

NO: CV-06-5001159S : SUPERIOR COURT
SYLVESTER TRAYLOR : JUDICIAL DISTRICT
OF NEW LONDON
VS : AT NEW LONDON, CONNECTICUT
BASSAM AWWA, M.D. : JUNE 15, 2010

SCHEDULING CONFERENCE

BEFORE THE HONORABLE THOMAS F. PARKER, J.T.R.

A P P E A R A N C E S :

Representing the Plaintiff:

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1 THE COURT: We're here on the matter of
2 Sylvester Traylor versus Bassam Awwa, et al. The
3 number of the case is 06-5001159.

4 Several -- Well, a week or ten days ago, maybe
5 more, I issued an order asking everybody to come in
6 for a scheduling conference.

7 This case has passed its four-year mark and I
8 don't know how far along we are towards getting a
9 trial, which I assume is the goal of everyone here.

10 Would counsel please identify themselves for
11 the record.

12 MR. HALL: James Hall and Attorney Bonde
13 Johnson for the plaintiff.

14 THE COURT: And who?

15 MR. HALL: Bonde Johnson.

16 THE COURT: Okay.

17 MR. HALL: B-o-n-d-e.

18 MR. LEONE: Don Leone representing the
19 defendant, Dr. Bassam Awwa and his professional
20 corporation.

21 THE COURT: I've kind of looked at this file and
22 it's rather daunting.

23 I want to first straighten out the pleadings or
24 find out where we are on the pleadings.

25 As I read the file, an amended complaint, a
26 request to amend -- Wait a minute, let me get the
27 exact title.

1 On June 4th, 2009, plaintiff, at least
2 according to the case detail, filed a request to
3 amend complaint and an amendment.

4 As I understand again from the case file, case
5 detail, no objection was filed to that request to
6 amend within 15 days. And so, therefore, I gather
7 that complaint that's dated June 4th, 2009, is the
8 standing complaint.

9 Does everybody agree to that?

10 MR. LEONE: Yes, Your Honor.

11 THE COURT: Okay. Mr. Johnson.

12 MR. JOHNSON: Yes, Judge. As far as we
13 understand from the pleadings that we have, that is
14 our understanding.

15 THE COURT: I then see that there was a request
16 to revise filed by the defendants. There was an
17 objection to the request to revise, but I don't see
18 that that was ever resolved.

19 MR. LEONE: That's my understanding as well,
20 Your Honor.

21 MR. JOHNSON: And that would have been around
22 December if the -- okay. December 10th, 2009 is the,
23 I'll call it the next amended complaint that I think
24 --

25 THE COURT: What?

26 MR. JOHNSON: This may be an error, but there
27 was an -- I'm just trying to figure out where the

1 second request because obviously there was another
2 complaint --

3 THE COURT: Oh, well, I didn't know that.
4 Where do you see that?

5 MR. JOHNSON: Well, it's paperwork that I have,
6 and this was nothing that was filed, but there is
7 still the pending request, and I didn't know what the
8 date of that was, the second --

9 THE COURT: Well, wait a minute. The June 4th,
10 2009, request to amend, --

11 MR. JOHNSON: Yes.

12 THE COURT: -- and the amendment attached and
13 upon failure of the defendants to object for --
14 within 15 days, it became the standing complaint.

15 MR. JOHNSON: Yes, I agree.

16 THE COURT: And further, there was a request to
17 revise, which addressed to that complaint, to which
18 there was an objection, and I don't believe the
19 objections were ever decided by the Court.

20 Is that correct?

21 MR. LEONE: Again, Your Honor, that's my
22 understanding from the defense table.

23 THE COURT: Is the plaintiff --

24 MR. JOHNSON: That's what I understand. I'm
25 sorry.

26 THE COURT: So the Court has to decide that.

27 MR. LEONE: Yes, Your Honor.

1 THE COURT: Well, there's a request to -- and I
2 want to know where we are. There's a request to
3 revise and there's objections to it, and then the
4 third thing is -- Did you respond to the objections
5 or do you have to?

6 MR. LEONE: I don't believe I have to, Your
7 Honor, but I'd be happy to do so.

8 THE COURT: No, no. Your request to revise and
9 the objections are in the file, and so that has to be
10 decided.

11 MR. LEONE: Yes. If Your Honor please, if --
12 one of the things that has been a problem is I don't
13 have the objections. There has been a problem in the
14 file where defendant not being served with motions
15 that are filed with the Court, and I've addressed
16 that in my motions; 334.5 is one of them.

17 THE COURT: Yes.

18 MR. LEONE: But in any -- In any event, that's
19 been the problem.

20 THE COURT: All right.

21 (Court's cell phone rings.)

