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Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 *(Proceedings convened in open court at 1:33 p.m.)*

2 **THE COURT:** Let the record reflect that we're in
3 open court. We've called the case of *Hale vs. State Farm*.
4 The plaintiffs are Mark Hale, Todd Shadle, Laurie Loger, and
5 Mark Covington. Defendants are State Farm, Edward Murnane,
6 and William Shepherd.

7 So I've got all the names of those who've entered
8 their appearance, which we'll enter in a minute record. I
9 won't go through those right now. I understand we have
10 about four people on the telephone as well. So, since we
11 have people on the phone, when you speak, please use the
12 microphone and please state your name when you begin
13 speaking.

14 So I've been over the Final Pretrial Order that's
15 been proposed by the parties and I appreciate your efforts.
16 It's -- Final Pretrial Order seems to be a difficult process
17 for a lot of lawyers, and I'm thankful that you were able to
18 work together and put this together.

19 Just one real quick thing. On page 4, the second
20 paragraph, second line, I think the word "billion" belongs
21 after the dollar amount and judgment, correct? Because it's
22 not a dollar and 5,600 cents.

23 **MR. BLONDER:** That's correct, Your Honor.

24 **THE COURT:** It's 1.056 billion. All right. So
25 I'll add that in.

1 Let me ask about, in the jurisdiction section,
2 Roman numeral III, page 5, if I remember correctly, this is
3 the only place where I have two different assertions.

4 Mr. Safer, can you speak for the defendants?

5 **MR. SAFER:** I can, Your Honor.

6 **THE COURT:** Continue to be seated, if you would.
7 Just pull the microphone close to you and make sure the
8 green light is on so we can -- the folks on the phone can
9 hear you.

10 **MR. SAFER:** Thank you, Your Honor.

11 Your Honor, under Noerr-Pennington, if the -- the
12 issue, as Your Honor has already addressed, is if that
13 doctrine applies, that it's not -- unlike res judicata or
14 collateral estoppel, it divests the Court, this Court, of
15 jurisdiction. So our position is that that doctrine
16 precludes this Court from having jurisdiction over this
17 case.

18 **THE COURT:** Okay.

19 **MR. SAFER:** I'm sorry. I said Noerr-Pennington. I
20 meant Rooker-Feldman.

21 **THE COURT:** Okay. So I thought that's what you
22 meant, but what I was going to ask was, if the -- if I
23 combine the two, is that misconstruing the position of each
24 party or does that preserve the issue for both parties? In
25 other words, just add the defendants -- as the last sentence

1 of that paragraph, "Defendants maintain that the Court lacks
2 subject matter jurisdiction under Rooker-Feldman"?

3 **MR. SAFER:** I think that's perfect.

4 **THE COURT:** All right. Mr. Clifford, is that okay
5 for the plaintiffs? Any problem with that?

6 **MR. CLIFFORD:** Yes, Your Honor, it is.

7 **THE COURT:** All right. Okay. And who's going to
8 speak for the plaintiffs throughout the afternoon? I look
9 to two different gentlemen.

10 **MR. CLIFFORD:** Your Honor, my colleague,
11 Steven Blonder, or myself, with your permission.

12 **THE COURT:** Okay. Great. Thanks.

13 So were there any other issues within the Final
14 Pretrial Order that somebody wanted to discuss or felt we
15 needed to bring up?

16 **MR. CLIFFORD:** Your Honor, Robert Clifford. Where
17 would deposition designations and summaries fit into the
18 discussion?

19 **THE COURT:** We can do it -- if we're done talking
20 about the Final Pretrial Order, which I've discussed all
21 things I want to, we can do that now. I've got a list of
22 things that I think we need to talk about, and that's
23 certainly on the list, so if you want to talk about it,
24 that's fine.

25 **MR. BLONDER:** Judge, just calling your attention to

1 one other aspect of the pretrial order. When you asked if
2 there was anywhere else that the parties have differing
3 contentions, in the issues for the Court and for the jury
4 the parties have differing contentions as well but we've set
5 them out in that context in terms of plaintiffs' positions
6 and defendants' positions.

7 **THE COURT:** Yeah. I guess what I was saying was
8 that in the one place under "Jurisdiction" was the only
9 place where there were statements from each side that needed
10 to be accommodated. I noticed that in the other parts in
11 the Final Pretrial Order you sort of accommodated that
12 yourselves by either dropping a footnote or otherwise
13 indicating what the difference was. So I was just trying to
14 figure out or make sure that there wasn't more like the one
15 under the "Jurisdiction" section.

16 **MR. BLONDER:** One other thing, Judge. When you
17 went through the parties at the beginning, Mr. Covington is
18 no longer a plaintiff in the case. He was dismissed out.

19 **THE COURT:** All right. Okay.

20 So before we get to your deposition summaries, I
21 ask that each of you be prepared to discuss the issue with
22 respect to number of peremptory challenges. So, clearly, to
23 the extent that folks have similarly aligned interests, they
24 don't necessarily need to be represented in additional
25 peremptory challenges, but I know that this is an issue that

1 we often need to discuss when we have multiple parties.

2 So let me hear from the defense side first -- and I
3 can hear from all three defendants' counsel if they want to
4 do it that way -- what the defendants' position is with
5 respect to the number of peremptory challenges. Mr. Safer?

6 **MR. SAFER:** Thank you, Your Honor.

7 **THE COURT:** Hard habit to break.

8 **MR. SAFER:** It is. Thank you.

9 From State Farm's position, Your Honor, I don't
10 think we need additional peremptory challenges.

11 **THE COURT:** All right. The other two -- Mr. Scott,
12 are you on board with that assessment?

13 **MR. SCOTT:** That's fine, Your Honor.

14 **THE COURT:** All right. And, Mr. Chinsky, how about
15 from your position?

16 **MR. CHINSKY:** That's also fine, Your Honor.

17 **THE COURT:** All right. So three per side. Hear
18 any objection to that? All right.

19 When you said -- I just want to make sure that I'm
20 reading you right. When you said no additional -- my
21 contemplation was three per side. Is that what you're
22 talking about, Mr. Safer?

23 **MR. SAFER:** Yes, Your Honor.

24 **THE COURT:** Okay. Great. Thanks. Go right ahead.

25 **MR. CLIFFORD:** Being all of them?

1 **THE COURT:** Yes. Plaintiffs' side gets three
2 challenges, defense side gets three challenges, period.

3 **MR. CLIFFORD:** Are they able to share?

4 **THE COURT:** Yeah. I would think they would want to
5 all talk -- there's not three per defendant party; three per
6 defendant side. So when it comes time to deciding how to
7 use that three, I would contemplate that all three
8 defendants would at least have some role in deciding who
9 gets -- who they'd like to strike.

10 So the depositions -- and I know we had a bit of a
11 hiccup as we were trying to approach this final pretrial,
12 but my thought was initially, and I clarified that, I think,
13 in responding to Mr. Clifford's motion. But my thought was
14 that if we could get agreement to reduce some depositions to
15 statements or some narrative rather than the jury having to
16 sit and listen to each and every deposition, that that would
17 be very helpful. So has there been some movement in this
18 area, Mr. Clifford?

19 **MR. CLIFFORD:** Actually, no, sir.

20 In fairness to both sides -- at least I hope these
21 remarks would be perceived that way -- as I think the Court
22 sees, there's been an awful lot of activity, an awful lot of
23 work. We have been working back and forth on exchanging
24 deposition designations and summaries. That's the good
25 news.

