

Notes on Gwen's depositions

In these notes, the first depo is referred to as depo 1 while the second depo, the one read into the trial record is referred to as depo or deposition.

First Deposition on October 9, 2016

She states that she did not know John or have knowledge of him before working at ASTCA but in the second depo, she says she knew of difficulties working with John.

She says there were negotiations over the terms of the MOU ASTCA and Newton but declines to say she was present at all those negotiations. There were no other negotiations. When asked what is meant by MOU she replies, "This is an understanding between the parties".

In the first deposition she says she was not responsible for the General Information section but in the second deposition, she says the General Information section would typically be approved by counsel.

On page 16, line 17, she says "contract agreement" but she catches herself and clarifies by saying "MOU".

She tries to say that she had nothing to do with the directory production but on page 21, lines 10-14 she says she was to follow up as needed on the work Newton was doing. On lines 20-25, she states very clearly that she would follow up with Newton on the status and to see if there was anything Newton needed and says he would contact me in terms of anything he needed.

On page 22 she gets very evasive when asked if she recalls any problems with the contracts prior to the MOU. She makes no mention of having difficulties working with Newton. Then she says some very evasive things like the emails attached to the complaint were redacted which is untrue and she could not compare to what she had on file.

Throughout this deposition, Gwen talks about attorney-client privilege and resorts to falling behind that privilege several times for issues not relevant to the privilege.

Second Deposition on December 23, 2022

The deposition was scheduled two times prior to 12-23 but Gwen postponed her appearance on both of these occasions and only finally agreed to sit for the deposition at the latest possible date prior to the trial. This deposition was taken on December 23, 2022, transcripts for the deposition did not become available to the Plaintiff's attorney until January 9, 2023, the evening before the trial. This seemed to be a deliberate attempt to prevent a proper review of the transcripts by Plaintiff prior to the trial.

The deposition was read into the trial records on the first day of the trial. The deposition starts with a statement by the attorney for the Defendant concerning the matter of attorney-client privileges wherein he waives all such privileges but reserves the right to assert this privilege when he determines there is a need to do so. This is in reference to the first deposition wherein Gwen invoked attorney-client privilege several times.

Gwen confirms her employment as ASTCA's in-house legal counsel from April of 2004 through December of 2013 (depo pg 7, lines 15-16). She says ASTCA did not have an attorney to assist with FCC filings and that she was the only attorney (depo pg 8, lines 2-5).

When asked if there were any other matters that she handled at ASTCA, other than dealing with legal matters, she answered NO. (depo pg 8, line 19) This answer contradicts her early deposition in which she testified that she was to follow up as needed on the work Newton was doing on the directories. (depo 1 pg 31, lines 10-25)

Her comments regarding contacts with Newton made it seem as though she had very little contact with Newton between 2004 and 2010. Then she says Newton was proposing to do the phonebooks for ASTCA again that JD called her to a meeting and that she thought JD was working in marketing. JD was, in fact, working out of her office area and was assigned to work on the billing system, which was the "ASTCA customer service records" referred to in the MOU. (ex 1, 1) The billing system is the source of the listings needed for the telephone directories.

From page 12, lines 15-25, and page 13, lines 1-3 of the 12-23-22 deposition, Gwen says "Well, to be quite frank, I was concerned about negotiating with Mr. Newton because I knew that he had been very difficult to deal with in the past from '04 to '08, the years that I had been there.

I worked as the spokesperson for the contract portion of the phone books so when he was brought back into the fold for discussions on another phone book, I recall at that meeting he brought with him an agreement that he had drafted, and I remember either I had looked at it prior to the meeting or I was looking at it as we were meeting, but I specifically recall making clear to him what ASTCA's capabilities were so that he would be sure to keep his expectations at base with respect to what ASTCA was capable of providing for the phone books."

Two important things about the above testimony are that 1) This is the first mention of Newton being difficult to work with and 2) she now says she was the "spokesperson for the contract portion of the phone books", whatever that is. This is a firm admission that she did more than write the contract and that she was, in essence, what is universally known as the "Contracting Officer" responsible for overseeing the contract that she wrote.

She goes on to say that "...he would always complain about the quality of the listings and the timeliness of listings and that type of thing".

This is a hollow accusation since she gives no reference to actual complaints or to whom Newton was complaining. Newton only worked with Margaret Willis during the years 2000 through 2008 and Margaret testified at trial that she had no problems working with Newton.

