

John Tuli

Boston, MA

August 30, 2007

Page 1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

- - - - - X  
SECURITIES AND EXCHANGE COMMISSION :  
V : CA 05cv00036-GK  
CHARLES JOHNSON JR., CHRIS BENYO, :  
MICHAEL KENNEDY, JOHN TULI, AND :  
KENT WAKEFORD :

- - - - - X

VIDEOTAPED DEPOSITION OF JOHN TULI,  
taken before Judith A. Twomey, Registered Professional  
Reporter and Notary Public in and for the Commonwealth  
of Massachusetts, at the Offices of Nutter McClennen &  
Fish, World Trade Center West, 155 Seaport Boulevard,  
Boston, Massachusetts, commencing at 9:39 a.m., on  
Thursday, August 30, 2007.

CERTIFIED COPY

1 Q. Now, Mr. Tuli, directing your attention to  
2 Tuli Exhibit 7, let's look at the e-mail that you  
3 sent to Kent Wakeford. Let's look at the version on  
4 page 2 of Tuli Exhibit 7. That's Government Exhibit  
5 145.1. In that e-mail -- why don't you read the text  
6 of it out loud.

7 A. Page 2?

8 Q. Yeah.

9 A. "Subject: Urgent, AuctionNet. What am I  
10 signing for PPRO auditors? Junior call me via Jim  
11 Sholeff and wants me to sign this now. Can you guys  
12 please take a look. Should I sign this? John."

13 MR. HUGEL: Note my objection to the form  
14 of the last question.

15 Q. It's addressed to both those people, Kent  
16 Wakeford and Jason Witt, right?

17 A. Those were my contacts in Business  
18 Affairs.

19 Q. Those are the people to whom you sent this  
20 e-mail, correct?

21 A. Correct.

22 Q. Now, your e-mail says that it's for  
23 PurchasePro auditors, right?

24 A. Yes.

25 Q. So, you were aware that you were being

1 to Business Affairs.

2 Q. Weren't you the product guy? Is that how  
3 you considered yourself at AOL with regard to  
4 NetBusiness? Were you the product guy?

5 A. Can you define that, what you mean  
6 specifically.

7 Q. I've heard that term before. I'm just  
8 wondering if that term is something that you would  
9 use to characterize your role at AOL with regard to  
10 business, the product guy?

11 A. I was responsible for elements of the  
12 product among other people, yes.

13 Q. So, the product guy is a description you  
14 would have used to characterize yourself, right?

15 A. Again, that was part of my role, yes.

16 Q. If you were the product guy, why did you  
17 need to send a document asking about completion of  
18 work to someone else?

19 A. My responsibilities related to the  
20 operating and sometimes the technical initiatives in  
21 our products on that business and access to our small  
22 business customers. Anything related to the business  
23 end of the relationship with our partners had to be  
24 approved, had to be looked at by Business Affairs.

25 Q. And who was your main contact in Business

1       Affairs?

2             A.       Kent Wakeford and Jason Whit.

3             Q.       Now, did you have a conversation with Kent  
4       Wakeford about the document you were being asked to  
5       sign that we see reflected in Exhibit 7? Did you  
6       have an oral conversation with Mr. Wakeford?

7             A.       I believe I did have a conversation about  
8       this, yes.

9             Q.       That was in April of 2001?

10            A.       I don't remember the date.

11            Q.       Was it around the time that you got the  
12       e-mail from Sholeff that we see in Exhibit 7?

13                    MR. REED: Objection to form.

14            A.       I think so.

15            Q.       And where was that conversation with Kent  
16       Wakeford?

17            A.       I believe it was in -- I believe it was in  
18       New York.

19            Q.       At Kent Wakeford's office at AOL in New  
20       York?

21            A.       I think so.

22            Q.       Who was present?

23            A.       Mr. Wakeford was present, and I was  
24       present.

25            Q.       What did you say and what did he say?

1           A.     I don't remember the conversation  
2 specifically. I mean, I think I can tell you the  
3 gist of it.

