

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

)
)
) CV 13-00417-PHX-ROS
 Don Addington, on behalf of)
 himself and all similarly situated)
 former America West Pilots, et al.,)
)
 Plaintiffs,) Phoenix, Arizona
) October 17, 2013
) 1:08 p.m.
 and)
)
 US Airline Pilots Association, an)
 unincorporated association, et al.,)
)
 Defendants.)
 _____)

BEFORE: THE HONORABLE ROSLYN O. SILVER, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATUS HEARING

Official Court Reporter:
Elaine Cropper, RDR, CRR, CCP
Sandra Day O'Connor U.S. Courthouse
401 West Washington Street, SPC 35
Phoenix, Arizona 85003-2150
(602) 322-7245

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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P R O C E E D I N G S

1 (Court was called to order by the courtroom deputy.)

2 (Proceedings begin at 1:08.)

3 (Ms. Martin and Ms. Kroll are present in the
4 courtroom; all other counsel appear telephonically, as well as
5 Dr. Thomas Gleason.)

6 THE COURT: Please be seated.

7 COURTROOM DEPUTY: This is case number CV 13-471,
8 *Addington, et al., v. US Airline Pilots Association*, on for
9 status hearing.

10 Counsel, please announce for the record.

11 MR. HARPER: For the plaintiffs, Your Honor, Marty
12 Harper, Andy Jacob, and Jennifer Axel. And to the extent that
13 there's any discussion during this conversation, Judge Silver,
14 Andy Jacob will be our spokesperson because he is a
15 cardiologist and knows a little bit about this.

16 THE COURT: Andy Jacob is a cardiologist and a
17 lawyer?

18 MR. HARPER: And a lawyer.

19 THE COURT: Thank you.

20 MR. SZYMANSKI: And for US Airline Pilots
21 Association, on the line is Patrick Szymanski, Brian O'Dwyer.
22 Susan Martin is in the courtroom as I understand and I think
23 Jennifer Kroll is there with her. And we're very pleased to
24 have Dr. Thomas Gleason on the line who was the surgeon for
25

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1 Captain Hummel. And we appreciate very much his staying on the
2 line and making time for this.

3 Thank you, Dr. Gleason.

4 MR. SIEGEL: Your Honor, for intervenor US Airways,
5 Robert Siegal, and my partner, Chris Hollinger, on the line.

6 THE COURT: All right. Thank you.

7 And thank you, Dr. Gleason. I know how busy you are
8 and I appreciate the opportunity to talk to you about this.

9 As I'm not quite sure if all of the information was
10 provided to you, not that anybody would have neglected to do
11 so -- but this is on short notice -- we have a scheduled
12 hearing, which is not a trial before a jury. It's a trial
13 before the Court and it's a preliminary matter, meaning this
14 Court will decide some issues that relate to what the
15 plaintiffs have requested in terms of a preliminary injunction.
16 This is -- this will only take approximately two days.

17 As I anticipate, Mr. -- or Mr. Hollinger's testimony
18 that has been outlined for me, although it is believed material
19 by the defendants, is not the linchpin of their case. It is
20 material because he provides some background information. And
21 I'm sure Mr. Szymanski and Ms. Martin have indicated that to
22 him.

23 They have told me that it is, in your judgment, too
24 stressful for him to participate in this hearing and too
25 stressful for him to participate in this hearing because it

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1 would take him something in the nature of a month to overcome
2 the stress.

3 This is something where I need to inquire of you what
4 your expert opinion is on all of this. And so you know, I have
5 been a Federal District Court Judge for 19 years. This is not
6 unusual for me to talk to doctors where the doctors have
7 concerns about their clients or their patients and whether or
8 not stress can be induced by participation in litigation.

9 So with all of that as background, tell me, first of
10 all, about Mr. Hollinger, what kinds of procedures has he
11 endured and what kind of stress does he have now. This hearing
12 is scheduled for next week starting Tuesday and Wednesday.

