

ORIGINAL

Alvin D. Shuman

DISTRICT COURT
CLARK COUNTY, NEVADA
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CLERK OF THE COURT

TED BURKE, et al.	.	
	.	
Plaintiffs	.	CASE NO. A-558629
	.	
vs.	.	
	.	
LARRY HAHN, et al.	.	DEPT. NO. XI
	.	
Defendants	.	Transcript of
	.	Proceedings
.....	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, MAY 27, 2010

APPEARANCES:

FOR THE PLAINTIFFS:	ALEXANDER ROBERTSON, IV, ESQ.
	JENNIFER LANE TAYLOR, ESQ.

FOR THE DEFENDANTS:	PATRICK C. CLARY, ESQ.
	M. NELSON SEGEL, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

COPY

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1 LAS VEGAS, NEVADA, THURSDAY, MAY 27, 2010, 10:32 A.M.

2 (Court was called to order)

3 THE COURT: All right. Let's start with the status
4 reports. This is a status check on how we were doing on the
5 additional discovery that was ordered to be produced after our
6 last conference.

7 MR. CLARY: Your Honor, I was astounded that we're
8 getting so close to the hearing this status report and nothing
9 had been filed by the plaintiffs. And so that's the reason
10 that I prepared my status report. They would have -- had I
11 not done that, apparently there would have been nothing before
12 the Court in writing to tell what had happened during this
13 period of time --

14 THE COURT: Well --

15 MR. CLARY: -- including the fact that we had
16 extensive correspondence disagreeing with each other, as
17 usual, and the fact that the deposition -- we wouldn't have
18 even known that the deposition was unilaterally cancelled by
19 the plaintiffs.

20 THE COURT: Well, I assume, Mr. Clary, that when you
21 come for the status check, like most other people who come for
22 a status check when I don't have a status report, I ask what
23 happens, and people tell me. And then we visit.

24 MR. CLARY: Well, you would not have been able to
25 see the documentation that's been exchanged.

1 THE COURT: All right.

2 MR. CLARY: And that's critically important. So
3 that's the reason --

4 THE COURT: Why don't you sit down, Mr. Clary,
5 please, and let me ask Ms. Taylor a couple of questions.

6 Ms. Taylor, we had this status check scheduled
7 because I had some concerns about the discovery after our last
8 hearing. I understand there are continuing to be issues.
9 Without going into everything that you put in the opposition
10 brief that I've received and read, can you tell me generally
11 what has actually been accomplished, as opposed to those
12 things that still have problems.

13 MS. TAYLOR: What has been accomplished was that on
14 April 14th we did receive a response to requests for
15 productions. It contained -- and I think that must be in my
16 opposition, an index, at least my opposition attached to the
17 letter that I wrote to Mr. Clary with my concerns about its
18 appropriateness.

19 THE COURT: And that's the index that Ms. Wright
20 prepared?

21 MS. TAYLOR: Right.

22 THE COURT: Okay.

23 MS. TAYLOR: As we discovered yesterday when we
24 received her supplement to his status report late in the
25 afternoon yesterday.

1 And we received a disk that came with -- an Exhibit
2 B document and a disk that came with that original April 14th
3 disclosure. We were also permitted to do onsite copying of
4 the shareholder files, as you directed, on March 30th. That
5 came to a total of about -- it's actually about 13,000 pages.
6 I had said in the correspondence it was nineteen, but I was
7 just looking at the end Bates number, not paying attention
8 what the Bates number had started at for those particular
9 documents.

10 And that, until yesterday, was all that had been
11 accomplished. Because when I wrote my letter on April 29th
12 objecting to the production, as was done on April 14th, I
13 received a letter back from Mr. Clary saying that he was done,
14 he'd given us everything and going back to the mantra of --
15 and this is a problem -- you've gotten stuff, you should have
16 had it.

17 And then yesterday we -- oh. We received a
18 supplement on the 29th, late in the afternoon of the 29th of
19 minutes and an extra shareholder record that was not at
20 Kokoweef, but that was at actually Mr. Clary's office. And
21 then yesterday we received those documents again in disk form
22 along with his status report. And that is it.

23 THE COURT: Okay. So let me see if I can summarize.

24 MS. TAYLOR: Yes.

25 THE COURT: You got an index, you did an inspection,

1 and you've received some written discovery responses, and you
2 had a chance to review those. As of yet, because you have
3 concerns about the completeness of the responses, you have yet
4 to take a deposition.

5 MS. TAYLOR: Yes. And, Your Honor, to compound the
6 concern about the completeness of the responses, yesterday at
7 10:40 a.m. while I was trying to respond to his ex parte
8 motion on an OST, I received his status report that included
9 an updated index. So I have not had a chance to go through
10 that updated index and see if it remedies any of my concerns
11 that were existing in the original index.

12 THE COURT: Okay.

13 MS. TAYLOR: I do have -- that's what's been
14 accomplished. Do you want me to tell you some of the big
15 broad categories of concerns that I have?

16 THE COURT: No. Not yet.

17 MS. TAYLOR: Okay. Thank you, Your Honor.

18 THE COURT: Mr. Clary, from your perspective can you
19 tell me what you think has been accomplished since our last
20 hearing.

21 MR. CLARY: Well, except for some documents that
22 I've agreed to provide, some of which I'd provided, some of
23 which I hadn't, as a result of our meet and confer that I've
24 referenced that occurred about a week ago, I believe we've
25 produced everything that's been requested.

1 Again, we don't have and never did receive, really,
2 specifically the documents. She had those now. I really
3 don't know what those are standing here today. But I believe
4 that -- the answer to your question directly is that I believe
5 that we have provided everything that's been requested. And
6 we're not, I will represent to the Court in good faith, and
7 I'll be happy to take an oath on this, that we're not holding
8 anything back. There's nothing to be held back. There's --
9 we have -- we believe we've produced everything. And if it
10 hasn't been produced, if she will specify what has not been
11 produced, rather than have these broad 11-page letters and
12 categories and all that sort of thing, if there's something
13 that hasn't been produced, we'll produce it. But we -- we're
14 not aware of anything that she's requested that hasn't been
15 produced.

16 THE COURT: Well, I think it would be a fair
17 characterization to say there is a significant disagreement
18 and lack of ability to accurately communicate between the two
19 of you. And I'm not going to place blame on either of you at
20 this point. I am going to, however, spend as much time as is
21 necessary here today to work through each and every
22 communication problem that you have so that when you leave
23 here we will no longer have communication issues. Because it
24 was clear at our last hearing that there were communication
25 issues, I tried to be very clear so this could be remedied.

1 It has apparently gotten worse, and the personal attacks
2 appear to me to be misplaced and inappropriate.

3 So if you would now let me speak to Mr. Segel,
4 please, Mr. Clary.

5 Mr. Segel, can you tell me what you think's been
6 accomplished.

7 MR. SEGEL: May I respond?

8 THE COURT: Please.

9 MR. SEGEL: No. That was my response, the silence.
10 Your Honor, I'm a little concerned about the report that was
11 -- well, I guess I shouldn't do that.

12 We -- I personally and Ms. Taylor and I went to
13 Kokoweef, we let them scan the 13,000 shareholder files,
14 because it took like four days, and that wasn't something that
15 we had to do. We made them available, and they scanned them.
16 We've not gotten our copies that we were promised of those
17 scans, so that's a problem for us.

18 As far as I know -- and I didn't have a hands-on
19 involvement, although I have had a peripheral involvement, I
20 believe we have produced each and every thing we were supposed
21 to produce. There may be some other things. Because I was
22 not involved in that phone call, I don't know. If you look --
23 and I'm not sure if Ms. Taylor's 11-page letter is in here. I
24 let her go in our office at Kokoweef that we -- she's only
25 supposed to be in the outer office, but in the inner office

1 where all the books and records were, she wasn't supposed to
2 go in there. I let her in there because I wanted to show how
3 open we were, how we wanted to get this discovery issue
4 resolved so we could get to the meat of this case.

5 She went in there and made a diagram of each and
6 every document, every file, every box that was there.

7 THE COURT: And this is the April 29th letter.

8 MR. SEGEL: Yes. And then sent a demand for all
9 these things that a lot of them have never been requested or
10 had already been produced. And so I cannot address whether --
11 whether or not Kokoweef has produced everything, because I
12 didn't -- I wasn't there. But I've seen numerous disks. I
13 have some concerns, as I was saying, that I think that where
14 they said that they didn't get everything that was in that
15 checklist that we gave them, I'm concerned maybe they didn't
16 look at all the disks we've given them. I don't know what
17 happened, why there's a disconnect there. I have no idea.