1 The bad news is that we've gotten nowhere with it,
2 that, you know, we'll tender a summary to them and it comes
3 back with our proposals stricken and a lot of new commentary
4 added to the point where, you know, we're all kind of -- at
5 least on our side, we're throwing up our hands about it.

6 Secondly, you'll recall the motion that I did
7 make -- and apologies for misunderstanding --

8 **THE COURT:** That's all right.

9 **MR. CLIFFORD:** -- the Court's order. But to that
10 end, you know, that very witness that was basically the
11 subject of that, Mr. Engstrom from the U.S. Chamber of
12 Commerce Institute for Legal Reform, we're now told he's not
13 available, and so that whole exercise was for naught.

14 So the problem that I see -- and we're, you know,
15 determined to work with them in the days ahead on an
16 immediate basis to see if we can reach an accord on these
17 proposed summaries and proposed deposition designations, but
18 I don't know how optimistic I am about the process because
19 there are some unanswered questions.

20 One of them that certainly the Court could, you
21 know, help us with, and that is, let's assume that I
22 designate, you know, Witness Smith, and I propose a summary
23 of him and yet they now want designations in their case.
24 The way we were looking at it is that if we prepared a
25 summary or we prepared deposition designations, we would

1 show them in our case in chief and they would be entitled to
2 cross, add information based on a rule of completeness in
3 the concept, and then if they wanted to have that same
4 witness in their case they could play it in their case.
5 Because the problem otherwise is, and what we're seeing is
6 that when we sent a designation to them it came back to us
7 loaded up with a whole bunch of stuff that we don't think
8 belongs in our case, and so -- on the concept that they
9 think it ought to be shown one time.

10 So we have those kind of obstacles that we're
11 facing, and that was one of the reasons why -- the very
12 reason why I suggested the possibility of a special master
13 to help us see our way through that because it's just -- you
14 know, we're trying to get along and we do get along. And
15 apologies again for any impression that the Court's had that
16 things have really been acrimonious between us because they
17 really haven't been, Judge. We don't agree on the time of
18 day most of the time but, nevertheless, we do it with a
19 smile.

20 So I mean with these -- we're just making no
21 progress on these things though.

22 **THE COURT:** So the reason why I make that
23 suggestion in every case that's going to take a while to try
24 is that after each jury trial that we have here, I go back
25 and do an exit interview with the jurors, and consistently

1 the thing they complain about are the depositions. It
2 doesn't have to be just a written deposition. They don't
3 even like video depositions.

4 So I make the suggestion because, quite frankly, I
5 don't think it's my place to order that you agree on a
6 summary, for example, but my suggestion is made based on my
7 experience and knowing that, one, for the jury it's a lot
8 better if they don't have to sit through an entire
9 deposition, but secondly, it really is beneficial to the
10 parties.

11 I can't tell you I've ever had a jury that said,
12 *Well, we ruled against Party B because they put so many of*
13 *those darn depositions in.* I don't think it happens like
14 that. I don't think jurors think that way. But it just
15 seems like it is the one thing, common denominator in all
16 trials, that they just hate depositions. So I realize, of
17 course, and I always explain that it's just the nature of
18 the business we're in. I understand that often times it's
19 required to use a deposition as opposed to bringing somebody
20 live, but understanding that, I try to look for ways to make
21 it more palatable for the jury.

22 So, frankly, my position is, if -- understanding
23 the way jurors are, if you can't arrive at some agreement
24 about, for example, summaries -- you know, and the summaries
25 can be like, well, in the direct examination the witness

1 said this, said that, and established this or did whatever.
2 In the cross-examination, this is what -- the essence of
3 what was said or something to that effect. I mean the whole
4 point being, there's no effort to make the witness look like
5 just an absolutely neutral witness called by the Court, and
6 this is what the witness happened to say. There's no reason
7 why you can't, in a summary, distinguish between direct
8 examination and cross-examination.

9 **MR. SAFER:** Your Honor, as a -- there's, I think, a
10 threshold question that we disagree about, the two
11 parties -- or the many parties disagree about, and that is
12 that we believe that if a witness is available then his or
13 her deposition cannot be played, except for impeachment.
14 And plaintiffs have a different view of that. They believe
15 that even for witnesses who are available they can play
16 their depositions.

17 **THE COURT:** Well, I think that's problematic. I
18 think under the rule -- go ahead.

19 **MR. CLIFFORD:** I didn't mean to interrupt, but
20 that's really not correct. I mean we -- that was the issue
21 that we -- the motion was about. Your Honor's ruled. We
22 accept that ruling. I will say there is authority for that
23 proposition. There is authority for the Court exercising
24 its discretion to allow that stuff.

25 **THE COURT:** I agree in some sort of -- maybe not as

1 strong as exceptional circumstances, but I agree that there
2 are reasons. For example, I have from time to time found,
3 when there was a dispute about this, that a doctor, even
4 though within a hundred miles of this courthouse, because
5 I'm made aware of what his schedule is like the week we're
6 in trial, I say, well, it looks like, as far as I'm
7 concerned, that's unavailable. So there are times, I agree,
8 that I -- but I don't think you just -- I don't think I can
9 do it just without good reason.

10 **MR. CLIFFORD:** Well, I accept that, and we have
11 accepted that.

12 Now, what counsel didn't add, we have been
13 discussing the possibility that with some specific witnesses
14 who are within the 100-mile rule of the courthouse, that
15 nevertheless there, too, by agreement, we would either use a
16 summary or deposition designations. But even with those
17 people, the problem has been that there's -- you know, it
18 would be very useful -- you just gave us on the summary an
19 idea about on direct the witness says X and on cross the
20 witness said Y.

21 But like with the deposition designations, I
22 believe their view is that a witness's deposition should
23 only be played once. So if the plaintiff goes first, we
24 show a witness's -- you know, 20 minutes of a witness's
25 deposition, they've loaded it up with another 20 or 40

1 minutes of their own time, and that's not fair. That's very
2 prejudicial to the plaintiffs.

3 If they want to show the same witness, a re-call if
4 you will in their case in chief and they want to use a
5 deposition to do it, that's their business. We don't
6 quarrel with that. But we don't think it's fair to the
7 plaintiffs to force us to play the material that's not
8 within the scope of the original examination, new topic
9 stuff, because that severely prejudices the plaintiff. And
10 that's been one of the problems we've been having in
11 knocking out these designations.

12 **THE COURT:** Yeah. Well, and that's why it's either
13 going to be by agreement. You're either going to do it all
14 or do nothing. If you can't come to agreement on it, as far
15 as I'm concerned, you just can't do it, and we just have to
16 use deposition designations and read whatever part of the
17 depositions you choose to put into evidence.

18 **MR. CLIFFORD:** Okay. And then -- but does that
19 allow the other party -- does that allow them to play in our
20 case designations they want as opposed to --

21 **THE COURT:** From that same deposition, their
22 cross-examination in other words?

23 **MR. CLIFFORD:** Yes, sir.

24 **THE COURT:** Yes. I don't know why it wouldn't.

25 **MR. CLIFFORD:** But what if it's on a different

1 subject, Judge?

2 **THE COURT:** Oh, in other words, they've taken the
3 deposition and they're covering different things?

4 **MR. CLIFFORD:** Yes.

5 **THE COURT:** So instead of calling them as their
6 witness in a separate deposition they set up, it's
7 entirely -- it's not within the scope of direct.

8 **MR. CLIFFORD:** Correct.

9 **THE COURT:** That's a different thing. If it's not
10 within the scope of direct then it should be read in the
11 other case, defendants' case, given your example.

