

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

THREE ANGELS BROADCASTING . CIVIL ACTION NO. 07-40098-FDS  
 .  
 V. . BOSTON, MASSACHUSETTS  
 . JULY 24, 2008  
 GAILON ARTHUR JOY, et al .  
 Defendants .  
 . . . .

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE TIMOTHY S. HILLMAN  
UNITED STATES MAGISTRATE JUDGE

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CASE CALLED INTO SESSION

THE CLERK: The Honorable Timothy S. Hillman  
presiding. Today is July 24, 2008 in the case of Three Angels  
v. Joy and Pickle, Civil Action No. 07-40098-FDS. Counsel,  
please identify yourself for the record.

MR. SIMPSON: Your Honor, on behalf of the  
plaintiffs, Three Angels Broadcasting Network and Danny Lee  
Shelton, I'm M. Gregory Simpson.

THE COURT: Mr. Simpson.

MR. SIMPSON: Yes.

THE COURT: Good morning.

MR. SIMPSON: Good morning.

MR. PUCCI: Good morning, Your Honor, John Pucci  
from--

THE COURT: Good morning, Mr. Pucci.

MR. PUCCI: --North Hampton for the plaintiffs.

THE COURT: Good morning.

MR. PUCCI: Good morning.

MR. JOY: Gailon Arthur Joy for pro se defense.

THE COURT: Good morning to you, Mr. Joy. And Mr.  
Pickle, I understand that you're here?

MR. PICKLE: Yes, I am.

THE COURT: I hate to tell you how many times I  
actually look at the ceiling when I ask that question so. If

1 you were here you would appreciate the comedy in that. Can  
2 you hear me okay?

3 MR. PICKLE: I can hear you okay.

4 THE COURT: Good. Give me one second, please.

5 PAUSE

6 THE COURT: All right, as I understand it this  
7 hearing, this is a hearing on a motion filed by the defendant  
8 Robert Pickle to compel production from Three Angels and Danny  
9 Lee Shelton and that's Documents No. 61. And Document No. 74  
10 is a motion of the plaintiffs for a protective order limiting  
11 the scope and methods of discovery. Is that your  
12 understanding, Mr. Pickle?

13 MR. PICKLE: Yes, Your Honor.

14 THE COURT: Mr. Joy?

15 MR. JOY: Yes, Your Honor.

16 THE COURT: Mr. Simpson?

17 MR. SIMPSON: Yes, Your Honor.

18 THE COURT: All right. And are you going to be  
19 speaking on behalf of the--

20 MR. SIMPSON: Yes, yes, I will.

21 THE COURT: I don't care, it's up to you guys.

22 All right, Mr. Pickle, I'm going to start with your  
23 motion. Also I need you to give some thought and I want to  
24 hear from you about whether or not I should enter some sort of  
25 an order regulating your discovery since nobody seems to be

1 able to get along here. So start with your motion and then I  
2 will hear from Mr. Simpson in opposition.

3 MR. PICKLE: Okay, Your Honor. The plaintiffs'  
4 complaint is quite broad and it does not limit itself to just  
5 specific issues due to the language that it uses or a specific  
6 time period. Maybe more specifically I should refer to a  
7 defendants' answer. In paragraph nine the defendants say that  
8 they have upon information and belief, sufficient information  
9 to believe that 3 ABN may actually be controlled by the  
10 plaintiff Danny Lee Shelton and if plaintiff treats the  
11 corporation as his own asset purposely profits from the same.

12 THE COURT: What paragraph in the answer, please?

13 MR. PICKLE: That would be our answer to paragraph  
14 nine.

15 THE COURT: So is it your paragraph nine?

16 MR. PICKLE: Pardon me, Your Honor?

17 THE COURT: Is it your paragraph nine?

18 MR. PICKLE: The way that we did it we quoted the  
19 complaint and then gave an answer to that paragraph. So I  
20 guess you could say it's answer of defendants to nine.

21 THE COURT: Okay. Thank you. I'm looking at it.

22 MR. PICKLE: And then also answer of defendants to  
23 14.

24 THE COURT: Yep.

25 MR. PICKLE: Where, and the language here is more or

1 less use their number of paragraphs throughout the answer.  
2 Answer of defendants to 14 upon, toward the end though it says  
3 upon information and belief the actions of the plaintiff Danny  
4 Lee Shelton purportedly a founder and either a current or  
5 former president of 3 ABN has conducted himself in such a way  
6 as to violate theological integrity, undermine operational  
7 capability to prey upon the financial soundness of the entity  
8 3ABN and to inappropriately redirect large sums to his personal  
9 benefit with and without properly constituted corporate  
10 authority.

11           And I just want to point out that we did not limit  
12 that to specific topics or time periods. The U.S. Supreme  
13 Court has held in *Oppenheimer Fund, Inc. v. Sanders* that  
14 discovery is not limited to issues raised by the pleadings for  
15 discovery itself is designed to help define and clarify the  
16 issues nor is it limited to the merits of the case for a  
17 variety of fact oriented issues may arise during litigation  
18 that are not related to the merits.

19           Now, we reserved our request to produce by the  
20 plaintiffs on August 20<sup>th</sup>. And I entered my appearance pro se  
21 mid-November and one of the first things that I did after doing  
22 that was to prepare these requests to produce. In preparing my  
23 request to produce, I modeled them to some extent after the  
24 ones that plaintiff had served on us. They used the word all,  
25 all this, all that, and so I used the word all. The idea of

1 putting plaintiff related issues in the definitions I got that  
2 from the plaintiff cause they had identify, define statements  
3 of fact in their definitions and then referenced that  
4 throughout their request to produce and that's what gave me the  
5 idea to do the plaintiff related issues to try and make it more  
6 efficient, you know, to produce this document in a more  
7 efficient way.

8           In my opening paragraph of my instruction for my  
9 request to produce, I asked for a time period through the  
10 present thereafter on a continuing basis and to the disposition  
11 of the trial of this matter. That wording was borrowed  
12 directly from the plaintiffs' request to produce that they  
13 served upon us. They asked for a document through the present  
14 thereafter on a continuing basis until the disposition of the  
15 trial of this matter.

16           In mid-November they filed two motions in U.S.  
17 Bankruptcy Court, November 13, 2007, their motion for relief  
18 from the automatic stay and their motion for expedited  
19 determination of their motion for relief from the automatic  
20 stay. In both those motions they referred to continuing  
21 defamatory conduct or ongoing defamatory conduct. So they  
22 didn't limit this just to events between 2001 and January 2007.

23           The plaintiffs would like to handcuff us so that we  
24 can't prepare our defense. What they originally said regarding  
25 the request to produce that everything that we asked for was

1 privileged, confidential or irrelevant. However the  
2 magistrates in Minnesota and Michigan that have heard some of  
3 these issues have ordered production of the documents that we  
4 requested by our third party subpoenas. We were all set to,  
5 but we retained the services of three auditors, two auditors  
6 and a certified fraud examiner. And two of those individuals  
7 were to meet us in Marion, Illinois on June 24<sup>th</sup> to go over the  
8 auditors' records that we had subpoenaed. We've been told by  
9 our experts that they need the auditors, particularly the  
10 auditors' work papers and they were going to go over these  
11 records and determine what could be used for our defense and  
12 then they were, these documents were to be copied on our own  
13 equipment in order to save expense to the auditor. So we tried  
14 to be responsible and reasonable in our request and our experts  
15 have said they need this material.

