

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC. et al.,)
Plaintiff-Counterclaim Defendants/)
Third Party Defendants,) No. 3:07-cv-01600-ARC
v.) (Judge A. Richard Caputo)
LEACHCO, INC. et al.,) (electronically filed)
Defendant-Counterclaim Plaintiffs/)
Third Party Plaintiffs.)

**MOTION TO EXCUSE COUNSEL'S
PERSONAL ATTENDANCE AT PRETRIAL CONFERENCE**

The Defendant-Counterclaim Plaintiffs, Leachco, Inc. and Jamie S. Leach, move to excuse their counsel's personal attendance at the pretrial conference set for April 7, 2009 at 9:30 a.m., and that counsel Gary Peterson instead be allowed to participate by telephone. The undersigned discussed this motion with Mr. Katsock, counsel for Babyage and John M. Kiefer, Jr., who advised that he was not then in a position to take a position concerning the motion.

The grounds for this application are that, because Mr. Peterson's office is in Oklahoma, air travel to and from Wilkes Barre will consume 2 full days, in addition to the day on which the conference is held. Inasmuch as the trial is scheduled for less than a week later, on April 13, Mr. Peterson will have essentially no down time in Oklahoma before having to return to Pennsylvania for the trial. Because of the burden and expense of the requisite travel, we submit that it is reasonable to excuse Mr. Peterson's personal attendance at the pretrial conference.

Normally, it would be possible for Mr. Kemether, our Pennsylvania counsel, to personally attend the conference. However, Mr. Kemether was advised a few days ago that his wife will be giving birth during the week of March 30. Because of his responsibilities as a husband and soon-to-be father, Mr. Kemether will not be available on April 7. He will be available during the following week, when the trial is to be held. Under these circumstances, we submit that it is reasonable to allow Mr. Peterson to participate in the conference by telephone.

Respectfully submitted,

s/ Gary Peterson
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CERTIFICATE OF SERVICE

I certify that I electronically transmitted this document to the Clerk using the ECF System so as to cause transmittal of a Notice of a Electronic Filing to the following ECF registrant:

Andrew J. Katsock, III

Attorney for Defendant, on March 24, 2009.

s/ Gary Peterson