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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DARRELL BREWER § CASE NO.: 09-03445-H4-ADV
§
VERSUS § HOUSTON, TEXAS
§
EXPRESS ENERGY SERVICES § DECEMBER 10, 2009
OPERATING, LP, ET AL § 9:32 A.M. TO 10:01 A.M.

STATUS AND SCHEDULING CONFERENCE

BEFORE THE HONORABLE JEFF BOHM
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR PLAINTIFF: SEE NEXT PAGE
FOR DEFENDANT: SEE NEXT PAGE
COURT RECORDER: BRENT LASWELL
CASE MANAGER: EVANGELINE ATTAWAY

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1 HOUSTON, TEXAS; THURSDAY, DECEMBER 10, 2009; 9:32 A.M.

2 **THE COURT:** Okay. This the 9:30 Docket. This is
3 an adversary proceeding. It's 09-3445. It's *Darrell*
4 *Brewer, Plaintiff, versus Express Energy Services Operating,*
5 *LP, and Express Energy Services (2008), LLC.* It's Adversary
6 09-3445. And this is a scheduling conference and a status
7 conference.

8 Let me go ahead and get appearances please.

9 **MR. STRASBURGER:** Good morning, Your Honor.

10 John Strasburger, Weil Gotshal and Manges,
11 for the Express Debtors.

12 With me today is Andrew Swartz, Chris Lopez,
13 who you know from previous matters in this Court --

14 **THE COURT:** Right.

15 **MR. STRASBURGER:** -- and also our client,
16 Darron Anderson, is here today again.

17 **THE COURT:** Thanks. Good morning to all of you.

18 **MR. SPEAKER:** Good morning.

19 **THE COURT:** Good morning.

20 **MR. SHARP:** Your Honor, I'm Phillip Sharp, here
21 for Darrell Brewer.

22 And with me is Julia Wells, and
23 Chris Tillmanns.

24 **THE COURT:** And good morning to all three of you.

25 As I was preparing for this yesterday, I

1 didn't have too much to look at but we've got a lawsuit that
2 was removed and it looks like both parties agree it's a core
3 producing and it should be tried in this court.

4 Is that a fair summary?

5 **MR. SHARP:** It is.

6 **MR. STRASBURGER:** Yes, Your Honor.

7 **THE COURT:** Okay. What would you like to tell
8 me, and have you all talked about scheduling dates?

9 **MR. STRASBURGER:** We have.

10 **THE COURT:** Okay.

11 **MR. STRASBURGER:** And if your -- if the Court
12 would indulge me for just a minute, I will give you a very
13 brief description of the dispute as we see it --

14 **THE COURT:** Okay.

15 **MR. STRASBURGER:** -- mention a couple of
16 procedural things, and then we'll make some suggestions to
17 the Court on what we'd like to do on scheduling.

18 Your Honor is generally familiar with
19 Express from the 41 days we spent in your court --

20 **THE COURT:** Yeah.

21 **MR. STRASBURGER:** -- as a chapter 11 debtor.

22 Darrell Brewer is on the other side of this dispute.

23 Mr. Brewer is the former CEO of Express and a former member
24 of the Board of Directors and that was all pre-petition, so
25 that was before we came down here in your court.

1 There are essentially two contracts that are
2 at issue in this dispute which you may have seen referred to
3 in the papers as -- one is the "Transaction Agreement" --

4 **THE COURT:** Uh-huh.

5 **MR. STRASBURGER:** -- one is the "Separation and
6 Consulting Agreement."

7 **THE COURT:** All right.

8 **MR. STRASBURGER:** The Transaction Agreement was
9 executed in June of 2008. It did a lot of things regarding
10 the structure of the company. And, also, as part of that,
11 Mr. Brewer received a significant cash-out of his investment
12 in the company.

13 The Separation Agreement was dated a few
14 months later, November of 2008, and that essentially
15 governed Mr. Brewer's transition from being an executive and
16 a board member to being a consultant.

17 Importantly for this dispute, Your Honor,
18 both of those contracts containing non-compete covenants and
19 non-solicitation provisions that govern Mr. Brewer's ability
20 to compete against Express and to hire -- solicit and hire
21 employees from Express. Those provisions, as Your Honor may
22 be familiar, are very common in the oilfield services
23 industry and certainly in other businesses. This industry
24 is a relationship-driven business. The provisions are
25 probably even more important in this situation where Express

1 has been in some financial distress and needs to govern the
2 ability of people to compete against it.

