

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

IN RE: OUT OF DISTRICT SUBPOENA,  
ROBERT PICKLE,

vs

REMNANT PUBLICATIONS, INC.,

Respondent.

Case No. 1:08-mc-0003

Grand Rapids, Michigan  
June 16, 2008  
10:02 a.m.

HON. RICHARD A. ENSLEN

DEFENDANT'S MOTION TO COMPEL  
BEFORE THE HONORABLE ELLEN S. CARMODY  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

In Pro Per: Mr. Robert Pickle (by phone)  
1354 County Highway 21  
Halstad, MN 56548  
(218) 456-2568

In Pro Per: Mr. Gailon Arthur Joy (by phone)  
P. O. Box 1425  
Sterling, MA 10564  
(978) 422-3525

For the Respondent: Mr. Charles R. Bappert  
Biringner Hutchinson Lillis Bappert  
& Angell, PC  
100 W. Chicago Street  
Coldwater, MI 49036  
(517) 279-9745

1 Grand Rapids, Michigan

2 Monday, June 16, 2008 - 10:02 a.m

3 THE COURT: Good morning. Would counsel please put  
4 your appearance on the record?

5 MR. BAPPERT: Your Honor, I'm Charles Bappert, and  
6 I'm the attorney for the respondent to the subpoena Remnant  
7 Publications, a Michigan corporation.

8 THE COURT: And how do you spell your last name, Mr.  
9 Bappert?

10 MR. BAPPERT: B as in boy, A, P-P as in pepper, E-R-T  
11 like Tom.

12 THE COURT: Just like it sounds.

13 MR. BAPPERT: Yes.

14 THE COURT: All right. Do I have Mr. Pickle on the  
15 line?

16 MR. PICKLE: Yes, this is Bob Pickle.

17 THE COURT: Anyone else?

18 MR. JOY: Yes. This is Gailon Arthur Joy.

19 THE COURT: And who do you represent, Mr. Joy?

20 MR. JOY: Myself, ma'am.

21 THE COURT: Oh, okay, all right, okay.

22 Now, as I understand it this involves -- the  
23 underlying suit involves an action for defamation; is that  
24 correct, Mr. Pickle?

25 MR. PICKLE: That is correct, your Honor.

1 THE COURT: All right. Now, and you, as I understand  
2 it, have issued the subpoena to Remnant. Can you tell me a  
3 little bit about how you think Remnant is involved in this?

4 MR. PICKLE: Well, plaintiff Danny Lee Shelton has  
5 been accused a number of times of applying creative ways of  
6 channeling assets and revenue from Three ABN to himself and to  
7 members of his family.

8 And I guess one of the biggest examples of this kind  
9 of thing was this Ten Commandments Twice Removed book campaign in  
10 like the first half of 2006.

11 Remnant was the publisher for that book. They had  
12 printed Danny Shelton's books prior to that. Three ABN collected  
13 the shipping, 25 cents a book for 4.8 million copies of this  
14 book, and turned that over to Remnant is our understanding.

15 They were invoiced like \$3 million, around three  
16 million, and what we are told is that Remnant then paid royalties  
17 in some way through some channel to Danny Shelton.

18 THE COURT: And the idea being that these royalties  
19 should have gone to TABN?

20 MR. PICKLE: Well, see, I'm a publisher myself and,  
21 you know, royalties would go to whoever owns the rights to the  
22 book. So I've never made any claim and I don't believe Mr. Joy's  
23 ever made any claim that royalties, you know, in the technical  
24 sense of the term should have gone to Three ABN.

25 There's a number of ways that somebody can make money

1 from books. Now, Three ABN founded a kind of a publishing  
2 imprint of their own in July of 2004. Three ABN Books, it's  
3 called.

4 And, you know, somebody looking on from outside would  
5 think, well, then Danny Shelton, rather than publishing his own  
6 books using his own personal publishing companies and then later  
7 using Remnant, why not have Three ABN books publish the book and  
8 then Three ABN could make the profit off the book instead of the  
9 publisher, instead of Danny Shelton, Three ABN publishing company  
10 instead of Remnant.

11 So there's a couple different issues. One issue  
12 would be who is making the profit on the book and another issue  
13 would be who is making the royalty on the book.