22 THE COURT: Oh, my god. My bookie.

23 MR. JOHNSON: Attorney Leone, we'll get you --
24 We certainly from this point forward make sure that
25 you get anything that's filed with the Court.

26 MR. LEONE: I understand. The only reason I
27 mention it is because Your Honor asked me if I was

1 going to file a response to the objections.

2 THE COURT: Well, I don't know that you have to.

3 MR. LEONE: But I don't even have the objections
4 to indicate that I am prepared to file a response.

5 THE COURT: Would you go, please, Steven, bring
6 in the file.

7 You won't be able to bring it this way, though.

8 Roll the cart in.

9 What's the number of the objections?

10 THE CLERK: 334.5.

11 MR. LEONE: Your Honor, I don't know if it is,
12 but 329, Motion 329 towards the top of the page, I
13 don't know that it is, but it's filed.

14 THE COURT: Get 329, please.

15 MR. JOHNSON: It looks correct. Plaintiff's
16 filing and it's the correct date.

17 (Pause.)

18 THE COURT: I haven't read it.

19 MR. LEONE: We didn't receive that, Your Honor.

20 THE COURT: All right. We'll get it for you.

21 MR. LEONE: Thank you.

22 THE COURT: Can I have that back, please.

23 MR. LEONE: Oh, I'm sorry. I didn't know what
24 you --

25 THE COURT: I don't know what I'm doing either.

26 Mr. Hall, do you --

27 MR. JOHNSON: Yes, Your Honor.

1 THE COURT: Do you dispute Mr. Leone's assertion
2 that he never got a copy of this?

3 MR. JOHNSON: Your Honor, I'm not at this point
4 in a position to dispute it or to confirm it.

5 We entered our appearance very recently, and we
6 are -- we are making the --

7 THE COURT: I know when you did. You did two
8 months ago.

9 MR. JOHNSON: Your Honor, it's been -- It's a
10 very thick file, and I've spoken with Attorney Leone
11 in an attempt to coordinate for a scheduling
12 conference, but I do not have a response to that
13 particular issue.

14 I'd be happy to get Attorney Leone a copy if
15 that's -- if he needs another copy.

16 THE COURT: I'll get him a copy before he leaves
17 here today.

18 MR. JOHNSON: Okay.

19 THE COURT: Look, everything doesn't have to be
20 the end of the world dispute. He says he never got
21 it. He's an attorney.

22 You say he got it -- Well, you don't say he got
23 it. I read this thing, which is the plaintiff's
24 objection --

25 MR. JOHNSON: Yes, Your Honor.

26 THE COURT: -- and it's centered on -- at least
27 the first two paragraphs I read are centered on

1 whether or not he got them or not because this
2 objection says, I think implies or says, the
3 defendant waived the chance to file a request to
4 revise because of -- it was untimely filed.

5 We've got to have a hearing on that? We'll have
6 the hearing tomorrow morning. No. Thursday morning.

7 I mean, we've got to get this case moving.

8 MR. JOHNSON: Absolutely, Judge.

9 THE COURT: It's no further along than it was in
10 July of 2006.

11 MR. JOHNSON: Our intent today, just so the
12 Court's aware, we actually have, and we didn't make a
13 bunch of copies of it, but we have -- I know there
14 probably were scheduling orders that were in place
15 from the past, and a lot of things probably have just
16 sort of gotten sidetracked with various motions, but
17 just so the Court's aware and defense counsel's
18 aware, we fully intend to go ahead and resolve all of
19 these type of issues and then have a scheduling order
20 that, you know, is accepted by the defense and
21 approved the Court so that --

22 THE COURT: Well, let me ask you. Let's go back
23 to the complaint of July -- June 4, 2009. Are you
24 happy with that? Satisfied with it?

25 MR. JOHNSON: It is what it is, Judge, at this
26 point.

27 THE COURT: When are you going to amend it?

1 MR. JOHNSON: We would then discuss that with
2 Attorney Leone to see that --

3 THE COURT: Let's say he stonewalls you. Are
4 you going to amend it or move to amend it?

5 MR. JOHNSON: At this point, probably not. I
6 think -- Unless there's some other -- The technical
7 deficiencies -- Well, let me leave that open, Judge.

8 THE COURT: Well, --

9 MR. JOHNSON: We're prepared to stick with
10 whatever's -- what exists and goes forward, but with
11 the graciousness of the Court, obviously, we will
12 make sure that everything is squeaky clean.

13 What we don't want to do is have the complaint
14 bring up other issues that are going to turn around
15 and slow the process of the case down. I guess is
16 where I'm trying to go with this.

17 Anything that will make things move along more
18 quickly so that there are less issues between the
19 parties is really the focus of where we're going.

