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K.B. SHORE

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CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

1 IN THE TWELFTH JUDICIAL CIRCUIT
2 IN AND FOR MANATEE COUNTY, FLORIDA

3 MARY LOU SMITH, an
4 individual, and
5 SHARON DENSON,
6 an individual,

7 Plaintiffs,

8 vs.

9 CASE NO. 08 CA 11315

10 TRAILER ESTATES PARK AND
11 RECREATION DISTRICT, an
12 independent special taxing
13 District, JANET JONES, an
14 individual, JOHN VANDERMOLEN,
15 an individual, JOSEPH SALERNO,
16 an individual, and
17 MARY LOU MCNULTY, an individual,

18 Defendants.

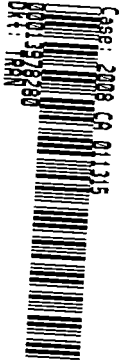
ORIGINAL

19 TRANSCRIPT OF PROCEEDINGS

20 Before the Honorable Janette Dunnigan, Judge of
21 said Court, Twelfth Judicial Circuit of Florida at
22 a hearing held at the Manatee County Courthouse,
23 Bradenton, Florida in the above-styled cause on
24 September 27, 2010, commencing at 9:09 a.m.

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1 APPEARANCES:

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4 Attorneys at Law
5 LEWIS, LONGMAN & WALKER
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8 Bradenton, Florida 34205

9 For the Defendants: KURT E. LEE
10 (Trailer Estates) Attorney at Law
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12 50 Central Avenue, Suite 700
13 Sarasota, Florida 34236
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PROCEEDINGS

1
2 THE COURT: Okay. Then let's begin with the
3 Motion in Limine Regarding Sequestration of
4 Witnesses. Is that the first one on the list?

5 MR. HENNESSY: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. HENNESSY: Kevin Hennessy on behalf of the
8 plaintiffs, Your Honor. We have filed this Motion
9 in Limine Regarding Sequestration in response to
10 the belief that the defendants will be requesting
11 sequestration of all witnesses at trial. We'd like
12 that order to limit, of course, the presence of
13 clients. But in addition, we're looking for the
14 order of sequestration not to -- or to allow
15 Jennifer Cowan, my co-counsel, and Melanie Marken,
16 my paralegal, to remain in the courtroom throughout
17 the trial of this case.

18 As you know, this is a public records and
19 government in the Sunshine law case. Both Ms.
20 Cowan and Ms. Marken are essential to the
21 presentation of this case. Ms. Cowan is second
22 chair and Ms. Marken has been the paralegal
23 assisting from the very beginning of this case, has
24 been involved in the public records requests from
25 the very -- throughout this case and is responsible

1 for the entire management of the documentation and
2 will be using -- doing the presentation of the
3 materials through the trial programs that we'll be
4 utilizing.

5 In addition to both individuals pursuing the
6 public records requests upon which this case has
7 been prepared, frankly, we're in a situation where
8 the District has not stipulated to the authenticity
9 or admissibility of any of those requests or their
10 responses. So my intent is to call Ms. Marken and
11 Ms. Cowan as the first witnesses in my case in
12 order to introduce the numerous public records
13 requests and responses to those requests.

14 Further, they'll testify to the condition of
15 the records that they reviewed at the time that
16 they were produced and the interaction they had
17 with the District in order to obtain those
18 documents. But it will be limited and brief
19 testimony to get those documents before the Court.

20 The sequestration rule is grounded on the goal
21 of ensuring a fair trial. It seeks to prevent the
22 coloring of a witness's testimony by observing
23 other witness testimony. Here Ms. Cowan and Ms.
24 Marken are both intimately knowledgeable and
25 familiar with all the testimony that's going to be

1 presented having been involved in all the
2 presentation of that testimony and discovery
3 depositions and the like. Their testimony is not
4 as such that it is going to be colored by being
5 present in the courtroom. And the Court will
6 certainly be in a position to weigh the fact of
7 their close relationship to the plaintiffs' case.

8 The rules -- the sequestration rule's goal is
9 fairness. And it's clear by allowing a specific
10 exception for not excluding a person whose presence
11 is essential to the presentation of the party's
12 cause.