16           How we came up with what we requested in the request  
17 to produce, we interviewed many current, former employees of 3  
18 ABN, many of them management, and we took the various  
19 allegations of wrongdoing and impropriety and we tried to craft  
20 relevant requests to produce material that would lead to  
21 admissible evidence. Once the Court ordered in March the  
22 plaintiffs to produce their Rule 26(a)(1) material, and once we  
23 went through those materials, we discovered that, you know, a  
24 lot of these printouts of web pages, internet web pages they  
25 contained the same allegations that we had put into our request

1 to produce. At least we put into our request to produce  
2 looking for documents dealing with these various allegations,  
3 well those same allegations are found in the plaintiffs' Rule  
4 26(a)(1) material, these printouts of web pages from internet  
5 forums.

6 Either - if the plaintiffs' Rule 26(a)(1) materials  
7 are relevant then our request to produce are relevant. If our  
8 request to produce are not relevant, then that majority of the  
9 material that the plaintiff gave us in the Rule 26(a)(1)  
10 material are not relevant either.

11 THE COURT: Fair enough. Let me ask you this.

12 MR. PICKLE: Okay.

13 THE COURT: Have you received the initial disclosures  
14 under Rule 26 from what purports to be initial disclosures from  
15 the plaintiffs?

16 MR. PICKLE: Yes. Your Honor, that's what I was just  
17 referring to.

18 THE COURT: Okay. And have you, have you served your  
19 own initial disclosures upon the plaintiffs?

20 MR. PICKLE: We did that in August--

21 THE COURT: Okay.

22 MR. PICKLE: --of last year.

23 THE COURT: All right. Thank you. And have you  
24 served any interrogatories on the plaintiffs?

25 MR. PICKLE: We have not served any interrogatories

1 at this point.

2 THE COURT: Have the plaintiffs served any  
3 interrogatories upon yourself?

4 MR. PICKLE: Yes.

5 THE COURT: Okay. And what's the status of those  
6 please?

7 MR. PICKLE: I, I served my responses I think in  
8 September.

9 THE COURT: Okay. And then have you served, I mean,  
10 I'm sorry, have the plaintiffs served any Rule 34 requests upon  
11 you?

12 MR. PICKLE: And Rule 34 would be?

13 THE COURT: That's a request for production of  
14 documents.

15 MR. PICKLE: Yes, they served those on August 20<sup>th</sup>,  
16 and mine were modeled after those, theirs in the way that I  
17 described and I responded to those requests to produce in  
18 September. And one of things I put in there was my phone  
19 records.

20 THE COURT: Okay.

21 MR. PICKLE: Among other things. We turned over  
22 thousands and thousands of documents to them in our initial  
23 disclosure. I guess I'm getting a little mixed up. We have  
24 already turned over everything in our initial disclosures and  
25 so there wasn't much to turn over in the, in response to the

1 request to produce.

2 THE COURT: As a supplement to your initial  
3 disclosures?

4 MR. PICKLE: Yes.

5 THE COURT: Gotcha. All right, thank you. I'm going  
6 to hear from Mr. Simpson and then I may come back to you.

7 Mr. Simpson, please.

8 MR. SIMPSON: Thank you, Judge. And I think Mr.  
9 Pickle's comments address really both motions so I'm not sure  
10 how to, I was going to go--

11 THE COURT: Well, I'm going to come back to you on  
12 your motion--

13 MR. SIMPSON: Okay.

14 THE COURT: --and then I'll let him respond but--

15 MR. SIMPSON: Thank you, Judge. Mr. Pickle's motion  
16 - 3 ABN and Mr. Shelton's position is that the motion is moot  
17 and should be denied without prejudice to re-file in the event  
18 that a further issue comes up in the future. At the time that  
19 he brought the motion, we were in the process of negotiating  
20 for what types of documents would be produced and we were  
21 gathering the records that would be responsive. The Rule  
22 26(a)(1) disclosure had happened in March and the actual  
23 documents, I might be wrong on the month but they had already  
24 occurred. He'd received some 10,000 pages of documents at that  
25 time and then we moved them to producing additional documents

1 that were specifically responsive to the request for  
2 production served by Mr. Pickle. And we were having a dialogue  
3 which is exhaustively detailed in one of the affidavits about I  
4 think the one from Jerrie Hayes that was kind of nearing an  
5 impasse when the motion was filed.

6 At that point we proposed in a letter from Ms. Hayes,  
7 that's in her affidavit, that we would produce documents that  
8 we thought - the problem was we couldn't tell exactly what he  
9 was asking for, and we were gathering records that we thought  
10 that we knew he was asking for but we weren't sure where the  
11 parameters of that would lie. So we produced the documents  
12 pursuant to a schedule that we thought we had agreed to as part  
13 of a meet and confer that occurred on June 5 or June 6<sup>th</sup> with  
14 Mr. Joy, Mr. Pickle. It later turned out that Mr. Joy and Mr.  
15 Pickle didn't feel that they had agreed to that schedule, but  
16 the understanding that we had at that meet and confer was that  
17 we'd produce the documents pursuant to our schedule, that they  
18 would withdraw their motion to compel without prejudice and  
19 re-file it at a later time if we reached an impasse.

20 But the reason why we believe that the motion is moot  
21 is now is because there's been an additional 6,000 pages or so  
22 of documents produced and now they have what we think they've  
23 asked for. And so now we need to go through the process  
24 contemplated in local Rule 37.1. It's the same rule pretty  
25 much everywhere that you have to have a dialogue about what's

1 missing and they have to explain how they've asked for  
2 something and then we explain we gave it to you, or we didn't  
3 know you wanted it and now that we know it we're going to give  
4 it to you, or now that we know you want it we're just not going  
5 to give it to you because of, and then give a reason. That  
6 process is what hasn't happened and that's why we believe the  
7 motion should be denied at this stage without prejudice and  
8 then we should come back after we have exchanged a few letters  
9 replying to the issues and we can come back to you with a  
10 finite list of issues that we disagree on. I proposed that to  
11 them in a letter dated July 9, 2008. It's in Kristin  
12 Kingsbury's affidavit which is Document No. 92, Exhibit 29 to  
13 that. And they haven't, actually they verbally responded that  
14 they would get back to me on that and they didn't do that or  
15 not yet anyway.

16           So that's my position and I could address some of the  
17 issues that Mr. Pickle talked about. He talks about - and this  
18 is kind of getting into the next motion, but he mentioned that  
19 the complaint is quite broad. It's not. It's anything but  
20 quite broad. There are 24 specific factual defamatory, what we  
21 say are defamatory statements that are selected out from the  
22 hundreds, if not thousands of disparaging remarks that they've  
23 made but we only selected 24 for suit. And those are found in  
24 the complaint, and this is part of my next presentation, at  
25 pages 12 through 14, and they're not broad, they're narrow.

