

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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August 27, 2004

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Attorneys for Plaintiffs

**Re: Peter J. Almeroth, et al. v. Innovative Clinical Solutions,
Ltd., et al.
Adv. Proc. No. 01-155**

Dear Counsel:

This is with respect to Plaintiffs' motion to compel discovery (Doc. # 139). Having reviewed all the submissions related to this dispute, I conclude that the motion should be granted as it relates to certain Board of Directors minutes.

Based on the declaration of Steven L. Gidumal (Doc. # 141), I find that any attorney-client privilege with respect to certain of the minutes of the Board of Directors meetings has been waived. In his declaration, Mr. Gidumal states that Innovative

Clinical Solutions, Ltd. ("ICSL") produced a document titled "Innovative Clinical Solutions Ltd. Due Diligence Index." This Due Diligence Index reflects documents and information that was made available by ICSL to a Steering Committee during the Steering Committee's due diligence review of ICSL leading up to the pre-packaged plan of reorganization. Item 7 of the Due Diligence Index identifies two volumes of minutes of the Board of Directors going back to December 31, 1995. Those two volumes were not produced for Plaintiffs in their December 2002 document inspection at ICSL's offices. Mr. Gidumal states that they questioned a Laura Otzel, a ICSL representative who was present during the inspection, regarding the minute books. According to Mr. Gidumal "she confirmed that . . . she still had the two (2) volume Minute Book . . . and would make them available for inspection by Plaintiffs, but only if she was authorized and directed to do so by counsel for ICSL." (Doc. 141, at 3-4).

In its objection (Doc. # 188) to the motion ICSL asserts that there is no evidence that in fact the minutes were reviewed by the Steering Committee. That point is irrelevant because making the documents available to a third party constitutes an intentional waiver of the privilege.

Plaintiffs' motion to compel discovery is directed at three categories of documents: (1) minutes of the Board of Directors meetings; (2) a memorandum containing recommendations by

the special committee, which recommendations were apparently acted upon by the Board at a July 22, 1999 meeting; (3) financial books and records that reflect an alleged \$10.9 million transaction between ICSL and Chancellor Development Corp.

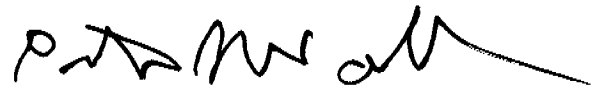
My ruling here relates only to the Board of Directors minutes. With respect to the memorandum of the special committee I suspect that that document would be a part of the minutes of the July 22, 1999 Board of Directors meeting. Certainly, the minutes would reflect some reference or discussion of that memorandum. To the extent the memorandum is not a part of the minutes or adequately disclosed in the minutes, then after Plaintiffs examine the minutes, it may be appropriate for them to request a copy of the memorandum.

With respect to the financial books and records relating to the alleged \$10.9 million transaction, it is my understanding that ICSL has advised Plaintiffs that there are no such records. Is this based on ICSL's position that no such transaction ever occurred? If not, then I find ICSL's position rather strange. It is inconceivable to me that if a transaction of that magnitude occurred it would not be properly reflected on the books and records of ICSL. On the other hand, if in fact, prior to the commencement of the adversary proceeding, ICSL saw fit, in the ordinary course of its business, to dispose of those records, then that may explain their nonexistence. In any event, unless ICSL

asserts that no such transaction ever occurred, ICSL should undertake to determine whether any such books and records ever existed and if they are not now in existence, then it should explain to Plaintiffs what it believes happened to the documents. If there is no basis to believe that the documents were discarded, then ICSL should undertake a diligent effort to determine the existence and location of the documents and advise Plaintiffs accordingly. ICSL should serve and file a supplemental response to address this issue.

Enclosed herewith is a copy of an order which has been entered with respect to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter J. Walsh", with a long horizontal flourish extending to the right.

Peter J. Walsh

PJW:ipm

Enc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:) Chapter 11
)
INNOVATIVE CLINICAL SOLUTIONS,) Case No. 00-3027 (PJW)
LTD, et al.,)
) Jointly Administered
Debtors.)
_____)
)
PETER J. ALMEROOTH, BOND)
OPPORTUNITY FUND II, LLC, and)
STEVEN L. GIDUMAL,)
)
Plaintiffs,)
)
v.) Adv. Proc. No. 01-155
)
INNOVATIVE CLINICAL SOLUTIONS,)
LTD., et al.,)
)
Defendants.)

ORDER

For the reasons set forth in the Court's letter ruling of this date, Plaintiffs' motion (Doc. # 139) to compel discovery is **GRANTED** as it relates to all of the Board of Directors minutes heretofore made available to the Steering Committee.


Peter J. Walsh
United States Bankruptcy Judge

Dated: August 27, 2004