

Dallas Desk, Inc.,	§	116th District Court
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
Patricia Barbary and Indoff Commercial, Interiors, Inc.,	§	
	§	
Defendants	§	Dallas County, Texas

Defendant Barbary’s Response to Plaintiff Dallas Desk’s Motion to Compel In-Person Deposition

Overview

- This lawsuit resulted from Barbary initiating two sales on behalf of a new employer before termination of her employment with Dallas Desk. The lawsuit resulted in Barbary losing her job with the new employer. To date, she has not received a single dollar in compensation for those sales. Barbary contends Dallas Desk would not have made those sales otherwise. Regardless, Dallas Desk has no actual damages outside of those two sales.
- Barbary’s counsel first inquired about doing the deposition by Zoom six days before the scheduled deposition (not the day before, as asserted in the Motion).
- Barbary did not refuse to appear for the noticed deposition. Her counsel made clear she was ready to appear. The only issue was Dallas Desk’s refusal to accommodate Barbary’s reasonable request to appear via Zoom. Dallas Desk also refused to identify who would be attending the in-person deposition.
- Barbary is an elderly woman with heightened risk factors. Barbary’s counsel has family members with risk factors. Between the time of the deposition notice and the date for the deposition, the Omicron variant hit the U.S.
- Furthermore, shortly before the deposition Barbary learned that Dallas Desk planned to deliberately have six people attend the deposition for the express purpose of trying to intimidate her.
- Dallas Desk’s counsel knew Barbary was not going to appear but had the court reporter appear and prepare a certificate of non-appearance anyway. This was

totally unnecessary, but to moot the issue Barbary's counsel has tendered payment for the court reporter's fee.

- The COVID-19 pandemic is an unprecedented public health emergency. In response, courts have taken reasonable measures including conducting hearings, and even trials, by Zoom and other video conference means.
- Zoom depositions have become routine during the pandemic. Obviously an in-person deposition is generally preferable, but Texas lawyers have taken thousands of Zoom depositions during the pandemic without any significant problems.
- The undersigned counsel for Barbary has done multiple Zoom depositions during the pandemic. This is the first and only case in which an opposing party has refused a request to conduct a deposition remotely.
- Dallas Desk offered no special reasons why *this* deposition needed to be in person. The reasons it offered—such as the potential for technical difficulties—were entirely generic, and unpersuasive.
- If this Court—and hundreds of others across the State of Texas—can conduct official judicial proceedings via telephone or video conference, the parties can conduct a deposition via Zoom.
- As of the date of this response, the COVID-19 virus is raging in Dallas County. The number of daily new cases has spiked in January. Dallas County has set the Risk Level at “High Risk of Transmission,” the highest level.
- Dallas Desk's motion to compel and in-person deposition should be denied, and the Court should order that any deposition of Barbary be conducted via Zoom or other remote means.

A. Background: The Motion is part of an attempt to bully and intimidate an elderly woman because of a personal grudge.

The fact that a routine request to do a deposition via Zoom has resulted in a motion to compel, a request for sanctions, and a hearing is not an accident. Barbary worked for family-owned Dallas Desk as a furniture sales person. Dallas Desk fired her and she went to work for Indoff. Barbary admits that while still employed by Dallas Desk, she initiated two sales on behalf of Indoff, one small sale to Leasing

Impressions and one larger one to Brinks Home Security. (The sales were completed after Barbary left Dallas Desk.) Barbary contends Dallas Desk would not have made the Brinks sale anyway, because it would not offer the credit terms Brinks wanted.

Dallas Desk has already gotten most of what it wanted. As a result of this lawsuit, Barbary lost her job with Indoff and had to go on unemployment. She eventually found a job working the floor at a furniture retailer for \$12/hour. To date, Indoff has not paid Barbary any compensation. She has not received a single dollar as a result of the two sales at issue. In short, there are no profits for her to “disgorge.” Furthermore, Dallas Desk has had every opportunity to win business from the two customers at issue, without any threat of competition from Barbary. Barbary’s understanding is that Dallas Desk decided not to seek business from Brinks. Dallas Desk has no actual damages outside of the two sales at issue.

