IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

STEPHEN BEHNKE, *et al.*,	**:**	**CASE NO. 2017 CA 005989 B**
	:	**Judge Todd E. Edelman**
Plaintiffs,		
	:	**Next Event:**
v.		**Initial Scheduling Conference**
	:	**February 23, 2018**
DAVID H. HOFFMAN, *et al.*,	**:**	
Defendants.		
	:	

OPPOSITION OF DEFENDANT AMERICAN PSYCHOLOGICAL ASSOCIATION TO PLAINTIFFS' OPPOSED MOTION FOR "LIMITED DISCOVERY"

Plaintiffs' motion for discovery[1] is nothing more than an attempt to shoehorn Plaintiffs' pre-existing demands for information into the D.C. Anti-SLAPP Act's narrow discovery provision, D.C. Code § 16-5502(c)(2), and, separately, to use both the pending arbitration motions and inapplicable D.C. Superior Court Rule of Civil Procedure 56(d) to obtain that discovery. Plaintiffs' Motion seeks information that is not relevant or even helpful in opposing Defendants' pending Anti-SLAPP and arbitration motions. Nonetheless, Plaintiffs have sought broad-ranging discovery designed to address their consuming interest in learning, among other things, who leaked the report prepared by Defendants Sidley Austin and Sidley partner David Hoffman (together "Sidley") for APA ("the Report")[2] to the *New York Times*. Plaintiffs' desperate interest in the information they

[1] Plaintiffs have styled their request of November 30, 2017 as an "Opposed Motion for Limited Discovery in Preparation for their Oppositions and Expedited Hearings or Trial," hereinafter referred to as "Motion" or "Pls.' Mem."

[2] As set forth in APA's Memorandum in Support of its Contested Special Motion to Dismiss Under the D.C. Anti-SLAPP Act, D.C. Act 16-5502 ("APA Anti-SLAPP Motion"), the Report concerned Sidley's investigation as to whether APA had colluded with U.S. military officials to

are seeking does not provide the necessary legal basis to grant their Motion. This is particularly true here because this case should be stayed while the appeal of Plaintiffs' first-filed Ohio lawsuit proceeds.

ARGUMENT

I. Plaintiffs' Motion Is Premature and Should Be Denied Until the Court Decides Defendants' Pending Motion to Stay.

Defendants have filed a Motion to Stay this case while Plaintiffs pursue an appeal of the Ohio court's decision to dismiss Plaintiffs' first-filed Ohio complaint for lack of jurisdiction. *See* Defendants' Motion to Stay This Action in Favor of the Identical First-Filed Lawsuit in Ohio (filed Oct. 11, 2017). Plaintiffs have opposed Defendants' stay motion and ignored it for purposes of seeking discovery. At the same time, Plaintiffs have treated the stay as granted because they have failed to file timely oppositions to Defendants' Motions to Compel Arbitration and Anti-SLAPP Motions, which responses were due on October 27, 2017. Plaintiffs cannot have it both ways—ignoring Defendants' motion to stay for the singular purpose of obtaining their desired but unwarranted discovery while simultaneously relying on that motion in refusing to respond to Defendants' pending Anti-SLAPP and arbitration motions. For all of the reasons set forth in Defendants' stay motion, this matter, including Plaintiffs' pending requests for discovery, should be stayed pending resolution of the first-filed Ohio lawsuit.

II. Plaintiffs Have Not Demonstrated that their Requested Discovery Is Targeted to Defeating the Anti-SLAPP Motion.

Under the D.C. Anti-SLAPP statute, Defendants' filing special motions to dismiss

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enable the torture of detainees in off-shore locations following the events of September 11, 2001. APA refers to and incorporates by reference the "Factual Background" section in its Anti-SLAPP Motion. APA Anti-SLAPP Motion at 1-5.

under the Act immediately imposed a stay of all discovery. D.C. Code § 16-5502(c)(1). This moratorium on discovery can be lifted *only* on a showing that a plaintiff's discovery (1) is targeted, (2) will enable the plaintiff to defeat the motion; and (3) is not unduly burdensome.[3] D.C. Code § 16-5502(c)(2). Plaintiffs cannot meet this burden because the discovery they have sought is broad-ranging and is neither relevant to the Anti-SLAPP motions nor needed to defeat them. As Plaintiffs themselves have admitted, the discovery they seek is actually general discovery that Plaintiffs have been requesting since before the Anti-SLAPP motions, or the lawsuit itself, were filed.[4] *See* Motion at Rule 12-I Certification at i ("[I]n March, September . . . 2017, Plaintiffs requested that Defendants stipulate to the proposed discovery. In the case of Hoffman's and Sidley's notes, as Plaintiffs' complaint details, they have requested those materials be released by Defendants for over two years."). Plaintiffs' blatant efforts to use the Anti-SLAPP Act's limited discovery provision as a hook to engage in a fishing expedition for discovery Plaintiffs have previously requested is exactly the reason why the Anti-SLAPP Act contains an automatic discovery stay—to prevent "expensive and time consuming discovery that is often used in a

