

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF ILLINOIS
4 EASTERN DIVISION

5 DAVID GROCHOCINSKI, Case No. 1:06-cv-5486
6 Plaintiff, Chicago, Illinois
7 v. December 13, 2007
Motion Hearing
8 MAYER BROWN ROWE & MAW, LLP,
9 et al.,
10 Defendants.

11 -----
12 TRANSCRIPT OF MOTION HEARING
13 BEFORE THE HONORABLE VIRGINIA M. KENDALL
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 For the Plaintiff: Edward T. Joyce & Associates
17 By: Arthur W. Aufmann, and
Robert D. Carroll
18 11 S. LaSalle St., Ste. 1600
Chicago, IL 60603
(312) 641-2600

19 For the Defendants: Novack & Macey
20 By: Stephen Novack, and
Steven J. Ciszewski
21 100 N. Riverside Plaza, Ste. 1500
Chicago, IL 60606
(312) 419-6900

22 Court Reporter: April M. Metzler, RPR, CRR
23 219 South Dearborn St., Rm. 2318-A
Chicago, IL 60604
24 (312) 408-5154

25 Proceedings recorded by mechanical stenography;
transcript produced by notereading.

1 (Commenced at 10:06 a.m.)

2 THE CLERK: 06-5486, Grochocinski versus
00:00:04 3 Mayer, Brown.

00:00:08 4 MR. NOVACK: Good morning, your Honor.
00:00:09 5 Steve Novack, N-o-v-a-c-k, on behalf of defendants.

00:00:13 6 THE COURT: Good morning.

00:00:13 7 MR. CISZEWSKI: Good morning, your Honor.
00:00:14 8 Steven Ciszewski, C-i-s-z-e-w-s-k-i, also for the
00:00:19 9 defendants.

00:00:19 10 THE COURT: Good morning.

00:00:19 11 MR. AUFMANN: Good morning, your Honor.
00:00:20 12 Arthur Aufmann and Robert Carroll on behalf of the
00:00:22 13 plaintiff.

00:00:23 14 THE COURT: Good morning.

00:00:24 15 Do you object to the plaintiff's motion for
00:00:26 16 protective order?

00:00:29 17 MR. NOVACK: We do, your Honor. And the
00:00:32 18 reason why we did -- why we made our objection, we have
00:00:35 19 a short fuse on this discovery period. You only gave us
00:00:39 20 until the end of January --

00:00:40 21 THE COURT: That's right.

00:00:41 22 MR. NOVACK: -- to complete discovery. And
00:00:44 23 both the trustee and Mr. Spehar's counsel asked us for
00:00:48 24 extensions of time to respond to our discovery and to
00:00:51 25 extend the deposition dates --

00:00:52 1 THE COURT: Oh, I thought I'm looking at a
00:00:54 2 motion for protective order. Isn't that what I'm
00:00:57 3 looking for? Isn't that what I have up for today?

00:01:00 4 MR. AUFMANN: Correct.

00:01:01 5 THE COURT: All right. It's not a motion to
00:01:03 6 extend time.

00:01:05 7 MR. NOVACK: It is not, but it will have
00:01:06 8 that effect, and that's what I'm saying.

00:01:08 9 THE COURT: Oh, okay. Go ahead.

00:01:09 10 MR. NOVACK: When both those parties asked
00:01:11 11 us for extensions -- and we accommodated them,
00:01:14 12 absolutely accommodated them -- nobody suggested to us
00:01:17 13 that there was going to be another motion, which nobody
00:01:20 14 ever told us about, asking for an interim period whereby
00:01:25 15 Mr. Spehar would produce his documents first to the
00:01:28 16 trustee, the trustee would take a period to do
00:01:31 17 something, and then there would be an intervening motion
00:01:36 18 for -- possibly an intervening motion for work-product
00:01:40 19 privilege claims. So faced with all of that and our
00:01:45 20 impending January 28 cutoff, we objected.

00:01:48 21 And as we were looking at the situation, it
00:01:51 22 occurred to us that without getting into all of the
00:01:54 23 issues of waiver and all the issues of whether this is
00:01:58 24 work product or not, all of which we're reserving, one
00:02:01 25 overarching observation came to us, which is they have

00:02:06 1 put into issue --

00:02:07 2 THE COURT: Right.

00:02:07 3 MR. NOVACK: -- at issue a waiver doctrine
00:02:11 4 we think trumps any possible work-product privilege
00:02:16 5 assertion. And we thought why don't we just shortcut
00:02:19 6 it, and so we responded the way we responded.

00:02:22 7 THE COURT: Okay. Counsel?

00:02:24 8 MR. AUFMANN: Judge, in terms of the at
00:02:27 9 issue waiver argument that the defendants have raised,
00:02:32 10 they've filed their response two days ago. We filed a
00:02:35 11 reply as quickly as we could in order to address that
00:02:38 12 issue --

00:02:38 13 THE COURT: Is there a reply?

00:02:40 14 MR. AUFMANN: It was filed yesterday.

00:02:41 15 THE COURT: Oh, I don't have that.

00:02:42 16 MR. CARROLL: It should have -- I apologize
00:02:44 17 if you didn't get it. I did instruct somebody to
00:02:47 18 deliver it to your chambers.

00:02:48 19 THE COURT: Oh, okay. I don't have that.
00:02:50 20 Well, why don't you go pull it off.

00:03:02 21 Okay. Go ahead.

00:03:02 22 MR. AUFMANN: In any event, I don't think
00:03:04 23 the at issue waiver doctrine applies whatsoever here.