12 **MR. CLIFFORD:** Yeah. Well, with that --

13 **THE COURT:** Do we understand -- I mean are we on
14 the same page? So if it clearly is something that's a
15 different subject and you're doing it then because, okay,
16 you've got this deponent there, no use making arrangements
17 in the future to bring him or her back, but it's not germane
18 to the direct, it's germane to another issue, then it should
19 be presented in your case. And then I take it there might
20 be follow-up questions from the plaintiff which could
21 then -- that are within the scope of that, and then can be
22 read or played during the defendants' case.

23 **MR. SAFER:** That's fine, Your Honor. The -- I
24 guess a related question is, if a party -- or a witness who
25 is within or not within the Court's jurisdiction but comes

1 to court and testifies, do they have to return or can they
2 be examined once? You know --

3 **THE COURT:** Typically we can do that by agreement,
4 and I certainly encourage it. I mean there's no reason to
5 make them come more than once, even though you're now asking
6 questions about a different subject. But when you're
7 talking about a live witness that's a much different thing
8 than talking about depositions.

9 **MR. SAFER:** I agree with that, Your Honor, and I
10 think for the jury's sake, for the witness's sake, it just
11 makes sense.

12 **THE COURT:** Right.

13 Now, on this issue of special master, when you ask
14 for a special master you're really -- under the rule both
15 sides have to agree to that special master. So, frankly, I
16 didn't know if we had enough time to get through the who are
17 we going to name as a special master procedure and then give
18 that person enough time to work with you. If you would all
19 like to do that, and you have a name of somebody, I'm happy
20 to do that. That may help, but --

21 **MR. CLIFFORD:** Can I propose something then?

22 **THE COURT:** Sure, of course.

23 **MR. CLIFFORD:** So certainly we -- it was -- on our
24 side we have the expectation that the parties would sit down
25 immediately after today, this week indeed -- that was going

1 to be my proposal to them -- to address, to debrief on all
2 topics that the Court brings up today, including and
3 especially this one. And so what I would propose is that we
4 do that, and if we're -- it's still irreconcilable on these
5 issues, that either party can, you know, write to the Court
6 and tell you where we're at and ask for such an appointment.

7 Does that make sense, or no?

8 **THE COURT:** Absolutely. And I didn't give it with
9 notice, but is there any problem with anybody on the defense
10 side that needs to be there that they can meet afterward and
11 continue to talk about these things?

12 **MR. SAFER:** Yes.

13 **THE COURT:** All right. Then consider that a
14 direction from the Court. And then if you need somebody and
15 you can propose somebody, that's fine. If you can't agree,
16 I can come up with a name and see if it's agreeable to you,
17 but --

18 **MR. CLIFFORD:** Then if I may revert to what
19 Mr. Safer was saying a moment ago, because I'm a little
20 confused by what his intent is. There's an issue here
21 associated with State Farm, former State Farm employees and
22 current that they intend to bring in live that we obviously
23 don't have access to or nor would it be proper for us to try
24 to have access to them, and so from our perspective, those
25 folks, if they have to be re-called, they need to be

1 re-called.

2 **THE COURT:** So rather than -- well, if they're --
3 are these people that you would be calling in your case?

4 **MR. BLONDER:** Your Honor, let me segregate the two.

5 There are at least two current State Farm employees
6 who we would contemplate calling in our case, and what has
7 been represented to us is that they will be made available
8 in our case on the condition that they only come once and
9 that State Farm can then examine them on any subjects they
10 want at the same time; to which we're saying, no, they're
11 not available to us if they're not available to come and
12 testify, and we shouldn't be required to put these people on
13 for the full scope of what State Farm or other defendants
14 may want to question them about in the plaintiffs' case.
15 And these are current State Farm employees.

16 Separate issue is, there are several former
17 State Farm employees who they've indicated they will bring
18 into their case who are also represented by the same
19 counsel, so it's Mr. Rust and a couple of others, and the
20 same issue is in play; whereas, we might choose to examine
21 them on certain limited topics in our case but aren't
22 interested in putting them on the witness stand necessarily
23 to open them up to a full examination by State Farm on other
24 topics.

25 So the question comes down to availability and what

1 it means to the extent they're not really available to us,
2 although they're being made available potentially
3 conditionally.

4 **MR. SAFER:** Your Honor, that's not entirely
5 accurate. We have said that we --

6 **THE COURT:** You're supposed to have a smile on your
7 face when you say that.

8 **MR. SAFER:** I totally agree with what Mr. Clifford
9 said. We try to agree on what we can, but I think we've
10 always -- at least they've always acted professionally with
11 us.

12 But we haven't said that we will make them
13 available only on the condition that they appear once.
14 We've said we'd make them available. Our position is they
15 should only appear once for the purpose of efficiency of the
16 trial, and that's what should happen. But they'll appear
17 however many times the Court requires.

18 **THE COURT:** So speaking of the plaintiffs' side,
19 what if they appear in your case initially and you ask them
20 whatever you want to ask them, and the defense side
21 cross-examines based on that direct examination, and then we
22 advise the jury that, for the sake of efficiency for the
23 jury, that we've made arrangements for the defense now to
24 ask them questions that they would be asking in their part
25 of the case, but we're trying to be efficient and effective,

1 and this is the defense's examination, a direct examination
2 to which the plaintiffs' side will be allowed to
3 cross-examine.

4 **MR. CLIFFORD:** We would ask you not do that.

5 **THE COURT:** Use your microphone.

6 **MR. CLIFFORD:** We would ask that you not do that.
7 We certainly -- given the discovery and what we know and
8 what these witnesses say -- I mean I'm not out to be
9 disparaging of anybody here, but when you ask a witness what
10 time is it and they tell you how to build Big Ben, that's a
11 problem. And so, you know, with the witnesses that we have
12 in mind, we know, we believe that that would work to the
13 severe prejudice of these plaintiffs. And since they are
14 controlled witnesses we're talking about here, we would ask
15 that they -- they want to call Witness X back, let them do
16 that, but the idea of having -- I'll use a name, Mr. Rust,
17 as an example. To have Mr. Rust -- we call him for 30
18 minutes on the topics we want to talk about, if that's the
19 case, and then they get him for an hour-and-a-half, that
20 would severely prejudice us and our ability to structure the
21 presentation of the proof to be efficient, to be timely.
22 Our goal, Judge, is to put this case in as quickly as we
23 can, as efficiently as we can without wasting a lot of time,
24 and we can't control that if we're not coordinating with
25 them on the timing of this.

1 **THE COURT:** Okay. So you said there's no problem
2 in bringing them back again if that's what they --

3 **MR. SAFER:** It's not "no problem," Judge. It's a
4 problem.

5 **THE COURT:** It's a problem you can deal with?

6 **MR. SAFER:** It's a problem that we will deal with
7 if the Court issues.

8 **THE COURT:** Frankly, my position is that -- I mean
9 in the past, almost without exception, that's been done by
10 agreement, but if we can't get agreement on it, we'll just
11 do it, as they say, by the book.

12 **MR. CLIFFORD:** We certainly are open to having an
13 open good faith conversation with them about what they have
14 in mind per witness and take them one at a time.

15 **THE COURT:** Well, I mean that's fine. To the
16 extent you can come to agreement on something, I'm good to
17 go.

