



Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

February 3, 2012

By ECF

The Honorable George H. Lowe
United States Magistrate Judge
U.S. District Court for the Northern District of New York
P.O. Box 7346
Syracuse, New York 13261-7346

Russell L. Hirschhorn
Attorney at Law
d 212.969.3286
f 212.969.2900
rhirschhorn@proskauer.com
www.proskauer.com

Re: *Yoder, et al. v. Town of Morristown, et al.*, Civil Case No.: 09-cv-00007 (NPM/GHL)

Dear Judge Lowe:

We write to follow-up on our discussion with Your Honor on January 18, 2012 concerning the \$250 court reporting cancellation fee Proskauer incurred as a result of Defendants unilaterally deciding to use a court reporter other than the one the parties agreed to use for the depositions on January 18, 2012.

The parties are scheduled to take nearly twenty depositions in this litigation. As is common for large cases, we suggested the parties engage a nationwide court reporting service (TSG Reporting) to handle all of the depositions at a discounted rate, with no travel fee. After multiple discussions with Defendants' counsel about logistics and costs, on December 17, 2011, Defendants agreed "for the depositions to be covered, at least initially, by TSG Reporting, Inc." (*See Exhibit A.*)

Proskauer thus arranged for TSG to cover Defendants' January 18 depositions of Andy Miller and Menno Hershberger. However, upon arriving at the depositions, we were surprised to find that Defendants had arranged for their own court reporter. They did so without informing either Proskauer or TSG. Because no notice was provided, TSG charged Proskauer a \$250 cancellation fee. (*See Exhibit B.*)

It is well established that the party taking the deposition bears the cost of the court reporter. For that reason, and because the cancellation was in no way the fault of Proskauer or Plaintiffs, we believe Defendants should bear the full \$250 expense. We informed Defendants of our position in a letter dated January 24, 2012. (*See Exhibit C.*) Unfortunately, Defendants have indicated that they are only willing to agree to pay half of the cancellation fee, and "have no intention on (sic) spending further time on this issue." (*See Exhibit D.*)

Proskauer»

Hon. George H. Lowe
February 3, 2012
Page 2

We therefore respectfully request that the Court order Defendants to reimburse Proskauer for the entirety of the \$250 cancellation fee.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Hirschhorn', written over a horizontal line.

Russell L. Hirschhorn

cc: Gregg T. Johnson, Esq.
Timothy J. Higgins, Esq.
Lori Windham, Esq.
Michael T. Mervis, Esq.
Jason D. Gerstein, Esq.
Daniel P. Goldberger, Esq.
Benjamin M. Rattner, Esq.

EXHIBIT A

From: Hirschhorn, Russell L.
Sent: Saturday, December 17, 2011 4:58 PM
To: Mervis, Michael T.; Goldberger, Daniel P.; Gerstein, Jason D.; Rattner, Benjamin M.
Subject: FW: Yoder

Russell L. Hirschhorn
Senior Counsel

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d 212 969 3286
m 516 509 9327
f 212 969 2900
rhirschhorn@proskauer.com

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From: Timothy Higgins [mailto:tjh@lemirejohnsonlaw.com]
Sent: Saturday, December 17, 2011 1:31 PM
To: Hirschhorn, Russell L.
Cc: Gregg Johnson; Ewa Krawiec
Subject: RE: Yoder

Russell:

In follow-up to our conversation yesterday regarding planning for depositions, we have no objection to your arranging for the depositions to be covered, at least initially, by TSG Reporting in NYC.

Whether we use the same reporting service for the plaintiffs' depositions and/or the duration of all depositions (into the spring, according to the current schedule) will have to be determined as we go along. It might be less costly for all parties to arrange for the services of a stenographer closer to Morrisonville to avoid travel and "sitting" fees as proposed by TSG.

Thank you.

- *Tim*

Timothy J. Higgins, Esq., Partner

2/3/2012

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tlh@lemirejohnsonlaw.com

Visit us at: www.lemirejohnsonlaw.com

From: Hirschhorn, Russell L. [mailto:RHirschhorn@proskauer.com]
Sent: Friday, December 16, 2011 11:11 AM
To: Gregg Johnson; Goldberger, Daniel P.; Ewa Krawiec
Cc: Timothy Higgins; Lori Windham; Gerstein, Jason D.; Mervis, Michael T.; Rattner, Benjamin M.
Subject: RE: Yoder

Will call shortly

Russell L. Hirschhorn
Senior Counsel

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f 212 969 2900
rhirschhorn@proskauer.com

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From: Gregg Johnson [mailto:gtj@lemirejohnsonlaw.com]
Sent: Thursday, December 15, 2011 1:19 PM
To: Hirschhorn, Russell L.; Goldberger, Daniel P.; Ewa Krawiec
Cc: Timothy Higgins; Lori Windham; Gerstein, Jason D.; Mervis, Michael T.; Rattner, Benjamin M.
Subject: RE: Yoder

Russell: Tim and/or I will be here at 11AM tomorrow for your call.