14 THE COURT: Okay.

15 MR. JOY: Your Honor --

16 THE COURT: And when was this book initially  
17 published?

18 MR. PICKLE: Well, Anti-Christ Agenda is the original  
19 book and that was published in late 2004 by DLS Publishing.

20 THE COURT: Anti-Christ Agenda?

21 MR. PICKLE: That's correct.

22 THE COURT: And that was published in 2004?

23 MR. PICKLE: Late 2004, yes, by DLS Publishing which  
24 was a corporation that Danny Lee Shelton had incorporated.

25 THE COURT: All right.

1 MR. PICKLE: And then the Ten Commandments Twice  
2 Removed book is an excerpt of that.

3 THE COURT: And what do the events in the complaint,  
4 what time period does that cover?

5 MR. PICKLE: Pardon me, your Honor?

6 THE COURT: Well, there's usually a pretty tight  
7 statute of limitations on defamation claims. What time period is  
8 covered by the complaint to which you are defendants?

9 MR. PICKLE: Oh, well, Mr. Joy and myself didn't  
10 become involved until mid-August of 2006, so I would assume that  
11 then the complaint is targeting whatever we have said from that  
12 point forward.

13 THE COURT: All right. Well, I think I noted that  
14 Mr. Bappert stated that your subpoena was for an eight-year  
15 period.

16 Is that correct, Mr. Bappert?

17 MR. BAPPERT: Yes, your Honor, going back to try to  
18 corral contracts and invoices and royalty payments and documents  
19 that cover that period of time.

20 THE COURT: I guess I'm not sure, Mr. Pickle, what  
21 relevance documents going back eight years could have if these  
22 events simply arose in 2006.

23 MR. PICKLE: Okay, that's not quite -- okay, you  
24 mentioned statute of limitations and I believe that would affect  
25 -- that would kick in regarding what we had investigative

1 reporters reporting, so there'd be a statute of limitations  
2 prohibiting Danny Shelton and Three ABN from suing us after a  
3 certain stated period of time.

4 But the allegations that we raised could go back, you  
5 know, ten years.

6 The complaint raises the issue of -- accuses us of  
7 defamation per se which then rolls the burden of proof to some  
8 degree upon us instead of just being a simple defamation case.

9 And it's doing that on two basic things from what I  
10 can tell. It's accusing us of saying that Three ABN board  
11 members violated the Internal Revenue Code by enriching  
12 themselves, and that Danny Shelton did not -- that he perjured  
13 himself in his divorce proceedings which would -- to me from what  
14 I can tell would point to a financial affidavit that he filed in  
15 July of 2006.

16 So what we're trying to do is we're trying to  
17 demonstrate a pattern of behavior on the part of Danny Shelton  
18 that he did, in fact, engage in private inurement of over a  
19 period of time --

20 THE COURT: Let me -- private what? I didn't catch  
21 the second word -- private --

22 MR. PICKLE: Private

23 THE COURT: Private what?

24 MR. PICKLE: Inurement.

25 THE COURT: Okay.

1 MR. PICKLE: So that's where he is enriching himself  
2 with revenue that's coming from a non-profit organization.

3 THE COURT: Have you sought this information from the  
4 plaintiffs in this case?

5 MR. PICKLE: Well, as far as like the information,  
6 specific information we're trying to get from Remnant, in that  
7 particular case Three ABN doesn't have, based on what our sources  
8 have said, Three ABN doesn't have the information because Danny  
9 tried to hide this information from them.

10 Nick Miller, former board member of Three ABN, the  
11 former general counsel, said that Danny was hiding this royalty  
12 information from his own board.

13 THE COURT: All right.

14 I'm going to hear from Mr. Bappert now in terms of --  
15 it seems to me, Mr. Bappert, this information, at least some of  
16 it, is relevant. I guess I have no idea what quantity is  
17 involved. I don't know how your client keeps their records.

18 You know, a lot of systems you could just plug in the  
19 title of the book and bring up all the records and so I don't  
20 know, one of your claims is it's overly burdensome and I just --  
21 I'd like to hear more about that.

