

2000

Joseph W. Rohan v. Chad Boseman, Jerald Boseman : Brief of Appellant

Utah Court of Appeals

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Robert L. Jeffs; Jeffs and Jeffs; Mark S. Gustavson; Attorneys for Appellees.

Joseph W. Rohan; Pro Se.

Recommended Citation

Brief of Appellant, *Joseph W. Rohan v. Chad Boseman, Jerald Boseman*, No. 20001148 (Utah Court of Appeals, 2000).
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Appeal No. 20001148-CA

Argument Priority 15

Appeal from a Decision of the
Third Judicial District Court
Salt Lake County, Judge J. Dennis Frederick

MARK S. GUSTAVSON
1348 Longdale Drive
Sandy, UT 84092
Attorneys for Defendants/Appellees

JOSEPH W. ROHAN
376 East 400 South, Suite 300
Salt Lake City, UT 84111
Plaintiff/Appellant *Pro se*

FILED
Utah Court of Appeals

SEP 06 2001

Paulette Stagg
Clerk of the Court

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Tab 1

Posted: 300.00
Refunded: 0.00
Balance: 300.00

CASE NOTE

PROCEEDINGS

04-23-98 Complaint filed by betsysc betsysc
04-23-98 Judge FREDERICK assigned. betsysc
04-23-98 Fee Account created Total Due: 120.00 betsysc
04-23-98 Filed: Complaint 10K-MORE betsysc
04-23-98 COMPLAINT 10K-MORE Payment Received: 120.00 betsysc
Note: Code Description: COMPLAINT 10K-MORE
05-07-98 Note: Address changed from sherrell
05-07-98 Note: Address changed to P.O. BOX 520781 SLC UT 84152 sherrell
05-07-98 Note: Address changed from sherrell
05-07-98 Note: Address changed to 1876 HARRISON AVE SLC UT 84105 sherrell
05-29-98 Filed: Answer and Jury demand laiep
05-29-98 Filed: Deft's Certificate of service-discovery laiep
05-29-98 Fee Account created Total Due: 50.00 brandyk
05-29-98 Filed: Demand Civil Jury brandyk
05-29-98 JURY DEMAND - CIVIL Payment Received: 50.00 brandyk
Note: Code Description: DEMAND CIVIL JURY
06-03-98 Filed: Pltf's Certificate of service-discovery laiep
06-12-98 Filed: Notice of records depositons laiep
07-17-98 Filed: Deft's Notice of records depositions laiep
07-27-98 Filed: Certificate of Service cindyb
07-28-98 Filed: Deft's Notice of records deposition laiep
09-30-98 Filed: Defts Notice of records deposition laiep
10-06-98 Filed: Notice of Records Deposition cindyb
10-16-98 Filed: Objection to subpoena and motion to quash subpoena laiep
10-16-98 Filed: Memorandum in support of objection to subpoena and
motion to quash subpoena laiep
10-28-98 Filed: Memorandum in opposition to objection to subpoena and
casehist.834 (16%)[Press space to continue, q to quit, h for help]
10-28-98 Filed: Memorandum in opposition to
objection to subpoena and
10-28-98 Filed: Notice of Submission of Affidavit of Joseph W. Rohan in
Support of the Utah State Bar's Objection to Subpoena and
Motion to Quash Subpoena cindyb
10-28-98 Filed: Affidavit of Joseph W. Rohan in Support of the Utah
State Bar's Objection to Subpoena and Motion to Quash Subpoena cindyb
11-04-98 Filed: Utah State Bar's Reply to Memorandum in Objection to

Subpoena and Motion to Quash Subpoena cindyb
 11-12-98 Filed: Notice to submit for decision (objection to subpoena and
 motion to quash) laiep
 11-16-98 Filed: Utah State Bar's Notice to submit for decision
 (objection to subpoena and motion to quash) laiep
 12-11-98 Filed: Minute Entry Ruling -Ut.St. Bar's Objection to Subpoena,
 etc is granted. However, until pltf supplies defts with an
 express waiver for discovery of materials sought from Bar, pltf
 will be precluded from asserting claims as stated in M/E. cindyb
 02-03-99 Filed order: Order (Ut State Bar's objection to subpoena is
 granted, etc) cindyb
 Judge jfrederi
 Signed February 03, 1999
 03-15-99 Filed: Pltf's Certificate of service-discovery laiep
 04-14-99 Filed: Deft's Certificate of service-discovery laiep
 08-19-99 Filed: Pltf's Notice of deposition of Jerald Boseman laiep
 casehist.834 (21%)[Press space to continue, q to quit, h for help]
 08-19-99 Filed: Pltf's Notice of deposition of
 Jerald Boseman laiep
 08-27-99 Filed: Waiver laiep
 08-27-99 Filed: Waiver laiep
 08-31-99 Filed: Stipulation and order on protective order laiep
 08-31-99 Filed order: Protective Order laiep
 Judge jfrederi
 Signed August 31, 1999
 09-14-99 Filed: Notice of assignment laiep
 09-30-99 Filed: Deft's Notice of taking deposition laiep
 10-04-99 Filed: Notice of deposition-Joseph Rohan laiep
 10-28-99 ORDER TO SHOW CAUSE scheduled on November 18, 1999 at 08:30 AM
 in Fourth Floor - N41 with Judge FREDERICK. laiep
 10-28-99 Notice - NOTICE for Case 980904135 ID 452829 laiep
 casehist.834 (24%)[Press space to continue, q to quit, h for help]
 10-28-99 Notice - NOTICE for Case
 980904135 ID 452829 laiep
 Date: 11/18/1999
 Time: 08:30 a.m.
 Location: Fourth Floor - N41
 THIRD DISTRICT COURT
 450 SOUTH STATE
 SLC, UT 84111-1860
 Before Judge: J. DENNIS FREDERICK

On its own motion, the Court orders the parties to appear on said
 date and time and show cause why this case should not be dismissed
 for failure to prosecute. By failing to appear, the Court will

enter an order of dismissal without further notice.

11-18-99 Minute Entry - Minutes for Order to Show Cause

cindyb

Judge: J. DENNIS FREDERICK

Clerk: cindyb

PRESENT

Plaintiff's Attorney(s): STEPHEN WATKINS

Defendant's Attorney(s): KEVIN SWENSON

Video

Tape Number: 1 Tape Count: 8:37-9:17

casehist.834 (28%)[Press space to continue, q to quit, h for help]

HEARING

The Court continues its own order to show cause 60 days for certification of readiness for trial.

12-22-99 Tracking started for Other. Review date Jan 18, 2000.

cindyb

01-19-00 Filed: Pltfs Certificate of readiness for trial

laiep

02-01-00 Filed: Objection to certificate of readiness for trial

laiep

02-02-00 Notice - NOTICE for Case 980904135 ID 518169

cindyb

TELEPHONE CONFERENCE is scheduled.

Date: 03/02/2000

Time: 08:40 a.m.

Location: Fourth Floor - N41

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

Before Judge: J. DENNIS FREDERICK

These matters will be discussed: trial dates, discovery completion dates, jury or non-jury trial, trial length, dates for dispositive motions, dates for exchange of witness lists, nature and complexity of case, final pretrial date and settlement status.

casehist.834 (32%)[Press space to continue, q to quit, h for help]

of case, final pretrial date and settlement

status.

Counsel are requested to be in their respective offices at the time set for the telephone scheduling conference. Unavailability or non-appearance of counsel will result in dates being set without counsel's input, or pleadings stricken and default entered.

Mark Gustavson will need to contact the clerk at 801-238-7509 to

provide his telephone number if he intends to participate in the telephone conference.

02-02-00 TELEPHONE CONFERENCE scheduled on March 02, 2000 at 08:40 AM in

Fourth Floor - N41 with Judge FREDERICK. cindyb

02-10-00 Filed: Deft's Amended notice of depositions laiep

02-28-00 Filed: Notice of Scheduled Independent Medical Exam (IME) cindyb

casehist.834 (35%)[Press space to continue, q to quit, h for help]

02-28-00 Filed: Notice of Scheduled

Independent Medical Exam (IME) cindyb

Fourth Floor - N41 with Judge FREDERICK. cindyb

03-02-00 Minute Entry - Minutes for Personal Injury cindyb

Judge: J. DENNIS FREDERICK

Clerk: cindyb

TELEPHONE CONFERENCE

PRESENT

Plaintiff(s): JOSEPH W ROHAN

Plaintiff's Attorney(s): STEPHEN B WATKINS

Defendant's Attorney(s): STEPHEN J TRAYNER

Other Parties: MARK S. GUSTAVSON

PRETRIAL CONFERENCE is scheduled.

Date: 06/05/2000

Time: 08:30 a.m.

Location: Fourth Floor - N41

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

Before Judge: J. DENNIS FREDERICK

casehist.834 (38%)[Press space to continue, q to quit, h for help]

Before Judge: J. DENNIS FREDERICK

JURY TRIAL.

Date: 06/20/2000

Time: 10:00 a.m.

Location: Fourth Floor - N41

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

Before Judge: J. DENNIS FREDERICK

JURY TRIAL.

Date: 06/21/2000

Time: 09:00 a.m.

Location: Fourth Floor - N41

THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84111-1860

Before Judge: J. DENNIS FREDERICK

JURY TRIAL.

Date: 06/22/2000

Time: 09:00 a.m.

Location: Fourth Floor - N41

THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84111-1860

Before Judge: J. DENNIS FREDERICK

JURY TRIAL.

Date: 06/23/2000

Time: 09:00 a.m.

Location: Fourth Floor - N41

THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84111-1860

Before Judge: J. DENNIS FREDERICK

casehist.834 (43%)[Press space to continue, q to quit, h for help]

Before Judge: J. DENNIS FREDERICK

Jury instructions due on or before 06/20/2000.

Plaintiff to exchange witness/exhibit lists by March 16, 2000 at
5:00 p.m. Defendants to exchange witness/exhibit lists by March 23,
2000 at 5:00 p.m.

Discovery to be completed by May 26, 2000 at 5:00 p.m.

At final pretrial, trial counsel and clients, or an individual with
authority to settle this case are to be present. Out of state
parties must be available by phone at the time of the final
pretrial.

Failure to appear at the Final Pretrial Conference may result in a
default.

The foregoing dates should be considered firm settings and will not
be modified without court order, and then only upon a showing of
manifest injustice. Counsel are instructed to stay in contact with
the Clerk as the trial date approaches regarding dates.

03-02-00 JURY TRIAL scheduled on June 20, 2000 at 10:00 AM in Fourth
Floor - N41 with Judge FREDERICK. cindyb

03-02-00 JURY TRIAL scheduled on June 21, 2000 at 09:00 AM in Fourth
casehist.834 (47%)[Press space to continue, q to quit, h for help]
03-02-00 JURY TRIAL scheduled on June 21,
2000 at 09:00 AM in Fourth

03-02-00 JURY TRIAL scheduled on June 22, 2000 at 09:00 AM in Fourth
Floor - N41 with Judge FREDERICK. cindyb

03-02-00 JURY TRIAL scheduled on June 23, 2000 at 09:00 AM in Fourth
Floor - N41 with Judge FREDERICK. cindyb

03-10-00 Filed: Motion to Compel rachella

03-10-00 Filed: Defendants' Memorandum in Support of Motion to Compel rachella

03-10-00 Filed: Notice of Supplemental Deposition for Joseph Rohan rachella

03-15-00 Filed: Plaintiff's Designation of Witnesses and Exhibits michellh

03-23-00 Filed: Defendant's Designation of Witnesses and Exhibits jills

03-24-00 Filed: Deft's Amended Designation of Witnesses and Exhibits cindyb

03-24-00 Filed: Notice of Deposition of Cheri Boseman cindyb

03-24-00 Filed: Pltf's Supplemental Designation of Witnesses cindyb
casehist.834 (50%)[Press space to continue, q to quit, h for help]
03-24-00 Filed: Pltf's Supplemental
Designation of Witnesses cindyb

03-29-00 Filed order: Minute Entry Ruling - Defts' Motion to Compel is
granted, there being no timely opposition. The information
requested is to be provided within 15 days or complaint will be
dismissed. cindyb

Judge jfrederi
Signed March 29, 2000

04-11-00 Filed: Plaintiff's designation of witnesses and exhibits janeilm

04-13-00 Filed: Rule 68(b) Offer of Judgment jills

04-19-00 Filed: Certificate of Delivery of Discovery lorip

04-20-00 Filed: Notice of Scheduled Independent Medical Exam (IME) cindyb

04-21-00 Filed: Notice of Second Supplemental Deposition of Joseph Rohancindyb

05-15-00 Filed: Certificate of Service from Depomax Reporting Service
(re deposition of Sherrie Boseman) cindyb

06-01-00 Filed: Notice of Records Depositions cindyb

06-01-00 Filed: Defendants' Motion in Limine to exclude the Testimony of
the Plaintiff's Supplemental Witness, David Ingebretsen cindyb

06-01-00 Filed: Memorandum in Support of Defendants' Motion in Limine to
exclude the Testimony of the plaintiff's Supplemental Witness,
David Ingebretsen cindyb

06-02-00 Filed: Motion for Continuance of Trial Setting, Withdrawal of
Counsel, Substitution of Counsel, and Enlargement of Discovery cindyb

06-02-00 Filed: Memorandum in Support of Motion for Continuance of Trial
casehist.834 (55%)[Press space to continue, q to quit, h for help]

HEARING

This case is before the Court for a pretrial settlement conference. The parties having failed to settle at this time, the trial will proceed as scheduled.

06-07-00 Filed: Notice of Discharge of Plaintiff's Attorneys rhondam

06-07-00 Filed: Motion for Voluntary Dismissal and Motion for Expedited Disposition rhondam

06-07-00 Filed: Memorandum in Support of Motion for Voluntary Dismissal casehist.475 (62%)[Press space to continue, q to quit, h for help]

06-07-00 Filed: Memorandum in Support of Motion for

Voluntary Dismissal

06-07-00 Filed: Affidavit of Plaintiff's Support of Motion for Voluntary Dismissal rhondam

06-09-00 Filed: Defendants' Memorandum in Opposition to Plaintiff's Motion for Voluntary Dismissal rhondam

06-09-00 Filed: Motion for Summary Judgment Submitted by Mountain States Insulation and Supply Co., Inc. rhondam

06-12-00 Filed: Defendants' Updated Designation of Witnesses rhondam

06-12-00 Filed: Reply Memorandum in Answer to Defendants' Objection to Plaintiff's Motion for Voluntary Dismissal rhondam

06-12-00 Filed: Notice to Submit for Decision Plaintiff's Motion for Voluntary Dismissal and Motion for Expedited Disposition rhondam

06-14-00 Filed: Motion - (Defs') Limine to Exclude Evidence of Plaintiff's Future Medical Expenses rhondam

06-14-00 Filed: Memo in Support of Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Future Medical Expenses rhondam

06-14-00 Filed: Motion (Defs') in Limine to Exclude Evidence of Plaintiff's Lost Wages and Future Lost Wages rhondam

06-14-00 Filed: Memo in Support of Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Lost Wages and Future Lost Wages rhondam

06-14-00 Filed: Affidavit of Peter H. Christensen rhondam

06-14-00 Filed: Notice to Submit for Decision rhondam

06-14-00 Filed: Minute Entry Ruling - Plt's Motion for Voluntary Dismissal is denied for the reasons specified in the opposing memorandum. Counsel for defts to prepare the order. cindyb

06-15-00 Filed return: Subpoena (Trial) on Return - Deepa Gupta MD rhondam
Party Served: Deepa Gupta MD

Service Type: Personal

Service Date: June 01, 2000

06-15-00 Filed return: Subpoena (Trial) on Return - Officer Gil Salazar rhondam

Party Served: R. L. Young, Law Enforcemnt. Offic

Service Type: Substitute

Service Date: June 08, 2000

06-15-00 Filed: Notice of Plaintiff's Inability to Bring this Matter to Trial rhondam

casehist.475 (70%)[Press space to continue, q to quit, h for help]

rhondam

Lawsuit Trial
rhondam

06-15-00 Filed: Memorandum in Support of Motion to Dismiss Defendant
Jerald Boseman from the Lawsuit rhondam

06-16-00 Filed order: Minute Entry Ruling - There being no timely
opposition, depts' Motion in Limine to exclude testimony of
witness Ingebretsen is grtd. ATD to prepare the order. cindyb
Judge jfrederi
Signed June 16, 2000

06-19-00 Filed: Renewed Motion for Voluntary Dismissal and Motion for
Expedited Disposition or Alternatively Motion to Continue Trial
Setting to Consider Plaintiff's Claims Under the ADA rhondam

06-19-00 Filed: Memorandum in Support of Plaintiff's Renewed Motion for
Voluntary Dismissal, Motion for Expedited Disposition or
Alternatively Moation to Continue Trial Setting to Consider
Plaintiff's Claims Under the ADA rhondam

06-19-00 Filed: Plaintiff's Affidavit in Support of Renewed Motion for
Voluntary Dismissal rhondam

06-20-00 JURY TRIAL Cancelled. cindyb
Reason: Case closed by court

06-20-00 JURY TRIAL Cancelled. cindyb
Reason: Case closed by court

06-20-00 JURY TRIAL Cancelled. cindyb
casehist.475 (75%)[Press space to continue, q to quit, h for help]
06-20-00 JURY TRIAL Cancelled.

cindyb

06-20-00 Minute Entry - Minutes for Jury Trial cindyb
Judge: J. DENNIS FREDERICK
Clerk: cindyb
PRESENT

Plaintiff(s): JOSEPH W ROHAN
Defendant's Attorney(s): STEPHEN J TRAYNER
PETER H. CHRISTENSEN

Video
Tape Number: 1 Tape Count: 10:06-10:14
TRIAL

This case is before the Court for a jury trial. Plaintiff's Motion to Continue Trial is argued to the Court. Plaintiff appears pro se and is a member of the bar and advises the Court that he is unable to proceed.

The Court rules as stated on the record and orders this case be dismissed with prejudice for failure to prosecute. Defendants are awarded costs and fees in an amount to be determined per Rule

4-501.

Attorney Trayner to prepare the findings of fact and conclusions of law and judgment including jury fees. The jury is released.

06-20-00 Filed: Defts' Memorandum in Opposition to Pltf's Renewed Motion for Voluntary Dismissal and Motion for Expedited Disposition or Alternatively Motion to Continue Trial Setting to Consider Pltf's Claims Under the ADA cindyb

06-20-00 Filed order: Order (Pltf's Motion for Voluntary Dismissal Without Prejudice is denied) cindyb
Judge jfrederi

Signed June 20, 2000

06-20-00 Filed: Copy of letter 8/23/99 to Paul Halliday from Stephen Trayner cindyb

casehist.475 (83%)[Press space to continue, q to quit, h for help]

Trayner

cindyb

Halliday, Jr.

cindyb

06-20-00 Filed: Copy of letter 6/16/00 to Stephen Trayner from Joseph Rohan cindyb

06-20-00 Tracking ended for Other. cindyb

06-26-00 Fee Account created Total Due: 15.00 joycer

06-26-00 VIDEO TAPE COPY Payment Received: 15.00 joycer

06-29-00 Filed: Affidavit of Steven J. Trayner rhondam

06-29-00 Filed: Memorandum of Costs and Disbursements rhondam

07-26-00 Filed: Memorandum of Costs and Disbursements rhondam

07-31-00 Filed order: (signed 7/28/00) Findings of Fact, Conclusions of Law cindyb

Judge jfrederi

Signed July 28, 2000

07-31-00 Filed order: (signed 7/28/00) Order and Judgment cindyb

Judge jfrederi

Signed July 28, 2000

07-31-00 Case Disposition is Dismsd w/ prejudice cindyb

casehist.475 (87%)[Press space to continue, q to quit, h for help]

^L

CASE NUMBER 980904135 Personal Injury

Disposition Judge is J. DENNIS FREDERICK

cindyb

08-01-00 Judgment #1 Entered

alicew

Creditor: CHAD BOSEMAN

Creditor: JERALD BOSEMAN

Debtor: JOSEPH W ROHAN

1,728.10 Costs

4,632.50 Attorneys Fee's

987.18 Costs

7,347.78 Judgment Grand Total

08-01-00 Filed judgment: Order and Judgment (with 2 separate judgments)

@J

alicew

Judge jfrederi

Signed July 28, 2000

casehist.202 (90%)[Press space to continue, q to quit, h for help]

Signed July 28, 2000

Creditor: THIRD DISTRICT COURT

Debtor: JOSEPH W ROHAN

518.00 Costs

518.00 Judgment Grand Total

08-01-00 Filed: Certificate of Service from Depomax Reporting Services,
Inc. regarding Deposition of Joseph W. Rohan, Vol. II

rhondam

08-03-00 Filed: Notice of Entry of Judgment

rhondam

08-07-00 Filed: Motion for New Trial Pursuant to Rule 59 or

Alternatively Motion to Amend

rhondam

08-07-00 Filed: Memorandum in Support of Plaintiff's Motion for New
Trial or Alternatively to Amend

rhondam

08-07-00 Filed: Plaintiff's Affidavit in Support of Motion for New Trial
or Alternatively to Amend

rhondam

08-08-00 Filed: Ex-Parte Application to File Over-Length Memorandum in
Support of Motion for New Trial Pursuant to Rule 59 or
Alternatively Motion to Amend

rhondam

08-11-00 Filed order: Order on Plaintiff's Ex-Parte Application to File
Over-Length Memorandum in Support of Motion for New Trial
Pursuant to Rule 59 or Alternatively Motion to Amend

rhondam

Judge jfrederi

Signed August 11, 2000

09-01-00 Filed: Stipulation for Extension of Time to File Defendants
casehist.202 (95%)[Press space to continue, q to quit, h for help]

09-01-00 Filed: Stipulation for Extension of

Time to File Defendants

Alternatively to Amend

rhondam

09-08-00 Filed: Affidavit of Arnold Birrell

rhondam

09-08-00 Filed: Defendants' Memorandum in Opposition to Plaintiff's
Motion for New Trial or Alternatively to Amend (Oral Argument
Requested)

rhondam

09-26-00 Filed: Notice to Submit for Decision on Plaintiff's Motion for
New Trial or Alternatively to Amend

rhondam

09-26-00 Filed: Reply Memorandum in Answer to Defendant's Memorandum in
Opposition to Plaintiff's Motion for New Trial or Alternatively
to Amend

rhondam

09-28-00 Filed: M/E Ruling - Plt's Motion for New Trial, etc is denied
for the reasons specified in the opposing memorandum. Counsel

Printed: 10/18/00 09:57:22

Page 10

^L

CASE NUMBER 980904135 Personal Injury

casehist.202 (99%)[Press space to continue, q to quit, h for help]

Tab 2

Paul M. Halliday Jr., Bar Number 5076
Stephen B. Watkins, Bar Number 3400
HALLIDAY & WATKINS P. C.
Attorneys for Plaintiff
Suite 300, Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

JOSEPH W. ROHAN,)	
Plaintiff,)	
)	
	)	CERTIFICATE OF READINESS
	)	FOR TRIAL
v.)	
)	
	)	Civil Number 980904135 PI
CHAD BOSEMAN, a minor)	
JERALD BOSEMAN an individual,)	
)	
Defendants.	)	Judge: J. Dennis Frederick

TO THE CLERK OF DISTRICT COURT:

Paul M. Halliday Jr., (Bar #5076), Attorney for Plaintiff, Joseph W. Rohan, by the signing below certifies that this case is ready for trial and in support of such certification counsel represents to the Court as follows:

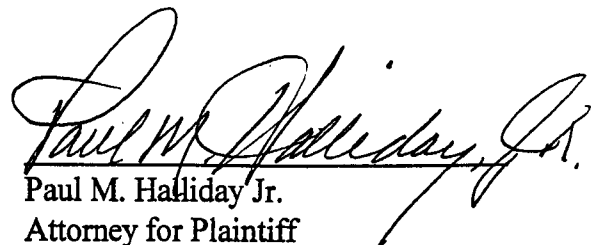
1. That all required pleadings have been filed and the case is at issue as to all parties.

2. That discovery is ongoing in this matter but that all discovery of record will be completed prior to trial.
3. That there are no motions that have been filed which remain pending and upon which no disposition has been made.
4. That reasonable discussions to effect settlement have been pursued by counsel and their clients but no settlement has been effected. (Such discussions are to be realistic in nature and not limited to an unresponded offer. The duty to negotiate lies with all parties.)

Counsel further hereby certifies that the following counsel or pro se parties of record were furnished with a copy of this certificate on the 18 day of January, 2000, whose last known addresses and telephone numbers are as follows:

NAME	BAR #	ADDRESS	TELEPHONE
<u>Stephen J. Trayner</u>	<u>4928</u>	<u>9 Exchange Place, Suite 600</u>	<u>572-7080</u>
<u></u>	<u></u>	<u>Salt Lake City, UT 84111</u>	<u></u>
<u>Mark S. Gustavson</u>	<u></u>	<u>1348 Longdale Drive</u>	<u></u>
<u></u>	<u></u>	<u>Sandy, UT 84111</u>	<u></u>

DATED this 18 day of January, 2000.



Paul M. Halliday Jr.
Attorney for Plaintiff
376 East 400 South, Suite 300
Salt Lake City, UT 84111

NOTICE TO ALL PARTIES

Any objections to the above certification or any disagreements to any of the matters certified are to be filed in writing with the Court within ten days of the date hereof, served upon all parties, and will be heard at the scheduling conference.

The foregoing Certificate is to be used in the Third Judicial Court as the Request for Trial Setting provided for in Rule 4.1 of the Rules of Practice of the District Courts.

BY THE COURT

Tab 3

EXHIBIT "A"

Stephen J. Trayner, # 4928
Steven T. Densley, # 8171
STRONG & HANNI
Attorneys for Defendants
Nine Exchange Place
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH W. ROHAN, Plaintiff, v. CHAD BOSEMAN, a minor, JERALD BOSEMAN, an individual, Defendant.	OBJECTION TO CERTIFICATE OF READINESS FOR TRIAL Civil No.: 980904135 PI Judge J. Dennis Frederick
--	--

Defendants, by and through counsel, objects to plaintiff's Certificate of Readiness for Trial. Defendants asserts there is ongoing discovery that has not been completed and requests that the court grant sufficient time to conduct discovery.

STATEMENT OF FACTS

1. During the course of this litigation, defendants was required to bring a Motion to Compel in order to require plaintiff to execute a authorization to allow defendants to obtain copies of plaintiff's file with the Utah State Bar.
2. On November 2, 1999, defendants took the deposition of plaintiff. At that time, plaintiff appeared at his deposition with extensive file materials purportedly related to his lawsuit against defendants.

Tab 4

Paul M. Halliday Jr., Bar Number 5076
Stephen B. Watkins, Bar Number 3400
HALLIDAY & WATKINS P. C.
Attorneys for Plaintiff
Suite 300, Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

JOSEPH W. ROHAN)	
Plaintiff,)	
)	
)	
v.	)	MOTION FOR CONTINUANCE
	)	OF TRIAL SETTING, WITHDRAWAL
	)	OF COUNSEL, SUBSTITUTION OF
	)	COUNSEL, AND ENLARGEMENT OF
	)	DISCOVERY
)	
)	
)	
	)	Civil Number 980904135 PI
CHAD BOSEMAN, a minor)	
JERALD BOSEMAN an individual,)	
)	
Defendants.	)	Judge: J. Dennis Frederick

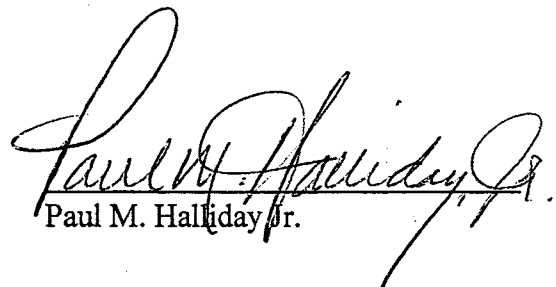
The Plaintiff by and through his counsel hereby moves this court: (1) to continue the trial setting in this matter for ninety days in order for Robert F. Orton of Fabian & Clendenin P.C., to enter his appearance as counsel for the Plaintiff, (2) to allow Paul M. Halliday Jr. and Stephen B. Watkins to withdraw as counsel for the Plaintiff; and (3) to extend the discovery deadline for 60 days

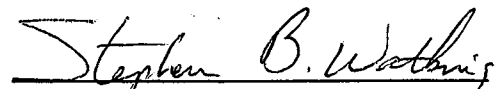
and allow Plaintiff 10 days to file a supplementary designation of exhibits and witnesses, and allow the Defendant 20 days to file a supplementary designation of exhibits and witnesses

This motion is supported by the Affidavit of Joseph W. Rohan and the memorandum of points and authorities submitted herewith.

DATED this 2nd day of June 2000.

HALLIDAY & WATKINS P.C.


Paul M. Halliday Jr.


Stephen B. Watkins

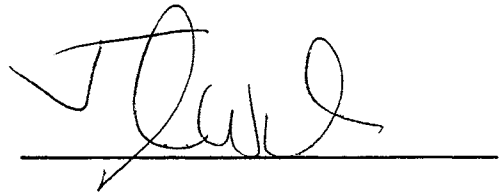
CERTIFICATE OF DELIVERY

I hereby certify that I caused to be faxed and mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 2ND day of June, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

Robert F. Orton
Fabian & Clendenin
P. O. Box 510210
215 South State, #1200
Salt Lake City, UT 84151

A handwritten signature, appearing to be "J. Clark", is written over a horizontal line.

Tab 5

Paul M. Halliday Jr., Bar Number 5076
Stephen B. Watkins, Bar Number 3400
HALLIDAY & WATKINS P. C.
Attorneys for Plaintiff
Suite 300, Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

JOSEPH W. ROHAN
Plaintiff,

V.

CHAD BOSEMAN, a minor
JERALD BOSEMAN an individual,

Defendants.

MEMORANDUM IN SUPPORT OF
MOTION FOR CONTINUANCE
OF TRIAL SETTING, WITHDRAWAL
OF COUNSEL, SUBSTITUTION OF
COUNSEL, AND ENLARGEMENT OF
DISCOVERY

Civil Number 980904135 PI

Judge: J. Dennis Frederick

The Plaintiff by and through his counsel hereby submits this memorandum of points and authorities in support of his motion: (1) to continue the trial setting in this matter for ninety days in order for Robert F. Orton of Fabian & Clendenin P.C., to enter his appearance as counsel for the

Plaintiff, (2) to allow Paul M. Halliday Jr. and Stephen B. Watkins to withdraw as counsel for the Plaintiff; and (3) to extend the discovery deadline for 60 days and allow Plaintiff 10 days to file a supplementary designation of exhibits and witnesses, and allow the Defendant 20 days to file a supplementary designation of exhibits and witnesses

ARGUMENT

Rule 40 of the Utah Rules of Civil Procedure in its relevant parts provides that the Court may in its discretion, and upon such terms as may be just . . . postpone a trial or a proceeding upon good cause shown.

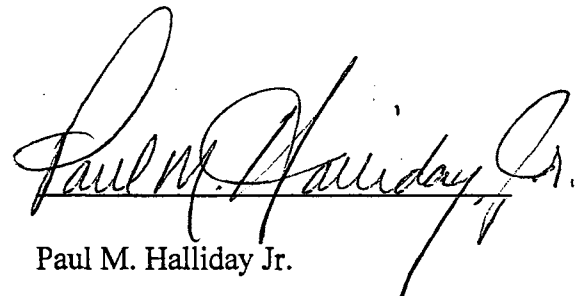
The Plaintiff has good cause to request a ninety day postponement of the trial. The Plaintiff has not requested a prior continuance and has been diligent in pursuing this matter. This is a complex matter, the Plaintiff is asserting that the accident has produced brain damage resulting in permanent injury, in order for his claims to be properly presented to the jury the Plaintiff has retained substitute counsel with considerable experience in this area. Mr. Orton cannot properly represent the Plaintiff without an adequate opportunity to prepare, a delay of ninety days is reasonable under the circumstances particularly in view of the injuries claimed in this lawsuit.

Therefore the Plaintiff respectfully asks the Court to continue the trial in this matter for ninety days in order for Robert F. Orton to enter his appearance as substitute counsel, that the undersigned counsel be allowed to withdraw as counsel for the Plaintiff, that the discovery deadline be extended for 60 days, and that the Plaintiff be granted 10 days to file a supplementary designation of exhibits and witnesses, and the Defendant be allowed 20 days to file a supplementary designation


of exhibits and witnesses in response.

DATED this 2 day of June 2000.

HALLIDAY & WATKINS P.C.



Paul M. Halliday Jr.



Stephen B. Watkins

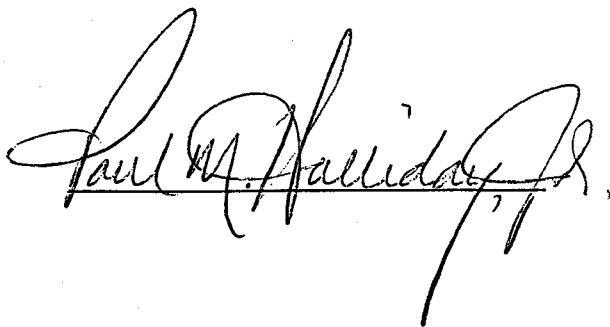
CERTIFICATE OF DELIVERY

I hereby certify that I caused to be faxed and mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 2 day of June, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

Robert F. Orton
Fabian & Clendenin
P. O. Box 510210
215 South State, #1200
Salt Lake City, UT 84151

A handwritten signature in cursive script, appearing to read "Paul M. Halliday", written over a horizontal line.

Tab 6

Paul M. Halliday Jr., Bar Number 5076
Stephen B. Watkins, Bar Number 3400
HALLIDAY & WATKINS P. C.
Attorneys for Plaintiff
Suite 300, Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

JOSEPH W. ROHAN	)	PLAINTIFF'S AFFIDAVIT IN
	)	SUPPORT OF MOTION
Plaintiff,	)	FOR CONTINUANCE
	)	OF TRIAL SETTING, WITHDRAWAL
	)	OF COUNSEL, SUBSTITUTION OF
v.	)	COUNSEL, AND ENLARGEMENT OF
	)	DISCOVERY
)	
)	
CHAD BOSEMAN, a minor	)	Civil Number 980904135 PI
JERALD BOSEMAN an individual,)	
)	
Defendants.	)	Judge: J. Dennis Frederick


STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

PLAINTIFF, Joseph W. Rohan, being first duly sworn under oath, deposes and says as

follows:

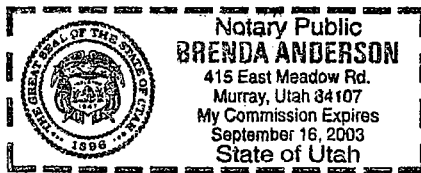
1. I am the Plaintiff in the above-captioned matter.
2. I am competent to testify to the facts contained herein based upon my personal knowledge.
3. I originally retained other members of my firm to represent me in the above captioned matter.
4. Mr. Halliday and Mr. Watkins have limited jury trial experience and it has become apparent to me that I need experienced trial counsel to properly present my claims.
5. I have contacted Robert F. Orton of the law firm of Fabian & Clendenin to act as my trial counsel.
6. Mr. Orton cannot properly prepare to try this case by June 20, 2000.
7. In order for Mr. Orton to adequately prepare he needs to be given the opportunity to identify supplemental expert and fact witnesses and to conduct further discovery.
8. Therefore, I respectfully request that the Court continue the trial setting in this matter for ninety days in order for Robert F. Orton to enter his appearance on my behalf, to allow Paul M. Halliday Jr. and Stephen B. Watkins to withdraw as my counsel, and to extend the discovery deadline for 60 days, and allow the Plaintiff 10 days to file a supplementary designation of exhibits and witnesses on my behalf, and allow the Defendant 20 days to file a supplementary designation of exhibits and witnesses in response.

DATED this 2nd day of June, 2000.



Joseph W. Rohan

SUBSCRIBED AND SWORN to me this 2nd day of June, 2000.





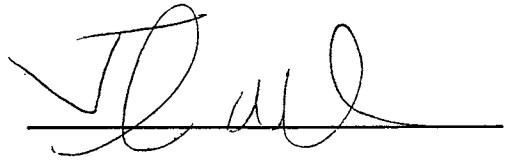
CERTIFICATE OF DELIVERY

I hereby certify that I caused to be faxed and mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 2ND day of June, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

Robert F. Orton
Fabian & Clendenin
P. O. Box 510210
215 South State, #1200
Salt Lake City, UT 84151



Tab 7

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH W. ROHAN,	:	MINUTE ENTRY RULING
Plaintiff(s),	:	CASE NO. 980904135 PI
vs.	:	Judge J. Dennis Frederick
CHAD BOSEMAN, et al,	:	Date: June 5, 2000
Defendant(s),	:	

After review of the pleadings and upon receipt of the Motion for Continuance of Trial Setting, Withdrawal of Counsel, Substitution of Counsel, and Enlargement of Discovery filed June 2, 2000, the Court rules as follows:

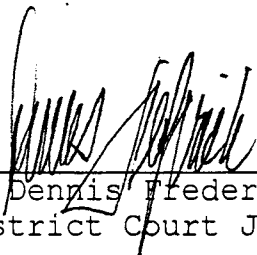
1. Plaintiff has served his Motion for Continuance, etc. on June 5, 2000 seeking to continue the trial set for June 20, 2000 to allow substitution of counsel, to extend discovery deadline, etc. Plaintiff has had the same counsel since the matter was filed April 23, 1998.

2. Because this matter was not moved forward, this Court was required to impose a 60 day certification order pursuant to an Order to Show Cause hearing November 18, 1999.

3. Counsel for defendants while not actively resisting the instant motion, will not stipulate to it.

4. This Court after review of the matter denies the request for continuance/substitution as there is no good cause showing for such continuance. A decision to change counsel 15 days before the trial date under the present circumstances is too late.

Dated this 5th day of June, 2000



J. Dennis Frederick
District Court Judge



CERTIFICATE OF MAILING

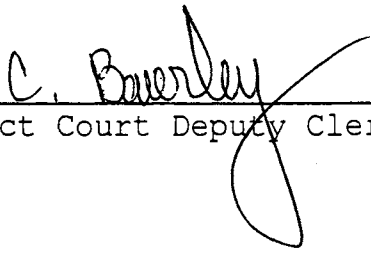
I certify that on the 6th day of June, 2000, I sent by first class mail, a true and correct copy of the attached document to the following:

Paul M. Halliday, Jr.
Stephen B. Watkins
376 East 400 South
Suite 300, Western Financial Ctr
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

Stephen J. Trayner
Peter H. Christensen
9 Exchange Place
6th floor Boston Building
Salt Lake City, UT 84111

Robert F. Orton
215 South State, #1200
P.O. Box 510210
Salt Lake City, UT 84151



District Court Deputy Clerk

Tab 8

Joseph W. Rohan (7296)
Pro Se
Suite 300, Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

JOSEPH W. ROHAN
Plaintiff,

v.

CHAD BOSEMAN, a minor
JERALD BOSEMAN an individual,

Defendants.

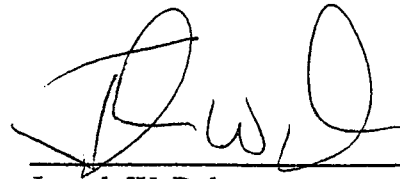
**NOTICE OF DISCHARGE OF
PLAINTIFF'S ATTORNEYS**

Civil Number 980904135 PI

Judge: J. Dennis Frederick

The Plaintiff, Joseph W. Rohan, hereby gives notice that Stephen B. Watkins, Paul M. Halliday Jr., and the law firm of Halliday & Watkins P. C., have been discharged as my attorneys in the above-captioned matter.

DATED this 6 day of June 2000.



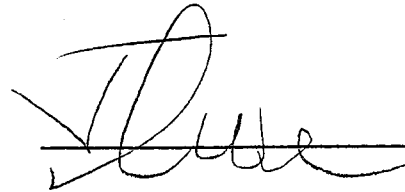
Joseph W. Rohan
Pro Se

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 6 day of June, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092



Tab 9

Joseph W. Rohan (7296)
Pro Se
Suite 300, Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

)	
)	
)	
JOSEPH W. ROHAN	)	MEMORANDUM IN SUPPORT OF
Plaintiff,	)	MOTION FOR VOLUNTARY
	)	DISMISSAL and MOTION TO
	)	EXPEDITE
)	
)	
v.)	
)	
)	
)	
	)	Civil Number 980904135 PI
CHAD BOSEMAN, a minor)	
JERALD BOSEMAN an individual,)	
)	
Defendants.	)	Judge: J. Dennis Frederick

The Plaintiff, Joseph W. Rohan, hereby submits this memorandum in support of his motion, pursuant to Rule 41 (2)(ii) of the Utah Rules of Civil Procedure to dismiss the above-entitled action without prejudice and to expedite disposition of this motion because time is of the essence.

ARGUMENT

Rule 41(2) of the Utah Rules of Civil Procedure provides in the relevant part that:

[U]nless the plaintiff timely files a notice of dismissal under paragraph (1) of this subdivision of this rule, an action may only be dismissed at the request of the plaintiff on order of the court based either on:

- (i) a stipulation of all of the parties who have appeared in the action; or
- (ii) upon such terms and conditions as the court deems proper.

Rule 41 U.R.C.P.

The Plaintiff's former attorneys contacted the Defendants, and although the Defendant's did not oppose the motion to continue the trial setting, to withdraw, to substitute counsel and to extend discovery, the Defendants will not stipulate to a voluntary dismissal. Therefore, the Plaintiff respectfully requests that the Court dismiss this action without prejudice upon the following grounds.

The Plaintiff is unrepresented by counsel. The Complaint alleges that the Plaintiff has suffered permanent brain injury as the result of the Defendant's negligence, clearly it would be a manifest injustice for the court to require the Plaintiff to represent himself at trial. Also, while an attorney should not withdraw from a case except for good cause, a party may discharge his attorney with or without cause at any stage of the litigation. Midvale Motors, Inc. v. Saunders, 21 Utah 2d 181, 442 P.2d 938 (1968).

The Plaintiff realized that he would need outside counsel to try this matter in March, and the

members of his firm did not have the time or the experience necessary. Therefore, he initiated discussions with other counsel, but because he was anxious to move this matter forward he did not move for a continuance or discharge of his former counsel at that time. The Plaintiff has been unable to find trial counsel who could properly prepare a brain injury case in less than three months. Mr. Orton has indicated his willingness to try this matter but he cannot be prepared to do so by June 20, 2000 because the experts he needs to be deposed cannot be scheduled in time. Therefore, the Plaintiff is left in the position of trying the case on his own, or moving to voluntarily dismiss the matter, obviously the proper course is to move to dismiss.

The Plaintiff, as provided by the rule¹ requests that this matter be dismissed without prejudice. The Defendants, who did not oppose the motion to continue, will not be prejudiced by a voluntary dismissal. The Plaintiff on the other hand will suffer great legal harm should the matter proceed to trial when he is without the benefit of counsel.

The Plaintiff, through new counsel, intends to re-file the action.. Thus, all expenditures made by the Defendants in this action will be directly applicable to the re-filed action and in fact, the Defendants will benefit by the dismissal in that they will have additional time to pursue discovery.

Therefore, because the Plaintiff is unrepresented by counsel, because it would be manifestly unjust to require a litigant in a brain injury case to try the matter himself, and because the defendants will not be prejudiced by a delay, the plaintiff respectfully requests the Court to dismiss this matter

¹Unless otherwise specified in the order, a dismissal under this rule is without prejudice. Rule 41(2)(ii) U.R.C.P.

without prejudice.

Pursuant to Rule 4-501(4) of the Utah Rules of Judicial Administration the Plaintiff also moves the court to expedite disposition of this motion as time is of the essence.

DATED this 7th day of June 2000.



Joseph W. Rohan
Pro Se

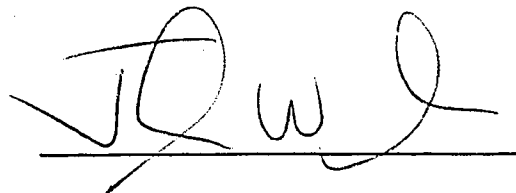
CERTIFICATE OF DELIVERY

I hereby certify that I caused to be faxed and mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following party of interest on the 7th day of June, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

I hereby certify that I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following party of interest on the 7th day of June, 2000.

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092



Tab 10

Stephen J. Trayner, #4928
Peter H. Christensen, #5453
STRONG & HANNI
Attorneys for Defendants
Nine Exchange Place
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

**IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JOSEPH W. ROHAN,

Plaintiff,

v.

CHAD BOSEMAN, a minor;
JERALD BOSEMAN, an individual,

Defendants.

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR VOLUNTARY DISMISSAL**

Civil No.: 980904135 PI

Judge J. Dennis Frederick

Defendants, by and through counsel, hereby submit the following memorandum of points and authorities in opposition to the plaintiff's Motion for Voluntary Dismissal.

FACTS

1. The accident in this case occurred January 23, 1997.
2. The law firm of Halliday & Watkins on April 23, 1998, filed this lawsuit against Chad Boseman and Jerald Boseman for the plaintiff's injuries arising out of the January 23, 1997 accident.
3. On June 5, 2000, this Court denied Halliday & Watkins' request to withdrawal of counsel, and to continue the June 20, 2000 trial date for the purpose of substituting counsel. The Court's rationale was that on November 18, 1999, the Court had to require that the case be moved

along because of inactivity. Further, the decision to change counsel 15 days before the trial date was too late.

4. The plaintiff's most recent motion for voluntary dismissal indicates that he has fired his attorneys, Halliday & Watkins, that his substitute counsel Robert Orton can not try the case on June 20, 2000, and that it would be prejudicial then to force the plaintiff to try the case Pro Se.

ARGUMENT

Defendant has not stipulated to the dismissal of the law suit without prejudice pursuant to Rule 41(2). Therefore, the only other way that this law suit can be dismissed without prejudice is for the Court to find such a dismissal proper under the circumstances. It is the defendants' position that there is no justification for such a dismissal.

The plaintiff should not be allowed to fire his attorneys 13 days before trial and then claim he has no representation and, thus, his case must be dismissed without prejudice. The basis for him firing his attorneys is that they don't have trial experience. Why has it taken the plaintiff until 13 days before trial to figure that out? The plaintiff knew at the time the complaint was filed what his attorneys' trial experience was. In reality, it is defendants' belief that claiming his attorneys have insufficient experience, and firing them, is simply a tactic by the plaintiff in which to get the case dismissed and, thus, obtain more time for discovery and to allow attorney Robert Orton to get up to speed on the matter. The plaintiff should not be allowed to prevail on this tactic by having the case dismissed without prejudice.

Simply because the plaintiff has chosen to discharge Halliday & Watkins as his attorneys doesn't mean that the court has to allow such a dismissal. Because Halliday & Watkins were counsel at the time that the trial date was set, it is the defendants' position that the Court can require them

to try the case. Alternatively, Joseph Rohan can be required to try the law suit himself. He is a member in good standing of the Utah State Bar.

It is disingenuous for the plaintiff to claim that he realized in March that the members of his firm did not have the time or the experience necessary to try a brain injury case. The claim of a brain injury has been a part of this law suit since the Complaint has been filed. It is not a new issue.

Defendants dispute the plaintiff's claim that he will be prejudiced if a voluntary dismissal of the law suit is not allowed. The plaintiff has prejudiced himself by waiting till now to decide who his counsel will be at trial.

Defendants also dispute the plaintiff's claim that defendants will benefit from the dismissal by having additional time to pursue discovery. Defendants do not need additional time for discovery. Furthermore, defendants will be severely prejudiced by a delay because defendant Jerald Boseman is a dentist who has blocked out the entire week of the trial so that he can be in attendance. If the trial is now continued, Dr. Boseman will not be able to refill that week with patients. Thus, whether the trial occurs on the week of June 20th or not, Dr. Boseman has already suffered a severe economic loss, and if the case is dismissed and the trial reset down the road, he will suffer a second economic loss. The only way to minimize the prejudice to Dr. Boseman is to proceed with the trial as scheduled.

The plaintiff asks for an expedited disposition of this motion pursuant to Rule 4-501(4). Defendant has no objection to the issue being expedited, however, none of the defense attorneys are going to be available on June 16th if that is the date that the Court chooses to hear the matter.

For the foregoing reasons, the defendants request that the Court deny the plaintiff's Motion for Voluntary Dismissal of this law suit.

DATED this 8 day of June, 2000.

STRONG & HANNI



Peter H. Christensen
Attorneys for Defendants

CERTIFICATE OF SERVICE

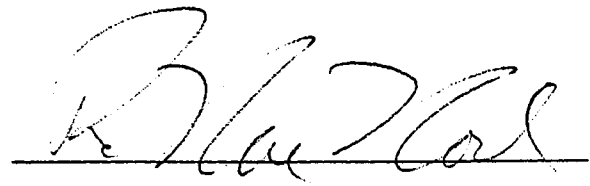
I hereby certify that on the 2 day of June, 2000, a true and correct copy of the foregoing **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL** was mailed via U.S. mail postage prepaid to the following:

Paul M Halliday
Stephen B. Watkins
HALLIDAY & WATKINS, P.C.
376 East 400 South, #300
Salt Lake City, Utah 84111

Mark S. Gustavson
1348 East Longdale
Sandy, Utah 84092

Joseph W. Rohan, Pro Se
Suite 300
Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111

Dr. Jerald Boseman
4190 S. Highland Dr, #106
Salt Lake City, UT 84124

A handwritten signature in dark ink, appearing to read "R. Alan Carl", is written over a horizontal line.

