

CAUSE NO. 2008-31471

KURT ROBINSON	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HARRIS COUNTY, T E X A S
	§	
U.S.A. LOGISTICS CARRIERS, LLC; and ALFREDO GARCIA	§	333 <sup>RD</sup> JUDICIAL DISTRICT

**PLAINTIFF'S FIRST SUPPLEMENTAL MOTION FOR SANCTIONS**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW**, Plaintiff, Kurt Robinson, in the above styled and numbered cause and files this First Supplemental Motion for Sanctions and would respectfully show unto the Court the following:

**A. SUMMARY**

1. Plaintiff continues to request sanctions for Defendants' discovery abuse in connection with the highly unethical investigation of Mr. Robinson and the aftermath. Plaintiff further requests sanctions for pleadings abuse based on pleadings filed by Defendant's counsel after this complaint was raised by Plaintiff.

**B. BACKGROUND**

2. An oral hearing was held on Plaintiff's Motion for Sanctions on June 19, 2009. Defendants' counsel admitted on the record that his private investigators' conduct was inappropriate.

3. One of the Defendants' private investigators testified at the hearing. Based on questioning by Plaintiff's counsel and by the Court, it was clear that the Defendant's investigator was playing fast and loose with the truth. Equally concerning, however, is Defendants' counsel's conduct in connection with this matter since this complaint was raised. The Defendants' lack of respect for the ethical rules underpinning our civil justice

system is captured in Defendants' counsel's statement to his investigator after his investigator told him about the inappropriate conduct: "good job" (as testified by the investigator at the hearing).

4. Before the hearing, Defendant's counsel Michael W. Cramer filed a Response to Plaintiff's Motion for Sanctions. A copy is attached. Defendants' counsel filed this pleading on June 15, 2009, well after the inappropriate conduct occurred and after he had spoken to his investigators and received their written report. Defendant's counsel signed this pleading, and also signed a Verification under oath affirming everything in the pleading was true and "within my personal knowledge." In filing that pleading, Defendant's counsel affirmed the following was true and correct based on his "personal knowledge":

1. "Also, one of the investigators, Janet Benavides, genuinely wanted to purchase the swing and did indeed purchase it."
2. "The statements made by the Plaintiff were spontaneous and surprised Mr. Markham [one of the investigators]."
3. "The conversation with the Plaintiff took place in order to identify the Plaintiff, so that the wrong individual would not be videotaped."
4. "Further, the conversation with the Plaintiff was only conducted in order to identify him."

5. There is a conflict between what Defendant's counsel affirmed under oath and what the investigator reported to him before he filed the verified pleading (and what the investigator testified to at the hearing).

6. Defendants' counsel affirmed that one of the investigators "genuinely wanted to purchase the swing." At the hearing, the investigator testified that his team "pretended" to want to buy items at Mr. Robinson's yard sale. "Genuinely wanted" is a far cry from

"pretended to want." In fact, they are direct opposites. How did Defendant's counsel come up with his sworn statement?

7. Defendants' counsel's sworn statement that Mr. Robinson's statements "surprised" his investigator is unclear, at best. Didn't the investigator admit to directly asking Mr. Robinson about issues pertaining to his case, including his surgery? The direct oral exchange between the investigator and Mr. Robinson certainly did not come across as the investigator being "surprised" at anything Mr. Robinson said. Instead, it came across as the investigator actively trying to pry case specific information directly from Mr. Robinson. How could any reasonable person, especially an officer of the court, read it any differently?

8. Defendants' counsel affirms that his investigators spoke to Mr. Robinson "only ... in order to identify him." That is a very interesting sworn statement in light of the investigator's admission of the extended discussion he had with Mr. Robinson, which was well-documented in the investigator's report to Defendants' counsel which he received well before he filed his verified pleading. It is crystal clear from the investigator's report that he did not speak with Mr. Robinson only to "identify him." How could anyone in good faith represent otherwise?

