EXHIBIT 1

Dixie Wells

From: Dick Ellis

Sent: Wednesday, July 27, 2011 9:51 PM

To: Robert Ekstrand (rce@ninthstreetlaw.com); 'Stefanie Sparks'

Cc: David Thompson; 'Pete Patterson'; Dixie Wells; 'Dan McLamb'

Subject: FW: McFadyen (26)

Bob, we have reviewed the proposed Rule 26(f) report that you prepared and sent to us on July 21, 2011. We are not able to join in the report as it is drafted for the reasons outlined in the attached document. By the way, as you may know from earlier emails, we suggest Jon Harkvay as mediator. Best regards - Dick Ellis

Comments on the Proposed 26(f) Report for McFadyen

Rule 26(a) Disclosures

- We agree to exchange initial disclosures on the two claims for which discovery is going forward on August 12.

Discovery Plan

- We do not agree with your characterization of the discovery that will be needed. For example, while we agree that discovery is need on "disclosures", we cannot agree that there were "unauthorized disclosures."

- We do not agree that discovery as outlined can be completed in nine months. We propose a period of twelve months. (As discussed below, it is our position that this twelve month period should include expert discovery on the claims for which discovery is going forward.)

- We cannot agree to 30 depositions in addition to the 40-60 depositions that have been proposed in the Carrington case. If the cases are consolidated for discovery, then we would propose a total of 60 depositions for both the Carrington and McFdayen cases. If discovery is not consolidated, then we agree that 30 depositions for the plaintiffs in McFadyen is a reasonable number.

- We propose that discovery should be consolidated such that anytime that a deposition is noticed, it is noticed for both cases. If we are to use a system like the one that you suggest whereby depositions would be cross-noticed, we would want it agreed that if the deposition is not cross-noticed, then that deponent will not be deposed in the other case. In short, each deponent sits for only one deposition in both Carrington and McFadyen. By way of example, if we depose a witness, then we would only be able to depose him or her once – at which time we would need to cover any issues relating to the claims going forward in both Carrington and McFadyen.

- We cannot agree that depositions would automatically be subject to two periods of 7 hours.

- Consistent with our response to the Carrington plaintiffs, we need 30 interrogatories and 30 requests for admission for each plaintiff. If discovery is consolidated, we have proposed that the Carrington and McFadyen plaintiffs be allowed a total of 30 interrogatories and 30 requests for admission for each named defendant.

- Rule 26(e) requires supplementation in a "timely manner." So long as the parties are providing supplementations in such a timely manner, that is, within at least 30 days of receipt of the information, and so long as any information discovered at

any point, including less than 45 days before the close of discovery is provided to the opposing side as soon as possible, then the Duke Defendants are agreeable to such a certification 45 days before the close of discovery.

- We cannot agree that expert discovery be delayed until such time that discovery proceeds on the claims that have been stayed. Judge Beaty has ordered that discovery proceed on the two claims, and an important part of discovery on any claim is expert discovery. We do not believe that it is consistent with Judge Beaty's order to delay part of the discovery on these claims.

Protocol for Discovery of ESI

- Producing emails in the .pst format adds a complexity and cost to the production of emails to which we cannot agree. We are happy to discuss this with you in greater detail.

Mediation

- We do not agree that mediation should be deferred until discovery proceeds on the claims that have been stayed. Mediation should be held during the discovery period on the two claims for which discovery is proceeding.

Preliminary Deposition Schedule

- If the Carrington and McFadyen plaintiffs agree to bring their clients to North Carolina for depositions, then the Duke Defendants would likewise agree to bring their clients to North Carolina for depositions. The Duke Defendants cannot agree that "all" depositions will be held in North Carolina, because the Duke Defendants do not control all of the witnesses who are likely to be deposed. That said, the Duke Defendants will certainly aim to schedule any depositions that can be scheduled in North Carolina in North Carolina.

Other Items

- Because this complaint was filed over three years ago, has already been amended twice, and has been the subject of extensive motions to dismiss, the Duke Defendants cannot agree to a presumptive deadline for amending the complaint and adding parties that is this late in the discovery period. If good cause is shown, a court could allow the amendment and/or the addition of parties at any point. The Duke Defendants cannot agree that amendments should be permitted and parties should be added after 6-9 months of discovery without this showing of good cause. We would propose that the deadline for amending pleadings and/or adding parties should be three months after the start of discovery.

- Like you, we agree that this case is not appropriate for reference to a Magistrate Judge.

- Based on the number of parties and the number of claims, we do not see how trial in this matter could be completed within one week.