20 THE COURT: Who's got the objection?

21 MR. HALL: The objection is right here, Your
22 Honor.

23 THE COURT: Okay. The sole objection here, as I
24 read it, is timetable. That request to revise was
25 improperly filed, out of time. Nothing to the
26 substance of the complaint or the substance of the
27 motion to revise.

1 It all goes on -- Doesn't that all got to do
2 with timing, the objection?

3 MR. JOHNSON: It appears that's correct, Judge.

4 MR. HALL: That's what the written -- That is
5 what the written objection is, Your Honor.

6 THE COURT: Is there anything else?

7 So you're not -- That objection, which as far as
8 I know, and you correct me, is the sole objection
9 that is in the file. It's strictly directed to the
10 timeliness of the filing of the request to revise and
11 does not dispute or contest the substance of the
12 request to revise, requests to revise.

13 MR. JOHNSON: You are correct.

14 MR. HALL: Yes.

15 MR. JOHNSON: That's how we --

16 THE COURT: So all's I have to do is determine
17 whether or not Attorney Leone's office got a copy of
18 the Amended Complaint? That's a fact issue?

19 When will you be ready to have a hearing on
20 that?

21 MR. JOHNSON: At the convenience of the Court?

22 THE COURT: Huh?

23 MR. JOHNSON: At the convenience of the Court,
24 Judge.

25 MR. HALL: We need a few days, Your Honor.

26 THE COURT: I'm telling you, I'm thinking of
27 short timetables here. We've got four years to make

1 up.

2 MR. JOHNSON: I understand, Judge.

3 THE COURT: When will you be ready, Mr. Leone?

4 MR. LEONE: Your Honor, if you tell me Thursday,
5 obviously, I'll be ready Thursday. If you tell me
6 tomorrow, I'll be --

7 THE COURT: Can you guys be -- I'm not going to
8 be here tomorrow.

9 MR. LEONE: Okay.

10 THE COURT: Thursday.

11 MR. JOHNSON: One of us will be available,
12 Judge, yes. We'll make that available.

13 THE COURT: What time?

14 MR. HALL: I'm usually -- 10:00 or 2:00,
15 depending on the judge of the day. So, but it's
16 really --

17 THE COURT: I have a hearing at 2:00. So you
18 could come on that day. Come at 2:00 and wait until
19 I finish that hearing.

20 MR. HALL: Your Honor, I have --

21 THE COURT: Or you can come at 10:00 o'clock.

22 MR. HALL: Your Honor, could you give me one
23 minute. I'm just taking a look at Thursday's
24 scheduling.

25 If 2:00 o'clock works for Attorney Leone, that's
26 fine.

27 MR. LEONE: I'll clear the day.

1 THE COURT: All right. What's that? What's the
2 name of that pleading?

3 MR. HALL: Plaintiff's objection to defendant's
4 request to revise.

5 THE COURT: 329. Steve, before Mr. Leone
6 leaves, can you make a copy of 329. Excuse me.
7 Okay.

8 (Pause.)

9 MR. HALL: Your Honor, we had prepared a
10 proposed amended scheduling order, which we think
11 moves things quickly. We're happy to present that as
12 options that could be discussed if it's helpful.

13 THE COURT: All right. I have another topic I
14 want to bring up now. I've got to come back to the
15 pleadings, but I guess it doesn't make sense until I
16 decide 329.

17 MR. HALL: Right.

18 THE COURT: How many witnesses do you expect to
19 have?

20 MR. JOHNSON: Approximately 15.

21 THE COURT: Fifteen?

22 MR. JOHNSON: Approximately. I mean, from what
23 I can judge at this point.

24 THE COURT: How many do you expect to have, and
25 I know --

26 MR. LEONE: Obviously, it would depend on who
27 the 15 are.

1 THE COURT: Well, I know that.

2 MR. LEONE: But in terms of my witnesses, I
3 would expect less than -- I'll just say ten or less,
4 Your Honor.

5 THE COURT: All right. A week from today, I
6 want each of you, plaintiff, compile a list of
7 probable witnesses with their names and addresses;
8 defendant to do likewise by a week from today.

9 MR. JOHNSON: Just a simple list, Judge, or
10 would you like it in the form of a trial management
11 order?

12 THE COURT: Just list probable witnesses or
13 something like that.

14 MR. JOHNSON: Okay. A list of probable
15 witnesses.

16 MR. LEONE: If Your Honor please, can I address
17 that because expert witnesses have not been
18 disclosed. So is that exclusive of expert witnesses?

19 We haven't even completed the discovery depositions,
20 so I don't --

21 THE COURT: Okay, non expert.

22 Aside from a list of probable witnesses, which
23 will not include the experts, how many experts do you
24 expect to use? You know the complaint.