3 Both of the non-competes in these documents
4 were to remain in effect until June of 2011 with a caveat.
5 The non-compete and the Separation Agreement contains a
6 clause that essentially says that it expires upon a change
7 of ownership of the Express entities and, of course, it's
8 arguable and likely that that change of ownership is
9 occurring as the result of the restructuring.

10 So I think the heart of this dispute is:
11 Express still believes that regardless of what happens with
12 the Separation Agreement, the Transaction Agreement
13 non-compete covenants and non-solicitation provisions will
14 remain in force and effect and still govern. My
15 understanding is that Mr. Brewer disputes that.

16 And so that's the nub of our dispute in a
17 nutshell is: which of these agreements governs and how long
18 the non-compete provisions govern?

19 We, also -- "We", Express, also believe that
20 Mr. Brewer has already violated some of the provisions of
21 both of these non-competes and so that's part of our
22 lawsuit.

23 Procedurally, we did remove this case. It
24 had not been on file long. It was filed as a deck action by
25 Mr. Brewer in State Court back in August.

1 **THE COURT:** Right.

2 **MR. STRASBURGER:** We, Express, answered, filed a
3 counterclaim in September seeking declaratory relief kind of
4 on the other side of the issue seeking an injunction and
5 also asking for damages, and Mr. Brewer answered that in
6 State Court. We removed it to this court in November. And
7 as the Court picked up on, Mr. Brewer filed a statement
8 saying that he did not dispute the jurisdiction of this
9 court so we're squarely here.

10 We've talked -- the parties have talked
11 extensively about the case and first of all, we've -- you
12 know, we've done what every good judge wants us to do: we've
13 looked for avenues to resolve it. We don't think that we're
14 in a position to do that at this time. It may change at
15 some point but that's where we are right now.

16 **THE COURT:** Okay.

17 **MR. STRASBURGER:** So we do think that we need to
18 conduct discovery and get the matter set for trial.

19 We've talked about timing. The first thing
20 the parties need to do is to amend pleadings. We have
21 exchanged draft amended pleadings and I think we can
22 basically file unopposed motions for leave to amend our
23 pleadings with the Court in the next few days, and there
24 should be no dispute about that.

25 **THE COURT:** Okay.

1 **MR. STRASBURGER:** We, Express, have served some
2 written discovery on Mr. Brewer and asked for it to be
3 answered on a shortened time, and they have indicated --
4 Mr. Brewer has indicated that they should be able to do
5 that, so we're working cooperatively on that. We expect
6 them to send us written discovery in the near future.

7 There are probably about a dozen or so
8 depositions that need to be taken. Many of them will not be
9 lengthy but, unfortunately, there of oilfield service
10 workers who are, you know, not necessarily down the street,
11 maybe in Louisiana or Oklahoma or other places.

12 **THE COURT:** Yeah.

13 **MR. STRASBURGER:** And we think that, you know,
14 working as quickly as we can, it would likely be
15 mid-February before we could complete everything that we
16 believe needs to be completed in discovery to get the
17 matters set for trial before Your Honor.

18 We would request -- and I have no idea what
19 the Court's calendar looks like, but we would request if the
20 Court had time -- and I -- also, Mr. Sharp told me that he
21 has another trial setting the first week of February so we
22 would need to be looking primarily at mid-February or
23 beyond.

24 The only caveat to all the timing things
25 that I've just laid out, Your Honor, is if during the course

1 of discovery we learn additional facts that lead us to
2 believe that Mr. Brewer and his companies are doing things
3 that are putting our company in imminent harm, we may be
4 back in front of Your Honor asking for some sort of
5 emergency injunctive relief.

6 **THE COURT:** Let's see, Mr. Sharp, do you want to
7 add anything?

8 **MR. SHARP:** Your Honor, with respect to what's
9 happened up until now that brought us here, I think
10 Mr. Strasburger has pretty well laid that out for the Court
11 and I really don't think I would have anything to say that
12 varies from what we've heard --

13 **THE COURT:** Okay.

14 **MR. SHARP:** -- other than to -- you know, I would
15 have described the dispute in different terms and I don't
16 acquiesce in his description of the dispute --

17 **THE COURT:** Sure.

