

EXHIBIT H

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JOHN H. RAINS IV

June 4, 2009

VIA E-MAIL

Laura E. Gary, Esq.
King & Spalding LLP
1180 Peachtree St. NE
Atlanta, GA 30309

Re: *Cambridge University Press, et al. v. Mark P. Becker, et al.*
United States District Court, Northern District of Georgia
Civil Action File No. 1:08-CV-1425-ODE

Dear Laura:

While Plaintiffs are opposed to Defendants' recently unveiled decision to employ Kenneth Crews as a testifying expert in the above referenced matter and expressly reserve all rights with respect thereto, including but not limited to the right to challenge his designation on the ground that both the designation and the report were untimely under the applicable rules, Plaintiffs request that Defendants supplement their document productions to account for this development. Specifically, Defendants should produce: (i) all documents, including written correspondence and e-mails, exchanged between Mr. Crews and Defendants (including their inside and outside counsel) that have not been previously produced in this litigation; (ii) all documents that Mr. Crews has reviewed, analyzed, collected, or relied on in forming the conclusions expressed in his report, including those documents which do not support his conclusions; and (iii) any and all drafts of Mr. Crews' report, including those exchanged between Mr. Crews and Defendants' counsel. Once we have received these documents and had an opportunity to assess their contents and volume, we will arrange a telephone conference with you to discuss scheduling a deposition date for Mr. Crews.

On a related matter, Plaintiffs also ask that Defendants reevaluate the privilege claims they have thus far asserted with respect to the development of the Board of Regents' new copyright policy. It appears from Mr. Crews' report that he was shown drafts of the policy during the committee process and that he was involved in conversations with counsel about this litigation as early as last October. *See Crews Report at 6-7.* As you are aware, the disclosure of privileged communication or attorney work product to a testifying expert operates as a complete waiver of the protection afforded by those doctrines. *See generally* Fed. R. Civ. P. 26(a)(2)(B)(ii); Advisory Committee Notes to the 1993 Amendments to the Federal Rules of Civil Procedure; *Venn v. McRae*, 295 B.R. 676, 697 (Bankr. N.D. Fla. 2003). To the extent Defendants still maintain that the attorney client privilege or work product doctrine covers the subject matters for

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which they were previously asserted, we ask that Defendants supplement their privilege logs to detail the communications and document exchanged with to Mr. Crews. We also note that to the extent Defendants have not previously included communication with Mr. Crews on the privilege logs they have thus far produced, Plaintiffs intend to treat the privilege as having been waived by Defendants' failure to identify those communications on a privilege log as required by the Federal Rules.

Because the Court-ordered deadline for completing all discovery other than depositions has already passed, and because depositions in this case must be completed by June 30, 2009, we ask that Defendants respond to this letter and produce the requested documents as soon as possible, but no later than June 10, 2009.

Sincerely,



John H. Rains IV

cc: Edward B. Krugman, Esq. (via e-mail)
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