

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

DEONNE MAGGETTE, ET AL

PLAINTIFFS

V.

**CIVIL ACTION NO. 2:07CV181-M-A
LEAD CASE**

**BL DEVELOPMENT CORP.
d/b/a GRAND CASINO TUNICA;
ET AL**

DEFENDANTS

CONSOLIDATED WITH

**McKINLEY JACOBS, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
FANNIE JACOBS, DECEASED; ET AL**

PLAINTIFFS

V.

CIVIL ACTION NO. 2:07CV182-M-A

**BL DEVELOPMENT CORP.
d/b/a GRAND CASINO TUNICA; ET AL.**

DEFENDANTS

PRE-HEARING MEMORANDUM ON BEHALF OF ROBERT L. MOORE

I. INTRODUCTION

Robert L. Moore submits this memorandum to the Court in order to summarize the efforts that were made by him and by members of his law firm in order to comply with the Court's orders directing his client, BL Development Corp. (hereafter "BL"), to locate and to produce discoverable information in response to the discovery propounded by the plaintiffs to the defendants. Mr. Moore has read, agrees with and adopts the legal arguments set out in the memorandum filed on behalf of BL Development Corp. but is filing this memorandum in order to set forth the factual basis for his statements to the

Court and to show the efforts that were made by him and other Heaton and Moore attorneys in order to bring BL into compliance with the Court's orders.

**II. HEATON AND MOORE ATTORNEYS WERE REPEATEDLY AND
UNEQUIVOCALLY INFORMED THAT ALL DISCOVERABLE
INFORMATION HAD BEEN GATHERED AND THERE WAS NOTHING ELSE
TO BE PRODUCED.**

From the very beginning, and until January 2010, BL reported that everything that was discoverable and relevant to the issues had been gathered and sent to Chicago as part of the Illinois litigation. By way of example, the very first letter from Chris Garcia (former counsel to BL) to Michael Kostrinsky (Harrah's Chief Litigation Officer) requested that BL send all documents to the Chicago firm of Seyfarth Shaw for its use in defending the case:

Given the stakes relative to the allegations in this multi-party wrongful death case, we recommend that before we submit a response to the court to plaintiff's second amended complaint, **it would help to ensure that we have reviewed and considered all correspondence, documentation and agreements by and between Caesars, BL Development and Walters Bus Service.** We appreciate that you are very busy and are dealing with the impact of Hurricane Katrina on significant aspects of your organization's business; to that end, is there a colleague within your organization with whom we can speak to begin the process of gathering and analyzing any pertinent documentation in addition to that which we have previously been provided? Thank you in advance for your assistance and cooperation in this regard. (Letter Garcia to Kostrinsky October 21, 2005)

When the case in Illinois entered the discovery phase and an issue came up during the deposition of Tundra Myers (Tour & Travel Manager for BL), the following statements were made on the record:

Chris Garcia - - **“I asked for everything on Walters and I think this did come from the Walters’ attorneys. We were working with the general counsel’s office for BL Development Corp. and we just got all of the documents.”**
(August 25, 2006 depo. of Tundra Myers at p. 83 line 24)

Despite the fact that “everything” had been asked for by Mr. Garcia and despite the fact that “any and all” “documents of whatever nature” were requested by plaintiffs’ counsel through discovery in Illinois, the following responses were approved and filed by BL in response to the following requests while the case was still pending in Illinois:

REQUEST NO. 1 Any and all writings, computer printouts records or documents of whatever nature containing information relative to the dealings with Walters Bus Service, Marlean Walters or any affiliated person or entity:

RESPONSE: Please see documents BL 0001 through BL 00020.

REQUEST NO. 12: All documentation/records/computer printouts of previous bus trips made by Walters Bus Service of Marlean Walters to the casino.

RESPONSE: None.

REQUEST NO. 13: Identify all agreements written or oral between Walters Bus Service or Marlean Walters and the casino by which Marlean Walters would receive payment or other benefit for each person she brought to the casino who stayed for more than four hours.

RESPONSE: Please see response to Request No. 1. (Responses to Requests for production of documents filed June 22, 2006)

When the case was subsequently filed in Mississippi, Michael Kostrinsky (Harrah's Chief Litigation Counsel); Susan Harmon (Harrah's corporate paralegal); Jill Eaton (Harrah's corporate paralegal); Jennifer Reynolds (Harrah's Vital Records Manager) and Seyfarth Shaw lawyers all made similar unequivocal statements to Mr. Moore and other members of his firm for the proposition that everything had already been gathered up and produced to the plaintiffs in Illinois. By way of example only, the following emails were exchanged:

From: Garcia, Christopher A. [<mailto:CGarcia@seyfarth.com>]
Sent: Friday, December 07, 2007 4:27 PM
To: Robert Moore
Cc: sharmon@harrachs.com; Fardy, Jennifer; Beyer, Justin
Subject: Patrick v. Harrahs

Robert,

I have attached information relevant to your 26(a) disclosures and the opinion that was handed down today by Judge Duncan-Brice.