18 THE COURT: Well, the affidavit says there's at
19 least one that hadn't been provided.

20 MR. SEGEL: Your Honor, I cannot address
21 specifically -- to my knowledge --

22 THE COURT: Ms. Wright's affidavit says there is at
23 least one disk apparently not yet provided to the plaintiffs'
24 attorneys. That'd be in paragraph number 6 of her affidavit.

25 MR. CLARY: Well, it'd be helpful, Your Honor, if

1 she'd identify what it is.

2 THE COURT: It's from your clients' affidavit.

3 MR. CLARY: Yes, but --

4 THE COURT: Another disk apparently not yet provided
5 to the plaintiffs' attorneys labeled Kokoweef, Inc., 512-1-
6 2010, removal of directors info -- it's from something you
7 produced, Mr. Clary.

8 MR. CLARY: Yes. And if you'd read on, Your Honor,
9 with respect, it says we're producing it at that time and she
10 receipted it when we sent that over.

11 THE COURT: Okay.

12 MR. CLARY: She's got it.

13 MR. SEGEL: At this stage I've not -- I was not -- I
14 didn't participate in the phone with Mr. Clary and with Ms.
15 Taylor. There's a serious issue -- we have received no
16 documents in response to Mr. Clary's discovery requests, and
17 there's -- I thought they were resolved. But we have nothing
18 from the plaintiffs, period, not a piece of paper.

19 I believe we've given them everything we're supposed
20 to do. Something that was mentioned I think in the pleadings
21 that neither one of them mentioned, there's an issue of the
22 fact that we provided about four books prior to the litigation
23 of documentation that Mr. Beller had that Mr. Stringam
24 testified at the evidentiary that they had. And I think Mr.
25 Clary's response is I don't think we should have to give them

1 that again, they've already got it. That may not be an issue,
2 and Ms. Taylor can address that. That may --

3 THE COURT: It's an issue for me.

4 MR. SEGEL: Well, I don't know the answer.

5 THE COURT: The answer is yes, you definitely have
6 to produce it again. But I'm not to that part yet.

7 MR. SEGEL: Okay.

8 THE COURT: So in your mind, Mr. Segel, you believe
9 that everything from my last hearing has already been
10 accomplished.

11 MR. SEGEL: Well, the deposition didn't take place,
12 but I believe that we have done everything in our -- I believe
13 that -- to my knowledge, my client or my clients and Kokoweef
14 have done their best to comply with this Court's order.

15 THE COURT: Okay. Ms. Taylor, how long do you need
16 to review the updated index that was provided to you yesterday
17 to give me a more accurate summary of what has now been
18 provided and whether there are any holes that still exist?

19 MS. TAYLOR: Given the schedule that I have, I would
20 need at least two weeks. I'm sorry, Your Honor, but I have a
21 whole host of depositions and mediations coming up.

22 THE COURT: Okay. Now, is there anything anybody
23 else wants to tell me as a result of our status check which is
24 following my March 30th hearing to see how you're doing on
25 what I told you to do? Either of you.

1 MS. TAYLOR: Okay, Your Honor. I just want to -- I
2 understand that you've already told Mr. Segel that they are
3 going to have to reproduce those documents. And that is one
4 of the largest concerns that we have had, because this -- the
5 attempts of plaintiffs to obtain documents disclosed properly
6 under the rules after the point when discovery was opened has
7 been going on since August. I just want -- you weren't the
8 judge at the time of the evidentiary hearing, but the reason
9 that we've had to do this is because there were documents that
10 were produced prior to the evidentiary hearing. At the
11 evidentiary hearing, when Mr. Stringam was examined he was
12 asked about what documents he received. And he was asked, "So
13 you don't have a recollection of when you got those red
14 binders?" To which Mr. Stringam said, "Well, the binders I
15 have aren't red." So that's part of the problem probably.

16 Then, when it came time to brief that, that was one
17 of the points, was on cross-examination Stringam testified he
18 didn't believe that he had three red -- four binders of
19 receipts that were provided to plaintiffs by Kokoweef in the
20 late fall of '07. He made it clear he'd never received the
21 red binders, but he did receive a volume of receipts.

22 So it is -- it is, it has been, it is crucial that
23 we get them produced under 16.1, what they're going to rely
24 on. And this is --

25 THE COURT: Well, not just what they're going to

1 rely on, whatever's required under Rule 16.1.

2 MS. TAYLOR: And everything that's required under
3 the rule with a signature. And that's one of the things that
4 we've been fighting about, is that this belief that they are
5 not -- because they've provided documents to us they're not
6 required to properly disclose those documents to us.

7 Let me see what else is outstanding. I will go -- I
8 mean, that's probably the -- I just wanted to make sure that
9 you understood --

10 THE COURT: Is that the largest category of
11 documents, the information that was produced prelitigation
12 that has not been designated or otherwise produced as part of
13 Rule 16.1?

14 MS. TAYLOR: It is definitely one of the largest
15 question marks, Your Honor, because, you know, we just simply
16 can't rely on these documents that have not been properly
17 disclosed. And when you go to the index -- and you've seen --

18 THE COURT: Well, let me stop you. Were the
19 prelitigation documents that were produced to you Bates
20 numbered?

21 MS. TAYLOR: No.

22 THE COURT: Okay.

23 MR. SEGEL: And, Your Honor, I was just advised by
24 my clients that those documents were produced.

25 MS. TAYLOR: Your Honor --

1 THE COURT: Wait.

2 MR. SEGEL: When we get to the Bates issue there may
3 be an issue. But all I'm saying is that I was informed by my
4 clients that what was scanned and given on disks included the
5 prelitigation documents. Just wanted the Court to be aware of
6 that fact.

7 MS. TAYLOR: Your Honor --

8 THE COURT: When do you believe, Mr. Segel -- and if
9 you need to consult with your client to ask that question,
10 when do you believe that was produced?

11 MR. SEGEL: I believe that was part of the first set
12 of disks that we provided to the defendants that occurred --
13 to the plaintiffs, rather, that occurred before the deposition
14 of the 30(b)(6) witness. And that was two stacks of about a
15 foot and a half each that they had printed out and had
16 available at that deposition.

17 MR. CLARY: Your Honor, the prelitigation term is --

18 THE COURT: Hold on, Mr. Clary. I'm talking to Mr.
19 Segel.

20 And, Mr. Segel, do you know if at the time that
21 information was produced whether there was a supplement under
22 Rule 16.1 regarding the disclosure or other discovery
23 response?

24 MR. SEGEL: I am not -- number one, I probably could
25 not answer that because it would have been produced by

1 Kokoweef. Number two, I'm not sure what the Court's asking.
2 But [unintelligible] we do believe we've provided to the
3 defendants -- to the plaintiffs, I'm sorry, each and every
4 document that was properly requested we believe we have
5 produced, including the prelitigation documents that we -- we
6 say previously produced, but we produced them again.

7 MR. CLARY: May I speak now, Your Honor?

8 MS. TAYLOR: Your Honor, at some point --

9 THE COURT: Hold on a second. I'm looking currently
10 at the joint case conference report. I am unable in the
11 Court's file to see any supplements under Rule 16.1 that were
12 filed, if any were filed. I am concerned regarding the
13 description that is provided in the joint case conference
14 report and the fact that we don't have Bates numbers.

15 Given the document problems that we're having in
16 this case, it's going to create certain significant issues if
17 what I have in front of me says, yes, I produced all the books
18 and records of Kokoweef, Inc., which is Number 4 on page 6 of
19 the joint case conference report, and there is a dispute as to
20 exactly what it is that was produced because they were not
21 produced in a fashion where I either have them as part of a
22 supplemental disclosure where they're all attached and
23 detailed, or whether they're Bates numbered and I can identify
24 them.

25 So what I currently have is, at least in my mind, a

1 communication problem and an identification problem. And I
2 think that it is possible to work through this problem, but
3 not in the fashion we're currently handling it.

