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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY PRESS,)	
ET AL.,)	DOCKET NO. 1:08-CV-1425-ODE
)	
PLAINTIFFS,)	ATLANTA, GEORGIA
)	NOVEMBER 5, 2010
V.)	
)	
MARK P. BECKER, IN HIS)	
OFFICIAL CAPACITY AS GEORGIA)	
STATE UNIVERSITY PRESIDENT,)	
ET AL.,)	
)	
DEFENDANTS.)	

TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE ORINDA D. EVANS
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:	EDWARD B. KRUGMAN
	TODD D. LARSON
	JOHN H. RAINS
	R. BRUCE RICH
FOR THE DEFENDANTS:	ANTHONY B. ASKEW
	STEPHEN M. SCHAETZEL
ALSO PRESENT:	CHARLES LEE
COURT REPORTER:	ANDY ASHLEY
	1949 U. S. COURTHOUSE
	ATLANTA, GEORGIA 30303-3361
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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER.

ANDRE G. ASHLEY, O.C.R.

1 P R O C E E D I N G S
2 (ATLANTA, FULTON COUNTY, GEORGIA; NOVEMBER 5, 2010
3 IN CHAMBERS.)

4 THE COURT: THERE ARE TWO THINGS I WANTED TO TALK TO
5 YOU ALL ABOUT TODAY. ONE IS THE SUBMISSIONS OF PROPOSED
6 SCHEDULING ORDERS. BOTH OF YOU, BOTH SIDES SUBMITTED
7 SCHEDULING ORDERS WHICH REFERRED TO INSTANCES OF CLAIMED
8 COPYRIGHT INFRINGEMENT.

9 THE PROPOSAL MADE BY -- WHO DID EXHIBIT B; WHOSE WAS
10 THAT?

11 MR. SCHAETZEL: THE DEFENDANTS.

12 THE COURT: OKAY. CALLS FOR PLAINTIFFS TO MAKE AN
13 INITIAL FILING, AND I'M LOOKING AT SUBSECTION C, LITTLE C ON
14 PAGE 2 OF EXHIBIT B. IT SAYS THAT WITHIN 21 DAYS OF
15 COMPLETION OF THE DEPOSITIONS, PLAINTIFF SHALL FILE THEIR
16 SUBMISSIONS SETTING FORTH INSTANCES OF CLAIMED COPYRIGHT
17 INFRINGEMENT OF THE WORK IDENTIFIED IN THE COURT'S SEPTEMBER
18 30, 2010 ORDER.

19 THEN IN THE NEXT PARAGRAPH LITTLE D, THEN WITHIN 30
20 DAYS AFTER PLAINTIFFS' MAKE THEIR FILING, DEFENDANTS SHALL
21 SUBMIT THEIR OPENING BRIEF AS TO THE CLAIMED INFRINGEMENTS, AND
22 THEN E, WITHIN 30 DAYS OF THE FILING OF DEFENDANTS' OPENING
23 BRIEF, PLAINTIFF SHALL SUBMIT AN OPPOSITION BRIEF AS TO THE
24 CLAIM INFRINGEMENTS, AND THEN F, WITHIN 21 DAYS OF THE FILING
25 OF PLAINTIFFS' OPPOSITION BRIEF, DEFENDANTS SHALL SUBMIT THEIR

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1 REPLY BRIEF AS TO THE CLAIMED INFRINGEMENTS.

2 ALL RIGHT. NOW MY QUESTION IS THIS. I DON'T REALLY
3 UNDERSTAND WHAT EXACTLY IS GOING TO BE GOING ON IN THESE
4 NUMEROUS BRIEFS.

5 I MEAN ARE YOU JUST TALKING ABOUT THESE BRIEFS TRYING
6 TO NAIL DOWN WHAT THE UNIVERSE OF CLAIMED INFRINGEMENTS IS, OR
7 ARE YOU REFERRING MORE GENERALLY TO THE IDEA OF BRIEFING
8 WHETHER FAIR USE APPLIES TO THESE VARIOUS INSTANCES OF CLAIMED
9 INFRINGEMENT?

10 MR. RICH: YOUR HONOR, IF I MAY, AND I THINK WHAT I
11 WILL INDICATE IS IN ACCORD WITH OUR DISCUSSIONS WITH OPPOSING
12 COUNSEL. WHAT WE PROPOSED TO DO WAS FIRST FROM THE BENEFIT OF
13 DISCOVERY TO SET FORTH THOSE INSTANCES OF CLAIMED INFRINGEMENT
14 ON WHICH YOUR HONOR WOULD FOCUS WITHOUT BRIEFING THE FAIR USE
15 IMPORT OF THOSE SINCE AS YOUR HONOR POINTED OUT THE BURDEN OF
16 DEMONSTRATING FAIR USE RESTS WITH THE DEFENDANTS, AND SO OUR
17 FIRST SUBMISSION WOULD NOT BE A LEGAL BRIEF SO MUCH AS AN
18 IDENTIFICATION OF THE INSTANCES OF CLAIMED INFRINGEMENT AGAIN
19 WITH THE BENEFIT OF THE REMAINING DISCOVERY.

20 THE REMAINING ROUNDS OF BRIEFING WOULD BE THE MORE
21 TRADITIONAL ISSUE JOINDER ON THE FAIR USE ISSUES. WE WOULD
22 ANTICIPATE THAT MR. SCHAEZEL AND HIS FIRM WOULD RESPOND AS TO
23 EACH CLAIMED INFRINGEMENT AS THEY WILL WITH WHATEVER PROFFER
24 AND INCLUDING, WE ASSUME, ANY FAIR USE JUSTIFICATIONS WITH
25 RESPECT TO IT.

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1 WE GET ESSENTIALLY OUR -- THE THIRD FILING IN THE
2 LIST IS ESSENTIALLY OUR BRIEF RESPONDING TO WHATEVER FAIR USE
3 AND OTHER LEGAL JUSTIFICATIONS MAY BE OFFERED, AND YOU CAN
4 CONSIDER THE FOURTH FILING AS THE EQUIVALENT OF A REPLY BRIEF
5 BY THE OTHER SIDE RESPONDING TO US. IT'S A LITTLE CUMBERSOME
6 BUT --

7 THE COURT: ARE THESE BRIEFS GOING TO BE IN THE
8 NATURE OF SUMMARY JUDGMENT BRIEFS, OR ARE WE GOING TO BE
9 CONSIDERING THIS AS A TRAIL?

10 MR. RICH: WE DISCUSSED THAT AT SOME LENGTH, AND
11 SPEAKING FROM THE PLAINTIFFS' PERSPECTIVE, WE FRANKLY COULD
12 PROCEED EITHER WAY AT THIS POINT AND WILL OBVIOUSLY BE GUIDED
13 BY YOUR HONOR'S PREFERENCE.