25 MR. JOHNSON: Approximately four, that's what we
26 anticipate at this time, maybe five. I'm going
27 through my head right now.

1 THE COURT: Okay. Of your probable -- Of this
2 list of 15 you might have, have any of them been
3 deposed?

4 MR. JOHNSON: Yes. Prior to us being on the
5 case, I believe approximately six or so of them have
6 been deposed. Sort of pulling that number out of my
7 head, but that's about what I recall.

8 THE COURT: This is a tough question for you,
9 Mr. Leone. You've heard them say 15.

10 MR. LEONE: Uh-huh.

11 THE COURT: And your knowledge of the case, do
12 you think you know who these 15 people probably are?

13 MR. LEONE: I know who the six are, that's all I
14 can tell you. No, I probably do not, Your Honor.

15 THE COURT: Okay.

16 And so a week from today, you should be
17 receiving a list of the probable 15, and I want you
18 very shortly thereafter to be able to tell me how
19 many of them you expect to depose, or do you know
20 right now you're going to depose everyone?

21 MR. LEONE: If they're attempting -- If they're
22 going to call them as witnesses at trial, Your Honor,
23 I would likely depose them.

24 THE COURT: Okay. Now it's your turn. You say
25 ten or less.

26 MR. LEONE: That was inclusive of --

27 THE COURT: Experts?

1 MR. LEONE: -- the experts, Your Honor.

2 THE COURT: Well, how many experts have you at
3 this point?

4 MR. LEONE: If they're going to name five, I
5 don't know who those might be, but I was only
6 anticipating three experts on my behalf to address
7 the issues that I felt were presented in the case.
8 But I would reserve depending on what issues they're
9 going to raise.

10 THE COURT: Oh, I understand.

11 MR. LEONE: So that would be seven, Your Honor,
12 fact witnesses. Non-expert witnesses.

13 THE COURT: Can you anticipate who his ten or
14 less probable non-expert witnesses are?

15 MR. JOHNSON: If they also include or at least
16 thinking of the six that were deposed, yes, I think
17 we're --

18 THE COURT: Well, -- all right.

19 Have you finished with interrogatories,
20 plaintiff?

21 MR. JOHNSON: I believe we have, Judge. I think
22 that those have been -- Those have been -- And
23 there's been a number of objections back and forth
24 that have been resolved over the last four or five,
25 six years. So I believe that that's -- We're going
26 to get -- We got what we're going to get I think at
27 this point.

1 THE COURT: Have you -- How about requests for
2 production?

3 MR. JOHNSON: That was an issue that at this
4 point we will -- They have been asked. The requests
5 have been done, but again, that was subject to a
6 considerable amount of litigation or today's date.
7 Maybe that's an understatement, but I think --

8 THE COURT: It is.

9 MR. JOHNSON: -- a lot of those issues Attorney
10 Leone and the plaintiff's side would be able to flesh
11 out very shortly and determine what is and what
12 isn't, what can be and what can't be, again, with a
13 view toward moving this along rather than being mired
14 down in litigation over those issues, so that -- The
15 questions and the answers --

16 The questions have all been posed, the requests
17 have all been posed. There are, you know, a few
18 things that have been disputed, but we're ready to go
19 ahead and handle and move on from this point -- at
20 this point.

21 THE COURT: On the hearing on the Thursday
22 afternoon, how many witnesses do you expect to call?

23 MR. JOHNSON: No more than two or three, Judge.
24 And I'm even stretching it at that, but I'm just
25 giving myself enough rope.

26 THE COURT: How about you, Mr. --

27 MR. LEONE: I would think two, if that's

1 necessary. I have to go back to the office and take
2 a look.

3 MR. JOHNSON: We're in the same posture.

4 THE COURT: Excuse me?

5 MR. JOHNSON: I say we're in the same position.

6 THE COURT: Well, okay. I don't know what the
7 nature of the requests to revise were.

8 Does that pose a great problem to you, assuming
9 -- and of course, it all depends upon which way the
10 Court rules after Thursday's hearing.

11 MR. JOHNSON: That's another thing that we will
12 be in the process of discussing with Attorney Leone
13 to again to try to work a lot of that out without
14 having to take the Court's time.

15 THE COURT: Well, it isn't going to take any
16 time.

17 MR. JOHNSON: Well, --

18 THE COURT: The requests to revise on the
19 merits, --

20 MR. JOHNSON: I understand.

21 THE COURT: -- there's no dispute because
22 nobody's objected to them on the merits. The only
23 issue is whether --

24 MR. JOHNSON: Timeliness.

25 THE COURT: -- there was proper service or
26 received service. I'm not sure which it is.

27 So, essentially, interrogatories and requests

1 for production aren't going to be a time consumer?

