

**ORIGINAL**

**IN THE SUPREME COURT OF OHIO**

**LARRY ENGEL, JR.,**

Plaintiff-Appellee,

vs.

**UNIVERSITY OF TOLEDO  
COLLEGE OF MEDICINE,**

Defendant-Appellant.

\* Case No. **2009-1735**  
\* On Appeal from the Franklin County Court  
of Appeals, Tenth Appellate District  
\*  
\* Court of Appeals Case No. 09AP-53  
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**APPELLEE LARRY ENGEL, JR.'S MOTION TO RESCHEDULE ORAL  
ARGUMENT**

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AUG 09 2010  
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*Dr. Marek Skoskiewicz*

Now comes plaintiff-appellee, Larry Engel, Jr., by and through counsel, who hereby moves this court for an order rescheduling oral argument in this case to a date other than September 28 – 30, 2010. This motion is being filed pursuant to S. Ct. Prac. R. 14.4, and is supported by the following memorandum.

### MEMORANDUM

The undersigned counsel for plaintiff-appellant Larry Engel, Jr. is a sole practitioner.

Moving counsel is already scheduled to appear at a hearing in Washington, D.C. on September 29, 2010. This hearing is before the American Society of Anesthesiologists (“ASA”) Committee on Expert Testimony Review (“Committee”). The notice of this hearing date in front of the ASA Committee was sent by letter dated June 8, 2010. A copy of this notice is attached as Exhibit “A.”

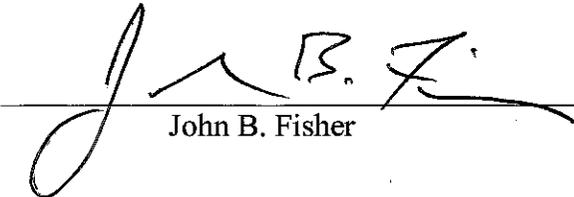
The ASA committee members who will preside over this hearing come from various parts of the country, and scheduling a hearing before this committee is cumbersome. To have the ASA hearing rescheduled would cause a great burden upon the ASA and its Committee members. (See Ex. B) The respondent, Dr. Ronald Katz, himself is from Los Angeles California and he has made arrangements to be away from his medical practice during the week of his hearing before the ASA committee.

The hearing before the ASA committee is a very serious matter to Dr. Katz as, depending on its outcome, he could be exonerated, censured, or expelled from his long-time affiliation with the premier professional association of anesthesiologists in the USA. Dr. Katz has retained the undersigned counsel to defend him before the hearing of the ASA committee, and the undersigned and Dr. Katz have already devoted considerable time and effort to preparing his defense.

Larry Engel recognizes that this Court is reluctant to reschedule oral arguments. However, given that the undersigned is a sole practitioner who is previously engaged from September 28 – 30 in a matter that involves the travel arrangements of his counsel, and seven other professionals from various parts of the country, it is hoped that this Court will grant this request so that Larry Engel and Dr. Ronald Katz may each be represented at their respective hearings by the counsel of their choosing.

Wherefore, Larry Engel, Jr. prays for an order of this court rescheduling the currently scheduled oral argument of this case.

Respectfully submitted,

  
John B. Fisher

**CERTIFICATION**

This is to certify that a copy of the foregoing has been sent via e-mail this 5th day of August, 2010 to the following counsel at their respective listed e-mail addresses.

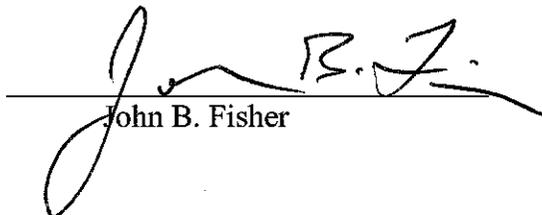
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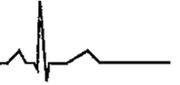
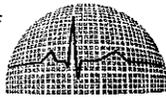
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John B. Fisher



June 8, 2010

**VIA FEDERAL EXPRESS**

Ronald L. Katz, M.D.  
2910 Neilson Way Unit 407  
Santa Monica, CA 90405-5323

**NOTICE OF HEARING**  
**ASA COMMITTEE ON EXPERT WITNESS TESTIMONY REVIEW**

Dear Dr. Katz:

On behalf of the American Society of Anesthesiologists (ASA), I am writing to confirm that the Committee on Expert Witness Testimony Review (Committee) will conduct a hearing regarding the Complaint concerning your expert testimony in Brywczynski v. Toledo Hospital, case number CI-200102499, Court of Common Pleas, County of Lucas, Ohio.

The hearing will take place on Wednesday, September 29, 2010 at 9:00 a.m., at the offices of Squire, Sanders & Dempsey, LLP, 1201 Pennsylvania Avenue, N.W., Suite 500, Washington, D.C. 20004. It shall conclude at approximately 12:30 p.m.

