

17 THE COURT: You're confusing me. Who
18 subpoenaed you?
19 MR. EGAN: The Sprint Georgia lawyers.
20 MR. DUPONT: We did not.
21 MR. GRAHAM: Chris Pace is on the record, of
22 counsel in that case. And they subpoenaed all of us.
23 MR. HUBBARD: To their office.
24 MR. EGAN: I guess what I'm really asking,
25 Judge, we can file motions to quash and for

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1 protective order, but I'm really standing up --
2 THE COURT: Are these subpoenas issued out
3 of this court?
4 MR. EGAN: Oh, no. And they didn't even
5 give us a \$40 check, I might add. So I guess I could
6 just ignore it.
7 THE COURT: Maybe I'm getting confused about
8 procedure, but I thought if they had a subpoena, they
9 had to issue it out of this court.
10 MR. GRAHAM: Well, we thought so, too,
11 Judge. But some lawyer in Atlanta believes that he
12 can depose all of the plaintiffs' lawyers in this
13 case. And it's all of them, Bert Braud --
14 MR. DUPONT: Let me see if I can't -- I
15 didn't know anything about this. And --
16 MR. EGAN: Chris didn't tell you about this?
17 MR. DUPONT: No. If I didn't know, I -- I
18 wouldn't have known.
19 What I propose is, you want to know if it
20 can get quashed or -- without you filing a motion.

21 MR. EGAN: We want our \$40, or we're not
22 showing up. (Laughter.)
23 MR. DUPONT: Or you want your \$40.
24 THE COURT: If you would informally see if
25 you can resolve it. You know, since it wasn't issued

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1 out of this court, there's not much I can do about
2 it. But you --

3 MR. EGAN: The subpoena is worthless, trying
4 to subpoena me up here, out of a Georgia court, to
5 testify at a place more than 100 miles from their
6 place. So I'm not sure what it's trying to do,
7 but --

8 THE COURT: My advice is, see if you can't
9 get this resolved.

10 MR. DUPONT: Can I get back to them by
11 Tuesday?

12 MR. GRAHAM: Our problem with that is, under
13 Rule 45, even though they didn't give us the check,
14 we're concerned that our time to file a motion to
15 quash, not run. And none of us have ever been
16 subpoenaed in a case that we're attorneys of record.

17 MR. EGAN: It's an interesting principle.

18 MR. GRAHAM: I don't want to have some
19 federal judge in Atlanta tell me that I'm in contempt
20 because I don't show up at Husch & Eppenberger.

21 THE COURT: As I said, I don't think I have
22 authority to do anything, other than to suggest it
23 would be in everyone's best interests to resolve this
24 without a lot of pleadings.

25 But clearly, if you can't get it resolved,

1 you may have to file pleadings in the appropriate
2 case and get the appropriate judge to do what's
3 right.

4 MR. DUPONT: Do you know when a response
5 would be due?

6 MR. MEYERS: We think tomorrow.

7 MR. DUPONT: I'll try to get back to you
8 tomorrow.

9 MR. EGAN: That would be fine.

10 But anyway, you guys can take back to your
11 client, our statement on the record. And I assume
12 that since we're officers of the Court, we don't need
13 to be put under oath to say what we just said?

14 MR. DUPONT: That's fine.

15 THE COURT: I think that takes us to No. 7.

16 MR. EGAN: Your Honor, we will pass on that.
17 That has to do with Susan Ott's e-mails. Gene is
18 here, and that's his issue, actually. But I think
19 that's something that he and Jim Monafo have been
20 talking about.

21 Jim, can you guys see if you can work
22 something out on that?

23 MR. GRAHAM: Jim and I are going to try to
24 work that out.

25 THE COURT: Good.

1 No. 8.

2 MR. MEYERS: Judge, I think this is --

3 THE COURT: This is what's under advisement,
4 isn't it?

5 MR. MEYERS: Yeah. Yeah, it's just --

6 MR. HUBBARD: No.

7 THE COURT: No, it's not?

8 MR. HUBBARD: It's memorialized in some
9 agreements that have been made. It's not what's
10 under advisement.

11 MR. MEYERS: Oh, you said "under
12 advisement." I thought you meant for advisement.
13 Yeah, this --

14 THE COURT: You're just telling us you've
15 done this.

16 MR. MEYERS: Right. Exactly. There are
17 really three categories of documents. We're trying
18 to work through these issues with Mr. Monafo, and I
19 think we're making progress in doing that. But we
20 put this on the agenda for today in hopes of avoiding
21 any misunderstanding, to make sure we understand what
22 the -- the same thing defendant understands.

