

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

JOEL C. ADAMS,

Plaintiff

v.

CASE NO. 3:07-cv-00310-MCR-EMT

VULCAN ENERGY SOLUTIONS,
LLC; VULCAN ADVANCED MOBILE
POWER SYSTEMS, LLC; VULCAN
AMPS, LLC; VULCAN POWER GROUP,
LLC; TEXAS MPOWER SYSTEMS, LLC;
and VULCAN POWER SOLUTIONS,
LLC,

Defendants.

SUPPLEMENTAL AFFIDAVIT OF JOHN A. BOUDET

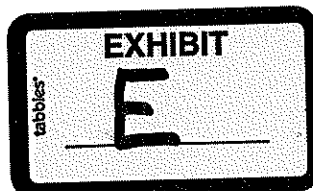
State of Florida)
) SS:
County of Orange)

Before me, the undersigned authority, appeared John A. Boudet, Esq. who being duly sworn, deposes and states as follows:

1. I am over the age of 18 years and have personal knowledge of the matters set forth herein.

2. On July 10, 2008, at 10:57 a.m., I received via electronic service from the Clerk's office a copy of this Court's Order for Pre-Trial Conference ("Trial Order"). The Trial Order established a pre-trial conference date for August 12 and set the case for trial during the two week term beginning on August 18, 2008 at 8:30 a.m.

3. The very same day that I received the Trial Order, on July 10, 2008 at 3:32 p.m., I sent an email marked "URGENT" to Mr. Ford Graham, the designated client representative



for the Vulcan Entities, to notify him of the developments. To ensure that the Vulcan Entities understood the seriousness of the situation and were on notice of all relevant dates, including the trial setting, I attached a copy of the Trial Order to the email. A copy of my email to Mr. Graham is attached as Exhibit AA to this Affidavit. **Thus, since July 10, 2008, the Vulcan Entities have been on notice of the August 18th trial date, the pre-trial conference date and all other relevant deadlines.**

4. In my email, I advised Mr. Graham, **in bold type**, that the Vulcan Entities risked entry of a default judgment against them if they did not appear to defend the case at trial. I also advised him that neither I nor Greenberg Traurig intended to appear on Vulcan's behalf because neither law firm had been paid. I urged him to act immediately to retain substitute counsel to represent the defendants and I invited him to call me if he had any questions.

5. Within two hours of sending my email, on July 10th at 5:28 p.m., I received an email from Mr. Graham—whom I had not heard from in nearly two months since he returned the executed retainer letter with my law firm—without the promised retainer deposit. (See, Exhibit G to the initial Affidavit of John A. Boudet). Mr. Graham's email said that he was in South America and that he would be returning to the U.S. the following day, Friday, July 11th and that matters would be "taken care of" upon his return. A copy of that email is attached as Exhibit BB.

6. I did not hear from Mr. Graham on July 11th, 12th, 13th or 14th. My next contact with the Vulcan Entities was an email I received from Mr. Graham on July 15th at 11:30 a.m. asking simply if I was "around", presumably for a telephone call. I responded that I was around and that I would also be available any time the following day. To avoid any possibility of missing Mr. Graham's long-awaited telephone call, I invited Mr. Graham to select a time for the

call and I would be there. A copy of that email exchange is attached as Exhibit CC. **Mr. Graham never responded to my email, never attempted to schedule a call and never called me.**

7. Although Mr. Graham had indicated that he would call me, after not hearing from him for several days, I tried to call him at his office and on his cell phone on Tuesday, July 22nd. However, as had happened previously, (See Exhibit D to initial Affidavit of John Boudet), there was no answer at his office, no answer on his cell phone and I was unable to even leave a voice message because the voice mailbox was full and would not accept additional messages. Finally, after not hearing from Mr. Graham (or anyone else associated with the Vulcan Entities) for two weeks since sending them my "Urgent" email on July 10th (with a copy of the Trial Order), I concluded that the situation could not be salvaged. Thus, late in the afternoon on July 22nd, I contacted Michele Johnson of Greenberg Traurig to see if, by chance, they had heard from Vulcan. She confirmed that they had not had any contact (or payment) from Mr. Graham or Vulcan and that Greenberg also intended to withdraw due to non-payment. Accordingly, on July 23, 2008, I filed my motion to withdraw as counsel. My secretary sent a copy of the motion to withdraw to Mr. Graham via email at 2:52 p.m. A copy of that transmittal email is attached as Exhibit DD.

8. Within minutes of sending our email with the motion to withdraw, I received an email from Mr. Graham at 3:05 p.m. stating "Can we do it today late? I just got back to civilization and should have cell service." A copy of Mr. Graham's email is attached as Exhibit EE.

