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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting)	
Network, Inc., et al.,)	
Plaintiffs,)	
)	
vs.)	Case No. 07cv40098-FDS
)	
Gailon Arthur Joy, et al.,)	
Defendants.)	

BEFORE: The Honorable F. Dennis Saylor, IV

Motion Hearing

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
July 23, 2007

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United States District Court
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P R O C E E D I N G S

THE CLERK: All rise.

Court is now open. You may be seated.

Case No. 07-40098, Three Angels Broadcasting vs. Joy,
et al.

Counsel, please note your appearance for the record.

MS. HAYES: Your Honor, Jerrie Hayes, with Siegel,
Brill, Greupner, Duffy & Foster, and I am appearing pro hac
vice for plaintiffs Three ABN and Danny Shelton.

THE COURT: Good afternoon.

MR. PUCCI: John Pucci for the plaintiffs, your
Honor.

MS. RICHARDS: Lizette Richards also for the
plaintiff.

THE COURT: Good afternoon.

MR. HEAL: Good afternoon, your Honor. Laird Heal for
the defendant Robert Pickle.

MR. JOY: Gailon Arthur Joy, for the defendant.

THE COURT: Good afternoon.

All right. This is a scheduling conference on this
matter. I've reviewed the joint -- well, I guess it's the
plaintiffs' report in this case.

What I'm going to do is the following: As my standard
order indicates, my belief or maybe it's closer to a prejudice

1 is that a case of ordinary complexity ought to be ready for
2 summary judgment in about a year. I will grant the parties
3 here additional time beyond a year. I'm not entirely convinced
4 this is more complicated than a normal case, but I will provide
5 some additional time; and I'm going to call -- as I indicated,
6 I'm going to have a couple of status conferences, one toward
7 the end of '07 and then one again in the spring of '08. And if
8 it looks like the case needs more time, if it reasonably needs
9 more time, I'll grant it, but I do think that the proposed
10 timetables, which take us out into late '08 and early '09,
11 is -- is -- is more languid than I want the pace to be, at
12 least as I see it. Sometimes things are a lot more complicated
13 than they look, and I'll be reasonable if you're reasonable on
14 both sides.

15 I was also a little concerned that the parties are
16 already indicating that they think everything is going to be
17 contentious, and that's going to drag things out. That -- it
18 may be true that the parties are contentious. I just want to
19 say up front that I expect counsel to act professionally at all
20 times, and none of you are relieved from your ordinary duties
21 to try to resolve disputes under Rule 7.1 and otherwise.

22 I recognize not everything can be resolved, but I do
23 expect professional conduct; and however upset the underlying
24 parties may be, I expect counsel to be professional.

25 So let me do the following: I'm going to set a

1 timetable, and I'll issue my standard -- it will be in the form
2 of my standard written scheduling order.

3 I'm going to order that to the extent that the parties
4 have not made their automatic discovery already, they shall do
5 so within two weeks or by August the 3rd.

6 I'm going to give the parties until September the 15th
7 of 2007, in which to amend the pleadings, to add new claims,
8 parties, or defenses.

9 After September 15th, parties will be required to show
10 good cause. Good cause is not a particularly high threshold.
11 If a matter arises for the first time, for example, in
12 discovery, that's almost always good cause to amend a pleading,
13 but the suggestion has been made that the parties are
14 contemplating counterclaims and so forth and so on. All of
15 that needs to be addressed by September 15th. After that date,
16 it will -- I'll make you show good cause.

17 I'm going to give the parties until February 28th of
18 2008 to serve written discovery requests, that is,
19 interrogatories, document requests, and requests for
20 admissions; and fact depositions, that is, nonexpert
21 depositions, shall be concluded by April the 30th, '08.

22 That's a relatively unusually long period of time,
23 and so what I'm going to do is I'm going to set the matter for
24 an interim status conference toward the middle part of
25 December.

1 THE CLERK: December 13th.

2 THE COURT: December the 13th. Discovery disputes
3 will be referred in the ordinary course to the magistrate
4 judge. It may be that we don't have very much to talk about on
5 December 13th, but I don't want to go the better part of the
6 year without seeing you again. I want to just check in and see
7 how things are progressing and how the timetable is working and
8 so forth.