4           Q.     Tell me what you remember, please, again,  
5 breaking it down by who said what.

6           A.     I think that I mentioned to him that I  
7 wasn't sure what this was. I mentioned to him, I  
8 think, that I wasn't sure about the process around  
9 this, because I had never encountered this before  
10 with our partners. And I think that -- I think that  
11 he asked me if the work regarding AuctionNet was  
12 done, and I said -- I don't remember if I had done  
13 some incremental checking at the time, but I think I  
14 said it was done, and he said it was okay to sign.

15          Q.     Okay. Mr. Tuli, do you -- again,  
16 directing your attention to the interviews that you  
17 had with AOL lawyers or lawyers for AOL back in the  
18 May 2001 time period --

19          A.     Exhibit 8?

20          Q.     Well, I don't want you to look at the  
21 document necessarily. My question to you is just  
22 directing your attention to those interviews that you  
23 had, that you described earlier, did you say in any  
24 of those interviews, in words or in substance,  
25 anything to the effect that Wakeford told you to

1       said in the interviews that you called your people  
2       who said they thought the work was proceeding, yes or  
3       no?

4           A.     No.

5           Q.     Okay. Now, you said earlier that you  
6       spoke with Mr. Wakeford in New York, you thought, in  
7       April 2001, is that correct?

8           A.     Mm hmm.

9           Q.     Pardon me?

10          A.     Yes.

11          Q.     And he said it was okay to sign the  
12       confirmation letter that you had been sent?

13               MR. HULKOWER: Objection.

14               MR. HUGEL: Objection to form.

15          Q.     Is that what he said?

16          A.     Say the question again, please.

17          Q.     Let's have you tell us then. What did Mr.  
18       Wakeford say to you in that conversation?

19               MR. HUGEL: Objection. Asked and  
20       answered.

21          A.     I think I said that -- I don't remember  
22       exactly what I said, but I think I said that he asked  
23       me if the work was complete, and I said, yes, it is.

24          Q.     And then what did Mr. Wakeford say?

25          A.     He said, then you can sign.

1 Q. Sign what?

2 A. Sign that document or a document that  
3 looked like that document.

4 Q. The confirmation letter that was going to  
5 be for PurchasePro's auditors, correct?

6 MR. HULKOWER: Objection.

7 Q. It's the letter that's referred to in Tuli  
8 Exhibit 7, the e-mail chain, correct?

9 A. No, I don't think so. That document  
10 doesn't have a -- where are we?

11 Q. The last page of Exhibit 7, the document  
12 that Sholeff sent you, is that the one you were  
13 discussing with Mr. Wakeford?

14 MR. REED: Objection to form and lack of  
15 foundation.

16 Q. Is that the letter you were discussing  
17 with Mr. Wakeford in New York in the conversation  
18 that you described today?

19 A. This letter doesn't have PurchasePro's  
20 header on it. It doesn't have the signature of Scott  
21 Miller. So, I'm not sure if this is the letter that  
22 I was discussing with him or not.

23 Q. Was it a letter substantially similar to  
24 this, though, in terms of the text that you were  
25 asking him about?

1 A. Yes.

2 Q. And that's what Mr. Wakeford said it was  
3 okay to go ahead and sign, is that correct?

4 A. Yes.

5 Q. Now, did you rely on Mr. Wakeford's  
6 telling you that it was okay to go ahead and sign?

7 A. What do you mean, rely on?

8 Q. In other words, you went ahead and signed  
9 a letter to that effect, correct?

10 A. After knowing that the work was done in a  
11 Statement of Work, yes.

12 Q. And in signing that letter, did you rely  
13 on Mr. Wakeford's telling you it was okay to sign?

14 A. I relied on my knowledge that the work was  
15 done and checking with the proper protocol with  
16 Business Affairs, I relied on all of that.

17 Q. Including that Mr. Wakeford told you that  
18 it was okay to sign, correct?

19 A. Including checking with Business Affairs  
20 and Mr. Wakeford.

21 Q. And Mr. Wakeford telling you that it was  
22 okay to sign, correct?

23 MR. HUGEL: Objection to the form.

24 A. Including checking with Mr. Wakeford and  
25 asking him if it was okay to sign once I knew the



1 work was complete.

