

Anderson, Todd F.

August 4, 2017

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

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UNITED STATES OF AMERICA,	)	
	)	Deposition of:
Plaintiff,	)	
	)	TODD F. ANDERSON
vs.	)	
	)	Time on record:
RAPOWER-3, LLC,	)	4 Hours 14 Minutes
INTERNATIONAL	)	
AUTOMATED SYSTEMS,	)	
INC., LTBl, LLC,	)	Case No. 2:15-cv-00828 DN
R. GREGORY SHEPARD,	)	
NELDON JOHNSON, and	)	
ROGER FREEBORN,	)	
Defendants.	)	Judge David Nuffer

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August 4, 2017 \* 8:02 a.m. to 1:36 p.m.

Location: Internal Revenue Service  
173 East 100 North  
Provo, Utah

Reporter: Denise M. Thomas, CRR/RPR

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

1 ended up with a lot of bankruptcy, but they did a lot  
2 of general practice work.

3 Q. All right. So beginning in 2010 you came  
4 back to Delta, opened your own firm.

5 You were a sole practitioner at that  
6 point?

7 A. Yes.

8 Q. Okay. What types of cases were you  
9 working on at that point?

10 A. Family law, domestic, wills and trusts,  
11 probates. I took a few criminal defense cases when I  
12 first started, but largely what walked in the door.

13 Q. Okay. With the exception of Mr. Paul's  
14 clients, were you involved in any tax matters?

15 A. No.

16 Q. Okay. All right. Did there come a time  
17 where you brought on any other attorneys?

18 A. Yes.

19 Q. Okay. When was that?

20 A. In October, actually, October of 2010.

21 Q. Okay. And who was that?

22 A. Jessica Anderson.

23 Q. Is that your wife?

24 A. Yes.

25 Q. How long had she been an attorney?

1           **A.     How long had she been an attorney? She**  
2 **was sworn in in October of 2010.**

3           Q.     Okay. Where did she go to law school?

4           **A.     Oklahoma City University School of Law.**

5           Q.     Okay. So both of you went to law school  
6 together?

7           **A.     Correct.**

8           Q.     Okay. So at that point I think you  
9 probably had a few children, right?

10          **A.     No.**

11          Q.     No? Okay. So Jessica went to law school?

12          **A.     Well, Danika was -- sorry. Danika was**  
13 **born in September of 2010.**

14          Q.     Okay.

15          **A.     And that was our first child, so allow me**  
16 **to correct myself. We had one child.**

17          Q.     No problem.

18          **A.     Okay.**

19          Q.     All right. So Jessica Anderson started  
20 working at your firm.

21                   Was she a partner?

22          **A.     I don't know how to answer that question.**  
23 **I guess I need more specifics on what you define**  
24 **partner.**

25          Q.     I'll rephrase.

1 Q. (By Mr. Moran) Does looking at  
2 Plaintiff's Exhibit 569 refresh your recollection?

3 A. Refresh my recollection as to the question  
4 of time?

5 Q. Yes.

6 A. Yes. It was -- I mean, it was end of  
7 September/first of October. The specific date I  
8 cannot recall.

9 Q. Sure. And that's in 2010?

10 A. Yes.

11 Q. Okay. All right. We'll probably talk  
12 more about that in a little bit.

13 In that time frame and in responding to  
14 that -- the CPA's questions, is that the only time  
15 you referred to yourself as RaPower-3's general  
16 counsel?

17 A. Yes.

18 Q. Is it fair to say, and I'm just trying to  
19 understand your testimony, that at that time Neldon  
20 Johnson was interviewing you and trying to bring you  
21 on as RaPower-3's general counsel?

22 A. He clearly wanted something from me.

23 Q. Okay. What was that something?

24 A. Don't know. Well, I mean, at the time I  
25 didn't know. At the time that I had the meeting and

1 testified that you had little to no information,  
2 right?

3 **A. As to specifics.**

4 Q. Okay. So having had little to no  
5 information, could you give a -- or did you have  
6 enough facts to give any type of specific legal  
7 analysis?

