

EXHIBIT 4



Lisa Borodkin <lborodkin@gmail.com>

AEI x. Xcentric: Request to Meet re Plaintiffs Discovery Responses

Lisa Borodkin <lborodkin@gmail.com>

Sat, May 29, 2010 at 2:47 AM

To: "<david@ripoffreport.com>" <david@ripoffreport.com>, Maria Crimi Speth <mcs@jaburgwilk.com>

Cc: Daniel Blackert <blackertesq@yahoo.com>, alexandra@asiaecon.org, kristi@asiaecon.org

David,

I have done some more research and I believe Defendants' Requests for Production of Documents, Requests for Admission, and Interrogatories served on April 26, 2010, prior to the Rule 26(f) conference, held on April 27, 2010, are invalid. As I wrote to you April 27, 2010, Rule 26(d)(1) provides:

"A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order."

When I pointed this out to you, you stated in an email dated April 27, 2010 that "Judge Wilson made it very clear that our Rule 26(f) duties had been satisfied and that discovery was immediately open." I reviewed the transcripts and orders again and I am not finding it. If you know where he did that, then please let us know.

Unless there is an order granting early discovery, discovery requests served before the Rule 26(f) conference are void. See, e.g., Crutcher v. Fidelity National Ins. Co., 2007 WL 430655 (E.D. La. Feb. 5, 2007) at *3; Batiste v. Bonin, 2007 WL 1772010 (W.D. La. June 15, 2007) at *1. As informal requests, they cannot be the basis for a Motion to Compel. See James v. Wash Depot Holdings, Inc., 240 F.R.D. 693, 695 (S.D. Fla. 2006) ("Rule 37 does not authorize a court to compel documents or a release to obtain them based on an informal discovery request. "). I think if you try to enforce those, we may be entitled to fees.

If you have any contrary authority, please let us know and we'll take a look at it.

We have and will continue to treat Defendants' April 26, 2010 requests as informal requests. We are in the process of supplementing our responses.

I don't mean to be overly contentious but we have asked to bifurcate discovery to match the trial and you have refused. If you are intent on compelling us to answer your very broad discovery requests, I don't think we have a choice but to fall back on the Federal Rules. As a practical matter, I am not sure what your justification is for a motion to compel at this time, since you already filed your motion for summary judgment. I would think you, like us, would want to focus on trial.

It is probably still a good idea to talk on Tuesday to coordinate discovery matters. In your portion of the joint stipulation on our motion to compel, you state that you are willing to make Mr. Magedson available for deposition. I don't remember you offering him except conditional on a broad protective order, which we are unwilling to enter into.

The only deposition date that I remember you asking about was the 30(b)(6) deposition of Xcentric LLC. We are doing that on June 2 at 10:00 a.m.

If you are now willing to let Mr. Magedson be examined in his own right without a broad protective order, let's set a date.

Lisa

[Quoted text hidden]

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Lisa J. Borodkin

lisa@lisaborodkin.com

323-337-7933
