

EXHIBIT O

McWilliams, Susan P.

From: Hayes, J. Mark <mhayesj@sccourts.org>
Sent: Thursday, September 20, 2012 2:39 PM
To: Jay Jones; M. Dawes Cooke; McWilliams, Susan P.; Sam Phillips; Gregg Alford
Cc: Thomas A. Pendarvis; Kent Stair; Rob Fields; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; TimothyD.Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; CatherineR.Atwood; Amanda Taylor; Harry Goldberg; Gee, Tanya A.
Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Mr. Jones

While appearing at the hearing is preferred by the Court, if you, class counsel and all of the other attorneys involved feel that the interest of the class and interests of all of the other parties can properly and adequately be served and protected by having the Clarks testimony presented by video deposition, the Court will accept the presentation of the Clarks testimony in that manner.

However, it is stressed that the responsibility of obtaining everyone's agreement to this method rest with you.

Thank you

Mark Hayes

From: Jay Jones [mailto:jjones@barnwell-whaley.com]
Sent: Wednesday, September 19, 2012 2:39 PM
To: Hayes, J. Mark; M. Dawes Cooke; Susi McWilliams; Sam Phillips; Gregg Alford
Cc: Thomas A. Pendarvis; Kent Stair; Rob Fields; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; TimothyD.Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; CatherineR.Atwood; Amanda Taylor; Harry Goldberg; Gee, Tanya A.
Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Judge Hayes,

I hate to bother you with logistical details, but in the spirit of full disclosure we wanted you to know that the circumstance with the Clarks has come full circle. As you may recall, the Clarks had long-standing plans to be out of the country during the RTSC hearing. Yesterday, after booking their flight to South Carolina next week to attend their special depositions for the RTSC hearing (to accommodate their original travel plans), the Clarks determined that they would not have enough time to get back to New Hampshire and then drive to Montreal to make their cruise. As a result, they cancelled their cruise and decided to try it another time. In what may best be described as a case of the tail wagging the dog, in seeking to accommodate for their travel plans that were to allow for their original travel plans, the Clarks cancelled their original travel plans.

I wanted to bring this to your attention because our previous grounds for taking the depositions in advance of the RTSC hearing- the Clarks being out of the country- have obviously changed, albeit with the best of intentions. Even though the Clarks will no longer be out of the country, Mr. Phillips has been very accommodating in agreeing to proceed next week with taking the Clarks' testimony in Hilton Head as previously arranged. Conversely, we also discussed and worked out potential objectionable inquiries he may make during his examination of the Clarks, and we do not anticipate there will be any objections.



Therefore, we would respectfully ask that we may continue as planned with the Clarks' deposition testimony for the RTSC hearing next Friday, September 28th in Hilton Head in lieu of their attendance in Spartanburg on October 1st.

I appreciate your attention to this, and please let me know if you have any questions or concerns.

Sincerely,

Jay Jones

From: Hayes, J. Mark [mailto:mhayesj@sccourts.org]

Sent: Tuesday, September 18, 2012 5:11 PM

To: M. Dawes Cooke; Susi McWilliams; Sam Phillips; Jay Jones; Gregg Alford

Cc: Thomas A. Pendarvis; Kent Stair; Rob Fields; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; TimothyD.Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; CatherineR.Atwood; Amanda Taylor; Harry Goldberg; Gee, Tanya A.

Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Mr. Jones and Mr. Cooke

Thank you for your response. I also appreciate your desire to not trouble the Court with logistical details.

I remain of the opinion that allowing the Clarks to present their testimony through a video deposition is a reasonable request given their travel schedule. My concern is with Mr. Robertson's position that because the Court has offered an approach to handle anticipated objections that it "further highlights" his claim of due process violations.

Class counsel does not consent to your request for a pre-hearing depositions and is doing so only because the Court has directed that it be accomplished. To accommodate class counsel concern, the Court offered the suggested approach of handling objections because the Court has been called upon in other cases to handle objection made in the course of a deposition in a similar fashion.

Unless you can find an agreed upon approach, the better approach is for the Court to withdraw its offer to assist with objection during the video deposition. If class counsel believes the Court withdrawal of its offer if being available to rule on objection is a material to its going forward with the video depositions and a reasonable alternative approach cannot be agreed by everyone, the Court could not require class counsel to conduct them.

Again thank you for your attention and cooperation

Mark Hayes

From: M. Dawes Cooke [mailto:mdc@barnwell-whaley.com]

Sent: Tuesday, September 18, 2012 2:00 PM

To: Hayes, J. Mark; Susi McWilliams; Sam Phillips; Jay Jones; Gregg Alford

Cc: Thomas A. Pendarvis; Kent Stair; Rob Fields; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; TimothyD.Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; CatherineR.Atwood; Amanda Taylor; Harry Goldberg; Gee, Tanya A.

Subject: Re: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Judge Hayes:

Thank you for your email of this afternoon. We have not been silent, but have had extensive discussions with the

interested parties and were trying not to trouble the Court with the logistical details of taking the Clarks' testimony. We believe that we have worked out a satisfactory arrangement with Mr. Phillips; to wit, the Clarks will travel from their home in New Hampshire to Hilton Head to be examined via video deposition next Friday, September 28.

