

UNITED STATES OF AMERICA



In the Matter of  
BASIC RESEARCH, L.L.C., et al.,

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DOCKET NO. 9318  
Public Document

4. Pursuant to the Court's 9 August 2005 Order, Dr. Mowrey is required to produce "all documents that relate to his capacity as an expert witness, including communications with his attorney, the other Respondents, and the other Respondents' attorneys." Order at 3. The

aimed at compelling production of documents from Dr. Mowrey that do not relate to his capacity

as an expert or to the formation of his expert opinion in this case, Complaint Counsel's motion is DENIED IN PART." *Id.* The Court then directed Dr. Mowrey to produce documents within five (5) business days after 9 August 2005 -- i.e., on or before 16 August 2005.

5. On 16 August 2005, Dr. Mowrey produced to Complaint Counsel what Dr.

In 16 August 2005 letter to Complaint Counsel I stated that "with respect to

[REDACTED]

printed out and provided to me all of the "drafts." *See, e.g.*, Mowrey Supp. Dec. I then had the documents which Dr. Mowrey had delivered to me produced to Complaint Counsel.<sup>2</sup> Dr

innocent mistake, a mistake which I immediately brought to Complaint Counsel's attention upon

scientific study of any kind, and with one potential fact witness who is an author of a scientific

study discussed in Dr. Mourou's report. Complaint Counsel conceded in their motion that notes

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the persons mentioned in the document are not authors of any of the scientific studies referenced in Dr. Mowrey's expert report, this document is not subject to production.

14. Document Bates Nos. 26-33. These documents are a series of emails on 9 August

2004 between Ms. Fobbs and me (and copied to Dr. Mowrey). The emails relate solely to efforts to arrange a meeting between Dr. Mowrey and the Corporate Respondent's prior counsel, and contain no substantive information. The meeting which we were trying to arrange in early August 2004 did not occur.

15. Document Bates Nos. 54-55. Dr. Mowrey addresses this document in his declaration.

16. Documents Bates Nos. 84, 86-87. These documents are a series of three emails

1. Document Bates No. 84. 2004 (from Ms. Fobbs to Dr. Mowrey) 20 September 2004 (from Dr.



14-0111/01/04 (v) Ms. F. 11-14-11/01/04 (v) Ms. F. to Heather Smith (with

the Corporate Respondents' Compliance Department) dated 11/01/04 (v) Ms. Sprik to Dr



contain absolutely no substantive information concern the Colker/Kalman paper, or concerning Dr. Colker and Mr. Kalman. Furthermore, the "Colker/Kalman paper" referenced in these two emails has been produced to Complaint Counsel on at least two (2) separate occasions, long before the Court entered the 9 August 2005 Order.

23. With respect to the 22 November 2004 email from me to Ms. Fobbs and Mr.

Respondents' counsel, Mr. Goy's counsel, and Respondents Dr

Mowrey & Friedlander) which is part of Document Bates No. 168, that document relates solely to Respondents' litigation strategy and potential discovery Respondents were considering undertaking. The document was not sent to Dr. Mowrey as an expert, and we were not consulting with Dr. Mowrey as an expert our litigation and discovery strategy. Rather,

Instead, Complaint Counsel and Dr. Heymsfield did not produce those documents until 14 December 2004 (they were received by me on 16 December 2004), and then they were produced

in response to a subpoena which I had caused to be served on Dr. Heymsfield after he had

produced his report, but had failed to produce the majority of the documents he later produced.<sup>3</sup>

<sup>3</sup> I note that Dr. Heymsfield did not produce all the required documents, as he produced

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **DECLARATION OF**  
**DAVID F. BRICE IN OPPOSITION TO COMPLAINT COUNSEL'S MOTION FOR SANCTIONS** was

provided to the following as follows:

- (1) on 15 September 2005, the original and two (2) paper copies sent via Federal Express overnight delivery. and on 16 September 2005 one (1) electronic copy via email attachment