

EXHIBIT E

9/19/2012 JOHN RYAN MCFADYEN

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Civil Action Number 1:07-CV-00953

RYAN MCFADYEN, et al.)
)
Plaintiffs,)
)
vs.)
)
DUKE UNIVERSITY, et al.,)
)
Defendants.)
_____ /

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF JOHN RYAN MCFADYEN
(Taken by Defendants)
Durham, North Carolina
Wednesday, September 19th, 2012

Reported in Stenotype by
Sophie Brock, RPR, CRR
Transcript produced by computer-aided transcription

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1 **A. Not that I recall.**

2 Q. Did you consider Mr. Bachman to be your
3 lawyer on April 5th, 2006?

4 MS. SMITH: Objection. Asks for a legal
5 conclusion.

6 THE WITNESS: I mean, by the end of the
7 night, yeah. I spent a number of hours in his office
8 with him that day as well, along with Stefanie and
9 Bob.

10 BY MR. SEGARS:

11 Q. And at the same time, did you also consider
12 Ekstrand & Ekstrand to be your lawyers?

13 **A. Yeah.**

14 MS. SMITH: Objection. Calls for
15 a legal conclusion.

16 BY MR. SEGARS:

17 Q. Why did you feel the need to get another
18 lawyer?

19 MS. SMITH: Objection.

20 To the extent that that calls for
21 communications with counsel and our work product, I'd
22 instruct you not to answer.

23 THE WITNESS: Yeah.

24 BY MR. SEGARS:

25 Q. Mindful of your counsel's instruction, and

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1 consistent with that instruction, is there any reason
2 as to why you decided to hire Mr. Bachman that you can
3 share with me that wouldn't violate her instruction?

4 MS. SMITH: Objection. I think that's
5 confusing to him. It's confusing to me when I hear
6 that. I think that asks the same question.

7 BY MR. SEGARS:

8 Q. Well, I guess -- here's what I'm trying to
9 find out. I'm trying to find out your reasons for
10 hiring Glen Bachman --

11 MS. SMITH: And we're instructing him
12 not to answer.

13 MR. SEGARS: I understand.

14 BY MR. SEGARS:

15 Q. And my question is, is there any information
16 responsive to that question that is outside of the
17 instruction that you've been given?

18 MS. SMITH: Objection. I think it's
19 confusing. I mean, these boys are not --

20 MR. EKSTRAND: I think he's answering
21 "no," so...

22 MR. SEGARS: I'm just --

23 MS. SMITH: I just mean --

24 MR. SEGARS: You're the one who's
25 instructing him.

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1 MS. SMITH: -- they don't understand
2 privilege as well as we might, and so they have to
3 follow our instruction. And I think every time you
4 follow up with these questions it's confusing to them.

5 And they not trying to withhold anything --

6 MR SEGARS: Well -- right.

7 MS. SMITH: -- but they're also trying
8 to follow their counsel's instruction and the
9 follow-up question. It's like -- they're not lawyers.
10 They can't determine what's reasoning that's separate
11 from privilege; what's facts and separate from our
12 work product. They just can't. And it happens at
13 every single deposition. And we're not trying to have
14 them withhold anything, but at the same time they
15 should be able to follow their own counsel's
16 instruction.

17 BY MR. SEGARS:

18 Q. All right. Do you understand your counsel's
19 instruction?

20 A. In regards to the previous question?

21 Q. Yes.

22 A. Yes.

23 Q. Okay. So you understood it --

24 A. I mean, to the point of, I understand, you
25 know, what -- exactly what she just said. Like, let's

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1 just have a, you know -- a non-legal jargon-filled
2 conversation. Half the crap you say, I don't
3 necessarily know the definition. Right? I'm not
4 going to say, you know -- but I get the gist of what
5 she's saying.

6 Q. Okay. Well, I'm not the one instructing you
7 not to answer --

8 A. No, I know.

9 Q. I'm just trying to -- and if you don't
10 understand the instruction --

11 A. But if she advises me something, while she's
12 my lawyer, about work product -- right? -- that's
13 something that I'm not necessarily fully -- I don't
14 have to discuss. I don't -- like, that's...

15 Q. Right. And I guess my issue is -- I just
16 want to make sure you understood what her instruction
17 to you was.

18 MR. EKSTRAND: He says "yes" --

19 MR. SEGARS: Okay.

20 MR. EKSTRAND: -- and then you asked
21 your follow-up and he said "no." I mean, this is
22 behind us, as far as I know.

23 I mean, did you catch him saying "no," Madam
24 Court Reporter?

25 THE COURT REPORTER: I don't think so.

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1 MR SEGARS: Okay --

2 MR. EKSTRAND: Is there any -- ask your
3 question again and I think he'll tell you.

4 MR SEGARS: All right.

5 BY MR. SEGARS:

6 Q. Now, you've understood your counsel's
7 instruction, and you understood the question that
8 I asked you; right?

9 **A. The follow-up question?**

10 Q. No, I'm sorry. You understood my question,
11 "What were your reasons for hiring Glen Bachman?"
12 Right?

13 **A. Yeah.**

14 Q. Okay. And you also understood Ms. Smith's
15 instruction?

16 **A. Yes.**

17 Q. Okay. Having understood those two things, is
18 there anything you can tell me that would -- is
19 responsive to my question that would not violate
20 Ms. Smith's instruction?

21 **A. No.**

22 Q. Thank you.

23 THE WITNESS: That is what I said
24 previously. I guess I kind of mumbled. I apologize.

25 MR. EKSTRAND: I heard you.