13 DR. GLEASON: I don't know anyone named Hollinger.

14 THE COURT: I'm sorry.

15 DR. GLEASON: I don't think you have the right
16 person.

17 MR. SZYMANSKI: Captain Hummel.

18 THE COURT: I'm sorry. It is Captain Hummel, thank
19 you. And now understanding that, can you --

20 DR. GLEASON: I'm not sure what you need from me but
21 I can tell you that I just operated on this patient and with
22 all due respect, I'm not sure that it's relevant what the
23 details of his health problems are. But he's still in the
24 hospital and I would not clear him to travel by next week.
25 There's just no way.

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1 THE COURT: Well, what we are planning -- let me ask
2 you a little bit about the surgery. What type of -- it was
3 heart surgery but what type of heart surgery?

4 DR. GLEASON: Again, without -- I don't know if this
5 is really appropriate with all due respect. I don't have his
6 consent to tell you anything about his surgery and I would not
7 feel comfortable doing that unless I -- you know, he was
8 involved and -- this is completely not something that -- I mean
9 I have been involved with many patients that have been
10 witnesses in cases and this is the first time I've ever been
11 asked to divulge his health problems to the Court.

12 THE COURT: Well, I appreciate the fact that there is
13 a physician-patient privilege and I don't know what to tell the
14 defense counsel about this but how do you expect to overcome
15 this?

16 MS. MARTIN: Dr. Gleason --

17 Go ahead, Pat.

18 MR. SZYMANSKI: I was going to say, Dr. Gleason, I
19 will tell you, with Gary's consent, what we have already told
20 the Court. We have told the Court that he had bypass surgery
21 earlier this week; that he is still in the hospital and that
22 based on information we've gotten I don't think directly from
23 you but from other doctors on the case, that he's not supposed
24 to be traveling for approximately four weeks -- for
25 approximately six weeks and that he was not supposed to be

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1 involved in any matters with this trial for possibly four
2 weeks. That is what we've told the Court.

3 DR. GLEASON: Okay. Well, I have no problem
4 corroborating that I would not want him traveling for four
5 weeks.

6 THE COURT: Okay. Well, that's all we have --

7 DR. GLEASON: That would be the earliest that I
8 would -- four weeks would be the earliest that I would clear
9 him to be able to travel.

10 THE COURT: Okay. That is understandable.

11 DR. GLEASON: Is that helpful?

12 THE COURT: That is helpful for a start.

13 Having had experience with bypass surgery, the other
14 issue is whether or not, if we can arrange it, he can appear by
15 video or by audio. That is only to provide the information
16 which is requisite for this hearing.

17 So, in other words, he would be on the phone and his
18 lawyers would ask him some questions and perhaps the lawyers
19 representing the other counsel would ask him questions. What's
20 your view on that, Dr. Gleason?

21 DR. GLEASON: Well, you're talking about next week or
22 when?

23 THE COURT: Next week, perhaps --

24 DR. GLEASON: When exactly are you talking about?

25 THE COURT: We're talking about next week, perhaps

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1 sometime on Wednesday I suppose.

2 DR. GLEASON: Potentially, that is possible, he could
3 take a phone call but I can't make any guarantee. I mean -- as
4 I said, he's still in the hospital and I don't have a crystal
5 ball.

6 THE COURT: Okay. Do you know when he would be
7 released?

8 DR. GLEASON: At this point, we would be scheduling
9 his release in the next few days.

10 THE COURT: Okay.

11 DR. GLEASON: Pending no other issues.

12 THE COURT: Okay. So today is Thursday and the next
13 couple of days might be Friday or Monday or Saturday? Are we
14 talking about that?

15 DR. GLEASON: Right. Yeah. Somewhere in that range.
16 I mean, honestly, I can't tell you specifically until he's
17 ready to go.

18 THE COURT: And I appreciate that.

19 DR. GLEASON: Sometime before Monday.

20 THE COURT: Okay. And as far as you know now, and
21 feel comfortable in telling us, is his condition satisfactory?

22 DR. GLEASON: Yes.

23 THE COURT: So he's not in a critical state?

24 DR. GLEASON: He's not in a critical state, no.

25 THE COURT: Okay. So he's not in ICU. He is in

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1 bedrest in the hospital somewhere receiving treatment?

2 DR. GLEASON: He's on the telemetry unit.

3 THE COURT: Okay. I believe I know what that is.

4 But let me stop here.

5 Mr. Harper, through Mr. Jacob, do you have any
6 questions to ask of Dr. Gleason?

7 MR. JACOB: Yes, Dr. Gleason. Thank you. Do you
8 have any information on how his surgery got to be timed for
9 this time?

