

STATE OF CALIFORNIA)
) SS:
COUNTY OF SANTA CLARA)

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
CAUSE NO. 1-10-CV-174783

JANCY ANN TORRES THOMPSON,)
)
 Plaintiff,)
)
 -v-)
)
DOE 1, et al.,)
)
 Defendants.)

The deposition upon oral examination of JACK SWARBRICK, a witness produced and sworn before me, Dana S. Miller, RPR, CRR, Notary Public in and for the County of Hendricks, State of Indiana, taken on behalf of the Plaintiff at the offices of Saeed & Little, 1512 North Delaware Street, Indianapolis, Indiana, on April 16, 2012, at 10:38 a.m., pursuant to the California Rules of Trial Procedure.

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1 JACK SWARBRICK,
2 having been first duly sworn to tell the truth,
3 the whole truth, and nothing but the truth,
4 relating to said matter, was examined and
5 testified as follows:

6 EXAMINATION BY MR. JONATHAN LITTLE:

7 Q. Mr. Swarbrick, can you state and spell your name
8 for the record.

9 A. My name is John Swarbrick. John is J-O-H-N,
10 Swarbrick is S-W-A-R-B-R-I-C-K.

11 Q. Okay. And you are currently the athletic director
12 at Notre Dame?

13 A. That's correct. I'm Vice President and Director of
14 Athletics at the University of Notre Dame.

15 Q. What did you do before that?

16 A. I was an attorney.

17 Q. At?

18 A. What is now called Faegre Baker Daniels. It was
19 Baker & Daniels.

20 Q. And did you do that straight out of law school?

21 A. I did.

22 Q. Where did you go to law school?

23 A. Stanford.

24 Q. And where did you go to undergrad?

25 A. University of Notre Dame.

1 Q. Did you play sports there?

2 A. Those who saw me would say no.

3 Q. I took an official visit there. I ran cross-
4 country at IU, but Coach Pianne's a good guy.

5 A. He's a great guy. I grew up in Bloomington.

6 Q. Okay. All right. And when you worked at what's
7 now Baker -- what's it called again?

8 A. Faegre Baker Daniels. It was Baker & Daniels then.

9 Q. We'll just call it Baker & Daniels. When you
10 worked at Baker & Daniels, did you ever represent
11 USA Swimming?

12 A. I did.

13 Q. And for what did you -- what was the general
14 context of that representation?

15 MR. OZELLO: Well, I'm going to object to
16 attorney-client privilege and work product
17 doctrine, Jon.

18 MR. LITTLE: Well, I understand, but I mean
19 like is it -- I want to know if it's about sexual
20 abuse or is it about something else. I think the
21 general question can be answered.

22 MR. OZELLO: What do you mean general
23 question?

24 MR. LITTLE: Like what did he do? I mean, did
25 he just -- generally what he did, I think, is --

1 I'm not asking him specifically what he does. I'm
2 saying what is the context of that representation.
3 Did they do your taxes? Did they do -- I mean,
4 this is the first time that Baker & Daniels has
5 ever represented USA Swimming, as far as has ever
6 come up in the five years we've been litigating
7 these cases, so I'm curious.

8 MR. OZELLO: Yeah, my understanding is a
9 privilege log was presented with documents
10 enumerated on it involving Mr. Swarbrick. And
11 objections were made on attorney-client privilege
12 grounds on behalf of USA Swimming. I think it
13 might have been in the Doe case.

14 MR. LITTLE: No, the first --

15 MR. OZELLO: If it's not there, it was in this
16 case. Do you have it with you?

17 MR. RUCCI: I don't have it with me, no.

18 MR. LITTLE: Because that actually never
19 happened. We didn't know about him until a
20 deposition in the Thompson case. There's never
21 been a privilege log with his name on it. His name
22 would have jumped out at us.

23 MR. OZELLO: That's not my understanding, but
24 okay. I'm just letting you know that this is
25 attorney-client privilege stuff you're asking. And

1 so you've got to tread lightly on it. And what he
2 did or didn't do, he's not going to answer that
3 today specifically, I'm not even sure generally.
4 So I'm not sure what you're looking for.