Despite having minimal actual damages (if any) and already getting Barbary fired, Dallas Desk continues to press forward with this lawsuit. Why? Barbary has learned from individuals with knowledge that Dallas Desk’s owners are pursuing this lawsuit because of a personal grudge, for the express purpose of trying to punish her for going against the family. Worse yet, before the noticed deposition Barbary learned that Dallas Desk’s ownership said the plan was to have six people attend her in-person deposition for the express purpose of trying to intimidate her. This is important context for the issue before the Court.

B. Facts: Barbary did not refuse to appear for the noticed deposition.

Relevant facts are reflected in the attached Declaration of Patricia Barbary (Exhibit A) and Declaration of Zach Wolfe (Exhibit B, including email chain attached as Exhibit B-1). The relevant timeline concerning the noticed deposition is as follows:

- 11/19/21 The parties having agreed to schedule Barbary's deposition for December 8, Dallas Desk serves its Notice of Deposition.
- 11/23/21 Texas Supreme Court issues 45th emergency order concerning the "imminent threat" posed by the COVID-19 pandemic.
- 12/1/21 First confirmed case of the Omicron variant hitting the U.S.¹
- 12/2/21 Barbary's counsel emails Dallas Desk's counsel to request conducting Barbary's deposition via Zoom, citing out of town counsel for both Defendants and Omicron.

[Thus, Dallas Desk's assertion that December 7 was the first time the issue was raised is not accurate.]

Dallas Desk's counsel responds that they have "multiple" unspecified reasons for preferring an in-person deposition.²

- 12/6/21 Barbary's counsel further confers with client.
- 12/7/21 8:51 am. Barbary's counsel email to Dallas Desk counsel: "I understand in general an in-person deposition is preferable. But unless there is a specific compelling reason to require Trish [Barbary] to attend this one in person, it doesn't make sense to me. I haven't had anyone insist on an in-person deposition since Covid hit. Trish is over 65 and concerned about Covid exposure. Can you confirm who would attend in person and that each person is vaccinated and/or has had a recent negative Covid test?"
- 12/7/21 2:54 pm. Dallas Desk's counsel identifies reasons for preferring an in-person deposition, such as "subtle dynamics of facial gestures" and potential "IT issues." These reasons were entirely generic. None of them were specific to this particular case or deposition.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html#:~:text=December%202021%3A,of%20Omicron%20was%20identified>

² All of the referenced emails are included in Exhibit B-1.

- 12/7/21 3:01 pm. Barbary's counsel responds: "This does not adequately address my client's concern. You have not even identified who will attend in person. **We are willing to appear tomorrow via Zoom or other remote means.** My client will not appear in person without a court order." (emphasis added)
- 12/7/21 3:47 pm. Barbary's counsel reiterates: "We are not coming in person tomorrow. **We are still available to do the deposition tomorrow remotely.**" (emphasis added)
- 12/7/21 4:26 pm. Barbary's counsel sends final email regarding the deposition: "We are not going to attend the deposition in person tomorrow. So if you ask the court reporter to show up tomorrow for an in-person deposition and incur that expense, that is your client's responsibility, not ours ... **We are ready to attend the deposition remotely tomorrow.**" (emphasis added).

As the chronology shows, Barbary did not refuse to appear for the noticed deposition. After news of the Omicron variant hitting the U.S., Barbary and her counsel became more concerned about an in-person deposition, and six days before the scheduled date, Barbary's counsel made a routine and reasonable request to conduct the deposition via Zoom. Barbary's counsel had done multiple depositions via Zoom, and this was the first time anyone refused to accommodate such a request.

