

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

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IN THE MATTER OF CERTAIN :
OMEGA-3 EXTRACTS FROM :
MARINE OR AQUATIC BIOMASS : INVESTIGATION NO:
AND PRODUCTS CONTAINING : 337-TA-877
THE SAME, :
- - - - - x

Videotaped Deposition of EARL L. WHITE, PH.D.
Reston, Virginia
Friday, August 23, 2013
9:00 a.m.

Reported by:
Cassandra E. Ellis, RPR
Ref. No.: 10179

1 Deposition of EARL L. WHITE, PH.D., held at
2 the offices of:

3
4
5 COOLEY LLP
6 One Freedom Square
7 Reston Town Center
8 11951 Freedom Drive
9 Reston, Virginia 20190
10 (703) 456-8091

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12
13 Pursuant to agreement, before Cassandra E. Ellis,
14 Registered Professional Reporter and Notary Public of
15 The Commonwealth of Virginia.
16
17
18
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22
23
24
25

1 APPEARANCES CONTINUED
2 ON BEHALF OF RESPONDENTS RIMFROST USA/AVOCA:
3 AMANDA HOLLIS, ESQUIRE
4 KIRKLAND & ELLIS, LLP
5 300 North LaSalle Street
6 Chicago, Illinois 60654
7 (312) 862-2011
8 Amanda.hollis@kirkland.com
9

10
11 ON BEHALF OF RESPONDENTS RIMFROST USA/AVOCA:
12 JOHN GALLAGHER, ESQUIRE
13 HOFFMAN & BARON, LLP
14 6900 Jericho Turnpike
15 Syosset, New York 11791
16 (516) 822-3550
17 Jgallagher@hblplaw.com
18
19

20 ALSO PRESENT: Joseph Ellis, CLVS
21
22
23
24
25

1 APPEARANCES
2 ON BEHALF OF COMPLAINANTS NEPTUNE TECHNOLOGIES;
3 BIORESOURCES AND ACASTI PHARMA:
4 LAURA J. CUNNINGHAM, ESQUIRE
5 COOLEY, LLP
6 One Freedom Square
7 Reston Town Center
8 11951 Freedom Drive
9 Reston, Virginia 20190
10 (703) 456-8091
11 Lcunningham@cooley.com
12

13 STEPHEN L. ALTIERI, PH.D.
14 500 Boylston Street
15 Boston, Massachusetts 02116
16 (617) 937-2371
17 Saltieri@cooley.com
18

19 STEPHEN R. SMITH, ESQUIRE
20 Suite 1100
21 1299 Pennsylvania Avenue, Northwest
22 Washington, D.C. 20004
23 (703) 456-8046
24 Stephen.smith@cooley.com
25

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LLP, representing complainants and the witness.

MR. SMITH: And Stephen Smith, from Cooley,

LLP, representing the complainants and the witness.

EARL L. WHITE, PH.D.

having been first duly sworn, testified as follows:

EXAMINATION BY COUNSEL FOR RESPONDENTS AVOCA/RIMFROST
BY MS. HOLLIS:

Q Go good morning, Dr. White.

A Good morning.

Q Is this your first time being deposed?

A No.

Q How many times have you been deposed in the
past?

A One other time.

Q Just one other time?

A Yes.

Q Is there a transcript of that deposition?

A Probably.

Q Do you have it?

A No.

Q What year was that deposition taken in?

A 2010, I believe.

Q And what case was that in?

A It was a case in Arizona, I don't remember
the details of the case, but it was -- I was an expert

PROCEEDINGS

THE VIDEOGRAPHER: Good morning. This is the beginning of disc number one in the deposition of Dr. Earl L. White, taken In the Matter of Certain Omega-3 Extracts From Marine or Aquatic Biomass and Products Containing the Same, held in the United States International Trade Commission, in Washington, D.C., with an Investigation Number 337-TA-877. Today's date is August 23rd, 2013, and the time on the monitor is approximately 9:12 a.m. My name is Joseph Ellis, I am the videographer, the court reporter is Cassandra Ellis, and we are here with Transperfect Legal Solutions. If counsel would please introduce yourselves, and whom you represent, after which the court reporter will swear in the witness, and we may proceed.

