THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR CACHE COUNTY, STATE OF UTAH

AUTUMN STAVELY; AUTUMN STAVELY as a Personal Representative to her children, Plaintiff, vs. JEFFREY G. NORMAN, D.C.; PETERSON WELLNESS CENTER; JC NORMAN, INC. dba PETERSON WELLNESS CENTER; BRANDON DURFEE, PA-C; RYAN J. STOLWORTHY, M.D.; IHC HEALTH SERVICES, INC. dba INTERMOUNTAIN MEDICAL GROUP; LOGAN REGIONAL HOSPITAL; IHC HEALTH SERVICES, INC. dba LOGAN REGIONAL HOSPITAL; and DOES I-X, Defendants.	MEMORANDUM DECISION (Filed Sep. 11, 2019) Case No. 150100054 Judge Kevin K. Allen

THIS MATTER IS BEFORE THE COURT on (1) Defendants' Joint Statement of Discovery Issues Re: Plaintiff's Failure to Follow Court's January 14, 2019 Order by Scheduling Plaintiff's Experts' Depositions; (2) Plaintiff's Rule 60 Motion for Relief of This Court's January 24, 2019; (3) Defendants' Motion to Strike Third Certificate of Readiness for Trial; (4) Plaintiff's Objection to Defendants' Requests to Submit; and (5) Defendants'

Affidavits in Support of Determination of Amount of Attorney Fee Award. In preparation of this Decision, the Court has reviewed the moving papers and examined the applicable legal authorities. Having considered the foregoing, the Court issues this Decision.

SUMMARY

On January 7, 2019, Plaintiff filed a *Third Certificate of Readiness for Trial and Request for Pretrial Scheduling Conference* [D.E. 617]. On January 14, 2019, Plaintiff requested the submission of the certificate of readiness for trial [D.E. 621]. That same day, Defendants filed an *Objection to Third Certificate of Readiness for Trial* [D.E. 623], as well as a *Motion to Strike Third Certificate of Readiness for Trial* [D.E. 627]. On January 23, 2019, Plaintiff filed an *Opposition to Defendants' Motion to Strike Certificate of Readiness for Trial* [D.E. 637]. On January 29, 2019, Defendants filed a *Reply Memorandum Supporting Motion to Strike Third Certificate of Readiness for Trial* [D.E. 647]. On January 29, 2018, Defendants requested the submission of its motion to strike [D.E. 648].

On February 5, 2019, the Court issued an Order implementing a stay in light of Plaintiff's filing of a petition for writ of certiorari to the Utah Supreme Court on January 28, 2019, finding it "appropriate to stay all pending motions, objections, and requests for hearings until the Utah Supreme Court issues its decision regarding the [p]etition." Order, Feb. 5, 2019, [D.E. 661].

Later, on April 5, 2019, Defendants filed a *Joint Statement of Discovery Issues Re: Plaintiff's Failure to Follow Court's January 14, 2019 Order by Scheduling Plaintiff's Experts' Depositions* ("Joint Statement") [D.E. 683]. On April 8, 2019, Plaintiff filed a *Rule 60 Motion for Relief of This Court's January 24, 2019 Order* [D.E. 690]. On April 10, 2019, the Court issued a Memorandum Decision noting that "the stay is still in place" because the Utah Supreme Court had still not granted or denied Plaintiff's petition. Mem. Decision, Apr. 10, 2019, at 2.

On April 12, 2019, Plaintiff filed an *Objection to Defendants' Joint Statement of Discovery Issues RE: Plaintiff's Failure to Follow Court's January 14, 2019 Order* [D.E. 695]. On April 17, 2019, Defendants requested the submission of its Joint Statement [D.E. 698]. On April 19, 2019, Defendants filed a *Joint Opposition to Plaintiffs' Rule 60 Motion for Relief of This Court's January 24, 2019 Order* [D.E. 700]. On April 25, 2019, Plaintiffs filed a *Reply Memorandum in Support of Her Rule 60 Motion for Relief of this Court's January 24, 2019 Order* [D.E. 706]. On April 25, 2019, the parties filed proposed orders concerning the Joint Statement, which the Court declined to sign because of the stay.

On May 7, 2019, the Utah Supreme Court issued an Order denying Plaintiff's petition for writ of certiorari, granting Defendants' attorney fees incurred in responding to the petition, and remanding for the limited purpose of ascertaining the amount of those fees. *See* Utah Sp. Ct. Order [D.E. 710], May 7, 2019. That same

day, Plaintiff filed a *Notice of Petition to the U.S. Supreme Court RE: Disqualification of Judge Allen and Plaintiffs' Right to a Non-Biased Tribunal* [D.E. 708].

On May 8, 2019, this Court issued a *Scheduling Order Regarding Remand* addressing the deadlines the parties would need to comply with to determine attorney fees [D.E. 722]. Also on May 8, 2019, Defendants requested the submission of its motion to strike [D.E. 711] and Joint Statement [D.E. 715] and Plaintiff's Rule 60 motion for relief [D.E. 712]. On May 9, 2019, Plaintiff filed an *Objection to Defendants' Requests to Submit* [D.E. 718] and provided notice of a *Request for Hearing on Attorney Fees* to the Utah Supreme Court pursuant to Rule 33 of the Utah Rules of Appellate Procedure [D.E. 719].

On May 16, 2019, Defendants filed a *Joint Response to Plaintiffs' Objection to Defendants' Requests to Submit* [D.E 723]. On May 23, 2019, Defendants filed *Affidavits in Support of Determination of Amount of Attorney Fee Award* [D.E. 731]. On May 30, 2019, Plaintiff filed an *Objection to Defendants' Affidavits for Attorney Fees* [D.E. 735]. On June 3, 2019, Defendants filed a *Response to Objection to Attorney Fees Affidavits* [D.E. 737]. On June 3, 2019, Defendants requested the submission of its affidavits for attorney fees [D.E. 738]. On June 20, 2019, the Utah Supreme Court issued an order denying Plaintiff's request for a hearing regarding attorney fees. *See* Utah Sup. Ct. Order, June 20, 2019, [D.E. 742].

ANALYSIS

I. Objection to Defendants' Requests to Submit

After the Utah Supreme Court denied Plaintiff's petition, Defendants filed a requests to submit on its Motion to Strike [D.E. 711] and joint statement [D.E. 715] and Plaintiff's Rule 60 motion for relief [D.E. 712] arguing that the stay placed by the Court in February of 2019 was operative pending a decision by the Utah Supreme Court on Plaintiff's petition. Defendants now request that the Court address the submitted issues because the Utah Supreme Court's denial of the petition meant that "the condition for lifting the stay on pending matters has been satisfied." Defs.' Req. to Submit [D.E. 715], at ¶ 7.

Plaintiff objected to Defendants' requests to submit [D.E. 718], arguing that the Court may not address the submitted issues because the motion to disqualify does not have final resolution on account of the following two reasons: (1) Plaintiff requested a hearing to the Utah Supreme Court regarding attorney fees, which has not been scheduled and (2) Plaintiff put this Court on notice of her petition for certiorari to the U.S. Supreme Court.

Defendants' reply that the motion to disqualify was resolved when the Utah Supreme Court denied Plaintiff's petition. Thus, "the stay by its terms is lifted." Defs.' Joint Resp. [D.E. 723], at 2-4. Defendants further argue that the issue of attorney fees "has no bearing on Plaintiffs' Motion to Disqualify" and "there exists no further cause to stay the proceedings." Defs.'

Joint Resp. [D.E. 723], at 3. Since the stay was lifted by the terms of the order and Plaintiff has not moved to implement a new stay in connection with her appeal to the U.S. Supreme Court, according to Defendants:

> [c]ontinuing the stay in this case serves no useful purpose[ ] [g]iven the delay that Plaintiff's motion to disqualify and subsequent appeals have occasioned, the Court should not prolong the stay any further on a less than one percent chance of the U.S. Supreme Court granting certiorari.

Defs.' Joint Resp. [D.E. 723], at 5.

A. Whether Plaintiff's request for a hearing signifies that the motion to disqualify does not have final resolution.

Plaintiff's first argument opposing Defendants' requests to submit is that the motion to disqualify does not have final resolution because Plaintiff requested a hearing to the Utah Supreme Court regarding attorney fees, which has not been scheduled.

The Utah Supreme Court has long followed the general rule "that an appeal divests the trial court of jurisdiction and transfers jurisdiction to the appellate court, where it remains until the appellate proceeding terminates and the trial court regains jurisdiction." *White v. State*, 795 P.2d 648, 650 (Utah 1990); *see also Cheves v. Williams*, 1999 UT 86, ¶ 45. Once an appellate court reviews the matter and makes a decision "[t]he rule is well established and there does not seem

to be anything to the contrary that when a case has been determined by a reviewing court and remanded to the trial court, the duty of the latter is to comply with the mandate of the former." *Utah Copper Co. v. Dist. Ct. of Third Jud Dist. in & for Salt Lake Cnty.*, 91 Utah 377, 64 P.2d 241, 250 (1937). The Utah Supreme Court described the effect of a remand decision by an appellate court upon the trial court as follows:

> [t]he lower court upon remand of a case from a higher court, must obey the mandate or remittitur and render judgment in conformity thereto and has no authority to enter any judgment not in conformity with the order. *Whatever comes before and is decided and disposed of by the reviewing court is considered as finally settled.*

Id. (emphasis added).

Here, the Utah Supreme Court denied Plaintiff's petition for certiorari involving the motion to disqualify. The only issue remaining on remand was procedural in nature: the amount of attorney fees Defendants incurred in responding to the petition.