(1750.055)

Tab 11

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH W. ROHAN,	:	MINUTE ENTRY RULING
Plaintiff(s),	:	CASE NO. 980904135 PI
vs.	:	Judge J. Dennis Frederick
CHAD BOSEMAN, et al,	:	Date: June 14, 2000
Defendant(s),	:	

After review of the pleadings and upon receipt of the Notice to Submit for Decision Plaintiff's Motion for Voluntary Dismissal and Motion for Expedited Disposition filed June 12, 2000, the Court rules as follows:

1. Plaintiff's Motion for Voluntary Dismissal is denied for the reasons specified in the opposing memorandum.
2. Counsel for defendants to prepare the order.

CERTIFICATE OF MAILING

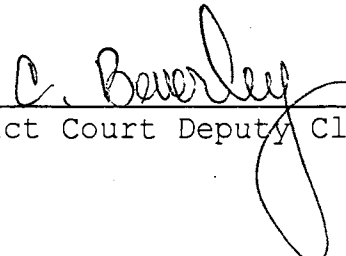
I certify that on the 14th day of June, 2000, I sent by first class mail, a true and correct copy of the attached document to the following:

Joseph W. Rohan
376 East 400 South
Suite 300, Western Financial Ctr
Salt Lake City, UT 84111

Paul M. Halliday Jr.
Stephen B. Watkins
376 East 400 South
Suite 300, Western Financial Ctr
Salt Lake City, UT 84111

Stephen J. Trayner
Peter H. Christensen
9 Exchange Place
6th floor Boston Building
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092



District Court Deputy Clerk

Tab 12

COPY

FILED
JUN 15 2000

Joseph W. Rohan (7296)
Pro Se
Suite 300, Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

JOSEPH W. ROHAN
Plaintiff,

v.

CHAD BOSEMAN, a minor
JERALD BOSEMAN an individual,
Defendants.

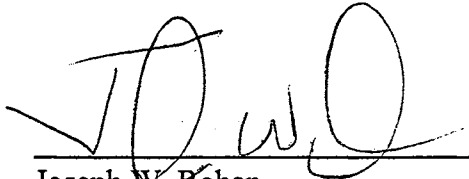
NOTICE OF PLAINTIFF'S INABILITY
TO BRING THIS MATTER TO TRIAL

Civil Number 980904135 PI

Judge: J. Dennis Frederick

The Plaintiff, Joseph W. Rohan *pro se*, in order avoid the waste of judicial resources, hereby gives notice that he cannot present his case that is scheduled for trial on Tuesday, June 20, 2000 through Friday, June 23, 2000.

DATED this 15 day of June 2000.



Joseph W. Rohan
Pro Se

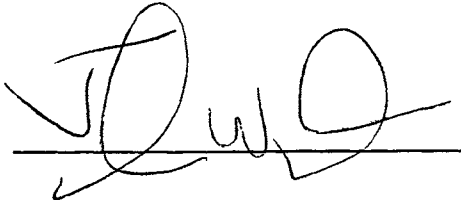
CERTIFICATE OF DELIVERY

I hereby certify that I caused to be delivered by the method indicated below a true and correct copy of the foregoing document to the following on the 15th day of June, 2000.

Judge J. Dennis Frederick
Third District Court
450 South State Street, N-402
Salt Lake City, UT 84111
(Hand Delivery)

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111
(Facsimile, Hand Delivery)

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092
(First Class Mail, Postage Prepaid)



Tab 13

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH W. ROHAN,	:	MINUTE ENTRY
Plaintiff,	:	CASE NO. 930904135
vs.	:	Judge J. Dennis Frederick
CHAD BOSEMAN, a minor;	:	Date: June 16, 2000
JERALD BOSEMAN, an individual,	:	
Defendants.	:	

1. There being no timely opposition, defendants' Motion in Limine to exclude testimony of witness Ingebretsen is granted.

2. Counsel for defendants is to prepare the Order.

Dated this 16th day of June, 2000.


J. DENNIS FREDERICK
DISTRICT COURT JUDGE



MAILING CERTIFICATE

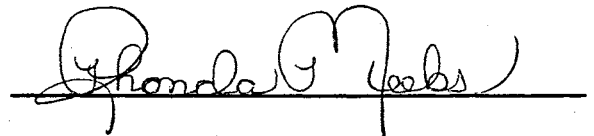
I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, to the following, this 16th day of June, 2000:

Paul M. Halliday
Stephen B. Watkins
Attorneys for Plaintiff
376 East 400 South, Suite 300
Salt Lake City, Utah 84111

Mark S. Gustavson
1348 E. Longdale
Sandy, Utah 84092

Joseph W. Rohan, Pro se
376 East 400 South, Suite 300
Salt Lake City, Utah 84111

Stephen J. Trayner
Peter H. Christensen
Attorneys for Defendants
9 Exchange Place, Sixth Floor
Salt Lake City, Utah 84111



Tab 14

Joseph W. Rohan (7296)
Pro Se
Suite 300, Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

JOSEPH W. ROHAN
Plaintiff,

V.

CHAD BOSEMAN, a minor
JERALD BOSEMAN an individual,

Defendants.

RENEWED MOTION FOR
VOLUNTARY DISMISSAL and
MOTION FOR EXPEDITED DISPOSITION
or ALTERNATIVELY MOTION TO
CONTINUE TRIAL SETTING TO
CONSIDER PLAINTIFF'S
CLAIMS UNDER THE ADA

Civil Number 980904135 PI

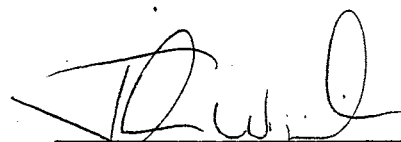
Judge: J. Dennis Frederick

The Plaintiff, Joseph W. Rohan, hereby moves this court, pursuant to Rule 41 (2)(ii) of the Utah Rules of Civil Procedure to dismiss the above entitled action without prejudice, based upon the invocation by the Plaintiff of the provisions of the Americans With Disability Act, 42 U. S. C. §§

12131-65. The Plaintiff also moves the Court, pursuant to Rule 4-501(4) of the Utah Rules of Judicial Administration to expedite disposition of this motion as time is of the essence or alternatively to continue the trial setting without to consider Plaintiff's claims under the ADA

This motion is supported by the accompanying memorandum of points and authorities and affidavit of Joseph W. Rohan.

DATED this 19th day of June 2000.



Joseph W. Rohan
Pro Se

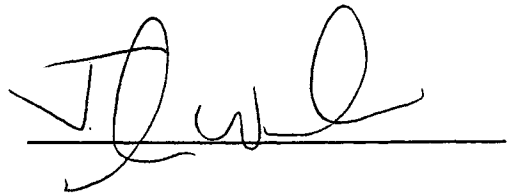
CERTIFICATE OF DELIVERY

I hereby certify that I caused to be faxed and hand delivered, a true and correct copy of the foregoing document to the following parties of interest on the 19 day of June, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

I hereby certify that I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 18th day of June, 2000.

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

A handwritten signature in black ink, appearing to read "M. Gustavson", is written over a horizontal line.

Tab 15

Pro Se

JOSEPH W. ROHAN
Plaintiff,

V.

MEMORANDUM IN SUPPORT
OF PLAINTIFF'S RENEWED
MOTION FOR VOLUNTARY
DISMISSAL, MOTION FOR EXPEDITED
DISPOSITION or ALTERNATIVELY
MOTION TO CONTINUE TRIAL
SETTING TO CONSIDER PLAINTIFF'S
CLAIMS UNDER THE ADA

Civil Number 980904135 PI

Judge: J. Dennis Frederick

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action without prejudice, alternatively the Plaintiff requests that the trial setting be continued in order for the court to consider Plaintiff's claims under the Americans With Disabilities Act.

ARGUMENT

Rule 41(2) of the Utah Rules of Civil Procedure provides in the relevant part that:

[U]nless the plaintiff timely files a notice of dismissal under paragraph (1) of this subdivision of this rule, an action may only be dismissed at the request of the plaintiff on order of the court based either on:

- (i) a stipulation of all of the parties who have appeared in the action; or
- (ii) upon such terms and conditions as the court deems proper.

Rule 41 U.R.C.P.

Additionally, 42 United States Code § 12101-60 provides in the relevant parts;

42 U. S. C. § 12132-Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U. S. C. § 12131 Definitions

As used in this subchapter:

(1) Public entity

The term "public entity" means--

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; . . .

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C.A. § 12102-Definitions

(2) Disability

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

42 U. S. C. § 12202 State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State

for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

Title II of the ADA is applicable to State Courts. As a government entity, the court system is required, pursuant to Americans with Disabilities Act (ADA) to make all of its services, programs, and activities available to qualified individuals with disabilities. People v. Caldwell, N.Y. City Crim.Ct. 1993, 603 N.Y.S.2d 713, 159 Misc.2d 190. A civil litigant in the Utah Court System, although not entitled to the same protections accorded a criminal defendant is still entitled to the basic due process and equal protection of laws accorded him under both the Utah and United States Constitutions. Title II of the ADA has been found applicable to criminal offenses. "Where defendant's mental illness is readily apparent to judge and defendant is facing more than minor traffic infraction, judge must err, if at all, on side of protection of defendant's civil rights, in deciding to appoint counsel." State v. P.E., N.J.Super.L.1994, 664 A.2d 1301, 284 N. J.Super. 309. By extension, a civil litigant claiming permanent injury due to the negligence of the defendants is likewise entitled to have the court error, if at all, on the side of protection of the Plaintiff's civil rights.

The Plaintiff meets the definition of a qualified individual with a disability under the Act. As established by his affidavit the Plaintiff's brain injury is a physical or mental impairment that substantially limits one or more of his major life activities. In determining whether impairment

substantially limits individual's major life activities, for purposes of establishing disability under the Americans with Disabilities Act (ADA), are nature and severity of impairment, duration or expected duration of impairment, and permanent or long-term impact, or expected permanent or long-term impact of or resulting from impairment. Cline v. Fort Howard Corp., E.D.Okla. 1997, 963 F.Supp. 1075.

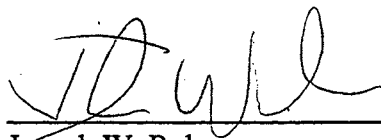
The Plaintiff has suffered a brain injury that has been objectively documented through medical imaging, neuropsychological testing and a sleep study. The Plaintiff has been assigned a permanent partial impairment of 33% and neuropsychological testing done in May of this year by the Defendant's expert identified areas of cognitive functioning (memory skills and information processing), in which the Plaintiff is severely impaired. See Plaintiff's Affidavit at ¶¶ 3-4.

Therefore, because the plaintiff is a qualified individual with a disability under the ADA, and because the act requires reasonable accommodation to such qualified individuals, it is apparent that the Plaintiff has stated proper grounds for voluntary dismissal without prejudice. Therefore, the Plaintiff respectfully requests the Court grant his motion, to preserve his rights under the ADA, the Utah Constitution and the United States Constitution.

Pursuant to Rule 4-501(4) of the Utah Rules of Judicial Administration the Plaintiff also moves the court to expedite disposition of this motion as time is of the essence. Alternatively, should the Court require further documentation to support Plaintiff's claim that he is a qualified individual

under the ADA or to afford the Defendant's additional time to respond, the Plaintiff respectfully requests that the trial setting in this matter be continued without date.

DATED this 15th day of June 2000.



Joseph W. Rohan
Pro Se

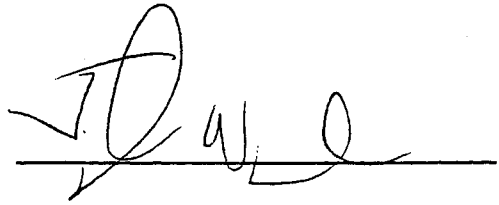
CERTIFICATE OF DELIVERY

I hereby certify that I caused to be faxed and hand delivered, a true and correct copy of the foregoing document to the following parties of interest on the 15 day of June, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

I hereby certify that I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 17 day of June, 2000.

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

A handwritten signature in dark ink, appearing to read "M. Gustavson", is written over a horizontal line.

Tab 16

Telephone: (801) 355-2886

450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

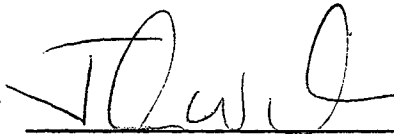
Judge: J. Dennis Frederick

Exhibit 16 Page 57

follows:

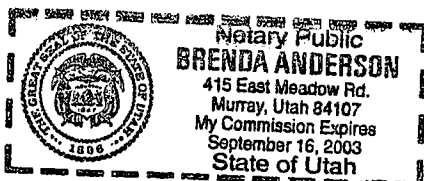
1. I am the Plaintiff in the above-captioned matter.
2. I am competent to testify to the facts contained herein based upon my personal knowledge.
3. I am an qualified individual with a disability as provided by Title II of the Americans With Disability Act (ADA).
4. I base my assertion that I am a qualified individual under the act is based on the attached report of Robert Rothfeder M.D., J.D. in which he assigns a 34% permanent partial impairment of the whole person for the injuries sustained in the accident.
5. I am unrepresented by counsel, and although I am an attorney it would be unreasonable to require me to try my own brain injury case.
6. I therefore respectfully, ask the Court, pursuant to the terms of the ADA, to grant me the reasonable accommodation of dismissing the above captioned matter without prejudice.

DATED this 15th day of June, 2000.



Joseph W. Rohan
Pro Se

SUBSCRIBED AND SWORN to me this 15th day of June, 2000.





GENERAL INFORMATION:

Patient: ROHAN, JOE Age: 47 Sex: M
Physician: Robert K. Rothfeder, M.D. Date: August 20, 1998

CHIEF COMPLAINT:

Head and neck injuries suffered in a motor vehicle accident of January 23, 1997.

DIAGNOSIS:

1. Motor vehicle accident driver of January 23, 1997 (E813.0)
2. Closed head injury with posttraumatic brain injury (854.0)
3. Headaches (307.81)
4. Posttraumatic migraine, (346.9) tension and occipital neuralgia (353.2)
5. Cervical strain/sprain with chronic neck pain (847.0)

MEDICAL DECISION MAKING:

Final Impression: The injuries described above are a result of the motor vehicle accident of 1/23/97. With respect to the patient's neck injury, that appears to have become chronic and static at the present time. With respect to the patient's headaches, likewise those have not changed clinically in some time. The patient's area of greatest concern is his intellectual functioning with respect to his posttraumatic brain injury. It would be my opinion that at the present time the patient's brain injury as described essentially has disabled him from the independent practice of law, given what I know about the demands of attorney practice. The patient appears capable of functioning as a paralegal with supervision. I explained to the patient that I have, in fact, seen improvement regarding the impairments he currently suffers in memory, language and cognitive function, greater than the one and one half years he now is post injury; however, given the length of time since injury, his prognosis for complete recovery is almost nil and his prognosis for additional significant partial recovery is uncertain. I am afraid it is more likely than not that the majority of the patient's intellectual impairment is permanent and I doubt that he will be able to return to his previous occupational level as an attorney. I believe that cognitive therapy should be continued as long as there is evidence that continued improvement is taking place. I believe that all reasonable diagnostic tests have been performed and the patient's pharmacologic treatment regimen at present is appropriate although I suspect there will continue to be required changes and adjustments in medication. I would anticipate that patient would require a regimen of medications similar to that at present indefinitely.

IMPAIRMENT RATING:

In light of all of the above, it would be my opinion that the patient's condition with respect to his various injuries has become

PATIENT: ROHAN, JOE

chronic and static and calculation of an Impairment Rating at the present time is appropriate.

Reference is made to the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition.

The patient has permanent partial impairment as follows:

1. For injury to the cervical spine the patient qualifies for a DRE category 2 = 5% permanent partial impairment of the whole person.
2. For closed head injury resulting in chronic headaches and posttraumatic brain injury along with sleep disturbance, this has had a profound affect on the patient's activities of daily living and I would calculate a 30% permanent partial impairment for head injury sequelae.

Using the Combined Value Tables, these impairments combine for a 34% permanent partial impairment of the whole person.

As noted above, in my opinion the intellectual impairments suffered by Mr. Rohan has essentially resulted in a 100% disability with respect to the practice of law.

PRESENT ACCIDENT:

Mr. Rohan is a 47-year-old attorney who is referred to the office by one of his fellow lawyers at the law firm in which he works, Paul Halliday, Jr.. Mr. Rohan states that among other injuries he suffered a brain injury in the motor vehicle accident of January 1997 and has been unable to practice law independently since that time. He has suffered from significant cognitive and memory problems which he states have made it impossible to resume his previous independent practice of law. The patient states that currently he is functioning essentially as a paralegal and requires supervision from other attorneys in his handling of cases. The details of his memory and cognitive problems are discussed in detail below. The patient also is suffering from a significant sleep disorder along with chronic pain from headache and neck injury. He requests my opinion at this time regarding his prognosis, his likely degree of permanent partial impairment, and specifically whether it is likely that he will be able to return to his previous level of function as an attorney in the near future or at all. The patient brings a thick stack of medical records to the office at the time of his visit. These were reviewed briefly during the visit to confirm certain details and at length afterwards prior to preparation of this report. The history that follows is obtained both from Mr. Rohan and the medical records. It is noteworthy that Mr. Rohan has only partial and in some cases, poor recollection of many of the events outlined in the medical records. His history of the accident and subsequent medical care is as follows.

The patient states that he was injured on January 1997. He could not remember the exact date and I reviewed the medical records to

confirm the accident date of January 23, 1997. The patient was the driver of this motor vehicle accident proceeding about 25 m.p.h. when he was struck by another vehicle traveling 30-40 m.p.h. The patient apparently did not lose consciousness with the impact but was dazed and noted dizziness at the time. First medical attention was the same day on 1/23/97 at the InstaCare facility where the patient was treated with a soft cervical collar, anti-inflammatories and a muscle relaxer. Early on he had two episodes where his left arm had gone numb. The patient was seen once again in follow-up at the InstaCare and referred to William Muir, M.D., an orthopedic spine surgeon who first saw Mr. Rohan on January 29, 1997. At that time the patient was complaining of neck pain as his major complaint along with memory loss. Plain films of the neck were obtained at that time which were essentially unremarkable. Physical examination showed markedly reduced range of motion of the cervical spine. The patient was treated in the usual conservative fashion with apparently only mild improvement. An MRI of the cervical spine was obtained on February 22, 1997 which did not show any significant acute pathology. A CT scan of the neck was obtained some months later in June 1997 which showed some degenerative changes but no significant disc herniation.

In addition to patient's neck pain, over the first several months post injury he exhibited ongoing headaches and progressive evidence of brain dysfunction secondary to posttraumatic brain injury. An MRI of the brain was obtained on April 25, 1997 which was abnormal showing scattered small punctate T2 hyperintensities reflecting residua of axonal sheer injury. Thereafter, the patient had multiple referrals and underwent extensive workup among various physicians including Dr. Miska, a neurologist and Dr. Bigler, a neuropsychologist and Dr. Macfarlane, a neurosurgeon, all of whom consulted on Mr. Rohan's case in the May 1997 time frame. Dr. Bigler's office performed a complete neuropsychological evaluation which was abnormal, showing a number of problems including disrupted cognitive performance substantially below what would be expected of the patient's educational and vocational background. There were additionally deficits noted on both auditory and verbal testing and memory. The patient was therefore referred for SPECT imaging studies which were done in June of 1997, which were considered to be within normal limits. Thereafter, the patient was treated with a variety of medications including Zoloft and verapamil for his headaches. Based upon recommendations from Dr. Bigler and Dr. Miska, the patient was also referred for cognitive and occupational therapy at the IHC rehab services and underwent therapy beginning in November 1997 and continuing until a month or two ago when apparently some insurance coverage issues became of concern. Review of medical records from IHC rehab indicates that the patient's intellectual performance had improved with therapy and with utilization of memory books and various compensatory strategies. The patient continued to experience difficulty planning and continuing projects, with memory, and with certain speech language issues. In July of 1998, the patient was referred to the Intermountain Sleep Disorder Center at LDS Hospital for evaluation. Sleep study results were abnormal showing marked disruption of sleep architecture and complete absence of REM sleep.

Patient: ROHAN, JOE

Treatment recommends following the sleep studies included initiation of CNS stimulants which were started in the form of Ritalin.

At the present time the patient states that with regard to his various symptoms, his neck pain seems to have plateaued at this time. Although the neck pain is bothersome, the patient states that it is certainly not his number one problem at present. His brain injury symptoms persist as described below as do his headaches which have not changed in many months.

PRESENT PROBLEMS:

The patient describes his present problems with specificity as follows:

1. **Headaches:** The patient states that at the present time he suffers some type of headache on a daily basis. Prior to the motor vehicle accident the patient denies any problem with significant headache syndrome. At the present time the patient describes three distinct types of headache. The first is an acute severe headache which has been diagnosed as a vascular headache and treated with Imitrex which is effective some but not all of the time. The patient also experiences a bilateral tension headache and also occipital neuralgia headaches which originate at the base of the skull. The patient uses simple analgesics and on occasions in the past, Lortab, which he is not presently taking.
2. **Posttraumatic brain injury:** The patient describes a multitude of symptoms following the automobile accident including problems with his short-term memory, problems with confusion, difficulty concentrating and following through with tasks, difficulty articulating words and understanding things he hears, tinnitus, and sleep disturbance with rather severe daytime fatigue. He has attempted to return to his previous law practice and states that he does not do too badly with some tasks. For example, Mr. Rohan is able to draft pleadings and memoranda of reasonable quality although not up to his previous standards, as long as he is not pressured or distracted. He states that he has missed several deadlines on cases which has caused serious problems which he had never done before and does not believe that he is safe to handle client work requiring deadlines without assistance from other lawyers. He attended some depositions recently and had a lot of difficulty conducting the deposition in terms of both memory and language and suffered a number of embarrassing lapses. He states he does not feel able to go to court on behalf of his clients.
3. **Neck pain:** The patient complains of neck pain which has not changed much over many months. The pain is present daily, radiates to the right shoulder and proximal arm but not into the hand or fingers. The patient does not have any numbness or tingling in the upper extremities at the present time. He denies any upper and lower back pain.

PAST MEDICAL HISTORY:

Allergies: No known allergies to medications.

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Medications: Ritalin 40-50 mg per day; Prozac 60 mg per day, Imitrex subcutaneous p.o. or nasal for vascular headaches, Naprosyn for his tension headaches and neck pain.

Previous Trauma: The patient suffered a slip and fall injury in 1990 which he states was not very significant. He did have some headaches and dizziness thereafter and underwent a CT scan which was normal. The patient states he was back to normal following this injury in less than a week and had no sequelae.

Surgeries: Appendectomy.

Previous Illnesses/Hospitalizations: No previous hospitalizations or significant illnesses.

Social History: Does not smoke or drink alcohol. The patient is currently married but his wife is in the process of filing for divorce related to the patient's changes following this motor vehicle accident. He does not have any children. He was off work completely following the accident until about July of 1997 and has been practicing law with the Halliday firm since that time but essentially in the role of a paralegal. The patient's educational background includes a bachelor's degree from Montana State and law school in Michigan.

REVIEW OF SYSTEMS:

General: Positive for severe sleep disturbance.

Skin: No scarring or rashes.

Eyes: No photophobia, double vision, or change in vision.

Ears: Positive for tinnitus.

Respiratory: No pain with breathing, no shortness of breath, asthma, or cough.

Throat: No difficulty swallowing, change in voice, temporomandibular joint pain, dental trauma, or abnormal range of motion of the mandible.

Respiratory: No pain with breathing, no shortness of breath, asthma, or cough.

Cardiovascular: No chest pain, angina, arrhythmia, murmurs, high blood pressure, heart attacks, heart failure, or syncope.

GI: No change in weight. No peptic ulcer disease. No change in bowel habits. No abdominal pain or hernias. No GI bleeding.

GU: No bladder or kidney problems.

Endocrine/Metabolic: No diabetes or thyroid problems.

PHYSICAL EXAMINATION:

Vital Signs: Supine B/P: 125/85 Pulse: 75 Resp: 14

General: Well developed, well-nourished gentleman who is oriented x 3 although it takes him much longer to remember the date than one would expect. He walks with a normal gait, gets in and out of a chair without difficulty.

Head: There is mild tenderness over the occiputs bilaterally. No gross deformity is present.

Eyes: Pupils are equal and reactive to light and accommodation. Extraocular movements are full. Visual fields are intact to confrontation. Discs, arteries, and veins appear normal.

Ears: Hearing is normal to speech. Canals and tympanic membranes are normal.

Mouth and Throat: Normal tongue. Normal elevation of the soft palate. Mucous membranes are normal.

Neck: Guarding, stiffness and spasm are present. There is bilateral paravertebral tenderness. Range of motion is reduced as follows: Flexion 40°, extension 50°. Lateral bending 35° bilaterally. Left rotation 70°, right rotation 50°.

Chest: Normal configuration. Nontender. Excursion is normal with respiration.

Lungs: Normal to auscultation.

Heart: Regular sinus rhythm without murmurs, rubs or gallops.

Abdomen: Bowel sounds are active. The abdomen is flat, soft and nondistended. There is no organosplenomegaly.

Back: Normal posture. No stiffness, spasm, or trigger points. Range of motion is normal. No kyphosis or scoliosis is noted.

Extremities: No deformity is noted. No swelling or skin changes. Range of motion is normal.

Neurologic: Mental status examination is conducted during the entire course of the interview. The patient demonstrated numerous obvious memory lapses regarding both details of his medical treatment to date and of various short-term memory functions. He additionally demonstrated several defects in language, being unable to verbalize words he wanted to express. The patient's affect additionally seemed somewhat flat when describing his various difficulties. He states that this is typical of a personality change he has experienced since the accident. As an example he describes prior to the accident being rather impatient, particularly waiting in line, etc. He states he can now wait in line indefinitely and not get impatient which he thinks is abnormal. The remainder of the neurologic exam including cranial nerves, motor, sensory, cerebellar and deep tendon reflexes are unremarkable.

I AUTHORIZE MY NAME TO BE AUTOMATICALLY ELECTRONICALLY AFFIXED TO THIS REPORT SIGNIFYING THAT I DICTATED THIS REPORT.

X: Robert K. Rothfeder, M.D.

(Dictated but not read)

SDS:dwc D: 08/24/98 14:24 T: 08/25/98 17:16

Tab 17

Stephen J. Trayner, #4928
Peter H. Christensen, #5453
STRONG & HANNI
Attorneys for Defendants
Nine Exchange Place
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

**IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JOSEPH W. ROHAN,

Plaintiff,

v.

CHAD BOSEMAN, a minor;
JERALD BOSEMAN, an individual,

Defendants.

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
RENEWED MOTION FOR
VOLUNTARY DISMISSAL and
MOTION FOR EXPEDITED
DISPOSITION or ALTERNATIVELY
MOTION TO CONTINUE TRIAL
SETTING TO CONSIDER PLAINTIFF'S
CLAIMS UNDER THE ADA**

Civil No.: 980904135 PI

Judge J. Dennis Frederick

Defendants, Chad Boseman and Jerald Boseman, submit the following Memorandum in Opposition to Plaintiff's Renewed Motion for Voluntary Dismissal and Motion for Expedited Disposition or Alternatively Motion to Continue Trial Setting to Consider Plaintiff's Claims Under the ADA. Defendants respectfully ask this Court to deny Plaintiff's motion, and to either order Plaintiff to proceed with the scheduled trial, or to dismiss Plaintiff's claims with prejudice.

STATEMENT OF RELEVANT FACTS

1. On April 20, 1998, Plaintiff filed a personal injury claim against Defendants seeking damages for injuries allegedly suffered in a January 23, 1997 automobile accident.

2. On January 18, 2000, following several months of discovery, Plaintiff's counsel certified to this Court that Plaintiff was ready to begin the trial phase of the case. Based on Plaintiff's representation, and a similar representation by Defendants' counsel, the trial in this matter was scheduled to begin on June 20, 2000.

3. On or about June 2, 2000, Plaintiff voluntarily fired the attorneys who had been representing him in this case. Since that time, Plaintiff, who is also an attorney and current member of the Utah Bar, has been representing himself on a *Pro Se* basis.

4. Since the January 1997 accident, in addition to representing himself in this matter, Plaintiff has continued practicing law by representing other clients, and has, in fact, taken several cases to trial during this period of time.

ARGUMENT

PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL OR CONTINUANCE SHOULD BE DENIED BECAUSE PLAINTIFF HAS FAILED TO SHOW THAT THE ADA IS APPLICABLE IN THIS CASE.

Plaintiff's motion for voluntary dismissal or continuance is nothing more than a desperate last minute attempt to save himself from his own misrepresentation to this Court that he was prepared to go to trial. For the first time, Plaintiff has now attempted to suggest that he is entitled to some sort of special accommodation from this Court based on Title II of the Americans with Disabilities Act ("ADA"). Plaintiff's desperate last minute arguments have no merit, however, and should be denied.

Title II of the ADA provides certain rights for individuals with disabilities, and protects them from discrimination from "public services". See 42 U.S.C. §§ 12131-12165. In order to seek protection under Title II, Plaintiff is required to show each of the following:

- (1) that he is a qualified individual with a disability;
- (2) that he was either excluded from participation in or denied the benefits of some public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and
- (3) that such exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability.

Tyler v. City of Manhattan, 857 F. Supp. 800, 817 (D. Kan. 1994). In addition, Plaintiff "carries the burden of proof on a claim that he has been discriminated against on the basis of his disability." Id. Plaintiff has clearly failed to satisfy this burden of proof, and has in fact, failed satisfy any of the three required elements for protection under Title II.

Plaintiff has attempted to suggest that his disability consists of a brain injury which prevents him from competently practicing law, and therefore, preventing him from representing himself in this trial. This claim is absurd in light of the fact that he is a licensed member of the Utah State Bar, and that, since suffering his alleged brain injury, Plaintiff has continued practicing law and has taken other cases to trial. Based on these facts, Plaintiff cannot suddenly claim that he has a disability entitling him to special accommodations in the practice of law.

Plaintiff has also failed to establish that he has in any way been excluded from or denied the benefits of participating in this Court. In fact, it is patently obvious that he has been given every opportunity to participate, and that he is fully entitled to proceed with the scheduled trial. Furthermore, any decision by this Court to order Plaintiff to proceed with the scheduled trial, or to dismiss Plaintiff's claims with prejudice would have nothing to do with Plaintiff's alleged disability. It was Plaintiff's decision to fire his attorneys after the case was already certified for trial, and it was Plaintiff's failure to obtain new counsel which have suddenly left Plaintiff unprepared for trial. Plaintiff's failure to be adequately prepared for trial has absolutely nothing to do with his alleged disability. Therefore, this Court's denial of his motion for voluntary dismissal or continuance would,

likewise, have nothing to do with Plaintiff's alleged disability.

Plaintiff's only attempts to suggest that he is entitled to any protection under Title II are based on two cases that have no bearing on the issues at hand. In the first case, People v. Caldwell, 603 N.Y.S.2d 713 (1993), the court considered whether a partially blind juror should be entitled to reasonable accommodations which would allow her to serve as a juror. It is difficult to see how that issue has any relevance to this case. The other case, State v. P.E., 664 A.2d 1301 (N.J. 1994), involved a criminal defendant who attempted to represent herself in her criminal trial. In that case, the court concluded that because the defendant's mental competency was in question, the trial court should have appointed counsel for the defendant before proceeding with trial. The court's decision was based on the fact that all criminal defendants have a legal right to an attorney. Based on that reasoning, Plaintiff somehow attempts to make a giant leap by suggesting that he should be entitled to have an attorney representing him in this case. Of course, there is no equivalent legal right to an attorney for plaintiffs in civil cases, and not surprisingly, Plaintiff has failed to cite any relevant legal authority for this argument.

Therefore, since Plaintiff has failed to establish that he is entitled to any protection or accommodation under Title II of the ADA, or that there has been any discrimination or denial of benefits, Plaintiff's motion for voluntary dismissal or continuance should be denied.

CONCLUSION

For the foregoing reasons, Defendants respectfully ask that Plaintiff's motion for voluntary dismissal or continuance be denied, and that Plaintiff either be ordered to proceed with the scheduled trial, or that Plaintiff's claims be dismissed with prejudice.

DATED this 20th day of June, 2000.

STRONG & HANNI

A handwritten signature in black ink, appearing to read "S. Trayner", written over a horizontal line.

Stephen J. Trayner
Peter H. Christensen
Attorneys for Defendants

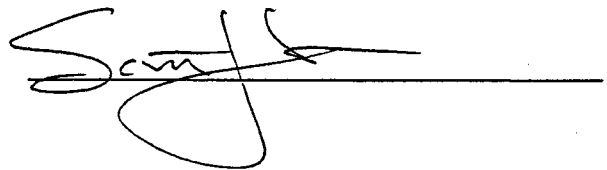
CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 2000, a true and correct copy of the foregoing document was hand delivered and mailed via U.S. mail postage prepaid as indicated to the following:

Paul M Halliday
Stephen B. Watkins
HALLIDAY & WATKINS, P.C.
376 East 400 South, #300
Salt Lake City, Utah 84111
VIA U.S. MAIL

Mark S. Gustavson
1348 East Longdale
Sandy, Utah 84092
VIA U.S. MAIL

Joseph W. Rohan, Pro Se
Suite 300
Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
VIA HAND DELIVERY

A handwritten signature in dark ink, appearing to read "Joseph W. Rohan", is written over a horizontal line.

(1750.055)

Tab 18

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

COPY

JOSEPH ROHAN,

Petitioner,

vs.

CHAD BOSEMAN, et al,

Respondent.

Case No. 980904135

Jury Trial
Electronically Recorded on
June 20, 2000

BEFORE: THE HONORABLE J. DENNIS FREDERICK
Third District Court Judge

For the Petitioner:

JOSEPH ROHAN
(Appearing pro se)
376 East 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

For the Respondent:

STEPHEN J. TRAYNER
PETER H. CHRISTENSEN
Strong & Hanni
9 Exchange Place, Suite 600
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

Transcribed by: Beverly Lowe RPR/CSR/CCT

1771 SOUTH CALIFORNIA AVENUE
PROVO, UTAH 84606
TELEPHONE: (801) 377-0027

P R O C E E D I N G S

(Electronically recorded on June 20, 2000)

THE COURT: This is the time set for Joseph Rohan versus Chad Boseman, et cetera, case No. C984135. Counsel, state your appearances for the record.

MR. ROHAN: Joseph Rohan.

THE COURT: You are appearing pro se, Mr. Rohan?

MR. ROHAN: I am.

THE COURT: Very well, and for the defense?

MR. TRAYNER: Stephen Trayner and Peter Christensen on behalf of the defendants, your Honor.

THE COURT: Very well. Mr. Rohan, the jury panel is called. Are you prepared to proceed by your witness and the evidence thereafter?

MR. ROHAN: No, I'm not, your Honor.

THE COURT: And will you state for the record why that is the case.

MR. ROHAN: Your Honor, I'm alleging I've suffered a brain injury in this accident, and because of the brain injury I'm unable to properly prosecute my own case.

THE COURT: You are, however, a member of the Utah State Bar in good standing; is that correct?

MR. ROHAN: I am.

THE COURT: And you are therefore in light of what you claim to be these debilitating circumstances, unable to proceed

1 with your witnesses who are not here this morning?

2 MR. ROHAN: They are not.

3 THE COURT: Do you wish to respond, Mr. Trayner?

4 MR. TRAYNER: Very briefly, your Honor. Your Honor,
5 I believe in chambers -- well, was there a record made of the
6 proceeding in chambers?

7 THE COURT: There was not.

8 MR. TRAYNER: Your Honor, perhaps we could just
9 memorialize what occurred in chambers this morning prior to
10 having the jury come in. The plaintiff yesterday afternoon
11 filed a renewed motion to continue the trial date, invoking
12 the provisions of the Americans with Disabilities Act.

13 We have filed a memorandum in opposition to that
14 motion, and I think the record should reflect that the Court
15 denied Mr. Rohan's renewed motion for a continuance or a stay,
16 pending determination of the applicability of the 88 provision.

17 We have opposed numerous motions filed by Mr. Rohan in
18 the last two weeks since the time of the final pretrial for a
19 continuance. Our position I think is adequately set forth in
20 the memorandum which are on file.

21 However, I think just for purposes of the record I
22 should indicate to the Court and would ask the Court to receive
23 two pieces of correspondence that were exchanged between the
24 parties in this case, if I may approach.

25 THE COURT: You may.

1 MR. TRAYNER: And your Honor, what I would indicate,
2 and the Court is very familiar with Mr. Rohan's actions in the
3 last two weeks, in firing his attorneys the day after the final
4 pretrial or discharging them, and then filing the subsequent
5 motions for continuance, one of the issues having been raised
6 in the briefs of the plaintiff was that somehow he may have
7 been loathe into inaction on the part of any conduct of the
8 defendants or their Counsel in this case.

9 I would just indicate by way of supplementation to
10 the record I have submitted now an August 17th, 1999 letter from
11 Mr. Rohan's business -- I don't know that they're partners, but
12 the traditional sense of a law firm, but for all intents and
13 purposes, a member of the firm that Mr. Rohan belongs to who
14 previously represented him until Mr. Halliday, Paul Halliday,
15 Jr. was discharged on June the 6th, in which Mr. Halliday on
16 August the 17th of 1999 indicated -- and I'm quoting from that
17 letter in the last paragraph, "Mr. Rohan has instructed me to
18 withdraw the offer of settlement made on September 14th, 1998.
19 He informs me that after nearly a year of fruitless negotiation
20 he is no longer willing to accept the policy limit settlement
21 and wishes to proceed to trial."

22 We have also provided the Court, to supplement the
23 record, my correspondence of August 23rd, 1999, acknowledging
24 Mr. Halliday's letter, and indicating in the last paragraph --
25 and again I'm quoting, "Now that it appears that your client

1 have made a determination to proceed to trial, we will move
2 forward with the necessary discovery in this case, including
3 the deposition of Dr. Nathaniel North."

4 The record should indicate that at least by August of
5 1999 the plaintiff in this case gave a clear and unequivocal
6 indication of his intention to proceed to trial. We've
7 certified this matter for trial, and we have opposed the
8 various motions.

9 The ADA is inapplicable to his last minute request
10 to have a continuance, and we would ask based upon Mr. Rohan's
11 failure to prepare his case for trial, the case be dismissed
12 with prejudice and on the merits and the defendants be awarded
13 their costs of Court, and we'd submit it.

14 THE COURT: All right, Mr. Trayner, thank you. It is
15 my view that the request -- last minute request to continue
16 this trial should be and therefore is denied for the reasons
17 specified by Counsel for the defendants in this matter.

18 It is my view, furthermore, Mr. Rohan, that efforts by
19 yourself within the last few weeks to continue this matter for
20 one reason or another, that each time that those motions and
21 requests have been brought to my attention I have consistently
22 denied the same and now likewise doing so.

23 Given your stated and admitted failure to be able to
24 proceed today with the calling of your witnesses, I will grant
25 the request of the defense to dismiss this case for failure to

1 prosecute with prejudice. I will award the defense costs and
2 fees, including an order that the plaintiff pro se be charged
3 with expenses of the jurors having been brought here today.

4 You submit your request for fees and costs -- at least
5 the fees to this Court by affidavit under 4501 of the Code of
6 Judicial Administration. Each reference that I have made in
7 my rulings in this matter have been pursuant to the Code of
8 Judicial Administration 4105(3), 4506(1) and (5), incident to
9 last minute efforts to obtain continuance and/or substitute
10 Counsel, necessarily having to be done with the approval of the
11 Court under the terms and conditions that this Court sees fit.
12 None of which have been met by Mr. Rohan. Consequently the
13 matter here is dismissed.

14 Members of the jury panel, I have brought you here
15 this morning simply to make you aware that it was not until
16 this minute that this Court was firmly convinced that this
17 matter was not going to proceed to trial. Your service here
18 today has facilitated our ability to bring this matter to a
19 resolution, and your fees for service here will be reimbursed
20 to the State.

21 However, the good news is you need not serve here
22 today, and I'm going to excuse you and express my appreciation
23 for your willingness to be here, to enable us to bring this
24 matter to a conclusion. The jury panel is now excused.

25 If there is nothing further at this time, Counsel, we

1 will be in recess, and Mr. Trayner, you prepare the findings of
2 fact and conclusions of law and judgment. Thank you.

3 (Hearing concluded.)
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Exhibit 18, Page 77

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.


That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

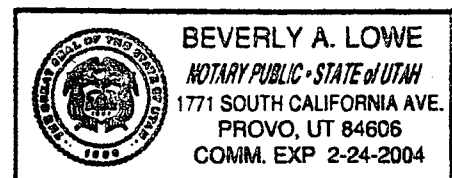
I further certify that I am not interested in the outcome thereof.

That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 29th day of December 2000.

My commission expires:
February 24, 2004


Beverly Lowe
NOTARY PUBLIC
Residing in Utah County



Beverly Lowe
1771 South California Avenue
Provo, Utah 84606

December 30, 2000

Utah Court of Appeals
450 South State Street
Suite 500
P.O. Box 140230
SLC, Utah 84114-0230

NOTICE OF FILING TRANSCRIPT ON APPEAL

Case Name: Joseph Rohan vs. Chad Boseman, et al
Trial No.: 980904135
Appeal No. (Not provided)
Trial Date: June 20, 2000

Notice is hereby given that on December 30, 2000 transcript of the trial held on the above noted date before Judge J. Dennis Frederick in the above case was completed and mailed priority to be filed with the trial Court.

Beverly Lowe, CSR/CCT

CERTIFICATE OF MAILING

I hereby certify that I have mailed copies of the foregoing notice to the following:

cc: Joseph Rohan
376 East 400 South
Suite 300
SLC, Utah 84111

Bunny Neuenschwander
Managing Reporter
Third District Court
450 South State Street
SLC, Utah 84114

Tab 19

FILED DISTRICT COURT
Third Judicial District

JUL 31 2000

SALT LAKE COUNTY
Deputy Clerk

Stephen J. Trayner, # 4928
Steven T. Densley, # 8171
STRONG & HANNI
Attorneys for Defendants
Nine Exchange Place
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

IN THE THIRD JUDICIAL DISTRICT COURT,

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH W. ROHAN,

Plaintiff,

v.

CHAD BOSEMAN, a minor;
JERALD BOSEMAN, an individual,

Defendant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW

Civil No.: 980904135 PI

Judge J. Dennis Frederick

The above referenced matter came on for trial on June 20, 2000, defendants appeared personally and by and through their counsel of record, Stephen J. Trayner and Peter H. Christensen of the law firm of *Strong & Hanni*, and plaintiff, Joseph W. Rohan, Esq., pro se, appeared personally, having discharged his prior counsel, Paul M. Halliday, Jr. and Steven B. Watkins, on June 6, 2000. Plaintiff Joseph W. Rohan having filed a renewed Motion for Voluntary Dismissal and Motion for Expedited Disposition or Alternatively Motion to Continue Trial Setting to Consider Plaintiff's Claims Under the ADA on June 19, 2000, and the court having heard the arguments of counsel, having reviewed the pleadings on file, and otherwise being fully apprised in the premises hereby makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. On or about April 23, 1998, plaintiff, by and through his counsel of record, Paul M. Halliday, Jr. and Steven B. Watkins of the law firm of *Halliday & Watkins, P.C.*, filed the present suit seeking damages for certain injuries allegedly sustained by plaintiff as a result of a January 23, 1997 motor vehicle accident.
2. On or about August 17, 1999, plaintiff's counsel of record corresponded with defendant's counsel to indicate plaintiff's desire to cutoff further settlement negotiations and to proceed to trial.
3. On or about August 23, 1999, defendants' counsel corresponded with plaintiff's counsel of record to acknowledge plaintiff's desire to move the matter forward to trial and further indicated defendants' desire to commence the necessary discovery to prepare the case for trial.
4. On or about January 18, 2000, plaintiff, by and through his counsel of record, filed a Certificate of Readiness for Trial.
5. Plaintiff, Joseph W. Rohan, Esq., is a licensed attorney and is a member in good standing of the Utah State Bar.
6. On March 2, 2000, the court, following a telephonic conference with counsel of record, set a four day jury trial for June 20-23, 2000, and further set appropriate witness designation deadlines, discovery cutoff date, and a final pre-trial conference for June 5, 2000.

7. On or about June 2, 2000, one business day prior to the final pre-trial conference, plaintiff filed a Motion for Continuance of Trial Setting, Withdrawal of Counsel, Substitution of Counsel, and Enlargement of Discovery. Plaintiff's Motion sought to continue the trial, to allow new counsel to substitute for his current counsel, and to allow additional time for the filing of Designations of Witnesses, and for an extension of discovery.
8. On June 5, 2000, the court held the previously scheduled final pre-trial conference. Defendants appeared by and through their counsel of record, Stephen J. Trayner of the law firm of *Strong & Hanni*, and plaintiff appeared personally and by and through his counsel of record, Steven B. Watkins of the law firm of *Halliday & Watkins, P.C.*
9. At the final pre-trial conference, plaintiff's counsel, Steven B. Watkins, Esq., requested that the trial date be stricken, that new witness designation dates be established, and that new counsel be allowed to substitute. Defendants did not actively oppose plaintiff's motion, but did not stipulate to the motion. The court indicated at the final pre-trial conference that it would take the matter under advisement, but that plaintiff and his counsel should continue to prepare for trial in the event that said motion was denied.
10. On or about June 5, 2000, the court issued its Minute Entry ruling on plaintiff's Motion for Continuance of Trial Setting, Withdrawal of Counsel, Substitution of Counsel and Enlargement of Discovery, denied plaintiff's Motion for

Continuance/Substitution based upon plaintiff's failure to show good cause for such a continuance.

11. On or about June 6, 2000, plaintiff gave notice to the court and defendant's counsel that he had discharged Steven B. Watkins and Paul M. Halliday, Jr. and the law firm of *Halliday & Watkins, P.C.* as his attorneys.
12. On or about June 7, 2000, plaintiff moved for Voluntary Dismissal and Motion for Expedited Disposition under Rule 41(2)(ii) of the Utah Rules of Civil Procedure. Plaintiff's Motion was supported by his own affidavit and a Memorandum of Points and Authorities indicating that plaintiff desired additional time "to find trial counsel who could properly prepare a brain injury case", that plaintiff's prior counsel had "limited jury trial experience and do not have any experience in trying a brain injury case" and that upon dismissal of the case, plaintiff intended to re-file his action.
13. Defendants opposed plaintiff's Motion for Voluntary Dismissal in part on the grounds that plaintiff had voluntarily chosen to discharge his prior attorneys with the law firm of *Halliday & Watkins, P.C.*, that plaintiff could claim no surprise with respect to the nature of his claims or the degree of experience and competency of his prior attorneys, and that defendants would be prejudiced as a result of any further continuances in the matter.
14. On June 14, 2000, the court issued its Minute Entry denying plaintiff's Motion for Voluntary Dismissal for the reasons specified in the opposing memorandum of the

defendants.

15. On June 14, 2000, Joseph W. Rohan, pro se, wrote to defendants' attorneys indicating his intention to file a petition for interlocutory appeal and stay of the trial date. Mr. Rohan's correspondence further indicated, "I also want to inform you that whether or not a stay is granted, a trial will not occur on Tuesday and therefore the defense does not need to expend time and effort in preparation of trial on that date."
16. On June 15, 2000, defendants' counsel wrote back to Mr. Rohan indicating their intention to continue with their preparations of trial since there was no Order from any trial or appellate court indicating that the trial would not occur as scheduled on June 20-23, 2000. Defendants' counsel's letter further indicated that defendants would not stop their preparations for trial until an appropriate Order was obtained staying the trial date or dismissing the case with prejudice and that in the event plaintiff failed or refused to move forward with his case at trial, that defendants would seek sanctions against plaintiff.
17. On or about June 15, 2000, plaintiff, Joseph W. Rohan, pro se, filed a "Notice of Plaintiffs Inability to Bring this Matter to Trial" indicating "that [plaintiff] cannot present his case that is scheduled for trial on Tuesday, June 20, 2000 through Friday, June 23, 2000."
18. On June 16, 2000, plaintiff wrote to defendants' counsel indicating "I am unable and unprepared to try my own brain injury case and that under no circumstances will a

trial be held on Tuesday, June 20th” and “both the Court and Defendants (for at least the second time) have been notified that this matter will not proceed to trial as scheduled.”

19. On or about June 19, 2000, plaintiff filed a renewed Motion for Voluntary Dismissal and Motion for Expedited Disposition or Alternatively Motion to Continue Trial Setting to Consider Plaintiff's Claims Under the ADA.
20. On or about June 20, 2000, the court entered its Order Denying Plaintiff's Motion for Voluntary Dismissal without Prejudice.
21. On June 20, 2000, defendants appeared personally and by and through their counsel of record, and were prepared to try the defense of this matter. Plaintiff appeared pro se, being unrepresented by other counsel.
22. As of the first day of trial, June 20, 2000, the court had not entered any order permitting withdrawal of counsel under Rule 4-506(1) or (5) of the Rules of Judicial Administration.
23. On the morning of trial, plaintiff appeared unprepared and/or unwilling to proceed with the calling of witnesses on his own behalf and stated in open court that he was not prepared to proceed with the presentation of his evidence.

