EXHIBIT 8

Electronically Filed
10/22/2010 05:24:09 PM

TRAN

CLERK OF THE COURT

COPY
ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIA MARTINEZ, Plaintiff, vs. STEVEN KRAMER MD, IRWIN GLASSMAN MD, Defendants.	CASE#: 07A552696 DEPT. VI

BEFORE THE HONORABLE ELISSA CADISH, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 14, 2010

TRANSCRIPT OF PROCEEDINGS
MOTION FOR GOOD FAITH SETTLEMENT, MOTION TO CONTINUE TRIAL, DEFENDANT VALLEY HEALTH SYSTEM, LLC dba VALLEY HOSPITAL AND MEDICAL CENTER'S MOTION TO ADMIT JOHN M. FITZPATRICK, ESQ. PRO HAC VICE IN THE CASE ONLY ON ORDER SHORTENING TIME

APPEARANCES ON PAGE 2:

RECEIVED
OCT 22 2010
CLERK OF THE COURT

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

APPEARANCES:

For the Plaintiff:

JERRY A WIESE, ESQ.
JEROME R. BOWEN, ESQ.
SARAH BANDA, ESQ.

For the Defendants:

CASEY W. TYLER, ESQ.
PATRICIA E. DAEHNKE, ESQ.
JOHN FITZPATRICK, ESQ.

Thursday, October 14, 2010 at 11:22 a.m.

THE COURT: Martinez versus Kramer.

MR. WIESE: Good morning, Your Honor, Jerry Wiese for the plaintiff.

THE COURT: Good morning.

MR. BOWEN: Good morning, Your Honor, Jerome Bowen and Sarah Banda for the plaintiff.

MR. TYLER: Casey Tyler for Valley.

MS. DAEHNKE: Good morning, Your Honor, Patricia Daehnke for Dr. Kramer and Dr. Glassman and their group.

THE COURT: Okay. Thank you.

THE COURT RECORDER: Ms. Banda, can I get your bar number?

MS. BANDA: Bar number 11909.

THE COURT: Yeah, you got your bar number now, huh?

MS. BANDA: Yes, Your Honor, I did on Tuesday.

MR. BOWEN: Thank you for noticing that, Judge. She wanted --

THE COURT: Yes.

MR. BOWEN: -- that put --

THE COURT: Yes, she appeared the other day. She did a fine job by the way.

MR. BOWEN: I heard.

THE COURT: But, she didn't know her bar number yet. We took her word for it that she'd been sworn in by Justice Cherry and she was okay.

MS. DAEHNKE: Congratulations.

MR. BOWEN: Thanks for hearing her on that, Judge. Thank you.

THE COURT: That's fine. Okay.

MS. DAEHNKE: Your Honor, thank you for accommodating us --

THE COURT: Sure.

MS. DAEHNKE: -- and putting everything on this -- today.

THE COURT: All right. So, let me start with --

MR. WIESE: We can prob --

THE COURT: -- a couple of easier matters.

MS. DAEHNKE: We have two unopposed motions, correct, Your Honor.

THE COURT: Yes. So, I've got the -- well first let's talk about pro hac vice. There was one that I had previously received, a pro hac with respect to John Fitzpatrick. And then we just first got this morning, Mr. Kilpela, --

MR. TYLER: That's right, Your Honor.

THE COURT: -- which I have not looked through yet.

MR. TYLER: And it was our understanding, because of the lack of the one day judicial notice, we couldn't get that set today. But, if we could have that heard Monday morning --

THE COURT: Right.

MR. TYLER: -- that should be fine.

THE COURT: All right.

MR. TYLER: I've got an order for Mr. Fitzpatrick if you're inclined to order it.

THE COURT: So, there's no objection as to Mr. Fitzpatrick, correct?

MR. WIESE: Your Honor, I don't think we have an objection to either one of them. If you want to just order them both granted today, that's fine.

MS. DAEHNKE: And we certainly have no objection, Your Honor.

MR. TYLER: I have one for --

THE COURT: Then I'll be happy to just do it. Thank you.

It is the requirement for 24 hour notice, but if I've got everyone agreeing we can just do it. Okay.