C. Barbary's request for a remote deposition was reasonable under the circumstances.

Considering the unprecedented COVID-19 pandemic, Barbary's request to conduct her deposition via Zoom rather than in person was reasonable. Texas courts have recognized the need for reasonable precautions to address the COVID-19 threat:

- To date, the Texas Supreme Court has issued 46 emergency orders to address the pandemic. In its 45th emergency order, the Texas Supreme Court recognized that "Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic." The emergency order provides that Texas courts may

“allow or require anyone involved in any hearing, deposition, or other proceeding of any kind . . . to participate remotely, such as by teleconferencing, videoconferencing, or other means.”³

- The Emergency Standing Order of the District Courts of Dallas County encourages receiving witness testimony remotely when feasible: “Wherever possible, when permitted by the Judge presiding, all Non-Jury trials and Motions shall proceed with the taking of all other testimonial evidence under oath either via telephonic or technological means (such as ZOOM or SKYPE).”⁴
- The Emergency Standing Order also recognizes the propriety of conducting depositions remotely (“Any Deposition may be noticed to proceed technologically and remotely”).
- This Court has also recognized the need for and propriety of remote proceedings, issuing Public Notice that it will conduct certain proceedings in the 116th District Court remotely, including via Zoom.⁵

These actions by Texas courts recognize that (1) the pandemic is an unprecedented public health emergency that calls for special measures, and (2) conducting depositions and hearings by remote means such as Zoom is an appropriate measure during this unusual time. This is further confirmed by the fact that **the hearing on the Motion at issue is to be held by phone.**

Zoom depositions have become commonplace and even routine throughout the State of Texas. Dallas Desk’s counsel identified several general reasons for preferring an in-person deposition, but they missed the point. Of course, it is *generally* preferable to do a deposition in person. But since the start of the pandemic, Texas lawyers have taken numerous Zoom depositions and made them work. There was no persuasive

³ <https://www.txcourts.gov/media/1453182/219145.pdf>

⁴ <https://www.dallascounty.org/Assets/uploads/docs/courts/civil-district/160/District-Courts-Emergency-Standing-Order.pdf>

⁵ <https://www.dallascounty.org/Assets/uploads/docs/courts/civil-district/116/PUBLIC-NOTICE-RE-REMOTE-PROCEEDINGS-20200330.pdf>

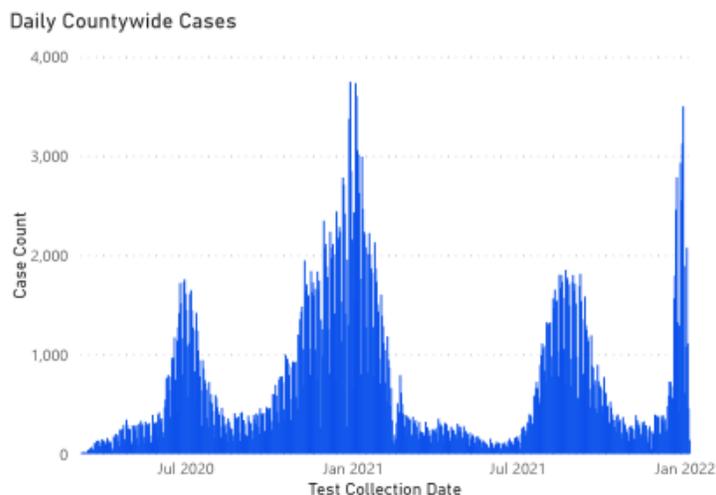
reason why Barbary's deposition could not have been taken via Zoom, like thousands of others.

Yet in the emails exchanged on December 7, Dallas Desk's counsel refused to conduct the deposition remotely *and* refused to identify who would attend the deposition in person. Dallas Desk faults Barbary for not filing a motion, but by that time it was not feasible to present the dispute to the Court for a ruling before the deposition. As the emails reflect, Barbary's counsel first inquired about doing the deposition by Zoom six days ahead of time and made a diligent effort to confer and resolve the issue prior to the scheduled deposition.

The email chain cited above also shows that it was unnecessary for Dallas Desk to have the court reporter appear to record Barbary's non-appearance. Dallas Desk's counsel knew from the emails that Barbary was not going to appear. Nonetheless, Barbary's counsel has sent Dallas Desk's counsel a check to reimburse Dallas Desk for the court reporter's fee. This should render the costs issue moot, leaving only the question of whether Barbary will be required to appear for a rescheduled deposition in person.

