

ORDERED.

Dated: April 09, 2019



 Karen S. Jennemann
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
 MIDDLE DISTRICT OF FLORIDA
 ORLANDO DIVISION
www.flmb.uscourts.gov

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|---------------------------|---|---------------------------------|
| In re |) | |
| |) | |
| CATHERINE ECKLEY BENTLEY, |) | Case No. 6:17-bk-00294-KSJ |
| |) | Chapter 7 |
| Debtor. |) | |
| _____ |) | |
| |) | |
| SUSAN KOLB, M.D., |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Adversary No. 6:17-ap-00119-KSJ |
| |) | |
| CATHERINE ECKLEY BENTLEY, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**ORDER GRANTING DEBTOR’S MOTION
 FOR CLARIFICATION ON EXCLUDED TRIAL EXHIBITS**

This adversary proceeding came before the Court to consider the Debtor’s Motion for Clarification of Order Excluding Reports of Examining Committee.¹ Before trial, the Court

¹ Doc. No. 96.

excluded the Debtor's proposed Exhibits 19, 20, and 21 as improper expert testimony.² Debtor now seeks clarification of this ruling, which the Court will grant and explain below.

Debtor sought to admit three reports of members of the "Examining Committee" that were prepared in connection with the state court action determining the Debtor was totally incapacitated (the "Reports"). Debtor wanted these in evidence to support a finding of total incapacity. The Reports were prepared by Dr. Janet Boes (19), Dr. Karl Seig (20), and Dr. Delwin Pitzer (21).³ Before trial, the Plaintiffs moved to exclude the Reports, and the Court granted that Motion. In its Order, the Court explained the Reports were excluded because they were not disclosed as expert opinion testimony.⁴ The Reports were prepared by doctors, described the Debtor's medical condition, and offered opinions on whether the Debtor could make informed decisions in May 2018.⁵

Debtor at trial then sought to admit the Committee Reports as a matter of public record observed while under a legal duty to report under Federal Rule of Evidence 803(8) and *not* as expert opinions. This section provides that a record or statement of a public office is not hearsay if it sets out factual findings from a legally authorized investigation and there is no lack of trustworthiness.⁶ The Court now will admit the Reports as a "legally authorized investigation" of the Debtor's mental capacity in May 2018.

The Court finds the Reports, although admitted, are of marginal relevance however because: (1) No witness explained the content of the Reports or the medical conclusions in the

² Doc. No. 82.

³ Doc. No. 66.

⁴ Doc. No. 82.

⁵ *Id.*

⁶ *See Meyer v. Ward*, No. 13 C 3303, 2017 WL 1862626, at *2 (N.D. Ill. May 9, 2017) (allowing SEC order issued after investigation into evidence under Fed. R. Evidence 803(8)); *In re Second Chance Body Armor, Inc.*, 421 B.R. 823, 831 (Bankr. W.D. Mich. 2010) (allowing admission of National Institute of Justice's Reports to the Attorney General on the Body Armor Safety Initiative under Fed. R. Evidence 803(8)).

Reports; (2) The Reports support a finding of the Debtor's incapacity on May 19, 2018, but offer no insight or evidentiary support for a finding of the Debtor's capacity at an earlier date, particularly the Debtor's capacity in 2015-2017, when the relevant events occurred; and (3) Large portions of the Reports are illegible and incomprehensible. The reports contain classic medical terminology and expert opinions that are not interpretable without expert testimony. Without supporting testimony, the Reports have no relevance to the Debtor's mental condition prior to May 2018.

Accordingly, it is

ORDERED:

1. Debtor's Motion for Clarification (Doc. No. 96) is **GRANTED**.
2. The Court will admit Debtor's Exhibits 19, 20, and 21 into evidence.
3. A separate annotated exhibit list will be docketed reflecting the Reports' admission.

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The Clerk is directed to serve a copy of this order on all interested parties.