

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE	:	
PREVENTION OF CRUELTY TO	:	
ANIMALS, <u>et al.</u> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 03-2006 (EGS/JMF)
	:	
FELD ENTERTAINMENT, INC.,	:	FILED UNDER SEAL
	:	
Defendant.	:	
	:	

MOTION TO STRIKE DR. CLUBB’S SUPPLEMENTAL REPORT AND REQUEST
FOR EXPEDITED CONSIDERATION OF MOTION

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS,

Plaintiff,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

CA No. 03-2006

Washington, D.C.

May 22, 2008

4:04 p.m.

TRANSCRIPT OF EMERGENCY MOTION
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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by computer-aided transcription.

P R O C E E D I N G S

COURTROOM DEPUTY: Please remain seated and come to order.

Civil action 03-2006, American Society for the Prevention of Cruelty to Animals, et al versus Ringling Brothers and Barnum Bailey Circus, et al.

Will counsel please introduce yourselves for the record?

MS. MEYER: Catherine Meyer for the plaintiff.

MS. SANERIB: Tanya Sanerib for the plaintiff.

MS. JOINER: Lisa Joiner for Feld Entertainment.

MR. SIMPSON: John Simpson for Feld Entertainment.

MS. GASPER: George Gasper for Feld Entertainment.

THE COURT: Good afternoon. As you know, this is plaintiff's motion for preliminary injunctive relief, filed some seven years after this case was filed in this court. It appears to address one very precise issue, among many issues that plaintiff has raised and alluded to over the years. And it comes at a very curious time and I'm concerned about the timing of the filing of this and I have to ask plaintiff's counsel, Why now? Why is this Court being burdened with this request, this request at this stage of the proceedings when discovery is about to conclude in this case and this case should be in a posture for trial?

MS. MEYER: If I could address that, your Honor. The

1 reason that we did it was because we now have at the close of
2 the fact discovery we now have the evidence that proves our
3 chain claim, which we've been saying all along --

4 THE COURT: So you have all the discovery you need
5 then in this case; is that right?

6 MS. MEYER: We're done with discovery except for the
7 expert discovery.

8 THE COURT: You're ready to go to trial, right?

9 MS. MEYER: Except for the expert discovery.

10 THE COURT: You're ready to go to trial?

11 MS. MEYER: Except for the expert discovery, yes.

12 THE COURT: How much time do you need for the expert
13 discovery?

14 MS. MEYER: I think we scheduled about six weeks to
15 two months for the depositions of the experts.

16 THE COURT: And if I understand Judge Facciola's
17 order, expert discovery is going to conclude the end of July?

18 MAGISTRATE FACCIOLA: July.

19 MS. MEYER: I think under the current agreement, all
20 the expert discovery is supposed to be done by July 18th. If
21 you take into account the six-week extension for the defendant's
22 expert reports, they actually gave us, served us with their
23 expert reports, but if they take that extension in addition and
24 file new expert reports, I guess that would mean I think if you
25 take into account our previous schedule, the expert discovery

1 would be over at the end of August.

2 THE COURT: All right.

3 MS. MEYER: But, your Honor, if I could just say, I
4 mean, the defendants have -- they think there's a lot more to go
5 on in this case before it goes to trial, and that is one of the
6 reasons we really don't, and this case has already, as you said,
7 been pending for seven years. For seven years my clients have
8 been saying these animals are being taken in violation of the
9 statute.

10 THE COURT: In fairness, the case was in the Circuit
11 for a couple of years.

12 MS. MEYER: That's true, your Honor. There are many
13 reasons for the delay, but what I was trying to say, your Honor,
14 is that for many years my clients have been asserting that in
15 fact Ringling Brothers keeps these endangered elephants on
16 chains.

17 THE COURT: It's just very curious that a several-
18 hundred page motion for summary judgment for a preliminary
19 injunction that addresses just one aspect of this very large
20 case was filed arguable on the eve of the close of discovery.

21 MS. MEYER: It's not clear to us, your Honor, when
22 discovery is going to end. We have no trial date. We don't
23 know when this case is going to trial, and meanwhile we now have
24 this evidence from the defendants themselves.

