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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

07-CR-220 (BSJ)

DAVID STOCKMAN, J. MICHAEL
STEPP, DAVID COSGROVE, DANI
BARNABA,

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Defendants.

Conference

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New York, N.Y.
April 17, 2008
2:17 p.m.

Before:

HON. BARBARA S. JONES,

District Judge

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APPEARANCES

MICHAEL J. GARCIA
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Southern District of New York
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1 (In open court)

2 (Case called)

3 THE CLERK: Is the government ready?

4 MR. BERGER: Yes. Marc Berger and Tony Barkow for the
5 government. Good afternoon, your Honor.

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7 THE COURT: Good afternoon.

8 THE CLERK: Is defendant Stockman ready?

9 MR. ABRAMOWITZ: Elkan Abramowitz with James Stovall
10 for the defendant Stockman.

11 THE COURT: Gentlemen.

12 THE CLERK: Is the defendant Stepp ready?

13 MS. SEYMOUR: Yes, your Honor. Karen Seymour and
14 David Swarts for defendant Stepp.

15 THE COURT: Good afternoon.

16 THE CLERK: Is defendant Cosgrove ready?

17 MR. STEWART: Yes. Craig Stewart and Ken Hashimoto
18 and Monique Gaylor for defendant Cosgrove.

19 THE COURT: Good afternoon.

20 THE CLERK: Is defendant Barnaba ready?

21 MR. WISENBERG: Yes, your Honor. Sol and Adrienne
22 Wisenberg on behalf of Paul Barnaba. We apologize for
23 inconveniencing the Court and being late.

24 THE COURT: That's all right, Mr. Wisenberg.

25 All right. Mr. Berger, has the government completed
discovery?

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1 MR. BERGER: Yes, Judge. As we advised the Court by
2 letter by February 27th, the government had completed initial
3 discovery, and actually by February 18th, the documents, the
4 remaining batches of documents that Ms. Cantwell referenced in
5 the July 11th conference from some additional custodians had
6 all been uploaded to the system on February -- by
7 February 18th. February 27th, some additional discovery
8 materials went out, including a recording and some additional
9 documents, and that's where we stand, yes.

10 THE COURT: Okay. Is the government's discovery
11 actually accessible to everyone?

12 Mr. Abramowitz?

13 MR. ABRAMOWITZ: I believe so, your Honor. There are
14 issues, however, that I think have come up and I think will
15 continue to come up that we would try to work out with the
16 government before we burden you with them, but there are some
17 issues about attachments and other issues like that. But --

18 THE COURT: In terms of being able to actually search
19 or re --

20 MR. ABRAMOWITZ: Access them. It's become an issue,
21 but I think it's something we can discuss with the government,
22 and if it becomes an issue later, we can bring it to the
23 Court's attention.

24 THE COURT: All right.

25 MR. ABRAMOWITZ: But let me just give you a report.

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1 I'm told that we have about 9 million pages, and as of two
2 weeks ago, I've also been informed we were not quite a quarter
3 done reviewing, on a first-level basis, just the search terms,
4 and we have at various times between 40 and 60 contract lawyers
5 among all of us working on this. So it's not as if we have not
6 been moving. Case 1:07-cr-00220-BSJ Document 40-7 Filed 04/24/2008 Page 5 of 12

7 THE COURT: When you say among all of us, I mean are
8 these lawyers all working together? Or did you just mean for
9 each defendant, you added up everybody's contract lawyers
10 and --

11 MR. ABRAMOWITZ: Adding up everybody. We have about
12 30, so -- which is extraordinary, and it's still not a quarter
13 done, on the first level. First level is just, you know, some
14 search terms, and then they really have to be reviewed.

15 THE COURT: So you don't even know the universe of
16 pages you're going to be looking at more closely yet, is that
17 the idea?

18 MR. ABRAMOWITZ: Correct. That is the idea. Maybe
19 I'm saying this out of total ignorance, but I'm assuming that
20 the next few months will move faster because there was some
21 startup time and some issues back and forth. But we are not
22 anywhere near done is the bottom line.

23 THE COURT: All right.

24 MR. ABRAMOWITZ: We discussed this with the
25 government, and we would suggest to your Honor that we put it

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1 down for three months from now again and see where we are, and
2 we -- at least, Stockman, Stepp and Cosgrove have agreed that
3 July 15th will be okay with both sides. If there are issues
4 involving discovery that may slow us down, we may be before you
5 before then.

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6 THE COURT: You can obviously ask for a conference any
7 time you want.

8 Am I correct in assuming that the defendants believe
9 they need to review all 10 million or however many pages?

10 MR. ABRAMOWITZ: Yes.

11 THE COURT: Okay.

12 MR. ABRAMOWITZ: At least the first level.

13 THE COURT: I agree.

14 MR. ABRAMOWITZ: And --

15 THE COURT: I'm not disputing it. I just want to make
16 sure.

17 MR. ABRAMOWITZ: No, that's the first level, and then
18 we have to make some judgments after that, but I think at least
19 the first level they have to be reviewed, yes.

20 THE COURT: All right. Mr. Wisenberg?

21 MR. WISENBERG: Thank you, your Honor. Paul Barnaba
22 is ready for trial. We would like to have -- As we've
23 indicated in a motion that we filed that the government
24 response is not due yet, we would like to have a trial date so
25 that we could start subpoenaing witnesses and start subpoenaing

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documents.

In terms of a report to you, I think last time, your Honor, we indicated that we would be -- we thought we would be through with our review by the time of this setting, and we are. We've had our own contract team, as you know, on the ground since even before EPIQ was up and running, and approximately six attorneys, with shifts back and forth. We've essentially -- they're doing some supplementary reviews now. But Barnaba has basically done a first-, second- and third-level review. So we understand that Barnaba has less in terms of charges against him really than most of the other defendants.