The opinion is fairly thorough and includes case law from other jurisdictions; so, my hope is that it can be useful for BL Development Corp. in fighting this battle in other states.

In any event, we are in the process of downloading all the transcripts and documents produced in this case per your request. I assume there are no privilege issues between us as we both represent BL Development, Caesars and BL Development Corp.; please let me know if you disagree.

The party is coming to your town Robert--although they may ask the Mississippi Court to stay all proceedings while they appeal this decision in Illinois. Obviously, please do not hesitate to call our team with any questions, any information or documentation, or any assistance with the players or issues that you may need. Most of this crowd will be very uncomfortable in Federal Court and in your neck of the woods.

Talk to you soon.

Christopher Garcia

The attachment to this email consisted of a list of witnesses only and no documents. In Illinois, the only documents produced were bates labeled as BL0001 through BL0020 (previously referenced in the Illinois discovery response set out above) and a disc containing patron data, all of which was later produced to the plaintiffs in Mississippi upon their request.

When formal interrogatories and requests for production were propounded by the plaintiff and BL was contacted for assistance in providing complete responses, the following email contact occurred:

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

From: J Chandley Crawford

[\[mailto:ccrawford@heatonandmoore.com\]](mailto:ccrawford@heatonandmoore.com)

Sent: Tuesday, November 25, 2008 1:25 PM

To: Susan Harmon

Subject: Jacobs & Maggette v. BL Delv. (Our file no.: RM-46698)

Dear Susan:

I don't believe that we have met, I'm an attorney in Robert's office and I have been working with him on the Arkansas bus crash case. The plaintiff's have propounded the attached discovery to us and I need help answering it. Many of the questions asked are things which are not available in our file here in the office and are simply outside my limited sphere of knowledge. Attached are my very rough draft responses. Please review them at your earliest convenience and provide me with your thoughts and guidance and responses to any of them that you know the answer to. You will need to read each response, in some instances I have provided a response based on what I was able to glean from other documents in this suit and the Illinois suit. These responses may not be accurate.

* * * *

Thank you in advance for your assistance and I look forward to working with you.

Regards,

CC

-----Response-----

From: Susan Harmon [sharmon@harrabs.com]
Sent: Tuesday, November 25, 2008 4:43 PM
To: J Chandley Crawford
Subject: RE: Jacobs & Maggette v. BL Delv. (Our file no.: RM-46698)

Nice to be working with you. What name do you prefer? **I will go over all of the questions and get any information we need. I can't imagine there will be anything available that we haven't already accessed in one way or another. ******

Thanks,
Susan

From: Garcia, Christopher A. [CGarcia@seyfarth.com]
Sent: Thursday, May 14, 2009 5:22 PM
To: J Chandley Crawford; Beyer, Justin
Subject: RE:

That discovery in Illinois was limited to personal jurisdiction does not mean we did not produce everything that was relevant to the merits of the case. The jurisdictional issue necessarily involved documents relevant to agency, any relationship between Walter's Bus and the Grand Casino Tunica, BL Development Corp. and Caesars, etc. We produced over 10,000 pages of documents and took or presented 6 or 7 depositions.

From: Jill Eaton
Sent: Monday, May 18, 2009
To: Robert Moore

Robert,

I spoke with Jennifer Reynolds regarding some of the recent requests. She explained that she was deposed in MS for this case prior to its filing. She was asked about the "benefits" of tour groups. **She also performed an extensive search for records and found very little, both hard copies and electronic. If you have a copy of Chris Garcia's file, you should have the documents, unless the recent requests differ from previous requests.**

I would suggest, if you haven't already, reviewing her depo because it appears that the information plaintiff is requesting may be found in her testimony.

Sincerely,

Jill Eaton, CP

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

From: Dawn Carson [<mailto:dcarson@heatonandmoore.com>]
Sent: Wednesday, June 03, 2009 7:05 PM
To: Beyer, Justin; Garcia, Christopher A.
Subject: RE: Jennifer Reynolds

I think the answer to this is yes, but I want to make sure, you have produced all documents to us that you have, not just what you produced to plaintiffs, because the questions to us seem different.