[3] D.C. Code §16-5502(c) states:

> (1) Except as provided in paragraph (2) of this subsection, upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of. (2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

[4] Plaintiffs contend that the parties' dispute has been pending for two years and that they have been waiting to obtain the requested discovery during that time. Plaintiffs' contention is inaccurate. Plaintiffs filed the Ohio lawsuit on February 17, 2017, ten months ago. Plaintiffs' request for discovery in that case was denied. On August 25, 2017, the Ohio trial court dismissed the case for lack of personal jurisdiction. Plaintiffs then refiled the case in this Court on August 28, 2017.

SLAPP as a means to prevent or punish." Council of the District of Columbia, Comm. on Pub. Safety & the Judiciary, Committee Report on D.C. Anti-SLAPP Act at 4 (2010).

The fundamental premise of Defendants' Anti-SLAPP motions is that Plaintiffs must, but cannot, demonstrate by clear and convincing evidence that APA and Sidley published specific false and defamatory statements about the Plaintiffs with actual malice.[5] *See, e.g.*, APA Anti-SLAPP Mem. at 10, 15 (filed Oct. 13, 2017). In particular, those motions contend that, even if each of the allegations in Plaintiffs' Complaint were true, Plaintiffs cannot carry their burden of proving actual malice as a matter of law and the Complaint must be dismissed. *Id*. at 18-22. Despite this assumption that favors Plaintiffs, they nonetheless contend that they require certain fact discovery in order to defeat the Anti-SLAPP motions. But none of the specific discovery sought would enable Plaintiffs to demonstrate that Defendants published false and defamatory statements with actual malice. A review of each of Plaintiffs' discovery requests makes this clear.[6]

A. Depositions

1. Dr. Steven Soldz. Plaintiffs contend that they require a deposition from Dr. Steven Soldz because he was one of two people who leaked the Report to the *New York Times*, and they want to confirm that contention with his testimony. Pls.' Mem. at 4 and Ex. A to the Freeh/Forrest Decl. at unnumbered page 4. Dr. Soldz, who was interviewed by Sidley, was not a member of APA at the time he received a copy of the Report. Compl. ¶¶ 56, 323. He was never an officer, director, or spokesperson for APA. *Id*. ¶ 56. Dr. Soldz

[5] Despite Plaintiffs' assertion to the contrary, *see* Motion at 2, *all* of Plaintiffs' claims are the subject of Defendants' Anti-SLAPP motion.

[6] APA reserves its rights with respect to any and all objections it may have to the form or substance of Plaintiffs' discovery requests, and will identify its specific objections in writing promptly as to any discovery requests or depositions this Court allows to proceed.

did not have the authority to act on behalf of APA, neither he nor anyone else was authorized by APA to transmit the Report to the *New York Times*, and Plaintiffs do not allege otherwise. Compl. ¶ 28.

A deposition of Dr. Soldz will not enable Plaintiffs to defeat Defendants' Anti-SLAPP Motions. Even if Dr. Soldz were to admit in his deposition that he did leak the Report to the *New York Times*, that testimony would address *publication* of the Report, which is distinct from whether Plaintiffs can demonstrate that any Defendant acted with actual malice, *i.e.* published false and defamatory statements with a high degree of awareness of probable falsity or at least with serious doubts about their truth. APA Anti-SLAPP Mem. at 10. Whether or not Dr. Soldz did leak the Report to the *New York Times*, Plaintiffs have not demonstrated, and cannot, that his alleged act had anything to do with APA's knowledge of the Report's falsity.

