

JUDGE ANDERSON'S ERRORS THROUGHOUT THE PROCESS

1. Entertaining the motion for relief when the matter was on appeal (6/19/19), when the court did not have jurisdiction; continuing the proceedings when advised by counsel that there was no jurisdiction; then denying our motion to dismiss the motion despite the court rule and case law.
2. Not following the COA deadlines.
3. Going beyond the scope of the remand order (8/15/19) and ordering a new trial despite not having jurisdiction. The judge only had authority to grant or deny the motion, not order a new trial.
4. Allowing Stott Matthews to exceed the scope of the protective order and produce a report and testify when we could not as a practical matter rebut, particularly given the limits placed on discovery.
5. Bifurcating the evidentiary hearing. Discovery was on-going at the time of the first part of the evidentiary hearing (8/23/19) which prejudiced IO because there was no evidence from Spectrum to use on cross examination of Pat. Both sides should have all of the evidence before the start of an evidentiary hearing. Lamar had access to and could communicate with Spectrum prior to the first hearing about information/ documents it found or did not find.
6. Denying post-new trial order discovery. The judge ordered no new discovery post-order setting aside judgment. The evidentiary hearing had limited discovery and created many new problematic evidentiary issues that warrant additional discovery. IO is not allowed to do any discovery into Pat when he was added to the witness list. (1/23/2020)
7. Not allowing for full discovery concerning Pat when he was added as a witness.
8. Not ruling on the motion for reconsideration for months.
9. Denying the addition of a necessary new party, National Storage, who is the current owner of the real estate in question. (2/26/2020).
10. Denied all MIL's for both Plaintiff and Defendants — while this also applied to Lamar/SSS, I thought I would mention it.
11. Denied P's motion to amend complaint (2/26/20)
12. Order denying + granting in part IO's motion to allow discovery and amend witness list. Denied discovery and amendment to witness lists except witnesses who testified at the post-trial evidentiary hearing and those giving opinion testimony on information technology (1/23/20)
13. Order granting in part Lamar's motion to release Spectrum report and documents. IO was required to prove a copy of versions 1 and 2 of Pat Depa notes by October 21, 2019. (10/18/19). IO objected to the production under attorney/client privilege.
14. Order denying our emergency motion to strike defense experts (8/23/19)
15. Order setting evidentiary hearing for August 23 - if I recall correctly, you told the judge that date did not work for you/out of town?
16. Order denying P's motion for stay of proceedings pending final resolution of its application for leave to appeal (3/12/20)
17. Order denying P's motion to dismiss (8/7/19)
18. Order granting D's motion re: computer and server inspection and imaging (7/31/19)
19. Order rendering P's motion for reconsideration moot (3/12/20)

20. Order denying P's motion for stay of proceedings (8/8/19)
21. Order granting D's motion for relief from judgment (12/19/19)
22. Order denying P's motion for contempt (10/18/19)
23. Judge entertains the motion for relief from judgment when the matter was on appeal (i.e. when the court did not have jurisdiction) and continuing the proceedings when advised by IO counsel that there was no jurisdiction and denying IO's motion to dismiss in spite of the court rule and case law. (6/19/19)
24. The judge failed to rule on IO's motion for reconsideration for months depriving it of the ability to file for leave to appeal. Additionally, the judge has never entered an order on IO's motion for attorney fees and costs (which judge Potts previously ordered 12/19/18). We participated in an evidentiary hearing before Judge Anderson on the fee issue in March 2019 and she never entered an order.
25. The Court denied Plaintiff's motion to quash Defendants' subpoena to Flagstar Bank (8/10/21)
26. The Court granted in part Lamar's motion for entry of judgment following the jury trial. (8/31/21)
27. The Court denied Plaintiff's motion for reconsideration. (7/27/21)
28. The protective order did not protect IO's attorney/client communications other than communications with Potter's firm. The defendant's forensic inspector had access numerous attorney/client communications of other outside firms retained by IO. IO filed a motion for reconsideration of the PO that was denied, and no additional retained firms were added to the protective order.
29. The protective order also allowed Defendant's forensic inspector to "identify any documents or information found during inspection" and provide a "brief description of relevant documents or information". The protective order did not contemplate the investigator preparing an expert report or to testify beyond what documents were found. IO filed a motion for contempt to prohibit Spectrum's testimony that the judge denied. Furthermore, the judge allowed Spectrum to be qualified as an expert and opine about topics well beyond the scope of his authority (either outside the dates or beyond the topics). The judge, having granted Spectrum to testify as such, greatly prejudiced IO because there was no opportunity to rebut Spectrum's testimony given the limited discovery.

Motion and Evidentiary Hearing Objections (8/23/19)

- Judge allowed Defendants to introduce testimony re Randy altering dates on documents, in order to introduce prior bad acts.

Evidentiary Hearing Objection (10/24/19)

- Plaintiff's objection was overruled as to Stott Matthews opining whether there is another hard drive or another source that could have the relevant information from July 2016 to July 2018.
- The Court sustained Defendants' objection to playing a voicemail that shows Mr. Depa admitting he is an independent contractor and calling Randy an SOB.

Anderson's Rulings

(Evidentiary Hearing 8-17-19, Evidentiary Hearing 10-24-19, Re-Trial

[Question]: Had you ever had any experience with Mr. Oram doing anything of this nature before, altering the date on a document, or altering a document?

DEPA [Answer]. Many, many times.

[Question]: And what had you seen before?

[Answer]. He would manipulate engineering plans. He would move stamps from other plans that were stamped and reviewed by engineers to engineering plans and building plans that weren't approved by engineers. He would also manipulate building code dates for building code -- for plans that were designed -- or engineered to a specific building code in the past, but now a new building code was adopted by the state that he would move -- he would actually move that -- or change that date from 2011, building code -- Michigan BC -- Michigan building code -- to now 2015 Michigan building code, when that particular --

(multiple speakers)--

MR. BRUETSCH: Your Honor -- your Honor, I'm going to -- I'd like to interrupt with an objection here. Counsel's trying to introduce alleged prior bad acts to prove that Mr. Oram alleged -- or allegedly acted in conformity with those. Those are not admissible.

MR. MCKENNEY: They are. It's the same pattern in the practice of altering dates on documents and altering documents in the past. It is exactly a 404 -- 403B exception.

MR. BRUETSCH: This -- he's talking about plans and stamps and engineering stamps without -- of course, without any specifics. This is just a classic attempt at saying he did something bad. He's doing something bad then. He's going to do something bad now.