Dawn

-----Response-----

From: Beyer, Justin [<mailto:JBeyer@seyfarth.com>]
Sent: Wednesday, June 03, 2009 7:07 PM
To: Dawn Carson; Garcia, Christopher A.
Subject: RE: Jennifer Reynolds

We've sought to give you everything that we have. The exception to this is documents that were created as a byproduct of attorney work product.

Justin K. Beyer

-----Further Response-----

From: Garcia, Christopher
Sent: Wednesday, June 3, 2009 7:10 PM
To: Dawn Carson, Beyer, Justin
Subject: RE: Jennifer Reynolds

Can't recall what the question was from this email. **We produced public records and have sent you everything that we received from BL.**

Please let us know how we can be of further assistance.

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

From: Dawn Carson [<mailto:dcarson@heatonandmoore.com>]
Sent: Monday, June 08, 2009 2:17 PM
To: Jennifer Reynolds
Subject: Jacobs v. Harrahs

Jennifer:

Please look at these request for production, and make sure there is nothing else you have that you have not already provided to counsel in Illinois.

Dawn Davis Carson

-----Response-----

From: Jennifer Reynolds [<mailto:ReynoldsJ@harrahs.com>]
Sent: Monday, June 08, 2009 5:03 PM
To: Dawn Carson
Subject: RE: Jacobs v. Harrahs

There isn't anything. They might try to connect items 7 and 8 with the manual I gave Mr. Moore, as it outlines the calculation process and demonstrates the use of CMS and other internal systems, but you would know better than me about that.

Jennifer Reynolds

On July 30, 2009 Ms. Reynolds, who identified herself as the one person “most familiar” concerning these matters and the same person to whom Jill Eaton had referred Mr. Moore, testified by affidavit:

A thorough search was performed by me and my department to locate documents and information requested by plaintiffs’ counsel in discovery. I worked with both counsel in Illinois and the attorneys of Heaton and Moore to locate documents or information requested. This included reviewing line by line interrogatory request, request for production and request for admissions. I searched both paper files and computer files with defense counsel by my side to locate these documents and all documents still in our possession were provided. We do not electronically store the records of my department and there is a document retention policy in place which calls for the destruction of our records after a specified time period. (*see* Reynolds depo at 126-127).

Documents which were requested and which could not be located were housed on the Mississippi Gulf Coast and were destroyed by Hurricane Katrina or were documents not kept until the Vital Records Department came into existence in June 2005. Along with the paper files the server that contained the documents was also housed on the Mississippi Gulf Coast and was also destroyed. Some electronic files were downloaded immediately before the hurricane made landfall, but these files were related to critical casino operations and the information requested by plaintiffs’ counsel was not copied and there was no request to retain this information at the time the hurricane occurred. **These facts were determined after a diligent search of both paper and computer generated files, and was confirmed by the Regional Director of Information Technology for Mid-South Region.** Further, I am unaware of any documents that are housed in Atlanta, Georgia.

**III. BL MADE SPECIFIC, UNEQUIVOCAL REPRESENTATIONS
TO HEATON AND MOORE ATTORNEYS CONCERNING THE VERY
DATABASES WHERE RESPONSIVE INFORMATION HAS NOW BEEN
FOUND.**

Despite these broad assurances to the contrary, information has been located and has been produced out of five separate databases. Set out below are some of the specific previous assurances given to Heaton and Moore attorneys concerning these databases which led Mr. Moore to believe and later to state to the court that he had “search[ed] every conceivable database in an effort to locate documents and information requested by plaintiffs’ counsel in discovery” and that he “was unaware of any additional documents responsive to any request for production of documents [and] was unaware of any additional documents when the responses were filed . . .” As Special Master Craig Ball found in his first report, this statement was false, but was not knowingly false (First Report of Special Master at p. 5) and the purpose of this section of this memorandum is to demonstrate why Mr. Moore believed that his statements to the court were true.

A. THE SEAWAY ROAD WAREHOUSE

From the very beginning, the warehouse at the Caesar’s corporate offices on Seaway Road in Gulfport, together with and all of its contents was unequivocally reported to have been destroyed. By way of example, Susan Harmon wrote:

From: Susan Harmon [<mailto:sharmon@harrachs.com>]
Sent: Thursday, December 04, 2008 10:07 AM
To: J Chandley Crawford
Cc: Robert Moore
Subject: RE: Jacobs, et al v. BL Devl (RM 46698)

Chandley,

I hope you are feeling better today. Attached is my rough draft of the discovery answers. Please review and let me know if you agree with the revisions. Please feel free to change the wording as you deem appropriate. Most of this information was obtained from the depositions of Gary Benson, Jennifer Reynolds, Tundra Meyers, briefings by Chris Garcia and the 12/7/07 Order of the IL Court. The questions regarding current advertising impossible to answer. If you need a further answer you can say that we are attempting to gather the requested information. However, our current advertising is entirely irrelevant to the case since at the time of the incident it was done in house by a group housed on the Gulf Coast. **That facility and its contents were destroyed by Hurricane Katrina.** It is my understanding that shortly after BL Development Corp. acquired Caesars we changed procedures and outsource the advertising under the guidance of Mark Connor. I would have to confirm this as to present day.