14 WE SORT OF FEEL THAT TO THE EXTENT THAT A LOT OF
15 THESE ARGUMENTS ON THE ONE SIDE ARE QUITE FACT SPECIFIC.
16 CERTAINLY IF WE DRILL DOWN LOOKING WORK BY WORK, THERE WILL BE
17 A FAIR AMOUNT OF DETAILED BACK AND FORTH WHICH PERHAPS LENDS
18 ITSELF IF NOT BETTER AT LEAST AS EASILY TO BRIEFING.

19 AND FRANKLY TO THE EXTENT, AS YOUR HONOR IS AWARE,
20 THE FAIR USE DOCTRINE HAS A BIG LEGAL COMPONENT. AGAIN IT
21 SEEMED TO US IT MAY ALSO LEND ITSELF TO, SO THAT WE THOUGHT
22 PERHAPS THE MORE EFFICIENT TECHNIQUE, EVEN THOUGH IT SOUNDS
23 LIKE A LOT OF PAPER, WOULD BE TO PRESENT IT IN A NEXT ROUND OF
24 SUMMARY JUDGMENT BRIEFING FOR YOU TO CONSIDER AGAIN SUBJECT TO
25 YOUR HONOR'S PREFERENCE.

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1 MR. SCHAETZEL: YOUR HONOR, FOR THE DEFENDANTS TWO
2 POINTS. FIRST, THERE'S A THRESHOLD ISSUE HERE. WHEN THE COURT
3 LOOKS AT ITEM C, WHICH IS THE INITIAL SUBMISSION TO BE MADE BY
4 THE PLAINTIFFS, WE THINK THAT TWO THINGS COULD HAPPEN THERE.

5 THE FIRST THING THAT COULD HAPPEN IS THAT AS THIS
6 NEXT ROUND OF INVESTIGATION GOES FORWARD, IT'S POSSIBLE,
7 ALTHOUGH WE THINK UNLIKELY, THAT THE PLAINTIFF MIGHT ACTUALLY
8 WITHDRAW SOME OF THE CLAIMED INFRINGEMENTS ON THE LIST THAT'S
9 CURRENTLY BEFORE THE COURT.

10 THERE IS AN ISSUE IN THAT THEY ARE ASKING FOR THE
11 CHANCE TO ADD CLAIMED INFRINGEMENTS TO THE LIST THAT'S
12 CURRENTLY BEFORE THE COURT, AND WE OPPOSE THAT.

13 THE COURT: YOU MEAN THE 2010 BRIEF?

14 MR. SCHAETZEL: YES, MA'AM. SO THAT'S THE FIRST
15 THRESHOLD ISSUE AS TO WHETHER OR NOT -- AND THAT'S ALL, AS MR.
16 RICH SAYS, THAT'S ALL THAT WOULD BE IN THE ITEM C FILING, JUST
17 AN IDENTIFICATION OF THE UNIVERSE OF THINGS THAT WERE IN
18 DISPUTE.

19 THE COURT: I WAS SORT OF ASSUMING THAT THE
20 PLAINTIFFS' INITIAL FILING WOULD BE A VERY COMPREHENSIVE LIST.
21 I MEAN YOU'VE ALREADY IDENTIFIED CERTAIN THINGS IN THE FILINGS
22 THAT YOU'VE MADE. YOU'VE INDICATED YOU WANT TO AUGMENT THAT
23 LIST BOTH WITH NEWLY DISCOVERED 2009 INFRINGEMENTS AND THEN YOU
24 WOULD LIKE TO ADD LATER INFRINGEMENTS AS WELL?

25 MR. RICH: THAT'S CORRECT.

1 THE COURT: SO THOSE ARE ISSUES, BUT THEY'RE REALLY
2 KIND OF A LITTLE BIT COLLATERAL TO THE FIRST QUESTION IN MY
3 MIND, AND, THAT IS, I DON'T REALLY UNDERSTAND WHAT YOU ALL
4 THINK IS GOING TO BE GOING ON WITH ALL OF THESE BRIEFS AND
5 WHETHER IT'S REALLY GOING TO MOVE THE CONVERSATION AHEAD IF WE
6 STILL NEED TO HAVE A TRIAL.

7 MR. SCHAETZEL: THE PARTIES ARE IN AGREEMENT, I
8 BELIEVE, YOUR HONOR, THAT ON THAT LATTER ISSUE AS TO WHETHER OR
9 NOT THESE WILL BE BRIEFS OR IN THE NATURE OF PRETRIAL
10 SUBMISSIONS THAT, IF YOU WILL, TEE UP THESE CLAIMED
11 INFRINGEMENTS FOR A TRIAL. WHICHEVER WAY THAT GOES, THE
12 DEFENDANTS ARE FINE WITH THIS AS WELL.

13 THERE COULD BE DEPENDING ON WHAT THE DISCOVERY SHOWS
14 SOME BENEFIT TO DOING SOME THINGS ON THE PAPER. THERE ARE, FOR
15 EXAMPLE, AS MANY AS 49 PROFESSORS AT ISSUE. THERE COULD BE
16 SOME THAT WOULD FERRET OUT ONE WAY OR THE OTHER.

17 THE COURT: I'M JUST TRYING TO THINK, YOU KNOW, IF WE
18 DO GO THE WAY OF IDENTIFYING -- THE PLAINTIFFS IDENTIFY THE
19 CLAIMS OF INFRINGEMENT, YOU KNOW, WHAT WORKS THEY'RE TALKING
20 ABOUT, AND YOU ALL COME BACK AND, I GUESS, IT'S CONTEMPLATED
21 YOU MIGHT SAY WELL, NO, THIS PARTICULAR CLAIM IS NOT VIABLE
22 BECAUSE ACTUALLY THAT COURSE WASN'T TAUGHT THAT SEMESTER OR
23 WHATEVER.

24 YOU COULD GO THROUGH THAT WHOLE PROCESS, AND WHAT WE
25 COULD BE LEFT WITH IS, YOU KNOW, JUST A FINAL LIST OF WHAT THE

1 ACTUAL CLAIMED INFRINGEMENTS ARE, AND IF THAT'S THE CASE, IT
2 SEEMS LIKE THERE'S AN AWFUL LOT OF WORK GOING INTO THAT.

3 OR WE COULD DO THE SUMMARY JUDGMENT APPROACH ON THE
4 UNFAIR USE ISSUE OR FAIR USE ISSUE, AND I DON'T KNOW ONCE WE
5 FINISH WITH THAT WHETHER THAT WILL HAVE ADDRESSED THE WHOLE
6 CASE, AND IF NOT, I THINK IT'S KIND OF A WASTE OF TIME JUST TO
7 DO THE SUMMARY JUDGMENT ROUTE.

