

The following is the evidence that Patrick Depa submitted a false affidavit to the court in the Lamar litigation and subsequently provided false testimony under oath in his deposition, in a subsequent hearing, and during the second trial held in that matter. The corroborating evidence to prove his falsity are Depa's very own testimony and documentary evidence. It is believed that through further minor investigation, additional evidence will be gathered to further prove the assertion that Depa committed criminal perjury.

The affidavit offered by Depa and the Lamar/SS MITX lawyers was not a piece of evidence, it was a bait and switch: A dishonest way to mislead the court and reverse an unfavorable jury verdict. SS MITX and Lamar lost the first case and wanted a way to get back into the courtroom with a favorable judge Martha Anderson, who was new to the business court bench and did not have the business experience and acumen and a judge the lawyers for Lamar had a GREAT relationship with and knew they could push and get what they wanted. Depa's false affidavit gave their attorneys an opening to try the case a second time in front of a judge not completely familiar with the workings of the business court.

Perjury is defined "as a willfully false statement regarding *any* matter or thing, if an oath is authorized or required." *People v Lively*, 470 Mich 248, 253; 680 NW2d 878 (2004). Therefore, one commits perjury under MCL 750.422 and 750.423 if they willfully make a false statement before a court or in a judicial proceeding while under oath or required to be under oath. *Id.*; see MCL 750.422 and 750.423.

MCL 750.422 - Perjury committed in courts—Any person who, being lawfully required to depose the truth in any proceeding in a court of justice, shall commit perjury shall be guilty of a felony, punishable, if such perjury was committed on the trial of an indictment for a capital crime, by imprisonment in the state prison for life, or any term of years, and if committed in any other case, by imprisonment in the state prison for not more than 15 years.

MCL 750.423 - (1) Any person authorized by a statute of this state to take an oath, or any person of whom an oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury, a felony punishable by imprisonment for not more than 15 years. (2) Subsection (1) applies to a person who willfully makes a false declaration in a record that is signed by the person and given under penalty of perjury. As used in this subsection: (a) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (b) "Signed" means the person did either of the following to authenticate or adopt the record: (i) Executed or adopted a tangible symbol. (ii) Attached to or logically associated with the record an electronic symbol, sound, or process.

Examples of perjury

1. **The Defendant was legally required to take an oath in a proceeding in a court of justice.**
 - a. Depa Affidavit (statements made in Portland, Oregon) May 30, 2019
 - b. Depa Deposition testimony (statements made in Portland, Oregon) August 17, 2019
 - c. Depa Evidentiary Hearing testimony (statements made in Pontiac, Michigan) August 23, 2019
 - d. Depa 2nd Trial testimony (statements made in Pontiac, Michigan) August 17, 2021
 2. **The Defendant took the oath** (see a, b, c, & d above).
 3. **The Defendant, while under oath, made a false statement;** and
 - a. See Binder & USB
 4. **The Defendant knew the statement was false when he/she said it.**
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1. **Affidavit #1:** “I am a former employee of International Outdoor, Inc. I make this affidavit on the basis of my personal knowledge of the facts stated in this affidavit. If called upon to testify, I can and will confirm each of the statements made below.”
 - a. **Pat was not an employee; he was a contractor.**
 - i. Evidence: Depa Deposition & Evidentiary Hearing Testimony
 1. **Question:** “You signed a letter and adopted the statements in the letter as your own that you were an independent contractor. Is that right. **[Answer]** I did. I did not write [the letter] though.” *Evd. Hrg., p 91, ln 4-7.*
 2. **Question:** “...You received a 1099 each year you were with International Outdoor, right? **[Answer]** Yes. *Dep., p 70, ln 21-23.*
 3. **Question:** “...Were you an employee or an independent contractor...**[Answer]** I was both. **[Question]** You were both? **[Answer]** Yeah, I was both. *Dep., p 86, ln 13-18.*
 - ii. Evidence: Contractor Agreement and 1099s, Letter to UIA, and other documents.
 - b. **The basis of the affidavit was created by Defendant attorney LeVasseur (based on Defendants’ theory from Trial #1), not the personal knowledge of Pat Depa, and loaded with extraordinary statements to shock the court into granting access to IO’s computer system on a fishing expedition to try and find misconduct during the 1st trial. Nothing was ever found after a forensic audit.**
 - i. Evidence: Emails between Depa and LeVasseur May 2019
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Black = Affidavit May 30, 2019 & Narrative Explanation/Commentary

Red = Deposition August 17, 2019

Blue = Evidentiary Hearing August 23, 2019

Green = Re-trial, August 17, 2021

ii. Evidence: Depa Deposition & Evidentiary Hearing

1. **Question:** “You didn’t actually type the words of the affidavit. It was typed by - - and sent to you by Mr. Le[V]asseur? **[Answer]** Yes.” *Evd. Hrg., p 81, ln 10-12.*
2. Depa only changed “minor stuff” from Attorney LeVasseur’s draft affidavit. Nothing of substance was changed. *Evd. Hrg., p 82, ln 4-8.*
3. **Question:** “But...the facts you stated in the affidavit [Paragraph 6, specifically] you did not have personal knowledge of, right? **[Answer]** I do not have personal knowledge...**[Question]** You can’t confirm all the statements in your affidavit, right? **[Answer]** Well you just brought up another - - six is inaccurate. **[Question]** Right, and that’s not the only one, right? **[Answer]** Not sure. There’s the Jim Faycurry one that I missed - - remembered, but gave the reason for that.” *Evd. Hrg., p 94, ln 7-19.*
(Contrary to the above testimony, and based on emails between LeVasseur and Depa, Depa reviewed documents related to the case at or around the time of the creation of the affidavit)
4. Talking about Depa’s first conversation with LeVasseur and what Depa said to LeVasseur to prepare the affidavit:
Question: “...tell me what was said on that phone call. **[Answer]** I just told him that I was aware of the - - case , and I know it hinged on the renewal letter, and I told him the renewal letter was fabricated. **[Question]** Give me as close to your exact words as possible - - ... **[Answer]** I believe that was - - that was as close as I can remember it... **[Question]** Did you tell [LeVasseur] when [Oram] created [the renewal letter]? **[Answer]** I don’t know why - - I can’t remember exactly that phone - - that whole conversation.” *Dep., p 16-17, ln 21-14.*
Depa’s lack of memory after less than 2 ½ months since the conversation that led to the basis of the affidavit is questionable considering an 18-paragraph affidavit that LeVasseur drafted was the result of the conversation.
5. **Question:** “...Who wrote the affidavit? Who actually typed the words? Do you know? **[Answer]** I think it was - - it wasn’t me. *Dep., p 55, ln 13-15.*

iii. Evidence: Depa testimony at Re-Trial

1. **Question:** When you were going through that process and talking to Mr. LeVasseur, did you have anything -- anything in front of you to help you refresh your memory on dates or documents you would look at to reference anything? **Answer:**

Black = Affidavit May 30, 2019 & Narrative Explanation/Commentary

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Blue = Evidentiary Hearing August 23, 2019

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No, nothing. Question: Did Mr. LeVasseur provide you with any information to help you write the affidavit? Answer: No. I was going all off my memory. *Re-Trial – 8/17/12 – page 111-12, ln 20-02*

