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8/8/2019 3:04 PM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Bonnie Berthiaume, Robert Berthiaume, Doris Burnham, Richard Burnham, Nancy Mayer-Gosz, Fletcher Lewis, and Carole Lewis,

Plaintiffs,

vs.

Allianz Life Insurance Company of North America and Imeriti, Inc. d/b/a Imeriti Financial Network,

Defendants.

ORDER ON DEFENDANT'S MOTION TO DISQUALIFY EXPERT WITNESS MICHAEL J. ROTHMAN

File No. 27-CV-17-15118

The above-entitled matter came on for hearing before the Honorable Laurie J. Miller, a judge of the above-named Court, on May 23, 2019, on Defendant Allianz Life Insurance Company of North America's Motion to Disqualify Plaintiffs' Expert Michael J. Rothman. Amy S. Conners, Esq., and Brian J. Linnerooth, Esq., appeared on behalf of Plaintiffs Bonnie Berthiaume, Robert Berthiaume, Doris Burnham, Richard Burnham, Nancy Mayer-Gosz, Fletcher Lewis, and Carole Lewis (collectively "Plaintiffs"). Jeffrey D. Hedlund, Esq., and Larry E. LaTarte, Esq., appeared on behalf of Defendant Allianz Life Insurance Company of North America ("Allianz"). David P. Pearson, Esq., and Kyle R. Kroll, Esq., appeared on behalf of Defendant Imeriti, Inc ("Imeriti").

The Court has reviewed the memoranda of law, the arguments of counsel, and all files, records, and proceedings herein. Being fully informed in the premises, the Court makes the following:

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ORDER

1. Defendant's Motion to Disqualify Plaintiffs' Expert Michael J. Rothman is **DENIED**.

2. The attached Memorandum is incorporated herein.

BY THE COURT:

Dated: August 8, 2019

Laurie J. Miller
Judge of District Court

MEMORANDUM

I. Factual Background

These facts are derived from the parties' pleadings and arguments. They are taken as true for the purpose of this Order only, and do not constitute findings of fact.

In June 2015, Sean Meadows ("Meadows"), a former Allianz insurance agent, was sentenced to 25 years in federal prison for defrauding his clients out of millions of dollars. Meadows' former clients, the Plaintiffs herein, now bring this class action lawsuit against Allianz and Imeriti, alleging that the Defendants' actions and omissions enabled Meadows to perpetrate his fraud. The facts underlying those allegations are detailed at length in this Court's prior orders. The issue currently before the Court is whether Plaintiffs' disclosed expert, Michael J. Rothman ("Rothman"), should be disqualified due to his former position as Allianz's outside attorney on annuity matters, which he held during a portion of the class period.

From 2000 to 2010, Allianz retained Rothman as outside counsel to advise the company on a variety of insurance regulatory, compliance, and litigation matters. Allianz

first retained Rothman in 2000 when Rothman practiced with the law firm Barger & Wolen in Los Angeles. Thereafter, when Rothman joined Winthrop and Weinstine in Minneapolis in 2002, Allianz continued to engage Rothman until 2010. While at Winthrop & Weinstine, Rothman served as Allianz's principal relationship partner at the firm.

Between 2002 and 2010, Rothman represented Allianz on a variety of insurance regulatory, compliance, and litigation matters, including matter related to Allianz's annuity business. From 2006 to 2010, Allianz estimates that Rothman spent more than 1,650 hours advising Allianz on matters related in some way to its annuity business. (This time period overlaps with the first years of the certified Class Period in this case, which runs from January 1, 2004 to August 5, 2014.) Among other things, in 2006, Rothman provided legal advice and representation to Allianz in relation to the Minnesota Attorney General's Office's concerns about Allianz's systems for suitability review of sales of annuity products. Rothman also represented Allianz in 2007 during negotiations with the Minnesota Attorney General's Office in connection with their lawsuit alleging that Allianz failed to take appropriate steps to ensure that annuity products sold to senior citizens were suitable to their circumstances.[1] Over the course of his representation of Allianz, Rothman was provided with confidential and privileged company information.

