

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2005 APR 13 PM 3:00

JEANNE HICKS, CLERK

BY: C. SUTTON

1 FAVOUR MOORE & WILHELMSSEN, P.A.  
2 Post Office Box 1391  
3 Prescott, AZ 86302-1391  
4 Ph: (928)445-2444  
5 David K. Wilhelmsen, #007112  
6 Marguerite Kirk, #018054

7 Attorneys for Plaintiffs

8 **IN THE SUPERIOR COURT OF ARIZONA**  
9 **COUNTY OF YAVAPAI**

10 **JOHN B. CUNDIFF and BARBARA C. )**  
11 **CUNDIFF, husband and wife; BECKY NASH, )**  
12 **a married woman dealing with her separate )**  
13 **property; KENNETH PAGE and KATHRYN )**  
14 **PAGE, as Trustee of the Kenneth Page and )**  
15 **Kathryn Page Trust, )**

16 Plaintiffs,

17 vs.

18 **DONALD COX and CATHERINE COX, )**  
19 **husband and wife, )**

20 Defendants. )

Case No. CV 2003-0399

Division 1

**PLAINTIFFS' COUNSEL'S  
CERTIFICATION PURSUANT TO  
RULE 37(a)(2)(C)  
IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL**

21 Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Katheryn Page, by and  
22 through undersigned counsel, hereby certifies in accordance with Rule 37(a)(2)(C), Ariz.R.Civ.Proc.,  
23 that undersigned counsel has attempted to resolve the instant discovery dispute in good faith with  
24 Defendants' counsel concerning Plaintiffs' request for production of Defendants' tax returns,  
25 specifically, the K-1 schedules that necessarily would be attached to any income tax return filed by  
26 Defendants.

Undersigned counsel contacted Defendants' counsel in writing on two (2) occasions  
requesting, initially, Defendants' compliance with the Court's January 31, 2005 order, and then later  
further requesting that Defendants' provide complete copies of the schedules necessarily included with  
the tax returns. *See, correspondence from undersigned counsel to Defendants' counsel, March*

**DIV. 1**

APR 14 2005

79

1 3 and March 8, 2005 (true and correct copies attached hereto as Exhibits "1" and "3" respectively).  
2 Defendants' counsel responded by producing incomplete copies of their clients' tax returns, and have  
3 failed to provide any excuse other than opposing counsel was out of the office on vacation for a  
4 limited period of time. See, correspondence from Defendants' counsel to opposing counsel, March  
5 7 and March 24, 2005 (true and correct copies attached hereto as Exhibits "2" and "4" respectively).  
6 It is important to note that both Jeffrey Adams and Mark Drutz have entered an appearance on behalf  
7 of Defendants, but only Mr. Adams was out of the office on vacation. There has been no reason  
8 provided by opposing counsel why Mr. Drutz was unable to obtain his clients compliance with the  
9 Court's order to disclose complete copies of their income tax returns. Undersigned counsel further  
10 states that he had one telephone conversation with opposing counsel, at which time opposing counsel  
11 commented that he would furnish all tax documents requested. To date, no documentation has been  
12 received from opposing counsel.

13 Therefore, Plaintiffs request that this Court consider and rule upon Plaintiffs' motion to  
14 compel.

15 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of April, 2005.

16 FAVOUR MOORE & WILHELMSSEN, P.A.

17  
18  
19 By:   
20 David K. Wilhelmsen  
21 Marguerite Kirk  
22 Post Office Box 1391  
23 Prescott, Arizona 86302-1391  
24 Attorneys for Plaintiffs

25 Original of the foregoing  
26 filed this 13<sup>th</sup> day of April, 2005  
with:

Clerk, Superior Court of Arizona  
Yavapai County  
Prescott, Arizona 86302

1 A copy hand-delivered this 13<sup>th</sup> day  
2 of April, 2005 to:

3 Honorable David L. Mackey  
4 Division One  
5 Superior Court of Arizona  
6 Yavapai County  
7 Prescott, Arizona

8 and, a copy hand-delivered this  
9 13<sup>th</sup> day of April, 2005 to:

10 Mark Drutz  
11 Jeffrey Adams  
12 MUSGROVE, DRUTZ & KACK, P.C.  
13 1135 Iron Springs Road  
14 Prescott, Arizona 86302  
15 Attorneys for Defendants Cox

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26  
By:   
David K. Wilhelmsen