We have interpreted the objections of our co-defendants, not as objections to this specific mode of examining the Clarks, but rather as preserving their objections to the entire Rule to Show Cause proceeding. In other words, the Defendants would have substantially the same objections to the Clarks' testimony if it were given live at the October 1 hearing. Even if Your Honor is not available to hear objections contemporaneously during the deposition, normal deposition procedures protect the due process rights of participants by allowing for objections to be reserved and ruled upon by the Court before objectionable testimony is introduced into evidence. We endorse the idea of Your Honor being available to hear objections in real time if that is possible, but it is not a requirement of due process. With all respect to our co-defendants, we do not understand how this humane accommodation of the Clarks' vacation plans affects their due process rights any differently than live testimony taken on October 1 would.

Speaking for the Clarks, we very much appreciate the Court's flexibility in this matter as well as the cooperation of Mr. Phillips and others in working out the logistics for taking the Clarks' testimony. Yesterday Mr. Williams commented about the "coincidence" that the Clarks booked their cruise shortly after the Court issued its Rule to Show Cause. We hope that he made the comment facetiously, because the Clarks' scheduling of their trip absolutely was coincidental. The Clarks knew nothing about the October 1 hearing when they booked their cruise. We invite any of the parties to question them about this under oath next Friday.

We will continue to work with all parties to resolve any problems that they perceive with the procedure that has been proposed.

Jay Jones
Dawes Cooke



Phone: 843-577-7700
Mobile: 843-729-2545
Facsimile: 843-577-7708
885 Island Park Drive (29492)
PO Drawer H
Charleston, SC 29402

Email
mdc@barnwell-whaley.com

On 9/18/12 12:53 PM, "Hayes, J. Mark" <mhayesj@sccourts.org> wrote:

Mr. Jones

The Court did not create the problem of your client's travel plan. The Court offer to allow the testimony of your clients to be secured prior to hearing is an accommodation to your client.

The Court's willingness to work with your client is now being characterize as a denial of due process. This is not a time for you to be silent. The Court made a suggestion on how to conduct the depositions but does not recall you agreeing, disagreeing or offering an alternative approach.

I look forward to your attention.

Mark Hayes

From: McWilliams, Susan P. [<mailto:SMcWilliams@nexsenpruet.com>]

Sent: Monday, September 17, 2012 9:41 PM

To: Hayes, J. Mark; Sam Phillips; Jay Jones; Gregg Alford

Cc: M. Dawes Cooke; Thomas A. Pendarvis; Kent Stair; Rob Fields; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; Catherine R. Atwood; Amanda Taylor; Harry Goldberg; Gee, Tanya A.

Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Dear Judge Hayes and Counsel,

The undersigned represents defendant William Dixon Robertson III in the legal malpractice action, *Tucker et al. v. Leath Bouch & Crawford, et al.*, Case No. 08-CP-07-3145 ("the *Tucker* case"). This is in response to the e-mails circulated by the Court and various counsel on Friday afternoon and today regarding the videotaped testimony of the Clarkes for introduction at the Rule to Show Cause Hearing in the underlying products liability action, *Treon et al. v. Dryvit Systems, Inc.*, Case No. 02-CP-07-1377 ("the *Treon* case"), set by the Court to begin on October 1, 2012. I was out of the office at a medical appointment at Duke with my husband on Friday and have been unable to respond until now.

The Court specifically raised in its e-mail on the 14th the issue of consent of the other defendants to proceeding with the videotaped testimony:

Mr. Jones you will need to also obtain the consent of the other parties involved. They may have a reason to feel it is important to have your clients present for the RTSC and may object to the process. Also, if the testimony is obtained prior to the RTSC, my expectation is that the other parties may also have questions for your clients. Thus, others beyond Mr. Phillips should be afforded an opportunity to attend.

On behalf of Mr. Robertson, while we have no objection to attempting to accommodate their travel plans for October, we do object substantively to the contemplated videotaping of the Clarkes' testimony on the grounds asserted in the Return to the Rule to Show Cause filed on behalf of Mr. Robertson, including without limitation that he is being denied the right to a jury trial in the *Tucker* action by virtue of the Rule to Show Cause in the *Treon* action. The need for logistical coordination with the Court in an effort to deal with the anticipated objections of counsel in the videotaped testimony of the Clarkes, discussed by counsel in e-mails circulated today, only further highlights, in our opinion, the lack of due process and denial of Mr. Robertson's right to a jury trial in the *Tucker* case. In the event counsel for the plaintiffs in the *Treon* action and counsel for the Clarkes elect to proceed with the videotaping of the Clarkes' testimony, Mr. Robertson will continue to assert his objections as stated in his Return.

Respectfully submitted,
Susi McWilliams

Susan P. McWilliams
Nexsen Pruet, LLC

1230 Main Street
Suite 700
Columbia, SC 29201
803-253-8221
smcwilliams@nexsenpruet.com
www.nexsenpruet.com <<http://www.nexsenpruet.com>>

NEXSEN PRUET
<<http://www.nexsenpruet.com/>>



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From: Hayes, J. Mark [<mailto:mhayesj@sccourts.org>]
Sent: Monday, September 17, 2012 10:11 AM
To: Sam Phillips; Jay Jones; Gregg Alford
Cc: M. Dawes Cooke; Thomas A. Pendarvis; Kent Stair; Rob Fields; McWilliams, Susan P.; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; Catherine R. Atwood; Amanda Taylor; Harry Goldberg
Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Your first assumption is correct.