MR. WIESE: I don't think I've even seen the one for --

THE COURT: So, they're granted, yes.

MR. WIESE: -- Mr. Kilpela, but I don't care.

THE COURT: Today's the 14th.

MR. TYLER: Appreciate that.

THE COURT: And did he also have no prior admissions within the three years or whatever?

MR. TYLER: I'm not sure.

MR. FITZPATRICK: I do not, Your Honor.

THE COURT: Oh, --

MR. TYLER: He's here.

THE COURT: -- he's here. Okay, a voice from the back. All right, not a problem. Thank you. Okay, because I hadn't looked at that one yet. But, all right.

So, both Mr. Kilpela's application, which was going to be heard on Monday and the -- and Mr. Fitzpatrick's application, which were both unopposed are granted.

MR. TYLER: Thank you.

THE COURT: I've signed the orders on those.

There's also the motion for good faith settlement.

MR. WIESE: Your Honor, we were actually willing to stipulate to that early on.

THE COURT: Right.

MR. WIESE: I believe it was Valley that didn't have authority to stipulate --

THE COURT: We weren't concerned --

MR. WIESE: -- but they did file a notice of --

THE COURT: We weren't concerned, yeah.

MR. WIESE: -- non-opposition.

THE COURT: A notice of non-opposition, yeah.

MS. DAEHNKE: Sure, Your Honor. And it's Dr. Kramer's motion for good faith settlement.

THE COURT: Right.

MS. DAEHNKE: And we would just submit that there is no opposition, and it was made in good faith given the facts of this case.

THE COURT: Right. So, given the lack of any opposition from any party and the information provided in the motion for good faith settlement, I am satisfied that this is a good faith settlement and grant that motion.

Okay. Now, --

MR. WIESE: Now we get to the motion to continue.

THE COURT: Yeah. All right, so we've got the motion to continue the trial, which I read that as well as the two oppositions. And I read the reply this morning.

MR. WIESE: Thank you, Your Honor. I'm gonna try to be pretty brief. EDCR 7.30 gives you authority to continue the trial. There was some argument that we had failed to comply with the specifics of the statute.

THE COURT: Uh-huh.

MR. WIESE: We filed an amended affidavit, which I believe indicates compliance with that. We did talk to our client, actually I believe the day of your motions in limine last week.

THE COURT: Yeah.

MR. WIESE: She was aware of it. Ms. Martinez actually wants a continuance of this case based --

THE COURT: Okay.

MR. WIESE: -- upon the rulings. I think that deals with 7.30.

There was an issue about whether or not this should have been brought as an NRAP Rule 8 motion for stay as opposed to the motion to continue. I think the Court understands that that was impossible in this case simply, because we couldn't have filed the writ prior to filing the motion to continue. We do have the transcript now from the October 7th hearing.

But, late last night I was faxed a draft copy of the order. We don't have an order yet to appeal from.

THE COURT: Right.

MR. WIESE: So, there's no way we could have filed a writ prior to now. We still don't have a signed order with regard to the motions in limine. But, I did get a draft proposed order last night.

THE COURT: Okay.

MR. WIESE: So, I think that will probably be submitted to you soon.

Just so you know, Judge, we did inform counsel last week. I believe the hearings were on the 7th. I met with Ms. Daehnke downstairs and we spoke. I talked to Mr. Webster either later that afternoon or the following day, informed them that we did have some problems with some of the Court's rulings.

THE COURT: Uh-huh.

MR. WIESE: We were gonna be filing a writ. We were gonna be requesting a continuance of the trial. So, that doesn't come as a surprise to anybody, although the oppositions seem to indicate that it was a surprise.

THE COURT: Okay. So, the bottom line is you need to show me good cause.

MR. WIESE: All right. Really we have -- well I don't want to limit myself to two, but we have two primarily -- or two primary disputes with Your Honor's rulings.

THE COURT: Uh-huh.

MR. WIESE: And I understand that Judges hate to be appealed. And I apologize for having to do this, but first of all with regard to Joclyn being allowed to be present in court. She's the plaintiff in the case.

THE COURT: Yes.

MR. WIESE: I believe that she has the right to assist in the prosecution of her claim.

THE COURT: Uh-huh.