18 **MR. CLIFFORD:** Judge, on a related but different
19 note, Chief Justice Karmeier will be a witness in this case,
20 and his counsel, Courtney Cox, is in court today, and
21 Mr. Cox has accepted a subpoena on behalf of the judge. And
22 the notion is that the Illinois Supreme Court is in session
23 for the two weeks beginning the week of September 10th, so
24 we are asking Justice Karmeier to be here on either Thursday
25 or Friday of the first week, depending upon how the case

1 goes. And in that instance we are not opposed to a full
2 examination of Justice Karmeier by both parties to the
3 extent so that he only has to testify once.

4 **THE COURT:** Mr. Safer, you agree with that?

5 **MR. SAFER:** Yes, I do, Your Honor.

6 **THE COURT:** Mr. Scott, you agree with that?

7 **MR. SCOTT:** Yes.

8 **THE COURT:** Mr. Chinsky?

9 **MR. CHINSKY:** Yes.

10 **THE COURT:** Mr. Cox, you're okay with that?

11 **MR. COX:** Yes, Your Honor.

12 **THE COURT:** All right. Very good.

13 **MR. VEITH:** Your Honor, this is Paul Veith on the
14 telephone. I represent Mr. Murnane, as well Andrew Chinsky,
15 my associate who is there.

16 I want to raise one issue related to what has just
17 been discussed. Mr. Murnane does intend to appear at trial
18 and testify in the plaintiffs' case. They've indicated they
19 do intend to call them in their case.

20 Last week Mr. Murnane's wife underwent surgery to
21 remove a brain tumor, and -- but I'm told so far, so good in
22 terms of her recovery, so this may be, at the end, a
23 non-issue. But if his personal circumstances dictate, we
24 may ask the Court to accommodate Mr. Murnane by allowing him
25 to be examined by the plaintiffs immediately following his

1 examination by -- I'm sorry, to be examined by the
2 defendants immediately following his examination by the
3 plaintiffs.

4 As I said, this is something we've raised with the
5 plaintiffs. They've indicated they would object to that.
6 And it's really premature for us to request the
7 accommodation at this point because, you know, we're several
8 weeks out still, and I'm hopeful that her recovery will go
9 fine, but I just wanted to raise this now so as not to
10 surprise you or anyone else if we end up requiring the
11 accommodation in his case.

12 **THE COURT:** Okay. So I appreciate you giving us a
13 heads up, and I'm a big believer in not borrowing trouble if
14 we don't have to, so let's see how it goes and perhaps
15 everything will work out. But I'm glad you told me about
16 it. Thanks.

17 **MR. SAFER:** Your Honor, so I understand exactly
18 what you've said with regard to the witnesses that
19 Mr. Blonder characterizes as State Farm controlled
20 witnesses, there are witnesses, Your Honor, that are coming
21 from Washington who are not State Farm persons. We believe
22 they are coming.

23 Mr. Clifford is correct that we were told that
24 Mr. Engstrom would come and now we're told that he will not,
25 but hopefully there are other witnesses who will come to

1 this court and testify. We would certainly hope that they
2 would be able to testify only once. And we have no
3 intention of having a witness that they call for, you know,
4 15 minutes, to examine them for two hours. That's not in
5 anybody's interest. But they should only testify once.

6 **THE COURT:** So, Mr. Clifford raised the possibility
7 that with regard to some of those kinds of issues, perhaps
8 your meeting and conferring can resolve it, so let's try
9 that first. To the extent that you're able to work it out,
10 that's fine. If you can't and want to tee it up with me
11 before the trial starts, I'm happy to take that up. We'll
12 do it on a telephone conference or something.

13 **MR. SAFER:** Thank you, Your Honor.

14 **THE COURT:** All right. Anything else on the issues
15 with respect to the depositions?

16 **MR. CLIFFORD:** No, Your Honor. Thank you.

17 **THE COURT:** All right. So I asked in my minute
18 order that you come today with your jury instructions. Were
19 you able to do that? If so, I can just give them to my law
20 clerk. By any chance, do you have them on --

21 **MR. SAFER:** We have a very little clean copy.

22 **THE COURT:** I was about to have a heart attack. I
23 thought I was going to retire a lot earlier than I thought.

24 **MR. SAFER:** As we read Your Honor's instructions,
25 they had the annotated with the case.

1 **THE COURT:** You're great. That's perfect.

2 **MR. SAFER:** And we have it on a little flash drive.

3 **MR. BLONDER:** We have a copy of proposed joint
4 instructions from both sides and plaintiffs' proposed
5 instructions as well.

6 **THE COURT:** Okay.

7 **MR. BLONDER:** We didn't bring the big binder with
8 all of the authority behind it. We'll be happy to provide
9 that.

10 **THE COURT:** I'd probably hurt my back lifting it.

11 **MR. BLONDER:** We can email you a set of all of
12 these.

13 **THE COURT:** Okay. Just email them to Katie. That
14 would be great.

15 Okay. So anything we need to talk about on jury
16 instructions? I just wanted to make sure that they were
17 here. Mr. Clifford, you're smiling. You must be going to
18 disagree with me on something.

19 **MR. CLIFFORD:** Well, I just -- last night we
20 received -- and, again, credit to -- patronizing to both
21 sides. Our colleague, Mr. Robert Nelson to my right here,
22 the gentleman in the middle, and Mr. Cancila and their teams
23 have been working very hard on these instructions.

24 Just to flag an issue, one of the things that I
25 noted in reading their instructions last evening is that

1 within several of the instructions there's reference to the
2 criminality, to illegality, and we don't think that concept
3 belongs anywhere stated in instructions in a civil RICO
4 case, and that's just something maybe when the Court and its
5 staff are going through that, just flag that one issue
6 because that's the one that sticks out like a sore thumb to
7 me.

8 **THE COURT:** All right. I'm glad you pointed out
9 which one was Nelson. This is the guy I don't like because
10 all those motions in limine he keeps filing. I hope you are
11 done with motions in limine.

12 **MR. CLIFFORD:** He's going back to California
13 tonight, Judge, if you let him.

14 **THE COURT:** I mean -- okay.

15 **MR. NELSON:** Your Honor, in my defense, I don't
16 take full credit for all the motions in limine.

17 **THE COURT:** You don't take full credit for all the
18 ideas at least, right? You're the smart guy in the group so
19 you get to write them up, but okay.

20 **MR. SAFER:** Your Honor, I have two questions with
21 regard to instructions. One, just mechanically, how do we
22 make -- I know Your Honor didn't want them filed. How do we
23 make our proposals a part of the record?

24 **THE COURT:** Well, they'll be in the record at the
25 close of the case. In other words, all of the proposed

1 instructions go in the record, and then there's a separate
2 delineation for which ones were given. We use a chart that
3 lists the instruction and then it will state on there
4 whether it was given, whether it was given after editing,
5 whether there's objections, all those kind of things. So we
6 try to make the record pretty clear on that.

7 **MR. SAFER:** Thank you.

8 The second question I had, Your Honor, is: We had
9 discussed with plaintiffs' counsel -- and we can discuss
10 further because I don't, frankly, remember where we came out
11 on this. But we talked about that in the case of this
12 complexity where the instructions are not going to change
13 depending on the evidence -- we know it's a RICO case --
14 seeing if we could have a jury instruction conference before
15 the trial and actually providing the jury with some
16 substantive instructions before the trial so that they would
17 have the finish line in mind while they heard the evidence.

18 **THE COURT:** We may be able to do that. A lot
19 depends on just logistics in terms of -- we're close to
20 getting done on a lot of these other pretrial motions but
21 we've got a lot more time we have to put in for those. For
22 us to have that instruction conference, I need Katie to
23 organize the instructions. So she's working on other things
24 having to do with these pretrial matters.