13 The issue presented here is similar to that
14 stated in the Second District Court of Appeals case
15 of Goodman versus West Coast Brace and Limb, Inc.,
16 which I've cited to the Court, and I have copies
17 for today. In that case the court found -- the
18 Second DCA found it error in excluding witnesses
19 from sitting at the counsel table and assisting the
20 attorney at trial. The court specifically made it
21 clear that the rule of sequestration is not one
22 that it should be strictly applied, but considered
23 on a witness by witness basis.

24 And I would direct your attention to page three
25 of that case. And under headnote one and two where

1 it states, "The exclusion of a witness from the
2 courtroom during a trial is a matter of peculiarly
3 within the discretion of the trial court."

4 It goes on to state, under headnote four, "When
5 it is shown that the presence of a witness will not
6 harm the party requesting exclusion and it is shown
7 that it will be beneficial to the opposing party to
8 have the witness immediately available to give
9 advice and information, it is within the trial
10 court's discretion to allow the witness to remain."

11 It goes on to discuss how the Florida courts
12 have followed federal guidelines. And it cites, in
13 fact, to the Oliver B. Cannon and Son case, which
14 we've also cited to in our motion. And in Oliver
15 B. Cannon, the court held that a witness who was
16 the individual most familiar with all the factual
17 details underlying the case was permitted to remain
18 in the courtroom under this exception.

19 I think the language that's most telling is
20 that, in headnote five, it says that the
21 sequestration rule should not be applied as a
22 strict rule of law, but instead, the trial court
23 should use its discretion in evaluating whether
24 particular witnesses should be excluded.

25 The Goodman case cites, as I said, two federal

1 cases in support, which are illustrative. The
2 Oliver B. Cannon is a case that's very relevant
3 here because the Federal District court would not
4 exclude an attorney who was previously involved in
5 the case despite that attorney being a witness to
6 the underlying transaction that was being litigated
7 in the case.

8 We provided her with --

9 THE COURT: I have it.

10 MR. HENNESSY: Okay. It further -- further,
11 Your Honor, in the case of Knight versus State, the
12 Supreme Court of Florida determined that the -- a
13 court has wide discretion in determining which
14 witnesses are essential. In Knight versus State,
15 the Supreme Court determined that a court was
16 correct in allowing an investigating detective to
17 remain in the courtroom to assist counsel.

18 And finally, in Thompson versus Gross, the
19 Third District hold that refusal to exclude
20 co-counsel, who was presumably also listed as a
21 witness, was within the court's sound discretion.

22 Your Honor, here the witnesses -- here
23 essentially the defendants are trying to dictate by
24 their response to my motion what co-counsel I
25 should have present. Their allegations that Ms.

1 Cowan is not essential to the presentation are
2 simply wrong.

3 And I know Your Honor has been present
4 throughout the full extent of this case and has
5 been able to observe Ms. Cowan and Ms. Marken's
6 participation throughout this trial. But I have
7 Ms. Cowan present, as do I have Ms. Marken, and I'm
8 prepared to put her on the stand here to testify to
9 what her value will be during the course of the
10 trial, how she will be essential to that
11 presentation, and the intimate knowledge that she
12 has concerning information in this trial that will
13 be essential to me in presenting this case to Your
14 Honor or Judge Galen, as the case may be.

15 THE COURT: Okay. Thank you. Let me hear from
16 counsel.

17 MR. LEE: Your Honor, did the Court have the
18 opportunity to review our Memorandum in Opposition?

19 THE COURT: No, but you can tell me.

20 MR. LEE: Okay.

21 THE COURT: I have it here, so I can --

22 MR. LEE: Well, thank you, Your Honor. Well,
23 then with the Court's indulgence, I won't repeat
24 what's in there, Judge. I'll just read a few
25 supplements since we only have a 15-minute block.

1 But, Judge, when counsel says that the goal of
2 sequestration is fairness, it's more than that.
3 It's for truth. And Wigmore, in his Treatise on
4 Evidence of Common Law, said, "When all allowances
5 are made, it remains true that the expedient of
6 sequestration is, next to cross-examination, one of
7 the greatest engines that the skill of man has ever
8 invented for the detection of liars in a court of
9 justice."