Moreover, Plaintiffs contend that they already have information about Dr. Soldz's supposed leak from another source, and merely seek confirmation of that fact. Pls.' Mem. at 4. Thus, the information that Plaintiffs seek in discovery is already within their possession, custody, or control. At base, a deposition of Dr. Soldz would only serve to satisfy Plaintiffs' keen fixation on publicly identifying the source of the leak of the Report to the *New York Times*, and their belief that Dr. Soldz, who opposed them vigorously on various APA political and policy matters, is at the heart of their problems. *See, e.g.*, Compl. ¶¶ 56, 165, 176. The information sought through the deposition is wholly irrelevant to any issue related to the disposition of the Anti-SLAPP motions. Accordingly, a deposition of Dr. Soldz will not enable Plaintiffs to defeat Defendants' Anti-SLAPP motions by showing that Defendants

published the Report with actual malice.[7] Plaintiffs' request to depose Dr. Soldz should be denied.

2. Dr. Heather O'Beirne Kelly. Plaintiffs also seek a deposition of Dr. Heather Kelly, an APA employee, whom they contend "confronted" Defendant Hoffman "during" the investigation because she felt he was "omitting anything from their interview that was favorable to her, APA, or Plaintiffs" and allegedly stated that she believed that the Report was going to be false and defamatory. *See* Pls.' Mem., Ex. A to Freeh/Forrest Decl. at unnumbered page 3. Plaintiffs allege that the purported confrontation between Dr. Heather Kelly and Hoffman occurred "during" Sidley's investigation, before the Report had been prepared or was available for review. *See id.* Any such testimony would be irrelevant to the actual contents of the Report, whether it contained any specific false and defamatory statements, or whether APA knew at the time of the Report's publication that any specific statements in the Report were false. Nor have Plaintiffs identified any particular allegedly false and defamatory statements that Dr. Heather Kelly's testimony would address. Dr. Heather Kelly's knowledge, views, and personal opinions regarding Sidley's conduct during the course of the investigation are irrelevant to the Anti-SLAPP motions' premise that Plaintiffs cannot demonstrate that Defendants published the Report with actual malice. Accordingly, a deposition of Dr. Heather Kelly should not go forward.

3. Dr. Jennifer Kelly. Plaintiffs also seek a deposition of Dr. Jennifer Kelly, who currently serves as Recording Secretary on APA's Board of Directors, and who Plaintiffs claim served on the APA Board or in "significant governance positions" during the

[7] Plaintiffs have not suggested that they will limit a deposition of Dr. Soldz to the sole issue of a possible leak to the *New York Times*. Instead, Plaintiffs evidently intend a far ranging inquiry that would go beyond the leak question. This type of unlimited discovery is not permissible under the Anti-SLAPP Act's limited discovery provisions. *See* D.C. Code § 16-5502(c)(2).

10-year period covered by the Report and participated in "a majority" of events addressed in the Report. *See* Pls.' Mem., Ex. A to Freeh/Forrest Decl. at unnumbered page 4. (Although they share a surname, Dr. Jennifer Kelly and Dr. Heather Kelly are not related by blood or marriage). Plaintiffs contend that Dr. Jennifer Kelly purportedly knew the Report's accusations were false, that she was "obligated to share her knowledge with her fellow Board members," and that "her knowledge invalidated her ability to rely on Hoffman and Sidley" under the D.C. Code provision relevant to standards of conduct for directors of nonprofit corporations. *Id.* But the deposition testimony Plaintiffs anticipate from Dr. Jennifer Kelly on these *factual* points would only serve to confirm allegations in the Complaint that APA has assumed are true for purposes of its Anti-SLAPP Motion. APA's Anti-SLAPP Mot. at 21; *see also* Compl. ¶¶ 231-241. As Defendants have assumed these facts to be true for purposes of their Anti-SLAPP motions, and because those facts do not constitute a showing of actual malice as a matter of law, discovery of this issue adds nothing. Accordingly, deposition testimony of Dr. Jennifer Kelly would not enable the defeat Defendants' Anti-SLAPP motions.

4. **Dr. Michael Honaker.** Plaintiffs seek a deposition of Dr. Michael Honaker, the former deputy Chief Executive Officer of APA. Plaintiffs contend that Dr. Honaker will testify regarding his conversations with Hoffman during the investigation that were omitted or distorted in the Report. *See* Pls.' Mem., Ex. A to Freeh/Forrest Decl. at unnumbered page 4. Plaintiffs have failed to identify any particular omissions or distortions in the Report that would be the subject of Dr. Honaker's deposition testimony, or how any such unidentified omissions and distortions would demonstrate that APA knowingly published false and defamatory statements. *See supra* Section II.A.2; APA Anti-SLAPP Mem. at 21-22. A

deposition of Dr. Honaker would not aid Plaintiffs' efforts to defeat the Anti-SLAPP motions.