She also says "**ASTCA didn't want anything from the agreement except to have its listings published** and so at the same time, I wanted to make sure that he ... that **this was a mutual MOU or understanding** and that we would therefore provide only what we could, only what was -- **the listings as they were in the system that ASTCA had at the time.**"

Here she confirms that there was a mutual understanding and that ASTCA would provide the listings as they were in the system. But, in the end, the court decided that there was no mutual understanding. And, after all, what other listings could there possibly be except those in the ASTCA system? Furthermore, Newton never asked for anything except what was in the ASTCA system.

Now Counsel goes through several emails in which Gwen was involved and asks if she recognizes each of them. These emails can be found [here](#). It turns out that she does not remember most of them. She does remember email exhibit 3 in which she instructs us to use her new ASTCA address.

On page 25, lines 7-12, Gwen says, "They would often "CC" me with ongoing projects, but again, unless an issue came up, I would not necessarily pay much heed to an ongoing project when my role had been

the completion of a contract and now it was handed over to ASTCA staff and the contractor to perform that particular contract.”

The deposition did not go well during the viewing of the emails. Exhibit numbers are mixed up and/or not used and questions and answers are not specific enough to make a point. The emails were not made a part of the trial during the reading of the deposition. I had offered my counsel suggestions on questioning and included all the emails I thought were important to include in the deposition. I also gave my opinion on how the syntax of the questioning should be handled. [You can see my suggestions here.](#)

On page 43, Gwen vaguely described how Aleki Sene would have had to give the go-ahead before she would start the contract. She later answers a question on this subject by simply saying “Well, we [he] did eventually sign it.

On page 45, lines 3-14, there is a discussion about the General Information section of the telephone directory. Gwen is again very vague and not able to remember details, but she does confirm that the General Information section is typically reviewed by legal counsel. Here is the exact Q and A.

A. The only portion of the phone book that I would have reviewed and I had reviewed that portion for the '04 to '08 phone book would have been the general information, a narrative in the front of the phone book.

Q. And what was that narrative, what can you explain that or tell us what that is?

A. I believe it's called the "general information".

Q. Okay.

A. I think that's what it's called in the phone book so if there was a book representing published from this 2010 Contract, typically legal counsel would have reviewed that general information.

The fact is that Gwen was very protective of the General Information section and insisted on writing, formatting, and reviewing it for all directories until the directories covered by the 2010 MOU. Her meticulous handling of the General Information section was the cause of some long delays in all directory publications. She had at least 2 years prior to leaving ASTCA to make sure the section was ready for the 2010 publication, but she did not.

Questions and answers relating to Newton’s proposed contract, [Ex 34](#). On pages 63-67 of Gwen’s Deposition, it is very clear that only 2 items out of 5 were objected to. This means that Gwen agreed with 60% of Newton’s proposed terms.

The Court says, in footnote 3 of the Court’s denial of Newton’s Motion for Reconsideration, “³ We opted to accept the version of facts as given by ASTCA's in-house counsel Gwen Tauiiili-Langkilde's testimony, which effectively showed the MOU to embody a very deliberate refutation or rejection of Newton's detailed proposal of ASTCA's obligations as outlined in Plaintiff's Exhibit 34.

The term “version of facts” is an absurd statement. Facts are facts. There can be no version of facts! And Gwen’s deposition contained some serious obfuscation of the facts. And the Court has fallen for her obfuscations on more than one occasion.

Here is the relevant testimony as it appears in the record, questioned by counsel for the defendant:

The below testimony is about Gwen’s desire to revise the old contract instead of creating a new contract. Evidence of that can be seen at Ex 35, cert doc 5. Although the reference to “incorporates what you’ve set out below” is not clear, it is important to note that this email was not sent to Newton.

Page 62 Re Exhibit 33

- 1 Q. And sitting here today and having you look at
2 this document, do you recognize it?
3 A. I don't recognize it.
4 Q. No? Okay.
5 A. But it says it's a "Format to the Contract, but
6 I don't recall though as it says it's a draft so it must
7 be something that I had drafted. I'm not sure.
8 Q. And the date here and just in case it refreshes
9 your recollection at all is August of 2010

Below is questioning regarding the Ex 34, which contained Newton's proposed contract. Here, Gwen again obfuscates the meaning of Newton's request for a count of listings. Gwen marked the proposed agreement with "no" on two of the five items Newton wanted to appear in the new contract. Gwen did not completely reject Newton's proposed contract, rather she rejected only 40% of the proposal. The Court said in footnote 3 of the Order Denying Motion for New Trial the following:

³ We opted to accept the version of facts as given by ASTCA's in-house counsel Gwen Tauiliili-Langkilde's testimony, which effectively showed the MOU to embody a very deliberate refutation or rejection of Newton's detailed proposal of ASTCA's obligations as outlined in Plaintiff's Exhibit 34.