10 Judge, it's a critical rule, and its genesis is
11 back in the apocrypha of the Old Testament. If the
12 Court's familiar with the story, there were two
13 accusers against Susanna. And Daniel separated the
14 accusers and was able, then, to divine the truth of
15 the accusations against Susanna.

16 It's been with our jurisprudence since the Old
17 Testament, Your Honor. And that's because it's
18 such an important rule and important protection as
19 a safeguard.

20 With all due respect to opposing counsel,
21 opposing counsel muddies the water when he says
22 that these people are essential, Ms. Cowan and Ms.
23 Marken. Of course they're essential. He's going
24 to call them as witnesses and they're purportedly
25 going to testify about the violations they observed

1 or believe they observed when they were at Trailer
2 Estates.

3 But whether they're an essential witness
4 doesn't mean they are essential to the presentation
5 of the plaintiffs' case in the sense of assisting
6 Mr. Hennessy, lead counsel. That's the difference.
7 That's what the case law talks about as being
8 essential. For example, the Goodman case, the
9 first case he cited, what happened there, Judge, is
10 Mr. Goodman filed a lawsuit, then he declared
11 bankruptcy. The defendant said, hey, you're not
12 the real party in interest anymore. They
13 substitute in the bankruptcy trustee, and the
14 bankruptcy trustee doesn't even show up for trial.
15 So there's an empty chair next to the plaintiff's
16 counsel and Mr. Goodman rightfully acknowledged
17 that, hey, maybe he has an interest in there
18 because any money they make from the lawsuit beyond
19 what's paid to the creditors inures to his benefit.
20 Easily extinguishable.

21 In Knight, for example, the investigator there
22 was merely repeating what was in sworn statements.
23 He wasn't offering anything new. That's not the
24 case here, Judge.

25 As we point out in the memorandum, in August of

1 2009, Mr. Shults wrote the opposing counsel a
2 letter advising them, giving them advance notice
3 that we were going to invoke the rule. Mr.
4 Hennessy responded a month later in e-mail. And
5 both those exchanges are Exhibits A and B to the
6 memorandum.

7 Mr. Hennessy's response wasn't, oh, no, no,
8 don't do that. His response was, well, if you do
9 that, well, I'm going to keep out Scott Rudacille
10 and Mark Barnebey, the only two board certified
11 city, county, local government lawyers in your
12 firm. Mr. Shults writes back, I agree. They won't
13 be there either.

14 Despite that exchange, Judge, plaintiffs'
15 counsel then has created this problem by keeping,
16 you know, these folks involved in the case
17 gathering information or looking at public records,
18 whatever they're doing, and that's fine. All we're
19 saying is that when we get to trial, they can't be
20 in the courtroom under the sequestration rule.

21 Plaintiffs' counsel has access to these folks
22 all the way up to trial. And can they learn what
23 these folks have to say? Sure. You know, they can
24 talk to them, refer to them, whatever they need.

25 In fact, Ms. Marken, in her depo, page 18, she

1 was asked if all the public records violations were
2 -- that she observed, were they contained in an
3 exhibit. It's a chart at her depo, Exhibit 2.

4 The question was, "But all the public records
5 law violations that you observed are contained in
6 Exhibit 2?"

7 Answer, "That's correct."

8 So they know what Ms. Marken's going to say.
9 Presumably they'll interview Ms. Cowan and know
10 what she's going to have to say.

11 But, Judge, what we have here is a case that's
12 very similar to the disqualification rule, and that
13 is that you either have to be a witness or a
14 lawyer. You can't be an advocate and a witness in
15 the same manner.

16 The plaintiffs' counsel found one case without
17 explanation where the court said yeah, that was an
18 abuse of discretion to let that lawyer stay. But
19 we've got a more recent case in Liebreich versus
20 Trial Strategies where it's just the opposite. And
21 that's in the Second DCA from a couple months ago
22 where they just recite -- and again, there's no --
23 I'm not going to pretend that the Second DCA
24 weighed in on it, you know. They just recite that
25 the court kicked out the co-counsel who wanted to

1 wear two hats. They said no, you're either a
2 witness or you're trial counsel.

