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January 8, 2012

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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

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

Dear Judge Lowe:

We, together with the Becket Fund, represent the Plaintiffs in the above-referenced action. As the parties previously informed the Court through a joint status report dated December 9, 2011 (*see* Docket No. 90), depositions in the matter are scheduled to commence on January 18, 2012.

On Friday afternoon, we received a letter from Defendants stating that they seek an adjournment of all depositions and, instead, would like to serve up to fifty (50) interrogatories and/or requests for admission in addition to holding abbreviated videotaped depositions¹ at a later date. The stated reason for this request is Defendants' (demonstrably incorrect) contention that they have only recently come to understand that the use of an interpreter will be required for the depositions of our clients. For the reasons that follow, Defendants' request is improper and unnecessary. The depositions should proceed as scheduled.

In response to Defendants' letter, we met and conferred with Defendants' counsel, Mr. Higgins, on Friday afternoon. Mr. Higgins stated that Defendants are not willing to proceed with the depositions as scheduled because they do not believe they can "effectively" take depositions using an interpreter.

Defendants' current position is at odds with previous discussions with Your Honor and among counsel. First, as Mr. Higgins acknowledged on our call today, all written and document discovery has been completed in this case (*see* Docket Nos. 81 and 82).² This is precisely the reason why the parties agreed, as discussed with Your Honor during our last status conference, to schedule all of the depositions. Second, Defendants have been on notice that Plaintiffs would

¹ Defendants' deposition notices did not state that they have any intention of videotaping Plaintiffs' depositions and we object to this new request. Defendants' desire to videotape the depositions serves no legitimate purpose is apparently designed only to harass our clients. There is no reason why the presence of an interpreter at the depositions requires the depositions to be videotaped. Moreover, it is our understanding that our clients' religious beliefs do not permit them to be voluntarily photographed or videotaped.

² The sole remaining issue relates to a dispute over the privileged nature of certain documents concerning Plaintiffs' consultant. These documents are currently before Your Honor for *in camera* review.

require an interpreter at their depositions since as early as July 20, 2009 — *over 2½ years ago* — when we so advised one of the Defendants’ lawyers, Ms. Jacinda Conboy. Ms. Conboy stated that she would find out who was interpreting in the related criminal matter and try to retain that person or persons. More recently, we communicated the need for Defendants to retain a translator for many, if not all, of our clients, when we first began scheduling these depositions. This is reflected in paragraph number 2 of the parties’ *joint* status report to Your Honor on December 9, 2011 (*see* Docket No. 90).

Defendants’ counsel first alerted us in an email dated January 4, 2012 to their purported “great concern” that Plaintiffs needed interpreters at their depositions. In that email, Defendants’ counsel asked if Plaintiffs would be paying for the interpreters and also stated that in light of the fact that our respective clients had previously communicated in English, they did not understand the need for interpreters.

In email dated that same day to Defendants’ counsel, we attempted to address Defendants’ concerns in stating:

“Our clients are not prepared to pay the costs of an interpreter. In fact, we believe the case law that exists reasonably supports the view that defendants should bear that cost. As an aside, I note that we made it very clear to Mark Lemire, Tim Higgins and you when we first started scheduling these depositions (over one month ago) that some or all of our clients would require an interpreter and that you should locate one fluent in Pennsylvania Dutch. Not one of you ever voiced any objection. In the interest of keeping to the agreed upon deposition schedule and avoiding a potentially an unnecessary discovery dispute, we propose that you take the depositions on Wednesday, January 18 without the use of an interpreter (or provide one at your cost). If it becomes apparent that those deponents are unable to understand your questions because of a language barrier (as opposed to any other reason), we will agree to make them available on another mutually convenient day when an interpreter is made available. We can then try to work out the cost issue and, if necessary, seek immediate court intervention so as not to disrupt the remainder of the deposition schedule. We think this is the best solution in light of the fact that we already have incurred significant costs in preparing our clients for their depositions and have made travel arrangements based on the current deposition schedule.”

Defendants' "great concern" over our clients' need for an interpreter is entirely misplaced. Defendants are well aware of the fact that interpreters were required for our clients' criminal proceedings in Morristown after it was found that our clients were unable to adequately understand what was happening at those criminal proceedings. Moreover, Defendants' counsel has not articulated any legitimate reason why they should be permitted to reopen written discovery and further delay the agreed-upon discovery schedule.

In short, there simply is no basis for: (a) allowing Defendants the additional unnecessary written discovery at this late juncture; and (b) delaying the deposition schedule. We respectfully request Your Honor's assistance in resolving these issues so that the depositions can commence on January 18, 2012 as the parties previously agreed.

Respectfully submitted,

Russell L. Hirschhorn /BHR

Russell L. Hirschhorn

cc: Gregg T. Johnson, Esq.
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