

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 9, 2010, 9:44 A.M.

2 (Court was called to order)

3 MR. CLARY: 'Morning, Your Honor.

4 THE COURT: Good morning. How are you, Mr. Clary?

5 MR. SEGEL: He was on my blind side, Your Honor.

6 THE COURT: Why is it in your cases, Mr. Segel, I
7 can't get orders? And I'm not blaming you. I'm just saying
8 why is it in your cases.

9 All right. Let me go -- because I had an
10 opportunity to read the status reports, let me ask a couple of
11 questions first before I get to some other issues.

12 MS. TAYLOR: And, Your Honor --

13 MR. SEGEL: May I make a clarification, Your Honor?
14 I know Ms. Taylor has issues, but one clarification she asked
15 me to make, and I think it's apparent, my assistant had an
16 arthroscopy last week. We had agreed to not take the
17 deposition of the custodian until the arthroscopy had been
18 completed. I thought my assistant had notified Ms. Taylor of
19 the date of the arthroscopy, she thought I notified her, so
20 it's Ms. Taylor's position that's why she didn't renote the
21 depositions. And I apologize.

22 THE COURT: And that's the Surplus custodian of
23 records --

24 MR. SEGEL: Correct.

25 THE COURT: -- that was my one issue. Well, that

1 was one of my issues, so we hit that one. Okay. Can I go to
2 my issues first, and then I'll hit yours.

3 MS. TAYLOR: Yes.

4 THE COURT: Mr. Clary, Mr. Segel asked if I could
5 move your motion for summary judgment which is scheduled for
6 January 4th back so his motion for summary judgment can be
7 heard at the same time. He hasn't filed his yet. Do you have
8 a position related to that?

9 MR. CLARY: I'm not objecting to that, Your Honor.
10 I'd like to get the case over with with respect to me
11 personally if that's going to be possible. It may not be
12 possible. No assurance of that. But after all this time with
13 this cloud over me, you know, another couple months, you know,
14 it's not going to be the end of the world. And so I --

15 THE COURT: So how long do you think we should move
16 it? Mr. Segel, that means when are you filing your motion is
17 really what I just asked.

18 MR. SEGEL: Your Honor, if you recall, I actually
19 had filed the first motion for summary judgment, then Mr.
20 Clary did a joinder --

21 THE COURT: Right. But you said you wanted to
22 supplement.

23 MR. SEGEL: And, well, the issues, Your Honor, that
24 I want to address with the Court, you refused to hear the
25 motion the last time because discovery hadn't been completed.

1 THE COURT: No. I refused to grant it. And I
2 denied it without prejudice because there was a 56(f) request,
3 and I told you you could renew it when we got past that.

4 MR. SEGEL: All right. Well, if the Court's willing
5 to consider it, then, yes, I think late January, early
6 February to give all the parties sufficient time to --

7 MR. CLARY: That's fine.

8 MR. SEGEL: -- supplement their opposition and
9 whatnot.

10 MR. CLARY: That's fine, Your Honor.

11 THE COURT: How does February 3rd sound? So we're
12 going to move, Mr. Clary, your motion as it's scheduled for
13 January 4th to February 3rd.

14 Mr. Segel, you're going to insure your renotice gets
15 filed with Master Calendar.

16 MR. SEGEL: Yes.

17 THE COURT: And then you're going to submit a
18 courtesy copy for me of everything that you are assuming is
19 part of what is being considered by me for the renoticed
20 motion.

21 MR. CLARY: And I'm going to kind of do the same,
22 Your Honor.

23 THE COURT: No, I assumed you would.

24 MR. CLARY: Yeah. I'm going to probably have a
25 supplement to it.

1 THE COURT: It's just I'm giving Mr. Segel a hard
2 time today.

3 MR. CLARY: The thing I do object to is that the
4 reason that I filed -- that I renoticed the motion, although
5 Your Honor had ruled that I could renotice my motion for
6 summary judgment at any time --

7 THE COURT: Right.

8 MR. CLARY: -- but I waited till discovery was
9 closed.

10 THE COURT: I understand.

11 MR. CLARY: And one thing I will object to today is
12 reopening of discovery.

13 THE COURT: Okay. Well, let me get to the issue,
14 which is the custodian of record deposition of Surplus.
15 You've both agreed that that deposition's going to be taken.
16 When are you going to have it done? Because I'm going to give
17 you a last day that it has to be completed by.

