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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

GREG KILGORE, ET AL, :  
PLAINTIFF :  
v. : Case No. 5:14-CV-7 (MTT)  
ACADEMY LTD, :  
DEFENDANT. :  
October 15, 2014  
Macon, Georgia

EVIDENTIARY HEARING

BEFORE THE HONORABLE MARC T. TREADWELL  
UNITED STATES DISTRICT JUDGE, PRESIDING

APPEARANCES:

FOR THE PLAINTIFF: CRAIG N. COWART  
ATTORNEY AT LAW  
P.O. BOX 4364  
MACON, GA 31208  
FOR THE DEFENDANT: MARY M. KATZ  
CHAMBLESS, HIGDON, RICHARDSON,  
KATZ & GRIGGS, LLP  
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P.O. BOX 18086  
MACON, GEORGIA 31209-8086

ALSO PRESENT FOR THE  
DEFENDANT: WADE TURNER  
CHRISTOPHER DOVE  
TOM ANDERSON

SALLY L. GRAY, CCR, RPR, USCR  
P.O. BOX 875  
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1 this up as an evidentiary hearing. I don't think it, at  
2 least initially, necessary to take testimony. I do have  
3 a number of questions that maybe Mr. Turner can answer,  
4 and if we need help from Mr. Anderson or Mr. Dove, that's  
5 certainly fine as well. I want to begin by asking some  
6 questions about some of the pleadings in this case, and I  
7 had some things marked as exhibits. So if you could,  
8 Ava, hand out the first of those, please.

9 Exhibit 1 is Mr. Cowart's motion to dismiss which  
10 was filed after the defendant responded to  
11 interrogatories, the obvious purpose of which were to  
12 elicit facts necessary to establish diversity  
13 jurisdiction. That, of course, was prompted -- those  
14 interrogatories were prompted by the show-cause order  
15 that I entered when we noted that Academy was an LLC, I  
16 believe. In any event, its -- the members of the LLC or  
17 limited partnership, as the case may be, had not been  
18 identified.

19 Mr. Cowart got the interrogatory responses and  
20 realized that they weren't sufficient and being concerned  
21 about the potential running of the statute of  
22 limitations, he wanted to dismiss the case. I've only  
23 got, I think, one question about this document. And I  
24 thought Mr. Karfis was going to be here, so we may or may  
25 not be able to get an answer to this question. But the

1 question is this. The information contained in the  
2 interrogatory response, where did it come from? You can  
3 sit, Mr. Turner.

4 **MR. TURNER:** Your Honor, I have reviewed all  
5 the materials in the case and I've discussed all these  
6 with Mel. So I think I can answer all the questions for  
7 you, and I'm going to attempt to do so. Just to clarify,  
8 the show-cause order was issued July 2nd, 2014, and then  
9 plaintiff's submitted their second set of interrogatories  
10 on August 11th. About August 11 or 13th or 14th, Mel  
11 contacted internal counsel from my office, who is a  
12 paralegal and also an attorney, to talk about our  
13 corporate structure, and they explained some of the  
14 issues I think Mel attempted to explain to you, that we  
15 simply have trouble since we're owned by all LLCs going  
16 up the chain high enough to be able to establish who all  
17 the individual members or corporations might be. From  
18 that point on 8/15, Mel had engaged plaintiff's counsel,  
19 and they're welcome to speak to that too, in  
20 conversations explaining the issues to him. So Mel  
21 didn't wait until the interrogatory answers were filed.  
22 He was already discussing the issues with plaintiff's  
23 counsel. When it got around to responding to the  
24 interrogatories, Mel believed and thought that they both  
25 agreed that the case would just go back to state court

1 because Academy couldn't help him establish diversity  
2 jurisdiction, and so Mel simply took our corporate  
3 disclosure statement and popped it into the interrogatory  
4 response, thinking that that just simply showed all that  
5 Academy knew and that plaintiff in his motion to dismiss  
6 would take that and say, hey, look, Academy can't show  
7 diversity, therefore we need to go back to state court.  
8 So he wasn't intending to mislead. He put truthful  
9 information, he just wasn't as complete as he should have  
10 been.

11 **THE COURT:** Okay. And then Exhibit 2 was filed  
12 after our telephone conference. It is titled: Academy's  
13 Response to the Court's Order Dated September 17, 2014.  
14 And as this pleading recognizes I had ordered Academy to  
15 provide what I thought was the proper response to the  
16 jurisdictional questions. And I suggested to them that  
17 that response would be more in line with the defendant's  
18 notice of removal in Bouvier, B-O-U-V-I-E-R. And this  
19 pleading acknowledges that. And also acknowledges that  
20 Academy just -- well, it states that Academy could not  
21 get information beyond a certain point with regard to the  
22 members of various LLCs or limited partnerships.

23 I want to look at page nine, though, the subsection  
24 titled: Academy's Removal in Bouvier Was Erroneous but  
25 Unintentional. The first sentence there acknowledges

1 that Bouvier was removed on May 14, 2013, and the second  
2 sentence says that: At the time of the Bouvier removal  
3 the law regarding pleading ownership of limited liability  
4 corporations for jurisdictional purposes was less well  
5 known and Academy erroneously believed that the  
6 citizenship of a limited liability company was the same  
7 as a corporation and depended on place of incorporation  
8 and principal place of business. I'm not sure that I  
9 understood -- understand what Academy meant in that  
10 sentence. Mr. Turner, can you elaborate on that?

11 **MR. TURNER:** Sure. So, up until August of 2011  
12 Academy was owned in its chain of ownership by a company.  
13 So before August 2011 we never had a problem establishing  
14 diversity jurisdiction because there was always a company  
15 in the chain and that company always had a place of  
16 business and a place of incorporation. Things were easy.  
17 In August 2011 Academy was purchased by KKR. If you're  
18 familiar with KKR; it's a big fund out of New York. They  
19 buy and own a number of different companies in all  
20 different sectors of the economy. When they bought us as  
21 a part of the entire transaction, our corporate structure  
22 changed, and then we became essentially all LLCs up to  
23 the very top of the ownership of our chain, and that is  
24 what's at the top of the ownership where the ownership  
25 becomes KKR. So from that point on, from August 2011, we

1 didn't have the information in order to establish  
2 diversity jurisdiction. What we didn't know is the  
3 correct pleading rule. We didn't know at that time that  
4 you had to plead an LLC differently than a corporation.  
5 And not only when I say we didn't know, but Academy has  
6 at any time, you know, in upwards of 300 cases pending.  
7 We handle those cases through two different insurance  
8 carriers and their claims handlers. We give those cases  
9 to insurance carriers. They hire counsel based on our  
10 criteria that we've set up. My expectation is that all  
11 those counsel know the pleading rules and know how to  
12 handle the cases and so once they're passed along to  
13 those counsel, a notice of removal would be not something  
14 that Academy approved. And so what we found, and looking  
15 back from this case, was that we had a lot of our counsel  
16 that simply didn't know this rule as well, and although  
17 we had provided them with our correct, new corporate  
18 ownership structure post the KKR transaction, a lot of  
19 our counsel continued plead us for diversity purposes as  
20 if we were a company. And so we found that error, and I  
21 think you've seen in our supplemental response in  
22 about -- I think it was about 6, 7, 8 cases between  
23 August of 2011 and September of 2013. September of 2013  
24 is important because we had a case known as Wise that's  
25 listed in our supplemental response. It actually got all

1 the way up to my level on the question of diversity  
2 jurisdiction, and the reason Mr. Dove is here today is  
3 Mr. Dove is the lawyer that I had look at the issue.  
4 Because I was a litigator myself, I have been in federal  
5 court many times, and I didn't know the rule myself,  
6 which is embarrassing to me. So I ask Chris to take a  
7 look at the rule and tell me the proper pleading rule.  
8 What he found is that the law is clear on this point,  
9 that an LLC is not pled like a corporation, that you do  
10 need to, indeed, track all of its members and individuals  
11 back in the chain, but that it wasn't widely known or  
12 practiced, and that he found some law with regard -- in  
13 other words, it showed in the Fifth Circuit and other  
14 circuits that up to 70 or 80 percent of the cases  
15 continued to be mis-pled. Well, that was, you know, nice  
16 to know, but the point for us was that we were doing it  
17 wrong. And so from that point on, I put out a mandate to  
18 all of our outside counsel to, one, not remove any more  
19 cases on diversity grounds because we simply couldn't  
20 meet the standard to establish diversity jurisdiction,  
21 and that, two, please review all your pending cases and  
22 make sure that we don't any jurisdictional problems that  
23 exist. And the word we got in September 2013 was that we  
24 were all clear. And so from that point on we didn't  
25 remove any more cases. The ones that we had removed, we



1 thought all were settled and were over with.

2 **THE COURT:** Who did?

3 **MR. TURNER:** Academy did.

4 **THE COURT:** All right. So I think I understand  
5 that statement, and then, I guess it follows that, as  
6 your lawyer said on the next page with regard to Bouvier,  
7 that: Neither Academy, plaintiffs, nor the Eastern  
8 District realized that Academy's jurisdictional  
9 allegations had been insufficient to establish diversity.  
10 That was certainly true as to Academy, you're telling me?

11 **MR. TURNER:** That's true, as to Academy  
12 absolutely. And, you know, my -- counsel would know, and  
13 my outside didn't know, and we didn't have a case where  
14 either the plaintiffs or the district court had raised  
15 the issue before either. It was just, you know, the  
16 pleadings made it through without challenge, which, you  
17 know, I still find it a bit odd, but I guess with the  
18 advent of LLCs structures it may have been a new kind of  
19 thing to partitioners.

20 **THE COURT:** All right. And then if you look at  
21 Exhibit 4, that follows, I believe, along the same line  
22 that you were just explaining. This is a document  
23 entitled Supplemental Responses by Academy filed in this  
24 court on October 8, 2014, and the first thing -- you're  
25 familiar with this pleading?

