

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

WILLIAM STEVEN GANDEE, D.C.

Complainant,

v.

**CHOICE ONE COMMUNICATIONS, INC.
d/b/a ONE COMMUNICATIONS,**

Respondent.

CASE NO. 09-51-TP-CSS

BRIAN LONGWORTH, D.C.,

Complainant,

v.

**CHOICE ONE COMMUNICATIONS, INC.
d/b/a ONE COMMUNICATIONS,**

Respondent.

CASE NO. 09-52-TP-CSS

**APPLICATION FOR REHEARING
BY
WILLIAM STEVEN GANDEE, D.C. AND BRIAN LONGWORTH, D.C.**

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In order to advance the goal that commercial telephone consumers receive adequate service at reasonable rates, the Complainants William Steven Gandee, D.C. (hereinafter "Gandee") and Brian Longworth, D.C. (hereinafter "Longworth") both hereinafter collectively referred to as Complainants file this application for rehearing of the Opinion and Order issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in this proceeding entered in the

on May 25, 2011. Complainants file this application for rehearing pursuant to 4903.10 and Ohio Adm. Code 4901-1-35.

Complainants assert that, under the applicable legal standards, the Opinion and Order was unjust, unreasonable and unlawful and erred by:

- Implementing a policy which would promote the production of bogus letters of authority to unlawfully port telephone numbers away from authorized consumers users leaving them without recourse against a telecommunications carrier;
- Failing to set forth reasonable standards to protect the consumer from fraud;
- Failing to implement an investigative process in which complaining parties can seek recourse after discovering that their phone numbers have been transferred pursuant to fraudulent letters of authority;
- Finding that the Defendant, Choice One Communications (hereinafter "One Communications") representative Richard Wheeler notified counsel for Complainants of the need for a port request after the Summit County Common Pleas Court Ordered the phone numbers returned to the Complainants;
- Failing to establish a logical investigative procedure allowing recourse or relief to a consumer who has established that a letter of authority was bogus or fraudulent.

The Opinion and Order of May 25, 2011 should be modified and/or abrogated to correct these errors. The grounds for this application for rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,



THOMAS A. SKIDMORE, ESQ. (#0039746)
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In this case, the Commission is investigating the actions of One Communications after receiving notice of the unauthorized Letter of Authority (“LOA”). The unauthorized LOA resulted in One Communications having possession of the Complainants’ business phone numbers which were assigned to an account of a One Communications customer. The Commission conducted a hearing and testimony was elicited from both sides including the Complainants, Brian

Longworth and William Steven Gandee, and One Communications representative, Richard Wheeler. Exhibits were submitted by both sides. Post Hearing Briefs were filed by counsel. The Commission filed an Opinion and Order on May 25, 2011 from which the Complainants make this Application for Rehearing.

II. STANDARD OF REVIEW

Applications for rehearing are governed by O.R.C. 4903.10. The statute allows that within 30 days after issuance of a PUCO order, “[a]ny party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.”

O.R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, Ohio Admin. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear.” The statute also provides: “if, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard for abrogating and modifying the May 25, 2011 Opinion and Order is met by this application for rehearing.

III. ARGUMENT

- A. **The Commission erred in finding that One Communications had no duty to investigate Complainants' allegations that the Letter of Authority ("LOA") executed by Keith Ungar, D.C. (hereinafter "Ungar") was bogus. The failure of the Commission to set forth any minimal standard to investigate an unauthorized LOA fails to protect the consumer.**

The Commission found that "... while a carrier must follow FCC verification procedures, establishing actual authorization of the subscriber is not required." Such a finding is unreasonable and unlawful. The Commission found that "... One Communications investigated and found a valid LOA from Dr. Ungar, and confirmed that the only contact persons for said numbers were Dr. Ungar and his office secretary ..." (See Opinion and Order dated May 25, 2011, Section Discussion and Conclusions, paragraph 3). The Complainants immediately contacted One Communications and provided notice that no authorization had ever been given to anyone to transfer their phone numbers. Dr. Longworth testified that his complaint to One Communications "... didn't seem to matter." (Tr. 16). One Communications admitted that it conducted little to no investigation after receiving notice. (Tr. 105-106). The Commission's Order does not require any verification procedure to the telecommunications carrier even after notice of an unauthorized act. Although the telecommunications carrier continues to receive financial benefit from the unauthorized user, the consumer is left essentially without remedy.