18 **MR. SHARP:** -- and I would hope that the Court
19 would understand that, and willing and able to argue loud
20 and long about that but this is probably not the time or the
21 place. Other than that, I really think that pretty well
22 says it.

23 And with respect to trying to cooperate and
24 get the matter underway and wrapped up and behind us as
25 expeditiously as we can, I mean, I don't see any reason why

1 we can't continue to cooperate as we have up until now.

2 **THE COURT:** Okay. And you agree to a trial date
3 in February is what you'd prefer?

4 **MR. SHARP:** I have a setting on February 1st in
5 Judge -- in the 189th here in Houston that I am --

6 **THE COURT:** Okay.

7 **MR. SHARP:** -- that is just, frankly, in my way.

8 **(Laughter)**

9 Otherwise, we could do it sooner. I don't
10 think mid-February -- mid-February maybe as early as I
11 really -- I can reasonably expect to be able to do it --

12 **THE COURT:** Okay.

13 **MR. SHARP:** -- in the light of the number of
14 depositions that we have to take of people scattered hither
15 and yon and a trial setting that I'm really fearful we'll
16 probably go to trial. I saw a case that will probably go to
17 trial.

18 **THE COURT:** Yeah, okay. I'm looking at my
19 February calendar. The 15th is Presidents' Day.

20 The 16th, 17th, 18th, I'm at -- teaching at
21 a clinic in the University of Miami Law School.

22 The 19th, 20th, and 21st, which is Friday,
23 Saturday, Sunday, I'm in New Orleans doing the Joe Elliott
24 Competition.

25 So I could -- we could try the case on

1 Tuesday, February 9; Wednesday, February 10; and Thursday,
2 February 11. Well, 9 and 10 are actually probably the
3 best days for that week, or we can go to February 23,
4 February 24, February 25, and Friday, February 26.

5 **MR. STRASBURGER:** I don't know, does the early
6 setting conflict with what you have going on?

7 **MR. SHARP:** I'm afraid it probably would,
8 Your Honor.

9 **THE COURT:** Sure.

10 **MR. SHARP:** That case will probably wrap around
11 the week, and so if we pick a jury on the 1st, I'm confident
12 I may be across town.

13 **THE COURT:** Yeah.

14 **MR. SHARP:** So later in the month would work
15 better for my purposes.

16 **THE COURT:** Okay.

17 **MR. STRASBURGER:** And that's fine, those dates --
18 the later dates you suggested are fine with me, Your Honor.

19 **THE COURT:** If you had to guess right now -- and
20 I recognize it's a sure -- it's more speculation -- do you
21 think you'll need one day, two days, three days, or four
22 days?

23 **MR. STRASBURGER:** I don't think it's four, I
24 don't think it's one.

25 **THE COURT:** Okay.

1 **MR. STRASBURGER:** I'd also think that some of the
2 issues -- some of the important issues may be largely legal
3 issues as opposed to factual issues that we can handle on
4 briefing.

5 **THE COURT:** Okay.

6 **MR. STRASBURGER:** But I would suggest that we
7 allow at least two days for this.

8 **MR. SHARP:** I think that sounds about right,
9 Your Honor. My portion of this case, frankly, may be -- I
10 believe should be resolved looking at papers through the
11 template of the law. And so for that reason, I think I can
12 do my part without a lot of trial time. Mr. Strasburger's
13 part of the case will probably take longer than mine I would
14 suspect, so I would defer to him on how long he thinks that
15 would be.

16 **THE COURT:** Why don't we do this then: why don't
17 we set out -- I'm going to block out four days: Tuesday,
18 February 23; Wednesday, February 24; Thursday, February 25;
19 and Friday, February 26 recognizing we may not need all four
20 days.

21 But why don't we start on Tuesday the 23rd.
22 Why don't we say at 10:00 o'clock. I've got prelim hearings
23 at 9:00 virtually all of which settle, and if they don't,
24 not to worry, I won't keep you all sitting at 10:00. So
25 we'll go -- we'll start at 10:00 o'clock and that'll give us

1 all day Tuesday. I've got a 2:00 o'clock hearing on Tuesday
2 which will not take long.

3 Then Wednesday is my complex day but I've
4 got nothing set now, and even if I do, on Tuesday the 23rd,
5 I can tell you how much time I can give you on that
6 following day, but I'll make sure it's a chunk.

7 And then Thursday the 25th, I can give you
8 virtually the entire day, and the hearings I have, you all
9 can take a break while I handle those hearings.

