

VIRGINIA :

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

JOHN DeGROOTE SERVICES, LLC and JOHN)
DeGROOTE, as liquidating trustee for and on behalf of)
the BEARINGPOINT, INC. LIQUIDATING TRUST,)

Plaintiffs,)

v.)

Civil Action No. 2011-10612

F. EDWIN HARBACH, ALBERT L. LORD,)
RODERICK C. McGEARY, J. TERRY STRANGE,)
DOUGLAS C. ALLRED, BETSY J. BERNARD,)
SPENCER C. FLEISCHER, JILL KANIN-LOVERS,)
and EDWARD MUNSON,)

Defendants.)

**PLAINTIFFS' MOTION TO COMPEL DEPOSITION OF
DEFENDANT RODERICK C. MCGEARY**

COMES NOW Plaintiffs John DeGroote Services, LLC and John DeGroote, as liquidating trustee for and on behalf of the BearingPoint, Inc. Liquidating Trust ("DeGroote"), by their undersigned counsel, and hereby, and pursuant to Rule 4:12 of the Rules of the Supreme Court of Virginia, hereby move for an Order compelling Defendant Roderick C. McGeary ("McGeary") to make himself available for deposition. In support thereof, Plaintiffs state as follows:

1. The Consent Scheduling Order in this case requires that all depositions occur on or before November 30, 2012. Plaintiffs have attempted to obtain dates from the director defendants for depositions since July 2012. Having received no response, on July 31, 2012, Plaintiffs requested, in writing, that the director defendants provide their available dates for deposition in September 2012. *See* Exhibit A. Again, having not received any dates from director defendants' counsel, Plaintiffs followed up by email of August 9, 2012. *See* Exhibit B.

2. On August 17, 2012, director defendants' counsel provided "a few" dates when the director defendants wanted their depositions to occur, as opposed to the dates on which they were available. Only one of the proposed dates was in September, and the locations of the proposed depositions were all over the country, with three depositions proposed to take place in San Francisco, California in three consecutive weeks, and none in Virginia. *See* Exhibit C.

3. In addition depositions of the nine director defendants and defendant Harbach, Defendants collectively proposed forty-five (45) depositions, leaving Plaintiffs with no choice but to again ask counsel for the director defendants' "available" dates, which were not provided.

4. To avoid further delay and avoid a situation of having to take numerous depositions during the last month of discovery, in September 2012, Plaintiffs noted the depositions of the director defendants and indicated a continued willingness to be open to reasonable scheduling accommodations, but stressed the need to proceed with depositions beginning in September and concluding in October given the November 30, 2012 discovery deadline and the early December expert designation deadline¹.

5. Defendant McGeary's deposition was eventually re-scheduled to be held on November 1 and 2, 2012 in Palo Alto, California as a courtesy to McGeary and because he refused to appear in Virginia on those dates. On October 29, 2012, McGeary's counsel advised that they would be unable to travel to Palo Alto, California for the deposition of McGeary on November 1st and 2nd given the unexpected severity of Hurricane Sandy.

¹ In good faith, Plaintiffs subsequently agreed to numerous accommodations to the director defendants, including: (i) moving the deposition of Defendant Jill Kanin-Lovers from September to October, and then again from October to November at Defendants' insistence; (ii) moving the deposition of Defendant Betsy Bernard from September to October, and then again to November at Defendants' insistence; (iii) moving the deposition of Defendant Doug Allred from September to October, and taking the deposition in Palo Alto, California, at Defendants' insistence; (iv) moving the deposition of Defendant Spencer Fleischer from September to October at Defendants' insistence; (v) moving the deposition of Defendant Terry Strange from October to November at Defendants' insistence; and (vi) delayed taking the depositions of Defendants Edward Munson and Al Lord at Defendants' insistence.

