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1 THE COURT: The Court calls Williams,
2 et al., versus Sprint, Case No. 03-2200.
3 Parties please state their appearances.
4 MR. EGAN: Dennis Egan for the plaintiffs,
5 Your Honor.
6 MR. HUBBARD: Dirk Hubbard for the
7 plaintiffs, Your Honor.

8 MR. GRAHAM: Gene Graham for the plaintiffs.

9 MR. MEYERS: And Martin Meyers for the
10 plaintiffs.

11 MR. DUPONT: Phillip Dupont and Jim Monafo
12 for defendant.

13 THE COURT: Okay. Before we get into your
14 issues, there are a couple of things I need to clear
15 up.

16 The first one is, as I understand it, May
17 4th is part of the dates you have set aside for
18 mediation, is that correct?

19 MR. EGAN: Yes, Your Honor, the 3rd and 4th.

20 THE COURT: So obviously we can't do the
21 status conference on May 4th. Let me look at the --
22 I have to be out of town on the 11th. So it would be
23 the next Thursday. I guess we'll just have to skip
24 to the 18th, in terms of the next status conference.

25 And then in terms of future scheduling, the

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1 next problem I have is on June 15th. I suppose you
2 guys don't all have your calendars. Why don't you
3 check, and we can talk about this -- I say "talk
4 about it." I'm not sure when -- I guess we've got
5 one set for June 1st that will work all right. And
6 on June 1st we'll talk about -- see whether you could
7 do either June 8th or June 22nd, in lieu of June
8 15th.

9 And then while you're looking at calendars,
10 I'm going to be out of town on July 6th. So see if
11 you could do July 13th instead of July 6th. And

12 we'll take up both of these scheduling issues at our
13 next conference.

14 Now, at the last telephone conference we
15 had, I asked you to come up with an attempted
16 agreement on premediation procedures and let me know
17 what they were. And I got e-mails that I thought
18 were conflicting, but then I got a message, I think
19 from one of the defense counsel, saying that you
20 thought there was an agreement.

21 Does everyone think there's an agreement on
22 what you're doing?

23 MR. MEYERS: Judge, really, we don't know
24 anything about an agreement. We got the same e-mail,
25 obviously, saying that we were in agreement. There's

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1 really been no communication since the two e-mails
2 the Court got. So I don't have any more information
3 about that. Because I'm with you, I think there was
4 a conflict between what we submitted and what
5 defendant submitted.

6 MR. DUPONT: What is the issue, in your
7 mind, and then we can --

8 MR. MEYERS: I think the issue was about
9 defendant providing reports. I mean, I think -- as I
10 recall the April 6th telephone conference, what the
11 Court had suggested or proposed was that we provide
12 our report, the dates are escaping me, but the week
13 before the mediation, and that defendant provide
14 their report at the mediation, that is in response to
15 our report. And we memorialized that in a proposed
16 form of order.

17 But it occurred to us after the fact that if
18 the defendant had some expert reports, that they --
19 that were not responsive, that were, you know, sort
20 of stand-alone, that if they gave those to us prior
21 to the mediation, then we could be in a position to
22 be working on those and have a response at the
23 mediation.

24 So we did add that feature to the order,
25 that was not discussed in the April 6th conference,

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1 that defendant, to the extent that they had an expert
2 report that was not responsive, that they give that
3 to us prior to the mediation, at the same time as we
4 give them ours.

5 But otherwise, we thought that we followed
6 the format that the Court suggested in the April 6th
7 conference.

8 I had a -- I guess I got an e-mail from
9 Mr. Yates, in advance of the e-mail he sent to the
10 Court, saying essentially the same thing, that they
11 didn't think there was any value in exchanging
12 reports, and they certainly did not want to submit a
13 report from the defense side, either prior to the
14 mediation or at the mediation.

15 THE COURT: Well, who on the defendant's
16 side --

17 MR. MONAFO: Your Honor, and this is --
18 Mr. Yates couldn't be with us today, but he's
19 handling most of the mediation issues.

20 But what I will say is, what was left out of

21 that is the reason -- our position is it doesn't make
22 any sense to exchange reports, to the extent those
23 reports are not binding. Plaintiffs will not agree
24 to submit -- or to provide us with an expert report
25 that would be binding. They have got this idea that

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1 it's just some nonbinding expert report, only to be
2 used for purposes of settlement, and not for any
3 other purpose.

4 If they would do that, and then we come back
5 with our expert report, we have essentially given up
6 our right to go second with respect to the expert
7 reports, because now they have seen our hand.

8 Obviously, some of the things our experts
9 are going to be doing, is pointing out where their
10 experts are wrong. And then they get to see that,
11 Judge. And because it's, quote, nonbinding, they
12 simply go back and redo their expert report and fix
13 it.

14 And so that's our major, major, major
15 concern with that process. And we do not want to
16 have anything to do with that kind of process.

17 There were several other reasons that I know
18 Mr. Yates set forth in his e-mail, why we would not
19 be willing to go along that road.

20 And I think why we thought there was an
21 agreement, I think we interpreted Mr. Meyers'
22 response to that being, "Okay, let's just do it --
23 forget about expert reports. We're going to go
24 through the mediation process without any expert
25 reports."

1 So it's not that we don't think there's
2 value in having expert reports for the mediation. We
3 do. We just think they need to be binding expert
4 reports and normal expert reports, that we can use
5 later on in litigation if it comes to that.

6 MR. DUPONT: I think the point is, we
7 understood from Mr. Meyers' e-mail that we weren't
8 going to provide reports, and they thought that was
9 okay. I thought that's where we were.

10 THE COURT: I'm not sure I'm following you.
11 Plaintiffs would give you something, but you wouldn't
12 give them something, is that what you understood?

13 MR. DUPONT: I think it's up to them whether
14 they want to provide something. Our position was, we
15 didn't want to provide a non -- get involved in that.
16 And I guess we just understood that that was okay
17 with plaintiffs.