Based upon the foregoing Findings of Facts, the court makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. Plaintiff's conduct individually and by and through his prior counsel of record demonstrate a clear pattern of failure to prosecute plaintiff's case, and as a result, warrants dismissal of plaintiff's complaint with prejudice and upon the merits;
2. Plaintiff failed to comply with or to make the requisite showing under Rule 4-105(3) with respect to his Motions to Continue the Trial in this case in that plaintiff failed to show good cause for such a continuance;
3. Plaintiff's Motions for Substitution of Counsel would have caused a continuance of the trial date and failed to comply with or meet the requirements of Rule 4-506(1) and (5) of the Rules of Judicial Administration;
4. That plaintiff's assertion that the trial of this case must be delayed or continued due to the provisions of Title II of the Americans with Disabilities Act is without foundation in law or in fact;
5. The provisions of Title II of the Americans with Disabilities Act do not require that this court grant plaintiff's request for a continuance and/or a voluntary dismissal without prejudice;
6. Plaintiff's failure to prosecute his case under the circumstances present in this case resulted in defendants incurring needless costs and fees and therefore, defendants shall be entitled to an awards of costs and fees as sanctions because of plaintiff's refusal and/or failure to present his case at trial and that said refusal and/or failure was

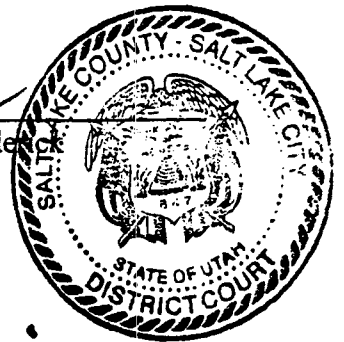
without merit and in bad faith and was engaged in with an intent to hinder or delay the proceedings of this court.

7. Plaintiff's actions are sanctionable within the contemplation under Utah Code Ann. §78-27-56 and this court's inherent authority to govern judicial proceedings and make appropriate sanctions.

DATED this 28th day of July, 2000.

By: 

Honorable J. Dennis Frederick
District Court Judge



APPROVED AS TO FORM:

Joseph W. Rohan, Esq.

Tab 20

Stephen J. Trayner, # 4928
Steven T. Densley, # 8171
STRONG & HANNI
Attorneys for Defendants
Nine Exchange Place
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

FILED DISTRICT COURT
Third Judicial District

JUL 31 2000

SALT LAKE COUNTY

Deputy Clerk

ENTERED IN REGISTRY
OF JUDGMENTS

DATE

8/1/00

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IMAGED

JOSEPH W. ROHAN,

Plaintiff,

v.

CHAD BOSEMAN, a minor;
JERALD BOSEMAN, an individual,

Defendant.

ORDER AND JUDGMENT

Civil No.: 980904135 PI

Judge J. Dennis Frederick

980904135 JD1423628 BOSEMAN, CHAD JL



Order and Judgment (with 2 separate judg

The above referenced matter came on for trial on June 20, 2000, defendants appeared personally and by and through their counsel of record, Stephen J. Trayner and Peter H. Christensen of the law firm of *Strong & Hanni*, plaintiff, Joseph W. Rohan, Esq., pro se, appeared. At the time of trial, plaintiff had pending Plaintiff's Renewed Motion for Voluntary Dismissal and Motion for Expedited Disposition or Alternatively Motion to Continue Trial Setting to Consider Plaintiff's Claims under the ADA. The court having previously made its Findings of Facts and Conclusions of Law, now rules as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Renewed Motion for Voluntary Dismissal and Motion for Expedited Disposition or Alternatively Motion to Continue

Trial Setting to Consider Plaintiff's Claims under the ADA being the same is hereby DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff's complaint and all claims contained therein, whether alleged or not alleged, against the defendants be and the same are HEREBY DISMISSED WITH PREJUDICE AND ON THE MERITS DUE TO PLAINTIFF'S FAILURE OR REFUSAL TO PROSECUTE HIS CASE, and defendants are thereby granted costs of court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment shall be entered in favor of defendants and against the plaintiff in the amount of \$ 1728.¹⁰ for costs of court incurred;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment shall be also entered in favor of defendants and against the plaintiff in the amount of \$ 4632.⁵⁰ in attorney's fees and \$ 987.¹⁴ in other costs as a result of the dismissal of said action and plaintiff's willful failure or refusal to proceed with trial. Interest shall accrue upon said judgment from the date of this Order until satisfied at the highest rate permitted by law.

IT IS FURTHER ORDERED AND DECREED that plaintiff, Joseph W. Rohan, Esq., shall reimburse the clerk of the Third District Court of Salt Lake County for the costs incurred in connection with the calling of the jurors in this case in the sum of \$518.

DATED this 28th day of July, 2000.

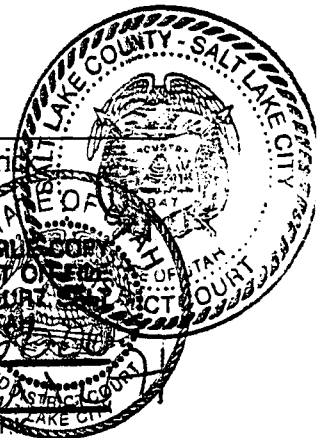
Rohan v Boseman et al
Judge J. Dennis Frederick
Civil No. 980904135 PI
1750.055

By: 

Honorable J. Dennis Frederick
District Court Judge

I CERTIFY THAT THIS IS A TRUE COPY
OF AN ORIGINAL DOCUMENT ON FILE
IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH
DATE 12-22-2000

DEPUTY COURT CLERK



APPROVED AS TO FORM:

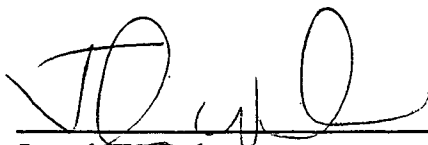
Joseph W. Rohan, Esq.

Tab 21

DATE: _____

of the Utah Rules of Civil Procedure, for a new trial on all issues. Alternatively, the Plaintiff respectfully requests the Court amend the judgment to provide for involuntary dismissal without prejudice as provided by Rule 41(a)(2)(b). This motion is supported by the accompanying memorandum of points and authorities and affidavit of Joseph W. Rohan.

DATED this 7th day of August 2000.



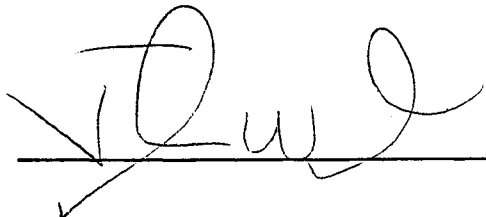
Joseph W. Rohan
Pro Se

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 7th day of August, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092



Tab 22

FILED
MAR 10 1968
COMM - 7 PM:40
FBI - NEW YORK
MAR 10 1968

)	
)	MEMORANDUM IN SUPPORT
)	OF PLAINTIFF'S MOTION FOR
)	NEW TRIAL OR ALTERNATIVELY
)	TO AMEND
JOSEPH W. ROHAN)	
Plaintiff,)	
)	
v.)	
)	
)	Civil Number 980904135 PI
CHAD BOSEMAN, a minor)	
JERALD BOSEMAN an individual,)	
)	
Defendants.)	Judge: J. Dennis Frederick

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Machine-generated OCR, may contain errors.

INTRODUCTION

From the outset, it should be understood that the Plaintiff is bringing his claim under the ADA as an individual litigant and the reasonable accommodation he requests is sought in his capacity as an individual litigant not as an attorney. The Plaintiff is not asking the Court to modify the rules to which attorneys practicing before this Court are expected to adhere nor is he seeking an accommodation by this Court in capacity as an attorney. Rather the Plaintiff is asking the Court to recognize the fact that he is a qualified individual under the Americans With Disabilities Act, 42 U.S.C. §§ 12131 et seq., (hereinafter the "ADA") entitled to a reasonable accommodation under the Act.

As a qualified individual with a brain injury, the Plaintiff is a member of a class of disabled individual litigants entitled to a reasonable accommodation by this Court pursuant to the provisions of the ADA. A reasonable accommodation under the facts of this case before and at the time of trial, would have been a continuance as provided by Rule 4-105 of the Utah Rules of Judicial Administration or voluntary dismissal without prejudice as provided by Rule 41 of the Utah Rules of Civil Procedure.

The Court, as a public entity, is subject to the provisions of Title II, Subchapter A of the ADA. The act requires the Court to make a reasonable accommodation to ensure that the Plaintiff, as a qualified individual with a disability, is not excluded from participation in or denied the benefits of the services, programs or activities of the courts, this includes the fundamental right to seek

redress for the injuries caused by another. This Court is required not only to take reasonable steps to remove physical barriers that prevent access to the administration of justice by the disabled, but the Court is also required to take reasonable steps to remove barriers imposed by rules and procedures that prevent meaningful access to the administration of justice by the disabled.

The Plaintiff, in his prior motions, did not ask the Court to alter established rules and procedures unreasonably. The means for a reasonable accommodation already exists, and is provided for by Rule 4-105 U. C. J. A. or Rule 41 of the Utah Rules of Civil Procedure. The judicial council through 4-105 has provided the mechanism for a continuance in special circumstances to other individuals. A reasonable accommodation to a qualified litigant in these circumstances would have been the granting the motion for a continuance at the pretrial, particularly in light of the fact that it was the Plaintiff's first request, the requested continuance was only for 90 days and the motion was unopposed by the Defendants.

The denial of the Plaintiff's original and renewed motions for a continuance or voluntary dismissal without prejudice was erroneous as a matter of law. In view of the error in law concerning the application of the ADA to this matter, the dismissal of the Plaintiff's cause of action with prejudice, with the award of costs and fees was an abuse of discretion. The Plaintiff respectfully requests this Court grant his motion for a new trial as provided by Rule 59(a)(1)(7), or alternatively to amend the judgment to provide for involuntary dismissal without prejudice as provided by Rule 41(a)(2)(b).

I. MOTION FOR NEW TRIAL

A. THE PLAINTIFF IS ENTITLED TO A NEW TRIAL PURSUANT TO RULE 59(a) OF THE UTAH RULES OF CIVIL PROCEDURE DUE TO AN ERROR IN LAW AND/OR ABUSE OF DISCRETION.

The general rule governing the grant of a new trial is that the trial court must find at least one of the seven grounds listed in Rule 59 to be met. Crookston v. Fire Insurance Exchange, 817 P.2d 789, 803 (Utah 1991).

Rule 59 of the Utah Rules of Civil Procedure Provides in the Relevant Parts:

(a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial . . .

(7) Error in law.

This Court erred as a matter of law by: (1) failing to apply the provisions of the ADA to the facts of this case, by failing to make a determination whether the Plaintiff was a qualified individual under the ADA, and by discriminating against the Plaintiff on the basis of his disability; (2) denying the Plaintiff his rights under Article I, section 11, Article I, section 24, Article I, section 2, Article I, section 7 Utah State Constitution, and Article XIV of the United States Constitution

This Court abused its discretion by: (1) failing to identify or articulate any facts, in light of

the Plaintiff's claimed disability under the ADA, to support a showing of good cause to justify the denial of Plaintiff's motions for a continuance as provided by Rule 4-105; (2) failing to identify or articulate any facts, in light of the Plaintiff's claimed disability under the ADA, to support a finding that the Plaintiff did not raise a justifiable excuse in denying the motions for voluntary dismissal as provided by Rule 41(a)(2)(ii) and in dismissing the Plaintiff's cause with prejudice with the award of costs and fees; and (3) discriminating against the Plaintiff under the ADA and the Utah and United States Constitutions.

1. The Statutory Basis of the Plaintiff's Claims Pursuant to Title II, Subchapter A of the Americans with Disabilities Act.

Title II, Subchapter A of the Americans With Disabilities Act bars public entities from discriminating on the basis of disability in the provision of programs and benefits to qualified individuals. The courts of this state, as public entities administered by the Utah Judicial Council¹, are included within the scope of the ADA². The Plaintiff is a qualified individual with a disability under the act because he suffers from an objectively documented brain injury that, despite mitigating factors, presently substantially limits many of his major life activities.

In evaluating whether a individual states a claim under Title II of the ADA, the Tenth Circuit applies the standard articulated in Tyler v City of Manhattan, 849 F. Supp. 1429 (D. Kan. 1994), See

¹ Established by Article VIII, Section 12 of the Utah Constitution.

² The Courts are a public entity as defined by 42 U. S. C. §12131 and by the Department of Justice implementing regulation 28 C. F. R. §35.104.

Gohier v. Enright, 186 F.3d 1216, 1220 (10th Cir. 1999). Under Tyler, the individual must prove:

- (a) That he [or she] is a qualified individual with a disability;
- (b) That he [or she] was either excluded from participation in or denied the benefits of some public entity's services, programs or activities, or was otherwise discriminated against by the public entity; and
- (c) That such exclusion, denial of benefits, or discrimination was by reason of the Plaintiff's disability. *Id.* at 1220.

Addressing each factor in turn:

a. The Plaintiff is a Qualified Individual With A Disability.

The ADA defines a qualified individual with a disability as one, who with or without reasonable modifications . . . meets the essential eligibility requirements to receive public services or participate in a public program. McGuinness v. University of N.M. Sch. of Medicine, 170 F.3d 974, 976 (10th Cir. 1998), *cert. denied*, 119 S. Ct. 1357 (1999). It is unquestioned that the Plaintiff has a fundamental right as a citizen of the United States and the State of Utah, to participate and have access to the judicial system to seek redress for his injuries.

An impairment need not appear on a specific list of disorders to constitute a disability under the act (although a brain injury is implicitly one of the disorders mentioned).³ Nor must the

³ Pages 35:698-35:700 of the Title II implementing regulation. "As explained in paragraph (1)(i) of the definition, "impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs (which would include speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.); respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This list closely tracks the one used in the

impairment effect those aspects of a persons life that have a public or economic character, and in the case of a physical impairment like HIV infection, a disability can be latent and asymptomatic. McGuinness at 977, citing Bragdon v. Abbott, 118 S. Ct. 2196, 2202-2205 (1998).

Whether a person has a disability under the ADA is an individualized inquiry. Bragdon at 670. The ADA does not specifically define the phrases “substantially limits” or “major life activity.” The 10th Circuit assesses three factors to determine whether an individual is “substantially limited” See Sutton v. United Air Lines, Inc., 130 F.3d 893, 900 (10th Cir 1997), *affirmed* 119 S. Ct. 2139 (1999). These factors are (i) the nature and severity of the impairment, (ii) the duration or expected duration of the impairment, and (iii) the permanent or expected long-term impact of the impairment.

The term “major life activity,” has been construed to mean a “basic activity that the average person in the general population can perform with little or no difficulty.” Pack v. Kmart Corp., 166 F.3d 1300, 1305. (10th Cir. 1999). Major life activities include but are not limited to “such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, learning, standing lifting and working.” Poindexter v. Atchison, Topeka & Santa Fe Ry. Co., 168 F.3d 1228, 1231-32. (10th Cir. 1999).

regulations for section 504 of the Rehabilitation Act of 1973 (see, e.g., 45 CFR 84.3(j)(2)(i)).

Many commentators asked that “traumatic brain injury” be added to the list in paragraph (1)(i). **Traumatic brain injury** is already included because it is a physiological condition affecting one of the listed body systems, i.e., “neurological.” Therefore, it was unnecessary to add the term to the regulation, which only provides representative examples of physiological disorders.” (Emphasis Added)

The major life activities in which the Plaintiff is limited are the result of a documented, irreversible brain injury. These include, but are not limited to, memory loss, disrupted cognition, excessive daytime sleepiness, fatigue, confusion, and an abnormal attention span. As a result of the brain injury the Plaintiff has extreme difficulty performing basic functions such as of caring for himself, performing simple tasks, speaking, learning, sleeping, and working.⁴

In affirming the 10th Circuit's decision in Sutton, the United States Supreme Court held that the term "substantially limits" requires that a person, "be presently, not potentially or hypothetically, substantially limited in order to demonstrate a disability. . . A disability exists only where an impairment "substantially limits" a major life activity, not where it "might," "could," or "would" be substantially limiting if mitigating measures were not taken." Sutton, 119 S. Ct. 2139 at 2150.

An individual whose impairment is corrected by medications or other measures does not have an impairment that substantially limits a major life activity and thus is not disabled under the act. For example, a person with severe nearsightedness (myopia), that is corrected to 20/20 is not a qualified individual under the ADA, because while the individual still has an impairment, the fact that is corrected means that the nearsightedness does not substantially limit a major life activity.

The Plaintiff on the other hand, is a qualified individual under the ADA because, even with mitigating factors of therapy, adaptive behavior, and medications, he is still presently substantially limited in most major life activities.

⁴See Affidavit of Joseph W. Rohan ¶ 20

The question of whether a person has a disability under the ADA is an individualized inquiry. In order to invoke the protections of the ADA the Plaintiff must first show that the claimed disabilities “substantially limits” a major life activity as determined by the three factors enumerated in Sutton.

Examination of these factors as applied to the Plaintiff provide overwhelming evidence that the Plaintiff is a qualified individual under the ADA because he currently has impairments, including memory loss, disrupted cognition, excessive daytime sleepiness, fatigue, confusion, and an abnormal attention span that are uncorrectable, even with mitigating factors, and the impairments substantially limit every major life activity in which he engages.

i. The nature and severity of the impairment: The impairments the Plaintiff has suffered as the result of the brain injury have been documented by objective medical imaging and neuropsychological testing. A CT scan of the Plaintiff’s brain taken in July 1990 revealed a normal brain scan⁵, however an MRI of the Plaintiff’s brain taken in 1997, three months after the accident, was abnormal⁶. The Plaintiff’s treating neurologist, Robert M. Miska, M.D., stated in May of 1998, “the MRI scan done after the accident showed changes typical for closed head injury with axonal shearing . . . including atrophy disproportionate to age and some small areas of increased T2 signal

⁵See Affidavit of Joseph W. Rohan ¶ 4

⁶ See Affidavit of Joseph W. Rohan ¶ 5

intensity⁷.”

Dr. Miska’s initial clinical impression in May 1997 was, “closed head injury, whether by direct impact or inertial force, with significantly impaired attention-concentration (at least).”⁸ Neuropsychological testing performed in May 1997 by Erin Bigler Ph.D., showed disrupted cognitive performance, with performance being substantially below what would be expected, given the patients educational and vocational background.⁹ In November 1997 the Plaintiff, at Dr. Miska’s request, was evaluated by Mark Fox M.S., CCC-SPL, and was tested with the Ross Information Processing Assessment-2 which is normed on individuals who had suffered a brain injury. The Plaintiff’s mean score of 10 represented a moderate dysfunction¹⁰. The Plaintiff underwent a sleep study in July 1998, which showed a severely disrupted sleep cycle with a sleep efficiency of 41% (normal is greater than 90%), and a total absence of REM, stage III & IV sleep. Additionally, measurements of the Plaintiff’s attentiveness were markedly abnormal¹¹.

In May 2000, the Plaintiff was evaluated by the Defendant’s nueropsychologist, Elaine Clark Ph.D. Although the issue of causation is disputed in this matter, the results of her testing showed that

⁷See Affidavit of Joseph W. Rohan ¶ 6

⁸See Affidavit of Joseph W. Rohan ¶ 7

⁹See Affidavit of Joseph W. Rohan ¶ 8

¹⁰ See Affidavit of Joseph W. Rohan ¶ 9

¹¹ See Affidavit of Joseph W. Rohan ¶ 10

the Plaintiff is currently severely impaired in terms of memory skills and information processing. The Plaintiff's visual memory remains severely impaired i.e. below the 10% percentile, the testing also showed significant impairment in the Plaintiff's verbal memory and learning.¹²

In addition to the cognitive defects related to memory and attention span that have been objectively documented over the past three years, the Plaintiff in his everyday functioning is presently severely limited by other problems associated with the brain injury. The Plaintiff was diagnosed with excessive daytime sleepiness for which he takes medication daily, he does not dream (which was demonstrated by the lack of REM sleep), and he is constantly fatigued, often having to leave the office during the day to take naps. It is difficult for the Plaintiff to awaken, and it is necessary for colleagues from the office to call to awaken him so that he can take his medication¹³. He continues to have severe debilitating headaches which prevent him from doing any activities at all, including maintaining a legal practice, when they occur.¹⁴ Additionally, the Plaintiff has informally entered into an agreement with the office of enrollment and discipline to have members of the law firm of Halliday & Watkins P.C., informally supervise his practice.¹⁵

ii. *The duration or expected duration of the impairment:* The Plaintiff has exhibited

¹² See Affidavit of Joseph W. Rohan ¶ 11

¹³ See Affidavit of Joseph W. Rohan ¶ 12, 13

¹⁴ See Affidavit of Joseph W. Rohan ¶ 13

¹⁵ See Affidavit of Joseph W. Rohan ¶ 14

the effects of the brain injury since January 1997. As reported by Elaine Clark Ph.D., in May 2000, neuropsychological testing reveals the cognitive defects first reported by Dr. Bigler in 1997 are presently the same or worse than before.¹⁶ Again, although causation is disputed, there is no indication that the documented impairments suffered by the Plaintiff are improving or will improve.

The Plaintiff began taking medication for the headaches in January 1997 continues on an as needed basis. The Plaintiff began taking medication for the excessive daytime sleepiness in July 1998 and continues on a daily basis. The Plaintiff will likely require his present regimen of medications indefinitely.¹⁷

Dr. Robert Rothfeder M.D., J.D., has determined that the Plaintiff's condition has become chronic and static, and has assigned the Plaintiff a permanent partial impairment of the whole person of 34% and a 100% impairment with respect to the independent practice of law.¹⁸

iii. The permanent or expected long-term impact of the impairment. The impairments claimed by the Plaintiff are severe, permanent, and they continue to impact every aspect of his life. As noted by Mark Fox in November 1997, the Plaintiff. "has reported significant difficulties since his accident in completing both activities of daily living and work related activities . . . Specifically, Mr. Rohan experiences significant difficulties attending to important information for a given task.

¹⁶See Affidavit of Joseph W. Rohan ¶ 15

¹⁷ See Affidavit of Joseph W. Rohan ¶ 16

¹⁸See Affidavit of Joseph W. Rohan ¶ 17

He experiences a decrease in his attentional abilities as the complexity of the information increases and as distractions are introduced. This has and will continue to significantly impact his abilities to complete activities at home and at work.”¹⁹ Dr. Clark stated, “Data from the current neuropsychological evaluation [May 2000] show Mr. Rohan is severely impaired . . . Despite receiving cognitive rehabilitation since the time of the first evaluation by Dr. Bigler, Mr. Rohan seems to be doing the same or worse in a number of areas.”²⁰

The sleep problems continue despite the medication, as do the headaches, the fatigue, the memory problems, and the inattention. Despite no longer demonstrating signs of depression that could have accounted for his symptoms and can be mitigated with medication, the myriad of symptoms and impairments related to the Plaintiff’s brain injury persist and cannot be mitigated. The record unquestionably demonstrates that the Plaintiff is presently, not potentially or hypothetically, substantially limited in any number of major life activities from thinking, to memory, to attention, to staying awake, and to staying asleep. The disability produced by the brain injury has altered every aspect of his personal and professional life. The Plaintiff is unquestionably a qualified individual under the and provisions of the ADA.

b. The Plaintiff Was Excluded from Participation in or Denied the Benefits of the Services, Programs or Activities of this Court, or Was Otherwise Discriminated Against

The Courts denial of the Plaintiff’s motions to continue or for a voluntary dismissal and the

¹⁹See Affidavit of Joseph W. Rohan ¶ 18

²⁰ See Affidavit of Joseph W. Rohan ¶ 19

dismissal of his cause of action with prejudice with the award of costs and fees, discriminated against the Plaintiff by excluding him from participation in the judicial process to redress his injuries. The Court discriminated against the Plaintiff by denying him the opportunity to present his claim based on the apparent mis-perception that a brain injured attorney is capable of litigating his own case. The Court's decisions are not only a violation of the ADA, but they are a violation of the Plaintiff's fundamental right to seek redress for his injuries under both Utah²¹ and United States Constitutions²².

The United States Congress, in enacting the ADA, intended that the act have a wide scope to redress the discrimination individuals with disabilities commonly face, particularly in view of the fact that many disabilities, such as brain injury, are not readily apparent to an observer. To express the broad scope of the Act, the term discrimination, encompasses a wide range of both intentional and unintentional acts that may constitute discrimination. The Utah Supreme Court has recognized this fact, "[I]n the context of Americans with Disabilities Act, 'discrimination' should be broadly defined so as not to preclude instances of discrimination even though difficult to identify and evaluate prior to the filing of a civil action." Elks Lodges No. 719 v. Department of Alcoholic Beverage Control, 905 P.2d 1189, 1205, *citations omitted* (Utah 1995)

This Court, in what the Plaintiff certainly believes was an unintentional act of discrimination, nonetheless discriminated against the Plaintiff by assuming that the Plaintiff was not a qualified

²¹ Article I, section 11, Article I, section 24, Article I, section 2, Article I, section 7 Utah State Constitution

²² Fourteenth Amendment, United States Constitution

individual with a disability under the ADA based on the fact that the Plaintiff is a member of the Utah State bar. This fact is one of many that the court may consider in making a factual determination of whether the Plaintiff is a qualified individual under the Act. The Court under is required to consider all the factors presented by the Plaintiff once a claim of disability is made under the Act and to determine whether the Plaintiff was qualified. Because the Court failed to do so, it discriminated against the Plaintiff within the meaning of Title II, Subsection A of the Americans With Disabilities Act.

A litigant is also discriminated against if his rights under the Utah or United States Constitutions are violated. A rule or procedure of the Court may be unconstitutional either on its face or as it is applied to the facts of a given case. The Court's denial of the Plaintiff's motions for a continuance, and the dismissal his action with prejudice, with the award of costs and fees for failure to prosecute, is unconstitutional both facially and as applied to the facts of this case.

The fundamental premise upon which our judicial system rests is the notion that the judiciary exists to afford litigants the opportunity to be heard and to do justice between them. This principle was articulated by United States Supreme Court in Wilson v. Iseminger, 185 U.S. 55 (1902) and cited with approval by the Utah Supreme Court in Berry v. Beech Aircraft Corporation 717 P.2d 670, 679 (Utah 1985). The Court noted the fundamental obligation of government is to provide reasonable remedies for wrongs done persons.

Every government is under obligation to its citizens to afford them all needful legal remedies.... A statute could not bar the existing rights of claimants without affording

this opportunity [to try rights in the courts]; if it should attempt to do so, it would not be a statute of limitations, but an unlawful attempt to extinguish rights arbitrarily, whatever might be the purport of its provisions. Wilson at 62

In addition to the fundamental right of meaningful access to the judiciary, the Plaintiff has a property interest in the right to be compensated for his personal injuries. "The right to be [compensated] for personal injuries is a substantial property right, not only of monetary value but in many cases fundamental to the injured person's physical well-being and ability to continue to live a decent life." *Citations Omitted. Condemarin v. University Hospital*, 775 P.2d 348, 360 (Utah 1989). The adoption of rules of procedure and the application of those rules by the courts cannot override the substantial rights guaranteed to the litigant, the Court is limited in its application of the rules of procedure by what has been called the substantive/procedural distinction.

The Utah Supreme Court has recognized this limitation stating, "The limitations on rules announced by this Court . . . are that the Court may not change the substantive rights of any litigant; the rules must only be procedural in nature." State v. Banner, 717 P.2d 1325, 1333 (Utah 1986). Under the facts of this case, the Court's application of the procedural rules to a brain injured plaintiff who happens to be an attorney, has altered the substantive/procedural distinction by denying him the right of redress for his injuries as guaranteed by Article I, section 11 of the Utah Constitution.

Article I, Section 11 was designed to accomplish several purposes. The clear language of the section guarantees access to the courts and a judicial procedure and is premised on basic concepts of fairness and equality. Section 11 also establishes that the framers of the [Utah] Constitution

intended that an individual could not be arbitrarily deprived of effective remedies designed to protect basic individual rights. The constitutional guarantee of access to the courthouse was not intended by the founders to be an empty gesture, individuals are entitled to a remedy by "due course of law" for injuries to "person, property, or reputation." Berry at 675.

The Plaintiff is an individual with a qualified disability as defined by the ADA. The denial of his motions and the dismissal with prejudice with the imposition of fees and costs, under the facts of this case was discriminatory. With all due respect to the power and integrity of this court, the Plaintiff believes that the Court's denials of his motions was neither fair, nor were the rules and procedures equally and uniformly applied. The Court's denial of the motions seemingly make the guarantee of access to the courthouse espoused by the Utah constitution an empty gesture for the individual litigant with a brain injury.

Article I, section 24 of the Utah Constitution states, "All laws of a general nature shall have uniform operation." By so providing, [Article I, section 24] "protects against two types of discrimination. First, a law must apply equally to all persons within a class. Second, the statutory classifications and the different treatment given the classes must be based on differences that have a reasonable tendency to further the objectives of the statute." Malan v. Lewis, 693 P.2d 661, 670 (Utah 1984).

The uniform operation of laws provision establishes different requirements than does the Federal Equal Protection Clause. "[F]or a law to be constitutional under [Section 24], it is not

enough that it be uniform on its face. What is critical is that the operation of the law be uniform. A law does not operate uniformly if 'persons similarly situated' are not 'treated similarly'...." Malan, at 669. Both Rule 4-105 and Rule 41 are uniform as applied to an individual with a disability only in that they can operate to uniformly exclude individuals, under these facts, with a qualified disability under the ADA from participation in the litigation process. The rules in effect grant the Court discretion to discriminate against disabled litigants.

Rule 4-105 of the Utah Rules of Judicial Administration, *Continuances in Special Circumstances*, provides that a motion to continue made on or within 10 days prior to the date of a hearing may be granted by the Court upon a showing of good cause and upon such terms as the Court determines are just. However, the rule is vague in that does not define the special circumstance nor the type of litigant who may qualify. Fundamental concepts of fairness and equality demand that the term "good cause," be interpreted at least broadly enough to require the Court to determine whether a litigant is a qualified individual under the ADA once the claim has been presented to the court in a motion to continue. The failure to consider the Plaintiff's ADA claims, the Court's denial of his pretrial motions, and the Court's dismissal of his cause with prejudice with the award of costs, is discriminatory under the ADA and under the Utah and United States Constitutions.

The Plaintiff is mindful of the fact that the Court has a heavy docket and must manage its caseload efficiently and effectively. Nor does Plaintiff dispute the proposition that the Court may dismiss an action for want of prosecution under Rule 41(b), pursuant to the inherent authority to

manage its own affairs “so as to achieve the orderly and expeditious disposition of cases.” Charlie Brown Constr. Co. v. Leisure Sports Inc., 740 P.2d 1368, 1370 (Utah Ct. App.1987). The Court has “a reasonable latitude of discretion in dismissing for failure to prosecute if a party fails to move forward according to the rules and the directions of the court, without justifiable excuse.” Westinghouse Elec. Supply Co. v. Paul W. Larsen Contractor Inc., 544 P.2d 876, 878-79 (Utah 1975). However, as stated in Meadow Fresh Farms, Inc... v. Utah State University Dept. of Agriculture and Applied Science., 813 P.2d 216 (Utah App. 1991), “[W]hile expeditious handling of calendars is commendable, it is even more important to keep in mind that the very reason for the existence of courts is to afford disputants an opportunity to be heard and to do justice between them.” Meadow Fresh at 219. As the United States Supreme Court has stated a “myopic insistence upon expeditiousness in the face of a justifiable request for delay” can constitute an abuse of discretion. Ungar v. Sarafite, 376 U.S. 575, 589 (1964). The Plaintiff raised a justifiable excuse for a short delay as provided by the rule, the Court’s insistence on expeditiousness was an abuse of discretion.

Individual litigants with qualified disabilities under the ADA, are implicitly if not explicitly one of the circumstances that are addressed by Rule 4-105. Additionally, the Plaintiff, who is a qualified individual with a disability as attorney, who knows he cannot try his own brain injury case because of the substantial limitation caused by the injury, offers a justifiable excuse for involuntary dismissal without prejudice as provided by Rule 41. It was an abuse of discretion to involuntarily

dismiss his cause with prejudice with the award of costs for failure to prosecute.

The Plaintiff is also entitled to equal protection under the law. The Utah Supreme Court has noted that the equal protection guarantees of the Utah and Federal Constitutions “embody the same general principle: persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same.” Malan v. Lewis, 693 P.2d 661, 669 (Utah 1984). The Plaintiff has demonstrated that he is a qualified individual with a disability. His circumstances as a individual litigant in appearing before this Court are distinctly different than those of a litigant without a disability. However, the Court even after becoming aware of the Plaintiff’s circumstances treated him as a non qualified litigant in spite of his reasonable request for a modification.

The Court, by dismissing the Plaintiff’s action with prejudice, and imposing costs and fees, has sanctioned the Plaintiff for being unable to try his own brain injury case, apparently assuming that the Plaintiff’s circumstances were the same as other litigants who are attorneys. The Plaintiff’s circumstances are not the same, he is an individual with a qualified disability under the ADA. As a result of this Court’s sanction, the Plaintiff has not only been denied his right to seek redress for his injuries, but the imposition of costs and fees raises the specter that he is being retaliated against raising a claim under the ADA.

As is shown by the fact that the Court called the jury, in spite of being notified several days earlier that the Plaintiff was unable to try the case, and in spite being made aware of his claims under

the ADA. This action not only increased the amount of the monetary sanction that the Court could impose, but the Court seemingly held the Plaintiff up to public ridicule for asserting a claim under the ADA.²³

c. The Reason for the Exclusion, Denial of benefits, or Discrimination was because of the Plaintiff's disability

The ADA like other civil rights statutes prohibits the denial of services or benefits on specified grounds, traumatic brain injury being among these grounds. While the ADA provides for equality of opportunity, it does not guarantee equality of results. As applied to public entities such as the Courts, the bedrock principle of the ADA is that individuals with disabilities must be provided with an equally effective opportunity as the general population to participate in or benefit from the services of the entity.

Under the facts of this case it was the Court's mis-perception that the Plaintiff, being an attorney, could not raise a claim in his individual capacity as a litigant under the ADA. The Court discriminated against the Plaintiff on the basis of his disability by ignoring the general principle that persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same. The Plaintiff's circumstances are clearly not the same as other litigants and the Court erred as a matter of law in treating the Plaintiff's motions as if they were.

²³ See Affidavit of Joseph W. Rohan ¶ 22

2. The Plaintiff's Request for an Accommodation Under the ADA was Reasonable.

Once an individual has shown a disability under Title II of the ADA, that individual may not demand an unreasonable accommodation. See Milton v Scrivner, Inc., 53 F.3d 1118, 1124 (10th Circuit 1995). A public entity discriminates against disabled individual, in violation of Americans with Disabilities Act (ADA), where it fails to make reasonable modifications for that person; if modifications would fundamentally alter nature of institution, however, it is not obliged to make modifications. Darian v. University of Massachusetts Boston, D. Mass. 1997, 980 F.Supp. 77.

The requirement of reasonable accommodation applies to the procedural rules of this Court. The federal courts have determined that cities must alter their zoning ordinances as a "reasonable accommodation" to avoid discrimination on basis of disability, if the modification does not cause any undue hardship or fiscal or administrative burdens on the public entity, or does not undermine the basic purpose that the ordinance seeks to achieve. Innovative Health Systems, Inc. v. City of White Plains, S.D.N.Y.1996, 931 F.Supp. 222, affirmed in part, 117 F.3d 37. The procedure for a reasonable accommodation under the facts of this case all ready exists and is provided by Rule 4-105. Because granting a 90 day continuance or dismissing the Plaintiff's cause of action without prejudice would not have caused any undue hardship or fiscal or administrative burdens on the Court, and because the Court did not make a factual determination whether the Plaintiff was a qualified individual with a disability under the ADA before denying the Plaintiff's motions, the

Court erred as a matter of law in denying the motions and consequently abused its discretion.

II. MOTION TO AMEND

A. ALTERNATIVELY, THE COURT SHOULD AMEND THE JUDGMENT TO PROVIDE FOR DISMISSAL WITHOUT PREJUDICE PURSUANT TO RULES 52(b) & 41(b) OF THE UTAH RULES OF CIVIL PROCEDURE.

Rule 52(b) of the Utah Rules of Civil Procedure provides in the relevant part:

Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made either a motion to amend them, a motion for judgment, or a motion for a new trial.

Rule 41(b) of the Utah Rules of Civil Procedure provides in the relevant part:

(b) Involuntary Dismissal; Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him . . . If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits.

This Court has abused its discretion and erred as a matter of law in dismissing the Plaintiff's cause of action with prejudice and awarding costs and fees to the Defendants. The Courts

interpretation of a rule in the Utah Code of Judicial Administration is a question of law. Wells v. Wells, 871 P.2d 1036, 1038 (Utah App.1994).

Dismissal with prejudice under Rule 41(b) is a harsh and permanent remedy when it precludes a presentation of a plaintiff's claims on their merits. The rules of procedure are intended to encourage the adjudication of disputes on their merits. Bonneville Tower v. Thompson Michie Assoc., 728 P.2d 1017 (Utah 1986). As discussed above, this Court erred as a matter of law in failing to consider the Plaintiff's claim under the ADA and in refusing to grant a continuance as provided by 4-105 for good cause once the claim that the Plaintiff was a qualified individual with a disability was made.

The court abused its discretion by failing to balance the need to "expedite litigation and efficiently utilize judicial resources with the need to allow parties to have their day in court." Meadow Fresh Farms, Inc. v. Utah State Univ., 813 P.2d 1216, 1219 (Utah App.1991). The goal of affording parties "an opportunity to be heard" is the essential purpose of the court system, and thus our system values this goal over that of judicial economy. Westinghouse Elec. Supply Co. v. Paul W. Larsen Contractor, Inc., 544 P.2d 876, 879 (Utah 1975).

The Plaintiff's explanation that he is a qualified individual with a disability under the ADA meets the requirement of "justifiable excuse," in determining whether a Plaintiff's cause of action should be dismissed without prejudice. To assist courts in assessing the sufficiency of a proffered excuse, the Westinghouse court listed five factors in addition to the length of time elapsed, which

deserve some consideration. These five factors include: "(1) the conduct of both parties; (2) the opportunity each party has had to move the case forward; (3) what each party has done to move the case forward; (4) the amount of difficulty or prejudice that may have been caused to the other side; and (5) 'most important, whether injustice may result from the dismissal.'" Meadow Fresh Farms, 813 P.2d at 1219 (quoting Westinghouse, 544 P.2d at 879)).

The both parties agreed at the pretrial conference that the cause could be continued for ninety days. Neither party had previously requested a continuance, nor had the parties completed discovery. The parties had the opportunity to move the case forward and were doing so, nothing in the record reflects any attempt by either party to delay the action. The Plaintiff, in hindsight, probably should have requested the 90 day continuance earlier, but he was anxious to move the case forward, but his new counsel simply could not prepare particularly in light of the fact that discovery was not complete and the Plaintiff did not receive Dr. Clark's report until after the pretrial. The Defendant's would have suffered no difficulty or prejudice in dismissing without prejudice, it was only when it became clear that the Plaintiff would not be capable of trying the action and the Court was determined to sanction the Plaintiff for his failure to do so that the Defendant's suddenly claimed prejudice.

Finally and most importantly the Court's dismissal of this action with prejudice and the award of more than \$7000.00 in costs and fees to the Defendant's is a great injustice. The Plaintiff has suffered permanent lifelong brain injury. The Defendants, at most, may have suffered a temporary inconvenience lasting a month or two. The Plaintiff is not only is saddled with tens of

thousands of dollars in past medical bills and potentially hundreds of thousands of dollars in future medical bills, but under the concept justice adopted by this Court he is to be required to pay the Defendants.

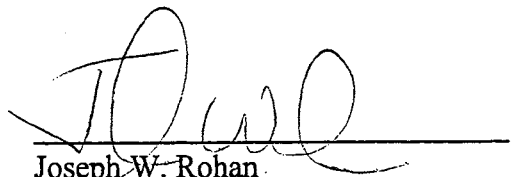
Therefore, in the interest of justice, the Court should amend the judgment to provide for dismissal without prejudice.

CONCLUSION

The Plaintiff respectfully submits that the Court erred as a matter of law in failing to consider the claims he made pursuant to the Americans With Disabilities Act and in denying the Plaintiff's motions for a continuance of voluntary dismissal. The denials constituted a denial of the Plaintiff's civil rights and represents exactly unintentional discrimination against disabled individuals that the ADA was designed to remedy.

Therefore, the Plaintiff respectfully requests the Court to grant his motion for a new trial or alternatively to amend the judgment to provide for dismissal without prejudice.

DATED this 7th day of August, 2000.

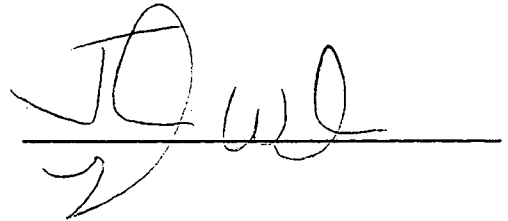

Joseph W. Rohan
Pro Se

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 7th day of August, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

A handwritten signature in dark ink, appearing to read "M. Gustavson", is written over a horizontal line.

RE: Joe Rohan
May 14, 1997
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Word Fluency
Boston Naming Test
Hooper Visual Organization Test
Facial Recognition Test
Judgment of Line Orientation Test
Pocket Smell Test
TNM
Rey 15 Item
Beck Depression Inventory
Beck Anxiety Inventory
SCL-90-R
Faschingbauer Short Form MMPI
Rey Auditory Verbal Learning Test
Rey-Osterrieth Complex Figure Design
Warrington Recognition Memory Test

Psychometrist: Lynne Bradford

TEST RESULTS:

INTELLECTUAL FUNCTIONING:

WAIS-R Results:

Verbal IQ score = 115

Information	14
Digit Span	9
Vocabulary	11
Arithmetic	13
Comprehension	13
Similarities	13

Performance IQ score = 85

Picture Completion	4
Picture Arrangement	7
Block Design	7
Object Assembly	5
Digit Symbol	8

Full Scale IQ score = 108

Results of intellectual assessment indicate verbal abilities significantly above non-verbal. Overall, there is what appears to be a reduction in intellectual performance in this individual that should be functioning in the bright normal to low superior range, based on his academic and vocational history.

ACHIEVEMENT FUNCTIONING:

WRAT-III Results:

	Standard Score	Percentile	Grade Level Estimate
Reading	107	68	H.S.+
Spelling	108	70	H.S.+
Arithmetic	106	66	H.S.+

Academic functioning is intact in all basic modalities, as evidenced by the WRAT-R-III results.

PERSONALITY/EMOTIONAL FUNCTIONING:

The patient's BDI score was a 22, with a BAI score of 12. Multiple symptom endorsement is present on SCL-90-R as well as the Faschingbauer Short Form MMPI. It is likely that the patient is experiencing some significant affective changes at this point that likely are of clinical significance.

NEUROPSYCHOLOGIC FUNCTIONING:

This patient is ambidextrous, with left hand preference for writing. He is right eye dominant, but with a mixed footedness. Clinical motor exam is within the broad context of normal, although the patient does move slowly. Grip strength was down on the left, as were finger oscillation speeds. Grip and finger oscillation speed were intact on the right. The patient completed the Tactual Performance Test within appropriate time limits, but performed marginally on spatial memory and localization tasks. Sensory-perceptual examination reveals some difficulties with tactile perception, which may be due to attentional factors. There were no lateralized findings suggestive of somatosensory, olfactory, visual, or auditory deficits. Language evaluation revealed no specific dysphasic indicators. Fluency was adequate. Memory studies do reflect poor memory performance on many tasks. For example, on the Wechsler Memory Scale - Revised, the following index scores were obtained:

Verbal Memory Index = 65
Visual Memory Index = 97
General Memory Index = 71
Attention/Concentration Index = 56
Delayed Recall Index = 68

The patient had a poor performance on the initial trial of the Rey Auditory Verbal Learning Test and also following the interference trial. Copy of the Rey Osterrieth Figure was poor, as was retention. The patient performed adequately on the verbal aspect of the Warrington, but poorly on the facial recognition component. Basic visual-spatial function was intact. The patient performed very poorly on the Wisconsin Card Sort.

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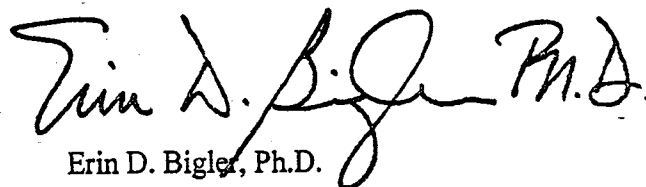
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IMPRESSION:

Deferred until additional medical records are obtained. By history, this patient may have sustained a concussive type head injury, with persistent post-concussive symptomatology. He also appears to be showing a significant affective response, with endorsement of significant levels of depression with somatic focus. These affective changes may be major factors in producing disruption in cognitive function.

RECOMMENDATIONS:

This patient's neuropsychological examination does reflect disrupted cognitive performance, with performance being substantially below what would be expected, given this patient's educational and vocational background. MRI findings, according to the report of April 25, 1997, "Evidence of moderate generalized atrophy. Scattered, few, small punctate T2 hyperintensities could reflect residue of axonal shear injury. No focal brain encephalomalacia is appreciated". Accordingly, based on the fact that the patient likely had a concussive head injury, has persistent cognitive sequela, and the MR demonstrates some irregularities, an SPECT exam appears in order. One of the most effective neuroimaging studies in assisting with the overall neuropsychological evaluation in assessment of a head injury patient is the SPECT examination and, accordingly, it is recommended.


Erin D. Bigler, Ph.D.

EDB:srw

COTTONWOOD HOSPITAL MEDICAL CENTER

SPEECH/LANGUAGE EVALUATION

REFERRING PHYSICIAN: ROBERT M. MISKA, M.D.

REFERRAL/DIAGNOSES: Joseph Rohan is a 46 year-old gentleman who was involved in a motor vehicle accident on 1-23-97. It was reported that he was a restrained driver of a car which was hit on the left hand side and caused him to "side swipe" a car on his right. There is a question as to whether he suffered unconsciousness. He went to an InstaCare where he was evaluated and then sent to LDS Hospital for cervical x-rays. Those x-rays were found to be normal. He was released the same day and went home. He did experience some nausea and vomiting following the accident. He was seen by Dr. Nord who ordered a cranial MRI which was completed on 4-25-97. Interpretation of that scan was that Mr. Rohan suffered a subcortical axonal shearing resulting in a brain injury.

Following that evaluation he was referred to Erin Bigler, Ph.D. a neuropsychologist for a neuropsychological evaluation. This evaluation was completed on 5-14-97. Results from that evaluation will be discussed later in this report. Mr. Rohan was referred by his primary care physician to be seen by Robert M. Miska, M.D. and he was seen on 5-22-97. At that time Dr. Miska indicated that Mr. Rohan had suffered a closed head injury, cervical strain-sprain syndrome and posttraumatic headaches. He was referred for a speech/language cognitive evaluation to assess his current level of function and to create a treatment plan to facilitate his functioning.

Mr. Rohan received a bachelors degree and previously has worked as a biomedical research engineer and a production manager chemist. He most recently completed law school and has been in a private law practice for just over one year. He reported that following the accident in January that he did not work until July 1997. At that time he resumed a full case load in his practice.

Mr. Rohan has been married for one year. He previously lived with his current wife for nine years before they were married. He reported that there have been significant difficulties in their relationship since the time of his accident.

Mr. Rohan reported that he currently is taking prescription medications as follows: Imitrex p.r.n. for severe headaches; Percocet p.r.n. for severe headaches; Cholan 240 mg q.d.; sodium naproxen 1100 mg q.4h.; Prozac 20 mg q.d.

TESTING PROCEDURES: Mr. Rohan's medical records were reviewed. A thorough interview was conducted with Mr. Rohan. Portions of the

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SPEECH/LANGUAGE EVALUATION

material two and three times in order to ascertain what is being communicated.

Mr. Rohan reports experiencing significant fatigue and that as he becomes more tired he is not able to accomplish or complete the activities which he needs to at home or at work. Mr. Rohan reports having difficulties remembering to pay bills and is "always bouncing checks". All of these difficulties are significantly frustrating to Mr. Rohan.

Portions of the Ross Information Processing Assessment-2 were administered. Mr. Rohan demonstrated the following performance:

SUBTEST	STANDARD SCORE	% RANK	SEVERITY
immediate memory	11	63	moderate
problem solving and abstract reasoning	9	37	severe
organization	13	84	mild to moderate
auditory processing and retention	14	91	normal

(mean = 10, standard deviation = 3).

The Ross Information Processing Assessment-2 was normed on individuals who had suffered a brain injury. A mean score of ten represents a moderate dysfunction.

Mr. Rohan demonstrates significant difficulties in attending to simple information as well as in higher level problem solving and organizational skills.

The Functional Cognitive Evaluation, an informal evaluation of cognitive function was administered. Mr. Rohan demonstrated the ability to visually scan a simple task with 95% accuracy. He initially demonstrated appropriate scanning across the page but part of the way through the test measure, he became disorganized in his approach and randomly selected the stimulus items. On a moderately difficult visual word search attention task, Mr. Rohan demonstrated 20% accuracy. He did not use any visual or physical tracking techniques and did not mark off the target words when they were found. He became somewhat frustrated with this task.

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On an auditory listening attending task, where he needed to identify two items, he demonstrated 80% accuracy. He demonstrated slow speed of information processing on this task. When distraction were introduced his abilities decreased to 70%. On a moderately difficult auditory attention task without distractions, Mr. Rohan demonstrated 30% accuracy. He was also asked to sequence in alphabetical order, six words in a sentence, which he was unable to complete.

Mr. Rohan was asked to recall information presented with a five minute timed delay. He demonstrated 67% accuracy in completing this activity. It was interesting to note that Mr. Rohan demonstrated 100% accuracy when semantic cuing was provided.