Regardless of the parties' dispute over doing an in-person deposition on December 8, requiring an in-person deposition *now* would be unreasonable and unwarranted. The COVID-19 virus is now raging again in Dallas County. The number of daily new cases has spiked in January:⁶

⁶ <https://www.dallascounty.org/covid-19/>



Accordingly, Dallas County has set the Risk Level at “High Risk of Transmission,” the highest level:



The risk is especially relevant in this case. Barbary is over 65 years old and has risk factors including thyroid disease and predisposition to both bronchitis and pneumonia.⁷ Barbary’s counsel has two members of his household who have health risk factors.⁸

For the foregoing reasons, Dallas Desk’s motion to compel an in-person deposition and its request for sanctions should be denied. The Court should grant

⁷ Exhibit A at ¶ 2.

⁸ Exhibit B at ¶ 6.

Barbary a protective order allowing Barbary and her counsel to appear for Barbary's deposition via Zoom or other remote means. Barbary and her counsel stand ready to reschedule her deposition to be taken by remote means.

/s/ Zach Wolfe

Zach Wolfe

State Bar No. 24003193

Zach Wolfe Law Firm

50 Briar Hollow Lane

Suite 370 West

Houston, Texas 77027

email: zach@zachwolfelaw.com

phone: 832-707-5883

**Attorney for Defendant Patricia
Barbary**

Certificate of Service

This document is being served on all counsel of record via electronic service on January 12, 2021.

/s/ Zach Wolfe

Zach Wolfe

Exhibit A

Cause No. DC-21-03989

Dallas Desk, Inc.,	§	116th District Court
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
Patricia Barbary and Indoff Commercial Interiors, Inc.,	§	
	§	
Defendants	§	Dallas County, Texas

Declaration of Patricia Barbary

Patricia Barbary declares that she is over the age of 18 years, competent to testify, and has personal knowledge that the following facts are true:

1. My deposition was initially scheduled and noticed for December 8, 2021. Between the time of the deposition notice and the scheduled deposition, I became more concerned about the risk of exposure to the COVID-19 virus, including the Omicron variant, which news outlets reported on December 1 had hit the U.S.

2. I am 67 years old and have risk factors for exposure to COVID-19, including thyroid disease and predisposition to bronchitis and pneumonia. I am concerned that my attendance at an in-person deposition will unnecessarily expose to me to a risk of exposure to the virus, which can be deadly, especially for people with risk factors like mine.

3. Because of this concern, I authorized my attorney, Zach Wolfe, to request doing the deposition remotely via Zoom, but I understand that Dallas Desk's attorney refused this request.

4. In addition, before the scheduled December 8 deposition, I received disturbing information that an owner of Dallas Desk had stated that Dallas Desk intended to have three lawyers and three company representatives attend my deposition in person for the purpose of intimidating me. This information caused me even greater concern about the risk of exposure to COVID-19.

5. I was ready, willing, and able to appear for the deposition on December 8, and I understand Mr. Wolfe communicated this to Dallas Desk's counsel. However, I was not willing to appear in person. My refusal to appear in person was reasonable considering my concern about exposure to the virus and that a Zoom deposition would be adequate.

6. Regardless of the dispute over whether I should have appeared in person on December 8, today I have even more concern about appearing for an in-person deposition.

7. I have researched the issue on the internet and found that Texas courts have recognized the need for reasonable precautions to address the COVID-19 threat:

- To date, the Texas Supreme Court has issued 46 emergency orders to address the pandemic. In its 45th emergency order, the Texas Supreme Court recognized that “Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic.” The emergency order provides that Texas courts may “allow or require anyone involved in any hearing, deposition, or other proceeding of any kind . . . to participate remotely, such as by teleconferencing, videoconferencing, or other means.”¹
- The Emergency Standing Order of the District Courts of Dallas County encourages receiving witness testimony remotely when feasible: “Wherever possible, when permitted by the Judge presiding, all Non-Jury trials and Motions shall proceed with the taking of all other testimonial evidence under oath either via telephonic or technological means (such as ZOOM or SKYPE).”²
- The Emergency Standing Order also recognizes the propriety of conducting depositions remotely (“Any Deposition may be noticed to proceed technologically and remotely”).
- The Court in which this lawsuit is pending has also recognized the need for and propriety of remote proceedings, issuing Public Notice that it will conduct certain proceedings in the 116th District Court remotely, including via Zoom.³