8 MR. RICH: YOUR HONOR, IF I MAY RESPONDING TO THAT,
9 IF YOUR HONOR BELIEVES THAT THE PAPERS ADEQUATELY ADDRESS THE
10 FOUR FAIR USE FACTORS AND WHATEVER OTHER ASPECTS OF THE
11 ANALYSIS THE PARTIES BELIEVE RELEVANT AND THEN APPLIES THOSE TO
12 THE ALLEGATIONS WE PUT FORWARD IN OUR SUBMISSION, WE BELIEVE
13 IT'S DISPOSITIVE OF THE CASE EXCEPT FOR ANY INJUNCTIVE RELIEF
14 IF WE PREVAIL ON SOME OR ALL OF IT. IN OTHER WORDS, WE
15 WOULDN'T SEE ANY TRIAL ISSUES.

16 IF, ON THE OTHER HAND, YOUR HONOR FEELS THERE ARE ANY
17 ASPECTS OF THE FAIR USE ANALYSIS WHICH DON'T LEND THEMSELVES TO
18 BEING RESOLVED IN THE EXCHANGE OF PAPERS AND PERHAPS AFFIDAVITS
19 OR WHATEVER, THEN I PROBABLY WOULD SUGGEST REVISITING THE WHOLE
20 IDEA OF GOING THROUGH THIS EXERCISE AND MAYBE, YOU KNOW, LET'S
21 DO SOME FORM OF TRIAL AND SAVE EVERYBODY A LOT OF TIME.

22 IN OUR EXPERIENCE IN THESE CASES IN OTHER DISTRICTS
23 OFTEN, NOT ALWAYS BUT OFTEN, THE FAIR USE ISSUES HAVE BEEN ABLE
24 TO BE RESOLVED THROUGH A SUMMARY JUDGMENT KIND OF PROCESS
25 BECAUSE I THINK, YOUR HONOR, WILL HAVE BEFORE YOU ALL OF THE

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1 RELEVANT FACTS, AND YOU'LL CERTAINLY HAVE MORE THAN YOUR -- A
2 FULL BRIEFING ON THE RELEVANT LEGAL PRINCIPLES. YOU'VE HAD A
3 BUNCH OF THAT ALREADY FROM US.

4 AND UNLESS YOUR HONOR GOING THROUGH THAT WERE TO SAY
5 I'M STILL NOT COMFORTABLE FACTUALLY WITH APPLYING SOME OF THAT,
6 OUR POSITION WOULD BE THAT WOULD REALLY BE DISPOSITIVE OF THE
7 MERITS ONCE YOU ADDRESS THE FILINGS, MEANING NO TRIAL WILL BE
8 NECESSARY.

9 THE COURT: WELL DOES EITHER SIDE WANT A JURY TRIAL?

10 MR. RICH: WE ARE NOT SEEKING DAMAGES, AND WE HAVE
11 NOT ASSUMED THE ENTITLEMENT OF SUCH A TRIAL.

12 MR. SCHAETZEL: I DON'T THINK WE -- WE WOULD NOT WANT
13 A JURY TRIAL, BUT THERE'S -- THERE ARE TWO WAYS OF LOOKING AT
14 THE CASE, AND I THINK THE PARTIES DO DIFFER ON THIS.

15 IT APPEARS TO US THAT THE PLAINTIFFS' WAY OF LOOKING
16 AT THE CASE IS AT LEAST IN LARGE PART FROM A POLICY STANDPOINT,
17 LOOKING AT THE POLICY OF GEORGIA STATE AND TRYING TO MAKE A
18 DETERMINATION AS TO WHETHER OR NOT IT IN EFFECT SANCTIONS OR
19 FAILS SANCTIONS PROPER FAIR USE.

20 WE BELIEVE STRONGLY THAT AS THE COURT HAS DONE IN ITS
21 SEPTEMBER 30TH ORDER THAT TO ADDRESS FAIR USE IN THIS CONTEXT
22 IT WILL HAVE TO BE A WORK-BY-WORK, IF YOU WILL, FACT-BY-FACT
23 COMPARISON.

24 IF THAT'S THE ROAD THAT WE'RE GOING DOWN, QUITE
25 FRANKLY I PERSONALLY DON'T SEE ANYWAY WE COULD RESOLVE ALL OF

1 THESE WITHOUT A TRIAL BECAUSE THERE WOULD BE SOME FACT DISPUTES
2 IN SOME OF THOSE INSTANCES.

3 THE COURT: GIVE ME AN EXAMPLE?

4 MR. SCHAETZEL: SURE. THE FOURTH FACTOR OF FAIR USE
5 AS TO WHETHER OR NOT THERE HAS BEEN ANY MARKET HARM, THE
6 PARTIES MAY HAVE A DISPUTE AS TO WHETHER OR NOT THERE'S BEEN
7 MARKET HARM FOR A GIVEN WORK, AND THAT MAY BE SOMETHING THAT
8 WOULD HAVE TO BE LITIGATED IN THE COURTROOM.

9 A PROFESSOR AS TO WHETHER OR NOT THERE WAS A
10 SUFFICIENT NEXUS BETWEEN THE CLASS THAT HE OR SHE TAUGHT AND
11 THAT SUBJECT MATTER AND THE EXCERPT THAT WAS USED AS TO WHETHER
12 OR NOT THAT WAS PROPER UNDER THE FAIR USE ACT.

13 THE COURT: OKAY. WELL, LET'S BACK UP JUST ONE STEP
14 FURTHER. ON THE QUESTION OF WHETHER TO EXPAND THE UNIVERSE OF
15 POTENTIAL CLAIMED INFRINGEMENTS INTO -- I THINK IT'S INTO
16 2010 --

17 MR. RICH: THAT'S CORRECT.

18 THE COURT: -- I DON'T REMEMBER EXACTLY HOW THE
19 SEMESTERS HIT. HERE'S WHAT I THINK. I THINK YOU ALL HAVE
20 PLENTY OF MATERIAL TO WORK WITH FROM 2009, AND I'M NOT SURE
21 THAT I SEE WHY IT'S NECESSARY TO ADD MORE CLAIMED INFRINGEMENTS
22 FROM 2010.

23 IN SAYING THAT I AM GUESSING SINCE GEORGIA STATE'S
24 POLICY DID NOT CHANGE OR THE UNIVERSITY'S POLICY DID NOT
25 CHANGE, I THINK IT DIDN'T GOING INTO 2010, THAT IF WE ADD TO

1 THE UNIVERSE OF MATERIAL THE CLAIMED INFRINGEMENTS FROM 2010
2 THEY PROBABLY WOULDN'T BE ANY DIFFERENT IN SUBSTANCE FROM THOSE
3 IN 2009.