25 THE COURT: You just got the evidence yesterday?

1 MS. MEYER: That proves this.

2 We got the evidence the end of January, your Honor.
3 That's the day we got a substantial portion of this evidence,
4 that's correct, your Honor.

5 THE COURT: What about the other four or five counts?
6 This motion addresses the chaining issue. There's some other
7 issues that you've raised. Have you not completed discovery
8 with respect to those remaining issues? Just a minute. And if
9 not, is it fair for the Court to anticipate the filing of four
10 or five more of these binders of request for injunctive relief?

11 MS. MEYER: No, your Honor. We don't intend to move
12 for a preliminary injunction on the other claims because those
13 are all disputed. For purposes of this preliminarily injunction
14 we were actually able to rely on the defendant's own documents
15 and admissions. That's why we decided to move for a preliminary
16 injunction, because we believe they can show with their own
17 evidence, which they can't dispute and does not raise any
18 credibility issues, that in fact these Asian elephants are being
19 taken every single day of their lives, so it's difficult for my
20 clients to stand by and let that happen while we have an open-
21 ended --

22 THE COURT: That's been your argument from day one
23 when this lawsuit was filed.

24 MS. MEYER: We couldn't prove it, your Honor. With
25 their own evidence. This is what I'm trying to say, we now have

1 their own evidence.

2 THE COURT: That you just got seven years after the
3 filing of this lawsuit? You didn't have any other evidence
4 before?

5 MS. MEYER: We had some of it, your Honor, but now we
6 have a lot of it. We have the missing elements of this,
7 including, for example, your Honor, the transportation orders
8 that show how long the animals are actually on the train in
9 chains. Now, we got a chunk of those a while ago but the
10 defendant withheld the rest of them, including the last four
11 years of them, until January 28th. That's when we finally got
12 them.

13 In addition, your Honor, we weren't able to take
14 depositions of some of their key witnesses, including their
15 30(b)(6) witness who was able to confirm some of this evidence,
16 until the last week -- second to the last week of January
17 because of what's been going on here, so, yes, we got the
18 evidence that we believe shows that this has in fact been going
19 on for years. They've been saying we're making this up, we're
20 lying, our clients are all lying about it. We have their own
21 evidence now that proves it.

22 We did our expert reports. We gave it all to our
23 experts. We did our expert reports, gave them our expert
24 reports in March, March 20th, and that's another component of
25 this, your Honor. As you may recall, there was a huge battle

1 over getting medical records for the elephants, and that's a
2 huge part of how we're able to move for a preliminary injunction
3 as well, your Honor, because the medical records which have now
4 been reviewed by our experts prove that in fact the chaining and
5 confinement of the elephants causes them all kinds of wounds and
6 injuries.

7 THE COURT: Thank you.

8 Let me hear from defendants. How much more discovery
9 do you need? Judge Facciola has a question.

10 MAGISTRATE FACCIOLA: Come on. I'm sorry, does
11 someone have a copy of my most recent order?

12 MS. JOINER: Of your most recent order?

13 MAGISTRATE FACCIOLA: Granting the motion to extend
14 discovery.

15 MS. JOINER: It was a minute order. It was on 5/21,
16 Monday.

17 MAGISTRATE FACCIOLA: Thank you. We'll get it.

18 THE COURT: How much discovery do you need to be
19 prepared to go to trial?

20 MS. JOINER: To be prepared to go to trial, I think
21 what we like to do is wrap up. There are a few outstanding fact
22 issues that are fully briefed and ready to be resolved by the
23 Court, and I think that we would like to finish up expert
24 discovery. Plaintiffs have I believe it is eight experts and
25 reports that we have. We have put in five expert reports, one

1 of which at least I think is incomplete, and there are two
2 others that, given the extension, we may or may not be able to
3 finish up.

4 THE COURT: What kind of time frame? Are you looking
5 at Judge Facciola's time frame then for your conclusion of
6 discovery June 30th or July 30th?