9. Defendant's counsel had spoken with his investigators, and received their report, well before he filed his verified pleading. There has been no explanation from Defendants as to why there are direct conflicts between what Defendant's counsel represented to this Court, and what his investigators communicated to him before he filed the pleading (and what his investigator testified to at the hearing).

**C. SANCTIONS FOR PLEADINGS ABUSE UNDER CHAPTER 10 OF THE CIVIL PRACTICE & REMEDIES CODE**

10. The verified pleading signed by Defendant's counsel is frivolous and groundless.

11. Plaintiff requests sanctions for this pleadings abuse under Chapter 10 of the Civil Practice & Remedies Code. Defendant's counsel violated CPRC 10.001(1), (3) and (4). Specifically, the pleading was brought for an improper purpose, the factual allegations in the pleading did not have evidentiary support nor was it likely that they had evidentiary support after a reasonable opportunity for further investigation (in fact it was contradicted by the known evidence), and the denial of factual contentions was not warranted on the evidence. See CPRC 10.001(1), (3) and (4).

12. Plaintiff requests reasonable expenses and attorney's fees incurred in handling this aspect of the sanctions case. Plaintiff's counsel has spent approximately 6 hours in connection with responding to the issue of the pleadings abuse, at a rate of \$500.00 per hour.

13. Because Defendants will be unable to show any "due diligence," Plaintiff further requests "all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation." See CPRC10.002(c).

14. Plaintiff further requests the following available sanctions:

1. a directive to the violator to perform, or refrain from performing, an act; and
2. an order to pay a penalty into court.

CPRC 10.004(c)(1) and (2).

**D. SANCTIONS FOR PLEADINGS ABUSE UNDER RULE 13 OF THE TEXAS RULES OF CIVIL PROCEDURE**

15. Plaintiff also requests sanctions based on the pleadings abuse which violated Rule 13 of the Texas Rules of Civil Procedure. The verified pleadings was clearly "groundless," "brought in bad faith," "and / or "brought for the purpose of harassment." TRCP 13.

Plaintiff requests the same sanctions under Rule 13 as indicated under CPRC 10 above, because Rule 13 was also violated.

**E. SANCTIONS FOR PLEADINGS ABUSE UNDER THE COURT'S "INHERENT POWER"**

16. A trial court has inherent power to impose sanctions for abuses of the judicial process not covered by rule or statute. *Kutch v. Del Mar Coll.*, 831 S.W.2d 506, 510 (Tex. App. -- Corpus Christi 1992 no writ). To the extent the abuses (pleadings and discovery) by Defendants are not covered by rule or statute, Plaintiff requests the Court exercise its inherent power and impose sanctions thereunder.

**F. SANCTIONS FOR DISCOVERY ABUSE BASED ON ETHICAL VIOLATIONS**

17. Plaintiff incorporates by reference his previously filed Motion for Sanctions, which dealt only with sanctions for discovery abuse, as set forth verbatim.

18. Plaintiff requests the following sanctions for Defendant's discovery abuse:

1. Exclude all evidence obtained by the unscrupulous investigation tactics, and disallow any evidence of any additional investigation that Defendants may try to do;
2. Exclude all retained experts to whom Defendants provided the ill-acquired evidence (Dr. Bain [biomechanic] and Dr. Greider [orthopedic]);
3. Reasonable attorney's fees and costs (thus far, Plaintiff's counsel has spent approximately 9 hours in connection with responding to Defendant's discovery abuse, at a rate of \$500.00 per hour);
4. Disallow Defendants from conducting any more discovery of any kind in this matter, effective immediately; and
5. Charge all expenses of discovery in this case against Defendants.

**G. TEXAS CASELAW SUPPORTS THE IMPOSITION OF SANCTIONS**

18. Defendant's counsel appeared at the sanctions hearing with a copy of the following 19 year old case: *Barham v. Turner Const. Co. of Texas*, 803 S.W.2d 731 (Tex. App. --

Dallas 1990, writ denied). In that case, a party argued that photos obtained by an investigator for a lawyer from the other party should be excluded because they were obtained in violation of the anti-contact rule (which is currently embodied in Rule 4.02 of the TDRPC).

