

Exhibit 10: 2016 12 07 SW email re T13 letter just sent

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Wednesday, December 07, 2016 3:45 PM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'; 'Mallory Biblo'  
**Subject:** Thirsty 13th Newsletter  
**Attachments:** Thirsty 13th Newsletter 2016 12.pdf

Kent and Stephen,

Attached is my latest Thirsty 13<sup>th</sup> newsletter which I just sent out, so you can see what I have been up to.

Pages 9-10 describe my main efforts, and page 10 lists the 50 members for whom I recently found their relatives. This takes a huge amount of time, and I give the book to them for free when I find them, so is a little crazy, but my current value-added in the world.

On the bottom of page 10 please read the note starting with "Pilot Hay," which includes a photo of Billie.

Page 11 shows a gold statuette I was recently awarded (but had to buy for about \$300) recognizing the newsletter quality.

Next it is on to the lawsuit items.

Seth

# December 2016 Newsletter

December 7, 2016



Dear Thirsty 13<sup>th</sup> members, relatives, and friends,

Today is the 75<sup>th</sup> Anniversary of the attack on Pearl Harbor, and of the U.S. entry into World War II. Our relatives were drafted, trained, and sent across the oceans to fight back. Let us again remember and be thankful for their sacrifices, which brought freedom all over the world.

This letter shares items received since the last letter August 26, 2016. Thank you to the relatives of Harmon, James, Hamasian, Claydon, Willman, and Hay for sharing their wonderful items. I moved general information to the bottom of this page and eliminated the conclusions page. Sadly, in September we lost three pilots, who contributed greatly to the squadron.

Thank you for your interest in “The Thirsty 13<sup>th</sup>.”

Seth P. Washburne, Squadron Historian

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This is the newsletter for the U.S. Army Air Corps 13<sup>th</sup> Troop Carrier Squadron, 1940-1946, nicknamed “The Thirsty 13<sup>th</sup>.”

This is prepared by Seth P. Washburne, the son of John C. Washburne, a navigator in the squadron. Please direct any comments to him at: (212) 289-1506, sethgw1@gmail.com, or 5200 Meadowcreek Drive, Apt. 2060, Dallas, TX 75248.

Page numbers referred to are in the book “The Thirsty 13<sup>th</sup>” unless otherwise stated.

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To enlarge the PDF to fill the width of your screen, press the CTRL key and “+” at the same time.

Please click the hand symbol to make it easier to scroll down.

### 3. Members and Relatives

#### a. Searching for New Member-Families

In 2015 when I used Ancestry.com for the first time I noticed some men had family tree links appear in their search results, and followed those. This year I realized that, even if the link does not appear, there is a link on the left to family trees. Since realizing this I have wanted to use that link to search again for relatives of the 354 of 678 men for whom I did not have a contact.

From October 4 to November 1, and November 25 to December 5, I spent about 15 hours a day and searched Ancestry again on every one of the 354 men for whom I did not have a contact. This is extremely challenging. There is often more than one person with the same name, so I had to first re-identify which man was ours. There are also different spellings, e.g. Leonard Davis was really Lenard, Malcolm Wilson was really Willson. Ancestry provides different results if one uses an initial for a middle name, e.g. if one searches for Alfred A Calvin, born 1918, there are no family trees, but change the middle initial to Alexander and there are 14 trees. This makes it important to search in a way to first find the middle name, and then search on it. Next is the hard job of finding a relative. Other examples are:

- Neil J. Malloy – He did not appear in Ancestry. Eventually I Googled his last name and 1945 address, “Malloy 926 71<sup>st</sup> Street” and was thrilled to find a Brooklyn Daily Eagle Newspaper from 1949 for a Cornelius J. Malloy at this address, and his son, Jr. getting married, i.e. his name was Cornelius, not Neil. After some work I determined the son was the one in the squadron, and searching without a location, found his dates. The son was born 5/2/1924, and enlisted 1/26/43 at 18. I was able to in turn find his son.
- Florencio L. Medina – I Googled his name, and eventually found a found a Frank L. in Ridgecrest, Calif, and then searching Ancestry for Frank found a Findagrave link with all family listed. Then Googling several family members eventually found his daughter.
- James R Moore – his address was listed as Route 1, “Stanly,” NC. This is a county near Charlotte, and there were Moores living on Route 1, but no James. I checked for a town “Stanly,” and found a tiny town “Stanley” in Gaston County, and he was from here.
- For Petry I was surprised to find on Ancestry the photo at right, which is on the book’s page 539. This provided the names of the other men, and I was able to contact his daughter.



This was also very productive. I found 9 exact birth dates, where I previously had only the years, and in a few cases realized I previously had the wrong man with the same name. I sent 420 messages on Ancestry to relatives of about 240 squadron members (often to more than one relative, and often a follow-up message). For 184 of these members I received no reply from the creator of the family tree, but often the member is a very distant relation, e.g. their great grandmother’s third husband’s fourth cousin once removed, and so they have no contact. I did, however find relatives of more than 50 people, and many people on Ancestry were very helpful.

I joined Newspapers.com, and searched on “13<sup>th</sup> Troop” and found two members I was not aware of, pilot Robert H Rogers, Jr., and G. William Hulland, and found Mr. Hulland’s son.



### Members and Families Found (of 678 total)

Members'	30-Jun	7-Dec	Add	Need
Birth Date	653 96%	651 96%	-2	27
Death Date*	616 94%	619 94%	3	42
Resting Place*	499 76%	515 78%	16	146
FindaGrave Link*	372 57%	378 57%	6	283
Contact	324 48%	378 56%	54	300
Have Book	308 46%	361 53%	53	317

\* Percent and Need for 2<sup>nd</sup>-4<sup>th</sup> exclude 17 known living

The new totals are shown at right. For birth dates, I realized that for several men I previously identified the wrong person, so took them out, but confirmed others, for a net loss of 2. I found 16 resting places. I contacted relatives of 54 more men, and on October 13 had reached relatives of 50% of the 678 men in the squadron, and am now at 56%; 53% have the book.

The table above notes 54 new contacts since June 30, which is 2 from the August letter, the 50 listed below, and 2 I don't recall. Many are sons and daughters, but also nieces, grand-nephews, etc.

Babcock, R.E.	Ferguson, M.B.	Hogan, C.F.	Muehr, L.	Strode, E.C.
Bland, J.H.	Foss, W.	Hopkins, J.P.	O'Connor, W.J.	Tauschman, J.A.
Bond, W.B.	Goldberger, E.I.	Haupt, F.R.	Petry, B.E.	Thomas, C.P.
Burgess, A.E.	Goudy, G.	Hulland, G.W.	Pyke, D.L.	Thompson, A.L.
Calvin, A.A.	Hale, C.R.	James, C.R.	Reberry, P.L.	Tutella, R.M.
Carey, P.E.	Hamasian, M.	King, E.S.	Reynolds, G.E.	Wade, W.C.
Claydon, J.	Harper, D.R.	Linden, D.	Schroth, A.K.	Wantz, R.H.
Conn, C.T.	Hay, D.M.	Malloy, C.J, Jr.	Scruggs, J.T.	Wicks, R.
Crooker, R.R.	Heckerson, B.	Medina, F.	Smith, Wm. E.	Willson, M.
Farmer, R.C.	Hocker, R.C.	Mitchell, O.L.	Stout, J.W.	Wilson, H



Every one of these new contacts was special, but a few were particularly satisfying. Carey was one of the longest serving navigators, and a friend of the top officers. Claydon had the story herein on page 7. Farmer, at right, was one of the original 10 staff sergeant pilots, and on page 322 ranked #1 for the most hours in the first six months, making the historic Guadalcanal flights. Ferguson was in many photos. Goldberger was a ground officer who was impossible to find – until I learned he changed his last name. Hay was one of the early pilots. Heckerson flew a mission with my dad. Linden was a mess cook. O'Connor and Reynolds were ground officers. William Smith was “Catfish” who had the C-47 painted to look like a fish. Hal Wilson was the second overseas commanding officer. Again these were relatives, not the members, I found.

Pilot Hay had the photo at right from 1943 – please let me know if you recognize the men; Hay is 3<sup>rd</sup>; the plane is Billie. He married in 1944, had a son, and passed away in 1949. His son wrote: “Wow! I’ve been searching for information about my father’s military service for years. Your email was the answer to so many questions. One of my sons is a Captain in the U.S. Air Force assigned to the 37<sup>th</sup> Bomb Squadron. He’s is pilot / aircraft commander for a B-1B Lancer bomber, and is quite proud of this grandfather, and has also been trying to dig up information about his service.”

On September 16, 4 days after North Korea tested a nuclear bomb, the U.S. sent two B-1Bs from Guam to fly over Seoul, one commanded by ...Hay’s grandson, offspring of the Thirsty 13<sup>th</sup>.



Of the 300 members for whom I have not yet contacted their relatives, roughly 120 have no family trees on Ancestry or anything to go on, and for the other 180 I contacted someone on Ancestry, or elsewhere, and will hope to hear from them someday, and renew this effort later.

As shown in the prior table, relatives of 53 members learned about and received the book for the first time. Since the last newsletter I sent out 77 books, almost all complimentary. I have 288 books remaining, now less than the number of member-families who do not have the book, of 317.

As a byproduct of finding relatives of more members, I learn what mementoes are out there. There are photos from Massachusetts to British Columbia to San Diego I hope to scan next year.

### b. MarCom Award

In the last newsletter I mentioned I submitted three of my newsletters to this annual competition. On October 17, 2016, I received an email from MarCom that I should log on to see how I did. The results are below – and each newsletter won Gold.

MarCom receives about 6,000 entries for more than 300 categories, and I entered two of the newsletters in category 264: E-Newsletters, and one in 76: Other Digital Communications. As noted in the last newsletter, submissions get rated by judges, and those with a score of 90-100 receive a Platinum Award, 80-90 Gold, and 70-80 an honorable mention. For 2016 for the 264 E-Newsletter category there were 2 Platinum winners, and 11 Gold winners, and in 76: Other Digital Communications, there were one Platinum winner and 4 Gold winners.

I wish they provided feedback about what could be done better, to win Platinum. For this issue I added my name and contact information at the bottom of the first page. If you think of anything which would improve these newsletters, please let me know.

There was no award ceremony, and so no opportunity to make an Oscar-esque speech. But if there were I would have given all thanks to those of you who shared family treasure photos and other items, those of you who helped me find these relatives, and researchers and others, e.g. all of you in New Caledonia, who have been a big part of this journey back into history. This award is for you.



Based on the evaluation of MarCom Awards judges, your entry(ies) merits the following award(s).

Title of Entry	Category	Award
Thirsty 13th July 2016 Newsletter	264. E-Newsletter	GOLD
Thirsty 13th March 2016 Newsletter	264. E-Newsletter	GOLD
Thirsty 13th November 2015 Newsletter	76. Other -- Military Unit Newsletter	GOLD

Exhibit 11: 2016 12 08 - 9.20 a.m. Seth to Kent

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Thursday, December 08, 2016 9:20 AM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'; 'Mallory Biblo'  
**Subject:** Invoices

Kent,

This is just venting, and I'll settle down in a little bit, so don't worry.

I just reviewed the invoices, including ones today for November – and see you have so far billed me \$146,418.

With this month's VFM MSJ's, the Dana deposition, and Paul's expenses we are now probably past \$200,000. I also now might have Mahaffey's attorney's fees. This is almost more in three months than Kevin billed in three years.

Last night I transferred \$100,000 from my brokerage account to pay the September and October bills, and just now with today getting November transferred another \$50,000. I should have this tomorrow and be able to send in a check for the \$146,418.

It seems at this rate these cases will go to at least \$400,000 to \$500,000 each, a combined \$800,000 to \$1 million. I am sure this is small potatoes to you guys who usually have corporate clients, but to me who is retired, no job, no income, and extremely volatile capital gains which may have all ceased for the foreseeable future, these are very big numbers, and will take a big part of my net worth.

Please don't be offended the way Kevin became, but, no offense, this is rather amazing. Puls Haney in Fort Worth committed to take the Terry case through trial for a fixed \$100,000, and you are already at \$86,675 on that case and barely started with it. Frank Hill was willing to take the Terry case through trial for a fixed \$75,000, plus expenses, but was going to hire someone right out of school to work on it, and I questioned how good Frank was, but he apparently has been around for years. Puls Haney was at \$450/hour – and there were two of them on the case at this rate, and Frank I think \$350, so they each planned to bill about one-fourth or less of your hours.

I have already paid Kevin \$250,000 and \$100,000 on the two cases since inception, \$350,000. The Terry defendants have spent practically nothing on legal fees – though also have done almost nothing, and VFM I think said they have spent \$50,000 so far, and so they are also far below my now \$200,000 level on that case (\$100,000 to Kevin, \$70,000 so far billed from you, and probably at least \$30,000 more for this month).

I know you are the best of the best, but right now I feel like I am going to have a heart attack. And there is no way out. Either drop the suits and spend the rest of my life living under a cloud, that I had my planes destroyed, 100 parts stolen, was thrown in jail, and they all laughed in my face about it, and let them tell everyone they were right all along that I had zero proof they ever did anything wrong, or spend \$1 million MORE to TRY to get justice, and then maybe even fail.

I think I gave you the impression that I was a good investor. I am actually a horrible investor. I was good at merger arbitrage, but have been terrible at everything else. From 2009 until 2015 as the market indices went up 300% I instead lost 33%. Again, the average stock went up 300%, and many went up 10x, and I overall lost 30%. In 2015 I lost 50% and would have gone completely broke in another month if I had not sold a highly leveraged position that November. This year I recovered that loss, but only because I got lucky on the oil and natural gas price recovery, and even at this should have made about twice as much as I actually did. But that oil price recovery – from \$28 a barrel in February to \$52 now, is now over with, and I don't expect much in future gains, and could have losses. So I am not some rich guy with a lot of income, and factually have zero income.

I probably shouldn't voice these concerns to you, but want you to be aware that we need to try to reign in the costs.

Can you give me any idea of what you see as the expected costs of these suits going forward?

I'll review the bill line by line and get back to you with any specific questions.

Seth

Exhibit 12: 2017 02 20 - 12.15 pm Krabill to Seth

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Monday, February 20, 2017 12:15 PM  
**To:** Seth Washburne  
**Subject:** Re: Washburne Dec. Invoices

No worries. You have it now.

Sent from my iPhone

On Feb 20, 2017, at 11:52 AM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Kent,

Thanks.

Please ask whoever told you they already sent it to please find the email in which they sent it, and to resend that email to me so I can see the date.

I am quite sure I never received this. I will look at it shortly.

Seth

---

**From:** Kent Krabill [<mailto:kkrabill@lynnllp.com>]  
**Sent:** Monday, February 20, 2017 11:48 AM  
**To:** Seth Washburne ([sethpw1@gmail.com](mailto:sethpw1@gmail.com))  
**Subject:** FW: Washburne Dec. Invoices

Seth,

You had mentioned that you had not received any billing for December. I was told that the attached was already sent to you. If not, here it is now.

Thanks,

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

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Exhibit 13: 2017 03 07 Krabill email re invoices and my reply



## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Tuesday, March 07, 2017 2:26 PM  
**To:** 'Kent Krabill'  
**Subject:** RE: Terry and Museum invoices

Kent,

I transferred \$100,000 from my brokerage account to my checking account back before paying Paul, the week before last, and intended to pay yours last week, but haven't felt up to looking over the invoices. I usually go over them line by line before writing the check, and just haven't wanted to. I have been busy finding Thirsty 13<sup>th</sup> relatives, and found relatives of 49 men so far in the last month. I was thinking of just sending a check in for a flat \$100,000, and then going over them. Anyway the money is there, I just haven't written the check yet. Maybe I'll bring one with me tomorrow. I'll get it taken care of in the next few days.

Seth

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**From:** Kent Krabill [mailto:kkrabill@lynnllp.com]  
**Sent:** Tuesday, March 07, 2017 2:13 PM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Subject:** Terry and Museum invoices

Seth,

Just checking in with you on your invoices. I sent the January invoices once again on February 20 after you said you hadn't seen them yet. Then new invoices were sent to you for both matters on February 24, 2017 (I have attached them again for your reference). Accounting has notified me that, as of today, you have a portion of your bills that is over 30 days behind.

Thank you for your attention to this matter.

**KENT D. KRABILL** | Partner

**LynnPinkerCoxHurst**

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Exhibit 14: 2017 03 29 SW email re will review later

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Thursday, March 30, 2017 10:09 AM  
**To:** Seth Washburne  
**Subject:** Re: Terry and Museum matters - Check in Mail

No problem, Seth. And it sounds like you are making great progress on your Thirsty 13h research! Great job!

---

**From:** Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Date:** Wednesday, March 29, 2017 at 2:06 PM  
**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Subject:** RE: Terry and Museum matters - Check in Mail

Thirsty 13h research

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Wednesday, March 29, 2017 2:06 PM  
**To:** 'Kent Krabill'  
**Subject:** RE: Terry and Museum matters - Check in Mail  
**Attachments:** Thirsty 13th Newsletter 2017 03.pdf; Thirsty 13th Visits.JPG; Chase Balance.JPG

Hi Kent,

Immediately after getting your email I wrote a check for \$90,000, almost all the money in my checking account today, as shown attached, less about \$5,000 for my credit card payment, and walked to the post box and mailed it, and it will get picked up today at 2 p.m., so should go out today, and get to Accounting before long. I also transferred another \$100,000 from my brokerage account to my checking, to pay the other recent invoices, too. I had transferred that first \$100k specifically to pay you, and apologize for not getting that done yet. But I will try get up to date on all of the invoices this weekend.

I greatly apologize for not getting all the invoices paid yet, but have not even looked at them yet because so busy with the Thirsty 13h research, and haven't wanted to change gears, and always think I am almost done, and can back to my financial matters, but the Thirsty 13<sup>th</sup> stuff continues another day. I am actually just today almost to a stopping point, and hoping to clear up things on my desk.

As a little background, attached is my latest Thirsty 13<sup>th</sup> newsletter, which I was working on until March 19. Page 8 has a photo of a still living Thirsty 13<sup>th</sup> member I just found and visited the Saturday before last, in San Antonio. Page 9 describes how I worked 7 days a week, 15 hours a day for 6 weeks to find relatives, and found relatives of fully 65 members during this time. These were ones I had searched on about six times before, so were the hardest of the hard, and to find them was quite huge. So that is what I have been doing, not slacking off or anything. Busier than ever.

Since the newsletter I have had calls from six more people for whom I left messages before March 19, including one just this morning, and one yesterday, so send these people emails of all the things I have on their dads which takes time. Last weekend I thought I could go over the bills, but received from a contact at Maxwell AFB a disk of all the Far East Air Forces orders for 1945 – more than 9,000 pages to review! So I went through all of those, then created some draft newsletter pages about combat time. Last night he sent me by dropbox more than 1,000 pages of orders from 1944 which I reviewed.

Yesterday a woman emailed me scans of more than 200 of her dad's photos! I spent about 3 hours or more going over all of those. So every day it is like "Yikes! More stuff!!" And I try to process it right away.

Monday-Tuesday I also went over everyone who has more than a few Thirsty 13<sup>th</sup> photos or papers, and hence whom I should visit, and made the attached map in Google Maps by zip code. I emailed about 80 people, including 40 not shown on this, asking if they have items they could scan themselves, and if not offering to add them. Then I hope to head off on "scanning" trips to all of these place, starting with four trips to the circled places, then one big 4-6 week driving trip east to visit all the places shown.

But now I am waiting for people to get back to me whether I should add them to my visit list, so have sort of a stopping point. I haven't tied out my checking or credit card accounts, either, since December. And have to do my taxes. But I fully believed in this Thirsty 13<sup>th</sup> searching-for-relatives, and photo collections, stuff.

So, a long way to say I apologize for the delay, I have wanted to get up to speed, and have sent \$90k which should cover the December invoice, and a little of the January one, and maybe will send the full \$100,000 when this next transfer goes through. I hope accounting is ok with lump sums like this.

Usually I like to review invoices line by line, and input them to a spreadsheet, but haven't been up to wading into that, but will try to this weekend.

I greatly appreciate all that you and Stephen do. Sorry again about the delay.

Seth

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**From:** Kent Krabill [<mailto:kkrabill@lynnllp.com>]  
**Sent:** Wednesday, March 29, 2017 12:23 PM  
**To:** Seth Washburne ([sethpw1@gmail.com](mailto:sethpw1@gmail.com))  
**Subject:** Terry and Museum matters

Seth,

I was just notified by accounting that you are over 60 days behind on your payments. When can you get your account up to date?

**KENT D. KRABILL** | Partner

**LynnPinkerCoxHurst**

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**Exhibit 15: 2017 05 30 - SW email re invoices and mediation**

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Tuesday, May 30, 2017 2:41 PM  
**To:** 'Kent Krabill'  
**Subject:** RE: Settlement Conversation

Kent,

Another requirement for any settlement is that Monk be deposed first, so if you put anything in writing to them, be sure to include that.

Regarding mediation, if the mediator could get them to give up confidentiality it would be worthwhile, so I am sorry to flip flop on that, but I think it might be worthwhile, assuming the mediator might see my view that confidentiality is an extra thing, above and beyond what they owe me for, and which I simply am not interested in, since they have already widely damaged and harmed me.

I just drove to the post office and mailed a check for \$100,000, addressed to Robert Petty, then your name under his, so that it might get there before you leave town.

Seth

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**From:** Kent Krabill [mailto:kkrabill@lynnllp.com]  
**Sent:** Tuesday, May 30, 2017 2:21 PM  
**To:** Seth Washburne  
**Subject:** RE: Settlement Conversation

Thank you, Seth.

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

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**From:** Seth Washburne [mailto:sethpw1@gmail.com]  
**Sent:** Tuesday, May 30, 2017 2:18 PM  
**To:** Kent Krabill <kkrabill@lynnllp.com>  
**Subject:** Settlement Conversation

Kent,

To confirm what I just mentioned, please tell Randy:

1. They owe me my costs, and something for doing this to me.
2. I am NOT ASKING for confidentiality - because they already tore me apart to everyone, and there is nothing true they can say bad about me, because I never did anything bad.
3. If they want to ask for confidentiality, that is nice, but it has NO impact on #1, paying me my costs and for the offense, for which they still owe me.
4. I do not want to give them this extra item they would like to get, and especially not in a trade for them giving it to me, because it does nothing for me, and so they should accept that thanks, but no thanks I don't want it, and still pay me #1.
5. If we go to trial they will not get confidentiality, and will instead get the opposite if any press covers the trial.
6. If I say anything untrue about them they can sue me later, so they are only afraid of me saying true things, but need to accept what they did.
7. I am not too concerned about the costs of going to trial, and if I was, I would simply hire a cheaper attorney, the case seems rather clean.
8. If I wanted to avoid all costs of going to trial, I would non-suit it before I would accept a low amount from them for confidentiality. You can tell them that I am losing \$330,000 today on some stocks, so there little \$27,000 means nothing to me.
9. You can also explain that Chuckie has admitted telling all the volunteers I cornered Dana, and I need to be able to now share that Dana said this never happened if anyone asks me, without being at risk of breaching confidentiality.

I just wrote out a check for \$100,000 and will walk it to the mailbox in a few moments, but it won't get picked up until tomorrow. I will still try to go over the invoices ASAP.

Seth

---

**From:** Kent Krabill [<mailto:kkrabill@lynnllp.com>]

**Sent:** Tuesday, May 30, 2017 9:55 AM

**To:** Seth Washburne

**Subject:** RE: Latest Washburne invoices

Seth,

You have told me multiple times you are going to review invoices. You are severely delinquent and my partners are bothering me about it. I need the past due amounts paid immediately (which have nothing to do with the current amounts billed at the end of May).

By the way, the retainer has nothing to do with your payment. The retainer is security that we hold until the case is fully resolved. At that point, it will be paid back to you.

Thanks,

**KENT D. KRABILL** | Partner

**LynnPinkerCoxHurst**

Direct 214 981 3831



Cell 817 881 8113  
Fax 214 981 3839  
[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

2100 Ross Avenue, Suite 2700  
Dallas, Texas 75201  
[www.lynnllp.com](http://www.lynnllp.com)

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---

**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]  
**Sent:** Tuesday, May 30, 2017 9:44 AM  
**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Subject:** RE: Latest Washburne invoices

Kent,

I will not be coming down today – I thought it would be good to do a presentation in person of how I would provide the background to the jury, but can probably relay that on the phone, too.

About the invoices, I received these invoices May 23 and May 24, just one week ago, and have not had time to go over them yet, so will not be able to put a check in the mail today.

I have actually never once reviewed any invoices from your firm. I paid the \$153,000 last December without reviewing them. In March I paid a lump sum \$180,000 without even opening them, just hoping that would be enough to cover whatever amount was in them. I did open the May 23 one and was happy to see it was only \$32,000. At the top it included Terry and GGA, so I assumed this was a combined bill and was elated that for \$32,000 I could be fully paid with your firm. Then I got the May 24 one, and I was surprised, and when I looked at it saw a past-due amount, and that this was for a total \$110,000, which further surprised me. This is also a total \$465,000 or so you have billed me so far. Therefore I now want to go back over all the invoices and understand what you billed for before paying this latest one. You have retainers for \$60,000, which is about half of the outstanding balance, so hope this is ok.

Again, I received the latest ones only May 23, and the ones before that April 19, so have not had them very long.

Seth

---

**From:** Kent Krabill [<mailto:kkrabill@lynnllp.com>]  
**Sent:** Tuesday, May 30, 2017 9:20 AM  
**To:** Seth Washburne ([sethpw1@gmail.com](mailto:sethpw1@gmail.com))  
**Subject:** FW: Latest Washburne invoices

Seth,

If you are going to come down to the office today, I would appreciate it if you would bring a check to pay your balance due. Right now you owe the following:

Museum = \$32,461.15 (\$10,789.36 is delinquent)

Terry = \$110,278 (\$106,223.96 is delinquent)

If you are not going to come in, please confirm that you will drop a check in the mail today.

Thank you,

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

Direct 214 981 3831

Cell 817 881 8113

Fax 214 981 3839

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

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Exhibit 16: 2017 10 18 - email from Krabil re settlement

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Wednesday, October 18, 2017 9:33 AM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Subject:** Settlement Agreement Washburne  
**Attachments:** Settlement Agreement Washburne.doc

Seth,

I have conferred with the partner management committee and we have agreed to accept your proposal that our firm keep both of your retainers, we write off the remaining balance owed, and we all walk away from this. I have attached a settlement agreement and release that reflects your proposal.

Thank you,

**KENT D. KRABILL** | Partner

LynnPinkerCoxHurst

Direct 214 981 3831

Cell 817 881 8113

Fax 214 981 3839

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

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## SETTLEMENT AGREEMENT AND RELEASE

---

This Settlement Agreement and Release (“**Agreement**”) is entered into by and among the following “Parties”:

### **I.** **PARTIES**

- A. Lynn Pinker Cox & Hurst, LLP**, including all of its partners, affiliated companies, and and/or legal entities, subsidiary corporations and/or other legal entities, and unincorporated divisions, and all of their respective current and/or former partners, members, employees, agents, representatives, insurers, reinsurers, attorneys, officers, directors, and successors (collectively “**LPCH**”);
- B. Thirsty 13th, LLC**, including all of its partners, affiliated companies, and all parent corporations and/or legal entities, subsidiary corporations and/or other legal entities, and unincorporated divisions, and all of their respective current and/or former partners, members, employees, agents, representatives, insurers, reinsurers, attorneys, officers, directors, and successors (collectively “**Thirsty 13th**”); and
- C. Seth Washburne**, including his successors, agents, assigns, legal representatives, and/or any affiliated legal entities or trusts in which he is a settlor, beneficiary or trustee, (“**Seth Washburne**”).

### **II.** **RECITALS**

**WHEREAS**, **Seth Washburne** and **Thirsty 13<sup>th</sup>** (together, “**Washburne**”) engaged **LPCH** on September 20, 2016 to represent it in Cause No. 048-268735-13; *Seth Washburne, et al. v. James Terry, et al.*, (“**Terry Lawsuit**”) and **Seth Washburne** engaged **LPCH** on September 20, 2016 to represent it in Cause No. 153-275478-14; *Seth Washburne v. Vintage Flying Museum, Inc., et al.* (“**Museum Lawsuit**”);

**WHEREAS**, **LPCH** contends that **Washburne** currently has an outstanding balance owed to **LPCH** in the amount of \$18,870.72 for Cause No. 048-268735-13; *Seth Washburne, et al. v. James Terry, et al.*;

**WHEREAS**, **LPCH** currently holds a \$30,000.00 retainer previously paid by **Washburne** for the **Terry Lawsuit**;

**WHEREAS**, **LPCH** contends that **Washburne** currently has an outstanding balance owed to **LPCH** in the amount of \$132,818.23 for Cause No. 153-275478-14; *Seth Washburne v. Vintage Flying Museum, Inc., et al.*;

**WHEREAS, LPCH** currently holds a \$30,000.00 retainer previously paid by **Washburne** for the Museum Lawsuit;

**WHEREAS, LPCH** no longer represents **Washburne** and there is no longer an attorney client relationship between **LPCH** and **Washburne**;

**WHEREAS,** disputes have arisen between **Washburne** and **LPCH** related to **LPCH's** legal representation of **Washburne** and amounts owed by **Washburne** to **LPCH**; and

**WHEREAS,** although bona fide disputes and controversies exist between the Parties, both as to liability, if any, and amounts thereof, if any, the Parties, being mindful of the cost, duration and uncertainty of litigation, desire to compromise and settle such disputes and controversies without any admission of anything by any Party, solely to avoid litigation and buy peace.

**NOW, THEREFORE,** in consideration for the recitals and promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are acknowledged, the Parties agree as follows:

### **III. OPERATIVE TERMS**

A. Settlement Terms: **Washburne** agrees to allow **LPCH** to keep the \$30,000.00 retainer for the Terry Lawsuit and the \$30,000.00 retainer for the Museum Lawsuit (for a total payment by **Washburne** to **LPCH** of \$60,000.00). In exchange for the \$60,000.00 payment, **LPCH** agrees that it will write off the remaining portion of any amounts it claims are owed by **Washburne**.

B. No Admission of Liability. This Agreement shall not in any way be construed as an admission by any Party that it has acted wrongfully or failed to act lawfully with respect to the other Party, or any other person, or that any Party has any rights whatsoever against any other Party. The Parties specifically disclaim any liability for any wrongful acts or omissions against each other or any other person, past and present. Neither this Agreement nor anything in it shall be admissible in any proceeding as evidence of any unlawful or wrongful conduct by any Party.

C. Complete Release of All Claims, Known or Unknown. In consideration of the covenants undertaken herein by **LPCH, Washburne** hereby covenants not to sue and fully releases and discharges **LPCH** from any and all known and unknown claims, demands, promises, causes of action, or similar rights of any type of whatever kind or nature that they have or may have against **LPCH**, arising out of or in any way connected with their individual or collective relationships with **LPCH, LPCH's** representation of **Washburne**, the Terry Lawsuit or Museum Lawsuit, and/or any other transactions, occurrences, acts, or omissions or any loss, damages or injury whatsoever, known or unknown, resulting from any act or omission by or on the part of the **LPCH**, or any of them, committed or omitted prior to the Parties' execution of this Agreement (the "Released Claims").

In consideration of the covenants undertaken herein by **Washburne, LPCH** hereby covenants not to sue and fully releases and discharges **Washburne** from any and all known and

unknown claims, demands, promises, causes of action, or similar rights of any type of whatever kind or nature that **LPCH** has or may have against **Washburne**, arising out of or in any way connected with **LPCH's** relationship with **Washburne**, individually or collectively, **LPCH's** representation of **Washburne**, the Terry Lawsuit or Museum Lawsuit, and/or any other transactions, occurrences, acts, or omissions or any loss, damages or injury whatsoever, known or unknown, resulting from any act or omission by or on the part of the **Washburne**, or any of them, committed or omitted prior to the Parties' execution of this Agreement (the "Released Claims").

D. Unknown Claims. The Parties represent that they are not aware of any claim by either of them against the other(s), other than the Released Claims. For the purpose of implementing a full and complete release and discharge of each other, the Parties expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all claims that the Parties do not know or suspect to exist in their favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of such claims, as broadly and globally as possible.

E. Pursuit of Released Claims. **Washburne** represents that they have not filed or caused to be filed any lawsuit, complaint, or charge with respect to any Released Claims as delineated herein. **Washburne** agrees and promise in the future never to file or prosecute a lawsuit, complaint, charge, or any arbitration proceeding of any kind against **LPCH**, including but not limited to the Released Claims.

**LPCH** represents that it has not filed or caused to be filed any lawsuit, complaint, or charge with respect to any Released Claims as delineated herein. **LPCH** agrees and promises in the future never to file or prosecute a lawsuit, complaint, charge, or any arbitration proceeding of any kind against **Washburne** (or any of them), including but not limited to the Released Claims.

F. Mutual Covenant Not to Sue. Save and except as may be necessary to enforce or construe this Agreement, **LPCH** and **Washburne** covenant and agree not to sue, prosecute, or otherwise seek any relief, monetary or otherwise, from the other Party in any forum, whether state, federal or foreign, by motion or otherwise, on account of any claim or cause of action, including but not limited to any claim or cause of action relating to or arising from the Released Claims.

G. Nondisparagement. The Parties agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the other party, its employees, directors, and officers. The Parties acknowledge and agree that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, investors, potential investors, any board of directors or advisory board or directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), and clients.

H. Entire Agreement; No Representations. This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes, any and all prior agreements, arrangements or understandings between the Parties pertaining to the subject matter hereof. This is an integrated document. No oral understandings, representations, statements or promises contrary to the terms of the Agreement exist. The Parties represent and agree that they have thoroughly discussed all

aspects of this Agreement with their attorneys, that they have carefully read and fully understand all of the provisions of this Agreement, that they are each voluntarily entering into this Agreement, and that they do not and have not relied in any way on any representations or statements of either Party, outside of this Agreement.

I. Representations and Warranties. Each Party hereby expressly warrants and represents that: (i) it has authority to act for itself or is the lawful owner of its respective Released Claims herein; (ii) it has full power and express authority to settle the Released Claims as set forth in this Agreement; (iii) it has not made any assignment or transfer of the Released Claims, in whole or in part, including but not limited to assignment or transfer by subrogation or by operation of law; (iv) it knows of no person or entity that intends to assert a claim by, through, under, or on behalf of such Party; (v) it is not relying upon any statements, understandings, representations, expectations, or agreements other than those expressly set forth in this Agreement; (vi) it is represented and has been advised by counsel in connection with this Agreement, which such Party executes wholly voluntarily and of its own choice, volition, judgment, belief and knowledge, after consultation with such counsel and not under coercion or duress; (vii) it has made its own investigation of the facts and is relying solely upon its own knowledge and the advice of its counsel; and (viii) it knowingly waives any claim that this Agreement was induced by any misrepresentation or nondisclosure and any right to rescind or avoid this Agreement based upon presently existing facts, known or unknown. The Parties agree, stipulate and acknowledge that each Party is relying upon these representations and warranties of the other party in entering into this Agreement.

J. Further Actions. The Parties agree that they shall, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered to the other Party instruments, agreements, lien waivers, releases, and other documents as each Party shall reasonably request in order to further evidence the covenants described in this Agreement.

K. Successors. This Agreement shall be binding upon each of the Parties and their heirs, representatives, executors, administrators, successors, and assigns and shall inure to the benefit of each, and to their heirs, representatives, executors, administrators, successors, and assigns.

L. No Attorneys' Fees or Costs. The Parties acknowledge and agree that each shall pay their own attorneys' fees and costs of any kind incurred in connection with the Lawsuit.

M. Texas Law and Venue. This Agreement shall be governed by and construed under and in accordance with the laws of the State of Texas without regard to any contrary result otherwise required under applicable conflict or choice of law rules. The venue for any dispute resolution of this Agreement shall be the appropriate state or federal court in Dallas County, State of Texas.

N. Severability. The language of all parts of this Agreement will in all cases be construed as a whole, according to its fair meaning. In the event that any term or provision in this Agreement is held to be invalid, void, illegal or unenforceable in any respect, the Agreement shall not fail, but shall be deemed amended to delete the void or unenforceable term or provision, and the remainder of this Agreement shall be enforced in accordance with its terms and shall not in any way be affected or impaired thereby. In the event that any term or provision of this Agreement is held to be overbroad or otherwise unreasonable, the same shall not fail, but shall be deemed



amended only to the extent necessary to render it reasonable, and the Parties agree to be bound by the same as thus amended.

O. Modifications. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by both Parties. No waiver shall be binding unless executed in writing by the Party making the waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

P. Counterparts. This Agreement may be executed in counterparts and, when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and all counterparts taken together shall constitute one and the same agreement, which shall be binding and effective as to both Parties. The Parties may exchange signatures *via* facsimile or electronically and facsimile signatures shall have the same force and effect as if in original ink.

Q. Construction. This Agreement shall be construed without regard to which Party drafted it, and shall be interpreted as if all Parties participated equally in drafting this Agreement.

R. Headings. The headings and titles are inserted only for convenience and shall not be deemed part of the Agreement or taken into consideration in the interpretation or construction of this Agreement.

**[signature page follows]**

**Lynn Pinker Cox & Hurst, LLP**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: October \_\_\_\_\_, 2017

**Thirsty 13th, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: July \_\_\_\_\_, 2017

**Seth Washburne**

\_\_\_\_\_  
Seth Washburne

Dated: October \_\_\_\_\_, 2017

Exhibit 17: 2017 10 18 - 4.06 p.m. email Seth to Krabill

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Wednesday, October 18, 2017 4:06 PM  
**To:** 'Kent Krabill'  
**Subject:** From Buzz

Kent,

I received the email below from Buzz, stating that the defendants' legal fees subsequent to the Rule 167 agreements so far are: Charlie: \$119,500 (which I am sure is a lie, just as I expected), and Dowdy (who is the only one who has done any real work, and has two people on this), is much less, at \$98,476. Buzz told me he has charged Rogers zero, working on that case as his pro bono project. So if I withdraw that one suit I would owe roughly \$220,000.

The best settlement they would agree to is to give me credit for the amounts of the prior offers, of \$55,000 and \$15,000, so I would still owe them \$150,000. And this would be subject to confidentiality, in which I could publish a book about what happened to me, but could not post it on any electronic media.

I was hoping they would eat their legal fees, pay me something, and not require any confidentiality.

So this is an enormous disaster, and an enormous liability I am facing. I expect it will be extremely hard to find a lawyer to take the Terry case, but will now have to try.

You have now massively, massively screwed me over, and massively ruined my life this fall, when I was supposed to be getting married a week from Saturday.

I will not be entering any agreements with, or paying a penny to, LPCH until both those suits are over.

I expect to go ahead and prepare and file an extensive complaint to the state bar about your horrible treatment of me. If I cannot find another firm to adequately represent me, I will also sue LPCH or all of these other fees, and the amount I might have gotten in that case, and seek treble damages under DTPA, etc.

You are a complete piece of shit, Kent Krabill.

See email below.

-----Original Message-----

**From:** Buzz Deitchman [<mailto:buzzdeitchman@gmail.com>]  
**Sent:** Wednesday, October 18, 2017 3:38 PM  
**To:** Seth Washburne  
**Subject:** FOR SETTLEMENT ONLY

Seth

I heard back from both John and Charlie after I discussed our conversation of last week

Following is for Settlement Purpose only:

- I proposed to both John and Charlie that they consider a hybrid type agreement to conclude the case
- 1 Their clients would honor the offers made under Rule 167 notwithstanding that the acceptance period had lapsed
  - 2 They cap their attorneys fees as of Monday after a full accounting of their time had been done
  - 3 The offers if lower than fees due be offset against those fees to give Seth the full credit of the offers
  - 4 A modified confidentiality agreement be agreed to which would limit either side from publishing the agreement in any manner and the litigation not be mentioned in social media or on Web sites but not to include private e mails between individuals, or in direct speech to others or in any published form other than digital

Under this formula the numbers are as follows

John D  
Time/fees to date  
\$98,476.42  
167 Offer \$15,100

Net due attorney  
\$83,376.42

Charlie B  
Time/fees to date  
\$119,500  
Rule 167 offer  
\$55,500  
Net due attorney  
\$64,050

Buzz D  
Net Zero

I am willing to act as a go between to assist you in reaching a final settlement, if that is your desire I did not discuss any type of negotiation with the attorneys as to the amount owed to them but I have never been involved in a case where a bit of wheeling and dealing caused the respective sides to end communications

As to the issue of who would know who paid who. We are not obligated to inform the court of anything other than the case has settled and all parties agree to dismiss all claims against the other The agreement and specific terms is done in a private agreement called a CSA and is totally confidential if the parties wish it to be This is different than post settlement restrictions that the parties may include in the agreement

I explained your concerns about not wanting to get into trouble discussing this mess with others To assure that there would be no blanket restrictions I suggested the partial confidentiality listed above This would not restrict you from discussing the case or your take on it from start to finish but would

keep everyone from using Web Sites or Social Media to attack each other The way I would draft the agreement you would be able to publish a printed book about your experience

Let me know your thoughts and what if anything you would like for me to do

I will return to Dallas on the 23 and back to the office on the 24

I should be able to speak by phone tomorrow if you have questions I have not addressed

Buzz

Sent from my iPhone  
B Buzz Deitchman  
14850 Montfort. # 220  
Dallas Texas 75254  
972-960-2600 Office  
972-239-6696 FAX=

Exhibit 18: 2017 10 20 - 5.10 pm email Seth to Krabill

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Friday, October 20, 2017 5:10 PM  
**To:** 'Kent Krabill'  
**Subject:** VFM Case

Kent,

I emailed Randy Turner on September 27 trying to settle the VFM case, and this afternoon he replied that now they will never pay me a penny, and if pay them, they will also require non-disparagement. He also states his Rule 167 fees have now climbed to \$85,000.

As I emailed you recently, the Terry case defendants Rule 167 fees are now at \$220,000. That is \$305,000, and will probably each climb at least another \$100,000, for \$605,000, by the time of the trials. Considering I will probably not be able to find adequate counsel, I will probably lose or have to withdraw both cases, and be forced to pay this \$600,000. Personally I have lost \$2 million since February on bad stock investments, and will go closer to being broke with all of this.

Yesterday I submitted a motion to the 48<sup>th</sup> court asking the judge to limit the Rule 167 fees to \$15,000 for each of Dowdy and Burgess, and then I would withdraw that suit and pay these amounts. I will file a similar request with the 153<sup>rd</sup>.

You should seriously consider getting involved again, taking the VFM case to trial for say a fixed amount, and trying to get the Terry case fees down. Otherwise I will be suing you, LPCH, and Berman for all of these amounts, and the millions I would have potentially won, and treble damages where applicable. If you got involved again I would skip suing you and filing state bar complaints. I would think taking the VFM case to trial would be easy for you, it is a simple one-event, and you have done a lot of work. It would make you and your firm look much better. We don't have to be best buddies. Just like in WWII, they were fighting a common enemy, and put aside personal differences.

This is an enormous, hellish, ruined-my-life, off-the-charts stressful situation you created. A never-ending nightmare, which is escalating by the day as these Rule 167 fees skyrocket.

Seth

---

**From:** Randy Turner [mailto:Randy@RandyTurner.com]  
**Sent:** Friday, October 20, 2017 3:01 PM  
**To:** Seth Washburne  
**Cc:** Chloe Parker  
**Subject:** settlement

Seth:

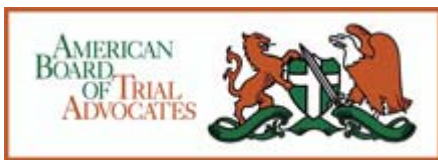
The VFM board unanimously rejected your proposed settlement. At this late stage, after incurring substantial additional attorney's fees, VFM does not have a counter offer for you and is not interested in considering any settlement that involves any defendant paying you any amount of money or that does not include a confidentiality and non-disparagement agreement.



My estimated attorney's fees after the Rule 167 letter now exceed \$85,000. These are increasing daily as I prepare for trial. I should also let you know that another attorney will be trying the case with me. His fees for trial are \$250 per hour and will be added to the total amount owed by you if you lose.

**Law Offices of Randall E. Turner, PLLC**

5017 El Campo Avenue  
Fort Worth, Texas 76107  
Tel: (817) 420-9690  
Fax: (817) 887-5717  
[www.randyturner.com](http://www.randyturner.com)



---

**From:** Randy Turner  
**Sent:** Wednesday, September 27, 2017 10:02 AM  
**To:** 'Seth Washburne' <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Subject:** RE: Following-up on Last Night Email

Seth:

I will forward your settlement proposal to VFM. Any decision concerning settlement will have to be made by the board of directors. Also, Chuckie consults with her family in this matter.

All the wing flaps that were in the south hangar are now in a storage unit owned by Jim Terry. You will need to contact him about looking for your flap.

**Law Offices of Randall E. Turner, PLLC**

5017 El Campo Avenue  
Fort Worth, Texas 76107  
Tel: (817) 420-9690  
Fax: (817) 887-5717  
[www.randyturner.com](http://www.randyturner.com)





---

**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]

**Sent:** Wednesday, September 27, 2017 8:59 AM

**To:** Randy Turner <[Randy@RandyTurner.com](mailto:Randy@RandyTurner.com)>

**Subject:** Following-up on Last Night Email

Randy,

Please treat this email with the same confidentiality as requested in that yesterday.

Further to my settlement question, please point out to Chuckie that:

1. At the end of the trial there is no confidentiality, so if she agrees to no-confidentiality now, then this is no different.
2. Trials are public, so she exposes herself and the museum to plenty of scrutiny and public disclosures through a trial.
3. You indicated you expected to bill about \$100,000 to take this to trial, and I estimate the 167 hurdle is quite low – 80% of \$22,000 is \$17,200, and I have about \$10,000 actual expenses, and so have to get \$7,000 for pain and suffering and punitive damages, and while juries are unpredictable I predict I can get that, so she might assume a rather high probability of being out your legal bills of maybe \$100,000.
4. We will actually ask for between \$500,000 and \$1 million for pain and suffering and punitive damages, so she could be out a whole lot more for these.

I am offering her an opportunity to: a) avoid the risk of paying your future legal bills, b) avoid the risk of potentially significant damages, and c) avoid a public trial, and to d) have the certainty of a fixed dollar amount, and having this all over with.

I would agree to confidentiality with regard to the amount of any settlement.

Seth

Exhibit 19: 2016 12 12 - 11.05 p.m. Krabill to me reply

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynllp.com]  
**Sent:** Monday, December 12, 2016 11:05 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** Re: Your Invoice Email

Seth,

I spent a huge amount of time responding to your last email with an enormous amount of questions about your charges and what we are doing. I am happy to explain to you what we are doing and why we are doing it. Now, on the heels of that extremely long email that took a lot of time to respond to, you drop this email. I will respond to this email this time, but in the future, if you want to discuss these types of issues, I am happy to have a call. But I will not continue to have all these lengthy email exchanges. They are a huge distraction to us getting our work done.

I have once again spent a great amount of time responding to your questions below. Hopefully this will help.

If you would like to have a short call tomorrow to discuss further, I am happy to do so. Let me know.

Kent

On Dec 12, 2016, at 11:38 AM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Kent,

I am now reviewing your email reply last Thursday about the invoices, in which you attached a budget. I have several questions, and would appreciate a reply in writing, vs. talking on the phone. Please note that you billed me \$146,418 for the first 2.25 months, and probably another \$50,000 this month, \$200,000 so far, and for me to have and ask these questions is not at all unreasonable. People have someone work on their car for \$200, and want explanations. I have paid you \$210,000 now, including the two retainers, an enormous sum, and deserve explanations.

I AM ALWAYS HAPPY TO ANSWER ANY QUESTIONS YOU HAVE. BUT I WILL NOTE THAT YOU COULD HAVE SAVED A TON OF TIME (YOURS AND MINE) BY PICKING UP THE PHONE.

Regarding your points:

1. Just for the record, you wrote: "When we spoke the first couple of times, I explained to you, in painstaking detail, the potential costs of this litigation." I do not recall any "painstaking detail."

I DID. SORRY YOU DON'T RECALL IT.

2. You wrote: "We had to respond to summary judgment briefings (which turned out to be rather expensive due to your constant revisions, suggestions, changes in affidavit, etc.)." I am sensitive to being accused of making "constant revisions" which drive up the cost, and think this is inaccurate and unfair.

I DISAGREE. YOU MADE A HUGE AMOUNT OF REVISIONS AND INSERTED LOTS OF IRRELEVANT INFO THAT WE HAD TO WADE THROUGH. AND EVEN THEN, YOU DIDN'T STOP, AND WANTED TO ADD A BUNCH OF IRRELEVANT INFO TO YOUR AFFIDAVITS. THIS ALL TAKES AN ENORMOUS AMOUNT OF TIME, AND ULTIMATELY ADDING IRRELEVANT INFO IS A HINDERANCE TO THE JUDGE (AND ULTIMATELY THE JURY IN THE FUTURE).

- a. Stephen spent 44.7 hours on the No Evidence MSJ through 11/21, and I was away in Korea all this time, and so had no input during those 45 hours.
- b. I did not make "constant" revisions. He ASKED me to review it, and I provided the suggestions he asked for, then reviewed it after he made the changes. So the word "constant" is unfair.
- c. I made zero "revisions" or "changes" at all – I don't have authority over that document and never demanded anything, Stephen made the revisions and changes. I only made suggestions, so the words "revisions" and "changes" are unfair characterizations.
- d. My first comments on the No Evidence MSJ were 11/20 at 9:09 a.m.. These included some basic things you should have been correct the first time, and so personally I think I shouldn't be charged for such changes. Other things were correcting facts, which have to be done, so you shouldn't criticize me for those. He wrote, and please let me know which were unreasonable comments by me:

I AM NOT CRITICIZING YOU. RATHER, I AM EXPLAINING HOW YOUR ACTIONS ARE ADDING TO YOUR COSTS. THIS IS FINE WITH ME, BUT WE DON'T WORK FOR FREE. WE BILL THE TIME WE WORK. WE WORK EFFICIENTLY AND SMART. WE KNOW WHAT WE ARE DOING AND DO IT WELL.

- i. "Washburne" throughout - and I thought it would be better to replace this with "Plaintiff." Isn't that generally better? Stephen used my suggestion, and changed my name to Plaintiff everywhere, suggesting that yes, I was right, and what I suggested was better, and this seems very basic. I shouldn't be charged, or criticized, for that change.

NO. IT ISN'T BETTER. NOT AT ALL. WE DID IT BECAUSE WE DIDN'T WANT TO FIGHT OVER EVERY LITTLE ISSUE WITH YOU. BUT WE SHOULD BE CALLING YOU BY YOUR NAME. PERIOD.

- ii. That I was "standing" on public property - when I was instead sitting in my car. This creates a different impression in one's mind.
- iii. I "leased" space in 2010 – which I did not until mid-2011
- iv. "For reasons unknown to me VFM sided with Jim Terry and engaged in retaliatory campaign" – I knew why they did this, and Monk actually wrote to me they would refuse to take sides.
- v. I received "an" invitation to the parts auction – and I thought it valuable to note I actually received three invitations to this.
- vi. "Wood called security guards" – no, they were already there.

I provided lots of other background, which he chose not to use, which was fine, but this was not "constant revisions," He spent 5.9 hours on this, which seemed long. I was completely fine with him taking what he wanted and skipping other things. This was a normal review.

AGAIN, WE HAVE NO ISSUES WITH YOU MAKING SO MANY EDITS. BUT THIS TAKES TIME AND COSTS MORE MONEY. THAT IS JUST THE REALITY. I DO TAKE ISSUE WITH YOU ADDING SO MUCH IRRELEVANT INFO, BECAUSE THIS HURTS, INSTEAD OF HELPS, YOUR CASE.

- e. My second suggestions on the no evidence MSJ were 11/21 at 8:34 a.m, and it is natural to think of some things one did not before. I also had to repeat some things I said the first time which he did not change:
  - i. Stephen had written that I began to restore the plane in 2010, and I had said no, Terry did, and he had left that in, so I had to change it again.
  - ii. Stephen called Terry a “fellow” tenant, implying I was a tenant in 2010, and I was not, and I had to make that change a second time.
  - iii. He spent 3.4 hours on the changes on this day, which again seems long, like they could have been done in 1 hour, but these, too, were not burdensome.

THE TIME BILLED IS ACCURATE.

- f. My third review of this was a reply 11/21 at 7:20 p.m., and my comments were very few and minor, including fixing the name of the Tarrant Appraisal District, to eliminate the word “County,” which he had wrongly inserted in the first draft, and I had not caught. These would have taken about 10 minutes to change. He spent 1.2 hours revising it on 11/25.

YOU THINK THAT REVISING ONLY TAKES A FEW MINUTES. IT DOESN'T. EACH ROUND OF REVISIONS IS DONE AND THEN THE DOC IS CONTINUALLY REVISED UNTIL FILED. THIS STUFF TAKES TIME TO GET IT RIGHT.

- g. Even if all of his revision time was due to my suggestions, this was  $5.9 + 3.4 + 1.2$  hours, 10.5, hours, \$3,570, vs. the 44.7 hours to prepare it in the first place, so my suggestions, only two days added 20%. I would expect getting comments from a client would be entirely normal, and I did nothing wrong.

AGAIN, NOBODY SAID YOU DID ANYTHING WRONG.

- h. Regarding the “Addendum”:
  - i. First, I was surprised and rather shocked that none of you challenged any of the statements they made about me, which were full of lies, e.g. that I love suing people, do it all the time, and have made a lot of money doing this; that we already mediated this suit, etc.
  - ii. As far as it adding to the cost, you billed 4.2 on 11/22 to review and revise the MSJs, and refer to “multiple calls with me,” but I had not sent my addendum yet, so this time was not for reviewing that, and the “multiple” calls, shown attached, were just two, for a combined 34 minutes, so did not add much on this day.
  - iii. I emailed you general additions on 11/23, and you didn't bill me anytime at all on that day, you just sent me a short four-sentence reply saying you would review it to see if useful for your oral argument, so still no cost due to the Addendum.
  - iv. I sent you the detailed addendum on the morning of Friday the 25<sup>th</sup>, you reviewed this the same day for 3.0, \$1,350, which was fine, and it was filed that same day. So the Addendum added maybe \$1,500 to the cost.

So please note these were not “constant” changes and did not add much to the cost, maybe \$5,000 of the total \$147,000.

YOU ARE WRONG ON THIS. I HAVE DONE THIS JOB EVERY SINGLE DAY FOR A LONG TIME. YOU HAVE MADE MORE CHANGES IN THE TWO MONTHS WE HAVE BEEN DOING THIS THAN ANY CLIENT I HAVE EVER HAD. THAT IS OK. I APPRECIATE THAT YOU CARE AND ARE INVOLVED. IT

WILL MAKE OUR CASE BETTER. BUT IT TAKES TIME TO ADDRESS EACH OF YOUR CHANGES, SUGGESTIONS, IDEAS, ETC. THAT IS THE REALITY.

3. As an aside, for Dana's attorney's MTW, none of you objected to it being more than 6 months old, from before you started, and having no phone number or email contact info, or being an apartment. I was the only person who thought of each one of these items, and I think this was valuable. I did not know she was scheduled for a deposition, so now she obviously knows who your firm is, but I think it was good to file that anyway.

I AM NOT SURE WHAT YOU MEAN HERE. AND WE GAINED NOTHING FROM THE WORK. WE WERE COMMUNICATING WITH HER PRIOR COUNSEL AND WOULD HAVE HAD HER INFO ANYWAYS, AS SHE IS A DEFENDANT IN THE CASE.

4. You wrote "you asked us to visit Meacham" – that added only maybe 1 hour, \$800, and should have been only 30 minutes. That, by the way, was a frustrating experience for me, because I wanted to simply show you what happened, and the area, but you wanted to have a talk about why I was there, and tell me the exact words I should say at trial when asked why I was there. No offense, but I didn't want to get my legal advice while standing on a street corner. I would prefer to get it in an email, or in a meeting in a conference room when I have a pen and paper to write it down. I was glad to help you understand the case, but a lot of that conversation I think did not produce any new long term value, because I don't remember the specific words you told me I should say about why I was there.

AGAIN, I NEED TO KNOW WHAT YOU THINK, HOW YOU WILL REACT, WHAT YOUR STORY IS, AND HOW IT WILL PLAY. BEING AT THE EXACT SPOT WHERE THE WARNINGS AND ARREST OCCURRED WAS THE BEST PLACE TO TEST THIS. DON'T WORRY ABOUT THE EXACT WORDS. IT IS OUR JOB TO PREP YOU FOR DEPO AND TESTIFYING, AND WE KNOW WHAT THEY ARE AND WILL MAKE SURE YOU ARE PREPPED.

5. You wrote: "I told you that we would have to dig into the file to have a better idea, but that it may be possible to try the cases for less than \$200k each, but that depending on what the Defendants did, it may be more or less than that for each case. We are well within that range." The Terry case through November was at \$86,675, so up to almost half the \$200,000. Do you believe that half the work and expense in the Terry suit has already been done?

AGAIN, I NEVER PROMISED YOU YOUR CASES WOULD COST A CERTAIN AMOUNT. LITIGATION IS TOO DYNAMIC TO DO SUCH A THING. I GAVE YOU A RANGE AND CAREFULLY EXPLAINED THAT THE RANGE COULD AND WILL LIKELY VARY DEPENDING ON A LOT OF FACTORS, WHICH WE DISCUSSED. FOR EXAMPLE, MAHAFFEY HAS NOW FILED AN MSJ. SO WE MUST RESPOND. AND THIS WILL TAKE A LOT OF EXTRA TIME AND MONEY. IT IS JUST THE NATURE OF LITIGATION. IT IS DYNAMIC AND IF YOU WANT TO FIGHT, YOU HAVE TO BE IN FOR THE LONG HAUL TO WIN.

6. You wrote: "We have suggested trimming both cases down from the beginning, by eliminating certain claims and defendants. You have refused thus far, which is your choice. But conducting litigation against multiple defendants on a wide variety of claims greatly increases the costs. I have told you this repeatedly." The suit I brought you in the first place had all these defendants, and the \$200,000 estimate should include all of these, and if I trim it down it should be much less than this. But instead I expect you will say keeping people in will increase it above this. Please confirm the \$200,000 estimate was the case as I brought it to you, and not the slimmed down one.

SEE MY ANSWER ABOVE. I NEVER SAID \$200K. RATHER, I SAID WE WOULD HAVE TO EXAMINE THE FILE AND WORK THAT WAS DONE BY YOUR PRIOR COUNSEL, THAT THERE WAS A POSSIBILITY EACH CASE COULD BE DONE UNDER \$200K, BUT WE WOULDN'T KNOW UNTIL WE DUG IN AND REVIEWED EVERYTHING, AS WELL AS FIGURED OUT DURING THE COURSE OF

LITIGATION HOW THE OTHER PARTIES WOULD CONDUCT THEMSELVES IN TERMS OF DISCOVERY, DEPOS, MSJ'S, ETC.

7. Regarding your proposed budget for both case, I emailed you at 9:21 a.m., and your reply was at 10:31 a.m., only 1 hour and 10 minutes later, and your email was long, making me wonder how you had time to also prepare those two detailed budgets. Were those ones you had before for another case and modified for me? Are they at all realistic and tailored to my case?

I DRAFTED BOTH BUDGETS FOR YOUR CASES. THEY ARE AN ESTIMATED RANGE FOR EACH CASE. AND AS THE BUDGETS SAY, THE NUMBERS COULD CHANGE DEPENDING ON THE FACTORS I LISTED ABOVE.

8. For the Terry case, please resend the budget correcting the following errors:
  - a. "Trial preparation and trial" you have the high-end total as \$15,000, but these numbers add up to \$185,000.
  - b. In the Budget Summary you transfer the \$15,000 number, which should be \$185,000.
  - c. Your total high-end of \$291,000 does not equal the sum of these numbers. It should be \$311,000.

I HAVE CORRECTED AND ATTACHED.

9. Your Budget summary high end number of \$311,000 is more than 50% more than we talked about. I wonder if you will say that keeping these people in will now dramatically increase the cost to even more than that,, to \$500,000.

THESE ARE THE BEST ROUGH ESTIMATES AT THIS TIME. NOBODY KNOWS WHAT MOTIONS DEFENDANTS WILL FILE IN THE FUTURE, HOW LONG THEIR CASE WILL BE AT TRIAL, WHO THEY WILL DEPOSE, WHAT ADDITIONAL DISCOVERY THEY WILL SEND, ETC. BUT THE NUMBERS I SENT ARE A GOOD GUIDE FOR PLANNING. I DO NOT ANTICIPATE THAT THE NUMBERS WILL REACH AS HIGH AS YOU SUGGEST.

10. Your budgets do not show money already spent. A budget at this time should include the actual expenses to date as well. Please redo it to show what has been finished, and what spent. You show "Case Assessment, Development and Administration" as \$14,000-\$33,500, but have already billed me \$86,675 for this, and that part may not even done yet. So are you already 3x over the high end of the budget?

YOUR 3X NUMBER IS INCORRECT. MY BUDGET LOOKS FORWARD, NOT BACK.

YOU HAVE OUR INVOICES AND THE WORK THAT WAS DONE. I WILL NOT RE-CREATE A BUDGET FOR THE PAST.

11. For the VFM budget.
  - a. Your high-end total under "Pre-trial Pleadings" is \$35,000, but these add up to \$35,500, please fix that, and in the summary.

DONE AND ATTACHED.

- b. This, too, should include money billed so far, so please add that.

SAME AS ABOVE.

- c. Under Pre-trial pleadings you budget \$15,500-\$35,000 total, including hearings, plural, but billed \$47,445 for this in November, and this does not even include the one hearing Dec 1, which was probably 6 hours x \$800/hour = \$4,800 more, so is probably \$55,000, and there the Monk MSJ hearing is not until January, so will be at least \$60,000, more than 2x your upper level.



THIS BUDGET IS FORWARD LOOKING AND DOES NOT INCLUDE PAST CHARGES. THE ONLY HEARING ON THE RADAR IS THE MONK HEARING. THERE WILL BE SOME PREP, BUT I ALREADY PREPARED FOR IT SO IT SHOULDN'T BE A LOT, UNLESS MONK FILES SOMETHING ELSE, WHICH I WOULD NOT EXPECT.

- d. Through November you have billed me \$59,743 on that case, equal to half your low-end total budget of \$120,000,, to this, too, seems unlikely.

AGAIN, THIS IS A RANGE, AND NOBODY CAN PREDICT WHAT THE DEFENDANTS WILL DO. BUT I BELIEVE THE RANGE IS A GOOD ROUGH ESTIMATE.

- 12. The high end of these, \$311 for Terry, and \$269 for VFM is \$580, almost \$600,000. You wrote: "I don't know where you are coming up with a number of \$800,000 to \$1 million. That is not even close to the range we are headed," but your own budget is \$600,000, and it seems we are already well over that, so \$800,000 seems entirely possible.

THE BUDGETS ARE FORWARD LOOKING. THERE IS A HIGH ESTIMATE AND A LOW ESTIMATE. YOUR MILLION DOLLAR NUMBER IS NOT CLOSE TO EITHER.

- 13. I have already been billed by Vice on the Terry suit \$252,000, and for you to charge another \$311,000 at the high end is \$563,000, a ridiculous amount for that suit. For VFM I have paid him \$141,000, all but about \$7,000 paid in full, and with your high-end of \$269 will take that to \$410,000, again a ridiculous amount. Together these are almost \$1 million.

ACTUALLY, THAT IS NOT AT ALL UNUSUAL FOR A CASE OF THIS SIZE.

- 14. What do you think the likelihood is of getting a favorable ruling in the VFM case, and an award of more than \$410,000?

AS I SAID FROM THE BEGINNING, I DON'T PREDICT OUTCOMES. YOU HAVE SOUND CLAIMS WITH VERY LITTLE ACTUAL DAMAGES IN THE MUSEUM CASE. I THINK WE WILL BE ABLE TO PUT ON A GOOD CASE AND THAT WE HAVE A SHOT AT WINNING. A JURY MAY FIND THE DEFENDANTS' ACTIONS DEPLORABLE AND MAKE THEM PAY. OR THEY COULD DECIDE THAT YOU SHOULDN'T HAVE RETURNED TO THE AIRPORT, AND EVEN THOUGH YOU WERE WRONGFULLY ARRESTED AND DETAINED, YOU DON'T DESERVE ANYTHING. TRIALS ARE ALWAYS RISKY, AS I HAVE TOLD YOU ON MULTIPLE OCCASIONS.

FROM OUR FIRST CALL, I ENCOURAGED YOU TO HIRE AN ATTORNEY YOU TRUST. YOUR PRIOR COUNSEL COMPLAINED TO ME THAT YOU MADE THEIR JOB EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE. YOUR LEVEL OF INVOLVEMENT IS EXTREMELY HIGH, BUT I AM OK WITH THAT. I LIKE A CLIENT WHO IS INVESTED AND ENGAGED IN THE CASE. BUT PLEASE NOTE THAT EACH EMAIL YOU SEND, EACH CALL YOU MAKE, EACH VISIT YOU ASK US TO MAKE, EACH CHANGE YOU MAKE TO FILINGS, COSTS ADDITIONAL TIME AND MONEY.

I UNDERSTAND THAT LITIGATING CASES TAKES A LOT OF TIME AND MONEY. AND THIS IS TOUGH ON CLIENTS. BUT PLEASE KNOW THAT OUR BILLING RATES AND PRACTICES ARE MUCH LOWER THAN MANY OF OUR TOP PEERS AT THE LARGER FIRMS. WE ARE ONE OF THE PREMIERE LITIGATIONS BOUTIQUES IN THE COUNTRY. WE HAVE ATTORNEYS WITH EXCELLENT CREDENTIALS AND THE BEST REPUTATIONS. WE REPRESENT MANY TOP NATIONAL COMPANIES AS WELL AS MANY SUCCESSFUL SMALL BUSINESSES WITH OWNERS WHO HAVE MUCH LESS MONEY THAN YOU DO. AND NONE OF THEM LIKE TO PAY FOR LITIGATION. IT IS JUST A REALITY. BUT IF YOU WANT TO FIGHT AND VINDICATE YOUR RIGHTS, THEN YOU HAVE HIRED A GREAT SET OF ATTORNEYS TO HELP YOU. WE CAN'T GUARANTEE VICTORY, BUT WE CAN

GUARANTEE THAT WE WILL WORK OUR HEARTS OUT TO ASSURE THAT YOU GET THE BEST ADVOCACY POSSIBLE.

IN CLOSING, PLEASE COMPLETE THE ASSIGNMENTS THAT WE DISCUSSED LAST WEEK. IT IS EXTREMELY IMPORTANT. I UNDERSTAND THE BILLING IS IMPORTANT TO YOU, TOO, BUT WE MUST GET THAT INFO AND GET THE CASES PREPARED FOR TRIAL.

I HOPE THIS HELPS. LET ME NOW IF YOU WANT TO HAVE A CALL TO DISCUSS FURTHER.

KENT

Exhibit 20: 2016 12 13 7.20 am Seth to Krabill

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Tuesday, December 13, 2016 7:20 AM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'  
**Subject:** RE: Your Invoice Email

Kent,

I am really in shock after reading your responses. I am shaking like I was when the police walked up, my fingers moving about 1 inch back and forth so can't even keep them on the keyboard. I am hyperventilating. I am writing this short reply to try to calm down a bit, which won't help I'm sure.

It is shocking that your budget does not include past charges, so when the Terry suit adds the \$87,000 already billed, your high estimate is \$400,000 additional. I am sure you never told me that when I met you. Your museum high end of \$268,500 added to the \$47,000 already billed and probably \$30,000 for this month on that is \$350,000. That is \$750,000 to you for both of these cases, exactly the \$800,000 I referred to which you say was in no way near that.

Then your replies mostly don't even answer the questions. You continue to insist that I have driven the cost up, when I clearly explained I think I only added \$5,000.

You write in a disrespectful way.

I really wish I had just gone pro-se this summer. I am seriously thinking of dropping both these cases.

Again, I cannot even type now my hands are shaking so bad – just this sentence I have to do every letter about about 2-3 times. I'm about to have a heart attack. I'll writ more latr.

You did not attach eht nrevised budge passé dxo dxo  
Sdrfth

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**From:** Kent Krabill [mailto:kkrabill@lynnllp.com]  
**Sent:** Monday, December 12, 2016 11:05 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** Re: Your Invoice Email

Seth,

I spent a huge amount of time responding to your last email with an enormous amount of questions about your charges and what we are doing. I am happy to explain to you what we are doing and why we are doing it. Now, on the heels of that extremely long email that took a lot of time to respond to, you drop this email. I will respond to this email this time, but in the future, if you want to discuss these types of issues, I am happy to have a call. But I will not continue to have all these lengthy email exchanges. They are a huge distraction to us getting our work done.

Exhibit 21: Exhibit 5 to 48th Plaintiffs' Response to Motion to  
Withdraw

Note: This is not written to in any way disparage anyone, but rather to demonstrate to the court that I have sought to work with other firms in good faith, and found legitimate concerns.

### **Exhibit 5**

**Horrific Mediation June 29, 2017 for Tarrant County Cause #153-275478-14 at  
Office of Gary Berman, 2027 Young St, Dallas, Tex, due to  
Kent Krabill of Lynn Pinker Cox & Hurst, LLP, 2100 Ross Avenue, Suite 2700, Dallas, TX  
As Remembered by Seth P. Washburne, Plaintiff**

#### **Background**

Defendant Charlyn Hospers has told untruths about me, including that I “cornered” a woman named Dana Wood in the airplane hangar, which was greatly insulting to me. One of the reasons for this suit was to require Wood sit for a deposition and explain that she was never “cornered,” and she mostly did. I have paid more than \$300,000 in legal fees to get mostly retractions to numerous misstatements Defendants told, which defamed me. Defendants in a settlement wanted confidentiality, though, such that all these retractions could never be shared. I could never say I never cornered Dana. The only reason I wanted to go mediation was then for a mediator to explain the confidentiality problem and find a solution.

I had been a Plaintiff in three prior mediations, with:

1. Kay Elliot in Fort Worth October 17, 2012, against Charlyn Hospers and the Vintage Flying Museum over a rent dispute.
2. Wade McMullen in Fort Worth March 30, 2015, against a trucking company.
3. Ross Stoddard in Dallas May 16, 2016, against the Terry defendants, which failed.

I picked Elliot from a list provided me, and for the other two my prior counsel asked me if these were ok. Krabill did no such thing with Berman, and instead he alone picked Berman, who, unbeknownst to me, has a reputation for being very “in-your-face.”

#### **Arrival at Deposition**

Berman’s office is in a small standalone building, with a hall down the middle, three rooms on the right, and on the left a secretary’s room, a kitchen area with bathroom, and another room. I was shown to the last room on the right, and told I could help myself to kitchen items.

The kitchen area had a roughly 20-foot long counter, with glass-faced refrigerators under the counter at both ends, with water and soft drinks, with handles across the tops of these. I pulled on the left one, and it did not open. I pulled on the right one, and it did not open. This was odd, to have locked refrigerators. Investigating, I realized the door hinges were closest to the center of the counter, such that I had been tugging at the hinge point. Because there were two, this seemed like a simple problem to fix: they could just roll these out and switch places. Then someone standing between these could easily open either one. I walked by the secretary’s office, and kindly and respectfully mentioned this to her. I was just trying to help.

Returning to the assigned room, I noticed it was a mess. Heavy duty extension cords extended from the right and left walls to the table, such that one could trip over them. A sideboard on the left had a broken piece of wood seemingly from furniture. A sideboard on the far wall had five magazines strewn over it at different angles, one having on the cover in big

letters “SUICIDE.” This is a sensitive word in my case so I didn’t appreciate seeing this. The conference table itself had an overly large glass bowl with about 3 Kit Kat bars, which seemed lame, and was distracting, a pen holder, a sign for the internet connection, and a box of Kleenex.

This was an important day, and I wanted to have no distractions, and so I decided to neaten up the room. I arranged the magazines in a fan, moved the conference table’s four items to the sideboard, moved the broken piece of wood there, and knelt down to fold the extension cords neatly under the cabinets on either end. Now I felt ready for the mediation.

Krabill appeared at the doorway, didn’t say hello, and looked over the room. Seeing him survey the room, I said “I straightened up the room up a bit, and moved things to the sideboard.” Krabill’s first words of the day to me were then: “You did what?! Who do you think you are to move things in someone else’s office?! This is why everyone hates you! Didn’t anyone ever tell you not to touch other people’s stuff?” Then, perhaps remembering that my dad died when I was 7, yelled at me: “Didn’t your mother every teach you not to touch other people’s stuff?!”

I didn’t reply. Krabill set down his backpack and went to get some water. I put everything back in the distracting mess it was when I came in.

## **Mediation**

1. Berman sits down, and starts to summarize the case, but only talks about the airplane restoration, and says nothing about the arrest, so seems to know nothing about this case. Krabill informs him.

Berman tells a story of two super rich people who spent \$3.5 million each fighting over an insignificant \$10,000 billboard, then one said to settle it because his private jet was waiting to take him somewhere to play golf, seeming to suggest that: a) my horrific, very personal, ordeal was akin to an insignificant billboard, and b) I was in the same league as these super rich people, when this has been enormously painful for me financially.

Berman says lawsuits are purely financial decisions; look at how much money one will make vs. the cost, i.e. to completely ignore any aspect of seeking justice.

Berman states “Juries hate rich people.” I ask for a pad of paper to take notes, and he calls his secretary and asks her to bring me one and she does.

Berman proudly states “Most mediators are like rabbits, jumping from room to room. I don’t do that,” putting down other mediators.

Berman is about to leave, and I have said nothing, and ask “Can I add some things,” wanting to tell him the reason I requested mediation, that this was about confidentiality, and he rebuffs me and says no, he has all he needs, gets up, and leaves the room.

2. Berman returns and announces “We have a big problem. They insist on confidentiality.” I thought “Yes, this is what I wanted to tell you about.”

I ask if I may now please explain why I requested this mediation, and can finally speak, and provide the arguments in Exhibit 7. I ask if he wants to write down anything I am saying, and he says no, that no one could care less about anything I think. He leaves.

3. Krabill has been typing on his laptop. I ask “May I please learn what you are working on?” Krabill says something like “None of your business.” A while later I ask him again, and he does not reply. I say “I just am wondering if you are replying to emails, or working for me,” and he won’t reply. Later because I have been talking, I say “It would make me feel really good if you typing up what I am saying,” and he replies “We often type notes when talking to a client,” being evasive and refusing to say what he is typing. Finally after getting no reply about six times I lean over just a little in my chair to see if he is in an email program, and he barks at me: “Don’t you know that’s rude?!”

At 10:24 a.m. I hear a ping on my phone, and see there was an e-filing, and say “Hey, there was something filed just now.” As I scroll down I see it was “Filed by: Kent Krabill.” It is a motion to compel defendants’ net worth statements that he was typing.

This is Kent Krabill – evasive, rude, refusing to communicate with me, despite my paying him \$450 an hour, \$7.50 per minute, to be there.

4. Berman returns and says he got them to give up the \$250,000 liquidated damages, but any settlement will still have to have confidentiality. I say I would have to sleep on this, but he states no, we have to reach an agreement that day or never. I ask if I can conditionally agree to confidentiality, and confirm this later in our meeting, but he insists no, I must agree to it at that moment before any more discussions occur. I realize I can reject the dollar amount later, so will have more time to think about confidentiality, so agree, and explain this to Krabill, that I will still think about confidentiality.

I decide to write out a list of all the things I would give up being able to say if I agree to confidentiality, and write down eight items, and want to think about each one of these.

5. Krabill starts criticizing me: “Why is it we can’t find a single person who likes you? Jim Terry doesn’t like you. Pat Mahaffey doesn’t like you. Dana Wood doesn’t like you.” He has said this same thing to me before. I reply that they are defendants. I told him there were plenty of people around the museum who liked me, and added “and we have my mother and sister.” He replied “Oh I’ve talked to your mother!” I raised my voice slightly to ask him to stop criticizing me, and he said if I raised my voice once more he would quit. He could say anything he wanted to me, and I had to sit there and take it.
6. Since I was a boy I greatly disliked anyone who used the word “d\_mn,” but solely due to Defendants action of putting me in jail I now on very rare occasions want to say it out loud. I once did when Krabill and his associate Stephen Cole were on the speakerphone with me, and Cole said he very offended, and Krabill backed him up, but I did not know if this also bothered Krabill or he was just backing Cole. In this mediation room I did not want to offend Krabill and so I asked him, and he is evasive, refusing to communicate:



Me: Is it ok if I use the word d\_mn?  
Krabill: We have talked about this.  
Me: Well, I remember Stephen didn't like this, but I don't know about you.  
Would you be offended?  
Krabill: You know the answer.  
Me: No, I really don't, will you please just tell me, so I don't offend you?  
Krabill: "You know what I am."

7. Krabill at one point tells me "You have serious problems."
8. Krabill I asked if we were going to get the net worth statements for the defendants, because of the juries-hate-rich-people comment, and said Hospers could be wealthier than I am, and told him I am definitely not rich. He angrily snarled at me "Yes, you are rich!"
9. Berman returns and says the most the defendants will offer in a settlement is \$30,000. It appears to me the day is over, so I tear the top two pages off of my legal pad, and slide it in Berman's direction. He then says he is going to prepare a "mediator's order" or some name like that. As he turns to leave he reaches for the legal pad, but, realizing this will continue, I, too, reach for it, and say I'd like to keep it. He angrily yells at me "Do you want the pad or not?!"
10. Krabill I ask what is a mediator's order, and Krabill for the third time is evasive, refuses to answer the question, and tells me something like "You'll find out."
11. Berman returns a while later with an offer to settle for \$65,000, and starts ripping me apart, telling me that based on meeting me he was sure the jury was going to hate me. He holds his right index finger under his chin and yells at me: "LOOK AT MY FACE! LOOK AT MY FACE! YOU ARE GOING TO LOSE YOUR CASE!"
12. Krabill, after Berman left, next started in on me insisting I take this offer, telling me I want peace. I told him no, I wanted justice. It is 12:40 p.m., and Berman has announced he has a big case coming in at 1 p.m., and so we had only a very short time to conclude this. I am under immense stress now.
13. Krabill I ask questions such as what we could get for pain and suffering, and he answers something like "We talked about this in September, we talked about this in October, we talked about this in November, and we talked about this in December, but the problem with you is you don't listen." He refuses to answer these questions. I ask him "Will you please try to just give me the answer and not preface every reply with all the self-defense stuff?" But he still won't answer my questions directly.
14. Krabill I tell that on my list of nine things I would give up if I agree to confidentiality a key one is that Hospers announced in a meeting of the museum volunteers that I had "cornered Dana." I want to add just one item to the order: that Hospers would announce in a meeting of the volunteers just four words: "Seth never cornered Dana." Krabill replies: "She will never agree to that."

15. Krabill I tell I don't care about the cost of going to trial, and I want to go to trial, because I don't want to agree to confidentiality, and I might get more than the mediator's order. I say it would be an interesting life experience, and even say I thought it might be fun, and note I have watched Perry Mason. For some humor I added that my favorite Three Stooges episode was "Disorder in the Court," and that my mother watches "Judge Judy." Krabill replied that trials were definitely not fun. I fully understood that, and am sure this one will not be, it is extremely serious, but for the record this time again I told Krabill I wanted to go to trial.
16. Berman returns. I want to ask him about this, and start to say "Could we add..." and Berman interrupts me and booms back at me (not an exact quote) "You want to make this into the Magna Carta, but it's not! You are not going to tell me how to do my job!! I have done 30,000 mediations! You don't want to follow the rules!" He continues yelling at me, and I never do tell him about these four words. He leaves.
17. Krabill berates me non-stop. I had made my list of 8 things I would give up being able to say about Hospers if I agreed to confidentiality, and had only reviewed the first six, and wanted to read the last two, after scanning down the list, but could not read even the first one. I repeatedly asked Krabill "Please just give me a few minutes to review my list," but he would not stop. I asked him "Please be quiet," and he said "You hired me to give you advice, and I am giving you advice." I replied "Well I am not sure I want to take your advice," and in a combative tone he replied "I will make a note of that" and typed in his computer. Again I look down at my paper and Krabill demands I accept this offer.

**I could not take any more of Krabill's constantly interrupting my thoughts, and announced I was going to go to the bathroom to get away from him.** The bathroom door was locked, so I walked toward the front door to see if another room was available.

18. Berman I see in the secretary's room, and he comes out and says I cannot be out in the hall, and walks me back to my room. Just before I get there I want to ask him why we can't add just these four little words "Seth never cornered Dana," which I expect Hospers would not care at all about, and start to say "I still don't know why..." and Berman spins around, standing in a rigid posture with his right arm outstretched pointing toward the door and yells at me: "IF YOU DON'T LIKE THE WAY I DO MEDIATION THEN THERE'S THE DOOR!!!!!"
19. Krabill I had asked in December to please settle the suit, and he and his assistant Stephen told me that was not the time to talk about settling, one only did that after all the depositions and motions were done. He had billed me \$200,000 since December, and this in addition to \$140,000 billed by the prior attorney, and so to now insist I take an offer for \$65,000 seemed unethical.
20. Krabill I told "I want to check the box "No," and he replied that only he could check the box, so I told him to, and **he refused**. He insisted I had to take this settlement offer.

21. Krabill, had been all over the map on damages:

- a. In our first meeting he just grinned and said there was no way to predict what a jury would award.
- b. For pain and suffering, in that meeting or soon after he did say juries don't typically award a lot for this unless one has seen a doctor, but held out hope that anything was possible.
- c. For punitive damages, in December 2016 he stated these were limited to \$200,000, which was a shock to me. He again said anything up to this was possible.
- d. For punitive, around May he told me the \$200,000 punitive number he gave me was wrong, that it is actually \$750,000.
- e. In a conversation around this time he insisted he ask for \$1 million for pain and suffering, and \$1 million punitive. I said I thought that might make me sound greedy, like I was trying to get rich, but he insisted these were the numbers we should ask for.

Now, at the very end of this deposition, Krabill, who had led me down the primrose path for 10 months with high ideas of punitive damages, and possibly a lot for pain and suffering, from low to most recently asserting \$2 million, while billing me \$264,831, suddenly, and remarkably, had 100% clarity on exactly what damages I would receive to the penny. He told me emphatically: "You will never get one penny more than \$8,995."

This is the number I remember him saying, but it could have been slightly different – it was my actual damages. This added another huge dose of stress to the moment. It may have contributed to my finally perhaps getting "fed-up" with Krabill. To the 153<sup>rd</sup> case Defendants who read this, I assume Krabill did not believe this, the damages could still be in the millions, but he said this to try once again to force me to settle so he could move on.

22. Krabill I then had to shield myself from, with my left elbow on the table, my left hand on my forehead, leaning to the right away from him, as if protecting myself from a bomb blast, as Krabill, on my left, started in again. I was obviously under enormous stress.
23. Krabill I asked yet again to please, please give me a few minutes of quiet to think about the final three items on my list of things I would give up saying about VFM if I agreed to confidentiality, and he replies something like "You just need to accept this offer."
24. Krabill simply would not respect my every-word-out-of-my-mouth begging for silence, and repeated everything he said before in a very disrespectful tone. The following is not the exact words, but similar to what happened. Again, I am hunched over to my right away from him, my left hand on my forehead protecting myself from him, looking down at my paper, and talking with enormous stress in my voice:

Me: "*Please* just be quiet for a few moments so I can think about this."

Kr: "No, I am not going to be quiet, you need to accept this offer."

Me: "*Again, I just need to think about the last few things on my list.*"

Kr: "You have had plenty of time to think about this, now is the time to accept this."

Me: "I know, but just be quiet please for a few minutes!"

Kr: "You hired me to advise you and I am advising you."

Me: "I know, but just stop talking please!!!"

Kr: "You need to accept this offer so you can start focusing on the Terry suit."

Me: "But just be quiet for a few minutes!!!"

Kr: "You want peace, you need to accept this offer."

25. Around now, as best as I can explain it, Krabill has filled all the registers in my brain with his constant carping, such that I could no longer respond rationally. I couldn't take him anymore, and had to escape from him immediately. I jumped to my feet, grabbed the legal pad with both hands, and threw the legal pad straight down on the table, so it only travelled about 6 inches from when I released it. I blurted out something like "Why can't you be quiet!!!"
26. I picked up the two pieces of paper upon which I had written, spun around, and opened the door to leave. Berman was standing in the doorway, to the right, very close, as if he had been eavesdropping on the entire conversation.
27. Berman had a) refused to care about the main reason I hired him, b) yelled at and insulted me all morning, c) and refused to let me even suggest a simple four words to add, and d) cost me potentially the \$65,000 settlement; \$100,000 more to now go through a trial, months more of my life on this, the possible loss of Krabill who has billed me \$515,000, and opening the possibility I could owe defendants fees of more than \$150,000, being hundreds of thousands of dollars. Because Krabill had deliberately pushed me to a breaking point when I acted not as I usually would, I told Berman "You are an as-\_\_\_."
28. It is acceptable practice when someone does a good job to pat them on the back. Some young men also give their buddy a light tap on the upper corner of their chest when they do something good, which I call an "atta-boy," short for "that-a-boy," going with the words "Way to go!" In this case I wanted to give Berman an atta-boy, but meaning "Great job, buddy, you just ruined my mediation, and cost me \$700,000." I extended my right hand to about 6" away from his upper right chest, about 4" in from his shoulder, stopped my hand, and then advanced it, giving him a very light tap, a facetious 'atta-boy.
- As an aside, after I visited my 89-year old mother and told her about this, as I stood at the door about to leave, she told me something, I don't recall what, and, unaware she was doing the same thing, she reached out with her right hand and gave me a light tap with the back of her hand on my chest. I immediately told her that was almost the same as I did to Berman. Perhaps I got this from her. It is a sign of affection.
29. Berman, staying in character, again yelled at me "You struck me! I am calling the police!" I immediately said "I greatly apologize, you could hear I was extremely upset." He again yelled at me "I am going to call the police!" I very humbly said "Again, I greatly apologize, please forgive me." He yelled: "Get out of my building right now!"
30. Krabill that afternoon sent me a letter he was going to withdraw from both cases.

31. Krabill on July 24 sent me a June invoice for \$64,968.94. If I had agreed to the mediator's order \$65,000, and paid Krabill's June invoice, I would have received a net \$31, and now been subject to confidentiality. This would not have given me any remote sense of "peace," but rather just the opposite.
32. Hospers' letter terminating my lease in 2012 stated anything I did not take with me would be considered "abandoned property," which she would effectively steal from me. During depositions in this case in April 2016 I learned that a large roughly 20' by 3' wing flap from my dad's original verified WWII Pacific War airplane was left behind because defendant Mahaffey told me nothing else in the South Hangar was mine, which was not true. There are also more than 100 parts which I did not take with me, because Jim Terry, who I hired to restore my plane, refused to turn these over. If I had agreed to settle and confidentiality, I would never be able to complain about the "abandoned property" provision, and could be considered to be agreeing to Hospers "abandoned property" designation, letting Terry or her steal all of these parts from me, impacting this suit. This, too, would not have brought me any "peace."
33. Krabill in this June invoice billed me \$1,060 for "VCE" for "legal research in connection with ethical obligations and conflicts concerning witnessing client engage in criminal act, draft e-mail summarizing research finding." This email was never shared with me despite my paying for it. My act of giving a friendly tap to Berman was not a criminal act. Krabill also billed me an estimate \$1,350 for his making plans to withdraw, including to draft the withdraw letter, demanding I even pay him for withdrawing.

In summary, Krabill:

1. Picked a mediator who does not negotiate but instead sought to impose a mediator order, and has a reputation for being rude, and so was the wrong mediator to choose.
2. Yelled at me repeatedly from the moment he arrived, and was evasive and disrespectful.
3. Violated the "Texas Disciplinary Rules of Professional Conduct, Rule 1.02: Scope and Objectives of Representation, which states: (a) a lawyer shall abide by a client's decisions: (1) concerning the objectives and general methods of representation." He had no legal right to demand I accept the settlement offer.

Exhibit 22: 2017 06 29 - 8.05 am Krabill to Seth re trial exhibits

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Thursday, June 29, 2017 8:05 AM  
**To:** Seth Washburne  
**Cc:** Jonathan Kelley  
**Subject:** Re: Trial Prep

No we do not have those this early.

Sent from my iPhone

On Jun 28, 2017, at 10:01 PM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Kent,

Regarding your trial prep calendar including a July 12 deadline for me to “submit all notes on questions to ask and exhibits to present to witnesses (categorized by witness),” I have not been able to start this yet, and will try to work on this tomorrow evening, and Monday and Tuesday, July 10-11, but may not have a very complete list.

Have you already prepared a list of documents and questions to ask each witness, and, if so, may I get a copy of your outline, so mine is not duplicative?

Seth

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Monday, June 26, 2017 9:13 AM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Cc:** Jonathan Kelley; Mariela Cawthon; Kent Krabill  
**Subject:** Trial Prep

Seth,

Here is a calendar of deadlines that you need to be aware of.

(Mariela, please calendar the deadlines below.)

Preparing for trial is an extremely busy time and we will not have time to look at anything you send us late. So please beware of the deadlines below and get us any info you feel we need by the deadline.

July 12: Deadline for Seth to submit all notes on questions to ask and exhibits to present to witnesses (categorized by witness)

July 14: Motion to Compel Mediation hearing at 10 a.m.

July 19: Prep Seth at our office 9 a.m. to 5 p.m.

July 20: Prep Seth at our office (hours TBD); Prep Ellie Washburne (hours TBD); Prep Nancy Washburne (if needed, hours TBD)

July 24: First Day of Trial

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

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Exhibit 23: 2017 05 30 - 2.47 pm Krabill to Seth

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Tuesday, May 30, 2017 2:47 PM  
**To:** Seth Washburne  
**Subject:** RE: Settlement Conversation

Got it. Thanks.

### **KENT D. KRABILL** | Partner

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**From:** Seth Washburne [mailto:sethpw1@gmail.com]

**Sent:** Tuesday, May 30, 2017 2:41 PM

**To:** Kent Krabill <kkrabill@lynnllp.com>

**Subject:** RE: Settlement Conversation

Kent,

Another requirement for any settlement is that Monk be deposed first, so if you put anything in writing to them, be sure to include that.

Regarding mediation, if the mediator could get them to give up confidentiality it would be worthwhile, so I am sorry to flip flop on that, but I think it might be worthwhile, assuming the mediator might see my view that confidentiality is an extra thing, above and beyond what they owe me for, and which I simply am not interested in, since they have already widely damaged and harmed me.

I just drove to the post office and mailed a check for \$100,000, addressed to Robert Petty, then your name under his, so that it might get there before you leave town.

Seth

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**From:** Kent Krabill [mailto:kkrabill@lynnllp.com]

**Sent:** Tuesday, May 30, 2017 2:21 PM

Exhibit 24: 2017 06 17 3.24 pm Seth to Krabill

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Saturday, June 17, 2017 3:24 PM  
**To:** 'Kent Krabill'  
**Subject:** VFM Case Mediation, and Hospers Net Worth Statement

Kent,

A while ago we talked about mediating this case, and my recollection is I first said let's not do it, but then I changed and said yes, if they can try to get Randy to give up confidentiality, then it would be ok, and you agreed that it was good to go to mediation, because sometimes you can get a glimpse of their strategy. There are only two weeks left until you go on vacation for a week, and then two weeks after that before the trial. May I please learn if a mediation is still contemplated, and when it might be scheduled? I, too, will be gone July 3-7, and am also unavailable June 30, and perhaps June 29. I still have zero flexibility on confidentiality, and never will provide that.

Secondly, did the defendants ever produce the net worth statements we requested, and, if so, will you please have these sent, or re-sent, to me?

Thank you.

Seth

Exhibit 25: 2017 06 29 - 9.40 am Seth to Krabill

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Wednesday, June 21, 2017 9:40 AM  
**To:** 'Kent Krabill'  
**Subject:** My call with Jonathan re damages and settlement  
**Attachments:** VFM Plaintiff's Original Petition.pdf; Washburne vs. VFM - 2nd Amended - Final.pdf

Kent,

Regarding your email below seeking to confirm my conversation with Jonathan:

1. Yes, he called me yesterday at 6:40 p.m., and said he was revising the actual damages to about \$8,250 (or some number in the 8,000 range), and wondered if I had any back up for any other damages. He said he had done a search that was "exhaustive," this was his word, and could find no other mention of any other damages.
2. I asked him if he knew what the components were of the roughly \$8,250 amount, and he said he knew it was three items, the defense attorney, the survey, and psych disorder costs, but had no idea what each one of these components was.
3. Both of these comments surprised me, because I am very into providing exact details behind numbers, and was sure I had my prior counsel include a breakdown of this in the petitions, or in an RFD response. So I asked Jonathan where he got the larger number he had, which was about \$32,000, thinking the backup must have been with it, and he said it was in a filing – I can't remember the one he named, and said it was included as only a total number, with no backup.
4. This morning I looked again at filings, and the exact amounts of the roughly \$8,250 – actually \$8,529, and most of these extra items, though adding up to \$26,000, not \$32,000, were in both the original petition and its second amended petition, attached. Hence I wonder why his "exhaustive" search did not include either of these documents. I am a little concerned, based on his use of the word "exhaustive," that I will be billed for 2-3 hours or more of his time searching for any mention of damages, when he would have found them in the first place one would ordinarily look – in the original petition.
5. As for advising me of the risks, yes, my recollection is he said something about there was no chance at all I would ever get a penny more than the actual damages, i.e. I would get zero for pain and suffering, and zero exemplary damages.
6. Yes, he then mentioned the 80% of \$22,000, and said it in a way such as "I don't know if you have heard of this rule they have in Texas...", but such was filed by Jim Terry, Pat Mahaffey, Dana Wood, and the Museum, so I have seen this four times, plus you and Stephen have reminded me of this. No offense, but just to be honest, it felt a little condescending.
7. I don't recall him saying the settlement offer was likely more than I would get at trial, but would not disagree with that. He made some reference to a 65% number.
8. You both ignore the fact that these settlement offers include confidentiality, which is a huge thing to give up.

Now leaving the subject of Jonathan:

9. Regarding pain and suffering, my recollection is that you have said it will be very hard to get a big number because I never went to a doctor. But I am under the impression I can still get a small number, e.g. \$5,000, \$25,000, or \$50,000, and maybe more, for this. If there is a statute which states I can receive \$0 for pain and suffering let me know, but in the Fourth Amended petition you left this in.
10. Regarding exemplary damages, my recollection is you and Stephen and I had a conversation in which you told me the maximum exemplary damages would be \$200,000. That was a surprise to me, but I have known it now since early December. My expectation is that I can get at least \$10,000 in exemplary damages, and maybe \$20,000 or \$50,000. You included exemplary, too, in your fourth amended petition.
11. Combined, my expectation is that I have an ok chance of getting:
  - a. Out of pocket costs of \$8,528.
  - b. Pay for my time to respond to these things, at least \$5,000 if at \$30/hour, or at my requested \$100 per hour this would be \$17,000.
  - c. Pain and suffering damages of at least \$5,000, but hopefully much more, such as \$50,000 or \$100,000.
  - d. Exemplary damages of at least \$5,000, but hopefully a minimum \$17,000, 2x my actual costs, and perhaps much more, such as \$25,000, or \$50,000.
  - e. Combined these add up to a minimum of  $\$8,528 + \$5,000 + \$5,000 + \$5,000 = \$23,528$ , which after allocating some to Dana would still be more than \$17,200.
  - f. Please let me know what pieces of this are extremely unlikely.
12. If I truly have no chance of reaching \$17,200 against VFM-Hospers-Gorin, if I non-suit it, and they sue me to recover their fees, is that a hard case for me to defend? I would non-suit it before agreeing to confidentiality.

#### Other things

13. Jonathan said we can still submit items if they are supplemental to an RFP item, and I want to include a photo of a billboard in Fort Worth of someone being handcuffed, and of a sign on the way to Lancaster to not pick up hitchhikers who may be from the prison, and maybe some other things, so will leave in a few moments to drive to FW to take a photo of that billboard, so will not be reachable by phone until the end of the day, but in any case would prefer an answer to the above in writing.
14. You and Stephen have often mentioned that I wanted an apology from them. If I said that before, I withdraw that, and ask you to please stop bringing it up. The first time Stephen mentioned they would offer this I made it quite clear that I could not care less about their apology – they don't mean it, they are only sorry they got caught. So again please do not again mention my wanting an apology from them, because it upsets me.

I think you are a very good lawyer, the best I could possibly have, and picture you doing a great job at trial.

Seth

---

**From:** Kent Krabill [<mailto:kkrabill@lynnllp.com>]

**Sent:** Tuesday, June 20, 2017 8:07 PM

**To:** Seth Washburne

**Cc:** Jonathan Kelley

**Subject:** You call with Jonathan re damages and settlement

Seth,

On your telephone call with Jonathan this afternoon, he advised you that the amount you are claiming in actual damages (non-punitive) is approximately \$8,250 (or a few thousand dollars more, depending on whether we are able to locate additional sources of damages). He further advised you (i) of the risks of continuing the lawsuit, (ii) that if we lose at trial or don't recover at least 80% of defendants' offer of \$22,000, you will owe Defendants their attorneys' fees, and (iii) that the settlement offer we have currently from defendants is likely higher than any amount you would receive in damages at trial (and also includes the apology you said you wanted).

I know you have repeatedly said you understand the risks and want your day in court, which is great, but I want to be crystal clear about the hurdles you face and the potential outcomes. From the beginning, I told you that I thought you have a strong liability case, but that damages were problematic because they were so low.

Today, you indicated once again that you understood, and told Jonathan that I had spoken to you about this previously. You also indicated that you would search for any other expenses that we might claim as damages when we amend our disclosures to include a revised damages number. You have now sent that and we will review and get back to you.

We are ready and willing to try this case. We just want to make sure you understand the potential outcomes.

Thanks,

Kent



Exhibit 26: 2016 06 26 - 11.37 a.m. email Krabill to me

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Monday, June 26, 2017 11:37 AM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Cc:** Mariela Cawthon  
**Subject:** Mediation will be with Gary Berman, 2027 Young St, Dallas, TX 75201 (214) 526-7500

Seth,

I will meet you at Gary's office about 11:45.

See you then,

**KENT D. KRABILL** | Partner

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Exhibit 27: 2017 07 14 - 153rd MTW hearing transcript

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**REPORTER'S RECORD**

VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. 153-275478-14

SETH WASHBURNE,	*	IN THE DISTRICT COURT
	*	
Plaintiff,	*	
	*	
VS.	*	
	*	TARRANT COUNTY, TEXAS
VINTAGE FLYING MUSEUM, INC.,	*	
HOSPERS FAMILY TRUST "D",	*	
CHARLYN HOSPERS, BILL GORIN,	*	
and DANA WOOD,	*	
	*	
Defendants.	*	153RD DISTRICT COURT

\*\*\*\*\*

**PLAINTIFF'S MOTION TO WITHDRAW**

\*\*\*\*\*

On the 14th day of July 2017, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Susan McCoy, Judge Presiding, held in Fort Worth, Tarrant County, Texas.

Proceedings reported by machine shorthand.

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1 That may happen, again, only because of the umbrella of the  
2 mediation privilege. And it may seem very frustrating to  
3 you but we need to do it right.

4 MR. WASHBURNE: Okay.

5 THE COURT: All right. Then let's begin.  
6 Let's let the attorneys state their appearances for the  
7 record and then I will hear Mr. Krabill's motions.

8 MR. KRABILL: Good morning, Your Honor.  
9 Kent Krabill for the plaintiff, Seth Washburne. I'm here  
10 with my partner, Britta Stanton.

11 MR. TURNER: Good morning, Your Honor.  
12 Randy Turner representing Vintage Flying Museum, Hospers  
13 Family Trust, Charlyn Hospers and Bill Gorin. And  
14 Charlyn Hospers is here with me.

15 THE COURT: All right. Well, everyone be  
16 seated except Mr. Krabill.

17 Mr. Krabill, just for the record, I  
18 understand that you are in a position where you came into  
19 this case a little late. You started representing the  
20 plaintiff and by all accounts seemed like you were doing,  
21 in my opinion -- not that this can be repeated or put  
22 into -- it seemed like you were doing a pretty good job.  
23 Seemed like you had a pretty good handle on the case and on  
24 your client. Most of your arguments before this Court  
25 seemed to get to the heart of what this case was about.



1 And so I understand that you have now filed a Motion to  
2 Withdraw as Mr. Washburne's counsel, and I saw  
3 Mr. Washburne nodding earlier when I said that he does not  
4 agree. And that's true, he does not agree; is that right?  
5 He has told you he does not agree?

6 MR. KRABILL: To this Motion to Withdraw?

7 THE COURT: Yes.

8 MR. KRABILL: Yes, Your Honor, he has not  
9 agreed to the Motion to Withdraw.

10 THE COURT: Okay. So then what we need to  
11 do is I need to -- then the heart of the matter like that  
12 gets down to whether an attorney feels that due to an  
13 event, that they are no longer able to adequately represent  
14 their client. And I want to start by saying that -- that's  
15 why I started by -- it wasn't just meant as a complement,  
16 but you were adequately representing him previously, and I  
17 think that the reason I bring that up is that if I'm to  
18 decide that you can no longer adequately represent him, I  
19 think we need to start with the standard that you were, in  
20 my opinion, adequately representing him at the time.  
21 Because I think that the Court then has to consider the  
22 factors of why you now feel like you are no longer able to  
23 adequately represent him.

24 Does that sound fair?

25 MR. KRABILL: Yes, Your Honor.

1 THE COURT: All right. And as I said  
2 before, because some of the events that are the subject of  
3 this occurred at mediation, let's all think carefully  
4 before we speak or before we respond, and I will keep my  
5 ears out for any objections. And I think anyone can assert  
6 the privilege objection if they wish to because it's not  
7 one side's or the other side; or nobody can assert it at  
8 all and if nobody asserts it then I suppose I don't have to  
9 rule on it. I don't know. We'll see how that goes.

10 Mr. Krabill, go ahead.

11 MR. KRABILL: Yes, Your Honor. As we stated  
12 in our motion, I'm a bit limited because of the  
13 attorney/client privilege on what I can share specifically.

14 There are irreconcilable differences between  
15 my firm and the client. I think I can say that you're  
16 right, we were not the first counsel on this case. We did  
17 take over the case in September. We believe we fought hard  
18 against defendants who have fought hard and fairly. As you  
19 know, there's been lots of motions, summary judgment,  
20 briefing, there's been disputes over depositions. We've  
21 resolved that and taken those depositions and done our best  
22 to prepare for trial against allegations against my client  
23 which were quite serious, in their defense, as you know  
24 some of those. And defense counsel can tell you more about  
25 that because they're the ones that made the allegations and

1 had the incidents that I ended up experiencing with my  
2 client.

3 THE COURT: Well, and just so that the  
4 record is full, the subject matter of this lawsuit has to  
5 do with whether or not the defendants should be liable to  
6 your client for him having been put in jail for trespass.

7 MR. KRABILL: Correct.

8 THE COURT: And I think that -- and I'm not  
9 going to make a legal statement, but the argument was that  
10 he should have never been in jail in the first place.  
11 That's the argument.

12 MR. KRABILL: Correct.

13 THE COURT: And, obviously, nobody wants to  
14 go to jail, particularly if one, for example, didn't do  
15 what they were alleged to have done. And so as I  
16 understood the case on plaintiff's side was that, whether  
17 by intentional or negligent conduct or something along that  
18 line, the things that the defendants did, in your opinion,  
19 in your argument, had a causal relationship to the reason  
20 that your client, Mr. Washburne, went to jail. If they  
21 were responsible, the next issue is how much damages should  
22 he be able to recover for this. I just want the record to  
23 reflect that this has to do with -- that this underlying  
24 case has a lot of emotion to it.

25 MR. KRABILL: Yes.

1           THE COURT: And it has to do with, you know,  
2 somebody feeling as though that they were wrongfully  
3 accused of something and then wrongfully, as a result,  
4 required to stay in jail; and how much that might be worth  
5 if, indeed, a jury found those to be the facts.

6           MR. KRABILL: Correct. I would agree for  
7 the most part with your articulation of the case. And I  
8 continue to believe, as somebody who has reviewed the  
9 evidence and represents Seth Washburne that he was  
10 wrongfully arrested and the claims are legitimate that he  
11 has brought. However, as you know, there were many --

12           THE COURT: Well, it's very important that  
13 you still believe the allegations in this lawsuit are still  
14 true. So the basis of your case has not changed. It is  
15 not a situation where you learned something new or found  
16 out your client was not telling the truth. You didn't  
17 learn a new fact about the underlying case. Or did --

18           MR. KRABILL: I cannot reveal -- I don't  
19 believe I can reveal the answer to that question.

20           THE COURT: Okay.

21           MR. KRABILL: -- without divulging  
22 attorney/client communications.

23           THE COURT: Okay. Well, then let me just  
24 hear what you have to say and then I will -- the way my  
25 mind works is I try to frame what are we talking about?

1 Which things are we talking about so that I can start  
2 knocking them out in my head one by one. So why don't I  
3 just let you continue your presentation and I will attempt  
4 to...

5 MR. KRABILL: I think -- and again, we're  
6 balancing some privilege issues here. The client, I do not  
7 believe, has -- I do not believe the client wants to follow  
8 or listen to my advice at all. And that's been a pattern  
9 for a long time that I have tried to work around and truly  
10 my associates as well. So I don't know why he wants me to  
11 continue to represent him to be honest with you. I am not  
12 free to say the comments that have been made to me and  
13 about me by him, obviously, but I just don't understand why  
14 he would continue to want me to represent him if the things  
15 that he has stated are true.

16 We ended up, as you know, there was a motion  
17 filed to compel mediation. The defendants did not want  
18 mediation because of, you know, you probably read their  
19 response of what happened in a mediation in another matter  
20 with Mr. Washburne.

21 THE COURT: Is that the case that's filed in  
22 the 48th?

23 MR. KRABILL: That is not the case that's  
24 filed in the 48th. This is a lease termination case that  
25 was several years before the incidences here. There will

1 be some discussion about it in the 48th case. I've already  
2 filed a Motion to Withdraw from that case as well, which is  
3 set for January.

4 THE COURT: Set for --

5 MR. KRABILL: Set for trial in January.

6 THE COURT: Oh, I'm sorry. When is your  
7 motion set for?

8 MR. KRABILL: It just got set yesterday.  
9 6th or 7th, somewhere in there.

10 THE COURT: So August 6th or 7th?

11 MR. KRABILL: I'd have to look it up. I  
12 have the motion here and the service, but I don't have when  
13 that was set. I could look it up for you, Your Honor.

14 THE COURT: That's fine. I'll follow up on  
15 that with Judge Evans.

16 MR. KRABILL: Thank you, Your Honor.

17 So in their response to the Motion to Compel  
18 Mediation, the defendants made the Court aware of the  
19 vicious treatment of them and the ranting and blistering  
20 attack of the prior mediator and such. I was not involved  
21 in that case. I don't know anything about it other than  
22 what they attached.

23 I eventually talked to Mr. Turner and  
24 convinced him to attend a half-day mediation. That was  
25 obviously negotiated. His clients did not want to do it.

1       However, we went to mediation with Mr. Berman and, as I  
2       have told you, an incident happened at the mediation.

3                       THE COURT: This is Gary Berman, correct?

4                       MR. KRABILL: Yes, Your Honor.

5                       THE COURT: He's in Dallas, correct?

6                       MR. KRABILL: Yes, Your Honor.

7                       THE COURT: I know Mr. Berman.

8                       MR. KRABILL: And Mr. Berman, he pushed my  
9       client hard. From what Mr. Turner has said, he pushed his  
10      client hard. He's known for that to try to bring about a  
11      settlement.

12                      THE COURT: I think that's been my  
13      experience when I was a trial lawyer as well. He does not  
14      come in and put on -- he does not allow your client to wear  
15      any rose-colored glasses and tells you the hard  
16      realizations of you have a 50 percent chance of winning and  
17      a 50 percent chance of losing.

18                      MR. KRABILL: Yes.

19                      THE COURT: And then points out the flaws of  
20      your case. And then he goes in the other room and he does  
21      it to the other side and goes back and forth.

22                      MR. KRABILL: And he did that and there was  
23      a conflict between my client and Mr. Berman. I'm not sure  
24      that I can say more than that.

25                      THE COURT: Was it a physical conflict?

1 MR. KRABILL: I'm not sure that I can answer  
2 that question, Your Honor. If my client allows me to I --

3 THE COURT: I believe I have already read  
4 somewhere that there was.

5 MR. KRABILL: Well, there was already a --  
6 and I know Mr. Turner, he was present as well. So there's  
7 other people that were there.

8 THE COURT: Let us relieve you of the  
9 attorney/client privilege. The Court is aware that there  
10 was a physical confrontation of sorts.

11 MR. KRABILL: Yes, Your Honor.

12 THE COURT: And so as a result, did that  
13 terminate the mediation immediately?

14 MR. KRABILL: Yes.

15 THE COURT: Out of curiosity and unrelated  
16 to your Motion to Withdraw, slightly unrelated, did it look  
17 like there was a chance that the case was going to settle?

18 MS. STANTON: Your Honor, I believe that  
19 that would be protected under the mediation settlement  
20 privilege.

21 THE COURT: You're probably right.  
22 Sustained. I was wondering if we could short-cut the whole  
23 process out of having to -- and to be honest with you, I  
24 guess in thinking that through, that wasn't a very wise  
25 thing for me to ask because people's positions may have



1 changed since the mediation, and therefore -- okay. I  
2 won't even think about that any more.

3 All right. So I think you're going to have  
4 to spell out, even though I can imagine -- first of all,  
5 I'm guessing that you did not -- what occurred at the  
6 mediation would have been against your advice?

7 MR. KRABILL: Of course.

8 THE COURT: Okay. I just want to make that  
9 clear for the record. So as a result, you feel as though  
10 Mr. Washburne did not follow your advice and that's just  
11 part of your concern about him following your advice.  
12 That's one example of him not following your advice that is  
13 the most recent and perhaps the most drastic.

14 MR. KRABILL: Yes, Your Honor.

15 THE COURT: Okay. So let's talk about the  
16 duties of a lawyer. I think every lawyer in this room has  
17 been in a position where they had a case that at some point  
18 they really wish they didn't have to go try but they did it  
19 because they were honor driven to represent their client to  
20 the best of their ability. So why don't you spell out kind  
21 of following the law how his failure to follow your advice  
22 prevents you from adequately representing him.

23 MR. KRABILL: Well, we have put together a  
24 case with the evidence that we believe is the best way to  
25 convince a jury to rule in our client's favor and it

1 appears that Mr. Washburne does not want to follow our  
2 advice on how to present the case to the jury. It goes  
3 back to how to take depositions, motion practice, every  
4 step of the way. And we're now left with a client who  
5 apparently does not believe that we are adequate counsel  
6 for them.

7 THE COURT: All right. And you say that  
8 and -- and just for the record, I see sort of a physical  
9 reaction by Mr. Washburne to that statement. And I  
10 think -- and the reason I bring that up is because I think  
11 that might get to the heart of the matter. I don't know at  
12 this point whether we can say whether Mr. Washburne -- I  
13 know he opposes this motion but we haven't yet heard him  
14 say what he wants to say. And we will hear that. But are  
15 you sure he doesn't want you to represent him?

16 MR. KRABILL: Well, I have conflicting  
17 evidence of that. I have evidence of him opposing this  
18 motion, and then I have other evidence. So I have  
19 conflicting evidence of that.

20 THE COURT: But you feel -- how long have  
21 you been practicing?

22 MR. KRABILL: Since 2005. In Texas since  
23 2007.

24 THE COURT: And you're a partner at --

25 MR. KRABILL: Lynn Pinker Cox & Hurst.

1 THE COURT: Let me just say every judge has  
2 past experience being a lawyer and my experience with those  
3 lawyers is it's a fine group of lawyers.

4 MR. KRABILL: Thank you, Your Honor.

5 THE COURT: And that does weigh -- if you  
6 tell me you can't do your job, I don't feel, based upon  
7 what I know about your law firm, although I've not met you  
8 before this case, I do not feel that it's that you don't  
9 want to or that you're not capable of doing your job, it's  
10 that you truly feel like you can't. And I'm pretty sure  
11 that that's all that is required.

12 But all right. So let's go ahead and I'm  
13 going to let -- before we let Mr. Washburne talk about what  
14 he wants to talk about, I want to get the lawyer issues out  
15 of the way.

16 Mr. Turner, do you have anything to add to  
17 this?

18 MR. TURNER: Yes, ma'am.

19 MR. KRABILL: May I add one thing?

20 THE COURT: Oh, absolutely, yes.

21 MR. KRABILL: Ms. Stanton reminded me of.  
22 What we've been left with, and I believe I said this in the  
23 papers, but we have a broken relationship with trust and  
24 confidence. And if I'm going to be in a fiduciary  
25 relationship with somebody, I need them to be able to trust

1 in me and trust my advice. It appears that's not occurring  
2 any longer.

3 THE COURT: Well, those are the buzz words  
4 that come right out of the law and so that is -- and  
5 something that people who aren't lawyers may not understand  
6 is -- it's obvious when you have a fiduciary relationship  
7 with your bank. That seems obvious to people. You have a  
8 privilege with your doctor and that seems obvious, too,  
9 maybe not the exact dimensions of it. But a lawyer does  
10 have a fiduciary relationship with their client because  
11 they have to be able to talk about -- they have to be able  
12 to be one hundred percent honest with each other like, you  
13 know, does that hurt my case? Where does that leave us?  
14 What facts have you not told me? All kinds of things.  
15 Because a person's case is a very fluid thing. It's not  
16 like putting an airplane together and you put it together  
17 and it flies or it doesn't fly. Putting a lawsuit together  
18 is nothing like that. It's not like brain surgery. I  
19 mean, there's many different ways to skin the proverbial  
20 cat. I don't know why I use that expression. I have cats.  
21 But nonetheless, it is not one of those things that like if  
22 you do this you're wrong, if you do this you're right. So  
23 it is a relationship of trust. And trust and fiduciary are  
24 two terms that I was either going to interject in myself or  
25 let somebody else interject in, but those are the two terms

1 that are very important.

2 And I think that trust thing has to go both  
3 ways. I think that not only -- we cannot speak for  
4 Mr. Washburne. He may not be a very trusting individual at  
5 all and he might trust you more than others. But we can't  
6 speak for whether he trusts you or not. But I do think  
7 trust is a two-way street. So are you saying that your  
8 ability to trust your client has also been a concern to  
9 you?

10 MR. KRABILL: I don't know if I'm allowed --  
11 may I confer? I do not trust Mr. Washburne.

12 THE COURT: And when we're talking about  
13 that, we're not talking about this general like leaving  
14 your cash out. We're talking about --

15 MR. KRABILL: That's correct.

16 THE COURT: We're talking about you don't  
17 trust him to help you move this case forward?

18 MR. KRABILL: That's correct.

19 THE COURT: Okay. Anything else,  
20 Mr. Krabill?

21 MR. KRABILL: No, Your Honor. Thank you  
22 very much. I'd be happy to answer any additional questions  
23 you may have.

24 THE COURT: This isn't the end of your time  
25 to speak, I just want to, you know, again, we're on the

1 record and I suspect this may be something that people read  
2 later. And just because y'all have written motions and  
3 just because I've read them doesn't mean that -- I think we  
4 need to get a full picture of everything on the record.

5 All right. Mr. Turner, obviously, you're  
6 opposing counsel. Usually opposing counsel is limited to  
7 saying whether they object or they don't object to this  
8 motion. And so let's start there.

9 MR. TURNER: Well, I don't object to the  
10 motion.

11 THE COURT: Okay.

12 MR. TURNER: I'm not bound by any kind of  
13 attorney/client privilege and I don't think what I'm going  
14 to say violates the mediation privilege. Mr. Washburne  
15 punched the mediator during the mediation. The mediator  
16 called the police and filed criminal charges. It's my  
17 understanding that currently Mr. Washburne is charged with  
18 Class C assault on a mediator. This is important to the  
19 Motion to Withdraw, Your Honor, because central to our  
20 defenses is that we say that Mr. Washburne has an  
21 uncontrollable temper and exhibits bizarre, irrational  
22 behavior, sometimes violent, and this is why the defendants  
23 terminated his lease. This is why one of the defendants  
24 called the police. And so it's central to this case, his  
25 demeanor.

1                   Mr. Krabill has very skillfully defended  
2                   against these allegations of irrational and violent  
3                   behavior, but after he saw the attack on the mediator by  
4                   Mr. Washburne, he's in the precarious position now of  
5                   basically having to advocate a position that doesn't exist.  
6                   For example, Mr. Washburne testified in a deposition that  
7                   he doesn't lose his temper and he doesn't get angry. Well,  
8                   now Mr. Krabill has firsthand knowledge that that's not  
9                   true. He does lose his temper and, in fact, can become  
10                  violent. Mr. Washburne, this is now his third law firm  
11                  that's withdrawing from representing him.

12                  THE COURT: Well, that happens a lot. I  
13                  mean, in our practice -- in the case that we had the  
14                  hearing for before -- not that one but the one before that,  
15                  we had three law firms representing one of the parties. So  
16                  that does happen. But okay, I take that as at least a  
17                  minuscule piece of evidence, but we can't presume what  
18                  happened to the previous law firms.

19                  MR. TURNER: And the last point I want to  
20                  make is that I don't have, I don't think, personal  
21                  knowledge, but in my opinion, it's obvious to me that he  
22                  can't control his client and he can't trust his client.