1 And they are specific events that occurred at specific points  
2 in time.

3 Now what's broadened the case is that, is as Mr.  
4 Pickle himself demonstrated their answer goes all over the  
5 place. It adds new disparaging remarks that we didn't sue them  
6 for. And what he's really saying, he's bootstrapping his  
7 discovery request onto his answer because his answer states new  
8 disparaging remarks that we never sued them for in the first  
9 place. So they're trying to expand the scope of discovery by  
10 their own allegations which are not in the nature of defense.  
11 The truth is they're, as I understand it as what they're really  
12 saying that as their defense and they cannot expand the scope  
13 of the issues in the case and get more discovery through their  
14 own efforts of making new defamatory remarks.

15 He says that he borrowed from our discovery requests  
16 and that's, it could be true that he borrowed the format, but  
17 I'm quite sure that we didn't ask questions that were as overly  
18 broad as his and I'm going to get to that.

19 THE COURT: Did he borrow your instructions and  
20 definitions?

21 MR. SIMPSON: Not the definitions but, some of them  
22 are standard definitions but not the ones that we're  
23 complaining of. And the, yeah he probably took the word all  
24 from ours but ours would have been more narrowly, and I don't  
25 have them fresh, I'm playing a bit of catch up and I don't have

1 the, our request for production in mind. I'm not sure I've  
2 even read them because they weren't an issue.

3 THE COURT: I often think that a lot of these  
4 discovery disputes begin with the instructions portion of the  
5 Rule 34 request and this may be another one of those  
6 situations, and that cuts both ways by the way so.

7 MR. SIMPSON: One more--

8 THE COURT: Anyway go ahead.

9 MR. SIMPSON: --comment, he's also saying that our  
10 disclosure of materials under Rule 26(a)(1) is some sort of  
11 admission of relevance. And I think the rule is pretty clear  
12 on that, that you, to encourage people to be more generous with  
13 what they give up under Rule 26(a)(1) as voluntary disclosure,  
14 you do not waive any objections to scope, relevance, that sort  
15 of thing. I think that's in the rule and it might be in the  
16 commentary to the rule. So that's what I wanted to say on Mr.  
17 Pickle's motion.

18 I do have more to say about the other motion.

19 THE COURT: Let me just stop you for a moment. When  
20 did you send, serve the latest round of documents on the  
21 defendants?

22 MR. SIMPSON: Mr. Pickle and Mr. Joy will correct me  
23 if I misstate it, but we were basically, we produced all of the  
24 documents that we intended to produce by, pretty much by the  
25 first or second week of July and then we produced a privilege

1 log after that. And I'll - it's actually in the records so I  
2 would stand corrected if it's, there's a letter that sets forth  
3 what we were going to do and we did that.

4 THE COURT: Mr. Pickle, did you, when did you get  
5 that latest round of documents and the privilege log?

6 MR. PICKLE: We got the privilege log on July 10<sup>th</sup> and  
7 we received that by fax. The last actual documents that were  
8 served upon us or served upon me were served by mail on June  
9 27<sup>th</sup>, and then I would have received them after that.

10 THE COURT: June 27<sup>th</sup>?

11 MR. PICKLE: That is correct, Your Honor.

12 THE COURT: And what was the volume of that package?

13 MR. PICKLE: The total of the three, the first one  
14 was 199. Let me see if I can find quickly the second.

15 THE COURT: No, you don't - just give me a rough  
16 idea. I'm just trying to get a sense--

17 MR. PICKLE: Well the total, the total that were  
18 served between June 13<sup>th</sup> and June 27<sup>th</sup> totaled 3,585 pages. So  
19 that's--

20 THE COURT: And have you had a chance to go through  
21 those documents and assess the responsiveness to your requests?

22 MR. PICKLE: I have. It has been a time consuming  
23 process, Your Honor, because these were delivered totally un-  
24 indexed without any way for me to know what was responsive to  
25 what. And so I have gone through those. I would like to point

1 out request No. 9 that was a number of different accounting  
2 type documents and we have, just for example, we have over 280  
3 invoices or pages of invoices for Smith & Butterfield. And I  
4 was kind of at a loss to know how those were responsive at all.  
5 But, you know, request No. 9, I'm turning there now. One thing  
6 it asks for is documents containing detail that would break  
7 down the categories on the financial statements and the Form  
8 990 that pertain to auto, expense, bad debt, cost of Good Soul,  
9 love gifts and such. You know, they tie it, it goes to the  
10 question of private inurement. Okay, love gifts we know we  
11 have, we had a I think we'd call him a level former employee of  
12 3 ABN who claims to have seen a \$10,000 check in 1999 that went  
13 to Tommy Shelton who wasn't even an employee at 3 ABN at the  
14 time.

15 THE COURT: Wait a minute, stop for a minute. I'm  
16 looking at your request for production of documents--

17 MR. PICKLE: Yes.

18 THE COURT: And you're directing me to request No. 9?

19 MR. PICKLE: That is correct, Your Honor.

20 THE COURT: Okay.

21 MR. PICKLE: And so--

22 THE COURT: And where in there what are you referring  
23 to, please?

24 MR. PICKLE: Okay, down toward the bottom of the  
25 request--

1 THE COURT: Yep.

2 MR. PICKLE: --there is a bunch of categories there,  
3 auto, bad debt--

4 THE COURT: Yep.

5 MR. PICKLE: --cost of Good Souls and Love gifts.  
6 I'd like to point out just those two categories.

7 THE COURT: Yeah.

8 MR. PICKLE: Okay, so you got these luck categories,  
9 these lump figures on the financial statements and 990s. I  
10 wanted the breakdown for those. I wanted the breakdown of  
11 what, I wanted something giving me, documents giving me the  
12 detail of what that total figure for love gifts was because I  
13 want to know about, I wanted thereby whether or not that  
14 \$10,000 check was sent to Tommy Shelton as a love gift in '99.  
15 That would be just one example for Love gifts, but I didn't get  
16 anything giving detail for Love gifts that I could find.

17 THE COURT: Let me ask you this, and I'm getting a  
18 little bit off of task but why wouldn't you just specifically  
19 ask the question what was the check for and where was it, and  
20 where was it entered into the bookkeeping system?

21 MR. PICKLE: I believe, well our understanding is  
22 that's just one example of, that this is not the only type of  
23 love gift problem that there is.

24 THE COURT: Well what is it that leads you to believe  
25 that it was filed under love gifts?

1 MR. PICKLE: A former high level employee has told  
2 us that that is, that is where some of these things are hidden.

3 THE COURT: I see. Okay.

4 MR. PICKLE: Now, I'd like to point out one thing  
5 about the cost of Good Souls. I did get one document that  
6 comes close to breaking down the details for the cost of Good  
7 Souls figure that is on both the form 990 and the financial  
8 statement. And this document deals with just the year 2006 and  
9 it lists satellite sales, satellite systems sales, \$1.162  
10 million worth of sales which corresponds with the figure that's  
11 on the 990s and the financial statement. It's about a \$2,000  
12 difference between the two figures, but it looks like that's  
13 the figure. Okay, the cost of Good Souls here on this document  
14 that I received says \$640,809 giving a 44.9% profit. And the  
15 problem is is that the figure for cost of Good Souls on the  
16 990s and the financial statements for 2006 for satellite system  
17 sales is over 1 million and so we've got a \$350,000 discrepancy  
18 with no explanation.

19 THE COURT: Well that's, and I'm not going to tell  
20 you how to prepare your case, but there's another form of  
21 discovery that you can utilize called either an interrogatory  
22 or a deposition where you get to specifically ask those  
23 questions but we can, we're going to talk about that in a bit.