22 MR. BAPPERT: Your Honor, should I speak at this  
23 microphone?

24 THE COURT: Yes, please.

25 And, Mr. Pickle and Mr. Joy, I should have told you

1 at the outset if there's anything that's said that you cannot  
2 hear, please let us know that.

3 MR. PICKLE: Thank you, your Honor.

4 MR. BAPPERT: Your Honor, the relevance question is  
5 still contained within the discovery rights which Mr. Pickle and  
6 Mr. Joy have in terms of Mr. Shelton is a plaintiff in this  
7 matter also.

8 And the answer to your question about whether they  
9 had tried to get these materials from Three ABN not being  
10 available is answered positively by they've been trying to get  
11 these materials from Mr. Shelton himself.

12 And the court in Massachusetts has not addressed the  
13 question of relevancy but has put in a protective order for the  
14 governance of discovery claimed to be confidential and  
15 proprietary as to the parties themselves and third parties which  
16 would include Remnant --

17 THE COURT: Okay.

18 MR. BAPPERT: -- under the assumption that the  
19 requested information would be put under seal and mailed to the  
20 magistrate in Massachusetts for an evaluation presumably of this  
21 relevance once the proper motion is made. And I believe Three  
22 ABN and Mr. Shelton are making that motion on the grounds that  
23 the matters are not relevant.

24 As to the responding to your question I believe that  
25 the information that they're seeking from Remnant would be

1 relating to contracts and monies paid to Mr. Shelton for various  
2 things and works that he performed with Remnant Publication.

3 THE COURT: Right.

4 MR. BAPPERT: That identical information would be  
5 available through discovery not maybe from Three ABN but  
6 certainly from Mr. Shelton himself who is the plaintiff in this  
7 matter.

8 Consequently, the search for that material through  
9 Remnant's files is duplicative and it is burdensome because there  
10 are boxes and boxes and boxes and boxes of files that relate to  
11 more than a dozen corporations, more than a dozen corporations  
12 and more than a dozen individuals, all ledgers, all contracts,  
13 all payment matters, all this and all that, and it certainly is  
14 not narrowly tailored for one thing.

15 If the Court were so inclined to order that we did  
16 produce documents relevant to Mr. Shelton himself I would ask  
17 that their order be in support of the protective order sought in  
18 Massachusetts or obtained in Massachusetts whereby those  
19 materials would be mailed under seal to the magistrate in  
20 Massachusetts for an evaluation at some point here soon, I  
21 believe, of their relevance.

22 THE COURT: That seems like a reasonable method to  
23 proceed, Mr. Pickle. What do you think of that?

24 MR. PICKLE: Well, we've got a couple different  
25 problems with that.

1           Number one, you know, we don't know for sure how  
2 Danny Shelton funnelled his money. Just to give you one example,  
3 one possibility that I'm toying with.

4           In his July 2006 affidavit, which he failed to report  
5 any income outside his salary from Three ABN; in other words, he  
6 did not report any royalty from the 4.8 million books that had  
7 been distributed the first part of that year, he reported having  
8 a mortgage loan from Merlin Farley of 200,000.

9           Now, Merlin Farley is one of his board members. Now,  
10 Merlin Farley had a private foundation and they're required to  
11 file Form 990PF with the Internal Revenue Service which had been  
12 publicly available. It wasn't, based on the 990PF, there was a  
13 \$200,000 loan paid out not by Merlin Farley but by the Farley  
14 Foundation.

15           Now, so at the end of 2004 there was a loan out to  
16 somebody for 200,000. At the end of 2005 the loan, according to  
17 the 2005 990PF per the Farley Foundation was down to 150,000, and  
18 yet six months, a little over six months later, Danny is  
19 reporting on his affidavit that it's still 200,000.

20           Now, at the end of 2006 that loan, that mortgage, was  
21 down to zero. So one possibility is that Remnant didn't pay the  
22 royalties to Danny; they instead paid them to the Farley  
23 Foundation to pay off this mortgage.

24           Now, my co-defendant, Mr. Joy, he doesn't favor that  
25 theory but that's one possibility. We don't know how this money

1 was channeled.

2           Okay, now, as far as the other issue that Mr. Bappert  
3 brought up, we've had a lot of obstructionism by the plaintiff.  
4 They're trying to say that everything we're asking for is  
5 irrelevant which is just absurd.