6. Due to these unexpected circumstances, on October 30, 2012, Plaintiffs' counsel offered to delay the commencement to later on Thursday, or to Friday and Saturday of the scheduled week instead of Thursday and Friday, so that McGeary's counsel could arrange for flight travel when the airports re-opened. Counsel for McGeary rejected that proposal. Plaintiffs then informed counsel for McGeary by email that Plaintiffs would postpone McGeary's deposition to November 5th and 6th or November 6th and 7th in Virginia, DC, or Baltimore in an effort to accommodate defense counsel's travel from the New York area. *See* Exhibit D. Having received no response to Plaintiffs' proposed alternative dates, Plaintiffs noted McGeary's deposition for November 6th and 7th in Plaintiffs' counsel's Falls Church, Virginia office. *See* Exhibit E. Surprisingly, despite advising that director defendants' counsel could not go forward with McGeary's deposition scheduled for November 2 because they could not travel out of New York, they showed up in person at the fourth day of the Defendants' deposition of Plaintiff in Dallas, Texas.

7. On November 2, 2012, McGeary's counsel also advised that they were not available on November 6th or 7th, but could be available on November 27th and 28th only in California, during the last week of discovery and just over two weeks before Plaintiffs' expert reports are due. Consistent with the prior scheduling difficulties relating to the directors' depositions, McGeary's counsel provided only one option for the two-day deposition of the former Chairman of the Board of Directors of BearingPoint. *See* Exhibit F.

8. In response to McGeary's counsel's November 2 email, Plaintiffs' counsel sent a letter to McGeary's counsel shortly thereafter proposing additional dates of November 9th and 10th, or November 16th and 17th for McGeary's deposition in Plaintiffs' counsel's Falls Church office. *See* Plaintiffs' letter dated November 2nd as Exhibit G.

9. Plaintiffs' counsel followed the letters with a call to McGeary's counsel to resolve the matter in good faith and offered yet additional dates. During this call, McGeary's counsel indicated that McGeary would be able to travel to Virginia on November 27th and 28th, even though McGeary's counsel had stated earlier that same day that McGeary was available on those dates in California. Moreover, while McGeary's counsel indicated that McGeary had additional available dates prior to the Thanksgiving holiday, he would not provide those dates to Plaintiffs' counsel. In a last good faith effort to schedule McGeary's deposition, Plaintiffs' counsel offered the following additional dates during this conversation: November 11th, 12th and 21st. Including the dates offered during this call, Plaintiffs have now offered the following dates for rescheduling McGeary's deposition: November 5, 6, 7, 9, 10, 11, 12, 16, 17 and 21. All of those dates were rejected by McGeary and counsel for the director defendants continued to refuse to provide the available dates that Plaintiffs were told McGeary had prior to the Thanksgiving holiday. Plaintiffs also tried in good faith to avoid this gamesmanship by contacting the director defendants' Virginia counsel, but were told he deferred to New York counsel.

10. McGeary is an important witness. He was on the board of directors since 1999. He became the CEO and Chairman of the Board in November 2004, and remained as the Chairman of the Board through all relevant time periods. He also served on the Finance Committee and the Special Committee of the Board of Directors, both of which are directly relevant to the claims in this case. In fact, McGeary is a Defendant in various counts relating to his breaches of fiduciary duties while on the Board, and as a member of both the Finance and Special Committees. Because of the number of depositions proposed by the Defendants, and the over six million pages of documents produced in this case, Plaintiffs' counsel have assigned topics and witnesses for preparation by specific lawyers. The lawyers who have prepared for and


who have been assigned to handle the deposition of Defendant McGeary will be out of town during the week of November 26th for court hearings set by a federal district court, and other lawyers in this case are already scheduled to attend depositions that Defendants have previously noted for that week. As such, the proposed November 27th and 28th dates do not work. Moreover, Plaintiffs should not be prejudiced with such a short period of time between the deposition and the expert designation deadline because Plaintiffs have attempted to avoid such a circumstance since July just to be foiled by the director defendants' alleged unavailability.

11. The scheduling difficulties are of the Defendants' making and without the ability to depose McGeary prior to November 26, 2012, Plaintiffs will be substantially prejudiced. The director defendants have confirmed on November 4, 2012 that the McGeary deposition can only proceed during the last week of discovery without offering any of the "available" dates Plaintiffs were previously told he had, or any reason why either McGeary or his counsel are unavailable for the entire month of November leading up to the last week. Instead, director defendants' counsel have now suggested an extension of discovery not only for McGeary but others as well. Plaintiff suspects the Defendants' effort to seek an extension of the discovery period is the motive for McGeary's alleged unavailability. The Defendants should not be rewarded for their lack of cooperation during the discovery period.

