

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

CASE NO.

Complainant,

TFB NO. 2009-10,745 (13C)

v.

NICHOLAS FRANCIS MOONEY,

Respondent.

_____ /

COMPLAINT

THE FLORIDA BAR, Complainant, files this Complaint against Nicholas Francis Mooney, Respondent, pursuant to Rule 3-3.2(b), Rules Regulating The Florida Bar, and alleges:

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent and Kurt D. Mitchell were opposing counsel in several cases.
3. During the course of litigation, Respondent and Mitchell engaged in a series of email exchanges that became increasingly hostile and unprofessional.
4. In the emails, Respondent commented about Mitchell and his family, which comments were meant to disparage, humiliate and discriminate against Mitchell. The emails included the following:

- a. Email trail dated May 7, 2008 3:48 PM, copy attached as **Exhibit A**.
- b. Email trail dated August 14, 2008 9:48 PM, copy attached as **Exhibit B**.
- c. Email trail dated September 19, 2008 11:45 AM, copy attached as **Exhibit C**.
- d. Email trail dated October 9, 2008 2:59 PM, copy attached as **Exhibit D**.

5. A majority of these email exchanges were copied to multiple persons in both Respondent's law firm and Mitchell's law firm, including Respondent's legal assistant, Tina Harris, Mitchell's legal assistant, Jessica Affortunato, and Mitchell's law partner, Aldo Bolliger.

6. On or about December 19, 2008, Mitchell conducted the deposition of a defense witness in the Craig case wherein Respondent is opposing counsel. During the deposition, Respondent engaged in a hostile verbal exchange with Mitchell in the presence of the deponent and the court reporter meant to disparage, humiliate and discriminate against Mitchell. See copy of deposition transcript dated December 19, 2008, attached as **Exhibit E**, pgs. 55-57.

7. The ongoing hostility demonstrated between Respondent and Mitchell has served to prohibit them from effectively resolving scheduling matters and conducting the litigation in a professional manner, which conduct is contrary to honesty and justice and is prejudicial to the administration of justice and to our system of justice as a whole.

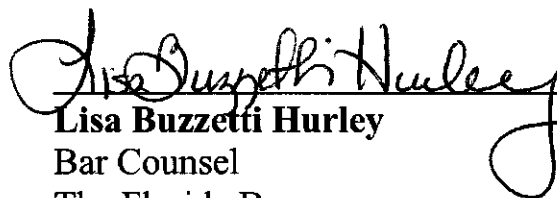
8. On August 26, 2009, the Thirteenth Judicial Circuit Grievance Committee "C" found probable cause for further disciplinary proceedings, and the presiding member of the grievance committee has approved the instant complaint.

9. By reason of the foregoing, the Respondent has violated the following Rules Regulating The Florida Bar: Rule 3-4.3 (commission of any act that is unlawful or contrary to honesty and justice); and Rule 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic).

WHEREFORE, The Florida Bar respectfully requests that the Respondent be appropriately disciplined.



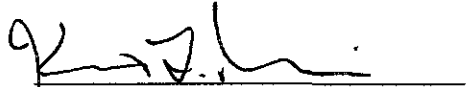
Kenneth Lawrence Marvin
Staff Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 200999



Lisa Buzzetti Hurley
Bar Counsel
The Florida Bar
4200 George J. Bean Parkway,
Suite 2580
Tampa, Florida 33607
(813)875-9821
Florida Bar No. 164216

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this **Complaint** has been furnished by regular U. S. mail to **The Honorable Thomas D. Hall, Clerk**, the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1925; a true and correct copy by Regular and U.S. Certified Mail No. 7019 2250 0001 4002 7018, Return Receipt Requested, to **Nicholas Francis Mooney, Esq., Respondent**, at his record Bar address of Bromagen & Rathet, P.A., 201 E. Kennedy Boulevard, Suite 500, Tampa, Florida 33602-5824; a copy to **Lisa Buzzetti Hurley, Bar Counsel**, The Florida Bar, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607; and a copy to **Lansing C. Scriven**, Designated Reviewer, at 442 West Kennedy Blvd., Suite 280, Tampa Florida 33606-1464; all this 7th day of April, 2010.



Kenneth Lawrence Marvin
Staff Counsel

NOTICE OF TRIAL COUNSEL

PLEASE TAKE NOTICE that the trial counsel in this matter is Lisa Buzzetti Hurley, Bar Counsel, whose address is The Florida Bar, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.

Kurt D. Mitchell J.D.