MR. MCKENNEY: Again, he's doing something specific bad -- altering documents. I mean, it's not -- this is not just a general, he's a bad guy and I want to introduce testimony about that. I'm asking him about altering documents which you'll hear about.

THE COURT: Overruled. Go ahead. *8-23-19 Evidentiary Hearing, p 48-50, ln 19-5*

MR. MCKENNEY [Question]: Since you wrote your affidavit in May of 2019, did you have any contact with Mr. Shea?

[Answer]. Yes, he called me out of the blue.

[Question]: When was this?

[Answer]. It was three weeks ago?

[Question]: And what did Mr. Shea contact you about?

MR. BRUETSCH: Objection, your Honor. Conversations with this witness are hearsay.

MR. MCKENNEY: I just asked him what he contacted him about. I'm not asking what Mr. Shea might have said.

THE COURT: I'll allow that. Just what he contacted you about.

THE WITNESS (DEPA): He contacted me to -- about me doing the -- submitting an affidavit.

MR. MCKENNEY: Did Mr. Shea threaten you?

MR. BRUETSCH: Objection, your Honor. Hearsay.

MR. MCKENNEY: I'm -- I'm not asking for the statement. I'm just asking whether or not he threatened him.

MR. BRUETSCH: He's -- he's asking for the content of the conversation.

THE COURT: All right. Rephrase the question. After the discussion did he feel threatened?

MR. MCKENNEY: Did you feel threatened after your discussion with Mr. Shea?

[Answer]. Yes. 8-23-19 Evidentiary hearing, p 65-66, ln 21-25

[Question]: Okay. Now, Mr. Depa, at the deposition, we talked about a few things including a -- a lawsuit when you were at the City of Taylor, right?

[Answer]. Yes.

[Question]: Okay. Do you believe that getting sued personally is a -- a significant event in someone's life?

MR. MCKENNEY: I'm going to object to this line of questioning. I don't think it's relevant to the issues before the Court today on whether or not he is -- you know, what he saw in terms of Mr. Oram's computer, I don't know in a lawsuit -- an unrelated lawsuit from years ago that I can show you it's dismissed on his motion for summary disposition has to do with anything.

MR. BRUETSCH: And I'm not getting into the nature of the lawsuit, your Honor. The problem is that Mr. Depa said he had absolutely no memory of any of the events of this lawsuit during the deposition. So this is intended to point out that there are significant events in Mr. Depa's life that he just claims not to remember. So this goes to his memory and his ability to remember events, not to the facts of the lawsuit.

MR. MCKENNEY: But again, it's a lawsuit from seven -- it's a lawsuit from nine years ago. It's not an event that occurred in July of 2016.

MR. BRUETSCH: I'm only going to ask him if he remembered it or not.

THE COURT: If he remembers being party to a lawsuit?

MR. BRUETSCH: Yes, and if he remembers what was alleged in the lawsuit, yes.

THE COURT: Okay. Well, that's more than just whether he remembers the lawsuit now, isn't it?

MR. BRUETSCH: All I'm trying to do is test Mr. Depa's memory as I did in the deposition. He indicated in the deposition he didn't remember the lawsuit. He didn't remember what the claims were in the lawsuit. He didn't remember -- I mean, this lawsuit was pending for two years. It was -- he was sued personally. There was a newspaper article about it. He didn't -- he claimed he didn't remember anything about it.

MR. MCKENNEY: Well, let's talk about the lawsuit, because apparently, they think this is what the case rises and falls on. He was sued because he worked for the City of Taylor at the time. Individual officers of public corporations get sued all the time. I have and am prepared to present to your Honor the order that dismisses him on his motion for summary disposition. He would tell you -- I mean, and if you want to --(undecipherable)-- he doesn't remember it because he never met with the lawyers. He wasn't deposed in a lawsuit. It was a frivolous lawsuit. I don't know what a -- and -- and it certainly doesn't have to do with Mr. Oram's fabrication of documents. I'm prepared to present the order, your Honor.

MR. BRUETSCH: His memory's going to be an issue on some of the things regarding the affidavit that we talk about.

MR. MCKENNEY: Then ask him things from three years ago, not things from nine years ago.

THE COURT: I'll let you ask him whether he remembers the lawsuit. But let's see where this is taking us, cuz I'm not spending time on some other lawsuit other than the one that's before me here, okay? *8-23-19 Evidentiary Hearing p 76-79, ln 15-2*

[Question]: And you 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 up to try to check the facts with you independently, did they?

[Answer]. No.

[Question]: They just took your word for it?

MR. MCKENNEY: Objection. Foundation.

THE COURT: Sustained. Let's move on. *8-23-19 Evidentiary Hearing, p 82, ln 9-18*

[Question]: Okay. Well, the white binder in front of you is your deposition. Why don't you take that and open it up to page 56. If you want to turn back to 55, I'll just give you the context. We were talking at your deposition about this search of every file and every server and every computer that you told the Court that you had undertaken in early 2016. See that?

[Answer]. Yes.

[Question]: And then over on page 56, want to find line 13, where it says "the witness" -- deposition you said, "I don't know what you want -- what you want me to say. So yeah, I -- I didn't think it needed to be precise. Yeah, I tried to get as -- it as accurate as I could with -- as far as me saying exaggeration, it wasn't exaggeration. It was just -- just kind of a cover-up." That's what you said at the deposition, correct, Mr. Depa? Did I read it correctly?

MR. MCKENNEY: Can you let him please finish the rest of the testimony? You -- you cut off his testimony there.

BY MR. BRUETSCH: [Question]: Did I read it correctly?

MR. MCKENNEY: I'm going to object. If he's going to impeach the witness, the witness is entitled to look at the entire statement, not a portion that he's --(undecipherable)--

MR. BRUETSCH: He'll be able to redirect, your Honor.

THE COURT: Well, let's have the whole statement, okay? Thank you. *8-23-19 Evidentiary Hearing, p 84-85 ln 23-18*

[Question]: Now -- so let's look back at the affidavit. In the first paragraph, you said, "I am a former employee of International Outdoor, Inc."

[Answer]. Yes.

[Question]: And we talked about that at some length in your deposition. And we discussed whether you were really an employee or you were actually an independent contractor. Is that right?

[Answer]. Yes.

[Question]: And you told me, "I was an employee," right?

[Answer]. Yes. You referred to me as an employee earlier.

[Question]: Okay. And that's your belief, you are -- you were an employee of International Outdoor and not a contractor?

MR. MCKENNEY: I'll object, your Honor, first as to relevance. I don't know whether as an employee or independent contractor. I think we've established he worked there for a number of years. Second as the foundation. A distinction between an employee and an independent contractor is one that hinges on tax law, the application of tax law, which Mr. Depa is not qualified to answer.