MR. WIESE: Based upon your rulings she can only be present during a short portion of Ms. Martinez's testimony.

THE COURT: The only part of that there was any disagreement with during the court hearing was as to that one doctor's testimony. Other than that everyone agreed it wasn't a good idea to have her sitting in court the whole time.

MR. WIESE: And we're not going to.

THE COURT: Okay. So, just --

MR. WIESE: But we do believe --

THE COURT: -- to be clear that's the part that you may disagree with. And that's fine. I mean, we had a lengthy argument about that issue.

MR. WIESE: We did.

THE COURT: I understand it was difficult one. I made the call I made.

MR. WIESE: I know.

THE COURT: And you can disagree with it all day, that's fine with me.

MR. WIESE: I understand, but I guess it's our position that she should be allowed to participate in the prosecution of her claim. If that's something that we as plaintiff's counsel or the plaintiff believes is necessary or if it's something that the doctor believes is necessary, we think that should be allowed.

THE COURT: Okay.

MR. WIESE: And the second big issue, which is probably even a bigger issue, is Dr. Tappan with regard to his causation testimony. If you recall last week when we argued this, you asked us: Do you have another causation expert? And I read back over the transcript. It was actually Mr. Webster that says: Yes, they have Dr. Cantor. We actually identified Dr. Cantor as a

rebuttal expert. And Mr. Webster informed me after the hearings last time that he would object to Dr. Cantor being allowed to testify during our case in chief.

So, what that results in, Your Honor, is if Dr. Tappan is not allowed to testify about causation, we don't have a causation expert in our case in chief. So, your ruling has essentially made it very difficult if not impossible for us to establish causation in our case in chief.

Now, I understand your ruling, but we --

THE COURT: And that neither of you informed me that you didn't have an expert on that issue.

MR. WIESE: We understand.

THE COURT: Okay. Go on.

MR. WIESE: The problem that we have is based upon the Court's ruling you've kind of gutted the plaintiff's case and our ability to present the case that we had planned. Dr. Tappan is both our liability and causation expert.

THE COURT: Yeah.

MR. WIESE: And you ruled that he can't talk about causation.

If -- I guess it's our position, Your Honor, if the case was forced to go to trial next week in the position that it is, we're gonna put on experts, we're gonna get to the point in -- at the end of plaintiff's case that the defense would have -- would file a motion for directed verdict. And you'd probably grant it if there was no evidence about causation. And based upon the Court's rulings there probably would not be.

It just seems to make more sense at this point to continue the trial, allow the Supreme Court to address these issues. We can have a status check

in November or December, whatever you want to come back here and find out what's happened on the writ. I can tell you that we --

THE COURT: If we lose this trial date it ain't me that picks another one.

MR. WIESE: I understand.

MR. BOWEN: We understand.

THE COURT: As you well know, it goes back to the med mal sweeps --

MR. WIESE: I understand.

THE COURT: -- in February.

MR. BOWEN: I understand.

MR. WIESE: And we understand that.

THE COURT: I have absolutely no control med mal trial dates.

MR. WIESE: And that's fine, Your Honor. And we put this in the motion that the trial date of October 18th was essentially set specifically at my request so that this could happen before the election. And I wanted to try to do everything we could to have it happen then.

But, I think based upon the situation and the events as they've unfolded it's just -- it doesn't make sense to compel us to do that based upon the circumstances as they are. It's -- I don't know a way that we could present the case based upon the Court's rulings as they were for the motions in limine. So, we would simply ask that the Court continue the case.

There's no prejudice to the defense. They're either gonna bill for it now or they're gonna bill for it later. They're gonna have -- I mean, we've got exhibits that are gonna be marked now or they're gonna be marked later. The experts -- we've got experts they've got experts. Yes, we've advanced some costs that we probably will not get back.

And that's part of the reason that we tried to get this on as quickly as possible. I understand that it's Thursday and it's set now -- trial is set for Monday, which is unfortunate. But, I think we did everything we could to bring this to the Court as quickly as we could after the motions in limine.

