

PAUL MACLEAN

\*

16<sup>TH</sup> JUDICIAL DISTRICT COURT

VS. NO. 103,096 DIV. "E"

\*

PARISH OF ST. MARY

G. TIM ALEXANDER III

\*

STATE OF LOUISIANA

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**AFFIDAVIT**

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**Parish of Terrebonne**

**State of Louisiana**

**BEFORE ME**, the undersigned authority, duly commissioned and qualified in and for the Parish of Terrebonne, State of Louisiana,

**PERSONALLY CAME AND APPEARED:**

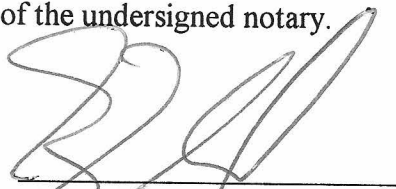
**GREGORY J. SCHWAB**

who, being first duly sworn by me, did depose and state:

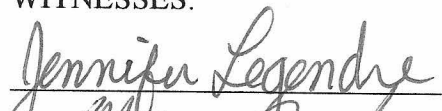
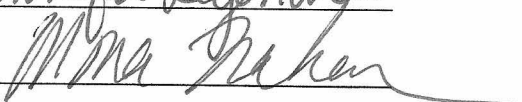
That I was present at the hearing held on February 21, 2001 in the above entitled matter. I was present before the hearing took place in Judge Anne L. Simon's courtroom and was present during and after the hearing was terminated. Also present at the hearing were at least the Judge, Anne L. Simon, the court reporter, Lisa M. DeCourt, Ms. Nancy Blanchard, opposing counsel, James Gibson, and my client, Paul Maclean. I can certify that both Paul Maclean and Nancy Blanchard were also present before, during and after the hearing on that date and neither of them walked out of the courtroom during the hearing. I can certify that I have read the attached transcription (EXHIBIT A) marked "RECEIVED AND FILED SEP 07 2001 /s/ MARY HEWITT DY. CLERK OF COURT" which said transcript purports to have been a true and accurate transcription as per the REPORTER'S CERTIFICATE purportedly signed by Lisa DeCourt, C.C.R. That I can certify that the transcription is absolutely not a true and accurate transcription of the proceedings had on February 21, 2001. I can certify that there are entire and very relevant dialogues omitted from the attached transcription. Merely by way of example, Judge Simon made a statement such that there were various attorneys who were trying to have things set on her docket and also a statement relative to her retirement. I asked her a number of times what she meant and she hesitantly responded and that dialogue is not contained in the transcription. These statements all occurred in open court right in the middle of the open court hearing - all well within hearing of James Gibson, opposing counsel, Ms. Nancy Blanchard as well

as my client, Paul Maclean who were positioned farther away than Ms. DeCourt from the judge when we had this dialogue. There is no doubt that the recording device would have been able to easily pick up at least these dialogues as they were said at the same volume as was all the other open court statements. I am sure that opposing counsel, James Gibson will also remember these dialogues and can also certify that they have been omitted from the attached transcript.


Thus done, read and signed in the presence of the undersigned notary.

  
\_\_\_\_\_  
**Gregory J. Schwab**

WITNESSES:

  
\_\_\_\_\_  
  
\_\_\_\_\_

SWORN TO AND SUBSCRIBED  
BEFORE ME, THIS 20th  
day of June, 2002.

  
\_\_\_\_\_  
NOTARY PUBLIC

1 CIVIL ACTION NO. 103,096  
2 SIXTEENTH JUDICIAL DISTRICT IN AND FOR THE  
3 PARISH OF ST. MARY, STATE OF LOUISIANA  
4  
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12

13 PAUL MACLEAN  
14  
15 VERSUS  
16 G. TIM ALEXANDER  
17  
18  
19  
20  
21  
22

23 APPEARANCES:

24 Mr. Gregory Schwab Representing the Plaintiff  
25  
26 Mr. James Gibson Representing the Defendant  
27  
28

29 \* \* \*

30 MOTIONS held on February 21<sup>st</sup>, 2001 before the  
31 Hon. Anne L. Simon.  
32

RECEIVED AND FILED  
SEP 07 2001  
/s/ MARY HEWITT  
DY. CLERK OF COURT

Lisa M. DeCourt  
Official Court Reporter  
P. O. Box 9931  
New Iberia, LA 70562-9931

EXHIBIT A

1 BY THE COURT:

2 At our telephone conference the other  
3 day, I asked for the specification of the  
4 discovery disputes that continue to exist.  
5 So perhaps that would be the wisest thing  
6 to address first.

7 BY MR. GIBSON:

8 Your Honor, I submitted something to  
9 you.

10 BY THE COURT:

11 Right.

12 BY MR. GIBSON:

13 I tried to put it in the phraseology,  
14 kind of like what you did last time, what  
15 it is you have to do.

16 BY THE COURT:

17 What is it we have to do, 'cause we  
18 won't do what we don't have to do. We have  
19 the judgment coming out of there that  
20 hasn't been done.