From: Nick Mooney [nick.mooney@bromagenlaw.com]
Sent: Wednesday, May 07, 2008 3:48 PM
To: 'Kurt D. Mitchell J.D.'
Cc: 'Mike Siegel'
Subject: Craig v VW

Thanks for the compliment its nice to hear from a 4 year junior lawyer with little or no trial experience nfm

From: Kurt D. Mitchell J.D. [mailto:kmitchell@mblawgroup.com]
Sent: Wednesday, May 07, 2008 3:34 PM
To: 'Nick Mooney'
Subject: RE: Craig v VW

Old Hack:

Your unprofessional and otherwise asinine behavior is not necessary Learn to litigate professionally and these issues will be avoided After all my email was in response to your asinine email insisting on setting a hearing even though there is not enough time Have a nice day

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Florida)
201 S Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425-2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Wednesday, May 07, 2008 3:03 PM
To: 'Kurt D Mitchell J.D.'
Cc: 'William Bromagen'; 'Mike Siegel'
Subject: RE: Craig v VW

Junior

Please do not send me any more of these absurd emails . While I am happy to know that you are also the judge in this case, your continued unprofessional & juvenile behavior is not necessary

nfm

From: Kurt D Mitchell J.D. [mailto:kmitchell@mblawgroup.com]
Sent: Wednesday, May 07, 2008 2:06 PM
To: 'Nick Mooney'
Subject: RE: Craig v. VW

Mr Mooney:

I will file an objection and the motion will not be heard I will also file several other motions I have been meaning to file Have a great day and I know I will be seeing you soon By the way five minutes? That is all you need? Somebody only read head notes to cases and really did not do his homework It would seem to me you would need 15 minutes to attempt to explain away the waiver issue alone, but again that is why I like practicing against the law firm of Bromagen & Rathet You seem to fit in perfectly

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Florida)
201 S Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Wednesday, May 07, 2008 1:10 PM
To: 'Kurt D. Mitchell J.D.'; 'Mike Siegel'
Cc: 'Aldo Bolliger'; 'Tina Harris'
Subject: RE: Craig v. VW

Mr Mitchell,

You are correct, you are not "Noticing the court", we are and we have already done so I do not anticipate needing more than 5 - 10 minutes of total time, and I am sure that Mr Siegel will only need 5 - 10 minutes of total time as well thus, even if you take as long as you think to respond to the simple / straight forward motions, we should have plenty of time If not, then we will need to re-schedule the motions / issues that have not been addressed accordingly

Additionally, as you were previously informed, I am not available on the 20th I have depositions in another claim scheduled all day on the 20th

Thanks see you the 19th

nfm

From: Kurt D Mitchell J.D. [mailto:kmitchell@mblawgroup.com]
Sent: Wednesday, May 07, 2008 12:56 PM
To: 'Nick Mooney'; 'Mike Siegel'
Cc: 'Aldo Bolliger'; 'Tina Harris'
Subject: RE: Craig v. VW

No we are not noticing all of these issues and overwhelming the Court each of the current motions will take the full 30 minutes and if you attempt to notice the matter I will file objections The court has time on the 20th and if you wish to notice the Plaintiff's motion you can do so that day I need 15 minutes to respond to your motion, 15 minutes to respond to Siegel's motion and at least 15 minutes to present the plaintiff's motion thus clearly 1 hour is not enough time

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Florida)
201 S Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Wednesday, May 07, 2008 12:47 PM
To: 'Mike Siegel'; 'Kurt D. Mitchell J.D.'
Cc: 'Aldo Bolliger'; 'Tina Harris'
Subject: Craig v VW

Mike,

Thanks for your professionalism in the setting of your hearing Please be advised that in addition to our Motion for Protective Order Re 5/27/08 Deposition of VW Corporate Representative, we have also noticed the Plaintiff's pending discovery motions / motion for case management conference One hour is plenty of time to handle all of these inter-related issues

NFM

From: Mike Siegel [mailto:Mike@Dalan-Katz.com]
Sent: Wednesday, May 07, 2008 12:15 PM
To: Kurt D. Mitchell J,D
Cc: Aldo Bolliger; Nick Mooney
Subject: RE: Craig v. VW ..and not Crown

The judge's assistant made an additional 30 minutes available so we have an entire hour on the 19th starting at 3 30 She did this when we called to get hrg time for the 20th Therefore we are issuing a notice for our motion to be heard on the 19th after the other motions are heard or in whatever order the judge wants the matters to be heard

From: Kurt D Mitchell J D [mailto:kmitchell@mblawgroup.com]
Sent: Wednesday, May 07, 2008 10:54 AM
To: Mike Siegel
Cc: 'Aldo Bolliger'
Subject: RE: Craig v. VW . and not Crown

No, there is only 30 minutes available and this hearing will likely take that long so there is simply not enough time.

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Florida)
201 S Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Mike Siegel [mailto:Mike@Dalan-Katz.com]
Sent: Wednesday, May 07, 2008 10:47 AM
To: Kurt D. Mitchell J D
Subject: RE: Craig v VW ..and not Crown

Are you willing to have our hearing on the 19th?