18 THE COURT: Well, maybe my memory is gone,
19 but I thought at one point it was defendant's concern
20 that you wanted something from their experts before
21 you had mediation.

22 MR. MONAFO: We did, Your Honor, but we
23 never -- we don't understand this concept of, quote,
24 nonbinding. It's not something we're familiar with,
25 or have done in previous cases. We think if -- we

1 wanted their expert reports prior to the mediation.
2 That's what we wanted. That's what the first --

3 THE COURT: We understand that would be
4 best. The problem is we're not in a posture now to
5 get that.

6 MR. MONAFO: Right. So at this point,
7 Judge, we're of the opinion, if plaintiffs have
8 something that they think will help get the case
9 settled, and put it in that type of frame, and they
10 want to bring that and give that to us, or bring it
11 to the mediation, great. But we don't want them to
12 think that we're going to come back with any sort of
13 nonbinding -- quote, nonbinding expert report,
14 because we're not going to do that. We want
15 everybody to be aware of that upfront.

16 THE COURT: It sounds to me like you don't
17 have an agreement. And the question is, what do we
18 do about that. And it seems -- you know, my thought
19 at this point is, start the mediation without expert
20 disclosures, and let the mediator help you on how you
21 might get the information exchanged that will enable
22 each side to understand the other's position.

23 MR. MEYERS: And that's kind of where we
24 are, Judge. In light of their proposal, we're
25 frankly not sure whether or not we want to provide

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1 them anything.

2 What I think we would like from this point,
3 and I -- maybe there is an agreement, in the sense
4 that I didn't see a large objection from defendant to
5 this, is maybe we can go ahead and enter the order
6 saying that, you know, if plaintiff chooses to submit
7 reports at the mediation, they will be nonbinding and

8 for mediation use only. And that way we're not
9 required -- we just didn't want to be in a position
10 where we had an affirmative obligation, if the
11 defendant didn't want that obligation to be mutual.

12 But we do think that it -- and frankly, part
13 of our thinking that it doesn't make any sense, is
14 that they're telling us, "Well, they're not going to
15 mean anything to us." So what's the point in doing
16 something that they consider, in advance,
17 meaningless. But --

18 MR. MONAFO: I don't want to interrupt,
19 Marty, but I still don't think that's our position.
20 I don't know if we're conveying it appropriately.

21 It's not that it would be meaningless. It
22 might be useful for purposes of the mediation. What
23 we're saying is -- and we never -- if they don't --
24 that's fine with us, this proposal to not have a
25 binding -- they don't need to be under a requirement

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1 to provide an expert report. If they want to do it
2 because they think it will facilitate the mediation
3 process, great. And we're obviously going to look at
4 it and consider it. We never said that would be
5 useless.

6 What we're saying, we're not going to come
7 forward with our expert stuff until they have
8 committed to a position with their experts. That's
9 all we're saying.

10 THE COURT: So you're saying you're
11 rejecting the idea of this being some nonbinding

12 expert on their part.

13 MR. MONAFO: Right, where it would be
14 mutual, where we would be forced to come up with --

15 THE COURT: Well, let's just leave it this
16 way.

17 MR. MEYERS: I think you're saying something
18 different than what he just said, Judge, if I'm
19 understanding. What he's saying is, they don't
20 object to us not being obligated to provide a report,
21 but I think they're saying they don't have a problem
22 with it if we choose to submit a nonbinding report.
23 They're okay with that.

24 MR. DUPONT: True.

25 MR. HUBBARD: They just don't want to

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1 respond.

2 THE COURT: So you don't have a problem with
3 their saying -- in other words, you can agree, they
4 can submit something that's not going to bind their
5 final expert, but you're not going to give anything
6 in response, until you get their final expert report.

7 MR. MONAFO: That's it.

8 THE COURT: Okay. Well, we do have an
9 agreement in what we're doing, and we'll try to put
10 it in order form.

11 MR. MEYERS: What I would propose, Judge, is
12 I had submitted an order that had all the protections
13 in there, most of which I took out of the local rule.
14 We could just take out the part about them being
15 obligated to provide a report in return, and we're
16 probably close.

17 THE COURT: I'll look at it.
18 Okay. Next issue, I think I told you
19 before, that I'm looking more and more at the issue
20 of appointing a special master to deal with some of
21 these ongoing problems. And we have done a little
22 more thinking and research about that. And what I
23 want both sides to do before the next hearing is give
24 me two things: One is, if I actually make the
25 decision that we're going to appoint a special

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1 master, who should that be; and two, if I make the
2 actual decision that we're going to have a special
3 master, how would you define the duties.

4 And then I'll look at those and make up my
5 mind whether we're going to do that over, as I
6 understood it, defendant's objection from the last
7 hearing.

8 And the way the process will work is, as I
9 read the rule and the cases more carefully, once
10 there's a final determination of what I'm going to
11 do, then each side will get an opportunity to respond
12 to that proposed order, almost like a show of cause,
13 so that you can -- but I want to informally see if I
14 can figure out what's the best way to process it, by
15 getting that information from both sides.

16 Okay. The next thing, I've been looking at
17 a lot of these motions, and I decided there are too
18 many. I think by my last count, I have 25 pending
19 motions. And there are too many to try and get out
20 written decisions. So what I'm going to do on some

21 of these is give you a very concise oral decision,
22 that we will follow up with probably a paragraph in
23 the overall order, combining these, that takes care
24 of everything we've done today.

25 The first one is -- before I start through

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1 the motions, let me give you a couple of statements
2 about why I'm going this way, generally, and then
3 we'll --

4 There are two sort of general things here
5 that you need to know about. One is, my tendency is
6 to grant discovery, as opposed to limit discovery, in
7 this kind of case. What might be too much discovery
8 in an ordinary case, in my position doesn't apply to
9 this kind of case. It's just the nature of this kind
10 of litigation, that there's going to be more
11 discovery.