23                  THE COURT: Okay. The controlling your  
24                  client, honestly, I'm not sure that that's -- you know, the  
25                  jury is allowed to see the person for who they are. And

1 controlling the client would be helpful but it is not  
2 necessarily required. It's the trusting part that concerns  
3 me greatly. It's the trust and fiduciary relationship and  
4 the elements of a fiduciary relationship in the  
5 lawyer/client setting. I think that that is what -- I  
6 mean, I can try in my mind to step into the shoes of anyone  
7 of you guys and think that that would be an unpleasant  
8 situation to be in. I have not forgotten what it's like to  
9 represent clients. Because clients are people. They are  
10 not inanimate objects. So I understand how much this might  
11 make Mr. Krabill and his firm's representation unpleasant  
12 and not going the way they want it to go. And I fully  
13 understand that. But there's a winner and a loser in every  
14 case and I think the jury is here to ferret out the  
15 details. My biggest concern is the fiduciary part because  
16 once a lawyer cannot be a fiduciary, that to me means he's  
17 not capable of doing his job. The control is less  
18 important to me than the trust.

19 MR. TURNER: Well, from my perspective from  
20 what I've seen in all these years of litigating this case,  
21 it would be impossible for me to trust -- knowing what I  
22 know about all the depositions, all the testimony, all the  
23 allegations, and then observing that behavior at the  
24 mediation, there is no way that I could trust a client --  
25 that I could trust Mr. Washburne if I was in Mr. Krabill's



1 shoes. Based on what Washburne has testified to in  
2 depositions and what the allegations are and then what we  
3 actually saw at the mediation, there's no way there would  
4 be any trust on my part.

5 THE COURT: Okay. I see that. Also, you  
6 might be a better person to ask than Mr. Krabill or  
7 Mr. Washburne because you're not burdened by the  
8 attorney/client and you're a lawyer. But what seems  
9 important to me was I felt like this case took a turn when  
10 Mr. Krabill and his law firm started representing  
11 Mr. Washburne, that things were moving in a more positive  
12 direction on their side. It seemed like the case was  
13 lingering for a long time. It wasn't being prosecuted as  
14 quickly as some. Not that there weren't good reasons for  
15 that, I'm not saying on the record that the previous  
16 lawyers acted too slowly. That's not what I'm saying. But  
17 I am saying it seems like the case made progress for the  
18 plaintiffs once Mr. Krabill and his team were on board.

19 Would you agree with that since you're on  
20 the other side?

21 MR. TURNER: I would agree. They've done  
22 the best job of any of the law firms who have represented  
23 Mr. Washburne in my opinion.

24 THE COURT: Of course, we don't know what  
25 kinds of problems the other law firms were constrained with

1 and we can't.

2 MR. TURNER: That's true. I think they were  
3 huge, but I know a lot more than you do because I've talked  
4 with these lawyers and I know what went on.

5 THE COURT: All right. So then let me ask  
6 you this. And this is definitely doing an end run around  
7 the current problem. Do you feel from your client's  
8 perspective that what occurred at mediation is going to  
9 make this case impossible to prosecute on the plaintiff's  
10 side anyway?

11 MR. TURNER: No. I think it's impossible  
12 for Mr. Krabill's law firm to prosecute this case. If he  
13 gets a new lawyer who won't be burdened with -- like  
14 Mr. Krabill is knowing what he knows now and what he's  
15 seen, a new law firm I think could easily present this case  
16 to a jury and do a good job.

17 THE COURT: Okay. Well, thank you,  
18 Mr. Turner.

19 All right. And Mr. Washburne, I'm not going  
20 to make you get on the witness stand. You're not a  
21 witness. I'm not going to swear you in unless you'd like  
22 to be sworn in. But we are on the record and there's going  
23 to be a record of what you say. But I will let you --  
24 first let me ask you a couple questions and then I'll give  
25 you the opportunity to say what you want to say.

1 MS. STANTON: Your Honor, may we advise him  
2 on the record that we still represent you and we will let  
3 you know if we think you're waiving a privilege. We'll  
4 make a privilege objection. If you want to waive it,  
5 that's your right, but we will advise you that you're  
6 waiving your privilege.

7 THE COURT: That's a very good way of  
8 handling it because until I make an order, you still are  
9 counsel, which is a really delicate situation to be in.  
10 But yes.

11 So to start with, Mr. Washburne, I want to  
12 make sure that I really understand. In really basic terms,  
13 you do not want Mr. Krabill and his law firm to withdraw as  
14 your attorneys; is that correct?

15 MR. WASHBURNE: That is correct.

16 THE COURT: All right. Explain why you want  
17 them -- Mr. Krabill said something to the effect that he  
18 doesn't understand why you would still like them to be your  
19 lawyers, and I think that's a good place to start. Why do  
20 you want them to continue representing you?

21 MS. STANTON: You want to be careful not to  
22 talk about any trial strategy or strategy for the case when  
23 you answer this question.

24 MR. WASHBURNE: Okay, thank you. I  
25 understand.

1 THE COURT: From your gut, why do you want  
2 them? Because you think they're good?

3 MR. WASHBURNE: Yeah. I think he is good at  
4 arguing the specific legal points and he understands the  
5 law and he's good at arguing those and better than  
6 attorneys I've met in the past. I also think this suit  
7 belongs in a larger firm and most of the larger firms have  
8 turned me down.

9 THE COURT: You just don't want to start  
10 from scratch?

11 MR. WASHBURNE: No. I believe it would be  
12 very expensive and I've had very bad luck with firms in the  
13 past.

14 THE COURT: All right. If you'll pull your  
15 microphone a little bit closer to you. I've heard  
16 everything you said but the court reporter, in order for us  
17 to have a record, needs to be able to hear everything  
18 clearly.

19 MR. WASHBURNE: Okay.

20 THE COURT: And let me ask you this. From  
21 everything I understand, your interest in aviation and  
22 planes, which I share, it requires you to be somewhat of an  
23 intellectual to understand airplanes and how they work and  
24 things like that. I mean, you can see where a new, fresh  
25 lawyer might be able to help you better in light of the

1 circumstances at mediation?

2 MR. WASHBURNE: I hired this firm because  
3 they advertised themselves as the best trial firm in Texas.  
4 I've paid them -- I've been billed \$515,000 and expect the  
5 recent invoices will drive up to \$600,000, which are  
6 amounts that are very painful for me. I believe, based on  
7 my commitment to them, that I should get what I paid for.  
8 There's been many problems with them along the way. I  
9 stayed with them only for them to take this to trial. And  
10 I would like them to do what I've paid them for.

11 THE COURT: Does it concern you that they  
12 feel like they can't continue doing this good job that they  
13 have been doing? Does that concern you? I mean...

14 MR. WASHBURNE: Yes and no.

15 THE COURT: Do you feel that you trust them  
16 in terms of your case?

17 MR. KRABILL: I trust their understanding of  
18 the law and ability to argue that I was wrong under the  
19 law.

20 THE COURT: All right. Given the fact that  
21 you mentioned an amount of money that they have billed, can  
22 you see any reason why -- other than truly not feeling they  
23 can represent you any more, you can't imagine a good reason  
24 why they'd want to quit working for you if they could be  
25 billing lots of time? Sounds like you're willing to take

1 this case as far as it's going to go so from a law firm  
2 perspective, if they have the opportunity to bill this case  
3 all the way through trial, it seems like there's not much  
4 motivation for them to want to get out of the trial except  
5 that they're telling me the truth.

6 Do you follow what I'm saying?

7 MR. WASHBURNE: Yes. I've been surprised  
8 that they want to get out of this. I'm not sure what I can  
9 say about the mediation, but -- again, I'm not sure what I  
10 can say about what he told me at mediation, but I was --

11 THE COURT: He did not tell you to hit  
12 Mr. Berman, did he?

13 MR. WASHBURNE: He caused me to hit  
14 Mr. Berman.

15 THE COURT: I don't think you answered my  
16 question, sir. Did he tell you to?

17 MR. WASHBURNE: No, he did not.

18 Could I explain what my views are or what  
19 happened on the day of mediation, Your Honor?

20 MS. STANTON: I'll just caution you just  
21 don't talk about the settlement, any numbers that were  
22 discussed, anything like that.

23 THE COURT: And again, these kinds of  
24 things, when and if this case does go to trial, I would  
25 never allow that to come in even if it was said here.

1 But -- and here is why I will let you tell what you want to  
2 tell: Because I get the feeling that you think that you've  
3 been wronged several steps along the way, including what  
4 happened at the Vintage Flying Museum. I think you feel  
5 wronged about how you view that your plane wasn't fixed  
6 properly. I don't know the allegations in that case,  
7 but... And I know that you do not want your attorneys to  
8 have the chance to withdraw. I understand that completely.

9 I may be constrained by the law. If an  
10 attorney says I can't represent this client despite the  
11 fact that I can bill lots of hours up to the tune of half a  
12 million dollars and I still am telling you, Judge, I don't  
13 think I can do it, it's very hard for a judge to say, Oh,  
14 I'm going to force you to. And I just want you to know  
15 where I'm coming from. But because of that, I'm going to  
16 let you tell me what you want to tell me. I'm not sure it  
17 will be relevant to my decision, but I certainly don't ever  
18 want you to think you didn't have the opportunity to  
19 explain your point, okay?

20 MR. WASHBURNE: Thank you. I appreciate  
21 that.

22 THE COURT: Okay. Go ahead.

23 MR. WASHBURNE: My first meeting with  
24 Kent Krabill went well. Subsequently to that, it is my  
25 belief that he spoke to my prior counsel and was told to

1 treat me --

2 MS. STANTON: And I would be careful about  
3 saying anything your lawyers told old lawyers or lawyers --

4 THE COURT: I think he was just speculating  
5 on what may have happened. Or do you know that it  
6 happened?

7 MR. WASHBURNE: I'm just talking about --  
8 I'm not talking about details of the case.

9 THE COURT: Okay.

10 MR. WASHBURNE: I'm just saying I believe he  
11 told -- well, this case has many details to it, being an  
12 airplane and complicated parts that lay people might not  
13 understand. And I was sort of detail oriented with my  
14 prior attorney and I would love to explain the reason he  
15 quit, which was unethical. But --

16 THE COURT: That's not why we're here today.

17 MR. WASHBURNE: No, it's not why we're here  
18 today. And the other two firms, I would also like to tell  
19 the issues with them. But in any case, Mr. Krabill, in my  
20 opinion, ever since then, has been very disrespectful of  
21 me.

22 THE COURT: So you think he was respectful  
23 to you in the first meeting, and then you think he talked  
24 to the prior lawyers and then his demeanor changed?

25 MR. WASHBURNE: Yes. I believe my prior



1 lawyer told him Seth is somebody you just have to control,  
2 you have to just tell him to shut up and not let him do  
3 anything. So he's yelled at me numerous times on the  
4 speakerphone from his office. I was embarrassed to go to  
5 his office and walk past the secretary thinking -- she  
6 looked at me like, Oh, you're the poor guy he's been  
7 yelling at all the time. Telling me, You don't listen. He  
8 asked me for a list of some things which were already in  
9 our RFPs and, Why don't you give us this? We told you this  
10 over and over again. You don't give us what we want. I  
11 said, Just look at the RFP. Oh, okay, it's there. He  
12 finally did shut up about that. But he just lambasted me,  
13 yelled at me over and over about that.

14 He, one time after meeting here, we went up  
15 just to show him the location. I pay him and his assistant  
16 \$800 an hour when they're together, \$450 and \$350. And I  
17 invited them up to the museum just to show him the -- to  
18 describe the events there. But he got out of the car,  
19 wanted to hear nothing from me, just started yelling  
20 questions at me. And I told him I didn't want to discuss  
21 strategy standing in the street. I just explained to him  
22 what I wanted him there for, just to explain where my car  
23 was, etcetera. No. He's yelling at me, I don't care, all  
24 this stuff. Finally, he got in his car and sped off, the  
25 tires screeching and rocks flying. This is the kind of

1 person he is. Defendant's counsel, who defends him, has  
2 seen this firsthand in the deposition of Monk where he sort  
3 of blew his top and yelled at him. The main problem is  
4 here we have a good lawyer who has a bit of an anger  
5 problem, which is -- I'm sorry, not an anger problem but  
6 a -- he's not been angry with me but he's been  
7 disrespectful to me and just has a problem being  
8 respectful.

9           So in this mediation -- and I won't go into  
10 any details of the mediation. I'll just describe the day  
11 from my perspective. I arrived before he did and the room  
12 was very messy with magazines kind of strewn around, one of  
13 them with a big word "suicide" on the cover and an empty --  
14 mostly empty container of KitKats in the middle of the  
15 table. And I'm someone who, when I go to restaurants,  
16 sometimes just move the salt over, want everything kind of  
17 clear. So I moved things around on the table. I moved  
18 things off of the table because this is an important day  
19 for me and I wanted to have this nice, clear space so I  
20 could think clearly.

21           Krabill appeared at the door and I just  
22 politely said -- he comes, looked around and he saw I'd  
23 moved everything off the main table so we had a good work  
24 space. And immediately, first words of the day yelling at  
25 me, You did what? How dare you move things off -- in

1 somebody else's office. Who do you think you are? Anybody  
2 ever teach you not to touch other people's stuff? Didn't  
3 your mother ever tell you not to touch other people's  
4 stuff? So that was the beginning of the day for me. He  
5 then went to get some water so I put all the stuff in a big  
6 mess it was before.

7           Later he was typing something very actively  
8 on his computer and I just asked him, Do you mind if I ask  
9 what you're typing? No, it's none of your business. I  
10 asked him about four times, What are you typing? He  
11 wouldn't tell me what he was typing. I asked him, Are you  
12 typing e-mails? I was saying -- I think at one point I  
13 said, I hope you're typing what I'm saying. You know, I  
14 would feel really good if you were typing what I was  
15 saying. At one point he said, We often type when other  
16 people talk. But again, he wouldn't -- he just was evasive  
17 and wouldn't tell me what he was typing. So finally I  
18 leaned over a lit and he snapped at me, Didn't anyone ever  
19 tell you that's rude? So this was his attitude towards me.

20           He -- at one point I asked him if I could  
21 say something and he snapped at me about that. He at one  
22 point yelled at me, You're a rich person. Or I was saying  
23 I wasn't a rich person. He said, Yes, you are, in this  
24 angry voice. I have a whole list here of things he did.

25           But the main thing he did then -- well, and

1 then Berman, Berman was quite a delight too. He -- again,  
2 without talking about the strategy things, he came in and  
3 said a couple words. First of all, so I requested this  
4 mediation for a very specific purpose, which I can say was  
5 about confidentiality, to try to remove that from this  
6 case. And that was -- I'm the one, again, who requested  
7 this meeting, and that was my goal. And Krabill should  
8 have communicated that to the mediator and he should have  
9 picked a mediator who communicates. I have been to  
10 mediation three times before, with Kay Elliott, with  
11 Ross Stoddard, and with a gentleman out on Camp Bowie in  
12 Fort Worth. And each of those mediators were nice people  
13 who would listen, talk to both sides. Krabill hired  
14 somebody for this deposition who, as you perhaps noted, is  
15 sort of a bulldog. And he --

16 THE COURT: But that's part of his job.

17 MR. WASHBURNE: Okay. He probably -- well,  
18 it's not the type of mediator I expected that I'd been used  
19 to from my prior three mediations. He said that most  
20 mediators jump from room to room like a rabbit, or some  
21 expression like that. I don't do that. I wanted to  
22 explain to him this thing about how, again, the purpose for  
23 me was to get the defendants to give up confidentiality, to  
24 have him convince them of my arguments. He didn't want to  
25 hear from me. He just said, No, I don't want to hear from

1 you. He came back and he said, They're not going to give  
2 up any confidentiality -- or he said we have a big problem  
3 about confidentiality. Well, I didn't even open my mouth  
4 yet. I finally asked him if I could explain why we're here  
5 and he let me, but then he didn't take any notes. I said,  
6 Do you want to write down anything? He said, No, nobody  
7 cares anything about what you think. I don't care.  
8 Nobody -- don't tell me how to do my job. He was very  
9 belligerent. He continued to be belligerent, one time  
10 yelling at me, Look at my face, look at my face, you're  
11 going to blah blah, and just yelling at me in my face. He  
12 was just very hateful to me the whole time.

13 Then he went back to Krabill. Krabill again  
14 was -- well, at one point I made a list of -- to give up  
15 confidentiality. I made this list of like nine things I  
16 would give up if I --

17 MS. STANTON: And I'll warn you not to talk  
18 what about their --

19 MR. WASHBURNE: I won't, specific things.

20 MS. STANTON: Well, even general things  
21 about terms of settlement and things like that that  
22 occurred at mediation.

23 MR. WASHBURNE: Okay, thank you.

24 Anyway, I had a list of --

25 THE COURT: You had a list of things that

1 were important to you.

2 MR. WASHBURN: Well, the things that I  
3 would be giving up if I agreed to confidentiality. And I  
4 looked over these and I thought, Okay, I can give up this  
5 one, I can give up that one. I looked at this list. I  
6 have "okay" written next to several of them and there were  
7 just a couple more I wanted to look at. And this was the  
8 whole crux of the whole problem that day.

9 And Krabill just started talking nonstop to  
10 me giving me advice. And I -- well, also, I'd asked  
11 questions to Krabill about, you know, benefits and things  
12 and costs, and he would respond to every question, I told  
13 you this in September, I told you in October, I told you in  
14 November, I told you in December. I told you five, six  
15 times. You just don't listen, Seth. You don't listen. I  
16 was just like, Can you please answer my question? Just  
17 answer what I asked you without all this defensive stuff  
18 before that. You know, this is the way he was the whole  
19 day, just on me from the moment he came in.

20 And then so finally we only had like 20  
21 minutes left and I had this piece of paper in front of me.  
22 I just wanted to look at it. And I was like, Kent, can you  
23 please be quiet for a few minutes? I already had my head  
24 in my hands like this to kind of shield me from him and I  
25 was saying, Kent, please stop talking; please just be

1 quiet. No, I'm not going to stop talking. You need to  
2 blah, blah, blah, giving me this advice. At one point I  
3 said, I might not want to take your advice. He said, I'm  
4 going to note that. So the only advice I did not take of  
5 his was with regard to --

6 MS. STANTON: Don't talk about what his  
7 advice was.

8 MR. WASHBURN: -- whether or not we settle  
9 this. That was the only piece of advice I didn't take of  
10 his and I just wanted a little more time.

11 Finally I said, I'm going to go to the  
12 bathroom to get away from you. How many people actually  
13 have to leave the room to get away from their attorney?  
14 That is how horrible he was. So I went to the bathroom but  
15 the bathroom door was locked so I walked down the hall to  
16 find another room and Berman bumped into me and said, You  
17 can't be out here and he walked me back to the door.  
18 Actually, there were just four words I wanted to add to  
19 this -- at one point I asked this gentleman, this person if  
20 I could -- I asked Berman if I could add -- or actually, I  
21 asked Krabill what a mediator order is. He said, I'm not  
22 going to tell you; you'll find out. That's what he told me  
23 about a mediator order. He just wouldn't communicate with  
24 me.

25 So Berman came back with this mediator order

1 and I wanted to add something --

2 MS. STANTON: Don't talk about terms.

3 MR. WASHBURN: I won't say specifically.

4 I wanted to add one little thing to it. And  
5 I just started to say to Berman, Is it possible to -- No,  
6 we can't. You want to make this into the Magna Carta.  
7 We're not making this into the Magna Carta. You don't tell  
8 me how to do my job. Are you going to do this or not?  
9 Just kept yelling at me like this.

10 And we could just settle this very easily, I  
11 thought, if I could just have made one small addition to  
12 this thing, which I thought the defendants would have  
13 easily agreed to. But he just wouldn't even let me open my  
14 mouth. So when I walked down the hall, I walked back,  
15 again, I had to go back and sit with this sort of was a  
16 monster that day. And I saw Berman in the hall and again I  
17 just said, Again, I just don't know why -- and as soon as I  
18 said three words, he spun around, arm pointing to the door,  
19 You do it my way or you get -- if you don't like the way I  
20 do mediation, there's the door, get out. He's yelling at  
21 me like this.

22 So then I was back in the room and we only  
23 had like ten minutes more and I was looking at my list  
24 going over it, or trying to read it, and Krabill just kept  
25 talking to me. I said, Krabill, again, please just be



1 quiet, Kent. I'm trying to concentrate. Please stop  
2 talking. No, I'm not going to stop talking. You need to  
3 do blah, blah, blah. Again, just stop and give me a minute  
4 to think about this. No, no, no. Kent, stop this. Will  
5 you please just stop talking? He just kept on going and  
6 going and going. This would drive anybody insane, you  
7 know.

8 So finally, I just grabbed the pad of paper  
9 and finally stood up and threw it down on the ground like  
10 that at the table and I said something to him, I don't know  
11 what, I think it was probably, Why can't you be quiet? But  
12 he pushed me to all this by just not being quiet. And he'd  
13 done this all morning just being abusive and rude to me.

14 THE COURT: Your lawyer?

15 MR. KRABILL: My lawyer. My lawyer who I  
16 hired and paid \$600 to.

17 THE COURT: I was just trying to -- because  
18 you were using the word "he" for both Mr. Krabill and  
19 Mr. Berman.

20 MR. WASHBURNE: So, you know, again, this is  
21 just -- I view this as Krabill's small little problem that  
22 he's disrespected his client. And so, yes, that really --  
23 I do not get easily upset. It takes a whole lot to get me  
24 upset. But Krabill just pushed, pushed, kept his foot on  
25 the pedal and, yes, so I did finally get slightly upset.

1 But this is something he entirely caused.

2 I spun around, I opened the door, and Berman  
3 was standing there right in the door like he'd been  
4 eavesdropping off to the side. And I -- considering that  
5 because of him this -- it was going to fail, he just -- now  
6 I was going to lose my counsel I spent \$500,000 to. And I  
7 was now having to risk having to pay defendant's counsel  
8 under 167 agreement. I just told him what I thought of him  
9 and said, You are an asshole, okay.

10 Now, I apologize for that. I'm ashamed of  
11 telling him that, but yes, that's what I told him because  
12 that's what he had been that day to me and he -- from  
13 yelling at me constantly and getting in my face. And it  
14 wasn't necessary for mediation for him to talk to me the  
15 way he did. It wasn't this tough love. He was just mean  
16 and hated my guts, okay.

17 And so then I reached out my hand about 6  
18 inches away from his shoulder and just gave him a very  
19 little slight tap like you were giving someone an atta boy,  
20 saying, Atta boy, way to go, you know. And so I was saying  
21 like, Way to go, guy, thanks for ruining my mediation. It  
22 wasn't a wind-up slug or anything. It was just a very  
23 slight tap on the shoulder like that, like, Thanks a lot,  
24 Buddy. Okay. And he immediately yelled out, You just  
25 struck me, I'm calling the police. I immediately said -- I

1 was very calm. I said, I apologize. I greatly apologize.  
2 He could see I was very upset. You could hear I was  
3 extremely upset. I'm very, very sorry. I greatly  
4 apologize. And again, he said, I'm calling the police. I  
5 said again, I'm very, very sorry. I sincerely apologize.  
6 I was very, very upset because of Krabill. And then he  
7 just pointed to the door and said, You get the heck out of  
8 my -- get out of my office right now. Okay. So that's  
9 what went on there.

10 And I went out and I literally burst into  
11 tears, okay, when I went outside. So I'm not some strong  
12 guy who was out trying to beat up people or anything. I  
13 was somebody who was very emotionally distraught. Krabill  
14 could see it. I had my head like this telling him, Please  
15 stop talking, stop talking, and shielding myself from him  
16 like it was like a bomb blast, you know. Leave me alone.  
17 Stop it. And he just kept on driving.

18 So my view is Krabill caused this whole  
19 thing and he ought to apologize to me. He ought to  
20 apologize to everybody. He ought to learn some respect for  
21 clients and he ought to continue this case that I hired him  
22 for.

23 I'll stop there.

24 THE COURT: Well --

25 MR. WASHBURNE: Can I say one more thing,

1 please?

2 THE COURT: Let me think for a minute. You  
3 can understand that, can't you?

4 MR. WASHBURN: Yes, please.

5 THE COURT: Because I'm trying to sort  
6 through what you told me. I think you said that -- one of  
7 the things you said, which is important to me so I want you  
8 to focus on this for a minute, was that perhaps the  
9 selection of Mr. Berman as the mediator wasn't probably the  
10 best choice for how you were feeling that day and for your  
11 expectations. Is that fair?

12 MR. WASHBURN: Absolutely. Krabill knew  
13 what my expectations were.

14 THE COURT: Wait, wait, wait. That wasn't  
15 my question.

16 MR. WASHBURN: Sorry.

17 THE COURT: And would it also be fair to say  
18 that you think that things might have gone differently if  
19 the mediator had had a different personality; is that fair  
20 to say?

21 MR. WASHBURN: Absolutely.

22 THE COURT: Well, what I think is that you  
23 and your lawyer have the same problem. I think that you  
24 feel very impassioned. I know you believe in your case.  
25 And I think that something about your communication style

1 and Mr. Krabill's communication style make y'all a not very  
2 good match.

3 And let's take this a little further down  
4 the line. I don't anticipate, as things get tougher in the  
5 case as we get closer to trial, I don't anticipate  
6 Mr. Krabill's strong personality or believing that like  
7 what he's doing for your case is perhaps more important  
8 than what you're thinking at the moment, I don't think that  
9 that's going to change. It's only going to get worse. I  
10 mean, not Mr. Krabill is going to get worse but the lack of  
11 ability to -- first of all, the most important thing about  
12 a lawyer and a client is communication. I'm no marriage  
13 expert or I'm not a psychologist, psychiatrist of any sort,  
14 but it doesn't seem like y'all are going to get to the end  
15 goal that you want to. And I think you're a smart man and  
16 I think you see that too.

17 MR. WASHBURNE: Respectfully, Your Honor, I  
18 think an attorney should be committed to the cause bringing  
19 people to justice. Another firm I talked to, he said if  
20 they get to trial, everybody is yelling at each other and  
21 swearing at each other and he sort of laughed and thought  
22 that was kind of fun. Krabill and I worked together fine  
23 on most of these issues. We -- I don't disagree with him  
24 about strategy things.

25 THE COURT: But your testimony -- not your

1 testimony but your statement earlier on the record was that  
2 he pushed you to do what you did, vis-a-vis, the physical  
3 altercation with Mr. Berman. And I'm just telling you, I  
4 think every trial lawyer in this room will tell you that  
5 what seems intense right now gets ramped up about  
6 200 percent when you're in trial.

7 MR. WASHBURNE: Well, another issue is that  
8 his firm has billed me ten of thousands of dollars to go  
9 over all the documents and mark what's hot and what's not  
10 and all this, and I'm going to lose all of that if they  
11 withdraw. It's a large firm --

12 THE COURT: But if you could win your case,  
13 you really -- isn't that the bigger goal?

14 MR. WASHBURNE: Yes. But it's a large --  
15 excuse me. My point was just that they have 16 partners  
16 there and I would think they could just assign this to  
17 another partner so I keep all the infrastructure that's  
18 been there within their firm and Krabill could hand it off  
19 to someone else. These are supposed to be the best trial  
20 lawyers in Texas, people who love going to trial, so they  
21 should all just be chomping at the bit to take a case where  
22 it's all prepared to go to trial and eager to do this. So  
23 I think if you kept it with Krabill, did not allow the firm  
24 to withdraw, then Mike Lynn could simply -- not simply, but  
25 could get another partner. I've hired this firm due to

1 their expertise and I believe I deserve to get what I  
2 deserved at this firm.

3 THE COURT: All right. Well, I'll tell you  
4 what. Let me look at the Motion to Withdraw. Give me one  
5 second, please.

6 Do you wish to say anything else,  
7 Mr. Krabill?

8 MR. KRABILL: Your Honor, just one comment.  
9 In my view, knowing what I now know, it would be unethical  
10 for me and my firm to continue to represent Mr. Washburne.

11 THE COURT: All right. I want you to talk a  
12 little bit because I think Mr. Washburne made a point and I  
13 was just thinking about this as being a motion for you to  
14 withdraw because you've been the lawyer. And that's why I  
15 actually flipped through the files to see. The motion asks  
16 not only for you to withdraw but also your whole law firm  
17 to withdraw.

18 And I will tell you, Mr. Washburne, one of  
19 the things I don't have the power to do is force a lawyer  
20 to take your case or work on your case. I don't have that  
21 power. I have the power to let them out of doing it but I  
22 cannot force someone to work on your case. So if you want  
23 to go to somebody else for that, I don't know who it would  
24 be but that's not -- I can't pull a genie out of a hat like  
25 that.

1 MR. WASHBURNE: I understand. Thank you.

2 THE COURT: So let's talk a little bit  
3 about -- I've never been in this particular situation  
4 before and --

5 MR. KRABILL: Neither have I.

6 THE COURT: And trying to -- I have a  
7 naturally curious person who is trying to get to the heart  
8 of the matter would have a ton of questions. I'm not going  
9 to ask them because I can't imagine that any of them  
10 wouldn't be covered by one or two or three privileges and  
11 that isn't my role. Let me just say this. And y'all have  
12 asked for a jury in this case so I'm not the fact-finder in  
13 this case. And so my feelings on the facts are -- but I  
14 feel that I have not seen too many plaintiffs who are that  
15 active in their case and that involved in their case and  
16 care as much about their case as your client does. He  
17 seems very -- the sad thing about sometimes being a lawyer,  
18 sometimes your clients lose interest in the case right as  
19 you're starting to, you know, make some real strides. That  
20 is not the case here.

21 I just, in listening to Mr. Washburne speak,  
22 it is very obvious that he is very distressed and he was  
23 distressed that day. You were preparing for the mediation  
24 and trying to do what you were doing and it doesn't seem  
25 like he was getting what he needed from you that day.



1     Would that be fair to say?  You were trying to do one  
2     thing, represent him, but maybe what he needed from you was  
3     more of a soft touch client approach.  It sounds to me  
4     like -- and where I'm going with this is if you've ever  
5     been in trial -- Mr. Washburne, I get the feeling you  
6     haven't taken a case all the way to trial.  Your attorney  
7     needs to be completely left alone to create his questions  
8     and have the attorney space.  And I just -- I think the mix  
9     of the two of y'all is not helpful to your case.  And I  
10    have to believe an attorney when they tell me, Judge, I  
11    can't continue to represent this client.  I have to believe  
12    them because who wouldn't want a client who loves his case?  
13    Who wouldn't want a client who has been faithfully paying  
14    their bills?  Who wouldn't want a client, especially if  
15    you're a trial lawyer, who wants to go to trial, you know?  
16    Those ingredients for a trial lawyer, those things don't  
17    come together.  Usually you don't get all three of those  
18    things at one.  You don't get a client who believes in  
19    their case and is passionate about their case and pays  
20    their bills and is willing to go to trial.  It's very rare  
21    to get those three things at the same time.  And for a  
22    trial lawyer firm like yours that is known for going to  
23    trial, and if you sit here in light of all that and tell me  
24    you can't do it, I mean, I have to believe you.  I think  
25    your ethics are telling me you can't do it.

1                   So let's talk about -- let's move on to Part  
2 B. And that is -- and I cannot rule on what I'm about to  
3 ask you. I cannot force anybody to do anything. But is it  
4 possible that there are other lawyers in your firm who  
5 might be able to, if not handle the case, at least ease the  
6 transfer, the people who have knowledge of the documents,  
7 do you think it's possible for anyone at Lynn Pinker Cox &  
8 Hurst to represent Mr. Washburne?

9                   MR. KRABILL: No. And if you'd like me to  
10 expound on that I can but...

11                  THE COURT: Well, you know --

12                  MR. KRABILL: I mean, we will certainly  
13 assist in transferring the files to his new counsel in an  
14 expedited manner, which is our professional duty. We will  
15 absolutely do that. I will share any information with that  
16 new counsel with Mr. Washburne present so he will know  
17 exactly what I say. I'm willing to do that. We're willing  
18 to help him out. But as far as representing him in trial,  
19 the answer is no. That's not my decision but it's already  
20 been made.

21                  THE COURT: All right. And so that's  
22 something that needs to come -- Mr. Turner, I asked him  
23 point blank after what happened does he still think that  
24 another lawyer could represent -- I'm going to follow up  
25 and ask you -- that another lawyer could take this over and

1 represent this client. I mean, do you think that there's  
2 another lawyer who might be able to give Mr. Washburne more  
3 of what he seems to need than you can?

4 MR. TURNER: In Mr. Krabill's firm or just a  
5 lawyer in general?

6 THE COURT: Well, I didn't mean for you to  
7 stand. I was getting to my point by saying Mr. Turner had  
8 said X and now I'm asking him if he agrees. I mean -- or  
9 do you think that -- and I wasn't there and I don't know  
10 the case strategies, but do you think what happened makes  
11 his case impossible to pursue based upon what happened  
12 given its --

13 MR. KRABILL: No, I don't believe it's  
14 impossible to pursue. I'm not sure of who the attorney is  
15 that will be able to give Mr. Washburne what he wants.  
16 I've tried my very best and my associates have tried their  
17 very best to be kind, to be very deliberate in our speech,  
18 to be consistent in the face of treatment that I would  
19 consider abusive, cruel and derogatory.

20 THE COURT: Just based -- I will say based  
21 upon the record of what you have said and what  
22 Mr. Washburne said, I am finding -- I am going to make a  
23 finding that you and Mr. Washburne do not have the trust  
24 that is required for a fiduciary relationship between a  
25 lawyer and a client. I'm going to let you withdraw. I

1 can't make your law firm take -- a different lawyer take  
2 on. That's beyond my scope. What happens after that needs  
3 to happen after that. But 100 percent, my reading of --  
4 and everyone got to say what they wanted to say except I  
5 think you guys were a little constrained by multiple  
6 privileges. I just don't think there's a trust there  
7 between either one of y'all and that's the most important  
8 element to have a fiduciary relationship. You've got to  
9 have trust. You really have to have trust. And both of  
10 you have been quite passionate about the fact that you  
11 think the other person has not treated you well and isn't  
12 doing what you're asking them to do and isn't meeting your  
13 needs to use as sort of one of those psychological,  
14 counseling type expressions, you know. But regardless, if  
15 there's no trust, there's no attorney relationship so my  
16 ruling is that I will allow Mr. Krabill to withdraw.

17 MR. WASHBURNE: How about the firm? Does  
18 that also apply to his firm?

19 THE COURT: You know, that's something  
20 that's going to need someone to do some research on. I  
21 am -- here is my thought. I don't know what's in the  
22 contract you signed with the firm. I don't know what's in  
23 it so I can't interpret it and I'm not being asked to and I  
24 refuse to do that. But what I do know is I can't force  
25 someone to be your lawyer that doesn't want to.

1                   MR. WASHBURNE:  If the contract is with the  
2  firm -- and I do not know if it is, but if it turns out  
3  that it is, do we need to come back here or will you rule  
4  now on that as well?

5                   MS. STANTON:  Your Honor, if I may  
6  interject?

7                   THE COURT:  Yes, please.

8                   MS. STANTON:  Lawyers represent clients.  
9  Firms do not represent clients.  So the undersigned lawyers  
10  on the pleading blocks now have been withdrawn pursuant to  
11  your ruling.

12                  THE COURT:  Mr. Washburne, I understand that  
13  there may be some Part B down the line.  We're just not  
14  there yet.  I don't know the answer to your question, to be  
15  honest with you.  I really don't know what's in the  
16  contract so I can't speculate.  But what I am telling you  
17  is that the lawyer who has been representing you, I'm going  
18  to allow him to withdraw.  Yes, that opens the doors to  
19  many questions.

20                  MR. WASHBURNE:  I also would just like to go  
21  on record saying I disagree with all of his  
22  characterizations of me and he has not provided any  
23  evidence of most of those.

24                  THE COURT:  Is it fair to say y'all just  
25  don't see things the same way; is that right?

1 MR. WASHBURNE: Say again, please?

2 THE COURT: Is it fair to say that y'all do  
3 not see things the same way?

4 MR. WASHBURNE: Well, we see plenty of  
5 things exactly the same way as far as what's important in  
6 the case. We've worked fine together until that morning.  
7 He just didn't want to follow the path I wanted to follow.  
8 There's a requirement in Texas under the rules for lawyers,  
9 which Section 1.15(b), or maybe it's a different one, it  
10 says you have to follow your client's advice. It doesn't  
11 say the client has to follow the lawyer's advice. And he  
12 just refused to follow the Texas Rules of Civil Procedure.

13 THE COURT: Well, I know you feel wronged  
14 but I promise you that your life is not going to get any  
15 better and your case is not going to get any better if you  
16 have a lawyer who doesn't believe in you and who you  
17 sometimes don't believe in.

18 MR. WASHBURNE: Again, the option is finding  
19 another lawyer who has no experience with this case. I've  
20 had terrible experience with all of them so far. This  
21 lawyer is relatively passionate about the case. You noted  
22 yourself he's done a good job of arguing points. I think  
23 Randy Turner has also said he seems like a good lawyer. So  
24 I think he's completely capable of taking this to trial.  
25 And the fact he has some friction with me, he should

1 acknowledge that he caused some of this and --

2 THE COURT: All right. But unfortunately --

3 MR. WASHBURN: He could get over that and  
4 still take it to trial.

5 THE COURT: Unfortunately, Mr. Washburne,  
6 I'm a legal judge. I decide the law. And I understand  
7 that you are very unhappy. I understand.

8 MR. WASHBURN: I've lost about \$500,000 or  
9 \$600,000 for somebody who's barely moved the case.

10 THE COURT: That may fall under the unhappy  
11 category, I do recognize that. But that is outside of --  
12 handling what happens next -- this is all I can handle. If  
13 someone comes to me with a motion, I will consider it.

14 MR. WASHBURN: I respect that, Your Honor.  
15 I'm just, I guess, just talking. But for the record, all I  
16 did wrong was not accept his advice and tell him to be  
17 quiet. There wasn't any way to escape from him. That's  
18 all I did wrong here.

19 THE COURT: Well, one should not want to  
20 escape from their lawyer.

21 MR. WASHBURN: No, they shouldn't, which is  
22 why he's a very bad person who has a very -- had a very bad  
23 problem.

24 THE COURT: All right. I will continue the  
25 trial setting. I am not going to force someone to go to

1 trial who does not have a lawyer. I understand that that  
2 may not be what defendants want to hear, but we are not  
3 going to force anyone to go to trial without a lawyer. We  
4 will decide later when to reschedule it based upon a motion  
5 but this setting is continued. So I am going to continue  
6 it for 90 days but I will be open to continuing it for  
7 longer beyond that should y'all ask me to.

8 MR. WASHBURNE: Thank you, Your Honor.

9 THE COURT: So for at least 90 days.

10 MR. KRABILL: I have a proposed order.

11 THE COURT: I have them both here. I'm  
12 writing on them as we speak.

13 MR. KRABILL: Thank you, Your Honor.

14 (Recess at 11:40 a.m.)  
15  
16  
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19  
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21  
22  
23  
24  
25



1 STATE OF TEXAS )

2 COUNTY OF TARRANT )

3 I, Suzanne Berry, Official Court Reporter in and  
4 for the 153rd District Court of Tarrant County, Texas, do  
5 hereby certify that the above and foregoing contains a true  
6 and correct transcription of all portions of evidence and  
7 other proceedings requested in writing by counsel for the  
8 parties to be included in this volume of the Reporter's  
9 Record in the above-styled and numbered cause, all of which  
10 occurred in open court or in chambers and were reported by  
11 me.

12 I further certify that this Reporter's Record of  
13 the proceedings truly and correctly reflects the exhibits,  
14 if any, offered by the respective parties, if requested.

15 I further certify that the total cost for the  
16 preparation of this Reporter's Record is \$378.00 and was  
17 paid/will be paid by Plaintiff.

18 WITNESS MY OFFICIAL HAND, on this the 15th day of  
19 September 2017.

20  
21 /s/ Suzanne Berry  
22 Suzanne Berry, CSR  
23 Texas CSR No. 5570, Exp: 12/31/18  
24 Official Court Reporter  
25 153rd District Court  
100 N. Calhoun, 3rd Floor  
Fort Worth, Texas 76196  
Telephone: (817)884-1471  
email:sberry@tarrantcounty.com

Exhibit 28: 2016 12 08 10.31 Krabill to me

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynllp.com]  
**Sent:** Thursday, December 08, 2016 10:31 AM  
**To:** Seth Washburne  
**Cc:** Stephen Cole; Mallory Biblo  
**Subject:** RE: Invoices  
**Attachments:** Washburne Terry Case Budget.pdf; Washburne Museum Case Budget.pdf

Seth,

A few observations:

1. I am not offended. Litigation is expensive, which is what I told you from the very first time you called. I am sorry you feel you wasted money on prior counsel. But your cases were nowhere near ready for trial when we received them. And both needed a lot of work to fend off motions the defendants had filed as well prepare for trial.
2. When we spoke the first couple of times, I explained to you, in painstaking detail, the potential costs of this litigation, the uncertainty of costs due to not knowing exactly what your prior counsel had done, the uncertainty of costs not knowing what opposing counsel will do, etc. You told me about other offers you had from other attorneys and I said the choice was yours, but that nobody could effectively try these cases and represent you for such a small amount of money. You then chose to hire us, because you realized that you get what you pay for. You have constantly complained about your former representation. Rather than falling into that pattern again, I suggest you trust in your decision and let's put together the best possible case and go try these cases. That is why you hired us.
3. You should in no way be surprised by our invoices, as they reflect the work necessary to ingest all the info from prior counsel as well as all the case background documents, depositions, and filings. Getting up to speed takes time, and time means money. And I might add that we had to respond to summary judgment briefings (which turned out to be rather expensive due to your constant revisions, suggestions, changes in affidavit, etc.), arrange a new trial date and orders for both cases, visit the hangar (twice), you asked us to visit Meacham, argue motions on two different occasions, engage and meet with our expert, etc. No time has been wasted. When we received both of your cases, there was a ton of work to do to get up to speed, and we have done so efficiently and effectively.
4. I clearly articulated the range of costs you should expect on both cases. I said that, although I hadn't reviewed the case files, from what you explained to me there was no way the cases could be tried for the amounts you were quoted (\$100k for one and \$75k for the other). I told you that we would have to dig into the file to have a better idea, but that it may be possible to try the cases for less than \$200k each, but that depending on what the Defendants did, it may be more or less than that for each case. We are well within that range. I don't know where you are coming up with a number of \$800,000 to \$1 million. That is not even close to the range we are headed.
5. We have suggested trimming both cases down from the beginning, by eliminating certain claims and defendants. You have refused thus far, which is your choice. But conducting litigation against multiple defendants on a wide variety of claims greatly increases the costs. I have told you this repeatedly. It is something for you to think about.
6. I have attached proposed case budgets for both cases. These provide a range of potential costs for each case. The total budget number is our best estimate of the amount to be expended, but the actual amount could vary based upon the strategies employed by the other parties in the case as well as decisions you make on how to

proceed with the litigation, which claims to include, and which defendants to dismiss. These estimates reflect the fact that in the Terry matter, there is still a large MSJ to respond to, several depositions to be taken, and expert reports to be completed. In the Museum matter, there are still MSJ's to argue, depositions to be taken, and written discovery. But the estimates should provide a good guide for you to analyze where you are.

If you would like to discuss further, please call me.

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

Direct 214 981 3831

Cell 817 881 8113

Fax 214 981 3839

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Dallas, Texas 75201

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**From:** Seth Washburne [mailto:[sethpw1@gmail.com](mailto:sethpw1@gmail.com)]  
**Sent:** Thursday, December 08, 2016 9:20 AM  
**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Cc:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>; Mallory Biblo <[MBiblo@lynnllp.com](mailto:MBiblo@lynnllp.com)>  
**Subject:** Invoices

Kent,

This is just venting, and I'll settle down in a little bit, so don't worry.

I just reviewed the invoices, including ones today for November – and see you have so far billed me \$146,418.

With this month's VFM MSJ's, the Dana deposition, and Paul's expenses we are now probably past \$200,000. I also now might have Mahaffey's attorney's fees. This is almost more in three months than Kevin billed in three years.

Last night I transferred \$100,000 from my brokerage account to pay the September and October bills, and just now with today getting November transferred another \$50,000. I should have this tomorrow and be able to send in a check for the \$146,418.

It seems at this rate these cases will go to at least \$400,000 to \$500,000 each, a combined \$800,000 to \$1 million. I am sure this is small potatoes to you guys who usually have corporate clients, but to me who is retired, no job, no income, and extremely volatile capital gains which may have all ceased for the foreseeable future, these are very big numbers, and will take a big part of my net worth.

Please don't be offended the way Kevin became, but, no offense, this is rather amazing. Puls Haney in Fort Worth committed to take the Terry case through trial for a fixed \$100,000, and you are already at \$86,675 on that case and

barely started with it. Frank Hill was willing to take the Terry case through trial for a fixed \$75,000, plus expenses, but was going to hire someone right out of school to work on it, and I questioned how good Frank was, but he apparently has been around for years. Puls Haney was at \$450/hour – and there were two of them on the case at this rate, and Frank I think \$350, so they each planned to bill about one-fourth or less of your hours.

I have already paid Kevin \$250,000 and \$100,000 on the two cases since inception, \$350,000. The Terry defendants have spent practically nothing on legal fees – though also have done almost nothing, and VFM I think said they have spent \$50,000 so far, and so they are also far below my now \$200,000 level on that case (\$100,000 to Kevin, \$70,000 so far billed from you, and probably at least \$30,000 more for this month).

I know you are the best of the best, but right now I feel like I am going to have a heart attack. And there is no way out. Either drop the suits and spent the rest of my life living under a cloud, that I had my planes destroyed, 100 parts stolen, was thrown in jail, and they all laughed in my face about it, and let them tell everyone they were right all along that I had zero proof they ever did anything wrong, or spend \$1 million MORE to TRY to get justice, and then maybe even fail.

I think I gave you the impression that I was a good investor. I am actually a horrible investor. I was good at merger arbitrage, but have been terrible at everything else. From 2009 until 2015 as the market indices went up 300% I instead lost 33%. Again, the average stock went up 300%, and many went up 10x, and I overall lost 30%. In 2015 I lost 50% and would have gone completely broke in another month if I had not sold a highly leveraged position that November. This year I recovered that loss, but only because I got lucky on the oil and natural gas price recovery, and even at this should have made about twice as much as I actually did. But that oil price recovery – from \$28 a barrel in February to \$52 now, is now over with, and I don't expect much in future gains, and could have losses. So I am not some rich guy with a lot of income, and factually have zero income.

I probably shouldn't voice these concerns to you, but want you to be aware that we need to try to reign in the costs.

Can you give me any idea of what you see as the expected costs of these suits going forward?

I'll review the bill line by line and get back to you with any specific questions.

Seth

Exhibit 29: 2016 12 08 11.06 am Seth to Krabill

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Thursday, December 08, 2016 11:06 AM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'; 'Mallory Biblo'  
**Subject:** RE: Invoices - Thanks

Kent,

Thanks for this reply. I will read this over again and reply again later, but wanted to say a quick thanks for being understanding.

Thanks so much for the estimates, as they are a bit of a relief. I do recall you said there would be a lot of expenses at the beginning, and then they would go down a bit, then come up again at the end, and maybe this is what I am seeing. I also recall a roughly \$200,000 estimate I think for the Terry case, and your latest estimate seems to be in that ball park, on average.

Please know I do fully recognize and appreciate that you guys have come up to speed very well, and are all over the facts, and this has been fantastic. I was amazed to hear you argue in front of the judge, at your knowledge of the VFM case, and the nuances of the legal cases you were quoting. All I could think was "There is no way Kevin Vice could do this." You are both smart people for a change! So yes, I do feel I am in great hands, and that is #1.

Let's just try to look for ways to keep the costs down.

I just wrote out a check for \$146,418.41 – the full amount so far. This would not even fit on the line of my check: "One hundred forty-six thousand, four hundred eighteen, and 41/100."

I will walk this to the post box in a few moments, but because it is such a large amount, if you want to meet and have me hand it to you let me know. I am going to a Cowboys Stadium tour today from 2:30 until 4 p.m., and could swing by at say 1:30 on the way, or meet you out in Arlington at 5 p.m. if you get off early. The post box picks up at 2 p.m., so if I don't hear from you I'll just drop it there. It won't be good funds until tomorrow, and so if you did get it today you would have to wait until tomorrow to deposit it.

Seth

---

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**Sent:** Thursday, December 08, 2016 10:31 AM  
**To:** Seth Washburne  
**Cc:** Stephen Cole; Mallory Biblo  
**Subject:** RE: Invoices

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1. I am not offended. Litigation is expensive, which is what I told you from the very first time you called. I am sorry you feel you wasted money on prior counsel. But your cases were nowhere near ready for trial when we

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3. You should in no way be surprised by our invoices, as they reflect the work necessary to ingest all the info from prior counsel as well as all the case background documents, depositions, and filings. Getting up to speed takes time, and time means money. And I might add that we had to respond to summary judgment briefings (which turned out to be rather expensive due to your constant revisions, suggestions, changes in affidavit, etc.), arrange a new trial date and orders for both cases, visit the hangar (twice), you asked us to visit Meacham, argue motions on two different occasions, engage and meet with our expert, etc. No time has been wasted. When we received both of your cases, there was a ton of work to do to get up to speed, and we have done so efficiently and effectively.
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**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]  
**Sent:** Thursday, December 08, 2016 9:20 AM  
**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Cc:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>; Mallory Biblo <[MBiblo@lynnllp.com](mailto:MBiblo@lynnllp.com)>  
**Subject:** Invoices

Kent,

This is just venting, and I'll settle down in a little bit, so don't worry.

I just reviewed the invoices, including ones today for November – and see you have so far billed me \$146,418.

With this month's VFM MSJ's, the Dana deposition, and Paul's expenses we are now probably past \$200,000. I also now might have Mahaffey's attorney's fees. This is almost more in three months than Kevin billed in three years.

Last night I transferred \$100,000 from my brokerage account to pay the September and October bills, and just now with today getting November transferred another \$50,000. I should have this tomorrow and be able to send in a check for the \$146,418.

It seems at this rate these cases will go to at least \$400,000 to \$500,000 each, a combined \$800,000 to \$1 million. I am sure this is small potatoes to you guys who usually have corporate clients, but to me who is retired, no job, no income, and extremely volatile capital gains which may have all ceased for the foreseeable future, these are very big numbers, and will take a big part of my net worth.

Please don't be offended the way Kevin became, but, no offense, this is rather amazing. Puls Haney in Fort Worth committed to take the Terry case through trial for a fixed \$100,000, and you are already at \$86,675 on that case and barely started with it. Frank Hill was willing to take the Terry case through trial for a fixed \$75,000, plus expenses, but was going to hire someone right out of school to work on it, and I questioned how good Frank was, but he apparently has been around for years. Puls Haney was at \$450/hour – and there were two of them on the case at this rate, and Frank I think \$350, so they each planned to bill about one-fourth or less of your hours.

I have already paid Kevin \$250,000 and \$100,000 on the two cases since inception, \$350,000. The Terry defendants have spent practically nothing on legal fees – though also have done almost nothing, and VFM I think said they have spent \$50,000 so far, and so they are also far below my now \$200,000 level on that case (\$100,000 to Kevin, \$70,000 so far billed from you, and probably at least \$30,000 more for this month).

I know you are the best of the best, but right now I feel like I am going to have a heart attack. And there is no way out. Either drop the suits and spend the rest of my life living under a cloud, that I had my planes destroyed, 100 parts stolen, was thrown in jail, and they all laughed in my face about it, and let them tell everyone they were right all along that I had zero proof they ever did anything wrong, or spend \$1 million MORE to TRY to get justice, and then maybe even fail.

I think I gave you the impression that I was a good investor. I am actually a horrible investor. I was good at merger arbitrage, but have been terrible at everything else. From 2009 until 2015 as the market indices went up 300% I instead

lost 33%. Again, the average stock went up 300%, and many went up 10x, and I overall lost 30%. In 2015 I lost 50% and would have gone completely broke in another month if I had not sold a highly leveraged position that November. This year I recovered that loss, but only because I got lucky on the oil and natural gas price recovery, and even at this should have made about twice as much as I actually did. But that oil price recovery – from \$28 a barrel in February to \$52 now, is now over with, and I don't expect much in future gains, and could have losses. So I am not some rich guy with a lot of income, and factually have zero income.

I probably shouldn't voice these concerns to you, but want you to be aware that we need to try to reign in the costs.

Can you give me any idea of what you see as the expected costs of these suits going forward?

I'll review the bill line by line and get back to you with any specific questions.

Seth

## Exhibit 30: Museum Filings

**Cause Number: 153-275478-14**  
**SETH WASHBURNE, v Vintage Flying Museum, et al.**  
**Cause of Action: Malicious Prosecution, Other Civil**  
**Case Status .... : DISMISSED OR NON-SUITED**

Date	Type	By	Subject
11/11/2014	PLTFS DRIG PET	Plntf	
11/11/2014	CIT-ISSUED ON VINTAGE FLYING MUSEUM INC.-On	Plntf	
11/11/2014	CIT-ISSUED ON HOSPERS FAMILY TRUST "O"-On	Plntf	
11/11/2014	CIT-ISSUED ON CHARLYN HOSPERS-On 11/12/2014	Plntf	
11/11/2014	CIT-ISSUED ON HAL MONK-On 11/12/2014	Plntf	
11/11/2014	CIT-ISSUED ON BILL GORIN-On 11/12/2014	Plntf	
11/11/2014	CIT-ISSUED ON DANA WOOD-On 11/12/2014	Plntf	
12/1/2014	CIT RTN/BILL GORIN	Plntf	
12/1/2014	CIT RTN/VINTAGE FLYING MUSEUM INC	Plntf	
12/1/2014	CIT RTN/HAL MONK	Plntf	
12/1/2014	CIT RTN/CHARLYN HOSPERS	Plntf	
12/1/2014	CIT RTN/HOSPERS FAMILY TRUST "O"	Plntf	
12/1/2014	CIT TrN 6 RET EXEC(BILL GORIN) On 11/22/2014	Plntf	
12/1/2014	CIT TrI 2 RET EXEC(VINTAGE FLYING MUSEUM INC.) On	Plntf	
12/1/2014	CIT TrI 5 RET EXEC(HAL MONK) on 11/22/2014	Plntf	
12/1/2014	CIT TrI 4 RET EXEC(CHARLYN HOSPERS) On 11/22/2014	Plntf	
12/1/2014	CIT TrI 3 RET EXEC(HOSPERS FAMILY TRUST "O") On 11	Plntf	
12/8/2014	DEFN'S ORIG ANS & REQ FOR DISCI	Def	
12/17/2014	DEFNS CERT OF WRITTEN DISC DIRECTED TO PLTF	Def	
2/3/2015	MTN FOR ALTERNATIVE SERVICE	Plntf	
2/3/2015	PROP ORD	Plntf	
2/3/2015	1ST AMO MTN FOR ALT SERVICE	Plntf	
2/3/2015	W/ABOVE AFFIDAVIT - MOTION TO SUB SERVICE	Plntf	
2/3/2015	PROP ORD	Plntf	
2/5/2015	***ORD ON 1ST AMD MTN FOR ALT SERVICE	Court	
2/25/2015	RTN OF SVC/OANA WOOD	Plntf	
2/25/2015	CIT TrI 7 RET EXEC (DANA WOOD) On 02/20/2015	Plntf	
3/9/2015	DEFN DANA WOOD ORIG AN5	Def	
3/9/2015	COVER LTR/BURGESS	Def	
3/17/2015	RULE 11 AGRMT TO EXTEND DISC DEADLINE	Both	
4/28/2015	BRAD HENDRICKS' MTN TO W/DRAW AS ATTY W/DRD	Def	
5/29/2015	CERT OF WRITTEN DISC	Def	
6/16/2015	DEFNS NOT OF ATTY IN CHARGE	Def	
6/16/2015	DEFNS 1ST AMO ANS	Def	
6/29/2015	DEFN'S 2ND AMD AN5	Def	
11/13/2015	ADRRESS CHANGE/CHARLIE BURGESS	Def	
1/7/2016	RULE 11 AGREEMENT	Both	
2/9/2016	SETTING ORD TRIAL WEEK OF 5/2/16	Both	
2/19/2016	PLTF'S 1ST AMO PET (+2 DEFN'S)	Plntf	
2/19/2016	CIT-ISSUED ON JAMES W TERRY-On 02/24/2016	Plntf	
2/19/2016	CIT-ISSUED ON PACIFIC PROWLER NON PROFIT-On	Plntf	
2/22/2016	PLTF'S 2ND AMD PET(+ DEFN)	Plntf	

Date	Type	By	Subject
11/11/2014	PLTFS DRIG PET	Plntf	
2/22/2016	CIT-ISSUED ON PACIFIC PROWLER LLC-On 02/24/2016	Plntf	
2/22/2016	SVC REQ FORM	Plntf	
2/29/2016	DEFNS' MTN DISM DEFAMATION CLAIMS	Def	
4/13/2016	***ORD ON BRAD HENDRICKS' MTN WiD	Court	
4/21/2016	AGREED JOINT MTN FOR CaNT	Both	
4/21/2016	PROPOSED ORD	Both	
4/27/2016	'ORD ON AGREED JOINT MTN CONT (WK OF 12/5/16)	Court	
<b>5/9/2016</b>	<b><u>DEFNS' MTN FOR PARTIAL SJ</u></b>	Def	Def Partial SJ
5/9/2016	W/ABOVE - EXHIBITS TO MSJ	Def	
5/10/2016	COVER LTR	Def	
5/10/2016	PROPOSED FIAT/PARTIAL MSJ	Def	
5/23/2016	FIAT HRG 6/24/16 @ 11:30	Def	
6/15/2016	VAC LTR/RANDALL E TURNER	Def	
6/17/2016	<b><u>PLTF'S RESP TO DEFNS' MTN FOR PARTIAL SJ</u></b>	Plntf	Plntf Response
6/27/2016	PROPOSED ORD RE:DEFNS' MTN PARTIAL SUMMARY JOG	Def	
7/8/2016	ORD REG RESET MSJ HGR 8/5/16 @ 11:30	Court	
7/15/2016	UNOPPOSED MTN TO W/D AS ATTY IN CHARGE FOR PLTF &	Def	
7/15/2016	LTR TO JUDGE MCCOY FROM TURNER RE:HRG REQ	Def	
7/15/2016	1ST AMD MTN TO W/D AS ATTY IN CHARGE FOR PLTF &	Plntf	
7/20/2016	LTR TO PATRICIA/RE:FIAT	Plntf	
7/20/2016	(PROP) FIAT	Plntf	
7/21/2016	LTR TO CONFIRM HRG 8/3/16 @ 3:30	Plntf	
7/25/2016	FIAT SETTING HRG 8/3/16 @ 3:30 PM	Plntf	
7/26/2016	2ND AMD MOT TO WiD AS ATTY IN CHARGE FOR PLTF SETH	Plntf	
7/26/2016	PROPOSED ORDER	Plntf	
7/26/2016	PROPOSED FIAT	Plntf	
7/28/2016	FIAT (HRG 8/18/16 @ 1:30PM) 2ND AMO MTN W/D & CONT	Plntf	
7/29/2016	PLTF'S 3RO AMO PET (NO ADOT)	Plntf	
7/29/2016	PLTF'S SUPPL RESP TO DEFN'S MTN FOR PARTIAL SJ	Plntf	
8/8/2016	PLTF'S MTN FOR SUB COUNSEL	Plntf	
8/8/2016	<b><u>DEFN'S NO/EVID MSJ</u></b>	Def	Defn No Evid MSJ
8/8/2016	ORD (PROPOSED)	Def	
8/11/2016	<b><u>DEFN HAL MONK MSJ</u></b>	Def	Defn Monk MSJ
8/11/2016	W/ABOVE EXHIBIT 1 HAL MONK'S AFFID	Def	
8/11/2016	W/ABOVE EXHIBIT 2 CHARLYN HOSPERS AFFIDAVIT	Def	
8/11/2016	W/ABOVE EXHIBIT 3 ROBERT HOSPERS AFFIDAVIT	Def	
8/17/2016	COVER LTR W/FIAT	Def	
8/17/2016	COVER LTR W/FIAT **DUPLICATE SENT WRONG FIAT	Def	
8/17/2016	COVER LTR W/FIAT	Def	
8/18/2016	*****ADDITIONAL FILE # 2*****	Def	
8/19/2016	PTLF MTN FOR CONT & ENTRY OF SCHEO ORD	Plntf	
8/22/2016	COVER LTR	Plntf	
8/22/2016	PROPOSED FIAT	Plntf	
8/23/2016	DEFN 3RO AMO ANS	Def	
8/23/2016	DEFN'S SPEC EXCEPT TO PLTF 3RD AMD PET	Def	

Date	Type	By	Subject
11/11/2014	PLTFS DRIG PET	Plntf	
8/24/2016	PLTF NOT OF W/D OF MTN FOR SUB OF COUNSEL	Plntf	
8/24/2016	LTR FROM VICE NOT OF HRG (9/22/16 @ 2PM)	Plntf	
8/24/2016	FIAT HRG 9/22/16 @ 2:00/MTN CONT	Plntf	
8/24/2016	FIAT HRG 10/13/16 @ 2:00/MSJ	Plntf	
8/24/2016	FIAT HRG 10/13/16 @ 2:00/MSJ HAL MONK'S	Plntf	
8/25/2016	CONFIRM LTR RETURNER (HRG 10/13/16 @ 2PM)	Plntf	
8/26/2016	***ORD GRANTING PLTF MTN TO SUB COUNSEL	Court	
8/29/2016	***ORD GRANTING DEFN MTN FOR PARTIAL SJ	Court	
9/1/2016	***ORD VACATING ORD GRANT PLTF MTN TO SUB COUNSEL	Court	
9/1/2016	***ORD VACATING MTN TO SUB COUNSEL	Court	
9/9/2016	DEFN ORIG ANS/TERRY, PACIFIC PROWLER LLC&NONPROFIT	Def	
9/15/2016	DEFN'S MTN TO QUASH N.O.T.D.& MTN FOR PROT/ORD	Def	
9/19/2016	PLTF MTN FOR CONT OF HRG ON DEFN MSJ	Plntf	
9/19/2016	COVER LTR	Plntf	
9/19/2016	SUPPL TO PLTF MTN FOR CONT & ENTRY OF SCHEO ORD	Plntf	
9/19/2016	COVER LTR	Plntf	
9/21/2016	PLTF'S UNOPPOSED MTN FOR SUB OF COUNSEL	Plntf	
9/21/2016	PROP ORD	Plntf	
9/21/2016	PLTF'S AMD UNOPPOSED MTN FOR SUB OF COUNSEL	Plntf	
9/21/2016	ORD (PROP)	Plntf	
9/21/2016	<b><u>RULE 11 AGREEMENTS</u></b>	Both	Rule 11
9/21/2016	ORD (PROPOSED)	Plntf	
9/22/2016	PROPOSED ORD	Plntf	
9/22/2016	***ORD GRANT PLTF MTN FOR CONT	Court	
9/22/2016	***ORD GRANT PLTF AMD UNOPPOSED MTN SUB COUNSEL	Court	Krabill Appears
9/30/2016	LTR TO CONFIRM RESET HRG 12/1/16 @ 1:30	Plntf	
(not filed)	Notice of hearing Dec 1 on No-Evid MSJ and Monk MSJ	Def	
(not filed)	Defn's 4th RFP	Def	
(not filed)	Defn's 4th RFAs	Def	
(not filed)	Plntf Resp to 4th RFP (objected to all)	Plntf	
(not filed)	Plntf Resp to 4th RFAs	Plntf	
11/8/2016	JT MTN FOR ENTRY OF AGRD SCHEDULING ORD W/EXHIBITS	Both	
11/16/2016	PROP FIAT	Both	
11/18/2016	MTN TO W/D AS ATTY OF REC	Def	
11/18/2016	COVER LTR	Def	
11/18/2016	CONFIRM LTR (HRG 12/1/16 @ 1:30PM)DEFN MTN QUASH	Def	
11/18/2016	PROP ORD	Def	
11/21/2016	> <b>PLTF'S RESP TO MTN TO W/D AS ATTY OF RECORD</b>	Plntf	
11/21/2016	NOT OF HRG 12/1/16 @ 1:30	Plntf	
11/21/2016	FIAT (HRG 12/1/16 @ 1:30)	Def	
11/21/2016	***AGREED SCHED ORD TRIAL WK OF 7/24/17	Both	
11/22/2016	> <b><u>PLTF'S RESP TO MUSEUM DEFN NO-EVIO MSJ W/CD</u></b>	Plntf	Resp to No Ev MSJ
11/22/2016	*****FILE #3*****PROP ORDER	Plntf	
11/22/2016	> <b><u>PLTF'S RESP TO DEFN HAL MONK'S MSJ</u></b>	Plntf	Resp to Monk MSJ
11/22/2016	PROPOSED ORDER	Plntf	

Date	Type	By	Subject
11/11/2014	PLTFS DRIG PET	Plntf	
11/22/2016	> <b>PLTF'S AMD RESP TO DEFN HAL MONK'S MSJ</b>	Plntf	"
11/22/2016	PROPOSED ORDER	Plntf	
11/25/2016	> <b>DECLARATION OF SETH WASHBURNE</b>	Plntf	"
11/25/2016 (not filed)	> <b>AMD DECLARATION OF SETH WASHBURNE</b> Agreed Sched Order	Plntf Both	"
11/29/2016	<b>DEFN'S OBI TO PLTF'S SJ EVID</b>	Def	Defn Obj to SJ Evid
11/29/2016	ORD (PROPOSED)	Def	
11/29/2016	<b>HAL MONK'S OBI TO PLTF SJ EVID</b>	Def	Monk Obj to SJ Evid
11/29/2016	ORD (PROPOSED)	Def	
11/29/2016	<b>DEFN'S OBJ TO AMD DECLARATION OF S. WASHBURN</b>	Def	Defn Obj to Am Dec
11/29/2016	ORD (PROPOSED)	Def	
11/29/2016	ORD (PROPOSED)	Def	
11/29/2016	ORD (PROPOSED)	Def	
12/2/2016	CONFIRM LTR FROM TURNER(HRG 1/26/17 @ 1:30PM)	Def	
12/21/2016	*.*ORD DENYING MUSEUM DEFN No/eVID MSJ	Court	
1/4/2017	<b>SUPPL AFFDT OF HAL MONK W/EXHIBITS</b>	Def	
1/4/2017	> <b>PLTF 4TH AMD PET(-4 DEFNS)</b>	Plntf	Pltf 4th Amend Pet
1/5/2017	*****ADDITIONAL FILE # 4*****.	Plntf	
1/23/2017	<b>HAL MONK'S BRIEF IN SUPPORT OF MSJ</b>	Def	Monk Brief ISP MSJ
2/2/2017 (not filed)	NOT OF CHANGE OF ADDRESS/RANDALL TURNER Notice to take Dana Wood deposition	Def Plntf	
2/9/2017	<b>DEFN'S DECLARATION INVOKING TRCP RULE 167</b>	Def	
2/9/2017	DEFN'S 4TH AMD ANS	Def	
2/9/2017	DEFN'S MSJ ON PLTF'S DECLARATORY JDG ACTION	Def	
2/10/2017 (not filed)	PROP FIAT Letter 2/9/17 from Turner re Rule 167	Def Def	
2/16/2017	<b><u>MTN TO CONSOLIDATE</u></b>	Def	Mtn to Consolidate
2/16/2017	COVER LTR	Def	
2/16/2017	REPORT CERT OEPO/SETH WASHBURNE SI,9S2.34-0EFN	Court	
2/21/2017	LTR/R E TURNER(HRG RESCHEO TO 4/27/17 @ 10:30AM)	Def	
2/21/2017	CORRECT LTR/TURNER(HRG THURS 4/27/17@10:30AM NOT	Def	
2/21/2017	FIAT(HRG 4/27/17 @ 1:30PM)DEFN MSI AON PLTF OECLAR	Def	
3/2/2017	VAC LTR FROM KENT KRABILL	Plntf	
3/3/2017	REPORT CERT/OEPO WILLIAM GORIN S649.55-PLTF	Court	
3/0S/2017	CONFIRM LTR(HRG 4/27/17 @ 1:30PM)DEFN MSI ON PLTFS	Def	
3/21/2017	DEFN DECLARATION INVOKING TRCP RULE 167	Def	
3/27/2017	REPORTER CERT/OEPO W. GORIN S649.55-PLTF	Court	
3/27/2017	REPORTER CERT/OEPO C. HOSPERS SI,411.55-PLTF	Court	
3/28/2018 (not filed)	<b>***ORD GRANT HAL MONK'S MSJ)</b> 2nd and 3rd RFP to Defns	Court Plntf	
(not filed)	Dana Wood Rule 167 offer	Def	
(not filed)	Notice to take depo of Mark Reams	Def	
(not filed)	Notice to take depo of Hal Monk	Plntf	
(not filed)	Def 1st Supp Resp to RFD	Def	Plus Objs fr 4 defnds
(not filed)	Sched Order	Both	

Date	Type	By	Subject
11/11/2014 (not filed)	PLTFS DRIG PET Pltf Amend Resp to Def RFD	Plntf Plntf	
4/15/2017 (not filed)	DEFN'S STIPULATION Objections to RFPs from four defendants	Def Def	Plus Objs fr 4 defnds
4/19/2017	RULE 11 AGRMT	Both	
4/19/2017	DEFN AMD STIPULATION	Def	
4/21/2017	> <b>PLTF'S 5TH AMO PET (NO ADO)</b>	Plntf	Pltf 5th Amend Pet
4/27/2017	REPORTER CERT/OEPO DANA WOOD SI,14.35-0EFN	Court	
5/19/2017	> PLTF'S MTN TO COMPEL	Plntf	Pltf MT Compel
"	ITR TO MS. CANNON FROM KENT KRABILL	Plntf	
"	PROP FIAT	Plntf	
S/22/2017	NOT OF HRG (5/25/17 @10:30AM)PLTF MTN TO COMPEL	Plntf	
"	FIAT (HRG 5/25/17 @ 10:30)	Court	
S/24/2017	DEFN RESP TO PLTF MTN TO COMPEL W/EXHIBITS	Def	
S/25/2017	***ORD GRANT PLTF MTN TO COMPEL	Court	
S/26/2017	*****ADDITIONAL FILE # 5*****	Plntf	
6/12/2017	PLTF'S NOT OF FILING BUSINESS RECS & AFFDT	Plntf	
6/12/2017	AFFDT OF BUSINESS RECS/FT WORTH POLICE DEPT w/co	Plntf	
6/21/2017	PROT/ORD (PROPOSEO)****RTN UNSIGNED/NO SIGNATURE	Plntf	
6/22/2017	DEFN'S NOT OF AUTHENTICATION OF RECORDS	Def	
6/22/2017	> <b>PLTF'S MTN TO COMPEL MEDIATION</b>	Plntf	MTC Mediation
6/22/2017	PROP FIAT	Plntf	
6/22/2017	(PROPOSED) ORD	Plntf	
6/22/2017	<b>DEFN'S RESP TO PLTF'S MTN TO COMPEL MEDIATION</b>	Def	
6/23/2017	BUSINESS RECS AFFDT OF RHANDA HOLDER	Def	
6/23/2017	BUSINESS RECS AFFDT	Def	
6/23/2017	NOT OF RELATING TO SELF-AUTHENTICATION OF DOCS	Def	
6/23/2017	FIAT (HRG 7/14/17 @ 10:30 AM)	Def	
6/23/2017	NOT OF HRG (7/14/17 10:00 AM) ON PLTF'S MTN TO	Plntf	
6/27/2017	DEFN'S MTN FOR LEAVE TO AMEND ADMISSION	Def	
6/29/2017	<b><u>PLTF'S MTN TO COMPEL DOCS EVIDENCING CEFN'S NET</u></b>	Plntf	
6/30/2017	<b><u>EMERGENCY MTN TO W/D</u></b>	w/d	
6/30/2017	(PROPOSED) ORD	w/d	
6/30/2017	COVER LTR	w/d	
6/30/2017	(PROPOSED) FIAT	w/d	
6/30/2017	EMERGENCY MTN TO CDNT TRIAL	w/d	
6/30/2017	(PROPOSED) ORD	w/d	
6/30/2017	(PROPOS EO) FIAT	w/d	
6/30/2017	FIAT (HRG 7/14/17 @ 10:00) EMERGENCY MTN W/D	w/d	
6/30/2017	FIAT (HRG 7/14/17 @ 10:00) EMERGENCY MTN TRIAL OAE	w/d	
7/14/2017	***ORD ON EMERGENCY MTN TO WID (PLTF ATTY)	Court	
7/14/2017	...ORD ON EMERGENCY MTN FOR CONT(AT LEAST 90 DAYS)	Court	
8/3/2017	LTR TO MS CANNON FROM RANDALL E TURNER	Def	
8/16/2017	REPORTERS CERT/OEPO OF HAL MONK SI,358.50-PLTF	Court	
8/16/2017	REPORTER'S CERT/DEPO HAL MONK SS61.SS-PLTF	Court	
8/21/2017	...SETTING ORD TRIAL WK OF 12/4/17	Court	



Date	Type	By	Subject
11/11/2014	PLTFS DRIG PET	Plntf	
9/28/2017	EMERGENCY MTN FOR CONT THE TRIAL & ABATE THE CASE	Plntf	
9/29/2017	DEFN'S RESP TO PITF'S EMERGENCY MTN TO CONT TRIAL	Def	
9/29/2017	DEFN'S 5TH AMD AN5	Def	
9/29/2017	PLTF'S REPLY TO DEFN STH AMO ANS	Plntf	
10/2/2017	PLTF'S REPLY TO CEFN RESP TO PLTF'S EMERGENCY MTN	Plntf	
10/30/2017	PLTF'S NOT OF NONSUIT	Plntf	
10/30/2017	PROP ORD	Plntf	
10/31/2017	*..ORD OF NONSUIT (COST NOT SPECIFIED)	Court	
10/31/2017	DOCKET SHEET	Court	

Cause Number: 153-275478-14 Date Filed: 11/11/2014  
SETH WASHBURNE v VINTAGE FLYING MUSEUM,  
S INC., ET AL  
Cause of Action: OTHER CIVIL, OTHER  
Case Status....: DISMISSED OR NON-SUITED

Filemark	Description		Fee Total
11/11/2014	PLTFS ORIG PET	I	0.00
11/11/2014	CIT-ISSUED ON VINTAGE FLYING MUSEUM, INC.-On	NUI	8.00
11/11/2014	CIT-ISSUED ON HOSPERS FAMILY TRUST "D"-On	NUI	8.00
11/11/2014	CIT-ISSUED ON CHARLYN HOSPERS-On 11/12/2014	NUI	8.00
11/11/2014	CIT-ISSUED ON HAL MONK-On 11/12/2014	NUI	8.00
11/11/2014	CIT-ISSUED ON BILL GORIN-On 11/12/2014	NUI	8.00
11/11/2014	CIT-ISSUED ON DANA WOOD-On 11/12/2014	NUI	8.00
12/01/2014	CIT RTN/BILL GORIN	I	0.00
12/01/2014	CIT RTN/VINTAGE FLYING MUSEUM INC	I	0.00
12/01/2014	CIT RTN/HAL MONK	I	0.00
12/01/2014	CIT RTN/CHARLYN HOSPERS	I	0.00
12/01/2014	CIT RTN/HOSPERS FAMILY TRUST "D"	I	0.00
12/01/2014	CIT Tr# 6 RET EXEC(BILL GORIN) On 11/22/2014	I	0.00
12/01/2014	CIT Tr# 2 RET EXEC(VINTAGE FLYING MUSEUM INC.) On	I	0.00
12/01/2014	CIT Tr# 5 RET EXEC(HAL MONK) On 11/22/2014	I	0.00
12/01/2014	CIT Tr# 4 RET EXEC(CHARLYN HOSPERS) On 11/22/2014	I	0.00
12/01/2014	CIT Tr# 3 RET EXEC(HOSPERS FAMILY TRUST "D") On 11	I	0.00
12/08/2014	DEFN'S ORIG ANS & REQ FOR DISCL	I	0.00
12/17/2014	DEFNS CERT OF WRITTEN DISC DIRECTED TO PLTF	I	0.00
02/03/2015	MTN FOR ALTERNATIVE SERVICE	I	0.00
02/03/2015	PROP ORD	I	0.00
02/03/2015	1ST AMD MTN FOR ALT SERVICE	I	0.00
02/03/2015	W/ABOVE AFFIDAVIT - MOTION TO SUB SERVICE	I	0.00
02/03/2015	PROP ORD	I	0.00
02/05/2015	***ORD ON 1ST AMD MTN FOR ALT SERVICE	IM	0.00
02/25/2015	RTN OF SVC/DANA WOOD	I	0.00
02/25/2015	CIT Tr# 7 RET EXEC(DANA WOOD) On 02/20/2015	I	0.00
03/09/2015	DEFN DANA WOOD ORIG ANS	I	0.00
03/09/2015	COVER LTR/BURGESS	I	0.00
03/17/2015	RULE 11 AGRMT TO EXTEND DISC DEADLINE	I	0.00
04/28/2015	BRAD HENDRICKS' MTN TO W/DRAW AS ATTY W/ORD	I	0.00
05/29/2015	CERT OF WRITTEN DISC	I	0.00
06/16/2015	DEFNS NOT OF ATTY IN CHARGE	I	0.00
06/16/2015	DEFNS 1ST AMD ANS	I	0.00
06/29/2015	DEFN'S 2ND AMD ANS	I	0.00
11/13/2015	ADDRESS CHANGE/CHARLIE BURGESS	I	0.00
01/07/2016	RULE 11 AGREEMENT	I	0.00
02/09/2016	**SETTING ORD TRIAL WEEK OF 5/2/16	I	0.00
02/19/2016	PLTF'S 1ST AMD PET (+2 DEFN'S)	I	0.00
02/19/2016	CIT-ISSUED ON JAMES W TERRY-On 02/24/2016	NUI	8.00
02/19/2016	CIT-ISSUED ON PACIFIC PROWLER NON PROFIT-On	NUI	8.00
02/22/2016	PLTF'S 2ND AMD PET(+ DEFN)	I	0.00
02/22/2016	CIT-ISSUED ON PACIFIC PROWLER LLC-On 02/24/2016	NUI	8.00
02/22/2016	SVC REQ FORM	I	0.00
02/29/2016	DEFNS' MTN DISM DEFAMATION CLAIMS	I	0.00
04/13/2016	***ORD ON BRAD HENDRICKS' MTN W/D	IM	0.00
04/21/2016	AGREED JOINT MTN FOR CONT	I	0.00
04/21/2016	PROPOSED ORD	I	0.00
04/27/2016	***ORD ON AGREED JOINT MTN CONT (WK OF 12/5/16)	IM	0.00
05/09/2016	DEFNS' MTN FOR PARTIAL SJ	I	0.00
05/09/2016	W/ABOVE - EXHIBITS TO MSJ	I	0.00
05/10/2016	COVER LTR	I	0.00
05/10/2016	PROPOSED FIAT/PARTIAL MSJ	I	0.00
05/23/2016	FIAT HRG 6/24/16 @ 11:30	I	0.00
06/15/2016	VAC LTR/RANDALL E TURNER	I	0.00
06/17/2016	PLTF'S RESP TO DEFNS' MTN FOR PARTIAL SJ	I	0.00
06/27/2016	PROPOSED ORD RE:DEFNS' MTN PARTIAL SUMMARY JDG	I	0.00
07/08/2016	***ORD REG RESET MSJ HGR 8/5/16 @ 11:30	IM	0.00

♀ TARRANT COUNTY DISTRICT CLERK'S OFFICE  
ALL IMAGED TRANSACTIONS FOR A CASE  
Cause Number: 153-275478-14 Date Filed: 11/11/2014  
SETH WASHBURNE v VINTAGE FLYING MUSEUM,  
S INC., ET AL  
Cause of Action: OTHER CIVIL, OTHER  
Case Status....: DISMISSED OR NON-SUITED

Filemark	Description	Fee	Total
07/15/2016	UNOPPOSED MTN TO W/D AS ATTY IN CHARGE FOR PLTF &	I	0.00
07/15/2016	LTR TO JUDGE MCCOY FROM TURNER RE:HRG REQ	I	0.00
07/15/2016	1ST AMD MTN TO W/D AS ATTY IN CHARGE FOR PLTF &	I	0.00
07/20/2016	LTR TO PATRICIA/RE:FIAT	I	0.00
07/20/2016	(PROP)FIAT	I	0.00
07/21/2016	LTR TO CONFIRM HRG 8/3/16 @ 3:30	I	0.00
07/25/2016	FIAT SETTING HRG 8/3/16 @ 3:30 PM	I	0.00
07/26/2016	2ND AMD MOT TO W/D AS ATTY IN CHARGE FOR PLTF SETH	I	0.00
07/26/2016	PROPOSED ORDER	I	0.00
07/26/2016	PROPOSED FIAT	I	0.00
07/28/2016	FIAT (HRG 8/18/16 @ 1:30PM) 2ND AMD MTN W/D & CONT	I	0.00
07/29/2016	PLTF'S 3RD AMD PET (NO ADDT)	I	0.00
07/29/2016	PLTF'S SUPPL RESP TO DEFN'S MTN FOR PARTIAL SJ	I	0.00
08/08/2016	PLTF'S MTN FOR SUB COUNSEL	I	0.00
08/08/2016	DEFN'S NO/EVID MSJ	I	0.00
08/08/2016	ORD (PROPOSED)	I	0.00
08/11/2016	DEFN HAL MONK MSJ	I	0.00
08/11/2016	W/ABOVE EXHIBIT 1 HAL MONK'S AFFID	I	0.00
08/11/2016	W/ABOVE EXHIBIT 2 CHARLYN HOSPERS AFFIDAVIT	I	0.00
08/11/2016	W/ABOVE EXHIBIT 3 ROBERT HOSPERS AFFIDAVIT	I	0.00
08/17/2016	COVER LTR W/FIAT	I	0.00
08/17/2016	COVER LTR W/FIAT **DUPLICATE SENT WRONG FIAT	I	0.00
08/17/2016	COVER LTR W/FIAT	I	0.00
08/18/2016	*****ADDITIONAL FILE # 2*****		0.00
08/19/2016	PTLF MTN FOR CONT & ENTRY OF SCHED ORD	I	0.00
08/22/2016	COVER LTR	I	0.00
08/22/2016	PROPOSED FIAT	I	0.00
08/23/2016	DEFN 3RD AMD ANS	I	0.00
08/23/2016	DEFN'S SPEC EXCEPT TO PLTF 3RD AMD PET	I	0.00
08/24/2016	PLTF NOT OF W/D OF MTN FOR SUB OF COUNSEL	I	0.00
08/24/2016	LTR FROM VICE NOT OF HRG (9/22/16 @ 2PM)	I	0.00
08/24/2016	FIAT HRG 9/22/16 @ 2:00/MTN CONT	I	0.00
08/24/2016	FIAT HRG 10/13/16 @ 2:00/MSJ	I	0.00
08/24/2016	FIAT HRG 10/13/16 @ 2:00/MSJ HAL MONK'S	I	0.00
08/25/2016	CONFIRM LTR R E TURNER (HRG 10/13/16 @ 2PM)	I	0.00
08/26/2016	***ORD GRANTING PLTF MTN TO SUB COUNSEL	IM	0.00
08/29/2016	***ORD GRANTING DEFN MTN FOR PARTIAL SJ	IM	0.00
09/01/2016	***ORD VACATING ORD GRANT PLTF MTN TO SUB COUNSEL	IM	0.00
09/01/2016	***ORD VACATING MTN TO SUB COUNSEL	IM	0.00
09/09/2016	DEFN ORIG ANS/TERRY, PACIFIC PROWLER LLC&NONPROFIT	I	0.00
09/15/2016	DEFN'S MTN TO QUASH N.O.T.D.& MTN FOR PROT/ORD	I	0.00
09/19/2016	PLTF MTN FOR CONT OF HRG ON DEFN MSJ	I	0.00
09/19/2016	COVER LTR	I	0.00
09/19/2016	SUPPL TO PLTF MTN FOR CONT & ENTRY OF SCHED ORD	I	0.00
09/19/2016	COVER LTR	I	0.00
09/21/2016	PLTF'S UNOPPOSED MTN FOR SUB OF COUNSEL	I	0.00
09/21/2016	PROP ORD	I	0.00
09/21/2016	PLTF'S AMD UNOPPOSED MTN FOR SUB OF COUNSEL	I	0.00
09/21/2016	ORD (PROP)	I	0.00
09/21/2016	RULE 11 AGREEMENTS	I	0.00
09/21/2016	ORD (PROPOSED)	I	0.00
09/22/2016	PROPOSED ORD	I	0.00
09/22/2016	***ORD GRANT PLTF MTN FOR CONT	IM	0.00
09/22/2016	***ORD GRANT PLTF AMD UNOPPOSED MTN SUB COUNSEL	IM	0.00
09/30/2016	LTR TO CONFIRM RESET HRG 12/1/16 @ 1:30	I	0.00
11/08/2016	JT MTN FOR ENTRY OF AGRD SCHEDULING ORD W/EXHIBITS	I	0.00
11/16/2016	PROP FIAT	I	0.00
11/18/2016	MTN TO W/D AS ATTY OF REC	I	0.00

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Cause Number: 153-275478-14 Date Filed: 11/11/2014  
 SETH WASHBURN v VINTAGE FLYING MUSEUM,  
 s INC., ET AL  
 Cause of Action: OTHER CIVIL, OTHER  
 Case Status.....: DISMISSED OR NON-SUITED

Filemark	Description	Fee	Total
11/18/2016	COVER LTR	I	0.00
11/18/2016	CONFIRM LTR (HRG 12/1/16 @ 1:30PM)DEFN MTN QUASH	I	0.00
11/18/2016	PROP ORD	I	0.00
11/21/2016	PLTF'S RESP TO MTN TO W/D AS ATTY OF RECORD	I	0.00
11/21/2016	NOT OF HRG 12/1/16 @ 1:30	I	0.00
11/21/2016	FIAT (HRG 12/1/16 @ 1:30)	I	0.00

11/21/2016	***AGREED SCHED ORD TRIAL WK OF 7/24/17	IM	0.00
11/22/2016	PLTF'S RESP TO MUSEUM DEFN NO-EVID MSJ W/CD	I	0.00
11/22/2016	*****FILE #3*****PROP ORDER	I	0.00
11/22/2016	PLTF'S RESP TO DEFN HAL MONK'S MSJ	I	0.00
11/22/2016	PROPOSED ORDER	I	0.00
11/22/2016	PLTF'S AMD RESP TO DEFN HAL MONK'S MSJ	I	0.00
11/22/2016	PROPOSED ORDER	I	0.00
11/25/2016	DECLARATION OF SETH WASHBURNE	I	0.00
11/25/2016	AMD DECLARATION OF SETH WASHBURNE	I	0.00
11/29/2016	DEFN'S OBJ TO PLTF'S SJ EVID	I	0.00
11/29/2016	ORD (PROPOSED)	I	0.00
11/29/2016	HAL MONK'S OBJ TO PLTF SJ EVID	I	0.00
11/29/2016	ORD (PROPOSED)	I	0.00
11/29/2016	DEFN'S OBJ TO AMD DECLARATION OF S. WASHBURN	I	0.00
11/29/2016	ORD (PROPOSED)	I	0.00
11/29/2016	ORD (PROPOSED)	I	0.00
11/29/2016	ORD (PROPOSED)	I	0.00
12/02/2016	CONFIRM LTR FROM TURNER(HRG 1/26/17 @ 1:30PM)	I	0.00
12/21/2016	***ORD DENYING MUSEUM DEFN NO/EVID MSJ	IM	0.00
01/04/2017	SUPPL AFFDT OF HAL MONK W/EXHIBITS	I	0.00
01/04/2017	PLTF 4TH AMD PET(-4 DEFNS)	I	0.00
01/05/2017	*****ADDITIONAL FILE # 4*****	I	0.00
01/23/2017	HAL MONK'S BRIEF IN SUPPORT OF MSJ	I	0.00
02/02/2017	NOT OF CHANGE OF ADDRESS/RANDALL TURNER	I	0.00
02/09/2017	DEFN'S DECLARATION INVOKING TRCP RULE 167	I	0.00
02/09/2017	DEFN'S 4TH AMD ANS	I	0.00
02/09/2017	DEFN'S MSJ ON PLTF'S DECLARATORY JDG ACTION	I	0.00
02/10/2017	PROP FIAT	I	0.00
02/16/2017	MTN TO CONSOLIDATE	I	0.00
02/16/2017	COVER LTR	I	0.00
02/16/2017	REPORT CERT DEPO/SETH WASHBURNE \$1,982.34-DEFN	I	0.00
02/21/2017	LTR/R E TURNER(HRG RESCHED TO 4/27/17 @ 10:30AM)	I	0.00
02/21/2017	CORRECT LTR/TURNER(HRG THURS 4/27/17@10:30AM NOT F	I	0.00
02/21/2017	FIAT(HRG 4/27/17 @ 1:30PM)DEFN MSJ AON PLTF DECLAR	I	0.00
03/02/2017	VAC LTR FROM KENT KRABILL	I	0.00
03/03/2017	REPORT CERT/DEPO WILLIAM GORIN \$649.55-PLTF	I	0.00
03/08/2017	CONFIRM LTR(HRG 4/27/17 @ 1:30PM)DEFN MSJ ON PLTF'S	I	0.00
03/21/2017	DEFN DECLARATION INVOKING TRCP RULE 167	I	0.00
03/27/2017	REPORTER CERT/DEPO W. GORIN \$649.55-PLTF	I	0.00
03/27/2017	REPORTER CERT/DEPO C. HOSPERS \$1,411.55-PLTF	I	0.00
03/28/2017	***ORD GRANT HAL MONK'S MSJ	IM	0.00
04/18/2017	DEFN'S STIPULATION	I	0.00
04/19/2017	RULE 11 AGRMT	I	0.00
04/19/2017	DEFN AMD STIPULATION	I	0.00
04/21/2017	PLTF'S 5TH AMD PET (NO ADD)	I	0.00
04/27/2017	REPORTER CERT/DEPO DANA WOOD \$1,114.35-DEFN	I	0.00
05/19/2017	PLTF'S MTN TO COMPEL	I	0.00
05/19/2017	LTR TO MS. CANNON FROM KENT KRABILL	I	0.00
05/19/2017	PROP FIAT	I	0.00
05/22/2017	NOT OF HRG (5/25/17 @10:30AM)PLTF MTN TO COMPEL	I	0.00
05/22/2017	FIAT (HRG 5/25/17 @ 10:30)	I	0.00
05/24/2017	DEFN RESP TO PLTF MTN TO COMPEL W/EXHIBITS	I	0.00

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 Cause Number: 153-275478-14 Date Filed: 11/11/2014  
 SETH WASHBURNE v VINTAGE FLYING MUSEUM,  
 S INC., ET AL  
 Cause of Action: OTHER CIVIL, OTHER  
 Case Status.....: DISMISSED OR NON-SUITED  
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Filemark	Description	Fee Total
05/25/2017	***ORD GRANT PLTF MTN TO COMPEL	IM 0.00
05/26/2017	*****ADDITIONAL FILE # 5*****	I 0.00
06/12/2017	PLTF'S NOT OF FILING BUSINESS RECS & AFFDT	I 0.00
06/12/2017	AFFDT OF BUSINESS RECS/FT WORTH POLICE DEPT W/CD	I 0.00
06/21/2017	PROT/ORD (PROPOSED)***RTN UNSIGNED/NO SIGNATURES	I 0.00
06/22/2017	DEFN'S NOT OF AUTHENTICATION OF RECORDS	I 0.00
06/22/2017	PLTF'S MTN TO COMPEL MEDIATION	I 0.00
06/22/2017	PROP FIAT	I 0.00
06/22/2017	(PROPOSED) ORD	I 0.00
06/22/2017	DEFN'S RESP TO PLTF'S MTN TO COMPEL MEDIATION	I 0.00
06/23/2017	BUSINESS RECS AFFDT OF RHANDA HOLDER	I 0.00
06/23/2017	BUSINESS RECS AFFDT	I 0.00
06/23/2017	NOT OF RELATING TO SELF-AUTHENTICATION OF DOCS	I 0.00
06/23/2017	FIAT (HRG 7/14/17 @ 10:30 AM)	I 0.00
06/23/2017	NOT OF HRG (7/14/17 10:00 AM) ON PLTF'S MTN TO	I 0.00

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06/27/2017	DEFN'S MTN FOR LEAVE TO AMEND ADMISSION	I	0.00
06/29/2017	PLTF'S MTN TO COMPEL DOCS EVIDENCING DEFN'S NET	I	0.00
06/30/2017	EMERGENCY MTN TO W/D	I	0.00
06/30/2017	(PROPOSED) ORD	I	0.00
06/30/2017	COVER LTR	I	0.00
06/30/2017	(PROPOSED) FIAT	I	0.00
06/30/2017	EMERGENCY MTN TO CONT TRIAL	I	0.00
06/30/2017	(PROPOSED) ORD	I	0.00
06/30/2017	(PROPOSED) FIAT	I	0.00
06/30/2017	FIAT (HRG 7/14/17 @ 10:00) EMERGENCY MTN W/D	I	0.00
06/30/2017	FIAT (HRG 7/14/17 @ 10:00) EMERGENCY MTN TRIAL DAE	I	0.00
07/14/2017	***ORD ON EMERGENCY MTN TO W/D (PLTF ATTY)	IM	0.00
07/14/2017	***ORD ON EMERGENCY MTN FOR CONT(AT LEAST 90 DAYS)	IM	0.00
08/03/2017	LTR TO MS CANNON FROM RANDALL E TURNER	I	0.00
08/16/2017	REPORTERS CERT/DEPO OF HAL MONK \$1,358.50-PLTF	I	0.00
08/16/2017	REPORTER'S CERT/DEPO HAL MONK \$561.55-PLTF	I	0.00
08/21/2017	***SETTING ORD TRIAL WK OF 12/4/17	I	0.00
09/28/2017	EMERGENCY MTN FOR CONT THE TRIAL & ABATE THE CASE	I	0.00
09/29/2017	DEFN'S RESP TO PLTF'S EMERGENCY MTN TO CONT TRIAL	I	0.00
09/29/2017	DEFN'S 5TH AMD ANS	I	0.00
09/29/2017	PLTF'S REPLY TO DEFN 5TH AMD ANS	I	0.00
10/02/2017	PLTF'S REPLY TO DEFN RESP TO PLTF'S EMERGENCY MTN	I	0.00
10/30/2017	PLTF'S NOT OF NONSUIT	I	0.00
10/30/2017	PROP ORD	I	0.00
10/31/2017	***ORD OF NONSUIT (COST NOT SPECIFIED)	IM	0.00
10/31/2017	DOCKET SHEET	I	0.00

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Total Number Of Records Printed: 215

Exhibit 31: 2016 12 08 - Washburne Museum and Terry Case Budgets

Exhibit 32: 2016 12 12 11.06 pm Krabill to Seth

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynllp.com]  
**Sent:** Monday, December 12, 2016 11:05 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** Re: Your Invoice Email

Seth,

I spent a huge amount of time responding to your last email with an enormous amount of questions about your charges and what we are doing. I am happy to explain to you what we are doing and why we are doing it. Now, on the heels of that extremely long email that took a lot of time to respond to, you drop this email. I will respond to this email this time, but in the future, if you want to discuss these types of issues, I am happy to have a call. But I will not continue to have all these lengthy email exchanges. They are a huge distraction to us getting our work done.

I have once again spent a great amount of time responding to your questions below. Hopefully this will help.

If you would like to have a short call tomorrow to discuss further, I am happy to do so. Let me know.

Kent

On Dec 12, 2016, at 11:38 AM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Kent,

I am now reviewing your email reply last Thursday about the invoices, in which you attached a budget. I have several questions, and would appreciate a reply in writing, vs. talking on the phone. Please note that you billed me \$146,418 for the first 2.25 months, and probably another \$50,000 this month, \$200,000 so far, and for me to have and ask these questions is not at all unreasonable. People have someone work on their car for \$200, and want explanations. I have paid you \$210,000 now, including the two retainers, an enormous sum, and deserve explanations.

I AM ALWAYS HAPPY TO ANSWER ANY QUESTIONS YOU HAVE. BUT I WILL NOTE THAT YOU COULD HAVE SAVED A TON OF TIME (YOURS AND MINE) BY PICKING UP THE PHONE.

Regarding your points:

1. Just for the record, you wrote: "When we spoke the first couple of times, I explained to you, in painstaking detail, the potential costs of this litigation." I do not recall any "painstaking detail."

I DID. SORRY YOU DON'T RECALL IT.

2. You wrote: "We had to respond to summary judgment briefings (which turned out to be rather expensive due to your constant revisions, suggestions, changes in affidavit, etc.)." I am sensitive to being accused of making "constant revisions" which drive up the cost, and think this is inaccurate and unfair.



I DISAGREE. YOU MADE A HUGE AMOUNT OF REVISIONS AND INSERTED LOTS OF IRRELEVANT INFO THAT WE HAD TO WADE THROUGH. AND EVEN THEN, YOU DIDN'T STOP, AND WANTED TO ADD A BUNCH OF IRRELEVANT INFO TO YOUR AFFIDAVITS. THIS ALL TAKES AN ENORMOUS AMOUNT OF TIME, AND ULTIMATELY ADDING IRRELEVANT INFO IS A HINDERANCE TO THE JUDGE (AND ULTIMATELY THE JURY IN THE FUTURE).

- a. Stephen spent 44.7 hours on the No Evidence MSJ through 11/21, and I was away in Korea all this time, and so had no input during those 45 hours.
- b. I did not make "constant" revisions. He ASKED me to review it, and I provided the suggestions he asked for, then reviewed it after he made the changes. So the word "constant" is unfair.
- c. I made zero "revisions" or "changes" at all – I don't have authority over that document and never demanded anything, Stephen made the revisions and changes. I only made suggestions, so the words "revisions" and "changes" are unfair characterizations.
- d. My first comments on the No Evidence MSJ were 11/20 at 9:09 a.m.. These included some basic things you should have been correct the first time, and so personally I think I shouldn't be charged for such changes. Other things were correcting facts, which have to be done, so you shouldn't criticize me for those. He wrote, and please let me know which were unreasonable comments by me:

I AM NOT CRITICIZING YOU. RATHER, I AM EXPLAINING HOW YOUR ACTIONS ARE ADDING TO YOUR COSTS. THIS IS FINE WITH ME, BUT WE DON'T WORK FOR FREE. WE BILL THE TIME WE WORK. WE WORK EFFICIENTLY AND SMART. WE KNOW WHAT WE ARE DOING AND DO IT WELL.

- i. "Washburne" throughout - and I thought it would be better to replace this with "Plaintiff." Isn't that generally better? Stephen used my suggestion, and changed my name to Plaintiff everywhere, suggesting that yes, I was right, and what I suggested was better, and this seems very basic. I shouldn't be charged, or criticized, for that change.

NO. IT ISN'T BETTER. NOT AT ALL. WE DID IT BECAUSE WE DIDN'T WANT TO FIGHT OVER EVERY LITTLE ISSUE WITH YOU. BUT WE SHOULD BE CALLING YOU BY YOUR NAME. PERIOD.

- ii. That I was "standing" on public property - when I was instead sitting in my car. This creates a different impression in one's mind.
- iii. I "leased" space in 2010 – which I did not until mid-2011
- iv. "For reasons unknown to me VFM sided with Jim Terry and engaged in retaliatory campaign" – I knew why they did this, and Monk actually wrote to me they would refuse to take sides.
- v. I received "an" invitation to the parts auction – and I thought it valuable to note I actually received three invitations to this.
- vi. "Wood called security guards" – no, they were already there.

I provided lots of other background, which he chose not to use, which was fine, but this was not "constant revisions," He spent 5.9 hours on this, which seemed long. I was completely fine with him taking what he wanted and skipping other things. This was a normal review.

AGAIN, WE HAVE NO ISSUES WITH YOU MAKING SO MANY EDITS. BUT THIS TAKES TIME AND COSTS MORE MONEY. THAT IS JUST THE REALITY. I DO TAKE ISSUE WITH YOU ADDING SO MUCH IRRELEVANT INFO, BECAUSE THIS HURTS, INSTEAD OF HELPS, YOUR CASE.

- e. My second suggestions on the no evidence MSJ were 11/21 at 8:34 a.m, and it is natural to think of some things one did not before. I also had to repeat some things I said the first time which he did not change:
  - i. Stephen had written that I began to restore the plane in 2010, and I had said no, Terry did, and he had left that in, so I had to change it again.
  - ii. Stephen called Terry a “fellow” tenant, implying I was a tenant in 2010, and I was not, and I had to make that change a second time.
  - iii. He spent 3.4 hours on the changes on this day, which again seems long, like they could have been done in 1 hour, but these, too, were not burdensome.

THE TIME BILLED IS ACCURATE.

- f. My third review of this was a reply 11/21 at 7:20 p.m., and my comments were very few and minor, including fixing the name of the Tarrant Appraisal District, to eliminate the word “County,” which he had wrongly inserted in the first draft, and I had not caught. These would have taken about 10 minutes to change. He spent 1.2 hours revising it on 11/25.

YOU THINK THAT REVISING ONLY TAKES A FEW MINUTES. IT DOESN'T. EACH ROUND OF REVISIONS IS DONE AND THEN THE DOC IS CONTINUALLY REVISED UNTIL FILED. THIS STUFF TAKES TIME TO GET IT RIGHT.

- g. Even if all of his revision time was due to my suggestions, this was  $5.9 + 3.4 + 1.2$  hours, 10.5, hours, \$3,570, vs. the 44.7 hours to prepare it in the first place, so my suggestions, only two days added 20%. I would expect getting comments from a client would be entirely normal, and I did nothing wrong.

AGAIN, NOBODY SAID YOU DID ANYTHING WRONG.

- h. Regarding the “Addendum”:
  - i. First, I was surprised and rather shocked that none of you challenged any of the statements they made about me, which were full of lies, e.g. that I love suing people, do it all the time, and have made a lot of money doing this; that we already mediated this suit, etc.
  - ii. As far as it adding to the cost, you billed 4.2 on 11/22 to review and revise the MSJs, and refer to “multiple calls with me,” but I had not sent my addendum yet, so this time was not for reviewing that, and the “multiple” calls, shown attached, were just two, for a combined 34 minutes, so did not add much on this day.
  - iii. I emailed you general additions on 11/23, and you didn't bill me anytime at all on that day, you just sent me a short four-sentence reply saying you would review it to see if useful for your oral argument, so still no cost due to the Addendum.
  - iv. I sent you the detailed addendum on the morning of Friday the 25<sup>th</sup>, you reviewed this the same day for 3.0, \$1,350, which was fine, and it was filed that same day. So the Addendum added maybe \$1,500 to the cost.

So please note these were not “constant” changes and did not add much to the cost, maybe \$5,000 of the total \$147,000.

YOU ARE WRONG ON THIS. I HAVE DONE THIS JOB EVERY SINGLE DAY FOR A LONG TIME. YOU HAVE MADE MORE CHANGES IN THE TWO MONTHS WE HAVE BEEN DOING THIS THAN ANY CLIENT I HAVE EVER HAD. THAT IS OK. I APPRECIATE THAT YOU CARE AND ARE INVOLVED. IT

WILL MAKE OUR CASE BETTER. BUT IT TAKES TIME TO ADDRESS EACH OF YOUR CHANGES, SUGGESTIONS, IDEAS, ETC. THAT IS THE REALITY.

3. As an aside, for Dana's attorney's MTW, none of you objected to it being more than 6 months old, from before you started, and having no phone number or email contact info, or being an apartment. I was the only person who thought of each one of these items, and I think this was valuable. I did not know she was scheduled for a deposition, so now she obviously knows who your firm is, but I think it was good to file that anyway.

I AM NOT SURE WHAT YOU MEAN HERE. AND WE GAINED NOTHING FROM THE WORK. WE WERE COMMUNICATING WITH HER PRIOR COUNSEL AND WOULD HAVE HAD HER INFO ANYWAYS, AS SHE IS A DEFENDANT IN THE CASE.

4. You wrote "you asked us to visit Meacham" – that added only maybe 1 hour, \$800, and should have been only 30 minutes. That, by the way, was a frustrating experience for me, because I wanted to simply show you what happened, and the area, but you wanted to have a talk about why I was there, and tell me the exact words I should say at trial when asked why I was there. No offense, but I didn't want to get my legal advice while standing on a street corner. I would prefer to get it in an email, or in a meeting in a conference room when I have a pen and paper to write it down. I was glad to help you understand the case, but a lot of that conversation I think did not produce any new long term value, because I don't remember the specific words you told me I should say about why I was there.

AGAIN, I NEED TO KNOW WHAT YOU THINK, HOW YOU WILL REACT, WHAT YOUR STORY IS, AND HOW IT WILL PLAY. BEING AT THE EXACT SPOT WHERE THE WARNINGS AND ARREST OCCURRED WAS THE BEST PLACE TO TEST THIS. DON'T WORRY ABOUT THE EXACT WORDS. IT IS OUR JOB TO PREP YOU FOR DEPO AND TESTIFYING, AND WE KNOW WHAT THEY ARE AND WILL MAKE SURE YOU ARE PREPPED.

5. You wrote: "I told you that we would have to dig into the file to have a better idea, but that it may be possible to try the cases for less than \$200k each, but that depending on what the Defendants did, it may be more or less than that for each case. We are well within that range." The Terry case through November was at \$86,675, so up to almost half the \$200,000. Do you believe that half the work and expense in the Terry suit has already been done?

AGAIN, I NEVER PROMISED YOU YOUR CASES WOULD COST A CERTAIN AMOUNT. LITIGATION IS TOO DYNAMIC TO DO SUCH A THING. I GAVE YOU A RANGE AND CAREFULLY EXPLAINED THAT THE RANGE COULD AND WILL LIKELY VARY DEPENDING ON A LOT OF FACTORS, WHICH WE DISCUSSED. FOR EXAMPLE, MAHAFFEY HAS NOW FILED AN MSJ. SO WE MUST RESPOND. AND THIS WILL TAKE A LOT OF EXTRA TIME AND MONEY. IT IS JUST THE NATURE OF LITIGATION. IT IS DYNAMIC AND IF YOU WANT TO FIGHT, YOU HAVE TO BE IN FOR THE LONG HAUL TO WIN.

6. You wrote: "We have suggested trimming both cases down from the beginning, by eliminating certain claims and defendants. You have refused thus far, which is your choice. But conducting litigation against multiple defendants on a wide variety of claims greatly increases the costs. I have told you this repeatedly." The suit I brought you in the first place had all these defendants, and the \$200,000 estimate should include all of these, and if I trim it down it should be much less than this. But instead I expect you will say keeping people in will increase it above this. Please confirm the \$200,000 estimate was the case as I brought it to you, and not the slimmed down one.

SEE MY ANSWER ABOVE. I NEVER SAID \$200K. RATHER, I SAID WE WOULD HAVE TO EXAMINE THE FILE AND WORK THAT WAS DONE BY YOUR PRIOR COUNSEL, THAT THERE WAS A POSSIBILITY EACH CASE COULD BE DONE UNDER \$200K, BUT WE WOULDN'T KNOW UNTIL WE DUG IN AND REVIEWED EVERYTHING, AS WELL AS FIGURED OUT DURING THE COURSE OF

LITIGATION HOW THE OTHER PARTIES WOULD CONDUCT THEMSELVES IN TERMS OF DISCOVERY, DEPOS, MSJ'S, ETC.

7. Regarding your proposed budget for both case, I emailed you at 9:21 a.m., and your reply was at 10:31 a.m., only 1 hour and 10 minutes later, and your email was long, making me wonder how you had time to also prepare those two detailed budgets. Were those ones you had before for another case and modified for me? Are they at all realistic and tailored to my case?

I DRAFTED BOTH BUDGETS FOR YOUR CASES. THEY ARE AN ESTIMATED RANGE FOR EACH CASE. AND AS THE BUDGETS SAY, THE NUMBERS COULD CHANGE DEPENDING ON THE FACTORS I LISTED ABOVE.

8. For the Terry case, please resend the budget correcting the following errors:
  - a. "Trial preparation and trial" you have the high-end total as \$15,000, but these numbers add up to \$185,000.
  - b. In the Budget Summary you transfer the \$15,000 number, which should be \$185,000.
  - c. Your total high-end of \$291,000 does not equal the sum of these numbers. It should be \$311,000.

I HAVE CORRECTED AND ATTACHED.

9. Your Budget summary high end number of \$311,000 is more than 50% more than we talked about. I wonder if you will say that keeping these people in will now dramatically increase the cost to even more than that,, to \$500,000.

THESE ARE THE BEST ROUGH ESTIMATES AT THIS TIME. NOBODY KNOWS WHAT MOTIONS DEFENDANTS WILL FILE IN THE FUTURE, HOW LONG THEIR CASE WILL BE AT TRIAL, WHO THEY WILL DEPOSE, WHAT ADDITIONAL DISCOVERY THEY WILL SEND, ETC. BUT THE NUMBERS I SENT ARE A GOOD GUIDE FOR PLANNING. I DO NOT ANTICIPATE THAT THE NUMBERS WILL REACH AS HIGH AS YOU SUGGEST.

10. Your budgets do not show money already spent. A budget at this time should include the actual expenses to date as well. Please redo it to show what has been finished, and what spent. You show "Case Assessment, Development and Administration" as \$14,000-\$33,500, but have already billed me \$86,675 for this, and that part may not even done yet. So are you already 3x over the high end of the budget?

YOUR 3X NUMBER IS INCORRECT. MY BUDGET LOOKS FORWARD, NOT BACK.

YOU HAVE OUR INVOICES AND THE WORK THAT WAS DONE. I WILL NOT RE-CREATE A BUDGET FOR THE PAST.

11. For the VFM budget.
  - a. Your high-end total under "Pre-trial Pleadings" is \$35,000, but these add up to \$35,500, please fix that, and in the summary.

DONE AND ATTACHED.

- b. This, too, should include money billed so far, so please add that.

SAME AS ABOVE.

- c. Under Pre-trial pleadings you budget \$15,500-\$35,000 total, including hearings, plural, but billed \$47,445 for this in November, and this does not even include the one hearing Dec 1, which was probably 6 hours x \$800/hour = \$4,800 more, so is probably \$55,000, and there the Monk MSJ hearing is not until January, so will be at least \$60,000, more than 2x your upper level.

THIS BUDGET IS FORWARD LOOKING AND DOES NOT INCLUDE PAST CHARGES. THE ONLY HEARING ON THE RADAR IS THE MONK HEARING. THERE WILL BE SOME PREP, BUT I ALREADY PREPARED FOR IT SO IT SHOULDN'T BE A LOT, UNLESS MONK FILES SOMETHING ELSE, WHICH I WOULD NOT EXPECT.

- d. Through November you have billed me \$59,743 on that case, equal to half your low-end total budget of \$120,000,, to this, too, seems unlikely.

AGAIN, THIS IS A RANGE, AND NOBODY CAN PREDICT WHAT THE DEFENDANTS WILL DO. BUT I BELIEVE THE RANGE IS A GOOD ROUGH ESTIMATE.

12. The high end of these, \$311 for Terry, and \$269 for VFM is \$580, almost \$600,000. You wrote: "I don't know where you are coming up with a number of \$800,000 to \$1 million. That is not even close to the range we are headed," but your own budget is \$600,000, and it seems we are already well over that, so \$800,000 seems entirely possible.

THE BUDGETS ARE FORWARD LOOKING. THERE IS A HIGH ESTIMATE AND A LOW ESTIMATE. YOUR MILLION DOLLAR NUMBER IS NOT CLOSE TO EITHER.

13. I have already been billed by Vice on the Terry suit \$252,000, and for you to charge another \$311,000 at the high end is \$563,000, a ridiculous amount for that suit. For VFM I have paid him \$141,000, all but about \$7,000 paid in full, and with your high-end of \$269 will take that to \$410,000, again a ridiculous amount. Together these are almost \$1 million.

ACTUALLY, THAT IS NOT AT ALL UNUSUAL FOR A CASE OF THIS SIZE.

14. What do you think the likelihood is of getting a favorable ruling in the VFM case, and an award of more than \$410,000?

AS I SAID FROM THE BEGINNING, I DON'T PREDICT OUTCOMES. YOU HAVE SOUND CLAIMS WITH VERY LITTLE ACTUAL DAMAGES IN THE MUSEUM CASE. I THINK WE WILL BE ABLE TO PUT ON A GOOD CASE AND THAT WE HAVE A SHOT AT WINNING. A JURY MAY FIND THE DEFENDANTS' ACTIONS DEPLORABLE AND MAKE THEM PAY. OR THEY COULD DECIDE THAT YOU SHOULDN'T HAVE RETURNED TO THE AIRPORT, AND EVEN THOUGH YOU WERE WRONGFULLY ARRESTED AND DETAINED, YOU DON'T DESERVE ANYTHING. TRIALS ARE ALWAYS RISKY, AS I HAVE TOLD YOU ON MULTIPLE OCCASIONS.

FROM OUR FIRST CALL, I ENCOURAGED YOU TO HIRE AN ATTORNEY YOU TRUST. YOUR PRIOR COUNSEL COMPLAINED TO ME THAT YOU MADE THEIR JOB EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE. YOUR LEVEL OF INVOLVEMENT IS EXTREMELY HIGH, BUT I AM OK WITH THAT. I LIKE A CLIENT WHO IS INVESTED AND ENGAGED IN THE CASE. BUT PLEASE NOTE THAT EACH EMAIL YOU SEND, EACH CALL YOU MAKE, EACH VISIT YOU ASK US TO MAKE, EACH CHANGE YOU MAKE TO FILINGS, COSTS ADDITIONAL TIME AND MONEY.

I UNDERSTAND THAT LITIGATING CASES TAKES A LOT OF TIME AND MONEY. AND THIS IS TOUGH ON CLIENTS. BUT PLEASE KNOW THAT OUR BILLING RATES AND PRACTICES ARE MUCH LOWER THAN MANY OF OUR TOP PEERS AT THE LARGER FIRMS. WE ARE ONE OF THE PREMIERE LITIGATIONS BOUTIQUES IN THE COUNTRY. WE HAVE ATTORNEYS WITH EXCELLENT CREDENTIALS AND THE BEST REPUTATIONS. WE REPRESENT MANY TOP NATIONAL COMPANIES AS WELL AS MANY SUCCESSFUL SMALL BUSINESSES WITH OWNERS WHO HAVE MUCH LESS MONEY THAN YOU DO. AND NONE OF THEM LIKE TO PAY FOR LITIGATION. IT IS JUST A REALITY. BUT IF YOU WANT TO FIGHT AND VINDICATE YOUR RIGHTS, THEN YOU HAVE HIRED A GREAT SET OF ATTORNEYS TO HELP YOU. WE CAN'T GUARANTEE VICTORY, BUT WE CAN

GUARANTEE THAT WE WILL WORK OUR HEARTS OUT TO ASSURE THAT YOU GET THE BEST ADVOCACY POSSIBLE.

IN CLOSING, PLEASE COMPLETE THE ASSIGNMENTS THAT WE DISCUSSED LAST WEEK. IT IS EXTREMELY IMPORTANT. I UNDERSTAND THE BILLING IS IMPORTANT TO YOU, TOO, BUT WE MUST GET THAT INFO AND GET THE CASES PREPARED FOR TRIAL.

I HOPE THIS HELPS. LET ME NOW IF YOU WANT TO HAVE A CALL TO DISCUSS FURTHER.

KENT

Exhibit 33: 2016 12 14 11.35 Seth to Krabill

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Wednesday, December 14, 2016 11:34 PM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'  
**Subject:** VFM Suit - Inquiry regarding telling the jury my legal fees

Kent,

This is to confirm that on our call Tuesday the 13<sup>th</sup> I asked you to please look into and get back to me about whether you can definitely reveal to the jury in the VFM case how much I have spent on legal fees.

In my view this is critically important when asking the jury to award damages. I have paid Vice \$140,000 on that suit, and you billed \$59,743 through November 30, a total \$200,000 already, and your high-end estimate was another \$268,500, plus expenses, so I might spend more than \$500,000 on that suit.

A jury might want to give me a good amount, but not make me rich, and think \$100,000 is enough. If they knew I had already spent \$500,000, they would realize paying me \$600,000 won't make me rich, it will just reimburse me my cost, and so they might be more willing to go with a bigger number.

I believe this is very important.

Please look into this and get back to me as soon as possible with a definite answer about this, and the mechanism of how and when you would tell the jury.

Please also email me the Terry Case budget with the amounts corrected which was not attached before.

Thank you.

Seth



Exhibit 34: Washburne's 4th Amended Petition 1-4-17

**CAUSE NO. 153-275478-14**

<b>SETH WASHBURNE,</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	
	§	<b>TARRANT COUNTY, TEXAS</b>
<b>VINTAGE FLYING MUSEUM, INC.,</b>	§	
<b>HOSPERS FAMILY TRUST “D”,</b>	§	
<b>CHARLYN HOSPERS, HAL MONK, BILL</b>	§	
<b>GORIN, and DANA WOOD,</b>	§	
	§	
<b>Defendants.</b>	§	<b>153RD JUDICIAL DISTRICT</b>

**PLAINTIFF’S FOURTH AMENDED PETITION**

Plaintiff Seth Washburne (“Washburne” or “Plaintiff”) files this Fourth Amended Petition against Defendants Vintage Flying Museum, Inc. (“VFM”), Hospers Family Trust “D” (the “Trust”), Charlyn Hospers (“Hospers”), Hal Monk (“Monk”), Bill Gorin (“Gorin”), and Dana Wood (“Wood”) (collectively, the “Defendants”), and respectfully shows the Court as follows:

**INTRODUCTION**

1. This case concerns the malicious prosecution and false imprisonment of Plaintiff, orchestrated primarily by the Defendants. The undisputed evidence reveals that Plaintiff was wrongfully arrested for trespass—at the request and instigation of the Defendants—when he was on public property. The charges were dismissed when the Fort Worth police’s independent investigation revealed that the Defendants had misrepresented to the police the location of the VFM’s property line in order to cause the police to wrongfully arrest Plaintiff. The evidence also reveals that each of the Defendants participated in and substantially contributed to Plaintiff’s wrongful arrest and imprisonment. Plaintiff brings this action seeking damages for his humiliating and harrowing wrongful arrest and imprisonment.

