

EXHIBIT D

AMERICAN FREEDOM DEFENSE INITIATIVE, ET
AL v. SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION, ET AL

ANTHONY CHUBB

May 21, 2013

Prepared for you by



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1 don't understand, I'm from the Boston area, every now
2 and then I cut words off at the end, and I tend to
3 speak quickly, so I apologize ahead of time to our
4 court reporter. So I want to make sure you fully
5 understand my question before you answer, sir.
6 **A. Understood.**
7 Q. If you need a break at all this morning, let me know.
8 We will certainly do that. This is not enhanced
9 interrogation by any stretch, so if you need a break,
10 we will certainly do that. What I typically do is
11 probably after about 50 minutes I tend to take a 10
12 minute break, that's usually how it works out, but
13 again, if you need a break, let me know. The only
14 caveat being that if we are in the middle of a
15 question and answer, I would ask that you finish your
16 answer to the question before we take a break, okay?
17 **A. Understood.**
18 Q. Now, is there any reason as you are sitting here today
19 why it would be difficult for you to fully understand
20 and answer my questions, meaning are you under any
21 doctor's care, do you have any personal issues, and I
22 don't need to know the details, I just want to know if
23 there is anything that might effect your ability to
24 fully understand and answer my questions this morning.
25 **A. No.**

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1 Q. In preparation for this deposition, did you review any
2 documents that might help you to recall facts related
3 to the issues in this case?
4 **A. Yes.**
5 Q. Do you recall what those documents were that you
6 reviewed?
7 **A. I reviewed the document production that SMART has**
8 **given to the plaintiffs.**
9 MR. HILDEBRANDT: Including the CBS stuff
10 that we gave to you yesterday that came up in his
11 review.
12 **A. And various other internal memorandums and documents**
13 **related to the case.**
14 BY MR. MUISE:
15 Q. Do you recall any specifics of what these internal
16 memoranda and documents related to the case were?
17 **A. I really -- no, I couldn't say.**
18 Q. Were they e-mails amongst individuals that work for
19 SMART?
20 **A. Not beyond those which were produced in the discovery.**
21 Q. Was there a document that was created regarding the
22 application of the SMART policy to the advertisement
23 that's at issue in this case?
24 **A. Any such document would be privileged if there was a**
25 **review of it.**

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1 Q. But does such a document exist?
2 **A. I don't believe so. Actually, no.**
3 Q. Anything you can recall about any other documents you
4 may have reviewed that are separate or distinct from
5 the documents that were provided in the production,
6 including the document that was produced yesterday?
7 **A. I don't believe so.**
8 Q. Did you discuss your deposition this morning with
9 anyone other than counsel?
10 **A. No.**
11 Q. I'm handing you what has been marked as Deposition
12 Exhibit Number 1. Have you seen this document prior
13 to today?
14 **A. Yes, I have.**
15 Q. **And do you understand that this document is the**
16 **deposition notice directed to defendant SMART, which**
17 **is Suburban Mobility Authority For Regional**
18 **Transportation, pursuant to rule 30 (b)(6) of the**
19 **Federal Rules of Civil Procedure?**
20 **A. Yes, I do.**
21 Q. And pursuant to this deposition notice, you have been
22 identified by -- and let me just back up.
23 Is it okay with you, I will be using the
24 acronym SMART, S-M-A-R-T, to refer to defendants
25 Suburban Mobility Authority for Regional

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1 Transportation, is that okay with you?
2 **A. Understood.**
3 Q. And I'm sure our court reporter will appreciate that
4 as well.
5 **So pursuant to this notice you have been**
6 **designated as the witness to testify on behalf of**
7 **defendant SMART; is that your understanding?**
8 **A. Yes.**
9 Q. And if you look at page 2 and 3, there are subject
10 matter that have been identified in this deposition
11 notice, again the numbers are 1 through 6 paragraphs,
12 do you see those, sir?
13 **A. Yes.**
14 Q. And are you prepared to testify on behalf of those
15 matters on behalf of SMART this morning?
16 **A. Yes.**
17 Q. And so I just want to be clear, so for purposes of
18 your answers in this deposition, those answers are the
19 answers of SMART, do you understand that?
20 MR. HILDEBRANDT: I'm going to object to
21 the question. It assumes that all of your questions
22 are going to be properly asked and properly
23 configured. To the extent that you ask him about his
24 personal opinions, you may receive personal opinions.
25 To the extent that your questions are directed to

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1 advertiser. CBS then will, if it believes that there
2 is a potential violation of section 5.07, it will give
3 a copy of the advertising to Beth Gibbons or the
4 person in that role obviously, and Beth then will seek
5 advice internally as necessary to make any final
6 determination as to violations of section 5.07.