24 All right, thank you. That's - your answers were  
25 helpful. All right, let's move to Document 74 and that is the

1 plaintiffs' motion for a protective order. And let me hear  
2 you on that please, Mr. Simpson.

3 MR. SIMPSON: Thank you, Judge. And if I may just  
4 comment on a few of the last things that he said. He was, if I  
5 understood his comments about request No. 9, he's complaining  
6 that we produced too much information, not, that he didn't feel  
7 it was responsive and that just kind of illustrates how  
8 difficult it was for us to interpret. We produced those  
9 Butterfield, Smith & Butterfield invoices because we thought  
10 they were responsive to requests 9 and 10. I still think  
11 they're responsive to nine and 10, but if he didn't want them  
12 it's really not, it's not an issue that's worthy of bringing a  
13 motion to compel.

14 And then the broader issue he's asking about cost of  
15 Good Soul. What they're trying to do is find new incidents of  
16 wrongdoing and this segways into my motion, the 3ABN, Danny  
17 Shelton's motion to limit the scope of the methods of  
18 discovery. They're trying to do a complete re-audit of all of  
19 3ABN's activities, not just financial but other activities as  
20 well, as part of their ongoing, their broader mission which  
21 they view as kind of reporting on wrongdoing in the 3ABN  
22 organization. And we've sued them for these 24 specific  
23 statements but what they're trying to do is find new acts of  
24 wrongdoing that were not, that they did not previously know  
25 about and find evidence in support of that. And we're trying

1 to limit them to the issues in the case which are defined by  
2 the complaint.

3           So that's what this motion is for is to narrow the  
4 scope of discovery to the relevant topics and to control the  
5 third party discovery that's been going on. There are really  
6 two prongs to this motion. The first is the request for  
7 production that have been served on plaintiffs. And the second  
8 prong is the third party discovery that has been served on the  
9 six people who received subpoenas, six that we know about.  
10 There might be others that we don't know about. And on the  
11 first prong that is the discovery the request for production  
12 served on plaintiffs our basic complaint is that they're  
13 grossly overly broad. The requests go well beyond what's  
14 necessary to find, to defend themselves against the allegations  
15 in the complaint which require them to prove that there are  
16 statements, that there are allegedly defamatory statements were  
17 true.

18           There's an item-by-item list of what our particular  
19 grievances are as to each document request. That's found in a  
20 Kingsbury affidavit Document 92 at Exhibit 19. And to cut to  
21 the chase what we would like to happen is, and it's going to be  
22 a challenge to craft an order that does this without unfairly  
23 limiting, that anticipates all the problems that could come up,  
24 but we would like an order limiting the topics of discovery,  
25 the permissible topics and the permissible date range and

1 basically to have them redraft their request for production  
2 formally or informally to articulate what it is they want. And  
3 I guess the Court's comment earlier about just serving us an  
4 interrogatory asking about a specific transaction is really all  
5 that's necessary.

6           As a, to make this more concrete, we're talking at a  
7 hopeless level of abstractions so I wanted to make it more real  
8 by, you know, going to the Court with the source documents  
9 which are the complaint and the request for production of  
10 documents. In the complaint at page 12 is where the under the  
11 heading defendants' untrue statements begins in paragraph  
12 46(a), and I'm not going to go through all of them because it  
13 would take more time than the Court probably wants to take on  
14 this. But in 46(a) is the first allegation of an untrue  
15 statement and we say there that for the last several years, so  
16 we're limiting it in scope, the international television  
17 ministry known as Three Angels Broadcasting Network has found  
18 itself beset by a growing number of moral, ethical and  
19 financial allegations. Despite the serious nature of these  
20 allegations repeated calls for investigation, reform and  
21 accountability have gone unheeded by its officers and  
22 directors.

23           So that's the allegation, the allegedly defamatory  
24 statement. Now what information would be necessary that's  
25 within the possession of 3ABN to prove that that is a true

1 statement? And the answer I think would be all of the minutes  
2 that the - cause this is about failure of oversight by the  
3 Board so all of the information that was in front of the Board  
4 is what would be responsive to that for the period, specific a  
5 period of time beginning in the early 2000, 2001 timeframe and  
6 extending until the time of the lawsuit.

7 Now let's compare that to what Mr. Pickle has asked  
8 for which is in his request for production of documents. Let's  
9 just go to the first one, request No. 1, all minutes and other  
10 documents of the 3ABN Board, so far so good, but it goes on,  
11 for the entire length of time of 3ABNs existence and on an  
12 ongoing basis. So I mean that would go back 20, 25 years and  
13 the allegation in the complaint only deals with events dating  
14 back to 2001.

15 So what we're saying, and this is the simplest  
16 example. It gets hairier as you go through these but the  
17 simplest example is we've made an allegation about something  
18 they said that relates to a specific point in time. Documents  
19 we agree would be discoverable and we've given them all the  
20 minutes back to 2001. Every scrap of paper that the Board had  
21 in front of it at the Board meetings has been produced is my  
22 understanding and, back to 2001. And we are asking to have  
23 their request narrowed to reflect that, what I think is an  
24 obvious limitation.

25 Another example, take the next one in line, Danny

1 Shelton purchased - this is on page 12 of the complaint.  
2 Danny Shelton purchased a three-year-old van using 3ABN funds  
3 then sold the van to a member of his family for just \$10. So  
4 what documents would be necessary to prove the truth of that  
5 statement? Well there would be maybe the certificate of title  
6 for that van. There would be a check stub. Maybe there would  
7 be a document memorializing it. So they can ask for that and  
8 we'll give it to them. If they can identify it, what they  
9 want, we'll give it to them. And just go through it, these are  
10 all specific events that don't require - but what have they  
11 asked for? They've asked for every banking record from Danny  
12 Shelton going back for I don't know how many years, six years I  
13 think was in the subpoena.

14 They want his entire - this is the subpoena they  
15 served in Minnesota on Danny Shelton's personal bank. They  
16 want all of his banking records going back pretty much forever.  
17 And that's just not necessary to prove this, you know, single  
18 transaction was or was not a bad transaction. And there's  
19 other transactions in here but they're all specific  
20 transactions. Now, they say that they've got an allegation of  
21 personal inurement but that's, that sentence goes on that  
22 there's specific allegations of personal inurement. It's not a  
23 general allegation of personal inurement so they get to conduct  
24 full discovery on everything that's ever happened. They made  
25 specific comments that we say are defamatory that relate to

1 specific transactions that they allege as personal inurement.  
2 And those are the allegations in the complaint and they're  
3 trying to use the discovery mechanism to find new instances of  
4 personal inurement and that's an improper expansion of the  
5 issues in the case. I can go through and do that same analysis  
6 with each of these. There's just no match between the  
7 allegations in the complaint which are narrow and the broad,  
8 really unlimited request for documents.

9           Now, you might wonder why they're doing this. Well,  
10 I touched on it earlier. The defendants consider themselves  
11 ecclesiastical journalists and that it's part of their mission  
12 to expose, to investigate 3ABN. That's what they do. And they  
13 post all their findings on the internet and that's what started  
14 this whole thing in the first place. And they have actually  
15 exchanged correspondence which is in Ms. Kingsbury's affidavit  
16 discussing the fact that the complaint is fairly narrow and  
17 they need to come up with creative ways of expanding the scope  
18 so they can get more information for their broader goal. So  
19 there's, it actually is their intent. It's not just that they  
20 don't know how to craft narrowly tailored requests. They  
21 actually want everything so that they can find more instances  
22 of wrongdoing.