The Court also misunderstood Gwen's testimony and wrote in their Opinion and Order

"Newton wrote a draft contract outlining the terms and responsibilities he believed the parties should have under the new agreement. See Exhibit 34. Two of the proposed terms were for ASTCA to (1) provide him subscriber listings accurate to within plus-or-minus ten (10) percent, and (2) have a count of the subscriber listings announced to him no later than 180 days before the projected publication date. Id."

The Court made a serious error in the above remarks. Newton has clarified this misconception of the wording of his proposal on several occasions, only to be ignored. No place in his proposal does Newton ask for any accuracy of the listings. He is only asking for a semi-accurate count of the listings to facilitate planning because the number of telephone books is tied to the number of listings – i.e., each listing is entitled to one book.

Then counsel for ASTCA again misquotes Newton's proposal as shown on page 65 below. He says "ASTCA will announce its listings within plus or minus ten percent accuracy". The actual document reads "ASTCA shall announce to PPC a count of all listings." There is a big difference between "announce its listings" and "a count of all listings". This difference has caused completely different outcomes for this case than would have been if Newton's proposal had been quoted correctly.

Page 64

- 16 A. Yes, Section A.
17 Q. Okay, and I see that you - - are these your notes
18 on this side on this document?
19 A. Yes.
20 Q. And do they indicate your notes reflecting your
21 concerns that you just referenced?
22 A. Yes, and I shared those concerns with Newton at
23 this meeting and I showed him what we could agree to and
24 what we couldn't agree to.

25 Q. So yes, here in Section 1 of Attachment A that (continued below)

Page 65

1 ASTCA will announce its listings within plus or minus
2 ten percent accuracy no later than 180 days prior to
3 targeting publication date and you've marked that on
4 here what appears to be your notes; can you elaborate on
5 what you meant by those notations?
6 A. Well, specifically that and I explained this to
7 Newton that we would not be able to agree to a specific
8 accuracy number; what ASTCA would be able to provide was
9 what ASTCA had in its data base.

Side Note: All previous contracts had this accuracy requirement: "The preliminary draft must contain at least 95% of the listings for these sections, and the content and form of the listings must be at least 95% accurate.

So, now Gwen is saying that ASTCA cannot agree to a specific accuracy number, but what ASTCA would be able to provide was what ASTCA had in its database. But the real problem here is that Newton is not asking for an accuracy of listings, rather he is clearly asking only for a count of listings to facilitate planning of the size and number of copies required for future telephone directories. Getting a count of listings should not take more than a few minutes because any report run on their database will give a summary of the report including the number of listings as exemplified at the bottom of the file sent to Newton by Hall, namely '[terdd02.03001](#)'.

Once again, the Court has fallen for Gwen's deliberate obfuscation of the meaning of Newton's proposal. The obfuscation is deliberate because the wording in [Ex 34](#) is very clear and deliberate. There can be no misunderstanding of Newton's proposed request for a count by any reasonable person. The Court has made a serious error and has shown prejudice toward Newton in their faulty interpretation of Gwen's obfuscation.

Furthermore, Newton's proposed contract was never enacted, and as such anything raised in that proposal is irrelevant. The only thing that is relevant is the MOU, which was fully prepared by ASTCA and signed by both ASTCA and Newton, projecting mutual assent. And it should be noted that Gwen did not explain her alternative wording. Newton only became aware of her "whatever was in ASTCA systems" concept when he received her draft of the MOU. But Newton was receptive to the "whatever was in ASTCA systems" concept because it meant that ASTCA would make available everything in their systems.

Page 65

10 Q. Understood.
11 And then under this next section, it appears to
12 discuss the formatting of listings; can you elaborate on
13 your notations here on the left that I'm circling with
14 my cursor regarding Section 2 of Attachment A?
15 A. So that's my handwriting on the left and that
16 particular provision was okay and that's what I noted
17 next to Number 2.
18 Q. Okay. So in your view is that ASTCA could
19 provide listings in CDS or MS Excel format?
20 A. Yes. And that, again, would have been after
21 review with the technical people, which would be J.D.,

22 who was under the supervision of Alex Sene Jr., and with
23 that okay, we would have been okay with that provision
24 and I would have -- that notation was my notation that
25 ASTCA was okay with it and that was related to

