

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CITIZENS FOR ENFORCEMENT OF )  
PARKLAND COVENANTS, AN )  
UNINCORPORATED ASSOCIATION, ET AL., )

PLAINTIFFS AND )  
PETITIONERS, )

VS. )

CASE NO. BS142768 )

CITY OF PALOS VERDES ESTATES, A )  
MUNICIPAL CORPORATION; ET AL., )

DEFENDANTS AND REAL )  
PARTIES IN INTEREST. )

ROBERT LUGLIANI; ET AL., )

DEFENDANTS AND REAL )  
PARTIES IN INTEREST. )

TRANSCRIPT OF PROCEEDINGS

MARCH 3, 2015

LYNN MARSHALL  
CSR 11002  
34471

Kelli Norden and Associates  
Court Reporters  
310.820.7733 phone 310.820.7933 fax  
11835 W. Olympic Boulevard Suite 680E  
Los Angeles, California 90064  
kna@kellinorden.com www.kellinorden.com

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

CITIZENS FOR ENFORCEMENT OF )  
PARKLAND COVENANTS, AN )  
UNINCORPORATED ASSOCIATION )  
AND JOHN HARBISON, )

PLAINTIFFS AND )  
PETITIONERS, )

VS. ) CASE NO. BS142768

CITY OF PALOS VERDES ESTATES, )  
A MUNICIPAL CORPORATION; )  
PALOS VERDES HOMES )  
ASSOCIATION; A CALIFORNIA )  
CORPORATION; PALOS VERDES )  
PENINSULA UNIFIED SCHOOL )  
DISTRICT, A POLITICAL )  
SUBDIVISION OF THE STATE OF )  
CALIFORNIA, )

DEFENDANTS AND REAL )  
PARTIES IN INTEREST. )

ROBERT LUGLIANI AND DELORES )  
A. LUGLIANI, AS CO-TRUSTEES )  
OF THE LUGLIANI TRUST; )  
THOMAS J. LIEB, TRUSTEE, THE )  
VIA PANORAMA TRUST U/DO )  
MAY 2, 2012, AND DOES 1 )  
THROUGH 20, )

DEFENDANTS AND REAL )  
PARTIES IN INTEREST. )

H E A R I N G

REPORTER'S TRANSCRIPT OF PROCEEDING

MARCH 3, 2015  
9:47 A.M.

111 NORTH HILL STREET, DEPARTMENT 12  
LOS ANGELES, CALIFORNIA

LYNN MARSHALL, CSR NUMBER 11002



Kelli Norden and Associates  
Court Reporters  
310.820.7733 phone 310.820.7933 fax  
11835 W. Olympic Boulevard Suite 680E  
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kna@kellinorden.com www.kellinorden.com

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HON. BARBARA A. MEIERS, PRESIDING

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS AND PETITIONERS, CITIZENS FOR ENFORCEMENT OF PARKLAND:

BROEDLOW, LEWIS, L.L.P.  
BY: JEFFREY LEWIS, ESQ.  
KELLY BROEDLOW DUNAGAN, ESQ.  
(NOT PRESENT)  
734 SILVER SPUR ROAD  
SUITE 300  
ROLLING HILLS ESTATES, CALIFORNIA 90274  
310.935.4001  
JEFF@BROEDLOWLEWIS.COM

FOR THE DEFENDANT AND RESPONDENT CITY OF PALOS VERDES ESTATES:

JENKINS & HOGIN, L.L.P.  
BY: GREGG KOVACEVICH, ESQ. (NOT PRESENT)  
CHRISTI HOGIN, ESQ.  
1230 ROSECRANS AVENUE  
SUITE 110  
MANHATTAN BEACH, CALIFORNIA 90266  
310.643.8448  
GK@LOCALGOVLAW.COM  
CHOGIN@LOCALGOVLAW.COM

FOR THE DEFENDANT AND RESPONDENT PALOS VERDES HOMES ASSOCIATION:

LAW OFFICES OF SIDNEY CROFT  
BY: SIDNEY F. CROFT, ESQ.  
314 TEJON PLACE  
PALOS VERDES ESTATES, CALIFORNIA 90274  
310.849.1002  
SFCROFTLAW@AOL.COM  
(NOT PRESENT)

- AND -

Kelli Norden and Associates  
Court Reporters  
310.820.7733 phone 310.820.7933 fax  
11835 W. Olympic Boulevard Suite 680E  
Los Angeles, California 90064  
kna@kellinorden.com www.kellinorden.com

## 1 APPEARANCES (CONTINUED):

2  
3 GREENWALD, PAULY, FOSTER & MILLER, A.P.C.  
4 BY: ANDREW J. HALEY, ESQ.  
5 1299 OCEAN AVENUE  
6 SUITE 400  
7 SANTA MONICA, CALIFORNIA 90401  
8 310.451.8001  
9 AHALEY@GPFM.COM  
10 (NOT PRESENT)

11 - AND -

12  
13 LEWIS, BRISBOIS, BISGAARD & SMITH, L.L.P.  
14 BY: DANIEL V. HYDE, ESQ. (NOT PRESENT)  
15 BRANT H. DVEIRIN, ESQ.  
16 221 NORTH FIGUEROA STREET  
17 SUITE 1200  
18 LOS ANGELES, CALIFORNIA 90012  
19 213.680.5103  
20 DANIEL.HYDE@LEWISBRISBOIS.COM  
21 BRANT.DVEIRIN@LEWISBRISBOIS.COM

22  
23 FOR THE DEFENDANTS AND REAL PARTIES IN INTEREST  
24 ROBERT LUGLIANI AND DELORES A. LUGLIANI AS CO-TRUSTEES  
25 OF THE LUGLIANI TRUST, THOMAS J. LIEB, TRUSTEE, THE  
26 VIA PANORAMA TRUST U/DO MAY 2, 2012:

27 ARMBRUSTER, GOLDSMITH & DELVAC, L.L.P.  
28 BY: R.J. COMER, ESQ.  
DAMON P. MAMALAKIS, ESQ. (NOT PRESENT)  
11611 SAN VICENTE BOULEVARD  
SUITE 900  
LOS ANGELES, CALIFORNIA 90049  
310.254.9026  
DAMON@AGD-LANDUSE.COM  
RJ@AGD-LANDUSE.COM

Kelli Norden and Associates  
Court Reporters  
310.820.7733 phone 310.820.7933 fax  
11835 W. Olympic Boulevard Suite 680E  
Los Angeles, California 90064  
kna@kellinorden.com www.kellinorden.com

1 LOS ANGELES, CALIFORNIA, TUESDAY

2 MARCH 3, 2015

3 9:47 A.M.

4

09:47:42

5

THE COURT: "CITIZENS FOR ENFORCEMENT

09:47:47

6

OF PARKLAND COVENANTS AND CITY OF PALOS VERDES."

09:47:52

7

MR. COMER: GOOD MORNING, YOUR HONOR.

09:47:54

8

R.J. COMER, C-O-M-E-R, ON BEHALF OF DEFENDANTS

09:47:56

9

LUGLIANI AND LIEB.

09:47:59

10

MR. DVEIRIN: GOOD MORNING, YOUR

09:47:59

11

HONOR. LEWIS, BRISBOIS, BISGAARD & SMITH, BRANT

09:48:03

12

DVEIRIN, ON BEHALF OF THE DEFENDANT PALOS VERDES

09:48:03

13

HOMES ASSOCIATION.

09:48:03

14

MR. LEWIS: GOOD MORNING, YOUR HONOR.

09:48:11

15

JEFF LEWIS FOR THE PLAINTIFFS, NOT THE MOVING PARTY.

09:48:14

16

THE COURT: OKAY. YOU HEARD MY

09:48:18

17

TENTATIVE WAS TO SAY NO.