1           **MR. TURNER:** Yes, I am.

2           **THE COURT:** And this pleading, first, seems to  
3 break down the discussion by three time periods, the  
4 first being the period before the October transaction --  
5 or, pardon me, it was August of 2011, I think. Is that  
6 right?

7           **MR. TURNER:** That's correct, August 2011.

8           **THE COURT:** Then there was the period between  
9 the time of that transaction and the time when Academy  
10 discovered that the diversity pleadings -- pleading rules  
11 for corporations did not apply to LLCs, right?

12           **MR. TURNER:** That's the September of 2013,  
13 that's correct.

14           **THE COURT:** And then the third time period is  
15 the time period since then. And that's elaborated on at  
16 page four of this pleading, if you look at the top. The  
17 pages aren't numbered, but the ECF number is at the top.  
18 And this explains in the second paragraph, I think this  
19 is what you were just telling me, that: Academy  
20 discovered the insufficiency of its post-acquisition  
21 pleadings in August of 2013 when the Middle District of  
22 Louisiana noted the shallow detail in Academy's diversity  
23 allegations. And that was the Wise case.

24           **MR. TURNER:** That's correct.

25           **THE COURT:** The paragraph goes on to say that:

1 Academy discovered for the first time in the Wise case  
2 that case law does not treat LLCs the same as  
3 corporations. Is that right?

4 **MR. TURNER:** That's correct.

5 **THE COURT:** Then in the next paragraph I see  
6 that Academy then investigated -- and by that, I guess  
7 you mean after August 2013?

8 **MR. TURNER:** That's correct, after  
9 September 2013.

10 **THE COURT:** "After August 2013 Academy then  
11 investigated the jurisdictional facts of its extensive  
12 ownership structure and discovered that it had no access  
13 to citizenship information about many of Allstar LLC's  
14 indirect owners." Is that right?

15 **MR. TURNER:** That's correct.

16 **THE COURT:** And then over on the next page, the  
17 end of that paragraph, you say -- Academy says: To  
18 Academy's knowledge after an exhaustive search, Academy's  
19 counsel have not attempted to invoke diversity  
20 jurisdiction since Academy made this discovery. And,  
21 again, that would have been in August of 2013; is that  
22 right?

23 **MR. TURNER:** That's correct.

24 **THE COURT:** And by invoking diversity  
25 jurisdiction, I assume you mean that Academy has not

1 removed a case to federal court or filed a case in  
2 federal court on the basis of diversity jurisdiction  
3 since August 2013?

4 **MR. TURNER:** That's correct.

5 **THE COURT:** And then you go on to identify  
6 several cases that fall within that second time period,  
7 that is, the time period between the transaction in 2011  
8 and the discovery of the problem in August 2013.

9 **MR. TURNER:** That's correct.

10 **THE COURT:** I've looked at some of those cases.  
11 And let me ask y'all to look at Exhibits 5 and 6, first.  
12 Exhibit 5 is the docket sheet in Loland versus Academy, a  
13 Louisiana company, LLC, a case from the Western District  
14 of Louisiana. And it's one case that was identified in  
15 Exhibit 4; is that right? I think it's the first case --  
16 yeah, page two of Exhibit 4. It's one of the cases in  
17 the first time period.

18 **MR. TURNER:** Oh, okay.

19 **THE COURT:** Is that right?

20 **MR. TURNER:** Yes, it is.

21 **THE COURT:** Okay. Now, of course, as you've  
22 said, at the time this case was filed Academy's ownership  
23 structure would have been different; is that correct?

24 **MR. TURNER:** That's correct.

25 **THE COURT:** And this case was removed. It

1       apparently involved a minor settlement. And look down at  
2       docket entry 19, if you would, please. That's an  
3       electronic order, and it begins by noting that "pending  
4       before the Court is a joint motion to approve minor  
5       settlement." Do you see that?

6               **MR. TURNER:** I do, Your Honor.

7               **THE COURT:** And then the electronic order goes  
8       further and says: "It is further ordered that the  
9       defendant shall file documentation necessary for the  
10      court to determine the citizenship of every one of the  
11      members of the limited liability companies and limited  
12      liability partnerships within ten days for the court to  
13      ascertain that diversity jurisdiction exists." And it  
14      cites the Harvey v. Grey Wolf Drilling Company case.  
15      You're familiar with that case?

16              **MR. TURNER:** I am familiar with the case, yes,  
17      Your Honor.

18              **THE COURT:** That's the 2008 case that, at least  
19      in the Fifth Circuit, made the law clear, right?

20              **MR. TURNER:** Yes, sir.

21              **THE COURT:** And so you recognize there, I  
22      assume, that the court was instructing Academy in October  
23      of 2011 that it needed to identify limited partnerships  
24      and limited liability companies so that the court could  
25      determine whether there was diversity jurisdiction; is

1 that right?

2 **MR. TURNER:** That's correct.

3 **THE COURT:** All right. Were you familiar with  
4 this case?

5 **MR. TURNER:** No, I was not.

6 **THE COURT:** All right. Then look at Exhibit 6.  
7 And this is titled: Notice of Citizenship of Parties For  
8 Purposes of Establishing Subject Matter Jurisdiction. Do  
9 you see that?

10 **MR. TURNER:** I do, Your Honor.

11 **THE COURT:** And, of course, this was at the  
12 time when you told me earlier that Academy was under the  
13 impression that LLCs were treated the same as  
14 corporations for purposes of establishing diversity  
15 jurisdiction?

16 **MR. TURNER:** That's correct.

17 **THE COURT:** But you recognize that this  
18 district judge told Academy something different than  
19 that?

20 **MR. TURNER:** Yes, sir, I do.

21 **THE COURT:** And then in this pleading the  
22 lawyer, who is Spencer Edwards with the Hudgins law firm  
23 and Jean-Paul -- or Jean-Paul Robert, with his own law  
24 firm, I guess. Well, actually I think he must have  
25 represented the plaintiff. Let's look back at the docket

1 sheet and see exactly who was representing -- looks like  
2 Academy was represented by Robicheaux and Collins. Are  
3 you familiar with that firm?

4 **MR. TURNER:** I am roughly familiar with it. We  
5 have, like I said, an extensive list, but --

6 **THE COURT:** And then the Hudgins law firm.

7 **MR. TURNER:** I am not familiar with that law  
8 firm.

9 **THE COURT:** But in any event, if you look back  
10 at Exhibit 6, in compliance with the court's order, we  
11 see that Academy disclosed its corporate structure at  
12 that time, that is, October of 2011; is that right?

13 **MR. TURNER:** That's correct.

14 **THE COURT:** But we know it wasn't the corporate  
15 structure at the time of removal because there's no  
16 corporation in this corporate structure.

17 **MR. TURNER:** That's right. That's correct.

18 **THE COURT:** So some lawyer on behalf of Academy  
19 had to get this information. Do you know where he got it  
20 from?

21 **MR. TURNER:** We provided, at the time of the  
22 transaction, all of our lawyers that work for us across  
23 the spectrum, with a new corporate organizational chart  
24 that goes up to the chart that you see that we filed in  
25 our original response, as well as a corporate disclosure

1 statement so that all of our counsel had that as part of  
2 their Academy materials, including, you know, other  
3 materials related to Academy. So that's where he got it  
4 from.

5 **THE COURT:** All right. So, are you telling me,  
6 then, that when Academy transmitted that information to  
7 its lawyers that Academy instructed its lawyers that the  
8 identity of its members, of one of these LLCs, is  
9 proprietary and confidential?

10 **MR. TURNER:** Yes.

11 **THE COURT:** But it goes on, this pleading does,  
12 to disclose that "those members are a citizen of the  
13 state of New York and two family trusts formed under the  
14 state of Texas and two additional corporations under the  
15 laws of the state of Delaware." Right?

16 **MR. TURNER:** That's what this says, yes.

17 **THE COURT:** So essentially the information  
18 provided by Academy back in October of 2011 in response  
19 to a question about the jurisdiction or the citizenship  
20 of these LLCs and LLPs was the same as what it has told  
21 this court, not the same entities, but the structure was  
22 the same. They identified the LLPs or LLCs down to a  
23 point and then said the remaining members were  
24 proprietary and confidential.

25 **MR. TURNER:** Well, we --



1           **THE COURT:** First, is that correct?

2           **MR. TURNER:** Yes. I want to make sure I get  
3 your whole question. First, that chart and information  
4 was sent to all of our counsel at the time of the  
5 transaction as a matter of course. It wasn't sent in  
6 response to this particular jurisdictional inquiry, to  
7 this particular attorney. So this attorney would have  
8 been handling the case around August 2011 and he would  
9 have gotten a set of material that would have been our  
10 new organizational chart, an explanation of the  
11 transaction, and what's happened: Hey, we've been  
12 purchased by KKR. This is what the new organizational  
13 chart looks like. This is what the new corporate  
14 disclosure statement looks like. KKR had some very  
15 specific language it wanted to use for that because they  
16 wanted to call us an affiliate -- or owned by an  
17 affiliate of KKR because we're not a direct subsidiary of  
18 the KKR that's traded on the exchange. And so they would  
19 have gotten that information and that's where this  
20 attorney would have gotten the information from. So it  
21 wasn't in response to an inquiry, and until you showed me  
22 this, I never knew that this particular attorney handled  
23 this jurisdictional issue in this case.

24           **THE COURT:** Okay. Ms. Katz, make a note. I  
25 want to see that document.

1           **MS. KATZ:** The document whereby Academy  
2 informed its counsel across the country?

3           **THE COURT:** Of its new corporate structure,  
4 that apparently this lawyer took and put in his notice  
5 filed in the Western District of Louisiana in October of  
6 2011. Next let's look at the Compango case,  
7 C-O-M-P-A-N-G-O. And that exhibit I believe is  
8 Exhibit 7. And specifically Exhibit 7 is notice of  
9 removal filed on September 30, 2011. So this notice  
10 would have been filed after the change in Academy's  
11 ownership structure; is that correct?