23           So what should the order say and that's really the  
24 challenging part. We believe that the brief and I've asked for  
25 what think would be an appropriate order with respect to each

1 request, but again it kind of, it's kind of the flip side of  
2 the first motion. What needs to happen is there needs to be a  
3 full compliance with Rule 37.1, the local rule that requires  
4 that the party who wants additional discovery identify the  
5 specific item that they want and the document request where it  
6 comes from and then their position on it. And then we respond  
7 to it and then we present our various positions on that finite  
8 set of specific issues to you to resolve. And maybe we can  
9 resolve it ourselves. The track record doesn't suggest we will  
10 do it but possibly we could. But in any case we'll end up with  
11 a finite list of documents that we believe should not be  
12 produced and they believe should be produced that actually  
13 exist and then there will be something concrete for the Court  
14 to order. But right now it'd be kind of hopelessly abstract.

15           And then the second prong of this motion deals with  
16 the third party discovery and I want to just touch briefly on  
17 that. There's been I think six subpoenas served by defendants  
18 on third parties in various jurisdictions. And the status, the  
19 one in Minnesota was for Danny Shelton's personal bank records.  
20 And Judge Boylan there ordered disclosure of those records to  
21 you under seal thinking that you would be the appropriate  
22 person to determine what's relevant and what's not and he  
23 wasn't. He wasn't in a position to do that. So whether you  
24 want to do that task or not the records will be arriving  
25 someday and we need to address what to do with them. And my

1 proposal would be either that you address that in this order  
2 as to what, and we can take it back to Judge Boylan and then he  
3 can narrow his order or and I know, I recognize you can't order  
4 him to do anything but the comity and so forth between the  
5 Courts my understanding is that he would invite a suggestion  
6 from this Court as to what's relevant.

7 THE COURT: When this first landed we communicated.

8 MR. SIMPSON: And if the documents arrive here before  
9 that can happen, then I would suggest that we either the Court  
10 or the Court appoint somebody to do an in-camera review of  
11 those documents in light of the allegations in the complaint  
12 and determine which documents are responsive to the document  
13 requests and relate to issues in the complaint. I don't envy  
14 that task but that's, somebody's got to do it. That's the  
15 Minnesota subpoena.

16 The Illinois subpoena is on Gray Hunter which is an  
17 accounting firm that does 3ABN's accounting work. The  
18 plaintiffs move to quash that subpoena and Gray Hunter joined  
19 in that motion because there's an Illinois accounting privilege  
20 that doesn't pertain to filed accounting records so the tax  
21 returns and so forth would not be subject to the privilege.  
22 But the work papers which is what they want because they  
23 already have the tax returns themselves, they want the work  
24 papers, would be considered privileged under Illinois law as a  
25 matter of substantive Illinois law. And so it's, that issue

1 was kind of stayed because we told the Court there that, in  
2 fact we had a hearing scheduled for today in Illinois and we  
3 asked the Court there to move it indefinitely to get some  
4 guidance from this Court as to what the scope of relevancy  
5 would be.

6 So that's the status of the Illinois subpoena of the  
7 accounting records. We've moved to quash them, that subpoena.  
8 We don't believe - it's like 10 bankers boxes. It's every  
9 accounting record going back forever and it relates to way more  
10 than what the issues are in the case and we think it's just way  
11 overbroad. Again, they need to identify what specific issues  
12 and they don't need to go to our accountants for that. We can  
13 give them the documents that relate to the issues in the case.

14 The third subpoena that I want to, that I know of is  
15 the Michigan subpoena on Remnant Publications, that's a  
16 publishing house that publishes books that are purchased by  
17 3ABN. They're in this case authored by Danny Shelton and then  
18 purchased by 3ABN and given away as part of their outreach  
19 program or sold as part of their outreach program. I think  
20 that the deal is that people who want the book pay for some  
21 nominal fee for the shipping and handling or whatever. And  
22 that - the judge there ordered disclosure of those records,  
23 which is basically all the dealings and contracts between  
24 Remnant and the plaintiffs. And initially the judge had said  
25 that she would be ordering disclosure to you following suit

1 with Judge Boylan which Judge Boylan did, and then when the  
2 order came out she changed her mind and said that the documents  
3 could go directly to Mr. Pickle and Mr. Joy without any  
4 intervening review for screening. And Remnant's attorney has  
5 moved for reconsideration and that motion is pending the last  
6 time I heard. So we would ask that, and I'm not sure you can,  
7 obviously you can't tell the Judge in Michigan what to do, but  
8 I think that if your order were to address the issue of that  
9 subpoena and whether you felt it was relevant that's something  
10 we could take to that judge that would then prompt her to  
11 reconsider or not reconsider according to whatever you tell  
12 her.

13           Then there are two other subpoenas that did not  
14 result in litigation. One was served on Kathy Bottomley (ph)  
15 who is a former employee of 3ABN who made allegations of sexual  
16 harassment or discrimination of some sort in California who was  
17 investigated by the California agency that does that, and there  
18 was no finding of probable cause and it ended. And these folks  
19 have, the defendants have made allegations that 3ABN violated  
20 the anti-discrimination laws citing as an example Kathy  
21 Bottomley and another employee. And so these documents were, I  
22 think we provided them to them first and then they also, I  
23 might have it switched, but in any case they've obtained the  
24 documents now from two sources, Kathy Bottomley and from 3ABN.

25           And then the final subpoena is on a pastor by the

1 name of Glenn Dryden for his records relating to Tommy Shelton  
2 who was a pastor at a church. Glenn Dryden replaced him when  
3 he left that church. And Tommy Shelton is not a party to this  
4 lawsuit and there's allegations that he was engaged in sexual  
5 misconduct with underage boys and terrible allegations.  
6 Nothing, there's been no criminal prosecution, no lawsuits that  
7 I'm aware of but he was employed by 3ABN. When those  
8 allegations came to light they terminated the employment. He's  
9 no longer connected with 3ABN. So the allegations in, the  
10 alleged defamatory remarks were that 3ABN didn't fire him soon  
11 enough if I'm summarizing that correctly. They knew but didn't  
12 fire him. Should've known about his conduct but didn't fire  
13 him soon enough.

14           And what these folks are doing is taking that  
15 incident or that - I would agree that what 3ABN knew and when  
16 they knew it is relevant, but it's not relevant to go to third  
17 parties and just kind of snoop about what Tommy Shelton was up  
18 to and that's what they're doing. That's what these subpoenas  
19 are all about. And when I asked them for these records they  
20 wouldn't even produce to me the records that they obtained  
21 through use of these subpoenas. Mr. Joy took the position that  
22 it wasn't relevant, that they weren't relevant and that  
23 therefore I couldn't ask for them. Well, what are you using  
24 Rule 45 to obtain records for if they're not relevant and they  
25 eventually gave them to me. So - and I haven't looked at them

1 so I can't tell you if they're relevant or not but I would  
2 suspect they're not.