Rothman left Winthrop & Weinstine in 2010, and then served as Commissioner of the Department of Commerce ("Commerce Commissioner") for the State of Minnesota from January 2011 to November 2018. In this position, Rothman was tasked with enforcing and investigating civil and criminal violations of Minnesota's laws and regulations relating

[1] According to Plaintiffs, Allianz has taken the position in this case that the 2007 Minnesota Attorney General matter is irrelevant, and stated that in reliance on that representation, they did not seek discovery into it.

to insurance, among other subjects. While Rothman served as Commerce Commissioner, the Department of Commerce (the "Department") initiated an investigation into Meadows' activities in allegedly defrauding his Allianz clientele. Rothman's role in the Meadows investigation included working with the United States Attorney's Office in its prosecution of Meadows, ensuring the Department had adequate resources to conduct the investigation, and protecting the victims of Meadows' fraud. Apart from the Meadows investigation, the Department took a number of positions allegedly adverse to Allianz during Rothman's tenure as Commerce Commissioner. No evidence was provided that Allianz sought to disqualify Rothman from working on the Meadows investigation or any other matter during his tenure as Commerce Commissioner.

Through discovery, Allianz took what Plaintiffs describe as a "narrow position on the issues in dispute" in this case, limiting its production to documents relating to Meadows and the named Plaintiffs. (Plaintiffs' Memorandum of Law in Opposition of Allianz's Motion, filed on May 16, 2019 ["Plaintiffs' Memo"], at 3.) Plaintiffs quoted Allianz's objections to discovery relating to its practices and procedures underlying its sale of annuity products as having "absolutely nothing to do with this case," and to inquiries about its agent training as "not reasonably calculated to lead to the discovery of admissible evidence." (*Id.*) Ultimately, according to Plaintiffs, Allianz produced such materials only as they related specifically to Meadows and to a single unit about which a witness had previously testified. (*Id.* at 4.)

On April 1, 2019, Plaintiffs served Rothman's Expert Report (the "Rothman Report") on Defendants. Within the Rothman Report, Rothman states, "I was asked for my opinion as to whether or not the Defendants' actions, under the facts presented in this case,

were consistent with standards and practices in the insurance industry, and whether compliance with industry standards and practices would have prevented class members' damages." (Declaration of Amy S. Conners, filed on May 16, 2019 ["Conners Decl."], Exhibit 6, ¶ 16.) In response to Allianz's motion to disqualify him, Rothman submitted a declaration in which he stated: "I continue to abide by my obligations under Minnesota Rules of Professional Conduct, Rule 1.9(c), and I have not used information relating to my prior representation of Allianz to Allianz's disadvantage. I have ensured that my report is consistent with my obligations under Rule 1.9." (Declaration of Michael J. Rothman, filed on May 16, 2019 ["Rothman Decl."], ¶ 14.)

On May 9, 2019, Allianz filed its motion to disqualify Rothman from serving as Plaintiff's expert. On the same day, Imeriti filed a memorandum in support of Allianz's motion, stating that Imeriti "supports and joins in on [Allianz's] motion to disqualify Michael J. Rothman." (Imeriti's Memorandum of Law in Support of Defendant Allianz's Motion, filed on May 9, 2019 ["Imeriti's Memo"], at 1.) Allianz's motion was heard on May 23, 2019, at which time the Court took the motion under advisement.

II. Rule 1.9(c) of the Rules of Professional Conduct Provides the Appropriate Standard for Analyzing Allianz's Expert Disqualification Motion.

Plaintiffs and Defendants disagree about which standard the Court should apply in deciding whether to disqualify Rothman from serving as an attorney-expert in this case. On the one hand, Defendants ask the Court to apply a judicially-created expert disqualification standard adopted by certain federal courts, but not yet considered or adopted by any Minnesota state court. On the other hand, Plaintiffs argue that because Rothman is an attorney, the Minnesota Rules of Professional Conduct should govern the question of his

potential disqualification. Both sides agree that no Minnesota state appellate court has decided what standard should apply in a case like this.

Rule 1.9 of the Minnesota Rules of Professional Conduct spells out the ethical duties owed by Minnesota lawyers to their former clients. Rule 1.9 has three subparts, (a), (b), and (c). Subparts (a) and (b) bar attorneys from representing another person in the same matter or in a matter substantially related to one in which the attorney or the attorney's former firm represented the former client. Rule 1.9(a) states: "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." Minn. R. Prof. Conduct 1.9(a). Defendants argue that if the Rules of Professional Conduct apply, the Court should follow Rule 1.9(a) and find this matter substantially relates to Rothman's prior representation of Allianz. Plaintiffs advocate for the application of Rule 1.9(c) as opposed to Rule 1.9(a).

