

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Civil Action No. : 1:10-cv-00569-RJA

Plaintiff,

v.

**DECLARATION
OF DEAN BOLAND IN
OPPOSITION TO DEFENDANTS'
MOTION FOR DEPOSITION
COSTS AND EXPENSES**

MARK ELLIOT ZUCKERBERG, Individually, and
FACEBOOK, INC.

Defendants.

DECLARANT, submits this declaration and hereby declares under penalty of perjury and pursuant to 28 U.S.C. 1746 and under the laws of the United States that the following is true and correct:

1. I make this declaration upon personal knowledge.
2. Defendants' counsel Alex Southwell and I reached an agreement regarding the process and responsibilities for expert depositions through a series of emails and phone calls.
3. Mr. Southwell and myself are both experienced lawyers who negotiated all the terms of the agreement for the deposition of experts.
4. The agreement reached, as suggested by Mr. Southwell, was that each party would pay the other party's expert's reasonable travel expenses and reasonable fee for their time spent in deposition.
5. The agreement did not include either party being required to pay the fee for

the noticed expert's preparation time for his deposition.

6. The agreement did not include either party being required to pay the fee for the opposing counsel's time spent preparing the noticed witness for deposition.
7. If Mr. Southwell or Plaintiff's counsel desired such terms in the agreement, either party was free to seek to impose those terms, or if such terms were not agreeable, seek the court's intervention to craft an agreement including such terms. Neither Mr. Southwell or I sought any of the terms noted above that are now the subject of Mr. Southwell's motion seeking fees and costs outside of the the agreement Plaintiff's counsel had with him.
8. Defendants had three and sometimes four or five lawyers present at every deposition on Defendants' behalf. i.e. Mr. Southwell, Ms. Aycock and Mr. Benjamin were present at every deposition while Mr. Snyder and occasionally one other lawyer were present at several depositions.
9. Defendants noticed all of Plaintiff's experts to take place in their offices in New York and demanded that their depositions occur first.
10. Plaintiff initially noticed all of Defendants' experts for deposition in Cleveland, Ohio, the location of Plaintiff's counsel's office. i.e. Dean Boland.
11. At the request of Mr. Southwell, Plaintiff agreed to have all of Defendants' experts deposed in New York at Mr. Southwell's offices saving Defendants' at least \$100,000 in travel costs necessary to send all three and possibly four or five lawyers to Cleveland for each of Defendants' experts' depositions.
12. Plaintiff's counsel consented to doing all the traveling for all depositions

requesting consideration from Mr. Southwell as to scheduling of depositions given the travel burden on Plaintiff's counsel.

13. The agreement reached left the risk of paying cost and expenses for postponed depositions with each respective party. That is, parties were not penalized in the event they needed to postpone a deposition that they had noticed.
14. Likewise, parties were not penalized for cancelling depositions that they had noticed. i.e. there was no requirement that a party commence a deposition they had noticed provided they cancelled the deposition before the day it was scheduled.
15. At no point in the course of expert depositions did Plaintiff's experts not appear on time for their depositions.
16. One one occasion, Plaintiff notified Defendants' counsel two days before a scheduled deposition of Defendants' expert Lesnevich that it would not occur.
17. One one occasion, Plaintiff was forced to postpone several depositions of Defendants' experts scheduled for a two day period after his flight was stuck in Philadelphia due to weather and Plaintiff's counsel became ill hours later while stuck in the airport in Philadelphia.
18. Mr. Southwell was sent an email from Plaintiff's counsel immediately upon notification to Plaintiff's counsel that his flight to New York was cancelled. This cancellation was provided to Plaintiff's counsel at near midnight his day of travel. i.e. the day before the first of two days of scheduled depositions.
19. The next scheduled flight to New York the following day departed Philadelphia

at 2:30 PM.

20. The next scheduled train to New York was 5:30 am the following day, a two hour train ride.
21. Upon being informed of this cancelled flight and Plaintiff's counsel's illness, Mr. Southwell demanded Plaintiff's counsel take a train to New York the next day and conduct the two days of depositions anyhow.
22. Plaintiff's counsel declined Mr. Southwell's unreasonable demand and returned home, ill, unable to participate in the depositions as scheduled.
23. One of the depositions scheduled of Defendants' experts was ultimately cancelled when Mr. Southwell refused to provide an hourly rate for the experts' time instead insisting that a \$6,400.00 rate for a scheduled half day deposition (i.e. 3.5 hours) was a reasonable fee for Mr. McMenamini's time to sit for a deposition. Mr. McMenamini's fee, then, resolves to roughly \$2,000 per hour for his deposition.
24. One one occasion, Plaintiff notified Defendant's counsel of a deposition cancellation the day before the deposition. Mr. Romano's deposition was specially scheduled to accommodate his refusal to travel by air to the deposition site at Defendants' lawyers' offices in New York.
25. During the initial Plaintiff's expert deposition, that of Mr. Broom, Plaintiff's counsel noted that Defendants were taking forty-five minute breaks (identified by them at the outset as a "five minute break") that would likely cause Mr. Broom's seven hours of deposition by rule to expire before they were finished.

26. Defendants' counsel, Mr. Southwell, countered that F.R. Civ. P. 30(d)(1) entitled him to keep Mr. Broom at his offices for as long as he wanted, provided Mr. Broom was only on the record in deposition for seven of those hours.
27. Defendants' understood the agreement between the parties was that a witness noticed for deposition was only to be paid for their actual time in deposition.
28. Defendants' counsel Mr. Southwell demonstrated this understanding by refusing to pay Plaintiff's expert, Larry Stewart, for the nine hours he was required to stay at Mr. Southwell's offices while they took numerous breaks throughout his deposition.
29. Instead, Mr. Southwell only paid Mr. Stewart for the seven hours of his actual deposition leaving him uncompensated for his time spent waiting at Mr. Southwell's offices, but not in deposition.
30. In violation of the terms and spirit of the agreement I had with Mr. Southwell, his current motion now seeks payment for his experts' time spent at his offices not spent in deposition.

I hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 and under the laws of the United States that the following is true and correct:

DATED: September 24, 2012.

/s/ Dean Boland

Declarant