19. In *Barham*, no complaint was raised that the ethical violation amounted to discovery abuse, and thus sanctions for discovery abuse is not even addressed in the opinion. Nor did the party complain about any violation of Rule 5.03 of the TDRPC (or whatever its equivalent was at the time, if any). In short, the *Barham* opinion did not address sanctions, it addressed the exclusion of evidence in a very narrow context, and thus it has no bearing on the case at hand.

20. On the other hand, there are several Texas cases which hold that discovery sanctions may be imposed on a party for violations of the disciplinary rules. See, e.g. *Aguilar v. Morales*, 162 S.W.3d 825, 833-34 (Tex. App. -- El Paso 2005, writ denied).

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff respectfully prays the Court enter an Order granting Plaintiff's Supplemental Motion for Sanctions, requests sanctions based on the foregoing conduct, including but not limited to death penalty sanctions. Plaintiff requests the Court enter sanctions in its discretion, such as monetary sanctions, default judgment, exclusion of evidence, jury instructions resolving fact issues in favor of Plaintiff, striking pleadings, striking expert testimony, and/or any other appropriate sanctions, including the sanctions available under Rule 215 of the TRCP, and for such other and further relief as this Plaintiff may show himself justly entitled to receive. A proposed Order is attached to this motion for the Court's consideration and convenience.

Respectfully submitted,

**VUJASINOVIC & BECKCOM, P.L.L.C.**



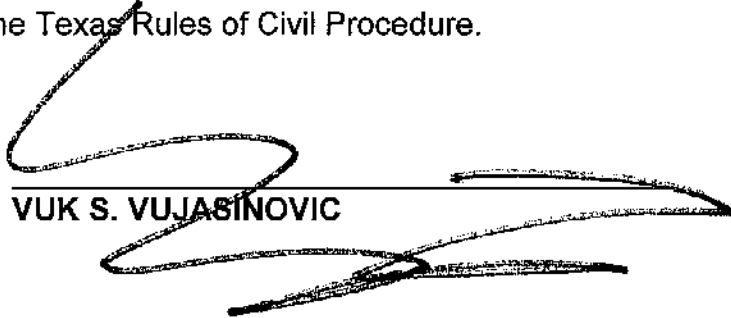
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**VUK S. VUJASINOVIC**  
SBN: 00794800  
1001 Texas Avenue, Suite 1020  
Houston, Texas 77002  
713-224-7800  
713-224-7801 Facsimile

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the above and foregoing instrument, and attached proposed Order, have been forwarded to all counsel of record on the 22<sup>nd</sup> day of June, 2009, in compliance with the Texas Rules of Civil Procedure.



---

**VUK S. VUJASINOVIC**

# EXHIBIT A

CAUSE NO. 2008-31471

KURT ROBINSON  
*Plaintiff,*

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

vs.

333<sup>rd</sup> JUDICIAL DISTRICT

U.S.A. LOGISTICS CARRIERS, LLC  
*Defendant.*

OF HARRIS COUNTY, TEXAS

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR SANCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, USA LOG CARRIERS, LLC f/k/a U.S.A. LOGISTICS CARRIERS, LLC, Defendant in the above-entitled and numbered cause, and files this its Defendant’s Response to Plaintiff’s Motion for Sanctions, and in support thereof would show the following:

I.

On or about March 13, 2009, the undersigned attorney wrote Claude Markham, a private investigator, a letter requesting him to perform surveillance on Plaintiff, Kurt Robinson. See Exhibit “A”, a letter dated March 13, 2009, sent to Mr. Markham with regard to the surveillance. The undersigned attorney also spoke to Mr. Markham by telephone and requested that Mr. Markham videotape the Plaintiff if he was engaged in any strenuous activity e.g. jogging, loading groceries.

At no time was Mr. Markham and his firm hired “to make direct contact with a represented litigant in an effort to gain evidence to use against the litigant”. Further, at no time did the undersigned counsel cause or encourage Mr. Markham to communicate about the subject of the representation with the Plaintiff. Mr. Markham was expressly retained to videotape the Plaintiff.