The Committee Chairman, Gregory K. Unruh, M.D., sitting with two other members of the Committee will act as the Hearing Panel. The Chairman has carefully reviewed the written record and has determined to allocate one and one half hours to the Committee Investigator who will represent the Investigators, and one and one half hours will also be allocated to you, the Respondent, to present at the oral hearing. The Committee Investigator shall present its case first, but may reserve a portion of its time for rebuttal. Its case will be limited to the issues outlined in the Committee memorandum enclosed as part of the record in this matter. The Respondent shall present second. Both parties are reminded to direct their testimony and arguments to the sole issues before the Hearing Panel – whether Respondent's expert testimony complied with the ASA Guidelines for Expert Witness Qualifications and Testimony and, if not, what sanction is appropriate.

Enclosed is a copy of the record in this matter which includes the Committee memorandum, additional copies of the Complaint and Response and all exhibits (on CD ROM), applicable ASA Bylaws, Administrative Procedures and the Guidelines for Expert Witness Qualifications and Testimony. You may rely upon these materials without independently offering them into evidence. If you wish to offer additional documentary evidence at the hearing, please provide such additional materials on or before August 30, 2010. Also enclosed are Committee Hearing Procedures which serve as a guide for conducting oral evidentiary hearings.

Ex. A

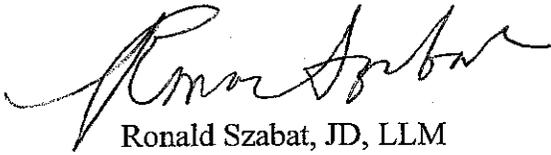
Ronald L. Katz, M.D.  
June 8, 2010  
Page 2 of 2

The Committee Investigators will be represented by Amy Brown, Esq. In addition to the written record, the Committee Investigators will offer oral testimony.

Please confirm by August 30, 2010, whether you (a) will be represented by counsel, (b) intend to call any witnesses on your behalf, and/or (c) require any audio or visual aids, e.g., an overhead projector and screen. If you will be accompanied by counsel or any witnesses, please provide their full names. All persons attending the hearing must bring photo identification to obtain access to the building. If you experience any delay or other problems on the day of the hearing, please call the receptionist at (202) 626-6600.

If you have any questions, please feel free to contact Associate General Counsel, Mary Kuffner, or me. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ron Szabat".

Ronald Szabat, JD, LLM  
Executive Vice President & General Counsel

Enclosures  
cc: Amy Brown, Esq.



1501 M Street, N.W. • Suite 300 • Washington, D.C. 20005 • (202) 289-2222 • Fax: (202) 371-0384 • mail@ASAwash.org

August 5, 2010

**VIA Email [jbfisher.law@gmail.com] and U.S. Mail**

John B. Fisher  
Law Office of John B. Fisher, LLC  
5719 Olde Post Road  
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**Re: HEARING ASA COMMITTEE ON EXPERT WITNESS TESTIMONY REVIEW**

Dear Mr. Fisher:

We received notice today that you are requesting that the American Society of Anesthesiologists (ASA) reschedule its September 29, 2010 hearing of the Committee on Expert Witness Testimony Review (Committee), regarding expert testimony in Brywczynski v. Toledo Hospital, case number CI-200102499, Court of Common Pleas, County of Lucas, Ohio. We understand that you received yesterday from the Ohio Supreme Court e-mail notification that oral argument in one of your cases has just been scheduled for September 29th, 2010.

Although we would like to accommodate your request to reschedule the ASA hearing, we urge you to request a continuance from the Court. It would be a great burden for ASA to reschedule this hearing. Given the many months it took to schedule it, in all likelihood, we would be unable to obtain a date in 2010, forcing a lengthy delay of this matter until 2011. Unlike the courts, we are not able to just set a date and expect volunteer committee members and other individuals to appear. As you are aware, we began seeking availability of the participants in April. We provided dates to your client that month and received confirmation in early May that the September date would work for both of you. After confirming the date for the seven other individuals participating in the hearing, we sent a formal Notice of Hearing on June 8, 2010, three and one-half months prior to the hearing date.

The members of the ASA Committee that have committed to taking two days off of work to attend this hearing, not to mention ASA staff and outside counsel who also have committed, are very busy practicing physicians from various parts of the country who have very limited time to devote to matters other than patient care. In addition, some of the participants have already purchased airline tickets to attend.

Again, we urge you to request a continuance from the Court and respectfully seek its indulgence in such request. If you have any questions, please feel free to contact Associate General Counsel, Mary Kuffner, or me. Thank you for your cooperation.

Sincerely,

Ronald Szabat, JD, LLM  
Executive Vice President & General Counsel

Ex. B