3           So those are the subpoenas that are out there. And I  
4 think the point I want to make about those third party  
5 discovery is that it doesn't make any sense for courts in other  
6 jurisdictions to be deciding relevance and scope and whether  
7 these are appropriate documents to be seeking from third  
8 parties. It would make more sense for this Court who is more  
9 familiar with the issues in the case to make a preliminary  
10 ruling on that, and I'm proposing that henceforth Mr. Pickle  
11 and Mr. Joy be required to obtain leave of this Court before  
12 serving any third party discovery. And those are the issues  
13 that I wanted to address in my motion, Your Honor.

14           THE COURT: Thank you. Let me hear from you,  
15 Mr. Pickle, and then I'll hear from Mr. Joy.

16           MR. PICKLE: Sorry for the phone, Your Honor. Would  
17 it be all right if you hear from Mr. Joy first and then come  
18 back to me?

19           THE COURT: Sure. Mr. Joy?

20           MR. JOY: Thank you, Your Honor. Let me start off by  
21 making it very clear to this Court I never challenged the  
22 irrelevance of anything, okay. In fact I have consistently  
23 from the beginning of this case taken the position discover  
24 everything. They want something, give it to them, I don't care  
25 whether it's relevant or not. We, as a matter of fact we had a

1 battle over that issue with counsel that was representing Mr.  
2 Pickle at the time. My position was take everything, give it  
3 to them and my position remains the same. And I have never  
4 challenged the relevance of any document that this man has  
5 every questioned. And that's only one of several frauds on  
6 this Court.

7           This man has represented that the subpoena that was  
8 issued in the state of Minnesota dealt with the question of  
9 relevance, that the order underlying that dealt with relevance.  
10 It didn't deal with relevance. It dealt with confidentiality,  
11 and it was agreed that the documents be put under seal pending  
12 a confidentiality order, not a relevance in scope order. That  
13 is clearly not in the order and was not part of the discussion  
14 at that time.

15           The document or pardon me, the subpoena, try to  
16 understand we have a case where these people have alleged  
17 defamation per se. They're saying hey look, these people have  
18 made allegations that are violations of the Internal Revenue  
19 Code and therefore criminal. That's their allegation, all  
20 right. Obviously experts regarding the issue of whether or not  
21 those are in fact in violation we'd need those documents. They  
22 would need the bank statements from Minnesota, and they would  
23 need the documents from Remnant Publication, and they would  
24 need a lot of other documents that we do not have at this  
25 point. They absolutely are covered by scope and they're

1 absolutely covered by the complaint. There's no question  
2 they're covered by the complaint. The allegations in the  
3 complaint specifically talk about abuses by the Board of  
4 directors and by Danny Lee Shelton, both the assets of 3ABN, et  
5 cetera. Clearly it goes to the question of scope and relevance  
6 and there's just no way that all of a sudden arbitrarily  
7 setting a date of 2001 works because many of our allegations go  
8 back long before 2001. We arbitrarily set our date as '99 when  
9 in reality, for example the Board meeting minutes, would  
10 obviously be relevant all the way back to the founding of the  
11 corporation. If we'd made an allegation that's relevant to the  
12 way that the board of directors had mismanaged the corporation,  
13 effectively not managed the corporation for nearly 25 years all  
14 of those Board records would clearly be relevant. And the  
15 scope could not be limited to 2001, a ludicrism at best given  
16 their own allegations against us.

17           And the other thing I'd like to point out, Your  
18 Honor, is that we had already come to an agreement with  
19 Litzenberg (ph), counsel for Grey Hunters. They were not going  
20 to oppose this. We had worked out a stipulated agreement that  
21 we would bring in two auditors and a forensic accountant to  
22 review all of these documents with us over three days to  
23 determine what was relevant, what was not relevant. In  
24 addition, we would bring in the equipment to be able to address  
25 the question of confidentiality. It would be copied and

1 watermarked and then those documents would then be scanned  
2 into a separate system for our own preservation purposes for  
3 trial as well as having obviously the copy made at that point  
4 of, at the point of discovery.

5           That all of a sudden came to not when suddenly people  
6 who were not parties to this Three Angels Broadcasting Network  
7 under Rule 45, they're not parties to this particular request  
8 and they claim all of a sudden that Illinois confidentiality  
9 comes into play when it's known by everybody in the world that  
10 federal common law does not recognize any type of client-  
11 accountant privilege. And Litzenberg had agreed to that and  
12 that's why we had an agreement in place as to how we were going  
13 to conduct that discovery to preserve confidentiality, to  
14 preserve relevance and to preserve scope.

15           As to Remnant Publications, Your Honor, I will point  
16 out that in their own complaint they have specifically alleged  
17 that we have said that they had hidden Mr. Shelton's royalties  
18 relevant to the production of books. And that they had then  
19 failed to disclose those at any point in the 3ABN 990s or other  
20 documents filed with the state of Illinois. Well, in fact we  
21 had good information and we produced that information to this  
22 Court to demonstrate the relevance and scope of that particular  
23 subpoena. And the fact is that they've made the allegation.  
24 They have specifically made an allegation. And in fact we  
25 believe the allegation to be true based on the representation

1 of at least two employees of Remnant Publication and other  
2 employees that came from Three Angels Broadcasting Network.  
3 That information was given to - he didn't even ask for it. It  
4 came out of the, clearly the blue sky one day. We got an email  
5 and we obviously moved on that because even though we had  
6 suspected it and even though Mr. Miller who had originally been  
7 on the board of directors at 3ABN had alleged it to us, okay,  
8 we had no firm evidence of that until we got inside information  
9 that in fact that was correct.

10 So these were all relevant. They were all part of  
11 the scope. They were all within the allegations that the  
12 plaintiff has made. There's no question about that. And the  
13 problem that we really have here is we have a very reluctant  
14 plaintiff. We have a plaintiff who clearly has determined that  
15 they're going to do everything they can from day one to  
16 obstruct our ability to get information as we need to defend  
17 against the allegations of defamation per se which they have  
18 purported to be allegations of defamation per se.

19 And the point is, Your Honor, that very simply we  
20 have done everything that we can to be compliant. We have  
21 always produced documents. The only thing that I'm aware of  
22 that's currently outstanding on our side is that I do have to  
23 amend my answers to interrogatories relative to specific issues  
24 referenced to sources et cetera. That's the only outstanding  
25 issue that I'm aware of that we have not yet responded to.

1 Otherwise, we've been entirely forthcoming. The problem we  
2 have is we have a plaintiff who clearly doesn't intend to be  
3 forthcoming and frequently misrepresents or mischaracterizes  
4 the underlying issues.

5 And let me say too, Your Honor, that it is in fact  
6 true that the judge magistrate in Michigan initially said well  
7 I'm going to produce these but I'm going to produce them under  
8 seal to Judge Hillman in the Commonwealth of Massachusetts.  
9 And then she very pointedly notes that upon reconsideration,  
10 obviously having looked at the record and the transcript and  
11 the allegations, et cetera, she notes that they were relevant.  
12 She doesn't have any question there's relevance here. And then  
13 they go back and say whoa, we want you to reconsider because  
14 we're filing this new motion to try to block this covering  
15 scope and relevance. That's the foundation of what their claim  
16 is in Michigan for reconsideration.