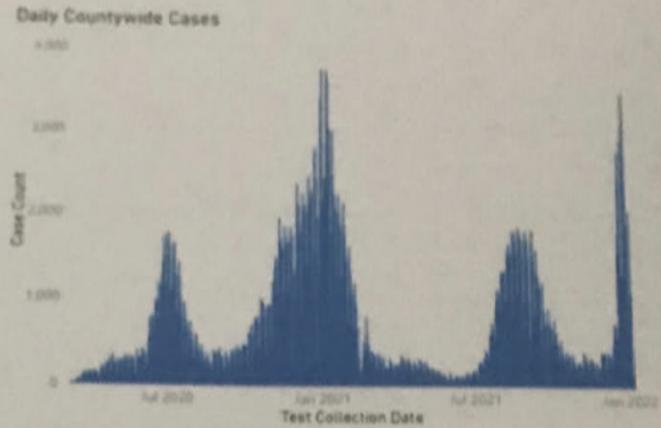
8. I have also reviewed the current COVID-19 information published by Dallas County on its website at <https://www.dallascounty.org/covid-19/>. It shows the current COVID-19 risk level has “high risk of transmission,” the highest level. It

¹ <https://www.txcourts.gov/media/1453182/219145.pdf>

² <https://www.dallascounty.org/Assets/uploads/docs/courts/civil-district/160/District-Courts-Emergency-Standing-Order.pdf>

³ <https://www.dallascounty.org/Assets/uploads/docs/courts/civil-district/116/PUBLIC-NOTICE-RE-REMOTE-PROCEEDINGS-20200330.pdf>

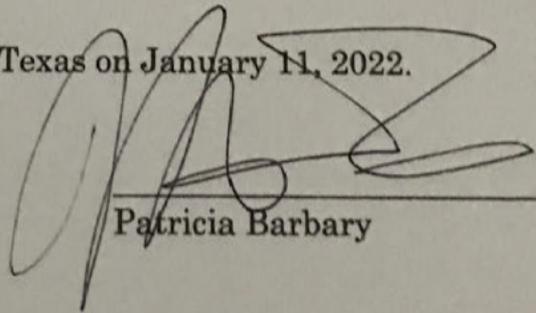
also shows that the number of cases in Dallas County has rapidly spiked in January:



9. Based on the current high risk of transmission of the COVID-19 virus and my personal risk factors, I am not willing to risk my health by appearing for an in-person deposition, especially when a deposition via Zoom or other remote means would be adequate. I am asking the Court to deny Dallas Desk's motion to compel my attendance at an in-person deposition, and to order that my deposition will be conducted by Zoom or other remote means.

I provide this Declaration in lieu of an affidavit as authorized by TEX. CIV. PRAC. & REM. CODE § 132.001. In accordance with the statute, I state that my name is Patricia Barbary, my date of birth is [REDACTED] and my address is 13290 Noel Road, Apt. 503, Dallas, Texas 75240. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, Texas on January 11, 2022.



Patricia Barbary

Exhibit B

Cause No. DC-21-03989

Dallas Desk, Inc.,	§	116th District Court
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
Patricia Barbary and Indoff Commercial,	§	
Interiors, Inc.,	§	
	§	
Defendants	§	Dallas County, Texas

Declaration of Zach Wolfe

Zach Wolfe declares that he is over the age of 18 years, competent to testify, and has personal knowledge that the following facts are true:

1. I am the attorney for Defendant Patricia Barbary in this lawsuit. Barbary initially engaged me at my previous law firm at an hourly rate, but I am now representing her pro bono at my solo practice. She cannot afford to pay my hourly rate. I have agreed to represent her pro bono in part because I am offended by the way the Plaintiff Dallas Desk is attempting to bully and intimidate her in this lawsuit.

2. Between the time of receiving the deposition notice and Barbary’s deposition scheduled for December 8, 2021, Barbary and I became concerned about the risk of exposure to COVID-19, including the Omicron virus. I requested doing the deposition via Zoom or other remote means. Plaintiff’s counsel refused.

