

1 RICHARD C. EYMANN  
Eymann Allison Hunter Jones, P.S.  
2 2208 West Second Avenue  
Spokane, WA 99201  
3 (509) 747-0101

4 STEPHEN L. NORDSTROM  
Nordstrom & Nees, P.S.  
5 323 South Pines Road  
Spokane, WA 99206  
6 (509) 924-9800

7 Attorneys for Plaintiff

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9 **UNITED STATES DISTRICT COURT FOR THE**  
10 **EASTERN DISTRICT OF WASHINGTON**

11 THOMAS A. WAITE,

12 Plaintiff,

13 vs.

14 THE CHURCH OF JESUS CHRIST OF  
LATTER DAY SAINTS d/b/a  
15 CORPORATION OF THE PRESIDING  
BISHOP OF THE CHURCH OF JESUS  
CHRIST OF LATTER DAY SAINTS,  
16 a Utah corporation, d/b/a  
CORPORATION OF THE  
17 PRESIDENT OF THE CHURCH OF  
JESUS CHRIST OF LATTER DAY  
18 SAINTS, a Utah corporation;  
DONALD C. FOSSUM; and  
19 STEVEN D. BRODHEAD,

20 Defendants.

No. CV-05-399-EFS

**DECLARATION OF  
RICHARD C. EYMANN  
IN RESPONSE TO  
AFFIDAVIT OF  
BRIAN T. REKOFKE IN  
SUPPORT OF MOTION  
TO COMPEL**

21 I, RICHARD C. EYMANN, declare under penalty of perjury under the  
22 laws of the State of Washington that the following is true and correct:  
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24 1. I am one of the attorneys for the plaintiff in the above-referenced  
25 matter. I make this declaration from my own personal knowledge.  
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1           2.     I have reviewed the Affidavit of Brian T. Rekofke in Support of  
2 Motion to Compel filed on April 11, 2007.

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4           3.     On November 9 and 10, 2006, plaintiff conducted discovery  
5 depositions in Salt Lake City, Utah. In attendance, in addition to witnesses, were  
6 Stephen Nordstrom and myself for plaintiff, Brian Rekofke and Thom Walk,  
7 attorneys for the Church defendants, Andrew Smythe for defendant Brodhead,  
8 Richard Black, a Church representative, Gavin Bohne, a legal videographer, as  
9 well as Terry Hansen Cronenwhett, court reporter.  
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12           4.     During the deposition of Donald C. Fossum, who was the  
13 missionary driver of the pickup at the time of the collision, the following  
14 exchange occurred:  
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16           Q:     (By Mr. Nordstrom) Okay. Let me kind of go back to  
17 the beginning again, when I talked to you about who you may have  
18 spoken with regarding this accident. You had a conversation  
sometime ago with Mr. Walk. Is that correct?

19           A:     Yeah.

20           Q:     Was that down in Provo?

21           A:     Yeah. That was at my house.

22           Q:     Do you remember the nature of that conversation?

23           A:     He just asked me questions about it, and I don't recall  
24 everything. I have talked about it with so many people and so many  
25 times that it's kind of hard to distinguish.  
26

1 Q: Sure. Just tell me what you do remember of that  
2 conversation involving him.

3 MR. REKOFKE: Excuse me. That would be attorney-client  
4 privilege.

5 MR. NORDSTROM: I didn't realize that Mr. Walk was an  
6 attorney for Mr. Fossum. I thought he was – in fact, I don't – did  
7 I ever get a notice of appearance from anybody but you, I think and  
8 Andy. Am I missing something here?

9 MR. REKOFKE: You are missing that he is a lawyer for  
10 various church entities. He investigated that accident. It's the same  
11 thing under Heidebrink versus Moriwaki in the state of the  
12 Washington.

13 It's privileged, so I am instructing Mr. Fossum not to answer  
14 any questions about – other than he's already answered the general  
15 tenor of the conversation and when it occurred. He's not going to  
16 answer any questions about his discussions with Mr. Walk.

17 Fossum deposition, page 17, lines 3-25 through page 18, lines 1-6.

18 5. At the next break, I challenged Mr. Rekofke on the issue of whether  
19 he represented any missionaries other than Mr. Fossum and he conveyed his view  
20 that all missionary witnesses were "off limits." I countered that unless they were  
21 "speaking agents," there could not be a valid attorney/client privilege objection.

22 6. Later that day in a discussion that I believe was off the record, the  
23 issue came up again with regard to direct contact between plaintiff's lawyers and  
24 former missionaries. I cited the case of *Wright v. Group Health Hospital*, 103  
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1 Wn.2d 192, 691 P.2d 564 (1984) to Mr. Rekofke and he acknowledged that he  
2 had forgotten about that case and said that it might apply.

3  
4 7. During subsequent breaks during a deposition that day, Mr. Rekofke  
5 and I were discussing, outside of Mr. Nordstrom's presence, the proposed  
6 dismissal stipulation of one of the Church entities and he inquired regarding Mr.  
7 Nordstrom's contact with missionaries. I told him that it was my position that we  
8 had every right to contact former missionaries who were witnesses unless they  
9 were speaking agents. He then said he wanted to go back to his office and take a  
10 look at the Wright case and that if he felt that he was on solid ground, that he  
11 wanted to get a Court ruling. I agreed that would be fine.

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14 8. I do not believe I ever spoke with Mr. Nordstrom concerning that  
15 conversation I had with Mr. Rekofke until recently.

16  
17 9. When I returned to the office from Salt Lake Cy in November, I read  
18 the Wright case and reconfirmed that I was correct. I assumed that Mr. Rekofke  
19 had done the same as weeks passed and he did not bring a motion for clarification  
20 by the Court. Obviously, if he brought a motion, Mr. Nordstrom and myself  
21 would have had immediate notice that he continued to maintain that we could not  
22 have direct contact with former missionary witnesses.  
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1 10. It was not until after Mr. Nordstrom had provided a copy of  
2 James T. Ross' affidavit to defense counsel, that I became aware that  
3 Mr. Rekofke was of the belief that he and I had reached an agreement on  
4 contacting missionary witnesses. In any event, I do not believe that a solid no  
5 contact agreement was reached, certainly nothing in writing, by letter, or on the  
6 record in a deposition. Rather, we did agree that the defense could check the case  
7 I cited as authority for allowing contact, and if he felt he was correct, he could  
8 seek Court affirmation.  
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12 DATED this 16th day of April, 2007 at Spokane, Washington.

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15 RICHARD C. EYMANN  
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