The Commission found that "... Mr. Wheeler stated that there is no internal investigative committee at One Communications to speak with all parties during such an allegation; rather, One Communications relies on a valid LOA ..." (Tr. 106). The Complainants had contacted One Communications in the Spring of 2008 and informed it that no authorization had ever been given to anyone to transfer their phone numbers. (Tr. 15-16). The Commission recognized Richard

Wheeler's testimony in which he stated that One Communications discussed very little with Complainants when contacted by them (Tr. 76-77, 132).

When One Communications expressed its intent to do nothing, the Complainants filed a separate action simultaneously in Summit County Court of Common Pleas entitled *Ungar v. Longworth, et al.*, Summit County Case No. CV 2008 02 1528. Magistrate Shoemaker held a hearing and found by decision filed May 19, 2009 that Ungar had "... no authority for the transfer of 330-896-8500 from control and ownership of Brian Longworth into the name of Keith S. Ungar as was done, and that both Dr. Ungar and his business entities, The Center for Natural Medicine and/or Advanced Pain and Wellness Center, Inc., in any fashion or combination, have no right or claim to such phone number. As a result, the party known as Choice One Communications, Inc., the phone carrier in this matter, is ordered and otherwise directed to forthwith transfer the ownership on the records of such entity and to physically allow a change of such phone number, that being 330-896-8500, into the name of Brian Longworth and to ensure that the corporate records of such business entity show that Keith S. Ungar, or any of the aforementioned two business entities, has no ownership interest in such name, notified Choice One that they had not ever granted any authority to Ungar to transfer or port their respective telephone numbers. . . ." (Magistrate's Decision, Page 5) (See Complainant's Exhibit 5). The Court further found that "... [s]uch entity known as Choice One Communications, Inc. shall forthwith effectuate all matters referred to above to allow the change in records and the change in control and ownership of the above-mentioned phone number, and shall file a notice with the Court when such acts have been accomplished." (Id at 5). No objections were filed and the trial court adopted the magistrate's decision.

The Commission summarily finds that Choice One can rely on an unauthorized LOA even after notice of its invalidity. The Commission's finding encourages a telecommunications carrier to do nothing to investigate or verify the authenticity of a LOA after a complaint. It leaves the consumer without timely recourse.

Applying the Commission's Order to the facts in this case results in the following unjust result and unreasonable delay:

1. Ungar provides an unauthorized LOA to One Communications;
2. One Communications ports Complainants' phone numbers pursuant to Unger's request;
3. One Communications is contacted by Complainants, receives notice of the invalid LOA but provides "very little" information to Complainants because they are not authorized on the Ungar account;
4. One Communications conducts no real investigation;
5. Summit County Common Pleas Court orders the numbers returned;
6. One Communications does nothing but awaits a port request;
7. Complainants are prevented from obtaining their respective phone numbers for more than a year from their original complaint and notice to One Communications.

The Commission's Order in application leaves the consumer without recourse even after notice to the telecommunications provider. The Commission's finding allows a telecommunications company to provide little to no information about a number due to "privacy" issues even in light of notice of an unauthorized act. Once notice is received by One Communications, the Commission's Order implies that it can fully rely on an unauthorized LOA without further action. The consumer therefore is left without remedy, without access to its phone number all the while losing patients and business. The finding and logic is clearly unjust and unreasonable.

B. The Commission erred in finding that One Communications representative Richard Wheeler notified counsel for Complainants of the need for a port request after the Summit County Common Pleas Court issued an order that the phone numbers be returned to the Complainants.