The issue here is whether an attorney-expert is taking on a representation as counsel for the party that has engaged him or her as an expert witness. The Court finds that in his capacity as Plaintiffs' retained expert, Rothman is not undertaking representation of the Plaintiffs. *See Commonwealth Ins. Co. v. Stone Container Corp.*, 178 F. Supp. 2d 938, 944 (N.D. Ill. 2001) (*Commonwealth I*) ("when a law firm undertakes the role of testifying expert for a client, this undertaking, or 'engagement,' does not form an attorney-client relationship and thus does not constitute a representation within the meaning of the ethical rules."). An expert witness's job is not to advise a client, but instead to provide testimony based upon the witness's general expertise in the subject matter, as applied to the facts as developed through

discovery. Expert witnesses "do not serve as advocates, but as sources of information. Their role is to assist the parties and, if they testify, to help the trier of fact to understand the relevant evidence." *EEOC v. Locals 14 and 15, Int'l Union of Operating Eng'rs*, No. 72 Civ. 2498 (VLB), 1981 WL 163 at *4 (S.D.N.Y. Feb. 11, 1981). Therefore, the Court concludes that Rule 1.9(a) does not apply to Rothman's role as an expert witness.

Instead, the Court finds that Rule 1.9(c) governs Rothman's role as attorney-expert. Rule 1.9(c) provides:

> A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
>
> (1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the information has become generally known; or
>
> (2) reveal information relating to the representation except as these rules would permit or require with respect to a client.

Minn. R. Prof. Conduct 1.9(c). This rule focuses on information learned by the attorney during the course of a former representation, and bars the attorney from using or revealing any such information, except as otherwise permitted by the rules. Rule 1.9(c) does not prohibit an attorney from taking on future work adverse to a former client, but prohibits the attorney from using any information learned from the former representation to the disadvantage of the former client.

Instead of applying Rule 1.9(c), Defendants urge this Court to adopt and follow the expert disqualification standard embraced by certain federal courts, including some in the District of Minnesota. Magistrate Judge Graham set out this standard in *CarboMedics, Inc. v. ATS Med., Inc.*, 06-CV-4601 PJS/JJG, 2008 WL 5500760, at *3 (D. Minn. Apr. 16, 2008):

> An expert with a prior relationship with a party may be disqualified if: 1) if it was objectively reasonable for the first party (the movant) to conclude that a confidential relationship existed between it and the expert; and 2) the first party (the movant) disclosed confidential or privileged information to the expert.

(citing *Koch Refining Co. v. Jennifer L. Boudreau M/V*, 85 F.3d 1178, 1181 (5th Cir.1996)). When applying this standard, expert disqualification is warranted when the answer to both inquiries is affirmative. *Id.*

Defendants assert that attorneys and non-attorneys should be treated identically in the context of expert disqualification. Defendants rely heavily on *Grioli v. Delta Int'l Mach. Corp.*, 395 F. Supp. 2d 11 (E.D.N.Y. 2005), to support this proposition. In *Grioli*, the court considered a defendant's motion to disqualify the plaintiffs' attorney-expert who had previously served as trial counsel for the defendant. The plaintiffs had retained this attorney-expert to testify about an allegedly defective table saw manufactured by the defendant. *Id.* at 12. The attorney-expert had previously represented the defendant in more than a hundred products liability lawsuits involving table saws and other power tools. *Id.* at 13. *Grioli* concluded that the federal expert disqualification standard was appropriate, and disqualified the attorney-expert. *Id.* at 13-14. Specifically, *Grioli* found that the attorney-expert acted as defense counsel "in numerous personal injury actions involving finger amputations from the use of [the defendant's] table saws," which was "the very same issue involved in this case." *Id.* at 14. Allianz asserts that as in *Grioli*, this case involves substantially similar issues as Rothman's previous representation of Allianz, in that both matters implicate issues of suitability and churning relating to annuity sales. *Grioli*, however, is not directly on point. Unlike the defendant in *Grioli*, Allianz has not identified any prior representation by Rothman that presented "the very same issue" involved in this case. Rothman did not

represent Allianz with respect to any fraud perpetrated by Meadows, nor with respect to any identified instance of fraudulent activities of any other Allianz representative.