I am assigned to do civil trial this week in Spartanburg. I will be available either Thursday or Friday. I suggest that if I am needed to rule on objection that you email both me and my law clerk. I do not usually take my computer to the bench but I will plan to do so when the depositions are scheduled. Email us when I am needed and I will try to step down as soon possible. Provide me with a telephone number to call and I will call once off the bench. If by chance I leave the courthouse for lunch or for some other reason I will email Mr. Phillips and Mr. Jones to advise them of the same. At that time I will give them my cell number to call if I am needed. Of course if anyone else has a better approach I am opened to hearing it.

I too prefer that the parties attend the hearing in person but given the long standing travel plans and the documentation that will be provided, I feel allowing the testimony to be gathered by video deposition is a reasonable accommodation that can be extended to the Clarkes.

From: Sam Phillips [<mailto:sphillips@FinkelLaw.com>]
Sent: Friday, September 14, 2012 6:18 PM
To: Hayes, J. Mark; Jay Jones; Gregg Alford
Cc: M. Dawes Cooke; Thomas A. Pendarvis; Kent Stair; Rob Fields; Susi McWilliams; Susan Wall; Beth Jowers; Mandy Delaney;

Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; Catherine R. Atwood; Amanda Taylor; Harry Goldberg
Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Dear Judge Hayes, I was involved with another matter this afternoon so I was not able to participate in the attached email exchange. I was able to reach Mr. Alford a few minutes ago so that I can set forth the position of Class Counsel to the Court regarding all this.

Mr. Alford withdraws his personal objection to the depositions of Mr. Jones' clients (Mr. & Mrs. Clarke). While Class Counsel would have preferred to have all Class Representatives present at the Oct. 1st hearing and was unwilling to consent to the Clarkes' absence, we understand the demands of peoples' schedules so we were/are willing to comply with any accommodation the Court thinks appropriate. Based on my initial conversation with Mr. Jones, I would propose the Clarkes' video deposition occur next week on either Thursday or Friday near their home on HHI. I would appreciate hearing **directly** from anyone who plans on attending the deposition regarding the feasibility of those dates (Sept. 20 & 21), rather than by return email, so that the Court is not distracted by counsels' arrangements.

In light of the email exchange, I would beg the Court's indulgence and ask it two (2) questions that I hope will facilitate the Clarkes' depositions:

- 1) I assume Mr. Alford and Mr. Williams may attend the Clarke's depositions. Although the Court has instructed me to conduct the class representatives' examination at the Oct. 1st hearing, I am unaware of any prohibition against Messers Alford and Williams witnessing the examination or discussing them with me after they are completed. As the depositions are meant to be substitutes for the hearing, I assume there is no prohibition regarding who may attend.
- 2) I would ask if the Court is available on either Thursday or Friday next in order to hear any evidentiary objections that may arise during the depositions. If Mr. & Mrs. Clarke were available to attend the Oct. 1 hearing, then the Court could have ruled on such objections so the examinations could have proceeded. I would like to avoid the possibility of an unanswered question by inquiring about the Court's availability for such rulings by telephone.

Also, just so the email record is clear and unambiguous, Class Counsel does not believe Judge Duke's orders "disqualifies" any lawyer from participating in the -1377 case by either operation of applicable law or the language used in those orders. Certainly, there is no basis for a disqualification regarding the Clarkes as the subject of the disqualification was a representation of Mr. & Mrs. Cardamone, not the Clarkes. Class Counsel is simply complying with the Court's ruling, and not abandoning its earlier objections to the respondents' various disqualification arguments.

Sam Phillips

PS, I apologize for not mentioning the draft order. Numerous matters and a bout of ill health have intruded on my ability to finish the draft. I have a teaching commitment at USC on Saturday that will take most of the day, but plan to complete the draft thereafter as soon as possible.

With Kindest Regards,

Robert B. (Sam) Phillips, Esq.
Finkel Law Firm LLC
Physical: 1201 Main St., No.1800, Columbia, SC 29201
Mail: P.O. Box 1799, Columbia, SC 29202
Voice: 803.765.2935
Fax: 803.252.0786

sphillips@finkellaw.com <<mailto:sphillips@finkellaw.com>>
www.Finkellaw.com <www.Finkellaw.com>

From: Jay Jones [<mailto:jjones@barnwell-whaley.com>]
Sent: Friday, September 14, 2012 4:02 PM
To: Gregg Alford
Cc: M. Dawes Cooke; Thomas A. Pendarvis; Kent Stair; Rob Fields; Sam Phillips; Susi McWilliams; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (JoelKozak); Willelfe@aol.com; Ken Anthony; Sam Outten; Catherine R. Atwood; Amanda Taylor
Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Gregg,

I have removed Judge Hayes from this chain of emails, as I don't think it proper to drag him into this argument. Perhaps you have forgotten, you were disqualified from the Tucker and Treon cases, period. You were not disqualified as to just Gianni or the Cardamones. Judge Hayes' email of August 31st indicating his ruling recognized this as well. Specifically, he stated that "in the order direct that work related to former class representatives be handle by Mr. Phillips and/or lawyers who were not lawyers associated with the collateral professional malpractice suit." Therefore, under that basis you are not participating as to the Clarks.