And I guess that the way I look at it is, when you submit the writ to the Supreme Court, yes, it's discretionary whether or not they accept that writ. But, if there's irreparable harm they're going to accept the writ. And I think in this case with that fact that the Court essentially precluded our only causation expert from testifying at trial with regard to causation, I think there is irreparable harm and that the Supreme Court would accept the writ on that basis. Thank you.

THE COURT: Counsel; either of you.

MR. TYLER: Well, by way of brief background for Your Honor. We were all three at status checks together actually when this matter was originally set. And Mr. Wiese had his calendar there. And I actually learned about two minutes before we went up that the only date available at all before the elections was the date starting Monday.

THE COURT: Right.

MR. TYLER: And so, I initially objected, because we have another trial starting on Monday. It's *Cook versus Sunrise*. It's in Department II.

THE COURT: Right.

MR. TRYLER: Because of that here comes the real issue with the prejudice that we're talking about. We've had to get counsel to come in. And you've signed Mr. Fitzpatrick and Mr. Kipela's pro hac vices. They've had to come into this case. They've had to learn it from scratch. They've had to

clear very busy calendars to get here. We've also had to bring Mr. Prangle from our office, who is located in Chicago, also a very busy calendar.

In addition to that we have to -- we had to take Dr. Druzin's deposition via videotape, because he's going to be out of the country, much expense, much inconvenience for everyone involved. And extended it also has some prejudice for Dr. Druzin because we have an opportunity where we're going to have to bring in the person next time, pay his expert fee twice. And also he's going to be subject to two different cross-examinations.

In addition, during the deposition of Dr. Druzin, you know, a large part of our case and our strategy was revealed by his testimony. And it's very prejudicial, but now their expert will be able to consider that going forward at future date. So, there's definitely some prejudice with those.

And as well as the actual trial prep. You can see the dolly we've brought in today. There's an extensive amount of trial prep that gone in. And everyone's --

MS. DAEHNKE: That's not even half of it.

MR. TYLER: Yeah, and that's -- and we're ready to go on Monday.

In addition to that when you consider the writ itself, as you know, it's speculative it's even going to be accepted at this point. We haven't seen a writ at all. And more importantly there's an adequate remedy at law if we do go forward and there is a directed verdict. They can appeal that issue. That's the proper avenue to do so. And there's caselaw that's been cited by co-defendants that says that.

And I'll let Ms. Daehnke address that.

MS. DAEHNKE: Well, thank you.

Your Honor, let me just add a little bit more historical perspective to the first trial that we had in May, just so that Your Honor, has this. We did have a firm trial date in May of this year. That was set at the August 2009 status checks. Mr. Weise and I were there. I might have even appeared for Mr. Weise with his dates. And we got that date, it was firm.

And then as of February 24th of this year we still had 15 depositions to do with a -- looking at March 1st cutoff. And the depositions were in Florida and New Mexico and Missouri and all across the nation in very geographically diverse set of experts that we had.

And so, we asked plaintiff if they thought it would be a good idea in light of the almost impossibility of taking on those depositions in a week to stip to 90 day continuance. They wouldn't do that and -- because of the fact that we had a firm date. And Judge Bixler and Judge Corey don't like changing firm dates. So, we went before Commissioner Bulla and it was a big brouhaha let me tell you. There was a lot of people getting excited.

And so ultimately we did, after much effort, get a brief continuance in order to complete these expert depositions and went before the med mal status checks. And Mr. Weise cherry picked this October 18th date, which with my agreement. He came over looked at my calendar and said: Looks like you got a little space in here. And this is the day -- this is good for me. And the hospital counsel did object.

So, it's not like this is the first time we've been doing this. And frankly given that all I do is defend doctors and other unjustly accused health care providers I --

[laughter]

MS. DAEHNKE: I'm doing God's work.

THE COURT: Uh-huh.

MS. DAEHNKE: I've got to respect the status checks. Because, as you know it was a big mess five years ago, and now it's a little bit more orderly. So, I'm not inclined to look at a second firm trial setting.

Oh, and the other thing is when we picked that October 18th date of course that had to be moved after a challenge by the hospital, but then within a matter of days Corey -- Judge Corey and Bixler and whoever was working found you. After it went -- so you were the third or fourth that found it and got Mr. Weise's date. So, I mean, this has been a lot of maneuvering in order --

THE COURT: We volunteered to take this trial.