21 BY MR. SCHWAB:

22 The written judgment.

23 BY MR. GIBSON:

24 We're in dispute over the judgment.  
25 I think the decision on these will clarify  
26 what needs to be put in the judgment. At  
27 least it's my hope.

28 BY THE COURT:

29 I only decided very few things that  
30 day. You made some other agreements out



1 there. It's my view those things should  
2 not be in the judgment. In the judgment  
3 should be only the things that I decided.  
4 And, as I remember what they were -- I  
5 didn't bring those particular notes with me  
6 today, I regret, but as I remember, I  
7 decided that what went from Mr. Maclean to  
8 the Eths folks was going to be disclosed,  
9 but nothing coming back, because what came  
10 back might contain privileged materials.

11  
12 BY MR. SCHWAB:

13 Right. What happened was, we had  
14 agreed that anything Paul filed initially  
15 -- my understanding of the Bar filing at  
16 that time was that the complainant filed  
17 with the Bar, and then the responding  
18 attorney then files with the Bar, and then  
19 the Bar makes a decision. What I didn't  
20 understand was the processes that Mr.  
21 Maclean filed with the Bar, the responding  
22 attorney then files response to the Bar,  
23 and then the complainant gets other  
24 opportunity to rebut what was responded to  
25 by the attorney.

26  
27 BY THE COURT:

28 So we didn't deal with that?

29 BY MR. SCHWAB:

30 We didn't deal with that issue.

31 BY MR. GIBSON:

32 I disagree with that, Your Honor.

1 The record that was agreed to last time,  
2 they specifically said everything my client  
3 filed with the Disciplinary Council's  
4 Office has either been produced or will be  
5 produced, and that's what --

6  
7 BY THE COURT:

8 And the problem is, he says in the  
9 response he's dragging in other stuff.

10 BY MR. GIBSON:

11 I understand if he didn't know what  
12 he was agreeing to and he wants to amend  
13 it. I understand that. I'll go back to my  
14 basic position where we were before, and  
15 that's what brought us here on that  
16 particular point. All I wanted was  
17 everything Mr. Maclean wrote.

18 BY THE COURT:

19 Initially.

20 BY MR. GIBSON:

21 No, I wanted everything that he  
22 wrote. Because, for example, if he writes  
23 something about Dale Hayes in the  
24 complaint, and then Dale Hayes responds to  
25 him, and then he writes something else, in  
26 that second response he may be giving me  
27 more information that's going to be  
28 assisting me in my preemption prescription  
29 defenses. That's what I want what he  
30 writes. I don't really care what Dale  
31 writes back to him, because that isn't  
32

1 really going to be effective on me. I want  
2 something that I can show Mr. Maclean on  
3 the witness stand or in a deposition and  
4 say, "Isn't it true that this is what you  
5 said when you were making these claims  
6 against an attorney?"  
7

8 BY THE COURT:

9 And what he's saying, though, is that  
10 the response brings in what Dale responded,  
11 just to use an example here.  
12

13 BY MR. GIBSON:

14 The silliness of that argument is,  
15 Your Honor, is the original complaint that  
16 he files against Dale, that I've already  
17 been entitled that he agrees, has  
18 everything about Dale that he's complaining  
19 about to begin with. It's even more silly  
20 when you put in context that Mr. Maclean is  
21 now trying to come here and say he's trying  
22 to protect the integrity of these very  
23 lawyers and judges for whom he was filing  
24 the complaints on. It's almost like --  
25 well, if you look in the context of  
26 everything that Mr. Maclean has done in  
27 this case, he doesn't want to produce a  
28 single shred of paper that could in any way  
29 be used against him under any  
30 circumstances.  
31

32 BY THE COURT:

Okay. Let's get through your reason

1 for not wanting to produce the second wave.  
2 BY MR. SCHWAB:

3 The reason is the same reason as was  
4 the basis of Your Honor's ruling, that  
5 nothing produced by the responding  
6 attorneys could be produced by my client  
7 under the rules of the Supreme Court. Paul  
8 sent two rebuttals to Your Honor, that we  
9 didn't submit ours to opposing counsel,  
10 asked for an in-camera inspection of those,  
11 but the rebuttals include the very dialog  
12 which was included in the responding  
13 attorney's response. So, in essence,  
14 Paul's rebuttal, he cited verbatim what  
15 they had claimed as a defense. So for the  
16 very reason that we are unable, incapable,  
17 under the law of providing that information  
18 to him, as far as the very basis for us  
19 being incapable of providing rebuttals now.

20  
21 BY THE COURT:

22 No. I agree. I think everything you  
23 said has to be disclosed on any wave,  
24 anything said by the plaintiff.

25  
26 BY MR. SCHWAB:

27 Anything submitted to the Bar by the  
28 plaintiff?

29 BY THE COURT:

30 Right. My ruling is now amended to  
31 include, within what can be discovered,  
32 anything submitted by the plaintiff to

1 disciplinary boards, period, whether it be  
2 in the first wave, second wave, third wave,  
3 whatever, anything that came out of his  
4 production.