9 So December the 13th at two o'clock?

10 THE CLERK: Yeah.

11 THE COURT: At two o'clock.

12 And counsel can request the right to appear by
13 telephone. If it looks like it's going to be relatively short,
14 I'll permit it, or relatively simple.

15 I'm going to set the matter for another status
16 conference at the close of fact discovery in early May.

17 THE CLERK: May 6th.

18 THE COURT: May the 6th, 2008, also at two o'clock;
19 does that work?

20 Any problem with those dates?

21 Hearing no objection, May 6th it will be.

22 And I will further order that plaintiffs' expert
23 disclosures be made by May the 30th; that defendants' expert
24 disclosures be made by June the 30th; and that expert
25 discovery, that is, expert depositions be completed by July the

1 31st with the expectation that in the ordinary course of
2 things, the party with the burden of proof will have its expert
3 deposed first.

4 So if plaintiffs submit an expert on an issue as to
5 which they bear the burden of proof, their -- their expert will
6 be deposed first. If there's a counterclaim, and defendants
7 propose an expert, as with the order that they have the burden
8 of proof, that expert will go first.

9 The timetable, as I indicated, is subject to revision.
10 I'm not necessarily giving you an open-ended invitation to
11 revise it, but if you're being reasonable and the case is
12 moving forward, I will be reasonable as well.

13 In terms of discovery limitations, what I'm going to
14 do is the parties have proposed a limit of 25 interrogatories
15 for each party. That's fine. No limit on document requests,
16 the parties appear to be in agreement on that. That's fine.
17 In terms of a limit on actual depositions, plaintiffs propose
18 20 for each party; the defendants propose no limit.

19 I am reluctant, I guess, to simply order open-endedly
20 that each party may have 20 depositions for a total of 40. I
21 think, rather, what I'm going to do is to limit each party at
22 present to 12, and I will -- the matter can be raised at the
23 status conference in December. I will be easily convinced that
24 the 12 is -- if it's an arbitrary number, obviously, that it's
25 too low. The 13th one will come easiest, and as we go higher

1 and higher up the chain, you'll be -- you'll have to show
2 greater and greater justification for the deposition.

3 And the reason I'm doing that is I don't want this
4 thing to spiral out of control. I want you to convince me or
5 to convince the magistrate judge, as the case may be, as to the
6 need for additional discovery.

7 I might -- my own particular prejudice is that
8 depositions and document requests are much more valuable than
9 interrogatories or other forms of discovery; and if I'm
10 convinced that the depositions are genuinely appropriate under
11 the circumstances, I will grant leave for additional
12 depositions, but rather than giving you a blank check, I'm
13 going to require you to at least focus on and think about and
14 justify each additional deposition beyond 12. Okay? Again,
15 the threshold is not being particularly high, but that is
16 different from having no threshold at all.

17 All right. Anything on the -- oh, let me set a
18 timetable for dispositive motions as well.

19 I'm going to direct that motions for summary
20 judgment or other dispositive motions shall be filed by
21 September the 5th, 2008. Oppositions to be filed 21 days
22 later, or September the 26th, with replies due on October the
23 3rd.

24 And I will set the date of a pretrial conference at a
25 future status conference.

1 All right. Any questions, issues, objections,
2 clarifications on the timetable and otherwise on discovery?

3 Ms. Hayes, are you taking the lead?

4 MS. HAYES: Yes, your Honor.

5 THE COURT: All right.

6 MS. HAYES: I have one quick question concerning
7 depositions and that would be expert depositions. We had some
8 disagreement as to the number, and you had addressed only 12
9 factual depositions. I didn't know if you wanted that to
10 include experts.

11 THE COURT: Let me do this: If, in fact, there are
12 six experts, that is, there are six separate issues in this
13 case and experts are required, I would permit six expert
14 depositions. Why don't we put that matter on pause for the
15 time being; and as we get closer to the issue, we can address
16 it.