From: Kurt D Mitchell J D [mailto:kmitchell@mblawgroup.com]
Sent: Tuesday, May 06, 2008 6:59 PM
To: Mike Siegel
Cc: 'Aldo Bolliger'
Subject: RE: Craig v VW and not Crown

Because of the limited time so if you do not secure the 20th then we will do it on the 27th As for the 20th as of yesterday afternoon the court had the date available so if you act quickly you may be able to secure the date

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Florida)
201 S Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Mike Siegel [mailto:Mike@Dalan-Katz.com]
Sent: Tuesday, May 06, 2008 6:22 PM
To: Kurt D Mitchell J.D.

EXHIBIT A
PAGE 4 OF 5

Cc: Aldo Bolliger

Subject: RE: Craig v VW .and not Crown

I don't know anything about the 20th Why don t we just do them together on the 19th when we are all there already That makes sense to me

From: Kurt D Mitchell J D [mailto:kmitchell@mblawgroup.com]

Sent: Tuesday, May 06, 2008 6:25 PM

To: Mike Siegel

Cc: 'Aldo Bolliger'

Subject: RE: Craig v VW .and not Crown

Well apparently the court has the 20th available which seems to be a more appropriate date than the 27th So why don't you secure that date and notice Crown Audi's motion accordingly

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Florida)
201 S Westland Ave
Tampa FL 33606
813-425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Mike Siegel [mailto:Mike@Dalan-Katz.com]

Sent: Tuesday, May 06, 2008 6:14 PM

To: Kurt D Mitchell J D

Cc: Nick Mooney; Aldo Bolliger; Mary Jo McCombs

Subject: RE: Craig v VW and not Crown

It was VW's motion that was noticed for the 19th I am willing to change our hearing to the same day if this is your way of requesting that Please let me know right away so nothing else gets scheduled Did you receive the recusal order and the copies of the deal file and service files I sent you?

Please fax and/or email the notice so I can see it right away in the event it is different than the previous notice Since I haven't received a return call from you Aldo am I to assume you will not be calling me back?

From: Kurt D Mitchell J D [mailto:kmitchell@mblawgroup.com]

Sent: Tuesday, May 06, 2008 6:00 PM

To: Mike Siegel

Cc: 'Nick Mooney'; Tina.harris@bromagenlaw.com

Subject: RE: Craig v VW .and not Crown

No the hearing is on the 19th so the notice will be going out tomorrow

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Fl-o-da)

Kurt D. Mitchell J.D.

From: Nick Mooney [nick.mooney@bromagenlaw.com]
Sent: Thursday, August 14, 2008 9:48 PM
To: 'Kurt D. Mitchell J.D.'
Cc: tina@bromagenlaw.com; 'Aldo Bolliger'
Subject: RE: Craig v VW

This is the most horrifying email I have ever read – the fact that you are married means that there truly is someone for everyone, even a short / hairless jerk !!! Moreover, the fact that you have pro-created is further proof for the need of forced sterilization !!!

Nicholas F. Mooney, Esquire
Bromagen & Rathet, P.A.
201 E. Kennedy Blvd
Suite 500
Tampa, FL 33602
813/261-3870 Office
813/261-3874 Fax

From: Kurt D. Mitchell J.D. [mailto:kmitchell@mblawgroup.com]
Sent: Wednesday, August 13, 2008 2:55 PM
To: 'Nick Mooney'
Cc: tina@bromagenlaw.com; 'Aldo Bolliger'
Subject: RE: Craig v VW

Yes, Mr. Mooney I am very impressed by your email. It really reflects an attorney who has been practicing high powered law for the past 20 years. As a matter of fact that is the very first impression I got from it. Like I said Mr. Mooney glass houses glass houses. Oh yea, I will get right on calling Patrick Cousins and while I am at it I will just go ahead and quit the practice of law. I mean after all you beat Patrick Cousins in a trial clearly, there is no hope for me. I mean because we both know in law you either win every single case or lose every single case. No brainer right? No such thing as winning and losing your fair share. Does not happen.

Oh and by the way the reason you, Bromagen & Rathet hate me is not because I am a "scum sucking" "loser attorney" but because I am the exact opposite. I am a very competent, hard working attorney who gives my clients vigorous representation and does not get "bullied" by high powered 20 year defense attorneys who practice with form pleadings. Finally, God has blessed me with a great life. I work when I want to, I travel when I want to, I ride my dirt bikes and atvs with my kids when I want to, I ride my motorcycle when I want to, etc. See the secret is obey the bar rules i.e. only take as many cases as you can diligently and competently handle so I can guarantee you I work far less than you. So you keep on "handling" your heavy caseloads and I will go on obeying the bar rules and limiting myself to the number of cases I can diligently and competently handle and living the good life enjoying my kids, wife & toys.