5 BY MR. GIBSON:

6 Your Honor, I hate to ask for this,  
7 but can there be a time frame that he has  
8 to produce that? The only reason I say  
9 that, there's a court in Pennsylvania that  
10 I'm fighting with a Ms. Nancy Blanchard on  
11 document production. They have a different  
12 disciplinary council procedure and most of  
13 this doesn't even get to the lawyer when  
14 these complaints are filed. If the judge,  
15 in his years of practice he may not get the  
16 complaints and everything known about it,  
17 but what he is going to do is take the  
18 complaints that I'm going to get from Mr.  
19 Maclean and he's going to compare those  
20 that Ms. Blanchard has filed, which we  
21 think are going to be virtually identical,  
22 probably almost word-for-word, and to the  
23 extent they are, the extent that he finds  
24 that I'm entitled to them he's going to  
25 produce them to me. Can there be a time  
26 frame that I can get that?

27 BY THE COURT:

28 What time frame do you need to get  
29 that?

30 BY MR. SCHWAB:

1 Judge, that will be made available at  
2 the copying place -- unless you want to  
3 come down and make copies of your own --  
4 tomorrow.

5 BY MR. GIBSON:

6 That's fine. If they will be made  
7 available tomorrow, I will arrange with the  
8 copy place for that.  
9

10 BY THE COURT:

11 I'm going to just say within five  
12 days to make sure that happens.

13 BY MR. GIBSON:

14 That's fine.

15 BY THE COURT:

16 What else is left that doesn't permit  
17 us to get a judgment of what we so-say  
18 already decided?

19 BY MR. GIBSON:

20 Everything else, really, is an  
21 agreement -- and I've got the transcript,  
22 Your Honor. I provided it to you and I've  
23 cited the transcript in support of what I  
24 wrote to you. In my opinion I was  
25 entitled, pursuant to the agreement -- as  
26 Your Honor will recall, if I can digress  
27 for just one second, we came here because I  
28 had scheduled a deposition. There was a  
29 deposition notice, which admittedly was a  
30 lot of different categories, but this is a  
31 big case with a hundred and forty-four  
32

1 paragraphs, so I had categories basically  
2 to cover those. I'll just say this. To  
3 this part, maybe there's just the genuine  
4 dispute. I thought that Mr. Maclean was  
5 going to be able to compare the documents  
6 he had previously produced to me and  
7 produce basically anything in response to  
8 those subpoenas that would be extra. I was  
9 basically told -- and, on the agreement,  
10 the first thing we start is that they're  
11 going to produce documents -- Maclean will  
12 produce documents responsive to all the  
13 requests. I thought that was settled.  
14 Afterward, I learned that what they're  
15 going to do is basically reproduce  
16 everything I've been produced already,  
17 which is about six boxes of materials, and  
18 add on to that. And now it's about eight  
19 boxes of materials. I've never been told  
20 that this will be designated. In other  
21 words, I have a category that says they've  
22 alleged fraud against Mr. Alexander. I  
23 have a request that they produce the  
24 documents that will support your  
25 allegations of fraud leveled against Mr.  
26 Alexander. What I thought we had an  
27 agreement on was that they were going to  
28 produce just the supplement. But then I  
29 also wanted -- and I didn't think of this  
30 until we left, so this is a dispute I know  
31  
32

1 we're going to have -- I want Mr. Maclean  
2 to designate which of those documents  
3 responsive --

4 BY THE COURT:

5 To me these are two different issues.

6 BY MR. GIBSON:

7 I agree. So if I can go to the first  
8 one, the first one was -- and Greg had told  
9 that he's planning to not do that, so if  
10 that's still the position, that he cannot  
11 designate and just amend, then I'm just  
12 going to go ahead and get all eight boxes  
13 again. But, I mean, the problem is I've  
14 had paralegals date stamp the last  
15 documents, organize them, I've been through  
16 them hundreds of hours preparing for this  
17 deposition coming up, and I'm going to have  
18 to now go through the eight boxes.

19 BY THE COURT:

20 These are two different things. If  
21 you've got to get it all, you've got to get  
22 it all, but then you also are entitled to  
23 know, on interrogatories and everything  
24 else, what exactly he had to support  
25 certain allegations.

26 BY MR. GIBSON:

27 Frankly, because I knew we would be  
28 back, when I go to depose him and I go to  
29 that exhibit and I say, "On Exhibit 24," or  
30 whatever the number is, "Mr. Maclean,



1 produce for me the documents that support  
2 the allegations of fraud leveled against  
3 Mr. Alexander so that I can then question  
4 you on those," I mean, I will have his  
5 eight boxes and I'll probably know what I  
6 think he's going to say, but I want him to  
7 say that in sworn testimony so we can come  
8 back before Your Honor in a motion for a  
9 hearing, or that he'll be precluded from,  
10 in a jury trial, coming up with new  
11 documents that he never produced or  
12 identified to me. 'Cause remember, this is  
13 also the one I've said identify your  
14 exhibits that was never amended or any of  
15 that stuff. We had that in a conference.  
16 So if Your Honor is saying that they have  
17 to do that too, then I'm satisfied with  
18 that.  
19