4 MR. SEGEL: Your Honor, if I can read between the
5 lines, hopefully I'm reading the line, I think we did revise a
6 lot of documents which were previously sent and Bates stamped
7 them, but I would -- don't think I have a problem if the Court
8 is saying that it wants us to make sure that all the documents
9 produced are Bates stamped and do a supplement that identifies
10 the Bates-stamped numbers as part of the 16.1. Is that --

11 THE COURT: Or otherwise specifically describes the
12 documents, as opposed to saying "books and records," then
13 specifically describes what the documents are.

14 MR. CLARY: We're talking about things that are not
15 true, Your Honor.

16 THE COURT: What do you mean, Mr. Clary? I'm
17 looking at the joint case conference report myself.

18 MR. CLARY: Fine. There was a -- there was a
19 response given. There are two responses that I made. One was
20 an early response that was a few days after the hearing, which
21 was in response to the 16.1, and identified documents there.
22 And then there was a second, longer one, which was the one
23 that was ordered by Your Honor within 15 days. It was done
24 within that period of time. And that specifies it and that
25 attaches the directory.

1 THE COURT: And --

2 MR. CLARY: Now, the other thing that's wrong is
3 when we talk about prelitigation documents. The documents
4 that we talked about in the red -- the red books were
5 documents that were -- that were introduced into evidence
6 specifically at the -- at the evidentiary hearing on the
7 motion for security under the statute for derivatives actions.
8 And we won that case, and they posted the security. Those
9 documents don't need to be Bates stamped [sic]. I believe
10 that they are in the documents that are Bates stamped, because
11 we -- I -- we specifically identified those documents and
12 Bates stamped them in response to the second -- to the request
13 contained within the notice of deposition. But we still do
14 have those documents. If they want me to give them another
15 copy with a list of the Court's identifying them as exhibits,
16 I believe that's duplicative, it's triple duplicative. But --
17 because they already have it, number one, because they
18 participated in the hearing; number two, it is included in
19 the other disclosures, all the other disks, and now would be
20 the third time, would be the third duplication if I gave them
21 another set of them. I'll be happy to do that.

22 THE COURT: Hold on a second.

23 Kathy, is there an exhibit list that's in the
24 Court's file?

25 MR. CLARY: Yes.

1 THE CLERK: I'm looking.

2 THE COURT: Hold on a second, Mr. Clary. I asked
3 the clerk, not you.

4 MR. CLARY: I beg your pardon.

5 THE CLERK: -- date when the hearing was?

6 THE COURT: It was in 2009, wasn't it, in August?

7 MR. SEGEL: 2008, July 30th of 2008.

8 THE COURT: July '08.

9 THE CLERK: [Inaudible].

10 THE COURT: Exhibits exist. I have -- the following
11 exhibits exist in the Court's vault. Defendants' 1,
12 Defendants 2, Defendants' 3, Defendants' 7, and Defendants' 8.
13 Those documents are described -- and if you want me to print
14 the list that represents what the clerk has in the vault, I
15 can do that. But I agree with Mr. Clary, to the extent that
16 those documents have been admitted as part of a proceeding, he
17 does not need to reproduce those five particular documents.

18 MS. TAYLOR: And, Your Honor, I have no problem with
19 that at all.

20 THE COURT: Okay.

21 MS. TAYLOR: But the -- considering that the
22 response from Mr. Clary is voluminous -- is usually voluminous
23 documents have been previously produced. That's great. If we
24 want -- you know, that identifies them. That tells me what
25 those documents are. I still think he needs to do them -- at

1 least identify them in a 16.1 supplement, but --

2 THE COURT: Well, I'm going to have a talk for a
3 minute with both of you about how you're going to identify
4 documents.

5 MS. TAYLOR: Okay. Can I just -- I just want to
6 point out a couple of other issues based on what --

7 THE COURT: I'm waiting.

8 MS. TAYLOR: Okay. If you look at Mr. Clary's
9 Exhibit 11, which says, "Responses of Defendant Patrick C.
10 Clary" --

11 THE COURT: Hold on a second.

12 MS. TAYLOR: Yes. In his status report, Your Honor.

13 THE COURT: Okay. I'm there.

14 MS. TAYLOR: You will note this was not produced in
15 2010, as represented. This was something that he did in 2009.
16 And I just want to point that out so that there's no question
17 about when things are being provided to me.

18 When you look at his disclosures, the only --

19 THE COURT: Well, it says on the top of Exhibit 11
20 -- and I don't know if there's a typo somewhere --

21 MS. TAYLOR: I believe it's a typo.

22 THE COURT: -- in brackets, "[served April 9, 2010]"
23 So I don't know if there's a date issue.

24 MS. TAYLOR: If you will look at the last page.

25 THE COURT: I saw the last page.

1 MS. TAYLOR: I will represent to you, Your Honor,
2 that when things come from Mr. Clary's office I never put an
3 "S" with a slash, at least not of recent. I never would have
4 done this. I always sign my ROCs.

5 THE COURT: Right.

6 MS. TAYLOR: I believe that this is a typo, but I
7 just wanted to make sure that we're not thinking that Mr.
8 Clary provided me with some type of supplemental disclosure in
9 conjunction with March 30th case hearing when he didn't,
10 because when I first looked at this I was really upset because
11 I thought he was representing that he had provided things to
12 me on April 9th and he never had, and that my signature had
13 somehow been put on there inappropriately. And then when
14 looked at it again I believe that somehow in identifying it
15 2010 got stuck in when it was 2009.

16 As far as disclosures, he has had one 16.1
17 disclosure, one. And all that that identified -- and I'm
18 pretty sure I put that in my opposition or in one of my
19 pleadings. And all that did was identify the Mayan Gold
20 letter. And that's the only thing he's ever provided or
21 produced in compliance with 16.1.

22 And then I also want to have you take a look at
23 Laurie Wright's deposition -- or Laurie Wright's affidavit
24 that came with the 3:39 p.m. supplement to his status report.
25 And she identifies disks that she says that we were provided.

1 One of them is called disk scan in July '08 labeled
2 "Evidentiary." We've never -- we've never gotten that. I
3 don't have that. Disk scan in July '08 labeled "Not in
4 evidence." I don't have that. Disk scan in October 2009
5 labeled "KI Paperwork Received KI Tax Return Fixed Assets."
6 That's this disk. Disk dated 2009 labeled "QuickBooks
7 Backup," which is with my accounting expert, and disk
8 labeled --

9 THE COURT: But you got that one.

10 MS. TAYLOR: Yeah. Got that one.

11 THE COURT: Okay.

12 MS. TAYLOR: Disk labeled "KI Files 4/12 Paid in '07
13 Receipts, KI Info Search Transfers and Shareholders." That is
14 one that came with the 4/14 supplement or response to the
15 request to produce. That's one of my other issues. Is that a
16 very large --

17 THE COURT: Let's just which disks you actually
18 have.

19 MS. TAYLOR: Okay. All right. And then this is
20 what -- that's this one. And then this is what came over
21 yesterday, which is basically a repeat --

22 THE COURT: Yesterday is the one that came with the
23 affidavit which was referred to in paragraph 6 that had been
24 arguably produced in paper format but now is being produced in
25 disk format.

1 MS. TAYLOR: Paper format, disk format. I haven't
2 had --

3 THE COURT: And that's the removal of directors
4 information.

5 MS. TAYLOR: Right. And I haven't had a chance to
6 go through this --

7 THE COURT: That's okay.

8 MS. TAYLOR: -- but I believe that this is --

9 THE COURT: So which disks that are mentioned in Ms.
10 Wright's affidavit do you believe you have not received, Ms.
11 Taylor?

12 MR. SEGEL: May I shortcut this, Your Honor? I'm
13 going to produce all new disks. Monday they'll have all the
14 disks in one package, and I will personally deliver it. I'll
15 make sure they get it. We deliver.

16 THE COURT: Lovely.

17 MR. SEGEL: That's what I'm going to do.'

18 THE COURT: Monday's a holiday.

19 MR. SEGEL: Well, Tuesday. But I'll get a whole new
20 set of disks, package them all together, we'll deliver them
21 with an ROC for her signature, although she made the runner
22 wait a half hour last week. I'm sure there's --

23 MR. CLARY: I think we already --

24 MR. SEGEL: But we will -- we will get that done. I
25 will personally take care of it. Every single disk we've

1 already produced will be produced again on Tuesday.

2 THE COURT: Lovely. Although she says she doesn't
3 need them all because some of them --

4 MR. SEGEL: I'm going to do it. I don't care. I
5 want them all at one time.

6 THE COURT: It's okay. I appreciate that, Mr.
7 Segel.

8 MR. SEGEL: I want them all in a package. Thank
9 you, Your Honor.

10 MS. TAYLOR: And as long as they match what's in Ms.
11 Wright's affidavit so that I can go check them off, I'm
12 perfectly content with that solution.