17 It's not entirely clear to me, in a case of this
18 nature, why we would have six experts, but, again, it's -- I
19 don't know the case well enough. It's certainly possible there
20 would be six experts, and I can't say at this time, but
21 the -- the presumption in my mind will be is that if there are
22 "X" number of experts, whatever that number is, each party will
23 have an opportunity to take the deposition of that expert.
24 Okay?

25 Mr. Heal, anything from your side on the timetable?

1 MR. HEAL: I think the timetable is reasonable,
2 Your Honor, although we agree with the plaintiffs, to a large
3 degree, that additional time will be needed on this case.

4 THE COURT: Okay. And I'm giving you a more generous
5 timetable than usual. I -- my -- my intention is as follows:
6 I want you all to keep the case moving forward. One of the
7 things I find is the longer the timetable, the more people put
8 everything on hold and wait until the end, and I'm not picking
9 on any of you. I'm just saying that is natural human tendency
10 is to put everything on the back burner that can be put on the
11 back burner, and I do expect you to begin doing the work; and
12 if the case winds up being sufficiently complex, or it requires
13 additional time, additional depositions, I will hear you, but
14 let's get started on it and see what it looks like. Cases
15 often look very different midstream than they do at the
16 beginning.

17 Mr. Joy, you're appearing pro se.

18 Anything from your standpoint?

19 MR. JOY: I am pro se, your Honor.

20 I'm sorry. What was the question?

21 THE COURT: Is there anything from your standpoint on
22 the timetable or discovery or motion practice schedule that you
23 wish to address?

24 MR. JOY: I think the appropriate thing to do is let's
25 try it. I doubt it will work, but let's try it.

1 THE COURT: Well, you're not instilling me with
2 confidence, but I do expect a good faith effort here.

3 By the way, in terms of deadlines, just to underscore
4 the point. They are orders of the Court, and my pretrial order
5 permits the parties a slight degree of flexibility in adjusting
6 them, but otherwise you need to seek leave, and it will be
7 set forth in the order itself.

8 Okay. Anything else on discovery or the timetable?

9 Ms. Hayes?

10 MS. HAYES: Not on those issues, your Honor.

11 THE COURT: Mr. Heal?

12 MR. HEAL: Your Honor, we do -- both defendants
13 have -- and I brought another copy -- nondisclosures. There
14 may or may not be an issue with a proposed protective order
15 regarding confidentiality, and we're -- you know, from my
16 standpoint, certainly willing to keep every bit of information
17 that should be confidential confidential.

18 THE COURT: All right. Then speaking completely in
19 the abstract, without any reference to the facts of this case,
20 certainly discovery of anything involving personal
21 identification information, Social Security numbers, and so
22 forth ought properly be the subject of a protective order, if
23 not redaction; and as a general matter, I am amenable to
24 reasonable protective orders that reasonably protect legitimate
25 privacy or business interests or things of that nature.

1 The parties should look at the local rule concerning
2 the filing of things under seal. The Court collectively in the
3 clerk's office look with great disfavor on matters under seal,
4 because it's very burdensome to the Court, and so however you
5 address that, you need to take into account the local rule and
6 to be thinking about ways to minimize it; but otherwise, if you
7 can't agree on a joint protective order, you can submit
8 competing versions, and I'll do the best I can or it may get
9 referred to the magistrate judge.

10 All right. Let me take up the subject of mediation
11 and/or settlement conferences. I have the strong sense that
12 this is not a matter that is ripe for mediation at this time.
13 I'm not going to require anyone to go to either a settlement
14 conference or a mediation, who is not in a position to discuss
15 it.

16 What I do want the parties to do is to, if you're not
17 going to settle it or mediate it, move the case forward, that
18 is, litigate it. If you're not going to talk settlement,
19 you're going to have to litigate it. I don't want the case to
20 just sit there.

21 And secondly, I will ask you at the status conference
22 is whether the matter is appropriate for mediation. If it
23 looks like mediation would not be a fruitless exercise, I will
24 refer it, but I'm not going to do it unless there is some
25 reasonable basis that it might result in settlement.