25 So to the extent that we've got time, I never have

1 a problem with resolving something when the jury's not
2 sitting around waiting to come back in the courtroom. So I
3 appreciate the suggestion, and let me, as they say, take
4 that under advisement.

5 **MR. SAFER:** Thank you, Your Honor.

6 **THE COURT:** Mr. Nelson?

7 **MR. NELSON:** I was actually going to propose
8 something similar. I just think we should be thinking about
9 some kind of mechanism, whether it's perhaps -- I hate to
10 say it, but maybe additional briefing relating to those
11 instructions or the opportunity to make argument. They are
12 very complicated and difficult, and they raise many, many
13 issues that will have an important impact on the trial. So
14 maybe a pre-instruction conference prior to trial may be the
15 way to go, but we'll await hearing back from you. But I
16 just wanted to second the idea that we think it makes sense
17 to try to do something like that.

18 **THE COURT:** So I've never asked Katie this: Is
19 that template something you could send them?

20 **LAW CLERK:** Yeah.

21 **THE COURT:** So I'll have Katie send you this chart
22 that we use, this sort of template. So if you fill it in in
23 advance, I mean that will help us out immensely. So you'll
24 see there's a place where you just list in order the
25 instructions. And what else does it have it on it, the

1 source? So it's the instruction and the source. And then
2 the other blanks we'll have to fill out at the instruction
3 conference. But if we get that done ahead of time that will
4 help us a lot and that will move us toward that end zone a
5 great deal, so that will help. So I'm certainly willing to
6 do it if we can figure out the time to do it.

7 **MR. NELSON:** All right. And if, for example, we
8 wanted to brief an issue, so -- and I'll talk specifically.

9 The defense of Noerr-Pennington, very important
10 issue in this case, at least as proposed by the defendants,
11 we don't -- quite frankly, the plaintiffs' position is that
12 Noerr-Pennington doesn't apply full stop. We haven't really
13 briefed that issue nor argued it. We haven't submitted
14 Noerr-Pennington instructions because -- we did, but we --
15 if we had our way we wouldn't have even submitted
16 instructions on that defense because we don't think it
17 applies. But we never really have had a chance to argue to
18 the Court as to why it doesn't apply, and we would like that
19 opportunity as just one example. There are several examples
20 that I could talk about.

21 **THE COURT:** So those kind of examples of the things
22 that we need to talk about -- and I agree that
23 Noerr-Pennington kind of came out of the blue, so I was
24 hoping we'd get at the point where we'd be briefing that.

25 So, why don't we figure out all those things that

1 need to be discussed in and around the instruction
2 conference and try to do it then. And if you can just give
3 us sort of a heads up about what kind of time we need to set
4 aside for these legal arguments and this discussion about
5 instructions -- not something I would criticize you on if
6 you misjudged, by the way, but at least give us some idea
7 what kind of time you think it will take. We'll be looking
8 for a spot on the calendar to do that.

9 **MR. NELSON:** Thank you, Your Honor.

10 **THE COURT:** All right, sure.

11 So, Alex, I think, is prepared to show you after
12 the hearing today -- is everybody familiar with the JERS
13 system, presenting the exhibits to the jurors
14 electronically? All right. So we use that here to the
15 great delight of the jurors. So she brought this in in a
16 wheelbarrow this morning with all these exhibits that you
17 folks have got pinpointed, so the first thing I thought of
18 when I saw that was, well, now, that's a big job in terms of
19 digitizing those exhibits.

20 So my first question is: Are your exhibits
21 digitized already?

22 **MR. CLIFFORD:** Yes, sir.

23 **THE COURT:** Okay. Defense side as well?

24 **MR. SAFER:** Yes, Your Honor.

25 **THE COURT:** Then we're way ahead of the game. At

1 some point in time then before the trial starts, with enough
2 time -- if I understand, Alex, you have to then load that
3 into the system, each one of those?

4 **COURTROOM DEPUTY:** Yes.

5 **THE COURT:** So she's going to need some time to
6 load those in, so the sooner you can email to her those
7 digitized exhibits, the better off we'll be in terms of
8 trying to get it ready to go before the trial starts.

9 **MR. CLIFFORD:** We'll try to -- in our
10 meet-and-confer, we'll put that as a topic and try to
11 coordinate something so that -- we'll call Alex jointly and
12 work something out with her.

13 **THE COURT:** All right. Now, the other thing that I
14 wanted to bring up is just a logistic thing as well. You've
15 filled up both tables. The jury would be sitting up there,
16 not you guys.

17 **MR. CLIFFORD:** We don't like that jury that's up
18 there.

19 **THE COURT:** And there obviously will be some room
20 out in the gallery, but -- and this is probably my job to
21 think of these things, but I really hadn't given it a
22 thought until today. Do you know how many people you're
23 going to want this close to the action and who cannot -- who
24 doesn't have to sit at counsel table, things like that?
25 Have you worked that out?

1 **MR. CLIFFORD:** On behalf of the plaintiff, Judge,
2 pretty sure we're going to be limited to three counsel at
3 this table and anyone else in support would be back benching
4 it.

5 **THE COURT:** All right. And so we'll have probably
6 more than three, but six or something?

7 **MR. SAFER:** Yes. I think we will have six, plus a
8 corporate representative, Your Honor.

9 **THE COURT:** All right. To the extent that you --

10 **MR. SAFER:** Well, yeah. So I should -- for that I
11 should say for State Farm we'll have four, plus a corporate
12 representative.

13 **MR. CHINSKY:** For Mr. Murnane, he will be here for
14 part of the trial, so we'll have two or possibly three if
15 there's space.

16 **THE COURT:** All right.

17 **MR. SCOTT:** Mr. Shepherd will be here. We haven't
18 figured out how much of the trial but he will be here part
19 of it certainly.

20 **THE COURT:** Let me -- as you can see, we don't have
21 a lot of room to make that table bigger by adding another
22 table to it. To the extent we can incorporate that first
23 bench there to accommodate either a corporate representative
24 or somebody that doesn't need a writing surface, that would
25 be helpful. So if we can count on that table and that first

1 bench for that purpose, hopefully that will work out.

2 Anybody think it will not work out?

3 **MR. SAFER:** We'll make it work.

4 **THE COURT:** As far as I'm concerned, if a lawyer
5 needs to get up and go to that bench to talk with a
6 corporate representative while we're proceeding with
7 examination, that's fine. I mean I don't care if people
8 move around and things like that. That doesn't bother me.
9 I have heard some jurors make comments about that so, you
10 know, apparently it's the kind of thing that can be
11 bothersome to them, so I would just suggest you keep it to
12 sort of a limit. But, frankly, I wouldn't restrict you
13 myself as far as a requirement from the bench.

14 **MR. SAFER:** Thank you.

15 **MR. SCOTT:** Your Honor, could we fit two more
16 chairs at the end of the table?

17 **THE COURT:** We can do that. I don't think they'd
18 be the same kind of chairs you're sitting in, I think that's
19 probably a limited set, but we could certainly put something
20 there, sure. In fact, if we've got something that, you
21 know, didn't have quite the mobility your chairs have, that
22 might help them be smaller and, therefore, fit at the end of
23 the table.

24 **MR. CLIFFORD:** Russell's got a couple of folding
25 chairs in the garage, Judge. He can bring those.

1 **MR. SAFER:** Your Honor, if I could go back to
2 exhibits for one moment.