18 MS. TAYLOR: Your Honor, I don't know. I mean, I
19 have issues that I would like to talk about before we talk
20 about any other discovery issues, including this custodian of
21 records issue. But I can say it's -- I'd like to maybe say
22 the first week of January just because of the holidays.

23 THE COURT: January 7th?

24 MS. TAYLOR: That's fine.

25 THE COURT: Okay. So we're going to complete the

1 custodian of records deposition of the Surplus custodian that
2 both parties agree was agreed to be taken after whatever
3 discovery cutoff was appropriate.

4 All right. Now we have other issues. I've covered
5 the ones that I had, except for the request about supplemental
6 expert report, and I assume you're going to tell me now about
7 that.

8 MS. TAYLOR: Your Honor, I have to tell you about a
9 number of things that are in Mr. Segel's report, because it
10 was very troubling to me. We have had these repeated
11 adversarial in nature status reports filed that are riddled
12 with inaccuracies and with omissions to --

13 THE COURT: That's why we have hearings.

14 MS. TAYLOR: Thank you, Your Honor. It's just
15 frustrating that you get something in writing and I get it at
16 1:00 and I don't have necessarily time to adequately prepare.
17 So I don't have something in writing for you, but I do have a
18 stack of emails. And I just need to make a very clear record
19 for this Court for future proceedings, whether it's here or in
20 front of any other entity, as to what's --

21 THE COURT: You mean Carson City.

22 MS. TAYLOR: Possibly. Or other governing entities
23 for our profession as to what is actually going on.

24 MR. CLARY: Your Honor, I'm going to object to that.
25 I mean, she's the one that's creating the extra adversarial

1 attitude by making statements like that.

2 THE COURT: Okay, Mr. Clary. Let me hear from her
3 before I make a decision as to what we're going to do, because
4 I do need to resolve the issue about the additional documents
5 I ordered to be produced, the review by her expert, the copy
6 of the documents, some issues about some confidentiality, and
7 then the supplemental report, and potentially deposition of
8 that expert if you guys want to take it. And you guys can
9 fight all you want, but don't do it in front of me. That's --

10 MR. CLARY: But her clients went to the Bar
11 Association on me one time already, and they didn't succeed.
12 So I don't think I have --

13 THE COURT: Mr. Clary, I try real hard not to get
14 involved with the Bar's governing activities. I try real
15 hard, because they've got their jurisdiction. My jurisdiction
16 is very different. And I've never referred an attorney to the
17 Bar. I have once asked Bar counsel to come sit through a
18 hearing I conducted, but I've never referred an attorney to a
19 Bar, and I'm probably not going to do that unless something
20 very unusual occurs in front of me, because I respect that the
21 members of the Bar are self governing in large part, and I'm
22 going to stay out of your self-governing activities. And if
23 the Bar thinks something's been done that's inappropriate, I
24 am certain they will take appropriate action.

25 Now, can you tell me what the discovery issue is.

1 And I don't really care, I just want to get through it.

2 MS. TAYLOR: I know. And, Your Honor, I very much
3 want to get through it, too. But everything that I have tried
4 to do has been met with a series of roadblocks, a series of
5 delays, representations to you that then don't occur for a
6 month.

7 THE COURT: Did you get Litigation Services over to
8 copy the documents?

9 MS. TAYLOR: I had the documents taken to Litigation
10 Services. There were 24 boxes with lots of receipts. They
11 are still copying them. They are down --

12 THE COURT: They haven't finished?

13 MS. TAYLOR: Well, it was October 25th. They
14 haven't finished.

15 THE COURT: Well, but it's December 9th.

16 MS. TAYLOR: I know. And I have been on them, Your
17 Honor, and I have talked to Ben on a regular basis to see what
18 the status is. And part of the frustration is that the order
19 in which the boxes could be copied and the process in which
20 boxes could be copied were delayed by this issue that was
21 raised about redacting credit account numbers and redacting
22 checking account numbers. This is one of the things we've
23 been fighting about. It's going to cost my client \$10,000
24 more to have Lit Services -- and a lot of time to have Lit
25 Services sit and draw the electronic redaction boxes over the

1 records. It took them a week from discussions onsite to raise
2 this issue, and then Mr. Segel took it upon himself to call
3 Ben and say, well, you have to reorder the copying, you can
4 move forward with this but you can't move forward with that,
5 and we've never been able to reach a resolve. And I --

6 THE COURT: When is the estimated date that
7 Litigation Services will have the copy job, understanding
8 there is a confidentiality issue and you guys will never trust
9 each other enough to enter into a confidentiality agreement,
10 so redactions must be done? So when's it going to be ready?
11 Ben Ross has to give me a date.

