

Respectfully submitted,

Dated: December 9, 2009

/s/ Gailon Arthur Joy, pro se

Gailon Arthur Joy, *pro se*
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Tel: (508) 872-8000

and

/s/ Robert Pickle, pro se

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LOCAL RULE 7.1 CERTIFICATE

The undersigned hereby attests that the Defendants have complied with the requirements of Local Rule 7.1 by having, in good faith, through counsel conferred with Plaintiffs, and Plaintiffs' counsel has been unresponsive.

Dated: December 9, 2009

/s/ Bob Pickle

Bob Pickle

AFFIDAVIT OF SERVICE

Under penalty of perjury, I, Bob Pickle, hereby certify that this document, with accompanying memorandum, affidavit, and exhibits, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: December 9, 2009

/s/ Bob Pickle

Bob Pickle

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
Three Angels Broadcasting Network, Inc.,)	
an Illinois non-profit corporation, and)	
Danny Lee Shelton, individually,)	Case No.: 07-40098-FDS
)	
) Plaintiffs,)	
v.)	
)	
Gailon Arthur Joy and Robert Pickle,)	
)	
) Defendants.)	
_____)	

**DEFENDANTS’ MEMORANDUM IN SUPPORT OF
DEFENDANTS’ MOTION TO FORWARD PART OF THE RECORD**

INTRODUCTION

On September 12, 2008, documents produced by MidCountry Bank (“MidCountry”) (“MidCountry documents”) were delivered by DHL International, Ltd. (“DHL”) to the federal courthouse in Worcester, Massachusetts, and were signed for by a clerk of court. (Affidavit of Robert Pickle (“Pickle Aff.”) ¶¶ 1–2, Ex. A). The MidCountry documents were therefore filed with this Court and constitute part of the record of the instant case. Since the docket does not reflect the forwarding of these documents to the First Circuit as part of the record on appeal, Defendants hereby request this Court to so forward a copy of these documents.

RELEVANT FACTS

A subpoena was issued from the District of Massachusetts on December 6, 2007, and was served upon a branch of MidCountry in Minnesota. (Doc. 76-3 p. 10). Since MidCountry objected to the improper district of issuance, a second subpoena was issued from the District of

Minnesota on December 12, 2007, and was served upon MidCountry on January 16, 2008. (Doc. 76-3 p. 12; Doc. 103-4).

Both subpoenas sought MidCountry's monthly statements for accounts owned by Danny Lee Shelton ("Shelton"), D & L Publishing, and DLS Publishing Inc. ("DLS"), or accounts for which Shelton was a signatory, back to January 1, 1998, since a clear cut instance of private inurement had taken place in 1998. (Doc. 76-3 pp. 10-13; Doc. 63-28 pp. 4-5, 10, 12).

Since MidCountry was going to produce the subpoenaed documents to Defendants (Doc. 63-27 p. 5), Shelton filed a motion to quash that subpoena on February 6, 2008, in the District of Minnesota.¹ (Doc. 76-3 pp. 18-19). Magistrate Judge Boylan, who conducted the hearing on that motion, noted that Shelton lacked standing to object to Defendants obtaining MidCountry records pertaining to DLS. (Doc. 185 ¶ 16).

Previously, on December 18, 2007, Plaintiffs had filed a motion for a confidentiality order in the District of Massachusetts. (Doc. 40). On March 28, 2008, Magistrate Judge Boylan issued an order from the District of Minnesota which stated:

MidCountry Bank shall not provide copies of the documents to any party herein absent further order of the court. ...

This Court has been advised by the parties that Plaintiffs' Motion for a Protective Order has been taken under advisement by Magistrate Judge Hillman in the District of Massachusetts. Once the Protective Order is entered by the court, the documents produced under seal by MidCountry Bank in response to Defendant Pickle's subpoena in this district may be reviewed by Magistrate Judge Hillman for compliance with the approved Protective Order.

(Doc. 63-36 pp. 2-3).

On April 17, 2008, Magistrate Judge Hillman issued a confidentiality order in response to Plaintiffs' December 18, 2008, motion. (Doc. 60). Nothing in that order prohibited the discovery of MidCountry's records or similar records, and thus the subpoenaed documents when produced

¹ Three Angels Broadcasting Network, Inc. ("3ABN") did not join in Shelton's motion.

would be fully in compliance with that protective order. This would not have been accidental, for in the motion hearing of July 24, 2008, in response to Plaintiffs' discussion about the MidCountry documents, Magistrate Judge Hillman said, "When this first landed, we communicated." By these words Magistrate Judge Hillman referred to Magistrate Judge Boylan and his conferring together on the matter earlier that year. (Pickle Aff. ¶ 3).

On May 21, 2008, MidCountry faxed Defendant Pickle a final estimate of costs for the subpoenaed documents. (Pickle Aff. ¶ 5, Ex. C). On May 28, 2008, Defendant Pickle ordered the MidCountry documents by fax, and his \$3,682.50 check for payment of those documents is also dated May 28, 2008. (Pickle Aff. ¶ 4–5, Ex. B at pp. 3–4, Ex. D).

On June 25, 2008, Plaintiffs filed a motion seeking to limit the methods and scope of discovery. (Doc. 74). The accompanying memorandum requested, *inter alia*, the following relief:

Plaintiffs seek two forms of relief from Defendants' third party discovery practice: (A) that Defendants be required to seek leave of court prior to the issuance of any future subpoenas ...; (B) that Magistrate Judge Hillman or some other third party be appointed to review *in camera* those documents produced to Magistrate Judge Hillman pursuant to the orders governing the MidCountry Bank ... subpoena[], prior to production to Defendants.

(Doc. 75 pp. 16–17).

On September 11, 2008, Magistrate Judge Hillman rendered a decision on that motion, which stated:

Plaintiff's Motion for Protective Order (Docket No. 74), allowed. No party is to issue subpoenas to any non-party under Fed.R.Civ.P. 45 without leave of the court. In all other respects, the Plaintiff's motion is denied.

(Doc. 107 p. 5). Thus, Magistrate Judge Hillman denied Plaintiffs' request to conduct an *in camera* review of the MidCountry documents, removing Plaintiffs' last obstacle to Defendants' obtaining those documents.

On September 8, 2008, MidCountry shipped the MidCountry documents from Minnetonka, Minnesota, to Magistrate Judge Hillman via DHL. (Pickle Aff. Ex. E at p. 2). These

documents arrived at the federal courthouse in Worcester, Massachusetts, on September 12, 2008, and were signed for by one of the clerks of court serving in that courthouse. (Pickle Aff. Ex. A). DHL provided an image of that clerk's signature. (*Id.* at p. 5).

It should be noted that for some unknown reason, MidCountry's September 8, 2008, production occurred 14 weeks 5 days after Defendants had ordered the documents on May 28. This was 8 weeks 5 days longer than the 6-week production timeline MidCountry had originally given. (Doc. 63-30 p. 6).

Upon being informed that the MidCountry documents had been shipped, Defendants unsuccessfully endeavored to trace the whereabouts of the package of documents. (Pickle Aff. ¶¶ 7–9). Those at the courthouse whom Defendants spoke with said that they could not locate the package's whereabouts. (*Id.*).

With some difficulty, Defendants obtained the DHL tracking number for the package of MidCountry documents. (Pickle Aff. ¶ 10). This enabled Defendants to confirm that the MidCountry documents had indeed arrived at the federal courthouse in Worcester, Massachusetts, and had been signed for by a clerk of court. (Pickle Aff. Ex. A). Yet Defendants still could not confirm that anyone in the courthouse knew where the documents were, and never received notice otherwise. (Pickle Aff. ¶ 11). Further complicating the matter is that the docket contains no entry acknowledging this Court's reception of the documents.

Plaintiffs' counsel, M. Gregory Simpson, even contacted Defendants on October 1, 2008, by telephone, trying to confirm that Defendants did not have the MidCountry documents.² (Pickle Aff. ¶ 12, Ex. F). Thus, Simpson led Defendants to believe that Simpson could not locate the whereabouts of the MidCountry documents either.

² Simpson's concern that Defendants might have the MidCountry documents strongly suggests that there must be something in those documents that Shelton is trying hard to hide. Thus, the MidCountry documents, like the documents produced by Remnant Publications, Inc., likely give further evidence of the frivolous nature of the entire case.

In retrospect, Simpson may have located them by November 11, 2008, as suggested by a quotation of his letter of that date that appears in one of Defendants' submissions:

... during the interchange with the Defendants that led up to the Defendants' filing of their notice of appeal, Plaintiffs' counsel on November 11, 2008, wrote:

I will be filing a motion to require you both to return all confidential materials, and to consent to the return of the MidCountry Bank records that are currently in the possession of Magistrate Judge Hillman.

