under the name of Sandra Kolalou, which contains photographs and videos of Plaintiff dated between 2019 and 2022. These photographs and videos, some of which we attach as exhibits to this motion, portray Plaintiff cliff-jumping, swimming with the dolphins, roller-skating, playing tennis, wearing high heels, and traveling to far-away destinations, such as South Africa, Egypt, and Mexico – all in the time period following her March 1, 2018 accident. **Ex. 15**.

This evidence directly contradicts Plaintiff's sworn testimony that the injuries she sustained in the accident were so severe – "10 out of 10" -- that they prevented her from leading a normal life. **Ex. 4,** 3/23/23 Tr. Excerpt, 85:3-6, 93:2 – 96:16, 98-15-17, 115:16-18, 121:6-24. Specifically, Plaintiff testified that she still has issues standing for extended periods of time, and that doing so causes numbness, tingling, and a sharp pain that radiates down her legs. **Ex. 4,** 3/23/23 Tr. Excerpt, 94:9 – 95:21. Plaintiff testified that she still has difficulty walking up and down stairs, that the last time she attempted to jog was in March 2021 and she could not even run

a block. **Ex. 4,** 3/23/23 Tr. Excerpt, 88:8 – 89:4. Plaintiff further testified that around the time she saw Dr. Sokolowski on March 2, 2021, she was trying to limit her activities in order to accommodate her pain, while her Facebook posts indicate she was traveling to South Africa a month before. **Ex. 4,** 3/23/23 Tr. Excerpt, 83:1-24, and **Ex. 15.**[4]

Because Plaintiff's perjured testimony at trial amounted to a fraud on the Court, this Court should grant a new trial or, at a minimum, order an evidentiary hearing where Defendants could inquire into the authenticity and circumstances surrounding Plaintiff's 2019-2022 Facebook postings.

## III. SEVERAL ERRONEOUS RULINGS BY THE COURT EXACERBATED PREJUDICE TO DEFENDANTS, THUS WARRANTING A NEW TRIAL ON DAMAGES OR, AT A MINIMUM, A REMITTITUR.

### A. The Court Should Have Allowed Defendants to Contest the Anticipated Value of Plaintiff's *Future* Loss of Normal Life, *Future* Pain and Suffering, and Medical Care *Reasonably Certain to be Received in the Future*, Given Her Incarceration Without Bail on Charges of First-Degree Murder.

The jury awarded Plaintiff more than $1.5 million in damages for the future loss of normal life, future pain and suffering, and medical care *reasonably certain* to be received in the future. **Ex. 6**, 2/27/23 Tr. 107. Yet, Defendants were not allowed to argue at trial that Plaintiff's future medical treatment, pain and suffering, and normal life may be substantially different from that of an average person because she is being held without bail – and may be convicted – on charges of first-degree murder, dismembering, and concealing the homicidal death of a human being.

Specifically, prior to trial, Defendants filed two motions *in limine* seeking to bar, as speculative, evidence of surgeries, medical treatment, and loss of normal life Plaintiff was "reasonably certain" to experience in the future – given that she was being incarcerated without

[4] Plaintiff's testimony regarding how she found Dr. Sokolowski is highly doubtful in its own right. As set forth more fully in Section III(c) below, Plaintiff testified that she found Dr. Sokolowski "on Google" (3/23/23 Excerpt, 112:2-4), despite Plaintiff's counsel's admission that Dr. Sokolowski had testified *for him* many times. 2/21/23 Tr. 94:20 – 95:2.

bail and, if convicted, could spend the rest of her life in jail. See **Exhibit 17,** Defs' MIL Nos. 28 and 32. The court denied both motions because Defendants did not have a prison system expert:

> Court: Do you have someone from the prison system that says she could not get medical care in the prison system under those contingencies and she could not have a fusion? You had an absolute right to look into that. Do you have anybody to testify to that?
>
> Kaplan: No, Your Honor.
> Court: Okay. We're Done.

**Ex. 2**, 2/22/23 Tr. 440:5-23. This was an error that severely prejudiced Defendants. Defendants did not have a chance to conduct discovery into the Plaintiff's prison conditions because she was arrested and incarcerated in October 2022, *six months* after an order had been entered certifying that discovery was closed and the case was set for trial. **Ex. 18**, Judge Trevino's order certifying the case for trial.