10 THE COURT: Let me interrupt there for a second. I'm
11 not sure if you heard, Dr. Gleason, that Mr. Jacob is a lawyer
12 and also a cardiologist.

13 And, Mr. Jacob, that is news to me. Are you a
14 practicing cardiologist or was that some time ago?

15 MR. JACOB: I practiced in Scottsdale for about 12
16 years and then I went to law school and I don't practice now.

17 THE COURT: All right. So just in terms of
18 background now, Dr. Gleason, you have -- he certainly has more
19 expertise than I do.

20 So why don't you repeat the question for Dr. Gleason,
21 Mr. Jacob?

22 MR. JACOB: Yes. Dr. Gleason, I would like to figure
23 out whether the surgery was in some way elective or if it
24 urgently had to be scheduled for when it was done and I wonder
25 whether you have that information.

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1 DR. GLEASON: I have that information. Again, I feel
2 that that type of question is, again, a HIPAA violation.

3 THE COURT: Okay.

4 Now, Mr. Szymanski. Mr. Szymanski, you have the
5 answer. What's the answer to that?

6 DR. GLEASON: It is highly unusual and I feel very
7 uncomfortable answering that.

8 THE COURT: Mr. Szymanski, was this elective or
9 emergency?

10 MS. MARTIN: It's our understanding, Your Honor, that
11 Captain Hummel was admitted to the hospital over a week ago and
12 that because he had the failure of a stent that had been placed
13 in his body a few months ago and that the surgery was scheduled
14 for when it happened, I guess it was the day before yesterday
15 or yesterday, because they had to get his body -- get rid of
16 the blood thinners in his body.

17 THE COURT: When was it scheduled? Was it scheduled
18 on an emergency basis or was it scheduled some time ago is the
19 question?

20 DR. GLEASON: I would say that they don't know that.

21 THE COURT: Well, somebody knows that. Mr.
22 Szymanski, your client knows that. So that's an answer you'll
23 provide to the Court.

24 Now, Mr. Jacob, do you have another question?

25 MR. O'DWYER: This is Brian O'Dwyer, the general

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1 counsel. My understanding was that Captain Hummel went in
2 for -- with a problem with his breathing, that the doctors
3 found out that the -- that his body had rejected his stent,
4 that they kept him in the hospital, would not let him go. They
5 scheduled surgery on an emergency basis but they had to wait
6 four days from the time he went in until Monday for the blood
7 thinners to get out of his blood so that he could then be
8 operated on.

9 THE COURT: Okay. So --

10 MR. O'DWYER: The day that he had went into the
11 hospital, he never went out.

12 THE COURT: Okay. So what you're saying is that this
13 emergency occurred within the last 10 days?

14 MR. O'DWYER: That's correct.

15 THE COURT: You're saying that this was discovered
16 within the last 10 days and so it was an emergency?

17 MR. O'DWYER: Absolutely. That is my representation,
18 Your Honor.

19 THE COURT: Okay.

20 MR. JACOB: And this is Andy Jacob. If he had
21 symptoms that were the trigger for this, then I would agree
22 that the scheduling was not elective so I don't have any
23 problem with that.

24 THE COURT: Okay.

25 Any other questions, Mr. Jacob?

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1 MR. JACOB: No, Your Honor. Thank you.

2 THE COURT: Mr. Harper, questions?

3 MR. HARPER: None, Your Honor. Thank you very much.

4 THE COURT: And, Ms. Martin, questions?

5 MS. MARTIN: No, Your Honor.

6 THE COURT: Mr. Szymanski, questions?

7 MR. SZYMANSKI: I don't, Your Honor, but I just want
8 the judge to understand that --

9 THE COURT: Well, I'm going to let Dr. Gleason go
10 because he has surgery and we'll conduct our own surgery here
11 in court amongst counsel.

12 MS. MARTIN: I have one question, Your Honor, for Dr.
13 Gleason.

14 Dr. Gleason, you are the surgeon; correct? Are there
15 other physicians who will be involved in Dr. -- in Captain
16 Hummel's follow-up care?

17 DR. GLEASON: I am the surgeon. The cardiologist who
18 performed his studies preoperatively will also be following up
19 with him.