13 THE COURT: Okay.

14 MR. CLARY: Can I make -- ask a question, please?

15 THE COURT: Absolutely.

16 MR. CLARY: I think that -- I think that -- may I
17 ask when -- when the notice of deposition was -- with the --
18 with the request for production inside of it was originally
19 served?

20 MS. TAYLOR: It was August 5th of '09, I believe.

21 MR. CLARY: August 5th, '09?

22 MS. TAYLOR: I don't know. It's in my motion to
23 compel.

24 THE COURT: Okay.

25 MR. CLARY: All right. Well, if that's -- if that's

1 the case, then even though Exhibit 11 says '09, if it's dated
2 prior to that deposition -- notice of deposition being served,
3 and it was in error, it should be 10, but if it was -- if it
4 was prior to April 5, 2009, that that was served, then '09
5 would be the correct date. I did not notice that when I
6 hurriedly put this together.

7 THE COURT: Okay.

8 MR. CLARY: If that's my mistake, I apologize.

9 THE COURT: All right. I'm not worried about --

10 MR. CLARY: But I do want to point out --

11 THE COURT: -- mistakes.

12 MR. CLARY: -- that we did -- we did --

13 THE COURT: I'm worried about moving forward from
14 today.

15 MR. CLARY: Okay.

16 THE COURT: Okay. Ms. Taylor --

17 MS. TAYLOR: Yes, ma'am. Yes, Your Honor.

18 MR. CLARY: But I would like to write down the disks
19 she said she didn't have so that --

20 THE COURT: Can I go back to Ms. Taylor now. I have
21 some issues the time want to follow up.

22 Mr. Segel --

23 MR. CLARY: Can I just ask that one question? What
24 is the one disk she said she did not get that we listed
25 yesterday? I just want to know that.

1 MS. TAYLOR: I do not have Disk A under paragraph 5,
2 I do not have Disk B under paragraph 5, and in paragraph 4(3)
3 it says, "Contents of one disk labeled 'Prelit' containing
4 documents provided thereon to the plaintiffs' attorney in
5 approximately October 2009." I believe that that date that it
6 was allegedly provided is in error, and I think that Ms.
7 Wright may have been referring to this one, the July --

8 THE COURT: What is that one you are holding up in
9 your hand?

10 MS. TAYLOR: This is exactly how it came to me, and
11 it just --

12 THE COURT: What is it labeled?

13 MS. TAYLOR: "Kokoweef, Inc., Taylor Copy 7-2009,"
14 there's something marked out on it, and then underneath it's
15 handwritten "COR."

16 THE COURT: Do you need to look at that more
17 closely, Mr. Segel or Mr. Clary, to identify it?

18 MR. CLARY: Yes.

19 MS. TAYLOR: But that, Your Honor --

20 THE COURT: Wait.

21 MS. TAYLOR: Yes.

22 (Pause in the proceedings)

23 THE COURT: Okay. Are we done identifying the disks
24 now to your satisfaction, Mr. Clary?

25 MR. CLARY: Yes, Your Honor.

1 THE COURT: Okay. Ms. Taylor. Ms. Taylor, on
2 Tuesday Mr. Segel is going to have delivered to you another
3 copy of all of the disks they believe they have previously
4 produced, including those you have identified today that you
5 haven't received. If you will have someone then receipt those
6 so that Mr. Segel can confirm he has provided those, I should
7 be past that issue.

8 MS. TAYLOR: You should be, Your Honor.

9 THE COURT: Okay.

10 MS. TAYLOR: And what I would just -- if I can just
11 ask Mr. Segel, because I will be in deposition on Monday -- or
12 on Tuesday, which is Monday, if perhaps you can send me in
13 advance your 16.1 disclosure of those disks. Then I can check
14 them off of this and make sure there's not a problem so that I
15 can authorized somebody in my office to receive copy of them.

16 THE COURT: Well, no. No. This is how it works.
17 He sends you an ROC. It says, hi, I'm delivering disk
18 labelled A, disk labelled B, disk labelled C, disk labelled D,
19 disk labelled E. The receptionist is going to look at the
20 seven disks and say, gosh, these don't match what's in the
21 thing, I can't sign it, runner, or, gosh, these are exactly
22 what the description is. If what's on the disks is different,
23 that's between you and Mr. Segel. But the disk itself can be
24 signed by a receptionist as to whether it is identified in the
25 cover sheet that specifically says, hi, I'm delivering this to

1 you.

2 MS. TAYLOR: Okay.

3 THE COURT: So can we do it that way on Tuesday,
4 please. All right.

5 MR. SEGEL: Thank you, Your Honor.

6 MR. CLARY: But that's been a problem, Your Honor.
7 We -- in delivering --

8 THE COURT: Mr. Clary, I don't want to talk about
9 past history now. I want to talk about moving forward. If we
10 talk about past history, we will be here for weeks and you
11 guys will get mad at each other, and I will get up and walk
12 out. So let's talk about the future and making sure we
13 correct the issues so that I can get your case moved on so
14 that you can get a resolution and all of the parties don't
15 need to waste their time sitting in my courtroom for discovery
16 disputes.

17 MR. CLARY: The only thing I wanted to say, what you
18 said would happen in the future when it comes to ROCs, I hope
19 that was heard by Ms. Taylor, because that's not the way it's
20 been handled in the past.

21 THE COURT: Is there anything else you want to tell
22 me, Mr. Clary?

23 MR. CLARY: Yes. The reason that I was so extensive
24 in providing all the documentations -- most of the
25 documentations we exchanged is I was able to put some kind of

1 order, I believe correct order, so that you would get a flavor
2 for what has occurred here. And the reason that I filed the
3 motion to compel --

4 THE COURT: I'm not on the motion to compel yet.
5 I'm only on the documents that were supposed to be produced as
6 a result of my last hearing here and the Rule 16.1 conference.
7 I will in a little bit get to your motion to compel the
8 plaintiffs to produce information. But I'm not there yet. So
9 is there anything else you want to tell me about what we were
10 supposed to do after my March 30th hearing?

11 MR. CLARY: Yes. I would just like to say that I
12 believe because I've disclosed all of the documentation that's
13 been exchanged, that we've demonstrated to Your Honor that we
14 have acted in good faith and have attempted to -- as best we
15 could to comply with Your Honor's order.

16 THE COURT: Okay. Here's where I think one of your
17 communication issues between the two sides exists. It exists
18 in the manner in which the response is being provided. And I
19 think we will better served, instead of saying, see the
20 documents identified in the directory, since in most cases you
21 have already identified the items on the directory by number
22 or Bates number, to specifically identify the range of
23 documents that is included there instead of referring just to
24 the directory. Do you understand what I'm suggesting?

25 MR. CLARY: Yes.

1 THE COURT: And I'm suggesting that all sides comply
2 with that. So, instead of saying, hi, it's in the index I
3 produced, saying, hi, it's in the index I produced and it's
4 page numbers A1 through 77. Do you understand that?

5 MS. TAYLOR: Yes, Your Honor.

6 THE COURT: Okay. If we are able to provide that
7 kind of detail, I do not think you will have these type of
8 issues in the future, because we won't be talking about who or
9 what has been produced. You will know what was produced.
10 Does anybody have any questions about that procedure? Can the
11 defendants do a supplemental response that includes that
12 identification?

