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**Re: James M. Crowhorn, on behalf of himself and all others
similarly situated v. Nationwide Mutual Insurance Company
C.A. No. 00C-06-010 WLW**

Submitted: May 2, 2002

Decided: May 6, 2002

On Plaintiff's Motion to Revoke the *Pro Hac Vice*
Admission of James C. Haggerty, Esquire. Denied.

Dear Counsel:

Upon review of the motion of James M. Crowhorn ("Plaintiff") to Revoke the Admission *Pro Hac Vice* of James C. Haggerty, Esquire, as well as the response of Nationwide Mutual Ins. Co. ("Defendant" or "Nationwide"), and arguments of the parties it appears to the Court that:

Background

1. Nationwide moved for the admission *pro hac vice* of James C. Haggerty, Esquire on March 20, 2002.
2. Plaintiff alleges that the motion to admit Mr. Haggerty was misrepresented

to this Court as unopposed when, in fact, Defendant knew that Plaintiff was against the admission.¹

3. Viewing Nationwide's motion as routine, this Court granted the motion on March 21, 2002.
4. Plaintiff thereafter filed a Motion to Revoke the Admission *Pro Hac Vice* of James C. Haggerty on April 10, 2002. Plaintiff objects to Mr. Haggerty's admission for the reason that Mr. Haggerty's conduct is marked by repeated instances of rudeness, incivility and obstruction. Plaintiff outlines the following incidents as illustrations of such behavior.

Incident One

5. On November 30, 2000, as part of a meeting on procedural issues regarding a prior unrelated arbitration,² a tense interchange occurred between Plaintiff's counsel (Mr. Spadaro) and Nationwide's counsel (Mr. Haggerty), wherein Mr. Haggerty used profanity.
6. As far as the Court can piece it together, the history of this meeting is that on November 20, 2000, during a conference call with the previous arbitrator,

¹ In light of the underlying controversies between Mr. Spadaro and Mr. Haggerty that were known to defense counsel, it would have been more appropriate for defendant to provide the Court notice that the motion was opposed.

² The arbitration concerned the extent of the boundaries of a confidentiality agreement entered into by Mr. Spadaro and Nationwide in another unrelated case. Even though the outcome of that arbitration may affect the limits of discovery here, that arbitration is not part of these proceedings, nor under the jurisdiction of this Court.

both parties agreed to meet on November 30, 2000,³ to discuss discovery and scheduling issues.

7. The next day, on November 21st, Plaintiff had a telephone conversation with Nationwide's previous Delaware counsel in the confidentiality arbitration (Mr. Donovan). Mr. Spadaro stated that this call resulted in an agreement that Nationwide would provide certain information on or before November 27th. That information was: (a) a written outline of Nationwide's position on Plaintiff's proposed discovery; (b) the discovery Nationwide would seek (and why); and (c) Nationwide's proposed litigation schedule.
8. Nationwide did not e-mail its response regarding these items until November 30th at 7:55 a.m., the day of the scheduled meeting. Although it appears that nobody submitted a copy of the November 30th e-mail to the Court, Plaintiff found it insufficient for various reasons.
9. Mr. Spadaro believed that Nationwide's e-mail was non-responsive on the above-noted pertinent issues of discovery and scheduling. Moreover, Mr. Spadaro felt that Nationwide was in default on every procedural obligation the arbitrator had imposed and was acting in an obstructionist fashion.
10. For this reason, "searching for a way to even the procedural playing field,"⁴ Mr. Spadaro decided to establish the condition that Nationwide *produce* what

³ The date was originally set for November 29th, but was rescheduled to the 30th.

⁴ Apparently without also seeking the aid of the arbitrator or arbitration procedures.

he understood to be the required discovery disclosures (per the November 21st conversation with Mr. Donovan) before he would *discuss* the required discovery disclosures.

11. Regarding the fallout from the November 30th meeting, *Plaintiff's* letter to the arbitrator, dated November 30, 2000, stated:

Mr. Haggerty and Mr. Donovan arrived at my office today, ostensibly to negotiate discovery and other issues. I explained to them that the negotiations could not proceed in a meaningful way. I pointed out that we had given Nationwide a detailed proffer on the discovery we would seek and why, including a lengthy dissertation on our theory of the case. I contrasted that with Nationwide's refusal to disclose either the substance or the basis of the discovery it would seek.