3 There are a hundred-plus exhibits that show up on
4 both parties' lists. We thought that would be best to call
5 those joint exhibits, and then we know that they're, you
6 know, noncontroversial. Does Your Honor --

7 **THE COURT:** That doesn't cause me any heartburn.
8 If you can agree to that, I can --

9 **MR. CLIFFORD:** No heartburn here either, Judge.

10 **MR. SAFER:** Thank you.

11 **THE COURT:** Okay, great.

12 Anything else on the instructions or the seating
13 arrangements?

14 **MR. CLIFFORD:** Just mechanically, if I may, I have
15 one question. I know, of course, we have the lectern here
16 and most examinations don't offer that. Would the Court
17 permit a very small stylish lectern that's sometimes used at
18 the end of the box that if we brought it?

19 **THE COURT:** No. You can bring whatever you want.
20 And, you know, I don't mind if, when you're asking
21 questions, a lawyer walks around, with one exception:
22 Laura's got to hear everything.

23 **MR. CLIFFORD:** She's got to have the mic on.

24 **THE COURT:** We have lavalier mics, so you can wear
25 a mic and walk up and down the aisle if you want. You can

1 approach the bench without asking permission to approach the
2 bench. You might have seen that in my instructions on my
3 website. If you want to ask, because you think that looks
4 better for the jury, go ahead and ask me, but, you know, I'm
5 always going to say yes. So that's just one of those things
6 I think you can do. As a friend of mine used to say, "I
7 like live walking around trials." So to the extent that you
8 need to move around, just move around.

9 **MR. CLIFFORD:** Thank you, sir.

10 **THE COURT:** Sure. So any other questions?
11 Mr. Blonder?

12 **MR. BLONDER:** This is something we've discussed.
13 We have the juror questionnaire that the Court has used on
14 previous occasions and we're in the process of trying to
15 work collaboratively on a proposed questionnaire that we may
16 bring to the Court. When would the jurors fill that out?
17 Is that the kind of thing we would do Tuesday morning? Is
18 that the kind of thing you would bring in the jurors the
19 week before? We'd like some guidance in terms of that
20 process.

21 **THE COURT:** That's a great question. In fact, I
22 try to remember to talk about that myself and I just failed.

23 So the questionnaire that you've seen gets mailed
24 to the jurors with their notice telling them when they're on
25 duty so-to-speak, so it's filled out in advance. It's

1 filled out before they get to the building.

2 Now, as far as -- and I contemplated that a more
3 lengthy questionnaire would be requested by one or both --
4 rather, all the parties. I'm fine with that, you know,
5 again, to the extent that we can have some agreement that
6 works out best. We can mail it to those jurors that are
7 going to be called in advance of their getting here and try
8 to get it filled out in advance. If not, we may have to
9 take some time after they get here to fill it out. But to
10 the extent we can send it to them in advance, that would be
11 fine.

12 The only problem I may have is this: If -- I don't
13 know if there's another trial set to go that week, the week
14 we're set to start or not. If there is another case set to
15 start we may not be able to send that questionnaire to the
16 jurors. On the other hand, they may send it to all of them
17 anyway and just see what they get back. But I'm okay with a
18 questionnaire by all means because I think the
19 questionnaires help reduce the amount of voir dire time.

20 **MR. BLONDER:** So, Judge, whichever way, whether it
21 gets mailed out or done Tuesday --

22 **THE COURT:** Would you use the microphone.

23 **MR. BLONDER:** In terms of the timing, whether it
24 gets mailed out in advance and jurors fill it out, I assume
25 they send it back as opposed to bringing it back. How does

1 it work from a process standpoint of us getting copies of
2 whatever the questionnaires are?

3 **THE COURT:** Well, I can -- I've never asked that
4 question before, but -- do you know if they bring them in
5 when they come in? Does anybody know? Katie, you know?
6 Alex, you know?

7 **COURTROOM DEPUTY:** I'm not sure.

8 **THE COURT:** So we can check with the jury
9 administrator, and -- in fact, why don't you give her a call
10 and see if she can come up here. Katie can do it. She can
11 go call. We'll get the jury administrator up here and ask
12 the questions.

13 **MR. BLONDER:** On a related question, based on your
14 experience picking juries and the way you do it, what time
15 would you estimate on that Tuesday that we would likely have
16 a jury seated?

17 **THE COURT:** Well, in the normal case I have one
18 seated by 11:30 or thereabouts. I contemplate, of course,
19 that this -- given the more complex nature of this case, it
20 would take longer than that. So I can't begin to think how
21 much longer, but so just to give you -- you know, even in
22 some complex cases, not as complex as this, it takes us an
23 hour-and-a-half, two hours to get a jury selected. I
24 contemplate this would be longer but I don't know how much
25 longer. And maybe we should talk about this while at this

1 juncture we're waiting on the jury administrator.

2 The way I do the jury selection is -- and depending
3 upon how many jurors we're going to have to call in because
4 I have to contemplate how many cause challenges we're going
5 to have when we tell them we've got a case that's going to
6 last a month-and-a-half or something. So if it's not too
7 many, and it shouldn't be, then I will ask questions of the
8 jurors. I have a list of -- checklist of questions I ask
9 just typically, and then I'll go through the questionnaires
10 that we use is my typical operation. And then I turn it
11 over to each lawyer from each side to then ask questions
12 themselves. I don't put a lot of restrictions on those kind
13 of questions except we don't need to all be asking the same
14 question. If I think somebody's asking a question that's
15 already been answered I may say, *Well, that's already been*
16 *covered*, or something like that, and ask you to move on, but
17 beyond that, I don't really have a restriction with that.

18 I have had, on a couple of occasions, lawyers that
19 just went on and on and on and asked questions that didn't
20 make any sense even to me, so I may cut that short, but
21 generally there's no restrictions. It just doesn't take us
22 that long. But I think those questionnaires help in that
23 regard. So to the extent your questionnaire is crafted by a
24 guy as smart as Mr. Nelson we're in good shape, right?

25 **MR. CLIFFORD:** Judge, on a slightly different

1 subject, but right after that jury is impaneled, we all get
2 to make opening statements. Does the Court have a view on
3 how long that takes?

4 **THE COURT:** My only view is, as good lawyers you
5 ought to know how long you can keep the jury attentive, and
6 be governed accordingly. I don't restrict the time on
7 openings or closings for that matter. So, you know, we all
8 know what the studies say about how long a jury is attentive
9 and how long they're going to stay with you, so you just
10 have to let that be your guide.

11 **MR. CLIFFORD:** Okay. Thank you, sir.

12 **THE COURT:** The other thing I should say about
13 selecting the jury is, after the questioning, then I get the
14 jury out of the room and let all the lawyers look at their
15 notes and try to figure out who it is they want to exclude,
16 and then we -- while the jury's still out of the room but on
17 the record then we go through the cause challenges first and
18 then we go through the peremptory challenges.

19 And you're going to have to give some thought, I
20 think, to the people that are going to say that they just
21 can't sit for a five- or six-week trial because they don't
22 get paid or they're the only caretaker for an elderly mother
23 or father, or there'll be a number of reasons why it would
24 be a hardship on them. Some lawyers are hard line on
25 hardships and say, *Judge, unless they've -- unless they have*

1 *stated a valid reason to be excused, I don't think that's a*
2 *valid reason. I can't agree to their being excused for*
3 *hardship.*

4 So I think you've got to think long and hard and
5 look deep within yourselves to figure out just how hard line
6 you're going to be on that because those that are forced to
7 stay, despite the fact they've verbalized a really good
8 reason in their mind why they shouldn't be here, usually
9 don't turn out to be the best of jurors in terms of attitude
10 with the other jurors, in terms of paying attention,
11 listening, or just shutting it down, so --

12 **MR. CLIFFORD:** Understood. Judge, also, has the
13 Court given any thought like in a case like this to -- here
14 you have a class of approximately 4.7 million State Farm
15 policy holders, what the Court's thoughts are about
16 potential jurors who are either current State Farm policy
17 holders or and/or potential class members?

