IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

PROVISUR TECHNOLOGIES, INC.,)
)
Plaintiff,)
vs.)Case No.
)21-cv-6113-SRB
WEBER, INC., et al.,)
)June 20, 2023
Defendants.)

.....

TRANSCRIPT OF SCHEDULING & DISCOVERY DISPUTE HEARING
BEFORE THE HONORABLE STEPHEN R. BOUGH
UNITED STATES DISTRICT COURT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

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TUESDAY, JUNE 20, 2023

THE COURT: Good morning. We are here on the case of Provisur v. Weber. May I have appearances by the parties, please?

MR. BABBITT: Morning, Your Honor. Michael Babbitt for plaintiff, and with me is Taylor Concannon-Hausmann and Jeff Simon.

MR. LEIKER: Morning, Your Honor. For defendants Weber, Mr. Don Banowit, Ms. Deirdre Wells, and myself, Jason Leiker.

THE COURT: Well, welcome, everyone.

Did you guys all see my order that came out this morning? In addition to those justifications, I'm getting tired of working on this case, and so my sincere hope is we can get this one done and do the discovery necessary and at least have the finality unless I've committed reversible error and the Eighth Circuit or the Fed Circuit sends it back to me.

So I think we can -- well, Ms. Wells, do you think we should talk about discovery first, or do you think we should schedule first?

MR. BANOWIT: I think I'd like to -- you know, I think we ought to talk about what happens next in terms of the schedule. I think the schedule that the parties submitted to you, we indicated in our paper, doesn't make sense if you're going to add extra things. So we figured this one's out the

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door, and according to what we're aware of, the next things that need to happen is they need to file their amended complaint. And then the federal rules and local rules take over in terms of the deadlines that need to happen next.

We need an opportunity to file our Rule 12 motions, have them file an opposition on reply, get that decided upon. Then once that's over, we then need time, if there's anything left, to answer. We'll likely have counterclaims, which they're going to have to answer, and once all that's done, if we could get together in a brand new 26(f), come up with a schedule for this brand new case, and have a scheduling conference late in the year on what's going to happen for what you now have before us. The way we see it this is basically -- you know, we are starting from scratch.

THE COURT: I bet you bet, like I do, they're going to tell me something different.

MR. BANOWIT: I don't know how there's anything we can reasonably do other than that. There's no way -- you actually said in your papers before when you gave them an opportunity to do this that this would allow Weber the normal opportunity to receive timely infringement contentions, propound discovery, identify claim construction disputes, develop its defenses pursuant to a regular procedural schedule. That's what we intend to do here. We are not rushing this.

THE COURT: Babbitt?

MR. BABBITT: Thank you, Your Honor.

I disagree with Mr. Banowit. As we said in the proposed schedule, we actually think the schedule would be just fine. We're willing to work with them, work with you to come up with a schedule that makes sense. If there needs to be some extra time built into that, I think we can talk about that, but I would recommend we set up a trial date and we work backwards from that to get the deadlines that need to be in there and we get going.

Like you said in your orders today, there's overlapping issues. We know there's the same witnesses. There's the same discovery. The whole reason we're putting it together is because there's that --

THE COURT: How soon can you file an amended complaint?

MR. BABBITT: Tomorrow.

THE COURT: So you can file one by June 23rd.

MR. BABBITT: Yes, Your Honor.

THE COURT: And you -- I'm assuming no additional parties?

MR. BABBITT: No, Your Honor.

THE COURT: Mr. Banowit?

MR. BANOWIT: Rule 15 would normally give us 14 days to respond to an amended complaint. I think in this instance

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when we're looking at a 44-page complaint with almost 200 paragraphs, we'd request 21 days to file our responsive pleading, which, as I said, will likely be Rule 12 motions.

THE COURT: 21 days is more than reasonable to file a responsive pleading.

THE COURTROOM DEPUTY: It would be Friday, July 14th.

MR. BANOWIT: Assuming they file the paper tomorrow.

THE COURTROOM DEPUTY: That would be from the 23rd.

THE COURT: We'll just put in there by July 14th you can file a responsive pleading.

MR. BANOWIT: Okay.

THE COURT: We have to somehow get this case going, and there's something appealing about Mr. Babbitt's proposal of setting a trial and working back from that. But, Mr. Banowit, I want to hear you out on why that wouldn't work.