On August 25, 2006, Tundra Myers (the head of Tour & Travel and who had responsibility for the overnight motorcoach program) testified in her deposition:

P. 56. beginning at L. 19:

BY MR. DUNN:

Q. So, I'm unclear. So, clarify for me the document that immediately precedes BL006, which is the Walters group of documents, that was something that you pulled up off the system?

A. We pulled it from the system, because the documents, the original documents, we did not have access to.

Q. Why is that?

A. Because all those documents were lost during Hurricane Katrina.

Q. The document that is BL006, the Jass Tours document?

A. Right.

Q. That is a copy of an actual original copy that you received, that your casino received?

A. Yes.

Q. Would that information also be located on the computer?

A. Anything after -- it would be on the computer, but the actual copy of this, we would retain now because anything prior to the hurricane, we don't have copies of.

Q. So, all information that was inputted, prior to Hurricane Katrina, the hard copies have been lost, correct?

A. The hard copies are lost, yes.

P. 81, L. 19:

Q. (by Mr. Dunn): You told me that all of the original documents relating to the motor coach trips were destroyed after the hurricane, correct?

A. 2004.

P. 93, L. 19:

Q. (by Mr. Dunn): So, you wouldn't have the ability to pull that document?

A. (by Ms. Myers) Not certificate of insurance.

Q. Would it have been possible for you to have directed someone to pull it for you?

A. There's no document at the Seaway Drive address pre-Hurricane Katrina.

In addition to this deposition testimony, on May 28, 2009, Justin Beyer (a lawyer with Seyfarth Shaw) forwarded a “banker’s box” of documents to Heaton and Moore, which was represented to contain “each and all of the documents produced in discovery” while the case was pending in Illinois. After detailing the contents of the box further, Mr. Beyer highlighted two particular affidavits stated to have been served on plaintiffs in the Illinois litigation - - the affidavits of Tundra Myers and Lance Ewing.

From: Beyer, Justin [JBeyer@seyfarth.com]
Sent: Thursday, May 28, 2009 4:38 PM
To: J Chandley Crawford
Cc: Garcia, Christopher A.
Subject: Tracking number of package

Chandley:

We are sending you down a banker's box of documents that contains each and all of the documents produced in discovery.* * * *
Finally, there are also two affidavits contained in the banker's box which should prove particularly helpful. Both relate to the Caesars' documents storage and its destruction.

These are all of the documents we served on plaintiffs in this matter in Illinois. Please do not hesitate to contact Chris

or me should you have questions or wish to discuss this matter further.

Best regards,

Justin K. Beyer

In this affidavit, Tundra Myers testified consistently with her deposition that:

In my capacity as Tour and Travel Manager, I was familiar with the protocols involving motorcoach travel to the casino in 2004. In October of 2004 all of the motorcoach tour groups were handled through the Regional Office at 11975 Seaway Road Gulfport, Mississippi. Much of Gulfport, Mississippi **including the Regional Office for the casino was destroyed by Hurricane Katrina in September of 2005.** Subsequent to Hurricane Katrina, the law department which existed for the casino at Gulfport Mississippi was closed and the office staff of nearly 800 was dispersed and/or left the employ of the casino. **Archive documents and computer data were lost regarding Tour and Travel arrangements booked through the Gulfport office due to damage from Katrina.**

In his affidavit, Lance Ewing testified that:

In my capacity as Vice President for Risk Management of Caesars, I was familiar with the protocols involving motorcoach travel to the casino in 2004. In October of 2004 all of the motorcoach tour groups were handled through the Regional Office at 11975 Seaway Road Gulfport, Mississippi. Much of Gulfport, Mississippi **including the Regional Office for the casino was destroyed by Hurricane Katrina in September of 2005.** Subsequent to Hurricane Katrina, the law department which existed for the casino at Gulfport Mississippi was closed and the office staff of nearly 800 was dispersed and/or left the employ of the casino. **Archive documents and computer data were lost regarding Tour and Travel arrangements booked through the Gulfport office due to damage from Katrina.**

Mark Conner (Director of Marketing) testified that the Seaway corporate office **“was pretty much wiped out”** by the hurricane. (Depo. of Conner p. 22 line 7). As he testified, “a lot of our systems were incapable after that point so by default, there had to be pretty significant damage because we lost capabilities.” (Depo. of Conner p. 26 line

13). “During the time period before the storm, everything was done out of the Gulf Coast. After the storm, it would have been the day trips, line runs and overnights, so the entire program for what we did, which was once again scrambling to do something.” (Depo. of Conner p. 56 line 1). The media and advertising records that would predate Katrina were in Gulfport and **“I’m sure they were destroyed.”** (Depo. of Conner p. 89 line 13).