12 MS. TAYLOR: Okay.

13 THE COURT: It's Ben Ross; right?

14 MS. TAYLOR: Ben Ross.

15 THE COURT: Ben Ross has to give me a date.

16 MS. TAYLOR: I will tell Ben, because the last time
17 I talked to him he was down to a couple of boxes, and it's all
18 the receipts. So I would imagine I can tell Ben he will have
19 it done in a week.

20 THE COURT: That's good. All right.

21 MS. TAYLOR: I will tell Ben that that was at your
22 discretion.

23 THE COURT: No. It was just my order.

24 MS. TAYLOR: Your order. Sorry. Thank you. Your
25 direction is really the word I was looking for.

1 THE COURT: All right. Here's the next step. So,
2 assuming you get the redacted copies of the records that were
3 made available in November, October-November, assume you got
4 them, I ordered these produced so your expert could review
5 them and provide a supplemental report. I anticipated that
6 those documents would have been in your expert's possession
7 for review a month ago or so.

8 MS. TAYLOR: And if I can go back, Your Honor, let
9 me just clarify. Because if you want me to get those records
10 redacted, I don't know that Ben can do that in a week.

11 THE COURT: I thought you said he had two boxes
12 left.

13 MS. TAYLOR: He had two -- I haven't been having him
14 redact, because I was not going to agree to that --

15 THE COURT: He has to redact.

16 MS. TAYLOR: But, Your Honor, I was looking at the
17 Southwest Exchange. We discussed Southwest Exchange. It's
18 similar situations where you've got third parties and their
19 account numbers.

20 THE COURT: This isn't similar to Southwest
21 Exchange, sorry.

22 MS. TAYLOR: So -- all right. Well, then I don't
23 know the answer. I'm going to have to go back to Ben and ask
24 him how long it's going to take for him to redact, because
25 he's been just doing the copies --

1 THE COURT: Mr. Segel, do you have confidence that a
2 confidentiality agreement could be entered between the parties
3 which would alleviate an additional delay that appears to be
4 obvious to me?

5 MR. SEGEL: Your Honor, I have serious concerns.
6 And the -- I don't think --

7 THE COURT: Okay.

8 MR. SEGEL: I don't think there's an issue of Ms.
9 Taylor --

10 THE COURT: All you have to do is tell me that
11 they're not going to be able to work out a confidentiality
12 agreement, because I'm not going to enforce one.

13 MR. SEGEL: But what I'm concerned about is -- it's
14 not that -- I think we can do one. I think we can get an
15 agreement. My concern is if we allow them to copy those
16 without redacting and somehow these individuals' information
17 gets out and they're having -- they have credit card fraud,
18 that we've got liability. And that's my big, big concern.

19 THE COURT: I understand, Mr. Segel.

20 MR. SEGEL: I'm more concerned, Your Honor, that
21 I've just -- you know, Ms. Taylor and I had a conversation
22 with Ben where they weren't going to do anything with the
23 confidential information without having Ms. Taylor and I work
24 out an arrangement. Now we're told they've already copied it
25 without redacting. That's a very serious concern for me.

1 MS. TAYLOR: Redaction is something that can be done
2 after it's -- after it's copied, Your Honor. You're aware of
3 that, and I told Mr. Segel that.

4 THE COURT: I am aware of that. The issue is before
5 it's released to you it has to be redacted unless you have a
6 confidentiality agreement.

7 MS. TAYLOR: Right. And we did not have anything
8 released to us. It's just been put on record at Lit Services.

9 THE COURT: Mr. Segel, here's the issue. And it's
10 not -- I'm not blaming anyone, because I'm not going to get
11 into any fault issues today other than I still don't have an
12 order and it's another one of your cases.