10 And then Friday the 26th is totally open.
11 So I would think that we can take care of everything.

12 **MR. STRASBURGER:** And, Your Honor, it may be --
13 and again, just kind of looking forward because we're taking
14 a lot of depositions, it may be that a lot of this can be --
15 a lot of the factual testimony can be handled by giving the
16 Court deposition submissions which you can --

17 **THE COURT:** That's fine.

18 **MR. STRASBURGER:** -- read at your leisure.

19 **THE COURT:** Okay. Anything you've given to me
20 before the 23rd, I will certainly read so -- and no problem
21 there.

22 Let's see, you talked about amendments to
23 the pleadings. To save you the time filing a motion, I
24 don't mind if I tell you -- if you all want to walk out of
25 here today, as long as you're agreeing, just to set a

1 deadline by when you should amend your pleadings.

2 **MR. STRASBURGER:** Well, I'll just state that I do
3 not have an objection to the draft of amended pleading that
4 Mr. Sharp emailed me last night.

5 **THE COURT:** Okay.

6 **MR. STRASBURGER:** And I just need a day or two to
7 revise my amended pleading so that it meets what he's done.
8 We should be able to have ours, you know, on file certainly
9 by Monday or Tuesday.

10 **THE COURT:** Okay. Why don't I just ask both of
11 you to get them on file by close of business next Wednesday,
12 which is, let's see, the 16th? That way, you can save the
13 time and expense of filing the motion and we'll just show --
14 we'll have in the Minutes today that you both made oral
15 motions for leave to amend and both of you said you no
16 opposition to the other doing so. And so all you do is file
17 by close of business Wednesday, December 16th.

18 **MR. STRASBURGER:** That's fine, Your Honor.

19 **THE COURT:** What would you like for a discovery
20 deadline or any other deadlines?

21 **MR. STRASBURGER:** My suggestion is, if the Court
22 would indulge us on this, is that we maybe leave that open
23 today and come up with an agreement after we see what sort
24 of difficulty we're going to have with witness scheduling.

25 **THE COURT:** Okay.

1 **MR. STRASBURGER:** And we're happy to submit
2 something to the Court on that. I'm just not sure -- you
3 know, some of the people may be hard to track down. I'm
4 just not sure what we can do.

5 **THE COURT:** Mr. Sharp, any opposition to that
6 approach?

7 **MR. SHARP:** No. And it occurred to me -- you
8 know, I'll acquiesce and that makes perfect sense to me,
9 Your Honor.

10 One concern that while Mr. Strasburger was
11 talking -- I'm going to go ahead and just make the Court
12 aware of it -- it just occurred to me as a practical matter,
13 Your Honor, we may have to take depositions of third
14 parties, in other words, people who are not necessarily
15 under the control of my client --

16 **THE COURT:** Yeah.

17 **MR. SHARP:** -- nor under the control of
18 Mr. Strasburger's client.

19 **THE COURT:** Yeah.

20 **MR. SHARP:** We may -- and we may have to come
21 back to the Court with this. I can see that we may have
22 difficulty rounding people up who are presently not within
23 subpoena range and we may be back in here for something like
24 letters rogatory to be issued in places like Searcy,
25 Arkansas. And so for that reason, this may -- I don't -- I

1 just want to let the Court know --

2 **THE COURT:** Yeah.

3 **MR. SHARP:** -- that this entanglement may be out
4 there, and I didn't want to sit quietly and --

5 **THE COURT:** No, no, I appreciate it. I'm just
6 trying to go back to my days of practicing. If you want to
7 serve someone, for example, in Searcy, Arkansas, I think
8 you've got to go get the Bankruptcy Court that -- whose
9 geographical territory covers Searcy and get that Court to
10 issue the subpoena, if I recollect correctly.

11 **MR. SHARP:** I think that's correct, Your Honor.

12 **THE COURT:** Yeah. So I could see where maybe you
13 don't get all depositions done before the end of February.
14 And if that's the case and you all want to push trial back,
15 we'll do it. And I'm here all through March. I'm not going
16 on spring break like a lot of people do. So I appreciate
17 you telling me that, and all you can do is do the best you
18 can to get a hold of these people.

19 But we'll -- right now, we'll lock down
20 those four days in February and see what happens.

21 How much time -- do you want to submit an
22 agreed order within, I don't know, by the end of the year as
23 to what -- will that give you enough time to figure out
24 where witnesses are and --

25 **MR. STRASBURGER:** I think so, Your Honor.