20 BY THE COURT:

21  
22 Yeah, you have to do them both. It's  
23 just two different procedures. We've  
24 already got an agreement that you're going  
25 to turn over the whole business. You're  
26 not going to delete the stuff that's  
27 already been turned over, you're going to  
28 do the whole business, but then you also  
29 have to produce the specific support for  
30 each of your allegations, the documents  
31 that you --

32 BY MR. SCHWAB:

1                   They're one and the same, Your Honor.

2 BY THE COURT:

3                   Well, you just have to --

4 BY MR. SCHWAB:

5                   In other words, anything that would  
6 be relevant to this -- he has a Request for  
7 Production. Any documents produced by the  
8 underlying litigation, the litigation filed  
9 in Terrebonne Parish, the litigation filed  
10 in St. Mary, we're producing it.

11 BY THE COURT:

12                   One is production and one is some  
13 organization. You have to do some work on  
14 things. I don't make you work on general  
15 discovery, but I do make you work to  
16 support what you allege. So you're going  
17 to have to do the work to find the specific  
18 documents on specific allegations.

19 BY MR. SCHWAB:

20                   I understand that, but if he expects  
21 to ask my client, sitting at a deposition,  
22 "Please delineate all documents which will  
23 evidence fraud," he has to memorize eight  
24 boxes worth of materials.

25 BY THE COURT:

26                   No, you have to do that ahead of  
27 time.

28 BY MR. GIBSON:

29                   That's why I've done the subpoena,  
30 Your Honor. That's why I'm asking for  
31  
32

1 production. He knows which ones he's done  
2 and they're specific paragraphs he's  
3 talking about. That's an amended  
4 complaint.

5 BY MR. SCHWAB:

6 Your Honor, if I might continue --  
7 without being interrupted -- a little bit?  
8 The only person who knows what Mr.  
9 Alexander has is Mr. Alexander. We have no  
10 idea what has been copied by Mr. Alexander  
11 thus far. Mr. Gibson tells me that he came  
12 -- I know he came down to my office and  
13 then asked to have all of the materials  
14 copied --  
15

16 BY THE COURT:

17 I don't want to listen to this  
18 because this is just your general  
19 complaints about each other which we have  
20 had on two hearings and several phone  
21 calls. I can't get into that. I just want  
22 to give you the guidelines of what I think  
23 has to be done. Everything has to be  
24 produced, and it is. Also, specific items  
25 have to be produced to support specific  
26 allegations.  
27

28 BY MR. SCHWAB:

29 I don't understand that.

30 BY THE COURT:

31 Okay. You've alleged fraud. Just as  
32 an example, I mean, I don't have all of

1 this stuff at my fingertips, you've alleged  
2 fraud. If he asks you in a subpoena, in a  
3 request for documents, or in some other  
4 discovery device other than a deposition,  
5 prior to the deposition, to produce the  
6 documents supporting that allegation, you  
7 have to do it.

8  
9 BY MR. SCHWAB:

10 Couldn't I answer --

11 BY THE COURT:

12 By saying I've already shipped a car  
13 load? No. You can't. You can't do it by  
14 saying I've shipped a car load. You're  
15 going to have to designate. We're never  
16 going to get from here to there on this  
17 case unless you do some work, too, on that,  
18 and you can't do it by the car load method.  
19 You have to do that first, but you're also  
20 going to have to do this on specific  
21 issues, or we'll never get there.

22  
23 BY MR. SCHWAB:

24 So if he asks seventy different  
25 categories of subpoenas, or whatever they  
26 are, I have to answer each one in subpoena  
27 like a request for production?

28 BY THE COURT:

29 If you think that there are too many  
30 of them, you can come back to me for relief  
31 on it. But when somebody says to me fraud,  
32 they've played their best card, because

1 once you've said card, you've got to be  
2 careful and you've got to produce every  
3 piece of material. That's a very serious  
4 allegation and you don't respond to that by  
5 a car load.

6  
7 Now if there are any others, I have  
8 to say if you've got seventy-three  
9 questions, that may be too much, Mr.  
10 Gibson.

11 BY MR. GIBSON:

12 There's actually forty-four, and I  
13 will say that is much less than the hundred  
14 and sixty Requests for Admission and the  
15 over thirty discoveries he sent to me. But  
16 I'm willing to fax Greg a letter, if I can  
17 have until Friday to do it, that will  
18 designate the ones that I want specific  
19 designations on, and then the rest of it he  
20 can put in the eight boxes.

