

Bill Cash

From: Philip Bates <pbates@philipbates.net>
Sent: Sunday, May 31, 2020 1:58 PM
To: Bill Cash; jwirt@wirtlawfirm.com; pcwirt@wirtlawfirm.com
Cc: jim@butlerwooten.com; ramsey@butlerwooten.com; Nathanson, Paul J.; Haynes, Antonio M.
Subject: RE: Sport & Wheat - Synovus, et. al. - Your e-mail last Friday afternoon

Mr. Cash,

I think tomorrow's conference needs to be limited to your proposed 30 (b) (6) deposition. The purpose would be to avoid the need for a MPO.

Since we just got your notice Friday afternoon, we won't be prepared by tomorrow to talk about topics. As I stated, we can have a meet and confer about the topics once the work mentioned in my e-mail has been accomplished.

A 30 (b) (6) notice imposes significant legal requirements. Our client is not going to show up unprepared to meet those requirements. One complication is that some of those at Synovus most knowledgeable are immersed just now in actually administering the PPP.

We also won't be prepared in the morning for a Rule 26 (f) conference as state in my e-mail. We need those answers from you so that we might confer among ourselves and then have a meaningful Rule 26 conference.

Davis Polk will provide the call in number and passcode for tomorrow.

Thank you

Philip Bates

From: Bill Cash <bcash@levinlaw.com>
Sent: Sunday, May 31, 2020 1:32 PM
To: jwirt@wirtlawfirm.com; pcwirt@wirtlawfirm.com; Philip Bates <pbates@philipbates.net>
Cc: jim@butlerwooten.com; ramsey@butlerwooten.com; Nathanson, Paul J. <paul.nathanson@davispolk.com>; Haynes, Antonio M. <antonio.haynes@davispolk.com>
Subject: Re: Sport & Wheat - Synovus, et. al. - Your e-mail last Friday afternoon

Hi Philip,

Thanks for the response.

We're happy to confer on all of these points, as proposed, at 9am tomorrow. Given that that is less than a day from now, I think the answers to all the good questions you raised can wait until we talk. That's what a 26(f) is for.

I have a conference number we can use. The number is 701-801-9548. I will not be sending a formal calendar invite.

Bill Cash III
Levin Papantonio

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From: Philip Bates <pbates@philipbates.net>
Sent: Sunday, May 31, 2020 1:20:29 PM
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Cc: jim@butlerwooten.com <jim@butlerwooten.com>; ramsey@butlerwooten.com <ramsey@butlerwooten.com>;
Nathanson, Paul J. <paul.nathanson@davispolk.com>; Haynes, Antonio M. <antonio.haynes@davispolk.com>
Subject: Sport & Wheat - Synovus, et. al. - Your e-mail last Friday afternoon

CAUTION: This email
message is **EXTERNAL**.

Thank you for your email.

Your 30 (b) (6) notice, which you chose to “spring” upon us (your words) in a 3:04 Central time Friday afternoon email, is a nonstarter. There is no way that Synovus could be prepared to respond to that notice consisting of 15 separate topics in five business days, or even a week after that. The topics are overbroad, unduly burdensome, and, for the most part, not relevant to any claims that Plaintiff has asserted. Synovus is reviewing the topics and identifying potential 30 (b) (6) deponents, and assembling the information that any such deponents would be required to review before a deposition, but we need to have a meet and confer about the timing of the deposition. Then, later, once Synovus has had time to do the things noted above, we can have a meet and confer about the topics.

We ask that you withdraw the notice, at least as to its provisions relating to the date of the deposition, until Synovus and its counsel have adequately reviewed the topics, and until the parties have had a chance to have a meaningful meet-and-confer regarding the 30 (b)(6) notice. As you have noted your availability on June 1, we kindly request a telephonic meet-and-confer at 9:00 Central/ 10:00 Eastern time on that day. We are happy to circulate an invite and dial in.

If you decline to meet-and-confer, kindly so state.

We also note that it is exceedingly odd for a plaintiff’s lawyer to send a 30 (b) (6) notice before he has seen any documents other than our motion to dismiss. Ordinarily, one seeks a 30 (b) (6) deposition following the study of written discovery responses and documents.

If you are unwilling to withdraw the 30 (b) (6) notice as to date, leaving the date unspecified for now (until, again, Synovus and its counsel can become prepared to have a meet and confer with you about the topics), then we will be forced to file a motion for protective order. In that event there will still be no deposition on June 5.

With respect to your request for a 26 (f) conference, it is also odd that you would press for discovery while at the same time apparently advocating for MDL status (see your 5/22/20 5:38 pm email to Mr. McDonough et. al.). Other plaintiffs’ lawyers who have filed similar lawsuits are asking defendants to “stay” everything until the JPML decides the MDL motions. Assuming that you agree to meet-and-confer on Monday, we would be interested in hearing any explanation as to whether it is your goal to plow ahead despite the MDL motions and despite the Amended MTD you know we will file, or wait on Court decisions.

In that regard, as to the Rule 26 (f) conference, it seems obvious to us that the Court’s ruling on our forthcoming Amended Motion to Dismiss will be dispositive of the legal issue and will thus mean either no discovery, or will elucidate what discovery is appropriate. It seems difficult to really address what discovery is appropriate until that decision by the Court.

For a Rule 26 (f) conference to be meaningful you also obviously need to tell us what you have in mind regarding a Discovery Plan (Rule 26 (f) (3)). A conference will likely be unproductive unless we have that information, first, so our Team can confer amongst ourselves prior to any conference with you.

In addition to reviewing the details of your proposed Discovery Plan, we have these questions:

1. What do you propose regarding the timing of initial disclosures (Rules 26 (f) (3) (A) and 26 (a) (1) (c)?
2. What do you consider to be the discovery subjects (Rule 26 (f) (3) (B)?
3. Do you see a need for a protective order regarding ESI, and if so, for what purpose? (Rule 26 (f) (3)(C)?
4. Will plaintiff agree that any claims of ACP or WPP will be noted in discovery responses along with a privilege log contemporaneously provided to the opposing party disclosing sufficient information about the withheld evidence or documents so the opposing party can decide whether to contest the claim? (Excepting communications between client and attorneys of record.)
5. What do you propose for a date to disclose experts (Rule 26 (a)(2))?
6. For that matter, what should be the subject matter of any expert testimony in this case, in your view? (The claim Sport & Wheat has made seems to raise a legal issue, not one for expert testimony.)

While the Court's scheduling order may preliminarily address some of these topics, it also states that "[m]odifications may be made to this order upon consideration of the parties' joint report."

Please let us know whether you will attend a meet and confer regarding your 30 (b)(6) notice at 9 am central/ 10 am Eastern Monday June 1.

Please let us know when you will share your proposed Discovery Plan with us and responses to the additional questions above. We ask that so Synovus counsel can arrange their calendars.

Thank you for your consideration.

Philip Bates