MS. DAEHNKE: And you're thinking --

THE COURT: No good deed goes unpunished.

MS. DAEHNKE: Right, exactly. I --

MR. WIESE: Now you're regretting it.

MS. DAEHNKE: Right. And we're happy that you did, Your Honor. But so, I guess just to give that historical background.

THE COURT: Right.

MS. DAEHNKE: But, also the fact that we were told that the plaintiffs were not pleased with Your Honor's ruling on Thursday. That -- I don't dispute that. But, what we were setting forth is we don't find their dispute with your rulings good cause to get another continued trial date.

And that's -- I mean, you know, plaintiff knows they have to put on a prima facie case. Mr. Weise is experienced. He does medical malpractice.

I've had a number of cases with Mr. Weise and over the years. And duty breach causation damages is not something new. So -- and neither would be the fact that Dr. Tappan is an OB/GYN. So, motions in -- you know, Dr. Tappan was -- is limited to his area of expertise and things within his knowledge. That shouldn't be too surprising.

THE COURT: Thank you.

Mr. Weise.

MR. WIESE: Your Honor, I think that one thing that the Court needs to consider is if we were compelled to go forward with the trial next week, the fees and costs that would be expended by both sides. Ms. Martinez would have to incur attorneys fees for us, costs to bring all these doctors in with the -- essentially the knowledge that we would be unable to put on causation testimony. It just doesn't make sense to do that.

There was a question about Dr. Druzin's deposition testimony being taken for trial. We agreed to that. It was a second deposition that was taken of him. We had no problem going down to California a second time for the deposition to preserve it for trial. There was no strat -- trial strategies given away at that deposition. I think the same questions were asked in that deposition as were asked in the prior deposition. They were just asked by defense counsel instead of me. But, I think if you compare the depositions they're essentially the same. So, I don't think that that's really an issue.

I acknowledge that I'm the one that asked for the trial date. I'm falling on the sword. Your Honor, it's just a problem that we have. We understand that it's our problem.

THE COURT: Uh-huh.

MR. WIESE: We simply are asking for the Court to allow us to take it up. And the Supreme Court might deny the writ. And it that's that case --

THE COURT: And then we will have lost the trial date --

MR. WIESE: Then we will have lost the trial date.

THE COURT: -- irreparably.

MR. WIESE: That's correct. But, either way it make more sense to do that, go to the next status hearings and get a new trial date, then to go forward with the trial next week when we don't have a causation expert. I think it's --

MR. TYLER: As far as the cost that Mr. Weise was talking about. I mean, there's really two remedies he can do on that. He can do a directed verdict and he still has the same appealable issue and he doesn't have to incur those costs. He's not losing his remedy at law. He either has a causation expert or he doesn't. It's going to be an appealable issue whether it's in a writ or an appeal after the directed verdict.

In addition if he wants to call Mr. Tappan and do an offer of proof at trial, he can do so. And if the Supreme Court decides in his favor that testimony is preserved.

MS. DAEHNKE: Your Honor, what I just heard Mr. Weise say is that he cannot meet his burden going forward with causation. And, you know, therefore I would move to dismiss based on plaintiff's inability to put forward a prima facie case. And if Mr. Weise wants to stipulate that because of Your Honor's rulings he cannot --

THE COURT: Preserving appeal rights.

MS. DAEHNKE: What's that?

THE COURT: Preserving appeal rights.

MS. DAEHNKE: Preserving his appeal rights. Because, the -- I mean, the question of whether the Court would accept a writ is really a real one. I doubt that they would, because there is an adequate remedy of law -- at law. It would be to go forward and try to survive a directed verdict, as Mr. Weise has just said.

MR. WIESE: I think you know the issue, Judge. We're just asking for your help.

THE COURT: I guess frankly the only reason for my hesitation is the new information about your other expert. So, the other expert, Cantor --

MR. WIESE: Dr. Cantor is our pediatric neurologist. He was identified as a rebuttal witness. I talked to Mr. Webster he said that he would be -- he would oppose the offer of Dr. Cantor during our case in chief. I followed up with a letter asking if he would reconsider. No response, though.