As for the date request; get the dates or choose to ignore the bar's guidelines for professionalism either way the depo will be set, so it does not matter to me. Take it easy do not work too hard.

Kurt D. Mitchell J.D.
licensed in FL, Pa and D.C.

Mitchell & Bolliger PLLC (Florida)
201 S. Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd. Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Tuesday, August 12, 2008 5:10 PM
To: 'Kurt D. Mitchell J.D.'
Cc: tina@bromagenlaw.com; 'Aldo Bolliger'
Subject: RE: Craig v. VW

Hey Junior,

Wow, you are delusional !!!! What kind of drugs are you on ??? I can handle ANYTHING a little punk like you can dish out . remember, I have been doing this for 20+ years and have not had a single heart attack as a prosecutor for 15 years, I have handled case loads in excess of 200 cases, many of which were more important / significant than these little Mag Moss claims that are handled by bottom feeding / scum sucking / loser lawyers like yourself ... I have actually done a jury trial and am looking forward to teaching you a lesson (please call Patrick Cousins he is still hurting from the ass whooping I gave him more than 1 year ago) while I know that you have a NOTHING life, other people do have more important thing to worry about than little Kurtie Boy file what you want - does not matter to me . I will get you MORE dates as I see fit otherwise, go back to your single wide trailer in the dumps of Pennsylvania and get a life !!!

nfm

Nicholas F Mooney, Esquire
Bromagen & Rathet, P A
201 E. Kennedy Blvd
Suite 500
Tampa, FL 33602
813/261-3870 Office
813/261-3874 Fax

From: Kurt D. Mitchell J.D. [mailto:kmitchell@mbtlawgroup.com]
Sent: Tuesday, August 12, 2008 1:57 PM
To: 'Nick Mooney'
Cc: tina@bromagenlaw.com; 'Aldo Bolliger'
Subject: RE: Craig v. VW

Mr Mooney:

It is clear you cannot deal with the pressure of litigating (I am sure your client's are on your ass (let me guess Mr. Kelly does not want to be deposed; Bill is cracking the whip; volume practice has you down) but I really do not care, if you cannot take the heat then get out of the kitchen. I told you on multiple occasions what time frame I was looking to conduct the deposition. Otherwise, how would you know to be checking for dates in late September or early October. So you better get your client under control and learn to pick up a phone and call somebody or we will be doing a lot of motion practice We can do it the easy or we can do the hard way the choice is yours.

Kurt D Mitchell J.D.
licensed in Fl, Pa and D.C

Mitchell & Bolliger PLLC (Florida)
201 S. Westland Ave
Tampa FL 33606
813 425 2824

fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Tuesday, August 12, 2008 11:04 AM
To: 'Kurt D. Mitchell J.D.'
Cc: tina@bromagenlaw.com
Subject: Craig v VW

You make me laugh we provided you dates and you were not available and did not provide us with any other dates I have checked with the witness for other dates in late September / early October as you know I will be out of the office for the next few days to attend a funeral and visit my Dad in the hospital thus, while I know that this is your LIFE and that you have nothing else to do, this is only my JOB My family comes first maybe you need to re-think your priorities we only have a short time on this planet (and yours will likely be even shorter) enjoy life while it lasts

nfm

Nicholas F Mooney, Esquire
Bromagen & Rathet, P A
201 E Kennedy Blvd
Suite 500
Tampa, FL 33602
813/261-3870 Office
813/261-3874 Fax

From: Kurt D. Mitchell J.D [mailto:kmitchell@mblawgroup.com]
Sent: Friday, August 01, 2008 9:44 AM
To: 'Nick Mooney'
Subject: RE: Craig v VW

Cannot, I will be in trial Whiddon v Ford Motor Company

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Florida)
201 S Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Friday, August 01, 2008 8:01 AM
To: 'Kurt D. Mitchell J.D.'

Cc: 'Aldo Bolliger'; tna@bromagenlaw.com
Subject: RE: Craig v VW

How about 9/16 or 9/17 ??? I will check back with him for the first week of October

nfm

Nicholas F Mooney, Esquire
Bromagen & Rathet, P A
201 E Kennedy Blvd
Suite 500
Tampa, FL 33602
813/261-3870 Office
813/261-3874 Fax

From: Kurt D Mitchell J D. [mailto:kmitchell@mblawgroup.com]
Sent: Thursday, July 31, 2008 11:59 AM
To: 'Nick Mooney'
Cc: 'Aldo Bolliger'; tna@bromagenlaw.com
Subject: RE: Craig v VW

Mr Mooney

I would prefer to conduct the deposition in late September or Early October as August is very busy for me and the few dates I have available I wish to leave open to handle events for a case that is going to trial in September To that end I suggest any date during the first week in October to conduct the deposition of Mr Kelly Please advise if you and your client are agreeable

