

## ARGUMENT

INA wants to paint a picture that this episode is somehow Plaintiffs' fault. But, let's be clear, this issue has nothing to do with Judge Klein, who was not at the deposition and thus could not resolve the problem, was not privy to the picture attached to this motion, and since this isn't a discovery dispute but a question of witness coaching/tampering. It is quite telling that INA's motion is filled with red herrings:

- a. It speaks of previous cancelled depositions.
- b. It claims that there was a request that Chief Magistrate Judge Brown be brought on the phone to resolve the matter.
- c. It cites to another "discovery crisis" manufactured by Plaintiffs.
- d. It refers to a "CNA" of an expert witness who is yet to be designated as an expert by Plaintiffs.

What does this have anything to do with what INA's counsel did and is trying to cover-up? INA decided to man-it-up and try to bluff its way out of this ethical cul-de-sac by throwing everything else into its explanation to this Court of what occurred, but the foot tapping. This issue deserves the Court's full attention. The red-herrings in INA's motion should be left for another day.

On July 12, 2010 the deposition of Connie Dennis commenced. Ms. Dennis is a key witness as she was involved with the initial claims of the Sol incident and the Hit and Run incident. Mr. Antorcha took the deposition of Connie Dennis. While taking the



deposition of Ms. Dennis, Mr. Antorcha noticed that the witness would take approximately five seconds before responding to the questions, at times longer. On some key questions, the five seconds would elapse and followed by a: "I don't remember" response. At the conclusion of Antorcha's questions, Mr. Halmos began questioning Ms. Dennis.

Soon into Mr. Halmos' questions, Johnathan texted Mr. Antorcha that the attorney sitting next to the witness was tapping her foot on various occasions. Antorcha responded to Johnathan to make sure that what he saw was in fact what it appeared to be. Johnathan texted Exhibit A to Antorcha. (Though the feet in question do not have labels on them, the pink foot belongs to Ms. Dennis, the attacking black shoe to Mr. Engerrand.)

As anyone can clearly see, Ms. Dennis' foot and Mr. Engerrand's foot are clearly touching one another. Further, this doesn't seem to be a comfortable position for either individual, clearly indicating that the intent of having the foot next to each other was for the purpose of tapping her foot. Upon receiving the picture and seeing how awkward the stance of each individual was, Antorcha inquired as to each individual:

**Mr. Antorcha:** Mr. Engerrand, are you tapping Ms. Dennis' foot during any of these questions . . .

**Mr. Engerrand:** I don't know that I've been tapping her foot. I assumed there was a pillar next to me, so I'll move down. .

**Mr. Antorcha:** Ms. Dennis.

**The Witness:** Yes



**Mr. Antorcha:** Has he been tapping your foot” And you’re under oath here.

**The Witness:** Yes.<sup>1</sup>

Prior to concluding the deposition, Antorcha asked Johnathan what he had seen and to put what he saw on the record.

**Mr. Antorcha:** Can you please put on the record what you saw.

**Mr. Burke:** I heard a tap . . . and I looked down, and I saw her lawyer’s foot almost on top of hers. And what made it odd was she didn’t move away. And as I continued to watch, it happened twice, so I let you know.<sup>2</sup>

Thankfully, isn’t a picture worth a thousand words? There is no question that Mr. Engerrand’s foot was tapping the witnesses. Mr. Engerrand would like for this Court to believe that Ms. Dennis’ foot was the pillar to the table. Plaintiffs request that the Court take a look at the attached picture and conclude for itself where the nearest pillar on that table is. Enough games, enough blaming Plaintiffs for “smoke screens” and “delay,” that is not what this is about. Enough pandering to the Court in an attempt to massage what clearly should be sanctioned. *See DE 898 at 6.*

To be clear, Plaintiffs are not asking for a postponement of the proceedings or anything that would delay this matter. The issue here is Mr. Engerrand coaching the witness by tapping her foot. That is it.

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<sup>1</sup> See *Exhibit B, Tr. 74/15 – 75/25.*

<sup>2</sup> *Id. at Tr. 78/3-23.*



As this Court has held, “[u]nder Local Rule 30.1(A)(1), ‘objections or statements which have the effect of coaching the witness, instructing the witness concerning the way in which he or she should frame a response, or suggesting an answer to the witness,’ abusive deposition conduct, which is prohibited and sanctionable.” See *Developers Surety And Indemnity Company v. Harding Village, Ltd.*, 2007 WL 2021939, \*5 (S.D. Fla. 2007)(Brown. J). Plaintiffs believe that this Court should order Ms. Dennis to appear before it so that the Court can inquire as to what was said to her by her counsel, and whether she was coached in any way.

What occurred is just wrong. INA’s response shows not only its true colors, but also how it views its duties to the Court. There was no mistake here. This was out and out witness tampering, followed by good ole misrepresentations of what had occurred. For sure, the old adage of a picture being worth a thousand words applies here.

### CONCLUSION

Plaintiffs request that the following actions be taken by the Court:

1. INA’s motion should be stricken as impertinent and scandalous.
2. This Court should conduct a hearing with Connie Dennis present for examination by the Court to determine what occurred unless INA will belatedly step up to the bench and admit what it did. If, the Court is convinced, at a minimum<sup>3</sup>, the following should occur:

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<sup>3</sup> Undersigned counsel is at serious odds with what should be the actual remedy. Who knows which of the previous depositions Mr. Engerrand performed the same “foot tapping.” Who knows what affidavit or sworn document submitted by this individual suffers from the same

3. The deposition should be retaken.
4. The Court should retain power to strike both depositions if the evil effects of the coaching cannot be cleaned-up.
5. All further monitoring of discovery should be borne at the expense of INA.
6. Mr. Engerrand should have his privileges of practice in this case revoked because he has abused them and dishonored this Court and because his client, INA, with its in-house attorney present and observing, chose to take the low road intentionally.
7. The law firm of Brown Sims P.C. should be disqualified from representing INA in this action.
8. The Court should award counsel fees, deposition transcript fees, travel fees, and all other fees in connection with the original taking and subsequent taking of Ms. Dennis's deposition, any other court hearings on the topic, and the cost of defending this motion.

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disrespect and unethical behavior. And, whether his law firm, partners and co-counsel are aware of Mr. Engerrand's technique. The problem we are faced with is that we do not know, and the gambit for sanctions can run from re-taking of the deposition to striking of INA's pleadings. Thus, undersigned counsel suggests the minimum that should be done, however, that by no means is meant to suggest to the Court that the full authority and power of this Court should not be used to sanction INA from any remedy this Court deems fit. *See Vargas v. Peltz*, 901 F. Supp. 1572, 1581 (S.D. Fla. 1995).