2. Depa responding to a question about the accuracy of the affidavit, Depa states, “...So, yeah, I - - I didn’t think it needed to be precise. Yeah, I tried to get it as accurate as I could with - - as far as me saying exaggeration, it wasn’t an exaggeration, it was just - - just kind of a - - kind of a coverall, what - - what in my mind I know that I looked at, when I say “everything,” pertinent to what I have access to or had access to.” *Dep., p 56, ln 14-21.*

iv. Evidence: Depa testimony at Re-Trial

Question: And so you knew that everything -- every word had to be honest and correct, right? Answer: Never doing an affidavit before, I didn’t know that some of the general statements that I made would be taken out of and played around in some kind of conversation -- you know -- without me having the opportunity to explain them. *Re-Trial – 8/17/12 – page 127, ln 06-11*

1. Because Depa could not recall in his affidavit where he allegedly sent SSMITX correspondence in the Spring of 2016 (Florida/Texas), by the time he was questioned (after speaking with Defendants’ attorneys) at the Deposition, Depa miraculously recalled the correct destination. **Question:** “Why do you believe that today and apparently you didn’t have that firm of a conviction when you signed the affidavit? **[Answer]** I couldn’t tell you. I just thought about it, and Florida is where it went.” *Dep., p 59, ln 8-12.* See also 11(c)(ii)(1) below.
2. Depa indicated that there was only 1 draft of the affidavit, and it was 90% complete but for some minor editing (not for content). **Answer:** “...I just know we started talking about putting – putting it down in an affidavit, and I was saying yes, and he said he was going to send me a rough draft and to look it over, and I did and I made some corrections and then I sent it back. **Question:** How many drafts were there? **Answer:** I believe there was just the one. **Question:** Okay. And what kind of corrections did you make? **Answer:** I couldn’t remember exactly what they were. **Question:** Were they extensive? **Answer:** No, no. **Question:** Were you just editing or did you make any – **Answer:** Yeah, I think it was just editing. **Question:** What about content corrections? **Answer:** I can’t remember exactly what it was, but it was minor stuff. **Question:** Okay. **Answer:** I think for the most part it was 90

percent there. *Dep.*, p 18-19, ln 14-9. According to emails provided by LeVasseur, there may be upwards of 10 drafts that were exchanged with Depa.

v. Evidence: Depa Testimony at Re-Trial

Question: Can you describe for the jury how you and Mr. LeVasseur went about making that affidavit? Answer Well, first of all, I've never done an affidavit before, had no idea really what it was. But we -- I basically just kind of outlined the story and the timeline and everything that kind of I felt was pertinent to what was going on during that time. And he was taking notes and writing it down and kind of organizing it and then we went through a revision or two to make sure that it was as accurate as -- as possible. And again, this is my first time ever doing an affidavit, so I didn't know – Re-Trial – 8/17/12 – page 111, ln 09-19

(Contrary to the above testimony, Depa executed other affidavits and was familiar with the process and use. Additionally, based on emails, LeVasseur sent the affidavit over first with 10 paragraphs. With respect to other affidavits, Case No. 10-007808-CZ, Vaughn v. City of Taylor, et al.- Depa was accused of misconduct in office by Vaughn and Depa submitted an affidavit as part of a motion for summary disposition in 2011. Depa also provided an affidavit in International Outdoor v. City of Troy, Case No. 2:17-cv-10335-GCS-MKM to include with International's opposition brief to the city's motion to dismiss in 2017).

c. In an attempt to elicit some type of incriminating admission from IO in-house attorney, Jeff Sieving, on May 22, 2019, Depa sent a random text to Sieving inquiring about the status of the Auburn Hills case, after a brief back and forth, Depa states, “should I reach out to simply storage? [International Outdoor] is a sewer”.

- i. Evidence: Text messages between Depa and Sieving
- ii. Evidence: Emails between Depa and LeVasseur started at least by May 14, 2019, 8 days before the random inquiry from Depa to Sieving. Depa was already in communication with Defendant SSMITX's attorney prior to May 22, 2019.
- iii. Evidence: Depa Deposition & Evidentiary Hearing

1. **Question:** “Why reach out to Mr. LeVasseur in May of 2019 with the information? **[Answer]** ...I just was in disbelief, disgusted the fact that [Mr. Oram] would do something to this extent with this amount of money involved, with this amount of personal injury to the Simply Self Storage lawyer, just from what I

understand, through a text that Mr. Sieving sent me, that I just - - you know, just wanted - - wanted to get to the truth.

Wanted the truth to be out there.” *Evd. Hrg.*, p 67-68, ln 12-5.

Depa’s text exchange with Sieving occurred on May 22, 2019, 8 days after Depa was already in email contact with LeVasseur. It is impossible for Sieving’s text to be the impetus that caused Depa to reach out to LeVasseur.

2. **Question:** “So what caused you to reach out a year later to Mr. LeVasseur? **[Answer]** Actually tried earlier, but - - with no response, but it was basically just weighing on my mind, what I saw, what was going on, and when I got a text from Jeff Sieving that the case was still, I guess, being appealed but they were going after legal fees, that’s when I decided to reach out.”

Dep., p 13, ln 9-16. Depa’s text exchange with Sieving occurred on May 22, 2019, 8 days after Depa was already in email contact with LeVasseur. It is impossible for Sieving’s text to be the impetus that caused Depa to reach out to LeVasseur.

3. **Question:** “Okay. And when did you get this text from Mr. Sieving that kind of sparked your efforts? **[Answer]** Before I reached out. **[Question]** Before the first letter? **[Answer]** No, earlier this year, maybe, April [2019]. *Dep.*, p 15, ln 17-21.

- iv. Evidence: LeVasseur Invoices Though not provided to International until after the re-trial, LeVasseur’s billing reports on February 27, 2019, he received and reviewed “correspondence from Brighton resident regarding International Outdoor fraud allegations.” Apparently, after the letter, LeVasseur did no follow-up or did not bill for any follow-up. Altior’s billing for that same time period is completely redacted. No letter was ever produced, though requested on multiple occasions. In coordination/communication with Altior, on the afternoon of May 22, 2019, LeVasseur prepared and emailed a draft of the affidavit to Depa. Depa had the draft affidavit prior to his text exchange with Sieving.

- d. **In an attempt to overcome Depa’s lack of personal knowledge of certain facts that he attests to in the affidavit (affidavit statements #11, #12, and #13), on June 18, 2019, Depa called and left a voicemail for IO employee Jim Faycurry asking for information related to Jim’s start date [at IO] and to disparage Oram and Sieving.**

- i. Evidence: June 18, 2019, voicemail to Jim Faycurry

- ii. Evidence: Depa Deposition & Evidentiary Hearing. Depa falsely testifies he had no contact with IO employees since the Motion.

