

Exhibit A

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF KANSAS
3
4 MICHAEL D. VAN DEELEN,
5 Plaintiff,
6 vs. Case No. 05-4039-SAC
7 MARION JOHNSON and STEVEN MILES
8 and DALE FLORY and KENNETH FANGOHR
9 and KEN MCGOVERN and THE BOARD OF
10 COUNTY COMMISSIONERS OF THE
11 COUNTY OF DOUGLAS, KANSAS,
12 Defendants.
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16
17 PARTIAL PROCEEDINGS FROM VIDEOTAPED
18 DEPOSITION OF MICHAEL D. VAN DEELEN, the
19 Plaintiff, taken on behalf of the Defendants
20 before Linda M. Wilson, CSR, CCR, pursuant to
21 Notice on the 8th day of July, 2005, at the law
22 offices of Fisher, Patterson, Sayler & Smith, LLP,
23 51 Corporate Woods, Suite 300, 9393 West 110th
24 Street, Overland Park, Kansas.
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APPEARANCES

The Plaintiff appeared pro se.

Appearing for the Defendants was Mr.

Michael K. Seck of Fisher, Patterson, Sayler &
Smith, LLP, 51 Corporate Woods, Suite 300, 9393
West 110th Street, Overland Park, Kansas 66210.

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WITNESS: PAGE:

MICHAEL D. VAN DEELEN

Examination by Mr. Seck

EXHIBITS: MARKED: IDENTIFIED:

Exhibit No. 1

Exhibit No. 2

1 (REPORTER'S NOTE: The text below is not
2 intended to be a complete transcript of the
3 deposition of July 8th, 2005. It reflects
4 testimony midway through the deposition.)

5

6

7 Q. In paragraph 11 of your petition you
8 complain that your right of privacy was invaded.

9 A. Yes.

10 Q. Because you were forced to reveal
11 confidential tax, financial and other personal
12 information to defendant Flory. Tell me what
13 personal information was revealed to Mr. Flory
14 during this meeting.

15 A. Mr. Seck, I object to this question. As
16 you well know you can't discover legal theories,
17 and you are attempting to obtain discovery on a
18 legal theory, and I respectfully will not answer
19 that question. It will come out during the
20 hearing, and if a jury ever sees this, they will
21 find out during a hearing what my legal theories
22 are.

23 And if you would like me to quote you the
24 statute that you may not discover legal theories
25 or inquire about them, I would be happy to do

1 that, Mr. Seck, but I think you probably already
2 know it.

3 Q. I am not asking for your theory, I am
4 asking for the facts that Mr. Flory learned about
5 your personal information during this informal
6 hearing.

7 A. I think you are trying to inquire about a
8 legal theory, and my petition states in paragraph
9 11, My right to privacy was invaded by defendants
10 when he, being me, was forced to reveal
11 confidential tax, financial and other personal
12 information to defendant Flory who was not
13 authorized by law to obtain said information. And
14 I think that speaks for itself, Mr. Seck.

15 Q. I am trying to find out what personal
16 information you gave to Mr. Flory during this
17 hearing that you believe he was not entitled to.

18 A. Again, I object because you are
19 attempting to further inquire about legal
20 theories, and paragraph 11 speaks for itself. So
21 we're going to -- Mr. Seck, if you continue, I am
22 going to ask to adjourn this and ask for a
23 protective order so that you may not inquire about
24 my legal theories and we can resume some other
25 time. We're not going to get into my legal

1 theories, Mr. Seck. Paragraph 11 speaks for
2 itself. It says, Confidential tax, financial and
3 other personal information, so that speaks for
4 itself and that's all we are going to talk about
5 that today.

6 Q. What confidential tax information was Mr.
7 Flory given or heard about in this hearing that he
8 was not entitled to?

9 A. I would like to adjourn this deposition
10 so that we can -- so that I can ask for a
11 protective order from the Court.

12 Q. Are you refusing to answer the question?

13 A. I am asking to adjourn this deposition so
14 that I can ask for a protective order from the
15 Court.

16 Q. I tell you what, let's get the Court on
17 the phone then.

18 A. Okay, let's do that.

19 VIDEOGRAPHER: Time is now 10:13,
20 we're going off the record.

21 (Whereupon, a phone call was placed
22 to The Honorable K. Gary Sebelius.)