## II.

After the surveillance was performed by Mr. Markham and two of his investigators, Mr. Markham sent a report and a DVD to defense counsel. Pursuant to the Texas Rules of Civil Procedure, the results of the surveillance were conveyed to Plaintiff's counsel in Defendant's Fourth Supplemental Response to Plaintiff's Requests for Disclosure.

## III.

Mr. Markham informed the undersigned attorney that he and Ms. Benavides spoke to Mr. Robinson in order to identify him. They did not know what Mr. Robinson looked like, and they did not want to videotape the wrong man. Also, one of the investigators, Janet Benavides, genuinely wanted to purchase the swing and did indeed purchase it. The Plaintiff was filmed loading the 40 pound base of the swing into a pick-up truck, refuting his deposition testimony that he could no longer engage in the normal activities of daily life, e.g., do the dishes, shoot pool, walk his dog. See Exhibit "B", deposition of Kurt Robinson, pages 46-49. The statements made by the Plaintiff were spontaneous and surprised Mr. Markham. In fact, Mr. Markham abruptly ended the conversation with Mr. Robinson when he said he was not using the VA Hospital with regard to the accident because it would "destroy his case".

## IV.

A trial court's ruling on a motion for sanctions is reviewed under an abuse of discretion standard. *Bodnow Corp. v. City of Hondo*, 721 S.W.2d 839, 840 (Tex.1986); *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex.1985). The test for an abuse of discretion is not whether, in the opinion of the reviewing court, the facts present an appropriate case for the trial court's action, but "whether the court acted without reference to any guiding rules and principles. *Downer*, 701 S.W.2d at 241; *see also Bodnow Corp.*, 721 S.W.2d at 840.

The trial court's ruling should be reversed only if it was arbitrary or unreasonable. *Downer*, 701 S.W.2d at 242.

Texas Rule of Civil Procedure 215.2 allows a trial court to sanction a party for failure to comply with a discovery order or request. Rule 215.2(b) lists the sanctions a court may impose. They include: (1) an order disallowing any further discovery of any kind; (2) an order charging all or a portion of the expenses of discovery against the disobedient party; (3) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established; (4) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting designated evidence from being introduced into evidence; (5) an order striking out pleadings or parts thereof, staying the action until the order is obeyed, dismissing the action with or without prejudice, or rendering judgment by default; (6) a contempt order; and (7) an order requiring the disobedient party to pay reasonable expenses, including attorney fees, caused by the failure. TEX.R. CIV. P. 215.2(b).

Sanctions are used to assure compliance with discovery and deter those who might be tempted to abuse discovery in the absence of a deterrent. *Downer*, 701 S.W.2d at 242. However, a trial court may not impose a sanction that is more severe than necessary to satisfy its legitimate purpose. *Hamill v. Level*, 917 S.W.2d 15, 16 (Tex.1996). Here, the court of appeals relied on the Texas Supreme Court's previous holdings in *TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913 (Tex.1991), and *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844 (Tex.1992), in concluding that the trial court's sanctions were too severe.

In *TransAmerican*, the trial court struck TransAmerican's pleadings because TransAmerican's president failed to appear for a deposition. The Texas Supreme Court held that Rule 215 required that any sanctions imposed be "just," and explained that there are two

components to measuring whether an imposition of sanctions is just. First, a direct relationship must exist between the offensive conduct and the sanction imposed. *TransAmerican*, 811 S.W.2d at 917. The Court noted that “[t]his means that a just sanction must be directed against the abuse and toward remedying the prejudice caused the innocent party.” *Id.* Second, the sanctions must not be excessive. *Id.* In other words, “[t]he punishment should fit the crime...courts must consider the availability of less stringent sanctions and whether such lesser sanctions would fully promote compliance.” *Id.* The Court explained:

“Discovery sanctions cannot be used to adjudicate the merits of a party’s claims or defenses unless a party’s hindrance of the discovery process justifies a presumption that its claims or defenses lack merit. However, if a party refuses to produce material evidence, despite the imposition of lesser sanctions, the court may presume that an asserted claim or defense lacks merit and dispose of it...Sanctions which are so severe as to preclude presentation of the merits of the case should not be assessed absent a party’s flagrant bad faith or counsel’s callous disregard for the responsibilities of discovery under the rules.”