THE COURT: What is the purpose of whether he was an employee or an independent contractor? What's the relevance of that?

MR. BRUETSCH: The relevance is that he wrote a letter after there was an audit by the State of Michigan as to his status as an employee or an independent contractor, in which he lied and told the State of Michigan that he's an independent contractor. So he put in an affidavit today before you a statement that says, "I was a former employee." But when the State had asked him that question in an audit, he told the State something different. He said, "I am an independent contractor." My intention here is to go through the affidavit, your Honor, and point out -- and there are many of them -- all of the inaccuracies in the affidavit. And point out that Mr. Depa has not been truthful on many, many occasions.

THE COURT: All right. Proceed.

MR. BRUETSCH: Thank you.

BY MR. BRUETSCH: [Question]: Mr. Depa, I showed you a letter that you had written to the State of Michigan regarding an Unemployment Insurance Agency audit, correct?

[Answer]. Yes.

[Question]: It's in Exhibit 17 if you'd like to look at it. And in that letter, you told Ms. Makita Miles from the State of Michigan that -- and it's in the second paragraph, I -- I believe, that you were an independent contractor, right?

MR. MCKENNEY: And I'm going to object, your Honor. I don't know if he's going to admit Exhibit 17. We haven't admitted anything yet. He can't read from a document without it being admitted into evidence. If he wants to admit it, that's fine. I'd like to do a brief voir dire before he moves to admit it.

MR. BRUETSCH: I'm impeaching the witness, your Honor. I can impeach the witness from a document. And I'm not admitting it for substance --

MR. MCKENNEY: But he's -- he's reading it --

MR. BRUETSCH: -- of evidence. I'm admit -- I'm -- I'm impeaching him.

MR. MCKENNEY: He's reading the document into evidence. That's not impeachment.

MR. BRUETSCH: Mr. Depa indicated that he's an employee. He made a prior inconsistent statement that he is -- was an independent contractor. He made it to the State of Michigan. I think that's impeachment.

MR. MCKENNEY: Not when he's reading from a letter. If he wants to admit the letter, let's -- let's go through the letter. Let's go through the admission process for admitting exhibits. I mean, he can't just read things into the Record and say, "Do you agree with me or not?"

THE COURT: You could have him review this and you can ask him, "Did you say this?"

MR. BRUETSCH: Okay.

THE COURT: And he can either say yes or no. But I don't want you reading from this letter into the Record unless you're going to admit it, okay? 8-23-19 *Evidentiary Hearing*, p 87-90, ln 14-15

[Question]: Well, when Mr. Oram has done things in the past that you didn't approve of, you let him know about it, didn't you?

[Answer]. If he asked me to lie about something, I -- I stood up and said, "I'm not going to lie for you," yes.

[Question]: So like when you wrote that letter to the State of Michigan that you said was a lie, you stood up to him and told him you weren't going to do it?

MR. MCKENNEY: Objection. Mischaracterizes his testimony. This we've have been over. They never even establish he knows the difference between an employee and an independent contractor. I'd object to the form of the question.

THE COURT: Rephrase your question. 8-23-19 *Evidentiary Hearing*, p 142-143, ln 24-11

MR. NEUMANN: Who prepared this document?

THE WITNESS (SIEVING): The creative department at International Outdoor.

MR. NEUMANN: When was this created?

THE WITNESS: Probably within the last two/three weeks.

MR. NEUMANN: How do we know this is to scale?

THE WITNESS: We -- well, I -- I couldn't tell you for sure.

MR. NEUMANN: Right, and -- and you didn't prepare it, did you?

THE WITNESS: I did not.

MR. NEUMANN: Objection. No found -- it's -- I mean, I have no problem with the document, but it needs to be authenticated. I don't think it's -- it's a proper -- this is the proper way to introduce this exhibit.

MR. BRUETSCH: We're not going -- we're not going for scale here. We're going for where are people, and he lives there -- lives there -- he works there every day, your Honor. He knows where the cubicles are. He knows where the offices are --

THE COURT: But evidently --

MR. BRUETSCH: -- in relation to each other.

THE COURT: -- it's not that way today as it was in 2016 by -- by your very questioning of --(multiple speakers)--

MR. BRUETSCH: Well, his testimony is this is how it looked in 2016, which is how my questions are, related to --

THE COURT: Well, he can testify. I mean, I don't need to look at a picture here. He can testify as to where offices were located in 2016. So sustained. Let's go on. *8-23-19 Evidentiary Hearing, p 244-245, ln 3-11*

10-24-19 Evidentiary Hearing

MR. BRUETSCH: Your Honor, just one housekeeping issue before we start with Mr. Faycurry. We did talk at length about Mr. Depa's affidavit at the first round of this hearing and we presented it as Exhibit 12. Looking at the transcript it doesn't look like we actually formally asked you to admit that exhibit, however, so I would like to clean that up and ask you to admit that.

(At 1:36:35 p.m., Plaintiff's Exhibit 12 is offered)

MR. MCKENNEY: I'd object that it's hearsay, your Honor. The witness was here live and testified and you can't have his affidavit come in.

MR. BRUETSCH: Well, it's an admission of a party opponent so it's not hearsay. Any statement that's of truth that's adopted by the opposing party under 801(d)(2) is an admission.

MR. MCKENNEY: Mr. Depa's not a party, he's - - it's not an admission either. He was here live to testify.

MR. BRUETSCH: He doesn't have to be a party and it doesn't matter if --(multiple speakers)--

MR. MCKENNEY: He has to be a party.

MR. BRUETSCH: -- it doesn't matter if he's here live to testify, 801(d)(2)(B) provides that a statement is not hearsay if it's a statement of which the party, that's them, has manifested an adoption or belief in its truth, and certainly they have presented the statements in that affidavit as an adoption or belief of truth.

MR. MCKENNEY: It's not our party, he's not a party. He's their former employee. He testified live, the document is hearsay.

MR. BRUETSCH: He doesn't have to be anybody's party, your Honor, as long as the statement that we're trying to introduce is one that a party, them, has manifested an adoption or belief in its truth under 801(d)(2)(B) then it's not hearsay. I mean, if they want to say we're not gonna adopt it as true, if they don't think the statement's in his affidavit were true, then fine, I'll withdraw it.

MR. MCKENNEY: We didn't offer it, Judge, we offered his live testimony.

