

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

John Roe - John Roe XII,)	
James Roe I - James Roe XV,)	
Jane Roe I - Jane Roe VIII,)	
)	
Plaintiffs,)	Case No.: 1:06-cv-00627-DFH-JMS
)	
vs.)	
)	
Bridgestone Americas Holding Inc., Bridgestone)	
Firestone North American Tire, LLC,)	
BFS Diversified Products, LLC,)	
Firestone Natural Rubber Company,)	
)	
)	
Defendants.)	

**PLAINTIFFS’ MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR A
PROTECTIVE ORDER TO REQUIRE DEFENDANTS TO CONDUCT THE
DEPOSITIONS OF PLAINTIFFS AND THEIR THIRD-PARTY LIBERIAN
WITNESSES WITH INTERPRETERS**

Plaintiffs hereby move the Court for a Protective Order to require that any further depositions of Plaintiffs, and any other Liberian witnesses who require such assistance, be conducted with “interpreters.”¹ The first deposition of a child labor Plaintiff in this case, taken on April 21, 2008, demonstrates that the other Plaintiffs and Liberian third-party witnesses must have qualified interpreters of their native Liberian English to have an accurate record of their testimony. Before the depositions began, the parties were in agreement that some form of

¹ The parties disagree as to whether the deposition questions and answers should merely be literally “translated” or should be “interpreted” so that the meaning of both is made clear on the spot. Plaintiffs maintain that since Liberian English is a distinct language, as with all other foreign languages, the meaning of the words, not just a literal transcription of the words, is required. See pages 10-11, *infra*.

interpretation was necessary. On the morning of the first scheduled deposition, counsel for Defendants presented counsel for Plaintiffs with two proposed “translators.” Declaration of Terry Collingsworth at ¶ 3 (“Collingsworth Decl”). Neither person had any prior experience with translation, and both lied about the terms of their financial arrangements with counsel for Defendants. *Id.* at 4. Plaintiffs rejected the proposed translators on both grounds. *Id.*

To begin the depositions, and also to establish conclusively that experienced professional interpreters were required, Plaintiffs agreed for the first day of the depositions to allow both sides to consult with their Liberian counsel to clarify language questions as they arose. However, in the deposition of Jane Doe 3, the first child laborer to be deposed, it was apparent that she could not understand the questions posed to her by Thomas Rector, counsel for Defendants. Liberian English is her native language, and Mr. Rector was asking his questions in American English. Despite the overall understanding that the first day was an experiment and the parties expected there to be language issues without experienced interpreters, Mr. Rector quickly grew frustrated with his inability to understand Jane Roe 3's Liberian English, and he accused this former child laborer of deliberately failing to speak “standard English.” Exhibit A at 106-09.² He berated her for not speaking his version of English without ever establishing her ability to do so. This harsh treatment added a significant new level of intimidation to Jane Roe 3's experience of being deposed by lawyers from a large law firm from the U.S. *See id.*

Following this clarifying exercise, counsel for Plaintiffs held a meet and confer with counsel for Defendants and offered to immediately work together to find qualified interpreters to ensure that the remaining depositions did not produce a questionable record. Collingsworth Decl

² All Exhibits are attached to the Collingsworth Decl.

at ¶ 6. Plaintiffs also offered to keep the schedule moving forward by using Liberian counsel for both sides as actual interpreters until neutral, experienced interpreters could be retained. *Id.* Counsel for Defendants rejected both options. *Id.* Within hours of making this offer to Defendants, Plaintiffs found qualified interpreters in both the U.S. and in Liberia. *Id.* at ¶ 7; Declaration of Rebecca Pendleton at ¶¶ 3-5. ***However, when Defendants asserted in the parties' meet and confer that they had no intention of using actual interpreters because Liberian English was the same as American English, this revealed why they never produced qualified interpreters.*** Collingsworth Decl at ¶ 6. Regardless of Defendants' motives for not wanting to have a clear record reflecting that the depositions are conducted in Plaintiffs' native language, the most fundamental aspect of a deposition is that the deponent must understand counsel's questions, and the court reporter must be able to accurately record the response. Here, there is no question that Liberian English is a distinct language, so much so that describing it as a form of "English" is a misnomer. As in all other cases where the deponent speaks a language other than standard English, Plaintiffs and other Liberian third-party witnesses are entitled to an interpreter. The record will not be accurate absent provision of interpreters.

