

EXHIBIT 52-C

to the

**CONFIDENTIAL DECLARATION
OF GREGG D. THOMAS
IN SUPPORT OF PLAINTIFFS' OBJECTIONS**

12/07/2012

The following is a draft transcript of a consensual recording of a telephone call on December 5, 2012 between Dave Houston and .

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This draft transcript, in its current form, is for the sole purpose of review by the prosecuting attorneys and should not be construed as a final verbatim transcript. Further review may be necessary for trial purposes.

(ID 6)

DH: Dave Houston

[Redacted]

b6 -2
b7C -2

Typing Key:

AV: Automated Voice

Auto: Automated Message

UI: Unintelligible

PH: Phonetic

IA: Inaudible

PH: Phonetic

///: Speaking simultaneously

(12/05/2012) (00:21:14)

[Redacted]

b6 -2
b7C -2

DH: [Redacted] DAVE HOUSTON.

[Redacted] Hey buddy, how you doing?

DH: I'm doing well man. I got ah your email. Sorry I couldn't get back sooner. I had court this morning.

[Redacted] No problem.

DH: Anyway I'm assuming you got my red-line version of the agreement.

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[Redacted] Yep I got two quick comments.

DH: Okay, go ahead.

[Redacted] Alright they're in the first, I think they're just the first two changes that you made. Do you have the agreement in front of you?

DH: Okay, yeah I do um recital point 2.1 ah we had to without his consent or knowledge, because quite frankly it's true (IA)

b6 -2
b7C -2

[Redacted] Right.

DH: As it concerns GAWKER then I had taken out that [] claims that she's been damaged by T.B's alleged threats against her. I didn't know what threats and he denies any such claim. I couldn't even figure out how that was relevant in this so I just took that out.

b6 -2
b7C -2

[] (IA)

DH: But I did add. . .

[]

Let me talk, let me talk to that though um sub paragraph 2.2 is really the, the main thing that you and I already are gonna be talking about.

b6 -2
b7C -2

DH: Oh okay.

[]

Alright (clears throat) this is a mutual release. Your client is acquiring a copyright and he's releasing any claims that he has against my client.

DH: Sure.

[]

But there's got to be some mutuality and you and your client have threatened to ah get to the bottom of this, to sue was ever involved.

b6 -2
b7C -2

DH: (Chuckles)

[]

And then you know make sure that justice is done and, and put people in jail.

DH: And. . .

b6 -2
b7C -2

[]

Even, even if you disagree that my client has claims or doesn't have claims against your client, I think it makes the, you don't have to admit that its true and you can say that my client's against yours are completely bullshit but there's got to be some mutuality and then I think it would, it strengthens the agreement and if, if that weren't in here and then the next thing you added, absent of payment by T.B. in the settlement so she's threatened to release this unless she gets money?

DH: Okay well maybe we can do this. I, I get your point.

[]

So what ///

DH: /// If we could address. . .

b6 -2
b7C -2

[]

Let me just finish. The last thing I guess I'm saying is you adding the second part and taking away the first part you're almost asking my client to admit that she's an extortionist.

DH: Okay I get it um how about this, because the only, the, the reason that troubled me was because of course the first thing I'm thinking is physical threats or something of that nature.

Right.

b6 -2
b7C -2

DH: If we added language to the effect of claims she has been damaged by T.B.'s alleged threats, can we put an as it concerns? And then set forth what they may be, at least according to In other words what I'm doing is I'm taking it out of the scope of any idea that he's threatened any sort of physical violence, duress or you know any of the intimidation factors that kind of popped into. . .

Sure, yeah, yeah, yeah.

b6 -2
b7C -2

DH: . . . my frame (IA).

I get it alright so how about claims that she has been damaged by T.B.'s alleged.

DH: Threats (IA).

Why don't we just do this? Why don't.

b6 -2
b7C -2

DH: Okay.

She has been damaged by T.B.'s alleged actions related to this claim.

DH: Perfect, no problem with that. Hold on, let me write that down, actions, hold on, related.