THE COURT: Mr. Depa was here to testify, you certainly had an ability to question him about the statements in his affidavit, I see no need to enter the affidavit as an everybody. Let's move on. *10-24-19 Evidentiary Hearing. P 6-7, ln 1-20*

[Question]: Now, I understand you weren't allowed to bring your phone in to court today, but did we ask you to transfer that voicemail off of your phone onto a recorder?

[Answer]. Yes.

[Question]: And did you do that?

[Answer]. Yes.

[Question]: Do you have it today?

[Answer]. Yes.

MR. BRUETSCH: May I approach, your Honor?

MR. MCKENNEY: Your Honor, I'm good object. I understand he's going to ask to play the voicemail message, it's hearsay.

MR. LEVASSEUR: And it wasn't produced.

MR. MCKENNEY: It wasn't -- I mean --

MR. LEVASSEUR: Sandbagging.

MR. MCKENNEY: It's hearsay.

MR. BRUETSCH: There was discovery on this issue in the case, first of all --

MR. MCKENNEY: It's hearsay.

MR. BRUETSCH: -- and it's -- again, making my record, it's not hearsay. Mr. Depa is a person and who they have adopted statements. It goes right to issues that Mr. Depa testified, and I'm also presenting it to impeach the witness because there's statements on this tape about whether Mr. Depa was a contractor --

THE COURT: So why didn't you -- why didn't you proffer this with Mr. Depa if you were trying to impeach him?

MR. BRUETSCH: Well, first of all, we don't have to -- I don't believe we have to do that with Mr. Depa, your Honor, we can --

MR. MCKENNEY: Yes.

MR. BRUETSCH: -- introduce impeaching evidence through other witnesses.

MR. MCKENNEY: No. That's not correct at all. You have to impeach a witness with his own statement.

MR. BRUETSCH: We can --

MR. MCKENNEY: You can't impeach a witness with somebody else's statement.

MR. BRUETSCH: We can offer -- we can offer inconsistent statements of a witness, your Honor.

MR. MCKENNEY: He's trying to offer a statement not at the trial or hearing for the truth of the matter asserted, that is hearsay.

MR. BRUETSCH: We're trying to offer a statement because Mr. Depa testified about things, including, number one, that he believed he was an employee, not a contractor. We went round and round on that issue. As an offer of proof I will tell you that in this voicemail Mr. Depa said to Mr. Faycurry, "Hey, we're all contractors, you don't have to worry, you're not an employee." That's one thing he said. There also -- it also goes to his motivation, because on this tape he calls Mr. Oram an S-O-B, he doesn't like Mr. Oram. He also makes some coercive statements on the tape. So, that's why we're offering it.

MR. MCKENNEY: Again, and your Honor is absolutely right, number one, it's hearsay; number two, if they wanted to impeach Mr. Depa with his own statements on this recorded voicemail the time to do that was when Mr. Depa was testifying so that he could respond to it. That's how impeachment works. I mean, we had -- we had -- as you recall, we had statements about threats that Mr. Depa received from Mr. Shaya (sp), and those were not allowed in because Mr. Shaya wasn't here to testify about it, they were hearsay.

THE COURT: It is hearsay. That's enough, let's move on. *10-24-19 Evidentiary Hearing, p 13-16, ln 24-15*

MR. MCKENNEY: All right, at this time, your Honor, I would like to move for the admission of Mr. Matthews as an expert in the area of computer forensics and allow him to be -- to offer opinion testimony in that area. I think computer forensics is an area of scientific, technical or otherwise specialized knowledge. In the Michigan Court of Appeals in *Michigan v Raar*, which is docket number 277419, specifically recognized computer forensics was an area that was appropriate for expert testimony. The testimony about what's on Mr. Oram's computer and what's on the IO server, or I should say what was represented as in Mr. Oram's computer, will assist this court in understanding the evidence that relates to when the lease renewal was or wasn't created. The facts on which Mr. Matthews' testimony would be based on reliable. There's the server itself, it was produced by IO. He just imaged it and copied it. The testimony is based on reliable principles and methods, so at this time I would ask for him to be admitted as an expert witness.

MR. BRUETSCH: The objection I have, your Honor, is -- actually, I have no objection to him doing what the protective order -- testifying about what the protective order allowed within its scope, which was identifying whether or not there were documents on the server or on the computer that related to the issues of Mr. Depa's deposition. Specifically, whether this lease renewal letter was created in 2016 as Mr. Depa claimed. However, there's no -- no provision ever been made for expert testimony that went beyond that scope in your order. We've not been able to depose Mr. Depa because -- I'm sorry, Mr. Matthews because the discovery orders in this case didn't allow it, and so I'd like his expert opinions to be restricted to the scope of your order and not go beyond it.

MR. MCKENNEY: I think, your Honor -- I think they're too narrowly reading your order. The July 3rd protective order said that he could testify about anything that was raised in Mr. Depa's affidavit. Mr. Depa's affidavit didn't just talk about whether or not something was created in July of 2016, it simply said things were not created in Jul -- or December of 2013. He also testified about -- or his affidavit also talks about efforts undertaken in July of 2016 and there's also testimony we need to get into regarding what was produced in represented to be Mr. Oram's computer that was not, in fact, Mr. Oram's computer. So, I do not think the restriction he's asking for is appropriate.

MR. BRUETSCH: Yeah, his testimony about what may not have been created in 2013 was because he had claimed that he saw Mr. Oram create a document in 2016. The 2013 issues were dealt with at trial, we provided the court with the transcripts and the prior motion hearings, and the jury ruled on that -- or a jury came up with a verdict on that issue. Mr. Oram was questioned at length about what happened in 2013. That issue is not contemplated by what Mr. Depa said. Mr. Depa said, "I saw Mr. Oram create this document in 2016." If the witness wants to testify

about what he found with regard to that I have no objection to it. But I do have objections going beyond the scope.

MR. MCKENNEY: Your Honor, in terms of what he will testify as to what was done in December of 2013 it's going to directly refute Mr. Oram's trial testimony about why he could not produce the document that was created in December of 2013, which was specifically raised in Mr. Depa's affidavit.

MR. BRUETSCH: And that's -- **MR. MCKENNEY:** This issue hasn't been fairly litigated, that's for certain, because Mr. Oram lied under oath and Mr. Matthews is gonna provide evidence to support that.

MR. BRUETSCH: And that's exactly what you said we weren't going to do in this hearing at the beginning. You said we weren't going to re-try the issues from the trial. Now he wants to contradict what Mr. Oram said at the trial. He's not talking about what Mr. Depa said or what Mr. Depa saw, now he wants to argue about what Mr. Oram said at trial and re-try that with a new expert that wasn't presented at trial.