MR. BANOWIT: I've got a bunch of reasons, but I'll start with the most simple of them.

We have no idea right now what issues will survive the motions phase, what issues we will put into our counterclaims. It's more than likely we're going to have more issues in this case than what we have right now. So it's premature for us to even approach that.

I think the way that the federal rules lay this out is proper. You've got to see what's in the final complaint

and what's in the counterclaims so that you can then assess it. We'll be in a position once all that's done to sit down and talk about what's an appropriate schedule, how much time we need for discovery of the various issues that are involved.

Assuming there's patent issues still in the case, then, which there appears there's going to be, we need to follow local patent rules in terms of what it sets out for the initial contentions, which they'll have to give us, our initial invalidity contentions, the Markman that we'll have to have for any new issues that might come up in this case. Then we'll be basically where we are in this case probably a year or more from now.

But there's no chance this case is getting tried before 2025, certainly given what we've got in it. That's just not the due process way of going through this. The proper way of doing this now is to follow the process of the rules to figure out what are the issues.

We can't even do discovery right now because I don't know whether their claims are going to survive, what they look like. They certainly at a minimum need to be more definite in terms of what they have. So we have to understand what are the claims in this case before we can even figure out what we're doing discovery on.

So I think all this stuff is premature. We can try our best later this year when we get together to do a

scheduling conference on going forward in this case to come up with a schedule that moves things quickly. But we -- we're -- we need to be able to have the time to go through the process of finalizing what claims are now in this case before we can do any of that.

MR. BABBITT: May I reply, Your Honor?

Today is a scheduling conference, right, so we're here to set the schedule. The claims that are in the case are what's going to be in the amended case. They've known about that for a while, and we shouldn't forget that we had that whole big trial last year. Been talking about these patent issues. There's talk about the local patent rules. A lot of that we did already. So the jury found those patents to be valid.

THE COURT: So here's what we're going to do: We're trying this in 2024. We're not trying it in 2025. If I've got to pull out the guys from Texas to call them up and tell me how to make this happen super quick and run over people's due process rights, I'll call up the Texas judges because they've got something figured out down there, right or wrong.

I have a lot of appreciation of what you're saying, that we need to at least figure out what's here and to give time for the local patent rules to play out. Whatever deadline's in those, we're going to reduce them. We are going to move this ahead because there's a -- there's so much of

this has already been done. There's so much of the discovery disputes that I have in front of me that already have these same issues engaged, and we have been together as a team collectively, all of us, too long. And we need to figure out how to make this really get done.

So I'm not going to set the trial date now because I think Mr. Banowit is right that there's some stuff that needs to be done. But some of this is on plaintiff. You can push.

Tracey, do we have other dates left this summer already on this case?

THE COURTROOM DEPUTY: We do. They are --

MS. WELLS: August 2nd.

THE COURTROOM DEPUTY: And September 5th.

THE COURT: So we're going to make August 2nd our new -- well, what was the September date, Tracey?

THE COURTROOM DEPUTY: September 5th.

THE COURT: September 5th is our new scheduling conference, and you guys can totally disagree and not come to any type of agreement on how this plays out. And I'll just adopt whoever has the most aggressive schedule.

But Mr. Babbitt and Ms. Wells are our discovery experts; is that right?

MR. BABBITT: We've been trying, Your Honor.

THE COURT: So the two of you need to understand that I'm going to put my foot on the gas pedal. Agree, don't

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agree. I understand the defendants' position, and you can argue that to me again on September 5th when we try to this get scheduled again.

But local rules are not Federal Rules of Civil Procedure, and if I need to abandon them, even though I'm the judge in charge of the local rules, I'll just abandon them. But we need to figure out how to take advantage of the experience that we've had getting here, the experience that we theoretically could have had a trial in the summer of next year but for my ruling and Provisur's desire to incorporate this additional claim.

So we're not talking about having it in May of 2024, but we're having it in 2024. So either oppose or find a way to make it happen.

MR. BANOWIT: I'll just try to be the voice of reason here, Your Honor.

THE COURT: You're good at that, Banowit.

MR. BANOWIT: Let me just throw some numbers out for you so you can do some calculation with me.