6           Now, they did file a motion for protective order last  
7 January, December 18, asking for a confidentiality order, and  
8 that was handed down on April 17th. And I would suggest that Mr.  
9 Bappert and Remnant just take advantage of that confidentiality  
10 order in order to keep everything confidential and prevent  
11 disclosure of confidential business and financial information.

12           But as Mr. Bappert has acknowledged the plaintiff has  
13 not filed a motion yet in Massachusetts asking for another  
14 protective order. And this case was filed at the beginning of  
15 April of last year and discovery deadlines, our first deadline is  
16 already passed.

17           Now, we've asked for an extension of the dateline for  
18 serving requests to produce interrogatories, written discovery,  
19 but the talking about trying to limit the scope of discovery at  
20 this point, it just seems absurd. And some of the ways that  
21 they're trying to limit it, they're actually trying to gut their  
22 own complaint without amending their complaint. Things that are  
23 clearly relevant in the complaint, they would like to eliminate.

24           But they haven't filed a motion yet. And so it seems  
25 to me it would be not appropriate for another district outside of

1 where the case is venued to command documents be put under seal  
2 in accordance or in compliance with an order that hasn't been  
3 issued from a motion that hasn't even been filed yet.

4 So I would suggest that the Court here just order  
5 these documents to be produced in terms of, you know, subject to  
6 the confidentiality order that's already in place.

7 THE COURT: What objection do you have to that, Mr.  
8 Bappert?

9 I mean, it seems to me, I mean, I don't have  
10 obviously the background that the judge in Massachusetts would  
11 have or plaintiff's counsel or the pro se defendants in terms of  
12 what it is that -- it's my understanding though they're trying to  
13 prove that truth is a defense to a defamation charge and they're  
14 trying to prove that at least some if not all the things that  
15 they said were actually true.

16 And it seems to me that this chain of money and where  
17 it went and to whom may be highly relevant.

18 MR. BAPPERT: Your Honor, it's a fishing expedition  
19 because they have made statements of fact, alleged statements of  
20 facts, and not produced their own documentary evidence or  
21 witnesses in support of such matters.

22 They're bloggers and I would argue that they do not  
23 have an investigative journalist privilege. They're heavily with  
24 innuendo, these matters are heavy with innuendo, and they haven't  
25 come forward with their own facts. It's essentially like being

1 accused of defamation going out on the street and asking people  
2 if they have any information that might help them.

3 If they don't have the information they're not going  
4 to get it from anybody else. And when Mr. Pickle was referring  
5 to that foundation my first instinct would be to say what's the  
6 relevance of that.

7 However, I know what the relevance is, and the  
8 relevance is that there are a finite number of donors that are  
9 out there for religious organizations to make the contributions  
10 to 501c3 such as Remnant Publication and Three ABN.

11 And that list and the monies they give would be  
12 exposed in an uncarefully tailored order or an uncarefully  
13 disclosed set of documents relating to Three ABN or Danny  
14 Shelton.

15 No harm would come to anybody in this matter if the  
16 order of the Massachusetts court is followed and the documents  
17 that are sought are sent under seal for an evaluation of their  
18 loans.

19 THE COURT: As I understand it, first of all, I don't  
20 understand that Remnant Publishing would have donor lists. I can  
21 understand why that would be sensitive but I don't know why they  
22 would have those donor lists. Do they?

23 MR. BAPPERT: Well, they are -- they're Seventh Day  
24 Adventists as are Mr. Pickle and Mr. Joy, I believe. And the  
25 Three ABN is, I believe, a Seventh Day Adventist group as well.

1 And they work cooperatively with each other for the disclosure of  
2 -- or not disclosure but for the use of the same money, they go  
3 after the same dollar.

4 THE COURT: That wouldn't be Remnant Publishing  
5 though.

6 MR. BAPPERT: Well, are you saying that Remnant  
7 Publications should give up anything that they have on Danny  
8 Shelton?

9 THE COURT: Well, it sounds like it may be relevant  
10 to their theories. I have no idea whether their theories are  
11 true or have any legs. There's no way for me to determine that.

