

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TIM and PENNY PATERSON, husband and )  
wife and the marital community thereof, )

Plaintiffs, )

v. )

LITTLE, BROWN AND COMPANY, a )  
Massachusetts state corporation, TIME )  
WARNER BOOK GROUP, a Delaware state )  
corporation, HAROLD EVANS ASSOCIATES )  
LLC, a New York state limited liability )  
company, HAROLD EVANS, and DAVID )  
LEFER, )

Defendants. )

No. 05-CV-01719-TSZ

DECLARATION OF BRUCE  
JOHNSON IN OPPOSITION TO  
PLAINTIFFS' MOTION TO  
EXCLUDE

I, Bruce E. H. Johnson, declare and state as follows:

1. I am the attorney of record for the defendants. I have personal knowledge of the matters referred to in this declaration. If called as a witness, I am competent to testify to these matters.

2. Defendants first requested detailed information regarding plaintiffs' expert witnesses on June 29, 2006. Attached hereto as Exhibit A is a true copy of plaintiffs'

1 response to defendants' June 29, 2006 request for detailed information regarding plaintiffs'  
2 expert witnesses. Although plaintiffs had their expert designated at the time, defendants  
3 only received plaintiffs' disclosure of the details of Mr. Hollaar's proposed expert testimony  
4 on April 16<sup>th</sup> 2007. *Id*; *see also* Declaration of Professor Lee A. Hollaar, attached to  
5 Plaintiffs' Response to Defendants' Motion for Summary Judgment.

6 3. On April 18<sup>th</sup>, 2007, within two days after receiving plaintiffs' disclosure,  
7 defendants: 1) timely alerted the plaintiffs that Mr. Nutt would rebut and respond to Mr.  
8 Hollaar's testimony, 2) provided Mr. Nutt's *curriculum vitae* and the focus of his  
9 testimony and report, and 3) promised to furnish the report when it became available. *See*  
10 Defendants' Rule 26(a)(2) Disclosure at 1-2, attached as Exhibit B to Plaintiffs' Motion to  
11 Exclude ("Pl. Mot.").

12 4. Defendants provided plaintiffs with Mr. Nutt's report on June 6<sup>th</sup> 2007, the  
13 earliest date at which defendants were able to make the report available. *See* Expert  
14 Witness Report of Gary J. Nutt, attached as Exhibit C to Pl. Mot.

15 5. Although plaintiffs knew of defendants' intent to rebut and respond to Mr.  
16 Hollaar with Mr. Nutt's expert testimony, plaintiffs apparently allowed the May 21, 2007  
17 discovery deadline to lapse without attempting to schedule Mr. Nutt's deposition, or in any  
18 way seeking and requesting additional information from defendants.

19 I declare under penalty of perjury that the foregoing is true and correct.  
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DATED at Seattle, Washington this 25th day of June, 2007.

Davis Wright Tremaine LLP

Attorney for Defendants

By /s/ Bruce E. H. Johnson  
Bruce E. H. Johnson, WSBA # 7667

**CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

D. Michael Tomkins  
Dietrich Biemiller

/s/ Nigel P. Avilez  
Nigel P. Avilez

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