MS. HOLLIS: This is Amanda Hollis, from Kirkland & Ellis, representing the Avoca group of respondents and the Rimfrost group of respondents.

MR. GALLAGHER: John Gallagher, from Hoffman & Baron, representing respondents Olympic, Rimfrost, and Avoca.

MS. CUNNINGHAM: Laura Cunningham, Cooley, LLP, representing complainants and the witness.

MR. ALTIERI: Steve Altieri, from Cooley,

witness in that particular case.

Q And you served as an expert in what field?

A In chromatography.

Q Anything else?

A No.

Q Who were you representing as an expert?

A I was representing a -- it was a -- a client of mine, that I had done some -- some reading for, and that name was Paul Diggins.

Q Were you representing anyone besides Paul Diggins in that case?

A No.

Q And when you say you were doing some reading for what do you mean by that?

MS. CUNNINGHAM: Counsel, I would just object, here, that we don't know why this is relevant. And I don't know anything about this case or what sort of protective orders might have been in place. So I would ask that you not to press the witness for these kind of details when we don't know what was in place there.

MS. HOLLIS: Are you instructing him not to answer that question?

MS. CUNNINGHAM: I'm asking that you move along, this isn't relevant, and I don't know -- I

1 don't want the witness to be violating a protective
2 order that may have been entered in that case.

3 MS. HOLLIS: We are talking about party
4 names and basics about a case. This is basic
5 information for a deposition of an expert.

6 THE WITNESS: And there was protective
7 orders.

8 BY MS. HOLLIS:

9 Q Okay, Dr. White, and what do you mean when
10 you say you did some readings?

11 A Well, I -- I was hired to analyze data and
12 information that was submitted to me to do.

13 Q That was what?

14 A Submitted to me --

15 Q Was this --

16 A -- to read.

17 Q I'm sorry. Was this a patent case?

18 A Yes. Oh, no, no, no, it was a -- it was
19 more of a trade secret case.

20 Q What law firm were you working with in that
21 case?

22 A I don't remember the law firm, themselves.

23 Q Was it an Arizona law firm?

24 A Yes.

25 Q Do you remember if this case was in federal

1 answer to my last question before we take a break; is
2 that fair?

3 A Yes.

4 Q And I'll be taking breaks about every hour,
5 so just to give you an idea, okay?

6 A Okay.

7 Q Is there any reason why you can't testify
8 truthfully and completely in response to my questions
9 today?

10 A No.

11 Q What did you do to prepare for today's
12 deposition?

13 MS. CUNNINGHAM: Just caution the witness
14 not to reveal any communications with counsel or
15 advice from counsel. But you can answer without going
16 into those kind of details.

17 A Well, started with collecting information
18 that -- that you all requested, and get that
19 information over, and came up and -- and met with
20 counsel, yesterday, for awhile.

21 Q You met with counsel, yesterday, for
22 awhile?

23 A Yes.

24 Q How long did you meet with counsel?

25 A Probably four or five hours.

1 court?

2 A No, I don't.

3 Q Do you remember if it was in state court?

4 A I think it was.

5 Q Okay. I know you've already been through
6 the process, once, but I'm going to explain a little
7 bit about the --

8 A Okay.

9 Q -- the process today to refresh your
10 memory, okay?

11 A Sure.

12 Q So when -- I'm going to ask you questions
13 and I ask that you let me finish my question before
14 you start your answer; is that fair?

15 A Yes.

16 Q And that's going to help the court
17 reporter, obviously, as well as us, okay?

18 A Okay.

19 Q If you don't understand any one of my
20 questions please let me know. If you don't ask for
21 clarification I'm going to assume that you understand
22 the question, is that okay?

23 A Yes.

24 Q If you need to take break that's fine. You
25 can just let me know. I ask that you finish your

1 Q Which counsel did you meet with?

2 A I met with Ms. Cunningham and Mr. Altieri.

3 Q Mr. Altieri?

4 A Yes.

5 Q Did you meet with anybody else yesterday?

6 A No.

7 Q Did anyone else come into the room
8 yesterday?

9 A No.

10 Q Have you spoken to anyone at Neptune in the
11 last year?

12 A No. Excuse me. Excuse me.

13 (Witness clearing throat.)