Uri Clinton (BL in-house counsel) told Mr. Moore that the documents in the Seaway Road warehouse had been destroyed with the approval of the Mississippi Gaming Commission.

Jeff Cummins (BL Regional Risk Manager) told Mr. Moore that he had gone to Gulfport after the hurricane and everything had been wiped out.

Despite these specific assurances, in April 2010 the Seaway Road warehouse was found to be extant and when it was personally searched by Mr. Moore, the terms utilized for the search and the search efforts were reported to the special master who found that the search had been thoroughly and competently performed by Mr. Moore.

B. THE TUNICA VITAL RECORDS DATABASE

From the very beginning, BL reported to Mr. Moore that this database had been thoroughly searched yet nothing was found. While the case was still pending in Illinois, Susan Harmon asked that a search be performed of the Tunica Vital Records warehouse and after receiving a report from the warehouse manager (believed to be David McGuire) and after being “satisfied” that no responsive information was available, **“Ms. Harmon informed counsel that there were ‘no records’ from that point forward.”** First Report of Special Master at p. 19.

In addition, Jennifer Reynolds testified in her deposition that she was the manager of the very same vital records department as well as the manager of accounts receivable department which was the department responsible for tracking and collecting receivables from bus companies. In her affidavit, Ms. Reynolds also stated that she:

“personally performed numerous physical and electronic searches of all conceivable records, files and electronic systems, **including within the Vital Records database** and Accounts Payables system using keywords such as “Walters”, “Bus Crash”, “Bus Accident”, “WAL05” and “WAL1001”, both in the presence of defense counsel and on my own . . .”

but that she was **“unaware of any additional documents that are responsive to the discovery propounded by the plaintiffs’ counsel.”**

In addition, Tundra Myers, the head of Tour & Travel in Tunica, testified in her deposition that:

P. 72, L. 1.:

Q. (By Mr. Dunn): Was the manifest something that was also inputted on the computer data, or was that simply an original document that was retained?

A. It is not inputted into the system, no.

Q. Would I be correct in saying that the manifest, the original manifest that was submitted by the Walters Bus Company, was that original document destroyed in the hurricane?

A. Yes.

Q. Copies of that document weren't saved or transmitted to another location that perhaps was not lost in the hurricane?

A. Not that I'm aware of, no.

Q. That you are not aware. Someone who is like a keeper of records or administrator of records for the casino in Grand Tunica?

A. Not that I'm aware of, no.

Q. Not that you're aware of?

A. No.

Continuing P. 95, L. 10:

A. Anything prior to 2004, we would not have. Anything after that, or 2005, which the hurricane happened, we

would not have. Anything October 2005 going forward, we would have. Anything prior to that, we wouldn't have.

Gary Benson, the former Senior Sales Manager for Tour & Travel testified in his deposition as follows:

Q. Okay. When you left all those records were kept at the Seaway address. Do you know if they were kept anywhere else?

A. **As far as I know, they were only kept at Seaway.**

Q. Was there any information or any records that we have already talked about that were also kept on computer, like computer back-up or scanned onto the computer that you are aware of?

A. I'm not aware. I'm not aware, no. I'm not aware of that.

Q. Do you in particular know if the insurance information was kept in a separate area or on computer, or would David Cutshall be the guy to ask?

A. That would have been kept in the filing cabinet.

Q. Are you aware of any like computer-generated documents that would have kept a list of the insurance receipts, like the insurance forms from tour operators, anything like that?

A. No. It would have all been there. I'm not aware of it.

Deposition of Gary Benson, p. 52, l. 4 through p. 53, l. 5.

Finally, Mike McGee, the successor to Tundra Myers as the manager of Tour & Travel, was not able to locate responsive paper documents, despite three separate in-person requests by Mr. Moore.

C. THE DELPHI DATABASE

Joe Long, the Vice President of IT testified in his deposition that he was unfamiliar with the Delphi data base but that the persons who would be familiar with Delphi are the employees who use that database at the property level.

Tundra Myers, the Tour & Travel Manager who actually used Delphi at the property level, testified in her deposition concerning Delphi as follows:

Q. Is there some other means, either through the computer or through some written record, that is kept that would reflect how many times, and on what dates, certain tour operators had come to the Grand Tunica Casino?