**DISCOVERY CONTROL PLAN**

2. Plaintiff intends to conduct discovery under a Level 3 Discovery Control Plan pursuant to Rule 190.3.

**CLAIM FOR RELIEF**

3. Plaintiff seeks monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(5).

**PARTIES**

4. Plaintiff Seth Washburne is an individual residing in Dallas County, Texas.

5. Defendant Vintage Flying Museum, Inc. is a Texas corporation. Defendant VFM has appeared in this action for all purposes.

6. Defendant Hospers Family Trust “D” is a Texas trust which owns property in Tarrant County, Texas. The Trust has appeared in this action for all purposes.

7. Defendant Charlyn Hospers is an individual residing in Tarrant County, Texas. Hospers has appeared in this action for all purposes.

8. Defendant Hal Monk is an individual residing in Tarrant County, Texas. Monk has appeared in this action for all purposes.

9. Defendant Bill Gorin is an individual residing in Tarrant County, Texas. Gorin has appeared in this action for all purposes.

10. Defendant Dana Wood is an individual residing in Tarrant County, Texas. Wood has appeared in this action for all purposes.

**VENUE AND JURISDICTION**

11. This Court has personal jurisdiction over the Defendants because they are all residents of Texas. This Court has subject matter jurisdiction over this case, because the amount in controversy is within the jurisdictional limits of this court. Venue is proper in Tarrant County

pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this county.

## FACTS

### **1. Plaintiff was the victim of fraud and theft by Jim Terry, a VFM tenant.**

12. In January 2010, Plaintiff acquired, and set about to restore, a World War II C-47 airplane nicknamed "Billie." Plaintiff's father flew on Billie during World War II, and it is the last known flying airplane of his father's WWII squadron. In connection with those efforts, Plaintiff retained the services of James Terry ("Terry")—a VFM tenant—to restore Billie. In 2010 and early 2011, Plaintiff resided in New York while Terry ostensibly went about the restoration of Billie. In November 2011, after becoming suspicious of Terry, who by now was far over budget and making little progress on Billie, Plaintiff relocated to Texas to more closely observe the restoration. In connection therewith, Plaintiff had leased space at the VFM to continue his restoration efforts.

13. Plaintiff had a falling out with Terry and others who were hired to work on Billie due to their negligent and/or defective work on Billie as well as Terry's theft of Plaintiff's airplane parts. As a result of the theft, Plaintiff filed criminal theft charges against Mr. Terry. Plaintiff provided the VFM clear, detailed evidence of Terry's crimes, but did not otherwise discuss this issue much around the VFM, so as to not cause a distraction for others.

14. When Plaintiff filed these charges, Wood, who was serving as Terry's marketing person and who relied on Terry for her income, started behaving in a hostile manner toward Plaintiff. It was also during this dispute—specifically in April and June 2012—that Hospers exhibited hostility to Plaintiff, twice lying about Plaintiff to VFM volunteers in order to agitate the volunteers against Plaintiff. For reasons unknown to Plaintiff, Terry was apparently successful in turning the VFM—and the other Defendants—against Plaintiff, as they sided with Terry in this

dispute and engaged in a retaliatory campaign against Plaintiff, including terminating Plaintiff's lease and culminating in Plaintiff's wrongful arrest and imprisonment.

**2. Plaintiff, after his lease had been terminated, was invited back to the VFM only to be wrongfully accused of trespassing while parked on public property.**

15. In September 2012, Plaintiff had Fort Worth detectives visit the VFM in order to investigate Terry's theft against Plaintiff. Within two weeks of the detectives' visit to the VFM, the VFM's three-member board of directors—which included Monk and Hospers—voted to terminate Plaintiff's lease.

16. Shortly thereafter, in early 2013, Plaintiff received several invitations to a March 2, 2013 parts auction, hosted by Terry's company and taking place at the VFM. The auction catalog appearing online before the auction showed a navigator's dome identical to one that Terry stole from Plaintiff. Plaintiff wanted to attend the auction to see if he could recover this stolen part. Plaintiff was also interested in seeing if any of his other stolen parts were placed for auction, and wanted to return certain items given to him by Gorin. Accordingly, Plaintiff traveled to the VFM for the auction on March 2, 2013.

17. Plaintiff drove to the west end of NW 38th Street—an area of public property. An armed security guard standing in the street met Plaintiff, demanded Plaintiff's name, and, upon receiving Plaintiff's name, called for "backup" and motioned for a nearby policewoman to come over. In all his prior visits to the VFM, Plaintiff had never seen police officers or armed security guards providing security to the VFM. Plaintiff discovered that the police and security were hired specifically to prevent Plaintiff from coming onto VFM property, even though Plaintiff had been explicitly invited to the auction. Then, the police officer told Plaintiff he was trespassing, even though Plaintiff was still in his car on the public road and had not traveled onto any private property.

18. It became apparent to Plaintiff that Wood, an admitted representative of the VFM, the Trust, and Hospers, misrepresented to the police that Plaintiff, if he drove up NW 38th street, would be on the Trust's property without permission. As a result of this misrepresentation, a police officer then issued a warning to Plaintiff not to return to "505 NW 38th Street," despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land, and threatened to arrest Plaintiff if he returned anywhere on NW 38th Street west of Ross Avenue.

**3. Plaintiff determined the Trust/VFM property line through a review of legal records.**

19. Disturbed by his trespass "warning" while parked on what he believed to be public property, Plaintiff investigated online the property line for the VFM property that the Trust owned, and discovered quite easily the true property line of the Trust. Realizing this contradicted Defendants' prior representations, Plaintiff took great effort to demonstrate and explain to the Defendants where exactly the property line was.

20. For example, on April 13, 2013, Plaintiff emailed Monk—a director for the VFM—and attached documents from the Tarrant Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust did not, in fact, own NW 38th Street or Von Avenue, as Wood had suggested to the police. Plaintiff added: "Until the time that you get back to me, I will assume these streets are indeed public property as depicted." Monk failed to respond.

21. Then, on April 15, 2013, Plaintiff again sent Monk an email regarding the Trust/VFM property line, this time attaching a distribution deed—drafted by Monk and signed by Hospers less than six months earlier—clearly identifying all of the lots owned by the Trust. This time, Monk forwarded this email to Hospers, copying Plaintiff, asking for direction on responding to Plaintiff's evidence regarding the property line. Monk, by replying to Plaintiff and not

correcting Plaintiff's understanding, acknowledged that he was aware Plaintiff would rely upon Plaintiff's findings as facts.

**4. Plaintiff filed suit against Terry and other VFM members.**

22. In October 2013, Plaintiff filed suit against Jim Terry, VFM Life Member Patrick Mahaffey, and others, detailing the wrongs they had committed against Plaintiff in connection with the restoration of Billie. This lawsuit received substantial publicity and was covered by multiple news outlets. Also, in early 2014, as a result of the VFM essentially siding with Terry, Plaintiff added a page to his website regarding the Thirsty 13th squadron that detailed the problems with the VFM, on January 30, 2014 made a post on the website Yelp that was not favorable to the VFM, and on February 13, 2014, made an unfavorable post on website Tripadvisor.

**5. The Defendants misrepresented their property line to the police and wrongfully procured a "trespass warning" against Plaintiff.**

23. In early 2014, Terry and Wood again invited Plaintiff to an event at the hangar at the VFM, just as they had more than 30 times in the prior year. Plaintiff declined the invitation, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 because (1) it was on his route for an errand Plaintiff was running that day, (2) Plaintiff wanted to perhaps observe a B-29 plane and the hanger in which it was held, and (3) Plaintiff wanted to see if Terry was in town, as Terry had been avoiding responding to discovery in Plaintiff's lawsuit against him on the alleged basis that Terry was out of town.

24. Plaintiff stayed on public roads and stopped just before the end of NW 38th Street, where Wood had set up a traffic cone and tent to collect payment to attend an event, even though Wood's actions blocked access to a public street. Plaintiff expected to have a friendly chat with Wood. Plaintiff explained to Wood that he wished to travel down Von Avenue to view a B-29 plane and the building in which it was housed. He also explained that 38th Street and Von Avenue

were public roads—he even offered Wood the proof of this in the form of public records—and said that he had explained this to Monk, and that Monk had not contradicted his understanding. Wood refused to look at the documents and simply said she was not going to let Plaintiff travel down the public roads. Shortly thereafter, although Plaintiff remained on the public roads, the VFM—through Wood—called the police on Plaintiff.

25. The VFM, through Wood, represented to the police that it had actual awareness of the ownership of the property at issue and represented that Plaintiff was trespassing. These misrepresentations resulted in the officers manhandling Plaintiff, temporarily detaining Plaintiff in a police cruiser, wrongly informing Plaintiff he was trespassing, and stating that he would be arrested if he returned to “505 NW 38th Street.” As a result of Wood’s misrepresentations—made on behalf of the VFM and the Trust—the police wrongfully issued Plaintiff a “Trespass Warning.” In addition, Wood—on behalf of the VFM and the Trust—filed false police reports replete with lies, including a report that Plaintiff had struck her with his car, when in reality she had run into his car while it was stationary.

26. The Trust, VFM, Hospers, Monk, and Gorin all allowed Wood to act as the VFM and Trust’s representative in procuring this false Trespass Warning.

**6. The Defendants continued with their misrepresentations and had Plaintiff wrongfully arrested.**

27. During the evening of April 26, 2014, Plaintiff emailed Hospers, Monk, and Wood demanding that they stop lying to the police—and demanding that the Defendants stop Wood from lying on their behalf—about the VFM/Trust property line, and again Plaintiff provided Hospers, Monk, and Wood with the public records showing the extent of the VFM/Trust property. However, the Defendants were unmoved in their plan to get Plaintiff wrongfully arrested.



28. On April 27, 2014, Plaintiff notified the Defendants that he intended to drive to the end of NW 38th Street—which the undisputed public records which he had previously provided to the Defendants demonstrated was public property—and look out at the airplanes at Meacham Airport. Plaintiff requested that Monk or Hospers call him to confirm that the matter of the VFM/Trust property line had been cleared up with the Defendants, including Wood.

29. At 2:05 p.m., Monk called Plaintiff and confirmed to him that he was allowed to park anywhere on NW 38th Street, including along the fence at the west end of the street, and the Defendants would not consider him to be trespassing on the Trust's property. Monk even clarified exactly where the Trust/VFM property began and ended, and he assured Plaintiff that he had informed Hospers and Wood of these facts. Monk also confirmed that the Defendants would not involve the police if Plaintiff parked where he and Monk discussed. As it turned out, this was merely a ruse to draw Plaintiff to the property so that the Defendants could have him wrongfully arrested.

30. At around 4:45 p.m. on April 27, 2014, Plaintiff arrived at NW 38th Street near the VFM and parked exactly where Monk had told Plaintiff he could park (and where the public records demonstrated that it was public property). Plaintiff did not drive onto the Trust/VFM property, but stayed strictly on public roads the entire time.

31. Shortly thereafter, the Defendants' ruse was revealed, as two police cars arrived at Plaintiff's car, and Wood and Gorin appeared, wrongfully telling the police that Plaintiff was trespassing. The police reports reveal that Gorin represented to the police the alleged boundaries of the Trust/VFM property lines. Of course, Gorin's representations were wrong.

32. Plaintiff immediately called Monk so that Monk could inform the police and the other Museum representatives of the information he had told Plaintiff less than three hours earlier.

While Monk briefly responded to Plaintiff, he refused to speak to Wood, Gorin, or the police and refused to correct Wood and Gorin's misrepresentations that Plaintiff was trespassing on Trust/VFM property. Plaintiff tried to call Monk again multiple times. Monk answered once, then hung up after Plaintiff identified himself. Monk ignored Plaintiff's next two calls, leaving the police to believe the lies of Gorin and Wood regarding the property line.

33. Based on the Defendants' misrepresentations regarding the Trust/VFM property line, the police arrested Plaintiff for criminal trespass. The police handcuffed Plaintiff, placed him in a police cruiser, and took him to the Fort Worth jail around 5:45 p.m. Plaintiff spent six more hours in the Fort Worth Jail, with other accused criminals, before being transported to the prison at Mansfield, Texas, where he had his mugshot taken and spent the night. Plaintiff was finally released the next morning and got a van back to Fort Worth, arriving more than 18 hours after he was wrongfully arrested.

**7. In private communications, Monk admitted the wrongfulness of the Defendants' actions.**

34. Monk's refusal to correct the Defendants' misinformation to the police is made all the more startling by his private conversations with other Defendants, which reveal his knowledge and awareness of the potential liability the Defendants were exposed to as a result of their misrepresentations.

35. On April 28, 2014, the day after Plaintiff's arrest, Monk emailed Hospers and Gorin and admitted that (1) the VFM and the Trust allowed Wood to hold herself out as a representative of the VFM and the Trust, (2) Wood likely made false representations to the police, and (3) the VFM and the Trust were likely responsible for these false representations. Likewise, in a later email to Wood, Monk noted that the Defendants' actions left them "treading on dangerous ground" because Plaintiff "well may be" correct about where the VFM/Trust property line is.

36. Monk's knowledge of the Defendants' violations of Plaintiff's rights is made most clear by his May 29, 2014 correspondence to Hospers and Gorin, wherein he laments the VFM/Trust's actions in ratifying Wood's misrepresentations to the police and confirms that Plaintiff, indeed, was not trespassing when the police were called:

[Plaintiff's intent] does not in any way preclude his right to travel as he darn well pleased up and down NW 38th Street, or which now, uncomfortably, seems to still be Von Street. *Dana Wood had no right whatsoever to impede such travel.* Contrary to her assertions below, *I find no indication that Seth ever set foot on any of VFM's leasehold or Hospers Trust property, or expressed any intention of doing so . . . .* In any event, I now have information that she walked in front of his car *while he was exercising his right to travel on a public street . . . .* I am much concerned that *actions, or inactions, of some folks connected with VFM may have lent credence to her erroneous assertions to [the police] that she was a 'representative of VFM.'*

Monk's understanding of the wrongfulness of the Defendants' actions makes his silence on the day of Plaintiff's arrest all the more malicious.

37. Meanwhile, other VFM/Museum representatives—including Wood, Gorin, and Hospers—continued to communicate with Fort Worth police, and continued to misrepresent the extent of the VFM/Trust's property line, in an effort to bring about a prosecution of Plaintiff. As Hospers put it in an email to Monk, the Fort Worth police “accepted the trespassing charge against Seth” based on an evaluation of the property line that was—to that point—entirely informed by the misrepresentations of the Defendants. Thankfully, the police eventually consulted the official record, which contradicted the Defendants' representations.

**8. After a review of the public record, the charges were dropped against Plaintiff.**

38. The police who arrested Plaintiff had only the misinformation supplied by the Defendants to go on, and, thus, were led to believe that Plaintiff was on the VFM/Trust property when he was arrested. However, after Plaintiff's arrest, during the scope of the investigation into his charges, law enforcement and the prosecution determined that Plaintiff was, in fact, right about

the property lines all along. They determined that Plaintiff was standing on public property—as Monk and the other Defendants knew or should have known—and, accordingly, that Plaintiff should not be prosecuted (and should have never been arrested). For these reasons, the charges were dropped against Plaintiff.

**9. Plaintiff suffered damages as a result of Defendants’ actions.**

39. Plaintiff’s prison stay was a harrowing experience for Plaintiff. Plaintiff, a lifelong professional, had never experienced any legal troubles with the police, and was never mentioned in a police report in his entire life until to the Defendants’ (successful) campaign to get him wrongfully arrested. In addition to suffering shame, humiliation, reputational damage, and emotional distress, Plaintiff incurred the expense of hiring a criminal attorney to defend himself against the Defendants’ false accusations and paying for a professional survey to be completed to provide his attorney with the necessary information to defend Plaintiff against the charges.

**CAUSES OF ACTION**

**Count One: Malicious Prosecution**

40. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

41. A criminal prosecution was commenced against Plaintiff.

42. Defendants initiated or procured the criminal prosecution against Plaintiff.

43. The prosecution was terminated in Plaintiff’s favor.

44. Plaintiff was innocent of the charges against him.

45. Defendants did not have probable cause to initiate or procure the prosecution against Plaintiff.

46. Defendants acted with malice in initiating or procuring the prosecution against Plaintiff.

47. Plaintiff suffered damages as a result of the prosecution.

**Count Two: Intentional Infliction of Emotional Distress**

48. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

49. Defendants acted in an intentional and reckless manner toward Plaintiff.

50. Plaintiff suffered severe emotional distress as a result of Defendants' actions.

51. Defendants' conduct was extreme and outrageous.

52. Defendants' conduct proximately caused the Plaintiff's emotional distress.

**Count Three: Negligence**

53. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

54. Defendants owed a duty to Plaintiffs to use ordinary care in making representations and in ascertaining the accuracy of information given to others.

55. Defendants breached this duty.

56. Defendants' breach proximately caused Plaintiff's injury.

**Count Four: False Imprisonment**

57. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

58. Defendants directed, requested, and/or participated in the willful arrest or detention of Plaintiff.

59. Plaintiff's detention was without his consent.

60. Plaintiff's detention was without legal authority or justification.

61. Plaintiff suffered injury as a result of his false imprisonment.

**Count Five: Civil Conspiracy**

62. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

63. Defendants were members of a combination of two or more persons.

64. The object of the Defendants' conspiracy was to accomplish an unlawful purpose—the malicious prosecution and false imprisonment of Plaintiff.

65. Defendants had a meeting of the minds on the course of action.

66. One or more of the Defendants committed an unlawful, overt act to further the object or course of action.

67. Plaintiff suffered injury as a proximate result of the Defendant's wrongful act.

**Count Six: Declaratory Judgment**

68. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

69. There is a dispute concerning Plaintiff's rights as they pertain to the property line boundary, as established by the Tarrant County property records, of the property owned by the Trust and where the VFM is located.

70. Pursuant to section 37.001, *et seq.*, Plaintiff requests that the Court declare that Plaintiff was within his rights to be present on those portions of NW 38<sup>th</sup> Street and Von Avenue, in Tarrant County, Texas, where Plaintiff was present when he received a trespass warning and was subsequently arrested for trespass. Plaintiff further seeks a declaration from the Court that, consistent with the Tarrant County property records, neither the Trust, the VFM, nor any other

Defendant has a right to preclude Plaintiff from being present on any portion of NW 38<sup>th</sup> Street, including the intersection with Von Avenue, nor any portion of Von Avenue, to the full length a public right of way exists.

71. Pursuant to section 37.009 of the Texas Civil Practice & Remedies Code, Plaintiff further seeks recovery of his costs and reasonable and necessary attorneys' fees incurred in bringing this action.

**Count Seven: Vicarious Liability**

72. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

73. At all relevant times, Hospers, Monk, Gorin, and Wood were acting as representatives and/or agents of the Museum and the Trust.

**DAMAGES**

74. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

75. As a result of Defendants' actions, including their malicious and reckless actions, Plaintiff seeks and is entitled to:

- a. His actual damages, including economic damages, and damages for mental anguish, emotional distress, injury to Plaintiff's reputation, and pain and suffering;
- b. Additional damages;
- c. Exemplary damages;
- d. Attorneys' fees; and
- e. Court costs.

**JURY REQUEST**

76. Plaintiff requests a trial by jury.

**PRAYER**

77. Plaintiff Seth Washburne respectfully requests that the Court, after final trial in this cause, enter judgment in favor of Plaintiff against the Defendants, jointly and severally, for Plaintiff's actual damages, additional damages, exemplary damages, attorneys' fees, costs, and pre- and post-judgment interest. Plaintiff further requests all other and further relief to which he may be justly entitled.

DATED: January 4, 2017

Respectfully submitted,

*/s/ Kent D. Krabill*

\_\_\_\_\_  
Kent D. Krabill

State Bar No. 24060115

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

Stephen Cole

State Bar No. 24078358

[scole@lynnllp.com](mailto:scole@lynnllp.com)

**LYNN PINKER COX & HURST, LLP**

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

Telephone: 214.981.3800

Facsimile: 214.981.3839

**ATTORNEYS FOR PLAINTIFF**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-service* on January 4, 2017.

Randall E Turner  
[randy@randyturner.com](mailto:randy@randyturner.com)  
Law Offices of Randall E. Turner, PLLC  
4255 Bryant Irvin Rd., Ste. 210  
Fort Worth, TX 76109

Charles Burgess  
[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)  
Attorney at Law  
521 N. Riverside Dr.  
Fort Worth, TX 76111

*/s/ Kent D. Krabill*

\_\_\_\_\_

Kent D. Krabill

Exhibit 35: 2017 01 17 3.20 pm Cole to Seth

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Tuesday, January 17, 2017 3:20 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Exemplary Damages

Seth,

As requested, here is some information concerning Texas' statutory limits on exemplary damages.

Section 41.008 of the Texas Civil Practice & Remedies Code provides that exemplary damages awarded against a defendant cannot exceed the greater of: (1) two times the amount of economic damages plus any noneconomic damages (up to \$750,000 of noneconomic damages), or (2) \$200,000.

In the Terry case, we do not have claims for non-economic damages (mental anguish, pain and suffering, etc.), so our claim for exemplary damages will be limited to the greater of (1) \$200,000, or (2) twice the economic damages we recover.

In the Museum case, we do have claims for noneconomic damages. So, our claim for exemplary damages there will be limited to the greater of (1) \$200,000, or (2) twice your economic damages (what you paid your criminal defense attorney, procuring the survey, etc.) plus the amount awarded for your noneconomic damages (up to \$750,000).

Let me know if you have any questions.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

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Exhibit 36: 2017 02 10 - 6.11 am Cole to Seth cc Krabill

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Friday, February 10, 2017 6:11 AM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Re: Museum Settlement Offer - and Defendants MSJ on our Declaratory Judgment Action

Seth, see my responses below.

### STEPHEN M. COLE | Associate

LynnPinkerCoxHurst

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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---

**From:** "[sethpw1@gmail.com](mailto:sethpw1@gmail.com)" <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Date:** Thursday, February 9, 2017 at 6:01 PM  
**To:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>  
**Cc:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Subject:** RE: Museum Settlement Offer - and Defendants MSJ on our Declaratory Judgment Action

Stephen,

1. Thanks for letting me know the amount. Please forward to me whatever document they sent that in, I have not seen that.
2. If you had to speculate, do you think it is possible I will get more than this, so it should be rejected? It seems it definitely should be. **It's impossible to guess what the jury might award. As we've discussed in the past, our biggest hurdle in this case will be proving a significant damages figure for you. That said, we will do everything we can to put on a strong case to the jury and hope that they are inclined to either (1) award you significant amounts for the emotional distress this caused you, and/or (2) provide us a significant exemplary damages award. So, is it possible you will get more than this? Yes, that's possible. It's also possible you would get less (or nothing at all).**
3. Regarding their MSJ on the Dec Ac, do you feel we have good arguments to keep that in? **Kent and I are discussing this. They have admitted in their MSJ that you were not standing on Trust/VFM property when you were given a trespass warning and then arrested. So that does remove the principal dispute that the dec action was designed to resolve. But we will brainstorm on other ways to keep this in, including some of the things you discuss below.**

4. In our response to the Dec Ac MSJ please note to the judge:
  - a. That the letter from the FW airport manager reflects that they want to put a fence across Von Avenue, and maybe the intersection with NW 38<sup>th</sup> Street, too, to block public access, which may lead to another problem.
  - b. They currently have a fence across Von Avenue at 37<sup>th</sup> Street, unfairly blocking access to the majority of Von Avenue.
  - c. Gorin specifically told me “If you come back here again I will get you arrested again.”

I desperately need something formal, from a court, to show that I have the right to travel on the public road in that area.

5. Regarding the eFile system, can we get Kevin Vice, Scott Dilbeck, Jennifer Gjesvold, and Anika Simmons (whoever she is) removed from that, or do they have a right to keep getting these flings?  
**Yes, we can get them removed.**

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynnllp.com>]  
**Sent:** Thursday, February 09, 2017 4:42 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Museum Settlement Offer

Seth,

Attached is the settlement offer. They are offering \$22,000.

Let us know how, if at all, you'd like to respond.

Thanks.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

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Exhibit 37: 2017 04 11 - 5.11 pm Seth to Cole

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Tuesday, April 11, 2017 5:11 PM  
**To:** 'Stephen Cole'  
**Cc:** 'Kent Krabill'  
**Subject:** Museum Settlement Term Sheet  
**Attachments:** Museum Settlement Term Sheet - with Seth's changes.docx; Seth Positives.pdf

Stephen and Kent,

1. I am not going to go see a psychiatrist, because if I do, and produce a report to the court, Jim Terry can send this to the FAA to get my pilot's license revoked. When they reinstated my medical, they wrote something like that if they receive one more complaint about me they would revoke it, so I already on their radar screen. I expect the FAA thinks no one should be in an airplane who has any distractions at all, and Jim Reynolds will encourage them to revoke it. I cannot trust what a psychiatrist will write in that.

It will still be in the public record if I say this in court, but only my saying so, not from a psychiatrist, and I expect if Terry told the FAA about this they would tell me to go see a psychiatrist again if concerned, to get a professional opinion, and I could minimize it for that analysis.

I think this is a believable thing to tell a jury, so I think I can make a good case for why I did not see a psychiatrist.

Regarding telling the jury how I have suffered I think I can do a good job of that, explaining the almost daily reminders of being arrested. I can tell them I used to write down every day the reminders, e.g. seeing people on TV at my mother's getting handcuffed, signs about DWIs with handcuffs, etc. I'll say I stopped writing these down after my prior attorney told me he would not use that, which is true, and also to try to forget about this. But I still see reminders almost every week.

Also it is not just the humiliation of being arrested, but the reminder that these people did something bad to me, told dozens of lies about me, laughed in my face about it, and otherwise would get away with it.

2. As for them stipulating the corner is public, the stipulation subject came up because they were going to stipulate about the corner for their own sake, perhaps to reduce the cost at trial, and I thought they already stipulated that orally during a deposition, with the tape running, or the court reporter typing. So I should not have to offer them anything to stipulate with regard to the corner.

As for stipulating about the entire street, I asked Stephen to ask if the corner stipulation could be extended to the entire street, but I meant as part of their corner stipulation which they were already offering for free. This is important to me, but not so much so that I want to negotiate a settlement with them to get it. I want that for free, included in the corner stipulation, and otherwise won't do much to get it. You, Kent, previously said you would not pursue such a request with the court, because it extends beyond what you were hired to do.

As for any benefit of the stipulation of the entire street, I am quite sure if I ever went out there and turned left, and parked in front of the hangar on a Saturday, and minded my own business, Chuckie would still have someone immediately call the police, but this time would say yes, I was



on a public road, but I was harassing them by being on the public street, and the police would show up, ask me why I was there, and I would have no good reason, and the police would tell me to leave and not come back. And Chuckie would then seek a TRO to prevent me from being on that street. So their stipulation would be worthless.

Any request that they stipulate to Von Avenue being public to its entire length would have to include that they will never call the police, security, or anyone else to prevent me from being anywhere on that street, or seek a TRO or any action that would limit my ability to be there, doing whatever I please, so please add this.

3. As for meeting with them, no, as mentioned on the phone, I would never meet in person with any of them, and that has no value to me.
4. One of the reasons I have pursued the VFM case is due to the four police reports Dana filed full of lies about me. When I do my Thirsty 13<sup>th</sup> searches I frequently see links one can click on to find all the police reports about people, and I worry someone in the future might find these and they will harm me, e.g. if I run for office (in a small town), or a potential investor, etc. The things said about me are quite damaging. Many of the questions I asked you to ask were aimed at this, and the defendants have admitted under questioning that almost everything in these is lies. I called Fort Worth Police Records just now and left a message asking if there is a way to expunge police reports. I know they expunge arrest records (and will do mine soon), but want to learn if they do this with police reports, too. I am also, though, quite concerned about the lies about me they told to others around the museum, and others in the aviation community.

Because I am trying to restore my reputation, getting a written apology that I can't disclose to anyone else does not accomplish my purpose. It doesn't in any way change what others have heard about me. So any apology has to be a public document.

Along this line, can we make a case to get attorney's fees because it was necessary to clear my reputation, e.g. putting defamation back in, but not with a financial loss of income, rather with general defamation, which I need to pay to get admissions they were wrong? Or call it something else?

5. The things I am trying to get out of this are:
  - a. A public record that their statements were not true. I already have this from the deposition responses.
  - b. To "buy my future happiness," avoid future unhappiness, by knowing I stood up for myself. If I didn't pursue them over this, I would live the rest of my life with my tail between my legs, feeling like a victim, they did this to me and literally laughed in my face about it, and I let them get away with it. So I want them to incur some pain and compensate me for what they did to me.
  - c. I picture we can make a case to the jury for non-economic damages (pain and suffering) by my being on the stand and giving examples of many of the times I am reminded of that bad experience, and how this will color all the days of the rest of my life, then use the Mark Cuban example, and say I should get at least \$100,000 for that, preferably \$500,000, but \$100,000 ok, and then exemplary damages of \$200,000, so \$300,000 total. I know this would not cover my costs of bringing the suit, but I do get the intangible of standing up for myself. Also the past

costs are sunk costs, and so going forward if I spend \$100,000 more through trial to get maybe more than that, it is worth it.

6. I modified the letter as shown attached. I have them admitting to a lot of things. While this might seem unrealistic, they already have admitted all of these things in depositions, and this just formalizes that.
7. Regarding the letter, can we withdraw from it before we sign it, or do we have to sign it if they do?
8. Please don't send it to them until I review it again, just getting your thoughts now.

On other matters:

9. I noticed the defendants all objected to revealing their net worth. I am sure they will all tell the jury how poor they are, and Hospers will talk about struggling to run this museum for the greater good, and relying on volunteers, that they cannot even afford to pay anyone, so they can't pay me much, but she sold the B-17 for I estimate \$1.5 million to \$2 million. The grounds there are probably worth \$1 million, so she and the trust are probably worth at least \$3 million. Is there a way you can get this info? Do you plan a motion to compel?
10. Our latest RFD reply states you have an expert to testify about my legal costs – why do we include him if we cannot talk about legal costs, just as a backup in case allowed?
11. Regarding the amended responses to defendant's RFD, my sister's married last name is Talburtt, and her formal first name is Eleanor, so legally she is Eleanor Talburtt (with 2 ts), but it is ok if you keep her as Ellie Washburne.

Seth

---

**From:** Stephen Cole [mailto:SCole@lynnllp.com]  
**Sent:** Tuesday, April 11, 2017 9:29 AM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Museum Settlement Term Sheet

Seth,

Attached is a draft term sheet for a settlement of the Museum matter. Please review and let me know if you have any comments/questions.

Our plan is to circulate this to Turner and inform him that you would be willing to down \$50,000 if we remove confidentiality and nondisparagement from the agreement.

Let me know your thoughts. Thanks.

**STEPHEN COLE** | Associate  
**LynnPinkerCoxHurst**  
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[scole@lynnllp.com](mailto:scole@lynnllp.com)

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Exhibit 38: 2017 04 21 - 1.30 Cole to Seth - ask for \$1mm

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Friday, April 21, 2017 1:30 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** RE: Fifth Amended Petition 4822-5544-1991 v.2  
**Attachments:** Fifth Amended Petition 4822-5544-1991 v.3.docx

Seth,

I just tried calling you. Regarding your notes below:

- 1) We cannot add a cause of action for slander. This is the same as defamation (slander and libel are types of defamation), which the Court already ruled on. Even if you still had that cause of action viable, it does not allow you to recover attorney's fees that you have incurred in this case.
- 2) We should not add a cause of action for the rent. First, that has nothing to do with your malicious prosecution and wrongful arrest. Second, even assuming you had a valid cause of action for that (which I'm not sure of), the statute of limitations has run. They last charged you rent in October 2012, I believe. The breach of contract limitations period is 4 years, meaning that would have expired this past October.
- 3) There is no reason to reduce our claim for relief asked for in the petition. For one, it doesn't change what happened in your deposition. We will have to deal with that no matter what. All we would accomplish by reducing our claim for relief is limiting ourselves. No matter how unlikely a recovery that large would be, we don't need to limit ourselves on what we can request from the jury. Changing this figure will do nothing helpful for us.

Other than these issues, I have accepted most of your other changes in the petition. Please see the attached and let me know if we have approval to file this today.

Thanks.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

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---

**From:** Seth Washburne [mailto:sethpw1@gmail.com]

**Sent:** Thursday, April 20, 2017 12:06 PM

**To:** Stephen Cole <SCole@lynnllp.com>  
**Cc:** Kent Krabill <kkrabill@lynnllp.com>  
**Subject:** RE: Fifth Amended Petition 4822-5544-1991 v.2

Stephen,

Attached is the petition with my comments.

I would like if possible to:

1. Add a cause of action for slander – I am not sure if that is a legal issue. I know they got defamation removed, but I wanted to pursue this in part to get them to under oath defend or withdraw the statements they made about me, and they have mostly neutralized them, but I have had to pay legal fees for this, and would like if possible to create another avenue to get these back, and get a slander claim in there.
2. Add a cause of action that they charged me rent for having my parts placed on public property, now that they have filed that stipulation. On Von Avenue I had two fuselages (Billie and Missouri), two center sections (Billie and Missouri), and JR's right wing, for which they charged me rent. This might be a total of only about \$2,000, but:
  - a. If for some reason the jury does not provide a lot for mental anguish, I don't want to fall short of the amount I need under the rule 167 agreement if this could have pushed me over, so it might be worth \$150,000 later – avoiding having to pay their attorney fees.
  - b. It shows the jury what rude people these are to rent the public road.
  - c. It might provide a basis for getting a portion off my own attorney's fees.
3. Perhaps reduce the amount sued for to less than this \$1 million, to a more realistic number, if this is in fact unrealistic, or in any case to at most \$850,000.
  - a. During my deposition I was very serious the entire time, but after Randy finished and Charlie took over, Charlie smiled and was all friendly, and asked me about suing for \$1 million, and grinned about how great it would be to get \$1 million. Then when I talked about actually wanting \$5 million I added that after taxes it is not that much, only about \$3 million, and Randy's paralegal, a woman to my right, let out a chuckle or gasp, and, for some reason, between Charlie laughing about the big number, the woman's action, and perhaps my own pride in looking at things after-taxes, I broke into a big grin. I expect they are going to show this to the jury. I then got serious again and said I am not trying to get rich, and Randy shot back "No, you're trying to get richer." So I think if I reduce this to a lower number I can take out some of the punch of them showing this to the jury and saying I am trying to get \$1 million, and I can say I reduced the amount I am asking for to a more realistic number. Using the word "million" can offend people, and look like someone is trying to get rich, "I want a million dollars!", but with a just slightly number it can look like a well-thought out number.
  - b. If we reduce it to \$850,000, this would be: actual damage of maybe \$30,000 – including the rent of the public road, and getting my record expunged, \$200,000 for mental anguish, \$200,000 at the maximum for exemplary, and \$400,000 as the estimated attorney's fees thus far, which were required to get this stipulation.

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynnllp.com>]  
**Sent:** Thursday, April 20, 2017 8:48 AM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** FW: Fifth Amended Petition 4822-5544-1991 v.2

Seth,

Let me know if we have the okay to file this. I'd like to get this on file today since technically our MSJ response is due today.

Thanks.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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---

**From:** Stephen Cole  
**Sent:** Wednesday, April 19, 2017 3:30 PM  
**To:** 'Seth Washburne' <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Cc:** 'Kent Krabill' ([kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com))' <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>; Jonathan Kelley <[jkelley@lynnllp.com](mailto:jkelley@lynnllp.com)>  
**Subject:** Fifth Amended Petition 4822-5544-1991 v.2

Seth,

Here is a draft of the amended petition. This is largely identical with the prior petition, except that: (1) we removed Hal Monk as a defendant, based on the MSJ order, and (2) we removed the declaratory judgment claim.

Please review and let us know any thoughts/comments. As I said, this is largely identical to the prior petition so there should not be anything too significant to deal with. We won't file this until we get the final stipulation from the other side.

Thanks.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

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Exhibit 39: Washburne 5th Amended Petition 4-21-17

**CAUSE NO. 153-275478-14**

<b>SETH WASHBURNE,</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	
	§	<b>TARRANT COUNTY, TEXAS</b>
<b>VINTAGE FLYING MUSEUM, INC.,</b>	§	
<b>HOSPERS FAMILY TRUST “D”,</b>	§	
<b>CHARLYN HOSPERS, BILL GORIN, and</b>	§	
<b>DANA WOOD,</b>	§	
	§	
<b>Defendants.</b>	§	<b>153RD JUDICIAL DISTRICT</b>

**PLAINTIFF’S FIFTH AMENDED PETITION**

Plaintiff Seth Washburne (“Washburne” or “Plaintiff”) files this Fifth Amended Petition against Defendants Vintage Flying Museum, Inc. (“VFM”), Hospers Family Trust “D” (the “Trust”), Charlyn Hospers (“Hospers”), Bill Gorin (“Gorin”), and Dana Wood (“Wood”) (collectively, the “Defendants”), and respectfully shows the Court as follows:

**INTRODUCTION**

1. This case concerns the malicious prosecution and false imprisonment of Plaintiff. The undisputed evidence reveals that Plaintiff was wrongfully arrested for trespass—at the request and instigation of Defendants—when he was on public property. The charges were dismissed when the Fort Worth police’s independent investigation revealed that Defendants had misrepresented the location of the VFM’s property line to the police. The evidence further reveals that each of Defendants participated in and substantially contributed to Plaintiff’s wrongful arrest and imprisonment. Plaintiff brings this action seeking damages for his humiliating and harrowing wrongful arrest and imprisonment.

**DISCOVERY CONTROL PLAN**

2. Plaintiff intends to conduct discovery under a Level 3 Discovery Control Plan pursuant to Rule 190.3.

**CLAIM FOR RELIEF**

3. Plaintiff seeks monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(5).

**PARTIES**

4. Plaintiff Seth Washburne is an individual residing in Dallas County, Texas.

5. Defendant Vintage Flying Museum, Inc. is a Texas corporation. Defendant VFM has appeared in this action for all purposes.

6. Defendant Hospers Family Trust “D” is a Texas trust which owns property in Tarrant County, Texas. The Trust has appeared in this action for all purposes.

7. Defendant Charlyn Hospers is an individual residing in Tarrant County, Texas. Hospers has appeared in this action for all purposes.

8. Defendant Bill Gorin is an individual residing in Tarrant County, Texas. Gorin has appeared in this action for all purposes.

9. Defendant Dana Wood is an individual residing in Tarrant County, Texas. Wood has appeared in this action for all purposes.

**VENUE AND JURISDICTION**

10. This Court has personal jurisdiction over Defendants because they are all residents of Texas. This Court has subject matter jurisdiction over this case, because the amount in controversy is within the jurisdictional limits of this court. Venue is proper in Tarrant County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this county.

## FACTS

### **1. Plaintiff was the victim of theft by Jim Terry, a VFM tenant.**

11. In January 2010, Plaintiff acquired and set about to restore a World War II C-47 airplane nicknamed “Billie.” Plaintiff’s father flew on Billie during World War II, and it is the last known flying airplane of his father’s WWII squadron. In connection with those efforts, Plaintiff leased space at the VFM and retained the services of James Terry (“Terry”)—a VFM tenant—to restore Billie. .

12. Plaintiff had a falling out with Terry and others who were hired to work on Billie due to their negligent and/or defective work on Billie as well as Terry’s theft of Plaintiff’s airplane parts. As a result of the theft, Plaintiff filed criminal theft charges against Mr. Terry.

13. When Plaintiff filed these charges, Wood, who was serving as Terry’s marketing person and who relied on Terry for her income, started behaving in a hostile manner toward Plaintiff. It was also during this dispute—approximately in May and June 2012—that Hospers exhibited hostility to Plaintiff, twice lying about Plaintiff to VFM volunteers, apparently to agitate the volunteers against Plaintiff. Eventually, the VFM terminated Plaintiff’s lease. However, the story does not end there. Indeed, the VFM and the other Defendants engaged in a retaliatory campaign against Plaintiff, culminating in Plaintiff’s wrongful arrest and imprisonment.

### **2. Plaintiff, after his lease had been terminated, was invited back to the VFM only to be wrongfully accused of trespassing while parked on public property.**

14. In September 2012, Plaintiff had Fort Worth detectives visit the VFM to investigate Terry’s theft against Plaintiff. Within two weeks of the detectives’ visit to the VFM, the VFM’s three-member board of directors—which included Hospers—voted to terminate Plaintiff’s lease.

15. Shortly thereafter, in early 2013, Plaintiff received several invitations to a March 2, 2013 parts auction, hosted by Terry's company and taking place at the VFM. The auction catalog appearing online before the auction showed a navigator's dome identical to one that Terry stole from Plaintiff. Plaintiff wanted to attend the auction to see if he could recover this stolen part. Plaintiff was also interested in seeing if any of his other stolen parts were placed for auction, and wanted to return certain items given to him by Gorin. Accordingly, Plaintiff traveled to the VFM for the auction on March 2, 2013.

16. Plaintiff drove to the west end of NW 38th Street—an area of public property. An armed security guard standing in the street met Plaintiff, demanded Plaintiff's name, and, upon receiving Plaintiff's name, called for "backup" and motioned for a nearby policewoman to come over. In all his prior visits to the VFM, Plaintiff had never seen police officers or armed security guards providing security to the VFM. Plaintiff discovered that the police and security were hired specifically to prevent Plaintiff from coming onto VFM property, even though Plaintiff had been explicitly invited to the auction. Then, the police officer told Plaintiff he was trespassing, even though Plaintiff was still in his car on the public road and had not traveled onto any private property.

17. It became apparent to Plaintiff that Wood, an admitted representative of the VFM, the Trust, and Hospers, misrepresented to the police that Plaintiff, if he drove up NW 38th street, would be on the Trust's property without permission. As a result of this misrepresentation, a police officer then issued a warning to Plaintiff not to return to "505 NW 38th Street," despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land, and threatened to arrest Plaintiff if he returned anywhere on NW 38th Street west of Ross Avenue.

**3. Plaintiff determined the Trust/VFM property line through a review of legal records.**

18. Disturbed by his “criminal trespass warning” while parked on what he believed to be public property, Plaintiff investigated online the property line for the VFM property that the Trust owned, and discovered quite easily the true Trust property line. Realizing this contradicted Defendants’ prior representations, Plaintiff took great effort to demonstrate and explain to Defendants where exactly the property line was.

19. For example, on April 13, 2013, Plaintiff emailed Hal Monk (“Monk”)—a director and representative for the VFM—and attached documents from the Tarrant Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust did not, in fact, own NW 38th Street or Von Avenue, as Wood had suggested to the police. Plaintiff added: “Until the time that you get back to me, I will assume these streets are indeed public property as depicted.” Monk failed to respond.

20. Then, on April 15, 2013, Plaintiff again sent Monk an email regarding the Trust/VFM property line, this time attaching a distribution deed—drafted by Monk and signed by Hospers less than six months earlier—clearly identifying all the lots owned by the Trust. This time, Monk forwarded this email to Hospers, copying Plaintiff, asking for direction on responding to Plaintiff’s evidence regarding the property line. Monk, by replying to Plaintiff and not correcting Plaintiff’s understanding, acknowledged that he was aware Plaintiff would rely upon Plaintiff’s findings as facts.

**4. Plaintiff filed suit against Terry and other VFM members.**

21. In October 2013, Plaintiff filed suit against Jim Terry, VFM Life Member Patrick Mahaffey, and others, detailing the wrongs they had committed against Plaintiff in connection with the restoration of Billie. This lawsuit filing was written up by two news outlets. Also, in

early 2014, as a result of the VFM siding with Terry, Plaintiff added a page to his website regarding the Thirsty 13th squadron that detailed the problems with the VFM, on January 30, 2014 made a post on the website Yelp that was not favorable to the VFM, and on February 13, 2014, made an unfavorable post on website Tripadvisor.

**5. Defendants misrepresented their property line to the police and wrongfully procured a “criminal trespass warning” against Plaintiff.**

22. In early 2014, Terry and Wood again invited Plaintiff to an event at the hangar at the VFM, just as they had more than 30 times in the prior year. Plaintiff declined the invitation, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 because: (1) it was on his route for an errand Plaintiff was running that day, (2) Plaintiff wanted to perhaps observe a B-29 plane and the hanger in which it was held, and (3) Plaintiff wanted to see if Terry was in town, as Terry had been avoiding responding to discovery in Plaintiff’s lawsuit against him on the alleged basis that Terry was out of town.

23. Plaintiff stayed on public roads and stopped just before the end of NW 38th Street, where Wood had set up a traffic cone and tent to collect payment to attend an event, even though Wood’s actions blocked access to a public street. Plaintiff explained to Wood, who was near the traffic cone where he was stopped in his car, that he wished to travel down Von Avenue to view a B-29 plane and the building in which it was housed. He also explained that 38th Street and Von Avenue were public roads—he even held out to Wood the proof of this in the form of print outs of public records—and said that he had explained this to Monk, and that Monk had not contradicted his understanding, and also held out the email from Monk. Wood refused to look at the documents and simply said she was not going to let Plaintiff travel down the public roads. Shortly thereafter, although Plaintiff remained on the public roads, the VFM—through Wood—called the police on Plaintiff.

24. The VFM, through Wood, represented to the police that it had actual awareness of the ownership, and property lines, of the property at issue and represented that Plaintiff was trespassing. These misrepresentations resulted in the officers manhandling Plaintiff, temporarily detaining Plaintiff in a police cruiser, wrongly informing Plaintiff that he was trespassing, and stating that he would be arrested if he returned to “505 NW 38th Street.” As a result of Wood’s misrepresentations—made on behalf of the VFM and the Trust—the police wrongfully issued Plaintiff a “Criminal Trespass Warning.” In addition, Wood—on behalf of the VFM and the Trust—filed false police reports replete with lies, including a report that Plaintiff had struck her with his car, when in reality she had run into his car while it was stationary. Charges were never filed related to Wood’s false accusations.

25. The Trust, VFM, Hospers, Monk, and Gorin all allowed Wood to act as the VFM and Trust’s representative in procuring this false Criminal Trespass Warning.

**6. Defendants continued their misrepresentations and had Plaintiff wrongfully arrested.**

26. During the evening of April 26, 2014, Plaintiff emailed Hospers, Monk, and Wood demanding that they stop lying to the police—and demanding that the Defendants stop Wood from lying on their behalf—about the VFM/Trust property line, and again Plaintiff provided Hospers, Monk, and Wood with the public records showing the extent of the VFM/Trust property. However, Defendants were unmoved in their plan to get Plaintiff wrongfully arrested.

27. On April 27, 2014, Plaintiff notified Defendants that he wanted to drive to the end of NW 38th Street—which the undisputed public records he had previously provided to Defendants demonstrated was public property—and look out at the airplanes at Meacham Airport, but only if first assured no one around VFM would again call the police. Plaintiff



requested that Monk or Hospers call him to confirm that the matter of the VFM/Trust property line had been cleared up with Defendants, especially with Wood.

28. At 2:05 p.m., Monk called Plaintiff and confirmed to him that he was allowed to park anywhere on NW 38th Street, including along the fence at the west end of the street, and Defendants would not consider him to be trespassing on the Trust's property. Monk even clarified exactly where the Trust/VFM property began and ended, and he assured Plaintiff that he had informed Hospers and Wood of these facts. Monk also confirmed that Defendants would not involve the police if Plaintiff parked where he and Monk discussed. As it turned out, this appears to be a ruse to draw Plaintiff to the property so that Defendants could have him wrongfully arrested.

29. At around 4:45 p.m. on April 27, 2014, Plaintiff arrived at NW 38th Street near the VFM and parked exactly where Monk had told Plaintiff he could park (and where the public records demonstrated that it was public property). Plaintiff did not drive onto the Trust/VFM property, but stayed strictly on public roads the entire time.

30. Shortly thereafter, Defendants' ruse was revealed, as two police cars arrived at Plaintiff's car, and Wood and Gorin appeared, wrongfully telling the police that Plaintiff was trespassing. The police reports reveal that Gorin represented to the police the alleged boundaries of the Trust/VFM property lines. Of course, Gorin's representations were wrong.

31. Plaintiff immediately called Monk, representative of the Trust, VFM, and Hospers, so that Monk could inform the police and the other Museum representatives of the information he had told Plaintiff less than three hours earlier. Although Monk briefly responded to Plaintiff, he refused to speak to Wood, Gorin, or the police, and refused to correct Wood and Gorin's misrepresentations that Plaintiff was trespassing on Trust/VFM property. Plaintiff tried

to call Monk again multiple times. Monk answered once, then hung up after Plaintiff identified himself. Monk ignored Plaintiff's next two calls, leaving the police to believe Gorin's and Wood's inaccurate claims regarding the property line.

32. Based on Defendants' misrepresentations regarding the Trust/VFM property line, the police arrested Plaintiff for criminal trespass. The police handcuffed Plaintiff, placed him in a police cruiser, and took him to the Fort Worth jail around 5:45 p.m. Plaintiff spent six more hours in the Fort Worth Jail, with other accused criminals, before being transported to the prison at Mansfield, Texas, where he had his mugshot taken and spent the night. Plaintiff was finally released the next morning and got a van back to Fort Worth, arriving more than 18 hours after he was wrongfully arrested.

**7. In private communications, Monk admitted the wrongfulness of Defendants' actions.**

33. Defendants' refusal to correct the misinformation to the police is made all the more startling by Monk's private conversations with Hospers, Gorin, and Wood, which reveal Defendants' knowledge and awareness of the potential liability they were exposed to as a result of their misrepresentations.

34. On April 28, 2014, the day after Plaintiff's arrest, Monk emailed Hospers and Gorin and admitted that (1) the VFM and the Trust allowed Wood to hold herself out as a representative of the VFM and the Trust, (2) Wood likely made false representations to the police, and (3) the VFM and the Trust were likely responsible for these false representations. Likewise, in a later email to Wood, Monk noted that Defendants' actions left them "treading on dangerous ground" because Plaintiff "well may be" correct about where the VFM/Trust property line is (as everyone now admits, Plaintiff *was* correct about the property line).

35. Defendants' acknowledgement of their violation of Plaintiff's rights is made most clear by Monk's May 29, 2014 correspondence to Hospers and Gorin, wherein he laments the VFM/Trust's actions in ratifying Wood's misrepresentations to the police and confirms that Plaintiff, indeed, was not trespassing when the police were called:

[Plaintiff's intent] does not in any way preclude his right to travel as he darn well pleased up and down NW 38th Street, or which now, uncomfortably, seems to still be Von Street. *Dana Wood had no right whatsoever to impede such travel.* Contrary to her assertions below, *I find no indication that Seth ever set foot on any of VFM's leasehold or Hospers Trust property, or expressed any intention of doing so . . . .* In any event, I now have information that she walked in front of his car *while he was exercising his right to travel on a public street . . . .* I am much concerned that *actions, or inactions, of some folks connected with VFM may have lent credence to her erroneous assertions to [the police] that she was a 'representative of VFM.'*

Defendants' understanding of the wrongfulness of their actions make their misrepresentations (or, in the case of Hospers, silence) on the day of Plaintiff's arrest all the more malicious.

36. Despite this understanding, other VFM/Museum representatives—including Wood, Gorin, and Hospers—continued to communicate with Fort Worth police and misrepresent the extent of the VFM/Trust's property line in an effort to bring about a prosecution of Plaintiff. As Hospers put it in an email to Monk, the Fort Worth police "accepted the trespassing charge against Seth" based on an evaluation of the property line that was—to that point—entirely informed by the misrepresentations of Defendants. Thankfully, the police eventually consulted the official record, which contradicted Defendants' representations.

**8. After a review of the public record, the charges were dropped against Plaintiff.**

37. The police who arrested Plaintiff had only the misinformation supplied by Defendants to go on, and, thus, were led to believe that Plaintiff was on the VFM/Trust property when he was arrested. However, after Plaintiff's arrest, during the scope of the investigation into his charges, law enforcement and the prosecution determined that Plaintiff was, in fact, right

about the property lines all along. They determined that Plaintiff was standing on public property—as the Defendants knew or should have known—and, accordingly, that Plaintiff should not be prosecuted (and should have never been arrested). For these reasons, the charges were dropped against Plaintiff.

**9. Plaintiff suffered damages as a result of Defendants’ actions.**

38. Plaintiff’s prison stay was a harrowing experience for Plaintiff. Plaintiff, a lifelong professional, had never experienced any legal troubles with the police, and was never even mentioned in a police report in his entire life until a report by Wood June 19, 2012, replete with lies, and Defendants’ (successful) campaign to get him wrongfully arrested. In addition to suffering shame, humiliation, reputational damage, and emotional distress, Plaintiff incurred the expense of hiring a criminal attorney to defend himself against Defendants’ false accusations, paying for a professional survey to be completed to provide his attorney with the necessary information to defend Plaintiff against the charges, expenses of seeking to get the false police reports and arrest record expunged, and spending significant amounts of his personal time to deal with Defendants’ false accusations and charges.

**CAUSES OF ACTION**

**Count One: Malicious Prosecution**

39. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

40. A criminal prosecution was commenced against Plaintiff.

41. Defendants initiated or procured the criminal prosecution against Plaintiff.

42. The prosecution was terminated in Plaintiff’s favor.

43. Plaintiff was innocent of the charges against him.

44. Defendants did not have probable cause to initiate or procure the prosecution against Plaintiff.

45. Defendants acted with malice in initiating or procuring the prosecution against Plaintiff.

46. Plaintiff suffered damages as a result of the prosecution.

**Count Two: Intentional Infliction of Emotional Distress**

47. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

48. Defendants acted in an intentional and reckless manner toward Plaintiff.

49. Plaintiff suffered severe emotional distress as a result of Defendants' actions.

50. Defendants' conduct was extreme and outrageous.

51. Defendants' conduct proximately caused the Plaintiff's emotional distress.

**Count Three: Negligence**

52. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

53. Defendants owed a duty to Plaintiffs to use ordinary care in making representations and in ascertaining the accuracy of information given to others.

54. Defendants breached this duty.

55. Defendants' breach proximately caused Plaintiff's injury.

**Count Four: False Imprisonment**

56. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

57. Defendants directed, requested, and/or participated in the willful arrest or detention of Plaintiff.

58. Plaintiff's detention was without his consent.

59. Plaintiff's detention was without legal authority or justification.

60. Plaintiff suffered injury as a result of his false imprisonment.

**Count Five: Civil Conspiracy**

61. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

62. Defendants were members of a combination of two or more persons.

63. The object of Defendants' conspiracy was to accomplish an unlawful purpose—the malicious prosecution and false imprisonment of Plaintiff.

64. Defendants had a meeting of the minds on the course of action.

65. One or more of Defendants committed an unlawful, overt act to further the object or course of action.

66. Plaintiff suffered injury as a proximate result of the Defendant's wrongful act.

**Count Six: Vicarious Liability**

67. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

68. At all relevant times, Hospers, Monk, Gorin, and Wood were acting as representatives and/or agents of the Museum and the Trust.

**DAMAGES**

69. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

70. As a result of Defendants' actions, including their malicious and reckless actions, Plaintiff seeks and is entitled to:

- a. His actual damages, including economic damages, and damages for mental anguish, emotional distress, injury to Plaintiff's reputation, and pain and suffering;
- b. Additional damages;
- c. Exemplary damages;
- d. Attorneys' fees; and
- e. Court costs.

#### **JURY REQUEST**

71. Plaintiff requests a trial by jury.

#### **PRAYER**

72. Plaintiff Seth Washburne respectfully requests that the Court, after final trial in this cause, enter judgment in favor of Plaintiff against Defendants, jointly and severally, for Plaintiff's actual damages, additional damages, exemplary damages, attorneys' fees, costs, and pre- and post-judgment interest. Plaintiff further requests all other and further relief to which he may be justly entitled.

DATED: April 21, 2017

Respectfully submitted,

/s/ Kent D. Krabill

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-service* on April 21, 2017.

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Fort Worth, TX 76111

/s/ Kent D. Krabill

Kent D. Krabill



Exhibit 40: 2017 04 21 - 4.44 p.m. Seth to Cole

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Friday, April 21, 2017 4:44 PM  
**To:** 'Stephen Cole'  
**Subject:** RE: Museum Settlement Term Sheet - 4-19-17  
**Attachments:** Museum Settlement Term Sheet - 4-19-17.docx

Stephen,

Attached is the term sheet with my changes to yours. It ok to have taken out the parts about Monk.

I increased the amount to \$350,000. I have yet to go over all LP's invoice's in detail, but I was at \$140,000 with Kevin Vice, and expect I am at \$200,000 with LP, so would like to recover all of this.

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynnllp.com>]  
**Sent:** Friday, April 21, 2017 3:49 PM  
**To:** Seth Washburne  
**Subject:** FW: Museum Settlement Term Sheet - 4-19-17

Seth, I haven't heard back from you on this. Let me know if I have approval to send the term sheet.

Thanks.

### STEPHEN M. COLE | Associate

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---

**From:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>  
**Date:** Wednesday, April 19, 2017 at 2:41 PM  
**To:** "[sethpw1@gmail.com](mailto:sethpw1@gmail.com)" <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Cc:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Subject:** Museum Settlement Term Sheet - 4-19-17

Seth,

We are getting close to getting the stipulation/declaratory judgment issue wrapped up, and I want to send this term sheet shortly after that is done. I have made a few substantive edits to the one you last sent, which you can see in this redline. Principally, as you'll see, I feel strongly that we take out the stuff you included regarding Monk. If you approve this, I will send it to Randy once we have the final stipulation from him.

Thanks.

**STEPHEN COLE** | Associate

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***Seth Washburne v. Vintage Flying Museum, et al.***  
**Cause No. 153-275478-14**  
**Settlement Term Sheet**

The parties agree, in principal, to settle this matter on the terms set forth below. The parties also agree to formalize this settlement by drafting and executing formal settlement documents. The parties agree as follows:

1. Defendants will pay Mr. Washburne \$~~20~~350,000.
2. Defendants will execute a stipulation that provides that (1) neither the Trust, the VFM, nor any other Defendant owns NW 38<sup>th</sup> Street or Von Avenue, (2) NW 38<sup>th</sup> Street and Von Avenue down to where NW 36<sup>th</sup> Street would intersect it and 100 feet south of this are public property, as depicted on VFM's survey, (3) none of the Defendants have a right to or will attempt to exclude Mr. Washburne from being present on NW 38<sup>th</sup> Street or Von Avenue down to 100 feet south of where NW 36<sup>th</sup> Street would intersect it, (4) Hospers will not allow any other person in any way associated with the museum or the trust, e.g. tenants, volunteers, workers, or visitors, to complain of, or attempt to exclude, Mr. Washburne being present on NW 38<sup>th</sup> Street or Von Avenue, and will defend Mr. Washburne's right to be there, and (5) before any Defendant makes any effort to annex, acquire, or otherwise change the status of NW 38<sup>th</sup> Street or Von Avenue, or any portions thereof, as public property, Defendants will provide Mr. Washburne with notice of their intent to make such efforts at least 30 days prior to filing or executing any application, request, or other transaction related to such efforts.
3. Each Defendant will provide a written apology to Mr. Washburne in substantially the following forms.

a. Hospers

I, Charlyn Hospers, apologize to Mr. Washburne that I:

- i. Around May 2012 announced to a meeting of VFM volunteers that Mr. Washburne had fired Pat Mahaffey, and acknowledge that this was not true, because Mr. Mahaffey quit.
- ii. Around July 2012 announced to a meeting of VFM volunteers that Mr. Washburne "cornered" Dana Wood, and acknowledge that this was not true, that Dana herself has said she was never cornered, and that such a statement was inflammatory, with the potential to greatly hurt Mr. Washburne's reputation around VFM.
- iii. In October 2012 refused to investigate his allegations of theft at VFM, violating the Through-the-Fence agreement then existing with the City of Fort Worth, which required I not allow any illegal activity to go on at the hangar, and in the event of discovering such terminate the wrongdoer; instead I terminated Mr.

Washburne, the victim. I have been informed by Mr. Washburne that this termination of his lease resulted in: a) him incurring costs to move his parts to Lancaster, b) his plane JR being damaged during the move, and this requiring he spend 2.3 years in a lawsuit against the trucking company, incurring \$95,000 of legal costs (barely recovered in settlement), and perhaps 500 or more hours of his time to work on that suit, not compensated, c) his having to pay 20% more for inside storage, 25 cents a square foot, but not having access to many resources helpful at the VFM, which factors have together resulted in the complete cessation of work on his plane JR for five years.

- iv. On March 2, 2013, allowed Dana Wood to hire an outside security firm, and request a police cruiser park at the corner of NW 38<sup>th</sup> Street and Von Avenue for the express purpose of keeping Mr. Washburne's away from a parts auction held at VFM, which action: a) illegally blocked his access to the public street Von Avenue, and b) resulted in his being treated in a disrespectful manner.
- v. On April 26, 2014, allowed Dana Wood to again restrict access to the public streets NW 38<sup>th</sup> Street and Von Avenue, leading to: a) an unpleasant interchange with John Ragland, b) Dana Wood calling the police **and** creating a police report about Mr. Washburne, c) police manhandling Mr. Washburne, d) police reinjuring Mr. Washburne's right shoulder which I understand caused him immense pain, e) Mr. Washburne being detained in the back of a police cruiser while many museum event visitors and volunteers passed by, and f) general shame upon Mr. Washburne.
- vi. On April 26, 2014, shared a photo of Mr. Washburne and wrote that he: a) "tried to run Dana down," b) "resisted arrest," and c) was handcuffed, when factually none of these things ever occurred on that day.
- vii. On April 27, 2014, wrongfully caused him to be arrested for trespassing, resulting in what he has described as a terrifying ordeal, which he has stated will forever haunt him. I acknowledge and admit that Mr. Washburne never trespassed on the property of the VFM, the Trust, or any other Defendant and that Defendants had no justification for calling the police and causing Mr. Washburne to be arrested.
- viii. Overall by taking actions I took, including renting space to Mr. Terry, **and** ~~and holding him out to the public as a good person,~~ then terminating Mr. Washburne's lease, did immense harm to Mr. Washburne, which has cost him to lose more than \$1 million, and have five years of his life utterly ruined. My actions have also caused considerable unhappiness, and an enormous waste of time for many people who care about him.

Furthermore, I, Charlyn Hospers, do hereby assert that Mr. Washburne:

- ix. In October 2009 was exceedingly generous to visit VFM and offer to purchase the C-47 nicknamed "Billie" and donate it to VFM, a value worth more than \$75,000, which would have been one of the largest gifts ever given to the museum.

- x. Was introduced to our tenant Jim Terry by a museum volunteer, despite the museum knowing Mr. Terry was a bad person, bad enough that both Mr. Monk and John Frasier each told Washburne the museum wanted to get rid of Terry, and our action in introducing the public to Terry resulted in an enormous loss for Mr. Washburne.
- xi. From February 1, 2010, until November 2, 2012, was one of the museum's most valuable tenants, due to: a) displaying the two largest aircraft in the hangar, and the only two with WWII battle history, and b) paying workers to be at the museum Monday to Friday when it might otherwise be closed or have little activity, providing excitement for mid-week visitors, and c) supporting the local economy during a deep economic downturn by paying three to six full-time workers at high rates of \$20 to \$35 an hour.
- xii. From November 4, 2011, until mid-2012, during which time he was present at the hangar, made many positive contributions to the hangar, including all those shown in attachment 1.
- xiii. Reacted to the apparent theft of his aircraft's \$25,000 elevator, and of more than 100 other parts, with remarkable restraint, calmness, and respect for other tenants and volunteers.

b. Wood:

I, Dana Wood, apologize to Mr. Washburne that I:

- i. In June 2012 made statements to Hospers which led her conclude that he "cornered me" when nothing of this sort ever occurred.
- ii. On June 19, 2012, filed police report 12-60107 with the Fort Worth Police which includes many false statements, including that:
  - a) "suspect came into the general open hangar area – Mr. Washburne was, in fact, already in the open hangar area;
  - b) "and began to shout and curse at the victim" – Mr. Washburne never shouted, and never cursed at me; he was about 30 feet away, so raised his voice for me to hear, but was not shouting at me; and never once cursed at me, though I recall he did use a curse word in describing Jim Terry;
  - c) "Victim told the suspect that he was not going to speak to her that way and that he should just leave," – I never said that, but instead simply said "We can't talk to you," twice, and nothing more;
  - d) "She went into a room and shut the door in suspects face," – I was already in the room, and Mr. Washburne was outside of it, and he had already turned and walked back to his area when I closed the sliding door;

- e) “This isn’t the first time they have had problems with suspect around the hangar” – this is not true, as I can think of no other problems Mr. Washburne had caused around the hangar with anyone associated with museum, trust, or the volunteers;
  - f) These five misstatements reflect badly on Plaintiff, and I would like this police report to be expunged.
- iii. On March 2, 2013, hired an outside security firm, and requested a police cruiser park at the corner of NW 38<sup>th</sup> Street and Von Avenue for the express purpose of keeping Mr. Washburne away from a parts auction held at VFM which action: a) illegally blocked his access to the public street of Von Avenue, and b) resulted in his being treated in a disrespectful manner.
- iv. On April 26, 2014, again restricted his access to the public streets NW 38<sup>th</sup> Street and Von Avenue, leading to: a) an unpleasant interchange with John Ragland who I summoned, b) my calling the police and creating a police report about Mr. Washburne, c) Police manhandling Mr. Washburne, d) Police reinjuring Mr. Washburne’s shoulder, e) Mr. Washburne being detained in the back of a police cruiser while many museum event visitors passed by, and f) general shame upon Mr. Washburne.
- v. On April 26, 2014, alleged to the police that Mr. Washburne tried to run me down, when, in fact, this never occurred; rather, I ran in front of his car.
- vi. After April 26, 2014, encouraged a volunteer to visit Fort Worth Police Internal Affairs and misrepresent to the police that Mr. Washburne drove his car straight at me causing me to tumble over the hood, and off the back of the car, which never ever happened.
- vii. On April 26, 2014, filed police report 14-38667 with the Fort Worth Police which includes many false statements, including that
- a) “Suspect was on scene being loud and cursing” – Mr. Washburne only raised his voice and cursed when speaking with John Ragland, who I summoned, who came down in his van, and was extremely insulting to Mr. Washburne, telling him he had already been arrested there once, which was not true, such that Mr. Washburne had every right to be upset at Mr. Ragland;
  - b) “Suspect refused to leave the property” – Mr. Washburne was not on any private property;
  - c) “The male hit the complainant with his car” – Rather, I ran into the path of his car, and ran into his side mirror;
  - d) “Now they are holding him down on the ground waiting for police” – i.e. that Mr. Washburne was being pinned to the ground by several men, which never ever happened;

- e) “Subject entered the property” – I have no evidence and have never learned of any that Mr. Washburne or his car ever entered any trust property;
- f) “She told Suspect that he had to leave the property and he refused,” – this is not true, and instead Mr. Washburne agreed to drive and park outside of the entrance they had set up, and wait for someone who I said would come to clear up the confusion about the property line;
- g) “Suspect tried hitting the gate attendants” – this never happened, and instead he drove well clear of us, but I ran into the path of his car and, after he stopped, ran into his mirror;
- h) “Rep 1 stepped in front of the car, and he gave it gas trying to hit her” Again, this never happened, and I acknowledge that this is a very detrimental statement;
- i) “Rep 1 said that she was able to get out of the way and was hit by the side mirror on the left arm,” – no, I ran into his way, and after he stopped ran into the mirror;
- j) “There is a two year history with suspect and the museum,” – Mr. Washburne had nothing to do with the museum for the 1.5 years since his lease was terminated, other than two emails to Monk and Hospers in April 2013; and other than these two emails there were no other communications at all, and so no history;
- k) “He was evicted from the property” – Mr. Washburne was never evicted, rather the museum chose to terminate the lease, and he met their timeline – in fact the museum asked him to stay five days longer;
- l) “He has a lawsuit pending” – this statement could wrongly suggest to someone that he had litigation pending with the museum, when he had no such thing, and rather he had a lawsuit pending against one tenant;
- m) “Every time they have an event, Suspect tries to come on the property and harass the staff.” To my knowledge, Mr. Washburne never made any attempt to come on Trust/VFM property after his lease was terminated, and by one count the museum had more than 100 events. I have never heard of him harassing any staff whatsoever. I acknowledge that these statements are very harmful to Mr. Washburne, and paint a picture which is completely fictional;
- n) I described myself as a “Manager” of the museum, when in fact I had no role with the museum;
- o) It is my desire that the Fort Worth Police expunge this police report.

viii. Also on April 26, 2014, I misrepresented to the Fort Worth Police that:



- a) I was a representative of VFM – I was not.
  - b) I knew where the property line was – I did not
  - c) Mr. Washburne was trespassing – he was not.
- ix. On April 27, 2014, I again misrepresented to the Fort Worth Police in report 14-39030, including that Mr. Washburne:
- a) Was trespassing – he was not.
  - b) Refused to leave – no one ever talked to him or asked him to leave.
  - c) “Was in an ongoing legal battle with the museum” when nothing of the sort ever existed. Washburne had nothing to do with the museum since his lease was terminated.
  - d) “Was evicted” – not true.
  - e) I believe this report, too, is full of falsehoods, and is very injurious to Mr. Washburne’s reputation, and should be expunged.
- x. On April 27, 2014, wrongfully caused him to be arrested for trespassing, resulting in what he has described as a terrifying ordeal, which he has stated will forever haunt him. I acknowledge and admit that Mr. Washburne never trespassed on the property of the VFM, the Trust, or any other Defendant and that Defendants had no justification for calling the police and causing Mr. Washburne to be arrested.
- xi. After April 27, 2014, worked with Jim Terry and Jim Reynolds to get the FAA to terminate Mr. Washburne’s pilot medical certificate, a privilege he states he has held since 1983, and an absolute requirement to fly the planes he owns, based upon the fact that the police were called twice, when in fact it was I who called them, and he had done nothing wrong to require the police. ~~This FAA effort was mean spirited and primarily meant to further harass, discourage, and dispirit Mr. Washburne.~~

Furthermore, I, Dana Wood, do hereby assert that Mr. Washburne:

- i. Has always treated me with complete respect.
- ii. After the “baby bottle incident” called out to me with an apology, saying this was just about Jim Terry, and that he still liked me.
- iii. After a talk at the hangar around November 2, 2012, in which I was hostile toward him, sticking my phone in his face to record him, he spoke politely and friendly to me during my video of him, and as I walked to get on Jim’s plane he called out to me that he had nothing against me and still liked me.

- iv. On April 26, 2014, when I first saw him, his first words were to compliment my prowess with organizing events, and suggest I go out on my own, to which I responded I had thought of just such a thing myself. He was very considerate, friendly, and respectful, and I replied that I prayed for him and asked whether I could shake his hand, to which he agreed, and again told me he always liked me.

c. Monk:

I, Hal Monk, apologize to Mr. Washburne that I:

- i. On April 27, 2014, after being alerted by Mr. Washburne by phone call that police had been called, failed to contact anyone to put a stop to this, and this after telling Mr. Washburne less 3 hours before that he could legally park there and the police would not be called., hence I was the key person in double crossing Mr. Washburne and getting him arrested. I used and abused the trust I had created by telling him of my WWII experience, and then deliberately took this horrendous action, and delighted in it.

- i. Many or all of the statements in my sworn affidavit were taken from others, and I factually had little to no knowledge of most or all of those statements. Despite signing my name to that sworn affidavit as testimony to all my statements being true, and my once being an attorney who practiced before that very court myself such that I should respect the integrity of the judicial process, most or all of those statements were in fact not true. That false affidavit was a document referenced extensively by Randy Turner in his motion for summary judgment to get me removed as a defendant. My actions reflect my complete and utter disregard the judicial system in Tarrant County, and my eagerness to lie to avoid responsibility for my actions.

d. Gorin:

I, Bill Gorin, apologize to Mr. Washburne that I:

- i. On April 27, 2014, told the police: a) that the drainage ditch was the property line, and b) that the entire area of Von Avenue was under the jurisdiction of VFM due to the "Through the fence agreement," both of which statements are not true. I acknowledge that he has described the arrest as a terrifying ordeal, and he has stated will forever haunt him, such that my actions were extremely harmful to him now and for the rest of his life.
  - ii. Made a video of the experience of Mr. Washburne being handcuffed.
  - iii. Laughed while I made the video.
4. Hopers will hold a meeting on a Saturday morning at which at least 10 volunteers and five rent-paying tenants are there, and move such meeting out in front of the hangar, such that Washburne can be present, during which no significant background noise will be present, and each defendant will read the above confessions aloud such that all can hear.

Mr. Washburne will have the right to post a link to each of the Defendants' statements on his Thirsty 13<sup>th</sup> website, and from time to time make others aware of these statements.

5. Defendants agree to cooperate with Mr. Washburne and the Fort Worth Police to have the Fort Worth Police Reports against Mr. Washburne expunged.
6. Mr. Washburne will fully release Defendants from any and all claims or causes of action he has, or may have, against them.
7. The parties agree to mutual confidentiality and nondisparagement only with regard to the events of March 2, 2013, August 26, 2014, and August 27, 2014,, except to the extent that these written statements will remain public as provided above.

AGREED:

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Kent D. Krabill  
Authorized Representative of  
Plaintiff Seth Washburne

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Randy Turner  
Authorized Representative of  
Defendants Vintage Flying  
Museum, Inc., Hospers Family  
Trust "D", Charlyn Hospers, and  
Bill Gorin

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Charlie Burgess  
Authorized Representative of  
Dana Wood

Exhibit 41: 2017 05 30 - 10.12 am Seth to Krabill

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Tuesday, May 30, 2017 10:12 AM  
**To:** 'Kent Krabill'  
**Subject:** Few Things

Kent,

I was writing this when I got yours about the invoices, so will continue here.

1. Regarding the Dec Ac, I am still unclear on how exactly it helps us, so please explain that. You can do so on the call.
2. I would like to get Monk's deposition done, so if that could be rescheduled sooner than later I'd appreciate it. I want to hear him answer: a) describe the first offer to me to move outside, b) when did he tell me to not come back, c) when were all the times I attempted to get on the property after that, d) why didn't he do anything when I called him, and e) other questions.
3. As far as settlement discussions, and confidentiality, please understand that they, including Dana, have: a) filled police reports with lies about me that cannot be expunged (I am told, only the arrest can), b) told all the volunteers bad things about me, c) photographed me being manhandled by police and shared that, d) got me arrested and filmed that while laughing and probably shared that, e) have people on the Warbird Information Exchange (WIX) – which is the entire warbird community, saying I am a nut case, f) have the FAA put me on notice that if they hear one peep out of me I will lose my license, g) kicked me out of the hangar, leading to damage on JR, and halting these projects for 5 years. In short, they have done everything they can to ruin my reputation and life, they cannot do any more damage. Confidentiality does nothing for me – they have nothing true to say about me to anyone anyway, because I never did a single thing wrong. Confidentiality is only for them to avoid all their misdeeds coming to light. They would have to pay me about \$100,000 to get me to not tell people about them. They are offering nothing. Even if they offered a lot I probably still would not take it, because I need to be able to tell people that all these things they said and wrote in police reports are lies.
4. You keep asking what I want out of this and telling me I don't know what I want, but I have been very clear many times. I want:
  - a. To depose all the people and have them admit everything they said about me is lies – and you have one more to do in Monk.
  - b. To have them reimburse me my expenses, of \$3,000 for the criminal lawyer, \$2,000 or so for the survey, costs of not using my plane, my time required to respond to these things, so maybe \$20,000.
  - c. To have them pay me something for the offense of being wrongfully arrested. I initially wanted \$10 million, then I think the first petition said \$1 million – and my prior counsel was wrong to not advise me that he most I could get was \$200,000. I might accept \$100,000 from them for getting me arrested, but would prefer it was much more, to cover the legal costs.
  - d. If they wanted confidentiality it would cost them another \$100,000, or at least \$50,000.
  - e. So this is a range of \$320,000 to \$170,00.
  - f. Part of wanting them to pay me something is not for me but to cause them some pain, and if they paid me \$100,000 that might be enough. So that would be \$100,000 but no confidentiality whatsoever – that is the easiest and best thing.

Seth

Exhibit 42: 2017 06 20 - 7.11 p.m. email Seth to Kelley with VFM  
Damages

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Tuesday, June 20, 2017 7:11 PM  
**To:** 'Jonathan Kelley'; 'Kent Krabill'  
**Subject:** VFM Suit Damages  
**Attachments:** VFM Suit damages.pdf; Varghese Summersett invoice for Expungement.pdf

Jonathan,

You called at 6:20 p.m. today, 40 minutes ago, inquiring how the VFM suit damages were calculated, and stated that without backup you were going to reduce them to about \$8,500.

Attached is one calculation, which might add up the total you have.

On this perhaps #4 could be removed. For #5, I am not sure how I came up with 72 hours of my time required to defend myself, but believe this was writing emails to the police, visiting the surveyor, visiting the criminal defense lawyer, corresponding with the three of them. For #6, to respond to the FAA request I spent a great deal of time, having to drive to Fort Worth to get copies of the police reports, getting items from the FAA, writing initially about a 40-page explanation, but then reduced it to a few pages, meeting with the psychiatrist, etc.

My hourly rate could also be increased by 2-3x, but I am ok leaving it at \$100 an hour to try to appear more reasonable.

To this should be added the \$2,500 I recently paid Varghese Summersett per the attached invoice.

The other items on this list were what I initially wanted, but may never have been communicated to anyone.

Seth



## **Damages**

Plaintiff demands:

1. Reimbursement of criminal defense attorney fees of \$3,500.
2. Reimbursement of his survey costs of \$2,826.73.
3. Reimbursement of the FAA “screening psychological assessment” costs, which were a direct result of Defendants actions, of \$750.
4. Reimbursement of Plaintiff’s civil attorney’s fees for time to review the arrest and FAA issues of \$1,445.50.

These first four add up to \$8,522.26 actual out of pocket costs due to Defendants’ actions.

5. Compensation for the 18 hours of the arrest, and 72 hours required to defend himself against the false accusations, 90 hours, at \$100 per hour, \$9,000.
6. Compensation for the estimated 80 hours Plaintiff spent responding to the FAA request, at \$100 per hour, or \$8,000.
7. Reimbursement for parking fees of \$75 per month, and insurance of \$60 per month, for his Cessna Skyhawk during the time he is not allowed to fly it, beginning on the day Plaintiff signed for the FAA letter, June 5, 2014, herein for calculation purposes calculated only for the first month, plus an additional \$400, the pro-rated cost of his last annual inspection, for not being able to use his aircraft from June 5 to June 30, 2014.
8. Treble damages. The above costs add up to \$34,579.52, and to this are added treble damages, of an additional \$103,938, for a total \$138,318.
9. \$1,000,000 damages for the severe humiliation and permanent emotional scarring from the extremely traumatic arrest and imprisonment that shall forever haunt him.
10. \$10,000,000 for lost income he will suffer in the future when trying to restart his hedge fund after being greatly defamed by more than 50 lies in the police reports in the public records, and having his name added to the list of people who have been arrested.

**A total \$11,138,318 cash.**

In addition, Plaintiff demands:

11. The Museum within 30 days remove the Museum sign on the north side of NW 38<sup>th</sup> Street, which is not on their property, that they use to lie to the police, and to lie to others about where their property begins.

12. The Trust to within 30 days, at their own expense, post a large sign in front of the fence at the end of NW 38<sup>th</sup> Street stating in large letters "PUBLIC RIGHT OF WAY" with a diagram of the west end of NW 38<sup>th</sup> Street, and of Von Avenue, clearly showing the public rights of way and labeling these as such, and to maintain this sign for as long as the Trust, or its successors, own or property adjacent to these roads.
13. The Trust within 30 days to paint a line, in bright red paint, six inches wide, denoting their property line, on the edge of NW 38<sup>th</sup> Street, and along Von Avenue on the west side of their property, and paint on the cement on each side of the line every 30 feet "Public Property" and "Private Property," such that they will never again be able to lie to the Fort Worth Police about where their property line is in order to harass people, defame them, and get them falsely arrested.
14. The Museum or Trust within 30 days to remove the gate at Von Avenue where NW 37<sup>th</sup> Street would meet it, through which they restrict the public from accessing the public right of way of Von Avenue to half way between NW 35<sup>th</sup> and NW 36<sup>th</sup> Street, which was given to the people of Fort Worth for their use forever.
15. The Museum to cease and desist from advertising on their website that they have a C-47 aircraft, when no such airplane exists there.
16. Defendants to have Wood retract all of her statements, which are all lies, in the four police reports, and get a judge to forever strike from the record all of the four police reports. Failing this, Defendants shall pay Plaintiff an additional \$1 million for defaming him forever in the public record.
17. The Museum to write Plaintiff a letter of apology, and to read this to all of their volunteers at the subsequent three meetings, to be observed and verified by an independent outside person of Plaintiff's choosing, and then to post a link to this apology on the first page of their website for no less than one year. The form of such an apology appears in Attachment 1.

Exhibit 43: 2017 06 20 - 8.07 pm email from Krabill ready to try the  
case

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynllp.com]  
**Sent:** Tuesday, June 20, 2017 8:07 PM  
**To:** Seth Washburne  
**Cc:** Jonathan Kelley  
**Subject:** You call with Jonathan re damages and settlement

Seth,

On your telephone call with Jonathan this afternoon, he advised you that the amount you are claiming in actual damages (non-punitive) is approximately \$8,250 (or a few thousand dollars more, depending on whether we are able to locate additional sources of damages). He further advised you (i) of the risks of continuing the lawsuit, (ii) that if we lose at trial or don't recover at least 80% of defendants' offer of \$22,000, you will owe Defendants their attorneys' fees, and (iii) that the settlement offer we have currently from defendants is likely higher than any amount you would receive in damages at trial (and also includes the apology you said you wanted).

I know you have repeatedly said you understand the risks and want your day in court, which is great, but I want to be crystal clear about the hurdles you face and the potential outcomes. From the beginning, I told you that I thought you have a strong liability case, but that damages were problematic because they were so low.

Today, you indicated once again that you understood, and told Jonathan that I had spoken to you about this previously. You also indicated that you would search for any other expenses that we might claim as damages when we amend our disclosures to include a revised damages number. You have now sent that and we will review and get back to you.

We are ready and willing to try this case. We just want to make sure you understand the potential outcomes.

Thanks,

Kent

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Wednesday, June 21, 2017 3:55 PM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Cc:** Jonathan Kelley  
**Subject:** Washburne v. Museum Damages  
**Attachments:** Washburne v. Museum Damages.docx

Seth,

I have attached a document with the damages we discussed on the phone. Please let me know if you have any questions or concerns.

**KENT D. KRABILL | Partner**

LynnPinkerCoxHurst

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## Damages

1. Actual Damages
  - a. Special Damages (economic) = \$8,522.23
    - i. Reimbursement of criminal defense attorney fees of \$3,500.
    - ii. Reimbursement of survey costs of \$2,826.73.
    - iii. Reimbursement of the FAA “screening psychological assessment” costs of \$750.
    - iv. Reimbursement of Plaintiff’s civil attorney’s fees for time to review the arrest and FAA issues of \$1,445.50.
  - b. General Damages (noneconomic) = \$1,000,000.00
    - i. Harm to reputation.
    - ii. Emotional distress.
    - iii. Mental or emotional pain or anguish.
    - iv. Loss of enjoyment of life.
2. Exemplary Damages = \$1,000,000.00
3. Court Costs = TBD
4. Prejudgment and postjudgment interest = TBD

Exhibit 44: 2017 06 27 - 5.34 pm Krabill to Seth

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynllp.com]  
**Sent:** Tuesday, June 27, 2017 5:34 PM  
**To:** Seth Washburne  
**Cc:** Jonathan Kelley  
**Subject:** Turner info for mediation

Seth,

Turner responded to your questions as follows:

1. We literally do not have any financial statements or other documents that show net worth of any defendants other than the VFM statements I sent you.  
WE WILL MOVE FORWARD WITH OUR MOTION TO COMPEL AND SET FOR HEARING SO WE HAVE THE INFO FOR TRIAL. FOR NOW, MAYBE THE MEDIATOR WILL GET A NUMBER FOR EACH OUT OF THEM AT MEDIATION.
2. The total attorney's fees paid by my clients to date are approximately \$115,000. I would expect them to pay another \$60,000+ between now and a verdict. Of course this does not include fees for an appeal.
3. Our position on Von is that it has been occupied exclusively by VFM, its visitors, volunteers and tenants for many years with no other traffic other than the occasional lost driver or attorney scoping out the scene.  
THIS IS EXACTLY WHAT HE TOLD ME AFTER THE HEARING A FEW WEEKS AGO. WE ARE IN GOOD SHAPE ON THIS. THEY HAVE NO LEGAL AUTHORITY, HAVE NOT (AND INDEED CANNOT) ACQUIRE THE PROPERTY THROUGH ADVERSE POSSESSION, AND, AS HE STATES BELOW, DO NOT CLAIM ANY RIGHT TO GET ANYONE ARRESTED. THEY WILL TRY THEIR BEST TO CONVINCE THE JURY THAT THEY DIDN'T KNOW THEY COULDN'T EXCLUDE PEOPLE OFF OF THE STREET, BUT GIVEN YOU PROVIDED THEM THE PROPERTY LINES, AND GIVEN MONK'S EMAILS, I DON'T THINK THE JURY WILL BUY IT. THE ONLY WAY I SEE IT HAPPENING IS IF THE JURY JUST LOVES THEM AND HATES YOU. BUT LET'S MAKE SURE THAT DOESN'T HAPPEN.
4. The defendants do not claim any right to get anyone arrested.

**KENT D. KRABILL** | Partner



**LynnPinkerCoxHurst**

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Exhibit 45: 2016 09 30 - 2.31 p.m. Krabill to Seth

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Friday, September 30, 2016 2:31 PM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Cc:** Stephen Cole  
**Subject:** Museum matter

Seth. Here is a preliminary list of tasks that we need to focus on:

1. Draft depo notices: Dana Wood, Bill Gorin
2. Review MSJ responses drafted by Vice to determine if we want to use
3. Analyze claims and parties to determine if any amendments are necessary
4. Review all discovery responses
5. Review docs and mark hot
6. Interview criminal attorney
  - a. What is his name and number?
7. Review police report and analyze whether we need to depose officer
8. Review DA docs and possibly interview DA
9. Set motion quashing Hal Monk deposition notice for hearing so we can depose him

### **KENT D. KRABILL | Partner**

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## Exhibit 46: Malicious Prosecution

## Exhibit 33: The Elements of Malicious Prosecution

### CIVIL TORT REMEDY AGAINST MALICIOUS CRIMINAL PROSECUTION

Texas courts have long recognized a cause of action for those unjustifiably subjected to criminal proceedings, but has made it clear that such a cause of action, known as malicious prosecution, must sometimes yield to society's interest in encouraging its citizens to report crimes whether real or merely perceived. *Kroger Tex. Ltd. P'ship v. Suberu*, 216 S.W.3d 788, 792 (Tex. 2006).

#### WHAT DOES IT TAKE TO PROVE MALICIOUS PROSECUTION? - THE ELEMENTS

The [elements necessary to recover for malicious prosecution](#) reflect a balance of these interests. *Id.* To recover for malicious prosecution, a plaintiff must prove: (1) a criminal proceeding was commenced against the plaintiff; (2) the defendant initiated or procured the proceeding; (3) the proceeding was terminated in the plaintiff's favor; (4) the plaintiff was innocent of the crime charged; (5) the defendant lacked probable cause to initiate the criminal proceeding; (6) the defendant acted with malice; and (7) the plaintiff suffered damages. *Id.* (citing *Richey v. Brookshire Grocery Co.*, 952 S.W.2d 515, 517 (Tex. 1997)). The fifth and sixth elements protect a defendant from a jury's "natural inclination" to punish a defendant who erroneously, but with cause and no malice, commenced criminal proceedings that resulted in an exoneration. *Suberu*, 216 S.W.3d at 792.

#### THE PROCUREMENT ELEMENT

According to the Texas Supreme Court, procurement, which is the causation element of a malicious prosecution action, occurs when a person's actions are enough to cause the prosecution, and but for the person's actions the prosecution would not have occurred. *Browning-Ferris Indus., Inc. v. Lieck*, 881 S.W.2d 288, 293 (Tex. 1994). A person does not procure a prosecution, however, when the decision to prosecute is left to the discretion of a law enforcement official or grand jury unless the person provides information he knows is false. *Id.*; *King v. Graham*, 126 S.W.3d 75, 78 (Tex. 2003).

A person does not procure a prosecution when the decision to prosecute is left to the discretion of a law enforcement official or grand jury. *Id.*; *King v. Graham*, 126 S.W.3d 75, 78 (Tex. 2003). However, **if a person knowingly provides false information to those responsible for procuring the prosecution, the person has procured the prosecution for purposes of a malicious prosecution action. *Id.* This exception is satisfied not only when actual false information is provided, but when the reporting person fails to report facts that might establish the accused is not guilty of any offense.** *Eans*, 580 S.W.2d at 20 (holding circumstantial evidence was sufficient for jury to have concluded corporation procured prosecution where reporting persons failed to disclose material facts favorable to accused).

#### THE MALICE ELEMENT

A person acts with malice in a malicious prosecution case when he acts with ill will or evil motive to the injury of another, or acts in reckless disregard of the rights of another and with indifference as to whether the other person is injured so as to amount to wanton and willful action knowingly and unreasonably done. *Id.* Malice can be established by either direct or circumstantial evidence and may be inferred from a lack of probable cause. *Thrift*, 974 S.W.2d at 80.

Of course a person has the legal right to report a crime. *See Closs*, 874 S.W.2d at 878. However, if a person reports a crime with an improper purpose, or in reckless disregard of the rights of another in a knowing and unreasonable manner, that is malice. *Id.*

*Richey*, 952 S.W.2d at 519-20 (holding that in malicious prosecution action, failing to fully and fairly disclose all relevant facts or knowingly providing false information to police is relevant to malicious intent of defendant); *Thrift*, 974 S.W.2d at 80 (holding defendant's failure to disclose exculpatory facts was sufficient to demonstrate malice).

### **CAN CORPORATION BE A DEFENDANT IN A MAL-PROS LAWSUIT?**

A malicious prosecution action against a corporate entity may be based on an agent taking action to procure a prosecution. *See Eans v. Grocery Supply Co.*, 580 S.W.2d 17, 21-22 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ) (malicious prosecution judgment upheld against corporation based on actions of corporate employees).

SOURCE: [SAN ANTONIO COURT OF APPEALS](#) - 04-10-00602-CV – 11/23/11  
Posted 30th November 2011 by [Wolfgang Demino](#)

Exhibit 47: FWPD Statement to Internal Affairs Det Povero re Oldham

COPY

THE STATE OF TEXAS }  
COUNTIES OF TARRANT, DENTON, PARKER and WISE }{

Before me, the undersigned peace officer, on this day personally appeared Seth Washburne, who after being duly sworn or affirmed deposes and says:

My name is Seth Washburne. I am of sound mind and I am capable of making this affidavit.

I am 54 years of <sup>age</sup> 2060. My date of birth is "4/59". I live at 5200 Meadowcreek Dr., Dallas 75248; my home phone number is (212) 289-1506. I can read, write and understand the English language.

I have personal knowledge of the following facts:

On Saturday April 26, 2014, Guserro received a call for  
Trespassing. He:

- A) 1) Did not ask: a) who owned the land, b) who represented the owner,  
c) where the property line was, d) for proof of the property line  
e) where I trespassed.
- 2) Did not ask the subject these questions either -
- 3) As a result <sup>he</sup> let a non-representative ~~de~~ falsely accuse me of the  
b) issued me a warning that was ~~it~~ not deserved - and
- 4) ~~that~~ the key to getting me arrested Sunday due to his  
false warning.



③ Dealing with me: When he arrived, I was smiling, steady happily talk to someone on the right. Me.

1) Failed to communicate w/ me respectfully when I said I wanted to listen to what the other person said - instead he gave me a dirty look, ~~said nothing~~, and rolled up the window.

2) When I walked to the left side in court, again failed to talk to me to say I could not stand there.

3) Unreasonably burst out of his car, yelled at me to turn around and put my hands behind my back, and twisted my hands up high on my back.

4) When I yelled to be careful of my right arm, told me to shut up - will not say ~~those~~ exact words; and continued to ~~twisted my right arm up on my back. Then shoved me in the car.~~

5) ~~Put~~ Put me in the back seat where it was hot + dry.

He could have simply asked me to step into the car, or to stand <sup>nearby</sup> ~~nearby~~:

COPY

c) Communications

He never once asked me for my side of the story.  
 I ~~never~~ <sup>stood</sup> on Meacham Airport property, never even set foot in the street,  
 and my car tires never left NW 38<sup>th</sup> St, and parked across the street.  
 I ~~never~~ trespassed anywhere. NOTE: While you will say a  
 warning doesn't ~~mean~~ <sup>mean</sup> I was trespassing, it did mess this ~~up~~ <sup>on</sup> Sunday.

d) Communications et cetera - before giving me the warning, he ~~had~~ opened the door  
 and ~~beated~~ <sup>harmed</sup> at me I had to listen to what Dana said, and do it.  
 This was not reasonable. He suggested there was a bargain there,  
 but didn't tell me what it was.

e) Regarding Dana saying I hit her - ask for my side.

Summary: He ~~never~~ <sup>refused</sup> to talk to me, and was extremely disrespectful and a  
 bully and brute.

Note: Peace officers taking statements from complainants and witnesses must ask them before they sign the form, "Do you swear or affirm that you have personal knowledge of the facts stated in your affidavit?" "Do you solemnly swear or affirm that the facts stated in your affidavit are true and correct?"

I have personal knowledge of the facts stated in the above affidavit. I swear or affirm that the facts stated above are true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 Signature

COPY

The second officer

1) Pushed my <sup>right</sup> hand up behind my back, after Guevrao let go of it, and when I said I previously injured it and to be careful, ignored my saying that. I am 54 year old - old guys have medical problems!

2) Lied to me that I was going to get charged w/ Assault / Deadly weapon, my car, probably to scare me, and seemed to delight in telling me that.

3) Stood by the door and for about 15 minutes looked out his opinion of what a fool I was. If ~~he~~ I spoke up, he interrupted me and kept insulting me. Because he had all the power, I had to put up with this.

He, too, is very disrespectful,  rude and harmful to my shoulder.

COPY

THE STATE OF TEXAS }  
COUNTIES OF TARRANT, DENTON, PARKER and WISE }  
}}  
}}

Before me, the undersigned peace officer, on this day personally appeared Seth P. Washburne, who after being duly sworn or affirmed deposes and says:

My name is Seth P. Washburne. I am of sound mind and I am capable of making this affidavit.

I am 54 years of age. My date of birth is 11/4/59. I live at 5202 Meadowcreek Dr #2060 Dallas TX 75248 my home phone number is (214) 289-1506. I can read, write and understand the English language.

I have personal knowledge of the following facts:

Mal Mark

at 11:50 a.m.  
On April 27, 2014, I emailed both the owner, and lawyer for,  
the Mosper's Family Trust, that own property @ 505 NW 38<sup>th</sup> Street.  
I said I would like to park at the end of the street, by the fence.  
Mal called me at 2:05 and said I would not be trespassing. ~~I~~  
Importantly, I asked him if he told this to Dang Wood, and he said yes,  
she knew I would be there, and would not call the police. She is

When Oldham arrived his first thing to do should have  
been to establish who owned the property, then where  
was the property, and where was I.



1) I told Oldham who owned the property - the Hesper Family Trust, and showed proof of this - a print out from the Tarrant County website. He ignored this. Tarrant official Doan

2) I told him I had "permission" from the owner's lawyer, i.e. that I had been called at 2:05 pm. and told <sup>38th</sup> ~~the~~ street was all public property - not the Trust's. He ignored that. The lawyer said it was a public street

3) I called the lawyer (Monk) who knows where the property line is and whose name was on a deed transfer I showed Oldham, and Monk picked up, and talked to me, and I put the phone on speaker mode and asked Oldham to talk to Monk who could tell him I was ok. He said "We don't talk to lawyers."

He ~~refused~~ refused to speak to ~~the~~ <sup>the</sup> reporter, who was outside!

4) I told Oldham that Monk was on the board of the museum - didn't call.

5) I implored Oldham to call the owner - who Monk told me he had spoken to around 1:30 and told her I could be there and told him I had her #, as did Dana Ward + Bill Gorin, and she may even have been there - he had zero interest in talking to the owner

6) Listened to people who I told him hate me, ~~and~~ and who did not represent the family trust, and had no idea where the line was.

7) Took the law into his own hands at one point and said a sign marked the land boundary.

8) Failed to realize what a traumatic thing it is to be arrested and jailed, so did not take seriously figuring out where the property line was.

9) Failed to apply simple common sense that this was still a public road - that getting to the end of a street does not make the last 30 feet belong to someone else.

10) Should have issued a warning when no one agreed where the property line was, and I had ample printed evidence to prove I did <sup>know where it was</sup>.

Note: Peace officers taking statements from complainants and witnesses must ask them before they sign the form, "Do you swear or affirm that you have personal knowledge of the facts stated in your affidavit?" "Do you solemnly swear or affirm that the facts stated in your affidavit are true and correct?"

I have personal knowledge of the facts stated in the above affidavit. I swear or affirm that the facts stated above are true and correct.

Signed this 15 day of May, 2014.

  
Signature

COPY

THE STATE OF TEXAS }  
COUNTIES OF TARRANT, DENTON, PARKER and WISE }  
}}  
}}

Before me, the undersigned peace officer, on this day personally appeared Seth P. Washburne, who after being duly sworn or affirmed deposes and says:

My name is Seth P. Washburne. I am of sound mind and I am capable of making this affidavit.

I am 54 years of age. My date of birth is 11/4/59. I live at 5208 W Peddaway Dr #2060 Dallas TX 75248 my home phone number is (214) 289-1506. I can read, write and understand the English language.

I have personal knowledge of the following facts:

Mal Mark

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On April 27, 2014, I emailed both the owner, and lawyer for,  
the Mosper Family Trust, that own property @ 505 NW 38<sup>th</sup> Street.  
I said I would like to park at the end of the street, by the fence.  
Mal called me at 2:05 and said I would not be trespassing.  
Importantly, I asked him if he told this to Dana Wood, and he said yes,  
she knew I would be there, and would not call the police. She did

When Oldham arrived his first thing to do should have  
been to establish who owned the property, then where  
was the property, and where was I.





COPY

1) I told Oldham who owned the property - the Hesper Family Trust, and showed proof of this - a print out from the Tarrant County Website. He ignored this. Tarrant official Document

2) I told him I had "permission" from the owner's lawyer, i.e. that I had been called - at 2:05 pm - and told ~~the~~ <sup>38th</sup> street was all public property - not the Trust's. He ignored that. The lawyer said it was a public street

3) I called the lawyer (Monk) who knows where the property line is and whose name was on a deed transfer I showed Oldham, and Monk picked up, and talked to me, and I put the phone on speaker mode and asked Oldham to talk to Monk who could tell him I was ok. We said "We don't talk to lawyers."

(i.e. He refused to speak to ~~the~~ <sup>the</sup> ~~representative~~, who was <sup>an</sup> ~~entrepreneur~~!)

4) I told Oldham that Monk was on the board of the museum - didn't call.

5) I implored Oldham to call the owner - who Monk told me he had spoken to around 11:30 and told her I could be there and told him I had her #, as did Dana Ward + Bill Gorin, and she may even have been there - He had zero interest in talking to the owner



6) Listened to people who I told him hate me, ~~and~~ and who did not represent the family trust, and had no idea where the line was.

7) Took the law into his own hands at one point and said a sign marked the land boundary.

8) Failed to realize what a traumatic thing it is to be arrested and jailed, so did not take seriously figuring out where the property line was.

9) Failed to apply simple common sense that this was still a public road - that getting to the end of a street does not make the last 30 feet belong to someone else.

10) Should have issued a warning when no one agreed where the property line was, and I had ample printed evidence to prove I did <sup>know where it was</sup>.

Note: Peace officers taking statements from complainants and witnesses must ask them before they sign the form, "Do you swear or affirm that you have personal knowledge of the facts stated in your affidavit?" "Do you solemnly swear or affirm that the facts stated in your affidavit are true and correct?"

I have personal knowledge of the facts stated in the above affidavit. I swear or affirm that the facts stated above are true and correct.

Signed this 15 day of May, 2014.

[Signature]  
Signature

**Screenshot of Files on USB Drive provided Seth Washburne from Kent Krabill Including under “Documents from Prior Counsel,” “Client Docs,” “VFM First Set,” FWPDP,” the file “0076 FWPDP Statement to Internal Affairs Det Provero re Oldham.”**

This is evidence LPCH had this document, which eliminates my entire VFM case.

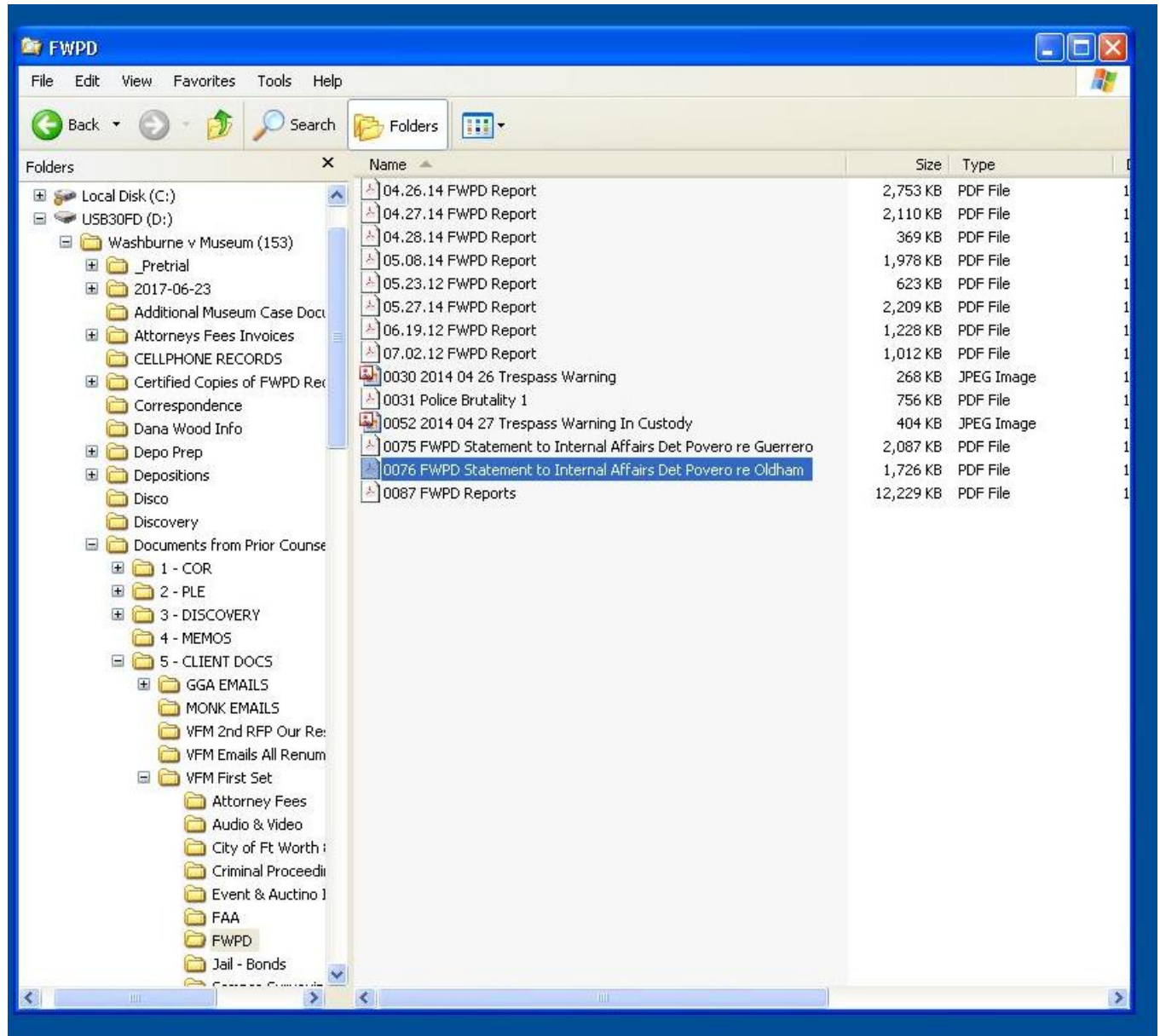


Exhibit 48: Washburne's Response to Museum Defs' No-Evidence MSJ  
11-22-16

**CAUSE NO. 153-275478-14**

**SETH WASHBURNE,**

**Plaintiff,**

**v.**

**VINTAGE FLYING MUSEUM, INC.,  
HOSPERS FAMILY TRUST “D”,  
CHARLYN HOSPERS, HAL MONK, BILL  
GORIN, DANA WOOD, JAMES TERRY,  
INDIVIDUALLY and d/b/a GREATEST  
GENERATION AIRCRAFT, PACIFIC  
PROWLER (NON-PROFIT), and PACIFIC  
PROWLER, LLC,**

**Defendants.**

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**IN THE DISTRICT COURT OF**

**TARRANT COUNTY, TEXAS**

**153RD JUDICIAL DISTRICT**

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**PLAINTIFF’S RESPONSE TO MUSEUM DEFENDANTS’  
NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT**

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Plaintiff Seth Washburne (“Washburne” or “Plaintiff”) files this Response to Defendants Hal Monk (“Monk”), Vintage Flying Museum, Inc. (“VFM”), Hospers Family Trust “D” (the “Trust”), Charlyn Hospers (“Hospers”), and Bill Gorin (“Gorin”) (collectively, the “Museum Defendants”) No-Evidence Motion for Summary Judgment, and respectfully shows the Court as follows:

**I. INTRODUCTION**

This case concerns the malicious prosecution and false imprisonment of Plaintiff, orchestrated primarily by the Museum Defendants. The undisputed evidence reveals that Plaintiff was wrongfully arrested for trespass—at the request and instigation of the Museum Defendants—when he was on public property. The charges were dismissed when the Fort Worth police’s independent investigation revealed that the Museum Defendants had misrepresented to

the police the location of the VFM's property line in order to cause the police to wrongfully arrest Plaintiff. The evidence also reveals that each of the Museum Defendants participated in and substantially contributed to Plaintiff's wrongful arrest and imprisonment

As shown below, Plaintiff has evidence supporting each of the challenged elements of his claims against the Museum Defendants. Accordingly, the Museum Defendants' No-Evidence Motion must be denied.

## **II. SUMMARY JUDGMENT EVIDENCE**

This response relies upon the evidence attached to the appendix, which is being contemporaneously filed herewith, and which is incorporated fully herein.

## **III. FACTUAL BACKGROUND**

### **1. Plaintiff was the victim of fraud and theft by Jim Terry, a VFM member and tenant.**

In January 2010, Plaintiff acquired, and set about to restore, a World War II C-47 airplane, nicknamed "Billie," which Washburne's father flew on in the war, and which is the last known flying airplane of his father's WWII squadron.<sup>1</sup> In connection with those efforts, Plaintiff retained the services of Defendant James Terry—a VFM tenant—to restore Billie.<sup>2</sup> In 2010 and early 2011, Plaintiff resided in New York while Terry ostensibly went about the restoration of Billie.<sup>3</sup> In October 2011, after becoming suspicious of Terry, who by now was far over budget and making little progress on Billie, Plaintiff relocated to Texas to more closely observe the restoration. In connection therewith, Plaintiff had leased space at the VFM to continue his restoration efforts.<sup>4</sup>

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<sup>1</sup> Ex. 1, Decl. of S. Washburne at ¶ 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Plaintiff had a falling out with Terry and others who were hired to work on Billie, due to their negligent and/or defective work on Billie and Terry's theft of more than seventy of Plaintiff's airplane parts.<sup>5</sup> As a result of the theft, Plaintiff filed criminal theft charges against Mr. Terry.<sup>6</sup> Plaintiff provided the VFM clear, detailed evidence of Terry's crimes, but did not otherwise discuss this issue much around the VFM, so as to not cause a distraction for others.<sup>7</sup> When Plaintiff filed these charges, Defendant Dana Wood, who was serving as Terry's marketing person and who relied on Terry for her income, started behaving in a hostile manner toward Plaintiff.<sup>8</sup> It was also during this dispute—specifically in April and June 2012—that Defendant Hospers exhibited her hostility to Plaintiff, twice lying about Plaintiff to VFM volunteers in order to agitate the volunteers against Plaintiff.<sup>9</sup> For reasons unknown to Plaintiff, Terry was apparently successful in turning the VFM—and the other Museum Defendants—against Plaintiff, as they sided with Terry in this dispute and engaged a retaliatory campaign against Plaintiff, including the VFM's termination of Plaintiff's lease and culminating in Plaintiff's wrongful arrest and imprisonment.

**2. Plaintiff, after his lease had been terminated, was invited back to the VFM only to be wrongfully accused of trespassing while parked on public property.**

In September 2012, Plaintiff had Fort Worth detectives visit the VFM in order to investigate Terry's massive theft against Plaintiff.<sup>10</sup> Within two weeks of the detectives' visit to the VFM, the VFM's three-member board of directors—which included Monk and Hospers—voted to terminate Plaintiff's lease.<sup>11</sup>

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<sup>5</sup> *Id.* at ¶ 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at ¶ 4.

<sup>11</sup> *Id.*

Shortly thereafter, in early 2013, Plaintiff received several invitations to a March 2, 2013 parts auction, hosted by Terry's company and taking place at the VFM.<sup>12</sup> The auction catalog appearing online before the auction showed a navigator's dome, identical to one that Terry stole from Plaintiff.<sup>13</sup> Plaintiff wanted to attend the auction to see if he could recover this stolen part.<sup>14</sup> Plaintiff was also interested in seeing if any of his other stolen parts were placed for auction, and he wanted to return certain items given to him by Defendant Gorin.<sup>15</sup> Accordingly, Plaintiff traveled to the VFM for the auction on March 2, 2013.<sup>16</sup>

Plaintiff drove to the west end of NW 38th Street—an area of public property.<sup>17</sup> An armed security guard standing in the street met Plaintiff, demanded Plaintiff's name, and, upon receiving Plaintiff's name, called for "backup," and motioned for a nearby policewoman to come over.<sup>18</sup> In all his prior visits to the VFM, Plaintiff had never seen police officers or armed security guards providing security to the VFM.<sup>19</sup> Plaintiff discovered that the police and security were hired specifically to prevent Plaintiff from coming onto VFM property, even though Plaintiff had been explicitly invited to the auction.<sup>20</sup> Then, the police officer told Plaintiff he was trespassing, even though Plaintiff was still in his car on the public road and had not traveled onto any private property.<sup>21</sup>

It became apparent to Plaintiff that Wood, an admitted representative of the VFM, the Trust, and Hospers, misrepresented to the police that Plaintiff, if he drove up NW 38th street,

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<sup>12</sup> *Id.* at ¶ 5; Ex. 2 (WASHBURNE000595-622).

<sup>13</sup> Ex. 1, at ¶ 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at ¶ 6.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

would be on the Trust's property without permission.<sup>22</sup> As a result of this misrepresentation, a police officer then issued a warning to Plaintiff not to return to "505 NW 38th Street," despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land, and threatened to arrest Plaintiff if he returned anywhere on NW 38th Street west of Ross Avenue.<sup>23</sup>

**3. Plaintiff determined the Trust/VFM property line through a review of legal records.**

Disturbed by his trespass "warning" while parked on what he believed to be public property, Plaintiff investigated online the property line for the VFM property that the Trust owned, and discovered quite easily online the true property line of the Trust.<sup>24</sup> Realizing this contradicted with the Museum Defendants' and Wood's prior representations, Plaintiff took great effort to demonstrate and explain to the Museum Defendants where exactly the property line was. For example, on April 13, 2013, Plaintiff emailed Monk—a director for the VFM—and attached documents from the Tarrant Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust did not, in fact, own NW 38th Street or Von Avenue, as Wood had suggested to the police.<sup>25</sup> Plaintiff added: "Until the time that you get back to me, I will assume these streets are indeed public property as depicted."<sup>26</sup> Monk failed to respond.<sup>27</sup>

Then, on April 15, 2013, Plaintiff again sent Monk an email regarding the Trust/VFM property line, this time attaching a distribution deed—drafted by Monk and signed by Hospers less than six months earlier—clearly identifying all of the lots owned by the Trust.<sup>28</sup> This time, Monk forwarded this email to Hospers, copying Plaintiff, asking for direction on responding to

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<sup>22</sup> *Id.* at ¶ 7.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* as ¶ 8.

<sup>25</sup> Ex. 3 (WASHBURNE000239-241).

<sup>26</sup> *Id.*

<sup>27</sup> Ex. 1 at ¶ 8.

<sup>28</sup> Ex. 4 (WASHBURNE000246-250).



Plaintiff's evidence regarding the property line.<sup>29</sup> Monk, by replying to Plaintiff and not correcting Plaintiff's understanding, acknowledged that he was aware Plaintiff would rely upon Plaintiff's findings as facts.

**4. Plaintiff filed suit against Terry and other VFM members.**

In October 2013, Plaintiff filed suit against Jim Terry, VFM Life Member Patrick Mahaffey, and others, detailing the wrongs they had committed against Plaintiff in connection with the restoration of Billie.<sup>30</sup> This lawsuit received substantial publicity and was covered by multiple news outlets.<sup>31</sup> Also, in early 2014, as a result of the VFM essentially siding with Terry, Plaintiff from approximately January to March 2013 added a page which detailed the problems with the VFM to his website regarding the Thirsty 13th squadron, and on January 30, 2014 made a post which was not favorable about the VFM on the website Yelp,<sup>32</sup> and on February 13, 2014, on website Tripadvisor.

**5. The Museum Defendants misrepresented their property line to the police and wrongfully procured a "trespass warning" against Plaintiff.**

In early 2014, Terry and Wood again invited Plaintiff to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.<sup>33</sup> Plaintiff declined the invitation, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 because (1) it was on his route for an errand Plaintiff was running that day, (2) Plaintiff wanted to perhaps observe a B-29 plane and the hanger in which it was held, and (3) Plaintiff wanted to see if Terry was in town, as Terry had been avoiding responding to discovery in Plaintiff's lawsuit against him on the alleged basis that Terry was out of town.<sup>34</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> Ex. 1 at ¶ 10.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at ¶ 11; Ex. 5 (WASHBURNE000992-94).

<sup>34</sup> Ex. 1 at ¶ 11.

Plaintiff stayed on public roads and stopped just before the end of NW 38th Street, where Wood had set up a traffic cone and tent to collect payment to attend an event, even though Wood’s actions blocked access to a public street.<sup>35</sup> Plaintiff expected to have a friendly chat with Wood.<sup>36</sup> Plaintiff explained to Wood that he wished to travel down Von Avenue to view a B-29 plane and the building in which it was housed.<sup>37</sup> He also explained that 38th Street and Von Avenue were public roads—he even offered Wood the proof of this in the form of public records—and said that he had explained this to Monk, and that Monk had not contradicted his understanding.<sup>38</sup> Wood refused to look at the documents and simply said she was not going to let Plaintiff travel down the public roads.<sup>39</sup> Shortly thereafter, although Plaintiff remained on the public roads, the VFM—through Wood—called the police on Plaintiff.<sup>40</sup>

The VFM, through Wood, represented to the police that it had actual awareness of the ownership of the property at issue and represented that Plaintiff was trespassing.<sup>41</sup> These misrepresentations resulted in the officers manhandling Plaintiff, temporarily detaining Plaintiff in a police cruiser, wrongly informing Plaintiff he was trespassing, and stating that he would be arrested if he returned to “505 NW 38th Street.”<sup>42</sup> As a result of Wood’s misrepresentations—made on behalf of the VFM and the Trust—the police wrongfully issued Plaintiff a “Trespass Warning.”<sup>43</sup> In addition, Wood—on behalf of the VFM and the Trust—filed false police reports

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<sup>35</sup> *Id.* at ¶ 12.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Ex. 1 at ¶ 13.

<sup>42</sup> *Id.*

<sup>43</sup> Ex. 6 (BG007).

replete with lies, including a report that Plaintiff had struck her with his car, when in reality she had run into his car while it was stationary.<sup>44</sup>

The Trust, VFM, Hospers, Monk, and Gorin all allowed Wood to act as the VFM and Trust's representative in procuring this false Trespass Warning.

**6. The Museum Defendants continued with their misrepresentations and had Plaintiff wrongfully arrested.**

During the evening of April 26, 2014, Plaintiff emailed Hospers, Monk, and Wood demanding that they stop lying to the police—and demanding that the Museum Defendants stop Wood from lying on their behalf—about the VFM/Trust property line, and again Plaintiff provided Hospers, Monk, and Wood with the public records showing the extent of the VFM/Trust property.<sup>45</sup> However, the Museum Defendants were unperturbed in their plan to get Plaintiff wrongfully arrested.