7 Q. Okay. If there is a determination that it violates
8 section 5.07, is there a process or procedure that
9 SMART employs to notify the advertiser?

10 A. Generally, although there could be exceptions, Beth
11 Gibbons will then go back to CBS to tell them to
12 notify the advertiser that their advertisement has
13 been rejected.

14 Q. Is it the policy or practice of SMART to give a reason
15 as to why the advertisement was rejected?

16 A. Yes.

17 Q. Would they specifically cite to section 5.07 if it was
18 a content based issue?

19 A. They would -- no, not necessarily. They would say --
20 I mean in a vague sense, yes. They wouldn't
21 necessarily say section 5.07, but they would say it's
22 against SMART's content policy.

23 Q. Is it the practice to explain what part of the content
24 policy the particular advertisement violated?

25 A. No.

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1 Q. And I believe you testified previously that in the
2 sequence that you have described, Beth Gibbons, if she
3 based on her determination concluded that it violated
4 the content restriction, she could then tell Mr.
5 Hawkins that the advertisement has been rejected
6 without any further, seeking any further advice; is
7 that right?

8 A. That's correct.

9 Q. And in some cases she may seek further advice; is that
10 right?

11 A. Correct.

12 Q. Who are the other officers or persons to whom she
13 would seek advice?

14 A. Generally the office of the general counsel, the
15 general manager, and other individuals within
16 administration potentially if the ad is of a certain
17 nature that it would impact -- that they would have
18 some technical expertise in it.

19 Q. For example, what would be an example of that?

20 A. It would be hard to come up with one. I was thinking
21 SMART has a drug and alcohol compliance person that
22 may have specialized knowledge in that area if it was
23 something related to drugs or alcohol potentially, or
24 our deputy general manager of administration has also
25 been sought generally if more opinions are needed.

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1 Q. Is the procedure for reviewing beyond Beth Gibbons'
2 determination, is there -- is it set forth in any
3 rules, guidelines or regulations as to what the
4 procedure will be employed if Beth Gibbons has to go
5 beyond her own determination?

6 A. No. It's fairly consistent, though.

7 Q. So you have the office of the general counsel, the
8 general manager and perhaps other individuals?

9 A. Well, first the marketing department or the external
10 affairs and communications department, which is Beth
11 Gibbons, the office of the general counsel, and the
12 general manager is the standard process.

13 Q. So marketing department, and who is it after that?

14 A. The office of the general counsel, and the general
15 manager's office.

16 Q. Does it have to go to all of those or can at any point
17 somebody make a determination that it's either good or
18 it fails?

19 A. At any point someone could make a determination if
20 they thought that it was clear-cut and didn't need to
21 be escalated further, they could make a determination
22 and the decision would be made.

23 Q. And that's a decision whether to run it or to reject
24 it?

25 A. Correct.

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1 Q. Is this the general direction it goes, marketing
2 department, office of general counsel, and then
3 general manager's office?

4 A. Yes.

5 Q. And using a, I guess a trite phrase, the buck could
6 stop at one of those departments; is that right?

7 A. That's correct.

8 Q. You know what I mean by that --

9 A. Yes.

10 Q. -- a final decision could be made in any one of those
11 departments?

12 A. Yes.

13 Q. Are there any guidelines that, for example, Beth
14 Gibbons in the marketing department would review to
15 make a determination whether it then needed to be
16 bumped up to the office of general counsel?

