

**EXHIBIT 4**  
**TO DECLARATION OF O'CONNOR**

ARBITRATION NO. 1310016794

DON NELSON, )  
 )  
 Claimant/Counterrespondent,) )  
 VS ) CIVIL ARBITRATION )  
 )  
 DALLAS BASKETBALL LIMITED ) PENDING BEFORE JAMS )  
 d/b/a DALLAS MAVERICKS, ) )  
 )  
 Respondent/Counterclaimant.)

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ORAL DEPOSITION OF

JOHN D. O'CONNOR

JUNE 17, 2008

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ORAL DEPOSITION OF JOHN D. O'CONNOR, produced as a witness at the instance of the Respondent, and duly sworn, was taken in the above-styled and numbered cause on the 17th of June, 2008, from 9:47 to 12:14, before Susan S. Klinger, CSR in and for the State of Texas, reported by stenographic method, at Figari & Davenport, 901 Main Street, Dallas, Texas, pursuant to the provisions stated on the record or attached hereto.

Page 2

1 APPEARANCES  
2  
3 FOR THE CLAIMANT:  
4 Mr. Mark T. Davenport  
5 FIGARI & DAVENPORT, LLP  
6 901 Main Street, Suite 3400  
7 Dallas, Texas 75201  
8  
9 FOR THE RESPONDENT:  
10 Mr. Geoffrey S. Harper  
11 FISH & RICHARDSON, P.C.  
12 1717 Main, Suite 5000  
13 Dallas, Texas 75201  
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1 JOHN D. O'CONNOR,  
2 having been first duly sworn testified as follows:  
3 EXAMINATION  
4 BY MR. HARPER:  
5 Q. Mr. O'Connor, you are Don Nelson's attorney?  
6 A. I am.  
7 Q. How long have you been Don Nelson's attorney?  
8 A. I believe since the summer of 1990.  
9 Q. And on top of that, he's also your friend?  
10 A. Yes, he is.  
11 Q. I'm asking you to take a look really quick at  
12 Exhibit 4, which is the --  
13 MR. HARPER: They only gave me two copies,  
14 I'm sorry, Mark.  
15 MR. DAVENPORT: I don't need it. I know  
16 these documents. I should know them by now.  
17 MR. HARPER: You are better than me.  
18 Q. Did you have any role in negotiating Exhibit 4?  
19 A. I did.  
20 Q. Can you please describe for me your role?  
21 A. Yes. I negotiated this contract with Frank  
22 Zaccanelli. It was a fairly straightforward  
23 negotiation.  
24 Q. I just have a couple of questions about the  
25 provisions and really the only question I have for you

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2 WITNESS PAGE  
3 JOHN D. O'CONNOR  
4 EXAMINATION BY MR. HARPER  
5  
6 EXHIBITS  
7 No. Page Description  
8 64 9 Sefko article, 6/17/2008  
9 65 9 Caplan article, 6/17/2008  
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1 is whether or not you had any discussions or  
2 negotiations over certain provisions of this agreement?  
3 A. Yes.  
4 Q. Let me ask you to look, for example, at Paragraph  
5 14.  
6 A. (Witness complies.)  
7 Q. Paragraph 14 is a paragraph of this agreement  
8 entitled Confidentiality. Did you have any discussions  
9 with the Mavericks regarding or negotiations regarding  
10 that paragraph?  
11 A. No, I did not.  
12 Q. This paragraph indicates that the employee and  
13 the club will not disclose the content of this  
14 agreement; correct?  
15 A. Yes, with exceptions, yes.  
16 Q. Right, but I mean maybe we should read it.  
17 "Employee and club agree and promise that none of the  
18 contents of this agreement shall be published,  
19 displayed, discussed, disclosed, revealed or  
20 characterized directly or indirectly by innuendo or  
21 other means in any way to anyone under any  
22 circumstances, and then the exceptions would be as  
23 required by law and the Constitution and the bylaws,  
24 rules or regulations of the NBA. And then the exception  
25 is except that if asked the club and the employee may



