

on September 21, 2009 in the 71st Judicial District of Harrison County, Texas. That case is *Norit Americas, Inc. v. ADA-ES, Inc., et. al.*, Cause Number 08-0673 and jury selection is set for September 16, 2009.

B. ARGUMENT

3. The instant subpoena subjects Michael Smith and his clients to an undue burden and the undersigned therefore requests that the Court quash the instant subpoena pursuant to Federal Rule of Civil Procedure 45 (c)(3)(A)(iv). Mr. Smith is not a party to this lawsuit and has no first-hand knowledge about the underlying facts of the lawsuit. Mr. Smith's attendance on behalf of his clients in the above described matters is necessary and it would impose an undue burden for him and his clients not to be present. As stated above, Mr. Smith has previously sat for and given a deposition in this matter and his testimony is therefore available to the Defendants for use at trial.

C. CONCLUSION

4. For these reasons, Michael Smith asks the Court to grant his motion to quash the Defendants' subpoena.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that prior to this motion, counsel for Witness Michael Smith communicated with Defendants' counsel of record, Charles L. Babcock, regarding the above Motion. Defendants' counsel of record stated they are opposed to the relief requested in this Motion.

/s/ Lawrence A. Phillips
Lawrence A. Phillips

CERTIFICATE OF SERVICE

The undersigned certifies that on this 3rd day of September, 2009, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

/s/ Lawrence A. Phillips
Lawrence A. Phillips