12 The other thing is, that ties into that, the
13 normal rules about what may be too burdensome, I
14 don't think applies in this kind of litigation. I
15 mean, I think if you're in this kind of litigation,
16 you're stuck with doing things that might ordinarily
17 be determined to be too burdensome.

18 So with that overview, let me go through
19 these motions.

20 On defendant's motion for protective order
21 re the Kissinger deposition, which is Docket 3592,
22 the motion was defendant's motion for protective
23 order that the deposition not be permitted, or that
24 certain limitations apply.

25 And what I'm going to determine is that the

1 motion is denied to the extent that the deposition
2 will be permitted. However, the limitations are that
3 the deposition shall be taken in Reston, Virginia,
4 where the deponent works.

5 The plaintiffs are not to re-ask previously
6 asked questions unless they can be justified by
7 intervening deposition testimony, events, or
8 documents that have been produced since that
9 deposition. In other words, if there's a change of
10 circumstances, you can inquire about it, but not just
11 start over.

12 And this is a very important part, because
13 this is going to apply to some other things. At
14 least five days prior to the deposition plaintiffs
15 shall provide the defendant any documents or Bates
16 numbers of documents that have been previously
17 produced, about which he will be questioned.

18 And then defendant shall provide plaintiffs'
19 counsel with at least three dates in the next 30 days
20 when he can be deposed.

21 So that will take care of 3592.

22 The next one is defendant's motion for
23 protective order regarding the Jan Price deposition,
24 which is 3602, and plaintiffs' motion to compel
25 resumption of the Price deposition, which is 3618.

1 The ruling is that I'm going to deny
2 defendant's motion for protective order, and grant

3 pl aint i ffs' mot i on to compel .

4 The i ssue has to do primarily with time.

5 And I think under the circumstances, as I read the
6 pleadings and what was provided me with those
7 pleadings, there's been a sufficient showing for the
8 need for an additional seven hours.

9 So the deposition will be rescheduled, and
10 defendant, again, will provide plaintiffs' counsel
11 with at least three dates in the next 30 days to get
12 that accomplished.

13 Next one is defendant's motion for
14 protective order regarding the Janet Larson
15 deposition, which is 3732. And this one, there was
16 no opposition, so it will be granted as unopposed.

17 The next one is defendant's motion for
18 protective order regarding the Brill deposition,
19 3604. And this one will be denied. The defendant,
20 again, will provide three dates in the next 30 days,
21 where the deponent is available. Plaintiffs' request
22 for costs and fees are denied as a result of the
23 unclarity of what we were going to do.

24 Next one is plaintiffs' motion to amend
25 scheduling order, compel discovery and sanctions,

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1 which is 3580. I've already vacated the schedule.
2 We did that on the phone conference on April 6th. So
3 what we've got to do now, obviously, is get a new
4 scheduling order.

5 So prior to the next conference, I want you
6 to confer and see if there's any parts of it you can
7 agree on. If you can't, give me your proposals on

8 the Tuesday before the next status conference, and
9 we'll set the schedule at the next status conference.

10 Now, the next part of that, this is one of
11 those sort of omnibus requests that sometimes you
12 guys are coming up with, that my suggestion would be,
13 maybe a little more precision in each motion would be
14 helpful. Somehow I can envision someone sitting down
15 and saying, "I'm going to take care of all of this in
16 one." My suggestion is, don't try that one again.

17 The next part of this, though, was the
18 motion to compel the RIF spreadsheets and e-mails in
19 native format. And it seems to me that we've pretty
20 much dealt with that. Does defendant have the
21 understanding that you've done that?

22 MR. MONAFO: I just want to make sure I'm
23 clear, Judge. We have produced -- at the time of the
24 pleading, we had produced all the decision-making
25 type RIF spreadsheets in native format that we were

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1 aware of.

2 As I have advised plaintiffs, we found a few
3 more. We're planning on producing those, as well.
4 But the answer is, yes.

5 THE COURT: Okay. Well, I think what
6 I'll --

7 MR. MONAFO: And we understand we have an
8 obligation to do that, and we will continue --

9 THE COURT: Right. You have an obligation
10 to keep updating if you find things.

11 MR. MONAFO: Absolutely.

12 THE COURT: But what we'll put in the order,
13 that the obligation has previously been met, unless
14 plaintiffs have a specific issue with a specific
15 spreadsheet that you think you have not gotten in
16 native format, or an e-mail in native format.

17 The next part of this was --

18 MR. HUBBARD: Can I address this, Your
19 Honor? Because there's a little distinction.

20 THE COURT: What? Go ahead.

21 MR. HUBBARD: The e-mails have never been
22 produced in native format. So our motion was
23 acknowledging the spreadsheets, but the e-mails have
24 never been produced in native format. We were
25 addressing some of the difficulties in matching up,

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1 and we've shown you some of those. So the two things
2 in the motion that have not been produced yet
3 electronically that defendant contests, are the
4 transmittal e-mails, No. 1; and No. 2, there are all
5 these other attachment spreadsheets and attachment
6 documents that we talked about in the motion, that
7 are listed on the spreadsheet reports. Besides the
8 one spreadsheet, there's like nine others. And we've
9 listed and attached those that show there's --

10 So the two issues are, transmittal e-mails,
11 and other attachments that were never produced,
12 electronically or otherwise. So that would be the
13 only two things. And I think that would require a
14 glancing at the motion, now that I've added some
15 complications there, so --

16 THE COURT: Well, I think what I want you to
Page 16

17 do, then, is --

18 MR. HUBBARD: We can sure summarize that for
19 you and draft a pleading and advise --

20 THE COURT: What I was going to say is give
21 me a new motion with specificity on what you think
22 still needs to be produced.

23 MR. HUBBARD: Very well.

24 THE COURT: As opposed to this broad,
25 generic one that I have.

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1 MR. HUBBARD: Very well, Your Honor.