13 MR. SEGEL: Of course, Your Honor.

14 THE COURT: How long do you think it will take to
15 do?

16 MR. SEGEL: Well, you'll have to ask Mr. Clary,
17 because everything was addressed to Kokoweef. Nothing has
18 been addressed to my clients, so --

19 THE COURT: Okay.

20 MR. SEGEL: -- I would think at least a couple --

21 THE COURT: I just want to give you a reasonable
22 time. I don't want to set unreasonable limits.

23 MR. SEGEL: I think -- and I'm sure we're going to
24 need at least two weeks. One of the issues that we have, Your
25 Honor, is --

1 THE COURT: How about four?
2 MR. SEGEL: That's cool.
3 MR. CLARY: No. I don't want to do four. I want to
4 get moving on this.
5 MR. SEGEL: Can we get it done?
6 MR. CLARY: We can get it done in two weeks.
7 THE COURT: Okay. Some people think two weeks isn't
8 long enough, Mr. Clary, and some people think maybe three or
9 four weeks is a better time frame.
10 MR. SEGEL: Can I have one second, Your Honor?
11 THE COURT: Some of the people who are actually
12 doing the work are telling me, gosh, Judge, could you give me
13 a little longer than the two weeks.
14 MR. SEGEL: Your Honor, we have an issue. The lady
15 who does our scanning and gets all the stuff together for us
16 -- I have two of our workers here, but the people -- the lady
17 that actually does the scanning work is going to be out town
18 on her actual real job, where she gets paid to do what she
19 does --
20 THE COURT: Yes.
21 MR. SEGEL: -- from June 11th through the end of the
22 month.
23 THE COURT: Okay.
24 MR. SEGEL: So we -- and I don't that we can get --
25 THE COURT: See, I'm trying to work with people's

1 schedules.

2 MR. SEGEL: Yeah. I appreciate that.

3 THE COURT: I'm trying to set reasonable deadlines.

4 MR. SEGEL: And unfortunately, I'm afraid -- I'm not
5 sure that we can anything done before she leaves. That
6 because the issue. So it might be elongated.

7 THE COURT: How about I give you a moment to consult
8 with your team while I deal with Mr. DeCastroverdes's case.

9 MR. SEGEL: I betcha he'll be happy.

10 THE COURT: He will be happy.

11 (Pause in the proceedings)

12 THE COURT: While the defendants are consulting on
13 the timing for the production, I'm going to take a break so I
14 don't rush them, since they actually got up and left the
15 courtroom for a few minutes. And then I'll come back as son
16 as you guys are ready, and we will continue to work for a
17 while.

18 MS. TAYLOR: And, Your Honor, I apologize. I have a
19 conflict at 11:45, so I --

20 THE COURT: Where have you got to go at 11:45?

21 MS. TAYLOR: I have to be down at Howard Hughes
22 Center to meet with an expert.

23 THE COURT: How long does it take you to get to
24 Howard Hughes Center?

25 MS. TAYLOR: Do you think 10 minutes from here?

1 THE COURT: I don't know. I never can get anywhere
2 in any amount of time anymore. I used to be able to get
3 anywhere in Vegas in 15 minutes.

4 MS. TAYLOR: Yeah.

5 THE COURT: It doesn't work that way anymore.

6 (Off-record colloquy)

7 THE COURT: So you want to leave at 11:30?

8 MS. TAYLOR: I would appreciate being able to leave
9 at 11:30.

10 THE COURT: Okay. Then I will take a five-minute
11 break, and I will send the marshal to hurry Mr. Segel and Mr.
12 Clary in their discussions, and then we will go to --

13 (Pause in the proceedings)

14 THE COURT: That's good information. Thank you.
15 I'll be back.

16 (Court recessed at 11:11 a.m., until 11:14 a.m.)

17 MR. SEGEL: Mr. Clary is indisposed, Your Honor.
18 I'm sure he'll return as quickly as possible.

19 THE COURT: Okay. I'll wait for a few minutes. Ms.
20 Taylor says she has a meeting at 11:45 because she did not
21 anticipate this hearing would last so long, and I'm trying to
22 accommodate her request to get there.

23 MR. SEGEL: And we appreciate the Court taking the
24 time to try to work out these issues.

25 THE COURT: It's okay. It's Business Court. I'm

1 supposed to handle discovery disputes.

2 MR. SEGEL: That's what you said the last time.
3 Aren't you happy?

4 (Off-record colloquy - Clerk)

5 THE COURT: So did you have a chance to consult as
6 to the length of time you believe you need before you can --

7 MR. CLARY: Yes, Your Honor.

8 THE COURT: -- supplement your prior responses?

9 MR. SEGEL: Your Honor, I think -- I mean, it's our
10 belief that Laurie Wright, who is our 30(b)(6) and does the
11 scanning and organizing the files, we think most of the
12 documentation has been scanned, so she probably can get the
13 job done before she leaves on the 11th.

14 THE COURT: She's shaking her head no, I think.

15 UNIDENTIFIED SPEAKER: She just said no.

16 THE COURT: Yeah.

17 MR. SEGEL: Your Honor, what I would represent to
18 the Court is we believe we can do it. We cannot assure the
19 Court that we can do it. So -- and I'm sure the Court wants
20 the time frame to decide what we're going to do next.

21 THE COURT: That's true.

22 MR. SEGEL: I'm omnipotent. The problem that I can
23 see is if we can't get it done in the two-week period, we
24 probably are going to need two weeks into July before it can
25 be done. So --

1 THE COURT: So it's either going to be done in two
2 weeks, or it's going to take six weeks to get it done.

3 MR. SEGEL: Exactly, Your Honor.

4 THE COURT: Okay.

5 MR. SEGEL: And we're going to do our best to get it
6 done, because we do want to move this along. I hate to
7 suggest a status check in --

8 MR. CLARY: Well, can I ask you something, Your
9 Honor? I was the one that's supposed to respond to this, but
10 I appreciate Mr. Segel's assistance.

11 I would recommend if you're going to provide, for
12 example, a period of time -- a deadline for Ms. Taylor to
13 respond to whatever we give her, this amended disks that were
14 getting her named particularly this amended response,
15 discovery response to her request for production of documents
16 that you make that so many days after the time we give it to
17 her, rather than set it to August or something. Because we're
18 going to really try hard to get it done in two weeks --

19 THE COURT: I appreciate that suggestion, Mr. Clary,
20 but that's not way I'm going to do it. So it appears that
21 you're going to make your best efforts to get it done in two
22 weeks, but we recognize there may be a significant issue in
23 getting it done because of other planned absence that the
24 individual is going to have.

25 So, Ms. Taylor, if you don't get it in two weeks, it

1 sounds like it's going to be six weeks.

2 The biggest concern that I have, gentlemen, on this
3 issue is, as you all know, we have a trial date scheduled for
4 September, and it is clear there's absolutely no way this case
5 is going to be ready to go to trial in September. So I have
6 been trying to hold hands with you to assist you in working
7 through that process, and it has not been very productive so
8 far.

9 So, Ms. Taylor, I am going to ask you that when you
10 get the disks that Mr. Segel is delivering to you on Tuesday
11 that you make your best efforts to review those along with the
12 new index and that within six weeks you will have the
13 supplemental response to the Rule 16 productions and the prior
14 discovery responses that have been provided to you.

15 Assuming you are able to get those things within the
16 six weeks that I've identified, tell me what else you believe
17 needs to then be accomplished. And I'm not yet to the motion
18 to compel by Mr. Clary, but I'm going to get there before you
19 leave in about 10 minutes.

20 MS. TAYLOR: Okay. Obviously once we have all the
21 documents and we're able to give them to our experts, our
22 experts are going to have to do reports, there may be some
23 percipient witnesses that we have been waiting to depose based
24 upon those records, and then I will probably want to serve
25 some written discovery based upon the contents of those

1 records. Some of that written discovery I could probably
2 serve now, but --

3 THE COURT: Yes.

4 MS. TAYLOR: And to the extent that there's
5 something that is specific to those records, then I may need
6 to --

7 THE COURT: Certainly.

8 MS. TAYLOR: And --

9 THE COURT: How long do you anticipate your experts
10 will need to digest the information before they have reports
11 that are able to be produced?

12 MS. TAYLOR: If I can just ask for clarification
13 real quick on something. We now have the evidence locker
14 list. Is it your -- was it your ruling that whatever on this
15 D2, D3 -- D1, D3, D7, and 8, is that something that is going
16 to be our responsibility to get out of the evidence locker to
17 make sure we have it because it's already been introduced into
18 evidence?

19 THE COURT: It is my position that that is something
20 that has been clearly disclosed to you since it was part of a
21 hearing. And if you can't find your copy, you should go over
22 and look with the Clerk's Office and try and get a copy. I'm
23 sure that if you are specifically able to identify the
24 documents, you can ask Mr. Segel, and the two of you can
25 figure out how to get a copy. Maybe you can ask Mr. Clary,

1 too. But there -- if it's been admitted in a court
2 proceeding, I'm assuming it was disclosed to you, since you
3 participated in the court proceeding.