On April 27, 2014, Plaintiff notified the Museum Defendants that he intended to drive to the end of NW 38th Street—which the undisputed public records which he had previously provided to the Museum Defendants demonstrated was public property—and look out at the airplanes at Meacham Airport.<sup>46</sup> Plaintiff requested that Monk or Hospers call him to confirm that the matter of the VFM/Trust property line had been cleared up with the Museum Defendants and with Wood.<sup>47</sup> At 2:05 p.m., Monk called Plaintiff and confirmed to him that he was allowed to park anywhere on NW 38th Street, including along the fence at the west end of the street, and the Museum Defendants would not consider him to be trespassing on the Trust's property.<sup>48</sup> Monk even clarified exactly where the Trust/VFM property began and ended, and he assured

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<sup>44</sup> Ex. 1 at ¶ 14.

<sup>45</sup> Ex. 7 (WASHBURNE000564-68; Supplemental documents produced by Defendants at pp. 94-101)

<sup>46</sup> Ex. 8 (WASHBURNE000356)

<sup>47</sup> Ex. 1 at ¶ 17.

<sup>48</sup> *Id.* at 18. Of course, Washburne did not need Monk's permission to park on public property. The public records established that the area Washburne intended to park was not on the Trust or VFM's property.

Plaintiff that he had informed Hospers and Wood of these facts.<sup>49</sup> Monk also confirmed that the Museum Defendants would not involve the police if Plaintiff parked where he and Monk discussed.<sup>50</sup> As it turned out, this was merely a ruse to draw Plaintiff to the property so that the Museum Defendants could have him wrongfully arrested.

At around 4:45 p.m. on April 27, 2014, Plaintiff arrived at NW 38th Street near the VFM and parked exactly where Monk had told Plaintiff he could park (and where the public records demonstrated that it was public property).<sup>51</sup> Plaintiff did not drive onto the Trust/VFM property, but stayed strictly on public roads the entire time.<sup>52</sup>

Shortly thereafter, the Museum Defendants' ruse was revealed, as two police cars arrived at Plaintiff's car, and Wood and Gorin appeared, wrongfully telling the police that Plaintiff was trespassing.<sup>53</sup> The police reports reveal that Gorin represented to the police the alleged boundaries of the Trust/VFM property lines.<sup>54</sup> Of course, Gorin's representations were wrong.

Plaintiff immediately called Monk so that Monk could inform the police and the other Museum representatives of the information he had told Plaintiff less than three hours earlier.<sup>55</sup> While Monk briefly responded to Plaintiff, he refused to speak to Wood, Gorin, or the police and refused to correct Wood and Gorin's misrepresentations that Plaintiff was trespassing on Trust/VFM property.<sup>56</sup> Plaintiff tried to call Monk again multiple times.<sup>57</sup> Monk answered once,

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 19.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 20.

<sup>54</sup> Ex. 9 (WASHBURNE001174)

<sup>55</sup> Ex. 1 at 21.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

then hung up after Plaintiff identified himself.<sup>58</sup> Monk ignored Plaintiff's next two calls, leaving the police to believe the lies of Gorin and Wood regarding the property line.<sup>59</sup>

Based on the Museum Defendants' misrepresentations regarding the Trust/VFM property line, the police arrested Plaintiff for criminal trespass.<sup>60</sup> The police handcuffed Plaintiff, placed him in a police cruiser, and took him to the Fort Worth jail around 5:45 p.m.<sup>61</sup> Plaintiff spent six more hours in the Fort Worth Jail, with other accused criminals, before being transported to the prison at Mansfield, Texas, where he spent the night and had his mugshot taken.<sup>62</sup> Plaintiff was finally released the next morning and got a van back to Fort Worth, arriving more than 18 hours after he was wrongfully arrested.<sup>63</sup>

**7. In private communications, Monk admitted the wrongfulness of the Museum Defendants' actions.**

Monk's refusal to correct the Museum Defendants' misinformation to the police is made all the more startling by his private conversations with other Museum Defendants, which reveal his knowledge and awareness of the potential liability the Museum Defendants were exposed to as a result of their misrepresentations. On April 28, 2014, the day after Plaintiff's arrest, Monk emailed Hospers and Gorin and admitted that (1) the VFM and the Trust allowed Wood to hold herself out as a representative of the VFM and the Trust, (2) Wood likely made false representations to the police, and (3) the VFM and the Trust were likely responsible for these false representations.<sup>64</sup> Likewise, in a later email to Wood, Monk noted that the Museum

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 22; Ex. 9 (WASHBURNE 1172-95).

<sup>61</sup> Ex. 1, at 22; Ex. 9 (WASHBURNE 1172-95).

<sup>62</sup> Ex. 1 at 23; Ex. 9 (WASHBURNE 1172-95).

<sup>63</sup> Ex. 1 at 23.

<sup>64</sup> Ex. 10 (WASHBURNE000632-34).

Defendants' actions left them "treading on dangerous ground" because Plaintiff "well may be" correct about where the VFM/Trust property line is.<sup>65</sup>

Monk's knowledge of the Museum Defendants' violations of Plaintiff's rights is made most clear by his May 29, 2014 correspondence to Hospers and Gorin, wherein he laments the VFM/Trust's actions in ratifying Wood's misrepresentations to the police and confirms that Plaintiff, indeed, was not trespassing when the police were called:

[Plaintiff's intent] does not in any way preclude his right to travel as he darn well pleased up and down NW 38th Street, or which now, uncomfortably, seems to still be Von Street. *Dana Wood had no right whatsoever to impede such travel. Contrary to her assertions below, I find no indication that Seth ever set foot on any of VFM's leasehold or Hospers Trust property, or expressed any intention of doing so . . . .* In any event, I now have information that she walked in front of his car *while he was exercising his right to travel on a public street . . . .* I am much concerned that *actions, or inactions, of some folks connected with VFM may have lent credence to her erroneous assertions to [the police] that she was a 'representative of VFM.'*<sup>66</sup>

Monk's understanding of the wrongfulness of the Museum Defendants' actions makes his silence on the day of Plaintiff's arrest all the more malicious.

Meanwhile, other VFM/Museum representatives—including Wood, Gorin, and Hospers—continued to communicate with Fort Worth police, and continued to misrepresent the extent of the VFM/Trust's property line, in an effort to bring about a prosecution of Plaintiff.<sup>67</sup> As Hospers put it in an email to Monk, the Fort Worth police "accepted the trespassing charge against Seth" based on an evaluation of the property line that was—to that point—entirely informed by the misrepresentations of the Museum Defendants.<sup>68</sup> Thankfully, the police eventually consulted the official record, which contradicted the Museum Defendants' representations.

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<sup>65</sup> Ex. 11 (HM0019).

<sup>66</sup> Ex. 12 (WASHBURNE000641-42).

<sup>67</sup> Ex. 13 (WASHBURNE001231-32; 1237) Ex. 14 (Supplemental documents produced by Defendants at p. 129)

<sup>68</sup> Ex. 14.

**8. After a review of the public record, the charges were dropped against Plaintiff.**

The police who arrested Plaintiff had only the misinformation supplied by the Museum Defendants to go on, and, thus, were led to believe that Plaintiff was on the VFM/Trust property when he was arrested. However, after Plaintiff's arrest, during the scope of the investigation into his charges, law enforcement and the prosecution determined that Plaintiff was, in fact, right about the property lines all along. They determined that Plaintiff was standing on public property—as Monk and the other Museum Defendants knew or should have known—and, accordingly, that Plaintiff should not be prosecuted (and should have never been arrested).<sup>69</sup> For these reasons, the charges were dropped against Plaintiff.<sup>70</sup>

**9. Plaintiff suffered damages as a result of Defendants' actions.**

Plaintiff's prison stay was a harrowing experience for Plaintiff. Plaintiff, a lifelong professional, had never experienced any legal troubles with the police, and was never mentioned in a police report in his entire life until to the Museum Defendants' and Wood's (successful) campaign to defame him and get him wrongfully arrested.<sup>71</sup> In addition to suffering shame, humiliation, reputational damage, and emotional distress, Plaintiff incurred the expense of hiring a criminal attorney to defend himself against the Museum Defendants' false accusations and paying for a professional survey to be completed to provide his attorney with the necessary information to defend Plaintiff against the charges.<sup>72</sup>

This evidence, as discussed below, more than satisfies Plaintiff's burden to raise a genuine issue of fact on each of his claims.

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<sup>69</sup> Ex. 9 (WASHBURNE 1172-95)

<sup>70</sup> *Id.*; Ex. 1 at ¶ 24.

<sup>71</sup> Ex. 1 at ¶ 25.

<sup>72</sup> *Id.*; Ex. 15 (WASHBURNE000726); Ex. 16 (WASHBURNE000762; 766).

#### IV. ARGUMENT AND AUTHORITIES

##### 1. Malicious Prosecution

To prove a claim for malicious prosecution, a plaintiff must establish: (1) a criminal prosecution was commenced against the plaintiff; (2) the defendant initiated or procured the prosecution; (3) the prosecution was terminated in the plaintiff's favor; (4) the plaintiff was innocent of the charge; (5) the defendant did not have probable cause to initiate or procure the prosecution; (6) the defendant acted with malice; and (7) the plaintiff suffered damages as a result of the prosecution. *See Kroger Tex. L.P. v. Suberu*, 216 S.W.3d 788, 792 n.3 (Tex. 2006).

In their No-Evidence Motion, the Museum Defendants challenge Plaintiff's evidence on elements (2), (5), and (6).

##### *a. The Museum Defendants initiated or procured the prosecution.*

A "prosecution" includes the lawful arrest of a person based on a criminal charge. *Airgas-Southwest, Inc. v. IWS Gas and Supply of Tex., Ltd.*, 390 S.W.3d 472, 479 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (noting that "courts have affirmed judgments for malicious prosecution when the claimant was physically detained, even if the detention lasted a relatively short time"); Restatement (2d) of Torts § 654(2)(c). A defendant initiates or procures a prosecution when his actions are the cause-in-fact of the plaintiff's criminal prosecution. *Browning-Ferris Indus. v. Lieck*, 881 S.W.2d 288, 292 (Tex. 1994). A defendant also "procures" a prosecution when his actions were enough to cause the prosecution and if the prosecution would not have occurred but for his actions. *King v. Graham*, 126 S.W.3d 75, 77 (Tex. 2003). A defendant may also be liable for malicious prosecution when he provides false information to law enforcement officials that result in the prosecution. *Id.* at 76.

Here, the evidence clearly demonstrates that the Museum Defendants initiated or procured Plaintiff's prosecution. Defendant Monk, on behalf of the Trust, informed Plaintiff that



the Trust would pursue criminal trespass charges against him if he came onto the Trust/VFM property.<sup>73</sup> Defendant Wood, while holding herself out as a representative of the VFM and the Trust, called the police on Plaintiff on April 26, 2014, and procured a trespass warning against Plaintiff.<sup>74</sup> Furthermore, Wood and Gorin, while holding themselves out as representatives of the VFM and the Trust, contacted the police on April 27, 2014, and accused Plaintiff of trespassing on the VFM/Trust property, which led to Plaintiff's arrest on a criminal trespass charge.<sup>75</sup> Gorin, Hospers, and Monk—representatives of the VFM and the Trust—then supplied the police with false information regarding the boundary of the VFM/Trust's property lines and/or failed to correct such false information, in an effort to further Plaintiff's prosecution.<sup>76</sup>

This evidence is more than sufficient to raise a genuine issue of fact on the issue of whether the Museum Defendants initiated or procured Plaintiff's prosecution. *Forbes, Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 172 (Tex. 2003); Tex. R. Civ. P. 166a(i).

***b. The Museum Defendants did not have probable cause to initiate or procure the prosecution.***

A defendant lacks probable cause to initiate or procure a prosecution when the defendant, acting on the facts within his knowledge, would not have had a reasonable belief that the plaintiff was guilty of a crime. *Akin v. Dahl*, 661 S.W.2d 917, 921 (Tex. 1983).

Here, Plaintiff had taken great pains to demonstrate and explain to the Museum Defendants where exactly the VFM/Trust property line ended.<sup>77</sup>

1. On April 13, 2013, Plaintiff emailed Monk with two attachments, one listing lots owned by the Trust, and the other a map from the Tarrant

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<sup>73</sup> Ex. 17 (HM0017).

<sup>74</sup> Ex. 6; Ex. 9 (WASHBURNE001170); Ex. 18 (WASHBURNE000505-06).

<sup>75</sup> Ex. 9 (WASHBURNE001174) Ex. 26 (WASHBURNE001196)

<sup>76</sup> Ex. 9 (WASHBURNE001174); EX. 10; Ex. 11; Ex. 12; Ex. 14.

<sup>77</sup> Ex. 3; Ex. 4.

County Appraisal District showing the exact location of these lots, which showed that the lots did not include NW 38th Street or Von Avenue;<sup>78</sup>

2. On April 15, 2013, Plaintiff emailed Monk attaching an October 24, 2012 Distribution Deed, signed by Hospers and Monk, listing the lots owned by the Trust.<sup>79</sup> This Deed was executed just 6 months before Plaintiff's email, showing the Museum Defendants were fully aware of what property the VFM/Trust did and did not own;
3. In the April 15, 2013 email, Plaintiff noted that the Deed specifically proved that the VFM/Trust did not own the public streets. Monk acknowledged receipt of this email and forwarded it to Hospers;<sup>80</sup>
4. On April 26, 2014, Plaintiff again emailed Monk, this time copying Hospers directly, and again attached the above items—public records clearly informing the Museum Defendants that they did not own NW 38th Street or Von Avenue. Plaintiff also threatened legal action if the Museum Defendants continued to misrepresent their property line to the police. Later, Monk confirmed that he had fully informed Hospers and other Trust/VFM representatives of these facts.<sup>81</sup> Monk also confirmed that the Museum Defendants would not involve the police if Plaintiff remained on public property;<sup>82</sup>
5. On the afternoon of April 27, 2014, Plaintiff reminded Monk over the phone that NW 38th Street was public property, just as the records Plaintiff had provided to Monk showed.<sup>83</sup>

Despite this knowledge, when Plaintiff appeared on public property near the VFM on April 27, 2014, the Museum Defendants procured Plaintiff's prosecution despite having a clear understanding—provided by Plaintiff four times and confirmed by Monk—that Plaintiff was not on the VFM/Trust property. If the Museum Defendants believed that Plaintiff was committing a crime on April 27, 2014, such a belief was wholly unreasonable based on the facts provided to the Museum Defendants. *See Suberu*, 216 S.W.3d at 792-93 (defendant must *reasonably* believe that a crime has been committed in order for defendant to have probable cause).

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<sup>78</sup> Ex. 3.

<sup>79</sup> Ex. 4.

<sup>80</sup> *Id.*

<sup>81</sup> Ex. 1 at ¶ 18.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

The evidence raises a genuine issue of fact as to whether the Museum Defendants had probable cause to initiate or procure a prosecution against Plaintiff. *Forbes*, 124 S.W.3d at 172; Tex. R. Civ. P. 166a(i).

***c. The Museum Defendants acted with malice.***

Malice is defined as ill will, evil motive, or such gross indifference or reckless disregard for the rights of others as to amount to a willful and wanton act. *See, e.g., Thrift v. Hubbard*, 974 S.W.2d 70, 82 (Tex. App.—San Antonio 1998, pet. denied). Proof of spite or ill will is not required for this element; the plaintiff may prove malice by showing the defendant committed wrongful acts in reckless disregard to the plaintiff's rights. *J.C. Penny Co. v. Ruth*, 982 S.W.2d 586, 590 (Tex. App.—Texarkana 1998, no pet.). Evidence that a defendant did not fully and fairly disclose all material information and knowingly provided false information is relevant to this inquiry. *Richey v. Brookshire Grocery Co.*, 952 S.W.2d 515, 519 (Tex. 1997).

Here, the evidence demonstrates that the Museum Defendants were, at a minimum, grossly indifferent to Plaintiff's rights. Again, Plaintiff had provided the Museum Defendants with extensive evidence of the Trust/VFM's property lines, yet the Museum Defendants proceeded anyway with Plaintiff's prosecution, choosing to recklessly disregard the actual boundary of its own property.<sup>84</sup>

Further, although such proof is not necessary, the evidence shows that Plaintiff's prosecution was the result of personal ill will and/or spite toward Plaintiff, rather than a sincere belief that Plaintiff was committing a crime. Plaintiff's lease at the VFM had been terminated after he had a falling out with fellow VFM member and tenant, Jim Terry, as a result of Terry's theft of Plaintiff's property, which Plaintiff reported to the police and which was the basis of a

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<sup>84</sup> Ex. 3; Ex. 4.

lawsuit Plaintiff filed against Terry in October 2013.<sup>85</sup> After it was clear that the VFM/Trust was, remarkably, siding with Terry in this dispute, Plaintiff detailed his problems with the VFM and made (true) derogatory statements about the VFM on his website.<sup>86</sup> Plaintiff also, in an effort to prevent others from suffering the same problems he had, made posts about the VFM, which were not favorable to the VFM, on Yelp<sup>87</sup> and TripAdvisor. These events caused the Museum Defendants and Wood to have a negative feeling toward Plaintiff.

Also, in April 2014, Wood, a representative of the VFM and the Trust, attempted to concoct a story about Plaintiff hitting her with his car—in fact, she walked into Plaintiff’s car and barely made contact with it—and tried to get additional charges brought against Plaintiff.<sup>88</sup> Gorin—a fellow Museum Defendant and representative of the VFM and Trust—referred to Plaintiff as a “nut job” in emails with other Museum Defendants and has admitted to laughing at Plaintiff while he was arrested.<sup>89</sup> Hospers shared, via social media, a photo of Plaintiff’s manhandling by the police the day before he was arrested, and included false statements about Plaintiff in the post.<sup>90</sup>

This evidence strongly suggests that the motive for initiating a prosecution against Plaintiff was the ill will and spite that the Museum Defendants held toward Plaintiff, rather than any interest in prosecuting alleged criminal activity. This is sufficient evidence to raise a genuine issue of fact as to whether the Museum Defendants acted with malice. *Forbes*, 124 S.W.3d at 172; Tex. R. Civ. P. 166a(i).

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<sup>85</sup> Ex. 1 at ¶¶ 3-4, 10.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at ¶ 14; Ex. 19 (BG0015-16).

<sup>89</sup> Ex. 20 (WASHBURNE000697); Ex. 25 (Gorin RFA responses).

<sup>90</sup> Ex. 21 (WASHBURNE000691; BG0004-5; Ex. 23 CH0019).

Because Plaintiff has evidence of each of the challenged elements of his malicious prosecution claim, this Court should deny the Museum Defendants' Motion as to this claim.

## **2. Intentional Infliction of Emotional Distress**

To prove a claim for intentional infliction of emotional distress, a plaintiff must establish: (1) the defendant acted intentionally or recklessly; (2) the emotional distress suffered by the plaintiff was severe; (3) the defendant's conduct was extreme and outrageous; (4) the defendant's conduct proximately caused the plaintiff's emotional distress; and (5) no alternative cause of action would provide a remedy for the severe emotional distress caused by the defendant's conduct. *Suberu*, 216 S.W.3d at 796.

In their No-Evidence Motion, the Museum Defendants challenge Plaintiff's evidence on elements (1) and (3).

### ***a. The Museum Defendants acted intentionally or recklessly.***

A defendant's conduct is intentional if the defendant either desires to cause the consequences of his act or believes the consequences are substantially certain to result from his act. *Toles v. Toles*, 45 S.W.3d 252, 259 (Tex. App.—Dallas 2001, pet. denied). Intent can be inferred from the circumstances of the defendant's conduct. *Id.* at 260. A defendant's conduct is reckless if the defendant knows or has reason to know of facts that create a high degree of risk of harm to another and then deliberately proceeds to act in conscious disregard of or with indifference to that risk. *Twyman v. Twyman*, 855 S.W.2d 619, 624 (Tex. 1993).

Here, the Museum Defendants acted intentionally or recklessly by procuring a prosecution of Plaintiff based on false information supplied to the police—information that the

Museum Defendants knew was false or had reason to believe was false.<sup>91</sup> They also acted recklessly by failing to correct the false information that had been supplied to the police.

Furthermore, the Museum Defendants' internal communications reveal that they believed Plaintiff to be particularly susceptible to emotional or mental distress before they ever began their scheme to falsely accuse Plaintiff of trespass.<sup>92</sup> With this understanding, the Museum Defendants' malicious actions in procuring Plaintiff's arrest based on false information is all the more intentional and/or reckless.

This evidence is sufficient to raise a genuine issue of fact as to whether the Museum Defendants acted intentionally and/or recklessly toward Plaintiff. *Forbes*, 124 S.W.3d at 172; Tex. R. Civ. P. 166a(i).

***b. The Museum Defendants' conduct was extreme and outrageous.***

A defendant's conduct is extreme and outrageous when it is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Tiller v. McLure*, 121 S.W.3d 709, 713 (Tex. 2003). In determining whether conduct is extreme and outrageous, the court may consider a course of harassing conduct. *GTE Sw., Inc. v. Bruce*, 998 S.W.2d 605, 616-17 (Tex. 1999).

Here, the Museum Defendants' conduct in lying to police regarding the VFM/Trust property line and failing to correct the police's misunderstanding regarding the property line despite having an abundance of information to correct such misunderstanding is extreme and outrageous behavior, especially when combined with the Museum Defendants' pattern of harassing Plaintiff over a period of years, including by: (1) Hospers defaming Plaintiff to

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<sup>91</sup> See, *supra*, section IV.1.a. above, and the evidence relied upon therein.

<sup>92</sup> Ex. 22 (WASHBURNE000569-570) (referring to Washburne as "suffering from . . . mental/personality disorders").

museum volunteers by claiming that Plaintiff had terminated someone working for him when, in fact, that person had voluntarily quit;<sup>93</sup> (2) Hoppers defaming Plaintiff to museum volunteers by claiming that Plaintiff had “cornered” Wood, when no such thing ever happened;<sup>94</sup> (3) refusing to investigate the theft charges against another museum tenant, and instead throwing out Plaintiff, the victim; terminating Plaintiff’s lease because he got into a dispute with a fellow tenant that stole from him;<sup>95</sup> (4) openly questioning Plaintiff’s mental stability;<sup>96</sup> (5) lying to police about Plaintiff striking Defendant Wood with his car;<sup>97</sup> (6) filing several false police reports;<sup>98</sup> and (7) publicly embarrassing Plaintiff by posting online photos depicting Plaintiff being detained by police and placed in a police cruiser, and including falsehoods with this posting.<sup>99</sup>

This evidence creates a genuine issue of fact as to whether the Museum Defendants actions were extreme and outrageous. *Forbes*, 124 S.W.3d at 172; Tex. R. Civ. P. 166a(i).

Because Plaintiff has evidence of each of the challenged elements of his intentional infliction of emotional distress claim, this Court should deny the Museum Defendants’ Motion as to this claim.

### **3. Negligence**

To prove an action for negligence, the plaintiff must establish: (1) the defendant owed a legal duty to the plaintiff; (2) the defendant breached the duty; and (3) the breach proximately caused the plaintiff’s injury. The Museum Defendants challenge Plaintiff’s evidence on each of these elements.

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<sup>93</sup> Ex. 1 at 26.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Ex. 22.

<sup>97</sup> Ex. 1 at ¶ 14.

<sup>98</sup> Ex. 9 (WASHBURNE 1172-94).

<sup>99</sup> Ex. 21.

**a. *The Museum Defendants owed a legal duty to Plaintiff.***

Individuals owe others a duty to use ordinary care in making representations and in ascertaining the accuracy of information given to others. *See, e.g., EDCO Prod., Inc. v. Hernandez*, 794 S.W.2d 69, 76-77 (Tex. App.—San Antonio 1990, writ denied); Restatement (2d) of Torts, § 311. Here, the Museum Defendants owed Plaintiff a legal duty to use ordinary care in making representations and ascertaining the accuracy of the information provided to Plaintiff and to the police.

**b. *The Museum Defendants breached their duty.***

The Museum Defendants breached their duty to Plaintiff by (1) representing to Plaintiff that he would not be arrested if he stayed on public property,<sup>100</sup> and (2) providing inaccurate information to the Fort Worth police concerning the VFM/Trust property line.<sup>101</sup>

**c. *The Museum Defendants' breach proximately caused Plaintiff's injuries.***

Unless the evidence is undisputed, proximate cause is typically a question of fact. *Ambrosio v. Carter's Shooting Ctr., Inc.*, 20 S.W.3d 262, 266 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). An act is the “proximate cause” of the plaintiff’s injuries when it is the cause-in-fact of the injuries and the injury was foreseeable. *Western Invs. V. Urena*, 162 S.W.3d 547, 551 (Tex. 2005).

Here, the evidence shows that the Museum Defendants’ acts were clearly the cause-in-fact of Plaintiff’s injuries. Plaintiff would not have suffered humiliation, reputational harm, emotional distress, and the expenses of defending himself against criminal charges had the Museum Defendants not wrongfully procured his arrest by supplying false information to the

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<sup>100</sup> Ex. 1 at 18.

<sup>101</sup> *See, supra*, section IV.1.a-c above, and the evidence relied upon therein



police.<sup>102</sup> Likewise, Plaintiff's injuries—typical of anyone who is arrested for something they did not do—were easily foreseeable by the Museum Defendants.

Because Plaintiff has evidence of each of the challenged elements of his negligence claim, this Court should deny the Museum Defendants' Motion as to this claim.

#### **4. Civil Conspiracy<sup>103</sup>**

To prove a civil conspiracy claim, a plaintiff must establish that: (1) the defendant was a member of a combination of two or more persons; (2) the objection of the combination was to accomplish (a) an unlawful purpose, or (b) a lawful purpose by unlawful means; (3) the members had a meeting of the minds on the object or course of action; (4) one of the members committed an unlawful, overt act to further the object or course of action; and (5) the plaintiff suffered injury as a proximate result of the wrongful act. The Museum Defendants challenge Plaintiff's evidence on each of these elements.

***a. The Museum Defendants were members of a combination of two or more persons.***

Each of the Museum Defendants—Monk, Gorin, Hospers, the VFM, and the Trust—were members of a combination with each other and with Defendant Wood. The Museum Defendants regularly communicated with each other and discussed their plans and strategy as it pertained to Plaintiff.<sup>104</sup> The entities in the combination—the VFM and the Trust—authorized the individuals, including Wood, to act on behalf of the combination with respect to Plaintiff.<sup>105</sup>

***b. The combination's object was an unlawful purpose.***

A combination to achieve a malicious prosecution can form the basis of a conspiracy claim. *Akin v. Dahl*, 661 S.W.2d 917, 921-22 (Tex. 1983). For the reasons and based on the

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<sup>102</sup> Ex. 1 at 25; Ex. 15; Ex. 16.

<sup>103</sup> The Court has previously dismissed Plaintiff's defamation claim against the Museum Defendants. Accordingly, Plaintiff will not address this claim in his response.

<sup>104</sup> *See, e.g.*, Ex. 19; Ex. 21; Ex. 24 (HM0043-45); Ex. 10; Ex. 12.

<sup>105</sup> Ex. 6 (trespass warning designating Wood as a representative of the VFM).

evidence set forth in section IV.1 above, the evidence demonstrates that the Museum Defendants' purpose in conspiring was to maliciously prosecute Plaintiff for trespass, a crime he did not commit.

***c. The members of the conspiracy—including the Museum Defendants—had a meeting of the minds concerning their unlawful purpose.***

Conspirators must have knowledge of the object of the conspiracy and have an agreement or understanding between them to inflict a wrong on another party. *San Antonio Credit Union v. O'Connor*, 115 S.W.3d 82, 91 (Tex. App.—San Antonio 2003, pet. denied). This agreement, though, may be proved by evidence of a course of conduct from which a tacit agreement to act in concert may be inferred. *See Wackman v. Rubsamen*, 602 F.3d 391, 409 (5th Cir. 2010).

For the reasons and evidence set forth in section IV.2.b above—which discussed the Museum Defendants' course of wrongful conduct against Plaintiff—the evidence shows that the Museum Defendants had a meeting of the minds concerning the purpose of their conspiracy to maliciously prosecute Plaintiff.

***d. One or more of the members of the conspiracy committed an unlawful, overt act in furtherance of the conspiracy.***

For the reasons and evidence set forth in Section IV.1 above—which discusses the Museum Defendants' and Wood's malicious prosecution of Plaintiff—the evidence shows one or more members of the conspiracy committed malicious prosecution—an unlawful, overt act—against Plaintiff in furtherance of the conspiracy.

***e. The wrongful act underlying the conspiracy proximately caused Plaintiff's damages.***

For the reasons and evidence set forth in Section IV.3.c above—which sets forth the proximate cause of Plaintiff's damages—the evidence demonstrates that the conspiracy's malicious prosecution of Plaintiff proximately caused his damages.

Because Plaintiff has evidence of each of the challenged elements of his civil conspiracy claim, this Court should deny the Museum Defendants' Motion as to this claim.

## **5. False Imprisonment**

To prove a claim for false imprisonment, a plaintiff must establish: (1) the defendant willfully detained the plaintiff; (2) the detention was without the plaintiff's consent; and (3) the detention was without legal authority or justification. The Museum Defendants challenge Plaintiff's evidence on elements (1) and (3) of this claim.

### ***a. The Museum Defendants willfully detained Plaintiff.***

Liability for false imprisonment extends to anyone who directs, requests, or participates in the arrest or detention of the plaintiff. *Wal-Mart Stores v. Rodriguez*, 92 S.W.3d 502, 506 (Tex. 2002).

For the reasons and evidence set forth above in section IV.1.a—which sets forth the Museum Defendants' initiation and/or procurement of Plaintiff's arrest for criminal trespass—the evidence demonstrates that the Museum Defendants directed, requested, and/or participated in the arrest or detention of Plaintiff. *Rodriguez*, 92 S.W.3d at 506. Notably, the Museum Defendants directed, requested, and/or participated not only in Plaintiff's arrest on April 27, 2014, but they also directed, requested, and/or participated in his temporary detention on April 26, 2014.<sup>106</sup>

### ***b. Plaintiff's detention was without legal authority or justification.***

When a plaintiff is arrested or detained without an arrest warrant, there is no presumption that the arrest or detention was legal, and the burden is on the defendant to show legal authority for the arrest or detention. *Cowboys Concert Hall-Arlington, Inc. v. Jones*, 2014 WL 1713472, at \*10 (Tex. App.—Fort Worth 2014, pet. denied).

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<sup>106</sup> Ex. 1 at ¶¶ 11-22; Ex. 6.

Here, the Museum Defendants clearly cannot carry their burden, as the evidence is undisputed that Plaintiff's arrest was without legal authority.<sup>107</sup> Monk, in his emails to the other Museum Defendants, admitted that Plaintiff had the right to be where he was when the Museum Defendants had him arrested.<sup>108</sup> And the police reports reflect that the charges were dropped against Plaintiff when it became apparent that the public records revealed that Plaintiff was not trespassing on either April 26 or April 27, 2014.<sup>109</sup>

Because Plaintiff has evidence of each of the challenged elements of his false imprisonment claim, this Court should deny the Museum Defendants' Motion as to this claim.

## **6. Vicarious Liability for Negligence of Employee or Agent**

An employer is vicariously liable for the negligence of (1) an agent or employee (2) acting within the scope of his or her agency or employment.” *Baptist Memorial Hosp. Sys. v. Sampson*, 969 S.W.2d 945, 947 (Tex. 1998). The Museum Defendants challenge Plaintiff's evidence on each of these elements.

### ***a. Hospers, Monk, Gorin, and Wood were agents or employees of the VFM and the Trust.***

A principal is liable for its agent's acts when the agent has actual or apparent authority to do those acts or when the principal ratifies those acts. *See Currey v. Lone Star Steel Co.*, 676 S.W.2d 205, 209 (Tex. App.—Fort Worth 1984, no writ) (actual and apparent authority); *Little v. Clark*, 592 S.W.2d 61, 64 (Tex. Civ. App.—Fort Worth 1979, writ ref'd n.r.e.).

### **1. Actual Authority**

Actual authority denotes the authority that a principal 1) intentionally confers upon on agent, 2) intentionally allows the agent to believe that he possess, or 3) allows an agent to believe

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<sup>107</sup> *See, supra*, evidence cited to and relied upon in Section IV.1..

<sup>108</sup> Ex. 10; Ex. 12.

<sup>109</sup> Ex. 9 (WASHBURNE001174).

that he or she possesses through want of due care. *Spring Garden 79U, Inc. v. Stewart Title Co.*, 874 S.W.2d 945, 948 (Tex. App.—Houston [1st Dist.] 1994, no writ). The evidence shows that the VFM and the Trust conferred actual and apparent authority on Hospers, Monk, Gorin, and Wood to act as their agent, representative, or employee.

Hospers, Monk, and Gorin all had actual authority to act on behalf of the VFM and the Trust, as they were intentionally conferred authority by the Trust and the VFM. *Spring Garden*, 874 S.W.2d at 948. Hospers and Monk were each directors of the VFM, which was owned and controlled by the Trust.<sup>110</sup> Gorin was the Director of Maintenance for the VFM.<sup>111</sup> Furthermore, Hospers explicitly authorized Gorin and Wood to call the police and get Plaintiff arrested.<sup>112</sup> Accordingly, Hospers, Monk, and Gorin were intentionally conferred actually authority by the Trust and the VFM.

Wood also had actual authority to act on behalf of the Trust and the VFM, as the Trust and VFM's want of due care allowed Wood to believe she had actual authority. When speaking to police on multiple occasions in April 2014, Wood held herself out to be a representative of the VFM, and held herself out as having authority to complain of an alleged trespasser on VFM and Trust property.<sup>113</sup> If the Trust and the VFM contend that Wood did not have authority to act on their behalf, they failed to take the steps necessary to disabuse Wood of that belief, thus conferring upon her actual authority. *See Spring Garden*, 874 S.W.2d at 948.

## 2. Ratification

A principal is also liable for an agent or employee's acts that the principal ratifies. To establish ratification, a plaintiff must show: (1) the plaintiff entered into a transaction with or was

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<sup>110</sup> Ex. 1 at 4.

<sup>111</sup> Ex. 9 (WASHBURNE001174); Ex. 1 at ¶ 5; Ex. 25.

<sup>112</sup> Ex. 1 at ¶¶ 11-22.

<sup>113</sup> Ex. 6; Ex. 9 (WASHBURNE001174)

injured by an agent or nonagent of the defendant; (2) the agent or nonagent committed the act on behalf of the defendant; (3) the defendant approved the act by word, act, or conduct after acquiring full knowledge of the act; and (4) the defendant's approval was given with the intention of giving validity to the agent's or nonagent's act. *See St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 536-37 (Tex. 2002); *Land Title Co. v. F.M. Stigler, Inc.*, 609 S.W.2d 754, 756-57 (Tex. 1980).

As shown by the evidence above, Plaintiff was harmed by Monk's, Gorin's, Wood's, and Hospers' acts in having him wrongfully arrested, providing false information to the police, and/or failing to correct the false information provided to the police. Furthermore, the evidence discussed above shows that the individual Museum Defendants acted on behalf of the Trust and VFM, as they were procuring Plaintiff's arrest for allegedly trespassing on the Trust's and VFM's property.<sup>114</sup>

These acts were approved by the Trust and VFM, at the very least through the Trust's and VFM's conduct after acquiring full knowledge of the act. Even before Plaintiff was arrested, but after the criminal trespass warning was issued, Plaintiff emailed Hospers and Monk—both directors of the Trust, which owned the VFM—explaining clearly and making Hospers and Monk fully aware that Wood was misrepresenting to the police the extent of the Trust/VFM property line.<sup>115</sup> To convey the severity of the issue, Plaintiff wrote in large fonts, used bold and differing colors, and added that Plaintiff would seek legal action if necessary to correct Wood's misrepresentations to the police.<sup>116</sup> Despite this knowledge, the Trust and the VFM took *no action* to inhibit Wood from calling the police the very next day and committing the same

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<sup>114</sup> *See, e.g., Ex. 17* (HM0017) (telling Washburne “on behalf of” the Trust, that the Museum Defendants would pursue criminal trespass charges against Washburne).

<sup>115</sup> *Ex. 7*.

<sup>116</sup> *Id.*

wrongful acts on behalf of the Trust/VFM. The Trust and the VFM accepted the benefit of Wood's actions—Plaintiff's wrongful arrest—knowing that they could have repudiated Wood's actions but choosing not to do so. *See Household Credit Servs. v. Driscoll*, 989 S.W.2d 72, 87 (Tex. App.—El Paso 1998, pet. denied) (holding that plaintiff proved defendant's ratification of agent's improper acts when the defendant allowed improper acts on its behalf to continue after notice of the impropriety of agent's actions). For these same reasons, the evidence shows that the Trust and the VFM approved of Wood's actions with the intent of validating her acts. *See Motel Enters. v. Nobani*, 784 S.W.2d 545, 547 (Tex. App.—Houston [1st Dist.] 1990, no writ) (holding that an intent to give validity may be inferred when the defendant retains the benefit of an agent's improper actions with full knowledge surrounding the improper act).

Because Plaintiff has evidence of each of the challenged elements of his theory of the Trust and VFM's vicarious liability for the negligent acts of Monk, Hospers, Wood, and Gorin, this Court should deny the Museum Defendants' Motion as to this theory.

#### **7. Vicarious Liability for Intentional Tort by Agent or Representative**

The Museum Defendants' No-Evidence Motion misstates the law as it pertains to a principal's vicarious liability for the intentional torts of its agents or representatives. The principal's vicarious liability for such actions are not limited, as the Museum Defendants contend, to only those acts committed by "vice principals."<sup>117</sup> Rather, a principal is liable for its agent's torts, including intentional torts, when the acts constituting the tort were either authorized by the employer or closely connected with the agent's authorized duties. *See GTE Sw., Inc. v. Bruce*, 998 S.W.2d 605, 617-18 (Tex. 1999). An agent's status, *vel non*, as a vice-principal is only relevant when the acts complained of are outside the agent's scope. *Id.* at 618.

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<sup>117</sup> *See* Motion, at ¶ 37.

For the reasons discussed in Section IV.6 above, Hospers, Wood, Gorin, and Monk were acting within the course of the authority conferred upon them by the Trust and the VFM when they initiated and procured Plaintiff's wrongful arrest and false imprisonment. Accordingly, their status as "vice principals" of the Trust or VFM are irrelevant to the Trust and VFM's vicarious liability for their actions. *GTE Sw.*, 998 S.W.2d at 617-18.<sup>118</sup>

Because Plaintiff has evidence of each of the challenged elements of his theory of the Trust and VFM's vicarious liability for the intentional acts of Monk, Hospers, Wood, and Gorin, this Court should deny the Museum Defendants' Motion as to this theory.<sup>119</sup>

## V. CONCLUSION

For the foregoing reasons, Plaintiff Seth Washburne respectfully requests that the Court deny the Museum Defendants' No-Evidence Motion for Summary Judgment, and requests all further relief at law or in equity to which he may be justly entitled.

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<sup>118</sup> Nevertheless, Hospers and Monk, as directors of the Trust, which owns the VFM, are clearly vice-principals of the Trust and VFM. *See Bennett v. Reynolds*, 315 S.W.3d 867, 884 (Tex. 2010) (a person who manages all or part of the defendant's business is a vice-principal). Accordingly, the Trust and VFM are automatically liable for Hospers' and Monk's actions, regardless of whether those acts were committed in the course of their duties for the Trust and VFM. *See GTE Sw.*, 998 S.W.2d at 618.

<sup>119</sup> The Museum Defendants also challenge Washburne's evidence on his "concert of action" theory of liability. Washburne intends to amend his petition in the coming weeks and will be dropping the "concert of action" theory of liability from his pleadings.



DATED: November 22, 2016

Respectfully submitted,

/s/ Kent D. Krabill

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-service* on November 22, 2016.

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/s/ Kent D. Krabill

Kent D. Krabill



progress on Billie, I relocated to Texas to more closely observe the restoration. In connection therewith, I had leased space at the VFM to continue my restoration efforts.

3. I had a falling out with Terry and others who were hired to work on Billie, due to their negligent and/or defective work on Billie and Terry's theft of more than seventy of my airplane parts. As a result of the theft, I filed criminal theft charges against Mr. Terry. I provided the VFM clear, detailed evidence of Terry's crimes, but did not otherwise discuss this issue much around the VFM, so as to not cause a distraction for others. When I filed these charges, Defendant Dana Wood, who was serving as Terry's marketing person and who relied on Terry for her income, started behaving in a hostile manner toward me. Also during this time—specifically in April and June 2012—Defendant Hospers exhibited hostility toward me by twice lying about me to VFM volunteers in order to agitate the volunteers against me. Terry was apparently successful in turning the VFM—and the other Museum Defendants—against me, as they sided with Terry in this dispute and engaged a retaliatory campaign against me, including the VFM's termination of my lease and culminating in my wrongful arrest and imprisonment.

4. In September 2012, I had Fort Worth detectives visit the VFM in order to investigate Terry's massive theft against me. Within two weeks of the detectives' visit to the VFM, the VFM's three-member board of directors—which included Monk and Hospers—voted to terminate my lease.

5. In early 2013, I received several invitations to a March 2, 2013 parts auction, hosted by Terry's company and taking place at the VFM. The auction catalog appearing online before the auction showed a navigator's dome, identical to one that Terry stole from me. I wanted to attend the auction to see if I could recover this stolen part. I was also interested in seeing if any of my other stolen parts were placed for auction, and I wanted to return certain

items given to me by Defendant Gorin—the director of maintenance at the VFM. Accordingly, I traveled to the VFM for the auction on March 2, 2013.

6. I drove to the west end of NW 38th Street—an area of public property. An armed security guard standing in the street met me, demanded my name, and, upon receiving my name, called for “backup,” and motioned for a nearby policewoman to come over. In all my prior visits to the VFM, I had never seen police officers or armed security guards providing security to the VFM. I discovered that the police and security were hired specifically to prevent me from coming onto VFM property, even though I had been explicitly invited to the auction. Then, the police officer told me I was trespassing, even though I was still in my car on the public road and had not traveled onto any private property.

7. Through these discussion, and based on what I observed, it became apparent that Dana Wood, an admitted representative of the VFM, the Trust, and Hospers, misrepresented to the police that, if I drove up NW 38th street, I would be on the Trust’s property without permission. As a result of this misrepresentation, the police officer issued a warning to me not to return to “505 NW 38th Street,” despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land, and threatened to arrest me if I returned anywhere on NW 38th Street west of Ross Avenue.

8. Disturbed by receiving a trespass “warning” while I was stopped momentarily on what I believed to be public property, I investigated online the property line for the lots owned by Charlyn Hospers and her relatives, and discovered quite easily online the true property line of the Trust. Realizing this contradicted with the prior representations the Museum Defendants and Wood had made to the police, I took great effort to demonstrate and explain to the Museum Defendants where the property line was. For example, on April 13, 2013, I emailed Monk—a

director for the VFM—and attached documents from the Tarrant Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust did not, in fact, own NW 38th Street or Von Avenue, as Wood had represented to the police. Monk failed to respond.

9. On April 15, 2013, I again sent Monk an email regarding the Trust/VFM property line, this time attaching a distribution deed—drafted by Monk and signed by Hospers less than six months earlier—clearly identifying all of the lots owned by the Trust. This time, Monk forwarded this email to Hospers, copying Plaintiff, asking for direction on responding to my evidence regarding the property line.

10. In October 2013, I filed suit against Jim Terry, VFM Life Member Patrick Mahaffey, and others, detailing the wrongs they had committed against me in connection with the restoration of Billie. This lawsuit received substantial publicity and was covered by multiple news outlets. Also, in early 2014, as a result of the VFM essentially siding with Terry, I from approximately January to March 2013 added a page which detailed the problems with the VFM on my website regarding the Thirsty 13th squadron, and on January 30, 2014 made a post which was not favorable about the VFM on the website Yelp and on February 13, 2014, on the website TripAdvisor. These were removed May 13, 2014, and May 11, 2014, respectively, due to my having a business dispute with VFM, and so not meeting their guidelines of being independent reviews.

11. In early 2014, Terry and Wood again invited me to an event at the hangar at the VFM, just as they had more than 30 times in the prior year. I declined the invitation, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 because (1) it was on my route for an errand I was running that day, (2) I wanted to perhaps observe a B-29 plane and the hanger in which it was held, and (3) to see if Terry was in town, as he had been

avoiding responding to discovery in my lawsuit against him on the alleged basis that he was out of town.

12. I stayed on public roads and stopped just before the end of NW 38th Street, where Wood had set up a traffic cone and tent to collect payment to attend an event, even though Wood's actions blocked access to a public street. I expected to have a friendly chat with Wood. I explained to Wood that I wished to travel down Von Avenue to view the B-29 plane and the building in which it was housed. I also explained that 38th Street and Von Avenue were public roads—I even offered Wood the proof of this in the form of public records—and said that I had explained this to Monk, and that Monk had not contradicted my understanding. Wood refused to look at the documents and simply said she was not going to let me travel down the public roads. Shortly thereafter, although I remained on the public roads, the VFM—through Wood—called the police on me.

13. The VFM, through Wood, represented to the police that it had actual awareness of the ownership of the property at issue and represented that I was trespassing. These misrepresentations resulted in the officers manhandling me, temporarily detaining me in a police cruiser, wrongly informing me that I was trespassing, and stating that I would be arrested if I returned to “505 NW 38th Street.” As a result of Wood's misrepresentations—made on behalf of the VFM and the Trust—the police wrongfully issued me a “Trespass Warning.”

14. In addition, Wood—on behalf of the VFM and the Trust—filed false police reports against me replete with lies, including a report that I had struck her with my car, when in reality she had run into his car while it was stationary.

15. The Trust, VFM, Hospers, Monk, and Gorin all allowed Wood to act as the VFM and Trust's representative in procuring this false Trespass Warning.

16. During the evening of April 26, 2014, I emailed Hospers, Monk, and Wood demanding that they stop lying to the police—and demanding that the Museum Defendants stop Wood from lying on their behalf—about the VFM/Trust property line, and again I provided Hospers, Monk, and Wood with the public records showing the extent of the VFM/Trust property. I wrote in large, bold, red and blue font to get their attention.

17. On April 27, 2014, I notified the Museum Defendants that I intended to drive to the end of NW 38th Street—which the undisputed public records which I had previously provided to the Museum Defendants demonstrated was public property—and look out at the airplanes at Meacham Airport. I requested that Monk or Hospers confirm that the matter of the VFM/Trust property line had been cleared up with the Museum Defendants and Wood.

18. At 2:05 p.m. on April 27, Monk called me and confirmed that I was allowed to park anywhere on NW 38th Street, including along the fence at the west end of the street, and the Museum Defendants would not consider me to be trespassing on the Trust's property. Monk even clarified exactly where the Trust/VFM property began and ended, and he assured me that he had informed Hospers and Wood of these facts. Monk also confirmed that the Museum Defendants would not involve the police if I parked where Monk and I discussed.

19. At around 4:45 p.m. on April 27, I arrived at NW 38th Street near the VFM and parked exactly where Monk had told me I could park (and where the public records demonstrated that it was public property). I did not drive onto the Trust/VFM property, but stayed strictly on public roads the entire time.

20. Shortly thereafter, two police cars arrived at my car, and Wood and Gorin appeared, wrongfully telling the police that I was trespassing. The police reports reveal that

Gorin represented to the police the alleged boundaries of the Trust/VFM property lines. Of course, Gorin's representations were wrong.

21. I immediately called Monk so that Monk could inform the police and the other Museum representatives of the information he had told me less than three hours earlier. While Monk briefly responded to me, he refused to speak to Wood, Gorin, or the police and refused to correct Wood and Gorin's misrepresentations that I was trespassing on Trust/VFM property. I tried to call Monk again multiple times. Monk answered once more, but hung up after I identified myself. Monk ignored my next two calls, leaving the police to believe the lies of Gorin and Wood regarding the property line.

22. Based on the Museum Defendants' misrepresentations regarding the Trust/VFM property line, the police arrested me for criminal trespass. The police handcuffed me, placed me in a police cruiser, and took me to the Fort Worth jail around 5:45 p.m.

23. I spent six more hours in the Fort Worth Jail, with other accused criminals, before being transported to the prison at Mansfield, Texas, where I spent the night and had my mugshot taken. I was finally released the next morning and got a van back to Fort Worth, arriving more than 18 hours after I was wrongfully arrested.

24. After my arrest, during the scope of the investigation into my charges, law enforcement and the prosecution determined that I was, in fact, right about the property lines all along. They determined that my car and I were on public property—as Monk and the other Museum Defendants knew or should have known—and, accordingly, that I should not be prosecuted (and should have never been arrested). For these reasons, the charges were dropped against me.



25. Even though the charges were dropped, my prison stay was a harrowing experience. I am a lifelong professional, had never experienced any legal troubles with the police, and was never mentioned in a police report in my entire life until the Museum Defendants' and Wood's (successful) campaign to defame me and get me wrongfully arrested. In addition to suffering shame, humiliation, reputational damage, and emotional distress, I incurred the expense of hiring a criminal attorney to defend me against the Museum Defendants' false accusations and paying for a professional survey to be completed to provide my attorney with the necessary information to defend me against the charges.

26. In addition to the above, the Museum Defendants took other action in the course of their pattern of harassment against me, including (1) Hospers defaming me to museum volunteers by claiming that I had terminated someone who was working for me, when in fact that person had voluntarily quit; (2) Hospers defaming me to museum volunteers by claiming that I had "cornered" Wood, when no such thing ever happened; and (3) refusing to investigate the theft charges against Jim Terry, and instead terminating my lease and throwing me out.

27. Exhibits 2-5, 7-10, 12-13, 15-16, 18, and 20-22 attached Plaintiff's Response to Defendants' No-Evidence Motion are true and correct copies of records I kept related to my interactions with the Museum Defendants. Emails sent from me included in these Exhibits are true and correct copies of the emails sent, which I provided to my attorneys and which have been produced in this case. Emails received by me are true and correct copies of the emails received, which I provided to my attorneys and which have been produced in this case.

28. Exhibit 2 is a true and correct copy of Greatest Generation Aircraft's digital advertisement for their March 2, 2013 parts auction.

29. Exhibits 9 and 18 are true and correct copies of police reports I received from the Fort Worth police department, and Exhibit 13 is a true and correct copy of documents I received from the Fort Worth police department related to my interactions with the Museum Defendants.

30. Exhibits 10, 12, and 20 are true and correct copies of documents I retrieved from a Google drive—the link to which was provided in documents produced by the Defendants in this case.

31. Exhibit 15 is a true and correct copy of a receipt for a payment I made to Scott Brown, my criminal attorney.

32. Exhibit 16 is a true and correct copy of a receipt and an invoice for payments I made to Sempco Surveying, Inc., which was provided surveying services in connection with my defense against the criminal charges filed against me.

33. Exhibit 22 is a true and correct copy of a documents that was included in a book that was returned to me by Jim Hocker.

34. My name is Seth Washburne. My date of birth is November 4, 1959, and my current address is 5200 Meadowcreek Dr., Apt. 2060, Dallas, Texas 75248. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the 22<sup>nd</sup> day of November, 2016.

  
Seth P. Washburne

Exhibit 49: Deleted

Exhibit 50: 2017 10 24 - 12.54 pm Turner to Seth

## Seth Washburne

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**From:** Randy Turner [Randy@RandyTurner.com]  
**Sent:** Tuesday, October 24, 2017 12:54 PM  
**To:** Seth Washburne  
**Subject:** RE: Proposed Amounts

Seth:

Your confidence that this case will not go to trial on Dec. 4 is greatly misguided, even if you somehow find a person with a law license who is desperate enough to take your case. There have been four continuances and you have had several months to hire an attorney before the Dec. 4 trial setting. I would be utterly shocked if the judge granted another continuance. I'm sure this is by far the oldest case on her docket. How do you think she is going to feel about your waiting several weeks after your lawyers were discharged before you even started looking for a new lawyer? And, trust me, she is not going to be impressed that you spent months attending to personal matters before you started looking. You have had plenty of time if you had made this case a priority.

As far as Chuckie coming out ahead with a \$50,000 settlement, that is absurd. She had already paid me an enormous amount of money before the Rule 167 letter was sent. If you pay \$50,000 in settlement she will still be taking a huge loss. By the way, Chuckie was never willing to pay \$65,000. You apparently either misunderstood what Hal told you or he was trying to get on your good side. She was willing to pay a small amount at the mediation but only if you signed a confidentiality/non-disparagement agreement. As you know, that has always been her main concern in this case. She knows we are eventually going to win. She still does not want to forgo such an agreement and was only willing to do if she could get this over with right away. You have managed to wear her down. She is well aware of the damage that will likely be done to VFM on the internet (although you are advised it will be watched very closely by me for defamatory content.)

At this point, Chuckie wants to gear this back up and try the case to a verdict. If VFM is going to be trashed on the internet then she wants you to pay all of her attorney's fees from the date of the Rule 167 letter to the date of verdict or appeal, in addition to your new attorney's fees. I think she has a 99% chance of winning this case and recovering all of her attorney's fees from you. This is not wishful thinking on my part. Your own attorneys, who were all seasoned and extremely competent (especially Kent Krabill), had the same very same opinion. At this stage, I can promise you that any lawyer who tells you that you have any chance of winning has not reviewed the file and depositions, has not talked to your previous lawyers, and is telling you what you want to hear in order to get a fat retainer.

In an effort to help resolve this I am willing to waive \$5,000 in attorney's fees and do a total settlement of \$45,000. However, I am not willing to wait around for you to consult more lawyers who will need to spend hours reviewing the case in order to be able to give you an opinion on whether it is a good settlement. And I am not willing to spend more hours on this case before the judge rules on your motion for continuance. You are correct—the judge is not going to rule on your “motion to determine Rule 167 fees” because it is premature; that hearing will be after the trial. My offer to settle for \$45,000 will be open until 5:00 p.m. today. If it is not accepted by that time it is officially withdrawn without further notice and our offer will go to \$85,000 and a confidentiality/non-disparagement clause.

Randy

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**From:** Seth Washburne [mailto:sethpw1@gmail.com]  
**Sent:** Tuesday, October 24, 2017 11:45 AM  
**To:** Randy Turner <Randy@RandyTurner.com>  
**Subject:** Proposed Amounts

Randy,

On February 9 with the Rule 167 agreement Chuckie was willing to pay me \$22,000. If I paid all of her legal fees through September 20 of \$38,000 to you, and Burgess' fees, which should have been perhaps \$5,000, \$43,000 total, she would have no other costs since then than that \$22,000, and I would pay a net \$21,000. This seems like the correct number, each out almost the exact same amount.

Regarding the \$50,000 you allege incurring since October 4, in less than three weeks:

- a) You knew I had filed a motion a week before this to continue the trial setting.
- b) You knew I had no lawyer, so it was unlikely the case would go to trial in December.
- c) Under the prior trial date, you had only three weeks between mediation and the trial, and so had done all but 3-weeks' worth of work, and so could again have waited until 3 weeks prior to the new trial date to finish preparing. So it seems you are taking advantage of the last continuance to now take 8 weeks to prepare, when you previously needed only three.
- d) My prior email asked "Would Hospers pay the \$55,000 difference between your \$30,500 and the asserted \$87,500, or would you write that off?", and you did not say. The fact that you dropped your fees by \$55,000 makes me wonder how real that was.

Paying \$50,000 effectively gives Chuckie \$29,000 more, to be spread around. If \$12,000 of that goes to her, such that she still effectively pays me my \$10,000 costs, then I get zero for pain and suffering, and there is \$17,000 more for you and Burgess, which I think is too much.

On June 29, according to Hal, Chuckie was willing to pay me \$65,000 and pay all of your and Charlie's fees of maybe \$35,000 at that time, i.e. she was willing to pay \$100,000 to end it, and this is 180° the opposite, with me paying her \$50,000, so this seems particularly unfair by that measure. One could argue a better option is we agree I drop it and pay \$0.

I also have the HUGE, NEVER-ENDING cost the REST OF MY LIFE of living with the horrible thing she did to me, of being handcuffed, thrown in jail, transported to another prison, and spending a horrendous night in prison. She will forget all about this and go on her merry way, but I will be reminded of it every time I pass a billboard such as that in the attachment, every time I watch a movie or show and at the end they handcuff the bad guys, and many, many more times. She has permanently hurt my personality and happiness in life.

So I am not comfortable with the \$50,000 number. If you want to come back with a lower number I would think about it.

I also want to get some legal advice on this, so want to keep calling firms until I get one who would take the case, and see what they think. If they would take it, I will not immediately go ahead with them, but rather will ask them what they think the amount should be. It is my preference to end this, but I don't want to learn later that I was a fool to do so.

Also I expect to withdraw the Terry case today or tomorrow, and want to see how I feel after I do that. Perhaps after that I will be more up to fight this battle.

Regarding your working on the case every day, i.e. preparing for trial, you know darn well I will not be going to trial December 4, because I do not have a lawyer, so you should not be working on this case and billing time, and it is unreasonable for you to do so.

I received three rejections this morning from lawyers, from Brandy Austin, Randall Moore, and Gerald Bates, and several yesterday, from Kent Krause of CDK in Dallas, Hutchison & Stoy, and others I called who said they do not do this type of case, or it is too close to the trial date.

Regarding the hearing Thursday, I plan today to file the Certificates of Conference, that you and Burgess oppose the prior motions, so that step is done, and file the notification letter Patricia Cannon said I had to file. Part of me would like to go ahead with that hearing, with the motion to compel the net worth statements, and to delay the trial setting.

Regarding a continuance, I plan to point out to the judge:

1. Your prior email states "For several reasons, I would be shocked if any lawyer took your case. Second, any lawyer who is so desperate for a 6-figure fee that he or she would be willing to take a case this complex only 5 weeks before trial is a lawyer I very much look forward to going up against.", so even you think it will be impossible for me to find a lawyer.
2. My list of those I talked to who have rejected this.
3. Part of the lost time was the three weeks I waited for you to reply to my asking if we could settle this, so the time elapsed is not entirely my fault.
4. You set that trial date knowing I would not be able to respond, and not following what I believe were her instructions to work together with me for a new date, so knew you would be jamming me with this.

I would hope she grants a continuance.

As for asking her to rule on what Rule 167 fees should be before I withdraw the suit, based on comments from John Dowdy it appears that is unlikely, so I would ask this last, but she will probably say no.

So the main items to argue on Thursday are first about a continuance, and second about net worth statements. If Chuckie wants to let me end this before then for \$0, I would do so, and might for \$21,000.

Seth

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**From:** Randy Turner [<mailto:Randy@RandyTurner.com>]  
**Sent:** Tuesday, October 24, 2017 9:31 AM  
**To:** Seth Washburne  
**Subject:** RE: Charlie's Fees \$24,500

Seth, I am literally working on this case every day now and would like to shut it down if we are going to settle. I also need to know whether I need to file a response to your latest motion and prepare for the hearing this Thursday. Please let me know if you are agreeable with the proposal in my last email.

Thank you.

**Law Offices of Randall E. Turner, PLLC**

5017 El Campo Avenue  
Fort Worth, Texas 76107  
Tel: (817) 420-9690  
Fax: (817) 887-5717  
[www.randyturner.com](http://www.randyturner.com)



---

**From:** Randy Turner  
**Sent:** Monday, October 23, 2017 4:32 PM  
**To:** 'Seth Washburne' <[sethgw1@gmail.com](mailto:sethgw1@gmail.com)>  
**Subject:** RE: Charlie's Fees \$24,500

Seth, I spent a long time talking to Charlie and Chuckie (who spent a long time talking to her family, including her son who is a lawyer in San Antonio.) I've gotten everyone to agree on final numbers and if we can split the difference with you paying a total of \$50,000. This will include dismissal of your lawsuit with prejudice, no confidentiality/non-disparagement clause, and each side pays their own court costs (such as court-reporters, filing fees, etc.—court costs have already been paid as they were incurred.)

I hope you can do this. No one is willing to budge any more.

**Law Offices of Randall E. Turner, PLLC**

5017 El Campo Avenue  
Fort Worth, Texas 76107  
Tel: (817) 420-9690



Fax: (817) 887-5717  
[www.randyturner.com](http://www.randyturner.com)



---

**From:** Randy Turner  
**Sent:** Monday, October 23, 2017 3:01 PM  
**To:** 'Seth Washburne' <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Subject:** RE: Charlie's Fees \$24,500

I will talk to Chuckie. She will want to talk to her family so I may not be able to get back to you until tomorrow.

**Law Offices of Randall E. Turner, PLLC**

5017 El Campo Avenue  
Fort Worth, Texas 76107  
Tel: (817) 420-9690  
Fax: (817) 887-5717  
[www.randyturner.com](http://www.randyturner.com)



---

**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]  
**Sent:** Monday, October 23, 2017 2:54 PM  
**To:** Randy Turner <[Randy@RandyTurner.com](mailto:Randy@RandyTurner.com)>  
**Subject:** RE: Charlie's Fees \$24,500

Randy,

Thanks for this reply. Will you please try to talk Charlie down to a lower number? That is an absurd and not believable amount, based on his doing almost zero work on this case, and letting you do everything.

Please see if he would come down to \$15,000, for \$45,000 total.

Would Hospers pay the \$55,000 difference between your \$30,500 and the actual \$87,500, or would you write that off?

Seth

---

**From:** Randy Turner [<mailto:Randy@RandyTurner.com>]  
**Sent:** Monday, October 23, 2017 2:37 PM  
**To:** Seth Washburne  
**Subject:** RE: Charlie's Fees \$24,500

Seth, first let me say, with all due respect, that I am not even slightly concerned about the possibility of a lawyer taking your case. For several reasons, I would be shocked if any lawyer took your case. Second, any lawyer who is so desperate for a 6-figure fee that he or she would be willing to take a case this complex only 5 weeks before trial is a lawyer I very much look forward to going up against.

I just talked to Charlie. As you said, he is willing to take \$24,500. I would be willing to recommend a payment of \$30,500 for our side. As your motion states, I have done substantially more work on the case than he has. This would be a total of \$55,000 paid by you. In return, we would need a dismissal with prejudice (meaning the lawsuit cannot be refiled.)

Randy

**Law Offices of Randall E. Turner, PLLC**

5017 El Campo Avenue  
Fort Worth, Texas 76107  
Tel: (817) 420-9690  
Fax: (817) 887-5717  
[www.randyturner.com](http://www.randyturner.com)



---

**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]  
**Sent:** Monday, October 23, 2017 2:06 PM  
**To:** Randy Turner <[Randy@RandyTurner.com](mailto:Randy@RandyTurner.com)>  
**Subject:** Charlie's Fees \$24,500

Randy,

Charlie just emailed me that he his Rule 167 fees in this museum case are a minimum of \$24,500, which is astonishing, and I think not correct. Please coordinate with him to come up with a combined number.

I just emailed a third firm, and will contact some more today.

Seth

---

**From:** Charlie Burgess [<mailto:cburgess72@yahoo.com>]

**Sent:** Monday, October 23, 2017 1:59 PM

**To:** Seth Washburne

**Subject:** Re: Hearing on Thursday at 3:30 p.m.

Mr. Washburne,

For the purposes of settlement negotiations of my client Dana Wood, the minimum level for rule 167 attorneys fees is \$24,500.

My phone # [817-808-4731](tel:817-808-4731).

On Monday, October 23, 2017, 12:45 PM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Charlie,

Thanks for your reply.

1. Is it ok with you if the hearing goes forward without you? Randy Turner is available and can speak for you. I don't know the procedure here, whether your unavailability means I need to let the court know and cancel this.

2. I have previously requested your Rule 167 fees since the settlement offer from Dana Wood, and have not received this. May I please learn where you are at on those for this museum case?

3. Is there a minimum level of Rule 167 fees in the museum case you would accept if I dropped this suit?

Today I contacted three law firms to take this museum case, and might still go forward if you all want a lot of Rule 167 fees.

Thank you.

Seth

---

**From:** Charlie Burgess [<mailto:cburgess72@yahoo.com>]  
**Sent:** Monday, October 23, 2017 12:10 PM  
**To:** Seth Washburne; 'Randy Turner'  
**Subject:** Re: Hearing on Thursday at 3:30 p.m.

Mr. Washburne,

I am not available Thursday afternoon, I have a prior court already set.

My phone # [817-808-4731](tel:817-808-4731).

On Monday, October 23, 2017, 10:35 AM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Randy and Charlie,

As you should be aware:

1. On June 29, 2017, my prior counsel, Kent Krabill, filed Plaintiff's Motion to Compel Documents Evidencing Defendants' Net Worth.
2. On September 28, 2017, I filed an Emergency Motion to Continue the Trial and Abate this Case to Retain Counsel.

On Monday, October 23, 2017, I emailed court coordinator Patricia Cannon inquiring why the first two motions were never set to hearing, and she said that neither included a Certificate of Conference or a Blank Fiat.

I would like to also file today the attached Plaintiff's Emergency Motion for an Immediate Hearing to Determine Court-Ordered Rule 167 Fees.

I would like to now send in a Certificate of Conference for each of these three motions, and so would you each please let me know your disposition toward each of these?

Secondly, Ms. Cannon asked how much time I would need for a hearing, and I said "15 minutes," and she said she could give me 15 to 20 minutes this Thursday, October 26, 2017, at 3:30 p.m. She indicated I would have to send a notification letter to Defendants' Counsel, and efile this, so attached is such a letter.

Before I efile this, may I please learn whether either of you have any objection to or conflict with this hearing time?

Thank you.

Seth P. Washburne

5200 Meadowcreek Drive, Apt. 2060

Dallas, TX 75248

[\(212\) 289-1506](tel:(212)289-1506)

Exhibit 51: KDK to Court Coordinator 6-30-17 with Fiat re Emergency Motion to Withdraw, Emergency Motion to Continue Trial Date, and Emergency Motion to Withdraw

# LYNN PINKER COX HURST

KENT D. KRABILL  
Partner  
D 214 981 3831  
F 214 981 3839  
kkrabill@lynnllp.com

Lynn Pinker Cox & Hurst, LLP  
2100 Ross Avenue  
Suite 2700  
Dallas, Texas 75201  
[lynnllp.com](http://lynnllp.com)

FILED  
TARRANT COUNTY  
6/30/2017 10:21 AM  
THOMAS A. WILDER  
DISTRICT CLERK

June 30, 2017

Patricia Cannon, Court Coordinator  
153rd District Court  
Tom Vandergriff Civil Courts Building  
100 N. Calhoun Street, 3rd Floor  
Fort Worth, TX 76196

Re: Cause No. 153-275478-14; *Seth Washburne v. Vintage Flying Museum, Inc., et al.*

Ms. Cannon:

Attached is a Fiat for setting the hearing on the *Emergency Motion to Withdraw* filed today with the Court.

Should you have any questions, please do not hesitate to contact my office.

Sincerely,



Kent D. Krabill

KDK/sd

cc: Opposing Counsel (via e-service)

CAUSE NO. 153-275478-14

SETH WASHBURNE,

Plaintiff,

v.

VINTAGE FLYING MUSEUM, INC.,  
HOSPERS FAMILY TRUST "D",  
CHARLYN HOSPERS, BILL GORIN, and  
DANA WOOD,

Defendants.

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IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

153RD JUDICIAL DISTRICT

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FIAT

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The *Emergency Motion to Withdraw* is hereby set for hearing on \_\_\_\_\_ at \_\_\_\_\_ in the 153<sup>rd</sup> Judicial District Court of Tarrant County, Texas, Tom Vandergriff Civil Courts Building, 100 North Calhoun Street, Third Floor, Fort Worth, Texas 76196.

SIGNED on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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JUDGE PRESIDING





5. Counsel for Defendants Charlie Burgess and Randy Turner are unopposed to this motion.

6. In order to avoid prejudice and allow Plaintiff to obtain substitute counsel, counsel for Plaintiff requests that this Court continue the trial date for at least 30 days.

### **ARGUMENT AND AUTHORITIES**

The decision to grant a continuance of trial is within the wide discretion of the trial court. *5 Star Diamond, LLC v. Singh*, 369 S.W.3d 572, 580 (Tex. App. – Dallas 2012, no pet.) (citing *State v. Wood Oil Distrib., Inc.*, 751 S.W.2d 863, 865 (Tex.1988)). A court has the discretion to continue a case when a party's attorney is unavailable for trial if the motion shows proof of good cause. Tex. R. Civ. P. 253. To establish good cause, the moving party must (1) state the reasons for the attorney's unavailability, (2) show that the attorney's unavailability is not the result of the movant's own fault or negligence, and (3) explain why another attorney at the firm cannot handle the trial.

Here, as set forth in the Emergency Motion to Withdraw filed earlier today, irreconcilable differences of opinion have arisen between counsel for Plaintiff and Mr. Washburne, necessitating the termination of their attorney-client relationship. This withdrawal is not the result of counsel's own fault or negligence. Due to the sensitive nature of the reasons supporting withdrawal, counsel has not included specifics here. Counsel is prepared to provide such specific information to this Court at the hearing on the Emergency Motion to Withdraw, including *in camera* if necessary. This information will also explain why another attorney at the firm cannot handle the trial. See Exhibit 1 (Krabill Affidavit).

Accordingly, counsel for Plaintiff requests that this trial setting be continued for at least 30 days.

The continuance is not sought for delay only but that justice may be done.

**REQUEST FOR EMERGENCY HEARING**

Pursuant to Tarrant County Local Rule 3.02, this motion is filed timely and will be heard by the Court in the courtroom at 2:00 p.m. on the Thursday preceding the trial date, which will be July 20, 2017. Alternatively, Defendants and counsel for Plaintiff are agreeable to this motion being heard simultaneously with the Emergency Motion to Withdraw, which counsel for Plaintiffs have requested to be set on July 14, 2017 at 10:00 a.m.

**CONCLUSION**

For the foregoing reasons, counsel for Plaintiff respectfully requests that the trial date be continued at least 30 days.

DATED: June 30, 2017

Respectfully submitted,

*/s/ Kent D. Krabill*

---

Kent D. Krabill

State Bar No. 24060115

kkrabill@lynnllp.com

Jonathan D. Kelley

Texas Bar No. 24090202

jkelly@lynnllp.com

LYNN PINKER COX & HURST, L.L.P.

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

Telephone: 214.981.3800

Facsimile: 214.981.3839

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF CONFERENCE**

Plaintiff Seth Washburne is opposed to the relief sought in this motion. A conference was held on June 30, 2017 with counsel for the Defendants on the merits of this Motion, and both are unopposed to the relief sought in this motion.

*/s/ Kent D. Krabill*

\_\_\_\_\_  
Kent D. Krabill

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing document was served upon counsel of record herein *via e-service* and e-mail June 30, 2017:

Randall E Turner

[randy@randyturner.com](mailto:randy@randyturner.com)

Law Offices of Randall E. Turner, PLLC

4255 Bryant Irvin Rd., Ste. 210

Fort Worth, TX 76109

Charles Burgess

[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)

Attorney at Law

521 N. Riverside Dr.

Fort Worth, TX 76111

I further certify that a true and correct copy of the above and foregoing document was served upon Plaintiff Seth Washburne *via* Certified Mail and e-mail June 30, 2017:

**Via CMRRR # 7014 0150 0001 9537 9659**

Seth Washburne

[sethpw1@gmail.com](mailto:sethpw1@gmail.com)

5200 Meadowcreek Dr., Apt. 2060

Dallas, Texas 75248

*/s/ Kent D. Krabill*

\_\_\_\_\_  
Kent D. Krabill

**EXHIBIT 1**

CAUSE NO. 153-275478-14

**SETH WASHBURNE,**

**Plaintiff,**

v.

**VINTAGE FLYING MUSEUM, INC.,  
HOSPERS FAMILY TRUST "D",  
CHARLYN HOSPERS, BILL GORIN,  
and DANA WOOD**

**Defendants.**

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**IN THE DISTRICT COURT OF**

**TARRANT COUNTY, TEXAS**

**153RD JUDICIAL DISTRICT**

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**AFFIDAVIT OF KENT D. KRABILL**

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STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

Before me, the undersigned authority, personally appeared Kent D. Krabill, a person whose identity is known to me, being duly sworn, deposed as follows:

1.       My name is Kent D. Krabill. I am over the age of eighteen years, have never been convicted of a felony or a crime involving moral turpitude, and am fully competent to make this Affidavit. I am personally acquainted with the facts herein stated.

2.       Irreconcilable differences of opinion have arisen between me, my firm Lynn, Pinker, Cox & Hurst, LLP (collectively, "Counsel") and Mr. Washburne, necessitating the termination of the attorney-client relationship.


3.       This withdrawal is not the result of Counsel's own fault or negligence. Due to the sensitive nature of the reasons supporting the withdrawal, counsel has not included specifics here.

Counsel is prepared to provide such specific information to this Court at the hearing on the Emergency Motion to Withdraw, including *in camera* if necessary, or at the hearing on this motion. This information will also explain why another attorney at the firm cannot handle the trial.

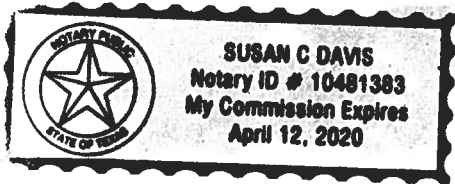
AFFIANT SAYS NOTHING FURTHER.

  
\_\_\_\_\_  
Kent D. Krabill

SWORN TO AND SUBSCRIBED before me on the 30<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
Notary Public, State of Texas

SEAL:









4. Movant has delivered a copy of this Motion to Mr. Washburne via Certified Mail and e-mail, and has advised him by letter of his right to object to this Motion.

5. Mr. Washburne's last known address is 5200 Meadowcreek Dr., Apt. 2060, Dallas, Texas 75248.

6. The letter to Mr. Washburne was received by him on June 29, 2017 by way of email.

7. Mr. Washburne is aware of the intention to seek an order of withdrawal and has said he is opposed.

8. This Motion is not filed for delay, but only so that justice may be done.

#### **REQUEST FOR EMERGENCY HEARING**

Trial is set in this matter on July 24, 2017. Movant has been notified by its client, Mr. Washburne, that he is out of the country starting today at 7 a.m. until Monday, July 9, 2017. Movant is also set to leave the country tomorrow morning and be out of the country until July 9, 2017. Movant respectfully requests that this Motion be set for hearing as soon as practicable the week of July 10-14, 2017. Alternatively, Movant notes that it is available for a telephonic hearing anytime from today, June 30, 2017 through July 9, 2015. However, Movant does not know Mr. Washburne's availability for a telephonic hearing during that time. Movant estimates that 15 minutes will be sufficient to present the issues in this Motion.

#### **PRAYER**

**WHEREFORE PREMISES CONSIDERED**, Movant Kent D. Krabill and LYNN PINKER COX & HURST, LLP respectfully request that this Court enter the attached Order granting Movant's Motion to Withdraw, and for any other relief in law or at equity to which Movant may be justly entitled.

DATED: June 30, 2017

Respectfully submitted,

/s/ Kent D. Krabill

Kent D. Krabill

State Bar No. 24060115

kkrabill@lynnllp.com

Jonathan D. Kelley

Texas Bar No. 24090202

jkelly@lynnllp.com

LYNN PINKER COX & HURST, L.L.P.

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

Telephone: 214.981.3800

Facsimile: 214.981.3839

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF CONFERENCE**

Plaintiff Seth Washburne notified counsel on June 29, 2017 that he is opposed to the relief sought in this motion. A conference was held on June 29, 2017 with counsel for the Defendants on the merits of this Motion, and both are unopposed to the relief sought in this motion.

/s/ Kent D. Krabill

Kent D. Krabill

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing document was served upon counsel of record herein *via e-service* and e-mail June 30, 2017:

Randall E Turner  
[randy@randyturner.com](mailto:randy@randyturner.com)  
Law Offices of Randall E. Turner, PLLC  
4255 Bryant Irvin Rd., Ste. 210  
Fort Worth, TX 76109

Charles Burgess  
[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)  
Attorney at Law  
521 N. Riverside Dr.  
Fort Worth, TX 76111

I further certify that a true and correct copy of the above and foregoing document was served upon Plaintiff Seth Washburne *via* Certified Mail and e-mail June 30, 2017:

**Via CMRRR #7014 0150 0001 9537 9635**

Seth Washburne  
[sethpw1@gmail.com](mailto:sethpw1@gmail.com)  
5200 Meadowcreek Dr., Apt. 2060  
Dallas, Texas 75248

*/s/ Kent D. Krabill*

\_\_\_\_\_   
Kent D. Krabill

Exhibit 52: MSJ - Counsel Immunity - Hal Monk

**CAUSE NO. 153-275478-14**

**SETH WASHBURNE**

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**IN THE DISTRICT COURT**

v.

**TARRANT COUNTY, TEXAS**

**VINTAGE FLYING MUSEUM, INC.,  
HOSPERS FAMILY TRUST “D,”  
CHARLYN HOSPERS, HAL MONK  
BILL GORIN AND DANA WOOD**

**153<sup>RD</sup> JUDICIAL DISTRICT**

**DEFENDANT, HAL MONK’S, MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, Hal Monk, files this Motion for Summary Judgment on Plaintiff’s claims against him and as grounds will show the following:

**TRADITIONAL MOTION**

There are no genuine issues of material fact regarding Hal Monk’s right to summary judgment against Plaintiff, and he is entitled to summary judgment as a matter of law on all of Plaintiff’s claims under Rule 166a.

**SUMMARY**

At all times material to the causes of actions alleged by Plaintiff, Hal Monk was the attorney for other Defendants and was discharging his duties as their attorney. Therefore, Monk is immune from suit and liability under the doctrine of attorney immunity.

**SUMMARY JUDGMENT EVIDENCE**

The following summary judgment evidence is attached hereto:

1. Affidavit of Hal Monk – Exhibit 1

2. Affidavit of Charlyn Hospers – Exhibit 2
3. Affidavit of Robert Hospers – Exhibit 3

## **INTRODUCTION**

Hal Monk is a licensed attorney at law who has represented Vintage Flying Museum, Inc. (“VFM”), the Hospers Family Trust “D,” and Charlyn Hospers for many years. [Exhibit 1, p. 2], [Exhibit 2, p. 2]. In 2010 Plaintiff, a New York hedge fund manager, leased space in a hangar at the Vintage Flying Museum where he planned to keep and restore an old airplane. [Exhibit 2, p. 2]. In 2012 Plaintiff came to Texas and began spending time at VFM’s hangar. [Exhibit 1, p. 2]. Almost immediately, VFM started receiving numerous complaints from other tenants, volunteers, and workers in the hangar about erratic, irrational and extremely bizarre behavior of Plaintiff. [Exhibit 1, p. 2, 3] [Exhibit 2, p. 2] [Exhibit 3, p. 2] VFM decided to terminate Plaintiff’s lease. [Exhibit 1, p. 2] [Exhibit 2, p. 3] [Exhibit 3, p. 2]. As VFM’s attorney, Hal Monk, would handle the lease termination and respond to Plaintiff’s demands to remain on or return to the premises. [Exhibit 1, p. 2] [Exhibit 2, p. 2].

Upon receipt of Hal Monk’s notice of lease termination on behalf of VFM, Plaintiff began making threats and demands for VFM to extend his occupancy period. [Exhibit 1, p. 3] [Exhibit 2, p. 3]. He tried to persuade another attorney to sue VFM, he threatened to disrupt VFM’s annual Hanger Dance by destroying parts of an airplane in the hangar while the band played, and he began defaming VFM on his website, in emails and posts on various internet sites such as Trip Advisor, Google, etc., referring to VFM as “Villain Flying Museum.” [Exhibit 2, p. 3]. Monk and his client concluded from Mr. Washburne’s threats that he was mentally ill and litigation was likely. [Exhibit 1, p. 2].

After Plaintiff finally vacated the premises and after he was repeatedly warned by Hal Monk

to stay away from the premises, Plaintiff made several attempts to go onto the property occupied by VFM. [Exhibit 2, p. 3]. He was given trespass warnings by the Fort Worth Police Department and was eventually arrested for trespass. [Exhibit 2, p. 3]. Hal Monk was not involved in any way in Plaintiff's arrest. [Exhibit 1, p. 3] [Exhibit 2, p. 3]. He did not ask or encourage the police to arrest Plaintiff and did not ask or suggest that anyone else do so. [Exhibit 1, p. 2] [Exhibit 2, p. 3].

An unsuccessful pre-lawsuit mediation was held in which Monk represented Defendants. When the case did not settle at mediation Plaintiff filed this lawsuit. [Exhibit 1, p. 3].

All of Hal Monk's dealings with Plaintiff and all his responses to Plaintiff's demands to remain on, or return to, the property occupied by VFM were performed in his capacity as attorney for VFM, the Hospers Family Trust "D," and Charlyn Hospers. [Exhibit 1, p. 3]. [Exhibit 2, p. 2-3] [Exhibit 3, p. 3].

### **ARGUMENT AND AUTHORITIES**

Texas courts have long held that attorneys cannot be held civilly liable for damages to non-clients, under any theory of recovery, for actions taken in connection with representing a client. *Cantey Hanger, LLP v. Byrd*, 467 S.W. 3d 477 (Tex. 2015); *Sacks v. Zimmerman*, 401 S.S.3d 336, 340 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2013, pet. denied). Attorney immunity is "properly characterized as a true immunity from suit, not as a defense to liability." *Troice v. Proskauer Rose, LLP*, 816 F.3d 341, 346-47 (5<sup>th</sup> Cir. 2016). The attorney immunity doctrine "stem(s) from the broad declaration over a century ago that attorneys are authorized to practice their profession, to advise their clients and interpose any defense or supposed defense, without making themselves liable for damages." *Cantey Hanger, LLP*, 467 S.W. 3d at 479 (citations omitted.) "In other words, the doctrine is 'intended to ensure loyal, faithful, and aggressive representation by attorneys employed as advocates.'" *Id* (quoting *Mitchell v. Chapman*, 10

S.W.3d 810, 812 (Tex. App.—Dallas 2000, pet. denied)).

Attorney immunity is not limited to actions or conduct by an attorney during litigation; it has also been applied to attorney representation where there is no litigation. *See e.g. Cantey Hanger, LLP v. Byrd*, 467 S.W. 3d 477 (law firm was immune from tort claims by opposing party in a divorce action where it was alleged that the firm falsified a bill of sale of an airplane to a third party over a year after the divorce decree had been entered); *Chu v. Hong*, 249 S.W.3d 441 (Tex. 2008) (attorney for the seller of a doughnut shop was sued by the buyer alleging fraud, conspiracy and conversion in connection with the sale; the court held “[w]e are especially reticent to open the door to such claims here against an opposing party's attorney”).

In the present case, Hal Monk is immune from suit and liability because all his actions were part of the discharge of his duties in representing his clients. All dealings and communications Monk had with, or concerning, Plaintiff pertained to the termination of the lease, occupancy of the hangar, ownership of property, the boundaries of the property occupied by VFM, and responding to Plaintiff's continuing demands to go on that property. [Exhibit 1, p. 3] [Exhibit 2, p. 2-3]. These were all squarely within Monk's duties as Defendants' attorney.

The Supreme Court has held that “the focus in evaluating attorney liability to a non-client is ‘on the kind—not the nature—of the attorney's conduct.’” *Cantey Hanger, LLP*, 467 S.W. 3d at 483 (citations omitted.) “Even conduct that is wrongful in the context of the underlying suit is not actionable if it is part of the discharge of the lawyer's duties in representing his or her client.” *Id* at 481 (citations and internal quotation marks omitted.) For example, “fraud is not an exception to attorney immunity” if it is committed within the scope of the attorney's legal representation of his client. *Id*. Whenever an attorney is sued by a non-client, attorney immunity applies unless the wrongful conduct is “outside the scope of an attorney's legal representation of



his client.” *Id.*

Plaintiff has alleged that actions taken by Monk in the representation of his clients constituted various torts. However, simply alleging that an attorney’s conduct was tortious does not remove it from the scope of client representation and eliminate the attorney’s immunity. *See id.* “Merely labeling an attorney’s conduct ‘fraudulent’ does not and should not remove it from the scope of client representation or render it ‘foreign to the duties of an attorney’” such that an attorney would not be immune. *Id.* Likewise, labeling an attorney’s conduct in terminating a lease and responding to a former tenant’s repeated demands to go on the property as “malicious prosecution,” intentional infliction of emotional distress,” “negligence,” “false imprisonment,” and “civil conspiracy” does not remove that conduct from the scope of client representation.

Plaintiff’s claim that Monk is somehow liable to Plaintiff because he “provided false information to Plaintiff” as to the boundaries of the property in question is also without merit. “[A] party cannot justifiably rely on the opposing party’s lawyer representations or silence as a matter of law.” *Jurek v. Kivell*, No. 01-10-00040-CV, 2011 WL 14 1587375, at \*5 (Tex. App.—Houston [1st Dist.] Apr. 21, 2011, no pet.) (mem. op.) citing *McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests*, 991 S.W.2d 787, 794 (Tex. 1999). Reliance is not justified when the representation takes place in an adversarial context. *Id.* Communications between Plaintiff and Monk after Plaintiff had been told his lease was terminated and to stay away from the property certainly took place in an adversarial context.

All the summary judgment evidence shows there are no genuine issues of material fact regarding Hal Monk’s immunity from suit and liability. Therefore, a summary judgment on all claims against him should be granted.

**PRAYER**

WHEREFORE, Defendant, Hal Monk, respectfully requests the Court grant his Motion for Summary Judgment on all claims against him by Plaintiff and to render judgment that Plaintiff take nothing on such claims and for such other and further relief to which he may be entitled.

Respectfully submitted,

**LAW OFFICES OF RANDALL E. TURNER, PLLC**  
4255 Bryant Irvin Rd., Suite 210  
Fort Worth, TX 76109  
Direct line: (817) 420-9690  
Fax: (817) 887-5717  
Email: [randy@randyturner.com](mailto:randy@randyturner.com)

/s/ *Randall E. Turner*  
**RANDALL E. TURNER**  
Texas Bar No. 20328310

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

In accordance with Rule 21a of the Texas Rules of Civil Procedure, I hereby certify that a true and correct copy of the above and foregoing document has been served electronically through the electronic filing manager to the email address of all attorneys of records and pro se parties whose email addresses are on file with the electronic filing manager.

/s/ *Randall E. Turner*

CAUSE NO. 153-275478-14

SETH WASHBURNE	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v	§	
	§	
VINTAGE FLYING MUSEUM, INC.,	§	TARRANT COUNTY, TEXAS
HOSPERS FAMILY TRUST "D",	§	
CHARLYN HOSPERS, HAL MONK,	§	
BILL GORIN, and DANA WOOD,	§	
JAMES TERRY, INDIVIDUALLY and	§	
d/b/a GREATEST GENERATION	§	
AIRCRAFT, PACIFIC PROWLER	§	
(NON-PROFIT), and PACIFIC	§	
PROWLER, LLC	§	
Defendants.	§	153 <sup>RD</sup> JUDICIAL DISTRICT

**AFFIDAVIT OF HAL MONK**

STATE OF TEXAS §  
COUNTY OF TARRANT §

**BEFORE ME**, the undersigned Notary Public, on this day personally appeared Hal Monk, who, being duly sworn on his oath, deposed and said:

1. "My name is Hal Monk. I am over twenty one years of age, and am of sound mind and fully competent to testify to the matters set forth herein. I have personal knowledge of the facts stated in this Affidavit and each are true and correct.

2. "My training in what constitutes the practice of law began fifteen years before admission to the bar while working as a legal investigator for lawyers such as Waggoner Carr, Joe Spurlock, Melvin Belli, Bill Meier, Charles J. Murray and Scott Moore. They all admonished me to know how broad the definition was, and to be very sure I never stepped over the line; or even got close to it.

3. "That knowledge was further honed in thirty-nine years as a lawyer, all of which has been in private practice on both sides of the civil dockets except three years as Texas' Executive Assistant Attorney General.



4. "I never knowingly breached any attorney ethical standard and had never been accused in any legal proceeding of telling a lie before I met Seth Washburne in September of 2012. Since then, in his emails and pleadings (sometime under oath) he has accused me and many other people who have displeased him, including his own attorneys, dozens of time of telling multiple lies to him and about him.

5. "His falsehoods have now required me and my clients to incur over \$50,000.00 in costs for legal fees, investigation, research, drafting and exhibit preparation to rebut the majority of the allegations contained in petitions he has filed in this suit. They also obliged me to perform legal services for my clients outside of more traditional functions of lawyers.

6. "In mid-2012, Mr. Washburne's extreme episodes of misconduct committed at Vintage Flying Museum ("VFM") necessitated termination of his space leases there. Because I had long been the sole attorney for the Hospers family, VFM, and the Hospers Family Trust, and for the further reasons that clients and I knew from Mr. Washburne's previous threats that litigation was likely, my client VFM assigned me the task of accomplishing such termination because I was a lawyer.

7. "I sent Mr. Washburne the notice of lease termination knowing that he would continue to be in the VFM hangar for at least thirty days. I wanted to do all possible to diminish his anticipated daily harangues of Charlyn Hospers, VFM's Managing Director. It didn't work. He burdened her with over 100 single-spaced pages of demands, false accusations, pleas and threats.

8. "My clients and I wished him no harm; just wanted him to cease his internet cyber terrorism against us and to stay away. Because his actions, threats, demands and accusations were so irrational, we concluded that he suffered from some severe mental illness. Such conclusions were drawn from reports of events such as:

a. Upon finding a baby bottle on his desk in the VFM hangar, he went into a rage, chased a female employee of another tenant across the hangar floor screaming 'mother fucker' and other obscenities, until she fell backwards while trying to get away from him. He was so out of control that he broke a toe when he kicked a huge metal tool box.

b. I received a signed statement that he expressed a wish to commit suicide because his employees weren't doing work on his airplane to his satisfaction,

c. A VFM volunteer reported him saying that he wanted to kill another hangar



tenant "so bad, I can't stand it,"


d. He threatened to disrupt VFM's annual hangar dance by demonstrating his rage by chopping up his airplane in the hangar while the dance band played, and,

e. "In response to Mr. Washburne's request for extension of his occupancy of the hangar, I agreed to a mediation. I attended the mediation and represented VFM as its attorney. After the unsuccessful mediation, Mr. Washburne sent an email to the mediator with copies to others and me. It is attached to this affidavit as Exhibit A.

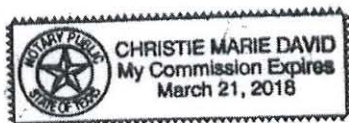
9. "After the lease was terminated Mr. Washburne demanded to go onto the property occupied by VFM. In response, as VFM's attorney, I instructed him several times to stay away from the property. I never asked or encouraged any police officer or law enforcement agency to issue a criminal trespass warning to Mr. Washburne or to arrest him and never asked or suggested that anyone else do so. I never conspired with anyone to cause Mr. Washburne's arrest. I never discussed with any person the idea or possibility of Mr. Washburne being arrested. All my dealings and communications with Mr. Washburne after advising him that the lease was terminated were in my capacity as attorney for VFM, representing the interests of VFM. All my dealings and communications with and about Mr. Washburne, pertained to the lease termination, his occupancy of the hangar, ownership of property in the hangar, his conduct in the hangar, the boundaries of the property occupied by VFM, and his demands to go on the property. I never "set a trap" to get Mr. Washburne arrested as he claims in his pleadings.

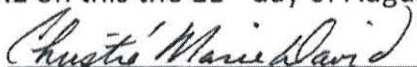
10. "All my actions regarding Mr. Washburne were performed in my capacity as attorney for my clients. In my opinion they were appropriate and necessary to achieve my client's legal objectives of terminating the lease and ending Mr. Washburne's disruptive presence on the property, while ensuring the safety of all tenants, volunteers, workers, and visitors to the museum.

11. "This concludes my statements in his Affidavit."

  
\_\_\_\_\_  
Hal Monk

SWORN TO AND SUBSCRIBED BEFORE ME on this the 11<sup>th</sup> day of August, 2016.



  
\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Texas

From: Seth Washburne [mailto:sethbw1@gmail.com]

Sent: Thursday, October 18, 2012 9:06 AM

To: 'Frank & Kay Elliott'

Cc: 'Hal Monk'; [Chuckie@vintageflyingmuseum.org](mailto:Chuckie@vintageflyingmuseum.org); 'Patsy Hocker'; 'Michael Coup'

Subject: Comments

**Exhibit A**

Kay,

I would like to tell you I think you did a terrible job of mediating.

1. **You bragged to us about your \$11,000-a-person business class trip to China.** I can't imagine anyone else doing this, even with their closest friends, much less with strangers, much less with aggrieved parties meeting to resolve an unhappy conflict.
2. **You moved the mediation part to the small, uncomfortable room where you sent me** – and let the other party enjoy the large, comfortable room, showing obvious preference for them and disrespect for me. You should have kept the mediation in the first room, and sent Chuckie and Jimmy to the other room.
3. **In the other room, instead of having Hal and I sit across from each other, you had us sit next to each other facing you,** making it harder for him and I to interact, and quickly making him become unengaged.
4. **You did not mediate at all between Hal and me** – instead you spent about 90% of the time in that room assailing me with your own, in my opinion stupid, questions.
5. **You did not get Hal involved much at all** - he spent that 90% of the time slumped in his chair perhaps with his eyes closed, or staring down, into space, immobilized, while you peppered me with questions. **You tried to stimulate almost no conversation between us.**
6. **Your questions to me were almost all quite ignorant,** something like: "Why do you care about what people say about you?", "If you want to be able to talk about them, why can't they be able to talk about you?" (to which I replied "They can say anything they like about me that is true, I am only concerned about things that aren't true"), "Why should anyone believe what you say is true?", and then back to "Why is this important to you?" That was a big waste of time, since Hal was not even listening and out of it, and the point was what HE thinks, not what YOU think.
7. **I told you ahead of time I wanted to mediate a disparagement complaint , too, rather than come back for this, and you never allowed me to specifically mention it as a formal complaint.** We could have dealt with that and put it behind us, but will now have to return to this later. (I assure you, you will not be the mediator).

8. **You laughed out loud** - when I said they should have just a little flexibility on the off-premises date, and in return the main thing I would give is I would have one less bad thing to say about them (i.e. I would not say they strictly enforced the 30 days), but you burst out with a huge laugh, your head even rocking back, because you thought that was so hysterical. That was a serious point.
9. **You seemed dead-set on helping them get a non-disparage commitment from me.**
10. **You failed to provide me with a copy of the agreement I signed**, and I cannot be expected to remember what was in it.
11. **At the end, you let Hal yell at me.** He asked me not to "interrogate" Chuckie, and I fully RESPECTED this and did not ask her a single question, and hardly even looked at her while I spoke. I wanted to make just a few respectful points, and was told to shut up.
12. **You did not even try to bring things to an amicable agree-to-disagree conclusion.**
13. The only reason I can see for your success is that you have done a lot of these, and so people assume you are good, so hire you to do another, and then you brag about even more business, so more people hire you.

With great disappointment,

Seth P. Washburne  
4200 Northern Cross Blvd, Apt 5302  
Haltom City, TX 76137  
(212) 289-1506



CAUSE NO. 153-275478-14

SETH WASHBURNE	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v	§	
	§	
VINTAGE FLYING MUSEUM, INC.,	§	TARRANT COUNTY,
TEXAS		
HOSPERS FAMILY TRUST "D",	§	
CHARLYN HOSPERS, HAL MONK,	§	
BILL GORIN, and DANA WOOD,	§	
JAMES TERRY, INDIVIDUALLY and	§	
d/b/a GREATEST GENERATION	§	
AIRCRAFT, PACIFIC PROWLER	§	
(NON-PROFIT), and PACIFIC	§	
PROWLER, LLC	§	
Defendants.	§	153rd JUDICIAL DISTRICT

AFFIDAVIT OF CHARLYN HOSPERS IN SUPPORT OF HAL MONK'S MOTION FOR SUMMARY JUDGMENT

THE STATE OF TEXAS §  
  §  
COUNTY OF TARRANT §

Before me, the undersigned notary, on this day personally appeared the Affiant, Charlyn Hospers, whose identity is well known to me. After I administered an oath to her, Affiant testified as follows:

1. "My name is Charlyn Hospers. I am over 18 years of age, of sound mind and am capable of making this Affidavit. The facts stated in this Affidavit are within my personal knowledge and are true and correct.
2. "I am an individual defendant in the above-styled suit (the "Lawsuit"), and, at all times pertinent to the Lawsuit, have been the sole Trustee of Defendant Hospers Family Trust "D" (the "Trust") and the Managing Director of Defendant Vintage Flying Museum, Inc. ("VFM"), a 501c(3) non-profit corporation.





3. "Hal Monk has been the attorney and legal advisor for our family since 1988 and for The Trust and VFM since their creations. In the past decade, neither I, the Trust nor VFM has been represented by any attorney other than Hal Monk, or specialized attorneys he engaged to handle specific matters.

4. "For many years prior to the March 10, 2010 death of my husband Dr. William D. ("Doc") Hospers, I was busy raising three children and/or employed outside the home while Doc handled any and all family business matters, those for VFM and B. C. Vintage Flying Machines (a D/B/A) and all operations of our real estate adjacent to Meacham Field in Fort Worth. During such times, Doc did not provide me or other family members with much information about those matters, and we never questioned him about them.

5. "Shortly after Doc's death, I was shocked to find that the business affairs were in terrible disarray, primarily due to Doc having ignored and failed to comply with some legal requirements applicable to those matters. An example of which was; the most valuable asset of our marital community was nine acres of land held in the name of a professional association (a P A) which had never existed. A similarly-named P A had been created, but the charter for it had long since been forfeited for non-payment of franchise taxes. That fact was of little help because I learned that it was legally-impermissible for a P A to hold that industrial property as ancillary to Doc's medical practice.

6. "As executor of Doc's estate and in my other above-described capacities, I spent many sleepless nights and several thousand dollars cleaning up those problems, which would have been much more difficult without the help of our family lawyer, Hal Monk. I started relying on him for legal advice and counsel regarding any actions that might potentially entail legal issues, and had him take the lead in several sensitive negotiations. Our connections with Hal went back to 1983, when he hired our son Bob as a part-time pilot of the Texas Attorney General Office's King-Air airplane. In 1988, he served as our attorney when we bought the land now owned by the Trust and since has handled several other legal matters for our family.

7. "Seth Washburne was a New York hedge fund manager who leased space in a hangar at the Vintage Flying Museum where he planned to keep and restore a World War II aircraft. In 2012 Mr. Washburne came to Texas and began spending time at VFM's hangar. In the summer of 2012, I got numerous complaints from tenants, volunteers and workers in the VFM hangar about intolerable behavior of tenant Seth Washburne. He demanded that his licensed aircraft mechanics violate

FAA regulations in doing restoration work on his airplanes in our hangar. Reports of his stated wishes to commit suicide and murder were most alarming. Episodes of uncontrollable screaming, cursing tantrums, and actual physical assaults on a former employee and a female employee of another tenant made us fearful for the personal safety of our tenants, volunteers and visitors to the Museum.

8. "I reluctantly decided that we must terminate Mr. Washburne's space lease. Upon hearing he told his employee how much he enjoyed suing people (said he found it challenging) and that he had made a lot of money doing so, I delegated the entire task of getting Mr. Washburne out of the VFM hangar community to our attorney, Hal Monk. If any doubt remained, I knew that such delegation was necessary when we learned that Washburne had tried to hire well-regarded Fort Worth attorney Douglas Hudman to sue us and stop the lease termination.

9. "Upon receiving notice of the lease termination, Mr. Washburne made incessant tormenting demands and threats for VFM to extend his occupancy period, including a threat to disrupt VFM's annual Hangar Dance by destroying parts of an airplane in the hangar while the band played. He commenced a series of untruthful defamatory posts on his website, emails, and posts on internet sites such as Trip Advisor, Google, etc., referring to VFM as the "Villain Flying Museum."

10. "After he vacated, despite having been warned numerous times to "Stay the hell away from VFM," he attempted intrusions onto premises long occupied by VFM several times, including those on March 2, 2013 and April 26 and 27, 2014, when police officers warned him to stay away and issued "Criminal Trespass Warnings" to him.

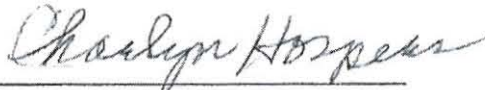
11. "Contrary to the many accusations in his Petitions filed in this Lawsuit, no representative of VFM or the Trust ever initiated a call to police about his attempted intrusions, or had any communication whatsoever with a police officer, other than responding to investigating officers' requests for information. Neither did any such representative ever request a police officer to arrest him. I asked Hal Monk to use his knowledge of significant facts and applicable law to draft written discovery requests proving that Mr. Washburne had no credible evidence to support his many allegations contravening my statements in this paragraph.

12. "During the eviction process and Mr. Washburne's ensuing actual and attempted intrusions on premises occupied by VFM and his cyber-terroristic efforts at vindictive retaliation thereafter, all of Hal Monk's work and actions were done in his capacity as attorney for his clients VFM, me and/or the Trust, in an effort to



preserve tranquility of the VFM community and enhance the safety of all persons therein. I would not have had entrusted that role to him if he had not been our lawyer.

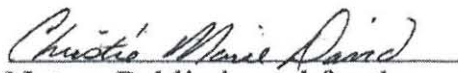
13. "This concludes my affidavit testimony."

  
Charlyn Hospers

SIGNED AND SWORN TO before me by Charlyn Hospers on August 10, 2016.



ID: 124082973

  
Notary Public in and for the  
State of Texas

CAUSE NO. 153-275478-14

SETH WASHBURNE	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v	§	
	§	
VINTAGE FLYING MUSEUM, INC.,	§	TARRANT COUNTY, TEXAS
HOSPERS FAMILY TRUST "D",	§	
CHARLYN HOSPERS, HAL MONK,	§	
BILL GORIN, and DANA WOOD,	§	
JAMES TERRY, INDIVIDUALLY and	§	
d/b/a GREATEST GENERATION	§	
AIRCRAFT, PACIFIC PROWLER	§	
(NON-PROFIT), and PACIFIC	§	
PROWLER, LLC	§	
Defendants.	§	153rd JUDICIAL DISTRICT

**AFFIDAVIT OF ROBERT HOSPERS IN SUPPORT OF HAL MONK'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

THE STATE OF TEXAS §  
§  
COUNTY OF TARRANT §

Before me, the undersigned notary, on this day personally appeared the Affiant, Robert Hospers, whose identity is well known to me. After I administered an oath to him, Affiant testified as follows:

1. "My name is Robert Hospers. I am over 18 years of age, am of sound mind and am capable of making this Affidavit. I am employed as a Boeing 747 International Captain for Atlas Airlines. The facts stated in this Affidavit are within my personal knowledge and are true and correct.

2. "Although I had met Hal Monk before in a ride on my parents' B-17 bomber, I became better acquainted with him in 1983 when I was a student at UT-Austin and he was the Texas Executive Assistant Attorney General. He hired me as a part-time pilot on that agency's King Air turbo prop airplane. I later interfaced with him when he served as



my parents' attorney in the acquisition of nine acres of land on the southeast edge of Meacham Field in Fort Worth., which became the home of Vintage Flying Museum, Inc. ("VFM"). Ever since then, he has been our family's 'go to' lawyer on anything presenting (or potentially involving) any legal matter.

3. "At the time of my father's death in March of 2010, Hal was representing him and VFM in lawsuits brought by a former tenant in the VFM hangar. Of course, we called on Hal to handle the probate matter. In doing that, he discovered numerous problems involving our family's assets, and worked diligently for years in satisfactorily resolving all of them.

4. "My mother, Charlyn Hospers, had very little experience in business matters and was overwhelmed with complicated issues arising out of her new roles as; (1.) Executrix of my father's estate, (2.) Managing director of VFM, (3.) Trustee of the Hospers Family Trust, and, (4.) CEO of the D/B/A "B. C. Vintage Flying Machines," which was the entity under which all business on the commercial real estate was conducted. She immediately started relying on Hal Monk for legal advice, counsel and representation on all matters.

5. "In mid-2012, we all became alarmed upon learning of the irrational threats, cursing rages, violations of FAA regulations, statements of wishes to commit suicide and murder, attempted bodily assaults and other antics in VFM's hangar by tenant Seth Washburne. Other hangar tenants, their employees, volunteers and Museum visitors were complaining about his manifestations of severe, and possibly dangerous, mental aberrations. In the interest of safety, my mother and VFM director Mike Coup decided that safety concerns necessitated getting him out of the VFM community by exercising its right to terminate his lease with 30 days written notice. Because it was obvious that such step was fraught with legal issues, they delegated that task to attorney Hal Monk.

6. "Upon receipt of the notice of lease termination, Mr. Washburne declared open warfare on my mother, Hal and other people connected with VFM. His proclivity to make false accusations and to generally prevaricate about facts became more evident at VFM's annual hangar dance on October 20, 2012. He approached me to complain about the injustice of terminating the lease. I simply told him he needed to leave. If there was any physical contact between us, it was a handshake. Immediately after that, he posted an allegation on the internet that I had assaulted him. He repeated that assertion many times, lastly in §4.11(f) of his Third Amended Petition.

7. "Any and all of Hal Monk's statements and actions before and after termination of Washburne's lease in contacts with Mr. Washburne, and/or with others on issues



related to disputes with Washburne, were as the attorney for his clients Charlyn Hospers, VFM or the Hospers Family Trust. If those clients' needs had been for general business matters, they would have assigned such work to Mike Coup, a much more experienced businessman than Hal Monk. Hal was selected solely because he was the clients' attorney and he was instructed to take whatever actions he deemed necessary to protect the safety, reputation and pocketbooks of his clients."

8. "This concludes my affidavit testimony."

  
Robert Hospers

SIGNED AND SWORN TO before me by Robert Hoser Hospers on August 10, 2016.




  
Notary Public in and for the  
State of Texas

Exhibit 53: 2016 11 16 - 1.26 pm Biblo to Seth draft reply, and 2016 11 22 - 1.10 pm Biblo to Seth with final declaration

## Seth Washburne

---

**From:** Mallory Biblo [MBiblo@lynnllp.com]  
**Sent:** Wednesday, November 16, 2016 1:26 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill; Stephen Cole  
**Subject:** Washburne v. Vintage Flying Museum, et al.  
**Attachments:** Plaintiff's Response to Monk's Motion for Summary Judgment - 11.16.16.docx

Seth,

Attached is a draft of a response to Hal Monk's motion for summary judgment. After you review the response, I will send your declaration in support of the motion to review. Our response and declaration will need to be filed with the Court on Tuesday, November 22.

Stephen will be sending you a response to the other motion for summary judgment.

Please let me know if you have any comments, questions, etc.

Thanks,

Mallory

**MALLORY BIBLO** | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3827

Fax 214 981 3839

[mbiblo@lynnllp.com](mailto:mbiblo@lynnllp.com)

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Dallas, Texas 75201

[www.lynnllp.com](http://www.lynnllp.com)

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representation of his clients. Monk’s motion—which conveniently (and tellingly) omits his status as a VFM director—should be denied for three reasons: **First**, regardless of the capacity in which Monk was acting when he committed the wrongful acts against Plaintiff, he was not representing any client *in litigation or any other proceeding*, as required for the attorney-immunity doctrine to apply. **Second**, Monk was acting in his capacity as a director of the VFM, rather than as its attorney, when he committed the wrongful acts. **Third**, even assuming Monk was acting in his capacity as an attorney representing his clients in litigation, his wrongful conduct was foreign to the duties of an attorney.

## **II. FACTUAL BACKGROUND**

In 2010, Plaintiff acquired, and began to restore, a World War II C-47a airplane, nicknamed “Billie.”<sup>1</sup> In connection with those efforts, Plaintiff leased space at the VFM and retained the services of Defendant James Terry—a fellow VFM tenant—to restore Billie.<sup>2</sup>

Plaintiff had a falling out with Terry and others who were hired to work on Billie, due to Terry’s and others’ negligent and/or defective work on Billie and Terry’s theft of more than seventy of Plaintiff’s airplane parts.<sup>3</sup> As a result of the theft, Plaintiff brought criminal charges against Mr. Terry.<sup>4</sup> For reasons unknown to Plaintiff, VFM and its representatives—including Monk—sided with Terry and engaged in a retaliatory campaign against Plaintiff, beginning with the VFM’s termination of Plaintiff’s lease and culminating in Plaintiff’s wrongful arrest and imprisonment.

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<sup>1</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>2</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>3</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>4</sup> Exhibit A, Decl. of S. Washburne at ¶

**A. Plaintiff received invitations to attend events at the VFM but was met by police officers when he drove in the vicinity of the VFM.**

Plaintiff was invited to a March 2, 2013 auction at the VFM.<sup>5</sup> Accordingly, on March 2, 2013, Plaintiff drove to the west end of NW 38th Street, where he was in the public right of way, for the auction.<sup>6</sup> While still at his car, Defendant Dana Wood called security guards who then waived down a police cruiser that had been parked outside the VFM.<sup>7</sup> A police officer then issued a warning to Plaintiff not return to “505 NW 38th Street” and further threaten arrest if Plaintiff returned anywhere on NW 38th Street west of Ross Avenue, despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land.<sup>8</sup>

On April 26, 2014, Mr. Terry and Ms. Wood invited Plaintiff to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.<sup>9</sup> Plaintiff had declined all prior invitations, and declined this one, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 to observe a B-29 plane.<sup>10</sup> Although Plaintiff stayed on the public roads, Ms. Wood called the police on Plaintiff.<sup>11</sup> She informed the police that she (i) was VFM’s representative, (ii) knew the ownership boundary lines of VFM’s property, and (iii) Plaintiff was trespassing.<sup>12</sup> These misrepresentations resulted in the officers manhandling Plaintiff, wrongly informing him that he was trespassing, and issuing him a Trespass Warning and stating that he would be arrested if he returned to “505 NW 38th Street.”<sup>13</sup>

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<sup>5</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit B, Invitation. to the March 2, 2013 auction at the VFM.

<sup>6</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>7</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>8</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit C, Official Records.

<sup>9</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit D, Invitations to the VFM dated April 26, 2014; Exhibit E, Invitations.

<sup>10</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>11</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>12</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>13</sup> Exhibit A, Decl. of S. Washburne at ¶

**B. Monk, in his capacity as a director of the VFM, conspires with the other Defendants to have Plaintiff falsely arrested.**

After the allegation of trespass on April 26, 2014, Plaintiff emailed board members Hospers and Monk demanding that representatives of the VFM stop telling the police that the Hospers Family Trust or the VFM owns NW 38th Street and Von Avenue.<sup>14</sup> The next day, Plaintiff again emailed Monk, along with others, and indicated that he would like to drive to the end of NW 38th Street and look out at the airport.<sup>15</sup> The area Plaintiff planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM.<sup>16</sup>

Plaintiff was seeking advance confirmation from Ms. Hospers or Monk that they had told Ms. Wood that NW 38th Street and Von Avenue were public roads and to check that Ms. Wood would not call the police again.<sup>17</sup> In response to Plaintiff's email, Monk phoned Plaintiff and told Plaintiff that he could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing.<sup>18</sup> Plaintiff specifically inquired as to whether Monk had provided Ms. Hospers and Ms. Wood this information, which Monk confirmed and represented that there would be no police involvement if Plaintiff parked in that area.<sup>19</sup> At no time during this conversation did Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Ms. Hospers, Ms. Wood, or any other Defendant.<sup>20</sup>

On the afternoon of April 27, Plaintiff arrived and parked his vehicle where Monk told him he was permitted to park.<sup>21</sup> Immediately thereafter, two police cars arrived and Ms. Wood

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<sup>14</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit F, Email from S. Washburne to C. Hospers and H. Monk, dated April 26, 2014.

<sup>15</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit G, Email from S. Washburne to H. Monk, dated April 27, 2014.

<sup>16</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>17</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>18</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>19</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>20</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>21</sup> Exhibit A, Decl. of S. Washburne at ¶

and Mr. Gorin appeared and told the police that Plaintiff was trespassing.<sup>22</sup> Plaintiff then called Monk – the party that clearly and unequivocally told him he was allowed to park there – but Monk failed to take any action and hung up the phone.<sup>23</sup> Plaintiff was subsequently arrested.<sup>24</sup>

At no point during any of these conversations did Monk state that he was acting as an attorney representing any client.<sup>25</sup> Further, there is no engagement letter or any written document showing the scope of Monk’s services as an attorney to any of the purported clients that are Defendants in this matter.<sup>26</sup>

### III. ARGUMENT AND AUTHORITIES

#### **A. Monk was not representing the VFM—or any client—in litigation when he committed the wrongful acts.**

The Texas Supreme Court held that a defendant asserting attorney immunity must prove conclusively that the actions complained of were “taken in connection with representing a client *in litigation.*” *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015);<sup>27</sup> *see also Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied); *see also Toles v. Toles*, 113 S.W.3d 899, 910 (Tex. App.—Dallas 2003, no pet.); *Renfro v. Jones & Assocs.*, 947 S.W.2d 285, 287-88 (Tex. App.—Fort Worth 1997, pet. denied). There is no dispute that, at the time that Monk made his various misrepresentations to Plaintiff concerning the VFM’s property line and participated in the malicious prosecution and

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<sup>22</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>23</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>24</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>25</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>26</sup> Exhibit H, Monk’s Response to Plaintiff’s Interrogatory No.¶

<sup>27</sup> Remarkably, Monk cites this case as support for their proposition that “[A]ttorney immunity is not limited to actions or conduct by an attorney during litigation.” *See* Motion, at p. 4. To the contrary, the *Byrd* case concerns a litigant suing opposing counsel for claims made in connection with the counsel’s representation of the opposing litigation. *Byrd*, 467 S.W.3d at 479. The Court was clear that application of the attorney immunity defense required the existence of litigation and the attorneys’ complained of action to be within the scope of representation in litigation. *See id.* at 484 (“*Cantey Hanger* is entitled to summary judgment on its immunity defense if it conclusively established that its alleged conduct was within the scope of its legal representation of Simenstad *in the divorce proceedings.*”) (emphasis added).

false imprisonment of Plaintiff, *Monk was not representing the VFM or any client in connection with any litigation*. This fact alone is sufficient to defeat Monk’s claim of attorney immunity. *See, e.g., Byrd*, 467 S.W.3d at 481. For this reason, the Court should deny Monk’s Motion for Summary Judgment.

**B. Monk was acting as a director of the VFM when engaging in the tortious conduct.**

It is undisputed that Monk maintained an ongoing role as director of the VFM—a fact that was conveniently (and tellingly) omitted from his motion and attached exhibits.<sup>28</sup> Further, the motion for summary judgment does not dispute that Monk engaged in the tortious conduct related to the false arrest of Plaintiff. *See e.g., Mot.* at 5. Monk did not inform Plaintiff in any of the emails or calls related to the property line that he was acting as an attorney representing any client. Monk did not take any action consistent with that of an attorney in a similar situation—*i.e.*, Monk did not confirm the property line to the officers before the false arrest or advise his “client” of the property line before the false arrest. To the contrary, Monk simply acted as a director of the VFM taking an inquiry from an individual regarding property lines.<sup>29</sup> As such, the motion for summary judgment should be denied.

**C. Even if Monk was acting as an attorney, his actions were foreign to the duties of an attorney and, thus, not subject to immunity.**

In order for the attorney immunity defense to apply, the acts complained of by the Plaintiff must not be “foreign to the duties of an attorney.” *Byrd*, 467 S.W.3d at 483-85. While the Supreme Court of Texas has not articulate a legal standard, it did provide three examples of conduct foreign to the duties of an attorney—(1) participation in a fraudulent business scheme with a client outside the litigation context, (2) drafting and filing fraudulent legal documents in a

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<sup>28</sup> Exhibit I, Secretary of State

<sup>29</sup> Monk’s actions after the arrest are telling—he got a survey done and recommended that Plaintiff’s trespass charges be dismissed.

non-litigation context, for the purpose of conspiring to hide the client's assets from judgment creditors in violation of the Uniform Fraudulent Transfer Act, and (3) a physical assault committed by the attorney during trial. *See id.* at 482-85.

Similar to two of the examples provided by the Supreme Court, the scheme to arrest Plaintiff outside the litigation context is conduct foreign to the duties of an attorney. Like the first two examples that involve illegal schemes between attorneys and clients outside the litigation context, the scheme between Monk and others to have Plaintiff arrested occurred outside of any litigation context, and thus is conduct foreign to the duties of an attorney. Similar to the third example, Monk participated in a scheme that involved the physical restraint of Plaintiff, which is far outside of the scope of duties of an attorney. Thus, because Monk engaged in acts "foreign to the duties of an attorney," the attorney immunity defense does not apply. *Byrd*, 467 S.W.3d at 483-85. Accordingly, this Court should deny Defendant Hal Monk's motion for summary judgment.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff Seth Washburne respectfully requests that the Court deny Defendant Hal Monk's motion for summary judgment and all further relief at law or in equity to which he may be justly entitled.

DATED: November 15, 2016

Respectfully submitted,

/s/ Kent D. Krabill

Kent D. Krabill

State Bar No. 24060115

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

Stephen Cole

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on the 15th day of November, 2016.

Randall E Turner

[randy@randyturner.com](mailto:randy@randyturner.com)

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Fort Worth, TX 76111

/s/ Kent D. Krabill

Kent D. Krabill



## Seth Washburne

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**From:** Mallory Biblo [MBiblo@lynnllp.com]  
**Sent:** Tuesday, November 22, 2016 1:10 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill; Stephen Cole; Mariela Cawthon  
**Subject:** Response to Monk MSJ and Declaration ISO  
**Attachments:** Monk Response 11.22.16 Final.docx; Declaration of Seth Washburne ISO Response to Monk's MSJ 11 22 16 (FINAL).docx

Seth,

Attached is the final version of the Response that includes several of your edits from this morning. Please note that we took out all reference to the September 19, 2012 letter from Monk (WASHBURNE000286), as it shows that Monk is acting in his capacity as an attorney. This letter is not part of the summary judgment record because it was not attached to Monk's motion and we do not want it part of the record.

We need to file this by 3 p.m. today. So, let me know if there are any nits or gross errors.

You will need to sign the version of the declaration attached to this email, as it needed to be updated to support the changes made to the Response. Also, there is no need to send in color.