7 MS. JOINER: June 30th is what we had asked for in
8 terms of being able to finish up the reports and wrap that up,
9 but we still need to schedule. That leaves us with thirteen to
10 fifteen depositions that we would have to schedule.

11 THE COURT: They can be done in August. That's not a
12 problem.

13 MS. JOINER: I think so, and the expert witnesses are
14 scattered across this country as well as internationally, so
15 it's going to take a little coordination with us to get
16 everybody in here. I think that that can happen this summer.

17 THE COURT: All right, that's fine. So that's your
18 best estimate of time, the end of August?

19 MS. JOINER: Yes, sir, I believe so.

20 THE COURT: And the case would be in a posture for
21 trial then, right?

22 MS. JOINER: I believe so, yes.

23 THE COURT: Let me share a few thoughts and then I'm
24 going to turn this over to Judge Facciola to share a few
25 thoughts. But here's the benefit of my thought process right

1 now, and having just been presented with this binder chalk full
2 of pleadings, it seems to me that the better part of wisdom at
3 this point is to exert whatever influence I have over the
4 attorneys in this case to finish discovery fairly during the
5 next three months, maybe the end of August. Maybe we can impose
6 on Judge Facciola to extend that time through August and put
7 this case in a posture for trial in October, and I say that for
8 a host of reasons. First of all, the case has been around too
9 long. That's the most compelling reason, and the parties are
10 entitled to some finality at least in this court. Secondly, I
11 don't have the luxury of time to devote to one discrete issue in
12 this case, and this motion addresses one discrete issue. There
13 are many other issues that plaintiffs have focused on and
14 articulated over the years, and in my mind I'm not ruling out
15 the possibility of the Court being confronted with getting still
16 another motion for injunctive relief for arguably compelling
17 reasons. If that happens -- well, just focus on what's before
18 the Court now. If the Court were to carve out some time now to
19 focus on this motion, that would be this case that's been around
20 for seven years is all of a sudden elevated to this Court's
21 focus of attention over other cases just as compelling if not
22 more so, involving people who are incarcerated, and I don't
23 think anyone would argue that the rights of someone incarcerated
24 or controversies involving the rights of people incarcerated are
25 far more compelling than civil cases, but it would mean the

1 Court would have to carve out time to focus on this case, which
2 could prompt the Court to do a couple of things. The Court
3 could be persuaded or the Court might on its own appoint a
4 master, someone either inside the court or outside the court, at
5 the parties' expense to consider the evidence advancing the
6 request for injunctive relief and opposing the request for
7 injunctive relief and then reporting back to the Court, or the
8 Court could on its own carve out the time which would be
9 difficult to focus on this for injunctive relief. I don't see
10 it happening. I don't see a hearing occurring under either
11 scenario before July or so. In fairness to the defendant being
12 afforded a fair opportunity to respond and in fairness to the
13 Court being able to sift through this binder of materials, I
14 didn't focus on the CDs or the DVDs that accompanied it, and
15 then the Court has to be mindful that whatever the Court does
16 with respect to this request for injunctive relief on one very
17 precise issue, whatever the Court does, is appealable to the
18 Circuit and if there were to be an appeal, I'm certain that
19 there would be regardless of how this Court rules, then what
20 this Court would in all likelihood do is stay the proceedings,
21 all the proceedings, with respect to the myriad other issues
22 raised by the plaintiffs until the Circuit has had its fair
23 opportunity to consider whether this Court was correct or not
24 correct, which means that sometime later, how much later no one
25 knows, and we assemble again and try to pick -- not try to. We

1 would resume with this litigation maybe a year from now, two
2 years from now. That doesn't seem to be the appropriate thing
3 to do in a case of this nature.