Plaintiffs argue that the standard articulated by Defendants is too restrictive, "forever barring an attorney from serving as an adverse expert, even when the Rules of Professional Conduct would allow it adverse representation." (Plaintiffs' Memo, at 13.) Plaintiffs rely on *Commonwealth Ins. Co. v. Stone Container Corp.*, 99 C 8471, 2002 WL 385559, at *3 (N.D. Ill. Mar. 12, 2002) (*Commonwealth II*), to support their argument that the Rules of Professional Conduct should govern an attorney-expert disqualification motion, as opposed to the federal expert disqualification test. In *Commonwealth II*, the defendant moved to disqualify the plaintiff's attorney-expert, who was a partner at the same firm as another attorney previously retained by the defendant on an unrelated matter. The court in *Commonwealth II* analyzed the disqualification issue under the Illinois federal court's Rules of Professional Conduct, and ultimately concluded that disqualification of the attorney-expert was not warranted. *Id.* at *5. *Commonwealth II*, like *Grioli*, is not directly on point, in that the underlying facts are dissimilar to the facts in this case.

The parties agree that deciding what standard governs a motion to disqualify an attorney-expert is an issue of first impression in Minnesota. This Court is unpersuaded that the federal expert disqualification standard should apply in all cases to adverse attorney-experts, particularly where the Rules of Professional Conduct would not prohibit the attorney from working on the case. As Plaintiffs point out, application of the federal attorney-expert standard likely would lead to a blanket restriction on the ability of attorneys to serve as expert witnesses adverse to a former client. Virtually all attorneys will meet the first factor of the federal test, because as Allianz highlighted, "[t]here is no clearer example

of an objectively reasonable expectation that a confidential relationship existed than the relationship between an attorney and his clients." (Defendant Allianz's Memorandum in Support of Motion, filed on May 9, 2019 [Allianz's Memo"], at 13.) The second factor likewise will be met as a matter of course for attorney-experts, because whenever an attorney-client relationship is formed, the exchange of confidential or privileged information is virtually inevitable. *See, e.g.*, Affidavit of Scott G. Bowman in Support of Motion, filed on May 9, 2019, at ¶ 5) ("I and other Allianz employees provided Rothman with privileged company information and communications that we expected and understood would be maintained in a confidential fashion."); *see also Paul By & Through Paul v. Rawlings Sporting Goods Co.*, 123 F.R.D. 271, 280-81 (S.D. Ohio 1988) (the presumption that confidential communications are made "is important in the attorney-client area. . . ."). The Court is not inclined to create new law in Minnesota by adopting such a blanket disqualification standard for attorney-expert witnesses, where the existing ethical rules governing Minnesota attorneys do not impose a blanket disqualification on all future activities that may be adverse to a former client.

The federal expert-disqualification standard arose, in part, because of the lack of ethical rules binding non-attorney experts, and it is based to some degree upon the ethical rules governing attorneys. *See Sarl v. Sprint Nextel Corp.*, No. 09-2269-CM/DJW, 2013 WL 501783, *4 (D. Kan. 2013) ("expert disqualification doctrine appears to be an extension of the legal principles for disqualification of an attorney"). Unsurprisingly, the vast majority of the cases cited by Defendants applying the federal standard involve non-attorney experts.[2]

[2] *See, e.g., CarboMedics, Inc. v. ATS Medical, Inc.*, Civil No. 06-cv-4601 (PGS/JJG), 2008 WL 5500760 (D. Minn. Apr. 16, 2008); *United States ex rel. FTC v. Larkin, Hoffman, Daly & Lindgren*, Civ. No. 3-92-789, 1994 WL 627569 (D. Minn. Apr. 12, 1994); *Northbrook Digital LLC v. Vendio Servs., Inc.*, Civil No. 07-2250 (PJS/JJG), 2009 WL 5908005 (D. Minn. Aug. 26, 2009); *Wang Labs., Inc. v. Toshiba*

The parties have cited only limited examples of the federal standard's application in the context of attorney-experts. *See, e.g., Grioli*, 395 F. Supp. 2d 11, and *Commonwealth II*, 2002 WL 385559. Neither of those cases provides binding authority for this Court, and neither is so close factually as to provide persuasive guidance in this case. In contrast, Minnesota has well-developed authority applying Rule 1.9 of the Rules of Professional Conduct to govern the ethical conduct of attorneys vis-à-vis their former clients.