For these reasons, as set forth more fully above, Plaintiffs John DeGroote Services, LLC and John DeGroote, as liquidating trustee for and on behalf of the BearingPoint, Inc. Liquidating Trust, respectfully request that the Court order Defendant Roderick C. McGeary be made available for deposition, at dates before November 26, 2012, including on weekends, which are acceptable to Plaintiffs' counsel, and award Plaintiffs their reasonable attorneys' fees for filing and arguing this Motion, and for whatever other relief the Court may deem appropriate.

Respectfully submitted,

JOHN DEGROOTE SERVICES, LLC and JOHN DEGROOTE

 Andrew J. Terrell (#30093) Kathleen A. Waldy (#75539) Whiteford, Taylor & Preston L.L.P. 3190 Fairview Park Drive Suite 300 Falls Church, Virginia 22042 (703) 280-9260 (703) 280-9139 (fax)	Lewis T. LeClair Robert M. Manley McKool Smith P.C. 300 Crescent Court Suite 1500 Dallas, Texas 75201 (214) 978-4000 (214) 978-4044 (fax) <i>Admitted pro hac</i>	William F. Ryan, Jr. Kevin G. Hroblak Whiteford, Taylor & Preston L.L.P. Seven Saint Paul Street Suite 1800 Baltimore, Maryland 21202 (410) 347-9405 (410) 223-4305 (fax) <i>Admitted pro hac</i>
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November 2012, a true and correct copy of the foregoing was served via electronic mail and United States first-class mail, postage prepaid, upon the following:

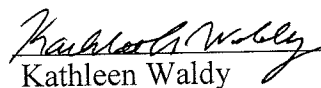
William B. Porter
Laurie L. Proctor
BLANKINGSHIP & KEITH, P.C.
4020 University Drive, Suite 300
Fairfax, Virginia 22030

Robert A. Van Kirk
George A. Borden
Lauren K. Collogan
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005

Dion W. Hayes
MCGUIREWOODS LLP
901 E. Cary Street
Richmond, Virginia 23219-4030

Sean F. Murphy
Warren E. Zirkle
MCGUIREWOODS LLP
1750 Tysons Boulevard, Suite 1800
Tysons Corner, Virginia 22102-4215

Paul C. Curnin
William T. Russell, Jr.
Paul C. Gluckow
Craig S. Waldman
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017-3954

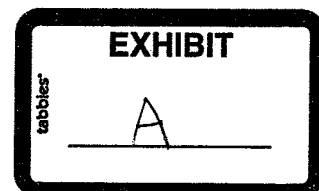

Kathleen Waldy

Waldy, Kathleen

From: Hroblak, Kevin G.
Sent: Tuesday, July 31, 2012 6:25 PM
To: Waldman, Craig S (CWaldman@stblaw.com)
Cc: Manley, Robert M. (rmanley@mckoolsmith.com); Casagrande, Aaron; Ryan, William F.
Subject: Director Depos

Craig,
Can you please let me know the availability of the directors for depositions during the month of September?
Thanks,
Kevin

KEVIN G. HROBLAK | PARTNER | WHITEFORD TAYLOR & PRESTON
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
T 410.347.9405 | F 410.223.4305 | M 410.736.1109
KHROBLAK@WTPLAW.COM | WWW.WTPLAW.COM



Waldy, Kathleen

From: Hroblak, Kevin G.
Sent: Thursday, August 09, 2012 1:09 PM
To: 'Waldman, Craig S'
Cc: 'Manley, Robert M. (rmanley@mckoolsmith.com)'; Casagrande, Aaron; Ryan, William F.
Subject: RE: Director Depos

OK, I will wait until next week to note the depositions. Have you been able to find out any available dates since July 31? We, of course, will provide a date for Mr. DeGroot but have not been asked to do so. During what month are you looking to depose him? I am not aware of a privilege log that you are waiting on from us. Can you provide more detail?

