

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

JOSEPH R. SLIGHTS, III  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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March 21, 2012

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Wilmington, DE 19899

**Re: *Plant v. Rosado, et al.*  
C.A. No. N10C-11-048 JRS**

Counsel,

I have considered the defendant's objection to the trial testimony of Dr. Crain that appears at pages 29 through 38 of his trial deposition transcript. As promised at our pretrial conference this morning, I am providing you with this brief ruling in this format so that the parties can respond to the ruling in advance of next Monday's trial. For the brief reasons that follow, Mr. Shalk's objection is sustained, at least in part.

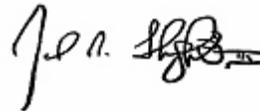
At pages 29 through 38, plaintiff's counsel repeatedly asks Dr. Crain to comment on various portions of the trial testimony of Dr. Andriansani (the defense expert) which had been secured by deposition some time earlier. While the defense objection to this testimony appears to be based upon a lack of notice that Dr. Crain would be asked to comment on Dr. Andriansani's trial testimony, and a lack of opportunity to allow Dr. Andriansani to address Dr. Crain's criticisms of his trial

testimony, the basis for my ruling is a bit different. Specifically, as I alluded to this morning, the rationale for allowing parties to take expert testimony for use at trial by pretrial deposition is to accommodate the witnesses and to offer some efficiencies to counsel when appropriate. It is not, however, meant to change the order of proof or to alter the burden of proof. Here, Ms. Plant bears the burden of proving causation and damages. If the doctors were to appear live at trial, she would not have the opportunity to meet this burden by asking her doctor to offer opinions about defense expert testimony that had not yet been presented. Yet, in availing herself of the court's practice of allowing parties to secure their expert trial testimony by pretrial deposition, plaintiff has achieved the unfair advantage of bolstering her case in chief with trial evidence that would otherwise not be presented until the defense presented its case in chief. The court will not countenance this result.

Plaintiff's options are either to: (1) secure Dr. Crain's appearance at trial and scrap the trial deposition; or (2) meet and confer with Mr. Shalk to attempt to redact those portions of Dr. Crain's testimony that refer directly to Dr. Andriansani's trial testimony (it does appear that portions of the testimony at pages 29-38 can be excised from the tainted testimony). If the parties cannot agree, I can be available Friday, March 23 at 10:00 to resolve any lingering disputes.

**IT IS SO ORDERED.**

Very truly yours,

A handwritten signature in black ink, appearing to read "J.R. Slights, III". The signature is written in a cursive style with a horizontal line at the end.

Joseph R. Slights, III

JRS, III/sb