

Beckwith, Marta 11/19/2008
Confidential - Subject To The Protective Order

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON,

Plaintiff,

-vs-

CASE NO. 6:08-CV-00089

CISCO SYSTEMS, INC.,
RICHARD FRENKEL,
MALLUN YEN and JOHN NOH,

Defendants.
_____ /

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DEPOSITION OF MARTA BECKWITH

Wednesday, November 19, 2008

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1 MR. McWILLIAMS: Objection. Form.

2 MR. PATTON: Q. Do you think he was?

3 MS. PARKER: Objection. Form.

4 THE WITNESS: I think he was a person
5 responsible for talking to the media.

6 MR. PATTON: Q. Okay. What do they call
7 those in Washington, D.C., these days?

8 A. I don't know.

9 Q. How about "spin doctor"?

10 MS. PARKER: Objection. Form.

11 MR. McWILLIAMS: Same objection.

12 MR. PATTON: Q. Did you suggest to
13 Mr. Frenkel that he inform Mr. Noh that he was the Troll
14 Tracker?

15 A. I don't believe so.

16 Q. When the controversy about the filing arose,
17 Ms. Beckwith, were you involved at all?

18 MS. PARKER: Objection. Form.

19 MR. McWILLIAMS: Same objection.

20 THE WITNESS: I'm not sure what you mean about
21 controversy.

22 MR. PATTON: Q. Let me describe this. I
23 think you're probably aware of it. There's a
24 controversy about whether the ESN complaint was actually
25 filed on the 15th of October or the 16th. You're aware

1 of that, are you not?

2 A. I am.

3 Q. That is the controversy I'll be talking about.

4 A. Okay.

5 Q. Okay. Were you aware of that controversy?

6 A. I was aware that the complaint appeared to
7 have been filed on the 15th. We have a --

8 Q. The case what?

9 A. That the case appeared to be filed on the
10 15th, according to what we received. And then later it
11 was claimed that it was actually filed on the 16th.

12 Q. Okay. Were you involved in the effort to
13 determine what happened?

14 A. I was aware in the effort to determine what to
15 do about what had happened.

16 Q. Okay. Were you -- are you aware that Baker
17 Botts was contacted regarding that?

18 A. Yes.

19 Q. And what was the purpose of contacting Baker
20 Botts in the Dallas office?

21 MS. PARKER: I'm going to instruct you not to
22 answer anything that has to do with litigation strategy.

23 MR. PATTON: What litigation are we talking
24 about?

25 MR. McWILLIAMS: Well, you're just asking

1 about the ESN litigation and the controversy, and now
2 you are going into communications with counsel.

3 MR. PATTON: No, I'm not. I'm asking if they
4 contacted Baker Botts about this issue.

5 MS. PARKER: You asked her what the purpose of
6 the call was.

7 MR. PATTON: Q. You did contact Baker Botts?

8 A. Yes.

9 Q. Did they undertake some work for you?

10 A. Yes.

11 Q. What was the work that they did?

12 MS. PARKER: I'm going to instruct her not to
13 answer.

14 MR. PATTON: There are e-mails here that say
15 they contacted the clerk.

16 MS. PARKER: She is testifying they contacted
17 the clerk. You haven't asked her whether she --

18 MR. PATTON: Q. Did Baker Botts contact the
19 clerk's office?

20 A. I believe they did.

21 Q. Okay. You received an e-mail that basically
22 informed you that they did, did you not?

23 A. Yes.

24 Q. And the e-mail told you -- there are a number
25 of e-mails, but they basically told you what they

1 thought had occurred?

2 MR. McWILLIAMS: Objection. Form.

3 MS. PARKER: Objection. Form.

4 THE WITNESS: What they had heard had
5 occurred.

6 MR. McWILLIAMS: There wasn't a question on
7 the table, and you answered one that wasn't there.

8 MR. PATTON: Q. Whatever the question would
9 have been, you just answered it. Okay.

10 Did you ask Baker Botts to determine what
11 happened -- you or someone on your team ask the Baker
12 Botts lawyer to determine what had happened about the
13 ESN filing?

14 A. We were trying to determine what to do with
15 what had happened.

16 Q. Was Baker Botts to assist in giving you the
17 information so that you could determine what to do?

18 A. Yes.

19 Q. Okay. Why did you call Baker Botts?

20 A. They had been working on the prelitigation
21 issues with ESN.

22 Q. Were they one of the firms that was under
23 consideration to represent Cisco in that litigation?

24 A. I don't remember if they were under
25 consideration. But they did not end up representing us

1 with respect to the later portions of the case.