MR. MCKENNEY: he wasn't presented at trial because he misled and lied to this court about what was on that server, and we're gonna show you that.

THE COURT: Thank you, counselors. At this time the court will qualify the witness as an expert in computer forensics. *10-24-19 Evidentiary Hearing, p 35-38, ln 2-11*

MR. MCKENNEY: And at this time I'd like to move for the admission of Exhibits F and G. (At 2:55:12 p.m., Defendant's Exhibit F and G are offered)

MR. BRUETSCH: Objection, your Honor. I don't know how these are relevant at all to the opinions of this witness. I mean, you've seen these documents, obviously, they're the ones that we produced at your order. Furthermore, for the record, we continue to object on the grounds of privilege. Privilege is not just communication from an attorney to a client relating to the litigation, it's also communications from the client to the attorney. You allowed us to redact the communications from the attorney to the client but not otherwise. I don't think any foundation has been laid for the use of these documents at all.

MR. MCKENNEY: For the record, this is the redacted version that your Honor has already ruled on that we -- could be produced. I think it is relevant to show what documents were actually produced that came from the computer that was represented to me, Mr. Oram's computer.

MR. BRUETSCH: He said he looked at thousands and millions and searched millions of documents, we're not admitting all of those, I don't know what makes these special.

MR. MCKENNEY: I'll connect it, your Honor.

THE COURT: I'm sorry?

MR. MCKENNEY: I can -- we can connect it, your Honor. I -- you know.

THE COURT: Go ahead.

BY MR. MCKENNEY:

[Question]: So these were two documents that were created -- were these created on Mr. Oram's computer from June of 2019?

[Answer]. No.

[Question]: Where were they created?

[Answer]. I don't know. I know that they were put on to that computer on May 5th.

[Question]: Okay. Is it possible they would have been created before or after May 5th?

[Answer]. It's possible. The one date related piece of information that's persistent generally from machine to machine, let's say from an external hard drive to a restaged computer would be the last written date, which is what is being presented here.

MR. MCKENNEY: Again, I'd move for the admission of the documents, your Honor. I think they are relevant to what was found on what was represented to be Mr. Oram's computer, that, in fact, it was not Mr. Oram's computer from July of 2016 to July of 2018.

MR. BRUETSCH: I have the same objections and I have a further one, which is, your order talked about information from a relevant time period. That relevant time period being July of 2016 to July of 2018. Now we're talking about documents after this motion was filed from June of 2019. They're outside the scope of what you've allowed, they're outside the scope of what you've allowed to have discovery on, they have no relevance to this case.

MR. MCKENNEY: Again, your Honor, I think they are relevant in terms of showing -- again, your order was very clear, produce the computer from July of 2016 to July of 2018. Mr. Matthews' testimony today is very clear, that's not what they produced. They produced some other random computer that had some documents on it. I want the two documents that were specifically identified in here to be admitted into evidence showing what was on that computer we were given and misled to believe it was Mr. Oram's computer.

THE COURT: I will allow you to question him about this subject to tying it up here.

MR. MCKENNEY: Okay.

BY MR. MCKENNEY: [Question]: Were these -- could you tell from your inspection of Mr. Oram's computer whether or not these documents were e-mailed or sent to anyone?

[Answer]. By analyzing the e-mail I would be able to -- I would have found them, yes.

[Question]: Okay. And -- but you didn't find these by analyzing the e-mail, did you?

[Answer]. I did not.

MR. MCKENNEY: Just one moment, your Honor. All right, I'll withdraw the exhibits, your Honor.

THE COURT: Very well.

BY MR. MCKENNEY: [Question]: All right, I do want to return to -- understand or kind of wrap up or recap your -- or no, strike that. I have one other set of questions. Based on your inspection of what was produced to you, what you were told was Mr. Oram's computer from July of 2016 to July of 2018 in which you have testified that you don't even believe to be his computer from July of 2019, is it possible that there is another hard drive or other source out there that could have the information from July of 2016 to July of 2018?

MR. BRUETSCH: Calls for speculation, your Honor, objection.

MR. MCKENNEY: He's done an expert, he's -- he's been qualified as an expert to offer opinion testimony in the area of computer forensics. This is a proper question for an expert to opine on. I'm asking for his opinion.

MR. BRUETSCH: But he has to have a basis for that opinion. There's been no basis introduced for some opinion that there's some mysterious other computer out there.

MR. MCKENNEY: The basis is, and I can -- I can walk them through it. Let me -- let me establish more of a basis. **BY MR. MCKENNEY: [Question]:** You inspected what was represented to you to be Mr. Oram's computer, correct?

[Answer]. Yes.

[Question]: And you went and looked and saw that computer had been restaged in May of 2019?

[Answer]. Yes.

[Question]: Is there anything, given what you saw on the computer and given the fact that it was restaged, is there anything that lead you to believe that there was some other source of data for putting information on that computer?

[Answer]. Yes, there --

MR. BRUETSCH: I -- just one moment if you would? When we're talking about some other computer, maybe if we had a time frame I could accept this a little better, are we talking about something after June 21st of 2019, or before?

MR. MCKENNEY: I think --

MR. BRUETSCH: That makes a difference.

MR. MCKENNEY: I'll --**BY MR. MCKENNEY: [Question]:** Is it from -- is there another computer from before June of 2019 that would have been a source for data that was put onto this computer?

MR. BRUETSCH: And I maintain the objection because there's no basis for this.

MR. MCKENNEY: Given -- sorry.

THE COURT: Overruled. Go ahead and answer the question. *10-24-19 Evidentiary Hearing, p 63-69, ln 23-7*

BY MR. BRUETSCH: [Question]: Good afternoon, **Mr. Matthews.**

[Answer]. Counselor, good afternoon.

[Question]: So, as I understand it, you kind of viewed your assignment as it had been set out in the protective order to see if you could locate drafts, derivative documents and/or the final version of a lease renewal document for the Simply Self Storage location as set out in Patrick Depa's deposition, is that right?

MR. MCKENNEY: I'll object, it wasn't his deposition, it was the affidavit.

MR. BRUETSCH: Oh, I stand corrected, yes.

THE WITNESS: I believe page 1 of my expert report specifically states what my objective was, which says, after the inspection --

BY MR. BRUETSCH: [Question]: Mr. -- I'm sorry, Sir, I don't want you testifying from the report. Was that your objective or not? If you need it to refresh your recollection, that's fine, just tell me.

[Answer]. I need to refresh my recollection.