12           **MR. TURNER:** That's correct.

13           **THE COURT:** But obviously long before August  
14 2013 when you tell me Academy discovered that pleading  
15 LLCs for purposes of jurisdiction was not the same as  
16 pleading corporations?

17           **MR. TURNER:** That's correct.

18           **THE COURT:** This was filed by a lawyer by the  
19 name of James Garner. I see his name a lot in the firm  
20 of Sher, Garner, Cahill, Richter, Klein & Hilbert. You  
21 know Mr. Garner?

22           **MR. TURNER:** I do know Mr. Garner.

23           **THE COURT:** Is he regular counsel?

24           **MR. TURNER:** He has handled several cases for  
25 us in Louisiana, and I talked to him specifically about

1 this matter because he has a number of different cases  
2 where jurisdiction was handled incorrectly. So I went  
3 through each of the cases with Mr. Garner and  
4 investigated why those were pled as they were.

5 **THE COURT:** All right. Well, I might come back  
6 to you and talk about your conversations with Mr. Gardner  
7 after we see some of the things he's done. The notice of  
8 removal at paragraph three on page three addresses the  
9 diversity citizenship issue. I won't read this  
10 paragraph. It's the same concept, but it's very much  
11 different specific information as we saw in the Loland  
12 case. Do you recognize that?

13 **MR. TURNER:** I'll have to read through it, Your  
14 Honor, if it's --

15 **THE COURT:** Please do.

16 **MR. TURNER:** Okay. Your Honor, there are some  
17 minor differences, but I think the basic corporate  
18 structure is the same.

19 **THE COURT:** Is there any mention of proprietary  
20 or confidential information here?

21 **MR. TURNER:** Not in the -- is it Compango?

22 **THE COURT:** Compango.

23 **MR. TURNER:** -- Compango file. It's Exhibit 7.  
24 No, there's not any mention of confidentiality in  
25 Exhibit 7.

1           **THE COURT:** Where did Mr. Garner get this  
2 information?

3           **MR. TURNER:** That would have been from the same  
4 structural chart that we provided him.

5           **THE COURT:** But it's different.

6           **MR. TURNER:** Different in what sense? It's  
7 different -- the only thing that -- from time to time the  
8 chart did change. The changes didn't affect our  
9 jurisdictional analysis here, but from time to time, for  
10 example, the Gotchmans, who hold two different of the  
11 ownership interests, changed -- they were originally held  
12 by individuals. They put it subsequently in trust. Each  
13 time we'd get a new change in the chart, we would sent  
14 out a new chart to our counsel.

15           **THE COURT:** So between the Loland filing on  
16 October 19, 2011 and the notice of removal filed in  
17 Compango on September 30, 2011, there was some change  
18 lawyers were notified of?

19           **MR. TURNER:** I'll have to look back. We have  
20 sent out organizational charts several times with minor  
21 changes in our structure, including the adding of  
22 different companies in between. So it just depends on  
23 what time and what chart they were working off of. But  
24 the charts are all -- basically have the same structure.  
25 In other words, from the time in September until now,

1 it's all LLC base. You'll find no companies or  
2 individuals in there. But the individual entities of the  
3 chart may change.

4 **THE COURT:** Well, you'll agree with me, I  
5 assume -- let me be sure -- that what we see here by Mr.  
6 Garner in Compango is a lawyer attempting to allege the  
7 citizenship of the various LLCs and limited liability  
8 partnerships to establish diversity jurisdiction.

9 **MR. TURNER:** That's correct.

10 **THE COURT:** But you tell me that Academy until  
11 August of 2013 thought that to establish diversity  
12 jurisdiction for an LLC you treated an LLC the same as a  
13 corporation.

14 **MR. TURNER:** That's correct. At this time we  
15 wouldn't have reviewed these pleadings from a lawyer that  
16 was handling these cases, but I will acknowledge and  
17 fairly and freely before the Court that it is not  
18 surprising. We have found ourselves that many of our  
19 lawyers are doing it incorrectly and many of our lawyers  
20 are pleading jurisdictional facts that either didn't  
21 represent our organization or represented our  
22 organization, but incorrectly pled diversity for purposes  
23 of jurisdiction.

24 **THE COURT:** Okay. Let's look next at Buggage,  
25 and that's Exhibit 8 that we'll pass out. Buggage v.

1 Academy Limited, another case removed by Mr. Garner a few  
2 weeks later on December 28, 2011. And Exhibit 8 is  
3 another notice of removal, and in paragraph four, towards  
4 the end of page three, Mr. Garner again attempts to state  
5 Academy's ownership structure, but this, too, is  
6 different than what we've seen in the previous two cases  
7 in a couple of respects. One is, now he is saying that  
8 the identity of New Academy Holding Company's LLCs is  
9 proprietary and confidential, but he does identify that  
10 its members are an individual citizen of the state of New  
11 York and two family trusts formed under the law of Texas  
12 and two additional corporations formed under the laws of  
13 the state of Delaware. Do you see that?

14 **MR. TURNER:** I do.

15 **THE COURT:** Do you know where he got this  
16 information from?

17 **MR. TURNER:** It would have been from the same  
18 place, Your Honor. It would have been from our original  
19 information that was sent. I think that he -- well, let  
20 me be clear. When I say he, Jim Garner is only one of  
21 several attorneys in that firm that handled cases for us.  
22 So I can't speak to who actually drafted this pleading,  
23 but it would have had to have come from the basic  
24 information that we gave them about the transaction and  
25 about our corporate structure. It's possible, and I

1 certainly can't discount the possibility that Mr. Garner,  
2 or whatever counsel, called one of our claims handlers or  
3 got ahold of one of our paralegals and asked about the  
4 structure, but it certainly didn't get raised as a  
5 jurisdictional question that we needed to research into,  
6 or in a way that I -- for example, if I would have read  
7 the pleading myself, I wouldn't have picked up on the  
8 error until I was aware of it -- until September 2013.  
9 Because I would have read the pleading, and although I  
10 would have picked up on any structural issues in the  
11 pleading itself that were not reflective of our corporate  
12 chart, I wouldn't have picked up on the fact that it's  
13 not simply pleading LLCs properly for the purpose of  
14 diversity jurisdiction.

15 **THE COURT:** All right. The next case you list  
16 is Tipton versus Academy Limited. That's Exhibit 9 and  
17 10. Exhibit 9, is the notice of removal. At page four,  
18 paragraph ten, Academy alleges that "it is a foreign  
19 corporation organized and existing under the laws of the  
20 state of Texas with its principal place of business in  
21 Texas." And the citation is the complaint at paragraph  
22 two. We know that the information contained in paragraph  
23 ten was not correct.

24 **MR. TURNER:** That's correct.

25 **THE COURT:** Clearly, even though the plaintiff

1 might have alleged that Academy was a corporation,  
2 Academy knew that it was not an corporation.

3 **MR. TURNER:** It was an LLC, that's correct.

4 **THE COURT:** And this case, again, is in a time  
5 period when you say it should not have been removed; is  
6 that right?

7 **MR. TURNER:** That's correct.

8 **THE COURT:** And then Exhibit 10, that case was  
9 remanded because of something that we sometimes see in  
10 our court, and that is, the plaintiff agreed to limit any  
11 recovery to \$75,000. Is that right?

12 **MR. TURNER:** That's correct.

13 **THE COURT:** So we have there a case improperly  
14 removed and then an order limiting the plaintiff to the  
15 recovery of \$75,000. Is that right?

16 **MR. TURNER:** That's correct.

17 **THE COURT:** Then, the next case is McElwain,  
18 M-C-E-L-W-A-I-N, v. Academy. It's a case in the Southern  
19 District of Mississippi. I want to show you Exhibit 11,  
20 which is the notice of removal. In paragraph six at page  
21 two, Academy alleges that it's a Texas corporation with  
22 principal place of business in Texas. That, of course,  
23 is not true?

24 **MR. TURNER:** That is incorrect.

25 **THE COURT:** It wasn't true at the time?



1           **MR. TURNER:** That's correct.

2           **THE COURT:** And Exhibit 12 tells us that on  
3 May 1, 2013 judgment was entered on a jury verdict.

4           **MR. TURNER:** That's correct.

5           **THE COURT:** So the case was removed to federal  
6 court, got tried in federal court, and the plaintiff  
7 lost.

8           **MR. TURNER:** That's correct.

9           **THE COURT:** Has Academy notified the  
10 plaintiff's lawyer of what happened?

11           **MR. TURNER:** Not in this case, no.

12           **THE COURT:** Why not?

13           **MR. TURNER:** We just haven't done it yet.

14           **THE COURT:** It's a case that never should have  
15 been in federal court, right?

16           **MR. TURNER:** That's correct.

17           **THE COURT:** Has Academy looked at the  
18 consequences of what happens in a situation like this,  
19 where a case gets tried over which there is no  
20 jurisdiction?

21           **MR. TURNER:** We have. Once the order is final,  
22 it's final for all purposes, even if subject matter  
23 jurisdiction is incorrect. We haven't gotten around,  
24 though, to looking at possible solutions for cases that  
25 have settled. We focused first on the Judge's questions

1 here, your questions here, and on making sure that the  
2 cases that were still pending were immediately taken care  
3 of. So that's what we spent our time on between the time  
4 that we filed our response and now. And that is the  
5 filing notice in Cleland, which I think you saw with the  
6 Fifth Circuit, notifying counsel in Sketchers that that  
7 case is improperly before the court under diversity  
8 jurisdiction. Those two particular, and notifying all of  
9 our counsel by letter -- and I'm happy to share that with  
10 you as well -- of this problem and making it 100 percent  
11 clear that no cases should be removed or to stay in  
12 federal court under diversity and explained why. But I  
13 do fully concede, Your Honor -- and we saw this when you  
14 raised this issue and we went back and inventoried all of  
15 our cases and looked at this. I fully see exactly what  
16 you're saying, and I recognize the issue. There are  
17 several cases in here that were removed improperly by  
18 Academy because we simply didn't know the law. I do not  
19 -- and I will submit to you, and wholeheartedly stand  
20 behind it, that there was nothing intentional that we  
21 meant to do. My direction to all my outside counsel is  
22 to follow the law, and I expect all of them to know the  
23 law, but we have some counsel that didn't know the law  
24 and that either pled jurisdiction incorrectly, pled our  
25 corporate structure incorrectly and were all removed

1 cases. And so we're going to have several of those in  
2 here, and I fully concede that, Your Honor. That was a  
3 mistake on our part, and we fully -- we have it corrected  
4 now, but we have those cases that are out there.