2 MR. JOHNSON: They have been up until this
3 point, as you are aware. At this point forward, --

4 THE COURT: I'm well aware.

5 MR. JOHNSON: -- I think we're -- our whole idea
6 is to streamline this, so I would say, answer in the
7 affirmative that they should not be a time consumer
8 at this point.

9 THE COURT: Well, I'm thinking of on things like
10 requests for production, interrogatories. The Rule
11 Book says 30 days to respond. I'm thinking of
12 cutting that down considerably.

13 Do you anticipate any dispositive motions?

14 MR. JOHNSON: I would have to defer to defense
15 at this point.

16 THE COURT: Well, is the plaintiff going to make
17 any?

18 MR. JOHNSON: I don't believe we have
19 dispositive motions at this point, as I sit here.

20 THE COURT: I don't know how you could, but --

21 MR. JOHNSON: Anticipate. But I'm stretching my
22 brain to think, and I don't -- I cannot --

23 THE COURT: How about you, Mr. Leone?

24 MR. LEONE: Yes, Your Honor. I anticipate
25 filing at some point a dispositive motion.

26 I also have to raise another issue with respect
27 to that question.

1 I have an outstanding motion to compel that is
2 unresolved. The facts -- I'm seeking facts which
3 would serve as the basis for such a dispositive
4 motion.

5 THE COURT: What is the motion?

6 MR. LEONE: The motion is Number 206, Your
7 Honor. It's a motion to compel. And I may be able to
8 --

9 MR. JOHNSON: Don, what's the number?

10 MR. LEONE: 206.

11 MR. JOHNSON: 206.

12 MR. LEONE: Dated February 6th, 2008.

13 THE COURT: 2/6/08.

14 MR. LEONE: The date on the motion is 2/6/08,
15 Your Honor.

16 THE CLERK: What's the motion number?

17 THE COURT: 206.

18 MR. LEONE: 206.

19 THE COURT: Motion to compel, I have it denied.

20 MR. JOHNSON: It was denied by Abrams.

21 THE COURT: It had been denied by Judge Abrams.

22 MR. LEONE: It was but for failing to file an
23 affidavit of, good faith affidavit.

24 THE COURT: Having a meeting to do something?

25 MR. LEONE: Correct, correct.

26 THE COURT: Have you had that meeting?

27 MR. LEONE: I have not, Your Honor. I intend to

1 have it with counsel. It may be issues that we can
2 resolve. There's only two.

3 THE COURT: You're going to have plenty of time
4 sitting around while -- on Thursday.

5 MR. HALL: We might be able to do it before
6 Thursday, Your Honor. We'll make an attempt. All
7 right?

8 THE COURT: Do you have Judge Abrams' ruling?

9 MR. HALL: It says Judge Abrams on the court
10 record.

11 MR. LEONE: Is it the same here?

12 MR. HALL: 206. The court file does not have
13 the denial of Number 206?

14 THE COURT: It does. Let me -- Here's the -- I
15 don't know whose handwriting. I'll show this to you.
16 But the order is hereby granted/denied, and the word
17 denied is circled, and the word granted is crossed
18 out.

19 And immediately below it, it says see P.B.
20 Section 13-9(b) and 13-10(c). And I believe that's
21 the section that are the sections which require
22 before it gets on the short calendar, that one of the
23 attorneys have filed -- has to file an affidavit
24 saying they had a meeting, tried to resolve it but it
25 didn't happen.

26 In any event, I believe this motion was denied
27 by Judge Abrams because there had been no compliance

1 with the meeting affidavit.

2 If you have authority that denials or denial and
3 you don't get a second bite at the apple, let me
4 know.

5 Excuse me, I said -- Counsel, it appears the
6 order page verified that I accurately summarized it,
7 described it.

8 MR. HALL: Your Honor, is this motion -- having
9 not been there, is this motion tied in with 211 on
10 the -- on the docket?

11 THE COURT: I'm a recent arrival, too.

12 MR. HALL: But the reason I ask is 211 looks
13 like -- 211 looks like a motion for judgment that was
14 granted by Judge Abrams on or around the same date.

15 THE CLERK: Do you want to see 211, Your Honor?

16 THE COURT: Yes, please.

17 (Pause.)

18 THE COURT: I don't know what this means, and
19 I'm showing Mr. Leone plaintiff's motion for judgment
20 by default, Number 211 in the file, and with respect
21 to Interrogatory Number 4, which is quoted on the
22 first page of the motion about continuing education.