3. I have done multiple depositions via Zoom during the pandemic without any significant problems. Zoom depositions have become routine in Texas during the pandemic. This is the first time in my practice that opposing counsel has refused to accommodate a request to do a deposition via Zoom.

4. The email communications between me and Dallas Desk’s counsel regarding my request are reflected in the attached **Exhibit B-1**. As reflected in the emails, Barbary did not refuse to appear for the deposition on December 8. I communicated to opposing counsel that Barbary was ready to appear remotely via Zoom. By the time it became clear we would not be able to reach agreement on this issue, it was too late to obtain a ruling from the Court before the scheduled deposition.

5. Based on my emails, Dallas Desk's counsel knew we were not going to appear for the deposition on December 8. Therefore, there was no need to have the court reporter appear to record Barbary's non-appearance. Nonetheless, I have sent Dallas Desk's counsel a check to reimburse Dallas Desk for the court reporter's fee.

6. I am concerned about the risk of exposure to the virus in an in-person deposition for Barbary, for myself, and for my family. Two members of my immediate family in my household have heightened risk factors for COVID-19. I am not willing to expose myself, and potentially my family, to the virus unnecessarily, especially considering a Zoom deposition would be adequate.

I provide this Declaration in lieu of an affidavit as authorized by TEX. CIV. PRAC. & REM. CODE § 132.001. In accordance with the statute, I state that my name is Zach Wolfe, my date of birth is _____, and my address is 50 Briar Hollow Lane, Suite 370 West, Houston, Texas 77027. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, Texas on January 11, 2022.



Zach Wolfe

Exhibit B-1

Zach Wolfe

Barbary (...las Desk) 105.1 December 7, 2021 at 4:26 PM

Re: [External Sender]Cause No. DC-21-03989 - Dallas Desk v Patricia Barbary and Indoff Commercial Interi...

[Details](#)



To: Alex Campbell, Cc: Jonathan Shulan, Staci Bednarski, Jeff Schultz, John Fraser

Alex,

I have been clear. We are not going to attend the deposition in person tomorrow. So if you ask the court reporter to show up tomorrow for an in-person deposition and incur that expense, that is your client's responsibility, not ours.

I have done numerous Zoom depositions since Covid hit. There have been literally thousands of Zoom depositions in Texas during this time. They work just fine. I think your client is the one being unreasonable. This should not be such a big deal.

We are ready to attend the deposition remotely tomorrow. I ask you to reconsider your position one more time. Please let me know by 7:00 pm tonight whether you will proceed with the deposition remotely tomorrow. If I do not hear from you, I will assume that the deposition is not proceeding tomorrow.

Also I have not received your client's document production, or a response to the questions I raised about production of financial records, so please let me know about those issues.

Zach

On Dec 7, 2021, at 4:05 PM, Alex Campbell <acampbell@fbfk.law> wrote:

Zach,

This deposition is going to proceed in person, we will have the court reporter at our offices tomorrow morning. You have not timely raised this issue. The window to raise any objections to the time or place of this deposition has long since passed. You are now putting us in a compromising position by waiting until this late on the day before the deposition to refuse to attend after we have already made arrangements to proceed tomorrow with our own schedules, as well as the court reporter's and our client's. We urge you to reconsider your position on this matter one last time before we must resort to court intervention, where we will request all costs and fees incurred to reschedule this deposition.

Please advise if you and your client will attend tomorrow.

ALEX CAMPBELL

Attorney

<image002.png>

FERGUSON BRASWELL FRASER KUBASTA PC

(972) 378-9111 Office | (972) 378-9115 Fax

2500 Dallas Parkway, Suite 600

Plano, Texas 75093

acampbe@fbfk.aw

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From: Zach Wolfe <zach@zachwolfelaw.com>

Sent: Tuesday, December 7, 2021 3:47 PM

To: Alex Campbell <acampbell@fbfk.law>

Cc: Jonathan Shulan <JShulan@atllp.com>; Staci Bednarski <sbednarski@fbfk.law>; Jeff Schultz <jschultz@atllp.com>; John Fraser <jfraser@fbfk.law>

Subject: Re: [External Sender]Cause No. DC-21-03989 - Dallas Desk v Patricia Barbary and Indoff Commercial Interiors, Inc.