*Id.* at 918 (citations omitted). Ultimately, the Court concluded that the trial court’s sanctions in *TransAmerican* were too severe, because there was nothing in the record to indicate that the trial court considered the imposition of lesser sanctions. The Court also noted that the record strongly suggested that lesser sanctions should have been utilized and that they might have been effective. *Id.* The Court gave several specific examples of lesser sanctions that the trial court could have considered or used before imposing the “death penalty” sanction:

“The district court could have ordered Shephard’s deposition for a specific date and punished any failure to comply with that order by contempt or another sanction. He also could have taxed the costs of the deposition against *TransAmerican* and awarded *Toma* attorney fees.”

*Id.*

In *Chrysler Corp. v. Blackman*, 841 S.W.2d 844 (Tex.1992), the trial court struck *Chrysler*’s pleadings when *Chrysler* refused to produce crash-test reports that were repeatedly

requested by the plaintiffs. The Texas Supreme Court noted that “lesser sanctions must first be tested to determine whether they are adequate” before a sanction that prevented a decision on the merits of a case could be justified. *Chrysler*, 841 S.W.2d at 849. The Court conditionally granted mandamus relief and ordered the trial court to set aside the order, holding that the trial court had failed to meet the standards set out in *TransAmerican* in four ways. First, there was no direct relationship between the offensive conduct and the sanction imposed, as the plaintiffs did not show that they were unable to prepare for trial without the test reports, and the record did not demonstrate Chrysler’s ability to produce the test reports. Second, striking Chrysler’s pleadings and rendering a default judgment was more severe than necessary to satisfy the legitimate purposes of sanctions for discovery abuse. Third, no lesser sanction was first imposed. Finally, death penalty sanctions should not be used to deny a trial on the merits unless the court finds that the sanctioned party’s conduct “justifies presumption that its claims or defenses lack merit” and that “it would be unjust to permit the party to present the substance of that position [which is the subject of the withheld discovery] before the court.” *Id.* at 850.

The Texas Supreme Court’s decision in *Chrysler* was soon followed by *GTE Communications Sys. Corp. v. Tanner*, 856 S.W.2d 725 (Tex.1993). In *GTE*, the Court conditionally granted mandamus relief when a telephone cord manufacturer was improperly sanctioned for failing to produce a memorandum when there was no evidence that it had actual or constructive possession of the document. *GTE*, 856 S.W.2d at 727. It reaffirmed its *TransAmerican* holding in *GTE*, specifically noting that a trial court was required to consider the availability of lesser sanctions before imposing death penalty sanctions. Under this standard, the trial court need not test the effectiveness of each available lesser sanction by actually imposing the lesser sanction on the party before issuing the death penalty; rather, the trial court must

analyze the available sanctions and offer a reasoned explanation as to the appropriateness of the sanction imposed. *GTE*, 856 S.W.2d at 729 (“[T]he record must reflect the trial court considered the availability of lesser sanctions.”); see also *Spohn Hosp. v. Mayer*, 104 S.W.3d 878, 883 (Tex.2003) (noting that the record should “contain some explanation of the appropriateness of the sanctions imposed”); *TransAmerican*, 811 S.W.2d at 917. However, the Court did not overrule the language in *Chrysler* requiring that lesser sanctions first be tested to determine whether they are adequate before a death penalty sanction could be justified in the *GTE* opinion. Instead, it reemphasized that case-determinative sanctions may only be imposed in “exceptional cases” where they are “clearly justified” and it is “fully apparent that no lesser sanctions would promote compliance with the rules.” *GTE*, 856 S.W.2d at 729-30. This holding was reaffirmed in *Spohn Hosp. v. Mayer*, 104 S.W.3d 878, 882 (Tex.2003) (requiring a trial court to “consider less stringent measures before settling on severe sanctions,” but reiterating that death penalty sanctions may only be imposed in the first instance when the facts of the case are exceptional and such a sanction is “clearly justified”).