A typical motion in this court has a 14-day opposition period and a 14-day reply period. That's 28 days. 28 days from the deadline that we've set for our responsive pleading, the Rule 12 motion will be fully briefed, okay?

So when we come here in September, at best the rule 12 motion will have been fully briefed. Maybe you'll have it

decided by then, but as you know under the federal rules, once a decision is made on Rule 12 motions, then there is a deadline of 14 days for the answer to be filed, right?

Now, if it turns out that they're required to do a more definite statement, it's 14 days for them to fix their complaint. We'll see how that goes.

But let's just assume 14 days after the 28 days is our answer. If we have counterclaims in there, they have another 21 days under federal rules to respond to the counterclaims. So that right there is another 35 days post the decision on the Rule 12 motion before we know what the claims are in this case. So I don't see how we can set a schedule even in September for a case we don't know what it's going to look like.

So to me I don't think we can have a scheduling conference any time earlier than October, and if you want us to meet and confer, like you normally would do on a 26(f), before the scheduling conference and propose a schedule to you, doing a conference right at the beginning of October is not going to give us time for that either.

It really makes the most sense to set a scheduling conference for November, December of this year when hopefully these things are resolved or -- I mean, you're going to have to be flexible here, right? What would we do in September if the parties still haven't finalized the pleadings?

THE COURT: I'll just pick a date.

MR. BANOWIT: For?

THE COURT: For trial. We're just going to make this thing happen in 2024. All these dates, including anything set forth in the Federal Rules of Civil Procedure, I can change and do. Right? I mean, I do. I tell people all the time that you're going to get this served on the parties quicker, and if I have to adjust every date along the way, I will. But we have -- if dragging it out as long as we've dragged it out hasn't gotten us all the way to the end zone, then I'm just going to have to gas pedal it.

MR. BANOWIT: I don't understand why this now has to be our problem.

THE COURT: It's not your problem.

MR. BANOWIT: Why their decision to file these -- to totally change the case. It would be one -- they're not just adding a product, right? They're adding a whole set of state law claims here. Now we see whether those survive Rule 12 or not, but if they do, we've got a much larger case here that we would be dealing with that is not a simple amendment they're making.

THE COURT: And --

MR. BANOWIT: I caution you to rush these things.

THE COURT: I get it. It's not your problem. I get it that you want to delay. I get it that they've brought in

new claims that maybe shouldn't be brought, and they can go back and revisit that between now and the 23rd. But, fellows, we're going to get this thing done.

And all I have done for years now is hear parties on both sides tell me how it can't be done and how it's got to have more time. All I have seen is millions of dollars spent on attorneys' fees on this case. And I'm done. And like -- and if I need a better example of why I'm done, read these discovery disputes. The things that I say are not heard, that the things that are done are we just delay and bill hours, and honestly I'm just done, right?

So we've got a ton of discovery done, and we've got -- this is a '21 case. I'm going to have to report myself to Chief Justice Roberts.

MR. BANOWIT: They chose to amend it almost two years into it. I mean, normally that would not be permitted. That's the problem they have with now blowing the case open as we have. But that's where we are. You can't rush us in this and go shorter than what the reasonable federal rules say.

THE COURT: Here's the deal: Whenever you tell an Article III judge they can't do something, we're stuck in a box, right? I've got to now, right? I can and legally I can, and I am. And we've just got to get this thing done in 2024.

So if I have to start whacking at every -- and, you know, we're going to go back and I'll call the Texas judges.

Fortunately some of them were in my baby judge school class. At least one of them is a great cookie baker. So I'll call him up, and he'll probably send me cookies, and figure out how the heck they do this because while from afar, I've never been impressed with how they ran these things down.

But they have a way, right? I mean, they have a Markman hearing, and you kind of get told whatever they do. I'm just -- from both sides, I'm tired of this, right? I mean -- and right now, Mr. Banowit, you are being very thoughtful and respectful and being a good advocate for your client, which you've always been.

And, you know, maybe a lot of this blame goes on Babbitt, right? They brought this new claim. We've been arguing about this, and part of this is on me for dragging out this decision way too damn long about to add it or not add it, and I've sent mixed messages. And that's on me. For that I apologize. But go back and tell whomever that I'm ready to move it and we're trying this thing in 2024 where we can alter the dates and be thoughtful in it.