4 The parties have invested all sorts of time, interest,
5 and money. The Court has its own resources as well as spending
6 the resources of its colleagues in trying to provide a fair
7 opportunity for the parties to litigate their issues, so it
8 doesn't seem to me to be the appropriate expenditure of scarce
9 judicial resources to carve out time to find out injunctive
10 relief on a case that was filed seven years ago, on one precise
11 issue. It seems to me that the better part of wisdom is to
12 focus on the trial of all the merits, a trial on the merits of
13 all the issues and at least bring about some finality in this
14 court during the month of October, so it's encouraging. I
15 didn't know what to expect about how much time the parties need
16 to wrap up discovery. I'm not only optimistic, I'm prepared to
17 say after a date certain in August there won't be any more
18 discovery and the Court will make its call and close discovery.
19 This case will be tried and a final ruling will be entered and
20 whoever is disappointed in the Court's ruling can take whatever
21 action that party believes is appropriate under the
22 circumstances, and there won't be any motions for summary
23 judgment. I can tell you that now. This is a nonjury case and
24 the Court's not going to require the parties to file motions for
25 summary judgment, nor will the Court focus its attention on

1 trying to resolve motions for summary judgment over the next
2 year, year-and-a-half. There will be a trial. I'm not aware of
3 any reason why this case is jury-tryable. On all accounts it's
4 a nonjury case. I know there was some overtures made about the
5 jury-tryable aspects of this case, but I believe this is a
6 nonjury trial, but it raises another question. If indeed it's a
7 nonjury trial and the parties seriously disagree as to whether
8 it's a non-jury trial, query whether the Court would certify
9 that issue to the Court of Appeals and resume this litigation
10 whenever it's appropriate to do so, so there are a few issues of
11 law that confront this Court, putting aside this request for
12 injunctive relief, which I would prefer not to have devote
13 resources to now. I think it's high time to try this case,
14 bring about finality in this court, let the chips fall where
15 they may, and provide the parties an opportunity to pursue
16 further litigation if appropriate in a different court.

17 So I'm looking at October 1 for a trial. And I've
18 said a lot. I know I've said a lot, and I want you to be
19 afforded an opportunity to respond to what I just said and I
20 want Judge Facciola to chime in, and I don't know whether he's
21 available to try the case or has any interest in trying the
22 case, but I'm not ruling that out as a possibility either. So I
23 invite your comments.

24 MS. JOINER: That proposal makes sense to us. If we
25 could wrap the discovery up this summer.

1 THE COURT: It's not if. You will.

2 MS. JOINER: Yes, exactly, and then have a trial date
3 set in October, I think finality would benefit all involved
4 here. There's no doubt about that. The question that we had is
5 what you've expressed earlier, which is why a preliminary
6 injunction now and why on one part of the case, because if I'm
7 understanding the motion correctly, what's being requested here
8 is a full-blown trial on the merits.

9 THE COURT: Well, this is a precursor to the trial.

10 MS. JOINER: Exactly.

11 THE COURT: This would require hours for the Court to
12 delve through, and I just assume spend the resources I have
13 available to trying the case on the merits and making
14 appropriate findings and arriving at the appropriate
15 conclusions, and whoever is dissatisfied with the ruling, then,
16 you know, pursuant to our system of justice, take it to the next
17 level.

18 MS. JOINER: Our concern here would be to stay -- we
19 definitely want to stay on track with the hearing that is
20 scheduled for a week from Friday, and then also to continue on
21 with the expert discovery. Three of the declarations that are
22 submitted in support of this particular motion for preliminary
23 injunction are from plaintiff's experts, and so obviously we
24 would want to do the discovery and depositions of them before
25 responding to this, and that's why we'd like guidance in terms

1 of sequentially --

2 THE COURT: It's the bombshell that you know came to
3 chambers today, the motion, but in thinking about it, let me ask
4 you while you're at the podium, though, do the defendants
5 seriously believe this is a jury-tryable case?

6 MS. JOINER: I'm glad that you ask, because the one
7 note that I have here about your comment is the issue of the
8 remedy that has been requested for forfeiture.

