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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

SAINT LOUIS UNIVERSITY, A)
MISSOURI BENEVOLENT CORPORATION,)
)
PLAINTIFF,)
)
)
vs.)
)
AVIS MEYER,)
)
DEFENDANT.)

Case No. 4:07-CV-1733-CEJ

BEFORE THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE
PRETRIAL MOTION HEARING
MARCH 2, 2009

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1 ST. LOUIS, MISSOURI; MARCH 2, 2009

2 9:45 a.m.

3 THE COURT: Good morning.

4 MR. JANOSKI: Good morning, Your Honor.

5 THE COURT: This is St. Louis University v. Avis
6 Meyer. It is before the Court for trial. Who is here for
7 the plaintiff?

8 MR. JANOSKI: Frank Janoski from Louis Rice, Your
9 Honor. Also my associate David Weder is here and Danielle
10 Uy, St. Louis University General Counsel and also Bridgette
11 Gehm, one of our paralegals.

12 THE COURT: All right. Good morning to all of you.
13 And for the defendant?

14 MR. GILL: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. GILL: My name is Brian Gill from the law firm
17 of Polster, Lieder Woodruff & Lucchesi. With me is
18 cocounsel, Nelson Nolte, and paralegal Marissa Lucchesi.

19 THE COURT: Good morning to you. Mr. Janoski, I
20 noticed you don't have a lot of witnesses on your witness
21 list. About how long do you think it will take for the
22 plaintiff to present its case?

23 MR. JANOSKI: About four or five hours, Your Honor.

24 THE COURT: Okay. All right. I note also that
25 there were some motions in limine filed. I guess the only

1 one that really concerns me, and it is not really a motion in
2 limine. It is a motion to I believe to strike two witnesses.
3 Well, it is a motion in limine by the defendant to exclude
4 witnesses whom the defendant contends were not timely
5 disclosed in disclosure and in discovery.

6 My questions is: What do either of these witnesses
7 have to do with the issue that's involved in this case?

8 MR. JANOSKI: Well, with regard to the two
9 witnesses, Your Honor, some of these witnesses will testify
10 on the -- and let me get that -- with regard to various
11 matters concerning this and going to as much the remedy that
12 we're looking for and the motive as to looking at what the
13 defendant has argued in his trial brief.

14 They would be anticipatory of showing why the or the
15 control the university has over the University News and its
16 name and the usage of its name; the usage of its name with
17 regard to Mr. Porterfield; and also when the students had
18 decided that they were going to accept the charter, which has
19 become an issue here as to why the defendant or would the
20 defendant have dissolved the corporation without the Cease
21 and Desist letters at all.

22 Certainly, the defendant has stated that, you know,
23 that he intends to take the newspaper independent at some
24 point in the future. And, certainly, Mr. Porterfield is
25 going to address that from our standpoint.

1 As it relates to Dr. Weixlmann, he will also testify
2 in that regard of what the negotiations were at that time.
3 These certainly are individuals that were disclosed we
4 believe, Your Honor, in discovery; that in response to
5 interrogatory responses, we referred to documents that were
6 produced, and they were named in those documents. They
7 certainly have had four months in which to take their
8 deposition. We've made that offer to them a long time ago,
9 and they've had their affidavits for over four months now.

10 THE COURT: Well, were they identified as witnesses
11 who had information or evidence on the issues that you tell
12 me today they're going to testify about?

13 MR. JANOSKI: In the documents, they do. Yes, Your
14 Honor and also in their affidavits.

15 THE COURT: Okay. And when were these affidavits
16 produced?

17 MR. JANOSKI: They were with regard to the summary
18 judgment. I think it was over four months ago that we had
19 done that.

20 THE COURT: Okay. But when you made your Rule 26
21 disclosures, they weren't mentioned or were they?

22 MR. JANOSKI: No. No, Your Honor. However, we said
23 that other people would be mentioned as discovery went along;
24 and they were mentioned in discovery. And responses to
25 interrogatories, we said that there was information, and they

1 were mentioned in Miss Banantes (phonetic) and Dr. Meyer's
2 deposition.