Thanks for your help on this,

Mallory

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4. I had a falling out with Terry and others who were hired to work on Billie, due to their negligent and/or defective work on Billie, and Terry's theft of more than seventy of my airplane parts. As a result of the theft, I brought criminal charges against Terry.

5. For reasons unknown to me, VFM and its representatives—including Hal Monk ("Monk")—sided with Terry and engaged in a retaliatory campaign against me, including terminating my lease for no reason and culminating in my wrongful arrest and imprisonment.

6. I was invited to a March 2, 2013 auction at the VFM. Accordingly, on March 2, 2013, I drove to the west end of NW 38th Street, where I was in the public right of way.

7. While still in my car, I was met by an armed security guard who, upon receiving my name, waived down a police cruiser that had been parked outside the VFM. A police officer issued a warning to me not return to "505 NW 38th Street," despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land, and further threatened arrest if I returned anywhere on NW 38th Street west of Ross Avenue.

8. I was eager to respect the wishes of the owner of "505 NW 38th Street," but was uncertain where this property was, because this address was not posted on a specific building. I Googled "Fort Worth Property Ownership" and the first suggestion was the Tarrant Appraisal District website; searched this for this address and found nothing, and then searched under owner "Hospers" and found all the property owned by the Hospers Trust "D" (the "Trust"), and a map showing exactly where this was. Notably, anyone could find this in under five minutes.

9. After researching various records, on April 13, 2013, I emailed Monk, directing my letter to Monk in his capacity as a VFM board member, and attached documents from the Tarrant Appraisal District showing the lots owned by the Trust, and asking for confirmation that

the Trust did not, in fact, own NW 38th Street or Von Avenue, as Dana Wood (“Wood”) had represented to the police. Monk failed to respond.

10. In my communications with Monk regarding the VFM property line, at all times I understood that I was communicating with Monk in Monk’s capacity as a VFM director.

11. In April of 2014, Terry and Wood again invited me to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.

12. I had declined all prior invitations, and declined this one, but elected to return to the vicinity of the VFM for two primary reasons. First, I returned to the vicinity of the VFM because the invitation had a photo a B-29 in front of the VFM hangar, and I, a WWII history enthusiast, noted a slot in the top of the building for the plane’s tail which I never noticed before, and thought would be fun to see, possibly along with observing how the B-29 fit in the hangar. Second, I returned to the vicinity of the VFM because Terry’s lawyer, only six days before, had requested an extension for interrogatory responses due to Terry being out of town, and I wanted to observe from a distance whether Terry was in fact still out of town. I stayed on public roads and stopped just before the end of NW 38th Street to have what I expected to be a friendly chat with Wood.

13. Wood immediately told me that I was trespassing. I offered the papers I carried with me, which Wood rejected. Wood said she would call someone who could determine the property line, and so I parked on the grass north of NW 38<sup>th</sup> Street, east of the Von Avenue, far from any Trust property, and had what I believed was a friendly conversation under a canopy with a worker as I waited for the person Wood called. In the meantime, Wood called the police

14. The VFM, through Wood, represented to the police that it had actual awareness of the ownership of the property at issue and represented that I was trespassing.

15. These misrepresentations resulted in the officers manhandling me, temporarily detaining me in a police cruiser, wrongly informing me that I was trespassing, wrongfully issuing me a Trespass Warning at the VFM's request and stating that I would be arrested if I returned to "505 NW 38th Street."

16. After the allegation of trespass on April 26, 2014, I emailed board members Hospers and Monk demanding that representatives of the VFM stop telling the police that the Trust or the VFM owns NW 38th Street and Von Avenue.

17. On April 27, 2014, I again emailed Monk, Hospers, and Wood, and indicated that I would like to drive to the end of NW 38th Street and look out at the airport.

18. The area I planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM, at almost 5:00 p.m. on a Sunday afternoon when almost no one would be around.

19. I was seeking advance confirmation from Hospers or Monk that they had told Wood that NW 38th Street and Von Avenue were public roads and to check that Wood would not call the police again.

20. In response to my email, Monk phoned me and told me that I could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing. I specifically inquired as to whether Monk had provided Wood this information, and Monk confirmed that he told Wood and Hospers, and represented that there would be no police involvement if I parked in that area. At no time during this conversation did Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Hospers, Wood, or any other Defendant in the above-referenced matter.

21. On the afternoon of April 27, I arrived and parked my vehicle where Monk told me that I was permitted to park.

22. Shortly thereafter, two police cars arrived and Wood and Bill Gorin appeared and told the police that I was trespassing. I immediately called Monk—the party that clearly and unequivocally told me that I was allowed to park there. Monk answered my call and was made fully aware of the situation and Wood’s false representations, but he failed to take any action. I was subsequently arrested.

23. Prior to the issue with the VFM’s property line, I engaged in substantial discussions with Monk regarding my lease.

24. At no point during any of these conversations did Monk state that he was acting as an attorney representing any client. Monk did not inform me in any of the emails or calls related to the property line that he was acting as an attorney representing any client. At all times that I communicated with Monk—whether regarding his lease or the VFM property line—I understood and believed that I was communicating with Monk in Monk’s capacity as a VFM director, not as an attorney. Monk several times specifically identified himself to me in writing as acting as a VFM director.

25. My name is Seth Washburne. My date of birth is November 4, 1959 and my current address is 5200 Meadowcreek Drive, Apt 2060, Dallas, TX 75248, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_, State of Texas on the 22nd day of  
November, 2016.

\_\_\_\_\_  
Seth P. Washburne

Exhibit 54: 2016 11 22 - 1.15 pm email Seth to Krabill



## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Tuesday, November 22, 2016 1:15 PM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'; 'Mallory Biblo'  
**Subject:** Monk Original MSJ and Affidavits~

Kent,

I thought I would clear some items off my desktop, and in searching for a file to where to move them found Monk's original Motion for Summary Judgment, and affidavits from him, Charlyn Hospers, and Robert Hospers, which Kevin Vice sent me or I obtained from eFile on August 11, and I have not looked at them in the 3.5 months since. When I first looked at these I was livid, and eager to reply to every item.

Now in reading these again, I am again shocked at the lies and misstatements in each of them, and again want to set the record straight.

May I please learn why the response you prepared did not specifically reference anything Monk said, or any items in these affidavits?

Is there still time to prepare a third document refuting all of their statements?

Seth

Exhibit 055: 2016 11 23 - 11.17 am Seth to Krabill

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Wednesday, November 23, 2016 11:17 AM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'; 'Mallory Biblo'  
**Subject:** Respectfully Submitted  
**Attachments:** Monk Response 11.22.16 Final.docx; To add to Declaration ISO Monk Response Maybe.docx

Kent,

As mentioned yesterday afternoon, when reviewing the documents, I had forgotten about the originally filed MSJ and its three exhibits, and, noticing these around 3 p.m. yesterday, was quite shocked to read them.

After I emailed you, and you asked me to call you, you stated we did not need to address all their criticisms of me, because the only thing relevant is if he was acting outside his duties as an attorney. You stated that even if I was a crazy lunatic, he still would be not-immune.

You, of course, know judges better than me, but I think all this negative stuff does affect at least in a small way the way a judge decides, and I think it is worth standing up to some of these in the response. They say I was screaming, swearing at everyone, assaulting people, knocking women over, demanding mechanics violate FAA regulations, openly threatening to murder people. I would think that plants at least a little seed in a judge's mind that I don't deserve the benefit of the doubt. And these are all lies, none of this ever happened.

Secondly, I noticed that Monk asserts there was an outstanding order to keep me away from the property that he was enforcing, and I made repeated attempts to go on the property, which could create a role for him, and this is bunk, it never happened, and I think should also be noted.

Third, it might be nice to address his arguments a bit more squarely on.

I am sure you won't like this, but:

1. I added just a little to the legal arguments page in the attached file "Monk Response." Would you or your crew be so kind as to look at these and see if worthwhile, and if not then feel free to skip it, but if so, think about re-filing?
2. I wrote the attached to add to the declaration ISO of the Monk response to deny all the terrible things they said about me, and provide some additional background. I know you think that is unimportant, and it might be, but I do think it might influence a judge a little. If ok, could I add all this to the end of that?

This will be the last on this, and maybe it is too late to do anything, but I did notice some lies Monk told – especially his "repeated telling me to stay away" which are not true.

Again, no disrespect here, I know it is simply one argument – was getting me arrested within his duties yes or no, but want to offer this additional info to you in case you think it might help.

Seth

Exhibit 56: 2016 11 25 - 11.24 a.m Seth to Krabill, and Declaration of Seth Washburne iso Response to Monk's MSJ 11.25.16 (filed)

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Friday, November 25, 2016 11:24 AM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'; 'Mallory Biblo'  
**Subject:** RE: Monk MSJ Declaration Deadline - Addendum  
**Attachments:** Declaration of Seth Washburne ISO Response to Monk's MSJ 11 22 16 (FINAL).docx

Kent, and by cc Stephen and Mallory,

Kent, you emailed me Wednesday regarding supplement info I wanted to add: "As I said, knowing what to argue, and when to argue it, is key in any lawsuit. I will review this info and see if any of it will be a good fit for oral argument. If not, we will address it, if necessary, in the future."

I fully respect the fact that the three of you know the laws, and are great trial lawyers, but please understand there are thousands of facts which I lived and know very well, which to you may not come to mind.

I added a 9-page addendum to my previously 5-page, as shown attached, addressing the specific points in Monk's motion, and the three affidavits (which I had not reviewed before we finalized the submission). These are packed with lies, including 12 in the MSJ introduction, and 3 in his arguments. If we are trying to prove there are issues of facts, I would think that pointing out to the court that Monk is deliberately lying to the court would be a good place to start. For example, he says there was already a mediation over this issue, which there was not. He says he told me to stay away after I left which he did not. He says I made repeated attempts to get on the property after I left, and actually did get on it, none of which happened.

Also I know you don't care about how they characterize me, but imagine if someone made a public filing that anyone of you were uncontrollably screaming, battering women, slugging employees, demanding employees brake federal laws, plotting murder, and much more, and someone told you not to challenge these, just to leave them out there, they won't affect what the judge thinks of you. I think they will, and would like to stand up for myself. The statement about chasing Wood until she tripped over – Dana in her interrogatory already denied this. How am I supposed to attend the hearing, and sit out there, seen by the judge, as the uncontrollable screamer and murderer? I dread that moment. We didn't challenge any of their lies about me.

I know the 7-day-before point passed, but we could say that was Thanksgiving, and this is the next day, so just one day late, and was held up due to the holiday, so I think we could squeak this in.

Would you please read my addendum pages and let me know if we may please, please, submit this? You can delete some if you want, or make changes, especially to my suggesting the judge recuse herself if fond of Hal, but I would greatly, greatly appreciate it if you would give serious consideration to including as much of this as possible.

This suit is of course about malicious prosecution, but for me it is also very much about challenging all the false lies they told about me – hence the defamation claim which was very important to me. That is gone now, but I am still hugely concerned about them making false statements about me, and want to challenge them, and this would be a best-ever way to do it, and with consequences to them all, of keeping Hal in, and letting the judge know they are liars.

Again, please please consider what I wrote, and consider adding it. I can go sign the signature page and resend it to you.

Seth  
(212) 289-1506



4. I had a falling out with Terry and others who were hired to work on Billie, due to their negligent and/or defective work on Billie, and Terry's theft of more than seventy of my airplane parts. As a result of the theft, I brought criminal charges against Terry.

5. For reasons unknown to me, VFM and its representatives—including Hal Monk ("Monk")—sided with Terry and engaged in a retaliatory campaign against me, including terminating my lease for no reason and culminating in my wrongful arrest and imprisonment.

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8. I was eager to respect the wishes of the owner of "505 NW 38th Street," but was uncertain where this property was, because this address was not posted on a specific building. I Googled "Fort Worth Property Ownership" and the first suggestion was the Tarrant Appraisal District website; searched this for this address and found nothing, and then searched under owner "Hospers" and found all the property owned by the Hospers Trust "D" (the "Trust"), and a map showing exactly where this was. Notably, anyone could find this in under five minutes.

9. After researching various records, on April 13, 2013, I emailed Monk, directing my letter to Monk in his capacity as a VFM board member, and attached documents from the Tarrant Appraisal District showing the lots owned by the Trust, and asking for confirmation that

the Trust did not, in fact, own NW 38th Street or Von Avenue, as Dana Wood (“Wood”) had represented to the police. Monk failed to respond.

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15. These misrepresentations resulted in the officers manhandling me, temporarily detaining me in a police cruiser, wrongly informing me that I was trespassing, wrongfully issuing me a Trespass Warning at the VFM's request and stating that I would be arrested if I returned to "505 NW 38th Street."

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18. The area I planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM, at almost 5:00 p.m. on a Sunday afternoon when almost no one would be around.

19. I was seeking advance confirmation from Hospers or Monk that they had told Wood that NW 38th Street and Von Avenue were public roads and to check that Wood would not call the police again.

20. In response to my email, Monk phoned me and told me that I could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing. I specifically inquired as to whether Monk had provided Wood this information, and Monk confirmed that he told Wood and Hospers, and represented that there would be no police involvement if I parked in that area. At no time during this conversation did Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Hospers, Wood, or any other Defendant in the above-referenced matter.

21. On the afternoon of April 27, I arrived and parked my vehicle where Monk told me that I was permitted to park.

22. Shortly thereafter, two police cars arrived and Wood and Bill Gorin appeared and told the police that I was trespassing. I immediately called Monk—the party that clearly and unequivocally told me that I was allowed to park there. Monk answered my call and was made fully aware of the situation and Wood’s false representations, but he failed to take any action. I was subsequently arrested.

23. Prior to the issue with the VFM’s property line, I engaged in substantial discussions with Monk regarding my lease.

24. At no point during any of these conversations did Monk state that he was acting as an attorney representing any client. Monk did not inform me in any of the emails or calls related to the property line that he was acting as an attorney representing any client. At all times that I communicated with Monk—whether regarding his lease or the VFM property line—I understood and believed that I was communicating with Monk in Monk’s capacity as a VFM director, not as an attorney. Monk several times specifically identified himself to me in writing as acting as a VFM director.

25. My name is Seth Washburne. My date of birth is November 4, 1959 and my current address is 5200 Meadowcreek Drive, Apt 2060, Dallas, TX 75248, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the \_\_\_\_\_ day of November, 2016.

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Seth P. Washburne

### **Addendum Addressing Specific Points in Defendants' Filings**

26. Defendants' Motion and Sworn Affidavits are full of outright lies, and references that don't exist, including in Monk's critically important Argument and Authorities section.

27. Lies in the Motion's Introduction include:

- a. Lie: "In 2010 Plaintiff, a New York hedge fund manager..." Fact: I closed my fund in March 2009, and so was not a hedge fund manager.
- b. Lie: "In 2010 Plaintiff leased space in a hangar at the Vintage Flying Museum where he planned to keep and restore an old airplane. [Exhibit 2, p. 2]" Fact: Nowhere in Exhibit 2, on page 2 or elsewhere, does it say Plaintiff leased space at VFM in 2010. Plaintiff did not sign a lease with VFM until mid-2011.
- c. Lie: "In 2012 Plaintiff came to Texas and began spending time at VFM's hangar. [Exhibit 1, p. 2]." Fact: I came to Texas October 31, 2011, and began spending time at VFM in November 2011.
- d. Lie: "Almost immediately, VFM started receiving numerous complaints from other tenants, volunteers, and workers in the hangar about erratic, irrational and extremely bizarre behavior of Plaintiff. [Exhibit 1, p. 2, 3] [Exhibit 2, p. 2] [Exhibit 3, p. 2]" Fact: Exhibit 1, pages 2 and 3 don't mention any complaints. Exhibit 2 page 2 states the complaints were in the summer of 2012, i.e. after June 21, 2012, more than 8 months after Plaintiff arrived. Exhibit 3 p. 2, says "mid-2012."
- e. Lie: "As VFM's attorney, Hal Monk, would handle the lease termination and respond to Plaintiff's demands to remain on or return to the premises. [Exhibit 1, p. 2] [Exhibit 2, p. 2]." Fact: Exhibit 2 p2 also never says this. Plaintiff never once demanded to return to the premises. There is not a shred of evidence of this anywhere, because it never happened.
- f. Lie: "He tried to persuade another attorney to sue VFM." Fact: On October 15, 2012, I emailed J. Walker Holland asking simply: "What I want is to: a) learn what my options are, b) perhaps to file this Thursday morning to get a stay of the lease termination on the basis that this is retaliatory, similar to firing someone who says they were raped at a company, and c) to pursue any rights as a result of this." He asked Douglas Hudman to reply to me. I had a very short conversation with Mr. Hudman, in which I started out telling him the lease seems very clear and unambiguous that I had no right to stay on, and he said yes this was exactly so, and I said thanks and we hung up.
- g. Lie: "He began defaming VFM on his website, in emails and posts on various internet sites such as Trip Advisor, Google, etc., referring to VFM as "Villain Flying Museum." [Exhibit 2, p. 3]." Fact: None of this happened before the lease termination, as Monk asserts. The first post on TripAdvisor was February 13, 2014, 1.5 years after leaving.

- h. Lie: “After Plaintiff finally vacated the premises and after he was repeatedly warned by Hal Monk to stay away from the premises...Plaintiff made several attempts to go onto the property occupied by VFM. [Exhibit 2, p. 3].” Fact: Regarding the first part, these “repeated” warnings were two emails from Monk. Monk deliberately lies to the court by leaving out the rest of the sentences. On October 12, 2012, he wrote “You will stay the hell away from VFM premises until after conclusion of that mediation,” with the mediation being October 17, and so for 5 days. On Thursday, October 18, 2012, at 3:29 p.m. he wrote “Your decision to remain away from VFM premises until Monday or Tuesday (to let the dust settle a little) will greatly assist me in coming up with some proposals I hope will inure to your benefit in the area of additional time to vacate VFM’s properties,” i.e. for 3 days. Again, these were short-term bans for 5 and 3 days, which Monk has deliberately misrepresents to the court.

Plaintiff had a valid leasehold at the time, and these demands by Monk were extremely illegal, similar to demanding someone who is renting an apartment “stay the hell away” from their apartment for which they are paying rent. Monk and Hospers notably made no offer to return the rent Plaintiff paid for the days in which he was banned from his leasehold.

Monk had threatened Plaintiff that any of Plaintiff’s property not removed by midnight October 27, 2012, would be considered abandoned. Plaintiff had purchased three enormous DC-3 airplanes, two which flew in but none of which were in flying condition, two completely dismantled, weighing an estimated 30 tons, with thousands of parts, all over the property, plus supplies, from almost three years. On October 12 I had only 15 days to pack and move, and so Monk banned me from my valid leasehold for one-third of this time, and on October 18 I had only nine days left, and was banned for one third of these. This was extremely tortuous and illegal of Monk, and perhaps part of Monk’s own scheme to steal everything left behind.

Additional evidence that I was never barred from the property is that I emailed Monk April 15, 2012, at 7:12 p.m.: “I was also disappointed that, rather than in the past five months simply sending me a polite email informing me that my presence was no longer appreciated on the property, you instead chose to hire armed security guards in flak jackets, and waste Fort Worth taxpayer’s money on a police car, to convey your simple message in a very humiliating fashion.”

Factually the only time I was told I was banned from the property was on April 27, 2014, in the phone conversation with Monk, when I begged Monk to ban me. I complained that these trespass warnings were initiated by Dana Wood, and I had no idea if VFM was really behind them, and on the phone asked Monk to please ban me. Monk recited a sentence banning me from the property.

I went even further, and then asked Monk to please ban me in writing. Monk refused, and said it was not necessary. I had to insist, and beg Monk, to ban me in writing and Monk finally agreed to send me an email. That is the only reason I was ever barred from VFM, and was the first time, in Monk’s email 4/27/14 at 2:26 p.m. I received this after released from prison. Therefore

factually Monk was not enforcing any ban against me for the prior 1.5 years before this, did not even want to ban me, and I had to ask him to, and beg him to put it in writing.

- i. Lie: The second part of Monk's statement is also false, that "After Plaintiff finally vacated the premises and after he was repeatedly warned by Hal Monk to stay away from the premises, Plaintiff made several attempts to go onto the property occupied by VFM." [Exhibit 2, p. 3]." The reference here is to Hospers statement that "he attempted intrusions onto premises long occupied by VFM several times, including those on March 2, 2013, and April 26 and 27, 2014." On March 2, 2013, I drove up to attend the parts auction March 2, 2013, to which I had received three invitations, but the only words I said to anyone were my name when asked while still in my car on NW 38<sup>th</sup> Street, and then was handed over to the police. On this day I did not express to the police any interest in going on the property. On April 26 and 27 I made no attempt to intrude on the premises, and had no interest in doing so. At no other time did I ever seek to intrude on the premises. After I vacated I thought VFM was evil ground, and would never want to set foot in there again.
- j. Lie: "Hal Monk was not involved in any way in Plaintiff's arrest. [Exhibit 1, p. 3] [Exhibit 2, p. 3]." Fact: The second reference does not say this. Monk was the key person who caused the arrest.
- k. Lie: "An unsuccessful pre-lawsuit mediation was held in which Monk represented Defendants. When the case did not settle at mediation Plaintiff filed this lawsuit. [Exhibit 1, p. 3]." Fact: Exhibit 1 p. 3, Monk's own affidavit, refers to a mediation in October 2012. There has never been any mediation about the current issue. This is another bold-faced, outright lie to the court.
- l. Lie: "All of Hal Monk's dealings with Plaintiff and all his responses to Plaintiff's demands to remain on, or return to, the property occupied by VFM were performed in his capacity as attorney for VFM, the Hospers Family Trust "D," and Charlyn Hospers. [Exhibit 1, p. 3]. [Exhibit 2, p. 2-3] [Exhibit 3, p. 3]." Fact: Plaintiff never once demanded to return to the property, and so Monk had almost zero dealings at all with Plaintiff after October 2012.

28. Lies in the Monk's Argument and Authorities include:

- a. Lie: "All dealings and communications Monk had with, or concerning, Plaintiff pertained to the termination of the lease, occupancy of the hangar, ownership of property, the boundaries of the property occupied by VFM, and responding to Plaintiff's continuing demands to go on that property. [Exhibit 1, p. 3] [Exhibit 2, p. 2-3]. Fact: Plaintiff never even once even remotely suggested to anyone that he wanted to go on any VFM or Trust property.
- b. Lie: "Likewise, labeling an attorney's conduct in terminating a lease and responding to a former tenant's repeated demands to go on the property..." Fact: I never even once even

remotely suggested to anyone that I wanted to go on any VFM or Trust property, and never had a single communication with Hal Monk about wanting to go on the property.

- c. Lie: “Reliance is not justified when the representation takes place in an adversarial context. Communications between Plaintiff and Monk after Plaintiff had been told his lease was terminated and to stay away from the property certainly took place in an adversarial context.” Fact: Plaintiff’s relationship with Monk was not adversarial, but was rather one of profound mutual respect and trust. Heretofore unmentioned are two critical facts: Monk is a WWII veteran, who was a mechanic on cargo planes in the Philippines, Japan, and Guam, which he described as “the salad days of his youth,” i.e. the best time in his life, and a role which was mostly never written about and so is forgotten to time, and Plaintiff is the #1 author and researcher of this role, having devoted eight years of his life, mostly full time, to making this role remembered. Plaintiff’s father, who died in 1967, was in such a unit, and Plaintiff wrote an 800-page book about this squadron, which was at the same locations where Monk served, with the same types of planes. Monk wrote Plaintiff October 5, 2012: “Hey Guy, I like you, respect and admire you. Your book is great.” On October 12, 2012, Monk wrote Plaintiff, addressing him as “My dear fellow,” explaining he was in “sincere awe” of Plaintiff. He wrote a glowing review of Plaintiff’s book, with a P.S. that Plaintiff could use Monk’s review to sell the book, even without attribution.

Plaintiff’s communications with Monk after the termination day of October 27, 2012, were even more very friendly, and all about Monk’s WWII experience, on October 28, November 13, November 16, November 17, November 18, and November 19, the last four titled “317<sup>th</sup> TCG,” i.e. troop carrier squadron. Monk liked Plaintiff so much that he even mailed Plaintiff his favorite paperback book as a gift, about a football kicker who could hit from anywhere on the field.

Plaintiff to this day devotes almost full time to WWII research of a troop carrier squadron and the places Monk served. The profound respect and trust he had in Monk made this double cross, by a WWII troop carrier squadron member, extremely hard to take. Monk’s friendly and respectful emails to Plaintiff, and gifting him his favorite book after Plaintiff left, is evidence there was no adversarial relationship.

The 12 lies in his Introduction and 3 lies in his arguments clearly demonstrate there are very genuine issues of material fact regarding Hal Monk’s immunity from suit and liability. That Monk was himself once a lawyer, and practiced before this very court, makes his deliberate lies to the court – even that a mediation already occurred over Plaintiff’s current claim of malicious prosecution, all the more shocking and appalling. Therefore, a summary judgment on all claims against him should be denied.

29. Lies in Monk’s affidavit include:

- a. Lie: “8a. Upon finding a baby bottle on his desk in the VFM hangar, he went into a rage, chased a female employee of another tenant across the hangar floor screaming 'mother fucker' and other obscenities, until she fell backwards while trying to get away

from him. He was so out of control that he broke a toe when he kicked a huge metal tool box.” Fact: Dana Wood was standing on the far side of the conference table in Jim Terry’s conference room off of the hangar, looking down going over something, but facing me. I called out to her from about 60 feet away, “Dana, do you know what Jim did?” She looked up, and said “We can’t talk to you.” Her feet did not move and were riveted in place. I told her he put a baby bottle on my desk. She again said “We can’t talk to you” and didn’t move. I then said he was a bad person, and she did not reply, but may have walked toward me to close the sliding door between us. About half an hour later she came out and was walking nearby and I called out and apologized and said “Hey Dana, this is just about Jim, and has nothing to do with you, I still like you.” Wood in her response to her interrogatory #12 about this replied: “I was in the mancave [i.e. the conference room] trying to set things up for kids camp and I was distracted by Seth’s yelling and I tripped and fell. I then walked over [toward me] and shut the door to the mancave with Seth standing on the other side of the door.” This confirms I was not chasing her, not even in the same room as her, that she walked toward me, not away from me, and she fell on her own due to tripping. I don’t recall seeing her trip – that must have been when walking toward me around the side of the conference table I could not see. Nevertheless, Wood herself denies everything Monk describes.

- b. Lie: “8c. A VFM volunteer reported him saying that he wanted to kill another hangar tenant "so bad, I can't stand it." Fact: Around June 19, after breaking my toe, it was maybe 1:30 p.m., and I told my worker Joe that we were done for the day and I was leaving. I had parked behind the hangar that day for some reason. The next day I told Joe that if as I was leaving the day before Jim Terry had walked in front of my car I would have been tempted to not slow down, but never said I wanted to otherwise hurt Terry. Factually I would have slowed down and would never harm him or anyone.
- c. Lie: “9. "After the lease was terminated Mr. Washburne demanded to go onto the property occupied by VFM. In response, as VFM's attorney, I instructed him several times to stay away from the property.” Fact: As previously noted, after my lease was terminated I never expressed the slightest interest to anyone of going on the property. After I vacated Monk also had not one single communication with me about the property line or staying away. These are deliberate lies to the court.
- d. Lie: “Paragraph 9: “I never conspired with anyone to cause Mr. Washburne's arrest.” Fact: Monk’s actions were the primary drivers of my arrest.
- e. Lie: “Paragraph 9: “All my dealings and communications with Mr. Washburne after advising him that the lease was terminated were in my capacity as attorney for VFM, representing the interests of VFM.” Fact: Monk never once communicated with me after his friendly November 19 email about his troop carrier squadron, other than to cc me on one email to Hospers.
- f. Lie: “All my dealings and communications with and about Mr. Washburne, pertained to the lease termination, his occupancy of the hangar, ownership of property in the hangar,

his conduct in the hangar, the boundaries of the property occupied by VFM, and his demands to go on the property.” Lie: I never once demanded to go on the property.

- g. Lie: “10. All my actions regarding Mr. Washburne were performed in my capacity as attorney for my clients. In my opinion they were appropriate and necessary to achieve my client's legal objectives of terminating the lease and ending Mr. Washburne's disruptive presence on the property, while ensuring the safety of all tenants, volunteers, workers, and visitors to the museum.” Fact: These actions were in October 2012, and ended then. Monk’s plan in April 2014 was completely apart from those prior actions.

30. Lies in Charlyn Hospers’ affidavit include:

- a. Lie: “Page 2. In the summer of 2012, I got numerous complaints from tenants, volunteers and workers in the VFM hangar about intolerable behavior of tenant Seth Washburne.” Facts: This is a lie which will be shown during depositions. In 2012 the first day of summer was June 20. My last two workers were driven off by Jim Terry on June 19, quitting June 20, and with no workers there, I rarely set foot in VFM again until after October 2012, after summer was over, other than when my airplane fuselage and three wings were destroyed August 14, 2012, due to the actions of Terry and Patrick Mahaffey. When I did stop by it was during the week when almost no one was around and I had almost no interaction with anyone in the summer of 2012. Before that, three tenants, of an F-86, a Beech 18, and a bi-plane, had planes that never flew, and I saw two of these tenants only once in the year that I was there, and never saw the third person. A tenant building a PT-22 was on good terms with me. The CAF people I got along with. The only other tenants were Jim Terry and Jim Reynolds, who was under Terry’s umbrella, and Terry stole from me. Most of the volunteers greeted me with enthusiasm the entire time I was there, other than those associated with Terry.
- b. Lie: “Page 3” He demanded that his licensed aircraft mechanics violate FAA regulations in doing restoration work on his airplanes in our hangar.” Fact: This has already been proved false in depositions in my other case. It relates to my request that original airplane skin be preserved where possible, and Mahaffey thinking this was an absolute requirement, but emails show this is not true.
- c. Lie: “Reports of his stated wishes to commit suicide and murder were most alarming.” Fact: I never once stated any wish to commit suicide or murder. My saying I would be tempted to not slow down if Terry walked in front of my car led to this “wants to commit murder” allegation.
- d. Lies: “Episodes of uncontrollable screaming, cursing tantrums, and actual physical assaults on a former employee and a female employee of another tenant...” Fact: Each and every part of this statement is a lie. I raised my voice only once ever, in calling out to Dana that once, and never physically touched a single other person there – not any former employee, e.g. Joe, and not any female employee. This is another outright lie by Hospers, typical of her prior statements, and the reason the defamation claim was included.



- e. Lie: “8. "He told his employee how much he enjoyed suing people (said he found it challenging) and that he had made a lot of money doing so.” Fact: I had never sued anyone in my life before late 2013, almost a year after leaving VFM, and certainly never made any money doing so. I also had no employees. Again this is an outright lie.
- f. Lie: “He commenced a series of untruthful defamatory posts on his website, emails, and posts on internet sites such as Trip Advisor, Google, etc., referring to VFM as the "Villain Flying Museum." Fact: I made no posts at all until well after I left.
- g. Lies: “10. After he vacated, despite having been warned numerous times to "Stay the hell away from VFM, he attempted intrusions onto premises long occupied by VFM several times, including those on March 2, 2013 and April 26 and 27, 2014.” Fact: As previously noted, VFM never once asked me to stay away after my lease was terminated, and I never once expressed any interest in returning, and never ever did.
- h. Lie: “11. "Contrary to the many accusations in his Petitions filed in this Lawsuit, no representative of VFM or the Trust ever initiated a call to police about his attempted intrusions, or had any communication whatsoever with a police officer, other than responding to investigating officers' requests for information.” Fact: the first Trespass in 2012 was issued by the VFM. The second in 2014 was by Dana Wood listed as a representative of VFM. The arrest on April 27, 2014 was due to Gorin as a representative of the VFM, Hospers, and the Trust.
- i. Lie: “Neither did any such representative ever request a police officer to arrest him.” Fact: Yes, Gorin did.
- j. Lie: “12. "During the eviction process and Mr. Washburne's ensuing actual and attempted intrusions on premises occupied by VFM...” Fact: After the evacuation I never made a single actual or attempted intrusion on any premises occupied by VFM.

31. Lies in Robert Hospers’ affidavit include:

- a. Lies: “Page 2. 5. In mid-2012, we all became alarmed upon learning of the irrational threats [none], cursing rages [none], violations of FAA regulations [none], statements of wishes to commit suicide [none] and murder [none], attempted bodily assaults [none] and other antics in VFM's hangar by tenant Seth Washburne. Other hangar tenants, their employees, volunteers and Museum visitors [none] were complaining about his manifestations of severe, and possibly dangerous, mental aberrations [none].” Fact: These have been addressed above, and are all lies copied from his mother
- b. Lie: “6. Upon receipt of the notice of lease termination, Mr. Washburne declared open warfare on my mother, Hal and other people connected with VFM.” Fact: No evidence of this whatsoever, and instead I wrote very respectful pleas to have my lease extended, and treated Ms. Hospers with the utmost respect. The afternoon of the hangar dance, three weeks after receiving the lease termination, when Bob threatened to slug me, his

mother rebuked him and was friendly and nice to me and said I had a right to be there, and we had a nice conversation.

- c. Lie: “His proclivity to make false accusations and to generally prevaricate about facts became more evident at VFM's annual hangar dance on October 20, 2012. He approached me to complain about the injustice of terminating the lease.” Fact: I saw him outside, behind his truck, with another man, and politely said “May I speak to you for a second,” and he said in a friendly way “Well no, not right now” or something like that. Later that evening I saw him sitting in his truck talking to his nephew Patrick Faram, and asked if I could speak to him then, and he said the same. I did not want to talk to him about extending the lease, but rather to ask him why he hated me, what had he heard about me, and try to address any lies he had been told, because at that point I had literally never spoken a word to him in my life. Notably, this Patrick Faram standing there, is Charlyn’s grandson, and responded enthusiastically to seeing me, and said he still would love a copy of my book. My car was parked nearby, and I went and got one out of my trunk and gave it to him, for which he thanked me profusely. If I was at war with his grandmother he would have been hostile toward me, but instead was very friendly.
- d. Lie: “I simply told him he needed to leave.” Fact: The conversation on this night was as shown above.
- e. Lie: “If there was any physical contact between us, it was a handshake.” Fact: Earlier in the day was when I approached Chuckie to confirm I could be around that night in my work area, he raised a fist and told me “Get the hell out of here!” I never shook his hand or had any contact with him

32. In conclusion, Monk, Charlyn Hospers, and Robert Hospers, have filed affidavits full of outright lies. Monk has filed an affidavit full of 12 outright lies in his introduction, and 3 in his arguments. Monk’s affidavit has 7 lies; Charlyn Hospers’ affidavit more than 10 lies, Robert Hospers affidavit more than 5 lies. That Monk was once long ago a lawyer before this very court, and now would deliberately choose to lie to it, is utterly shocking. It also revealing. The only reason he would lower himself to such base acts is due to his fear of the consequences if the truth is revealed. In other words, he knows full well that he is 100% guilty of everything as charged.

33. Lastly, with all due respect to the court, I heard earlier in this suit that the judge looked out over her glasses and said “Is that you Hal?” and something like “Great to see you

again.” If your honor cannot separate her emotional attachment to Hal from ruling on this and rule correctly to deny this motion he asks that she recuse herself.

34. My name is Seth Washburne. My date of birth is November 4, 1959 and my current address is 5200 Meadowcreek Drive, Apt 2060, Dallas, TX 75248, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the \_\_\_\_\_ day of November, 2016.



4. I had a falling out with Terry and others who were hired to work on Billie, due to their negligent and/or defective work on Billie, and Terry's theft of more than seventy of my airplane parts. As a result of the theft, I brought criminal charges against Terry.

5. For reasons unknown to me, VFM and its representatives—including Hal Monk ("Monk")—sided with Terry and engaged in a retaliatory campaign against me, including terminating my lease for no reason and culminating in my wrongful arrest and imprisonment.

6. I was invited to a March 2, 2013 auction at the VFM. Accordingly, on March 2, 2013, I drove to the west end of NW 38th Street, where I was in the public right of way.

7. While still in my car, I was met by an armed security guard who, upon receiving my name, waived down a police cruiser that had been parked outside the VFM. A police officer issued a warning to me not return to "505 NW 38th Street," despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land, and further threatened arrest if I returned anywhere on NW 38th Street west of Ross Avenue.

8. I was eager to respect the wishes of the owner of "505 NW 38th Street," but was uncertain where this property was, because this address was not posted on a specific building. I Googled "Fort Worth Property Ownership" and the first suggestion was the Tarrant Appraisal District website; searched this for this address and found nothing, and then searched under owner "Hospers" and found all the property owned by the Hospers Trust "D" (the "Trust"), and a map showing exactly where this was. Notably, anyone could find this in under five minutes.

9. After researching various records, on April 13, 2013, I emailed Monk, directing my letter to Monk in his capacity as a VFM board member, and attached documents from the Tarrant Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust

did not, in fact, own NW 38th Street or Von Avenue, as Dana Wood (“Wood”) had represented to the police. Monk failed to respond.

10. In my communications with Monk regarding the VFM property line, at all times I understood that I was communicating with Monk in Monk’s capacity as a VFM director.

11. In April of 2014, Terry and Wood again invited me to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.

12. I had declined all prior invitations, and declined this one, but elected to return to the vicinity of the VFM for two primary reasons. First, I returned to the vicinity of the VFM because the invitation had a photo a B-29 in front of the VFM hangar, and I, a WWII history enthusiast, noted a slot in the top of the building for the plane’s tail which I never noticed before, and thought would be fun to see, possibly along with observing how the B-29 fit in the hangar. Second, I returned to the vicinity of the VFM because Terry’s lawyer, only six days before, had requested an extension for interrogatory responses due to Terry being out of town, and I wanted to observe from a distance whether Terry was in fact still out of town. I stayed on public roads and stopped just before the end of NW 38th Street to have what I expected to be a friendly chat with Wood.

13. Wood immediately told me that I was trespassing. I offered the papers I carried with me, which Wood rejected. Wood said she would call someone who could determine the property line, and so I parked on the grass north of NW 38<sup>th</sup> Street, east of the Von Avenue, far from any Trust property, and had what I believed was a friendly conversation under a canopy with a worker as I waited for the person Wood called. In the meantime, Wood called the police.

14. The VFM, through Wood, represented to the police that it had actual awareness of the ownership of the property at issue and represented that I was trespassing.

15. These misrepresentations resulted in the officers manhandling me, temporarily detaining me in a police cruiser, wrongly informing me that I was trespassing, wrongfully issuing me a Trespass Warning at the VFM's request and stating that I would be arrested if I returned to "505 NW 38th Street."

16. After the allegation of trespass on April 26, 2014, I emailed board members Hospers and Monk demanding that representatives of the VFM stop telling the police that the Trust or the VFM owns NW 38th Street and Von Avenue.

17. On April 27, 2014, I again emailed Monk, Hospers, and Wood, and indicated that I would like to drive to the end of NW 38th Street and look out at the airport.

18. The area I planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM, at almost 5:00 p.m. on a Sunday afternoon when almost no one would be around.

19. I was seeking advance confirmation from Hospers or Monk that they had told Wood that NW 38th Street and Von Avenue were public roads and to check that Wood would not call the police again.

20. In response to my email, Monk phoned me and told me that I could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing. I specifically inquired as to whether Monk had provided Wood this information, and Monk confirmed that he told Wood and Hospers, and represented that there would be no police involvement if I parked in that area. At no time during this conversation did Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Hospers, Wood, or any other Defendant in the above-referenced matter.

21. On the afternoon of April 27, I arrived and parked my vehicle where Monk told me that I was permitted to park.

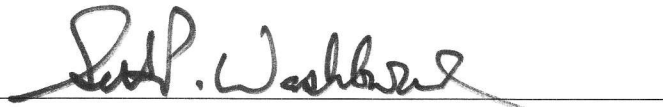
22. Shortly thereafter, two police cars arrived and Wood and Bill Gorin appeared and told the police that I was trespassing. I immediately called Monk—the party that clearly and unequivocally told me that I was allowed to park there. Monk answered my call and was made fully aware of the situation and Wood’s false representations, but he failed to take any action. I was subsequently arrested.

23. Prior to the issue with the VFM’s property line, I engaged in substantial discussions with Monk regarding my lease.

24. At no point during any of these conversations did Monk state that he was acting as an attorney representing any client. Monk did not inform me in any of the emails or calls related to the property line that he was acting as an attorney representing any client. At all times that I communicated with Monk—whether regarding his lease or the VFM property line—I understood and believed that I was communicating with Monk in Monk’s capacity as a VFM director, not as an attorney. Monk several times specifically identified himself to me in writing as acting as a VFM director.

25. My name is Seth Washburne. My date of birth is November 4, 1959 and my current address is 5200 Meadowcreek Drive, Apt 2060, Dallas, TX 75248, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the 25<sup>th</sup> day of November, 2016.

  
Seth P. Washburne



## **Declaration Addendum Addressing Specific Points in Defendants' Filings**

26. Defendants' Motion and Sworn Affidavits are full of inaccuracies, and references that don't exist, including in Monk's critically important Argument and Authorities section.

27. Inaccuracies in the Motion's Introduction include:

- a. Inaccuracy: "In 2010 Plaintiff, a New York hedge fund manager..." Fact: I closed my fund in March 2009, and so was not a hedge fund manager.
- b. Inaccuracy: "In 2010 Plaintiff leased space in a hangar at the Vintage Flying Museum where he planned to keep and restore an old airplane. [Exhibit 2, p. 2]" Fact: Nowhere in Exhibit 2, on page 2 or elsewhere, does it say Plaintiff leased space at VFM in 2010. Plaintiff did not sign a lease with VFM until mid-2011.
- c. Inaccuracy: "In 2012 Plaintiff came to Texas and began spending time at VFM's hangar. [Exhibit 1, p. 2]." Fact: I came to Texas October 31, 2011, and began spending time at VFM in November 2011.
- d. Inaccuracy: "Almost immediately, VFM started receiving numerous complaints from other tenants, volunteers, and workers in the hangar about erratic, irrational and extremely bizarre behavior of Plaintiff. [Exhibit 1, p. 2, 3] [Exhibit 2, p. 2] [Exhibit 3, p. 2]" Fact: Exhibit 1, pages 2 and 3 don't mention any complaints. Exhibit 2 page 2 states the complaints were in the summer of 2012, i.e. after June 21, 2012, more than 8 months after Plaintiff arrived. Exhibit 3 p. 2, says "mid-2012."
- e. Inaccuracy: "As VFM's attorney, Hal Monk, would handle the lease termination and respond to Plaintiff's demands to remain on or return to the premises. [Exhibit 1, p. 2] [Exhibit 2, p. 2]." Fact: Exhibit 2 p.2 also never says this. Plaintiff never once demanded to return to the premises.
- f. Inaccuracy: "He began defaming VFM on his website, in emails and posts on various internet sites such as Trip Advisor, Google, etc., referring to VFM as "Villain Flying Museum." [Exhibit 2, p. 3]." Fact: None of this happened before the lease termination, as Monk asserts. The first post on TripAdvisor was February 13, 2014, 1.5 years after leaving.
- g. Inaccuracy: "After Plaintiff finally vacated the premises and after he was repeatedly warned by Hal Monk to stay away from the premises...Plaintiff made several attempts to go onto the property occupied by VFM. [Exhibit 2, p. 3]." Fact: Regarding the first part, these "repeated" warnings were two emails from Monk. Monk deliberately misleads the court by leaving out the rest of the sentences. On October 12, 2012, he wrote "You will stay the hell away from VFM premises until after conclusion of that mediation," with the mediation being October 17, and so for 5 days. On Thursday, October 18, 2012, at 3:29 p.m. he wrote "Your decision to remain away from VFM premises until Monday or

Tuesday (to let the dust settle a little) will greatly assist me in coming up with some proposals I hope will inure to your benefit in the area of additional time to vacate VFM's properties," i.e. for 3 days. Again, these were short-term bans for 5 and 3 days, which Monk has deliberately misrepresented to the court. Factually the only time I was told I was banned from the property was on April 27, 2014, in the phone conversation with Monk. I complained that these trespass warnings were initiated by Dana Wood. Monk sent me an email on April 27, 2014 at 2:26 p.m., which I received after I was released from jail, notifying me of the ban.

- h. Inaccuracy: The second part of Monk's statement is also false, that "After Plaintiff finally vacated the premises and after he was repeatedly warned by Hal Monk to stay away from the premises, Plaintiff made several attempts to go onto the property occupied by VFM." [Exhibit 2, p. 3]." The reference here is to Hospers statement that "he attempted intrusions onto premises long occupied by VFM several times, including those on March 2, 2013, and April 26 and 27, 2014." On March 2, 2013, I drove up to attend the parts auction March 2, 2013, to which I had received three invitations, but the only words I said to anyone were my name when asked while still in my car on NW 38<sup>th</sup> Street, and then was handed over to the police. On this day I did not express to the police any interest in going on the property. On April 26 and 27 I made no attempt to intrude on the premises, and had no interest in doing so. At no other time did I ever seek to intrude on the premises.
- i. Inaccuracy: "Hal Monk was not involved in any way in Plaintiff's arrest. [Exhibit 1, p. 3] [Exhibit 2, p. 3]." Fact: The second reference does not say this. Monk was the key person who caused the arrest.
- j. Inaccuracy: "An unsuccessful pre-lawsuit mediation was held in which Monk represented Defendants. When the case did not settle at mediation Plaintiff filed this lawsuit. [Exhibit 1, p. 3]." Fact: Exhibit 1 p. 3, Monk's own affidavit, refers to a mediation in October 2012. There has never been any mediation about the current issue. This is another bold-faced, outright lie to the court.

28. Inaccuracies in the Monk's Argument and Authorities include:

- a. Inaccuracy: "All dealings and communications Monk had with, or concerning, Plaintiff pertained to the termination of the lease, occupancy of the hangar, ownership of property, the boundaries of the property occupied by VFM, and responding to Plaintiff's continuing demands to go on that property. [Exhibit 1, p. 3] [Exhibit 2, p. 2-3]. Fact: Plaintiff never even once even remotely suggested to anyone that he wanted to go on any VFM or Trust property.
- b. Inaccuracy: "Likewise, labeling an attorney's conduct in terminating a lease and responding to a former tenant's repeated demands to go on the property..." Fact: I did not make repeated demands to go on any VFM or Trust property.

- c. Inaccuracy: “Reliance is not justified when the representation takes place in an adversarial context. Communications between Plaintiff and Monk after Plaintiff had been told his lease was terminated and to stay away from the property certainly took place in an adversarial context.” Fact: Plaintiff’s relationship with Monk was not adversarial, but was rather one of profound mutual respect and trust. Heretofore unmentioned are two critical facts: Monk is a WWII veteran, who was a mechanic on cargo planes in the Philippines, Japan, and Guam, which he described as “the salad days of his youth,” i.e. the best time in his life, and a role which was mostly never written about and so is forgotten to time, and Plaintiff is the #1 author and researcher of this role, having devoted eight years of his life, mostly full time, to making this role remembered. Plaintiff’s father, who died in 1967, was in such a unit, and Plaintiff wrote an 800-page book about this squadron, which was at the same locations where Monk served, with the same types of planes. Monk wrote Plaintiff October 5, 2012: “Hey Guy, I like you, respect and admire you. Your book is great.” On October 12, 2012, Monk wrote Plaintiff, addressing him as “My dear fellow,” explaining he was in “sincere awe” of Plaintiff. He wrote a glowing review of Plaintiff’s book, with a P.S. that Plaintiff could use Monk’s review to sell the book, even without attribution.

Plaintiff’s communications with Monk after the termination day of October 27, 2012, were even more very friendly, and all about Monk’s WWII experience, on October 28, November 13, November 16, November 17, November 18, and November 19, the last four titled “317<sup>th</sup> TCG,” i.e. troop carrier squadron. Monk liked Plaintiff so much that he even mailed Plaintiff his favorite paperback book as a gift, about a football kicker who could hit from anywhere on the field.

Plaintiff to this day devotes almost full time to WWII research of a troop carrier squadron and the places Monk served. The profound respect and trust he had in Monk made this double cross, by a WWII troop carrier squadron member, extremely hard to take. Monk’s friendly and respectful emails to Plaintiff, and gifting him his favorite book after Plaintiff left, is evidence there was no adversarial relationship.

29. Inaccuracies in Monk’s affidavit include:

- a. Inaccuracy: “8a. Upon finding a baby bottle on his desk in the VFM hangar, he went into a rage, chased a female employee of another tenant across the hangar floor screaming 'mother fucker' and other obscenities, until she fell backwards while trying to get away from him. He was so out of control that he broke a toe when he kicked a huge metal tool box.” Fact: Dana Wood was standing on the far side of the conference table in Jim Terry’s conference room off of the hangar, looking down going over something, but facing me. I called out to her from about 60 feet away, “Dana, do you know what Jim did?” She looked up, and said “We can’t talk to you.” Her feet did not move and were riveted in place. I told her he put a baby bottle on my desk. She again said “We can’t talk to you” and didn’t move. I then said he was a bad person, and she did not reply, but may have walked toward me to close the sliding door between us. About half an hour later she came out and was walking nearby and I called out and apologized and said “Hey

Dana, this is just about Jim, and has nothing to do with you, I still like you.” Wood in her response to her interrogatory #12 about this replied: “I was in the man cave [i.e. the conference room] trying to set things up for kid’s camp and I was distracted by Seth's yelling and I tripped and fell. I then walked over [toward me] and shut the door to the mancave with Seth standing on the other side of the door.” This confirms I was not chasing her, not even in the same room as her, that she walked toward me, not away from me, and she fell on her own due to tripping. I don’t recall seeing her trip – that must have been when walking toward me around the side of the conference table I could not see. Nevertheless, Wood herself denies everything Monk describes.

- b. Inaccuracy: “9. "After the lease was terminated Mr. Washburne demanded to go onto the property occupied by VFM. In response, as VFM's attorney, I instructed him several times to stay away from the property.” Fact: As previously noted, after my lease was terminated I never expressed the slightest interest to anyone of going on the property. After I vacated Monk also had not one single communication with me about the property line or staying away.
- c. Inaccuracy: “Paragraph 9: “All my dealings and communications with Mr. Washburne after advising him that the lease was terminated were in my capacity as attorney for VFM, representing the interests of VFM.” Fact: Monk never once communicated with me after his friendly November 19 email about his troop carrier squadron, other than to cc me on one email to Hospers.
- d. Inaccuracy: “All my dealings and communications with and about Mr. Washburne, pertained to the lease termination, his occupancy of the hangar, ownership of property in the hangar, his conduct in the hangar, the boundaries of the property occupied by VFM, and his demands to go on the property.” Inaccuracy: I never once demanded to go on the property.
- e. Inaccuracy: “10. All my actions regarding Mr. Washburne were performed in my capacity as attorney for my clients. In my opinion they were appropriate and necessary to achieve my client's legal objectives of terminating the lease and ending Mr. Washburne's disruptive presence on the property, while ensuring the safety of all tenants, volunteers, workers, and visitors to the museum.” Fact: These actions were in October 2012, and ended then. Monk’s plan in April 2014 was completely apart from those prior actions.

30. Inaccuracies in Charlyn Hospers’ affidavit include:

- a. Inaccuracy: “Page 3” He demanded that his licensed aircraft mechanics violate FAA regulations in doing restoration work on his airplanes in our hangar.” Fact: This has already been proved false in depositions in my other case. It relates to my request that

original airplane skin be preserved where possible, and Mahaffey thinking this was an absolute requirement, but emails show this is not true.

- b. Inaccuracy: “Reports of his stated wishes to commit suicide and murder were most alarming.” Fact: I never once stated any wish to commit suicide or murder.
- c. Inaccuracy: “Episodes of uncontrollable screaming, cursing tantrums, and actual physical assaults on a former employee and a female employee of another tenant...”  
Fact: Each and every part of this statement is a lie. I raised my voice only once ever, in calling out to Dana one time, and never physically touched a single person there – not any former employee, e.g. Joe, and not any female employee.
- d. Inaccuracy: “8. "He told his employee how much he enjoyed suing people (said he found it challenging) and that he had made a lot of money doing so.” Fact: I had never sued anyone in my life before late 2013, almost a year after leaving VFM, and certainly never made any money doing so. I also had no employees.
- e. Inaccuracy: “He commenced a series of untruthful defamatory posts on his website, emails, and posts on internet sites such as Trip Advisor, Google, etc., referring to VFM as the "Villain Flying Museum." Fact: I made no posts at all until well after I left.
- f. Inaccuracy: “10. After he vacated, despite having been warned numerous times to "Stay the hell away from VFM, he attempted intrusions onto premises long occupied by VFM several times, including those on March 2, 2013 and April 26 and 27, 2014.” Fact: As previously noted, VFM never once asked me to stay away after my lease was terminated, and I never once expressed any interest in returning, and never ever did.
- g. Inaccuracy: “11. "Contrary to the many accusations in his Petitions filed in this Lawsuit, no representative of VFM or the Trust ever initiated a call to police about his attempted intrusions, or had any communication whatsoever with a police officer, other than responding to investigating officers' requests for information.” Fact: the first Trespass in 2013 was issued by the VFM. The second in 2014 was by Dana Wood listed as a representative of VFM. The arrest on April 27, 2014 was due to Gorin as a representative of the VFM, Hospers, and the Trust.
- h. Inaccuracy: “Neither did any such representative ever request a police officer to arrest him.” Fact: Yes, Gorin and Wood did.
- i. Inaccuracy: “12. "During the eviction process and Mr. Washburne's ensuing actual and attempted intrusions on premises occupied by VFM...” Fact: After the eviction, I never made a single actual or attempted intrusion on any premises occupied by VFM.

31. Inaccuracies in Robert Hospers' affidavit include:

- a. Inaccuracies: "Page 2. 5. In mid-2012, we all became alarmed upon learning of the irrational threats [none], cursing rages [none], violations of FAA regulations [none], statements of wishes to commit suicide [none] and murder [none], attempted bodily assaults [none] and other antics in VFM's hangar by tenant Seth Washburne. Other hangar tenants, their employees, volunteers and Museum visitors [none] were complaining about his manifestations of severe, and possibly dangerous, mental aberrations [none]." Fact: These have been addressed above, and are all inaccuracies copied from his mother.
- b. Inaccuracy: "6. Upon receipt of the notice of lease termination, Mr. Washburne declared open warfare on my mother, Hal and other people connected with VFM." Fact: No evidence of this whatsoever, and instead I wrote very respectful pleas to have my lease extended, and treated Ms. Hospers with the utmost respect. The afternoon of the hangar dance, three weeks after receiving the lease termination, when Bob threatened to slug me, his mother rebuked him and was friendly and nice to me and said I had a right to be there, and we had a nice conversation. On my last day there, October 27, 2012, Hospers' top lieutenant, Mae McKnight, greeted me with a very enthusiastic "Hi Seth! Great to see you! How's everything?"
- c. Inaccuracy: "His proclivity to make false accusations and to generally prevaricate about facts became more evident at VFM's annual hangar dance on October 20, 2012. He approached me to complain about the injustice of terminating the lease." Fact: I saw him outside, behind his truck, with another man, and politely said "May I speak to you for a second," and he said in a friendly way "Well no, not right now" or something like that. Later that evening I saw him sitting in his truck talking to his nephew Patrick Faram, and asked if I could speak to him then, and he said the same. I did not want to talk to him about extending the lease, but rather to ask him why he hated me, what had he heard about me, and try to address any lies he had been told, because at that point I had literally never spoken a word to him in my life. Notably, this Patrick Faram standing there, is Charlyn's grandson, and responded enthusiastically to seeing me, and said he still would love a copy of my book. My car was parked nearby, and I went and got one out of my trunk and gave it to him, for which he thanked me profusely. If I was at war with his grandmother he would have been hostile toward me, but instead was very friendly.
- d. Inaccuracy: "I simply told him he needed to leave." Fact: The conversation on this night was as shown above.
- e. Inaccuracy: "If there was any physical contact between us, it was a handshake." Fact: Earlier in the day was when I approached Chuckie to confirm I could be around that night in my work area, he raised a fist and told me "Get the hell out of here!" I never shook his hand or had any contact with him.

32. My name is Seth Washburne. My date of birth is November 4, 1959 and my current address is 5200 Meadowcreek Drive, Apt 2060, Dallas, TX 75248, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the 25<sup>th</sup> day of November, 2016.

  
\_\_\_\_\_  
Seth P. Washburne

Exhibit 57: 2017 11 25 - 1.31 p.m. Krabill to Seth addendum not  
necessary



## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Friday, November 25, 2016 1:31 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole; Mallory Biblo  
**Subject:** Re: Monk MSJ Declaration Deadline - Addendum

Seth,

I am going to be sending you the amended declaration in a few minutes. After reviewing, you will need to execute both parts, the original declaration and the addendum.

As you know, we do not believe this addendum is necessary. However, we understand your desire to clear your name by having this in the record. Hopefully it will help us in some way as well if they judge chooses to read everything.

Call me on my cell if you have any questions. We need to get this back ASAP to get it filed today.

## KENT D. KRABILL | Partner

LynnPinkerCoxHurst

Direct [214 981 3831](tel:2149813831)

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[Dallas, Texas 75201](#)

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**From:** Seth Washburne <sethpw1@gmail.com>  
**Date:** Friday, November 25, 2016 at 11:24 AM  
**To:** Kent Krabill <kkrabill@lynnllp.com>  
**Cc:** Stephen Cole <SCole@lynnllp.com>, Mallory Biblo <MBiblo@lynnllp.com>  
**Subject:** RE: Monk MSJ Declaration Deadline - Addendum

Kent, and by cc Stephen and Mallory,

Kent, you emailed me Wednesday regarding supplement info I wanted to add: "As I said, knowing what to argue, and when to argue it, is key in any lawsuit. I will review this info and see if any of it will be a good fit for oral argument. If not, we will address it, if necessary, in the future."

I fully respect the fact that the three of you know the laws, and are great trial lawyers, but please understand there are thousands of facts which I lived and know very well, which to you may not come to mind.

I added a 9-page addendum to my previously 5-page, as shown attached, addressing the specific points in Monk's motion, and the three affidavits (which I had not reviewed before we finalized the submission). These are packed with lies, including 12 in the MSJ introduction, and 3 in his arguments. If we are trying to prove there are issues of facts, I would think that pointing out to the court that Monk is deliberately lying to the court would be a good place to start. For example, he says there was already a mediation over this issue, which there was not. He says he told me to stay away after I left which he did not. He says I made repeated attempts to get on the property after I left, and actually did get on it, none of which happened.

Also I know you don't care about how they characterize me, but imagine if someone made a public filing that anyone of you were uncontrollably screaming, battering women, slugging employees, demanding employees brake federal laws, plotting murder, and much more, and someone told you not to challenge these, just to leave them out there, they won't affect what the judge thinks of you. I think they will, and would like to stand up for myself. The statement about chasing Wood until she tripped over – Dana in her interrogatory already denied this. How am I supposed to attend the hearing, and sit out there, seen by the judge, as the uncontrollable screamer and murderer? I dread that moment. We didn't challenge any of their lies about me.

I know the 7-day-before point passed, but we could say that was Thanksgiving, and this is the next day, so just one day late, and was held up due to the holiday, so I think we could squeak this in.

Would you please read my addendum pages and let me know if we may please, please, submit this? You can delete some if you want, or make changes, especially to my suggesting the judge recuse herself if fond of Hal, but I would greatly, greatly appreciate it if you would give serious consideration to including as much of this as possible.

This suit is of course about malicious prosecution, but for me it is also very much about challenging all the false lies they told about me – hence the defamation claim which was very important to me. That is gone now, but I am still hugely concerned about them making false statements about me, and want to challenge them, and this would be a best-ever way to do it, and with consequences to them all, of keeping Hal in, and letting the judge know they are liars.

Again, please please consider what I wrote, and consider adding it. I can go sign the signature page and resend it to you.

Seth  
(212) 289-1506

Exhibit 58: Defendant's Response to Plaintiff's Motion to Compel  
Mediation

**Cause No. 153-275478-14**

**SETH WASHBURNE**  
**Plaintiff,**

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§

**IN THE DISTRICT COURT OF**

v.

**VINTAGE FLYING MUSEUM, INC.,**  
**HOSPERS FAMILY TRUST “D”,**  
**CHARLYN HOSPERS, BILL GORIN**  
**and DANA WOOD**  
**Defendants.**

**TARRANTCOUNTY, TEXAS**

**153<sup>RD</sup> JUDICIAL DISTRICT**

**DEFENDANTS’ RESPONSE TO PLAINTIFF’S MOTION TO COMPEL MEDIATION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, Vintage Flying Museum, Inc., Hospers Family Trust “D,” Charlyn Hospers, Hal Monk, and Bill Gorin, file this Response to Plaintiff’s Motion to Compel Mediation and will show the following:

**Defendants’ opposition to mediation**

Defendants are opposed to mediating this case because it will be a complete waste of time under the unusual circumstances of this lawsuit. Plaintiff has engaged in a vicious internet smear campaign designed to defame and ruin defendants’ reputations in retaliation for perceived wrongs he complains about in this lawsuit. Defendant, Vintage Flying Museum, is a non-profit organization that operates solely on donations from the public and its reputation and internet presence are existential. Defendants are unwilling, under any circumstances, to enter into any settlement that does not include non-disparagement and confidentiality clauses. Such clauses are, of course, standard in settlement of tort lawsuits. Plaintiff has refused to agree to such clauses, thus revealing that his objective in this lawsuit is to get revenge and retribution rather than compensation for his alleged damages.

Further, the parties in this case previously attended a mediation concerning Vintage Flying Museum's termination of Plaintiff's lease agreement. Not only was the mediation unsuccessful, but afterwards Plaintiff wrote a ranting, blistering email attacking the mediator personally. *See Exhibit 1.* Plaintiff's conduct demonstrates an unstable and irrational temperament that makes any type of settlement virtually impossible. Defendants also have no desire to subject another mediator to this kind of abuse.

WHEREFORE, Defendants request that the Court deny Plaintiff's Motion to Compel Mediation.

Respectfully submitted,

*/s/ Randall E. Turner*

Texas State Bar No.: 20328310

**LAW OFFICES OF RANDALL E. TURNER, PLLC**

5017 El Campo Ave.

Fort Worth, TX 76107

Direct line: (817) 420-9690

Fax: (817) 887-5717

Email: [randy@randyturner.com](mailto:randy@randyturner.com)

**ATTORNEY FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

In accordance with Rule 21a of the Texas Rules of Civil Procedure, I hereby certify that a true and correct copy of the above and foregoing document has been served electronically through the electronic filing manager to the email addresses of all attorneys of record and pro se parties whose email addresses are on file with the electronic filing manager.

*/s/ Randall E. Turner*

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Thursday, October 18, 2012 9:06 AM  
**To:** 'Frank & Kay Elliott'  
**Cc:** 'Hal Monk'; 'Chuckie@vintageflyingmuseum.org'; 'Patsy Hocker'; 'Michael Coup'  
**Subject:** Comments

Kay,

I would like to tell you I think you did a terrible job of mediating.

1. **You bragged to us about your \$11,000-a-person business class trip to China.** I can't imagine anyone else doing this, even with their closest friends, much less with strangers, much less with aggrieved parties meeting to resolve an unhappy conflict.
2. **You moved the mediation part to the small, uncomfortable room where you sent me** – and let the other party enjoy the large, comfortable room, showing obvious preference for them and disrespect for me. You should have kept the mediation in the first room, and sent Chuckie and Jimmy to the other room.
3. **In the other room, instead of having Hal and I sit across from each other, you had us sit next to each other facing you,** making it harder for him and I to interact, and quickly making him become unengaged.
4. **You did not mediate at all between Hal and me** – instead you spent about 90% of the time in that room assailing me with your own, in my opinion stupid, questions.
5. **You did not get Hal involved much at all** - he spent that 90% of the time slumped in his chair perhaps with his eyes closed, or staring down, into space, immobilized, while you peppered me with questions. **You tried to stimulate almost no conversation between us.**
6. **Your questions to me were almost all quite ignorant,** something like: “Why do you care about what people say about you?”, “If you want to be able to talk about them, why can't they be able to talk about you?” (to which I replied “They can say anything they like about me that is true, I am only concerned about things that aren't true”), “Why should anyone believe what you say is true?”, and then back to “Why is this important to you?” That was a big waste of time, since Hal was not even listening and out of it, and the point was what HE thinks, not what YOU think.
7. **I told you ahead of time I wanted to mediate a disparagement complaint , too, rather than come back for this, and you never allowed me to specifically mention it as a formal complaint.** We could have dealt with that and put it behind us, but will now have to return to this later. (I assure you, you will not be the mediator).
8. **You laughed out loud** - when I said they should have just a little flexibility on the off-premises date, and in return the main thing I would give is I would have one less bad thing to say about them (i.e. I would not say they strictly enforced the 30 days), but you burst out with a huge laugh, your head even rocking back, because you thought that was so hysterical. That was a serious point.
9. **You seemed dead-set on helping them get a non-disparage commitment from me.**
10. **You failed to provide me with a copy of the agreement I signed,** and I cannot be expected to remember what was in it.



11. **At the end, you let Hal yell at me.** He asked me not to “interrogate” Chuckie, and I fully RESPECTED this and did not ask her a single question, and hardly even looked at her while I spoke. I wanted to make just a few respectful points, and was told to shut up.
12. **You did not even try to bring things to an amicable agree-to-disagree conclusion.**
13. The only reason I can see for your success is that you have done a lot of these, and so people assume you are good, so hire you to do another, and then you brag about even more business, so more people hire you.

With great disappointment,

Seth P. Washburne  
4200 Northern Cross Blvd, Apt 5302  
Haltom City, TX 76137  
(212) 289-1506

Exhibit 59: 2017 06 21 - 9.40 a.m. Seth to Krabill



## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Wednesday, June 21, 2017 9:40 AM  
**To:** 'Kent Krabill'  
**Subject:** My call with Jonathan re damages and settlement  
**Attachments:** VFM Plaintiff's Original Petition.pdf; Washburne vs. VFM - 2nd Amended - Final.pdf

Kent,

Regarding your email below seeking to confirm my conversation with Jonathan:

1. Yes, he called me yesterday at 6:40 p.m., and said he was revising the actual damages to about \$8,250 (or some number in the 8,000 range), and wondered if I had any back up for any other damages. He said he had done a search that was "exhaustive," this was his word, and could find no other mention of any other damages.
2. I asked him if he knew what the components were of the roughly \$8,250 amount, and he said he knew it was three items, the defense attorney, the survey, and psych disorder costs, but had no idea what each one of these components was.
3. Both of these comments surprised me, because I am very into providing exact details behind numbers, and was sure I had my prior counsel include a breakdown of this in the petitions, or in an RFD response. So I asked Jonathan where he got the larger number he had, which was about \$32,000, thinking the backup must have been with it, and he said it was in a filing – I can't remember the one he named, and said it was included as only a total number, with no backup.
4. This morning I looked again at filings, and the exact amounts of the roughly \$8,250 – actually \$8,529, and most of these extra items, though adding up to \$26,000, not \$32,000, were in both the original petition and its second amended petition, attached. Hence I wonder why his "exhaustive" search did not include either of these documents. I am a little concerned, based on his use of the word "exhaustive," that I will be billed for 2-3 hours or more of his time searching for any mention of damages, when he would have found them in the first place one would ordinarily look – in the original petition.
5. As for advising me of the risks, yes, my recollection is he said something about there was no chance at all I would ever get a penny more than the actual damages, i.e. I would get zero for pain and suffering, and zero exemplary damages.
6. Yes, he then mentioned the 80% of \$22,000, and said it in a way such as "I don't know if you have heard of this rule they have in Texas..." but such was filed by Jim Terry, Pat Mahaffey, Dana Wood, and the Museum, so I have seen this four times, plus you and Stephen have reminded me of this. No offense, but just to be honest, it felt a little condescending.
7. I don't recall him saying the settlement offer was likely more than I would get at trial, but would not disagree with that. He made some reference to a 65% number.
8. You both ignore the fact that these settlement offers include confidentiality, which is a huge thing to give up.

Now leaving the subject of Jonathan:

9. Regarding pain and suffering, my recollection is that you have said it will be very hard to get a big number because I never went to a doctor. But I am under the impression I can still get a small number, e.g. \$5,000, \$25,000, or \$50,000, and maybe more, for this. If there is a statute which states I can receive \$0 for pain and suffering let me know, but in the Fourth Amended petition you left this in.
10. Regarding exemplary damages, my recollection is you and Stephen and I had a conversation in which you told me the maximum exemplary damages would be \$200,000. That was a surprise to me, but I have known it now since early December. My expectation is that I can get at least \$10,000 in exemplary damages, and maybe \$20,000 or \$50,000. You included exemplary, too, in your fourth amended petition.
11. Combined, my expectation is that I have an ok chance of getting:
- a. Out of pocket costs of \$8,528.
  - b. Pay for my time to respond to these things, at least \$5,000 if at \$30/hour, or at my requested \$100 per hour this would be \$17,000.
  - c. Pain and suffering damages of at least \$5,000, but hopefully much more, such as \$50,000 or \$100,000.
  - d. Exemplary damages of at least \$5,000, but hopefully a minimum \$17,000, 2x my actual costs, and perhaps much more, such as \$25,000, or \$50,000.
  - e. Combined these add up to a minimum of  $\$8,528 + \$5,000 + \$5,000 + \$5,000 = \$23,528$ , which after allocating some to Dana would still be more than \$17,200.
  - f. Please let me know what pieces of this are extremely unlikely.
12. If I truly have no chance of reaching \$17,200 against VFM-Hospers-Gorin, if I non-suit it, and they sue me to recover their fees, is that a hard case for me to defend? I would non-suit it before agreeing to confidentiality.

#### Other things

13. Jonathan said we can still submit items if they are supplemental to an RFP item, and I want to include a photo of a billboard in Fort Worth of someone being handcuffed, and of a sign on the way to Lancaster to not pick up hitchhikers who may be from the prison, and maybe some other things, so will leave in a few moments to drive to FW to take a photo of that billboard, so will not be reachable by phone until the end of the day, but in any case would prefer an answer to the above in writing.
14. You and Stephen have often mentioned that I wanted an apology from them. If I said that before, I withdraw that, and ask you to please stop bringing it up. The first time Stephen mentioned they would offer this I made it quite clear that I could not care less about their apology – they don't mean it, they are only sorry they got caught. So again please do not again mention my wanting an apology from them, because it upsets me.

I think you are a very good lawyer, the best I could possibly have, and picture you doing a great job at trial.

Seth

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**From:** Kent Krabill [<mailto:kkrabill@lynnllp.com>]

**Sent:** Tuesday, June 20, 2017 8:07 PM

**To:** Seth Washburne

**Cc:** Jonathan Kelley

**Subject:** You call with Jonathan re damages and settlement

Seth,

On your telephone call with Jonathan this afternoon, he advised you that the amount you are claiming in actual damages (non-punitive) is approximately \$8,250 (or a few thousand dollars more, depending on whether we are able to locate additional sources of damages). He further advised you (i) of the risks of continuing the lawsuit, (ii) that if we lose at trial or don't recover at least 80% of defendants' offer of \$22,000, you will owe Defendants their attorneys' fees, and (iii) that the settlement offer we have currently from defendants is likely higher than any amount you would receive in damages at trial (and also includes the apology you said you wanted).

I know you have repeatedly said you understand the risks and want your day in court, which is great, but I want to be crystal clear about the hurdles you face and the potential outcomes. From the beginning, I told you that I thought you have a strong liability case, but that damages were problematic because they were so low.

Today, you indicated once again that you understood, and told Jonathan that I had spoken to you about this previously. You also indicated that you would search for any other expenses that we might claim as damages when we amend our disclosures to include a revised damages number. You have now sent that and we will review and get back to you.

We are ready and willing to try this case. We just want to make sure you understand the potential outcomes.

Thanks,

Kent

Exhibit 60: 2017 06 08 - Krabill to Seth re Monk depo outline

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Thursday, June 08, 2017 3:08 PM  
**To:** Seth Washburne; Jonathan Kelley  
**Subject:** Re: Monk Deposition Outline

Seth,

If Jonathan has time, he certainly can ask the questions you added. But we must get the info we need for trial. So let Jonathan do his best to get through those, and then if he has time, he can ask the other questions. Maybe you can prioritize what you added so that -- if he has time -- he can start with the most important questions first.

Kent

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**From:** Seth Washburne <sethpw1@gmail.com>  
**Date:** Thursday, June 8, 2017 at 11:03 PM  
**To:** Kent Krabill <kkrabill@lynnllp.com>, Jonathan Kelley <jkelley@lynnllp.com>  
**Subject:** RE: Monk Deposition Outline

Kent,

We have 5.5 hours, which with 1 hour lunch is 6.5 hours, from 9:30 a.m. until 4 p.m., so may have enough time for all of these. Monk may talk slowly, but also does not say very much.

If we have time is it ok to ask these the things you eliminated, and can you alternatively identify which questions would hurt our case?

I strongly want to ask what date he went overseas, because I am just personally curious if he overlapped with the Thirsty 13<sup>th</sup>.

I think the point about him giving me a book, too, shows we had a very cordial, trusting relationship, that is why it was particularly painful to be double-crossed by him.

Seth

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**From:** Kent Krabill [mailto:kkrabill@lynnllp.com]  
**Sent:** Thursday, June 08, 2017 2:52 PM  
**To:** Seth Washburne; Jonathan Kelley  
**Subject:** Re: Monk Deposition Outline

Seth,

We don't have time for all of this. It is way too much and most of what you added is completely irrelevant to our case.

Here is what needs to be omitted from what you added:

Please add this back – this is important as to why I trusted him, and to show his history of lying.

### **Personal and professional Background**

1. Exact birth date – important for his WWII sign-up.
2. Where born, grew up.

### **WWII Experience**

3. Date enlisted?
4. Why enlisted?
5. How old was he when enlisted? Lied about age? - Told me he did.
6. Why did you lie about your age? Did you lie a lot as a youngster?
7. Do you think it was ok to tell a lie about your age? Why was lying ok?
8. What date did you arrive overseas?
9. Initially in a replacement depot?
10. To what operational unit were you assigned, initially and until returned to U.S.
11. Date assigned to operational unit? Date returned to U.S.?
12. Responsibilities with first unit, second unit, etc.
13. Locations where worked with each unit.
14. Feelings about service?
15. Emailed Seth it was the “salad days” of your youth, what did you mean by that?
16. Any injuries sustained while in the service? (Monk stepped off a curb in Japan or somewhere, while with some famous aviator I think, and hurt his back).
17. Did you ever receive veteran’s compensation for any injuries?

### **Sale of B-17 – I think this is helpful to show why they catered to Jim Terry.**

18. Where you involved in the sale of the B-17?
19. Why was it sold?
20. Did that remove the main attraction of the museum? Did that make the museum more dependent upon Jim Terry, for his airplanes and events to bring in visitors?

Do not spend too much time on baby bottle.

### **Lease Termination Reasons**

21. Please list all the bad things you had heard at that time, not since, that Seth had done, which made you want to terminate his lease.
22. Did you hear that 35-40 people hated Seth?
23. Please list all the tenants who were there at the time. Then which did not like Seth.
24. Please list all the tenant workers there at that time, and all who did not like Seth.
25. Please list all the volunteers there at the time, and all who did not like Seth.

26. Seth's workers quit around June 19, and the lease termination letter was written around September 11. Do you know how often Seth even went to the hangar any more during those three months?
27. Were you aware that Seth had to summon a police detective to the hangar about one week before the lease termination in order to get his parts back?
28. The real reason for the termination was Jim Terry did not like the police coming out, right?

### **Lease Termination Letter**

29. In the 27 years that you have been associated with the museum, please identify all the people who did restoration for hire, the way Jim Terry did. What planes were restored there, who were the owners, and how much money did the buyers spend?
30. How long did Jim Terry run a restoration shop there? What other planes did he restore for customers?
31. Wouldn't you agree that the museum was a place where, other than for an aircraft annual or a small repair, virtually everyone worked on planes as a volunteer?
32. Wouldn't you agree that Seth's projects were the first ever large-scale restorations ever done for hire at VFM, with full-time paid workers 5 days a week?
33. Wouldn't you agree that you, Hospers, and Coup allowed Terry to run this money-making operation there, a first-ever?
34. Is it reasonable to assume that a customer who had paid \$860,000 to have one plane restored there would have certain expectations when he visited the hangar, to see the plane or planes were moving along well?
35. What communications did you have with Terry prior to the lease termination?
36. Why did you not get rid of Terry instead of Seth/

### **Book about Field Goal Kicker – this is very important.**

37. When Seth left for good on November 2, 2012, how would you describe your relations with him, were they cordial, neutral, or exceeding hostile, etc.?
38. After Seth left did you mail Seth a free paperback book about a kicker who could kick field goals from anywhere on the field?
39. What was the name of that book, and the author, and how did you learn of it?
40. It was a favorite book of yours, wasn't it?
41. This is evidence that your relationship was cordial, right?

### **Real Estate Experience – I think this is good to add back.**

42. Have you ever purchased property for yourself or your business?
43. Prior to April 15, 2013, were you aware of how Fort Worth defines property, i.e. dividing the city into subdivisions, then into blocks, and then into lots? If so, please explain this in your own words.
44. In your law practice did you ever work on cases involving property lines, and, if so, were you aware through these cases, too, that property is defined by subdivision, block, and lot, and that streets are not included?

### **Hangar Purchase Negotiation – I think it is good to note that the museum was "born of evil," i.e. that a midnight deal was made to buy the hangar. I know maybe not admissible.**

45. In roughly what month and year did Doc Hospers purchase the B-17?
46. Where was it when he purchased it, and when it was at Meacham, before in the hangar?
47. How did Doc Hospers become aware that the hangar was for sale?
48. What was the name of the other bidder for the property?
49. It is my client's understanding that the other buyer was all set to buy it, but at the last minute due to some behind-the-scenes event Doc was able to purchase it. Please describe any events you recall which led to Doc buying this, instead of the other bidder.
50. What actions did the losing bidder take to try and block your purchase, e.g. did he sue Doc? [This line of questions to show the museum was born out of lies].

### **Hangar Purchase**

51. How much did Doc pay to purchase the land and buildings?
52. Why were additional areas on Ross Avenue included?
53. Where did he get the money?

**Through the Fence Agreement – the First – I think it would be helpful to add this, to show them we can embarrass them at trial, to make them want to pay more to settle. Shows what kind of people they are.**

54. Why did Doc pursue a “Through the Fence Agreement?”
55. What was your involvement with these negotiations?
56. Were you at all the meetings he had with city officials?
57. Did he have to appear at a city hall meeting?
58. It has been said that he famously stated at a city meeting something along the lines of “If this is not approved, I will use the property as a whore house.” Do you recall this?
59. If so, what was his exact line?
60. If not, what variation of this do you recall?
61. You have said you were at this meeting, and so if my client can find people who were there and can quote this, and you deny it, then you would be lying correct?
62. Please try again to recall and state to your best recollection the words you heard Mr. Hospers use along this line.
63. Was Mrs. Hospers at these meetings? Did she hear this?

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**From:** Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Date:** Thursday, June 8, 2017 at 10:31 PM  
**To:** Jonathan Kelley <[jkelly@lynnllp.com](mailto:jkelly@lynnllp.com)>  
**Cc:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Subject:** RE: Monk Deposition Outline

Jonathan,

I went through your outline and, first, thought it might be a little easier if chronological, and so moved some of your paragraphs around. For example the proposal for me to stay an extra four months is last, but occurred earlier. I realize time is limited, and you might want to get the important stuff done first, but think it might be better to go chronologically. Overall I broke it into two parts, first background info through when I left, then the events of the three dates and property line and survey discussion.

I colored my prior submissions in blue, the ones you took out which I added back in red, and the questions you added are in black. I added back a lot of mine and think they are good, so hope you will be able to ask a lot of them. This is 21 pages, for 5.5 hours, 330 minutes, so is 16 minutes a page, which might be tight, but also might be doable.

I will bring this new one with me, and any you don't get to we can talk about during a break, but I think I hope you will be able to incorporate a lot of these.

I'll try to get there at 9 a.m. If you are planning to take the train and prefer a ride, I could easily swing by and pick you up. I live next to Richardson.

Seth

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**From:** Jonathan Kelley [<mailto:jkelly@lynnllp.com>]  
**Sent:** Thursday, June 08, 2017 11:13 AM



**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** RE: Monk Deposition Outline

Hi Seth,

Apologies that you did receive word that the Monk deposition was tomorrow, I have attached his depo notice to this email. Monk's depo is scheduled to begin tomorrow at 9:30am, at Veritext Legal Solutions, 300 Throckmorton St., Fort Worth, TX 76102 (the same location we were at last time).

Thanks in advance for your comments.

Jon

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**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]

**Sent:** Thursday, June 08, 2017 11:07 AM

**To:** Jonathan Kelley <[jkelly@lynnllp.com](mailto:jkelly@lynnllp.com)>

**Cc:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>

**Subject:** RE: Monk Deposition Outline

Jonathan,

Thank you for sending the outline. I will go over it now, and try to get back to you by the end of the day, and in any case will bring any comments with me tomorrow.

I believe this is the first time I have heard about the Monk deposition being tomorrow. I thought it was still June 29. I recall Kent saying he might have you do it while he is gone, but do not recall ever hearing anything more about this. Please confirm the location is the same, and indicate what time this begins.

Thank you.

Seth

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**From:** Jonathan Kelley [<mailto:jkelly@lynnllp.com>]

**Sent:** Wednesday, June 07, 2017 9:34 PM

**To:** Seth Washburne

**Cc:** Kent Krabill

**Subject:** Monk Deposition Outline

Seth,

I have attached a deposition outline for Monk's deposition this Friday. It is based on the outline that Kent created for Monk's deposition last month, but with the following added:

1. Each of the documents you suggested adding, except the earlier of the two through the fence agreements (I think it is enough to use the one signed in 2014, but let me know if you disagree) and the mayor and council communication concerning the 2014 through-the-fence agreement with VFM;
2. Questions and documents related to all of the survey-related documents produced by Defendants (though note, these are attorneys' eyes only, so my descriptions are vague); and
3. Questions based on the documents produced by Defendants in their Supplemental Production served on May 19th.

Additionally, I plan to incorporate your attached RFA response questions throughout the deposition based on the subject we are discussing, I think they are really good. Note also that I have not included all of the questions I intend to ask in this outline. In fact, most of the questions I plan to ask about the documents are not included in this outline.

Let me know if you have any comments or questions, and look forward to seeing you on Friday.

Thanks,  
Jon

**JONATHAN KELLEY**, Attorney  
**Lynn Pinker Cox & Hurst**  
2100 Ross Avenue, Suite 2700  
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Exhibit 61: 2017 05 29 - 11.02 a.m. email Seth to Krabill re extra items,  
and 2017 05 29 - 10.00 pm seth to krabill re trial intro

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Monday, May 29, 2017 11:02 AM  
**To:** 'Kent Krabill'  
**Cc:** 'Jonathan Kelley'  
**Subject:** RE: Museum Case Supplemental Docs

Kent,

You write that Wednesday is the deadline, but I think you meant Tuesday, tomorrow.

After the hearing last Thursday, when we walked to the parking lot, I mentioned I wanted to review Terry case items and add them, so did give you a slight heads-up on this. I did not think of this until recently, and only did as a result of Mark Reams surprising deposition 15 days before that, when wondering how to lessen the blow of what Mark said. But then I did not prepare this last Friday or Saturday, and waited until Sunday, so apologize for losing two days there. I actually thought the deadline was today, so am slightly relieved you have two days instead of only one. I understand from what you wrote that you really needed them two weeks before the deadline.

I do recognize that providing this at the last-minute is unfair to you and Jonathan, who have other items, too, on your plate, and greatly, greatly apologize for this. I, too, don't like doing things at the last minute. When I worked with prior counsel I produced things far in advance, and reviewed things immediately, and was all chipper and eager. But please recall that you are the sixth firm I have retained, and this is about the 20<sup>th</sup> time I have delved into these matters. First for my own write-up, then for the FAA, then for my write up for Chuckie, then for the police, then for the Economic Crimes, then to produce "evidence files" for prior counsel, then for their depositions, then for my deposition, then for the experts, etc). It is very depressing to have to keep reliving all the terrible things people did to me, so it is almost excruciatingly hard to open these files and read over this stuff again.

Please believe I am doing the best I can, but am in a very, very low state now, like walking around with a 100 lb weight on one's shoulder. I will try to do better and be more responsive.

Seth

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**From:** Kent Krabill [mailto:kkrabill@lynnllp.com]  
**Sent:** Monday, May 29, 2017 9:55 AM  
**To:** Seth Washburne  
**Cc:** Jonathan Kelley  
**Subject:** Re: Museum Case Supplemental Docs

Seth,

You do know the deadline to produce all discovery is Wednesday, correct? You are now asking us to review all of these docs to see if they are responsive, get them bates labeled, and produced at the very last moment. Doing things at the very last moment, as I have told you repeatedly, is a terrible way to try a case. We needed these docs at least two weeks ago to properly review and process.

We will do our best to look at these, and, if they are relevant to the Defendants' request or we feel we want to use in our case, we will produce. But this constant last minute routine you keep doing is not the way to prepare a case. You are harming your case, and costing yourself a bunch of extra money, every time you dump something like this on us. And frankly, you do this all the time, before every motion, depo, and deadline. Please try to plan ahead next time.

Kent

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**From:** Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>

**Date:** Sunday, May 28, 2017 at 9:49 PM

**To:** Kent Krabill <[kkrabill@lynlllp.com](mailto:kkrabill@lynlllp.com)>

**Cc:** Jonathan Kelley <[kelley@lynlllp.com](mailto:kelley@lynlllp.com)>

**Subject:** Museum Case Supplemental Docs

Kent and Jonathan,

I think tomorrow is the last day to submit documents for the VFM case, and apologize for providing this to you at the last minute, but would like to provide some more documents, from the Terry case, which I think would help. I uploaded these to Dropbox and will send you a link. We can always produce them now and decide later whether to use them or not. I think they don't hurt us anymore than anything they are already going to say.

I was interested to find, about the baby bottle, an email I wrote that same morning to Gary Worthy of the FAA providing what I recall is word for word what Terry said to me, this is document #70. This has Terry giving me the finger, i.e. using the f-word to me first. Then has his line that Mark remembered in his deposition, telling me "I will neither confirm nor deny." It also has him saying he will try to get my pilot license revoked – and this being two years before he actually did.

An email #78 describes everything that happened with Joe, when Chuckie said I through a rope in his face.

#55 is me telling Chuckie that Terry made threats to me. This one may already have been produced.

I found a good photo #81 of the door to Terry's area against which I through the baby bottle. It fell down next to the base of the fan, or whatever was there at that time.

I include a photo of the back of the head of Steve Swift, who Mark said did not like me, with Steve taking me for a ride in a T6.

I know you want to focus on the arrest itself, but I think the jury is going to look at the big picture, of what kind of guy I am, and if they hear Mark Reams saying 35-40 people hated me, and everyone was walking on egg shells because I was such a bad guy, then they will likely let that influence them, and care a little less about the arrest, or at least damages. VFM will throw a lot at me that we don't know about yet, and it will be a huge battle, and I think we should first establish as many means of support and sympathy as we can, and these will help neutralize most of what they can say.

I spent all day on this. Please consider producing all of these items, and let me know if ok. Thank you.

Seth

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Monday, May 29, 2017 10:00 PM  
**To:** 'Kent Krabill'  
**Cc:** 'Jonathan Kelley'  
**Subject:** Supplemental Info  
**Attachments:** zz maybe 2018 03 15 Greg and Seth.JPG; zz18b 2010 01 31 Billie landing at Meacham.JPG; VFM Supplemental Items with Jonathan's notes.docx; VFM Supplemental Items with Jonathan's notes.pdf; VFM Supplemental Items and Potential Line of Questions as Introduction.pdf

Kent and Jonathan,

In re-reading my first email to you, I did not mention that I included a word file and PDF of a suggested line of questioning, also explaining the reasons for each document. The PDF of that is included again here.

Also attached as a PDF and Word file is all the items by name, similar to what Jonathan did, but preserving the original numbering. PDFs are indicated by numbers that are blue and bold. I added in his 11 comments keeping the original red. I include my replies in blue, and on PDFs he did not comment on. I put an "x" next to some of mine, meaning we can skip those.

Attached are two additional JPEGs, of Billie landing and me at the hangar – there are no other photos of me there. I am with a prior worker who visited. And I think it is good to show Billie landing there.

Kent, I emailed you asking if we could go over this in person, but I guess that is not necessary, so a call is fine. I could describe all of these to a jury in 15 minutes, and I think if you ask the judge can we have 15 minutes for an intro, she might say ok. I think it will help me to get sympathy from the jury if I can explain the background. Obviously the ones that hurt me can be taken out. I feel rather strongly about #70 though.

Seth

## VFM Supplemental Items and Potential Line of Questions as Introduction

**Kent: Please explain how this all started.**

Seth:

1. This is me and my dad in Michigan, where I grew up, in 1962.
2. This is my 7<sup>th</sup> birthday, with my brother and dad in 1966. Six months later he was dead.
3. This is a patch he had from his WWII squadron, and all of my life I was proud of my dad for being in “The Thirsty 13<sup>th</sup>”, though I had no idea what it was.
4. In 2008 I searched online and learned ordered this book.
5. The book had a list of who was awarded the Distinguished Flying Cross, and there was my dad’s name. It provided names of men who served with my dad. I was able to locate many of these men, and others. I interviewed them on the phone and typed their stories. In 2009 I was between jobs, and devoted myself full time to finishing my book. This took 2.5 years, including visiting members or their children to scan their photos.
6. In 2011 I completed the book. It is 800 pages, with more than 2,000 photos. I found the exact locations of all of the camps.
7. The book has color on almost every page. This has been described as the most detailed unit history ever written.

**Kent: Ok, thanks, and here is the book [show to jury]. Tell us about the airplane.**

Seth:

8. The squadron had 43 C-47 airplanes in it, and I made a list here, those at the bottom being “B” models, then A-Models, then base models. I found the serial numbers for 38 of them, and nose art names. I estimate the time line each was in the squadron. The most special are the first 13, which were the first to fly to the South Pacific. These made flights into Guadalcanal, a famous WWII battle, helping save the Marines, and was a turning point in the Pacific War. They are also important to me because my dad flew on these.
9. This is a list of what happened to all the planes in the squadron. After the war, four of the early planes went to Brazil, one to Columbia, one to Venezuela. Many of the squadron’s later planes were scraped, and some crashed. I was surprised to learn that one was still flying, in Puerto Rico.
10. This one was named Billie.
11. This is an email from me to the seller of the plane, stating my intention, that I wanted to donate it to a WWII museum, and where they could sell my book in the bookstore. This was August 19, 2009, and I added that I will need a couple of months to find a museum, to where I could donate the plane.

Kent: “Why were you going to give \$75,000 to a museum?”

Seth: “New York City had a 13% combined state and city tax, and Federal Tax could be 37%, for a combined 50% tax rate, so after tax I expected the cost would half as much, about \$40,000.

Kent: “So you wanted to give a \$40,000 gift to a museum to honor your dad and his squadron?”



Seth: Yes.

**Kent: Ok, so how did you end up here?**

Seth:

12. In October 2009 I planned to visit 18 still living squadron members, and relatives of 5 others, to interview them in person, and scan their photo albums, in the order here, being in Abilene October 29, 2009.
13. On the morning of October 29 I received this email from Luis, the seller of Billie, in Puerto Rico, in which he writes "At this time we are going to sell it ASAP." Therefore the next day when in Lake Worth, at the home of a daughter of a squadron member, scanning her photos, I mentioned to her I was thinking of buying this plane, and needed to find a museum to where to donate it. She suggested the Vintage Flying Museum at Meacham Airport. After I left her home, I was travelling west on 820, and turned off on North Main Street, to visit the Vintage Flying Museum, with the intention of giving them a \$75,000 airplane. I met a man in the gift shop named Joe, and asked if the museum would like the plane, and he said sure. I then asked if the other planes were owned by the museum, and he said they were all privately owned.
14. This is a photo on that day of a C-47 parked outside the museum, and I asked who owned it, and was told Jim Terry. Joe then walked me outside and introduced me to Jim Terry. Terry urged me to not donate it to the museum, and instead to hire him to restore the plane, making many representations to me, and a couple weeks later I agreed to hire Terry.

**Kent: Ok, so that explains why you ended up here, what happened with Terry?**

Seth: There were three times I wanted to fire Jim Terry.

15. This is a photo in Puerto Rico the day I purchased the plane, of Terry on the left, the seller Luis, and me. There were four things Terry did which made me want to fire him before he even began.
16. This is two days later, of the where we worked on the plane. On the right, under the plane, is a tow bar, and one attaches one end to the tail wheel, and the other to a tug, to move the plane. Terry told me I should load the tow bar on the plane. I told him it was not included in the sale, and belonged to the lawyer in whose office I purchased the plane, who we met two days before. Terry replied: "Well, if you take it, no one is going to have any proof you took it. And if they can prove you took it and ask for it back, tell them you will send it, and then just don't. They'll ask a couple more times, then forget about it, and you got yourself a tow bar." I replied "But Jim! That's stealing! I'm not going to steal his tow bar!" Jim dropped his left shoulder and said, "Well, the bottom line is you are going to need a tow bar, and if I were you I'd just take it." That was red flag #1.
17. This is Luis and Terry in Luis's room full of spare parts he wanted to give me. The day of the tow bar comment, or the next day, Terry told me he would go and get the parts from Luis, but insisted on going alone. I implored that I wanted to go to, to see what I was getting, but with a big confident smile he assured he insisted it would be better if he went alone. Then he recommended leaving almost all of the parts in Puerto Rico, for his son to come back and get. This made no sense.

18. Third, on the flight back, we stopped at one place and while walking to dinner, Terry, in the bottom right here, insisted I had to buy a second plane for parts, from this man in the upper right who he had brought along. This would cost \$75,000 using up almost half of the restoration budget. I wanted to keep as much original as possible, so wanted to repair parts, not replace them, so this seemed like bad advice.
19. Fourth, while flying it Texas, we had to stop in Tyler on a Thursday due to the weather. Terry planned to go get it on Sunday. I had been asking him for his home address, and he had refused to tell me, but he called me the day before and said his girlfriend Kandi, on the right here, wanted to have me over to their house for a home-cooked meal on Sunday, to thank me for the Puerto Rico trip, because I had paid for her accommodations and meals there, and they had presents for me, and to bring my mother, who lived in the area. Well I got to the airport, and he announced we were going to H3 ranch instead. This was a letdown, but I went along with it. The only gift was his friend Charles who I had treated to the 10 day trip, all expenses paid, gave me a small pocket knife. But then incredibly, when the bill came, which was more than \$300, he pointed to me and I said I had to pay it. Bill Gorin was there.
20. This photo is Jim and his girlfriend Kandi, and I asked Jim “But you invited me to this meal and said you were going to treat me!” And he just said I had to pay for it because of what he had done for me that day in getting Billie. I asked Kandi “Did you invite me over to your house?” She would not respond, and just looked at Terry. Terry was laughing almost hysterically throughout this, and would keep saying I had to pay for the meal. To keep everyone happy, I did. But I wanted to fire him before he even started work on the plane, because he told me he likes to steal, gave me bad advice, lied to me, and thought it was all so funny. He said the plane would be done in June, so I went ahead because I couldn’t imagine it could go very far wrong.

**Kent: So from the first day the plane landed at Meacham you wanted to fire Terry?**

Seth: Yes.

**Kent: When was the second time?**

Seth: Terry did a lot of wrong things, and after about a month I decided I should write these down, and I kept a list.

21. This is the tail of Billie, with original green primer, and theoretically molecules of my dad’s breath, and I told him to not strip any of this, and he promised in writing he would not strip any original primer, then he stripped it all.
22. This is a summary I made of Paid and Volunteer hours. In our first meeting he promised about 40% of the labor would be volunteers, and this is 31% overall, but other than the two zero weeks is 36%, so close to 40%. He always told me they worked on the planes, but in late May told me they never worked on the planes, and he had no idea what they did, so this was a lie.
23. This is an email to Rob Diver, from whom I bought the second plane, noting the FAA demanded to see the book’s on the plane I bought from him, nicknamed “JR.” Terry told me he gave the books to the FAA, and I called the FAA and they said they didn’t have them, and Terry admitted lying to me, and was laughing, and said “I knew you would be upset, and I didn’t want to upset you!”

24. At this point I resolved to fire Terry, and wrote him this email telling him to stop work until he took the books to the FAA. He had insisted I buy a third DC-3 for parts, which was in Missouri, and I told him on the phone, and here in writing to not move that plane, because I wanted to move the operation to someone in Illinois.

**Kent: So did you fire him in June 2010?**

Seth: No. I called him a week or so later, and he said the Missouri plane had arrived that day. I told him I had demanded he not move it, and he replied, "Well we had had the permits so had to move it." Again, completely ignoring what I asked. So I decided to continue with him but no longer paying his shop rate, paying the workers what they actually made.

Kent: What happened next.

Seth: He told me we should work on JR first, that it could be done in two months, and so I let him work on it first, for two months.

25. This is photo three months later when I visited, of the two young workers, Ricky and Steve, then Pat, then Jim.

26. This is a photo of JR, just going into the paintshop, so they were not all done with it after two months. I gave Jim two more months, and asked if he could be done with JR by Thanksgiving, and with a big smile he confidently told me absolutely it would be done by Thanksgiving. Well it wasn't done by then, or by Christmas, or by the end of January. I gave him 8 months, from June to February, to work on it, 4 times as long as he first requested, which I thought was very nice of me.

27. This is an email to Terry on the one-year anniversary of starting Billie, noting I had made a list of 43 problems with him in just the prior 4 months; noting I had decided to give him a second chance the prior summer, and that I want to change managers now. Notably I said I could move it, but like Steve and Ricky, and didn't want to put them out of a job. And I had Pat take over.

**Kent: So January 31, 2011, you fired Jim Terry?**

Seth: Correct

Kent: How did it go under Pat?

Seth: Initially I thought Pat was great.

Kent: When did you move here?

Seth: I was living in New York City, working on the book, and I finished in October 2011. On November 1, 2011, I relocated to Texas. I held a mini-reunion for the pilots, and rented Jim's plane, to let these men fly again.

**Kent: What problems arose when you arrived here in November?**

Seth:

28. The very first problem with Pat was something very small. I sent this email to Pat asking him to please drive over and look at a hotel for me, for people to stay in at a reunion, and this was only about a mile north of the hangar, and Pat never did this. That was odd.

29. The second was also small, that I had asked Pat to please have a videographer there Saturday morning to video the men talking, and there was no videographer, but I didn't say anything to anyone.
30. I rented Jim's plane for the reunion weekend, to let the old pilots fly again, and this is Jim's invoice, of which \$2,497 was for his friend's plane, but \$8,890 went to Jim, and billed me \$1,200 per hour, instead of the \$1,000 per hour we agreed to.
31. As went out to board these which I alone paid for, there were many people I did not recognize, and it turned out the Terry decided to invite volunteers at the museum and others to ride along for free. I didn't want these people diluting our reunion time. There was Dana.
32. Here is another person, who I think had a wife and grandchild with him. Also Terry's business partner Brett Hobson with his girlfriend. So at least 6, and I think about 10 strangers along with us, crashing our party, but I did not say anything.

I was there on very few days in November, because I had to setup a fulfillment service for selling the book. I would fly over in my Cessna from McKinney, and it was always a happy time.

**Kent: So for your initial event here, November 4-5, 2011, your reunion weekend, Pat let you down a bit by not researching the hotel, and not getting a videographer, then Jim overbilled you 20%, and Dana invited at least six strangers on the flights you paid for. Ok, what happened in December?**

Seth:

33. December 5 was the first full day I worked in the hangar. This is an email from me to Jim about some parts, for which I wired him \$5,500. I had asked him to take a photo of the parts before buying them, and said I could only spend \$5,000, but he spent \$5,500, and did not send me photos. Some baffles were not what I wanted but he said there were many extras I thought might be worth it. After I paid him, he then told me that all the extra parts were not included in the sale, which was shocking. So when I arrived here this \$5,500 purchase was the #1 thing I wanted to investigate
34. This is a photo of a mock-up Jim had of a navigator and radio room area, and it included all the parts he said were not included. I asked him if those were the parts I paid for, and he was honest and admitted yes they were, but then said "But these are all going in MY plane, and we will get others that go in your plane."
35. Another issue was I noticed in my area was Jim's work bench.
36. Also his oil drums. I was paying \$1,500 a month rent, and Jim, around his plane, had nothing, so I was paying his rent, too. I asked him to move his parts out of my area.
37. Next, on the right here are his supplies, but on the left is a metal bin. I asked them to keep separate any piece of metal removed from Billie, but Pat failed to do this.
38. On December 21, 2012, I sent Jim this email, asking him to reimburse me the \$5,500. I also ask him about: a) taking Joe and Oscar, b) where are my parts, c) a 16-hour round

- trip drive to Brownsville he insisted make, and d) his taking my other workers whenever he wanted. This resulted in him yelling at me, but he did give me back my \$5,500.
39. This is the room Terry and Pat used as an office, and for which I paid rent the rent for 1.5 years, and he then kicked me out of this, so I had to sit at a table out in the open hangar, which was cold, windy, and wet when it rained.
40. The day after Christmas I did as he asked and drove to Brownsville, with his truck and trailer, to pick up parts he said were for my airplane.
41. In Brownsville I realized all but these parts pictured were engine cowlings, and all were broken. The person who met me told me every single one of them was damaged beyond repair, and so were completely useless junk, as were the other parts here. Terry apparently thought they could be made into art work, but it was a complete lie to me, and waste of my time.
42. Terry asked me on this trip to also stop by Tradewinds in San Antonio and pick up a box of window plugs. He said they were worth their weight in gold, and we would share them, but we'd figure this out after I got back. It turned out there were only 13, and he took them all, and gave me none, so the trip was a complete lie and waste of my time.
43. This is an email from Pat in October noting that Steve and Ricky complained they were not making enough. I was paying them \$25 per hour, equivalent to \$52,000 per year, and felt good that I was paying them a living wage, and much more. I had noticed they only worked about half time for me, making almost exactly \$26,000 for the entire of 2011. On Thursday, December 29, when walking with them in the south field, we talked about this, and I had seen they worked a lot for Jim, including every Friday, and asked "Doesn't Jim pay you the same I do when you work for him?" They replied "No, he told us he had a deal with you that we had to work for free for him half the time to get the \$25 per hour," so it would average out to the \$12 per hour they got before I paid them directly. I went to Jim and asked him if any such deal exists, and he said "No, they work for me for free because they like my planes, and like going to airshows." I told them, and they said "That's not what we were told." So I learned he had stolen half of my workers time for two years, and made me pay his workers.

**Kent: To summarize, in December you learned Terry a) had stolen your navigator and radio room parts, b) had not separated Billie's original metal, c) made you pay the rent for storing his supplies, d) stole half your worker's time, and e) lied to you to get you to drive 16 hours roundtrip to Brownsville, and f) kicked you out of the office so you had to set up in the cold hangar. Tell us about January.**

Seth:

44. This is a photo January 4, 2012, of my best worker, Ricky – smiling at me - he liked me, with Pat behind him. Less than three weeks later, on January 23, he walked up to me and said "I heard you were going to cut my pay, so I decided to get a new job," and he quit. After I learned they had been working for \$12 an hour, I realized they were going to get a 100% bump in pay going to \$25, and I asked Pat if should just pay the \$20 an hour, since they no longer had to work for Jim, but I quickly decided against it. I asked Pat if he was

the one who told this to Ricky, and if he knew ahead of time, and he was quite defensive, and said yes he told Ricky, and yes he knew ahead of time, “because I protect my workers!” I told Pat “But you work for me,” and he shot back “No I don’t! I work for Jim Terry!” I made it very clear to him when I made him project manager that Terry was not involved anymore, but Terry had two planes that flew, and would let Pat fly them for free, or maybe even pay him to fly them, so Pat had 100% allegiance to Jim Terry.

I talked to Jim and said I was disappointed Ricky quit, and he said laughed and said, no, it was good to get rid of Ricky. I implored him why, what was the matter with Ricky? Jim had huge smile and said “The biggest problem with Ricky was he always felt he had to tell the truth!” This would indeed turn out to be a problem for Jim.

**Kent: So in January your best worker quits. How about February?**

45. This is a photo of Steve. He gave notice in February.
46. This is Joe Tooley, who started work on the projects about 6 months before, who came back to work for me. He eventually brought in a friend of his.
47. This is a summary of hours worked in 2012. You can also see in the first column that Pat starting February 4, rarely came in ever again. In the four weeks, 160 possible hours, from February 4 to March 2 he worked 25 hours, gone 85% of the time. After Steve left, from March 17 to April 13, for four weeks, two weeks he was gone the entire time, the other weeks worked 1 day and 2 days - 3 days in four weeks.

Pat told me at one point that he thought of his job as to be the one to run errands, to go to Home Depot, to TexAir for parts, etc. Well I thought I don’t need to pay someone \$35 an hour, \$300 a day to do this, I will do this, and Pat can work on the airplane. He told me he thought I’d taken his job away from him. He didn’t want to work on the plane, he wanted to get \$73,000 a year for running errands.

He also told me that because he was friendly with Donna at TexAir parts, she gave him an extra discount. I asked her about this, and she said that was nonsense.

**Kent: So in February and March your next best worker quit, and the project manager stopped coming in, though you did get Joe to start working. Was that tough?**

Seth: Yes, but I kept a positive attitude.

48. These photos are March 18, 2012, Chuckie Hospers’ birthday party.
49. You can see she is smiling at me – she liked me a lot.
50. Here she posed for me for a photo with head of operations, John Frasier.

**Kent: April and May?**

51. This a volunteer named Steve Swift, who took me up for a flight in a T6. He always was friendly.
52. This is me cleaning the nacelle. I wanted to paint in here, and Pat had told me not to spray water in here to clean this area, so I spent maybe a month inside this nacelle with

little pieces of cloth trying to clean each area. I injured my shoulder in the process, something teachers get from writing on the blackboard. When Pat finally showed up again the last week of April after working only one day all month, I asked if I really had to clean it the way I was doing, and he laughed and said I was doing it the wrong way, "But you wanted to do it that way, so I just let you!" and rocked back on his heels and laughed at me.

At this point I tired of paying him \$35 an hour, \$73,000 a year, and having him never show up, and then insult me. So on Tuesday April 24 I emailed him asking if he would please consider a very small reduction in pay from \$35 to \$30 an hour. I followed this with an email listing 29 things he had done in which I was disappointed. He replied April 29 at 9 p.m. that he quit.

The next day he sent me two more emails, about write-ups, saying to get them from others. That evening I received an email from Bill Gorin, to just three tenants, me, Jim Terry and, Jim Reynolds – plus his mechanic JR, and cc'ing Chuckie, Head of Operations John Frasier, and financial manager Jimmy Hocker, about a tow bar that was left out, and he copied a. I replied "to all," and let them know Pat was the one who left this out. I thought it was important for these few people to know about personnel changes and so added that Pat had quit.

53. This is my email to them.

54. This is an apology I sent to these same people 29 days later.

55. This is an important email I sent to Chuckie, letting her know Terry had stolen other parts from me, and twice threatened me, yelling at me "You're going to bleed!"

**Kent: You allege Terry stole some of your parts. Tell us about that?**

56. This is an email from Terry telling me he had put his parts on my planes, which seemed odd, because I had many parts, and he wanted to get paid for them.

57. This was a follow-up he sent.

58. This is an email from Pat saying he hoped I could come to an agreement with Terry, i.e. that Terry's parts really were on my planes, which sounded untrue.

59. This is an email from me to Terry and his reply, in which I note Pat told me Terry's plane was blown into a fence, and had damage to the rudder and elevator, and also asking if Terry took back any that belonged to me. This was the first problem with Pat, that I suspected he was not being honest with me about these parts.

**Kent: So he had given you fake invoice for \$4,700, then took \$3,000, but it was lie?**

Seth: Yes

**Kent: How about other parts.**

Seth:

When I got to Fort Worth, Ricky or Steve told me JR's rudder was its own, so these invoices were lies.

60. This is an email to Terry May 20, 2012, asking him to please return items I purchased in Puerto Rico, and ending asking about my elevators.
61. This is the battery charger – he walked over and set it in my area, but the plug here has been torn out. It had a charge, so had been plugged in recently, but someone had recently torn out the plug, making it unusable. I expect Terry did this “Here you can have it back, after I break it.” For the multimeter, he pointed to one which belonged to my mechanic, and said “There it is!” and started laughing. This was all so funny to him. I had to get a police detective to come the hangar to get the beach chairs. He refused to give me the Nitrogen Baffle, “ only saying “I paid for one of them,” and I said “Yes, with my credit card,” and he just repeated “But I paid for it...”
62. This is a photo of my area when I first arrived there, and in the foreground there is part missing from this plane, a part called an elevator. I asked the workers where this was, all they would tell me was “one of yours was bad,” and “we through it in the dumpster.” This was hard to believe.
63. These were these part in June 2010 in the South Hangar.

In response to my email, Terry walked up to me and said my elevators had been in the South Hangar, but weren't anymore, and he didn't think they were stolen. I then called Steve and he would only say “Talk to Jim.” I called Ricky and he said the same, but then he said “Well I guess you have a right to know, Jim took it and it is out there on his plane.” Even then Terry initially refused to give it to me, telling me to go take one of his old frames and use that.

64. I asked my workers Joe and Jason if they thought I should file theft charges, and Joe said “Hell yes, I don't know why you are so calm.” Later I sent this email to Terry telling him I would not tell anyone about this, and asking him to do the same.
65. Here is Terry with Mark Reams and Mike carrying it to the paint room.

**Kent: So now in addition to realing the invoice was fake, you realize he tried stealing your elevator?**

Seth: Yes

**Kent: How about other parts.**

Seth:

66. Terry now when I asked him about parts replied “My lawyer has advised me not to talk to you.” I had to have a police detective come out in September to get these parts, which include the prop dome for JR.

**Kent: What else happened?**

Seth:

67. When anything come off an airplane, a mechanic is supposed to write it down. Terry never wrote anything down. I asked him politely around May 1 to do this by June 1, and then then gave him until June 15. This is an email to him about these.
68. I didn't wait until the 15<sup>th</sup>, but contacted the FAA and filed a complaint Thursday, June 14.



69. I think we did not work Friday, and never did Saturday or Sunday, and did not that Monday either for some reason, so the next day I came in was Tuesday. I saw this baby bottle in the middle of my desk.
70. This is an email I wrote that same morning to the FAA, recalling my exact conversation with Terry.

**Kent: So he admitted putting the baby bottle there, because you had complained to the FAA, and now said he was going to make sure you lose your pilot's license. After all this could it get any worse?**

Seth:

My worker Joe seemed like a good friend, and in late May said he wanted to invite me to his house for a cookout on his new porch when it was finished. But I think Terry turned him against me. Two days after the baby bottle, he and Jason quit.

**Kent: Now you had no workers either. Many parts were stolen. After all this could it get any worse?**

71. This is Pat putting Billie along a fence outside
72. This is where it sat.
73. In April Pat put JR's wing outside on top of pallets.
74. On August 12 a windstorm blew the fuselage about 100 yards, tearing it in half, and smashing almost all of the ribs.
75. Shown here
76. And here
77. And here

**Kent: Now your plane is destroyed.**

78. On August 14 they were having a Japan surrender event at the museum. I saw my prior worker Joe, who I always liked, and he looked at me and shook his head, and I caught up with him outside with all good intentions, to ask him if he had left his torque wrench behind, and another part, and he said no, those were mine. Then I asked him what I ever did wrong as to why he didn't like me. This summarizes that interchange.
79. ah told me two months later that he was mad at me for taking all of the manuals home, thinking I was trying to keep these away from my mechanics. The realiy was This is a tool cabinet that I was using that Mark Reams bought from Terry, so I had to take everything out of it,
80. These are books I took out. I took these home, but only for a few days, because I had no where to store them.

**Kent: September 2012?**

81. I asked volunteer Leo Clevenger if anyone in the hangar was saying anything bad about me, and he told me Chuckie had announced in a meeting that I "cornered Dana." This is

the outside of Jim Terry's conference room. I was standing near the near yellow pylon, and Dana was inside this room.

82. She was on the other side of the table, here.

On September 6 I was taking my mother to the Van Cliburn competition, and around 6 p.m. we were driving south in front of the museum, and I saw Chuckie, and I purposely made a circle, and rolled down the window and said hi to her, from a distance, and she looked very apprehensive, and her mood had changed to where she seemed to not like me all of a sudden. The termination letter had a date a few days later.

Exhibit 62: 2017 01 03 - 8.48 am Cole to Seth re Bradley outline

## Seth Washburne

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**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Tuesday, January 03, 2017 8:48 AM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Ricky Bradley

Seth,

As mentioned in my prior email, Ricky Bradley's deposition is scheduled for tomorrow at 8:30 in our office. He has been served with a subpoena, but we have not been able to reach him to confirm he will show up. However, to get prepared, can you please send me a list of areas to cover with him, as you did with Scott Perdue?

I've been busy working on the MSJ responses so do not currently have an outline put together, but will get that to you after I get your suggestions.

Thanks.

**STEPHEN COLE** | Associate

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Exhibit 63: 2017 01 04 - transcript of my depo

1           A.     But he continued and said that they could  
2 not get rid of him, because there was no one to  
3 replace him with. He was the biggest tenant. I  
4 don't recall actually if he used those words  
5 "biggest tenant," but the implication was that they  
6 could not get rid of him because they needed him.

7           Q.     When you say, "They engaged in a  
8 retaliatory campaign including the termination of  
9 the lease and culminating in my wrongful arrest,"  
10 tell me what else they did in their -- in their  
11 retaliatory campaign.

12          A.     They refused to investigate any of the  
13 issues I had with Jim Terry. And any other museum  
14 directors would have tried to get to the bottom of  
15 what happened and get rid of the wrongdoer, but  
16 instead, they wanted to hurt my reputation and get  
17 rid of me.

18          Q.     That made you mad, didn't it?

19          A.     I don't get mad very easily, so I wouldn't  
20 say -- I don't -- I can't comment on that.

21          Q.     Were you angry?

22                   MR. KRABILL:   Objection, form.

23                   THE WITNESS:   Was I angry? I wouldn't  
24 say I was -- I don't recall.

25          Q.     (By Mr. Turner) It just hurt your

1 feelings?

2 A. I thought it was very poor of them that  
3 they would not care at all about what went on, the  
4 crimes that occurred in their hangar.

5 Q. Just so I understand, your -- your  
6 feelings about this retaliatory campaign never  
7 included anger?

8 MR. KRABILL: Objection, form.

9 THE WITNESS: At -- The -- Depends  
10 what timeframe you're referring to in the  
11 retaliatory campaign.

12 Q. (By Mr. Turner) Well, before the arrest,  
13 let's say.

14 A. Before the arrest. Well, before the  
15 termination letter was also another timeframe.  
16 I -- Again, I don't get angry very easily, so I  
17 would not use the word "anger."

18 Q. What word would you use?

19 A. Disappointment, frustration. But -- Well,  
20 to that point -- Well, yes, disappointment and  
21 frustration.

22 Q. Excuse me. And that was before the  
23 termination letter?

24 A. Yes.

25 Q. Disappointment and frustration, but no

1 anger?

2 A. Well, honestly, I was very busy during  
3 that time and did not have much time to think about  
4 them.

5 Q. So you weren't angry?

6 MR. KRABILL: Objection, form. You've  
7 asked that like five times now.

8 THE WITNESS: Well, before -- I  
9 haven't thought about this.

10 Q. (By Mr. Turner) I'm going to keep asking  
11 it till I get an answer, but go ahead.

12 A. Sure.

13 MR. KRABILL: Objection, form. You do  
14 not have to change your answer because he's trying  
15 to bully you, okay?

16 THE WITNESS: I'm just trying to  
17 recall. During that summer, I did not -- I did not  
18 learn about the one -- the lie about cornering Dana  
19 until after I received the termination letter.  
20 That was around in October that Leo happened to  
21 mention that to me. I'd asked him, "Are people  
22 saying things about me," and he told me that.

23 Q. (By Mr. Turner) Were you -- I'm sorry.

24 A. So I was not upset about that or angry  
25 about that, because I did not know about it before



1 then. The failure to -- Telling people I'd fired  
2 Pat, that bothered me, but I was not angry about  
3 that.

4 The failure to share my letter with  
5 everyone and -- I respected that Ms. Hospers ran  
6 the hangar the way she wanted, but I thought that  
7 was not -- it was disappointing to me. But I wrote  
8 in the letter "Distribute if you want or don't," so  
9 I respected that she would do what she wanted. I  
10 didn't know if it would make the situation better  
11 or worse to distribute the letter.

12 Some people may not have known about  
13 the theft charges. It turned out everyone did.  
14 And it would have helped me if she said something  
15 to people. But I was not angry before I got the  
16 letter. I was busy on other things. And I liked  
17 Mrs. Hospers.

18 MR. TURNER: Objection as  
19 nonresponsive to everything before "I was not angry  
20 before I got the letter."

21 Q. (By Mr. Turner) Let's talk about after  
22 your arrest. Were you angry at the Vintage Flying  
23 Museum and Chuckie Hospers and Hal Monk after you  
24 were arrested?

25 A. I -- I'm not -- I was extremely upset

1 about what they did to me. I'm concerned that the  
2 word "angry" may have some legal implication I'm  
3 not aware of that you're trying to corner me into,  
4 so I hesitate to agree with that. But yes, I was  
5 very upset with them for what they had done to me,  
6 extremely, extremely upset.

7 Q. Let's use the word "mad" instead of  
8 "angry." Were you mad at Monk and Hospers and the  
9 museum after your arrest?

