

VIRGIE ARTHUR,

Plaintiff,

v.

HOWARD K. STERN, ET AL.,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

280TH JUDICIAL DISTRICT

VIRGIE ARTHUR'S DESIGNATION OF EXPERTS

COMES NOW Plaintiff Virgie Arthur and files this her designation of experts, and designates the following expert to testify in her case-in-chief:

1. Mr. John Mallery
 BKD, LLP
 Twelve Wyandotte Plaza
 120 West 12th Street
 Kansas City, MO 64105-1936
 Telephone: (816) 701-0267
 Facsimile: (816) 221-6380

Mr. Mallery is expected to testify concerning forensic examination of various computer hard drives.

Plaintiff hereby cross designates and states that she may call any expert witness identified or designated by any adverse party or any employee or representative of any adverse party, subject to any objections Plaintiff may make concerning the designation of those witnesses.

Plaintiff reserves the right to elicit, by way of cross-examination, opinion testimony from experts or corporate representatives or other witnesses who may be qualified to render expert testimony designated and called by other parties to the suit.

Plaintiff reserves the right to elicit, by way of cross-examination, opinion testimony from experts designated and called by other parties to the suit. Plaintiff expresses her intention to

Handwritten signature and date: 11/11/08

possibly call, as a witness associated with other parties, any expert witness of any party who may be added to this lawsuit.

Plaintiff reserves the right to withdraw the designation of any expert and to aver positively that any such previously designated expert will not be called as a witness to trial and to re-designate same as a consulting expert, who cannot be called by opposing counsel. Plaintiff reserves the right to elicit any expert opinion or lay opinion testimony at the time of trial which would be truthful, which would be of benefit to the jury to determine material issues of fact, which would not be violative of any existing court order or the Texas Rules of Civil Procedure.

Plaintiff hereby designates adverse parties, potentially adverse parties, and/or witnesses associated with adverse parties, all parties to the suit and all experts designated by any party to this suit, even if the designating party is not a party to the suit at the time of trial. In the event that present or future parties designate an expert, but are subsequently dismissed for any reason from the suit or fail to call any designated expert, Plaintiff reserves the right to designate and/or call any such party or any such experts previously designated by any party.

Plaintiff reserves the right to supplement this designation in light of on-going discovery in this matter with additional designations of experts within any time limits imposed by the Court or any alterations of same by subsequent court order or agreement of the parties or pursuant to the Rules of Civil Procedure, Rules of Evidence, and/or the case law construing the same, and/or the rulings of the trial court.

Plaintiff hereby reserves the right to amend and supplement this disclosure as a result of on-going discovery that has not yet been completed or made available to the parties, ongoing investigations by these experts, and any additional discovery or further disclosures made by the Plaintiff and/or Defendants.

Plaintiff hereby reserves the right to have these experts review additional discovery, documents, transcripts, things and authorities as necessary for them to render an opinion regarding the subjects in which each expert has been designated and outlined in each of their respective summaries and reports.

Plaintiff reserves whatever additional rights she may have with regard to experts, pursuant to the rules of civil procedure, rules of evidence, and the case law construing the same, and/or the rulings of the trial court.

Plaintiff reserves the right to call experts to provide rebuttal testimony concerning evidence raised by Defendants.

Copies of the curriculum vitæ of experts retained by Plaintiff, are attached to this designation.

Respectfully submitted,

THE O'QUINN LAW FIRM

By: 

Neil C. McCabe
State Bar No. 13335300
M. Michael Meyer
State Bar No. 13993850
440 Louisiana, Suite 2300
Houston, Texas 77002
713-223-1000 (telephone)
713-222-6903 (fax)

**ATTORNEYS FOR PLAINTIFF
VIRGIE ARTHUR**

CERTIFICATE OF SERVICE

On the 1st of December, 2008, Plaintiff served the foregoing Designation of Experts to all counsel of record as follows.

Mr. William Ogden
Ogden, Gibson, Broocks & Longoria, LLP
1900 Pennzoil, South Tower
711 Louisiana
Houston, Texas 77002
Via Certified Mail, Return Receipt Requested

Mr. Harry Susman
Mr. Richard Hess
Susman Godfrey LLP
1000 Louisiana, 51st Floor
Houston, Texas 77002
Via Certified Mail, Return Receipt Requested

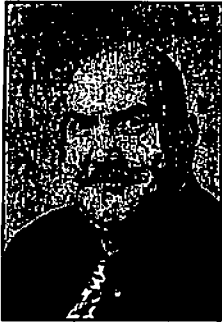
Mr. L. Lin Wood
Mr. John Patton
Mr. Luke Lantta
Powell Goldstein
One Atlantic Center, 14th Floor
Atlanta, GA, 30309.
Via Certified Mail, Return Receipt Requested

Ms. Teresa Stephens

Via Certified Mail, Return Receipt Requested



NEIL McCABE



John R. Mallery
Managing Consultant

**Forensics & Dispute
Consulting
Kansas City
Phone: 816.221.6300
Fax: 816.221.6380
jmallery@bkd.com**

John, a member of BKD's Forensics & Dispute Consulting group, specializes in the practical applications of computer forensics and network security. He works as a consulting expert in a wide range of litigation matters, providing assistance with electronic discovery requests, deposition questions and clarification of technology issues.