Defense counsel also assert that using interpreters will cause delay. This contradicts their earlier agreement to use interpreters, and in any event, is never an acceptable reason when there is a need for interpretation to have an accurate record. Further, Jane Roe 3's deposition has at least 112 instances in which she responded to a question by saying that she did not understand. Collingsworth Decl ¶ 5. This speaks for itself in terms of whether forcing Plaintiffs to participate in depositions conducted in a language not their native tongue is efficient. In addition, Defendants' new position invites later problems and delays if the parties must later argue,

without the witnesses present, about what the deponents' words, spoken in Liberian English, mean. The record should be clear at the conclusion of each deposition, before the witness is excused and the lawyers return to the U.S. There simply is no legitimate reason not to take the routine step of providing interpreters to ensure an accurate record in this important case.

STATEMENT OF FACTS

The parties agreed to schedule depositions of the 22 child laborer Plaintiffs, all of whom are proposed class representatives, and their 13 guardians, from April 21 to May 9. There had been discussion between the parties regarding the need for interpreters, and there was general agreement that the parties would come to some accommodation regarding interpretation. *See* Exhibits B, C, and D. On Sunday, April 20, counsel for Defendants sent an email to counsel for Plaintiffs stating that Defendants had identified two potential persons to serve as translators, and offered to make them available for an interview with Plaintiffs at 8:30 a.m. on Monday, April 21, before the first scheduled deposition. Exhibit B. Plaintiffs' counsel met with these proposed translators and rejected them because they lacked experience, were unable to understand the meaning of some key phrases used by the Firestone child labor Plaintiffs, and they lied to counsel for Plaintiffs about their compensation arrangements with the Firestone Defendants. Further, one of them had been dismissed from her last position for dishonesty. Collingsworth Decl ¶ 4.

In order to make a good faith effort to begin the depositions, Plaintiffs agreed to go forward on April 22 without formal interpreters, but with both sides using their Liberian counsel to clarify issues as they came up. Plaintiffs made clear that they were willing to give this

approach a try, if only to see how pronounced the interpretation issue would be. Collingsworth Decl ¶ 5. In the deposition of Jane Roe 3, the first child labor Plaintiff to be deposed, it became clear that she could not understand the questions posed by Thomas Rector, counsel for Defendants. For example, she stated several times that she did not understand the word “estimate.” Mr. Rector spent considerable time trying to convince her that her initial answer was not correct, and that she did know what this foreign word meant. *See, e.g.*, Exhibit A at 205-06. Likewise, despite Jane Roe 3 responding several times that she did not know what “zero tolerance policy” meant, Mr. Rector kept asking her repeatedly until her counsel instructed her not to answer any further. *Id.* 53:10-55:23.

Equally clear was that Mr. Rector could not understand the responses given by Jane Doe 3. On numerous occasions Mr. Rector stopped the deposition and asked his Liberian counsel to interpret what the witness had said. *See, e.g.* Exhibit A at 29-31, 37, 38, 50, 105,108, and 189. After numerous stops and starts like this, precisely the process that counsel for both parties agreed to experiment with, Mr. Rector then harshly demanded that Jane Doe 3 immediately begin speaking “standard English”:

[Excerpt of Jane Doe 3 Deposition]

19 BY MR. RECTOR [Counsel for Firestone]:

20 Q Do you speak standard English?

21 A Yes.

22 Q Okay. Can you please speak standard English

23 for the deposition?

24 MS. LEVESQUE [Counsel for Plaintiffs]: Oh, objection -- objection, that's

not appropriate. She's communicating in the language
[106]

1 that she is comfortable and able to communicate in.

