

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CITY OF SEATTLE, a first-class charter city,)	
)	
Plaintiff,)	No. C07-1620MJP
)	
v.)	REPLY IN SUPPORT OF MOTION
)	TO EXCLUDE THE TESTIMONY
THE PROFESSIONAL BASKETBALL CLUB,)	OF TIM CEIS
LLC, an Oklahoma limited liability company,)	
)	NOTE ON MOTION CALENDAR FOR
Defendant.)	IMMEDIATE CONSIDERATION
)	

The City's opposition misses the point. A drive-by denial from Ceis—"our lawyers never told me about the PowerPoint presentation they helped prepare (and which mentions me)"¹—proves nothing. For example, if Ceis was unaware but the Mayor or the City Attorney's office knew about it, Ceis adds nothing to the search for the truth. And there is good reason to believe they knew. The PowerPoint shows that the Mayor had been dealing with the Ballmer group since at least early October. Ex 567 at 0222 ("with the offer the Mayor made to us").²

¹ Ex. 567 at 0213.

² The PowerPoint was finalized on October 7, 2007. The Mayor's testimony that he did not know the group even existed until late November or early December (Tr. 56:7-15, 93:11-14) was mistaken.

1 And K&L Gates supposedly disclosed its dealings with the Ballmer group to the City Attorney's
2 office as part of the process of obtaining a conflict waiver.³

3 Unfortunately, the details of what the Mayor, the City Attorney, and others knew remain
4 tucked away behind privilege. For example, the defense does not have access to the internal
5 K&L Gates materials regarding the PowerPoint and its preparation. Fleeting glimpses from
6 third-party documents show that K&L Gates played a central role. E.g., Exs. 567, 620. Internal
7 K&L Gates emails would likely show who saw the PowerPoint and when. Likewise, there is
8 presumably considerable communication between K&L Gates and its client, the City. Those
9 communications might also show who saw the PowerPoint and when. It is telling that the City is
10 apparently unwilling to produce this material. It is not unfair to conclude that the material
11 establishes the City's knowledge about the PowerPoint. If Ceis is allowed to testify, this
12 material should be produced.

13 In short, the City hopes to present a fleeting denial through Ceis which cannot be tested
14 by the normal tools available in the search for the truth. But courts do not allow a party to use
15 privilege as a sword and a shield.

16 The City also says that in the middle of Ceis' deposition, it made some undefined waiver
17 of the privilege. No such waiver was announced to the PBC.⁴ Had a waiver been made and
18 announced—an extraordinary move in litigation—the PBC would have immediately sought all
19 related documents. Indeed, we would not be addressing this issue now, on the last day of trial,
20 had the waiver been made and the documents produced.

21 There was extensive discussion—on the record—about the City's privilege assertion.⁵
22 The PBC asked for a delineation of the "attorney/client privilege relationship between K&L
23 Gates, the Griffin group, and the City of Seattle, so [the PBC could] know what position the city
24

25 ³ Ex. 630. (Ex. 630 is K&L Gates' retention letter executed by the City. It will be offered on
26 Thursday.)

⁴ See Declaration of Paul R. Taylor.

⁵ See Exhibit 1 to Taylor Declaration at pp. 23-25.

1 is asserting so [that the PBC] can seek appropriate relief.”⁶ Despite this and repeated similar
2 requests, no such explanation was ever given.

3 To this day, the City has never set forth its position as to who would answer which
4 questions about discussions with Gorton, et al.

5 One thing is clear. In Ceis’ deposition, he was instructed not to answer questions
6 regarding his conversations with PowerPoint coauthor Walker from the date that Walker became
7 a “consultant” to the City. That instruction was never withdrawn. Moreover, the questions Ceis
8 answered regarding communications with Gorton related to the renovation of KeyArena, not the
9 litigation.⁷

10 The City should not be permitted to ask Ceis questions about what the City’s attorneys
11 did or did not tell him. But if it is permitted, the City should be required to produce all related
12 documents.

13 DATED this 25th day of June, 2008.

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26 ⁶ Id. at p. 23.

⁷ See, e.g., Narver Declaration at 6.

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TESTIMONY OF TIM CEIS (C07-1620MJP) - 4

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