5 BY MR. LITTLE:

6 Q. When did you -- when did Baker & Daniels represent
7 USA Swimming?

8 MR. OZELLO: You can answer that.

9 A. I don't know. I mean, it was more than ten years
10 ago.

11 Q. Okay. When did you leave Baker & Daniels?

12 A. I left Baker & Daniels in August of '08.

13 Q. Okay. And when did you start there?

14 A. In August of '80.

15 Q. Okay. And so it was more than ten years ago. So
16 it was pre-2003, 2002?

17 A. Certainly.

18 Q. And how long was that -- how long did that legal
19 relationship last? When did it start; do you know?

20 A. I don't.

21 Q. Now, how did you -- my understanding is you're
22 pretty good friends with Mr. Wielgus?

23 A. I've known Chuck since he was the Executive
24 Director of the United States Canoe & Kayak.

25 Q. And when was that?

- 1 A. It must have been in the '80s.
- 2 Q. Okay. And that's an organization based here in
3 Indianapolis?
- 4 A. It is.
- 5 Q. Okay. And so you were here in Indianapolis, then?
- 6 A. I was.
- 7 Q. Okay. Do you speak to Mr. Wielgus regularly?
- 8 A. I don't know what regularly -- help me out there.
9 What would you propose is regularly?
- 10 Q. How often do you speak to Mr. Wielgus today?
- 11 MR. OZELLO: You mean now?
- 12 MR. LITTLE: Now.
- 13 MR. OZELLO: In the last -- can you give a
14 time frame on that, Jon?
- 15 MR. LITTLE: In the last five years.
- 16 MR. OZELLO: Thank you.
- 17 A. Twice a year.
- 18 Q. Twice a year. Okay.
- 19 A. On average, typically relating to his health.
- 20 Q. Did you talk about this deposition?
- 21 A. No.
- 22 Q. Did you talk to the attorneys for USA Swimming
23 about this deposition?
- 24 A. I did.
- 25 Q. Okay. And what did you talk about?

1 MR. OZELLO: No, no, I'm going to object as
2 attorney-client privilege and work product doctrine
3 and instruct him not to answer.

4 BY MR. LITTLE:

5 Q. Mr. Swarbrick, I'm really sorry, we're probably
6 going to have to depose you again, you know, at
7 another time, I just want to let you know that.
8 And I really appreciate you agreeing to come down
9 here today, and we'll work with you to accommodate
10 your second deposition.

11 MR. RUCCI: Wait, just for my understanding,
12 why are you telling him there's going to be a
13 second deposition?

14 MR. LITTLE: Because after we file for a
15 motion to compel, and after we win and after we get
16 sanctions from you, we'll have to depose him again.

17 MR. OZELLO: Jon, I think you're
18 misunderstanding the relationship here.
19 Mr. Swarbrick represented USA Swimming. He's an
20 attorney. What you're asking him is attorney-
21 client privilege, what he discussed with us is
22 attorney-client privilege. So we represent him
23 today, and so he's not going to answer those
24 questions.

25 If you have other questions for him, you know,

1 feel free to ask them, and we'll go from there.
2 And I'm happy to talk to you after the deposition
3 about ameliorating that situation with
4 Mr. Swarbrick so he doesn't have to come back
5 again.

6 MR. LITTLE: I think, number --

7 BY MR. LITTLE:

8 Q. You received a document request in this?

9 A. I did.

10 MR. LITTLE: Let's go ahead and put that in
11 the record. What number are we on for exhibits?

12 MR. RUCCI: I don't know the last number. I
13 think it was 327, so this might be 328, but just
14 for the record, why don't we mark it -- we've been
15 marking these sequentially, but because this is an
16 out-of-state depo --

17 MR. LITTLE: Well, what we do is that we send
18 it to the lady in San Jose.

19 MR. RUCCI: Why don't we mark it --

20 MR. LITTLE: We're going to get in trouble for
21 this.

22 MR. RUCCI: I think it's 328.

23 MR. LITTLE: All right. We'll mark it 328.

24 MR. RUCCI: Let's just say for the record
25 we're not sure, and what we'll do is we'll

1 coordinate with the reporter back in California.
2 And when we confirm the exact exhibit number, we'll
3 have her contact the court reporter and you can
4 fill in the correct number.

5 MR. LITTLE: We could probably call her this
6 afternoon.

7 MR. OZELLO: Yeah, that's fine.

8 MR. LITTLE: We'll call her as soon as --

9 MR. RUCCI: She's on vacation, that's the only
10 reason I say that.

11 MR. LITTLE: Oh, she is?

12 MR. RUCCI: Yeah.

13 MR. LITTLE: All right. We'll call this 328,
14 the document request for Mr. Swarbrick.

15 (Deposition Exhibit 328 marked for
16 identification.)

17 BY MR. LITTLE:

18 Q. You've seen this before, sir?

19 A. I have.

20 Q. Did you find any documents responsive to this?

21 A. No.

22 Q. Okay. Can you tell me what you did to check for
23 those documents?

24 A. I have no documents of any kind in my possession or
25 control from my time at Baker & Daniels.

- 1 Q. Okay. And I just want to clarify the privilege.
2 Besides USA Swimming's attorney -- actually, which
3 USA Swimming attorneys did you speak with about
4 this deposition?
- 5 A. I talked with Rich Young, and I talked with the two
6 gentlemen here today.
- 7 Q. That would be Mr. Rucci --
- 8 A. Bob and Frank, yes.
- 9 Q. Okay. Now, when you were at Baker & Daniels, did
10 you do work for the U.S. Olympic Committee as well?
- 11 A. I can't remember any representations of the Olympic
12 Committee.
- 13 Q. Did you do any work for a company called USSIC,
14 United States Sports Insurance Company?
- 15 A. I do not recall doing any work for USSIC.
- 16 Q. How many conversations did you have with USA
17 Swimming's counsel in preparation for this
18 deposition?
- 19 A. One with each gentleman.
- 20 Q. Okay. Are you familiar with a gentleman by the
21 name of John Peterson?
- 22 A. (The witness shook head negatively.)
- 23 Q. Eric Peterson?
- 24 A. No.
- 25 Q. A company called Risk Management Services?