17 MR. HILDEBRANDT: Objection, vague. You
18 mean in addition to 5.07?

19 MR. MUISE: Exactly.

20 A. Common sense.

21 BY MR. MUISE:

22 Q. Anything other than common sense?

23 A. No.

24 Q. Do you know if there was anyone other than Beth
25 Gibbons who in the marketing department reviewed my

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1 client's advertisement at issue in this case?
2 MR. HILDEBRANDT: Objection, vague. What
3 do you mean by reviewed?
4 BY MR. MUISE:
5 Q. Do you understand what I mean by reviewed?
6 **A. Yes, I believe so. I believe that at the time we had**
7 **a direct -- there was a SMART director of marketing**
8 **and external affairs, Beth Dryden, and I believe she**
9 **has reviewed the advertisement.**
10 Q. Okay. Other than Beth Gibbons and Beth Dryden,
11 anybody else in the marketing department that you are
12 aware of that reviewed my client's advertisement to
13 determine whether it satisfied the content based
14 requirements?
15 **A. No.**
16 Q. Do you know if the decision to reject my client's
17 advertisement was made by the marketing department?
18 **A. It was not.**
19 Q. So there was something about my client's advertisement
20 that then caused either Ms. Gibbons or Ms. Dryden to
21 push the decision up to the office of the general
22 counsel; is that correct?
23 **A. Presumably, yes.**
24 Q. Well, do you know?
25 **A. I can't speculate as to their -- what they were**

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1 **thinking, but they did push it beyond the marketing**
2 **department, and so based on our policy, yes, there was**
3 **something that caused them uncertainty and they needed**
4 **further review.**
5 Q. Okay. So they didn't -- even though she had the
6 authority to either approve or reject the
7 advertisement, it's your understanding that Beth
8 Gibbons or Beth -- was it Beth Dryden too?
9 **A. Correct.**
10 Q. So two Beths, I'm sorry. So Beth Gibbons and Beth
11 Dryden in the marketing department did not make a
12 decision one way or the other and they pushed it up to
13 the office of general counsel, correct?
14 **A. Correct.**
15 Q. Do you know if the decision to reject my client's ad
16 was made from the office of the general counsel?
17 **A. Can you restate that question?**
18 Q. Sure. Do you know if the decision then to reject my
19 client's ad was made at the office of the general
20 counsel?
21 **A. It was not.**
22 Q. So then the office of the general counsel decided it
23 needed to be pushed up to the general manager's
24 office?
25 **A. That's correct.**

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1 Q. And was the decision to deny, reject my client's
2 advertisement was made then by the general manager's
3 office; is that right?
4 **A. In consultation with the other departments, yes.**
5 Q. So the final decision then went through all three of
6 those levels up to the general manager's office?
7 **A. That's correct.**
8 Q. Who was the general manager at the time?
9 **A. John Hertel.**
10 Q. **Did the marketing department make a recommendation to**
11 **the office of general counsel as to whether my**
12 **client's ad should be accepted or rejected?**
13 MR. HILDEBRANDT: **I'm going to object.**
14 **That's privileged information. The advice that they**
15 **sought from the attorney from SMART is privileged.**
16 MR. MUISE: **I'm not asking for the**
17 **advice --**
18 BY MR. MUISE:
19 Q. Is Beth Gibbons an attorney?
20 **A. She is not.**
21 Q. Is Beth Dryden an attorney?
22 **A. She is not.**
23 Q. Do either of them hold a role as an attorney?
24 **A. Not that I'm aware of, no.**
25 Q. So they are not engaging in the lawful practice of law

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1 at SMART; is that fair to say?
2 **A. Correct.**
3 Q. **Do you know what recommendations either Beth Dryden or**
4 **Beth Gibbons made as to whether this advisement should**
5 **be accepted or rejected?**
6 MR. HILDEBRANDT: **I'm objecting, that's**
7 **attorney client privileged.**
8 MR. MUISE: Are you directing the witness
9 not to answer the question?
10 MR. HILDEBRANDT: **I am directing the**
11 **witness not to answer the question because the fact**
12 **that she sought legal counsel and the discussions that**
13 **she had with legal counsel are absolutely privileged.**
14 MR. MUISE: Are you instructing the client
15 not to answer the question?
16 BY MR. MUISE:
17 Q. Are you going to answer the question?
18 **A. Are you directing me?**
19 MR. GORDON: Can I hear the question again,
20 please?
21 (The following record was read by the
22 reporter at 10:21 a.m.
23 "QUESTION: Do you know what
24 recommendations either Beth Dryden or Beth
25 Gibbons made as to whether this advisement

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1 should be accepted or rejected?")