He also works with businesses and attorneys in addressing risks associated with electronic data, including consultation with respect to disclosure and preservation obligations. John has experience in a variety of case types, including wrongful death, labor and employment issues, theft of trade secrets and fraud. In addition, he has conducted numerous computer forensics examinations of laptop and desktop computers as well as Blackberry handheld devices.

A nationally recognized public speaker in the area of computer forensics and network security, John has developed continuing legal education (CLE) programs for the legal community, as well as accredited programs for law enforcement around the country. His unique background as an entertainer, investigator and information technologies specialist has enabled him to develop a series of programs that are both highly informative and entertaining. He keeps up with current trends and issues which makes him an excellent resource for those facing technology challenges. Previously an adjunct professor at Central Missouri State University and Johnson County Community College.

John is past chair of the Kansas City chapter of ASIS International. He is a contributing editor of **Security Technology & Design** magazine and co-author of the book **Hardening Network Security** (McGraw-Hill/Osborne, First Edition 2005), and has appeared on CNN's **NewsNight** with Aaron Brown and the show **Next@CNN** hosted by Daniel Sieberg.



CPAs & Advisors

John R. Mallery

Professional History

John has nearly 10 years of experience with computer information systems. His technology background includes working as a system administrator where he configured and maintained a wide range of technologies including desktop systems, file servers, routers and firewalls. He also has worked as a chief technology officer for a privately-held firm. His experiences with internal systems provide insight into how technology is used within an organization. He has utilized this knowledge and expertise to provide both computer security and computer forensics consulting services across a wide range of industries.

Education

- B.S., marine science and biology, University of Tampa, Florida, 1980

Professional Affiliations/Certifications

- High Technology Crime Investigation Association – MO KAN Chapter President 2006 and 2007
- ASIS International, Kansas City Chapter, President 2004
- Infragard
- Kansas City Metropolitan Bar Association
- Defense Research Institute
- Certified Novell Engineer, Netware 4.x and 5.x
- Certified Novell Administrator, GroupWise 5.x
- SANS Institute GSEC Certification



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Professional Training

300+ hours information technology training in topics such as Novell NetWare and Microsoft Windows operating systems, firewalls, routers and computer forensics. A representative list appears below:

- Introduction to Macintosh Forensics 2008
- EnCase Intermediate Analysis and Reporting 2006
- Securing Windows 2000 – Gold Standard 2002
- EnCase Introduction to Computer Forensics 2002
- System Administration for SQL Server 7.0 2001
- Maresware Basic Computer Forensics Analysis 2001
- SANS Institute Level One SANS Security Essentials 2001
- Network Security and Firewall Administration 2000
- Cisco – Interconnecting Network Devices 2000
- NetWare - Integrating Windows NT 2000
- GroupWise Net Access and Connectivity 1999
- GroupWise 5.5 Advanced Administration 1999
- NetWare Service and Support 1999
- NetWare 4.11 Installation and Configuration 1999
- Microsoft NT 4.0 Core Technologies 1999
- NetWare 4.11 to 5 Update 1999
- Networking Technologies 1999
- NetWare 4.11 Advanced Administration 1999
- Workstation Administration Windows NT Server 4.0 1998
- Visual Basic Programming 1998
- NetObjects Fusion 1998
- Advanced Access 2.0 1998
- Interview and Interrogation Techniques 1996
- Troubleshooting & Maintenance of IBM PC's and Compatibles 1996

Additional training completed at High Technology Crime Investigation Association conferences and the Cybercrime Summit in Atlanta in 2004, 2005, 2006 and 2007.



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John R. Mallery

Publications

- "Log Management for Regulatory Compliance," **Security Technology & Design**, September 2008
- "Network Intrusion Detection," **Security Technology & Design**, August 2008
- "Network Risk Management," **Security Technology & Design**, May 2008
- "Encryption for the Enterprise," **Security Technology & Design**, February 2008
- "Security Cooperation," **Security Technology & Design**, September 2007
- "Failing to Maintain Control of Firm's Data Can Take Big Toll," **Business Courier of Cincinnati**, August 31, 2007
- "Policy Enforcement," **Security Technology & Design**, June 2007
- "Will Privacy Tools Hamper Investigations?" **Security Technology & Design**, January 2007
- "Defense in Depth for Compliance," **Security Technology & Design**, October 2006
- "Keep Your Secrets Secret," **Security Technology & Design**, August 2006
- "What Are You Talking About? An IT Dictionary for Physical Security Pros," **Security Technology & Design**, July 2006
- "The Hidden Data Thieves," **Security Technology & Design**, March 2006
- "Cyberforensics: The Ultimate Investigative Tool," **Security Technology & Design**, December 2005
- "Litigation and the Digital World," **The Nebraska Lawyer**, October/November 2005
- "Who Are You?" **Security Technology & Design**, November 2005
- "Litigation and the Digital World," **KC Counselor**, September 2005
- "Portable Data Storage Devices: Security Nightmare," **Security Technology & Design**, July 2005
- "Cyberterrorism: Real Threat or Media Hype?" **Security Technology & Design**, May 2005
- "You're Fired!" **Security Technology & Design**, March 2005
- "Securing a Security Budget: Probable Threats vs. Describable Threats," **Security Technology & Design**, October 2004
- "Certification Update," **Security Technology & Design**, July 2004
- "GPS Technologies: More Than Just Cool Toys," **Security Technology & Design**, April 2004
- "Database Security: Protecting Your Most Important Assets," **Security Technology & Design**, February 2004
- "Network Authentication: Passwords are Not Enough," **Security Technology & Design**, January 2004



