

II.

Dr. Daniel B. Mowrey, who is a named Respondent in this proceeding, has been designated by Respondents as a testifying expert in this matter. Complaint Counsel asserts that Respondent Mowrey produced a privilege log to Complaint Counsel on March 2, 2005, which identified 191 documents that had been withheld from production. Complaint Counsel urges that Respondent should be compelled to produce the withheld documents if Dr. Mowrey considered the information in formulating his expert report and because the documents are responsive to Complaint Counsel's document requests.

Complaint Counsel further asks that, because these documents were not produced prior to the deposition of Dr. Mowrey, if a review of Dr. Mowrey's expert file raises additional questions

if Complaint Counsel does not object to evidence in Dr. Mowrey's deposition, then the deposition

to argue that materials furnished to their experts to be used in forming their opinions – whether or not ultimately relied upon by the expert – are privileged or otherwise protected from disclosure when such persons are testifying or being deposed”); *TV-3, Inc. v. Royal Ins. Co. of Am.*, 194 F.R.D. 585, 589 (S.D. Miss. 2000) (correspondence between counsel and expert

In the event that a reasonable review of these documents raises additional questions that
Complaint Counsel was not able to meaningfully explore in the deposition of Dr. Mowrey.

without having had the documents underlying his expert opinion, the deposition of Dr. Mowrey shall be reopened. Consistent with this Order, Mowrey shall not be instructed to not answer questions about his communications with his attorney that relate to his role or agreement in this

case.

Deposition of Mowrey dated 11/11/11 at 1:00 PM in Courtroom 101, Court of Appeals, 1010