

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION**

CAMBRIDGE UNIVERSITY PRESS,
OXFORD UNIVERSITY PRESS, INC.,
and SAGE PUBLICATIONS, INC.,

Plaintiffs,

- v. -

MARK P. BECKER, in his official
capacity as Georgia State University
President, et al.,

Defendants.

Civil Action No. 1:08-CV-1425-ODE

Dockets.Justia.com

DECLARATION OF EDWARD B. KRUGMAN

I, Edward B. Krugman, declare as follows:

1. I am a partner in the law firm Bondurant, Mixson & Elmore, LLP, counsel to Plaintiffs in this action. I submit this declaration in support of Plaintiffs' Motion to Exclude the Expert Report of Kenneth D. Crews.
2. I make this declaration based upon my own knowledge and that of my firm.
3. Over the course of discovery in this case, the Parties have discussed the progress of discovery and issues related to the discovery schedule on several occasions.

4. On May 15, 2009, the Parties negotiated an agreement to resolve several outstanding discovery disputes. As a part of that agreement (*see* Exhibit A hereto) the Parties agreed that June 30, 2009 would be the “close of discovery” for purposes of the local rules and this Court’s April 22, 2009 Scheduling Order. Plaintiffs understood this agreement as a clarification of the date from which post-discovery deadlines would be determined and not as an authorization for either party to conduct additional discovery beyond that which was allowed under the Court’s April 22 Order. To that end, Plaintiffs insisted that the agreement include language specifying that the agreement authorized no additional written discovery.

5. Prior to May 19, 2009, Defendants’ counsel never identified any expert witness who would offer testimony in this case. Similarly, at no time prior to May 19, 2009 (*see* Exhibit B hereto) did Defendants’ counsel ever state that Defendants planned to identify a testifying expert.

6. On May 19, 2009, I received a telephone call from Anthony B. Askew, lead counsel for Defendants. During that call, Mr. Askew stated that Defendants would be designating Dr. Kenneth D. Crews as an expert witness. Mr. Askew did not specify the subjects or issues for which Dr. Crews’ testimony would be offered. During that same telephone call, Mr. Askew suggested that the Parties not submit to the Court the agreement they had reached on May 15, 2009 regarding

the deadline for filing motions for summary judgment and suggested that the Parties instead agree on a period for expert discovery after June 30, 2009, the deadline for completing depositions in the case. I told Mr. Askew that I would pass his comments on to my co-counsel and would get back to him as to Plaintiffs' position.

7. On May 21, 2009, I called Mr. Askew but did not reach him. I then called Laura Gary, another attorney for the Defendants at King & Spalding, to advise her that Plaintiffs intended to object to Defendants' untimely identification of a purported expert. Ms. Gary thanked me for the call and indicated she would pass it on to Mr. Askew and others. I confirmed our conversation by letter of the same day. *See Exhibit C hereto.*

8. Over the next week, I again attempted to contact Mr. Askew by telephone to discuss Defendants' intentions with respect to their designation of Dr. Crews as an expert, leaving another voice mail requesting that he return my call. To the best of my knowledge, Mr. Askew did not return my calls.

9. On May 28, 2009, I left another voicemail for Mr. Askew asking him to call me to discuss Defendants' designation of Dr. Crews as an expert. The following day, I sent Mr. Askew an e-mail advising of the purpose of my calls – to determine whether Defendants still intended to seek to use an expert notwithstanding their failure to comply with the requirements of the Local Rules

and to suggest that a conference with the Court might be in order given the impact of this issue on the discovery schedule. Again, Mr. Askew neither returned my call nor responded to my email.

10. On June 1, 2009, I received an e-mail from Laura Gary indicating that Defendants still intended to offer the expert testimony of Dr. Crews and that they would serve an expert report later that afternoon.

11. Attached as Exhibit A hereto is a true and correct copy of a letter from Laura E. Gary to Randi W. Singer, dated May 15, 2009.

12. Attached as Exhibit B hereto is a true and correct copy of a letter from Laura E. Gary to Edward B. Krugman, dated May 19, 2009.

13. Attached as Exhibit C hereto is a true and correct copy of a letter from Edward B. Krugman to Laura E. Gary, dated May 21, 2009.

Dated: Atlanta, Georgia
June 5, 2009



Edward B. Krugman