Mr. Rohan was asked to listen to paragraph length material and then answer comprehension questions immediately following the information presentation. He demonstrated 88% accuracy on this task. On visual reading tasks, Mr. Rohan demonstrated 60% comprehension of paragraph length material and 70% accuracy on page length information.

Mr. Rohan was asked to sequence six steps of common tasks. He demonstrated 53% accuracy on this task. It was apparent that Mr. Rohan has difficulties synthesizing and organizing the steps for these simple activities.

Mr. Rohan was asked to locate information in the white and yellow pages of the phone book. He completed these activities with 100% accuracy.

Mr. Rohan was asked to complete simple deductive reasoning tasks which he completed with 50% accuracy. On the moderately difficult problem solving tasks he was unable to complete these activities. This is especially significant in that the type of task which was presented is similar to activities which Mr. Rohan was required to complete successfully prior to his admission to law school.

Mr. Rohan was asked to generate ten words regarding a given topic. He completed this activity with 90% accuracy. He was then asked to generate three sentences utilizing one word for each of the sentences from the list generated. He completed this with 100% accuracy. It is important to note, however, that he utilized simple linguistic forms in his sentences to complete this task. Mr. Rohan was then asked to generate a paragraph utilizing one of the sentences as a theme for that paragraph. He demonstrated 100% accuracy on this activity.

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Ross Information Processing Assessment II, as well as an informal test measure. The Functional Cognitive Evaluation was administered.

TEST RESULTS: As indicated above, Mr. Rohan underwent a neuropsychological evaluation conducted by Erin Bigler, Ph.D., neuropsychologist. Dr. Bigler indicated that results of intellectual assessment indicated verbal abilities significantly above his nonverbal abilities and overall there was what appeared to be a reduction of intellectual performance in an individual that should be functioning at a higher level based on his academic and vocational history. He also demonstrated poor memory performance on many of the tasks presented. He demonstrated a low attention, concentration index. He also had difficulties with higher level problem solving and organizational skills. Dr. Bigler also indicated that he felt depression was also a contributing factor to Mr. Rohan's level of function.

A thorough interview was conducted with Mr. Rohan with regards to his current level of function. He indicated that he continues to suffer difficulties with his neck and range of motion. He experiences frequent headaches which range in severity from mild to severe. He reported that he had never had a headache prior to his automobile accident. He also reported that he has had difficulties with his balance.

Mr. Rohan reported that he has significant difficulties focusing his attention on tasks. He indicated that he becomes easily distracted by things which occur in the environment. He also has significant difficulties with remembering information and this becomes very problematic for him.

He indicated that it takes a lot longer to figure things out and at times he has difficulties coming up with appropriate solutions and plans. He reports that he has difficulties accomplishing tasks both at home and at work. He reports having difficulties figuring things out and has had significant difficulties with calculations and completing math facts and processes.

Mr. Rohan reports experiencing difficulties in his abilities to understand information presented both auditorially and visually. He indicates that often time he becomes distracted or has difficulties understanding what is being said. He also indicated that he has a hard time remembering what he hears and reads. He reports reading

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Again, it is important to note that he utilized simplistic sentences in completing this activity which would not be expected for a gentleman who was functioning prior to his accident at such a high level.

Mr. Rohan was asked to write a check which he completed with 100% accuracy. He was then asked to organize information into a check register, which he completed with 67% accuracy. He left out a date of the deposit and also left out information regarding who checks had been written to. Mr. Rohan was then asked to balance a check register. He completed this with 80% accuracy.

Mr. Rohan was asked to generate a menu for two days for all meals and then write a list of items that would need to be purchased in order to make those meals. Mr. Rohan demonstrated an abbreviated menu which was not complete. He also did not generate a complete shopping list. He did, however, utilize a good organizational strategy for this activity.

Through the course of this evaluation Mr. Rohan demonstrated a difficult time switching from task to task. He also became overwhelmed many times during the evaluation, becoming frustrated with his inability to complete certain activities.

DIAGNOSTIC IMPRESSIONS: Mr. Rohan is a 46 year-old gentleman who suffered a traumatic brain injury resulting from an automobile accident on 1-23-97. He has reported significant difficulties since his accident in completing both activities of daily living and work related activities. Findings from the evaluation indicate that Mr. Rohan demonstrates moderate speech/language cognitive deficits resulting from his accident.

Specifically, Mr. Rohan experiences significant difficulties attending to important information for a given task. He experiences a decrease in his attentional abilities as the complexity of the information increases and as distractions are introduced. This has and will continue to significantly impact his abilities to complete activities at home and work. This also has significant impact on his memory function.

Mr. Rohan demonstrates significant memory difficulties and is unable to recall information presented even for a short period of time. It is felt that this is in part due to the decreased attention he is

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experiencing. This has and continues to significantly impact his abilities to complete his work responsibilities.

Mr. Rohan demonstrates difficulties with organizing and sequencing functional information. This effects his abilities to plan out, organize and complete activities of daily living and work assignments. This is consistent with his reports of having difficulties completing activities at work and at home.

Mr. Rohan's difficulties with organization and sequencing impact his abilities to complete functional problem solving. This is especially important in that law practice requires both organization and problem solving in order to successfully complete responsibilities in organizing and presenting cases before the court.

Mr. Rohan is experiencing significant fatigue which also effects his abilities to complete activities of daily living and work assignments. It is felt that the decrease in his attentional abilities impacts his endurance and as a result he becomes fatigued. This will need to be managed more effectively if Mr. Rohan is to be successful.

Mr. Rohan is also experiencing significant communicative difficulties as a result of his brain injury. He demonstrates a flat affect in his verbal communication. He is demonstrating significant difficulties with both auditory and reading comprehension. These will significant impact his ability to meet with his clients and prepare his legal cases appropriately. He also experiences some difficulties with written expression which will impact his abilities to complete written briefs.

Overall, it is felt that Mr. Rohan would benefit from speech/language cognitive therapy and that significant improvement in his function could be demonstrated with improvement in underlying cognitive processes and in utilizing compensatory strategies.

FUNCTIONAL INDEPENDENCE MEASURES:

AREA	INITIAL	GOAL
Attention	4	6
Memory	4	6
sequencing and Organization	4	6
Problem Solving and Reasoning	4	6
Auditory Comprehension	5	7

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Reading Comprehension	4	6
Verbal Expression	6	7
Written Expression	5	6

FREQUENCY AND DURATION OF TREATMENT: Mr. Rohan should be seen in speech/language cognitive therapy one time per week for one hour sessions. It is anticipated that this treatment regimen will be necessary for eight to ten months to improve Mr. Rohan's speech/language cognitive function.

PATIENT/FAMILY GOALS: Mr. Rohan expressed a desire to be able to successfully complete his activities of daily living at home and to complete his work responsibilities in his law practice.

TREATMENT/DISCHARGE GOALS:

1. Mr. Rohan will attend to moderate to complex information in the presence of distractions with 90% accuracy so that he can learn new information and complete tasks necessary in his law practice.
2. Mr. Rohan will recall information presented with a 60 minute time delay with 90% accuracy to facilitate his abilities to recall events from day to day.
3. Mr. Rohan will utilize a memory book and other compensatory strategies with 90% independence to facilitate his abilities to organize and recall functional information.
4. Mr. Rohan will organize and sequence functional information with 90% independence to increase his abilities to complete activities of daily living and his work assignments.
5. Mr. Rohan will complete functional problem solving with 90% independence utilizing compensatory strategies when necessary to facilitate his abilities to meet day to day challenges and complete his work responsibilities.
6. Mr. Rohan will read college level information demonstrating 90% comprehension of the material to facilitate his abilities to read legal information necessary for his work.
7. Mr. Rohan will prepare and write a legal brief with 90% independence so that he can complete responsibilities necessary for

SPEECH/LANGUAGE EVALUATION

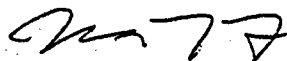
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carrying out his profession.

8. Mr. Rohan will demonstrate successful completion of his job for three months.

If you have any questions or if I can provide further information, please feel free to contact me at 269-2089.



Mark L. Fox, M.S., CCC-SLP
SPEECH/LANGUAGE PATHOLOGY

SPEECH/LANGUAGE EVALUATION

PT. NAME: ROHAN, JOSEPH
Date of Birth: 03/02/51

THERAPIST: Mark L. Fox, M.S., CCC-SLP
Date of Evaluation: 11/05/97



EXHIBIT "G"

INTERMOUNTAIN SLEEP DISORDERS CENTER
LDS HOSPITAL
FINAL REPORT

NAME: ROHAN, Joseph W.
BIRTHDATE: 2 March 1951 (age 46)
TELEPHONE: 801-486-1236
ADDRESS: P.O. Box 520781, Salt Lake City, UT 84152
REFERRAL: Phil Roberts, M.D., Robert Miska, M.D.
DATE OF STUDY: 19 and 20 July 1998

REASON FOR SLEEP STUDY: Evaluate for causes of poor sleep quality including sleep apnea, periodic limb movement disorder, etc.

CLINICAL SUMMARY: This 46-year-old male has a complicated medical history which apparently relates to a motor vehicle accident January 1997 at which point he sustained a closed head injury. Since then, he has had head and neck discomfort and difficulty sleeping and maintaining alertness. He has a chaotic sleep-wake and work schedule. He has variable sleep quality often interrupted by awakenings. His sleep seems to be disturbed by tinnitus and chronic neck pain. He has had difficulty remaining fully alert and becomes drowsy while driving and at work. There is no history of cataplexy. There is no history of snoring or observed apneas but he has possibly had indications of restless legs. Clinical consultation notes should be reviewed for more details. Present medications include Prozac 60 mg q.d., Imitrex, naproxen, and Restoril. Physical examination reveals that he is mildly obese (weight 195 pounds, height 69½ inches, and BMI 29). Neck circumference measured 44 cm. General physical examination was otherwise unremarkable.

BASELINE POLYSOMNOGRAPHY (19 July 1998):

STUDY PROTOCOL: The patient was studied while breathing room air. Electrophysiologic sleep parameters included: Central (C3/A2 or C4/A1) and occipital (O1/A2 or O2/A1), electroencephalogram (EEG), right and left electrooculogram (EOG), and submental electromyogram (EMG). Cardiac rhythm was continuously recorded (ECG). Periodic limb movements were monitored by anterior tibialis electromyogram (EMG). Airflow was detected by oral-nasal thermistors and respiratory effort was determined by measurement of chest and abdomen motion using pneumatic bands. Arterial pulse oximetry (SpO₂) was measured with an Ohmeda 3700 oximeter in the fast response mode from the finger and the SpO₂ was simultaneously recorded on a strip chart at a slow paper speed. Analog data was digitized, transferred from the hard drive to the local area network and after being analyzed, the results archived on CD-ROM. Raw data was manually scored in 30 second epochs for sleep stages using standard criteria (Rechtschaffen & Kales, 1968). Electrophysiologic arousals were manually scored according to ASDA criteria (*Sleep* 1992;15:(2) 173-184). Apneas and hypopneas were scored on the basis of absence or reduction of airflow for 10 or more seconds, respectively. Obstructive and mixed events were defined by the presence of respiratory effort and/or characteristic changes of the inspiratory flow pattern. The Respiratory Disturbance Index (RDI) was computed as the total of all respiratory events divided by the total sleep time in hours.

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TECHNICAL QUALITY OF STUDY: Satisfactory.

MORNING QUESTIONNAIRE:

Sleep Latency: 1 hour.
Total Sleep Time: 4.5 hours.
Number of Awakenings: 7
Quality of Sleep: Same as usual.

ELECTROPHYSIOLOGIC MEASUREMENTS OF SLEEP: Sleep quality was extremely poor, but satisfactory for evaluation. The total sleep time (TST) measured only 3.3 hours with a sleep efficiency of 41% (normal $\geq 90\%$) and REM sleep was completely absent. There were frequent awakenings and he was unable to sustain sleep after approximately 0300 hours. There were 41 awakenings and the arousal index measured 12/hr sleep. Periodic limb movements were observed in moderate frequency (PLMS index 19/hr sleep). There was no evidence of alpha intrusion. He appeared to have more eye movements than average during all stages of sleep, but there was no clear-cut REM sleep.

RESPIRATORY MEASUREMENTS: An arterial blood gas was obtained with the patient in the supine position during the awake state while breathing room air for comparison with oximetry. The results are as follows:

	FIO ₂	SaO ₂	PaO ₂	COHB	HB	pH	PaCO ₂	HCO ₃
ABG	0.21	95	72	0	15.8	7.43	34	22

Arterial blood gas measurements were within normal limits. Baseline arterial oxygen saturation by pulse oximetry (SpO₂) measured 92% during quiet wakefulness in the recumbent position. The average SpO₂ measured 94% throughout the recording. There were very few definable respiratory events although the oximetric pattern was consistently irregular, apparently a reflection of his unstable sleep-wake state. The total number of apneas and hypopneas measured 8 which results in a respiratory disturbance index (RDI) of 2/hr sleep.

CLINICAL OBSERVATIONS: He was restless but there was no abnormal behavior observed or excessive motor activity.

ELECTROCARDIOGRAPHIC OBSERVATIONS: Technically suboptimal.

PSYCHOMETRIC TESTING:

The following interpretations are based on a reading of psychometric test data without face to face contact with the patient. The data are intended to serve for screening purposes only and cannot be used to make definitive statements about the patient's diagnosis. The MMPI-2 validity scales were normal. The following clinical scales were significantly elevated (T score): Hs (88), D (74), and Hy (91).

MULTIPLE SLEEP LATENCY/MAINTENANCE OF WAKEFULNESS TESTING (20 July 1998):

STUDY PROTOCOL: Following all-night polysomnography, a combined MSLT and MWT was performed as follows: The degree of pathologic sleepiness was assessed by asking the patient to relax and fall asleep during five (5) twenty minute naps beginning at 10:00 hours. Opportunities to sleep were repeated every two hours and the patient was maintained as alert as possible in between nap periods. No

ROHAN, Joseph W.

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19 and 20 July 1998

more than 15 minutes of sleep were allowed during any nap. The ability to maintain wakefulness was tested between naps one time in the morning and one time in the afternoon by asking the patient to remain awake for 40 minutes in a soporific environment. Sleep latency was defined as the time from "lights out" until the first 30-second epoch of any sleep stage according to Rechtschaffen & Kales criteria. REM latency was defined as the time from sleep onset to the first 30-second epoch of stage REM sleep. The Steer Clear Driving Performance Test was administered at 1528 for 30 minutes with a speed of 70 mph. Conners Continuous Performance Test (CPT) was administered at 1030.

TIME	TEST	SC/CPT DATA	SLEEP LATENCY (min to sleep onset)	REM SLEEP LATENCY (min after sleep onset to REM sleep)
0915	MWT		40.0	---
1000	MSLT		7.0	---
1030	CPT	8.95		
1200	MSLT		7.5	---
1400	MSLT		10.5	---
1515	MWT		40.0	---
1600	MSLT		3.0	---
1528	Steer Clear	9%		
1800	MSLT		20.0	0/5
		Mean Sleep Latency on MSLT:	9.6	No. REM sleep onsets: 0/5
		Mean Sleep Latency on MWT:	40.0	
	Normal Values:			
	MSLT	≥ 10 minutes		
	MWT	≥ 30 minutes		
	Steer Clear	≤ 2%		
	CPT	≤ 5.0		

CONCLUSIONS:

1. Polysomnography is not diagnostic of any specific sleep disorder such as sleep apnea, periodic limb movements, etc. Sleep architecture was notable for the marked disruption and poor continuity with complete absence of REM sleep. These findings are nonspecific and are probably a manifestation of underlying neuropsychological dysfunctioning. The eye movements during sleep were somewhat greater than average, possibly related to Prozac.
2. As indicated in the clinical report, difficulties with sleeping are also related to his chaotic sleep-wake schedule and counterproductive sleep habits.

ROHAN, Joseph W.

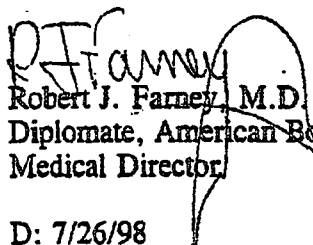
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19 and 20 July 1998

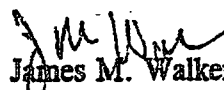
3. The MSLT revealed moderate pathologic sleepiness but no evidence of sleep onset REM. If the last nap is excluded, the mean sleep latency measured 7.0 minutes. The clinical presentation and these findings therefore reasonably exclude the diagnosis of narcolepsy, but substantiate the presence of hypersomnia. The basis of his hypersomnia is complex but relates in part to chronic insufficient sleep.
4. Maintenance of Wakefulness tests were within normal limits and indicate the capacity of remaining fully awake.
5. Measurements of attentiveness were markedly abnormal. The Steer Clear Driving Performance test measured 9% (normal $\leq 2\%$). The Conner's Continuous Performance test revealed slow reaction time with many errors consistent with attention deficit disorder. The results of the daytime studies indicate an increased risk for motor vehicle accidents, although the exact risk cannot be quantified.
6. The MMPI-2 findings are consistent with a somatic disorder with underlying depressive features. The relationship of these findings to his closed head injury is unclear.

RECOMMENDATIONS:

1. Further evaluation in the sleep laboratory with nasal CPAP is not indicated.
2. Therapy with CNS stimulants may be appropriate to improve attentiveness but he does not have narcolepsy. Attentiveness may also improve with efforts to consolidate his sleep pattern and to optimize neuropsychological functioning.
3. He would benefit from further counseling regarding standard sleep hygiene principles. A sedating antidepressant such as trazodone or Remeron should be considered as adjunctive therapy to Prozac.


Robert J. Farney, M.D.
Diplomate, American Board of Sleep Medicine
Medical Director

D: 7/26/98
T: 7/27/98
Job #32768


James M. Walker, Ph.D.
Diplomate, American Board of Sleep Medicine
Director
RJF/ch

ROHAN, Joseph W.

4

19 and 20 July 1998

Exhibit 23, Page 148

Intermountain Sleep Disorders Center
8th Avenue, C Street
Salt Lake City, Utah 84143
(801) 321-3617

Patient Name: Rohan, Joseph
Date of Birth: 03/02/1951
Sex: Male
Height: 0 in
Weight: 0 lbs

Test Date: 07/19/1998

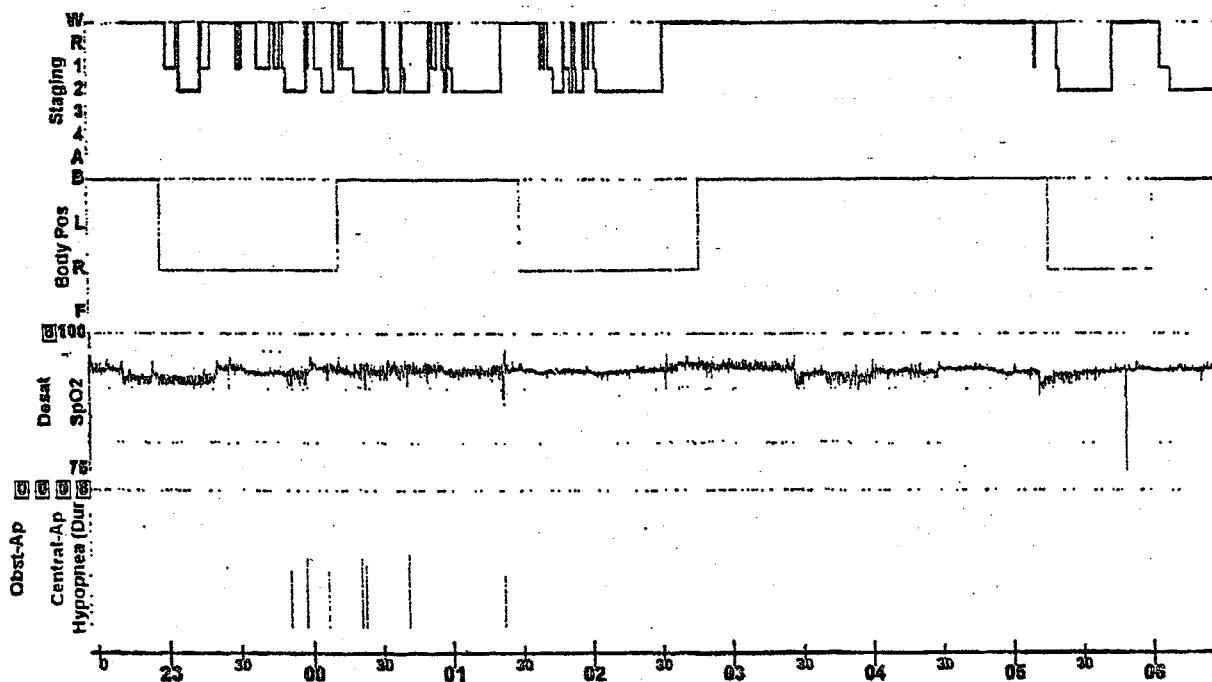
Night # 1

Staging Summary Information

Recording start time :	22:22:44	Recording end time :	06:31:28
Analysis start time :	22:26:44	Analysis end time :	06:28:14
Total number of epochs :	963	Epoch size (sec) :	30
Total recording time (hr) :	8.0	Total sleep time (hr) :	3.3
Number of Awakenings :	27	Total wake time (hr) :	4.7
Sleep Efficiency (%) :	41.4	Sleep Maintenance Effic(%) :	44.4
Sleep onset latency (min) :	33.5	Stage REM latency (min) :	0.0

Staging Table

Sleep Stage	Latency (mins)		Duration (mins)	%TIB	%Sleep Time
	Absolute	Relative			
Wake	--	--	282.0	58.6	--
Stage REM	33.5	0.0	0.0	0.0	0.0
Stage 1	33.5	0.0	47.5	9.9	23.8
Stage 2	38.5	5.0	152.0	31.6	76.2
Stage 3	0.0	0.0	0.0	0.0	0.0
Stage 4	0.0	0.0	0.0	0.0	0.0
Artifact	--	--	0.0	0.0	--



Intermountain Sleep Disorders Center
8th Avenue, C Street
Salt Lake City, Utah 84143
(801) 321-3617

Patient Name: Rohan, Joseph
Date of Birth: 03/02/1951
Sex: Male
Height: 0 in
Weight: 0 lbs

Test Date: 07/19/1998

Night # 1

	Events Summary			
	Obstructive	Mixed	Central	Hypopnea
REM Events	0	0	0	0
Min (secs)	0.0	0.0	0.0	0.0
Max (secs)	0.0	0.0	0.0	0.0
Mean	0.0	0.0	0.0	0.0
Index (/hr)	0.0	0.0	0.0	0.0
REM Index	0.0	0.0	0.0	0.0
NREM Events	0	0	0	8
Min (secs)	0.0	0.0	0.0	16.0
Max (secs)	0.0	0.0	0.0	22.0
Mean	0.0	0.0	0.0	18.2
Index (/hr)	0.0	0.0	0.0	2.4
NREM Index	0.0	0.0	0.0	2.4
Event Totals	0	0	0	8
Index Totals	0.0	0.0	0.0	2.4
Waking Events	0	0	0	0
Apnea (O+M+C) Index =	0.0			Apnea + Hypopnea Index = 2.4

	Respiratory Events Summary		
	REM	Non-REM	Sleep
Apneas	0	0	0
Hypopneas	0	8	8
Apneas+Hypopneas	0	8	8
Apnea min duration (sec)	0	0	0
Apnea max duration (sec)	0	0	0
Apnea mean duration (sec)	0	0	0
Apnea Index (/hr)	0	0	0
Apnea Arousal Index (/hr)	0	7	7
Hypopnea min duration (sec)	0	16	16
Hypopnea max duration (sec)	0	22	22
Hypopnea mean duration (sec)	0	18	18
Hypopnea Index (/hr)	0	2	2
Hypopnea Arousal Index (/hr)	0	0	0
RDI (/hr)	0	2	2
RAI (/hr)	0	7	7

Patient Name: Rohan, Joseph
Date of Birth: 03/02/1951
Sex: Male
Height: 0 in
Weight: 0 lbs

Night # 1



OVERALL SUMMARY BASED ON COMPARISON TO GENERAL POPULATION DATA

MEASURE	VALUE	T-SCORE	PERCENTILE	GUIDELINE
# Hits	297 (91.7%)	*	99.00	MARKEDLY ATYPICAL
# Omissions	27 (8.3%)	*	99.00	MARKEDLY ATYPICAL
# Commissions	17 (47.2%)	56.00	75.79	within average range
Hit RT	487.96	36.78	11.11	a little slow
Hit RT Std Error	12.25	77.55	99.00	MARKEDLY ATYPICAL
Variability of SEs	19.22	71.11	98.25	MARKEDLY ATYPICAL
Attentiveness (d')	1.48	71.74	98.85	MARKEDLY ATYPICAL
Risk Taking (B)	0.37	100.00	99.00	MARKEDLY ATYPICAL
Hit RT Block Change	-0.09	8.61	1.00	within average range
Hit SE Block Change	-0.20	27.24	1.15	within average range
Hit RT ISI Change	0.00	42.43	22.49	within average range
Hit SE ISI Change	0.07	56.12	72.96	within average range

* For hits and omissions, nature of data dictates use of percentiles only.

Conversions were made for HITS, HIT RT, and d' so that high T-scores (i.e., ≥ 60) provide evidence of a problem for ALL measures listed in the table. For example, without a conversion, a HITS T-score of 33 would indicate a lot of errors and a potential attention problem. This score of 33 is 17 BELOW the normative average of 50. To make high scores consistently indicative of a problem, this score is converted to 17 points ABOVE 50 which is 67.

Note that percentile values higher than 90 or 95 correspond to atypical responses. Percentile values must be much higher than T-scores before being considered atypical.

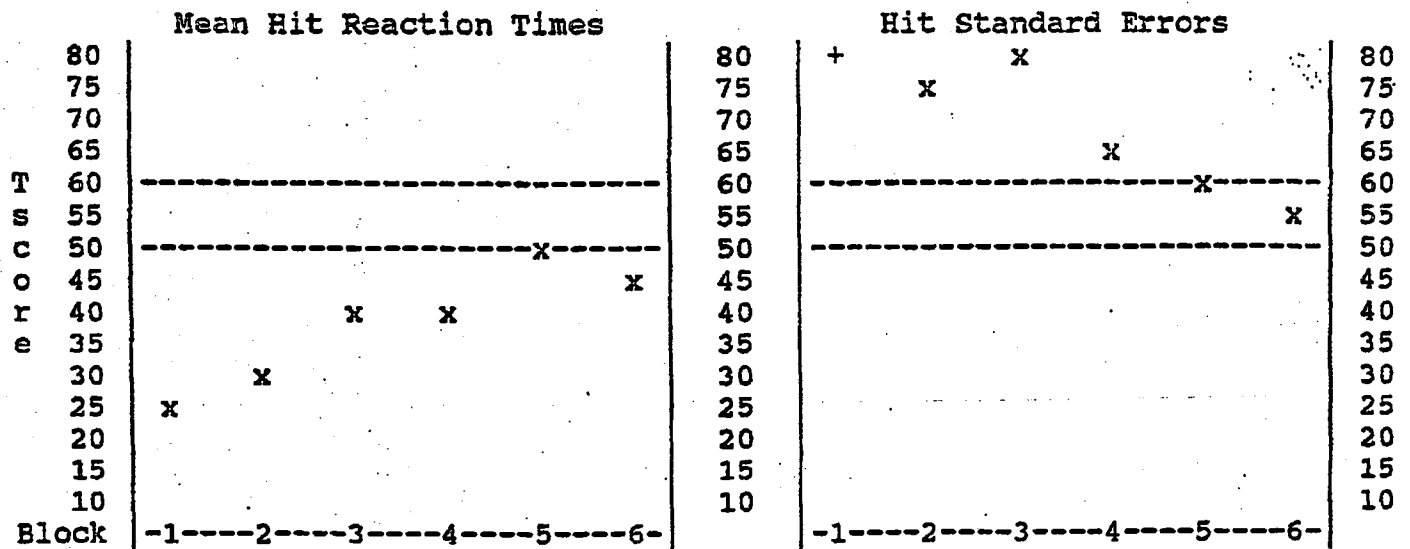
For B, both high AND low scores are noteworthy. Low scores indicate too frequent responding usually related to impulsivity. High T-scores for B indicate atypically low number of responses usually related to inattention.

The more measures showing up as atypical, the more likely that a problem exists. The presence of only one atypical measure does not usually indicate a problem.

DATA ARE COMPARED TO THE GENERAL POPULATION STUDY GROUP

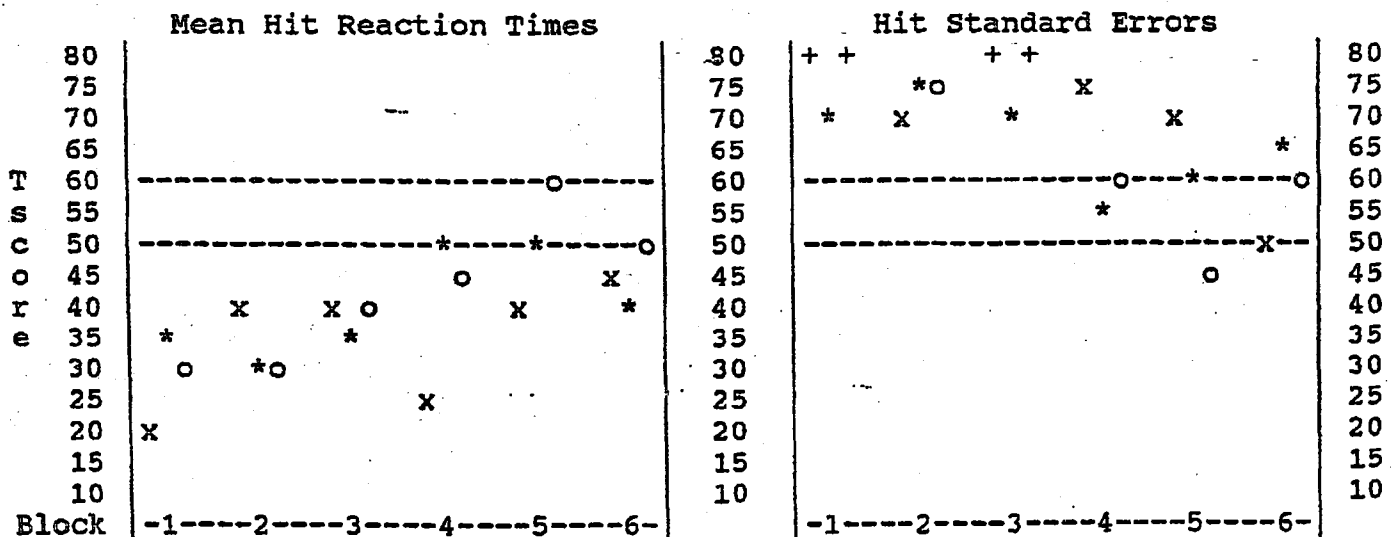
Data are collapsed across the 3 ISIs within each block

Legend: x = in range, + = out of range



Data are for each of the 3 ISIs within each block

Legend: x = 1 sec ISI, * = 2 sec ISI, o = 4 sec ISI, + = out of range



NEUROPSYCHOLOGICAL EVALUATION

Confident

EXHIBIT "H"

NAME: Joseph Rohan
DOB: 03/02/51
AGE: 49 years old
EDUCATION: Law School

REFERRED BY: Stephen Trayner
TESTED BY: Elaine Clark
TEST DATE: 05/03/00

REASON FOR REFERRAL AND BACKGROUND INFORMATION: Joseph Rohan is a 49 year-old male who was referred for a neuropsychological evaluation by Stephen Trayner. Mr. Trayner is an attorney representing the driver of a vehicle that hit Mr. Rohan. The motor vehicle accident (MVA) took place on 01/23/97. Mr. Rohan claims that as a result of the injuries he sustained in the accident, specifically, a closed head injury, he cannot function as well as a lawyer. The purpose of the present evaluation is to help in determining the likelihood that a head injury took place, and what, if any, cognitive or psychological problems resulted from the accident.

According to Mr. Rohan, he was returning home around 7:30 AM from dropping his wife off at work when hit by a truck that was driven by a 16 year-old male. The driver was described by Mr. Rohan as traveling too fast for the road conditions (i.e., it was snowy and the roads were slippery). His car, a Subaru, was hit in the driver's front side and then pushed into another vehicle sitting on the side of the road. Mr. Rohan was wearing a seat belt and did not know if he actually hit his head on anything in the car. He did recall falling asleep while waiting for the wrecker to arrive. He also reported being confused but denied loss of consciousness. Mr. Rohan said that he recalled swearing at the driver and remembered wanting the police officer to cite him. The driver, however, was not given a ticket, reportedly due to the fact the officer was too busy. Mr. Rohan declined an ambulance, instead he took a cab to the Sugarhouse InstaCare.

Records from the InstaCare indicate that when Mr. Rohan came in 3 hours after the accident, he was complaining of neck pain and headache. He was sent to the hospital for a cervical X-ray, which was negative, and discharged with medications for pain management. He was also given a collar to wear. Mr. Rohan's diagnosis was that of a cervical sprain.

Records indicate that Mr. Rohan first saw Dr. Phillip Roberts on 1/28/97. He was complaining of dizziness, nausea, and memory problems. Mr. Rohan also went back to the InstaCare the following day (i.e., 1/29/97) for a follow-up visit. At that time he was reporting ongoing problems with neck pain, as well as memory disturbance. He was consequently diagnosed with a concussion. On the same day, Mr. Rohan consulted with a neurosurgeon at the Intermountain Spine Institute, Dr. William Muir. According to Dr. Muir's record, Mr. Rohan's major complaint at the time he saw him was neck pain (and limited range of motion). He also reported to Dr. Muir that he was having memory problems. Dr. Muir diagnosed him with severe cervical strain and

hypermobility and recommended he continue wearing the collar and taking the prescribed anti-inflammatories. He was also given Lortab for pain and advised to start physical therapy (PT).

Dr. Muir saw him again on 4/2/97. At that time Mr. Rohan denied improvement in his symptoms and indicated he could not sleep as a result of severe neck pain. Although he was seeing a physical therapist (PT) at the time (i.e., seeing Henry White), records indicate that he did not find the therapy helpful. Dr. Muir advised him to see a different PT, Jan Watts. As a result of other complaints (e.g., dizziness, loss of balance, and problems with thinking), Dr. Muir also recommended that he be seen by a neurologist.

Mr. Rohan switched physical therapists and saw Ms. Watts for treatment until 4/19/97 when he stopped going. Ms. Watt's progress reports indicate that she discharged him from therapy in July of 1997 because he had stopped going. He was, however, expected to continue with a home exercise program (and continue the use of a Tens Unit and traction). He also consulted with a neurologist, Dr. Nathaniel Nord. According to Dr. Nord's evaluation on 4/10/97 he was of the opinion that a cervical injury accounted for many of Mr. Rohan's complaints (e.g., headaches, cognitive dysfunction, and dizziness), not a concussion. He did, however, order brain and cervical MRIs to further evaluate Mr. Rohan's condition. Sensory problems were thought to be due to a Thoracic Outlet Syndrome; therefore, Dr. Nord suggested a nerve conduction study.

The brain MRI was performed on 4/25/97. The scan showed evidence of moderate generalized atrophy and hyperintensities that the radiologist, Dr. Duane Blatter, felt could suggest an axonal shearing injury to the brain. Dr. Nord apparently disagreed with this interpretation and felt that Mr. Rohan's cognitive symptoms, and other complaints suggestive of a post-concussive syndrome, were part of a pain syndrome and would resolve once the cervical symptoms resolved. The cervical imaging reportedly failed to show significant instability but did indicate restricted motion. Mr. Rohan saw another neurologist for a second opinion, Dr. Robert Miska.

According to Dr. Miska, who saw him on 5/22/97, he felt that Mr. Rohan had a cervical strain-sprain syndrome but was also of the opinion he suffered from a closed head injury. He felt that cognitive rehabilitation may be appropriate but wanted to delay the decision until he received Dr. Erin Bigler's neuropsychological test findings. Mr. Rohan had been referred to Dr. Bigler by Dr. John Macfarlane, the neurosurgeon he saw on 5/7/97. Dr. Macfarlane felt that his symptoms of headaches, dizziness, tinnitus, and poor concentration and memory were consistent with a post-concussive syndrome; however, he wanted him evaluated further.

Mr. Rohan saw Dr. Bigler for a neuropsychological evaluation on 5/14/97. According to Dr. Bigler's report, it was his opinion that Mr. Rohan had sustained a concussive type of head injury. He did, however, feel that some of his cognitive symptoms were a function of depression that had resulted from the accident. Dr. Bigler, nonetheless, recommended that a SPECT be conducted to further assess the head injury. The results of the SPECT that was conducted on 6/13/97 showed a questionable mild focal decrease in perfusion in the frontal horn region. Apparently, the findings were not that abnormal to be classified as such. According to a report

of Dr. Bigler's dated 8/1/97, he subsequently discussed with Mr. Rohan the importance of "doing routine things and engaging in appropriate cognitive stimulation."

Starting in November of 1997, Mr. Rohan began cognitive rehabilitation. He was seen by Mark Fox, a speech and language therapist. According to Mr. Fox's initial evaluative report dated 11/5/97, Mr. Rohan had severe problems with abstract reasoning, moderate problems with immediate memory, and mild to moderate problems with organization. Progress reports by Mr. Fox indicate that Mr. Rohan attended sessions on a regular basis and was making progress toward his goals. Mr. Rohan, however, discontinued therapy in June of 1998 (records indicate that he was expected to remain in treatment for another 3 or 4 months when he quit).

Records indicate that Mr. Rohan returned to see Dr. Roberts on 5/22/98 in order to get a referral to a sleep center. He also saw a Dr. Robert Rothfeder on 8/20/98 for further evaluation of his injuries. Dr. Rothfeder's records indicate that he felt that the problems were a direct result of the 1997 MVA. He was of the opinion that the injuries disable him from "independent practice of law."

CURRENT SYMPTOMATOLOGY: Current symptoms include memory problems, neck pain and limited range of motion, headache, dizziness, tinnitus, and sleep problems. Mr. Rohan reported improvement in some of these symptoms. Mr. Rohan said that he still gets migraine-like headaches (e.g., relieved by Imitrex or lying down in a dark room) and gets dizzy at times when he has a headache (near the time of the accident dizziness was more of a problem). Mr. Rohan denied headaches before but said a record from a prior fall indicates that he complained of one then. He did not, however, take medications before for them. His neck pain is better but Mr. Rohan said that it bothers him a great deal when the weather changes. He also reported right arm pain and said he sleeps on a couch to relieve the pain (e.g., said the bed is too soft).

Mr. Rohan indicated that he has significant sleep problems and went to a sleep clinic in the summer of 1998. He was reportedly falling down and his sleep was all screwed up." Mr. Rohan said that a sleep study found he woke up a lot in the night. His sleep has improved with medication (Provigil) and Mr. Rohan said he has tried to get into a habit of going to bed earlier. Prior to the accident, however, Mr. Rohan did not feel he needed that much sleep. He told the examiner that he would work late in a lab and get up early to deliver newspapers. As a result of poor sleep, he experiences fatigue now.

When asked about the ringing in his ears, Mr. Rohan described this as constant. Mr. Rohan has noted that the problem is worse at night. He denied loss of hearing since the accident.

In terms of memory, Mr. Rohan said "I would like to think it's improving" but commented that he cannot do things like he use to do. Mr. Rohan did, however, indicate that he is teaching himself a new computer operating system. He indicated that Dr. Miska tried him on Prozac to improve his memory but the medication did not help. According to Mr. Rohan, before the accident he would forget things that he was told but was quite able in terms of his visual

memory. Mr. Rohan described this skill as being able to look into a picture frame and bring back images. This, he says, is now gone. Mr. Rohan indicated that he makes lists now but loses these. An example of what he may put on the list is a reminder to turn the water off and on. Mr. Rohan indicated that he also has problems doing more than one thing at a time and did not have this type of problem before the accident.

When asked how he did in law school, Mr. Rohan said he "got every one of the grades," that is, good and bad grades. He denied failing any. Mr. Rohan indicated that he attended Cooley Law School because they had a year-round school schedule and his grades were "ecliptical." Mr. Rohan indicated that he was always poor in math but excelled in the sciences. He described himself as a "geek guy." When asked if he felt he had a permanent cognitive impairment, Mr. Rohan said "it's like a computer that has lost its clock."

FURTHER INTERVIEW INFORMATION: Mr. Rohan told the examiner that in March he moved into his wife's place because his landlord died and he had to move out. Mr. Rohan said that he has been sleeping on his wife's couch but she wants him out. According to Mr. Rohan, he does not attribute his marital problems to the accident but said his wife claims that he is more detached. When asked if he was emotionally expressive before, he said "not really." Mr. Rohan indicated that he plans to get his own place to live soon but he needs to remain married to get her insurance benefits. He also said that he would prefer remaining married, and that it was his wife who filed for divorce (this was in 1998 but has not been pursued because of his insurance needs). Mr. Rohan said that people were surprised when the two of them got married because they had lived together for so long. She did not accompany him to Michigan when he attended law school but Mr. Rohan said she shared his hopes for a future as a lawyer.

Mr. Rohan said that he had planned to become a patent attorney but is uncertain if he can do this now. He also reported that he does not have the money to take the test. When asked about his current law practice, Mr. Rohan said he was "trying to be a lawyer." He works for Holladay and Watkins, a private law firm. He reportedly works only 6 hours a day because he gets so tired. His practice is varied (e.g., personal injury, small business contracts, and family/divorce law). Mr. Rohan said that he lost \$5,000-\$7,000 last year but brought in \$37,000-\$40,000 this year. According to Mr. Rohan, when he worked as a chemist he had checks coming in regularly. As a lawyer things have apparently been less stable; however, starting in 1996 things were improving. He reported settling a lawsuit he had with Westminster College over a property dispute (i.e., they wanted to build a garage next to his house). The college ended up buying his home and allowing him to live there rent-free.

EDUCATIONAL WORK AND MILITARY HISTORY: A review of his academic transcripts indicate that Mr. Rohan had average grades. For example, he graduated from high school in 1969 with a grade point average (GPA) of 2.65 and performed in the average range on the Scholastic Aptitude Test (SAT) that was given in the 12th grade. Scores from the SAT indicate that he had average to above potential to achieve in college. Mr. Rohan showed particular strength in the area of Reading (74th and 83rd %ile scores on two subtests). Percentiles for other areas include:

29th %ile for English Usage, 30th %ile for Math Usage, and 40th %ile for Word Usage. No area was below average.

Educational transcripts from Montana College of Mines, Science and Technology where Mr. Rohan attended from 1969 until 1973 generally showed average performance in classes (i.e., C grade). He did, however, withdraw from a number of classes and received F's in five classes. Records indicate that he was placed on academic probation and left there in 1973 with a cumulative GPA of 2.1. While at the college he started a radio station. According to Mr. Rohan, during that time of his life he turned into a "socialite" (e.g., ran for study body president).

In 1974, Mr. Rohan said he enlisted in the Army. He served from then until 1976. He did not go to Viet Nam because of a high draft number. According to his report, he was an agitator in the military. For example, he refused to polish his shoes for 247 days.

In 1976 he began studies at Montana State University (MSU). His overall performance was better. When he graduated in 1982, he had a cumulative GPA of 2.29. Although the grade point does not look that different from the one at Montana College of Mines, Mr. Rohan did take more classes, and he overall earned higher grades. Nonetheless, he still failed some classes, in fact, during winter quarter of 1979 he failed all but one class and withdrew from the other. In 1982, he started taking classes at the University of Utah. Over the quarters he took classes, his GPA ranged from a high of 3.15 to a low of 2.00. He earned mostly C's but got a few D's and one F (these lower than average grades were in computer programming, physics for engineering, and vector science). It should be noted that the courses that Mr. Rohan took during his college studies required a higher than average level of thinking and are known for lower than average grading.

Mr. Rohan worked as an engineer in the Bioengineering Department at the University of Utah but left when some of his colleagues started a biomaterial company. He was there for 6 to 8 years. Mr. Rohan left the company to take a job as a production manager at Ion Laser. The job paid more and he found it to be more challenging. He was fired from the job and went to Biotrace to work on heavy metal analysis. He left after 5 years to attend law school. Mr. Rohan said that he never thought of practicing law. According to his report, he had concerns about his speech as he had had an articulation problem since childhood. Mr. Rohan said he did not think it was a problem and he did not get speech therapy until junior high. When asked if he had learning problems, Mr. Rohan said that in school he would get A's in science and reading but F's in everything else (he said he failed due to boredom).

Mr. Rohan began law school at Thomas Cooley in 1993. When asked why he chose Thomas Cooley Law School to get his education, Mr. Rohan said that the school had a year-round schedule, and his grades were poor. Educational records from Thomas Cooley Law School showed that he graduated with a 2.6 GPA. Term GPA's ranged from a low of 2.20 to a high of 2.84.

FAMILY HISTORY: Mr. Rohan's father died from Lupis when he was 6 or 7 years of age. His

mother died in 1999. She reportedly died from colon cancer. He described their relationship as close but said that he was "detached". Mr. Rohan indicated that this bothered him that he did not show his emotions. Mr. Rohan has two younger brothers, one a defense lawyer and the other a mechanic.

MEDICAL HISTORY: Mr. Rohan has reportedly been healthy. He had an appendectomy in 1963 but no other surgeries. Medical records indicate that in 1990 he slipped and fell at work. The work injury report indicted that he complained of loss of memory and sleepiness afterward; however, Mr. Rohan denied any significant problems from the fall (e.g., did not miss work). The CT that was done was also normal.

ASSESSMENT PROCEDURES:

Wechsler Adult Intelligence Scale-III (WAIS-III; selected subtests)
 California Verbal Learning Test (CVLT)
 Rey Osterreith Complex Figure
 Trail Making Test
 FAS Verbal Fluency Test
 Trail Making Test
 Grooved Pegboard Test
 Finger Tapping Test
 Beck Depression Inventory (BDI)
 Beck Anxiety Inventory (BAI)
 Symptom Checklist 90 (SCL-90)
 Millon Clinical Multiaxial Inventory-III (MCMI-III)
 Minnesota Multiphasic Personality Inventory-2 (MMPI-2)
 Clinical Interview
 Records Review

BEHAVIORAL OBSERVATIONS: Mr. Rohan arrived on-time for the session. He was casually dressed (e.g., blue jeans) but well groomed. He was aware of the fact the examiner was asked by Mr. Trayner, the defense attorney in his legal case, to conduct the evaluation. Mr. Rohan made a couple of references to the fact the assessment was being done "for the defense" but was still cooperative and pleasant.

During the interview, Mr. Rohan frequently appeared to be losing his train of thought. This was evident in his asking for questions to be repeated and giving slow responses to the questions asked. Although Mr. Rohan seemed to be putting forth adequate effort, he demonstrated a surprising level of confusion at times. For example, while doing the sample portion of the Trail Making Test, Mr. Rohan did not seem to know where to begin the task, even though the task starts with a number 1, and proceeds in numeric order. He made a mistake by the time he got to 3, that is, confused about drawing a line from 3 to 4 (he went from 3 to 5). He also seemed uncertain if the pencil was in his hand or not. He was using his dominant (left) hand for the task.

Mr. Rohan was observed to work slowly on motor tasks, in particular, the tapping test. According to Mr. Rohan, his fingers felt odd while trying to tap the key. There was no visible indication that Mr. Rohan was experiencing pain during the testing and he worked on the tasks without complaining of discomfort. His hands were shaking at times, but so was his voice. When asked if he was anxious about the testing, Mr. Rohan acknowledged that he was a little nervous. In addition to a shaky vocal quality, Mr. Rohan evidenced a distinct speech articulation problem.

Mr. Rohan was offered a lunch break, which he took. He did not take long, however, and was able to get back on task when he returned.

TEST RESULTS AND INTERPRETATION: Mr. Rohan was given selected subtests of the Wechsler Adult Intelligence Scale-III (WAIS-III). When he was administered the test in 1997 by Dr. Bigler, he did quite poorly on non-verbal WAIS subtests, therefore, the focus of the intelligence testing was on these tasks. The following are subtest scores from the current and past Wechsler administration. It should be noted, however, that the WAIS-R was given in 1997. Below are the current WAIS-III scores and some of the 1997 WAIS-R scores (in parentheses). The scores all have a mean of 10 and standard deviation (SD) of 3:

WAIS-III SUBTESTS AGE-ADJUSTED SCORES

Picture Completion	07 (04)
Block Design	09 (07)
Digit Symbol-Coding	06 (08)
Matrix Reasoning	11 (na)
Symbol Search	06 (na)
Digit Span	08 (09)

As seen by the above scores, Mr. Rohan's performance on the Perceptual Organization (PO) subtests suggested normal ability. He obtained a PO Index of 93, which is at the 32nd percentile rank. There was, however, some scatter on this factor given the fact he obtained a Picture Completion subtest score that was below the mean. Nonetheless, he showed improvement from the first time he was given the Wechsler scale in 1997. At that time he had a Performance IQ of 85 (with subtest scale scores of 7 on Picture Arrangement and 5 on Object Assembly). The only non-verbal subtest where he did worse was on Digit Symbol. It is unclear why he declined so much on this task. In 1997 he had an average score of 8, and for the current testing had a 6.

Digit Symbol measures processing speed. It is expected that speed of process would improve over time. Since the newer version of the test was given, it is possible that some of the depressed score is due to this. Overall, however, Mr. Rohan's performance suggests a decline in speed. Although he would also be expected to improve on attentional measures (and he did on the visual attention measure, Picture Completion), he did not increase that much his auditory attention score. When given the test before he had a scale score of 9, and now received a score of 8 (a

score that is likely to be comparable given the change in test edition). It should be noted that when he was given the WAIS-R in 1997, he obtained a Verbal IQ of 115, indicating above average verbal intelligence.