MS. DAEHNKE: We would object to putting on a rebuttal witness in the case in chief as well or that rebuttal -- excuse me, a prima facie rebuttal witness on causation.

THE COURT: Right. I guess, you know, looking at the good cause and sort of looking at it as a motion for stay which is really kind of effectively what we're doing, I don't think there's a likelihood of success on the merits of the writ. And I don't think there's irreparable injury, because you have a right to appeal at the end of the case. So, I'm not inclined to continue the trial.

MR. WIESE: You don't think it's irreparable injury if we proceed forward with a trial that -- where you've excluded our only causation expert? I think that is irreparable harm, Your Honor, so --

THE COURT: I understand your position, and I am not offended at all if you -- that you need to appeal it. I mean, that you need to -- I mean, I'm not. It was a difficult issue. We talked for a long time about it. It wasn't an easy call, but I made the call I made. And I stand by the call I made.

But, I don't think it's -- I don't think the Supreme Court's likely to take the writ at all. And I don't think it's good cause to continue the trial on the unlikely possibility that they may take it. Now, I've been proven wrong before. You know, if they -- and here's -- I mean, I don't know what you're able to do in the next day, but if you try to take up a writ to the Supreme Court or -- and ask them to issue a stay, which would be a reasonable option for you possibly. As far as I'm concerned you've already asked me for a stay even though your motion was to continue the trial. So, you don't need to come back again and ask me for a stay.

Now, you know, having said what you've said and I appreciate your candor, I do. And I appreciate your candor in terms of what it does to your case. So, I mean, I guess there, you know, -- and I don't need to tell you what your options are. But, I mean, you know, either you try to put it on and see if you have enough or you, you know, come to some sort of a stipulation that allows you to take a direct appeal. Or you both evaluate your risks and benefits and reach a resolution between now and Monday. You know, I -- there's probably other options I'm not thinking of at the moment. But, I --

MR. WIESE: Your Honor, I guess, one other thing that I just want to bring up to the Court's attention is --

THE COURT: Yeah.

MR. WIESE: -- we would still need to bring Dr. Tappan to testify about liability.

THE COURT: Right.

MR. WIESE: He is out of the country. He will be back later next week. But, my -- I've been informed that he will not be available to testify until the beginning of the second week of trial.

THE COURT: Okay.

MR. WIESE: I think that will probably be during the defendant's case. So, I guess, I'd -- we'd ask --

THE COURT: Sorry, when did you find this out?

MR. WIESE: Well, we knew he was out of the country.

THE COURT: Yeah.

MR. WIESE: We just found out recently that he will not be back until the end of next week, so --

MR. TYLER: We've had no information about this, Your Honor. This is the first time we're hearing this.

MR. WIESE: And --

MR. TYLER: We've been prepared to go to trial for everyone.

MR. WIESE: And if you're going to have us go to trial I understand.

THE COURT: Yeah.

MR. WIESE: But, I'm just asking that we take him out of order because he won't be available I don't believe until Monday.

THE COURT: Well, okay, let's talk about our trial. You know, we start picking a jury on Monday. If we're lucky we finish Monday with picking a jury. So, then we start Tuesday with, you know, Openings and start -- probably just

do Openings in the morning, maybe start plaintiff's case in the afternoon on Tuesday. With the rulings I've made, how long -- well, okay, so now you won't have Tappan. So, with everyone but Tappan, how long is plaintiff's case?

MR. WIESE: We'd anticipate being done sometime late Thursday, maybe Friday morning, --

THE COURT: So, --

MR. WIESE: -- but I think we're gonna end up with at least a half a day.

THE COURT: -- we'll be -- how much -- how long is defendant's case? I mean, I know you do we have a bunch of experts, so depending on what the plaintiff puts on. I mean, -- do we have two days of plaintiff case --

MR. TYLER: I guess our issue is --

THE COURT: -- before the following week? I mean, of defendant's case before --

MR. TYLER: -- if we don't even get to causation, do we even want to get into our case in chief is the issue.

MS. DAEHNKE: Well, right.

THE COURT: Right. Right, I understand, I mean, --

MS. DAEHNKE: Assuming we go forward.