3 But, Judge, we think we've sufficiently
4 distinguished the cases that were cited in their
5 motion and the memo. The idea that there would be
6 some sort of a cure by calling these folks one and
7 two is an illusory. They may want to call them
8 later, we may want to call them later after
9 witnesses come in and testify contrary to what
10 they've said. You know, I could think of two
11 instances right now where they're going to have --
12 there's going to be a conflict, and, you know,
13 they're going to be here in the courtroom hearing
14 that conflicting testimony.

15 And then lastly, Judge, they have to show that
16 there's a lack of prejudice. And that's not our
17 burden. They have to show that there's an
18 exception that applies. They have to show that
19 they meet the requirements of the exception. They
20 haven't done it. It's not our job to show some
21 sort of negative inference that we won't not use
22 prejudice if somebody testifies. That's why the
23 rule's there, Judge. Because we can't satisfy that
24 -- you don't have to satisfy the burden. We can't.
25 Because it would swallow up the rule that's

1 designed to aid the truth-seeking process and
2 preserve the durability and acceptability of
3 verdicts.

4 So, Judge, for all those reasons, because they
5 haven't carried their burden here -- it certainly
6 wasn't noticed as an evidentiary hearing. And,
7 Judge, for the reasons in our memo, which we would
8 ask the Court to review, we'd ask the Court to deny
9 their motion. And when the Court invokes the rule,
10 it's not only Ms. Cowan, as the attorney witness
11 that's excluded, it's Mr. Rudacille and Mr.
12 Barnebey along with the other lay witnesses. Thank
13 you, Judge.

14 THE COURT: Thank you.

15 Okay. The Motion in Limine regarding
16 sequestration of witnesses, the Court will not
17 disqualify or require that either Ms. Cowan or the
18 paralegal shall be required to be removed from the
19 courtroom.

20 All right. What's the next motion?

21 MR. LEE: Judge, can we also have that include
22 that we can have Mr. Rudacille and Mr. Barnebey
23 present?

24 THE COURT: Yes.

25 MR. HENNESSY: I have no objection, Your Honor.

1 THE COURT: Okay. Thank you.

2 All right. What's the next motion?

3 MR. LEE: If you want to jump to the 10:15
4 hearings, Judge? That was all we had for this
5 morning. I'm prepared to go.

6 THE COURT: I've got a hearing in between. So
7 let me -- if you want to just hold.

8 MR. LEE: Yes, Your Honor.

9 THE COURT: We'll see what the next hearing is
10 and see.

11 (Recess, after which the following proceedings
12 were had:)

13 MR. LEE: We just have two quick ones, Judge.

14 THE COURT: Okay.

15 MR. LEE: The first one is a Motion to Amend
16 Affirmative Defenses. In preparing for trial we
17 identified some typographical errors, as well as a
18 couple other additional minute groups that helps
19 show a cure of some of the items. And so we'd ask
20 the Court to deem the amended defenses amended per
21 the motion. You know, we're not trying to re-open
22 the pleadings and we want to recognize that the
23 Court's prior orders directed to pleadings remain
24 valid and in effect. Just wanted to clean up some
25 typos and then add a couple of minutes.

1 MR. HENNESSY: Your Honor, I'm certainly not
2 going to sit here and object to correcting
3 typographical errors. But, what the defendant is
4 looking to do is to make approximately 18 changes
5 to the existing affirmative defenses and then,
6 again, file a complete amended complaint that
7 contains motions, demands, that have -- that will
8 have then not been ruled on and would make this
9 case no longer at issue.

10 I don't see that these corrections that he's
11 seeking are in any way going to alter what they
12 intend their presentation at trial to be. The
13 bottom line is they've alleged cure and they're
14 arguing cure for every violation that we've cited.

15 To the extent that what they're trying to do is
16 cite new evidence that's never been disclosed or
17 placed on their witness or exhibit list, it seems
18 to me that that would be something that they could
19 attempt to do by introducing at trial and subject
20 to any objection I may or may not make. But it's
21 not appropriate to try to get it in through
22 amending the pleadings at this very late date.
23 Thank you.