A. **Only if you know the date and the confirmation number.**

Q. Is there any other way to sort that?

A. **Only if you know the date and the confirmation number.**

Q. And all this information is on the computer, right?

All those documents are -- prior to October, 2004, all those documents are lost, so it is only on a computer, correct?

A. Right.

Q. So, presumably, you would have to just punch in every single day, prior to October of 2004, and just see what comes up, and that way if you don't know about a certain date or certain confirmation number?

A. Yes.

Deposition of Tundra Myers, p. 66, l. 24 through p. 67, l. 21

Ms. Myers was also court ordered by Judge Duncan-Brice to conduct a search of the Delphi database for information concerning Walters from 1999-2004 but reported to

the court, through counsel, that such a search was not possible and that she was unable to locate any responsive information.

Mike McGee, the Tour & Travel Manager after Tundra Myers who also used Delphi at the property level, also stated to Mr. Moore and later also stated to Craig Ball that he was unable to retrieve any historical information concerning the Walter's Group off of Delphi. According to Mr. McGee, Delphi has prospective application, but does not have any retrospective application.

Jennifer Reynolds, at Mr. Moore's request, went to Convention Services and asked that department to make a search of the Delphi software for historical information concerning the Walter's Group, again without any success.

On January 15, 2010, the Delphi database was ultimately successfully searched by Traci Franzone, manager of Convention Services. At first, it was believed that Ms. Myers and Mr. McGee did not have the full administrative rights to search the database. As it turns out, however, neither Ms. Myers nor Mr. McGee knew how to fully utilize the software that they used on a daily basis in their jobs. It was as simple as pulling down a menu and clicking on a button.

D. THE ATLANTIC CITY SERVER

Joe Long, the Vice President of IT for Caesars testified in his deposition as follows:

66-18 He pulled together a CD of all Illinois patrons off of the CMS.

68-7 The CD has all patron data for all Illinois patrons from 1999 through 2005.

73-10 There are no other servers with information other than the server in Atlantic City.

74-19 There is nothing on the server about buses because the applications don't record that kind of information.

The Atlantic City server was searched by Jim Venuti and Sam Dillard at Mr. Moore's request and later also interrogated by Craig Ball. The information produced through Mr. Venuti's and Mr. Dillard's efforts were produced to plaintiffs by Mr. Moore. No new information was obtained as a result of the later interrogation by Mr. Ball.

E. ELECTRONICALLY STORED INFORMATION

I. INFINIUM

Infinium is the accounts payable database. From the very beginning BL reported to Mr. Moore that efforts had been made to locate evidence of payment within the BL system, but without success. By way of example only, the following exchanges of email were shared with Mr. Moore:

From: Susan Harmon
Sent: Monday, December 01, 2008 1:08 PM
To: Jennifer Reynolds
Cc: Vickie Clark
Subject: Jacobs / Maggette bus crash case

Hi Jennifer,

I hope you had a great Thanksgiving! I am answering discovery for the old bus crash case. *Can you find out how much in commissions was paid to Walter's Charter and Bus Tours of Chicago (at any time) or Walters Bus Service or any variation of the name?* It was owned by Roosevelt and Marean Walters. If we don't have records going back prior to 2004, or don't have the records at all just let me know and I will answer that way. Our answers are due Friday.

Thanks for the help,

Susan

Susan,

Hope your Thanksgiving went well, too. Can't believe we are still working on this case! I have checked the bus database and the Accounts Payables records and can not find any record of payment for commission under Walter's Bus Service or to either of the individuals listed.

Jennifer Reynolds
Regional Manager, Accounts Receivable / Inventory Control
BL Development Corp. Entertainment

From: Susan Harmon
Sent: Monday, December 01, 2008 1:24 PM
To: Jennifer Reynolds
Cc: Vickie Clark
Subject: Jacobs / Maggette discovery

Hi Jennifer,

Along similar lines, I am also attempting to answer the following:

Please identify each and every tour bus trip conducted by Walters Bus Service to the Grand Casino Tunica, including dates, number of patrons, total revenues generated and amounts of commissions paid, if any, and dates of payment.

Again, if the information is no longer available as it would have been prior to 10/9/04, please advise.

Thanks,

Susan

Susan Harmon

Paralegal

There were no payments of any kind that I can find.