(Pickle Aff. Ex. E). Plaintiffs' counsel hereby threatened use of the Court's power to compel the Defendants to *consent* to the return of the MidCountry Bank records, which aren't even in the Defendants' possession. This is *prima facie* evidence that Plaintiffs' counsel believed that neither the confidentiality order of April 17 nor the terms of the order of October 30 were sufficient to keep these records away from the Defendants who had paid more than \$3,500 for them.

(Doc. 161 p. 6). But since Defendants never received notice that the Court had located the MidCountry documents (Pickle Aff. ¶ 11), Defendants are uncertain whether Simpson's letter should be taken that way.

However, the MidCountry documents must have been found by December 16, 2008, for a receipt was filed on that date, and was entered on the docket on December 23, 2008. (Doc. 160). Curiously, the record on appeal was declared complete on December 9, 2008, just seven days before the date of that receipt. (Pickle Aff. Ex. G).

ARGUMENT

I. MIDCOUNTRY DOCUMENTS ARE PART OF THE RECORD BECAUSE THEY ARE ORIGINAL PAPERS OF THIS CASE

Fed. R. App. P. 10(a) states that the composition of the record on appeal includes "the original papers and exhibits filed in the district court." In particular, original papers and exhibits that were "presented" to the district court (and filed) are part of the record. *In re Arthur Andersen & Co*, 621 F2d 37, 39 (1st Cir. 1980). Since the MidCountry documents, subpoenaed, ordered,

and paid for by Defendants, were presented to this Court for possible review as ordered by Magistrate Judge Boylan (Doc. 63-36 pp. 2–3), they are part of the record of this case.

II. MIDCOUNTRY DOCUMENTS ARE PART OF THE RECORD BECAUSE THEY WERE FILED WITH THE COURT

“A paper is filed by delivering it: (A) to the clerk; ...” Fed. R. Civ. P. 5(d)(2). Since the MidCountry records were delivered to the clerk on September 12, 2008 (Pickle Aff. Ex. A), they were filed with the Court on that date.

The decisive question is whether the MidCountry documents were received by the clerk, not whether the clerk actually filed them after they were received. *Hernandez v. C Aldridge III*, 902 F.2d 386, 388 (5th Cir. 1990). It is indisputable that the MidCountry documents were received by the clerk, since the DHL tracking information even includes an image of the signature of the clerk that signed for the documents. (Pickle Aff. Ex. A at p. 5). Therefore, the MidCountry documents must be part of the record because they were filed with the Court.

III. MIDCOUNTRY DOCUMENTS ARE RELEVANT TO PLEADINGS OF ALL PARTIES

Plaintiffs may argue that the MidCountry documents are not part of the record on appeal because they are not relevant to the instant case. This assertion would be false.

Plaintiffs’ complaint charged Defendants with defamation *per se* in an attempt to roll the burden of proof upon Defendants, and accused Defendants of making the following allegedly false and defamatory statements:

g. 3ABN Board members have personally enriched themselves as officers and directors of 3ABN in violation of the Internal Revenue Code.

h. Danny Shelton wrongfully withheld book royalties from 3ABN and refused to disclose those royalties in proceedings before a court of law related to the distribution of marital assets.

...

i. Danny Shelton perjured himself through the course of court proceedings relating to his divorce from Linda Shelton.

(Doc. 1 pp. 13, 15).

An examination of the MidCountry documents by Defendants would have been necessary to determine, *inter alia*, whether Shelton perjuriously omitted and misreported income, bank accounts, and bank account balances on his July 2006 financial affidavit (Doc. 8-2 pp. 15–16, 21, 24–25, 30, 35, 37; Doc. 81-7 pp. 8–10, 13), and whether there were transfers of funds between 3ABN’s bank accounts and Shelton’s bank accounts that cannot be attributed to Shelton’s salary from 3ABN.

Defendants’ answer to Plaintiffs’ complaint stated:

... Defendants have, upon information and belief, sufficient information to believe that 3ABN may actually be controlled by Plaintiff Danny Lee Shelton and that Plaintiff treats the corporation as his own asset and purposefully profits from the same.

(Doc. 9 p. 5).

Upon information and belief, ... Plaintiff Danny Lee Shelton ... has conducted himself in such a way as to ... prey upon the financial soundness of the entity 3ABN and to inappropriately redirect large sums to his personal benefit with and without properly constituted corporate authority.

(Doc. 9 pp. 8–9). Thus, Defendants’ answer echoed the same issues found in Plaintiffs’ complaint.

Yet on February 7, 2008, Shelton lied to the district court in the District of Minnesota when he falsely stated in connection with his motion to quash Defendants’ subpoena upon MidCountry:

Second, the Subpoena requests Shelton’s personal bank account statements, when Plaintiff Shelton’s personal financial condition is not at issue in the underlying litigation, ... and when Defendants have done nothing to prove Shelton’s personal financial affairs relevant to either the trademark or defamation claims.

(Doc. 63-27 p. 9).

IV. MIDCOUNTRY DOCUMENTS ARE PART OF RECORD ON APPEAL IN BOTH APPEALS

A. Date of Filing Makes MidCountry Documents Part of Record on Appeal in Both Appeals

Since the MidCountry documents were filed with this Court on September 12, 2008 (Pickle Aff. Ex. A), and since that date is prior to the dismissal order of November 3, 2008 (Doc. 129), and since Defendants' first notice of appeal was filed on November 13, 2008 (Doc. 133), the MidCountry documents are part of the record on appeal for both of Defendants' appeals.

B. MidCountry Documents Speak to Issues in Both Appeals

Plaintiffs may argue that the MidCountry documents are not part of the record on appeal because they do not speak to issues under review in Defendants' appeals. This assertion would be false. The MidCountry documents and their contents speak to issues involved in Plaintiffs' motion to dismiss, Defendants' motion for costs, Defendants' motions for reconsideration and to amend findings, and Defendants' motion for sanctions.

For one thing, the MidCountry documents are evidence of the frivolous nature of Plaintiffs' complaint since they further document Shelton's private inurement and the perjurious nature of Shelton's divorce-related financial affidavit. This explains why Plaintiffs have repeatedly obstructed the discovery of these documents. Defendants have repeatedly put at issue in connection with the orders under appeal the topics of malicious prosecution and abuse of process. (Doc. 126 pp. 1, 4-5, 11, 13-14; Doc. 149 p. 3; Doc. 161 pp. 2, 16; Doc. 170 pp. 3-4, 13-18; Doc. 177 pp. 2, 9; Doc. 182 pp. 4, 11; Doc. 190 p. 9). This Court's April 13, 2009, order put these topics at issue as well. (Doc. 166 pp. 3-4).

Also, Defendants sought sanctions against Plaintiffs and their counsel for Plaintiffs' mischaracterization of proceedings concerning Shelton's motion to quash which Shelton filed in

the District of Minnesota. (Doc. 184 p. 12; Doc. 190 p. 10).

Quotations from Defendants' submissions follow, which demonstrate that the MidCountry documents are at issue in Defendants' appeals, and should therefore be available for review by the First Circuit. (The list that follows is not intended to be exhaustive.)

1. The ploy of the voluntary dismissal

Finally, after the Defendants are close to getting access to the records of MidCountry and GHS, the Plaintiffs through the instant motion seek to prohibit that access.

(Doc. 126 p. 9).

The presence of incriminating information in the MidCountry documents would further confirm that Plaintiffs' motion to dismiss was but a ploy to that end.

2. Plaintiffs' sought to duplicate Defendants' litigation expenses

By including in their motion a request for an order to return all documents from Remnant, MidCountry, and the Plaintiffs, the Plaintiffs ensure that there will be substantial duplication of expense, especially given the long, protracted war over discovery they have shown themselves prone to fight.

(Doc. 126 p. 15).

Only after Defendants had obtained the damning Remnant documents did Plaintiffs file their motion to dismiss. In doing so, Plaintiffs sought the following:

...

- Return of MidCountry's records, necessitating duplicative discovery expense in future litigation, even though the confidentiality order does not so require. (*Id.*).

(Doc. 170 p. 15).

The presence of incriminating information in the MidCountry documents would give more weight to Defendants' argument, and would make more necessary the duplicative expense of Defendants' acquiring these documents in future litigation.

A noted treatise observes: "Legal prejudice is shown when actual legal

rights are threatened or when monetary or other burdens appear to be extreme or unreasonable.” 8 *Moore’s Federal Practice* § 41.40[6] (3d ed. 2003). As a clear example, it is an unreasonable monetary burden to deprive Defendants of the MidCountry records without compensation given that the confidentiality order did not order such, Magistrate Judge Hillman refused Plaintiffs’ request to conduct an *in camera* review of those records, they contain no checks or deposit slips which could reveal health care information, and neither Plaintiff had standing to object to Defendants receiving MidCountry records pertaining to DLS.