1. **Question:** “When did you learn that your - - your affidavit concerning Mr. Faycurry’s start date and things get told to you when he began at Auburn - - at - - at International Outdoor, when did you learn that was inaccurate? [**Answer**] Believe it was at the deposition. [**Question**] You didn’t call Mr. Faycurry on June 17th - - I’m sorry, June 18th and ask him about it? [**Answer**] No, not that I recall.” *Evd. Hrg., p 114-115, ln 24-8*. June 18th is the day after International filed its Response to the Motion for Relief and identified the impossibility of Depa’s affidavit claims about Faycurry. According to emails between attorney LeVasseur and Depa, LeVasseur provided Depa with a copy of the Response on June 18, 2019. The voicemail indicates Depa had no personal knowledge of Faycurry’s start date and was trying to secretly obtain the start date without Randy finding out.

iii. **Evidence:** Depa Testimony at Re-Trial

Question: “[...] Your call to Mr. Faycurry about what his correct employment dates at International Outdoor -- that was before your deposition in this case, right? [**Answer**]: “I don’t recall.” *Re-trial, p 140, ln 8-12*. The voicemail asks Jim to confirm his start date, calls Randy a “dick”, and states that Randy will never find out if Jim helps him with this information.

- a. **Depa claims to not have read any pleadings from the trial leading up to his deposition and the evidentiary hearing.** At a minimum, Depa read Defendants Motion for Relief from Judgment, International’s Response to the motion, AND Mr. Oram’s “original deposition”.

i. **Evidence:** Emails between Depa and LeVasseur

1. **Evidence:** Depa Deposition & Evidentiary Hearing Testimony. Depa admits [contrary to his NDA agreement] that he copied International Outdoor documents from its server prior to leaving the company in August 2018. There is no explanation where/who provided Depa with Oram’s original deposition. LeVasseur represented to the court that he only provided Depa the Motion for Relief and the Response. See also 1(f)(i)(1) below as well. Depa also apparently retained a copy of the original judgment.

Question: “Now you told me in your deposition that you kept work product from International Outdoor when you left the company, right? Your work product? [**Answer**] Some of my work product. Not all of it.” *Evd. Hrg., p 120, ln 4-7*. His work product, even if excluded from NDA, would not include a copy of Oram’s original deposition or the judgment.

2. **Question:** "...do you have any documents removed from, copied from, forwarded, or otherwise taken from International Outdoor, inc.? **Answer]** Yeah, there's certain documents that I have. **Question]** What kind of documents? **Answer]** Everything is pertaining to my work there. Not everything, but everything that I have pertained to certain cases, certain correspondence with MDOT, maps such that I created either at home or at work." *Dep., p 8, ln 10-18.*
 3. **Question:** "How did you happen to have that [a copy of the judgment]? **Answer]** I had it [the judgment] before I left. **Question]** This was something that was on your computer as well? **Answer]** No, no. **Question]** No? **Answer]** Well, no, it is on my computer, yeah. I think it must have got scanned in because it's kind of crooked." *Dep., p 11, ln 17-25.*
 4. **Question:** "Did [LeVasseur] actually send you the [Motion for Relief from Judgment and Response]? **Answer]** No. **Question]** Have you seen any of the other papers in the case since May? **Answer]** No, nothing. **Question]** What did you look at today? **Answer]** I looked at - - I didn't look at anything today, just the subpoena that I got." *Dep., p 20, ln 4-11.* Emails between LeVasseur and Depa contradict this testimony, and at minimum, Depa reviewed the Motion for Relief from Judgment, International's Response to the Motion, Randy Oram's deposition from the first trial, and the judgment entered after the first trial.
- b. Depa Claims to have reached out by letter to the attorneys representing Lamar and SSMITX in September 2018 and on another occasion prior to May 2019.**
- i. Evidence: Depa Evidentiary Hearing Testimony
 1. "I reached out - - I - - I sent an anonymous letter in September [of 2018] to both Simply Storage and Lamar...I sent a letter to the legal names of record that were on the judgment." (emphasis added) *Evd. Hrg., p 61-62, ln 20-1.* In Answers to Interrogatories, Lamar claims (under oath) that neither it nor its attorneys have ever communicated with Depa prior to at least August 13, 2019. This Answer is also interesting because Lamar filed a Motion for Relief from Judgment based on fraud from an affidavit from someone they never communicated with prior to the motion.
 - a. **Question:** "And you [Depa] and I [Lamar Attorney] met last Saturday [August 17, 2019] when we took your deposition in Oregon, correct? **Answer]** Yes. **Question]** We'd never spoken before? **Answer]** No."

Evd. Hrg., p 64, ln 19-23.

- b. Emails between LeVasseur and Depa seem to indicate a conference call with Lamar attorneys may have taken place on or around June 18, 2019. International Outdoor filed its Response to the Motion for Relief from Judgment on June 17, 2019.
 - c. **Question:** “And [Depa] never talked - - you confirmed this just a minute ago. You never talked with anyone from Lamar, any of their attorneys, right? **[Answer]** No. **[Question]** They didn’t call you up to try to check the facts with you independently, did they? **[Answer]** No. **[Question]** [Lamar attorneys] just took your word for it?” *Evd. Hrg., p 82, ln 9-16.*
 - d. **Question:** “Since May 1st of this year [2019], have you had any communications - - I mean that broadly, text messages, emails, phone conversations, letters, whatever - - with any person employed by or representing Lamar Advertising of Michigan? **[Answer]** No.” *Dep., p 10-11, ln 21-1.*
 - e. **Question:** “Did you talk to any of Lamar’s attorneys before [August 17, 2019]? **[Answer]** No, never had any conversation with Lamar attorneys. *Dep., p 20, ln 19-22.*
- ii. **Evidence:** No letters were ever produced during the evidentiary hearing or re-trial process. Neither Lamar nor SSMITX attorneys billed for time reviewing any letters in September 2018. On February 27, 2019, LeVasseur billed SSMITX for receipt and review of correspondence “from Brighton resident regarding International Outdoor fraud allegation.” See *Stark Reagan Invoice 59593.*
2. **Affidavit #5:** “I have personal knowledge that the lease renewal letter was not sent in December 2013. I know this because I observed Randy Oram Type the letter in question on the computer in his office, print it and sign it. This occurred in or about late July 2016. Mr. Oram backdated the letter to December 2013 so that he could falsely claim that the 2009 lease had been renewed on time.”
- a. **At the Evidentiary Hearing, Depa claims to have also witnessed Mr. Oram “scan” the letter. Depa claims throughout the hearing that he witnessed Mr. Oram scan the letter. Though International did not have Defendants’ forensic computer expert’s report at the time of the evidentiary hearing, the forensic report indicated that the only version of the renewal letter on International’s IT system was a scanned version from July 24, 2016. July 24, 2016, is a Sunday and Depa’s timecard report confirmed Depa was not present at the office on July 24, 2016.**

Faced with this impossibility, Depa subsequently claimed he misspoke at the hearing about witnessing the scanning. Even recanting Depa's claim of witnessing the scanning, for Depa's story to be accurate, Oram would have created the letter on Friday, July 22, 2016, and then waited until Sunday evening, on July 24, 2016, just to scan the letter into the system after he printed and signed the letter at the printer allegedly in Depa's presence.