#### V.

The facts of this case do not make it an “exceptional” case warranting death penalty sanctions. A private investigator was hired to perform surveillance on the Plaintiff, a common tactic used in the defense of a personal injury case. The private investigator spoke to the Plaintiff on his own, without Defendant, its attorneys or any of its agents’ knowledge or instruction. The conversation with the Plaintiff took place in order to identify the Plaintiff, so that the wrong individual would not be videotaped. There is nothing “exceptional” about this.

Discovery sanctions cannot be used to adjudicate the merits of a party's claims or defenses unless a party's hindrance of the discovery process justifies a presumption that its claims or defenses lack merit. *TransAmerican*, 811 S.W. 2d at 918. This is not the case here.

Also, lesser sanctions are inappropriate. Defendant, its counsel and its agents never anticipated that the private investigator would speak to the Plaintiff. Further, the conversation with the Plaintiff was only conducted in order to identify him.

The fact is Plaintiff's counsel does not like the videotape, as it clearly reveals the perjury in the Plaintiff's deposition testimony. The statements made to the investigator also reveal that the Plaintiff is being steered by counsel to certain doctors, other than his own, in order to "manufacture" a case. Defendants urge that the probative value of the videotape and the Plaintiff's admissions against interest far outweigh any prejudice towards him, and that the Court deny Plaintiff's motion in its entirety.

WHEREFORE, PREMISES CONSIDERED, U.S.A. LOG CARRIERS, LLC f/k/a U.S.A. LOGISTICS CARRIERS, LLC, Defendant, prays that the Court deny Plaintiff's Motion for Sanctions, and for such other and further relief, at law or in equity, to which Defendant is justly entitled.

Respectfully submitted,  
**THE CRAMER LAW FIRM**



Michael W. Cramer  
TBN: 05002750  
16225 Park Ten Place Drive, Suite 500  
Houston, Texas 77084  
Tel.: 713.523.7117  
Fax: 713.523.7005  
**ATTORNEY FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

This pleading was served in compliance with the Texas Rules of Civil Procedure on June 15, 2009.


  
Michael W. Cramer

VERIFICATION

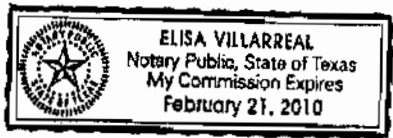
STATE OF TEXAS       §  
                                  §  
HARRIS COUNTY       §

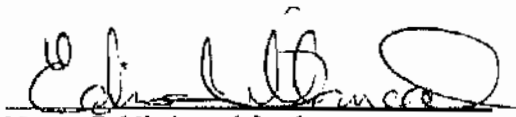
Before me, the undersigned notary, on this day personally appeared Michael W. Cramer, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

"My name is Michael W. Cramer. I am capable of making this verification. I have read the Defendant's Response to Plaintiff's Motion for Sanctions and Defendant's Motion for Sanctions. The facts stated in it are within my personal knowledge and are true and correct."

  
Michael W. Cramer

SIGNED under oath before me on this 5th day of June 2009.



  
Notary Public in and for the  
State of Texas

CAUSE NO. 2008-31471

KURT ROBINSON  
*Plaintiff,*

vs.