5 **THE COURT:** All right. Let's look next at  
6 Exhibit 13, which is a notice of removal, again filed by  
7 Mr. Garner or his firm, in the case of Spurgeon versus  
8 Academy in the Middle District of Louisiana. And the  
9 allegations of citizenship of Academy are found in  
10 paragraph four. And, again, I won't go through the  
11 details of it. Again, it's slightly different. It does  
12 conclude that the identity of the members of New Academy  
13 Holding Company are proprietary and confidential. Is  
14 that correct?

15 **MR. TURNER:** That's correct.

16 **THE COURT:** Then, I'm going to skip an exhibit  
17 because it involves a case in which a co-defendant  
18 removed, and I'm not particularly interested in that at  
19 this point. Exhibit 15, which is a notice of removal in  
20 Adams versus Academy, again, filed by Mr. Garner or his  
21 firm. And the allegations of citizenship are found in  
22 paragraph four at page three, and they're very similar.  
23 And, by the way, this was on September 25, 2012. It  
24 tells us that the identity of New Academy Holding  
25 Company's members is proprietary and confidential; is

1 that right?

2 **MR. TURNER:** I'm looking it, Your Honor.  
3 Mine's cut off. As I read this, it says defendant  
4 Horton, which is the -- got it. I'm sorry, Your Honor, I  
5 only have two pages of the exhibit. Let me see, I have  
6 the third page now. Okay. It is the same pleading with  
7 a few minor changes that Mr. Garner has used in several  
8 of these.

9 **THE COURT:** Next, let's look at Armstrong  
10 versus Academy, another case removed by Mr. Garner or his  
11 firm, this one on November 26, 2012, and the notice of  
12 removal is Exhibit 16. The allegations of citizenship  
13 are found at exhibit -- pardon me, at paragraph four, and  
14 it says that: Defendant Academy Limited's sole general  
15 partner is Academy Managing Company, LLC, and Defendant  
16 Academy Limited's sole limited partner is Associated  
17 Investors, LLC, and the sole member of both Academy  
18 Managing Company, LLC and Associated Investors, LLC is  
19 New Academy Holding Company, LLC. Do you see that?

20 **MR. TURNER:** I do.

21 **THE COURT:** One difference here is that there's  
22 not the additional language telling us who the members of  
23 New Academy Holding Company are. Do you see that?

24 **MR. TURNER:** That's correct.

25 **THE COURT:** Do you know why that is?

1           **MR. TURNER:** I do not.

2           **THE COURT:** Did you ask Mr. Garner about that?

3           **MR. TURNER:** I did not ask him about specific  
4 pleadings like that. No, I did not.

5           **THE COURT:** All right. And then let's go in  
6 the same case to Exhibit 17 and 18 and 19. Do you have  
7 17 there?

8           **MR. TURNER:** I do.

9           **THE COURT:** That's an order entered in  
10 Armstrong on April 16, 2013. And the relevant language  
11 is in paragraph four. The judge says that "a party  
12 invoking diversity jurisdiction must properly allege the  
13 citizenship of an LLC." Do you see that?

14           **MR. TURNER:** I do.

15           **THE COURT:** "The citizenship of a limited  
16 liability company for diversity purposes is determined by  
17 the citizenship of its members." Do you see that?

18           **MR. TURNER:** I do.

19           **THE COURT:** "The citizenship of all of the  
20 members of a limited liability company must be properly  
21 alleged." Do you see that?

22           **MR. TURNER:** I do.

23           **THE COURT:** And then it goes on to explain and  
24 to cite the Harvey v. Grey Wolf Drilling Company. Do you  
25 see that case?

1           **MR. TURNER:** I do.

2           **THE COURT:** So here we see in April of 2013 a  
3 judge telling Academy, again, and citing Harvey v. Grey  
4 Wolf Drilling Company, again, that you've got to identify  
5 all of the members of your LLCs and LLPs.

6           **MR. TURNER:** That's correct.

7           **THE COURT:** That was before the issue came up  
8 in the Wise case?

9           **MR. TURNER:** That is correct.

10          **THE COURT:** Then Academy responded to that, and  
11 that's Exhibit 18 on May 10, 2013, filed by Mr. Garner,  
12 signed by Mr. Garner, in which he says that Academy  
13 maintains that there is complete diversity of  
14 citizenship. Do you see that?

15          **MR. TURNER:** I do.

16          **THE COURT:** Did you have any discussion with  
17 Mr. Garner about this case?

18          **MR. TURNER:** Not at the time, no. I didn't see  
19 these until I did the research for the issues in this  
20 court. I did talk to Mr. Garner about the whole set of  
21 issues, particularly in response to this case, and my  
22 question directly to him was: How did you not know at  
23 that point because you also handled the Wise case, which  
24 was still going on, and you had other cases that were  
25 pending in federal court? And he not have a good

1 response. He said something along the lines of, you  
2 know, I've been pleading jurisdiction in federal court  
3 for 20 years, and I've been doing it for Academy for 15,  
4 and I thought this was correct, and I thought I was doing  
5 the right thing. And in this case, in particular, on  
6 Armstrong, he said we were really close to settlement so  
7 we just decided not to get into the jurisdictional issues  
8 and go back to state court. That was the explanation.

9 **THE COURT:** Really?

10 **MR. TURNER:** I do -- and, look, I mean, I gotta  
11 be honest with you, I'm not very happy with Mr. Garner  
12 and his firm. I think they owe some responsibility here,  
13 and I'm going to address that with them on a  
14 going-forward basis. But you can see on our whole docket  
15 of 300 or so cases that the handful of cases is a  
16 centered around one firm and one set of lawyers. Now, in  
17 their defense, when I gave my mandate in September 2013  
18 not to remove any more cases, to check your dockets and  
19 make sure, they claimed not to have gotten that notice,  
20 and there might be a reason for that. The lawyer -- one  
21 of the lawyers in Mr. Garner's firm who used to do work  
22 for us on some of these cases was a lawyer that we  
23 removed for performance on other issues. So it's not  
24 surprising to me that we would come up with these issues  
25 in that firm given that we had to remove a lawyer for

1 performance. But they are centered around one firm, and  
2 other that, other than apologizing for our lack of  
3 oversight, up until September 2013 this is just simply  
4 not something that we would have reviewed at the company  
5 level, just believing that all of our counsel know how to  
6 correctly pled jurisdiction and how to properly remove  
7 cases. And so the September date I keep keying on is  
8 because from the September date on, I believe that we  
9 have looked at and reviewed with the exception of the two  
10 that we have, Cleland and Sketches, that we can talk  
11 about, all of the notices of removal that our counsel was  
12 going to file. In fact, as we counted, we had at least  
13 ten different discussions with ten different outside  
14 counsel since September 2013 where our outside counsel  
15 wanted to remove a case in a specific jurisdiction, but  
16 came to us for permission to do that, and we said, look,  
17 you can't do that, and we explained to them why, and then  
18 they went back in state court. So that is the mode of  
19 practice now. It's just that we did not see these and  
20 would not have seen these types of pleadings before that  
21 date.

22 **THE COURT:** Just to finish up with the  
23 Armstrong case, look at Exhibit 19 where we have the  
24 magistrate judge's report where he makes its clear --

25 **MR. TURNER:** Crystal clear.



1           **THE COURT:** -- that no subject matter  
2 jurisdiction and cites Harvey v. Grey Wolf Drilling  
3 Company.

4           **MR. TURNER:** Crystal clear. I read the  
5 magistrate's report for the first time when you raised  
6 these issues, and it's clear from the original order.  
7 It's crystal from the magistrate court. It's crystal  
8 clear from the law. There's no question that this should  
9 have been back in state court.

10           **THE COURT:** And this order is dated June 21,  
11 2013, and you say Mr. Garner or his firm just didn't  
12 inform in-house counsel about this?

13           **MR. TURNER:** They didn't see it as an issue.  
14 Either they were confused or otherwise, but they didn't  
15 see it as issue that needed our attention. They just  
16 continued to plead the jurisdictional facts that they  
17 had, and, you know, they didn't plead them correctly and  
18 didn't seek diversity correctly.

19           **THE COURT:** All right. Let's look then --

20           **MR. TURNER:** And if I may, Your Honor, Ms. Katz  
21 just wanted me to emphasize, and I think I've said this,  
22 but I want to be clear. The autonomy of our outside  
23 counsel is very important because we have so many cases.  
24 And so when we manage outside counsel, they go through an  
25 insurance carrier and a claims handler. So all

1 decisions, particularly at this level, are handled  
2 directly by the lawyer autonomously or through the claims  
3 handler before they get back to Academy. We would only  
4 opine on a case like this -- unless it's a major case  
5 with a major injury -- for maybe a final settlement  
6 approval of a dollar amount or any major strategic, you  
7 know, life-changing decision in the case. Otherwise  
8 matters like this are left to our outside counsel, which,  
9 again, I can't stress enough, you know, my expectation is  
10 that they do know the law, and they follow it.

