

# **EXHIBIT D**

**From:** Golob, Barry [mailto:BGolob@duanemorris.com]  
**Sent:** Tuesday, April 10, 2007 5:23 PM  
**To:** Strand, Peter E. (SHB); Buresh, Eric A. (SHB); Brown, Joshua R. (SHB)  
**Cc:** McPhail, Donald R.; McPherson, Patrick D.; Baird, John M.; Finucane, Ayline; Barnett, Sarah B.; Lahey, Helesa K.; Muldoon, Patrick C.; Russell, Walt (SHB); DeBruicker, Lauren E.; Golob, Barry  
**Subject:** RE: Tribolet Deposition

Peter:

I informed Adam shortly after receiving your email (while on vacation) that I was not available on either of those dates you offered for Mr. Sims's deposition.


Moreover, I don't know where these unfounded accusations get you. We have a conference with the Court this Friday, in three days. As you know, we have asked for a 6 month extension of discovery to work with your firm on search terms in order to assist your firm in searching for and locating unquestionably responsive documents that we have been requesting for nearly one year. Given the enormity of that task, as well as the likelihood that relevant documents will be produced that may affect Mr. Sims' report, we see no point in moving forward at this time.

If the Court rejects our request and maintains the present schedule, we would like to take Mr. Sims's deposition in early May. Please provide dates that he is available. As to Dr. Strickland's deposition, we will likewise confront that issue after the hearing on Friday.

With respect to Mr. Eisen and Mr. Tribolet's depositions, we have just confirmed that Mr. Eisen will be here tomorrow and available at the conclusion of Mr. Mulligan's deposition. As to Mr. Tribolet, we will obtain available dates once he is feeling better.

Finally, your threats are ludicrous. Maybe before making such threats you should consult your co-counsel on the number of depositions that have been rescheduled by your firm. Given that this is not the first time that communications between our firm and other members of your firm do not seem to (allegedly) flow to you, I suggest that in the future, before making accusations of dilatory conduct, you communicate internally.

Barry

 Duane Morris	
<b>Barry Golob</b> Partner	
Duane Morris LLP 1667 K Street, N.W., Suite 700 Washington, DC 20006-1608 P: 202.776.5236 F: 202.776.7801	
	<ul style="list-style-type: none"><li>● BIO</li><li>● E-MAIL</li><li>● WEB SITE</li><li>● VCARD</li></ul>

4/12/2007

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**From:** Strand, Peter E. (SHB) [mailto:PSTRAND@shb.com]  
**Sent:** Tuesday, April 10, 2007 4:30 PM  
**To:** Golob, Barry; Buresh, Eric A. (SHB); Brown, Joshua R. (SHB)  
**Cc:** McPhail, Donald R.; McPherson, Patrick D.; Baird, John M.; Finucane, Aylene; Barnett, Sarah B.; Lahey, Helesa K.; Muldoon, Patrick C.; Russell, Walt (SHB)  
**Subject:** RE: Tribolet Deposition

Barry,

We unequivocally reject your suggestion that we "wait to see what happens at the conference" on Friday before finalizing a deposition schedule for Mr. Sims and Dr. Strickland. I have asked you repeatedly for more than 10 days to confirm which of the two dates (April 24 or 25) on which you would like to take Mr. Sims' deposition. It appears you have intentionally delayed making a response, in the hope of pushing back the entire schedule. Mr. Sims remains available on either April 24 and 25.

Your decisions to unilaterally withdraw Mr. Eisen and Mr. Tribolet from the list of witnesses to be deposed this week is similarly unacceptable. We reserve all rights with regard to our right to take non-appearance depositions and/or seek sanctions based on your untimely withdrawal of these witnesses.

Peter

Peter E. Strand  
Shook, Hardy & Bacon, LLP  
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Washington, D.C. 20005  
202.639.5617

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**From:** Golob, Barry [mailto:BGolob@duanemorris.com]  
**Sent:** Tuesday, April 10, 2007 4:13 PM  
**To:** Strand, Peter E. (SHB); Buresh, Eric A. (SHB); Brown, Joshua R. (SHB)  
**Cc:** McPhail, Donald R.; McPherson, Patrick D.; Baird, John M.; Finucane, Aylene; Barnett, Sarah B.; Lahey, Helesa K.; Muldoon, Patrick C.  
**Subject:** RE: Tribolet Deposition

Peter:

We will be ready at 9:00 to start with Mr. Mulligan.


At this point we are also unsure of Mr. Eisen's availability this week. Mr. Eisen has a personal issue and cannot make it on Thursday. We are checking to see if he will be available tomorrow afternoon at the conclusion of Mr. Mulligan's deposition, and will advise as soon as we hear. At this point, given that he is not in the office, we do not think that his deposition will go forward this week.

We are making every effort to find alternative dates for Mr. Tribolet and Eisen.

4/12/2007

As to Mr. Sims, we would like to wait and see what happens at the conference with the Court this Friday before we finalize a schedule for Mr. Sim's deposition. In the alternative, please inquire about dates in early May.

Barry



**Duane Morris**

**Barry Golob**  
Partner

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**From:** Strand, Peter E. (SHB) [mailto:PSTRAND@shb.com]

**Sent:** Tuesday, April 10, 2007 12:24 PM

**To:** Golob, Barry; Buresh, Eric A. (SHB); Brown, Joshua R. (SHB)

**Cc:** McPhail, Donald R.; McPherson, Patrick D.; Baird, John M.; Finucane, Ayline; Barnett, Sarah B.; Lahey, Helesa K.; Muldoon, Patrick C.

**Subject:** RE: Tribolet Deposition

Barry,

Please let me know Mr. Tribolet's alternate dates at your earliest convenience. Also, I need to know about tomorrow's arrangements ASAP. We will be ready to go with Mulligan at 9:00 AM.

Also, I need to hear from you regarding your desires on proceeding with Mr. Sims deposition on either April 24 or 25.

Peter

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**From:** Golob, Barry [mailto:BGolob@duanemorris.com]

**Sent:** Tuesday, April 10, 2007 9:51 AM

**To:** Strand, Peter E. (SHB); Buresh, Eric A. (SHB)

**Cc:** McPhail, Donald R.; McPherson, Patrick D.; Baird, John M.; Finucane, Ayline; Barnett, Sarah B.; Lahey, Helesa K.; Muldoon, Patrick C.

**Subject:** Tribolet Deposition

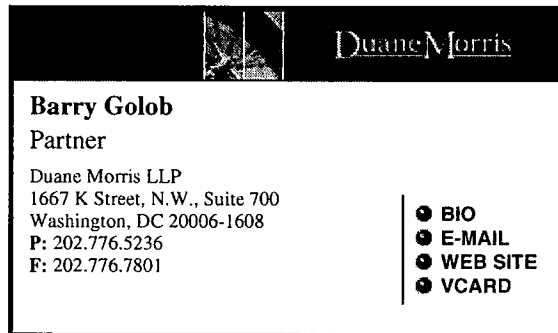
Gentlemen:

I have just learned that Mr. Tribolet became ill with the flu last evening and is still ill today. We will thus need to reschedule his deposition. We will let you know when he will be available, but will make every attempt to have it before the end of the month.

4/12/2007

In addition, Mr. McPhail was planning to take Mr. Kaplan's deposition and has developed a sinus infection in KC. We would like to reschedule his deposition as Mr. McPhail will not be able to travel today. Please provide us with some alternative dates.

Thanks  
Barry



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