23 The statement on the next page saying Dr. Bassam
24 -- or Awwa objected to Question 4, and then it
25 quotes: Mr. Leone: That's agreed to, Your Honor.

26 What the hell does that mean?

27 MR. LEONE: I don't know, Your Honor. I can --

1 I can tell you though that this motion was granted by
2 Judge --

3 THE COURT: I understand it's --

4 MR. LEONE: But there was a subsequent hearing.

5 THE COURT: Yes, but what's it mean. In that
6 hearing, were you agreeing to answer Question 4? If
7 you don't know, --

8 MR. LEONE: I don't know, Your Honor. I'd have
9 to see. I honestly don't know at this point.

10 THE COURT: All right. In any event, it's my
11 understanding that later, the granting of the
12 default, his default, --

13 MR. LEONE: Yes, Your Honor.

14 THE COURT: -- 211, somehow got wiped out.
15 Reopened -- The default was opened to set aside is my
16 understanding, but I'm not sure where --

17 MR. LEONE: I'm not quite sure how. I'm still
18 --

19 THE COURT: Okay.

20 MR. LEONE: -- my head around that one, Your
21 Honor. Motion 218.

22 MR. HALL: Motion 218.

23 MR. LEONE: 218, yes. Does the Court have 218?

24 THE CLERK: The next volume. That ends at 260.

25 THE COURT: Well, anybody have 218? Set aside
26 the default entered on 2/11?

27 MR. LEONE: I don't, Your Honor.

1 MR. HALL: No, Your Honor.

2 THE COURT: Well, I'm asking whether --

3 MR. LEONE: I don't, Your Honor.

4 THE CLERK: Default?

5 MR. LEONE: Yes, that's the one.

6 MR. HALL: 218.

7 (Pause.)

8 THE COURT: What I have in hand is 218, which is
9 a motion to open default dated May 27th, and written
10 on the order page, or somewhere, there isn't an order
11 page, is the word granted. The Court ordered --
12 entered the order without reviewing defendant's
13 objection which was not in the file. Abrams, J.,
14 July 1, '08.

15 MR. HALL: With regard to the discovery that was
16 originally ordered by Judge Hurley --

17 THE COURT: I've heard about that a little bit.

18 MR. HALL: Probably more than me, Your Honor.

19 That discovery is still outstanding, as far as I
20 understand it. Is that the Court's understanding as
21 well?

22 THE COURT: No, it isn't, but --

23 MR. HALL: Okay.

24 THE COURT: -- I don't know what I understand
25 about that.

26 MR. HALL: Well, --

27 THE COURT: I've had a mandamus action which

1 repeatedly states that various judges here in New
2 London have failed to enforce Judge Hurley's orders.

3 MR. HALL: Okay.

4 THE COURT: It's also my understanding, and I
5 couldn't give you chapter and verse, --

6 MR. HALL: Yes, Your Honor.

7 THE COURT: That various motions were made by
8 the plaintiff to enforce those orders, --

9 MR. HALL: Okay.

10 THE COURT: -- and the various judges here in
11 New London have not ruled in plaintiff's favor.

12 In other words, it seems to me that the
13 plaintiff was arguing in those motions or maintaining
14 that defendants were not in compliance with Judge
15 Hurley's orders.

16 And it seems to me how he presented the motions,
17 which he has. The judges seemingly found or did find
18 that the defendant was not in noncompliance.
19 A double negative.

20 MR. HALL: I picked that up, Your Honor.

21 THE COURT: Well, not in noncompliance and it's
22 a little bit unwieldy, but if I said they found he
23 was in compliance, I don't think that's true either.

24 MR. HALL: That was my question, yes.

25 THE COURT: I don't think, and Mr. Leone can
26 correct me, that whether any judge has actually said
27 that the defendants were in compliance with Hurley's

1 orders. Have they?

2 MR. LEONE: No, they have not used those words,
3 Your Honor.

4 THE COURT: Well, I don't mean exactly --

5 MR. LEONE: My -- I'm sorry.

6 THE COURT: Is it accurate for me to the extent
7 we can with this file say that those judges, the
8 extent of what they ruled was that the defendant was
9 not in noncompliance?

10 MR. LEONE: I disagree with that, Your Honor.
11 The motions that have been filed by the plaintiffs
12 specifically indicate that I did not, the defendant
13 did not comply fully, fairly or complied in a manner
14 to mislead the plaintiff.

15 All those motions that all the judges that have
16 addressed that issue have denied the relief, and my
17 position is, in denying the relief, they are making a
18 ruling that the defendants have complied fully,
19 fairly and in a manner not to mislead the plaintiff
20 in respect to the D&P answers.