Kevin

From: Waldman, Craig S [<mailto:CWaldman@stblaw.com>]
Sent: Thursday, August 09, 2012 1:02 PM
To: Hroblak, Kevin G.
Cc: 'Manley, Robert M. (rmanley@mckoolsmith.com)'; Casagrande, Aaron; Ryan, William F.
Subject: RE: Director Depos

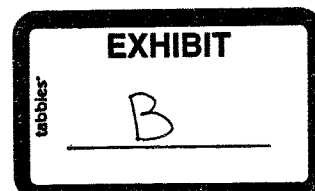
Yes. As soon as we coordinate with our eight clients, which I expect to be next week. Have you or will you be providing a date for Degroot? Also, are we waiting on a privilege log from you?

From: Hroblak, Kevin G. [<mailto:khroblak@wtplaw.com>]
Sent: Thursday, August 09, 2012 1:01 PM
To: Waldman, Craig S
Cc: 'Manley, Robert M. (rmanley@mckoolsmith.com)'; Casagrande, Aaron; Ryan, William F.
Subject: RE: Director Depos

Craig,
Are you planning on providing me dates?
Thanks,
Kevin

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Waldy, Kathleen

From: Hroblak, Kevin G.
Sent: Friday, August 17, 2012 4:57 PM
To: Waldman, Craig S
Cc: Robert Manley; Casagrande, Aaron; Curnin, Paul C.; Russell Jr, William T; Gluckow, Paul C.; Sean F. Murphy (sfmurphy@mcguirewoods.com); Ana C. Reyes (areyes@wc.com); lcollogan@wc.com
Subject: Re: BearingPoint: Proposed Director Deposition Dates

Craig,
Let's you and I talk on Monday morning around 10 since these dates don't comply with our request.
Kevin

On Aug 17, 2012, at 1:49 PM, "Waldman, Craig S" <CWaldman@stblaw.com> wrote:

Robert and Kevin,

We have a few dates to propose for director depositions. Terry Strange is available for a deposition in Houston, Texas on September 25th or in New York on October 4th; Jill Kanin-Lovers is available on October 12th in New York; Eddie Munson is available in Michigan on October 16th or October 17th; Doug Allred is available in the San Francisco area on October 17th, 18th, or 19th; Spencer Fleischer is available in San Francisco on October 26th; Betsy Bernard is available in New York on October 30th; and Rod McGearry is available in the San Francisco area on November 6th, 7th, or 8th. We will follow up with dates for Al Lord shortly. Please give a ring if you want to discuss.

Also, please provide us with dates for Mr. DeGroot's deposition in late September or early October.

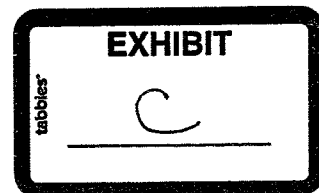
Regards,

Craig

Craig S. Waldman
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

Tel: (212) 455-2881
Fax: (212) 455-2502
cwaldman@stblaw.com

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Waldy, Kathleen

From: Casagrande, Aaron
Sent: Tuesday, October 30, 2012 5:26 PM
To: 'Waldman, Craig S'; Hroblak, Kevin G.
Cc: Robert Manley; Curnin, Paul C.; Russell Jr, William T; Collogan, Lauren; Ryan, William F.
Subject: RE: BearingPoint: McGeary Deposition

Hi Craig,

Under the circumstances and given defense counsel's inability to travel to California for Mr. McGeary's deposition later this week, we are agreeable to postponing his deposition to November 5th and 6th or November 6th and 7th in either our Washington or Baltimore offices. Please advise which of these alternatives you prefer.

I hope everyone's situation with the storm is improving.