i. Evidence: Depa Evidentiary Hearing

1. **Question:** "And what did you see Mr. Oram do with [the alleged renewal letter] after it was printed off? [Answer] Well, the - - the - - I - - well, I saw him sign it and then scan it. And that was it." (emphasis added) *Evd. Hrg., p 48, ln 3-6*. After this statement at the hearing, it was discovered that the first original scan of the renewal letter was scanned into the computer system on Sunday, July 24, 2016. Time records confirm Depa was not in the office on July 24, 2016. It appears the Defendants were trusting that Depa's affidavit would convince the court to order a forensic audit of the IT system and that it would confirm the creation of the letter in 2016. Neither (Plaintiff's nor Defendants) forensic expert located the original Word file that could corroborate its creation date.
2. "I didn't go into detail about, you know, I saw him type it, I saw him print it off, I saw him sign it and scan it." (emphasis added) *Evd. Hrg., p 52, ln 9-11*.
3. **Question:** "And during one of those updates [unscheduled times Depa would converse with Sieving in Sieving's office], you told [Sieving] that you didn't believe that Mr. Oram had found the renewal letter. [Isn't that] your testimony? [Answer] Yes. *Evd. Hrg., p 148, ln 5-8*. This is important because Depa admits here that he didn't claim he witnessed anything, only a disbelief that the renewal letter was found.

iii. Evidence: Depa testimony at Re-Trial

1. **Question:** Did you ever see Mr. Oram sign the document?
Answer: I did. Half an hour or less from the time that I noticed it was laying there, he came out of his office, picked it up, laid it out, signed it, continued -- we were talking back and forth. Can't remember what the conversation was about, but I mean it wasn't untypical for him -- when he comes out to pick something up to strike up a conversation whether it be business or personal. *Re-Trial – 8/17/12 – page 99, ln 13-20* (So the document sits on the printer, Randy signs it, and just walks back into his office so he can come in on Sunday, 7/24/16, and

scan it? That makes no sense)

iv. Evidence: Depa Testimony at Re-Trial

1. **Question:** Did you see Mr. Oram scan in [the renewal letter] in July 2016? **Answer:** No, I did not. *Re-Trial – 8/17/12 – page 101, ln 23-24* (Contrary to testimony at the evidentiary hearing on August 23, 2019. It was not until October 2019 that it was determined by Spectrum that the first scanned iteration of the renewal letter was scanned on July 24, 2016, a Sunday when Depa was not in the office.)

ii. Evidence: Timecard Report

iii. Evidence: Depa Deposition Testimony

1. **Question:** "...Did you see him write more than one letter or just one? **[Answer]** I saw him write one letter, I saw him print it off, I saw it on the printer, and then I saw exactly what it said...**[Question]** You saw it at the printer, too? **[Answer]** Correct. *Dep., p 93, ln 14-20.*
 - a. **Question:** "How long did he leave it on the printer? **[Answer]** Oh, I don't know, probably over half an hour to an hour maybe". *Dep., p 98, ln 9-11.*
 - i. This statement is questionable considering Depa's Evidentiary Hearing testimony that he claims he also witnessed Oram "scan" the letter. However, Depa has no explanation why Oram would print and sign a letter in Depa's presence (presumably July 22, 2016) and then wait until the evening on Sunday, July 24, 2016 to scan the letter into the IT system.

iv. Evidence: Re-Trial Testimony

1. At the re-trial, Depa testifies: **[Question]:** "...did you see Mr. Oram scan [the renewal letter] into the scanner at International Outdoor?" **[Answer]:** "No, I didn't". *Retrial – Vol III, p. 119, Ln 17-19.* **[Question]** "Did anyone from Lamar or its counsel tell you that you weren't in the office the day that Mr. Oram scanned the [renewal letter] into the system? **[Answer]** No. **[Question]** Had you ever heard that before? **[Answer]** I did. It was at the evidentiary hearing - - I'm not sure. **[Question]** "You heard what, sir? **[Answer]** That I wasn't in the office." *Retrial – Vol III, p. 121, Ln 15-22.*
 - a. The July 24, 2016, date was determined by Spectrum to be the first instance of the scanning of the renewal letter. Spectrum's report was dated September 20, 2019. Depa testified at the August 23, 2019, hearing and was back in Oregon long before September 20,

2019. Depa was not present at the October 2019 evidentiary hearing conclusion. It is impossible for Depa to have heard this at the evidentiary hearing. It is much more likely that Depa heard this from Defense counsel and lied again under oath before the jury.

2. **Affidavit #6:** “The computer Mr. Oram used to create the letter was still in his office when I left employment with International Outdoor in July 2018.”

a. **Depa admits that he would not have any personal knowledge of Mr. Oram’s computer status.**

i. Evidence: Depa Deposition & Evidentiary Hearing.

1. **Question:** “Was this the same computer that Mr. Oram had from that date you saw [the alleged creation of the renewal letter] until you left working for International Outdoor? [Answer] That I know of...but, I mean, I - - [Mr. Oram] could have - - he could have swapped it out. *Evd. Hrg., p 45-46, ln 17-6.*

2. **Question:** “You don’t have any idea whether the computer that was in Mr. Oram’s office when you left employment was the same computer as in 2016, two years earlier, right? [Answer] Correct. [Mr. Oram] could have changed it, or he could not have...[Question] so... Paragraph 6 of your affidavit is inaccurate? [Answer] It’s inaccurate, yes.” *Evd. Hrg., p 93, ln 6-15.*

a. This is important because during the 1st trial, International rightfully claimed it was not in possession of the computer used to create the letter, which prevented the court (Judge Potts) from originally ordering a forensic audit of International’s IT system. By Depa falsely claiming the computer was the same, it gave Defendants enough to convince the new court (Judge Anderson) to order a forensic audit of International’s IT system. The result of the audit confirmed International’s claim from the 1st trial that it was not in possession of the computer used to create the letter. Without Depa making this statement in his affidavit, Defendants have no basis to seek a forensic audit of International’s IT system. While a protective order was entered for the evidentiary hearing, the Defendant’s forensic expert completely disregarded the purview of its authority to mine International’s data. Once the original renewal letter was not found in the IT system, the Defendants then, and contrary to the protective order, used their forensic expert to attempt to

opine why it was not in the IT system.

b. See also 1(b)(ii)(3).

3. **Question:** “You said in your affidavit in paragraph 6 that the computer Mr. Oram used to create the letter was still in his office when you left your employment with International Outdoor in July of 2018. How in the world do you know that? **Answer]** I could tell you that - - that his computer was in the same location as it was when he - - when he created that letter, but if he would have changed it over a weekend or something I wouldn’t have known...**Question]** So how did you swear under oath from your - - on the basis of your personal knowledge that you can and will confirm each of the statements made below that the computer Mr. Oram used to create the letter was still in his office when you left your employment? You have no idea, do you? **Answer]** I don’t. If it was the same computer, I don’t. It was a computer; I don’t know if it was the same computer. *Dep., p 105-106, ln 7-4.*

a. See 3(a)(i)(2)(a). Without the statement about the computer, there is no basis for a forensic audit and without the forensic audit verifying the creation date of the renewal letter there can be no “clear and convincing” evidence of fraud (the basis of the motion for relief from judgment).