The Commission mistakenly found and then relied in error upon an erroneous factual finding that Richard Wheeler had informed the Complainants' counsel Thomas Skidmore (hereinafter "Skidmore") that an AT & T port order was needed for Dr. Gandee to obtain his number. In reviewing the transcript pages referenced by the commission (Tr. 110, 112-113), there does not appear to be support for such a conclusion. In fact, after One Communications retains Attorney Michael Dortch (hereinafter "Dortch"), Skidmore had no further discussions with One Communications representatives including Richard Wheeler. The Commission's factual conclusion in this regard is mistaken.

In support on this contention, the Complainants' would like to reference additional testimony and submit supplemental evidence regarding these issues. At Tr. 119 was the following testimony elicited from Richard Wheeler:

- Q. So once this Court order comes out -- the Court order is not a porting order; right?
- A. A Court order is not a porting request.
- Q. Not a porting request. So what did Choice One Communications do in order to make this happen?
- A. When we received the request from AT&T we complied with the port order and switched the number back.
- Q. But did Choice One send a letter to me, send a letter to Dr. Longworth, send a letter to Dr. Gandee saying we have the court order but we need a porting request? Did anyone ever do that?
- A. I have no knowledge of anything along those lines.

On March 11, 2008, Skidmore initially contacted One Communications via facsimile transmission informing it that the transfer of the phone numbers was not authorized. (See

Supplemental Exhibit "A"). Verbal communication with Richard Wheeler resulted in a subpoena being faxed on March 19, 2008 (See Supplemental Exhibit "B"). Once Dortch appeared on behalf of One Communications in the Summit County Court of Common Pleas litigation, Skidmore had no further communications with any representative of One Communication including Richard Wheeler.

On June 3, 2009 Skidmore sent via facsimile transmission correspondence to Dortch requesting that his client One Communications immediately port the phone number to AT & T under Longworth's account number. (See Supplemental Exhibit "C"). An additional request was made to port Grandee's phone number directly to him at the same AT & T account number. (See Supplemental Exhibit "C").

On June 26, 2009 another request via e-mail was sent to Dortch with notice that the Complainants' request had still not been acted upon and asking for compliance with the Summit County Court of Common Pleas Order. (See Supplemental Exhibit "D").

On July 14, 2009 Skidmore again followed with another e-mail to Dortch providing notice that Longworth's number had finally been ported but that because Gande's number was inactive, it could not be ported. (See Supplemental Exhibit "E").

On August 10, 2009 Skidmore again faxed a letter to Dortch advising him again that the porting request through AT & T was unsuccessful due to it being "inactive." (See Supplemental Exhibit "F").

The Commission's factual finding that "One Communications informed Complainants' counsel that a port request from AT & T was needed for Gande's number to be transferred back to AT & T, and that, until receipt of AT & T's September 2009 port request, One Communications "held" that number to prevent its release into the general number pool" is in error.

IV. CONCLUSION

Complainants hereby request a rehearing to present evidence on this factual error to correct the record to accurately reflect the actual occurrences. Further, Complainants request a rehearing to present additional testimony and evidence regarding One Communications actions after notice was received of an unauthorized use of a LOA and what if any investigation was actually conducted by One Communications.

The Commissions Opinion and Order concludes that although the Complainants and their counsel expressed objection to the porting no evidence was provided that Ungar lacked authority. The sworn testimony of the Complainants apparently is not to be considered and the Commission has not set forth a policy or suggestion as to what "evidence" there would be in any consumer circumstance such as this that would meet such a requirement. The Commission suggest that the burden of proof establishing the lack of authority is upon the consumer. In most cases such as this there would be little tangible evidence. To suggest that there is some type of voluminous evidence to prove unauthorized use is unrealistic.

Respectfully submitted,

THOMAS A. SKIDMORE CO., L.P.A.