11 **THE COURT:** All right. Let's look at  
12 Exhibit 22 then, which the Bouvier case, which we've  
13 mentioned briefly already, filed -- or removed to Eastern  
14 District of Louisiana by Mr. Garner or his firm on  
15 May 14, 2013. And the jurisdictional allegations are  
16 found in paragraph four. Again, it's back -- I think we  
17 might have seen this particular version before, but it's  
18 a version that stops at New Academy Holding Company  
19 without identifying the members of New Academy or saying  
20 that their identity is privileged or proprietary or  
21 confidential. Do you see that?

22 **MR. TURNER:** That's correct.

23 **THE COURT:** Did you ask Mr. Garner why one time  
24 we'd see it one way and one time we'd see it another way?

25 **MR. TURNER:** He said he had different counsel

1 working on different cases, and they -- although they had  
2 the same information, they didn't have a consistent  
3 pleading between them, and that included the counsel,  
4 like I said, we did remove for other performance-related  
5 issues.

6 **THE COURT:** Then let's look at Exhibit 23,  
7 another case from Mr. Garner removed on July 2, 2013.  
8 Now, clearly this case was removed after Mr. Garner at  
9 least, or his firm, knew beyond any dispute that they  
10 could not remove Academy.

11 **MR. TURNER:** That's correct. Although I don't  
12 know if it was the same lawyers, but, yeah, but the firm,  
13 for sure.

14 **THE COURT:** Then, that brings us to the Wise  
15 case. I've got Exhibits 24 through 29. The Wise case  
16 was removed on August 29. This case was removed in the  
17 Middle District of Louisiana by another firm other than  
18 Mr. Garner's, Duplass, Zwain, Bourgeois, Pfister, and  
19 Weinstock. Do you know this firm?

20 **MR. TURNER:** I do.

21 **THE COURT:** And how do you know this firm?

22 **MR. TURNER:** This case actually started out  
23 with Jim Garner's firm. In fact, I don't know until I  
24 read this if they've got some of the jurisdictional --  
25 but the file was transferred to the Duplass firm in part

1 because of the performance issues that I've identified  
2 for the Court. We were changes cases and changing  
3 counsel.

4 **THE COURT:** Okay. Has Mr. Garner's firm  
5 represented Academy at all since August of 2013?

6 **MR. TURNER:** Not any new cases. They've  
7 continued to maintain the old cases that they have. It  
8 was not at a certain point.

9 **THE COURT:** So the situation here is, this was  
10 a case that the removal petition was filed by the Duplass  
11 firm, so I assume that the transition from the Garner  
12 firm, at least as to this case, had already happened.

13 **MR. TURNER:** Yes, I believe that's correct.

14 **THE COURT:** Exhibit 24 is just a docket sheet.  
15 Exhibit 25 is the notice of removal, and the allegations  
16 of Academy's citizenships are in 12, 13, and 14. Do you  
17 see that?

18 **MR. TURNER:** I do.

19 **THE COURT:** Do you know where this brand-new  
20 firm got the information that it needed to establish the  
21 citizenship of Academy's members?

22 **MR. TURNER:** The Duplass firm was a firm that  
23 we used before, and they have prosecuted other cases for  
24 us. So they would gotten our org chart and our corporate  
25 information in the same fashion that every other firm

1 would have.

2 **THE COURT:** Now, this time, in this case, if  
3 you look at Exhibit 26, and the magistrate judge noted  
4 the problem and ordered Academy to amend its notice of  
5 removal, the problem being Academy had not identified the  
6 citizenship of all the LLPs or LLCs; is that correct?

7 **MR. TURNER:** That's correct.

8 **THE COURT:** Again, citing in footnote two the  
9 *Grey Wolf Drilling* case, and ordered the Academy to  
10 provide that information within 14 days.

11 **MR. TURNER:** That's correct.

12 **THE COURT:** And then Exhibit 27, the Duplass  
13 firm wanted an extension of time to provide that  
14 information. Do you see that?

15 **MR. TURNER:** I do.

16 **THE COURT:** And it said that "in response to  
17 the order, Academy --" This is the request for  
18 extension. "immediately began undertaking the process to  
19 provide the information required by this honorable  
20 court's order." Do know if that's a true statement?

21 **MR. TURNER:** That is true.

22 **THE COURT:** How do you know that's a true  
23 statement?

24 **MR. TURNER:** Going back and investigating the  
25 Wise case at the time, when we got this issue from the

1 district court, we went to KKR, our owner, and raised the  
2 issue with them, and said, hey, look, we have to be able  
3 to identify your partners and members up the chain in  
4 order for us to establish diversity in federal court, can  
5 you help us out? And so we put in a request to them, and  
6 they said, well, we're going to take a look at it and see  
7 what we can do, but it's going to take some time.

8 **THE COURT:** When you say "we," was there a  
9 particular in-house lawyer working on this issue at the  
10 time?

11 **MR. TURNER:** For Academy or for KKR?

12 **THE COURT:** Academy.

13 **MR. TURNER:** At this time I believe Rene  
14 Casares was onboard. He's a new lawyer with us, but  
15 check me on that -- Tom, am I correct?

16 **MR. ANDERSON:** As of July 2013?

17 **MR. TURNER:** Yes.

18 **THE COURT:** This was September 2013.

19 **MR. ANDERSON:** He would have started. He  
20 started in August.

21 **MR. TURNER:** So this would have been one of the  
22 first task he had. So we had an in-house lawyer. So an  
23 issue was raised to us from the Duplass firm, Rene  
24 Casares took a lead on trying to work with KKR through  
25 their law firm, Linklaters, to see if we could meet the

1 Court's requirement regarding proper pleading of  
2 jurisdiction, and that means going up the chain and  
3 identifying their ownership until we got back to  
4 corporations or individuals.

5 **THE COURT:** The next sentence in that paragraph  
6 says: "As no federal court has to date ruled that the  
7 information regarding its citizenship initially provided  
8 by Academy Limited in its notice of removal is in some  
9 manner insufficient for the purposes of addressing  
10 diversity jurisdiction, Academy had to begin the process  
11 in this matter for the first very first time. There is  
12 no previously compiled information upon which Academy can  
13 draw."

14 Now, the first part of that sentence, it goes on for  
15 awhile, is not true, is it? That is, it had been ruled  
16 at least one time. It had been called to Academy's  
17 attention more than one time that its allegations of  
18 diversity were not sufficient.

19 **MR. TURNER:** It had been called to different  
20 Academy counsel, for sure. I agree with you a hundred  
21 percent there. It had not been called to my attention or  
22 Rene Casares's attention or the Duplass law firm's  
23 attention.

24 **THE COURT:** Well, where did Duplass get that  
25 information? How could they -- did they just make that

1 sentence up?

2 **MR. TURNER:** Well, he asked us have we ever  
3 dealt with this issue before, and we said, no, this is  
4 the first time we've ever seen this, and it was,  
5 literally. I was surprised at the rule myself, and I  
6 just remember being surprised and talking with my  
7 colleague, Mr. Dove about it because I had no idea you  
8 pleaded LLC that way. So from Academy's legal office's  
9 perspective this was the first time that we had dealt  
10 with the issue, even though it's possible that our  
11 paralegals or somebody else might have given corporate  
12 information along the way, neither the Garner firm or any  
13 of the other firms that were in some of these mixes  
14 raised the issue of, hey, your corporate structure causes  
15 us with problems with pleading federal diversity  
16 jurisdiction. And so I fully concede and realize that  
17 many of my -- not many. The Garner firm certainly had  
18 notice of this issue, and they should have advised us of  
19 it. But I don't think they realized the magnitude of the  
20 issue, and they didn't bring it up.

21 **THE COURT:** Well, the Court sure did, and  
22 apparently this judge took the time to do a little bit of  
23 research.

24 **MR. TURNER:** Yes, he did.

25 **THE COURT:** And Exhibit 28 kind of called the



1 Duplass firm out, didn't they -- didn't he?

2 **MR. TURNER:** He did, yes, sir. You're  
3 absolutely right.

4 **THE COURT:** Did you know about this?

5 **MR. TURNER:** I didn't know about this -- this  
6 particular notice, I didn't see. But I do know at the  
7 time that we were looking at the issue, and we were  
8 trying to work with KKR to see if KKR would give us the  
9 information we needed to reply. And so that wasn't an  
10 overnight exercise. It took a lot of back and forth with  
11 KKR and lot of no's, I guess, from KKR about their  
12 inability to provide with us further information, but we  
13 were trying to get it for the court, and we thought --  
14 when this initially came up, we thought we could get it.  
15 We didn't think KKR's structure was that complicated, but  
16 we didn't have any visibility into it. All I knew was  
17 there was Allstar, LLC there. I thought for sure they  
18 could give us information that would allow us to  
19 establish jurisdiction. When they finally came back and  
20 said they could not, then that's when, hey, we realized  
21 that we couldn't meet the removal requirements in the  
22 case, and we couldn't remove any more cases to federal  
23 court.

24 **THE COURT:** All right. So at this point, if I  
25 understand what you're saying that, it was clear to you

1 and Academy's in-house lawyers that it could not invoke  
2 the diversity jurisdiction of federal courts. And "by  
3 this time," I mean late August, early September of 2013?

4 **MR. TURNER:** That's correct.

5 **THE COURT:** The next case I want to talk about  
6 is the Eddie Cleland case, Exhibit 20 and 22. This is a  
7 case removed on January 18, 2013. The notice of removal  
8 has been marked as Exhibit 20. Do you have that?

9 **MR. TURNER:** I do.

10 **THE COURT:** And the jurisdictional allegations  
11 as to Academy are found in paragraph 12. Do you see  
12 that?

13 **MR. TURNER:** I do.

14 **THE COURT:** It simply states that: Academy is  
15 a limited partnership, the limited partner of Academy is  
16 Associated Investors, LLC, the general partner is Academy  
17 Managing Company, both of which are Texas LLCs. That's  
18 right?

19 **MR. TURNER:** That's correct.

20 **THE COURT:** That's clearly insufficient  
21 pleading.

22 **MR. TURNER:** That is insufficient, you're  
23 right.

24 **THE COURT:** Have you asked Locke Lord their  
25 state of knowledge as to *Grey Wolf*?