23 MR. SECK: Judge, this is Mike Seck
24 and Mr. Van Deelen. We are in Mr. Van Deelen's
25 deposition in Case No. 05-4039, and I have been

1 asking Mr. Van Deelen questions about allegations
2 in his petition. He has asked that we stop so
3 that he can request a protective order from the
4 Court, and what I would like to do is to put on
5 the record so that you can rule on this the
6 questions that we were asking him, and then let
7 Mr. Van Deelen tell you why he doesn't feel like
8 he should answer them.

9 THE COURT: Well, I think we can do
10 that. We don't have a court reporter here, but I
11 think --

12 MR. SECK: I have one here that is
13 taking this down.

14 THE COURT: All right, that would
15 be the best way to do that.

16 MR. SECK: Judge, the paragraph
17 that we are referring to in the petition is
18 paragraph 11 and it reads, During the tax appeal
19 hearing in Defendant Mile's work area, plaintiff's
20 right to privacy was invaded by the defendants
21 when he was forced to reveal confidential tax,
22 financial and other personal information to
23 defendant Flory who was not authorized by law to
24 obtain said information.

25 I have asked Mr. Van Deelen to tell me

1 the facts or the personal information that was
2 revealed to Mr. Flory. Mr. Van Deelen has
3 declined to answer the question on the grounds
4 that it is an attempt to find out his legal theory
5 of the case. We simply want him to tell us what
6 factual information he is claiming was revealed to
7 the defendant that violated his right of privacy.

8 THE COURT: All right, Mr.
9 Van Deelen, how are the defendants supposed to
10 explore this if you don't tell him what it was?

11 MR. VAN DEELEN: Your Honor, Mr.
12 Seck is misstating the conversation that took
13 place between us during this hearing. He couched
14 his questions to me in the light of attempting to
15 determine facts which were in paragraph 11 of the
16 petition, and paragraph 11 of the petition states
17 that my right of privacy was invaded. And he may
18 not inquire as to my legal theories.

19 THE COURT: Why not?

20 MR. VAN DEELEN: I believe that is
21 -- and pardon me, Judge, I am going to look it up
22 and I will quote it to you. Says the Court Rule
23 26 and there is letters and numbers everywhere,
24 but it's at the very end of Rule 26(b)3 I believe
25 it is. "The Court shall protect against

1 disclosure of the mental impressions, conclusions,
2 opinions or legal theories of an attorney or other
3 representative of a party concerning the
4 litigation." So that's what I am relying on here,
5 Your Honor.

6 THE COURT: It was my
7 understanding, correct me if I am wrong, Mr. Seck
8 asked you what was the nature of the confidential
9 tax, financial, other personal information that
10 you were forced to disclose. Am I not correct in
11 that being the substance of the question that you
12 refuse to answer?

13 MR. VAN DEELEN: That was one of
14 the questions, yes.

15 THE COURT: How are we supposed to
16 proceed if we don't know what it was that you
17 claim to have been confidential that resulted in
18 defendant Flory violating your right to privacy?

19 MR. VAN DEELEN: I can't answer
20 that question, Judge, without discussing my legal
21 theory of what my rights of privacy entails.

22 THE COURT: This is going to be
23 very simple for me. You will be required to
24 reveal the confidential tax, financial and other
25 personal information that you disclosed to

1 defendant Flory. You will not be required to
2 disclose your theory, but you will be required to
3 indicate to the defendants what it was that you
4 revealed to defendant Flory that you believe to be
5 confidential tax, financial or other personal
6 information.

7 MR. VAN DEELEN: Your Honor --

8 THE COURT: I don't think that's
9 even close to the line.

10 MR. VAN DEELEN: Your Honor, I
11 would respectfully ask that I have a chance to
12 brief this before Judge Crow.

13 THE COURT: Well --

14 MR. VAN DEELEN: Rather than having
15 an impromptu hearing before yourself, and I
16 respect your decision, Judge, but I also, as you
17 know, I have the right to ask Judge Crow -- to
18 appeal your instant decision to Judge Crow. And
19 if Mr. Seck and I can't agree on what is going to
20 happen in the rest of this deposition, I would
21 respectfully ask for the opportunity to appeal
22 your order today, assuming it was an order, and it
23 sounded like it was, to Judge Crow.