12 But it sounds to me like it may be relevant to the  
13 theory, so what I'm trying to probe from you is two things  
14 really. How burdensome really is this and, secondly, is there  
15 information that you think would be confidential assuming it's  
16 subject to the protective order that's already in place?

17 MR. BAPPERT: Yes, I do think it's confidential. I  
18 mean, if it is subject to the protective order, fine, that --

19 THE COURT: Because, you know, Mr. Shelton, he  
20 brought this lawsuit --

21 MR. BAPPERT: Yes.

22 THE COURT: -- so he, from my point of view, waives  
23 at least a certain amount of confidentiality. I am loath to send  
24 documents to another magistrate judge in-camera, and I don't even  
25 know how many documents there are, you've referred to boxes.

1 MR. BAPPERT: Well, if they were allowed to come to  
2 the warehouse where the storage is contained and rummage through  
3 these things looking for Lord knows what, that would be, in my  
4 opinion, burdensome and duplicative. They're seeking the same  
5 information from Mr. Shelton himself.

6 THE COURT: But their whole theory is that Mr.  
7 Shelton has not always been forthcoming. I have no idea whether  
8 that's true or not. It may not be true.

9 MR. JOY: Your Honor?

10 THE COURT: Maybe he would be forthcoming --

11 MR. JOY: Your Honor?

12 THE COURT: -- but the theory is that he has not  
13 always been. And so it seems to me that they are entitled to try  
14 to seek verifying information or information that shows he's not  
15 forthcoming from other sources.

16 MR. JOY: Your Honor?

17 MR. BAPPERT: Your Honor, I could assemble Shelton  
18 references documents and put them in an envelope and I would ask  
19 the Court that that envelope be sent to Massachusetts for this  
20 very determination. That is the case. That's where the case is  
21 being handled, and presumably that's what the purposes of the  
22 protective order are.

23 THE COURT: How many documents do you think -- you  
24 know, I'm confused here because as I understand it there's a  
25 protective order in place but plaintiffs have not yet moved for

1 an in-camera review by a magistrate judge; is that correct?

2 MR. JOY: That's correct, your Honor.

3 MR. BAPPERT: I believe that is true and it's being  
4 filed in a matter of days or hours.

5 THE COURT: Okay. Well, what I will do is, I mean,  
6 you said Shelton referenced documents. Obviously the subpoena is  
7 broader than that.

8 MR. BAPPERT: Well, that would be certainly  
9 burdensome and a fishing expedition does incorporations that have  
10 nothing to do with --

11 THE COURT: Okay. Okay. This is what I'm going to  
12 do with this, gentleman. I'm going to order that --

13 MR. PICKLE: Your Honor, could I respond to that?

14 MR. JOY: And I would like to as well, your Honor.

15 THE COURT: Who is speaking?

16 MR. PICKLE: Defendant Pickle.

17 THE COURT: All right. You may respond.

18 MR. PICKLE: Okay. The corporations that are listed  
19 in the subpoena are, I guess to put it over-simply, are like  
20 d/b/a's of the plaintiffs. And Dwight Hall, I'm certain, knows  
21 what entities of Three ABN or Danny Shelton he did business with.

22 And so it's not -- the corporations listed there does  
23 not make it burdensome, that's being burdensome. But I had to,  
24 you know, I don't know how the money flowed so I had to list the  
25 various corporations that they control or that are like d/b/a's

1 to them.

2 THE COURT: You're saying that, for example, that a  
3 Brazil corporation and a Russian corporation are real d/b/a's?

4 MR. PICKLE: Well, that's probably not the proper way  
5 to put it but those -- if you look at Three ABN's audited  
6 financial statements, in the financial statement it mentions the  
7 entity in Russia not being a separate legal entity from Three  
8 ABN, so it's kind of like an arm of Three ABN.

9 And it mentions the, I believe, the Brazil, Peru, and  
10 Philippine corporations as being separate legal entities but  
11 Three ABN controls them through the finances that it gives to  
12 them. And so there was definitely a foundation for my putting  
13 those corporations in there.

14 And Dwight Hall, he should know off the top of his  
15 head which ones he's done business with and which ones he hasn't.  
16 They're all three ABN; they're all Danny Shelton.