- *Gregg T. Johnson, Esq., Partner*

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Malta, NY 12020
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(f) 518 899 5487
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From: Hirschhorn, Russell L. [mailto:RHirschhorn@proskauer.com]
Sent: Thursday, December 15, 2011 11:52 AM
To: Gregg Johnson; Goldberger, Daniel P.; Ewa Krawiec
Cc: Timothy Higgins; Lori Windham; Gerstein, Jason D.; Mervis, Michael T.; Rattner, Benjamin M.
Subject: Yoder

Gregg -

Can we schedule ten minutes to talk tomorrow anytime after 11:00 a.m.? I spoke with the court reporter and want to try and get that finalized. Thanks.

2/3/2012

Russell L. Hirschhorn
Senior Counsel

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=====

EXHIBIT B



Corporate Headquarters
 747 Third Avenue, Suite 10A
 New York, NY 10017
 Phone: (877) 702-9580
 Fax: (212) 207-3311
 www.tsgreporting.com

INVOICE

DATE: 1/26/2012
INVOICE # 011812-200642

Bill To: Benjamin M. Rattner Esq.
 Proskauer Rose LLP
 Eleven Times Square
 New York, NY 10036-8299

CASE: Yoder v. Morristown
DEPOSITION: Miller, Andy / Hershberger, Menno
DATE: 1/18/2012
CITY: Ogdensburg
STATE: New York

Billing Comments / Instructions:

REPORTER	VIDEOGRAPHER	SHIP VIA	TERMS
Jennifer Gofkowski			net 30

DESCRIPTION	# PAGES / QTY	UNIT PRICE	AMOUNT
Reporter Bust / Scheduling Fee	1	\$250.00	\$250.00
SUBTOTAL			\$250.00
SHIPPING & HANDLING			\$0.00
TOTAL			\$250.00

Please make all checks payable to: **TSG Reporting, Inc.** **Federal ID # 41-2085745**

For prompt payment processing, please include the invoice # with your check. All balances in arrears will be assessed a late fee of 1.5% per month, not to exceed the legal limit. If you have any questions, please call TSG

THANK YOU FOR YOUR BUSINESS!

EXHIBIT C

January 24, 2012

By Email

Timothy J. Higgins, Esq.
Lemire Johnson LLC
2534 Route 9, P.O. Box 2485
Malta, NY 12020

Jason D Gerstein
Attorney at Law
d 212.969.3134
f 212.969.2900
jgerstein@proskauer.com
www.proskauer.com

Re: Yoder v. Morristown, No. 09-cv-00007 (NPM/GHL)

Dear Mr. Higgins:

We write to address several issues that arose at last week's depositions of Plaintiffs Andy Miller, Menno Hershberger, Dannie Swartzentruber and Mosie Swartzentruber.

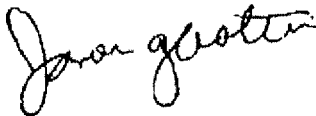
First, as we stated at each deposition, not one of Defendants' deposition exhibits bore a Bates number. That is contrary to standard practice. Please identify by Bates number each of the exhibits you introduced at the depositions. Going forward, we request that you use the Bates-stamped copy of any exhibit that has been produced in this litigation.

Second, if any of Defendants' exhibits have not been produced, please produce them and provide an explanation as to why they were not produced.

Third, it is common courtesy to provide counsel with a copy of each deposition exhibit. We ask that you extend us that courtesy in the future.

Lastly, as we discussed with Judge Lowe, we renew our request that your firm reimburse us \$250 for the court reporter cancellation fee incurred as a result of your decision to use a court reporter other than the one the parties agreed to use and not tell us in advance of the deposition. As you know, my colleague Russell Hirschhorn had specific discussions with you, as well as Mr. Johnson, and the parties agreed to use the same court reporter in order to obtain better rates.

Sincerely,



Jason D. Gerstein

cc: Gregg T. Johnson, Esq.
Michael T. Mervis, Esq.
Russell L. Hirschhorn, Esq.
Daniel P. Goldberger, Esq.
Lori H. Windham, Esq.

EXHIBIT D

Rattner, Benjamin M.