Page 66

1 Mr. Newton at this meeting.
2 a. Okay. And then there's another notation down
3 here in paragraph 4 of Attachment A and you have
4 underlined "Delivered" -- a requirement that books held
5 on records be "delivered directly to all telephone
6 subscribers at their home and offices"; can you
7 elaborate on your underline there in your notation down
8 on the left?
9 A. If I recall the way the books have been
10 delivered previously have been that they would be
11 delivered upon the subscriber coming to either the
12 warehouse at Tafuna or the customer service office in
13 Fagatogo. At that time I believe we may have just
14 opened Tafuna so I think we're talking primarily about
15 Fagatogo.
16 He wanted to change that to make it ASTCA's
17 responsibility to deliver telephone books to people at
18 their homes, and so that was my notation saying that we
19 couldn't -- we didn't agree to this provision and that
20 would have been related to him at this meeting.
21 a. Okay. And in Section 5 here, it says, and I'll
22 just read it here, "ASTCA shall verify the accuracy of
23 all government listings each year and organize the
24 listings by department"; did you have any comments on
25 those or discussions with Newton about that requirement?

Page 67

1 A. I don't believe so and I don't have any specific
2 notations on that.
3 Q. Okay. And -- well, strike that.
4 Okay, but this was -- so just to summarize, this
5 was the proposal that Newton provided at the meeting and
6 it was not ever executed or put into effect, correct?
7 A. Whether he provided it at the meeting or prior
8 to the meeting, I'm not really sure. I don't recall;
9 but yes, it was never executed.

The above testimony is very interesting because there is much time wasted analyzing Newton's proposed elements of a contract, none of which, according to the above testimony, was ever executed. However, Gwen did confirm that ASTCA would provide formatted listings and that it would provide accurate and organized government listings.

Page 67

20 Q. Okay, so can you tell me how may this section
21 reflect your concerns in your discussions with
22 Mr. Newton at the September meeting regarding his
23 proposal?

24 A. Well, in that first paragraph -- well, this
25 paragraph 1 describes ASTCA's responsibilities and I

Page 68

1 specifically added a line which to the extent available
2 at ASTCA's customer service with our records, ASTCA
3 would provide, you know listings, subscriber listings.
4 And so that was to alleviate any dispute as to what John
5 Newton would be entitle to and what ASTCA would be
6 responsible for. Basically that he would only get or he
7 would get whatever data we have in our listings at the
8 time.

9 Q. And as compared to the [Agreement](#) that was in
10 effect when you first started at ASTCA for the
11 directories from approximately 2004 to 2008, although
12 I'm not sure that's exactly the time period, how did
13 this compare in terms of meeting the requirements under
14 that contract?

15 A. There was no specific accuracy requirement.
16 Basically what he would get is what we would give him
17 and whatever we had in our records at the time.

18 Q. Okay. And then in terms of the timing provision
19 of listings, does this speak to that at all?

20 A. I don't recall there being a timing requirement.
21 There may be a timing requirement for the agreement
22 itself as towards the end. I think it was a five-year
23 M.O.U., but I don't recall having -- there being a
24 specific timing requirement.

25 Q. And just to clarify, I mean the timing

Page 69

1 requirement in terms of when ASTCA would specifically
2 provide listings to Newton for production of telephone
3 directories; does this provision speak to that at all?

4 A. No, there's no timing requirement.

5 Q. And in fact does it, does that provision here
6 upon mutually agreed upon by the parties, is that
7 something that you added to address that issue?

8 A. Yes.

9 Q. And in terms of formatting of listings, does
10 this provision have anything to say about formatting?

11 A. I don't see a provision of -- well, other than
12 the digital format either CSV or Excel.

13 Q. But as compared to the prior agreement that was
14 in effect when you first started at ASTCA, how did this
15 compare?
16 A. The first agreement required that we provide the
17 listings as they would be -- as it would appear in the
18 telephone book and that removed that requirement. This
19 new language removed that requirement.

The above testimony goes into ASTCA Responsibilities as specified in the MOU and compares the MOU with Newton's proposal as well as with previous contracts between ASTCA and Newton.

At the beginning of the above testimony, Gwen says, "I specifically added a line which to the extent available at ASTCA's customer service with our records." This is a truly absurd provision because 1) it clearly means Newton is entitled to everything in ASTCA customer service records, and 2) whatever other records could there possibly be?