4 I THINK THE PLAINTIFFS MADE THE POINT IN YOUR PAPER
5 THAT YOU FILED THAT YOU NEED TO GO INTO 2010 TO MEET THE,
6 QUOTE, ONGOING AND CONTINUOUS, CLOSED QUOTE, REQUIREMENT, BUT
7 IT SEEMS TO ME THAT BASED ON ONLY A LITTLE BIT OF EVIDENCE SUCH
8 THAT THE POLICY HASN'T CHANGED, THERE ARE MORE INSTANCES OF
9 CLAIMED INFRINGEMENT, IT WOULD BE POSSIBLE TO SATISFY THAT
10 REQUIREMENT SUFFICIENTLY SO THAT WE COULD CONCENTRATE ON THE
11 POOL OF CLAIMED INFRINGEMENTS FROM 2009 OF WHICH I THINK THERE
12 ARE QUITE A FEW.

13 WHAT IS THE TOTAL?

14 MR. RICH: IT WAS -- I COUNTED IT THIS MORNING. IT
15 WAS MANY DOZENS.

16 THE COURT: I WOULD THINK IT WOULD BE HIGHER THAN
17 THAT.

18 MR. RICH: THERE WERE -- IN THE THREE AUGUST
19 SUBMISSIONS YOU'RE SAYING?

20 THE COURT: YES.

21 MR. RICH: YES, THERE WERE A BUNCH, YOU'RE RIGHT,
22 YOUR HONOR. THE MAYMESTER AND JUNE --

23 THE COURT: WOULD IT BE 200?

24 THE LAW CLERK: 125.

25 THE COURT: 125. OKAY. THERE YOU GO. SO YOU'VE GOT

1 120 INSTANCES AND MAYBE SOME OVERLAP OF MATERIALS BETWEEN
2 DIFFERENT ONES, BUT LOTS OF STUFF THERE THAT YOU CAN GET INTO.

3 SO I WANT BEFORE I MAKE A RULING ON YOU ALL'S REQUEST
4 TO INCREASE THE TEMPORAL SCOPE, I WANT TO MAKE SURE I
5 UNDERSTAND EVERYBODY'S POSITION, AND I'M KIND OF LOOKING TO YOU
6 TO PERSUADE ME IF YOU THINK YOU WANT TO --

7 MR. RICH: THIS IS WHAT I'M SO HAPPY TO BE PERSUADED
8 OUT OF. WE FILED THIS REQUEST FOR TWO REASONS, ONE OF WHICH
9 YOU'VE IDENTIFIED, WHICH IS, WE DIDN'T FULLY APPRECIATE WHETHER
10 YOUR HONOR'S SEPTEMBER 30 ORDER VIEWED THOSE THREE TERMS AS A
11 SUFFICIENT BODY OF EVIDENCE ON WHICH YOU COULD EVENTUALLY MAKE
12 YOUR RULING, AND WE WANTED TO BE CAUTIOUS AND PROTECTIVE IN THE
13 EVENT THAT YOU WERE OTHERWISE OF A MIND TO SAY THIS ISN'T
14 ENOUGH OF A BODY OF EVIDENCE ON WHICH I CAN RULE. YOU'VE MADE
15 CLEAR NOW YOUR VIEW AND WE'RE FINE.

16 THE ONLY REMAINING --

17 THE COURT: I THINK WITH THE RIGHT STIPULATION OR
18 SOME LITTLE OFFER OF EVIDENCE IT COULD BE HANDLED.

19 MR. RICH: AND THAT GOES TO MY SECOND CONCERN. AS
20 YOUR HONOR KNOWS FROM READING THE PRIOR MOUND OF PAPERS, OUR
21 FRIENDS AT GEORGIA STATE HAVE ARGUED THAT THERE'S BEEN A
22 SIGNIFICANT IMPROVEMENT OR DIMINUTION IN NUMBERS OF CLAIMED
23 INFRINGEMENTS OVER TIME.

24 WE DISPUTE THAT FACTUALLY. I THINK EVEN THE AUGUST
25 SHOWING DISPUTES IT, BUT I DON'T WANT TO BE IN A POSITION WHERE

1 AS PART OF THIS NEXT ROUND OF FILINGS WE'RE MET WITH AN
2 ALLEGATION THAT WE CAN'T RESPOND TO WHICH IS SOMEHOW THAT THE
3 2009 MATERIAL IS NOT REPRESENTATIVE OF, QUOTE, ONGOING
4 PRACTICE.

5 IF GEORGIA STATE'S REPRESENTATIVES ARE PREPARED TO
6 STIPULATE TO THAT, THEN WE'RE FINE WITH PULLING THAT MUCH OF
7 OUR DISCOVERY REQUEST OFF THE TABLE.

8 THE COURT: YOU ALL IN YOUR BRIEF THAT YOU FILED YOU
9 SAID YOU DIDN'T THINK IT WAS NECESSARY OR MAYBE NOT EVEN
10 APPROPRIATE TO EXPAND THE TEMPORAL SCOPE OF THE CLAIMED
11 INFRINGEMENTS, THAT'S MY RECOLLECTION.

12 MR. SCHAETZEL: THAT'S CORRECT, WE DON'T THINK IT'S
13 APPROPRIATE TO GO INTO THAT. THE DISCOVERY EXPENSE ALONE ON
14 THE STATE AND ON THE UNIVERSITY IS SUBSTANTIAL WHICH WAS THE
15 REASON -- ONE OF THE REASONS FOR THE ACCOMMODATION THAT WE HAD
16 WAS TRYING TO GO BACK FOR THE THINGS THAT ARE ALREADY, IF YOU
17 WILL, ON THE TABLE, GO BACK AND GET CHECKLISTS AND SO ON AND SO
18 FORTH --

19 THE COURT: OKAY. WELL, I'M HEARING KIND OF AN
20 AGREEMENT THAT THERE IS NO NEED TO EXPAND THE TEMPORAL SCOPE
21 THEN?

22 MR. SCHAETZEL: I THINK THAT'S RIGHT. AS TO MR.
23 RICH'S QUESTION OF WHETHER OR NOT WE CAN REPRESENT THAT 2010 IS
24 REPRESENTATIVE OR AKIN TO 2009, I DON'T KNOW THAT WE HAVE ANY
25 INFORMATION ON THAT. I'D HAVE TO TALK TO THE CLIENT ABOUT THAT

1 TO FIND OUT.

2 THE COURT: WELL, I THINK THIS ISSUE HAS TO BE
3 ACCOMMODATED IN SOME WAY. I MEAN I THINK IT'S OUT OF FAIRNESS
4 TO THE PLAINTIFFS' SIDE, YOU KNOW, IF YOU ALL ARE IN A POSITION
5 TO MAKE THE ARGUMENT THAT THINGS HAVE CONTINUED TO GET BETTER
6 AND BETTER AFTER 2009, THEN I HAVE TO LET THEM DO THEIR
7 DISCOVERY.

