



August 12, 2009

Mr. Michael Sullivan
Levine Sullivan et al
1050 Seventeenth Street, N.W.
Suite 800
Washington, DC 20036-5514

Re: *Stepnes et al v. Ritschel et al* (08-vb-5296 (ADM/JJK))

Dear CBS counsel:

I am writing to determine whether Stepnes and CBS can resolve certain issues without court.

Claimed attorney-client privilege.

As you will recall, when we all met for Scott Libin's deposition on May 21, 2009, some privilege issues arose – that we decided to reserve until later.

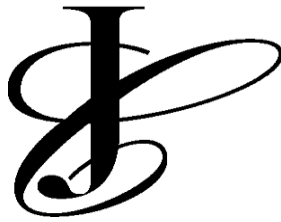
Notably, on page 8 of the deposition transcript, Mr. Libin indicated that he believes he first became aware of potential litigation on July 16, 2008. (See line 21). At line 22 I indicate that you and I had agreed that I would not ask about any communications from CBS attorneys, but reserving the issue for later.

At this time Plaintiff Stepnes requests that CBS either: i) waive the attorney-client privilege for the specific communication on July 16, 2008 that alerted Scott Libin to potential litigation; or ii) agree that it is not privileged. Our reasoning is this: the information may be necessary for the Magistrate Judge to analyze when he decides Plaintiffs' spoliation motion.

As CBS has already disclosed, Stepnes' agent (Jill Clark) telephoned CBS legal on July 16, 2009, and among other things: i) left a voicemail message for Andy Siegel, and ii) left a voicemail message for General Counsel Borjournio. We have produced a transcript of these, so we will keep the discussion of the precise content to a minimum in this letter. But we know that Jill Clark *specifically* asked Andy Siegel to ensure that the *interview of Stepnes and his attorney* was preserved.

JILL CLARK, P. A. ATTORNEY AT LAW

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Courts have increasingly indicated that counsel must take affirmative steps to ensure that their litigation clients comply with the duty to preserve evidence. ... Issuing “litigation hold” letters to [] officials at the outset of litigation or whenever it is reasonably anticipated; [and] Communicating directly with “key players....” M. Koesel and D. Gourash, Spoliation of Evidence, p. 11, American Bar Association Publishing (2006).

This implies that the lawyer’s duty is to the *court*, as an officer of the court. And that the duty is not to the client. That is – that the issue is not one of the attorney providing *legal advice* to the client that he or she should retain evidence. the duty to inform the client to retain evidence is to the court, and therefore not protected by attorney-client privilege.

The content of the conversation between CBS legal (Siegel? (see deposition p. 10, line 25)) and Libin is important – because the parties and the Judge are entitled to know whether Siegel specifically told Libin to make sure that the interview between Stepnes and his attorney was preserved. If Siegel told Libin to be sure to preserve that interview, then Libin’s conduct can be viewed with that perspective. If it was Siegel who neglected to tell Libin to be sure to preserve the interview of Stepnes and his attorney, then it seems the Court might view that a different way.

Since no “retention letter” has been produced, Stepnes is entitled to assume that none was penned and none exists. If there was anything resembling a retention letter (such as an email), please indicate that date, to and from (if it is not already on the privilege log).

July 16, 2008 email.

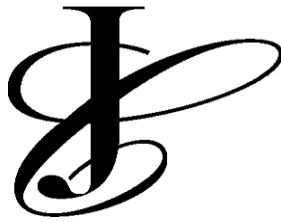
Plaintiffs’ Document Request 14 sought all emails (or other correspondence) relating to the package that aired on July 15, 2008.

You have indicated (see, e.g., your email to me dated 7/2/09) that Scott Libin sent an email to Esme Murphy and managers that was sent “at counsel’s direction” and copied counsel. That email was clearly not for the purpose of seeking legal advice. Indeed, it was sent by Libin. We are requesting that email – unredacted.

In addition, Stepnes is asking CBS to withdraw its privilege objection to the July 18, 2009 conference call (see, e.g., your instruction to Esme Murphy on page 45 of her deposition (Vol. I)), at least to the extent this conversation was about the preservation of evidence (see argument above).

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Request for defamation review by CBS legal.

The July 10, 2008 email from Esme Murphy (produced to me the night before the CBS depositions on May 21, 2009) and Reed Erickson deposition indicate that there was some type of defamation review by CBS legal prior to the airing of the story on July 15, 2008. Plaintiffs assert that this was covered by Request No. 14, and are requesting all documents relating to same.

In other words, if CBS refuses to produce documents and information relating to the defamation review, then Plaintiffs will seek to exclude from trial any reference to that review. But further, it seems that if CBS was already concerned enough to perform a pre-airing defamation review (see Murphy email of July 10), then it was certainly on notice that that litigation was a possibility.

It seems that CBS should not be able to tell the jury that it performed some type of defamation review, if Plaintiffs' cannot discover what evidence/factual assertions were considered, and what the conclusions were.

All versions of the script.

Please also note that Request 13 sought *all* copies and versions of the script – anything with notes, marginalia, and certainly any version that was sent to CBS legal to review.

We are hoping that these issues can be resolved without court, but Stepnes will move to compel this information/documents if we cannot resolve the issue. Please respond by **August 19, 2009**.

Please do not hesitate to contact me if you have any questions.

Sincerely,

s/jillclark

Jill Clark

JEC/slf

C: Clients; other opposing counsel (Lathrop; Borger).

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