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

ROSE SMITH	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.
	)	
BOBBY JONES, M.D.	)	
	)	
Defendants.	)	

PLAINTIFF'S MOTION *IN LIMINE*
RELATING TO TIME, SCOPE AND SUBJECT MATTERS OF ATTORNEY CONDUCTED *VOIR DIRE*

Plaintiff, by her attorneys, **KURT D. LLOYD** and the **LLOYD LAW GROUP, LTD.,** moves this Court, *in limine,* pursuant to Supreme Court Rule 234, for entry of an order granting the trial lawyers for the parties adequate time to conduct voir dire examinations of prospective jurors, and allowing the trial attorneys necessary voir dire questioning of prospective jurors regarding their present opinions, attitudes and beliefs on the following subject matters:

- The law applicable to this case, including the civil burden of proof, standard of care and contributory negligence
- The anticipated evidence relating to liability and damages for the alleged occurrence
- Credibility and sympathy of certain witnesses
- The laws allowing the award of money damages for non-economic damages, including for pain and suffering, disability, loss of normal life, and disfigurement
- The dollar amount of the plaintiff's damages award

In support of this Motion, the Plaintiff states:

LAW

The parties are entitled to impartial jurors who are free from bias or prejudice. *Kingston v. Turner*, 115 Ill.2d 445, 464, 505 N.E.2d 320 (Sup. Ct. 1987) The purpose of voir dire is to filter out prospective jurors who are unable or unwilling to be impartial. *People v. Washington*, 104 Ill. App.3d 386, 390, 432 N.E.2d 1020 (1st D. 1982).

During jury selection, the voir dire questioning serves two different purposes: 1) voir dire enables the trial to select jurors who are free from bias or prejudice. *People v. Gregg,* 315 Ill. App.3d 59, 65, 70, 732 N.E.2d 1152 (1st D. 2000). If a prospective juror is not free from bias or prejudice, a party has a basis to challenge that juror for cause. *People v. Lobb,* 17 Ill.2d 287, 161 N.E. 2d 325, 332-33 (Sup. Ct. 1973); and 2) voir dire ensures that attorneys have an informed and intelligent basis for exercising their peremptory challenges. *Gregg,* 315 Ill. App. 3d at 65.

A. Court Must Allow Trial Attorneys to Conduct Appropriate Voir Dire Questioning

Illinois Supreme Court Rule 234 provides in pertinent part:

> The court shall conduct the *voir dire* examination of prospective jurors by putting to them questions it thinks appropriate touching upon their qualifications to serve as jurors in the case on trial. *The court …shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, the complexity of the case, and the nature and extent of the damages.*
>
> 177 Ill.2d R. 234 (emphasis added).

Our Illinois Supreme Court very strongly favors trial court allowing the trial attorneys for the parties to conduct appropriate voir dire questioning. *People v. Garstecki,* 234 Ill. 2d 430, 443, 917 N.E. 2d 465 (2009) In *Grossman v. Gebarowski*, 315 Ill. App. 3d 213, 221, 732 N.E. 2d

1100 (1st Dist. 2000), the trial judge was reversed for failure to allow attorney conducted voir dire, even though the trial judge had conducted lengthy, extensive voir dire questioning of the prospective jurors.

In determining what is appropriate voir dire questioning, the trial judge must exercise his discretion in favor of a voir dire examination which allows a trial attorney's reasonable exploration of germane factors that might expose a basis for challenge, whether for cause or peremptory. *People v. Oliver,* 265 Ill. App.3d 543, 548, 637 N.E.2d 1173 (1st D. 1994). As stated in *Oliver*:

> [P]rejudice and bias are deep running streams more often than not concealed by the calm surface stemming from an awareness of societal distaste for their existence . . . a few specific associational questions as a maieutic process may indicate the dormant seeds of prejudice, preconceived and unalterable concepts or other nonfairness disqualifications. The result may not reach the stage of being a basis for cause challenge but could well . . . bring about a peremptory challenge. 265 Ill. App.3d at 551.