Listen, Babbitt, a lot of this is on you, and a lot of this is on Craig. And we have to figure out how the hell to get this discovery done and how to limit your claims. So if you're lopping in a bunch of state law claims that you can get rid of and we can dramatically narrow it down, it's only going to help you out because you already know I like Banowit

a lot. And I think he is being reasonable; that he -- I mean, due process means something, right?

He has an opportunity to be heard, and he should have an opportunity to respond, and he should have an opportunity to file his motion to dismiss. While it takes 14 days to respond, you guys all get orders one day after they're briefed here. So it ain't going to be on me.

Get on you. You decide to make this a priority, and don't take 14 days. And all of you quit giving each other extensions, and you make this a priority, and the bullshit with the discovery on both sides has got to stop.

So we're going to come back in September and do our best to get this thing scheduled, and I'll hear your arguments. And you'll do your best to like we think this is crap, we should get more time to respond, but here's also another -- if you're going to do it to us, here's a reasonable way to get out, and plaintiff is being entirely unreasonable because that's what Babbitt does is be unreasonable.

We've got to figure out some way to get this done in 2024. And I can do it by talking to my Texas buddies, or you can do it in a thoughtful way.

Anything else on that issue of scheduling in this case, Mr. Banowit?

MR. BANOWIT: I think the only other issue is that the parties recently filed an ESI stipulation with several

deadlines in it, substantial completion deadline and deadline for certain counts. I think given that the issues are now larger in the case than those, that's certainly not going to be the end of discovery in this case. It's going to be some other time. I think I would --

THE COURT: Here's what we're going to do on that. So those same deadlines are going to stay in effect for the same discovery, and then we're going to talk about the new discovery because we're not going to hold up the reins on anything. If there's discovery that we know and those claims have survived and we're moving ahead, then keep moving ahead. We're not stopping it. Keep moving it ahead is how we'll deal with those deadlines.

MR. BANOWIT: So that discovery would not apply to any of their weSLICE allegations or any of their state law allegations; it would only apply to allegations that were already in the case before they filed their amended complaint?

THE COURT: I don't know about that. What do you have to say to that, Babbitt?

MR. BABBITT: I'm not sure I quite understood. Can you say it again?

MR. BANOWIT: Yeah. If you're saying we're going to go forward on something, what is the something? What I understand is what has now changed is two things.

THE COURT: I think I've got this. Whatever

discovery and whatever ESI and whatever we've got going, we're not stopping. We're moving ahead with whatever we already know exists.

Now, as we start talking about weSLICE again, I fully appreciate your argument that there needs to be an amendment and you get a chance to respond and there's motions to dismiss. But we are putting our foot on the gas pedal. So those deadlines about the ESI order and those things that are in it, I'm not changing those deadlines. But as of right now, as of today, before September 5th, all those still apply. Keep your foot on the gas pedal.

MR. BANOWIT: To the issues that were already in the case, not the -- what they added in their supplemental contentions or what they added in their motion to amend that you only today permitted?

THE COURT: True.

MR. BANOWIT: Okay.

THE COURT: Keep our foot on the gas pedal what we've got.

MR. BANOWIT: Thank you.

MR. BABBITT: I just want to make sure to clarify that defendants aren't -- you're not limiting the scope of what we've already done? We're moving forward with the deadlines we already have. The weSLICE allegations were already in the case. They moved for a motion to strike that

you denied. The weSLICE was an ESI term. They don't get to get rid of that term. You've already ordered us to do that stuff; so we're moving forward on what was in the case as of today.

THE COURT: WeSLICE -- we're going to get to weSLICE in discovery in this case because that's part and parcel of where we're at in this discovery dispute.

I'm just saying that we had all these deadlines in place before we got here, including those in the ESI about trading information, including the term "weSLICE." But you're going to add all these in your claims and that also -- that means contentions and back and forth. And we're going to dramatically shave those deadlines because it's just one additional piece, not a whole bunch of -- it's not -- well, it's one additional piece.

We're going to really finish the discovery we've got, and we're going to add this weSLICE. And we're going to get it done in 2024.

MR. BABBITT: So we're not slowing down or staying any --

THE COURT: Let's talk about discovery as opposed to asking me contention questions.

So here's what we've got. Neither side fully complied with my order, and that's okay. I've got a lot of respect for you guys and the work that you've been doing and

how hard you've been working to get here, but it's got to stop, right? We've got to get this thing done.