T.B.'s alleged actions related to this claim.

b6 -2
b7C -2

DH: Okay, got it, I'll switch that, alright that should take care of then of everybody's concern about 2.2.

Okay then we're talking of sentence T.B. alleges that is threatening, selling, transferring license blah blah blah confidentially.

DH: Right.

All without the knowledge, consent or authorization of T.B, agreed. Then you add absent payment by T.B. in settlement and for purchase of all rights (UI)

b6 -2
b7C -2

DH: Right.

What does that, the, the red line that you added, what does that really add to the agreement?

DH:

Um a couple of things; number one I'll tell you what the greatest fear here is, or at least from TERRY's perspective. The greatest fear is two things; number one that we go through with this, that [] whomever that may be, continues to have copies or has caused something to be in the works that's gonna make he or she money and as a consequence goes forward and actually then presents this information and then comes back at a later point and says well gee you know really that wasn't what the sum and substance of our agreement was about. Really he was only getting the, the copyright information, and again we go back to that concept of damages and you know he's a public persona. On top of that they were already out there with GAWKER, they've already seen it and minimizing the situation and I'm trying to pump it up to the point where it is absolutely clear that what we are doing is preventing the continued dissemination or exploitation and we're doing it by virtue of payment of money to her or him by virtue of purchasing all the right, title and interest in the video that she holds, or he holds. And so I'm trying to pump it up for his security because that's his biggest complaint and actually my conversations with him resulted in that addition and I mean he's . . .

b6 -2
b7C -2

[]

Okay if, if you feel strongly about that language ah I'm okay with it but what I would like to add is T.B. and so the start of that second sentence, T.B. alleges.

b6 -2
b7C -2

DH:

Okay, where? Go ahead.

[]

And [] denies. So that's it.

DH:

Yeah but now I'm changing your language. I think that ah but that's, that's a change in your language that really, my language is an add-on and TERRY is involved in this simply because of the potential threat these things are gonna hit the Internet and that's what he wants to be able to enforce, that to him is the sum and substance..

[]

Agreed.

DH:

. . . of this agreement so if I start taking that out which he hasn't denied or he hasn't denied because they've admitted they've gone to GAWKER with it then you know I'm sort of going cross purposes with what I've already discussed with him and I, I will tell you [] this has not been easy.

b6 -2
b7C -2

[]

Yeah.

DH:

I mean if you saw some of language he wanted ah you know and he's coming from just ah straight street guy kind of persona on this um (sighs) I, I'm trying to keep a balance here and keep it as mild as I possibly can. He actually appreciated

your language and wanted me simply to add to it that the sole reason he's really getting involved in this is cause he wants to stop that. . .

Right, right.

b6 -2
b7C -2

DH:

. . . by virtue of the settlement for the purchase of all right, title and interest in the video and make it explicit as to the terms of its enforcement if he ever had to.

The way, the way this second sentence reads right now.

DH:

(Coughs)

My client puts, puts a signature on this, I think it's an admission of criminal wrongdoing. I can't, I can't have him sign that.

b6 -2
b7C -2

DH:

You mean (sighs)

That, that so that just so HOUSTON and his client are alleging that client has threatened to sell transfer or (UI)

DH:

How about this, absent payment it is alleged by T.B. , absent payment and settlement for and purchase of all right, title and interest, how about it is alleged by T.B. absent payment how about that?

Yeah that's fine.

b6 -2
b7C -2

DH:

Okay so where it says authorization of T.B. I will put it is alleged by T.B.

So you're gonna start that sentence with.

DH:

Actually it would read now, hold on a minute, um well actually does say T.B. alleges at the very beginning (chuckles)

Mm yeah.

b6 -2
b7C -2

DH:

So it's kind of non admission because it's his allegation that you're repeating.

Yeah.

DH:

Right? So why am I adding it again?

Yeah.

DH:

I think when you drafted it certainly you covered it by the T.B. alleges. It's not an admission. It's acknowledgement of his allegation.

b6 -2
b7C -2

So but if you allege it and we deny it how does that hurt?