09:48:19

18

MR. DVEIRIN: YOUR HONOR, WE ALSO

09:48:21

19

HEARD THAT LOUD AND CLEAR IN THE LAST EX PARTE THAT

09:48:23

20

IF WE NEEDED A CONTINUANCE TO COME BACK TO YOU AND

09:48:28

21

EXPLAIN TO YOU IN A DECLARATION EXACTLY WHAT

09:48:31

22

DISCOVERY WE NEEDED, AND THAT YOU WERE CLEAR TO US,

09:48:34

23

YOU UNDERSTOOD THE NATURE OF THE CASE LAW ON THIS,

09:48:37

24

THAT IT'S AN ABUSE OF DISCRETION, THAT WE SHOULD ERR

09:48:41

25

ON THE SIDE OF GRANTING A CONTINUANCE.

09:48:43

26

AND I PAINSTAKINGLY, OVER THE WEEKEND,

09:48:46

27

PUT TOGETHER A RATHER DETAILED DECLARATION AND

09:48:48

28

THESE --

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09:48:49 1 THE COURT: I UNDERSTAND THAT.

09:48:49 2 MR. DVEIRIN: -- PAPERS EXPLAIN

09:48:51 3 EXACTLY WHAT WE NEED TO GET --

09:48:52 4 THE COURT: BUT I DON'T THINK YOU NEED  
09:48:54 5 IT.

09:48:54 6 MR. DVEIRIN: BUT I --

09:48:55 7 THE COURT: AND SECONDLY, I DON'T KNOW  
09:48:58 8 WHY YOU'RE USING SUMMARY JUDGMENT FOR THIS. THIS  
09:49:00 9 SHOULD BE A SIMPLE JUDGMENT OF THE PLEADINGS IN THIS  
09:49:02 10 MATTER, WHICH DOESN'T GET YOU IN ALL THIS UNNECESSARY  
09:49:06 11 AND EXPENSIVE PAPERWORK.

09:49:10 12 PEOPLE ARE SUPPOSED TO PLEAD IN  
09:49:13 13 CONNECTION WITH CERTAIN AFFIRMATIVE DEFENSES, I  
09:49:18 14 BELIEVE, SUCH AS LACHES AND A COUPLE OF THE OTHERS  
09:49:20 15 THAT ARE HERE, FACTS THAT SUPPORT THAT.

09:49:24 16 THAT'S NOT ALWAYS TRUE WITH REGARDS TO  
09:49:28 17 OTHER AFFIRMATIVE DEFENSES, BUT IT IS TRUE WITH  
09:49:34 18 REGARD TO THIS.

09:49:35 19 I DON'T RECALL THIS COMPLAINT OFF THE  
09:49:39 20 TOP OF MY HEAD, BUT MY GUESS IS THAT IT'S LIKE ALL  
09:49:42 21 THE ANSWERS THAT WE GET: THEY JUST THROW IN LACHES,  
09:49:47 22 ESTOPPEL, WHATEVER, AND NO FACTS. AND THAT BEING THE  
09:49:51 23 CASE, IT CAN'T WITHSTAND A MOTION FOR JUDGMENT ON THE  
09:49:56 24 PLEADINGS.

09:49:57 25 AND IF WE -- SO THEN IT'S GRANTED.  
09:50:00 26 THEN THEY'VE GOT TO LAY OUT THEIR WHOLE STORY. SO I  
09:50:04 27 CONFESS, I HAVE A CALENDAR THIS MORNING AND I DIDN'T  
09:50:08 28 GET HEAVILY INTO THIS. I DIDN'T GO BACK AND

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09:50:11 1 INVESTIGATE THE CASE. BUT MY SENSE OF THINGS IS I  
09:50:14 2 DON'T KNOW WHY YOU'RE DOING A SUMMARY JUDGMENT  
09:50:16 3 MOTION.

09:50:17 4 AM I CORRECT THAT THE COMPLAINT HERE  
09:50:20 5 FAILED TO LAY OUT THE DETAILS OF WHAT THE LACHES WAS  
09:50:24 6 BASED ON?

09:50:25 7 MR. LEWIS: YOUR HONOR, MY MEMORY IS  
09:50:26 8 THE AFFIRMATIVE DEFENSES WERE VERY BOILERPLATE AND --  
09:50:28 9 THE COURT: YEAH. SO WHY ARE YOU  
09:50:30 10 FOOLING AROUND WITH A SUMMARY JUDGMENT MOTION?

09:50:32 11 NOW, LET ME TURN TO THE NEXT QUESTION.  
09:50:37 12 FROM WHAT I UNDERSTAND OF WHAT YOU HAVE PRESENTED --  
09:50:45 13 LET ME GO BACK ONE STEP.

09:50:48 14 WHEN YOU THROW IN LACHES, YOU OUGHT TO  
09:50:50 15 HAVE ALL YOUR PROBABLE CAUSE FOR LACHES. YOU OUGHT  
09:50:52 16 TO KNOW YOUR FACTS. IT SOUNDS LIKE YOU'RE TRYING TO  
09:50:55 17 FIGURE OUT WHAT THEY MIGHT BE NOW. THAT'S NOT OKAY.

09:51:00 18 BUT LOOKING AT WHAT YOU SAID YOU WANT TO  
09:51:03 19 PRODUCE, YOU WANT TO PRODUCE A COUPLE OF, QUOTE,  
09:51:03 20 "EXPERTS."

09:51:03 21 MR. DVEIRIN: YES.

09:51:09 22 THE COURT: AND WHAT THESE EXPERTS  
09:51:10 23 APPEAR TO BE ARE BASICALLY LAWYERS. AND THE LAWYERS  
09:51:17 24 ARE GOING TO TELL THIS COURT WHAT DEEDS ARE WHAT AND  
09:51:22 25 SO ON.

09:51:23 26 MR. DVEIRIN: WELL, THAT'S NOT  
09:51:24 27 CORRECT.

09:51:24 28 WHAT WE'RE -- I THINK THERE'S A BIG

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09:51:27 1 DIFFERENCE BETWEEN INTERPRETING PROVISIONS AND  
09:51:30 2 ACTUALLY IDENTIFYING, IN LARGE CHAIN OF DOCUMENTS  
09:51:34 3 OVER MANY YEARS, WHICH DOCUMENTS APPLY SO THAT WE'RE  
09:51:37 4 LOOKING AT THE SAME DOCUMENTS. WE UNDERSTAND --  
09:51:40 5 THE COURT: NO, I DON'T NEED A LAWYER  
09:51:42 6 TO TELL ME THAT.

09:51:43 7 MR. DVEIRIN: WELL, YOUR HONOR, AS WE  
09:51:44 8 POINT OUT IN MY DECLARATION, THAT WHEN YOU LOOK AT  
09:51:47 9 THE DIFFERENCES BETWEEN THE ORIGINAL COMPLAINT, THE  
09:51:50 10 FIRST AMENDED COMPLAINT, AND THE SECOND AMENDED  
09:51:52 11 COMPLAINT, THERE IS A MYRIAD OF TITLE DOCUMENTS THAT  
09:51:58 12 HAVE BEEN ALLEGED TO APPLY IN THIS CASE.

09:51:59 13 AS I ALSO POINT OUT IN OUR -- IN THE  
09:52:02 14 DISCOVERY RESPONSES THAT WE ALREADY FILED, WE  
09:52:04 15 IDENTIFIED SOME OF THOSE DOCUMENTS AS BEING IN THE  
09:52:07 16 CHAIN OF TITLE AND WE SAID WE COULD NOT SAY FOR  
09:52:11 17 CERTAIN WHETHER THEY WERE ACTUALLY APPLICABLE TO THIS  
09:52:12 18 PARTICULAR PROPERTY. THERE ARE A LOT OF PROPERTIES  
09:52:21 19 IN THIS AREA.