4 MS. TAYLOR: Okay.

5 THE COURT: Not that you ever saw it before the
6 court proceeding, but I know you were there.

7 MS. TAYLOR: Personally I wasn't, but counsel for
8 the plaintiffs was. But I will start with just speaking to
9 the vault clerk to see how voluminous it is, and then will
10 speak to Mr. Segel and go from there.

11 So because we have been waiting on getting responses
12 and getting documents for so long, I think that that list of
13 what I believe needs to be accomplished is pretty dead on.
14 I'll have to do --

15 THE COURT: So how long do you think your experts
16 need to review things?

17 MS. TAYLOR: Presuming that it's not -- I would
18 think just to be safe -- just because I'm so concerned about
19 saying a month, six weeks, because I don't know what's going
20 to come over in these disks that I've not previously seen. So
21 I would think that my experts would need I'm going to say six
22 weeks.

23 THE COURT: Okay.

24 MR. CLARY: Your Honor, I'm not sure I'm going to be
25 alive by then. Does that need that we're not going to be able

1 to hear the motions for summary judgment until after all that?

2 THE COURT: Probably so, Mr. Clary.

3 MR. CLARY: I want to strongly object to that -- I
4 can't understand why Your Honor would not allow the time to
5 run from the date that we actually delivered, rather than have
6 to have another month sit there where nobody does anything.

7 THE COURT: Okay. Thank you, Mr. Clary.

8 So in about 12 weeks your expert reports need to be
9 produced.

10 Mr. Clary, I am going to assume that you are going
11 to have experts that you're going to use. Are there any areas
12 where you are going to have an expert on issues you bear the
13 burden of proof on?

14 MR. CLARY: The only thing that I can think of that
15 we would bear the burden of proof on would be the motion --
16 the remaining motions for summary judgment on the remaining
17 claim against me personally.

18 THE COURT: I'm just on --

19 MR. CLARY: I don't -- on Kokoweef I don't --

20 THE COURT: -- mainly trial issues. Trial issues.

21 MR. CLARY: And I believe there's -- I believe that
22 motion is also with respect to Kokoweef, as well.

23 THE COURT: Okay.

24 MR. CLARY: So that would be the only thing, because
25 we don't have a counterclaim in this case.

1 THE COURT: I know you don't, which -- but sometimes
2 there are affirmative defenses where you bear the burden of
3 proof. And since I haven't looked at your affirmative
4 defenses lately, I can't remember if there are any on which
5 you bear the burden of proof. And I'm trying to set a
6 deadline for an expert disclosure for you.

7 MR. CLARY: I don't remember, either.

8 THE COURT: All right. How long do you anticipate,
9 Mr. Clary, after you see the expert reports from the
10 plaintiffs you will need for your expert to provide the
11 rebuttal report?

12 MR. CLARY: Two weeks.

13 THE COURT: Two weeks? You need four weeks, don't
14 you?

15 MR. CLARY: He wants a month. As I say, I probably
16 won't be here, so it won't be of any concern to me.

17 MS. TAYLOR: Your Honor, I apologize. I know you're
18 trying to do dates, but just quickly. In terms of things that
19 have not been produced but may exist, there are some issues
20 still on pages 4 and 5 of Mr. Clary's letter to me of May 7th
21 where he goes into a list of items that I believe were
22 requested in our -- in our requests, and I just wanted to
23 raise that for discussion at some point.

24 THE COURT: Okay. So --

25 MR. CLARY: With respect to some of those, I've

1 already in my letter back to her, which apparently she hasn't
2 read yet -- that's not true, she did read it, because we
3 discussed some of those and I've got it in the papers that I
4 filed with Your Honor as to what documents we said we would
5 produce. If they haven't produced yet, I will produce them
6 very shortly.

7 THE COURT: Okay. And that would be on or before
8 July 16th that you will produce the supplemental information
9 and supplemental disclosures. Your expert report on issues
10 anyone bears the burden of proof on are due on September 3rd.
11 Rebuttal expert reports are due on October 15th.

12 Now, Ms. Taylor, there is a request for production
13 of documents that has been served on you that asks for -- I
14 will say it is very broad, but it is also basically just
15 asking for everything you're required to produce under
16 Rule 16.1. How long before you're going to provide all of the
17 documents that you are required to under Rule 16.1 and that
18 support any of the allegations that still remain in your first
19 amended complaint?

20 MS. TAYLOR: That we have knowledge of at the moment
21 because discovery is not complete and we have outstanding
22 document requests, as well?

23 THE COURT: Absolute. Because you know you have to
24 make --

25 MS. TAYLOR: Reasonable --

1 THE COURT: -- investigation and you have to produce
2 any information is that is reasonably within your control
3 after a reasonable investigation.

4 MS. TAYLOR: For anything that is percipient based
5 and not going to be part of an expert report, I would think
6 that it would be -- just to make sure I can get through
7 everything I think that we're going to have do, three weeks.

8 THE COURT: Okay. So within three weeks, Mr. Clary
9 and Mr. Segel, you will have all of the documents that to me
10 appear to be responsive to your Request to Produce Number 1
11 that relate to the allegations in this case and also that are
12 still required to be produced under Rule 16.1 even if they are
13 not covered under that because just something -- because
14 something doesn't support your allegations but you are aware
15 of it and have it within your control, you still have to
16 produce it, okay.

17 MS. TAYLOR: Your Honor, if it's --

18 THE COURT: Three weeks.

19 MR. CLARY: Three weeks from when?

20 THE COURT: Now.

21 MS. TAYLOR: If it's been produced, Your Honor, by
22 the defendants --

23 THE COURT: Then you can identify it by Bates
24 number.

25 MS. TAYLOR: And reasonable description.

1 THE COURT: Yes.

2 MS. TAYLOR: Thank you, Your Honor.

3 THE COURT: Okay. Now, that means that I am

4 probably going to not have a trial with you until after the

5 first of the year. I would like to hear your motions for

6 summary judgment -- and I don't know that I need all of the

7 expert reports to be able to hear your motions for summary

8 judgment. Does everyone have a position on that?

9 MR. SEGEL: Your Honor, the last time we were here

10 you denied the request to continue discovery and stated that

11 once we had produced all the stuff we were supposed to produce

12 and they --

13 THE COURT: Which I was hoping I would know by

14 today.

15 MR. SEGEL: I agree.

16 THE COURT: Which is why we're doing these dates

17 right now.

18 MR. SEGEL: -- and we had the 30(b)(6) that I could

19 then renotice my deposition and you were going to -- my

20 summary judgment, and you were not going to consider extending

21 discovery until after the summary judgments were heard. And

22 what I'm hearing now is that's not the case.

23 THE COURT: Absolutely not. We've screwed up way

24 too much to be able to do that. So you can renotice your

25 motions for summary judgment at any time. My question -- you

1 know, because you've practiced long enough, that sometimes we
2 get requests for 56(f) relief --

3 MR. SEGEL: Yes.

4 THE COURT: -- in response to summary judgment
5 motions. And if there are issues in your motion for summary
6 judgment that may or may not relate to experts, I'm trying to
7 figure that out so that I know when I can anticipate having
8 them heard.

9 MR. SEGEL: And that's an interesting issue, judge.
10 I think on my motion as to the negligent misrepresentation the
11 key aspect of that motion was a lack of damages. And if
12 there's no damages, there's relief they're entitled to. I'm
13 not sure what further discovery they would need. And which
14 goes to Exhibit 1 of the papers you received, my letter that
15 was considered to be a nasty letter to Ms. Taylor, which
16 simply asks for what 16.1 requires, that they provide us with
17 their damages. And I --

18 THE COURT: The statement of damages required under
19 16.1, you're going to get it in three weeks. I told her.

20 MR. SEGEL: I haven't gotten it, and I'm told that
21 I'm ridiculous we've asked for it.

22 THE COURT: No, you're not ridiculous to ask for it.
23 You need it.

24 MR. SEGEL: I would hope so.

25 THE COURT: And you're required to get it.

1 MR. SEGEL: I thought so.

2 THE COURT: And so you'll have it in three weeks.

3 MR. SEGEL: And I'll probably be in a position to
4 evaluate my summary judgment at that time and I'll renew it if
5 I think it's going to work.

6 MR. CLARY: If I could add something to that. I
7 don't think on the negligent misrepresentation that the --
8 that experts are required. That's a -- that's a very
9 restrictive cause of action or claim for relief, and I don't
10 think that that's going to turn on any expert witness, because
11 it's going to turn on what the facts are, can -- do they have
12 any evidence to support the facts that are required to be
13 proved -- proven in order to be able to get -- relief to be
14 granted. So I don't think that needs to be held up for that
15 reason, to respond to Your Honor's question.