1           **MR. TURNER:** I did. And I have somebody that  
2 can speak to their knowledge. Mr. Dove? Mr. Dove  
3 handled the Cleland case on appeal, and so if you'd like,  
4 he can speak to it as well.

5           **THE COURT:** Handled the case on appeal?

6           **MR. DOVE:** Yes, Your Honor.

7           **THE COURT:** All right.

8           **MR. DOVE:** May I sit?

9           **THE COURT:** You may.

10          **MR. DOVE:** Thank you, Your Honor.

11          **THE COURT:** Were you responsible for this  
12 removal pleading?

13          **MR. DOVE:** I was not.

14          **THE COURT:** Who was at Locke Lord?

15          **MR. DOVE:** It was supervised by my partner,  
16 Hannah Norvelle. It was actually done by local counsel  
17 in Mississippi, but our name is on it.

18          **THE COURT:** Do you know what investigation was  
19 made with regard to establishing the citizenship or the  
20 residency of the various LLPs holding an interest, or  
21 LLCs, in Academy?

22          **MR. DOVE:** In speaking with Ms. Norvelle, I  
23 understand that she was under the same mistaken belief  
24 that the rest of us were at the time, that by stating  
25 what was stated there, it would sufficiently describe

1 what was necessary to plead jurisdiction for an LLC.  
2 Obviously, that is incorrect.

3 **THE COURT:** Is that Locke Lord's understanding  
4 of the law as of January 2013?

5 **MR. DOVE:** It is no longer, sir.

6 **THE COURT:** In the Cleland case there was a  
7 motion to dismiss, and it was granted?

8 **MR. DOVE:** That's correct, Your Honor.

9 **THE COURT:** Dismissal on the merits?

10 **MR. DOVE:** It was, in part, a dismissal on the  
11 merits, in part --

12 **THE COURT:** With prejudice.

13 **MR. DOVE:** In part a dismissal with prejudice  
14 and part not.

15 **THE COURT:** And it gets appealed to the Fifth  
16 Circuit.

17 **MR. DOVE:** That's correct, Your Honor.

18 **THE COURT:** Who's representing Academy at that  
19 point?

20 **MR. DOVE:** It was -- I worked on the briefing,  
21 along with one of our associates, and with some review by  
22 Ms. Norvelle, but not much.

23 **THE COURT:** Who argued it?

24 **MR. DOVE:** I did, Your Honor.

25 **THE COURT:** Now, Mr. Turner tells me that

1 Academy had this revelation in August of 2013 that it  
2 could not be in federal court on the basis of  
3 jurisdiction. When did you have -- or you tell me you've  
4 had that revelation. When did you have the revelation?

5 **MR. DOVE:** I want to be very careful on how I  
6 answer Your Honor's question.

7 **THE COURT:** You better be.

8 **MR. DOVE:** I knew about the Fifth Circuit's  
9 holding in 2008 at the time that Academy discovered it in  
10 September 2013. At that time I did not know about  
11 Academy's larger ownership structure. What I understood  
12 was Academy would have to go through an investigation if  
13 it wanted to assert diversity jurisdiction.

14 **THE COURT:** Well, Mr. Turner tells me, again,  
15 that they had this great revelation in September of 2013.  
16 Mr. Garner got the revelation several times before that.  
17 But let's stick with what Mr. Turner tells me, that in  
18 August 2013 Academy's in-house lawyers now know that they  
19 can't be in federal court. Did Academy communicate to  
20 that to Locke Lord?

21 **MR. DOVE:** No, Your Honor. They communicated  
22 to us their ownership structure, the various qualities  
23 that they had there, but to my knowledge they did not  
24 communicate that. I think one distinction here that is  
25 important. Cleland is a very different case than the

1 other cases on this list. The other cases are  
2 essentially slip-and-fall, direct liability cases, these  
3 sort of matters, which would go from Academy through  
4 their claims handler and through their insurance  
5 coverage, and so on. In employment cases -- this was an  
6 employment discrimination case -- it my understanding at  
7 least that Academy does not go through its insurance  
8 carrier, but has hired Locke Lord in the past to  
9 represent them on these employment matters. It may be  
10 that notice that was given through the methods of  
11 notifying their outside counsel through the claims  
12 handlers was not provided to us in that manner.

13 **MR. TURNER:** And let me just further add, Your  
14 Honor. So, in September of 2013 when we discovered the  
15 issue, we canvassed all of our cases. We did not uncover  
16 Cleland just because of the odd timing. It had issued a  
17 final order in that case in the lower court in August,  
18 and it simply dropped off of the list that we tracked  
19 in-house, and it wasn't on the list in September when we  
20 went through and canvassed the cases, and then it  
21 reappeared after the notice of appeal. And so we just  
22 missed that window when we were looking at cases. We  
23 should have discovered it after the fact, we certainly  
24 discovered it when we raised the issue here, but it was  
25 missed on our part. I wanted to clear up that. It was

1 not something that we intended to do, but because of the  
2 time gap in there, it wasn't on the list that we  
3 canvassed, and we canvassed a lot of cases in 2013 to  
4 make sure that we were in the right pleading format for  
5 the ones that we could verify in-house, as well as notify  
6 our claims handlers and other lawyers to check their own  
7 dockets outside.

8 **THE COURT:** How did the Kilgore case slip  
9 through that careful screening process?

10 **MR. TURNER:** Let me see which one Kilgore is.

11 **THE COURT:** That's the case we're here on.

12 **MR. TURNER:** Ah, Kilgore -- there's two  
13 reasons. One, Kilgore was an oddball to us because we  
14 rarely get cases filed against us in federal court, and  
15 so most of the cases we deal with are cases in state  
16 court and our counsel come to us asking for removal. And  
17 so it just was unclear exactly what was going on. And  
18 the other thing is that Mel, unfortunately or not  
19 fortunately, either way, but Mel is a specialist, so when  
20 we sent him a notice to all of our counsel that handle  
21 cases for our insurance carrier, Mel simply didn't get  
22 that notice because Mel is called in for tree stands or  
23 stand cases, which this is one of them, and so Mel was  
24 called in as a specialist because of the nature of the  
25 product defect, and he didn't get the notice. Between

1 that and the unique nature of the case, we missed it.  
2 You know, going back on this, this was a very easy thing,  
3 and we shouldn't have been in court now because should  
4 have in our answer said, hey, we can't help you here on  
5 diversity here, plaintiff, and from there we could have  
6 had quick discussions and ended the matter very quickly.  
7 So no doubt, we did not serve Mel here well because we  
8 didn't educate him well enough. And because of that --  
9 I'll just mention the other piece of this I'm not sure  
10 you're aware of. But we have offered and plaintiffs have  
11 already accepted our offer to pay their attorney's fees  
12 for this entire mess. And so we're going to compensate  
13 the plaintiff for their attorney's fees from the point  
14 that this became an issue until now so that they're not  
15 out of pocket anything for having to even be here today.

16 **THE COURT:** All right. Back to Cleland.  
17 According to the docket sheet, the case is -- or final  
18 judgment is entered on August 26, 2013, but there was  
19 considerable post-judgment activity. And then, as we  
20 see, the case goes to the Fifth Circuit and gets argued.  
21 And tell me -- or maybe you didn't tell me, Mr. Dove, how  
22 Academy lawyers in Cleland learned that it could not be  
23 in federal court?

24 **MR. DOVE:** We learned about the deficiency in  
25 the Cleland case because of this Court's inquiry. When



1 we began look at these cases to make sure we had  
2 identified all the situations in which diversity had been  
3 improperly invoked, Cleland was one of the ones that came  
4 up. I was shocked to find this out because, of course,  
5 I'd been associated with the case and had not realized  
6 that there was a deficient diversity allegation in it.  
7 Even though I knew the rule, I did not -- it did not  
8 occur to me. It's not excusable, but I can explain where  
9 I think my error was made. What happened in that case  
10 was there was considerable fighting over whether an  
11 individual was fraudulently joined. There was a dispute  
12 over that. The fraudulent joinder was held to be  
13 correct, meaning that the individual should not have been  
14 there, and the court agreed to hang on to diversity  
15 jurisdiction. The plaintiff did not then challenge that  
16 finding on appeal, did not challenge jurisdiction in any  
17 way. And as a result it did not occur to me to go back  
18 and reinvestigate whether Academy had properly pleaded  
19 diversity jurisdiction in its original pleading or  
20 whether it was still correct at that time. As I say,  
21 it's not an excuse, but it is an explanation, Your Honor.

22 **THE COURT:** All right. Then you filed in the  
23 Fifth Circuit on October 7, 2014, a notice regarding  
24 subject matter jurisdiction. Is that correct?

25 **MR. DOVE:** That's correct, Your Honor.

1           **THE COURT:** You begin by saying: "It has  
2 recently come to the attention of Academy that its notice  
3 of removal in this case did not fully demonstrate the  
4 existence of diversity." And I guess what you mean by  
5 that is, it came to your attention?

6           **MR. DOVE:** It came to -- well, it is true that  
7 it came to my attention, and I believe it's true that it  
8 came to Academy's attention. As Mr. Turner said, we  
9 weren't thinking about the Cleland case until this Court  
10 said, what's going on here? Do you have cases where this  
11 slipped through the rail? And as a result of that, it  
12 did come to our attention that the Cleland jurisdictional  
13 allegations were insufficient.

14           **THE COURT:** Well, I want to make sure I  
15 understand because Mr. Turner has made it very clear that  
16 as of September 2013 even Academy's in-house lawyers knew  
17 that it could not be in federal court based on diversity  
18 jurisdiction. You heard him say that, right?

19           **MR. DOVE:** Yes, Your Honor.

20           **THE COURT:** Your case was in federal court?

21           **MR. DOVE:** Yes, Your Honor.

22           **THE COURT:** Were you communicating with  
23 Academy's lawyers about the case?