Sincerely,

Jay

From: Gregg Alford [<mailto:gregg@awc-lawfirm.com>]
Sent: Friday, September 14, 2012 3:56 PM
To: Jay Jones
Cc: Hayes, J. Mark; M. Dawes Cooke; Thomas A. Pendarvis; Kent Stair; Rob Fields; Sam Phillips; Susi McWilliams; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; <jonastrialatty@netscape.net>; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (JoelKozak); <Willelfe@aol.com>; Ken Anthony; Sam Outten; Catherine R. Atwood; Amanda Taylor
Subject: Re: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

No i am not. Under what basis? As to the Carke's they were never even close to being our clients. They have no basis in law or fact to make that argument. As you well know, the Clark's were Bill Bowen's clients and no conflict Has ever been raised, or even suggested as to them, nor could it be. So I object.

I am prepared to attend anywhere and anytime to argue this issue, even Gaffney.

Gregory M. Alford

Alford, Wilkins and Coltrane LLC

P.O. Drawer 8008

Hilton Head Island, SC 29938

Phone (843) 842-5500

Fax (843) 842-8400

gregg@alfordandwilkins.com

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On Sep 14, 2012, at 3:43 PM, "Jay Jones" <jjones@barnwell-whaley.com> wrote:

Respectfully, you are disqualified from participating. I have discussed this with Sam Phillips and I believe he is the only one from -1377 counsel who may object. As he and I discussed, if the Court was okay with it, then so was he.

From: Gregg Alford [<mailto:gregg@awc-lawfirm.com>]

Sent: Friday, September 14, 2012 3:41 PM

To: Jay Jones

Cc: Hayes, J. Mark; M. Dawes Cooke; Thomas A. Pendarvis; Kent Stair; Rob Fields; Sam Phillips; Susi McWilliams; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell;

<jonastralatty@netscape.net>; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (JoelKozak); <Willelfe@aol.com>; Ken Anthony; Sam Outten; Catherine R. Atwood; Amanda Taylor

Subject: Re: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

I object. In my opinion, they need to be there.

Gregory M. Alford

Alford, Wilkins and Coltrane LLC

P.O. Drawer 8008

Hilton Head Island, SC 29938

Phone (843) 842-5500

Fax (843) 842-8400

gregg@alfordandwilkins.com

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On Sep 14, 2012, at 3:39 PM, "Jay Jones" <jjones@barnwell-whaley.com> wrote:

Judge Hayes,

I appreciate your consideration and understanding. I will provide the documentation to Mr. Phillips and the Court. It is my understanding that pending approval by the Court, the other parties would consent to proceeding in this manner. If I am mistaken, I would appreciate that any counsel objecting to this please let me know as soon as possible. Otherwise, we will proceed with making the necessary arrangements, including having the testimony taken by video per the Court's request.

I apologize if I was not clear in my prior communication- my proposal contemplated making the Clarks available for questioning to counsel for the other proper parties if so desired, and I fully intend on affording them the opportunity to attend.

Please do not hesitate to let me know if the Court has any other issues or concerns so we may

address them accordingly. Thanks, and I hope everyone has a great weekend.

Sincerely,

Jay Jones

John A. "Jay" Jones

<BWPH logo.jpg>

Post Office Drawer H
Charleston, SC 29402
885 Island Park Drive (29492)
(843) 577-7700
(843) 577-7708 (fax)

jjones@barnwell-whaley.com <<mailto:JJones@Barnwell-Whaley.com>>

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From: Hayes, J. Mark [<mailto:mhayesj@sccourts.org>]

Sent: Friday, September 14, 2012 3:15 PM

To: Jay Jones; M. Dawes Cooke; Gregory M. Alford; Thomas A. Pendarvis; Kent Stair; Rob Fields
Cc: Sam Phillips; Susi McWilliams; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; Catherine R. Atwood; Amanda Taylor

Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

If you will provide the verifying documentation to Mr. Phillips and make a copy available for the court's records, I am fine with their testimony being taken prior to the RTSC. My preference, however is for the testimony to be taken by video.

Mr. Jones you will need to also obtain the consent of the other parties involved. They may have a reason to feel it is important to have your clients present for the RTSC and may object to the process. Also, if the testimony is obtained prior to the RTSC, my expectation is that the other parties may also have questions for your clients. Thus, others beyond Mr. Phillips should be afforded an opportunity to attend.

From: Jay Jones [<mailto:jjones@barnwell-whaley.com>]

Sent: Thursday, September 13, 2012 3:34 PM

To: Hayes, J. Mark; M. Dawes Cooke; Gregory M. Alford; Thomas A. Pendarvis; Kent Stair; Rob Fields
Cc: Sam Phillips; Susi McWilliams; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; Catherine R. Atwood; Amanda Taylor
Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Dear Judge Hayes,

It has come to our attention that two of the -1377 former class representatives, Benjamin and Diane Clark, have long-standing travel plans and will be out of the country on October 1st, and thus unable to be present for the Rule to Show Cause hearing ("RTSC"). I have requested, and will provide upon receipt, copies of their documentation evidencing the same. I have spoken with Sam Phillips about this, and would like to present a possible resolution to minimize disruption to the proceedings, while at the same time making my clients available to fully answer questions from Mr. Phillips and the Court:

Understanding that the RTSC was issued by the Court and that our Motions to Quash and/or Dismiss the RTSC are being denied (subject to the Court's pending Order), I have proposed to Mr. Phillips that we make the Clarks available for a special deposition to be published at the RTSC in lieu of their appearance. This would allow Mr. Phillips to conduct his examination of the Clarks the same as if they were in the courtroom, under oath. Then, after publishing their testimony into the record during the RTSC, if the Court should have any further issues or questions for them, we could make the Clarks available upon their return. To be very clear, Mr. Phillips cannot and does not consent to the Clarks not appearing at the RTSC; however, should the Court allow the proposed pre-hearing special deposition, he would be fine in proceeding in that manner.