(Doc. 177 pp. 10–11).

Thus, depriving Defendants of both the MidCountry documents and the funds paid to produce those documents constitutes an arbitrary imposition of legal prejudice upon Defendants, an argument made more weighty by the presence of incriminating information in those documents.

3. Shelton lacked standing to object on behalf of DLS

Plaintiffs contended that no court agreed with Defendants’ positions, yet Magistrate Judge Boylan explicitly did, a topic put at issue in Defendants’ motion for sanctions.

On March 4, 2008, Magistrate Judge Boylan agreed that Danny Lee Shelton (“Shelton”) lacked standing to object to Defendants’ acquiring documents from MidCountry Bank (“MidCountry”) pertaining to DLS Publishing, Inc. (“DLS”).

(Doc. 177 p. 3).

Magistrate Judge Boylan agreed with Defendants that Shelton did not have standing to object to Defendants’ subpoena of MidCountry documents pertaining to DLS Publishing, Inc. (Doc. 155 ¶ 3; Pickle Aff. ¶¶ 14–16, Ex. K).

(Doc. 184 p. 12).

Contrary to Plaintiffs’ assertion (Doc. 188 p. 19), four magistrate judges most certainly did find “Plaintiffs’ position to lack a legal or factual basis”:

- Magistrate Judge Boylan: Shelton had no legal basis for his position that Shelton had standing to object to Defendants’ subpoena of MidCountry documents pertaining to DLS Publishing, Inc. (Doc. 155 ¶ 3; Doc. 185 ¶¶ 14–16, Doc. 185-12 p. 3).

(Doc. 190 p. 10).

Demonstrating that MidCountry produced documents pertaining to accounts owned by DLS rather than by Shelton lends more weight to this argument.

4. Defendants should be reimbursed for the MidCountry documents, or should receive the MidCountry documents, or both

Further, the Court has now declined to require Plaintiffs to reimburse Defendants for any of Defendants' costs, including MidCountry's records, even though Defendants paid considerably for these records and have not yet seen them. (Doc. 166). Defendants should be reimbursed for these records, or Defendants should be allowed to possess what they paid for, or both.

(Doc. 170 p. 16).

MidCountry's records are relevant to questions of private inurement and perjury put at issue in Plaintiffs' complaint. (JA 36–37, 39; DB 14–15). Thus, they are also relevant to Defendants' claims of malicious prosecution and abuse of process, since these records would further prove Plaintiffs' allegations to be baseless. Therefore, there is no legitimate reason to surrender MidCountry's records to a party who neither produced nor paid for them.

(Doc. 178-2 p. 36 (an argument submitted to this Court to the extent that the order of dismissal was not a final, appealable order)).

This argument depends in part on the frivolous nature of Plaintiffs' complaint, and whether Plaintiffs engaged in abuse of the discovery process, and the contents of the MidCountry documents speak to that issue.

5. Plaintiffs' last legal obstacle removed on September 11, 2008

Plaintiffs' last legal roadblock to Defendants' obtaining the MidCountry documents was removed on September 11, 2008, 7 weeks prior to the case's dismissal:

Magistrate Judge Hillman's order of September 11, 2008, also denied the Plaintiffs' request to conduct *in camera* review of the records of MidCountry Bank (hereafter "MidCountry"), Gray Hunter Stenn LLP (hereafter "GHS"), Remnant Publications, Inc. (hereafter "Remnant"), and all other third parties, thus opening the way for the Defendants to obtain these documents. (Doc. 74 ¶ 7; Doc. 75 pp. 16–17; Doc. 107 p. 5).

(Doc. 149 p. 2).

Also on September 11, Magistrate Judge Hillman refused to limit the scope of discovery, and refused to order an *in camera* review of the MidCountry and Remnant documents. (Doc. 107 p. 5; Doc. 74 ¶ 7; Doc. 75 pp. 16–17).

(Doc. 177 p. 4).

Magistrate Judge Hillman denied Plaintiffs' requests (a) to limit the scope of discovery as to subject matter or time frame, (b) to prohibit discovery of donor information, and (c) for *in camera* review of the MidCountry, Remnant, and GHS documents. (Doc. 107; Doc. 74 pp. 2–3; Doc. 75 pp. 16–17).

(Doc. 184 p. 14).

A review of the MidCountry documents should confirm that there was nothing in the documents themselves left to bar Defendants from obtaining those documents.

CONCLUSION

The MidCountry documents filed with this Court on September 12, 2008, are part of the record on appeal for both of Defendants' appeals, and speak to a number of the issues in those appeals. They should be forwarded to the First Circuit Court of Appeals as a supplemental record.

Respectfully submitted,

Dated: December 9, 2009

/s/ Gailon Arthur Joy, pro se

Gailon Arthur Joy, *pro se*
Sterling, MA 01564
Tel: (508) 872-8000

and

/s/ Robert Pickle, pro se

Robert Pickle, *pro se*
Halstad, MN 56548
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
Three Angels Broadcasting Network, Inc.,)	
an Illinois non-profit corporation, and)	
Danny Lee Shelton, individually,)	Case No.: 07-40098-FDS
)	
) Plaintiffs,)	
v.)	
)	
Gailon Arthur Joy and Robert Pickle,)	
)	
) Defendants.)	
_____)	

AFFIDAVIT OF ROBERT PICKLE

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. Attached hereto as **Exhibit A** are printouts that I made of the tracking information that the shipper DHL International, Ltd. (“DHL”) provides its customers online. The tracking information in Exhibit A is for # 28878311652, a package shipped from MidCountry Bank (“MidCountry”) in Minnetonka, Minnesota, on September 8, 2008, which was delivered to the U.S. District Courthouse in Worcester, Massachusetts, on September 12, 2008, at 12:27 pm.

2. On page 1 of Exhibit A is a summary of the itinerary the package from MidCountry took, and on page 3 is a more detailed itinerary. Page 5 has an image of the signature of “S. Jones,” the clerk of court that signed for the package at the federal courthouse in Worcester on September 12, 2008.

3. I have ordered the transcript of the July 24, 2008, motion hearing before

Magistrate Judge Timothy S. Hillman, and already have a recording of that hearing. In that hearing Magistrate Judge Hillman stated: “When this first landed, we communicated.” He was speaking of having communicated with Magistrate Judge Arthur Boylan of the District of Minnesota regarding Plaintiffs’ attempts to quash Defendants’ second subpoena of MidCountry.

4. Attached hereto as **Exhibit B** are selected pages from my Qwest long distance telephone bills for the months of June, September, and October 2008. These selected pages detail (a) calls (952-843-5222) I made and faxes (952-697-2074) I sent to Deborah Nielsen (“Nielsen”) of MidCountry, (b) calls I made to Richard (“Dick”) Hills (“Hills”), MidCountry’s attorney (404-888-7419; 404-888-7475), and (c) calls I made to Lisa Roland (“Roland”) (508-929-9905), Martin Castles (508-929-9904), and Magistrate Judge Timothy S. Hillman’s chambers in Boston (617-748-4446).

5. These telephone bills tell a story. Toward the end of May 2008, I made final arrangements to order and pay for subpoenaed bank records from MidCountry (“MidCountry records”). (Ex. B pp. 1–2). Nielsen faxed me an estimate of costs on May 21, attached hereto as **Exhibit C**. At 1:09 pm on May 28, 2008, I signed and faxed back that estimate (attached hereto as **Exhibit D**), and followed up with a telephone call on May 29 at 3:36 pm. (Ex. B pp. 3–4). My personal check # 3116 for \$3,682.50 for these records is dated May 28, 2008.

6. Production of the subpoenaed MidCountry records was to take 6 weeks after instructions were faxed to Nielsen, and thus should have been produced by July 9, 2008. (Doc. 63-30 p. 6). However, they were not produced until September 8, 2008, 14 weeks 5 days after I faxed my instructions to Nielsen, or 8 weeks 5 days longer than expected.

7. Beginning on September 9, 2008, I began telephoning Nielsen, Roland, and Magistrate Judge Hillman’s chambers in Boston, but was never able to track down the whereabouts of the package of MidCountry records. (Ex. B pp. 6–10). I recall that Gailon Arthur

Joy (“Joy”) was also involved in these efforts. Those we spoke with at the courthouse told us they could not locate the package of MidCountry records.

8. The calls on September 11, 2008, may concern an unrelated, clerical error in a court order that was then corrected. (Doc. 106; Doc. 107). But that court order is relevant to the MidCountry records, since that order denied Plaintiffs’ request to conduct an *in camera* review of the MidCountry records before those records were given to us. (Doc. 75 pp. 16–17; Doc. 107 p. 5). That decision removed Plaintiffs’ last legal obstacle hindering Joy and me from obtaining the MidCountry records, and so we were quite eager to track down their whereabouts.

