

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

SAINT LOUIS UNIVERSITY, )  
a Missouri benevolent corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
AVIS MEYER, )  
 )  
Defendant. )

Case No. 4:07CV01733 CEJ

**PLAINTIFF SAINT LOUIS UNIVERSITY’S MOTION TO COMPEL  
DISCOVERY FROM DEFENDANT AVIS MEYER BASED UPON  
WAIVER OF ATTORNEY-CLIENT PRIVILEGE**

COMES NOW Plaintiff Saint Louis University (“Plaintiff” or “SLU”), by and through its undersigned attorneys, and hereby submits its Motion to Compel Discovery from Defendant Avis Meyer Based upon Waiver of Attorney Client Privilege. In support of its Motion, Plaintiff states:

1. In interviews Defendant Avis Meyer has granted to the press and other communications with third-parties during the course of this litigation, Defendant has arrogantly revealed the substance of communications with his attorneys in an apparent attempt to litigate this dispute in the press and curry favor with the public. See Stephanie Sidak “SLU Files Lawsuit Against Longtime Prof,” The University News (Nov. 2007), attached hereto as Exhibit 1; Lisa Watson’s Facebook Posting, available at <http://slu.facebook.com/topic.php?uid=5984514473atopic=3474>, attached hereto as Exhibit 2, at p. 2.

2. Defendant then refused to answer questions with regard to those public disclosures of otherwise privileged communications when asked during his deposition on June 4, 2008. See Deposition of Avis Meyer, at pp. 176-79, attached hereto as Exhibit 3.

3. Any privilege that may have attached to the subject matter of the referenced conversations was waived when Defendant disclosed the substance of those conversations (including his attorney's impressions of the case, his litigation strategy and his stance on settlement) to third parties.<sup>1</sup> See Lutheran Med. Cntr of Omaha v. Contractors, Laborers, Teamsters and Engineers Health and Wel. Plan, 25 F.3d 616 (8th Cir. 1994).

4. Because the privilege has been waived, Defendant Meyer should be ordered to produce the related communications with counsel and appear for a deposition to answer all questions related thereto.

5. Defendant Meyer also should be ordered to bear the cost of the deposition necessitated by his refusal to answer questions in the face of a clear waiver of the privilege.

6. Plaintiff also is entitled to a jury instruction informing the jury of Defendant Meyer's waiver of the privilege and refusal to answer questions during his initial deposition.

7. Additionally, pursuant to Federal Rule of Civil Procedure 37(a)(5), Defendant should be ordered to pay the attorneys' fees incurred by Saint Louis University in preparing this Motion and request.

8. Despite good faith attempts to resolve this dispute, including in-person conferences attended by Frank B. Janoski, Bridget Hoy, and Brian Gill on June 4, 2008 and June 11, 2008 (also attended by Scott A. Smith) and a telephone conference between Bridget Hoy and Brian Gill at 9:30 a.m. on July 8, 2008, the parties are unable to reach a resolution.

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<sup>1</sup> For other statements Meyer has made to the press, see the representative articles attached hereto as Exhibit 4.

9. A Memorandum in Support of this Motion is filed herewith and incorporated herein by reference.

WHEREFORE, Plaintiff Saint Louis University requests that this Court grant the instant Motion to Compel Discovery From Defendant Avis Meyer Based upon Waiver of Privilege, enter an award of attorneys' fees incurred herein, and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

**LEWIS, RICE & FINGERSH, L.C.**

By: /s/ Frank B. Janoski  
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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of July, 2008, the foregoing was hand-delivered to:

Brian J. Gill  
Polster, Lieder, Woodruff & Lucchesi, L.C.  
12412 Powerscourt Drive, Suite 200  
St. Louis, Missouri 63131-3615

I further certify that on the 8th day of July, 2008, the foregoing was filed with the Clerk of Court to be served via the Court's ECF system upon all counsel of record.

/s/ Frank B. Janoski  
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