

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NOLEN SCOTT ELY, <i>et al.</i> ,)	CASE NO. 3:09-cv-02284-JEJ
)	
Plaintiffs,)	(Magistrate Judge Martin C. Carlson)
v.)	
)	
CABOT OIL & GAS CORP.,)	
)	
Defendant.)	

**PLAINTIFFS’ COMMENT ON ATTRIBUTIONS CITED IN
DEFENDANT’S OPPOSITION (DOC. 587)**

On April 6, 2015, Parties filed Objections/Opposition to competing proposed amended case management orders. Plaintiffs argue, in part, that a failure to permit Plaintiffs to depose Defendant’s experts would prejudice Plaintiffs’ case. (Doc. 586) Defendant on that topic in telephone conference on March 16, 2015 stated “that ship had sailed” based on prior counsel’s waiver, and in papers, “no good cause demonstrated [to modify a prior case management order]”. (Doc. 587) Jeremy Mercer, Esq. for Defendant took the step of including certain statements in Doc. 587, which Plaintiffs’ counsel is obliged to address.

At page 5, paragraph 2, Mr. Mercer states:

*The sole basis proffered by Atty. Lewis for her request to this Court for leave to conduct depositions of defense experts is that she disagrees with the decision made by Atty. Stretton, prior counsel of record.*5

At Footnote 5 on the same page Mr. Mercer adds:

Atty. Lewis made this representation to the undersigned during a telephone conference on March 16, 2015, during which counsel was attempting to reach agreement on matters prior to the March 24, 2015, telephone conference with the Court. By signing this pleading, the undersigned verifies under penalty of perjury under the laws of the United States of America that the foregoing statement is true and connect. See 28 U.S.C. Section 1746(1). Moreover, if necessary, Atty. Barrette, who also was on the March 16, 2015, telephone conference with Atty. Lewis can submit a verification of such representation by Atty. Lewis.

Mr. Mercer selectively distills Plaintiffs' side of the conversation, apparently to provide himself the essential words upon which to hinge Defendant's entire argument in favor of barring Plaintiffs' access to the sworn pre-trial testimony of Defendant's experts. (Doc. 587, pp. 2-7)

The fact is there were few words exchanged between Mr. Mercer and Plaintiff's counsel on March 16, 2015, or during a second scheduling call on March 18, 2015, and none between Mrs. Amy Barrette, Esq. and Plaintiff's counsel, during either call, other than Plaintiffs' counsel's greetings to Mrs. Barrette.

Plaintiff's counsel's words for both calls were carefully chosen, in fact jotted down in advance. Plaintiff's counsel did not say: "I disagree with the decision made by Atty. Stretton". Plaintiffs' counsel did not say: "I am basing my intention to depose Defendant's experts on the fact that I disagree

with the decision of Mr. Stretton". The gist of what Plaintiffs' counsel did say is: that she could not speak for Mr. Stretton; that Mr. Stretton's decision may have been influenced by his interest in avoiding adjournment of a set trial date, due to his busy calendar and limited availability; and that it would be detrimental to her trial preparation and prejudicial to the Plaintiffs, if she did not depose Defendant's experts.

Plaintiffs' counsel would be extremely surprised if Mr. Mercer or Mrs. Barrette would swear that none of that commentary occurred.

The reason Plaintiffs risk addressing this point, which might otherwise seem trivial, is that this small incident reinforces the necessity for and benefits of oversight when it comes to the all-important examination of Plaintiffs' *three essential experts*. It is a matter of record that, in this case, certain prior depositions have been battle zones, with motions for sanctions and reimbursement of costs a repeated refrain. Plaintiffs cannot afford this.

When parties, as now, potentially cannot agree on what actually took place during a five or ten minute phone conversation, or two, and one side is willing to mold a part of that conversation in such a way as to bootstrap its legal argument, I suggest that the possibilities for confusion, undue brinkmanship, claims of abuse, wastefulness, and further delays associated with these critical depositions, absent direct physical access to the Court or

his Officer for hearing and resolution of issues as they arise, are not remote, but, realistically, inevitable.

Therefore, Plaintiffs respectfully request the Court's consideration of this Comment, together with Plaintiffs' Objections, in crafting his Order addressing this issue.

Date: April 8, 2015

Respectfully submitted,

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