

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, :  
 :  
Plaintiff, : Civil No.  
 : 2:15-cv-00828-DN-EJF  
-v- :  
 :  
RAPOWER-3, LLC, INTERNATIONAL :  
AUTOMATED SYSTEMS, INC., : Deposition of:  
LTB1, LLC, R. GREGORY : NELDON JOHNSON  
SHEPARD, NELDON JOHNSON, and :  
ROGER FREEBORN, :  
 :  
Defendants. :

Place: UNITED STATES  
ATTORNEY'S OFFICE  
111 South Main Street  
Suite 1800  
Salt Lake City, Utah 84111  
  
Date: June 28, 2017  
9:10 a.m.  
  
Reporter: Vickie Larsen, CSR/RMR



A P P E A R A N C E S

For the Plaintiff:

Erin Healy-Gallagher  
Erin Hines  
Chris Moran (present by phone)  
U.S. DEPARTMENT OF JUSTICE  
P.O. Box 7238  
Ben Franklin Station  
Washington, DC 20044  
202.353.2452  
Erin.healygallagher@usdoj.gov  
Erin.r.hines@usdoj.gov  
Christopher.r.moran@usdoj.gov

For the Defendants, RaPower-3, LLC, International  
Automated Systems, Inc., LTB1, LLC, and Neldon  
Johnson:

Denver C. Snuffer, Jr.  
NELSON, SNUFFER, DAHLE & POULSEN  
10885 South State Street  
Sandy, Utah 84070  
801.576.1400  
Denversnuffer@gmail.com

Also Present:

Tom Mancini  
Glenda Johnson

-oOo-

1 June 28, 2017

9:10 a.m.

2 P R O C E E D I N G S

3  
4 NELDON JOHNSON,

5 called as a witness, having been duly sworn,

6 was examined and testified as follows:

7  
8 MS. HEALY-GALLAGHER: All right. We're  
9 on the record in the case of the United States v.  
10 RaPower-3, et al., on June 28th, and we're starting at  
11 approximately 9:10 a.m.

12 My name is Erin Healy-Gallagher of the  
13 U.S. Department of Justice's Tax Division, appearing  
14 on behalf of the United States.

15 Counsel, would you please make your  
16 appearance.

17 MR. SNUFFER: My name is Denver Snuffer,  
18 and I'm on behalf of Mr. Neldon Johnson today.

19 It's my understanding that there is a  
20 protective order that's in place in this case, and  
21 it's also my understanding that whatever the scope of  
22 the questions are today, that the protective order  
23 would apply to the testimony of this witness.

24 And I haven't seen the protective order,  
25 haven't read it, but I discussed it with the client

1 and I know that there is one, and I think it's  
2 applicable.

3 MS. HEALY-GALLAGHER: Well, there are  
4 provisions in the protective order for invoking it, so  
5 that's up to you at your discretion.

6 Mr. Don Reay is not present today. He  
7 represents R. Gregory Shepard and Roger Freeborn.

8 And, Mr. Snuffer, am I correct you also  
9 represent International Automated Systems, RaPower-3,  
10 LLC, and LTB1, LLC?

11 MR. SNUFFER: Right. All of -- all of  
12 those parties. But today's deposition is, as I  
13 understand it, of Neldon Johnson individually.

14 MS. HEALY-GALLAGHER: That's correct.

15 MS. HINES: Erin R. Hines, also appearing  
16 on behalf of the United States.

17 MS. HEALY-GALLAGHER: And we have  
18 Christopher Moran on the phone.

19 Also present with us in the room are  
20 Dr. Tom Mancini and Mrs. Glenda Johnson.

21 All right. This deposition will be  
22 governed by the Federal Rules of Civil Procedure and  
23 the rules of the District of Utah.

24 The exhibits will be marked and kept here  
25 for the course of this week of depositions, after

1 which time they'll go with the court reporter.

2 And we'll address any other stipulations  
3 as the need arises.

4

5 EXAMINATION

6 BY MS. HEALY-GALLAGHER:

7 Q. Would you please, sir, state your name  
8 and address for the record.

9 A. Yes. Neldon Paul Johnson, and my mailing  
10 address is 2730 West 4000 South, Oasis, Utah.

11 Q. Is that your home address or simply where  
12 you receive mail?

13 A. That's where I receive the mail.

14 Q. Would you give me the city and state of  
15 your home address.

16 A. I don't know it. I never use it. Do you  
17 want me to ask my wife and see what my address is?

18 MR. SNUFFER: If you don't know, you  
19 don't know.

20 THE WITNESS: I don't know the address.

21 Q. BY MS. HEALY-GALLAGHER: Do you know what  
22 county you live in?

23 A. What is it? Millard County? Yeah,  
24 Millard County.

25 Q. Utah, yes?

1 to people to -- to buy into, you know, the product.

2 Q. And so then did -- were you -- I'm trying  
3 to understand how it worked.

4 So did you advise the sales people if  
5 there were potential tax benefits?

6 A. I showed them, yeah. I said this is what  
7 I understand to be the tax laws, and this is what  
8 we've discovered, this is what we -- we were told, you  
9 know, and this is the best information I have.