23 THE COURT: Well, since I can't tell what
24 you've agreed, why don't you quickly state it, and
25 see if defendant agrees with it, and then we've got

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1 it on the record.

2 MR. MEYERS: Well, on the -- there's three
3 categories of documents, Judge. And they are listed
4 on our list of issues as A, B and C. The first one
5 is documents pulled from discovery as allegedly
6 privileged, but with no entry on the privilege log.

7 As I understand it from Mr. Monafo, he's

8 going to provide us with an updated log by April 27
9 that will contain all of those entries, and be full
10 and complete so we can assess it, and our response to
11 that.

12 MR. MONAFO: That's correct, Your Honor.

13 I would just say that April 27th is
14 certainly our target date. We're trying to shoot for
15 that date. In fact, that's not a guarantee, but
16 certainly we're going to try and do that date. That
17 was the date that we picked, and the staff is working
18 toward that date.

19 THE COURT: Okay.

20 MR. MEYERS: There's a second category of
21 documents, Judge, that are listed in B, that are just
22 described as having been contained in defendant's
23 attorneys' files, working files, that defendant
24 subsequently advised us, after listing them on the
25 privilege log, that, in fact, having reviewed the

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1 documents, defendant didn't believe that they were
2 privileged, and they agreed to produce those.

3 There's been some delay in that. It's our
4 understanding that the defendant is going to produce
5 on April 27, along with this updated log, those
6 documents that it now agrees are on the log, but not,
7 in fact, privileged.

8 MR. MONAFO: Judge, that's basically
9 correct. What we're essentially finding out, I'll
10 just tell you now, that there are certainly documents
11 that are on the log, on their privilege log, because

12 they were in an attorney's file, that have been
13 produced out of other HR people's files. So, in
14 other words, an HR person hands something to the
15 lawyer, a lawyer sticks it in his file, and it ends
16 up on the log because it came out of that lawyer's
17 file, but it has already been produced out of the HR
18 person's file.

19 So what we plan to do by the 27th, is have
20 it all worked out, where they have got everything --
21 it's either, A, been produced already out of somebody
22 else's file; if not, here it is. And then that's all
23 taken care. And then it's --

24 THE COURT: So you'll redo the privilege log
25 and make sure what's privileged or not.

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1 MR. MONAFO: Correct.

2 MR. MEYERS: The last category, Judge, I
3 think we've got an agreement on this, but it was the
4 impetus of the three.

5 There's a category of documents that
6 defendant listed as privileged on their privilege
7 log. There was some challenge made to that.
8 Defendant said, "Well, we now agree they are not
9 privileged, but we don't want to produce them because
10 we don't think they are responsive."

11 And what I think we worked out the last
12 time, and I think there are, what, 160 documents,
13 compromising more pages than that, but 160 different
14 documents, I think Mr. Monafo agreed that he would
15 produce every tenth document. You know, just one,
16 two, three, four, five, counting the Bates numbers,

17 produce every tenth document, make those available
18 for us to review as kind of a random sampling.

19 And then that way, if we look at them and
20 agree, "Yeah, this is not important stuff, we don't
21 want to fight about this," we have solved the issue.

22 If we consider it something responsive, we
23 can confer further about it and/or file a motion with
24 the Court.

25 MR. MONAFO: That's basically correct, Your

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1 Honor, except I'm not intending on, quote, producing
2 the documents. I'm intending on sitting down with
3 them, showing them the documents so they can look at
4 them. And then if they want to move to compel them,
5 then that's --

6 THE COURT: Okay.

7 MR. MEYERS: That's correct.

8 THE COURT: No. 9, then.

9 MR. MEYERS: No. 9 is -- this is just by way
10 of advice, as well, Judge. Mr. Hubbard has tried to
11 make defendant aware, as we discover them, of issues
12 on the native production master index, where they
13 have referenced documents and we can't find them, or
14 the documents are misdescribed. And we're continuing
15 to call those errors and deficiencies to defendant's
16 attention, so that they can correct that and
17 ultimately give us a complete and correct index to
18 the documents that have been produced in native file
19 format.

20 THE COURT: Okay.

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No. 10?

