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SUMMIT COUNTY
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**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

TASER INTERNATIONAL, INC.)	CASE NO.: CV 2006 11 7421
)	
Plaintiff)	JUDGE: SCHNEIDERMAN
)	
And)	
)	
CITY OF AKRON)	
)	
Intervenor)	
)	
v.)	
)	
CHIEF MEDICAL EXAMINER OF SUMMIT COUNTY, OHIO a/k/a LISA KOHLER, M.D.)	PRE-TRIAL BRIEF OF DEFENDANT SUMMIT COUNTY MEDICAL EXAMINER
)	
Defendant)	

In preparation for the trial in the above captioned matter, Defendant Summit County Medical Examiner provides this pre-trial brief. The issue in this matter is the determination of the cause of death of three individuals each of whom died shortly after being repeatedly shot with a Taser electronic control device while in police custody. In all three events, Defendant Medical Examiner of Summit County ruled that the use of a Taser electronic control device, capable of delivering repeated 50,000 volt bursts, contributed to the cause of

death of the three decedents at issue in this matter. Plaintiff Taser International Corporation is challenging these findings.

The medical examiner is a medical expert rendering an expert opinion on a medical question. *State v. Cousin* (1982), 5 Ohio App.3d 32, 35, 5 OBR 34, 38, 449 N.E.2d 32, 37. The credibility of an expert's conclusions remain a matter for the trier of fact to determine. *State v. Nemeth* (1998), 82 Ohio St.3d 202, 211, 694 N.E.2d 1332, 1339. R.C. §313.19 gives presumptive value to the coroner's verdict. *Perez v. Cleveland* (1997), 78 Ohio St.3d 376, 377, 678 N.E.2d 537, 539. "The coroner's factual determinations concerning the manner, mode and cause of death, as expressed in the coroner's report and death certificate, create a nonbinding rebuttable presumption concerning such facts in the absence of competent, credible evidence to the contrary." *Vargo v. Travelers Ins. Co., Inc.* (1987), 34 Ohio St.3d 27, 29, 516 N.E.2d 226, 229. The determination of the coroner is to be given much weight. *Id.*, citing *State v. Manago* (1974), 38 Ohio St.2d 223, 227, 67 O.O.2d 291, 293, 313 N.E.2d 10, 13.

In the present situation, Defendant Medical Examiner determined that the repeated deployments of the Taser electronic control device contributed to the cause of death of the three decedents. The R.C. gives this determination presumptive value in the absence of competent and credible evidence to the contrary. Plaintiffs presume that the evidence they presented is competent and credible well before the trier of fact has had the opportunity to make that determination. Admissibility is not the same as competence and credibility. Until the trier of fact determines the competence and credibility of Plaintiff's evidence, the verdict of the Defendant Medical Examiner is appropriately given the presumptive value it is due.

As noted above, a medical examiner is an expert rendering an expert opinion. *Cousin*, supra. An expert opinion need not be based on first hand knowledge or observation. *Daubert*, 509 U.S. at 592, 113 S.Ct. at 2796, 125 L.E.2d 469. In *Colboch v. Uniroyal Tire Co., Inc.* (1996), 108 Ohio App.3d 448, 670 N.E.2d 1366, the Eighth District Court of Appeals allowed an expert on metallurgy and failure analysis to give an opinion on a defective tire, noting that designing tires is not the only way to develop expertise on the subject. *Id.* at 461, 670 N.E.2d at 1374.

A medical examiner is an expert on what causes an individual's death. They determine the cause of death by, among other things, examining the stresses placed on a person near the time of death. These physiological stresses can include a gun shot, a stabbing, blunt force trauma, electrocution, or any other stressor that exceeds the ordinary stress of daily life, taking into account the unique presentation of the individual. Defendant Medical Examiner determined that the repeated use of a Taser electronic control device was a contributing factor, not the sole or primary factor, in the deaths of decedents Hyde, Holcomb and McCullaugh.

Plaintiffs contend in part that because the Defendant Medical Examiner is not an expert on the nuances of how Taser electronic control devices work, that they are not qualified to conclude that Tasers contributed to their deaths. Extensive personal knowledge in this area is not necessary to reach the conclusion that the significant physiological stress caused by successful deployment of the device contributed to the decedents' death. The R.C. does not require coroners to published reports or conduct experiments on weapons prior to determining contributors to cause of death.

Plaintiff Taser cites numerous expert witnesses who opine that successful deployment of Plaintiff's products can in no contribute to cause of death under any circumstances. However, it is clear that the unique presentations of the individual decedents herein cannot be replicated in a controlled experimental framework. In this matter now before the court each of individual decedents were either under the influence of drugs or in an acutely psychotic state. Defendant Medical Examiner has never maintained that the repeated deployments of the Taser devices in the minutes prior to death was the sole or direct cause of death, only that they contributed to cause of death in these instances.

Plaintiffs have the burden of overcoming the presumptively valid findings of Defendant Medical Examiner by a preponderance of the evidence. In making this determination it is the exclusive province of the Court to weigh and assess the quality and credibility of the evidence. Plaintiffs present no evidence to suggest that the decedents would have died shortly after the onset of their actual death anyway had the repeated Taser deployments not occurred. Instead, they embrace Excited Delirium Syndrome as the cause of death.

Conclusion

The verdict of Defendant Medical Examiner must be given presumptive value until it is rebutted by competent, credible evidence to the contrary. This presumptive value is given much weight. The trier of fact must determine that the evidence to the contrary is both competent and credible before the presumption is rebutted.

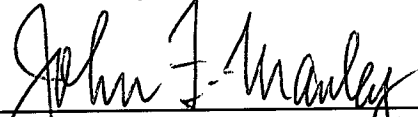
Defendant Medical Examiner is an expert uniquely qualified to render cause and manner of death determinations. The medical examiner's expertise is in determining a cause

of death, and they exercised that expertise in rendering the verdicts in the causes of death of the three individuals in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE


This will serve as proof that a copy of the foregoing instrument was sent by regular U.S. mail on the 18th day of April, 2008 to the following:

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