24 THE COURT: Okay. Your motion is granted.

25 MR. LEE: Okay. Thank you, Judge. In the

1 proposed order, I think I've made it clear -- I'll
2 let opposing counsel make sure. Judge, may I
3 suggest that instead of accepting the new pleading
4 as a pleading, perhaps the Court might prefer just
5 to deem it amended in the manner that it was
6 requested but not re-opening the pleadings and not
7 modifying or changing the Court's prior orders?

8 THE COURT: By doing this, Mr. Hennessy, is
9 there any prejudice to you?

10 MR. HENNESSY: Your Honor, as long as we're
11 not, we're not adding any new defenses, we're not
12 opening up the pleadings as stipulated by counsel,
13 I do not see any prejudice.

14 THE COURT: Okay. Then I'll enter the order
15 and sign it.

16 MR. LEE: Then, Judge, the other one is just a
17 Motion in Limine to Evenly Apportion the Trial
18 Dates. It sounds uncontroversial to me, but just
19 looking at the number of the exhibits, if the
20 plaintiffs spend five minutes on each of their
21 1,054 exhibits, that's a little under 95 hours. So
22 we're just asking that we just go ahead and start
23 off with the understanding that we have ten days,
24 five and five.

25 MR. HENNESSY: Your Honor, I would object to

1 this motion and this determination certainly at
2 this time. We've indicated in the prior hearing we
3 just held plaintiff hasn't agreed to or stipulated
4 to any of the exhibits even though the overwhelming
5 majority of the exhibits I have in this case are
6 all documents that have come from Trailer Estates
7 and from -- and in response to public record
8 requests that have been brought as part of this
9 case. And that is even despite the fact that
10 several hundred of the exhibits are also listed on
11 their witness list as exhibits they intend to use.

12 So theoretically, I will have to spend the time
13 going through the authentication process and
14 admissibility process for exhibits then that they
15 want to use in their case in chief anyway. So
16 frankly, we are the plaintiffs, we bear the burden
17 in this case of showing the violations in both the
18 Sunshine and public records laws that have occurred
19 in this case. And I think that the Judge, during
20 the course of the trial, could best determine
21 whether, you know, my case has been fully and
22 fairly presented in the first five days or not.

23 And secondly, in prior communications with
24 counsel when we were working on attempting to do
25 pretrial stipulations, he's indicated that his case

1 is very simple and short. And in fact, when we've
2 been in front of you asking how long we think it
3 will take, I've stated continuously ten days while
4 opposing counsel has offered that perhaps it could
5 be shortened. I can only believe that that's
6 because their case will certainly take less than
7 five days. And I think it's very possible, given
8 the lack of stipulation in this case, that my case
9 could take more than five days.

10 MR. LEE: Judge, if the Court really wants to
11 hear why there hasn't been a stipulation, I can
12 address that. But otherwise, Judge, it seems like
13 it's fair, they're saying ten days, apportion it
14 five and five.

15 The reason why there hasn't been a stipulation
16 to exhibits is because, as Mr. Hennessy knows, they
17 provided us with all their exhibits, 1,140 exhibits
18 at the time, on a disc in PDF form. The document
19 that was sent along with the disc as the catalog or
20 the index was not arranged as the documents were on
21 the disc. So that's how I know how long it would
22 take to look at them, Judge, because I would have
23 to look at the disc, see what the PRR, triple ought
24 10, however they numbered it, find it on their list
25 to see what it was. The list does not say author,

1 addressee. It doesn't give you any information but
2 this Bate's number thing, like date, letter. I
3 then have to find it on my own. If that took me
4 five minutes each, Judge -- when it was 1,140, it
5 was exactly 95 hours.

6 So, Judge, we haven't come in here complaining
7 about how they've done their exhibits. If they
8 want to work through their Bate's numbers -- and
9 while Mr. Hennessy is shaking his head, Judge, I'd
10 be more than happy to let you know, then, that when
11 we had a conference, I brought this to his
12 attention. And he said, "Oh, the list isn't the
13 way it is on the disc? Oh, no." He called his
14 paralegal in my presence, asked why it was done
15 like that, like tobacco litigation. He then gave
16 me another list of documents where his -- Jennifer
17 Davy or Jennifer Cowan wrote on it, List the way it
18 is according to the disc.