8 MR. SCHAETZEL: I MEAN THE POLICY WAS IMPLEMENTED.
9 WE WOULD ANTICIPATE THAT THINGS WOULD CONTINUE ON THE COURSE
10 THAT THEY HAVE GONE SINCE FEBRUARY OF 2009, THE DATE THE POLICY
11 WAS ADOPTED.

12 BUT, AGAIN, IT'S NOT SOMETHING WHERE THERE'S A PERSON
13 AT GEORGIA STATE THAT IS, YOU KNOW, MONITORING ALL THAT. WE'D
14 HAVE TO DO SOME RESEARCH TO TRY AND BE ABLE TO DETERMINE
15 EXACTLY WHAT SORT OF REPRESENTATION WE COULD GIVE UNLESS YOU
16 HAVE SOME --

17 MR. ASKEW: NO, I DON'T HAVE ANY INFORMATION ABOUT
18 THAT.

19 THE COURT: OKAY. WELL BASED ON WHAT YOU ALL HAVE
20 TOLD ME AND AFTER HAVING READ THE BRIEFS THAT YOU ALL
21 SUBMITTED, I'M GOING TO RULE THAT THE TEMPORAL SCOPE OF CLAIMED
22 INFRINGEMENTS CANNOT BE EXPANDED. WE'RE DEALING WITH THE
23 2009 -- THE THREE SEMESTERS IN 2009, AND WE'LL STICK WITH
24 THOSE.

25 AND AS I SAID, MY BEST BELIEF IS THAT THAT'S ENOUGH

1 TO MEET THE ONGOING AND CONTINUOUS REQUIREMENT, AND I CAN'T SEE
2 ANY REASON WHY THINGS WOULD BE DIFFERENT WHEN YOU'VE GOT THE
3 SAME POLICY AND A LOT OF THE SAME PROFESSORS. SO THAT'S WHAT
4 WE'LL DO ON THAT.

5 NOW, THE PLAINTIFFS HAVE ASKED TO BE ALLOWED TO
6 AUGMENT THE 2009 GROUP OR TO CHANGE OR CLARIFY IT BASED ON
7 INFORMATION YOU HAVE NOW THAT MAKES IT APPEAR THAT THE FILING
8 YOU ALL DID IN AUGUST, I GUESS, WAS NOT QUITE CORRECT. I CAN'T
9 SEE ANY REASON WHY THAT SHOULDN'T BE ALLOWED.

10 MR. RICH: AND I THINK WE HAVE HAD COOPERATION FROM
11 THE DEFENSE ABOUT PROVIDING US WITH UPDATED ERES REPORTS SO
12 THAT HOPEFULLY CAN ALLOW US TO DO THAT IN A COUPLE OF
13 INSTANCES.

14 THE COURT: OKAY.

15 MR. SCHAETZEL: I THINK THE QUESTION, YOUR HONOR, IS
16 WHETHER OR NOT THE PLAINTIFF WOULD BE ABLE TO ADD NEW
17 ALLEGATIONS OF INFRINGEMENT FROM THOSE.

18 WHAT TRANSPIRED IS THIS. FOR EXAMPLE, MR. RAINS
19 CALLED AFTER THE CLOSE OF FACT DISCOVERY AND SAID WE WOULD LIKE
20 TO GET AN ERES REPORT FOR THE SUMMER OF 2009. JOHN GAVE US
21 SOME INSTRUCTIONS AS TO HOW HE WANTED THAT PREPARED, AND WE
22 FOLLOWED THOSE INSTRUCTIONS.

23 IT WAS DURING THE SUMMER OF 2009 THAT WE PRINTED OFF
24 THE REPORT AND PROVIDED IT TO THE PLAINTIFF. SO THE SEMESTER
25 WAS STILL RUNNING. WE CAN NOW RUN THE REPORT AND ARE PREPARED

1 TO SHOW WHAT TRANSPIRED FOR THAT ENTIRE TIME.

2 THE COURT: RIGHT.

3 MR. SCHAETZEL: WHAT WE THINK IS FAIR GAME IS IF FOR
4 EXAMPLE A SPECIFIC ALLEGATION OF INFRINGEMENT, MAYBE UNDER THE
5 ORIGINAL REPORT IT INDICATED THAT TWO STUDENTS HAD ACCESS OR
6 WORK THAT WAS ON THE ERESERVE SYSTEM AND NOW IT SHOWS THAT FOUR
7 STUDENTS ACCESSED THAT WORK.

8 THAT'S A DIFFERENT SCENARIO FROM SAYING NO, NOW WE'RE
9 GOING TO -- WE SEE THAT IN A DIFFERENT CLASS, THERE'S A
10 DIFFERENT WORK AND WE'RE LOOKING AT A NEW COPYRIGHT
11 REGISTRATION, A NEW COPYRIGHT CLAIM OF INFRINGEMENT WHERE
12 WE --

13 THE COURT: I'M NOT SURE I'M FOLLOWING YOU ON THIS.
14 YOU JUMPED FROM THE FOUR STUDENTS TO THE TWO DIFFERENT
15 REGISTRATIONS.

16 MR. SCHAETZEL: AND THAT'S WHAT WOULD HAPPEN
17 POTENTIALLY, YOUR HONOR. LET'S SAY, FOR EXAMPLE, THAT BOOK
18 NUMBER 1 HAS ALREADY BEEN IDENTIFIED AS A COPYRIGHTED WORK AND
19 THERE'S A CLAIMED INFRINGEMENT OF BOOK NUMBER 1.

20 NOW WHEN WE RUN THE REPORT AGAIN, A DIFFERENT BOOK
21 APPEARS THAT WAS PERHAPS PUBLISHED BY ONE OF THE PLAINTIFF
22 PUBLISHERS, A DIFFERENT SAGE BOOK, FOR EXAMPLE, IS NOW ON THE
23 REPORT THAT WAS NOT ON THE REPORT WHEN IT WAS RUN WHEN WE
24 PROVIDED IT.

25 ARE WE GOING TO BE SUBJECT TO NOW A NEW CLAIM OF

1 INFRINGEMENT FOR THAT NEW WORK?

2 THE COURT: YEAH, YEAH, I DON'T SEE WHY NOT, BUT I
3 DON'T SEE AS A PRACTICAL MATTER WHY IT SHOULD MAKE ANY
4 DIFFERENCE TO YOU.