4. The forensic inspection of Oram’s hard drive confirmed the hard drive was not the same hard drive used in July 2016.

b. Depa left employment with International in August 2018, not July

i. Evidence: Depa Testimony at Evidentiary Hearing

1. **Question:** “When did you leave working for International Outdoor?” **Answer]** It was end of July - - like July 26, 27, 28th. Right around - - you know, the last week of July. *Evd. Hrg., p 60, ln 16-19.*

2. **Question:** “And so if the timecard records say you were clocked in for the last time on August 3rd, that would be the best record of your last day of work? **Answer]** I would say so, yeah.” *Evd. Hrg., p 70, ln 16-19.*

ii. Evidence: Depa payroll records

3. **Affidavit #7:** “I know that Mr. Oram made use of this falsified letter as part of International Outdoor’s lawsuit against Simply Self Storage and Lamar. I was greatly troubled by Mr. Oram’s actions, so I met with the [c]ompany’s attorney, Jeff Sieving, to enlist his help in preventing Mr. Oram from committing a fraud by using the backdated letter.”

a. Depa never confronted Oram at any point in time over the validity of the

letter, if Depa was greatly troubled he would have acted accordingly

i. Evidence: Depa Testimony Evidentiary Hearing

1. **Question:** “And you never said anything to Mr. Oram at all about this [claim of witnessing the creation of the renewal letter], right? **[Answer]** No. *Evd. Hrg., p 142, ln 19-21*. Post-verdict #1, **Question:** “... You set up - - you helped set up a meeting with Auburn Hills officials, right?” **[Answer]** Yes. **[Question]** And you attended that meeting with Auburn Hills officials, right? **[Answer]** Yes.” *Evd. Hrg., p 151, ln 20-25*. Depa was so disturbed by the 1st verdict and what he claims he witnessed that he took affirmative steps to get the sign built.

2. **Question:** “And after the jury verdict, you were part of the team trying to get a billboard built on the Simply Storage location? **[Answer]** For the - - yeah, for the two-and-a-half months I was there, the two month I was there, yeah. I would have - - I would have helped out. *Dep., p 139, ln 3-8*. Depa prepared and submitted our MDOT applications for locational approval, prepared our PUD application, and met/discussed with municipal officials our PUD application.

b. Depa never attempted to enlist Sieving, Depa vaguely commented on a few occasions over the course of 2 years about his disbelief the renewal letter was found outside his presence.

i. Evidence: Sieving Testimony Evidentiary Hearing

Question: what you became aware of prior to trial in this case? **Answer** Yes, I -- I was aware of Pat’s disbelief the letter was found and sent. *pg. 196, ln 19-20*

ii. Evidence: Depa Testimony at Evidentiary Hearing

1. See 2(a)(i)(3) above.

c. If Depa was “greatly troubled” he never put any of his concerns in writing nor did he vent his frustration with any other International personnel. Depa/LeVasseur conveniently or intentionally make allegations in the affidavit that are objectively difficult to disprove other than by counter-testimony.

i. Evidence: Sieving Testimony Evidentiary Hearing

Question: Now as I understand your version of your interactions with Mr. Depa, you acknowledge that he brought to your attention some concern about the lease renewal. Isn’t that true? **Answer:** I would phrase it more as a disbelief of a lease renewal. But yes. **Question:** Okay. And that expression of disbelief was actually brought to your attention before the complaint in this underlying case was filed. Isn’t that true? **Answer:** No, I don’t think that’s accurate. *Evid hrng, pg. 193.194, ln 24-7*

ii. Evidence: Alan Scott White Testimony Evidentiary Hearing

Question: Okay. Now Mr. Depa has testified today and he testified-said in an affidavit that he spoke to you at some point about the Simply Self Storage

lease and that you were aware that it had expired. Did that conversation ever occur? Answer: No. Question: And Mr. Depa said not only did you confirm that no renewal letter was sent, but you also, quote, “explained that there was no reason to do so because Randy Oram had decided not to move forward with the Auburn Hills site.” Did that conversation happen? Answer: Not at all. Question: Did Randy Oram ever tell you that he had decided not to move forward with the Auburn Hills site? Answer: No, I don’t ever recall him saying that about any site. And knowing the value of that site to his company, he would have never said that about Auburn Hills. And we worked about a decade on it. Question: Did Mr. Depa seek contact information for Simply Self Storage so that he could contact them and try to get a renewal letter from them? Answer: The only time I gave Pat -- I think when Pat first got to the company, he was working on another site involving Simply Storage, and I was -- I was trying -- I think I did send him a contact information for the person I had worked with on the original lease, and I think that person had vacated their position. But that was the only time I would have talked to him about Simply Storage and the contact. *Evid. Hrng, pgs 179-180, ln 9-10*

4. **Affidavit #8:** “During the course of [Sieving & Depa’s] meeting, [Depa] revealed to Jeff Sieving that I had seen Randy Oram create the backdated letter. Mr. Sieving acknowledge[d] this information but refused to take any action to prevent Mr. Oram from using the letter as evidence in the lawsuit.”
 - a. **There was never a meeting.**
 - b. **There was never an allegation (pre-affidavit) by Depa that Oram created the letter in Depa’s presence.**
 - i. Evidence: Depa Testimony at Evidentiary Hearing
 1. See 2(a)(i)(3) above.
 - c. **Depa cannot have personal knowledge of Sieving’s interactions with Oram about the litigation. All Depa may have personal knowledge of is the fact that the lawsuit was filed and that Oram executed an affidavit in support of International’s motion for summary disposition in early 2017.**
 - i. Evidence: Sieving Testimony Evidentiary Hearing
5. **Affidavit #9:** “As the lawsuit between International Outdoor and Lamar/Simply Self Storage proceeded, I continued to make complaints to Jeff Sieving about the letter and Mr. Oram’s actions, and repeatedly asked that [Sieving] intervene to stop Mr. Oram. Mr. Sieving never expressed any doubts about what I had witnessed or suggested in any way that he did not believe me. He nonetheless refused to do anything about it.”
 - a. **See 4(b) and 4(c) above.**
6. **Affidavit #10:** “I am also aware that the Lamar and Simply Self Storage had taken a position in the lawsuit that International Outdoor had abandoned any claim to the

Auburn Hills location. I know the position taken by Lamar/SSS was and is true. We at International took no further action after December 2009 to secure the right to erect a billboard on the property because of the difficulty and expense of doing so. Conversations occurred on at least two occasions but Mr. Oram always steered Alan White and myself to other sites that had better chances of success.”

a. Depa cannot have personal knowledge that IO “abandoned” any claim to Auburn Hills. This is clearly included by LeVasseur to support Defendants’ theory of abandonment. This is a highly technical theory proffered by Defendants during the discovery phase of trial. The Court ruled on two separate occasions that IO was not required to do anything under the lease (i.e. abandonment was impossible to demonstrate). Depa would not know anything about the SS MITX lease (because it was not his lease) except for things he may have picked up on during the litigation. He has no foundation to make any claim that the lease was abandoned. He also testifies that the SSMITX location was brought up numerous times during meetings. This is just an attempt by Lamar/SSMITX to position their argument AGAIN with respect to abandonment. Furthermore, Depa was not affiliated with International in 2009 (Depa claims he came to International in September 2010).

i. Evidence: Depa Deposition & Evidentiary Hearing Testimony

1. Depa claims at the Evidentiary Hearing: responding to the **Question**: “During these [meetings with Mr. Oram], did Mr. Oram ever mention the fact that he had a lease for the property at 1096 Doris Road, owned by Simply Self Storage? **[Answer]** Yes, that was the only lease that we had, so it was the only one that was brought up.” *Evd. Hrg., p 31, ln 9-13.*

2. “[W]hen we spoke about the lease in the past before Auburn Hills - - before we realized we were going to pursue Auburn Hills, through normal permit process rather than through a lawsuit, I - - I never looked at the lease to see if it was five years or ten years.” *Evd. Hrg., p 35, ln 6-10.*
Discussions about the lease do not support the idea the lease was abandoned. “[Alan] was - - [Alan] was the - - [Alan] was kinda the controller of - - of [the lease] - - of that file or that lease, because it was his...No, I mean it was [Alan’s] - - it was his lease. He would have probably been aware of [the lease renewal date].” *Evd. Hrg., p 34-35, ln 25-5.*

3. “I said [at Depa’s deposition] [the SSMITX lease] was brought up in weekly meetings from time to time, but it was never really pulled out of the file - - I mean, out of the file cabinet.”

