

-----Original Message-----

From: Jon Katz [mailto:jon@markskatz.com]
Sent: Friday, February 16, 2007 8:26 AM
To: 'ssummers@barley.com'
Cc: 'rose@markskatz.com'; 'Jon Katz'
Subject: Re: Agreement for Fred Phelps deposition.

Dear Sean- Thanks for your attached message.

This has been an unusual week here both with various calendar obligations and the horrendous weather, which I imagine that you have had at least as bad. Consequently, I suggest that we work beyond today to hammer out this matter before seeking court intervention. (In that regard, I will plan to reply by Monday to your proposed confidentiality agreement, and to your corporate designee deposition notice).

As to the agreement for deposing Fred Phelps. your last proposal is attached, as well as the last proposal I sent you. Judge Bennett's November 28 letter to counsel says he hopes the parties will be able to work out the deposition of Fred Phelps without needing court intervention. During our last conference call with the judge, the parties orally stated the conditions that would be acceptable for them to depose Mr. Phelps in Kansas.

The attached last draft agreement I sent you fulfills all those orally stated conditions, I believe, except for not adding a signature line for Phelps Chartered, which I would agree to add and to deliver to Phelps Chartered.

Consequently, I suggest that we both take the extra effort to resolve this matter, which, in the long run will be less time consuming than litigating the matter and will avoid the Court from needing to take its time on the matter.

I address your attached proposed CIRCLED agreement paragraph by paragraph, below, because you did not insist on including the non-circled paragraphs. I suggest that we re-draft the agreement to cover what is agreed to below; also, feel free to insert any portions of Defendants' attached proposed document:

- Defendants agree to keep paragraphs 1, 3, 11, 12 and 13.
- For paragraph 2, Defendants agree to amend it to: "Defendant Phelps, by and through counsel, represented to the Court that he is unable to travel to Maryland for a deposition."

[Comment: Just as Plaintiff has sought confidentiality from the public about his health, Defendant Phelps seeks the same].

- Paragraph 5, 14, 16, 22, 23 and 24 are not agreed to. Defendants are without sufficient information to know what business Plaintiff and his counsel have done or not done in Kansas, so it is not reasonable for Defendants to agree about the extent of Plaintiff's and his counsels' activities in Kansas. Nor is it reasonable to bind anyone so broadly about the future. The language of these paragraphs appear to go beyond what was finally hammered out over the phone with Judge Bennett, except that Defendants' attached proposed stipulation already would bind Phelps Chartered upon Phelps Chartered's signature of a stipulated agreement.

- Paragraph six duplicates paragraphs 2 and 3, so is not agreed to.

Consequently, I believe that the parties' understanding on the phone last time with Judge Bennett is covered by the above-listed agreed paragraphs, together with any paragraphs you wish to incorporate from Defendants' attached proposal, together with a signature by Phelps Chartered binding it and its attorneys.

Therefore, Fred Phelps's deposition should proceed in Topeka on the scheduled date, and there is no need to seek court intervention on this matter.

Thanks. Jon

P.S. I note, by the way, that your attached message was sent at the close of business this past Monday, when I had provided you a proposed agreement regarding Fred Phelps's deposition long before that. Nevertheless, I look forward to resolving this matter.

----- Forwarded message from ssummers@barley.com -----
Date: Mon, 12 Feb 2007 16:59:51 -0500
From: "Summers, Sean E." <ssummers@barley.com>
Reply-To: "Summers, Sean E." <ssummers@barley.com>
Subject: Snyder v Phelps et al.
To: Jon Katz <jon@markskatz.com>

Jon,
Attached is the agreement concerning discovery in Kansas. I have circled the numbers that are non-negotiable. At this point, I just need to know if you and Phelps Chartered will agree to be bound by the circled terms. I don't want to negotiate any further. Please speak with Mr. Phelps and someone at Phelps Chartered and let me know. If we do not have a signed agreement by this Friday, I will request that Mr. Phelps be deposed in Maryland. Please let me know. Sean

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