10 A. I was extremely upset at them, and perhaps  
11 you could use the word "mad" to describe that  
12 feeling.

13 Q. Let's look at -- I'm sorry.

14 A. Yes. I think that would be a good word to  
15 use.

16 Q. Let's look at paragraph four of the  
17 Affidavit. You see there it says, "In September  
18 2012, I had Fort Worth detectives visit the VFM in  
19 order to investigate Terry's massive theft against  
20 me. Within two weeks of the detectives' visit to  
21 the VFM, the VFM's three-member board of directors,  
22 which included Monk and Hospers, voted to terminate  
23 my lease." Was it a unanimous vote?

24 A. Yes.

25 Q. So everybody voted to terminate your

1 Q. Well, tell me about that June of 2012  
2 incident.

3 A. What would you like to know about it?

4 MR. KRABILL: Objection, form.

5 Q. (By Mr. Turner) What happened?

6 A. In June of -- In May of 2012, I had asked  
7 Jim Terry to please provide me write-ups that are  
8 required by the FAA. And then I was going away for  
9 a while, so I told him he could have till June 15th  
10 to provide those.

11 Q. For the work he was doing on your  
12 airplane?

13 A. Yes.

14 Q. Okay.

15 A. And I told him if I didn't get those, I  
16 would complain to the FAA. Well, he did not  
17 provide those, and I did file a complaint with the  
18 FAA. And a few days later -- It was like on a  
19 Friday. And either Monday or Tuesday, the next day  
20 I came back to work, there was a baby bottle in the  
21 middle of my desk.

22 And it -- I immediately expected Jim  
23 Terry had put it there, which upset me. And later  
24 that day, I saw Dana walk into Jim Terry's office.  
25 And I picture myself. I was working at my table,

1 and I looked over and I saw her there, and I  
2 thought, you know, I should go tell her about what  
3 Jim Terry did.

4 So I walked in her direction. I was  
5 out in the open hangar. And I just called out and  
6 I said, "Dana, you know what Jim Terry did?"

7 And she was on the other side of his  
8 conference table working, and she just looked up,  
9 and she said, "We can't talk to you." Her feet  
10 didn't move. That's all she said, "We can't talk  
11 to you." And Jim had used this expression before,  
12 that his lawyer advised him not to talk to me to  
13 tell me where my parts were. So I respected that.  
14 Okay. And I said, --

15 Q. Were you involved in -- I'm sorry. Were  
16 you involved in litigation at that time with Terry?

17 A. No. No.

18 Q. Okay.

19 A. But I'd filed the theft charges.

20 Q. Okay.

21 A. I'd already filed the theft charges. And  
22 so I -- So I respected that she couldn't talk. And  
23 I said, "Well, he put a baby bottle on my desk."

24 Again, she said, "We can't talk to  
25 you." Her feet didn't even move.

1                   And I said, "Well, you should know  
2 what kind of person you're working for," and I told  
3 her he was a bad person of some sort.

4           Q.     And you were -- you were angry at Jim  
5 Terry, I assume.

6           A.     I was -- I was a little -- Again, I hate  
7 to use the word "angry" in case there's some  
8 implications to that, but I was upset at Jim Terry.  
9 Okay. I then -- But I liked Dana.

10                   And then I went back to my desk.  
11 Later, I saw her walking along the wall, the south  
12 wall. And I called out to her and said, "Hey,  
13 Dana, this just has to do with Jim Terry. I still  
14 like you. This has nothing to do with you. I  
15 still like you, Dana. It's just about Jim Terry."

16                   So I made it clear to her that I sort  
17 of apologized, but she then filed a report with the  
18 police that I had -- I don't remember all the  
19 contents of the report, but she greatly misstated  
20 everything that happened.

21           Q.     She actually called the police over this  
22 conversation you had with her?

23           A.     She filed a report. Again, I apologize, I  
24 don't recall --

25                   MR. KRABILL: Objection, form.

1 was so that I would not be arrested.

2 Q. And on April 13th of 2013, you had already  
3 filed criminal charges against Terry; is that  
4 correct?

5 A. No.

6 Q. Hospers had already exhibited hostility  
7 towards you by lying about you to VFM volunteers in  
8 order to agitate them against you?

9 A. Yes.

10 Q. And had she defamed you?

11 A. I felt she had, yes.

12 Q. And on that date, she had already sided  
13 with Terry and engaged in a retaliatory campaign  
14 against you, including termination of your lease?

15 A. Yes.

16 Q. Would it be fair to say, Mr. Washburne,  
17 that you were angry with VFM, Hospers, and Jim  
18 Terry on that date?

19 A. On which date?

20 Q. April 13th.

21 A. No.

22 Q. Did you think -- So you would not agree  
23 with me that there was a lot of animosity between  
24 you and VFM or Ms. Hospers?

25 A. I'm inclined to say none whatsoever. I

1 Q. Why did you write that? Why did you post  
2 it?

3 A. So that no one else would have the same  
4 experience I did.

5 Q. But you weren't angry?

6 A. Again, I was trying to just warn others  
7 not to have the same fate that I had.

8 Q. And I'm showing you what's been marked as  
9 Exhibit Number 5. And the -- This isn't a very  
10 good copy, but there's an X at the top and used to  
11 say -- it said "Vintage Flying Museum," and the  
12 "Vintage" was Xed out, and then "Villain" was  
13 written above it. Do you remember that?

14 A. Yes, I do.

15 Q. And you posted that where?

16 A. I believe this was a page I created and  
17 attached for a few days, I don't know how long,  
18 perhaps longer, on the Thirsty 13th website as one  
19 of the -- I don't think I had -- I may have had a  
20 link to it on the Thirsty 13th website.

21 Q. And this is four pages single-spaced where  
22 you said bad things about Vintage Flying Museum,  
23 correct?

24 MR. KRABILL: Objection, form.

25 THE WITNESS: Four pages where I

1 over here. And I stood back by the -- I didn't  
2 want to get close to them. I didn't want to invade  
3 their space or be disrespectful, so I stood back by  
4 the, you know, the trunk of the car and right next  
5 to the back left tire. And I -- I wasn't too  
6 worried about anything. I just happily stood there  
7 and...

8 Q. And you walked back there at a normal  
9 pace? You weren't hurrying?

10 A. Strolled around the car. Strolled around  
11 the car and just stood there and thought, well,  
12 maybe I can hear over here what he's talking about.

13 Q. Okay. And so how long did you stand  
14 there?

15 A. Not very long. Maybe about three seconds.  
16 I'm sorry, maybe about five seconds. There was  
17 another police car here, as well. There were two  
18 police cars. And I stood there, and the officer  
19 saw me in his rear-view mirror. And he all of a  
20 sudden hurled the door open.

21 Q. The one who was talking to the young man?

22 A. Yeah.

23 Q. Okay.

24 A. Hurled the door open, jumped out at me. I  
25 had those papers for the property line in my hand.



1 He knocked those out of my hand, shoved me against  
2 the car. The other guy, I didn't even know he was  
3 behind me, I thought he was still in his car, but  
4 he apparently had walked up, gotten out -- quietly  
5 gotten out of his car and walked up. And maybe  
6 they signalled each other, like, hey, let's get  
7 this guy or something, and so they -- It was a  
8 complete surprise. I was just standing there  
9 happily smiling standing there in shorts,  
10 Topsiders, I think I had shorts, easygoing guy, you  
11 know, and shoved me against the car twisting my arm  
12 back.

13 Q. The police officer in car -- in -- at  
14 number 4?

15 A. He was probably pushing my head down. The  
16 other guy was pushing my arm down.

17 Q. Had you ever been subjected to that kind  
18 of brutality?

19 A. Never, ever, ever.

20 Q. Were you shocked?

21 A. Yes. I was very shocked.

22 Q. Were you angry?

23 A. I was very upset at the police. And my  
24 arm, especially. I'd injured it before. And I  
25 said, "Don't hurt my arm. Don't hurt my arm", and

1 Q. Are you currently on any prescription  
2 medication?

3 A. Never have been in my life.

4 Q. Have you ever been treated for anger  
5 management?

6 A. Never.

7 Q. Did you kick the back of the police car  
8 after you were detained when you were in the back  
9 seat?

10 A. I think I kicked the wall of the police  
11 car maybe.

12 Q. But you weren't angry?

13 A. Well, then I was a little upset.

14 MR. KRABILL: Objection, misleading.

15 Q. (By Mr. Turner) Well, I'm just asking:  
16 Were you angry?

17 MR. KRABILL: There you go.

18 THE WITNESS: After I'd been arrested,  
19 yes, I was upset.

20 Q. (By Mr. Turner) And when we were talking  
21 about things that you posted on the internet about  
22 VFM, did you also edit VFM's Wikipedia page?

23 A. I did not edit the whole thing. I added a  
24 -- one sentence or two, a couple of things on it.

25 Q. More than once?

1 place that you knew of that you could go and watch  
2 airplanes take off and land?

3 A. No. That was not the only place, but that  
4 was where I wanted to go on that day.

5 Q. Why did you choose that place, as opposed  
6 to some other place where you hadn't been  
7 threatened with criminal prosecution and arrest?

8 A. Because I liked that area. There's no  
9 cars going by. It was just a nice area to park,  
10 and I had permission from Hal Monk.

11 Q. Isn't it fair to say that you were -- you  
12 were really looking for trouble?

13 A. Absolutely not. Absolutely not.

14 Q. Were you angry at VFM and Mrs. Hospers and  
15 Hal Monk at that time? Well, let me change that.  
16 Were you mad at them at that time?

17 A. Not -- Well, I don't recall, but I don't  
18 think so. I had a pleasant conversation with Hal  
19 that afternoon. I thought of him as a friend, and  
20 I thought it was a very warm, friendly conversation  
21 we had. We sort of laughed and talked. I don't  
22 know if we laughed, but it was a very friendly  
23 conversation I had with Hal, and I liked and  
24 respected Chuckie, so I wasn't feeling any  
25 hostility towards them.

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<p><b>vfm's</b> 15:25 21:21 55:24,25 56:7 57:10,21 58:17 124:22 125:18,24 140:11 221:9,13 221:25 235:18 237:6 <b>vice</b> 5:19 68:18 69:14 70:5 281:2 <b>vice's</b> 70:8 <b>vicinity</b> 80:16 <b>victim</b> 76:3 86:9 <b>video</b> 194:23 195:15,18 196:3,5 248:18 <b>videographer</b> 2:16 4:1 59:20,23 119:15,18 182:11 182:14 251:21,24 274:21,24 292:4 <b>videotaped</b> 1:12 1:17 4:3 295:11 <b>view</b> 36:4 83:1 90:17 98:13 115:19 201:25 212:2 276:14 <b>vigorously</b> 174:19 <b>villain</b> 72:12 <b>vintage</b> 1:4,18 2:6 3:10 4:5,6,10 20:22 23:12,22 26:12 27:15 33:21 35:1 58:10 63:3 72:11,12,22 73:1 75:12,15 77:23 98:18 101:12 152:1 155:10 156:12 158:13 159:21 160:2 193:23 194:1,2 214:6 254:4</p>	<p>278:22 279:21 295:4 296:2 297:5 <b>violated</b> 80:4 <b>violation</b> 80:9 <b>virginia</b> 125:14 <b>visit</b> 21:18,20 169:18 218:18 <b>visited</b> 77:25 <b>visiting</b> 60:15,16 <b>visitors</b> 125:20 218:11 <b>voce</b> 226:11 241:9 <b>voice</b> 88:17,21,23 89:1,9 277:25 278:5 <b>volume</b> 205:14 <b>volunteer</b> 11:24 120:20 152:14 <b>volunteer's</b> 12:1 <b>volunteers</b> 11:1,2 11:9,18,23 12:8,14 12:16,19 13:3 14:8 66:7 68:4 77:5 269:7 <b>von</b> 64:14 83:1 175:25 178:19 183:21 211:16,21 211:22,24 214:22 215:9 216:24 217:3,7,14,18 220:9,13,17,22 221:5,11,15 222:3 223:16 <b>vote</b> 21:23 <b>voted</b> 21:22,25 58:14 <b>vs</b> 1:3 295:3 <b>vu</b> 282:8,16,19</p>	<p><b>w</b> <b>w</b> 295:12 296:20 297:13 <b>wages</b> 7:10,11,12 8:4 270:14,18 271:12 <b>wait</b> 48:15 73:14 73:14,15 111:4 <b>waited</b> 85:9 <b>waiting</b> 85:25 111:20 274:11 <b>walk</b> 41:24 185:4 187:24 <b>walked</b> 37:10 38:5 42:4 50:14 84:15 84:23 89:18,25 90:10 91:11,18 114:24 115:8 116:4,5 130:8,17 184:14 185:22 187:1 191:11,13 191:14,16 195:9 <b>walking</b> 43:11 189:14 <b>wall</b> 43:11,12 124:10 133:6,16 199:21 200:25 201:8,10,12,16,16 <b>wallet</b> 185:16 187:1 <b>walls</b> 201:14 <b>want</b> 7:10 13:20 13:25 16:16 20:8 22:17,18,18,19,19 22:24 28:3 32:21 52:23 60:9 64:21 76:5,7 82:23 85:8 85:11 87:19 91:9 94:20 104:7 111:3 115:2,2 119:12 126:11,12,14,18</p>	<p>134:6 135:24 143:22 147:9 148:14 149:22 164:20 169:2,16 182:17 191:8 195:10 199:17 205:10 209:4 216:8,10 224:12 225:4 237:5 239:24 247:2 250:22 251:7 252:5,8,10,19 256:8 257:24 261:21 262:3 263:7 265:11,16 267:5 269:20,21 270:23 272:19 282:3,4 286:13 288:21 289:18,19 <b>wanted</b> 15:12,15 15:16,18 17:16 20:6,9 22:11,21,24 33:12 34:7,16 35:21 38:15 40:8 60:10,13,14,23,24 61:18 62:11,24 64:22,22,23,25 65:4,8,11,13,15 67:3,4 75:19 76:19 80:19 82:25 84:5 90:8,23 93:5 93:13,14 111:22 114:2 120:21 121:14,17 125:22 126:9 130:9 143:2 169:17,19,20 172:13,17 178:25 180:5,7 181:4 186:7,16 196:12 196:18 197:22 213:24 218:25</p>
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Exhibit 64: 2017 05 27 - 1.30 - Cole to Washburne, and  
2017 05 28 2017 - 9.57 a.m. Cole to Seth re his granddad



## Seth Washburne

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**From:** Stephen Cole [cole.stephenm@gmail.com]  
**Sent:** Saturday, May 27, 2017 1:29 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Troop Carriers

Seth,

I hope you're doing well. I wanted to drop you a line because I was thinking of you this past weekend.

My grandfather passed away this past Saturday. He was a wonderful man who lived a long and full life. He loved everyone he ever met and could talk for hours with just about anyone (in his retired years, he occupied himself by spending time with prison inmates, particularly those on death row, just so they would have someone to talk to).

And while I knew he was a veteran, I didn't know much about his service because one thing he did not do was talk much about his time spent in the military. In fact, I'm embarrassed to say that, prior to his death, I had always thought he served in the Korean War. Turns out he served in World War II.

I was thinking of you because I learned after his death that he was in the 84th Troop Carrier Squadron of the Army Air Force. As you probably know, this means he flew on a C-47. He was a radio operator. I wish I had realized this before, so that I could have spoken with him about your case and the work I was doing. It would have meant a lot to him, I'm sure (although he was not exactly at a state where he could mentally process that).

Anyway, I am now that much more grateful that I got the chance to represent you and help you in some small way in your work of honoring our veterans.

As always, I am wishing you the very best and will be checking in with Kent periodically to get an update on how things are going.

Take care,

-Stephen Cole

## Seth Washburne

---

**From:** Stephen Cole [cole.stephenm@gmail.com]  
**Sent:** Sunday, May 28, 2017 9:57 AM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Re: Troop Carriers - Thanks

Thanks for all of this info, Seth. Hope you have a nice Memorial Day weekend.

Sent from my iPhone

On May 27, 2017, at 2:06 PM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Hi Stephen,

Thank you for your email this morning, and I am so sorry you lost your grandfather recently. It does sound like he lived a long life, and was indeed a wonderful man.

Thanks for letting me know he was a radio operator on a C-47 in the 84<sup>th</sup> TCS. Attached is a summary I made of 61 troop carrier squadrons, part of 14 troop carrier groups, part of three troop carrier wings, all making up the IX Troop Carrier Command, for D-Day. The 84<sup>th</sup> you can see is part of the 437<sup>th</sup> Group. He would have sat on a C-47 just like JR.

The National Archives and Records Administration (NARA) in College Park, MD, has boxes for all of these TCSs, such as that shown in the attachment for JR's 95<sup>th</sup> TCS. These boxes have orders such as that shown attached for JR (42-100903) on June 7, 1944, listing the crews and the aircraft. You could go there someday, or hire someone to, and get scans of the orders listing your granddad, and learn the serial number of the plane to which he was assigned, and make a list of all of the missions upon which he flew. Attached is a photo of me doing this for JR in 2015 to show you what this looks like.

Thanks for letting me know, and I expect you now have an even greater appreciation for the value of the missing radio operator's chair!

Thanks for your well-wishes with the case, and for staying in touch with Kent about it. Continued best wishes to you in your new position.

Seth

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**From:** Stephen Cole [<mailto:cole.stephenm@gmail.com>]  
**Sent:** Saturday, May 27, 2017 1:29 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Troop Carriers

Seth,

I hope you're doing well. I wanted to drop you a line because I was thinking of you this past weekend.

My grandfather passed away this past Saturday. He was a wonderful man who lived a long and full life. He loved everyone he ever met and could talk for hours with just about anyone (in his retired years, he occupied himself by spending time with prison inmates, particularly those on death row, just so they would have someone to talk to).

And while I knew he was a veteran, I didn't know much about his service because one thing he did not do was talk much about his time spent in the military. In fact, I'm embarrassed to say that, prior to his death, I had always thought he served in the Korean War. Turns out he served in World War II.

I was thinking of you because I learned after his death that he was in the 84th Troop Carrier Squadron of the Army Air Force. As you probably know, this means he flew on a C-47. He was a radio operator. I wish I had realized this before, so that I could have spoken with him about your case and the work I was doing. It would have meant a lot to him, I'm sure (although he was not exactly at a state where he could mentally process that).

Anyway, I am now that much more grateful that I got the chance to represent you and help you in some small way in your work of honoring our veterans.

As always, I am wishing you the very best and will be checking in with Kent periodically to get an update on how things are going.

Take care,

-Stephen Cole

<Ninth Air Force C-47s.JPG>

<95th TCS file at NARA College Park.jpg>

<95th TCS 1944 06 07 adj.jpg>

<2015 07 27 Setn in NARA College Park main room with scanner and 95th TCS files.jpg>

Exhibit 65: 2017 05 29 - 11.42 am Krabill to me re Kelley email

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynllp.com]  
**Sent:** Monday, May 29, 2017 11:42 AM  
**To:** Seth Washburne  
**Cc:** Jonathan Kelley; Kent Krabill  
**Subject:** Museum settlement issues

Seth,

As I wrote yesterday, the email you sent last evening related to the defendants' settlement offer is not only misdirected (I have repeatedly asked you to direct all such emails, questions, concerns to me, not to associates), it is inaccurate and a complete re-writing of history.

Turner asked me some time ago about settlement. I then called you with Stephen to discuss the potential elements of a settlement. I told you on that call that there would be no settlement unless it included confidentiality and non-disparagement provisions. You stated, quite clearly, that you would agree to such provisions only if compensated separately for that, and said you wanted \$50k for those provisions. We proceeded with this understanding.

If you are going to continue to mispresent reality and make blatantly false accusations, we are not going to be able to continue to represent you.

You are all over the place right now. You are throwing around wild accusations regarding settlement, you are sending us docs from another case at the very last moment, you are asking people to be deposed at the very last moment (when I told you weeks ago to talk to Jonathan about it and you never did), and you still are not clear on what you want out of this case.

You need to clear your mind and figure out what you want out of this case. You will never get the type of public apology you want. That isn't going to happen.

As we have discussed repeatedly, your damages are low on this matter because you chose not to get any medical care. As a result, you have very small actual damages. In addition, the defendants who are closest to you getting arrested, Wood and Gorin, likely don't have much money to pay a damage award even if you are awarded damages. We have some fairly good evidence tying Hospers, the Museum, and Trust to Wood and Gorin, but as you know, this isn't a slam dunk. And at the end of the day, as I have told you repeatedly, juries are good, but oftentimes unpredictable.

I have never said you have to settle. But I always think it is prudent to evaluate settlement offers. Here, you have an offer that is larger than your actual damages. It isn't enough, but it is something. You have an apology. Again, it isn't perfect, but it is something. There is

absolutely nothing in this settlement offer to be offended by. It is a good faith offer. If you want to reject it, that is fine. But to get upset and make false accusations against me and my firm is not fine. I won't have it.

If you want to discuss, call me. But no more false accusations. If you choose to continue on this route, you will have to do it with another attorney.

Regards,

Kent D. Krabill

---

**From:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Date:** Sunday, May 28, 2017 at 8:10 PM  
**To:** Seth Washburne <[sethgw1@gmail.com](mailto:sethgw1@gmail.com)>  
**Cc:** Jonathan Kelley <[jkelly@lynnllp.com](mailto:jkelly@lynnllp.com)>  
**Subject:** Re: Washburne v. VFM, et al

This email is inaccurate Seth. If you want to discuss this, you discuss it with me only. And please stop with the false allegations against Stephen. It is offensive.

Kent

Sent from my iPhone

On May 28, 2017, at 7:51 PM, Seth Washburne <[sethgw1@gmail.com](mailto:sethgw1@gmail.com)> wrote:

Jonathan,

I made it very clear to Stephen that I would never agree to a non-disparage. He either failed to communicate this to the other side, or they just want to insult me, which they do with this, asking for \$250,000 liquidating damages.

Stephen was discussing the stipulation with Randy, then launched into a settlement discussions without my permission or knowledge. I would have told him on day 1 I will never agree to non-disparage. They wanted this in 2012 when I went to mediation with them about the lease termination and I said I would never agree to this.

I will not pay for anyone at LPCH to communicate with them beyond a simple sentence that I will never agree to any non-disparage or confidentiality, and to tell them to stop wasting my time.

Seth

---

**From:** Jonathan Kelley [<mailto:jkelly@lynnllp.com>]  
**Sent:** Sunday, May 28, 2017 4:09 PM  
**To:** [sethgw1@gmail.com](mailto:sethgw1@gmail.com)  
**Cc:** Kent Krabill  
**Subject:** Fwd: Washburne v. VFM, et al

Seth,

Please see the attached settlement offer from the Vintage Flying Museum. Let us know if you would like to discuss.

Thanks,  
Jon

Begin forwarded message:

**From:** Randy Turner <[Randy@RandyTurner.com](mailto:Randy@RandyTurner.com)>  
**Date:** May 28, 2017 at 3:33:35 PM CDT  
**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Cc:** Chloe Parker <[chloe@RandyTurner.com](mailto:chloe@RandyTurner.com)>, Jonathan Kelley <[jkelley@lynnllp.com](mailto:jkelley@lynnllp.com)>  
**Subject:** Washburne v. VFM, et al

Kent, attached is a settlement offer.

Randy

Law Offices of Randall E. Turner, PLLC  
5017 El Campo Ave.  
Fort Worth, Texas 76107  
Direct Tel: (817) 420-9690  
Fax: (817) 887-5717  
[www.randyturner.com](http://www.randyturner.com)

Exhibit 66: 2017 04 11 - Museum Settlement Term Sheet



***Seth Washburne v. Vintage Flying Museum, et al.***  
**Cause No. 153-275478-14**  
**Settlement Term Sheet**

The parties agree, in principal, to settle this matter on the terms set forth below. The parties also agree to formalize this settlement by drafting and executing formal settlement documents. The parties agree as follows:

1. Defendants will pay Mr. Washburne \$200,000.
2. Defendants will execute a stipulation that provides that (1) neither the Trust, the VFM, nor any other Defendant owns NW 38<sup>th</sup> Street or Von Avenue, (2) NW 38<sup>th</sup> Street and Von Avenue are public property, (3) none of the Defendants have a right to or will attempt to exclude Mr. Washburne from being present on NW 38<sup>th</sup> Street or Von Avenue, and (4) before any Defendant makes any effort to annex, acquire, or otherwise change the status of NW 38<sup>th</sup> Street or Von Avenue, or any portions thereof, as public property, Defendants will provide Mr. Washburne with notice of their intent to make such efforts at least 30 days prior to filing or executing any application, request, or other transaction related to such efforts.
3. Each Defendant will provide a written apology to Mr. Washburne in substantially the following form:

I, [name], apologize to Mr. Washburne for wrongfully causing him to be arrested for trespassing. I acknowledge and admit that Mr. Washburne never trespassed on the property of the VFM, the Trust, or any other Defendant and that Defendants had no justification for calling the police and causing Mr. Washburne to be arrested.
4. Mr. Washburne will fully release Defendants from any and all claims or causes of action he has, or may have, against them.
5. The parties agree to mutual confidentiality and nondisparagement.

AGREED:

\_\_\_\_\_  
Kent D. Krabill  
Authorized Representative of  
Plaintiff Seth Washburne

\_\_\_\_\_  
Randy Turner  
Authorized Representative of  
Defendants Vintage Flying  
Museum, Inc., Hospers Family  
Trust "D", Charlyn Hospers, and  
Bill Gorin

\_\_\_\_\_  
Charlie Burgess  
Authorized Representative of  
Dana Wood

***Seth Washburne v. Vintage Flying Museum, et al.***  
**Cause No. 153-275478-14**  
**Settlement Term Sheet**

The parties agree, in principal, to settle this matter on the terms set forth below. The parties also agree to formalize this settlement by drafting and executing formal settlement documents. The parties agree as follows:

1. Defendants will pay Mr. Washburne \$200,000.
2. Defendants will execute a stipulation that provides that (1) neither the Trust, the VFM, nor any other Defendant owns NW 38<sup>th</sup> Street or Von Avenue, (2) NW 38<sup>th</sup> Street and Von Avenue down to where NW 36<sup>th</sup> Street would intersect it and 100 feet south of this are public property, (3) none of the Defendants have a right to or will attempt to exclude Mr. Washburne from being present on NW 38<sup>th</sup> Street or Von Avenue down to 100 feet south of where NW 36<sup>th</sup> Street would intersect it, (4) Hospers will not allow any other person in any way associated with the museum or the trust, e.g. tenants, volunteers, workers, or visitors, to complain of, or attempt to exclude, Mr. Washburne being present on NW 38<sup>th</sup> Street or Von Avenue, and will defend Mr. Washburne's right to be there, and (5) before any Defendant makes any effort to annex, acquire, or otherwise change the status of NW 38<sup>th</sup> Street or Von Avenue, or any portions thereof, as public property, Defendants will provide Mr. Washburne with notice of their intent to make such efforts at least 30 days prior to filing or executing any application, request, or other transaction related to such efforts.
3. Each Defendant will provide a written apology to Mr. Washburne in substantially the following forms.

a. Hospers

I, Charlyn Hospers, apologize to Mr. Washburne that I:

- i. Around May 2012 announced to a meeting of VFM volunteers that Mr. Washburne had fired Pat Mahaffey, and acknowledge that this was not true, because Mr. Mahaffey quit.
- ii. Around July 2012 announced to a meeting of VFM volunteers that Mr. Washburne "cornered" Dana Wood, and acknowledge that this was not true, that Dana herself has said she was never cornered, and that such a statement was inflammatory, with the potential to greatly hurt Mr. Washburne's reputation around VFM.
- iii. In October 2012 refused to investigate his allegations of theft at VFM, violating the Through-the-Fence agreement then existing with the City of Fort Worth, which required I not allow any illegal activity to go on at the hangar, and in the

event of discovering such terminate the wrongdoer; instead I terminated Mr. Washburne, the victim.

- iv. On March 2, 2013, allowed Dana Wood to hire an outside security firm, and request a police cruiser park at the corner of NW 38<sup>th</sup> Street and Von Avenue for the express purpose of keeping Mr. Washburne's away from a parts auction held at VFM, which action: a) illegally blocked his access to the public street Von Avenue, and b) resulted in his being treated in a disrespectful manner.
- v. On April 26, 2014, allowed Dana Wood to again restrict access to the public streets NW 38<sup>th</sup> Street and Von Avenue, leading to: a) an unpleasant interchange with John Ragland, b) Dana Wood calling the police creating a police report about Mr. Washburne, c) police manhandling Mr. Washburne, d) police reinjuring Mr. Washburne's right shoulder which I understand caused him immense pain, e) Mr. Washburne being detained in the back of a police cruiser while many museum event visitors and volunteers passed by, and f) general shame upon Mr. Washburne.
- vi. On April 26, 2014, shared a photo of Mr. Washburne and wrote that he: a) "tried to run Dana down," b) "resisted arrest," and c) was handcuffed, when factually none of these things ever occurred on that day.
- vii. On April 27, 2014, wrongfully caused him to be arrested for trespassing, resulting in what he has described as a terrifying ordeal, which he has stated will forever haunt him. I acknowledge and admit that Mr. Washburne never trespassed on the property of the VFM, the Trust, or any other Defendant and that Defendants had no justification for calling the police and causing Mr. Washburne to be arrested.

Furthermore, I, Charlyn Hospers, do hereby assert that Mr. Washburne:

- viii. In October 2009 was exceedingly generous to visit VFM and offer to purchase the C-47 nicknamed "Billie" and donate it to VFM, a value worth more than \$75,000, which would have been one of the largest gifts ever given to the museum.
- ix. Was introduced to our tenant Jim Terry by a museum volunteer, despite the museum knowing Mr. Terry was a bad person, bad enough that both Mr. Monk and John Frasier told Washburne the museum wanted to get rid of Terry, and our action in introducing the public to Terry resulted in an enormous loss for Mr. Washburne.
- x. From February 1, 2010, until November 2, 2012, was one of the museum's most valuable tenants, due to: a) displaying the two largest aircraft in the hangar, and the only two with WWII battle history, and b) paying workers to be at the museum Monday to Friday when it might otherwise be closed or have little activity, providing excitement for mid-week visitors, and c) supporting the local economy during a deep economic downturn by paying three to six full-time workers at high rates of \$20 to \$35 an hour.

- xi. From November 4, 2011, until mid-2012, during which time he was present at the hangar, made many positive contributions to the hangar, including all those shown in attachment 1.
- xii. Reacted to the apparent theft of his aircraft's \$25,000 elevator, and of more than 100 other parts, with remarkable restraint, calmness, and respect for other tenants and volunteers.

b. Wood:

I, Dana Wood, apologize to Mr. Washburne that I:

- i. In June 2012 made statements to Hospers which led her conclude that he "cornered me" when nothing of this sort ever occurred.
- ii. On June 19, 2012, filed police report 12-60107 with the Fort Worth Police which includes many false statements, including that:
  - a) "suspect came into the general open hangar area – Mr. Washburne was, in fact, already in the hangar;
  - b) "and began to shout and curse at the victim" – Mr. Washburne never shouted, and never cursed at me; he was about 30 feet away, so raised his voice for me to hear, but was not shouting at me; and never once cursed at me, though I recall he did use a curse word in describing Jim Terry;
  - c) "Victim told the suspect that he was not going to speak to her that way and that he should just leave," – I never said that, but instead simply said "We can't talk to you," twice, and nothing more;
  - d) "She went into a room and shut the door in suspects face," – I was already in the room, and Mr. Washburne had already turned and walked back to his area when I closed the sliding door;
  - e) "This isn't the first time they have had problems with suspect around the hangar" – this is not true, as I can think of no other problems Mr. Washburne had caused around the hangar with anyone associated with museum, trust, or the volunteers;
  - f) These five misstatements reflect badly on Plaintiff, and I would like this police report to be expunged.
- iii. On March 2, 2013, hired an outside security firm, and requested a police cruiser park at the corner of NW 38<sup>th</sup> Street and Von Avenue for the express purpose of keeping Mr. Washburne away from a parts auction held at VFM which a) action illegally blocked his access to the public street of Von Avenue, and b) resulted in his being treated in a disrespectful manner.

- iv. On April 26, 2014, again restricted his access to the public streets NW 38<sup>th</sup> Street and Von Avenue, leading to: i. an unpleasant interchange with John Ragland who I summoned, ii. my calling the police and creating a police report about Mr. Washburne, iii. Police manhandling Mr. Washburne, iv. Police reinjuring Mr. Washburne's shoulder, v. Mr. Washburne being detained in the back of a police cruiser while many museum event visitors passed by, and vi. general shame upon Mr. Washburne.
- v. On April 26, 2014, alleged to the police that Mr. Washburne tried to run me down, when, in fact, this never occurred; rather, I ran in front of his car.
- vi. After April 26, 2014, encouraged a volunteer to visit Fort Worth Police Internal Affairs and misrepresent to the police that Mr. Washburne drove his car straight at me causing me to tumble over the hood, and off the back of the car, which never ever happened.
- vii. On April 26, 2014, filed police report 14-38667 with the Fort Worth Police which includes many false statements, including that
  - a) "Suspect was on scene being loud and cursing" – Mr. Washburne only raised his voice and cursed when speaking with John Ragland, who came down in his van, and was extremely insulting to Mr. Washburne, telling him he had already been arrested there once, which was not true, such that Mr. Washburne had every right to be upset at Mr. Ragland;
  - b) "Suspect refused to leave the property" – Mr. Washburne was not on any private property;
  - c) "The male hit the complainant with his car" – Rather, I ran into the path of his car, and ran into his side mirror;
  - d) "Now they are holding him down on the ground waiting for police" – i.e. that Mr. Washburne was being pinned to the ground by several men, which never ever happened;
  - e) "Subject entered the property" – neither Mr. Washburne nor his car ever entered any trust property;
  - f) "She told Suspect that he had to leave the property and he refused," – this is not true, and instead Mr. Washburne agreed to drive and park outside of the entrance they had set up, and wait for someone who I said would come to clear up the confusion about the property line;
  - g) "Suspect tried hitting the gate attendants" – this never happened, and instead he drove well clear of us, but I ran into the path of his car and, after he stopped, ran into his mirror;

- h) “Rep 1 stepped in front of the car, and he gave it gas trying to hit her” Again, this never happened, and I acknowledge that this is a very detrimental statement;
- i) “Rep 1 said that she was able to get out of the way and was hit by the side mirror on the left arm,” – no, I ran into his way, and after he stopped ran into the mirror;
- j) “There is a two year history with suspect and the museum,” – Mr. Washburne had nothing to with the museum for the 1.5 years since his lease was terminated, other than two emails to Monk and Hospers in April 2013; there were no other communications at all, and so no history;
- k) “He was evicted from the property” – Mr. Washburne was never evicted, rather the museum simply chose to terminate the lease;
- l) “He has a lawsuit pending” – this statement could wrongly suggest to someone that he had litigation pending with the museum, when he had no such thing, and rather he had a lawsuit pending against one tenant;
- m) “Every time they have an event, Suspect tries to come on the property and harass the staff.” To my knowledge, Mr. Washburne never made any attempt to come on Trust/VFM property after his lease was terminated, and by one count the museum had more than 100 events. I have never heard of him harassing any staff whatsoever. I acknowledge that these statements are harmful to Mr. Washburne;
- n) I described myself as a “Manager” of the museum, when in fact I had no role with the museum;
- o) It is my desire that the Fort Worth Police expunge this police report.

viii. Also on April 26, 2014, I misrepresented to the Fort Worth Police that:

- a) I was a representative of VFM – I was not.
- b) I knew where the property line was – I did not
- c) Mr. Washburne was trespassing – he was not.

ix. On April 27, 2014, I again misrepresented to the Fort Worth Police in report 14-39030, including that Mr. Washburne:

- a) Was trespassing – he was not.
- b) Refused to leave – no one ever talked to him or asked him to leave.

- c) “Was in an ongoing legal battle with the museum” when nothing of the sort ever existed. Washburne had nothing to do with the museum since his lease was terminated.
  - d) “Was evicted” – not true.
  - e) I believe this report, too, is full of falsehoods, and is very injurious to Mr. Washburne’s reputation, and should be expunged.
- x. On April 27, 2014, wrongfully caused him to be arrested for trespassing, resulting in what he has described as a terrifying ordeal, which he has stated will forever haunt him. I acknowledge and admit that Mr. Washburne never trespassed on the property of the VFM, the Trust, or any other Defendant and that Defendants had no justification for calling the police and causing Mr. Washburne to be arrested.

Furthermore, I, Dana Wood, do hereby assert that Mr. Washburne:

- i. Has always treated me with complete respect.
- ii. After the “baby bottle incident” called out to me with an apology, saying this was just about Jim Terry, and that he still liked me.
- iii. After a talk at the hangar around November 2, 2012, in which I was hostile toward him, sticking my phone in his face to record him, he spoke politely and friendly to me during my video of him, and as I walked to get on Jim’s plane he called out to me that he had nothing against me and still liked me.
- iv. On April 26, 2014, when I first saw him, his first words were to compliment my prowess with organizing events, and suggest I go out on my own, to which I responded I had thought of just such a thing myself. He was very considerate, friendly, and respectful, and I replied that I prayed for him and asked whether I could shake his hand.

c. Monk:

I, Hal Monk, apologize to Mr. Washburne that I:

- i. On April 27, 2014, after being alerted by phone call that police had been called, failed to contact anyone to put a stop to this, and this after telling Mr. Washburne less 3 hours before that he could legally park there and the police would not be called.

d. Gorin:

I, Bill Gorin, apologize to Mr. Washburne that I:

- i. On April 27, 2014, told the police: a) that the drainage ditch was the property line, and b) that the entire area of Von Avenue was under the jurisdiction of VFM due to the “Through the fence agreement,” both of which statements are not true.
  - ii. Made a video of the experience of Mr. Washburne being handcuffed.
  - iii. Laughed while I made the video.
4. Hospers will hold a meeting on a Saturday morning at which at least 10 volunteers and five rent-paying tenants are there, and move such meeting out in front of the hangar, such that Washburne can be present, during which no significant background noise is present, and each defendant will read the above confessions aloud such that all can hear Mr. Washburne will have the right to post a link to each of the Defendants’ statements on his Thirsty 13<sup>th</sup> website, and from time to time make others aware of these statements.
5. Defendants agree to cooperate with Mr. Washburne and the Fort Worth Police to have the Fort Worth Police Reports against Mr. Washburne expunged.
6. Mr. Washburne will fully release Defendants from any and all claims or causes of action he has, or may have, against them.
7. The parties agree to mutual confidentiality and nondisparagement only with regard to the events of March 2, 2013, August 26, 2014, and August 27, 2014., except to the extent that these written statements will remain public as provided above.

AGREED:

\_\_\_\_\_  
 Kent D. Krabill  
 Authorized Representative of  
 Plaintiff Seth Washburne

\_\_\_\_\_  
 Randy Turner  
 Authorized Representative of  
 Defendants Vintage Flying  
 Museum, Inc., Hospers Family  
 Trust “D”, Charlyn Hospers, and  
 Bill Gorin

\_\_\_\_\_  
 Charlie Burgess  
 Authorized Representative of  
 Dana Wood



Exhibit 67: 2017 04 27 - 2.41 Seth to Cole

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Thursday, April 27, 2017 2:41 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill; Jonathan Kelley  
**Subject:** RE: Museum Settlement

Seth,

While I understand your position on non-disparagement and confidentiality, you did not tell us that those terms were “impossible” nor did you “reluctantly” put a price on them at our insistence. When we were discussing the settlement offer, we told you that the Defendants were going to demand confidentiality and non-disparagement, and you said that you didn’t want to do that, but if they wanted it, it was going to cost them an extra \$50,000. You put the price on it; we did not ask you to.

On the depositions, I have gone through the depositions and digested them. Particularly as to Dana Wood, I made sure to include the places where she discussed the contents of the police reports, and included anywhere that she walked back the statements contained therein. Once Mariela has made the cuts to the transcripts, we will send those to you for your review.

I appreciate your kind words and the opportunity to represent you. I wish you the very best.

Thanks.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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Dallas, Texas 75201

[www.lynnllp.com](http://www.lynnllp.com)

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---

**From:** Seth Washburne [mailto:sethpw1@gmail.com]  
**Sent:** Thursday, April 27, 2017 1:51 PM  
**To:** Stephen Cole <SCole@lynnllp.com>  
**Cc:** Kent Krabill <kkrabill@lynnllp.com>; Jonathan Kelley <jkelley@lynnllp.com>  
**Subject:** RE: Museum Settlement

Stephen,

Regarding my terms being “shocking,” other than the amount requested, yes, those statements are all shocking, because the things they did are really bad. But they are all true, and I had to endure all of those.

As explained on the phone, one of the purposes for the suit was to get them to admit that almost everything they said publicly about me was a lie, and so their admissions have to also be public, or such admissions are of no value. For example Chuckie told all the volunteers I cornered Dana, and Dana has now said that is not true. With confidentiality I cannot tell anyone that is not true, so their statement remains out there. So non-disparagement and confidentiality are simply impossible, and always have been.

These settlement discussions started without my approval. You were trying to get the admission from them on the streets (and I am glad we got that before the settlement discussions, not as part of a settlement, which now will not occur), and you segued that into negotiating a settlement. I would have told you on day 1 that the "full non-disparagement and confidentiality" they demand are impossible, and saved all of the time spent on this. I reluctantly put a price on non-disparagement because you and Kent seemed to want me to, but never wanted to agree to that, and still don't want to agree to that, and will not.

Have you been able to look over the depositions for lines that contradict the police reports? You said your last day might be May 1, which is Monday, and as indicated before I would greatly appreciate it you would do that step before departing.

I hope these last days as a trial lawyer are good ones for you.

Thank you.

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynnllp.com>]  
**Sent:** Wednesday, April 26, 2017 4:56 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill; Jonathan Kelley  
**Subject:** Museum Settlement

Seth,

Randy Turner called me regarding the settlement term sheet. As we predicted, he and his clients were shocked to see the terms we offered. Randy informed me that, unless the parties can agree up front that any settlement will include full nondisparagement and confidentiality, then his clients are not going to give us a counter-offer.

Let us know if you are agreeable to nondisparagement and confidentiality. Otherwise, it looks like settlement discussions are over.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

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Exhibit 68: Withdrawal Letter 6-29-17

# LYNN PINKER COX HURST

KENT D. KRABILL  
Partner  
D 214 981 3831  
F 214 981 3839  
kkrabill@lynnllp.com

Lynn Pinker Cox & Hurst, LLP  
2100 Ross Avenue  
Suite 2700  
Dallas, Texas 75201  
[lynnllp.com](http://lynnllp.com)

June 29, 2017

**Via Email ([Sethpw1@gmail.com](mailto:Sethpw1@gmail.com)) and  
CMRRR #7014 0150 0001 95367 9628**

Seth Washburne  
5200 Meadowcreek Drive, Apt. 2060  
Dallas, TX 75248

Re: Cause No. 048-268735-13; *Seth Washburne, et al. v. James Terry, et al.* and  
Cause No. 153-275478-14; *Seth Washburne v. Vintage Flying Museum, Inc., et al.*

Seth,

I am writing to address what happened today at the mediation of your matter styled *Seth Washburne v. Vintage Flying Museum, Inc., et al.*

As you know, toward the end of the mediation you got up angrily, yelled expletives, charged toward the doorway where the mediator Gary Berman was standing, and struck him. You then exchanged some words with Mr. Berman (while grabbing his arm) and left the building. After that, Mr. Berman called the police to report the incident as an assault.

After you stormed out of the mediation, the police arrived at Mr. Berman's office, took statements from everyone who was present at the office during your conflict with Mr. Berman, and also asked me to provide a statement. Because I represent you and was currently unclear about my responsibilities to you under these circumstances, I told the police that I could not provide a statement at the moment. I further explained to the police that I would write down what I saw and heard to preserve the information, would research my responsibilities under the law, and later decide whether I was obligated to provide a statement. The police agreed that this was a good plan and I left.

Due to your conduct at the mediation, we must withdraw from both of your cases listed above. Please let me know if you will consent to our withdrawal. If you choose not to consent, we will be forced to provide information to the judge during a withdrawal hearing related to your conduct at the mediation. I am hoping that will not be necessary.

Sincerely,



Kent D. Krabill

Exhibit 69: Police report D011591-051818-Offense\_R

# Incident Report

Case Number 147285-2017	CAD Incident # 17-1231225
Report Type Incident Report	Page 1 of 4
Date / Time Occurred 6/29/2017 12:55 to 6/29/2017 12:55	Date / Time Reported 6/29/2017 14:35

Arrested Suspects	Additional Suspects	Unknown Suspects	Victims 1	Other Persons 3	Vehicles	Items	Evidence Count	Leoka Court	Related Case #
<input type="checkbox"/> Hate Crime	<input type="checkbox"/> Arson Related	Arson Code		Damage Value					

Location Given By Dispatcher 2027 YOUNG STREET		Unit Number L213
Clearance Disposition	Clearance by Exception	Exceptional Clearance Date
Situation Found	Case Status	

House No. 2027	Prefix	Street Name YOUNG ST	Unit No.
City DALLAS	State TEXAS	Zip 75201	County Dallas
		Beat 135	

Reporting Officer 1 ULLAH, MICHAEL RAHMAT	Reporting Officer 1 9749	Reporting Officer 2 CAMPBELL, TARVIANT	Reporting Officer 2 Employee Number 8306
--	-----------------------------	---	---

**OFFENSE**

<input checked="" type="checkbox"/> Primary Offense	Offense Code ASSAULT - BODILY INJURY ONLY (PC 22.01(A)(1))	Attempted/Completed	Counts 1
IC Number MA-13990001-H1	# Premise Entered	Family Violence NO	
Premise Type BUSINESS OFFICE	Criminal Activity 1	Criminal Activity 2	Offender Using NOT APPLICABLE
Gang Related NO	Drug Related NO	Drug Type	
Drug Endangered Child	Hate Crime NONE		
MO Panel	Entry Method N/A	Entry Point 1 N/A	
Entry Area N/A	Exit Point 1 N/A	Exit Point 2	
Target Area N/A	Property Target 1 OTHER	Property Target 2	
Victim Target N/A	Victim Activity NONE	Time of Day DAY - 08:00 - 15:59	
Action 1 on Victim N/A	Action 2 on Victim	Action 3 on Victim	
Action 1 to Premises N/A	Action 2 to Premises	Action 3 to Premises	
Other Action 1 N/A	Other Action 2	Other Action 3	
Solicited Offered 1 N/A	Solicited Offered 2	Weapon OTHER	
Arson	Precipitating Circumstance	Instrument Used NONE	
Comments SUSP PUNCHED AND GRABBED COMP CAUSING PAIN			

OTHER PERSON	Person Type WITNESS		
Last Name KRABILL	First Name KENT	Middle Name	Suffix
Nickname	Race WHITE	Sex MALE	SSN
Height	Weight	Driver's License #	DL State
Age	50	Age Range to	Place of Birth
Preferred CELL PHONE	Home Phone	Cell Phone	Email Address
Other Person Home Address			
House No. 2100	Prefix	Street Name ROSS AVE	Unit No. 2700
City DALLAS	State	Zip 75201	

Employment Information



# Incident Report

Case Number 147285-2017	CAD Incident # 17-1231225
Report Type Incident Report	Page 2 of 4
Date / Time Occurred 8/29/2017 12:55 to 6/29/2017 12:55	Date / Time Reported 6/29/2017 14:35

<input type="checkbox"/> Student	Employer / School	Occupation		
House No.	Prefix	Street Name	Unit No.	
City	State	Zip	Work Phone	Hours of Employment to
Work Phone	Hours of Employment to	Hair Color	Hair Length	<input type="checkbox"/> Glasses
Eye Color	Build	Facial Hair	Voice	Complexion
Ethnicity	Citizenship			

<b>OTHER PERSON</b>	Person Type <b>REPORTING</b>					
Last Name <b>TURNER</b>	First Name <b>RANDALL</b>	Middle Name	Suffix			
Nickname	Race <b>WHITE</b>	Sex <b>MALE</b>	SSN	Date of Birth	Age	Age Range 40 to 50
Height	Weight	Driver's License #	DL State	Place of Birth		
Preferred <b>CELL PHONE</b>	Home Phone	Cell Phone	Email Address	Other Person Home Address		
House No. <b>5017</b>	Prefix	Street Name <b>EL CAMPO AVENUE</b>	Unit No.			
City <b>FORT WORTH</b>	State	Zip <b>76107</b>				

<input type="checkbox"/> Student	Employer / School	Occupation		
House No.	Prefix	Street Name	Unit No.	
City	State	Zip	Work Phone	Hours of Employment to
Work Phone	Hours of Employment to	Hair Color	Hair Length	<input type="checkbox"/> Glasses
Eye Color	Build	Facial Hair	Voice	Complexion
Ethnicity	Citizenship			

<b>OTHER PERSON</b>	Person Type <b>REPORTING</b>					
Last Name <b>ODETUNDE</b>	First Name <b>ADEWALE</b>	Middle Name	Suffix			
Nickname	Race <b>BLACK</b>	Sex <b>MALE</b>	SSN	Date of Birth	Age	Age Range 40 to 50
Height	Weight	Driver's License #	DL State	Place of Birth		
Preferred <b>CELL PHONE</b>	Home Phone	Cell Phone	Email Address	Other Person Home Address		
House No. <b>10440</b>	Prefix <b>NORTH</b>	Street Name <b>CENTRAL EXPY</b>	Unit No.			
City <b>DALLAS</b>	State	Zip <b>75231</b>				

<input type="checkbox"/> Student	Employer / School	Occupation		
House No.	Prefix	Street Name	Unit No.	
City	State	Zip	Work Phone	Hours of Employment to
Work Phone	Hours of Employment to	Hair Color	Hair Length	<input type="checkbox"/> Glasses
Eye Color	Build	Facial Hair	Voice	Complexion
Ethnicity	Citizenship			

<b>VICTIM</b>	<input type="checkbox"/> Business		
Last Name <b>BERMAN</b>	First Name <b>GARY</b>	Middle Name	Suffix

# Incident Report

Case Number 147285-2017	CAD Incident # 17-1231225
Report Type Incident Report	Page 3 of 4
Date / Time Occurred 6/29/2017 12:55 to 6/29/2017 12:55	Date / Time Reported 6/29/2017 14:35

Nickname	Race WHITE	Sex MALE	SSN	Date of Birth	Age 61	Age Range to
Height	Weight	Driver's License #	DL State	Place of Birth		

Preferred HOME PHONE	Home Phone	Cell Phone	Email Address
-------------------------	------------	------------	---------------

Victim Home Address			
House No. 3200	Prefix	Street Name LOUIS DR	Unit No.
City PLANO	State	Zip 75023	

<input type="checkbox"/> Student	Employer / School	Occupation
----------------------------------	-------------------	------------

House No.	Prefix	Street Name	Unit No.
City	State	Zip	Work Phone
		Hours of Employment	to

Hair Color	Eye Color	Build	Resident
------------	-----------	-------	----------

Citizenship	Ethnicity NON-HISPANIC	Injury YES	Injury Description SORE RIGHT ARM
-------------	---------------------------	---------------	--------------------------------------

Victim Condition	
<input type="checkbox"/> Victim Hospitalized	Hospital Description

Under Influence Alcohol? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown	Under Influence Drugs? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown	Family Violence NO	Family Violence Victim Transported <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
--	--	-----------------------	---

Violation of Protective Order <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Cohabitant <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
--	---

### Associated Offenses

Offense ASSAULT -BODILY INJURY ONLY (PC 22.01(A)(1))	<input checked="" type="checkbox"/> Associated With Victim
---	--

SUSPECT <input checked="" type="checkbox"/> Known <input type="checkbox"/> Unknown <input type="checkbox"/> Arrested <input type="checkbox"/> Summoned
--

Last Name WASHBURN	First Name SETH	Middle Name	Suffix
-----------------------	--------------------	-------------	--------

Nickname	Race WHITE	Sex MALE	SSN	Date of Birth	Age 50	Age Range to 55
Height 5'10"	Weight 175	Driver's License #	DL State	Place of Birth		

Preferred	Home Phone	Cell Phone	Email Address
-----------	------------	------------	---------------

Suspect Home Address			
House No.	Prefix	Street Name	Unit No.
City	State	Zip	

<input type="checkbox"/> Student	Employer / School	Occupation
----------------------------------	-------------------	------------

House No.	Prefix	Street Name	Unit No.
City	State	Zip	Work Phone
		Hours of Employment	

Hair Color BLACK	Hair Length	<input type="checkbox"/> Glasses	Eye Color BLACK	Build	Facial Hair	Facial Hair Color
---------------------	-------------	----------------------------------	--------------------	-------	-------------	-------------------

Voice	Complexion	Hand Preference	Teeth Descriptor	Shirt	Jacket	Pants
-------	------------	-----------------	------------------	-------	--------	-------

Shoes	Hat	Citizenship	Marital Status	Ethnicity NON-HISPANIC
-------	-----	-------------	----------------	---------------------------

Clothing Description

Trademarks of Suspect

Injury	<input type="checkbox"/> Hospitalized	Hospital Facility
--------	---------------------------------------	-------------------

MO Panel	Entry Area	Entry Method	Entry Point
----------	------------	--------------	-------------

# Incident Report

Case Number 147285-2017	CAD Incident # 17-1231225
Report Type Incident Report	Page 4 of 4
Date / Time Occurred 6/29/2017 12:55 to 6/29/2017 12:55	Date / Time Reported 6/29/2017 14:35

Exit Point	Target Area	Property Target 1
Property Target 2	Victim Target	Victim Activity
Action 1 on Victim	Action 2 on Victim	Action 3 on Victim
Action 1 to Premises	Action 2 to Premises	Action 3 to Premises
Other Action 1	Other Action 2	Other Action 3
Solicited Offered 1	Solicited Offered 2	Weapon
Arson	Precipitating Circumstance	Instrument Used
Time of Day	Weapon 1 Type	Weapon 1 Caliber
Weapon 1 Color		
Comments		

**Narrative Information**

ON LISTED DATE AND TIME R/OS RESPONDED TO A DISTURBANCE CALL AT THE LISTED LOCATION. LISTED LOCATION IS A LAW OFFICE WHERE A MEDIATION MEETING WAS TAKING PLACE. DURING THE MEDIATION THE LISTED SUSP BECAME VERY IRATE AND STARTED YELLING AND CAUSING A SCENE IN ONE OF THE CONFERENCE ROOMS WITH LISTED WITNESS WHO IS SUSPS ATTORNEY. THE COMP WENT IN TO INVESTIGATE WHAT WAS GOING ON AT WHICH TIME THE SUSP PUNCHED THE COMP ON HIS RIGHT ARM CAUSING PAIN. THE SUSP THEN ALSO GRABBED COMPS LEFT ARM CAUSING PAIN. THE SUSP APOLOGIZED TO THE COMP AND THEN FLED THE LOCATION PRIOR TO R/OS ARRIVAL. COMP DECLINED MEDICAL ATTENTION AT THIS TIME. THE LISTED WITNESS IS THE ATTORNEY FOR THE LISTED SUSP. ONLY SUSP INFORMATION AVAILABLE AT THE TIME OF THIS REPORT WAS SUSP NAME AND DESCRIPTION. THE WIT OBSERVED THE SUSP ASSAULT COMP. THE LISTED R/PS DID NOT OBSERVE THE ASSAULT BUT ALL HEARD THE DISTURBANCE.

# CITY OF DALLAS POLICE DEPARTMENT

Incident ID: 147285-2017

## Incident Data Sheet Report

ORI Number:

Page: 10

Printed On: 5/26/2018 14:18 (Sat)

### Narratives

#### Narrative Title

Locked

#### Narrative

ON LISTED DATE AND TIME R/OS RESPONDED TO A DISTURBANCE CALL AT THE LISTED LOCATION. LISTED LOCATION IS A LAW OFFICE WHERE A MEDIATION MEETING WAS TAKING PLACE. DURING THE MEDIATION THE LISTED SUSP BECAME VERY IRATE AND STARTED YELLING AND CAUSING A SCENE IN ONE OF THE CONFERENCE ROOMS WITH LISTED WITNESS WHO IS SUSPS ATTORNEY. THE COMP WENT IN TO INVESTIGATE WHAT WAS GOING ON AT WHICH TIME THE SUSP PUNCHED THE COMP ON HIS RIGHT ARM CAUSING PAIN. THE SUSP THEN ALSO GRABBED COMPS LEFT ARM CAUSING PAIN. THE SUSP APOLOGIZED TO THE COMP AND THEN FLED THE LOCATION PRIOR TO R/OS ARRIVAL. COMP DECLINED MEDICAL ATTENTION AT THIS TIME. THE LISTED WITNESS IS THE ATTORNEY FOR THE LISTED SUSP. ONLY SUSP INFORMATION AVAILABLE AT THE TIME OF THIS REPORT WAS SUSP NAME AND DESCRIPTION. THE WIT OBSERVED THE SUSP ASSAULT COMP. THE LISTED R/PS DID NOT OBSERVE THE ASSAULT BUT ALL HEARD THE DISTURBANCE.

**Created On**  
6/29/2017 19:50

**Created By**  
FBR Import

**Updated On**  
6/29/2017 19:50

**Updated By**  
FBR Import

## Exhibit 70: Examples of Friendly Shoulder Punch on Internet

## Examples of Friendly Shoulder Punch on Internet

### 1. Friendly Should Punch GIF:

Friendly Shoulder Punch GIF



henrydanger

• HD GIF • SD GIF • MP4



### 2. From book *Fourth Down* by Desiree Holt:

He shook his head. "Thanks, but I've got it. But, uh, I probably won't be working out with you guys tonight."

John laughed. "I figured."

"No, it's not that. I, uh, have someplace else to be." Like Pump It Up if she'd be there too.

"Whatever." John gave Chase a light, friendly shoulder punch. "Good luck, buddy. I hope this works out."

### 3. Urban Dictionary, at right:

A screenshot of the Urban Dictionary website. The page features a dark blue header with the 'urban DICTIONARY' logo and navigation links for 'Browse', 'Vote', and 'Store'. Below the header is a search bar with the placeholder text 'Type any word...'. The main content area is white and displays the 'TOP DEFINITION' for the term 'friendly punch'. The definition is: 'To punch a friendly lightly on the shoulder or arm.' Below the definition are two example sentences: 'Friend tells a funny joke' and 'Me: Stop your too funny friendly (Then I friendly punch him)'. At the bottom, it says 'by Linktargeter.com May 14, 2016'.

TOP DEFINITION

## friendly punch

To **punch** a **friendly** lightly on **the shoulder** or arm.

Friend tells **a funny** joke

Me: Stop your **too funny friendly**

(Then I friendly punch him)

by **Linktargeter.com** May 14, 2016

Exhibit 71: 2017 06 29 - 10.05 pm Lynn to Seth

## Seth Washburne

---

**From:** Mike Lynn [mlynn@lynnllp.com]  
**Sent:** Thursday, June 29, 2017 10:05 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Re: Lynn Pinker - NOT a Trial Law Firm

Seth:

I understand your upset. I can't do anything about that. I was no where near mediation today. I have no personal knowledge of what happened.

We are at an impasse now and the process to solve it is for you to find another lawyer. If you wish to file a grievance we understand that is your right as is our right to defend. As for appeals from Kent in our firm I'm afraid I'm it.

Let's make this divorce easy as we can reserving of course any claims you have against us or we against you. We are not required to represent anyone. That is slavery which was long ago prohibited. It is best for you to separate from us. This is a bad marriage.

I truly want you to find a lawyer you like and trust. We cannot help you anymore.

Mr. Lynn

Michael P Lynn PC

2100 Ross Avenue  
Suite 2700  
Dallas, Texas 75201  
P 214 981 3801  
C 214 707 8887  
F 214 981 3839  
[www.lynnllp.com](http://www.lynnllp.com)

**2017--Band One Commercial Trial Lawyer-TX,Chambers & Partners.**

**2017 -- Benchmark Top 100 Commercial Trial Lawyer in US**

**2017 -- Best Lawyers Top 100 Lawyer-Texas.**

**2017-- One of Top 4 Law Firm -Texas Commercial Trial Firm, Chambers & Partners.**

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On Jun 29, 2017, at 9:46 PM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Mr. Lynn,

I respect that you have had a long experience with your lawyers, and have come to rely on their integrity, but I am pointing out something that one of your lawyers did today that in my opinion was very bad. A good person in your position would investigate the specific allegations, and ask Kent: "Why did Seth get upset at you? What did you do to cause this?"

If you are a person of integrity, would you please tell me:

1. What did you learn from Kent about why I got upset with him? What was his version?
2. Why do you think it was ok for him to act the way he did and make me so upset?
3. Do you approve of telling a client "You have serious problems."
4. Do you think removing a glass jar of Kit Kats from a table, to avoid being tempted to eat chocolate when one is trying to lose weight, is so bad that one should be angrily scolded and shouted at: "Didn't your mother ever tell you to not touch other people's stuff?!"
5. Why do you think his provoking me to anger, after I asked him repeatedly to give me just a few moments to review some key points to get to a settlement was a justifiable reason to terminate a \$500,000 relationship three weeks before trial?

I expect in your call to him he just tore me apart with generalities, and you believed the generalities, and never even asked what happened. Isn't that right, Mike? He probably told you I didn't take his advice. You are reminded that the Texas Disciplinary Rules of Professional Conduct, Rule 1.02: Scope and Objectives of Representation, states: (a) a lawyer shall abide by a client's decisions: (1) concerning the objectives and general methods of representation. He had no legal right to demand I accept the settlement offer. You will lose on this, Mike.

And you add that you will be "relentless" against me. That is real nice, too, Mike. You should add that to your brochure, that you will be relentless against your clients. You certainly were never relentless for me. You were, though, relentless in billing me.

BTW, what did you all do with my \$500,000? Take a nice vacation? Buy a new BMW? Buy presents for the kids?

Is there an internal ethics committee to which I may also file a complaint, and, if so, would you please provide me the contact email, because it appears you do not care at all about what goes on in the firm bearing your name.

Again it is incredible that neither of you care at all about what was the main event today, Kent being incredibly off-the-charts rude and disrespectful to me for four straight hours, from the moment he walked in the door, and refusing to be quiet and let me think,

despite me asking him repeatedly, and my even going to the bathroom to get away from his horrible behavior.

Mr. Washburne

---

**From:** Mike Lynn [<mailto:mlynn@lynllp.com>]  
**Sent:** Thursday, June 29, 2017 8:52 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Re: Lynn Pinker - NOT a Trial Law Firm

Seth:

It seems apparent that you need a lawyer you trust and who trusts you. We cannot act as your lawyer under the conditions you have described. It is best for you we separate and the withdrawal is our attempt to separate.

As for your stated desire to present this matter to the state bar all I can say is as a client you should pursue any material unethical conduct it observes. We ,of course, will defend ourselves.

I have to tell you I spend a good portion of my life relying on the integrity and character of my partners and associates. They have never lied to me nor mistreated a client so I have to support them in this matter.

I hope you get a new lawyer and find peace in your life. If you want to try my lawyers we will of course defend ourselves vigorously and with honor and integrity but you should know we will also be relentless.

Mr Lynn

Michael P Lynn PC

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[www.lynllp.com](http://www.lynllp.com)

**2017--Band One Commercial Trial Lawyer-TX,Chambers & Partners.**

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2017-- One of Top 4 Law Firm -Texas Commercial Trial Firm, Chambers & Partners.

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On Jun 29, 2017, at 8:25 PM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Mike, and by cc Kent,

I received Kent's email, below, essentially that he has belittled me to you, too, such that you will not assign this case to anyone else.

I hired the firm that bears YOUR name, and STAYED WITH YOU, despite Kent's despicable treatment of me, paying \$500,000 IN FEES, only because your brochure says YOU like trying cases. And you are supposedly the "Best trial law firm in Texas."

But now, in this case, just three weeks before trial, and a trial I told Kent I was eager to go through with, Kent, prior to his making me upset, almost essentially refused to take this to trial. That's real nice, Mike.

Then Kent is the one who made me upset, and I was upset at only him for his incredibly obnoxious ranting on continually almost demanding I settle the case, essentially refusing to take it to trial, and not giving me a moment of silence to think, despite my requesting this over and over and over and over. As mentioned, I even told him I was going to go the bathroom to get away from him, that is how bad he was. Does this not sink in?

He has been completely resistant to taking this case to trial for weeks now, almost yelling at me on the phone about settling it, and today berated me for almost four hours to settle this case.

This is called breach of contract, Mike. And fraud. I will look into suing your firm over this. And I will file complaints with the state bar for not going along with a client's wishes. You are completely wrong about this, Mike.

It seems LPCH is not a trial firm at all, Mike. It is a firm that takes as much as they can of people's money, and then dumps them in the sewer.

By the way, my experience with your new boy wonder Jonathan is:

1. In our first interaction he suggested during the first Monk deposition adding to a stipulation that a street was "used by the public," which was completely irrelevant, when the only thing that should have been added was that the defendants did not have a right to get

someone arrested there. This contributed to Kent wrongly walking out of that deposition. (Kent explained to me he had to walk out to redepose defendant Hospers first, which was the only reason I agreed to this, then after this was denied, he happily told me we absolutely did not need to redepose her. The judge admitted we had no right to redepose Monk, but said she would grant it anyway because she thought clients should not be shortchanged by their attorney's screwups.)

2. The first motion Jonathan drafted included a key sentence that the defendants had backed away from a stipulation, which was not true, and repeated in about five places. I was the only one who caught this and had to correct it.
3. He went over some numbered documents I sent and inexplicably renumbered them in an order that made no sense – and he was a communications major.
4. When I asked him to please resend his comments using the original numbering he refused. (Kent then yelled at me for lying about Jonathan – yes, Jonathan did refuse to renumber those that night for me).
5. Kent never told me Jonathan was going to take the deposition of key defendant Monk, only “I might ask Jonathan to do this.”
6. No one ever told me about the date of defendant Monk's deposition until a Wednesday night before a Friday deposition when Jonathan sent me an outline.
7. For Monk's deposition he never asked Monk to articulate responses, so there were times when Monk just shrugged, and he went on.
8. He let Monk tear me up with sentences such as everyone disliked me, and never thought to go down the rabbit hole and ask Monk to name the people. I had to ask him during a break to do this.
9. He repeatedly asked why the defendants thought they owned the subject roads, and Monk told him over and over that they did not own the streets, even saying once “for the 20<sup>th</sup> time, we never said we owned the roads!” but he kept on asking this.
10. He never once asked the only important question, which is whether they had a right to get me arrested.
11. For another key question about why Monk didn't call Chuckie to stop my arrest, when Monk's attorney objected, Jonathan was ready to let it go and move on, and I had to insist he ask about why he didn't call Gorin. When this, too, was objected to, he was again ready to give up, and I had to write on a piece of paper or whisper in his ear a more general question, which is the only way we got an important answer. So he did not care at all about this.
12. He doesn't seem like a fighter at all, but instead like an easy going guy.
13. About his background, when I drove him back from Fort Worth to Garland, it sounded like he had only about 6 months prior trial experience, at a small firm before yours, so this may have been the first deposition he ever took, but Kent insisted he was “at the top of his game.” He was not. It seemed he had no passion at all for this.

I highly regret ever hearing of your firm.

Seth P. Washburne

---

**From:** Kent Krabill [<mailto:kkrabill@lynnllp.com>]

**Sent:** Thursday, June 29, 2017 6:50 PM

**To:** Seth Washburne

**Subject:** Re: Withdrawal Letter 6-29-17

Seth,

I have received the emails you sent to Mike Lynn as well as the two emails you sent me just now. I have also spoken to Mike Lynn about the emails, your conduct throughout this case, as well as the events that occurred at the mediation today. I further discussed the situation with our managing partner.

I respectfully disagree with your version of the events set forth in the emails you wrote today. In addition, our firm will not be moving this case to another attorney. Rather, we will file a motion to withdraw from both cases tomorrow. Because trial is set to begin July 24 in the VFM matter, I will ask for an expedited hearing. If the judge sets it at a time you cannot be physically present at the hearing, you may be able to telephone in.

If you have any additional questions or comments, please direct them to me.

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

Direct [214 981 3831](tel:2149813831)

Cell [817 881 8113](tel:8178818113)

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or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

---

**From:** Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Date:** Thursday, June 29, 2017 at 6:35 PM  
**To:** Kent Krabill <[kkrabill@lynllp.com](mailto:kkrabill@lynllp.com)>  
**Cc:** Jonathan Kelley <[kelley@lynllp.com](mailto:kelley@lynllp.com)>, Mariela Cawthon <[mcawthon@lynllp.com](mailto:mcawthon@lynllp.com)>  
**Subject:** Withdrawal Letter 6-29-17

Kent,

Here is my recollection of what happened today.

1. You selected Gary Berman to mediate the case, but never checked beforehand with me, and never gave me a choice of which mediator to use. I have been to four mediations, and the second and third were good, though I thought Ross took too long, but the second and third were nice guys, who listened, and tried to work with a client. Berman from the start was bombastic.
2. I arrived first and the room was messy, so I straightened it up, including moving some items I found distracting, e.g. a jar of Kit Kats, from the conference table to the side table. When you came in, I happily told you I had straightened up the room, and you immediately, first words out of your mouth, started tearing me apart, almost shouting at me: "You moved things in someone else's room??! What is the matter with you??! This is why everybody hates you!" and exact quotes: "Didn't your mother ever teach you to not touch other people's stuff?! Didn't she??! Didn't your mother ever teach you to not move other people's stuff?!", repeating this in a raised and mean voice. Your first words to me of the day, real nice.

When you went to get some water, I put everything back in the distracting mess it was before.

3. Next you said to me "You have serious problems!" That is a real nice way to treat a client.
4. Next you were typing actively on your laptop while I spoke, and I politely asked if you were typing what I was saying, or answering emails, and you said it was none of my business. You could have simply answered, but this is what you are like, always evasive. I asked a couple more times, and you were still evasive. When I finally leaned over to look and see if you were in your email account or in a note taking document you again lit into me telling me how rude I was.
5. You continually told me how no one liked me, and all these criticisms, and I kept asking you to please stop criticizing me, but you kept on, and finally I raised my voice just a little and you got very serious and

told me if I raised my voice one more time you were going to quit. You have been threatening to quit for months now.

6. Berman said he would prepare a Mediator Order, or some name like that, and I asked you what it was, and you refused to tell me. Real nice.
7. I asked you it was ok if I swore, and you would only say "You know what I am" or something like that. This is what is extremely frustrating with you, that you refuse to answer a simple question, and this was about the fourth time you had not answered a simple question.
8. Berman treated me terribly from the beginning, and I couldn't help wondering if you told him bad things about me to make him so negative on me from the outset.
9. When I asked you about potential damages, you answered with words like "I told you this last September, I told you in October, I told you in November, I told you in December." I reply "Will you just tell me again, I need to make a decision on this," and you say "I have told you, you never listen, that is the problem with you," but won't give me a straight answer. Eventually I got an answer, but I had to ask the questions over and over and over and listen to 5 minutes of criticism of me in between each question. Amazing way to treat someone.
10. I wanted to ask Gary if he could add just five words to the settlement, for the defendant to announce in a staff meeting "Seth did not corner Dana," and we would have been done, and I might have accepted this. But Gary utterly refused to listen to me, telling me to accept or reject the order as it was, and when I tried to protest got very angry with me, thinking I was telling him how to do his job, and pointed to the door and told me if I didn't like the way he was doing it then to leave.

Here is the big problem that happened today:

11. I then studied that paper I had, where I had written the 10 things I wanted to publicly complain about regarding the museum, and was deciding if I could let them all go, and I just wanted to think about these. But you would not stop talking. You kept repeating things like "I am advising you to accept this." "You will never get a penny more than \$8,500, and it all depends how much the jury likes you or them, and no one likes you." I continued to ask you to please, please, just be quiet until I finish thinking about this and you continued to say things such as "You don't need to think about this, you just need to accept it." "I have told you this over and over. You need to accept this offer, you need to settle it, and get on with the other suit. You aren't listening to me. You never listen, that is the problem with you."
12. I told you thanks, I hear you, but need desperately to study my 10 things. **BUT YOU WOULDN'T STOP TALKING!!!** You started again with the "No you don't hear me, you are not listening, because you

haven't accepted it." **I finally said I would go to the bathroom to find some quiet and get away from you!!!**

13. The bathroom door was locked, so I returned to the room. The time was ticking down, only 10 minutes left, and I was under extreme stress to think this through, and repeatedly, every word out of my mouth, was asking you to please, please, STOP TALKING until I could think this through, and you kept on, and on and on, saying things like "You should accept this offer," which kept interrupting my train of thought!

**THIS MASSIVELY IRRITATING MANNER OF YOURS IS WHAT CAUSED ME TO STAND UP. I WAS SICK OF YOU!!!**

**I HAD MY HEAD TO MY FOREHEAD FOR THE LAST HOUR SO YOU COULD SEE I WAS UNDER EXTREME STRESS AND YOU JUST KEPT YOUR FOOT ON THE ACCELERATOR, OR THE ELECTRIC SHOCK BUTTON, annoying the hell out of me, until I couldn't take it anymore!**

Again, the only thing I got upset at today was YOU!!! WHY DON'T YOU TRY TO PROCESS THAT, KENT???!

Gary hadn't even knocked on the door or yet, it was all YOU!!!!

And now you are withdrawing. That's real sweet of you. Take my \$500,000 and dump me.

You have been treating me very disrespectfully since the moment you spoke to Kevin Vice; perhaps he poisoned the well.

You shouted at me repeatedly to give you a list of only 3-5 things the defendants had done wrong, and never even noticed there were RFDs about each defendant, despite billing me \$10,000 or \$20,000 for someone to go over all the documents.

In December you purposely excluded me from two damage discussion conference calls with Bazeley, such that his report is almost entirely worthless.

No I will not agree to a motion to withdraw. Write all the bad stuff you want in it, and I will do the same in my reply. I have wanted for a long time to explain to a judge all the terrible experiences I have had with lawyers.

I am going out of town at 7 a.m. tomorrow, so will not be back until late on July 9, and not able to file a reply until around the 13<sup>th</sup>, so please be sure a hearing date is beyond that.

Seth



## Exhibit 72: LPCH Website Kelley Background



## PROFILE

Jon has experience in all aspects of trial strategy and preparation, and has represented a diverse group of clients including Microsoft, Major League Baseball, Pfizer, JPMorgan, Kohlberg Kravis Roberts & Co., the Blackstone Group, and other fortune 500 companies. Jon's practice is focused on civil litigation and civil appeals.

Prior to joining Lynn Pinker Cox & Hurst, LLP, Jon practiced law at Wilkinson Walsh + Eskovitz, LLP, and Simpson Thacher & Bartlett LLP in Washington, D.C. Jon earned his law degree from Duke University School of Law, where he was Editor-in-Chief of the Duke Law & Technology review, a member of the Duke Law Journal's Editorial Board, and a member of the Moot Court Board. After graduating summa cum laude with his undergraduate degree from Arizona State University, Jon received a Fulbright Grant from the US Department of State and spent a year living in South Korea. Jon has traveled extensively, and, among other international work, has served as a visiting professor at a university in the Democratic Republic of Congo.

## ADMISSIONS

- State Bar of Texas
- State Bar of District of Columbia

## EDUCATION

- **Duke University School of Law**, Durham, NC, J.D.
- **Arizona State University**, Tempe, AZ  
B.A., *summa cum laude*, Communication Studies

## PROFESSIONAL ASSOCIATIONS / COMMUNITY INVOLVEMENT

- Dallas Bar Association, Member
- Texas Bar Association, Member
- Dallas Association of Young Lawyers, Member

## PRESENTATIONS / PUBLICATIONS

- Peter H. Bresnan, Jonathan D. Kelley, *2014 SEC Actions brought Against Hedge Funds, Private Funds, and Fund Investment Advisers*, Practising Law Institute (Fall 2014).
- *Gideon's Bullhorn: Sounding a Louder, Clearer Call for a Civil Right to Counsel*, 4 Sanford J. Pub. Pol'y 87 (May 2013).
- *Equal Justice Under Law? Broken Promises and Relevant Responses to the Inefficacy of Appointed Counsel*. Lecture at Duke University Sanford School of Public Policy, April 25, 2013.

Exhibit 73: 2018 05 18 email re Kelley

## Seth Washburne

---

**From:** Brant Bishop [bbishop@wilkinsonwalsh.com]  
**Sent:** Tuesday, May 08, 2018 3:48 PM  
**To:** sethpw1@gmail.com  
**Cc:** Beth Wilkinson  
**Subject:** RE: Jonathan Kelley's Experience at Wilkinson Walsh & Eskovitz

Seth:

Beth has forwarded me your questions about Jon Kelley. I'm sorry to hear that you've not had positive experiences with him. As you mention, we typically do not provide comments on personnel matters or the reasons for employee departures. Consistent with that general principle, though, I can tell you the following.

Jon was an associate at Wilkinson Walsh + Eskovitz from the Firm's beginning on approximately February 1, 2016 through August 19, 2016.

During Jon's tenure at WW+E, the Firm did not have any active matters for Microsoft, JPMorgan, KKR or the Blackstone Group. During the first couple of months of the Firm's existence, Beth Wilkinson handled the final court approvals in the resolution of a matter for Major League Baseball, though it was just the final approval hearing and all the motion papers requesting the court's approval had been submitted before the Firm's formation, when Beth was at Paul Weiss. The Firm has also had matters for Pfizer. Our records do not indicate that Jon performed any work for Major League Baseball or Pfizer while at WW+E. Any work that Jon did during his time at WW+E was under the direction of partners of the Firm. I do not believe that Jon questioned any witnesses in depositions while at WW+E, or made any in-court appearances on behalf of clients while at WW+E.

I do not know what work he may have done for any of the aforementioned corporations or other clients at other law firms.

I hope you are able to satisfactorily resolve your issues relative to your matter with Lynn Pinker Cox & Hurst.

Sincerely,

**Brant W. Bishop, P.C.** | Founding Partner, Managing Partner

### **WILKINSON WALSH + ESKOVITZ LLP**

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[bbishop@wilkinsonwalsh.com](mailto:bbishop@wilkinsonwalsh.com)

[www.wilkinsonwalsh.com](http://www.wilkinsonwalsh.com)

Begin forwarded message:

**From:** "Seth Washburne" <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Date:** May 1, 2018 at 2:38:30 PM EDT

To: <[bwilkinson@wilkinsonwalsh.com](mailto:bwilkinson@wilkinsonwalsh.com)>

Subject: Jonathan Kelley's Experience at Wilkinson Walsh & Eskovitz

Beth,

The website of Dallas law firm Lynn Pinker Cox & Hurst has a bio page for their associate Jonathan Kelley which states: "Jon...has represented a diverse group of clients including Microsoft, Major League Baseball, Pfizer, JPMorgan, Kohlberg Kravis Roberts & Co., the Blackstone Group, and other fortune 500 companies." May I please learn whether it is accurate to say he "represented" these clients while there, and, if not, would you please be so kind as to suggest a more accurate word?

May I also please learn how many depositions he took while working there, meaning in which he asked the questions, and was not just when sitting in?

I was the plaintiff in two suits and retained Lynn Pinker, their partner Kent Krabill, in September 2016. In March 2017 the associate quit, and was replaced with Jonathan Kelley.

My experience with Kelley was he seemed incredibly incompetent. He:

- a. Recommended language for a stipulation that made no sense, and contributed to an early end of one deposition.
- b. When reviewing a list of 85 numbered items I provided, rather than commenting on each as I numbered them, he created a new list with different numbers, only up to about 60 items, with his own vague titles, so it was almost impossible to see to which of my numbered items his comments applied – and this from a communications major. I asked him to please resend his comments applying them to the items I numbered, so I could see to which they went, and he refused, and told me, the client, to figure it out myself.
- c. Took a deposition in which he asked incredibly stupid questions, and repeated the same wrong assumption about a dozen times, something like "Because you claim you own the road...", to which the deponent would reply "for the 20<sup>th</sup> time, we have never said we own the road!"
- d. Did many other things which seemed very incompetent.

I drove Jonathan back to Dallas from a deposition in Fort Worth, and he said you or someone there asked him to join the firm in what I picture as about October 2016, and he left around February 2017, so was only there for about four months, and said he sat in on a deposition of Bill Gates. To say he "represented Microsoft" seems like overstating. He said he left there because he was starting a family, and wanted cheaper housing, and to get closer to his hometown of Phoenix, so came to Dallas, but I expected someone there figured out he was not very smart and asked him to leave.

Krabill replied to my respectful observations by saying Kelley was "a brilliant lawyer at the top of his game."

Krabill, after billing me \$600,000 in 9 months, quit both cases, three weeks before a trial. He was fully paid as to all amounts due at the time he quit, so it had nothing to do with billing. Krabill always told me my one case was very strong, but a defense lawyer in that case told me Krabill always told him he was 99% sure I would lose, so I expect he quit before he would be exposed for this. Kelley told me they also had a \$500 million contingency deal in house for an oil company, and he was working on that, and I expect Krabill just wanted to switch gears. He is a horrible person who yelled at me often.

Krabill is now taking me to arbitration for the amount of the last two invoices on one case, and I am counterclaiming for fraud, breach of contract, etc. I want to note that their website has false statements, and so would like to verify this about Kelley.

I know it is standard to say "We do not comment on employee records," but in this case someone is making assertions, on a public website, for marketing purposes, to make potential clients act upon what is represented, and according to the Texas rules for lawyers these things must be true, and so it is ok, and good and appropriate to verify this.

Any assistance would be greatly appreciated. Thank you.

Seth P. Washburne  
5200 Meadowcreek Drive, Apt. 2060  
Dallas, TX 75248  
(212) 289-1506

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## Exhibit 74: LPCH Website and Brochure

## Exhibit 58: Lynn Pinker Public Representations

1. Google Search Results same as 2016: “The courtroom is where we shine. When you have to go to trial, we’re exactly the kind of team you want on your side.”

The screenshot shows a Google search results page for the query "lynn pinker cox". The search results are displayed in a grid format. The first result is highlighted with a red border and contains the following text:

**Lynn Pinker Cox & Hurst, LLP | High-Stakes Litigation, Dallas, Texas**  
[www.lynnllp.com/](http://www.lynnllp.com/)  
At **Lynn Pinker Cox & Hurst, LLP**, the courtroom is where we shine. When you have to go to trial, we're exactly the kind of team you want on your side.

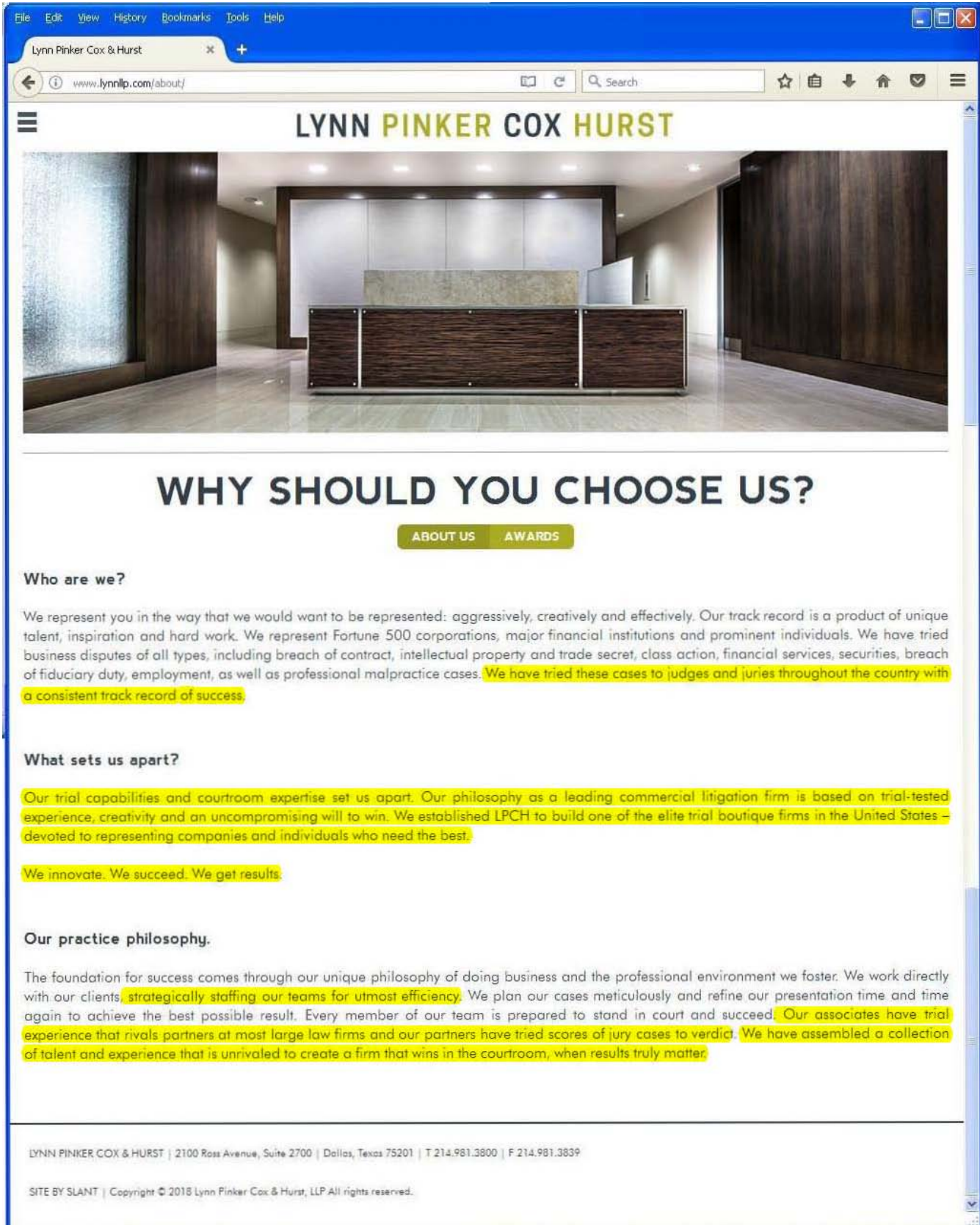
Below this result, there are several sections:

- Attorneys**: The attorneys at LPCH come from demonstrated excellence in ...
- Commercial Litigation**: A major portion of LPCH's practice is dedicated to commercial ...
- Contact**: Contact us. Lynn Pinker Cox & Hurst, 2100 Ross Avenue ...
- Trey Cox**: Trey Cox is consistently recognized as one of the ...
- About**: At LPCH, the foundation for success comes through our ...
- Eric Pinker**: "Eric Pinker represented us with the highest degree of ..."

On the right side of the page, there is a knowledge panel for "Lynn Pinker Co Hurst" with a star rating of 1.0 and a "Website" button. Below the panel, there is an address, phone number, and options to suggest an edit or add missing information.



## 2. LPCH's Website represents they are the ones to hire to go to trial.




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# LYNN PINKER COX HURST



## WHY SHOULD YOU CHOOSE US?

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### Who are we?

We represent you in the way that we would want to be represented: aggressively, creatively and effectively. Our track record is a product of unique talent, inspiration and hard work. We represent Fortune 500 corporations, major financial institutions and prominent individuals. We have tried business disputes of all types, including breach of contract, intellectual property and trade secret, class action, financial services, securities, breach of fiduciary duty, employment, as well as professional malpractice cases. **We have tried these cases to judges and juries throughout the country with a consistent track record of success.**

### What sets us apart?

**Our trial capabilities and courtroom expertise set us apart. Our philosophy as a leading commercial litigation firm is based on trial-tested experience, creativity and an uncompromising will to win. We established LPCH to build one of the elite trial boutique firms in the United States – devoted to representing companies and individuals who need the best.**

**We innovate. We succeed. We get results.**

### Our practice philosophy.

The foundation for success comes through our unique philosophy of doing business and the professional environment we foster. We work directly with our clients, **strategically staffing our teams for utmost efficiency.** We plan our cases meticulously and refine our presentation time and time again to achieve the best possible result. Every member of our team is prepared to stand in court and succeed. **Our associates have trial experience that rivals partners at most large law firms and our partners have tried scores of jury cases to verdict. We have assembled a collection of talent and experience that is unrivaled to create a firm that wins in the courtroom, when results truly matter.**

LYNN PINKER COX & HURST | 2100 Ross Avenue, Suite 2700 | Dallas, Texas 75201 | T 214.981.3800 | F 214.981.3839

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3. Firm Brochure Offered to public on conference table September 16, 2016, and in 2018.

**Claims: “UNSTOPPABLE”**

Claims: “... an unstoppable litigation force. Our goal for the next 20 years is to dominate the Texas business litigation market. Simply put, we want to be the go-to trial firm for all commercial litigation in the state of Texas.”



INTRODUCING LYNN PINKER COX & HURST

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On behalf of the firm, we would like to thank each and every one of you for your support and friendship. With your help, we have accomplished many amazing things over the last 20 years. The highlights include Texas Trial Firm of the Year, a \$535 million judgment, and winning The National Law Journal's Defense Win of the Year (twice, which we believe has been done only by our firm).

We could not be happier to build on those successes with the addition of Michael K. Hurst, A. Shonn Brown, Jonathan R. Childers and their excellent team of lawyers. Adding them to the considerable trial talent at the firm creates an unstoppable litigation force. Our goal for the next 20 years is to dominate the Texas business litigation market. Simply put, we want to be the go-to trial firm for all commercial litigation in the state of Texas.

Thank you for your support, and we look forward to accomplishing our goals and yours.

Michael P. Lynn

Handwritten signature of Michael P. Lynn in black ink.

Eric Pinker

Handwritten signature of Eric Pinker in black ink.

Trey Cox

Handwritten signature of Trey Cox in black ink.

Michael K. Hurst

Handwritten signature of Michael K. Hurst in black ink.

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LYNN  
PINKER  
COX  
HURST

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Exhibit 75: 2016 09 16 - 10.05 am email Seth to Krabill

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Friday, September 16, 2016 10:05 AM  
**To:** 'kkrabill@lynnllp.com'  
**Subject:** Two Pending Cases  
**Attachments:** Washburne Suits Background.pdf

Kent,

John Roper emailed me last night recommending I contact you. He met me Wednesday, but had to decline my cases because "I simply don't have the time I believe is necessary to dedicate to them. Regrettably my docket is busier than usual right now, and the timing is just off for me. You certainly deserve an attorney who can give your cases the attention they warrant."

I have two suits for which I need a law firm:

Tarrant County, 352nd Judicial District, Cause No. 352-268735-13, Seth Washburne and Thirsty 13th LLC, Plaintiffs, vs. James Terry, Pacific Prowler, LLC, Greatest Generation Aircraft, Patrick Mahaffey, Terry Rogers, and Perrin Warbirds, Inc., Defendants. This was scheduled for trial September 12, and was continued until the week of March 20, 2017. This is breach of contract, fraud, theft, negligence, DTPA, etc. against people who destroyed a WWII plane from my dad's squadron, and the defendants claim they are mostly broke, but the main person has at least \$500,000 hidden away. Discovery is mostly done, as are depositions, and mediation did not succeed. Outstanding issues are to: a) respond to some RFP items by September 29, which require input from my two experts, b) interview some fact witnesses, and c) prepare the case for trial.

Tarrant County, 153rd Judicial District, Cause No. 153-275478-14. Seth Washburne vs. Vintage Flying Museum, the Hospers Family Trust "D," Charlyn Hospers, Bill Gorin, Dana Wood, Hal Monk (a lawyer in Bedford), James Terry, individually and d/b/a Greatest Generation Aircraft, Pacific Prowler (Non-Profit), and Pacific Prowler, LLC. Was scheduled for trial December 5, and will probably be delayed until May 2017. This is about malicious prosecution and defamation, and the main defendant here is estimated to have a couple of million dollars. This is still early in the process.

On July 14 my lawyer for three years, Kevin Vice of Mayo Mendolia & Vice, in Royse City, east of Rockwall, resigned for reasons I can explain in person. I am looking for a firm which has trial experience, preferably including some in Tarrant County. Attached is some background on me and the cases, including the petitions.

Please let me know if this case would be of interest to you, or anyone else at Lynn Pinker Cox Hurst. I have reviewed your firm's website, and the firm profile is impressive.

Thank you.

Seth

Seth P. Washburne  
5200 Meadowcreek Drive, Apt. 2060  
Dallas, TX 75248  
(212) 289-1506

*the law office of*

**JOHN ROPER, PLLC**

Market~Ross Place  
1701 N. Market St. #200  
Dallas, Texas 75202

Tel. 214-505-6796  
Fax 214-206-9375  
[jr@johnroperlaw.com](mailto:jr@johnroperlaw.com)

16 September 2016

**First Class Mail**  
**(with copy by email)**

Seth Washburne  
5200 Meadowcreek Drive, Apt. 2060  
Dallas, TX 75248

Re: Declining Representation for Jim Terry and VFM Lawsuits (Case Nos. 352-268735-13  
and 153-275478-14) in Tarrant County, Texas

Dear Mr. Washburne:

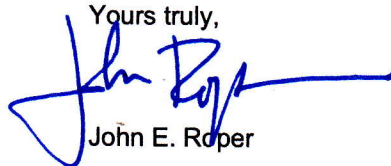
You contacted the Law Office of John Roper, PLLC (the "Law Office") concerning possible representation in the two above lawsuits. While we appreciate your interest in this firm, the Law Office has concluded that it will not be able to represent you in this matter. I am enclosing the pamphlet—THE FAILED RESTORATION OF C-47 "BILLIE," 2010-2012—that you left with me at our initial consultation on September 14, 2016.

I am aware from our conversation that you are consulting with other attorneys about representing you and the other plaintiff in these lawsuits. That is wise. In addition to others, you might try the law firm of Lynn Pinker Cox & Hurst, LLP. Kent Krabill is an attorney over there that I know. Here is their website <http://www.lynnllp.com/>. You may also ask Kevin Vice or Scott Dilbeck for another referral. Finally, another option always available is the State Bar Lawyer Referral Service at 1-800-252-9690.

Please understand that because the Law Office has decided not to pursue any legal action on your behalf in this matter this should in no way be considered a representation of the factual or legal validity of your claim or an opinion on the likelihood of a recovery or non-recovery in your case. In other words, you should not refrain from seeking legal assistance because of this firm's decision to not represent you.

I regret we could not be of assistance to you in this matter and appreciate the opportunity to have met and discussed the case with you. I wish you the best of luck.

Yours truly,



John E. Roper

Enc.

cc: File

Exhibit 76: 2016 10 16 - 1.34 Seth to Krabill



## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Thursday, October 06, 2016 1:34 PM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'  
**Subject:** RE: Paul Bazeley  
**Attachments:** 2016 05 04f Paul in Jacket of Thirsty 13th Exec Officer Duffy.jpg; 2016 05 04e Paul, John, Darrin.jpg

Kent,

I have not had any contact with Paul since I dropped him off at the airport May 6.

Jen Gjesvold once said she was going to contact him and require he spend six months preparing a 100+ page report, including exhibits. I told her to not to bother him until we had a specific list of questions for him to answer, and she never indicated she did contact him, but perhaps she did, which may have turned him off. He also is very busy, and manages a plane in Switzerland, and so goes over there for a month at a time, where he might be too busy to reply to emails.

Below is contact info for Paul's secretarial assistant, who schedules his trips. She told me I should always coordinate everything through her, because Paul can be hard to reach. I suggest you call her and ask Paul's whereabouts.

Victoria Nanbu  
Aerometal International, Inc.  
503-678-2266  
503-678-2269 fax  
[victoria@flyaerometal.com](mailto:victoria@flyaerometal.com)

When you check with Kevin Vice about whether there was a contract with Darrin, please also ask him if he wrote a contract with Paul.

As I may have mentioned, Paul works for someone, who he has not named, who put up the money to create Aerometal International. That person initially told Paul he did not want him to do this, because something like: "The DC-3 world is divided into good guys and bad guys, and even though some are bad guys, they are a very vocal group." I, too, have found this, that there is someone named Dan Gryder, in Georgia, who is sort of the polarizing person, who some people hate, but Terry likes. We are holding onto Paul by a thread, if at all. He also doesn't need to do this, and I am sure would prefer to not do so, but agreed I think as a favor to me, after I gave him a nice tour of Dallas and DC-3s May 4-5. So please be sensitive when and if you do talk to Paul. He is also a Brit, grew up in England, an only child, has been here for maybe 8 years, married a woman in Oregon, has one or two young children, and is quite soft spoken and even sort of shy. I am sure that lawyers and courtrooms scare him.

I think before you contact Paul you should create a list of questions, and photo exhibits to go with them, so he knows immediately exactly what you want him to do. For instance for the work Terry Rogers did on the center section, regarding the metal with the rivet holes, ask him: "What percent complete was AD 92-06-10?", and send him photos to go along with this for him to assess this. He doesn't need to come down here to look at it again if he has photos. And for that attach angle compression plate that was not flush, ask "How much would it cost to fix this," and refer to the photo of it in the produced exhibits. I think Kevin sent him a USB drive with about 9,000 emails and photos.

I think the time to call him is after you put this together, when you can say “I am emailing you this PDF, please look at it, and can you respond in two weeks?” Then he can at least see what he is getting into, and review it with his boss if necessary. If you give him a broad request, he will probably get scared.

And again, please try to be chummy and easy going, which I think is what works best with him.

Seth

---

**From:** Kent Krabill [<mailto:kkrabill@lynnllp.com>]  
**Sent:** Thursday, October 06, 2016 10:19 AM  
**To:** Seth Washburne ([sethgw1@gmail.com](mailto:sethgw1@gmail.com))  
**Subject:** Paul Bazeley

Seth,

We have emailed and left voicemails for Paul Bazeley and he hasn't got back to us yet. When was the last time you spoke with him?

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

Direct 214 981 3831

Cell 817 881 8113

Fax 214 981 3839

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

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Exhibit 77: 2016 11 17 - Krabill email re expert outline

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Thursday, November 17, 2016 11:29 AM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Cc:** Stephen Cole  
**Subject:** Bazeley Opinions  
**Attachments:** Bazeley Opinions.docx

Seth,

I have attached the outline that we will work with tomorrow. Please note that all communications with experts are discoverable, so we will not be providing this copy to Bazeley. However, we will have this document with us and will take notes on it throughout the day.

If you have anything you would like to add, please let me know.

Thanks,

**KENT D. KRABILL** | Partner

LynnPinkerCoxHurst

Direct 214 981 3831

Cell 817 881 8113

Fax 214 981 3839

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

[www.lynnllp.com](http://www.lynnllp.com)

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Bazeley Opinions:

1. The general standards of care and applicable regulations in the aircraft maintenance and restoration industry, and the Defendants' adherence to those standards and regulations
  - a. Need 3-5 examples of discrete work Defendants' did and why it did not measure up to applicable standards/regulations
    - i.
    - ii.
    - iii.
    - iv.
    - v.
  - b. Should also include a discussion about the standards and regulations concerning the creating and maintaining of records of repair, restoration, part removal, etc.
2. The current airworthiness of Washburne's planes.
3. The current fair market value of Washburne's planes and parts, in the state that they exist today.
4. The amount and type of work required to make Washburne's planes airworthy, and the costs associated with such work.
5. The reasonableness of Defendants' purchase of JR and the Missouri as a "donor plane" for Billie's restoration.
6. The reasonableness of Defendants' representation that they could "restore" Billie for \$300,000.
7. A reasonable estimation for the length of time it would have taken to restore Billie from the time it was purchased.
8. The reasonableness of Defendants' decision to place Washburne's planes and parts outside in an area exposed to the wind and without tying down any of the planes or parts.
9. The fair market value of the parts that Defendants stole from Washburne.
10. The fair market value, if any, of the services Defendants provided to Washburne.

Exhibit 78: 2016 12 14 - 2.00 p.m. Krabill to Seth, and 2016 12 15 - 1.19 pm questions re Bazeley conference call, and 2016 06 15 - 10.21 pm email Seth to Bazeley

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Wednesday, December 14, 2016 2:00 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** RE: Washburne matters call

Seth,

Our call with Paul Bazeley got postponed for 15 minutes, so we will likely be a little late, 15 minutes or so, in calling you. Sorry for the delay.

### **KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

Direct 214 981 3831

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---

**From:** Seth Washburne [<mailto:sethgw1@gmail.com>]  
**Sent:** Wednesday, December 14, 2016 9:58 AM  
**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Cc:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>  
**Subject:** RE: Washburne matters call

Yes, I will await your call at 2:30.

---

**From:** Kent Krabill [<mailto:kkrabill@lynnllp.com>]  
**Sent:** Wednesday, December 14, 2016 9:52 AM  
**To:** Seth Washburne ([sethgw1@gmail.com](mailto:sethgw1@gmail.com))  
**Cc:** Stephen Cole  
**Subject:** Washburne matters call

Seth,

Do you have time for a call at 2:30 p.m.? We would like to discuss depositions and MSJs. Please let me know.

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Thursday, December 15, 2016 1:19 PM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'  
**Subject:** RE: Questions about Bazeley Opinions

Kent,

1. **I am wondering if your call with him yesterday was very worthwhile.** May I please learn:
  - a. Were the three of you on this call, or just you and Stephen?
  - b. From what time until what time was this call?
  - c. Did you during that time ask him specifically about the AD? When I mentioned it, I don't recall your exact words but it was something to the effect that you thought it was all done well, because that is what Bazeley said.
  - d. Did you ask him about the compression plate?
  - e. Did you ask Bazeley about the rivets Rogers did? Many of them were not bucked properly, and one could see light through the side of them. You have the locations of those all identified by me in one write-up.
  - f. Did you ask him about the use of huckbolts, and other potentially non-standard fasteners, Rogers used? Those were all identified by me in one write-up.
  - g. Did you ask Bazeley about each of the specific spar cap repairs Rogers did? You have a handout with all those identified. How do you know he even looked at each of the spar cap repairs Rogers made?
  - h. Did you ask him about the small corrosion hole on a stiffener which Rogers missed?
  - i. Did you ask him about changing nacelles, whether Billie's looked like they had 1830s initially?
  - j. Did you ask him to opine on whether one should change nacelles when changing from 1820s to 1830s, and then specifically if one starts with my nacelles which had 1830s before? Did you ask him how easy it is to attach different nacelles to a center section? Is that already in his report?
  - k. Did you ask Bazeley how hard it is to prime the inside of the center section, and how much this will cost? To top coat the fourth fuel bay? How much it would cost to repair all the remaining spar cap problems? I expect that no, you didn't, and none of this is in his report.
  - l. Did you point out any of the changes Rogers made to the trailing edge wedge? Did Paul look at all the repairs in the trailing edge wedge?
  - m. Was it ok to remove all the guts from the center section, and not write any of that down? How much will it cost to put new guts in it. Were the tubes really corroded and in need of replacing?
  - n. Did he look at the landing gear that Rogers stripped and painted.
  - o. Did you ask him if it was ok to remove the bungee assist, if that is a good thing to keep, for a historic airplane, and what he did to prepare it for hydraulic assist? That was on my list of complaints about Rogers, and was significant.

Regarding Mahaffey's work

On Billie:

- a. Did you ask him about the decision to try to transfer the doorframe upper and lower longerons from Missouri to Billie, and the likelihood of success without changing any associated ribs and pieces? That was the biggest thing with me, because it caused him to replace the entire door frame.
- b. I had a list of every rib that had work done on it, and were these pointed to him? He went inside and took photos of many of these, but I am not sure he saw all of them.
- c. Did you point out the eyebrow panel repair he did? The 020 bulkhead? I think he saw the latter, but never saw him look at the eyebrow panel, which requires a ladder.
- d. Did he opine on painting the floor gray, instead of green?
- e. Did he opine on the necessity of opening up the horizontals to look for corrosion, vs. going in with a scope? This was a big deal to me.

f. Did he look at the wiring diagrams to say if they were worth anything at all? No.

On JR:

- g. Did you provide him any idea whatsoever of what Mahaffey did to this?
- h. Did he opine on the forward cargo door seal?
- i. Did he opine on the way Mahaffey bundled the cockpit wires, with ties every 2 inches?
- j. Did he opine on the new fuel drains?
- k. On how the overhauled carburetors were installed?

1. Regarding work Terry directed:

On Billie:

- a. Did he opine on the skin repair opposite the cargo door?
- b. Did he look for corrosion where paint had been stripped, and opine on the necessity of stripping the paint, given no corrosion was found?
- c. Did he opine on the advisability of having the props overhauled immediately, when they would not be used for years, but have a limited life before they must be inspected again?
- d. Did he opine on the correct way and timing to strip paint, and whether the 2.5 months and three methods Terry took were reasonable?
- e. Did he opine on the necessity of removing the center section to make spar cap repairs? That is one of the most important areas.

On JR

- f. Did he opine on how much more work it would take to get it flying, and at what cost?
- g. Did he opine on whether a wood floor should have been installed, vs. finding an original metal one, and if the current floor rails are compatible with any style of seats?

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Thursday, June 15, 2017 10:21 PM  
**To:** 'Paul Bazeley'  
**Subject:** Bazeley Opinions

Hi Paul,

Thank you again for emailing me the damage opinions on Wednesday, May 24. For three weeks I have been eager to review it, but have been prevented from doing so for various reasons, and am only now able to focus on it. Please review and reply to the following comments.

Generally I wonder if it would be better if you include a lot more specifics.

1. Center wing
  - a. You state this is for:
    - i) repairing the center section – it might be better to include a count of the number of spar cap repairs, e.g. six (?), the time for each, hours for the compression plate, piano hinge, etc.
    - ii) reattaching the TEW – this seems like sort of a big job, but not enormous.
    - iii) It seems it would be best to include a separate quote for i) and ii) here, because these are the items Terry Rogers was responsible for, my damages against him.
    - iv) structural repairs to the wing spars, attach angles, wing longerons, wing ribs, and wing tips – the wings were leaning against the wall of the hangar, and so did you actually identify any problems with the wing spars, attach angles, wing longerons, or wing tips? My impression is that they are all in good shape and don't need any work – only two small holes on top of one wing due to the other lifting up and coming down on it. I worry this may be hard to defend at trial.
    - v) reattaching the CS to the airplane – to remove it there are only 8 attach plates, four per side, each with four nuts, so I would think that would be rather quick and easy.
    - vi) It would take time to re-route the cables in the wing, and reestablish connections with the fuselage, but this is not mentioned in your estimate.
  - b. This 1,400 hours is equivalent to two men working full time on this for 17.5 weeks, four months. You note this is unusually high, and I wonder if it need be, and if it can hold up to cross-examination. It seems to me the center section repairs could be completed in two weeks, and, if the wing is structurally sound, with good attach angles, then I expect the TEW could be reattached in 2 weeks, and this all attached to the fuselage in one week, for about 5 weeks. You are the expert, but just want to be sure this is defensible.
2. Empennage
  - a. You might want to note that this does not include repairing damage due to the wind storm, which twisted it.
  - b. Repair and reinstallation of the horizontal and vertical surface tip caps and root fairings – did you find damage to these? I don't recall seeing damage to the tip caps and root fairings. It seems some more details might be good, e.g. to note what exactly you saw.



- c. You refer to vertical and horizontal flying surfaces, but not to the ribs underneath these, and do you have any idea if the inside of the horizontal is ok? Pat thought there might be corrosion in there.
  - d. It would be nice to include an estimate for reattaching the skin on the horizontals, where for each of them Pat removed a panel the entire length of the horizontal, one on the leading edge I think, and one on the trailing edge, to look in it. I would like to include the cost of that action as a claim against Pat.
  - e. Reinstallation of the horizontal and vertical – I think the vertical goes on rather quickly, just 50 or so screws (I removed JR's), and would think the horizontal could slide in pretty easily, too.
3. Fuselage
- a. Here again I am not sure if you are referring to it before or after the wind damage. If before the wind damage, your 1280 hours is two men for 16 weeks, i.e. four months. Pat felt the fuselage was pretty much done before the wind storm, so I think you need to add a lot more details about exactly what he did not complete. If after the wind damage, I think it would be good to separate out before and after the wind damage, because the wind damage was on Mahaffey, and the other incomplete work on Terry.
4. Landing Gear
- a. Terry Rogers supposedly overhauled the struts, and primed them.
  - b. I think it would be good to break out the cost of overhauling the actuators, wheels, and brakes, because Jim Terry was just going to restore it as it came in, and we probably could have used the original actuators, wheels and brakes, i.e. I am not sure such an overhaul would be included in a repair estimate.
5. Engine Section of Nacelle.
- a. You indicate you will use many parts from the Missouri nacelles, but Billie's nacelles used to have 1830s, so I think you can keep most of Billie's nacelles, and use a minimal amount of items from Missouri. I think it would be better to state you plan to keep Billie's nacelles, which appear to be original and had 1830s – based on the trapezoidal rust outline of a removed 1830 engine control bracket.
  - b. You state that every piece of the engine section of the nacelle is different, but, again, I think Billie's used to have 1830s, so think this might not be true. Do you really think this, and think Billie's nacelles are not original?
  - c. You state this is unusually high, and it does appear so.
6. Powerplant
- a. You include \$185,000 parts to overhaul the Missouri engines, but I have already had one overhauled, and showed it to you in the hangar, and have paid all but \$8,000 of the cost to overhaul the other one, to Blakey Engine Service, so this seems too high
  - b. The build up and installation and rigging of these engines you estimate at 960 hours, which is 2 men working for 12 weeks, or 3 months. I have heard that people can change an engine in a day, or two days, just hang it on, attach bolts, and reconnect hoses. Are you sure this 3 months is defensible?
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- a. Billie's propellers were overhauled in 2010 by Byam Propeller, and are on pallets on the floor. Maybe they have time out, but \$48,000 seems a bit high to overhaul them again.

- b. The 320 hours to hang the propellers, including changing the propeller controls, is two men for four weeks. We hung the props on JR, and timed the magnetos, and it took about 30 minutes, so are you sure this is a good number? Maybe can you add more detail?
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- a. I am not sure what the starting system is, and this 2 weeks for 2 men sounds like a lot.
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- a. This 320 hours, 4 weeks for two men, again seems high.
  - b. It might be better to include all the engine change-over items in one heading.
10. Fuel system.
- a. I think it would be best to separate out the cost of installing the original plumbing, vs. installing new plumbing. Terry Rogers did have tags on a few lines, fuel or hydraulic, and those could probably be reinstalled, and I think the estimate should include reinstalling the original lines, then a separate line item for if these were replaced with new plumbing, which was not something Terry initially promised.
  - b. On cross examination they will ask me if he promised me new plumbing, and he did say he would restore the plane, but did not specifically mention new plumbing, so again I think the plumbing should be separated out.
  - c. It would be good to have more specific details about the cost of the parts, e.g. the length of tubing required, the cost to bend it, etc. I think Rogers provided this at one point
  - d. The cost to reinstall the tubing actually is against Terry Roger, not Jim Terry, so should be broken out separate from reinstalling the fuel tanks.
11. Instruments
- a. Do you have details supporting this estimate? All the instruments were already overhauled once, and just need to be certified, so it would be better to have specifics of the \$32,000.
  - b. The labor cost of 640 hours, which is two men working for 8 weeks to reinstall the instruments, about 24 instruments, maybe 32 including switches, is 20 hours per instrument, 2.5 days per instrument, which seems a little high.
12. Surface Controls
- a. You ask me to confirm the flight controls are missing, and yes, both ailerons, both elevators, and the rudder is missing. But I think that should go in the theft area, and you should include two options, with and without these, because we are trying to get at what Terry originally promised, and he did not promise to recover all of these.
  - b. Regarding the labor cost of \$116,250, and parts cost of \$17,500, this is \$133,750 – I think you said one could buy used surfaces for about \$7,000 each, and that is what I had before, and so that is what I would do, not create new ones, so my cost would be about \$35,000.
  - c. Installing these is I think rather simple – I removed JR's rudder and elevators, and it took maybe an hour, and I expect they could be reattached in an hour, then one had to rig the wires and pulleys, so maybe 3 days max. Would you please revisit this estimate?
13. Hydraulic System
- a. You state the hydraulic selectors will be subject to cosmetic restoration – what makes you think this is necessary? Did you take a photo of those in Billie? I am not at Lancaster now, and can't find photos of the cockpit, but thought they were removed and overhauled already.

- b. You state that the accumulator might be replaced, but I think it would be better if you knew based on inspection whether it had to be replaced. I think it was fine, and should not be included.
- c. You mention repairing or replacing the pumps and actuators, but

#### 14. Electrical

- a. This 680 hours is 2 men for 2 months, which again seems a little high.

#### 15. Communications.

- a. Jim did not promise anything specific for this, but when it flew in we had a radio in the plane, and one just plugged into it, and I expect his bid would have included retaining or reinstalling that.
- b. I think the cost here should be \$0 for parts, and just a day or two to reinstall the headset jacks.

#### 16. Furnishings.

- a. Flight deck windows and seals – I think that was not included in his original estimate – the windows were fine.
- b. The cargo door was already repaired and ready to install, I think, just needed hinges.
- c. Would you please break out the cost of the original military cabin cargo floor? Where is one of these available? I thought they were impossible to find.
- d. I think you should include the cost to install the paratrooper seats I purchased – to make the triangle that connects them to the wall.
- e. I think the crew seats don't need to be included – it came with seats, and we never discussed him replacing those.
- f. It should include buying a navigators area and radio operator's area and building those out, which was included.

#### 17. Engine Fire Extinguishing System

- a. Again this seems high – 155 hours is 2 men for 2 weeks.

#### 18. HVAC

- a. Ok.

#### 19. Ice Elimination

- a. Yes, you can eliminate adding a de-icing system. There may have been one originally, but the Thirsty 13<sup>th</sup> I think did not have this, and in any case I don't recall Jim talking about this.

#### 20. Maintenance Administration

- a. Ok.

#### 21. Compliance Manuals

- a. Ok

#### 22. Paint Polish and Livery

- a. I think it would be good to add more detail, e.g. to apply primer to the inside and outside, then paint the outside in olive drab, then paint stars and bars, serial numbers, and nose art.
- b. I would be interest to learn where you do this.

On a related issue, do you have a report for the cost for other things, e.g.:

- a. to repair damage to JR's wing due to the wind storm,
- b. the value of the two Missouri wings destroyed in the wind storm
- c. the value of all the parts which were stolen?

If you could please forward these, too, to me, I would appreciate it.

Please let me know what your schedule is, e.g. when you are in town, and when you think you might be able to revise this, so I may plan my own time away.

Thank you.

Seth

---

**From:** bazeleypaul@gmail.com [mailto:bazeleypaul@gmail.com] **On Behalf Of** Paul Bazeley  
**Sent:** Wednesday, May 24, 2017 2:50 AM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Re: Report Timing

Kent, Seth,  
Good evening.

I humbly apologize for the further delays in getting this initial draft of the damages opinions for the completion of Billie - from the point that Jim Terry ceased to occupy the position of project manager.

I will be at the office all day tomorrow - I am sure that we will want to discuss this draft document.

I am off to get some sleep but I will look forward to connecting with you in the AM.

I am sincerely grateful for your patience - I am sorry to have undoubtedly pushed its limits.

Sincerely - PB

On Tue, May 23, 2017 at 1:04 PM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Hi Paul,

I spoke with Kent recently and he said what he wants to do is have the Terry case moved to the 153<sup>rd</sup>, and then have the judge switch the order, to have the Terry case go first, on July 24, maybe. I expect you will be at Oshkosh that week, though, so I am not sure if he figured on that.

In any case he needs your report ASAP so he can schedule a status conference with the judge to talk about that, or get the Terry suit scheduled in another court.

I know you are very busy, but would you please try to set aside a couple of hours this week to finalize the report? I would greatly appreciate it, and then can get the trial scheduled earlier, and get on with my own life sooner, too.

Thank you, Paul.

Seth

Seth P. Washburne

5200 Meadowcreek Drive, Apt. 2060

Dallas, TX 75248

[\(212\) 289-1506](tel:(212)289-1506)

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Thursday, June 15, 2017 10:21 PM  
**To:** 'Paul Bazeley'  
**Subject:** Bazeley Opinions

Hi Paul,

Thank you again for emailing me the damage opinions on Wednesday, May 24. For three weeks I have been eager to review it, but have been prevented from doing so for various reasons, and am only now able to focus on it. Please review and reply to the following comments.

Generally I wonder if it would be better if you include a lot more specifics.

1. Center wing
  - a. You state this is for:
    - i) repairing the center section – it might be better to include a count of the number of spar cap repairs, e.g. six (?), the time for each, hours for the compression plate, piano hinge, etc.
    - ii) reattaching the TEW – this seems like sort of a big job, but not enormous.
    - iii) It seems it would be best to include a separate quote for i) and ii) here, because these are the items Terry Rogers was responsible for, my damages against him.
    - iv) structural repairs to the wing spars, attach angles, wing longerons, wing ribs, and wing tips – the wings were leaning against the wall of the hangar, and so did you actually identify any problems with the wing spars, attach angles, wing longerons, or wing tips? My impression is that they are all in good shape and don't need any work – only two small holes on top of one wing due to the other lifting up and coming down on it. I worry this may be hard to defend at trial.
    - v) reattaching the CS to the airplane – to remove it there are only 8 attach plates, four per side, each with four nuts, so I would think that would be rather quick and easy.
    - vi) It would take time to re-route the cables in the wing, and reestablish connections with the fuselage, but this is not mentioned in your estimate.
  - b. This 1,400 hours is equivalent to two men working full time on this for 17.5 weeks, four months. You note this is unusually high, and I wonder if it need be, and if it can hold up to cross-examination. It seems to me the center section repairs could be completed in two weeks, and, if the wing is structurally sound, with good attach angles, then I expect the TEW could be reattached in 2 weeks, and this all attached to the fuselage in one week, for about 5 weeks. You are the expert, but just want to be sure this is defensible.
2. Empennage
  - a. You might want to note that this does not include repairing damage due to the wind storm, which twisted it.
  - b. Repair and reinstallation of the horizontal and vertical surface tip caps and root fairings – did you find damage to these? I don't recall seeing damage to the tip caps and root fairings. It seems some more details might be good, e.g. to note what exactly you saw.