3 They were also mentioned, as I said, in the
4 documents; and there is a discovery response that said
5 Individuals with knowledge were in those documents. Now,
6 they were mentioned in about 200 documents each. They
7 weren't just slipped in somewhere.

8 THE COURT: Well, their names may have been
9 mentioned. But my question is whether the substance of the
10 information that they had was disclosed adequately in these
11 materials?

12 MR. JANOSKI: We think it was open as to what they
13 would, because they're going to be referred to. And as a
14 matter of fact, the defendants, some of their exhibits
15 themselves are from those particular individuals. So they
16 couldn't have been surprised.

17 THE COURT: All right. All right. Mr. Gill or Mr.
18 Nolte?

19 MR. NOLTE: Your Honor, these witnesses were never
20 disclosed in interrogatory responses directly relating to
21 this issue, asking them for who they were going to call at
22 trial.

23 In fact, that interrogatory answer was not answered
24 at all with any of the witnesses that are being called today.
25 We are just going after Mr. Porterfield and Mr. Galli,

1 because we have no idea --

2 THE COURT: And who's the other one?

3 MR. NOLTE: Mr. Porterfield and Mr. Weixlmann. I
4 apologize.

5 THE COURT: Okay.

6 MR. NOLTE: Also in this case, Avis Meyer was
7 sanctioned \$3,900 for failure to properly supplement
8 interrogatory response. And I think in this case where the
9 Rule 26(a) disclosures, which provided only Avis Meyer as a
10 witness was never supplemented with any witnesses or the
11 Interrogatory Number 16 response, which was not provided any
12 witnesses is telling that they are sandbagging on these
13 people.

14 The fact that they submitted affidavits in response
15 to summary judgment motions after the end of the discovery
16 still doesn't excuse the fact they were never disclosed in
17 interrogatory response or Rule 26(a) disclosures. The fact
18 that they were mentioned in documents that they were produced
19 doesn't mean that they were going to testify at trial or we
20 understand the substance of their testimony.

21 So just merely being mentioned in documents as well
22 as many other people, basically, if they're allowed to
23 testify now, then SLU is allowed to sandbag on their
24 requirements and their responsibilities under the rules of
25 discovery.

1 THE COURT: Okay. All right. Well, I don't like to
2 deal with discovery problems at trial, for obvious reasons.
3 It delays the proceedings. But, you know, this has come up
4 so I have to address it.

5 I also feel that the parties should follow the rules
6 of discovery and disclosure. You all know what they are, and
7 you know what your responsibilities are. The issue here, it
8 seems to me, involves these two individuals who didn't just
9 materialize out of nowhere. These were individuals who were,
10 I believe, known to both sides. The extent to which the
11 knowledge of their testimony or their anticipated testimony
12 is known remains to be seen.

13 But I'm not convinced that, even if this is an
14 untimely disclosure, I'm not convinced that the defendant is
15 prejudiced by it. So here's what I'm going to do. I'm also
16 not 100 percent convinced that these witnesses are relevant
17 to the sole remaining issue involved in this case. But I'll
18 deal with that when they testify.

19 I'm going to let them testify. I'm going to deny
20 the motion in limine to exclude witnesses, which is Document
21 Number 96. I'm going to deny that without prejudice. Mr.
22 Nolte, I don't know if you or Mr. Gill will be handling the
23 cross-examination of these witnesses. But if it appears that
24 their testimony gets into areas that you feel you have not
25 had adequate notice of and opportunity to explore before

1 trial, then you can raise this issue again, and I'll address
2 it and determine whether you have sustained any prejudice by
3 their being allowed to testify.

4 Okay. Now, as far as any objections that were made
5 in your pretrial submissions directed to exhibits, you can
6 make those objections during trial as those exhibits are
7 offered, and I'll rule on them in that manner. The same
8 applies to any objections to depositions or interrogatory
9 responses. I'll rule on those as they are made during the
10 course of the trial.

11 There are some additional motions in limine. The
12 defendant has a motion in limine to preclude certain
13 testimony that he anticipates will be provided or presented
14 by the plaintiff; likewise, the plaintiff has a motion in
15 limine that relates to some evidence that it expects the
16 defendant to present. I'm going to deny both of these
17 motions in limine without prejudice.

