Lisa Borodkin <lborodkin@gmail.com>

AEI v. Xcentric -- Defendants FIRST Set of Discovery Requests

David Gingras <david@ripoffreport.com> **Tue, Apr 27, 2010 at 10:39 AM**
Reply-To: david@ripoffreport.com
To: Lisa Borodkin <lborodkin@gmail.com>
Cc: Daniel Blackert <blackertesq@yahoo.com>, Maria Crimi Speth <mcs@jaburgwilk.com>

Lisa,

Preservation of electronic information is not an issue. Xcentric keeps all of its records pretty much indefinitely, so there's no issue with respect to putting a hold on something specific because we always put a hold on everything.

In terms of your reference to the Sedona conference, I'm not sure what your point is. Among other things, the principle of this non-binding proclamation is to promote "open and forthright information sharing . . . to facilitate cooperative, collaborative, transparent discovery." Thus far, I have acted consistently with this view while you have not. I hope that position changes.

In terms of discovery, Judge Wilson made it very clear that our Rule 26(f) duties had been satisfied and that discovery was immediately open. If you disagree, let me know and perhaps we can contact the court and seek clarification as to whether the judge intended to set a quick trial without permitting any time for discovery. I don't think that's what the judge intended. Thus, I think the latter part of Rule 26(d)(1) (allowing discovery to begin when authorized by court order) is applicable. Again, I note that you were the one who requested and received an expedited trial over my objection, so there is no basis for your position that I am somehow acting too promptly since you have given me no other choice but to do so. Because the trial is barely more than 90 days away, and because you have refused to answer discovery on an expedited basis, it is critical that we move as quickly as possible unless you're willing to agree to move the trial back at least six months or so.

Finally, I am concerned about what appears to be an emerging pattern of you directly misrepresenting my words.

Your email seems to suggest that I told you I would agree to limit discovery in some way. Here's what you said:

Based on your email of 4/22 and our response, we also thought we were in agreement that "Based on the court's order bifurcating this matter, Defendants believe that discovery should be initially focused on the matters set for trial in August." Because the Court bifurcated damages as well as defamation and your representations, that is why we thought we were in agreement that damages would not be a part of discovery. Despite this, numerous categories of your document requests seek information that are not part of the bifurcated trial.

If you go back and review my email to you from only a few days ago, you will note that I did NOT agree or suggest that "damages would not be part of discovery." In fact, I very clearly stated the opposite; here's exactly what I said

on this issue:

"Based on the court's order bifurcating this matter, Defendants believe that discovery should be initially focused on the matters set for trial in August. However, unless the court enters an order staying discovery as to any other matters or unless Plaintiffs agree to a stay, Defendants intend to pursue discovery as to each issue in the case."

I do not know how I could have been any clearer and I do not know how you could erroneously conclude that I somehow agreed to exclude damages from discovery. I said no such thing.

Indeed, after reviewing the law and the claims in your complaint, it was my conclusion that it makes no sense to limit discovery to only the RICO issues or to exclude any of the mandatory elements of RICO including damages. First of all, as I have already stated, damages are a mandatory element of a RICO claim, so unless you are prepared to introduce evidence of damages, there is no basis for the court to have a trial on the *other* elements of that claim because without damages, you have no RICO claim.

As for the remaining claims, unless you're willing to immediately dismiss all of the non-RICO claims, Xcentric has the right to perform discovery as to those claims and to seek summary judgment as to those claims under Rule 56, which is what I intend to do. Allowing a groundless case or groundless claims to tie up the resources of the court longer than necessary is inappropriate, so let's just conduct some quick discovery to establish whether your client's claims have merit. If they do, you should be ready, willing, and eager to demonstrate this to me without delay.

David Gingras, Esq.

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From: Lisa Borodkin [mailto:lborodkin@gmail.com]
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