1 A. No.

2 Q. Have you ever made a presentation at a USA Swimming
3 board meeting?

4 MR. RUCCI: That's just broad. I don't want
5 to have two different lawyers objecting, but it's
6 overbroad and vague as phrased.

7 A. I don't recall.

8 Q. Okay. Have you ever attended USA Swimming board
9 meetings?

10 A. I don't recall.

11 Q. Do you know a gentleman by the name of John
12 Leonard?

13 A. Yes.

14 Q. How do you know Mr. Leonard?

15 MR. OZELLO: Well, sir, if you can answer that
16 to the extent it doesn't invade the attorney-client
17 privilege or work product doctrine.

18 To the extent it doesn't invade the
19 attorney-client privilege and work product
20 doctrine, I'll let him answer it.

21 MR. LITTLE: We'll go off the record for a
22 second.

23 MR. OZELLO: Let's go off the record.

24 (A discussion was held off the record.)

25 (Deposition Exhibit 329 marked for

1 identification.)

2 BY MR. LITTLE:

3 Q. Mr. Swarbrick, how did you come to interact with
4 John Leonard?

5 A. Indianapolis has hosted a lot of swim meets over
6 the years. And I was involved as Chairman of the
7 Indiana Sports Corporation, Olympic trials,
8 national championships, and that's how I met John
9 Leonard.

10 Q. You were chairman of the Indiana Sports Corp.?

11 A. I was.

12 Q. How many times have you met John Leonard?

13 A. I have no idea.

14 Q. More than five or like just once?

15 A. I don't know.

16 Q. Okay. Take a look at what's marked as Exhibit 329
17 for the time being. And if you could take a second
18 and read that over, particularly starting -- you
19 can start up at 128, but it doesn't go all the way.

20 MR. OZELLO: Jon, just for the record,
21 whose -- when I say Jon, Jon Little --

22 MR. LITTLE: This is John Leonard's
23 deposition.

24 MR. OZELLO: This is John Leonard's
25 deposition?

1 MR. LITTLE: Yep.

2 MR. OZELLO: Thank you.

3 MR. LITTLE: From February of this year.

4 (Witness reviewing document.)

5 MR. OZELLO: Jon Little, was this a deposition

6 in this case?

7 MR. LITTLE: Yep.

8 (Mr. Sedigh now present.)

9 MR. LITTLE: This is Hadi.

10 I believe you met Frank in Virginia.

11 MR. OZELLO: Yeah, I met Hadi. I met Hadi

12 at --

13 MR. LITTLE: Where were we? Nashville. This

14 is Bob.

15 MR. SEDIGH: Nice to meet you.

16 MR. RUCCI: How are you? Nice to meet you.

17 MR. LITTLE: This is Mr. Swarbrick --

18 THE WITNESS: Jack Swarbrick. How are you?

19 MR. LITTLE: -- athletic director at Notre

20 Dame.

21 MR. RUCCI: Director of athletics.

22 MR. LITTLE: Director of athletics. Everybody

23 ready?

24 BY MR. LITTLE:

25 Q. So, Mr. Swarbrick, have you had time to review

1 what's marked as 329?

2 A. I have.

3 Q. Okay. Do you recall meeting with Mr. Leonard and
4 discussing sexual misconduct?

5 A. No.

6 Q. Okay. And you, I forget already, do you recall any
7 conventions, USA Swimming conventions you've
8 attended?

9 A. No.

10 Q. And do you recall making any -- or having any
11 discussions, informal discussions involving sexual
12 misconduct in USA Swimming?

13 MR. OZELLO: All right. That's overbroad,
14 vague and ambiguous and subject to the
15 attorney-client privilege and work product doctrine
16 as phrased. So I'll instruct him not to answer
17 that question.

18 MR. LITTLE: Could you explain how that's
19 subject to the attorney-client privilege just so we
20 can get it on the record.

21 MR. OZELLO: The way you phrased the question,
22 Jon, it encompasses all time and all people with
23 USA Swimming. So I think you can get what you
24 want -- I think you already got what you want from
25 Mr. Swarbrick. He doesn't recall the conversation,

1 if it ever happened, assuming it never happened.

