

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

CAMBRIDGE UNIVERSITY PRESS,
et al.,

Plaintiffs,

-vs.-

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

Defendants.

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

DECLARATION OF ANTHONY B. ASKEW

I, Anthony B. Askew, under penalty of perjury, declare as follows:

1. I am a partner in the firm of King & Spalding LLP, counsel to the Defendants in this lawsuit. I submit this Declaration in support of Defendants' Opposition to Plaintiffs' Motion to Exclude the Expert Report of Kenneth D. Crews.

2. Defendants' counsel first contacted Dr. Kenneth D. Crews in early October of 2008 to inquire of his willingness to serve and to seek his assistance as a consulting expert in the subject litigation. At the time he was contacted in October, no decision had been made as to whether Dr. Crews would be designated as a testifying trial expert.

3. As a result of developments in the discovery process of the subject litigation, it was decided in April of 2009 that it might be helpful to the Court to have Dr. Crews provide evidence regarding application of fair use principles in the educational environment and opine as a testifying trial expert.

4. Consequently, on April 22, 2009, Dr. Crews was asked to prepare an expert report for review by counsel. The initial draft of Dr. Crews' expert report was received by counsel in mid-May 2009.

5. Following a conference call with Dr. Crews to discuss an expansion of his report to address subjects in more detail, it was decided on May 19, 2009 that Dr. Crews would be designated as a testifying trial expert and that the final draft of his expert report would be submitted to Plaintiffs' counsel when received from Dr. Crews.

6. On May 19, 2009, I called Edward B. Krugman, counsel for Plaintiffs, and informed him that the Defendants were designating Kenneth D. Crews as an expert witness. I explained that Dr. Crews would offer his opinions regarding application of fair use principles in the educational environment in the subject litigation and that his report would be completed and provided to the Plaintiffs as soon as possible. I also explained that I was confident that Plaintiffs and Plaintiffs' counsel were familiar with Dr. Crews and his opinions regarding fair use since a number of his scholarly articles had been published.

7. At the time I called Mr. Krugman, counsel for the parties had been discussing the submission of a joint motion for an extension of the due date in the litigation for summary judgment motions. I informed Mr. Krugman that Defendants were willing to agree to an extension of the discovery schedule to include a distinct period for expert discovery, if the Plaintiffs believed they needed additional time to respond to Dr. Crews' report. In that regard, I also proposed that rather than submit the motion currently under discussion, a more comprehensive motion be submitted that provided for a period of expert discovery and an adjustment of other due dates such as the date for summary judgment motions.

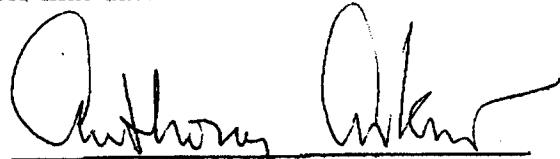
8. On May 21, 2009, I was out of the office and out of town and did not receive a telephone call or voicemail from Mr. Krugman. It is my understanding that Mr. Krugman spoke to Laura Gary, an associate at King & Spalding, and informed her that the Plaintiffs objected to the designation of Dr. Crews as an expert.

9. At no time did I or any other attorney at King & Spalding ever indicate or suggest that the designation of Dr. Crews as an expert would be withdrawn in view of the objection by the Plaintiffs.

10. During the next week, including May 28, 2009, I was out of the office and out of town on a family vacation. During that week, I did not receive any voicemail messages and did not respond to email messages.

11. In negotiating the terms of a joint request for the extension of discovery in April 2009, which was granted in the form of the Court's April 22, 2009 Scheduling Order, the parties intended to prohibit the service of written discovery requests after May 25, 2009. Defendants did not intend to foreclose their ability to designate expert witnesses after that date.

Date: June 19, 2009


Anthony B. Askey