In short, the Court is unwilling to adopt the federal expert disqualification rule, not yet recognized by any Minnesota state court, to govern this motion to disqualify Rothman, because he is subject to well-developed ethical rules under Minnesota law. The Court need not create or apply a new legal standard to evaluate an expert witness's alleged conflict of interest where, as here, the expert in question is bound by the Rules of Professional Conduct. Rule 1.9(c) of the Rules of Professional Conduct governs Rothman's duties to Allianz, and it provides the appropriate legal framework for analyzing Allianz's disqualification motion.

III. Rule 1.9(c) Does Not Require Disqualification of Rothman as Plaintiffs' Expert.

"[S]uppression of expert testimony is a serious sanction and should be imposed only in the most compelling circumstances." *Macy's Retail Holdings, Inc. v. County of Hennepin*, 899 N.W.2d 451, 459 (Minn. 2017) (citing *Dennie v. Metropolitan Medical Center*, 387 N.W.2d 401, 406 (Minn. 1986)). Under the ethical rules by which he is bound, even though he has not taken on representation of Plaintiffs as his clients, Rothman remains subject to

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Corp., 762 F.Supp. 1246 (E.D. Va. 1991); *Koch Ref. Co. v. Jennifer L. Boudreau MV*, 85 F.3d 1178 (5th Cir. 1996); *Knapp v. Ceruzzi*, No. HHDCV136037991S, 2017 WL 4273972 (Conn. Super. Ct. Aug. 10, 2017); *Rhodes v. E.I. Du Pont De Nemours & Co.*, 558 F. Supp. 2d 660 (S.D. W.Va. 2008); *Turner v. Thiel*, 553 S.E.2d 765 (Va. 2001); *Butamax Advanced Biofuels LLC v. Gevo, Inc.*, Civ. No. 11-54-SLR, 2012 WL 4815593 (D. Del. Oct. 10, 2012).

disqualification in his role as an expert witness if he (1) uses information relating to his past representation of Allianz to Allianz's disadvantage; or (2) reveals information to Plaintiffs relating to his former representation of Allianz. *See* Minn. R. Prof. Conduct 1.9(c).

Defendants argue that even if the Court declines to adopt the federal expert-disqualification standard, Rothman still must be disqualified under the Rules of Professional Conduct standard. In support of this position, Allianz cites *Marvin Lumber & Cedar Co. v. Norton Co.*, 113 F.R.D. 588, 590 (D. Minn. 1986), a case involving the disqualification of a non-attorney expert. While the expert in question there, a scientific testing laboratory, was not an attorney, the *Marvin* court based its analysis on an analogy to the rules governing attorney disqualification. Without citing the Rules of Professional Conduct, the *Marvin* court stated:

> The test, regarding attorney disqualification, as articulated in this Circuit, is that the party seeking disqualification of opposing counsel must show that counsel to have an attorney-client relationship with an adverse party in the present suit, and that the matters involved in the pending suit are substantially related to the matters or cause of action in which the attorney previously represented him.

Id. at 591 (citing *Fred Weber, Inc. v. Shell Oil Co.*, 566 F.2d 602, 208 (8th Cir. 1977)). The *Marvin* court concluded that the factual context of the expert's former involvement with the plaintiff "clearly impinges upon this litigation," and disqualified the expert. *Id.* Defendants argue that because Rothman's prior representation of Allianz involved annuities, it is substantially related to the issues involved in this case, and therefore Rothman must be disqualified under the attorney disqualification standard.

This Court is not persuaded that *Marvin* controls the outcome of this motion. The *Marvin* court did not cite or apply Rule 1.9(c) of the Rules of Professional Conduct. Furthermore, it employed a standard for attorney disqualification based upon federal case

law involving subsequent representations. But as discussed above, because Rothman has not taken on representation of Plaintiffs in this action by agreeing to serve as an expert witness, this is not a subsequent representation case. According to Rule 1.9(c) of the Rules of Professional Conduct, a court need not consider whether matters are substantially related when contemplating attorney disqualification outside of the subsequent representation context. But even if the substantial relationship test were to apply, the Court is not persuaded that Defendants have shown a substantial relationship exists between Rothman's former representation of Allianz on general annuity matters and Rothman's present opinions regarding Allianz's actions and omissions relating to Meadow's fraud.

