

# The Law Office of Laraine Pacheco

2401 E. Calle Sin Controversia  
Tucson AZ 85718

Telephone: 520 232-0606  
Facsimile: 520 219-0870  
Email: [pacheco18@comcast.net](mailto:pacheco18@comcast.net)

## MEMORANDUM

To: All Counsel in the NYCAL

From: Laraine Pacheco, Special Master

Date: October 27, 2011

Re: Improvements in the Manner in Which Pathology Materials are Shared

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Over the course of the past few years we have had occasional problems with respect to defendants' ability to obtain pathology materials in a timely manner and send them to their experts for evaluation in time for trial. Although in most cases the issues get resolved, lately I have seen more "trial readiness" issues raised based on an inability to have an expert test the pathology.

When I was last in New York for conferences I convened a small group of attorneys from the Medical Defense Group and from plaintiffs to explore some possible ways we can obviate such problems and ensure that everyone has what they need in advance of trial.

One of the challenges facing the Medical Defense Group is making sure that every defendant who wants to submit the pathology materials to its own expert has the opportunity to do so in advance of trial. In order to do so, medical liaison must know which defendants want the materials to determine how much time each defendant will be permitted to have its expert retain the materials. It has come to my attention that a few defendants wait until the last minute to request the materials and then complain that the case is not trial ready. That practice is unacceptable.

Effective with the April 2012 Cluster, any defendant who wishes to receive pathology materials in a case must notify the medical liaison for that case NO LATER THAN one week from the completion of the deposition OR if plaintiff does not identify that defendant at the deposition, one week from the time plaintiff informs defendant of the nature of the identification. Plaintiffs are required to advise defendants of the nature of the identification to be used at trial as soon as possible – either in response to an NOSJM, by producing documents, or supplying the name of additional witnesses who will supply identification, such as

a co-worker. Only defendants who comply with this notification requirement will be able to assert a trial readiness objection based on failure to receive pathology materials.

At the same time we are asking defendants to provide timely notification of their need for pathology materials I am working with plaintiffs' counsel (although this largely affects the Weitz cases) to establish a suggested timetable for producing pathology that is keyed to the date of the application to the cluster. That procedure is still being discussed and evaluated and will not be implemented until the October 2012 Cluster.