18 To the extent that either party attempts to elicit
19 testimony or present evidence that I believe is not relevant
20 to the issue remaining in this case, I will rule on that; and
21 I will exclude that evidence. Since we don't have a jury,
22 there isn't any concern about presenting evidence that the
23 jury might hear and take into consideration improperly.

24 I will rule on all hearsay objections that may be
25 made during the trial, as well as any objections to evidence

1 that anyone believes is not relevant. So the motions in
2 limine Number 98 and 93 are denied without prejudice.

3 Okay. Now, I know that sometime ago there was a
4 Motion for Sanctions filed by the plaintiff based on a claim
5 that the defendant destroyed evidence improperly. And I
6 don't remember how much discussion we had about this motion
7 the last time we were together. Well, it was some months
8 ago.

9 But let me just say this about the motion. If I
10 didn't say it before, I'll say it now. I'm very troubled by
11 the manner in which these e-mails and other items of
12 evidence -- other correspondence -- were handled Dr. Meyer,
13 given the fact that he was placed on notice not to destroy
14 evidence. And he made the decision to delete certain e-mails
15 and apparently did so without seeking the advice of his
16 counsel in determining whether or not these were in fact
17 materials that should have been retained.

18 That's very disturbing, and I think that it was in
19 complete disregard to his obligation to maintain evidence for
20 purposes of discovery. So I believe that Dr. Meyer acted
21 improperly in that regard. What I don't agree with is the
22 sanction that the plaintiff requests, which is essentially
23 entry of a default judgment against the defendant by striking
24 his Answer.

25 I don't believe that that drastic sanction is

1 appropriate, given the conduct on the defendant's part. It
2 was wrongful. This is no doubt about it. The extent to
3 which the defendant has been prejudiced is very difficult to
4 determine, in part, because the documents are gone.

5 And also, since this motion was filed, a good
6 portion of the plaintiff's case has been dismissed. So we're
7 now down to one claim. And the extent to which destruction
8 of these documents has materially affected the plaintiff's
9 ability to prove its claim really cannot be determined. So I
10 don't believe it is appropriate to grant a default judgment
11 in favor of the plaintiff as a sanction; however, I believe
12 that some sanction is appropriate. At the very least, the
13 defendant should be required and will be required to pay the
14 plaintiff's attorney's fees in connection with presenting
15 this Motion for Sanctions.

16 Further sanctions, I will consider. But I can tell
17 you right now that there will be an award of attorney's fees
18 for the plaintiff. Beyond that, I can't tell you at this
19 time what I believe will be a further sanction, if any. And
20 I'll just say this: This is the kind of behavior that really
21 should never have occurred.

22 Dr. Meyer, you were represented by able counsel. If
23 you were unsure about whether something was important or
24 unimportant, it wouldn't have taken you very much time to ask
25 them in advance of your destroying it. I know that you're an

1 intelligent man. And while I don't believe there was any
2 intent on your part to thwart the plaintiff's case -- at
3 least I don't have any evidence of that -- this was reckless
4 and perhaps thoughtless behavior on your part. Okay. Are
5 you ready?

6 MR. JANOSKI: I believe there are two other motions.
7 Just so the Court's record is cleaned up, there is a Motion
8 for Leave to Amend Exhibit Lists, Your Honor.

9 THE COURT: That's granted.

10 MR. JANOSKI: And then there is also a Motion to
11 Strike Belated Pretrial Filings that we had filed. Your
12 Honor, I think that has become moot.

13 THE COURT: Oh, this relates to the Motions in
14 Limine?

15 MR. JANOSKI: Yes, Your Honor.

16 THE COURT: Okay. Yes. That motion, which is
17 Document Number 102, is denied as moot. Are you ready to
18 proceed, Mr. Janoski?

19 MR. JANOSKI: Yes, I am, Your Honor.

20 THE COURT: All right.

21 MR. JANOSKI: May it please the Court, my name is
22 Frank Janoski, and I'm with the law firm of Louis, Rice &
23 Fingersh, and I represent St. Louis University in this matter.