Defendants further argue that Rothman's assertion that he did not divulge privileged or conditional information to Plaintiffs is irrelevant because "it is simply inconceivable that he could now partition the deep and wide-ranging confidential and privileged knowledge and information that he learned about Allianz's annuity business from working as Allianz's attorney for a decade." (Allianz's Memo, at 28.) But the role of an attorney who provided legal counsel to a former client in the past does not necessarily overlap with that of an attorney providing current expert opinions. As the court explained in *Commonwealth I*,

> When a lawyer is engaged as a testifying expert, that lawyer is not being asked to perform the traditional role of a lawyer in providing legal advice. Rather, the lawyer is being asked to do what an expert in any subject matter is asked to do: to review materials or do other investigation, draw on the expertise derived for the expert's discipline, and to offer opinions on a particular point that is relevant to the case.

Commonwealth I, 178 F.Supp.2d at 944–45. Plaintiffs argued that Rothman's role as an expert is solely to review and render opinions on the materials produced in discovery relating to Meadows' fraudulent activities and Defendants' acts and omissions in allegedly failing to detect his fraud. All of the documents, pleadings, motion papers, and deposition

testimony reviewed by Rothman were listed in his report and were subject to discovery. Plaintiffs pointed out that to the extent Allianz asserted claims of privilege in response to Plaintiffs' discovery requests, Allianz's privilege log entries are confined to the years 2014-2016, long after Rothman ceased representing Allianz. Thus, the scope of Rothman's review does not, on this record, appear to include any material that would give rise to claims of privilege by Allianz.

Furthermore, Defendants have not identified a single instance in the Rothman Report where Rothman used or revealed confidential information obtained during his representation of Allianz between 2000 and 2010. Instead, Allina asserted that Rothman's opinions about its failure to appropriately monitor Meadows' transactions "substantially relate" to annuity matters on which Rothman formerly advised Allina. (Allina's Memo, at 10.) But substantial relationship is not the test under Rule 1.9(c). For his part, Rothman specifically asserted: "I do not possess any confidential documents from my prior representation, nor do my opinions in this case rely upon any confidential information." (Rothman Decl., ¶ 13.) In his declaration, Rothman further stated, "I continue to abide by my obligations under Minnesota Rules of Professional Conduct, Rule 1.9(c), and I have not used information relating to my prior representation of Allianz to Allianz's disadvantage. I have ensured that my report is consistent with my obligations under Rule 1.9." (*Id.*, ¶ 14.) Defendants provided no evidence to dispute or refute these assertions.

Allianz's failure to cite any opinions in the Rothman Report directly related to his former representation of Allianz also undermines Imeriti's concern about its ability to cross-examine Rothman rigorously. Imeriti merely "presum[es]" that Rothman's opinions are "based on knowledge and experience Rothman gained while representing Allianz."

(Imeriti's Memo, at 3.) However, neither Allianz nor Imeriti point to any reference in the Rothman Report that relies upon, uses, or implicates any non-discoverable information obtained by Rothman during his prior representation of Allianz. For their part, Plaintiffs maintain that Rothman's opinions are confined to his analysis of Meadows' fraudulent activities and Defendants' acts and omissions in relationship to Meadows' fraudulent activities, and thus are unrelated to his prior representation of Allianz.

Based on the evidence presented, this Court is not persuaded that Imeriti's ability to cross-examine will be hampered by Rothman's representation of Allianz on other matters nearly a decade ago. Imeriti has access to all discovery documents produced in this matter, and will have the opportunity to cross-examine Rothman based on the information found therein. For these reasons, the Court finds that Rothman's retention as Plaintiffs' expert in this matter is in compliance with his obligations under the Rules of Professional Conduct.

In denying the motion to disqualify, the Court does not mean to minimize the importance of the ethical duties owed by Rothman to Allianz under Rule 1.9(c). Rothman is well aware of those duties, as acknowledged in his report and his declaration filed herein. He must continue to take care not to make use of any information relating to his prior representation of Allianz, or to reveal any such information, as he fulfills his role as an expert witness in this case.

IV. Conclusion

Rule 1.9(c) of the Rules of Professional Conduct governs Rothman's obligations to Allianz as his former client, and provides the framework by which Allianz's motion for disqualification should be analyzed. Because Rothman has not taken on representation of Plaintiffs, but instead has been engaged as an expert witness, and because Defendants have

not presented evidence to establish that in preparing the report setting forth his expert opinions in this matter Rothman either (1) used information relating to his representation of Allianz to the disadvantage of Allianz; or (2) revealed information to Plaintiffs relating to his representation of Allianz, this motion must be denied.

L.J.M.