Evd. Hrg., p 95, ln 18-20. Question: “So it [the SSMITX lease] was discussed, right? *[Answer]* It was brought up, yes.” *Evd. Hrg., p 97, ln 23-24.*

- a. Why would the SSMITX lease be brought up if the lease expired or abandoned?
4. **Question:** “...I asked you [at Depa’s deposition] how this [the theory International abandoned its lease with SSMITX] ended up in your affidavit. Did you bring this up with Mr. LeVasseur, or did he ask you about it? *[Answer]* I can’t remember the exact origin of that. **Question** I mean, it kinda seems off the subject of this renewal letter, right? *[Answer]* Yeah, I’d have - - it was - - seemed like it was later.” *Evd. Hrg., p 103, ln 16-22.*
5. **Question:** “Did Mr. Le[V]assure tell you when you’re going over this paragraph - - (inaudible) - - on abandonment, that that issue had actually come up at the trial and the Court had made a ruling on it? *[Answer]* No, I - - I don’t remember where it came from.” *Evd. Hrg., p 107-108, ln 24-3.* According to the affidavit, this statement should have originated from personal knowledge.
6. **Question:** “Do you even know what [abandonment] means in the legal context? *[Answer]* No. **Question** Did you know that the judge had dismissed that count, that theory in the case? *[Answer]* No.” *Dep., p 114, ln 19-24.*
7. **Question:** “...You didn’t start working on [the SSMITX location] until after the litigation was over, right? *[Answer]* Which litigation? **Question** The Simply Storage/Lamar/International Outdoor litigation that we’re here about today. *[Answer]* No. I mean, Auburn Hills got brought up a lot, that location got brought up a lot in our weekly or biweekly meetings. *Dep., p 44, ln 7-15.*
- ii. Evidence: Alan Scott White Testimony at Evidentiary Hearing
Question: Mr. Depa said not only did you confirm that no renewal letter was sent, but you also, quote, “explained that there was no reason to do so because Randy Oram had decided not to move forward with the Auburn Hills site.” Did that conversation happen? **Answer:** Not at all. **Question:** Did Randy Oram ever tell you that he had decided not to 21 move forward with the Auburn Hills site? **Answer:** No, I don’t ever recall him saying that about any site. And knowing the value of that site to his company, he would have never said that about Auburn Hills. *Evid Hrgng, pg 179, lines 14-24*
- iii. Evidence: Oram Deposition and Trial #1 Testimony
Question: Okay. And was there any reason for you not to renew that lease? **Answer:** No, no reason whatsoever not to renew the lease. It was every interest -- in our best interest to renew the lease. **Question:** Okay. Did you

renew the lease? Answer: Yes. Question: How did you renew the lease?
Answer: By sending a letter of renewal. Question: And who'd you send it to?
Answer: The offices for Simply Storage, Kurt O'Brien, the president that
signed off on the original lease. *Trial 1, pg. 252, ln 3-14*

iv. Evidence: Judge Pott's Order denying SD and Order denying JNOV

7. **Affidavit #11:** "The Simply Self Storage Auburn Hills lease file stayed in a drawer and was never b[r]ought out or spoken about again until January or February 2016. Around this time, a new employee, James Faycurry, was hired. James had come to International Outdoor from Adams Outdoor, a competitor, and he advised us that a change in the law had made erecting a sign in Auburn Hills more feasible than it had been in the past."

a. **Jim Faycurry was not employed by IO until February 2017. Mr. Faycurry was paid a consultant fee in December 2016. Mr. Faycurry had no contact with IO until December 2016.**

i. Evidence: Faycurry Testimony at 10/24/19 Evidentiary Hearing

1. Question: Now, there's also testimony -- well, scratch -- strike that, I'm sorry. When did you start your tenure at International Outdoor?
Answer: I believe it was probably February of 2017. Question: Okay, and if there was any testimony that you had started at International Outdoor earlier, say in early 2016, that would be incorrect? Answer: That's correct." *Evd. Hrg., p. 10, ln 12-19.*

ii. Evidence: Payroll records provided in Response to Lamar Motion for Relief from Judgment

iii. Evidence: Copy of 2016 check paid to Jim Faycurry for consulting fees in December 2016 as provided in Jeff's documents per Dep Notice duces tecum.

b. **Depa admitted that he could not have personal knowledge of if the Auburn Hills file stayed in a drawer outside his presence. Depa also admits that the Auburn Hills lease was White's lease and Depa would not have any reason inquire about the file without prompting from Oram.**

i. Evidence: Depa Testimony at Deposition and Evidentiary Hearing

1. "I wasn't always aware of what was going on with leases that were out of my purview". *Evd. Hrg., p. 27, ln. 17-19.*
2. See also 7(a)(i)(3) above.
3. **Question:** "...Paragraph 11 of your affidavit you said, "The Simply Self Storage Auburn Hills lease file stayed in a drawer and was never brought out or spoken about again until January or February 2016...[Answer] It could have been brought out, but there would really be no reason to. *Dep., p 117, ln 6-9, 16-17.*
4. **Question:** "And so here we are again, where you said - - you made a very declarative statement that it stayed in the drawer and never was brought out or spoken [about] again, but you

don't know if that statement is true or not, correct? [Answer] I don't know if that's correct. *Dep.*, p 118-119, ln 23-3.

ii. Evidence: White Testimony at Evidentiary Hearing

Question: Okay, so if you sent 50 e-mails to International Outdoor excuse me -- to Simply Self Storage about the Auburn Hills location, all 50 of those e-mails would have been processed through the International Outdoor server, to the best of your understanding. Isn't that true? Answer: As far as I would know. Question: Your interaction with Randy Oram about the lease renewal, that was verbal, I presume? Answer Yeah. Question There were -- there were no e-mails, "Hey -- hey, Randy, heads up. You got 30 days before that Auburn Hills lease expires." There -- we wouldn't find any e-mails like that, would we, Sir? Answer No. *Evid Hrng*, pg 184-185 ln 22-10

c. **Faycurry could not have been the trigger to bring the Auburn Hills file from the drawer because he did not join International until after the complaint was filed.**

i. Evidence: Depa Deposition & Evidentiary Hearing Testimony

1. Depa claims at the Evidentiary Hearing, "Well, I don't know the exact genesis of it - - we - - we brought it out into discussion, but we would have weekly meetings with Randy and we were aware that there was a lawsuit, [Reed] verse Town of Gilbert." *Evd. Hrg.*, p 30, ln 2-5. So, in the affidavit, Mr. Faycurry's conversation triggered the alleged renewed interest in SSMITX location; however, when faced with the impossibility of that, Depa demurs claiming he couldn't remember what triggered the renewed interest.