So I'm giving you each -- I think -- Ms. Wells, would you agree that the synopsis of both of these memos is that both parties believe that discovery hasn't been fully completed as I've ordered? Jason is shaking his head vehemently no.

MS. WELLS: I believe the party that submitted the memo believes that. I strongly disagree with the allegations in Provisur's memo, which obviously we didn't see until after we had already submitted our memo. So we couldn't address them.

THE COURT: So here's what we're going to do. You guys each have one week. Get through these things.

Ms. Wells, you are intelligent and brilliant and hardworking and honest and diligent. That's how I feel about you, and you're my discovery person on the Weber side.

Mr. Babbitt, you're not all that, but you do pretty good work. And I appointed both of you because I need somebody, as I've talked about, at the mother-ship to drive this stuff. Well, thank God Jason and Taylor are on this, and somehow I have not as clearly communicated my desire to get this thing done.

I'm tired of the posturing. I'm tired of the game playing. All this has just worn me out, and it's probably

worn you out. And it's pretty clear it hasn't worn your clients out. So we're done with it. You've got a week to get back with me.

I'm getting the weekly emails. Thank you for doing that. If after a week, you guys can't get this resolved, resolve it by filing a motion for sanctions under Rule 37. And I'm not telling you how it's going to work out because I don't want to figure it out at this point.

What I want is for Jason and Taylor to communicate clearly that this is done, that this is not how we're playing it anymore, that I'm tired of the discovery fights. I'm tired of all these fights. You are highly competent, really skilled lawyers, as I saw in trial. And we are right back to where we were before where we played tons of petty games getting us here as opposed to the great lawyers that I saw in trial. And that's disconcerting to me because I know when there's 12 citizens or eight citizens sitting in that box, you know how to act. Both sides were great in trial and got to the issues.

Outside of the presence of those eight people, you go right back to billing way too many hours, fighting way too many discovery disputes. And so the only way I know now to resolve it is to have due process, a Rule 37 sanction order.

And here's the bad part, Babbitt and Wells, your names will be in it. And I don't want to -- and you're out of state so I don't really care as much as I care about Jason and

Taylor. But nobody wants their name in a sanction order because it gets drug up from here to eternity, and that is not who I think you two are.

But we're going to discuss that you two are the people in charge of discovery and it's failed. And I've begged and pleaded. Have all the extra pages you want in your Rule 37 motion for sanctions order, drag it all out, and spell out the whole history of me begging for this to stop and that you guys can't get it done.

Ms. Wells is going to say, oh, guess what, Mr. Babbitt, you can't get it done and he's begged you several times. Mr. Babbitt is going to say, Ms. Wells has been begged to get it done and she can't get it done. Then I'm going to have to write an order and pick one of them.

That is not what we want because you guys are great lawyers, and somehow the message has not gotten through that I'm done. And whatever nasty emails or phone calls or lack thereof behind the scenes, I don't know what they are. But I can only imagine if we're here at this time, once again, that somebody didn't get the message.

And here's me go ahead and conjecturing some more, speculating, conjecture, speculation, it ain't you, Ms. Wells. It's somebody further up. And it ain't you, Babbitt. It's somebody further up. So ask them -- tell them get the transcript -- are you going to make me the sacrificial lamb

and get a Rule 37 discovery order against me that will be used against me for the rest of my career?

Because one of you are going to get sanctioned because I'm so sick of this. This is what -- if you guys are billing out $700 to $1,200 an hour, you are good enough to get discovery done in this case.

If we can somehow avoid having to keep coming back to this because you've decided to make this a priority and that neither Babbitt or Wells want to be made the sacrificial lamb, then great. But I'm just done with the discovery fights.

And you guys are good lawyers. You're good people. You know how to do this. You're much smarter than I am on any of these patent discovery issues, but we've got to get it done.

Ms. Wells, anything you'd like to tell me?

MS. WELLS: I guess I would just appreciate a little direction because -- I mean, you're right, obviously I don't want to end up in a discovery sanction, but I wholeheartedly believe we fully complied with the court's order. So --

THE COURT: So how about this: One week. You guys have one week. You two and you two get together for one week and say, okay, we jointly pissed him off, and he's done with it, and somebody's going to get sanctioned. And I don't know what else to do unless we want to drag in Yonan and Martin to

get back here. And maybe we can do that.