8 **A. I provided a general analysis of tax**  
9 **principles based on information that I had. It was**  
10 **not applied to any specific circumstances.**

11 Q. Okay. Thank you.

12 **A. And when I say "I," I refer to Anderson**  
13 **Law Center as a firm and the attorneys of that firm**  
14 **that Anderson Law Center did those things.**

15 Q. You said that Mr. Johnson gave you little  
16 to no information.

17 How was that information, what information  
18 you did get, conveyed to you?

19 **A. Orally.**

20 Q. And all that information was conveyed by  
21 Neldon Johnson?

22 **A. Correct.**

23 Q. None of it was from Glenda Johnson?

24 **A. She was there at some of the meetings as a**  
25 **companion, but she did not convey information --**

1 really are no specific facts or circumstances for a  
2 written analysis to be given on; right?

3 MR. PAUL: Objection. Foundation.

4 THE WITNESS: I believe that this is a  
5 general summary of general tax principles, and it  
6 does not apply those general tax principles to any  
7 specific set of circumstances.

8 Q. (By Mr. Moran) And so any specific  
9 circumstances that were conveyed from Mr. Johnson to  
10 your firm, those aren't written down anywhere?

11 A. Correct.

12 Q. Okay.

13 A. And there's no documentation applying  
14 those circumstances to specific tax principles.

15 Q. Okay. Why not?

16 A. Because ultimately -- the specifics of the  
17 conversation are Jessica's, but ultimately Jessica  
18 could not find a way to provide him the affirmative  
19 opinion that those facts applied to the tax  
20 principles were in conformance with law.

21 Q. And did that discussion occur before or  
22 after Exhibit 23?

23 A. After.

24 Q. Okay. So was Mr. Johnson satisfied with  
25 Exhibit 23?

1 EXAMINATION

2 BY MR. PAUL:

3 Q. Do you know what research was done to  
4 produce the letters that have been referenced today,  
5 Exhibit 23 and Exhibit 570?

6 **A. Specifically?**

7 Q. To the best of your recollection.

8 **A. I do not. Jessica did the substantive**  
9 **research and drafting of those documents.**

10 Q. Do you believe that she undertook  
11 sufficient legal research to make a reasoned legal  
12 analysis as set forth in those two exhibits?

13 MR. MORAN: Objection. Assumes facts not  
14 in evidence.

15 THE WITNESS: I don't know.

16 Q. (By Mr. Paul) Do you believe that Jessica  
17 Anderson had sufficient time to undertake the legal  
18 research that was required to provide the analysis  
19 and opinions that are in the two exhibits that we've  
20 mentioned?

21 **A. Yes.**

22 Q. Do you recall conducting any independent  
23 legal research in support of the two exhibits that  
24 we've referenced today?

25 **A. I do not.**

1 Q. You don't recall doing any?

2 A. **Not independent, no. I don't recall.**

3 Q. Did you engage anybody else to do research  
4 besides either yourself or your wife?

5 A. **No.**

6 Q. Do you believe that Exhibit 23 and  
7 Exhibit 570 were accurate when they were written?

8 A. **I believe they're accurate summaries of  
9 general tax principles, yes.**

10 Q. Okay. And in the drafting of that, did  
11 you and your wife try to make every effort to make it  
12 correct under the law and an honest and complete  
13 opinion?

14 A. **I would not say that about 23.**

15 Q. What about 23 don't you think was not  
16 accurate, honest or complete?

17 MR. MARTIN: Objection. Misstates the  
18 testimony, but go ahead. Assumes facts not in  
19 evidence. Go ahead.

20 THE WITNESS: Because it wasn't a final  
21 document, I can't say that it was -- that it hadn't  
22 been given the full -- I can't say everything you  
23 said regarding Exhibit 23.

24 Q. (By Mr. Paul) Because you didn't have a  
25 chance to finish it?



1           **A.     Correct.**

2           Q.     And you think there may have been  
3 additional due diligence that you and/or your wife  
4 would have undertaken before it was finalized?

5           **A.     Yes.**

6           Q.     Was Exhibit 570 provided to the client  
7 with the expectation the client would rely on it?

8           **A.     I don't know. I don't know.**

9           Q.     Is Exhibit 570 a final version?

10          **A.     Well, I believe so. This is not a signed**  
11 **copy, but I believe it's substantially similar to a**  
12 **final version.**

13          Q.     Okay. And Exhibit 23 was sufficiently  
14 completed that you provided to the client as a work  
15 in progress?