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THE COURT: Is that the reason why you've been able to complete it in a remarkably much faster time than the rest of counsel?

MR. WISENBERG: That is one reason. Barnaba is only charged with the rebates.

The other reason is, I have a client who very much wants to go to trial and has directed us to do everything possible to get him ready for trial, and we've made that a very high priority. As you know, at each conference I think I've discussed the reality of the pool of D&O money, and so one of these things we decided to do was get a team in early and have them ready with as much as possible so that we could be in this position to say that we're ready.

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1 THE COURT: Let me just ask you this, Mr. Wisenberg.
2 I think you also mentioned making a motion to sever. Are you
3 planning to make that motion?

4 MR. WISENBERG: We probably will, your Honor. I
5 wanted to see what the Court would do today. If the -- if it's
6 strictly a question of -- if we need to make a motion to sever
7 in order to have an earlier trial date, we will. I wasn't
8 certain whether or not you would set a trial date today, of
9 course, or when it would be. But I think we had originally
10 said we would file a motion for speedy trial and/or a motion to
11 sever. We -- and I informed Mr. Barkow that we'd be holding
12 back for a few weeks perhaps on the motion to sever.

13 THE COURT: That's okay. I was just curious.

14 MR. WISENBERG: Yeah.

15 THE COURT: All right. Well, obviously I'll rule
16 promptly on your motion to dismiss under the Speedy Trial act
17 after I've had a chance to look at the government's papers,
18 which I think are due on April 25.

19 Let me hear from the government and other counsel with
20 respect to setting a trial date.

21 MR. BERGER: Your Honor, it doesn't appear that the
22 defendants are in a position to have a trial date set at this
23 point. It's the government's position that it is ready, if
24 your Honor would like to set a trial date.

25 THE COURT: All right.

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1 MR. ABRAMOWITZ: Your Honor, I think it's premature to
2 talk about a trial date because I think once we get some better
3 control over our review, we can set a motion schedule. I think
4 once we set that motion schedule, there are motions that might
5 affect the length of the trial or whether to have a trial at
6 all. So I really think it's premature. Even though the
7 indictment came down 13 months ago, this -- I've never been
8 involved in a case where there is this high volume of material,
9 and it took us quite awhile to get it set up. So I think it
10 would be premature to set a trial date, frankly. At the next
11 conference we could maybe talk about a motion schedule if we
12 get much further along in the discovery. But I don't -- I
13 don't even think that's going to be possible, frankly.

14 THE COURT: I'm not surprised to hear what you have to
15 say, Mr. Abramowitz. Is there any way that we can get some
16 notion, a better notion of timing, at least, from your contract
17 lawyers or -- and your own consultations with them about how
18 long this is really going to take?

19 MR. ABRAMOWITZ: Well, I believe that the bulk of the
20 work has been done in the last three months, okay, since the
21 last conference. We've made great progress since then. So if
22 we do the math, we can do a rough calculation, then we're not
23 going to be done on July 15th, but we will perhaps be over
24 half done or maybe even better than that, and then I think we
25 will be in a better position to see how much longer it's going

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1 to take.

2 I will, before the next conference, specifically ask
3 the team to try to get a prediction. I don't have one. I'm
4 just using a mathematical construct based upon what they've
5 done in the last three months.

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THE COURT: All right. I know how you feel about it,

7 Mr. Wisenberg. Does any other defendant have anything to add
8 or anything to say differently from Mr. Abramowitz?

9 MS. SEYMOUR: No. We agree with his position, your
10 Honor.

11 THE COURT: Mr. Stewart?

12 MR. STEWART: Likewise, your Honor.

13 THE COURT: Okay. Well, Mr. Wisenberg, I think what I
14 will do is proceed to decide your motion under the Speedy Trial
15 Act promptly, as soon as I receive the government's opposition,
16 and then I would expect you to make a motion for severance.

17 MR. WISENBERG: Thank you, your Honor. We'll do that.
18 We'll do that shortly and we'll do it primarily I think just on
19 the speedy trial, just on the issue of being ready for trial.
20 We may --

21 THE COURT: That may well be the issue. Okay.

22 MR. WISENBERG: Thank you, your Honor.

23 THE COURT: It's very clear to me that based on the
24 volume of discovery in this case and the difficulty in
25 searching it and then having to evaluate it, defendants cannot

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1 possibly be ready for trial yet, and I'm also persuaded that
2 until at least the next conference we may not know what a
3 realistic schedule is in this case. So I will set a conference
4 down for -- July 15th is the date that most of you have
5 agreed on?

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MR. ABRAMOWITZ: Yes, your Honor, at 2:00.

7 THE COURT: All right. 2:00, July 15th.

8 Over Mr. Wisenberg's objection, I will grant a speedy
9 trial continuance from today through that date for all the
10 reasons that have been articulated on the record today. It's
11 obviously necessary for counsel to be able to continue to
12 review the discovery in order to consult with their clients and
13 figure out what, if any, motions they wish to make.

14 All right. Mr. Wisenberg?

15 MR. WISENBERG: Sorry, your Honor. One other point.
16 Just for the record, I'd like to make it clear that we're
17 objecting both to the ends of justice continuance and the
18 failure to set a trial date. I just want to make it clear for
19 the record.

20 THE COURT: That's fine.

21 MR. WISENBERG: Thank you.

22 THE COURT: Anything else?

23 MR. ABRAMOWITZ: No, your Honor.

24 MR. BERGER: No, your Honor.

25 THE COURT: Okay.

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THE CLERK: All rise.

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