

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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U.S. SECURITIES AND EXCHANGE	:	
COMMISSION,	:	04 CV 02322 (GEL)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
	:	
UNIVERSAL EXPRESS, INC., RICHARD A.	:	
ALTOMARE, CHRIS G. GUNDERSON, MARK	:	
S. NEUHAUS, GEORGE J. SANDHU, SPIGA,	:	
LTD., and TARUN MENDIRATTA,	:	
	:	
Defendants.	:	
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**MOTION IN LIMINE TO PRECLUDE
TESTIMONY OF SEC STAFF**

Plaintiff has designated its own staff members, Hugh Beck, Lonnie Morgan, and Kerry Matticks to testify at trial against George Sandhu.

This Motion in Limine is to preclude each of these persons from testifying on the grounds that (1) they have not been designated as expert witnesses and, as "fact witnesses," they have nothing to offer from personal knowledge¹; and (2) to now permit the SEC to spring two witnesses (Morgan and Matticks) that have never been deposed, in reliance upon representations and objections made by the SEC approximately 2 ½ years ago is highly prejudicial to Mr. Sandhu.

¹ For example, the SEC has designated a "Morgan Summary of Spiga account at Research Capital" See Plaintiff's Exhibit List items 431-436. Yet, the SEC has admitted in its Statement of Facts pursuant to Rule 56.1 ¶ 73 that "Sandhu did not have trading authorization over Spiga's accounts at Research Capital." See Sandhu Proposed Findings of Fact paragraph 91.

On June 16, 2004, Mr. Sandhu's counsel sent an email to Robert Fusfeld, then one of the counsel for Plaintiff, pursuant to Rule 26(a) of the Federal Rules of Civil Procedure, requesting a list of persons "with knowledge of the matters alleged in the Complaint." That request expressly stated that it "includes the names . . . of the members of the [SEC] staff who have first hand knowledge of the matters alleged in the Complaint." (emphasis added) Email attached hereto.

That same day, Mr. Fusfeld replied by email which, in pertinent part, stated:

There are no SEC staff who have direct personal knowledge of any of the facts alleged in the Complaint.

On that basis, Mr. Fusfeld objected to their depositions. Email attached hereto.

"No SEC staff . . . have direct knowledge of any of the facts alleged in the Complaint."
(emphasis supplied)

By the SEC's own admission, the 3 staff persons now offered cannot be persons with "direct knowledge" – they are hearsay witnesses who can only offer speculation, conjecture and surmise. That is prejudicial to Mr. Sandhu.

Likewise it was prejudicial to Mr. Sandhu's defense for the SEC to have refused to have depositions occur (except for Mr. Beck) of its staff and then, on the eve of trial try to shore up its case with its own staff offering testimony not based on "direct knowledge," but on its interpretations, constructions, summaries and attempts to authenticate supposed records of third parties. This type of tactic, and attempt to get into the record as "evidence" statements by its own staff who lack "direct knowledge" was rejected by the SEC itself – and in a case involving one of

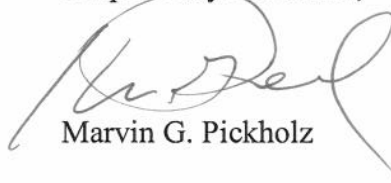
the proposed witnesses here, Kerry Matticks. The SEC's own Administrative Law Judge struck Mr. Matticks' testimony and exhibits offered through him saying the following:

Kerry Matticks (Matticks), a staff accountant with the Division, testified as a summary witness for the Division. In preparation for his testimony, he reviewed ... DIS's and Northstar's financial records. Such records included ... DIS and Northstar bank records and financial statements, DIS ledgers, and Northstar tax returns. (Tr. 1031) Some records were missing and he could not account for every document. The summary exhibit notes these as "unknown item." The exhibit categorizes monies that left DIS's bank account during the time period at issue. (Tr. 1033, 1038-39; DX. 126, 127, 128, 147, 169.) At the hearing, Elliott and Tarbett moved to strike Matticks's testimony and Division Exhibits 128 and 169. They argue that [Mattick's] and the schedules he created are based on [a third party's] memory and [the third person] was basically guessing as to which expenses and employees were attributable to Northstar. They object on the additional grounds that Matticks construed the Services Agreement as one for expense reimbursement as opposed to one for fees. I sustain the motion to strike Matticks's testimony and Division Exhibits 128 and 169 on the grounds proffered. (Tr. 932, 1011, 1214, 1224.)

In the Matter of Douglas Powell, et al. File No. 3-11086, Initial Decision dated August 17, 2004 Robert G. Mahoney (SEC Administrative Law Judge). A copy of the first page and page 15, note 19 from Administrative Law Judge Mahoney's Initial Decision are attached.

The Court should grant this Motion in Limine and preclude these witnesses from testifying live or by affidavit.

Respectfully submitted,



Marvin G. Pickholz

Dated: November 16, 2007

Enclosures

cc: Leslie Hughes, Esq.
Julie Lutz, Esq.

John Hutchings, Esq.
John Harris, Esq.
(All By E-Mail)