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MR. EGAN: No. 10, I think we've covered that, Your Honor. What we got was the disk that gives us the exhibits. And I think we've got that covered.

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THE COURT: Okay. And, yes, I know there are other pending motions, but I don't think we ought to take them up today because I haven't looked at any others, than those I ruled on.

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MR. MONAFO: Your Honor, just so I -- back on No. 9, and this is on my list, as well, but I just want to state my position on No. 9, which is, they did advise me of some errors on the master index spreadsheet, which is the document that we put together for them that shows them all the spreadsheets they have received in native format, all the new ones we've produced in native format, and then the ones that have never been produced in native format. They did tell me there were some errors with that. I pointed out to them what our thinking was. We worked it out, in other words.

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I believe No. 9 is really designed, and you're going to, likely, see a motion on this soon, to set up, if you will, an argument that they need to get the e-mails in native format, as well. And that's what that's all about.

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So I would just state for the record that I made a phone call to Mr. Hubbard after the -- around the last status conference -- or excuse me, around the last meet and confer session, and advised them of

1 the solutions to their issues. And I have not heard
2 anything back that they have any continuing problems
3 with the master spreadsheet. So that has been, now,
4 more than 20 days. I haven't heard anything about
5 any other problems. So my -- certainly, I'm assuming
6 I've solved their problems with respect to that now.

7 THE COURT: I'm sure they will let you know
8 if you haven't.

9 MR. HUBBARD: Yeah, I --

10 MR. MONAFO: But, Judge, I just want to
11 state that so the record is clear, that this is not
12 some ongoing problem. At least 20 days have elapsed,
13 and I have not heard of any problems.

14 MR. HUBBARD: Your Honor, that wouldn't be
15 accurate, but we don't need to get into that here.

16 They had a 30 to 50 percent error rate on
17 the native format index. We informed them of that.
18 It was obvious that they weren't actually matching up
19 the true documents. I've asked them to agree, look
20 at the entire index. They haven't done that. They
21 have solved some of them. They didn't solve others
22 of them. We are working through the problem.

23 THE COURT: Okay. Keep focussing on the
24 solution side, as opposed to the blame side. Maybe
25 we'll get it done.

1 All right. Now, what's on defendant's list
2 that we haven't talked about?

3 MR. MONAFO: Well, and this is kind of in
4 the same vein, Your Honor. I've actually put
5 together an exhibit to demonstrate this.

6 MR. EGAN: Have we seen it?

7 MR. MONAFO: Yes, you have. It was e-mailed
8 to you. And here's a copy (handing document).

9 MR. HUBBARD: It's just the transcript of my
10 e-mail when we had the conflict on March 31st -- or
11 March 21st.

12 THE COURT: And you already sent us copies,
13 didn't you?

14 MR. MONAFO: Yes, you have a copy, Your
15 Honor. I have another one if you'd like one.

16 THE COURT: I have it right here.

17 MR. MONAFO: Great.

18 Your Honor, I just want to refer you back to
19 the last status conference we had on March 13th. And
20 on Page 33, near the bottom, where I've highlighted,
21 Mr. Hubbard was raising this issue, and he says there
22 at the last paragraph on the bottom of Page 33, "We
23 have noted that there are many, many, many errors on
24 what defendant calls the native production master
25 index." He goes on over to the next page to continue

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1 to talk about that.

2 I say at the top of Page 36, "Judge, this is
3 the first I've ever heard of this. This is what I
4 think is appropriate for a meet and confer."

5 We go back and forth on that. I think you
6 agreed with my position that there should be some
7 conversation about it before we come before the Court

8 at a status conference.

9 And on Page 38, I say, "I object to them
10 putting down topics on their list so they can come in
11 here and complain about them, before I've ever had a
12 chance to even research it or get back with them.
13 Instead, we just get ambushed with all their
14 complaints, so they can get up here and prejudice you
15 in the hopes that they can continue discovery
16 forever."

17 Then on Page 40 Mr. Hubbard says -- he
18 basically says -- now he calls it that "they're
19 willfully filled with errors," this document I
20 provided for them. I guess that means we're
21 intentionally putting errors in there. And he says,
22 "I'll get back to you. We'll do a further meet and
23 confer. And I'll get back to you on this at a
24 subsequent hearing," he says at Page 40.

25 And again, I believe this is all part of the

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1 master plan to get the e-mails in native format.