9. I recall Nielsen telling me that the MidCountry records had arrived at the courthouse and had been signed for, which would explain why I called Roland right after I called Nielsen on September 26, 2008. (Ex. B p. 8). Still, Joy and I could not locate the MidCountry records.

10. Probably on October 6, 2008 (Ex. B p. 9), I asked Nielsen for the DHL tracking number, and she told me that she could not give it to me since the documents were under seal. That did not make sense to me, so I telephoned MidCountry’s attorney, Richard (“Dick”) Hills (“Hills”) in Atlanta. His law firm at the time had two Richard Hills, it seemed, and so I had two telephone numbers, one which seemed to work and one which seemed not to work, but eventually I reached the right Richard Hills. (Ex. B pp. 9–10). Hills and I had spoken before when MidCountry had objected to our first subpoena because it was issued from the wrong district. Hills didn’t think there was a problem with our obtaining the DHL tracking number, and so on October 8, 2008, Nielsen faxed me the tracking number, which fax is attached hereto as **Exhibit E**.

11. Sometimes Joy and I would make conference calls to the courthouse and to other places using a telephone system that Joy had access to. Thus, there may have been other relevant

calls that would not appear on my telephone bills. At any rate, I am fairly certain that after we found out that Ms. Sherry Jones had signed for the MidCountry records, we inquired of her as to their whereabouts. But we never could locate the whereabouts at the courthouse of the MidCountry records, or find someone who knew where they were. Neither did we ever receive notice from the Court that the subpoenaed MidCountry records had been located.

12. Attached hereto as **Exhibit F** is the October 1, 2008, email of Greg Simpson (“Simpson”), Plaintiffs’ counsel. This email was Simpson’s follow up to his telephone calls to myself and Joy, and it memorializes that Simpson as of that date could not locate the MidCountry records either, and that he was concerned that we might have them in our possession.

13. Attached hereto as **Exhibit G** is the briefing schedule filed on December 9, 2008, in First Circuit Case No. 08-2457, which declares that the record on appeal is now complete.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 8th day of December, 2009.

/s/ Bob Pickle

Bob Pickle
Halstad, MN 56548
Tel: (218) 456-2568

Subscribed and sworn to me
this 8th day of December, 2009.

/s/ Lori J. Rufsvold
Notary Public—Minnesota

My Commission Expires Jan. 31, 2010

Ex. 4: Ex. A

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Current status for 28878311652... [Help](#)

Shipment delivered. ✓

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Delivered on: 9/12/2008 12:27 pm
 Delivered to:
 Signed for by: S JONES [What is this?](#)
 Want to get the status of all your shipments in one place? [Learn more about DHL ProView™](#)

Tracking history... [Help](#)

Date and time	Status	Location Service Area
9/12/2008 12:27 pm	Shipment delivered.	Shrewsbury, MA Why is this?
7:10 am	With delivery courier.	Shrewsbury, MA
7:04 am	Arrived at DHL facility.	Shrewsbury, MA
4:04 am	Depart Facility	Coventry Regional Hub, RI
9/11/2008 11:17 pm	Transit through DHL facility	Coventry Regional Hub, RI
8:46 pm	In transit.	Coventry Regional Hub, RI
8:39 pm	Processed at DHL Location.	Coventry Regional Hub, RI
12:43 pm	Depart Facility	Allentown Hub, PA
9/10/2008 8:58 pm	Processed at DHL Location.	Allentown Hub, PA
8:58 pm	In transit.	Allentown Hub, PA
9/8/2008 11:41 pm	In transit.	Minneapolis Regional Hub, MN
10:28 pm	Transit through DHL facility	Minneapolis Regional Hub, MN
10:16 pm	Depart Facility	Plymouth, MN
6:10 pm	Processed at DHL Location.	Plymouth, MN
6:04 pm	Departing origin.	Plymouth, MN
4:10 pm	Shipment picked up	Plymouth, MN

Shipment details... [Help](#)

From	To	Shipment information
MIDCOUNTRY Minnetonka, MN 55345 United States	US DISTRICT COURT Worcester, MA 01608 United States	Ship date: 9/8/2008 Pieces: 1 Total weight: 12 lbs Note on weight

Track

- [Track by number](#)
- [Track by reference](#)
- [Get delivery signature](#)
- [Track DHL Same Day service](#)
- [Monitor shipments](#)

Log in to DHL

User ID

Password

Remember my User ID

[Log in](#)

[Forgot password/user ID?](#)

New to DHL online?

Registration is quick and free.

[Sign up now](#)



Ship type: Package

Service: Ground [More info](#)

▶ **Track new shipment**

Tracking detail provided by DHL: 10/31/2008, 12:43:49 pm pt.

Business is waiting.

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We're here to help!

▶ **Contact DHL**

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Password

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Current status for 28878311652... [▶ Help](#)

Shipment delivered. ✓

[▶ View signature](#)

Delivered on: 9/12/2008 12:27 pm

Delivered to:

Signed for by: S JONES [What is this?](#)

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Tracking history... [▶ Help](#)

Date and time	Status	Location Service Area
9/12/2008 12:27 pm	Shipment delivered.	Shrewsbury, MA Why is this?
7:10 am	With delivery courier.	Shrewsbury, MA
7:04 am	Arrived at DHL facility.	Shrewsbury, MA
4:04 am	Depart Facility	Coventry Regional Hub, RI
9/11/2008 11:17 pm	Transit through DHL facility	Coventry Regional Hub, RI
8:46 pm	In transit.	Coventry Regional Hub, RI
8:39 pm	Processed at DHL Location.	Coventry Regional Hub, RI
12:43 pm	Depart Facility	Allentown Hub, PA
9/10/2008 8:58 pm	Processed at DHL Location.	Allentown Hub, PA
8:58 pm	In transit.	Allentown Hub, PA
9/8/2008 11:41 pm	In transit.	Minneapolis Regional Hub, MN
10:28 pm	Transit through DHL facility	Minneapolis Regional Hub, MN
10:16 pm	Depart Facility	Plymouth, MN
6:10 pm	Processed at DHL Location.	Plymouth, MN
6:04 pm	Departing origin.	Plymouth, MN
4:10 pm	Shipment picked up	Plymouth, MN

Shipment details... [▶ Help](#)

From	To	Shipment information
MIDCOUNTRY Minnetonka, MN 55345 United States	US DISTRICT COURT Worcester, MA 01608 United States	Ship date: 9/8/2008 Pieces: 1 Total weight: 12 lbs Note on weight Ship type: Package Service: Ground More info

▶ [Track new shipment](#)

Tracking detail provided by DHL: 10/8/2008, 9:35:50 am pt.

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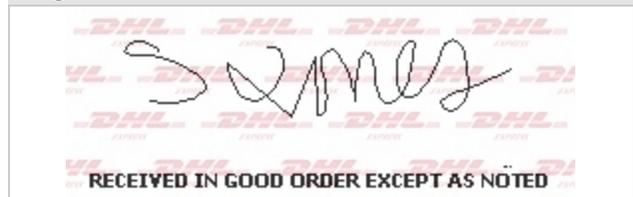
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- Track**
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Delivery signature detail

Signature details for 28878311652



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Try out DHL ProView™ for shipment visibility and event notifications for ground parcel and air express packages associated with your account (first time users will need to register and add their accounts).

- ▶ [Learn more about DHL ProView™](#)

Summary details [▶ Help](#)

Current Status	✓ Shipment Delivered
Delivered on	9/12/08 12:27 pm
Delivered to	
Signed for by	S JONES What is this?