I also reminded Nationwide of its mounting record of failed commitments—its failure to provide the November 27 letter on November 27; its failure to provide the November 29 letter on November 29, and so forth. I noted that Nationwide had ignored my initial request for a statement of its position on discovery issues by November 20. I also noted Nationwide's non-cooperation in connection with its provision of a more definite statement [discussed in another section of the letter].

I told Nationwide's counsel that, in light of this history, I was not in a position to address many of the issues at hand in a meaningful way. I told them that, more importantly, I thought Nationwide was using non-cooperation to its strategic advantage. I therefore made it clear that the meeting could not proceed.

To that point the exchange had been tense but polite. As I exited my conference room, however, Mr. Haggerty shouted that I was not to 'fax the Arbitrator any bullshit letter.' With that, I invited Mr. Haggerty to leave my office.

12. Nationwide representatives were angry at the unrevealed condition which, in their view, was imposed as an ultimatum by Mr. Spadaro upon their arrival. Mr. Haggerty had specially traveled to the meeting from Philadelphia. He was "perturbed" and believed that the meeting was a "sham orchestrated by [Mr. Spadaro] so that he could attempt to cast the defendant and their counsel in a bad light before the arbitrator."
13. Regarding the November 30th meeting, *Defendant's* letter to the arbitrator, dated November 30, 2000, states that:

A brief meeting was conducted. (In this regard, Mr. Haggerty traveled from Philadelphia to Wilmington for the meeting.) It began at approximately 12:10 p.m. Counsel for the plaintiff began the meeting by stating that the defendant obviously had no intention of cooperating. He referenced the two day delay in responding to the November 27, 2000 deadline established by counsel for the plaintiff. He accused us of blatant non-cooperation. He then stated that no agreement could be reached and no discussion would be conducted. We suggested that the issues be reviewed. Counsel for the plaintiff refused. He then concluded the meeting, asked us to leave and exited the conference room (As counsel for the plaintiff was leaving, Mr. Haggerty told him 'not to send any b--- s---- response to the arbitrator misconstruing this b--- s--- meeting.' Counsel for the plaintiff briefly returned, screamed at Mr. Haggerty for using

such language in his office and threatened to call security.)⁵ We left the office of counsel for the plaintiff at approximately 12:15 p.m.

Upon return to our offices, we called you requesting your availability for a conference call with all counsel. You suggested that we attempt to get counsel for the plaintiff on the telephone. We contacted counsel. He refused to get on the line with you stating that he would not address these issues on our terms. You then requested that we attempt to schedule a conference call for [that afternoon or the next day]. We immediately called the office for counsel for the plaintiff, were advised that he was gone for the day and therefore left a voice mail message for him regarding the proposed conference.

14. Plaintiff concludes that this incident was not a momentary lapse in professional behavior and cites more instances of incivility and/or obstruction.

Incident Two

15. The next day, on December 1, 2000, Mr. Haggerty received a copy of Mr. Spadaro's November 30th letter to the arbitrator. Since Mr. Haggerty was not copied on this letter, Mr. Haggerty sent a one-sentence reminder letter to Mr. Spadaro. The body of that letter said:

We have received your letter of November 30, 2000. Kindly

⁵ Mr. Haggerty's affidavit states that upon hearing Mr. Haggerty's statement, Mr. Spadaro became infuriated and stood over Mr. Haggerty in a threatening fashion. After Mr. Spadaro made the treat to call security, Mr. Haggerty next told Mr. Spadaro that "perhaps he 'should have more bran in his diet.'"

remember to send copies of all letters (however inane they may be) to the undersigned. Thank you.

Incident Three

16. Another incident occurred when Mr. Haggerty wrote to respond to Mr. Crowhorn's settlement demand. Plaintiff states that "it was not enough to merely reject the demand; Mr. Haggerty felt compelled to ridicule it as 'sophomoric.'" The facts show that Mr. Haggerty's letter rejecting the settlement demand stated that "we welcome your thoughts regarding an actual, viable settlement proposal. While a sophomoric proposal of settlement for \$25,000,000.00 may have some (little) shock value, additional information is needed in order to evaluate your demand."