17 MR. BAPPERT: Your Honor, Danny Shelton is either the  
18 bad actor or he's not as the Court indicated, and that is the  
19 focus -- that should be the focus of any discovery because that  
20 is the source of alleged defamation. If they want to get  
21 information from corporations in Brazil or Russia or wherever let  
22 them do it there or under court order from Massachusetts.

23 THE COURT: Well, what I'm going to do is order that  
24 the subpoena -- I'm going to grant the motion to compel in  
25 certain respects. I'm going to limit it to Three Angels

1 Broadcasting Network and Danny Shelton.

2 Mr. Pickle and Mr. Joy, that would be without  
3 prejudice to your following up with another subpoena if you turn  
4 up anything.

5 MR. PICKLE: Now, your Honor --

6 THE COURT: And I'm going to order that those be  
7 submitted to the magistrate judge in Massachusetts with a motion  
8 by your client that they be reviewed in-camera.

9 MR. BAPPERT: I want to make this clear, of course,  
10 Three Angels Broadcasting. Any relationships with Remnant?

11 THE COURT: Right.

12 MR. BAPPERT: And anything with Danny Shelton?

13 THE COURT: Correct.

14 MR. BAPPERT: And it should be put in a box that's  
15 sealed and sent to Massachusetts.

16 THE COURT: With a motion to the court in  
17 Massachusetts for in-camera review if you believe that -- if you  
18 truly believe it's not relevant or it contains confidential  
19 information. I have a hard time seeing how those two entities,  
20 at least, who have chosen to sue these defendants --

21 And, incidentally, Mr. Joy and Mr. Pickle, the only  
22 reason I allowed you to appear by phone is that you did not  
23 choose to be in this lawsuit so it seemed somewhat unfair to me  
24 for you to have to come all the way out here.

25 But I'm going to start there and if you think you

1 turn up something that you can persuade me is either relevant --  
2 no, is relevant and not unduly burdensome in terms of these other  
3 corporations, I will entertain another subpoena.

4 MR. PICKLE: Your Honor?

5 THE COURT: Yes.

6 MR. PICKLE: I did put in my pleading that the local  
7 rule for Massachusetts defines parties in such a way as to  
8 include, you know, these other entities that an individual,  
9 employees, directors, and so forth. Should that not have a --  
10 see, so when you say Three ABN by the local rules in  
11 Massachusetts that would include the directors, officers, and so  
12 forth.

13 THE COURT: Well, you can apply -- you can apply  
14 either to this court or to the magistrate judge in Massachusetts  
15 for application of that rule. But I don't know, I don't have any  
16 information on which to base a decision as to whether these  
17 corporations are all intertwined.

18 MR. BAPPERT: Your Honor, is my client entitled to  
19 any costs for producing these documents to the magistrate?

20 THE COURT: Well, I think you're going to need to  
21 verify those costs and then I will give that consideration. The  
22 alternative is for them to come and look for the records  
23 themselves.

24 MR. BAPPERT: I object to that.

25 THE COURT: All right.

1 MR. BAPPERT: I'd be happy to mail it up -- send it  
2 to the magistrate with the motion.

3 THE COURT: But make sure you bring a motion, too,  
4 for in-camera review.

5 MR. BAPPERT: The plaintiffs will.

6 THE COURT: Because I don't want to act like I'm  
7 deciding what the magistrate judge --

8 MR. BAPPERT: I understand.

9 THE COURT: -- in Massachusetts needs to do.

10 MR. BAPPERT: And I assume the motion in-camera would  
11 be for its appropriate relevance and --

12 THE COURT: Relevance, yes.

13 MR. BAPPERT: -- suitability for discovery.

14 THE COURT: Well, and if you think you have grounds.  
15 It's hard for me to see how any documents that a publishing house  
16 had with two plaintiffs who have chosen to bring a lawsuit would  
17 not be relevant or it would be so proprietary that they would be  
18 subject to protection.

19 MR. BAPPERT: Thank you.

20 THE COURT: Anything further, Mr. Joy or Mr. Pickle?

21 MR. JOY: I guess we have to live with that. I think  
22 we'll end up coming back for more.

23 THE COURT: I can't hear you.

24 MR. JOY: I said I believe we'll end up coming back  
25 for more.

1 THE COURT: Well, we'll have to see about that but  
2 I'm going to take it one step at a time. And you could be liable  
3 for the costs involved so you may want to give that consideration  
4 as well.