DH: Well because in TERRY's world the statement of the denial causes him a great deal more concern and confusion. He doesn't want her to deny it. He wants him or her to agree, and I'm using her cause you have. He wants him or her to agree that in fact the threat of selling, transferring or licensing or disseminating or exploiting is going to cause a great deal of problem for him and I thought that's kind of what you were trying to set forth and it's really then tied in to the fact that he's agreed as he alleges to make the payment to purchase all of the right, title and interest in the video to stop it and that becomes then an injunction issue. You may be aware we've run into some significant problems re the judge in Tampa concerning the injunction against GAWKER because of this First Amendment nonsense.

Yeah.

b6 -2
b7C -2

DH: That the judge seems to hold as the more sacred thing in the world and he's, TERRY, aware of what's going on. We don't want to be faced with that again that there's a First Amendment issue and injunction issues. I cannot convince him that this isn't gonna come back in the sense that this is gonna pop up again um to the extent that I can't guarantee him that and that this deal doesn't quote guarantee him that. What I'm trying to do is um salve it or solve or salve rather his feelings enough to where I'm giving him what appears to be very proficient tools of enforcement.

Okay.

b6 -2
b7C -2

DH: And he enjoyed your language and that's why . . .

Yeah hold on one second. So we're gonna leave basically the first sentence.

DH: (Coughs) Right.

Which is my client's claims against yours.

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b7C -2

DH: Right.

So really all the second sentence is doing, my, the first sentence lays out my claim against you. The second sentence lays out your claims against me.

DH: Pretty much.

I, I'm okay with it. I'm okay with it as is as long we change that first (IA).

b6 -2
b7C -2

DH: Alright change that. You saw also I added business interests, reputation, correct?

Yes no, no problem with that.

DH: Okay you don't have a problem with that I'm assuming. And again you know and I hate, I hate to keep beating the dead horse in paragraph E or D rather under 2.3 but again you see what I'm saying, an allegation that T.B. was not grievously harmed by [] release of information. In other words TERRY is like well what if she gets up or he gets up and says you know he hasn't even been harmed. It's already happened and I said well.

b6 -2
b7C -2

[] No problem.

b6 -2
b7C -2

DH: Look it's a blank space, I'll add it.

[] Yep, yep no problem.

DH: Um the one thing in 2.4 and I may have misstated it but I think I got the point across where it says T.B. desires to acquire and [] desires to sell transfer and turn over to T.B. any and all I added the word original because I'm believing that T.B. has or excuse me [] has originals.

b6 -2
b7C -2

[] Yes, no problem.

DH: And it should be comma tangible copies, etc.

b6 -2
b7C -2

[] Yep, no problem.

DH: Okay (sighs) let me go to par, page two. Any issue on page two would be 3.1 C.

[] Nope.

b6 -2
b7C -2

DH: Okay and I put in the date [] December 14th. I didn't, you had it blank but I figured that would be the day.

[] No, no problem.

DH: Does that sound good to you?

[] Yeah no problem.

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b7C -2

DH: Okay.

[] And I know, I saw that you added um 3.3.

DH: I'm sorry?

[] No problem.

b6 -2
b7C -2

DH: Okay.

Then we're going on to.

b6 -2
b7C -2

DH:

Hold on let me catch up to you. Okay let's see going to 4 and um this oh good I'm glad we got here. On page 4 at the very top of the paragraph where I added um TERRY again has asked me because you know until the point is proved to him otherwise, he's not sure that your person is the one that's actually gone to GAWKER. He wanted them to agree that they are the people that gave the video to GAWKER, TMZ and the other media outlets so there's not gonna be this problem with somebody else out there doing this that your client has, at least orally professed to having done, but then when it comes time to it there's no real statement of it so I added that.

Yeah, yep okay I mean we'd rather not have it in but if, if you want it that's no problem.

b6 -2
b7C -2

DH:

Well his big worry is of course GAWKER is coming up with that article, I don't know whether you've read it, where they're kind of describing this scenario as it concerned this other person um who I guess lived in Florida that claimed they got it at a garage sale or some nonsense like that.