14 BY MS. HOLLIS:

15 Q Did you do anything to prepare for today's
16 deposition other than your four to five hour meeting
17 with counsel yesterday?

18 A No. I didn't have time to, actually, no.
19 Well, let me take that back. I did read the
20 declarations I had done, on the plane, coming here.

21 Q Which --

22 A On Wednesday night.

23 Q On Wednesday night you read the
24 declarations?

25 A Yeah.

1 Q Which -- which declarations did you read?
 2 A I don't remember, now. I think it's one,
 3 three, two, it was two declarations, one of them May
 4 11th, I think it was, May 2011. I think the other one
 5 was in 2000 -- sometime in 2012.
 6 Q You read two declarations?
 7 A Yeah.
 8 Q This week? Yes?
 9 Did you read anything else?
 10 A No, not really, scanned through a few other
 11 documents but nothing.
 12 Q I think early your you said something one,
 13 three, two, what was that referring to?
 14 A I think that one, three, two, one, one,
 15 three, or something, those were the last three digits
 16 of the declaration, I think.
 17 Q Do you mean on the face of the declaration?
 18 A Yeah.
 19 MS. HOLLIS: Okay. I've had marked as
 20 white Exhibit 1, the application for issuance of
 21 subpoena and duces tecum and ad testificandum to Earl
 22 White, Ph.D.
 23 (Exhibit 1 was marked for identification.)
 24 BY MS. HOLLIS:
 25 Q have you seen this document before?

1 documents?
 2 A I did.
 3 Q Did you produce any e-mail?
 4 A Yes, I did.
 5 Q About how many e-mails did you produce?
 6 A Probably eight or ten.
 7 Q Who did you e-mail with at Neptune?
 8 A Wael and Tina.
 9 Q Wael Massrieh?
 10 A Yes.
 11 Q And Tina Sampalis?
 12 A Yes.
 13 Q What other files or places did you look,
 14 besides e-mail, to collect documents in response to
 15 this subpoena?
 16 A Well, initially I attempted to look on an
 17 external hard drive that I backed everything up on,
 18 all of my electronic files, only to find that that
 19 unit was no longer operational.
 20 Q What do you mean it was not operational?
 21 A I let the IT guy take a look at it and he
 22 said the motor was probably gone bad, so I would need
 23 to, if I had to have the data off of it, I would need
 24 to get it -- send it out to get the data retrieved.
 25 Q Send it out to who?

1 A Yes, I have.
 2 Q And is this the document that has brought
 3 you here today?
 4 A Yes, it is.
 5 Q Did you collect documents in response to
 6 this subpoena?
 7 A I did.
 8 Q When did you start collecting your
 9 documents in response to this subpoena?
 10 MS. CUNNINGHAM: Again, caution the witness
 11 not to reveal any communications with counsel, advice
 12 from counsel, and you can respond without revealing
 13 those details.
 14 A Probably a week or so after I received it.
 15 Q When did you receive it?
 16 A I don't remember, exactly.
 17 Q What did you do to collect your documents?
 18 A Went and looked for where I had, you know,
 19 items stored. And I also went to got things out of a
 20 file box and went through those and see what was meant
 21 -- if it had anything to do with Neptune.
 22 Q Did you produce anything you had relating
 23 to Neptune?
 24 A Yes, I did.
 25 Q And did you search your e-mail for

1 A The company that made it or somebody that
 2 can work on them.
 3 Q And what documents relating to your work
 4 for Neptune would have been stored on that external
 5 hard drive?
 6 A Probably everything that I did when I
 7 sending, and the data, the raw data for the analyses
 8 that I performed.
 9 Q What types of raw data would it have
 10 contained?
 11 A All of the information the mass spec data
 12 that I analyzed.
 13 Q Anything else?
 14 A No, that's it. Oh, I did go -- one of the
 15 reasons I didn't worry about retrieving it is because
 16 I did go on our server at the company I worked for new
 17 and all the data was there. So I didn't worry about
 18 having it retrieved.
 19 Q When you say "All the data was there" what
 20 are you referring to?
 21 A It's on the server.
 22 Q But when you mean the raw -- are you
 23 talking raw data?
 24 A All the raw data files, yes, mm-hmm.
 25 Q And how do you know, since you couldn't

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