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APPEARANCES

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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 his matter.

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