Right, right, right, right.

DH:

So I have no clue whether that was a cover story or otherwise but quite frankly I wanted to make sure he had that protection.

b6 -2
b7C -2

Got it um paragraph 7 you changed. That's my mistake, no problem.

DH:

Okay.

And then that's it.

DH:

Um yeah if you go to 4.22 um I added some language on paragraph A. Confidential information and/or property including damages created and you had by T.B. originally but of course he didn't create that so I scratched T.B. and put by others or of any other images by HEATHER CLEM and because obviously those are the three that I'm talking about.

b6 -2
b7C -2

Yeah.

DH:

I don't think there's any other tapes.

b6 -2
b7C -2

No problem.

DH:

(Sighs) Um finally on E and I know there's not a lot that can be done. I again put this in because it kind of assisted in my discussions with TERRY.

Mm hm.

DH:

agrees and warrants that they will contact all media outlets with whom they have provided images and request to cease and desist as (UI) their publication. I realize they don't control it that's why it's not a success oriented paragraph that they warrant that they'll cause them to be pulled cause I know they can.

b6 -2
b7C -2

Right.

DH:

But ah TERRY had requested just their assistance because if we're trying to get them to take it off and some of these entities, specifically GAWKER, were saying oh no, you know the people who gave it to us they never said anything to us. TERRY just asked that they exercise their ability to say hey we're saying to you if we have any say take it off.

Right got it, no problem.

DH:

Okay then I think that's pretty much it, isn't it?

b6 -2
b7C -2

Yeah.

DH:

Oh no I changed the liquidated damage provision. You saw that on 8, right?

Yeah I saw that, yeah.

DH:

Yeah I didn't think that was going to be an issue. I doubt your clients would (UI) but um I took out the part about T.B. may disclose this agreement to the officials of the HYATT, I knew that was probably just a.

b6 -2
b7C -2

Yeah that was just from a prior case, sorry about that.

DH:

Yeah not a problem um that's it.

b6 -2
b7C -2

Good. I think we're good to go.

DH:

Okay now what I will do is I'm gonna go ahead and do this in final. I will circulate it to you and really I think, wow, I think we're pretty much in final now.

I think we are too. I mean there's.

DH:

Other than, yeah, aren't we pretty much.

b6 -2
b7C -2

I think we changed one, one word, really.

DH:

Yeah let's go back over that and figure out where that is cause I scratched out most of it.

That was paragraph 2.2.

DH:

Yeah where we were putting alleged actions, yeah okay let me make that correction.

b6 -2
b7C -2

Alleged actions related to this case or this claim.

DH:

Yeah related, you want me to say related to this case, claim or matter or does it concern you?

How about this matter? That's, that's I think better, more appropriate.

DH:

Alright and then finally can we confirm with you the day of the 14th? Is that gonna work?

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b7C -2

Yes that works.

DH:

Okay I'm gonna start trying to look for flight reservations. Here, here is my plan.

Okay.

DH:

Um I was gonna try to get out of there on the afternoon of the 14th.

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b7C -2

Okay.

DH:

For the obvious reasons I'd rather be home for the weekend and as a consequence I'm gonna try to see whether we can arrange flight times here for me to at least be able to get in late Thursday um. I usually am able to do that and fly out late in the afternoon on Friday, leaving open like Friday morning or something, around 10:00 or so and I'll provide you more detail on that as things get going but.

Yeah no problem. Even if you wanted to do it.

b6 -2
b7C -2

DH:

I thought that would be a good time.

I plan on doing the same thing so even if you want to start um earlier that's fine with me too. I mean we (UI)

DH:

Okay and I'll talk to the polygrapher. I've been talking to a fella um in Tampa who has agreed to become involved and as a consequence I'm gonna have to arrange with him payment and the whole story so I've got a, he's already blocked out the time but it would be the morning of the 14th so that seems to work perfectly. Um he's indicated to me.