10 Q. And then they -- they went out and sold  
11 the lenses; right?

12 A. Yeah.

13 Q. Okay. Did there come a time, sir, when  
14 you talked to Todd Anderson about the tax benefits of  
15 selling a lens?

16 A. Yes, uh-huh. It wasn't Todd Anderson.  
17 It's his wife.

18 Q. Okay.

19 A. She's the tax attorney.

20 Q. About when was that?

21 A. I don't know exactly. Have you got a  
22 date on there? I -- should have a date.

23 MS. HEALY-GALLAGHER: So make this the  
24 next, 514, it looks like.

25 Handing you what's been marked -- oh,

1 wait a minute. Can I take back the exhibit number?

2 THE WITNESS: Yeah.

3 MS. HEALY-GALLAGHER: I'd actually like  
4 to make this Plaintiff's Exhibit 23A, if we could make  
5 a new exhibit label.

6 (Exhibit 23A was marked for identification.)

7 Q. BY MS. HEALY-GALLAGHER: Handing you  
8 what's been marked Plaintiff's Exhibit 23A.

9 Do you recognize Plaintiff's 23A?

10 A. Well, I don't know that I -- you know, I  
11 recognize it, but it's -- I know that -- I know the  
12 Anderson group.

13 Q. Well, take a look at that, and for the  
14 record I'll say this is marked as Ra3008255.

15 A. Yeah, this is something that they would  
16 have generated, I'm sure.

17 Q. And I'm also going to show you what's  
18 already been marked as Plaintiff's Exhibit 23.

19 A. Okay.

20 Q. Okay. They are different documents.

21 Plaintiff's Exhibit 23A has a date at the  
22 top of November 9, 2010.

23 Do you see that?

24 A. Yes. And I never saw this until they  
25 picked up all the -- all the day -- all the product

1 papers from Anderson was the first time that I was  
2 ever made aware of this. It was never -- this was  
3 never given to me.

4 Q. I'm not sure what you're talking about.

5 MRS. JOHNSON: This is the same.

6 THE WITNESS: This letter, I never seen  
7 -- I had never seen prior to the time that the  
8 previous attorneys were given this information to  
9 their -- my attorneys in -- in 2017.

10 MS. HEALY-GALLAGHER: Okay. Let's slow  
11 down for a second. We'll unpack that a little bit, I  
12 promise.

13 THE WITNESS: Okay.

14 Q. BY MS. HEALY-GALLAGHER: So let's take a  
15 look at Plaintiff's Exhibit 23A, which is the other  
16 one. All right?

17 A. Right.

18 Q. And that's Bates numbered US001654  
19 through 1658.

20 A. Okay.

21 Q. Do you see that? All right.

22 Let's take a look at the last page of 23A  
23 -- I'm sorry. I'm sorry. Of 23.

24 A. Of 23?

25 Q. 23. 23, I'm sorry. Yep, 23. Last page

1 of 23.

2 A. Okay.

3 Q. This last page of Plaintiff's Exhibit 23  
4 is from Todd Anderson; correct?

5 A. That's what it says.

6 Q. And it says that it's to Neldon@IAUS.com  
7 and GlendaEJohnson@Hotmail.com.

8 Do you see that?

9 A. Yes.

10 Q. And it says it was sent Monday,  
11 11-15-2010.

12 Do you see that?

13 A. Right.

14 Q. Okay. And then let's take a look back at  
15 Plaintiff's Exhibit 23A, which bears the date  
16 November 9, 2010.

17 Do you see that?

18 A. Okay.

19 Q. Okay. So, Mr. Johnson, you just  
20 testified that you had never seen --

21 A. I had never seen it.

22 Q. -- the letter in Plaintiff's 23 and  
23 23A --

24 A. No, I haven't.

25 Q. -- until 2017?

1           A.       Right.

2           Q.       What -- let's back it up and find out  
3       what did you talk about with Ms. Anderson when you  
4       first approached her about anything to do with tax  
5       benefits to do with the lens?

6           THE WITNESS: Have you given up that  
7       privilege, then?

8           MR. SNUFFER: If you're talking about the  
9       lenses with Anderson, yeah, we've waived that  
10      privilege.

11          THE WITNESS: So we're okay?

12          MR. SNUFFER: Yeah, we're okay.

13          THE WITNESS: So --

14          MR. SNUFFER: The waiver goes to the  
15      discussion about the lenses, the tax effect on the  
16      lenses, the depreciation and the tax credit. So if  
17      you talked about gambling on BYU/Utah football games,  
18      that would still be privileged.

19          THE WITNESS: All right, well, I won't  
20      talk about that gambling procedure.

21                 When I talked to them, they approached  
22      me. We -- we had Todd Anderson as an attorney for --

23          Q.       BY MS. HEALY-GALLAGHER: Other things?

24          A.       Doing other things, okay.

25                 And I told him what I was doing, and he

1 says my wife is a tax -- tax attorney and could help  
2 you out with the -- with -- with understanding these  
3 tax codes and could write a letter if you're willing  
4 to pay for it.