But my message and me trying to treat you like I want you to treat each other has not gotten across, and if you think everything's been done, well, then just stand up for it. And I'll -- and if I agree, well, then guess what, it's Babbitt. He'll go down.

I don't -- I mean, when you read all this, and I'm trying to go back to the old transcripts and trying to figure out everything, that is so not my job to be the special discovery master on these cases. It's just not my job.

Somebody has got -- on your team has got to figure it out, and maybe we'll throw Martin and Yonan in. And maybe they don't care. I'm not trying to pick on you, Banowit. I'm not sure where you're in this hierarchy. I like you a lot too. I get the feeling that Yonan's the top of the ladder.

MR. BANOWIT: If you're addressing me, I'll respond to something. I don't know where that all fits out, but I do think one of the issues here that I see, which maybe you can help with, is that I think the process of ruling on these things informally, as we often do here, and sending them back to make a decision still doesn't leave us with answers to questions like is this something that needs to be produced or not produced in the case. So they end up, you know, fighting over those issues.

Or is what we did sufficient or not? They have

their own views but it's not resolved. You know, personally I think what would help this case is to do some motions to compel and actually give you the opportunity to rule on either an issue of is this discoverable or not if that's the beef between the parties, or is this sufficient or not?

THE COURT: So here's my problem: When I rule on them here under Local Rule 37, it may not have the lengthy motion to compel, but it's an order. And so if we're having fights back and forth, whether it's sufficient or not or whether it's discoverable or not, I don't think that there's any doubt in my mind after these when I leave that I've ordered discovery to be completed.

So what you're telling me is I'm vague, and I appreciate the respectful way that you are telling me I need to be more clear. And what I'm telling you is the way I'm going to be more clear now is we're going to have motions for sanctions because I think I'm clear enough, and I think that Jason and Taylor have got whatever -- whatever my redneck or more genteel Kansas City approach, I don't think I'm that unclear. If I'm vague, well, then somebody needs to tell me that day.

And I don't want to do motions to compel because we have dragged this case out long enough, and the same rules of civil procedure that have nonmandatory dates, I can change any of those dates I want according to the U.S. Supreme Court and

Eighth Circuit case law. I think I've been clear enough.

So -- go ahead.

MR. BANOWIT: I'm not blaming this on you. I think part of the problem is that it's the two pages you get are really -- and the amount of time --

THE COURT: You can have five pages.

MR. BANOWIT: No. Just hear me out -- really don't allow the parties to specify in detail what it is you can rule on. If you remember our last discovery conference, the ruling you made was, Okay, I'm going to do what's in paragraph 2 of Weber's letter, and then they said, Well, we want to get something too. You said, Okay, well, what is it? And they just started throwing out interrogatory numbers. You said, Well, okay, we'll throw those in.

Never even been outlined in the papers you received what were the issues there and what was going on. And granted even from their side, maybe the amount of stuff that was in the two pages you got wasn't 100-percent clear. I think the problem is that there's not enough, you know -- not enough specificity to what is going on here. I really would feel horrible for both of them if you sanctioned them when they both think they did what they did, but the problem is no one really understands what the requirement was.

So I really do feel like if I were in your position, I would, you know, certainly encourage them to come back with

a proposal of how this is going to be done. But I think it makes sense for you to have a full record of what it is that is the problem so you can say, Well, I don't see that as a problem, I think you did your job, or I think -- because to rule on it substantively, not simply on a matter of I don't care about the substance, you know, let me just hear the he said, she said.

THE COURT: Here's the problem: Look at my ECF. Look at the millions of dollars you've spent and you've spent and the stuff that's been filed by both sides. You can have five pages. I've never -- I never told you guys no for anything that you've agreed on.

I think I have been extremely patient, but there has been millions of pages filed in this case. So if you want five pages to more spell it out in discovery dispute under Local Rule 37, you can have it. I don't care. I'll give it to you, and you know me, I'll read it.

But the problem isn't that you need more due process or you need more pages, it's we've got to get this done, and whatever's going on, delay on one side or the other seems to be part of a strategy. And I'm done with that strategy. So the strategy is to get it done at all costs, running over timelines and deadlines to get it done in 2024.