Therefore, this Court finds that the merits of the motion to disqualify has been finally settled. *See Utah Copper Co.*, 64 P.2d at 250. Further, any argument that Plaintiff's request for a hearing on attorney fees meant that the motion to disqualify did not have final resolution became moot when the Utah Supreme Court denied the request on June 20, 2019, [D.E. 742].

B. Whether Plaintiff's notice of a petition for certiorari to the U.S. Supreme Court signified that the motion to disqualify does not have final resolution.

Plaintiff's second argument opposing Defendants' requests to submit is that the motion to disqualify does not have final resolution because Plaintiff put this Court on notice of her petition for certiorari to the U.S. Supreme Court.

As the Utah Supreme Court has acknowledged: "[t]here is no automatic stay of execution upon the filing of a notice of appeal." *Cheves*, 1999 UT at 1147. "It is elemental that where a judgment is not stayed by a proper order or bond there is no impediment against proceedings in the trial court for the purpose of executing on the judgment." *Id.* (quoting *Schnier v. District Court*, 696 P.2d 264, 267 (Colo.1985)). Thus, "absent a stay of judgment either by the trial court itself or by an appellate court pending appeal, a trial court has jurisdiction to enforce its judgment." *Id.* at 1148. "[T]he decision to stay enforcement of a judgment is within the discretion of the reviewing court." *Utah Res. Int'l, Inc. v. Mark Techs. Corp.*, 2014 UT 60, ¶ 11, 342 P.3d 779, 782; *see also Lewis v. Moultree*, 627 P.2d 94, 96 (Utah 1981) ("It lies within the inherent powers of the courts to grant a stay of proceedings."). The Supreme Court reviews the denial of a motion to stay by the district court on an abuse of discretion standard. *Utah Res. Int'l, Inc.*, 2014 UT at ¶ 11.

As Defendants point out, Plaintiff has not requested a stay with regards to her petition to the U.S. Supreme Court. *See* Utah R. Civ. P. 62 ("[w]hen an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay."); *see also* Utah R. App. P. 8 (providing that an application for a stay "during the pendency of an appeal must ordinarily be made in the first instance in the trial court" and that it may only be made to the appellate court if the motion shows "the reasons given by the trial court for its action."); *Cheves*, 1999 UT at 1 48 (stating that "the trial court had jurisdiction to issue the challenged enforcement order" because the trial court denied the motion to stay and petitioner did not apply for a stay to the higher court.). Thus, the question is whether the stay implemented by this Court in February of 2019 remains in effect during the pendency of Plaintiff's appeal to the U.S. Supreme Court notwithstanding the Utah Supreme Court's denial of the petition.

This Court acknowledged Plaintiff's filing of an interlocutory petition for permission to appeal regarding the motion to disqualify in the February of 2019 stay order, which the Utah Court of Appeals denied on January 9, 2019. The Court further acknowledged Plaintiff's filing of a second petition (this time for writ of certiorari) regarding the motion to disqualify. The Court began its analysis by citing the general principle found in Rule 63 stating that a judge who is the subject of a motion to disqualify may not take action in a case before the motion is decided. *See* Utah R. Civ. P. 63(c)(1).

The Court noted, however, that that the motion to disqualify had been decided both "by the Presiding Judge and the Utah Court of Appeals." Order [D.E. 661]. Nonetheless, "in an abundance of caution and fairness" and since "this Court's impartiality is still at issue and pending petition before the Utah Supreme Court" – the Court exercised its discretion and found it "appropriate to stay all pending motions, objections, and requests for hearings until the Utah Supreme Court issues its decision regarding the Petition for Writ of Certiorari." Order [D.E. 661], at 2. By the terms of the stay order, the stay would remain in effect "until the Utah Supreme Court issues its decision regarding the Petition for Writ of Certiorari." Order [D.E. 661]. The Utah Supreme Court issued its decision on May 7, 2019, when it denied the petition. Thus, this Court finds it appropriate to lift the stay as of the date of this decision. *See* Utah Sp. Ct. Order [D.E. 710].

The Utah Supreme Court in *Cheves* held that a trial court's jurisdiction pending appeal "was implicitly authorized" by Rule 8 of the Utah Rules of Appellate Procedure requiring an application for a stay of a trial court's order. *Cheves*, 1999 UT at ¶¶ 45-46. The Utah Supreme Court further held that, pursuant to Rule 8, "the trial court has jurisdiction, in the first instance, over a case on appeal to determine whether a stay of the judgment pending appeal should be granted." *Id.* at ¶ 46. The Utah Supreme Court noted that "[t]he implication of this rule is clear": "[i]n order to stay enforcement of a judgment pending appeal" a stay must be requested. *Id.* "Absent such application, or in the

event the trial court denies such application and the appellant does not apply to the appellate court for a stay, the judgment is immediately enforceable." *Id.*

Plaintiff has not requested a stay pending her appeal to the U.S. Supreme Court nor has Plaintiff provided this Court with any authority to support her proposition that this Court may not address the submitted issues because the motion to disqualify does not have final resolution. Therefore, this Court finds it appropriate to overrule Plaintiff's objection to Defendants' requests to submit and to address the submitted issues.

II. Joint Statement of Discovery Issues

On January 24, 2019, this Court issued an order granting Defendants' *Joint Statement of Discovery Issues Re Plaintiff's Cooperation in Accomplishing Depositions of Plaintiff's Experts*. *See* Order [D.E. 639], at 2. The Court observed its entry of three prior orders "governing expert discovery, none of which Plaintiff has complied." Order [D.E. 639], at 3. Defendants were awarded reasonable attorney fees "[b]ecause of Plaintiff's continued failure to cooperate in expert discovery." Order [D.E. 639], at 3. The Court ordered Plaintiff's counsel, Robert Strieper, to pay the attorney fees because it was his "obstructive behavior" that necessitated Defendants' filing of the statement of discovery issues and the Court's entry of a fourth order regarding expert discovery. Order [D.E. 639], at 3. The Court directed the parties to "cooperate in scheduling the

depositions of Plaintiff's experts within a reasonable time following the entry of this Order." Order [D.E. 639], at 2.

Defendants argue in the Joint Statement that although the Court ordered the parties to cooperate in scheduling such depositions, "Plaintiff still has not scheduled even one of her expert depositions." Defs.' Joint Statement [D.E. 683], at 2. Defendants request that "this Court either order Plaintiff to schedule those depositions or, in the alternative, to strike Plaintiff's experts for openly violating the Court's January 14, 2019 Order by failing to cooperate in expert discovery." Defs.' Joint Statement [D.E. 683], at 3. Defendants seek attorney fees entered against Plaintiff's counsel pursuant to Rule 37(a)(7)(K) of the Utah Rules of Civil Procedure "[b]ecause it is likely Plaintiff's counsel, not Plaintiff, who has engaged in such obstreperous conduct." Defs.' Joint Statement [D.E. 683], at 3-4.

Plaintiff objects on the ground that the Joint Statement "is an obvious attempt to intimidate the Plaintiff into setting depositions of experts in direct violation of this Court's Order staying the case and an endeavor to undermine three pending Motions and undermine Plaintiff's Petition for a Writ of Certiorari." Pl.'s Obj. [D.E. 695], at 1. Plaintiff argues that "[o]n February 5, 2019 this Court, pursuant to Rule 63 of the Utah Rules of Civil Procedure, recognized its incapacity to rule on any motions until after the Supreme Court of Utah issued a decision on the Petition for Certiorari" and, as a result, the Court "sua sponte stayed this case." Pl.'s Obj. [DE. 695], at 2. Plaintiff requests that the Court

issue a protective order "to protect the Plaintiff from any further harassment while the stay is in place." Pl.'s Obj. [D.E. 695], at 3. Plaintiff argues that sanctions in the form of striking Plaintiff's experts is prohibited by Rule 37(a)(8) and that Defendants' "mere request therefor voids the Defendants' entire SODI." Pl.'s Obj. [D.E. 695], at 4. Plaintiff seeks attorney fees under Rule 37(a)(7)(k) on the ground that the Joint Statement "is being improperly used to intimidate the Plaintiff into setting expert witnesses' depositions in violation of a court ordered stay, to undermine pending motions when the Defendants are under no time restraints to conduct the discovery." Pl.'s Obj. [D.E. 695], at 4.

Rule 37 of the Utah Rules of Civil Procedure provides that a party "from whom discovery is sought may request that the judge enter an order regarding any discovery issue" including "failure to disclose under Rule 26" and "compelling discovery from a party who fails to make full and complete discovery." Utah R. Civ. P. 37. The Court may enter a number of different orders under Rule 37, including "that a party pay the reasonable costs, expenses and attorney fees incurred on account of the statement of discovery issues if the relief requested is granted or denied." Utah R. Civ. P. 37(a)(7)(K). The Utah Supreme Court has "grant[ed] district courts broad discretion in matters of discovery because they 'deal first hand with the parties and the discovery process.' " *Rawlings v. Rawlings*, 2015 UT 85, ¶ 15, 358 P.3d 1103, 1108 (quoting *Utah Dept of Transp. v. Osguthorpe*, 892 P.2d 4, 6 (Utah 1995)).

As this Court noted in its October 2018 memorandum decision, Plaintiff has been aware that discovery would be re-opened for ninety-days since the date in which the pretrial conference occurred in February of 2018 and that the Court has repeatedly upheld that decision in each of the Court's subsequent orders and decisions. Thus, despite clear direction from this Court for over a year now as to discovery issues, Plaintiff has nonetheless insisted on a pattern of flagrantly challenging and disregarding the Court's orders and decisions.