21 BY THE COURT:

22 Okay. How many of those do you think  
23 you can get down to? Let's do that, and  
24 then that will be a ruling.

25  
26 BY MR. GIBSON:

27 Your Honor, I'm pretty sure I can get  
28 them down below fifteen. I want to make  
29 sure I'm clear on this, because I get  
30 copies of these transcripts every time we  
31 have them because I anticipate problems in  
32 advance, so I want to make sure I'm clear

1 on this. For example, if I can say all the  
2 allegations against fraud, there's  
3 actually, in his amended complaint, I think  
4 maybe twelve paragraphs where he alleges  
5 fraud. They basically, in my opinion, all  
6 say the same thing about what he claims my  
7 client did. But if that would be one of  
8 them, fraud, then it may be much less than  
9 that.  
10

11 BY THE COURT:

12 That would be fraud. That would be  
13 one.

14 BY MR. GIBSON:

15 Yeah. If I can do fraud on one, I  
16 can get them probably less than ten.

17 BY THE COURT:

18 All right. Let's say that, that to  
19 go over ten, if there are more than ten  
20 categories requested, you can come back to  
21 me for relief.  
22

23 BY MR. GIBSON:

24 I will tell Your Honor there won't be  
25 less than ten [sic].

26 BY MR. SCHWAB:

27 There'll be ten or less.

28 BY MR. GIBSON:

29 I can do that. I think the other  
30 thing, Your Honor, that we had a fight on  
31 is my last thing. Frankly, I've offered  
32 some relief. I don't understand sometimes

1 why we can't get agreement, and I'm as  
2 frustrated -- you're probably more  
3 frustrated than I am.

4 Last time we came here we had an  
5 agreement they wanted a protective order  
6 only on the tax records of Mr. Maclean. I  
7 said, "Fine. I'll give you the protective  
8 order on Mr. Maclean." In the judgment  
9 that Mr. Schwab submits, he puts he wants a  
10 protective order on every document that his  
11 client ever produces. My response to that  
12 to him was, okay, let's get a protective  
13 order on everything that everybody  
14 produces. I mean, what's good for the  
15 goose is good for the gander. He's  
16 unwilling to do that. The agreement in the  
17 court was only a protective order on their  
18 tax records. I'm willing to go protective  
19 order on every document produced in the  
20 case, or I say stick to the agreement that  
21 he agreed to when he was before Your Honor.  
22 I don't know why we can't get a mutual  
23 protective order. If his client thinks  
24 he's entitled to one, I don't know why I  
25 shouldn't be entitled to one either.  
26 Frankly, I'm not trying to get into it, but  
27 I've got a Protective Order Motion next  
28 that we're going to talk about that deals  
29 with the dual representation, which is why  
30 sought that. I thought it would be an easy  
31  
32

1 way to solve everything, but that was  
2 rejected.

3 BY THE COURT:

4 You need protection of more than tax  
5 returns? If not, let's just stop at that,  
6 'cause everything gets globalized here.

7 BY MR. SCHWAB:

8 I know. I know. I know. And I  
9 don't want to globalize any unnecessarily,  
10 however, my client is intensely concerned  
11 that what has already occurred in his life  
12 will reoccur. We're dealing with the same  
13 parties who did it to him the first time.  
14 After last hearing there's been a lot  
15 that's occurred after last hearing,  
16 including the fact that come to find out  
17 the other defense counsel representing  
18 Coregis was actually representing the very  
19 defendant Arco, or whatever, Atlantic  
20 Richfield, et al, that was involved in this  
21 whole ongoing matter.

22 BY THE COURT:

23 You're not answering my question. Do  
24 you need protection of anything more than  
25 tax records? I don't want to hear all of  
26 the major problems that go around.

27 BY MR. SCHWAB:

28 Certainly financial, Your Honor.

29 BY THE COURT:

30 Financial. Is that a broad enough  
31  
32



1 category to work with?

2 BY MR. GIBSON:

3 I don't know what that means, but  
4 what I'd like you to do is make them stick  
5 to their word in tax records. I think  
6 that's the only thing I subpoenaed. I  
7 don't know if financial is even involved,  
8 but I don't want, in the eight boxes of  
9 stuff that I'm going to get, for him to  
10 claim some of that because it maybe deals  
11 with a lease, or an opportunity for a  
12 lease, or an underlying litigation that he  
13 could have gotten money, that Mr. Maclean  
14 or Mr. Schwab is going to say well, that's  
15 financial, how could you not know that.  
16

17 BY THE COURT:

18 I'll say tax returns plus any  
19 specific financial documents that you give  
20 to me and I rule on. I'm not going to just  
21 say financial. It's too open-end. If  
22 you've got a problem with any specific  
23 financial documents, then we'll deal with  
24 it.  
25

26 BY MR. GIBSON:

27 Can I ask Mr. Schwab, then, to make  
28 him work on this, and that is for him, when  
29 he sends me those documents, to identify  
30 the ones that are going to be subject to  
31 the protective order so that I will know  
32 that and my office can be instructed that

1 those will go in a different color binder,  
2 that only a certain number of copies will  
3 be made, or whatever, as opposed to me,  
4 when I show up with the eight boxes of  
5 stuff, then complain those are under some  
6 type of protective order. If he can  
7 identify them when he sends them to me,  
8 these are the ones under protective order,  
9 then I'll know.  
10

11 BY THE COURT:

12 That you consider under the category  
13 of financial that need to be protected, but  
14 it's just not an open-end protection. So  
15 the protective order is in effect for tax  
16 returns and any other financial documents  
17 that you particularly specify. And if you  
18 disagree on whether they should be  
19 protected, then you come to me.  
20

21 BY MR. GIBSON:

22 That sounds good, Your Honor.

23 BY THE COURT:

24 Any other designated financial  
25 records.

26 What next?

27 BY MR. SCHWAB:

28 There's only one other issue that was  
29 made, it came out after the hearing, and  
30 that was our contention that we had made an  
31 agreement out in the hall specifically to  
32 the request by Mr. Alexander that Mr.

