

**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

**REPLY 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 reply declaration in further support of Plaintiffs' Motion to Exclude the Expert Report of Kenneth D. Crews.
2. I make this declaration under penalty of perjury based upon my own knowledge and that of my firm.
3. Following the Parties' May 15, 2009 letter agreement concerning outstanding discovery disputes, an associate at my firm, John Rains,

prepared a draft joint motion and proposed order extending the deadline for filing summary judgment motions in accordance with the terms of the agreement.

4. Attached as Exhibit A hereto is a true and correct copy of a series of e-mails exchanged between Mr. Rains, Kristen Swift and Laura Gary, dated May 18, 2009, May 19, 2009, and May 26, 2009.

5. On May 18, 2009, Mr. Rains circulated, via e-mail, copies of the draft motion and proposed order to two King & Spalding associates, Ms. Swift and Ms. Gary. *See Exhibit A.*

6. Later that same day, Ms. Gary replied to Mr. Rains' e-mail suggesting one change to the draft. *See Exhibit A.* The proposed change involved the introductory language and sought to clarify that Defendants were being sued in their official capacities only.

7. On May 19, 2009 at 10:12 a.m., Mr. Rains replied to Ms. Gary's May 18 e-mail, indicating that the change proposed by Defendants was acceptable to Plaintiffs. Because Ms. Gary had not yet appeared on behalf of Defendants, Mr. Rains asked Ms. Swift to give him express permission to electronically sign the joint motion on her behalf. *See Exhibit A.* To the best of my knowledge, Ms. Swift never replied to Mr. Rains' e-mail.

8. Later that same morning, before Mr. Rains had had an opportunity to file the joint motion and proposed order, I received a telephone call

from Anthony Askew, lead counsel for Defendants. My recollection of the conversation with Mr. Askew is set forth in my Declaration in Support of Plaintiffs Motion to Exclude the Expert Report of Kenneth D. Crews, dated June 5, 2009. *See* Dkt. No. 106, #1, ¶ 6.

9. On May 26, 2009, Ms. Gary, who on May 21, 2009 had filed a notice of appearance in this case, responded to Mr. Rains' May 19 e-mail and authorized him to file the joint motion and sign it electronically on her behalf (*see* Exhibit A).

10. Although Plaintiffs' counsel still believed that filing summary judgment motions on or before July 30, 2009 (the date agreed upon by the Parties on May 15, 2009 and memorialized in the draft joint motion and proposed order) was appropriate in light of the deadlines set forth in the Court's April 22, 2009 Scheduling Order and the remaining depositions both parties had scheduled and planned to take, I directed Mr. Rains not to file the joint motion until I had spoken with Mr. Askew to ascertain whether Defendants still intended to offer the testimony of Dr. Crews.

11. My recollection of my efforts to contact Mr. Askew to discuss Defendants' designation of Dr. Crews as a testifying expert in this matter are set forth in my June 5 Declaration. *See* Dkt. No. 106, #1, ¶¶ 7-9.

12. Attached as Exhibit B hereto is a true and correct copy of a log file automatically generated by the telephone system at my firm that shows all incoming and outgoing calls from my direct telephone line between May 15, 2009 and May 31, 2009. The log has been redacted to preserve the confidentiality of calls that are not relevant to this motion.

13. Incoming telephone calls to my firm from any caller at King & Spalding are displayed on Exhibit B as being from the telephone number (404) 572-4600, the main telephone line of King & Spalding's Atlanta office.

14. Mr. Askew's direct telephone line at King & Spalding is (404) 572-2530.

15. Stephen Schaetzel's direct telephone line at King & Spalding is (404) 572-2531.

16. Ms. Gary's directed telephone line at King & Spalding is (404) 572-3562.

17. As reflected on the call log attached as Exhibit B, the voicemail message described in ¶ 7 of my June 5 Declaration was left on Mr. Askew's direct telephone line at 2:36 p.m. on May 21, 2009. *See* Exhibit B.


18. As reflected on the call log attached as Exhibit B, the voicemail message described in ¶ 9 of my June 5 Declaration was left on Mr. Askew's direct telephone line at 6:18 p.m. on May 28, 2009. *See* Exhibit B.

19. Attached as Exhibit C hereto is a true and correct copy of the email I sent to Mr. Askew on May 29, 2009, advising him of the voicemail messages I had left and asking him to call me to discuss whether Defendants still intended to seek to use an expert in this matter. As discussed in my June 5 Declaration, to the best of my knowledge, Mr. Askew did not respond to either my voicemails or e-mail.

20. Attached as Exhibit D hereto is a true and correct copy of an e-mail from Kenneth Crews to Stephen Schaezel, dated January 13, 2009.

21. Attached as Exhibit E hereto is a true and correct copy of an e-mail from Kenneth Crews to Laura Gary, dated January 30, 2009, and a true and correct copy of the document that was attached to that e-mail.

Dated: Atlanta, Georgia  
June 24, 2009



Edward B. Krugman