24           **MR. DOVE:** I was not at that point, Your Honor.  
25 To the extent that this -- the question of jurisdiction

1 never came up. What had happened was the appeal was  
2 filed, we received the plaintiff's brief. One of our  
3 associates began working on a draft of a brief. I worked  
4 on the brief. We sent it to Academy for review. Some of  
5 their internal paralegals looked at it --

6 **THE COURT:** Which brief was that?

7 **MR. DOVE:** This was the response brief in the  
8 Cleland case, Your Honor.

9 **THE COURT:** I mean, at what level?

10 **MR. DOVE:** At the Fifth Circuit level. I only  
11 began looking at it after the response briefs -- at the  
12 response briefs stage in the Fifth Circuit.

13 **THE COURT:** All right. Well, let's talk about  
14 that point. Do you think that the Academy lawyers know  
15 that the Fifth Circuit is a federal court?

16 **MR. DOVE:** Yes, Your Honor.

17 **THE COURT:** And you sent them the brief?

18 **MR. DOVE:** Yes, Your Honor.

19 **THE COURT:** It said this is filed in the Fifth  
20 Circuit Court of Appeals?

21 **MR. DOVE:** Yes, Your Honor.

22 **THE COURT:** And you know that Academy knew at  
23 that time that it could not be in federal court, right?

24 **MR. DOVE:** That is what they said, Your Honor,  
25 yes.

1           **THE COURT:** So based upon many discussions  
2 you've had with Academy lawyers, do you have any  
3 explanation for how they didn't realize that they had a  
4 case improperly in federal court?

5           **MR. DOVE:** I can't speak to that, Your Honor,  
6 because none of my conversations with Academy addressed  
7 the question of jurisdiction or diversity jurisdiction.

8           **THE COURT:** Well, can you, Mr. Turner?

9           **MR. TURNER:** Well, a lot of our -- we have a  
10 lot of -- we have a history of a lot of federal cases in  
11 employment law because a lot of the cases raise federal  
12 questions, you know, through different actions -- yeah,  
13 Title VII. So it's not unusual for us to get a brief  
14 that is in federal court. And so I think the real miss  
15 here that when we canvassed in cases in September of  
16 2013, we simply didn't pick up the Cleland case because  
17 it was in between that order and appeal, and it had just  
18 fallen off the reports that we were using to canvas all  
19 of our cases. And we did a pretty extensive canvas, so,  
20 you know, to miss that case was -- it was a mistake, but  
21 I think that's where the miss occurred. Once the miss  
22 occurred, when we got the brief back, unless you were,  
23 you know, really looking for that jurisdictional issue,  
24 you know, our attorneys were probably were focused on  
25 just simply the issues on appeal and weren't cognizant of

1 the fact that that might be there on diversity grounds as  
2 opposed to a federal question.

3 **THE COURT:** All right. Getting back to your  
4 pleading, Mr. Dove, at page two, that first full  
5 paragraph. This is Exhibit 21. It says: "This issue  
6 was not previously explored by either of the parties or  
7 by the district court, so Academy has brought it to the  
8 court's attention as soon as it realized the problem."  
9 Now, I assume that what you really meant there was as  
10 soon as you realized the problem?

11 **MR. DOVE:** Again, Your Honor, that is true. As  
12 soon as I discovered the problem, I wanted to make sure  
13 we brought it to the court's attention, but this was the  
14 result of a process where, as relates to the Cleland  
15 case, we all, to my knowledge in my discussions with  
16 Academy internally, all of us came to the realization  
17 that Cleland had slipped through the cracks at the same  
18 time as a result of Your Honor's inquiries into diversity  
19 jurisdiction.

20 **THE COURT:** Well, my point is that -- I  
21 understand what you're saying, whether or not it's  
22 plausible is another question. But you did not tell the  
23 Fifth Circuit that Academy had known at least since  
24 August 2013 that it could not be in federal court on the  
25 basis of diversity jurisdiction, did you?

1           **MR. DOVE:** Your Honor, that may not be in this  
2 disclosure, but if that is absent, it was a -- what's  
3 causing me to pause is I know that there is a discussion  
4 of how Academy came to realize this, on page four. And  
5 this is, again, why I'm hesitating. On page four we say:  
6 "Academy discovered for the first that a limited  
7 liability company is not treated as a corporation for  
8 purposes of citizenship." You're right. At that point  
9 we did not add the disclosure that at that time Academy  
10 came to the realization that it could not invoke  
11 diversity jurisdiction ever.

12           **THE COURT:** Then at page three, the first  
13 paragraph there: "At the time of those disclosures --  
14 and that would be the notice of removal you're talking  
15 about; is that correct?"

16           **MR. DOVE:** That's correct, and the corporate  
17 disclosure statement.

18           **THE COURT:** You say "Academy's outside  
19 counsel--" You're talking about Locke Lord?

20           **MR. DOVE:** That's correct.

21           **THE COURT:** -- "believed that they sufficiently  
22 demonstrated that Academy was a citizen of Texas and no  
23 other state because they believed that the citizenship of  
24 an LLC could be pleaded in the same fashion as  
25 corporation."

1           **MR. DOVE:** That is correct, Your Honor.

2           **THE COURT:** Meaning that for a corporation you  
3 simply allege the state of the corporation and --

4           **MR. DOVE:** The principal place of business,  
5 right.

6           **THE COURT:** -- the principal place of business.  
7 But in the removal pleadings that's not what your  
8 partners alleged, is it? It did allege to a point the  
9 members of Academy's -- the limited partnership.

10          **MR. DOVE:** That's correct, Your Honor.

11          **THE COURT:** It didn't plead it as a  
12 corporation, just to say the state where it was formed  
13 and its principal place of business, it went on to state  
14 the limited partners, at least to a degree.

15          **MR. DOVE:** That's true, Your Honor. And I  
16 would like to make one distinction if I can. It's never  
17 been in doubt to anyone that when one faces a partnership  
18 you must plead the citizenship of every partner. The  
19 distinction is the confusion that we had over what one  
20 does with an LLC. So because we were dealing with  
21 Academy as a Texas limited partnership, we knew that  
22 would not be sufficient. So you go on, and you say, but  
23 it's two partners, and there were only two, are both  
24 Texas LLCs.

25          **THE COURT:** So you don't plead it as a

1 corporation. You plead it as a partnership.

2 **MR. DOVE:** We did, and then we followed up by  
3 pleading what we thought was the correct standard for an  
4 LLC, Your Honor.

5 **THE COURT:** Then at page four you say: "Recent  
6 litigation made Academy realize that it should ensure  
7 that are there no pending cases in which its outside  
8 counsel had insufficiently alleged a basis for  
9 jurisdiction." You drop a footnote there which says:  
10 "Academy denied the existence of diversity in that case  
11 which the district court questioned because Academy's  
12 former practice was to allege diversity in some  
13 circumstances." What are you talking about there?

14 **MR. DOVE:** I'm talking about this very matter,  
15 Your Honor, the fact that because Your Honor had called  
16 to Academy's attention the Bouvier case and said, why  
17 have you not pleaded this like you pleaded Bouvier, why  
18 are you denying jurisdiction here, whereas -- because  
19 it's been filed against you -- whereas in another case  
20 you allege diversity, which was a fair question.

21 **THE COURT:** Any particular reason why you  
22 didn't cite this case?

23 **MR. DOVE:** None, Your Honor. I'm not intending  
24 to hide it. That's why I wanted to disclose it to the  
25 Court. It wasn't -- I certainly didn't want to leave the



1 indication that somehow we had just had it dawn on us. I  
2 wanted to make sure it was clear that it was litigation  
3 that brought it to our attention.

4 **THE COURT:** And at page five you say: "Academy  
5 is mindful that it has the duty to inform the courts  
6 without delay of any issue that may potentially affect  
7 their subject matter jurisdiction." And certainly that  
8 is a duty that Academy has. No question about that, is  
9 there?

10 **MR. DOVE:** No question about it, Your Honor.

11 **THE COURT:** And I guess your position is that  
12 you promptly, on behalf of Academy and your firm,  
13 notified the Fifth Circuit when it came to your attention  
14 because of this litigation?

15 **MR. DOVE:** That's correct, Your Honor.

16 **THE COURT:** But, of course, you know now that  
17 Academy had known about this issue since at least August  
18 and September of 2013?

19 **MR. DOVE:** That is correct, Your Honor.

20 **THE COURT:** Do you think your disclosure --  
21 well, let me -- since you filed this on October 7th, have  
22 you heard from the Fifth Circuit?

23 **MR. DOVE:** No, we have not, Your Honor. I  
24 wouldn't have expected to hear because we are still  
25 within the time period for the plaintiff's counsel to

1 file a response if he wants to. He has told me that he  
2 does not intend to respond -- or rather to oppose, which  
3 is technically what the question is. I have not heard  
4 from them yet.

5 **THE COURT:** Have you informed plaintiff's  
6 counsel of this case?

7 **MR. DOVE:** Yes. We have informed the  
8 plaintiff's counsel of the fact that this arose because  
9 of other litigation we were dealing with. I didn't give  
10 the case number and name, but I told him that we had --  
11 basically before I filed it, I walked through what we  
12 were saying, explained that because of this litigation  
13 we'd gone back, we checked, and we found that in this  
14 case our allegations were incorrect and that we were  
15 going to file something urging the Fifth Circuit to  
16 remand back to state court. He was rather shocked.

17 **THE COURT:** Well, I would imagine so. Perhaps  
18 it's bittersweet. On the one hand, it means the judgment  
19 in favor of Academy goes away, I presume; is that  
20 correct?

21 **MR. DOVE:** That's correct, Your Honor.

22 **THE COURT:** But on the other hand, he's been  
23 litigating in federal court where he shouldn't have been  
24 for two or three years, right?

25 **MR. DOVE:** That's correct, Your Honor.

1           **THE COURT:** Was there any discussion about  
2 sanctions?

3           **MR. DOVE:** No, Your Honor.