Receiver information

US DISTRICT COURT
 Worcester, MA 01608
 United States

- ▶ [Track new shipment](#)

Tracking detail provided by DHL: 10/31/2008 12:47:38 PM

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Track

- ▶ Track by number
- ▶ Track by reference
- ▶ **Get delivery signature**
- ▶ Track DHL Same Day service
- ▶ Monitor shipments

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nov dec jan feb mar apr may **jun** jul aug sep oct



Account 70592661
Phone 218-456-2568
Billing Date Jun 19, 2008

Bill Summary

Customer Service
1-800-860-2255

218-456-2568

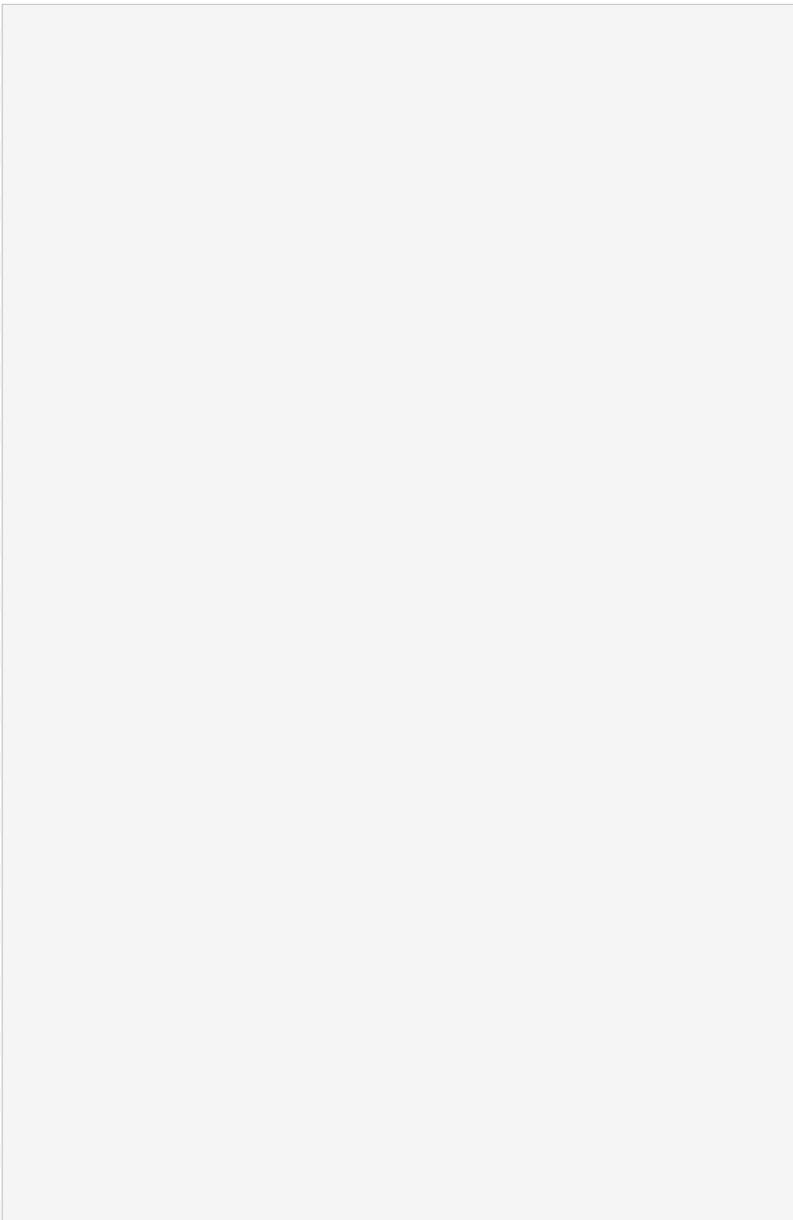
Date ▲	Time	Place Called	Number Called	Rate	Duration	Amount
May 20	8:36 am					
May 20	8:45 am					
May 20	9:00 am					
May 20	9:44 am					
May 20	9:48 am					
May 20	9:55 am					
May 20	9:58 am					
May 20	10:07 am					
May 20	10:08 am					
May 20	1:54 pm					
May 20	2:08 pm					
May 20	2:44 pm					
May 20	3:20 pm					
May 20	3:34 pm	TWINCITIES, MN	952-843-5222	D	6:00	0.00
May 20	3:43 pm	STLOUIS PK, MN	952-697-2074	D	2:00	0.00
May 20	4:21 pm					
May 20	4:42 pm					
May 20	7:13 pm					
May 20	8:41 pm					
May 21	8:58 am					
May 21	8:58 am					
May 21	10:23 am					
May 21	10:46 am					
May 21	10:48 am					
May 21	12:06 pm	STLOUIS PK, MN	952-697-2074	D	4:00	0.00
May 21	12:40 pm					
May 21	1:03 pm					
May 21	3:32 pm					
May 21	3:32 pm					
May 21	3:32 pm	TWINCITIES, MN	952-843-5222	D	1:00	0.00
May 21	4:09 pm					

May 21 7:11 pm
May 21 7:17 pm
May 21 7:58 pm
May 21 7:59 pm
May 21 8:01 pm
May 21 8:04 pm
May 21 8:14 pm
May 21 10:07 pm
May 22 9:04 am
May 22 1:21 pm
May 22 2:07 pm
May 22 2:07 pm
May 22 2:08 pm
May 22 4:15 pm
May 22 4:19 pm
May 22 4:23 pm
May 22 4:32 pm
May 22 4:33 pm
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May 22 10:22 pm
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May 23 1:12 pm
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May 23 3:44 pm
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May 23 5:12 pm
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May 23 6:27 pm
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May 23 7:35 pm
May 23 8:29 pm
May 23 8:44 pm
May 23 9:12 pm
May 23 9:13 pm
May 23 9:14 pm
May 24 8:20 pm
May 24 9:00 pm
May 25 7:56 am
May 25 8:03 am
May 25 9:06 am
May 25 2:33 pm
May 25 2:52 pm
May 25 7:29 pm
May 25 8:28 pm
May 25 10:53 pm
May 25 10:54 pm
May 26 8:29 am

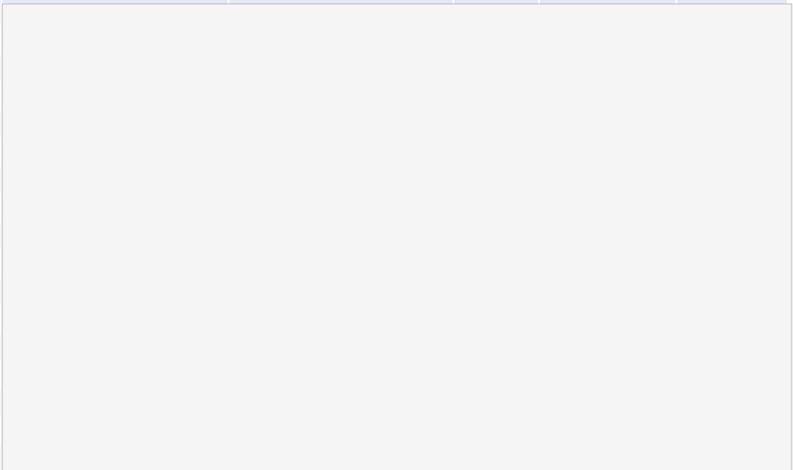


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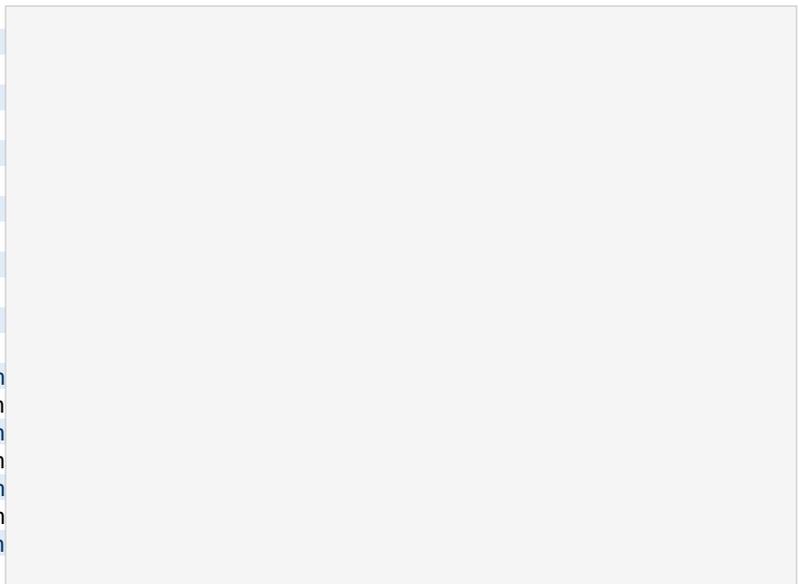
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 May 27 11:21 pm
 May 28 7:47 am
 May 28 8:58 am
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 May 28 5:15 pm