16 THE COURT: Thank you, Mr. Clary.

17 MS. TAYLOR: I disagree.

18 THE COURT: Okay. So then I assume that if there's
19 a motion that's filed before the expert deadlines I've given
20 you somebody will do something and I'll make a decision
21 whether 56(f) is appropriate if it's asked for. If I don't
22 think it's appropriate, I'll go ahead and rule on the motion
23 for summary judgment.

24 Going to set a new discovery cutoff for you for
25 November 19th. The last day to file any motions -- and you

1 may certainly file motions before this -- is December 17th.

2 Now, Ms. Taylor, I understand your position that the
3 interrogatories are overbroad. I understand that your
4 position some of the claims have been dismissed are in the
5 interrogatories. I will tell you you do not have to respond
6 to any of the interrogatories that relate to claims that have
7 been dismissed. Other than those, I need you to make your
8 best efforts to respond to them, because I do not think that
9 they are that bad. I looked at them because they were
10 attached to the motion to compel, and generally they appear to
11 be to the point.

12 The problem I have with Interrogatory Number 32 is
13 it is way too broad, Mr. Clary. So Interrogatory Number 32
14 I'm not going to require her to answer, okay.

15 MS. TAYLOR: Your Honor, I am very concerned,
16 though, as I stated in my opposition, regarding the
17 interrogatories related to the filing costs and the costs for
18 the litigation. And I submitted an affidavit where we
19 actually do have a witness who will testify that once his
20 involvement was known -- he wasn't even involved once he had
21 anything to do with the Website that was --

22 THE COURT: And you're on Interrogatory Number 28?

23 MS. TAYLOR: Yes. Well, I'm on 28, 29, and 30 are
24 the ones that we really have the biggest problems with. I --
25 you know, any and all I will --

1 THE COURT: 28, 29, and 30 are all perfectly
2 appropriate interrogatories. So you will answer them.

3 However, I do have a concern, and this was mentioned
4 in I can't remember which brief, regarding potential
5 harassment of witnesses or other members or shareholders.

6 MS. TAYLOR: That was in my brief, Your Honor.

7 THE COURT: I do not know who is related to that
8 issue. I will tell you that if it comes to my attention the
9 there are allegations of harassment or efforts to intimidate a
10 witness by any party or counsel, I will take very strong
11 action.

12 MR. CLARY: For the record, Your Honor, I want to
13 state that my client denies that ever took place, what's
14 alleged. It's presented to Your Honor. It's absolutely
15 inadmissible in the form in which it was presented to Your
16 Honor, and we're prepared to back that up.

17 THE COURT: Mr. Clary, I'm just making a statement
18 so in case there's ever a order to show cause to have somebody
19 held in contempt everybody is clear on what my position is.
20 My position is it is inappropriate to threaten, intimidate, or
21 harass potential witnesses or others. I'm not saying it's
22 happened. I don't take as gospel anything that's been told to
23 me. My only concern is I don't want somebody saying, oh, I
24 get one free bite at it now. I've made my position clear.

25 MR. CLARY: Your position is very clear, and even

1 before you said that I want to make clear that my position is
2 that that will never happen by any clients of mine, and if it
3 does, I'll be out of the case.

4 THE COURT: All right. Well, I'm not saying it
5 happened. I'm just saying it is an allegation and I put it on
6 my check mark -- check box.

7 Now, Ms. Taylor, the last issue before I let you go
8 is there are scanned documents that you obtained when you did
9 your inspection. When can those be provided?

10 MS. TAYLOR: They can be provided right now, Your
11 Honor. I have them in my hands.

12 THE COURT: Do you have two copies?

13 MS. TAYLOR: I do. And the reason that they were
14 not produced was because of the concern that I had regarding
15 your order and any allegations that somehow disclosing them to
16 them in a 16.1 form would be violative of your order.

17 Given what you have recognized as problems in
18 communication, I was gravely concerned about that.

19 MR. CLARY: Well --

20 MS. TAYLOR: So as long as you're here and we can
21 all agree that my disclosure and my subsequent --

22 THE COURT: Are the disks labelled?

23 MS. TAYLOR: They are, Your Honor.

24 THE COURT: And does the ROC particularly identify
25 the disks that are being provided?

1 MS. TAYLOR: They do, Your Honor.

2 THE COURT: All right. Why don't you pass the ROCs
3 and the disks over to Mr. Clary and Mr. Segel and let them
4 sign their respective names after they've reviewed the disks
5 to make sure they actually are listed on the receipt of copy.

6 MR. SEGEL: You know, it's very simple. It just
7 says Disks 1 through 6. I'm not sure how -- six disks. I'm
8 going to sign it.

9 MS. TAYLOR: And if you'll look, Mr. Segel, there is
10 Bates numbers.

11 MR. SEGEL: There are Bates numbers, as well, yes.

12 THE COURT: Good. Very nice.

13 MR. SEGEL: I've signed mine, Your Honor. I'm
14 handing it back. I don't have a copy for myself.

15 THE COURT: Well, it may be, Mr. Segel, that those
16 disks are blank when you get back to your office.

17 MR. SEGEL: It could happen. But we've already
18 addressed that issue.

19 THE COURT: And if they are, you'll send a nice
20 letter to Ms. Taylor saying, I put them in my computer, I
21 couldn't retrieve the data for some reason, can you tell me
22 why, can I get another copy.

23 MR. SEGEL: Absolutely. Thank you, Your Honor.

24 THE COURT: Okay.

25 MS. TAYLOR: And then, actually, gentlemen, if

1 you'll sign this one, too, then we all have copies.

2 THE COURT: Mr. Hahn, it's not always like this in
3 Business Court. It just seems like it a lot lately.

4 MS. TAYLOR: A couple things, Your Honor. I know --
5 my expert's just going to have to wait a few minutes, because
6 I do have a couple other issues I would like to discuss as
7 long as we're talking about --

8 THE COURT: Well, wait.

9 MS. TAYLOR: I'm sorry.

10 THE COURT: Mr. Clary, your motion is granted in
11 part. I have given Ms. Taylor direction on what she's to
12 respond to.

13 MR. CLARY: When is she supposed to respond to that?

14 THE COURT: Three weeks.

15 MR. CLARY: Oh. Same three weeks.

16 THE COURT: And she will get you the information.
17 And if there is any problem after you get that information
18 from her, you will then address it to me in a motion after
19 you've talked to her and you've been unable to resolve it, and
20 we will have another discussion, and I'll try and set aside a
21 couple hours for you.

22 MS. TAYLOR: Your Honor, what I was going to ask you
23 -- it was one of my issues before you just put your statement
24 on the record is whether or not you would permit further
25 briefing on Interrogatories Number 28, 29, and 30 given what

1 you have noted as a check mark of potential harassment and the
2 fact that I think that this is too broad.

3 THE COURT: The answer is no.

4 MS. TAYLOR: Okay. Thank you, Your Honor.

5 THE COURT: Okay. You have been handed back your
6 ROCs for the six disks, so I can check that item back off on
7 my list.

8 Is there anything else before we break that any of
9 you want to tell me?

10 MS. TAYLOR: Your Honor, I do have a couple things I
11 want to tell you. One is that my expert Talen Stringam,
12 [phonetic], who is my audit expert, really -- we didn't know
13 at the time we saw you on March 30th until we got to look at
14 the shareholder documents. Now that we've seen the
15 shareholder documents, there are ledgers in each of the
16 folders for the shareholder documents indicating how much
17 money has come in from each shareholder to the company.
18 Because Mr. Stringam is doing financial expert work, he really
19 does need to be able to see those records to be able to
20 calculate what's come in and analyze it against what's gone
21 out. I am more than --

22 And then my other expert is a securities expert, and
23 so obviously he needs to see those records, as well. I didn't
24 know what was going to be in there until we had a chance to
25 see them.

1 I am requesting, therefore, that the order be
2 amended slightly to allow Mr. Stringam under the same
3 strictures of your order to be able to have access to those
4 records, as well.

5 THE COURT: Any objection?

6 MR. CLARY: Well, Your Honor, why?

7 THE COURT: Because he's an expert and he needs to
8 review them to give his opinions. Otherwise, I assume --

9 MR. CLARY: Yes. But they've got copies, absolute
10 complete copies of them.

11 MS. TAYLOR: Mr. Stringam was not provided copies of
12 those shareholder records under the order, only Mr. Ed
13 Happenbrink was.