18 **THE COURT:** Well, I think that's -- you know, for
19 some reason, I hadn't thought about that. That's an
20 excellent point and I'll take that into account when I
21 decide how many to summons for the case. But my gut
22 reaction is that if they're a current State Farm policy
23 holder, that's problematic for both sides. Not necessarily
24 problematic; could be problematic for both sides. Obviously
25 you can explore with them, you know, do they think that this

1 is a defense -- a plaintiffs' verdict in this case would in
2 some way be harmful to them or take something away from
3 them? Or, on the other hand, have they had any bad claims
4 experience with State Farm? Things like that. They need
5 to -- unless we're going to agree in advance that anybody
6 that's a policy holder is automatically excluded, then
7 you're just going to have to do the regular Q and A to find
8 out if they have any preconceived notions that would prevent
9 them from being fair.

10 **MR. BLONDER:** Judge, the other concern though is,
11 for anyone who is a class member at that point in time, they
12 have an interest in the case potentially, so the issue is
13 ferreting that out in a way that doesn't --

14 **THE COURT:** Sure. You add another element. So I
15 guess we have to look at a period of time and find out if
16 they had a claim experience during that period of time
17 because that's what would make them a member of the class,
18 right?

19 **MR. CLIFFORD:** Correct.

20 **THE COURT:** And clearly a member of the class
21 couldn't sit.

22 **MR. CLIFFORD:** Right. We haven't addressed this
23 with counsel for State Farm yet. I'm just bringing it up
24 now.

25 **MR. SAFER:** It doesn't make sense to us,

1 Your Honor, to exclude all State Farm policy holders.
2 That's going to be a lot of people. But I think it's
3 exactly as Your Honor described.

4 **THE COURT:** I agree with you, but we obviously need
5 to be able to ferret out favorable opinions versus
6 unfavorable opinions and the like and whether or not that's
7 going to have an effect.

8 **MR. SAFER:** Totally agree, Your Honor.

9 **THE COURT:** So, Dede, would you come up for a
10 second and answer some questions for us. We're not going to
11 put you under oath or anything. Actually, come up to the
12 podium.

13 So I had some questions I couldn't -- we had some
14 questions I couldn't answer. I think we're going to come up
15 with more while you're standing here. But the
16 questionnaires that we send out, that goes with the notice,
17 right?

18 **MS. MAITLAND:** Yes.

19 **THE COURT:** When do we get that back?

20 **MS. MAITLAND:** We're starting to get them back now.

21 **THE COURT:** For September?

22 **MS. MAITLAND:** Yes.

23 **THE COURT:** So we get those back, including the
24 questionnaires, in advance to some degree?

25 **MS. MAITLAND:** Yes.

1 **THE COURT:** What would be the last day that we
2 would get those back?

3 **MS. MAITLAND:** I'm still getting August ones
4 arrived still today. We mail out about six weeks before the
5 date, so the August -- or the September ones have a mail
6 date on it -- I think they were stamped the 25th.

7 **THE COURT:** Is there another case set for trial
8 September the 4th?

9 **MS. MAITLAND:** I think you're the only one for the
10 4th.

11 **THE COURT:** So, for example, if -- we're talking
12 about each side coming up with an additional questionnaire.
13 If we wanted to get that to the jurors that are going to be
14 coming in on the 4th, could we do that in advance?

15 **MS. MAITLAND:** It's kind of tough because
16 obviously, you know, when we get them back, then we have to
17 mail them something else and then expect them to turn around
18 and get it back to us in a timely manner. If we're doing
19 that, we usually need like another, you know, four weeks to
20 get it from them; send it out and then get it back to us.

21 **THE COURT:** I'm not saying we would necessarily do
22 this, but what about -- and this is -- I'm thinking out loud
23 for the lawyers at this point. So if we sent questionnaires
24 to all those we think are going to be called that day --
25 because at some point you get their names out of a wheel,

1 right?

2 **MS. MAITLAND:** Right, yeah. Well, the Friday
3 before we would set the phones. You know, we would have
4 everybody set on who's coming in.

5 **THE COURT:** Really wouldn't know until Friday
6 before?

7 **MS. MAITLAND:** Correct.

8 **THE COURT:** So really the only practical way to get
9 a questionnaire filled out by everybody is have them do it
10 when they get here?

11 **MS. MAITLAND:** That's the easiest way to do it.
12 How long of a questionnaire is it going to be?

13 **THE COURT:** We don't know yet. They're going to
14 work on that. If you don't pull them until the Friday
15 before, that's really not even enough time to have them get
16 to the people really, is it?

17 **MS. MAITLAND:** Well, I mean right now they're
18 starting to come in, and so as they come in, when they get
19 entered they're either qualified or not qualified or they go
20 into, you know, questionable status, and Chief Judge Reagan
21 reviews them. So we kind of go back and forth with them.
22 As we get them now -- but then it's hard to keep track of
23 who you've gotten it -- who you've received the new
24 questionnaire back from. Does that make sense?

25 **THE COURT:** Yeah. What I would have said if --

1 let's say, for example, you pull the names two weeks before
2 the start date of the trial, we could send them -- a
3 questionnaire to all those people, understanding that we may
4 get back, or we'll only get back, rather, a certain
5 percentage of the whole. In other words, maybe 25 percent
6 of them do what they're asked.

7 **MS. MAITLAND:** Right.

8 **THE COURT:** Maybe half of them do what they're
9 asked. I don't know. Could be any percentage, we have no
10 clue. But at least that many people will have filled out
11 the questionnaire, and then when they get here on that
12 Tuesday morning, it's, *Okay. Those of you for whom we don't*
13 *have finished questionnaires, we need you to now fill those*
14 *out.*

15 **MS. MAITLAND:** Right. And then, you know, I guess
16 depending on the length of the additional questionnaire --
17 if it's pretty lengthy then those that have already filled
18 it out would have to kind of sit and wait.

19 **THE COURT:** I'll bet every once in a while -- and
20 I'll bet it's going to be fairly lengthy, but I don't know.
21 We're going to find that out probably in the next week or
22 so.

23 So what other questions does anybody else have for
24 Dede about the process?

25 **MR. SAFER:** So if, Your Honor, we have them come in

1 and fill out that questionnaire, so then they -- is there
2 any way to get them in the Friday before to have them --

3 **THE COURT:** You mean actually call the jurors in?

4 **MS. MAITLAND:** No, because their summon date starts
5 September 4th, so that's their first date that they're on
6 call to come into the courthouse, so -- because we've
7 already sent out the summons.

8 **THE COURT:** I think it would even be -- I'm not
9 sure how we could explain to the Administrative Office that
10 we summoned these people in a week before the trial and so
11 we need to pay them for that day. I think that's going to
12 be a problem just logistically in and of itself.

13 **MS. MAITLAND:** I mean bringing them -- sending them
14 the additional questionnaire and then -- you might just want
15 to have them bring it with them the day they come. Now, you
16 know, we also --

17 **THE COURT:** We could also do that.