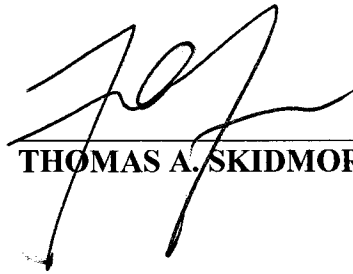


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CERTIFICATE OF SERVICE

A copy of the foregoing has been sent via regular U.S. Mail, postage prepaid this 24th day of June, 2011 to:

Michael D. Dortch, Esq.
Counsel for Respondent, Choice One Communications
65 East State Street, Suite 200
Columbus, OH 43215-4277

A handwritten signature in black ink, appearing to read 'T. Skidmore', is written over a horizontal line.

THOMAS A. SKIDMORE, ESQ. #0039746

THOMAS A. SKIDMORE CO., L.P.A.

Attorney at Law

THOMAS A. SKIDMORE
Attorney

(330) 379-2745 / (330) 253-1550
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National City Center
One Cascade Plaza
12th Floor
Akron, Ohio 44308
thomasskidmore@rrbiznet.com

March 10, 2008

Choice One Communications
2150 Holgren Way
Green Bay, WI 54304

Re: Phone Numbers: (330) 896-8500; (330) 724-5521
My Clients: Health First Chiropractic Clinic, Inc.
Gandee Chiropractic Life Center, Inc.

TO THE LEGAL DEPARTMENT:

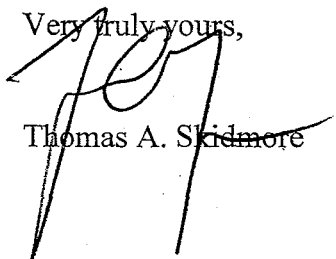
Please be advised that the undersigned has been retained by Health First Chiropractic Clinic, Inc. and Gandee Chiropractic Life Center, Inc. regarding litigation which has been filed entitled Keith S. Ungar, D.C. -vs.- Brian Longworth, D.C., et al., Summit County Court of Common Pleas, Case No. 2008-02-1528. The parties are in a legal dispute which involves the separation of their respective chiropractic practices.

I have been informed by William Gandee, D.C. that he has had legal title and ownership of his above-referenced phone number for approximately 28 years. I have been informed by Brian Longworth, D.C. that he has been the title owner of his phone number for approximately 12 years. Both have indicated that they have not authorized the transfer of ownership.

It is my understanding that my clients have contacted you in order to transfer their numbers to their new address and a representative has informed them that this cannot be done. I have attempted to contact your legal department in order to obtain the company position regarding the ownership of these numbers but have not yet received a returned call.

I would appreciate it if a company representative from you legal department would contact me immediately regarding this issue. I would also ask that any documentation showing any changes in ownership of these phone numbers be supplied to the undersigned immediately. In the meantime, should you have any further questions, please do not hesitate to contact me. Thanking you in advance for your anticipated cooperation. I remain,

Very truly yours,


Thomas A. Skidmore

TAS;ksp

EXHIBIT

Supplemental
A

P.1

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THOMAS A. SKIDMORE CO., L.P.A.

Attorney at Law

National City Center, One Cascade Plaza, 12th Floor, Akron, Ohio 44308
(330) 379-2745 (330) 253-1550 Fax (330) 253-9657 thomasskidmore@rrbiznet.com

TO: Richard Wheeler _____

FROM: Thomas A. Skidmore, Esquire

FIRM: _____

FIRM: Thomas A. Skidmore Co., L.P.A.

FAX NO.: 781-622-2114 _____

FAX NO.: (330) 253-9657

PHONE NO.: _____

PHONE NO.: (330) 379-2745

DATE: March 11, 2008

NUMBER OF PAGES, including this page: 2

COMMENTS: _____

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

CIVIL CASE SUBPOENA

Case No. 2008-02-1528

KEITH S. UNGAR, D.C.

-v-

BRIAN LONGWORTH, D.C., et al.

TO: CHOICE ONE COMMUNICATIONS
ATTENTION: RICHARD WHEELER, ESQ.

YOU ARE HEREBY COMMANDED TO:

_____ ATTEND AND GIVE TESTIMONY AT A (TRIAL) (HEARING) (DEPOSITION).

_____ ATTEND AND PRODUCE (DOCUMENTS) (TANGIBLE THINGS) AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW.

 X PRODUCE AND PERMIT INSPECTION AND COPYING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY DESIGNATED DOCUMENTS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.