2 THE COURT: The final part of that was
3 plaintiffs' request for access to the computer
4 systems, hard drives and a long list of things you
5 want access to. And at this point in time that is
6 going to be denied. It does not seem to me there has
7 been a sufficient showing that that kind of intrusive
8 effort is needed. I'm not saying that it will never
9 be, but not at this point.

10 And finally, there's a request for
11 sanctions. And at this point, that's denied, also.
12 I think the best approach so far is to avoid those
13 when we can.

14 The next motion is plaintiffs' motion to
15 compel the St. Angelo deposition, which is 3803. And
16 this one, even though we don't have plaintiffs'
17 reply, I think it's clear enough to me, that I can
18 rule on it. And the ruling is going to be that the
19 plaintiffs' motion to compel is granted, and the
20 defendant will provide plaintiffs' counsel with at

21 least three dates in the next 30 days, where the
22 deponent may be available. And again, if there's any
23 question about documents to be used in this, they are
24 to be produced five days ahead of the deposition. If
25 you've already done that, that's fine.

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1 MR. HUBBARD: But Bates numbers is okay,
2 rather than the physical --

3 THE COURT: Yes. If it's clearly documents
4 that have been exchanged previously, you don't have
5 to recopy them if you have the Bates numbers.

6 MR. HUBBARD: That was an important issue
7 last time. Thank you, Your Honor.

8 THE COURT: All right. The next --

9 MR. MONAFO: Also, Your Honor, I'm sorry to
10 interrupt, but I think the issue there, and I'm not
11 real familiar with it, but what happened was they
12 submitted six, seven pages full of Bates numbers,
13 that constituted 30,000 documents or something like
14 that. I mean, there's no physical -- there was no
15 humanly possible way you would be able to examine the
16 witness on all those documents. So in other words,
17 to get out of this obligation of having to provide
18 the documents five days in advance, they just gave
19 us, you know, thousands of Bates number references.
20 As I said, it would be -- if you look, it was
21 literally five or six pages full of nothing but Bates
22 ranges.

23 THE COURT: Okay. I see now the reference
24 to 36,000 pages. Somebody counted the documents.

25 MR. MONAFO: Right.
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1 THE COURT: But I think, you know, there
2 needs to be some precision here. If you're going to
3 have a one-day deposition, you can't have the witness
4 examine 36,000 pages of documents.

5 So figure out, with a little more
6 specificity, what it is you're going to inquire
7 about, and reference those documents, as opposed -- I
8 mean, it would not be appropriate to say, "And please
9 review all the documents produced to date in this
10 case, and we'll talk to you about the ones we like
11 when we get there." I want you to --

12 MR. HUBBARD: It's not willy-nilly. They're
13 ones with the witnesses' names on them. They are on
14 that many.

15 And part of the difficulty is, five days in
16 advance, unfortunately, you sometimes start large and
17 hone in as you get closer to the depo. But we
18 will --

19 THE COURT: Hone a little earlier.

20 MR. HUBBARD: -- we will set it far enough
21 in advance, and hone in early. Exactly.

22 THE COURT: All right. The next one is
23 defendant's motion for protective order on the Gene
24 Betts deposition, which is Docket 3834. And again,
25 that one is denied. And defendant will produce three

1 dates in the next 30 days where Betts will be
2 available for deposition.

3 The next one is plaintiffs' motion for
4 protective order for delisted plaintiffs, which is
5 3807, and plaintiffs' motion for protective order for
6 plaintiffs never listed on Rule 26 disclosures, which
7 is 3808. And both motions are denied.

8 As I said at the start of this, the idea is,
9 I think in this case, discovery needs to go forward
10 in a broader range than might normally be allowed.
11 And obviously, we're still talking about pattern and
12 practice discovery, and not individual claims
13 discovery, so -- but I still think both sides have a
14 right to take depositions of people that meet the
15 normal standards, that they either have relevant
16 evidence, or are likely to lead to the discovery of
17 relevant evidence. And so those both will be denied.

18 MR. HUBBARD: Can I just make one point on
19 those? Our replies are due next week on those, to
20 their response. They are due next Tuesday.

21 The only one they responded to, that was due
22 yesterday, was the telephonic for out of town, who
23 are listed. And I understand the Court's ruling, and
24 doubt that we're going to do anything to sway you,
25 but we may actually make -- the main fall-back

24

1 request was at least these out-of-towners, who are
2 not even plaintiffs at this stage, they are
3 witnesses, can then be done by phone. And so that
4 would be our fall-back request. And I just want to
5 advise, we might consider, should we still file a
6 reply?

7 THE COURT: I was getting ready to talk
 Page 20

8 about 3809, which is plaintiffs' motion to conduct
9 plaintiffs' depositions by telephone. And that one
10 is not as simple. And, you know, the more I looked
11 at the law here, I think it's going to have to be
12 done on an individual deposition basis. Because the
13 normal standard is, you don't get to, unless you can
14 show a really good reason why you should. And some
15 of the affidavits you have attached to your reply,
16 look to me like they may provide sufficient reason,
17 some may not.

18 But the more I thought about it, I think
19 what we need to do is, if you have somebody that you
20 think needs to be deposed by telephone, do a motion
21 on that deposition. Because generically, I'm not
22 going to allow you to get an order that everything is
23 done by telephone. We're going to have to look at it
24 on an individualized basis.

25 So at this point in time, 3809 is denied,

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1 but you have a right to make individualized requests.

2 And the final one is 3626, which is
3 plaintiffs' motion to compel discovery of workforce
4 planning, hard drives or databases. And based on
5 what I've seen to date, that's going to be denied. I
6 think the current, either request, or current items
7 that have been produced, are far enough at this
8 point, that although I'm willing to reconsider that
9 if you can convince me that you still have not
10 gotten -- but it's too broad to be granted in its
11 current form.

