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May 18, 2010

VIA EMAIL (dbriley@bonelaw.com)
AND FIRST-CLASS U.S. MAIL

David Briley
Bone McAllester Norton, PLLC
Nashville City Center
Suite 1600
511 Union Street
Nashville, Tennessee 37219

Re: *In re Fisk University* – Discovery Issues

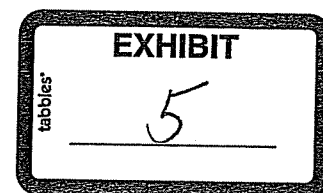
Dear David:

I am writing in response to the two letters you forwarded yesterday. First, after reviewing the May 10 letter, I think we can come to agreement on the issues related to production pursuant to a protective order. Second, we do not agree with your assertion that we are limited to choosing 6 Interrogatories from our second set of discovery requests.

At the outset, I want you to know that neither Janet nor I received the first letter, dated May 10, 2010. Given that we are on 2 different email servers, I am left to assume there was an issue sending the letter. Had we received it we would have certainly responded before today. Having now reviewed it, it is my understanding that there are 7 categories of information that Fisk feels should be produced pursuant to a protective order. Our response to each is:

1. Test grades listing students by name and identification number: We do not need these. You may redact them from the production. As a result, we do not need a protective order covering them.
2. College transcripts of faculty members: We do not need these. You may redact them from the production. As a result, we do not need a protective order covering them.
3. Documents regarding the separation of employment from Fisk giving employee's name and address: We would be happy to enter into a protective order covering production of these.

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4. Plans of Fisk: We do need these. Given that the plans are referenced in the Amended Petition and the Second Amended Petition, and are paramount to the lawsuit, we cannot agree to a protective order absent the Court deciding that such an order would be appropriate. In addition, SACS was asked for similar documents and has not informed us that a protective order is appropriate. As such, we require production without a protective order.
5. Resumes of faculty and staff: We do not need these for the vast majority of staff. You may redact them from the production. As a result, we do not need a protective order covering them. We do need these for members of staff whose duties include fund raising of any sort and/or maintaining the art. We do not think a protective order would be appropriate for those few resumes.
6. List of employees who belong to a union: We do not need these. You may redact them from the production. As a result, we do not need a protective order covering them.
7. Performance evaluations of Fisk employees: We do not need these for the vast majority of staff. You may redact them from the production. As a result, we do not need a protective order covering them. We do need these for members of staff whose duties include fund raising of any sort and/or maintaining the art. We do not think a protective order would be appropriate for those few resumes.

Of the 7 categories you identified, we appear to have taken care of 4 of them by agreeing to a protective order for 1 and not requiring production of 3 others. As to the remaining 3 categories, we will require production, and we cannot agree to a protective order. Several reasons why we cannot agree are: the abundant case law protecting the public nature of court proceedings; and Fisk's accusations in Second Amended Petition of the AG misleading the Court in relation to not referencing documents Fisk had marked confidential in a subsequent court filing by the AG. We expect production of the documents absent a court order to the contrary.

As to the second letter, I want to first express some surprise. When we discussed Fisk's issues with our discovery requests, you identified two problems: the requests were duplicitous of our original requests in the pre-appeal proceedings; and the requests were immense and oppressive. As to the first problem, I agreed that Fisk should not answer duplicative questions; if the question already had been asked and answered, then Fisk's only obligation would be to timely supplement its previous answer as required by the rules of procedure. You seemed to intimate that was fine. As to the second problem, the alleged immensity and oppressiveness of the requests, I asked you to identify each request that was oppressive or burdensome, and we would work with you on either refining the request to narrow it or make other good faith attempts to resolve the issue, as the rules require. You agreed with that suggestion as well. I even

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suggested that we attempt to do so within 24 hours to accommodate the expedited schedule the Court set.

To now receive a letter that fails to identify a single request as oppressive is surprising and seemingly counter-productive. It seems your position has now changed to asserting that Local Rule 22.04 limits our requests to 30 total interrogatories, and we already served 24 in the pre-appeal proceeding.

First, we do not agree with the conclusion that we are only entitled answers to 6 of the interrogatories. The previous discovery requests contained 24 interrogatories. Those 24 interrogatories addressed the First Amended Petition. The proceedings on that petition were disposed of by the trial court (on summary judgment on a question of law as to the charitable intent). The appellate court reversed that legal finding and remanded back to the trial court. Fisk then filed a Second Amended Petition, which did not incorporate the First Amended Petition and in fact makes a number of new, broad factual assertions. As a result, Fisk is no longer traveling under the petition upon which those 24 initial interrogatories were based. It is our position that the entirely new petition resets the number of interrogatories to which we are entitled. Logic dictates this conclusion.

Under Fisk's argument, that a party is only entitled to 30 interrogatories total, plaintiffs would be free to amend their complaints/petitions after defendants had served the initial 30, and then refuse to answer any additional interrogatories. There is no doubt that the Local Rules did not desire this result. Much like amending a complaint/petition moots a motion to dismiss and vacates an answer, it also resets the interrogatory count.

This is not a case of serving 100 additional interrogatories, or one of serving numerous irrelevant interrogatories. Each interrogatory is relevant and goes directly to, and often quotes from, allegations and claims in the Second Amended Petition. In fact, assuming that Fisk properly researched its Second Amended Petition, Fisk should have the facts underlying its allegations readily available for the interrogatory responses. Fisk does not have the right to file an entirely new petition and at the same time seek to close off an entire category of discovery. Fisk's objections are unreasonable and inconsistent with its expressed desire to prepare this case for trial in August. We will require an answer to those interrogatories absent a court order to the contrary.

If you have any questions or wish to further discuss any issues Fisk may have with the discovery requested, please do not hesitate to contact me.

David Briley, Esq.
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Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Helou', enclosed within a hand-drawn oval border.

William N. Helou

cc: Janet Kleinfelter, Esq. (via email: janet.kleinfelter@ag.tn.gov)
Deputy Attorney General

John Branham, Esq. (via email: jbranham@bonelaw.com)

Mike Norton, Esq. (via email: mnorton@bonelaw.com)