13 I am going to let her expert do what I said I was
14 going to let her expert do the last time you were here, which
15 is I'm going to give him about a month to review the documents
16 once he has them. If there not a confidentiality agreement
17 that you all agree to, it is going to cause a greater delay in
18 when that month period will conclude. I am giving you and
19 your side some discretion related to when that period will
20 potentially end, because I can't make him review the documents
21 if I can't get them to him because it's got confidential
22 information that hasn't been redacted. So do you guys want a
23 few minutes to talk to each other, and then I'll come back to
24 whether in fact we got finished?

25 MR. SEGEL: Well, I think, Your Honor, I do need to

1 talk to my client --

2 THE COURT: I know you do.

3 MR. SEGEL: -- because I'm very concerned about what
4 if something happens. If they want to give us indemnification
5 -- well, I'm not -- they can't indemnify anything, so --

6 THE COURT: Doesn't help you.

7 MR. SEGEL: So we could have a few minutes, Your
8 Honor. I think we need it.

9 THE COURT: You may.

10 MR. SEGEL: Is there anything else you want to cover
11 now, or do you want us to come back after that?

12 THE COURT: That is in my opinion your biggest
13 issue. I'm sure Ms. Taylor has other issues, but that is my
14 issue. When I granted the motion to compel my plan was the
15 expert would get the documents, the expert would review the
16 documents, the expert would submit a supplemental report, and
17 if you wanted to depose him you'd get to, and were done. That
18 doesn't mean that Ms. Taylor can't show good cause that
19 something else should happen, but that wasn't my plan. So
20 I'll give you a few minutes to work this out, because without
21 a confidentiality agreement it slows the process down.

22 MR. SEGEL: Understood. Thank you, Your Honor.

23 THE COURT: So wave at me when you've had a chance
24 to talk.

25 (Court recessed at 9:56 a.m., until 10:13 a.m.)

1 THE COURT: Come on back up.

2 MR. SEGEL: Your Honor, during the break we did
3 discuss with our client the issue of a confidentiality
4 agreement, and we're -- we can agree in principle to allow
5 that. We have some concern. This is a pretty ugly case, as
6 the Court is well aware.

7 THE COURT: Really?

8 MR. SEGEL: Unfortunately, counsel's not --

9 THE COURT: You're not as ugly as some of the
10 others.

11 MR. SEGEL: Thank you, Your Honor. I'm glad to hear
12 that. And unfortunately, we've had issues that have gone back
13 and forth. Sometimes we can get along, sometimes we can't.

14 I have some concerns. I would like the Court to
15 enter an order that initially would allow their expert, Mr.
16 Stringham and his staff based on signing a confidentiality
17 agreement that they would be able to see this information and
18 the confidential stuff, that it not be initially disclosed to
19 counsel, that if Mr. Stringham can come up with something he
20 thinks is supportive of the position the nefarious conduct has
21 occurred by Hahn Surplus, that then we can have an agreement
22 to either come back to court or have some other written
23 agreement with counsel.

24 I'm concerned, if the Court recalls, that there was
25 initially subpoenas that were improperly issued where Hahn

1 Surplus and the Hahns' individual information was provided
2 without notice to us, and we -- that was delivered to us after
3 the plaintiffs had received it from the banks. We had a
4 disagreement, as well, as to whether or not I knew that they
5 had reviewed those disks. It was my understanding they never
6 review those disks. But they were in the 16.1, we found out,
7 and they did return the disks to us. We have since the last
8 hearing returned the Hahn's Surplus disks to them and have
9 kept the ones -- I guess they were not actually ever delivered
10 for the Hahns individually, but --

11 THE COURT: Let me ask you a question.

12 MR. SEGEL: Sure.

13 THE COURT: Typically I don't have an expert-only
14 confidentiality agreement. I may have an attorney-only
15 confidentiality agreement. I can't keep the documents from
16 counsel if we're going to have people do their job. I am
17 happy to limit, usually, the access of material that's
18 confidential and make people sign a special acknowledgement of
19 their duties under the confidentiality agreement that you
20 stipulate to. But I have never, although I'm not going to say
21 it won't happen, I have never yet done a confidentiality
22 agreement where the only one who gets to see them is an expert
23 for the party and not counsel for the party. I have limited
24 it from the parties seeing it frequently. But, you know,
25 you're asking me to do something unusual. So if you want me

1 to force someone to agree to this unusual procedure, you've
2 got to give me more than I've heard so far.