00:03:09 24 More to the point, the procedure that we're
00:03:12 25 suggesting, I believe, is entirely reasonable. No one

00:03:15 1 has challenged the fairness or the reasonableness of the
00:03:18 2 procedure we're suggesting. The only issue counsel is
00:03:21 3 really raising is that if this procedure's put into
00:03:25 4 place, it could make it difficult to comply with the
00:03:28 5 Court's discovery cutoff of January 28th. He might be
00:03:33 6 right about that. I don't know what your Honor's
00:03:35 7 feeling is about potentially extending that date. We
00:03:38 8 would certainly have -- since we're the ones who are
00:03:41 9 proposing this procedure -- even though we think it's
00:03:44 10 entirely fair since we are the ones who are proposing
00:03:47 11 this procedure -- we would have no objection to
00:03:49 12 extending that date, that January 28th date, so that
00:03:52 13 this procedure could be engaged in and --

00:03:55 14 THE COURT: Well --

00:03:56 15 MR. AUFMANN: To me, that's the issue that's
00:03:58 16 in front of your Honor.

00:03:59 17 THE COURT: I'm not sure. They're getting
00:04:01 18 me the reply.

00:04:01 19 But I don't understand why the at issue
00:04:04 20 response isn't something that -- you've put this into
00:04:08 21 play filing this lawsuit. We need to address whether or
00:04:12 22 not this is going to be a situation of unclean hands or
00:04:16 23 not.

00:04:17 24 MR. AUFMANN: It's really -- it's really two
00:04:20 25 points, your Honor.

00:04:22 1 THE COURT: Okay.

00:04:23 2 MR. AUFMANN: We have a definite
00:04:24 3 understanding of what your Honor was talking about when
00:04:28 4 you allowed discovery to go forward on the unclean hands
00:04:31 5 issue. We think it was a narrow issue directed to the
00:04:38 6 trustee's decision not to file a motion in California to
00:04:42 7 try and vacate the default judgment. Okay?

00:04:45 8 THE COURT: Well, it may not be. Unclean
00:04:47 9 hands could cover your behavior throughout the whole
00:04:50 10 period of time. It's really getting to the issue as to
00:04:53 11 what was the motivation for the filing of the lawsuit,
00:04:56 12 whether the -- I mean, all of the steps leading up to
00:04:59 13 the failure to move to dismiss this suit could
00:05:03 14 potentially show intent or a pattern of behavior or some
00:05:09 15 theory by the defendants as to why this would be unclean
00:05:12 16 hands.

00:05:12 17 MR. AUFMANN: Right. And one of the things
00:05:13 18 we've tried to address in our reply is that this whole
00:05:16 19 premise that started this unclean hands argument about,
00:05:21 20 Oh, the trustee could have just gone into California and
00:05:23 21 gotten this default vacated, that whole premise is
00:05:27 22 wrong.

00:05:28 23 THE COURT: Well, fine. Fair enough.
00:05:30 24 That's why we're doing this. But it doesn't look like
00:05:32 25 it may be wrong, otherwise I wouldn't have permitted

00:05:35 1 this particular path of discovery to go first, so that
00:05:39 2 we could address why this is set forth in the odd way
00:05:44 3 that it's set forth.

00:05:45 4 MR. AUFMANN: Understood.

00:05:46 5 But one of the things we've done in our
00:05:48 6 reply -- whereas their arguments to you earlier about
00:05:51 7 how easy this would have been to vacate this default did
00:05:54 8 not cite California law, we provided the cite to the
00:05:57 9 statute and the requirements that must be met. And I
00:06:02 10 believe we've demonstrated already that those
00:06:04 11 requirements could not have been met.

00:06:06 12 THE COURT: Meaning what, in discovery, is
00:06:08 13 that what you're saying, or ...

00:06:09 14 MR. AUFMANN: No, in our reply --

00:06:10 15 THE COURT: In the reply that I don't have
00:06:12 16 here? Is that it?

00:06:14 17 MR. AUFMANN: Right.

00:06:14 18 THE COURT: Okay. But, of course --

00:06:21 19 MR. AUFMANN: I'm not saying --

00:06:22 20 THE COURT: -- whether that may be the end
00:06:25 21 result of our first issue really shouldn't be the
00:06:29 22 response as to today's issue, which is you want a
00:06:33 23 protective order and whether or not that protective
00:06:38 24 order can be put into play, whether we adopt the
00:06:41 25 procedure that would delay discovery.

00:06:44 1 MR. AUFMANN: Right. The argument they made
00:06:45 2 about at issue is, Judge, we never need to address any
00:06:49 3 issues of work-product privilege because -- simply
00:06:52 4 because my client in response to an accusation that
00:06:56 5 says, You filed this lawsuit in bad faith, said, No, I
00:06:59 6 didn't file it in bad faith, I filed it in good faith,
00:07:02 7 that does not put at issue any work-product privilege
00:07:09 8 documents.

00:07:09 9 In order to put -- in order to invoke the at
00:07:11 10 issue doctrine, there must be both a claim asserted and
00:07:16 11 reliance on specific defined identifiable privileged
00:07:23 12 material. For example, in the case that they're relying
00:07:26 13 on, you're talking about a situation where the plaintiff
00:07:28 14 said, I did not blow the statute of limitations because
00:07:32 15 my lawyer told me that I first had a claim on
00:07:36 16 such-and-such a date and the discovery rule applies
00:07:39 17 here, and, therefore, the time for my claim to run
00:07:43 18 didn't start running until my lawyer told me. He has
00:07:46 19 not put into issue a specific communication with his
00:07:49 20 lawyer and, thus, cannot sit back and say, No, you can't
00:07:52 21 see that communication with my lawyer, it's privileged.
00:07:55 22 It's the old you can't have your cake and eat it too.