5 I MEAN MY IDEA HERE IS TO GET A REALLY CORRECT LIST.
6 THAT'S WHAT I'M LOOKING FOR. A LIST THAT LAYS OUT EXACTLY WHAT
7 HAPPENED IN EACH SEMESTER AS TO EACH OF THE COPYRIGHTED WORKS
8 WHERE THERE WERE CLAIMS OF INFRINGEMENT, AND TO THE EXTENT THAT
9 EITHER SIDE HAS BETTER INFORMATION NOW, SURE, LET'S CLEAN UP
10 THE LIST.

11 MR. SCHAETZEL: WE'LL DO SO.

12 THE COURT: OKAY. I THINK WHAT NEEDS TO HAPPEN, YOU
13 ALL NEED TO EXCHANGE INFORMATION, AND THEN I THINK YOU SHOULD
14 GET TOGETHER AND PREPARE FOR ME A CLEANED UP VERSION OF THE
15 LIST THAT YOU ALL FILED IN AUGUST, THERE WERE TWO LISTS, I
16 GUESS, AND IF THERE IS SOMETHING YOU DON'T AGREE ON, YOU COULD
17 NOTE YOUR DISAGREEMENT.

18 AND I GUESS WHAT I'M THINKING OF AT THIS POINT SINCE
19 WE'RE SORT OF EXPANDING THE SCOPE OF THESE LISTINGS, YOU KNOW,
20 MAYBE ONE PAGE COULD BE DEVOTED TO EACH CLAIMED INFRINGEMENT,
21 AND YOU COULD HAVE, LIKE YOU DID ON THIS CHART, YOU KNOW, THE
22 NUMBER OF CHAPTERS DISTRIBUTED, THE PAGE RANGE, THE NUMBER OF
23 PAGES.

24 I CAN TELL YOU SOMETHING ELSE YOU COULD DO FOR ME
25 THAT WOULD SAVE ME DOING SOME MATH WOULD BE TO PUT SOME

1 PERCENTAGES IN THERE, YOU KNOW, WHAT PERCENTAGE OF THE PAGES IN
2 THE WORK --

3 MR. RICH: WERE PHOTOCOPIED?

4 THE COURT: RIGHT, AND THEN, YOU KNOW, ON THE BOTTOM
5 HALF OF THE PAGE OR WHATEVER, ANY PARTS WHERE YOU ALL JUST
6 DISAGREE ABOUT THE FACTS, AND MAYBE, YOU KNOW, JUST TRY TO MAKE
7 IT EASY TO READ. MAYBE PUT THE DISAGREEMENTS IN RED AND THE
8 AGREED PARTS IN BLACK, AND THEN WE WOULD HAVE 127 PAGES, AND WE
9 COULD GO FROM THERE.

10 AND THEN I WOULD THINK AT THAT POINT, YOU KNOW, I
11 DON'T KNOW WHETHER -- WHATEVER WE DO AFTER THAT I WANT TO MAKE
12 SURE THAT IT ADDRESSES ALL CLAIMS IN THE CASE. I DON'T WANT TO
13 GET TO A POINT WHERE I'VE RULED ON THE FAIR USE ISSUES, AND
14 THEN SUDDENLY THERE IN THE BACKGROUND THERE IS SOMETHING
15 ELSE LINGERING SUCH THAT WE DON'T GET A FINAL JUDGMENT OUT OF
16 IT.

17 MR. RICH: YOUR HONOR, TO ME PARAMOUNT IS WHAT WORKS
18 EFFICIENTLY FOR YOUR HONOR, BUT HAVING SAID THAT, I DO BELIEVE
19 JUST IN THE NATURE OF THE FAIR USE ISSUE JOINDER AND GIVEN THE
20 NUMBER OF WORKS AND ALSO GIVEN THAT THERE WILL BE A
21 DISAGREEMENT AS TO WHETHER THIS CASE IS ULTIMATELY ONLY ABOUT
22 WORK BY WORK OR WHETHER IT'S ABOUT THE ANTHOLOGICAL EFFECTS OF
23 COMPILING SO MANY WORKS IN A GIVEN COURSE, WHICH IS ALSO
24 CENTRAL TO OUR ALLEGATIONS IN THIS CASE, THAT GIVEN THAT I FEEL
25 THAT YOU WOULD HAVE EVERYTHING YOU NEEDED AND MAYBE WE CAN

1 STREAMLINE IT INSTEAD OF FOUR FILINGS INTO TWO FILINGS. WE'RE
2 ALL FOR THAT.

3 I THINK IT COULD BE DONE ULTIMATELY EFFICIENTLY ON
4 PAPER. I COULD BE WRONG. YOUR HONOR MAY DISAGREE. I DON'T
5 NECESSARILY AGREE WITH STEVE ON THIS, MR. SCHAETZEL, THAT THERE
6 IS AN INEVITABILITY TO TRIAL.

7 I THINK THERE WOULD BE RELATIVELY FEW ISSUES THAT
8 FROM THE BODY OF AFFIANTS YOU HAVE ALREADY. YOU HAVE
9 AFFIDAVITS FROM EACH OF OUR CLIENTS REPRESENTATIVES ABOUT THE
10 MARKET HARM. IT'S A VERY GENERIC ARGUMENT. IT'S NOT A SUBTLE
11 ARGUMENT. YOUR HONOR WILL RESPOND TO IT AS YOU WILL.

12 AND, LIKEWISE, THE OTHER FACTORS THEY'RE VERY FACT
13 SPECIFIC, AND THEN ULTIMATELY YOUR HONOR'S HARD TASK, OF
14 COURSE, IS TO APPLY THAT TO THE LAW, AND I JUST DON'T KNOW HOW
15 WITNESSES ON THE STAND ARE THAT MUCH MORE LIKELY TO ADVANCE
16 CLARITY FOR YOU THAN HAVING IT BEFORE YOU.

17 THE COURT: RIGHT. ONE DISTINCT DIFFERENCE WOULD BE
18 THAT IF WE TRY THE CASE, LET'S ASSUME IT'S NOT NONJURY, THEN I
19 WOULD EXPECT TO GET PROPOSED FINDINGS OF FACT AND CONCLUSIONS
20 OF LAW, AND THAT MIGHT BE MORE HELPFUL TO ME THAN JUST LOOKING
21 AT BRIEFS WHICH, YOU KNOW, WOULD NOT BE SO FACT BASED.