- c. You refer to vertical and horizontal flying surfaces, but not to the ribs underneath these, and do you have any idea if the inside of the horizontal is ok? Pat thought there might be corrosion in there.
  - d. It would be nice to include an estimate for reattaching the skin on the horizontals, where for each of them Pat removed a panel the entire length of the horizontal, one on the leading edge I think, and one on the trailing edge, to look in it. I would like to include the cost of that action as a claim against Pat.
  - e. Reinstallation of the horizontal and vertical – I think the vertical goes on rather quickly, just 50 or so screws (I removed JR's), and would think the horizontal could slide in pretty easily, too.
3. Fuselage
- a. Here again I am not sure if you are referring to it before or after the wind damage. If before the wind damage, your 1280 hours is two men for 16 weeks, i.e. four months. Pat felt the fuselage was pretty much done before the wind storm, so I think you need to add a lot more details about exactly what he did not complete. If after the wind damage, I think it would be good to separate out before and after the wind damage, because the wind damage was on Mahaffey, and the other incomplete work on Terry.
4. Landing Gear
- a. Terry Rogers supposedly overhauled the struts, and primed them.
  - b. I think it would be good to break out the cost of overhauling the actuators, wheels, and brakes, because Jim Terry was just going to restore it as it came in, and we probably could have used the original actuators, wheels and brakes, i.e. I am not sure such an overhaul would be included in a repair estimate.
5. Engine Section of Nacelle.
- a. You indicate you will use many parts from the Missouri nacelles, but Billie's nacelles used to have 1830s, so I think you can keep most of Billie's nacelles, and use a minimal amount of items from Missouri. I think it would be better to state you plan to keep Billie's nacelles, which appear to be original and had 1830s – based on the trapezoidal rust outline of a removed 1830 engine control bracket.
  - b. You state that every piece of the engine section of the nacelle is different, but, again, I think Billie's used to have 1830s, so think this might not be true. Do you really think this, and think Billie's nacelles are not original?
  - c. You state this is unusually high, and it does appear so.
6. Powerplant
- a. You include \$185,000 parts to overhaul the Missouri engines, but I have already had one overhauled, and showed it to you in the hangar, and have paid all but \$8,000 of the cost to overhaul the other one, to Blakey Engine Service, so this seems too high
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- a. Ok.

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Please let me know what your schedule is, e.g. when you are in town, and when you think you might be able to revise this, so I may plan my own time away.

Thank you.

Seth

---

**From:** bazeleypaul@gmail.com [mailto:bazeleypaul@gmail.com] **On Behalf Of** Paul Bazeley  
**Sent:** Wednesday, May 24, 2017 2:50 AM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Re: Report Timing

Kent, Seth,  
Good evening.

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I will be at the office all day tomorrow - I am sure that we will want to discuss this draft document.

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I am sincerely grateful for your patience - I am sorry to have undoubtedly pushed its limits.

Sincerely - PB

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In any case he needs your report ASAP so he can schedule a status conference with the judge to talk about that, or get the Terry suit scheduled in another court.

I know you are very busy, but would you please try to set aside a couple of hours this week to finalize the report? I would greatly appreciate it, and then can get the trial scheduled earlier, and get on with my own life sooner, too.

Thank you, Paul.

Seth

Seth P. Washburne

5200 Meadowcreek Drive, Apt. 2060

Dallas, TX 75248

[\(212\) 289-1506](tel:(212)289-1506)

Exhibit 79: 2017 02 22 - Deitchman email to delay trial, and 2017 02 26  
- SW email to Cole re Deitchman delay

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Wednesday, February 22, 2017 3:55 PM  
**To:** Seth Washburne  
**Subject:** FW: Washburne et al

### STEPHEN COLE | Associate

LynnPinkerCoxHurst

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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**From:** Buzz Deitchman [<mailto:buzzdeitchman@gmail.com>]  
**Sent:** Wednesday, February 22, 2017 3:44 PM  
**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>; John Dowdy Jr. <[john@dowdylawfirm.com](mailto:john@dowdylawfirm.com)>; Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>; Charlie Burgess <[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)>; Elmer Atkins <[elatkinslawfirm@gmail.com](mailto:elatkinslawfirm@gmail.com)>; Buzz Deitchman <[buzzdeitchman@gmail.com](mailto:buzzdeitchman@gmail.com)>  
**Subject:** Washburne et al

Kent, Stephen, John, Charlie and El:

I hesitate to write this but write it I must. Please accept this as my attempt to conference on the Motion For Continuance I will file with the court tomorrow.

I had a visit with my Orthopedic Doctor yesterday who has been treating me for my injured right shoulder and knee since the MVA with the truck 11/23/16. The test done last week showed a much more serious injury than the original MRI done in Dec. I have a full thickness tear of the rotator cuff, anterior superior glenoid labrum tear and AC joint arthropathy. In layman's terms it means that it is only going to improve with surgery and it hurts to the point that I can't use my right arm and hand to do much. The doctor wanted to move my surgery up to next Tuesday but I will be unable to move my arm for six weeks and obviously can't drive. My decision based on the high level of pain I am in and the fact that I can't take strong pain medication is to try to get my surgery as soon as possible (Tuesday is not my target date) and ask the court to consider a continuance of a minimum of six weeks after surgery to reset the case. I understand we all have our clients to consider and mine is fully supportive of my request however I ask each of the other attorneys to confirm that they are in agreement or oppose the Motion. Frankly even if all agree there is no assurance that the court will agree to continue the case but for the sake of my health and ability to be competent to endure a multi-day trial I must reach out to each of you for this request. No personal feelings going on here, won't hold against anyone who must oppose but a prompt reply would be appreciated.

Thank you

Buzz

--

**B. Buzz Deitchman, P.C.**

**14850 Montfort Drive**

**Suite 220, LB-12**

**Dallas, TX 75254**

Ph: 972-960-2600

Fx: 972-239-6696

email: [buzzdeitchman@gmail.com](mailto:buzzdeitchman@gmail.com)

email: [bdeitchman@aol.com](mailto:bdeitchman@aol.com)

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Sunday, February 26, 2017 10:26 AM  
**To:** 'Stephen Cole'  
**Subject:** RE: Terry trial continuance

Stephen,

I am unavailable:

1. June 8-11 – going to my high school 40th reunion.
2. July 2-9 – my niece is getting married in Italy Friday, July 7, and I plan want to go over a few days before. I wouldn't mind spending even more time there then.

Therefore June 19 works for me, but gives us little time to prepare for the VFM case July 24 five weeks later, e.g. Terry case may take 2 weeks, I am gone one week, leaves 2 weeks. I don't feel too strongly about a delay, though, because it has been delayed so much already. It does give you and Kent more time to prepare – do you need more time? Three weeks from tomorrow seems rather soon.

But as I have indicated before, my whole life is on hold until this gets done, and I have costs of storing the planes – i.e. as soon as the case is done I will probably ship them to Paul or someone else and have him work on them and fix them, and then can rent the unit for \$1,200 a month, or sell the building.

I think we can oppose this saying:

1. We spent half a day with Buzz on February 16, and regarding having an injured right shoulder and knee he: a) moved around the room just fine, b) took notes, moving his shoulder just fine, c) was in an upbeat mood, and d) said not a word about being in any pain whatsoever, and instead was in a very happy and comfortable disposition.
2. He wrote us that he rejected the doctor's recommended surgery date of this Tuesday, so is not in a hurry to get this done, and March 20 is only three weeks away.
3. He has had 3.5 years to put together his defense, and has plenty of time now to put it together, such that he should not be inconvenienced as far as preparing the case.
4. He admitted to us when we met him recently that his client should have agreed to breach of contract, but didn't want to spend the money, or something like that, so knows his client is guilty, and has almost no case to put on. His client is hardly even paying him or not paying him at all.
5. He can probably still the present the case without use of his right arm/hand and without driving. He obviously is going to be feeding himself, and can have someone drive him.
6. Buzz and Terry Rogers can hire someone in Buzz's place to put on the case – it is extremely simple on their end, because they have almost no defense. Buzz has been a lawyer for

dozens of years and surely knows someone who can step in and defend Rogers. Maybe even Dowdy or Burgess can pick up Rogers' defense.

7. We already delayed the trial a year for his heart or cancer problem from 2015 to 2016.
8. Approving "six weeks after surgery" with no surgery date set means he could wait as long as he wants to have the surgery.
9. We asked Buzz to go along with us in opposing the motion to consolidate, and Buzz stated he agreed it was a bad idea, but had to go along with the defendants, saying "There's no I in Team," so isn't helping us out.
10. Mention that our expert Paul Bazeley manages a DC-3 for a very high profile international luxury firm, and the plane is on a round the world tour this year, starting very soon, taking most of Paul's time this year, so his schedule is very tight. When he does have free time, he must attend to his regular business for other customers. He is not a professional expert, and this is the first time he has ever done this, and it has been hard to keep him involved in the first place, and we cannot risk losing him.
11. With so many people involved, other people will have other conflicts, making rescheduling extremely difficult.

Again, I don't feel too strongly about this, so do what you think is best. It might be nice to have more time to prepare. I feel rather free now due to most of the discovery and depositions being done. But if you and Kent think you will be ready to go on March 20 and can put on a great case on that date, then that is ok with me.

Seth

Buzz's message:

I had a visit with my Orthopedic Doctor yesterday who has been treating me for my injured right shoulder and knee since the MVA with the truck 11/23/16. The test done last week showed a much more serious injury than the original MRI done in Dec. I have a full thickness tear of the rotator cuff, anterior superior glenoid labrum tear and AC joint arthropathy. In layman's terms it means that it is only going to improve with surgery and it hurts to the point that I can't use my right arm and hand to do much. The doctor wanted to move my surgery up to next Tuesday but I will be unable to move my arm for six weeks and obviously can't drive. My decision based on the high level of pain I am in and the fact that I can't take strong pain medication is to try to get my surgery as soon as possible (Tuesday is not my target date) and ask the court to consider a continuance of a minimum of six weeks after surgery to reset the case. I understand we all have our clients to consider and mine is fully supportive of my request however I ask each of the other attorneys to confirm that they are in agreement or oppose the Motion. Frankly even if all agree there is no assurance that the court will agree to continue the case but for the sake of my health and ability to be competent to endure a multi-day trial I must reach out to each of you for this request. No personal feelings going on here, won't hold against anyone who must oppose but a prompt reply would be appreciated

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**From:** Stephen Cole [mailto:SCole@lynnllp.com]  
**Sent:** Friday, February 24, 2017 4:21 PM  
**To:** Seth Washburne  
**Subject:** Terry trial continuance

Seth,



The Court has informed us that April 10 is not available for trial (that is a “non-jury week,” meaning they take up non-jury issues that entire week). Since that date is not available, we are currently marked as opposed to Buzz’s continuance.

We are happy to oppose the continuance, and there is a chance Judge Evans will make us keep that date. But, I did want to check with you to see how you felt about the possibility of agreeing to a later date that accommodates Paul’s schedule. Remember that Paul is currently unavailable, except for a small window in April, until June 15. So a “later date” would have to be something like the week of June 19. I realize that this is a significant delay and you may have zero interest in agreeing to such a delay, and that’s perfectly understandable, but I just wanted to get your thoughts. The judge may very likely grant Buzz’s continuance anyway, and we would then have to be fighting for a date that allows for Paul’s schedule, so we may find ourselves in that boat regardless of what we do.

Feel free to call me to discuss if you would like.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

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Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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Exhibit 80: 2017 01 16 - 1.14 pm Krabill to me re settement

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Monday, January 16, 2017 1:13 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** Settlement discussions

Seth,

As we discussed, please provide the following:

1. Mahaffey
  - a. Amount I would like to get in settlement
  - b. Minimum amount for which I would settle
2. Terry Defendants
  - a. Amount I would like to get in settlement
  - b. Minimum amount for which I would settle
3. Perrin Warbirds and Terry Rogers
  - a. Amount I would like to get in settlement
  - b. Minimum amount for which I would settle

Thank you,

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

Direct [214 981 3831](tel:2149813831)

Cell [817 881 8113](tel:8178818113)

Fax [214 981 3839](tel:2149813839)

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

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Exhibit 81: 2016 12 15 - 11.18 a.m. Krabill to Seth re Rogers

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Thursday, December 15, 2016 11:18 AM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** RE: Questions about Bazeley Opinions

Seth,

Yesterday, we asked you to send a list of the Terry Roger's work that was either not done or was done incorrectly. I am assuming that is the list you have drafted and want to discuss.

Please send the list and then Stephen and I will call you at 1 p.m. We then plan to speak to Bazeley.

Also, please send us the list of the 3-5 main items for each defendant that we have requested.

Talk at 1.

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

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[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

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---

**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]

**Sent:** Thursday, December 15, 2016 11:13 AM

**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>

**Cc:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>

**Subject:** Questions about Bazeley Opinions

Kent,

I have some questions about the Bazeley opinions you relayed yesterday, which I wrote up in an email, but because you said you would prefer to cover such things on the phone, would you please call me or tell me a good time to chat, when we can go over these? Anytime today is fine, but preferably after 1 p.m., though 1 p.m. is fine, too. Thanks.

Seth



Exhibit 82: 2016 12 16 - re Bazeley conference call, and 2016 12 16 -  
9.24 a.m. Krabill to Seth

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Friday, December 16, 2016 9:21 AM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'  
**Subject:** Rogers Issues  
**Attachments:** Resp.RFD-Rogers-Perrin - highlighted.pdf

Kent,

1. Please acknowledge receipt of my email Wednesday at 11:34 p.m., which:
  - a. Put in writing my request Tuesday to inform me of whether my legal fees may be disclosed to the jury in the VFM case, and how and when they would be disclosed to the jury.
  - b. Requested you send the Terry budget, after correcting the math errors in it, showing a maximum of \$311,000 additional cost, plus expenses, in addition to the \$86,675 already billed through November.
2. This is to put in writing my request during a phone conversation Wednesday or Thursday to:
  - a. Have Mallory email me the address she has for Joe Tooley, which you said was beyond a subpoena limit or some such thing.
  - b. Provide the address where the process server served Dana Wood, if he is allowed to disclose this. As part of this I would like to learn from the process server which first address he went to was bad, as he notes. It would also be interesting to learn how he determined the correct address. If the bad one is the one she filed with the court, then please let me know if we should note to the court that her lawyer filed that MTW with a false address for her.
3. I apologize for wanting to revisit the Lancaster billing, but you told me on the phone you and Stephen did not bill for the time at lunch, so please let me know what time started, what time we broke for lunch, what time we returned from lunch, what time we ended, and any other hours billed, e.g. at home or driving. I am not trying to be difficult, but am just confused and want to resolve that. I ordered an egg sandwich that morning, and looked out every few minutes to see if anyone was there, and did not see anyone until around 7:50 a.m. We finished around 3:51 p.m. or so, which is exactly 8 hours, and you billed 8.2. Perhaps you arrived at 7:44 a.m., though I don't think so, and perhaps stayed another 6 minutes after the photo, though I don't think that either, but then that means lunch was billed. Lunch was about 30 minutes, so if you did not bill for it, I wonder when you did bill this, e.g. for work at home, or driving time. I would like to know this for Stephen, too.
4. I will not pay for any time for you to call me today and tell me what Stephen talked about with Paul, because I specifically asked to be on that call, and could have heard all of that for free. That would double or triple bill me – Stephen talks to him for 1 hour for \$350/hour, then you and Stephen call me to tell me what was said for an hour for \$800/hour, for a total cost of \$1,150 vs. \$350. Even if you can summarize it in a shorter time than Stephen's call, it still makes me pay for something I should have had for free.



5. For the record, it was completely shocking to me for you to call me on Wednesday, after allocating three of you to talk to Paul for probably a long time, and tell me Paul determined Rogers did adequate work at a reasonable cost, and sounding like therefore there was no claim against him.
6. I paid Kevin Vice \$250,000 to develop this case, and paid for you and Stephen to meet with him, and asked you to ask him what are the key points in the case. From our call Thursday when you were demanding to know what Rogers did wrong, it sounded like you did not ask this to Kevin, and did not learn this on your own, despite several document explaining what he did wrong, and me pointing out thing to you in the hangar when you visited there October 4.
7. Attached is the RFP Kevin Vice submitted regarding my case against Rogers, with the facts drafted mostly by me, which explains "in painstaking detail" every single thing Rogers did wrong. I would like a yes or no answer whether each of you, Stephen, and Mallory ever read this.
  - a. If yes, then please explain why you did not ask Bazeley to opine on these things, and why on our call you were demanding and almost yelling at me to tell you off the top of my head on an \$800 per hour phone call what these issues were.
  - b. If no, please tell me why your firm, as the best litigation firm in the country, did not read an RFD response.
  - c. I believe I had every right to be upset with you on the phone when you told me Paul thought Rogers did ok work.
8. In the future, unless absolutely necessary to have you and Stephen both on a call, I want to talk to only one of you at a time, and that person can summarize and tell the other. I do realize there are often times when you are both needed, and no problem then, but I want you to look for ways to minimize this.
9. You have asked if it is ok to have Mallory help out, and yes, it is fine if you assign her tasks that free up Stephen, but I do not want to pay for her to sit on calls, such as to Baseley, when she is not actively part of the discussion.

Please reply in writing.

Seth

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Friday, December 16, 2016 9:24 AM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** RE: Rogers Issues

I see you are up. Please call me.

### **KENT D. KRABILL** | Partner

**LynnPinkerCoxHurst**

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---

**From:** Seth Washburne [mailto:sethgw1@gmail.com]

**Sent:** Friday, December 16, 2016 9:21 AM

**To:** Kent Krabill <kkrabill@lynnllp.com>

**Cc:** Stephen Cole <SCole@lynnllp.com>

**Subject:** Rogers Issues

Kent,

1. Please acknowledge receipt of my email Wednesday at 11:34 p.m., which:
  - a. Put in writing my request Tuesday to inform me of whether my legal fees may be disclosed to the jury in the VFM case, and how and when they would be disclosed to the jury.
  - b. Requested you send the Terry budget, after correcting the math errors in it, showing a maximum of \$311,000 additional cost, plus expenses, in addition to the \$86,675 already billed through November.
2. This is to put in writing my request during a phone conversation Wednesday or Thursday to:
  - a. Have Mallory email me the address she has for Joe Tooley, which you said was beyond a subpoena limit or some such thing.

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Friday, December 16, 2016 9:24 AM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** RE: Rogers Issues

I see you are up. Please call me.

### **KENT D. KRABILL** | Partner

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---

**From:** Seth Washburne [mailto:sethgw1@gmail.com]

**Sent:** Friday, December 16, 2016 9:21 AM

**To:** Kent Krabill <kkrabill@lynnllp.com>

**Cc:** Stephen Cole <SCole@lynnllp.com>

**Subject:** Rogers Issues

Kent,

1. Please acknowledge receipt of my email Wednesday at 11:34 p.m., which:
  - a. Put in writing my request Tuesday to inform me of whether my legal fees may be disclosed to the jury in the VFM case, and how and when they would be disclosed to the jury.
  - b. Requested you send the Terry budget, after correcting the math errors in it, showing a maximum of \$311,000 additional cost, plus expenses, in addition to the \$86,675 already billed through November.
2. This is to put in writing my request during a phone conversation Wednesday or Thursday to:
  - a. Have Mallory email me the address she has for Joe Tooley, which you said was beyond a subpoena limit or some such thing.

Exhibit 83: 2016 12 16 - 10.29 a.m email to Krabill

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Friday, December 16, 2016 10:29 AM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'  
**Subject:** Mahaffey RFD Response  
**Attachments:** Resp to RFD-Mahaffey - highlighted.pdf; Resp to RFD-Mahaffey.final.docx

Kent,

Attached as a PDF and Word document is Plaintiff's Response to Defendant Patrick Mahaffey's Request for Disclosure, itemizing all the areas I summarized for Kevin Vice, and he put in legal terms, as actionable against Mahaffey. Please reply in writing and tell me whether you, Stephen, and Mallory have each reviewed this or not.

I believe it was in our meeting at the hangar October 4 that you asked me to make a list of the 3-5 things which Mahaffey (and Jim Terry and Terry Rogers) did wrong, and you have repeated this request many times.

This document is 17 pages long, and you essentially want me to:

- a. Eliminate everything but 3-5 one-liner sentences.
- b. Decide what is a strong legal claim, despite that I am not a lawyer
- c. Decide what should be left in to trigger DTPA claims, despite that I am not a lawyer.
- d. Decide where I might get treble damages, despite that I am not a lawyer.

I apologize, but I am not equipped to do this.

Will you please go through and decide yourself what is worth taking forward?

I will say that some of things that bother me the most are below, but everything here that he did bothers me:

1. Not securing Billie's fuselage and JR's wing when placed outside – although you say that sentence lets him out of this, can we tell our version to the jury anyway, and let them decide?
2. Letting Joe paint the control pedestal and floors Winter Gray, when they should have been black and green respectively – these have to be stripped and repainted, and I specifically required he let me know in advance before painting anything.
3. Conspiring, I believe, with Terry to let Terry steal my parts, by not keeping track of my parts as was in his contract – though again you might say that sentence let him out of that. But can't we say this was done outside of his contract?
4. Telling me I should pay Rogers \$5,000 in each of three installments when Rogers was nowhere near done.
5. Encouraging Ricky to leave – who was the best worker, and had been there the entire time so knew what went where.
6. Replacing the cargo door frame upper and lower longerons with ones from Missouri rather than ordering ones from Basler. Paul told me those longerons can cost about \$14,000 each, so would have been maybe \$32,000 installed, about the same as I paid, but Mahaffey's approach: a) resulted in all the original cargo door frame being replaced with that from Missouri – and this is a big deal, because

that frame is the only thing everyone definitely touched, climbing in and out, and b) resulted in Steven Nelson working on this for 10 months, and so not being able to work on anything else.

Similar to my email earlier this morning, please reply in writing, at least to answer my question in my first paragraph. If, after you review the RFD response, you have questions to help you understand each item, we can have a call to go over all the claims.

Seth

Exhibit 84: Resp.RFD-Rogers-Perrin, Resp to RFD-Mahaffey, and  
Screenshot of Directory of Krabill Flash Drive

**CAUSE NO. 352-268735-13**

**SETH WASHBURNE and  
THIRSTY 13<sup>th</sup> LLC**

**Plaintiffs,**

**vs.**

**JAMES TERRY, PACIFIC PROWLER,  
LLC, PACIFIC PROWLER NONPROFIT,  
GREATEST GENERATION  
AIRCRAFT, PATRICK  
MAHAFFEY, TERRY ROGERS and  
PERRIN WARBIRDS, INC.**

**Defendants.**

§ IN THE DISTRICT COURT OF  
§  
§  
§  
§  
§ TARRANT COUNTY, TEXAS  
§  
§  
§  
§  
§  
§  
§  
§ 352<sup>nd</sup> JUDICIAL DISTRICT

**PLAINTIFFS' RESPONSES TO DEFENDANTS  
TERRY ROGERS AND PERRIN WARBIRDS, INC.'S  
REQUEST FOR DISCLOSURE**

TO: Defendants TERRY ROGERS and PERRIN WARBIRDS, INC., by and through their attorney of record, B. Buzz Deitchman, B. Buzz Deitchman, P.C., 14850 Montfort Dr., Suite 220, LB 12, Dallas, Texas 75254-7077.

COME NOW, SETH WASHBURNE AND THIRSTY 13<sup>TH</sup> LLC, Plaintiffs in the above-numbered and entitled cause, and hereby make and serve the following Responses to Defendants Terry Rogers and Perrin Warbirds, Inc.'s Request for Disclosure, pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE:

**(a) the correct names of the parties to the lawsuit;**

Plaintiffs believe all parties are properly named.

**(b) the name, address, and telephone number of any potential parties;**

Plaintiffs are not aware of any potential parties.

**PLAINTIFFS' RESPONSES TO DEFENDANTS  
TERRY ROGERS AND PERRIN WARBIRDS, INC.'S  
REQUEST FOR DISCLOSURE**



(c) **the legal theories and factual bases of the Plaintiffs' claims against Terry Rogers and Perrin Warbirds, Inc.;**

Plaintiffs Seth Washburne (“Washburne”) and Thirsty 13<sup>th</sup> LLC aver that Defendants Terry Rogers and Perrin Warbirds, Inc. (hereinafter collectively referred to as the “Rogers Defendants”): 1) made false representations about the nature and quality of the work performed on Plaintiffs’ aircraft (*e.g.*, that the first contract work was almost finished when it was not), 2) charged and collected on work that was not performed (*e.g.*, Plaintiffs paid 99% of the amount due under the first contract when only a small part was completed), and 3) performed substandard and inadequate service on Plaintiffs’ aircraft (*e.g.*, under the first and second contract work). As a result, Plaintiffs seek recovery under the theories of breach of contract, breach of warranty for services, breach of warranty of good and workmanlike manner, fraud (*e.g.*, for misrepresenting the cost of spare parts, and the need and ease to change nacelles), and for violations of the DTPA.

In connection with the assertion of violations of the DTPA, Plaintiffs aver that the Rogers Defendants breached the provisions of the DTPA, including the prohibition against (1) false, misleading, and deceptive acts and practices as enumerated in § 17.46(b) of the DTPA; (b) unconscionable actions or courses of action; and (c) breaches of express and implied warranties as enumerated in § 17.50(a)(2). Specifically, and without being limited to the same, the Rogers Defendants:

- a. Engaged in false, misleading, or deceptive acts or practices that Plaintiffs relied on to Plaintiffs’ detriment, TEX. BUS. & COM. CODE § 17.46(b);

Examples include entering into a contract with a \$20,000 down payment and no payment due until completion which the Rogers Defendants should have known they could not abide by due to their inability to pay workers during the second half work, refusing to abide by the original contract and requiring progress payment for the second half work, asserting that the center section had to be in a jig for the repairs, billing for parts included in the original contract, over billing by \$10,000 for such parts, billing for non-contracted work, providing misleading advice about the need to change nacelles, advising Plaintiffs they would save money by paying by the week rather than the job, and many other similar acts and omissions.

- b. Breached an express warranty that they would properly repair the center section in a timely and professional manner – they had it for more than one year, and completed a small fraction of the contracted work, TEX. BUS. & COM. CODE § 17.50(a)(2);

- c. Breached an express warranty that they had the requisite skill, experience, knowledge and tools to (1) repair the center section – but made many bad rivets, and set the attach angle compression plate far out of tolerance, and (2) remove, refurbish, repair and remount the nacelles at the correct angle and in the correct manner – when they had no idea at what angle to mount them, and were wholly incapable of completing this task, TEX. BUS. & COM. CODE §17.50(a)(2);
- d. Engaged in unconscionable actions or courses of action that, to Plaintiffs’ detriment, took advantage of Plaintiffs’ lack of knowledge, experience or ability to a grossly unfair degree, TEX. BUS. & COM. CODE § 17.50(a)(3);
- e. Misrepresented to Plaintiffs the source, sponsorship, approval or certification of goods and services – that their repairs would pass FAA standards, but they would not, TEX. BUS. & COM. CODE § 17.46(b)(2);
- f. Represented to Plaintiffs that goods or services had characteristics, parts, uses or qualities that they did not have – *e.g.* that they completed all but 3 days worth of work, TEX. BUS. & COM. CODE § 17.46(b)(5);
- g. Represented to Plaintiffs that goods or services being provided by them were of a particular standard, quality, grade, or that goods are of a particular style or model, when they, in fact, were not, TEX. BUS. & COM. CODE § 17.46(b)(7);
- h. Knowingly made false or misleading statements of fact to Plaintiffs about the need for work that was purportedly necessary, and about parts, replacement, or repair services, TEX. BUS. & COM. CODE § 17.46(b)(13);
- i. Falsely represented to Plaintiffs that certain work or services had been performed on the center section and nacelles when no such work had been performed, TEX. BUS. & COM. CODE § 17.46(b)(22); and
- j. Failed to disclose information to Plaintiffs about their planes, and the airplane parts that are the subject of this lawsuit, and services performed on same, that was known to them at the time of the transactions in order to induce Plaintiffs to enter into such transactions, when Plaintiffs would not have entered into the transactions had such information been disclosed, TEX. BUS. & COM. CODE § 17.46(b)(24).

Plaintiffs further aver that such conduct was committed knowingly and with the intent to deceive Plaintiffs, thereby raising to the level of fraud, and allowing recovery for treble and exemplary damages.

Plaintiffs also assert that the Rogers Defendants conspired with the other defendants named in this cause to defraud and damage Plaintiffs. In this regard, Plaintiffs assert that the Rogers Defendants acted in concert with other defendants to be paid for work that was not actually performed or completed, to induce Plaintiffs to agree to or pay for certain work that was not necessary, and to pay extra for work and parts that were included in the original bid.

The **factual basis** to support the foregoing claims is as follows:

### **First Contract**

The Rogers Defendants drafted a contract dated December 16, 2010, to perform seven tasks on a DC-3 center section, for compensation of \$20,000 up-front, and \$20,000 “upon completion of the work required to return the center section to airworthy condition.” The quote did not include any adjustment for the cost of parts to fulfill the seven tasks, *e.g.* for the spar caps, stringers and doublers to replace the corroded pieces, or for paint, *i.e.*, these were included in the quote.

Plaintiffs paid \$35,000 to Rogers Defendants under this contract, plus \$4,498 toward parts requested by Rogers Defendants for which they did not have the cash, a total \$39,498, fulfilling 99% of their obligations under the contract.

The Rogers Defendants agreed upon performance under the contract, in the order of the items numbered therein, and an explanation of the Rogers Defendants failure to perform each item, follows:

1. Strip the original center section – if this meant to strip the small amount of blue paint on the leading edge, then they did complete this minor task; if this meant to remove tubing from the center section, then they did not complete this, as there are still numerous tubes.
2. Repair corrosion as required – in the center section, excluding the trailing edge wedge, there were nine areas of corrosion, and these were identified by Jim Terry in June 2010, were in plain sight, and should have been known to the Rogers Defendants before signing the contract.

The Rogers Defendants worked on four of these nine areas: a) a stringer below the leading edge; b) the most easy to access repair on the second spar's bottom left side; and c+d) two repairs on the second spar's top left and right. Two of these four have bad rivets that must be redone. There were many Cherry max rivets inserted in holes but never pulled. The Rogers Defendants reskinned areas left and right forward of the tanks. The Rogers Defendants never touched the other five corrosion areas, which constituted the majority of the required repairs.

The Rogers Defendants sought to repair a broken attach angle compression plate bracket, but this has a specified tolerance of .000, and the Rogers Defendants attached it with a tolerance of about .250, so this must be redone.

In the trailing edge wedge, the Rogers Defendants appear to have replaced seven sections of stringers and four stiffeners, which are all minor repairs, and replaced the piano hinge on the right side. The Rogers Defendant did not attach the piano hinge on the left side.

3. Install AD 92-06-15 – this was a significant item requiring an estimated eight heavy aluminum pieces to be attached with an estimated total 400 fasteners. It appears the Rogers Defendants cut pieces for some of these doublers, but installed only about one third of the fasteners. Additional information will be sought during discovery.
4. Prime inside and out of center section – the Rogers Defendants did not prime the inside of the center section, nor the trailing edge wedge, and the inside is the harder area to paint, and so failed to complete the largest part of this task. The Rogers Defendants painted over the wing attach angles.
5. Top coat inside of tank bay with zinc chromate colored DuPont AF400 polyurethane paint – the Rogers Defendants top-coated three bays, but not the fourth, the right-forward bay.
6. Supply all paperwork required by FAA as to the work performed – the Rogers Defendants provided zero paperwork, claiming none is required because none of their tasks were completed.
7. Visual inspection of landing gear attach lugs – Rogers provided no write-up on his findings on this task, that presumably falls under his “nothing was completed” assessment, and so he did not complete this task either.

Therefore, the Rogers Defendants failed to complete the majority of the major items #2, #3, and #4, failed to completed 25% of #5, and all of #6 and #7, and thus overall completed far less than 50% of the contracted work.

In addition to completing far less than 50% of the contracted work, the Rogers Defendants refused to reattach the trailing edge wedge to the center section, reattach the nacelles to the center section, or reinstall all of the parts and tubing which they removed. Although these reattachments were not specifically stated in the contract, it was understood by all parties that these tasks were included, *i.e.* that the center section would be returned in the configuration in which it was received.

Regarding the removed parts, during a visit to the Rogers Defendants' facility on February 18, 2011, Plaintiffs were shown a large wooden box outside filled with Plaintiffs' parts, and asked Rogers if the parts would be okay stored like this. Rogers represented to Washburne that the parts would be fine. Plaintiffs asked Rogers if he knew how to put all of those parts back in and Rogers responded "I have worked on more DC-3s than anyone else," and so he purposely lead Plaintiffs to believe that the Rogers Defendants would reinstall all of those parts in the center section and nacelles from whence they were removed, when he had no intention of doing so.

Rogers provided no record of what was removed from the center section.

### **Timing of Work and Payments Under the First Contract**

Photos from December 27, 2010, show that within five days of the contract, the Rogers Defendants had removed the landing gear, nacelles, trailing edge wedge, and associated parts from the nacelles.

Rogers prepared an invoice dated January 26, 2011, for the spar caps and doublers he would need from supplier Basler Turbo Conversions, but did not purchase these parts.

On February 18, 2011, Plaintiffs visited the Rogers Defendants' facility, and noted the only work done since December 27, 2010, appeared to be to cut out two corroded parts of spar caps (not repair them) – an estimated 8 man hours, top coat three fuel tank bays – an estimated 16 man hours, and remove the nacelles from a second center section – an estimated 64 man hours, an estimated three day's worth of work for four people in nearly two months. The Rogers Defendants had stopped working on the center section, and subsequently admitted

they obtained a more lucrative business deal elsewhere, and went “where the money is.”

In July 2011, the Rogers Defendants stated they could not continue working on Plaintiffs’ project because they did not have the parts, and told Plaintiffs to remit \$15,000 for the parts. Plaintiffs obtained a copy of the January 26 Basler invoice, and learned the parts actually cost only \$4,498. Rogers had tried to overcharge Plaintiffs by \$10,000 for these parts.

Not realizing the parts were included in the original contract at that time, Plaintiffs paid \$4,498 for the Basler parts, and had them delivered to the Rogers Defendants’ facility. Because parts were included in the original quote, the Rogers Defendants had knowingly overbilled Plaintiffs.

The Rogers Defendants, to induce Plaintiffs to continue with them in July 2011, stated the repair required the specialized jig that Rogers Defendants had, and the centersection could be irreparably damaged if removed before the Rogers Defendants finished the work. However, three months later, after Rogers Defendants had attempted three second-spar repairs, they stated it was fine to remove the center section from the jig, and the third spar repairs, the most major ones, could be done without a jig.

The Rogers Defendants began work again in September, and during three weeks the main tasks they accomplished appear to be to: cut out a third corroded spar cap; replace the three areas of spar caps – but with some bad rivets; replace the compression plate bracket with one far out of tolerance, replace a left forward stringer and reskin panels over it forward of the fuel bays; repair seven stringers in the trailing edge wedge, replace four stiffeners in the wedge’s right side, replace the right side piano hinge, and prime the outside of the center section, trailing edge wedge, and landing gear braces.

Plaintiffs’ payments to Rogers under the original contract were based on the Rogers Defendants representation in July 2011 that they had completed 50% of the contract work, and completed 75% of the remaining amount from Friday, September 16, 2011, to Friday, October 7, 2011, for 87.5% of the original amount, and that the only remaining work was to make one repair to the third spar that would take one week. The Rogers Defendants in an email dated Thursday, October 13 wrote “you can pick up the competed wing on Friday, 10/21/11 and pay your last payment on that day,” *i.e.* that they were one week from finishing.

The Rogers Defendants later stated they worked on AD 92-06-15 from October 17 to 21, for four days, but they were nowhere near finished with it, and

did not complete any of the other numerous incomplete items, so their representation October 13 that they were one-week from completing the work was false.

On November 11, 2011, the Rogers Defendants emailed Plaintiffs: “If we stop on the nacelles, we can complete the original project in 3 days,” indicating they had completed all but 3-days worth of work under the original contract, but the considerable unfinished work indicates this representation too was false.

On November 13, Plaintiffs emailed Rogers and stated: “Please finish the original contract work, and let me know when this is ready so that I may pick up my parts.” Rogers replied on Monday, November 14, that he would finish the work under the contract, and “Your center section should be ready to transport by this weekend.” But Rogers did not “complete the original project in 3 days,” or in “one week,” or ever. After five weeks and two days, on December 21, Rogers emailed Plaintiffs: “Being a difficult decision to make, it has been decided to close the business. Please make arrangements to pick up the center section.” Therefore, the Rogers Defendants, after having Plaintiffs parts in his shop for more than one year, outright refused to complete the contracted work.

### **Non-Contracted Work**

On Wednesday, October 12, 2011, the Rogers Defendants emailed Plaintiffs demanding \$13,200 for “Nacelle removal & clean up,” \$1,760 for “gear removal and strip (conversion from bungee to hydraulic retract),” and \$880 for “hydraulic line removal from #2 center section.” None of these tasks was ever requested, or desired, by Plaintiffs or Plaintiffs’ representative, Jim Terry.

The first contract stated “Any item found requiring extra funding or man hours above the quoted items will be estimated and agreed to by both parties, in writing, before any extra work commences,” thus, the Rogers Defendants had no legal basis to request payment for any of this work. Plaintiffs wanted to keep their DC-3 as original as possible, and so did not want to change nacelles, did not want to eliminate the original bungee-assist gear retract, and did not want to salvage hydraulic lines from the second center section. These lines were tossed carelessly in an old wood box and never were used.

Rogers, in a phone call on October 12, 13, or 14, made representations to Plaintiffs that: a) when changing between 1820 and 1830 engines it was easier to change nacelles than to change firewall connections; b) no one would try to change the firewall connections, c) the nacelles on Plaintiffs’ aircraft were not original, d) when Delta Airlines changed this airplane from 1830 to 1820 engines

in 1946 they would have changed nacelles, e) he saw unmistakable evidence that the nacelles had been changed before, f) the nacelles needed to be installed at a very exact angle, and if this angle was even slightly off, if Plaintiffs lost an engine when flying the plane, they could easily “go into a flat spin, and you...will...die,” g) he knew what that angle was and quoted it, *e.g.* “1° down and 1.5° in,” h) he had the requisite experience and skill to replace 1820 nacelles with the 1830 nacelles, and i) the change could be accomplished by four people working 8 hours per day at \$55 per hour for one week, for a fixed cost of \$8,800.

Rogers, in a phone conversation around October 12, 2011, also told Plaintiffs that Jim Terry suggested Rogers ignore the first center section, and instead repair Plaintiffs’ second center section, also delivered to the Rogers Defendants, that already had the 1830 nacelles, and that this would make it look like the nacelles had been switched, when they had not been, and then they would both lie to Plaintiffs and say the second center section was actually the first one, and Plaintiffs would never know the difference. Rogers asserted that he would not go along with this, was the honorable person, and hence removed and cleaned the 1830 nacelles to transfer them.

Based on the Rogers Defendants’ numerous representations, Plaintiffs relied upon the Rogers Defendants, and initially agreed to pay \$5,000 toward the first task of removing and cleaning up the nacelles from Plaintiffs second center section to apply them to the first. Plaintiffs did not want their plane converted to hydraulic retract, and emailed Rogers October 13 “You have no legal basis to charge us for these either. [But] I am willing to pay \$1,000 toward this work to get to an amicable ending of this relationship.” After Rogers response, based only on the Rogers Defendants’ representations, Plaintiffs paid a total of \$7,000 for this non-contracted work.

### **Second Contract**

Rogers, in his October 12, 2011 email, at the same time as he held himself out to be the honorable one vs. Jim Terry, offered a menu of additional services, *e.g.* to install new hydraulic lines for \$12,000, new cables for \$19,140, and overhaul the landing gear for \$4,400. The first project, though, would be the nacelle install, for which he quoted a fixed price of \$8,800, equal to four people working 40 hours for one week.

In discussing the forthcoming work, Rogers told Plaintiffs “We will work even harder and faster if you pay us by the week.” Rogers said this faster work would be also accomplished for a lower hourly rate, saying he would accept \$5,500 per week. Because this worked out to \$34.375 per hour, not a round



number, Washburne offered to increase the rate to \$5,600 per week, so it would round off to \$35 per hour. Rogers responded saying “That would be very nice, that way my wife and I will be able to go out for dinner once a week.” This was a large saving from the \$55 regular rate, and so appeared to be a win-win.

On October 14, 2011, Plaintiffs drafted a second contract, sent as the text of an email titled “Going Forward” to the Rogers Defendants. This contract, based on representations by the Rogers Defendants, stated that the Rogers Defendants “will have four people working 8 hours a day, 5 days per week, on the tasks in #4, starting this Monday, October 17,” with the first task being to install the 1830 nacelles.

Plaintiffs performed their obligations under this contract, wiring \$5,600 per week to the Rogers Defendants on October 24, October 28, and November 8, and another \$1,020 November 14, a total \$17,820.

The Rogers Defendants did not fulfill their obligations. They admitted working on the AD from the original contract for four days, from October 17 to 20, and not starting on the nacelle installation as required by the second contract.

Furthermore, Plaintiffs did not save money paying by the week, as the Rogers Defendants worked for three weeks to install the nacelles, three times as long as estimated, at a cost to Plaintiffs of \$17,820, more than double the original \$8,800 fixed-price quote, and accomplished virtually nothing of value.

On November 10, 2011, Washburne visited Rogers and inquired how Rogers measured the angles of the nacelles, did he have a level of some sort? Rogers responded “Aw hell, I don’t know what angle they are supposed to be at! If you want to know that, write the Smithsonian and pay a fortune for the blueprints! I have the Cavanaugh DC-3 in here for some work, so I am just going to set it equal to whatever they have by sighting along lines.” After representing to Plaintiffs that Rogers knew the correct angle for the nacelles, and that it was a one-week job, the Rogers Defendants now had admitted they had no idea of the correct angle, and were nowhere close to attaching even one nacelle. Three days later, Plaintiffs terminated the nacelle install.

In March 2012, Plaintiffs noticed that their 1820 nacelles had a rust outline of a bracket for 1830 engines, and so used to have 1830 engines, and so could very well have been original. Plaintiffs subsequently spoke with other DC-3 experts who unanimously stated it is a very easy thing to change the firewall connections from one engine to another, and no one would ever change nacelles.

The Rogers Defendants' representations to Plaintiffs to induce them to hire the Rogers Defendants to install the 1830 nacelles were almost universally fraudulent lies, to take advantage of Plaintiffs' lack of knowledge in this area.

### **Rogers Defendants Again Insist the Nacelles Were Not Original**

On December 29, 2011, Washburne visited the Rogers Defendants' facility with the only purpose being to have Rogers show him what evidence he saw that the nacelles had been changed before, and these were not the original nacelles. Rogers responded "I have told you one thousand times, and I am not going to tell you again." When Washburne pressed him further, Rogers led Plaintiffs outside, to the north side of his building, and pointed at some rivets for an unrelated project, and said something like "See, I can tell," but still refused to explain what he meant.

### **Refusal to provide and Write-Ups**

During the course of the two contracts, Plaintiffs repeatedly asked the Rogers Defendants for a description of the work they were doing, and the Rogers Defendants always put off this request, instead promising to provide a thorough write-up when the project was completed. When the parts were picked up, Rogers again promised "I will get with Pat Mahaffey and complete the write-up."

The deception though, was that Rogers intended to never finish the project. The Rogers Defendants have to this day refused to provide any indication at all of what work they performed.

Plaintiffs had to spend hours of their own time to try and determine what repairs now exist, and which were done by the Rogers Defendants. When Plaintiffs demanded a Form 337 write-up based on FAA requirements, Rogers advised Plaintiffs that a Form 337 is only required when a project is completed, and because he did not complete the project, he was not required to document the work he had performed on the center section.

The lack of a list of itemized work performed by Rogers may make it virtually impossible to obtain the required FAA approval to use the center section and other parts on an aircraft that would be certified as airworthy.

### **(d) the amount and any method of calculating economic damages;**

Plaintiffs paid the Rogers Defendants for work that was reportedly performed under the original contract, and thus were entitled to receive in return a completed center section in an airworthy condition. In connection with the original contract, the economic damages sustained by Plaintiffs are the amounts required to complete the work the Rogers Defendants failed to complete, despite representations to the contrary. The work required and estimated amounts of

repair are as follows (all repairs are estimated at \$35 per hour, the rate charged by the Rogers Defendants):

1. Repair Corrosion as Required
  - a. Third Spar top right – 171 hours = \$5,985.
  - b. Third Spar top center – 76 hours = \$2,660.
  - c. Third Spar top left – 60 hours = \$2,100.
  - d. Third Spar bottom left – 86 hours = \$3,010.
  - e. Left outboard stiffener hole repair - 20 hours = \$700.
  - f. Compression plate reinstall: 16 hours = \$560.
  - g. Bad rivets by Rogers 32 hours = \$1,120.
2. Install AD 92-06-15 – estimated 80 hours = \$2,800, subject to change during discovery.
3. Prime inside of center section and trailing edge wedge – including clean, prep, and clean-up, 80 hours = \$2,800 + ~\$200 paint = \$3,000.
4. Top-coat fourth fuel tank bay: 1 quart AF 400 paint \$58.34; 0.5 pints DuPont 131 Urethane Activator \$22.87; plus tax and shipping ~100. Clean, prep, paint, and clean-up 10 hours = \$350 + \$100 supplies = \$380
5. Supply all paperwork required by the FAA – 8 hours = \$280.
6. Visual inspection of landing gear attach lugs – 4 hours = \$140, but TBD.
7. Other: Attach TEW left piano hinge: 8 hours x \$35 = \$280.

Thus, Plaintiffs are entitled to the return of at least \$23,015 for the cost to complete the work that should have been performed by the Rogers Defendants under the original contract.

Additionally, the original contract envisioned the Rogers Defendants returning the center section in the configuration in which they received it, *i.e.* with the trailing edge wedge attached, nacelles attached, and parts that had to be removed reinstalled. Plaintiffs estimate the cost to accomplish these tasks as:

1. Reattach the trailing edge wedge 68 hours x \$35 = \$2,380
2. Reattach nacelles (based on the Rogers Defendants 4 people 3 weeks and failing at this, it is assumed to still require 3 people for 3 weeks = \$16,800;

3. Reinstall all tubing and parts torn out without approval 2 people for 2 weeks x \$35 = \$5,600.

This is an additional \$24,780.

The Rogers Defendants removed the nacelles in such a way that it is now very difficult to reinstall them, causing perhaps irreparable harm, with damages to be determined at trial.

Plaintiffs are also entitled to the return of the \$6,000 paid for the removal and clean-up of the second nacelles. Plaintiffs are entitled to the return of the \$1,000 paid for the conversion to hydraulic retract and removal of hydraulic lines from the second center section, which were never contracted for, nor desired.

Plaintiffs are entitled to an additional estimated \$5,000 for anticipated difficulties they will have converting back to bungee retract.

Plaintiffs are entitled to the full return of the \$17,820 they paid for attempting to install the nacelles, which was not necessary, and failed.

Thus, the total economic damages claimed herein by Plaintiffs as to the Rogers Defendants are: a) \$23,015 directly from the original contract, b) \$24,780 also from the original contract, to reinstall the trailing edge wedge, nacelles, and removed parts, c) \$7,000 paid for the unnecessary and never contracted cleaning of the 1830 nacelles, conversion to hydraulic retract, and scavenging hydraulic lines, d) \$5,000 in anticipated costs to return it to bungee retract, and e) \$17,820 unnecessarily spent on trying to install the 1830 nacelles, for a total of \$ \$77,615.

Plaintiffs also request treble damages pursuant to the DTPA, punitive damages in an amount to be determined by the jury and attorneys' fees and court costs.

- (e) **the name, address and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;**

See attached Exhibit A, attached hereto.

- (f) **for any testifying expert:**
  - (1) **the expert's name, address and telephone number;**
  - (2) **the subject matter on which the expert will testify;**

- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the Defendant, documents reflecting such information;**
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the Defendant:**
  - (a) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and**
  - (b) the expert's current resume and bibliography;**

Plaintiffs have not yet identified their testifying experts.

- (g) any discoverable indemnity and insuring agreements;**

None know to Plaintiffs.

- (h) any discoverable settlement agreements;**

None know to Plaintiffs.

- (i) any discoverable witness statements;**

See videos and recordings produced in Plaintiffs Objections and Responses to Defendants Terry Rogers and Perrin Warbirds, Inc.'s Request for Production to Plaintiff. Responsive documents have been provided on a flash drive and are contained in folders identifying the documents and items being produced. Additionally, there may be statements, as that term is defined by the Texas Rules of Civil Procedure, contained in the various emails produced in this matter.

- (j) all medical records and bills reasonably related to the injuries or damage asserted;**

N/A

- (k) all medical records and bills obtained by Defendant by virtue of an authorization furnished to Defendant.**


N/A

- (l) the name, address, and telephone number of any person who may be designated as a responsible third party.

Plaintiffs are aware of no additional responsible third parties.

Respectfully submitted:

**MAYO MENDOLIA & VICE, L.L.P.**

By:  \_\_\_\_\_

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**ATTORNEYS FOR PLAINTIFFS  
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THIRSTY 13<sup>TH</sup>, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following counsel of record, **on this 16<sup>th</sup> day of December, 2013:**

B. Buzz Deitchman

**Via CMRRR: 7013 1090 0002 0094 2905**

B. Buzz Deitchman. P.C.

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Charles Burgess

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Fort Worth, Texas 76179

**Attorney for James Terry, Pacific Prowler, LLC,**

**Pacific Prowler NonProfit and Greatest Generation Aircraft**



\_\_\_\_\_  
KEVIN W. VICE



CAUSE NO. 352-268735-13

**SETH WASHBURNE and  
THIRSTY 13<sup>th</sup> LLC**

**Plaintiffs,**

vs.

**JAMES TERRY, PACIFIC PROWLER,  
LLC, PACIFIC PROWLER NONPROFIT,  
GREATEST GENERATION  
AIRCRAFT, PATRICK  
MAHAFFEY, TERRY ROGERS and  
PERRIN WARBIRDS, INC.**

**Defendants.**

§ IN THE DISTRICT COURT OF  
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§ TARRANT COUNTY, TEXAS  
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§ 352<sup>nd</sup> JUDICIAL DISTRICT

**PLAINTIFFS' RESPONSES TO  
DEFENDANT PATRICK MAHAFFEY'S REQUEST FOR DISCLOSURE**

TO: Defendant, PATRICK MAHAFFEY, by and through his attorney of record, Hal Monk, 840 Brown Trail, Bedford, Texas 76022.

COME NOW, SETH WASHBURNE AND THIRSTY 13<sup>TH</sup> LLC, Plaintiffs in the above-numbered and entitled cause, hereby makes the following Responses to Defendant Patrick Mahaffey's Request for Disclosure pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE:

**(a) the correct names of the parties to the lawsuit;**

Plaintiffs are properly named.

**(b) the name, address, and telephone number of any potential parties;**

Defendant is not aware of any potential parties.

**(c) the legal theories and factual bases of the Plaintiffs' claims against Patrick Mahaffey;**

Plaintiffs Seth Washburne ("Washburne") and Thirsty 13<sup>th</sup>, LLC aver that

Defendant Patrick Mahaffey: 1) made false representations about the nature and quality of the work performed on Plaintiffs' aircraft (*e.g.*, that work had been performed on the aircraft by third parties when it had not), 2) induced Plaintiffs to pay third party vendors, 3) performed substandard and inadequate service on Plaintiffs' aircraft, and 4) engaged in misleading, deceptive and fraudulent conduct in connection with the work performed on Plaintiffs' aircraft. As a result, Plaintiffs seek recovery from Mahaffey under the theories of breach of contract, breach of warranty for services, breach of warranty of good and workmanlike manner, fraud and for violations of the DTPA.

In connection with the assertion of violations of the DTPA, Plaintiffs aver that Mahaffey breached the provisions of the DTPA, including the prohibition against (1) false, misleading, and deceptive acts and practices as enumerated in § 17.46(b) of the DTPA; (b) unconscionable actions or courses of action; and (c) breaches of express and implied warranties as enumerated in § 17.50(a)(2). Specifically and without being limited to the same, Mahaffey:

- a. Engaged in false, misleading, or deceptive acts or practices that Plaintiffs relied on to Plaintiffs' detriment, TEX. BUS. & COM. CODE § 17.46(b);
- b. Breached an express warranty that he and the other Terry Defendants (as defined in Plaintiffs' Original Petition) would properly restore and renovate Billie to flyable and air-show condition, TEX. BUS. & COM. CODE § 17.50(a)(2);
- c. Breached an express warranty that he and the other Terry Defendants would properly restore and renovate JR to flyable and air-show condition, TEX. BUS. & COM. CODE § 17.50(a)(2);
- d. Engaged in unconscionable actions or courses of action that, to Plaintiffs' detriment, took advantage of Plaintiffs' lack of knowledge, experience or ability to a grossly unfair degree TEX. BUS. & COM. CODE § 17.50(a)(3);
- e. Misrepresented to Plaintiffs the source, sponsorship, approval or certification of goods and services, TEX. BUS. & COM. CODE § 17.46(b)(2);
- f. Represented to Plaintiffs that goods or services had characteristics, parts, uses or quantities that they did not have. TEX. BUS. & COM. CODE § 17.46(b)(5);
- g. Represented to Plaintiffs that goods or services being provided by them were of a particular standard, quality, grade, or that goods are of a particular style or model, when they, in fact, were not, TEX. BUS. & COM.

CODE § 17.46(b)(7);

- h. Knowingly made false or misleading statements of fact to Plaintiffs about the need for parts, replacement, or repair services, TEX. BUS. & COM. CODE § 17.46(b)(13);
- i. Falsely represented to Plaintiffs that work or services had been performed on parts or on Billie, JR and Missouri when no such work had been performed, TEX. BUS. & COM. CODE § 17.46(b)(22); and
- j. Failed to disclose information to Plaintiffs about Billie, JR, Missouri and the airplane parts that are the subject of this lawsuit and services performed on same that was known to him at the time of the transactions in order to induce Plaintiffs to enter into such transactions when Plaintiffs would not have entered into the transactions had such information been disclosed, TEX. BUS. & COM. CODE § 17.46(b)(24).

Plaintiffs further aver that such conduct was committed knowingly and with the intent to deceive Plaintiffs, thereby raising to the level of fraud, and allowing recovery for treble and exemplary damages.

Plaintiffs also assert that Mahaffey conspired with the other defendants named in this cause to defraud and damage Plaintiffs. In this regard, Plaintiffs assert that the Mahaffey acted in concert with other defendants to be paid for work that was not actually performed or completed, to induce Plaintiffs to agree to or pay for certain work that was not necessary, and to pay extra for work and parts that were included in the original bid from other defendants. Mahaffey also conspired with the Terry Defendants to defraud Plaintiffs and to steal Plaintiffs' parts.

The **factual basis** to support the foregoing claims is as follows:

### **Project Manager Contract**

On February 15, 2011, Defendant Mahaffey signed a "Project Manager Contract for the Restoration of Billie and Maintenance of JR" agreeing that he "will" do eleven items, and will obtain verbal or written approval from Plaintiffs before doing four items. In return, Plaintiffs agreed to pay Mahaffey \$35 per hour. Plaintiffs fulfilled their part of the contract, however, Mahaffey failed in fulfilling his obligations under the contract.

Out of the first eleven items, Mahaffey fulfilled only five of the eleven obligations, only one of which required any real action:

No. 3: Mahaffey agreed to email the Owner a summary of labor costs for each week by project and person, including locations for any structural changes, and did to this.

No. 5: Mahaffey agreed to have use of a credit card.

No. 8: Mahaffey agreed to provide the owner with the Social Security or Employer Identification Number (EIN) for each worker on the project, and for each external contractor hired, and did this.

No. 9: Mahaffey agreed to notify the Owner within one week of any accidents or errors affecting the C-47s. It is not clear if there were any such accidents.

No. 11: Mahaffey agreed to distribute to the workers their pay checks received by mail from the Owner - but Owner paid the workers directly almost the entire time.

Mahaffey showed almost complete disregard for his six main obligations.

No. 1: Mahaffey agreed to move the restoration of Billie along as quickly as possible, yet he conspired with Jim Terry to steal Plaintiffs' laborers, by leading workers Steven Nelson and Rick Bradley to believe they had to work for Jim Terry for free every Friday, when no such agreement with Plaintiffs ever existed. Mahaffey allowed Steven and Ricky to work on average 2.5 days a week, and so made little progress in 11 months. Mahaffey allowed worker Steven Nelson to work on Billie's cargo door frame from February to October 2011, for nine months, and still not have hinges or doors mounted. In November 2011, Mahaffey allowed workers Joe Tooley and Oscar Cardenas to rivet in a new nose skin piece, which Steven Nelson riveted back out the next day, at a complete loss of time and money for Plaintiffs. Later in November, Mahaffey allowed Jim Terry to take workers Oscar Cardenas and Joe Tooley for three weeks, and told Plaintiffs he had no idea where these two workers had gone or when they would be back. In January 2012, Mahaffey told the best worker, Rick Bradley, that Plaintiffs were going to cut his pay by 20% and encouraged this best worker to leave, which he did, despite that Plaintiffs had no intention at all of cutting the pay for Rick Bradley. All of these actions greatly slowed down work on Plaintiffs' projects. In March, after Plaintiffs on their own hired a new worker named Mark Ashley, Mahaffey slandered Plaintiff Washburne to Ashley, who stated "On my first day, Pat came over and said all kinds of bad things about you, things I wouldn't even repeat."

No. 2: Mahaffey agreed to, during 2011, as time permitted, finish up items on JR, but never worked at all on JR, despite having considerable time.

No. 4: Mahaffey agreed to include in the weekly email a description of all credit card charges, but out of 85 charges he made from March 8, 2011, to January 18, 2012, provided receipts for 46 charges for \$5,737, and no information at all, and kept no receipts, for 39 charges, 46%, almost half, for \$3,035.

No. 6: Mahaffey agreed for any structural changes to email the Owner with before and after photos, but never did this.

No. 7: Mahaffey agreed to only bill time for himself when the he was working exclusively on the C-47s, not for time managing others on the C-47s while working on another project or inactive. Plaintiffs later discovered that Mahaffey rarely worked on any aircraft, and instead, fictionalized most of his hours by claiming to assist others in their tasks.

During the time Plaintiff Washburne was onsite observing Mahaffey, from December 2011 until April 2012, Plaintiff Washburne observed Mahaffey, while billing time to Plaintiffs, on the computer reviewing Jim Terry's air show schedule, talking to Jim Terry about Terry's aircraft. Mahaffey even proudly told Plaintiff Washburne that he did not work for Plaintiffs, but he worked for Jim Terry - despite billing Plaintiffs for all his time. Mahaffey never said reported or clocked in or out, and thus, Plaintiffs did not know when Mahaffey arrived or left, and he often was nowhere to be found. But, Mahaffey would still bill Plaintiffs for a full day, 6.5 hours, for working 8:30 to 4 p.m. less one hour lunch. Plaintiffs tried to get Mahaffey to at least write down in his notebook where he was, so Plaintiffs could monitor Mahaffey's work, but Mahaffey refused.

From December 2011 until April 2012, the primary work Plaintiff Washburne observed Mahaffey doing, other than a quick install of JR's props, right carburetor, and timing the magnetos, was to tie wire bundles in JR's cockpit, and attempt to create wiring diagrams for JR and Billie. Mahaffey billed Plaintiffs \$14,000 to create 19 pages of handwritten notes and diagrams on electrical panels for Billie and JR, but did not label which went to which airplane.

When Plaintiffs, on April 29, 2012, demanded Mahaffey give these diagrams to Plaintiffs, Mahaffey refused to turn over the \$14,000 wiring diagrams. Plaintiffs only obtained these six months later, six months after Mahaffey quit, on September 10, 2012, when Mahaffey was required to turn them over by the Fort Worth Police Department.

No. 10: Mahaffey agreed to seek to safeguard all assets of the Owner relating to the C-47s, including retaining all parts removed from Billie. But, Mahaffey: a) did not separate out which parts belonged to Billie, as he was told to do, and instead tossed all sheet metal that came off of Billie into a large square

container, mixed with parts from other airplanes and scrap pieces, b) “loaned” Plaintiffs’ elevator to Terry and hid this from Plaintiffs, c) had no idea where Plaintiffs radio room parts were, d) allowed eleven of Plaintiffs’ cockpit instruments to be stolen, and e) allowed Plaintiffs’ elevators, rudders, and ailerons, and an estimated 70 parts in all to be stolen, estimated during his time as manager. Mahaffey also appears to have conspired with Jim Terry to steal Plaintiffs prop hub and prop dome from JR.

In addition to Mahaffey's blatant disregard for all the significant items he agreed he would do under his contract, Mahaffey had no regard for the items he agreed he would not do. Regarding the four items for which he had to first get Plaintiffs' approval:

Approval No 1: Mahaffey agreed to get Plaintiffs’ approval before painting anything on either plane - but Mahaffey let Joe Tooley paint Billie's control pedestal Winter Gray, when it should have been black - and previously was black. Mahaffey also let Tooley paint Billie's cockpit floors and yoke gray, when they should be green. Payroll records from October 19, 2011, until November 2, 2011, show Tooley spent an estimated 20 hours on this, while paid \$16 per hour, for a cost to Plaintiff of \$320 plus supplies, and prep cost, and estimated \$500. These parts have to be stripped and repainted at a significant additional cost to Plaintiffs.

Approval No 2: Mahaffey agreed to get Plaintiffs’ approval before committing to pay an outside contractor more than \$750, but sent out the right engine carburetor for JR for overhaul which cost \$3,266 on February 23, 2012, without Plaintiffs’ approval.

Mahaffey also committed Plaintiffs to spend \$2,895 on cockpit instrument overhaul without Plaintiffs’ knowledge. The owner of this instrument shop, Ralph Stahl of Stahl Air Instruments, told Mahaffey his shop was not FAA-approved to certify the instruments, but Mahaffey told him to work on the instruments anyway, at perhaps a total loss to Plaintiffs. Included in this overhaul Mahaffey committed Plaintiffs to pay \$450 to overhaul two instruments that will never be used.

Approval No. 3: Mahaffey agreed to get Plaintiffs’ approval before removing any structure or disposing of any assets, but asked Steven Nelson to remove JR's elevator without telling Plaintiffs, violating this point of his contract. Mahaffey then “loaned” it to Jim Terry, without notifying Plaintiffs. Mahaffey emailed Plaintiffs June 22 with the week's payroll, on the very day he was taking Plaintiffs’ elevator, and yet failed to disclose he allowed unauthorized use of Plaintiffs’ parts.

Approval No. 4: Mahaffey agreed to get Plaintiffs' approval before increasing hourly wages for any worker - Mahaffey did not violate this.

### **Refusing to Document Work Performed**

Mahaffey never officially documented any work he oversaw. In January 31, 2012, Plaintiffs demanded Mahaffey stop work and write up FAA Form 337s. Mahaffey billed Plaintiffs for writing up many 337s, but Mahaffey then refused to give them to Plaintiffs - and never has.

Mahaffey emailed Plaintiffs April 30, 2012: "Logbook entries for what I have done and the work Ricky and Oscar did are on my computer at the hangar. Steve and Greg [Voyles] are licensed A&P mechanics, so they will need to submit entries for the work they did." Greg quit on August 10, 2011. Despite saying he had logbook entries for Ricky and Oscar, he refused to provide these.

Mahaffey refused to give Plaintiffs any write-ups at all until Plaintiffs filed a complaint with the FAA in June 2012. In response to the FAA demand that he write-up the work he oversaw, Mahaffey wrote up only 5 of 15 months - May 9 to Oct 28, 2011, and many of these were inconsistent with the payroll reports.

### **Mahaffey Refused to Complete the Project**

On April 24, 2012, Plaintiffs emailed Mahaffey asking him: "..... would you be willing to continue to work on this for \$30 an hour, instead of \$35? \$35 works out to \$73,000 per year, and is also \$280 per day, which is uncomfortable for me." To further explain the need for this, at 8:24 p.m., Plaintiffs also sent a list of areas, in which he was disappointed with Mahaffey, but concluded writing: "Your advice is obviously often sought, and valued, and so I sincerely hope you will stay involved on this new basis." On April 29, Mahaffey emailed Plaintiff back: "Thank you for offering me the position of technical advisor on your project. After very careful consideration I have decided not to take this position. I wish you the best of luck." The projects at this time were all incomplete, and much of the work was undocumented, making it impossible for Plaintiffs to timely and affordably complete the projects Mahaffey and James Terry had started.

### **Fraud**

#### **Representing that Terry Rogers was doing a great job when he was not**

In September 2011, Plaintiffs gave Mahaffey instructions to visit Perrin

Warbirds, determine what was left to do, divide it by four, and make sure Perrin did 25% every week, to get each \$5,000 of a final \$20,000 due under a contract. Plaintiff called Mahaffey at the end of each of the first three weeks, after also paying Mahaffey for an estimated 7 hours each Friday to drive up and perform his inspection, and Mahaffey stated Perrin Warbirds did in fact complete one-fourth of the remaining work each week, and at the end of the third week had only five days work left to do. This was all untrue. Mahaffey never made such a list of what was left to do, never inspected Perrin Warbirds work closely, and after the third week there was months of work left. Mahaffey not only wasted the \$245 Plaintiffs paid him each of three times to drive to Perrin, but also cost Plaintiffs the terrible work done by Perrin Warbirds.

Several times Plaintiffs wanted to terminate Perrin Warbirds, but Mahaffey urged him to keep going with Perrin Warbirds.

It is Plaintiffs belief that Mahaffey conspired with Jim Terry and Terry Rogers to defraud Plaintiff.

### **Hiding that JR May never be allowed to Fly**

On May 16, 2012, worker Joe Tooley told Plaintiff Washburne "Several months ago someone on the A-26 came by and asked 'Why are you wasting your time working on this plane [JR]?' I said 'What do you mean?' He said 'Pat said this plane will never fly.'" If this is true, then Mahaffey was hiding this from Plaintiffs.

### **Conspiring with Jim Terry on a False Invoice**

In March and May of 2011, after Jim Terry emailed Plaintiffs an invoice for Terry's own rudders, elevators, and ailerons that he alleged had been put on Plaintiffs' airplanes, Plaintiffs contacted their trusted manager Mahaffey to determine the authenticity of what Jim Terry wrote. Mahaffey represented to Plaintiffs that what Jim Terry said was all true. In fact, everything Terry wrote was false, and Billie had no rudder or elevator. By insisting Jim Terry was telling the truth, Mahaffey conspired to defraud Plaintiff.

### **Refusing to file an FAA AAIP**

While Plaintiffs were under the impression that JR was moving toward completion, Mahaffey made no effort to file an Approved Airplane Inspection Program (AAIP). Plaintiffs learned about this around March 2012 from Joe Tooley.



Mahaffey charged Plaintiffs for eight hours to review an AAIP that Plaintiffs drafted, and stated all the changes in red were made by him, but most of the changes in red were made by Plaintiffs, and Mahaffey left in ADs that relate to air stairs that Plaintiffs did not have, and left in other inapplicable areas.

### **Urged Plaintiff to Purchase a New Tail Wheel Tire, and Refused to Install It**

Mahaffey insisted Plaintiff had to buy a new tail wheel tire, which Plaintiffs immediately did, and then Mahaffey refused to install it.

### **Mahaffey Frequently Appeared to Lie about his Time**

In January 2012, Mahaffey seemed to spend about 3 hours on the internet looking for an instrument panel switch, but then told Plaintiffs he hadn't measured the hole it had to go through. Mahaffey wrote in his timesheet that he found the correct cockpit switch, but then the next day researched it on the internet again. He then told Plaintiffs it was on a page in a book on his desk. Mahaffey never did get the correct switch. Instead, Plaintiffs found one rather easily on the internet in about 30 minutes, but yet had to pay Mahaffey an estimated 5.5 hours for nothing.

Mahaffey spent about two hours researching a fuel-oil cutoff bracket that was stuck, but later stated he had fixed it the night before.

### **Was Aware that Jim Terry Mised People**

Mahaffey emailed Plaintiff June 29, 2011: "I know Jim can sometimes leave important details out when he tells someone something. Whether it is by accident or design I am not sure."

### **Negligence**

#### **Not Exercising a Standard of Care to Tie Down Plaintiffs' Property in 2010**

Mahaffey, as Chief Mechanic in 2010 according to Jim Terry, and after placing Billie's wings on top of rubber tires with nothing around them to interrupt the wind, did not place anything on top of the wings to spoil the airflow, and did not tie down either of Billie's wings.

Mahaffey, as Chief Mechanic in 2010 according to Jim Terry, after placing JR's wings on top of rubber tires high atop pallets with nothing around them to interrupt the wind, did not place anything on top of them to spoil the airflow, and did not tie down either of JR's wings.

Mahaffey, as Chief Mechanic in 2010 according to Jim Terry, after placing Missouri's wings on top of rubber tires with nothing around them to interrupt the wind, did not place anything on top of the wings to spoil the airflow, and did not tie down either of Missouri's wings.

Mahaffey, as Project Manager in April 2012, driving the tug and operating the crane, after a two-month long repair to JR's left wing, which he directed, and which cost Plaintiffs an estimated \$12,382, after placing the left wing of JR high atop several pallets, facing north, did not place anything on top of the wing to spoil the airflow, and did not tie down JR's left wing.

Mahaffey, as Chief Mechanic in 2010 according to Jim Terry, placed Missouri's fuselage along the fence at Meacham, exposed to strong winds and dust, and did not tie it down.

Mahaffey, as Chief Mechanic in 2010 according to Jim Terry, placed Billie's fuselage along the fence in 2010, and did not tie it down.

Mahaffey, as Project Manager in January 2012, placed Billie's fuselage along the fence, and did not tie it down.

As a result of Mahaffey's negligent behavior, a wind gust on August 12, 2012, lifted one of Billie's wings and set it down upon another, punching two holes in the wing.

As a result of Mahaffey's negligent behavior, a wind gust on August 12, 2012, tossed JR left wing an estimated 90 feet, causing severe damage to the attach brackets, the wing tip section, the aileron connections, the skin that is wrinkled, probably indicating more interior damage, and several holes were punched in it.

As a result of Mahaffey's negligent behavior, a wind gust on August 12, 2012, lifted both of the Missouri wings, which Jim Terry had stated were in perfect condition, and threw them high in the air, over a 6-foot high fence, and caused severe damage to each of these, making them virtually worthless.

As a result of Mahaffey's negligent behavior, in 2010, Billie was blown into the fence, cracking the 020 bulkhead. This required the replacement of an original part with an unoriginal one from the Missouri plane, in August 2011, and a cost to Plaintiffs of an estimated \$1,744.

As a result of Mahaffey's negligent behavior, Billie's fuselage was often soaked in rain causing the cockpit to rust, and covered with dust from the airfield,

filling it with dirt.

As a result of Mahaffey's negligent behavior, a wind gust on August 12, 2012, first pushed the nose of Billie into the fence exactly as happened in 2010, again ripping the 020 bulkhead in the exact same location as before, despite Mahaffey having been fully aware of this risk, and being the one to oversee the repair.

As a result of Mahaffey's negligent behavior, a wind gust on August 12, 2012, after it pushed the nose of Billie into the fence, and because it was pushed into the fence, flipped onto its left side, allowing the wind to enter the large opening on the underside where the centersection attaches, and this wind hurled the fuselage an estimated 100 yards across a field, into a metal fence with steel posts that the fuselage completely flattened, and hurled the fuselage down a hill, where it came to rest with almost every rib broken in numerous places, torn completely in two, and with the skin greatly damaged, completely destroyed.

### **Conspiracy to Commit Theft**

#### **Elevator**

In December 2011, Plaintiffs asked Mahaffey about the location of JR's left elevator. Mahaffey refused to tell Plaintiffs where this was, and instead said one of JR's was bad. Plaintiffs asked if they should therefore paint up an extra one repaired in pink, and Mahaffey said yes, never letting on the whereabouts of JR's left elevator.

In January 2012, Plaintiff Washburne again asked Mahaffey, while they both stood in a parts trailer on the South Lawn of the Vintage Flying Museum, where his elevators were for Billie and JR, and Mahaffey replied "Jim should be here when we go over these," or "Jim wants to be here when we go over the elevators," and refused to tell Plaintiffs where Plaintiffs' parts were located.

Mahaffey on another occasion told Plaintiffs not to worry about finding JR's elevator until JR was ready to fly.

Mahaffey, in June 2011, had "loaned" Plaintiffs' elevator to Jim Terry, and hid this from Plaintiffs in all 2011, and now refused to tell Plaintiffs.

These actions all reflect a determined effort by Mahaffey to conspire with his boss, Jim Terry, to commit theft of Plaintiffs' property.

#### **Prop Hub and Spoke**

Around March 2012, Mahaffey entered Plaintiffs area at the Meacham hangar and removed a prop hub, spoke, and perhaps the dome, that he insisted belonged to Jim Terry, over Plaintiffs protestations that these belonged to Plaintiffs.

### **Other Parts**

Mahaffey was along on the trip to San Antonio in April 2010, and so was aware that all of the parts were purchased with Plaintiffs' money, but yet many were taken by Jim Terry. Mahaffey was asked in 2011 to locate all of Plaintiffs' parts, and in refusing to disclose the parts taken by Terry conspired with Terry in the theft of Plaintiffs' property.

### **Other**

Mahaffey worked for Jim Terry from January 2010 until April 2012, sitting in the same small office as Jim Terry, and it is estimated with full knowledge of every action by Jim Terry. Therefore he was a party to most of the offenses committed by Jim Terry.

#### **(d) the amount and any method of calculating economic damages;**

Following are estimates of Plaintiffs' damages arising from Mahaffey's conduct:

#### **Estimated Damages from Breach of Contract**

For not providing any information at all about 39 credit card charges for \$3,035, to pay 50% of this amount, \$1,517.

For allowing Joe Tooley to paint Billie's control pedestal, yoke, and floors gray, at a cost to Plaintiffs of at least \$500, reimbursement of this \$500.

For committing Plaintiffs to spend \$2,895 to clean and calibrate 27 cockpit instruments, which exceeded the \$750 level above which Mahaffey needed to obtain approval, and doing so without Plaintiffs' approval, and because this repair shop that was not FAA certified, and so could not also certify the instruments, the difference between what another shop that certifies instruments would charge for certifying only, vs. cleaning, calibrating, and certifying.

For committing Plaintiffs to spend at least \$450 cleaning two instruments that may never be used, reimbursement of this \$450.

For “lending” out Plaintiffs’ elevator to Jim Terry from June 22, 2010, until discovered by Plaintiffs on May 22, 2012, rent of \$500 per month, \$6,000 for the year. This was tantamount to conspiring to commit theft.

### **Fraud**

For representing to Plaintiffs that Terry Rogers had done a great job and completed all but one week's worth of work, and so was entitled to three progress payments of \$5,000 each week for three weeks, when there was months worth of work left, return of the \$245 per week paid to Mahaffey to check on Rogers because he provided false reports, and up to the full \$15,000 paid to Rogers.

For hiding that JR may never be able to fly again, reimbursement of all funds spent on JR while Mahaffey managed this project, which is from January 2012 through April 2012, \$29,736 labor + \$3,821 supplies, a total \$33,557.

For conspiring with Jim Terry on the false invoice, by, as Plaintiffs’ trusted eyes and ears on the project, telling Plaintiffs that the words in Jim Terry's email and invoice were correct, to reimburse Plaintiffs \$3,000.

For conspiring with the other Terry Defendants throughout the life of the projects on Plaintiffs' aircraft, the entire amount paid by Plaintiffs to James Terry throughout the course of the projects, or alternatively, for the loss in value to Plaintiffs' aircraft.

### **Negligence**

For, as Chief Mechanic in 2010 according to Jim Terry, and after placing Billie's wings on top of rubber tires with nothing around them to interrupt the wind, not placing anything on top of the wings to spoil the airflow, and not tying down either of Billie's wings, such that when on August 12, 2012, a 73 MPH wind gust passed over the wings, it lifted one up, and dropped it on the other, punching two holes, that must be repaired at an estimated cost of \$2,000, to be determined.

For, as Chief Mechanic in 2010 according to Jim Terry, after placing Missouri's wings on top of rubber tires with nothing around them to interrupt the wind, and not placing anything on top of the wings to spoil the airflow, and not tying down either of Missouri's wings, such that when on August 12, 2012, a 73 MPH wind gust passed over the wings, them high in the air, over a 6-foot high fence, and caused severe damage to each of these, making them virtually worthless, having been worth \$10,000 each, so damages of \$20,000.

For, as Project Manager in April 2012, driving the tug and operating the crane, after a two-month long repair to JR's left wing, which he directed, and which cost Plaintiff's an estimated \$12,382, after placing the left wing of JR high atop several pallets, facing north, and not placing anything on top of the wing to spoil the airflow, and not tying down JR's left wing, such that on August 12, 2012, a 73 MPH wind gust tossed JR's left wing an estimated 90 feet, causing severe damage to the attach brackets, the wing tip section, the aileron connections, the skin that is wrinkled, probably indicating more interior damage, and several holes were punched in it, such that it is virtually destroyed, reimbursement of the \$12,382 spent repairing it, \$10,000 for a replacement wing, and an estimated \$5,000 to transport the replacement wing to Dallas, fix any issues, and prime and paint it, the exact replacement cost to be determined.

For, as Chief Mechanic in 2010 according to Jim Terry, placing Billie's fuselage along the fence in 2010, and not tying it down, such that the a wind blew the nose into the fence, cracking the 020 bulkhead, which required the replacement of an original part with an unoriginal one from the Missouri plane, in August 2011, at a cost to Plaintiffs of an estimated \$1,744, reimbursement of this \$1,744, plus double this amount, another \$1,744, for making one more part of Billie unoriginal, for a total \$3,488.

For, as Project Manager in 2012, placing Billie again along the fence, and representing to Plaintiff that the rain and dust from an airport road under construction would not hurt Billie, when instead the rain caused extensive rust of Billie's power quadrant, dirt throughout, an estimated \$5,000 to clean this up.

For, as Project Manager in 2012, placing Billie's fuselage along the fence, incredibly in the exact same location where placed in 2010 when the 020 bulkhead was cracked, and again not tying it down, such that the a wind blew the nose into the fence, cracking the 020 bulkhead again, which will require purchasing a new 020 bulkhead for an estimated \$3,000, plus the removal and installation again, another \$1,744, but because likely at double the prior labor rate of about \$15, an estimated \$3,488, for a total \$8,488.

For, as Project Manager in 2012, placing Billie's fuselage along the fence, incredibly in the exact same location where placed in 2010 when the 020 bulkhead was cracked, and again not tying it down, such that the a wind blew the nose into the fence, cracking the 020 bulkhead again, but this time because it was pushed into the fence causing the fuselage to flip onto its left side, allowing the wind to enter the large opening on the underside where the centersection attaches, which resulted in the fuselage being hurled an estimated 100 yards across a field, into a high metal fence with steel posts that the fuselage completely flattened, and hurled down a hill, where it came to rest, with almost every rib broken in numerous places, torn completely in two, and with the skin greatly damaged,

completely destroyed, reimbursement of the total cost to date spent on Billie, less the engine overhaul costs, an estimated \$500,000.

**Conspiracy to Commit Theft**

For conspiring with Jim Terry to steal Plaintiffs' prop hub and spoke from JR, reimbursement of the replacement value, an estimated \$3,000.

For conspiring with Jim Terry to steal Plaintiffs' many parts, about which Mahaffey would have had full knowledge, replacement value for all of the following.

Billie's rudder  
Billie two elevators  
Billie's aileron  
Missouri's rudder, with trim tab  
Missouri's two ailerons  
Potentially more than 60 more parts, to be determined at trial.

- (e) **the name, address and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;**

See exhibit A, attached hereto.

- (f) **for any testifying expert:**

- (1) **the expert's name, address and telephone number;**
- (2) **the subject matter on which the expert will testify;**
- (3) **the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the Defendant, documents reflecting such information;**
- (4) **if the expert is retained by, employed by, or otherwise subject to the control of the Defendant:**
  - (a) **all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and**

**(b) the expert's current resume and bibliography;**

Defendant has not yet designated testifying experts.

**(g) any discoverable indemnity and insuring agreements;**

None know to Plaintiffs.

**(h) any discoverable settlement agreements;**

Defendant is not aware of any settlement agreements.

**(i) any discoverable witness statements;**

Plaintiffs are aware of no recorded statements or other recordings of any party or witness. However, there may be statements, as that term is defined by the Texas Rules of Civil Procedure, contained in the various emails produced in this matter.

**(j) all medical records and bills reasonably related to the injuries or damages asserted;**

N/A

**(k) all medical records and bills obtained by Defendant by virtue of an authorization furnished to Defendant:**

N/A

**(l) the name, address, and telephone number of any person who may be designated as a responsible third party.**

Plaintiffs are aware of no additional responsible third parties.



Respectfully submitted:

**MAYO MENDOLIA & VICE, L.L.P.**

By: 

\_\_\_\_\_  
KEVIN W. VICE

State Bar No. 00785150

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following counsel of record, **on this 3<sup>rd</sup> day of February, 2014:**

Charles Burgess  
5752 Boat Club Rd., Suite 400  
Fort Worth, Texas 76179

**Via Facsimile (817)335-5361**

B. Buzz Deitchman  
B. Buzz Deitchman. P.C.  
14850 Montfort Drive  
Suite 220, LB 12  
Dallas, Texas 75254

**Via Facsimile (972) 239-6696**



\_\_\_\_\_  
KEVIN W. VICE

**Screenshot of Directory of Krabill Flash Drive  
Showing among - Documents from Prior Counsel  
- Discovery  
- Plaintiff's Discovery Responses  
Are "Response to RFD from Mahaffey, final," and for Terry Rogers  
Evidence Krabill and LPCH had these disclosures in September 2016**

The screenshot shows a Windows Explorer window titled "2 - Plaintiffs' Discovery Responses". The interface includes a menu bar (File, Edit, View, Favorites, Tools, Help), a navigation pane on the left, and a main content area on the right. The navigation pane shows a tree view of folders, with "2 - Plaintiffs' Discovery Responses" selected under "3 - Discovery" in the "Documents from Prior Counsel" folder. The main content area displays a list of files and folders with columns for Name, Size, Type, and Date Modified.

Name	Size	Type	Date Modified
Draft Answers to Recent Disc. Requests		File Folder	3/22/2017 12:09 AM
Exhibit Page - A	6 KB	PDF File	9/23/2015 2:39 PM
Resp to RFD - Amended - Exhibit B - Experts	123 KB	PDF File	6/1/2016 4:36 PM
Resp to RFD - Exhibit A - PWKF- Final	80 KB	PDF File	6/1/2016 4:39 PM
Resp to RFP-Rogers-Perrin - 1st supplement	592 KB	WPD File	7/14/2016 4:23 PM
Resp to RFP-Rogers-Perrin.final	590 KB	WPD File	12/16/2013 10:22 AM
Resp to RFD - 2nd Amended - Exhibit B - Expert...	54 KB	WPD File	8/3/2016 10:20 AM
Resp to RFD - Amended - Exhibit B - Experts	54 KB	WPD File	6/1/2016 4:26 PM
Resp to RFD - Amended- Plaintiffs to Defendants	129 KB	WPD File	6/1/2016 4:31 PM
Resp to RFD - Exhibit A - PWKF- Final	29 KB	WPD File	6/1/2016 4:03 PM
Resp to RFD-Mahaffey.final	84 KB	WPD File	2/3/2014 1:13 PM
Resp.RFD-Rogers-Perrin.final	136 KB	WPD File	12/16/2013 10:43 AM

Exhibit 85: Terry Suit Third Amended Petition 4834-1036-3451

**CAUSE NO. 352-268735-13**

**SETH WASHBURNE and  
THIRSTY 13TH LLC,**

**Plaintiffs,**

**v.**

**JAMES TERRY, PACIFIC PROWLER,  
LLC, PACIFIC PROWLER NONPROFIT,  
GREATEST GENERATION AIRCRAFT,  
PATRICK MAHAFFEY, TERRY  
ROGERS, PERRIN WARBIRDS, INC., and  
DOUGLAS87745, LLC,**

**Defendants.**

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**IN THE DISTRICT COURT OF**

**TARRANT COUNTY, TEXAS**

**352ND JUDICIAL DISTRICT**

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**PLAINTIFFS' THIRD AMENDED PETITION**

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1. This case concerns Defendants' fraud, breach of contract, negligence, and theft resulting in the ruin of an historic World War II aircraft and millions of dollars in damages to Plaintiffs. Based on Defendants' numerous representations, Plaintiffs entrusted Defendants with the task of fulfilling their dream—restoring the airplane—"Billie"—on which Plaintiff Seth Washburne's father (who died when Washburne was just seven years old) flew during World War II. Defendants induced Plaintiffs to hire them and, ultimately, spend nearly \$900,000 for "restoration work," much of which was defectively performed or not completed at all. For all of Plaintiffs time and money, Billie—which Plaintiffs flew from Puerto Rico to Texas when they first purchased the aircraft—now sits as a hunk of broken metal in Plaintiffs' hangar, still needing hundreds of thousands, if not millions, of dollars in work to be restored and made airworthy. Plaintiffs bring this suit seeking damages for Defendants' numerous false promises, breaches of contract and warranty, negligence, and outright theft.

## **I. DISCOVERY CONTROL LEVEL**

2. Discovery is being conducted under a Level 3 discovery control plan, pursuant to Rule 190.3.

## **II. CLAIM FOR RELIEF**

3. Plaintiffs seek monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(5).

## **III. PARTIES**

4. Plaintiff Seth Washburne (“Washburne”) is an individual residing in Dallas County, Texas.

5. Plaintiff Thirsty 13th LLC (“Thirsty”) (collectively with Washburne, “Plaintiffs”) is a Delaware limited liability company which conducts business in Texas.

6. Defendant James Terry (“Terry”) is or was a resident of Johnson County, Texas and has appeared for all purposes in this suit.

7. Defendant Pacific Prowler, LLC (“Pacific Prowler”) is a Texas limited liability company and has appeared for all purposes in this suit.

8. Defendant Pacific Prowler, Nonprofit (“Pacific Prowler NP”) is or was a Texas nonprofit corporation and has appeared for all purposes in this suit.

9. Defendant Greatest Generation Aircraft (“GGA”) is represented to be registered as a 501(c)(3) charitable organization and has appeared for all purposes in this suit.

10. Defendant Douglas87745 LLC (“Douglas”) is a Texas limited liability company, which can be served by serving its registered agent, United States Corporation Agents, at 9900 Spectrum Dr., Austin, TX 78717, or through the attorney for James Terry, Charlie Burgess.

11. Defendant Patrick Mahaffey (“Mahaffey”) is a resident of Tarrant County, Texas and has appeared for all purposes in this suit.

12. Defendant Terry Rogers (“Rogers”) is a resident of Grayson County, Texas and has appeared for all purposes in this suit.

13. Defendant Perrin Warbirds, Inc. (“Perrin”) is or was a Texas corporation with its principal place of business in Grayson County, Texas and has appeared for all purposes in this suit.

14. Defendants Terry, Pacific Prowler, Pacific Prowler NP, GGA, and Douglas will be collectively referred to as the “Terry Defendants.” Defendants Rogers and Perrin will be collectively referred to as the “Rogers Defendants.”

#### **IV. JURISDICTION AND VENUE**

15. This Court has subject matter over this dispute because the amount in controversy is within the jurisdictional limits of this court.

16. This Court has personal jurisdiction over all defendants because they are all residents of Texas and/or are doing business in Texas.

17. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this county.

#### **V. FACTS**

##### **1. Washburne learns of, and writes a book about, the “Thirsty 13th” Squadron.**

18. Plaintiff Washburne tragically lost his father when he was just seven years old. Years later, in 2008, Washburne set out to learn about his father’s participation in World War II. In a box of his father’s mementoes, Washburne found a large round patch, from a flyer’s jacket, depicting a beer bottle with wings, and the name “Thirsty 13th.” Through diligence and research, Washburne discovered a Thirsty 13th squadron yearbook from 1946, with the names of

many members, including his father, who was listed with the Distinguished Flying Cross and two Air Medals.

19. Since there was limited information on the Thirsty 13th squadron, Washburne decided to write a book to memorialize and preserve the history of the squadron in which his father proudly served. In 2009, Washburne took a sabbatical from work so he could devote all his time and energy into completing his book. For more than two years, Washburne traveled around the country visiting members of the squadron and their families, the Air Force Historical Research Agency in Montgomery, Alabama, and the National Archives, gathering stories, data, and World War II photographs to preserve and memorialize an accurate portrayal of the Thirsty 13th squadron.

20. In November 2011, after three years of research, traveling, interviews and investigation, Washburne completed his book, which is 800 pages long, with more than 2000 photographs, and countless stories from members of the Thirsty 13th squadron and their families. The book has been described as the most detailed unit history ever written, and is now preserved in the National Archives, the Air Force Academy library, and hundreds of other locations.

## **2. Washburne discovers “Billie,” the plane his father flew on in WWII.**

21. While writing his book, Washburne discovered that one, and only one, of the very first 13 planes flown by the Thirsty 13th was still flying, now operating as a cargo plane in Puerto Rico. The plane originally was a model C-47, the military version of the popular DC-3. In the Thirsty 13th squadron, the plane’s nickname was “Billie.”

22. Billie was quite special for other reasons, too. It was one of four lead planes in the squadron marked with a special white tail stripe, it was flown overseas by the most senior pilot who became the next commanding officer, and it was the first sign of help for 25 men

stranded on a remote coral reef for 8 days until food was dropped from Billie to aid them. Billie was particularly important to Washburne, because he has a photo of Billie in New Hebrides, and standing beside it is his father.

23. Because Washburne expected that his father actually flew on Billie as part of its crew, Washburne wanted to personally see, touch and photograph Billie. Thus, in the summer of 2009, Washburne began efforts to try to locate the current owner of Billie. When Washburne finally made contact with Billie's owner, he learned that Billie was for sale for the price of \$75,000.00. While Washburne was not interested in personally owning Billie, he was very interested in preserving the history behind this plane on which his father flew during World War II, and thus, considered purchasing Billie and donating it to a museum.

24. During an interview with the family of one of the Thirsty 13th squadron members who resided in Texas, Washburne learned of the Vintage Flying Museum located at Meacham Airport in Fort Worth, which purportedly had similar goals of preserving the historic value of World War II aircraft.

### **3. Washburne meets Terry, who leads Washburne down the primrose path.**

25. Washburne traveled to Meacham Airport and was introduced to Defendant Terry. During the meeting, Terry convinced Washburne to change his plan of donating the plane to a museum, and instead to keep it for himself as a flying airplane. Through a series of representations, Terry convinced Washburne that Terry could restore Billie to resemble its original condition, and thereafter, due to the revenue the plane would generate, Washburne could personally own Billie for little or no continuing upkeep and maintenance costs. Terry represented that after he restored Billie, he would store and maintain Billie for Washburne, and that he would take Billie to air shows, where it would be viewed by people all over the country.



26. Based on Terry's representations, Washburne, through his company, Thirsty, purchased Billie in January of 2010. Washburne, Terry, and two men hired by Terry traveled to Puerto Rico where Billie was located, and flew Billie to Fort Worth, Texas, to begin the restoration process. At this time, Billie was a beautiful, fully-functioning, DC-3:



27. The Terry Defendants represented to Plaintiffs that they could fully restore Billie for no more than \$300,000. Indeed, this was Plaintiffs' agreement with the Terry Defendants.

28. The Terry Defendants began restoring Billie on February 1, 2010, with the instructions to use as much of Billie's original parts as possible. The Terry Defendants promised on multiple occasions to have Billie fully restored and airworthy by July of 2010, so Washburne could show the restored aircraft at a Thirsty 13th reunion, which Washburne scheduled for the end of that month.

**4. Terry Defendants fail to honor their promises.**

29. During the ensuing two plus years, the Terry Defendants wholly failed to deliver on their promises and induced the Plaintiffs to spend nearly three times their original budget.

30. After Plaintiffs had engaged the Terry Defendants, based on their promises that Billie could be restored for \$300,000 and would be ready in time for the Thirsty 13th reunion, the Terry Defendants then insisted on the purchase of two “donor planes.” The Terry Defendants insisted that this purchase was necessary to quickly and efficiently restore Billie, as the Terry Defendants would be able to use parts from the “donor planes” for Billie, which, the Terry Defendants said, would save time and money that they would otherwise have to spend looking for replacement parts.

31. However, after the purchase of the first donor plane—“JR”—the Terry Defendants insisted that it be restored as well because of its purported historical and monetary value. The second donor plane, called “Missouri,” was then purchased, purportedly because it had almost perfect engines and came with a mountain of parts that could be used to restore Billie.

32. Despite the purchase of these two “donor planes,” July 2010 came and went with no significant progress being made on the restoration of Billie. Plaintiffs pressed forward with the Terry Defendants in the hopes that Billie would eventually be restored, and could be exhibited at airshows around the country, as the Terry Defendants had promised.

**5. Terry hires the Rogers Defendants, who—like the Terry Defendants—fail to provide the services for which they were hired.**

33. In late 2010, Terry, without Plaintiffs’ permission and in direct contradiction to Plaintiffs’ express instructions, retained the Rogers Defendants to work on Billie’s center section. However, the Rogers Defendants never completed the agreed-upon work and forced Plaintiffs to agree to additional work which was also never completed. Much of the work Rogers

did do was performed below industry standard and must be redone. In exchange for the Rogers Defendants' defective and incomplete work, Plaintiffs paid the Rogers Defendants nearly \$60,000, with an additional \$8,000 in related costs.

**6. Terry Defendants steal Plaintiffs' parts.**

34. Plaintiffs directed and/or approved the purchase of a number of various parts to be used in Billie's restoration. The Terry Defendants' obligation, while Plaintiffs' aircraft were in their possession, was to safeguard Plaintiffs' aircraft and associated parts. Yet, in shocking violation of their obligation, the Terry Defendants stole and/or misappropriated several of Plaintiffs' parts, including but not limited to Plaintiffs' radio operator's chair, a navigator's dome, instrument panels, and jump lights. Additionally, when Plaintiffs eventually sought to reclaim their property from the Terry Defendants, more than 100 parts were discovered missing.

35. In the course of this litigation, the Terry Defendants have admitted their theft of Plaintiffs' parts. Terry admitted to misappropriating Plaintiffs' left elevator—after newly mounted on JR—and using such elevator, without Plaintiffs' permission, on Terry's own plane for nearly a year. Although the Terry Defendants eventually returned this elevator—only after being confronted by Plaintiffs—the Terry Defendants admittedly deprived Plaintiffs of the use of this elevator for nearly a year.

**7. Mahaffey takes over, but also breaches his obligations.**

36. After a year, Plaintiffs were fed up with the Terry Defendants and decided to change project managers. So, in February 2011, Plaintiffs hired Mahaffey—who had previously worked on Plaintiffs' projects under Terry's supervision—to serve as project manager and complete the restoration of Billie. Mahaffey represented that he could complete the restoration

of Billie and do so in a timely and efficient manner. As it turned out, Mahaffey proved to be no better suited for the job than Terry.

37. Mahaffey, like the Terry Defendants, made very little progress on Billie over the next year, completing work in a defective fashion or via methods that took much longer than other available methods. Also, Mahaffey failed to employ methods that would preserve as much of Billie's original parts as possible—a key component of Plaintiffs' project that Mahaffey understood, but failed to honor. Finally, Mahaffey was a key conspirator in the Terry Defendants' theft of Plaintiffs' property, admittedly allowing Terry to take Plaintiffs' elevator and, without Plaintiffs' permission, use it on Terry's own plane.

38. After more than a year, and after Mahaffey breached key provisions of his contract, Mahaffey abruptly quit working on the project.

**8. Defendants failed to secure Plaintiffs' airplanes, leading to severe wind damage in 2012.**

39. In addition to the Defendants' wholesale failure to provide the service they promised to Plaintiffs—the restoration of Billie—Defendants failed to exercise even the slightest degree of care over Plaintiffs' aircraft and parts. While Defendants' theft of Plaintiffs' property is the clearest example of this failure, Defendants' negligence is also exemplified by their placement of Plaintiffs' aircraft and parts in a risky area that was exposed to the elements, without such parts or aircraft being tied down in any fashion, leading to extensive damage to Plaintiffs' property.

40. From the start of the project in February 2010, the Terry Defendants and, later, Mahaffey, oversaw and approved the placement of Plaintiffs' parts and aircraft outside. They knew, or should have known, that the parts and aircraft, if left outside on a long-term basis, should be tied down or otherwise secured. They also knew, or should have known, that the parts

and aircraft should be placed in an area that would be best protected from microbursts or other weather elements.

41. Yet, in breach of the duty of care they owed to Plaintiffs, the Terry Defendants and Mahaffey placed Plaintiffs' property in an exposed area outside the hangar and failed to tie down the aircraft or otherwise secure it and Plaintiffs' associated parts.

42. In August 2012, a windstorm blew through the Meacham Airport and severely damaged Plaintiffs' property. Had Defendants properly secured Plaintiffs' property and/or placed it in a protected area, Plaintiffs' property would not have suffered such damage.

**9. Plaintiffs' property—and Washburne's dream of restoring his father's WWII plane—have been destroyed.**

43. Through more than two years of unfulfilled promises, defective work, and theft, Plaintiffs have expended nearly three times what they originally planned, and are no further to restoring Billie than when they first hired the Defendants. Although the Terry Defendants promised to fully restore Billie for \$300,000, Plaintiffs paid Defendants *nearly \$900,000*. And what do Plaintiffs have to show for it:



44. Thanks to Defendants' "work," Billie is now a thoroughly dismantled wreck: its wings have been removed and had new holes punched in them; its center section has been improperly stripped of its nacelles, tubing, and other parts, but little work was performed to repair corrosion which had been identified. Billie's fuselage, which is the heart of Billie, was stripped of parts with no record of what went where, and was thoroughly destroyed, being broken in half, with almost every rib broken and the skin torn to shreds.

45. The extent of Defendants' corruption is almost beyond comprehension in its breadth and depth against Plaintiffs. Plaintiffs set out to spend \$75,000.00 on a simple gesture to honor Washburne's father and his WWII squadron, and instead, were led down the primrose path to ultimately be taken for almost \$900,000.00, had their plane destroyed, had parts stolen, and were subject to unending lies and humiliations. This resulted entirely from Defendants acting in concert together to deceive Plaintiffs, and Plaintiffs' reliance upon the agreements and representations by the Defendants to restore Billie so that the story and spirit of the men of the Thirsty 13th and those like them could live on for generations to come.

**10. The Defendants acted in concert for one another, were each other's alter ego, and/or participated in a single enterprise with one another.**

46. At all relevant times, the Terry Defendants and Mahaffey were acting as agents and/or representatives for each other, and they were acting in concert in connection with their conduct toward Plaintiffs. Accordingly, the Terry Defendants and Mahaffey are all jointly and severally liable for the damages sustained by Plaintiffs as a result of their conduct.

47. The Terry Defendants acted as the alter ego for each of the other Terry Defendants, such that unity developed and existed between the respective Terry Defendants and, accordingly, each are jointly and severally liable to the Plaintiffs.

48. The Rogers Defendants acted as the alter ego for each of the other Rogers Defendants, such that unity developed and existed between the respective Rogers Defendants and, accordingly, each are jointly and severally liable to the Plaintiffs.

49. Upon information and belief, the individual Terry Defendants were not operated as separate business entities or persons during the relevant time period. Rather, the Terry Defendants integrated their resources to achieve a common business purpose, which included depriving Plaintiffs of monies owed to them and property belonging to them. As a result, the Terry Defendants are liable to Plaintiff jointly and severally.

50. Upon information and belief, the individual Rogers Defendants were not operated as separate business entities or persons during the relevant time period. Rather, the Rogers Defendants integrated their resources to achieve a common business purpose, which included depriving Plaintiffs of monies owed to them and property belonging to them. As a result, the Rogers Defendants are liable to Plaintiff jointly and severally.

## VI. CAUSES OF ACTION

### 1. **Count One: Breach of Contract Against Terry Defendants**

51. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

52. Plaintiffs had valid, enforceable contract with the Terry Defendants.

53. Plaintiffs performed, tendered performance of, or were excused from performing their contractual obligations under the contract.

54. Terry Defendants breached the contract.

55. Terry Defendants' breach caused Plaintiffs injury.

**2. Count Two: Breach of Contract Against Rogers Defendants**

56. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

57. Plaintiffs had valid, enforceable contract with the Rogers Defendants.

58. Plaintiffs performed, tendered performance of, or were excused from performing their contractual obligations under the contract.

59. Rogers Defendants breached the contract.

60. Rogers Defendants' breach caused Plaintiffs injury.

**3. Count Three: Breach of Contract Against Mahaffey**

61. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

62. Plaintiffs had valid, enforceable contract with Mahaffey.

63. Plaintiffs performed, tendered performance of, or were excused from performing their contractual obligations under the contract.

64. Mahaffey breached the contract.

65. Mahaffey's breach caused Plaintiffs injury.

**4. Count Four: Breach of Express Warranty for Service Against All Defendants**

66. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

67. Defendants sold services to Plaintiffs.

68. Defendants made representations to Plaintiffs about the quality or characteristics of their services by affirmation of fact, by promise, and/or by description.



69. Defendants' representations became part of the basis of the bargains Plaintiffs made with Defendants.

70. Defendants breached their warranties.

71. Although not required, Plaintiffs notified Defendants of their breaches.

72. Plaintiffs suffered injury as a result of Defendants' breaches.

**5. Count Five: Breach of Warranty of Good and Workmanlike Manner Against All Defendants**

73. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

74. Defendants sold services to Plaintiffs.

75. Defendants' services consisted of the repair or modification of Plaintiffs' existing tangible property.

76. Defendants did not perform the services in a good and workmanlike manner.

77. Plaintiffs suffered injury as a result of Defendants' actions.

**6. Count Six: Fraud Against Terry Defendants**

78. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

79. The Terry Defendants made a number of representations to the Plaintiffs, as described above and as set forth herein:

- a. Terry Defendants had the requisite personnel, expertise, ability, and capacity to competently restore Billie;
- b. Terry Defendants had a "shop rate" lower than almost anyone else—\$45 per hour—and they had an established shop full of qualified people who were ready, willing, and able to competently work on Billie;
- c. Terry Defendants would bring in volunteer vintage-aviation enthusiasts who would make up about 40% of the total labor to work directly on the airplane, reducing the cost even further;

- d. Billie could be purchased, restored and ready to fly for no more than \$300,000;
- e. Billie could be completely restored and would be airworthy by July 1, 2010, in time for the Thirsty 13th reunion Washburne scheduled for that month;
- f. Terry Defendants would exhibit the restored Billie at airshows around the country, spreading the story of the Thirsty 13th and offsetting the costs to Plaintiffs;
- g. Donor planes were necessary to complete the restoration process of Billie;
- h. The donor plane nicknamed “JR” was in very good condition and worth the \$75,000 asking price;
- i. JR could be quickly restored and sold for, or if retained be worth, three times the purchase price;
- j. The donor plane nicknamed “Missouri” had two mid-time engines with perfect cores identical to the original engines on Billie, which could be used at a substantially lower cost than purchasing rebuilt engines;
- k. The Missouri plane had quality parts, such as propellers and engines control accessories, that, if not used on Billie, could be sold to recoup expenses;
- l. The Missouri plane came with a “mountain” of extra parts that could be used on Billie or sold to recoup expenses;
- m. The total cost of purchasing the “Missouri” plane would be \$40,000.00;
- n. The Terry Defendants had installed various parts on Plaintiffs' aircraft, such as rudders, elevators and ailerons, that belonged to the Terry Defendants, and that Plaintiffs were required to pay the Terry Defendants for same;
- o. They had negotiated with the Rogers Defendants to get them to perform the same required work another reputable vendor proposed for half of the price;
- p. Other vendors used and retained by the Terry Defendants, such as the Rogers Defendants, were reputable and performed quality work; and
- q. All work would be properly documented and written up pursuant to FAA regulations.

80. Each of the above representations, and those referenced elsewhere in this Petition, were false.

81. When the Terry Defendants made these representations, they knew the representations were false, or made the representations recklessly without knowledge of their truth.

82. Terry Defendants made these representations with the intent that Plaintiffs rely on the representations by hiring Terry Defendants and/or continuing to pay them significant sums.

83. Plaintiffs relied on these representations in hiring the Terry Defendants (and, later, the Rogers Defendants), paying the Terry Defendants substantial sums, and entrusting the Billie project to the Terry Defendants for more than a year.

84. Terry Defendants' representations caused Plaintiffs injury.

**7. Count Seven: Fraud Against Mahaffey**

85. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

86. Mahaffey made a number of representations to the Plaintiffs, as described above and as set forth herein:

- a. Mahaffey had the requisite personnel, expertise, ability, and capacity to competently restore Billie;
- b. Mahaffey would move Plaintiffs' project along as quickly as possible;
- c. Mahaffey would use as much of Billie's original parts as possible;
- d. The Rogers Defendants completed certain tasks and had performed quality repairs; and
- e. All work would be properly documented and written up pursuant to FAA regulations.

87. Each of the above representations, and those referenced elsewhere in this Petition, were false.

88. When Mahaffey made these representations, he knew the representations were false, or made the representations recklessly without knowledge of their truth.

89. Mahaffey made these representations with the intent that Plaintiffs rely on the representations by hiring Mahaffey and/or continuing to pay him significant sums.

90. Plaintiffs relied on these representations in hiring Mahaffey, paying Mahaffey and the Rogers Defendants substantial sums, and entrusting the Billie project to Mahaffey for more than a year.

91. Mahaffey's representations caused Plaintiffs injury.

**8. Count Eight: Fraud Against Rogers Defendants**

92. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

93. The Rogers Defendants made a number of representations to the Plaintiffs, as described above and as set forth herein:

- a. The work performed by the Rogers Defendants would be done in a timely and professional manner;
- b. Plaintiffs only had to make two payments for the Rogers Defendants' work—one half at the contract's inception and the rest upon completion;
- c. The Rogers Defendants' work, including all parts and labor, could be completed for \$40,000;
- d. The Rogers Defendants had performed certain work, such that Plaintiffs should make a "progress" payment;
- e. Billie's nacelles were not the original nacelles;
- f. Rogers Defendants had the requisite personnel, expertise, ability, and capacity to perform the necessary work on Plaintiffs' center section;

- g. During the contract term, the Rogers Defendants represented that additional work needed to be performed, and that this work was necessary;
- h. Rogers Defendants were going out of business and, thus, could not complete the project; and
- i. All work would be properly documented and written up pursuant to FAA regulations.

94. Each of the above representations, and those referenced elsewhere in this Petition, were false.

95. When the Rogers Defendants made these representations, they knew the representations were false, or made the representations recklessly without knowledge of their truth.

96. Rogers Defendants made these representations with the intent that Plaintiffs rely on the representations by hiring Rogers Defendants and/or continuing to pay them significant sums.

97. Plaintiffs relied on these representations in hiring the Rogers Defendants, paying the Rogers Defendants substantial sums, and entrusting the work on Billie's center section to the Rogers Defendants.

98. Rogers Defendants' representations caused Plaintiffs injury.

**9. Count Nine: Violations of the DTPA Against All Defendants**

99. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

100. Plaintiffs are consumers under the Texas Deceptive Trade Practices Act ("DTPA"), Tex. Bus. & Com. Code §§ 17.41, *et al*, because they sought or acquired goods and/or services by purchase from the Defendants, who may be sued under the DTPA.

101. Defendants committed one or more of the following wrongful acts: (1) committed false, misleading, or deceptive acts or practices, as set forth in section 17.46 of the DTPA; (2) committed unconscionable actions or courses of action; (3) breached express and implied warranties as set forth in section 17.50 of the DTPA, as described above. Defendants actions include, but are not limited to:

- a. Engaged in false, misleading, or deceptive acts or practices on which Plaintiffs relied to Plaintiffs' detriment, § 17.46(b);
- b. Breached an express warranty that they would properly restore and renovate Billie to flyable and air-show condition, § 17.50(a)(2);
- c. Breached an express warranty that they would properly restore and renovate JR to flyable and air-show condition, § 17.50(a)(2);
- d. Engaged in unconscionable actions or courses of action that, to Plaintiffs' detriment, took advantage of Plaintiffs' lack of knowledge, experience or ability to a grossly unfair degree, 17.50(a)(3);
- e. Misrepresented to Plaintiffs the source, sponsorship, approval or certification of goods and services, § 17.46(b)(2);
- f. Represented to Plaintiffs that goods or services had characteristics, parts, uses or quantities that they did not have, § 17.46(b)(5);
- g. Represented to Plaintiffs that goods or services being provided by them were of a particular standard, quality, grade, or that goods are of a particular style or model, when they, in fact, were not, § 17.46(b)(7);
- h. Knowingly made false or misleading statements of fact to Plaintiffs about the need for parts, replacement, or repair services, § 17.46(b)(13);
- i. Falsely represented to Plaintiffs that work or services had been performed on parts or on Billie, JR and Missouri when no such work had been performed, § 17.46(b)(22); and
- j. Failed to disclose information to Plaintiffs about Billie, JR, Missouri and the airplane parts that are the subject of this lawsuit and services performed on same that was known to them at the time of the transactions in order to induce Plaintiffs to enter into such transactions when Plaintiffs would not have entered into the transactions had such information been disclosed, § 17.46(b)(24).

102. Defendants' actions were a producing cause of Plaintiffs' damages.

103. Defendants' acts were committed knowingly and/or intentionally, entitling Plaintiffs to recovery of additional damages. § 17.50(b)(1).

**10. Count Ten: Conversion Against Terry Defendants and Mahaffey**

104. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

105. Plaintiffs owned, possessed, or had the right to immediate possession of their aircraft and associated parts, which was Plaintiffs' personal property.

106. Defendants wrongfully exercised dominion or control over the property.

107. Plaintiffs suffered injury as a result of Defendants' actions.

108. Defendants acted with malice, entitling Plaintiffs to exemplary damages.

**11. Count Eleven: Violation of the Texas Theft Liability Act Against Terry Defendants**

109. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

110. Plaintiffs had a possessory right to Billie's left elevator.

111. Terry Defendants unlawfully appropriated, secured, or stole Billie's left elevator, in violation of Texas Penal Code § 31.03, without Plaintiffs' effective consent.

112. Terry Defendants' unlawful taking was made with the intent to deprive Plaintiffs of Billie's left elevator.

113. Plaintiffs sustained damages as a result of Terry Defendants' theft.

114. In addition to their actual damages, Plaintiffs seek additional damages, pursuant to Tex. Civ. Prac. & Rem. Code § 134.005, and exemplary damages.

**12. Count Twelve: Negligence Against All Defendants**

115. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

116. Defendants owed a duty of care to Plaintiffs to protect Plaintiffs' property, which was entrusted to Defendants, from harm. Defendants also owed a duty to Plaintiffs to properly supervise those working for Defendants. Defendants also owed a duty to Plaintiffs to competently repair and restore the vintage aircraft entrusted to them by Plaintiffs, which Defendants affirmatively represented that they had the expertise, experience, and resources to do and which they contractually assumed a duty to do.

117. Defendants also owed a bailment duty to Plaintiffs because Plaintiffs delivered personal property to Defendants for a specific purpose, Defendants accepted such delivery, and Plaintiffs and Defendants had an agreement that a specific purpose would be fulfilled and an understanding that property would be returned to Plaintiffs.

118. Defendants breached their duties.

119. Defendants' breaches proximately caused Plaintiffs' damages.

120. Defendants acted maliciously and/or with conscious indifference, entitling Plaintiffs to exemplary damages for Defendants' negligence.

**13. Count Thirteen: Conspiracy Against All Defendants**

121. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

122. Defendants were members of a combination of two or more persons.

123. The object of the combination was to accomplish (a) an unlawful purpose, or (b) a lawful purpose by unlawful means.



124. The members had a meeting of the minds on the object or course of action.

125. One or more of the members committed an unlawful, overt act to further the object or course of action.

126. Plaintiffs suffered injury as a proximate result of the wrongful conduct.

**14. Count Fourteen: Aiding and Abetting Against Mahaffey**

127. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

128. Terry Defendants committed theft and conversion against Plaintiffs.

129. Mahaffey had knowledge that the Terry Defendants' actions constituted theft and conversion against Plaintiffs.

130. Mahaffey intended to and did assist and/or encourage the Terry Defendants in committing their theft and conversion.

131. Mahaffey's assistance or encouragement was a substantial factor in causing the theft and conversion.

**VII. EXEMPLARY AND/OR ADDITIONAL DAMAGES**

132. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

133. Defendants acted fraudulently, maliciously, and/or with gross negligence, entitling Plaintiffs to exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code § 41.003.

134. Defendants also committed knowing and/or intentional violations of the DTPA, entitling Plaintiffs to additional damages pursuant to the Tex. Bus. & Com. Code § 17.50(b)(1).

135. Defendants also committed theft, entitling Plaintiffs to exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code § 41.008(c).

**VIII. ATTORNEYS' FEES**

136. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

137. Plaintiffs are entitled to recover their reasonable and necessary attorneys' fees, pursuant to Tex. Civ. Prac. & Rem. Code §§ 38.0001 and 134.005, and Tex. Bus. & Com. Code § 17.50(d).

**IX. JURY TRIAL**

138. Plaintiff requests trial by jury and has paid the jury fee.

**PRAYER**

139. For these reasons, Plaintiffs Seth Washburne and Thirsty 13th LLC ask that the Court award Plaintiffs a judgment against Defendants for the following

- a. Actual damages;
- b. Additional damages;
- c. Exemplary damages;
- d. Attorneys' fees;
- e. Court costs;
- f. Prejudgment and postjudgment interest as provided by law; and
- g. All other relief to which Plaintiffs are entitled.

DATED: October 31, 2016

Respectfully submitted,

/s/ Kent D. Krabill

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on this 31st day of October, 2016.

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/s/ Kent D. Krabill

Kent D. Krabill

Exhibit 86: 2017 02 23 Terry MSJ order



Defendant Patrick Mahaffey's No-Evidence Motion for Summary Judgment on Plaintiffs' claims of Theft, Conversion, Aiding and Abetting, and Conspiracy is GRANTED except as to the elevator claims that the parties discussed at the hearing.

Defendant Patrick Mahaffey's Traditional Motion for Summary Judgment and No-Evidence Motion for Summary Judgment on all of Plaintiffs' other claims is DENIED.

The Court, after considering the papers on file and the argument of counsel, is of the opinion that the Terry Motions should be granted in part and denied in part.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

The Terry Defendants' No-Evidence Motion for Summary Judgment on Plaintiffs' claim of Conspiracy is GRANTED except as to the elevator claims that the parties discussed at the hearing.

The Terry Defendants' Traditional Motions for Summary Judgment and No-Evidence Motions for Summary Judgment on all of Plaintiffs' other claims are DENIED.

SO ORDERED on February 23, 2017.

  
\_\_\_\_\_  
PRESIDING JUDGE

AGREED AS TO FORM:

/s/ Kent D. Krabill

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**ATTORNEY FOR DEFENDANTS  
JAMES TERRY, PACIFIC PROWLER LLC,  
PACIFIC PROWLER NONPROFIT,  
GREATEST GENERATION AIRCRAFT, and  
DOUGLAS87745, LLC**

Exhibit 87: Summary of Terry case Plaintiffs' Proposed Jury Charge



## Summary of Terry Suit Jury Charge

The only causes of action are breach of contract, and breach of express warranty for service.

### 1. Alter Ego of Terry Defendants

**Are Terry, Pacific Prowler Nonprofit, Pacific Prowler, LLC, and Douglas87745, LLC responsible for the conduct of one another?** They are if:

- a. [they] were organized and operated as mere tools or business conduits of Terry;
- b. there was such unity between [them] that the separateness [of them] had ceased and holding only one of the Terry Defendants liable would result in injustice;
- c. Terry caused [them] to be used for the purpose of perpetrating and did perpetrate an actual fraud on Plaintiffs primarily for the direct personal benefit of Terry.

You are to consider the total dealings of [them] including:

1. the degree to which [their] and Terry's property had been kept separate from one another;
2. the amount of financial interest, ownership, and control Terry maintained over [them];
3. whether [they] had been used for Terry's personal purposes.

[if No go to #5]

---

### 2. [Then #5-7 for Terry, #8-10 for PPNP, #11-13 for PPL, 14-16 Douglas] **Existence of Contract Between the Terry Defendants and Plaintiffs<sup>1</sup>**

Did any of the Terry Defendants agree to fully restore Billie for the Plaintiffs for \$300,000, including Billie's purchase price?

### 3. **Breach of Contract by Terry Defendants**

Did any the Terry Defendants fail to comply with their agreement with the Plaintiffs?

### 4. **Damages for Terry Defendants' Breach of Contract**

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiffs for their damages, if any, that resulted from the Terry Defendants' failure to comply? Consider the following elements of damages, if any, and none other: the difference between the cost of the services agreed to by the parties and the cost of the services incurred by Plaintiffs.

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<sup>1</sup> PJC § 101.2

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**5. [Act #17] Alter Ego of Rogers Defendants<sup>2</sup>**

Rogers is responsible for the conduct of Perrin Warbirds if:

- a. Perrin Warbirds was organized and operated as a mere tool or business conduit of Rogers;
- b. there was such unity between Perrin Warbirds and Rogers that the separateness of Perrin Warbirds had ceased and holding only Perrin Warbirds liable would result in injustice; and
- c. Rogers caused Perrin Warbirds to be used for the purpose of perpetrating and did perpetrate an actual fraud on Plaintiffs primarily for the direct personal benefit of Rogers.