B. Interrogatories to APA. Plaintiffs have proposed four interrogatories[8] directed toward identifying the source of the purported leak of the Report to the *New York Times*. For all of the reasons set forth above, *supra* at II.A.1 (discussion re Dr. Soldz), the identity of the individual who leaked the Report to the *New York Times* does not go to the only issue in Defendants' Anti-SLAPP motions, challenging Plaintiffs' ability to prove that statements in the Report were knowingly false. APA Anti-SLAPP Motion at 10. Who had access to the Report when and who shared the Report or communicated with the *New York Times* regarding the Report are irrelevant to actual malice. Accordingly, Plaintiffs' proposed interrogatories fail to meet the discovery standard set forth in the Anti-SLAPP Act and Plaintiffs' request for this discovery should be denied.[9]

III. Plaintiffs Need No Discovery to Oppose Defendants' Arbitration Motions.

Attempting to employ another tactic on which to obtain information they have previously sought, Plaintiffs have seized on Defendants' pending motions to compel arbitration of the claims of Plaintiffs Behnke and Newman, arguing that the information sought will aid them in opposing those motions. While D.C.'s Anti-SLAPP statute

[8] The interrogatories propounded to APA are appended here as Exhibit 1.

[9] Plaintiffs have also requested that the Court not require them to pay Defendants' discovery costs and expenses, as may be required by the Anti-SLAPP Act, D.C. Code § 16-5502(c)(2), because they do not have substantial resources. Pls.' Mem. at 9. This overlooks the significant burden they seek to impose not only on Defendants, whom they request be subjected to five unnecessary depositions (and likely multiple depositions of the same witnesses), but also on third parties who may also lack resources: Dr. Soldz, Dr. Jennifer Kelly, and Dr. Honaker. Balancing the absence of any relevance of the information sought in these depositions with the significant cost to Defendants and third parties, APA requests that Plaintiffs bear any and all costs and attorneys' fees associated with any discovery granted, including for any depositions.

expressly provides that certain limited discovery may be permissible under very narrow circumstances, *supra* Section II, there is no similar provision under the D.C. and Federal Arbitration Acts. 9 U.S.C. § 1, *et seq.*; D.C. Code § 16-4401, *et seq.* In fact, Plaintiffs have identified *no* legal basis on which to premise a request for such discovery in the context of a motion to compel arbitration. Instead, Plaintiffs make an inapt analogy, arguing that Superior Court Rule of Civil Procedure 56(d) should apply to convert Defendants' motions to compel arbitration to motions for summary judgment and permit Plaintiffs to seek discovery to respond to the arbitration motions. *See* Pls.' Mem. at 6. This argument is without merit.

As a threshold matter, no discovery is needed for Plaintiffs to respond to the arbitration motions. Defendants have already placed on the record the employment agreements on which they rely in seeking to compel arbitration, and Plaintiffs have not contested the authenticity of those agreements. It is a legal issue, for the Court to decide, whether the broad arbitration provisions in those employment agreements cover the claims of Plaintiffs Behnke and Newman. The Court has everything it needs to make a determination about whether those claims are arbitrable. APA Arbitration Mem. at 7 (filed Oct. 13, 2017).

Nonetheless, Plaintiffs argue that because the motions to compel arbitration address matters outside the Complaint, the Court should treat them as motions for summary judgment under Rule 56(d). The cases Plaintiffs rely on in support of their novel theory, *Kitt v. Pathmakers, Inc.*, 672 A.2d 76, 79–80 (D.C. 1996) and *Bernay v. Sales*, 435 A.2d 398, 402 (D.C. 1981), Pls.' Mem. at 6, are entirely irrelevant to an arbitration motion. Those cases concern motions to dismiss for failure to state a claim under Rule 12(b)(6), in which the defendants relied on facts outside of the complaints and the court, consistent with Rule 12(d),

consequently converted the dismissal motions to motions for summary judgment. But Rule 12(d) does not apply to motions to compel arbitration. Plaintiffs have cited no cases applying D.C. law that support their theory. Motions to compel arbitration essentially seek a change in the venue from a court to arbitration, not final judgment. An arbitration motion is decided pursuant to a legal standard distinct from that applicable to a motion for summary judgment, which, if granted, awards judgment to the movant. D.C. Super. Ct. R. Civ. P. 56(d). Plaintiffs' efforts to graft Rule 56(d) onto a motion to compel arbitration, which addresses only whether a particular claim is within the scope of an arbitration agreement, in order to argue entitlement to discovery, should not be indulged.

