

August 11, 2014

VIA ELECTRONIC/REGULAR MAIL

Michael Madden, Esq.
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Two Union Square
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Re: *In re Seattle Children's Hospital*

Dear Counsel:

We write in regards to Seattle Children's Hospital's Exhibit List submitted at 4:56 pm today. We were extremely surprised and dismayed to see that Seattle Children's Hospital ("SCH") has included 98 additional exhibits that have not been previously produced to Premera despite the subpoenas duces tecum that Premera and BridgeSpan served on all SCH's witnesses for production of all documents upon which SCH intends to rely at the hearing. With the hearing less than one week away and depositions slated for both Tuesday and Wednesday of this week, it is impossible for Premera to devote the time necessary to properly review and analyze these documents, much less prepare its case for trial with the addition of 98 unexpected and improperly added exhibits within the next six days. Simply put, this is an ambush.

Moreover, even though SCH has now put Premera on notice that it plans to present 98 additional exhibits in the upcoming hearing, it still has yet to even produce these documents to Premera, in direct contravention to the guidelines set forth regarding pre-trial procedures in the August 6, 2014 pre-trial conference.

If SCH had intended to rely on these documents, they should have been produced pursuant to the numerous subpoenas duces tecum served on each of the SCH witnesses. Each one of these subpoenas commanded the SCH witnesses to produce "All documents you intend to rely upon in your testimony at the hearing in this matter scheduled for August 18-22, 2014." SCH served subpoenas with identical language on each Premera witness. Premera complied with these subpoenas, producing documents for each of the witnesses it intends to call at trial. As such, Premera does not intend to add more than a handful of new documents to the exhibit list. Indeed, Premera likely will only be adding documents to reflect the most recent statistical data and copies of its demonstratives.

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The addition of 98 documents is not insignificant, especially in light of the rushed nature of this hearing. And these 98 documents would present a particular hurdle to Premera in reviewing and analyzing for the upcoming trial as several of them, to the extent that Premera can identify them (as, again, Premera has not yet been provided with copies of any of these exhibits) are extremely long.

Finally, in addition to its strenuous objection to the 98 newly disclosed trial exhibits, Premera objects to certain deposition exhibits as trial exhibits. At this time, and Premera reserves its rights and does intend to object at a later date to other exhibits, Premera specifically objects to the inclusion of Deposition Exhibit 135. This deposition exhibit consists of notes that Ms. Clark typed up last week.¹ These notes are clearly hearsay as they consist of statements made by Ms. Clark prior to her testimony that are being offered for their truth. ER 801(c). Such hearsay is inadmissible in court. ER 802. Such notes would only constitute a hearsay exception if taken contemporaneously, but these notes were not. ER 803(5). Indeed, Ms. Clark testified that these notes were made 48 hours prior to her deposition following Ms. Clark's conversation with counsel for SCH.

Very truly yours,

LANE POWELL PC



Gwendolyn C. Payton

cc: Hon. George Finkle
Chuck Brown, Esq.
Annalissa Gellermann, Esq.
Tim Parker, Esq.
Melissa Cunningham, Esq.

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¹ Ms. Clark's testimony to this fact is clear:

Q. And is this [exhibit] the notes that you typed up this week?

A. Yes

Q. And just to be clear, you typed these up after –

A. From my notes.

Q. After Carol Sue talked to you on the telephone?

A. After I requested if I could have them with me to make sure I could reference the dates and everything.

Q. After Carol Sue talked to you on the phone?

A. Yes

Clark Dep. Tr. 23:9-21.