As explained in detail above, on January 24, 2019, the Court ordered the parties to cooperate in scheduling the depositions of Plaintiff's experts within a reasonable time and to use reasonable efforts to promptly and timely complete the discovery of Plaintiff's expert witnesses. The Court stated that "the time period for defendants to complete discovery of plaintiff's experts *is extended for as long as is necessary to complete the elected depositions*." Order [D.E. 639], at 2 (emphasis added).

The Court finds that Plaintiff has failed to cooperate in scheduling the depositions of her experts and therefore finds it appropriate to award attorney fees pursuant to Rule 37(a)(7)(K) to Defendants and against Plaintiff's counsel, Robert Strieper, for necessitating Defendants' filing of the Joint Statement and this Court's entry of a fifth order governing expert discovery. Defendants have fifteen (15) days in which to submit a supporting affidavit or declaration for an award of attorney fees. From the date of Defendants'

affidavit, Plaintiff will have seven (7) days to file an objection. If no objection is filed, Defendants will file a request to submit. If an objection is filed, Defendants will have seven (7) days from the date of the objection to file a response memorandum and request to submit.

The Court finds it appropriate to once again order that Plaintiff cooperate in scheduling the depositions of her experts. Plaintiff's incessant disregard of the Court's prior orders and misconstructions of the record (such as stating that the Court sua sponte stayed the case even though it was Plaintiff who requested the stay via ex-parte motion) will not be entertained in the future. Should Plaintiff continue refusing to cooperate in conducting the requisite discovery within a reasonable time following the entry of this Order, then upon appropriate motion under Rule 37(b), the Court will consider the imposition of sanctions up to and including the entire dismissal of Plaintiff's case. While Rule 37(a)(8) does prohibit a request for sanctions within a statement of discovery issues, Plaintiff fails to provide any authority to support her argument that Defendants' "mere request" to strike Plaintiff's experts "therefor voids the Defendants' entire SODI." Pl.'s Obj. [D.E. 695], at 4; *see also* Utah R. Civ. P. 37(a)(8). Nonetheless, the Court will consider Defendants request for sanctions in the form of striking Plaintiff's experts for violating the Court's January 2019 order if separately brought under appropriate motion.

III. Rule 60 Motion for Relief

Plaintiff seeks the striking of the Court's January 2019 order under Rule 60 of the Utah Rules of Civil Procedure on the ground that the Court "had to have made an error in its January 24, 2019 Order" either because the Court made a mistake or relied on Defendants' misrepresentations. Pl.'s Mot. for Relief [D.E. 690], at 5. In specific, Plaintiff takes issue with the Court's "re-opening discovery and entering sanctions against Ms. Stavely and her counsel based upon misrepresentations of the Defendants that they had complied with the scheduling orders previously set by the Court and they represented to the Court that it was Plaintiffs' 'obstreperous conduct' which prevented Defendants from conducting expert discovery." Pl.'s Mot. for Relief [D.E. 690], at 2. Plaintiff argues that "Defendants misrepresented that Plaintiff's counsel was obstructive and failed to comply with the January 16, 2018 Memorandum Decision, April 11, 2018 Order and the October 12, 2018 memorandum decision." Pl.'s Mot. to Strike [D.E. 690], at 7. According to Plaintiff, the Court relied on these misrepresentations to find that Plaintiff had not complied with this Court's prior orders involving expert discovery and ordering Plaintiff's counsel to pay attorney fees. Plaintiff argues that Defendants were required to make their elections of expert depositions between July 10, 2019 and July 17, 2019, and that their failure to do so signifies that Rule 26(a)(4)(C)(i) precludes them from any further discovery of Plaintiff's experts.

Defendants respond that Rule 60(a) "only relates to 'clerical mistakes,' not instances in which the Court must use its discretion" nor "to correct errors of a substantial nature, particularly where the claim of error is unilateral." Defs.' Joint Opp'n [D.E. 700], at 7. According to Defendants, Plaintiff's claim of error is unilateral because "only Plaintiff believes the Court made a mistake in finding that Plaintiff's counsel has engaged in obstructive behavior." Defs.' Joint Opp'n [D.E. 700], at 7-8. Defendants further argue that Plaintiff's allegations of mistake do not amount to clerical ones, but errors of a substantial nature. Thus, Rule 60(a) does not apply.

Regarding Rule 60(b), Defendants argue that Plaintiff's arguments are "misguided" and "ignore[ ] the reality of the procedural course of this case." Defs.' Joint Opp'n [D.E. 700], at 8. Defendants argue that "the award for attorney fees was for Mr. Strieper's continued and systematic refusal to cooperate in expert discovery since April 15, 2017, when Defendants elected to take Plaintiff's experts' depositions" and that Plaintiff's assertion that defendants failed to file elections between July 10-17, 2018 "is a red herring." Defs.' Joint Opp'n [D.E. 700], at 10. According to Defendants, "[a]ll three Defendants timely filed their Elections of Depositions or Reports on April 15, 2017" and it was Plaintiff's continued assertions that discovery was over despite the prior orders of the Court that necessitated the entry of the January 2019 order. Defs.' Joint Opp'n [D.E. 700], at 8.

Regarding motions to set aside judgments, Rule 60 of the Utah Rules of Civil Procedure provides that:

> [o]n motion and upon just terms, the court may relieve a party or its legal representative from a judgment, order, or proceeding for the following reasons:
>
> (b)(1) mistake, inadvertence, surprise, or excusable neglect;
>
> . . .
>
> (b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or other misconduct of an opposing party;

Utah R. Civ. P. 60. "To be entitled to relief under the rule, a party must show that '(1) the motion is timely; (2) there is a basis for granting relief under one of the subsections of 60(b); and (3) the movant has alleged a meritorious defense.'" *Asset Acceptance LLC v. Stocks*, 2016 UT App 84, 13, 376 P.3d 322 (quoting *Menzies v. Galetka*, 2006 UT 81, ¶ 64, 150 P.3d 480). These considerations should be addressed in a serial manner, and "there is no need to consider whether there is a meritorious defense if there are not grounds for relief." *Menzies*, 2006 UT at 1164. Furthermore, "[a] district court has broad discretion to rule on a motion to set aside a judgment under rule 60(b)." *Id.* at ¶ 54.

The Utah Court of Appeals determined that "mistake, inadvertence, surprise, or neglect" should be utilized to "correct a minor oversight, such as the omission of damages" and not "to correct a fundamental error of law." *Franklin Covey Client Sales Inc. v. Melvin*,

2000 UT App. 110, 1122, 2 P.3d 451. The court more recently clarified that the grounds considered to set aside a judgment "are aptly suited to describe circumstances which might befall counsel or parties." *Fisher v. Bybee*, 2004 UT 92, 1112, 104 P.3d 1198 (citations omitted). Thus, "[i]n order for a party to be relieved from judgment under Rule 60(b)(1), the party must demonstrate not only that the judgment resulted from mistake, inadvertence, surprise, or excusable neglect, but also that the motion to set aside was timely and that there exist issues worthy of adjudication." *Richins v. Delbert Chipman & Sons Co., Inc.*, 817 P.2d 382, 387 (Utah Ct. App. 1991).

In addition, "the term [fraud on the court] as used in obtaining relief from judgment . . . embrace[s] only that type of conduct which defiles the court itself, or fraud which . . . prevent[s] the judicial system from function in the customary manner of deciding cases presented in an impartial manner.'" *Kartchner v. Kartchner*, 2014 UT App 195, ¶ 26, 334 P.3d 1 (quoting *Kelley v. Kelley*, 2000 UT App 236, ¶ 28 n. 10, 9 P.3d 171). "Examples of fraud on the court justifying relief from judgment would include such 'egregious misconduct' as bribery of a judge or jury, or fabrication of evidence by counsel." *Kelley*, 2000 UT App at ¶ 28 n. 10. Ambiguous assertions are not enough to constitute fraud upon the court. *See Franklin Covey Client Sales, Inc. v. Melvin*, 2000 UT App 110, ¶ 28, 2 P.3d 451 (holding defendant's ambiguous assertions "wholly meritless"); *see also* Utah R. Civ. P. 9(c) (stating that "a party

must state with particularity the circumstances constituting fraud.").

Here, Plaintiff argues that the Court reopened discovery and entered sanctions against Plaintiff in the Court's January 2019 order based upon either mistake or misrepresentations by Defendants that "Plaintiff's counsel was obstructive and failed to comply with the January 16, 2018 Memorandum Decision, April 11, 2018 Order and the October 12, 2018 memorandum decision." Pl.'s Mot. to Strike [D.E. 690], at 7. First, the Court finds that the error alleged by Plaintiff is neither clerical in nature nor intended to correct a minor oversight. Rather, Plaintiff seeks the reconsideration of the issues decided by the Court in its January 2019 order, which the Court declines to do. In addition, the Court does not find any ground in which to relieve Plaintiff from the Court's January 2019 order under Rule 60(b), including any mistake, fraud, misrepresentation, or other misconduct by Defendants. *See* Utah R. Civ. P. 60.

IV. Motion to Strike

Rule 16 of the Utah Rules of Civil Procedure provides instruction on when a court may direct the parties to appear for a pretrial trial conference. Utah R. Civ. P. 16(a). In the absence of an order setting a trial date, "any party may and the plaintiff shall, at the close of all discovery, certify to the court that discovery is complete . . . and that the case is ready for trial." Utah R. Civ. P. 16(b). "If a party or a party's attorney fails to obey an order . . . if a party or a party's attorney

is substantially unprepared to participate in a conference, or if a party or a party's attorney fails to participate in good faith, the court, upon motion or its own initiative, may take any action authorized by Rule 37(b)." Utah R. Civ. P. 16(d).