20 MS. MARTIN: Thank you.

21 DR. GLEASON: But you're asking for longitudinal
22 follow-up?

23 MS. MARTIN: I'm asking about who will be treating
24 the patient between now and his recovery from the surgery?

25 THE COURT: So, in other words, after-care I guess.

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1 DR. GLEASON: Primarily me. Primarily me but his own
2 cardiologist would also be involved.

3 MS. MARTIN: Thank you.

4 DR. GLEASON: Ordinarily me.

5 THE COURT: All right. Dr. Gleason, thank you so
6 much.

7 DR. GLEASON: Really me for the next three to six
8 weeks.

9 THE COURT: All right. Thank you. You are excused.
10 Again, thank you.

11 Okay. He's off the phone, I presume.

12 Counsel, all right.

13 DR. GLEASON: Okay. Thanks.

14 THE COURT: Let's see if we can arrange to have him
15 testify -- he's going to be released apparently in the next few
16 days -- over the phone, then that's what we'll do. Dr. Gleason
17 said it's possible he's going to release him in the next couple
18 of days. Today is Thursday. Friday, Saturday, Sunday.
19 Usually -- in my view, they don't hold patients very long in
20 the hospital, particularly heart patients, unless -- he was on
21 a telemeter so they have to release him from that. So if he's
22 able to testify, let's put him off until as late as possible
23 for this trial. Let's see. It is scheduled for -- what was
24 it, next -- the 24th, 23rd and 24th.

25 COURTROOM DEPUTY: It's the 22nd and 23rd, Your

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1 Honor.

2 THE COURT: The end of the 23rd then we'll have him
3 testify.

4 Counsel, you are to make arrangements to have him
5 testify by either video or audio, whatever is most convenient
6 for him and most comfortable for him.

7 And as I understood from what I received from you,
8 Ms. Martin and Mr. Szymanski, it appears that his testimony is
9 definitely relevant. I'm not sure how critical it is but I
10 can't presage what my ruling is but it certainly is relevant
11 and counsel for the plaintiffs, Mr. Harper, Jennifer --
12 Jennifer Axel and Mr. Jacob, I don't imagine that you are going
13 to be engaging -- now you know what he's going to testify to, a
14 rigorous cross-examination. Am I right?

15 MR. HARPER: We will not be rigorous, Your Honor, but
16 we will probably necessarily have to follow up with some
17 questions.

18 THE COURT: Okay. All right.

19 Well, you can --

20 MR. SZYMANSKI: Your Honor, this is Mr. Szymanski.

21 THE COURT: Mr. Szymanski, I'll call on you when I'm
22 ready.

23 So what I'm going to do, in order to make it a little
24 bit more comfortable for the captain, that -- is it Hummel?

25 MS. MARTIN: Hummel.

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1 THE COURT: For Captain Hummel is that the plaintiffs
2 are -- plaintiffs' counsel are to give a synoptic outline of
3 what questions you would be asking him so that he won't be
4 drawn off guard and feel extremely uncomfortable in answering
5 those questions.

6 MR. HARPER: Your Honor, this is Marty Harper. May I
7 jump in?

8 Just to explain what has happened, we have reached an
9 agreement with the USAPA's counsel that we can use depositions
10 affirmatively in this case even if the parties show. So we
11 have already designated the relevant parts of the deposition
12 two weeks ago for Captain Hummel.

13 What we would be expecting, then, Your Honor, is if I
14 have any further questions on the part of my case, I would
15 provide it to him. But I think mostly I would be following up
16 if Mr. Szymanski has any questions that he claims I did not
17 have either properly or completely enough during the deposition
18 I took.

19 THE COURT: Okay. So, in other words, this is not a
20 surprise of any sort. It seems that Mr. Szymanski is going to
21 be asking additional questions that might be outside the
22 parameters of the deposition. Am I right? Ms. Martin is
23 nodding.

24 So, Mr. Harper, now that you've seen these additional
25 types of questions, do you anticipate that you're going to be

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1 asking more questions or do you know?