1 Maclean produce to him all the checks that  
2 he had ever written to St. Mary Parish  
3 Clerk's Office involving this particular  
4 case. Mr. Maclean does work in the Clerk's  
5 Office for a living. It's impossible for  
6 him to produce all of these checks specific  
7 to the case. It's impossible for him to  
8 backtrack to figure out which check was  
9 paying for which records, and this, that  
10 and the other.  
11

12 As a concession, what we said to Mr.  
13 Gibson was, why don't you list specific  
14 documents that you want and the specific  
15 dates. He advised me that they've gone  
16 down to the Clerk's Office and have gotten  
17 a printout which was available from the  
18 Clerk's Office to him, and he was going to  
19 provide us with a printout and designate  
20 those specific documents which he wanted us  
21 to produce, which checks, which dates,  
22 which everything.  
23

24 I was under the impression that was  
25 agreed to. It was never stated in open  
26 court because we had agreed to it. He was  
27 reading the list that he was taking notes  
28 on. He didn't read it, so it was not  
29 included in the open court agreement,  
30 stipulation. So that's the only other one  
31 that I know of that should be included in  
32 the judgment.

1 BY MR. GIBSON:

2 Your Honor, that's untrue. What I  
3 told him out in the hall -- they complained  
4 for them to go back and look through all  
5 these checks which was in the Clerk of  
6 Court. I don't know how many. They gave  
7 me a number. I said I don't want any  
8 except any that are related to the  
9 underlying litigation or this litigation.  
10 If that's one check, if that's three  
11 checks, I don't know.  
12

13 I did go to the Clerk's Office and  
14 they basically said they can't tell me  
15 what's related to anything, so I didn't ask  
16 them to pull information. I've never had a  
17 printout. I don't know where that comes  
18 from. All I asked for was those that are  
19 related.  
20

21 Here's what I'm concerned with, Your  
22 Honor. Frankly, I'll take that statement.  
23 If that's an admission of his client that  
24 he can't do it, I'm happy and we'll drop  
25 the check issue. All I don't want to  
26 happen is I'm in a preemption of  
27 prescription exception hearing, Your Honor,  
28 and then Mr. Maclean takes the stand and  
29 says, "Well, of course not, Your Honor.  
30 Here's a check that I wrote to the Clerk of  
31 Court and that's the date I did this."  
32

The reason I even thought of that,

1 frankly, there's a reported case that  
2 decided years ago in a legal malpractice  
3 case where the client went to the Clerk of  
4 Court, wrote a check, it was introduced,  
5 and that was the basis that your honor used  
6 for starting the process to look at the one  
7 year. I've read a little bit of law and  
8 that's one of the things I've thought of,  
9 particularly cause he's in the Clerk of  
10 Court.  
11

12 So if Mr. Schwab will say that Mr.  
13 Maclean cannot do that, I'll take that as  
14 an admission, we drop the checks. If not,  
15 I think that he ought to go through and  
16 identify any that he can identify related  
17 to the underlying litigation or this  
18 litigation.  
19

20 We believe that he probably went and  
21 purchased -- I'm going to question this,  
22 and he's sitting here so he'll know that in  
23 advance -- I intend to question him how did  
24 he get certain documents for the underlying  
25 litigation. In other words, there was a  
26 settlement read in open court. There were  
27 some other documents that he got. I want  
28 to know how he got them. He may have  
29 gotten them from Alexander. I don't think  
30 he got them from Alexander. He might have  
31 gotten them from Dale Hayes, from Joe  
32 Laites who was his attorney, or he may have

1           gone to the Clerk of Court and purchased  
2           that. I want to find out how he got these  
3           things, and that's why I asked the  
4           question.

5       BY THE COURT:

6           I think I can handle that by saying  
7           this, that no checks to the Clerk of Court  
8           can be introduced in evidence in this case  
9           unless they are produced to the other side  
10          within -- I want them produced as of now.  
11          They can't be produced that day, so I need  
12          to put a deadline on this. We don't have a  
13          hearing date on this yet, but I'd say  
14          produced with a month.

15  
16       BY MR. GIBSON:

17           Thirty days is fine.

18       BY THE COURT:

19           Thirty days.

20       BY MR. GIBSON:

21           Your Honor, that's fine. That's all  
22           I was looking for and that's what I offered  
23           to Greg. I hope to have his deposition  
24           finished before then, but if he comes with  
25           a check after that...

26  
27           I think that's the last dispute on  
28           the judgment, Your Honor.