2. **Question:** "And in the affidavit in paragraph 11, you had stated - - you thought in - - in January or February of 2016, that was when Mr. Faycurry started working for International Outdoor, and you had a discussion with him then. Is that correct? [Answer] That's what I put in the - - in the affidavit, but after getting some additional information, realized that basically I was a year off." *Evd. Hrg.*, p 32, ln 11-17.

3. **Question:** "[The conversation with Faycurry is] kinda the whole kick-off for why are we looking for the lease, right? [Answer] Yes. [Question] But we know that Mr. Faycurry didn't start working for [International Outdoor], right? In - - in that time frame [January/February 2016]? [Answer] Yes, Mhmm." *Evd. Hrg.*, p 110-111, ln 21-1.

ii. Evidence: See 8a above.

d. **In an attempt to overcome Depa's lack of personal knowledge of certain facts that he attests to in the affidavit (affidavit statements #11, #12, and #13), on June 18, 2019, Depa called and left a voicemail for IO employee**

Faycurry asking for information related to Jim’s start date [at IO] and to disparage Oram and Sieving.

- i. Evidence: June 18, 2019, voicemail to Jim Faycurry
- ii. Evidence: Depa Deposition & Evidentiary Hearing. Depa falsely testifies he had no contact with IO employees since the Motion.
 1. **Question:** “so since May 1st, 2019 [and August 17, 2019], the only employees or contractors of International Outdoor you remember texting are Jeff Sieving and Joe [Cimeno]?”
[Answer] Yes. **[Question]** Okay. What about emails?
[Answer] No emails. **[Question]** What about phone calls?
[Answer] No phone calls.” *Dep., p 9-10, ln 23-5.*

8. **Affidavit #12:** “Specifically, James told us that Auburn Hills had amended its zoning ordinance to allow billboards, but only as a planned unit development (PUD). As part of the PUD, Auburn Hills required that there be a public benefit to the [c]ity if they were going to allow a new digital sign in their city. James said that Adams Outdoor made a donation to the City of Auburn Hills of close to \$160,000 for a new park, plus a slot of advertising on the sign. As a result, Adams Outdoor was allowed to begin constructing a digital sign in the City of Auburn Hills in late 2015.”

a. Depa falsely claims Faycurry “specifically” told “us” (presumably referring to Oram and Depa as the only International personnel involved in real estate acquisition/management) Auburn Hills amended its zoning ordinance. This is demonstrably and admittedly false.

- i. Evidence: See 8a.

9. **Affidavit #13:** “[Faycurry’s information about amended Auburn Hills zoning ordinance] caused Randy Oram to again become interested in exploring the possibility of building a billboard in Auburn Hills. I reviewed the file and learned that the Simply Self Storage lease had expired, and I advised Randy Oram of that fact. He then directed me to try to reach out to Simply Self Storage to get it renewed, but I did not have a good number.”

a. Depa’s admittedly false claim about Faycurry’s hire date and the entire reason Depa claims Auburn Hills was revived.

- i. Evidence: See 8a, 8c, and 8d.

b. Depa provides no explanation why Oram would wait so long (till July 2016) to falsify a renewal letter Depa claims Oram new about in January or February 2016.

- i. Evidence: Depa Deposition & Evidentiary Hearing Testimony

1. According to Depa, a search of all the files, all the servers, and all the computers took place in “**January, February, March**” of 2016 when Depa could not locate a copy of the renewal letter.
Dep., p 63, ln 11-17.

10. **Affidavit #14:** “This was Alan White’s lease (a former International Outdoor employee), but he left the company due to a medical condition and was not easy to contact. When I finally made contact with Alan, he was aware that the lease had expired and he tried to provide me with a current contact number for Simply Self Storage, but was unsuccessful. I even wrote letters to the legal departments at Simply Self Storage’s corporate offices in Florida and/or Texas. I received no response.”
- a. **White’s July 22, 2016 email to Depa does not report any conversation about the lease being expired and provides the email address of two Simply Self Storage employees (Schmutzler & Cannon).**
 - i. Evidence: July 22, 2016 email from White to Depa
 - ii. Evidence: White Testimony at Evidentiary Hearing
Question: Your interaction with Randy Oram about the lease renewal, that was verbal, I presume? Answer Yeah. Question There were -- there were no e-mails, “Hey -- hey, Randy, heads up. You got 30 days before that Auburn Hills lease expires.” There -- we wouldn’t find any e-mails like that, would we, Sir? Answer No. Evid hrng, pg 185 ln 3-10
 - b. **No purported letters were ever produced by International Outdoor or Simply Self Storage to corroborate this claim through the discovery process. No letters were identified by either party’s forensic computer expert as being on International’s IT system.**
 - i. Evidence: Forensic Computer Expert Reports
 - c. **After claiming in the affidavit that the letters were sent to “Florida and/or Texas”, Depa recants this uncertainty and affirmatively states they were sent to Florida (i.e. not from personal knowledge, but more likely from coaching from Defendants’ attorneys or subsequent research on SSMITX corporate offices).**
 - i. Evidence: Depa Evidentiary Hearing Testimony
 - 1. **Question:** “And in your affidavit had test - - or had stated that you sent it to Texas or Florida. Upon further reflection, do you know where you might have sent it? [**Answer**] I sent it to Florida. [**Question**] And what makes you certain that you sent it to Florida? [**Answer**] I mean, I was in the deposition. It was - - “Where did you send it and - - and why did you send it - - do that” - - and - - and I know my - - my initial response was, “Because there’s the SS MITX in the abbreviation, “ so that kind of like threw me like I - - where it was. But just further reflection, I - - I remember that it was a Florida address.” *Evd. Hrg., p 41, ln 15-25*. He has no personal recollection of where he allegedly sent the letters (that were never discovered even after his claim they were created on a work computer).
 - ii. Evidence: Depa Deposition Testimony
 - 1. Because Depa could not recall in his affidavit where he allegedly sent SSMITX correspondence in the Spring of 2016

(Florida/Texas), by the time he was questioned (after speaking with Defendants' attorneys) at the Deposition, Depa miraculously recalled the correct destination. **Question:** "Why do you believe that today and apparently you didn't have that firm of a conviction when you signed the affidavit? [Answer] I couldn't tell you. I just thought about it, and Florida is where it went." *Dep., p 59, ln 8-12.*

11. **Affidavit 15:** "Randy Oram then instructed a few of us employees to use the Adams Outdoors information and packets to put together similar packages for other properties in Auburn Hills that I was attempting to get leases with. We turned our attention to this project and we essentially gave up on the Simply Storage Auburn Hills location for a second time."
- a. **There were no other International Outdoor personnel in the Real Estate Department besides Depa and Oram in July 2016 – August 2016. White was out on medical leave and Steve Shaya left for another position in May/June 2016 and did not return until October 2016.**
- i. Evidence: International Outdoor payroll July 2016 – August 2016
12. **Affidavit #16:** "Shortly after this occurred, I was checking the Auburn Hills website for meeting agendas and discovered that Lamar was taking a case to the planning commission for a new billboard to be located on the Simply Self Storage location. I advised Randy Oram of this development, which caused him to become extremely upset. He insisted that Alan White must have sent a renewal letter before the lease had expired. We looked at every file, every server, and every computer, and found no such letter."
- a. **Depa's previous affidavit statement #13 contradicts this statement #16. If Oram was advised the lease expired in January/February 2016 and Depa was tasked with following up with Simply Self Storage to get the "expired" lease renewed, then why would Oram be "extremely upset" in July 2016.**
- i. Evidence: Depa Testimony at Deposition 1. **Question:** "When – when did the – when did the search of all the files, all the servers, and all the computers take place? **Answer:** 2018 – or 2016, I'm sorry." **Question:** "Okay, what month?" **Answer:** "Earlier in the year, January, February, March, right in that area." *Dep. Pg. 63 ln 11-17*
- ii. Evidence: Depa Testimony at Evidentiary Hearing
1. **Question:** "But in your affidavit, you said that the search was after the check of the Auburn Hills website and after you advised Randy Oram of the development. And you said that was in July. [Answer] When we - - when we found out that the lease had expired, we had looked everywhere for that...[Question] Do you know when the search occurred? The - - the every file, every server, every computer search?"