2 MR. HARPER: Your Honor, I don't know what the
3 questions are going to be because if you look at the reply that
4 came in this morning, Mr. Szymanski points to a couple of areas
5 where there's going to be follow-up questions but he provides
6 no insight as to the specifics. So I know the area. I just
7 need to be prepared to go into the area. But I don't know the
8 questions so I can't preview my cross-examination at this point
9 in time.

10 THE COURT: Okay.

11 Mr. Szymanski, now, Mr. Szymanski, you may respond.

12 MR. SZYMANSKI: Well, first of all, Your Honor, the
13 description that was given to Dr. Gleason about a phone call I
14 think is completely misleading about the length of time that we
15 would expect that Captain Hummel would be on the line, both
16 answering direct questions and cross-examination and Dr.
17 Gleason made himself available on very short notice.
18 Obviously, he didn't have a chance to talk with Captain Hummel
19 and get his consent with respect to other matters that he might
20 be able to talk to you about because he's a busy cardiac
21 surgeon in Pittsburgh.

22 So that -- and he is not, as he said, the only doctor
23 who is handling Captain Hummel's care.

24 And I don't think he was told what the length of time
25 was or the number of questions and so forth that Captain Hummel

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1 would be asked to do only a week after his bypass surgery. I
2 think that is unfair at this point.

3 THE COURT: Well, go ahead.

4 MR. SZYMANSKI: Except to the extent the Court is
5 saying we're going to go ahead with this, there is a problem
6 because Captain Hummel won't be at the hearing. He won't be
7 there assisting me as the principal representative of the U.S.
8 Airline Pilots Association. He won't be there hearing the
9 testimony that is given -- would be given before he testifies
10 and that he may be responsible to respond to. I mean even that
11 would require us to talk with Captain Hummel before a telephone
12 call with him on Wednesday.

13 I mean, we're talking about multiple telephone calls
14 over a substantial length of time within a week of his bypass
15 surgery. And I think that that really ought to be described to
16 the doctors before the Court makes a determination that this
17 can go forward with Captain Hummel's telephone conversation
18 testimony on Wednesday, which is only a week after his surgery.

19 THE COURT: Mr. Szymanski, let me ask a question. Do
20 you consider Captain Hummel the client? Is he the person that
21 is always sitting next to you in these hearings and is somebody
22 you have to converse with as the client in this case?

23 MR. SZYMANSKI: Yes, Your Honor. He is the principal
24 officer of the US Airline Pilots Association and he's been the
25 principal officer since April of 2012 during the entire time

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1 period that is covered by the issues that are at issue in the
2 case.

3 THE COURT: So are you relying on him exclusively or
4 substantially on all the facts and circumstances that occurred
5 in regard to what this preliminary injunction is all about? I
6 mean, the preliminary injunction is a narrow question of
7 whether or not there was a failure of good-faith
8 representation.

9 How much of the facts does he have available to him,
10 those facts being facts that would be admissible?

11 MR. SZYMANSKI: Your Honor, we've listed them in our
12 reply. They are extensive. They include almost every aspect
13 of this case. Captain Hummel was going to sit with me at
14 counsel table. He is the principal officer and has personal
15 knowledge of all of these matters that he listed.

16 THE COURT: Well, he's not testifying to all of those
17 personal matters because his testimony would be hearsay,
18 wouldn't it?

19 MR. SZYMANSKI: Not with respect to the things that
20 we had listed in the reply, Your Honor, which is --

21 THE COURT: I give that you. We now know what he
22 what he would testify to in the reply and his deposition has
23 been taken.

24 My ruling is that I am not going to continue the
25 trial. His testimony -- you are to arrange for him to testify

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1 as needed during the trial. Counsel are to work together to at
2 least make him as comfortable as possible for his deposition
3 testimony.

4 Mr. Szymanski, you are to speak to him as you believe
5 it's necessary throughout the trial on the limited issues which
6 are before this Court. And if, however, there is reason to
7 believe that he is in a condition -- his condition has been
8 altered or depreciated to the point where it's not, as the
9 doctor has said, satisfactory, he's only on a telemeter which
10 isn't, in my view, as I know these matters in a limited sense,
11 is not a real serious issue. He's going to be released. This
12 is difficult for him. No doubt. I take that into
13 consideration and if it is going to not just be stressful to
14 him because this case is stressful for everyone, but if it's
15 going to depreciate his health condition in a way that is
16 irremediable or is such that it would be unconscionable to have
17 him testify over the phone, then I will reconsider my ruling.