12 All right. Those are the ones I was ready
13 to deal with today. And hopefully by the next one,
14 we'll be more caught up. So the next --

15 I don't know why I can't ever remember.
16 Whose turn is it to go first?

17 MR. EGAN: Plaintiffs.

18 THE COURT: All right. Plaintiffs, go over
19 your list, then.

20 MR. GRAHAM: Your Honor, I was going to
21 handle the first issue, and it's really a very simple
22 issue.

23 In about the middle of February our group
24 had assigned me the responsibility of taking the
25 depositions of former employees who were management

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1 level employees. And I provided a list of those
2 individuals to counsel for defendant, and then asked
3 for them to confirm, are these people truly no longer
4 employed at Sprint, and will you still produce them.

5 And that started a long string of e-mails,
6 which I didn't provide the defendant. I brought them
7 all today, but then I realized I should have given
8 them to them before the hearing, so I'm not going to
9 give you those.

10 But I'll just summarize and say this: From
11 the middle of February I was led to believe, until
12 the end of March, that the defendant was going to
13 give me the last known addresses and telephone
14 numbers of these former employees that they were not
15 going to produce for us, and that they were telling
16 us that we had to subpoena.

17 Then about a week before we were supposed to
18 start these depositions, and it ended up, I think,
19 being as many as 16 depositions that we had dates on
20 throughout April, that number changed a little bit,
21 the defendant then told us that they weren't going to
22 give us addresses.

23 And they further advised us that we needed
24 to formally request these witnesses' addresses and/or
25 phone numbers through formal discovery. And they

27

1 advised us that -- Mr. Dupont said, "But what I will
2 do is I'll ask witnesses, and any witness that agrees
3 that I can give you their address and phone number,
4 I'll give you their address and phone number."

5 Then they told us none of the people that
6 they spoke to would agree.

7 Our issue is this: I thought that I
8 understood from the outset, Judge Lungstrum indicated
9 that when we could cooperate informally, we should.
10 I also believe that when the defendant tells us, "Our
11 ex-employees, we're not going to produce them for
12 you," it's not unreasonable for them to simply give
13 us their last known address and telephone number.
14 It's cheaper, it's easier.

15 And I don't -- I've never had a lawyer tell
16 me on witnesses in a case, "We're only going to give
17 you that address and phone number if the witness
18 agrees after we tell them you want to take their
19 deposition."

20 So we would ask that the defendant be

21 instructed with these witnesses, many of whom are on
22 Rule 26 disclosures, where their addresses and phone
23 numbers would be relevant, anyway, this doesn't seem
24 like a hard issue, so we would ask that they
25 cooperate with us on that. But I've said enough.

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1 THE COURT: And defendant's position on
2 No. 1?

3 MR. DUPONT: Your Honor, we have provided, I
4 believe, without exception, the information requested
5 on whether or not a particular individual is a former
6 or active employee. So that has been provided.

7 It is true that I did attempt to provide the
8 addresses, and asked the witness if it was okay. I
9 don't think the response is surprising, but that's
10 their response.

11 They have now put that request in an
12 interrogatory for the addresses, and I believe that's
13 going to resolve the issue.

14 THE COURT: Okay. When is the interrogatory
15 answer due?

16 MR. DUPONT: You know, I don't know.

17 MR. EGAN: Let's move it up to ten days from
18 now.

19 MR. DUPONT: If they want to move it up, I
20 don't have any objection to that.

21 THE COURT: It seems to me that something as
22 simple as this, we should just shorten the time. But
23 nobody knows --

24 MR. HUBBARD: We sent it out on March 31st
25 or something. That Friday, March 30th or 31st.

1 MR. DUPONT: It's due very soon, so we will
2 respond.

3 MR. HUBBARD: So if we could move it up to
4 next Friday, that gives --

5 MR. MONAFO: And, Judge, just so we're
6 clear, if we did object on some sort of privacy
7 grounds, then you would overrule that objection and
8 order us to produce that?

9 THE COURT: In terms of the -- I think I can
10 cut through that pretty quickly. The privacy is
11 generally only a basis for a protective order, not a
12 failure to produce, so --

13 If you guys want to work out a protective
14 order on these addresses, that would be useful, but
15 that's not going to keep you from having --

16 MR. GRAHAM: We'll stipulate to that, Judge,
17 that we won't use the addresses for any purpose other
18 than obviously to get a subpoena on the witnesses.
19 We don't have any other use for the addresses.

20 THE COURT: Okay. Well, why don't -- back
21 to this date thing, I don't know that we -- you think
22 it was served the end of March, and we're now at the
23 20th, so it's probably due the end of April.

24 MR. MONAFO: Yes, I'm pretty sure, Judge,
25 they were served on the deadline, which was the very

1 last day of March.

2 THE COURT: Okay. Well, why don't we say

3 that you get them answered by the 28th, which may be
4 a couple of days sooner. I think it would be better
5 if you did a little, short protective order about the
6 information, instead of us trying to recast what you
7 intend.

8 All right. That takes care of No. 1.

9 No. 2?

10 MR. MEYERS: Judge, I think that's mine.

11 The background on this one, Your Honor, is, as the
12 Court will recall, we had that telephone conference
13 on April the 6th in which the Court orally mentioned
14 its intention to suspend the discovery deadlines in
15 anticipation of entering a new scheduling order.

16 The following day, April 7, defendant filed
17 an omnibus, universal motion for protective order,
18 announcing -- requesting, announcing, I'm not sure
19 what it was, there wouldn't be any further
20 depositions. Any of the pending deposition notices
21 were just basically off, pending entry of the new
22 scheduling order. Sort of a vetoing of the Court's
23 order, as we read it.

24 But our concern is this: It's not briefed.

25 I think our response to that motion is due tomorrow.

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1 And by my count, depending upon how you count, we've
2 lost anywhere from 25 to 35 depositions that would
3 have occurred between April 11 and the time of the
4 mediation.