_____ PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY TANGIBLE THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.

_____ PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY, FOR THE PURPOSES DESCRIBED IN Ohio Civil Rules 34 (A)(3), ON THE DATE AND AT THE TIME SPECIFIED BELOW.
DESCRIPTION OF LAND OR OTHER PREMISES:

DAY: Friday
DATE: March 21, 2008
TIME: 11:00 a.m.
PLACE: Skidmore & Associates, One Cascade Plaza, 12th Floor, Akron, Ohio 44308

DESCRIPTION OF ITEMS TO BE PRODUCED:
ANY AND ALL DOCUMENTS PERTAINING TO THE FOLLOWING PHONE NUMBERS INCLUDING BUT NOT LIMITED TO ALL CHANGES, APPLICATIONS, TELEPHONE OR OPERATOR NOTES, SIGNATURES, CLIENT OR CUSTOMER CHANGES AND REQUESTS:

PHONE NUMBERS: (330)896-8500; (330) 724-5521

THE STATE OF OHIO

Summit County, ss

To the Sheriff of Summit County, Ohio Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON.

WITNESS MY HAND AND SEAL OF SAID COURT THIS _____ DAY OF _____, 2008

CLERK OF THE COURT OF COMMON PLEAS

BY: 
SIGNATURE OF Attorney for (Plaintiff) (Defendant)

REQUESTING PARTY INFORMATION:

NAME: Thomas A. Skidmore ATTORNEY CODE: 0039746 TELEPHONE NUMBER: 330-379-2745

NOTE: READ ALL INFORMATION ON THE REVERSE SIDE OF THIS SUBPOENA.

EXHIBIT

Supplemental
B

tabbles

CIVIL RULE 45 (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A PARTY OR AN ATTORNEY RESPONSIBLE FOR THE ISSUANCE AND SERVICE OF A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING UNDUE BURDEN OR EXPENSE ON A PERSON SUBJECT TO THAT SUBPOENA.

(2) (a) A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING OF DESIGNATED BOOKS, PAPERS, DOCUMENTS OR TANGIBLE THINGS, OR INSPECTION OF PREMISES, NEED NOT APPEAR IN PERSON AT THE PLACE OF PRODUCTION OR INSPECTION UNLESS COMMANDED TO APPEAR FOR DEPOSITION, HEARING OR TRIAL.

(b) SUBJECT TO DIVISION (D)(2) OF THIS RULE, A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING MAY, WITHIN FOURTEEN DAYS AFTER SERVICE OF THE SUBPOENA OR BEFORE THE TIME SPECIFIED FOR COMPLIANCE IF SUCH TIME IS LESS THAN FOURTEEN DAYS AFTER SERVICE, SERVE UPON THE PARTY OR ATTORNEY DESIGNATED IN THE SUBPOENA WRITTEN OBJECTIONS TO INSPECTION AND COPYING OF ANY OR ALL OF THE DESIGNATED MATERIALS OR OF THE PREMISES. IF OBJECTION IS MADE, THE PARTY SERVING THE SUBPOENA SHALL NOT BE ENTITLED TO INSPECT AND COPY THE MATERIALS OR INSPECT THE PREMISES EXCEPT PURSUANT TO AN ORDER OF THE COURT BY WHICH THE SUBPOENA WAS ISSUED. IF OBJECTION HAS BEEN MADE, THE PARTY SERVING THE SUBPOENA, UPON NOTICE TO THE PERSON COMMANDED TO PRODUCE, MAY MOVE AT ANY TIME FOR AN ORDER TO COMPEL THE PRODUCTION. AN ORDER TO COMPEL PRODUCTION SHALL PROTECT ANY PERSON WHO IS NOT A PARTY OR AN OFFICER OF A PARTY FROM SIGNIFICANT EXPENSE RESULTING FROM THE INSPECTION AND COPYING COMMANDED.