19 And if you'd like, I'd be more than happy to
20 get those documents and show the Court. It's like
21 tobacco litigation.

22 So, Judge, I have not taken the 95 hours to
23 match up those things. So if he wants to get the
24 exhibits in, great. You know, I'm not going to
25 argue. If it's a minute, it's a minute. I'll be

1 able to quickly find it. But some way he's going
2 to have to print them out because Renee Davis in
3 the Clerk's office is not going to accept them on a
4 disc. So we'll move along.

5 But that's -- again, as he said, he's the
6 plaintiff. If that's how they want to prepare
7 their case, that's not a defense issue. So we're
8 just asking for fairness in the apportioning of the
9 trial dates.

10 MR. HENNESSY: Your Honor, if I may respond
11 briefly. Very briefly. Upon being told of his
12 difficulty with the disc, I immediately -- I agree
13 that he indicated there was a problem, and I
14 immediately provided him with the correction to
15 that. I have not heard since then that there was
16 any problem, number one.

17 Number two, you know, we've already provided
18 the Court with all of the exhibits in written
19 format. And again, if counsel had indicated that
20 that was his preference, that he wanted written
21 format, we would've provided it that way.

22 THE COURT: Okay. You will need to provide the
23 defense with the marked exhibits exactly as they
24 are to be presented at trial. After you do that,
25 with the exhibit markers on them --

1 MR. HENNESSY: Yes, Your Honor.

2 THE COURT: -- then I will require that you get
3 -- that you meet and that you are -- make every
4 reasonable effort to make the appropriate
5 stipulations in order to make sure that the trial
6 is completed.

7 Please understand this. If you do not complete
8 this trial in ten days, the Court has every right
9 to declare a mistrial and you will have to start
10 all over again. And quite frankly, I think the
11 expense that this is going to cost the residents
12 simply -- it would be unconscionable to have to do
13 that.

14 But it is correct that each party should have
15 the same amount of time or the appropriate amount
16 of time as needed. If the defense does not need
17 five full days -- and keep in mind, if you want to
18 make a closing argument, that's -- you know, your
19 jury selection and your openings and closings are
20 all included -- well, I'm sorry, you don't have a
21 jury selection in this. But your openings and
22 closing are included within that ten days. So
23 basically at best, you would each have four and a
24 half days.

25 So I'll take this motion under advertisement

1 until you are able to provide the documents and the
2 exhibits as they are going to be presented at
3 trial. And after you've had, after you've had an
4 opportunity to make a good faith effort to
5 stipulate to the introduction of as many as you
6 can, after that then the Court will rule on how
7 much time that you will be able to have.

8 MR. HENNESSY: Yes, Your Honor.

9 MR. LEE: Judge, would the Court -- you know,
10 now that we've got folks back in town, would the
11 Court consider maybe letting the folks revisit this
12 matter in mediation?

13 THE COURT: I swear you were reading my mind.
14 I really feel that this case -- I know it was close
15 to settlement probably \$50,000 ago. And that's
16 probably conservative. I think that the expense of
17 a ten-day trial with the number of lawyers that
18 will have to be paid, that -- and of course the
19 fact that the Court can, I believe, make a
20 determination as to the reasonableness of those
21 fees, I would really encourage you and will so
22 order you to go back to mediation. And I truly
23 encourage you for the -- for everyone's sake to
24 make an extreme effort to resolve the case without
25 further litigation.

1 MR. LEE: Judge, if we can't get Mr. Larsen,
2 say, tomorrow, does the Court have someone to which
3 they'd order us to use or select or -- so we don't
4 have to --

5 THE COURT: Did Mr. Larsen mediate with you the
6 last time?

7 MR. LEE: I believe he was the mediator, Your
8 Honor.

9 MR. HENNESSY: Yes, Your Honor, he's been the
10 mediator on the multiple times that we've mediated
11 the case.

12 Your Honor, if we're talking about scheduling
13 -- I don't have in my schedule the ability to take
14 a day out. I'm prepping my witnesses all this
15 week. I'm willing to -- I'm very cognizant of Your
16 Honor's concerns, and I couldn't agree more in
17 terms of the cost that this is to all of --
18 everyone in the community.