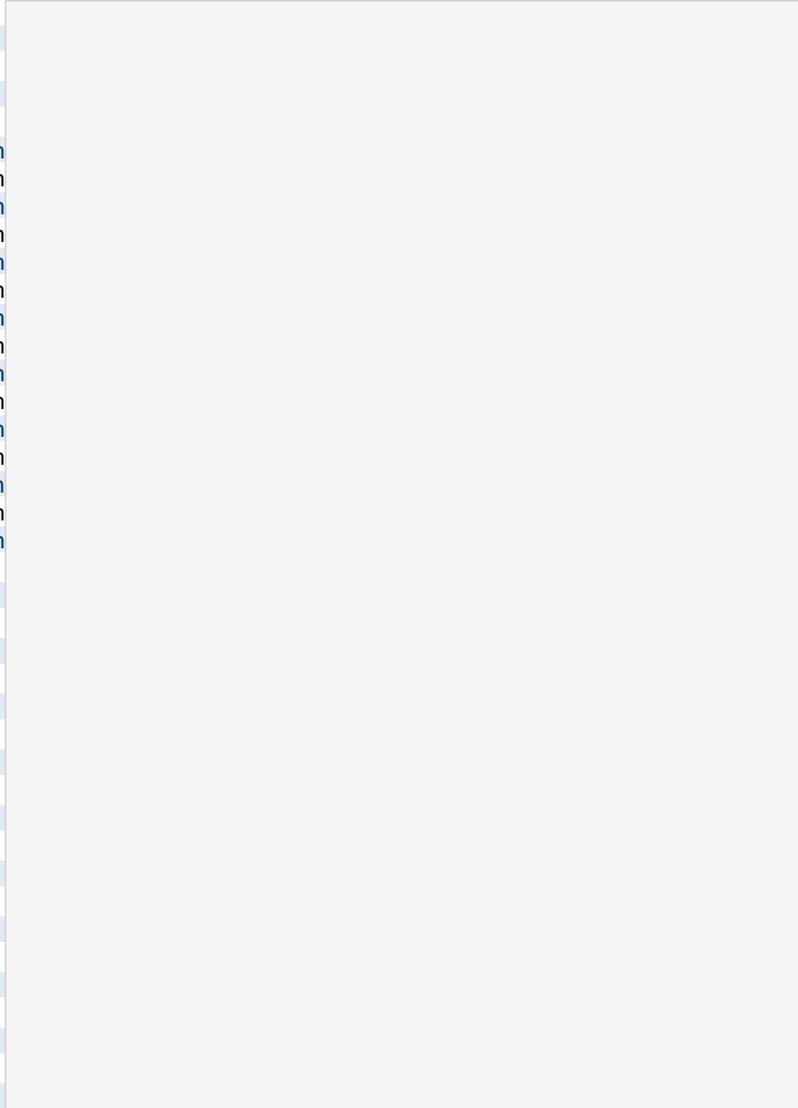
May 28 1:09 pm STLOUIS PK, MN 952-697-2074 D 1:00 0.00



May 28 5:16 pm
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 May 28 5:35 pm
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 May 28 8:31 pm
 May 28 8:32 pm
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 May 28 8:37 pm
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 May 31 9:32 pm



TWINCITIES, MN	952-843-5222	D	1:00	0.00
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- jan
- feb
- mar
- apr
- may
- jun
- jul
- aug
- sep
- oct



Account **70592661**
 Phone 218-456-2568
 Billing Date Sep 19, 2008

Bill Summary

Customer Service
 1-800-860-2255

218-456-2568						
Date ▲	Time	Place Called	Number Called	Rate	Duration	Amount
Aug 20	11:00 am					
Aug 20	11:25 am					
Aug 20	12:30 pm					
Aug 20	1:31 pm					
Aug 20	3:35 pm					
Aug 20	3:38 pm					
Aug 20	5:19 pm					
Aug 20	6:07 pm					
Aug 20	9:28 pm					
Aug 20	9:29 pm					
Aug 20	10:31 pm					
Aug 21	11:27 am					
Aug 21	11:46 am					
Aug 21	12:10 pm					
Aug 21	1:05 pm					
Aug 21	1:23 pm					
Aug 21	1:39 pm					
Aug 21	4:44 pm					
Aug 21	4:51 pm					
Aug 21	7:34 pm					
Aug 21	7:35 pm					
Aug 21	7:40 pm					
Aug 21	7:41 pm					
Aug 21	7:42 pm					
Aug 21	7:44 pm					
Aug 21	7:57 pm					
Aug 21	8:43 pm					
Aug 21	8:48 pm					
Aug 21	8:51 pm					
Aug 21	8:51 pm					
Aug 21	8:53 pm					

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- jan
- feb
- mar
- apr
- may
- jun
- jul
- aug
- sep
- oct



Account 70592661
Phone 218-456-2568
Billing Date Oct 19, 2008

Bill Summary

Customer Service
 1-800-860-2255

218-456-2568						
Date ▲	Time	Place Called	Number Called	Rate	Duration	Amount
Sep 20	8:15 am					
Sep 20	8:11 pm					
Sep 20	8:29 pm					
Sep 20	9:04 pm					
Sep 20	9:19 pm					
Sep 20	9:21 pm					
Sep 20	9:23 pm					
Sep 20	9:23 pm					
Sep 20	11:01 pm					
Sep 20	11:08 pm					
Sep 21	8:56 am					
Sep 21	9:31 am					
Sep 21	10:47 am					
Sep 21	10:55 am					
Sep 21	10:57 am					
Sep 21	11:28 am					
Sep 21	11:29 am					
Sep 21	11:34 am					
Sep 21	11:44 am					
Sep 21	11:53 am					
Sep 21	12:41 pm					
Sep 21	12:48 pm					
Sep 21	12:58 pm					
Sep 21	1:03 pm					
Sep 21	2:12 pm					
Sep 21	2:42 pm					
Sep 21	2:46 pm					
Sep 21	2:47 pm					
Sep 21	2:47 pm					
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Sep 21	2:49 pm					

Sep 24 8:38 pm
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 Sep 25 9:04 am
 Sep 25 9:04 am
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 Sep 25 9:32 am
 Sep 25 11:13 am
 Sep 25 12:03 pm
 Sep 25 12:04 pm
 Sep 25 12:10 pm
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 Sep 25 1:30 pm
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 Sep 28 5:29 pm
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 Sep 29 7:53 am
 Sep 29 11:44 am
 Sep 29 4:37 pm
 Sep 29 5:15 pm



Sep 26 11:44 am	TWINCITIES, MN	952-843-5222	D	2:00	0.00
Sep 26 11:47 am	WORCESTER, MA	508-929-9905	D	1:00	0.00

Oct 03 6:58 pm
 Oct 04 7:49 am
 Oct 04 7:50 am
 Oct 04 7:51 am
 Oct 04 8:00 pm
 Oct 04 8:01 pm
 Oct 04 8:03 pm
 Oct 04 8:05 pm
 Oct 04 8:10 pm
 Oct 05 5:28 pm
 Oct 05 5:43 pm
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 Oct 06 8:06 pm
 Oct 06 8:10 pm
 Oct 06 8:10 pm
 Oct 06 8:26 pm
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 Oct 06 9:01 pm
 Oct 07 9:49 am



[Redacted]						
Oct 06 8:49 am	TWINCITIES, MN	952-843-5222	D	1:00	0.00	
Oct 06 8:50 am	TWINCITIES, MN	952-843-5222	D	1:00	0.00	
Oct 06 8:53 am						
Oct 06 9:38 am	TWINCITIES, MN	952-843-5222	D	1:00	0.00	
Oct 06 10:22 am						
Oct 06 10:55 am	ATLANTA, GA	404-888-7419	D	2:00	0.00	
Oct 06 11:01 am						
Oct 06 12:07 pm						
Oct 06 12:55 pm						
Oct 06 1:06 pm						
Oct 06 6:02 pm						
Oct 06 7:04 pm						
Oct 06 7:05 pm						
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Oct 07 9:49 am						

	Oct 07	10:24 am						
	Oct 07	11:48 am						
	Oct 07	11:49 am						
	Oct 07	12:36 pm						
	Oct 07	12:50 pm						
	Oct 07	12:51 pm						
	Oct 07	1:44 pm						
	Oct 07	2:04 pm						
	Oct 07	3:27 pm	ATLANTA, GA	404-888-7475	D		1:00	0.00
	Oct 07	3:28 pm	ATLANTA, GA	404-888-7419	D		1:00	0.00
	Oct 07	3:29 pm	TWINCITIES, MN	952-843-5222	D		1:00	0.00
	Oct 07	3:33 pm						
	Oct 07	3:33 pm						
	Oct 07	3:49 pm	TWINCITIES, MN	952-843-5222	D		1:00	0.00
	Oct 07	4:21 pm	TWINCITIES, MN	952-843-5222	D		1:00	0.00
	Oct 07	4:22 pm						
	Oct 07	4:37 pm	TWINCITIES, MN	952-843-5222	D		1:00	0.00
	Oct 07	4:39 pm						
	Oct 07	4:59 pm	TWINCITIES, MN	952-843-5222	D		1:00	0.00
	Oct 08	9:46 am	TWINCITIES, MN	952-843-5222	D		1:00	0.00
	Oct 08	11:08 am						
	Oct 08	11:36 am						
	Oct 08	1:40 pm						
	Oct 08	1:48 pm						
	Oct 08	2:46 pm						
	Oct 08	4:27 pm						
	Oct 09	9:07 am						
	Oct 09	10:13 am						
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	Oct 11	7:12 am						
	Oct 11	1:58 pm						
	Oct 11	8:34 pm						
	Oct 12	3:25 pm						

Ex. C

MIDCOUNTRY BANK

Fax

To: Bob Puckl From: Deborah Nielsen

Fax: 206-203-3751 Phone: 952-843-5222

Date: 5/21 Fax: 952-697-2074

Re: Pages: 3

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• Comments:

*Call if you have questions,
otherwise please sign/date &
fax back.*

*Thanks,
Deborah*

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MIDCOUNTRY BANK

May 21, 2008

Gailon Arthur Joy
Robert Pickle
1354 county Highway 21
Halstad, MN 56548

RE: Court Order:
Case N. 08-MC-7 (RHK/AJB)
Three Angels Broadcasting Network, Inc., an Illinois Non-Profit Corporation,
and Danny Lee Shelton, Individually
V.
Gailon Arthur Joy and Robert Pickle

Dear Sirs,
In compliance with the above referenced Order, MidCountry Bank charges the following fees for research and copies:

Photo Copies	\$ 0.25 / page
Research	\$30.00 / hour
Archived Copies* (* documents prior to May 2005)	\$ 5.00 / statement

Payment in advance is required.