24 The plaintiff, St. Louis University, is a Missouri
25 Benevolent Corporation; and this is not in dispute. Thus, it

1 is by Missouri statute and equitable principals entitled to
2 the exclusive right in its name and "the power to exclude
3 others from assuming, adopting, or using its name; a
4 colorable imitation thereof; or calculated to deceive any
5 person with respect to such corporation." And that's
6 Missouri Statute Chapter 415.105. And, Your Honor, under the
7 item sonance (phonetic), it doesn't matter whether the "St."
8 in St. Louis University is "St." or "Saint." And, you know,
9 it is also a colorable imitation thereof.

10 But the evidence will show there is little dispute
11 as to the facts, and we will submit that the requested remedy
12 is justified by defendant's conduct. The evidence will show
13 that defendant Meyer is an individual employed with St. Louis
14 University for over three decades; a tenured professor. He
15 was very familiar with the university's campus newspaper, The
16 University News and its long-standing tag line, "A Student
17 Voice of University Since 1921." He was, among other things,
18 a copy editor for the newspaper.

19 In March of 2007, the defendant assumed and adopted
20 the name, "St. Louis University," within the name of his own
21 nonprofit corporation. The corporate name is nearly
22 identical to that used by St. Louis University in connection
23 with its campus newspaper. It included the name, "St. Louis
24 University." He created the corporation as a not-for-profit
25 and stated in it, the evidence will show, that it would

1 publish a weekly newspaper.

2 He did this so that the new not-for-profit would
3 look like The University News and would benefit from the
4 history and recognition of the newspaper and that SLU had
5 gathered through its many years of use. The evidence will
6 show after defendant Meyer was found out with regard to the
7 formation of the corporation and notified by St. Louis
8 University on several occasions of its objection, the
9 defendant then proceeded to terminate the corporation.

10 However, Your Honor, the facts will show that,
11 unlike his incorporation papers, where he identified his home
12 address, the defendant submitted papers on St. Louis
13 University letterhead that of The University News. The
14 letterhead that he used had a St. Louis University address on
15 it. The defendant then proceeded to use his university
16 signature block and indicated his university address for
17 correspondence.

18 The evidence will also show a fax line at the top of
19 the documents that were submitted, which show printing,
20 stating among some other things, "SLU. Communication. And
21 "SLU" an abbreviation for "St. Louis University." He did
22 this on behalf of his not-profit corporation. SLU had not
23 authorized the use of the letterhead; his address at SLU for
24 his private enterprise. And he created a permanent document
25 in the Missouri Secretary of States' s office.

1 We will submit that this is a clear violation of
2 Missouri Statute 417.150 and was willfully done to deceive.
3 It also invades St. Louis University's right with regard to
4 the integrity of its name and to the exclusive use of such
5 name under the statute.

6 So at the end of the evidence, we will be seeking a
7 remedy justified by this wrongful conduct. We will be asking
8 for an order from this Court mandating Dr. Meyer correct the
9 record in the Missouri Secretary of State office. We will
10 also be seeking an injunction prohibiting him from any such
11 conduct in the future. This will be based on interviews he
12 has given, where he states that there is a plan to have a
13 student newspaper off-campus; and he further said that he
14 would take as long as he was 80 years old to have this truly
15 independent.

16 Finally, we will ask for attorney's fees, because
17 his conduct and the unusual circumstances; his discovery
18 abuses which the Court in part has already ordered monetary
19 sanctions; defendant Meyer's intentional destruction of
20 evidence; and his conduct, which has required us to be here
21 today. Thank you, Your Honor.

22 THE COURT: Don't sit down yet. I have a question.
23 One of the remedies mentioned that you intend to ask for is
24 that Dr. Meyer be ordered to correct the record in the
25 Missouri Secretary of State's office?

1 MR. JANOSKI: Yes, Your Honor.

2 THE COURT: And what record would that be?

3 MR. JANOSKI: That would be the record where there
4 is his incorporation documents and also the documents where
5 he has dissolved the corporation. And it appears, I believe,
6 that St. Louis University was compliant in that.

