

EXHIBIT H

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
 3
 4 Stephen and Jeaneen)
 Tucker, et al.,) TRANSCRIPT OF RECORD
 5 Plaintiffs,) 2008-CP-07-3145
 -vs-)
 6
 7 Leath, Bouch & Crawford,)
 LLP, et al.,)
 8 Defendants.) July 21 and 22, 2011
 Spartanburg, South Carolina

9
 10 Timothy Treon and P.)
 Jennings Scarce) TRANSCRIPT OF RECORD
 11 individually and on behalf) 2008-CP-07-0774
 of Others similarly)
 12 situated in the State of)
 South Carolina,)
 13 Plaintiffs,)
 14 -vs-)
 15
 16 Dryvit Systems, Inc., et)
 al.)
 17 Defendants.) JULY 21 and 22, 2011
 Spartanburg, South Carolina

ORIGINAL

21 B E F O R E:
 22 HONORABLE J. MARK HAYES, II, JUDGE
 23
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EXHIBIT
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1 MR. STAIR: --- that I think would not only be good, I
2 think it would be dispositive of their claim.

3 THE COURT: Mr. Stair, I do not want to grant this class
4 certification.

5 MR. STAIR: Yes.

6 THE COURT: I think, I think ---

7 MR. STAIR: Alright.

8 THE COURT: --- everybody in this courtroom knows that.
9 I think I've stated that I've had -- do not have any affinity
10 for this case, I think I stated in back in 1377 in in one of
11 those cases, I think, I think the defense counsel even quoted
12 me in one of the briefs they filed as to how I view ---

13 MR. STAIR: I think that might have been ---

14 THE COURT: --- this case.

15 MR. STAIR: --- me, sir.

16 THE COURT: Alright, so I think you know where probably
17 my heart is ---

18 MR. STAIR: Right.

19 THE COURT: --- with this ---

20 MR. STAIR: Alright.

21 THE COURT: --- but what I'm having a difficulty
22 separating from, sir, is the fact that there was a class
23 action litigation in place, that the lawyers that this side of
24 the courtroom is representing in all indications failed to do
25 their job and sit -- let this South Carolina case sit for an

1 extremely long period of time, let that fruit rot on the vine
2 and did not send out any notice. There are class
3 representatives that are named in this litigation that
4 received settlements that on their face seem to be extremely
5 favorable to them. I have seen documents, I have seen
6 letters, I have seen emails that highly suggest that there was
7 a deal contemplated between Dryvit lawyers and class counsels
8 and included these members of -- that were the -- these class
9 representatives, a secret deal to make the South Carolina case
10 rot on the vine while Posey went, while Posey up in Tennessee
11 went through all the hurdles it went through to be ripened.
12 If you have those types of allegations arising from a class
13 action lawsuit and factual basis of the class action, a
14 subsequent class action lawsuit that's the failure of the
15 lawyers and class representatives to be able to do their job
16 under Rule, under Rule 23 that I am obligated that gives me
17 duties as well, I have to see that there is going to be a
18 class. I might agree with you that plaintiffs' counsel is not
19 making it easy for me to apply these rules that need to be
20 applied but give me some help, don't -- I -- your credibility
21 in your argument is lost with me when the facts that I have
22 heard for years are so clear, they're so documented. I've not
23 come to any final conclusions on those facts, if I did my
24 judicial obligations would be different. I have not heard
25 from the defense and I want to hear from the defense but we

1 are talking about the first stage class certification and
2 there are certain facts that are screaming at me that we need
3 to have a class certification as much as I do not want to do
4 it.

5 MR. STAIR: Okay.

6 THE COURT: You're picking Mr. Searcy, or if I say his
7 name incorrectly, I have heard this argument. I have heard
8 this argument as an attack on Sam Phillips, I heard it in the
9 other case and I will tell you that Mr. Phillips's
10 participation in the 1377 case was extremely valuable to the
11 class who eventually received a better settlement or no
12 settlement that resulted from the attorneys that are being
13 represented on your side of the room. He was invaluable in
14 1377 in reaching that settlement.

15 MR. STAIR: I don't think I suggested otherwise.

16 THE COURT: Alright.

17 MR. STAIR: Alright, now if if you might I think our
18 dialogue here has demonstrated a lot of the problem under
19 which I operate which is I have not been involved in the other
20 case, you obviously have, ---

21 THE COURT: And I would hope that you had obtained those
22 records.

23 MR. STAIR: Again, again, I -- I'm not ignorant at all of
24 the other case ---

25 THE COURT: Okay.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on July 21 and 22, 2011 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 239, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

October 12, 2011

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.