29       BY THE COURT:

30           Is that right?

31       BY MR. SCHWAB:

32           I think so, Your Honor.

1 BY THE COURT:

2 Then we have the Exception, and  
3 you're looking for a fixing for that.

4 BY MR. GIBSON:

5 I was before you in the Dauterive  
6 case a couple of weeks ago, and I forgot  
7 the name of the case we were talking about,  
8 being an innominate type hearing you need a  
9 full evidentiary hearing. The thing I want  
10 to point out is this, 'cause I understand  
11 what I might hear from Greg 'cause I  
12 mentioned to him this the other day, that I  
13 was going to seek this, they filed this  
14 suit originally in Terrebonne Parish in May  
15 of '98. In August of '98, and I know this  
16 is in some other filings that I've pled, I  
17 offered him to look at the file. He  
18 claimed that he had done a Request for  
19 Production and tried to argue that, Judge,  
20 that he was entitled to a contempt order  
21 against me and my client for not producing  
22 it. I satisfied that, Judge, in a hearing,  
23 that not only had they not requested it, it  
24 wasn't even before on a Motion to Compel.  
25 I offer in August, I think it's 14, 1998,  
26 they get started on the file and start  
27 looking through the file. It's file  
28 cabinets of file material. They've never  
29 asked one time to look at it. Last year,  
30 on October 31<sup>st</sup> of the year 2000, over two  
31  
32

1 years after they filed this thing in  
2 Terrebonne Parish -- and they were such in  
3 a rush they entered a default judgment  
4 against my client and wouldn't give an  
5 extension and I had to hurriedly file my  
6 exceptions -- they finally asked to depose  
7 my client. That was only after I had Mr.  
8 Maclean's deposition scheduled. We've had,  
9 since this thing's been filed, Exceptions  
10 of Peremptory and Prescription. We had our  
11 venue adverred in Terrebonne and moved it  
12 over here. They've amended their complaint  
13 when they had the law partnership. Lane  
14 Roy represented them in that, and those  
15 guys had a different row to hoe than I did  
16 and they got out. We want a hearing. I  
17 checked, and April 30<sup>th</sup> was a rule date  
18 hearing that I was kind of looking for, but  
19 after coming before Your Honor a couple of  
20 weeks ago, I realized I needed to ask for  
21 one.  
22

23 BY THE COURT:  
24

25 These exceptions of prescription in  
26 medical and legal matters require so much  
27 testimony that I don't think rule days are  
28 appropriate for them. Even though they're  
29 called by one name, the law on them is that  
30 you've got to have all this testimony. So  
31 I've got to set special fixings for these.  
32 I looked at my calendar just to see, and my



1 civil trial days all come in June. I don't  
2 know whether you can get on a regular civil  
3 trial day. I would suggest that you try.  
4 If you can't get on on those days, you  
5 won't have me unless we make a special  
6 fixing between now and June.  
7

8 BY MR. GIBSON:

9 That's the one time year I probably  
10 take a week off and go to the San Destin  
11 seminar with my kids. I'll obviously  
12 forego it if that's your only chance. I  
13 would like to have the matter resolved with  
14 Your Honor.

15 BY THE COURT:

16 Work with her and see if you can get  
17 those June dates. If you can't get those  
18 June dates, you've got your choice. You  
19 either get another judge after July 3<sup>rd</sup>,  
20 when they cut off my head --  
21

22 BY MR. SCHWAB:

23 You're leaving? I didn't know.

24 BY THE COURT:

25 I have some vacation days in March  
26 that we could put it if you wanted to, but  
27 it's up to you and Mary Hewitt where you  
28 find a place to put it.

29 BY MR. SCHWAB:

30 That's the end of your term, in June?

31 BY THE COURT:

32 I'm retiring.

1 BY MR. SCHWAB:

2 I didn't know.

3 BY MR. GIBSON:

4 Your Honor, there's was one other  
5 thing I had. I had filed a Motion for  
6 Protective Order. It is the first I've  
7 ever filed like this. My client  
8 represented two people, Betty Blanchard and  
9 Paul Maclean. He's indicated, at least at  
10 one time in October, he wanted to depose my  
11 client. What I wanted to ensure is that at  
12 least it was clear -- and I brought this up  
13 in the last hearing, that I was going to  
14 bring this up -- since it was a dual  
15 representation, his client is not entitled,  
16 I don't think, under Louisiana law to find  
17 out any confidences that Betty Blanchard  
18 had. I wanted to at least make sure that  
19 we had a protective order filed before he  
20 actually showed up to take my client's  
21 deposition, that he would be precluded from  
22 asking those type of questions. I served  
23 the plaintiffs. I assume the plaintiff  
24 does not want to waive his privilege, but  
25 it was the only way that I could know that.  
26 If she wanted to waive the privilege and  
27 say that, then that's fine with us. I  
28 thought that she would want. We've been  
29 very protective of her privilege since day  
30 one. In our first discovery responses, we  
31  
32

1 brought up -- I submitted them to Your  
2 Honor in that other memo --

3 BY THE COURT:

4 Does she have other counsel at the  
5 moment?

6 BY MR. GIBSON:

7 She's had at different times.

8 BY MS. NANCY BLANCHARD:

9 She does not, Your Honor. I'm her  
10 daughter, Nancy Blanchard, and I reside in  
11 Pennsylvania. I have her complete power of  
12 attorney. I would like to read something  
13 to the Court, if I may.

