

EXHIBIT 3

From: Dick Ellis
Sent: Thursday, September 22, 2011 3:47 PM
To: 'Robert Ekstrand (rce@ninthstreetlaw.com)'
Cc: 'Stefanie Sparks'; Dixie Wells
Subject: McFadyen ESI

Bob:

As you will recall, we have long said, both at the pretrial conference before Magistrate Judge Dixon and at other times, that we have carefully considered and concluded that the ESI from 17 custodians will yield substantial and complete data without being "unreasonably cumulative or duplicative." Searching the 17, considering the volume of electronic data they have, is proving to be very expensive; searching beyond this number will escalate the expense hugely. I know neither of us is motivated to cause unnecessary expense. In the spirit of full but manageable discovery, we continue to propose that the Duke defendants' initial review of electronically stored information be restricted to the 17 custodians. As we have noted before, these 17 custodians have more than 800 GB of information, which is, of course, an enormous amount.

Our understanding would be that we would review and produce from this set of ESI. If, after you've had a chance to review what we produce, that review (or other discovery) points to electronic materials that are not within the material of the 17, we are certainly prepared to hear from you, consider any requests you make, and confer.

The 17 custodians that we have identified for Claims 21 and 24, are:

- Zoila Airall
- Richard Brodhead
- Stephen Bryan
- Robert Dean
- Matthew Drummond
- Roland Getliffe
- Aaron Graves
- Kate Hendricks

- Larry Moneta
- Sara Jane Raines
- Michelle Rasmussen
- Judith Ruderman
- Gary Smith
- Robert Steel
- Greg Stotsenberg
- Suzanne Wasiolek
- Gerald Wilson

I think you will agree, these custodians are significant to your discovery efforts. I know their names will be familiar to you, but if you have any questions about who any of them are, or what role they played with regard to the claims at issue, please let me know.

Best regards -- Dick Ellis