Regards,

Aaron

AARON L. CASAGRANDE, ESQ.
Whiteford, Taylor & Preston L.L.P.
7 St. Paul Street | Baltimore, MD 21202-1636
ACasagrande@wtplaw.com | [Bio](#) | www.wtplaw.com
t: 410-347-8714 | f: 410-234-2326

From: Waldman, Craig S [<mailto:CWaldman@stblaw.com>]
Sent: Tuesday, October 30, 2012 12:26 PM
To: Hroblak, Kevin G.
Cc: Robert Manley; Casagrande, Aaron; Curnin, Paul C.; Russell Jr, William T; Collogan, Lauren
Subject: RE: BearingPoint: McGeary Deposition

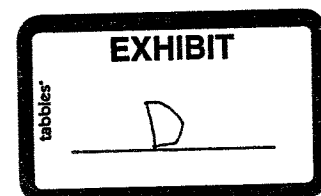
Folks,

I hope everyone made it through the storm OK. Our flights today were cancelled and the substitute flights that we attempted to arrange for tomorrow were cancelled as well. We understand from news reports and from our travel department that Newark and LGA will likely not be operating at all through at least the end of the day tomorrow; and that if JFK reopens, it is likely to operate on nothing more than a limited schedule. We therefore will not be able to get to Palo Alto for Mr. McGeary's deposition and will adjourn it to a later time in the discovery period. We are coordinating with him for new dates now and will provide those dates to you shortly.

Best regards,

Craig

From: Hroblak, Kevin G. [<mailto:khroblak@wtplaw.com>]
Sent: Monday, October 29, 2012 5:52 PM
To: Waldman, Craig S
Cc: Robert Manley; Casagrande, Aaron; Curnin, Paul C.; Collogan, Lauren
Subject: Re: BearingPoint: McGeary Deposition



Craig,
We were able to rebook for Wednesday and had several alternatives available.
Kevin

On Oct 29, 2012, at 5:44 PM, "Waldman, Craig S" <CWaldman@stblaw.com> wrote:

Kevin and Robert,

We have just been advised that our flights out to the McGeary deposition have been cancelled due to the storm and that we will likely not be able to get sufficient replacement flights to allow the deposition to begin on Thursday. We will continue to monitor the flight options tonight and tomorrow morning, but will also be asking Mr. McGeary for alternative dates in the discovery period. We will circle up with you tomorrow.

Regards,

Craig

Craig S. Waldman
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

Tel: (212) 455-2881
Fax: (212) 455-2502
cwaldman@stblaw.com

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Waldy, Kathleen

From: Casagrande, Aaron
Sent: Thursday, November 01, 2012 10:24 AM
To: Waldman, Craig S (CWaldman@stblaw.com)
Cc: Paul Curnin (pcurnin@stblaw.com); Russell Jr, William T; Icollogan@wc.com; 'Robert Manley'; Hroblak, Kevin G.; Ryan, William F.; Waldy, Kathleen; Terrell, Andrew J.
Subject: RE: BearingPoint: McGeary Deposition
Attachments: CopitrakScan.PDF.PDF

Craig,

Having not heard back from you regarding Mr. McGeary's deposition and my email below, attached please find an amended notice for his deposition to occur next Tuesday and Wednesday in our Virginia office. As I assume you are aware, under the local rules Mr. McGeary, a party defendant, is obligated to come to Virginia for his deposition. Plaintiffs were willing to accommodate Mr. McGeary and travel to him in California this week for his deposition, but that deposition was postponed given the unforeseen storm. Given the limited available dates remaining to conclude discovery, however, we could not wait any longer to re-note this deposition.

Regards,

Aaron

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t: 410-347-8714 | f: 410-234-2326

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Cc: Robert Manley; Curnin, Paul C.; Russell Jr, William T; Collogan, Lauren; Ryan, William F.
Subject: RE: BearingPoint: McGeary Deposition

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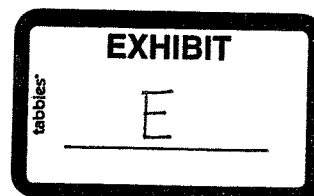
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To: Waldman, Craig S
Cc: Robert Manley; Casagrande, Aaron; Curnin, Paul C.; Collogan, Lauren
Subject: Re: BearingPoint: McGeary Deposition

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Craig

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New York, New York 10017

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Waldy, Kathleen

From: Waldman, Craig S <CWaldman@stblaw.com>
Sent: Friday, November 02, 2012 9:51 AM
To: Casagrande, Aaron
Cc: Curnin, Paul C.; Russell Jr, William T; Icollogan@wc.com; Ana C. Reyes (areyes@wc.com); 'Robert Manley'; Hroblak, Kevin G.; Ryan, William F.; Waldy, Kathleen; Terrell, Andrew J.; Sean F. Murphy (sfmurphy@mcguirewoods.com)
Subject: RE: BearingPoint: McGeary Deposition

Aaron,

We are not available for a deposition of Mr. McGeary next Tuesday and Wednesday. We are available for Mr. McGeary's deposition on November 27 and November 28. Consistent with prior discussions between the parties regarding the location of depositions in this case (including our willingness to bring many of our clients to your office in Baltimore), Mr. McGeary will be made available in Palo Alto.