(3) ON TIMELY MOTION, THE COURT FROM WHICH THE SUBPOENA WAS ISSUED SHALL QUASH OR MODIFY THE SUBPOENA OR ORDER APPEARANCE OR PRODUCTION ONLY UNDER SPECIFIED CONDITIONS, IF THE SUBPOENA DOES ANY OF THE FOLLOWING:

(a) FAILS TO ALLOW REASONABLE TIME TO COMPLY;

(b) REQUIRES DISCLOSURE OF PRIVILEGED OR OTHERWISE PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES;

(c) REQUIRES DISCLOSURE OF AN UNRETAINED EXPERT'S OPINION OR INFORMATION NOT DESCRIBING SPECIFIC EVENTS OR OCCURRENCES IN DISPUTE AND RESULTING FROM THE EXPERT'S STUDY MADE NOT AT THE REQUEST OF ANY PARTY;

(d) SUBJECTS A PERSON TO UNDUE BURDEN.

(4) BEFORE FILING A MOTION PURSUANT TO DIVISION (C)(3)(d) OF THIS RULE, A PERSON RESISTING DISCOVERY UNDER THIS RULE SHALL ATTEMPT TO RESOLVE ANY CLAIM OF UNDUE BURDEN THROUGH DISCUSSIONS WITH THE ISSUING ATTORNEY. A MOTION FILED PURSUANT TO DIVISION (C)(3)(d) OF THIS RULE SHALL BE SUPPORTED BY AN AFFIDAVIT OF THE SUBPOENAED PERSON OR A CERTIFICATE OF THAT PERSON'S ATTORNEY OF THE EFFORTS MADE TO RESOLVE ANY CLAIM OF UNDUE BURDEN.

(5) IN CASES UNDER DIVISION (C)(3)(c) OR (C)(3)(d) OF THIS RULE, THE COURT SHALL QUASH OR MODIFY THE SUBPOENA UNLESS THE PARTY IN WHOSE BEHALF THE SUBPOENA IS ISSUED SHOWS A SUBSTANTIAL NEED FOR THE TESTIMONY OR MATERIAL THAT CANNOT BE OTHERWISE MET WITHOUT UNDUE HARDSHIP AND ASSURES THAT THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED WILL BE REASONABLY COMPENSATED.

CIVIL RULE 45 (D) DUTIES IN RESPONDING TO SUBPOENA.

(1) A PERSON RESPONDING TO A SUBPOENA TO PRODUCE DOCUMENTS SHALL PRODUCE THEM AS THEY ARE KEPT IN THE USUAL COURSE OF BUSINESS OR SHALL ORGANIZE AND LABEL THEM TO CORRESPOND WITH THE CATEGORIES IN THE DEMAND. A PERSON PRODUCING DOCUMENTS PURSUANT TO A SUBPOENA FOR THEM SHALL PERMIT THEIR INSPECTION AND COPYING BY ALL PARTIES PRESENT AT THE TIME AND PLACE SET IN THE SUBPOENA FOR INSPECTION AND COPYING.

(2) WHEN INFORMATION SUBJECT TO A SUBPOENA IS WITHHELD ON A CLAIM THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIALS, THE CLAIM SHALL BE MADE EXPRESSLY AND SHALL BE SUPPORTED BY A DESCRIPTION OF THE NATURE OF THE DOCUMENTS, COMMUNICATIONS, OR THINGS NOT PRODUCED THAT IS SUFFICIENT TO ENABLE THE DEMANDING PARTY TO CONSENT TO THE CLAIM.

CIVIL RULE 45 (E) SANCTIONS.

FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA ISSUED. A SUBPOENAED PERSON OR THAT PERSON'S ATTORNEY FRIVOLOUSLY RESISTING DISCOVERY UNDER THIS RULE MAY BE REQUIRED BY THE COURT TO PAY THE REASONABLE EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF THE PARTY SEEKING THE DISCOVERY. THE COURT FROM WHICH A SUBPOENA WAS ISSUED MAY IMPOSE UPON A PARTY OR ATTORNEY IN BREACH OF DUTY IMPOSED BY DIVISION (C)(1) OF THIS RULE AN APPROPRIATE SANCTION, WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, LOST EARNINGS AND REASONABLE ATTORNEY'S FEES.