The Utah Supreme Court has determined that Rule 16 "gives the district court 'broad authority to manage a case.' " *Coroles v. State*, 2015 UT 48, ¶ 19, 349 P.3d 739, 745. Under Rule 16, "the court may 'establish the time to complete discovery' through a scheduling order." *Id.*; *see also* Utah R. Civ. P. 16(a)(9). Rule 16 also authorizes a court to extend fact discovery, set the date for pretrial conferences and trial, and consider any other appropriate matters. Utah R. Civ. P. 16(a)(10)-(14). The Utah Supreme Court "has held that rule 16(d) is the source of the district court's authority to sanction a party for producing untimely discovery under a scheduling order." *Coroles*, 2015 UT at ¶ 20. Thus, "[i]f a party fails to obey a scheduling order establishing a discovery deadline, the district court 'may take any action authorized by Rule 37(e)' of the Utah Rules of Civil Procedure." *Id.* at ¶ 19. A court's decision to sanction a party under rule 16(d) and selection of an appropriate sanction is reviewed on an abuse of discretion standard. *Id.* at ¶ 20

On April 11, 2018, this Court issued an *Order on Defendants' Joint Motion for Rule 16 Conference* extending fact discovery for a period of ninety (90) days and declining to set the matter for trial as "Plaintiff's Certificate of Readiness for Trial is premature." Order [D.E. 394], at 2. Thereafter, on July 27, 2018, Plaintiff

filed a second certificate of readiness for trial. *See* Pl.'s Second Certificate [D.E. 539]. That same day, the Court acknowledged the filing and explained that a pretrial conference would not be set because there were six pending motions. On January 7, 2019, Plaintiff filed a third certificate of readiness for trial. *See* Pl.'s Third Certificate [D.E. 617].

On January 24, 2019, this Court issued an *Order on Defendants' Joint Statement of Discovery Issues Re: Plaintiff's Cooperation in Accomplishing Depositions of Plaintiff's Experts* observing that the Court had entered three prior orders "governing expert discovery, none of which Plaintiff has complied." Order [D.E. 639], at 3. The Court awarded attorney fees against Plaintiff's counsel for his "obstructive behavior" that necessitated Defendants filing of the statement of discovery issues and a fourth order governing expert discovery. Order [D.E. 639], at 3. The Court directed the parties to "cooperate in scheduling the depositions of Plaintiff's experts within a reasonable time following the entry of this Order" stating that it "expects the parties to use reasonable efforts to promptly and timely complete discovery of plaintiff's expert witnesses" and that "[w]ith that understanding, the time period for defendants to complete discovery of plaintiff's experts *is extended for as long as is necessary to complete the elected depositions*." Order [D.E. 639], at 2 (emphasis added).

Defendants moved to strike Plaintiff's third certificate of readiness for trial on the ground that "[D]efendants are entitled to conduct expert discovery under the prior orders of this Court and that discovery

has not been completed because [P]laintiff has refused to cooperate in scheduling expert depositions." Defs.' Mot. to Strike [D.E. 627], at 2. Defendants argue that Plaintiff has prevented Defendants from completing fact and expert discovery "[t]hrough multiple motions and other actions." Defs.' Mot. to Strike [D.E. 627], at 2. Defendants further argue that "[f]or well over a year and a half, defendants have been trying to complete the fact and expert discovery needed for them to prepare their defenses while plaintiffs have, through various procedural maneuvers, obstructed defendants from doing so" expressly and implicitly requesting that Defendants be barred from conducting discovery and that a default judgment be entered against them. Defs.' Mot. to Strike [D.E. 627], at 9.

Plaintiff responds that, pursuant to the Court's order in April 2018 extending fact discovery for ninety day, fact discovery "ended on July 10, 2018" and Defendants failure to make its elections within the seven days thereafter "precluded them from further discovery on Plaintiffs' experts." Pl.'s Opp'n [D.E. 637], at 6. Plaintiff argues that "the election was the perquisite for the Defendants to obtain sixty days for the Defendants to depose Ms. Stavely's experts." Pl.'s Opp'n [D.E. 637], at 11. Plaintiff further argues that both fact and expert discovery closed on July 24, 2018, and that Defendants are barred from any further discovery of Plaintiff's experts because "it would be substantially prejudicial to the Plaintiffs to once again have deadlines extended, and have memories of the witnesses

fade further, when this case was ready for trial two years ago." Pl.'s Opp'n [D.E. 637], at 16.

The Court finds that Plaintiff's third certificate of readiness for trial is again premature. As this Court determined in the January 2019 order, the discovery of Plaintiff's experts is still ongoing and will remain ongoing "*for as long as is necessary to complete the elected depositions*" of Plaintiff's experts. Order [D.E. 639], at 2 (emphasis added). Thus, so long as Plaintiff fails to take reasonably efforts to promptly and timely complete the discovery of its expert witnesses, discovery will continue and the case will not be set for trial. In addition, while the Court has already once awarded attorney fees against Plaintiff's counsel, should Plaintiff continue its pattern of refusing to cooperate in conducting discovery within a reasonable time following the entry of this Order, then the Court will consider the imposition of other sanctions, including the dismissal of Plaintiff's case.

V. Affidavits in Support of Determination of Amount of Attorney Fee Award

In light of the Utah Supreme Court's order granting attorney fees to Defendants, on May 8, 2019, this Court issued a *Scheduling Order Regarding Remand* affording Defendants fifteen (15) days to submit a supporting affidavit for attorney fees. Plaintiff would file her objection, if any, within seven (7) days of the affidavit's filing. If no objection was filed within that timeframe, Defendants would file a request to submit.

However, if an objection was filed, Defendants would have seven (7) days from the date of the objection to file a response memorandum and request to submit.

On May 23, 2019, Defendants filed *Affidavits in Support of Determination of Amount of Attorney Fee Award*, including the following three affidavits: (1) Affidavit of Patrick L. Tanner in Support of Request to Determine Amount of Attorney Fees, (2) Affidavit of Sean C. Miller in Support of Request for Attorney Fees, and (3) Affidavit of Julia M. Houser for Attorney Fees and Expenses. As provided in the respective affidavits, Defendants' attorney fees include the following:

- Attorney Patrick L. Tanner states that his hourly rate in this case is $210 and that the work he performed in responding to the petition for certiorari took at least 35.2 hours, totaling an amount of $7,392.
- Attorney Sean C. Miller states that his hourly rate in this case is $180 and that the work he performed in responding to the petition took $4.5 hours, totaling an amount of $864.
- Attorney Julia M. Houser states that her hourly rate in this case is $225 and that the work she performed in responding to the petition took 2.4 hours, totaling an amount of $540.

See Defs.' Aff. in Supp. of Att'y Fees [D.E. 7311. Thus, the total amount of attorney fees incurred by Defendants in responding to Plaintiff's petition is $8,796.

On May 30, 2019, Plaintiff filed an *Objection to Defendants' Affidavits for Attorney Fees*, arguing that the attorney fees claimed by Defendants are excessive on their face and that the Court "should not grant the entire amount that the Defendants have requested." Pl.'s Obj. to Defs.' Aff. for Att'y Fees [D.E. 735], at 5. Plaintiff further argues that under the authority of *Holt v. Virginia*, 381 U.S. 131, 85 S. Ct. 1375, 14 L. Ed. 2d 290 (1965), the Utah Supreme Court's order granting attorney fees against Plaintiff "for merely seeking a petition for certiorari of a motion to disqualify" violated the Fourteenth Amendment of the U.S. Constitution and thus cannot be enforced. Pl.'s Obj. to Defs.' Aff. for Att'y Fees [D.E. 735], at 2. According to Plaintiff, the Court may grant the following two remedies because they do not violate the Fourteenth Amendment: (1) "[f]ollow the dictates of the U.S. Supreme Court and deny the attorney fees" or (2) "certify a question to the Supreme Court of Utah" pursuant to Article 8 Section 3 of the Utah State Constitution. Pl.'s Obj. to Defs.' Aff. for Att'y Fees [D.E. 735], at 4.

On June 3, 2019, Defendants filed a *Response to Objection to Attorney Fees Affidavits*, wherein Defendants argue that the requested attorney fees are reasonable and not excessive, that Plaintiff does not submit any evidence to support her claim that the requested fees are excessive, that Plaintiff fails to identify any category of work performed that was not appropriate or necessary, and that Plaintiff has not established any violation of the Fourteenth Amendment nor that this Court may disregard the Utah Supreme Court's order.

On June 3, 2019, Defendants filed a Request to Submit noting that Plaintiff requested oral arguments in her objection. Rule 1.5 of the Utah Rules of Professional Conduct states that "[a] lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses." Utah R. Prof. Conduct 1.5(a). Several factors are considered in determining the reasonableness of a fee, including the time and labor required, the novelty and difficulty of the issues, and the skill required to properly perform the task. *See id.*

In this case, however, Plaintiff has failed to demonstrate that the requested attorney fees are excessive on their face. Neither the hourly rates nor hours reported by Defendants appear to this Court to be excessive on their face. Moreover, Plaintiff has failed to demonstrate any violation of Plaintiff's constitutional rights or that this Court has the authority to deny attorney fees to Defendants, which were specifically authorized by the Utah Supreme Court. Plaintiff's constitutional arguments challenging the grant of attorney fees should be addressed to the court that granted such fees, the Utah Supreme Court or, alternatively, to the U.S. Supreme Court. Therefore, the Court finds that Defendants' requested attorney fees of $8,796 are appropriate and the fees are thus granted.