9 THE COURT: The remedy?

10 MS. JOINER: The remedy requested is what would
11 trigger a jury trial. Our reading of the statute and our
12 understanding is that for citizen actions under this particular
13 statute, the remedy of forfeiture is not available to private
14 citizens. That's something that can happen only if the
15 government decides to step in and file suit. And there's case
16 law here I believe out of this particular court. Judge Richie
17 has held that way, so if in fact, and I've seen pleadings and
18 I've seen transcripts of different -- I've seen transcripts
19 where plaintiff's counsel have said no, no, no, we're not
20 seeking forfeiture but yet the complaint, the supplemental
21 complaint have had requests for relief in them, so if in fact
22 forfeiture is involved as the taking of our client's property,
23 then we would submit that that would invoke a right to a jury
24 trial, and that's something I think that we need to hash out.

25 THE COURT: All right. What about the plaintiffs? Do

1 the plaintiffs strongly believe that this is a jury-tryable
2 case?

3 MS. MEYER: No, your Honor. We don't think it's a
4 jury.

5 THE COURT: This, I think, is the closest both sides
6 have been on this issue.

7 MAGISTRATE FACCIOLA: Did someone note the time?

8 MS. MEYER: I can agree to something else, your Honor.
9 We also would like to have a trial the first week of October.

10 THE COURT: I was just making my record. I wasn't
11 being critical of anyone.

12 MS. MEYER: I understand, your Honor.

13 THE COURT: The couple of hours we've had such a
14 thing, you start thinking about motions for summary judgment,
15 you start thinking about this being a precursor for the
16 remaining issues, and it doesn't make a lot of sense for this
17 Court to be tied down with summary judgment motions when the
18 better part of wisdom is to get your briefs on these issues, to
19 take testimony, to deal with whatever legal issues are raised,
20 as opposed to being tied down to summary judgment. I'm just
21 trying to provide a basis to get this case over with now, and
22 maybe I don't want to go so far as to say maybe it's great you
23 filed this motion. I'm not going to be that generous, but you
24 did file it and you have my attention and I called Judge
25 Facciola, and among other things I said it's time to bring about

1 some finality in this court.

2 Now, could you live with that, a trial in October --

3 MS. MEYER: If we did --

4 THE COURT: -- and forego this?

5 MS. MEYER: The question is if we had a date, your
6 Honor. Our concern has been there's been no trial date and this
7 case is tending to fill up the space and go on and on and on,
8 and that's why we felt we really had do something now that we
9 can prove that claim with their own evidence. That's why we did
10 it, your Honor.

11 MAGISTRATE FACCIOLA: The judge would be interested in
12 how would you estimate the length of your case, how many weeks?

13 MS. MEYER: Our case?

14 THE COURT: How many days?

15 MS. MEYER: I'd say two weeks, maybe a week-and-a-half
16 if we were streamlining.

17 MAGISTRATE FACCIOLA: Defendants about the same amount
18 of time?

19 MS. JOINER: Yes, your Honor.

20 MAGISTRATE FACCIOLA: And then some time for rebuttal,
21 right?

22 MS. JOINER: Correct.

23 THE COURT: Maybe four to six weeks total.

24 MAGISTRATE FACCIOLA: In terms of the witnesses that
25 the depositions have already been taken, are they videotape?

1 MS. MEYER: Most of them, your Honor. I think there
2 is one or two exceptions. Maybe all of them actually now that I
3 think about it.

4 MAGISTRATE FACCIOLA: In terms of the witnesses whose
5 depositions have been videotaped, would either side still insist
6 on live testimony, or could we go with the tapes?

7 MS. MEYER: I'd have to think that through a little
8 bit, your Honor. I think certainly for many of them we'd be
9 willing to use the deposition transcripts.

10 MAGISTRATE FACCIOLA: And then in terms of the
11 experts, each of them will have a report, so speaking of the
12 late Judge Richie, we could use his rule where there would be no
13 direct examination, it would be the experts' report and
14 cross-examination and rebuttal, so we actually begin to compress
15 this. We also could start doing it without awaiting everything
16 to be finished before we start, if you know what I mean. We've
17 got videotape depositions. I assume you want, everybody wants
18 to produce Ridner in person, right?