00:07:58 23 The trustee has not done anything like that
00:08:00 24 here. The trustee has not either in support of a claim
00:08:04 25 he's asserting or in defense of something that they're

00:08:06 1 asserting said, No, what I did was justified because I'm
00:08:10 2 relying on a specific piece of work product material.
00:08:15 3 If he had made a specific reference like that and relied
00:08:18 4 on a specific piece of work product material, he
00:08:21 5 couldn't then say, Okay, I'm relying on that, but you
00:08:24 6 can't see it. That's what the at issue waiver doctrine
00:08:27 7 is all about, and that hasn't happened here.

00:08:29 8 All that happened here is they accused my
00:08:32 9 guy of bad faith. We came in on his behalf and said,
00:08:35 10 That's ridiculous, there's no evidence of bad faith. In
00:08:38 11 fact, everything that's been done here is in good faith.
00:08:41 12 And they want to take the position now that because they
00:08:44 13 made a baseless accusation against him and he denied it
00:08:47 14 that suddenly all of his attorney work product is --
00:08:50 15 there's just been a complete blanket waiver? This is
00:08:53 16 not at all the way the at issue doctrine works --

00:08:56 17 THE COURT: Okay. And, again, you need to
00:08:57 18 get off the baseless accusation, otherwise I wouldn't
00:09:00 19 have ordered the discovery.

00:09:01 20 A response?

00:09:02 21 MR. NOVACK: Let me say two things Judge,
00:09:04 22 and who knows maybe it'll become three things, but two
00:09:08 23 things at the outset.

00:09:09 24 No. 1, this was said in their reply brief --

00:09:13 25 THE COURT: I am going to take a few minutes

00:09:15 1 and read the reply brief, but, go ahead and argue it --
00:09:18 2 MR. NOVACK: -- one thing to you before you
00:09:20 3 do.

00:09:21 4 They make a very bold statement in there
00:09:23 5 that in a work product privilege situation there are two
00:09:25 6 requisite elements to raise the at issue waiver. One,
00:09:30 7 that a defense was raised that implicates it.

00:09:32 8 THE COURT: Right.

00:09:33 9 MR. NOVACK: And, two -- and this is what
00:09:34 10 they add, it's beyond the elements that we've put in our
00:09:37 11 case law -- that there must be a specific reference to
00:09:40 12 specific documents by the party claiming the
00:09:43 13 work-product privilege. They cite only two cases for
00:09:46 14 that, both by Magistrate Judge Schenkier, the Beneficial
00:09:50 15 Franchise case and the Quality Croutons case. Both of
00:09:53 16 those cases dealt with the attorney-client privilege,
00:09:57 17 not with the work product privilege.

00:09:58 18 We know that those privileges are different.
00:10:01 19 They're governed by separate standards. Attorney-client
00:10:05 20 privilege is governed by this law of the state of the
00:10:08 21 forum. The work product is federal law.

00:10:11 22 Judge Denlow's decision in Eagle which is
00:10:14 23 cited in -- I can't remember if we cited it or they
00:10:19 24 cited it, frankly --

00:10:19 25 THE COURT: Okay.

00:10:20 1 MR. NOVACK: -- in the earlier briefs points
00:10:21 2 out that the standards governing attorney-client
00:10:24 3 privilege and work-product privilege are different.

00:10:27 4 So the second element, well, it may well
00:10:29 5 apply to an attorney-client privilege. It has nothing
00:10:32 6 whatsoever to do with work-product privilege.

00:10:35 7 Secondly, the notion that they didn't raise
00:10:39 8 their good faith as a defense, Judge, I would say to you
00:10:43 9 that from cradle to grave they raised it every step of
00:10:48 10 the way. In response to the motion to dismiss they
00:10:51 11 said -- and they convinced your Honor, because you
00:10:53 12 denied our motion to dismiss, that we failed to present
00:10:57 13 evidence that plaintiff acted fraudulently or in bad
00:11:00 14 faith. Your Honor agreed and said it's not just
00:11:02 15 Spehar's conduct we have to look to; we have to look to
00:11:05 16 the trustee.

00:11:06 17 On reconsideration they said to your Honor
00:11:08 18 that if they filed the case with a good-faith belief
00:11:12 19 that the malpractice claims were meritorious, then the
00:11:14 20 case cannot be a fraud on the Court. They said the
00:11:18 21 critical element to defendants' fraud theory -- they're
00:11:23 22 interpreting our theory -- is not whether Spehar has a
00:11:27 23 financial interest in the case. According to the
00:11:28 24 plaintiff, it is whether the trustee knowingly filed
00:11:31 25 meritless or untrue claims. That's what we're trying to

00:11:34 1 get at.

00:11:34 2 And when your Honor made your bifurcation
00:11:37 3 ruling and granted us the discovery and you asked me
00:11:40 4 what I was going to do, and I said, Well, we'll take the
00:11:43 5 trustee's deposition, which we've noticed, we'll take
00:11:47 6 Spehar's deposition, which we've noticed, and I said we
00:11:49 7 may need discovery from the former shareholders and
00:11:52 8 officers. And your Honor said, Well, why do you need
00:11:54 9 that?

00:11:54 10 I said, Because they are -- We believe they
00:11:57 11 will testify that they were never -- this is from the
00:11:59 12 transcript, I'm quoting. I said this: That we believe
00:12:02 13 that they will testify that they were never contacted by
00:12:05 14 the trustee before he filed the complaint, that they
00:12:08 15 don't believe in this complaint, and had they been asked
00:12:11 16 by the trustee they would have told him so.

00:12:13 17 Your Honor's response was, Okay. And there
00:12:16 18 was no objection. Mr. Aufmann wasn't here; Mr. Joyce
00:12:20 19 was. There was no objection to that. It was clear to
00:12:22 20 everybody when your Honor ruled that one of the avenues
00:12:25 21 of discovery was what was the good faith --

00:12:28 22 THE COURT: Okay. I am not going down
00:12:31 23 another motion that wasn't filed. I'm dealing with the
00:12:34 24 protective order, and I'm going to read all of this, and
00:12:36 25 I'll be out in a few minutes. Okay?

