

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

CINDY AVILA, Individually, and as Personal ) CASE NO. 04-CV-3384
Representative of the Estate of STEVEN )
AVILA, et al., )
)
Plaintiffs, )
)
vs. )
)
CNH AMERICA LLC, et al., )
)
Defendants. )

STIPULATION AND ORDER REGARDING EXPERT DISCOVERY

The undersigned parties through their respective counsel of record stipulate to the following regarding the scope of discovery and testimony relating to experts in this matter, regardless of when such events, actions, or communications occur:

1. No party or their experts are obligated to preserve or produce budgets, invoices, bills, receipts or time records concerning testifying or non-testifying expert witnesses or consultants, their staff, assistants, colleagues or associates or their companies or organizations. Provided, however, that except as provided in Paragraph 2 below, nothing in this paragraph shall preclude questions by counsel during an expert’s testimony about the work underlying the expert’s opinions in this case, including the amount of time or costs associated with that work or aspects thereof.

2. The following categories of data, information, and documents (including electronically stored information (“ESI”)) need not be disclosed by any party and are outside the scope of, and not subject to, permissible discovery (including questions during an expert’s testimony):

a. draft reports, draft studies, draft affidavits, draft declarations, or draft work papers; preliminary calculations, computations, or data runs; and other preliminary or draft materials prepared by, for, or at the direction of a testifying expert witness, non-testifying expert, or consultant;

b. any oral, written or other communication between or among expert witnesses, non-testifying experts or consultants, their staff, assistants, colleagues or associates, or one or more attorneys (or their staff) for the party or parties offering the testimony of the expert

witness, unless the testifying expert witness is relying upon such communications in connection with the expert witness' opinions in this matter; and

c. any notes, ESI or other writings taken or prepared by, or given to a testifying expert witness or non-testifying expert in connection with this matter, including correspondence, e-mails or memoranda to or from, and notes of conversations with, the expert's staff, assistants, colleagues or associates, one or more other expert witnesses or non-testifying expert consultants, or one or more attorneys for the party or parties offering the testimony of the expert witness, unless the testifying expert witness is relying upon such notes, ESI or other writings in connection with the expert witness' opinions in this matter.

3. Nothing in this Stipulation and Order shall preclude a testifying expert from being questioned during testimony about any (a) proposition, fact, belief or other data, information or material on which the expert relies in support of her or his opinions in this matter or (b) facts or data received, considered, or reviewed if relied upon, or if considered and rejected, by the expert in connection with her or his opinions in this matter.

4. Neither the terms of this Stipulation and Order nor the parties' agreement to them implies that any of the information restricted from discovery through this Stipulation and Order would otherwise be discoverable.

5. Any party may move the Court to modify this Stipulation and Order upon good cause shown.

6. The parties agree to comply with this Stipulation and Order pending the Court's approval.

/s/ Daniel W. Nelson

Daniel W. Nelson  
*Admitted Pro Hac Vice*

Melanie L. Katsur  
*Admitted Pro Hac Vice*

GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, District of Columbia 20036  
Telephone: (202) 955-8500  
Facsimile: (202) 467-0539

Edward G. Warin, NE Bar No. 14396  
Patrick E. Brookhouser, Jr., NE Bar No. 19245  
Michaela A. Smith, NE Bar No. 22737  
McGRATH, NORTH, MULLIN, & KRATZ  
First National Tower  
1601 Dodge Street, Suite 3700  
Omaha, Nebraska 68102  
Telephone: (402) 341-3070  
Facsimile: (402) 341-0216  
[ewarin@mcgrathnorth.com](mailto:ewarin@mcgrathnorth.com)  
[pbrookhouser@mcgrathnorth.com](mailto:pbrookhouser@mcgrathnorth.com)  
[msmith@mcgrathnorth.com](mailto:msmith@mcgrathnorth.com)

*Attorneys for Unisys Corporation*

/s/ Neal H. Weinfield

Neal H. Weinfield, Esq.  
*Admitted Pro Hac Vice*

GREENBERG TRAUERIG LLP  
77 West Wacker Drive  
Chicago, Illinois 60601  
Telephone: (312) 456-6585  
Facsimile: (312) 899-0322  
[Weinfieldn@gtlaw.com](mailto:Weinfieldn@gtlaw.com)

*Attorney for CNH America LLC; Case  
New Holland, Inc.; CNH Global N.V.;  
Fiatallis North America LLC; and Fiat  
S.p.A.*

/s/ Lemuel M. Srolovic

Lemuel M. Srolovic, NY Bar No. 2349561  
*Admitted Pro Hac Vice*

Curt D. Marshall, NY Bar No. 2524841  
*Admitted Pro Hac Vice*

WEITZ & LUXENBERG, P.C.  
180 Maiden Lane  
New York, New York 10038-4925  
Telephone: (212) 558-5500  
Facsimile: (212) 344-5461  
[lsrolovic@weitzlux.com](mailto:lsrolovic@weitzlux.com)  
[cmarshall@weitzlux.com](mailto:cmarshall@weitzlux.com)

Nancy S. Eichler, CA Bar No. 75017  
*Admitted Pro Hac Vice*  
MASRY & VITITOE, P.C.  
5707 Corsa Avenue, Third Floor  
Westlake Village, California 91362  
Telephone: (818) 991-8900  
Facsimile: (818) 991-6200  
[neichler@masryvititoe.com](mailto:neichler@masryvititoe.com)

L. William Kelly, NE Bar No. 15096  
LAW OFFICE OF L. WILLIAM KELLY  
305 South Locust Street  
Grand Island, Nebraska 68802  
Telephone: (308) 382-7510  
Telecopier: (308) 382-7513  
[lwkdts@alltel.net](mailto:lwkdts@alltel.net)

*Attorneys for Plaintiffs*

IT IS SO ORDERED:

Date: 2-9-09

A handwritten signature in black ink, appearing to read "David L. Piester", written over a horizontal line.

David L. Piester  
United States Magistrate Judge