19 I would say that I understand the reason why
20 counsel is bringing this up at this time. He's a
21 public body and he wants to consider any
22 opportunities to settle in a confidential fashion
23 that mediation can provide. I understand that, and
24 I don't object to that.

25 I'm just concerned about -- and I'm perfectly

1 willing to get on the phone with counsel and get on
2 the phone with a mediator. But I'm concerned about
3 losing my preparation time if this is merely going
4 to be another fruitless effort.

5 THE COURT: Well, if you're saying now that
6 your clients aren't prepared to mediate, then --

7 MR. HENNESSY: No, I'm saying my clients are --
8 well, my clients are present, Your Honor.

9 THE COURT: Okay. So just for giggles --

10 MR. HENNESSY: Yes, Your Honor.

11 THE COURT: -- what are you charging an hour?

12 MR. HENNESSY: Your Honor, I'm going to be
13 charging what the Court's going to award.

14 THE COURT: Okay.

15 MR. HENNESSY: My normal and reasonable rate is
16 \$365 an hour.

17 THE COURT: Okay. So just -- that's almost
18 \$30,000 just for you to be here for ten days
19 without considering another 15,000 or so just to
20 get prepared.

21 MR. HENNESSY: Yes, Your Honor. I guess, Your
22 Honor, what I was asking for is just the
23 flexibility in terms of how this mediation might --

24 THE COURT: Okay. I think for this mediation
25 to work, everyone has to be there.

1 MR. HENNESSY: All right.

2 THE COURT: And I am going to order that you do
3 it and hope that the day that you spend will save
4 hundreds of thousands of dollars to these
5 residents, so.

6 MR. HENNESSY: All right, Your Honor.

7 MR. LEE: And, Judge, not to go back to it, but
8 if we can't get Mr. Larsen this week, does the
9 Court have a preference as to --

10 THE COURT: I don't have a preference as to who
11 you use.

12 MR. LEE: Maybe, Judge, can you just assign us
13 somebody, say we will use blank?

14 THE COURT: Do you have anyone that you want to
15 recommend?

16 MR. LEE: Ed Ford. I think he does mediation
17 full time now.

18 MR. HENNESSY: I've utilized Mr. Ford before.
19 My concern would be scheduling whichever mediator
20 that we can get in a time that works for all of us
21 to be present.

22 THE COURT: Well, I'd like for you to try Mr.
23 Larsen first --

24 MR. HENNESSY: Yes, Judge.

25 THE COURT: -- just simply because he can, with

1 the knowledge of the issues, perhaps now that it --
2 we're down to one defendant, some of the issues
3 that he may have had to spend time on that may have
4 been sticky points are over. So try to get Mr.
5 Larsen.

6 MR. LEE: I will, Judge. I'll do it during the
7 break, Judge. And if we have a problem --

8 THE COURT: Come back.

9 MR. LEE: At 11:45.

10 THE COURT: Okay. I'll see you at 11:45. If
11 you want to come back at 10:45, it looks like we
12 have a cancellation, so we can move you forward if
13 you want.

14 MR. LEE: It's the individual defendants that
15 are part of that Motion to Protect, Your Honor.

16 THE COURT: Right. Right.

17 (Thereupon, this hearing was concluded at 9:55
18 a.m.)

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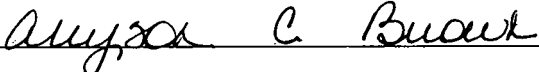
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3 CERTIFICATE

4 STATE OF FLORIDA)

5 COUNTY OF MANATEE)

6 I, ALLYSON C. BROWN, Court Reporter, certify
7 that I was authorized to and did stenographically report the
8 foregoing proceedings and that the transcript is a true
9 record.

10 Dated this 29th day of September, 2010.

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12  _____13 ALLYSON C. BROWN, Court Reporter
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