Incident Four

17. In an exchange of e-mails submitted to the Court Mr. Haggerty has referenced Mr. Crowhorn's representations as perhaps "delusional." On April 7, 2002, Mr. Spadaro wrote Mr. Haggerty an e-mail wherein he stated in part:

Finally, it's clear enough that you feel wronged by our planned opposition to your *pro hac* admission; that is, that you do not blame yourself for being consistently rude, profane and insulting. It's clear, too, that you feel no compunction over your failed efforts to (essentially) destroy our law firm, force my wife and I to sell our home, and make it impossible for me to continue sending my children to the schools they now attend—all results that would have directly followed your success in the first arbitration, had you been successful.

18. To this e-mail, Mr. Haggerty responded in pertinent part:

Your assertions regarding our interest in your personal life are curious if not delusional.

Other Conduct

19. Finally, Plaintiff alleges “that Mr. Haggerty is the lead lawyer for Nationwide. All of Nationwide’s departures from the norms of discovery and professionalism have occurred on his watch.”⁶ Moreover, “it is under Mr. Haggerty’s supervision that Nationwide pursued the course of conduct that led to the Court’s recent award of sanctions against Nationwide.”⁷

Assertions of the Parties

20. It is Plaintiff’s position that Mr. Haggerty’s conduct is similar to that of the offending counsel in *Paramount Communications, Inc. v. QVC Network, Inc.*,⁸ except that Mr. Haggerty’s behavior is worse.⁹ Plaintiff asserts that in *Paramount* “the Supreme Court condemned the conduct of Texas attorney Joseph Jamail for his “astonishing lack of professionalism and civility” Likewise, it is argued that Mr. Haggerty’s conduct can be thus described.
21. Nationwide responds that the conduct reflected herein show zealous

⁶ Plaintiff has provided no facts to this Court to substantiate this allegation.

⁷ Again, the court views this as an unsubstantiated declaration.

⁸ 637 A.2d 34 (Del. 1994).

⁹ Plaintiff states that the attorney in *Paramount*, Mr. Jamail, “obstructed just a single deposition. Mr. Haggerty has successfully stalled an entire lawsuit. Mr. Jamail uttered a single profanity. By his local counsel’s account, Mr. Haggerty uttered two. In a colorful turn, Mr. Jamail assailed his adversary as a man who ‘could gag a maggot off a meat wagon.’ Mr. Haggerty assails his adversaries as ‘inane’ and ‘sophomoric.’”

advocacy, or was the result of provocation and threatening behavior on the part of Mr. Spadaro. Nationwide believes that asserting valid objections to discovery (even if overruled) reflects zealous advocacy, not disrespect. Nationwide further contends that some of the discovery abuses Plaintiff attributes to Mr. Haggerty actually occurred with Mr. Donovan, not Mr. Haggerty. Nationwide also defends its position because the discovery dispute here arose in large part from Plaintiff's discovery strategy implicating a prior confidentiality agreement. Finally, at oral argument, Nationwide represented that both parties have dirty hands; however, going forward, the conduct complained of will not happen again by their side.

Standard

22. In Delaware, the only circumstance under which a trial court would have jurisdiction to entertain an application for revocation of an admission *pro hac vice*, "is where the party seeking disqualification can show, by clear and convincing evidence, that the [behavior of] the attorney in question . . . 'will affect the fairness of the proceedings' [in the case before it]." ¹⁰ "[A] trial court lacks the authority to conduct what, in effect, are attorney disciplinary proceedings even though it has the authority to disqualify an attorney for

¹⁰ *Scattered Corp. v. Chicago Stock Exch., Inc.*, 1997 WL 187316 at *6 (Del. Ch.) (citing *In re Appeal of Infotechnology, Inc.*, 582 A.2d 215 (Del. 1990)).

unethical conduct committed *in proceedings before it.*¹¹ Thus, in a proceeding before it, a trial Court has revoked the admission *pro hac vice* of an attorney who made misrepresentations to the Court,¹² or attempted to serve as both a trial advocate and a witness.¹³