1 **THE COURT:** Okay.

2 **MR. STRASBURGER:** And if we -- we will endeavor
3 to do that. If there any issues, we can also alert the
4 Court to those issues by the end of the year.

5 **THE COURT:** Okay. Then, Mr. Strasburger, I'll
6 put you down as the attorney responsible for submitting the
7 order. Obviously, I need Mr. Sharp's signature on it and
8 we'll just say by December 31.

9 **MR. STRASBURGER:** Are there any other deadlines
10 that the Court would like us to have in there? I mean, we
11 can certainly agree on -- we may agree on things for our own
12 purposes, but are there other deadlines that the Court would
13 want in there?

14 **THE COURT:** Am I right in concluding that this is
15 not a summary judgment case?

16 **MR. STRASBURGER:** It may be a partial summary
17 judgment case.

18 **MR. SHARP:** I think at least some of it --

19 **THE COURT:** I heard you talk about the law a
20 little bit. So you think some of it might be.

21 **MR. SHARP:** I think that my portion of it is. I
22 think that -- of course, I think at least half of the people
23 within the sound of my voice right now think I'm wrong.

24 **THE COURT:** Yeah, okay. Let me ask you this:
25 Do you need to conduct -- take any

1 depositions, Mr. Sharp, to adduce testimony in order to
2 attach that to the motion to make your argument, or within
3 the next week or two or three, could you file a motion for
4 summary judgment based upon what -- the law as it is and the
5 facts that you've got stipulated to?

6 **MR. SHARP:** Your Honor, I mean, candidly, I
7 believe that I can do the latter.

8 **THE COURT:** Okay.

9 **MR. SHARP:** I think that I would like to get that
10 issue before the Court sooner rather than later.

11 **THE COURT:** Okay.

12 **MR. SHARP:** And, candidly, I don't know that I
13 need testimony and I -- now, I don't want to have to recant
14 that, but I don't think I do as I'm standing here right now.

15 **THE COURT:** Okay. Is there any reason -- do you
16 think you could get that motion on file by the end of the
17 year?

18 **MR. SHARP:** I don't see any reason why not.

19 **THE COURT:** Okay. Because what I'm thinking is:
20 if you do that and, Mr. Strasburger, if you respond, you
21 know, if I gave you 20 days or something like that to
22 respond to or you feel you need longer, and then we have a
23 hearing at least either late January before Mr. Sharp's
24 trial starts or at least maybe the week before the trial, or
25 I can rule without oral argument. I mean, I'm certainly

1 willing to do that as well.

2 If we can knock out at least some of the
3 issues -- let me rephrase. I'm not making any judgment
4 today but if, in fact, there are issues that I conclude
5 need to be knocked out just to reduce the trial time, I'm
6 certainly willing to have you put in the scheduling order,
7 you know, "Motion for summary judgment by Mr. Brewer should
8 be filed by December 31, response should be filed by
9 January 21," or something like that then I can read the
10 pleadings and, if I have questions, schedule a hearing. If
11 I don't, I can rule in Chambers.

12 **MR. STRASBURGER:** I guess my reaction to that,
13 Your Honor, we certainly have no problem with the timing
14 although we don't believe that Mr. Brewer's motion would
15 knock out any part of our case.

16 And my only other comment would be -- well,
17 I think we could certainly respond. If they file something
18 by the end of the year, we could respond within 20 days or
19 so.

20 **THE COURT:** Okay.

21 **MR. STRASBURGER:** I would request a hearing on --
22 if they do file a motion. And I certainly would not want to
23 put discovery on hold. I mean, we're going to need to go
24 forward with discovery given the timeframe.

25 **THE COURT:** Sure. Let me ask you this: if we

1 have Mr. Sharp file a motion for summary judgment on or
2 before December 31, if you could file a response by Friday,
3 January 15, we could have a hearing during the week of
4 January 18, which is well in advance of Mr. Sharp's trial,
5 so that I could hear oral arguments and then I could make a
6 ruling.

7 **MR. STRASBURGER:** All right.

8 **THE COURT:** Or let me put it this way: the sooner
9 deadline you can give me for filing a response, the quicker
10 I can give you a hearing.

11 **MR. STRASBURGER:** Without seeing --

12 **THE COURT:** Yeah.