24 We can adjourn this deposition if Mr.
25 Seck and I can't agree. I will attempt to confer

1 with Mr. Seck so that we don't waste everybody's
2 time and effort and adjourn the deposition, but if
3 we can't do that, rather than disobey your order,
4 which I do not intend to do, Your Honor, I would
5 like to exercise my right to have that order --

6 THE COURT: Is that the only issue
7 for which you all are calling me, the question of
8 whether or not the plaintiff needs to disclose the
9 information that is claimed to have been
10 confidential as it relates to paragraph 11?

11 MR. SECK: Yes, that is because the
12 reason we called you is Mr. Van Deelen said that
13 he wanted to seek a protective order from the
14 Court or adjourn the deposition. So I wanted to
15 give him the opportunity to make his pitch to the
16 Court.

17 THE COURT: The protective order,
18 as I understood it, was that he not be required to
19 reveal at all.

20 MR. SECK: That's correct.

21 THE COURT: As opposed to being
22 permitted to protect the answer from further
23 disclosure beyond the litigation in the lawsuit.

24 MR. SECK: That's correct.

25 THE COURT: Here's what I think you

1 need to do. I am certainly going to give Mr.
2 Van Deelen the opportunity to appeal this order.
3 I would like for the court reporter to first of
4 all provide us with the precise question that was
5 asked or series of questions that you believe, Mr.
6 Seck, went to this allegation contained in
7 paragraph 11 so that Judge Crow would have the
8 ability to rule upon it or re-evaluate my
9 decision. I also would like the court reporter,
10 who I assume is taking down all of our statements
11 here, to provide the Court with that portion that
12 related to your telephone conversation with me.

13 MR. SECK: Will do.

14 THE COURT: If we think it needs
15 further edification by way of a more formal order,
16 we will get that out as soon as we receive it.
17 When do you think you could provide to me the
18 court reporter's record of the questions that were
19 objected to and our discussion here on the record?

20 MR. SECK: She indicates that we
21 can get it to you any time after the deposition is
22 concluded.

23 THE COURT: By concluded, I mean
24 sometime today?

25 MR. SECK: Yes, sir.

1 THE COURT: Now, I don't know
2 whether or not you all choose to adjourn the
3 deposition or just simply preserve that issue for
4 Mr. Van Deelen's ability to appeal the Court's
5 decision here. I will leave that to you all.

6 MR. VAN DEELEN: Judge, I prefer to
7 continue the deposition.

8 MR. SECK: Judge, I think we intend
9 to continue. The only reason we did stop when we
10 did was because Mr. Van Deelen I think indicated
11 that he wanted a protective order.

12 THE COURT: Well, that's fine, but
13 as I understand, Mr. Van Deelen, the protective
14 order you seek is one that would not require you
15 to disclose under any circumstances the
16 confidential tax, financial or other personal
17 information that you were forced to reveal to
18 defendant Flory; is that correct?

19 MR. VAN DEELEN: No, sir. My
20 protective order is to prohibit the defense from
21 inquiring into my legal theories, and my
22 contention is that to answer the question that was
23 posed by Mr. Seck would be tantamount to
24 responding to an inquiry about my legal theories,
25 so, no, Mr. Seck --

1 THE COURT: In other words, you
2 don't believe that you should be forced to reveal
3 the confidential tax, financial or other personal
4 information that you were required to reveal to
5 the defendant Flory?

6 MR. VAN DEELEN: At this point
7 doing so would be the same as revealing that my
8 right of privacy -- or how my right of privacy was
9 invaded.

10 THE COURT: I am just asking you to
11 tell Mr. Seck what the confidential tax, financial
12 and personal information was that you believe you
13 were forced to provide to defendant Flory. We can
14 enter an order indicating that that information
15 may be used solely for the purposes of this
16 litigation. But as I understand it, you don't
17 want to even do that because it is your belief
18 that in doing so you will have disclosed your
19 theory as to how that violated your right to
20 privacy.