4           **THE COURT:** What about the case that was tried  
5 to a verdict, Mr. Turner, are you telling me that nobody  
6 has contacted that plaintiff's lawyer to say, hey, this  
7 was all a mistake?

8           **MR. TURNER:** We have not yet, no, Your Honor.

9           **THE COURT:** Do you think that would be a good  
10 idea?

11           **MR. TURNER:** We're intending to look at all the  
12 cases that were settled during that time period. We just  
13 hadn't gotten to the point of --

14           **THE COURT:** It may be the case where Academy  
15 got from the plaintiff a stipulation and a judgment to  
16 limit his recovery to 75,000?

17           **MR. TURNER:** We were looking at all of them,  
18 the cases on that list, Your Honor, of what the next step  
19 on each one would be.

20           **THE COURT:** This is only a suggestion from me,  
21 Mr. Dove. Well, it's not even a suggestion. I'll call  
22 it an observation. If I were in your shoes, I would want  
23 the Fifth Circuit to hear more about this from me instead  
24 of somebody else. It's up to you. Mr. Cowart, I heard  
25 earlier that there's been some discussion with you about

1 compensating you for your time and expense as a result of  
2 this issue; is that correct?

3 **MR. COWART:** That is correct, Your Honor.

4 **THE COURT:** Well, I think that under the  
5 circumstances, given the plaintiff's predicament here,  
6 that the Court must dismiss this case for lack of subject  
7 matter jurisdiction. The Court retains jurisdiction of  
8 the case for purposes of sanctions. I want to review  
9 what I've heard here today, as well as these various  
10 notices that Mr. Turner says that he's been sending to  
11 outside counsel over these years and give careful  
12 consideration to every bit of information you want to  
13 suggest. I find it difficult to believe that this "it's  
14 somebody else's fault," some other Academy lawyer's fault  
15 is a good explanation for what's happened here. That's  
16 not a final conclusion. At the most, it's irresponsible  
17 even if, in fact, Academy was ignorant of what was going  
18 on its behalf by its various lawyers, including a  
19 well-known firm, Locke Lord, perhaps that's conceivable.  
20 But that an issue of this significance didn't rise to a  
21 level of being noticed other than the way it was.  
22 Clearly there was notice to Academy's outside counsel of  
23 this issue as early as October 2011, almost immediately  
24 after the change in corporate structure. And if it's a  
25 sufficient response for a corporation or an LLC to simply

1 say, well, our lawyers knew that, we didn't know that, so  
2 there's no fault on our part, then that's discomfoting.

3 **MS. KATZ:** May I say something briefly? I  
4 don't think that Academy is saying that it has no fault  
5 in the matter. I think that Academy acknowledges that  
6 there was an oversight problem with respect perhaps to  
7 direction to its outside counsel and what reporting  
8 duties it had or what supervision should have been  
9 undertaken by Academy directly. So I don't think that  
10 Academy is saying we have absolutely no responsibility,  
11 no fault in the matter. I think that, in fact, it does  
12 acknowledge some deficiencies in the way that its  
13 independent outside counsel operated and reported.

14 **MR. TURNER:** And let me be even blunter than  
15 that. We made several mistakes here, take full  
16 responsibility for them. I do personally take full  
17 responsibility for them. I'm the general counsel. This  
18 is under my charge, and I take this very seriously. When  
19 I saw this, that's why I'm here today, Your Honor, I  
20 didn't send somebody else to be here. That's why I  
21 personally reviewed every pleading in this book. First,  
22 we made a mistake because didn't know the rule ourselves.  
23 We should have known the pleadings -- I was a litigator  
24 for a decade, I should have known the pleading rule  
25 myself, and that's our fault. We should have known the

1 rule ourselves and not just depended on outside counsel  
2 to know all the rules. Second, we should have had better  
3 oversight of our cases to the extent that we reviewed  
4 oversight of pleadings where we were moving from court to  
5 court. That's not too much to ask. Moving from one court  
6 to another is a bigger decision, and it shouldn't be left  
7 up to outside counsel. We should have the opportunity to  
8 review that, and we failed to do that. The third thing  
9 is that when we did figure out the rule properly in  
10 September, we canvassed our cases as best we could, but  
11 we didn't do a complete enough job. We missed a couple  
12 of cases that we should have found or we wouldn't have  
13 the problem in Cleland. And, fourth, we should have made  
14 sure that counsel like Mel, and in this case, were fully  
15 aware of our corporate structure, and we should have done  
16 that at the time of the transaction and not just given  
17 people a corporate organizational chart. We should have  
18 given them a lot more instructions on how to plead us,  
19 and that was insufficient as well. So there's a lot  
20 responsibility here. We accept it all, and we'll accept  
21 any judgment you come up with on this, Your Honor, but we  
22 certainly have failed, and my job is to acknowledge those  
23 failures and make sure they don't happen again, and  
24 they're not going to happen again.

25 **THE COURT:** Well, Mr. Turner, I appreciate

1 that. That's absolutely the correct thing to say, and I  
2 don't doubt its sincerity as this point, but as I think  
3 you've acknowledged from what you just said even  
4 negligent conduct of this nature merits some sanction.  
5 But I want to hear whatever else Academy wants to submit.  
6 I think it will be important to see what communications  
7 Academy did have with its outside lawyers to deal with  
8 this issue. Obviously, I'm not concerned with these  
9 other cases, except I'm taking you at your word that  
10 you're going to notify the plaintiff's counsel in these  
11 cases. I think they need to know. You've got a minor  
12 settlement out there which may not be a problem because  
13 at the time that case was removed -- and I haven't  
14 researched this issue, but from what you've told me, at  
15 the time that that case was removed that there was a  
16 proper corporate structure that would allow Academy to be  
17 in federal court, but from what I see on the docket  
18 you've got a court order approving a minor settlement. I  
19 don't know what impact this issue has on this. The case  
20 was tried to a verdict. What's -- apparently you've  
21 researched it some and think that you're okay in that  
22 regard. I don't know if the plaintiff's lawyer is going  
23 to agree with that.

24 **MR. TURNER:** And let be clear, we didn't  
25 research that -- we don't want to do anything that

1 doesn't follow the law, and I believe, in fairness, we  
2 settle the majority of our cases because we believed in  
3 that, and folks that sue us are also our customers, and  
4 we're very cognizant of that. And so our plan is to  
5 notify everybody that's on that list and to see what to  
6 do from there. I'm still unclear -- I just don't know  
7 what happens from there. I've never been involved in the  
8 circumstance before, but I want to be sure everyone is  
9 treated fairly. So everybody will be notified. We'll  
10 have discussions with them on what the damage, if you  
11 will, might have been, but in no way, and I hope you see  
12 that, if nothing else, from everything that we showed  
13 that -- I hope you see that there wasn't a negative  
14 intent there, that we weren't trying to manipulate the  
15 pleadings in a way to show KKR's structure in some cases  
16 and not show it in others and do things like that, but  
17 this truly was a mistake because I certainly don't want  
18 to get an unfair advantage over any litigant. And I just  
19 simply want to be in the court that I can be in,  
20 litigating to the fairness of the courts, and, you know,  
21 get to the conclusion that's fair for all. So we'll  
22 notify everybody that's on that list, and we'll have  
23 discussions with them all and see what we can do.

24 **THE COURT:** Well, I hear what you're saying,  
25 but it's no secret that many defendants view the ability



1 to remove to federal court as a powerful weapon. All  
2 you've got to do is look at federal court dockets and  
3 look up Wal-Mart. Ms. Katz knows, I've represented  
4 K-Mart and believe me, removal is a powerful weapon.  
5 Whether or not plaintiffs overestimate the power of that  
6 weapon is another question. I think they do. But they  
7 perceive it to be a powerful weapon, hence you have  
8 people stipulating to limit their damages so they can get  
9 out of federal court. So it's very easy to take a less  
10 generous view of what has happened here, that recognizing  
11 that it had a powerful weapon, like the Wal-Mart and the  
12 K-Marts, Academy's lawyers didn't want to give up that  
13 weapon. Mr. Garner sure didn't want to give up that  
14 weapon. Even in the face of clear notice to his firm  
15 that he couldn't remove, he kept doing it. I know you  
16 disavow any knowledge of or responsibility of what Mr.  
17 Garner knew or did or his firm knew or did, but they were  
18 your lawyers. So I appreciate what you're saying, I  
19 appreciate the way you've come in here and address these  
20 issues, but there's another view that a reasonable  
21 observer could take to what has happened here.

22 **MR. TURNER:** I understand.

23 **THE COURT:** Ms. Katz, anything further at this  
24 point?

25 **MS. KATZ:** No, Your Honor, except we need a

1 time frame for which to submit this.

2 **THE COURT:** What do you want?

3 **MS. KATZ:** Ten days?

4 **MR. TURNER:** Ten days is fine, sure.

5 **THE COURT:** That's plenty. Why don't you take  
6 two weeks?

7 **MS. KATZ:** Thank you.

8 **THE COURT:** That will make it easier to  
9 calculate. Mr. Cowart, anything further from you?

10 **MR. TURNER:** Nothing, Your Honor.

11 **THE COURT:** All right, then, thank you all.  
12 We're adjourned.

13

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14 **CERTIFICATE OF OFFICIAL REPORTER**

15 I, Sally L. Gray, Federal Official Court Reporter,  
16 in and for the United States District Court for  
17 the Middle District of Georgia, do hereby certify  
18 that pursuant to Section 753, Title 28, United  
19 States Code that the foregoing is a true and  
20 correct transcript of the stenographically  
21 reported proceedings held in the above-entitled  
22 matter and that the transcript page format is in  
23 conformance with the regulations of the Judicial  
24 Conference of the United States, dated this 20th  
25 day of October 2014.

21 /s/ SALLY L. GRAY  
22 **SALLY L. GRAY, CCR, RPR**  
23 **FEDERAL OFFICIAL COURT REPORTER**

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