21 But in fairness --

22 THE COURT: No, I'm not disputing you. I'm just
23 --

24 MR. LEONE: I understand. But in fairness to
25 your question, no judge in a ruling has said I deny
26 the plaintiff's relief because I find the defendant
27 has complied fully with the D&P. I don't know if

1 that answers that.

2 MR. HALL: I understood that.

3 MR. LEONE: I don't want to, you know -- that's
4 my position, Your Honor.

5 THE COURT: But I mean that issue is dead, isn't
6 it?

7 MR. LEONE: From my perspective, it's been
8 rehashed now six or seven times and it's been ruled
9 on six or seven times by three or four different
10 judges. Yes, Your Honor, from my -- the defendant's
11 perspective, that issue has been resolved.

12 THE COURT: Well, are you going to raise it
13 again?

14 MR. JOHNSON: Our position is to talk with
15 Attorney Leone right now. Our coming in today was to
16 try to streamline some of the things that are
17 actually beginning to burst out on the table as we
18 speak --

19 THE COURT: All right.

20 MR. JOHNSON: -- to get to a point where we can
21 wrap this up for better or for worse.

22 A lot of this has been addressed, absolutely, I
23 agree. To what degree somebody complied or some
24 record is missing or not, a lot of that has been
25 discussed, and I think there's room to work with each
26 other, but keep the thing on focus for the purposes
27 of the trial.

1 THE COURT: Well, I'm not making any judgment on
2 what the heck is going on and whether there's been
3 compliance, noncompliance and this, that and the
4 other. I don't know.

5 And I don't think it's before me, and so,
6 therefore, you shouldn't interpret anything I say as
7 cutting in favor of you or against you or in favor of
8 Leone or side or not. I just don't know. I just
9 think it's not come before me for which I say thank
10 you.

11 So we can accomplish something real today, which
12 we haven't so far, are you in a position to disclose
13 your experts yet because I see that's the big --

14 MR. JOHNSON: Yes.

15 THE COURT: The big barrier, the big --

16 MR. JOHNSON: Yes. We're in a position to take
17 care of that. Like I said, we also have a scheduling
18 order to try to come up with some organization on
19 when that can be accomplished by.

20 We were going to discuss that with Attorney
21 Leone to see how he felt because obviously he's
22 invested a lot of time thus far, and I don't know
23 what his position is as far as his time requirements
24 to do that.

25 THE COURT: Well, we got to -- I would think, in
26 the normal course of things, you disclose your
27 experts.

1 MR. JOHNSON: Yes.

2 THE COURT: And Mr. Leone decides whether he
3 wants to depose them, which I don't think is going to
4 take a lot of time, and then notice them. Take the
5 actual depositions. Since I suspect your experts are
6 not just sitting in the hallway, that's going to take
7 a little coordination and time.

8 MR. JOHNSON: I think we can have a -- I don't
9 know if we can -- I think within a week, we can have
10 an expert disclosure, and I only say that because
11 there are a phone calls that need to be made to make
12 sure things are cinched up, but that can be done, I'm
13 pretty sure.

14 THE COURT: When I say disclose your experts, I
15 just don't mean their names and addresses.

16 MR. JOHNSON: I understand.

17 THE COURT: I mean the thing that the rule book
18 requires, you know.

19 MR. JOHNSON: And that's what I understand you
20 to mean, Your Honor.

21 THE COURT: Is there anything else that we
22 should -- Everything, as I see it, is tied up on the
23 pleadings until I decide whatever I'm going to decide
24 after the Thursday afternoon hearing.

25 When I decide that, I can set a time table for
26 whatever the pleadings are going to be. We've got to
27 get them closed soon, I would think.

1 What is your -- And I won't hold you to it, but
2 just when do you think this -- we could schedule this
3 for trial and we're a long ways from it, but --

4 MR. JOHNSON: Well, I don't think -- I think if,
5 with some due diligence and some cooperation between
6 the parties, I don't see why we couldn't get this
7 thing -- start picking a jury for this thing in the
8 late spring, or mid-spring next year without
9 question. I don't -- That's not -- That's without
10 talking with Attorney Leone. I have no idea. I have
11 four or five trials before the end of the year.