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Florida)
201 S Westland Ave
Tampa Fl 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Thursday, July 31, 2008 10:18 AM
To: 'Kurt D. Mitchell J D'
Cc: 'Aldo Bolliger'; tna@bromagenlaw.com
Subject: Craig v VW

Mr Kelly provided me with dates of 8/19, 8/27 or 8/28 Are those available for you ??? Please advise If not, I will get other dates from him and let you know

nfm

Nicholas F Mooney, Esquire
Bromagen & Rathet, P A

201 E. Kennedy Blvd
Suite 500
Tampa, FL 33602
813/261-3870 Office
813/261-3874 Fax

From: Kurt D Mitchell J.D. [mailto:kmitchell@mblawgroup.com]
Sent: Wednesday, July 30, 2008 4:36 PM
To: 'Nick Mooney'
Cc: 'Aldo Bolliger'
Subject: RE: Craig v. VW

Mr Mooney:

I believe I stated I would move the depo of Mr Kelly to a date in late September or early October and withdraw the notice of Mr Fischer. Further, I stated we could cross the bridge of Mr Fischer's deposition when and if I determined if I needed it. As the Florida rules are very broad providing for the deposition of any person, I do not wish to place myself in a position of compelling a deposition if I determine I need it just to take a deposition of an individual I am entitled to. Please, advise if VW is agreeable to holding Mr Kelly's deposition in late September or early October and crossing the bridge with Mr Fischer's deposition when and if we need to. Thank you for your time and attention to this matter.

Kurt D Mitchell J D
licensed in Fl, Pa and D C

Mitchell & Bolliger PLLC (Florida)
201 S Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd Ste D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Wednesday, July 30, 2008 3:17 PM
To: 'Kurt D. Mitchell J.D.'
Cc: 'Aldo Bolliger'; tina@bromagenlaw.com
Subject: Craig v. VW

Mr Mitchell,

Per our discussions with respect to the depositions of Brian Kelly & Reinhard Fischer, may this email serve to outline a good faith effort to resolve the issues without court intervention. Accordingly, VWoA hereby agrees to produce Brian Kelly for deposition in Virginia at a date & time agreed to by the parties (I will get dates from Mr. Kelly. I think you suggested late September or early October 2008). Based upon the production of Mr Kelly for deposition, Plaintiff agrees that it will not seek to take the deposition of Reinhard Fischer, unless the Court enters an Order requiring the deposition of Mr Fischer. Please advise if this is acceptable - let me know if any problems or concerns.

nfm

Nicholas F Mooney, Esquire
Bromagen & Rathet, P A
201 E Kennedy Blvd

Kurt D. Mitchell J.D.

From: Kurt D. Mitchell J.D. [kmitchell@mblawgroup.com]
Sent: Friday, September 19, 2008 11:45 AM
To: 'Nick Mooney'
Cc: 'Tina Harris'; 'William Bromagen'; 'abolliger@mblawgroup.com'
Subject: RE: Craig v. VW

I am sorry you have sent this email this email to the wrong recipient. I never heard of the name "Sparky" please check your addressee and resend for everybody's convenience I have deleted the email communication from my computer. If this email was intended for me then I suggest you use my proper name when addressing communications to me. Thank you for your time and attention to this matter and have a nice day.

Kurt D. Mitchell J.D.
licensed in Fl, Pa and D.C.

Mitchell & Bolliger PLLC (Florida)
201 S. Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd. Ste. D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Friday, September 19, 2008 9:55 AM
To: kmitchell@mblawgroup.com
Cc: 'Tina Harris'; 'William Bromagen'; abolliger@mblawgroup.com
Subject: RE: Craig v. VW

No, Sparky, that is not what I am telling you He will voluntarily appear -- he is just not available on that date If you attempt to serve him, we will simply move to quash the subpoena ... since you "fancy yourself as chess player" perhaps you can figure out the "two moves ahead" -- reschedule the motion to a date he is available and then you can present your "motions" to the court

See ya soon !!!

nfm

Nicholas F. Mooney, Esquire
Bromagen & Rathet, P.A.
201 E. Kennedy Blvd.
Suite 500
Tampa, FL 33602
813/261-3870 Office
813/261-3874 Fax

From: Kurt D. Mitchell J.D. [mailto:kmitchell@mblawgroup.com]
Sent: Friday, September 19, 2008 8:44 AM
To: 'Nick Mooney'

EXHIBIT C
PAGE 1 OF 2

Cc: 'Tina Harris'; 'William Bromagen'; abolliger@mblawgroup.com
Subject: RE: Craig v. VW

Well that is when the hearing is, so what you are telling me is that he will not voluntarily appear. So I will serve a subpoena on him and he will have no choice but to make himself available on 10/2 or face a plaintiff's motion for writ of bodily attachment. Thank you for your time and attention to this matter.