THE COURT: -- you'd be --

MS. DAEHNKE: Well, and right if Tappan is now unavailable, which we did ask him at his deposition -- his twelve hour deposition that -- if he was going to be available on this firm trial date. So, I -- you know, so then we could be going into the second week, the end of the second week to move, I mean, Tappan --

THE COURT: The beginning of the second week is --

MS. DAEHNKE: Okay. Well, so then we -- and Friday is Nevada Day. So, we've got Monday, Tuesday, Wednesday, Thursday.

THE COURT: That second week, yes. So, the -- I mean, the first week we've got the whole week. Yeah, go ahead.

MS. DAEHNKE: Well, I think you're in, if you want to come on up.

THE COURT: Yes, you've been admitted.

MS. DAEHNKE: You're here.

MR. FITZPATRICK: I'm sorry.

MS. DAEHNKE: Welcome to the party.

THE COURT: Sure.

THE COURT RECORDER: I need your name though.

MR. FITZPATRICK: Judge, I want to bet if that woman's ever coming back. I want to put some money on.

THE COURT: Oh, I don't think anyone will take you up on the bet. Sorry, can I have your name for the record?

MR. FITZPATRICK: John Fitzpatrick, Your Honor.

THE COURT: Okay. Go ahead.

MR. FITZPATRICK: And I thank you very much for the pro hac and also counsel's courtesy.

THE COURT: Yeah.

MR. FITZPATRICK: Our -- I think our difficulty as you can imagine is putting our case in their case --

THE COURT: When you're anticipating a directed verdict motion.

MR. FITZPATRICK: -- when we're anticipating a DV.

MS. DAEHNKE: Correct.

MR. FITZPATRICK: Our case would take three days, I will tell you that. If we had to wait until Monday I would prefer that they put on Tappan so they can close. And we would be done -- we can put our case on in three days.

THE COURT: Can Tappan be here Monday of the second week?

MR. WIESE: I believe he can. But, I don't think we can get him before then. That's I wanted to --

THE COURT: Right.

MR. WIESE: -- bring that to your attention today.

THE COURT: Well, I mean, I guess what I'm thinking about is if we just start trial Tuesday with picking the jury, do Openings Wednesday, do what you have of plaintiff case the rest of the week, finishing with Tappan on Monday. And then that's the close of plaintiff's case.

MR. FITZPATRICK: That would be --

THE COURT: And then --

MR. FITZPATRICK: -- that'd be acceptable.

THE COURT: -- but we do have the Nevada Day. So, that means you're -- depending on the motion of course you're squeezed into Tuesday, Wednesday, Thursday, and that's it.

MR. FITZPATRICK: Judge, I can tell you if you can give us three -- we can get our case in. But, we just would love to follow him. I mean, it's -- that's our problem.

THE COURT: Yeah, I mean, especially given the status of the case. I mean, I understand. Because, frankly I mean, I don't -- and I think generally

counsel are pretty good about allowing a witness to be out of order and in other places, but this going to raise some important issues for the case.

MS. DAEHNKE: And that's right, Your Honor.

THE COURT: All right.

MS. DAEHNKE: We would --

MR. FITZPATRICK: If he --

MS. DAEHNKE: We would be more than happy to accommodate it under different circumstances.

THE COURT: Yeah.

MR. BOWEN: Judge, can I just weigh in just real quick the --

THE COURT: Yeah, go ahead.

MR. BOWEN: If in fact, and I understand their strategy. If I were on their side I'd want the same strategy. If they take Tuesday, Wednesday, and Thursday, they finish Thursday. By the time you do jury instruction, reading and they deliberate. They want them to not be able to deliberate or want to have to understand the holiday is coming up and: Gee, if we're going to have to come back on Monday and let's decide this right now. And let's get a defense verdict. I mean, it -- that's all strategy. I understand that.

THE COURT: They may have to be brought back the next week --

MR. BOWEN: So, that --

THE COURT: -- to continue deliberations.

MR. BOWEN: Yeah, that's the problem. What time -- how many -- is three --

MR. WIESE: Or even keep them for Closings.

MR. BOWEN: -- full days of the defense -- three full days of defense or two and a half? Because, if we're going to have come back on the following Monday to do Closings, which we would prefer then, because --

THE COURT: Right.

