

EXHIBIT S

From: Southwell, Alexander H.
Sent: Tuesday, July 24, 2012 5:44 PM
To: Dean Boland
Cc: paul.argentieri@gmail.com; Benjamin, Matthew; Aycock, Amanda; Narasimhan, Sripriya
Subject: RE: Response on emails re expert documents

Mr. Boland:

To be clear, towards the end of the day of his deposition, Mr. Stewart identified numerous items in his deposition that were not provided to Defendants, that were clearly germane, and upon which he relied during his deposition and in preparation of his report.

Indeed, Mr. Stewart himself believed that these materials had already been provided to Defendants, apparently as a PDF document. *See, e.g.*, Stewart Depo. Tr. at 346:5-6 (“A. I provided that to you. You say you didn't have it, but I did provide it to you.”), 351:24-352:9 (“Q. And how do you know it was provided to us? Did you provide it to us? A. Yes. Q. You did? A. Yes. Q. How? A. It's my recollection it was provided to you back in November and it was provided to you again on Mr. Southwell's request last week when you got that file.”), 368:7-9 (“A. If it helps you on those type of documents, they were part of a PDF that was sent with the file and there are many pages in the PDF.”). However, the material you provided in relation to Stewart on July 5, 2012 did not include a single PDF document. The production included only a limited number of digital snapshots in JPG format and two webarchive files. There was no PDF of Mr. Stewart's file or notes.

In fact, you yourself represented on the record during the course of the deposition that “all of the documents” had been provided to Defendants. Stewart Depo. Tr. at 378:10; *see also* Stewart Depo. Tr. at 371:24-372:2 (“MR. BOLAND: I'm not agreeing that we haven't provided them, but I understand your position is that we haven't.”).

By way of specific example, Mr. Stewart represented in his deposition that there were additional inventory worksheets, including a worksheet documenting ink samples. *See, e.g.*, Stewart Depo. Tr. 372:19-373:6. Only one sample inventory worksheet has been provided, Defendants' Exhibit 26, and it was not provided until very late in Mr. Stewart's deposition. Defendants' Exhibit 26 does not include any information about ink sampling.

In sum, Mr. Stewart believed his file had been provided to Defendants, you represented on the record that it had been provided to Defendants, and yet it is abundantly clear that “all of the documents” have not been provided to Defendants. Along with our July 16, 2012 letter to you, we produced back to you a copy of what you produced to us on July 5, 2012, so there can be no ambiguity as to what you actually provided, which, as outlined above, was insufficient and incomplete. Please produce Mr. Stewart's file immediately, as you represented you would at his deposition. Defendants continue to reserve all rights, including the right to resume Mr. Stewart's deposition.

Alex

From: Dean Boland [mailto:dean@bolandlegal.com]
Sent: Monday, July 23, 2012 10:22 AM
To: Southwell, Alexander H.
Cc: paul.argentieri@gmail.com; Benjamin, Matthew; Aycock, Amanda; Narasimhan, Sripriya
Subject: Re: Response on emails re expert documents

Alex:

Everything Mr. Stewart relied upon for his opinion was contained in his report. Also, during your exhaustive deposition of him, you had ample opportunity to quiz him about any other materials you believe he relied on.

As to the remainder of your requests, Plaintiff objects to them as they are inappropriate and you had the opportunity to efficiently seek them through deposition.

Dean Boland

On Fri, Jul 20, 2012 at 6:48 PM, Southwell, Alexander H. <ASouthwell@gibsondunn.com> wrote:

Mr. Boland:

I write in response to your emails dated July 11, 2012 and July 20, 2012, requesting various materials related to Defendants' experts.

In your July 11 email, you make a "formal request for a copy in native format of all images, scans or photographs your paper document expert captured of any documents or contracts in this case." First of all, you made this same inappropriately broad request in your motion to compel (Doc. No. 390 at 5), and the Court firmly rejected it (Doc. No. 457 at 22-23).

Moreover, in forming their opinions, Defendants' expert document examiners relied upon their first-hand observations of the Work for Hire Document and Specifications Document, both of which remain in Ceglia's possession. Some of Defendants' experts' reports included images for illustrative purposes; thus, to the extent that Defendants' experts included any images for illustrative purposes, you already have them. Moreover, Defendants' experts relied upon some images which are already in the possession of Plaintiff, and have been for many months (*e.g.*, the authentic StreetFax Contract, images of the Work for Hire Documents produced by Ceglia's attorneys and experts). Finally, the hard-copy Work for Hire document, on which Defendants' experts based their observations and opinions, remains in Plaintiff's possession, and was in Ceglia's possession prior to its production to Defendants' experts.

Some of our experts do state an opinion regarding Mr. Tytell's scans taken at 9:18 a.m. and 9:22 a.m. on July 14, 2011; therefore, in order to make the court-ordered expert depositions as efficient as possible, we are prepared to provide you with a copy of these native format scans. Note, our provision of Mr. Tytell's scans in no way acknowledges the propriety of your overbroad request.

Please provide us immediately with the materials you agreed to provide regarding the Stewart deposition, and which we requested in our July 16 Letter, specifically the entire file that he had with him at his deposition on July 11, 2012, including all inventories of samples.

As to the remainder of your requests, Defendants object to them as they are inappropriate and more efficiently sought through deposition.

Alex

Alexander H. Southwell
Partner

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Please note, I typically only review my emails once daily. If there is something urgent in any email, please do not hesitate to contact my office at 216-236-8080.