19 MS. MEYER: Yes. I think it's important for the judge
20 to see him on the stand.

21 MAGISTRATE FACCIOLA: I understand. I'm just thinking
22 out loud how we could begin to marshal our resources.

23 THE COURT: I think a two- or three-week trial.

24 MS. MEYER: There are a lot of documents, and one
25 would think we could stipulate to the admissibility of many of

1 those.

2 MAGISTRATE FACCIOLA: One of the things Judge Sullivan
3 and I may want to discuss, and I don't want to speak for him,
4 but there may be some kind of relationship between the two of us
5 as judge and special master where we could compress this.

6 THE COURT: That would be great. Would there be
7 objections?

8 MS. MEYER: No.

9 MAGISTRATE FACCIOLA: I guess they're saying its fine.

10 THE COURT: I think it's a great idea.

11 MS. JOINER: Not at this time.

12 MAGISTRATE FACCIOLA: Not at this time why? Not at
13 this time? Suppose you could work kind of dual track system and
14 Judge Sullivan says okay, Facciola, I want you to take the
15 nonexpert witnesses and give me a set of proposed findings of
16 facts with de novo review and Judge Sullivan says, well, I don't
17 know, I'll hear the experts, in which case you would have two
18 judges working simultaneously on this case. Don't commit
19 yourself today.

20 THE COURT: Yes, you have the right to appeal.

21 MAGISTRATE FACCIOLA: I'm trying to think a little bit
22 outside the box.

23 THE COURT: We're trying to accommodate you.

24 MS. JOINER: We would not have any trouble of Judge
25 Facciola presiding over a trial in this matter or your Honor.

1 THE COURT: Both sides want some finality here.
2 You've had years of discovery here. You've have two more
3 months, maybe three months at best. You know, maybe by August.

4 MAGISTRATE FACCIOLA: I think it's fair.

5 THE COURT: Or July. You said July?

6 MAGISTRATE FACCIOLA: You've got eighteen experts who
7 are apparently spread out all over the world, and it's summer-
8 time so that's going to take some time. You've got eighteen.

9 MS. MEYER: No, no, no. Total of fifteen, sixteen.

10 THE COURT: We can marshal them. There has to be an
11 element of realism about it. It is summer.

12 MAGISTRATE FACCIOLA: I think one of the things we
13 want to think about, whether you want to do those de bene esse
14 with the understanding that would be testimony as opposed to
15 doing it for a discovery basis. I think the answer is we've
16 already batted around some creative ideas and if we all put our
17 heads together maybe we can come up with an expedited schedule
18 on a lot of different ways. We've thrown a lot out. We're not
19 looking for commitments today.

20 THE COURT: Look, there's got to be some finality
21 here. This is a shot across the bough. You filed this
22 consistent with your obligations to your client, but I'm looking
23 at the word processor, four more of these for the other issues
24 too, and I'm saying it's time to try this case and make the
25 calls and send the case on. And that's all you want anyway.

1 MS. MEYER: Your Honor, if we can get a trial date in
2 October we will withdraw the motion.

3 THE COURT: You just told me there are a total of
4 eighteen experts all over the world.

5 MAGISTRATE FACCIOLA: The reports will be in by June
6 30 so we've got all of July and August to do eighteen
7 depositions if we push hard.

8 THE COURT: Is that realistic?

9 MS. MEYER: We're willing to do it. It's been done in
10 other cases my firm's been involved in. You just have to do it
11 and just get it done.

12 MAGISTRATE FACCIOLA: It's got to get done. The judge
13 has already said no further extensions of discovery, isn't that
14 right?

15 THE COURT: That's it.

16 MS. MEYER: Does your Honor have an actual block of
17 time in October?

18 THE COURT: We're willing to work with you. We
19 haven't looked at the calendar. I didn't know how far we'd get
20 with this, but maybe it's time to look at the calendar. Judge
21 Facciola doesn't have his, but I've been talking informally
22 among my staff, and October probably is workable. In fact, it
23 is workable for this Court. Or November, for that matter.

