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

SAINT LOUIS UNIVERSITY, A MISSOURI BENEVOLENT CORPORATION,

PLAINTIFF,

vs.

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

AVIS MEYER,

DEFENDANT.

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

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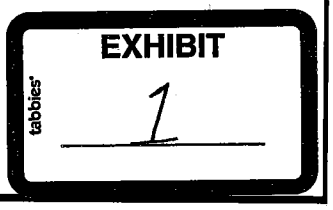

APPEARANCES

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

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

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

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

I don't believe that that drastic sanction is

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

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

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

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

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

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

THE COURT: That's granted.

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

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

MR. JANOSKI: Yes, Your Honor.

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

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

THE COURT: All right.

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

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