Jennifer Reynolds
Regional Manager, Accounts Receivable / Inventory Control
BL Development Corp. Entertainment

In addition, in her affidavit, Ms. Reynolds also stated that she:

“personally performed numerous physical and electronic searches of all conceivable records, files and electronic systems, including within the Vital Records database **and Accounts Payables system** using keywords such as “Walters”, “Bus Crash”, “Bus Accident”, “WAL05” and “WAL1001”, both in the presence of defense counsel and on my own . . .”

but that she was “unaware of any additional documents that are responsive to the discovery propounded by the plaintiffs’ counsel.”

When Mr. Ball first went to Tunica on January 15, 2009, Mr. Ball conducted a search of the Infinium database with Jennifer Reynolds, found nothing, and left Tunica stating a belief that no commissions had ever been paid to the Walters Group.

When Mr. Ball traveled to Atlantic City on January 29, 2010 in order to search the Atlantic City server, Mr. Moore went one day early in order to prepare Sam Dillard (VP of IT), Jim Venuti (CMS Manager) and Debbie Hood (Manager Accounts Payable) for the meetings to be held the following day. During the meetings that took place prior to Mr. Ball’s arrival, Dillard, Venuti and Hood stated that based on their research, no payments of any kind had ever been made to the Walters Group. Because Mr. Moore had been provided with a check stub for a return of deposit written by BL to the Walters Group, and at Mr. Moore’s insistence, it was learned that the reason BL believed and represented that there had been no previous payments made to the Walter’s Group was because Ms. Hood had been searching in the wrong division (Eastern as opposed to MidSouth) and did not have full rights to conduct her search. Once she got the full rights and searched in the right division, the commission payments were located and turned over to Mr. Ball upon his arrival.

II. EMAIL

On May 19, 2009 Jennifer Reynolds, at Mr. Moore's request, reached out to Ken Clayton (the Regional Manager for IT in Tunica) who stated that the servers and backup tapes for Gulfport were lost in the hurricane. In January 2010 in preparation for the first teleconference with Mr. Ball, Sam Dillard (VP of IT) sent the following email string to Mr. Moore with regards to the availability *vel non* of email:

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

From: Sam Dillard [<mailto:sdillard@harrahs.com>]

Sent: Friday, January 08, 2010 12:41 PM

To: Robert Moore

Cc: Jim Venuti

Subject: FW: Maggette and Jacobs v. BL Development Corp., et al.; Our File No. RM-46698

Robert,

Here is a consolidated update on the information you requested today and our research to this point.

SYSTEM/HARDWARE: Windows Server

APPLICATIONS: eMail for the Mid-South Caesars

Entertainment, Inc. Region (Gulfport, Biloxi, Tunica)

ORIGINAL LOCATION: Biloxi - On the Casino Property itself

STATUS: The email server for Biloxi was in the computer room in Biloxi during Hurricane Katrina and was destroyed when the computer room was flooded. There were tapes stored offsite at the time that would have included data from this server; the gulf coast region today has no information on the current status of the tapes.

-----First Response-----

From: Robert Moore [<mailto:rmoore@heatonandmoore.com>]
Sent: Fri 1/8/2010 3:12 PM
To: Sam Dillard
Cc: Jim Venuti
Subject: RE: Maggette and Jacobs v. BL Development Corp., et al.; Our File No. RM-46698

Jim, insofar as emails are concerned, does this mean that all emails written in Tunica would be stored on the Biloxi email server? Is historical information concerning email retrievable any other way than from the tapes if located?

-----Second Response-----

From: Sam Dillard [<mailto:sdillard@harrahs.com>]
Sent: Friday, January 08, 2010 2:15 PM
To: Robert Moore
Cc: Jim Venuti
Subject: RE: Maggette and Jacobs v. BL Development Corp., et al.; Our File No. RM-46698

Robert,

Yes, the email accounts/mailboxes for the individuals of interest who you gave me the other day would be located only on the mail server that would have been in Biloxi.

Thanks –

-----Third Response-----

From: Robert Moore [<mailto:rmoore@heatonandmoore.com>]
Sent: Fri 1/8/2010 3:17 PM
To: Sam Dillard
Cc: Jim Venuti
Subject: RE: Maggette and Jacobs v. BL Development Corp., et al.; Our File No. RM-46698

What if these are sent outside the region?

-----Final Response-----

From: Sam Dillard

If the person sent an email to someone else whose mailbox was on a different server, that item could still exist. However, without finding the mailbox for the persons of interest, we won't know who they emailed and won't know which mail servers and user's mailboxes to look in . . .

In February, 2010 Mr. Ball, Mr. O'Connor and Mr. Moore were in Las Vegas ostensibly for the purpose of searching the servers which in fact had not been destroyed in the hurricane and which ostensibly held email and file shares for Gulfport. After two days of wasted effort during which time nothing could be recovered from the server of any value, it was learned that Harrah's was searching the wrong server because its IT (information technology) professionals and outside experts didn't know which of its servers housed the email and file shares. As of the filing of this memorandum, and despite tremendous effort by Mr. Ball and others there has yet to be a single complete email and file share store recovered for any user.