00:27:24 1 (Recess taken.)

00:27:24 2 THE COURT: Okay. Gentlemen, I have
00:27:26 3 reviewed all of the papers now, which I'm sorry I didn't
00:27:29 4 have the reply brief in hand. It was filed -- I don't
00:27:34 5 know what time that it came in, but I have read it now,
00:27:37 6 and this is what I'm going to do.

00:27:39 7 It is true that my issue, I think, is
00:27:42 8 broader than the way the plaintiffs have narrowly
00:27:45 9 defined it. That being said, all of these
00:27:48 10 communications are going to start to percolate up as
00:27:51 11 potential privileged disputes. And as such I'm
00:27:55 12 extending this issue of discovery to March 3rd. I am
00:27:59 13 ordering that a privilege log be prepared for any
00:28:03 14 document that you assert privilege on and that that
00:28:06 15 privilege log be prepared and submitted to Judge Denlow,
00:28:11 16 who's going to review it, who is your magistrate judge
00:28:13 17 on this case, by January -- well, let's see.

00:28:19 18 If I give you discovery to March 3rd, I'll
00:28:25 19 have to give you 'til shortly thereafter. It should be
00:28:28 20 something that you're generating as you're doing
00:28:30 21 discovery. So I'm going to require that you give it to
00:28:33 22 Judge Denlow by March 10th, so one week after the close
00:28:37 23 of discovery. I don't think that is too short of a
00:28:40 24 period of time, because as requests are made they can be
00:28:43 25 brought to Judge Denlow's attention.

00:28:44 1 I'm referring any issues regarding the
00:28:48 2 discovery of privilege matters to Judge Denlow. And
00:28:51 3 then I will see you all again on March 19th, so strike
00:28:54 4 any other schedule, except this one, and we'll readdress
00:28:58 5 where we're headed with this issue on the 19th.

00:29:01 6 So move forward with your requests, and if
00:29:03 7 you believe that it's something that's privileged and
00:29:05 8 shouldn't be turned over, you're going to need to
00:29:08 9 address it with Judge Denlow.

00:29:09 10 MR. AUFMANN: Is March 19th a status date?

00:29:11 11 THE COURT: It is for me, not Judge Denlow.
00:29:13 12 And I'm going to give Judge Denlow a call right now and
00:29:17 13 explain the situation so he knows what's coming. Okay?

00:29:19 14 MR. NOVACK: Judge, could I ask one thing --

00:29:21 15 THE COURT: Yes.

00:29:21 16 MR. NOVACK: -- to be included in the order?

00:29:23 17 Because it sounds like what's going to
00:29:25 18 happen is Spehar, instead of producing it to us, it
00:29:27 19 sounds like it's going to be produced to the trustee.
00:29:30 20 And I just wonder if the order could require that Spehar
00:29:34 21 Bates stamp all the documents that it produces to the
00:29:37 22 trustee, keep a copy, so there's never --

00:29:40 23 THE COURT: I think that's a very helpful
00:29:42 24 idea, and that's something I've done in the past when I
00:29:45 25 was litigating and I think that's very helpful.

00:29:47 1 So as you give it to the trustee, it would
00:29:50 2 be Bates stamped so we know exactly what he is
00:29:52 3 reviewing, and then that set goes to the judge and the
00:29:55 4 judge reviews it. You should be fine with that.

00:29:58 5 MR. NOVACK: Well, it's actually --

00:30:00 6 MR. AUFMANN: Thank you.

00:30:00 7 MR. NOVACK: Spehar isn't here today. What
00:30:03 8 they're asking for is that instead of Spehar responding
00:30:06 9 to our subpoena -- I believe this is what they asked
00:30:08 10 for --

00:30:08 11 THE COURT: I know.

00:30:09 12 MR. NOVACK: -- he send it to them.

00:30:11 13 THE COURT: Right.

00:30:11 14 MR. NOVACK: So I'm asking Spehar --

00:30:13 15 THE COURT: Yes, that is fine.

00:30:17 16 MR. CARROLL: We understand. And we'll put
00:30:17 17 the Bates number of the documents being withheld on the
00:30:18 18 basis of privilege on the privilege log.

00:30:21 19 THE COURT: Exactly. That's the way it
00:30:23 20 should be. Okay. Thank you.

00:30:24 21 MR. NOVACK: Thank you, your Honor.

00:30:24 22 THE COURT: Thank you.

23 (Concluded at 10:36 a.m.)