I appreciate your attention and consideration to this matter, and apologize in advance for any inconvenience this may cause. I look forward to hearing from you on this so we may reach a resolution that is acceptable to everyone.

Sincerely,

Jay Jones

John A. "Jay" Jones

<image001.jpg>

Post Office Drawer H
Charleston, SC 29402
885 Island Park Drive (29492)
(843) 577-7700
(843) 577-7708 (fax)
jjones@barnwell-whaley.com <<mailto:JJones@Barnwell-Whaley.com>>

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From: Hayes, J. Mark [<mailto:mhayesj@sccourts.org>]
Sent: Wednesday, September 12, 2012 11:53 AM
To: M. Dawes Cooke; Gregory M. Alford; Thomas A. Pendarvis; Kent Stair; Rob Fields; Jay Jones
Cc: Sam Phillips; Susi McWilliams; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; Catherine R. Atwood
Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

I appreciate your cooperation but please do not reset your deposition or your other scheduled events.

From: M. Dawes Cooke [<mailto:mdc@barnwell-whaley.com>]
Sent: Tuesday, September 11, 2012 11:41 AM
To: Gregory M. Alford; Thomas A. Pendarvis; Hayes, J. Mark; Kent Stair; Rob Fields; Jay Jones
Cc: Sam Phillips; Susi McWilliams; Susan Wall; Beth Jowers; Mandy Delaney; Leonardi, Daniel C.; James Bruner; Warren Powell; jonastrialatty@netscape.net; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Ken Anthony; Sam Outten; Catherine R. Atwood
Subject: Re: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

I will, of course, appear when and where Judge Hayes sets the hearing. However, September 24 and 25 are particularly difficult for me because a two-day deposition of a key party in a complex multi-party case has been set for those dates. There are many lawyers involved in that case, and the dates were set after much negotiation among the parties. I have other things scheduled that week as well, but I can move them to make myself available the whole week other than Monday and Tuesday.

Dawes Cooke

<image002.jpg>

Phone: 843-577-7700
Mobile: 843-729-2545 Email
Facsimile: 843-577-7708 mdc@barnwell-whaley.com
885 Island Park Drive (29492)
PO Drawer H
Charleston, SC 29402

On 9/10/12 10:05 AM, "Gregory M. Alford" <gregg@awc-lawfirm.com> wrote:

Dear Judge Hayes:

?

In response to the various emails, our understanding is the Court has ruled Dryvit? not to be an indispensable party.??We believe this?means their attendance is not required at the RTSC.? Is this correct?? ?

?

Additionally, in response to Mr.. Pendarvis' email, I understand that the Court was asking if the dates proposed conflicted with any other Court obligations and would ask that Mr.. Jones clarify whether or not the obligation mentioned in his email are Court obligations.

?

Finally, it is our understanding that Mr.. Grimball, Mullen and Wiley will be made available to be witnesses should the Court or interested party request it.

?

To date we have not heard any objection?to the hearing being moved to Beaufort on September 24, 2012.?? We are currently moving a mediation so that we can attend and request any party?making any objection that would cause the hearing not to go forward the week of September 24, please?let us know today.?

?

As always, thank you for your attention to this matter.?

?

?

Gregory M. Alford

Alford, Wilkins & Coltrane, LLC

P.O. Drawer 8008

Hilton Head Island, SC 29938

(843) 842-5500

(843) 842-8400 fax

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?

From: Thomas A. Pendarvis [<mailto:tpendarvis@pendarvislaw.com>]

Sent: Friday, September 07, 2012 11:55 AM

To: Hayes, J. Mark; Stair, Kent T.; Rob Fields; Jay Jones

Cc: Gregg Alford; Sam Phillips; McWilliams, Susan P.; Wall, Susan; Jowers, Beth; Mandy Delaney; Leonardi, Daniel C.; Jim Bruner; M. Dawes Cooke;

wpowell@brunerpowell.com; jonastrialatty@netscape.net; Thomas A. Pendarvis; I.

Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Kenneth Anthony; Sam Outten; Catherine R. Atwood

Subject: RE: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

Judge Hayes:

?

Judge Hayes:

?

I am available at the Court's convenience during the week of September 24-28 to observe the proceedings in the #1377 case. Please accept my apologies for the slight delay in responding, but I was actually on I-95 on my way to Gaffney when I received your e-mail postponing status conference and have just returned to my office.

?

While I have no court appearance scheduled for that week, it is worthy of mention that there is a deposition scheduled by mutual agreement that week on a case in which Mr. Cooke and I are involved. Mr. Jones may not have been aware that the matter scheduled on Mr. Cooke's calendar for Thursday, September 27 is a deposition that can easily be rescheduled and not a court appearance. The other unrelated matter has not been set for trial.

?

As always, thank you for your time and attention to these matters.

?

Thomas Pendarvis

?

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?