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<p>1 money. So she would, she would come out on top in that 2 situation. 3 MR. DAVENPORT: Can we take a five minute 4 break? 5 MR. HARPER: Sure. 6 (Recess, 11:06 to 11:17 a.m.) 7 <b>Q. Tell me about your discussion with the Golden 8 State Warriors on August the 3rd, 2006?</b> 9 A. Yes. At approximately 3:00 o'clock in the 10 afternoon, maybe 3:30 I got a call from Robert Rowell, 11 president of the Warriors asking if I could have a beer 12 with him. And I said, "How soon?" He said, "How soon 13 can you be ready?" And I said, "I'm not doing 14 anything." He said, "I will be over." I want to say it 15 was somewhere between a half an hour or an hour later he 16 came over, and we had a beer. 17 And during that beer, he told me that the 18 Warriors were thinking about making a move with their 19 basketball coach and would Don be interested in talking 20 to them. 21 <b>Q. Anything else you can recall about that 22 conversation?</b> 23 A. I think he said he had permission to talk to Don. 24 I told him I thought the club, do what you need to do, 25 but I thought the club was in breach of contract.</p>	<p>1 where he gave me his cell phone again, but I think he 2 gave it to me in the meeting. 3 <b>Q. The next day did you send Exhibit 14?</b> 4 A. I did. 5 <b>Q. Let me just ask you to read, if you will, the 6 first sentence of the third paragraph of Exhibit 14.</b> 7 A. "As you know, Don --" 8 <b>Q. I'm sorry, I didn't mean aloud although you are 9 welcome. The one that says first sentence, "Floyd has 10 been gracious."</b> 11 A. The third paragraph, I'm sorry. 12 <b>Q. Yes, sir. Did you see that first sentence?</b> 13 A. Yes. 14 <b>Q. When you said "settle this amicably," what are 15 you referring to? What is the "this"?</b> 16 A. Their failure to pay Don either his consultant 17 salary as it becomes due they wouldn't do that, but they 18 also wouldn't agree to any kind of a lump sum walk away 19 settlement. It was obviously neither party wanted to be 20 involved with the other one, so my discussion with Floyd 21 are you have two choices. You either should pay him as 22 per the contract or we will settle it in a lump sum but 23 do one or the other. And Floyd basically, I gathered 24 that Floyd didn't have the authority to do either. 25 <b>Q. Tell me if I'm accurate in saying what you are</b></p>
Page 55	Page 57
<p>1 <b>Q. Did he say who he had gotten permission from?</b> 2 A. No, he just said he had permission. He might 3 have told me, but I don't remember that. 4 <b>Q. Can you tell me anything else about that 5 conversation?</b> 6 A. Yes. He had, they had not made the decision to 7 terminate Mike Montgomery, but if they did do it they 8 would owe him 2 and a half million dollars a year for 9 the next two years. That was going to be real tight and 10 the owners just didn't want to pay much to the new coach 11 and did you think Don would be interested in talking to 12 us, you know, knowing that we didn't have much money. 13 And I said, "What is not much money?" Well, he said, "I 14 don't know. I haven't gone to my principals, because 15 this hasn't happened yet but I bet you I'm not going to 16 have much more than \$2 million." 17 I said, "Well, Don, one of the places that Don 18 would like to go would be Golden State," because Joy has 19 grandchildren in the bay area. So I think he would be 20 interested in coming, but I didn't think that that level 21 of compensation would interest him and there we had it, 22 but I said, "Please let me know what you are going to do 23 and maybe we can talk." He gave me his cell phone, 24 maybe gave me, he did give me his cell phone then I 25 thought I also saw in evidence an e-mail he sent to me</p>	<p>1 saying is the "this" is the consulting salary that he's 2 owed? 3 A. Yes, the consulting salary I think the, you know, 4 the breach as to the general manager's couldn't be, I 5 didn't expect to be, anything to happen. We weren't 6 asking for money for that. Also the consultants 7 provision had already been breached. Floyd and I talked 8 about that they were not letting Don act as a consultant 9 and hadn't let him do that for the last year and a half. 10 So basically I was saying, come on, let's part ways or 11 pay him the 20,000 a month or whatever is, I guess it 12 would be 20,000 a month. I guess it would be 16,000 a 13 month, pay him the \$200,000 per year ratably, one or the 14 other, but let's get on with our lives. So this was a 15 formal request for that. 16 <b>Q. Is this the, are you aware of any other written 17 correspondence regarding a proposed, proposed is the 18 wrong word there. Other than Exhibit 14, are you aware 19 of any formal letter indicating a breach of the 20 agreement from Mr. Nelson's perspective?</b> 21 A. This is our only written notice. Obviously as 22 evidence of the failure of Cuban to pay, you had the 23 proposed sixth amendment to the employment agreement, 24 but that was prepared, of course, by the club. 25 <b>Q. Well, that was actually them offering to pay a</b></p>