U.S.A. LOGISTICS CARRIERS, LLC  
*Defendant.*

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IN THE DISTRICT COURT OF  
  
333<sup>rd</sup> JUDICIAL DISTRICT  
  
OF HARRIS COUNTY, TEXAS

ORDER

BE IT REMEMBERED that on the \_\_\_\_\_ day of \_\_\_\_\_ 2009,  
came on to be heard Plaintiff's Motion for Sanctions, and the Court, having read the pleading  
and heard the arguments of counsel, is of the opinion that such motion should be DENIED. It is,  
therefore,

ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Sanctions is  
hereby DENIED.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED:



Michael W. Cramer  
TBN: 05002750  
16225 Park Ten Place Drive, Suite 500  
Houston, Texas 77084  
Tel.: 713.523.7117  
Fax: 713.523.7005  
**ATTORNEY FOR DEFENDANT**

From:

06/16/2009 10:04

#096 P.025/028

EXHIBIT " A "

THE CRAMER LAW FIRM  
16225 PARK TEN PLACE DRIVE  
SUITE 500  
HOUSTON, TEXAS 77084

Michael W. Cramer  
Attorney at Law

Telephone (713) 523-7117  
Telecopier: (713) 523-7005

March 13, 2009

Via Facsimile 281.376.4171

Mr. Claude Markham  
Markham Investigations, LLC  
4008 Louetta, Suite 235  
Spring, Texas 77388

Re: Cause No. 2008-31471; *Kurt Robinson v. U.S.A. Logistics Carriers, LLC*; In the  
333<sup>rd</sup> Judicial District Court of Harris County, Texas.

Dear Mr. Markham:

My client would like you to perform surveillance on Kurt Robinson, 1634 ½ Castle Court, Houston, Texas 77006. U.S.A. Logistics would like to start with three days of surveillance, two weekend days and one weekday the budget for the surveillance is \$2,500.00

If you have any questions or comments concerning this matter, please do not hesitate to contact me.

Yours very truly,

  
Michael W. Cramer

MWC/emv

From:

06/16/2009 10:05

#096 P.026/028

THE CRAMER LAW FIRM  
16225 PARK TEN PLACE DRIVE  
SUITE 500  
HOUSTON, TEXAS 77084

MICHAEL W. CRAMER  
ATTORNEY AT LAW

TELEPHONE (713) 523-7117  
TELECOPIER (713) 523-7005

## FACSIMILE COVER SHEET

Date: March 13, 2009

To: Claude Markham  
(281) 376-4171

From: Michael W. Cramer  
(713) 523-7005

Re: Robinson, Kurt

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER SHEET: 2

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TX Result Report

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TC: 66378

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Note TMR: Timer TX, POL: Polling, ORG: Original Size Setting, FME: Frame Erase TX,  
 MIX: Mixed Original TX, CALL: Manual LB: CSACT CSRC FOD: Forward, DC: DC-Fax,  
 BWC: Double-Sided Binding Direction, SR: Special Original, FCODE: F-code, RTX: Re-Tx,  
 RLV: Reply, MEX: Confidential, BUL: Bulletin, STP: STP Fax, IPADR: IP Address Fax,  
 I-FAX: Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,  
 TEL: RX from TEL, NG: Other Error, Cont: Continue, No Ans: No Answer,  
 Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full,  
 LOVR:Receiving length Over, POVER:Receiving page Over, FIL:File Error,  
 DC:Decode Error, MDN:MDN Response Error, DSN:DSN Response Error.

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FACSIMILE COVER SHEET

Date: March 13, 2009  
 To: Claude Markham  
 (281) 376-4171  
 From: Michael W. Cramer  
 (713) 523-7005  
 Re: Robinson, Kurt

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If you do not receive this transmission in its entirety, please call Martha at (713) 523-7117.

EXHIBIT " B "

KURT JOSEPH ROBINSON

46

1 therapy part of that with Monarch.  
 2 Q. Under Dr. Esses' direction?  
 3 A. Yeah, Dr. Esses had referred me to the Monarch.  
 4 THE WITNESS: Going up.  
 5 Q. (BY MR. CRAMER) When was the last time you saw  
 6 Dr. Esses?  
 7 A. I don't recall the date.  
 8 Q. When was the last time you went to Monarch?  
 9 A. The -- I want to say the 6th of December.  
 10 Q. And that's, of course, December 6, 2008; is  
 11 that right?  
 12 A. That is correct, yes.  
 13 Q. Okay. And do you have an appointment to see a  
 14 doctor or a medical provider at this time?  
 15 A. January 3, '09, Monarch.  
 16 Q. Is that for physical therapy?  
 17 A. Yes, sir, and a follow-up on the pain  
 18 medications that they gave me.  
 19 Q. Have you ever been in any other automobile  
 20 accidents?  
 21 A. No, sir.  
 22 Q. Have you ever had any other injuries to your  
 23 neck or your lower back?  
 24 A. Not that I recall.  
 25 Q. Is there anything that you used to do, such as