So what I sincerely hope is that four reasonable people can come together, how do we get this done so that

neither one of us files a motion for sanctions because Lord knows I don't want to do that. I filed zero motions for sanctions as a lawyer, zero, over the course of 20 years. Zero. I want to have zero sanction orders. I've had one or two, and I don't want anymore. I just want zero. I want none.

And I want somebody, you -- there's too many names here -- Mr. Babbitt, to find a reasonable solution. This is on you. And nobody's more reasonable than Taylor. Figure out how to make this not happen, and figure out how to -- you be the person that makes this not happen. And whatever has to be done to make it not happen, you do it, and you tell Craig that you don't want to be his sacrificial lamb for screaming about this stuff because honestly Craig was a total pain in my side until trial.

So if I'm pointing fingers at your side, I think I'm pointing at Craig, and I don't -- his name's on the door, isn't it? So -- no? Taylor gave me a no. I can't keep track of all your firms.

You be the one to figure out how to avoid this. You be the one that can go back and say we figured out a solution and we put it in our email that, you know, we met again, and we got this and we're going to talk again many times and by September 5th, we're going to have diametrically opposed proposals about how to get it done in 2024.

But you both have heard that I don't care about any of the deadlines that are set in the Federal Rules of Civil Procedure or in the local rules. I understand they can be amended under Eighth Circuit law, and I'm going to amend them. And it makes much more sense if you two and you, Mr. Babbitt, take the lead and you follow Taylor's leadership style instead of Craig's leadership style to get that done.

MR. BABBITT: That's loud and clear, Your Honor.

THE COURT: Because that's Kansas City nice.

MR. BABBITT: Thank you. I will do everything I can to make this work.

I think just to start, I'm happy to go in the hall face to face, talk right after this. We're all in person. Good time to do it.

THE COURT: You got anything else from the plaintiff's side, Ms. Concannon-Hausmann?

MR. SIMON: Your Honor, may I?

THE COURT: You are not Ms. Concannon-Hausmann.

MR. SIMON: That's why I asked.

THE COURT: Are you the problem? You're kind of the Craig of Husch Blackwell.

MR. SIMON: You're right. I will -- I'll stand with Mr. Babbitt, I'll tell you that. If we ever walk down that road, I will stand side by side with him. I'm not going to go down everything I planned to say today, Judge, but I will

stand with Mr. Babbitt. We'll get this done.

Here's what I want to say, Your Honor, and I'm looking at your courtroom deputy, Tracey Richard. We recently got the news that I'm not going to say she's moving on to bigger and better things, but she's moving on.

And it needs to be on the record here with your other fantastic staff member Gayle as well as Ben, how much we have for both parties, we appreciate everything that Tracey did to keep this case going, to keep all of us from losing our minds, and what an absolute pro she is at her job.

And on behalf of all of us, and I know that Don and Jason and Deirdre would join, thank you, Tracey, for everything you've done. I know it doesn't just happen in our case. I know everything that you've done in this courtroom and for this judge and for this courthouse has really been first rate. It's been absolutely professional. It has been everything a court should be, and this case in particular has been extremely challenging for you and you've maintained not only your professionalism and your competence in keeping things between the guardrails but your good cheer and your friendliness.

Just last night -- I understand that Friday is your last day. Yesterday was a federal holiday. There were filings being made yesterday, and at 4:30 yesterday afternoon on a federal holiday, she's saying, Thank you, I've received

your filings.

That is noticed. It won't be forgotten. We all wish you the very best from where you're going from here.

And, Judge, to you, I would say I can't imagine how you're going to try and fill those shoes. I'm sure you will do your best, and I'm sure the next person in line will do a good job.

But, Tracey, you will be missed, and you have set the standard that we all should try to aspire to. Thank you.

THE COURTROOM DEPUTY: Thank you very much.

MR. BANOWIT: Well said, Jeff. We agree with everything, and you know how hard it is for us to do that. You must know it's true. We certainly appreciate everything as well. Thank you and good luck.

THE COURTROOM DEPUTY: Thank you. Thank you very much.

THE COURT: We'll be in recess.

REPORTER'S CERTIFICATE

I certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____

Date /s/Gayle M. Wambolt
GAYLE M. WAMBOLT, CRR, RMR
United States Court Reporter

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