When voir dire questioning of prospective jurors is turned over to the trial attorney, it is properly within the scope of his questioning to expose any hidden bias or prejudice of a prospective juror. *Rub v. ConRail*, 331 Ill. App.3d 692, 771 N.E.2d 1015 (2002). A trial court abuses its discretion when it denies a party's attorney the opportunity to probe an important area of potential bias or prejudice among prospective jurors. *Grossman*, 315 Ill.App.3d at 222 *citing People v. Oliver,* 265 Ill.App.3d 543, 548 (1994); *Gregg*, 315 Ill. App.3d at 65 (1st Dist. 2000). Indeed, a trial judge may commit reversible error if he fails to permit the parties to ask questions to determine whether the jurors are free from bias or prejudice or questions that

help the parties exercise their right of peremptory challenge intelligently. *Lobb*, 17 Ill. 2d 287, 161 N.E. 2d 325, 332-333.

B. Trial Judge Must Grant Reasonable Time Limits for Voir Examination

The trial judge can reasonably limit the trial attorney's time for voir dire under Rule 234. *York* v. *El-Gonzouri*, 353 Ill.App.3d 1(1st D. 2004) It is well-established that limitation of voir dire questioning may constitute reversible error where it denies a fair opportunity to probe an important, relevant area of potential bias among prospective jurors. *Gasiorowski v. Homer*, 47 Ill.App.3d 989(1st D. 1977) In the instant case, the plaintiff's attorney has provided the court with a written questions of his proposed voir dire examination, including necessary subject matters of inquiry. See copy attached hereto.

C. The Parties Must Be Allowed to Probe Areas of Potential Bias and Prejudice

Voir dire examination is not sufficient when the trial court asks only general questions about an area of possible bias or prejudice. *Grossman v. Gebarowski*, 315 Ill. App. 3d 213, 221, 732 N.E. 2d 1100 (1st D. 2000) In *Grossman,* a family brought a wrongful death suit against the defendant driver who struck and killed their relative, a pedestrian with cerebral palsy who had crossed the street in mid-block at night. During voir dire, the trial court asked potential jurors general questions about their backgrounds, occupations, experiences with cerebral palsy, prior lawsuits, accidents and work injuries and also asked follow up questions. The trial lawyers were not allowed to ask oral voir dire questions. At trial, the jury found in favor of the driver. On appeal, the pedestrian's family argued that the trial court failed to conduct voir dire that would identify jurors with a specific bias against a pedestrian who crosses a street at a place other than an intersection or marked crosswalk and that would provide enough information to enable plaintiff to use her peremptory challenges. The appellate court reversed, finding that the trial court merely asked general questions about whether the jurors or their family

members or close friends had been involved in an accident. *Grossman*, 315 Ill. App. 3d at 222. The appellate court ruled that trial court erred by not allowing counsel to participate in voir dire and held that the trial court's limited, general questions did not ensure an impartial jury. *Id.*

D. **Illinois law Allows Questions to Jurors About Anticipated Evidence Particular to The Case**

The appellate court's reasoning in *Grossman* is consistent with other Illinois appellate court rulings guaranteeing parties the right to ask questions about certain argument or anticipated evidence particular to that case. For example:

1. ***Presence of Warning Sign at Railroad Crossing:*** Defendant railroad company's attorney was allowed to ask prospective jurors' attitudes about whether a single warning sign known as a "cross buck" located at a railroad crossing by itself showed that the railroad was negligent. *Rub v. ConRail*, 331 Ill. App. 3d 692, 771 N.E. 2d 1015 (1st D. 2002).

2. ***Intoxication:*** the defendant's attorney was allowed to ask about juror's feelings towards alcohol and drugs because defendant raised intoxication defense to charge of aggravated battery and aggravated assault. *People v. Lanter*, 230 Ill.App.3d 72, 595 N.E. 2d 210 (4th D. 1992).

E. Illinois Allows Parties to Question Whether Jurors Disagree with Applicable Law

Illinois law also allows trial attorneys to confirm that each prospective juror is generally aware of the particular laws that govern the case, and whether any prospective juror disagrees with a particular rule of law applicable to the case. *Limer v. Casassa*, 273 Ill.App.3d 300, 302 (4th D. 1995); *Kirk v. Walter E. Deuchler Associates, Inc.,* 79 Ill. App.3d 416, 398 N.E.2d 603 (2nd D. 1979); *Schneider v. Kirk*, 83 Ill. App.2d 170, 177, 226 N.E.2d 655, 658 (2nd D. 1967). For example:

1. ***Contributory Negligence:*** the plaintiff's attorney allowed to repeatedly ask jurors prospective jurors whether they disagreed with a proposition that

contributory negligence was not a defense to plaintiff's Structural Work Act claim. Although a question of law is involved, it is precisely the sort of point on which counsel must have the right to question prospective jurors. *Kirk v. Walter E. Deuchler Associates, Inc.*, 79 Ill. App.3d 416, 398 N.E.2d 603 (2nd D. 1979).