RETURN OF SERVICE

I RECEIVED THIS SUBPOENA ON _____ AND SERVED THE PARTY NAMED ON THE REVERSE HEREOF BY _____ ON _____.

I WAS UNABLE TO COMPLETE SERVICE FOR THE FOLLOWING REASON: _____

Sheriff's Fees _____

(Signature of Serving Party)

Service _____
Mileage _____
Copy _____
Total _____

Circle One: Deputy Sheriff/Attorney/Process Server/Deputy Clerk

Other _____

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Attorney at Law

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TO: Richard Wheeler _____

FROM: Thomas A. Skidmore, Esquire

FIRM: _____

FIRM: Thomas A. Skidmore Co., L.P.A.

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PHONE NO.: (330) 379-2745

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THOMAS A. SKIDMORE CO., L.P.A.

Attorney at Law

THOMAS A. SKIDMORE
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Akron, Ohio 44308

thomasskidmore@rrbiznet.com

June 3, 2009

Michael D. Dortch, Esq.
65 East State Street, Suite 200
Columbus, OH 43215-4277

Re: Keith S. Ungar, D.C. -vs.- Brian Longworth, D.C., et al.

Dear Attorney Dortch,

It is my understanding that the Magistrate has ruled that Keith Ungar, D.C. lacked the requisite authority to port the phone numbers of Dr. Longworth. I would ask that your client immediately port the phone number (330) 896-8500 to AT & T. Dr. Longworth's account number is (330) 896-8800 (6459). I would appreciate it if you would get this taken care of as soon as practical.

Second, it is my understanding that there is no objection to Dr. Gandee's phone number also being ported back to him. William Gandee's number (330) 724-5521 can be ported directly to the same account above. Please contact me if there are any questions. If you could let me know when this has been completed, it would be greatly appreciated.

In the meantime, should you have any further questions, please do not hesitate to contact me. Thanking you in advance for your anticipated cooperation. I remain,

Very truly yours,


Thomas A. Skidmore

TAS;ksp

cc: Brian Longworth
William Gandee

EXHIBIT

Supplemental
C

TRANSACTION REPORT

P.01

JUN-03-2009 WED 04:44 PM

FOR: Skidmore and Assoc.

330 253 9657

SEND

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
JUN-03	04:43 PM	16144642002	28"	2	FAX TX	OK	382	

TOTAL : 28S PAGES: 2

FAX COVER SHEET

THOMAS A. SKIDMORE CO., L.P.A.

Attorney at Law

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(330) 379-2745 (330) 253-1550 Fax (330) 253-9657 thomasskidmore@rrbiznet.com

TO: Michael D. Dartch, Esq.

FROM: Thomas A. Skidmore, Esquire

COMPANY:

FIRM: Thomas A. Skidmore Co., L.P.A.

FAX NO.: 1-614-464-2002

FAX NO.: (330) 253-9657

PHONE NO.: _____

PHONE NO.: (330) 379-2745

DATE: June 3, 2009 _____

NUMBER OF PAGES, including this page: 2 _____

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Thomas Skidmore

From: "Thomas Skidmore" <thomasskidmore@rrbiznet.com>
To: "Michael Dortch" <mdortch@kravitzllc.com>
Sent: Friday, June 26, 2009 9:28 AM
Subject: Re: Longworth Decision

Mike,

I just spoke with my clients today and they still don't have their phone numbers.

We put in a request to AT & T to obtain the phone numbers based upon the Court Order.

AT & T believes that it can obtain Longworth's phone number but Gandee's needs to be activated.

I would ask that you promptly aid the transition to comply with the Court's Order.

My client's have been more than patient.

I appreciate it.