[Question]: Okay --

THE COURT: Then look at your report --

BY MR. BRUETSCH: [Question]: -- from your report?

THE COURT: -- but don't testify from it, Sir. *10-24-19 Evidentiary Hearing, p 71-72, ln 21-21*

RE-TRIAL, Pt. 1

BY MR. MANZELLA [Question]: Do you recall if during the negotiations of the lease that lender approval was required by your company's lender --

MR. MCKENNEY: Your Honor, I'm gonna object to what happened during the negotiation of the lease. There's a final, binding lease that's signed between the parties and the parol evidence rule says when there's a final, binding lease between the parties, that controls, not what they negotiated or may have gone back and forth on.

MR. MANZELLA: Judge, I would indicate that it did end up in the lease. I would agree with that provision. I'm giving the background through this witness of how they got to where they got, the final product.

THE COURT: All right. You're giving him the background for what reason?

MR. MANZELLA: Having him give the background of the negotiations between these parties.

THE COURT: But whatever the lease says, the lease says. That's the binding contract, so I'm going to sustain the objection. Let's move on. *Re-Trial Pt. 1, p 126, ln 7-25*

MR. MANZELLA: Can you -- James -- pull up volume one from that day? April 19th of '18, lines 9 through 11.

UNIDENTIFIED SPEAKER: What page?

MR. MCKENNEY: I'm gonna object to -- (undecipherable)-- publishing this to the jury. If he wants to refresh his recollection with it, that's fine. It shouldn't be anything that's published to the jury. It's not an exhibit that's admitted.

THE COURT: If you want him to -- if you want to refresh his recollection, then just show him what it is that --(undecipherable)-- to see if that refreshes his recollection. *Re-Trial Pt. 1, p 131-132, ln 21-8*

[Question]: At that time, you were asked on behalf of your company to admit and then (ph) International Outdoor sent your company a letter dated December 20, 2013 exercising its first option to renew the lease --

MR. MCKENNEY: I'm gonna object, your Honor. This request for admission was neither admitted nor denied. So it's not an admission. It's not -- the evidence -- the exhibit itself hasn't been admitted. He can't ask him about the substance of an exhibit that hasn't been admitted yet --(undecipherable)-- which we have an objection.

THE COURT: That's correct. This exhibit hasn't been admitted. So you can ask him if he recalls having received a letter. *Re-Trial Pt. 1, p 149, ln 6-18*

[Question]: Okay. And you couldn't, at the time, admit or deny whether your company received the December 20, 2013 letter, correct?

[Answer]. I couldn't admit or deny?

[Question]: Right.

[Answer]. Is that what you said?

[Question]: Yes. That's what you signed your name to.

[Answer]. Well, if I signed that, yes.

[Question]: Take a look at it.

[Answer]. Where does it say that, by the way? Can you help me out?

[Question]: Sure, page 2.

[Answer]. Yep.

MR. MCKENNEY: I wanna object, your Honor. Again, this -- this exhibit is not in evidence yet. I mean you can't ask him about the substance of an exhibit that hasn't been admitted.

THE COURT: All right. As I said, you can ask him independently if he remembers receiving a letter from International Outdoor on that particular date. *Re-Trial Pt. 1, p 150-151, ln 10-2*

[Question]: And had Mr. Oram acted on his lease and applied for an MDOT permit, you would have found out about it right away from MDOT, correct?

[Answer]. We would have.

[Question]: They would have told you, you couldn't put up a billboard there, correct?

[Answer]. Yeah --

MR. MANZELLA: Objection, calls for speculation.

THE WITNESS: That letter would have been a denial letter.

MR. MANZELLA: Objection --

THE COURT: Just a second, sir.

MR. MCKENNEY: I can lay the foundation if you want for it.

THE COURT: Well, yes, otherwise it is speculation.

BY MR. MCKENNEY: [Question]: You -- you are in the process of applying for billboards as part of your job for Lamar, correct?

[Answer]. I am.

[Question]: And you make MDOT applications all the time, correct?

[Answer]. All the time.

[Question]: And there's sometimes they get approved and sometimes they get rejecting (ph), correct?

[Answer]. Very rarely they get object -- denied.

[Question]: One of the reasons they can be rejected, however, is because there's another billboard too close, correct?

[Answer]. Yes.

[Question]: All right.

MR. MCKENNEY: That's the foundation, your Honor. I ask that the objection be overruled.

THE COURT: Overruled, go ahead. *Re-Trial, p 186-187, ln 10-17*

[Question]: Did you know about donations that Outfront and Adams had made to certain --

MR. MCKENNEY: I'm gonna object, your Honor, as to relevance. I don't think there's any indication there's anything Lamar did regarding these donations. I'm not certain how it's relevant to the claims -- (undecipherable)-- Lamar and International Outdoor.

THE COURT: What's the -- what's the relevancy of what some other entity -- other than the parties in this case did?

MR. MANZELLA: Certainly. I was leading up to Proposed Exhibit 35, which is the -- and it was also referenced by Mr. Shopshear that there was litigation that was drafted between Lamar and the City of Auburn Hills. Don't put it up yet. Judge, I don't think the -- (undecipherable)-- book for the witness.

MR. BRUETSCH: I think I stole it.

THE COURT: Was -- was this lawsuit actually filed?

MR. MANZELLA: It was not.

MR. MCKENNEY: Yeah, so on 35 I'll do the hearsay and relevant objection.

THE COURT: I'm gonna sustain the objection. Move on.

MR. MANZELLA: Fair enough, Judge. **BY MR. MANZELLA:** **[Question]:** I'm gonna ask a follow-up question. Mr. Zuver, are you aware that Lamar drafted a lawsuit against Auburn Hills?

[Answer]. Yes, I am.

[Question]: Okay. And did you ever read that lawsuit?

[Answer]. Not in its entirety. I did (ph) at that time, but my recollection of the exact content -- I don't remember, that was quite some time ago.

[Question]: Are you familiar, though, with the underlying complaint or the underlying fight between Lamar and Auburn Hills that was contained in that?

MR. MCKENNEY: I'm gonna object as to relevance, your Honor. Again, the lawsuit that was drafted but never filed has nothing to do with claims in this action.

MR. MANZELLA: Well, it leads directly to the PUD, Judge. And Mr. Shopshear even testified to that already.

THE COURT: Well, it appears you're trying to get in the back door what I wouldn't let in through the front door. So I'm gonna sustain the objection. Let's move on. *Re-Trial, p 200-202, ln 15-11*

[Question]: And the copy of the lease was sent to you the next day, correct?

[Answer]. Yeah, I believe so, mm-hmm.