2. ***Liability for Serving Alcohol:*** the plaintiff's attorney was allowed to ask each prospective juror whether he or she had any quarrel with law that a person injured by the act of an intoxicated person might recover against the owner of the tavern that sold the liquor. It was highly conceivable that a potential juror might find the law unjust. *Schneider v. Kirk,* 83 Ill. App. 2d 170, 177, 226 N.E. 2d 655, 658 (2nd D. 1967).

3. ***Burden of Proof***: the court and plaintiff's attorney are allowed to identify the civil burden of proof as a preponderance of the evidence, i.e. more probably true than not standard, and to distinguish for the jury this burden of proof from the criminal burden of proof standard. *Schaffner v. Chicago Northwestern*, 129 Ill.2d 1, 33 (1989) Specifically, an attorney has been allowed to ask prospective jurors' their attitudes toward a lesser burden of proof – preponderance of the evidence, because simply asking jurors whether they could faithfully apply the law as instructed is not enough to reveal juror bias and prejudice toward a lessor burden of proof. See e.g. *People v. Gregg*, 315 Ill. App.3d 59, 65, 70, 732 N.E.2d 1152(1st D. 2000)

F. Illinois Law Allows Voir Dire Questions About Witness Credibility, Sympathy and Religious or Moral Issues Applicable to the Case

The Illinois courts have sanctioned voir dire questions on prospective jurors' attitudes towards witnesses and social and moral issues involved in the case. For example:

1. ***Credibility:*** For purposes of evaluating prospective jurors' attitudes toward the credibility of the victim, the prosecutor was allowed to ask the jurors their opinions about why the victim of sexual assault might delay her report of the crime. *People v. Rinehart*, 2012 IL 111719, 962 N.E. 2d 444 (2012).

2. ***Jurors' Religious and Moral Attitudes to Alcohol: For a*** defendant charged with Driving While Intoxication, his attorney was allowed to ask prospective jurors whether they drank socially and whether they had any religious or moral objections to drinking alcohol. *Village of Plainfield v. Nowicki,* 367 Ill.App.3d 522, 854 N.E.2d 791(3rd D. 2006).

3. ***Social Affiliations:*** For a defendant charged with murder who was a gang member, his attorney was allowed to ask prospective jurors questions that would reveal any prejudice against gang members. *People v. Jimenez,* 284 Ill. App. 3d 908, 672 N.E. 2d 914 (1st D. 1996).

4. ***Sympathy:*** The defendant hospital's attorney was allowed to show day-in-the-life video and ask prospective jurors questions about whether it arouses sympathy, passion or prejudice for the plaintiff. *Roberts v. Sisters of Saint Francis Health Services, Inc.*, 198 Ill.App.3d 891, 901, 556 N.E.2d 662, 669 (1st D. 1990).

G. Illinois Law Allows Voir Dire Questions About Awarding Damages

In Illinois, the plaintiff's attorneys is allowed to ask prospective jurors about their attitudes toward awarding damages.

1. ***Award Specific Sum of Money:*** the plaintiff's attorney was allowed to ask prospective jurors whether they could award as much as $2 million in damages if supported by the evidence. *Kinsey v. Kolber*, 103 Ill. App. 3d 933 (1st Dist. 1982).

ARGUMENT

In the case at bar, the plaintiff cannot receive a fair trial without sufficient time to discuss with prospective jurors the following subjects:

- The law applicable to this case, including the civil burden of proof, standard of care and contributory negligence;
- Certain uncontested evidence relating to liability for the alleged occurrence;
- Sympathy and credibility of witnesses;
- Awarding money damages for non-economic damages, including for pain and suffering, disability, loss of normal life, and disfigurement;
- The amount of the plaintiff's damages award.

WHEREFORE, the Plaintiff, JONES, requests that this Court enter an order, *in limine*, allowing the attorneys ample and sufficient time to thoroughly question the potential jurors during voir dire about the subject matters of awarding non-economic damages, including money for pain and suffering, loss of a normal life; disagreements with the applicable law, including the burden of proof, standard of care, and damages in order to discover any bias or prejudice or other information upon which to intelligently exercise peremptory challenges and make other challenges for cause.

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