Regards,

Craig

From: Casagrande, Aaron [mailto:ACasagrande@wtplaw.com]
Sent: Thursday, November 01, 2012 10:24 AM
To: Waldman, Craig S
Cc: Curnin, Paul C.; Russell Jr, William T; Icollogan@wc.com; 'Robert Manley'; Hroblak, Kevin G.; Ryan, William F.; Waldy, Kathleen; Terrell, Andrew J.
Subject: RE: BearingPoint: McGeary Deposition

Craig,

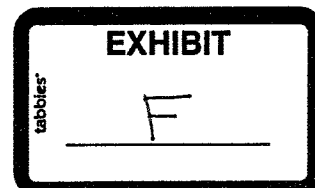
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Hi Craig,

Under the circumstances and given defense counsel's inability to travel to California for Mr. McGeary's deposition later this week, we are agreeable to postponing his deposition to November 5th and 6th or November 6th and 7th in either our Washington or Baltimore offices. Please advise which of these alternatives you prefer.

I hope everyone's situation with the storm is improving.

Regards,

Aaron

AARON L. CASAGRANDE, ESQ.
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From: Waldman, Craig S [<mailto:CWaldman@stblaw.com>]
Sent: Tuesday, October 30, 2012 12:26 PM
To: Hroblak, Kevin G.
Cc: Robert Manley; Casagrande, Aaron; Curnin, Paul C.; Russell Jr, William T; Collogan, Lauren
Subject: RE: BearingPoint: McGeary Deposition

Folks,

I hope everyone made it through the storm OK. Our flights today were cancelled and the substitute flights that we attempted to arrange for tomorrow were cancelled as well. We understand from news reports and from our travel department that Newark and LGA will likely not be operating at all through at least the end of the day tomorrow; and that if JFK reopens, it is likely to operate on nothing more than a limited schedule. We therefore will not be able to get to Palo Alto for Mr. McGeary's deposition and will adjourn it to a later time in the discovery period. We are coordinating with him for new dates now and will provide those dates to you shortly.

Best regards,

Craig

From: Hroblak, Kevin G. [<mailto:khroblak@wtplaw.com>]
Sent: Monday, October 29, 2012 5:52 PM
To: Waldman, Craig S
Cc: Robert Manley; Casagrande, Aaron; Curnin, Paul C.; Collogan, Lauren
Subject: Re: BearingPoint: McGeary Deposition

Craig,
We were able to rebook for Wednesday and had several alternatives available.
Kevin

On Oct 29, 2012, at 5:44 PM, "Waldman, Craig S" <CWaldman@stblaw.com> wrote:

Kevin and Robert,

We have just been advised that our flights out to the McGeary deposition have been cancelled due to the storm and that we will likely not be able to get sufficient replacement flights to allow the deposition to begin on Thursday. We will continue to monitor the flight options tonight and tomorrow morning, but will also be asking Mr. McGeary for alternative dates in the discovery period. We will circle up with you tomorrow.

Regards,

Craig

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November 2, 2012

Via Email

Craig S. Waldman, Esquire
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

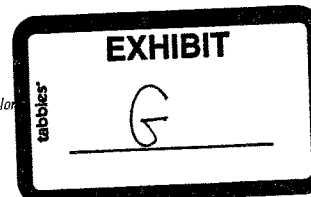
Re: John DeGroot Services LLC, et al. v. F. Edwin Harbach et al., No. 2011-10612

Dear Craig:

I write in response to your email of earlier today in which you state that you are not available for Mr. McGeary's deposition next Tuesday and Wednesday, November 6th and 7th but that Mr. McGeary could be available in Palo Alto, California on November 27th and 28th for his deposition.