2 So you can try it again a different way if you

3 want.

4 BY MR. LITTLE:

5 Q. All right. If you look here on the bottom of

6 what's marked as 129 -- actually, it's better on

7 the top of 132, on the next page, the second line.

8 Mr. Leonard recalls talking to you in an

9 informal setting with five or six people. Do you

10 know who those five or six people would be?

11 A. I do not.

12 Q. Okay. And do you recall the contents of this

13 alleged discussion?

14 A. No.

15 Q. Okay. Do you know Ron Van Pool?

16 A. I don't believe I do. I don't recall the name, it

17 doesn't --

18 Q. When your firm started working, or when you started

19 doing legal work for USA Swimming, do you remember

20 who the president of USA Swimming was?

21 A. No.

22 Q. Do you remember if it was Dale Neuburger?

23 A. I do not.

24 Q. Do you know Mr. Neuburger?

25 A. I do know Mr. Neuburger.

1 Q. Did you do legal work for USA Swimming when
2 Mr. Neuburger was the president?

3 A. I don't know.

4 Q. When did you meet Mr. Neuburger?

5 A. I probably met Mr. Neuburger shortly after moving
6 to Indianapolis.

7 Q. So in the '80s?

8 A. Yeah.

9 Q. And what was he -- where was he working at the
10 time?

11 MR. OZELLO: Calls for speculation. Lacks
12 foundation.

13 A. I don't know.

14 Q. Okay. Do you recall when Mr. Neuburger went to the
15 Indiana -- do you remember if Mr. Neuburger's ever
16 worked at the Indiana Sports Commission?

17 A. Yes, he did.

18 Q. Do you remember those dates?

19 A. I don't.

20 Q. Do you remember when he -- approximately when he
21 left the Indiana Sports Commission?

22 A. No, I don't. I'm sorry.

23 Q. Do you recall ever discussing sexual abuse in USA
24 Swimming with Mr. Neuburger?

25 A. No.

1 MR. OZELLO: Just a belated objection,
2 attorney-client privilege and work product doctrine
3 as phrased, but go ahead.

4 BY MR. LITTLE:

5 Q. Do you recall ever making a statement to the effect
6 of what's in lines 24 and 25 on 129 and then on the
7 top of 130 about USA Swimming needing to take a
8 strong position on sexual misconduct?

9 A. No.

10 Q. Okay. Do you recall Mr. Leonard questioning your
11 background in swimming?

12 MR. OZELLO: You talking about at the time
13 that Mr. Leonard testified that this conversation
14 allegedly took place?

15 MR. LITTLE: We'll start with that
16 specifically.

17 MR. OZELLO: This one conversation?

18 MR. LITTLE: Yes, this one conversation.

19 A. No.

20 Q. Do you recall or have you ever had conversations
21 with Mr. Leonard questioning your background in
22 swimming?

23 MR. OZELLO: Well, let's -- Mr. Leonard
24 himself?

25 MR. LITTLE: John Leonard.

1 MR. OZELLO: You can answer that.

2 A. No.

3 Q. What is your background in swimming, just out of
4 curiosity?

5 MR. OZELLO: Well --

6 Q. I mean, is it just that you represented USA
7 Swimming? Did you swim in high school and stuff
8 like that?

9 MR. OZELLO: Well, it's overbroad, vague and
10 ambiguous.

11 MR. LITTLE: And compound.

12 MR. OZELLO: Thank you. And to the extent it
13 invades the attorney-client privilege and work
14 product doctrine, I object.

15 But you can answer as to the non-privileged
16 portion of that, Mr. Swarbrick.

17 A. I've never swam competitively.

18 Q. What NGBs have you done legal work for?

19 A. USA Gymnastics, USA Synchronized Swimming. Rowing,
20 canoe/kayak, swimming, diving, skiing.

21 Q. Cross-country or alpine?

22 A. They were combined.

23 Q. Oh, they were combined?

24 A. All in one body. There may have been others, those
25 are the ones that come to mind.

1 Q. Let's go through those real quick. Are you aware
2 of any sexual misconduct scandals involving coaches
3 and athletes in USA Gymnastics?

4 A. Yes.

5 Q. Have you advised USA Gymnastics in that situation?

6 MR. RUCCI: That might invade the
7 attorney-client privilege on their behalf, too.

8 MR. OZELLO: Well, if it's a yes/no question,
9 he can answer that, if he advised them. I'll let
10 him answer that, but otherwise he's not going to
11 answer anything else on attorney-client privilege
12 and work product doctrine.