24 - - -

25

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

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

April M. Metzler, RPR, CRR

Date

0	APPEARANCES [1] - 1:13 applies [2] - 4:23, 8:16 apply [1] - 11:5 April [2] - 1:22, 16:12 argue [1] - 10:1 argument [3] - 4:9, 6:19, 8:1 arguments [1] - 7:6 Arthur [2] - 1:15, 2:12 assert [1] - 13:14 asserted [1] - 8:10 asserting [2] - 8:25, 9:1 assertion [1] - 4:5 Associates [1] - 1:14 attention [1] - 13:25 Attorney [1] - 10:19 attorney [4] - 9:14, 10:16, 11:2, 11:5 attorney-client [3] - 10:16, 11:2, 11:5 Attorney-client [1] - 10:19 AUFMANN [16] - 2:11, 3:4, 4:8, 4:14, 4:22, 5:15, 5:24, 6:2, 6:17, 7:4, 7:14, 7:17, 7:19, 8:1, 14:10, 15:6 Aufmann [3] - 1:15, 2:12, 12:18 avenues [1] - 12:20	certify [1] - 16:7 challenged [1] - 5:1 chambers [1] - 4:18 Chicago [4] - 1:6, 1:16, 1:20, 1:23 CISZEWSKI [2] - 2:7, 2:8 Ciszewski [2] - 1:19, 2:8 cite [3] - 7:8, 10:13 cited [3] - 10:23, 10:24 claim [4] - 8:10, 8:15, 8:17, 8:24 claiming [1] - 10:12 claims [3] - 3:19, 11:19, 11:25 clear [1] - 12:19 CLERK [1] - 2:2 client [5] - 8:4, 10:16, 10:19, 11:2, 11:5 close [1] - 13:22 coming [1] - 14:13 Commenced [1] - 2:1 communication [2] - 8:19, 8:21 communications [1] - 13:10 complaint [2] - 12:14, 12:15 complete [2] - 2:22, 9:15 comply [1] - 5:4 Concluded [1] - 15:23 conduct [1] - 11:15 contacted [1] - 12:13 convinced [1] - 11:11 copy [1] - 14:22 Correct [1] - 3:4 correct [1] - 16:7 Counsel [1] - 4:7 counsel [2] - 2:23, 5:2 course [1] - 7:18 Court [2] - 1:22, 11:20 COURT [36] - 1:2, 2:6, 2:10, 2:14, 2:21, 3:1, 3:5, 3:9, 4:2, 4:7, 4:13, 4:15, 4:19, 5:14, 5:17, 6:1, 6:8, 6:23, 7:12, 7:15, 7:18, 7:20, 9:17, 9:25, 10:8, 10:25, 12:22, 13:2, 14:11, 14:15, 14:23, 15:11, 15:13, 15:15, 15:19, 15:22 Court's [1] - 5:5 cover [1] - 6:9 cradle [1] - 11:9 critical [1] - 11:21 Croutons [1] - 10:15 CRR [2] - 1:22, 16:12 cutoff [2] - 3:20, 5:5
06-5486 [1] - 2:2		
1		
1 [1] - 9:24 100 [1] - 1:19 10:06 [1] - 2:1 10:36 [1] - 15:23 10th [1] - 13:22 11 [1] - 1:16 13 [1] - 1:6 1500 [1] - 1:19 1600 [1] - 1:16 19th [3] - 14:3, 14:5, 14:10 1:06-cv-5486 [1] - 1:5		
2		
2007 [1] - 1:6 219 [1] - 1:23 2318-A [1] - 1:23 28 [1] - 3:20 28th [2] - 5:5, 5:12		
3	B	
312 [3] - 1:17, 1:20, 1:24 3rd [2] - 13:12, 13:18	bad [5] - 8:5, 8:6, 9:9, 9:10, 11:13 baseless [2] - 9:13, 9:18 basis [1] - 15:18 Bates [3] - 14:21, 15:2, 15:17 become [1] - 9:22 BEFORE [1] - 1:11 behalf [3] - 2:5, 2:12, 9:9 behavior [2] - 6:9, 6:14 belief [1] - 11:18 Beneficial [1] - 10:14 beyond [1] - 10:10 bifurcation [1] - 12:2 blanket [1] - 9:15 blow [1] - 8:14 bold [1] - 10:4 brief [3] - 9:24, 10:1, 13:4 briefs [1] - 11:1 broader [1] - 13:8 brought [1] - 13:25 Brown [1] - 2:3 BROWN [1] - 1:8	
4		
408-5154 [1] - 1:24 419-6900 [1] - 1:20		
6		
60603 [1] - 1:16 60604 [1] - 1:23 60606 [1] - 1:20 641-2600 [1] - 1:17		
A	C	D
a.m [2] - 2:1, 15:23 above-entitled [1] - 16:8 absolutely [1] - 3:12 accommodated [2] - 3:11, 3:12 According [1] - 11:23 accusation [3] - 8:4, 9:13, 9:18 accused [1] - 9:8 acted [1] - 11:13 add [1] - 10:10 address [6] - 4:11, 5:21, 6:18, 7:2, 8:2, 14:9 adopt [1] - 7:24 ago [1] - 4:10 agreed [1] - 11:14 ahead [3] - 3:9, 4:21, 10:1 al [1] - 1:8 allowed [1] - 6:4 apologize [1] - 4:16	cake [1] - 8:22 California [3] - 6:6, 6:20, 7:8 cannot [2] - 8:20, 11:20 Carroll [2] - 1:15, 2:12 CARROLL [2] - 4:16, 15:16 case [8] - 8:12, 10:11, 10:15, 11:18, 11:20, 11:23, 13:17 Case [1] - 1:5 cases [2] - 10:13, 10:16 certainly [1] - 5:8	Date [1] - 16:12 date [5] - 5:7, 5:12, 8:16, 14:10 dates [1] - 2:25 DAVID [1] - 1:5 days [1] - 4:10 dealing [1] - 12:23 dealt [1] - 10:16 Dearborn [1] - 1:23 December [1] - 1:6 decision [2] - 6:6, 10:22 default [3] - 6:7, 6:21, 7:7