7 We have submitted with regard to our trial brief and
8 exhibits our proposed Findings of Fact and Conclusions of
9 Law; the document that is used in the Missouri Secretary of
10 State's office for this particular purpose to amend a record.
11 And also we have submitted to the Court what we believe is
12 the required language or the language that Dr. Meyer should
13 be required to insert in that document and sign.

14 THE COURT: Okay. Also, you mentioned that there
15 was or there is evidence that Dr. Meyer has stated his
16 intention to move the newspaper off-campus or to start an
17 off-campus student newspaper?

18 MR. JANOSKI: Yes, Your Honor. It is in an
19 interview that he gave in August of 2000 or that was
20 published in August of 2007. And I believe it is Exhibit 14
21 that you will find in your binder that we have for you; and
22 that our witness will testify; and that Dr. Meyer will be
23 examined on.

24 THE COURT: Well, there isn't anything wrong with
25 Dr. Meyer or anyone else starting a student newspaper

1 Off-campus --

2 MR. JANOSKI: No.

3 THE COURT: -- as long as they don't use St. Louis
4 University's name or any of its marks or insignia or anything
5 that would indicate or suggest that it was a publication of
6 the university.

7 MR. JANOSKI: This is true, Your Honor.

8 THE COURT: So was his statement that he intends to
9 use St. Louis University's name in some way with this
10 off-campus newspaper or that he somehow intends to have
11 people believing that it's a St. Louis University
12 publication?

13 MR. JANOSKI: Well, not necessarily in that article,
14 but he shows his intent, number one. And I don't know what
15 else he did in that regard, because he did destroy all of his
16 documents. And so we don't have anything related around that
17 or any of the communications that he had with regard to that.

18 Certainly, his indication was, A, that, you know, he
19 incorporated under that name. He also said he didn't believe
20 at that time that the university had trademark rights in that
21 particular name, even though he used "St. Louis University."

22 THE COURT: Okay.

23 MR. JANOSKI: Well, there will also be other
24 testimony to support why we believe that it is appropriate
25 for an injunction to be in place with regard to the name,

1 "St. Louis University," because, in order let's say this
2 enterprise to have any credibility or for it to be able to
3 raise funds in the way that it has now, it will have to
4 associate itself with St. Louis University in some way.

5 THE COURT: Okay. Also I noticed and I believe it
6 was in your brief -- yes -- that you also intend to seek
7 attorney's fees and costs?

8 MR. JANOSKI: Yes, Your Honor.

9 THE COURT: Thank you.

10 MR. JANOSKI: You're welcome.

11 THE COURT: Good morning?

12 MR. GILL: Good morning. May it please the Court,
13 my name is Brian Gill, and I'm an attorney with the law firm
14 of Polster, Lieder Woodruff & Luchessi, and I represent
15 Dr. Avis Meyer.

16 Since the time of FDR, a select group of SLU
17 students have met to produce a student newspaper. Despite
18 their other responsibilities, such as academics or jobs, they
19 have met on a weekly production night to produce the weekly
20 newspaper for the community of SLU. Production night is an
21 arduous task. Typically, production night carries over into
22 the next morning.

23 Regardless of the next day's academic commitments,
24 these students produce the weekly newspaper. For over 30
25 years of this time period, there has been a continuum. One

1 person for 30 years has continually provided the support for
2 the student newspaper. This person, taking time away from
3 his own family, provided his support on weekly production
4 nights for the student staff.

5 And on these nights, he advised, mentored, coached,
6 cheerleaded, and encouraged the student staff to get through
7 production night. This man is Dr. Avis Meyer, one of most
8 honored of SLU professors. According to the plaintiff's
9 website, an alumni survey identified him as one of the ten
10 most influential and effective teachers at SLU. The Office of
11 Student Life has honored him by establishing an annual award,
12 the Avis Meyer Outstanding Award.

13 The evidence will show that a little over two years
14 ago, Saint Louis University and the student staff had an
15 issue with the charter of the student newspaper. The
16 evidence will show that because of this issue, the student
17 staff briefly considered moving the student newspaper
18 off-campus.