5 What we would like is for the Court to
6 either rule today, or rule on an expedited basis,
7 that in the event the mediation is successful, that

8 the depositions resume immediately upon return from
9 mediation. The reason --

10 THE COURT: I don't think you mean that,
11 Marty.

12 MR. GRAHAM: You said in the event the
13 mediation is successful.

14 MR. MEYERS: I thought I said "un."

15 THE COURT: I knew you guys were enjoying
16 this case.

17 MR. MEYERS: Let me back up.

18 THE COURT: I think that I can cut it off,
19 because I think the key is, we've got to get this
20 thing rescheduled. We've got to get back on track.
21 And if defendant has messed with some deposition
22 dates, that's a factor you've got to consider in
23 getting it all done. So, you know, I want to get it
24 done expeditiously, but I think it probably does make
25 logical sense that you figure out, with as much

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1 precision as you can, what needs to be done, and how
2 much time is it going to take to get it done. And
3 obviously this is part of it.

4 So when we meet next time, hopefully you not
5 only have an agreement on how long it's going to
6 take, but you also have them rescheduled so you can
7 get them started.

8 MR. MEYERS: But here's part of my concern,
9 Judge. In anticipation of meeting the June deadline,
10 we essentially lined out all of April and all of May.
11 We lost April. And what I'm attempting to do is

12 salvage May, the ones already noticed for May.

13 THE COURT: Well, I'm not going to order
14 anything at this point. I think it's a good idea to
15 get agreement on a schedule, and get an agreement on
16 when these things get rescheduled on both sides. I
17 mean, it's been happening both directions. So you've
18 got to get back on track because the case is going to
19 finish some day, either by settlement or by
20 completing discovery and getting it submitted.

21 MR. EGAN: Judge, just so we know, does this
22 mean, as we try to get back on track with our
23 depositions, we're not going to be met with some kind
24 of statement, a blank statement, that, "No, we're not
25 going to do anything," the defendant saying that?

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1 Because the message we're hearing you tell us today
2 is, cut through it, get past this stuff, get things
3 scheduled. Don't stop everything. That's
4 counterproductive.

5 THE COURT: Yes. I think you're asking me
6 what you need to ask the defendant.

7 And I assume, based on what I've said,
8 you're going to cooperate and try to get things
9 rescheduled, also.

10 MR. DUPONT: That's right. I mean, I think
11 I understand the Court's position on a lot of these
12 things. And it simply isn't true that all
13 depositions are cancelled. That isn't correct.

14 We have taken a position that there's a
15 tremendous amount of accumulation, repetition and
16 waste. And if I could go back to, I think what

17 you've asked us to do, is to put together a framework
18 for a scheduling order. I'm trying to look back at
19 my notes where you said that, and I don't see it.

20 THE COURT: Yes.

21 MR. DUPONT: But one of things that -- this
22 case is off track. There's no control over the
23 amount of discovery that's going on in this case.
24 And it's way too much. I mean, I understand it's a
25 different kind of case, but it is not -- there is not

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1 unlimited discovery. And it's been going on for
2 almost three years.

3 And when we sit down to do a scheduling
4 order, the problem with the last one was, it didn't
5 have any structure to it. It listed topics, and, "We
6 want a bunch of witnesses on all those topics."

7 I think what we need is a finite list from
8 plaintiffs that says, "These are the depositions we
9 want." Give us the names. Then together, the
10 parties can look at that and raise any issues that we
11 can't resolve, with you.

12 But until we have an end, a definition,
13 we're just going to be doing this case forever. And
14 we're asking for something to get done to put a
15 framework on this case so it can come to a
16 resolution. If it's just endless discovery, we're
17 never going to get it done. We're always going to be
18 back in front of Your Honor complaining about -- both
19 sides complaining about discovery.

20 I mean, when I read this topic, that there

21 was cancellation of all depositions, I thought that
22 was plaintiffs because they are the ones that filed
23 the motions seeking to suspend, cancel, effectively,
24 100 depositions.

25 So I guess until we have a list, a known

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1 list, and this -- I mean, we can really cut through
2 all of these motions. So many of these motions can
3 be dealt with if we have some end, some sight, some
4 definition about what the future discovery is going
5 to be.

6 I've said it before. I said it the last
7 time we tried to put together a scheduling order.
8 There has to be an end to Rule 26 disclosures. There
9 can't be -- because if we get a new list, a D list,
10 and then 100 new witnesses, we've accomplished
11 nothing.

12 And if we keep getting these new names for
13 depositions, and the list goes on and on and on and
14 on, we're not accomplishing anything. We've got to
15 get some structure.

16 THE COURT: Yes, I agree. And I think what
17 you should do when you come back with this new,
18 either joint or individual proposal on scheduling, I
19 do think you have to come up -- and I don't think at
20 this point in time it's going to be possible to do
21 all the names you want, but I think what you need to
22 come up with at this point, is names, where you know
23 them, and a number of depositions beyond that, not
24 open-ended beyond that, so that there's some
25 structure to what's going to happen in the future.

1 MR. DUPONT: We've been doing this almost
2 three years. Why wouldn't it be possible to come up
3 with a list of names? That seems basic.

4 THE COURT: I guess the problem I can see,
5 and I assume plaintiffs see the same thing, if they
6 depose a witness they have a name on, that suddenly,
7 for the first time, they say, "Well, Billy Smith is
8 the one that really did this," and nobody has heard
9 of him, that shouldn't be a limitation on their being
10 able to get that deposition. That's the problem with
11 names.

12 MR. DUPONT: If that was the exception,
13 rather than the rule.

14 THE COURT: I think the rule needs to be to
15 try to come up with the names as you structure this.
16 And the exception needs to be limited, also. I don't
17 think it's an exception without a limit, in terms of
18 how many. So see if you can't either get an
19 agreement, or your proposals together, on that.