1 The mediations in this Court are performed, in very
2 large part, by the magistrate judges. They have a full plate.
3 It's about a two- or three-month lead time to get on the
4 schedule of a magistrate judge for mediation, unless there's a
5 cancellation, and I'm going to leave the ball in your
6 collective courts.

7 But I'm not going to browbeat people into talking
8 settlement or mediating the case at this stage of the game.
9 I'm going to give you a chance to -- probably you'll never do
10 it, but I'll give you a chance to take discovery and to frame
11 the issues before we begin to talk about it seriously.

12 If you jointly think it would be a useful exercise, I
13 will refer the matter virtually automatically; and if you want
14 to be heard on the subject, I would be prepared to discuss it;
15 for example, if you think the case could be settled, if only
16 one or two issues were resolved, we could talk about that and
17 how we might tee that up.

18 Anything on mediation or settlement?

19 Ms. Hayes?

20 MS. HAYES: Not on those issues, your Honor.

21 THE COURT: Mr. Heal?

22 MR. HEAL: No, your Honor.

23 THE COURT: Mr. Joy?

24 MR. JOY: Yes, your Honor. It has come kind of
25 circuitously to me that Three ABN is currently considering

1 a -- some sort of a merger with an entity known as Amazing
2 Facts; and if that merger does go forward, then there's a very
3 strong possibility that one of the requirements would be that
4 we would indeed to have to work out some negotiated settlement
5 of this case, and we have sent the word back that we would be
6 willing to do that, and I think the Court needs to be aware of
7 that.

8 THE COURT: All right. I will -- I'm not going to
9 take any action in that regard. If you think it makes sense,
10 what I ask is that you think about it, talk about it. If you
11 want to involve me or give me a heads up or have a conference
12 about it, I'm willing to do that. You can appear by telephone.
13 I'd be happy to listen to you all and discuss it, but at this
14 point, there's nothing in front of me. There's no motion.
15 And I'm going to leave matters where they are for the time
16 being.

17 All right. I understand that the parties do not
18 consent to reference to the magistrate judge for all purposes,
19 and I think the parties have not yet filed the certifications
20 that are required under local Rule 16.1. This is certification
21 that you've had a conversation with your client about ADR and
22 budget.

23 Ms. Hayes?

24 MS. HAYES: Yes, your Honor.

25 THE COURT: The important thing there is to have the

1 conversation; the piece of paper is not particularly
2 significant.

3 Why don't you do that forthwith.

4 Mr. Heal?

5 MR. HEAL: Yes, I already had that conversation, in
6 fact, this afternoon with Mr. Pickle.

7 THE COURT: All right. And I think, Mr. Joy, you're
8 probably exempt from the requirement.

9 MR. HEAL: As a matter of fact, your Honor, I spoke at
10 length with him on that topic today, too.

11 THE COURT: All right. Get the required
12 certifications on file.

13 Okay. That's my agenda.

14 Ms. Hayes, is there anything you wish to raise?

15 MS. HAYES: Yes, your Honor, just two issues. The
16 first relating to what was reported on item E2 in plaintiffs'
17 report. Excuse me. I'm just recovering from a chest cold.
18 I'm sorry, your Honor.

19 I'm sorry. It's E3. It's related to recommended
20 disclosure of discovery options pursuant to local rules.
21 Plaintiffs originally made no recommendation under that
22 category, but that was because we understood in our reading of
23 local rules that that related to expert disclosures only.

24 As we have looked at the defendants' 26(f) report, we
25 notice that it appears that this is the point at which

1 defendants would like to include a discussion of electronic
2 production; and so, since that appears to be the case, I'd like
3 to --

4 THE COURT: You mean electronic discovery?

5 MS. HAYES: Yes. Yeah, and the -- essentially the
6 form of electronic production. We did have some discussion of
7 the fact -- the matter over our 26(f) conference, and the
8 plaintiffs are adamant, I suppose to say the least, about
9 getting electronic discovery in the form in which it's
10 typically -- it's typically stored.

11 And we have already retained computer experts to do
12 that for us, and they have explained to us that in order to
13 properly analyze the data, they need to be able to have access
14 to the materials in their original form, not translating, not
15 copied, not converted via software to another form.