3 MR. SEGEL: All right. Well, let me explain.
4 Generally -- the general business records of Surplus I don't
5 have an issue with confidentiality. It's fine. And I have no
6 problem with Ms. Taylor's office having that documentation.
7 The things that I'm concerned about, which I don't even think
8 we should have had to disclose, but we didn't fight that 22-
9 question disclosure, we did agree -- Ms. Taylor and I were
10 able to agree to reduce it to a certain amount, but there are
11 still 24 boxes. I'm concerned about Mr. Stringham believes he
12 needs every single record of the business operations of
13 Surplus from 2004 to 2009. That includes credit card slips
14 from customers. How that's going to show that Mr. Hahn stole
15 money from Kokoweef is beyond me, but I'm not a forensic
16 expert. And so that type of documentation, I don't see how
17 it's going to be of any benefit whatsoever to the plaintiff or
18 is going to prove anything. If Mr. Stringham can say, yes,
19 these documents here that are third-party documents are
20 meaningful and would show something, then I think, yes, it may
21 make sense to let counsel see them. But if it's -- if it's --
22 you know, this is an unusual situation where financial records
23 have to be disclosed in a litigation. In a derivative action
24 it's not so unusual.

25 THE COURT: It's not unusual at all.

1 MR. SEGEL: Say again.

2 THE COURT: It's not unusual at all.

3 MR. SEGEL: Well, I think that there are -- the
4 items that we're considering -- I mean, all -- we've agreed --
5 Ms. Taylor and I have agreed that everything is confidential,
6 quote, unquote, and then we realize that --

7 THE COURT: Of these particular boxes that are being
8 produced.

9 MR. SEGEL: Of all the boxes. We agreed all the --

10 THE COURT: That's fine.

11 MR. SEGEL: -- Hahn -- and that only her firm and
12 Mr. Stringham would be able to see them. I'm okay with that.

13 THE COURT: Without a further order of the Court?

14 MR. SEGEL: Right. Well, we're going to do a
15 written agreement on that. And what I have concerns about is
16 this third-party information that may or may not --

17 THE COURT: That's what I usually refer to as backup
18 information.

19 MR. SEGEL: Okay. Well, it's far from backup, but
20 if that's what --

21 THE COURT: Well, no, it's not.

22 MR. SEGEL: Okay.

23 THE COURT: It's actually what I define as backup
24 when I order the backup to be provided.

25 MR. SEGEL: It's that documentation I'm concerned

1 about.

2 THE COURT: All right. And your concern is that you
3 don't want Ms. Taylor to have it because she's an officer of
4 the court and you think she's going to not honor the
5 confidentiality agreement she signs so that you guys can then
6 go to the Bar and fight with her about it?

7 MR. SEGEL: Your Honor, that's not right. I have --
8 I have --

9 THE COURT: Or I'm mean to her.

10 MR. SEGEL: I have faith in Ms. Taylor doing her
11 job. We've been at odds. I think her back office has issues.

12 THE COURT: Her back office?

13 MR. SEGEL: Yeah. Her staff. I don't think that
14 things have been done as well as they should have been done,
15 that's all.

16 THE COURT: Okay.

17 MR. SEGEL: That's a concern.

18 THE COURT: All right. Ms. Taylor.

19 MS. TAYLOR: I can make this very easy, Your Honor.
20 My clients have said they would rather just pay for the
21 redaction than have to deal with all of this, because it --
22 you know, what was -- what he reported to you about this
23 concern he has about inadvertent disclosure is, as most of the
24 things that he's presented in the status report, not accurate
25 and -- or relevant and solely --

1 THE COURT: So, in other words, you're not agreeing
2 to have only your expert be the one who looks at the documents
3 that are of concern.

4 MS. TAYLOR: That is correct, Your Honor. I think
5 it would be --

6 THE COURT: Okay. That's fine. That's all I needed
7 to hear.

8 MS. TAYLOR: Okay.

9 THE COURT: So, Mr. Segel, as I said, I'm not going
10 to enforce a confidentiality agreement unless you guys agree
11 to it. I will enforce the redaction, because that's within my
12 discretion. If you guys can't agree to a confidentiality
13 order, that's okay. But it sounds like it's going to delay
14 your proceedings further. I don't know that it delays the
15 motion related to Mr. Clary, but it delays everything else.