For statements only, on all accounts, 1998 to current:

\$2,315.00	Estimated number of statements x \$5.00 each pre conversion
\$ 42.50	Estimated number of statements x 2 pages (estimated) @ \$0.25 each; *post conversion
\$ 720.00	24 hours x \$30/hour for pre conversion statements
\$ 480.00	16 hours x \$30/hour for *post conversion statements
\$ 125.00	Shipping est.
\$3,682.50	Total

(* from May 2005 to present)

Please note: This is an estimate of costs only. An exact tally of costs will be kept. If the total costs are more than the amount pre-paid, additional payment will be required. If the total costs are less than the amount pre-paid, the difference will be refunded.

The payment will be held and not deposited pending Dick Hills authorization to proceed. If authorization is not given, the payment will be returned to you.

Please sign, date, and fax this form to me at 952-697-2074

Robert Pickle	Date	and	Gailon Joy	Date
---------------	------	------------	------------	------



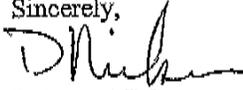
MIDCOUNTRY **BANK**

Please send check to:

MidCountry Bank
Attn: Deborah Nielsen
14525 Highway 7, Suite # 145
Minnetonka, MN, 55345

Please feel free to call me if you have any questions or if I can be of further assistance.

Sincerely,



Deborah Nielsen
MidCountry Bank
Administrative Associate
952-843-5222 (direct)



Ex. D

MIDCOUNTRY BANK

May 21, 2008

Gailon Arthur Joy
Robert Pickle
1354 county Highway 21
Halstad, MN 56548

RE: Court Order:
Case N. 08-MC-7 (RHK/AJB)
Three Angels Broadcasting Network, Inc., an Illinois Non-Profit Corporation,
and Danny Lee Shelton, Individually
V.
Gailon Arthur Joy and Robert Pickle

Dear Sirs,
In compliance with the above referenced Order, MidCountry Bank charges the following fees for research and copies:

Photo Copies	\$ 0.25 / page
Research	\$30.00 / hour
Archived Copies* (* documents prior to May 2005)	\$ 5.00 / statement

Payment in advance is required.

For statements only, on all accounts, 1998 to current:

\$2,315.00	Estimated number of statements x \$5.00 each pre conversion
\$ 42.50	Estimated number of statements x 2 pages (estimated) @ \$0.25 each; *post conversion
\$ 720.00	24 hours x \$30/hour for pre conversion statements
\$ 480.00	16 hours x \$30/hour for *post conversion statements
\$ 125.00	Shipping est.
\$3,682.50	Total

(* from May 2005 to present)

Please note: This is an estimate of costs only. An exact tally of costs will be kept. If the total costs are more than the amount pre-paid, additional payment will be required. If the total costs are less than the amount pre-paid, the difference will be refunded.

The payment will be held and not deposited pending Dick Hills authorization to proceed. If authorization is not given, the payment will be returned to you.

Please sign, date, and fax this form to me at 952-697-2074

Bob Pickle 5/28/08
Robert Pickle Date and Gailon Joy Date



MIDCOUNTRY BANK

Ex. E

Fax

To: Behr Peckle From: Deborah Nielsen

Fax: 206-203-3751 Phone: 952-843-5222

Date: 10/8/08 Fax: 952-697-2074

Re: Count Order Docs. Pages: 2

Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

This facsimile message, and any attachments to it, are for the sole use of the intended recipients, and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this message or its attachments is prohibited. If you are not the intended recipient, please contact the sender by calling (952)-843-5222 and destroy all copies of the original message.



MIDCOUNTRY BANK

October 8, 2008

Gailon Arthur Joy
Robert Pickle
1354 County Highway 21
Halstad, MN 56548

RE: Court Order:
Case N. 08-MC-7 (RHK/AJB)
Three Angels Broadcasting Network, Inc., an Illinois Non-Profit Corporation,
and Danny Lee Shelton; Individually v. Gailon Arthur Joy and Robert Pickle

Dear Sirs;

Upon further review of DHL tracking guidelines and restrictions, we have determined that we can release the following information to you regarding delivery of documents for the Court Order referenced above:

- The documents were delivered, as previously stated, per the court order instructions.
- They were sealed, and labeled confidential.
- They were sent via DHL courier to:
 - US District Court
 - Attn: Judge Timothy S. Hillman
 - Donohue Federal Bldg
 - 595 Main Street
 - Worcester, MA 01608
- They were received on 9/12/08, and signed for by S. Jones. The DHL tracking # is 28878311652. If you go to DHL online you can enter the tracking #, and you'll have the confirmation/signature.

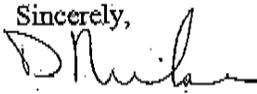
Furthermore please note:

Dick Hills, as *our* legal counsel and is not available for your consultation or communication regarding this case. It is possible that Mr. Hills could be available for legal consult to you, but for a fee. Further communication with him by you or any party representing you, will initiate a billing of \$350 / per hour with a half hour minimum.

Further, our role was to comply with the Court Order and provide adequate delivery of records based on that request. We do not have an interest in the case and are not willing to be a go between among the parties.

Unless further instructed directly by the Court, in association with Judge Timothy S. Hillman, *i.e.* requesting further information or documentation, we are considering this court order complied with and closed.

Sincerely,


Deborah Nielsen
MidCountry Bank
Administrative Associate
952-843-5222 (direct)



Subject: 3ABN
From: "Greg Simpson"
Date: Wed, 1 Oct 2008 11:36:54 -0500
To: "G. Arthur Joy"
CC: "Bob"

Arthur-

This will confirm my understanding following our telephone call this morning that, notwithstanding the internet banter, you are not in possession of any of Danny Shelton's financial records except those obtained in discovery and which are subject to the confidentiality order issued by Judge Hillman in the Massachusetts court case.

I would ask that you avoid making statements in your internet postings that implicitly reveal the contents of the confidential documents, since that would also violate the confidentiality order even if not directly quoting the contents of those documents. If it appears that your comments on the confidential documents in your internet postings reveal the contents of the documents, I would regard that as a violation of the confidentiality order and take appropriate steps to enforce it. I trust and hope that won't be necessary.

M. Gregory Simpson

Direct: (612) 337-6107

e-mail: gregsimpson@

SIEGEL BRILL

GREUPNER DUFFY

& FOSTER P.A.

1300 Washington Square

100 Washington Avenue South

Minneapolis, MN 55402

T (612) 337-6100

F (612) 339-6591

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United States Court of Appeals For the First Circuit

No. 08-2457

THREE ANGELS BROADCASTING NETWORK, INC., an Illinois Non-Profit Corporation;
DANNY LEE SHELTON,

Plaintiffs - Appellees

v.

GAILON ARTHUR JOY; ROBERT PICKLE,

Defendants - Appellants

APPELLANT'S BRIEFING NOTICE

Issued: December 9, 2008

The record on appeal now being complete with the filing of the transcripts, or Transcript Report Form, appellant's brief must be filed by January 19, 2009. Unless appellant is proceeding in forma pauperis, an appendix must also be filed by January 19, 2009.

The deadline for filing appellee's brief will be set in accordance with Fed. R. App. P. 31 and 1st Cir. R. 31.0. Parties are advised that extensions of time are not normally allowed without timely motion for good cause shown.

The parties are advised to review the First Circuit Rulebook, with particular attention to the following Federal and Local Rules of Appellate Procedure:

1st Cir. R. 11.0, 28.0 and 28.1

Briefs are public documents and will not be sealed absent timely motion. Sealed or non-public documents, such as a presentence investigation report or statement of reasons in a criminal case, must be filed in a separate volume of the addendum or appendix clearly marked "FILED UNDER SEAL."