13 And if you're comfortable answering that,
14 Mr. Swarbrick, you can go ahead and answer that.

15 A. They were clients.

16 Q. And you're not going to say whether or not you
17 advised them on sexual misconduct?

18 A. I'm not going to talk about anything I advised them
19 on specifically.

20 Q. All right. Synchronized swimming, are you aware of
21 any sexual misconduct scandals in synchronized
22 swimming?

23 A. They were a client of the law firm.

24 MR. OZELLO: Object, attorney-client privilege
25 and work product doctrine.

1 Q. And so you're not going to answer whether or not
2 you're aware of any scandals involving sexual
3 misconduct?

4 MR. OZELLO: And it's irrelevant, Jon. How is
5 that relevant?

6 A. I am not.

7 Q. Okay. And the same two questions for rowing, then?

8 A. Same answers for each of my clients, former
9 clients.

10 Q. We'll go through them all. Canoe and kayak?

11 MR. OZELLO: Again, these are all, Jon, just
12 so I don't have to keep making it, these are all
13 subject to the attorney-client privilege and work
14 product doctrine.

15 Q. Same with swimming and diving?

16 MR. OZELLO: Objection, attorney-client
17 privilege, work product doctrine. Overbroad and
18 irrelevant.

19 A. Yes.

20 Q. My -- well, we'll go through this.

21 MR. LITTLE: Actually, Frank, are you claiming
22 that you're the attorney for Mr. Swarbrick?

23 MR. OZELLO: Yes, today, yes.

24 BY MR. LITTLE:

25 Q. And diving?

1 A. Same answers to the two questions.

2 Q. And same with skiing?

3 A. Correct.

4 Q. Okay. Have you ever --

5 MR. OZELLO: Thank you, Jon Little.

6 BY MR. LITTLE:

7 Q. Are you aware of the USOC, any discussions at the
8 USOC level involving sexual misconduct in the NGBs?

9 A. No.

10 MR. OZELLO: Again, it's attorney-client
11 privilege and work product doctrine as phrased.

12 MR. LITTLE: I don't think he's ever worked
13 with USOC.

14 MR. OZELLO: Yeah, but you're asking him at
15 the NGBs.

16 MR. LITTLE: Involving the NGBs.

17 MR. OZELLO: Right, but he represents the NGBs
18 that you just discussed. So that's the problem.

19 MR. LITTLE: Okay.

20 MR. OZELLO: If you want to rephrase it in a
21 different way, you know, feel free.

22 BY MR. LITTLE:

23 Q. Were you involved in the formation of the USA
24 Swimming Code of Conduct?

25 MR. OZELLO: Well, object to the extent it

1 invades the attorney-client privilege and work
2 product doctrine. I'm instructing him not to
3 answer that, if the answer would invade the
4 attorney-client privilege or work product doctrine.

5 Jon Little, can we take a break?

6 MR. LITTLE: Sure.

7 MR. OZELLO: Thanks.

8 (A recess was taken.)

9 reporter.)

10 MR. OZELLO: I object on attorney-client
11 privilege and work product doctrine grounds. This
12 is a client of Mr. Swarbrick, so he can't answer
13 that question.

14 BY MR. LITTLE:

15 Q. Mr. Swarbrick, did you ever feel that sexual
16 misconduct in USA Swimming, and I'm reading lines
17 23 and 24, was "going to become" -- on page 130 at
18 the top, 23 and 24, that -- did you ever advise
19 Mr. Leonard that -- or did you ever say to
20 Mr. Leonard that this was going -- sexual
21 misconduct was going to become a big issue?

22 MR. OZELLO: Asked and answered. He said he
23 doesn't recall saying that.

24 A. I think you asked me if I recalled talking to
25 Mr. Leonard, and I said no.

1 Q. Okay. Have you had any discussions with David
2 Burkhoff involving sexual misconduct?

3 A. I don't know who David Burkhoff is.

4 Q. Okay. Did you go to law school with Richard Young?

5 A. No.

6 Q. When did you come to know Mr. Young?

7 A. He recruited me out of law school for his law firm.

8 Q. Did you ever work at --

9 A. No. He apparently wasn't persuasive.

10 Q. Now, do you know a gentleman by the name of Ross
11 Wales?

12 A. I do.

13 Q. How do you know Mr. Wales?

14 MR. OZELLO: Well, I'll object to the -- to
15 the extent it invades the attorney-client privilege
16 and work product doctrine, I instruct him not to
17 answer anything related to that.

18 If it's not privileged, you can go ahead and
19 answer it, which it may very well be. I just don't
20 know the answer.

21 A. I think I first met Mr. Wales when I -- when we
22 hosted the Olympic Sports Festival in the early
23 '80s.

24 Q. Okay. And have you had any discussions with Ross
25 Wales involving sexual misconduct and USA Swimming?

1 MR. OZELLO: Objection, attorney-client
2 privilege, work product doctrine grounds. Instruct
3 him not to answer that question.

4 MR. LITTLE: All right. Well, I want to know
5 when they were. I mean, I didn't get a privilege
6 log. You can -- I want to establish this
7 privilege.