16 MR. SEGEL: Delay our motion, Your Honor?

17 THE COURT: It's going to clearly delay your motion.

18 MR. SEGEL: Well, Your Honor, our motion relates to
19 the claim for negligent misrepresentation, which is a
20 securities claim which is unrelated to the claim that in fact
21 Mr. Hahn has diverted funds from the company. We have --
22 Hahn's Surplus has been sued for unjust enrichment, Mr. Hahn
23 has been sued for two other claims of -- purportedly
24 derivative in nature.

25 MR. CLARY: I agree with that.

1 MS. TAYLOR: And all those claims are subject to his
2 motion for summary judgment.

3 THE COURT: I understand that.

4 MS. TAYLOR: Thank you, Your Honor.

5 THE COURT: Which is why I said it may not affect
6 Mr. Clary's motion, because it does deal with some discrete
7 issues that are not necessarily related to this, but it
8 clearly will relate to Mr. Segel's issues.

9 MR. CLARY: Well, the motion's also on behalf of
10 Kokoweef, and Kokoweef is the ultimate victim here in my view.
11 And I represent Kokoweef. And if the securities fraud was
12 committed or any securities fraud was committed, it's Kokoweef
13 that is the involved party on that, really the more -- even
14 more so perhaps than I, although it's affected me personally
15 in my profession. So I think those issues could go forward,
16 and the thing --

17 THE COURT: Well, I understand.

18 MR. CLARY: -- I'm not objecting to having her have
19 her deposition once she gets those records. I'm not objecting
20 to that. But I am objecting -- I think while she was having
21 all these problems on this other issue she let the time slide
22 on the issue of my motion and the issue of Kokoweef's motion
23 with respect to the securities fraud issues, and she has run
24 out of time to do more discovery on that issue.

25 THE COURT: Mr. Clary, you're already winning on

1 your motion. You're already winning your part.

2 MR. SEGEL: Your Honor --

3 THE COURT: I may move you back to January 4th if I
4 can't get this done.

5 MR. SEGEL: Your Honor, my clients are willing --
6 they would like to proceed as we've talked earlier. We will
7 do a standard nondisclosure agreement with each of the parties
8 signing specifically.

9 THE COURT: Anybody who reviews any of the documents
10 is going to have to sign the acknowledgement.

11 MS. TAYLOR: That is fine, Your Honor.

12 THE COURT: Okay.

13 MS. TAYLOR: And that was what we talked about on
14 September 14th, and that's what I anticipated would happen.

15 THE COURT: So that means there won't be redactions,
16 and Mr. Ross at Litigation Services can have the documents to
17 you in a week or so.

18 MS. TAYLOR: Mr. Ross and I spoke, because I thought
19 I would take advantage of them being -- I called him, I asked
20 him how many boxes he still had, they're all those hand
21 placement receipts. He's got seven boxes, and he says it's
22 going to take him three weeks. And he had to put a break in
23 his copying to wait for -- to start this copying on the third-
24 party issues, Your Honor, because he didn't have an answer
25 from us. And I'm sorry. And I said, the Judge is going to be

1 very unhappy when I come back in and tell her that.

2 THE COURT: Irritated. Irritated. Not unhappy,
3 irritated.

4 MS. TAYLOR: Irritated. I chose the wrong
5 adjective. I apologize. So that is what Mr. Ross reports to
6 me. I said, gotta get them done by the first of the year.

7 THE COURT: Well, here's the deal. You've got a
8 confidentiality agreement. Those that are done he has to
9 release to you now. As they're done he will deliver them to
10 you.

11 MS. TAYLOR: Great.

12 THE COURT: I'm only giving your expert 40 days from
13 today to supplement his report, because he's going to have the
14 bulk of the documents by the time you guys sign this
15 confidentiality order, which should be by today or tomorrow,
16 because it's a really standard document. Please reference the
17 Nevada Supreme Court rule for any filing with me.

18 MR. SEGEL: Okay.

19 THE COURT: So your expert's going to have a
20 supplemental report, if he's going to do one, 40 days from
21 today, which is about January 19th.