2 They then say -- at Page 44, he then is
3 complaining again about the privilege log. And he's
4 talking about documents that are identified as,
5 supposedly on the Bates -- or excuse me, they should
6 be on the log. He says, "There's no entry on the
7 log. It's a document that supposedly says it's been
8 pulled for privilege, and it should be on the log."
9 And he goes to the log, and he can't find the
10 document.

11 I say at Page 44, "Your Honor, that would

12 seem to be a classic meet and confer topic. This is
13 the first I've heard of this. If there's a problem
14 with the log, come talk to me about it. We'll work
15 it out."

16 Judge, you tell them at Page 45, near the
17 bottom, you say --

18 THE COURT: "I understand you are going to
19 bring them up."

20 MR. MONAFO: Yeah. And then he says, "This
21 is news to us, Your Honor."

22 I mean the point here is, he's saying that,
23 this is news to us, that the way this is supposed to
24 work is we have a status -- we have a meet and confer
25 session, where he brings his issues to me. I attempt

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1 to resolve them. If we can't resolve them, then we
2 come before you with our dispute.

3 What I'm continually complaining about
4 here, Your Honor, is I get ambushed with these issues
5 at the status conference, that I never heard about at
6 the meet and confer. And my concern is, over time,
7 it's having a prejudicial effect. And that -- you
8 know, I would point to the fact that the scheduling
9 order has not been vacated. You know, it gives you
10 the impression that there are all these problems out
11 there and all these discovery disputes, and it
12 really -- I don't think it's an accurate portrayal.

13 Mr. Hubbard then, to really close this loop,
14 he says at Page 46, after you explained to him what
15 the process is, he says, "Well, can we have meet and
16 confers every week, then, on the record? Because we
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17 would accomplish more. We're losing a week of
18 record, getting responses and getting issues." So
19 he's asking for double meet and confer sessions, when
20 they don't follow the meet and confer that we have
21 set up already.

22 So that's what Mr. Hubbard is saying at the
23 status conference to you, because he's trying to
24 convey to you there are all these discovery issues,
25 all these problems we're having with defendant, and

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1 we need double meet and confers now.

2 So after that March 16th, 2005, status
3 conference, I took efforts to set a meet and confer
4 session to address these issues. And the front page
5 of this exhibit is an e-mail I get from Mr. Hubbard,
6 where he says he's not sure there's much to discuss
7 at the meet and confer. There's not going to be much
8 to discuss. He says it twice in the e-mail.

9 So I'm scratching my head, Judge. Here he
10 is, four days earlier, ranting and raving in front of
11 you that there are all these issues, all these
12 problems with the master index, all these issues. I
13 say these are appropriate for a meet and confer.
14 Everyone agrees. We schedule a meet and confer. He
15 sends me an e-mail saying he's not ready to discuss
16 them. There's a problem with that.

17 MR. HUBBARD: Can I respond, Your Honor?

18 THE COURT: No, I don't think I want to hear
19 a response because I think I understand.

20 What I understand is that you've been having

21 lots of problems. And it appears to me, from what
22 came up on the list today, there was nothing that
23 hadn't been dealt with before. So the message I
24 think that I was trying to give at the last hearing,
25 has gotten through, that I don't want things brought

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1 here, that haven't been discussed outside. And so I
2 don't think I need to rehash whether they did that
3 before, because we didn't do it this time, and nobody
4 is going to do it in the future.

5 And you're going to get back on track and
6 come up with a schedule. And I'm not going to get
7 into did you or did you not do a bad thing three
8 weeks ago.

9 MR. MEYERS: Amen.

10 MR. EGAN: Amen.

11 THE COURT: Is there something else you want
12 to say?

13 MR. HUBBARD: I would just point out that
14 the e-mail motion has already been filed. They
15 referenced it twice. I just wanted to clarify. That
16 was filed with our motion to -- the motion we talked
17 about.

18 THE COURT: Yes, we --

19 MR. HUBBARD: So it's already been filed
20 some time ago, so it wasn't positing for any --

21 THE COURT: You are back on who is bad, and
22 I don't want to hear it.

23 MR. HUBBARD: No. I just wanted to point
24 out factually --

25 MR. EGAN: As far as this grand plan, yes,
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1 we've asked for the e-mails in native format.

2 MR. HUBBARD: Back in February.

3 THE COURT: Anything else we can accomplish
4 today?

5 MR. DUPONT: Yes. I think, first -- I had a
6 question about this special master.

7 And maybe you guys did, too.

8 You want us to provide you with the identity
9 of who it will be. You want to us come up with a
10 name that we agree on. And if we can't, submit one
11 each, something like that.