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1 much tighter than that. You can't offset against  
 2 anything that is earned already and that is why you have  
 3 the earned schedules, but I may be wrong. Fax me the  
 4 contract.  
 5 So he did say it originally, but once I got into  
 6 my analysis, I went in, I went through and I talked  
 7 about earned and accrued, he didn't give me a refutation  
 8 there like I wanted, I wanted to see if I was wrong.  
 9 And he just, either wouldn't or couldn't give me a  
 10 refutation of it.  
 11 Q. Again, so I'm clear you said, hey, that is not my  
 12 memory. Let me see the contract, you reviewed the  
 13 contract, applied your lawyer hat and said I don't read  
 14 it that way?  
 15 A. Yes.  
 16 Q. Asked him to engage in discussions with you. He  
 17 said, I'm not going to engage in discussions, but we  
 18 feel differently?  
 19 A. No, he didn't say that. He didn't say I'm not  
 20 going to engage in discussions. He just didn't have an  
 21 answer to what I was saying.  
 22 Q. Okay.  
 23 A. He did not say that. He was very friendly and we  
 24 were discussing things, but it was like he didn't have  
 25 an answer is all I'm saying. He did not have an answer.

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1 I tried to get one from him, but it wasn't as though he  
 2 were saying I'm not going to talk to you or I'm not at  
 3 liberty to divulge. He just didn't have -- I couldn't  
 4 engage him in why, I could not engage him, but he didn't  
 5 tell me he was refusing to talk to me --  
 6 Q. I'm sorry, I didn't mean to imply that.  
 7 A. -- or he didn't say, gee, I'm not going to engage  
 8 in the reasons. He didn't say I've got reasons, but I'm  
 9 keeping them secret or I've got reasons and I'm not at  
 10 liberty to discuss them. He just could not give me an  
 11 answer. He was sort of dumbfounded is what I would call  
 12 it when I presented him with, it is the better way I  
 13 would characterize it.  
 14 Q. Let me sort of make sure I'm also on the same  
 15 page as to what is going on right now. The Mavericks  
 16 have sent a proposed sixth amendment that you have in  
 17 your possession; correct?  
 18 A. Correct.  
 19 Q. If I understand what you are saying, what you had  
 20 thought the sixth amendment was going to be was a,  
 21 basically a buy out of the agreement whereby there would  
 22 be a sum paid and in exchange for that sum Mr. Nelson  
 23 would provide no more service and would agree the club  
 24 didn't have to pay him over the next five years;  
 25 correct?

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1 A. Yes, it wouldn't have to pay him anymore  
 2 consultant's salary. It would be a settlement and  
 3 release of his consultant's salary.  
 4 Q. Instead what the Mavericks had sent, again you  
 5 didn't read the Floyd depo and we won't talk about why,  
 6 but what the Mavericks had sent was purely an  
 7 accelerated payment proposal.  
 8 A. Right, an accelerated payment proposal that still  
 9 obligated Don for five years to the club.  
 10 Q. Correct. So instead of paying him, you know,  
 11 whatever it comes out to be 10,000 per pay period or  
 12 something like, they were going to say I will give you  
 13 \$500,000 cash now and you will still have the obligation  
 14 to consult for the next five years; correct?  
 15 A. Could you read the question again?  
 16 (Record read.)  
 17 A. Yes, that's correct. And I told Floyd that that  
 18 is not what Don told me that had been the agreement  
 19 between the two of them.  
 20 Q. Do you recall Mr. Jahner responding to that?  
 21 A. He didn't deny that. He didn't agree, didn't  
 22 deny but he said, well, look, the club wants to, you  
 23 know, wants to consult with him from time-to-time. And  
 24 gee, we would like to be able to do that. And that is  
 25 when I laughed at him and scoffed and we made jokes and