These polygraphers they're, they're a little different um some have one issue test, some have five but basically the issues are um do you believe that you possess the originals and that there are no copies, yes.

b6 -2
b7C -2

DH:

Right.

Um and have you retained a copy or given a copy or made a copy of, of these materials and given them to any, anyone else, no. And is ah it your belief and understanding that every copy that exists in the world of this material is now in the possession of your attorney, yes.

DH:

Perfect.

I mean that's basically it right?

DH:

I, he, yeah he had told me you know and I gave him a partial briefing but he said he felt he could do that at max four to five questions so.

b6 -2
b7C -2

Yeah, yeah okay perfect.

DH:

I think that'll be okay and I had asked him if we could have an opportunity to review his questions on the morning before. He indicated that it probably wouldn't be a problem as long as he didn't feel it would compromise his ability to do the polygraph. In other words he didn't want somebody talking to the individual and giving them the information as to the questions in advance and so I suggested to him that maybe you and I could just meet with him and kind of go over it to get your agreement as to the structure and if we needed.

Yeah, yeah no problem.

DH:

To fine tune anything would that be a problem and he said no.

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b7C -2

No, no problem at all um if, what airport are you flying into?

DH:

I usually fly into Tampa.

Okay.

DH:

And ah between ah

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And you. . .

DH:

AMERICAN and USAIR, they have some pretty good flights.

Okay and um do you have an office there? Are we gonna use an office or a hotel suite or.

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b7C -2

DH: I, you know, I'm probably just gonna rent a hotel. I usually stay at the HYATT or the SAND PEARL and I'll see whose available and ah we have to have a separate room for the polygrapher for him to be able to take whomever in and get that done so um other that advising TERRY I've gotta rent a suite (chuckles) I don't know how that's gonna go over.

Yeah.

b6 -2
b7C -2

DH:

But ah you know hey its gonna get it done.

Well if you, if you'd like here's what we, what I would propose um why don't you and I stay in the same hotel. I will vacate my room and um leave it for the polygrapher and then ah any business that needs to be done can be done in your room.

DH:

Right, okay. Well let me find out what's going on with that.

Yep.

b6 -2
b7C -2

DH:

I don't know whether my office had already tried to make a reservation at one or not but if they haven't I'll certainly present that as an alternative. I talked to TERRY last night and basically said TERRY I'm gonna have to rent a suite, a suite and like I say he wasn't real happy about it but I think he okayed it. I don't really handle that. handles most of that so I don't know what she's done but if she hasn't I'll just alert her to kind of stand down. I'll talk to her as soon as get off.

Okay. Yeah I mean (UI)

b6 -2
b7C -2

DH:

Alrighty?

Yeah whatever, whatever you think is, is appropriate. I'll, I'm on board.

DH:

Okay and you know for obvious reasons I'm also trying to keep this pretty reduced in scope. I don't want TERRY walking around on the street with a group of people headed anywhere because that draws a lot of attention to him.

I can im, only imagine.

b6 -2
b7C -2

DH:

You know I'm trying to get that ease of ah anonymity here and I think that's possible. It's just a matter of, I initially thought of trying to do it in some office with some of the counsel I've worked with but the problem was the obvious. I mean he's like walking around with one of the BEATLES.

(Chuckles)

DH: And pretty soon everybody is watching and paying attention.

Yeah, okay, perfect.

b6 -2
b7C -2

DH: Alright sir I'll be in touch.

Now is this your cell number DAVID just so I have it?

DH: Yeah and do you, you have my office number as well, correct?

I do.

DH: Actually I'm sitting here in my office on this one because I had your number programmed into it but.

b6 -2
b7C -2

Okay.

DH: If you, you've got my office, anything comes up just get a hold of me.

Alright. Thanks DAVE.

DH: Alright I'll send this to you in a couple of minutes.

You got it. Thanks, bye.

b6 -2
b7C -2

DH: Okay, bye, bye.

(Sound of phone being hung up)

(End of recording)