The Court hereby stays any further proceedings in this matter, including any recent filings. This stay does not bar Defendants' submission of and Plaintiff's possible objections to the attorney fees ordered herein for

violation of discovery orders. As such, the motion hearing set for November 4, 2019, is hereby stricken.

CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED that Defendants' Joint Statement of Discovery Issues Re: Plaintiff's Failure to Follow Court's January 14, 2019 Order by Scheduling Plaintiff's Experts' Depositions be **GRANTED**; Plaintiff's Rule 60 Motion for Relief of This Court's January 24, 2019 be **DENIED**; Defendants' Motion to Strike Third Certificate of Readiness for Trial be **GRANTED**; Plaintiff's Objection to Defendants' Requests to Submit be **DENIED**; and Defendants' Affidavits in Support of Determination of Amount of Attorney Fee Award be **GRANTED**. This decision represents the order of the Court. No further order is necessary to effectuate this decision.

DATED this 11 day of September, 2019.

BY THE COURT:

/s/ Kevin K. Allen [SEAL]
Judge Kevin K. Allen

IN THE UTAH COURT OF APPEALS

----ooOoo----

AUTUMN STAVELY, Petitioner, v. JEFFERY G. NORMAN, ET AL., Respondents.	)))))))	ORDER Case No. 20190787-CA (Filed Sep. 27, 2019)

Before Judges Orme, Christiansen Forster, and Appleby.

This matter is before the court on a petition for permission to appeal from an interlocutory order filed pursuant to Rule 5 of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the petition for permission to appeal is denied. DATED this 27th day of September, 2019.

FOR THE COURT:

/s/ Kate Appleby
Kate Appleby, Judge

[Certificate Of Service Omitted]

The Order of the Court is stated below:

[SEAL]

Dated: May 07, 2019 05:25:13 PM

/s/ Thomas R. Lee
Associate Chief Justice

IN THE SUPREME COURT
OF THE STATE OF UTAH

----ooOoo----

Autumn Stavely, Petitioner, v. Jeffery G. Norman, D.C.; Peterson Wellness Center; JCNorman, Inc.; Brandon Durfee, PAC; and Ryan J. Stolworthy, MD, Respondents.	ORDER Supreme Court No. 20190056-SC Court of Appeals No. 20181049-CA Trial Court No. 150100054

----ooOoo----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on January 28, 2019.

The Petition for Writ of Certiorari is denied.

Respondents' request for attorney fees incurred in responding to the petition for writ of certiorari is granted. This matter is remanded to the district court for the limited purpose of ascertaining the amount of those fees.

End of Order – Signature at the Top of the First Page

The Order of the Court is stated below:

[SEAL]

Dated: April 01, 2020 04:12:56 PM

/s/ Thomas R. Lee
Associate Chief Justice

IN THE SUPREME COURT
OF THE STATE OF UTAH

----ooOoo----

Autumn Stavely, Petitioner, v. Jeffery G. Norman, Peterson Wellness Center, JCNorman, Inc. Brandon Durfee, and Ryan J. Stolworthy, Respondents.	ORDER Supreme Court No. 20190891-SC Court of Appeals No. 20190787-CA Trial Court No. 150100054

----ooOoo----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on October 25, 2019.

The Petition for Writ of Certiorari is denied.

Respondent's request for attorney fees incurred in responding to the petition for writ of certiorari is granted. The attorney fees awarded to Respondent should be paid by Petitioner's attorney. This matter is

remanded to the district court for the limited purpose of ascertaining the amount of those fees.

End of Order – Signature at the Top of the First Page

IN THE SUPREME COURT OF UTAH

AUTUMN STAVELY individually; and AUTUMN STAVELY as Personal Representative to her Children. Petitioners/Plaintiffs, v. JEFFERY G. NORMAN, D.C.; PETERSON WELLNESS CENTER; JCNORMAN, INC., dba PETERSON WELLNESS CENTER; BRANDON DURFEE, PA-C; RYAN J. STOLWORTHY, MD; IHC HEALTH SERVICES, INC d/b/a INTERMOUNTAIN MEDICAL GROUP, LOGAN REGIONAL HOSPITAL; and IHC HEALTH SERVICES, INC.,dba LOGAN REGIONAL HOSPITAL. Respondents/Defendants.	PETITION FOR WRIT OF CERTIORARI Supreme Court No. _____ Court of Appeals No. 20190787-CA Trial Court No. 150100054 (First District Court, Cache County, Logan)

Christian Nelson
Brandon Hobbs
Sean Miller
Kristina H. Ruedas
RICHARDS BRANDT MILLER & NELSON
111 East Broadway, Suite 400

Robert Strieper (10145)
STRIEPER LAW FIRM
2366 Logan Way
Salt Lake City, UT 84108
Phone: 801-631-6421
Facsimile: 801-416-3616
robert@strieperlaw.com

P.O. Box 2465
Salt Lake City, UT 84110-2465
Phone: 801-531-2000
Facsimile: 801-532-5506
Christian-Nelson@rbmn.com
Brandon-Hobbs@rbmn.com
Sean-Miller@rbmn.com
Kristina-Ruedas@rbmn.com
Attorney for Ryan Stolworthy M.D. and Brandon Durfee, PA

Mike Miller
Kathleen Abke
STRONG & HANNI
102 South 200 East, Suite 800
Salt Lake City, UT 84111
Phone: 801-532-7080
Facsimile: 801-596-1508
mmiller@strongandhanni.com
Kabke@strongandhanni.com
Attorney for IHC Health Services, Inc d/b/a Intermountain Medical Group; Logan Regional Hospital; and IHC Health Services, Inc., d/b/a Logan Regional Hospital

and

Patrick Tanner
BURBIDGE & WHITE
102 South 200 East, Suite 600
Salt Lake City, UT 84111
Phone: 801-359-7000
ptanner@burbidgewhite.com
Attorney for Jeffery Norman Peterson Wellness Center and JCNorman, Inc., dba Peterson Wellness Center

TABLE OF CONTENTS

ADDENDA

TABLE OF AUTHORITIES

CONSTITUTION PROVISIONS

UTAH RULES, STATUTES, and CODES

CASES

QUESTIONS PRESENTED FOR REVIEW

1. Can either the Court of Appeals or the trial court defer the constitutional question or whether an Order from this Supreme Court of Utah violated the Fourteenth Amendment to the United States Constitution solely for a resolution from this Supreme Court of Utah or from the United States Supreme Court?

ANSWER: No, the Utah Supreme Court has held that although Utah and the U.S. Supreme Courts are final arbiters of constitutional issues, they are not the only arbiters of constitutional issues. *Vega v. Jordan Valley Medical Center*, 2019 UT 35, at ¶8 Fn. 5, cautioning,

> the district court applied the plain language of the statute and decided to 'let the higher court make the decision' regarding its constitutionality. This hands-off approach to constitutional questions fundamentally misunderstands the obligations of a district court judge. While this Court has the final say as to constitutional interpretation, the judicial function of the lower courts is not optional; it is the duty of the courts to reason through each case and issue decisions based upon sound and thorough legal analysis, including constitutional

> analysis. We are meant to be the final review—not the only review—of such issues.

In this case Judge Allen declined to decide the constitutional issues ruling it is the province of the Utah Supreme Court or the U.S. Supreme Court to decide if the Utah Supreme Court's order violated the constitution. The Utah Court of Appeals denied the petition so there is no decision on the constitutionality of the Supreme Court's order.

2. Can a party or his/her attorney be sanctioned, punished, and/or have attorney fees awarded against them for seeking appellate review, when that appellate review involves a review of disqualification of a trial court judge for bias?

ANSWER: No, the United States Supreme Court has found it a violation of the 14th Amendment's due process clause to sanction or punish a party or their attorney for attempting to escape a biased tribunal. *See Holt v. Virginia*, 381 U.S. 131, 136, 85 S.Ct. [1] 1375 (1965). The U.S. Supreme Court has held that it is a fundamental right under Fourteenth Amendment to the U.S. Constitution to a fair tribunal and to have a non-biased judge. *Id.* Therefore, it is a fundamentally protected right for a litigant to petition a court for change of venue or recusal of a Judge. *Id.* And sanctions for seeking recusal of a biased or alleged biased judge, even sanctions as low as fifty dollars, violates a party's due process rights. *Id.*

3. Is it mandatory for appellate courts to accept an interlocutory appeal regarding a biased judge even if the appeal did not precisely follow the rules

regarding interlocutory appeals or if the procedure for disqualification in the trial court was not precisely followed?

ANSWER: Yes, the U.S. Supreme Court held "[t]he right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues. And since '[a] fair trial in a fair tribunal is a basic requirement of due process' . . . motions for change of venue [or disqualification of a judge] to escape a biased tribunal raise constitutional issues both relevant and essential." *Id* at 136 (citations omitted). In *Holt*, the Virginia Supreme Court heard arguments regarding change of venue and disqualification of the trial court judge and the Virginia Supreme Court concluded, "the motion for change of venue was not in the proper form and not authorized by state law in such circumstances." *Id* at 137. The U.S. Supreme Court asked what relevance could there be to the form of the request to escape a biased tribunal "where at [party] asserts a federally guaranteed right to a fair trial." *Id.* An understanding from the *Holt* decision therefore is that no matter how the issue of judicial bias comes to a state's Supreme Court's attention and even if it comes "not in [2] the proper form or not authorized by state law" where a Party "asserts a federally guaranteed right to a fair trial," the Supreme Court should entertain such a Petition. *See Id.* See also *Williams v. Pennsylvania*, 136 S.Ct. 1899, 1905, 195 L.Ed. 2d 132 (2016). (finding "[d]ue process rights of the Fourteenth Amendment to the United States Constitution guarantees an absence

of bias on the part of a judge"). *See U.S. v. Cooper*, 872 F.2d 1, 3-4 (First Cir. 1989).

