

3. Sidell commenced this action on May 8, 2008 for claims arising out of the post-termination access to and use of Sidell's personal e-mail account, including privileged attorney-client communications.

4. In the Plaintiff's Memorandum of Law in Opposition to Plaintiff's Motion for Determination on Disqualification (the "Opposition"), dated April 8, 2009, the Defendants represented that the Arbitration was no longer "ongoing," which is incorrect.

5. In fact, on April 29, 2009, the parties to the Arbitration were notified by the JAMS senior case manager, Melanie O'Hara, that: "Please be advised that the arbitrator can do no further work for this arbitration due to an ongoing administrative issue. When the issue is resolved, work can continue for this matter." (Emphasis added.) See Exhibit A.

6. The administrative issue was, in fact, resolved. And, on May 18, 2009, Ms. O'Hara notified the parties that: "This is to advise you that the administrative issue has been resolved and work can now continue for this arbitration." (Emphasis added.) See Exhibit B. Therefore, the Arbitration was never abandoned or suspended, and continues to proceed.

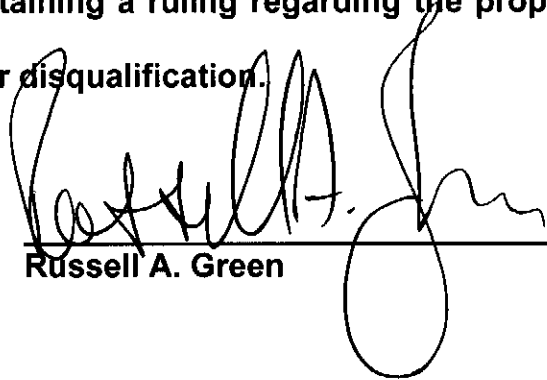
7. To the contrary, on May 1, 2009, in the Arbitration, both parties (the Claimant and the Respondents) filed objections to the pending Motions to Dismiss that the parties had previously filed.

8. On May 8, 2009, the parties filed Replies in support of their Motions to Dismiss. These filings were made pursuant to a scheduling order

entered by the Arbitrator and at no time did the Defendants/Respondents seek relief from that order or their filing obligations because of the Arbitration was “not ongoing”.


9. Although Sidell maintains that the Defendants'/Respondents' Motion to Dismiss in the Arbitration should be denied, even if it is granted the Arbitration will continued because the Motion is directed only towards certain of Sidell's claims in the Arbitration. Therefore, even if the Arbitrator grants the Respondents' Motion to Dismiss in its entirety, such ruling would not dispose of all of Sidell's claims in the Arbitration.

10. Therefore, not only is this action and the pending motion not moot, but critically important to obtaining a ruling regarding the propriety of defense counsel's conduct and their disqualification.



Russell A. Green

Subscribed and sworn to
Before me, this 3rd day of June, 2009.



Brian J. Wheelin
Commissioner of the Superior Court

CERTIFICATE OF SERVICE

I hereby certify that, on June 3, 2009, a copy of the foregoing Affidavit in Support of Plaintiff's Response to Order to Show Cause 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 as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Russell A. Green