[Answer] Yes. Like February/March. *Evd. Hrg.*, p 126, ln 5-15.

b. White testified at the Evidentiary Hearing that he advised Oram about the need for a renewal letter in the Fall of 2013 as it was his lease to manage.

i. Evidence: White Testimony at Evidentiary Hearing

Question: So you would advise him when -- when a date was coming and --

Answer: Right. Question: --you would leave it to him to do the renewal?

Answer: Correct. Question With respect to the Simply Self Storage lease, did you become aware at some point in time that the initial term of that lease was going to expire? Answer Yes. Question What'd you do? Answer: I let him know it was coming to expiration. *Evid hrng*, pg 178, ln 3-13

c. Depa admitted that he did not actually look at “every file, every server, and every computer” at International Outdoor.

i. Evidence: Depa Testimony at Deposition

1. **Question:** Did you look at the computer in Mr. Oram’s office?

[Answer] No, I did not...[Question] What about Mrs. Oram’s

office? [Answer] No...[Question] So you didn’t power up any

of the computers in the basement? [Answer] Didn’t power

anything downstairs, no. [Question] Okay. So it’s not

accurate to say that you looked at every computer in the office,

right? [Answer] I wouldn’t say that that is accurate [meaning

Paragraph 16 is inaccurate]. *Dep.*, p 51, ln 22-24; p 52, ln 3-4;

p 52, ln 20-25. Depa admits he did not even look on the

computer [Mr. Oram’s computer] the letter was created on to verify its existence.

2. **Question:** “So when you said in your affidavit that “we looked at every file, every server, and every computer,” that’s

inaccurate, right? [Answer] I guess it’s a little exaggeration, yes...”. *Dep.*, p 55, ln 2-5.

ii. Evidence: Depa Testimony at Evidentiary Hearing

1. **Question:** “Now in your affidavit in paragraph 16, you had

said you had looked through every file, computer, server.

Were there some files you didn’t necessarily look at that maybe

were onsite at International Outdoor? [Answer] Yeah, I mean,

I made the statement, “Everything that was - - would

reasonably be a billboard file or was associated with my

department in real estate where it would be. There was other

files that were Mr. Oram’s personal files and I didn’t look in

those files...I didn’t go any - - through any of his legal files.

There was just those two main files, four drawers.” *Evd. Hrg.*,

p 37-38, ln 14-2.

2. **Question:** “So after the search happens, you’ve looked

everywhere you could reasonably look, and you - - did you tell Mr. Oram you couldn't find it? [Answer] Yes. *Evd. Hrg., p 38, ln 20-23*. So, every file, every server, every computer was exaggerated and instead Depa's claim is that he only looked everywhere he "reasonably" believed the renewal letter could be located.

3. **Question:** "Did you look at all the paper files at International Outdoor? [Answer] No. [Question] Did you look at all the files on the server or not? [Answer] Not all of them....[Question] you didn't look in Mr. Oram's [computer] [Answer] No...I did not...[Question] You didn't look on Mrs. Oram's computer? [Answer] No. *Evd. Hrg., p 127-128, ln 20-19*.
4. **Question:** "And you confirmed for me [at the deposition] that, "Yeah, it's not accurate that I looked at every single computer," right? [Answer] Correct. [Question] And so when you said in your affidavit that you looked at every file and every computer and every server, as you confirmed in your deposition, that was inaccurate, right? [Answer] Correct. [Question] You called it a little exaggeration, right? [Answer] I did. *Evd. Hrg., p 130, ln 14-22*.

iii. Evidence: Depa Testimony at Re-Trial

Question: Well, right. In the affidavit actually you said you looked at more, right? Because you said it was every file, every server, and every computer in the place. **Answer:** First affidavit I ever did, so there was some -- there was some -- I don't know if it was exaggeration but some stuff that maybe should have been more focused and pointed. *Re-Trial – 8/17/12 – page 165, ln 12-17*

(Contrary to the above testimony, Depa executed other affidavits and was familiar with the process and use. Additionally, based on emails, LeVasseur sent the affidavit over first with 10 paragraphs. With respect to other affidavits, Case No. 10-007808-CZ, Vaughn v. City of Taylor, et al.- Depa was accused of misconduct in office by Vaughn and Depa submitted an affidavit as part of a motion for summary disposition in 2011. Depa also provided an affidavit in International Outdoor v. City of Troy, Case No. 2:17-cv-10335-GCS-MKM to include with International's opposition brief to the city's motion to dismiss in 2017).

13. **Affidavit #17:** "Mr. Oram never claimed to us at this time that *he* wrote a renewal letter; rather, he stated only that he hoped Alan White had done so. Mr. Oram made us double and triple check, and no renewal letter was found. When I

later spoke to Alan White about this, he confirmed that he never sent a renewal letter. [Alan] explained that there was no reason to do so because Randy Oram had decided not to move forward with the Auburn Hills site.”

- a. **Depa never explains who “us” refers to.**
- b. **Alan never advised Depa that Oram decided not to move forward with Auburn Hills.**

- i. Evidence: White Testimony Evidentiary Hearing

- Question: And Mr. Depa said not only did you confirm that no renewal letter was sent, but you also, quote, “explained that there was no reason to do so because Randy Oram had decided not to move forward with the Auburn Hills site.” Did that conversation happen? Answer: Not at all. Question: Did Randy Oram ever tell you that he had decided not to move forward with the Auburn Hills site? Answer: No, I don’t ever recall him saying that about any site. And knowing the value of that site to his company, he would have never said that about Auburn Hills. And we worked about a decade on it. *Evid hrng, pg 179, ln 14-25*

- c. **In July 2016, why would Oram hope White wrote a renewal letter when Depa claims to have advised Oram of the lease expiration in January/February 2016 and then why wait until July 2016 to create and backdate the renewal letter?**

- i. Evidence: See 8, 9, 10, and 13a.

14. **Affidavit #18:** “It was after the above-mentioned search for a renewal letter proved to be unsuccessful that I witnessed Randy Oram create and backdate a renewal letter, as described above.”

- a. **See 2a above.**

- i. Evidence: Depa testimony at Re-Trial

- b. *Question: Did you see Mr. Oram scan in [the renewal letter] in July 2016? Answer: No, I did not. Re-Trial – 8/17/12 – page 101, ln 23-24* (Contrary to testimony at the evidentiary hearing on August 23, 2019. It was not until October 2019 that it was determined by Spectrum that the first scanned iteration of the renewal letter was scanned on July 24, 2016, a Sunday when Depa was not in the office.)