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**From:** Babcock, Chip [cbabcock@jw.com]  
**Sent:** Wednesday, December 23, 2009 2:01 PM  
**To:** Patricia L. Peden; Courtney Towle; Nick Patton; jh@jamesholmeslaw.com  
**Cc:** Parker, Crystal; Griffin, Richard; Moran, David; Schwarz, Kurt; Bill Friedman (bilfried); Adair, Kathy  
**Subject:** Response to emails of December 22 @9:01PM;December 22 @ 10:30PM and December 23 @ 11:11 AM

Dear Patty and Courtney,

I am responding to your three emails referenced above as follows:

1.) I have spoken to Mr. Beal today and he has reconfirmed that he is not available until the week of January 18 to provide his deposition. I plan to meet with him on the 18th and he will be available for his deposition on the 20th as both Crystal and I have indicated. It is sometimes the case in litigation that things have to be done at the last minute and , while regrettable, that is the nature of the beast. The only thing I can do for you is to offer to order the transcript expedited so that you will have it the same or next day. If you wish to take me up on this offer please let me know the name of the court reporter that you intend to use so that I may make arrangements. Mr. Beal has not authorized me to accept service of a subpoena.

2.) Your 10:30 PM email says that "the documents you sent do not include time records or billing statements". I am sure that you simply overlooked documents bates numbered Beal.000047 and Beal.0000134 which were in the package of documents sent to you. There are no other time records or billing statements. If any such records are created after this date I will send them to you. I admire your diligence in pursuing these records but am disappointed that you have not shown the same tenacity when responding to repeated requests from both Crystal and myself for these very same "time records or billing statements" from your own experts. As you recall Mr. Campbell testified that he had sent you two invoices prior to his deposition but, despite request, they have not been produced. Indeed you have not given us the other documents from your experts we have requested.

3.) As for Courtney's email, the threat of Rule 11 sanctions is procedurally improper , substantively without merit and frankly insulting. I have reviewed the language quoted in the December 22 9:01 PM email and find your contentions to be without merit . I do agree, however, that the statement found at pages 14 and 15 of the brief that: "Moreover, it appears that Plaintiff and his counsel may have schemed by making agreements concerning when attorneys would enter of record so they could trick Defendant into producing privileged documents under strict confidentiality agreements and Protective Orders under the facade of Albritton and Ward having separate attorneys" should be withdrawn and we will do so. We are withdrawing this not because we lack an evidentiary basis for our suspicion but because I do not wish to make that allegation against Mr. Holmes or Mr. Patton for whom I have a high regard.

I hope this has been responsive to your concerns. Patty, you still have not responded to my inquiries about Mr. DeLoach's deposition. I am out of the country next week and have to make travel plans to go to Kansas if that deposition is to go forward. That means rearranging flights and the longer I wait the greater the expense and uncertainty of available space. Please let me know as soon as possible. Thank you.

All that said, Have a Very Merry Christmas.

Chip