2 **A. Could you clarify as to -- do you mean prior to the ad**

3 **being reviewed by the office of the general counsel?**

4 BY MR. MUISE:

5 Q. Right. I'm trying to understand the process in which

6 SMART uses to apply generally the content based

7 restrictions and how it was applied in my client's

8 case, and my question is based on your testimony the

9 decision to accept or reject the advertisement was not

10 made at the marketing department level, although it

11 could have been made under this policy, correct?

12 **A. Correct.**

13 Q. And so the -- that decision was pushed up to the next

14 level, and the next level is the office of general

15 counsel, and you testified that that decision could

16 have been made to accept or reject at that point, but

17 it wasn't. In the case of my client's ad, it was

18 pushed up again to the third level, which was the

19 general manager's office, and it was at the general

20 manager's office that the final decision was made to

21 reject the advertisement. Is that a correct summary?

22 **A. That is all correct, but it isn't strictly appellate**

23 **review; it's more of a consensus review, and if there**

24 **isn't absolute consensus, then another and more input**

25 **is sought, but yes.**

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1 Q. I understand.

2 **A. The advertisement did go through people in that order.**

3 Q. And so my question was did the marketing department

4 make a recommendation as to whether it believed that

5 the advertisement should have been accepted or

6 rejected when it was pursuing further information from

7 or further determination from the office of general

8 counsel?

9 MR. HILDEBRANDT: Objection, that seeks

10 attorney client privileged information. Whether the

11 client seeks legal advice from their legal department

12 is privileged, whether or what or whatever

13 conversations they have are absolutely privileged.

14 And so to the extent that Beth Gibbons came to the

15 legal department and said I want to talk about this,

16 what she says after that or even before that with the

17 legal department is absolutely privileged. So any

18 recommendation made to the legal department, which is

19 the basis of your question, is privileged.

20 MR. MUISE: You are instructing the witness

21 not to answer the question?

22 MR. GORDON: Yes, of course.

23 MR. HILDEBRANDT: Yes.

24 MR. MUISE: Okay. I just want to make sure

25 we are perfectly clear on the record of that.

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1 MR. HILDEBRANDT: Perfectly.

2 BY MR. MUISE:

3 Q. I want to ask you in terms of the application of the

4 content based restrictions generally and then focus in

5 on how it was applied in my client's case.

6 If a determination cannot be made at the

7 marketing department level, is it typical that the

8 marketing department will then make a recommendation

9 to the next level in the sequence that we described in

10 terms of the application of the policy?

11 MR. HILDEBRANDT: You are again getting

12 into what is the conversation between the marketing

13 department and their attorneys, the general counsel.

14 You don't get that. It's privileged.

15 MR. MUISE: There is nothing specific about

16 it. The fact that --

17 MR. HILDEBRANDT: It doesn't matter if it's

18 specific.

19 MR. MUISE: The fact that -- the fact of

20 making a recommendation is not a privileged

21 communication.

22 MR. HILDEBRANDT: Yes, it is.

23 MR. MUISE: Are you going to instruct him

24 not to answer the question?

25 MR. HILDEBRANDT: The fact that they picked

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1 up the phone to call legal is a privileged issue.

2 What they seek legal advice about is privileged, how

3 they seek legal advice is privileged. The legal

4 advice is privileged.

5 If you want to ask what the review was at

6 the general counsel level, that's fine. If you want

7 to ask what the review was at the marketing level,

8 that was fine, but if you ask her what she asked her

9 attorney about or what she normally asks her attorney

10 about, that is privileged information and he is not

11 going to be answering. SMART asserts that privilege.

12 BY MR. MUISE:

13 Q. So you're not going to answer the question; is that

14 correct?

15 **A. As directed by my counsel.**

16 Q. Okay. That's a yes?

17 MR. HILDEBRANDT: SMART's counsel.

18 **A. SMART's counsel, yes.**

19 MR. MUISE: The my pronoun fits SMART as

20 well in the course of this deposition.

21 MR. HILDEBRANDT: Fair enough.

22 BY MR. MUISE:

23 Q. So in light of the objection and what I believe was

24 clarification of Mr. Hildebrandt was offering, did the

25 marketing department make a determination based on its