09:52:21 20 SO ONE OF THE MAIN REASONS THAT WE ARE  
09:52:21 21 SEEKING TO HAVE THESE EXPERTS --

09:52:21 22 THE COURT: YOU NEED A SURVEYOR, THEN,  
09:52:22 23 WHO WOULD LOOK AT THE METES AND BOUNDS THAT ARE  
09:52:24 24 DESCRIBED ON ONE DOCUMENT AND TELL US WHETHER THOSE  
09:52:27 25 ARE THE SAME METES AND BOUNDS, THE SAME PROPERTY  
09:52:32 26 DESCRIPTION AS IS ON ANOTHER DOCUMENT. YOU DON'T GET  
09:52:34 27 A LAWYER TO --

09:52:36 28 MR. DVEIRIN: WELL, THEY'RE NOT --

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09:52:39 1 THEY MAY BE LAWYERS, BUT THEY'RE TITLE EXPERTS AND  
09:52:41 2 THEY'RE SERVITUDE EXPERTS AND THEY ARE -- THIS IS  
09:52:45 3 WHAT THEY DO. THEY LOOK AT THESE PARTICULAR  
09:52:49 4 DOCUMENTS AND MAKE THAT DETERMINATION.

09:52:52 5 UNDER THE STANDARD OF REVIEW FOR US TO  
09:52:54 6 GET THIS CONTINUANCE, WE HAVE TO --

09:52:56 7 THE COURT: BUT IT'S NOT FOR THEM TO  
09:52:57 8 MAKE THAT DETERMINATION. WE ARE TALKING ABOUT FACTS.  
09:53:02 9 THEY ARE NOT COMPETENT TO TELL ME THIS DEED, BASED ON  
09:53:12 10 ITS METES AND BOUNDS, COVERS THE SAME AS THIS ONE.

09:53:17 11 THEY ARE NOT SURVEYORS. THEY ARE NOT  
09:53:20 12 EXPERTS IN METES AND BOUNDS. THEY ARE NOT ENGINEERS  
09:53:23 13 QUALIFIED TO TESTIFY AS TO THAT. WHAT  
09:53:26 14 QUALIFICATIONS -- WHAT A COUPLE OF LAWYERS HAVE TO  
09:53:29 15 TELL ME WHAT CONCLUSIONS I OUGHT TO REACH.

09:53:35 16 MR. DVEIRIN: I THINK, YOUR HONOR,  
09:53:37 17 THAT THE --

09:53:38 18 THE COURT: THE DIFFERENCE BETWEEN AN  
09:53:41 19 ACCIDENT RECONSTRUCTION GUY TRYING TO COME IN AND  
09:53:47 20 SAY, "FROM THE SKID MARKS, I CAN DETERMINE THAT THIS  
09:53:51 21 CAR MOVED AT THIS SPEED IN THIS DIRECTION." OKAY?  
09:53:56 22 BUT IT CAN'T TELL ME THAT THE DRIVER WAS NEGLIGENT.  
09:54:03 23 NOT QUALIFIED TO DO THAT.

09:54:05 24 AND YOUR GUY IS NOT QUALIFIED, ON THE  
09:54:09 25 FACE OF WHAT I'M READING, TO TELL THE COURT HOW THESE  
09:54:15 26 DEEDS INTERRELATE.

09:54:19 27 MR. DVEIRIN: FIRST OF ALL, THERE ARE  
09:54:20 28 TWO REASONS -- THERE ARE TWO AREAS OF DISCOVERY THAT

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09:54:22 1 WE NEED FOR THE OPPOSITION TO THE MOTION OF SUMMARY  
09:54:22 2 JUDGMENT.

09:54:26 3 THE COURT: LET ME GO BACK FOR A  
09:54:26 4 MINUTE.

09:54:26 5 WHERE IS THE DESCRIPTION OF WHAT IS  
09:54:28 6 THE SUBJECT OF THE SUMMARY JUDGMENT MOTION? LET'S  
09:54:31 7 SEE. THAT'S AT PAGE --

09:54:36 8 MR. DVEIRIN: AS I POINT OUT IN MY  
09:54:36 9 DECLARATION --

09:54:37 10 THE COURT: HOLD ON. THAT'S AT  
09:54:42 11 PAGE -- I BELIEVE YOU READ -- THE AFFIRMATIVE  
09:54:44 12 DEFENSES THAT YOU'RE GOING AFTER.

09:54:45 13 MR. DVEIRIN: WELL, IN THE  
09:54:46 14 INTRODUCTION, I LAY OUT SOME OF THESE AFFIRMATIVE  
09:54:46 15 DEFENSES --

09:54:48 16 THE COURT: OKAY.

09:54:48 17 MR. DVEIRIN: -- AND THOSE ARE --

09:54:49 18 THE COURT: OKAY. LACK OF STANDING.  
09:54:50 19 YOU DON'T NEED AN EXPERT FOR THAT.

09:54:52 20 MR. DVEIRIN: NO. THAT'S NOT BASED  
09:54:54 21 ON -- THAT IS NOT BASED ON EXPERT TESTIMONY. THAT'S  
09:54:57 22 BASED ON PERCIPIENT TESTIMONY.

09:54:58 23 THE COURT: OBVIOUSLY.

09:54:59 24 MR. DVEIRIN: WE'RE --

09:55:00 25 THE COURT: LACHES? THAT'S NO NEED  
09:55:02 26 FOR EXPERT --

09:55:03 27 MR. DVEIRIN: CAN I -- CAN I GO BACK  
09:55:04 28 TO STANDING FOR JUST ONE SECOND?

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09:55:05 1 THE COURT: NO. YOU AGREE, YOU DON'T  
 09:55:08 2 NEED AN EXPERT FOR STANDING. YOU DON'T NEED EXPERTS  
 09:55:10 3 FOR LACHES. YOU DON'T NEED EXPERTS FOR FAILURE TO  
 09:55:15 4 EXHAUST REMEDIES. THAT'S A LEGAL QUESTION FOR ME.

09:55:21 5 YOU DON'T NEED RES JUDICATA AND  
 09:55:25 6 COLLATERAL ESTOPPEL. I'M NOT TAKING THE LEGAL  
 09:55:26 7 OPINION FROM SOMEBODY ON THAT. THAT'S --

09:55:29 8 MR. DVEIRIN: THAT'S CORRECT.

09:55:31 9 THE COURT: -- A QUESTION OF LAW FOR  
 09:55:31 10 THE COURT.

09:55:32 11 UNCLEAN HANDS, YOU DON'T NEED EXPERTS  
 09:55:34 12 FOR THAT. AND MERGER OF COVENANTS. YOU DON'T NEED  
 09:55:39 13 AN EXPERT FOR THAT. I KNOW ABOUT MERGER OF  
 09:55:42 14 COVENANTS. IT'S A CONCEPT IN THE LAW.

09:55:46 15 MR. DVEIRIN: YOUR HONOR, THE MOTION  
 09:55:49 16 IS TWOFOLD. AS TO THOSE DEFENSES, WE ARE ASKING FOR  
 09:55:53 17 TIME TO COMPLETE OUR PERCIPIENT DISCOVERY.

09:55:56 18 ONE OF THE THINGS THAT I LAID OUT IN  
 09:55:58 19 MY DECLARATION IS THAT WE ARE SEEKING TO  
 09:56:01 20 AFFIRMATIVELY DETERMINE WHO IS A MEMBER OF THIS  
 09:56:04 21 ASSOCIATION AND WHO LIVES WITHIN PALOS VERDES, WITHIN  
 09:56:09 22 THE ASSOCIATION'S LIMITS.

09:56:11 23 THAT'S ALL PERCIPIENT DISCOVERY. WHAT  
 09:56:13 24 THEY DID BEFORE THE CITY OF PALOS VERDES IN TERMS OF  
 09:56:17 25 EXHAUSTION OF THEIR REMEDIES, THAT'S FACTUAL  
 09:56:19 26 DISCOVERY, WHAT THEY ACTUALLY DID.

09:56:20 27 THE COURT: I ALREADY MADE A RULING  
 09:56:21 28 THAT I'M NOT EVEN SURE YOU HAVE TO BE A MEMBER OF THE

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09:56:26 1 CITY OR RESIDE THERE. AND THEY CAME BACK WITH A  
09:56:30 2 DECLARATION THAT THIS PERSON OWNS A PIECE OF PROPERTY  
09:56:34 3 GOVERNED BY THE SPECIFIC COVENANTS IN ISSUE. AND  
09:56:38 4 THAT SHOULD TAKE ABOUT TWO SECONDS FOR A TITLE PERSON  
09:56:42 5 TO CONFIRM.

09:56:43 6 MR. DVEIRIN: YOUR HONOR, THEY HAVE AN  
09:56:44 7 ASSOCIATION. THEY HAVE A CITIZENS FOR ENFORCEMENT  
09:56:49 8 PARKLAND COVENANTS, NOT JUST FOR ONE PERSON.

09:56:51 9 THOSE MEMBERS OF THE ASSOCIATION THAT  
09:56:54 10 ARE -- THOSE MEMBERS OF HIS -- PLAINTIFF'S GROUP THAT  
09:56:57 11 ARE NOT MEMBERS OF THE ASSOCIATION DO NOT HAVE  
09:57:01 12 STANDING AS ONE OF OUR ARGUMENTS TO CHALLENGE -- TO  
09:57:05 13 CHALLENGE THE ASSOCIATION UNDER THE COVENANTS.

09:57:09 14 WE NEED TIME TO DISCOVER WHO THESE  
09:57:12 15 PEOPLE ARE AND WHETHER OR NOT THEY'RE MEMBERS OF THE  
09:57:15 16 ASSOCIATION.

09:57:16 17 THE COURT: ONE PERSON HAS THE  
09:57:17 18 STANDING. THEY DON'T NEED ALL THESE OTHERS TO HAVE  
09:57:20 19 STANDING.

09:57:20 20 MR. DVEIRIN: NO. ONE PERSON -- ONE  
09:57:22 21 PERSON HAS STANDING, BUT THEY ALL HAVE TO HAVE  
09:57:25 22 STANDING IN ORDER TO SUE US --

09:57:27 23 THE COURT: NO.

09:57:28 24 MR. DVEIRIN: BUT WE STILL HAVE A  
09:57:28 25 RIGHT TO DETERMINE WHO HAS -- WHAT THEIR GROUP IS TO  
09:57:28 26 SEE IF --

09:57:32 27 THE COURT: NOT SOMETHING I'D CONTINUE  
09:57:33 28 THIS TRIAL FOR.

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09:57:34 1 MR. DVEIRIN: WE'RE NOT ASKING TO  
09:57:36 2 CONTINUE THE TRIAL. WE'RE ASKING TO HAVE THE SUMMARY  
09:57:38 3 JUDGMENT DATE BE PUT OFF SO WE CAN CONTINUE  
09:57:39 4 DISCOVERY. WE DON'T EVEN HAVE A TRIAL DATE SET.  
09:57:42 5 THE COURT: I DON'T THINK SO. I'M NOT  
09:57:42 6 HEARING A REAL ISSUE THERE.  
09:57:44 7 WHAT'S THE NEXT --  
09:57:45 8 MR. DVEIRIN: THE NEXT ONE IS ON  
09:57:48 9 THE FAILURE TO EXHAUST REMEDIES.  
09:57:50 10 THE COURT: NO. THE NEXT ONE ON YOUR  
09:57:52 11 LIST IS LACHES.  
09:57:53 12 MR. DVEIRIN: NO. WELL, WHAT WE'RE  
09:57:54 13 SEEKING TO TAKE DISCOVERY ON -- ON WHAT THE  
09:57:59 14 PETITIONER KNEW, WHEN THEY KNEW IT AND THE TIME IN  
09:58:02 15 WHICH THIS HAS BEEN GOING ON.  
09:58:04 16 AND THEY KNEW EXACTLY WHAT WAS GOING  
09:58:04 17 ON DURING THE TIME OF THE PREVIOUS LITIGATION AND THE  
09:58:07 18 SETTLEMENT AND DIDN'T TAKE ANY ACTION WITH RESPECT TO  
09:58:10 19 THESE THINGS WITHIN THE PROPER AVENUES UNTIL THEY  
09:58:15 20 WERE -- UNTIL WE'RE AT THE PRESENT TIME. BUT THESE  
09:58:17 21 ARE FACTUAL DETERMINATIONS.  
09:58:18 22 THE COURT: I DON'T THINK THAT'S A  
09:58:20 23 MATTER OF LAW -- THAT IT'S A MATTER OF LAW. I KNOW  
09:58:22 24 WHEN THESE DIFFERENT THINGS TOOK PLACE AND I DON'T  
09:58:24 25 THINK THERE'S ANY ARGUMENT --  
09:58:27 26 MR. DVEIRIN: BUT, YOUR HONOR --  
09:58:27 27 THE COURT: -- TENTATIVELY, THAT CAN  
09:58:30 28 BE MADE ON THE QUESTION OF LACHES. BUT DISCOVERY, I



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09:58:33 1 DON'T THINK IS AT ISSUE.

09:58:33 2 MR. DVEIRIN: YOUR HONOR, WE'RE --

09:58:36 3 THE COURT: I DON'T THINK YOU NEED A  
09:58:37 4 BUNCH OF FACTS. DID YOU EVER TAKE THE PLAINTIFF'S  
09:58:40 5 DEPOSITION?

09:58:40 6 MR. DVEIRIN: WE --

09:58:40 7 THE COURT: AND HOW MANY MONTHS HAVE  
09:58:41 8 YOU HAD TO DO THAT?

09:58:43 9 MR. DVEIRIN: AS WE POINTED OUT IN THE  
09:58:44 10 PAPERS THAT WE FILED, WE'VE BEEN IN LENGTHY MEET AND  
09:58:48 11 CONFER WITH THEM OVER THESE VERY ISSUES.

09:58:50 12 THE COURT: THEY SHOULDN'T ALLOW  
09:58:51 13 LENGTHY MEET AND CONFERS. THEY SHOULD --

09:58:51 14 (SPEAKING SIMULTANEOUSLY.)

09:58:51 15 MR. DVEIRIN: WELL, YOUR HONOR, WE --

09:59:00 16 THE COURT: -- THAT IF YOU'RE GOING TO  
09:59:00 17 TAKE THE PLAINTIFF'S DEPOSITION, THAT YOU DO IT.

09:59:00 18 MR. DVEIRIN: YOUR HONOR --

09:59:00 19 MR. LEWIS: YOUR HONOR, WE OFFERED  
09:59:00 20 THEM NINE DEPOSITION DATES IN JANUARY, FEBRUARY AND  
09:59:00 21 MARCH. AND WHAT THE DEFENDANTS DID IS THEY SAID,  
09:59:03 22 "WE'LL TAKE THE DATE THAT IS RIGHT AFTER --  
09:59:05 23 LITERALLY, THE DAY AFTER THE OPPOSITION IS DUE TO THE  
09:59:09 24 M.S.J., THAT'S THE DATE WE WILL WANT IT."

09:59:09 25 MR. DVEIRIN: YOUR HONOR, THAT'S NOT  
09:59:09 26 CORRECT.

09:59:10 27 MR. LEWIS: WE'VE PASSED UP JANUARY  
09:59:11 28 AND FEBRUARY.

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09:59:11 1 MR. DVEIRIN: THAT'S NOT CORRECT.  
09:59:13 2 WHEN WE GOT THE DEPOSITION -- WE WERE SETTING THE  
09:59:15 3 DEPOSITION DATES -- PLAINTIFF'S COUNSEL ASKED US TO  
09:59:19 4 CONTINUE THE DEPOSITION DATES. IN RESPONSE TO THAT,  
09:59:21 5 WE LOOKED AT ALL PARTIES; SCHEDULES --  
09:59:23 6 THE COURT: YOU HAD MONTHS BEFORE  
09:59:25 7 JANUARY TO TAKE THE PLAINTIFF'S DEPOSITION.  
09:59:27 8 MR. DVEIRIN: NO, WE DIDN'T. WE --  
09:59:29 9 LOOK --  
09:59:31 10 THE COURT: YOU HAD FOREVER.  
09:59:32 11 MR. DVEIRIN: AS WE POINTED OUT IN THE  
09:59:32 12 PAPERS, THE STANDARD FOR GRANTING THIS IS NOT  
09:59:35 13 DILIGENCE, EVEN THOUGH WE HAVE BEEN DILIGENT.  
09:59:37 14 AS SOON AS WE GOT THE MOTION FOR  
09:59:39 15 SUMMARY JUDGMENT WE SERVED THE INTERROGATORIES, WHICH  
09:59:42 16 WE JUST GOT THE RESPONSES TO LAST FRIDAY BECAUSE OF  
09:59:45 17 AN EXTENSION THAT PLAINTIFF'S COUNSEL ASKED FOR.  
09:59:48 18 THE COURT: THAT'S YOUR PROBLEM.  
09:59:49 19 MR. DVEIRIN: NO, I KNOW. BUT WHAT  
09:59:50 20 I'M SAYING IS --  
09:59:51 21 THE COURT: YOU DON'T GRANT IT IF YOU  
09:59:53 22 NEED THE INFORMATION RIGHT --  
09:59:55 23 MR. DVEIRIN: I UNDERSTAND THAT. BUT  
09:59:55 24 THEN --  
09:59:56 25 THE COURT: ALL RIGHT.  
09:59:57 26 MR. DVEIRIN: -- WE ALSO SERVED THE  
09:59:58 27 DEPOSITION NOTICES --  
09:59:59 28 THE COURT: WHAT'S NEXT? RES JUDICATA



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09:59:59 1 AND COLLATERAL ESTOPPEL? YOU DON'T NEED ANY DELAYS  
10:00:03 2 TO PREPARE FOR THAT.

10:00:06 3 UNCLEAN HANDS. WHAT DO YOU NEED FOR  
10:00:08 4 THAT?

10:00:09 5 MR. DVEIRIN: WELL, I'M GOING TO GO  
10:00:10 6 BACK TO FAILURE TO EXHAUST REMEDIES. WE NEED TO  
10:00:13 7 DISCOVER WHAT EXACTLY THEY DID VIS-A-VIS THEIR -- THE  
10:00:18 8 HEARINGS BEFORE THE CITY, AND ALSO BEFORE THE  
10:00:21 9 ASSOCIATION. AND THAT'S SOMETHING WE INTEND TO  
10:00:24 10 ADDRESS IN THE DEPOSITION.

10:00:24 11 THE COURT: THAT'S NOT A LEGAL BAR.  
10:00:26 12 TENTATIVELY, THAT'S NOT A LEGAL BAR. ALL RIGHT.

10:00:29 13 THEN -- I DON'T SEE ANYTHING ELSE,  
10:00:35 14 UNLESS YOU HAVE COVENANTS. THAT'S A LEGAL QUESTION.

10:00:36 15 DO YOU WANT TO BE HEARD ON ALL THIS?

10:00:38 16 MR. LEWIS: YOUR HONOR, NO. I WOULD  
10:00:39 17 STAND ON MY PAPERS. THANK YOU.

10:00:40 18 THE COURT: ALL RIGHT. I'LL TAKE IT  
10:00:42 19 UNDER SUBMISSION. BUT OFF THE TOP, I DON'T SEE ANY  
10:00:48 20 MERITS TO IT.

10:00:49 21 MR. DVEIRIN: YOUR HONOR, PLEASE --

10:00:50 22 THE COURT: AND I ALSO DON'T SEE ANY  
10:00:52 23 GOOD REASON FOR BRINGING A SUMMARY JUDGMENT MOTION.

10:00:53 24 MR. DVEIRIN: YOUR HONOR, PLEASE --

10:00:56 25 THE COURT: I'M LOOKING AT --

10:00:56 26 MR. LEWIS: YOUR HONOR, TO BE HEARD,  
10:00:59 27 JUST TO BE CLEAR, I'M NOT BRINGING A M.S.J. TO DEFEAT  
10:00:59 28 AFFIRMATIVE DEFENSES.

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10:01:01 1 WHEN I BROUGHT THE M.S.J. WAS -- THIS  
10:01:04 2 IS STRICTLY ON ENFORCEMENT OF THE DEEDS, THE DEED OUT  
10:01:06 3 THERE THAT SAID THIS PARK SHOULD BE PARKLAND FOREVER.  
10:01:10 4 THE FACTS ARE REALLY NOT IN DISPUTE. I WANT THE  
10:01:12 5 COURT TO RULE ON THAT. AND I KNOW IT'S UNUSUAL --  
10:01:15 6 THE COURT: SO YOU'RE ASKING SUMMARY  
10:01:16 7 JUDGMENT AS TO THE ENTIRE ACTION?  
10:01:18 8 MR. LEWIS: YES, YOUR HONOR.  
10:01:19 9 THE COURT: NOT AS TO JUST THE  
10:01:21 10 SUPERLATIVE DEFENSES?  
10:01:21 11 MR. LEWIS: CORRECT.  
10:01:24 12 THE COURT: OKAY. ALL RIGHT.  
10:01:24 13 MR. DVEIRIN: A COUPLE OF THINGS, YOUR  
10:01:24 14 HONOR.  
10:01:24 15 THE COURT: I'LL GIVE YOU THE LAST  
10:01:28 16 WORD, BUT DON'T REPEAT WHAT'S IN YOUR PAPERS. I  
10:01:29 17 INTEND TO GO THROUGH THEM AGAIN MORE THOROUGHLY, BUT  
10:01:32 18 I'M JUST NOT SEEING IT IN THIS EXPERT BUSINESS. I  
10:01:35 19 JUST DON'T SEE IT ALL. MAYBE I JUST HAVEN'T READ  
10:01:38 20 CAREFULLY ENOUGH.  
10:01:39 21 MR. DVEIRIN: LOOK, I BELIEVE THAT  
10:01:42 22 THERE'S A DIFFERENCE BETWEEN THE LEGAL INTERPRETATION  
10:01:45 23 AND DEALING WITH THE FACTUAL ISSUE OF WHAT DOCUMENTS  
10:01:49 24 APPLY TO THIS PARTICULAR PROPERTY, WHICH IS MUCH MORE  
10:01:51 25 THAN THE 1940 DEED THAT HE IS JUST ALLEGING.  
10:01:54 26 AND THEN IN HIS OWN PAPERS, HE  
10:01:55 27 IDENTIFIED SIX OR SEVEN DEEDS AND TRACTS THAT APPLY  
10:01:58 28 TO THIS PROPERTY UNTIL IT GOT TO HIS LATEST PLEADING.

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10:02:00 1 THAT IS A GRAY ISSUE. THAT'S AN AMBIGUITY THAT THESE  
10:02:03 2 EXPERTS SEEK TO ADDRESS.

10:02:04 3 ONE OF THE THINGS I'M VERY CONCERNED  
10:02:06 4 ABOUT IS THAT THIS NOT GET PREJUDGED. I CAN  
10:02:09 5 UNDERSTAND IF WE FILE EXPERT DECLARATIONS AND AT SOME  
10:02:12 6 POINT IN TIME YOU DECIDE NOT TO CONSIDER THEM, BUT TO  
10:02:15 7 TELL US WE DON'T EVEN HAVE THE ABILITY TO PRESENT  
10:02:15 8 THOSE TO YOU --

10:02:15 9 THE COURT: I TOLD YOU, TENTATIVELY,  
10:02:15 10 IT SOUNDS, ALTHOUGH I HAVEN'T CAREFULLY READ YOUR  
10:02:25 11 PAPERS, BUT YOU'RE LOOKING TO THE WRONG EXPERT.

10:02:27 12 I HAVE PEOPLE ALL THE TIME WHO TRY TO  
10:02:30 13 PUT LAWYERS ON THE STAND TO TELL THE COURT WHAT THE  
10:02:33 14 LAW IS AND HOW THE COURT OUGHT TO -- WHAT LEGAL  
10:02:38 15 JUDGMENTS THE COURT OUGHT TO MAKE ABOUT VARIOUS  
10:02:40 16 THINGS, AND THAT IS NOT APPROPRIATE.

10:02:44 17 AND FROM WHAT LITTLE I HAVE READ, AND  
10:02:46 18 I CONFESS, IT'S JUST A LITTLE FROM YOUR PAPERS THAT  
10:02:51 19 YOUR INTENT -- AND I'M TRYING TO GIVE YOU A HEADS UP,  
10:02:53 20 THAT YOU MAY BE GOING TOWARD THE WRONG TYPE OF  
10:02:53 21 EXPERT.

10:02:57 22 I DIDN'T SAY I WAS GOING TO PRECLUDE  
10:03:00 23 YOU FROM CALLING EXPERTS.

10:03:00 24 MR. DVEIRIN: RIGHT. BUT WHAT --

10:03:02 25 THE COURT: I'M SAYING THE TWO YOU'RE  
10:03:06 26 TALKING ABOUT HERE, I'M NOT, OFF THE TOP, SEEING THE  
10:03:09 27 JUSTIFICATION FOR THEM.

10:03:10 28 MR. DVEIRIN: YOUR HONOR, IT MAY VERY



10:03:13 1 WELL BE THAT AT THE END OF THE DAY, YOU MIGHT MAKE A  
10:03:16 2 DECISION REGARDING THESE EXPERTS.

10:03:17 3 BUT TO PRECLUDE US TO HAVE THE  
10:03:19 4 OPPORTUNITY TO -- WHAT WE ASKED FOR IN THE SIXTH  
10:03:23 5 YEAR, NINETY DAYS TO COMPLETE THEIR WORK, SO WE CAN  
10:03:25 6 PRESENT THAT FACTUAL EVIDENCE TO YOU AND THEN YOU  
10:03:29 7 MAKE A DECISION ABOUT IT, THAT'S WHERE IT BECOMES  
10:03:32 8 PREJUDICIAL TO US.

10:03:34 9 THE COURT: SIR, IF THE QUESTION WAS  
10:03:36 10 WHAT THE WORTH IS OF A HEIFER COW IN CALIFORNIA,  
10:03:49 11 NOTHING SPECIAL, AND YOU WANT TO BRING IN AN EXPERT  
10:03:53 12 TO TELL ME THE VALUE OF HEIFERS IN NEW JERSEY, I  
10:04:00 13 MIGHT TELL YOU RIGHT OFF THE TOP, I'M NOT INCLINED TO  
10:04:04 14 GIVE YOU A CONTINUANCE TO BRING ME IN AN EXPERT ON  
10:04:10 15 JERSEY COW VALUES IN NEW JERSEY, BECAUSE I DON'T SEE  
10:04:14 16 IT.

10:04:14 17 THAT'S KIND OF WHAT WE'RE TALKING  
10:04:18 18 ABOUT HERE. YOU'RE BASING YOUR REQUEST ON A NEED.  
10:04:23 19 AND I'M TRYING TO SAY TO YOU: IF THE NEED IS  
10:04:28 20 THERE -- AGAIN, OFF THE TOP OF A LIGHT READING -- YOU  
10:04:32 21 HAVEN'T SHOWN ME A NEED FOR THIS PARTICULAR TYPE OF  
10:04:37 22 EXPERT ON ANYTHING.

10:04:39 23 MR. DVEIRIN: WHAT I LAID OUT IN THAT  
10:04:40 24 DECLARATION -- AND I DO ENCOURAGE YOU TO READ IT --  
10:04:42 25 IS THAT THERE IS A BIG DIFFERENCE BETWEEN THE  
10:04:45 26 ORIGINAL COMPLAINT AND THE SECOND COMPLAINT AND THE  
10:04:45 27 THIRD COMPLAINT --

10:04:48 28 THE COURT: I DON'T CARE. WE'RE ON

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10:04:49 1 THE THIRD COMPLAINT.

10:04:50 2 MR. DVEIRIN: I UNDERSTAND THAT. BUT  
10:04:51 3 THE PROBLEM IS THAT THERE IS A SIGNIFICANT AMBIGUITY  
10:04:55 4 AS TO WHICH OF THESE MANY DOCUMENTS ACTUALLY APPLY TO  
10:04:58 5 THIS PARTICULAR PROPERTY. WE NEED EXPERTS TO ASSESS  
10:05:01 6 THAT SO THAT WE'RE ALL LOOKING AT THE SAME DOCUMENTS.

10:05:04 7 THE COURT: ALL RIGHT. JUST --

10:05:05 8 MR. DVEIRIN: THAT'S THE FACTUAL  
10:05:06 9 ISSUE.

10:05:06 10 THE COURT: YOU ARE JUST REPEATING  
10:05:14 11 YOURSELF NOW, SIR. IS THERE SOMETHING NEW --

10:05:14 12 MR. DVEIRIN: YES.

10:05:14 13 THE COURT: -- AND ADDITIONAL THAT YOU  
10:05:14 14 WANT TO EMPHASIZE?

10:05:14 15 MR. DVEIRIN: YES.

10:05:14 16 THE COURT: I THINK WE'RE GOING TO  
10:05:14 17 CALL THIS A DAY BECAUSE I HAVE MY OTHER CALENDAR  
10:05:19 18 PARTICIPANTS HERE.

10:05:20 19 MR. DVEIRIN: YES. WE -- THERE IS --  
10:05:20 20 THE TIME THAT WE'RE ASKING FOR, WHICH IS 150 DAYS, IS  
10:05:24 21 BASED ON THE ORIGINAL HEARING DATE. IT'S NOT 150  
10:05:28 22 DAYS FROM STAY. WE ARE ALREADY ACTIVELY WORKING ON  
10:05:29 23 GETTING THESE PEOPLE IN ORDER. WE JUST NEED MORE  
10:05:29 24 TIME.

10:05:32 25 SECONDLY, THERE IS NO PREJUDICE. HE  
10:05:35 26 DOESN'T IDENTIFY ANY IN HIS OPPOSITION. THERE'S NO  
10:05:37 27 TRIAL DATE SET. THERE'S NO DISCOVERY CUT-OFF.

10:05:39 28 WE'RE THE PARTY THAT'S PREJUDICED BY

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10:05:41 1 NOT BEING ABLE TO PRESENT ALL THE EVIDENCE THAT WE  
10:05:43 2 WANT TO PRESENT SO THAT YOU CAN MAKE THE DECISION  
10:05:45 3 THAT YOU WANT TO MAKE --

10:05:46 4 THE COURT: WE HAVE NO TRIAL DATE?

10:05:46 5 MR. LEWIS: THERE'S NO TRIAL DATE,  
10:05:46 6 YOUR HONOR.

10:05:46 7 MR. DVEIRIN: AND SO WE'RE THE ONES  
10:05:51 8 THAT ARE PREJUDICED, NOT THE OTHER SIDE. SO WE'RE  
10:05:53 9 JUST ASKING FOR THE OPPORTUNITY TO PRESENT THE  
10:05:57 10 EVIDENCE. YOU MAY ULTIMATELY DECIDE NOT TO CONSIDER.  
10:05:59 11 YOU MAY CONSIDER PART OF IT. BUT TO DENY --

10:06:02 12 THE COURT: YOU MIGHT RECONSIDER IT IF  
10:06:03 13 I DO GIVE YOU A CONTINUANCE ABOUT WHAT KIND OF AN  
10:06:06 14 EXPERT WOULD REALLY BE APPROPRIATE.

10:06:08 15 MR. DVEIRIN: YES. WELL, THAT TOO.  
10:06:09 16 BUT WHAT I'M SAYING IS WE NEED MORE TIME IN ORDER TO  
10:06:12 17 PRESENT OUR -- THE EVIDENCE THAT WE ASKED FOR IN THE  
10:06:14 18 DECLARATION AS PART OF OUR OPPOSITION. AND NOBODY IS  
10:06:18 19 GOING TO BE PREJUDICED BY IT EXCEPT FOR US.

10:06:20 20 THE COURT: ALL RIGHT. LET ME THINK  
10:06:21 21 ABOUT IT.

10:06:23 22 MR. DVEIRIN: THANK YOU, YOUR HONOR.

10:06:23 23 THE COURT: THAT LAST POINT IS YOUR  
10:06:23 24 BEST POINT.

10:06:23 25 MR. LEWIS: YOUR HONOR, IF I MAY BE  
10:06:28 26 HEARD ON THAT NEW POINT THAT WAS JUST RAISED,  
10:06:31 27 BRIEFLY?

10:06:32 28 THE COURT: YEAH. I DON'T EVEN -- I

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10:06:34 1 DIDN'T EVEN REMEMBER SEEING THAT --

10:06:35 2 MR. LEWIS: ONE OF THE REASONS --

10:06:36 3 THE COURT: -- IN THESE MOVING PAPERS.

10:06:41 4 LET ME SEE IF THEY EVER TALK ABOUT

10:06:45 5 PREJUDICE.

10:06:46 6 MR. DVEIRIN: YES. ON --

10:06:52 7 THE COURT: THERE WE GO. PAGE 7.

10:06:55 8 MR. DVEIRIN: YES.

10:06:57 9 THE COURT: YOU'VE GIVEN IT FOUR

10:07:00 10 LINES.

10:07:03 11 MR. DVEIRIN: BUT IT'S IMPORTANT

10:07:03 12 BECAUSE --

10:07:04 13 THE COURT: OF COURSE. IT SHOULD BE

10:07:05 14 THE FIRST FOUR LINES, NOT THE LAST.

10:07:08 15 MR. DVEIRIN: LOOK, AND AS WE ALSO

10:07:09 16 POINT OUT IN THERE THAT THE MARCH -- AMONG OTHER

10:07:12 17 THINGS, THE MARCH DATE THAT WE WERE GIVEN, WE

10:07:15 18 ALWAYS -- WE WERE IN THE PROCESS OF USING THAT EXTRA

10:07:17 19 TIME TO WORK OUT A SCHEDULE FOR YOU.

10:07:19 20 IT WASN'T THAT THIS DATE IN MARCH WAS

10:07:21 21 SUPPOSED BE THE FINAL DATE. THIS IS NEW. AND --

10:07:23 22 BECAUSE WE CAME IN HERE. BUT THERE ARE -- IN THE

10:07:27 23 E-MAIL AND THE STUFF THAT I PRESENTED --

10:07:28 24 THE COURT: I DON'T NEED MORE. YOU

10:07:31 25 HAVE TO TALK TO ME ABOUT THEIR THROW-IN COMMENT IN

10:07:34 26 THE LAST FOUR SENTENCES ABOUT PREJUDICE.

10:07:39 27 MR. LEWIS: THIS CASE HAS BEEN PENDING

10:07:41 28 SINCE MAY OF 2013. THEY'VE HAD YEARS -- LITERALLY,

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10:07:43 1 YEARS TO DO LITIGATION. I MEAN TO DO DISCOVERY.

10:07:46 2 WHAT THEY'RE GOING TO DO -- I'M A

10:07:47 3 LITTLE GUY -- THEY'RE GOING TO BURY ME IN FACT

10:07:50 4 DISCOVERY THAT'S NOT NECESSARY TO READ A DEED.

10:07:53 5 ALL THE COURT WILL NEED TO DO IN MARCH

10:07:56 6 FOR OUR M.S.J. HEARING IS READ THE DEED AND INTERPRET

10:07:59 7 IT. IT DOESN'T MEAN THIS PARK SHOULD BE PARKLAND

10:08:01 8 FOREVER. AND THEY'RE GOING TO WANT TO DO

10:08:03 9 DEPOSITIONS.

10:08:04 10 AND THE LAST THING I WANT TO RAISE IS

10:08:05 11 THEY'RE GOING TO WANT TO FILE A MULTIPLE MOTION FOR

10:08:07 12 SUMMARY JUDGMENT, ALL THREE OF THEM, TO BE HEARD

10:08:09 13 CONCURRENTLY WITH MINE, SO --

10:08:10 14 THE COURT: IS THAT WHAT YOU'RE

10:08:13 15 ASKING?

10:08:13 16 MR. COMER: YOUR HONOR, NO.

10:08:13 17 MR. DVEIRIN: NO.

10:08:13 18 THE COURT: OKAY.

10:08:13 19 MR. LEWIS: WE'RE WILLING TO SAY ON

10:08:15 20 THE RECORD THAT IT WILL BE A JOINT MOTION.

10:08:16 21 THE COURT: OKAY. SO WE'RE GOING TO

10:08:19 22 HAVE A CROSS MOTION, AND THAT'S REALLY WHAT THIS IS

10:08:20 23 ABOUT.

10:08:20 24 MR. LEWIS: THAT'S FAIR ENOUGH.

10:08:20 25 THE COURT: GO AHEAD.

10:08:22 26 MR. LEWIS: AND THE LAST TIME WE WERE

10:08:24 27 IN HERE ON THIS, THE COURT SAID IT DOESN'T MATTER.

10:08:26 28 YOU COULD HEAR MY MOTION FIRST, AND IF I WIN, GREAT;

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10:08:27 1 THAT OTHER MOTION DOESN'T NEED TO BE HEARD.

10:08:29 2 BUT THIS IS ALL JUST A RUSE JUST TO

10:08:30 3 GET MORE TIME SO THAT THEIR MOTION CAN BE HEARD. AND

10:08:33 4 THEY'RE GOING TO OVERWHELM ME WITH THEIR RESOURCES,

10:08:36 5 AND THAT'S WHAT I'M CONCERNED ABOUT.

10:08:37 6 MR. DVEIRIN: I DIDN'T --

10:08:38 7 THE COURT: ALL RIGHT. THANK YOU.

10:08:38 8 MR. COMER: YOUR HONOR --

10:08:42 9 THE COURT: I'LL TAKE IT UNDER

10:08:43 10 SUBMISSION.

10:08:44 11 MR. COMER: THANK YOU, YOUR HONOR.

10:08:44 12 MR. DVEIRIN: THANK YOU, YOUR HONOR.

10:08:45 13 MR. LEWIS: THANK YOU, YOUR HONOR.

10:09:03 14 THE COURT: I DON'T MEAN TO BE SHORT

10:09:04 15 WITH YOU GENTLEMEN. I'M ASKING FOR HIM TO LOOK AT IT

16 AGAIN --

17 MR. DVEIRIN: WE APPRECIATE THAT.

18 THE COURT: -- AND I WILL CONSIDER IT.

19 BUT I THINK YOU HAVE TO THINK ABOUT IT ON YOUR END

20 TOO, IF MY COMMENTS HAVE BEEN VALUED.

21 MR. DVEIRIN: WE APPRECIATE YOUR FULL

10:09:06 22 ATTENTION.

10:09:06 23 MR. COMER: THERE IS ONE THING I'D

10:09:06 24 LIKE TO SAY, YOUR HONOR. IF YOU'LL INDULGE ME, I'LL

10:09:06 25 BE BRIEF.

10:09:06 26 THE COURT: YES.

10:09:07 27 MR. COMER: WITH REGARD TO THE OTHER

10:09:09 28 OF THE AFFIRMATIVE DEFENSES, THE SUMMARY JUDGMENT



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10:09:12 1 MOTION IS NOT ABOUT AFFIRMATIVE DEFENSES. IT'S -- AS  
10:09:15 2 YOU'VE ILLUMINATED, IT'S ABOUT DECIDING THE CASE.  
10:09:18 3 BUT IN ORDER TO MEET THE BURDEN OF SUMMARY JUDGMENT,  
10:09:22 4 THE PLAINTIFF HAS TO SHOW THAT THEY MADE ALL THE  
10:09:25 5 COMPONENTS NECESSARY FOR JUDGMENT.

10:09:26 6 THE AFFIRMATIVE DEFENSES THAT WE WOULD  
10:09:28 7 LIKE TO ENGAGE DISCOVERY TO FIND FACTS WOULD NEGATE  
10:09:33 8 CERTAIN ELEMENTS OF THE VERY POINTS THAT SUMMARY  
10:09:36 9 JUDGMENT TRIES TO MAKES.

10:09:37 10 AND WE JUST NEED SOME TIME TO DO -- TO  
10:09:39 11 INVESTIGATE THOSE FACTS. WE ANSWERED WITH THOSE  
10:09:42 12 DEFENSES. WE RESPONDED, I RECALL -- AND I DON'T HAVE  
10:09:47 13 IT IN FRONT OF ME BECAUSE I DIDN'T KNOW THIS WAS  
10:09:47 14 GOING TO COME UP.

10:09:48 15 BUT I RECALL THAT THE PLAINTIFF ASKED  
10:09:50 16 US TO IDENTIFY WHAT KIND OF FACTS SUPPORT THOSE  
10:09:55 17 AFFIRMATIVE DEFENSES AND WE PROVIDED SOME OF THAT.

10:09:57 18 THE COURT: YOU MEAN THROUGH  
10:09:58 19 DISCOVERY?

10:09:58 20 MR. COMER: DISCOVERY. SO WE WOULD  
10:10:01 21 LIKE TO DO SOME DISCOVERY TO GET TO THE FACTS THAT  
10:10:02 22 MAY -- THAT MAY ESSENTIALLY TAKE OUT CERTAIN  
10:10:09 23 COMPONENTS OF THE PLAINTIFF'S CASE. AND WE'RE NOT --

24 THE COURT: WHAT'S SAUCE FOR THE  
25 GOOSE --

26 (BACKGROUND NOISE.)

27 COURT REPORTER: I'M SORRY. WHAT WAS  
28 THAT?

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11835 W. Olympic Boulevard Suite 680E  
Los Angeles, California 90064  
kna@kellinorden.com www.kellinorden.com

10:10:13 1 THE COURT: WHAT'S SAUCE FOR THE GOOSE  
10:10:16 2 IS SAUCE FOR THE GANDER. AND IN THIS CASE, WE'VE GOT  
10:10:21 3 THREE GANDER.

10:10:24 4 IF SOMETHING THAT WAS -- A COMPLAINT  
10:10:27 5 WAS FILED IN MAY AND WE GET THESE ANSWERS SHORTLY  
10:10:31 6 THEREAFTER, JUST AS A PLAINTIFF IS SUPPOSED TO HAVE  
10:10:35 7 PROBABLE CAUSE TO FILE THEIR COMPLAINT, BUT THEN  
10:10:39 8 THEY'RE SUPPOSED TO HAVE PROBABLE CAUSE BEFORE THEY  
10:10:42 9 FILE ANSWERS, THEY'RE SUPPOSED TO SUPPLY FACTS.

10:10:45 10 AND THEN WE'RE TALKING ABOUT A  
10:10:48 11 TWO-YEAR HIATUS WHERE SOMEBODY DIDN'T TAKE THE CASE  
10:10:52 12 SERIOUSLY ENOUGH TO TRY TO DEVELOP THEIR FACTS. SO  
10:10:58 13 YOU KNOW, TALK ABOUT LACHES.

10:11:02 14 THE COURT MAY END UP NOT BEING  
10:11:04 15 SYMPATHETIC TO YOUR PLEAS ON THAT POINT, BUT I'LL  
10:11:06 16 TAKE IT UNDER SUBMISSION.

10:11:08 17 MR. DVEIRIN: WE DO APPRECIATE THAT,  
10:11:09 18 YOUR HONOR. THANK YOU.

10:11:10 19 MR. COMER: THANK YOU.

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(WHEREUPON, AT THE HOUR OF  
10:11 A.M., THE PROCEEDINGS  
WERE CONCLUDED.)

-000-

Kelli Norden and Associates  
Court Reporters  
310.820.7733 phone 310.820.7933 fax  
11835 W. Olympic Boulevard Suite 680E  
Los Angeles, California 90064  
kna@kellinorden.com www.kellinorden.com

1 STATE OF CALIFORNIA )  
 ) SS.  
 2 COUNTY OF LOS ANGELES )  
 3

4 I, LYNN MARSHALL, CERTIFIED SHORTHAND  
 5 REPORTER, CERTIFICATE NUMBER 11002, FOR THE STATE OF  
 6 CALIFORNIA, HEREBY CERTIFY:

7 THE FOREGOING PROCEEDINGS WERE TAKEN  
 8 BEFORE ME AT THE TIME AND PLACE THEREIN SET FORTH;  
 9 THE PROCEEDINGS WERE RECORDED  
 10 STENOGRAPHICALLY BY ME AND WERE THEREAFTER  
 11 TRANSCRIBED;

12 THE FOREGOING TRANSCRIPT IS A TRUE AND  
 13 CORRECT TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN;

14 I FURTHER CERTIFY THAT I AM NEITHER  
 15 COUNSEL FOR NOR RELATED TO ANY PARTY TO SAID ACTION,  
 16 NOR IN ANY WAY INTERESTED IN THE OUTCOME THEREOF.

17 IN WITNESS WHEREOF, I HAVE HEREUNTO  
 18 SUBSCRIBED MY NAME THIS 5TH DAY OF MARCH, 2015.  
 19  
 20  
 21  
 22

23 Lynn Marshall  
 24  
 25  
 26  
 27  
 28

*kna*

Kelli Norden and Associates  
 Court Reporters  
 310.820.7733 phone 310.820.7933 fax  
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 Los Angeles, California 90064  
 kna@kellinorden.com www.kellinorden.com

Handwritten signature or text, possibly "Handwritten" or similar, written in a cursive style.