23. In the case *sub judice*, the only question this Court may consider is whether or not “the challenged conduct prejudices the fairness of the [current] proceedings, such that it adversely affects the fair and efficient administration of justice.”¹⁴ It is not within this Court’s jurisdiction to determine if behavior which occurred during an arbitration process, related to a confidentiality agreement from an unrelated case, is *per se* unethical under the Delaware Rules of Professional Conduct.¹⁵
24. This Court has determined that, as of the present time, it is not necessary to

¹¹ *Kaplan v. Wyatt*, 1984 WL 8274 at *6 (Del. Ch.) (emphasis added) (adopting position of *Hahn v. Boeing Co.*, 621 P.2d 1263 (Wash. 1980) (finding that court did not have jurisdiction to determine if a violation of the Code of Professional Responsibility occurred when the conduct at issue did not occur in a proceeding before that court); *See also Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Stauffer Chem. Co.*, 1990 WL 197864 (Del.) (finding that the trial judge cannot rely upon the Delaware Rules of Professional Conduct to, in essence, hold a disciplinary hearing to revoke a *pro hac vice* application; however, the court but may properly act “within its discretion to invoke appropriate sanctions where necessary to preserve the integrity of judicial proceedings”)

¹² *Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 1990 WL 197864.

¹³ *See e.g. In re Estate of Waters*, 647 A.2d 1091 (Del. 1994).

¹⁴ *In re Appeal of Infotechnology, Inc.*, 582 A.2d 215.

¹⁵ *Id.*

revoke the admission *pro hac vice* of Mr. Haggerty in order to preserve the integrity or fairness of the judicial proceedings in this case. The Court does not believe that the Plaintiff has shown by clear and convincing evidence that the behavior of Mr. Haggerty has affected the fairness of the proceedings before this Court, or that in the future such conduct will continue.

25. By this holding the Court does not say that it condones or will accept or permit the use of profanity, acrimony, derisive gibes, or sarcasm with respect to any communication related to any matter, proceeding, writing, meeting, etc. involved in this case. Because of what has gone before, both parties in this matter should become intimately familiar with the preferred conduct for Delaware attorneys as set forth in Delaware Supreme Court Rule 71 which contains the Delaware State Bar Association Statement of Principles of Lawyer Conduct. Moreover, the Court will hold Nationwide to its representations at oral argument about its behavior going forward.
26. With these cautions in mind, I feel that it would be inappropriate for this court to take action against Mr. Haggerty for the first three incidents which occurred in proceedings not under this Court's jurisdiction. This is especially true if these findings "might be equated by others with a finding that he had violated the Code of Professional Responsibility. That question can be passed upon by the appropriate authorities elsewhere, if necessary."¹⁶ The

¹⁶ *Kaplan*, 1984 WL 8274at *6.

Court should also note, that it does not view these occurrences as one-sided. At the same time, it does not condone and will not permit the responses shown by both parties to apparent provocations and obvious personality conflicts.

27. As to the fourth incident, the Court does not know what to make of it, other than to see it as an example of children in the sandbox throwing sand at each other. Although the exchange occurred, arguably, during proceedings within this Court's jurisdiction, the Court does not see how it is relevant to the fairness or efficient administration of justice (other than the Court will require that the parties leave their sand buckets and shovels outside the Courtroom proceedings).
28. Finally, as to obstructionist acts alleged, Plaintiff submits no factual proof; therefore, the Court will not consider these allegations.
29. This Court will expect that *all* counsel will act to represent their respective clients in an exemplary manner with conscious respect of the fine professional traditions that Delaware attorneys are expected to present in our courts. I suggest that counsel take particular note of the remarks of Chief Justice Warren E. Burger, who commented in the *National Observer*, on May 24, 1971, "I suggest the necessity for civility is relevant to lawyers because they are the living exemplars—and also teachers—every day in every case and in every court; and their worst conduct will be emulated . . . more readily than their best."

James M. Crowhorn v. Nationwide Mutual Ins. Co.
C.A. No. 00C-06-010
May 6, 2002

Wherefore, with the expectation that the parties will heed the cautionary statements expressed herein, Plaintiff's Motion to Revoke the Admission *Pro Hac Vice* of James C. Haggerty is ***DENIED***.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

WLW/dmh

oc: Prothonotary
xc: John S. Spadaro, Esquire
Nicholas E. Skiles, Esquire
Curtis P. Cheyney, III, Esquire
James C. Haggerty, Esquire