24 MS. MEYER: October is wide open for me.

25 THE COURT: You have a block of time, does that work,

1 October?

2 MS. JOINER: Yes, your Honor.

3 THE COURT: I think we can be as creative as possible
4 without dispensing with fairness and bring about some finality
5 here. October? Do you want to talk among yourselves? We're
6 waiting on Judge Facciola's calendar. We probably need to
7 assemble again in a day or two and iron this out and put in
8 place a schedule that's going to work.

9 MS. MEYER: That's the other way we could do this,
10 just come back for a status conference next week.

11 THE COURT: I don't want to let you go too soon.
12 Maybe it's time for you folks to talk among yourselves.

13 COURTROOM DEPUTY: This Honorable Court now stands in
14 a brief recess.

15 (Recess taken at about 4:21 p.m.)

16 COURTROOM DEPUTY: Please remain seated and come to
17 order.

18 THE COURT: Judge Facciola is not here for a reason.
19 I want you to focus on this for the next ten days or less. I'm
20 referring to I'm not going to give you any options right now.
21 I'm going to focus on this one proposal by the Court, this
22 Court, pursuant to federal code 2080636, and I'm referring to
23 subsection two in parens: If a magistrate judge, and I'll read
24 it verbatim: If a magistrate judge has exercised civil
25 jurisdiction under paragraph one of this subsection the clerk of

1 the court shall at the time the action is filed notify the
2 parties of the availability of a magistrate judge to exercise
3 such jurisdiction. The decision of the parties shall be
4 communicated with the clerk of the court. The district court
5 judge or magistrate judge may again advise the parties of the
6 availability of the magistrate judge and in so doing shall also
7 advise the parties they're free to withhold consent without
8 adverse substantive consequences. Rules of the court for the
9 reference of the civil matters to magistrate judges shall
10 include procedures to protect voluntariness of the parties'
11 consent.

12 And what we've done is the court has enacted Local
13 Rule 73.1, which essentially parrots that. All that to say is
14 this: You have, and there's a form available, you have a form.
15 I want you to consider this, and no adverse consequences. The
16 Court would be -- the magistrate judge would be appointed for
17 all purposes with appeals to the Circuit Court, but the beauty
18 of this is that if someone withholds, we don't need to know who
19 is withholding consent. It's will only work if everyone
20 consents to it.

21 I will tell you that the magistrate judge has blocked
22 off fifteen days in October through November the 9th, I believe,
23 and would be available as needed to discharge any further
24 responsibilities to bring about finality in this case, but there
25 is a process in place. There are, I emphasize, no adverse

1 consequences. We don't even need to know who doesn't consent to
2 this, but there is a form that Carol will give you that all of
3 you are to consider, and if you withhold consent then I'm moving
4 to Plan B, and I haven't thought about what Plan B is at this
5 time, but that's what I'm asking the parties to consider now.
6 It seems to me that ten days is an appropriate block of time.
7 What I will do is stay any briefing requirements with respect to
8 the motion for PI during that time period and we'll see what
9 happens. If the parties agree to it then we'll formalize
10 whatever has to be formalized at that point. But this case is
11 going to be history in this court by no later than November of
12 this year, but that's a process in place that I want you to
13 focus on, and you don't have to, I don't need any response from
14 anyone today. In fact, I'm not asking for a response. In fact,
15 I'm avoiding eye contact with everyone, looking down, and that's
16 all I have to say. Are you all ready? So Carol has the form, I
17 think, and I'm going to leave and just follow the rules, and we
18 don't need to know who doesn't consent if someone doesn't
19 consent, and if this process doesn't work then you'll hear my
20 Plan B. All right. Everyone have a wonderful holiday.

21 MS. JOINER: Thank you, your Honor.

22 THE COURT: Thank you.

23 COURTROOM DEPUTY: This Honorable Court now stands in
24 recess.

25 (Proceedings adjourned at about 5:05 p.m.)

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I N D E X

WITNESSES:

None.

E X H I B I T S

None.

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CERTIFICATE

I, JACQUELINE M. SULLIVAN, Official Court Reporter,
certify that the foregoing pages are a correct transcript from
the record of proceedings in the above-entitled matter.

Jacqueline M Sullivan
JACQUELINE M. SULLIVAN