Then, when asked about accuracy agreements in previous contracts, Gwen says "There was no specific accuracy requirement." This statement by Gwen is just not true and she should have known that because, during the years 2004-2008, Gwen stated that she was assigned to oversee Newton. The truthful answer to this question can be found [here](#), specifically "A preliminary draft of the Information Pages, White Pages, Cellular Subscribers, and Government sections of each Telephone Directory shall be submitted to CONTRACTOR no later than ninety (90) days before the completion date specified in the applicable Notice To Proceed. The preliminary draft must contain at least 95% of the listings for these sections, and the content and form of the listings must be at least 95% accurate."

Referring again to the [prior contract](#), Gwen would lead the reader here to believe that the prior contract had no formatting requirements. In fact, this is what the prior contract said "ASTCA will provide all the listings for each Telephone Directory, and said listings must be formatted as they are to appear in each Telephone Directory. Bold listings will be the basis for inclusion in the Yellow Pages section." Gwen's answer to this question is another example of her obfuscation of the facts.

Page 70

4 Q. Fair enough.
5 In this last paragraph specifically, if you
6 could please take a moment just to read that?
7 A. Yes.
8 Q. And does this make Mr. Newton responsible for
9 the composition of the actual pages of the telephone
10 directory?
11 A. Yes. And that was something that was understood
12 from prior agreements with Mr. Newton that he would
13 basically be responsible for compiling the directory
14 pages.

This is important testimony because it might lead the Court to believe that the formatting of listings and composition of the actual pages is one and the same. The fact is that whereas formatting of the listings gives the listings their basic format, which is dictated by ASTCA, the composition of the pages is where the formatted listings become part of the pages of the directory. The composition of pages is a very complex function handled

by very sophisticated software used by Newton. It is clear from these questions and answers that the people making these statements simply do not understand what they are talking about.

On page 72, there was a question about the General Information section. Gwen was asked if JD was responsible for that, and Gwen answered in the affirmative. This is contrary to her earlier testimony that the General Information section needed to be approved by legal counsel. See page 48, line 13.

On page 74, Gwen says "I just told J.D., you know, stop. We don't need to give him anything more or give him exactly what's in there; stop trying to fix this because he's just never going to be satisfied." This is proof positive that Gwen did not honor what she wrote in the MOU, namely "whatever was in ASTCA systems". Newton never asked for anything that was not in ASTCA systems. After all, ASTCA systems contained every telephone number serviced by ASTCA, so there were no other sources of listings.

Gwen goes on to imply that JD had provided all of ASTCA's listings, but the truth is that there was never a time when JD provided all of ASTCA's listings. Although JD claimed "The listings as provided are the best available data from our customer database", (ex 35, cert doc 67) this was summarily refuted by Newton in his email of November 28, 2011, saying in part, "If you had actually merged, compared and updated records, you certainly would have noticed things like the fact that there are no listings for Bluesky, ASPA, the hospital, homeland security, just to mention a few. You might also have noticed that ASTCA doesn't have a single listing anywhere. How about the schools. Do schools not have phones?" And JD never provided Commercial Listings, in a file type consistent with the MOU requirements, or Cell Phone listings in any form.

From the above it is obvious that Newton was not asking for anything that was not in ASTCA systems, nor was he asking for what is characterized as "what he wants". It would have been totally impossible to publish a directory that was missing all the items pointed out above.

On pages 76-77, there is questioning on matters relative to the FCC. Gwen says she doesn't know anything about that and that ASTCA is only required to report on cell phone matters. That is just not true, and she knows it. ASTCA has many reporting requirements with the FCC as shown below:

All intrastate, interstate, and international providers of telecommunications (including VoIP providers) within the United States, with limited exceptions (see Who is Exempt?), are legally obligated to file the FCC Forms 499.

The FCC is the controlling body under which ASTCA operates and is also a source of major funding. ASTCA is bound by the Telecommunications Act of 1934, and the rules they must follow are part of the Code of Federal Regulations. As an in-house legal counsel at ASTCA, Gwen was certainly required to know this.

On page 81, there is a dialog regarding Newton publishing ASTCA subscriber listings online, and yet he was unable to publish telephone directories. What this dialog cleverly avoids disclosing is that Newton was publishing only some white page listings, no yellow pages, and no cell phone listings. Even the white page listings came with a disclaimer saying the listings were incomplete. This line of questioning was simply an attempt to smear Newton's reputation and to put the blame for the lack of telephone directories on him when it was ASTCA who had not fulfilled their obligation to provide listings as specified in [their MOU](#) which they wrote and signed.

The rest of the deposition was pretty meaningless except that Gwen continued to bash Newton saying he was always sending JD nasty emails. This is just patently untrue and uncalled for. The vast majority of emails from Newton to JD were courteous and instructional, a fact that was often acknowledged by JD.