-----Original Message-----

From: Jay Jones

Sent: Friday, September 07, 2012 10:05 AM

To: Hayes, J. Mark; Stair, Kent T.; Rob Fields

Cc: Gregg Alford; Sam Phillips; McWilliams, Susan P.; Wall, Susan; Jowers, Beth; Mandy Delaney; Leonardi, Daniel C.; Jim Bruner; M. Dawes Cooke; wpowell@brunerpowell.com; jonastrialatty@netscape.net; Thomas A. Pendarvis; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Kenneth Anthony; Sam Outten; Catherine R. Atwood

?

Judge Hayes,

?

Respectfully, the only day that week that either Dawes or I could be available is Wednesday, September 26th, and that is assuming our clients are available as well. I will follow up regarding their availability as soon as possible. Thank you.

?

Sincerely,

?

Jay Jones

?

?

From: Hayes, J. Mark [<mailto:mhayesj@sccourts.org>]

Sent: Friday, September 07, 2012 9:37 AM

To: Stair, Kent T.; Rob Fields

Cc: Gregg Alford; Sam Phillips; McWilliams, Susan P.; Wall, Susan; Jowers, Beth; JClark@pendarvislaw.com; Leonardi, Daniel C.; Jay Jones; Jim Bruner; M. Dawes Cooke; wpowell@brunerpowell.com; jonastrialatty@netscape.net; Thomas A. Pendarvis; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Kenneth Anthony; Sam Outten; Catherine R. Atwood
Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

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Everyone

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I have decided we will not have the conference today.

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However what need from everyone is for you to check your schedules for the end of September. I would like to move the hearing up by one week. Court administration has given me approval to travel to Beaufort County the last week of September. If you do not have any previously scheduled court appearances, I would appreciate your efforts of allowing the hearing to be move to Beaufort the last week of September.

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I look forward to hearing from everyone as soon as possible.

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In advance thank you

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Mark Hayes

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From: Stair, Kent T. [mailto:kstair@carlockcopeland.com]
Sent: Friday, September 07, 2012 7:54 AM
To: Rob Fields
Cc: Gregg Alford; Hayes, J. Mark; Sam Phillips; McWilliams, Susan P.; Wall, Susan; Jowers, Beth; JClark@pendarvislaw.com; Leonardi, Daniel C.; jjones@barnwell-whaley.com; Jim Bruner; M. Dawes Cooke; wpowell@brunerpowell.com; jonastrialatty@netscape.net; Thomas A.Pendarvis; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D.Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com; Kenneth Anthony; Sam Outten; Catherine R. Atwood
Subject: Re: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

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Rob,

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???????????? I did not think that my request for a Court Reporter for a conference between the Court and all counsel in a highly contested case was, or would turn out to be, controversial. I anticipated it could and would be handled in the same way that other reported hearings I have attended by phone have been done. I have not researched the issue, but do not see that the cases you cite below offer any support for the proposition that my request was or is out of line.

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?

???????????? Like Ms McWilliams, when I said I was available for a phone conference on Friday, it was for a phone conference. I have a long standing obligation for late Friday afternoon/evening that prevents me from traveling to Gaffney for the hearing and I would have made that known in the beginning if the request had been for an in-person conference in Gaffney. Beyond that, Ken Anthony is co-counsel in our case and I don't understand your concern about his attendance.

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record that no objections were made by either side after counsel had finished addressing the jury. If counsel believes an argument to be improper, his rights are fully protected by the method set forth in State v. Meehan, 160 S.C. 111, 158 S.E. 151 (1931), and in Crocker v. Weathers, 240 S.C. 412, 126 S.E.2d 335 (1962). In Crocker, we said: 'The proper course to be pursued when counsel makes an improper argument is for opposing counsel to immediately object and have a record made of the statements or language complained of and to ask the Court for a distinct ruling thereon.'¹⁵¹⁶ We refuse to hold that arguments must be recorded in every case and refuse to hold that these defendants have been deprived of effective assistance of counsel because of the absence of a record of the closing arguments. No contention of impropriety in the arguments is pointed out and, at most, counsel's pursuit of this matter is a fishing expedition.

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???????????? State v. Williams, 266 S.C. 325, 337, 223 S.E.2d 38, 44 (S.C. 1976)

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???????????? Briefs on this issue were filed with this Court before our opinion number 20186 was filed March 10, 1976, in the case of State v. Williams, 223 S.E.2d 38. In that case, the same counsel, appearing herein, raised the same issue. In Williams, we refused to hold that arguments must be recorded in every case. We adhered to the method heretofore set forth in? *448 State v. Meehan, 160 S.C. 111, 158 S.E. 151 (1931), and in Crocker v. Weathers, 240 S.C. 412, 126 S.E.2d 335 (1962), whereby a defendant may challenge the argument of counsel and preserve the alleged error for review.

?

???????????? ?

?

???????????? State v. Bolton, 266 S.C. 444, 447-48, 223 S.E.2d 863, 865 (S.C. 1976)

?

????????????

???????????? Sent from my iPad

?

????????????

???????????? On Sep 6, 2012, at 8:13 PM, "Stair, Kent T." <kstair@carlockcopeland.com> wrote:

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???????????????????????????????? Judge Hayes,

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???????????????????????????????? I did not see this email before I sent my response a moment ago.

?

???????????????????????????? ?

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???????????????????????????????? In the first and fourth paragraphs,? Mr. Alford refers to a "status" conference. In the second paragraph, he refers to a "scheduling" conference. At this time, I don't know what will be discussed, but if it is important enough to have everyone come to Gaffney, then we feel it is important enough to be reported.