Moreover, the Court went to great lengths *to conceal* from the jury *the very fact of Plaintiff's incarceration.* In particular, the Court allowed Plaintiff to change her last name, Kolalou, to her maiden name, White, for purposes of trial. **Ex. 10**, 1/25/23 Court Order. All witnesses were instructed to refer to Plaintiff only as Sandra White, not Sandra Kolalou. Id. At trial, all parties were instructed to identify Plaintiff by her maiden name "White." See Plaintiff's Motion *in Lamine* 36, Day 1 Tr. 32:20 – 34-14. At times, the Court itself admonished witnesses to use the name White. Day 3 Tr. 51:15 – 52:3, 65:21 – 66:17, 112:10 – 113:5. Additionally, the court ordered that, for her evidence deposition (recorded in jail), Plaintiff be allowed to wear civilian clothes, make-up and hairdo, not to wear hand-cuffs, and that the background be blurred, so that the jury could not suspect a prison setting. **Ex. 9**, 1/13/23 Court Order. Given these extensive precautions designed to exclude any reference to Plaintiff's incarceration from trial, Defendants were not in a position to introduce evidence – let alone *a prison system expert* – about

the prison conditions awaiting Plaintiff upon her potential conviction.

Yet, as the court acknowledged, Defendants had "an absolute right" to contest the Plaintiff's claims of future loss of normal life, future pain and suffering, and surgeries and medical care that she was "reasonably certain" to receive in the future. **Ex. 2**, 2/2/23 Tr. 439:13 – 440:23. Defendants were deprived of that critical opportunity because the *very facts of Plaintiff's incarceration and potential conviction* were concealed from the jury. This severely prejudiced Defendants, thus warranting a new trial on damages. At a minimum, the Court should order a remittitur. *See Klesowitch v. Smith,* 2016 IL App (1st) 150414, ¶48-49 (remanding a case for remittitur or a new trial on damages).

**B. The Court Should Have Instructed the Jury that Plaintiff's Absence from the Courtroom Was Unrelated to Her Claimed Injuries.**

This case presented a unique situation in which the personal injury plaintiff – who complained of allegedly debilitating injuries to her lower back and legs – did not attend the trial in person. As a result, the jury did not have the benefit of seeing her enter the courtroom, walk towards the witness stand, take a seat, and sit through the examination. Instead, the jury saw the Plaintiff only from her waist up, seated at a table during a pre-recorded video deposition taken via Zoom. Thus, jurors could not evaluate the credibility of Plaintiff's claims by observing her demeanor in person.

Defendants requested the Court to instruct the jury that they should not infer from the Plaintiff's absence that it is due to the injuries she sustained in the bus accident. **Ex. 5**, 2/24/23 Tr. at 58, and **Ex. 19**, Defendants' Proposed IPI. The Court refused the proposed instruction, explaining: "I think it's clear from the very beginning in the Statement of the Case that nothing should be inferred that she's not here." **Ex. 5**, 2/24/23 Tr. 58:14-22. Specifically, before conducting *voir dire*, the Court told prospective jurors that "Plaintiff will not attend this trial live

due to reasons beyond her control and unrelated to the accident or injuries she claims resulted from the accident." 2/22/23 Tr. at 194. The Court's refusal to instruct the jury immediately prior to jury deliberations regarding the Plaintiff's absence, prejudiced Defendants.

"[I]t is well-established that non-IPI instructions are permissible where the case presents a unique fact situation or point of law not addressed by the IPI which requires amplification or clarification." *Ono v. Chicago Park Dist.*, 235 Ill. App. 3d 383, 390 (1st Dist. 1992). The instant case presented a unique fact situation, in which a personal injury Plaintiff, who claimed inability to sit or stand for extended periods of time, was absent from the courtroom during the entire trial. There is no pattern jury instruction available to address this situation. Indeed, during his closing argument, Plaintiff's counsel emphasized that, even at her medical visits, Plaintiff "was having difficulty sitting for any kind of extended period of time." **Ex. 6,** 2/27/23 Tr. 43:17-24, 45:13-18, 61:17-23. Without the Defendants' proposed instruction, the jury was left to infer that Plaintiff could not sit through the trial because of the injuries she suffered in the bus accident.

The Court's statement to prospective jurors during *voir dire* did not cure this prejudice. By the time the jurors began deliberating *five days later* on February 27, 2023, that statement was far in their rear-view mirror. Moreover, the juries are presumed to follow the court's instructions. *McDonnell v. McPartlin*, 192 Ill. 2d 505, 535 (2000). There is no similar presumption or obligation with respect to the statement of the case during *voir dire*. Accordingly, Defendants were prejudiced by the Court's refusal to instruct the jury regarding the Plaintiff's absence from trial.