We are not coming in person tomorrow. We are still available to do the deposition tomorrow remotely. So let me know if you change your mind.

Also, please get back to me about the questions I emailed about your response to our request for production.

Zach

Zach Wolfe Law Firm

50 Briar Hollow Lane

Suite 370 West

Houston, Texas 77027

832-707-5883

On Dec 7, 2021, at 3:10 PM, Alex Campbell <acampbell@fbfk.law> wrote:

Zach,

This position is wholly untenable, and to raise these issues the day before the deposition is scheduled is completely untimely. We properly and timely noticed this deposition and clearly stated it would take place in person. Pursuant to the Rules of Civil Procedure that Notice has the full force and effect of a subpoena. It is far too late in the game to object to the time and place now.

Should your client fail to attend the deposition tomorrow at our offices, we will undoubtedly proceed with a Motion to Compel and a Motion for Contempt, requiring her attendance at a subsequent date in person, and will be requesting costs and fees for same.

ALEX CAMPBELL

Attorney

<image001.png>

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From: Zach Wolfe <zach@zachwolfelaw.com>

Sent: Tuesday, December 7, 2021 3:02 PM

To: Alex Campbell <acampbell@fbfk.law>

Cc: Jonathan Shulan <JShulan@atllp.com>; Staci Bednarski <sbednarski@fbfk.law>; Jeff Schultz <jschultz@atllp.com>; John Fraser <jfraser@fbfk.law>

Subject: Re: [External Sender]Cause No. DC-21-03989 - Dallas Desk v Patricia Barbary and Indoff Commercial Interiors, Inc.

This does not adequately address my client's concern. You have not even identified who will attend in person.

We are willing to appear tomorrow via Zoom or other remote means. My client will not appear in person without a court order.

Please let me know if you want to proceed tomorrow or not.

Zach

On Dec 7, 2021, at 2:54 PM, Alex Campbell <acampbell@fbfk.law> wrote:

Zach,

1. First and foremost, the deposition was noticed as an “in person” proceeding. No objection was timely raised to this format.
2. There is no substitute for examining a witness face to face. The subtle dynamics of facial gestures, attitude, appearance and demeanor can be impeded or even lost entirely in a “remote” setting.
3. It is nearly impossible to manage and control the “sterility” of the witnesses environment when they are remote. A witness potentially has access to an unlimited number of “resources” to unfairly assist them during a remote deposition (people, documents, computers, etc.) We are certainly not suggesting that your client will avail herself of these resources. However it is beyond question that a face to face deposition proceeding eliminates this potential problem.
4. Remote proceedings can be interrupted or even halted by IT issues (connectivity, bandwidth, etc.). I believe everyone has experienced this. it results in more delays and increased expense.
5. Presenting documents to a witness remotely is also challenging. Depending upon how the witness testifies, it is not always known which documents will need to be used/uploaded for examination.
6. Regarding your inquiry on vaccination status, you really don’t have the right to this information. With that said, my clients and I are fully vaccinated. Given your concerns, I presume your client is vaccinated as well.
7. Our main conference room table is just over 20 feet long. The room, the table and chairs are fully cleaned and sanitized every evening. Your client can be placed at one end of the table and in accordance with the CDC recommendations, we can maintain a safe 6 foot + distance from her.

All of this should be a non-issue. We will see you tomorrow.

ALEX CAMPBELL

Attorney

<image002.png>

FERGUSON BRASWELL FRASER KUBASTA PC

(972) 378-9111 Office | (972) 378-9115 Fax

2500 Dallas Parkway, Suite 600

Plano, Texas 75093

acampbe@fbfk.aw

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From: Zach Wolfe <zach@zachwolfelaw.com>

Sent: Tuesday, December 7, 2021 8:51 AM

To: Alex Campbell <acampbell@fbfk.law>

Cc: Jonathan Shulan <JShulan@atllp.com>; Staci Bednarski <sbednarski@fbfk.law>; Jeff Schultz <jschultz@atllp.com>; John Fraser <jfraser@fbfk.law>

Subject: Re: [External Sender]Cause No. DC-21-03989 - Dallas Desk v Patricia Barbary and Indoff Commercial Interiors, Inc.