From: Gregg Johnson [gtj@lemirejohnsonlaw.com]
Sent: Tuesday, January 31, 2012 10:42 AM
To: Hirschhorn, Russell L.; Timothy Higgins
Cc: Lori Windham; Mervis, Michael T.; Goldberger, Daniel P.; Gerstein, Jason D.; Rattner, Benjamin M.; Ewa Krawiec
Subject: RE: Yoder v. Morristown

Mr Hirschhorn

After you send us evidence that your firm paid half of this invoice we will submit a payment directly to the stenographer for half (i.e. \$125 00) based on the invoice you sent. We have no intention on spending further time on this issue. The e-mail you reference does not reflect a commitment by us to engage your chosen stenographer for conducting Plaintiffs' depositions. Notably, appearance fees in this part of the state are usually in the range of \$60-75. In any event, that is the best we can do.

Regards.

- *Gregg T. Johnson, Esq., Partner*

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gtj@lemirejohnsonlaw.com

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From: Hirschhorn, Russell L. [mailto:RHirschhorn@proskauer.com]
Sent: Monday, January 30, 2012 6:13 PM
To: Gregg Johnson; Timothy Higgins
Cc: Lori Windham; Mervis, Michael T.; Goldberger, Daniel P.; Gerstein, Jason D.; Rattner, Benjamin M.
Subject: RE: Yoder v. Morristown

Mr. Johnson,

We await a response on whether Defendants will reimburse our Firm for the cancellation fee noted below. Mr. Higgins told me today that I must speak with you about this issue. I have attached another copy of the invoice for your reference. We look forward to your prompt response. Thank you.

Russell L. Hirschhorn
Senior Counsel

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From: Gregg Johnson [mailto:gtj@lemirejohnsonlaw.com]
Sent: Thursday, January 26, 2012 8:54 AM
To: Hirschhorn, Russell L.; Timothy Higgins
Cc: Lori Windham; Mervis, Michael T.; Goldberger, Daniel P.; Gerstein, Jason D.; Rattner, Benjamin M.
Subject: RE: Yoder v. Morristown

We will look into it. In the meantime, please send us a copy of the invoice

2/3/2012

- Gregg T. Johnson, Esq., Partner

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Malta, NY 12020
(p) 518 899 5700
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gtj@lemirejohnsonlaw.com

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From: Hirschhorn, Russell L. [mailto:RHirschhorn@proskauer.com]
Sent: Wednesday, January 25, 2012 11:14 PM
To: Hirschhorn, Russell L.; Timothy Higgins; Gregg Johnson
Cc: Lori Windham; Mervis, Michael T.; Goldberger, Daniel P.; Gerstein, Jason D.; Rattner, Benjamin M.
Subject: RE: Yoder v. Morristown

Mr. Johnson,

I do not believe the email below made it to you.

Russell L. Hirschhorn
Senior Counsel

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d 212 969 3286
m 516 509 9327
f 212 969 2900
rhirschhorn@proskauer.com

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Please consider the environment before printing this email

From: Hirschhorn, Russell L.
Sent: Wednesday, January 25, 2012 11:11 PM
To: Timothy J. Higgins Esq. (tjh@lemirejohnsonlaw.com); Gregg T. Johnson Esq. (gtj@lemirejohnsonlaw.com)
Cc: Lori Windham; Mervis, Michael T.; Goldberger, Daniel P.; Gerstein, Jason D.; Rattner, Benjamin M.
Subject: Yoder v. Morristown

Messrs. Higgins and Johnson -

I am writing to follow-up on Mr. Gerstein's letter to Mr. Higgins and, in particular, our request that you reimburse our Firm for the cancellation fee incurred for the TSG court reporter during last week's depositions. As the email below indisputably shows, Mr. Higgins agreed "for the depositions to be covered, at least initially, by TSG Reporting in NYC."

We request a response from you by the end of this week as to whether you will reimburse our firm for the cancellation fee and, if so, a date by which you send us payment.

Thank you.

Russell L. Hirschhorn
Senior Counsel

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Thank you.

- *Tim*

Timothy J. Higgins, Esq., Partner

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Cc: Timothy Higgins; Lori Windham; Gerstein, Jason D.; Mervis, Michael T.; Rattner, Benjamin M.
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Will call shortly

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Cc: Timothy Higgins; Lori Windham; Gerstein, Jason D.; Mervis, Michael T.; Rattner, Benjamin M.

2/3/2012

Subject: RE: Yoder

Russell Tim and/or I will be here at 11AM tomorrow for your call

- *Gregg T. Johnson, Esq., Partner*

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Subject: Yoder

Gregg -

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Russell L. Hirschhorn
Senior Counsel

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