Plaintiffs contend that the summary judgment standard applies and discovery is permissible where a party resisting arbitration denies the existence of an agreement to arbitrate. Again, the cases Plaintiffs rely on, *Haynes v. Kuder*, 591 A.2d 1286, 1290 (D.C. 1991), and *Keeton v. Wells Fargo Corp*., 987 A.2d 1118, 1122 (D.C. 2010), are inapposite. Here, unlike in those cases, Plaintiffs do not (and cannot) deny the existence of Behnke's and Newman's arbitration agreements or challenge their validity.

Plaintiffs also appear to rely on a Third Circuit case, *Guidotti v. Legal Helpers Debt Resolution, L.L.C.*, 716 F.3d 764, 776 (3d Cir. 2013), to argue that when arbitrability is not apparent from the face of the complaint, the summary judgment standard applies to a motion to compel arbitration, permitting discovery. Pls.' Mem. at 7-8. But no D.C. court has ever cited or applied the reasoning in *Guidotti*, and its suggestion that discovery may be permissible under certain circumstances does not appear to have been endorsed by any other ruling outside of the Third Circuit. And in any case, the holding in *Guidotti* regarding discovery was very narrow: limited discovery regarding the validity of the arbitration

agreement was permissible only because the complaint and supporting documents were ambiguous with respect to arbitrability and the party resisting arbitration had already responded to the motion to compel arbitration with facts placing validity at issue. *Guidotti*, 716 F.3d at 775-76. So even if the holding in *Guidotti* were to apply here, and it does not, no discovery would be permissible because the arbitration provisions are unambiguous, Plaintiffs have not denied their authenticity, and Plaintiffs have not yet filed any opposition to the arbitration motions. Plaintiffs' quarrel with arbitrability is not over the facts, but the legal conclusion to be drawn from those facts. No discovery is needed.

Based on these inapposite cases and theories, Plaintiffs imply that the arbitrability of Behnke's and Newman's claims may be undermined by: (i) the existence of other employment agreements with different arbitration provisions;[10] (ii) deposition testimony from Theresa McGregor, a paralegal in APA's Office of General Counsel and document custodian for the employment agreements appended to Defendants' motions to compel arbitration; (iii) deposition testimony from Dr. Honaker, APA's former deputy CEO, that it was not his "intent" to arbitrate these types of disputes; and (iv) Plaintiff Newman's execution of his employment agreement after its effective date. Pls.' Mem. at 7-8. None of this requested discovery would impact the issue of arbitrability or aid Plaintiffs in the opposition that they may eventually file.

APA has appended here as Exhibit 2 all other employment agreements between APA and either Plaintiffs Behnke or Newman, all of which contain arbitration provisions identical

[10] In the Exhibit A appended to the Freeh/Forrest Declaration in support of Plaintiffs' Motion, Plaintiffs seek (1) "[a]ny employment agreements with Dr. Behnke covering his initial date of hire until December 31, 2011, on which Defendants rely to assert an obligation to arbitrate." Plaintiffs also seek (2) "[a] copy of Plaintiff Newman's expired employment agreement without sentences obscured by copying and any other agreement with any APA entity affecting Dr. Newman's terms or conditions of employment." Without waiving any of its rights with respect to objections to this request, APA refers to Exhibit 2.

with respect to arbitrability to the provisions in the employment agreements on which Defendants' rely for their motions to compel arbitration. The operative agreements, and those on which Defendants rely, were appended to the motions to compel arbitration.

As to the proposed deposition of Theresa McGregor, Plaintiffs claim they need her testimony to explore "factual issues" regarding "additional employment agreements … not attached to the motion," the fact that "Dr. Newman was also employed by a separate entity within APA," and the fact that Dr. Newman's agreement was signed months after its effective date. Pls.'Mem. at 7. Such factual "exploration" is wholly unnecessary. Plaintiffs have all of the employment agreements. Plaintiffs' contention that Plaintiff Newman worked for an APA affiliate, the APA Practice Organization ("APAPO"), Pls.' Mem. at 7-8 and Newman Decl. at ¶¶ 2,3, is immaterial. Plaintiff Newman had no separate employment agreement with APAPO, and he does not allege otherwise. Plaintiff Newman's execution of his 3-year employment agreement nearly twelve months into that term is irrelevant to the arbitration provision and does not affect the binding nature of the agreement, which specifies that notwithstanding when it is signed, its effective date was January 1, 2003. Newman Employment Agmt. at ¶ 17. And any substantive knowledge Ms. McGregor may have would be privileged, given Ms. McGregor's role within the Office of General Counsel. Most importantly, Plaintiffs themselves have personal knowledge of the issues on which they seek testimony from Ms. McGregor, rendering a deposition unnecessary, irrelevant, and burdensome. No such discovery is needed.