18 **MS. MAITLAND:** They don't always fill that out and
19 send that in either, so --

20 **THE COURT:** Yeah. So even that one-pager, they
21 don't fill it out, so --

22 **MS. MAITLAND:** Then there's those that do it online
23 that are supposed to bring that with them, so we don't even
24 have the supplemental one on everyone.

25 **THE COURT:** Got you. So one of the things these

1 lawyers are trying to figure out is how soon they could get
2 a hold of this information so they can start dissecting it
3 and figuring out which of these jurors are good, bad, or
4 indifferent. So can you envision a way to do that to where
5 they get it back in advance of coming in that Tuesday,
6 September 4th, for the trial?

7 **MS. MAITLAND:** Before the 4th?

8 **THE COURT:** Yes.

9 **MS. MAITLAND:** You know, people are still --
10 because they're still filling it out so late. It says ten
11 days, but like I said, I got five of them yet today that
12 were on call starting yesterday, so you know, they're coming
13 in constantly. I do have a lot on my desk now that haven't
14 been processed so I don't know if they're qualified or what
15 status they are. You know, trying to keep track of who
16 we've sent additional questionnaires to and who we've
17 received those back from, it's kind of a nightmare, if that
18 makes sense.

19 **THE COURT:** So any other questions from anybody
20 else for Dede that would explore these issues?
21 Mr. Clifford?

22 **MR. CLIFFORD:** Thank you, Judge. Just anecdotally
23 I have had a couple of experiences with asking -- sending
24 them out, asking them to bring them back. The percentage
25 has been pretty high. And then for those who say, I'm

1 *sorry, I left it at home, you have a clipboard and a new one*
2 *right there and they fill it out and it goes pretty quickly.*

3 **THE COURT:** *See, where my mind is right now is, I*
4 *think it's doable to get them the questionnaires in advance*
5 *to bring back. But to Mr. Safer's question of any way to*
6 *get them back before we start that morning to give us all a*
7 *chance to go through them, that, I think, is problematic*
8 *enough that I don't see us being able to do that. I can see*
9 *us doing what you just said, Mr. Clifford; that is, sending*
10 *them the questionnaires and then just telling them fill them*
11 *out and bring them back completed on that Tuesday morning.*

12 **MR. CLIFFORD:** *With your permission, we could get*
13 *one of those trucks and put it in the parking lot and they*
14 *could be out there copying this for all of us and split the*
15 *cost.*

16 **THE COURT:** *Whatever you want to do.*

17 **MS. MAITLAND:** *How many jurors are you planning to*
18 *bring?*

19 **THE COURT:** *I've got to figure that out. I know*
20 *how many peremptory challenges now. I just have to figure*
21 *out in my own mind how many cause challenges we can*
22 *anticipate given the length of the trial and the issues*
23 *involved, so I don't know. It will be -- for a civil case,*
24 *it will be a fairly high number, but I don't know yet.*

25 **MS. MAITLAND:** *One hundred, 200?*

1 **THE COURT:** I don't think it will be anything like
2 that, but -- I don't think it will be even at a hundred. I
3 think it will be something less than that.

4 Anybody else have any questions for Dede?

5 **(No response)**

6 **THE COURT:** Dede, thank you very much.

7 **MS. MAITLAND:** You're welcome.

8 **THE COURT:** Appreciate your help.

9 Okay. So other issues we should talk about,
10 questions, etc.?

11 **MR. SAFER:** Your Honor, so with regard -- does
12 Your Honor have any procedure with regard to time sharing
13 because as the party that goes second in a case that we want
14 to finish in five weeks, if we're starting in the fifth
15 week, that will be a problem.

16 **THE COURT:** You're a pro. I mean you can pull it
17 off, right? So, no, I don't. I have from time to time set
18 cases where I had an overall amount of time available for
19 each side, and then those cases went away. I don't know
20 whether it's because I sent them that or not, but I've
21 just -- they just haven't gone to trial.

22 I mean we can think about that but it would be
23 pretty hard, I think, to try to decide how much time for
24 each side, period. If anybody has any -- wants to forward
25 any ideas on that, I'm happy to do it.

1 Any other questions?

2 **MR. SAFER:** Your Honor, we had spoken to
3 plaintiffs' counsel, and, again, my memory fails me, but I
4 think we agreed to 48 hours working day notice for
5 witnesses.

6 **THE COURT:** For the witnesses coming up?

7 **MR. BLONDER:** We talked about either two days or do
8 it the end of the week for the following week, something
9 akin to that.

10 **MR. SAFER:** Which works for us. We understand if
11 you -- if we do it at the end of the week for the following
12 week, there's some movement. We all understand that.

13 **THE COURT:** Right.

14 **MR. SAFER:** But we need to know 48 hours of working
15 days before.

16 **MR. CLIFFORD:** Maybe he gets more time if he's
17 nicer on the summaries and dep designations. We'll see.

18 **THE COURT:** Sounds like a bargain. Any other
19 questions?

20 **MR. SAFER:** Your Honor, we have the deposition
21 designations as required by the Court color-coded that we'll
22 add to the pile.

23 **THE COURT:** Okay.

24 **MR. BLONDER:** Judge, just so we're clear on that,
25 the issue there is, they've done them. It's kind of

1 everything that any party has designated is here, and with
2 the issue of -- what I'll call the scope issues kind of,
3 which portions are actually used or designated in a
4 particular case will be likely different than what you're
5 being given.

6 **THE COURT:** Yeah, I got you. Yeah.

7 Anything else? And my buddy, Jim Holderman,
8 couldn't do anything to resolve this thing for heaven's
9 sakes? I give him one assignment.

10 **MR. CLIFFORD:** He's into this retirement thing now,
11 so he just couldn't cut it. Lake Geneva beckoned his
12 summer.

13 **THE COURT:** I can't wait 'til I talk to him and
14 tell him that. I won't tell him who said it.

15 **MR. CLIFFORD:** You can tell him now because he's
16 not --

17 **THE COURT:** He's not on the bench. He doesn't
18 care.

19 Okay. Well, if there's nothing else, we'll go
20 ahead and adjourn and let you get to work on what you can
21 come to agreement on.

22 Somebody asked about the struck method. The struck
23 method is -- and I've actually never had to do this. I've
24 always reserved it just in case we're sort of out of jurors
25 who survive the cause challenges and we don't really have

1 enough. So the struck method would just be, you'd give me a
2 piece of paper with three names on it and those are your
3 strikes, and defense side gives me a piece of paper with
4 three names on it and that's their strike. The effort
5 being, or the -- not the effort; the fantasy being that
6 there would be a common name on -- one or two common names
7 on both lists. So it's just something -- according to the
8 case law, I have to give you notice if I'm going to use the
9 struck method, so I always say I reserve the opportunity to
10 use the struck method if necessary.

11 In my 20 years here and seven years in Madison
12 County I didn't have one -- I haven't had one opportunity to
13 use it. I'm still looking for that, one by the way.

14 Anything else? Alex, anything else? I should have
15 asked you.

16 **COURTROOM DEPUTY:** No.

17 **THE COURT:** Katie, anything else I need to talk
18 about?

19 **LAW CLERK:** No.

20 **THE COURT:** All right. Thanks.

21 *(Proceedings adjourned at 2:43 p.m.)*

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REPORTER'S CERTIFICATE

I, Laura A. Esposito, RPR, CRR, CRC, Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported in shorthand the proceedings contained in the foregoing 53 pages, and that the same is a full, true, correct, and complete transcript from the record of proceedings in the above-entitled matter.

Dated this 16th day of August, 2018.

LAURA A. ESPOSITO, RPR, CRR, CRC