19 The evidence will show that Dr. Meyer, thinking that
20 the name of the student newspaper belonged to the student
21 staff, filed with the Missouri Secretary of State the
22 incorporation papers under the title, "The University News, a
23 Student Voice Serving St. Louis University since 1921." The
24 evidence will show that Dr. Meyer filed the nonprofit
25 paperwork to reserve the students' name, in case the students

1 decided to go off-campus and in case they decided to use his
2 name. This charter issue however was resolved between St.
3 Louis University and the student staff.

4 The evidence will show -- I'm sorry -- that part of
5 the resolving of the issue that the student staff decided to
6 remain on campus. The evidence will show that a few months
7 after filing this corporation paperwork Dr. Meyer filed the
8 dissolution paperwork. Yes, Dr. Meyer filed the nonprofit
9 paperwork without seeking authorization from St. Louis
10 University; and Dr. Meyer filed a seldomly used letterhead as
11 part of the dissolution of this corporation; however, this
12 ensuing litigation would impress even one of Victor Hugo's
13 inspectors.

14 This trial is over a single count of the Missouri
15 misuse of a benevolent society's name. And on the screen,
16 the statute is put up for us. And on the screen, there are
17 portions highlighted of the statute. The statute calls out
18 different portions, such as "assuming, adopting, or using the
19 name of a benevolent society or assuming, adopting, or using
20 a name so nearly resembling to be a colorable imitation of
21 that name or a name that is calculated to deceive any
22 person. "

23 The at-issue statute recites a colorable imitation
24 standard, which is a higher standard and a more stricter
25 standard than a likelihood of confusion. SLU's recorded

1 benevolent society name is "St. Louis University." Dr.
2 Meyer's not-for-profit corporation was titled, "The
3 University News, a Student Voice Serving St. Louis University
4 Since 1921."

5 The plaintiff's evidence will not show that Dr.
6 Meyer assumed, adopted, or used the plaintiff's benevolent
7 name in this corporation paperwork. The plaintiff's evidence
8 will not show that Dr. Meyer assumed or adopted or used a
9 name so similar to be a colorable imitation thereof. And,
10 finally, the plaintiff's evidence will not show that Dr.
11 Meyer, assumed, adopted, or used the name calculated to
12 deceive any person.

13 Further, under equitable injunction principles, the
14 plaintiff's evidence will not demonstrate that SLU has
15 suffered irreparable injury. The evidence will also show
16 that SLU admitted that it has not suffered an irreparable
17 injury. The evidence will also show that Dr. Meyer dissolved
18 this nonprofit corporation before this lawsuit was even
19 filed.

20 Further, the evidence will show that Dr. Meyer has
21 provided assertions to SLU that he has not used this
22 corporation name, other than a registration and dissolution
23 thereof. The parties have been in a relationship longer than
24 most marriages. So there's a disconnect here; however, the
25 disconnect is not a violation of Missouri Revised Statute

1 417.150 by Dr. Meyer. Thank you.

2 THE COURT: Don't sit down yet. I have a question
3 for you.

4 MR. GILL: Sure.

5 THE COURT: This is a case in which the plaintiff is
6 seeking some specific injunctive relief, one of which is the
7 filing of this Statement of Correction with the Missouri
8 Secretary of State's office. Now, I know that the Articles
9 of Dissolution have been Filed --

10 MR. GILL: Correct.

11 THE COURT: -- by Dr. Meyer. But this particular
12 document -- this Statement of Correction -- has never been
13 filed; is that right?

14 MR. GILL: Not yet. No, Your Honor.

15 THE COURT: All right. That's just one of the items
16 of equitable relief that the plaintiff is seeking.

17 The other is an order enjoining Dr. Meyer from using
18 St. Louis University's name either spelled out "S-a-i-n-t" or
19 any similar variation except in the context of identifying
20 himself as being associated with the school. And that's the
21 only equitable relief that's being requested?

22 MR. GILL: Correct.

23 THE COURT: Okay. I don't understand what the
24 problem is. I don't understand why we're here.

25 MR. GILL: If I may, I mean Dr. Meyer is being

1 called as a witness. And I -- you know, I would assume that
2 I can't answer for him -- but he would testify that he has no
3 plans on forming any paper or any corporation using SLU's
4 names or any variant thereof.