2 Q. Well, I must not have understood what you
3 first told me. Why did you call Baker Botts?

4 A. We did not have and had not yet decided on
5 litigation counsel on a going-forward basis. They had
6 been helping us with respect to the prelitigation
7 matters. So when we needed immediate help, they were
8 available and knowledgeable.

9 Q. Did you know that Baker Botts practices in the
10 Eastern District of Texas?

11 A. Yes.

12 Q. And that they regularly do so?

13 A. Yes.

14 Q. And am I correct in assuming that you wanted
15 someone who was familiar with the Eastern District of
16 Texas practice to help you out with this matter?

17 MR. McWILLIAMS: Objection. Form.

18 MS. PARKER: Objection. Form.

19 MR. McWILLIAMS: Ms. Beckwith, we will
20 instruct you not to answer about the litigation strategy
21 within Cisco.

22 MR. PATTON: Q. But, whatever the reason,
23 Baker Botts did assist with this?

24 MR. McWILLIAMS: Objection. Form.

25 MR. PATTON: You object to what?

1 MR. McWILLIAMS: I objected to the form.

2 Whatever reason.

3 MS. PARKER: Same objection.

4 THE WITNESS: Baker Botts helped us.

5 MR. McWILLIAMS: Whoa, Ms. Beckwith.

6 THE WITNESS: Sorry.

7 MR. PATTON: Are you telling her not to answer
8 the question?

9 MR. McWILLIAMS: Well, I'm telling her not to
10 the answer a question that's not asked.

11 MR. PATTON: There is a question, is there
12 not?

13 (Record read as follows:

14 Q. But, whatever the reason, Baker
15 Botts did assist with this?)

16 THE WITNESS: That's not a question.

17 MR. McWILLIAMS: Did you put a question mark
18 at the end of that?

19 MR. PATTON: Q. Did Baker Botts assist --

20 A. Baker Botts assisted when the ESN case was
21 filed.

22 Q. Is that privileged, you think, that they
23 assisted you?

24 MR. McWILLIAMS: Objection. Form. And I
25 instruct her not to answer that.

1 MR. PATTON: Q. Right.

2 A. I'm not sure, to this day, that I actually
3 know what occurred.

4 Q. Okay. Well, do you think that the serious
5 words in that blog, like "conspiracy" and the others
6 that I have mentioned to you -- don't you think you need
7 to have determined what really happened before you blog
8 about it?

9 MS. PARKER: Objection. Form.

10 MR. McWILLIAMS: Same objection.

11 THE WITNESS: I believe that the blog reflects
12 what occurred.

13 MR. PATTON: Q. All right.

14 A. We received a file-stamped copy of the
15 complaint dated the 15th. Magically, the file stamp was
16 changed to reflect the 16th.

17 Q. You say "magically" why?

18 A. Because a motion should -- if your client and
19 ESN believed that something had happened and that the
20 date on that complaint was not the actual date of
21 filing, a motion should have been brought, so that we
22 could have all found out what had occurred.

23 Q. Well, why didn't you guys file one?

24 MS. PARKER: Objection. Form.

25 MR. McWILLIAMS: Same objection.

1 THE WITNESS: We ended up taking a different
2 tact.

3 MR. PATTON: Q. I see. I want you to tell me
4 all of the things that you are aware of that was done to
5 investigate this incident with the filing, everything
6 you can remember about the investigation.

7 A. Baker Botts talked with the clerk. We
8 discussed the issue with other attorneys who had been in
9 similar circumstances. And eventually we decided to
10 take a different tact with ESN --

11 MR. McWILLIAMS: Ms. Beckwith --

12 THE WITNESS: Sorry. You are right.

13 MS. PARKER: I'm going to instruct you not to
14 answer anything that has to do with your litigation
15 strategy in the ESN case.

16 MR. PATTON: Q. What else? What else did you
17 do in the investigation?

18 A. Those are the --

19 Q. You talked to the clerk, or Baker Botts talked
20 to the clerk. What else?

21 A. As I said, we discussed it with other
22 attorneys who had been in similar circumstances.

23 Q. And that would be who?

24 A. I spoke with Tony Downs, at Goodwin Procter.

25 Q. Okay. What else?