16 The expert that we've retained who is an expert and
17 does a lot of litigation work has -- is willing to do any sort
18 of range of disclosure that needs to be done on that, and
19 beginning with taking the materials that he receives first and
20 doing an in camera review with your Honor before disclosing it
21 even to our side of the bar, and then moving forward from there
22 based on what the Honorable Judge sees on that record and
23 decides if it is inappropriate to the case, it can be culled
24 out before the material is even produced to us.

25 So we have security measures in place and having

1 consulted with that expert understand some of the concerns
2 that defendants certainly have about disclosure of material
3 that's not relevant to this case, and we're certainly not
4 looking for that, but we do believe it's important to receive
5 information in its originally maintained format to avoid any
6 loss of data or amended data. So that's one issue I did want
7 to raise to the Court. I have to make sure that we were at
8 least good on that.

9 THE COURT: Okay. Mr. Heal, any response to that?

10 MR. HEAL: Your Honor, what they're proposing is that
11 the computers be taken off line and delivered to the expert for
12 as long as the expert needs to look at them, effectively,
13 shutting down the website, taking Mr. Pickle's commercial
14 operation, which he does for money, you know, just turning that
15 off for a while, and -- when there's no showing that we're not
16 providing complete copies of everything that's relevant.

17 What's relevant here? They can obtain, if necessary,
18 subpoenas from the email providers and say, "oh, you didn't
19 provide all the emails." Well, we are providing those emails,
20 and that's the allegation that somehow there was a posting on a
21 website that was defamatory, and we're giving them all the
22 background.

23 To take the computers, you know, there's no need for
24 it. There's confidential information from his customers, from
25 other people's customers. His computer -- you know,

1 that's -- you know, it's completely not -- not just, you know,
2 unreasonable, but it's abusive, you know. What's wrong with
3 just taking a copy, producing everything that's responsive to
4 the request and being done with it, and producing it in
5 computer readable form. They assured me that no matter what
6 computer readable form we supplied, they would be able to read
7 it.

8 THE COURT: Ms. Hayes?

9 MS. HAYES: Two issues, your Honor: First of all,
10 it's absolutely untrue that we intend to use our computer
11 consultants as a means of shutting down the website. The
12 computer consultant has explained to me that he can go in while
13 the system is active with absolutely zero disruption to service
14 whatsoever, make a mirror image of the hard drive and all the
15 relevant information on site without unplugging or moving a
16 single thing with, of course, the defendant and defendants
17 present, if that need be.

18 So it's -- it's frankly a red herring to suggest that
19 we would try to shut the website or any of Mr. Joy or Mr.
20 Pickle's personal information down by doing discovery.

21 Second of all, as to Mr. Heal's question concerning
22 what's wrong with taking a copy? Two issues: The first being
23 that metadata can be lost when taking a copy, and our expert
24 has informed us that it's -- the easiest thing for him to do is
25 take a mirror image of the data, the disk, whatever computer

1 electronic source is at issue.

2 Second of all, there can be chain of custody problems
3 when the consultant or expert, who needs to read and discuss
4 the data later, is not the person who took the original copy of
5 the material in the first place, which is, again, why we would
6 ask our computer consultant have access to the original files
7 on site. They don't have to be shipped anywhere, sent
8 anywhere. We can send our consultant in to do that electronic
9 discovery without any disruption to either of the defendants,
10 which is, again, why we served -- made this request.

11 THE COURT: All right. Here's what I'm going to do:
12 I'm going to refer that to -- the issue to the magistrate
13 judge, and I'm going to set it for a conference on electronic
14 discovery issues. He is out this week, and I'm going to give
15 what, in substance, is a plug date. I'm going to set it for a
16 date like three weeks out is what I was -- before the
17 magistrate judge, and I will notify the clerk, who will contact
18 you and indicate whether the date works, and it may not work
19 for all of you because we're getting into vacation time, but I
20 think this is something that needs to be addressed up front.

21 One advantage I have of Magistrate Judge Hillman is he
22 is far more facile than I am on electronic discovery issues,
23 not that that's a very high standard to meet.