8 MR. OZELLO: There's no privilege log to the
9 question.

10 MR. LITTLE: Right, I got that, but I want to
11 establish privilege. I think I'm entitled to ask
12 when he had these discussions and who else was in
13 the room.

14 MR. OZELLO: No, the way you're phrasing it,
15 he can't answer that, because you're asking him
16 what the content of those discussions was. If you
17 want to establish when Mr. Wales first became a
18 client, I don't have a problem with that. You can
19 ask him that, if he recalls. But he's not going to
20 answer anything substantively on any content of any
21 discussions or memos or anything else that's
22 privileged or work product as to his clients,
23 especially USA Swimming.

24 MR. LITTLE: But Mr. Wales is not a party --
25 my understanding is he has testified earlier that

1 he's never worked for USSIC. Mr. Wales has no
2 relationship to USA Swimming, as I was told in
3 January of 2011, he simply --

4 MR. OZELLO: Do me a favor, let's go off the
5 record a second.

6 MR. LITTLE: Sure.

7 MR. OZELLO: Let me talk to the witness to
8 find out what is and isn't privileged, and then
9 we'll go on from there. Okay?

10 MR. LITTLE: All right.

11 MR. OZELLO: Thank you.

12 (A recess was taken.)

13 MR. OZELLO: I'm going to object on
14 attorney-client privilege, work product doctrine
15 grounds, and instruct the witness not to answer the
16 question as phrased.

17 Jon Little, it's my understanding that
18 Mr. Wales was at one time USA Swimming's president.

19 MR. LITTLE: In 1979.

20 MR. OZELLO: Okay. I'm just saying that at
21 one time he was. You're asking the question you
22 asked, and I'm objecting on those grounds.

23 MR. LITTLE: Okay.

24 BY MR. LITTLE:

25 Q. Has Mr. Wales ever been a client of yours?

1 A. No.

2 Q. Okay. Have you ever had any conversations with
3 Ross Wales involving sexual misconduct at USA
4 Swimming?

5 MR. OZELLO: I'm going to object on
6 attorney-client privilege and work product doctrine
7 grounds as phrased. Mr. Wales himself may not have
8 been a client of Mr. Swarbrick's, but he certainly
9 was employed by USA Swimming, and those discussions
10 would be privileged. I don't see how you can get
11 around that.

12 MR. LITTLE: Mr. Wales hasn't been president
13 of USA Swimming in 25 plus years, so -- okay.

14 BY MR. LITTLE:

15 Q. Since 1995, have you had any discussions with Ross
16 Wales involving USA Swimming or involving -- yeah,
17 start with USA Swimming?

18 A. No.

19 Q. So you have not discussed sexual misconduct in USA
20 Swimming with Ross Wales since 1995?

21 MR. OZELLO: Hold on.

22 MR. RUCCI: That's a different question.

23 MR. OZELLO: Well, no. Asked and answered.
24 He's already said he hasn't had any discussions
25 with Ross Wales that he recalls since 1985. So

1 he's answered your question. I think that one was
2 phrased better in terms of avoiding the
3 attorney-client privilege and work product doctrine
4 grounds.

5 The next one he answered goes to the content
6 of those communications. But, you know, I think
7 you got your answer.

8 BY MR. LITTLE:

9 Q. Since you've been athletic director at Notre Dame
10 since 2008, you said?

11 A. Uh-huh.

12 Q. Have you had any discussions with USA Swimming
13 involving sexual misconduct?

14 A. No.

15 Q. With nobody from USA Swimming?

16 MR. OZELLO: Since 2008, since he became
17 athletic director at ND?

18 MR. LITTLE: Yeah.

19 A. I don't -- I do not recall any.

20 Q. Okay. Do you know a gentleman by the name of Wells
21 O'Brien?

22 A. I do.

23 Q. And how do you know him?

24 MR. OZELLO: Same objections, attorney-client
25 privilege, work product doctrine.

1 MR. LITTLE: How he knows him? I mean, he
2 could say I know him because I represented him in
3 USA Swimming.

4 MR. OZELLO: Why don't you -- if you phrase it
5 that way, I may let him answer it, you know, that's
6 up to you, Jon, you're taking the deposition. But
7 the way you're phrasing it, he's not going to
8 answer that question as phrased. Thank you.

9 MR. LITTLE: Other than -- well, I don't --
10 let's go off the record for a second.

11 (A discussion was held off the record.)

12 BY MR. LITTLE:

13 Q. Other than in your alleged capacity representing
14 USA Swimming, have you ever had any discussions
15 with Wells O'Brien?

16 A. Excuse me, why is it alleged?

17 MR. RUCCI: It's argumentative.

18 MR. LITTLE: It is argumentative. And Baker &
19 Daniels has never represented USA Swimming until
20 right now. So I'm curious, because this has never
21 come up before, this is a left-field play.