John R. Mallery

Publications (continued)

- "Shoring Up System Vulnerabilities," **Security Technology & Design**, December 2003
- "Get the Word Out," **Security Technology & Design**, October 2003
- "Theft of Trade Secrets: Can You Stop It?" **Security Technology & Design**, August 2003
- "What Are They Doing On Your Computers?" **Security Technology & Design**, July 2003
- "Where Do I Turn For Help?" **Security Technology & Design**, June 2003
- "The Physical/Logical Security Dilemma," **Security Technology & Design**, April 2003
- "Home User: Friend or Foe?" **Security Technology & Design**, March 2003
- "Finding the Smoking Gun on Employee Computers," **Security Technology & Design**, November 2002
- "Who's Watching Your Data?" **Security Technology & Design**, July 2002
- "Additional Sources of Data Loss: Thinking Outside the Hard Drive," **Security Technology & Design**, May 2002
- "Back to Basics," **Security Technology & Design**, March 2002
- "What's On That Hard Drive?" **Security Technology & Design**, February 2002
- "Don't Forget Security When Choosing an Application Service Provider," (with Patrick Kelly), **Kansas City Small Business Monthly**, February 2001

Whitepapers

- "Secure File Deletion: Fact or Fiction?" SANS Institute GSEC Practical Assignment, submitted July 7, 2001, updated June 6, 2006

Books

- **Hardening Network Security**, McGraw-Hill Osborne Media, ISBN 0072257032, January 2005, co-authored



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John R. Mallery

Presentations

Presentations include:

- Hot Topics in eDiscovery: New Rules, Preservation and Digital Forensics
- Pursuing and Defending eDiscovery
- Introduction to Digital Forensics
- Digital Data in the Enterprise: Do You Have It Under Control?

Select audiences have included:

- Kansas City Metropolitan Bar Association
- Cincinnati Bar Association
- Indiana Chapter of the Association of Corporate Counsel of America
- Bar Association of Metropolitan St. Louis
- Federal Financial Institutions Examination Council Conferences
- Missouri Gaming Commission
- 2004, 2005, 2006 and 2007 Cybercrime Summit, Atlanta, Georgia
- 2004, 2006, 2007 International High Technology Crime Investigation Association Conference
- 2003 and 2004 ASIS International Conference
- Appearances on CNN on NewsNight with Aaron Brown and Next@CNN hosted by Daniel Sieberg

Representative Engagements

Litigation

John has provided sworn testimony in the following matters:

Karl C. James v. Jerry Thomas, District Court of Lyon County, Kansas
Case No: 06-CV-180

YRC Worldwide, Inc. v. Jennifer Yates, District Court of Johnson County, Kansas
Case No: 08-CV-09897

Julie White v. Shari Wilkens et al, United States District Court, District of Kansas
Case No: 07-CV-2319



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BKD, LLP Forensics & Dispute Consulting Division

Universal Engraving, Inc. vs. Frederick Duarte, United States District Court, District of Kansas, Case No. 2:2007CV02427

Catherine M. Hibbeln vs. Nixon Peabody LLP et al, Superior Court of California, City and County of San Francisco, Case No: CGC-07-459299

Claredi Corporation vs. SeeBeyond Technology Corporation, United States District Court, Eastern District of Missouri, Case No. 4-04CV01304RWS

U.S. Bank International Association vs. Signature Bank et al, United States District Court, Western District of Missouri, Case No. 05-CV-3418-RED

In Re Celexa and Lexapro Products Liability Litigation, United States District Court, Eastern District of Missouri, MDL Docket No. 1736

Gulbrandsen vs. Par Pharmaceuticals, Superior Court of the State of Arizona, In and For the County of Maricopa, Case No. CV2005-003379

Balboa Threadworks, Inc. vs. Ronald A. Stucky, et al, United States District Court, District of Kansas, Case No. 05-CV-1157-JTM

Coughlin vs. Forest Pharmaceuticals, Inc., Missouri Circuit Court, Twenty-Second Judicial Circuit, Case No. 042-09467

Piqua Petro, Inc. vs. Doris Arnold, et al, District Court of Woodson County, Kansas, Case No. 04CV18