Kurt D. Mitchell J.D.
licensed in Fl, Pa and D.C.

Mitchell & Bolliger PLLC (Florida)
201 S. Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd. Ste. D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Friday, September 19, 2008 6:30 AM
To: kmitchell@mblawgroup.com
Cc: 'Tina Harris'; 'William Bromagen'
Subject: Craig v. VW

Be advised that Joe Houseman will voluntarily appear for a hearing, HOWEVER, he is not available on 10/2.

nfm

Nicholas F. Mooney, Esquire
Bromagen & Rathet, P.A.
201 E. Kennedy Blvd.
Suite 500
Tampa, FL 33602
813/261-3870 Office
813/261-3874 Fax

Nick Mooney

From: Kurt D. Mitchell J.D. [kmitchell@mblawgroup.com]
Sent: Thursday, October 09, 2008 2:59 PM
To: 'Nick Mooney', 'Tina Harris'; 'Jessica Affortunato'
Cc: nick@bromagenlaw.com; lroberts@mblawgroup.com; 'Aldo Bolliger'
Subject: RE: BROWNELL V VW

Three things Corky:

- (1) While I am sorry to hear about your disabled child; that sort of thing is to be expected when a retard reproduces, it is a crap shoot sometimes retards can produce normal kids, sometimes they produce F**** up kids. Do not hate me, hate your genetics. However, I would look at the bright side at least you definitely know the kid is yours.
- (2) You are confusing realities again the retard love story you describe taking place in a pinto and trailer is your story. You remember the other lifetime movie about your life: "Special Love" the Corky and Marie story; a heartwarming tale of a retard fighting for his love, children, pinto and trailer and hoping to prove to the world that a retard can live a normal life (well kinda).
- (3) Finally, I am done communicating with you; your language skills, wit and overall skill level is at a level my nine-year could successfully combat; so for me it is like taking candy from well a retard and I am now bored. So run along and resume your normal activity of attempting to put a square peg into a round hole and come back when science progresses to a level that it can successfully add 50, 75 or 100 points to your I.Q.

Kurt D. Mitchell J.D.
 licensed in Fl, Pa and D.C.

Mitchell & Bolliger PLLC (Florida)
 201 S. Westland Ave
 Tampa FL 33606
 813 425 2824
 fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
 186 Blaney Rd. Ste. D
 Kittanning PA 16201
 724 954 3087
 fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Thursday, October 09, 2008 1:39 PM
To: kmitchell@mblawgroup.com; 'Tina Harris'; 'Jessica Affortunato'
Cc: nick@bromagenlaw.com; lroberts@mblawgroup.com; 'Aldo Bolliger'
Subject: RE: BROWNELL V VW

Thanks Sparky ... more evidence of the jerk you are the fact that I have a son with a birth defect really shows what type of a weak minded, coward you truly are I am sure your parents, if you even know who they are, are very proud of the development of their sperm cells if you need to find the indications of "retardism" you seek, I suggest that you look into a mirror, then look at your wife - she has to be a retard to marry such a loser like you Then check your children (if they are even yours Better check the garbage man that comes by your trailer to make sure they don't look like him) Unfortunately, it looks the better part of you was the sperm cells left on the back seat of the Ford Pinto ... too bad they didn't have a rear end impact / explosion before you were born that would have made the world a better place

11/21/2008

EXHIBIT D
 PAGE 1 OF 4

See you soon If you don't wimp out again !!!

Nicholas F. Mooney, Esquire
Bromagen & Rathel, P.A.
201 E. Kennedy Blvd.
Suite 500
Tampa, FL 33602
813/261-3870 Office
813/261-3874 Fax

From: Kurt D. Mitchell J.D. [mailto:kmitchell@mblawgroup.com]
Sent: Thursday, October 09, 2008 11:55 AM
To: 'Nick Mooney'; 'Tina Harris'; 'Jessica Affortunato'
Cc: nick@bromagenlaw.com; lroberts@mblawgroup.com; 'Aldo Bolliger'
Subject: RE: BROWNELL V VW

You should already have my response a notice of hearing for November 13, 2008. Moreover, anticipating dilatory conduct on your part; you know I am sure you will come up with something like my 4 cousin twice removed is having an ultra -sound that day and needs my emotional support. I will be filing a motion and setting for UMC to enforce the hearing date. Ahh, yes the joys of working with a lying, dilatory mentally handicapped person. By the way, I do not think I deserve the jerk comment, I was actually on the internet trying to find out what type of retardism you have by checking your symptoms e.g. closely spaced eyes, dull blank stare, bulbous head, lying and inability to tell fiction from reality so I could donate money for research for a cure. However, apparently those symptoms are indicative of numerous types of retardism and so my search was unsuccessful. Have a great day Corky I mean; Mr. Mooney.