18 My ruling is based upon what I've heard from Dr.
19 Gleason. He's obviously very qualified. He is a doctor, as is
20 clear. He did not want to violate any of his responsibilities
21 to his patient, is that he would take very good care to ensure
22 that his patient was not in harm's way.

23 So the trial will not be continued. It is going
24 forward as planned with the understanding that if Captain
25 Hummel is -- his situation becomes egregious, then counsel will

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1 bring it to my attention and I will reconsider.

2 There also are the alternatives, too, and I --
3 Mr. Harper, Ms. Axel, and Mr. Jacob, you are ordered to work
4 with defense counsel to try to work out perhaps the possibility
5 of just using his deposition testimony or outlining, as I said,
6 Mr. Harper, what your cross-examination would be on the
7 testimony that he is going to give.

8 It is possible, I suppose, if that's the testimony he
9 is going to give, rather than having him testify in Court,
10 which is probably stressful to him, because no matter -- even
11 if they are not here present in Court, the formal proceedings
12 are stressful. Perhaps you can elevate the evidence that is
13 already available in the deposition testimony by retaking it,
14 retaking the testimony, now that Mr. Szymanski has decided
15 there are other things he wants to ask him. So that's another
16 alternative.

17 All right. Mr. Harper, anything else?

18 MR. HARPER: No. I think that I understand
19 everything except perhaps the last about -- were you suggesting
20 that there may be another depo between now and Wednesday
21 afternoon, Your Honor?

22 THE COURT: Well, I am not suggesting it. I am just
23 saying look at every possibility for ameliorating the potential
24 stress to Captain Hummel. If that's a possibility --

25 MR. HARPER: Yes. And we've already communicated to

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1 Mr. Szymanski, I believe, that we're quite comfortable with the
2 deposition testimony that we took on September 19 or whenever
3 that was, September 17.

4 THE COURT: Well, I know you're comfortable with that
5 but apparently Mr. Szymanski wants to ask him more questions
6 despite the fact that he didn't ask them during the deposition.

7 MR. HARPER: And Pat and I will work together and if
8 he can tell me what the handful of questions are that he wants
9 to ask, I will respond in kind, Your Honor, and tell him what I
10 want to follow up with, if anything.

11 THE COURT: Okay.

12 MR. SZYMANSKI: Your Honor, those questions, to a
13 large extent, are going to depend on the testimony that
14 Mr. Harper is going to present during his case-in-chief at the
15 beginning.

16 THE COURT: Okay. Well, that is understandable.
17 Mr. Harper, Mr. Harper is going to let you know what -- I mean,
18 at this point, counsel, this case has been around for a long
19 time. Even I know, have a good sense, Mr. Szymanski, of what
20 Mr. Harper is going to put on. I've seen it unless, all of a
21 sudden, there's some smoking gun here that I haven't seen
22 before and Mr. Harper is going to drop it on you on the first
23 day of trial, then there's nothing new about it.

24 You'll just have to decide it along the way as you
25 always do. If, after Mr. Harper drops something on you after

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1 his case is presented, that doesn't mean that a deposition
2 still can't be taken. Mr. Harper is willing to work with you
3 concerning what his case is going to be. He has an obligation
4 to do that. That is the order of this Court.

5 All right. This matter is adjourned.

6 (Whereupon, these proceedings recessed at 1:41 p.m.)

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United States District Court

CV 13-00417-PHX-ROS, October 17, 2013

C E R T I F I C A T E

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3 I, ELAINE M. CROPPER, do hereby certify that I am
4 duly appointed and qualified to act as Official Court Reporter
5 for the United States District Court for the District of
6 Arizona.

7
8 I FURTHER CERTIFY that the foregoing pages constitute
9 a full, true, and accurate transcript of all of that portion of
10 the proceedings contained herein, had in the above-entitled
11 cause on the date specified therein, and that said transcript
12 was prepared under my direction and control, and to the best of
13 my ability.

14
15 DATED at Phoenix, Arizona, this 17th day of October,
16 2013.

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20 s/Elaine M. Cropper

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22 Elaine M. Cropper, RDR, CRR, CCP
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United States District Court