Plaintiffs have requested a deposition of Dr. Honaker, APA's former deputy CEO, whom they claim would "testify to the parties' intent with respect to Plaintiff Behnke's and Newman's alleged obligations to arbitrate." Pls.' Mem., Ex. A to Freeh/Forrest Decl. at

unnumbered page 4. But there is no ambiguity regarding the words of the arbitration provisions, and testimony as to the intended meaning of the arbitration provision cannot be considered, both under the agreements' integration clauses (Behnke Employment Agmt. ¶ 11; Newman Employment Agmt., ¶ 12) and the parol evidence rule. *Segal Wholesale, Inc. v. United Drug Serv.*, 933 A.2d 780, 784 (D.C. 2007). Moreover, Dr. Honaker's views of the parties' intent, or even of APA's intent, are not pertinent to the Court's determination of arbitrability. Nor have Plaintiffs demonstrated that arbitrability was even within Dr. Honaker's purview as APA's deputy CEO, as opposed to that of APA's general counsel and other legal staff, COO/CFO, or CEO. Accordingly, Plaintiffs have no need for Dr. Honaker's deposition. None of the discovery sought will provide any basis for Plaintiffs Newman and Behnke to oppose Defendants' arbitration motions.

Plaintiffs have also sought "copies of all written opinions delivered by WilmerHale and Sidley Austin LLP with regard to this matter to which the Board of Directors referred in their October 30, 2015, e-mail to the Council of Representatives," an apparent reference to APA's communications to its Council of Representatives responding to requests to disclose materials generated during the course of Sidley's independent review. Plaintiffs contend that those communications are relevant to opposing Sidley's "alternative estoppel" theory and to counter certain privilege claims. Pls.' Mem., Ex. A to Freeh/Forrest Decl. at unnumbered pages 4, 5. Plaintiffs identified this request for documents for their first time in the Motion; it was not included in the discovery served with the Complaint and was not requested in any of Plaintiffs' counsel's multiple emails requesting consent to Plaintiffs' Motion. Plaintiffs contend that they need a full understanding of the relationship between APA and Sidley/Hoffman in order to address Sidley/Hoffman's estoppel argument. Pls.' Mem. at 8-9. Plaintiffs have no such need.

As Sidley explains, Plaintiffs misconstrue the doctrine of alternative estoppel, which is constrained to an analysis of the factual allegations in the Complaint. *See* Sidley Opp'n to Pls.' Motion at 13; Sidley Mem. in Support of Motion to Compel at 8 (filed Oct. 13, 2017). APA incorporates by reference the arguments made in Part IV of Sidley's opposition to Plaintiffs' Motion. Moreover, such documents are likely subject to the attorney-client privilege. With this request, Plaintiffs are blatantly engaged in a fishing expedition to obtain joint interest or other agreements among the Defendants. Any such documents would be entirely irrelevant to Plaintiffs' opposition to arbitration.

Plaintiffs' request for any arbitration discovery should be denied.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion to compel discovery should be denied.

Dated: December 14, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2017, a true and correct copy of the foregoing Opposition to Plaintiffs' Motion to Compel was filed through the Court's electronic filing system, which will automatically send copies to counsel for Plaintiffs and Defendants Sidley Austin LLP, Sidley Austin (DC) LLP, and Sidley Austin LLP partner David Hoffman.

/s/ Barbara S. Wahl
Barbara S. Wahl

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

STEPHEN BEHNKE, *et al.*,	**:**	**CASE NO. 2017 CA 005989 B**
	:	**Judge Todd E. Edelman**
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	:	**Next Event:**
v.		**Initial Scheduling Conference**
	:	**February 23, 2018**
DAVID H. HOFFMAN, *et al.*,	**:**	
Defendants.		
_____	**:**	

PROPOSED ORDER

Upon consideration of Plaintiffs' Contested Motion for Limited Discovery pursuant to D.C. Superior Court Rules 26 and 56(d) and D.C. Code § 16-5502(c)(2), Defendants' Oppositions thereto, and any Responses, it is hereby **ORDERED** that:

Plaintiffs' Motion is **DENIED.**

IT IS SO ORDERED.

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Judge Todd E. Edelman