On the California Verbal Learning Test (CVLT), Mr. Rohan obtained a total T score of 35. This score is significantly below average (i.e., 1 ½ SDs below the mean). On all short and long delay recall measures he scored 2 SD's below average. Cues helped some, but Mr. Rohan still did not perform well enough to get a score in the average range. Although Mr. Rohan recalled 7 out of 16 words on Trial 1 of the test (a normal performance), he only recalled two more on Trial 5, and lost 3 of those by the short delay task (i.e., he got 9 correct on Trial 5, but after the List B interference recalled only 6 words correctly). With a semantic cue, he only recalled 8 on the short and long recall task. He utilized both semantic and serial clustering to learn the words (and retrieve them) but at the time of the long delay recognition trial had a significantly lower than average score (i.e., recognized only 13 of 16 words correctly and gave 5 false positive responses). On the Wechsler Memory Scale-Revised (WMS-R) that was given in 1997, he also had a markedly deficient score (i.e., index of 65).

His performance on the Rey Osterreith Complex Figure Test was similarly poor. He had a copy score at the 30th percentile, but on the immediate and delayed portions of the test had a score below the 10th %ile. This suggests significant problems with visual memory. When given the Rey in 1997, he was described as having difficulty with the copy portion as well as the retention of the figure.

On the Trail Making Test, he completed Part A in 94 seconds (T of 11) and Part B in 290 seconds (T of 9). These scores indicate severe impairment in mental tracking and cognitive flexibility. When given a mental flexibility test in 1997, the Wisconsin Card Sorting Test, he was reported to have performed "very poorly."

On the FAS Verbal Fluency Test, he generated 32 words in 3 minutes. This score is at the lower end of the expected range for his age. The expected mean is 41.16, with a SD of 11.42. Overall, the performance suggests weakness in fluency. When given a fluency test in 1997, his performance was described as adequate.

Mr. Rohan is left hand dominant. Although it is expected that he would perform much better with his left hand on motor tasks, this was not the case. In fact, he completed the Grooved Pegboard Test 3 seconds faster with his dominant hand, and had an average score on the Finger Tapping Test that was 3 taps faster with his nondominant right hand. It is also noteworthy that his performance on both motor tasks was significantly below average, regardless of hand used. For example, on the Pegboard, he completed the board with his left hand in 80 seconds for a T score of 34. He completed it using his right hand in 83 seconds for a T of 38. These score, by the way, are significantly below average. On the Finger Tapping Test, he was also significantly below the mean. He had a left hand average of 24.8 taps and right hand average of 27.4 taps. The T scores for these tests were 11 and 14, respectively. When given the tapping test in 1997, his

right hand score was intact, but his left hand speed was lower. This suggests that he is getting slower, in particular, slower with his nondominant hand.

AFFECTIVE AND PERSONALITY ASSESSMENT: Mr. Rohan had a Beck Depression Inventory (BDI-II) score of 7. This score is normal and fails to indicate depression. When given the test in 1997, he had a BDI score of 22, which suggests significant depressive symptomatology. On the Beck Anxiety inventory (BAI) that was given during the current assessment, he had a score of 2, which is perfectly normal. In 1997 when the BAI was given he had a score of 12, indicating mild anxiety.

On the Symptom Checklist 90, he reported the following symptoms as "moderately to extremely" distressing: numbness, low energy, sleep problems, poor concentration and memory, working slowly and rechecking to insure correctness, mind going blank, feeling that everything is an effort, and never feeling close to another person.

On the Millon Clinical Multiphasic Inventory-III (MCMI-III), Mr. Rohan's responses indicated a tendency to avoid self-disclosure. The profile, however, did indicate schizoid, narcissistic and schizotypal personality traits. Individuals with similar profiles tend to be avoidant of social situations and more isolated and self-absorbed. Social discomfort was noted as well on the Minnesota Multiphasic Personality Inventory (MMPI-2). The MMPI-2, in fact, shows a tendency to be passively dependent. Individuals with this type of response pattern tend to be unskilled socially and may use physical complaints in order to get their emotional needs met. The only clinical scales that reached a significant level (i.e., T of 66) were Hypochondriasis and Hysteria (Depression was close, with a T of 62). The only content scale that was significantly elevated (i.e., T of 65) was Social Discomfort.

CLINICAL IMPRESSIONS: Joseph Rohan is a 49 year-old male who was seen for a neuropsychological evaluation at the request of an attorney, Stephen Trayner. Mr. Trayner represents the driver of the vehicle that hit Mr. Rohan on 1/23/97. Mr. Rohan claims that he sustained physical injuries at the time of the accident, including a head injury. The present evaluation was intended to address the likelihood that a head injury occurred, and if so, what cognitive and psychological sequelae resulted from it.

There are no clear objective data to indicate that Mr. Rohan sustained a traumatic brain injury. Despite the fact MRI and SPECT data show abnormalities in the brain, these imaging data are nonconclusive. The MRI showed generalized atrophy of the brain and hyperintensities that could indicate axonal shearing, but it was not definitive. Similarly, the SPECT failed to provide definitive findings despite the fact this exam is a more effective study of damage from mild head injury. According to the SPECT report, it showed some decrease in perfusion but not of the magnitude to be classified as abnormal. Mr. Rohan's complaints of symptoms shortly after the accident, however, indicate that he may have sustained a mild concussion. For example, he reported to Dr. Roberts on 1/28/97 problems with dizziness, nausea, and poor memory. Although these symptoms are consistent with a concussion, Mr. Rohan's ongoing report of severe

difficulty processing information and remembering (e.g., having to have a reminder note to turn water off) is not typically found with concussions that are so mild as to not alter a person's mental status at the time. There is no indication that Mr. Rohan lost consciousness from the accident, nor is there evidence that he had any post-traumatic amnesia. His initial complaints, in fact, at the InstaCare suggested a whiplash injury (e.g., cervical strain).

Data from the current neuropsychological evaluation show that Mr. Rohan is severely impaired in terms of his memory skills and information processing. His process speed is extremely slow, in fact, he seems slower now than when tested soon after the accident. Although his performance on a test of visual attention is better than it was in 1997, his visual memory remains severely impaired (i.e., below the 10th %ile). This is an area of functioning that Mr. Rohan said he was especially good at before; in fact, he reported that his verbal memory skills were never as good as his visual memory. Testing also shows significant impairment in his verbal memory and learning. Other problems noted on testing include confusion (e.g., not knowing a pencil is in his hand) and poor mental tracking (e.g., unable to follow the examiner's conversation and not able to connect single digit numbers from lowest to highest).

Overall, Mr. Rohan appears to be doing too poorly to attribute his problems to a mild concussive event that took place 3 years ago. Despite receiving cognitive rehabilitation since the time of the first evaluation by Dr. Bigler (i.e., in May of 1997), Mr. Rohan seems to be doing about the same or worse in a number of areas. His scores, for example, on tests of verbal fluency, processing of information, and motor speed are lower than before, and his performance on tests of auditory attention and mental flexibility are about the same. He did improve on measures of visual attention and visual-spatial organization; however, individuals with mild concussion are expected to improve more than this. Dr. Bigler seemed to be of the opinion that some of Mr. Rohan's cognitive problems were associated with his low mood, however, current testing shows that his mood is improved (e.g., report of depressive symptoms and anxiety). Basically, it is not entirely clear why Mr. Rohan has not improved and continues to perform, and described himself, as so severely impaired.

Given Mr. Rohan's performance in law school, in particular, one that is ranked poorly when compared to other law schools in the U.S., it is not surprising that he may struggle some in his chosen profession, however, even this and his record of uneven, and often times poor academic performance, does not explain the severity of his complaints or the problems observed on testing. It is not entirely clear why Mr. Rohan appears to be so impaired. It is, however, possible that the current litigation is impacting Mr. Rohan's perception of impairment attributable to the 1997 MVA, and his overall performance on testing. Mr. Rohan does have the potential for secondary gain, both emotionally and financially, from the lawsuit. Hopefully, when the litigation proceedings end, Mr. Rohan will realize some improvement in his symptoms, and be able to function at a higher level. If Mr. Rohan does not improve after the lawsuit is settled, it is recommended that he be followed by his physicians and seen for a psychiatric evaluation.



Elaine Clark, Ph.D.
Licensed Psychologist

GENERAL INFORMATION:**EXHIBIT "T"**

Patient: ROHAN, JOE Age: 47

Physician: Robert K. Rothfeder, M.D. Date: August 20, 1997

CHIEF COMPLAINT:

Head and neck injuries suffered in a motor vehicle accident of January 23, 1997.

DIAGNOSIS:

1. Motor vehicle accident driver of January 23, 1997 (E813.0)
2. Closed head injury with posttraumatic brain injury (854.0)
3. Headaches (307.81)
4. Posttraumatic migraine, (346.9) tension and occipital neuralgia (353.2)
5. Cervical strain/sprain with chronic neck pain (847.0)

MEDICAL DECISION MAKING:

Final Impression: The injuries described above are a result of the motor vehicle accident of 1/23/97. With respect to the patient's neck injury, that appears to have become chronic and static at the present time. With respect to the patient's headaches, likewise those have not changed clinically in some time. The patient's area of greatest concern is his intellectual functioning with respect to his posttraumatic brain injury. It would be my opinion that at the present time the patient's brain injury as described essentially has disabled him from the independent practice of law, given what I know about the demands of attorney practice. The patient appears capable of functioning as a paralegal with supervision. I explained to the patient that I have, in fact, seen improvement regarding the impairments he currently suffers in memory, language and cognitive function, greater than the one and one half years he now is post injury; however, given the length of time since injury, his prognosis for complete recovery is almost nil and his prognosis for additional significant partial recovery is uncertain. I am afraid it is more likely than not that the majority of the patient's intellectual impairment is permanent and I doubt that he will be able to return to his previous occupational level as an attorney. I believe that cognitive therapy should be continued as long as there is evidence that continued improvement is taking place. I believe that all reasonable diagnostic tests have been performed and the patient's pharmacologic treatment regimen at present is appropriate although I suspect there will continue to be required changes and adjustments in medication. I would anticipate that patient would require a regimen of medications similar to that at present indefinitely.

IMPAIRMENT RATING:

In light of all of the above, it would be my opinion that the patient's condition with respect to his various injuries has become

chronic and static and calculation of an Impairment Rating at the present time is appropriate.

Reference is made to the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition.

The patient has permanent partial impairment as follows:

1. For injury to the cervical spine the patient qualifies for a DRE category 2 = 5% permanent partial impairment of the whole person.
2. For closed head injury resulting in chronic headaches and posttraumatic brain injury along with sleep disturbance, this has had a profound affect on the patient's activities of daily living and I would calculate a 30% permanent partial impairment for head injury sequelae.

Using the Combined Value Tables, these impairments combine for a 34% permanent partial impairment of the whole person.

As noted above, in my opinion the intellectual impairments suffered by Mr. Rohan has essentially resulted in a 100% disability with respect to the practice of law.

PRESENT ACCIDENT:

Mr. Rohan is a 47-year-old attorney who is referred to the office by one of his fellow lawyers at the law firm in which he works, Paul Halliday, Jr.. Mr. Rohan states that among other injuries he suffered a brain injury in the motor vehicle accident of January 1997 and has been unable to practice law independently since that time. He has suffered from significant cognitive and memory problems which he states have made it impossible to resume his previous independent practice of law. The patient states that currently he is functioning essentially as a paralegal and requires supervision from other attorneys in his handling of cases. The details of his memory and cognitive problems are discussed in detail below. The patient also is suffering from a significant sleep disorder along with chronic pain from headache and neck injury. He requests my opinion at this time regarding his prognosis, his likely degree of permanent partial impairment, and specifically whether it is likely that he will be able to return to his previous level of function as an attorney in the near future or at all. The patient brings a thick stack of medical records to the office at the time of his visit. These were reviewed briefly during the visit to confirm certain details and at length afterwards prior to preparation of this report. The history that follows is obtained both from Mr. Rohan and the medical records. It is noteworthy that Mr. Rohan has only partial and in some cases, poor recollection of many of the events outlined in the medical records. His history of the accident and subsequent medical care is as follows.

The patient states that he was injured on January 1997. He could not remember the exact date and I reviewed the medical records to

confirm the accident date of January 23, 1997. The patient was the driver of this motor vehicle accident proceeding about 25 m.p.h. when he was struck by another vehicle traveling 30-40 m.p.h. The patient apparently did not lose consciousness with the impact but was dazed and noted dizziness at the time. First medical attention was the same day on 1/23/97 at the InstaCare facility where the patient was treated with a soft cervical collar, anti-inflammatories and a muscle relaxer. Early on he had two episodes where his left arm had gone numb. The patient was seen once again in follow-up at the InstaCare and referred to William Muir, M.D., an orthopedic spine surgeon who first saw Mr. Rohan on January 29, 1997. At that time the patient was complaining of neck pain as his major complaint along with memory loss. Plain films of the neck were obtained at that time which were essentially unremarkable. Physical examination showed markedly reduced range of motion of the cervical spine. The patient was treated in the usual conservative fashion with apparently only mild improvement. An MRI of the cervical spine was obtained on February 22, 1997 which did not show any significant acute pathology. A CT scan of the neck was obtained some months later in June 1997 which showed some degenerative changes but no significant disc herniation.

In addition to patient's neck pain, over the first several months post injury he exhibited ongoing headaches and progressive evidence of brain dysfunction secondary to posttraumatic brain injury. An MRI of the brain was obtained on April 25, 1997 which was abnormal showing scattered small punctate T2 hyperintensities reflecting residua of axonal shear injury. Thereafter, the patient had multiple referrals and underwent extensive workup among various physicians including Dr. Miska, a neurologist and Dr. Bigler, a neuropsychologist and Dr. Macfarlane, a neurosurgeon, all of whom consulted on Mr. Rohan's case in the May 1997 time frame. Dr. Bigler's office performed a complete neuropsychological evaluation which was abnormal, showing a number of problems including disrupted cognitive performance substantially below what would be expected of the patient's educational and vocational background. There were additionally deficits noted on both auditory and verbal testing and memory. The patient was therefore referred for SPECT imaging studies which were done in June of 1997, which were considered to be within normal limits. Thereafter, the patient was treated with a variety of medications including Zoloft and verapamil for his headaches. Based upon recommendations from Dr. Bigler and Dr. Miska, the patient was also referred for cognitive and occupational therapy at the IHC rehab services and underwent therapy beginning in November 1997 and continuing until a month or two ago when apparently some insurance coverage issues became of concern. Review of medical records from IHC rehab indicates that the patient's intellectual performance had improved with therapy and with utilization of memory books and various compensatory strategies. The patient continued to experience difficulty planning and continuing projects, with memory, and with certain speech language issues. In July of 1998, the patient was referred to the Intermountain Sleep Disorder Center at LDS Hospital for evaluation. Sleep study results were abnormal showing marked disruption of sleep architecture and complete absence of REM sleep.

Medications: Kitalin 40-50 mg per day, Prozac 60 mg per day, Imitrex subcutaneous p.o. or nasal for vascular headaches, Naprosyn for his tension headaches and neck pain.

Previous Trauma: The patient suffered a slip and fall injury in 1990 which he states was not very significant. He did have some headaches and dizziness thereafter and underwent a CT scan which was normal. The patient states he was back to normal following this injury in less than a week and had no sequelae.

Surgeries: Appendectomy.

Previous Illnesses/Hospitalizations: No previous hospitalizations or significant illnesses.

Social History: Does not smoke or drink alcohol. The patient is currently married but his wife is in the process of filing for divorce related to the patient's changes following this motor vehicle accident. He does not have any children. He was off work completely following the accident until about July of 1997 and has been practicing law with the Halliday firm since that time but essentially in the role of a paralegal. The patient's educational background includes a bachelor's degree from Montana State and law school in Michigan.

REVIEW OF SYSTEMS:

General: Positive for severe sleep disturbance.

Skin: No scarring or rashes.

Eyes: No photophobia, double vision, or change in vision.

Ears: Positive for tinnitus.

Respiratory: No pain with breathing, no shortness of breath, asthma, or cough.

Throat: No difficulty swallowing, change in voice, temporomandibular joint pain, dental trauma, or abnormal range of motion of the mandible.

Respiratory: No pain with breathing, no shortness of breath, asthma, or cough.

Cardiovascular: No chest pain, angina, arrhythmia, murmurs, high blood pressure, heart attacks, heart failure, or syncope.

GI: No change in weight. No peptic ulcer disease. No change in bowel habits. No abdominal pain or hernias. No GI bleeding.

GU: No bladder or kidney problems.

Endocrine/Metabolic: No diabetes or thyroid problems.

PHYSICAL EXAMINATION:

Vital Signs: Supine B/P: 125/85 Pulse: 75 Resp: 14

General: Well developed, well-nourished gentleman who is oriented x 3 although it takes him much longer to remember the date than one would expect. He walks with a normal gait, gets in and out of a chair without difficulty.

Head: There is mild tenderness over the occiputs bilaterally. No gross deformity is present.

Eyes: Pupils are equal and reactive to light and accommodation. Extraocular movements are full. Visual fields are intact to confrontation. Discs, arteries, and veins appear normal.

Ears: Hearing is normal to speech. Canals and tympanic membranes are normal.

Mouth and Throat: Normal tongue. Normal elevation of the soft palate. Mucous membranes are normal.

Neck: Guarding, stiffness and spasm are present. There is bilateral paravertebral tenderness. Range of motion is reduced as follows: Flexion 40°, extension 50°. Lateral bending 35° bilaterally. Left rotation 70°, right rotation 50°.

Chest: Normal configuration. Nontender. Excursion is normal with respiration.

Lungs: Normal to auscultation.

Heart: Regular sinus rhythm without murmurs, rubs or gallops.

Abdomen: Bowel sounds are active. The abdomen is flat, soft and nondistended. There is no organosplenomegaly.

Back: Normal posture. No stiffness, spasm, or trigger points. Range of motion is normal. No kyphosis or scoliosis is noted.

Extremities: No deformity is noted. No swelling or skin changes. Range of motion is normal.

Neurologic: Mental status examination is conducted during the entire course of the interview. The patient demonstrated numerous obvious memory lapses regarding both details of his medical treatment to date and of various short-term memory functions. He additionally demonstrated several defects in language, being unable to verbalize words he wanted to express. The patient's affect additionally seemed somewhat flat when describing his various difficulties. He states that this is typical of a personality change he has experienced since the accident. As an example he describes prior to the accident being rather impatient, particularly waiting in line, etc. He states he can now wait in line indefinitely and not get impatient which he thinks is abnormal. The remainder of the neurologic exam including cranial nerves, motor, sensory, cerebellar and deep tendon reflexes are unremarkable.

I AUTHORIZE MY NAME TO BE AUTOMATICALLY ELECTRONICALLY AFFIXED TO THIS REPORT SIGNIFYING THAT I DICTATED THIS REPORT.

X: Robert K. Rothfeder, M.D.

(Dictated but not read)

SDS:dwc D: 08/24/98 14:24 T: 08/25/98 17:16

Tab 23

FBI
 DEPT. OF JUSTICE
 CONFIDENTIAL
 T-100-100000
 100-100000
 100-100000

JOSEPH W. ROHAN

PLAINTIFF'S AFFIDAVIT IN
SUPPORT OF MOTION FOR
FOR NEW TRIAL OR
ALTERNATIVELY TO AMEND

V.

Civil Number 980904135 PI

Judge: J. Dennis Frederick

)

: SS

)

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU. Machine-generated OCR, may contain errors.

1. I am the Plaintiff in the above-captioned matter.
2. I am competent to testify to the facts contained herein based upon my personal knowledge.
3. I am an qualified individual with a disability as provided by Title II of the Americans With Disability Act (ADA) as shown by the following facts.
4. A CT scan of my brain taken in July 1990, prior to my attending law school, revealed a normal brain scan. See Exhibit "A" attached hereto and incorporated herein by this reference.
5. A MRI scan of the my brain taken in April 1997, after I had attended law school and passed both the Utah and Montana bars on the first try, some three months after the accident involving the defendant, was abnormal. See Exhibit "B" attached hereto and incorporated herein by this reference.
6. My treating neurologist, Robert M. Miska, M.D., stated in May of 1998, "the MRI scan done after the accident showed changes typical for closed head injury with axonal shearing . . . including atrophy disproportionate to age and some small areas of increased T2 signal intensity." See Exhibit "C" attached hereto and incorporated herein by this reference.
7. Dr. Miska's initial clinical impression in May 1997 was, "closed head injury, whether by direct impact or inertial force, with significantly impaired attention-concentration (at least)." See Exhibit "D" attached hereto and incorporated herein by this reference.
8. Neuropsychological testing performed in May 1997 by Erin Bigler Ph.D., showed

disrupted cognitive performance, with performance being substantially below what would be expected, given my educational and vocational background. See Exhibit "E" attached hereto and incorporated herein by this reference.

9. In November 1997, at Dr. Miska's request, I was evaluated by Mark Fox M.S., CCC-SPL, and was tested with the Ross Information Processing Assessment-2 which is normed on individuals who had suffered a brain injury. My mean score of 10 represented a moderate dysfunction. See Exhibit "F" attached hereto and incorporated herein by this reference.

10. I underwent a sleep study in July 1998, which showed a severely disrupted sleep cycle with a sleep efficiency of 41% (normal is greater than 90%), and a total absence of REM, stage III & IV sleep. Additionally, measurements of the my attentiveness were markedly abnormal. See Exhibit "G" attached hereto and incorporated herein by this reference.

11. Testing in May 2000 shows my visual memory remains severely impaired i.e. below the 10% percentile, the testing also showed significant impairment in the Plaintiff's verbal memory and learning. See Exhibit "H" attached hereto and incorporated herein by this reference.

12. I was diagnosed with excessive daytime sleepiness for which I take medication daily, I do not dream (which was demonstrated by the lack of REM sleep), and I am constantly fatigued, often having to leave the office during the day to take naps.

13. It is difficult for the me to awaken in the morning, and it has become necessary for colleagues from the office to call and awaken me so I can take my medication. I also continues to have severe debilitating headaches which prevent me from doing any activities at all, including

maintaining a legal practice, when they occur.

14. I have informally entered into an agreement with the office of enrollment and discipline to have members of the law firm of Halliday & Watkins P.C., informally supervise my practice.

15. In May 2000, neuropsychological testing revealed the cognitive defects first reported by Dr. Bigler in 1997 are presently the same or worse than before. See Exhibit "H" attached hereto and incorporated herein by this reference.

16. I began taking medication for the excessive daytime sleepiness in July 1998 and I continue to take up to three of the tablets on a daily basis. The prescription was just renewed for another year and the cost of the medication is more than \$500.00 dollars a month. Although the medication is helpful it does not relieve all of the symptoms of the excessive sleepiness and I am substantially limited in many daily activities as a result.

17. Dr. Robert Rothfeder M.D., J.D., has determined that the my condition has become chronic and static, and has assigned the Plaintiff a permanent partial impairment of the whole person of 34% and a 100% impairment with respect to the independent practice of law. See Exhibit "I" attached hereto and incorporated herein by this reference.

18. The impairments I have as the result of the accident are severe, permanent, and they continue to impact evert aspect of my life. As noted by Mark Fox in November 1997, I "have reported significant difficulties since the accident in completing both activities of daily living and work related activities . . . Specifically, Mr. Rohan experiences significant difficulties attending to

important information for a given task. He experiences a decrease in his attentional abilities as the complexity of the information increases and as distractions are introduced. This has and will continue to significantly impact his abilities to complete activities at home and at work.”

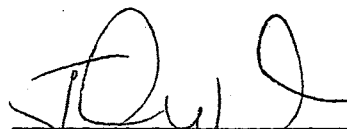
19. Data from the current neuropsychological evaluation [May 2000] show I am severely impaired . . . Despite receiving cognitive rehabilitation since the time of the first evaluation by Dr. Bigler, Mr. Rohan seems to be doing the same or worse in a number of areas.” See Exhibit “H” attached hereto and incorporated herein by this reference.

20 I am substantially limited in many areas of everyday life, these include, but are not limited to, memory loss, disrupted cognition, excessive daytime sleepiness, fatigue, confusion, and an abnormal attention span. As a result of the brain injury I have extreme difficulty performing basic functions such as of caring for myself performing simple tasks, speaking, learning, sleeping, and working.

21. I notified the Defendants and the Court I was making a claim under the ADA and because of the effects of my injuries I was unable to try the my own brain injury case. I requested a continuance or dismissal without prejudice.

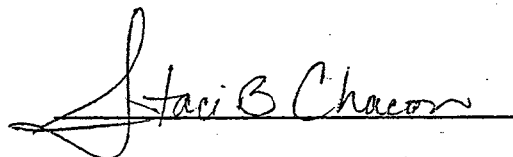
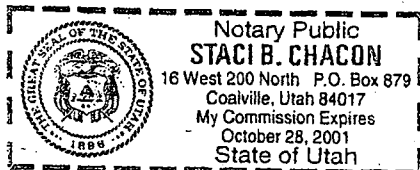
22. In spite of the fact the Court was notified the Thursday before the scheduled trial that under no circumstances would I be able to go to trial, the Court called the jury panel. I consider the Court’s action punitive and designed not only to increased the amount of the monetary sanction that the Court ultimately imposed, but discriminatory in that the Court seemingly held me and my brain injury up to public ridicule for asserting a claim under the ADA.

DATED this 7th day of August, 2000.



Joseph W. Rohan
Pro Se

SUBSCRIBED AND SWORN to me this 7th day of August, 2000.

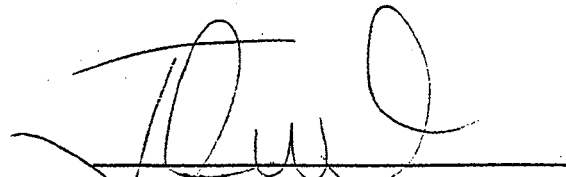


CERTIFICATE OF DELIVERY

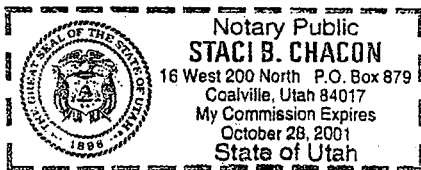
I hereby certify that I caused to be ~~faxed~~ mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 7th day of August, 2000.

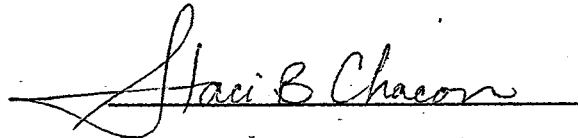
Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

DATED this 7th day of August, 2000.


Joseph W. Rohan
Pro Se

SUBSCRIBED AND SWORN to me this 7th day of August, 2000.




Staci B. Chacon

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be ~~faxed~~ and mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 7 day of August, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

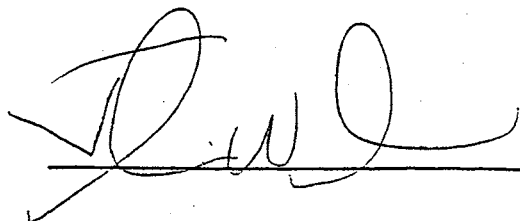
A handwritten signature in dark ink, appearing to be 'M. Gustavson', written over a horizontal line.

EXHIBIT "A"

1 PAGE

LDS HOSPITAL
DEPARTMENT OF RADIOLOGY
SALT LAKE CITY, UTAH 84143
TELEPHONE: 801-321-1791

PATIENT: ROHAN, JOSEPH WILLIAM

AGE: 39M BIRTH: 3/2/51

ADDRESS: 1184 BLAINE AVE

SLC UT 84105

PHONE: 801 486-2871

INS. INDUSTRIAL - WORKERS

===== RADIOLOGY REPORT =====
JOSEPH W. ROHAN

DATE TO BE DONE: 13 JUL 90

RADIOLOGY #: 6-18-462

ROOM #: ER

HOSPITAL #: 21135215

MEDICAL RECORD #: 0

REQ DR: DUFFY, OWEN

ATT DR: DUFFY, OWEN

REQ PHONE: 0 ATT PHONE: 0

ORDERED: 13 JUL 90 14:55 BY: DG

AD-DX: HEAD AND NECK PAIN, MEMORY

CT BRAIN: 13 Jul 1990

CLINICAL HISTORY: Loss of consciousness.

FINDINGS: Axial images of the brain without contrast demonstrate normal appearance of ventricles, sulci, cisterns. There are no mass lesions or evidence of mass effect, extracerebral collections or contusions. Skull and sinuses are intact.

IMPRESSION: Normal cranial CT.

DDB: TL491

D: 14 JUL 1990

T: 14 JUL 1990, 1631

CC: CT

LDS HOSPITAL
DEPARTMENT OF RADIOLOGY
SALT LAKE CITY, UTAH 84143
(801) 321-1791

ORD DR: NORD, NATHANIEL M.
Phone: 363-3777

REF DR: ROBERTS, PHILIP L.
Phone: 572-0311

NAME: ROHAN, JOSEPH WILLIAM
RAD: 61846200 Hsp#: 26990879
BD: 03/02/51 AGE: 46M
ROOM: OPD

DATE: 25 APR 97 06:00
AD-DX: MVA HEAD AND NECK INJURY
MR #: 54-49-99
INS. AUTO-NO FAULT

ADDRESS: 1184 BLAINE AVE SLC UT 84105

RADIOLOGY REPORT

ROHAN, JOSEPH W

MRI BRAIN: 4-25-97

EXHIBIT "B"

CLINICAL HISTORY: Closed head injury

TECHNIQUE. Examination includes the following sequences.

1. Sagittal T1 weighted spin echo.
2. Axial intermediate and T2 weighted standard spin echo.
3. Coronal intermediate and T2 weighted fast-spin echo.

FINDINGS: There is mild generalized prominence of ventricles and subarachnoid spaces for the patient's age of 46. Small foci of increased T2 signal are present in the white matter of both cerebral hemispheres. This includes small foci adjacent to the caudate nuclei bilaterally. The appearance is nonspecific. There are no mass lesions. No mass-effect is present. There are no extra-axial collections. I do not perceive focal areas of brain encephalomalacia. No focal sulcal widening is present. The temporal horns and lateral ventricles are at the upper limit of normal, consistent with the generalized ventricular prominence. Calvarium is intact. Sinuses and skull base are within normal limits.

IMPRESSION. Evidence of moderate generalized atrophy. Scattered, few, small punctate T2 hyperintensities could reflect residua of axonal shear injury. No focal brain encephalomalacia is appreciated.

CODE 2
DB/ef
D&T: 4-25-97

===== End of Finalized Text =====

Trans:
Date: 04/25/97

Signing Physician: BLATTER, DUANE D.

Authentication: BLATTER, DUANE D.
ROHAN, JOSEPH WILLIAM

25 APR 97 06:00
MRI Brain w/o Contrast

25. 58

=====

**Rocky Mountain
Neurological Associates**

370 East 9th Avenue, Suite #106, Salt Lake City, Utah 84103
(801) 321-5700 Fax (801) 321-5704

John F. Foley, M.D.
Diplomate
American Board of Psychiatry & Neurology

Robert M. Miska, M.D.
Diplomate
American Board of Psychiatry & Neurology

May 13, 1998

James Walker, M.D.
Sleep Lab
LDS Hospital
8th Ave & C Street
Salt Lake City, UT 84143

EXHIBIT "C"

Re: Joseph Rohan

Dear Jim:

This letter regards Joseph Rohan, about whom we spoke on the phone on May 13. He is a 47-year-old attorney who was involved in a motor vehicle accident in January 1997, with a resultant closed head injury. I have included copies of my original notes on him. Neuropsychologic testing done by Dr. Bigler showed the expected type and degree of cognitive interference. Other problems include headache and persistent tinnitus. His current medications include Prozac 60 mg per day, Imitrex 50 mg PO on a prn basis for vascular headaches, sodium naproxen 1100 mg taken for other headaches, and the recent introduction of an Imitrex inhaler. He has had no response to verapamil for headache prophylaxis nor to trazodone taken 50 mg h.s. for sleep induction. Ever since the accident he has had consistent difficulty with sleep initiation accompanied by subsequent sleep fragmentation, nocturnally. He has recently begun to have a problem with an undesired shift in his sleep cycle, sleeping during the day, usually from late morning to late afternoon, while still finding it difficult to obtain nocturnal sleep. A cranial MRI scan done after the accident showed changes typical for closed head injury with axonal shearing, these including atrophy disproportionate to age and some small subcortical areas of increased T2 signal intensity. I have recently had him begin trying temazepam 15 mg h.s. every other day as an aid to sleep induction. He sees Mark Fox for cognitive rehabilitation on a weekly basis. Any help you can give will be appreciated. His telephone numbers are 486-2871 at home and 355-2886 at work.

Sincerely,


Robert M. Miska, M.D.

RMM:rlp

~~Neurological Associates~~
Neurological Associates

370 East 9th Avenue, Suite #106, Salt Lake City, Utah 84103
(801) 321-5700 Fax (801) 321-5704

John F. Foley, M.D.
Diplomate
American Board of Psychiatry & Neurology

Robert M. Miska, M.D.
Diplomate
American Board of Psychiatry & Neurology

May 22, 1997

EXHIBIT "D"

John Macfarlane, M.D.
370 Ninth Ave., #111
Salt Lake City, UT 84103

Re: Joseph Rohan

Dear Dr. Macfarlane:

I saw Joseph Rohan in the office on the afternoon of May 22. This 46-year-old man, a self-employed attorney, had the misfortune to be involved in a motor vehicle accident this past January 23. He was the restrained driver of a car, wearing both a shoulder harness and lap belt, which was struck from the left front by another vehicle traveling at an undetermined speed, causing the patient to "side-swipe" a car on his right. It is uncertain whether he had a closed head injury, but he certainly had a cervical flexion-extension injury, possibly with a rotational component. It is further uncertain whether he may have been unconscious, and he seems to have certainly been "dazed", though there is no defined period of actual unconsciousness. He was initially seen at Instacare and then sent to LDS Hospital, where cervical x-rays were done, apparently with normal results, and he was given a soft cervical collar to wear as well as medications including Motrin and "muscle relaxers". He had some nausea, including minor vomiting, after the accident, and has continued to be bothered by headaches since. There were initially occipital but have changed over time to be felt as predominantly a bitemporal "piercing" pain, sometimes with a throbbing component. He also complains of bilateral tinnitus, as well as the cognitive effects of such an injury, including impaired attention-concentration and possibly memory. Medications taken to date, but not currently received, include Ultram, Motrin and Lortab. He had a cranial MRI scan done on April 25. This shows mild ventriculomegaly disproportionate for age, along with a few areas of increased T2 signal intensity. The report is interpreted as being consistent with subcortical axonal shearing. I would agree that it is consistent with this but not diagnostic of such. The patient apparently saw Dr. Nord earlier, and it was he who ordered the cranial MRI scan. He subsequently saw Dr. Erin Bigler for neuropsychologic testing, but results of that are unavailable as yet. Initial treatment attempts for pain included physical therapy, which was unhelpful after 20 visits to LDS Hospital, and care was transferred to Cottonwood, where he

John Macfarlane, M.D.
Re: Joseph Rohan
Page Two

continues to receive outpatient physical therapy. He also uses home cervical traction.

Past medical history is otherwise unremarkable. He takes no regular medication at present. Social history shows him to be a self-employed attorney, doing general law. He has been in practice about one year, and had hoped to take the bar for patent law, but found himself ill-prepared to do so after the accident. Family history is negative for heritable arthropathy or for headache disorders. System review includes the information that he is relatively amnesic for details of events during the months of February through April 1997, and that he has to exert extra cognitive effort to be able to perform the activities of his profession, being still unsuccessful at times in spite of this extra effort. He has significantly increased sleep onset latency, and it is his perception that he sometimes "doesn't sleep at all". Even when he does fall asleep it is clear that he has considerable sleep fragmentation.

Current examination shows a pleasant rather quiet young man with a weight of 214 lbs and a blood pressure of 156/108. Cranial, orbital, cervical, supraclavicular and precordial auscultation are silent or normal. Neuro-ophthalmologic evaluation documents normal funduscopy, full confrontational visual fields, full ocular range and normal pupillary resting size and light reactivity. The lower cranial motor nerves show no abnormalities or asymmetries. Regressive reflexes and jaw jerk are not found. Cervical paraspinal muscle tone and upper medial trapezius muscle tone are enhanced somewhat bilaterally, without palpable trigger points. Motor system examination shows left-handedness with no demonstrable deficits of power, testing the upper limbs according to myotomes and the lower limbs both proximally and distally. Muscle stretch reflexes are symmetrically preserved at all levels, without pathologic reflexes being found. Plantar responses are downgoing. Alternating movement rate is normal in the hands. The "forearm-rolling" test and "finger-rolling" test are probably normal bilaterally. There is an exaggerated physiologic hand tremor but no asterixis. Sensory examination shows symmetric temperature perception bilaterally over the face and limbs with normal graphesthesia on the hands, a negative Romberg test, and normal and symmetric vibratory perception in the feet. Sharp discrimination, examined according to dermatomes and according to sensory territories of peripheral nerves in the upper limbs is normal. Tests of limb coordination and gait are normally done, including single-foot standing and stressed walking maneuvers. Observational and limited examination review of mental status shows normal speech syntax and prosody. He is able to give the current date, more slowly than expected. He is off by one day in naming the day of the week. He repeats 5 digits without particular difficulty, but

John Macfarlane, M.D.

Re: Joseph Rohan

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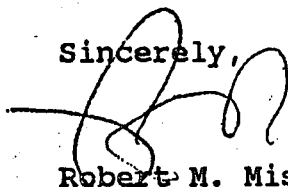
requires 5 trials to correctly reverse those digits, probably quite abnormal for his level of education, and denoting (at least) significantly-impaired attention-concentration. Further testing of memory was deferred pending the results of formal testing already done.

Impression: Closed head injury, whether by direct impact or inertial force, with impaired attention-concentration (at least). Cervical strain-sprain syndrome with microscopic ligamentous shearing. Post Traumatic Headaches Type I (these might be considered type I-III overlap headaches, though the lack of specific migrainous features makes them probably best considered as type I).

Recommendations: I await the neuropsychologic test results. He will likely need some cognitive rehabilitation. I have taken the liberty of drawing some serologic measures, including assays of thyroid function. Serotonergic potentiation is probably the simplest way to treat his cognitive dysfunction. Zoloft will be selected for this purpose, with a beginning dose of 50 mg. Regarding headache prophylaxis, verapamil at 180 mg per day will be begun, and symptomatic headache treatment will be afforded with sodium naproxen 1100 mg. I gave him prescriptions for each of these medications with specific written instructions in the methods of use and limits of dosing. He will call to report on his progress in 2 weeks, or for any problems. I discussed the nature of his injuries, the current and pending evaluations, and the approaches to treatment. I also gave him a prescription to have progressive cervical paraspinal muscle resistance exercises added to his physical therapy regimen.

I hope the above is of interest.

Sincerely,



Robert M. Miska, M.D.

RMM:rlp

cc: Erin Bigler, Ph.D.

Erin David Bigler, Ph.D.
A Professional Corporation
Diplomate in Clinical Neuropsychology
American Board of Professional Psychology

May 14, 1997

NEUROPSYCHOLOGICAL CONSULTATION REPORT

RE: Joe Rohan
DOB: March 2, 1951
DATE OF INJURY: January 23, 1997
DATE OF EXAMINATION: M
EDUCATION: Law Degree
MEDICATIONS: Lortab PRN

EXHIBIT "E"

PRESENTING PROBLEM:

This patient probably sustained a concussive type head injury in the motor vehicle accident that occurred on the above captioned date. His current symptoms include deficits in short-term memory, inability to stay organized, persistent tinnitus, vertigo and dizziness, along with headache and neck pain.

BACKGROUND HISTORY:

The patient states that he was in excellent health prior to this accident and that he was not undergoing any specific treatment for any medical condition. I am awaiting other medical records.

MENTAL STATUS EXAMINATION/BEHAVIORAL OBSERVATIONS:

This is a 46-year-old male patient. He is well-oriented in all three spheres. He is appropriately dressed and groomed. His affect is depressed. He feels rather demoralized at this point because of the cognitive problems and persistent headache have significantly disrupted his ability to work. He does appear distressed. He was fully cooperative with all aspects of the examination, but displayed some frustration with poor performance on some of the measures.

TESTS ADMINISTERED:

Wechsler Adult Intelligence Scale - Revised
Wechsler Memory Scale - Revised
Halstead-Reitan Neuropsychological Test Battery
Raven Coloured Progressive Matrices
Wisconsin Card Sorting Test
Wide Range Achievement Test

LDS Hospital Medical Office Building, Suite 106, 370 East 9th Avenue, Salt Lake City, Utah 84103
(801) 321-5755 FAX (801) 321-5704

RE: Joe Rohan
May 14, 1997
Page 2

Word Fluency
Boston Naming Test
Hooper Visual Organization Test
Facial Recognition Test
Judgment of Line Orientation Test
Pocket Smell Test
TNM
Rey 15 Item
Beck Depression Inventory
Beck Anxiety Inventory
SCL-90-R
Faschingbauer Short Form MMPI
Rey Auditory Verbal Learning Test
Rey-Osterrieth Complex Figure Design
Warrington Recognition Memory Test

Psychometrist: Lynne Bradford

TEST RESULTS:

INTELLECTUAL FUNCTIONING:

WAIS-R Results:

Verbal IQ score = 115

Information	14
Digit Span	9
Vocabulary	11
Arithmetic	13
Comprehension	13
Similarities	13

Performance IQ score = 85

Picture Completion	4
Picture Arrangement	7
Block Design	7
Object Assembly	5
Digit Symbol	8

Full Scale IQ score = 108

Results of intellectual assessment indicate verbal abilities significantly above non-verbal. Overall, there is what appears to be a reduction in intellectual performance in this individual that should be functioning in the bright normal to low superior range, based on his academic and vocational history.

ACHIEVEMENT FUNCTIONING:

COPY

WRAT-III Results:

	Standard Score	Percentile	Grade Level Estimate
Reading	107	68	H.S.+
Spelling	108	70	H.S.+
Arithmetic	106	66	H.S.+

Academic functioning is intact in all basic modalities, as evidenced by the WRAT-R-III results.

PERSONALITY/EMOTIONAL FUNCTIONING:

The patient's BDI score was a 22, with a BAI score of 12. Multiple symptom endorsement is present on SCL-90-R as well as the Faschingbauer Short Form MMPI. It is likely that the patient is experiencing some significant affective changes at this point that likely are of clinical significance.

NEUROPSYCHOLOGIC FUNCTIONING:

This patient is ambidextrous, with left hand preference for writing. He is right eye dominant, but with a mixed footedness. Clinical motor exam is within the broad context of normal, although the patient does move slowly. Grip strength was down on the left, as were finger oscillation speeds. Grip and finger oscillation speed were intact on the right. The patient completed the Tactual Performance Test within appropriate time limits, but performed marginally on spatial memory and localization tasks. Sensory-perceptual examination reveals some difficulties with tactile perception, which may be due to attentional factors. There were no lateralized findings suggestive of somatosensory, olfactory, visual, or auditory deficits. Language evaluation revealed no specific dysphasic indicators. Fluency was adequate. Memory studies do reflect poor memory performance on many tasks. For example, on the Wechsler Memory Scale - Revised, the following index scores were obtained:

Verbal Memory Index = 65
Visual Memory Index = 97
General Memory Index = 71
Attention/Concentration Index = 56
Delayed Recall Index = 68

The patient had a poor performance on the initial trial of the Rey Auditory Verbal Learning Test and also following the interference trial. Copy of the Rey Osterrieth Figure was poor, as was retention. The patient performed adequately on the verbal aspect of the Warrington, but poorly on the facial recognition component. Basic visual-spatial function was intact. The patient performed very poorly on the Wisconsin Card Sort.

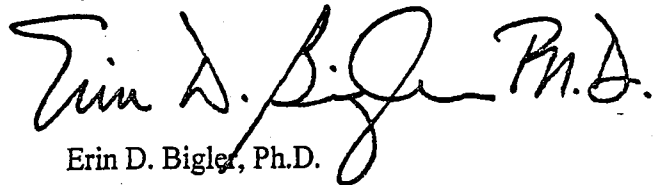
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IMPRESSION:

Deferred until additional medical records are obtained. By history, this patient may have sustained a concussive type head injury, with persistent post-concussive symptomatology. He also appears to be showing a significant affective response, with endorsement of significant levels of depression with somatic focus. These affective changes may be major factors in producing disruption in cognitive function.

RECOMMENDATIONS:

This patient's neuropsychological examination does reflect disrupted cognitive performance, with performance being substantially below what would be expected, given this patient's educational and vocational background. MRI findings, according to the report of April 25, 1997, "Evidence of moderate generalized atrophy. Scattered, few, small punctate T2 hyperintensities could reflect residue of axonal shear injury. No focal brain encephalomalacia is appreciated". Accordingly, based on the fact that the patient likely had a concussive head injury, has persistent cognitive sequela, and the MR demonstrates some irregularities, an SPECT exam appears in order. One of the most effective neuroimaging studies in assisting with the overall neuropsychological evaluation in assessment of a head injury patient is the SPECT examination and, accordingly, it is recommended.


Erin D. Bigler, Ph.D.

EDB:srw

COTTONWOOD HOSPITAL MEDICAL CENTER

SPEECH/LANGUAGE EVALUATION

REFERRING PHYSICIAN: ROBERT M. MISKA, M.D.

REFERRAL/DIAGNOSES: Joseph Rohan is a 46 year-old gentleman who was involved in a motor vehicle accident on 1-23-97. It was reported that he was a restrained driver of a car which was hit on the left hand side and caused him to "side swipe" a car on his right. There is a question as to whether he suffered unconsciousness. He went to an InstaCare where he was evaluated and then sent to LDS Hospital for cervical x-rays. Those x-rays were found to be normal. He was released the same day and went home. He did experience some nausea and vomiting following the accident. He was seen by Dr. Nord who ordered a cranial MRI which was completed on 4-25-97. Interpretation of that scan was that Mr. Rohan suffered a subcortical axonal shearing resulting in a brain injury.

Following that evaluation he was referred to Erin Bigler, Ph.D. a neuropsychologist for a neuropsychological evaluation. This evaluation was completed on 5-14-97. Results from that evaluation will be discussed later in this report. Mr. Rohan was referred by his primary care physician to be seen by Robert M. Miska, M.D. and he was seen on 5-22-97. At that time Dr. Miska indicated that Mr. Rohan had suffered a closed head injury, cervical strain-sprain syndrome and posttraumatic headaches. He was referred for a speech/language cognitive evaluation to assess his current level of function and to create a treatment plan to facilitate his functioning.

Mr. Rohan received a bachelors degree and previously has worked as a biomedical research engineer and a production manager chemist. He most recently completed law school and has been in a private law practice for just over one year. He reported that following the accident in January that he did not work until July 1997. At that time he resumed a full case load in his practice.

Mr. Rohan has been married for one year. He previously lived with his current wife for nine years before they were married. He reported that there have been significant difficulties in their relationship since the time of his accident.

Mr. Rohan reported that he currently is taking prescription medications as follows: Imitrex p.r.n. for severe headaches; Percocet p.r.n. for severe headaches; Cholan 240 mg q.d.; sodium naproxen 1100 mg q.4h.; Prozac 20 mg q.d.

TESTING PROCEDURES: Mr. Rohan's medical records were reviewed. A thorough interview was conducted with Mr. Rohan. Portions of the

SPEECH/LANGUAGE EVALUATION

PT. NAME: ROHAN, JOSEPH
Date of Birth: 03/02/51

THERAPIST: Mark L. Fox, M.S., CCC-SLP
Date of Evaluation: 11/05/97

material two and three times in order to ascertain what is being communicated.

Mr. Rohan reports experiencing significant fatigue and that as he becomes more tired he is not able to accomplish or complete the activities which he needs to at home or at work. Mr. Rohan reports having difficulties remembering to pay bills and is "always bouncing checks". All of these difficulties are significantly frustrating to Mr. Rohan.

Portions of the Ross Information Processing Assessment-2 were administered. Mr. Rohan demonstrated the following performance:

SUBTEST	STANDARD SCORE	% RANK	SEVERITY
immediate memory	11	63	moderate
problem solving and abstract reasoning	9	37	severe
organization	13	84	mild to moderate
auditory processing and retention	14	91	normal

(mean = 10, standard deviation = 3).

The Ross Information Processing Assessment-2 was normed on individuals who had suffered a brain injury. A mean score of ten represents a moderate dysfunction.

Mr. Rohan demonstrates significant difficulties in attending to simple information as well as in higher level problem solving and organizational skills.

The Functional Cognitive Evaluation, an informal evaluation of cognitive function was administered. Mr. Rohan demonstrated the ability to visually scan a simple task with 95% accuracy. He initially demonstrated appropriate scanning across the page but part of the way through the test measure, he became disorganized in his approach and randomly selected the stimulus items. On a moderately difficult visual word search attention task, Mr. Rohan demonstrated 20% accuracy. He did not use any visual or physical tracking techniques and did not mark off the target words when they were found. He became somewhat frustrated with this task.

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PT. NAME: ROHAN, JOSEPH
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Date of Evaluation: 11/05/97

COTTONWOOD HOSPITAL MEDICAL CENTER**SPEECH/LANGUAGE EVALUATION**

On an auditory listening attending task, where he needed to identify two items, he demonstrated 80% accuracy. He demonstrated slow speed of information processing on this task. When distraction were introduced his abilities decreased to 70%. On a moderately difficult auditory attention task without distractions, Mr. Rohan demonstrated 30% accuracy. He was also asked to sequence in alphabetical order, six words in a sentence, which he was unable to complete.