Kurt D. Mitchell J.D.
licensed in Fl, Pa and D.C.

Mitchell & Bolliger PLLC (Florida)
201 S. Westland Ave
Tampa FL 33606
813 425 2824
fax 813 425 2832

Mitchell & Bolliger PLLC (Pennsylvania)
186 Blaney Rd. Ste. D
Kittanning PA 16201
724 954 3087
fax 724 954 3107

From: Nick Mooney [mailto:nick.mooney@bromagenlaw.com]
Sent: Thursday, October 09, 2008 11:41 AM
To: 'Tina Harris'; 'Jessica Affortunato'
Cc: nick@bromagenlaw.com; 'Kurt D. Mitchell J.D.'
Subject: RE: BROWNELL V VW

Ahhhh yes, the continuing saga of scheduling with Sparkymy expert and my schedule are not open on those dates in November If 12/16 or 12/17 don't work for you, then get some dates in January and let me know ... Consistent with Sparky's sharp practices, confirm availability by 12:00 noon ... if we don't hear from you, we will rely upon your lack of response as being available ...

nfm

Nicholas F. Mooney, Esquire

11/21/2008

EXHIBIT ^D
PAGE 2 OF 4

Bromagen & Rathet, P.A.
201 E. Kennedy Blvd.
Suite 500
Tampa, FL 33602
813/261-3870 Office
813/261-3874 Fax

From: Tina Harris [mailto:tina.harris@bromagenlaw.com]
Sent: Thursday, October 09, 2008 11:32 AM
To: 'Jessica Affortunato'
Cc: nick@bromagenlaw.com; 'Kurt D. Mitchell J.D.'
Subject: RE: BROWNELL V VW

They may be available on JACS, but, as I stated previously, they are NOT available to Mr. Mooney or our Expert.

Please advise as to your availability for December 16 or December 17 so that we can get alternative dates in January, 2009 if necessary.

Tina Marie Harris, FRP
Paralegal to Nicholas F. Mooney, Esquire
BROMAGEN & RATHET, P.A.
201 E. Kennedy Blvd.
Suite 500
Tampa, FL 33602
813/261-3870 office
813/261-3874 fax
tina@bromagenlaw.com

From: Jessica Affortunato [mailto:jaffortunato@mblawgroup.com]
Sent: Thursday, October 09, 2008 11:24 AM
To: 'Tina Harris'
Subject: RE: BROWNELL V VW

The dates that I gave you are all available on the JACS. Please pick one by noon today.

Jessica Affortunato
Legal Assistant

Mitchell & Bolliger, PLLC
201 S. Westland Ave
Tampa, FL 33606
FL OFFICE - 813-425-2824
FL FAX - 813-425-2832

Mitchell & Bolliger, PLLC
186 Blaney Road
Suite D
Kittanning, PA 16201
PA OFFICE - 724-954-3087
PA FAX - 724-954-3107

From: Tina Harris [mailto:tina.harris@bromagenlaw.com]
Sent: Thursday, October 09, 2008 10:48 AM
To: 'Jessica Affortunato'
Subject: RE: BROWNELL V VW

Unfortunately, those dates are already booked. I did send Mr. Mitchell alternative dates earlier today for two

11/21/2008

EXHIBIT D
PAGE 3 OF 4

December dates. Please check those and advise.

Tina Marie Harris, FRP
Paralegal to Nicholas F. Mooney, Esquire
BROMAGEN & RATHET, P.A.
201 E. Kennedy Blvd.
Suite 500
Tampa, FL 33602
813/261-3870 office
813/261-3874 fax
tina@bromagenlaw.com

From: Jessica Affortunato [mailto:jaffortunato@mblawgroup.com]
Sent: Thursday, October 09, 2008 10:38 AM
To: tina@bromagenlaw.com
Subject: BROWNELL V VW

Ms. Harris

We would like to schedule a hearing for the continuance for attorney fees and Judge Nicholas has these dates available on his calendar for one hour and 30 minutes:

November 13
November 24
November 26

Please respond by noon today or we will be taking the first available date. Thank you for your time and attention to this matter.

Jessica Affortunato
Legal Assistant

Mitchell & Bolliger, PLLC
201 S. Westland Ave
Tampa, FL 33606
FL OFFICE - 813-425-2824
FL FAX - 813-425-2832

Mitchell & Bolliger, PLLC
186 Blaney Road
Suite D
Kittanning, PA 16201
PA OFFICE - 724-954-3087
PA FAX - 724-954-3107

11/21/2008

EXHIBIT D
PAGE 4 OF 4

**CERTIFIED
COPY**

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

BRETT CRAIG, x
:
Plaintiff, :
vs. : Civil Action No.
:
VOLKSWAGEN OF AMERICA, INC., : 07-7823-CI7
:
Defendant. x

Herndon, Virginia

Friday, December 19, 2008

DEPOSITION OF:

BRIAN D. KELLY,

a witness, was called for examination by counsel for
the plaintiff, pursuant to Notice and agreement of
the parties as to time and date, beginning at
approximately 10:05 o'clock, a.m.