The Law Firm of

**Favour Moore & Wilhelmsen, P.A.**

David K. Wilhelmsen

1580 Plaza West Drive  
Post Office Box 1391  
Prescott, Arizona 86302

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Facsimile (928) 771-0450  
[DavidWilhelmsen@cableone.net](mailto:DavidWilhelmsen@cableone.net)  
[fmwlaw@cableone.net](mailto:fmwlaw@cableone.net)

March 3, 2005  
File No. 10641.001

**VIA FACSIMILE 445-5980  
AND FIRST CLASS MAIL**

Mr. Mark Drutz  
Mr. Jeffrey Adams  
MUSGROVE, DRUTZ & KACK, P.C.  
Post Office Box 2720  
Prescott, AZ 86302-2720

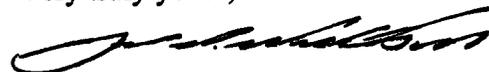
*Re: Cundiff, et al. v. Cox – Yavapai County Cause No. CV 2003-0399*

Dear Mark and Jeff:

We have yet to receive the production of your client's state and federal tax returns for the years 1998 through 2004 as was ordered by the Court on January 31, 2005. I am assuming this is simply an oversight on your part and we thus wish to have them delivered within five (5) days.

If your clients have some continuing reluctance to cooperate in this disclosure I will bring this matter to the Court's attention for a more formal means of production.

Very truly yours,



David K. Wilhelmsen  
For the Firm

DKW/dal  
cc: Kenneth and Kathryn Page  
John and Barbara Cundiff  
Becky Nash

3100  
Fax/Copier/Scanner

SEND CONFIRMATION REPORT for  
Favour Moore & Wilhelmsen, P.A.  
928 771 0450  
Mar-3-05 15:40

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
34	3/ 3 15:39 ..	0'37"	928 445 5980	Send..... ..	2/ 2	EC144	Completed. ....

Total 0'37" Pages Sent: 2 Pages Printed: 0

The Law Offices of  
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P. O. Box 1391  
Prescott, AZ 86302  
Telephone: (928) 445-2444  
Telecopier: (928) 771-0450

FAX COVER SHEET

DATE: March 3, 2005

TO: Mark Druz & Jeffrey Adams

FROM: David K. Wilhelmsen

FAX NO.: (928) 445-5980

PHONE: (928) 445-5935

RE: Cundiff, et al. v. Cox  
File No. 10641 001

TOTAL PAGES TRANSMITTING (INCLUDING COVER SHEET): 2

SPECIAL INSTRUCTIONS:

If there is a problem with transmittal, please call the operator listed below at (928) 445-2444.

OPERATOR: Karen

If you have not properly received this telecopy, please call at (928) 445-2444  
Our telecopy number is (928) 771-0450.

The information contained in this facsimile is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, the employee, or agent responsible to deliver it to the intended recipient, please notify Favour, Moore & Wilhelmsen, P.A. immediately. You are hereby notified that any dissemination, distribution or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (collect), and return the original message to us at the above address via the U.S. Postal service. Thank you

MUSGROVE, DRUTZ & KACK, P.C.

ATTORNEYS AT LAW

P. O. Box 2720

PRESCOTT, ARIZONA 86302-2720

OFFICE ADDRESS

1135 IRON SPRINGS ROAD

TELEPHONE

(928) 445-5935

(928) 778-3904

FAX (928) 445-5980

JAMES B MUSGROVE

MARK W DRUTZ

THOMAS P KACK

GRANT K. MCGREGOR

JOHN G. MULL

JEFFREY R ADAMS

CATHY L KNAPP

March 7, 2005

File No. 9449-1

**VIA HAND DELIVERY**

David K. Wilhelmsen  
FAVOUR MOORE & WILHELMSSEN, P.A.  
1580 Plaza West Drive  
Prescott, Arizona 86305

RE: *Cundiff v. Cox*  
Yavapai County Superior Court Cause No. CV 2003-0399

Dear Dave:

Pursuant to your letter dated March 3, 2005 and the order by the Court on January 31, 2005, enclosed please find the state and federal tax returns for the years 1998 through 2003. We have not received the tax returns yet for the tax year 2004 as they have not yet been prepared. Upon receipt, we will provide them to you.

Please call with any questions, comments or concerns regarding the foregoing.

Sincerely,

MUSGROVE, DRUTZ & KACK, P.C.