?

???????????????????????????????? ?

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???????????????????????????????? My intention is not, and never has been, to have everyone travel unnecessarily to Gaffney. On the other hand, I have an obligation to protect my clients rights and I feel that my request to have all proceedings recorded is a legitimate exercise of that duty.

?

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???????????????????????????????? Kent Stair

????????????????????????????????

???????????????????????????????? Sent from my iPad

?

????????????????????

???????????????????? On Sep 6, 2012, at 6:20 PM, "Gregg Alford" <gregg@awc-lawfirm.com> wrote:

?
???????????????????? Dear Judge Hayes:

?
???????????????????? ?

?
???????????????????? We are not aware of Any rule requiring a status conference to be on the record.? We have asked for and not received a clear statement of Mr. stair's final position on whether we need to come to Gaffney.? Of course we would prefer the discussion to take place by phone, it saves time and money.? We believe these requests to be dilatory and designed to prevent the hearing in October from going forward.?

?
???????????????????? ?

?
???????????????????? We ask that Mr. Stair either agree to the conference by phone or make a formal motion on whether a scheduling conference has to be on the record (we are sure that he will keep Rule 11 's requirement of a good faith basis in both law and fact in mind when making such motion)

?
???????????????????? ?

?
???????????????????? But as a courtesy to all the attorneys and especially the Court and the folks in Gaffney, we are asking Mr. Stair to state with clarity his position, sooner rather than later and within a time that allows everyone to plan accordingly.?

?
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???????????????????? We are requesting that the status conference go forward by telephone without a reporter.? The call can tell us if a further, on the record hearing will be necessary before October.?

?
???????????????????? ?

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???????????????????? Thank you for your patience and attention to this matter.?

?
???????????????????? ?

?
???????????????????? ?

?
???????????????????? Gregory M. Alford

?
???????????????????? Alford, Wilkins and Coltrane? LLC

?
???????????????????? P.O. Drawer 8008

?
???????????????????? Hilton Head Island, SC 29938

?
???????????????????? Phone (843) 842-5500

?
???????????????????? Fax (843) 842-8400

?
???????????????????? gregg@alfordandwilkins.com

?
???????????????????? ?

?

Dawes Cooke; wpowell@brunerpowell.com; rob.fields@sasserfields.com;
jonastrialatty@netscape.net; Thomas A. Pendarvis; I. Gregory Hodges, J.D.; Bill Hunter; Timothy
D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak); Willelfe@aol.com
?? Subject: RE: Treon et al. v. Dryvit et al.
2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

?
?? ?

?
?? Dear Judge Hayes, although class counsel
do not believe it is necessary to record the status conference, we do not object to defense
counsel's request to do so and have rearranged our schedules in order to appear before the
Court in Gaffney tomorrow at 2:00 if necessary. We would ask that counsel inform the Court of
how they wish to proceed sometime this afternoon so we can make appropriate travel plans for
tomorrow.???

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?? ?

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?? Unfortunately, pressing matters outside of
the office have delayed the drafting of the proposed order; however, I hope to complete the
order along with a proffer of the documents Plaintiffs intend to rely on at the Rule to Show Cause
hearing by Monday if not sooner.

?
?? ?

?
?? With Kindest Regards,

?
?? ?

?
?? Robert B. (Sam) Phillips, Esq.

?
?? Finkel Law Firm LLC

?
?? Physical:?? 1201 Main St., No.1800,
Columbia, SC 29201

?
?? Mail:???????? P.O. Box 1799, Columbia,
SC 29202

?
?? Voice:???????? 803.765.2935

?
?? Fax:???????????? 803.252.0786

?
?? sPhillips@finkellaw.com
<<mailto:sPhillips@finkellaw.com>>

?
?? www.Finkellaw.com
<<http://www.Finkellaw.com>> <<http://www.Finkellaw.com>>

?
?? ?

?
? From: Hayes, J. Mark
<<mailto:mhayesj@sccourts.org>>
?? Sent: Thursday, September 06, 2012 2:44
PM
?? To: McWilliams, Susan P.; Stair, Kent T.;
Gregg Alford

?? Cc: Wall, Susan; Jowers, Beth; Jennifer Clark(JClark@pendarvislaw.com); Sam Phillips; Leonardi, Daniel C.; jjones@barnwell-whaley.com; Jim Bruner; M. Dawes Cooke; wpowell@brunerpowell.com; 'rob.fields@sasserfields.com' <rob.fields@sasserfields.com> ' (rob.fields@sasserfields.com); jonastrialatty@netscape.net ('jonastrialatty@netscape.net' <jonastrialatty@netscape.net>); Thomas A. Pendarvis; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak) ??? Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

?
?? ?
?

?? I apologize for just now responding, we are swamped this week in Gaffney

?
?? ?
?

?? The conference is informal and I have been provided no reason to have a court reporter record the informal conference.? I have a court reporter assigned to me in Gaffney and the Gaffney court staff has arranged for me to have the courtroom and for security if the meeting tomorrow is going to take place in Gaffney.? If the conference is going to be recorded, the attorneys will have to appear here in Gaffney.? With the number of lawyers participating, I will not require the court reporter to do the hearing via telephone.?

?
?? ?
?