CONCLUSION

And finally, on January 14, 2010, Mr. Moore and Tom O'Connor, (an ESI (electronically stored information) expert who has over 30 years experience as a consultant, author and speaker in the field), spent more than twelve hours of time in Tunica, Mississippi meeting with Jennifer Reynolds, Mike McGee, Ken Clayton, Traci Franzione and speaking by phone with Brandon Foley, Jim Venuti, Susan Harmon, and others; preparing for the meeting with Mr. Ball which was to be held the next day; going over all of these very same databases; having Mr. O'Connor ask all the right questions;

looking for any of the requested information and trying to find anything that might be discoverable but which might have been overlooked. Even then, nothing was found until Mr. Ball arrived the next day.

As the court can see, a non-exhaustive list of the lawyers, paralegals, managers and others to whom Mr. Moore (or members of his firm) personally spoke or who gave sworn testimony that Mr. Moore relied on for his statements to the Court and in his effort to bring his client into compliance with the Court's orders is as follows:

Michael Kostrinsky	Chief Litigation Officer
Susan Harmon	Corporate Legal
Jill Eaton	Corporate Legal
Chris Garcia	Seyfarth Shaw
Justin Beyer	Seyfarth Shaw
Jennifer Fardy	Seyfarth Shaw
Tundra Myers	Tour & Travel Manager
Mike McGee	Tour & Travel Manager
Jennifer Reynolds	Vital Records Manager
Joe Long	Vice President, IT
Ken Clayton	Regional Manager, IT
Lance Ewing	VP, Risk Management
Jeff Cummins	Regional Risk Management
Mark Conner	Director of Marketing
Gary Benson	Senior Sales Manager
Uri Clinton	Corporate Counsel

All of this, of course, was in addition, to the efforts that had been made during the two years that the case was pending in Illinois when Susan Harmon reached out to the following list of officers and managers and reported the results to Mr. Moore:

Tommy Reynolds	Security Manager	Tunica, Mississippi
LaDonna Hamilton	Risk Manager	Biloxi, Mississippi
Gary Benson	Senior Sales Manager	Gulfport, Mississippi
David Cutshall	Day Trip Coordinator	Gulfport, Mississippi
Tundra Myers	Tour & Travel Manager	Tunica, Mississippi
Adriane Franklin	Tour & Travel Manager	Tunica, Mississippi
Lance Ewing	VP, Risk Management	Memphis, Tennessee
Jeff Cummins	Regional Risk Manager	Memphis, Tennessee
Jimmy Buckhalter	Compliance Manager	Tunica, Mississippi
Ken Clayton	Regional Manager, IT	Tunica, Mississippi
Joe Long	VP, IT	Las Vegas, Nevada
Anne Nash	Database & Support Adm.	Las Vegas, Nevada
Uri Clinton	Corporate Attorney	Memphis, Tennessee
Melonie Johnson	VP, Finance	Tunica, Mississippi
Cindy Borkowski	Director of Finance	Tunica, Mississippi
Jennifer Reynolds	Regional Manager, AR	Tunica, Mississippi
Diane Tolliver	Senior Financial Analyst	Tunica, Mississippi
Mark Conner	Director of Marketing	Tunica, Mississippi
Jeffrey R. Evora	Director, VIP Marketing	Memphis, Tennessee
Chris Caniano	Manager, Analysis	Las Vegas, Nevada
Patrick Browne	Casino General Manager	Tunica, Mississippi

Unquestionably, Mr. Moore regrets having made statements of fact to the Court based on what he absolutely believed to be true, but which has now been shown to be absolutely untrue, and this memorandum was prepared so that the Court could see and understand why Mr. Moore believed what he was saying to be true. Mr. Moore will be available to the Court at its discretion to answer any questions concerning this matter as the Court deems appropriate.

LUCKETT TYNER LAW FIRM, P.A.

By: s/ W.O. LUCKETT, JR.
W.O. Lockett, Jr. (MS 1487)
Attorney for Robert L. Moore
143 Yazoo Avenue
Clarksdale, MS 38614
Phone: 662-624-2591
wol@luckettyner.com

CERTIFICATE OF SERVICE

I, William O. Lockett, as attorney for Robert L. Moore, hereby certifies that I have this day electronically filed the foregoing Response using the ECF system which sent notification of such filing to all counsel of record.

This the 14th day of July, 2010.

BY: s/ W.O. LUCKETT, JR.
W.O. LUCKETT, JR.