Mr. Rohan was asked to recall information presented with a five minute timed delay. He demonstrated 67% accuracy in completing this activity. It was interesting to note that Mr. Rohan demonstrated 100% accuracy when semantic cuing was provided.

Mr. Rohan was asked to listen to paragraph length material and then answer comprehension questions immediately following the information presentation. He demonstrated 88% accuracy on this task. On visual reading tasks, Mr. Rohan demonstrated 60% comprehension of paragraph length material and 70% accuracy on page length information.

Mr. Rohan was asked to sequence six steps of common tasks. He demonstrated 53% accuracy on this task. It was apparent that Mr. Rohan has difficulties synthesizing and organizing the steps for these simple activities.

Mr. Rohan was asked to locate information in the white and yellow pages of the phone book. He completed these activities with 100% accuracy.

Mr. Rohan was asked to complete simple deductive reasoning tasks which he completed with 50% accuracy. On the moderately difficult problem solving tasks he was unable to complete these activities. This is especially significant in that the type of task which was presented is similar to activities which Mr. Rohan was required to complete successfully prior to his admission to law school.

Mr. Rohan was asked to generate ten words regarding a given topic. He completed this activity with 90% accuracy. He was then asked to generate three sentences utilizing one word for each of the sentences from the list generated. He completed this with 100% accuracy. It is important to note, however, that he utilized simple linguistic forms in his sentences to complete this task. Mr. Rohan was then asked to generate a paragraph utilizing one of the sentences as a theme for that paragraph. He demonstrated 100% accuracy on this activity.

SPEECH/LANGUAGE EVALUATION

PT. NAME: ROHAN, JOSEPH
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THERAPIST: Mark L. Fox, M.S., CCC-SLP
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SPEECH/LANGUAGE EVALUATION

Ross Information Processing Assessment II, as well as an informal test measure. The Functional Cognitive Evaluation was administered.

TEST RESULTS: As indicated above, Mr. Rohan underwent a neuropsychological evaluation conducted by Erin Bigler, Ph.D., neuropsychologist. Dr. Bigler indicated that results of intellectual assessment indicated verbal abilities significantly above his nonverbal abilities and overall there was what appeared to be a reduction of intellectual performance in an individual that should be functioning at a higher level based on his academic and vocational history. He also demonstrated poor memory performance on many of the tasks presented. He demonstrated a low attention, concentration index. He also had difficulties with higher level problem solving and organizational skills. Dr. Bigler also indicated that he felt depression was also a contributing factor to Mr. Rohan's level of function.

A thorough interview was conducted with Mr. Rohan with regards to his current level of function. He indicated that he continues to suffer difficulties with his neck and range of motion. He experiences frequent headaches which range in severity from mild to severe. He reported that he had never had a headache prior to his automobile accident. He also reported that he has had difficulties with his balance.

Mr. Rohan reported that he has significant difficulties focusing his attention on tasks. He indicated that he becomes easily distracted by things which occur in the environment. He also has significant difficulties with remembering information and this becomes very problematic for him.

He indicated that it takes a lot longer to figure things out and at times he has difficulties coming up with appropriate solutions and plans. He reports that he has difficulties accomplishing tasks both at home and at work. He reports having difficulties figuring things out and has had significant difficulties with calculations and completing math facts and processes.

Mr. Rohan reports experiencing difficulties in his abilities to understand information presented both auditorially and visually. He indicates that often time he becomes distracted or has difficulties understanding what is being said. He also indicated that he has a hard time remembering what he hears and reads. He reports reading

SPEECH/LANGUAGE EVALUATION

PT. NAME: ROHAN, JOSEPH
Date of Birth: 03/02/51

THERAPIST: Mark L. Fox, M.S., CCC-SLP
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COTTONWOOD HOSPITAL MEDICAL CENTER**SPEECH/LANGUAGE EVALUATION**

Again, it is important to note that he utilized simplistic sentences in completing this activity which would not be expected for a gentleman who was functioning prior to his accident at such a high level.

Mr. Rohan was asked to write a check which he completed with 100% accuracy. He was then asked to organize information into a check register, which he completed with 67% accuracy. He left out a date of the deposit and also left out information regarding who checks had been written to. Mr. Rohan was then asked to balance a check register. He completed this with 80% accuracy.

Mr. Rohan was asked to generate a menu for two days for all meals and then write a list of items that would need to be purchased in order to make those meals. Mr. Rohan demonstrated an abbreviated menu which was not complete. He also did not generate a complete shopping list. He did, however, utilize a good organizational strategy for this activity.

Through the course of this evaluation Mr. Rohan demonstrated a difficult time switching from task to task. He also became overwhelmed many times during the evaluation, becoming frustrated with his inability to complete certain activities.

DIAGNOSTIC IMPRESSIONS: Mr. Rohan is a 46 year-old gentleman who suffered a traumatic brain injury resulting from an automobile accident on 1-23-97. He has reported significant difficulties since his accident in completing both activities of daily living and work related activities. Findings from the evaluation indicate that Mr. Rohan demonstrates moderate speech/language cognitive deficits resulting from his accident.

Specifically, Mr. Rohan experiences significant difficulties attending to important information for a given task. He experiences a decrease in his attentional abilities as the complexity of the information increases and as distractions are introduced. This has and will continue to significantly impact his abilities to complete activities at home and work. This also has significant impact on his memory function.

Mr. Rohan demonstrates significant memory difficulties and is unable to recall information presented even for a short period of time. It is felt that this is in part due to the decreased attention he is

SPEECH/LANGUAGE EVALUATION

PT. NAME: ROHAN, JOSEPH
Date of Birth: 03/02/51

THERAPIST: Mark L. Fox, M.S., CCC-SLP
Date of Evaluation: 11/05/97

COTTONWOOD HOSPITAL MEDICAL CENTER

SPEECH/LANGUAGE EVALUATION

experiencing. This has and continues to significantly impact his abilities to complete his work responsibilities.

Mr. Rohan demonstrates difficulties with organizing and sequencing functional information. This effects his abilities to plan out, organize and complete activities of daily living and work assignments. This is consistent with his reports of having difficulties completing activities at work and at home.

Mr. Rohan's difficulties with organization and sequencing impact his abilities to complete functional problem solving. This is especially important in that law practice requires both organization and problem solving in order to successfully complete responsibilities in organizing and presenting cases before the court.

Mr. Rohan is experiencing significant fatigue which also effects his abilities to complete activities of daily living and work assignments. It is felt that the decrease in his attentional abilities impacts his endurance and as a result he becomes fatigued. This will need to be managed more effectively if Mr. Rohan is to be successful.

Mr. Rohan is also experiencing significant communicative difficulties as a result of his brain injury. He demonstrates a flat affect in his verbal communication. He is demonstrating significant difficulties with both auditory and reading comprehension. These will significantly impact his ability to meet with his clients and prepare his legal cases appropriately. He also experiences some difficulties with written expression which will impact his abilities to complete written briefs.

Overall, it is felt that Mr. Rohan would benefit from speech/language cognitive therapy and that significant improvement in his function could be demonstrated with improvement in underlying cognitive processes and in utilizing compensatory strategies.

FUNCTIONAL INDEPENDENCE MEASURES:

AREA	INITIAL	GOAL
Attention	4	6
Memory	4	6
sequencing and Organization	4	6
Problem Solving and Reasoning	4	6
Auditory Comprehension	5	7

SPEECH/LANGUAGE EVALUATION

PT. NAME: ROHAN, JOSEPH
Date of Birth: 03/02/51

THERAPIST: Mark L. Fox, M.S., CCC-SLP
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COTTONWOOD HOSPITAL MEDICAL CENTER

SPEECH/LANGUAGE EVALUATION

Reading Comprehension	4	6
Verbal Expression	6	7
Written Expression	5	6

FREQUENCY AND DURATION OF TREATMENT: Mr. Rohan should be seen in speech/language cognitive therapy one time per week for one hour sessions. It is anticipated that this treatment regimen will be necessary for eight to ten months to improve Mr. Rohan's speech/language cognitive function.

PATIENT/FAMILY GOALS: Mr. Rohan expressed a desire to be able to successfully complete his activities of daily living at home and to complete his work responsibilities in his law practice.

TREATMENT/DISCHARGE GOALS:

1. Mr. Rohan will attend to moderate to complex information in the presence of distractions with 90% accuracy so that he can learn new information and complete tasks necessary in his law practice.
2. Mr. Rohan will recall information presented with a 60 minute time delay with 90% accuracy to facilitate his abilities to recall events from day to day.
3. Mr. Rohan will utilize a memory book and other compensatory strategies with 90% independence to facilitate his abilities to organize and recall functional information.
4. Mr. Rohan will organize and sequence functional information with 90% independence to increase his abilities to complete activities of daily living and his work assignments.
5. Mr. Rohan will complete functional problem solving with 90% independence utilizing compensatory strategies when necessary to facilitate his abilities to meet day to day challenges and complete his work responsibilities.
6. Mr. Rohan will read college level information demonstrating 90% comprehension of the material to facilitate his abilities to read legal information necessary for his work.
7. Mr. Rohan will prepare and write a legal brief with 90% independence so that he can complete responsibilities necessary for

SPEECH/LANGUAGE EVALUATION

PT. NAME: ROHAN, JOSEPH
Date of Birth: 03/02/51

THERAPIST: Mark L. Fox, M.S., CCC-SLP
Date of Evaluation: 11/05/97

carrying out his profession.

8. Mr. Rohan will demonstrate successful completion of his job for three months.

If you have any questions or if I can provide further information, please feel free to contact me at 269-2089.



Mark L. Fox, M.S., CCC-SLP
SPEECH/LANGUAGE PATHOLOGY

SPEECH/LANGUAGE EVALUATION

PT. NAME: ROHAN, JOSEPH
Date of Birth: 03/02/51

THERAPIST: Mark L. Fox, M.S., CCC-SLP
Date of Evaluation: 11/05/97



EXHIBIT "G"

**INTERMOUNTAIN SLEEP DISORDERS CENTER
LDS HOSPITAL
FINAL REPORT**

NAME: ROHAN, Joseph W.
BIRTHDATE: 2 March 1951 (age 46)
TELEPHONE: 801-486-1236
ADDRESS: P.O. Box 520781, Salt Lake City, UT 84152
REFERRAL: Phil Roberts, M.D., Robert Miska, M.D.
DATE OF STUDY: 19 and 20 July 1998

REASON FOR SLEEP STUDY: Evaluate for causes of poor sleep quality including sleep apnea, periodic limb movement disorder, etc.

CLINICAL SUMMARY: This 46-year-old male has a complicated medical history which apparently relates to a motor vehicle accident January 1997 at which point he sustained a closed head injury. Since then, he has had head and neck discomfort and difficulty sleeping and maintaining alertness. He has a chaotic sleep-wake and work schedule. He has variable sleep quality often interrupted by awakenings. His sleep seems to be disturbed by tinnitus and chronic neck pain. He has had difficulty remaining fully alert and becomes drowsy while driving and at work. There is no history of cataplexy. There is no history of snoring or observed apneas but he has possibly had indications of restless legs. Clinical consultation notes should be reviewed for more details. Present medications include Prozac 60 mg q.d., Imitrex, naproxen, and Restoril. Physical examination reveals that he is mildly obese (weight 195 pounds, height 69½ inches, and BMI 29). Neck circumference measured 44 cm. General physical examination was otherwise unremarkable.

BASELINE POLYSOMNOGRAPHY (19 July 1998):

STUDY PROTOCOL: The patient was studied while breathing room air. Electrophysiologic sleep parameters included: Central (C3/A2 or C4/A1) and occipital (O1/A2 or O2/A1), electroencephalogram (EEG), right and left electrooculogram (EOG), and submental is electromyogram (EMG). Cardiac rhythm was continuously recorded (ECG). Periodic limb movements were monitored by anterior tibialis electromyogram (EMG). Airflow was detected by oral-nasal thermistors and respiratory effort was determined by measurement of chest and abdomen motion using pneumatic bands. Arterial pulse oximetry (SpO₂) was measured with an Ohmeda 3700 oximeter in the fast response mode from the finger and the SpO₂ was simultaneously recorded on a strip chart at a slow paper speed. Analog data was digitized, transferred from the hard drive to the local area network and after being analyzed, the results archived on CD-ROM. Raw data was manually scored in 30 second epochs for sleep stages using standard criteria (Rechtschaffen & Kales, 1968). Electrophysiologic arousals were manually scored according to ASDA criteria (Sleep 1992;15:(2) 173-184). Apneas and hypopneas were scored on the basis of absence or reduction of airflow for 10 or more seconds, respectively. Obstructive and mixed events were defined by the presence of respiratory effort and/or characteristic changes of the inspiratory flow pattern. The Respiratory Disturbance Index (RDI) was computed as the total of all respiratory events divided by the total sleep time in hours.

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TECHNICAL QUALITY OF STUDY: Satisfactory.

MORNING QUESTIONNAIRE:

Sleep Latency: 1 hour.
Total Sleep Time: 4.5 hours.
Number of Awakenings: 7
Quality of Sleep: Same as usual.

ELECTROPHYSIOLOGIC MEASUREMENTS OF SLEEP: Sleep quality was extremely poor, but satisfactory for evaluation. The total sleep time (TST) measured only 3.3 hours with a sleep efficiency of 41% (normal $\geq 90\%$) and REM sleep was completely absent. There were frequent awakenings and he was unable to sustain sleep after approximately 0300 hours. There were 41 awakenings and the arousal index measured 12/hr sleep. Periodic limb movements were observed in moderate frequency (PLMS index 19/hr sleep). There was no evidence of alpha intrusion. He appeared to have more eye movements than average during all stages of sleep, but there was no clear-cut REM sleep.

RESPIRATORY MEASUREMENTS: An arterial blood gas was obtained with the patient in the supine position during the awake state while breathing room air for comparison with oximetry. The results are as follows:

	FIO ₂	SaO ₂	PaO ₂	COHB	HB	pH	PaCO ₂	HCO ₃
ABG	0.21	95	72	0	15.8	7.43	34	22

Arterial blood gas measurements were within normal limits. Baseline arterial oxygen saturation by pulse oximetry (SpO₂) measured 92% during quiet wakefulness in the recumbent position. The average SpO₂ measured 94% throughout the recording. There were very few definable respiratory events although the oximetric pattern was consistently irregular, apparently a reflection of his unstable sleep-wake state. The total number of apneas and hypopneas measured 8 which results in a respiratory disturbance index (RDI) of 2/hr sleep.

CLINICAL OBSERVATIONS: He was restless but there was no abnormal behavior observed or excessive motor activity.

ELECTROCARDIOGRAPHIC OBSERVATIONS: Technically suboptimal.

PSYCHOMETRIC TESTING:

The following interpretations are based on a reading of psychometric test data without face to face contact with the patient. The data are intended to serve for screening purposes only and cannot be used to make definitive statements about the patient's diagnosis. The MMPI-2 validity scales were normal. The following clinical scales were significantly elevated (T score): Hs (88), D (74), and Hy (91).

MULTIPLE SLEEP LATENCY/MAINTENANCE OF WAKEFULNESS TESTING (20 July 1998):

STUDY PROTOCOL: Following all-night polysomnography, a combined MSLT and MWT was performed as follows: The degree of pathologic sleepiness was assessed by asking the patient to relax and fall asleep during five (5) twenty minute naps beginning at 10:00 hours. Opportunities to sleep were repeated every two hours and the patient was maintained as alert as possible in between nap periods. No

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more than 15 minutes of sleep were allowed during any nap. The ability to maintain wakefulness was tested between naps one time in the morning and one time in the afternoon by asking the patient to remain awake for 40 minutes in a soporific environment. Sleep latency was defined as the time from "lights out" until the first 30-second epoch of any sleep stage according to Rechtschaffen & Kales criteria. REM latency was defined as the time from sleep onset to the first 30-second epoch of stage REM sleep. The Steer Clear Driving Performance Test was administered at 1528 for 30 minutes with a speed of 70 mph. Conners Continuous Performance Test (CPT) was administered at 1030.

TIME	TEST	SC/CPT DATA	SLEEP LATENCY (min to sleep onset)	REM SLEEP LATENCY (min after sleep onset to REM sleep)
0915	MWT		40.0	---
1000	MSLT		7.0	---
1030	CPT	8.95		
1200	MSLT		7.5	---
1400	MSLT		10.5	---
1515	MWT		40.0	---
1600	MSLT		3.0	---
1528	Steer Clear	9%		
1800	MSLT		20.0	0/5
		Mean Sleep Latency on MSLT:	9.6	No. REM sleep onsets: 0/5
		Mean Sleep Latency on MWT:	40.0	
	Normal Values:			
	MSLT	≥ 10 minutes		
	MWT	≥ 30 minutes		
	Steer Clear	≤ 2%		
	CPT	≤ 5.0		

CONCLUSIONS:

1. Polysomnography is not diagnostic of any specific sleep disorder such as sleep apnea, periodic limb movements, etc. Sleep architecture was notable for the marked disruption and poor continuity with complete absence of REM sleep. These findings are nonspecific and are probably a manifestation of underlying neuropsychological dysfunctioning. The eye movements during sleep were somewhat greater than average, possibly related to Prozac.
2. As indicated in the clinical report, difficulties with sleeping are also related to his chaotic sleep-wake schedule and counterproductive sleep habits.

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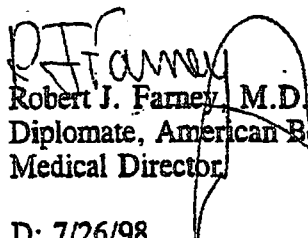
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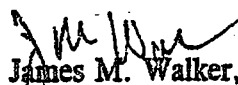
3. The MSLT revealed moderate pathologic sleepiness but no evidence of sleep onset REM. If the last nap is excluded, the mean sleep latency measured 7.0 minutes. The clinical presentation and these findings therefore reasonably exclude the diagnosis of narcolepsy, but substantiate the presence of hypersomnia. The basis of his hypersomnia is complex but relates in part to chronic insufficient sleep.
4. Maintenance of Wakefulness tests were within normal limits and indicate the capacity of remaining fully awake.
5. Measurements of attentiveness were markedly abnormal. The Steer Clear Driving Performance test measured 9% (normal $\leq 2\%$). The Conner's Continuous Performance test revealed slow reaction time with many errors consistent with attention deficit disorder. The results of the daytime studies indicate an increased risk for motor vehicle accidents, although the exact risk cannot be quantified.
6. The MMPI-2 findings are consistent with a somatic disorder with underlying depressive features. The relationship of these findings to his closed head injury is unclear.

RECOMMENDATIONS:

1. Further evaluation in the sleep laboratory with nasal CPAP is not indicated.
2. Therapy with CNS stimulants may be appropriate to improve attentiveness but he does not have narcolepsy. Attentiveness may also improve with efforts to consolidate his sleep pattern and to optimize neuropsychological functioning.
3. He would benefit from further counseling regarding standard sleep hygiene principles. A sedating antidepressant such as trazodone or Remeron should be considered as adjunctive therapy to Prozac.


Robert J. Farney, M.D.
Diplomate, American Board of Sleep Medicine
Medical Director

D: 7/26/98
T: 7/27/98
Job #32768


James M. Walker, Ph.D.
Diplomate, American Board of Sleep Medicine
Director RJF/ch

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Intermountain Sleep Disorders Center
8th Avenue, C Street
Salt Lake City, Utah 84143
(801) 321-3617

Patient Name: Rohan, Joseph
Date of Birth: 03/02/1951
Sex: Male
Height: 0 in
Weight: 0 lbs

Test Date: 07/19/1998

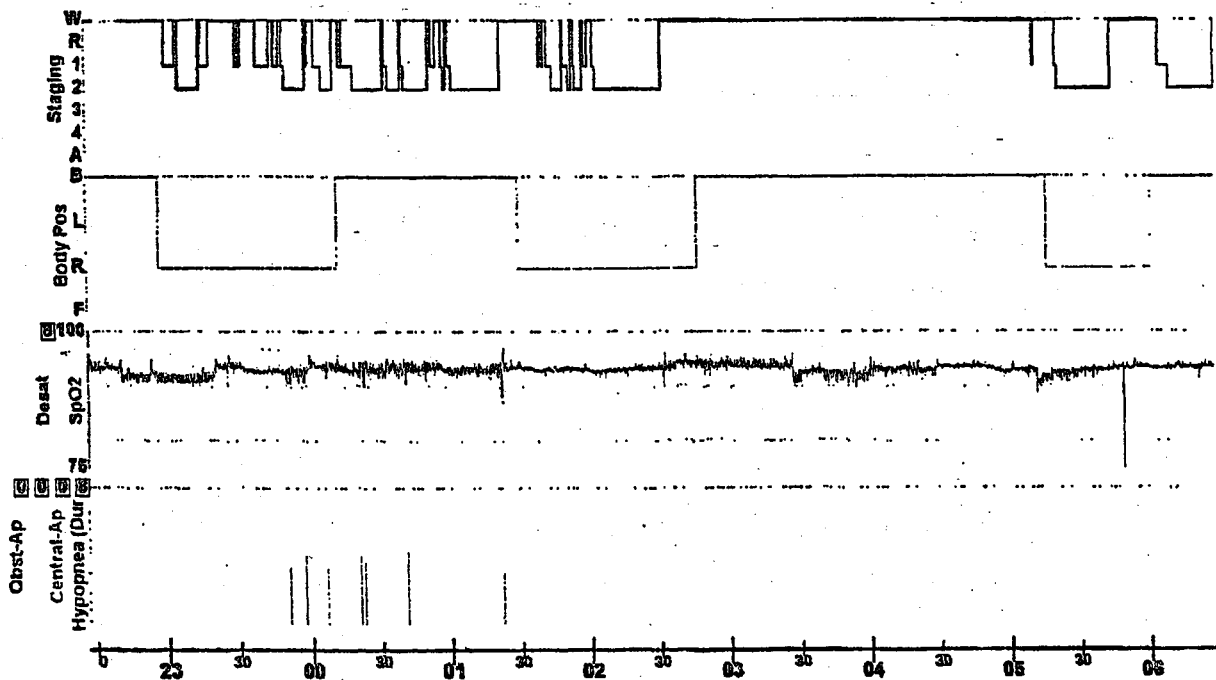
Night # 1

Staging Summary Information

Recording start time :	22:22:44	Recording end time :	06:31:28
Analysis start time :	22:26:44	Analysis end time :	06:28:14
Total number of epochs :	963	Epoch size (sec) :	30
Total recording time (hr) :	8.0	Total sleep time (hr) :	3.3
Number of Awakenings :	27	Total wake time (hr) :	4.7
Sleep Efficiency (%) :	41.4	Sleep Maintenance Effic(%) :	44.4
Sleep onset latency (min) :	33.5	Stage REM latency (min) :	0.0

Staging Table

Sleep Stage	Latency (mins)		Duration (mins)	%TIB	%Sleep Time
	Absolute	Relative			
Wake	--	--	282.0	58.6	--
Stage REM	33.5	0.0	0.0	0.0	0.0
Stage 1	33.5	0.0	47.5	9.9	23.8
Stage 2	38.5	5.0	152.0	31.6	76.2
Stage 3	0.0	0.0	0.0	0.0	0.0
Stage 4	0.0	0.0	0.0	0.0	0.0
Artifact	--	--	0.0	0.0	--



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Night # 1

	Events Summary			
	Obstructive	Mixed	Central	Hypopnea
REM Events	0	0	0	0
Min (secs)	0.0	0.0	0.0	0.0
Max (secs)	0.0	0.0	0.0	0.0
Mean	0.0	0.0	0.0	0.0
Index (/hr)	0.0	0.0	0.0	0.0
REM Index	0.0	0.0	0.0	0.0
NREM Events	0	0	0	8
Min (secs)	0.0	0.0	0.0	16.0
Max (secs)	0.0	0.0	0.0	22.0
Mean	0.0	0.0	0.0	18.2
Index (/hr)	0.0	0.0	0.0	2.4
NREM Index	0.0	0.0	0.0	2.4
Event Totals	0	0	0	8
Index Totals	0.0	0.0	0.0	2.4
Waking Events	0	0	0	0
Apnea (O+M+C) Index =	0.0			Apnea + Hypopnea Index = 2.4

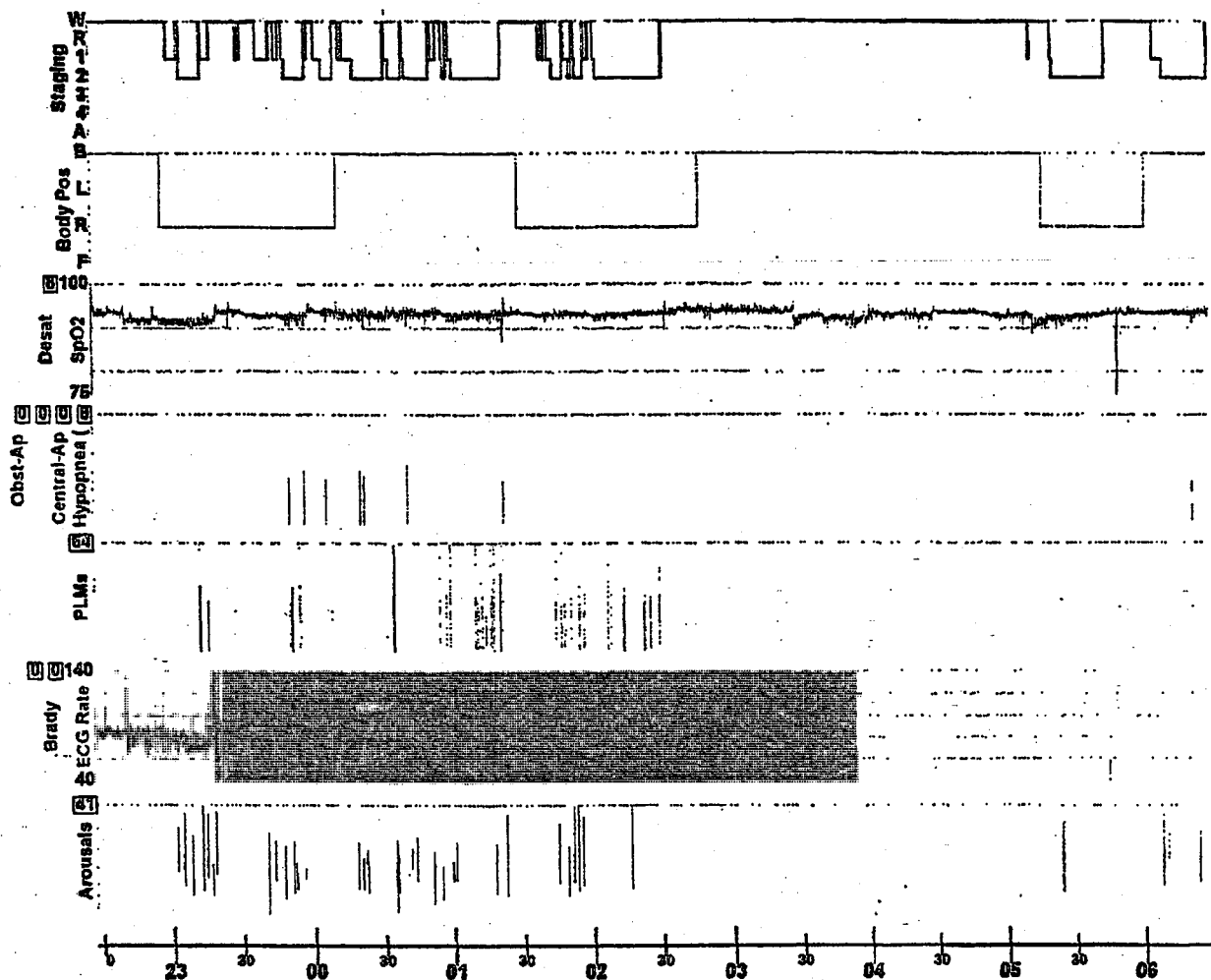
Respiratory Events Summary			
	REM	Non-REM	Sleep
Apneas	0	0	0
Hypopneas	0	8	8
Apneas+Hypopneas	0	8	8
Apnea min duration (sec)	0	0	0
Apnea max duration (sec)	0	0	0
Apnea mean duration (sec)	0	0	0
Apnea Index (/hr)	0	0	0
Apnea Arousal Index (/hr)	0	7	7
Hypopnea min duration (sec)	0	16	16
Hypopnea max duration (sec)	0	22	22
Hypopnea mean duration (sec)	0	18	18
Hypopnea Index (/hr)	0	2	2
Hypopnea Arousal Index (/hr)	0	0	0
RDI (/hr)	0	2	2
RAI (/hr)	0	7	7

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Night # 1



OVERALL SUMMARY BASED ON COMPARISON TO GENERAL POPULATION DATA

MEASURE	VALUE	T-SCORE	PERCENTILE	GUIDELINE
# Hits	297 (91.7%)	*	99.00	MARKEDLY ATYPICAL
# Omissions	27 (8.3%)	*	99.00	MARKEDLY ATYPICAL
# Commissions	17 (47.2%)	56.00	75.79	within average range
Hit RT	487.96	36.78	11.11	a little slow
Hit RT Std Error	12.25	77.55	99.00	MARKEDLY ATYPICAL
Variability of SEs	19.22	71.11	98.25	MARKEDLY ATYPICAL
Attentiveness (d')	1.48	71.74	98.85	MARKEDLY ATYPICAL
Risk Taking (B)	0.37	100.00	99.00	MARKEDLY ATYPICAL
Hit RT Block Change	-0.09	8.61	1.00	within average range
Hit SE Block Change	-0.20	27.24	1.15	within average range
Hit RT ISI Change	0.00	42.43	22.49	within average range
Hit SE ISI Change	0.07	56.12	72.96	within average range

* For hits and omissions, nature of data dictates use of percentiles only.

Conversions were made for HITS, HIT RT, and d' so that high T-scores (i.e., ≥ 60) provide evidence of a problem for ALL measures listed in the table. For example, without a conversion, a HITS T-score of 33 would indicate a lot of errors and a potential attention problem. This score of 33 is 17 BELOW the normative average of 50. To make high scores consistently indicative of a problem, this score is converted to 17 points ABOVE 50 which is 67.

Note that percentile values higher than 90 or 95 correspond to atypical responses. Percentile values must be much higher than T-scores before being considered atypical.

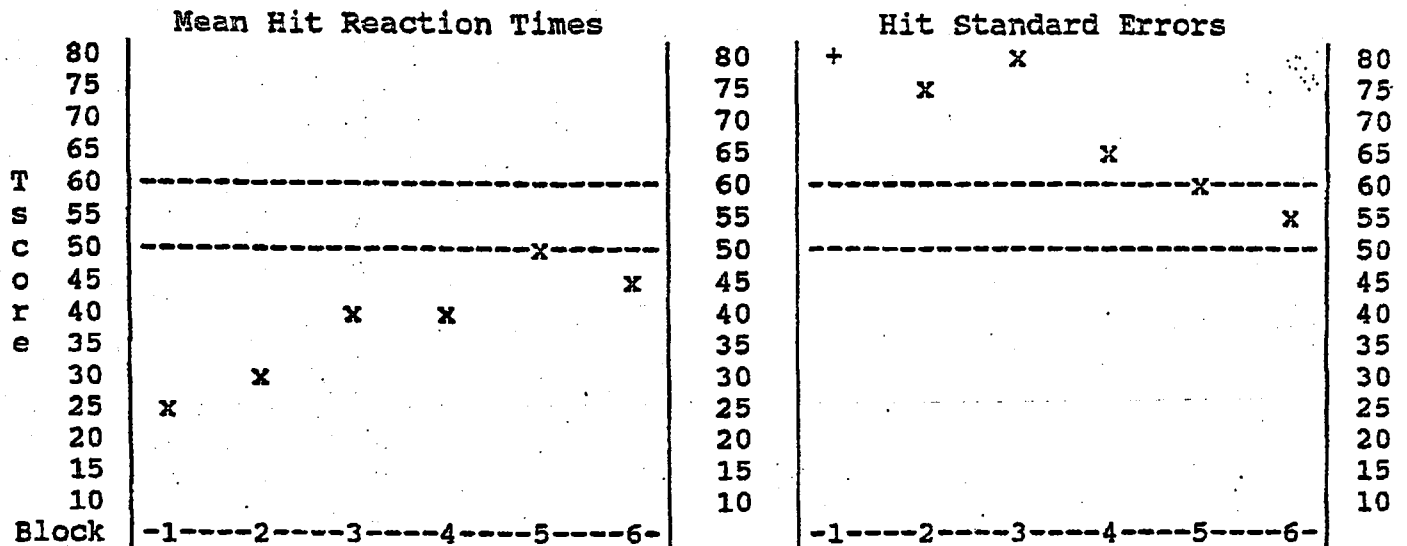
For B, both high AND low scores are noteworthy. Low scores indicate too frequent responding usually related to impulsivity. High T-scores for B indicate atypically low number of responses usually related to inattention.

The more measures showing up as atypical, the more likely that a problem exists. The presence of only one atypical measure does not usually indicate a problem.

DATA ARE COMPARED TO THE GENERAL POPULATION STUDY GROUP

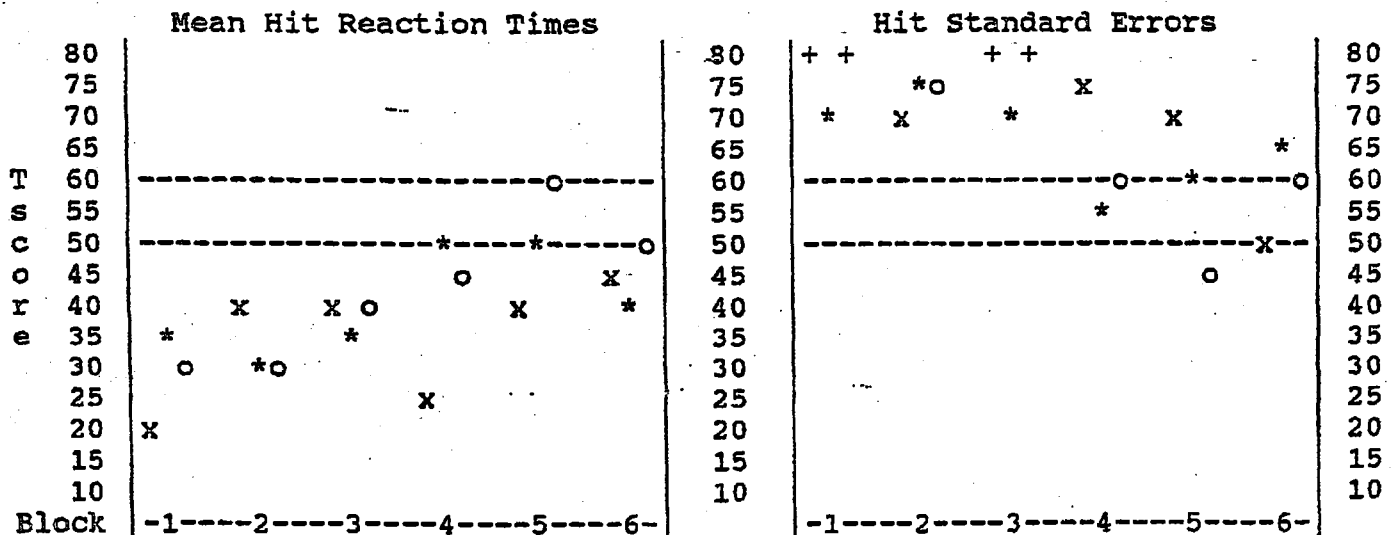
Data are collapsed across the 3 ISIs within each block

Legend: x = in range, + = out of range



Data are for each of the 3 ISIs within each block

Legend: x = 1 sec ISI, * = 2 sec ISI, o = 4 sec ISI, + = out of range



Confident

NAME: Joseph Rohan
DOB: 03/02/51
AGE: 49 years old
EDUCATION: Law School

REFERRED BY: Stephen Trayner
TESTED BY: Elaine Clark
TEST DATE: 05/03/00

According to Mr. Rohan, he was returning home around 7:30 AM from dropping his wife off at work when hit by a truck that was driven by a 16 year-old male. The driver was described by Mr. Rohan as traveling too fast for the road conditions (i.e., it was snowy and the roads were slippery). His car, a Subaru, was hit in the driver's front side and then pushed into another vehicle sitting on the side of the road. Mr. Rohan was wearing a seat belt and did not know if he actually hit his head on anything in the car. He did recall falling asleep while waiting for the wrecker to arrive. He also reported being confused but denied loss of consciousness. Mr. Rohan said that he recalled swearing at the driver and remembered wanting the police officer to cite him. The driver, however, was not given a ticket, reportedly due to the fact the officer was too busy. Mr. Rohan declined an ambulance, instead he took a cab to the Sugarhouse InstaCare.

Records indicate that Mr. Rohan first saw Dr. Phillip Roberts on 1/28/97. He was complaining of dizziness, nausea, and memory problems. Mr. Rohan also went back to the InstaCare the following day (i.e., 1/29/97) for a follow-up visit. At that time he was reporting ongoing problems with neck pain, as well as memory disturbance. He was consequently diagnosed with a concussion. On the same day, Mr. Rohan consulted with a neurosurgeon at the Intermountain Spine Institute, Dr. William Muir. According to Dr. Muir's record, Mr. Rohan's major complaint at the time he saw him was neck pain (and limited range of motion). He also reported to Dr. Muir that he was having memory problems. Dr. Muir diagnosed him with severe cervical strain and

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hypermobility and recommended he continue wearing the collar and taking the prescribed anti-inflammatories. He was also given Lortab for pain and advised to start physical therapy (PT).

Dr. Muir saw him again on 4/2/97. At that time Mr. Rohan denied improvement in his symptoms and indicated he could not sleep as a result of severe neck pain. Although he was seeing a physical therapist (PT) at the time (i.e., seeing Henry White), records indicate that he did not find the therapy helpful. Dr. Muir advised him to see a different PT, Jan Watts. As a result of other complaints (e.g., dizziness, loss of balance, and problems with thinking), Dr. Muir also recommended that he be seen by a neurologist.

Mr. Rohan switched physical therapists and saw Ms. Watts for treatment until 4/19/97 when he stopped going. Ms. Watt's progress reports indicate that she discharged him from therapy in July of 1997 because he had stopped going. He was, however, expected to continue with a home exercise program (and continue the use of a Tens Unit and traction). He also consulted with a neurologist, Dr. Nathaniel Nord. According to Dr. Nord's evaluation on 4/10/97 he was of the opinion that a cervical injury accounted for many of Mr. Rohan's complaints (e.g., headaches, cognitive dysfunction, and dizziness), not a concussion. He did, however, order brain and cervical MRIs to further evaluate Mr. Rohan's condition. Sensory problems were thought to be due to a Thoracic Outlet Syndrome; therefore, Dr. Nord suggested a nerve conduction study.

The brain MRI was performed on 4/25/97. The scan showed evidence of moderate generalized atrophy and hyperintensities that the radiologist, Dr. Duane Blatter, felt could suggest an axonal shearing injury to the brain. Dr. Nord apparently disagreed with this interpretation and felt that Mr. Rohan's cognitive symptoms, and other complaints suggestive of a post-concussive syndrome, were part of a pain syndrome and would resolve once the cervical symptoms resolved. The cervical imaging reportedly failed to show significant instability but did indicate restricted motion. Mr. Rohan saw another neurologist for a second opinion, Dr. Robert Miska.

According to Dr. Miska, who saw him on 5/22/97, he felt that Mr. Rohan had a cervical strain-sprain syndrome but was also of the opinion he suffered from a closed head injury. He felt that cognitive rehabilitation may be appropriate but wanted to delay the decision until he received Dr. Erin Bigler's neuropsychological test findings. Mr. Rohan had been referred to Dr. Bigler by Dr. John Macfarlane, the neurosurgeon he saw on 5/7/97. Dr. Macfarlane felt that his symptoms of headaches, dizziness, tinnitus, and poor concentration and memory were consistent with a post-concussive syndrome; however, he wanted him evaluated further.

Mr. Rohan saw Dr. Bigler for a neuropsychological evaluation on 5/14/97. According to Dr. Bigler's report, it was his opinion that Mr. Rohan had sustained a concussive type of head injury. He did, however, feel that some of his cognitive symptoms were a function of depression that had resulted from the accident. Dr. Bigler, nonetheless, recommended that a SPECT be conducted to further assess the head injury. The results of the SPECT that was conducted on 6/13/97 showed a questionable mild focal decrease in perfusion in the frontal horn region. Apparently, the findings were not that abnormal to be classified as such. According to a report

memory. Mr. Rohan described this skill as being able to look into a picture frame and bring back images. This, he says, is now gone. Mr. Rohan indicated that he makes lists now but loses these. An example of what he may put on the list is a reminder to turn the water off and on. Mr. Rohan indicated that he also has problems doing more than one thing at a time and did not have this type of problem before the accident.

When asked how he did in law school, Mr. Rohan said he "got every one of the grades," that is, good and bad grades. He denied failing any. Mr. Rohan indicated that he attended Cooley Law School because they had a year-round school schedule and his grades were "ecciptical." Mr. Rohan indicated that he was always poor in math but excelled in the sciences. He described himself as a "geek guy." When asked if he felt he had a permanent cognitive impairment, Mr. Rohan said "it's like a computer that has lost its clock."

FURTHER INTERVIEW INFORMATION: Mr. Rohan told the examiner that in March he moved into his wife's place because his landlord died and he had to move out. Mr. Rohan said that he has been sleeping on his wife's couch but she wants him out. According to Mr. Rohan, he does not attribute his marital problems to the accident but said his wife claims that he is more detached. When asked if he was emotionally expressive before, he said "not really." Mr. Rohan indicated that he plans to get his own place to live soon but he needs to remain married to get her insurance benefits. He also said that he would prefer remaining married, and that it was his wife who filed for divorce (this was in 1998 but has not been pursued because of his insurance needs). Mr. Rohan said that people were surprised when the two of them got married because they had lived together for so long. She did not accompany him to Michigan when he attended law school but Mr. Rohan said she shared his hopes for a future as a lawyer.

Mr. Rohan said that he had planned to become a patent attorney but is uncertain if he can do this now. He also reported that he does not have the money to take the test. When asked about his current law practice, Mr. Rohan said he was "trying to be a lawyer." He works for Holladay and Watkins, a private law firm. He reportedly works only 6 hours a day because he gets so tired. His practice is varied (e.g., personal injury, small business contracts, and family/divorce law). Mr. Rohan said that he lost \$5,000-\$7,000 last year but brought in \$37,000-\$40,000 this year. According to Mr. Rohan, when he worked as a chemist he had checks coming in regularly. As a lawyer things have apparently been less stable; however, starting in 1996 things were improving. He reported settling a lawsuit he had with Westminster College over a property dispute (i.e., they wanted to build a garage next to his house). The college ended up buying his home and allowing him to live there rent-free.

EDUCATIONAL WORK AND MILITARY HISTORY: A review of his academic transcripts indicate that Mr. Rohan had average grades. For example, he graduated from high school in 1969 with a grade point average (GPA) of 2.65 and performed in the average range on the Scholastic Aptitude Test (SAT) that was given in the 12th grade. Scores from the SAT indicate that he had average to above potential to achieve in college. Mr. Rohan showed particular strength in the area of Reading (74th and 83rd %ile scores on two subtests). Percentiles for other areas include:

Mr. Rohan was observed to work slowly on motor tasks, in particular, the tapping test. According to Mr. Rohan, his fingers felt odd while trying to tap the key. There was no visible indication that Mr. Rohan was experiencing pain during the testing and he worked on the tasks without complaining of discomfort. His hands were shaking at times, but so was his voice. When asked if he was anxious about the testing, Mr. Rohan acknowledged that he was a little nervous. In addition to a shaky vocal quality, Mr. Rohan evidenced a distinct speech articulation problem.

Mr. Rohan was offered a lunch break, which he took. He did not take long, however, and was able to get back on task when he returned.

TEST RESULTS AND INTERPRETATION: Mr. Rohan was given selected subtests of the Wechsler Adult Intelligence Scale-III (WAIS-III). When he was administered the test in 1997 by Dr. Bigler, he did quite poorly on non-verbal WAIS subtests, therefore, the focus of the intelligence testing was on these tasks. The following are subtest scores from the current and past Wechsler administration. It should be noted, however, that the WAIS-R was given in 1997. Below are the current WAIS-III scores and some of the 1997 WAIS-R scores (in parentheses). The scores all have a mean of 10 and standard deviation (SD) of 3:

WAIS-III SUBTESTS AGE-ADJUSTED SCORES

Picture Completion	07 (04)
Block Design	09 (07)
Digit Symbol-Coding	06 (08)
Matrix Reasoning	11 (na)
Symbol Search	06 (na)
Digit Span	08 (09)

As seen by the above scores, Mr. Rohan's performance on the Perceptual Organization (PO) subtests suggested normal ability. He obtained a PO Index of 93, which is at the 32nd percentile rank. There was, however, some scatter on this factor given the fact he obtained a Picture Completion subtest score that was below the mean. Nonetheless, he showed improvement from the first time he was given the Wechsler scale in 1997. At that time he had a Performance IQ of 85 (with subtest scale scores of 7 on Picture Arrangement and 5 on Object Assembly). The only non-verbal subtest where he did worse was on Digit Symbol. It is unclear why he declined so much on this task. In 1997 he had an average score of 8, and for the current testing had a 6.

Digit Symbol measures processing speed. It is expected that speed of process would improve over time. Since the newer version of the test was given, it is possible that some of the depressed score is due to this. Overall, however, Mr. Rohan's performance suggests a decline in speed. Although he would also be expected to improve on attentional measures (and he did on the visual attention measure, Picture Completion), he did not increase that much his auditory attention score. When given the test before he had a scale score of 9, and now received a score of 8 (a

score that is likely to be comparable given the change in test edition). It should be noted that when he was given the WAIS-R in 1997, he obtained a Verbal IQ of 115, indicating above average verbal intelligence.

On the California Verbal Learning Test (CVLT), Mr. Rohan obtained a total T score of 35. This score is significantly below average (i.e., $1\frac{1}{2}$ SDs below the mean). On all short and long delay recall measures he scored 2 SD's below average. Cues helped some, but Mr. Rohan still did not perform well enough to get a score in the average range. Although Mr. Rohan recalled 7 out of 16 words on Trial 1 of the test (a normal performance), he only recalled two more on Trial 5, and lost 3 of those by the short delay task (i.e., he got 9 correct on Trial 5, but after the List B interference recalled only 6 words correctly). With a semantic cue, he only recalled 8 on the short and long recall task. He utilized both semantic and serial clustering to learn the words (and retrieve them) but at the time of the long delay recognition trial had a significantly lower than average score (i.e., recognized only 13 of 16 words correctly and gave 5 false positive responses). On the Wechsler Memory Scale-Revised (WMS-R) that was given in 1997, he also had a markedly deficient score (i.e., index of 65).

His performance on the Rey Osterreith Complex Figure Test was similarly poor. He had a copy score at the 30th percentile, but on the immediate and delayed portions of the test had a score below the 10th %ile. This suggests significant problems with visual memory. When given the Rey in 1997, he was described as having difficulty with the copy portion as well as the retention of the figure.

On the Trail Making Test, he completed Part A in 94 seconds (T of 11) and Part B in 290 seconds (T of 9). These scores indicate severe impairment in mental tracking and cognitive flexibility. When given a mental flexibility test in 1997, the Wisconsin Card Sorting Test, he was reported to have performed "very poorly."

On the FAS Verbal Fluency Test, he generated 32 words in 3 minutes. This score is at the lower end of the expected range for his age. The expected mean is 41.16, with a SD of 11.42. Overall, the performance suggests weakness in fluency. When given a fluency test in 1997, his performance was described as adequate.

Mr. Rohan is left hand dominant. Although it is expected that he would perform much better with his left hand on motor tasks, this was not the case. In fact, he completed the Grooved Pegboard Test 3 seconds faster with his dominant hand, and had an average score on the Finger Tapping Test that was 3 taps faster with his nondominant right hand. It is also noteworthy that his performance on both motor tasks was significantly below average, regardless of hand used. For example, on the Pegboard, he completed the board with his left hand in 80 seconds for a T score of 34. He completed it using his right hand in 83 seconds for a T of 38. These score, by the way, are significantly below average. On the Finger Tapping Test, he was also significantly below the mean. He had a left hand average of 24.8 taps and right hand average of 27.4 taps. The T scores for these tests were 11 and 14, respectively. When given the tapping test in 1997, his

right hand score was intact, but his left hand speed was lower. This suggests that he is getting slower, in particular, slower with his nondominant hand.

AFFECTIVE AND PERSONALITY ASSESSMENT: Mr. Rohan had a Beck Depression Inventory (BDI-II) score of 7. This score is normal and fails to indicate depression. When given the test in 1997, he had a BDI score of 22, which suggests significant depressive symptomatology. On the Beck Anxiety inventory (BAI) that was given during the current assessment, he had a score of 2, which is perfectly normal. In 1997 when the BAI was given he had a score of 12, indicating mild anxiety.

On the Symptom Checklist 90, he reported the following symptoms as "moderately to extremely" distressing: numbness, low energy, sleep problems, poor concentration and memory, working slowly and rechecking to insure correctness, mind going blank, feeling that everything is an effort, and never feeling close to another person.