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1 recreational activity, that you can no longer do as a  
 2 result of this accident?  
 3 A. Absolutely.  
 4 Q. Can you tell us what that is?  
 5 A. Quite a few. Give me a minute here. Where do  
 6 you want me to start?  
 7 Q. Wherever you want.  
 8 A. First of all, there's absolutely no sex life.  
 9 I used to go shoot pool. I can't do that. Movies with  
 10 my wife. I have a dog. Because I can't walk long  
 11 distances now, he weighs 42 pounds when he should be  
 12 weighing 27. I did all the chores around the house.  
 13 They've been, quite frankly, neglected. I used to do  
 14 the shopping. We live upstairs. So it's real difficult  
 15 for me to get up and down the stairs.  
 16 And, of course, you know that sitting in  
 17 one position doesn't work. My sleep is interrupted. My  
 18 appetite's off, extreme weight loss. I used to exercise  
 19 all the time, and I did lawn and garden. It takes me  
 20 now -- to push a lawn mower, it probably takes me about  
 21 two and a half hours to do what I could do in half an  
 22 hour. Cooking. I don't have the luxury of a  
 23 dishwasher. So we're down to half of our dishes because  
 24 I used to do the dishes and I'd lose control of them and  
 25 drop them.

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1 So -- and it goes on from there. Making  
 2 the bed. I pretty much did everything in the house for  
 3 my wife, and she was the one that would go out and make  
 4 the money. So --  
 5 Q. So you can still mow the lawn, it just takes  
 6 you longer; is that right?  
 7 A. Yeah, quite longer.  
 8 Q. Okay.  
 9 A. Quite longer. I -- it takes me maybe -- to do  
 10 about a 100-foot patch by 100-foot patch, maybe about an  
 11 hour and a half.  
 12 Q. What kind of exercise did you used to do that  
 13 you can't do now?  
 14 A. I used to work out quite a bit. I started  
 15 running when I had quit smoking. I did --  
 16 Q. How far did you run?  
 17 A. I was up to about a mile and a half, three  
 18 times a week.  
 19 Q. Where did you run?  
 20 A. Around the city there.  
 21 Q. Do you do any brisk walking or anything like  
 22 that?  
 23 A. I used to. I can't do it anymore. I can't  
 24 even take my dog for a walk.  
 25 Q. How much weight have you lost?

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1 A. Approximately 32, 35 pounds.  
 2 Q. But you are able to use the dishwasher, right?  
 3 A. I'm sorry?  
 4 Q. You are able to use the dishwasher, correct?  
 5 A. I am the dishwasher.  
 6 Q. Okay. And --  
 7 A. We have no dishwasher.  
 8 Q. Oh, okay. Are you able to wash dishes?  
 9 A. No. I drop most of them with my left hand.  
 10 Q. So does your wife do them now?  
 11 A. She's doing most of them, yeah.  
 12 Q. Are you able to make the bed?  
 13 A. It takes me a little bit. I've got to bend  
 14 over.  
 15 Q. Are you able to still cook?  
 16 A. Not the way I used to.  
 17 Q. But you still can, right?  
 18 A. I can cook, yes.  
 19 Q. Okay. And do you go to movies with your wife?  
 20 A. I can't sit through a movie.  
 21 Q. Okay. Do you ever walk the dog?  
 22 A. I do walk the dog. Most of the time he just  
 23 gets out off the leash and runs around in the yard out  
 24 there by itself.  
 25 Q. Do you still do the shopping?