17 The other fraud upon this Board is that Bottomley,  
18 Ms. Bottomley in the state of California filed a complaint with  
19 the EEOC - actually let's go back a step. She filed a  
20 complaint with the state of California version of the EEOC  
21 which is the Department of Housing and something, I can't  
22 remember the exact title for it. And 3ABN quickly alleged that  
23 they had no jurisdiction. Counsel for the state of California  
24 said gee, I think you're right. This is a religious issue.  
25 It's outside the purview of our mandate and therefore if you

1 have a complaint you have to go to the federal EEOC. And  
2 that's exactly what happened, Your Honor, and there's an  
3 ongoing investigation of the federal EEOC relating to this very  
4 issue because a complaint was filed.

5 Now that issue as far as I know they have never, the  
6 EEOC in the federal level has never issued a letter to sue.  
7 They are still as far as I know ongoing field investigation  
8 relative to the complaints. And I'm sure counsel knows this,  
9 how could they not be aware of what's going on, on such a  
10 critical issue. But it really characterizes an example of the  
11 fraudulent misrepresentations of counsel in this case.

12 Now, there's reference to the subpoena to Pastor  
13 Glenn Dryden. Your Honor, some of the allegations relating to  
14 the conduct of Mr. Tommy Ray Shelton, okay, actually occurred  
15 on the premises of Three Angels Broadcasting Network. Some of  
16 those parties have told us that they went to the president of  
17 Three Angels Broadcasting Network and they made very specific  
18 allegations and made it clear to the president that they were  
19 not interested in continuing their employment unless this issue  
20 was dealt with. These were males who had been approached by a  
21 superior member of the staff and they gave us this very  
22 specific information. Now it is true that there were other  
23 allegations outside of Three Angels Broadcasting Network  
24 dealing with underage students that were in a school that he  
25 managed. And those issues, well there's a whole story there

1 and I won't bore the Court with that whole story, but the fact  
2 is we know that Three Angels Broadcasting Network and  
3 specifically Danny Lee Shelton and specifically the chairman of  
4 the Board of Three Angels Broadcasting Network, a Dr. Thompson  
5 I believe, were absolutely aware of these issues and Dr.  
6 Thompson was relegated the responsibility of "investigating  
7 them." And now they claim they did a thorough investigation  
8 and yet we have statements from Dr. Thompson which clearly show  
9 that he did not do a thorough investigation. That obviously  
10 goes to Board oversight, Your Honor. Clearly relevant, clearly  
11 addressed in the complaint and clearly an issue in - matter of  
12 fact, Your Honor, I'd point out that when we initially started  
13 the website the very first issue that we addressed was the  
14 allegations relating specifically to Tommy Ray Shelton.

15 And in fact if we said we're going to cut this case  
16 off as of January 2007, we did a look back and said what's that  
17 going to include, okay. And ironically it virtually cuts off  
18 everything from Tommy Ray Shelton forward. Most of the website  
19 was constructed after January of 2007, and yet they've sought  
20 an injunction against that website and the information that's  
21 on that website. They've sought that in their complaint.

22 Now, they make another fraudulent statement. They  
23 claim plaintiffs have not made claims to ongoing defamation.  
24 Your Honor, in the court downstairs in this very building in  
25 the bankruptcy court motion for relief and the automatic stay

1 November 11<sup>th</sup>, 13<sup>th</sup> I'm sorry, November 13, 2007. It addresses  
2 his ongoing continuing conduct, referring to me, and goes on to  
3 say his ongoing defamatory conduct towards 3ABN and Shelton,  
4 quote, okay, motion for expedited determination, motion for  
5 relief in the automatic stay, okay.

6 In addition to that Ms. Hayes when she was managing  
7 the case, which is part of our problem here, Ms. Hayes in fact  
8 went about seeking also third party subpoenas. And for  
9 example, she sought third party subpoenas which went to places  
10 like Blue House which happens to be the website, and they ask  
11 for information on completely irrelevant third party  
12 identifications of people who did use - now in all of the  
13 postings that I have ever done on the internet, I have never  
14 used anything other than the surname that I was given at  
15 birthday and the same for Mr. Pickle as far as I know, all  
16 right. They know that. We made that very clear. And the  
17 bottom line is they went around looking for identifications for  
18 people like sister and there's a whole litany of people that  
19 they were looking for. Clearly beyond the scope and relevance  
20 of this case.

21 What does black SDA and people posting on the  
22 internet on Advent Talk or on, what's the other one, I can't  
23 remember what it is, it's on the west coast, how's that  
24 relevant to this case, but yet they sought the information?  
25 And furthermore they used that identifying information once

1 they had it. They set up their own cite and turned these  
2 people's pseudonyms. I'd say that far more outweighs conduct  
3 than anything we have ever done, we have ever done.

4 In summary, Your Honor, we believe that we covered  
5 the relevance and the scope in nearly six hours of conversation  
6 in January of 2008. We absolutely covered to a T every single  
7 item, every single request to produce with Ms. Hayes. We  
8 talked about the relevance. We talked about the scope. We  
9 talked about everything you could possibly think of including  
10 the issues of confidentiality. Those were all discussed.  
11 There's no question we couldn't agree on much, all right. In  
12 their opinion everything was irrelevant, everything was  
13 confidential and obviously everything was beyond the scope of  
14 the present case. Despite the allegations, and they finally  
15 came across with production on 14, 14 of these requests to  
16 produce, they couldn't figure out for the life of them, over  
17 the course of six months they could not figure out for the life  
18 of them despite correspondence, communications and on and on  
19 what it is we were looking for that was specific to this case  
20 in the other request to produce. A virtual ludicrism and fraud  
21 upon this Court to say the least.

22 I believe that we clearly established the relevance  
23 of each request in that conversation and we clearly established  
24 both relevance and scope and explained it through obviously the  
25 complaints of defamation, defamation per se and the other

1 specific allegations made in the underlying claim.

2 We also have allegations regarding governments and  
3 oversight and oversight which again, that goes over the entire  
4 lifespan of Three Angels Broadcasting Network. As financial  
5 allegations for some reason or other they claim it includes the  
6 Board. Now there are three members of the Board who are also  
7 employed - well there were four members of the Board who are  
8 members of the, are also employees of 3ABN. If they refer to  
9 those, that's fine. I, you know, I don't recall us making  
10 allegations beyond Mr. Shelton and of course just general Board  
11 oversight but they claim we have. But that would clearly cover  
12 the entire 25 years again from inception to the current period.  
13 The relevance of the third party is that these parties clearly  
14 had documents--

15 THE COURT: I'm going to give you just a minute to  
16 wrap up.

17 MR. JOY: Okay.

18 THE COURT: I've got a verdict.

19 MR. JOY: They had documents that 3ABN clearly did  
20 not have. The, obviously the documents that the accountant,  
21 the auditor has would be documents that they would not have in  
22 their possession. The information that Mr. Dryden had in the  
23 great state of Virginia was the information that 3ABN would not  
24 have had. The information from the Bottomleys is information  
25 they wouldn't have had. The information from - or at least

1 they'd only have part of the information. The information  
2 from obviously regarding the accounts, we were told very  
3 specifically that all records prior to 2000 were destroyed by  
4 the plaintiffs to give them that information a year ago. The  
5 bottom line is we know that only part of that is there. But  
6 regardless, the point is they question relevance and scope and  
7 the fact is that we have a situation where our experts tell us  
8 that they need the, obviously the checking account information,  
9 they need the information found in the auditor's statement and  
10 they clearly need the information from Remnant Publication in  
11 order to make a clear, decisive opinion regarding defamation,  
12 defamation per se and some of the other allegations in the  
13 complaint.