5 MR. PICKLE: Well, we were going to handle all the  
6 costs by doing all the copying, handling, all that ourselves.

7 THE COURT: Well, he can make, if you want to come  
8 out here and you want to corral those documents, Mr. Bappert, and  
9 have them review them here, that's fine. If they've offered to  
10 do that I would make that offer in writing, gentlemen.

11 MR. PICKLE: One thing, your Honor, there is a  
12 confidentiality order in place and, you know, Mr. Bappert said in  
13 his pleading that, you know, that there needs to be something in  
14 place that keeps this information from being, you know,  
15 publicized. There's already that in place.

16 THE COURT: Well, Mr. Pickle, I'm at a disadvantage  
17 here because I'm not working on this underlying lawsuit and it's  
18 very difficult. Mr. Bappert has challenged the relevance and  
19 I've already made clear to him it's very difficult for me to see  
20 how they would not be relevant. But if he wants to have the  
21 magistrate judge in Massachusetts make that determination I'm  
22 just allowing him to go through that effort. If it were me and  
23 if I were reviewing these documents and based on what you've told  
24 me I would say, yes, they are relevant.

25 MR. JOY: But, your Honor, there's a major issue

1 here. There is currently no relevancy motion pending and we have  
2 responded to the issue of relevance in the response.

3 THE COURT: I've already told you I think they are  
4 relevant. I've already told Mr. Bappert that.

5 MR. BAPPERT: Your Honor, may I --

6 THE COURT: I don't know why he would want to go to  
7 the magistrate judge in Massachusetts for documents that seem to  
8 me to be clearly relevant, but if he wants to try to do that I'm  
9 going to allow him to do it.

10 MR. JOY: But, your Honor, there's a growing time  
11 issue here and the fact is that we have experts that need access  
12 to these documents to tie these issues together and that's a  
13 major issue here.

14 THE COURT: Well, you're going to have to apply to  
15 the magistrate judge in Massachusetts then for an extension of  
16 time. If you think there's been obstructionism going on here you  
17 should --

18 MR. JOY: Well, we've already done that, your Honor,  
19 but the problem is that, you know, the more time we ask for the  
20 more obstruction they, you know, they threw up the  
21 confidentiality, now they're challenging relevance. There's no  
22 question that this stuff is relevant.

23 THE COURT: All right. Well, you may not agree with  
24 my decision but that is my decision. I think the subpoena is  
25 very broad and you're telling me it's not because all of these

1 corporations are interrelated. I have no way of verifying that  
2 or knowing that so I'm going to let you take it a step at a time.

3 MR. BAPPERT: Your Honor, may I send this sealed  
4 package to the plaintiffs who will be making the motion or should  
5 I send it to Massachusetts?

6 THE COURT: I would rather you send it directly to  
7 Massachusetts.

8 MR. BAPPERT: I will do that.

9 THE COURT: Anything further, gentlemen?

10 MR. PICKLE: I can't think of anything, your Honor.

11 THE COURT: All right. Well, so I'm going to grant  
12 your motion insofar as it relates to documents concerning either  
13 of the plaintiffs in your underlying lawsuit with the proviso  
14 that Mr. Bappert may send those to the Massachusetts court and  
15 ask for review. I can't imagine that they're not relevant. I've  
16 already made that clear to him. All right.

17 MR. PICKLE: Okay.

18 THE COURT: Good day to you, gentlemen.

19 MR. BAPPERT: Thank you.

20 THE COURT: Good day, Mr. Bappert.

21 MR. PICKLE: Thank you, your Honor.

22 (At 10:34 a.m., proceedings adjourned)

23

-----

CERTIFICATE

I, Patricia R. Pritchard, CER 3752, Certified Electronic Court Reporter for the State of Michigan, do hereby certify that the foregoing pages, 1 through 24, inclusive, comprise a full, true and correct transcript, to the best of my ability, of the proceedings and testimony recorded in the above-entitled cause.

August 18, 2008

Patricia R. Pritchard /S/  
Patricia R. Pritchard, CER 3752