

LAW FIRM OF  
MONEYMAKER & MONEYMAKER

RICHARD M. MONEYMAKER

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VINCENT B. MONEYMAKER

December 17, 2002

Timothy B. Jafek  
Kirkland & Ellis  
777 South Figueroa Street  
Los Angeles, California 90017

Re: Reed Slatkin  
Case No. ND 01-11549 RR  
R. Todd Neilson v. William and Anne Hutchins  
Adv. No. 02-1164 RR

Dear Mr. Jafek:

I have read your letter of December 16, 2002 and your authorities. I reject your conclusions; for a work product privilege to exist, the following must be shown.

- (1) The material is a document or tangible thing;
- (2) that the material was prepared in anticipation of the litigation and;
- (3) that the material was prepared by the party.

Zapata v. IBP Inc. 175 F.R.D. 574, 576 (D. Kan 1997)

The two volumes that my client obtained were never documents in your possession. These facts distinguish the case from all of your citations, which involve the efforts of parties to compel the other side's documents to be turned over.

These transcripts were created for my client, at his expense, and sold to him, thus vesting him with title. You never had title to these volumes. Thus, under California Civil Code Section 654, and 679, my client can do what he wants with his volumes. You apparently contend that the information transcribed therein is privileged, but that information is intangible and thus not subject to the work product privilege.

I do not understand you to contend that the information was copyrighted.

There is a second basis for my rejection of your demand, and

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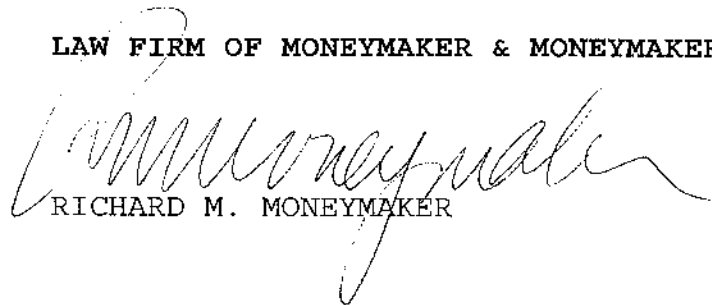
that is found in Federal Rule Civil Procedure 26(b)(3). Pursuant to that section even if you are totally correct that the transcripts would otherwise be privileged, a party may be entitled to the transcripts if (1) they have a substantial need, and (2) the party is unable without substantial hardship to obtain substantial equivalent materials.

Your firm has seen fit to schedule a motion for a partial summary judgment on January 13, 2002, over the written objections of three different law firms. None of the Defendants have had any opportunity to depose or examine Mr. Slatkin, and will be unable to do so until after the hearing (if then). Thus, these transcripts are the only source of contrary information available to us.

I can think of no better showing of substantial need, than under these facts.

Sincerely yours,

**LAW FIRM OF MONEYMAKER & MONEYMAKER**



RICHARD M. MONEYMAKER

RMM:yt  
cc: William W. Hutchins  
Richard Burstein, Esq.