[Question]: After that July 25th meeting, what was your understanding of which lease Simply Self Storage believed controlled the property?

[Answer]. It was my understanding with --

MR. MANZELLA: Objection --

THE WITNESS: -- conversation --

MR. MANZELLA: -- objection --

THE COURT: -- just a second, sir.

MR. MANZELLA: It's gonna call for hearsay. He's asking what Simply Self Storage believed.

MR. MCKENNEY: I'm not asking what they said. What was his understanding of Simply Self Storage's position.

THE WITNESS: They were honoring (ph) our lease.

THE COURT: Thank you. I will allow that question. *Re-Trial Pt.1, p 219-220, ln 18-12*

[Question]: Okay. But you see the letter from Kevin Cannon's new boss, correct?

[Answer]. I don't know, maybe he didn't know about it. I don't know. I can't -- I can't answer -- you're asking me to comment on something until right now I have not -- I'm totally unaware of.

[Question]: Okay.

[Answer]. And I can't do that. I can read it.

[Question]: But you still worked for Lamar until April of 2019, yes?

[Answer]. Yeah, I did, April 1st.

[Question]: Right. April Fools Day, yes. But you were not aware of this letter that was sent to MDOT or the transportation division, state of Michigan, six months before you left -- or retired, correct?

MR. MCKENNEY: Objection, asked and answered. We've covered --(multiple speakers)--

THE COURT: Sustained -- *Re-Trial, p 229-230, ln 17-8*

[Question]: Okay. In the 2015, 2016 time frame, were there other priorities that International Outdoor was working on in the company?

[Answer]. Yes. Public Act 4629, which was passed January 28th of 2014. What it did was it allowed you to --

MR. NEUMAN: Excuse me, your Honor, I'm gonna object. This is non-responsive. He asked him were you working on other projects and now we're gonna get another recitation on the law.

MR. BRUETSCH: He's setting the stage for what they were doing.

THE COURT: All right, look, you -- you asked the question and Mr. Oram, please, listen to the question and --

THE WITNESS: Okay --

THE COURT: -- just answer the question. Thank you.

BY MR. BRUETSCH: [Question]: What else was the company working on at the time, Mr. Oram?

[Answer]. We -- the law that passed in 2014 allowed us to convert static billboards to digital in what they called non-conforming. So the state gave you -- because they control the permits and they also control digital billboards. In 2014, they came out with spacing, which meant that you cannot have a billboard on either side of the road in 1,750 feet.

[Question]: Okay, so --

[Answer]. -- so we were busy converting --

[Question]: -- stop, because he's having a -- he's having a fit over here, so --

THE COURT: Excuse me, excuse me. Let's keep the editorial comments, all right.

MR. BRUETSCH: I apologize.

THE COURT: Thank you.

MR. NEUMAN: I'm not having a fit, I'm objecting because your client is non-responsive to your question.

THE COURT: All right. Counselors, enough. You address the Court, not one another. And I want some civility here. And please, Mr. Oram, just answer the question. Thank you. *Re-Trial Pt. 1, p 248-249, ln 20-18*

Re-Trial, Pt. 2

[Question]: I'd like you to look at -- I think it's Exhibit 54. Is 54 in your book an affidavit, Mr. Oram?

[Answer]. Yes, sir, it is.

[Question]: Okay. This has been admitted. You're aware, Mr. Oram, that Mr. Depa filed an affidavit relating to this matter?

[Answer]. Yes.

[Question]: And have you reviewed that affidavit?

[Answer]. Yes, I have. It's disgusting.

MR. NEUMAN: Your Honor, I object. That is just completely inappropriate.

THE COURT: That will be stricken. Mr. Oram. *Re-Trial Pt. 2, p 57, ln 11-21*

[Question]: And he's flying all the way here from Oregon to tell this jury that he saw you make up that 2013 lease renewal, for what?

MR. BRUETSCH: Judge, Mr. Depa's testimony is not in evidence. He's asking -- he's asking --

MR. NEUMAN: It is in evidence --

MR. BRUETSCH: He's asking this witness to guess, speculate where Mr. Depa's coming from, how is he getting here, how is he gonna testify? I object to all of that.

MR. NEUMAN: Your Honor, they spent 15 minutes walking through Mr. Depa's affidavit, which has already been a stipulated exhibit into evidence. So with all due respect to brother counsel, his testimony is in evidence. This is cross-examination. Mr. Oram knows exactly what's coming and I'm giving him a chance to address it on cross-examination.

THE COURT: Overruled, answer the question, Mr. Oram. *Re-Trial Pt. 2, p 109-110, ln 13-6*

[Question]: So it's cheaper for you -- you save money by having -- by classifying Mr. Depa as an independent contractor and not an employee, correct?

MR. BRUETSCH: Your Honor, I'm just gonna -- objection to relevance. I don't know what this has to do with our case.

MR. LEVASSEUR: His credibility is at issue in this case, your Honor. And if he's committing tax fraud, I think that's relevant.

MR. BRUETSCH: Are we gonna have a trial on tax fraud now? I hope not. I don't think this is relevant. You know, Mr. Depa can explain --

MR. LEVASSEUR: I won't go on very long, your Honor.

THE COURT: All right, I'll allow it... *Re-Trial Pt. 2, p 178, ln 4-18*

BY MR. BRUETSCH: [Question]: I'm gonna hand you some documents to try to refresh your recollection on the handwritten checks.

MR. NEUMAN: Your Honor, may I be provided a copy of what --

MR. BRUETSCH: I'll let you -- I'll let you look at it.

MR. NEUMAN: I'm gonna object. This is a purported summary. We aren't being provided the underlying records to support the summary. I don't know who created this summary. This is being provided to me, you know, in real time. We're in the middle of a trial. I think this is completely improper.

MR. BRUETSCH: Your Honor, we're refreshing the witness's recollection. We're not introducing anything. You can refresh recollection with anything. Mr. Neuman subpoenaed our bank statements, could have subpoenaed whatever he wanted and had these documents. They came -- most of them came from him. He's made an assertion that there's no handwritten checks in the history of the company. I'm gonna refresh Mr. Oram's recollection on that subject and ask him for some --

THE COURT: What are you -- okay -- you're refreshing his recollection as to whether or not there were other handwritten checks?

MR. BRUETSCH: I asked Mr. Oram, can you tell me any of the check numbers or dates that the handwritten checks were -- were written on and he said he could not remember them. And so that's all I'm giving him these documents to do.