### C. Dr. Mark Sokolowski Was a Controlled Expert Witness, Not a Treating Physician, and Thus, Should Have Been Barred From Rendering Opinions, Which He Did Not Disclose Prior to Trial.

The only medical professional who opined at trial on the cause, extent, and permanency of

Plaintiff's injuries was Dr. Mark Sokolowski. See **Ex. 20,** Dr. Sokolowski's Evidence Deposition.[5] He also was the only" expert" opining on the reasonableness of the medical care she had received from him, as well as *all of her previous treaters*. As such, his testimony was instrumental in securing Plaintiff's verdict.

Plaintiff identified Dr. Sokolowski only as a treating physician. See **Ex. 21**, Plaintiff's 4/17/20, 10/22/20, 12/14/20, 1/26/21 R. 213(f) Disclosures. As a treating physician, he was allowed to opine on the cause of Plaintiff's condition and the appropriateness of her previous treatment, without prior disclosures under Rule 213(f)(3) governing controlled expert witnesses. Defendants objected on the ground that Plaintiff should have disclosed Dr. Sokolowski as a controlled expert witness and provided Defendants with his expert disclosures in advance of trial. **Ex. 1**, 2/23/23 Tr. 6:7-16, 81:9 –21. The circuit court denied Defendants' request on the ground that it was not supported by case law. Id. 81:9 – 21. This was an error. As we explain below, *the facts as they developed at trial* demonstrate that, in actuality, Plaintiff retained Dr. Sokolowski for litigation-related purposes. Thus, he was a controlled expert witness, not a treater.

To begin with, Plaintiff first saw Dr. Sokolowski eight months after filing her lawsuit against Defendants. Plaintiff's lawsuit filed on February 25, 2019, while Plaintiff's first visit with Dr. Sokolowski was in October 8, 2019. See **Ex. 22**, Plaintiff's Complaint, and **Ex. 4**, 2/23/23 Tr. Excerpt 115:12-14. Prior to seeing Dr. Sokolowski, Plaintiff did not seek any medical treatment for 11 months, as her final appointment with Dr. Grochowski was on November 20, 2018. **Ex. 4**, 2/23/23 Tr. Excerpt 115:8-11. This is a highly unusual behavior for someone who purportedly experienced excruciating pain on a daily basis. **Ex. 4,** 85:3-6, 93:2 – 96:16, 98-15-17, 115:16-18, 121:6-24. To get to Dr. Sokolowski's office, Plaintiff traveled approximately an hour by bus – all

[5] The playing of Dr. Sokolowski's Evidence Deposition at trial was not transcribed by the court reporter. Exhibit 20 is the full content of Dr. Sokolowski's Evidence Deposition.

while carrying a box of medical records. **Ex. 4,** 2/23/23 Tr. Excerpt 112:3-21, Sokolowski Dep. 109:16-19. She made this long journey, despite claims that sitting for extended periods of time caused her excruciating pain. **Ex. 4,** 2/23/23 Tr. Excerpt 73:24 – 76:1.

Moreover, Plaintiff's testimony that she found Dr. Sokolowski "through Google" strains credulity. **Ex. 4**, 2/23/23 Tr. Excerpt 71:20-22. Plaintiff's counsel acknowledged at trial that Dr. Sokolowski "testified *for me* numerous times about the cost of surgeries that he does." **Ex 1**, 2/21/23 Tr. 94:23 – 95:2 (emphasis added).[6]

Under these circumstances, Plaintiff should not have been permitted to use Dr. Sokolowski as a treating physician under Rule 213(f)(3). The delay in treatment and evident relationship between counsel and Dr. Sokolowski evidence that this was an opinion made in anticipation of litigation. Defendants request a re-trial in which Dr. Sokolowski is identified as what he is -- a controlled expert witness.

## CONCLUSION

For the foregoing reasons, Defendants request a new trial on damages, a remittitur, or, at a minimum, an evidentiary hearing on the circumstances surrounding Plaintiff's perjured testimony.

Respectfully submitted,

KENT RAY
General Counsel of the Chicago Transit Authority

By: */s/ Brian Kaplan*

Brian Kaplan , Chief Attorney

[6] Additionally, Nemeroff Law Offices, LTD is listed as the "plan" on all of Dr. Sokolowski's medical bills. See **Exhibit 23**, bills from Dr. Sokolowski's office.

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