21 MR. VAN DEELEN: Yes. Judge, I am
22 not trying to get into a shoving match with Mr.
23 Seck in your Chambers. I certainly wouldn't do
24 that.

25 THE COURT: I haven't perceived

1 that either of the parties are in a shouting
2 match.

3 MR. VAN DEELEN: Or I said shoving
4 match, but shouting is okay, too.

5 THE COURT: Shoving match. I can't
6 see through the telephone what physically is going
7 on, if you are all trying to politely disagree as
8 to what Mr. Seck is entitled to inquire about.
9 And I have indicated I believe he is entitled to
10 learn what the confidential tax, financial and
11 other personal information that you claim was
12 forced to be revealed to defendant Flory in
13 paragraph 11 of your complaint. And we're going
14 to allow you an appropriate period of time to seek
15 review of my decision regarding that so that it
16 can be appealed to the trial judge, Judge Crow.
17 And you all will go around that and talk about
18 other issues related to the lawsuit is my
19 understanding.

20 MR. VAN DEELEN: Right, and I would
21 just say, Judge, the problem that I am having is I
22 was in a tax appeal hearing on property taxes.
23 Mr. Seck initially couched his verbiage to me to
24 make me -- that caused me to believe he was trying
25 to inquire about my legal theories. He then said,

1 no, I am just trying to discover what confidential
2 tax information was disclosed to Mr. Flory.

3 Judge, we were in a tax appeal hearing, so it's --

4 THE COURT: There surely must have
5 been something placed on the record there.

6 MR. VAN DEELEN: Well, it was
7 property tax information which Mr. Seck well
8 knows, Your Honor, so to sit here and split hairs
9 over the property tax -- the information given to
10 Mr. Flory that was confidential tax information
11 when he was sitting in and which I have already
12 testified to and acknowledged, it was a property
13 tax appeal hearing. Well, the information that --

14 THE COURT: I don't understand why
15 you can't give it to him if it's already a matter
16 of public record.

17 MR. VAN DEELEN: I completely agree
18 with that, Judge, but the whole point is it was so
19 blatantly obvious that that's information he was
20 given and Mr. Seck already knows that.

21 THE COURT: Well, he is trying to
22 establish a record in this case. Whether he is
23 right or he is wrong, I think he is entitled to
24 require you and that's been my ruling, to divulge
25 what that confidential tax, financial or other

1 personal information was that you believe by
2 virtue of your being forced to divulge it
3 constituted a violation of your right to privacy.
4 So we will ask the court reporter to immediately
5 send to us -- can this be done electronically by
6 e-mail?

7 MR. SECK: Yes, sir.

8 MR. VAN DEELEN: I can't receive
9 anything by e-mail.

10 THE COURT: Let's do that. Make
11 sure that Mr. Van Deelen also has a copy of that
12 transcript. You will have to sort out how to pay
13 for it, but I want him to have the ability if he
14 chooses to pursue this. That protective order I
15 understand that he seeks to have imposed in this
16 case is one that would protect him from having to
17 divulge at all any of the information sought by
18 the question. Certify the question as well as our
19 little telephone hearing here and that will be my
20 order, but I think, Mr. Van Deelen, so it's clear
21 to you, until we actually enter at least a minute
22 order reflecting this, your time for appealing
23 that decision will not start to run.

24 MR. VAN DEELEN: Thank you, Judge.

25 THE COURT: If we get it done

1 today, it will start to run today for your
2 purposes of seeking review by Judge Crow. If we
3 don't get it done until next Monday, it will start
4 from then.

5 MR. VAN DEELEN: Your Honor, I am
6 not privy -- I wish I was, but I am not privy to
7 the e-mail system and there is no way I can get
8 anything.

9 THE COURT: We will mail you -- are
10 you not a Kansas resident?

11 MR. VAN DEELEN: Yes, I am.

12 THE COURT: So you will be given,
13 as I recall, three days by mail to be added onto
14 the time for seeking review of my decision.

15 MR. VAN DEELEN: Okay, that's fair.

16 THE COURT: Okay?

17 MR. VAN DEELEN: Thank you, Judge.

18 MR. SECK: Thank you, Judge.

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