2 That's why we have interpreters or translators here.

3 BY MR. RECTOR:

4 Q Just for the record, you speak standard

5 English; correct?

6 MS. LEVESQUE: And, objection, vague -- vague as

7 to "standard English."

8 BY MR. RECTOR:

9 Q Do you take English in school?

10 A Yes.

11 Q And you speak standard English; right?

12 MS. LEVESQUE: Same objection.

13 BY MR. RECTOR:

14 Q Go ahead and answer. Answer out loud.

15 A I don't understand.

16 MS. ELLIOTT [Firestone's Liberian counsel]: Speak out.

17 BY MR. RECTOR:

18 Q You speak standard English; right?

19 MS. LEVESQUE: Same objection.

20 BY MR. RECTOR:

21 Q Please answer the question.

22 A Yes.

23 Q Could you please try to speak standard

24 English today?

25 MS. LEVESQUE: Same objection. She's not going to
[107]

1 speak in any language other than that which she's

2 comfortable in. And she's speaking today in Pidgin

3 language. That's what she's comfortable in.

4 MR. RECTOR: Let's take a break for ten minutes --

5 actually just five minutes. I'm just going to make a

6 phone call. Be right back.

7 (Brief recess taken.)

8 BY MR. RECTOR:

9 Q How long have you studied standard English?

10 MS. LEVESQUE: Objection as to vague and

11 ambiguous. You can answer.

12 THE DEPONENT: The time I started school -- the

13 time I started going to school.

14 MS. ELLIOTT: "The time I started going to

15 school."

16 BY MR. RECTOR:

17 Q How many -- so for how many years?

18 A For nine years now.

19 MS. ELLIOTT: "For nine years now."

20 MR. RECTOR: Counsel, obviously we've had some
21 difficulties today with the objection on the
22 interpreters. And we've got a process going right now
23 that's slowing the deposition down considerably.

24 And it's obviously in all of our interests
25 to -- the process itself is working, but it's really
[108]

1 slowing things down. We're going to request the
2 court -- that the court permit these depositions to
3 proceed in standard English for those people like Doris
4 who speak standard English.

5 MS. LEVESQUE: And just so you know, we're going
6 to most certainly object to that. It's not your
7 definition of "standard English" that is in fact
8 relevant as to what she's speaking. She is speaking a
9 form of English that is comfortable to her.

10 And I object to your implication that that
11 is not in some way standard. And it's unnecessarily
12 embarrassing to our client. And if you need to bring
13 that to the court, that's fine, but I'll be instructing

14 her to communicate in the form of English, whatever
15 that is called, that she is speaking in at this present
time.

17 MR. SAYRE [counsel for Plaintiffs]: And I'd like to say one thing too, and

18 I need this for the record so that when the court
19 reviews this -- sir, she is speaking English, the
20 English that she knows. We are in Liberia and she's
21 speaking the English that what she knows.
22 Your presumption that what you're speaking
23 is standard and what she's speaking is something else
24 other than standard, I consider that -- I consider
25 that to be centric to what you view.

[109]

Exhibit A at 106-09.

The sole result of this was that Jane Roe 3 was even more intimidated than she otherwise was given that, fresh from the Firestone Plantation, she was in a hotel room being deposed by an aggressive lawyer from a large U.S. law firm who was insisting that her native language was not legitimate. *See id.* at 110:1-3.

Jane Roe 3's deposition produced an extraordinarily muddled record filled with her saying that she did not understand the questions at least 112 times. Collingsworth Decl at ¶ 5. *See, e.g.*, Exhibit A at 27-28; 189; 205-06. Clear that the experiment failed, and to prevent any further problems of this sort, counsel for Plaintiffs held a meet and confer with Defendants the morning after Jane Roe 3's deposition. Plaintiffs offered to continue with the depositions, but