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1 he laughed. And I thought that was humorous in my  
 2 depiction of the Nelson Cuban relationship.  
 3 Q. I'm not going to, I don't want to turn myself  
 4 into testifying, but I am going to try to shorten this  
 5 query, so again, please don't -- my memory is that  
 6 Mr. Jahner testified that there were several discussions  
 7 basically that you have described?  
 8 A. Yes.  
 9 Q. Is that accurate?  
 10 A. There was more than one phone call. There was  
 11 several discussions, yes.  
 12 Q. And again, my only question was that went over  
 13 approximately what time period?  
 14 A. Well, there were discussions I think. Well, I  
 15 had, I know I had a discussion, I'm pretty sure I had a  
 16 discussion with Floyd after that week, in other words,  
 17 later on I had a call with Floyd just to see if anything  
 18 could be done. But I certainly had discussions with  
 19 him, let's say, the 1st through the 4th, around that  
 20 time period.  
 21 Q. Mr. Jahner also thought that there was a call I  
 22 think he had said on August the 24th, again, I don't  
 23 want to -- I'm just asking whether or not you know, you  
 24 have a recollection of anything like that?  
 25 A. I would not disagree with that.

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1 Q. Are there any other -- I know you have tried to  
 2 be broad on purpose for me, are there any other general  
 3 discussions with Mr. Jahner that you had on this concept  
 4 that we have not talked about?  
 5 A. Are you asking me for other discussions or other  
 6 -- in other words, when you say are there other  
 7 discussions, are you saying are there other times I  
 8 discussed it or are there other discussions to which I  
 9 have not --  
 10 Q. I think I meant was there anything else that  
 11 y'all had talked about that you haven't shared with me  
 12 at any --  
 13 A. Yes, I told Floyd before we were talking about,  
 14 you know, the likelihood of him getting, you know, when  
 15 it would be that he would get a job. We both talked  
 16 about Don getting another job. He wanted him, he  
 17 encouraged me throughout these conversations for Don to  
 18 get a job. He kept probing as to whether Don was  
 19 talking to somebody and that kind of thing. Would he  
 20 get another job and after that weekend I told him, and I  
 21 don't know if I told -- I certainly told, would have  
 22 told him on the 24th and that I thought there was a  
 23 possibility of Don getting a job this year, that this  
 24 year being the 2006 that there at least was a possible  
 25 job open that would be acceptable to him, something like

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1 that. Whether he would get it or not, I didn't know.  
 2 Q. And I guess, you know, I want -- I don't want to  
 3 get into a whole bunch of detail on this. You mentioned  
 4 the 24th, you told me about one additional conversation  
 5 on August the 3rd with someone with Golden State?  
 6 A. Right.  
 7 Q. I assume by the, at some point in time that  
 8 became actual negotiations regarding a contract?  
 9 A. Well, that never went anywhere. The first  
 10 weekend never went anywhere and those things died, but  
 11 as of by the 24th I think the thing was alive again. We  
 12 had been reapproached. Ralph had, I thought, as of  
 13 August 5th that the discussions at least for, for  
 14 present time periods were ended. I thought there was  
 15 still a possibility that they may do something with  
 16 Montgomery as the coach, but nothing was in the offing  
 17 as of August 5th. Bobby left me a message and said the  
 18 club wasn't going to do anything.  
 19 Q. I'm sorry, I think you have gone beyond what I  
 20 was asking.  
 21 A. Then later on the negotiations restarted, I  
 22 suppose I would call it or started and there was some,  
 23 was some talk. Exactly when that was, I'm not exactly  
 24 sure.  
 25 Q. Obviously you mentioned that on the 24th you said

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1 to Mr. Jahner that it was possible he was going to take  
 2 another job that year. Were there discussions actively  
 3 ongoing at that time?  
 4 A. You know, I don't know that there were  
 5 discussions between Bobby and I, but there were  
 6 discussions of a non-monetary nature between Don and  
 7 some of the player guys, his ex players. I know those  
 8 were going on. Whether or not I had a discussion with  
 9 Bobby at the time, I do not know. I started having them  
 10 sometime around then. When exactly they were, I  
 11 couldn't put a fine point on it. I wasn't keeping time  
 12 records.  
 13 Q. The only player I have heard about fourth hand is  
 14 a guy by the name of Pietrus, do you know him?  
 15 A. Yes.  
 16 Q. I'm not sure I am pronouncing it right. He  
 17 indicates that he thought the first discussion he had  
 18 with Don may have occurred as early as the summer  
 19 league. Do you know anything about that?  
 20 A. Pietrus?  
 21 Q. Yes, sir.  
 22 A. Mickael Pietrus?  
 23 Q. I believe that's correct.  
 24 A. It is a new one. Tell me what you are talking  
 25 about.