16          **A.     It was provided as a work in progress.**

17          Q.     Okay. And you had a level of confidence  
18 that the information that is included in there is  
19 legally accurate?

20          **A.     I don't -- I don't know.**

21          Q.     Do you feel that before preparing  
22 Exhibit 23 and Exhibit 570 that you had sufficient  
23 opportunity to ask questions of Mr. Johnson related  
24 to the opinions that you were asked to write?

25          **A.     No. Well, could you --**

1 Q. Yeah, and I'll rephrase the question.

2 A. **Would you rephrase the question for me,**  
3 **please.**

4 Q. Do you feel that before you provided  
5 Exhibit 570 and Exhibit 23 to Mr. Johnson, that you  
6 had sufficient time to ask questions regarding the  
7 opinions you were asked to render?

8 A. **I was given sufficient time to ask**  
9 **questions. I wasn't given sufficient answers.**

10 Q. Do you know as we sit here today what  
11 answers you were not given that you sought?

12 A. **I don't.**

13 Q. Nothing stands out in your mind as to  
14 information that we felt we needed before we could  
15 render a final answer?

16 A. **Not specifically.**

17 Q. As you were working on Exhibit 23 and  
18 Exhibit 570 drafting and revising before it was sent  
19 to the client, do you feel you were able to receive  
20 sufficient clarification as needed to be fully  
21 apprised of the opinions you were asked to give?

22 A. **To the extent that I provided the summary**  
23 **of the tax principles discussed, yes. To the extent**  
24 **that it was what the client was looking for, no.**

25 Q. And that you learned after the fact?

1           **A.     With a surety I learned after the fact,**  
2           **yes.**

3           Q.     And your letters, or the letters from your  
4           firm were meant to be general overviews of the tax  
5           benefits associated with energy equipment?

6           **A.     No, I would not say that. They are**  
7           **summaries regarding the specific areas of tax law**  
8           **that are discussed in those documents, not**  
9           **necessarily any specific equipment, because that was**  
10          **the information I was lacking.**

11          Q.     Okay. But you reference energy equipment  
12          in both letters?

13          **A.     Yeah. As a general term, yeah.**

14          Q.     So you knew that those were provisions of  
15          the tax code that you were giving advice on?

16          **A.     It was the general arena that we were**  
17          **discussing, yes.**

18          Q.     You knew you weren't talking about  
19          employee benefits?

20          **A.     Correct.**

21          Q.     And you weren't talking about Social  
22          Security withholdings?

23          **A.     Yes.**

24          Q.     You were talking about the energy tax  
25          credit and depreciation?

1           **A.**     Yes, and I can -- when you put it that  
2 way, energy tax credits and depreciation, yes, I can  
3 answer those questions because that was clearly what  
4 we discussed.

5                   How that was applied to a specific set of  
6 circumstances, I don't feel I could answer those  
7 questions because we didn't have those circumstances.

8           **Q.**     Okay. So those were beyond the scope of  
9 your letters?

10          **A.**     Yes.

11          **Q.**     But as far as the questions that were  
12 presented to you and that you answered in the  
13 letters, you believe that's an appropriate legal  
14 analysis?

15          **A.**     Yes.

16          **Q.**     Okay.

17          **A.**     Well, as to 570. I will say that as to  
18 507. I will not say that as to Exhibit 23.

19          **Q.**     Because it's a work in progress?

20          **A.**     Correct.

21          **Q.**     And in each of your letters you recommend  
22 that anybody that intends to rely on the information  
23 in your letters seek independent professional tax  
24 advice?

25          **A.**     I do.

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REPORTER'S CERTIFICATE

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

I, Denise M. Thomas, Certified Real-Time Reporter and Registered Professional Reporter in and for the State of Utah, do hereby certify:

That prior to being examined, the witness, TODD F. ANDERSON, was by me duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in stenotype on August 4, 2017, at the place therein named, and was thereafter transcribed and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that, in accordance with Rule 30(e), a request having been made to review the transcript, a reading copy was sent to MR. MARTIN for the witness to read and sign under penalties of perjury and then return to me for filing with MR. MORAN.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND this \_\_\_ DAY day of \_\_\_ MONTH, 2017.

\_\_\_\_\_  
DENISE M. THOMAS, CRR/RPR  
Utah License No. 104113-7801