Thanks,

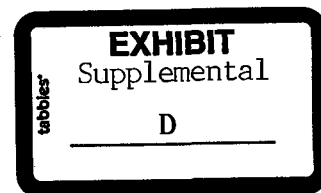
Tom

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

From: "Michael Dortch" <mdortch@kravitzllc.com>
To: <thomasskidmore@rrbiznet.com>
Sent: Thursday, May 21, 2009 1:14 PM
Subject: Longworth Decision

Michael D. Dortch
Kravitz, Brown & Dortch, LLC
65 East State Street
Suite 200
Columbus, OH 43215
614.464.2000
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Thomas Skidmore

From: "Thomas Skidmore" <thomasskidmore@rrbiznet.com>
To: "Michael Dortch" <mdortch@kravitzllc.com>
Sent: ~~Tuesday, July 14, 2009 12:01 PM~~
Subject: Longworth, et al. -vs.- Choice One, et al.

Mike,

I left you a voice mail and thought that I would follow with an e-mail.

Since my clients still had been unable to obtain their phone numbers pursuant to the Court's Order, Brian Longworth issued a request to Port his phone number back to him via AT & T. The Porting request was completed just in the last week.

Dr. Gandee's phone number continues to remain in the possession of Choice One and is currently inactive. AT & T cannot port the phone number unless it is activated. If you could let me know where this stands, it would be greatly appreciated.

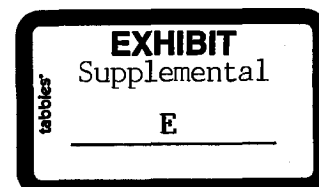
Just in the week since Dr. Longworth has reactivated his phone number he has already received calls from several of his patients. It has already equated to approximately \$5,000 - \$7,000 in revenues which he believes would have been misdirected by Dr. Ungar. This is even in light of the fact that it has taken approximately 16 months to regain his phone number.

I just received the Court's scheduling Order and thought it prudent to discuss what we hope to get completed in discovery.

Give me a call when you get a chance.

Thanks,

Thomas A. Skidmore, Esq.
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August 10, 2009

Michael Dortch, Esq.
Kravitz, Brown & Dortch, LLC
65 East State Street. Suite 200
Columbus, OH 43215-4277

Sent Via Facsimile Transmission: 1-614-464-2002

Re: Keith Ungar, D.C., et al. -vs.- Brian Longworth, et al.

Dear Attorney Dortch,

I have inquired a number of times of your client's ability to voluntarily participate in the transfer of their phone numbers. The last was an e-mail dated July 14, 2009 in which I informed you that Longworth was able to obtain his phone number via a porting request thru AT&T but Gandee still cannot obtain his phone number because your client has it listed as inactive. I asked that you contact me and let me know the status.

It has now been more than three weeks and my client still is still without his phone number. I will be filing a Motion for Contempt for failing to abide by the Court Order issued months ago. Please advise as to the status. I remain,

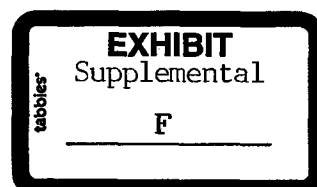
Very truly yours,

Thomas A. Skidmore

Thomas A. Skidmore

TAS;ksp

cc: William Gandee, D.C.



TRANSACTION REPORT

P. 01

AUG-10-2009 MON 09:00 AM

FOR: Skidmore and Assoc.

330 253 9857

SEND

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
AUG-10	08:59 AM	16144642002	52"	2	FAX TX	OK	476	

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FROM: Thomas A. Skidmore, Esquire

COMPANY: Kravitz, Brown & Dortch, LLC

FIRM: Thomas A. Skidmore Co., L.P.A.

FAX NO.: 1-614-464-2002

FAX NO.: (330) 253-9657

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PHONE NO.: (330) 379-2745

DATE: August 10, 2009

NUMBER OF PAGES, including this page: 2

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Commission of Ohio Docketing Information System on

6/24/2011 3:22:11 PM

in

Case No(s). 09-0051-TP-CSS, 09-0052-TP-CSS

Summary: Application Application for Rehearing by William Steven Gandee, D.C. and Brian Longworth, D.C.