5 THE COURT: Well, that's fine. But here's the
6 thing: You know, I think that the filing of this piece of
7 paper with the Secretary of State's office, that doesn't seem
8 to be some something that would cause anybody any problem,
9 particularly Dr. Meyer, since he has already dissolved the
10 corporation. And you all have entered into this Stipulation
11 of Facts in which you've agreed that Dr. Meyer used St. Louis
12 University's name or did not seek the school's permission to
13 use St. Louis University's name in connection with the
14 nonprofit corporation he created. Quite honestly, I'm very
15 baffled by this. I mean, did you all go to ADR?

16 MR. JANOSKI: Yes, Your Honor.

17 THE COURT: Well, that was before, when they were
18 more claims. But I mean it just seems to me if Dr. Meyer is
19 willing to submit this Statement of Correction and if he is
20 willing to or if you all can reach some kind of stipulation
21 about what use he can and cannot make of St. Louis
22 University's name in the future, those don't seem like very
23 difficult things for you all to agree to, in light of what
24 you've stipulated to.

25 Now, I understand that you don't believe that Dr.

1 Meyer has violated the statute. I understand that there is
2 an issue of attorney's fees, and I understand that there is
3 some distrust on both sides, in light of some things that
4 have been said and that have been done in the past. But
5 there is really not a whole lot here.

6 I mean, clearly, Dr. Meyer knows he can't use St.
7 Louis University's name, except in a limited context. I mean
8 this whole lawsuit, I guess, stemmed from perhaps the
9 Articles of Incorporation but also this newspaper being --
10 well, there was never a newspaper published by the nonprofit
11 corporation but certainly there was some discussion of that
12 possibly happening.

13 And I'm sorry. I just don't know why this isn't
14 something that you all can't reach some resolution of. If
15 you can't, that's fine. I mean I know you're all here and
16 you're ready to go to trial; and I'm more than happy to hear
17 your testimony. But given the limited relief here -- at
18 least the equitable relief -- I don't know.

19 MR. GILL: I agree, Your Honor. In the last round
20 of motions with respect to summary judgment, you know, it did
21 come out that an offer of judgment was made. And obviously
22 back in the beginning of the lawsuit, it was not accepted.
23 But that's come out in both parties' motions.

24 You know, he would agree to file this paperwork with
25 the Secretary of State. He would agree he is not going to

1 have any plans on having a corporation or any newspaper at
2 all more or less using any of SLU's names or variants
3 thereof. You know, I agree, and I wish we could work
4 something out. We have to defend this.

5 I mean we have to defend this. And, you know, if we
6 could come to an agreement, if he would. I mean it is an
7 issue then of I don't know what the plaintiff would ask for
8 with respect to whether this is an admission of wrongdoing?
9 Is this a violation off statute? I don't know what kind of
10 repercussions that would have for him. I agree. Mr.
11 Janoski, I know you want to say something.

12 MR. JANOSKI: Your Honor, we probably wouldn't be
13 here if we would have gotten the assurances up front. We
14 didn't. Contrary to what Mr. Gill has said, St. Louis
15 University has never gotten any assurance that Dr. Meyer
16 wasn't going to do what he said in that article. Never ever.

17 He said that he sent me a letter that had those
18 assurances. Never been produced. Probably been destroyed,
19 if it was ever created at all. And that was, you know, part
20 of the problem that we had. Then we didn't know exactly what
21 he had done; who had contacted. He destroyed all that
22 evidence that we've got here. He's never before offered to
23 make the Correction document.

24 I mean we're here because there's been no
25 representation, as Mr. Gill is now making, let's say, to St.

1 Louis University. And St. Louis University has to protect
2 its name. It does it in many, many instances, whether it's a
3 commercial activity or whether it is a noncommercial
4 activity; not treating Dr. Meyer any differently than anyone
5 else that goes out and violates their rights. And they've
6 expended money to do this. I mean they didn't want to do.

