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September 1, 2011

VIA E-MAIL and FIRST CLASS MAIL

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Re: McFadyen et al. v. Duke University et al.
No. 1:07-CV-953

Dear Counsel:

It was good to see everyone yesterday, or at least the backs of various heads. Given the course of the initial conference, I did not raise the issues that we presented in our Submission to the Court.

I did not do the most artful job in stating what I would like to see included in the Scheduling Order. Specifically, as Duke pointed out, we requested provisions that were too broad in their scope.

My concern is simple: I do not want to attend all (or anywhere close to all) of these depositions; however, I do not want a witness to stray into areas that affect my client and miss the opportunity to object. To address this concern, I request that the following provision be included in the Scheduling Order:

“All objections to deposition questions or testimony based on the question or response exceeding the scope of permissible discovery, per Judge Beaty’s Order of June 9, 2011, shall be deemed preserved regardless of whether the objection is raised at the deposition.”

Or words to similar effect. I would appreciate this accommodation.

Also, while I think that it is assumed by everyone to be the case, I suggest stating that a new Scheduling Order will be entered when the case returns from the Fourth Circuit. I would

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also appreciate an express statement preserving the rights of parties to re-depose witnesses on other claims once the stay is lifted.

I am available to discuss if you would like.

Sincerely,



Robert J. King III

RJK:mh

cc: Reginald Gillespie
Jim Roberts
Paul Dickinson
William Cary
Clint Pinyan