?? If the attorneys wish to appear by telephone, I am fine with that process but, again, it will not be recorded.

?
?? ?
?

?? One way or the other, I'd like to get an update tomorrow at 2:00.

?
?? ?
?

?? In advance thank you all for your attention.

?
?? ?
?

?? From: McWilliams, Susan P.

[\[mailto:SMcWilliams@nexsenpruet.com\]](mailto:SMcWilliams@nexsenpruet.com)
?? Sent: Thursday, September 06, 2012 2:15 PM

?? To: Stair, Kent T.; Hayes, J. Mark; Gregg Alford

?? Cc: Wall, Susan; Jowers, Beth; Jennifer Clark(JClark@pendarvislaw.com); Sam Phillips(sphillips@FinkelLaw.com); Leonardi, Daniel C.; jjones@barnwell-whaley.com; Jim Bruner; M. Dawes Cooke; wpowell@brunerpowell.com; 'rob.fields@sasserfields.com' <rob.fields@sasserfields.com> ' (rob.fields@sasserfields.com); jonastrialatty@netscape.net ('jonastrialatty@netscape.net' <jonastrialatty@netscape.net>); Thomas A. Pendarvis; I. Gregory Hodges, J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak)

?? Subject: RE: Treon et al. v. Dryvit et al. 2002-CP-07-1377 [IWOV-NPCOL1.FID838083]

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?? ?

?

??? Judge Hayes,

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?? ?

?

??? This is in reference to Mr. Stair's e-mails yesterday regarding the telephonic hearing that the Court has set for 2 p.m. tomorrow.? Dan Leonardi and I represent Dixon Robertson III.

?

?? ?

?

??? On behalf of Mr. Robertson, we support Mr. Stair's request that any hearing be held on the record and further that a court reporter be arranged to be in Gaffney with the Court this Friday so that all counsel may participate by telephone.?

?

?? ?

?

??? However, in the event that the Court requires that counsel be present in Gaffney in order for there to be a record made, we respectfully request that the hearing be re-scheduled, as neither Mr. Leonardi nor I can physically be in Gaffney on Friday at 2 p.m. due to other commitments here in Columbia that day.

?

?? ?

?

??? Susi McWilliams?

?

?? ?

?

?? ?

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?? ?

?

??? Susan P. McWilliams

?

??? Member

?

??? Nexsen Pruet, LLC
??? 1230 Main Street, Suite 700
??? Columbia, SC 29201
??? PO Drawer 2426 (29202)
??? T: 803.253.8221, F: 8037271476
??? SMcWilliams@nexsenpruet.com
??? www.nexsenpruet.com
<<http://www.nexsenpruet.com>> <<http://www.nexsenpruet.com>>

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??? <image001.gif>
<<http://www.nexsenpruet.com/>>
???
??? <image002.gif><image003.jpg>

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?? ?

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??? From: Stair, Kent T.
[<mailto:kstair@carlockcopeland.com>]

?
?? If we need to have the conference recorded, then you all will need to travel to Gaffney and I suggest we plan on starting at 2:00.
?
?? ?
?
?? I assume Mr. Phillips will have a proposed order for me to review as soon as reasonably possible but cannot predict if it will be before Friday.
?
?? ?
?
?? Also, I am not aware of a reason why I need to rule upon at this time on the issue raised in Mr. Alford's email.
?
?? ?
?
?? From: Gregg Alford [mailto:gregg@awc-lawfirm.com] <mailto:%5bmailto:gregg@awc-lawfirm.com <mailto:5bmailto%3Agregg@awc-lawfirm.com> %5d>?
?? Sent: Tuesday, September 04, 2012 4:50 PM
?? To: Stair, Kent T.
?? Cc: Hayes, J. Mark; Wall, Susan; Jowers, Beth; Jennifer Clark(JClark@pendarvislaw.com); Sam Phillips(sphillips@FinkelLaw.com); Leonardi, Daniel C.(DLeonardi@nexsenpruet.com); jjones@barnwell-whaley.com; Jim Bruner; M. Dawes Cooke; wpowell@brunerpowell.com; 'rob.fields@sasserfields.com <rob.fields@sasserfields.com>' ('rob.fields@sasserfields.com); 'smcwilliams@nexsenpruet.com'(smcwilliams <smcwilliams@nexsenpruet.com'(smcwilliams@nexsenpruet.com); jonastrialatty@netscape.net ('jonastrialatty@netscape.net' <jonastrialatty@netscape.net>); Thomas A. Pendarvis; I. Gregory Hodges,J.D.; Bill Hunter; Timothy D. Roberts, J.D.; Hayes, J. Mark Law Clerk (Joel Kozak)
?? Subject: Re: Treon et al. v. Dryvit et al. 2002-CP-07-1377
?
?? ?
?
?? Dear Judge Hayes
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?? ?
?
?? We believe that by Arguing other matters outside of jurisdiction that Mr Stair waived any purported protection of a "special appearance".?? We would be happy to brief that matter if the Court would like.?? And, we would be happy to appear at an expedited proceeding.
?
?? ?
?
?? Thanks.?
?
?? Gregg Alford.?
?
??
?? Sent from my iPhone
?
??
?? On Sep 4, 2012, at 4:38 PM, "Stair, Kent T." <kstair@carlockcopeland.com> wrote:

may be imposed under the Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any entity, investment, plan, transaction, arrangement, or other tax related matter.
?

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