By: \_\_\_\_\_

Jeffrey R. Adams, Esq.

JRA/jf

Enclosures

Cc: Donald & Catherine Cox (letter only)

The Law Firm of

**Favour Moore & Wilhelmsen, P.A.**

David K. Wilhelmsen

1580 Plaza West Drive  
Post Office Box 1391  
Prescott, Arizona 86302

Telephone (928) 445-2444  
Facsimile (928) 771-0450  
[DavidWilhelmsen@cableone.net](mailto:DavidWilhelmsen@cableone.net)  
[fmwlaw@cableone.net](mailto:fmwlaw@cableone.net)

March 8, 2005  
File No. 10641.001

*via Facsimile & U.S. Mail*

Jeffrey Adams  
MUSGROVE, DRUTZ & KACK, P.C.  
Post Office Box 2720  
Prescott, Arizona 86302-2720

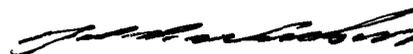
*Re: Cundiff, et al. v. Cox – Yavapai County Cause No. CV 2003-0399*

Dear Jeff:

We are in receipt of your clients' income tax returns for 1998 to 2003. As you are undoubtedly aware, the Court specifically ordered that your clients' returns include all schedules. However, each income tax return for 1998 through 2003 specifically omitted your clients' K-1 forms, although the tax returns indicate that an overwhelming amount of your clients' income was attributable to partnership income. Additionally, the income tax returns provide list the occupation of each of your clients' as "managing partners."

This correspondence is to demand that your clients' immediately comply with the Court's orders. If we do not receive your clients' complete income tax returns with all attached schedules, notably schedule K-1, by March 15, 2005, we will have no option but to again file an appropriate motion with the Court and request our clients' attorney's fees.

Very truly yours,



David K. Wilhelmsen  
For the Firm

cc: Kenneth and Kathryn Page  
John and Barbara Cundiff

erJet 3100  
er/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for  
Favour Moore & Wilhelmsen, P.A.  
928 771 0450  
Mar-8-05 10:31

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
91	3/ 8 10:30 ..	0'39"	928 445 5980	Send.....	2/ 2	EC144	Completed.....

Total 0'39" Pages Sent: 2 Pages Printed: 0

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P. O. Box 1391  
Prescott, AZ 86302  
Telephone: (928) 445-2444  
Telecopier: (928) 771-0450

FAX COVER SHEET

DATE: March 8, 2005  
TO: Jeffrey Adams  
FROM: David K. Wilhelmsen  
FAX NO.: (928) 445-5980  
PHONE: (928) 445-5935  
RE: *Cundiff, et al. v Cox*  
File No. 10641.001

TOTAL PAGES TRANSMITTING (INCLUDING COVER SHEET): 2

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10641.001

MUSGROVE, DRUTZ & KACK, P.C.

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JAMES B. MUSGROVE  
MARK W. DRUTZ  
THOMAS P. KACK  
GRANT K. MCGREGOR  
JOHN G. MULL  
JEFFREY R. ADAMS  
CATHY L. KNAPP

March 24, 2005

File No. 9449-1

**VIA FIRST CLASS MAIL & FACSIMILE (928) 771-0450**

David K. Wilhelmsen  
FAVOUR MOORE & WILHELMSSEN, P.A.  
1580 Plaza West Drive  
Prescott, Arizona 86305

RE: *Cundiff v. Cox*  
Yavapai County Superior Court Cause No. CV 2003-0399

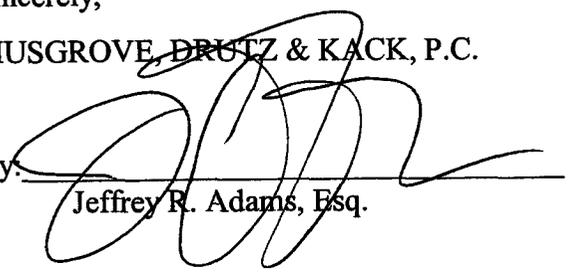
Dear Dave:

I returned this week from vacation and found your letter regarding our clients partnership K-1's. I have forwarded your request to our clients and will respond shortly.

If you should have any questions or concerns please feel free to contact me.

Sincerely,

MUSGROVE, DRUTZ & KACK, P.C.

By:   
Jeffrey R. Adams, Esq.

JRA/jf  
Enclosures

Cc: Donald & Catherine Cox