13 **MR. STRASBURGER:** -- Mr. Sharp's motion --

14 **THE COURT:** Yeah.

15 **MR. STRASBURGER:** -- but attempting to read his
16 mind on what it will look like, I think we can do that.

17 **THE COURT:** Okay.

18 **MR. STRASBURGER:** If we see it and there's a
19 bunch of crazy stuff in there we haven't anticipated --

20 **THE COURT:** Yeah.

21 **MR. STRASBURGER:** -- I may come back to the Court
22 and ask for more time.

23 **THE COURT:** Fair enough, I don't have any problem
24 with that. Why don't we do this then:

25 Mr. Sharp, could I ask you to file your

1 motion by December 31?

2 **MR. SHARP:** Yes, Your Honor.

3 **THE COURT:** And, Mr. Strasburger, why don't I ask
4 you file a response by the 15th of January, unless you want
5 more time because I'm -- and, frankly, I will be willing to
6 give it to you because, obviously, you're going to have,
7 particularly with the holidays, not a lot of time to respond
8 compared to what you would have under the rules, and why
9 don't -- I'm just trying to think, why don't I give you all
10 a -- I could do the hearing on January 19, 20, or 21, which
11 is that Tuesday, Wednesday, or Thursday. The 18th is a
12 federal holiday, it's Martin Luther King's birthday.

13 **MR. STRASBURGER:** Mr. Sharp, how are you looking?

14 **MR. SHARP:** Your Honor, I'm told that those dates
15 would work fine --

16 **THE COURT:** Okay.

17 **MR. SHARP:** -- for our side and so that's
18 perfectly fine with us.

19 **THE COURT:** Then why don't we do Tuesday,
20 January 19th, at --

21 **THE CLERK:** January 19th, 10:30, Your Honor?

22 **THE COURT:** Bear with me. No, why don't we do it
23 at 1:30 -- 1:30.

24 **THE CLERK:** Okay, 1:30 then.

25 **THE COURT:** Yeah. We've got enough stuff set in

1 the morning.

2 **MR. STRASBURGER:** Your Honor, I haven't given
3 this a lot of thought but it may be there are some claims
4 that Express would want to move on as well.

5 If that's the case, can we use those same
6 deadlines for any claims we want to move on?

7 **THE COURT:** Sure. And I'll tell Mr. Sharp the
8 same thing: if he needs beyond the 15th to -- I mean, I'd
9 like a response by the 15th, but if you need more time, I'll
10 give it to you. But if you don't and you file it, I'll read
11 everything over that weekend and I'll be loaded for bear on
12 the 19th for any questions I have and, obviously, give each
13 of you the opportunity to make oral argument.

14 **MR. SHARP:** That's fine with us, Your Honor, as
15 well.

16 **THE COURT:** Okay, good. Then if I could have you
17 put all that in the scheduling order. And again, I don't
18 need the scheduling order till the end of the year. Let's
19 see if you can pinpoint these witnesses and how many of them
20 you think you can get locked down. Those are the only
21 deadlines I can think of given what you're telling me.

22 I'm here all January and February except for
23 that one week where I'm out, so if you need expedited
24 hearings or something comes up, I can -- we can have
25 expedited hearings quickly.

1 Just to review exhibits, I think probably
2 because Mr. Lopez and Mr. Tillmanns I know have been in the
3 courtroom, you can either do exhibits where they're in
4 three-ring binders tabbed. I need one for myself, one for
5 Ms. Attaway, one for the witness box, and one for each
6 counsel so that we're not running back and forth. Or if you
7 want to use technology in the courtroom, all you need to do
8 is to bring in a disk. We've got the screens. And then I
9 only need one hard copy of the exhibits which would be for
10 appeal purposes because the appellate courts want the hard
11 copy. And while I encourage people to use technology in the
12 courtroom, it's by no means a requirement. And if I could
13 get the exhibits on noon the day before the trial starts --
14 noon the day before the trial starts -- so that I can look
15 at them.

16 And my thought process is on this is:
17 between the summary judgment hearing, I don't think we need
18 to have a pretrial conference unless you all -- usually, I
19 have a pretrial conference but this is on enough of a fast
20 track and I think between the summary judgment hearings I
21 think I'll understand the issues. But if you all want to
22 have a pretrial conference a day or two or three before the
23 trial in order to review exhibits, what you've stipulated
24 to, what you can't, I'm happy to do it. Otherwise, just
25 come in on the morning of the trial, tell me which exhibits

1 you've stipulated to and which you haven't and that way I'll
2 know. And those that you haven't stipulated to, obviously,
3 you know you've got to prove up.