9. Two minutes later, at 3:07 p.m., I received a "cc" of an email from Mr. Graham to Ms. Johnson at Greenberg Traurig where he stated to her that he had been in South America

with “no connectivity”. He also indicated to her that he would get retainer payments out the following day (July 24th) when he returned to New York City. A copy of Mr. Graham’s email is attached as Exhibit FF.

10. Two minutes later, at 3:09 p.m., before I had an opportunity to respond to his email of moments before, my secretary received yet another email from Mr. Graham apologizing for not responding sooner and indicating that he would return to New York the following day and “handle your items.” A copy of that email is attached as Exhibit GG.

11. At 4:20 p.m. on July 23rd, my secretary sent Mr. Graham a copy of the court’s order denying plaintiff’s motion for summary judgment, which had been entered earlier that day. See Exhibit HH.

12. Mr. Graham did not call or otherwise contact me “late” on the 23rd as he had indicated. Mr. Graham did not call me the next day, July 24th. He also did not call or otherwise contact me on the following day, July 25th.

13. Consequently, after waiting late on the 23rd, all of the 24th and all of the 25th for the promised return call from Mr. Graham, on Friday, July 25th at 5:18 p.m. I sent Mr. Graham another email advising him that I was still waiting for his call. Frankly, I was frustrated by Mr. Graham’s lack of cooperation and my communication was blunt and to the point. I told him that, in light of the Court’s denial of the summary judgment motion, “the case will go to trial next month...[t]he case is scheduled for trial and the trial will go forward in August, period. End of story. The court will expect Adams to be there—if he has to come from Africa—and it will expect Vulcan to be there, represented by a lawyer admitted in the United States District Court for the Northern District of Florida....If Vulcan does not show up, with a lawyer, then it’s quite likely that the court will enter a judgment for Adams against Vulcan for the full

amount of the damages being requested. That's about it." A copy of my email is attached as Exhibit II.

14. Despite being on notice of the trial date since July 10th (and the possible withdrawal of defense counsel) Mr. Graham (and the Vulcan Entities) did not respond to my email and, to this day, he has never called me back or otherwise responded. Based on my conversations with Ms. Johnson, it is my understanding and belief that Mr. Graham has also made no attempt to contact Greenberg Traurig since learning of the trial date.

15. Shortly after sending my final email to Mr. Graham on July 25th, I received the Court's initial order denying the motions to withdraw as counsel. **I did not personally notify Mr. Graham of the Court's order denying the motions to withdraw.** I believed that my simply notifying him that the Court had denied our motions to withdraw as counsel would eliminate any incentive he might have had to contact me. It was only the threat of being left without trial counsel and potentially having a default judgment entered against the Vulcan Entities that provided the incentive for the client to return our calls. Once that threat was eliminated, I concluded that it was virtually certain that Mr. Graham would not make any effort to contact us if he found that, miraculously, the Vulcan Entities had not one, but two law firms under a court mandate to appear at trial and to defend the Vulcan Entities for "free."

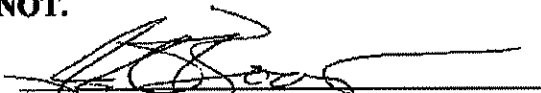
16. Under the circumstances, and faced with the likelihood that the Vulcan Entities would continue to ignore my repeated efforts to communicate with them, I decided as a last-ditch effort to reach out to Mr. Allen Foster, a former colleague of mine and a senior shareholder in Greenberg Traurig's Washington, D.C. office. Mr. Foster had not been involved in the representation but he had been the originating attorney on this matter when it was first opened. I hoped that Mr. Foster might have an alternative contact or at least some different approach to

generate an appropriate response from the client. Thus, late on July 25th I sent an email to Mr. Foster requesting his assistance in contacting the Vulcan Entities and attaching a copy of the Order denying the motions to withdraw. A copy of my email to Mr. Foster is attached as Exhibit JJ.

17. Based on communications with Ms. Johnson, I understand that Mr. Foster sent an email to Mr. Graham on August 1st requesting that the Vulcan Entities make arrangements with me to assume handling of the case for trial. However, as of the date of this Supplemental Affidavit, the Vulcan Entities have not responded to Mr. Foster's email.

18. In sum, the Vulcan Entities have been on notice since July 10, 2008 that this matter was set for trial beginning on August 18th at 8:30 a.m. Despite that notice, and repeated efforts to contact them, the Vulcan Entities have not called me or anyone else at Roetzel & Andress or anyone at Greenberg Traurig in an effort to cooperate and assist with the defense, or for any other purpose, since being placed on notice of the impending trial date.

FURTHER AFFIANT SAYETH NOT.


John A. Boudet
Florida Bar No. 0515670

STATE OF FLORIDA)

COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 15th day of August, 2008, John A. Boudet, who is personally known to me or who has produced _____ as identification.

Notary: 
Notary Public, State of Florida

NOTARY SEAL

My commission expires:

