

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 4

HON. J. MICHAEL BOLLMAN

WILLIAM G. TADLOCK AND VICKI TADLOCK,
PLAINTIFFS,

VS.

SOUTHWESTERN YACHT CLUB, ET AL.,
DEFENDANTS.

COPY

CIVIL NO. GIC 767381

MOTION HEARING

REPORTER'S TRANSCRIPT

SAN DIEGO, CALIFORNIA

NOVEMBER 17, 2005

APPEARANCES:

FOR THE PLAINTIFFS:

MELODY A. KRAMER
ATTORNEY AT LAW
8460 TRAVIS COURT
SAN DIEGO, CA 92126

FOR THE DEFENDANT
SOUTHWESTERN YACHT CLUB:

PAUL KENNERSON
KENNERSON & GRANT
101 WEST BROADWAY
SUITE 1150
SAN DIEGO, CA 92101

FOR THE DEFENDANTS
BILL FALLON, JAMES
A. LONERGAN AND JIM
COBURN:

GREGORY P. KONOSKE
SHIFFLET, KANE & KONOSKE
16880 WEST BERNARDO DRIVE
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REPORTED BY: KATHLEEN M. KELLER, CRR, RMR, RPR, CSR 2451
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1 SAN DIEGO, CALIFORNIA, THURSDAY, 11/17/05, 12:35 P.M.

2 --000--

3

4 THE COURT: GOOD AFTERNOON. WE'RE ON THE RECORD ON
5 THE CASE WILLIAM G. HADLOCK, H-A-D-L-O-C-K, VS. SOUTHWESTERN
6 YACHT CLUB.

7 MS. KRAMER: "TADLOCK," YOUR HONOR, WITH A "T."

8 THE COURT: TADLOCK, T-A-D-L-O-C-K.

9 THERE ARE VARIOUS OTHER NAMED INDIVIDUAL
10 DEFENDANTS; CASE GIC767381.

11 APPEARANCES, PLEASE.

12 MR. KRAMER: MELODY KRAMER APPEARING ON BEHALF OF
13 WILLIAM AND VICKI TADLOCK, PLAINTIFFS; AND ESPECIALLY
14 APPEARING FOR PURPOSES OF THIS HEARING FOR BARRY AND JACKIE
15 HARDMAN, WHO WERE ASKED TO COME TO THIS HEARING BY
16 MR. KENNERSON.

17 MR. KONOSKE: GREG KONOSKE, DEFENDANTS FALLON AND
18 LONERGAN AND COBURN.

19 MR. KENNERSON: PAUL KENNERSON FOR SOUTHWESTERN YACHT
20 CLUB AND THE OTHER INDIVIDUAL DEFENDANTS, YOUR HONOR. THANK
21 YOU.

22 THE COURT: OKAY. MR. KENNERSON, YOU SCHEDULED AN EX
23 PARTE HEARING THIS MORNING. WE'VE BEEN HERE SINCE 8:00. IT'S
24 NOW APPROXIMATELY 12:38.

25 MR. KENNERSON: YES, YOUR HONOR. ALL THAT'S TRUE.
26 AND I WISH WE COULD REPORT PROGRESS COMMENSURATE WITH THE TIME
27 WE SPENT, BUT I THINK WE'VE MADE SOME.

28 YOUR HONOR, WHAT OCCASIONED THIS WAS A PROBLEM

1 REPORTED TO ME WHILE I WAS OUT OF TOWN REGARDING THE NATURE
2 AND EXTENT AND SCOPE AND POSSIBLE BREACH OF THE
3 CONFIDENTIALITY PROVISION OF THE SETTLEMENT AGREEMENT THAT HAD
4 PREVIOUSLY BEEN ENTERED INTO IN THIS COURT. AND THAT REMAINS
5 AN ISSUE TO SOME EXTENT. THE UPSHOT OF WHAT HAS OCCURRED,
6 WHICH WE WANTED TO PUT ON THE RECORD, IS THAT THE COURT HAS
7 GIVEN US DATES WITHIN WHICH TO BRING A MOTION FOR FURTHER
8 DISCUSSION AND CLARIFICATION OF THE CONFIDENTIALITY PROVISION
9 OF THE SETTLEMENT AGREEMENT. AND THOSE DATES ARE, FIRST OF
10 ALL, WORKING BACKWARD:

11 A HEARING ON DECEMBER 9TH AT 9:00 A.M. IN THIS
12 DEPARTMENT;

13 THE MOTION IS TO BE FILED BY OUR OFFICE BY
14 NOVEMBER 28TH, 2005, BY CLOSE OF BUSINESS;

15 A RESPONSE WOULD BE DUE OR IS DUE BY DECEMBER
16 5TH, 2005, BY CLOSE OF BUSINESS;

17 AND ANY REBUTTAL BY 1:00 P.M. ON DECEMBER 8TH OF
18 2005.

19 PART OF THE REASON FOR GOING ON THE RECORD, YOUR
20 HONOR -- AN IMPORTANT PART -- IS THAT THERE WAS AN OBJECTION
21 TO THE EX PARTE, AS I UNDERSTAND IT -- AT LEAST A MILD
22 OBJECTION -- ON THE BASIS THAT NO PAPERWORK HAD BEEN PRESENTED
23 TO THE COURT OR COUNSEL, AS APPARENTLY THE REGULAR RITUAL
24 REQUIRES. AND THIS MOTION HAS OCCASIONED -- THESE DATES ARE
25 OCCASIONED IN PART BY THAT OBJECTION. BUT IN THE MEANTIME --
26 AND I UNDERSTAND THE COURT'S RELUCTANCE TO GO ANYWHERE BY WAY
27 OF AN ORDER OR ANY GRANT OF RELIEF WITHOUT A NOTICED MOTION
28 AND AN OPPORTUNITY FOR EVERYBODY WHO MAY BE AFFECTED TO BE

1 HEARD. BUT MY CLIENT'S POSITION, WHICH I THINK -- WHICH WE
2 HAVE STATED, AND WHICH I BELIEVE PLAINTIFF'S COUNSEL IS IN
3 ACCORD WITH -- IS THE CONFIDENTIALITY PROVISION OF THE
4 SETTLEMENT AGREEMENT REMAINS IN EFFECT. NOTHING HAS CHANGED,
5 IN EFFECT, REGARDING WHAT -- ITS NATURE OR SCOPE OR EXTENT, AS
6 FAR AS THE PARTIES TO THE AGREEMENT ARE CONCERNED. AND MY --
7 SPEAKING FOR MY CLIENTS, THEY STILL CONSIDER THEMSELVES
8 ENTIRELY AS BOUND BY THE CONFIDENTIALITY AGREEMENT AS THEY
9 EVER WERE. SO THAT'S, I THINK, WHERE WE ARE.

10 THANK YOU.

11 THE COURT: MR. KONOSKE?

12 MR. KONOSKE: I SIMPLY JOIN THAT, YOUR HONOR.

13 THE COURT: MISS KRAMER?

14 MR. KRAMER: THANK YOU, YOUR HONOR.

15 JUST, BASICALLY, TO CLARIFY: FIRST, THE
16 TADLOCKS' POSITION -- OUR OBJECTION TO THIS HEARING IS NOT A
17 MERE FACT OF FAILURE TO FILE PAPERWORK BUT A FAILURE OF THE
18 REQUESTING ATTORNEY TO IDENTIFY IN THE AT LEAST
19 FOUR-AND-A-HALF HOURS WHAT RELIEF HE'S SEEKING FROM THE COURT.
20 WE HAVE AGREED IN CHAMBERS ON THOSE HEARING DATES THAT YOU
21 PROPOSED.

22 I DO WANT TO MAKE IT VERY CLEAR ON THE RECORD
23 THAT NEITHER I NOR CO-COUNSEL OR THE TADLOCKS HAVE VIOLATED
24 THE CONFIDENTIALITY PROVISION. AND THE DEFENDANTS HAVE NOT
25 ACCUSED US OF DOING THAT. THE ONLY CONCERN THAT WAS RAISED --
26 AND THIS WAS THE REASON WHY MY OTHER CLIENTS WERE TODAY -- THE
27 HARDMANS -- WERE ASKED TO COME HERE IS THAT THE HARDMANS CAME
28 ACROSS THE SETTLEMENT AGREEMENT THAT WAS INADVERTENTLY PUT IN

1 THE COURT FILE, WHICH IS A PUBLIC RECORD. ALSO LIKE TO PUT ON
2 THE RECORD THAT THE COURT HAS DIRECTED OUR ATTENTION TO THE
3 COPLEY VS. SUPERIOR COURT CASE THAT DEALS WITH THE ISSUE ABOUT
4 PUBLIC ACCESS TO RECORDS; AND ON BEHALF OF THE HARDMANS, ONCE
5 AGAIN REITERATE THAT THEY HAVE CERTAIN RIGHTS AND OBLIGATIONS;
6 AND, UNDER THE LAW, THEY HAVE CERTAIN RIGHTS; AND THAT THIS --
7 AND TO CLARIFY FOR THE RECORD, THAT THIS COURT IS NOT ISSUING
8 ANY ORDER OF ANY KIND WHATSOEVER TO THE HARDMANS OR ANY OTHER
9 PERSON SIMILARLY-SITUATED THAT ARE NOT PARTIES TO THE
10 SETTLEMENT AGREEMENT. IS THAT CORRECT, YOUR HONOR?

11 THE COURT: I'M NOT MAKING ANY ORDER AT THIS TIME
12 AGAINST ANYBODY WHO IS NOT A PARTY TO THE LAWSUIT.

13 MR. KRAMER: THANK YOU, YOUR HONOR.

14 ONE THING THAT I NEGLECTED TO BRING UP IN
15 CHAMBERS: THERE'S ONE -- WELL, TWO SORT OF ISSUES REMAINING
16 FROM THE TADLOCKS' SIDE ON ENFORCEMENT OF THE SETTLEMENT
17 AGREEMENT. AND I WOULD ASK THAT IF THOSE AREN'T RESOLVED
18 PROMPTLY, IF WE COULD HAVE THOSE SAME DATES THAT YOU PROVIDED
19 TO MR. KENNERSON, IF HE CHOOSES TO BRING A MOTION, THAT WE
20 COULD BRING A MOTION ON OUR -- PROBABLY JUST ONE REMAINING
21 ISSUE, IF THAT STILL EXISTS.

22 THE COURT: ARE YOU TALKING ABOUT THE SEVEN
23 SIGNATURES?

24 MR. KRAMER: WELL, THE SEVEN SIGNATURES THAT I HOPE WE
25 DON'T -- WE GOT ONE ALREADY. THE SIX -- I'M HOPING THAT WILL
26 BE DEALT WITH. BUT THE ISSUE -- THE LETTER --

27 THE COURT: IF EITHER SIDE WISHES TO HAVE ANY ISSUES
28 RAISED, THEY CAN APPLY -- COMPLY WITH THE SAME DATES. SO, IN

1 OTHER WORDS, IF MISS KRAMER WISHES TO SEEK AFFIRMATIVE RELIEF,
2 SHE CAN EITHER DO SO ON OR BEFORE NOVEMBER 8TH OR IN HER
3 OPPOSITION WHICH WILL BE FILED ON OR BEFORE DECEMBER 5TH.

4 MR. KRAMER: THANK YOU, YOUR HONOR.

5 MR. KENNERSON: YOUR HONOR, I WOULD JUST SAY THAT,
6 WHILE I UNDERSTAND AND HEAR LOUD AND CLEAR THE COURT ISN'T
7 MAKING ANY ORDER WITH RESPECT TO ANYBODY NOT A PARTY TO THIS
8 CASE, THAT IS NOT ANY PRONOUNCEMENT OR AGREEMENT BY US OR BY
9 THE COURT OR ANY STATEMENT BY THE COURT AS TO WHAT THE
10 HARDMANS' OBLIGATIONS ARE OR ARE NOT UNDER ANY PREVIOUS ORDER
11 THAT MAY EXIST OR ANY CONFIDENTIALITY AGREEMENT THAT MAY
12 PREVIOUSLY HAVE EXISTED ON THE BASIS OF THE SETTLEMENT. IN
13 OTHER WORDS, THE COURT'S NOT MAKING ANY ORDER THAT APPLIES TO
14 THE HARDMANS. I WELL UNDERSTAND. BUT THAT IS NOT OUR
15 AGREEMENT THAT THEY -- THAT THEY -- IT MAY BE THEY HAVE --
16 THEY MAY HAVE SOME OBLIGATIONS FOR OTHER REASONS WHICH HAVE
17 NOT BEEN DISCUSSED HERE. AND I TAKE IT THE COURT IS NOT
18 EXONERATING THE HARDMANS OR DOING ANYTHING IMPLICATING THEM OR
19 EXONERATING THEM IN ANY SENSE.

20 THE SECOND POINT, YOUR HONOR, -- AND I SIMPLY
21 DON'T WANT MY SILENCE TO BE CONSTRUED AS CONSENT -- COUNSEL
22 HAS SAID THAT EVERYBODY HAS AGREED THAT NEITHER SHE NOR HER
23 CLIENT IS RESPONSIBLE FOR THIS ALLEGED BREACH OF THE
24 SETTLEMENT AGREEMENT. AND I SIMPLY DON'T WANT MY AGREEMENT
25 WITH THAT TO BE CONSENT TO HER STATEMENT. I DON'T KNOW. I
26 HAVE NO EVIDENCE OF THAT AT THIS POINT. BUT WE HAVEN'T DONE
27 ANY DEPOSITIONS. WE HAVEN'T DONE ANY DISCOVERY. I HAVE NO
28 WAY OF KNOWING. I JUST DON'T WANT TO LET IT GO BY IN SILENCE

1 AND BE BOUND BY SOMETHING LATER THAT I WOULD REGRET BEING
2 BOUND BY.

3 MR. KRAMER: IF I COULD ADDRESS THAT.

4 I DON'T WANT ANY OF US TO LEAVE THIS HEARING
5 WITH THIS CLOUD OVER THE HARDMANS THAT THEY MAY HAVE DONE
6 SOMETHING IMPROPER. AND I'M PERFECTLY HAPPY -- AND I'M SURE
7 THEY WOULD BE WILLING AS WELL -- ON THE RECORD TO EXPLAIN HOW
8 AND WHY THEY CAME ACROSS THIS DOCUMENT. I THINK HAVING THIS
9 ASSERTION OF MAYBE THE PLAINTIFFS DID SOMETHING -- MAYBE THE
10 HARDMANS DID SOMETHING WRONG IS INAPPROPRIATE. THEY ARE NOT
11 PARTIES TO THIS CASE. THERE HAS BEEN AFFIRMATIVE
12 REPRESENTATIONS BEFORE THIS COURT THAT THEY HAVE NO EVIDENCE,
13 NO INDICATION THAT THE PLAINTIFFS OR THEIR COUNSEL HAVE
14 BREACHED THIS AGREEMENT. AND THAT'S THE END OF IT. AND I
15 DON'T WANT A CLOUD OVER THE HARDMANS, WHO ARE NOT A PARTY TO
16 THIS CASE, WHO ARE NOT A PARTY TO ANY OF THE DISCUSSIONS IN
17 CHAMBERS IN THIS FOUR-AND-A-HALF HOURS -- FOR THERE TO BE SOME
18 SORT OF CLOUD OR SOME FEAR THAT THEY CAN'T EXERCISE THEIR
19 FIRST AMENDMENT RIGHTS.

20 MR. KONOSKE: WELL, JUDGE, IF I MIGHT, THERE HAS BEEN
21 NO HEARING NOR DETERMINATION BY THIS COURT THAT THE HARDMANS
22 ARE NOT BOUND AS MEMBERS OF THE YACHT CLUB TO THE TERMS OF THE
23 AGREEMENT. AND UNTIL SUCH TIME, THEY COULD DO WHATEVER I
24 SUPPOSE THEY WANT, BUT THEY MAY HAVE PERIL FOR DOING THAT. SO
25 THEY SHOULD AT LEAST BE AWARE THAT THIS COURT ISN'T GIVING
26 THEM A RUBBER STAMP THAT, "HEY, YOU DON'T HAVE ANY RIGHTS OR
27 DUTIES OR OBLIGATIONS AS A MEMBER OF THE YACHT CLUB." AND I
28 WANT TO JUST MAKE SURE THAT THAT'S ON THE RECORD AS WELL.

1 MR. KRAMER: YOUR HONOR, THIS IS THE VERY ISSUE. THIS
2 IS THE VERY REASON THAT I SPECIFICALLY INDICATED THAT I DIDN'T
3 THINK WE NEEDED TO HAVE A HEARING IN FRONT OF THE COURT,
4 BECAUSE I DON'T WANT A PERCEPTION OF YOU BEING THE JUDGE IN
5 YOUR ROBE IN THE COURTROOM AND HAVING THE HARDMANS HERE WHO
6 ARE NOT PARTIES TO THIS LAWSUIT. THERE'S BEEN NO PAPERWORK
7 FILED AGAINST THEM, NOTHING, TO COME IN AND HAVE A JUDGE IN
8 ANY WAY INDICATE THAT YOU ARE MAKING ANY COMMENT WHATSOEVER ON
9 THEIR RIGHTS AND OBLIGATIONS AS RESPECT TO SOME OTHER ISSUE.
10 THERE IS NOTHING THAT HAS BEEN PRESENTED TO THE COURT TODAY
11 NOR OVER WHICH THE COURT HAS ANY JURISDICTION TO MAKE ANY
12 OPINION ONE WAY OR THE OTHER AS TO THE CONDUCT OF THE
13 HARDMANS. NOTHING. AND SO I WANT IT CLEAR ON THE RECORD THAT
14 THIS COURT IS NOT TAKING ANY POSITION WHATSOEVER REGARDING THE
15 HARDMANS AND HAS NO CONTROL OVER WHAT THEY DO OR DON'T DO.
16 THEY ARE NOT PARTIES. THEY ARE NOT PARTIES TO THIS SETTLEMENT
17 AGREEMENT.

18 MR. KENNERSON: WELL, YOUR HONOR, EXCUSE ME. I AGREE
19 WITH THE FIRST PART: THAT THERE'S BEEN NO MOTION -- NO
20 NOTICED MOTION; AND THERE IS, THEREFORE, NO CALL FOR THE COURT
21 TO MAKE ANY ORDER WITH RESPECT TO THE PROPRIETY OR IMPROPRIETY
22 OF THE HARDMANS' CONDUCT. AND IN THAT RESPECT, I AGREE WITH
23 COUNSEL THAT THE COURT SHOULD NOT MAKE ANY ORDER EITHER
24 CONDEMNING OR EXONERATING THE HARDMANS. AND THEIR RIGHTS ARE
25 WHAT THEIR RIGHTS ARE. BUT AS TO PREVIOUSLY-EXISTING ORDERS
26 IN THIS CASE -- AND IF THEY DID NOTHING WRONG, THEY DID
27 NOTHING WRONG; ALL TO BE DETERMINED LATER, I SUPPOSE, IF IT
28 COMES UP. AND I COMPLETELY AGREE WITH THAT. BUT COUNSEL THEN

1 TRIES TO GO ANOTHER STEP FURTHER AND SAY THE COURT HAS NO
2 JURISDICTION OR NO RIGHT TO SPEAK TO THE HARDMANS' CONDUCT AT
3 ALL. AND I DON'T KNOW THAT THAT'S BEEN SHOWN. AND I DON'T
4 THINK YOU CAN ORDER THAT OR YOU CAN FIND THAT. I THINK WHAT
5 YOU HAVE TO DO IS SAY, "NOTHING HAS CHANGED."

6 THIS IS MY VIEW, YOUR HONOR: NOTHING HAS
7 CHANGED. THE SETTLEMENT IS STILL CONFIDENTIAL. AND TO ECHO
8 WHAT MR. KONOSKE SAID, THE HARDMANS APPARENTLY FEEL THEY HAVE
9 CERTAIN RIGHTS IN THE MATTER. AND THEIR RIGHTS ARE WHAT THEIR
10 RIGHTS ARE. AND THEY OPERATE AT THEIR OWN RISK IN EXERCISING
11 THEM.

12 MR. KRAMER: BRIEFLY, AGAIN, YOUR HONOR.

13 WHAT IS HAPPENING HERE IS AN ATTEMPT TO THREATEN
14 THE HARDMANS BY VIRTUE OF BEING IN THIS COURTROOM, WHETHER YOU
15 SAY NOTHING OR NOT, BY BEING ABLE TO ASK THEM TO ATTEND THIS
16 COURT, THOUGH THEY --

17 THE COURT: FIRST OF ALL, I DIDN'T ASK THEM TO DO
18 ANYTHING, OKAY? I WANT TO MAKE THAT CLEAR. THEY'RE NOT HERE
19 BECAUSE OF ANYTHING I DID. I HAD NO KNOWLEDGE OF THIS. I HAD
20 NO INVOLVEMENT IN IT. THEY'RE HERE BECAUSE APPARENTLY
21 MR. KENNERSON, WHO REPRESENTS THE YACHT CLUB, ASKED THEM TO
22 COME HERE BECAUSE THEY'RE MEMBERS OF THE YACHT CLUB AND HAVE A
23 COURT ORDER WHICH WAS NOT INTENDED THAT THEY WOULD HAVE.

24 MR. KONOSKE?

25 MR. KONOSKE: NOTHING FURTHER, YOUR HONOR.

26 THE COURT: MR. KENNERSON?

27 MR. KENNERSON: YOUR HONOR, A LETTER WENT OUT FROM MY
28 OFFICE ON NOVEMBER 14TH IN WHICH -- DIRECTED TO THE HARDMANS,

1 URGING THEM TO BE HERE. AND WHAT IT SAID, WAS, "THE COURT HAS
2 STRONGLY URGED YOU TO ATTEND." THAT LANGUAGE CAME TO ME FROM
3 MY SECRETARY, WHO SAID THAT IT WOULDN'T -- WHO SAID THAT SHE
4 WAS TOLD THAT THE COURT COULD -- MIGHT WANT TO TALK TO THE
5 HARDMANS, AND THAT IT WOULD BE A GOOD IDEA FOR THEM TO BE
6 HERE, AND FELT THAT WAY PRETTY STRONGLY. THAT'S THE REASON
7 FOR THAT LANGUAGE IN THE LETTER. BUT IF THAT'S INCORRECT, I
8 WOULD THINK IT SHOULD BE CORRECTED RIGHT NOW.

9 THE COURT: LET ME TELL YOU WHAT MY UNDERSTANDING IS:
10 MY UNDERSTANDING IS THAT YOUR SECRETARY CALLED MY CLERK AND
11 INDICATED THAT THE -- THAT THE MATTER HAD BEEN DISCUSSED AND
12 IT WAS TO REMAIN CONFIDENTIAL. I BELIEVE THAT IT WAS OUR
13 UNDERSTANDING THAT IT WAS ONE OF THE NAMED PARTIES TO THE
14 LAWSUIT. AND I THINK IT WENT IN THAT CONTEXT. SO, FOR THAT
15 MISUNDERSTANDING, I'LL TAKE THE BLAME. IT WAS MY
16 UNDERSTANDING THAT IT WAS ONE OF THE NAMED PARTIES.

17 MR. KENNERSON: I SEE.

18 THE COURT: AND THAT'S WHY IT WOULD BE UNDERSTANDABLE
19 THAT YOUR OFFICE WOULD HAVE MISUNDERSTOOD MY COMMENT.

20 MR. KENNERSON: I APOLOGIZE FOR THAT, YOUR HONOR. BUT
21 I HAD A RESPONSE FROM MRS. HARDMAN AS WELL, HANDWRITTEN, THAT
22 APPARENTLY WAS FAXED BACK TO MY OFFICE THAT SAID, "DEAR
23 MR. KENNERSON, BARRY IS AWAY, BUT HE PHONED-IN, AND I READ
24 THIS TO HIM. HE SAID TO TELL YOU HE'D BE PLEASED TO ATTEND."
25 SO I THINK THERE'S NO HARM, NO FOUL, YOUR HONOR, AS FAR AS I
26 CAN TELL FROM IT -- FROM THE SUBSTANCE OF THAT RESPONSE.

27 MR. KRAMER: JUST FOR THE RECORD, INTERESTINGLY
28 ENOUGH, THIS LETTER WAS NOT SENT TO OUR OFFICE. WE GOT A

1 NOTICE SAYING THERE WAS AN EX PARTE SET. I DID NOT KNOW ABOUT
2 THIS LETTER UNTIL YESTERDAY.

3 THE COURT: AND WE GOT YOU A COPY OF IT, RIGHT?

4 MR. KRAMER: YES.

5 THE COURT: I WASN'T AWARE OF IT UNTIL THIS MORNING.

6 MR. KENNERSON: WE DIDN'T KNOW COUNSEL REPRESENTED
7 MR. HARDMAN, YOUR HONOR, UNTIL COURT THIS MORNING.

8 MR. KRAMER: WE WERE CALLED TO THE HEARING AND NOT
9 TOLD. MR. KENNERSON'S OFFICE DID NOT RETURN NUMEROUS PHONE
10 CALLS. WE HAD NO IDEA WHAT THIS HEARING WAS ABOUT THIS
11 MORNING FROM MR. KENNERSON'S OFFICE.

12 THE COURT: WELL, MR. KENNERSON, RIGHTLY OR WRONGLY,
13 WAS IN NEW YORK UNTIL 12:30 THIS MORNING. AND THAT'S AT LEAST
14 WHY WE ARE NOT GOING TO DO ANYTHING THIS MORNING ORDER-WISE.
15 AND WE'RE GOING TO SET THIS UP FOR NOTICED MOTIONS SO THAT
16 EVERYBODY WILL HAVE NOTICE AND OPPORTUNITY TO BE HERE.

17 THE PRESENT ORDER IS STILL IN EFFECT. AS TO WHO
18 IT APPLIES TO AND DOESN'T APPLY TO IS NOT BEING DECIDED AT
19 THIS HEARING. I WOULD ADVISE ANYBODY WHO THINKS THEY MAY BE
20 OR NOT BE AFFECTED BY THIS PRESENT ORDER TO SEEK LEGAL ADVICE.
21 THAT'S ALL I'M GOING TO SAY. NO DETERMINATION HAS BEEN MADE
22 THAT ANYBODY HAS DONE ANYTHING WRONG. BUT IF THERE'S ANY --
23 IF THERE'S ANY CONCERN BY ANYBODY, THEY SHOULD SEEK THEIR OWN
24 COUNSEL'S ADVICE.

25 THE ORDER IS IN EFFECT. IT HAS NOT BEEN
26 CHANGED. IT REMAINS IN FULL FORCE AND EFFECT. AND I EXPECT
27 THE SIGNATURES -- THERE'S APPARENTLY SIX REMAINING SIGNATURES.
28 I EXPECT THAT TO BE DONE VERY, VERY QUICKLY; AS SOON AS

1 POSSIBLE. OR IF SOMEBODY'S OUT OF TOWN, MAYBE THAT'S ANOTHER
2 ISSUE. THERE'S APPARENTLY AN ISSUE OF THE AUTHORITY OF
3 MR. HOLTHAUS; WHETHER HE HAS THE AUTHORITY OR NOT TO SIGN.
4 HOPEFULLY, WE CAN CLEAR THAT UP. IF NOT, WE'LL CLEAR THAT UP
5 IN THE NOTICED MOTION. BUT NO ORDER IS BEING ENTERED TODAY
6 CHANGING THE PREVIOUS SETTLEMENT, WHICH I BELIEVE WAS MADE
7 JUNE 29TH, '05. THAT ORDER IS IN FULL FORCE AND EFFECT. THAT
8 ORDER IS GOING TO BE PLACED -- I HAVE IT ON MY DESK. I'M
9 GIVING IT BACK TO MY CLERK. IT WILL BE IMMEDIATELY PLACED IN
10 THE COURT FILE. IT IS AVAILABLE FOR PUBLIC VIEWING. AND I AM
11 NOT MAKING ANY DETERMINATION THAT ANYBODY HAS OR HAS NOT
12 VIOLATED IT. AND I'M NOT DETERMINING WHAT ANY NON-PARTY'S
13 RIGHTS ARE OR ARE NOT. BUT ANY NON-PARTY OUGHT TO CONSIDER
14 SEEKING INDEPENDENT LEGAL ADVICE.

15 ANYTHING FURTHER?

16 MR. KENNERSON: NO. THANK YOU, YOUR HONOR.

17 MR. KONOSKE: NOTHING, YOUR HONOR.

18 MR. KRAMER: NO, YOUR HONOR.

19 THE COURT: ACTUALLY, I WANT TO INDICATE ON THE RECORD
20 THAT THIS IS A VERY UNFORTUNATE SITUATION THAT HAPPENED. IT
21 WAS NEVER INTENDED TO BE PUBLIC. IT WAS INTENDED TO BE
22 CONFIDENTIAL.

23 UNDER THE CIRCUMSTANCES, THE LAWYERS HAVE DONE A
24 VERY, VERY FINE JOB. THEY ARE VERY FINE PEOPLE. THEY ARE
25 VERY FINE LAWYERS. THEY HAVE DONE A VERY FINE JOB TO THE BEST
26 OF THEIR ABILITY, AND I AM IMPRESSED WITH THEM.

27 THE CASE IS IN RECESS. THANK YOU.

28 ANYBODY WANT TO ADD ANYTHING OR ANYBODY WANT TO

1 SPEAK?

2

3

(NO RESPONSE.)

4

5 THE COURT: ANYBODY? ANYBODY AT ALL IN THE COURTROOM?

6 MR. MC FARLAND: AS I UNDERSTAND IT, YOUR HONOR, --

7 THE COURT: YOUR NAME FOR THE RECORD?

8 MR. MC FARLAND: ROBERT MC FARLAND.

9 AS I UNDERSTAND IT, THE SETTLEMENT AGREEMENT IS

10 GOING IN THE FILE AND IS AVAILABLE FOR INSPECTION, IS THAT

11 CORRECT?

12 THE COURT: IT'S -- YES.

13 MR. MC FARLAND: I WILL BE PERMITTED TO COPY IT?

14 THE COURT: I GUESS THAT'S BETWEEN YOU AND THE CLERK'S

15 OFFICE, BUT IT'S IN THE FILE.

16 MR. MC FARLAND: THANK YOU.

17 THE COURT: ANYTHING FURTHER? ANYBODY ELSE WANT TO

18 SAY ANYTHING?

19

20 (NO RESPONSE.)

21

22 THE COURT: OKAY. EVERYBODY HAS HAD AN OPPORTUNITY TO

23 SPEAK. EVERYBODY HAS SPOKEN.

24 LET ME INDICATE THIS: IF THE LAWYERS FEEL THAT

25 THEY HAVE A RESOLUTION OR ARE CLOSE TO A RESOLUTION AND

26 DON'T -- AND WANT TO SPEAK WITH ME BEFORE NOVEMBER 28TH OR

27 BEFORE ANY OF THESE OTHER DATES, CONFERENCE CALL OR

28 PERSONALLY, TO AVOID THE EXPENSE AND INCONVENIENCE, I WOULD BE

1 DELIGHTED TO WORK WITH YOU NICE LAWYERS. I WOULD BE
2 DELIGHTED. IT WOULD BE MY PLEASURE.

3 THANK YOU. THANK YOU VERY MUCH.

4

5 (PROCEEDINGS CONCLUDED.)

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