4 **MR. STRASBURGER:** Unless something comes up that
5 we don't anticipate, I would agree with Your Honor, I do not
6 think we need to set aside a specific pretrial conference at
7 this point.

8 **THE COURT:** Mr. Sharp, do you agree?

9 **MR. SHARP:** I agree with Mr. Strasburger.

10 **THE COURT:** Okay, good.

11 Anything else you can think of that you want
12 to raise? I don't think -- I can't think of anything else
13 right now.

14 **MR. STRASBURGER:** That's all from my -- I would
15 just comment, Your Honor, that contrary to Mr. Sharp's
16 comments, that was as neutral a description of the facts as
17 I'm capable of giving and it took me a lot of practice last
18 night to get it that neutral.

19 **(Laughter)**

20 **THE COURT:** Fair enough.

21 **MR. STRASBURGER:** But that's all we have to
22 request to the Court today, Your Honor, and we'll prepare
23 the order.

24 **THE COURT:** Thanks.

25 Mr. Sharp, anything else?

1 **MR. SHARP:** I have nothing else, Your Honor.

2 **THE COURT:** Gentlemen, I appreciate your
3 professionalism and look forward to getting the order. And
4 if I don't see you all before the end of the year, you all
5 have safe and happy holidays please.

6 **MR. LOPEZ:** Your Honor?

7 **THE COURT:** Yeah, Mr. Lopez?

8 **MR. LOPEZ:** Your Honor, just very quickly. Since
9 we're speaking Express, I just wanted to raise, Your Honor,
10 a -- just one point. We had filed a few days ago an
11 emergency motion and I think it's Docket Number 190 as a
12 supplement to an emergency motion to pay post-petition
13 amounts. We -- one of the potential lien claimants that we
14 had -- Your Honor had previously given us authority to pay,
15 we found that there were some additional amounts that were
16 owed to the potential lien claimant, and so we filed an
17 emergency supplement to just pay that additional amount. We
18 have notified Ms. Stennis and the clerk that if Your Honor
19 see that cause of action, we just need to try to set it, a
20 day -- a hearing day.

21 **THE COURT:** Well, hold on a minute. I'm looking
22 at on the screen. Ms. Stennis was out yesterday and I was
23 on the Bench.

24 **MR. LOPEZ:** Yeah. We just want to make Your
25 Honor --

1 **THE COURT:** Ms. Attaway has just given it to me
2 which meant Ms. Stennis this morning must have put it in my
3 box so bear with me.

4 You want to set it for a hearing?

5 **MR. LOPEZ:** Yes, any day next week would work,
6 Your Honor.

7 **THE COURT:** Let's do it right now. As long as
8 you're okay, I'd prefer to do it on -- I can either do it
9 Tuesday the 15th, at 1:30, or I can do it Wednesday the
10 16th, at the normal time.

11 **MR. LOPEZ:** Tuesday, okay.

12 **THE COURT:** Could I ask you to notice it out?

13 **MR. LOPEZ:** Yes, Your Honor.

14 **THE COURT:** We'll just go to --

15 **MR. LOPEZ:** We said Tuesday at?

16 **THE COURT:** Tuesday, December 15th, at 1:30.

17 **MR. LOPEZ:** Yes, we'll do it.

18 **THE COURT:** Okay.

19 **MR. LOPEZ:** Thank you, Your Honor.

20 **THE COURT:** Thanks, Mr. Lopez.

21 **THE CLERK:** At 1:30, Judge?

22 **THE COURT:** I'm sorry, Vangie?

23 **THE CLERK:** What time please?

24 **THE COURT:** At 1:30, Tuesday, December 15th,
25 okay?

1 THE CLERK: Okay. Thank you, Your Honor.

2 THE COURT: Okay, good.

3 MR. LOPEZ: Thank you, Your Honor.

4 THE COURT: Thanks you all.

5 MR. STRASBURGER: Thank you, Your Honor.

6 (This proceeding was concluded at 10:01 a.m.)

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10 *I certify that the foregoing is a correct transcript from*
11 *the electronic sound recording of the proceedings in the*
12 *above-entitled matter.*

13 */s lmartin*

14

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