5 And I says, yeah, that would be great.

6 And so we went into it and -- and we got  
7 talking about different things and -- and she's the --  
8 she got all these codes out and was telling me about  
9 the laws, and she wrote them down.

10 I said, well, okay, write them down and  
11 give me a tax opinion letter and I'll pay you for  
12 them.

13 She did. I got it. I said, fine, is  
14 this -- is this complete?

15 And she said yes.

16 And she actually sent another letter, I  
17 think, besides this one on -- on the -- on the  
18 information. I believe it was more -- more than this  
19 somewhere.

20 But anyway, that's how the thing got  
21 started. It wasn't -- I didn't go to -- I didn't even  
22 know they were -- she was a tax -- that she had a tax  
23 license, an attorney.

24 Q. Which -- what facts did you give her  
25 about RaPower-3 or IAS?

1           A.       I gave her all the contracts. I gave her  
2 everything. She even came out and saw the lenses and  
3 everything. She saw everything. I didn't hold  
4 anything back.

5           Q.       And was that in late 2010?

6           A.       Yeah. That's when we started doing it,  
7 yeah. I don't know when she started. It was probably  
8 earlier than that. But it was -- I'm just saying is  
9 that's how the thing got started, and she was -- she's  
10 the one who solicited the business, you know, and I  
11 thought it was great. I didn't have a problem with  
12 it.

13          Q.       And then, sir, you just testified that  
14 she gave it to you and you looked at it and said it  
15 was great. So --

16          A.       Well, this isn't all what she gave, I  
17 don't think. I think there's a whole package thing  
18 and we discussed several issues on it.

19                   We -- we discussed all the tax laws and  
20 how the -- how she felt about them, what the  
21 ramifications were, and the laws and how they were --  
22 what -- how she felt like they could be applied.

23                   I mean, I -- I mean, I -- I like to get  
24 the full information when I'm -- you know, when we're  
25 discussing an issue. But my wife was -- was with me

1 when we did it. So...

2 Q. How many times did you meet with  
3 Ms. Anderson before you got a copy of this letter?

4 A. Oh, several times. Yeah, it wasn't just  
5 one time. It was over a period of several months.

6 Q. How many times did she come out to visit  
7 the site before you received a copy of the letter?

8 A. I don't know. I couldn't tell you.

9 Q. Did you have any idea or understanding  
10 that the letter was a draft rather than a finished  
11 product?

12 A. Oh, no. In fact, she sent me a letter  
13 stating the fact it was a finished product, that I  
14 could use it.

15 Q. Do you have that letter in your  
16 possession?

17 A. You guys should have it. I don't have  
18 it.

19 Q. If we don't, will you produce it?

20 A. Well, I'll -- I'll get it. It's got to  
21 be in the stuff. But she gave -- she gave a finished  
22 product out there and said I could use it. In fact, I  
23 think she wrote on it "RaPower," didn't see?

24 MRS. JOHNSON: I don't know.

25 THE WITNESS: I don't either. I can't

1 remember.

2 Q. BY MS. HEALY-GALLAGHER: If you don't  
3 know, you don't know.

4 Do you -- did you give the Anderson  
5 letter to anyone?

6 A. Well, I showed it to -- to -- to Greg and  
7 my kids, but I didn't put it out to anybody, no.

8 Q. Why did you show it to Mr. Shepard?

9 A. Just to show that the -- how to -- the  
10 laws were -- were accurate, that what we were doing  
11 was, as far as I could tell, were accurate and the  
12 things that we were doing were within -- within the  
13 statutes that the government had provided.

14 Q. Did you ever show it to Roger Freeborn?

15 A. Maybe. I -- Greg maybe probably did. I  
16 wasn't that close to Roger.

17 Q. Did you give Greg Shepard a copy of the  
18 Anderson letter?

19 A. I must have done, because he had it. I  
20 didn't know he had it, but he put it on the website  
21 without -- I think -- but I never saw it. I never  
22 noticed it was on until somebody raided my house and  
23 told me it was there. I didn't know it was there  
24 until the IRS came in and was aggravated over it.

25 Q. Did you ever subsequently hear from

1       either Ms. Anderson or Mr. Anderson about the letter?

2           A.       No, I didn't. I have never heard from  
3       them.

4           Q.       They never asked you to stop using it?

5           A.       No. No, they did not.

6           Q.       Show you what's been marked Plaintiff's  
7       Exhibit 480. The document is Bates numbered  
8       Anderson\_Todd-00024 through 26.

9           A.       This is the first time I've ever seen  
10       this letter, actually. I haven't even seen it in --  
11       in the documents that came up with Todd Anderson's  
12       stuff.

13          Q.       Slow down. Slow down for a second.  
14                    So this letter appears to be from Tate W.  
15       Bennett, Esquire, and your name is one of the  
16       addressees, along with RaPower-3, LLC.

17                   Do you see that?

18          A.       Well, I see it, but I've never seen the  
19       letter.

20          Q.       Sure. So it's --

21          A.       Who was this given out by?

22                   MR. SNUFFER: It's not dated.

23                   THE WITNESS: Where's the date on it?

24                   MR. SNUFFER: It's not.

25          Q.       BY MS. HEALY-GALLAGHER: If you take a