20 You know, and that reminds me, one of the
21 motions that I looked at that I didn't, I guess,
22 clearly communicate enough with the law clerks on, in
23 terms of getting me a better memo, it -- in fact, let
24 me just look at the docket while it's fresh in my
25 mind. Hold on a second.

1 Okay. The other motion I should have had on
2 my list before, because I at least made up my mind,

3 but didn't get the clear message to the law clerks I
4 had made up my mind, to get a memo back, anyway, it
5 is Docket No. 3835. It's plaintiffs' motion for
6 reconsideration of the March 21st order, Docket
7 No. 3749, or in the alternative, for clarification of
8 plaintiffs' extension of time to respond.

9 You know, I know how problematic that order
10 is in terms of what plaintiffs are going to have to
11 do. But as I told you at the start of my recitation
12 of those other orders, the general principle is
13 you're going to have to do this stuff. And so this
14 motion, in terms of reconsideration, is denied.

15 And what I want you to do in your
16 scheduling, is come up with a time frame, if you can
17 get an agreement, your proposal on when you're going
18 to get that stuff done. I understand that's a lot of
19 work, but I think this case requires you to do a lot
20 of work. And so figure out a time frame to get that
21 done.

22 All right. We sort of jumped off track
23 here.

24 MR. HUBBARD: On that, I think defendant has
25 already agreed to May 20th in their response brief on

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1 that issue. And we'll talk and see if anything
2 longer is needed.

3 MR. DUPONT: The 22nd.

4 MR. HUBBARD: Is it the 22nd? Oh, yeah, the
5 22nd.

6 If that was even in the pleading, then we'll
7 see if more time is needed. We'll talk to defendant.

8 THE COURT: Okay. I think we're up to
9 No. 3.

10 MR. EGAN: Your Honor, this is one of my
11 issues. Maybe we can get through this one today.

12 And, Jim, Phil, let me know.

13 This is the resumption of the deposition of
14 John Shannon. John Shannon, you remember his name,
15 he was an HR manager. You've seen his name on the
16 Jerry Batt adverse impact documents, talking about,
17 "We've got to change the pools to get a green light."
18 So that's just to kind of refresh the Court's
19 recollection about who he is.

20 He is somebody who is a key HR manager in
21 the PCS division, under a gentleman named Jerry Batt.
22 We've got lots of ageist evidence about Jerry Batt.

23 I first started the deposition of John
24 Shannon on October 20th. Took it for six hours. At
25 the end of the time, said, "We need to adjourn to

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1 finish him," because what was produced, and properly
2 so, in a duces tecum, was 1,768 pages of documents.
3 And so I was going through those. There are 197
4 pages of e-mails, alone.

5 When we ended the deposition, Christine
6 Miller produced him, I said, "Look, we're not going
7 to get through what we need to do. Let's find a time
8 to reconvene." She said, "Fine, we'll get back with
9 you and talk about a schedule."

10 We have since tried to meet and confer, Your
11 Honor, on the amount of time. That's really all

12 we're talking about here.

13 This falls within the same heading of some
14 other witnesses. We do not have any motion papers
15 pending on this right now because I've got a notice
16 out to take his deposition for the 25th.

17 In the meantime, we were talking about how
18 much time I would need to finish him. On February
19 24th we had a meet and confer. Christine Miller had
20 said, "Dennis, how much time do you need?" And I
21 said, "I think let's set aside all day because you're
22 coming in from out of town. Let's get him finished
23 in a day." What I was offered at first was two
24 hours. Then Jim Monafo and I had a discussion on
25 February 24th, when they said --

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1 Well, I don't know, Jim. What did we bandy
2 about? You said, "How about three and a half hours?"
3 "How about four hours?" We were kind of doing a
4 little auctioneering.

5 MR. MONAFO: You had me bid against myself
6 several times, but we never got to it.

7 MR. EGAN: The point is, then on April 7th,
8 the same day that the omnibus motion got filed by the
9 defendant, I received a fax that said, "Please be
10 advised we will produce Mr. Shannon on April 25, on
11 that date only, for the amount of time remaining
12 under the seven-hour rule." So that would
13 effectively give me one hour.

14 That's where we are. I have conferred and
15 told Jim and told his staff, I said, "I can't accept
16 that." We have released Mr. Shannon, or at least

17 defense counsel has, from the April 25th date.
18 I would like to go back -- I've got all
19 kinds of documents, in good faith, that I need to ask
20 him about. I don't like taking long depositions.
21 Jim Monafo knows that. But I also know when I've got
22 a witness who I need to clearly get through all of
23 his documents. He affects many of our opt-ins. He
24 is on e-mails relating to RIF discussions, RIF
25 spreadsheets, all kinds of stuff.

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1 When I was asked how much time I needed, I
2 said, "Look, what I don't want to do is get pinned
3 to, I can do it in five hours," because then that
4 puts it on the witness's shoulders. He takes his
5 time in answering the questions. Jim kind of
6 jokingly says, "Well, we'll give him a 24-second
7 rule," you know, kind of a shot clock that he has to
8 answer his questions.

9 But this is just like, in a way, the Jan
10 Price deposition. He's a very important witness. I
11 think we should just set aside, and tell me, "Dennis,
12 get him done in the one day time," and I will abide
13 by that. And maybe I'll be able to get him done
14 shorter. But I just can't be pinned down to five
15 hours, 3.5, 4.2.

16 THE COURT: The defendant's position on
17 Mr. Shannon?

18 MR. DUPONT: Well, first, Jan Price is not
19 an important deposition. I mean, she's just a --
20 really, a functionary. They have had an inflated

21 view of who Jan Price is and what she did, what her
22 role was.

23 Our position has been on Mr. Shannon, that
24 there's no reason to go beyond the seven-hour
25 guideline. And if plaintiff wants more than that,

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1 then plaintiff has the burden to seek leave to do
2 that. That hasn't been done. I don't know if that's
3 what's being done today.