2 Q. And that he said, yes, it was okay to  
3 sign?

4 MR. HUGEL: Objection to the form.

5 Q. Correct?

6 A. I believe so, yes.

7 Q. Did Mr. Wakeford in connection with that  
8 discussion say anything to you to the effect that he  
9 had never heard of a Statement of Work in connection  
10 with AuctionNet integration?

11 MR. REED: Form.

12 A. I don't remember.

13 Q. You don't remember one way or the other?

14 MR. REED: Form.

15 A. I don't think he said that.

16 Q. Pardon me?

17 A. I don't think he said that.

18 Q. Did Mr. Wakeford at any time in connection  
19 with your discussions in April 2001 regarding the  
20 letter that you were going -- that you were asking  
21 about, confirmation letter -- do you understand what  
22 I mean when I say the confirmation letter?

23 MR. HULKOWER: Objection. It nowhere says  
24 confirmation on it. So, let's try and be precise.

25 Q. Just be sure we're talking about the same

1 acquitted during a jury trial, based on being found  
2 innocent by AOL, I'd never want to be a director or  
3 an officer of a company that was regulated by the  
4 SEC, never.

5 Q. Next question. Showing you what's been  
6 marked as Exhibit 19, previously marked as Government  
7 Exhibit 2006, Mr. Tuli --

8 MR. HULKOWER: Can we have copies, please.

9 Q. -- does this refresh your recollection as  
10 to whether you were at AOL's offices in Virginia at  
11 some time on February 25?

12 MR. LEVIN: That's it?

13 MR. GOTTESMAN: Question pending. Let's  
14 get the answer.

15 A. No, this doesn't refresh my recollection  
16 about this, no.

17 MR. GOTTESMAN: All right.

18 MR. HULKOWER: Thank you.

19 MR. GOTTESMAN: Thank you.

20 VIDEOGRAPHER: The time is 1:43.

21 EXAMINATION BY MR. HUGEL:

22 Q. Mr. Tuli, I'm Paul Hugel. I represent  
23 Kent Wakeford. Couple of follow-up questions. My  
24 questions relate to the conversation that you  
25 testified to in response to Mr. Gottesman's questions

1 about your conversation with Kent Wakeford on April  
2 20 surrounding Tuli Exhibit 5. Was that a lengthy  
3 conversation that you had with Kent?

4 A. Can you repeat the question, please.

5 Q. That conversation that you testified to  
6 about Kent, was that a lengthy discussion that you  
7 had with him?

8 A. I wouldn't characterize it as lengthy, no.

9 Q. Characterize it as a brief discussion?

10 A. Yes.

11 Q. Did Kent seem to be waiting for you or  
12 expecting you to come in to discuss this document?

13 A. No, Kent was very busy.

14 Q. Do you know if Kent reviewed any documents  
15 before you came about AuctionNet, a Statement of  
16 Work, before you had this discussion with him?

17 A. I don't know what Kent reviewed.

18 Q. Other than the three or four statements  
19 that you mentioned on your direct testimony, was  
20 there anything else said in that conversation with  
21 Kent that you can recall?

22 A. Not that I can recall, I'm sorry.

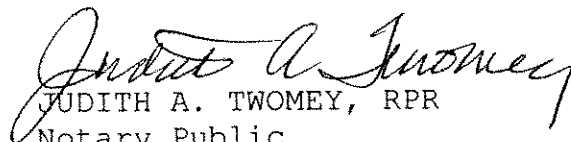
23 MR. HUGEL: That's all I have. Thank you.

24 MR. HULKOWER: Anybody on the phone?

25 MR. REED: No, no questions for Defendant

CERTIFICATE

I, JUDITH A. TWOMEY, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript was taken by me stenographically and thereafter by me reduced to transcription and is a true record of the proceedings in the above-entitled matter to the best of my ability.



JUDITH A. TWOMEY, RPR

Notary Public

My Commission Expires 9/8/2011