changing the process so that Liberian counsel would shift to serving as actual interpreters. Collingsworth Decl at ¶ 6. Under this process, each question and each answer would be interpreted by Liberian counsel on both sides, while the parties redoubled their efforts to find professional interpreters. *Id. Defendants refused on both counts and offered no alternative except to continue the process that clearly did not work with Jane Roe 3* . Defendants asserted, despite their prior agreement that interpreters were necessary, that Liberian English is not different than American English and that interpreters were not necessary. They further stated that using interpreters would slow down or delay the depositions. *Id. Thus, until the issue of the need for and role of interpreters is resolved, that Plaintiffs have now found numerous interpreters in Liberia and in the U.S. is moot; defense counsel have rejected that Plaintiffs, whose native tongue is Liberian English, need help in understanding defense counsel's version of American English.*

ARGUMENT– PLAINTIFFS SPEAK A DISTINCT LANGUAGE – LIBERIAN ENGLISH– AND MUST BE DEPOSED WITH INTERPRETERS

The primary issue is whether Plaintiffs, and other Liberian witnesses, for any reason, are unable to understand the American English spoken by Firestone's American lawyers, such that interpreters must be used to ensure that the record of the depositions is accurate. In this case, the facts and the law require that interpreters be utilized because these witnesses speak a foreign language, Liberian English. No less than five renowned experts, on short notice, have provided sworn Declarations that Liberian English is a recognized and distinct language. The first, Professor John Singler, literally wrote the book on the topic – **Introduction to Liberian English**. In his Declaration, attached hereto, he explicitly states that Liberian English is a distinct language that varies significantly from “standard” or American English. Professor

Singler Declaration at ¶¶ 7-9. Indeed, Professor Singler has even studied the form of Liberian English spoken on the Firestone Plantation, and concludes,

[c]hildren who were born and raised in Liberia and who have not traveled outside of West Africa may well have a very different understanding of words and questions posed to them by those speaking educated American English. This is especially true if these children have not been substantially exposed to American English. Similarly, responses given in Liberian English but literally translated to American English suffer from the same potential for inaccuracy.

Id. at ¶ 8.

Professor Singler's ultimate conclusion is that "Liberian English--most specifically, the 'Firestone English' variety of Liberian English--is a separate language from International English." *Id.* at ¶ 7.

Likewise, Professor *Emeritus* David Dwyer, who has taught and studied African languages for over 35 years, agrees that Liberian English is a distinct language. Professor Dwyer Declaration, attached hereto, at ¶¶ 3-8. Professor Dwyer concludes that:

Liberian English is a language quite separate and distinct from the English spoken in America today. There are notable pronunciation and grammatical differences that are manifest in Liberian English versus American English, even in oral communications. Similarly, there are words which look alike, but have different meanings in Liberian and American English.

Id. at ¶ 4.

In addition, three distinguished experts from Liberia agree with their American colleagues that Liberian English is a distinct language. *See* attached Declarations of Professor Stephen M. Jubwe, Sr. (Acting Dean and Associate Professor of Sociology, University of Liberia); Professor Jcerbo Wil Mannie, Sr. (Instructor of English, University of Liberia); and Professor Sekou W. Konneh (Instructor of Anthropology, University of Liberia).

As a further indication that Liberian English is a distinct language, there are interpreters in the U.S. who are trained to interpret Liberian English in the U.S. courts. *See* Declaration of

Rebecca Pendleton at ¶¶ 4-5.

The law is clear that any person who speaks a foreign language and has limited or impaired understanding of “standard English” must have an interpreter in order to be deposed under oath. “Fundamental due process rights may require ... an interpreter to translate courtroom proceedings. ‘This is so because *inherent in [the] nature of justice is the notion that those involved in litigation should understand and be understood.*’” *Figueroa v. Doherty*, 707 N.E.2d 654, 658 (Ill. App. 1999) (quoting 25 Am.Jur.2d Trial § 230 (1991)) (emphasis added). For example, the Indiana Code provides:

Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons, and who is a party to or a witness in a civil proceeding is entitled to an interpreter to assist the person throughout the proceeding.