defendants ^[4] - 2:5, 2:9, 4:9, 6:15 Defendants ^[2] - 1:9, 1:18 defendants' ^[1] - 11:21 defense ^[3] - 8:25, 10:7, 11:8 defined ^[2] - 8:11, 13:9 definite ^[1] - 6:2 delay ^[1] - 7:25 deliver ^[1] - 4:18 demonstrated ^[1] - 7:10 denied ^[2] - 9:13, 11:12 Denlow ^[6] - 13:15, 13:22, 14:2, 14:9, 14:11, 14:12 Denlow's ^[2] - 10:22, 13:25 deposition ^[3] - 2:25, 12:5, 12:6 different ^[2] - 10:18, 11:3 difficult ^[1] - 5:4 directed ^[1] - 6:5 discovery ^[18] - 2:19, 2:22, 2:24, 5:5, 6:4, 7:1, 7:12, 7:25, 8:16, 9:19, 12:3, 12:7, 12:21, 13:12, 13:18, 13:21, 13:23, 14:2 dismiss ^[3] - 6:13, 11:10, 11:12 disputes ^[1] - 13:11 DISTRICT ^[3] - 1:2, 1:2, 1:12 DIVISION ^[1] - 1:3 doctrine ^[5] - 4:3, 4:23, 8:10, 9:6, 9:16 document ^[1] - 13:14 documents ^[5] - 3:15, 8:8, 10:12, 14:21, 15:17 done ^[4] - 7:5, 8:23, 9:11, 14:24 down ^[1] - 12:22	F faced ^[1] - 3:19 fact ^[1] - 9:11 failed ^[1] - 11:12 failure ^[1] - 6:13 Fair ^[1] - 6:23 fair ^[1] - 5:10 fairness ^[1] - 5:1 faith ^[10] - 8:5, 8:6, 9:9, 9:10, 9:11, 11:8, 11:14, 11:18, 12:21 federal ^[1] - 10:21 few ^[2] - 9:25, 12:25 file ^[2] - 6:6, 8:6 filed ^[10] - 4:10, 4:14, 8:5, 8:6, 11:18, 11:24, 12:14, 12:23, 13:4 filing ^[2] - 5:21, 6:11 financial ^[1] - 11:23 fine ^[3] - 6:23, 15:4, 15:15 first ^[4] - 3:15, 7:1, 7:21, 8:15 foregoing ^[1] - 16:7 former ^[1] - 12:7 forth ^[2] - 7:2, 7:3 forum ^[1] - 10:21 forward ^[2] - 6:4, 14:6 Franchise ^[1] - 10:15 frankly ^[1] - 10:24 fraud ^[2] - 11:20, 11:21 fraudulently ^[1] - 11:13 front ^[1] - 5:16 fuse ^[1] - 2:19	I idea ^[1] - 14:24 identifiable ^[1] - 8:11 IL ^[3] - 1:16, 1:20, 1:23 ILLINOIS ^[1] - 1:2 Illinois ^[1] - 1:6 impending ^[1] - 3:20 implicates ^[1] - 10:7 included ^[1] - 14:16 instead ^[2] - 14:18, 15:8 instruct ^[1] - 4:17 intent ^[1] - 6:14 interest ^[1] - 11:23 interim ^[1] - 3:14 interpreting ^[1] - 11:22 intervening ^[2] - 3:17, 3:18 invoke ^[1] - 8:9 issue ^[23] - 4:1, 4:3, 4:9, 4:12, 4:23, 5:2, 5:15, 5:19, 6:5, 6:10, 7:21, 7:22, 8:2, 8:7, 8:10, 8:19, 9:6, 9:16, 10:6, 13:7, 13:12, 14:5 issues ^[4] - 3:23, 8:3, 14:1 it'll ^[1] - 9:22
	E Eagle ^[1] - 10:22 EASTERN ^[1] - 1:3 easy ^[1] - 7:7 eat ^[1] - 8:22 Edward ^[1] - 1:14 effect ^[1] - 3:8 either ^[1] - 8:24 element ^[2] - 11:4, 11:21 elements ^[2] - 10:6, 10:10 end ^[2] - 2:20, 7:20 engaged ^[1] - 5:13 entirely ^[2] - 4:25, 5:10 entitled ^[1] - 16:8 et ^[1] - 1:8 event ^[1] - 4:22 evidence ^[2] - 9:10, 11:13 Exactly ^[1] - 15:19 exactly ^[1] - 15:2 example ^[1] - 8:12 except ^[1] - 14:4 explain ^[1] - 14:13 extend ^[2] - 2:25, 3:6 extending ^[3] - 5:7, 5:12, 13:12 extensions ^[2] - 2:24, 3:11	G generating ^[1] - 13:20 Gentlemen ^[1] - 13:2 good-faith ^[1] - 11:18 governed ^[2] - 10:19, 10:20 governing ^[1] - 11:2 granted ^[1] - 12:3 grave ^[1] - 11:9 Grochocinski ^[1] - 2:2 GROCHOCINSKI ^[1] - 1:5 guy ^[1] - 9:9
	H hand ^[1] - 13:4 hands ^[5] - 5:22, 6:4, 6:9, 6:16, 6:19 headed ^[1] - 14:5 Hearing ^[1] - 1:7 HEARING ^[1] - 1:11 helpful ^[2] - 14:23, 14:25 Honor ^[14] - 2:4, 2:7, 2:11, 2:17, 5:16, 5:25, 6:3, 11:11, 11:14, 11:17, 12:2, 12:8, 12:20, 15:21 Honor's ^[2] - 5:6, 12:17 HONORABLE ^[1] - 1:11	K keep ^[1] - 14:22 KENDALL ^[1] - 1:11 knowingly ^[1] - 11:24 knows ^[2] - 9:22, 14:13
	M Macey ^[1] - 1:18	L LaSalle ^[1] - 1:16 law ^[4] - 7:8, 10:11, 10:20, 10:21 lawsuit ^[3] - 5:21, 6:11, 8:5 lawyer ^[4] - 8:15, 8:18, 8:20, 8:21 leading ^[1] - 6:12 limitations ^[1] - 8:14 litigating ^[1] - 14:25 LLP ^[1] - 1:8 log ^[3] - 13:13, 13:15, 15:18 look ^[3] - 6:24, 11:15 looking ^[3] - 3:1, 3:3, 3:21
		M