On the Millon Clinical Multiphasic Inventory-III (MCMI-III), Mr. Rohan's responses indicated a tendency to avoid self-disclosure. The profile, however, did indicate schizoid, narcissistic and schizotypal personality traits. Individuals with similar profiles tend to be avoidant of social situations and more isolated and self-absorbed. Social discomfort was noted as well on the Minnesota Multiphasic Personality Inventory (MMPI-2). The MMPI-2, in fact, shows a tendency to be passively dependent. Individuals with this type of response pattern tend to be unskilled socially and may use physical complaints in order to get their emotional needs met. The only clinical scales that reached a significant level (i.e., T of 66) were Hypochondriasis and Hysteria (Depression was close, with a T of 62). The only content scale that was significantly elevated (i.e., T of 65) was Social Discomfort.

CLINICAL IMPRESSIONS: Joseph Rohan is a 49 year-old male who was seen for a neuropsychological evaluation at the request of an attorney, Stephen Trayner. Mr. Trayner represents the driver of the vehicle that hit Mr. Rohan on 1/23/97. Mr. Rohan claims that he sustained physical injuries at the time of the accident, including a head injury. The present evaluation was intended to address the likelihood that a head injury occurred, and if so, what cognitive and psychological sequelae resulted from it.

There are no clear objective data to indicate that Mr. Rohan sustained a traumatic brain injury. Despite the fact MRI and SPECT data show abnormalities in the brain, these imaging data are nonconclusive. The MRI showed generalized atrophy of the brain and hyperintensities that could indicate axonal shearing, but it was not definitive. Similarly, the SPECT failed to provide definitive findings despite the fact this exam is a more effective study of damage from mild head injury. According to the SPECT report, it showed some decrease in perfusion but not of the magnitude to be classified as abnormal. Mr. Rohan's complaints of symptoms shortly after the accident, however, indicate that he may have sustained a mild concussion. For example, he reported to Dr. Roberts on 1/28/97 problems with dizziness, nausea, and poor memory. Although these symptoms are consistent with a concussion, Mr. Rohan's ongoing report of severe

difficulty processing information and remembering (e.g., having to have a reminder note to turn water off) is not typically found with concussions that are so mild as to not alter a person's mental status at the time. There is no indication that Mr. Rohan lost consciousness from the accident, nor is there evidence that he had any post-traumatic amnesia. His initial complaints, in fact, at the InstaCare suggested a whiplash injury (e.g., cervical strain).

Data from the current neuropsychological evaluation show that Mr. Rohan is severely impaired in terms of his memory skills and information processing. His process speed is extremely slow, in fact, he seems slower now than when tested soon after the accident. Although his performance on a test of visual attention is better than it was in 1997, his visual memory remains severely impaired (i.e., below the 10th %ile). This is an area of functioning that Mr. Rohan said he was especially good at before; in fact, he reported that his verbal memory skills were never as good as his visual memory. Testing also shows significant impairment in his verbal memory and learning. Other problems noted on testing include confusion (e.g., not knowing a pencil is in his hand) and poor mental tracking (e.g., unable to follow the examiner's conversation and not able to connect single digit numbers from lowest to highest).

Overall, Mr. Rohan appears to be doing too poorly to attribute his problems to a mild concussive event that took place 3 years ago. Despite receiving cognitive rehabilitation since the time of the first evaluation by Dr. Bigler (i.e., in May of 1997), Mr. Rohan seems to be doing about the same or worse in a number of areas. His scores, for example, on tests of verbal fluency, processing of information, and motor speed are lower than before, and his performance on tests of auditory attention and mental flexibility are about the same. He did improve on measures of visual attention and visual-spatial organization; however, individuals with mild concussion are expected to improve more than this. Dr. Bigler seemed to be of the opinion that some of Mr. Rohan's cognitive problems were associated with his low mood, however, current testing shows that his mood is improved (e.g., report of depressive symptoms and anxiety). Basically, it is not entirely clear why Mr. Rohan has not improved and continues to perform, and described himself, as so severely impaired.

Given Mr. Rohan's performance in law school, in particular, one that is ranked poorly when compared to other law schools in the U.S., it is not surprising that he may struggle some in his chosen profession, however, even this and his record of uneven, and often times poor academic performance, does not explain the severity of his complaints or the problems observed on testing. It is not entirely clear why Mr. Rohan appears to be so impaired. It is, however, possible that the current litigation is impacting Mr. Rohan's perception of impairment attributable to the 1997 MVA, and his overall performance on testing. Mr. Rohan does have the potential for secondary gain, both emotionally and financially, from the lawsuit. Hopefully, when the litigation proceedings end, Mr. Rohan will realize some improvement in his symptoms, and be able to function at a higher level. If Mr. Rohan does not improve after the lawsuit is settled, it is recommended that he be followed by his physicians and seen for a psychiatric evaluation.



Elaine Clark, Ph.D.
Licensed Psychologist

GENERAL INFORMATION:

EXHIBIT "I"

Patient: ROHAN, JOE Age: 47

Physician: Robert K. Rothfeder, M.D. Date: August 27, 1997

CHIEF COMPLAINT:

Head and neck injuries suffered in a motor vehicle accident of January 23, 1997.

DIAGNOSIS:

1. Motor vehicle accident driver of January 23, 1997 (E813.0)
2. Closed head injury with posttraumatic brain injury (854.0)
3. Headaches (307.81)
4. Posttraumatic migraine, (346.9) tension and occipital neuralgia (353.2)
5. Cervical strain/sprain with chronic neck pain (847.0)

MEDICAL DECISION MAKING:

Final Impression: The injuries described above are a result of the motor vehicle accident of 1/23/97. With respect to the patient's neck injury, that appears to have become chronic and static at the present time. With respect to the patient's headaches, likewise those have not changed clinically in some time. The patient's area of greatest concern is his intellectual functioning with respect to his posttraumatic brain injury. It would be my opinion that at the present time the patient's brain injury as described essentially has disabled him from the independent practice of law, given what I know about the demands of attorney practice. The patient appears capable of functioning as a paralegal with supervision. I explained to the patient that I have, in fact, seen improvement regarding the impairments he currently suffers in memory, language and cognitive function, greater than the one and one half years he now is post injury; however, given the length of time since injury, his prognosis for complete recovery is almost nil and his prognosis for additional significant partial recovery is uncertain. I am afraid it is more likely than not that the majority of the patient's intellectual impairment is permanent and I doubt that he will be able to return to his previous occupational level as an attorney. I believe that cognitive therapy should be continued as long as there is evidence that continued improvement is taking place. I believe that all reasonable diagnostic tests have been performed and the patient's pharmacologic treatment regimen at present is appropriate although I suspect there will continue to be required changes and adjustments in medication. I would anticipate that patient would require a regimen of medications similar to that at present indefinitely.

IMPAIRMENT RATING:

In light of all of the above, it would be my opinion that the patient's condition with respect to his various injuries has become

chronic and static and calculation of an Impairment Rating at the present time is appropriate.

Reference is made to the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition.

The patient has permanent partial impairment as follows:

1. For injury to the cervical spine the patient qualifies for a DRE category 2 = 5% permanent partial impairment of the whole person.
2. For closed head injury resulting in chronic headaches and posttraumatic brain injury along with sleep disturbance, this has had a profound affect on the patient's activities of daily living and I would calculate a 30% permanent partial impairment for head injury sequelae.

Using the Combined Value Tables, these impairments combine for a 34% permanent partial impairment of the whole person.

As noted above, in my opinion the intellectual impairments suffered by Mr. Rohan has essentially resulted in a 100% disability with respect to the practice of law.

PRESENT ACCIDENT:

Mr. Rohan is a 47-year-old attorney who is referred to the office by one of his fellow lawyers at the law firm in which he works, Paul Halliday, Jr.. Mr. Rohan states that among other injuries he suffered a brain injury in the motor vehicle accident of January 1997 and has been unable to practice law independently since that time. He has suffered from significant cognitive and memory problems which he states have made it impossible to resume his previous independent practice of law. The patient states that currently he is functioning essentially as a paralegal and requires supervision from other attorneys in his handling of cases. The details of his memory and cognitive problems are discussed in detail below. The patient also is suffering from a significant sleep disorder along with chronic pain from headache and neck injury. He requests my opinion at this time regarding his prognosis, his likely degree of permanent partial impairment, and specifically whether it is likely that he will be able to return to his previous level of function as an attorney in the near future or at all. The patient brings a thick stack of medical records to the office at the time of his visit. These were reviewed briefly during the visit to confirm certain details and at length afterwards prior to preparation of this report. The history that follows is obtained both from Mr. Rohan and the medical records. It is noteworthy that Mr. Rohan has only partial and in some cases, poor recollection of many of the events outlined in the medical records. His history of the accident and subsequent medical care is as follows.

The patient states that he was injured on January 1997. He could not remember the exact date and I reviewed the medical records to

confirm the accident date of January 23, 1997. The patient was the driver of this motor vehicle accident proceeding about 25 m.p.h. when he was struck by another vehicle traveling 30-40 m.p.h. The patient apparently did not lose consciousness with the impact but was dazed and noted dizziness at the time. First medical attention was the same day on 1/23/97 at the InstaCare facility where the patient was treated with a soft cervical collar, anti-inflammatories and a muscle relaxer. Early on he had two episodes where his left arm had gone numb. The patient was seen once again in follow-up at the InstaCare and referred to William Muir, M.D., an orthopedic spine surgeon who first saw Mr. Rohan on January 29, 1997. At that time the patient was complaining of neck pain as his major complaint along with memory loss. Plain films of the neck were obtained at that time which were essentially unremarkable. Physical examination showed markedly reduced range of motion of the cervical spine. The patient was treated in the usual conservative fashion with apparently only mild improvement. An MRI of the cervical spine was obtained on February 22, 1997 which did not show any significant acute pathology. A CT scan of the neck was obtained some months later in June 1997 which showed some degenerative changes but no significant disc herniation.

In addition to patient's neck pain, over the first several months post injury he exhibited ongoing headaches and progressive evidence of brain dysfunction secondary to posttraumatic brain injury. An MRI of the brain was obtained on April 25, 1997 which was abnormal showing scattered small punctate T2 hyperintensities reflecting residua of axonal sheer injury. Thereafter, the patient had multiple referrals and underwent extensive workup among various physicians including Dr. Miska, a neurologist and Dr. Bigler, a neuropsychologist and Dr. Macfarlane, a neurosurgeon, all of whom consulted on Mr. Rohan's case in the May 1997 time frame. Dr. Bigler's office performed a complete neuropsychological evaluation which was abnormal, showing a number of problems including disrupted cognitive performance substantially below what would be expected of the patient's educational and vocational background. There were additionally deficits noted on both auditory and verbal testing and memory. The patient was therefore referred for SPECT imaging studies which were done in June of 1997, which were considered to be within normal limits. Thereafter, the patient was treated with a variety of medications including Zoloft and verapamil for his headaches. Based upon recommendations from Dr. Bigler and Dr. Miska, the patient was also referred for cognitive and occupational therapy at the IHC rehab services and underwent therapy beginning in November 1997 and continuing until a month or two ago when apparently some insurance coverage issues became of concern. Review of medical records from IHC rehab indicates that the patient's intellectual performance had improved with therapy and with utilization of memory books and various compensatory strategies. The patient continued to experience difficulty planning and continuing projects, with memory, and with certain speech language issues. In July of 1998, the patient was referred to the Intermountain Sleep Disorder Center at LDS Hospital for evaluation. Sleep study results were abnormal showing marked disruption of sleep architecture and complete absence of REM sleep.

medications: Ritalin 40-50 mg per day, Prozac 60 mg per day, Imitrex subcutaneous p.o. or nasal for vascular headaches, Naprosyn for his tension headaches and neck pain.

Previous Trauma: The patient suffered a slip and fall injury in 1990 which he states was not very significant. He did have some headaches and dizziness thereafter and underwent a CT scan which was normal. The patient states he was back to normal following this injury in less than a week and had no sequelae.

Surgeries: Appendectomy.

Previous Illnesses/Hospitalizations: No previous hospitalizations or significant illnesses.

Social History: Does not smoke or drink alcohol. The patient is currently married but his wife is in the process of filing for divorce related to the patient's changes following this motor vehicle accident. He does not have any children. He was off work completely following the accident until about July of 1997 and has been practicing law with the Halliday firm since that time but essentially in the role of a paralegal. The patient's educational background includes a bachelor's degree from Montana State and law school in Michigan.

REVIEW OF SYSTEMS:

General: Positive for severe sleep disturbance.

Skin: No scarring or rashes.

Eyes: No photophobia, double vision, or change in vision.

Ears: Positive for tinnitus.

Respiratory: No pain with breathing, no shortness of breath, asthma, or cough.

Throat: No difficulty swallowing, change in voice, temporomandibular joint pain, dental trauma, or abnormal range of motion of the mandible.

Respiratory: No pain with breathing, no shortness of breath, asthma, or cough.

Cardiovascular: No chest pain, angina, arrhythmia, murmurs, high blood pressure, heart attacks, heart failure, or syncope.

GI: No change in weight. No peptic ulcer disease. No change in bowel habits. No abdominal pain or hernias. No GI bleeding.

GU: No bladder or kidney problems.

Endocrine/Metabolic: No diabetes or thyroid problems.

PHYSICAL EXAMINATION:

Vital Signs: Supine B/P: 125/85 Pulse: 75 Resp: 14

General: Well developed, well-nourished gentleman who is oriented x 3 although it takes him much longer to remember the date than one would expect. He walks with a normal gait, gets in and out of a chair without difficulty.

Head: There is mild tenderness over the occiputs bilaterally. No gross deformity is present.

Eyes: Pupils are equal and reactive to light and accommodation. Extraocular movements are full. Visual fields are intact to confrontation. Discs, arteries, and veins appear normal.

Ears: Hearing is normal to speech. Canals and tympanic membranes are normal.

Mouth and Throat: Normal tongue. Normal elevation of the soft palate. Mucous membranes are normal.

Neck: Guarding, stiffness and spasm are present. There is bilateral paravertebral tenderness. Range of motion is reduced as follows: Flexion 40°, extension 50°. Lateral bending 35° bilaterally. Left rotation 70°, right rotation 50°.

Chest: Normal configuration. Nontender. Excursion is normal with respiration.

Lungs: Normal to auscultation.

Heart: Regular sinus rhythm without murmurs, rubs or gallops.

Abdomen: Bowel sounds are active. The abdomen is flat, soft and nondistended. There is no organosplenomegaly.

Back: Normal posture. No stiffness, spasm, or trigger points. Range of motion is normal. No kyphosis or scoliosis is noted.

Extremities: No deformity is noted. No swelling or skin changes. Range of motion is normal.

Neurologic: Mental status examination is conducted during the entire course of the interview. The patient demonstrated numerous obvious memory lapses regarding both details of his medical treatment to date and of various short-term memory functions. He additionally demonstrated several defects in language, being unable to verbalize words he wanted to express. The patient's affect additionally seemed somewhat flat when describing his various difficulties. He states that this is typical of a personality change he has experienced since the accident. As an example he describes prior to the accident being rather impatient, particularly waiting in line, etc. He states he can now wait in line indefinitely and not get impatient which he thinks is abnormal. The remainder of the neurologic exam including cranial nerves, motor, sensory, cerebellar and deep tendon reflexes are unremarkable.

I AUTHORIZE MY NAME TO BE AUTOMATICALLY ELECTRONICALLY AFFIXED TO THIS REPORT SIGNIFYING THAT I DICTATED THIS REPORT.

X: Robert K. Rothfeder, M.D.

(Dictated but not read)

SDS:dwc D: 08/24/98 14:24 T: 08/25/98 17:16

Tab 24

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**IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JOSEPH W. ROHAN,

Plaintiff,

v.

CHAD BOSEMAN, a minor;
JERALD BOSEMAN, an individual,

Defendants.

**DEFENDANTS' MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR NEW TRIAL OR
ALTERNATIVELY TO AMEND
(Oral Argument Requested)**

Civil No.: 980904135 PI

Judge J. Dennis Frederick

Defendants, Chad Boseman and Jerald Boseman, through counsel, submit the following Memorandum in Opposition to Plaintiff's Motion for New Trial or Alternatively to Amend, and hereby ask this Court to deny plaintiff's motion.

INTRODUCTION

This case involves a claim in which plaintiff, who is also an attorney and active member of the Utah State Bar, is attempting to recover damages for personal injuries allegedly suffered as the result of a January 23, 1997 motor vehicle accident. In January of 2000, after several failed attempts to settle this matter, plaintiff's counsel filed a Certificate of Readiness for Trial. In March of 2000, this Court set the case for a four day jury trial, scheduled to begin on June 20, 2000.

Approximately two weeks before the June 20 trial date, plaintiff filed a motion seeking a continuance of the trial date, and seeking court approval of withdrawal and substitution of counsel. The Court denied plaintiff's motion, and instructed plaintiff and his counsel to prepare to proceed with trial as scheduled. Despite the Court's explicit instructions, plaintiff discharged his counsel and, acting *pro se*, made several last minute attempts to either have the trial continued or the case dismissed without prejudice. On the day before trial, plaintiff made a final attempt to avoid trial by filing, *pro se*, a renewed motion for voluntary dismissal or continuance of the trial. In this last minute motion, plaintiff argued, for the first time, that he should be entitled to a continuance based on the protections afforded by the Americans with Disabilities Act ("ADA").

The Court denied each of plaintiff's last minute attempts to avoid trial, and on the morning of the scheduled trial, with the jury venire present, plaintiff informed the Court that he was not prepared to proceed with the trial. As a result, the Court dismissed plaintiff's cause of action with prejudice and ordered plaintiff to pay defendants' costs and fees.

Plaintiff has now filed a Motion for New Trial or Alternatively to Amend in which plaintiff is asking the Court to either grant him a new trial on all of the issues raised in his original Complaint, or to amend the prior judgment to provide for an involuntary dismissal without prejudice. Plaintiff's motion is based entirely on the same ADA argument which plaintiff initially raised in a motion filed the day before trial. Specifically, plaintiff is now arguing that he suffers from a neurological disability, and that this Court's refusal to grant a continuance or dismissal of the case without prejudice constituted discrimination by a private entity which is prohibited by the ADA. Therefore, plaintiff argues, it was an error of law and abuse of discretion for the Court to dismiss his claims with prejudice, and to order him to pay defendants' costs and fees.

As the following arguments clearly show, however, plaintiff's inability to proceed with the

scheduled trial had nothing to do with his alleged disability. Likewise, this Court's dismissal of plaintiff's claims was completely unrelated to plaintiff's alleged disability. It is entirely inaccurate for plaintiff to now suggest that the Court's dismissal of plaintiff's claims should be construed as some type of discrimination, or that it was in any way related to his alleged disability. Therefore, plaintiff's Motion for New Trial or Alternatively to Amend should be denied.

STATEMENT OF RELEVANT FACTS

1. On or about April 23, 1998, plaintiff, by and through his counsel of record, Paul M. Halliday, Jr. and Steven B. Watkins of the law firm of *Halliday & Watkins, P.C.*, filed the present suit seeking damages for certain injuries allegedly sustained by plaintiff as a result of a January 23, 1997 motor vehicle accident. (Findings of Fact, Conclusions of Law ¶ 1, signed by this Court on July 28, 2000, attached as Exhibit 1)
2. Plaintiff, Joseph W. Rohan, Esq., is a licensed attorney and is an active member in good standing of the Utah State Bar. (See Affidavit of Arnold Birrell, attached as Exhibit 2)
3. On or about January 18, 2000, plaintiff, by and through his counsel of record, filed a Certificate of Readiness for Trial. (Ex. 1, ¶ 4)
4. On March 2, 2000, this Court set this matter for a four day jury trial scheduled to begin on June 20, 2000, and further set appropriate witness designation deadlines, discovery cutoff date, and a final pre-trial conference for June 5, 2000. *Id.* ¶ 6.
5. On or about June 2, 2000, one business day prior to the final pre-trial conference, plaintiff filed a Motion for Continuance of Trial Setting, Withdrawal of Counsel, Substitution of Counsel, and Enlargement of Discovery. Plaintiff's Motion sought

to continue the trial, to allow new counsel to substitute for his current counsel, and to allow additional time for the filing of Designations of Witnesses, and for an extension of discovery. Plaintiff's counsel asked defendants' counsel if they would be willing to stipulate to this motion. Defendants' counsel refused to stipulate to this motion, but agreed that they would not oppose it. Id. ¶ 7.

6. In an affidavit dated June 2, 2000 which plaintiff filed in support of his June 2 motion, plaintiff indicated that the reason he was seeking a substitution of counsel was because "Mr. Halliday and Mr. Watkins have limited jury trial experience and it has become apparent to me that I need experienced trial counsel to properly present my claims." (Plaintiff's 6/2/00 Affidavit ¶ 4, attached as Exhibit 3)
7. Plaintiff's June 2, 2000 motion and affidavit also indicated that plaintiff intended to have Robert F. Orton, Esq., of the law firm of Fabian & Clendenin take over as his legal counsel in this matter. Id. ¶ 5.
8. While Mr. Orton had not previously entered a notice of appearance on behalf of plaintiff, Mr. Orton had represented plaintiff when he was deposed by defendants' counsel in this matter on April 26, 2000. Plaintiff was not represented by any other counsel at that deposition. (See Exhibit 4 which consists of relevant portions of plaintiff's deposition). Mr. Orton also came to defendants' counsel's office on in May of 2000 to review plaintiff's medical records in this matter.
9. On June 5, 2000, the court held the previously scheduled final pre-trial conference. Defendants appeared by and through their counsel of record, Stephen J. Trayner of the law firm of *Strong & Hanni*, and plaintiff appeared personally and by and through his counsel of record, Steven B. Watkins of the law firm of *Halliday & Watkins, P.C.*

(Exhibit 1, ¶ 8)

10. At the final pre-trial conference, plaintiff's counsel, Steven B. Watkins, Esq., requested that the trial date be stricken, that new witness designation dates be established, and that new counsel be allowed to substitute. Defendants did not actively oppose plaintiff's motion, but did not stipulate to the motion. The court indicated at the final pre-trial conference that it would take the matter under advisement, but that plaintiff and his counsel should continue to prepare for trial in the event that said motion was denied. Id. ¶ 9.
11. On or about June 5, 2000, the court issued its Minute Entry ruling on plaintiff's Motion for Continuance of Trial Setting, Withdrawal of Counsel, Substitution of Counsel and Enlargement of Discovery and denied said motion based upon plaintiff's failure to show good cause for such a continuance. Id. ¶ 10.
12. On or about June 6, 2000, plaintiff gave notice to the court and defendant's counsel that he had discharged Steven B. Watkins and Paul M. Halliday, Jr. and the law firm of *Halliday & Watkins, P.C.* as his attorneys. Id. ¶ 11.
13. On or about June 7, 2000, plaintiff moved for Voluntary Dismissal and Motion for Expedited Disposition under Rule 41(2)(ii) of the Utah Rules of Civil Procedure. Plaintiff's Motion was supported by his own affidavit and a Memorandum of Points and Authorities indicating that plaintiff desired additional time "to find trial counsel who could properly prepare a brain injury case", that plaintiff's prior counsel had "limited jury trial experience and [did] not have any experience in trying a brain injury case" and that upon dismissal of the case, plaintiff intended to re-file his action. Id. ¶ 12.

14. Defendants opposed plaintiff's Motion for Voluntary Dismissal in part on the grounds that plaintiff had voluntarily chosen to discharge his prior attorneys with the law firm of *Halliday & Watkins, P.C.*, that plaintiff could claim no surprise with respect to the nature of his claims or the degree of experience and competency of his prior attorneys, and that defendants would be prejudiced as a result of any further continuances in the matter. Id. ¶ 13.
15. On June 14, 2000, the court issued its Minute Entry denying plaintiff's Motion for Voluntary Dismissal for the reasons specified in defendants' opposing memorandum. Id. ¶ 14.
16. On June 14, 2000, Joseph W. Rohan, acting *pro se*, wrote to defendants' attorneys indicating his intention to file a petition for interlocutory appeal and stay of the trial date. Mr. Rohan's correspondence further indicated, "I also want to inform you that whether or not a stay is granted, a trial will not occur on Tuesday and therefore the defense does not need to expend time and effort in preparation of trial on that date." Id. ¶ 15.
17. On June 15, 2000, defendants' counsel wrote back to Mr. Rohan indicating their intention to continue with their preparations of trial since there was no Order from any trial or appellate court indicating that the trial would not occur as scheduled on June 20-23, 2000. Defendants' counsel's letter further indicated that defendants would not stop their preparations for trial until an appropriate Order was obtained staying the trial date or dismissing the case with prejudice and that in the event plaintiff failed or refused to move forward with his case at trial, that defendants would seek sanctions against plaintiff. Id. ¶ 16.

18. On or about June 15, 2000, plaintiff, Joseph W. Rohan, *pro se*, filed a “Notice of Plaintiffs Inability to Bring this Matter to Trial” indicating “that [plaintiff] cannot present his case that is scheduled for trial on Tuesday, June 20, 2000 through Friday, June 23, 2000.” Id. ¶ 17.
19. On June 16, 2000, plaintiff wrote to defendants’ counsel indicating “I am unable and unprepared to try my own brain injury case and that under no circumstances will a trial be held on Tuesday, June 20th” and “both the Court and Defendants (for at least the second time) have been notified that this matter will not proceed to trial as scheduled.” Id. ¶ 18.
20. On or about June 19, 2000, the day before trial, plaintiff filed a renewed Motion for Voluntary Dismissal and Motion for Expedited Disposition or Alternatively Motion to Continue Trial Setting to Consider Plaintiff’s Claims Under the ADA. Id. at ¶ 19.
21. On or about June 20, 2000, the court entered its Order Denying Plaintiff’s Motion for Voluntary Dismissal without Prejudice. Id. ¶ 20.
22. On June 20, 2000, defendants appeared personally and by and through their counsel of record, and were prepared to try the defense of this matter. Plaintiff appeared *pro se*, being unrepresented by other counsel. Id. ¶ 21.
23. As of the first day of trial, June 20, 2000, the court had not entered any order permitting withdrawal of counsel under Rule 4-506(1) or (5) of the Rules of Judicial Administration. Id. ¶ 22.
24. On the morning of trial, plaintiff appeared unprepared and/or unwilling to proceed with the calling of witnesses on his own behalf and stated in open court that he was not prepared to proceed with the presentation of his evidence. Id. ¶ 23.

25. Based upon the foregoing Findings of Facts, this Court entered the following conclusions of law:

- (A) Plaintiff's conduct individually and by and through his prior counsel of record demonstrate a clear pattern of failure to prosecute plaintiff's case, and as a result, warrants dismissal of plaintiff's complaint with prejudice and upon the merits;
- (B) Plaintiff failed to comply with or to make the requisite showing under Rule 4-105(3) with respect to his Motions to Continue the Trial in this case in that plaintiff failed to show good cause for such a continuance;
- (C) Plaintiff's Motions for Substitution of Counsel would have caused a continuance of the trial date and failed to comply with or meet the requirements of Rule 4-506(1) and (5) of the Rules of Judicial Administration;
- (D) That plaintiff's assertion that the trial of this case must be delayed or continued due to the provisions of Title II of the Americans with Disabilities Act is without foundation in law or in fact;
- (E) The provisions of Title II of the Americans with Disabilities Act do not require that this court grant plaintiff's request for a continuance and/or a voluntary dismissal without prejudice;
- (F) Plaintiff's failure to prosecute his case under the circumstances present in this case resulted in defendants incurring needless costs and fees and therefore, defendants shall be entitled to an award of costs and fees as sanctions because of plaintiff's refusal and/or failure to present his case at trial and that said refusal and/or failure was without merit and in bad faith and was engaged in with an intent to hinder or delay the proceedings of this court.
- (G) Plaintiff's actions are sanctionable within the contemplation under Utah Code Ann. §78-27-56 and this court's inherent authority to govern judicial proceedings and make appropriate sanctions.

Id. at "Conclusions of Law" ¶¶ 1-7.

25. Despite plaintiff's repeated claims that he is not competent to practice law and that he has a "100% impairment with respect to the independent practice of law," in addition to representing himself in this matter, plaintiff has continued to actively and

independently practice law as the following evidence clearly shows:

- (A) Plaintiff has informed the Utah State Bar of his alleged disability. Based on his own description of the nature and severity of this alleged disability, however, the Utah State Bar's Office of Professional Conduct decided there was no need to initiate a formal or informal investigation into plaintiff's alleged disability or competence to practice law. Plaintiff's license to practice law in the State of Utah is completely unrestricted, and the Utah State Bar is unaware of any agreements, formal or informal, requiring the law firm of *Halliday & Watkins*, or any other law firm, to supervise plaintiff's practice of law. (Exhibit 2)
- (B) Plaintiff has paid the necessary fees, and is currently included on the Utah State Bar's Lawyer Referral Service. (Exhibit 2)
- (C) Plaintiff is currently the only counsel of record representing plaintiff Glade Tueller in a case currently pending before the Honorable J. Dennis Frederick, and in which the law firm of *Strong & Hanni* is providing the defense. (See Glade Tueller v. Jeanetta Williams and NAACP, Civ. No. 990906479)
- (D) In the afore mentioned Tueller case, on July 20, 2000, plaintiff deposed defendant Jeanetta Williams, without other counsel present to assist or supervise him. (Relevant portions of Jeanetta Williams Depo. are attached as Exhibit 5. On September 6, 2000, plaintiff is scheduled, in the Tueller matter, to travel to Baltimore, Maryland, presumably without assistance, to take the deposition of Dennis Hayes, a designated representative of the NAACP. (See Exhibit 6)

- (E) Defendants' counsel has obtained the March 4, 1997 video trial transcript in the matter of Emily Sorenson v. Earl Scheib of Utah, Inc., 968005421, which shows plaintiff actually representing his client at trial in front of Judge Atherton without assistance from any other attorney.
- (F) Research performed on Utah Courts Exchange indicates that plaintiff is the named counsel in several Salt Lake County cases which have been commenced since the January, 1997 motor vehicle accident which plaintiff claims to be the source of his alleged disability and inability to practice law. A sampling of these case have been listed for the Court in Exhibit 7 of this memorandum.

ARGUMENT

PLAINTIFF'S ALLEGED DISABILITY DOES NOT ENTITLE HIM TO A NEW TRIAL OR AN AMENDED JUDGMENT.

Plaintiff's motion for a new trial and amended judgment is based on his claim that the Court somehow discriminated against him or deprived him of access to the judicial process on account of his alleged disability. Plaintiff's alleged disability, however, had nothing to do with the judgment which was entered in this case, and should not therefore, be the basis for a new trial or an amended judgment.

Plaintiff's argument is primarily based on Title II of the Americans with Disabilities Act ("ADA").¹ Title II of the ADA provides certain rights for individuals with disabilities, and protects

¹Plaintiff has also attempted to base his arguments on provisions in both the Utah and the United States Constitutions. These arguments, however, like the ADA argument, are based on plaintiff's claim that the Court's judgment was discriminatory on account of plaintiff's alleged disability. Therefore, the arguments contained in this memorandum, while focused more directly at plaintiff's ADA arguments, are equally applicable to plaintiff's constitutional arguments.

them from discrimination from public entities. See 42 U.S.C. §§ 12131-12165. As plaintiff's memorandum acknowledges, in order to prove that he is entitled to any protection under the ADA, he must prove each of the following three elements:

- (1) that he is a qualified individual with a disability;
- (2) that he was either excluded from participation in or denied the benefits of some public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and
- (3) that such exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability.

Tyler v. City of Manhattan, 857 F. Supp. 800, 817 (D. Kan. 1994). In addition, plaintiff "carries the burden of proof on a claim that he has been discriminated against on the basis of his disability." Id.

In response to plaintiff's motion for a new trial or amended judgment, defendants will not attempt to dispute plaintiff's claim that he has a neurological disorder that meets the definition of a disability under the ADA.² Defendants do, however, contend that, even if plaintiff is disabled, the ADA does not entitle him to a new trial or an amended judgment because: (1) plaintiff is not a "qualified individual" for the accommodations he is seeking; (2) plaintiff was not excluded from participation in the judicial process; and (3) the Court's judgment and sanctions against plaintiff were completely unrelated to plaintiff's alleged disability. Therefore, as the arguments below will

In addition, these constitutional arguments were not raised in plaintiff's original ADA motion. Therefore, the Court should not consider them when determining whether its original denial of plaintiff's motion was an error in law or abuse of discretion.

²Defendants' decision to not dispute this particular factor is not intended to suggest that defendants admit that plaintiff is disabled. If this matter were to go to trial, defendants would certainly dispute plaintiff's claims as to the severity and cause of his alleged disability.

Furthermore, while defendants do not dispute the authenticity of plaintiff's medical records, the Court should recognize that these documents are clearly hearsay, and as such, should not be relied on by the Court for the purpose of determining whether or not plaintiff is disabled.

show, plaintiff has failed to satisfy his burden of proof, and has in fact, failed satisfy any of the three required elements for protection under Title II of the ADA.

A. PLAINTIFF IS NOT A “QUALIFIED INDIVIDUAL”.

It is clear from the ADA definition of “qualified individual” that simply having a disability does not make somebody a qualified individual for every type of accommodation requested. See 42 U.S.C. §§ 12131(2). For example, an individual whose only disability is being deaf, would clearly not be a “qualified individual” under the ADA for purposes of claiming that he is entitled to wheel chair ramps or elevators in the courthouse. Obviously, an individual who is requesting some type of “reasonable accommodation” under the ADA must be able to show that because of his particular type of disability, he is qualified for a specific type of accommodation.

In this case, the accommodation which plaintiff claims should have been granted by the Court was either a 90 day continuance or a voluntary dismissal of the case without prejudice. Plaintiff claims that his alleged disability qualified him for these specific accommodations because, even though he is an attorney, his disability would prevent him from trying his own personal injury case. This argument, however, fails for three reasons. First, the argument completely ignores the fact that, as of the trial date, the Court had not entered any order permitting plaintiff’s counsel and partners, Mr. Halliday and Mr. Watkins of the firm of *Halliday & Watkins*, to withdraw from their representation of plaintiff. Second, even if plaintiff was no longer represented by counsel, plaintiff has failed to establish that he could not have tried the case himself. Finally, plaintiff failed to cite even a single case which suggests that the ADA would ever qualify an individual for accommodations which require the courts to either bend or disregard the rules of civil procedure or express orders of the court.

According to Rule 1.16(a)(3) of the Utah Rules of Professional Conduct, an attorney is

ordinarily required to withdraw from representation if a client discharges that attorney. This rule is not applicable, however, if the attorney is ordered by the court to continue the representation. See U.R.P.C. 1.16(c). Rule 4-506 of the Utah Code of Judicial Administration states:

Consistent with the Rules of Professional Conduct, an attorney may withdraw as counsel of record *only upon approval of the court . . . after a certificate of readiness for trial has been filed*. Under these circumstances, *an attorney may not withdraw except upon motion and order of the court*. (emphasis added)

Based on this rule, once the case has been certified as ready for trial, even if a client attempts to discharge their attorney, the attorney cannot withdraw and is obligated to continue representing the client unless and until the court approves the withdrawal.

In this case, plaintiff's counsel of record, Paul Halliday and Steven Watkins of the law firm of *Halliday & Watkins*, filed a Certificate of Readiness for Trial on January 18, 2000. Then, just two weeks before trial was scheduled to begin, plaintiff's counsel attempted to withdraw from their representation of plaintiff and sought a 90 day continuance so that plaintiff could obtain new counsel. This Court expressly denied the request to withdraw, and specifically instructed plaintiff's counsel that they should continue to prepare for the scheduled trial. Nevertheless, on the day after the pretrial conference, plaintiff informed defendants and the Court that he had discharged his attorneys, and that he would be unprepared to proceed with the scheduled trial.

The fact that plaintiff claims to have discharged his attorneys does not change the fact that, under Utah law, *Halliday & Watkins* was required to continue its representation unless the Court authorized the firm and its attorneys to withdraw from the case. This Court never authorized such a withdrawal. In fact, the Court expressly found that plaintiff had failed to show good cause for a withdrawal and continuance and denied the request. Therefore, on the date that trial was scheduled to begin, plaintiff was still represented by the law firm of *Halliday & Watkins*. Since plaintiff was

represented by competent counsel who had represented to the Court six months earlier that they were prepared to try this case, there is no reason why plaintiff, disabled or not, could not have proceeded with the trial as scheduled.

Furthermore, even if the Court had approved the withdrawal of representation by the firm of *Halliday & Watkins*, plaintiff has failed to show why his new counsel could not have been prepared to go ahead with the scheduled trial. It is undisputed that plaintiff's purported "new counsel", Robert F. Orton, had been involved in this case on a limited basis for several months before trial. In fact, Mr. Orton represented plaintiff during his deposition in this matter on April 26, 2000. In addition, in May of 2000, Mr. Orton came to defendants' counsel's office to review plaintiff's medical records. Yet, Mr. Orton never filed a notice of appearance on behalf of plaintiff at any time. Therefore, even if the Court authorized the substitution of counsel, plaintiff has failed to show why his "new counsel" would have been unable to prepare for the scheduled trial.

Finally, plaintiff has failed to show why his alleged disability would have prevented him from trying the case himself. Despite plaintiff's claim that his motion for new trial or amended judgment is brought in his "capacity as an individual litigant [and] not as an attorney," plaintiff cannot hide from the fact that he is, in fact, a licensed attorney who has been deemed competent to practice law in the state of Utah. The Utah State Bar has been made aware of plaintiff's alleged disability. Nevertheless, the Bar has not placed any restrictions on plaintiff's license to practice law. Furthermore, the evidence clearly shows that since the January, 1997 motor vehicle accident, plaintiff has continued to seek and take on new clients, practice law without supervision, and has, in fact, tried cases without any assistance. All of this has been done without the need for any accommodation by the legal system. Therefore, there is no reason why plaintiff's alleged disability would entitle him to any special accommodations in this case.

Based on these factors, plaintiff has failed to show that, because of his alleged disability, he was somehow “qualified” to receive an additional 90 days to prepare for trial or a voluntary dismissal of his claims. Despite plaintiff’s alleged disability, this case could have proceeded, as scheduled, with either the firm of *Halliday & Watkins*, Robert Orton, or plaintiff himself providing competent representation.

B. PLAINTIFF WAS NOT EXCLUDED FROM THE JUDICIAL PROCESS OR IN ANY WAY DISCRIMINATED AGAINST BY THIS COURT.

Plaintiff has also failed to satisfy the second element necessary for establishing a claim under Title II of the ADA which requires that he show some type of discrimination or exclusion from public services by a public entity. Defendants do not dispute the fact that this Court is a public entity and that plaintiff has a right to seek redress for his injuries by participating in the judicial process. Plaintiff has failed to show, however, how this Court in any way discriminated against him or denied him access to the courts. In fact, the evidence clearly shows just the opposite.

Plaintiff was permitted to initiate this lawsuit, conduct discovery, and was given the opportunity to present his case, with or without representation, to a jury. As will be discussed further below, it was plaintiff’s own conduct and decisions which prevented him from actually having the opportunity to go through with the trial. This Court, however, gave plaintiff every opportunity to proceed with the trial, and to present his claims to a jury. Therefore, plaintiff cannot claim that this Court discriminated against him or denied him access to the judicial process.

C. THE COURT’S JUDGMENT AND SANCTIONS AGAINST THE PLAINTIFF WERE NOT BASED ON HIS ALLEGED DISABILITY.

Plaintiff also cannot satisfy the third element necessary for establishing a claim under Title II of the ADA which requires that the alleged “exclusion, denial of benefits, or discrimination was by reason of the plaintiff’s disability.” *Tyler*, 857 F. Supp. at 817.

Plaintiff's memorandum in support of his motion for new trial or amended judgment erroneously states:

[T]he Court called the jury, in spite of being notified several days earlier that the Plaintiff was unable to try the case, in spite [sic] being made aware of his claims under the ADA. This action not only increased the amount of the monetary sanction that the Court could impose, but the Court seemingly held the Plaintiff up to public ridicule for asserting a claim under the ADA.

[Plaintiff's Memo. at 20-21].³ While it is true that plaintiff filed several motions in the final two weeks before trial seeking a continuance and informing the Court that he would not be prepared to proceed with trial, none of these motions made any mention of the ADA, and none of these motions indicated that plaintiff, on account of his alleged disability, was entitled to some type of reasonable accommodation. It is important for this Court to recognize that plaintiff's very first mention of the ADA or claim for accommodation based on his alleged disability was made in Plaintiff's Renewed Motion for Voluntary Dismissal, Motion for Expedited Disposition or Alternatively Motion to Continue Trial Setting to Consider Plaintiff's Claims Under the ADA which was filed on June 19, 2000, exactly one day before this trial was scheduled to begin.

Obviously the courts cannot be expected to read the minds of every attorney, litigant, or jury member to determine whether or not that individual is disabled and in need of some type of reasonable accommodation. A Florida appellate court stated the following in a recent ADA case:

³Plaintiff's memorandum also incorrectly suggests that defendants had "agreed at the pretrial conference that the cause could be continued for ninety days," and that plaintiff's requests for a continuance were not opposed by defendants. [Plaintiff's Memo. at 3, 25]. In actuality, prior to the pretrial conference, plaintiff's counsel asked defendants counsel to stipulate to the continuance. Defendants' counsel refused to stipulate to plaintiff's motion for a continuance but agreed not to oppose it. When that motion was denied by the Court, plaintiff filed a Motion for Voluntary Dismissal which defendants' counsel did oppose in a memorandum dated June 8, 2000. Defendants counsel also filed a memorandum opposing plaintiff's last minute ADA-based renewed motion for continuance.

[U]nder state and federal disability laws, disabled persons are entitled to equal and meaningful access to the courts; however, in order to be accommodated such persons have the duty not only to make their disabilities known but also to inform the court when measures taken to remedy such obstacles are ineffective. The *law requires diligence of all parties to protect and assert their rights – including the disabled* to the extent that they are capable of doing so.

Allstate Ins. Co. v. Gulisano, 722 So.2d 216, 218 (Fl. App. 1998) (emphasis added).

In this case, even if plaintiff were entitled to some type of accommodation under the ADA, he failed to exercise any diligence whatsoever in making that fact known to the Court. Obviously plaintiff and his counsel were aware of his alleged disability before this lawsuit was filed on January 23, 1997. Yet, it was not until June 19, 2000, the day before trial, that plaintiff made his first attempt to inform this Court that, under the ADA and because of his alleged disability, he was entitled to reasonable accommodations such as an additional ninety days to prepare for trial. It is apparent that plaintiff's last minute ADA request was not motivated by plaintiff's disability, but rather, by his desperate realization that the Court was actually intending to proceed with trial.

In final two week period before trial, and before plaintiff ever raised the ADA issue, this Court had already denied plaintiff's request for continuance or voluntary dismissal on at least two occasions, making it very clear that plaintiff would not be allowed to substitute counsel, and that the trial would proceed as scheduled. Since plaintiff had not yet even raised the ADA issue, there is no question that the Court's decisions were completely unrelated to plaintiff's disability. This Court's final judgment and sanctions were a direct result of the Court's earlier decisions, and the fact that plaintiff informed the Court, on the morning of trial, that he was not prepared to try the case.

It is also important to recognize that plaintiff's inability to try the case was not a result of his disability, but rather the fact that he decided to discharge his counsel just weeks before trial was scheduled to begin. Plaintiff has also acknowledged that his decision to discharge his counsel was

not related to his disability, but rather was based upon his belief that his partners, Mr. Halliday and Mr. Watkins, had "limited jury trial experience" and, therefore, lacked the experience necessary to "properly present [his] claims." In light of the fact that plaintiff should have determined the competency of his counsel long before this case was certified as ready for trial, this Court determined that plaintiff had failed to establish good cause sufficient to justify a continuance or substitution of counsel.


It is clear that this Courts January 20, 2000 judgment and sanctions against the plaintiff were a direct result of plaintiff's own conduct and decisions in the weeks leading up to trial, and had nothing to do with plaintiff's alleged disability or the ADA claim that was raised less than 24 hours before trial was set to begin. Therefore, plaintiff has failed to satisfy the third element necessary to maintain a claim under Title II of the ADA.

CONCLUSION

For the foregoing reasons, Defendants respectfully ask that Plaintiff's Motion for New Trial or Alternatively to Amend be denied.

DATED this 8th day of September, 2000.

STRONG & HANNI



Stephen J. Trayner
Peter H. Christensen
Attorneys for Defendants

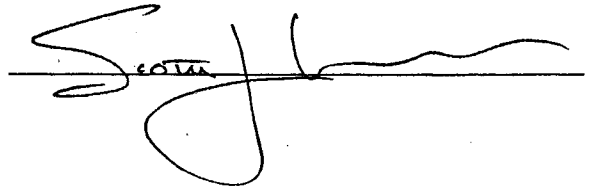
CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2000, a true and correct copy of the foregoing document was mailed via U.S. mail postage prepaid to the following:

Paul M Halliday
Stephen B. Watkins
HALLIDAY & WATKINS, P.C.
376 East 400 South, #300
Salt Lake City, Utah 84111

Mark S. Gustavson
1348 East Longdale
Sandy, Utah 84092

Joseph W. Rohan, Pro Se
Suite 300
Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read "Joseph W. Rohan", written over a horizontal line.

(1750.055)

FILED DISTRICT COURT
Third Judicial District

JUL 31 2000

SALT LAKE COUNTY

By _____ Deputy Clerk

Stephen J. Trayner, # 4928
Steven T. Densley, # 8171
STRONG & HANNI
Attorneys for Defendants
Nine Exchange Place
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

IN THE THIRD JUDICIAL DISTRICT COURT,

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH W. ROHAN, Plaintiff, v. CHAD BOSEMAN, a minor; JERALD BOSEMAN, an individual, Defendant.	FINDINGS OF FACT, CONCLUSIONS OF LAW Civil No.: 980904135 PI Judge J. Dennis Frederick
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The above referenced matter came on for trial on June 20, 2000, defendants appeared personally and by and through their counsel of record, Stephen J. Trayner and Peter H. Christensen of the law firm of *Strong & Hanni*, and plaintiff, Joseph W. Rohan, Esq., pro se, appeared personally, having discharged his prior counsel, Paul M. Halliday, Jr. and Steven B. Watkins, on June 6, 2000. Plaintiff Joseph W. Rohan having filed a renewed Motion for Voluntary Dismissal and Motion for Expedited Disposition or Alternatively Motion to Continue Trial Setting to Consider Plaintiff's Claims Under the ADA on June 19, 2000, and the court having heard the arguments of counsel, having reviewed the pleadings on file, and otherwise being fully apprised in the premises hereby makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. On or about April 23, 1998, plaintiff, by and through his counsel of record, Paul M. Halliday, Jr. and Steven B. Watkins of the law firm of *Halliday & Watkins, P.C.*, filed the present suit seeking damages for certain injuries allegedly sustained by plaintiff as a result of a January 23, 1997 motor vehicle accident.
2. On or about August 17, 1999, plaintiff's counsel of record corresponded with defendant's counsel to indicate plaintiff's desire to cutoff further settlement negotiations and to proceed to trial.
3. On or about August 23, 1999, defendants' counsel corresponded with plaintiff's counsel of record to acknowledge plaintiff's desire to move the matter forward to trial and further indicated defendants' desire to commence the necessary discovery to prepare the case for trial.
4. On or about January 18, 2000, plaintiff, by and through his counsel of record, filed a Certificate of Readiness for Trial.
5. Plaintiff, Joseph W. Rohan, Esq., is a licensed attorney and is a member in good standing of the Utah State Bar.
6. On March 2, 2000, the court, following a telephonic conference with counsel of record, set a four day jury trial for June 20-23, 2000, and further set appropriate witness designation deadlines, discovery cutoff date, and a final pre-trial conference for June 5, 2000.

7. On or about June 2, 2000, one business day prior to the final pre-trial conference, plaintiff filed a Motion for Continuance of Trial Setting, Withdrawal of Counsel, Substitution of Counsel, and Enlargement of Discovery. Plaintiff's Motion sought to continue the trial, to allow new counsel to substitute for his current counsel, and to allow additional time for the filing of Designations of Witnesses, and for an extension of discovery.
8. On June 5, 2000, the court held the previously scheduled final pre-trial conference. Defendants appeared by and through their counsel of record, Stephen J. Trayner of the law firm of *Strong & Hanni*, and plaintiff appeared personally and by and through his counsel of record, Steven B. Watkins of the law firm of *Halliday & Watkins, P.C.*
9. At the final pre-trial conference, plaintiff's counsel, Steven B. Watkins, Esq., requested that the trial date be stricken, that new witness designation dates be established, and that new counsel be allowed to substitute. Defendants did not actively oppose plaintiff's motion, but did not stipulate to the motion. The court indicated at the final pre-trial conference that it would take the matter under advisement, but that plaintiff and his counsel should continue to prepare for trial in the event that said motion was denied.
10. On or about June 5, 2000, the court issued its Minute Entry ruling on plaintiff's Motion for Continuance of Trial Setting, Withdrawal of Counsel, Substitution of Counsel and Enlargement of Discovery, denied plaintiff's Motion for

Continuance/Substitution based upon plaintiff's failure to show good cause for such a continuance.