22 Is that about right, Kathy?

23 THE CLERK: Uh-huh.

24 THE COURT: About January 19th. You're going to
25 take the depo maybe, and then you're done with discovery

1 unless you file a separate motion that tells me you have good
2 cause as a result of these newly discovered documents for
3 which I had previously granted the motion to compel.

4 MS. TAYLOR: Your Honor, this is where I would like
5 to at least put on the record Mr. Segel's failure to
6 accurately represent to you what was being discussed prior to
7 his filing his status report. On November 18th, and I have
8 emails, he solicited me to ask would I like to extend the
9 discovery cutoff because -- and I'm going to quote him -- this
10 case was not ready for discovery to be closed. And I said,
11 sure, we can discuss it, I will stipulate. He also said, you
12 see, "Also, additionally I want to take the deposition of our
13 PMK in the December. That was represented to me.
14 [Unintelligible] expert's report, and we are clearly not in a
15 position to close discovery." That was on November 18th. And
16 I emailed him and I said, "I'm happy to stipulate to a
17 discovery extension."

18 He also emailed me and said -- part of this was
19 "Please let me know whether you can stipulate to an extension
20 of the discovery deadline. If so, we need to have it
21 presented to the Judge by Friday. We also need to discuss the
22 practicality of maintaining the present trial stack. I am
23 inclined to request a new date," this is Mr. Segel, "and
24 obtain a date certain. If you're not able to stipulate, I
25 will file the motion Friday."

1 And I responded, "How far out do you want to
2 continue the trial? Please advise so we can try to stipulate.
3 We have a status check the first weeks of December. We can
4 probably discuss the trial date then."

5 I never heard back from him, Your Honor. So imagine
6 my shock to get his status report that now demands that you
7 deem discovery closed. And this is where I believe that he's
8 violated certain rules that obligate to maintain candor to the
9 Court.

10 THE COURT: Okay. Let's skip that part.

11 MS. TAYLOR: Okay.

12 THE COURT: I have ordered that certain discovery
13 will be completed. That discovery is the custodian of records
14 of the Surplus that I've said must be completed by January
15 7th. It is the delivery of the documents that are subject to
16 the motion to compel that I ordered be produced a long time
17 ago, the review of those documents by plaintiffs' expert, the
18 supplemental expert report by plaintiffs' expert if he chooses
19 to supplement his report, and the taking of that one
20 deposition by the defendants. If you guys decide to stipulate
21 to do anything else, I'm not going to stop you. However, if
22 you don't stipulate, somebody needs to file a motion very,
23 very quickly.

24 MR. CLARY: Your Honor, I just want to make one
25 quick statement, and that is, assuming that what Ms. Taylor

1 has said is true with their dealings with Mr. Segel, I never
2 agreed to stipulate --

3 THE COURT: I understand, Mr. Clary.

4 MR. CLARY: -- to anything.

5 THE COURT: Mr. Clary, I understand. You already
6 won.

7 MR. CLARY: Thank you.

8 THE COURT: All right.

9 MR. SEGEL: Your Honor, if I may, there's a few
10 issues. Issue number one is that I would be shocked if
11 plaintiffs want to take the deposition of our custodian of
12 records on January 7th. They've got until January 19th to
13 actually produce a report. But that's up to them.

14 THE COURT: Custodian of records has nothing to do
15 with the report.

16 MR. SEGEL: Well, they need the records --

17 THE COURT: The custodian of records is who has your
18 records, how were they stored, where are they, are these them,
19 are the ones that went to the copy service the right records,
20 are there any more records, so I can go tell the Judge I don't
21 have all the records and I need to do something. Right?
22 That's what you intend to ask a custodian of records?

23 MS. TAYLOR: Correct, Your Honor.

24 THE COURT: You're not asking substantive issues.

25 MS. TAYLOR: Correct, Your Honor.

1 MR. SEGEL: Okay. Number two, Your Honor, is that
2 obviously I would like to take the deposition of their expert.

3 THE COURT: Discovery is closed with the exception
4 of the items I just listed. That includes your ability to
5 take their expert.

6 MR. SEGEL: Okay. Well, then we also --

7 THE COURT: That was one of the specific things I
8 told you.

9 MR. SEGEL: Okay. We need a rebuttal expert. We
10 have a rebuttal expert who I've identified. We need a
11 rebuttal expert report that we have to be able to present.