1st Cir. R. 28.0

An addendum must be attached to the appellant's brief. The addendum must contain the judgments, rulings or orders appealed from and any supporting opinions, memoranda or statements of reasons. It must also

contain the following: portions of any instructions to the jury which are the subject of appeal; pertinent portions of any document in the record that is the subject of an issue on appeal; and items or short excerpts from the record, if necessary for understanding the specific issues on appeal. In cases where the district court adopts a magistrate judge's report and recommendation, the report and recommendation must be included in the addendum, in addition to the order adopting it. In cases where the district court reviewed an agency decision, the agency decision must be included in the addendum, in addition to the district court order or opinion.

Fed. R. App. P. 28(a)(11)

If a principal brief exceeds 30 pages, or a reply brief exceeds 15 pages, the brief must include a certificate of compliance certifying that the brief complies with the typeface and length limitations of Fed. R. App. P. 32(a)(7).

Fed. R. App. P. 30
1st Cir. R. 30.0

The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from a transcript are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. If the parties are unable to agree as to the contents of the appendix, they must follow the procedure outlined in Fed. R. App. P. 30(b) and 1st Cir. R. 30.0(b).

Fed. R. App. P. 30(a) and 31(b)
1st Cir. R. 30.0(a) and 31.0(b)

Represented parties must file nine paper copies of their brief, a disk containing the entire brief, including the addendum, and five copies of the appendix. Two copies of the brief and appendix must be served on each unrepresented party and on opposing counsel for each separately represented party. **Caveat: Represented parties proceeding in forma pauperis and/or with CJA counsel** must file and serve the same number of briefs, but an appendix is not required.

Pro se parties must file ten paper copies of the brief and five copies of the appendix. One copy of the brief and appendix must be served on each unrepresented party and on opposing counsel for each separately represented party. **Caveat: Pro se parties proceeding in forma**

pauperis need only file four paper copies of the brief. An appendix is not required.

1st Cir. R. 32.0

A represented party must submit one copy of its brief on a 3½" disk, or Windows-based CD or DVD, in a single electronic file in Portable Document Format (PDF). The main document must be generated by saving in PDF from the original word processing file, but material in the addendum may be scanned if an original word processing file of that material is unavailable.

Fed. R. App. P. 32(a)(2)

Except for filings by pro se parties, the cover of the appellant's brief must be blue, the cover of the appellee's brief must be red and the cover of any reply brief must be gray. The cover of the appendix must be white.

Fed. R. App. P. 32(a)(5)

Briefs must be produced using either a 14 point proportionally spaced typeface, such as Times New Roman, or a 12 point monospaced typeface, such as Courier.

The First Circuit Rulebook, which contains the Federal Rules of Appellate Procedure, First Circuit Local Rules and First Circuit Internal Operating Procedures, is available on the court's website at www.ca1.uscourts.gov. Please note that the court's website also contains tips on filing briefs and appendices, including a checklist of what your brief must contain.

Failure to file a brief in compliance with the Federal and Local Rules will result in entry of an order directing the party to file a conforming brief and could lead to dismissal of the appeal. See 1st Cir. R. 3.0 and 45.0.

Richard Cushing Donovan, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
John Joseph Moakley
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210
Case Manager: Melinda McKenzie - (617) 748-4214

cc:

Gerald Duffy

Jerrie Hayes

Kristen L. Kingsbury

William Christopher Penwell

John P. Pucci

J. Lizette Richards

M. Gregory Simpson

Gailon Arthur Joy

Robert Pickle

No. 08-2457; No. 09-2615

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

THREE ANGELS BROADCASTING NETWORK, INC.,
an Illinois Non-Profit Corporation;
DANNY LEE SHELTON,

Plaintiffs-Appellees,

v.

GAILON ARTHUR JOY; ROBERT PICKLE,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts
Case No. 07-40098

**DEFENDANTS' MOTION TO STAY OR
HOLD IN ABEYANCE DEFENDANTS' APPEALS**

GAILON ARTHUR JOY, *PRO SE*
P.O. Box 37
Sterling, MA 01564
(508) 872-8000

ROBERT PICKLE, *PRO SE*
1354 County Highway 21
Halstad, MN 56548
(218) 456-2568

Defendants hereby request that this Court hold in abeyance or stay Defendants' pending appeals until this Court receives a certified supplemental record from the district court consisting of bank records Defendants subpoenaed from MidCountry Bank ("MidCountry") ("MidCountry records").

The December 4, 2009, ruling on Defendants' motion to enlarge the record made clear that the documents Defendants were seeking by that motion to include in the record are already part of the record on appeal for Case No. 09-2615. This ruling prompted Defendants to research further under what circumstances the record includes materials not described in the docket as formally filed.

Upon further reflection, Defendants believe that the MidCountry records which Defendants paid dearly for are part of the record on appeal. Defendants have filed a motion, memorandum, affidavit, and exhibits in the district court (attached hereto as Exhibits 1–4), asking the district court to certify and forward a supplemental record consisting of a copy of the MidCountry records.

The March 28, 2008, order of Magistrate Judge Boylan of the District of Minnesota ordered the MidCountry records to be produced under seal to Magistrate Judge Hillman of the District of Massachusetts to ensure that the records complied with Magistrate Judge Hillman's yet unissued confidentiality order. (Record on Appeal docket entry ("RA") 63-36 pp. 2–3). These records were produced by MidCountry on September 8, 2008, delivered to the federal courthouse in Worcester, Massachusetts, on September 12, 2008, and signed for by

a clerk of court. (Ex. 4 pp. 1–5).

Since by court order the MidCountry records were presented to the district court for review, and since they were received by the clerk on September 12, 2008, Defendants believe the MidCountry records are considered filed with the district court and thus constitute part of the record on appeal for both appeals. *In re Arthur Andersen & Co*, 621 F.2d 37, 39 (1st Cir. 1980); *Hernandez v. C Aldridge III*, 902 F.2d 386, 388 (5th Cir. 1990).

On September 11, 2008, Magistrate Judge Timothy Hillman denied Plaintiffs' request to conduct an *in camera* review of the MidCountry records. (RA 75 pp. 16–17; RA 107 p. 5). Thus Plaintiffs' last legal roadblock to Defendants obtaining the MidCountry records was removed, and Defendants should have been able to obtain these records.

However, Defendants were told by individuals at the district court that the MidCountry records could not be found. (Ex. 3 pp. 2–4). Even Plaintiffs' counsel could not confirm their location, and thus, on October 1, 2008, Plaintiffs' counsel contacted Defendants to see whether Defendants had obtained the MidCountry records from the district court. (Ex. 3 p. 4; Ex. 4 p. 22).

On December 9, 2008, this Court declared the record on appeal for Case No. 08-2457 to be complete. (Briefing schedule filed on December 9, 2008). A docket entry entered in the district court on December 23, 2008, concerning a receipt dated December 16, is the first indication Defendants had from the district court

that the district court had located the MidCountry records. (RA 160). The withholding of the evidence in the MidCountry records from Defendants, whether inadvertent or not, impacted Defendants' litigation efforts, including Defendants' October 30, 2008, response to Plaintiffs' motion to dismiss.

Defendants believe that the MidCountry records speak to a number of issues in both of Defendants' appeals. (Ex. B pp. 8–12).

WHEREFORE, Gailon Arthur Joy and Robert Pickle pray the Court to hold in abeyance or stay Defendants' appeals until this Court receives a certified supplemental record from the district court consisting of a copy of the MidCountry records.

Respectfully submitted,

Dated: December 9, 2009

s/ Gailon Arthur Joy, *pro se*
Gailon Arthur Joy, *pro se*
P.O. Box 37
Sterling, MA 01564
Tel: (508) 872-8000

and

s/ Robert Pickle, *pro se*
Robert Pickle, *pro se*
1354 County Highway 21
Halstad, MN 56548
Tel: (218) 456-2568
Fax: (206) 203-3751

CERTIFICATE OF SERVICE

I, Bob Pickle, hereby certify that on December 9, 2009, I served copies of this motion with accompanying exhibits on the following registered parties via the ECF system:

John P. Pucci, J. Lizette Richards
*Attorneys for Danny Lee Shelton
and Three Angels Broadcasting Network, Inc.*

M. Gregory Simpson
*Attorney for Danny Lee Shelton
and Three Angels Broadcasting Network, Inc.*

And on the following parties by way of First Class U.S. Mail:

Gerald Duffy, Kristin L. Kingsbury,
Jerrie Hayes, William Christopher Penwell
*Attorneys for Danny Lee Shelton
and Three Angels Broadcasting Network, Inc.*

Siegel, Brill, Greupner, Duffy & Foster, P.A.
100 Washington Avenue South, Suite 1300
Minneapolis, MN 55401

Dated: December 9, 2009

s/ Bob Pickle
Bob Pickle