22 SO MY IDEA IS YOU ALL FINISH YOUR DISCOVERY, THEN YOU
23 TAKE A CERTAIN AMOUNT OF TIME TO GET TOGETHER THESE LISTS THAT
24 I WANT, AND ONCE THAT HAS BEEN DONE, I THINK WE SHOULD SET A
25 TRIAL DATE, GET A PRETRIAL ORDER, AND AT THE TRIAL YOU ALL

1 WOULD BE AT LIBERTY TO STRUCTURE IT AS YOU WISH.

2 YOU ALL COULD AGREE TO PRESENT AFFIDAVITS AT THE
3 TRIAL. THAT WOULD BE FINE WITH ME IF BOTH SIDES AGREE. YOU
4 COULD CALL SOME WITNESSES.

5 I WOULD LIKE TO DISCOURAGE YOU FROM PRESENTING A
6 WHOLE LOT OF EXPERT TESTIMONY. YOU COULD BUT I'M NOT TOO SURE
7 HOW HELPFUL IT'S GOING TO BE.

8 OKAY. SO HOW IS THAT FOR AN APPROACH?

9 MR. ASKEW: I COULD SAY I THINK WE CERTAINLY, YOUR
10 HONOR, INTEND TO PRESENT THE TESTIMONY OF DR. CREW. WE'VE
11 OBVIOUSLY HAD HIM INVOLVED IN THIS CASE A SUBSTANTIAL LENGTH OF
12 TIME NOW. HE HAS SUBMITTED AN EXPERT REPORT.

13 THE COURT: HE HAS?

14 MR. ASKEW: AND WE WOULD BE PLANNING ON USING HIM I
15 THINK IN A TRIAL AS AN EXPERT. I DON'T THINK WE WOULD
16 ANTICIPATE HAVING ANY OTHER EXPERT IN THE CASE. THERE MAY BE
17 WITNESSES FOR US WHO WOULD BE REPRESENTATIVES FROM GEORGIA
18 STATE AND VARIOUS PROFESSORS.

19 THE COURT: YEAH, I DON'T KNOW HOW HELPFUL INDIVIDUAL
20 PROFESSOR TESTIMONY IS GOING TO BE EITHER, BUT YOU ALL ARE
21 THE -- YOU'VE GOT TO STEP FORWARD AND TAKE THE LEAD ABOUT WHAT
22 YOU THINK IS THE BEST WAY TO PRESENT YOUR CASE.

23 ALL RIGHT. NOW, HERE'S ANOTHER ISSUE FOR THE TRIAL.
24 IT MAY BE IF THE ONLY ISSUE TO BE TRIED IS FAIR USE AND THE
25 PLAINTIFFS HAVE THE BURDEN OF PROOF -- EXCUSE ME, THE

1 DEFENDANTS HAVE THE BURDEN OF PROOF. THAT THAT'S THE WAY THE
2 TRIAL WOULD BE STRUCTURED. YOU ALL WOULD GO FIRST AND YOU ALL
3 WOULD IN REBUTTAL.

4 MR. SCHAETZEL: WE WOULD ASK FOR THAT.

5 THE COURT: YEAH.

6 MR. RICH: YOUR HONOR, MIGHT IT MAKE SENSE, THIS IS
7 HELPFUL GUIDANCE AND WE'RE COMPLETELY COMFORTABLE WITH THE
8 APPROACH, IT PROBABLY WOULD MAKE SENSE WITH THE BENEFIT OF YOUR
9 HONOR'S FEEDBACK THAT WE OVER THE COURSE OF THE NEXT LITTLE
10 WHILE CHAT BETWEEN COUNSEL AND FIGURE OUT OUR THOUGHTS ABOUT
11 THE MOST EFFICIENT WAY TO STRUCTURE A TRIAL, YOU KNOW, SO THAT
12 WE CAN MAKE THIS EXERCISE NOT TOO PAINFUL FOR EVERYBODY.

13 THE COURT: RIGHT. I KNOW THAT YOU ALL ARE PROBABLY
14 STRUGGLING OVER HOW THE FAIR USE DEFENSE SHOULD BE PRESENTED,
15 AND WE HAVE GOT HERE 127 WORKS, AND I THINK THAT'S SOMETHING
16 YOU ALL JUST HAVE TO STRUGGLE WITH AND FIGURE OUT WHAT TO DO
17 WITH IT. I'M NOT GOING TO TAKE THE LEAD ON -- JUMP INTO THE
18 BREACH ON THAT. SO WE'LL JUST HAVE TO SEE HOW THAT SHAKES
19 OUT.

20 OKAY. LET'S SET AN AMOUNT REASONABLE --

21 MR. RICH: YOUR HONOR, MAY I RAISE ONE OTHER
22 DISCOVERY RELATED ISSUE FOR YOU?

23 THE COURT: YES.

24 MR. RICH: AND THIS INVOLVES FURTHER DEPOSITIONS, IF
25 ANY, OF PROFESSORS.

1 THE COURT: I'M GLAD YOU BROUGHT THAT UP. GO AHEAD.

2 MR. RICH: I DON'T THINK THERE'S A LARGE DISPUTE. WE
3 HAVE NO INTENTION TO TAKE A DEPOSITION OF EVERY PROFESSOR WHO
4 WILL SHOW UP ON THIS 127 OR WHATEVER THAT NUMBER MIGHT BE
5 LIST.

6 WE DO FEEL WE WOULD WANT TO TAKE LITERALLY A HANDFUL
7 OR LESS SUCH DEPOSITIONS OR FEWER SUCH DEPOSITIONS.

8 THE COURT: I THOUGHT YOU HAD FIVE LEFT FROM YOUR
9 PREVIOUS AGREEMENT?

10 MR. RICH: WE DO, AND SO THERE'S NO DISPUTE THERE.
11 HERE'S THE WRINKLE. WE DON'T KNOW, NOW I GUESS A SLIGHTLY
12 DIFFERENT ISSUE, WHO AT GEORGIA STATE FROM THAT LIST OF I
13 COUNTED 48 DIFFERENT PROFESSORS I THINK SO FAR, WHO THEY MIGHT
14 CALL AT TRIAL AND PRESENT AS REPRESENTATIVE OF PRACTICES.

15 ALL WE HAD WANTED WAS THE PROTECTION THAT IN THE
16 EVENT, AND IT'S NOT UNCOMMON, THAT WE WOULD RECIPROCATE IN THE
17 EVENT EITHER SIDE PROPOSES NOW TO PRESENT LIVE TESTIMONY FROM
18 SOMEONE WHOM THE OTHER SIDE HAD NOT HAD THE OPPORTUNITY TO TAKE
19 A DEPOSITION THAT A TRIAL DEPOSITION BE AFFORDED. THESE HAVE
20 BEEN VERY NARROW TO OUR DEPOSITIONS. THAT'S REALLY THE SCOPE
21 OF THE DISAGREEMENT BETWEEN US.