IC § 34-45-1-3 (emphasis added).³

Likewise, federal courts recognize that interpreters serve the important function of ensuring that the record of proceedings is accurate: “The sole purpose of an interpreter is to enable the officer taking the deposition to set down the words of the witness correctly in the English language according to their true tenor and import in the language of the witness.” *Meyer v. Rothe*, 13 App.D.C. 97, 1898 WL 15637 at *4 (C.A.D.C. 1898).

Defendants cannot seriously challenge that Liberian English is a distinct language or that this requires that Plaintiffs be deposed with an interpreter. Defendants’ opposition to the use of

³ To the extent that Defendants assert that Plaintiffs’ Interrogatory Responses and their Declarations are in American English, and therefore they must understand it, counsel for Plaintiffs had those documents translated to American English. *See* Collingsworth Declaration at ¶ 8. Further, the clear intent of § 34-45-1-3 is that an interpreter should be provided if a witness needs the assistance. Plaintiffs herein have asserted the need.

interpreters is particularly ill-considered given the objectively verifiable record that Mr. Rector, counsel for Defendants, conceded, repeatedly, that he could not understand Jane Roe 3. *See, e.g.*, Exhibit A at 106-09. Mr. Rector had the benefit of Liberian counsel to interpret for him what Jane Roe 3 was saying, while he fired questions at her in his version of English, expecting her to understand his every word. *See, e.g.* Exhibit A at 29-31, 37, 38, 50, 105, 108, and 189.

Likewise, Jane Roe 3 could not understand Mr. Rector. On at least 112 occasions during her deposition, she responded to a question from Mr. Rector with a response indicating that she did not understand the question. Collingsworth Decl at ¶ 5. For example, each time Mr. Rector used a “big word” in his American English, Jane Roe 3 responded that she did not know what the word meant. *See, e.g.*, Exhibit A at 27-28; 189; 205-06 (did not know “estimate”); 53-55 (did not know “zero tolerance policy”).

Two explanations have been offered for this lack of understanding. On behalf of the Firestone Defendants, Mr. Rector claims that Jane Roe 3, a young woman who has been working on the Firestone plantation since she was about nine years old, was deliberately hiding her polished American English to confuse him. *See* Exhibit A at 106-09. Alternatively, wholly apart from the clear record that Jane Roe 3 and Mr. Rector were not speaking the same language, five distinguished experts have joined herein to state that Liberian English is a separate language, and the differences with American or standard English are real and substantial. Defendants simply cannot rebut this overwhelming showing on this fundamental point.

Reinforcing that counsel for Defendants have an objective other than an accurate record, they also assert that they do not want to delay the depositions by using interpreters. Speed is never an issue if an interpreter is needed for an accurate record. Moreover, Defendants’ position

does not even withstand a common sense test. With Jane Roe 3 stating over 112 times that she did not understand Mr. Rector's question, and Mr. Rector first asking his Liberian counsel repeatedly what Jane Roe 3 had said, before he launched into a lengthy tirade that Jane Roe 3 must speak his version of English because he could not understand her, whatever else was accomplished in Jane Roe 3's deposition, it was not speedy and efficient. Defense counsel's refusal to cooperate in using interpreters has cost the parties at least two days while the process was suspended to take the issue to the Court, leaving four lawyers for the Plaintiffs sitting around in Liberia. Collingsworth Decl at ¶ 9. It is hard to imagine that, whatever the outcome of this motion, losing two days to allow Defendants to argue that using interpreters will slow the process down will justify the lost time.

More fundamentally, the lack of interpretation produced a record for Jane Roe 3's deposition that is not accurate. Going forward, Plaintiffs, and the Court, have a right to an accurate record of the depositions, regardless of whether Defendants have conflicting objectives.

CONCLUSION

There is no question that Liberian English is a distinct language and is Plaintiffs' native tongue. The facts and the law require that they be permitted to testify in their native language through an interpreter. Plaintiffs accordingly request that the Court grant their motion for a Protective Order.

Respectfully submitted this 23rd day of April, 2008

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