<p>magistrate ^[1] - 13:16 Magistrate ^[1] - 10:14 malpractice ^[1] - 11:19 March ^[5] - 13:12, 13:18, 13:22, 14:3, 14:10 material ^[3] - 8:12, 9:2, 9:4 matter ^[1] - 16:9 matters ^[1] - 14:2 MAW ^[1] - 1:8 Mayer ^[1] - 2:3 MAYER ^[1] - 1:8 mean ^[1] - 6:12 Meaning ^[1] - 7:12 mechanical ^[1] - 1:25 meritless ^[1] - 11:25 meritorious ^[1] - 11:19 met ^[2] - 7:9, 7:11 Metzler ^[2] - 1:22, 16:12 might ^[1] - 5:5 minutes ^[2] - 9:25, 12:25 morning ^[6] - 2:4, 2:6, 2:7, 2:10, 2:11, 2:14 Motion ^[1] - 1:7 motion ^[10] - 2:15, 3:2, 3:5, 3:13, 3:17, 3:18, 6:6, 11:10, 11:12, 12:23 MOTION ^[1] - 1:11 motivation ^[1] - 6:11 move ^[2] - 6:13, 14:6 MR ^[36] - 2:4, 2:7, 2:11, 2:17, 2:22, 3:4, 3:7, 3:10, 4:3, 4:8, 4:14, 4:16, 4:22, 5:15, 5:24, 6:2, 6:17, 7:4, 7:14, 7:17, 7:19, 8:1, 9:21, 10:2, 10:9, 11:1, 14:10, 14:14, 14:16, 15:5, 15:6, 15:7, 15:12, 15:14, 15:16, 15:21 must ^[3] - 7:9, 8:10, 10:11</p>	<p>objection ^[4] - 2:18, 5:11, 12:18, 12:19 observation ^[1] - 3:25 occurred ^[1] - 3:22 odd ^[1] - 7:2 OF ^[2] - 1:2, 1:11 officers ^[1] - 12:8 old ^[1] - 8:22 one ^[9] - 3:24, 4:25, 6:17, 7:5, 10:2, 12:20, 13:22, 14:4, 14:14 One ^[1] - 10:6 ones ^[2] - 5:8, 5:10 order ^[10] - 2:16, 3:2, 4:11, 7:23, 7:24, 8:9, 12:24, 14:16, 14:20 ordered ^[1] - 9:19 ordering ^[1] - 13:13 otherwise ^[2] - 6:25, 9:18 outset ^[1] - 9:23 overarching ^[1] - 3:25</p>	<p>produce ^[1] - 3:15 produced ^[2] - 1:25, 14:19 produces ^[1] - 14:21 producing ^[1] - 14:18 product ^[14] - 3:18, 3:24, 4:4, 8:3, 8:7, 9:2, 9:4, 9:14, 10:5, 10:13, 10:17, 10:21, 11:3, 11:6 proposing ^[2] - 5:9, 5:10 protective ^[5] - 2:16, 3:2, 7:23, 12:24 provided ^[1] - 7:8 pull ^[1] - 4:20 put ^[9] - 4:1, 5:3, 5:20, 7:24, 8:7, 8:9, 8:19, 10:10, 15:16</p>
	P	Q
	<p>papers ^[1] - 13:3 particular ^[1] - 7:1 parties ^[1] - 3:10 party ^[1] - 10:12 past ^[1] - 14:24 path ^[1] - 7:1 pattern ^[1] - 6:14 percolate ^[1] - 13:10 period ^[5] - 2:19, 3:14, 3:16, 6:10, 13:24 permitted ^[1] - 6:25 piece ^[2] - 9:2, 9:4 place ^[1] - 5:4 Plaintiff ^[2] - 1:6, 1:14 plaintiff ^[4] - 2:13, 8:13, 11:13, 11:24 plaintiff's ^[1] - 2:15 plaintiffs ^[1] - 13:8 play ^[2] - 5:21, 7:24 Plaza ^[1] - 1:19 point ^[1] - 4:24 points ^[2] - 5:25, 11:1 position ^[1] - 9:12 possible ^[1] - 4:4 possibly ^[1] - 3:18 potential ^[1] - 13:11 potentially ^[2] - 5:7, 6:14 premise ^[2] - 6:19, 6:21 prepared ^[2] - 13:13, 13:15 present ^[1] - 11:12 privilege ^[19] - 3:19, 4:4, 8:3, 8:7, 10:5, 10:13, 10:16, 10:17, 10:20, 11:3, 11:5, 11:6, 13:13, 13:14, 13:15, 14:2, 15:18 privileged ^[4] - 8:11, 8:21, 13:11, 14:7 privileges ^[1] - 10:18 procedure ^[6] - 4:24, 5:2, 5:9, 5:11, 5:13, 7:25 procedure's ^[1] - 5:3 proceedings ^[1] - 16:8 Proceedings ^[1] - 1:25</p>	R
N		<p>raise ^[2] - 10:6, 11:7 raised ^[3] - 4:9, 10:7, 11:9 raising ^[1] - 5:3 read ^[3] - 10:1, 12:24, 13:5 readdress ^[1] - 14:4 really ^[5] - 5:3, 5:24, 6:10, 7:21 reason ^[1] - 2:18 reasonable ^[1] - 4:25 reasonableness ^[1] - 5:1 Recess ^[1] - 13:1 reconsideration ^[1] - 11:17 record ^[1] - 16:8 recorded ^[1] - 1:25 reference ^[2] - 9:3, 10:11 referring ^[1] - 14:1 regarding ^[1] - 14:1 reliance ^[1] - 8:11 relied ^[1] - 9:3 relying ^[3] - 8:12, 9:2, 9:5 remember ^[1] - 10:23 reply ^[10] - 4:11, 4:13, 5:18, 6:18, 7:6, 7:14, 7:15, 9:24, 10:1, 13:4 Reporter ^[1] - 1:22 requests ^[2] - 13:24, 14:6 require ^[2] - 13:21, 14:20 requirements ^[2] - 7:9, 7:11 requisite ^[1] - 10:6 reserving ^[1] - 3:24 respond ^[1] - 2:24 responded ^[2] - 4:6 responding ^[1] - 15:8 response ^[7] - 4:10, 5:20, 7:22, 8:4, 9:20, 11:10, 12:17 result ^[1] - 7:21 review ^[1] - 13:16 reviewed ^[1] - 13:3 reviewing ^[1] - 15:3 reviews ^[1] - 15:4</p>
O		
<p>object ^[1] - 2:15 objected ^[1] - 3:20</p>		