14 THE COURT: Thank you. Mr. Joy? I'm sorry, Mr.  
15 Pickle, I'll let you - what do you want to add?

16 MR. PICKLE: Yes, Your Honor. In the, this relates  
17 to this motion. In the plaintiffs' opposition to my motion to  
18 compel on page 11 at the very bottom it says a single  
19 defamatory statement remotely related to Danny Shelton's  
20 personal finances would make relevant only the title, purchase  
21 documents and payment history for a Toyota Sequoia automobile.  
22 And I just think that's just, when we're talking about private  
23 inurement that is just a ludicrous statement cause nothing  
24 having to do with that Toyota Sequoia has to do with private  
25 inurement.

1 But more importantly I want to point out that they  
2 specify payment information for the Toyota Sequoia automobile.  
3 See the complaint says inter alia and it lists a bunch of  
4 example statements but it says inter alia so it could include  
5 other statements. Well there's nothing in their complaint that  
6 specifically talks about the payment information for that  
7 Toyota Sequoia. There is an allegation that defendants have  
8 made based on payment history of that vehicle and statements by  
9 Walt Thompson and that information, our allegations are that  
10 they gave a report about that was included in the plaintiffs  
11 Rule 26(a)(1) material. So this does demonstrate that the  
12 plaintiffs do not mind going beyond the allegations that are  
13 explicitly stated in their complaint. They will go beyond that  
14 when it suits their purpose.

15 I also want to point out that, this addresses the  
16 question of limiting the scope to a particular time period, the  
17 problems with this can result in. In my request to produce in  
18 definition 16(d) I, you know, one of the plaintiff related  
19 issues is allegations of embezzlement regarding, you know, any  
20 employees, officers, records of 3ABN. And I got nothing in  
21 regards to that other than there was a brief blurb in a January  
22 2001 Board minutes which referred to Alan Lovejoy, the 3ABN  
23 auditor giving a report, an update on Pete Croxer (ph).

24 Now what we had been told was that Pete Croxer had  
25 been associated with the 3ABN auditor, with the auditing firm

1 and that he had been to see CFO of 3ABN. And in the  
2 plaintiffs' Rule 26(a)(1) materials there is some material  
3 written by sister, a former employee of 3ABN referring to Pete  
4 Croxer. Now, as CFO he was running his personal expenses  
5 through 3 ABN, paying for his house with 3ABN funds. He was  
6 given a van as like a hush payment because, you know, what  
7 sister is suggesting or indicating is that he was helping Danny  
8 Shelton embezzle funds or inappropriately direct funds. But -  
9 and he was given this van. You know, one of the documents we  
10 did receive did reference a van that was sold to Pete Croxer or  
11 given to Pete Croxer in December of '99. And through some  
12 documents filed with the state of Illinois for the 2000 tax  
13 year mentioned that their CFO was fired in December of 2000.

14 So you see if we limit the scope of discovery just to  
15 events occurring from January 2001 onward, then we'd totally  
16 miss the embezzlement, alleged embezzlement that took place  
17 under CFO Pete Croxer and all the issues, intertwined issues  
18 with that.

19 Now, one thing the sister did say regarding why there  
20 was never any prosecution of Pete Croxer by 3ABN or the  
21 plaintiffs because Danny Shelton in running his operation there  
22 wants to avoid at all costs the transparency that a court case  
23 would result in over the finances of 3ABN. And I think we see  
24 that, an example of that kind of thing in their current  
25 litigation. They want to avoid financial transparency. I mean

1 this is, the issue with Pete Croxer isn't the only example of  
2 somebody that has embezzled funds or stolen funds that were to  
3 go to 3ABN and that it didn't result in prosecution allegedly  
4 in order to avoid the kind of investigation that litigation  
5 would result in.

6           What Mr. Simpson said about how 3ABN didn't fire  
7 Tommy soon enough, that's just ludicrous. Our understanding is  
8 that the Board did say that Tommy needed to go around 1991  
9 after he had propositioned or gone after this one employee. He  
10 went after him and the guy had to flee his car, flee the car  
11 that he was riding in with Tommy. And after that incident our  
12 understanding is that the Board did say Tommy had to go. Well  
13 then he shows back up in 2001 and when these allegations  
14 resurface in 2003 nothing was done. And when they surfaced  
15 again in 2006 nothing was done. We have no indication that  
16 Tommy was terminated over these allegations. And in 2006 what  
17 was officially reported publicly is that he was retiring early  
18 because of alleged health problems. So this idea that 3ABN  
19 didn't fire Tommy soon enough is just ludicrous.

20           THE COURT: All right. Thank you everybody.

21           MR. PICKLE: And I guess, I guess, you know, the book  
22 royalties, on page 11 - I'll mention just a couple of other  
23 things. On the top of page 11 of the plaintiffs' opposition to  
24 my motion to compel they mentioned book royalties earned by and  
25 paid to 3ABN. That just garbles the issue because I don't know

1 that either, I know I have never accused 3ABN of supposedly  
2 having royalties paid to them that then were inappropriately  
3 paid to Danny Shelton. The issue is that Danny Shelton did not  
4 properly disclose his royalties on his financial affidavit or  
5 to the court of royalties that he was earning from his book  
6 deals with Remnant. That was the issue.

7           On the bottom of page 10 of their opposition which is  
8 Document 67 it says 3ABN donations to Shreve Peters Ministry  
9 the records of any orders issued by 3ABN for revenues that  
10 donation. Well that totally garbles the issue. That's not the  
11 issue. The allegation that we received from a high level 3ABN  
12 individual was that Danny was, the Board had said that Brandy  
13 Elwick (ph) Murray who became Brandy Shelton, Danny's wife, the  
14 Board did not want her to be paid and that then Danny arranged  
15 for money to be paid through a, to her anyway through a third  
16 party non-profit. Whether that third party nonprofit was  
17 Shreve Peter's Ministry or not, don't know. But I don't know  
18 of any allegation that the 3ABN Board ever prohibited donations  
19 to Shreve Peter's Ministry. So the plaintiffs are garbling the  
20 issues that, of this controversy.

21           And just one other thing which is a key point, we're  
22 approaching, I guess we're about a year now after the beginning  
23 of discovery and I still do not have documents that we can use  
24 to verify that former donors stopped giving to 3ABN because of  
25 alleged lies that we were telling. And that plaintiffs want to

1 prevent us from being able to verify those kind of things,  
2 verify the truth or falsity of their claims that we have lied,  
3 that we've made statements that are definitely false and that  
4 our activity rather than other peoples activity has caused a  
5 decline in donations. The plaintiffs by trying to restrict  
6 scope of discovery are trying to prevent us from finding, from  
7 discovering documents that directly pertain to those questions.  
8 I think that's it, Your Honor.

9 THE COURT: All right, thank you everybody. Under  
10 advisement.

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CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Maryann V. Young

January 5, 2010

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