Gmail

Lisa Borodkin <lborodkin@gmail.com>

Asia Economic Institute v. Xcentric (C.D. Cal. No. 10-cv-1360) Request to Meet and Confer Re: Bifurcation of Discovery

5 messages

Lisa Borodkin <lborodkin@gmail.com> **Fri, May 7, 2010 at 10:33 AM**
To: "david@ripoffreport.com" <david@ripoffreport.com>, Maria Crimi Speth <mcs@jaburgwilk.com>
Cc: Daniel Blackert <blackertesq@yahoo.com>, "alexandra@asiaecon.org" <alexandra@asiaecon.org>, "kristi@asiaecon.org" <kristi@asiaecon.org>

Dear David:

Please see attached letter requesting to meet and confer on a potential motion to bifurcate discovery.

As we discussed at the deposition this morning, we will conduct the meet and confer by telephone on Tuesday, May 11, 2010 at 3 p.m.

Lisa

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Lisa J. Borodkin
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323-337-7933

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Lisa Borodkin <lborodkin@gmail.com> **Tue, May 11, 2010 at 10:46 AM**
To: david@ripoffreport.com
Cc: Maria Crimi Speth <mcs@jaburgwilk.com>, Daniel Blackert <blackertesq@yahoo.com>

David,

This is to confirm that we will meet and confer on discovery issues today at 2 p.m. by telephone.

In addition to bifurcated discovery, we would like to meet and confer on the following:

1. Protective order regarding confidentiality

We do not believe a protective order regarding confidentiality is necessary. Our position is that we would stipulate to a narrow protective order to facilitate Mr. Magedson's deposition to keep the location and time confidential and to redact from the transcript any information identifying his location or address if used in a public filing.

2. Jury trial

Our position is that Defendants have waived the right to a jury trial by not timely making, serving and filing such demand. We do not believe the Court ordered a jury. The Court's trial setting order provides for both jury and non-jury procedure.

We believe the reference in the minutes by the clerk of the Court from the April 19, 2010 proceeding are a clerical error and do not constitute a final order. Plaintiffs would be prejudiced by a jury trial, as Defendants did not demand it, case management preparation has been proceeding on the assumption it is not a jury trial, and a request for bench trial was contained in the draft Rule 26(f) report.

3. Defendants' Initial Rule 26(a) Disclosures

Yesterday I asked you if there are any more recordings of phone calls. I don't believe I got an answer. We would like a response today.

Our position is any recordings of phone calls are central to your defense. They should be identified in Defendants' Initial Disclosures under Rule 26(a). In general, we request that you disclose and identify, without awaiting specific request, any and all other major pieces of evidence you intend to use in your defense.

Holding back the fact that your client has a regular business practice of recording calls until last Friday afternoon impeded orderly discovery, was overly contentious, and delayed the hasty resolution or settlement of this case. We could have worked with you to identify the dates or recordings you should be focused on and conserved time and valuable court resources had you earlier disclosed those.

In any event, we think the existence of more recordings of conversations is central to the extortion claim. We would like you to identify if you know that any such recordings exist, and also any witnesses that you know of who were party to those or any other evidence of those exchanges. I believe our client testified in the deposition Friday that he recalled having a conversation with a "fast talker." There is also evidence in emails that our client invited Mr. Magedson to a meal. If you know of anything memorializing of of these, please disclose it as a supplement to your Rule 26(a) disclosures.

4. Extensions

We will probably be requesting extensions to respond to the discovery that is identified in my May 6, 2010 letter.

5. Conduct of depositions

In a review of the rough deposition transcript from Friday, it appears you cut short our client's answers, attempts to answer or fully explain his answers to your questions. Our position is that you should allow the deponent to finish and not attempt to create a false record. I will send you a case about that.

I also requested authority supporting the position you took last Friday that you are entitled to determine which of us between Daniel Blackert and myself would be able to make objections to questions and defend our client's deposition. You stated something to the effect that I should get an order from the judge and that otherwise you would have me escorted out of the building.

I agree that only one objection per question is reasonable, and I apologize if my co-counsel or I interrupted or stepped on each other's objection during the deposition. However, our position is that a client's right to be represented by counsel of choice is a fundamental right. There is nothing I am aware of in the California Code of Civil Procedure or the Federal Rules that prevents a deponent from being defended by two attorneys. We informed you in advance that both Mr. Blackert and I would be appearing on Friday. I objected, but I was intimidated by the idea of being forcibly removed from the building. I felt I had to make a choice between observing the deposition and defending it. I chose to place an objection on the record. There is a possibility that such conduct prejudiced the outcome of the deposition, and we may make a motion to exclude it.

That's all I can think of for now. Speak to you at 2 p.m.

Lisa

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