11. On or about June 6, 2000, plaintiff gave notice to the court and defendant's counsel that he had discharged Steven B. Watkins and Paul M. Halliday, Jr. and the law firm of *Halliday & Watkins, P.C.* as his attorneys.
12. On or about June 7, 2000, plaintiff moved for Voluntary Dismissal and Motion for Expedited Disposition under Rule 41(2)(ii) of the Utah Rules of Civil Procedure. Plaintiff's Motion was supported by his own affidavit and a Memorandum of Points and Authorities indicating that plaintiff desired additional time "to find trial counsel who could properly prepare a brain injury case", that plaintiff's prior counsel had "limited jury trial experience and do not have any experience in trying a brain injury case" and that upon dismissal of the case, plaintiff intended to re-file his action.
13. Defendants opposed plaintiff's Motion for Voluntary Dismissal in part on the grounds that plaintiff had voluntarily chosen to discharge his prior attorneys with the law firm of *Halliday & Watkins, P.C.*, that plaintiff could claim no surprise with respect to the nature of his claims or the degree of experience and competency of his prior attorneys, and that defendants would be prejudiced as a result of any further continuances in the matter.
14. On June 14, 2000, the court issued its Minute Entry denying plaintiff's Motion for Voluntary Dismissal for the reasons specified in the opposing memorandum of the

defendants.

15. On June 14, 2000, Joseph W. Rohan, pro se, wrote to defendants' attorneys indicating his intention to file a petition for interlocutory appeal and stay of the trial date. Mr. Rohan's correspondence further indicated, "I also want to inform you that whether or not a stay is granted, a trial will not occur on Tuesday and therefore the defense does not need to expend time and effort in preparation of trial on that date."
16. On June 15, 2000, defendants' counsel wrote back to Mr. Rohan indicating their intention to continue with their preparations of trial since there was no Order from any trial or appellate court indicating that the trial would not occur as scheduled on June 20-23, 2000. Defendants' counsel's letter further indicated that defendants would not stop their preparations for trial until an appropriate Order was obtained staying the trial date or dismissing the case with prejudice and that in the event plaintiff failed or refused to move forward with his case at trial, that defendants would seek sanctions against plaintiff.
17. On or about June 15, 2000, plaintiff, Joseph W. Rohan, pro se, filed a "Notice of Plaintiffs Inability to Bring this Matter to Trial" indicating "that [plaintiff] cannot present his case that is scheduled for trial on Tuesday, June 20, 2000 through Friday, June 23, 2000."
18. On June 16, 2000, plaintiff wrote to defendants' counsel indicating "I am unable and unprepared to try my own brain injury case and that under no circumstances will a

trial be held on Tuesday, June 20th” and “both the Court and Defendants (for at least the second time) have been notified that this matter will not proceed to trial as scheduled.”

19. On or about June 19, 2000, plaintiff filed a renewed Motion for Voluntary Dismissal and Motion for Expedited Disposition or Alternatively Motion to Continue Trial Setting to Consider Plaintiff's Claims Under the ADA.
20. On or about June 20, 2000, the court entered its Order Denying Plaintiff's Motion for Voluntary Dismissal without Prejudice.
21. On June 20, 2000, defendants appeared personally and by and through their counsel of record, and were prepared to try the defense of this matter. Plaintiff appeared pro se, being unrepresented by other counsel.
22. As of the first day of trial, June 20, 2000, the court had not entered any order permitting withdrawal of counsel under Rule 4-506(1) or (5) of the Rules of Judicial Administration.
23. On the morning of trial, plaintiff appeared unprepared and/or unwilling to proceed with the calling of witnesses on his own behalf and stated in open court that he was not prepared to proceed with the presentation of his evidence.

Based upon the foregoing Findings of Facts, the court makes the following Conclusions of

Law:

CONCLUSIONS OF LAW

1. Plaintiff's conduct individually and by and through his prior counsel of record demonstrate a clear pattern of failure to prosecute plaintiff's case, and as a result, warrants dismissal of plaintiff's complaint with prejudice and upon the merits;
2. Plaintiff failed to comply with or to make the requisite showing under Rule 4-105(3) with respect to his Motions to Continue the Trial in this case in that plaintiff failed to show good cause for such a continuance;
3. Plaintiff's Motions for Substitution of Counsel would have caused a continuance of the trial date and failed to comply with or meet the requirements of Rule 4-506(1) and (5) of the Rules of Judicial Administration;
4. That plaintiff's assertion that the trial of this case must be delayed or continued due to the provisions of Title II of the Americans with Disabilities Act is without foundation in law or in fact;
5. The provisions of Title II of the Americans with Disabilities Act do not require that this court grant plaintiff's request for a continuance and/or a voluntary dismissal without prejudice;
6. Plaintiff's failure to prosecute his case under the circumstances present in this case resulted in defendants incurring needless costs and fees and therefore, defendants shall be entitled to an award of costs and fees as sanctions because of plaintiff's refusal and/or failure to present his case at trial and that said refusal and/or failure was

without merit and in bad faith and was engaged in with an intent to hinder or delay the proceedings of this court.

7. Plaintiff's actions are sanctionable within the contemplation under Utah Code Ann. §78-27-56 and this court's inherent authority to govern judicial proceedings and make appropriate sanctions.

DATED this 28th day of July, 2000.

By: /s/
Honorable J. Dennis Frederick
District Court Judge

APPROVED AS TO FORM:

Joseph W. Rohan, Esq.

Stephen J. Trayner, #4928
Peter H. Christensen, #5453
STRONG & HANNI
Attorneys for Defendants
Nine Exchange Place
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

**IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JOSEPH W. ROHAN,

Plaintiff,

v.

CHAD BOSEMAN, a minor;
JERALD BOSEMAN, an individual,

Defendants.

**AFFIDAVIT OF
ARNOLD BIRRELL**

Civil No.: 980904135 PI

Judge J. Dennis Frederick

STATE OF UTAH)
 :ss
COUNTY OF SALT LAKE)

I, ARNOLD BIRRELL, being first duly sworn, do state as follows:

1. I have personal knowledge of all the information set forth in this affidavit.
2. I am currently the Licensing and Financial Administrator for the Utah
State Bar.
3. On September 6, 2000, I reviewed the Utah State Bar records that are on
file for attorney Joseph W. Rohan.
4. My review of Mr. Rohan's records indicates that Mr. Rohan is currently

an active member of the Utah State Bar in good standing, licensed to practice law in the state of Utah, without restriction.

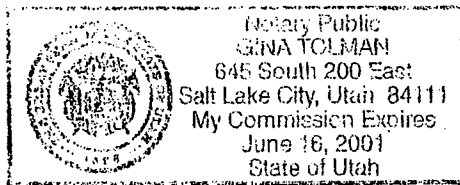
5. Mr. Rohan's records also indicate that he has paid the necessary fees to be a current member of the Utah State Bar's Lawyer Referral Service.
6. During a period of time between 1998 and 1999, Mr. Rohan voluntarily contacted the Utah State Bar's Office of Professional Conduct ("OPC") to discuss his injury and subsequent disability. Based on Mr. Rohan's representations and the information he provided concerning his disability, as well as its impact on his ability to practice law, OPC determined that it would not initiate private or public disability proceedings against Mr. Rohan.
7. OPC also determined, based on Mr. Rohan's representations and the information he provided, that there was no need to impose private or public conditions or restrictions on Mr. Rohan's license to practice law.
8. In light of Mr. Rohan's alleged disabilities, OPC discussed Mr. Rohan's professional duties and obligations with the law firm of Halliday & Watkins as well as Mr. Rohan. There has, however, been no "agreement", formal or informal, public or private, regarding Mr. Rohan's ability to practice law between OPC and either Mr. Rohan or the law firm of Halliday & Watkins. While it is OPC's understanding that the firm of Halliday & Watkins is voluntarily supervising Mr. Rohan in various aspects of his legal practice to ensure that Mr. Rohan can practice law responsibly and ethically, the Utah State Bar has no personal knowledge of the existence, extent, or content of that supervision. As a matter of law, OPC has no jurisdiction or authority to enter into "informal" agreements regarding restricted legal practice.

DATED this 8th day of September, 2000.


ARNOLD BIRRELL

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 8th day of September, 2000, before me personally appeared ARNOLD BIRRELL, known to me (or satisfactorily proven) to be the person who executed the foregoing document.



Gina Tolman
Notary Public

Paul M. Halliday Jr., Bar Number 5076
Stephen B. Watkins, Bar Number 3400
HALLIDAY & WATKINS P. C.
Attorneys for Plaintiff
Suite 300, Western Financial Center
376 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

JOSEPH W. ROHAN

Plaintiff,

v.

CHAD BOSEMAN, a minor
JERALD BOSEMAN an individual,

Defendants.

PLAINTIFF'S AFFIDAVIT IN
SUPPORT OF MOTION
FOR CONTINUANCE
OF TRIAL SETTING, WITHDRAWAL
OF COUNSEL, SUBSTITUTION OF
COUNSEL, AND ENLARGEMENT OF
DISCOVERY

Civil Number 980904135 PI

Judge: J. Dennis Frederick

STATE OF UTAH

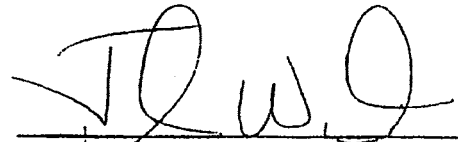
COUNTY OF SALT LAKE

PLAINTIFF, Joseph W. Rohan, being first duly sworn under oath, deposes and says as

follows:

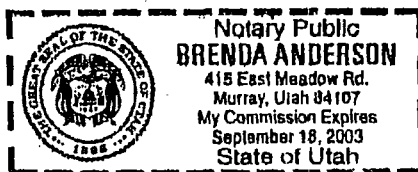
1. I am the Plaintiff in the above-captioned matter.
2. I am competent to testify to the facts contained herein based upon my personal knowledge.
3. I originally retained other members of my firm to represent me in the above captioned matter.
4. Mr. Halliday and Mr. Watkins have limited jury trial experience and it has become apparent to me that I need experienced trial counsel to properly present my claims.
5. I have contacted Robert F. Orton of the law firm of Fabian & Clendenin to act as my trial counsel.
6. Mr. Orton cannot properly prepare to try this case by June 20, 2000.
7. In order for Mr. Orton to adequately prepare he needs to be given the opportunity to identify supplemental expert and fact witnesses and to conduct further discovery.
8. Therefore, I respectfully request that the Court continue the trial setting in this matter for ninety days in order for Robert F. Orton to enter his appearance on my behalf, to allow Paul M. Halliday Jr. and Stephen B. Watkins to withdraw as my counsel, and to extend the discovery deadline for 60 days, and allow the Plaintiff 10 days to file a supplementary designation of exhibits and witnesses on my behalf, and allow the Defendant 20 days to file a supplementary designation of exhibits and witnesses in response.

DATED this 2nd day of June, 2000.



Joseph W. Rohan

SUBSCRIBED AND SWORN to me this 2nd day of June, 2000.





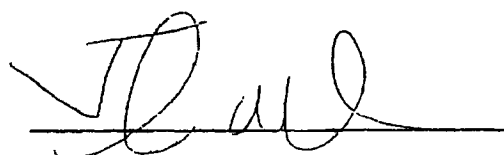
CERTIFICATE OF DELIVERY

I hereby certify that I caused to be faxed and mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 2ND day of June, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

Robert F. Orton
Fabian & Clendenin
P. O. Box 510210
215 South State, #1200
Salt Lake City, UT 84151

A handwritten signature in dark ink, appearing to be "J. H. H.", written over a horizontal line.

Page 162

1 IN THE THIRD JUDICIAL DISTRICT COURT
2 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
3 --oo0oo--
4 JOSEPH W. ROHAN, : Civil No. 980904135P1
5 Plaintiff, : Judge Dennis Frederick
6 vs. :
7 CHAD BOSEMAN, a minor; : Deposition of:
8 JERALD BOSEMAN, an : JOSEPH W. ROHAN
9 individual, :
10 Defendants. : VOLUME III
11 --oo0oo--
12
13 Continued deposition of JOSEPH WILLIAM
14 ROHAN, taken at the instance and request of the
15 Defendants, at the law offices of Strong & Hanni,
16 600 Boston Building, Salt Lake City, Utah, on the
17 26th day of April, 2000, at the hour of 8:45 a.m.,
18 before LYNNE SHINDURLING, CSR, RMR, holding Utah
19 License No. 22-104310-7801, and Notary Public in
20 and for the State of Utah.
21
22
23
24
25

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1 PROCEEDINGS
2 JOSEPH WILLIAM ROHAN,
3 called as a witness for and on behalf of the
4 defendants, having been previously sworn, was
5 examined and testified as follows:
6 CONTINUED EXAMINATION
7 BY MR. CHRISTENSEN:
8 Q I think he is sworn and this will be part
9 three of your deposition. Okay?
10 A All right.
11 Q All right. Last time we left off talking
12 about your injuries from the accident and how they
13 had progressed since the date of the accident. What
14 I'd like to start off today talking about is
15 confirming who your medical providers have been, make
16 sure we have a complete list of all the doctors. So
17 that's what I'd like to do first. All right?
18 A Okay.
19 Q After the accident, you've already
20 indicated to us you went to IHC InstaCare, right?
21 A Right.
22 Q And then was it IHC InstaCare that referred
23 you to Dr. Muir?
24 A Yes.
25 Q All right. The orthopedic surgeon?

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1 APPEARANCES
2
3 For the Plaintiff: Robert F. Orton, Esq.
4 FABIAN & CLENDENIN
5 Attorneys at Law
6 215 South State Street
7 Twelfth Floor
8 Salt Lake City, Utah 84111
9 For the Defendants: Peter B. Christensen, Esq.
10 STRONG & HANNI
11 Attorneys at Law
12 600 Boston Building
13 Salt Lake City, Utah 84111
14
15 INDEX
16
17 Witness Page
18 JOSEPH WILLIAM ROHAN
19 Continued Examination by Mr. Christensen . 164
20
21 --oo0oo--
22
23
24
25

Page 165

1 A Yes.
2 Q And then you also saw Nathaniel Nord,
3 correct, the neurologist?
4 A Yeah.
5 Q Who sent you to him?
6 A Well, Dr. Muir, like in April or May,
7 suggested I see a neurologist, and he just said if
8 you pick one up in that area, I'll refer you to him.
9 So I picked the wrong guy but --
10 Q Why did you pick the wrong guy?
11 A Well, I subsequently have found out, you
12 know, he's basically a -- you know, he's a defense
13 guy and, you know, he's -- you know, he started out
14 there was nothing wrong. So --
15 Q You didn't like the opinion he gave you?
16 A Well, it was -- see, I --
17 MR. ORTON: You can answer that yes or no.
18 THE WITNESS: It's really not a yes or no.
19 MR. ORTON: Okay.
20 THE WITNESS: It's not the opinion. It was
21 the circumstances. See, he sent me to get this MRI,
22 and then I got this thing coming back. That was
23 really -- that was the first time it ever occurred to
24 me there could be any kind of brain deal. And it
25 was, you know, that thing from Dr. Blatter. And I

<p>1 IN THE THIRD JUDICIAL DISTRICT COURT</p> <p>2 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH</p> <p>3 --oo0oo--</p> <p>4 GLADE D. TUELLER, Civil No. 990906479</p> <p>5 Plaintiff,</p> <p>6 vs. DEPOSITION OF:</p> <p>7 JEANETTA WILLIAMS, an individual, JEANETTA WILLIAMS</p> <p>8 Association, the NAACP, a National Association</p> <p>9 Defendants. Reported By:</p> <p>10 KAREN HOUT, RPR, CSR</p> <p>11</p> <p>12 Deposition of JEANETTA WILLIAMS, taken on behalf of</p> <p>13 the plaintiff at 376 East 400 South, Suite 300, Salt Lake</p> <p>14 City, Utah, commencing at 2:20 p.m. on July 20, 2000, before</p> <p>15 KAREN HOUT, Registered Professional Reporter, Certified</p> <p>16 Shorthand Reporter and Notary Public in and for the State of</p> <p>17 Utah, pursuant to Notice.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A P P E A R A N C E S Page 2</p> <p>2 FOR THE PLAINTIFF: JOSEPH W. ROHAN, ESQ.</p> <p>3 HALLIDAY & WATKINS</p> <p>4 WESTERN FINANCIAL CENTER</p> <p>5 376 EAST 400 SOUTH, SUITE 300</p> <p>6 SALT LAKE CITY, UTAH 84111</p> <p>7</p> <p>8 FOR THE DEFENDANTS: STEPHEN J. TRAYNER, ESQ.</p> <p>9 STRONG & HANNI</p> <p>10 NINE EXCHANGE PLACE,</p> <p>11 SUITE 600</p> <p>12 SALT LAKE CITY, UTAH 84111</p> <p>13</p> <p>14 ALSO PRESENT: GLADE TUELLER</p> <p>15</p> <p>16 I N D E X</p> <p>17 WITNESS PAGE</p> <p>18 JEANETTA WILLIAMS</p> <p>19 Examination by Mr. Rohan 3</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>1 E X H I B I T S</p> <p>2 NUMBER DESCRIPTION MARKED</p> <p>3 1 Salt Lake Tribune Article dated Monday</p> <p>4 November 11, 1996 entitled "Some Not Amused</p> <p>5 at Barber's Attempt at Humor." 56</p> <p>6</p> <p>7 2 Newspaper Article entitled "Barber sorry about</p> <p>8 racist joke but says penalty is too harsh." 70</p> <p>9</p> <p>10 3 Tribune Archive 1997 entitled "5 Members Have</p> <p>11 Resigned." 109</p> <p>12</p> <p>13 4 Tribune Archive 1997, Caption: Alberta Henry 112</p> <p>14</p> <p>15 5 Tribune Archive 1996, Texaco Settles Bias</p> <p>16 Suit For \$." 117</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 July 20, 2000 PROCEEDINGS 2:20 p.m. Page 3</p> <p>2 JEANETTA WILLIAMS,</p> <p>3 called as a witness by and on behalf of the plaintiff,</p> <p>4 having been first duly sworn, was examined and testified as</p> <p>5 follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. ROHAN:</p> <p>8 Q. Hello, my name is Joseph Rohan. I'm Glade's</p> <p>9 attorney.</p> <p>10 A. I'm sorry, your name is?</p> <p>11 Q. Joe Rohan. Call me Joe.</p> <p>12 A. Okay.</p> <p>13 Q. Have you ever had your deposition taken before?</p> <p>14 A. No.</p> <p>15 Q. Okay. A deposition is the same as testifying</p> <p>16 in a trial. You're under oath. Anything that you say in</p> <p>17 this deposition may be used during the trial. So I'm not</p> <p>18 trying to trick you or anything like that, I'm just asking</p> <p>19 you questions to find out information.</p> <p>20 If you have any questions or you don't understand my</p> <p>21 questions, it's important that you let me know and I'll</p> <p>22 rephrase them, or whatever. And it's important that you</p> <p>23 don't shake your head and nod and things, so the court</p> <p>24 reporter can --</p> <p>25 A. I do understand that.</p>	<p>1 Q. Okay. Do you have any questions? Page 4</p> <p>2 A. No, I don't.</p> <p>3 Q. Would you state your name and address, please?</p> <p>4 A. Jeanetta William, I'm at Post Office Box 25414,</p> <p>5 Salt Lake City, Utah 84125-0414.</p> <p>6 Q. Okay. And I understand you're the president of</p> <p>7 the Salt Lake chapter or branch of the NAACP.</p> <p>8 A. It's called a branch.</p> <p>9 Q. Okay. And you're the president?</p> <p>10 A. Yes.</p> <p>11 Q. And how long have you been the president of the</p> <p>12 Salt Lake branch?</p> <p>13 A. 1992, I was elected.</p> <p>14 Q. Okay. And do you hold any other offices in the</p> <p>15 NAACP on a local or national, regional level?</p> <p>16 A. Yes.</p> <p>17 Q. What offices are those?</p> <p>18 A. A national board member.</p> <p>19 Q. Anything else?</p> <p>20 A. No, I can't think of any.</p> <p>21 Q. Can you describe what a national board member</p> <p>22 is in the organization? I'm a little unclear about the</p> <p>23 organization.</p> <p>24 A. Can you restate that?</p> <p>25 Q. Okay. What are your duties as a board member</p>
---	---

Joseph W. Rohan, Bar Number 7296
HALLIDAY & WATKINS P. C.
 Attorney for Plaintiff
 Suite 300, Western Financial Center
 376 East 400 South
 Salt Lake City, Utah 84111
 Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
 SALT LAKE COUNTY, STATE OF UTAH
 450 SOUTH STATE STREET, SALT LAKE CITY, UT 84114

GLADE D. TUELLER)	
Plaintiff,)	
)	
	)	NOTICE OF DEPOSITION
	)	UNDER RULE 30(b)(6)
)	
v.)	
	)	Civil Number: 990906479
JEANETTA WILLIAMS, an individual,)	
SALT LAKE CHAPTER NAACP, a)	
Utah Association, the NAACP, a)	
National Association)	
)	
Defendants.	)	Judge: J. Dennis Frederick

Plaintiff, Glade D. Tueller, pursuant to Rule 30(b)(6) of the Utah Rules of Civil Procedure, hereby gives notice that the Deposition upon oral examination of Dennis Courtland Hayes, designated representative of the Defendant NAACP, will be taken at the at the national headquarters of the NAACP located at 4805 Mt. Hope Drive, Baltimore, Maryland on Wednesday, September 6,

2000 at 9:00 a.m., and will continue until completed.

1. The deposition will be taken before a court reporter designated under Rule 28 of the Utah Rules of Civil Procedure.

2. The despondent(s) will be asked about the following matters, in the event Mr. Hayes is unable to respond all of the matters listed herein, the national chapter is requested to designate additional representatives:

- a. The function of each committee of the National Board of Directors on which Ms. Williams serves;
- b. The duties and responsibilities of each member on the committees of the National Board of Directors;
- c. The duties and responsibilities of Ms. Williams on the committees National Board of Directors;
- d. The function and responsibility of the National Board of Directors of the NAACP;
- e. The duties and responsibilities of each member of the National Board of Directors;
- f. The duties and responsibilities of the officers of the national chapter of the NAACP.
- g. The function and responsibility of the office of the president of the NAACP;

- h. The function and responsibility of the executive committee of the national board of directors of the NAACP;
- i. The duties and responsibility of the chairman of the board of directors of the national chapter of the NAACP;
- j. The function and responsibility of the national field secretary of the NAACP;
- k. The relationship of the office of the president to the national board of directors and other officers of the organization:
 - l. The function and responsibility of the Branch and Field Services Department of the NAACP;
 - m. The function and responsibility of the Membership Department of the NAACP;
 - n. The function and responsibility of the Legal Department of the NAACP;
 - o. The function and responsibility of the Public Relations Department of the NAACP;
 - p. The relationship the national board of directors has to Region 1, the Tri-State Conference, and local branches of the NAACP;
 - q. The number of times and the locations, the national chapter of the NAACP has used the facilities of the Hilton Hotel chain for its conventions, meetings and/or other gatherings.

- r. The identity of the person or persons responsible for contracting with the Hilton Hotels on a national basis, and the identity(s) of the Hilton Hotel contact both locally and nationally.
- s. The Economic Reciprocity Initiative and the NAACP Consumer Choice Guide.
- t. The date and manner in which the national chapter first became aware of the incident at the Hilton.
- u. The nature and amount of financial assistance the national chapter of the NAACP, or its sponsors, provided to Ms. Williams for attendance at any event sponsored by the NAACP.
- v. The nature of the relationship the national chapter, through the board of directors, has to the local branches and to the individual members of the branches.
- w. The degree of oversight the national chapter exercises over the regional and local branches concerning receipt and expenditure of funds.
- x. The financial reports the Salt Lake City branch has submitted to the national chapter of the NAACP from the beginning of Ms. Williams tenure as president of the Salt Lake City branch, the financial reports submitted by the Pocatello branch of the NAACP while Ms. Williams was treasurer of that branch and the financial reports of the Tri-State Conference of the NAACP while Ms. Williams was its president.

- y. The nature of investigations, if any, of Ms. Williams conducted by the National Chapter while she served as and officer of the Salt Lake Branch or the Tri-State Conference.
- z. The charter, constitution and bylaws of the national chapter.
- aa. The membership application of the Salt Lake Branch and the National Chapter of the NAACP.
- bb. The minutes of meetings of the board of directors and the executive committee of the board of directors of the National Chapter from the date of Ms. Williams election to the board to the present.
- cc. The press releases of the national chapter of the NAACP from 1992 to present.

3. Pursuant to Rule 30(b)(5) of the Utah Rules of Civil Procedure the despondent is requested to produce for examination and copying any documents upon which its testimony is based, or which were used to refresh the recollection of the despondent's designated witnesses.

DATED this _____ day of August, 2000.

HALLIDAY & WATKINS, P.C.

By: _____
Joseph W. Rohan
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the _____ day of August, 2000.

Stephen J. Trayner
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

CASES INVOLVING JOSEPH ROHAN AS NAMED COUNSEL
IN THIRD DISTRICT COURT, SALT LAKE COUNTY

Thowbridge v. Throwbridge	970907020	J. Medley
Haas v. Haas	974905301	J. Frederick
Mauney v. Lu, et al	980901279	J. Noel
Robertson v. Palfreyman, etal	980904513	J. Young
Griffith v. All Tune & Lube, et al	980905241	J. Pueler
Ellis v. Ellis	984904113	J. Hanson
Tueller v. Williams, et al	990906479	J. Frederick
Jones v. Jones	994905455	J. Lewis

Tab 25

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Telephone: (801) 355-2886

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
450 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84114

JOSEPH W. ROHAN
Plaintiff,

V.

**CHAD BOSEMAN, a minor
JERALD BOSEMAN an individual,
Defendants.**

REPLY MEMORANDUM IN ANSWER
TO DEFENDANTS' MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR NEW TRIAL OR
ALTERNATIVELY TO AMEND

Civil Number 980904135 PI

Judge: J. Dennis Frederick

The Plaintiff, Joseph W. Rohan, hereby submits this reply memorandum in answer to Defendants' Memorandum In Opposition To Plaintiff's Motion for New Trial or Alternatively to Amend.

RESPONSE TO DEFENDANT'S FACTS

1. Admit the allegation contained paragraph 1 of Defendant's Memorandum.
2. Admit the allegation contained paragraph 2 of Defendant's Memorandum, affirmatively allege that the reasonable accommodation the Plaintiff is seeking is as an individual litigant, not as a member of the bar.
3. Admit a certificate of readiness for trial was filed in response to the Court's order to Show Cause. The Plaintiff affirmatively alleges that on January 31, 2000 the Defendant Filed a Objection to Plaintiff's Certificate of Readiness for trial seeking 120 days for Defendant's to complete discovery, said objection is attached hereto as Exhibit "A" and incorporated herein by this reference.
4. Admit that on March 2, 2000, this court set the matter for a jury trial scheduled to begin on June 20, 2000, set witness designation deadlines, discovery cutoff date and a final pre-trial conference for June 5, 2000, deny the remainder of the allegations in the paragraph.
5. Admit that Plaintiff's first Motion for Continuance of Trial Setting etc., was filed on Friday June 2, 2000. Affirmatively allege Defendant's were contacted several days prior to the Motion informing them that Plaintiff would be seeking a continuance in order for trial counsel to properly prepare.
6. Admit the allegation contained in paragraph 6 of Defendant's memorandum.

Affirmatively allege that the reason given in Plaintiff's memorandum in for needing additional time to prepare was because of the brain injury.

7. Admit the allegation contained in paragraph 7 of Defendant's memorandum.
8. Admit the allegation contained in paragraph 9 of Defendant's memorandum
9. Admit the allegation contained in paragraph 9 of Defendant's memorandum.
10. The Plaintiff was not present at the pre-trial conference that was held in this Courts chambers, therefore the Plaintiff does not have knowledge sufficient to form a belief as to the truth of the averment contained in paragraph 9 of Defendant's memorandum and therefore denies the same.
11. Admit the allegation contained in paragraph 11 of Defendant's memorandum.
12. Admit the allegation contained in paragraph 12 of Defendant's memorandum.
13. Admit the allegation contained in paragraph 13 of Defendant's memorandum.
14. Admit the allegation contained in paragraph 14 of Defendant's memorandum.
15. Admit the allegation contained in paragraph 15 of Defendant's memorandum.
16. Admit the allegation contained in paragraph 16 of Defendant's memorandum.
17. Admit the allegation contained in paragraph 17 of Defendant's memorandum.
18. Admit the allegation contained in paragraph 18 of Defendant's memorandum.
19. Admit the allegation contained in paragraph 19 of Defendant's memorandum.
20. Admit the allegation contained in paragraph 20 of Defendant's memorandum.

21. Admit the allegation contained in paragraph 21 of Defendant's memorandum.

22. Admit the allegation contained in paragraph 20 of Defendant's memorandum that on June 20, 2000 the defendants appeared personally and through their counsel, and Plaintiff appeared pro se, the Plaintiff denies the remainder of the allegations in the paragraph.

23. Admit the allegation contained in paragraph 22 of Defendant's memorandum. Affirmatively allege that the court was not required to enter any order pursuant to Rule 4-506(1) or (5) of the Rules of Judicial Administration permitting withdrawal of counsel because the Plaintiff was unrepresented by counsel.

24. The Plaintiff admits the allegation contained in paragraph 24 of Defendant's memorandum that he appeared the morning of trial, the Plaintiff denies the remainder of the paragraph.

25. The Plaintiff admits the allegation contained in paragraph 25 of Defendant's memorandum that Findings of Fact and Conclusions of Law were entered in this matter. The Plaintiff denies each and every conclusion enumerated and affirmatively alleges that Plaintiff's timely Motion for New Trial or Dismissal Without Prejudice constitutes a denial of the same.

26. The Plaintiff denies the allegation contained in the first sentence in paragraph 25 of Defendant's memorandum

(A) The Plaintiff admits he contacted the Utah State Bar. The Plaintiff denies the Defendant's characterization of that contact is accurate.

(B) The Plaintiff admits the allegation contained in paragraph 26(B).

(C) The Plaintiff admits the allegation contained in paragraph 26(C), the Plaintiff affirmatively alleges the in the Federal Lawsuit involving Ms. Williams, the Plaintiff added Paul M. Halliday Jr. as counsel pursuant to his discussions with the Utah State Bar.

(D) The Plaintiff admits the allegation contained in paragraph 26(E).

(E) The Plaintiff has not seen the video transcript and therefore does not have knowledge sufficient to form a belief as to the truth of the averment contained in the paragraph and therefore denies the same.

(F) The Plaintiff admits he was the counsel of record in some of the cases listed in Plaintiff's exhibit.

ARGUMENT IN REPLY

PLAINTIFF IS ENTITLED TO A NEW TRIAL OR AN AMENDED JUDGMENT

From the very first sentence in his memorandum in support of his motion for a new trial the Plaintiff has made it clear that his claims for a reasonable accommodation as provided by the ADA are brought in his capacity as a litigant¹ and not as an attorney. The Plaintiff is a qualified individual with a disability under the ADA and as such was entitled to the reasonable accommodation he requested from this Court prior to trial of a continuance or dismissal without prejudice in order that

¹ From the outset, it should be understood that the Plaintiff is bringing his claim under the ADA as an individual litigant and the reasonable accommodation he requests is sought in his capacity as an individual litigant not as an attorney. (Introduction of Plaintiff's Memorandum)

his counsel could properly prepare to represent him.

The Defendant's state that they will not attempt to dispute Plaintiff's claim that his brain injury meets the definition of a disability under the ADA or the validity of the Plaintiff's medical records. The assertion that "the Court should recognize that these documents are clearly hearsay, and as such, should not be relied on by the Court for the purposes of determining whether or not plaintiff is disabled," is an incorrect. The Plaintiff most certainly can rely on his own medical records in asserting his claim. "Nothing in ADA required plaintiff to present medical testimony in order to prove "disability" under the ADA; disability could be established solely by plaintiff's testimony. Colwell v. Suffolk County Police Dept., E.D.N.Y.1997, 967 F.Supp. 1419, new trial denied, reversed 158 F.3d 635, certiorari denied 119 S.Ct. 1253, 143 L.Ed.2d 350.

A. PLAINTIFF IS A QUALIFIED INDIVIDUAL UNDER THE ADA

The Plaintiff in his motion for a new trial has shown that he is a qualified individual with a disability because he currently has impairments, including memory loss, disrupted cognition, excessive daytime sleepiness, fatigue, confusion, and an abnormal attention span that are uncorrectable, even with mitigating factors, and the impairments substantially limit every major life activity in which he engages.

The Defendant's make the conclusory statement that the Plaintiff is not qualified individual with a disability ignoring the mandate by the United States Supreme Court in Sutton v. United Air

Lines, Inc., 119 S. Ct. 2139 (1999) that such an inquiry is an individualized inquiry. The Defendant's have failed to assert any facts to support their position.

The reasonable accommodation of a ninety day continuance that the plaintiff requested was certainly justified in light of Rule 4-105 of the Utah Rules of Judicial Administration which provides that a motion to continue made on or within 10 days prior to the date of a hearing may be granted by the Court upon a showing of good cause and upon such terms as the Court determines are just. The Plaintiff has shown that he is qualified individual under the ADA which by definition meets the requirement of good cause.

The Defendant claims that the Plaintiff is not a qualified individual under the ADA and was therefore not entitled to a continuance because: First, This Court did not enter an order permitting withdrawal of Plaintiff's former attorney's; Secondly, Plaintiff has failed to establish he could not have tried the case himself; Third, the Plaintiff failed to cite even a single case which suggests the ADA would qualify an individual for accommodations which require courts to bend or disregard the rules of civil procedure or express orders of the court.

The Defendants conclusion and the incorporation of that conclusion into the Order of Dismissal signed by this court, that a individual in a personal injury case, was required, pursuant to Rule 4-506, to seek the courts approval to discharge his attorneys and his attorneys are obligated to continue representing him in spite of being discharged is an error of law. The interpretation of a rule in the Utah Code of Judicial Administration presents a question of law. Wells v. Wells, 871

P.2d 1036, 1038 (Utah App.1994). The individual litigant is no doubt subject to the procedural rules of the court, but the rules of procedure adopted by the Court “may not change the substantive rights of any litigant; the rules must only be procedural in nature.” State v. Banner, 717 P.2d 1325, 1333 (Utah 1986). Denying the Plaintiff’s motion for a continuance or dismissal without prejudice based on the special circumstances that the Plaintiff is a qualified individual with a disability pursuant to the ADA is clearly a denial of the Plaintiff’s substantive rights. Additionally, whether Plaintiff’s former counsel was required to represent him after their discharge, has absolutely nothing to do with the individualized inquiry of whether the Plaintiff is a qualified individual under the act and entitled to a reasonable accommodation.

The Defendant’s make much of the fact that Plaintiff’s counsel, in response to the order of this court, filed a certificate of readiness for trial on January 18, 2000, based upon the good fortune that this court denied the unopposed motion for a continuance. The Defendant’s now claim that they would be prejudiced by the fact that the Plaintiff could not try his own brain injury case. The Defendant’s have seemingly forgotten the fact that they filed an objection to Plaintiff’s Certificate of Readiness on January 31, 2000 in which they requested 120 days (until approximately May 30, 2000) to complete discovery. The Defendant’s claims of prejudice when examined by their actions are groundless.

The Plaintiff relied on the statements by Mr. Orton that he could not properly prepare for a brain injury case. For example, the Plaintiff did not receive the IME from Elaine Clark ph. D until

after discovery had closed and after the pretrial conference on June 5, 2000. There was simply no time to depose Dr. Clark in time for trial.

The only factor that the Defendant's have raised in their attempt to show the Plaintiff is not a qualified individual with a disability under the act that has relevance to the inquiry is the fact that he is a attorney licensed by the State of Utah. However, the inquiry into whether the Plaintiff is a qualified individual with a disability involves a determination of whether he is substantially limited in his major life activities. Although the practice of law or other employment is a major life activity that one may engage in, it is not the only major life activity that is analyzed. The Plaintiff has testified in his affidavits that his practice of law is limited by the brain injury, and he has identified several other major life activities in which he is substantially limited. Additionally, the Plaintiff's limitations have been objectively documented by his health care providers e.g. Mark Fox noted the Plaintiff. "has reported significant difficulties since his accident in completing both activities of daily living and work related activities . . . Specifically, Mr. Rohan experiences significant difficulties attending to important information for a given task. He experiences a decrease in his attentional abilities as the complexity of the information increases and as distractions are introduced. This has and will continue to significantly impact his abilities to complete activities at home and at work." Requiring the Plaintiff to try his own brain injury case would certainly expose him to increasingly complex information and distractions with the resulting decrease in his attentional abilities, and thus his ability to try his own case.

B. THE PLAINTIFF AS A QUALIFIED INDIVIDUAL UNDER THE ADA WAS EXCLUDED FROM THE JUDICIAL PROCESS AND DISCRIMINATED AGAINST BY THIS COURT

The Plaintiff as noted in his memorandum in support of this motion in no way believes that the Court knowingly or purposefully discriminated against him on the basis of his disability. However, it is exactly this type of discrimination that the ADA is designed to address. The Court incorrectly assumed that a individual litigant who is also an attorney should be required to try his own case, in spite of his objections and requests for the reasonable accommodation of a continuance or a dismissal without prejudice. Under these facts, the Plaintiff was discriminated against because the Court violated the precept that persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same. The Plaintiff as an individual litigant who is also an attorney with a qualified disability, is clearly not in the same situation as individual litigants who are also attorneys but without a qualified disability.

The Court discriminated against the Plaintiff by treating him as if his circumstances were the same as those of litigants without a brain injury.

C. THE COURT'S JUDGMENT AND SANCTIONS AGAINST THE PLAINTIFF WERE BY REASON OF THE PLAINTIFF'S DISABILITY

The sanctions imposed against the Plaintiff were by reason of the Courts misperception that he was similarly situated as other litigants. The Defendant is correct in noting that the Plaintiff raised his ADA claim in his Renewed Motion for Voluntary Dismissal shortly before trial. The Defendant is incorrect in concluding because of this fact the Plaintiff is precluded from asserting those claims.

The Defendant's cite what they refer to as a "recent ADA case" from a Florida Appeals Court, Allstate Ins Co. v. Gulisano, 772 So.2d 216,219 (Fl App. 1998). (Attached hereto as Exhibit "B"). In Gulisano, the Plaintiff after the beginning of a two day trial, informed the trial judge that he was unable to hear testimony due to a hearing impairment. The Court accommodated the Plaintiff by allowing him to sit in front of the witness box apparently with the presumption that the close proximity would remedy the problem. The Plaintiff remained seated in this position throughout the remainder of the trial.

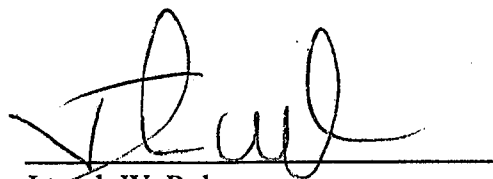
Forty nine days after the trial Gulisano filed an untimely motion for a new trial alleging prejudice because he was unable to participate in the proceedings due to a profound hearing loss, three months later Guliano filed a motion for relief from judgment as an amendment and supplement to the motion for new trial. Contrary to the Defendant's claim that this was "a recent ADA case," it was actually decided pursuant to Utah counterpart of Rule 60(b), as the Florida Appellant court stated:

Although the Gulisano's motion from relief from judgment did not specify, we presume it was filed pursuant to subsection (b) of Florida Rule of Civil Procedure 1.540 which allows the court to vacate a final judgment on grounds of mistake, inadvertence, surprise or excusable neglect, newly discovered evidence, fraud or if the judgment is void or has been satisfied. However, the rule does not contemplate relief under circumstances such as these where the moving party has merely suffered prejudice as a result of his own action.
Guliano at 218.

The Defendant's conveniently fail to mention the final sentence of the paragraph from their cite. "Certainly Mr. Gulisano was capable [at trial] of informing the court of his continued inability to hear." Thus, the Florida court is actually stating that was incumbent on the Plaintiff to make his objection and his need for a reasonable accommodation known to the Court at the time of trial. In this case the Plaintiff properly brought his ADA claim and his need for a reasonable accommodation before trial. The further protected his rights by filing this timely motion for a new trial (unlike Gulisano) in order to allow this court to remedy the inadvertent act of discrimination.

Therefore, the Plaintiff respectfully requests that this Court grant him a new trial or alternatively amend the judgment to provide for dismissal without prejudice.

DATED this 25th day of September, 2000.



Joseph W. Rohan
Pro Se

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing document to the following parties of interest on the 28th day of September, 2000.

Stephen J. Trayner
Peter H. Christensen
STRONG & HANNI
Nine Exchange Place, #600
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

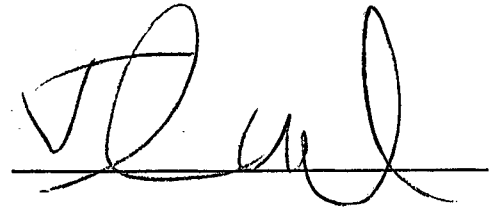
A handwritten signature, likely "Paul", written in dark ink over a horizontal line.

EXHIBIT "A"

Stephen J. Trayner, # 4928
Steven T. Densley, # 8171
STRONG & HANNI
Attorneys for Defendants
Nine Exchange Place
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

**IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JOSEPH W. ROHAN, Plaintiff, v. CHAD BOSEMAN, a minor; JERALD BOSEMAN, an individual, Defendant.	OBJECTION TO CERTIFICATE OF READINESS FOR TRIAL Civil No.: 980904135 PI Judge J. Dennis Frederick
--	--

Defendants, by and through counsel, objects to plaintiff's Certificate of Readiness for Trial. Defendants asserts there is ongoing discovery that has not been completed and requests that the court grant sufficient time to conduct discovery.

STATEMENT OF FACTS

1. During the course of this litigation, defendants was required to bring a Motion to Compel in order to require plaintiff to execute a authorization to allow defendants to obtain copies of plaintiff's file with the Utah State Bar.
2. On November 2, 1999, defendants took the deposition of plaintiff. At that time, plaintiff appeared at his deposition with extensive file materials purportedly related to his lawsuit against defendants.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT
CASE NO. 97-04471

ALLSTATE INSURANCE COMPANY,
a corporation,
Appellant,

v.

SALVATORE GULISANO and ELEANOR GULISANO,
Appellees.

Opinion filed October 9, 1998.

Appeal from nonfinal order of the Circuit Court for Collier County; Charles T. Carlton, Judge.

Richard A. Sherman of Richard A. Sherman, P.A., Fort Lauderdale,
and Ronald L. Napier of Ronald L. Napier, P.A.,
Naples, for Appellant.

Michael R.N. McDonnell of McDonnell Trial Lawyers,
Naples, for Appellees.

QUINCE, Judge.

Allstate Insurance Company (Allstate) appeals an order granting Salvatore and Eleanor Gulisano's (the Gulisanos) motion for relief from judgment and motion for new trial. We reverse because the record does not support the trial court's order granting the motions.

The Gulisanos filed suit against Allstate under their homeowner's policy for property damage allegedly caused by Hurricane Andrew. On the first day of the two day trial, after the lunch break, the trial judge was informed that Mr. Gulisano was unable to hear testimony due to his hearing impairment. At counsel's request, Mr. Gulisano was permitted to sit in front of the witness stand, apparently with the presumption that close proximity would remedy the problem. He remained seated in front of the witness box without complaint for the remainder of the trial.

At the close of proceedings, the jury found Allstate partially liable (30%) for the Gulisanos' property loss and awarded the couple \$5,130.00 for damages and costs. On April 12, 1996, forty-nine days after the jury verdict, the Gulisanos filed an untimely motion for new trial alleging prejudice because Mr. Gulisano was unable to participate in the proceedings due to his profound hearing loss. Three months later, on August 6, 1996, the Gulisanos filed a motion for relief from judgment as an amendment and supplement to their motion for new trial pursuant to Florida Rule of Civil Procedure 1.540. The motion alleged that Mr. Gulisano was

unable to prosecute his case and was deprived of due process because inadequate measures were taken to accommodate his hearing disability. The trial court granted the motion following an evidentiary hearing on the matter.

Although the Gulisanos' motion for relief from judgment did not specify, we presume it was filed pursuant to subsection (b) of Florida Rule of Civil Procedure 1.540, which allows the court to vacate a final judgment on grounds of mistake, inadvertence, surprise or excusable neglect, newly discovered evidence, fraud or if the judgment is void or has been satisfied. However, the rule does not contemplate relief under circumstances such as these where the moving party has merely suffered prejudice as a result of his own inaction. See, e.g., Bothwell v. State, 450 So. 2d 1150 (Fla. 2d DCA 1984) (a party's failure to object or take steps necessary to protect his or her own interests cannot be, in and of itself, grounds for vacating a judgment); John Crescent, Inc. v. Schwartz, 382 So. 2d 383 (Fla. 4th DCA 1980); Smiles v. Young, 271 So. 2d 798 (Fla. 3d DCA 1973).

As a preliminary matter we note that a motion filed pursuant to rule 1.540 cannot be used as a substitute for an untimely motion for new trial. See Fla. R. Civ. P. 1.530 (time for which to move for new trial is within ten days after verdict is rendered); see also Curbelo v. Ullman, 571 So. 2d 443 (Fla. 1990). Therefore, the trial court erred in allowing the motion for relief from judgment to supplement and/or amend the Gulisanos' untimely motion for new trial.

The motion for relief from judgment did not allege factors enumerated in rule 1.540(b), and the only grounds which could remotely provide relief in this case would be mistake, inadvertence or excusable neglect. Evidence presented at the hearing simply does not establish the presence of any of these factors; therefore, the trial court's granting of the motion was an abuse of discretion. The Gulisanos properly argue that under state and federal disability laws, disabled persons are entitled to equal and meaningful access to the courts; however, in order to be accommodated such persons have the duty not only to make their disabilities known but also to inform the court when measures taken to remedy such obstacles are ineffective. The law requires diligence of all parties to protect and assert their rights -- including the disabled to the extent that they are capable of doing so. Certainly Mr. Gulisano was capable of informing the court of his continued inability to hear.

Moreover, from a policy standpoint we feel it imprudent to grant relief under rule 1.540 in this case. Such a ruling would provide a basis for allowing too many dissatisfied litigants to seek relief from judgment under these or similar circumstances. No party should be forced to bear the burden of relitigating a matter due to the opponent's failure to take the necessary steps to protect his or her own interests, particularly when, as here, this could have easily been done.

Accordingly, we reverse and remand with directions to reinstate the judgment.

PARKER, C.J., and WHATLEY, J. Concur.

Tab 26

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH W. ROHAN,	:	MINUTE ENTRY RULING
Plaintiff(s),	:	CASE NO. 980904135 PI
vs.	:	Judge J. Dennis Frederick
CHAD BOSEMAN, et al,	:	Date: September 28, 2000
Defendant(s),	:	

After review of the pleadings and upon receipt of the Notice to Submit for Decision filed September 26, 2000, the Court rules as follows:

1. Plaintiff's Motion for New Trial, etc. is denied for the reasons specified in the opposing memorandum.
2. Counsel for defendants to prepare the order.

Case No. 980904135 PI

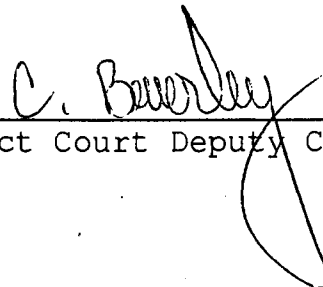
CERTIFICATE OF MAILING

I certify that on the 28th day of September, 2000, I sent by first class mail, a true and correct copy of the attached document to the following:

Stephen J. Trayner
9 Exchange Place
Sixth Floor Boston Bldg
Salt Lake City, UT 84111

Mark S. Gustavson
1348 Longdale Drive
Sandy, UT 84092

Joseph W. Rohan
376 East 400 South, #300
Western Financial Center
Salt Lake City, UT 84111

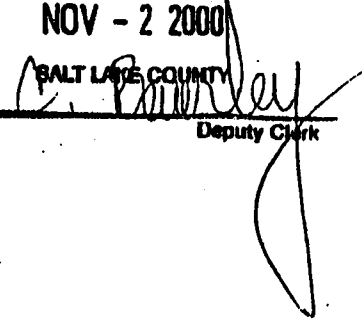


District Court Deputy Clerk

Tab 27

NOV - 2 2000

SALT LAKE COUNTY

By  Deputy Clerk

Stephen J. Trayner, # 4928
 Steven T. Densley, # 8171
STRONG & HANNI
 Attorneys for Defendants
 Nine Exchange Place
 Sixth Floor Boston Building
 Salt Lake City, Utah 84111
 Telephone: (801) 532-7080

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH W. ROHAN,

Plaintiff,

v.

CHAD BOSEMAN, a minor;
 JERALD BOSEMAN, an individual,

Defendant.

ORDER

Civil No.: 980904135 PI

Judge J. Dennis Frederick

Plaintiff's Motion for a New Trial or Alternatively to Amend, having been duly submitted to the court pursuant to Rule 4-501 of the Code of Judicial Administration, the court having reviewed the memoranda submitted in support and opposition of said Motion, and other pertinent pleadings, and the court being otherwise fully apprised in the premises as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREE that plaintiff's Motion for a New Trial or in the Alternative to Amend, be and the same is hereby denied on the grounds and for the reasons specified in the opposing memorandum filed by defendants.

DATED this 7th day of Nov. ~~October~~, 2000.

By: _____

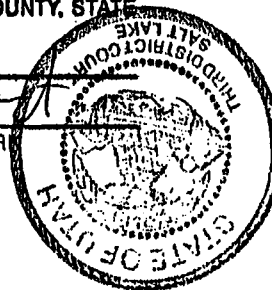
Honorable J. Dennis Frederick
District Court Judge



I CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE
OF UTAH.

DATE: _____

H. Stewart
DEPUTY COURT CLERK



Rohan v Boseman et al
Judge J. Dennis Frederick
Civil No. 980904135 PI
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