MR. BOWEN: -- that way the jury doesn't feel compelled to just get out of here. And I know you know this drill that we all go through.

THE COURT: Right. It looks like I do not have a trial November 1st as it turns out. So, if we need to bleed into that week I could.

MR. BOWEN: Yeah, I think that's the way to do it, Judge.

THE COURT: I mean, you know, we'll have --

MR. BOWEN: And then, it's fair to everybody.

THE COURT: -- to see of course how everything plays out. But, I understand. I mean, I'm not going to, you know, force arguments to be 20 minutes long --

MR. BOWEN: Exactly.

THE COURT: -- and the jury better decide in an hour, you know.

MR. FITZPATRICK: We might be one -- we might be out when they're done. But I agree; I don't disagree with that assessment.

THE COURT: Right. I mean, depending on how timing is working --

MS. DAEHNKE: Right.

THE COURT: I mean, if we're running late I wouldn't want to --

MR. FITZPATRICK: If we --

THE COURT: -- have to force it be very quickly. And we could potentially could bleed into that next Monday.

MR. FITZPATRICK: Judge, do we understand then and I think Jerry saying if we start Tuesday to pick a jury we do Openings Wednesday.

THE COURT: Uh-huh.

MR. FITZPATRICK: He at least gets all his case in Wednesday, Thursday. And do we do anything on Friday or is Friday a --

MR. WIESE: Yeah,

MR. FITZPATRICK: Okay.

MR. WIESE: Wednesday, Thursday, Friday, --

MR. FITZPATRICK: So, you get everybody --

MR. WIESE: -- and then we do Tappan on Monday.

MR. FITZPATRICK: -- damages or whatever, and Tappan's the only one left.

THE COURT: And then Tappan Monday.

MR. FITZPATRICK: And then we jam right in right afterwards. If the motion is not --

THE COURT: Well, followed by your motion.

MR. FITZPATRICK: Right, and if that's not --

THE COURT: Then followed by defense case.

MR. FITZPATRICK: -- then off we go. That'll give us Monday afternoon.

THE COURT: That would the 25th, Monday the 25th you can get going from there.

[Colloquy between counsel]

THE COURT: The second Friday is the holiday, the 29th.

MR. FITZPATRICK: Yeah, then we're -- we may go into Monday if we don't survive the motion.

THE COURT: Right. And that would be November 1st. So, that's what I'm saying. I mean, as it turned out that Monday I don't have a trial. Mr. Weise may be --

MR. FITZPATRICK: He may be a Judge.

THE COURT: -- occupied.

MR. WIESE: It may just be easier to just continue the trial, Judge.

MS. DAEHNKE: Or grant --

THE COURT: To someone it would.

MS. DAEHNKE: Or grant the rule 50 or 52, whichever --

THE COURT: Oh, no, no.

MS. DAEHNKE: -- motion is --

THE COURT: Okay. I understand.

MS. DAEHNKE: Is that denied then, Your Honor?

THE COURT: Today it's denied.

MS. DAEHNKE: Just --

THE COURT: Today it's denied.

MS. DAEHNKE: I thought so, just wanted to --

THE COURT: I'm going to allow him the opportunity to present his evidence and do what he can do with his case.

Look, I mean, joking aside, I understand your position. I understand you've got activities related to Election Day. These were the two weeks that you had picked knowing it was Election Day issue. Now, we weren't anticipating bleeding into the next week, but it's the scheduling issue with your witness that may result in that happening.

So, why don't we go ahead and move our trial to Tuesday start. That's Tuesday, the 19th at 10, instead of Monday, the 18th at 10. And we'll just plan to just do jury selection that day and not do Openings until Wednesday morning. Okay. We can just plan it that way.

Okay. And, you know, gives you another day to see if the Supreme Court thinks differently. Which you know if it happens, it happens. It's happened before.

MR. BOWEN: Thank you, Judge.

THE COURT: All right. Thank you, folks.

MS. DAEHNKE: Thank you, Your Honor.

[Proceeding concluded at 11:55 a.m.]

* * * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

Jessica Kirkpatrick
Court Recorder/Transcriber