> ([finding a] motion to recuse a trial judge is inherently offensive to the sitting judge because it requires the moving party to allege and substantiate bias and prejudice-traits contrary to the impartiality expected from a mortal cloaked in judicial robe. ***Yet*** the fair administration of justice requires that lawyers challenge a judge's purported impartiality when facts arise which suggest the judge has *exhibited* bias or prejudice). 872 F.2d at 4

In the present case, it is unknown why the Appellate Courts have repeatedly refused to accept any petition regarding change of venue or judicial bias, it is only known that they continue to deny the petitions and the issue of a biased tribunal remains undecided, unanswered, and un-appealed.

4. Did the Court of Appeals err when it chose not to review the district court's awarded $8,796.00 against Ms. Stavely for seeking appellate review of a trial court's bias, when the U.S. Supreme Court had predetermined that such an award violates the 14th Amendment of the United States Constitution?

ANSWER: Yes, the U. S. Supreme Court has determined that a fundamental due process right of the 14th Amendment to petition the courts for the right to have a non-biased tribunal and sanctions against a party for petitioning for that right therefore violates the parties' fundamental due process rights. *Holt*,

381 U.S. at 136. This Supreme Court of Utah has recognized, "[i]t is elementary that the Constitution must be regarded by the courts as fundamental law" *Wadsworth v. Santaquin City*, 28 P.2d 161, [3] 172 (Utah 1933); and that the "Constitution and the laws of the United States made in pursuance thereof are the supreme law of the land, and judges in every state are bound thereby, anything in the laws of the sate to the contrary notwithstanding." *Callister v. Spencer*, 196 P.2d 714, 503 (Utah 1948). In 2006 this Supreme Court of Utah recognized its boundaries were constrained by the U.S. Constitution when it stated the "Constitution is not a patchwork of barren words found in a dictionary. Instead, it is the 'original and supreme will' of the citizenry, and ' a superior paramount law' that fixes the boundaries of power granted to the branches of state government, including this Court [the Supreme Court of Utah]." *American Bush v. City of South Salt Lake*, 2006 UT 40, ¶ 23, 140 P.3d 1235.

The U.S. Supreme Court has held that it is a fundamental right under the Fourteenth Amendment to the U.S. Constitution to a fair tribunal and to have a non-biased judge. *Holt*, 381 U.S. at 136. Therefore, it is a fundamentally protected right for a litigant to petition a court for change of venue or recusal of a Judge: and according to the U.S. Supreme Court sanctions for seeking recusal of a biased or alleged biased judge or seeking a change in venue, even sanctions as low as fifty dollars, violates a party's fundamental due process rights. *Id.*

5. Is an attorney required to seek the disqualification of a judge who exhibits bias or prejudice?

ANSWER: Yes, all members of the bar are required to uphold the constitution of the United States. In *Cooper*, the fair administration of justice requires that lawyers [4] challenge a judge's purported impartiality when facts arise which suggest the judge has *exhibited* bias or prejudice. *Cooper*, 872 F.2d at 4

6. When a Judge has extrajudicial relationships/ friendships with two Respondents, can adverse interlocutory orders or a series of adverse interlocutory orders demonstrate actual bias?

ANSWER: Yes, in and of themselves, adverse rulings rarely demonstrate judicial bias, but tied to extrajudicial relationships between a judge and a party, then those adverse rulings certainly can demonstrate actual bias. The sentinel case on due process and judicial bias is the U.S. Supreme Courts holding in *Liteky v. U.S.* 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994). The US Supreme Court stated in *Liteky*:

> judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves (i.e. ***apart*** from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required when no extra judicial source is involved. *Id* at 555 (brackets in original, emphasis added).

The Court of Appeals of Tennessee recognized that where a judge "had made several [adverse] interlocutory rulings which, in the context of his affiliation with the [Defendant] hospital, furnished a basis to question the court's impartiality." *Doe v. Knox County Bd of Educ*, 423 S.W. 3d 344 (2013) citing *Olerud v. Morgan*, 2011 WL 607113 *4.

CITATION TO OPINION OF COURT OF APPEALS

Order on Case No. 20190787-CA, signed on September 27, 2019 and filed on September 30, 2019 and September 11, 2019 trial court order (*See* Dckt at 762 Petition to appeal and 776 Court of Appeals Order).

[5] JURISDICTION

The Supreme Court of Utah has jurisdiction over this matter pursuant to Utah Code Ann. §78A-3-102(2019) and Utah R. App. P. Rules 45 et seq. The Court of Appeals issued its order on September 27, 2019 and it was filed at the trial court on September 30, 2019.

DETERMINATIVE PROVISIONS OF CONSTITUTIONS, STATUTES, AND RULES

1) United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the

> State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*** U.S. Const. Amend. XIV, § 1.

2) Rule 201 of the Utah Rules of Evidence attached as Addendum C.

STATEMENT OF THE CASE

NATURE OF THE CASE: On June 11, 2013, Ms. Stavely the mother of three young children presented to Chiropractor Jeffery Norman, DC. Dr. Norman manipulated Ms. Stavely's neck and in the process caused three arterial dissections in three of the four major arteries that provide blood to her brain. The dissections immediately started throwing blood clots into her brain causing multiple strokes. Ms. Stavely immediately started showing symptoms of a stroke. Dr. Norman did not call 911; rather he had his assistant drive Ms. Stavely to Logan Regional Hospital. Ms. Stavely waited an hour in the waiting room with unrelenting head pain and with the loss of the ability to communicate and walk. After the hour wait, Ms. Stavely presented to [6] Brandon Durfee P.A. and Ryan Stolworthy M.D. Mr. Durfee and Dr. Stolworthy made no attempt to discover the last time that Ms. Stavely was seen well. ("Last seen well" is a term of art in the

medical field, which according to Advance Cardiovascular Life Support is the time that a health care worker can determine when a stroke began and when the 3-hour clock starts running to adequately treat and/or reverse the strokes).

Mr. Durfee performed an MRI on Ms. Stavely's brain and the MRI revealed multiple strokes that they did not treat the evolving strokes. After the MRI Dr. Stolworthy consulted with hospitalist Robert Duncan, DO. Dr. Duncan also failed to ascertain when Ms. Stavely was last seen well and he also did not treat her strokes. Instead of treating Ms. Stavely's strokes, Dr. Duncan transferred Ms. Stavely to the University of Utah via ground transportation (ambulance) from Logan Utah. The three-hour window to effectively treat Ms. Stavely slipped by as she was prepared and transferred to the University of Utah. Judge Allen had extrajudicial relationships/ friendships with both Dr. Duncan and Dr. Stolworthy. (Having one as a prior student and over to his home for dinner and the other being a close friend of his brother-in-law).

COURSE OF PROCEEDINGS: On February 2, 2015, Ms. Stavely filed her Complaint. The case was assigned to Judge Brian Cannell. On August 16, 2016 Judge Cannell *sua sponte* recused himself because Dr. Duncan was his neighbor. The case was reassigned to Judge Willmore. On August 31, 2016 Judge Willmore heard one motion regarding whether or not the firm representing a Respondent could also represent Ms. Stavely's employer the Logan School district. On September 30, 2016 Judge Willmore ruled they could, but

that the two attorneys were not to have any [7] communications between each other. Exactly a week to the day after the decision was handed down, Ms. Stavely was fired from the school district. One of the reasons given by her former coworkers was that Ms. Stavely was fired for having sued the local hospital, Logan Regional Hospital. On June 27, 2017, Judge Willmore heard several other motions, including a motion to change venue, and to reopen discovery deadlines. He ruled in Respondents' favor and instructed Respondents to prepare the orders. Before the orders were finalized, Judge Willmore recused himself because his daughter worked for Logan Regional Hospital and represented it at community events. The remainder of the procedural history and the relevant facts are so intertwined, that it makes no sense to separate them into separate parts.

STATEMENT OF RELEVANT FACTS

On August 4, 2017, the case was reassigned to Judge Allen. (Dckt at 291) On October 2, 2017, the Court held a hearing where it was disclosed that Judge Allen was Dr. Duncan's teacher, that he had had Dr. Duncan over to his home for dinner, and where Judge Allen disclosed that Dr. Stolworthy is a family friend. (Dckt, 551 trnscpt hearing at pp. 10,12) During the hearing the following colloquy took place:

> BY THE COURT: Yeah. Honestly. And in that spirit, I do know—I do know Dr. Ryan Stolworthy, he was a good friends with my brother-in-law in high school. If I were to see him in the

street, I would say Hi but there's a lot of people in Cache County I know and I will say Hi to them. That does not—I don't feel that is cause for me to not hear this case either, I know—I know a lot of people. If I had to recuse myself from everybody I know we'd be in trouble.

BY MR. STRIEPER: And that's – that's one of my basis for change of venue cause everybody knows everybody here.