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1 Q. I'm just asking you whether or not he indicated  
 2 discussions occurred as early as the summer league, do  
 3 you know?  
 4 A. Discussions with who?  
 5 Q. Mr. Nelson?  
 6 A. Pietrus wouldn't have had any discussions with  
 7 Nelson, I don't think. He's not a negotiator. He had  
 8 no authority. He's a player.  
 9 Q. Well, yes, I agree with that.  
 10 A. He's a player that wasn't under contract, I don't  
 11 even think. Maybe I'm wrong on that. Maybe that was  
 12 the next year, might have been the next year. He might  
 13 have been under contract.  
 14 Q. You sort of keyed on my point. Certainly not,  
 15 you certainly weren't aware that Mr. Nelson would be  
 16 talking to players at that time; correct, or maybe you  
 17 are that's why I'm asking you.  
 18 A. Don could have talked to a player, of course, he  
 19 could. If he was at the summer league it would be  
 20 natural that he would talk to players, but about what.  
 21 I was talking about his ex players, Mullin, Richmond and  
 22 Higgins.  
 23 Q. No, I understand and obviously I don't want to  
 24 get into privileged communication you had nor do I want  
 25 to get into you sort of guessing as to what he might

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1 have or might not have. Do you know whether or not  
 2 Mr. Nelson was already speaking to Golden State Warrior  
 3 players during the summer league in 2006 about just that  
 4 question?  
 5 A. No, I wouldn't know one way or the other.  
 6 Q. Did you have any discussions with Mr. Nelson,  
 7 not where he's seeking legal advice about when he first  
 8 spoke to Baron Davis about discussing with him his  
 9 coaching philosophy and how it would fit in if  
 10 Mr. Nelson was the coach?  
 11 A. No, I would have no knowledge of that. I would  
 12 have no subject matter discussions on that topic at all  
 13 with anybody.  
 14 Q. I just want to cleanup something. You mentioned  
 15 about when you first would have seen the fourth  
 16 amendment I can't help but notice, but the fifth  
 17 amendment makes reference to the fourth amendment.  
 18 Would you would have seen the fifth amendment before it  
 19 was signed or no?  
 20 A. No, I would not have. The fifth amendment was  
 21 something that Randall Schmidt did. As I understand, it  
 22 it was sort of signed literally the 11th hour and I did  
 23 not see it until after it was signed.  
 24 Q. So like I'm just going to show you Exhibit 26 and  
 25 again I'm not in any way suggesting Exhibit 26 purports

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1 to be a draft fifth amendment that was faxed to your  
 2 office on June 18th of 2003?  
 3 A. Yes.  
 4 Q. Do you know whether or not you would have  
 5 received this?  
 6 A. I would have received it at some point I think,  
 7 but I don't think I received it by the time I was on the  
 8 road. I was in Little Rock, Arkansas I think and I  
 9 don't think I received it at or about the time my office  
 10 received it. If that is the answer I had someone else  
 11 somehow this eventually, I saw this in Little Rock,  
 12 Arkansas is my answer but I did not see it in San  
 13 Francisco.  
 14 Q. That is fair. Again I'm just trying to --  
 15 A. Yes.  
 16 Q. I'm just trying to --  
 17 A. I think I saw it before the handwritten letter  
 18 that I sent to Robert Hart.  
 19 Q. That would have been, I will just show you, might  
 20 as well not let the tree die in vain, that appears to be  
 21 dated June the 24th of 2003?  
 22 A. Yes.  
 23 Q. So are you saying you would have seen a draft of  
 24 the fifth amendment prior to June the 24th of 2003?  
 25 A. Yes, somehow I think it was probably the day