12 I need to talk to Mr. --

13 MR. LEONE: I was thinking somewhere this time
14 next year.

15 MR. JOHNSON: I'm an optimist, Judge.

16 THE COURT: Huh?

17 MR. JOHNSON: I'm an optimist. But I think
18 talking with each other, we can -- we can facilitate
19 either.

20 THE COURT: Well, please do that. All right.

21 Is there anything else realistically we could
22 accomplish today? Is there something you want
23 specific?

24 MR. JOHNSON: Really, I think we came here with
25 the intention of coming up with at least a
26 preliminary game plan to move forward, and I think
27 we've, with what Your Honor has talked about and some

1 of the things that we've discussed, I think we're --

2 THE COURT: Let me say --

3 MR. JOHNSON: -- jelling that.

4 THE COURT: -- I'm -- Well, never mind.

5 Is there anything you want to accomplish today
6 or bring to my attention?

7 MR. LEONE: I don't think we can accomplish
8 anything else today, Your Honor. I think we've
9 addressed some of the major stumbling blocks that
10 hopefully will --

11 THE COURT: Well, as I understand it, plaintiff
12 thinks they could -- this case could be ready for
13 trial by next spring, and you're --

14 MR. LEONE: As I said, Your Honor, I think that
15 --

16 THE COURT: You like the summer.

17 MR. LEONE: I think that's optimistic.

18 THE COURT: Well, then you're both going to
19 think that I'm totally off the wall and unrealistic.

20 All right. I'm going to stop today. I'll hear
21 you Tuesday -- I mean Thursday afternoon, and I
22 encourage you to -- You can see what the problems are
23 and where we are.

24 I may continue to talk to you, scheduling after
25 we have the hearing on where the focus is, whether or
26 not there was proper service of the proper and
27 completed -- and/or completed service of the

1 objections.

2 Okay, all right. Anything else you want to
3 cover today or at least float it so we can be
4 thinking about it?

5 MR. JOHNSON: No, Your Honor.

6 MR. LEONE: No, Your Honor.

7 THE COURT: Steve, you're going to get --
8 there's a Xerox machine right there.

9 MR. LEONE: If Your Honor please, if he's going
10 to get me copies, I have a list of those that I never
11 received, and if he would be kind enough to copy
12 those while he's doing that.

13 THE CLERK: Yes.

14 THE COURT: Don't ever say yes. He's got 50 of
15 them.

16 THE CLERK: He gave me a list earlier, Your
17 Honor.

18 THE COURT: Can you do that?

19 THE CLERK: Yes.

20 MR. JOHNSON: Could you just tell me what they
21 are.

22 THE CLERK: Yes.

23 MR. JOHNSON: We'll come up. This way, we can
24 make some headway without going --

25 MR. LEONE: Right, 318.

26 MR. JOHNSON: Okay.

27 MR. LEONE: 320.

1 MR. JOHNSON: Okay.

2 MR. LEONE: 325.

3 MR. JOHNSON: All right.

4 MR. LEONE: 329, 330, 333.

5 THE CLERK: I think you missed some.

6 MR. LEONE: What's that?

7 THE CLERK: I think you missed --

8 MR. LEONE: No, I nixed a couple because they've
9 already resolved or ruled upon by the Court.

10 THE CLERK: Oh, okay.

11 MR. JOHNSON: May I ask for a copy while you
12 make them?

13 MR. LEONE: Is these all we actually need today?
14 Is the objection that's going to -- that I will need
15 for Thursday?

16 THE CLERK: It's going to be ruled on Thursday?

17 MR. LEONE: It was the very first one.

18 THE CLERK: All right. So 218 is -- so you want
19 219 -- well, 219 is going to be --

20 MR. LEONE: No, no, no. Hold on.

21 MR. JOHNSON: No, it was 329.

22 MR. LEONE: 329.

23 THE CLERK: So we'll revisit 329?

24 THE COURT: No, he needs a copy. That was the
25 initial one.

26 MR. JOHNSON: The request to revise was 327, and
27 the objection was 329. So we're all clear.

1 THE COURT: And the request to revise was filed
2 by the defendant addressed to the June 4, 2009
3 complaint.

4 Then the plaintiff filed Number 329, which was
5 objection to the request to revise, and the
6 objections were centered on or focused on timing of
7 the request to revise, but not the substance of the
8 request to revise.

9 And the defendant claims that he never got a
10 copy of 329.

11 Does that summarize it?

12 MR. LEONE: Correct.

13 THE COURT: Okay. Anything further, gentlemen?

14 MR. JOHNSON: Nothing, Your Honor.

15 MR. LEONE: Nothing, Your Honor. Thank you.

16 MR. JOHNSON: Thank you for your time.

17 THE COURT: I gave more than my time.

18 * * *

NO: CV-06-5001159S : SUPERIOR COURT
SYLVESTER TRAYLOR : JUDICIAL DISTRICT
OF NEW LONDON
VS : AT NEW LONDON, CONNECTICUT
BASSAM AWWA, M.D. : JUNE 15, 2010

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, Connecticut, before the Honorable Thomas F. Parker, Judge Trial Referee, on the 15th of June, 2010.

Dated this 7th day of July, in New London,
Connecticut.

Marielle Bottinelli
Court Recording Monitor