24 THE CLERK: August 16th.

25 THE COURT: All right. Let's say August the 16th.

1 MR. PUCCI: Your Honor, could we buy another week on
2 that date? I know I'm going to be out of town, and I'd -- for
3 some reasons on our side, I would like to attend that
4 conference.

5 THE COURT: All right. What about -- does the
6 following week create -- I want to address this up front for a
7 variety of reasons, of course, including the fact that the
8 systems ordinarily are dynamic and data can change and so
9 forth. I mean, both sides are --

10 MR. PUCCI: We could also do it sooner. I know he is
11 out this week, but today is the 23rd. We could do it in
12 early -- the first week in August.

13 THE COURT: August 9th.

14 Mr. Heal, does that work?

15 And, again, I don't know what his timetable is, so
16 it's -- it's a placeholder date is what it is, and I'll leave
17 it to counsel and Mr. Joy to talk about that with Lisa Roland,
18 who is his docket clerk and -- or courtroom clerk and come up
19 with a time, but it would be a discovery conference for the
20 purpose of addressing electronic discovery issues.

21 We'll say August the 9th. That will be the
22 placeholder date. And I'll just say two o'clock, which is just
23 a time I'm picking out of the air. And I will -- I'm directing
24 Mr. Castles to contact Ms. Roland to advise her that I've done
25 this, and that she should work with counsel to find a date when

1 you all can appear. And this obviously fits with the
2 magistrate judge's schedule.

3 All right. Anything else on e-discovery?

4 Mr. Joy?

5 MR. JOY: I did consult with my expert, and he
6 informed me that they could get a virtual identical copy of
7 whatever is produced on a hard drive by very simply providing
8 them with a jumper drive. Okay. He finds it no problem
9 whatsoever. I've made -- I have made, you know -- I made that
10 availability -- feasibility at this point and would offer that
11 as a solution.

12 THE COURT: Okay. Obviously, I should make clear that
13 the parties -- I'm not suspending the parties' obligation to
14 try to work this out in good faith, if you can do so, or to
15 narrow the field of conflict at a minimum.

16 MR. JOY: The difficulty, your Honor, was in the
17 conference. Mr. Duffy, in particular, was absolutely insisting
18 that we produce our hard drives. The problem in my case is
19 that my hard drive has personal financial information from
20 literally hundreds of clients that I have worked with over the
21 years, both as a loan officer, et cetera; and Mr. Pickle, of
22 course, has an enormous amount of information on there with
23 reference to credit cards and so on. So we made it very clear
24 in that meeting that we would make provisions for an
25 alternative.

1 THE COURT: Let's -- let's not preargue it. I'm
2 going to leave it for the magistrate judge to work out. I'm
3 confident that there are legitimate issues on both sides that
4 need to be thrashed out, and particularly when you're talking
5 about individuals, as opposed to the computer systems of
6 General Electric or General Motors, there may be more personal
7 data than usual. I'm going to leave that for the conference.

8 Ms. Hayes, was there some other issue that you wanted
9 to raise?

10 MS. HAYES: Yes, your Honor, not to abuse the
11 generosity of the Court's time today, but just one more matter
12 that I wanted to bring to your Honor's attention, and that is
13 during our 26(f) conference, we were informed by defendants
14 that they have learned somewhere, somehow, through some party
15 that there is destruction of evidence happening either at Three
16 ABN or related to employees of Three ABN.

17 We asked repeatedly for the name or some sort of
18 identifying information that we could track this down. We take
19 it extremely seriously. We have spoken to the employees of the
20 company, and Mr. Shelton remembers saying about evidence
21 destruction. We certainly do not want to be behind the eight
22 ball on this; and so if, for whatever reason, defendants won't
23 disclose that to us voluntarily, we would ask, at a minimum,
24 they volunteer that information to you in camera and that you
25 somehow review that so that we can chase this down and make

1 sure that there is not going to be any spoliation problem now
2 or in the near or far future.

3 THE COURT: Mr. Heal?

4 MR. HEAL: Your Honor, during that conference I
5 initially objected that it was at deposition with Mr. Joy, but
6 he mentioned the name of one of the management of Three ABN
7 that was observed shredding documents from before the
8 year 2000, and the question was who told you that? Who was
9 your source?

