

FILED
DISTRICT OF WYOMING
CHEYENNE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

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RICHARD D. COLLARD and MOUNTAIN)
STATES CONSULTING, LLC, a)
Wyoming Limited Liability Co.)

CLERK
U.S. DISTRICT COURT

Plaintiffs,)

vs.)

RONALD KAILEY, and TRIBAL)
SOFTWARE, INC., a Wyoming)
Corporation; and John Does 1 through 3,)

Case No. 2:01-cv-00008

Defendants.)

DEPOSITION SUBPOENA DUCES TECUM OF JACK YOUNG

TO: Jack Young
Cheyenne Board of Public Utilities
2100 Pioneer Ave
Cheyenne, WY 82001
(307) 637-6469

YOU ARE HEREBY COMMANDED to appear for the taking of your deposition pursuant to the Federal Rules of Civil Procedure before a certified shorthand reporter on the date of August 2, 2001, at 2:00 p.m. at the law offices of Dray, Thomson & Dyekman, P.C., 204 E. 22nd Street, Cheyenne, WY 82001, which will continue from day-to-day until completed.

You are further hereby commanded to bring to the deposition all documents designated in Exhibit "A" hereto that are in your possession, custody or control.

SUBPOENA DUCES TECUM FOR JACK YOUNG
Collard, et al. v. Kailey, et al; Case No. 2:01-cv-00008

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Pursuant to Rule 45(a)(1)(D), Federal Rules of Civil Procedure, you are hereby advised as follows:

(c) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subdivision (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) Fails to allow reasonable time for compliance;
- (ii) Requires, in the case of a deposition or production prior to hearing or trial, a person to travel outside that person's county of residence or employment or a county where that person regularly transacts business in person; or
- (iii) Requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) Subjects a person to undue burden.

(B) If a subpoena:

- (i) Requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) Requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) Requires a person who is not a party or an officer of a party to incur substantial expense to travel to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specific conditions.

(d) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

DATED the 26th day of July, 2001.

Requested By:



Joseph F. Moore, Jr.
Glenn W. Myers
R. Scott Garland
MOORE & MYERS
P. O. Box 8498
Jackson, WY 83002
(307) 733-8668
(307) 733-3220 FAX
Attorneys for Plaintiffs

PROOF OF SERVICE

DATE 7-30-01 PLACE Cheyenne, WY 82001

SERVED Jack Young Personal Delivery
SERVED ON (PRINT NAME) MANNER OF SERVICE

Michael D. Basom Cheyenne City Attorney
SERVED BY (PRINT NAME) TITLE

DECLARATION OF SERVER

I declare under the penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7-30-01 [Signature]
DATE SIGNATURE OF SERVER

2101 O'Neil Ave, Rm 308
ADDRESS OF SERVER
Cheyenne, WY 82001

EXHIBIT "A"

A. **DEFINITIONS:** The following definitions should be used as an aid to understanding what information is required to be produced pursuant to the subpoena duces tecum to which this Exhibit "A" is attached.

1. "**Communication**" means the production, or offer, or delivery, or receipt, or exchange of information or ideas by any **Persons**, whether done orally or in the form of **Documents**.

2. "**Documents**" mean any writing, whether hard copy or electronically recorded, whether an original or copy, and all words, numbers, and data stored electronically on hard disk, CD ROM, floppy disk, magnetic tape or other media. **Documents** also specifically include items, otherwise discoverable under applicable law, that are in the care, custody, or control of persons other than the Responding Party, such as their accountants, bookkeepers, investigators, or attorneys. "**Documents**" also includes, separately, each non-exact copy of the same original, for instance, those with hand written notations, interlineations, comments or editorial changes. "**Documents**" also includes all audio tapes, video tapes, digital recordings (audio or visual) and other perpetuated or recorded words or scenes.

2. "**Persons**" means an individual, or a group of individuals, or a business entity or group of business entities, or a governmental agency or group of governmental agencies.

3. "**Responding Party**" means the **Persons** identified as the recipient of the subpoena to which this Exhibit "A" is attached.

B. **INFORMATION REQUIRED TO BE PRODUCED:**

1. All **Documents** identifying the name, last known address and telephone number of all **Persons** who worked for or with Ronald E. Kailey at the Cheyenne Board of Public Utilities ("BoPU"), or who interacted with Ronald E. Kailey for the purpose of performing their duties as employees or independent contractors of the BoPU, from January 1, 1994 to the present time, or in the alternative, a written list of such **Persons'** names, last known addresses and telephone numbers prepared and authenticated by the **Responding Party**.

2. All **Documents** containing or memorializing every employment position held by Ronald E. Kailey with BoPU from the date of Mr. Kailey's first employment with BoPU until the present time, or in the alternative, a written list, prepared and authenticated by the **Responding Party** identifying the title of employment positions held by Mr. Kailey at BoPU, a brief description of Mr. Kailey's responsibilities for each such position, and the time periods during which Mr. Kailey was employed in each such position.

3. All **Documents** containing or memorializing every job performance review conducted by any **Persons** regarding Ronald E. Kailey's performance of his duties as an employee or independent contractor of BoPU.

4. All **Documents** containing or memorializing all time spent by Ronald E. Kailey performing his duties as an employee of or independent contractor for BoPU, from January 1, 1994 up to and including the present time.

5. All **Documents** containing or memorializing every rule, regulation or procedure governing or intending to control or direct the conduct of BoPU employees during the time period which Ronald E. Kailey was an employee of BoPU.

6. All **Documents** containing or memorializing the terms by which Ronald E. Kailey has ever held an independent contractor relationship with BoPU.

7. All **Documents** containing, memorializing, referring to, relating to or incorporating by reference any **Communication** between any **Persons** regarding the purchase, by BoPU of the MSC-LIMS computer software from Richard Collard, d.b.a. Mountain States Consulting in 1994.

8. All **Documents** containing, memorializing, referring to, relating to or incorporating by reference any **Communication** between any **Persons** regarding the use, by BoPU employees or independent contractors of BoPU, of the MSC-LIMS computer software purchased from Richard Collard, d.b.a. Mountain States Consulting in 1994.

9. All **Documents** containing, memorializing, referring to, relating to or incorporating by reference any **Communication** between any **Persons** regarding alteration, modification or customization, by BoPU employees or independent contractors of BoPU of the MSC-LIMS computer software purchased from Richard Collard, d.b.a. Mountain States Consulting in 1994.

10. All **Documents** containing, memorializing, referring to, relating to or incorporating by reference any **Communication** between any **Persons** regarding the BoPU's decision to cease using the MSC-LIMS Computer software purchased by BoPU from Richard Collard, d.b.a. Mountain States Consulting.

11. All **Documents** containing every version of the MSC-LIMS computer software purchased or otherwise obtained by BoPU from Richard Collard, d.b.a. Mountain States Consulting, and any variations thereto or thereof subsequently produced or created by any **Persons**.

12. All **Documents** containing, memorializing, referring to, relating to or incorporating by reference any **Communication** between any **Persons** regarding computer software or hardware produced or marketed or offered for sale or sold by the corporation known as Tribal Software, Inc.

13. All **Documents** containing, memorializing, referring to, relating to or incorporating by reference any **Communication** between any **Persons** regarding computer software or hardware produced or marketed or offered for sale or sold by a company known as DynaTec.