7 I mean we could have had this thing all put aside if
8 early on when he dissolved it, he would have said, "Hey" --
9 well, first of all, he ignored the first letter and we had to
10 draft a Complaint and everything. But, you know, we've gone
11 down the road because there has never been any assurances,
12 among other things, that he's going to do forward with this.
13 And that's why we're here.

14 THE COURT: Okay. Well, I understand the history of
15 it. And I didn't mean to suggest that you all didn't make
16 good-faith efforts to try to resolve this, but here we are.
17 And now what I'm hearing from Mr. Gill is that Dr. Meyer is
18 willing to submit this Statement of Correction. So that
19 takes care of one item of equitable relief that the plaintiff
20 is asking for.

21 Now, as far as the second part about using the
22 university's name, I think that that's something that Dr.
23 Meyer understands he's not allowed to do that in order to
24 publish a newspaper or to make any kind of representation
25 about the university that he doesn't have authority to make.

1 So putting aside before today, where are we? I mean
2 do we need to have all of these witnesses come in and
3 testify?

4 MR. JANOSKI: Do you want to give us some time?

5 THE COURT: I would be happy to give you some time.
6 So we'll take a short recess, and you all let me know what
7 you're ready to resume. Okay? All right.

8 (Whereupon, a recess took place.)

9 THE COURT: Well, here we are again.

10 MR. JANOSKI: Here we are again, Your Honor. Your
11 Honor, we have settled Count 7. And what we would like to do
12 is tomorrow morning have counsel back with a proposed order.
13 We've taken there of the things that we've submitted to the
14 Court that we have agreed to and that the defendant has
15 agreed to entry of judgment on that. And so that we can
16 bring that in the morning. I don't think that we have the
17 ability to do the it right now.

18 THE COURT: That's fine?

19 MR. JANOSKI: So that takes care of that. I have a
20 question though and certainly with regard to the spoliation.
21 Would you like us to submit like we did on the other --

22 THE COURT: Yes. I will need from you a verified
23 statement of your attorney's fees and costs in connection
24 with the spoliation motion.

25 MR. JANOSKI: Okay.

1 THE COURT: I don't know how long it'll take you to
2 do that.

3 MR. JANOSKI: I could probably have it done -- today
4 is Monday. By the end of the week.

5 THE COURT: Okay. That's fine. Why do not you
6 submit that?

7 MR. NOLTE: Your Honor, Nelson Nolte.

8 THE COURT: Yes.

9 MR. NOLTE: We would like the opportunity if we
10 could to respond to that written submission before you order,
11 if you would allow that, Your Honor?

12 THE COURT: Of course. If you've got some concerns
13 or some challenges to the amounts that are claimed, you'll
14 have the opportunity to do that.

15 MR. NOLTE: Thank you very much.

16 THE COURT: All right? All right. So, tomorrow,
17 are you going to want to put something on the record
18 tomorrow?

19 MR. JANOSKI: We could probably just bring it to
20 your chambers, I guess, and just be ready for your signature
21 Really --

22 THE COURT: All right.

23 MR. JANOSKI: -- is what we anticipate.

24 THE COURT: Okay. That's fine. All right.

25 MR. JANOSKI: Is there a good time for the Court for

1 us to come back?

2 THE COURT: No, I'll be here.

3 MR. JANOSKI: Okay.

4 THE COURT: So whenever you --

5 MR. JANOSKI: We can call ahead?

6 THE COURT: Why don't you do that? I know I've got
7 some things scheduled tomorrow. But, generally, I'll be
8 here. Morning, definitely, I'll be here.

9 MR. JANOSKI: We should be able to do this and have
10 it here; and we'll just call ahead.

11 THE COURT: Okay. That's fine.

12 MR. JANOSKI: Thank you, judge. We appreciate your
13 time.

14 THE COURT: Thank you. We're in recess.

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16 (Proceedings concluded at 3:45 p. m.)

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UNITED STATES OF AMERICA)
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EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION) SS:

C E R T I F I C A T E

I, Gary Bond, Certified Shorthand Reporter in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings had the 2nd day of March, 2009, in the above mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 through 29 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at St. Louis, Missouri, this 3rd day March, 2009.

/s/ Gary Bond
Gary Bond, RPR, RMR
Certified Shorthand Reporter