[8] BY THE COURT: Well, and we'll address that issue [change of venue] at the hearing, but . . . just, I want to put that [relationship with Dr. Stolworthy] out there as well [as the relationship with Dr. Duncan]. I have – you know, there's a judicial ethic that requires us to *take cases that are tough, it requires us to make decisions that are tough* and I take that very seriously, I don't punt cases unless it's crystal clear that I need to and I should. I don't feel that precludes me.

We had a case here a little while ago that there's a gentleman, he lived in my former L.D.S. ward, he worked at the L.D.S. temple with my father, he knew him really well and I ruled against him dramatically. It did not go well for him.

I've – there's one less person on the street who will say Hi to me, but that's okay, I—that's the nature of the job, I have no problem ruling against people if I feel that's what the law and the facts require me to do. But since it's been an issue previously, the we'll – I just

> want to let you know that about Dr. Stolworthy. (See id at p.11: line 25; p.12:1-25; and p.13:1-10).

Judge Allen suggested that the parties can address the issue of disqualification after the hearings on change of venue are decided. Id at p. 13:11-13.

October 12, 2017 ruling: Judge Allen disclosed his two extrajudicial relationships with two Respondents (one he had at his home for dinner the second was/is a best friend of his brother-in-law) and yet ruled he has an ethical duty to remain on the case even if those friendships make his decisions harder. (See id). Judge Allen did not follow The Code of Judicial Conduct, Canon 2, Rule 2.11(C), which provides:

> A trial court judge subject to disqualification under this Rule, other than bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, ***outside the presence of the judge and court personnel, whether to waive disqualification***. If, following the disclosure, the parties and lawyers agree, ***without participation by the judge or court personnel***, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement ***shall*** be incorporated into the record of the proceeding. *See* Utah Code of Judicial Conduct, Canon 2, Rule 2.11(C). (See Id. pp. 11-13).

[9] The court recognized that there was already a pending motion to change venue at the time that would resolve his disqualification. (See id at pp. 12:9-18, 13:11-13).

January 16, 2018 Memorandum Decision: Judge Allen declined to "revisit any prior rulings" from Judge Willmore who disqualified himself. (Dckt. 34.2 p. 1112). On October 12, 2018 Judge Allen found it appropriate to clarified his January 16, 2018 Memorandum Decision and the April 11, 2018 order in that the Memorandum Decision included Judge Willmore's oral rulings and that the April 11, 2018 scheduling order "immortalize[d]" J. Willmore's verbal statements. (Dckt. 571, p. 7 and p.9).

February 28, 2018 Hearing: The court after permitting Respondents over 20 minutes of argument, at the very beginning of Ms. Stavely's argument stated to Ms. Stavely's counsel, "I don't have time for this today. I'm denying your motion. I'm granting the defendant's motion." The Court stated to Respondents, you get "everything you asked for." (Dckt 370 p.11:lines 16-25, p.12: lines 1-2, 19-25).

April 11, 2018 Scheduling Order: The Court reopened discovery over a year after it had closed. The order reopened fact discovery for 90 days; required Respondents to elect reports or depositions from Ms. Stavely's experts within 7 days; gave them 60 days to conduct expert discovery; allowed them to disclose additional experts; but did not allow Ms. Stavely to disclose additional experts; did not permit Ms. Stavely to

conduct discovery on Respondents' experts; and did not allow Ms. Stavely to elect rebuttal experts or witnesses. (Dckt. 394).

September 11, 2018 Order Permitting Rule 35 Examination: The trial court ordered a psychologist from South Carolina with no license in neuropsychology, [10] no certification in neuropsychology, and no postgraduate training in neuropsychology to perform a neuropsychological examination on Ms. Stavely. (Dckt. 485 and 561)

On July 26, 2019 Ms. Stavely filed her Second Certificate of Readiness for Trial. (Dckt. 539)

October 12, 2018 Memorandum Decision: Judge Allen finally wrote a decision on the two Motions for Change of Venue based on both community and judicial bias. Judge Allen decided that any community bias could be taken care of through the *voir dire* process. (Dckt 571 at pp. 12-18). Judge Allen failed to address Ms. Stavely's argument that there also existed judicial bias, where both Judge Cannell and Judge Willmore voluntarily recused themselves for the appearance of bias, and Judge Allen himself had extrajudicial relationships/friendships with two of the Respondents (Dckt. 571, Memorandum Decision at pp. 2-6, 12-18 (not one reference to judicial bias). Dckt 425, Motion, 467 Reply (central to the motion was the relationships of the judges to the Respondents)).

In the same Memorandum Decision, Judge Allen reopened discovery for the "limited purpose of taking two more depositions of treating health care

providers/expert witnesses." (Dckt 571, p.22, p.26). As the basis for reopening discovery one more time, Judge Allen wrongly labeled Ms. Stavely's counsel as being "wholly uncooperative" in getting the last two depositions scheduled. (Dckt. 571, p. 21, 650 first request Judicial Notice, 726, second request JN, 766, third request for JN, at pp.7-13, 71122-58 attached hereto as Addendum C (along with Resp. Opp. and Pet. Reply)). The court's own docket dispels any claim that Ms. Stavely was even slightly uncooperative and in [11] January 2019 she requested that the court take judicial notice of its docket and an email to dispel the false label. (Id). The Judicial Notice demonstrated that, Ms. Stavely's counsel assisted in getting all 14 depositions, which Respondents originally requested, set and taken. (Id). That he assisted in getting two more depositions taken that were requested later in discovery. That Respondents requested to take the two depositions in question only in the last 28 and 17 days respectively and the argument made by counsel for reopening discovery was because the schedule of all counsel had prevented them from occurring. (Id). The record demonstrates that Ms. Stavely had done nothing to prevent or hinder the two experts getting their depositions taken during the reopened fact discovery. (Id). Nonetheless, the court reopened discovery once again, but it could have done it without making an unfounded defamatory statement against Ms. Stavely's counsel. (Id).

The unambiguous language of the October 12, 2018 order is that Respondents would get 60 days of

additional discovery for the "limited purpose" of taking the "two" health care providers depositions. (Dckt. 571, p. 21, p.26) Pursuant to the October order, Respondents get just two depositions, not 3, not 4, and certainly not 12 or 162 depositions in those sixty-days (162 is the total of retained experts and non-retained treating health care providers) (Id and Dckt 766, JN Add C at 71145,64-66).

On November 9, 2018, Ms. Stavely filed a Motion to Disqualify Judge Allen. (Dckt 599). On November 20, 2018 the trial court assigned the motion to Judge Fonnesbeck. (Dckt. 606). On December 17, 2018 the trial court denied the motion to disqualify. (Dckt. 609). On December 26, 2018 Ms. Stavely filed her petition to appeal [12] the motion to disqualify based upon actual perceived bias. (Dckt. 613) On January 7, 2019, eighty-seven (87) days after the October Order reopening discovery for 60 days for the limited purpose of taking two depositions, Ms. Stavely filed her Third Certificate of Readiness for Trial (CRT). (Dckt 617). On January 9, 2019 the petition re-disqualification was denied. (Dckt. 620). On January 14, 2019 Respondents filed a joint statement of discovery to reopen discovery yet again. (Dckt. 625). Respondents also Objected to the CRT, and filed a Motion to Strike the Third CRT. (Dckt. 623, 627)

The January 24, 2019 Order: the Court entered an order allowing Respondents unlimited amount of time to take the depositions of the experts. (Dckt. 639). The court also sanctioned Ms. Stavely for complying with the October 12, 2018 order (i.e. he did nothing to stop, slow, down or prevent the Respondents

from taking the two remaining depositions) and awarded attorney fees to the Respondents. (See Id, Dckt. 571, 650, 766. Add C. 'n157,69-82). The court nonetheless accused Ms. Stavely of not complying with the January 16, 2018, April 11, 2018, and October 12, 2018 orders. (Id). The court alleged Ms. Stavely continued to fail to cooperate in discovery. (Id). The court alleged it "was the obstructive behavior of Robert Strieper (Plaintiff's counsel) that necessitated the Statement of Discovery Issues." (parenthesis in original)(Id). (The court declined to have a hearing on the SODI). (Id).

On January 28, 2019 Ms. Stavely filed a Petition for Certiorari regarding Judge Allen's disqualification. (Dckt. 643). On January 29, 2019 Ms. Stavely filed a request to take judicial notice pursuant to Utah Rules of Evidence, Rule 201 of the court's own docket, the courts orders, and of an email. (Dckt. 650). The facts to be judicial notice [13] unequivocally revealed that when discovery was open, Ms. Stavely was cooperative and even went beyond what was required by law. (Id). It also revealed that Respondents missed the deadlines set in the scheduling orders and that it was impossible for Ms. Stavely or her counsel to have prevented the Respondents from making deadlines. (Id).

February 5, 2019 Order: With the request for judicial notice before the court, the court *sua sponte* stayed the case. (Dckt. 661). On April 5, 2019 Respondents filed a SODI to have Ms. Stavely comply with the January 14 [sic 24] order. (Dckt. 683). In response, on

April 7, Ms. Stavely filed a motion to stay the case. (Dckt. 686).

April 2019 Memorandum Decision: The court recognized and reminded the parties that the case had already been stayed since February 5, 2019 and was still stayed. (Dckt. 692).