12 THE COURT: Discovery is closed with the exception
13 of those items I have identified. He's already provided a
14 report, Mr. Segel. This is a supplemental report.

15 MR. SEGEL: No, Your Honor, he did not provide a
16 report. They submitted -- they submit nothing. They
17 submitted the notice that he was going to be their expert.
18 They did not submit a report.

19 MS. TAYLOR: And on September 14th what you directed
20 is was get the bank records, which took -- just even the ones
21 he had in his possession took more than a month for him to
22 turn over to us, get the bank records, get those records, and
23 then that was the date you would start the clock running. And
24 that was your language. And so Mr. Segel's correct -- see, we
25 agree on something -- my experts have not filed a report.

1 Your direction to us was they would file something after that
2 clock ran, you know, three weeks, and then if they needed to
3 supplement I could bring it to you.

4 THE COURT: So are you agreeing he cannot file a
5 rebuttal expert?

6 MS. TAYLOR: I would not seek to prejudice him in
7 such a way, Your Honor.

8 THE COURT: So then, yes, you may have a rebuttal
9 expert. The rebuttal expert needs to be disclosed three weeks
10 after the plaintiffs' expert report is delivered to you.

11 MR. SEGEL: Your Honor, it was disclosed. In fact,
12 you ordered that we identify our experts in the middle of --

13 THE COURT: Okay. The report needs to be disclosed
14 three weeks after the expert report from the plaintiffs.

15 MR. SEGEL: Three weeks, Your Honor?

16 THE COURT: Yep.

17 MR. SEGEL: Okay.

18 MS. TAYLOR: And, Your Honor, then I'm assuming that
19 I --

20 THE COURT: Yes, you can take that deposition.

21 MS. TAYLOR: Thank you, Your Honor.

22 THE COURT: Anything else? All other discovery is
23 closed unless you stipulate, and that means all of you
24 stipulate, or someone files a motion.

25 MR. SEGEL: The only other thing, Your Honor, is we

1 go back to that September order, or just leave that in limbo
2 or -- I think we probably just -- the order to take -- oh. I
3 don't have to do that.

4 THE COURT: You know, there's no reason to submit it
5 to me anymore, because we've sort of gutted it today, haven't
6 we?

7 MR. SEGEL: Probably so.

8 THE COURT: Yeah.

9 MR. SEGEL: Just make sure the record's clear.

10 THE COURT: So again the fact that a case involving
11 Nelson -- because it's not always his fault -- has taken over
12 a -- well, no, it's not a year this time.

13 MR. CLARY: You might want do as you did in the
14 previous case and order a quick transcript, because I can see
15 arguments going on about what the new order's going to look
16 like. I've seen --

17 THE COURT: If you guys want to order a transcript,
18 call Jill. It's not something I have to direct an inspector
19 of elections to do something on.

20 MR. CLARY: All right. That's fine.

21 THE COURT: Have a lovely holiday if I don't see
22 you.

23 I am still move Mr. Clary's motion to the February
24 date, because that way everything will be worked out. And if
25 Mr. Segel's issues still aren't resolved, we'll probably deal

1 with Mr. Segel's issues later. But because Mr. Clary's issues
2 deal with different issues, or at least arguably different
3 issues, I want to hear it at the time we've talked about
4 scheduling it.

5 MR. SEGEL: Your Honor, so I guess am I going to
6 renotice mine for that same time, as well, or --

7 THE COURT: If you want to. But your problem is
8 you've got to supplement, and it sounds like there may be
9 problems getting the supplement to me of everything you need.

10 MR. SEGEL: Well, that was why I wanted to ask for a
11 briefing schedule.

12 THE COURT: But I don't want to move Mr. Clary's
13 more than 30 days. I was willing to move his motion 30 days
14 so I could have them heard together, but your issues are
15 slightly different than hers -- or his.

16 MR. SEGEL: All right, Your Honor.

17 THE COURT: Have a great holiday.

18 MR. SEGEL: Thanks.

19 MS. TAYLOR: Thank you, Your Honor.

20 THE PROCEEDINGS CONCLUDED AT 10:30 A.M.

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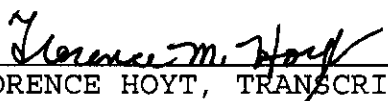
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE HOYT, TRANSCRIBER

12/16/10

DATE