10 One thing that happens at Three ABN is if somebody is
11 identified giving information out, they get fired; and Mr. Joy,
12 for whatever reason he chose, would not say who had told him.

13 THE COURT: Mr. Joy?

14 MR. JOY: Your Honor, that information will be in the
15 discovery information, because frankly it came to us by email
16 from a very reliable source inside Three ABN, and they
17 specifically identified a director and a CFO as being the party
18 who had ordered the destruction of documents. That CFO is a
19 fellow by the name of Mr. Larry Ewing. Now that document came
20 to us. We brought it up as a matter of course, and the reason
21 it is significant is because they had made a big deal about the
22 fact that we will never be able to produce a copy of a \$10,000
23 check that we had two sources on verifying that that check was
24 actually sent from the period 19 -- I believe it was '99 to the
25 brother, Tommy Shelton in Virginia, and we found it profound

1 that they would all of a sudden decide to destroy all documents
2 prior to 2000, particularly given the fact that there's an
3 outstanding appeal pending.

4 THE COURT: Let -- let me stop you. Is that the
5 individual who is alleged to have engaged in document
6 destruction? The CFO?

7 MR. JOY: The CFO, yes.

8 THE COURT: Okay. Is that enough for present
9 purposes?

10 MS. HAYES: That's all I need, your Honor. Thank
11 you.

12 THE COURT: Okay. I'm going to leave it where it is.
13 I'm sure counsel is aware, and, Mr. Joy, you should become
14 aware, if you're not, of the grave risks of altering or
15 destroying evidence; and, again, I don't have anything before
16 me, and I'm going to expect that the parties will comply with
17 their obligations as lawyers or as litigants, as the case may
18 be.

19 Ms. Hayes, anything else?

20 MS. HAYES: No thank you, your Honor.

21 THE COURT: -- you wish to raise?

22 Mr. Heal, anything further?

23 MR. HEAL: No, your Honor. Thank you very much.

24 THE COURT: Mr. Joy?

25 MR. JOY: Nothing, your Honor.

1 THE COURT: All right. Let me -- again, I -- I don't
2 enjoy having this kind of conversation, but I feel compelled to
3 say it. Everyone needs to turn down the heat here a little
4 bit, and -- and certainly counsel need to litigate this case in
5 a professional and dispassionate way, and I will -- well, I
6 will be unhappy if things begin to break down that are not to
7 be breaking down. People are entitled to be emotional about
8 their claims and their defenses, but they're required to comply
9 with their discovery obligations, to act professionally, to
10 engage in the normal courtesies that I will expect from one
11 counsel to another, to coordinate with each other on the things
12 that can be coordinated, and generally not to make lives more
13 miserable for one another than, you know, is inherent in the
14 situation.

15 So -- well, I'll just leave it at that. I'm repeating
16 myself. I expect complete professionalism from counsel, and I
17 expect the litigants to conduct themselves with some reasonable
18 degree of restraint.

19 Okay. Anything else?

20 Ms. Hayes?

21 MS. HAYES: No. Thank you, your Honor.

22 THE COURT: Mr. Heal?

23 MR. HEAL: No, your Honor.

24 THE COURT: Mr. Joy?

25 MR. JOY: No, your Honor.

1 THE COURT: Okay. Thank you, and I will see you then
2 in this case in December.

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4 (AT 4:12 p.m., Court was adjourned.)
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C E R T I F I C A T E

I, Marianne Kusa-Ryll, RDR, CRR, do hereby certify that the foregoing transcript, consisting of 26 pages inclusive, is a true and accurate transcription of my stenographic notes in Case No. 07cv40098, Three Angels Broadcasting Network, Inc., et al., versus Gailon Arthur Joy, et al., before F. Dennis Saylor, IV, on July 23, 2007, to the best of my skill, knowledge, and ability.

/s/ Marianne Kusa-Ryll

December 3, 2009

Marianne Kusa-Ryll, RDR, CRR

Date

Official Court Reporter