

timely disclose their possession of Plaintiff's intercepted e-mails, including his attorney-client communications.

4. The parties had agreed to hold the Rule 26(f) parties planning conference on July 18, 2008 at 10:30 a.m. for the proposed 26(f) conference.

5. Prior to the planned conference, Plaintiff's counsel, Attorney David Slossberg, contacted Attorney John Peloso expressing concern about the ZBG lawyers participating in the Rule 26(f) conference in light of the seriousness of the pending Motions to Disqualify, and requesting that he, or one of his colleagues, conduct the conference. Attorney Peloso responded that he would contact Attorney Crossman, but did not get back to Attorney Slossberg prior to the commencement of the conference.

6. At the time of the scheduled telephone conference, only Attorney Crossman and Attorney Frank Welzer of his office were on the call representing the Defendants (Attorney Welzer has not filed an appearance in this action). Plaintiff's counsel expressed their concerns about proceeding with lawyers who were the subject of a serious Motion to Disqualify and without counsel from Robinson & Cole on the call. Plaintiff's counsel requested that the conference be held with counsel from Robinson & Cole. Attorney Crossman refused to do so and said he was ready and willing to proceed with the 26(f) conference and would not include Robinson & Cole on the phone call.

7. In view of the serious issues raised in the Motion to Disqualify, the conference was terminated without any substantive discussions of the matters set forth in Rule 26(f).

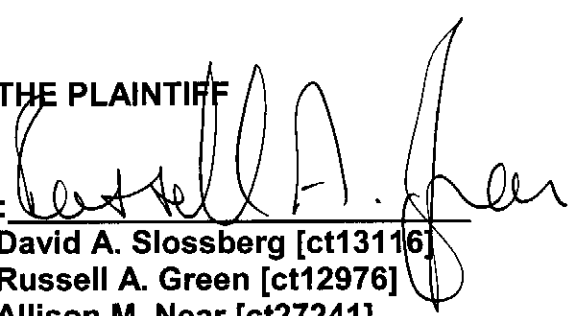
8. To have conducted the conference without co-counsel and solely with the involvement of Attorney Crossman would have been improper. Attorney Crossman's refusal to include Robinson & Cole in the conference was patently unreasonable and obviously intended to thwart the conference from proceeding. Attorney Peloso and his firm are more than capable of handling the 26(f) conference and should have been involved at the outset.

9. In view of the impasse that has occurred, and the desire to eliminate any unwarranted delays, Plaintiff submits the attached Rule 26(f) report and respectfully requests that the Court adopt it as the scheduling order in this action. This will permit discovery to commence forthwith, and permit the court to rule on the Motion to Disqualify as the court's docket permits.

WHEREFORE, so as not to occasion further delay in the commencement of discovery in this action, and to ensure that the pending motion to disqualify is adequately addressed, the Plaintiff requests that his proposed report of the Rule 26(f) conference be adopted by the Court.

THE PLAINTIFF

By:


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CERTIFICATE OF SERVICE

This is to certify that on July 18, 2008 a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system and by mail to all parties that are unable to accept electronic filing. Parties may access this filing through the Court's electronic system.


Russell A. Green