14 BY THE COURT:

15 No, I can't allow you to do that, but  
16 I can urge you --

17 BY MS. BLANCHARD:

18 Can I put it into the record?

19 BY THE COURT:

20 No, you're really not a party to it.  
21 Unless you're a party to this proceeding, I  
22 can't allow that. I'm not going to rule on  
23 this thing today.

24 BY MR. GIBSON:

25 That's fine, Your Honor.

26 BY THE COURT:

27 Perhaps you can notify Ms. Blanchard  
28 and the person who has her power of  
29 attorney in some kind of official way that  
30 she may need counsel to make this decision.  
31  
32

1           This is kind of a counsel decision that has  
2           to be made.

3 BY MS. BLANCHARD:

4           Your Honor, my mother is not a party  
5           to this suit.

6 BY THE COURT:

7           Right.

8 BY MS. BLANCHARD:

9           She has never been a party to this  
10          litigation.

11 BY THE COURT:

12          Right.

13 BY MS. BLANCHARD:

14          She does not understand. Through my  
15          counsel we do not understand exactly what  
16          it is Mr. Alexander is asking for. He  
17          seems to be asking for an order of  
18          protection --

19 BY THE COURT:

20          No. I don't want to get into this  
21          discussion with you because I can't advise  
22          you either. I'm not permitted to be a  
23          lawyer for you. I'm saying he needs to put  
24          you on notice in some official, legal type  
25          way, the way we do, that you need to  
26          consult an attorney to make a decision on  
27          this issue. You're not a party to this  
28          suit so I can't let you get involved. I  
29          can't do that. Procedurally, I can't do  
30          that. I can't let you speak or enter  
31  
32

1 anything into the record. I can't lean on  
2 you, but I can lean on them, you see, so  
3 I'm leaning on Mr. Alexander and telling  
4 him to notify you of this situation and get  
5 a response from her in a legal way.  
6

7 BY MR. GIBSON:

8 That's fine. If Ms. Blanchard would  
9 agree to this, she has an attorney in  
10 Pennsylvania, if I can basically just  
11 write, or she can have that lawyer write to  
12 me and advise whether they want to waive it  
13 or not, that's fine with me.

14 BY THE COURT:

15 I think you should officially ask for  
16 it. The only thing I can do is tell you  
17 what to do. I can't tell them what to do.

18 BY MR. GIBSON:

19 I can do that. I can fax to her  
20 lawyer and I'll send certified mail to Ms.  
21 Blanchard the same request.  
22

23 BY MR. SCHWAB:

24 I did want to schedule some  
25 depositions and Mr. Gibson informed me that  
26 until he deposed Paul he was opposed to at  
27 least the deposition of his client. Does  
28 that continue to be --

29 BY MR. GIBSON:

30 Yeah, 'cause I'm the one that has to  
31 depose your client first. Y'all filed the  
32 protective order. I want to depose Mr.

1 Maclean before Mr. Alexander. I don't  
2 have a problem with doing it, if I finish  
3 with Mr. Maclean on a Tuesday or Wednesday  
4 and we start with Alexander on Thursday or  
5 Friday, I don't care about that, but I want  
6 to make sure I complete his deposition  
7 first.  
8

9 BY MR. SCHWAB:

10 Are you not allowing me to go forward  
11 with depositions of other witnesses?

12 BY MR. GIBSON:

13 I would prefer let's get the  
14 plaintiff and defendant out of the way  
15 'cause I don't want us to use dates on  
16 that. I think that's appropriate. I've  
17 been waiting for a long time to get his  
18 deposition scheduled, and you didn't even  
19 ask for deposition dates until two and a  
20 half years after the claim was filed. I  
21 think I'm entitled to that. I think it's  
22 fair.  
23

24 BY MR. SCHWAB:

25 He's telling me, on one hand, I have  
26 to go to trial on peremptory exception and,  
27 on the other hand, he's not letting me  
28 depose anybody. He's not giving me  
29 available dates.

30 BY THE COURT:

31 We've got to depose the plaintiff  
32 first. That comes first..

1 BY MR. GIBSON:

2 And then if you want to do somebody  
3 else before Alexander, I don't care.

4 BY THE COURT:

5 Then do them all.

6 (End of proceeding)  
7  
8  
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REPORTER'S CERTIFICATE

STATE OF LOUISIANA

PARISH OF ST. MARY

I, LISA M. DeCOURT, Official Court Reporter for the Sixteenth Judicial District of the State of Louisiana, hereby certify that the foregoing 33 pages of typewritten matter constitute a true and correct transcript of evidence adduced and proceedings had in the above numbered and entitled cause as recorded by me on the day and date herein above stated and reduced to typewriting by me or under my direction and supervision.

I further certify that I am not of counsel, nor in the employ of any of them, and that I am in no way interested in the result of said cause.

New Iberia, Louisiana, this 23<sup>rd</sup> day of February, 2001.



*Lisa M. DeCOURT*  
Lisa M. DeCOURT, C.C.R.  
Certificate #91337