

John Jacks

From: John Jacks
Sent: Tuesday, March 08, 2011 5:41 PM
To: 'John Henry'
Cc: Doug Becker; Ian Imrich (ian@ijilaw.com); GrotzingerJ@GTLAW.com; BelfieldG@GTLAW.com
Subject: RE: Deposition of Designated Experts

John,

Dr. Wilcox is available on either March 22 or March 25. Mr. Benavides can likewise be available that week. I will check to see if there are any times he is not available that week. I will try to contact Mr. Perales to see if he is available for deposition. Mr. Perales, however, is not under Plaintiff's control, so I cannot produce him for a deposition. Likewise, Maurice Mills is not under the control of Plaintiff and, even if he were, Defendants have already deposed Mr. Mills and Plaintiff's designation is based on that testimony. Defendants are not entitled to depose Mr. Mills a second time. As for Doug and myself, I don't believe we are subject to deposition in this case. We will submit Plaintiff's claim for attorney fees in accordance with Rule 54, which does not contemplate discovery on attorney fees. *See Fed. R. Civ. P. 54(d)(2)(B)(iv)* (requiring disclosure of terms of any agreement regarding fees only upon court order).

We are still waiting on a number of items of discovery from defendants. Mr. Imrich has said that he would provide a written acknowledgement of the objections Tiltware has agreed to withdraw to Plaintiff's written discovery. That was approximately one week ago, and we still do not have that. Mr. Imrich has also said that Tiltware cannot produce Chris Porter, but we have not been provided with an address where Mr. Porter can be served with a subpoena, which we have requested. We are still waiting on a date to depose Mr. Mizrachi. Please provide that as soon as possible. We still need to depose Chris Torina, but I am still unclear as to whether he will voluntarily appear in Austin for his deposition or if we need to subpoena him in California. Please let me know how this is to be handled. We need to depose a representative for Tiltware. I'll get to you a draft of the notice identifying the areas of examination tomorrow, so that Tiltware can identify a representative. Finally, we need to depose Donna Marks. Please let me know if you can produce her in Austin or we need to subpoena her in Florida.

We still need to schedule this case for mediation in accordance with the Court's order. I have provided possible candidates to serve as mediator, but I have received no response to that overture. Please let me know if you intend to mediate the case as ordered and, if so, what your plan is for accomplishing this.

We still have not received the \$1,500 ordered by the Court several weeks ago. Please provide that or let me know when we can expect to be paid.

Finally, we would like to enter into a comprehensive schedule for discovery. We will agree to make witnesses subject to our control available and otherwise be available for non-party witnesses, but we are requesting the same consideration. We are also amenable to scheduling depositions beyond the March 25 cut-off date. We have at least a couple of weeks where it would be feasible to take depositions for this case. Of course, all of this is subject to the Court's rulings on the motion to dismiss and motion to continue the trial.

A conference call may be in order to discuss all of this. Please let me know your thoughts.

Sincerely,

John


John Jacks



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From: John Henry [<mailto:jhenry@jhenrylaw.com>]
Sent: Tuesday, March 08, 2011 3:21 PM
To: John Jacks
Cc: Doug Becker; Ian Imrich (ian@ijilaw.com); GrotzingerJ@GTLAW.com; BelfieldG@GTLAW.com
Subject: Deposition of Designated Experts

John,

Although there is certain to be substantial activity regarding jurisdictional matters in the case, I would like to agree upon dates, times and the locations for the depositions of your expert witnesses should the case continue as scheduled with respect to one or both of the defendants. Please provide me dates and times for the depositions of all of your expert witnesses, including but not limited to Mills, Perales, Benavides, Wilcox, and yourself and Mr. Becker for the week of March 21st.

I will file notice with the Court and send out depositions notices today if we cannot agree, given the extreme time constraints the parties are under.

John

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