12 THE COURT: Right. That's the idea.

13 And as I said, I have not definitely made up
14 my mind, but I want to see what your suggestions are,
15 and then I will make up my mind. So you'll have a
16 chance to respond when I formulate an order.

17 MR. DUPONT: And then the last thing on our
18 list was an effort to move toward a scheduling order.
19 We've talked about that, but I thought we ought to
20 put a little more flesh about that. Specific names,
21 expert deadline, Rule 26 --

22 THE COURT: I just want you to do your same
23 report of parties planning meeting that you did the
24 last time, that either gives me agreement, or you
25 can't agree what your respective positions are on all

1 the dates that we've got to set.

2 MR. DUPONT: Well, I just heard that you

3 didn't want specific names.

4 MR. HUBBARD: No, Your Honor said, it's on
5 the record, that it wasn't required, it would be
6 helpful if they had them, but it wasn't, certainly,
7 required, is what we heard Your Honor say.

8 MR. DUPONT: That wasn't my understanding.

9 THE COURT: Well, are you talking about
10 witnesses to be deposed?

11 MR. HUBBARD: Yes, Your Honor.

12 MR. DUPONT: Yes, after --

13 THE COURT: What I want is, where possible,
14 to come up with the names. But I'm not saying you
15 can only do the names.

16 MR. HUBBARD: Right.

17 MR. EGAN: And get me a schedule on
18 Pinchback and those guys.

19 MR. DUPONT: Do names. And under rare
20 circumstances, will there be some exception to that.

21 THE COURT: Well, there can be exceptions,
22 but I want a limit on the number of exceptions, so
23 it's not an unlimited number of exceptions.

24 MR. EGAN: And, Judge, just -- we'll try and
25 agree. But, you know, it is funny that every time --

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1 THE COURT: We were doing well, guys.

2 MR. EGAN: We were doing well, until
3 Mr. Dupont got up and raised an issue, not on their
4 issue list, I might point out.

5 MR. DUPONT: Scheduling is on the issue
6 list.

7 THE COURT: We're falling apart again.
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8 Let's not do this.

9 I have a clear understanding of what you're
10 going to do. And we'll put it in the order, and
11 hopefully get it done. But stay on track.

12 Thank you all for what -- for moments of
13 cooperation.

14 MR. HUBBARD: Your Honor, do we have a
15 timetable that they are to get us three dates in the
16 next 30 days for all of these witnesses? Do we get
17 those in the next week or so? I took it, the dates
18 for the depositions are in the next 30 days.

19 THE COURT: Well, that's a good point.

20 MR. HUBBARD: Or do they have 30 days --

21 THE COURT: How much time do we need to give
22 them.

23 MR. HUBBARD: Right.

24 THE COURT: I didn't put that in my oral
25 statement. How much time do you need to figure out

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1 these dates?

2 MR. DUPONT: I honestly don't know. I
3 suspect, given the Court's order, we can resolve --
4 we're going to have to come up with dates when you're
5 available, when the witness is available, and we're
6 available.

7 THE COURT: Let's do this: When is your
8 next meet and confer set?

9 MR. EGAN: Next week, if we can get a body
10 there from the defendant.

11 THE COURT: Why don't you have a meet and

12 confer, and by that date, see if you can sit down and
13 do these dates.

14 MR. HUBBARD: And that's to have three days
15 from the witnesses. Because we'll get them worked
16 out --

17 THE COURT: Yes, so you can do the
18 deposition.

19 (Whereupon, the proceedings were adjourned.)

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1 REPORTER'S CERTIFICATE

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3 I, BARBARA A. GRIFFITH, Registered
4 Professional Reporter of John M. Bowen & Associates,
5 with offices located at 1930 Commerce Tower, 911
6 Main, Kansas City, Missouri, 64106, do hereby certify
7 that I was personally present at the taking of the
8 proceedings as set forth in the caption sheet hereof;
9 that I then and there took down in shorthand the
10 proceedings had at said time, and that the foregoing
11 is a full, true and correct transcript of such
12 shorthand notes so made at such time and place.

13 IN WITNESS WHEREOF, I hereunto set my hand
14 and seal this 22nd day of April, 2005.

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Barbara A. Gri ffi th, RMR

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