22 MR. OZELLO: What do you mean until right now?

23 MR. LITTLE: Because when we discussed this in
24 February, there was -- in the five years we've been
25 doing this case, there has never once, out of

1 35,000 documents, never once has Baker & Daniels
2 come up as representing USA Swimming, done anything
3 for USA Swimming, name ever appeared in this case
4 at all. Now when a former employee of Baker &
5 Daniels has relevant information, you suddenly
6 represent him, and Baker & Daniels suddenly
7 represents USA Swimming. I find it very
8 suspicious.

9 MR. OZELLO: Well, Jon, you're swinging at
10 windmills on this one. There's nothing suspicious
11 about it. Mr. Swarbrick was an attorney. He
12 represented USA Swimming. He was a partner of
13 Baker & Daniels, as far as what I understand, and
14 was employed by them, as you said, in a way.
15 There's an attorney-client relationship. There's
16 an attorney-client privilege and work product
17 doctrine there.

18 Now, I don't know, I haven't gone through
19 every single one of the 35,000 pages that you're
20 referring to. My understanding is that somewhere
21 in a privilege log Mr. Swarbrick's documents were
22 put on there, but you're telling me they weren't.

23 MR. RUCCI: I'm not saying they were. I know
24 there's been privilege logs back and forth. So I
25 don't know if Mr. Swarbrick's name appears on any

1 of them or not.

2 MR. OZELLO: And I was not counsel of record
3 when Mr. Leonard's deposition was taken. So don't
4 take what we're doing today as anything more than
5 asserting our client's rights to the
6 attorney-client privilege and work product
7 doctrine. You know the difficulties in deposing a
8 lawyer, or a former lawyer, in terms of the
9 attorney-client privilege and work product
10 doctrine. And we're asserting in good faith these
11 objections.

12 MR. LITTLE: But, Frank, my concern is that --
13 I didn't mean to talk over you -- my concern is
14 that I'm asking him about an informal conversation
15 that he apparently had or that John Leonard
16 apparently remembers at an informal situation where
17 Mr. Swarbrick took the position that USA Swimming
18 had some sexual misconduct issues they needed to
19 deal with years ago.

20 MR. OZELLO: Right.

21 MR. LITTLE: And suddenly, as soon as we find
22 this out, now his firm is representing USA
23 Swimming. And I don't see how, even if that's
24 true, I don't understand how that applies to an
25 informal conversation with somebody who's not your

1 client.

2 MR. OZELLO: Okay. So, Jon Little, what I
3 will allow him to answer were questions that you
4 specifically related to what you marked as Exhibit
5 329 and whatever was next in order, which is John
6 Leonard's testimony which is two pages, two pages
7 consisting of eight pages, it's the condensed
8 version, and he answered those questions. I didn't
9 tell him not to answer those questions, because
10 those have been testified to by John Leonard. So
11 he answered those questions, Mr. Swarbrick answered
12 those questions.

13 So, you know, we're not saying everything,
14 based on what you've presented, everything that he
15 knows is privileged. He has asserted -- he has
16 stated things on the record, items on the record
17 that do relate to Mr. Leonard's alleged discussion
18 with him, and he answered those. I let him answer
19 those, and you know that.

20 MR. RUCCI: And just to be fair, Mr. Leonard
21 in his deposition also said he had no idea in what
22 capacity Mr. Swarbrick was connected to USA
23 Swimming. I think you even asked specific
24 questions if he knew if he was a lawyer for them or
25 in what capacity he worked for them. And he said

1 he didn't know, he had no knowledge one way or the
2 other.

3 MR. LITTLE: Right, but then, therefore,
4 conversations with Mr. Leonard would not be
5 privileged.

6 MR. OZELLO: Hold on.

7 MR. RUCCI: But you're getting him to testify
8 about what John Leonard said. He already said he
9 doesn't remember a conversation with John Leonard.
10 You're asking him to confirm something that
11 Mr. Swarbrick doesn't even remember happening.

12 MR. OZELLO: And now you're talking about
13 Wells O'Brien, and that's a whole different
14 subject. Wells O'Brien, as I understand it, was
15 legal counsel, counsel for USA Swimming.

16 MR. LITTLE: Well, I'll ask him who he
17 understands Wells O'Brien to be, and then we'll see
18 what comes of it.

19 MR. OZELLO: That you can -- he can answer
20 that.

21 A. Before you move on to the next question, I'd like
22 to comment on your last statement. I was happy to
23 come here today. I'm happy to be a deponent. I
24 didn't come here to have you call me a liar.

25 Q. I didn't call you a liar.

1 A. Yes, you did, sir. You said that my assertion that
2 USA Swimming was a client was suspicious.

3 Q. And I still say that.

4 A. There's nothing suspicious about it, sir. I
5 represented them in my capacity as an attorney at
6 Baker & Daniels, as a partner in that firm. I did
7 no work when I was a partner at Baker & Daniels
8 that wasn't as a lawyer for that firm.