Todd Olivas & Associates
COURT REPORTING AGENCY

41690 Enterprise Circle North, Suite 200CC
Temecula, CA 92590

(888) 566-0253 • (951) 848-0789 fax • info@ToddOlivas.com • www.ToddOlivas.com

EXHIBIT
PAGE 1 of 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

APPEARANCE OF COUNSEL:

For the Plaintiff:

MITCHELL & BOLLINGER, ESQUIRES
BY: KURT D. MITCHELL, ESQUIRE
201 South Westland Avenue
Tampa, Florida 33606
(813) 425-2824
E-mail: Kmitchell@mblawgroup.com

For the Defendant:

BROMAGEN & RATHET, ESQUIRES
BY: NICHOLAS F. MOONEY, ESQUIRE
201 East Kennedy Boulevard, Suite 500
Tampa, Florida 33602
(813) 261-3870
E-mail: Nick.mooney@bromagenlaw.com

- 0 -
I-N-D-E-X

Witness: Page:

Brian D. Kelly
Examination by Mr. Mitchell 3

- 0 -

Exhibits: (INCLUDED IN TRANSCRIPT) Page:

Plaintiff's Exhibit Number 1 for
Identification to the Kelly deposition
(Plaintiff's First Set of Interrogatories) 3

- 0 -

EXHIBIT E
PAGE 2 OF 5

1 THE WITNESS: In most basic terms, Audi of
2 America makes money based on the sale of vehicles to
3 dealers and the sale of parts to dealers.

4 BY MR. MITCHELL:

5 Q. To dealers?

6 A. Yes.

7 Q. That's not accurate.

8 MR. MOONEY: Okay, Mr. Mitchell.

9 MR. MITCHELL: Mr. Mooney, if you have an
10 objection, make it. I'm not going to listen to your
11 long diatribes today. I'm not in the mood for it.
12 Make your objection.

13 MR. MOONEY: You can choose to listen, if
14 you'd like, but when you sit there and say that's not
15 accurate, you're accusing the witness of lying.

16 MR. MITCHELL: I'm allowed to question his
17 veracity. That's what it's called,
18 cross-examination.

19 MR. MOONEY: No. Actually, Mr. Mitchell,
20 you noticed the deposition, so it's your direct
21 examination --

22 MR. MITCHELL: He's a hostile witness.

EXHIBIT E
PAGE 3 OF 5

1 MR. MOONEY: When has he been hostile?

2 The only person who has been hostile is you.

3 MR. MITCHELL: He's here testifying on
4 behalf of his employer.

5 MR. MOONEY: No. He's here in response to
6 your request for a deposition of this witness as an
7 employee.

8 MR. MITCHELL: Mr. Mooney, make your
9 objection, or I'm going to shut off the deposition
10 and we can all go down to Florida and we'll redo it
11 there, because I'm not going to deal with your
12 behavior, your inappropriate behavior.

13 MR. MOONEY: Mr. Mitchell, you can do
14 whatever you like for as long as you like and as long
15 as you have your license. I don't care. You do what
16 you want. You do not sit there and look at this man,
17 a professional, and say that's just not true.

18 MR. MITCHELL: I'm allowed to test his
19 veracity.

20 MR. MOONEY: No. You're not allowed to
21 accuse somebody of lying to you.

22 MR. MITCHELL: I'm not?

EXHIBIT E
PAGE 4 OF 5

1 MR. MOONEY: No, you're not.

2 MR. MITCHELL: Okay. Whatever.

3 MR. MOONEY: So you can ask a question,
4 but don't sit there and argue with the gentleman.

5 MR. MITCHELL: That's a 20-year attorney,
6 a 20-year attorney.

7 MR. MOONEY: And the point would be,
8 Junior?

9 MR. MITCHELL: Second time you called me
10 Junior on the record in a deposition.

11 MR. MOONEY: No problem. Like I care.

12 MR. MITCHELL: No problem. Like you care?

13 MR. MOONEY: No problem. Just like you
14 calling my special-needs child a retard, Junior, so
15 you go right ahead.

16 MR. MITCHELL: Third time, Mr. Mooney, on
17 the record at a deposition.

18 MR. MOONEY: Mr. Mitchell, do you have a
19 question? Ask a question. If you don't have a
20 question, the deposition is done. I don't care.

21 MR. MITCHELL: Okay.

22 BY MR. MITCHELL:

EXHIBIT E
PAGE 5 OF 5