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1 before.  
 2 Q. Again, I'm just trying to make sure, if I take a  
 3 look at Exhibit 26 which is the draft, there is a  
 4 reference in here to the fourth amendment?  
 5 A. Right.  
 6 Q. Do you see that, but not something that you  
 7 reviewed at that time?  
 8 A. I will tell you almost just about as positive as  
 9 one can be that I did not have the fourth amendment at  
 10 this time. I'm not so sure I even paid attention to  
 11 this paragraph in any case about the, talks about the  
 12 fourth amendment. I was concerned about the loss of the  
 13 2.7 million, that is what my role was to put it back in.  
 14 I do believe I received a copy of the fourth amendment  
 15 around August of that summer.  
 16 Q. That is fine. Did you have any discussion with  
 17 anybody about it, not your client, but anybody with the  
 18 Mavericks?  
 19 A. No, I didn't actually.  
 20 Q. How about you mentioned to me your conversations  
 21 with Floyd. Did you have any conversations with Floyd  
 22 about the consulting payments, anybody with the  
 23 Mavericks?  
 24 A. I did not. At least I did not prior to Don's  
 25 taking a job with Golden State. The only person I

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1 talked to was Floyd about this matter.  
 2 MR. DAVENPORT: Should we break for lunch?  
 3 MR. HARPER: Actually I'm done. Thank you  
 4 so much for your time, I appreciate it.  
 5 (Deposition adjourned at 12:14 p.m.)  
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1 CHANGES AND SIGNATURE

2 PAGE LINE CHANGE REASON FOR CHANGE

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1 ARBITRATION NO. 1310016794

2

3 DON NELSON, )

4 Claimant/Counterrespondent.)

5 VS ) CIVIL ARBITRATION

6 DALLAS BASKETBALL LIMITED ) PENDING BEFORE JAMES

7 d/b/a DALLAS MAVERICKS, )

8 Respondent/Counterclaimant.)

9 REPORTER'S CERTIFICATION

10 DEPOSITION OF JOHN D. O'CONNOR

11 JUNE 17, 2008

12 I, Susan S. Klinger, Certified Shorthand Reporter in

13 and for the State of Texas, hereby certify to the

14 following:

15 That the witness, JOHN D. O'CONNOR, was duly sworn by

16 the officer and that the transcript of the oral

17 deposition is a true record of the testimony given by

18 the witness;

19 That the deposition transcript was submitted on

20 \_\_\_\_\_, 2008 to the witness or to the

21 attorney for the witness for examination, signature and

22 return to me by \_\_\_\_\_, 2008;

23 That pursuant to information given to the deposition

24 officer at the time said testimony was taken, the

25 following includes counsel for all parties of record:

Mr. Davenport, Attorney for Claimant

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1 I, JOHN D. O'CONNOR, have read the foregoing

2 deposition and hereby affix my signature that same is

3 true and correct, except as noted above.

4

5 \_\_\_\_\_

6 JOHN D. O'CONNOR

7

8 THE STATE OF \_\_\_\_\_)

9 COUNTY OF \_\_\_\_\_)

10 Subscribed and sworn to before me by the said

11 witness, JOHN D. O'CONNOR,

12

13 Given under my hand and seal of office this \_\_\_\_\_

14 day of \_\_\_\_\_, 20 \_\_\_\_\_.

15

16 \_\_\_\_\_

17 Notary Public in and for the

18 State of \_\_\_\_\_

19 My commission expires \_\_\_\_\_

20

21

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1 Mr. Harper, Attorney for Respondent

2 I further certify that I am neither counsel for,

3 related to, nor employed by any of the parties or

4 attorneys in the action in which this proceeding was

5 taken, and further that I am not financially or

6 otherwise interested in the outcome of the action.

7 Certified to by me this \_\_\_ day of \_\_\_\_\_, 2008.

8

9 \_\_\_\_\_

10 Susan S. Klinger, Texas CSR No. 6531

11 Expiration Date: 12/31/08

12 Henjum Goucher Reporting Services

13 Firm No. Dallas: 69 Houston: 373

14 2501 Oak Lawn Avenue

15 435 Oak Lawn Plaza

16 Dallas, Texas 75219

17 (214) 521-1188

18

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22

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file on CD, DVD, Hard Drive, E-Transcript  
using legal technology.