In deciding whether there was such unity between Perrin Warbirds and Rogers that the separateness of Perrin Warbirds had ceased, you are to consider the total dealings of Perrin Warbirds and Rogers, including:

1. the degree to which Perrin Warbirds' and Rogers' property had been kept separate from one another;
2. the amount of financial interest, ownership, and control Rogers maintained over Perrin Warbirds; and
3. whether Perrin Warbirds had been used for Rogers' personal purposes.

Is Rogers responsible for the conduct of Perrin Warbirds?

**6. Breach of Contract by Perrin Warbirds<sup>3</sup>**

Perrin Warbirds' agreement with the Plaintiffs is reflected in Exhibit 68, introduced into evidence. Did Perrin Warbirds fail to comply with its agreement with the Plaintiffs?

**7. Damages for Perrin Warbirds' Breach of Contract**

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiffs for their damages, if any, that resulted from Perrin Warbirds' failure to comply?<sup>4</sup>

Consider the following elements of damages, if any, and none other:

(1) The difference between the value of the services agreed to by the parties and the value of the services performed by Perrin Warbirds. The difference in value, if any, shall be determined at the time and place the services were performed, and (2) the reasonable and

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<sup>2</sup> PJC § 108.2

<sup>3</sup> PJC § 101.2

<sup>4</sup> PJC § 115.3.

necessary costs to correct and/or complete the services that Perrin Warbirds agreed to perform.

---

**8. Breach of Contract by Mahaffey<sup>5</sup>**

Mahaffey's agreement with the Plaintiffs is reflected in Exhibit 57, introduced into evidence. Did Mahaffey fail to comply with his agreement with the Plaintiffs?

**9. Damages for Mahaffey's Breach of Contract**

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiffs for their damages, if any, that resulted from Mahaffey's failure to comply?<sup>6</sup>

Consider the following elements of damages, if any, and none other: (1) The difference between the value of the services agreed to by the parties and the value of the services performed by Mahaffey. The difference in value, if any, shall be determined at the time and place the services were performed, and (2) the reasonable and necessary costs to correct and/or complete the services that Mahaffey agreed to perform.

---

**10. Breach of Express Warranty for Services by Terry<sup>7</sup> [then 24-25 PPNP, 26-27 PPL, 28-29 Douglas]**

An express warranty is any affirmation of fact or promise made by Terry that relates to the provision of aircraft restoration services and becomes part of the basis of the bargain. It is not necessary to find that formal words such as "warrant" or "guarantee" be used or that there be a specific intent to make a warranty.

Did Terry fail to comply with an express warranty?

**11. [23] Damages for Terry's Breach of Express Warranty**

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiffs for their damages, if any, that resulted from Terry's failure to comply?

Consider the following elements of damages, if any, and none other: The difference between the cost of the services agreed to by the parties and the cost of the services incurred by Plaintiffs.

---

**12. Breach of Express Warranty [and damages] for Services by Rogers<sup>8</sup> [32-33 Perrin]**

An express warranty is any affirmation of fact or promise made by Rogers that relates to

---

<sup>5</sup> PJC § 101.2

<sup>6</sup> PJC § 115.3.

<sup>7</sup> PJC § 102.9

<sup>8</sup> PJC § 102.9

the provision of aircraft restoration services and becomes part of the basis of the bargain. It is not necessary to find that formal words such as “warrant” or “guarantee” be used or that there be a specific intent to make a warranty.

Did Rogers fail to comply with an express warranty?

---

**13. [34] Breach of Express Warranty for Services by Mahaffey<sup>9</sup>**

An express warranty is any affirmation of fact or promise made by Mahaffey that relates to the provision of aircraft restoration services and becomes part of the basis of the bargain. It is not necessary to find that formal words such as “warrant” or “guarantee” be used or that there be a specific intent to make a warranty.

Did Mahaffey fail to comply with an express warranty?

**14. [35, and repeated] Damages for Mahaffey’s Breach of Express Warranty**

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiffs for their damages, if any, that resulted from Terry’s failure to comply?

Consider the following elements of damages, if any, and none other: (1) The difference between the value of the services agreed to by the parties and the value of the services performed by Mahaffey. The difference in value, if any, shall be determined at the time and place the services were performed, and (2) the reasonable and necessary costs to correct and/or complete the services that Mahaffey agreed to perform.

---

---

<sup>9</sup> PJC § 102.9

Exhibit 88: 2016 10 04 - 4.17 pm Ivy Sweeney to me re Mahaffey offer

## Seth Washburne

---

**From:** Ivy Sweeney [isweeney@lynnllp.com]  
**Sent:** Tuesday, October 04, 2016 4:17 PM  
**To:** sethpw1@gmail.com  
**Cc:** Kent Krabill  
**Subject:** Washburne v. Terry  
**Attachments:** 4845-9980-4474.PDF

Seth, attached is a settlement offer received from Patrick Mahaffey's counsel.  
Ivy

### **IVY SWEENEY**

Assistant to Jason Dennis, Kent Krabill and Russell Herman

**LynnPinkerCoxHurst**

Direct 214 292 3646

Fax 214 981 3839

[isweeney@lynnllp.com](mailto:isweeney@lynnllp.com)

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

[www.lynnllp.com](http://www.lynnllp.com)

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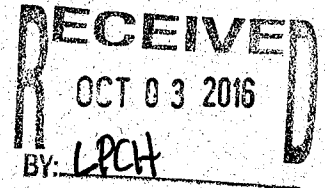
(817) 265-9000 PHONE

**JOHN V. DOWDY, JR.**  
**Attorney at Law**  
**Attorney-Mediator-Arbitrator**

(817) 460-8366 FAX  
E-mail: john@dowdylawfirm.com

2401 Garden Park Ct., Suite A  
Arlington, Texas 76013-1340

September 28, 2016



Stephen M. Cole  
LynnPinkerCoxHurst  
2100 Ross Avenue, Suite 2700  
Dallas, TX 75201

certified mail #7015 0640 0001 8481 9927

Re: Cause No. 352-268735-13; Seth Washburne & Thirsty 13<sup>th</sup>, LLC vs. James Terry, Pacific Prowler, LLC, Pacific Prowler, Nonprofit, Greatest Generation Aircraft, Patrick Mahaffey, Terry Rogers & Perrin Warbirds, Inc.

Dear Mr. Cole:

As you know, my client is Patrick Mahaffey, one of defendants in the captioned lawsuit, in which you represent the plaintiffs.

The purpose of this letter is to communicate a settlement offer under Rule 167 of the Texas Rules of Civil Procedure and Chapter 42 of the Texas Civil Practice and Remedies Code. The offer is being made on behalf of my client, Patrick Mahaffey.

My client hereby offers to pay to the Plaintiffs the total sum of \$15,100.00 in full and complete settlement of any and all claims the Plaintiffs have asserted or could assert against Patrick Mahaffey.

In exchange for the payment of \$15,100.00, your clients, Seth Washburne and Thirsty 13<sup>th</sup> are to dismiss with prejudice any and all claims which have been asserted or could be asserted against Patrick Mahaffey in the captioned lawsuit.

The sum of \$15,100.00 will be paid to the Plaintiffs on or before the expiration of the fifth day following the signature of the judge on the Order Dismissing Plaintiffs' Claims Against Patrick Mahaffey With Prejudice.

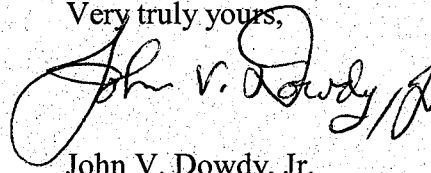
This offer is subject to the execution of reasonable and appropriate releases, indemnities and other documents necessary to give full effect to a complete release of liability of Patrick Mahaffey to Plaintiffs.

Finally, this offer will expire on the later of 14 days from your receipt of this letter or October 14, 2016.

September 28, 2016 - page 2

I have filed on behalf of Patrick Mahaffey a declaration invoking this rule under Texas Rule of Civil Procedure 167.2(a). This letter follows the filing of that declaration.

Very truly yours,

A handwritten signature in cursive script that reads "John V. Dowdy, Jr." The signature is written in black ink and is positioned above the printed name.

John V. Dowdy, Jr.

JVD:rc

cc: Charles Burgess  
Buzz Deitchman  
Patrick Mahaffey



Exhibit 89: 2016 10 17 - 11.28 am Krabill to me re Mahaffey settlement  
offer

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Monday, October 17, 2016 11:28 AM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Cc:** Stephen Cole  
**Subject:** Mahaffey's settlement offer  
**Attachments:** 4845-9980-4474.pdf

Seth,

Today is the deadline to either accept or reject Mahaffey's offer, which I have attached. Please remember if you do not accept, and we do not get awarded at least \$12k in damages, then you will be liable to pay Mahaffey's attorneys' fees and costs from the date of the offer.

We understand that you do not want to settle with Mahaffey. But I wanted to confirm.

If you would like to have a short call to discuss, let me know.

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

Direct 214 981 3831

Cell 817 881 8113

Fax 214 981 3839

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

[www.lynnllp.com](http://www.lynnllp.com)

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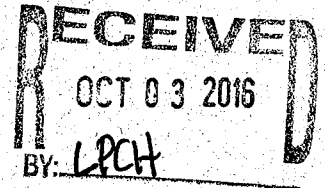
(817) 265-9000 PHONE

**JOHN V. DOWDY, JR.**  
**Attorney at Law**  
**Attorney-Mediator-Arbitrator**

(817) 460-8366 FAX  
E-mail: john@dowdylawfirm.com

2401 Garden Park Ct., Suite A  
Arlington, Texas 76013-1340

September 28, 2016



Stephen M. Cole  
LynnPinkerCoxHurst  
2100 Ross Avenue, Suite 2700  
Dallas, TX 75201

certified mail #7015 0640 0001 8481 9927

Re: Cause No. 352-268735-13; Seth Washburne & Thirsty 13<sup>th</sup>, LLC vs. James Terry, Pacific Prowler, LLC, Pacific Prowler, Nonprofit, Greatest Generation Aircraft, Patrick Mahaffey, Terry Rogers & Perrin Warbirds, Inc.

Dear Mr. Cole:

As you know, my client is Patrick Mahaffey, one of defendants in the captioned lawsuit, in which you represent the plaintiffs.

The purpose of this letter is to communicate a settlement offer under Rule 167 of the Texas Rules of Civil Procedure and Chapter 42 of the Texas Civil Practice and Remedies Code. The offer is being made on behalf of my client, Patrick Mahaffey.

My client hereby offers to pay to the Plaintiffs the total sum of \$15,100.00 in full and complete settlement of any and all claims the Plaintiffs have asserted or could assert against Patrick Mahaffey.

In exchange for the payment of \$15,100.00, your clients, Seth Washburne and Thirsty 13<sup>th</sup> are to dismiss with prejudice any and all claims which have been asserted or could be asserted against Patrick Mahaffey in the captioned lawsuit.

The sum of \$15,100.00 will be paid to the Plaintiffs on or before the expiration of the fifth day following the signature of the judge on the Order Dismissing Plaintiffs' Claims Against Patrick Mahaffey With Prejudice.

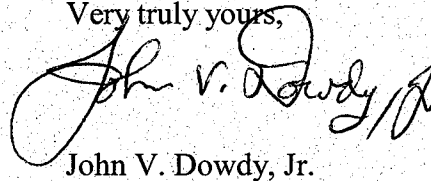
This offer is subject to the execution of reasonable and appropriate releases, indemnities and other documents necessary to give full effect to a complete release of liability of Patrick Mahaffey to Plaintiffs.

Finally, this offer will expire on the later of 14 days from your receipt of this letter or October 14, 2016.

September 28, 2016 - page 2

I have filed on behalf of Patrick Mahaffey a declaration invoking this rule under Texas Rule of Civil Procedure 167.2(a). This letter follows the filing of that declaration.

Very truly yours,

A handwritten signature in cursive script that reads "John V. Dowdy, Jr." with a stylized flourish at the end.

John V. Dowdy, Jr.

JVD:rc

cc: Charles Burgess  
Buzz Deitchman  
Patrick Mahaffey

Exhibit 90: 2017 01 10 - 5.34 p.m. Cole to Seth re Terry 167

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Tuesday, January 10, 2017 5:34 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** FW: Offer of settlement  
**Attachments:** Letter to OPC offer to settle.pdf; Terry.Rule167.pdf

Seth,

See attached settlement offer from the Terry Defendants. They're offering \$56,500. They're making this offer pursuant to the same rule that Mahaffey did, which involves the possibility of you being on the hook for their attorneys fees if we don't get a judgment against them for a certain amount.

Please review and then let's discuss later this week. We have 14 days to respond.

### STEPHEN COLE | Associate

LynnPinkerCoxHurst

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

[www.lynnllp.com](http://www.lynnllp.com)

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---

**From:** [admin@tarrantdwi.com](mailto:admin@tarrantdwi.com) [<mailto:admin@tarrantdwi.com>]  
**Sent:** Tuesday, January 10, 2017 5:20 PM  
**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>; Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>; [john@dowdylawfirm.com](mailto:john@dowdylawfirm.com);  
[buzzdeitchman@gmail.com](mailto:buzzdeitchman@gmail.com)  
**Subject:** Offer of settlement

Please see attached.

Charlie Burgess  
Attorney At Law  
521 N. Riverside Dr.

Fort Worth, TX 76111

[www.tarrantdwi.com](http://www.tarrantdwi.com)

(817)808-4731Phone

(817)451-4869Fax

[admin@tarrantdwi.com](mailto:admin@tarrantdwi.com)

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Charlie Burgess  
cburgess72@yahoo.com

**Charlie Burgess**  
ATTORNEYS AND COUNSELORS AT LAW  
521 N. Riverside Dr.

Telephone (817) 808-4731  
Facsimile (817) 451-4869

Fort Worth, Texas 76111

January 10, 2017

Stephen M. Cole  
LynnPinkerCoxHurst  
2100 Ross Avenue, Suite 2700  
Dallas, TX 75201

*certified mail # 7010 3090 0000 7401 8574*  
*via email*

Re: Cause No. 352-268735-13; Seth Washburne & Thirsty 13th, LLC vs. James Terry, Pacific Prowler, LLC, Pacific Prowler, Nonprofit, Greatest Generation Aircraft, DOUGLAS87745, LLC, Patrick Mahaffey, Terry Rogers & Perrin Warbirds, Inc.

Dear Mr. Cole:

As you know, I represent James Terry, Pacific Prowler LLC, Pacific Prowler Nonprofit, Greatest Generation Aircraft and DOUGLAS87745 LLC, defendants in the captioned lawsuit, in which you represent the plaintiffs.

The purpose of this letter is to communicate a settlement offer under Rule 167 of the Texas Rules of Civil Procedure and Chapter 42 of the Texas Civil Practice and Remedies Code. The offer is being made on behalf of my clients, James Terry, Pacific Prowler LLC, Pacific Prowler Nonprofit, Greatest Generation Aircraft and DOUGLAS87745 LLC. My clients hereby offer to pay to the Plaintiffs the total sum of \$56,500.00 in full and complete settlement of any and all claims the Plaintiffs have asserted or could assert against James Terry, Pacific Prowler, LLC, Pacific Prowler, Nonprofit, Greatest Generation Aircraft and DOUGLAS87745 LLC. In exchange for the payment of \$56,500.00, your clients, Seth Washburne and Thirsty 13th are to dismiss with prejudice any and all claims which have been asserted or could be asserted against James Terry, Pacific Prowler LLC, Pacific Prowler Nonprofit, Greatest Generation Aircraft and DOUGLAS87745 LLC in the captioned lawsuit.

The sum of \$56,500.00 will be paid to the Plaintiffs on or before the expiration of the fifth day following the signature of the judge on the Order Dismissing Plaintiffs' Claims against James Terry, Pacific Prowler LLC, Pacific Prowler Nonprofit, Greatest Generation Aircraft and DOUGLAS87745 LLC with Prejudice.

This offer is subject to the execution of reasonable and appropriate releases, indemnities and other documents necessary to give full effect to a complete release of liability of James Terry, Pacific Prowler LLC, Pacific Prowler Nonprofit, Greatest Generation Aircraft and DOUGLAS87745 LLC to Plaintiffs.

Finally, this offer will expire on the later of 14 days from your receipt of this letter.

I have filed on behalf of James Terry, Pacific Prowler LLC, Pacific Prowler Nonprofit, Greatest Generation Aircraft and DOUGLAS87745 LLC a declaration invoking this rule under Texas Rule of Civil Procedure 167.2(a). This letter follows the filing of that declaration. I attach a copy of that declaration to this letter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Charlie Burgess".

---

CHARLIE BURGESS

cc:

John Dowdy

Buzz Deitchman





IV.

The settlement offer will be served by certified mail, return receipt requested on counsel for Plaintiffs, with courtesy copies being sent to counsel for Co-Defendants as follows:

Plaintiffs, SETH WASHBURNE and THIRSTY 13<sup>TH</sup>, LLC, by and through Plaintiffs' attorney of record, Stephen M. Cole, LynnPinkerCoxHurst, Attorneys at Law, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201;

Co-Defendant, PATRICK MAHAFFEY, by and through Defendant's attorney of record, JOHN V. DOWDY, JR., 2401 Garden Park Court, Suite A, Arlington, Texas 76013; and

Co-Defendants, TERRY ROGERS and PERRIN WARBIRDS, INC., by and through such Defendants' attorney of record, BUZZ DEITCHMAN, 14850 Montfort Dr., Suite 220, LB 12, Dallas, Texas 75254.

Respectfully submitted,



---

CHARLIE BURGESS  
State Bar No. 24050354  
521 N. Riverside DR.  
Fort Worth, Texas 76111  
Phone: (817) 808-4731  
Fax: (817) 451-4869  
Cburgess72@yahoo.com

CERTIFICATE OF SERVICE

I certify that on January 10, 2017, a true and correct copy of Defendants Declaration Invoking TRCP Rule 167 was served in the following manner to the following attorneys of record:

VIA E-SERVICE

STEPHEN M. COLE  
LynnPinkerCoxHurst  
Attorneys at Law  
2100 Ross Avenue, Suite 2700  
Dallas, Texas 75201

VIA E-SERVICE

JOHN V. DOWDY, JR.  
2401 Garden Park Court, Suite A  
Arlington, Texas 76013

VIA E-SERVICE

BUZZ DEITCHMAN  
Attorney at Law  
14850 Montfort Dr., Suite 220, LB 12  
Dallas, Texas 75254



---

CHARLIE BURGESS

Exhibit 91: 2017 01 27 - 2.14 pm Krabill to Seth re Terry settlement amounts

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Friday, January 27, 2017 2:14 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** RE: Settlement discussions

Seth,

I need you to provide the info I requested below.

### **KENT D. KRABILL** | Partner

**LynnPinkerCoxHurst**

Direct 214 981 3831

Cell 817 881 8113

Fax 214 981 3839

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

[www.lynnllp.com](http://www.lynnllp.com)

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---

**From:** Kent Krabill  
**Sent:** Monday, January 16, 2017 1:13 PM  
**To:** Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>  
**Cc:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>  
**Subject:** Settlement discussions

Seth,

As we discussed, please provide the following:

1. Mahaffey
  - a. Amount I would like to get in settlement
  - b. Minimum amount for which I would settle
2. Terry Defendants
  - a. Amount I would like to get in settlement
  - b. Minimum amount for which I would settle
3. Perrin Warbirds and Terry Rogers
  - a. Amount I would like to get in settlement
  - b. Minimum amount for which I would settle

Thank you,

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

Direct [214 981 3831](tel:2149813831)

Cell [817 881 8113](tel:8178818113)

Fax [214 981 3839](tel:2149813839)

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

[2100 Ross Avenue, Suite 2700](https://www.lynnllp.com)

[Dallas, Texas 75201](https://www.lynnllp.com)

[www.lynnllp.com](https://www.lynnllp.com)

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Exhibit 92: 2016 09 20 - 9.03 am Seth to Krabill

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Tuesday, September 20, 2016 9:03 AM  
**To:** 'Kent Krabill'  
**Subject:** Thank You for Meeting

Kent,

Thank you to you and Stephen for meeting with me on Monday from 3:30 p.m. to around 5 p.m. I enjoyed meeting each of you and learning about your background and experience.

It was particularly great to learn that Lynn Pinker Cox Hurst has a focus on litigation, that you and Stephen have a passion for this, and that you have experience with Judge Pittman. I also liked that you keep all documents digitized – this is what I do, and it is the only sensible way. I have a USB drive with all the documents for these cases on it digitized, so it would be easy to provide these.

Please let me know if I may provide any additional information.

I look forward to hearing from you.

Seth P. Washburne  
5200 Meadowcreek Drive, Apt. 2060  
Dallas, TX 75248  
(212) 289-1506



Exhibit 93: 2016 09 27 - 7.43 pm email Krabill to me

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Tuesday, September 27, 2016 7:43 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** Re: Meeting with Kevin Vice Friday

Seth,

I appreciate the email and your thoughts about our meeting with your prior counsel. We need to meet with Kevin only, the lead attorney. We need to do this in person because we will want to discuss particular documents, pleadings, etc. and face to face is the best way to communicate. We will be discussing the history of the cases, factually, legally, and procedurally. We need to ask why certain claims were added or not added, why certain parties were added or not added, why certain motions were filed or not filed, why certain depositions were taken or not taken, etc.

This process will save you a lot of money in the long run. There is absolutely no reason for us to fly blind and spend countless hours trying to figure out what was done and why it was done (or not done) when we can download info from the prior counsel. I anticipate the meeting will take no more than 4 hours.

As for your prior dealings with your prior counsel, we are not concerned with that. How you handle your bills with them is your business, not ours. We will not be communicating with your prior counsel about your bills or anything related to their dealings with you. We simply want to meet with them to download case info.

We took this case to give you the quality representation you desire. We want to help provide you the best chance to prevail in your cases. We know how to put cases together and try them. We have experience taking cases over near the trial date, and know how to do it in the most efficient way possible. A short meeting with prior counsel, when possible, is an important step in this process.

Let me know if you have any further questions. Otherwise, we will plan on meeting with Kevin Vice on Friday morning.

## **KENT D. KRABILL** | Partner

**LynnPinkerCoxHurst**

Direct [214 981 3831](tel:2149813831)

Cell [817 881 8113](tel:8178818113)

Fax [214 981 3839](tel:2149813839)

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

[2100 Ross Avenue, Suite 2700](https://www.lynnllp.com)

[Dallas, Texas 75201](https://www.lynnllp.com)

[www.lynnllp.com](https://www.lynnllp.com)

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---

**From:** Stephen Cole <SCole@lynnllp.com>  
**Date:** Tuesday, September 27, 2016 at 7:05 PM  
**To:** Seth Washburne <sethpw1@gmail.com>  
**Cc:** Kent Krabill <kkrabill@lynnllp.com>  
**Subject:** Re: Meeting with Kevin Vice Friday

Seth, Kent will send you a response to the below. Thanks.

Stephen Cole  
214.981.3804  
[scole@lynnllp.com](mailto:scole@lynnllp.com)

Sent from my iPhone

On Sep 27, 2016, at 6:35 PM, Seth Washburne <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)> wrote:

Stephen,

Scott Dilbeck emailed me Tuesday afternoon that you and Kent want Kevin Vice and Scott to come to your office for a meeting Friday morning to go over the cases, and Scott wants to know if I approve of this, i.e. if I will pay them for their time.

Scott noted Kevin is concerned that I have not paid the court reporter invoice yet from around July, nor his latest invoice which he sent last Monday.

The court reporter billed \$13,051.95 for four days, and Jen Gjesvold told me that seemed about 2x the going rate, so I have wanted to review this, but have not had time to.

The latest invoices last Monday (the 19<sup>th</sup>) of \$16,728 for the VFM case and \$2,902 for the Terry case, a total \$19,630, included many items for sending me emails, and I have wanted to compare the amounts to the emails sent, and see if they are reasonable, and have not had time to do that.

Much of the almost \$17,000 for the VFM case was for Scott to draft the MSJ responses, which he said he would finish last Wednesday, and I have wanted to get those responses before paying for them, and also have you review them to see if they have any value to you or if they are worthless. For the last MSJ hearing, Scott lost on it, and admitted not noticing the word "retract" clearly written in the one email he attached, so I now wonder how good he is. Scott emailed me last Tuesday he would finish the latest two replies by last Wednesday because he had a "big mess" in his office relevant to the MSJs, and it made sense to finish them, but today emailed me he decided to stop work on them when he learned of the extension, so that seems inefficient. I am reluctant to pay for this work before seeing what he produced, and that it has some value.

I have always paid every invoice 100% in full, without ever questioning an amount, but with this being almost the last one, would also like to review my entire relationship with MMV to see if they have been overpaid in the past. In May he charged me \$6,000 to print out 9,000 documents, only about 3,000 which I have now, and told me they would be of great value going

forward, but I doubt they will ever be used. He billed me maybe \$10,000 for his secretary to create some sort of document tree, to easily find documents, which I have never seen, other than a handwritten page – I would like to him to at least explain what this is before paying him. I may find enough disputable charges to go against the full latest invoice. MMV has a \$10,000 retainer of mine, they can probably use to set-off, so might not be out that much, but in any case I won't be able to pay these amounts to them before Friday, and will probably dispute some of them.

I wonder what you expect to get out of this meeting with Kevin? It has been my experience that despite his billing me \$240,000 on the Terry case he has little to no knowledge of any of the facts, no idea which claims are the best, and no idea what evidence exists. All he has done is write me hundreds of worthless emails, and drag it out. He said he would create a folder for each of the claims, with documents included in the folder, and I found just a few of these, with just a few documents in each, not even very relevant. He told me he always waits to put the case together until everything is done, i.e. the depositions, and so has done nothing on this yet. Regarding the damage model which the RFP and ROG responses need, he has never done a single thing on this. Regarding the VFM case, despite billing me \$120,000 on that case, he has little knowledge of it either.

If you have the meeting, they will enjoy getting paid a combined \$495 an hour for just driving time, basically a boondoggle downtown, and in the meeting will primarily tell you what a nice guy Pat Mahaffey is, and that Pat will hurt the case and should be let out because he is such a friendly guy – Kevin really bonded with defendant Mahaffey during his deposition of him, refusing to ask him any hard questions, because Kevin was completely unprepared. He'll tell you the experts are good, just a bunch of stuff that is not new or insightful, so I think the meeting will be a complete waste.

Could you make a list of what exactly you want to know from Kevin and Scott and share it with me? Then maybe tell them something came up, and ask them if they can just talk to you over the phone about the items – then don't let them talk in generalities?

Let me know if you definitely want to meet them, but please know I will not be paying their full invoices before then. I can agree to pay them by separate invoice for that one day, but would like to keep it to \$2,000 total for them, which at their combined \$495 per hour (\$295 and \$200) is 4 hours, which with their 36 minute commute each way, 45 minutes with parking, 1.5 hours total, would be a 2.5 hour meeting. But again I think it will be a complete waste of your time and my money.

Seth

Exhibit 94: 48th case Motion to Withdraw and proposed Order



5. Movant notified Plaintiffs by e-mail and voicemail on July 10, 2017 of their intention to seek an order of withdrawal, and asked Plaintiffs if they opposed this Motion, but Plaintiffs have not responded whether they are opposed or unopposed.

6. Movant has delivered a copy of this Motion to Plaintiffs via Certified Mail and e-mail.

7. Mr. Washburne's last known address is 5200 Meadowcreek Dr., Apt. 2060, Dallas, Texas 75248.

8. Thirsty 13<sup>th</sup> LLC's last known address is 5200 Meadowcreek Dr., Apt. 2060, Dallas, Texas 75248.

9. I have conferred with all counsel for Defendants, who have indicated that they are not opposed to this Motion.

10. This Motion is not filed for delay, but only so that justice may be done.

#### **REQUEST FOR HEARING**

Movant requests a hearing on this Motion. Movant estimates that 15 minutes will be sufficient to present the issues in this Motion.

#### **PRAYER**

**WHEREFORE PREMISES CONSIDERED**, Movant Kent D. Krabill and LYNN PINKER COX & HURST, LLP respectfully request that this Court enter the attached Order granting Movant's Motion to Withdraw, and for any other relief in law or at equity to which Movant may be justly entitled.

DATED: July 12, 2017

Respectfully submitted,

/s/ Kent D. Krabill

Kent D. Krabill

State Bar No. 24060115

[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

Jonathan D. Kelley

Texas Bar No. 24090202

[jkelly@lynnllp.com](mailto:jkelly@lynnllp.com)

LYNN PINKER COX & HURST, L.L.P.

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

Telephone: 214.981.3800

Facsimile: 214.981.3839

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF CONFERENCE**

I conferred with counsel for the Defendants on the merits of this Motion, and they have indicated that they are unopposed to the relief sought in this motion. I notified Plaintiffs by e-mail and voicemail on July 10, 2017 of our intention to seek an order of withdrawal, and asked Plaintiffs if they opposed this Motion, but Plaintiffs have not responded whether they are opposed or unopposed.

/s/ Kent D. Krabill

Kent D. Krabill



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing document was served upon counsel of record herein *via e-service* and e-mail July 12, 2017:

John Dowdey, Jr.  
[john@dowdylawfirm.com](mailto:john@dowdylawfirm.com)  
Attorney at Law  
2401 Garden Park Ct., Ste. A  
Arlington, TX 76013

Charles Burgess  
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521 N. Riverside Dr.  
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B. Buzz Deitchman  
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B. Buzz Deitchman, PC  
14850 Montfort Dr.  
Ste. 220, LB 12  
Dallas, TX 75254

I further certify that a true and correct copy of the above and foregoing document was served upon Plaintiff Seth Washburne *via* Certified Mail and e-mail July 12, 2017:

**Via Email and CMRRR #7014 0150 0001 9537 9666**

Seth Washburne  
[sethpw1@gmail.com](mailto:sethpw1@gmail.com)  
5200 Meadowcreek Dr., Apt. 2060  
Dallas, Texas 75248

*/s/ Kent D. Krabill*

\_\_\_\_\_   
Kent D. Krabill



## Exhibit 95: Plaintiffs' Response to Motion to Withdraw

CAUSE NO. 48-268735-13

SETH P. WASHBURNE and  
THIRSTY 13<sup>TH</sup>, LLC,

Plaintiffs,

V.

JAMES TERRY, PACIFIC PROWLER,  
LLC, PACIFIC PROWLER  
NONPROFIT, GREATEST  
GENERATION AIRCRAFT, PATRICK  
MAHAFFEY, TERRY ROGERS,  
PERRIN WARBIRDS, INC., AND  
DOUGLAS 87745, LLC

Defendants.

§ IN THE DISTRICT COURT OF  
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§ TARRANT COUNTY, TEXAS  
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§ 48<sup>TH</sup> JUDICIAL DISTRICT

PLAINTIFF’S REPLY TO ATTORNEYS’  
MOTION TO WITHDRAW

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Seth P. Washburne and Thirsty 13<sup>th</sup> LLC, Plaintiffs, respectfully requesting this Court to DENY the Motion to Withdraw filed by Kent Krabill (“Krabill”) of firm Lynn Pinker Cox & Hurst LLP (hereinafter referred to as LPCH).

Plaintiff has not retained counsel to make this reply, believing that unduly burdensome. Plaintiff drafted this reply with no legal assistance, putting him at a disadvantage.

In support of this reply, Plaintiffs would respectfully show unto the Court as follows:

I. Introduction

1.1 The Texas Disciplinary Rules of Professional Conduct, Section 1.15 Declining or Terminating Representation, paragraph (b), is written in the stern language of a commandment:

“A lawyer shall not withdraw from representing a client,” reflecting the seriousness of this act.

1.2 This Section 1.15 (b) provides seven conditions in which withdrawal is allowed, and paramount, first, among these is that “(1) withdrawal can be accomplished without material adverse effect on the interests of the client.” The next five are severe acts: “(2) the client persists in a course of action involving the lawyer’s services that the lawyer believes may be criminal, (3) the client has used the lawyer’s services to perpetrate a crime, (4) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent, (5) the client fails substantially to fulfill an obligation to the lawyer, including to pay the lawyer’s fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled, and (6) representation will be an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client.” The last is “(7) other good cause for withdrawal exists.”

1.3 LPCH’s motion states in paragraph 2 that it relies upon (7), “good cause,” and in paragraph 3 asserts “irreconcilable differences of opinion have arisen between Movant and Plaintiffs necessitating the termination of their attorney-client relationship.”

1.4 Plaintiff believes that “good cause” does NOT exist; there are NO “differences of opinion;” and this withdrawal will result in a severe material adverse effect. Therefore this motion should FAIL.

## **II. Background**

2.1 Plaintiff has “played by the rules,” placing his faith in the legal system to seek justice against alleged wrongdoers. What he thought would be a quick suit in the Terry case, has instead placed his life on hold for five years, cost him almost \$1 million in legal fees, imposed enormous personal costs, and subjected him to enormous stress, due to lawyers who violated the Texas Disciplinary Rules of Professional Conduct, or were disorganized or dishonest.

2.2 From 2013 through the present, twenty-six firms, small to large, reviewed this case. Six were retained (four withdrew, one was terminated), eighteen refused this case, one was not met, and one was interested but not chosen. This enormous effort is described in Exhibit 1.

2.3 The Honorable Judge Mark Pittman when presiding over the 352<sup>nd</sup> in a hearing September 22, 2016, at 9 a.m. for LPCH to substitute in said something like “It is obvious to anyone looking at all these changes in lawyers that Plaintiff does not want to take this case to trial,” and so said that would be the last continuance granted, to March 20, 2017. I vigorously shook my head “No! – I was not delaying it!” In response to his question why there were so many lawyers, and relevant to why approval of this motion would be unduly burdensome upon me, I very reluctantly offer Exhibits 2 to 4 to describe the concerns I had with three prior firms.

### **III. Why I Oppose this Motion**

3.1 Defendant Jim Terry at his deposition sat down and told my prior attorney Kevin Vice “You’re next!” suggesting I was going to sue Vice next. Previously I had constructive friendly discussions with Vice about concerns, but after that he became more defensive. Perhaps Vice in turn relayed this to Krabill, such that Krabill has felt he has to be defensive and rude to me. Kent Krabill has often been extremely disrespectful of me since right after he met Vice. Krabill has yelled at me several times, often from his office on his speakerphone.

3.2 Despite Krabill’s treatment of me, I want him to continue because:

- a. I expect Krabill can argue the legal theories better than anyone else can.
- b. On January 9, 2017, Krabill met defendants James Terry and Patrick Mahaffey at the deposition of my expert witness in his office conference room, and has met counsel for all of the defendants. He has met my expert witness more than once.

- c. On January 9 Krabill brought up “gross negligence” against defendant Mahaffey, which no prior firm identified, and seems to understand and be able to argue this cause better than anyone else would, on what is one of the most important causes.
- d. On January 12, 2017, Krabill successfully argued against a Motion for Summary judgment in this case, and hence developed knowledge of all of the causes of action.
- e. On March 8, 2017, after a hearing on a motion to continue this case, when speaking with me in the parking deck across the street, Krabill stomped his foot and said the delay was frustrating because he was all ready to go to trial – so most work is done.
- f. LPCH billed me more than \$10,000 to go over documents and identify “what is hot” and probably tens of thousands more to organize all the documents on their system.
- g. This case is complicated, best suited for a large firm which can clear the decks for it.
- h. I have paid LPCH legal fees for this case of \$326,336.
- i. Including prior counsel I have paid legal fees on this case of \$576,336.
- j. Due to rule 167 agreements from Terry and Mahaffey I am at risk of having to pay their legal fees if I do not reach certain damage levels, so need the best attorney.
- k. This is my most important case personally, and I expect anyone else would do worse.

#### **IV. “Good Cause” did not exist prior to 12:45 p.m. on June 29, 2017**

4.1 Prior to 12:45 p.m. on June 29, 2017, Krabill had no “good cause” to withdraw from representing Plaintiff:

- a. As recently as May 30, 2017, Krabill called me about an outstanding balance, and after I said I could send in \$100,000 (and this check cleared June 1), Krabill told me “That shows good faith. You, know, I like you.”

- b. On Monday, June 26, 2017, just three days prior to the mediation, Krabill emailed me a “calendar of deadlines that you need to be aware of,” including “July 12: Deadline for Seth to submit all notes on questions to ask and exhibits to present to witnesses (categorized by witness).” All systems seemed “go” for the 153<sup>rd</sup> trial.
- c. On June 29, 2017, during the 153<sup>rd</sup> case mediation, Krabill urged me to accept a settlement so we could then focus on this case. That alone indicates that on June 29, 2017, during the mediation he was NOT contemplating withdrawing from this case.

#### **V. The Two Events on June 29, 2017, were the fault of Krabill**

5.1 There were two events on June 29, 2017: I blurted out something – I don’t know what - to Krabill, and my interaction with mediator Gary Berman. These were caused by Krabill.

5.2 Krabill knew my objective for mediation was to have the mediator explain my arguments about confidentiality to the defendants, to try and get them to give up this demand, but Krabill picked a mediator who would not mediate confidentiality, and has a reputation for being “in-your-face,” which Krabill should have known would not work with my objective. Berman:

- a. Derided mediators who jumped from room to room listening to clients as “rabbits.”
- b. Refused in our first discussion to let me say a word about why I requested mediation.
- c. Refused in our second discussion to take any notes about anything I said, and responded to my inquiry why by stating no one cared about anything I thought.
- d. Refused to sit down after the second time he came back to the room, despite my asking him to please sit down, and instead each time loomed over us and looked down on us.
- e. In a raised voice told me the jury would hate me.
- f. Pointed to his chin with the first finger on his right hand, and yelled at me from close range: “Look at my face! Look at my face! You are going to LOSE your case!”



- g. Multiple times refused to let me say that I would like to add to his mediator's order just one thing: that Defendant Hospers tell volunteers "Seth never cornered Dana."
- h. When I uttered just a few words such as "I just wonder..." interrupted me and yelled at me I was not going to tell him how to do his job.
- i. When passing him in the hall and I quietly muttered "I just don't know why...", he spun around, raised his right arm, rigidly pointing straight toward the exit, and yelled: "IF YOU DON'T LIKE THE WAY I MEDIATE, THEN THERE'S THE DOOR!!!"

5.3 Krabill, for his part, in a best-case scenario woke up on the wrong side of the bed this day. He was excessively abusive from the first moment he saw me, as described in Exhibit 5 and summarized below. Krabill:

- a. In his first words launched into a tirade against me for moving four items from the conference table to the side table, concluding with: "DIDN'T YOUR MOTHER EVER TELL YOU NOT TO TOUCH OTHER PEOPLE'S STUFF!!!"
- b. Four times refused my respectful request to tell me what he was actively typing, which I later found was a motion to compel net worth statements from defendants.
- c. Four times refused my respectful request whether he would be offended if I used the word "d\_\_n" – something which has resulted from the 153<sup>rd</sup> case defendants' actions.
- d. Refused my request to tell me what a mediator's order was.
- e. Delighted in stating "No one likes you," and then named only the defendants.
- f. When I joyfully said my mother liked me replied "Oh, I've talked to your mother!" implying that my own mother didn't like me.
- g. Told me "You have serious problems."
- h. Snarled at me "Yes, you are rich!"

- i. Refused to give me straight answers to critical questions such as regarding potential non-monetary and punitive damages, replying with statements such as “We talked about this in September, we talked about this in October, we talked about this in November, but you don’t listen, that’s the problem with you, you don’t listen!” He refused to provide the counsel for which I was paying him, at the most critical time.
- j. Neglected my goals in the case, repeatedly asserting “You want peace” when I said I wanted justice. Anyone can quit a suit, but this does not provide internal peace.
- k. The one time I raised my voice slightly to ask him to stop, he raised his voice and said if I raised my voice again he would quit, so I had to sit and take it.
- l. **Refused my instruction to him to mark the mediator’s order “No.”** I told him I did not like the settlement offer – especially the confidentiality provision, and that I wanted to go to trial, and to emphasize this added that “it would be an interesting life experience.” I told him I wanted to check the mediator order’s box “No,” and reached for it, and he said I could not do this, that he had to be the one to mark the box. So I told him to mark it “No,” and he refused.
- m. Refused my repeated requests begging, begging him to be quiet so I could review a list of 8 items I would give up if I agreed to confidentiality.
- n. Was so incessant that I said I was going to the bathroom to sit to get away from him.
- o. When I found the bathroom locked and was forced to return to the room with Krabill, he could see I was under enormous stress, with my left elbow on the table, my left hand on my forehead, shielding myself from him, leaning to my right away from him, begging him to be quiet, but he refused, leading to my no longer being able to take his incessant demand that I take the settlement.

5.4 Krabill in a worst-case scenario had an agenda, to force me to settle this case, picked Berman because he would be tough on me, and worked this out with him ahead of time.

5.5 Krabill's actions violated the Texas Disciplinary Rules of Professional Conduct, Rule 1.03: Communication, (a) **"A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, and (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."**

5.6 **Krabill, above all, flagrantly violated the Texas Disciplinary Rules of Professional Conduct, Rule 1.02: Scope and Objectives of Representation, (a) "a lawyer shall abide by a client's decisions: (2) whether to accept an offer of settlement of a matter."**

5.7 Krabill precipitated both of the events which ended this day, in violation of his own code of ethics, and **should be severely reprimanded.** I will file complaints with the bar.

## **VI. Krabill's Treatment of Others was already the Subject of a 153<sup>rd</sup> Hearing**

6.1 Krabill's treatment of others was the subject of a May 25, 2017, hearing in the 153<sup>rd</sup> to compel a second deposition of Hal Monk. Defendants' counsel Randy Turner testified to seeing Krabill lose his temper at Hal Monk, and refuse repeated requests to calm down and continue the deposition.

6.2 The Honorable Judge Susan McCoy ruled, as I understood it, that even though Texas law did not allow a deposition to be reset for another date, it was her feeling that a Plaintiff should not be injured by the personal failings of an attorney.

6.3 This hearing is the same: a) about Kent Krabill, not me; b) about the same issue – his occasional disrespectful treatment of others, and c) about whether a Plaintiff should suffer due to his lawyer's shortcomings. The right ruling is NO, I should not suffer from his failings.

## **VII. Krabill's arguments are irrelevant or lack evidence**

7.1 Krabill in a letter to me July 17 cited as "just cause" many items which all fail for lack of evidence.

7.2 "Your conduct toward me and my firm" fails. At the time of his withdrawal I had very little contact with anyone at his firm other than associates Stephen Cole and Jonathan Kelley. My relationship with Stephen was good, and ended on a good note after he quit LPCH, and my relationship with Jonathan Kelley was fine. Krabill, without my approval, showed Jonathan a private email to Krabill about Jonathan, but I spoke to Jonathan afterwards and all seemed fine. Krabill should be required to provide examples, or this should fail for no evidence.

7.3 Immediately following receipt of Krabill's withdrawal letter, I replied with some unflattering emails, but these should not be considered by the court, because they came after the withdrawal, when it is only natural to get "sour grapes" precipitated solely by Krabill's actions. If one has been yelling at and disrespectful to their dependent spouse for a year who has to sit and take it, and then announces "I filed for an emergency divorce today," then of course they will get an earful of criticism. But to then turn around and say this criticism is the good cause for the divorce is unfair, because it never would have come out without the first announcement.

7.4 "Your conduct toward...the Defendants and Defendants counsel" fails.

- a. In the 153<sup>rd</sup> case I never had one bit of contact with the Defendants or their counsel.
- b. In the 48<sup>th</sup> case the only word I have spoken to any defendant since October 2012 was on April 25, 2016, at the start of Jim Terry's deposition by Vice before on record when he told me had no money, and I politely asked him to repeat this so I could record it. There have been no other communications with any other defendant ever.

- c. In the 48<sup>th</sup> case regarding defendants' counsel, I have never communicated with Dowdy or Burgess. On September 15, 2016, I sent an email to the 352<sup>nd</sup> court coordinator and wrote: "Regarding Buzz Deitchman, during my deposition Buzz was giving me a bit of a hard time for not having damage numbers on the top of my head, and Kevin sort of blew up at him, and afterwards I saw him in the hall and told him I was sorry, and we had a personal conversation. He said he greatly admired my writing the book, and that his dad was a WWII vet, and had been the pilot, his name inscribed in the cockpit, of a B-25 here in Addison that I had just seen a few days before. So he seems like a nice guy. He also had a heart condition or cancer last year from which he is recovering." Buzz replied to this email: "Mr. Washburne, this email is Not Case Related. I have received your emails to the court and read the content. I appreciate your kind words about me and feel that regardless of the battle, men of good character and sons of great fathers should respect each other and act accordingly. Sincerely, Buzz." We have had a good and friendly relationship.
- d. Krabill should be required to provide examples, or this should fail for no evidence.

7.5 "Your conduct toward...the mediator" should fail. This mediator is famous for being "in your face," and his conduct toward me was terrible. He took an immediate disliking to me and yelled at me often – perhaps entirely due to things Krabill told him about me, hence this, too, was Krabill's fault. I expect that numerous plaintiffs or defendants who have mediated with Gary Berman wish they had interacted with him the way I had. Furthermore, my conduct toward him was 100% the result of the provocation by Krabill. It would be wrong to let a lawyer egg someone on, and then penalize the person when they react. Furthermore my conduct toward the mediator, while perhaps embarrassing for Krabill, does not affect my relationship with Krabill.

7.6 “Your lack of trust and confidence in me and our firm” fails. I have never once suggested either of these, and instead testified in the 153<sup>rd</sup> case that I thought Krabill was very good at arguing legal points, and I eagerly wanted him to represent me. The very fact that I am opposing this motion means I trust Krabill to put on a good case, otherwise I obviously would not want him representing me. Krabill should be required to provide examples, or this should fail for no evidence.

7.7 “Your conduct...could be found to be consistent with the Defendants’ [in the 153<sup>rd</sup> case] defenses and allegations” fails. That case is about malicious prosecution, and even if I had a tendency to lose my temper, which I do not, nowhere in that suit is Krabill required to suggest otherwise. Krabill has even told me that the 153<sup>rd</sup> Defendants’ allegations about my conduct help our case. This point has no relevance.

7.8 “Because I witnessed your conduct..., I could be called as a material fact witness should the mediator choose to continue to pursue criminal charges against you” fails. On July 14, 2017, in the 153<sup>rd</sup> case hearing on Krabill’s MTW I freely stated what happened, and so there are no more facts about which Krabill could testify which would hurt me. I love truth, and believe it should always be told, and would welcome Krabill testifying in any criminal case – especially as there is nothing more he could add that I have not said or would not say myself. This point is therefore irrelevant.

7.9 As an aside, I hired a criminal defense attorney, who found that as of July 28, almost one month after the police report by Berman, no charges have been filed against me. This lawyer, with twenty years criminal defense experience, and on five top-lawyer lists, told me if Berman presses charges, this lawyer predicts it would likely not result in a conviction, and the charge would be expunged in six months.

7.10 “You have past due amounts in both matters - this is an additional ground for ceasing to represent you” fails.

- a. For both cases, Krabill on May 30, 2017, said it was fine for me to make a progress payment of \$100,000 against the outstanding balance, and pay the balance after reviewing the invoices. The Texas Rules Section 1.15 (b) allows withdrawal under point (5) if “the client fails substantially to fulfill an obligation to the lawyer including to pay the lawyer’s fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled.” The “fee as agreed” was \$100,000 to be mailed in the next three days (and I mailed a check within an hour), and the balance after I reviewed the invoices, and I have not reviewed them yet. Next, I was never “given reasonable” – or any – “warning that the lawyer will withdraw unless the obligation is fulfilled.” Krabill has also never communicated with me about the June balance.
- b. In this 48<sup>th</sup> case the latest balance, as of June 30, 2017, was \$18,262. Krabill has a \$30,000 retainer, and so including the retainer I HAVE OVERPAID BY \$11,738.
- c. In the 153<sup>rd</sup> case, the balance April 30 was \$32,461, and part of my \$100,000 progress payment reduced this to \$25,690, which was less than the \$30,000 retainer, so through April 30 including the retainer I WAS OVERPAID BY \$4,310.
- d. In the 153<sup>rd</sup> case the May 30 invoice was received June 20, only 9 days prior to the withdrawal, and was due in 30 days, and so was not due yet.
- e. In the 153<sup>rd</sup> case, Krabill billed \$44,120 for May and on July 24 \$64,969 for June, so the current outstanding in that case is \$134,778. The status of this balance should not in any way impact this 48<sup>th</sup> case, because there are issues regarding this balance, e.g. that Krabill

refused my instruction during mediation to check the box “No” and to go to trial, and withdrew by an emergency hearing for which I did not have adequate time to prepare.

7.11 Again, there are simply no arguments of good cause. Krabill needs to apologize for his behavior and refusal to go to trial in the 153<sup>rd</sup> case, and get back to work on this case.

### **VIII. Good Cause and Plaintiff’s Legal Rights**

8.1 If this motion is granted, I will sue Lynn Pinker Cox & Hurst, LLP and Krabill for breach of contract, fraud, theft and more, and Krabill may try to point to the fact that this court found “good cause.” Therefore if this motion is granted, I ask the court to state quite specifically what the cause is. I believe the court should find the only cause is Krabill simply doesn’t want to take this case to trial, and so has tried to intentionally hurt his relationship with his me.

### **IX. What May Really be Going On: New Associate, and Oil Company Deal**

9.1 Krabill’s associate Stephen Cole quit, with his last day May 31, 2017. Cole seemed to know these cases fairly well and be well organized. Cole was replaced with newly-hired associate Jonathan Kelley, who is probably not yet up to speed on my cases.

9.2 It appears that LPCH, despite projecting themselves as a large firm, is actually a small firm. Outside of Associate Cole’s small office was a bullpen area with many cubicles, all never used, and other offices seemed empty, so there might be a manpower problem at this firm.

9.3 In any case it appears they have perhaps only one associate per partner, so each partner is not much different than a lawyer on his own with one associate.

9.4 I drove Kelley back to Dallas after the Monk deposition, and he said he was working on a roughly \$300 million oil company deal, for which Krabill would get a 50% fee.

9.5 Perhaps Krabill has no other associates to draw on, and would prefer Kelley work on the \$300 million, 50%-contingency fee deal. This is simply dereliction of duty.



## **X. Arguments to show “Material Adverse Effect” if Granted**

10.1 As noted in paragraph 1.2, the Texas Disciplinary Rules of Professional Conduct, Section 1.15 Declining or Terminating Representation, in its Section 1.15 (b), providing seven conditions in which withdrawal is allowed, states paramount, first among these, is that “(1) withdrawal can be accomplished without material adverse effect on the interests of the client.” Material Adverse Effect is therefore the #1 consideration. However if this motion is granted I will suffer a severe and irreparable Material Adverse Effect.

10.2 Krabill has been good at arguing points, probably better than anyone, and so I will immediately have worse, and in my experience much, much worse, representation, if any.

10.3 My ability to find another firm to represent me may be entirely impossible now.

- a. Most or all of the larger firms in the DFW area have rejected this case, or would reject it. Most or all of the smaller firms would not be able to take time from their existing cases.
- b. In 2016 I contacted 19 firms, and only four were interested, 21%, one of which appeared to have not read the cases, and so almost 80% declined. This was while there was still some work to do pre-trial. Now with nothing to do pre-trial this percentage might drop from 20% to 5% - meaning I will have to contact 20 firms to get one to take the case.
- c. When one factors in that Gary Berman has filed a police report that I struck him, and this may have spread around, and Turner and Krabill have referred to me as potentially being charged as a criminal, the odds of a lawyer taking this case drop to probably 0%.
- d. Any firm who did take this would require non-disparage and be free to put on a bad case.
- e. On July 19, 2017, I emailed attorney John Roper, who recommended Krabill, and attorney Andrew Piel, and in the email explained the situation, and as of July 31 neither of these people, once-enthusiastic and friendly toward me, had even replied.

10.4 Any new firm would be coming in at the latest possible moment, having never met any of the defendants, their experts, or defendants' counsel, and never asked one question in a deposition.

10.5 It seems that most lawyers would prefer to bill time sitting in their office rather than to be in a courtroom presenting a case, which is physically and mentally demanding. A trial also risks exposing a lawyer's incompetence, and risks him handing the client a loss. Most probably hope to reach a settlement to avoid a trial. This case offers a trial and nothing else.

10.6 The matters in this case are quite complicated and extensive, and deal with unfamiliar items, and so will be enormously time consuming and challenging for most firms.

10.7 Any new firm coming in at this point might not care much about the trial result, and not try very hard, and not try to know all of the facts, putting me at a huge disadvantage.

10.8 I will want to be very involved in preparing for the trial and the case presentation, because:

- a. This is about a WWII airplane upon which flew my father, who died in June 1967.
- b. The plane was the last of the squadron, for which for 9 years I have been the historian.
- c. I was subject to an estimated 200 offenses by the Defendants.
- d. Airplanes have parts with unfamiliar names and I want to be sure all is presented correctly.

I expect it will be very hard to find another firm to work with me, when I have not already paid them \$486,418 as I have to Krabill.

10.9 The most likely scenario is that I will be unable to find any counsel, and will have to continue on a pro-se basis, through which I will suffer irreparable harm, a loss of 100% of the \$576,000 in legal fees I have already spent to develop this case as shown in Exhibit 6, a loss of any potential recovery from the defendants, and potentially a huge liability to Defendants' lawyers based on Rule 167 agreements.

## **XI. Personal Costs**

11.1 In October 2011 I put all of my belongings in a storage locker in New Jersey, and visited Fort Worth, only to check on the restoration of my WWII plane, planning then to visit some places where my dad was during WWII, and then to settle down somewhere, get a job, get married, and start a family for the first time in my life. I found many problems with the airplane restoration, and so rented a car, and stayed in hotels in Fort Worth for two months. In January 2012 I rented an apartment in Haltom City, expecting to stay here for nine more months. Instead I have been stuck living here for six years, during which I went from 52 years old to 58 years old, in a completely empty apartment with only a desk and bed for the first four years. I have been unemployed for 8.5 years. My marriage and opportunity to have children of my own have been put off for six years and perhaps forever. The only reason I am here is to process these lawsuits and then to find an endgame for these planes. This suit has therefore placed my life on hold for six years, and the impact of losing Krabill will be devastating to my life and cause.

11.2 This suit and Krabill's bills and actions have been enormously stressful to my loved ones – it is almost killing my 89-year-old mother, and is stressful to brother, sister, and many others who care about me.

## **XII. LPCH Representations**

12.1 LPCH has made many legal representations to me and needs to make good on them. Two of these are in Exhibit 8.

12.2 LPCH's website proclaims: "Lynn Pinker Cox & Hurst, LLP: High-Stakes Litigation, Dallas, Texas. At Lynn Pinker Cox & Hurst, LLP, **the courtroom is where we shine**. **When you have to go to trial, we're exactly the kind of team you want on your side."** But in the 153<sup>rd</sup> they refused to go to trial, and now refuse to do so in this case.

12.3 LPCH has a brochure on their lobby coffee table, the first thing that greeted me as a visitor, with the firm name and only one word: **“Unstoppable.”** **That is what I contracted for,** a firm that is not stopped. **Now they are asking you to stop them.**

12.4 Krabill often told me regarding law firms: **“You get what you pay for.”** I paid for LPCH to take my cases to trial, and paid an ungodly amount, and now he won't give me this.

12.5 I put up with Krabill's treatment of me solely to get his firm's expertise at trial, and paid unreasonable and astronomical invoices, believing LPCH's assertion they are the best trial firm in Texas. I deserve to get what I paid for, and what the firm legally represented.

12.6 Krabill has often boasted of doing work for Southwest Airlines.

12.7 If Krabill refuses, then his boss, Mike Lynn, should assign another lawyer from his firm to pick up the case. I have paid \$486,418 to this firm, including retainers, to get their supposedly great trial skill. The LPCH website has photos of 16 smiling partners, and with a trial six months away, and Krabill saying he is all ready for trial, there is time for at least one of these to learn about and prepare this case for a jury. If I were a trial lawyer, I would be eager to take any case I could to trial. All 16 of LPCH's lawyers should be fighting over the opportunity to present this. The Honorable Judge Susan McCoy said most lawyers would love a client with an ability and willingness to pay, and who is still passionate about his case.

### **XIII. Other Thoughts**

13.1 During WWII, which was the event at the core of all of my efforts, people worked together toward a common goal no matter what they thought of each other. Krabill, and LPCH, who represent to the public that they are a trial firm, should focus on, and own, the ultimate goal, which is to get the bad guys. The Texas Rules state: “Lawyers, as guardians of the law, play a vital role in the preservation of society.” LPCH should fulfill their obligation to society.

13.2 The Texas Rules also state: “A consequent obligation of lawyers it to maintain the highest standards of ethical conduct.” LPCH’s motion is completely unethical.

13.3 LPCH should have the humility to admit their imperfections and their fault.

13.4 LPCH should recognize that I have fulfilled my part of the bargain by paying them an enormous \$486,418 in eight months, analyzing everything they gave me to review, and putting up with their disrespectful treatment of me without fighting back.

#### **XIV. Comparison to a Marital Divorce**

14.1 Lawyers treat these motions to withdraw like they are no big deal, and they aren’t for the attorney. He has many other clients, so his life is not impacted at all – he keeps making money just as he did the day before, and couldn’t care less. But the client loses all the expertise built up, and must try to find a new attorney, which can take a long time and is very treacherous.

14.2 This is very much like a divorce in a relationship where the man is the bread winner, and in this case making a lot of bread. He dumps the spouse, and all the unattached women want him, the rich lawyer, so he is thrilled. But the spouse, i.e. the client, is older, less desirable, someone fewer people want, and has an enormously painful road ahead.

14.3 It says in the Bible “He who divorces a woman causes her to commit adultery,” and that is what I feel like when I get divorced by these lawyers, and have to go try to meet someone else, who will just take advantage of me, use me, and dump me. It is massively poor.

14.4 The Honorable Judge Susan McCoy asked why would an attorney withdraw from a client who is able to pay, and is passionate about the case, and I expect it is the same reason some men divorce their wives – because they have found someone else, and Krabill has another client. Krabill now wants quickie divorces.

14.5 **Again, these divorces are immensely, immensely painful for the recipient.**

## **XV. This will require only three weeks of Krabill's time**

15.1 Krabill on March 8 indicated he was all ready to go to trial in this case (initially set for March 20), and so the amount of interaction I will have to have with Krabill, and him with me, will be for a very limited time. He will only be required to work with me for maybe three more weeks in his life – two weeks to prepare for trial, and one week for the trial. He can do it.

15.2 Perhaps it will “hard” for poor Kent Krabill to represent someone with whom HE has created friction. Well you know what is also hard? Writing a check for \$146,000 for two months of legal work out of one's life savings when one has been unemployed for 9 years is very hard, and almost heart-attack inducing, but I did it. Writing a check for \$180,000 more for two months more of legal work out of one's live savings when one has no income for nine years is even harder, but I did it. Writing checks for a total of \$486,000, a huge percent of my 58-years of life savings, for 10 months of legal work is very, very hard, especially to someone who is extremely verbally abusive and disrespectful of me, but I did it. I have done hard things for a very, very long time only to get Krabill's expertise at trial, and he, too, can do something hard.

15.3 If this motion is granted, Krabill and LPCH might spend a lot more than three weeks responding to the lawsuit I will file against Krabill and LPCH, and responding to complaints to the State Bar to terminate his and their licenses.

## **XVI. Argument for Equal Treatment**

16.1 **Krabill was at least equally responsible for what happened with Berman (and I believe 100% responsible), and so it is only fair to make us equal in the rulings on these motions.**

16.2 **He got his way, his motion granted, in the 153<sup>rd</sup>, and to be fair I should get my way on this motion.**

## **XVII. Related Issue – Status Conference on Trial Date**

17.1 Krabill has wanted a status conference on this case to move up the trial date from the current January 22, 2018.

17.2 I, too, would like it to be sooner, and this is critically important so I can start work on my plane JR to get it ready for a June 2019 D-Day 75<sup>th</sup> Anniversary celebration. I would also like to have this before the 153<sup>rd</sup> case goes to trial.

17.3 If Krabill is kept in, then, because he is already up to speed, it is asked that, if defendants counsel is present and approve, that the parties be permitted to work together to determine an earlier trial date, and even in another court if necessary for that to happen.

17.4 I have had this case delayed for 2.5 years, and be outstanding for four years, it has been massively harmful to my life and lives of those around me.

## **XVIII. Conclusion and Prayer**

18.1 Plaintiff asks the Court to find that:

- a. I have “followed the rules,” and enthusiastically hired six law firms, and for the three prior ones had legitimate concerns, so due to factors beyond my control I have had a very hard time finding representation in Texas.
- b. LPCH made representations which they knew I would rely upon.
- c. The Texas Disciplinary Rules of Professional Conduct commandment “A lawyer shall not withdraw from representing a client” is an extremely serious command.
- d. **Good cause does NOT exist.**
- e. Krabill caused the mediation failure by: i) selecting a mediator who is inflexible and rude with a preference for mediator orders, ii) refusing to follow my instruction to reject the settlement, and iii) being extremely irritating, and, knowing he was being

extremely irritating by my telling him I was going to go to the bathroom to get away from him, continued therein to the point I couldn't take him anymore.

- f. **There are unique circumstances here – i) Krabill is the sixth firm retained, ii) all is done except for the trial, and iii) there was an interaction with Berman, which make it likely that no other attorney will step in. In addition, this case has gone on for four years, and the legal fees are over half-a million dollars.**
- g. **I will suffer an enormous material adverse effect** if this is granted, with probably the entire failure of this cause, the loss of \$576,000 in legal fees, loss of five years of my life I have devoted to this cause, loss of any recovery from the defendants, the possible liability for defendants attorneys fees which could be huge, and numerous other adverse consequences.
- h. Krabill has unique experience in this case which will be hard for another attorney to replicate.
- i. **The tiny benefit to Krabill is infinitely far outweighed by the enormous life-changing costs to me, and to the cause of justice.**
- j. **Above all simply look at:**
  - 1. At 11:45 p.m. June 29, 2017, Krabill had no “good cause” or grounds whatsoever to withdraw.
  - 2. He violated his code of ethics all day by refusing to communicate with me and refusing to let me not take the settlement.
  - 3. **He verbally abused me until I couldn't take him anymore, jumped to my feet, blurted out something to him – I don't know what, and left. This is all I did to him!!!!!!!!!! This does NOT rise to the level I should have my causes fail!**



4. I told Gary Berman what I thought of him in one word. This is between Berman and me and has nothing to do with Krabill – and is not sufficient.
  5. I gave Berman a friendly love-tap, such as my 89-year old mother gives me! This has NOT been determined to be a criminal act, no charges have been filed yet, and my attorney for that expects even if charges were filed they would not result in a conviction.
- k. **Krabill has billed an average \$62,970 per month for each of the past 9 months, and for the first 8 months, including the retainer, I have paid 95% of what was billed, paying an enormous \$486,418.**
- l. **Krabill is making a mountain out of a mole hill, solely so he can avoid having to take a case to trial, perhaps just so he can work on his oil company deal, which was the primary function for which I hired him, based on repeated representations made to me by him and his firm. I paid him this enormous amount of money, and put up with his treatment of me. This would be immensely harmful to me.**
- m. **If this motion is approved, find that the only cause is because Krabill simply doesn't feel like continuing, and has elected to breach his contract with me.**

Plaintiff prays the Court DENY Attorneys' motion, DENY attorney any right of attorney to charge for this appearance, and grant Plaintiff other relief as to be determined.

Respectfully Submitted,

Seth P. Washburne  
5200 Meadowcreek Dr, Apt 2060  
Dallas, TX 75248

## Exhibit 1: Plaintiff Seth Washburne's History of Seeking Legal Representation in Texas

1. On June 19, 2012, I asked the attorney for my New York investment partnership (closed in March 2009) if he could recommend any lawyers in Texas, and he recommended a friend from law school. We exchanged emails, and spoke on October 9, 2012. On January 9, 2013, I contacted him when ready to proceed, and he replied January 16 he would call in the next few days. On March 2, 2013, I still had not heard back from him, and emailed him I would find another lawyer.
2. On March 2, 2013, I emailed Scott Perdue, a local warbird person, and asked if he could recommend a lawyer, and he replied: "Chris Lyster of Shannon Gracey is the best I know in town." I emailed Chris, he met me March 5, 2013, and **I retained him first.**

Chris drafted a petition, and I emailed Scott Perdue March 22: "I received a draft from Chris on Monday, and I found it disappointing. He sent me a revised one today that failed to include many changes I told him about, had misspellings, bad punctuation, etc., so is again disappointing. Several times he has said he would call me or send me something, and then did not do it. I am wondering if these are all red flags that I should terminate him and get someone else." I continued to work with him, though.

On March 27, 2013, I replied to an invite from Jennifer Cameron of Shannon Gracey inviting me to their party to watch the Final Four final at a country club, writing: "Jennifer, I do not wish to attend the basketball party. I hired Shannon Gracey because I am an aggrieved party, and am in no mood to go to such a party." Jennifer did not know who I had retained, and rather than simply ask me she forwarded my email to everyone in Shannon Gracey. Chris Lyster said this made him sort of a laughing stock in his firm.

Chris neglected to ever tell me Texas was a "notice pleading" state, and I was surprised he left out most of the details of what happened, and I wanted to include these, leading to some friction. On May 27, 2013, 4.5 years ago, I emailed Chris expressing concerns, e.g. that he was neglecting my case, and he replied that he was terminating the relationship.

3. On May 31, 2013, I contacted Lois Case at Noteboom, who referred my case to a Mr. Suddereth, who declined to take it. She suggested I contact Slack & Davis.
4. I contacted Slack & Davis and met with them June 7, 2013, and they were interested in the case. On June 16, 2013, **I retained them second**, with a \$50,000 retainer.

Slack & Davis worked on the petition, but similarly did not tell me this was a notice pleading state, leading to some friction about what to include. On July 9 the partner I worked with emailed me: "Sometimes an attorney and client pairing is not a good match. This is one of those cases, and we urge you to seek out another attorney who is better suited for the kind of attorney-client relationship that you want and need," and withdrew. To their credit they returned my retainer, writing off about \$15,000 in charges.

5. On June 6, 2013, while looking up aviation law firms in Dallas I found William Angelley. I met him June 11, 2013, and he was interested in the case, but I chose Slack & Davis believing I needed a larger firm. Now I re-contacted Angelley, but he was busy. He recommended Anderson, Riddle & Kuehler in Fort Worth.
6. On July 12, 2013, I contacted Geff Anderson of Anderson, Riddle in Fort Worth. Geff replied July 16, 2013, “we would like to meet with you in person before we agree to represent you,” but could not do so until July 29. I waited the 17 days to meet him, and as soon as he came into the room he said he had already decided to not take the case, but said he liked to tell people in person. He gave me the names of three attorneys, and I called each of them, and only one answered: Kevin Vice in Royse City, 30 miles east of Dallas. He was available to meet that day, and so I drove directly to meet him.
7. On July 29, 2013, I met with Kevin Vice of Mayo, Mendolia & Vice (“MMV”), and **I retained him third**. He filed a suit for me against a trucking company for damage which occurred to one of my DC-3s while it was being loaded on a truck. He next filed the Terry suit, and then the VFM suit. **Problems with Kevin Vice of MMV are in Exhibit 2**. Vice quit on me July 14, 2016, just 8 weeks prior to a trial in this case September 12, 2016.

In July 2016 with Vice threatening to withdraw:

8. On July 5, 2016, I again contacted Chris Lyster, now at Lacy Lyster. Chris was not interested in representing me again. I asked if he could refer me to someone, and he recommended Frank Hill of Hill Gilstrap. I met with Frank July 7. He agreed to take the Terry case to trial for fixed \$75,000, and the VFM case for \$100,000. He said he had only presented one case to a jury in the prior year. He had no interest in any of the facts of either case, and it wasn't clear if he had even looked at either petition. He spent the entire meeting describing financial arrangements he made with other clients, across a wide price range, seemingly trying to gauge my reactions to the amounts. I asked why he didn't want to discuss the case, and he said the only thing that mattered was agreeing to a dollar amount. This made me uncomfortable and so I did not hire him.
9. On July 6, 2016, I again contacted Shannon Gracey, and received a reply July 8 from Joe Spence that they would not represent me.
10. On July 12, 2016, I contacted Kelley Hart, and received a reply July 13 that they declined.
11. On July 12, 2016, I spoke to Frank Newman at Decker Jones, who declined on behalf of himself and the firm. He recommended Gary Werley, Robert Haslam, and Puls Haney. The first two never replied to me.
12. On July 14, 2016, I contacted Puls Haney, and set up a meeting July 18, and was invited back July 20, at which time a \$50,000 retainer was requested, and I provided this, and **I retained them fourth**, for the Terry case, but they refused the VFM case. **Problems with Puls Haney are in Exhibit 3**. Puls Haney is the only firm I terminated.

13. On July 15, 2016, I met with a firm in Addison, which did not accept the cases.
14. On July 20, 2016, I heard back from Brian Benitez at Cutler-Smith, previously an associate at Kevin Vice's firm, who knew my cases very well, who declined the VFM case.
15. On July 21, 2016, I contacted the Law Offices of Jennifer K. Gjesvold in Hurst for the VFM case. I met her July 22, 2016, and **I retained her fifth**, for the VFM case, July 23, 2016, and for the Terry case soon after. **Problems with the Law Offices of Jennifer K. Gjesvold are in Exhibit 4.** This firm quit on me.

As issues arose with the Puls Haney and the Law Offices of Jennifer K. Gjesvold I had to again into contact law firms.

16. On August 26, 2016, I met with Brad Brown of Jackson Walker in Dallas, who declined the cases. He recommended Andrew B. Piel of Harrison Steck.
17. On August 26, 2016, I spoke with Andrew B. Piel of Harrison Steck in Fort Worth, who sounded perfect, having an interest in WWII. I waited 10 days to meet with him, and the morning of the meeting, September 6, 2016, he emailed me he had a medical matter arise and could not take the cases.
18. On August 29, 2016, I looked at the 352<sup>nd</sup> docket for firms presenting cases, and emailed David Clem of KRCL in Dallas. I believe I did not hear back from them.
19. Also on August 29, 2016, from the 352<sup>nd</sup> docket for firms presenting cases I emailed David S. Kohm Associates. I believe I did not hear back from them.
20. On September 6, 2016, I contacted Blaies & Hightower, and two days later they declined.
21. Also on September 6, 2016, I contacted Albert, Neeley, but they declined.
22. On September 15, 2016, I contacted Doug Uloth in Addison, who declined.
23. On September 15, 2016, I met with John Roper of the Law Office of John Roper in Dallas, who later indicated his docket was too full to take on the cases. He said these should be at a big firm, and recommended Kent Krabill of Lynn Pinker Cox & Hurst.
24. On September 16, 2016, I contacted Michael J. Henry in Fort Worth, who replied he would not be able to represent me.
25. On September 19, 2016, I used the Texas State Bar referral system and was directed to Mansfield & Mansfield in Hurst. We set up a meeting, but I was now considering LPCH and subsequently cancelled the meeting.
26. On September 16, 2016, I contacted Kent Krabill of Lynn Pinker Cox & Hurst, LLP, and met with him September 19, 2016, and **I retained him sixth**.

Note: This is not written to in any way disparage anyone, but rather to demonstrate to the court that I have sought to work with other firms in good faith, and found legitimate concerns.

## **Exhibit 2: Problems with Kevin Vice of Mayo Mendolia & Vice**

On June 22, 2016, I met with Vice, and asked him what he had determined in three years, for my \$240,000, and what his strategy would be for the trial. Vice first told me that to determine where the money went, we needed a forensic audit of Terry's computer. I had provided Vice a summary of where all the money went, and there was never a question about stolen money, so he seemed to not know this basic fact of the case.

Vice next told me relative to a missing navigator's dome: "We'll tell the jury Terry's plane did not have one before he met you, he bought one for you, and now his plane has one, and so that is evidence he stole yours." I replied: "But he had two of these." Vice replied: "We won't tell the jury." Vice said the same about a missing radio operator's chair, and when I stated "But Terry had four of these," Vice again replied "We won't tell the jury."

These two statements were astonishing because it appeared he wanted to provide misleading information to a jury. Furthermore, we say Terry auctioned off my navigator's dome, and Terry had recently asserted the radio operator's chair was found in proximity to my area (i.e. mine was the one in his area), so Vice also did not know these basic facts, which would have blown up his statements. I voiced my concerns to Vice, and he defended his "We won't tell the jury" line by calling it "circumstantial evidence."

On July 11, 2016, Vice emailed me stating he would not continue unless I agreed to never "communicate with any other person regarding your thoughts and feelings in connection with this firm...unless you are speaking with another attorney to bring suit, or unless you have written approval from the firm," and would require a liquidated damages provision of \$25,000.

On July 13 I replied to Vice that I had paid him almost \$500,000 in legal fees (\$95,000 in the trucking company suit, \$240,000 in the Terry suit, and \$140,000 for VFM), had paid almost every bill the day I received it, was fully paid to that date, had never once asked for a reduction of a bill, and been a friendly and good client, and thought this was disrespectful to me. Also I thought it would prohibit me from talking about the suit at all, and said I could not agree to this. On July 14, 2016, Vice replied that motions to withdraw would be filed that day. I lost this counsel because I had a problem with him wanting to mislead a jury.

Vice was sort of a 1-man shop, with a partner who does estate work, and only one associate helping him at the time, and it appeared he took on more cases than he could handle, and so also violated Texas requirements by "neglecting" my case.

Vice said for every case he created manila folders for each cause of action, with the relevant documents, and in all the documents I picked up from him I found only two such folders, each with only one photo in them and no words, and so for my \$240,000 he had done virtually nothing to prepare this case for a trial which was only 8 weeks away.

Vice never in three years interviewed fact witnesses such that they forgot things, and never sent me final versions of filings unless I requested them. The main thing I got from Vice was long emails, and then, after \$400,000 on these two suits he quit, because he didn't want me to tell anyone how what kind of a lawyer he was at trial.

Note: This is not written to in any way disparage anyone, but rather to demonstrate to the court that I have sought to work with other firms in good faith, and found legitimate concerns.

### **Exhibit 3: Problems with Puls Haney Kaiser**

On July 14, 2016, I contacted Kelley Puls of Puls Haney Kaiser. On June 19, 2016, I met with Puls and Haney, and Haney was great to show me the type of computer screen the court has, and offer to take me down there and show me the courtroom layout, and I liked Haney.

Late on June 19 Puls called and said they would take the case for a fixed \$100,000. He told me he wanted me to meet his partner, Stephanie Kaiser, and asked me to drive 45 minutes over to his office the next day to meet her. I read about her background, came up with some questions to show interest, and drove over.

On July 20, despite my spending 1.5 hours in traffic solely to go meet Kaiser, she was going over loan documents and refused to even poke her head in, so I never met her.

Puls then said he'd prepare a contract, which was a surprise, not previously a goal for the day. This was presented to me, with a 50% price increase, for \$150,000. I had to have that fixed. A pen was presented, as if I should sign it right there, without taking it home to review it.

The contract allowed them to terminate and keep all of my \$100,000 at any time if I did not accept their advice. I believe this was illegal under Texas Rule 1.02: Scope and Objectives of Representation. (a) a lawyer shall abide by a client's decisions: (1) concerning the objectives and general methods of representation.

As soon as I signed the contract, they insisted I drop two defendants, and narrow the claims against defendant Terry, so they refused to present the case for which I had just hired them.

I asked what happened if the case never went to trial, and Puls laughed and said "Then WE come out ahead!" It appeared he wanted to get the better of me.

I decided it would be better to change the contract to pay them for their actual time.

I received an invoice referred to as "finalized." They billed me 3.9 hours, together at \$900 an hour, \$3,510, for a "work session regarding possible expert witnesses," when a perfect expert was already identified. Puls billed \$675 twice for the same phone call. Puls billed 3.5 hours on August 3 to "Prepare for hearing. Review Motion and Response and research regarding same," to prepare for a hearing for a motion to substitute, and another 3.5 hours the same day for a 0.1 phone call with me regarding substitution, and email regarding the cancelling the hearing, a total 7 hours, \$3,150, to prepare for a substitution hearing, which appears to have been cancelled two days before. There were many other examples of what appeared to be overbilling.

Puls defended the invoice for several days, and then called it a draft which should never have been sent. I repeatedly asked for a corrected invoice, saying I was eager to pay him, but he refused to ever provide a corrected invoice. Instead he refunded all of my money, writing off \$16,495 of charges, which I estimated should have been \$5,470.

Note: This is not written to in any way disparage anyone, but rather to demonstrate to the court that I have sought to work with other firms in good faith, and found legitimate concerns.

#### **Exhibit 4: Problems with the Law Office of Jennifer K. Gjesvold**

For the museum case about malicious prosecution, Gjesvold impressed me that she accessed a criminal records database, and seemed to know the criminal court side. She said she could handle malicious prosecution. She did not know then-defendant Monk, and was independent. She said she had many cases that created case law, and often quoted her own cases. She said a retainer of \$60,000 would probably cover all the costs for the museum case, roughly a fixed-price deal. She stated she adhered to highest ethical standards with regard to billing.

I felt good that I had a fixed \$100,000 cost with Puls Haney, and \$60,000 for Gjesvold. Gjesvold set me up on the e-file system, which no one else had done. Soon I realized Puls Haney might not work out, and asked if she could handle both cases, and she said yes.

On July 22, 2016, her retainer agreement had no provision to return any unused portion of the initial fee, and typos: “billed in .06 minute increments,” “five percent (3%).” “three percent (5%).”

Late on July 31, 2016, a Sunday evening, she called wanting my financial advice on setting up a \$1.5 million 10% 30-year annuity her firm would offer, and after about an hour I got the impression she wanted me to fund this. We set up a meeting August 6, and she asked me to sign a confidentiality agreement about the use of the funds and source of income, but she told me about this instrument July 31 without any such request. After hearing her out on August 6, I emailed her that only insurance companies are allowed to issue annuities, and declined.

Gjesvold wanted me to work with a videographer to create a movie of all the missing parts, estimating this might cost (I think) \$70,000, and be similar to ASPCA ads she saw at night on TV for lost puppies. She said this had never been done before, and would be objected to, but she could get it in. I talked to the videographer, who worked for her, and decided to hold up on this.

Gjesvold emailed me August 9: “The whole point in litigation is to take somebody’s time or money or both.” I replied: “I do not want to take this approach. Other people have done this to me, and it has been bad, and I don’t want to do it to them. I think the emotion that goes with this is also not good in the long run. Also regarding Buzz Deitchman...he seems like a nice guy. He also had a heart condition or cancer last year from which he is recovering. So please do not do things to take the defendants time and money.” She replied: “So, you do not want to litigate? Then you need to settle and drop the case.” So we had different styles.

Gjesvold billed 16.2 hours on the substitution motion, despite Puls Haney sending her one. When Puls asked why it took so long, she replied and cc’d all of the defendants’ counsel blaming this on me. I had signed four of these, so it was not my fault. I asked for a retraction for defaming me and she provided it.

I agreed to split the \$60,000 retainer into \$30,000 retainers for each case, but after just three weeks she told me the money would soon be all gone and to send more. I asked her to please send an invoice and she said she only sends these at the end of an assignment, that in the meantime I should keep sending money. I emailed her that her agreement said I would get an invoice at the end of every month, and I deserved one for July 31. She then said she didn’t have to provide one until 30 days had passed.

Note: This is not written to in any way disparage anyone, but rather to demonstrate to the court that I have sought to work with other firms in good faith, and found legitimate concerns.

When 30 days had passed she still refused to provide an invoice, saying she would be guilty of malpractice if she prepared an invoice because there was so much else to do. I finally had to issue a stop work order, demanding she cease everything until I get an invoice.

I reviewed Gjesvold's invoice, which was \$21,007, and noticed about half the charges were for emails and phone calls to me, for which she said she did not charge, because these were explaining things, and not legal work. I asked her to send a revised bill, and she zero-billed everything and returned all my money. After the check cleared, out of the kindness of my heart on September 1, 2016, I emailed Gjesvold: "As I indicated, I would nevertheless like to pay you for some of the invoice items," and sent her a 12-page PDF and spreadsheet going over all her line items, and agreed to roughly \$10,000 of charges for July 23 to August 13, but she did not want to negotiate this.

Gjesvold was the most off-the-charts stressful person I have ever worked with in my life.

### **Problems with Mark Alexander, who Gjesvold wanted to Add**

Gjesvold asked for my approval to send \$4,000 to Addison attorney Mark Alexander, to advise on one thing, and I reluctantly agreed.

She then wanted to send \$20,000 more to Mark Alexander, and now said he would be a key part of the team. I had expected she would do all the work, at her \$275/hour rate, with her internal associates and paralegals at lower costs, but now it seemed her staff was not up to this, and she wanted Alexander to do much of the work. She said he charged \$350 per hour, so he cost more than she did. Alexander then told me his rate had never been \$350, it was \$450.

I met Mark Alexander, and considered moving the cases to him, but asked to first get my \$4,000 back, and then I would sign a retainer with him. He insisted that that \$500 of my money was Gjesvold's payment to him of a referral fee for a ~\$7,000 case he sent her, so he would not give that back. This led to many emails and he finally reluctantly agreed to let go of my \$500.

For the balance, Alexander said he would take two days to review my petition to see if he wanted to take the case, and charge me \$450 an hour to do this. I expected this would make the entire \$4,000 disappear. I asked if he reviewed petitions for free for new customers, and he replied "Do you work for free?" I asked if he could estimate the cost of the review and he said no. I asked if he could cap the review cost and he said no, but then agreed to check with a partner, and get back to me before doing anything.

The next day I asked him to just return the \$4,000 and not review anything, and he said he would after deducting all of his costs. I said I never gave him approval to do any work. He insisted he could do work without a contract. I sent him his own email to Gjesvold just days before saying he would not do any work without a contract.

Finally he rather angrily agreed to give me back my \$4,000, and told me to never contact him again unless I was sending him a retainer for \$75,000.



Note: This is not written to in any way disparage anyone, but rather to demonstrate to the court that I have sought to work with other firms in good faith, and found legitimate concerns.

## **Exhibit 5**

**Horrific Mediation June 29, 2017 for Tarrant County Cause #153-275478-14 at  
Office of Gary Berman, 2027 Young St, Dallas, Tex, due to  
Kent Krabill of Lynn Pinker Cox & Hurst, LLP, 2100 Ross Avenue, Suite 2700, Dallas, TX  
As Remembered by Seth P. Washburne, Plaintiff**

### **Background**

Defendant Charlyn Hospers has told untruths about me, including that I “cornered” a woman named Dana Wood in the airplane hangar, which was greatly insulting to me. One of the reasons for this suit was to require Wood sit for a deposition and explain that she was never “cornered,” and she mostly did. I have paid more than \$300,000 in legal fees to get mostly retractions to numerous misstatements Defendants told, which defamed me. Defendants in a settlement wanted confidentiality, though, such that all these retractions could never be shared. I could never say I never cornered Dana. The only reason I wanted to go mediation was then for a mediator to explain the confidentiality problem and find a solution.

I had been a Plaintiff in three prior mediations, with:

1. Kay Elliot in Fort Worth October 17, 2012, against Charlyn Hospers and the Vintage Flying Museum over a rent dispute.
2. Wade McMullen in Fort Worth March 30, 2015, against a trucking company.
3. Ross Stoddard in Dallas May 16, 2016, against the Terry defendants, which failed.

I picked Elliot from a list provided me, and for the other two my prior counsel asked me if these were ok. Krabill did no such thing with Berman, and instead he alone picked Berman, who, unbeknownst to me, has a reputation for being very “in-your-face.”

### **Arrival at Deposition**

Berman’s office is in a small standalone building, with a hall down the middle, three rooms on the right, and on the left a secretary’s room, a kitchen area with bathroom, and another room. I was shown to the last room on the right, and told I could help myself to kitchen items.

The kitchen area had a roughly 20-foot long counter, with glass-faced refrigerators under the counter at both ends, with water and soft drinks, with handles across the tops of these. I pulled on the left one, and it did not open. I pulled on the right one, and it did not open. This was odd, to have locked refrigerators. Investigating, I realized the door hinges were closest to the center of the counter, such that I had been tugging at the hinge point. Because there were two, this seemed like a simple problem to fix: they could just roll these out and switch places. Then someone standing between these could easily open either one. I walked by the secretary’s office, and kindly and respectfully mentioned this to her. I was just trying to help.

Returning to the assigned room, I noticed it was a mess. Heavy duty extension cords extended from the right and left walls to the table, such that one could trip over them. A sideboard on the left had a broken piece of wood seemingly from furniture. A sideboard on the far wall had five magazines strewn over it at different angles, one having on the cover in big

letters “SUICIDE.” This is a sensitive word in my case so I didn’t appreciate seeing this. The conference table itself had an overly large glass bowl with about 3 Kit Kat bars, which seemed lame, and was distracting, a pen holder, a sign for the internet connection, and a box of Kleenex.

This was an important day, and I wanted to have no distractions, and so I decided to neaten up the room. I arranged the magazines in a fan, moved the conference table’s four items to the sideboard, moved the broken piece of wood there, and knelt down to fold the extension cords neatly under the cabinets on either end. Now I felt ready for the mediation.

Krabill appeared at the doorway, didn’t say hello, and looked over the room. Seeing him survey the room, I said “I straightened up the room up a bit, and moved things to the sideboard.” Krabill’s first words of the day to me were then: “You did what?! Who do you think you are to move things in someone else’s office?! This is why everyone hates you! Didn’t anyone ever tell you not to touch other people’s stuff?” Then, perhaps remembering that my dad died when I was 7, yelled at me: “Didn’t your mother every teach you not to touch other people’s stuff?!”

I didn’t reply. Krabill set down his backpack and went to get some water. I put everything back in the distracting mess it was when I came in.

## **Mediation**

1. Berman sits down, and starts to summarize the case, but only talks about the airplane restoration, and says nothing about the arrest, so seems to know nothing about this case. Krabill informs him.

Berman tells a story of two super rich people who spent \$3.5 million each fighting over an insignificant \$10,000 billboard, then one said to settle it because his private jet was waiting to take him somewhere to play golf, seeming to suggest that: a) my horrific, very personal, ordeal was akin to an insignificant billboard, and b) I was in the same league as these super rich people, when this has been enormously painful for me financially.

Berman says lawsuits are purely financial decisions; look at how much money one will make vs. the cost, i.e. to completely ignore any aspect of seeking justice.

Berman states “Juries hate rich people.” I ask for a pad of paper to take notes, and he calls his secretary and asks her to bring me one and she does.

Berman proudly states “Most mediators are like rabbits, jumping from room to room. I don’t do that,” putting down other mediators.

Berman is about to leave, and I have said nothing, and ask “Can I add some things,” wanting to tell him the reason I requested mediation, that this was about confidentiality, and he rebuffs me and says no, he has all he needs, gets up, and leaves the room.

2. Berman returns and announces “We have a big problem. They insist on confidentiality.” I thought “Yes, this is what I wanted to tell you about.”

I ask if I may now please explain why I requested this mediation, and can finally speak, and provide the arguments in Exhibit 7. I ask if he wants to write down anything I am saying, and he says no, that no one could care less about anything I think. He leaves.

3. Krabill has been typing on his laptop. I ask “May I please learn what you are working on?” Krabill says something like “None of your business.” A while later I ask him again, and he does not reply. I say “I just am wondering if you are replying to emails, or working for me,” and he won’t reply. Later because I have been talking, I say “It would make me feel really good if you typing up what I am saying,” and he replies “We often type notes when talking to a client,” being evasive and refusing to say what he is typing. Finally after getting no reply about six times I lean over just a little in my chair to see if he is in an email program, and he barks at me: “Don’t you know that’s rude?!”

At 10:24 a.m. I hear a ping on my phone, and see there was an e-filing, and say “Hey, there was something filed just now.” As I scroll down I see it was “Filed by: Kent Krabill.” It is a motion to compel defendants’ net worth statements that he was typing.

This is Kent Krabill – evasive, rude, refusing to communicate with me, despite my paying him \$450 an hour, \$7.50 per minute, to be there.

4. Berman returns and says he got them to give up the \$250,000 liquidated damages, but any settlement will still have to have confidentiality. I say I would have to sleep on this, but he states no, we have to reach an agreement that day or never. I ask if I can conditionally agree to confidentiality, and confirm this later in our meeting, but he insists no, I must agree to it at that moment before any more discussions occur. I realize I can reject the dollar amount later, so will have more time to think about confidentiality, so agree, and explain this to Krabill, that I will still think about confidentiality.

I decide to write out a list of all the things I would give up being able to say if I agree to confidentiality, and write down eight items, and want to think about each one of these.

5. Krabill starts criticizing me: “Why is it we can’t find a single person who likes you? Jim Terry doesn’t like you. Pat Mahaffey doesn’t like you. Dana Wood doesn’t like you.” He has said this same thing to me before. I reply that they are defendants. I told him there were plenty of people around the museum who liked me, and added “and we have my mother and sister.” He replied “Oh I’ve talked to your mother!” I raised my voice slightly to ask him to stop criticizing me, and he said if I raised my voice once more he would quit. He could say anything he wanted to me, and I had to sit there and take it.
6. Since I was a boy I greatly disliked anyone who used the word “d\_mn,” but solely due to Defendants action of putting me in jail I now on very rare occasions want to say it out loud. I once did when Krabill and his associate Stephen Cole were on the speakerphone with me, and Cole said he very offended, and Krabill backed him up, but I did not know if this also bothered Krabill or he was just backing Cole. In this mediation room I did not want to offend Krabill and so I asked him, and he is evasive, refusing to communicate:

Me: Is it ok if I use the word d\_mn?  
Krabill: We have talked about this.  
Me: Well, I remember Stephen didn't like this, but I don't know about you.  
Would you be offended?  
Krabill: You know the answer.  
Me: No, I really don't, will you please just tell me, so I don't offend you?  
Krabill: "You know what I am."

7. Krabill at one point tells me "You have serious problems."
8. Krabill I asked if we were going to get the net worth statements for the defendants, because of the juries-hate-rich-people comment, and said Hospers could be wealthier than I am, and told him I am definitely not rich. He angrily snarled at me "Yes, you are rich!"
9. Berman returns and says the most the defendants will offer in a settlement is \$30,000. It appears to me the day is over, so I tear the top two pages off of my legal pad, and slide it in Berman's direction. He then says he is going to prepare a "mediator's order" or some name like that. As he turns to leave he reaches for the legal pad, but, realizing this will continue, I, too, reach for it, and say I'd like to keep it. He angrily yells at me "Do you want the pad or not?!"
10. Krabill I ask what is a mediator's order, and Krabill for the third time is evasive, refuses to answer the question, and tells me something like "You'll find out."
11. Berman returns a while later with an offer to settle for \$65,000, and starts ripping me apart, telling me that based on meeting me he was sure the jury was going to hate me. He holds his right index finger under his chin and yells at me: "LOOK AT MY FACE! LOOK AT MY FACE! YOU ARE GOING TO LOSE YOUR CASE!"
12. Krabill, after Berman left, next started in on me insisting I take this offer, telling me I want peace. I told him no, I wanted justice. It is 12:40 p.m., and Berman has announced he has a big case coming in at 1 p.m., and so we had only a very short time to conclude this. I am under immense stress now.
13. Krabill I ask questions such as what we could get for pain and suffering, and he answers something like "We talked about this in September, we talked about this in October, we talked about this in November, and we talked about this in December, but the problem with you is you don't listen." He refuses to answer these questions. I ask him "Will you please try to just give me the answer and not preface every reply with all the self-defense stuff?" But he still won't answer my questions directly.
14. Krabill I tell that on my list of nine things I would give up if I agree to confidentiality a key one is that Hospers announced in a meeting of the museum volunteers that I had "cornered Dana." I want to add just one item to the order: that Hospers would announce in a meeting of the volunteers just four words: "Seth never cornered Dana." Krabill replies: "She will never agree to that."

15. Krabill I tell I don't care about the cost of going to trial, and I want to go to trial, because I don't want to agree to confidentiality, and I might get more than the mediator's order. I say it would be an interesting life experience, and even say I thought it might be fun, and note I have watched Perry Mason. For some humor I added that my favorite Three Stooges episode was "Disorder in the Court," and that my mother watches "Judge Judy." Krabill replied that trials were definitely not fun. I fully understood that, and am sure this one will not be, it is extremely serious, but for the record this time again I told Krabill I wanted to go to trial.
16. Berman returns. I want to ask him about this, and start to say "Could we add..." and Berman interrupts me and booms back at me (not an exact quote) "You want to make this into the Magna Carta, but it's not! You are not going to tell me how to do my job!! I have done 30,000 mediations! You don't want to follow the rules!" He continues yelling at me, and I never do tell him about these four words. He leaves.
17. Krabill berates me non-stop. I had made my list of 8 things I would give up being able to say about Hospers if I agreed to confidentiality, and had only reviewed the first six, and wanted to read the last two, after scanning down the list, but could not read even the first one. I repeatedly asked Krabill "Please just give me a few minutes to review my list," but he would not stop. I asked him "Please be quiet," and he said "You hired me to give you advice, and I am giving you advice." I replied "Well I am not sure I want to take your advice," and in a combative tone he replied "I will make a note of that" and typed in his computer. Again I look down at my paper and Krabill demands I accept this offer.

**I could not take any more of Krabill's constantly interrupting my thoughts, and announced I was going to go to the bathroom to get away from him.** The bathroom door was locked, so I walked toward the front door to see if another room was available.

18. Berman I see in the secretary's room, and he comes out and says I cannot be out in the hall, and walks me back to my room. Just before I get there I want to ask him why we can't add just these four little words "Seth never cornered Dana," which I expect Hospers would not care at all about, and start to say "I still don't know why..." and Berman spins around, standing in a rigid posture with his right arm outstretched pointing toward the door and yells at me: "IF YOU DON'T LIKE THE WAY I DO MEDIATION THEN THERE'S THE DOOR!!!!!"
19. Krabill I had asked in December to please settle the suit, and he and his assistant Stephen told me that was not the time to talk about settling, one only did that after all the depositions and motions were done. He had billed me \$200,000 since December, and this in addition to \$140,000 billed by the prior attorney, and so to now insist I take an offer for \$65,000 seemed unethical.
20. Krabill I told "I want to check the box "No," and he replied that only he could check the box, so I told him to, and **he refused**. He insisted I had to take this settlement offer.

21. Krabill, had been all over the map on damages:

- a. In our first meeting he just grinned and said there was no way to predict what a jury would award.
- b. For pain and suffering, in that meeting or soon after he did say juries don't typically award a lot for this unless one has seen a doctor, but held out hope that anything was possible.
- c. For punitive damages, in December 2016 he stated these were limited to \$200,000, which was a shock to me. He again said anything up to this was possible.
- d. For punitive, around May he told me the \$200,000 punitive number he gave me was wrong, that it is actually \$750,000.
- e. In a conversation around this time he insisted he ask for \$1 million for pain and suffering, and \$1 million punitive. I said I thought that might make me sound greedy, like I was trying to get rich, but he insisted these were the numbers we should ask for.

Now, at the very end of this deposition, Krabill, who had led me down the primrose path for 10 months with high ideas of punitive damages, and possibly a lot for pain and suffering, from low to most recently asserting \$2 million, while billing me \$264,831, suddenly, and remarkably, had 100% clarity on exactly what damages I would receive to the penny. He told me emphatically: "You will never get one penny more than \$8,995."

This is the number I remember him saying, but it could have been slightly different – it was my actual damages. This added another huge dose of stress to the moment. It may have contributed to my finally perhaps getting "fed-up" with Krabill. To the 153<sup>rd</sup> case Defendants who read this, I assume Krabill did not believe this, the damages could still be in the millions, but he said this to try once again to force me to settle so he could move on.

22. Krabill I then had to shield myself from, with my left elbow on the table, my left hand on my forehead, leaning to the right away from him, as if protecting myself from a bomb blast, as Krabill, on my left, started in again. I was obviously under enormous stress.
23. Krabill I asked yet again to please, please give me a few minutes of quiet to think about the final three items on my list of things I would give up saying about VFM if I agreed to confidentiality, and he replies something like "You just need to accept this offer."
24. Krabill simply would not respect my every-word-out-of-my-mouth begging for silence, and repeated everything he said before in a very disrespectful tone. The following is not the exact words, but similar to what happened. Again, I am hunched over to my right away from him, my left hand on my forehead protecting myself from him, looking down at my paper, and talking with enormous stress in my voice:

Me: "*Please* just be quiet for a few moments so I can think about this."

Kr: "No, I am not going to be quiet, you need to accept this offer."

Me: "*Again, I just need to think about the last few things on my list.*"

Kr: "You have had plenty of time to think about this, now is the time to accept this."

Me: "I know, but just be quiet please for a few minutes!"

Kr: "You hired me to advise you and I am advising you."

Me: "I know, but just stop talking please!!!"

Kr: "You need to accept this offer so you can start focusing on the Terry suit."

Me: "But just be quiet for a few minutes!!!"

Kr: "You want peace, you need to accept this offer."

25. Around now, as best as I can explain it, Krabill has filled all the registers in my brain with his constant carping, such that I could no longer respond rationally. I couldn't take him anymore, and had to escape from him immediately. I jumped to my feet, grabbed the legal pad with both hands, and threw the legal pad straight down on the table, so it only travelled about 6 inches from when I released it. I blurted out something like "Why can't you be quiet!!!"
26. I picked up the two pieces of paper upon which I had written, spun around, and opened the door to leave. Berman was standing in the doorway, to the right, very close, as if he had been eavesdropping on the entire conversation.
27. Berman had a) refused to care about the main reason I hired him, b) yelled at and insulted me all morning, c) and refused to let me even suggest a simple four words to add, and d) cost me potentially the \$65,000 settlement; \$100,000 more to now go through a trial, months more of my life on this, the possible loss of Krabill who has billed me \$515,000, and opening the possibility I could owe defendants fees of more than \$150,000, being hundreds of thousands of dollars. Because Krabill had deliberately pushed me to a breaking point when I acted not as I usually would, I told Berman "You are an as-\_\_\_."
28. It is acceptable practice when someone does a good job to pat them on the back. Some young men also give their buddy a light tap on the upper corner of their chest when they do something good, which I call an "atta-boy," short for "that-a-boy," going with the words "Way to go!" In this case I wanted to give Berman an atta-boy, but meaning "Great job, buddy, you just ruined my mediation, and cost me \$700,000." I extended my right hand to about 6" away from his upper right chest, about 4" in from his shoulder, stopped my hand, and then advanced it, giving him a very light tap, a facetious 'atta-boy.  
  
As an aside, after I visited my 89-year old mother and told her about this, as I stood at the door about to leave, she told me something, I don't recall what, and, unaware she was doing the same thing, she reached out with her right hand and gave me a light tap with the back of her hand on my chest. I immediately told her that was almost the same as I did to Berman. Perhaps I got this from her. It is a sign of affection.
29. Berman, staying in character, again yelled at me "You struck me! I am calling the police!" I immediately said "I greatly apologize, you could hear I was extremely upset." He again yelled at me "I am going to call the police!" I very humbly said "Again, I greatly apologize, please forgive me." He yelled: "Get out of my building right now!"
30. Krabill that afternoon sent me a letter he was going to withdraw from both cases.

31. Krabill on July 24 sent me a June invoice for \$64,968.94. If I had agreed to the mediator's order \$65,000, and paid Krabill's June invoice, I would have received a net \$31, and now been subject to confidentiality. This would not have given me any remote sense of "peace," but rather just the opposite.
32. Hospers' letter terminating my lease in 2012 stated anything I did not take with me would be considered "abandoned property," which she would effectively steal from me. During depositions in this case in April 2016 I learned that a large roughly 20' by 3' wing flap from my dad's original verified WWII Pacific War airplane was left behind because defendant Mahaffey told me nothing else in the South Hangar was mine, which was not true. There are also more than 100 parts which I did not take with me, because Jim Terry, who I hired to restore my plane, refused to turn these over. If I had agreed to settle and confidentiality, I would never be able to complain about the "abandoned property" provision, and could be considered to be agreeing to Hospers "abandoned property" designation, letting Terry or her steal all of these parts from me, impacting this suit. This, too, would not have brought me any "peace."
33. Krabill in this June invoice billed me \$1,060 for "VCE" for "legal research in connection with ethical obligations and conflicts concerning witnessing client engage in criminal act, draft e-mail summarizing research finding." This email was never shared with me despite my paying for it. My act of giving a friendly tap to Berman was not a criminal act. Krabill also billed me an estimate \$1,350 for his making plans to withdraw, including to draft the withdraw letter, demanding I even pay him for withdrawing.

In summary, Krabill:

1. Picked a mediator who does not negotiate but instead sought to impose a mediator order, and has a reputation for being rude, and so was the wrong mediator to choose.
2. Yelled at me repeatedly from the moment he arrived, and was evasive and disrespectful.
3. Violated the "Texas Disciplinary Rules of Professional Conduct, Rule 1.02: Scope and Objectives of Representation, which states: (a) a lawyer shall abide by a client's decisions: (1) concerning the objectives and general methods of representation." He had no legal right to demand I accept the settlement offer.



## Exhibit 6

### Lynn Pinker Cox Hurst amounts Billed and Paid in Washburne Cases to June 30, 2017

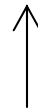
Month	Museum Case			Terry Case			Combined		
	Billed	Paid	Balance	Billed	Paid	Balance	Billed	Paid	Balance
30-Sep	6,181		6,181	7,160		7,160	13,341		13,341
31-Oct	6,117		12,298	56,967		64,127	63,084		76,425
30-Nov	47,564		59,862	22,549		86,676	70,113		146,538
31-Dec	17,858	59,743	17,977	48,638	86,676	48,638	66,495	146,418	66,615
31-Jan	25,507		43,485	73,292		121,930	98,800		165,415
28-Feb	20,053		63,538	60,716		182,647	80,770		246,185
31-Mar	10,789	63,538	10,789	40,039	116,462	106,224	50,829	180,000	117,013
30-Apr	21,672		32,461	4,055		110,279	25,727		142,740
31-May	44,120	6,772	69,809	1,212	93,228	18,262	45,332	100,000	88,072
30-Jun	64,969		134,778	608		18,871	65,577		153,649
31-Jul	TBD			TBD			TBD		
<b>To May 31</b>	<b>264,831</b>	<b>130,053</b>	<b>134,778</b>	<b>315,237</b>	<b>296,366</b>	<b>18,871</b>	<b>580,067</b>	<b>426,418</b>	<b>153,649</b>
<b>Retainer</b>		<b>30,000</b>	<b>30,000</b>		<b>30,000</b>	<b>30,000</b>		<b>60,000</b>	<b>60,000</b>
<b>Net of Ret</b>			<b>104,778</b>		<b>326,366</b>	<b>-11,129</b>		<b>486,418</b>	<b>93,649</b>

Budget Provided in December									
Sep-Nov	59,862			86,676			146,538		
Add'l - low	120,000			115,000			235,000		
Add'l - high	268,500			291,000			559,500		
<b>Total - max</b>	<b>328,362</b>			<b>377,676</b>			<b>706,038</b>		

By MMV	140,000	140,000	(est'd)	250,000	250,000	(est'd)	390,000	390,000	(est'd)
<b>Total</b>	<b>404,831</b>	<b>300,053</b>	<b>104,778</b>	<b>565,237</b>	<b>576,366</b>	<b>-11,129</b>	<b>970,067</b>	<b>876,418</b>	<b>93,649</b>



**The bottom right number shows I have spent \$876,418 in legal fees on these two cases in four years: \$390,000 to Kevin Vice, and an enormous \$486,418 to LPCH!**

## **Exhibit 7: What I wanted to Mediate: My view of Non-Disparage**

I requested this mediation solely to explain to the mediator my view of non-disparage, and to ask him to explain this to the Defendants, in hopes he could convince them to drop this.

My feeling is that they owe me: a) my out of pocket costs, and b) something for pain and suffering. Confidentiality is an extraneous item unrelated to these. I see no reason why confidentiality should extend beyond the arrest.

### **1. Hospers has done all she can to destroy me and my reputation. Her offer of non-disparage is akin to me saying to let me:**

- a. Announce to all the museum volunteers that Hospers fired a favorite person, turning many people against her, despite this being a lie.
- b. Announce to all the museum volunteers that Hospers chased a little boy around the hangar and corned him, making more people dislike her, despite this being a lie.
- c. Refuse to respond to her stating another tenant yelled at her “You’re going to bleed!”
- d. Refuse to respond to allegations another tenant stole more than 100 of her parts, despite the agreement allowing access to Meacham Airport requiring anyone who conducts illegal activity be evicted.
- e. Throw her out, requiring she move 20 tons of parts in 30 days, with initially nowhere to go, which would require 7 flatbed truck loads and 10 U-hauls the latter she would have to move all by herself.
- f. Have this contributed to one of her planes being seriously damaged.
- g. State that whatever she does not take with her will be mine, stealing parts from her (e.g. my verified 1942 rare Pacific warbird airplane’s original 15-foot by 3-foot flap which she has refused to return).
- h. Offer her a highly insulting offer to move her parts outside to an unprotected area for the cold winter months of November – March, with no ability to use the wash room.
- i. Through the eviction, lead to her airplane incurring enormous damage in moving.
- j. Call the police and have her body-slammed against a patrol car, and her right hand twisted up on her back tearing a ligament such that she cannot even lift a coat hanger.
- k. Tweet a photo of this police action, with lies that she tried to run someone down, resisted arrest, and was handcuffed.
- l. Lure her back to the same location with a promise she would not be arrested, then have the police arrest her, film this while laughing, and share it with others.
- m. Have her thrown in jail, and transferred to Mansfield prison, for an 18 hour ordeal.
- n. Next I’ll get the FAA to revoke her pilot medical, which she has had for 33 years and is required for flying a plane, suspended and almost revoked, require she submit to psychological evaluation, require she appeal to get her medical back, and place be on thin ice with the FAA for the rest of her life, within a hair of losing her pilot’s license.

After I have done all of this to her, then I will demand confidentiality, that she can never tell anyone I did these things to her, and if she does or tells anyone she never cornered the little boy, and that I have her airplane parts she would owe me \$250,000. The mediator removed the \$250,000 penalty, but still she could sue me if I spoke about the any of these items. There is not a single true thing Hospers could say about me that would be disparaging to me, because I never did a single thing wrong.

## Exhibit 8: Representations Made by Lynn Pinker Cox & Hurst, LLP

1. This Google search result states “the courtroom is where we shine,” and “When you have to go to trial, we’re exactly the kind of team you want on your side” – but LPCH refused to take my case to trial.

### Lynn Pinker Cox & Hurst, LLP | High-Stakes Litigation, Dallas, Texas

[www.lynnllp.com/](http://www.lynnllp.com/) ▼

At Lynn Pinker Cox & Hurst, LLP, the courtroom is where we shine. When you have to go to trial, we're exactly the kind of team you want on your side.

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2. This is the cover of the brochure that is the first thing visitors see, on the coffee table in the waiting area. This is the main word I relied upon: “UNSTOPPABLE.” I deserve to get what was represented to me, for which I paid almost \$500,000.



Exhibit 96: 2017 08 03 - 48th MTW hearing transcript

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REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 048-268735-13

SETH WASHBURNE AND  
THIRSTY 13TH, LLC,  
*PLAINTIFFS,*

- *versus* -

JAMES TERRY,  
PACIFIC PROWLER, LLC,  
PACIFIC PROWLER NONPROFIT,  
GREATEST GENERATION AIRCRAFT,  
PATRICK MAHAFFEY,  
TERRY ROGERS AND  
PERRIN WARBIRDS, INC.,  
*DEFENDANTS.*

IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

48TH JUDICIAL DISTRICT

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MOTION TO WITHDRAW  
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On the 3rd day of August, 2017, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable David L. Evans, Judge Presiding, held in Fort Worth, Tarrant County, Texas.

Proceedings reported by machine shorthand.

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VOLUME 1

MOTION TO WITHDRAW

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P R O C E E D I N G S

(Thursday, August 3, 2017, 9:03 a.m.)

THE COURT: All right. At this time I'm going to call Case Number 48-268735-13, Washburne, et al versus James Terry.

The matter pending before the Court this morning is a motion to withdraw. I have reviewed earlier the motion to withdraw and the plaintiffs' reply to the attorney's motion to withdraw.

Mr. Washburne, are you present?

MR. WASHBURNE: Yes, sir.

THE COURT: All right. Well, Mr. Washburne, at this time you may make your presentation as to why you should -- why I should retain your counsel in this matter, and then I'll hear a short response from Plaintiffs' counsel. That ought to short-circuit some of the issues.

I notice we have a lot of other people here, but I don't think you have anything to add to this matter. Am I correct?

MR. DEITCHMAN: That would be true, Your Honor.

THE COURT: All right. Very well.

Mr. Washburne, if you will use the podium, please.

1 MR. WASHBURNE: Yes. Okay. First of all,  
2 Your Honor, I did not know I would have to actually be  
3 speaking today, though I appreciate the opportunity. I  
4 have summarized everything I have wanted to say.

5 THE COURT: Not necessary for you to speak  
6 if you don't want to. If you want to let your papers  
7 speak for you, that's appropriate, too, but if you have  
8 a few comments that you want to add to it without  
9 rehashing everything you have written, I don't mind  
10 that.

11 MR. WASHBURNE: Okay. Thank you. I  
12 appreciate an opportunity, and I would like to just say  
13 a few things then.

14 Primarily, it would be that -- that I  
15 believe there is no good cause here for withdrawal. At  
16 12:45 p.m. on the day of mediation, we -- I still had  
17 an attorney, and I believe the events subsequent to  
18 that do not rise to the level of which my attorney has  
19 a right to withdraw.

20 I think he is -- I'll just say that I don't  
21 believe that the events -- there's been some perhaps  
22 bad blood, if you want to use that expression, but not  
23 really. I like Kent as much as I ever did, and I  
24 believe we could work together constructively on these  
25 cases.

1                   And, you know, I -- I believe to find  
2 another lawyer would be almost impossible. And he is  
3 good at what he's done, and I want him to continue. I  
4 would hope -- the Honorable Judge Susan McCoy is a very  
5 good judge. She asked the defendants' counsel what  
6 they thought, and they thought, oh, Seth can find  
7 another lawyer easily, let him out.

8                   And so I -- I believe the defendants'  
9 counsel here would love to get rid of Krabill because  
10 they think he is a good attorney, and I think their  
11 opinion should not matter. So I would -- anyway, I  
12 guess those are the main things.

13                   It's a very difficult position to be in. I  
14 just have to play by the rules here. I have had  
15 horrible experiences with lawyers I have hired so far.

16                   And, you know, I hate to summarize them  
17 there, but I wanted to know that it wasn't my fault,  
18 these things other people did. And every part, you  
19 know, I embrace them, you know, I work with these  
20 people constructively, enthusiastically, and I just  
21 have been massively shafted by the prior attorneys.

22                   And at this point I've been billed an  
23 enormous, enormous amount of money, and I paid all my  
24 bills, and now he wants to quit. And it's just  
25 incredible, absolutely incredible.

1 I guess I'll leave it at that. Everything  
2 else is in there. But I sincerely hope you will make  
3 him stay in the case.

4 THE COURT: All right. Thank you very  
5 much.

6 All right. Let me hear from Counsel.

7 MR. KRABILL: Thank you, Your Honor. My  
8 name is Kent Krabill. I'm here with my partner  
9 Britta Stanton.

10 THE COURT: Uh-huh.

11 MR. KRABILL: I brought her along because,  
12 as you know, I have certain privilege issues with my  
13 client on what I can report to the Court and what I  
14 can't on what's --

15 THE COURT: I don't think there's anything  
16 more than you to tell me that you have good cause --  
17 that you believe you have good cause for -- that you  
18 can't work with your client on it.

19 MR. KRABILL: Yes, Your Honor.

20 THE COURT: I don't really care to have you  
21 say things adverse to your client in open court and  
22 before me and -- which may or may not color my opinion  
23 of your client.

24 MR. KRABILL: Yes, Your Honor.

25 THE COURT: Let me -- let me just point out

1 to everybody the true nature of the relationship here,  
2 because it may have escaped the parties, and I think it  
3 does often.

4           The relationship with counsel that's  
5 terminable at will always has been there. May be  
6 certain contractual rights that exist between  
7 attorney/client with regard to retention of files, the  
8 delivery of files, retention of financial interests in  
9 the case and items of that.

10           But the relationship is one in which either  
11 party can terminate at will to -- except when the  
12 matter is before a tribunal. And when the matter is  
13 before a tribunal, the motion is framed a motion to  
14 withdraw as counsel and to withdraw from the course --  
15 the relationship with the Court and be excused from  
16 serving as counsel in the Court case.

17           Counsel can't just quit a case, even after  
18 judgment is entered, contrary to some people's opinion.  
19 But that's the facts today, and it may change at some  
20 point in the future, especially with prior judgments.

21           Interestingly enough, in my life I have run  
22 into a judge that told me that I got to stay in a case  
23 even though I was about 80 grand in the hole, and I got  
24 to put another 45,000 in it to try the case out.

25           Client and I turned out to be fabulous

1 friends, and I got paid eventually, but it taught me  
2 that indentured servitude was not covered in all  
3 aspects by the amendments after the Civil War.

4 I don't have any discretion except to grant  
5 it unless it's going to harm the trial setting. That's  
6 it. Trial setting is in January of '18, and I don't  
7 have any discretion under the law, Mr. Washburne.

8 I'm going to abate the case for 30 days so  
9 that there is no activity and that you're not put at a  
10 disadvantage with anybody on any pending motions or  
11 anything of that nature and give you 30 days to retain  
12 counsel. And that's the law. That's the oath I took  
13 was to follow the law, and that's where it is.

14 Any complaints that you have with Counsel  
15 about his early termination would be taken up in a  
16 different forum and on different claim matters.

17 You may sit down.

18 MR. KRABILL: Thank you, Your Honor.

19 MR. WASHBURNE: May I speak, Your Honor?

20 THE COURT: You may, but I have ruled.

21 It's not going to change.

22 MR. WASHBURNE: Well, if you could -- may I  
23 ask this for clarification, please? This  
24 disciplinary --

25 THE COURT: I'm not a very unclear person,

1 Mr. Washburne.

2 MR. WASHBURNE: I just want --

3 (Simultaneous conversation between the  
4 Court and Mr. Washburne.)

5 THE REPORTER: Stop talking when he is  
6 talking.

7 THE COURT: I don't think there was  
8 anything unclear about what I said. The motion is  
9 granted. I tried to explain the policy behind it. And  
10 I have abated the case for 30 days.

11 Now, do you need a longer period of  
12 abatement of the case in order to retain counsel?

13 MR. WASHBURNE: Yes, Your Honor.

14 THE COURT: And how long do you need?

15 MR. WASHBURNE: I'm going out of town for  
16 the rest of --

17 THE COURT: I'm not concerned about --  
18 where is the out of town? What is the nature of the  
19 out-of-town trip?

20 MR. WASHBURNE: To research my father's  
21 World War II squadron. I planned this --

22 THE COURT: How long are you going to be  
23 out of town?

24 MR. WASHBURNE: For four weeks.

25 THE COURT: All right. I'll put that on

1 top of the 30 days. 60-day abatement. And if you need  
2 additional time after -- when you get back from your  
3 research on the squadron and you haven't made any  
4 progress, you can petition the Court for an additional  
5 abatement period. Probably puts the trial setting in  
6 jeopardy, but that's where we are and that's how we'll  
7 handle the matter.

8 I'll issue my own order of abatement. I  
9 don't need any assistance from anybody else. I'll sign  
10 an order of withdrawal. I'm going to want an order of  
11 withdrawal that lists his address, his phone number,  
12 and an email address, and a fax number.

13 Yes, sir?

14 MR. WASHBURNE: With all due respect, Your  
15 Honor, I just wonder what this Texas disciplinary rules  
16 where it says these conditions under which --

17 THE COURT: I have -- he has to have  
18 sufficient grounds under his opinion to withdraw from  
19 the court and tell me I cannot -- I cannot continue to  
20 represent this person. Once he makes that -- makes  
21 that representation as a lawyer to the Court that he  
22 cannot represent the person, my only concern at that  
23 point is how much additional time, if any, do I need to  
24 grant the parties.

25 Now, there are times when a motion to



1 withdraw comes upon the eve of trial, seven days, ten  
2 days. And at some point, you know, if the lawyer is  
3 deemed by the judge to have sat on his -- sat on his  
4 haunches and not taken care of his business and  
5 presented his motion to withdraw, then the judge just  
6 says, You should have told me about your problem  
7 earlier on. You are going to trial. Good luck, I'll  
8 see you next week.

9 MR. WASHBURNE: Your Honor, just for my  
10 future --

11 THE COURT: I'm not out here to educate  
12 you. I'm not a law professor, and I'm not anything  
13 other than a judge. If you need an attorney to teach  
14 you the law, then hire one or read the law.

15 MR. WASHBURNE: I just want --

16 THE COURT: I'm not up here for  
17 interrogation, Mr. Washburne.

18 MR. WASHBURNE: I'm sorry, Your Honor.

19 THE COURT: You know, this is -- this is  
20 nothing more than -- this is simply a motion to  
21 withdraw. I have granted it. I have given you  
22 sufficient time to retain counsel.

23 We're adjourned. Thank you.

24 (Proceedings adjourned at 9:14 a.m.)

25



Exhibit 97: Mediation List tried to Review



- Write a mediation proposal?

Give up part about:

1. Fixed mechanics - told - ok II d ✓

\* 2. Cond Dams - told ~~-----~~

3. 30d notice term - ok

4. Insults other - ok

5. Puke to and - ok

6. Didn't look at Terry - ok

- 7. Arrest - this -

8. Criminal

9.

10. Legal fees covered by mutual disburse.

(400,000)