14 MR. CLARY: I don't have objection to giving him
15 copies, but I thought she wanted to go back and look at them
16 again.

17 THE COURT: No. Okay.

18 MR. SEGEL: Just so it's clear, we have no --

19 THE COURT: They will be added to the exception of
20 someone who can see those particular documents.

21 MS. TAYLOR: Thank you, Your Honor. On the --

22 THE COURT: If you would submit a written order on
23 that, please.

24 MS. TAYLOR: Yes, Your Honor.

25 Your Honor, on the cease and desist world of

1 potential alleged harassment, we have copies of documents that
2 are regularly sent out from Mr. Hahn to shareholders
3 soliciting funds for the defense of Kokoweef, which is fine
4 potentially. But the problem is the statements that are being
5 made in these documents.

6 THE COURT: I'm not going to stop him from
7 communicating with the shareholders. You may certainly ask
8 questions during discovery about that, and it may be part of
9 the issues that are litigated in this case if get that far,
10 okay.

11 MR. CLARY: To my knowledge, Your Honor, Mr. Hahn is
12 not -- may send that out with -- for example, I think perhaps
13 a letter to that effect went out with a notice of an upcoming
14 annual meeting just to save postage. But when she says Mr.
15 Hahn sends it out, he doesn't really send it out. He has the
16 clerical person that does that. But they are not -- they are
17 not authored by Mr. Hahn. There was a special trust set up,
18 separate entity set up for soliciting donations for the -- for
19 the defense fund and a separate defense fund set up.

20 MS. TAYLOR: And to the --

21 MR. CLARY: And there is a person who is the trustee
22 of that, and it's not Mr. Hahn.

23 THE COURT: Okay.

24 MS. TAYLOR: To the extent that in these letters or
25 anything from this trustee come out that contain statements

1 that could be considered slander per quad, are those things
2 that we can address with you as they come up?

3 THE COURT: Absolutely.

4 MS. TAYLOR: I apologize, Your Honor. I actually
5 had a checklist of stuff. And let me just make sure that
6 everything is done.

7 MR. CLARY: I might just say that if that does
8 become an issue that we'll raise the issue about what they're
9 putting out, as well.

10 THE COURT: Absolutely.

11 MR. CLARY: Because there's a lot of false
12 information coming from them, from Burke in particular, who's
13 present today.

14 THE COURT: Shareholders have the right to
15 communicate with other shareholders and members.

16 MS. TAYLOR: Well, I mean -- and I just want to --
17 again, my shareholders now do not have the right to
18 communicate under the order with other shareholders whose
19 identity they did not know previously.

20 THE COURT: True.

21 MS. TAYLOR: And so that's part of the concern.

22 THE COURT: Anything else?

23 MS. TAYLOR: So I wanted to just ensure then are you
24 ruling -- are you denying my motion for sanctions that I
25 filed?

1 THE COURT: Yes.

2 MS. TAYLOR: Okay.

3 THE COURT: I'm denying all the motions for
4 sanctions and attorneys' fees today.

5 MS. TAYLOR: Okay.

6 THE COURT: I did grant the motion in part that Mr.
7 Clary filed, and I have resolved what I hoped were the final
8 issues from my March 30th hearing.

9 Mr. Segel.

10 MR. SEGEL: Your Honor, since we're handling matters
11 that were not on the Court's calendar, we do have a discovery
12 issue from last June. The plaintiffs had issued subpoenas in
13 violation of the rules and procedures of court against Mr.
14 Hahn personally, against Hahn Surplus, against Kokoweef,
15 getting all of their financial records from their banks from
16 almost forever, like four or five years.

17 THE COURT: And the banks gave them to them?

18 MR. SEGEL: Well, the banks gave them to them. And
19 we didn't know about it until the banks called us. And so
20 they actually produced before we had a chance to get the
21 motion on. So I entered into a stipulation with Ms. Taylor
22 that, one, they could have the Kokoweef stuff even though it
23 was in violation of the rules; two, she would immediately turn
24 over without reviewing any documentation she got regarding the
25 Hahns and Hahn Surplus.

1 THE COURT: True.

2 MR. SEGEL: That was a stipulation that was entered
3 into, and in fact there was -- I've never gotten those
4 documents, number one. Number two, there was a -- the Court
5 -- Commissioner Bulla granted our motion for protective order.
6 I'm responsible for taking six months to get it out. Ms.
7 Taylor about three months ago signed the recommendation, sent
8 it back to me, I lost it, we sent it back to her about a month
9 ago. We still haven't seen her signed copy. And that's --
10 just need to get that.

11 MS. TAYLOR: May I please address the inaccuracies
12 in Mr. Segel's statements?

13 THE COURT: Okay. Wait. Let me start.

14 MS. TAYLOR: Yes.

15 THE COURT: We can't issue subpoenas without doing a
16 notice of custodian of records deposition. I know that people
17 do it. It's wrong. You need to do it in the fashions that
18 everybody has notice so if there is a protective order that
19 needs to be filed it's done.

20 MS. TAYLOR: And I understand that. I have learned
21 that, Your Honor, and I will never do that again.

22 THE COURT: And you have documents from a bank that
23 may not relate to some of the parties in this case.

24 MS. TAYLOR: That have been held in a -- in an area
25 in my office that is not accessed by anybody and that have

1 been waiting for the actual recommendation, because I want to
2 be able to act on that because those records are records that
3 my expert again needs.

4 THE COURT: Well, but first we need to have the
5 records sent back over to Mr. Segel.

6 MS. TAYLOR: Okay.

7 THE COURT: And then I assume you're going to file a
8 motion that says, hey, Judge, I need these records that I gave
9 back to Mr. Segel that I've never looked at.

10 MS. TAYLOR: Right.

11 THE COURT: And then I'm going to rule on it, and
12 then either you're going to get to look at them or you're not.

13 MS. TAYLOR: And would you be willing to entertain
14 that on an order shortening time so that if -- because the way
15 the -- part of the problem is, you know, the evidentiary --

16 THE COURT: The answer's yes. But I won't set it on
17 two days' notice. The only reason I set this on two days'
18 notice is you were already coming in for a status check and I
19 was going to try and work through all the issues at the same
20 time.

21 MS. TAYLOR: The -- you know, just so you know, the
22 hearing on this was August 14.

23 THE COURT: I'm not worried about it. We're going
24 to get it done.

25 MS. TAYLOR: Okay. Well, then I want -- then I will

1 take a look at what Mr. Hahn -- Mr. Segel gave me, because I
2 looked at it once and then it -- when I looked at the minutes
3 to sign it to send it over, it does not accurately reflect the
4 minutes. And my concern is I want to be able to have not the
5 issue of the subpoenas and the procedural issues, which I
6 recognize was improper, but the actual substantive issue,
7 which is actually what Mr. Segel and I stipulated would be
8 argued, the substantive issue of those documents heard. And I
9 don't want to have to again spend a lot of time and burn into
10 expert time to do that.

11 THE COURT: Okay. Kathy, can you note just in case
12 it's never been noted I'm handling discovery here so nobody's
13 going to bother the Discovery Commissioner with this case.

14 So let's get the report and recommendation that was
15 previously entered by Commissioner Bulla and sign off on it,
16 get the documents back over to Mr. Segel with a receipt, then
17 file whatever motion you want to do, and I'm make a ruling,
18 and then we'll get past this one.

19 MR. SEGEL: Would you order, Your Honor, that those
20 docs be provided to my runner or to me, whomever delivers the
21 disks on Tuesday.

22 THE COURT: Is that okay?

23 MS. TAYLOR: That should be okay, yes.

24 THE COURT: All right.

25 MR. SEGEL: Thank you, Your Honor.

1 THE COURT: Make sure you have an ROC there for Mr.
2 Segel to have his runner pick up and sign.

3 Anything else? Have a lovely day.

4 MR. SEGEL: Thank you, Your Honor.

5 THE COURT: Have a good Memorial Day Weekend,
6 everyone.

7 MS. TAYLOR: Thanks. You, too, Your Honor.

8 THE PROCEEDINGS CONCLUDED AT 11:45 A.M.

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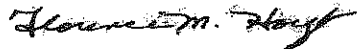
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE HOYT, TRANSCRIBER

5/30/10

DATE