9 Q. So your testimony is you represented USA Swimming?

10 A. I told you that earlier. You asked me that
11 earlier, and I answered it.

12 Q. Well --

13 A. Why are you shaking your head no?

14 MR. LITTLE: Let's go off the record.

15 MR. RUCCI: No, let's stay on the record.

16 MR. LITTLE: Let's go off the record.

17 MR. RUCCI: You're accusing him of lying. You
18 used the word allegedly in your representation of
19 USA Swimming. It's demeaning. He showed up
20 voluntarily today, Jon.

21 MR. LITTLE: I used the word allegedly because
22 I've been here for five years, I've sorted through
23 35,000 pages of your documents. This spontaneously
24 comes up two months ago, and now all of a sudden
25 after seeing dozens of firms that represented USA

1 Swimming, all of a sudden when there's something
2 like this that comes up, you guys establish an
3 attorney-client relationship.

4 MR. RUCCI: When you say something like this
5 comes up, you're talking about a deposition of John
6 Leonard who admits he has no idea who Jack
7 Swarbrick was or what capacity he was acting in or
8 what he was holding or whether he even held a
9 position with USA Swimming. So you're relying on
10 someone who gave one sentence of testimony.

11 MR. OZELLO: And, Jon Little, look, you knew
12 that Jack Swarbrick was a lawyer. And you knew
13 that he was acting in a legal capacity before you
14 came here today. He's here today, he's answered
15 your questions. There's attorney-client privilege
16 and work product doctrine grounds. You shouldn't
17 be surprised when you depose a lawyer, or former
18 lawyer like I said earlier, these issues always
19 arise.

20 MR. LITTLE: And if it was at a board meeting
21 and he was giving a presentation and he was saying,
22 you know, X, Y and Z, that's different. But an
23 informal conversation with one person who's not the
24 client --

25 MR. OZELLO: And he answered that.

1 MR. LITTLE: He doesn't remember.

2 MR. OZELLO: Okay. But that's the answer,
3 Jon. What are you -- Jon --

4 MR. LITTLE: I just want --

5 MR. OZELLO: -- the answer is the answer.
6 Okay?

7 MR. LITTLE: Whatever. All right.

8 BY MR. LITTLE:

9 Q. What is your belief -- can you tell me who you --
10 strike that.

11 Did you come to know Wells O'Brien through
12 your work with USA Swimming?

13 A. I first knew Wells O'Brien as a judge in swimming
14 competitions.

15 Q. Okay. And then you -- did you later learn that he
16 was an attorney for USA Swimming?

17 A. I also came to know him through my work as an
18 attorney for USA Swimming.

19 Q. Outside of your work with USA Swimming, outside of
20 your legal representation of USA Swimming, do you
21 recall any discussions of a background screening
22 program in USA Swimming?

23 A. No.

24 Q. Have you ever held a board position with USA
25 Swimming?

1 A. No.

2 Q. Have you ever held a board position with any NGB?

3 A. No.

4 MR. LITTLE: Let's go off the record a second.

5 (A discussion was held off the record.)

6 BY MR. LITTLE:

7 Q. You ever heard of Norm Havercroft?

8 A. No.

9 MR. LITTLE: I'm done.

10 MR. OZELLO: Okay.

11 COURT REPORTER: Signature?

12 MR. OZELLO: Send it to me.

13 (The deposition adjourned at 11:36 a.m.)

14 AND FURTHER THE DEPONENT SAITH NOT

15

16 _____
(JACK SWARBRICK)

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1 STATE OF INDIANA)
2)
3 COUNTY OF HENDRICKS)

4

5 I, Dana S. Miller, Notary Public in and for the
6 County of Hendricks and State of Indiana, do hereby
7 certify that the above-named deponent herein was by me
8 first duly sworn to tell the truth, the whole truth,
9 and nothing but the truth in the aforementioned matter;

10 That the foregoing deposition was taken on behalf
11 of the Plaintiff at the time and place heretofore
12 mentioned, with all counsel being present as duly
13 noted;

14 That the deposition was taken down by means of
15 stenograph notes, was reduced to typewriting under my
16 direction, and is a true record of the testimony given
17 by said deponent, and was thereafter presented to the
18 deponent for signature;

19 I do hereby further certify that I am a
20 disinterested person in this cause of action, that I am
21 not a relative of the attorneys for any of the parties
22 or otherwise interested in the event of this cause of
23 action.

24 IN WITNESS WHEREOF, I have hereunto set my hand and
25 have affixed my official notarial seal on this ____day
of _____, 2012.

17

18

19 DANA S. MILLER, RPR, CRR, NOTARY PUBLIC

20

21 County of Residence:

22 Hendricks County

23 My Commission Expires:

24 January 17, 2016

25