4 But we don't see any reason to -- I mean, to
5 keep redeposing people, and taking people's
6 depositions for 14 hours, is another example, we
7 think, of a lack of structure and a lack of real
8 effort to bring this case to a close.

9 THE COURT: Okay. Well, obviously, there's
10 not a clear motion, and it doesn't appear to me
11 there's going to be an agreement, so I'll just make
12 the statement I've made several times today. My
13 general principle is going to be, do the discovery,
14 and if it takes, in a good faith effort, more than
15 seven hours, then you're going to get more than seven
16 hours.

17 So if there is a large number of documents
18 that this person does have information about, if
19 there's a motion filed, it's very likely it's going
20 to be granted to get the -- you know, just to me, it
21 makes more sense if you're going to have to bring
22 someone in, to make sure you get the deposition done,
23 and you go ahead and set aside another possible day,
24 with the hope that you don't have to use it.

25 But you see if you can work it out. If you

1 can't, get your motion on file.

2 MR. EGAN: Thank you, Your Honor.

3 THE COURT: Now, I think we've taken care of
4 a lot of No. 4, haven't we?

5 MR. EGAN: Yes, Your Honor. May we just
6 memorialize an agreement we have with the defendant
7 on Pinchback, Van Horn, and Finks? We're going to
8 file a response tomorrow on those. It would be due
9 today. They have agreed that we can file our
10 response brief on those tomorrow, or we can talk
11 about them. Those are depositions that we had
12 scheduled at one time.

13 THE COURT: Well, if the principles I've
14 outlined in previous rulings will help you resolve
15 it, fine. Otherwise, get your pleading on file.

16 MR. EGAN: I think the principle you've
17 outlined should resolve them.

18 THE COURT: And we've already talked about
19 No. 5. It's either --

20 MR. HUBBARD: What's your --

21 MR. DUPONT: Your Honor, I think he wanted
22 to know our agreement to the extension, and we do
23 agree to that.

24 THE CLERK: Which extension is that on?

25 THE COURT: Well, it's to respond to the

1 defendant's contention interrogatories, the one I
2 overruled the motion to reconsider on.

3 THE CLERK: It's not on the motion for
4 protective order?

5 THE COURT: Yes, the one I just ruled on a
6 minute ago. It's more time. I ruled that the
7 reconsideration is denied, but we haven't decided --

8 Now, I thought you just told me it was the
9 22nd, and this says it's the 20th.

10 MR. MONAFO: Yes. The 20th is a Saturday.
11 We just figured that out.

12 THE COURT: The 22nd, then.

13 MR. DUPONT: On the issue of responding to
14 the discovery, which is the subject of the motion to
15 reconsider, they are going to do that by the 22nd. I
16 think what Dennis was just talking about, was motions
17 directed at Finks, Pinchback and Van Horn.

18 THE COURT: No, I've already moved on to
19 No. 5.

20 THE CLERK: I thought Dennis was requesting
21 an extension of time to respond to the motion for
22 protective order in regards to Finks, Pinchback and
23 Van Horn.

24 THE COURT: And that's taken care of.
25 That's till tomorrow, I guess.

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1 MR. DUPONT: That's correct.

2 THE CLERK: Okay.

3 THE COURT: And next is the extension to May
4 22nd on the contention interrogatories.

5 MR. MONAFO: Judge, before you move off
6 No. 5, just so I don't forget, plaintiffs served five
7 different types of written discovery on Sprint on the

8 last day of March, or maybe even April 1st. And they
9 have agreed, I believe, that our response date to
10 those five different written discovery requests is
11 also May 22nd. I just wanted to memorialize that, as
12 well.

13 THE COURT: Well, why don't you e-mail me
14 the docket numbers, if you don't have them right in
15 front of you, so we can --

16 MR. MONAFO: We never filed -- oh, the
17 docket number of the discovery.

18 THE COURT: The ones that are being
19 extended, so we can keep track of what we've
20 extended.

21 MR. HUBBARD: Yes, because there's
22 reciprocal stuff that we got from defendant on March
23 30th.

24 THE COURT: Okay. Well, just send me an
25 e-mail on what's agreed, by docket number, so we can

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1 make a specific order.

2 I think we've dealt with No. 6.

3 MR. EGAN: Possibly, Your Honor. There's
4 one other thing that relates to the mediation. I
5 just want to bring it up. And hopefully, along the
6 spirit of where we're going today, we'll be able to
7 get this resolved.

8 We have that order out there that you issued
9 on allowing the plaintiffs' attorney in Georgia to
10 have access to discovery in the Williams case. Judge
11 Lungstrum has now affirmed your ruling.

12 I don't know. I think counsel may know
13 about this. But yesterday we had the surprise of
14 getting subpoenas served on every named lawyer in
15 this case. Dennis Egan, I have my subpoena here
16 (indicating).

17 MR. MEYERS: I have mine.

18 MR. HUBBARD: I have mine.

19 MR. EGAN: Served in Cavanaugh vs.
20 Sprint/United Management.

21 MR. DUPONT: I didn't get one.

22 MR. MONAFO: I didn't get one.

23 MR. HUBBARD: It's to come to your office
24 and testify.

25 MR. EGAN: I'll tell you, and state on the

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1 record for counsel here, we had agreed among
2 ourselves, really as a show of good faith, that we
3 were not going to do anything on the exchange of
4 information with Mr. Billips, until we see what
5 happens at the mediation.

6 Someone could have found that out by picking
7 up the phone and asking, "What are you going to do?"
8 Because last time, after your ruling, Christine
9 Miller writes a letter and an e-mail and says,
10 "Please don't do anything until we appeal this." So
11 I was actually expecting to receive something. I
12 didn't know that I would get a subpoena, asking me to
13 appear at Husch & Eppenger on May 1st, and to sit
14 in a chair and I guess be sworn under oath and say
15 what I've given to Matt Billips. So I hope they are
16 not --