May 7-8, 2019 Supreme Court of Utah's Order: The Supreme Court of Utah denied the Petition for Writ of Certiorari and granted Respondents attorney frees and remanded to the district court for the "limited purpose of ascertaining the amount of those fees." (Dckt. 710). On May 16, 2019 Ms. Stavely requested mandatory Rule 201 judicial notice again at the trial court and at the Supreme Court of Utah with additional facts from the docket as it went forward. (Dckt. 726). The facts requested to be judicial noticed again, demonstrated that the accusations made about Ms. Stavely and her counsel were untrue. (Id). On May 8, 2019 the trial court set a schedule regarding the award of attorney fees from the Supreme Court. (Dckt. 722). On May 23, 2019 Respondents filed their affidavit of attorney fees. (Dckt 731). On May 30 Ms. Stavely filed her opposition, noting the fees violated the Fourteenth Amendment of the U.S. [14] Constitution as predetermined by the United States Supreme Court in *Holt v. Virginia*, 381 U.S. 131, 136, 85 S.Ct. 1375 (1965). (Dckt. 735).

On October 30, 2019 Respondents requested to submit on Ms. Stavely's Rule 60 Motion for Relief from January 14 [six 24] Order; Motion to Strike Third

Certificate of Readiness for Trial; Respondents April 5, 2019 SODI; and Respondents' Award of Attorney fees and requested Oral Argument. (Dckt. 747). On September 3, 2019 Ms. Stavely's requested to submit for a decision on the two Rule 201 Judicial Notices. (Dckt. 749). On September 9, 2019 the court set a hearing for November 4, 2019. (Dckt 756).

September 11, 2019 Memorandum Decision: Judge Allen cancelled the November hearing; lifted the stay on the case; sanctioned Ms. Stavely's attorney with attorney fees for allegedly failing to violate his stay (Respondents did not issue any subpoenas during the stay, so Ms. Stavely did not file any motions for protective orders, so even in arguendo, if there was no stay there still was no violation of the January 24 Order (Dckt 639-757 generally); struck Ms. Stavely's third CRT; and awarded 8,796.00 in attorney fees for Ms. Stavely's petition to the Supreme Court of Utah regarding his bias. (See Dckt 757). In regards to the U.S. Constitutional issues presently at issue in this Petition, the trial court had this to say: "Plaintiff's constitutional arguments challenging the grant of attorney fees should be addressed to the court that granted the fees, the Utah Supreme Court or, alternatively, to the U.S. Supreme Court." (Dckt 757, p. 21). Conspicuously absent from the trial court's memorandum is any reference or decision on Ms. Stavely's two requests for judicial notice. (Dckt. 757).

[15] On September 23, 2019 Ms. Stavely filed a Permission to Appeal the current interlocutory orders at the Utah Supreme Court. (Dckt. 762). On September

24, 2019 she filed a third request for judicial notice incorporating the previous requested facts and extending the request to include additional facts since the prior requests (Dckt. 766). The request to take judicial notice was filed simultaneous at both the trial court and at the Supreme Court. (Id). On September 25, 2019 the Supreme Court poured the case to the Appellate Court and on September 27, 2019 the Court of Appeals denied the Petition for Permission to Appeal. (Dckt. 722). This Petition for Certiorari follows.

RULE 46 REASONS FOR THE ISSUE OF THE WRIT FOR CERTIORARI

This Writ for Certiorari should be granted because the rulings of the trial court and therefore the denial of the Petition for Permission to Appeal conflicts with the holdings of this Supreme Court of Utah in—*Vega v. Jordan Valley Medical Center*, 2019 UT 35—and the U.S. Supreme Court precedent in—*Holt v. Virginia*, 381 U.S. 131, as well as several other Supreme Court cases applying the principles as set forth below. In *Vega*, this Supreme Court admonished the trial court for not addressing constitutional issues stating

> the district court applied the plain language of the statute and decided to 'let the higher court make the decision' regarding its constitutionality. This hands-off approach to constitutional questions fundamentally misunderstands the obligations of a district court judge. While this Court has the final say as to constitutional interpretation, the judicial

> function of the lower courts is not optional; it is the duty of the courts to reason through each case and issue decisions based upon sound and thorough legal analysis, including constitutional analysis. We are meant to be the final review—not the only review—of such issues. *Vega*, 2019 UT 35 at ¶8, Fn 5.

[16] In *Holt*, the U.S. Supreme Court found that fining a party $50.00 for seeking to change venue and to disqualify a judge violated the attorney's due process rights to seek to escape from a biased tribunal. *Holt*, 381 U.S. at 137. The U.S. Supreme Court held "[t]he right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues. And since '[a] fair trial in a fair tribunal is a basic requirement of due process' . . . motions for change of venue [or disqualification of a judge] to escape a biased tribunal raise constitutional issues both relevant and essential." *Id* at 136 (citations omitted). In *Holt*, the Virginia Supreme Court heard arguments regarding change of venue and disqualification of the trial court judge and concluded 1) "the motion for change of venue was not in the proper form and not authorized by state law in such circumstances, and 2) because the charges of bias were false." *Id* at 137. The U.S. Supreme Court reversed and reasoned:

> [a]s to the first argument, **assuming** it could have any relevance where a [party] asserts a federally guaranteed right to a fair trial, the motion for change of venue was duly filed with the clerk, and the trial court without objection

> set it down for hearing, . . . Nor can we accept Virginia' apparent contention that the contempt convictions should be sustained on the ground that Petitioners' charges were bias were false. The issue of truth or falsity of these charges was not heard, the trial court choosing instead to convict and sentence Petitioners for having done nothing more than make the charges. Even if failure to prove their allegations of bias could under any circumstances ever be made part of the basis of a contempt charge against Petitioners, these convictions cannot rest on any such unproven assumptions. *Id.*

The Supreme Court of the United States has determined, "[t]he due process clause entitles [Ms. Stavely] to an impartial and disinterested tribunal in [her] civil case." *Marshall v. Jerrico, Inc.* 446 U.S. 238, 242 (1980). Unlike in *Holt*, this Court [17] has not once taken up the issue of Judge Allen's bias, but nonetheless awarded attorney fees against Ms. Stavely for merely asking this Court to determine if Judge Allen is biased. The trial court when presented with the constitutional issues punted those issue to this Supreme Court of Utah or to the U.S. Supreme Court. In addition to being in clear conflict to the *Holt* holding, the holding creates a clear split in authority between jurisdictions, with Utah being the outlier.

The First Circuit court of appeals found "[a] motion to recuse a trial judge is inherently offensive to the sitting judge because it requires the moving party to allege and substantiate bias and prejudice-traits

contrary to the impartiality expected from a mortal cloaked in judicial robe. ***Yet*** the fair administration of justice requires that lawyers challenge a judge's purported impartiality when facts arise which suggest the judge has *exhibited* bias or prejudice." *See U.S. v. Cooper*, 872 F.2d 1, 3-4 (First Cir. 1989). The sentinel case on due process and judicial bias is the U.S. Supreme Courts holding in *Liteky v. U.S.* 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994). The US Supreme Court stated in *Liteky*:

> judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves (i.e. ***apart*** from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required when no extra judicial source is involved. *Id* at 555 (brackets in original).

The Court of Appeals of Tennessee recognized that where a judge "had made several [adverse] interlocutory rulings which, in the context of his affiliation with the [Defendant] hospital, furnished a basis to question the court's impartiality." *Doe v.* [18] *Knox County Bd of Educ*, 423 S.W. 3d 344 (2013) citing *Olerud v. Morgan*, 2011 WL 607113 *4. The issue before the district court and the Court of Appeals was, "is a trial court permitted to award attorney fees, in accordance with a Supreme Court order, when that award of attorney fees would violate the U.S. Constitution's due process as was predetermined by the U.S. Supreme Court in *Holt*,

381 U.S. 131?" The district court determined that the Supreme Court of Utah or the U.S. Supreme Court had to answer that question, and the Court of Appeals simply declined to answer that question. Ms. Stavely therefor, is asking this Court to answer the question left unanswered by the trial court and the Court of Appeals.

In addition, in the same memorandum decision, the court found it was appropriate to sanction Ms. Stavely's counsel for filing a certificate of readiness for trial after the October 12, 2018 memorandum decision. What the court is saying is that in the October order where the court stated, I find it appropriate to reopen discovery for the "limited purpose" of taking two more depositions, what I meant was I am reopening discovery for the "limited purpose" of taking two more depositions *and whatever extra discovery Respondents want to conduct.* Also, the Court sanctioned her a third time because Ms. Stavely's counsel complied with the trial court's stay. On February 5, 2019 the trial court entered a stay, on April 5, 2019 the Respondents filed a SODI to have the parties comply with the February 24, 2019 order, on April 10, 2019 the trial court reminded the parties that the case was stayed. On September 11, 2019 the trial court lifted the stay and sanctioned counsel for not assisting with scheduling the depositions of her experts. And last, the trial court ignored Ms. Stavely's two requests [19] pursuant to Utah Rules of Evidence Rule 201 for judicial notice, as if they were not even made, as did the Court of Appeals. The trial court ignored the facts and has reason to ignore the

requests, because they demonstrate that the trial court was wrong, when it labeled Ms. Stavely's counsel as being "wholly uncooperative" and it was impossible for him to have "obstructed" Respondents' discovery. It demonstrates that Ms. Stavely had in fact complied with each and every discovery order and that Respondents just missed their respective deadlines on multiple occasions.

CONCLUSION

For the foregoing reasons, Ms. Stavely respectfully requests that this Supreme Court of Utah grant Certiorari.

Respectfully submitted this 25th day of October 2019.

STRIEPER LAW FIRM

/s/ Robert Strieper
ROBERT D. STRIEPER
Attorney for Petitioners/Appellants

[20] [Certificate Of Service Omitted]