MR. NEUMAN: This -- this summary doesn't show anybody that it's a handwritten check other than somebody wrote handwritten check --(multiple speakers)--

MR. BRUETSCH: And I'm also gonna give him copies of the checks.

THE COURT: Well then give him that as opposed to this -- okay. *Re-Trial Pt. 2, p 206-208, ln 23-9*

MR. MANZELLA: Your Honor, I ask that portions of Exhibit -- Proposed Exhibit 16 -- specifically Bate stamp 747 and 748 be admitted.

(At 4:04:24 p.m., portions of Exhibit 16 are offered)

MR. MCKENNEY: I object, your Honor, they're hearsay. They're written by his client, so it's not an admission. They're out of court statements offered for the truth of the matter asserted. I don't think we've ever come close to establishing any exception in the hearsay rule for these documents.

MR. MANZELLA: It's not being offered for the truth of the matter asserted, your Honor, it's just being offered to prove once again that SS MITX was sent documents and they didn't save them.

MR. MCKENNEY: That's in the record in the testimony. He said that's not in their legal drive. The document is then repetitive evidence. And it's not an exception to the hearsay rule if you're going to put the document in to say yes, you've got this document that says what it says.

MR. MANZELLA: Again, it's not being offered for the truth of the matter asserted. The jury can certainly be given a limited instruction -- limiting instruction -- as to those two pages.

THE COURT: Again, I'm sorry, which two pages are you asking for?

MR. MANZELLA: Part of 16, the last two pages of Proposed 16. They're Bate stamped 747 and 748.

MR. MCKENNEY: I'll note for the record too, your Honor, there are a number of allegations in here against Simply Self Storage and I think Lamar that -- you can't just give it to the jury and just say, "Oh, just pay attention to the fact that this document wasn't on their legal drive". That's been in the testimony.

MR. MANZELLA: It shows a pattern -- it'll certainly show a pattern, Judge.

MR. MCKENNEY: That's 403(b), it doesn't address hearsay.

THE COURT: All right. I'm gonna sustain the objection. The document, Bates number 747 and 748 will not be admitted. Let's move on. Thank you. *Re-Trial Pt. 2, p 258-260, ln 15-6*

Re-Trial Pt. 3

MR. MANZELLA: Your Honor, I'd ask that Proposed Exhibit 1 be admitted. It's a statement -- a pleading, actually by Mr. Schmutzler's company under I believe 103. You can take judicial notice of it. They are their statements. It's an admission by a party opponent as well.

(At 8:43:22 a.m., Proposed Exhibit 1 is offered)

MR. MCKENNEY: Objection, your Honor. It's hearsay. In Larion versus Detroit, which is 149 Mich App 402, the Court of Appeals had simply said the complaints are hearsay. They are not admissions. Complaints of course contain allegations, they can contain inconsistent statements, inconsistent legal theories. They aren't admissions. So this is a hearsay document. Again, Larion versus The City of Detroit. I can read the quote from the case if you'd like and I've got a copy of the case if your Honor would like.

THE COURT: If I may, yes.

MR. MCKENNEY: And I have a copy for counsel as well.

MR. MANZELLA: Thanks.

THE COURT: The Court will not admit the document. Thank you. *Re-Trial Pt.3, p 9-10, ln 15-13*

MR. MANZELLA: Judge, I'd ask for the admission of Proposed Exhibit 36.

(At 8:58:50 a.m., Proposed Exhibit 36 is offered)

MR. MCKENNEY: Judge, we'll object on the issue of relevance. I'm not certain how this document relates to any of the issues in this case. I don't -- I don't see the relevance.

MR. MANZELLA: Your Honor, it's certainly relevant. In opening statements, Mr. LeVasseur indicated that SS MITX has no skin in the game -- I'm paraphrasing of course -- and that, you know, they don't even own the property anymore. There's no -- no reason for them to even really be here. But this document, Proposed Exhibit 36, contradicts that certainly in that it lays out the reason that SS MITX is still here. And it's to protect themselves from litigation with Lamar. And that is contained in paragraph G on 243.

MR. LEVASSEUR: Your Honor, I did not say that there is no reason why we are here. We're here because they sued us. We're a defendant, that's why we're here. I didn't say there was no reason for it. And this document relates to a time when there was a claim, because as you know it's since been dismissed voluntarily by my client. And for that reason, it's also irrelevant.

MR. MANZELLA: I would indicate it also goes to witness bias which is also relevant. The witness is biased clearly against International Outdoor and the witness favors Lamar for the reasons contained in this document.

MR. MCKENNEY: I don't -- again, I don't think it goes to any sort of witness bias. If he wants to ask him questions about the relationship between Lamar and Simply Self Storage, that's fine. But the document itself is simply not relevant --(undecipherable)-- it contains a number of agreements on, you know, matters that are completely not germane to the issues in this case. And it's pretty -- it's a lengthy agreement. I just don't know how it's relevant to any -- you know, whether or not the lease was renewed in 2013 or not.

MR. MANZELLA: Judge, it's only five pages, as far as it being a lengthy agreement. And the last page is all signatures. So it's not that lengthy. Certainly clarifies the relationship between the parties. And it goes to this witness's bias.

THE COURT: Well, you can question him about the relationship between the parties without the document. They certainly can't dispute that this document exists so you can question him all you want --(undecipherable)-- the bias.

MR. MANZELLA: Certainly, but if it's admitted as an exhibit the jury can see it, they can read it for themselves. I don't see any reason why it should not be admitted since it's signed by Mr. Schmutzler who's on the stand. It's clearly not hearsay. And it's also signed by Mr. Rickert who's going to testify later.

THE COURT: And they can basically testify as to what they did and why they did it.

MR. MANZELLA: Okay, very good.

THE COURT: Thank you.

MR. MANZELLA: So admission is --

THE COURT: I'm denying the admission, yes. *Re-Trial Pt. 3, p 18-2, ln 3-13*

[Question]: Okay. And you didn't look at every computer at International Outdoor like you said in your affidavit, right?

MR. MCKENNEY: You know, your Honor, at some point I need to object because we have asked this question over and over and over again. And I think at this point the strategy appears to be just asking him until you get an answer you like. I think it's cumulative evidence and it's

barred (ph) by MRE 403.

MR. BRUETSCH: I certainly haven't asked him that question before. And Mr. Depa's testimony is replete with contradictions and changing testimony. As they've said, this is a credibility contest between Mr. Oram and Mr. Depa. I think I'm allowed to go through a sworn statement and point out where it's wrong or untrue.

THE COURT: But not 50,000,000 times, okay? *Re-Trial Pt. 3, p 167, ln 4-19*