Thanks, Alex. I understand in general an in-person deposition is preferable. But unless there is a specific compelling reason to require Trish to attend this one in person, it doesn't make sense to me. I haven't had anyone insist on an in-person deposition since Covid hit.

Trish is over 65 and concerned about Covid exposure. Can you confirm who would attend in person and that each person is vaccinated and/or has had a recent negative Covid test?

Zach

On Dec 2, 2021, at 4:42 PM, Alex Campbell <acampbell@fbfk.law> wrote:

Zach,

We have multiple reasons for preferring an in-person deposition over Zoom. Generally speaking, we see them as the most efficient way to conduct these proceedings.

Regards,

ALEX CAMPBELL

Attorney

<image001.png>

FERGUSON BRASWELL FRASER KUBASTA PC

(972) 378-9111 Office | (972) 378-9115 Fax

2500 Dallas Parkway, Suite 600

Plano, Texas 75093

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From: Zach Wolfe <zach@zachwolfelaw.com>

Sent: Thursday, December 2, 2021 2:10 PM

To: Alex Campbell <acampbell@fbfk.law>

Cc: Jonathan Shulan <JShulan@atllp.com>; Staci Bednarski <sbednarski@fbfk.law>; Jeff Schultz <jschultz@atllp.com>; John Fraser <jfraser@fbfk.law>

Subject: Re: [External Sender]Cause No. DC-21-03989 - Dallas Desk v Patricia Barbary and Indoff Commercial Interiors, Inc.

Alex, thanks for getting back to me. Do you have any reason for insisting that Ms. Barbary attend in person? I've done a good number of depositions via Zoom in the last year and a half, and no one has had a problem with it.

Zach

On Dec 2, 2021, at 2:06 PM, Alex Campbell <acampbell@fbfk.law> wrote:

Gentlemen,

Unfortunately, this deposition will be proceeding in person as we stated in the Notice. We have not made any accommodations with the Court Reporter to conduct this deposition via Zoom, and planned on having a conference room big enough to ensure proper social distancing. However, now that you are raising this request for the first time, we will contact the Court Reporter and see if there is still time to accommodate the attorneys to attend via Zoom. That

being said, we must still insist that Ms. Barbary, as the witness, must appear in person for the deposition.

Regards,

ALEX CAMPBELL

Attorney

<image002.png>

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From: Jonathan Shulan <JShulan@atllp.com>

Sent: Thursday, December 2, 2021 10:24 AM

To: Zach Wolfe <zach@zachwolfelaw.com>; Alex Campbell <acampbell@fbfk.law>

Cc: Staci Bednarski <sbednarski@fbfk.law>; Jeffrey Schultz <jschultz@atllp.com>; John Fraser <jfraser@fbfk.law>

Subject: RE: [External Sender] Cause No. DC-21-03989 - Dallas Desk v Patricia Barbary and Indoff Commercial Interiors, Inc.

All, FYI I was planning on participating remotely by zoom at any rate.

<image005.jpg>

Armstrong Teasdale LLP

Jonathan Shulan | Partner

DIRECT: 314.259.4748 | MAIN OFFICE: 314.621.5070

<image006.png>

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From: Zach Wolfe <zach@zachwolfelaw.com>

Sent: Thursday, December 2, 2021 10:24 AM

To: Alex Campbell <acampbell@fbfk.law>

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Subject: Re: [External Sender]Cause No. DC-21-03989 - Dallas Desk v Patricia Barbary and Indoff Commercial Interiors, Inc.

CAUTION: EXTERNAL EMAIL

Alex, can we do Barbary's deposition via Zoom? We've got out of town counsel for both Defendants, plus Covid concerns (looks like Omicron is now in the US). The Zoom depositions I've done have worked fine.

Zach