ridiculous ^[1] - 9:10 Riverside ^[1] - 1:19 Rm ^[1] - 1:23 Robert ^[2] - 1:15, 2:12 ROWE ^[1] - 1:8 RPR ^[2] - 1:22, 16:12 rule ^[1] - 8:16 ruled ^[1] - 12:20 ruling ^[1] - 12:3 run ^[1] - 8:17 running ^[1] - 8:18	such-and-such ^[1] - 8:16 suddenly ^[1] - 9:14 suggested ^[1] - 3:12 suggesting ^[2] - 4:25, 5:2 suit ^[1] - 6:13 support ^[1] - 8:24	whereas ^[1] - 7:6 whereby ^[1] - 3:14 whole ^[3] - 6:9, 6:18, 6:21 withheld ^[1] - 15:17 wonder ^[1] - 14:20 work-product ^[7] - 3:18, 4:4, 8:3, 8:7, 10:13, 11:3, 11:6 works ^[1] - 9:16
S	T	Y
	terms ^[1] - 4:8 testify ^[2] - 12:11, 12:13 THE ^[37] - 1:11, 2:2, 2:6, 2:10, 2:14, 2:21, 3:1, 3:5, 3:9, 4:2, 4:7, 4:13, 4:15, 4:19, 5:14, 5:17, 6:1, 6:8, 6:23, 7:12, 7:15, 7:18, 7:20, 9:17, 9:25, 10:8, 10:25, 12:22, 13:2, 14:11, 14:15, 14:23, 15:11, 15:13, 15:15, 15:19, 15:22 theory ^[3] - 6:15, 11:21, 11:22 thereafter ^[1] - 13:19 therefore ^[1] - 8:17 they've ^[1] - 4:10 three ^[1] - 9:22 throughout ^[1] - 6:9 today ^[2] - 3:3, 15:7 today's ^[1] - 7:22 TRANSCRIPT ^[1] - 1:11 transcript ^[3] - 1:25, 12:12, 16:7 tried ^[1] - 6:18 true ^[1] - 13:7 trumps ^[1] - 4:4 trustee ^[13] - 2:23, 3:16, 6:20, 8:23, 8:24, 11:16, 11:24, 12:14, 12:16, 14:19, 14:22, 15:1 trustee's ^[2] - 6:6, 12:5 try ^[1] - 6:7 trying ^[1] - 11:25 turned ^[1] - 14:8 two ^[7] - 4:10, 5:24, 9:21, 9:22, 10:5, 10:9, 10:13	yesterday ^[1] - 4:14
schedule ^[1] - 14:4 Schenkier ^[1] - 10:14 second ^[1] - 11:4 Secondly ^[1] - 11:7 see ^[4] - 8:21, 9:6, 13:17, 14:3 send ^[1] - 15:12 separate ^[1] - 10:19 set ^[3] - 7:2, 7:3, 15:3 shareholders ^[1] - 12:7 short ^[2] - 2:19, 13:23 shortcut ^[1] - 4:5 shortly ^[1] - 13:19 show ^[1] - 6:14 simply ^[1] - 8:3 sit ^[1] - 8:20 situation ^[5] - 3:21, 5:22, 8:13, 10:5, 14:13 sorry ^[1] - 13:3 sounds ^[2] - 14:17, 14:19 South ^[1] - 1:23 specific ^[7] - 8:11, 8:19, 9:2, 9:3, 9:4, 10:11, 10:12 Spehar ^[7] - 3:15, 11:22, 14:18, 14:20, 15:7, 15:8, 15:14 Spehar's ^[3] - 2:23, 11:15, 12:6 St ^[2] - 1:16, 1:23 stamp ^[1] - 14:21 stamped ^[1] - 15:2 standards ^[2] - 10:19, 11:2 start ^[2] - 8:18, 13:10 started ^[1] - 6:19 state ^[1] - 10:20 statement ^[1] - 10:4 STATES ^[2] - 1:2, 1:12 status ^[1] - 14:10 statute ^[2] - 7:9, 8:14 Ste ^[2] - 1:16, 1:19 stenography ^[1] - 1:25 step ^[1] - 11:9 Stephen ^[1] - 1:18 steps ^[1] - 6:12 Steve ^[1] - 2:5 Steven ^[2] - 1:19, 2:8 strike ^[1] - 14:3 submitted ^[1] - 13:15 subpoena ^[1] - 15:9	U	
	unclean ^[4] - 5:22, 6:4, 6:15, 6:19 Unclean ^[1] - 6:8 Understood ^[1] - 7:4 UNITED ^[2] - 1:2, 1:12 untrue ^[1] - 11:25 up ^[3] - 3:3, 6:12, 13:10	
	V	
	vacate ^[2] - 6:7, 7:7 vacated ^[1] - 6:21 versus ^[1] - 2:2 VIRGINIA ^[1] - 1:11	
	W	
	waiver ^[7] - 3:23, 4:3, 4:9, 4:23, 9:6, 9:15, 10:6 week ^[1] - 13:22 whatsoever ^[2] - 4:23, 11:6	