As you know, Plaintiffs have been trying to obtain workable dates from the director defendants for depositions since July. On July 31, which was subsequent to Plaintiffs' verbal request for dates, Plaintiffs requested in writing available dates for the depositions of your clients to be held in September. Having not received any dates from you, Plaintiffs followed up by email of August 9. On August 17, you provided "a few" dates when you or your clients wanted their depositions to occur, instead of their available dates. Only one of those proposed dates was in September, and the locations of the proposed depositions were all over the country, with three depositions proposed by the director defendants to take place in San Francisco, California in three consecutive weeks, and none in Virginia where the case is pending. Because the Defendants collectively proposed forty-five (45) depositions, not including the nine (9) Defendants, Plaintiffs again asked you for the director defendants' "available" dates, which you refused to provide.

To avoid further delay that would put the case calendar in jeopardy, Plaintiffs noted various depositions of your clients in September and indicated our continued



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willingness to be open to reasonable schedule accommodations, but stressed our desire to proceed beginning in September given the November 30 discovery deadline and the early December expert designation deadline. As it stands, we are now just four weeks away from the November 30 discovery deadline, and Plaintiffs have been unable, due in large part to the director defendants' alleged unavailability, to take the depositions of half of the director defendants.

In response to your advisement earlier this week that defense counsel would be unable to travel to Palo Alto, California for the deposition of Mr. McGeary on November 1st and 2nd given the unexpected severity of the recent weather, I advised you on October 30, 2012, that, under the circumstances, Plaintiffs were agreeable to postponing Mr. McGeary's deposition to November 5th and 6th or November 6th and 7th in one of our East Coast offices, in an effort to accommodate defense counsel's travel from the New York area. I also offered to start Mr. McGeary's deposition later in the week in California should defense counsel ultimately be able to travel from New York to California, provided that we were given adequate time today or tomorrow to conclude the deposition. That offer being declined, and having received no response to my proposed alternative dates on October 30th, yesterday Plaintiffs noted Mr. McGeary's deposition for November 6th and 7th in our Falls Church, Virginia office.

This morning you advised that you are not available on November 6th or 7th, but could be available on November 27th and 28th, three weeks later, only in California, during the last week of discovery and just over two weeks before Plaintiffs' expert reports are due. Consistent with the prior scheduling difficulties relating to the directors depositions, you have provided only one option for the two-day deposition of the former Chairman of the Board of Directors of BearingPoint. We have consistently accommodated your multiple demands with respect to dates, but cannot accommodate this most recent demand. The lawyers who have prepared for and who have been assigned to handle this important deposition are out of town during the week of November 26th for court hearings set by a federal district court, and others are already scheduled to attend depositions Defendants have noted for that week. As such, the November 27th and 28th dates do not work.

Thus, as a final attempt to resolve this matter without court intervention, we propose the additional dates of November 9th and 10th, or November 16th and 17th for Mr. McGeary's deposition, which would occur in our Falls Church office. As we have explained to you and despite our accommodating you by traveling for at least one other deposition, Mr. McGeary, a party defendant, is obligated to come to Virginia for his deposition. While Plaintiffs were willing to accommodate Mr. McGeary and travel to him in California for deposition this past week, we are unable to make such accommodations moving forward giving the discovery schedule. Moreover, it makes

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little sense for four or five counsel to fly across the country for a deposition, when the party witness can travel to Virginia, where he was the Chairman of the Board of Directors of BearingPoint, Inc., a Virginia-based corporation, to attend his deposition.

Should we not receive confirmation that Mr. McGeary will appear for his deposition on the currently noted dates of November 6th and 7th, or receive confirmation that he will appear on the alternative dates of November 9th and 10th or November 16th and 17th, all of which would occur in our Falls Church, Virginia office, by 3 P.M. E.S.T. today, we intend on seeking relief from court. I hope such intervention can be avoided.

Very truly yours,



Aaron L. Casagrande

cc: Paul C. Curnin, Esquire
William T. Russell, Esquire
Kevin G. Hroblak, Esquire
William F. Ryan, Jr., Esquire
Robert Manley, Esquire