22 THE COURT: BASED ON THE BRIEF THAT YOU ALL FILED, MY
23 IMPRESSION WAS THAT YOUR PREVIOUS AGREEMENT LIMITED YOU TO
24 POTENTIALLY FIVE MORE DEPOSITIONS AND THAT THE DEFENDANTS WERE
25 READY, WILLING AND ABLE FOR YOU TO HAVE THOSE FIVE. SO THAT'S

1 YOUR AGREEMENT AND THAT'S FINE WITH ME.

2 I'M NOT TOO SURE WHAT TO DO BEYOND THAT. I MEAN BOTH
3 SIDES HAVE KIND OF STRUCTURED YOUR CASE IN THE WAY YOU WANTED
4 TO, AND MY ATTITUDE GENERALLY IS THAT BOTH SIDES HAD AN AMPLE
5 OPPORTUNITY FOR DISCOVERY, AND YOU CHOSE TO DO CERTAIN THINGS,
6 AND I DO NOT WANT TO JUST OPEN UP DISCOVERY AGAIN BECAUSE I
7 THINK IT WILL DELAY THINGS AND IT WILL BE VERY EXPENSIVE.

8 I THINK WHAT YOU ARE SAYING ABOUT WELL IF THE
9 PLAINTIFFS DECIDE TO CALL CERTAIN PEOPLE AT TRIAL THAT YOU
10 DIDN'T KNOW PREVIOUSLY THAT THEY MIGHT BE TESTIFYING, YOU
11 HAVEN'T HAD A CHANCE TO QUESTION THEM, YOU KNOW, THAT MIGHT BE
12 AN AREA WHERE SOME EXCEPTIONS COULD BE MADE, BUT I REALLY THINK
13 YOU ALL SHOULD, YOU KNOW, TRY TO THINK THROUGH HOW YOU THINK
14 THE TRIAL IS GOING TO GO, AND YOU'RE GOING TO HAVE TO TALK
15 ABOUT WHO YOUR WITNESSES ARE GOING TO BE WHEN YOU DO THE
16 PRETRIAL ORDER AND JUST SEE HOW IT LOOKS AND SEE WHAT YOU CAN
17 RESOLVE BY AGREEMENT.

18 MR. RICH: EXCELLENT.

19 MR. ASKEW: COULD I ASK THIS QUESTION, YOUR HONOR?

20 THE COURT: YES.

21 MR. ASKEW: THERE IS THIS QUESTION ABOUT THE NUMBER
22 OF PROFESSORS THAT WE HAVE INVOLVED HERE 48 OR 49, AND YOU'RE
23 ABSOLUTELY CORRECT, WE'VE WRESTLED WITH HOW MANY OF THOSE WOULD
24 WE WANT TO USE AS A WITNESS.

25 AM I CORRECT IN MY UNDERSTANDING THAT YOU WOULD NOT

1 BE PARTICULARLY INTERESTED IN HEARING FROM 48 PROFESSORS?

2 THE COURT: WELL, AS I SAID, I DON'T WANT TO JUMP
3 INTO THE BREACH HERE. I THOUGHT MYSELF ABOUT, YOU KNOW, CAN
4 THE FAIR USE DEFENSE BE PRESENTED IN THIS CASE BASED ON SOME
5 GENERALIZATION ABOUT THE NATURE OF THE WORKS AND SO FORTH, AND
6 IT'S POSSIBLE THAT IT CAN BE, BUT I'M NOT -- I DON'T WANT TO
7 MAKE THAT DECISION FOR YOU ALL.

8 I THINK IT'S JUST YOU KNOW THE CASE BETTER THAN I DO,
9 AND I THINK, YOU KNOW, YOU ALL WOULD BE THE BEST JUDGES OF THE
10 BEST WAY TO PRESENT YOUR FAIR USE DEFENSE.

11 I WOULD IMAGINE I WOULDN'T BE TOO HAPPY TO HEAR FROM
12 48 OR 49 PROFESSORS, PARTICULARLY IF THEY'RE ALL GOING TO BE
13 SAYING THE SAME THING.

14 MR. RICH: YOUR HONOR, AN OBVIOUS POSSIBILITY IS THAT
15 WE CAN STIPULATE TO THE REPRESENTATIVENESS OF THE TESTIMONY OF
16 SOME NUMBER OF PROFESSORS. WHETHER THAT'S FEASIBLE, I DON'T
17 KNOW, BUT THAT WOULD LOGICAL.

18 THE COURT: YEAH, I DON'T KNOW EITHER. I REALLY
19 DON'T. I JUST DON'T KNOW. I MEAN I SEE YOUR LIST OF THESE
20 WORKS, AND MAYBE I HAVE SOME IMPRESSIONS ABOUT WHAT THEY ARE,
21 BUT I THINK IT'S PRETTY OBVIOUS THAT I HAVEN'T READ VERY MANY,
22 IF ANY, OF THESE WORKS, AND SO SOMEBODY IS GOING TO HAVE TO
23 EDUCATE ME ABOUT THEM, AND THE BEST WAY TO DO IT, I'M NOT SURE
24 WHAT IS THE BEST WAY TO DO IT.

25 ALL RIGHT. NOW, LET'S SEE, SO YOU ALL IN YOUR

1 PROPOSED SCHEDULING ORDERS CONTEMPLATED A CERTAIN AMOUNT OF
2 TIME FOR SUPPLEMENTATION OF DISCOVERY AND DEPOSITIONS OF UP TO
3 FIVE GEORGIA STATE WITNESSES, AND THAT'S OKAY WITH ME.

4 AND THEN IN SECTIONS C, D, E AND F OF THE PLAINTIFFS'
5 FILING, YOU HAVE ALL THIS STUFF ABOUT OPPOSITION BRIEFS. LET'S
6 JUST SCRATCH THAT, AND INSTEAD OF THAT SAY THAT COUNSEL FOR THE
7 PARTIES SHALL CONFER AND JOINTLY PREPARE UPDATED STATEMENTS OF
8 THE CLAIMED INFRINGEMENTS IN THE THREE 2009 SEMESTERS, AND
9 WHAT WOULD BE THE AMOUNT OF TIME, YOU THINK, YOU'D NEED TO DO
10 THAT?

11 MR. SCHAETZEL: WE WILL BE PRODUCING ELECTRONICALLY
12 TODAY UPDATED ERESERVE REPORTS.

13 MR. RICH: HOW DOES 30 DAYS FROM THE CLOSE OF THE
14 DEPOSITIONS SOUND TO GET THAT PROCESS DONE?

15 MR. SCHAETZEL: IS THAT FOR BOTH OF US --

16 MR. RICH: WE'RE THINKING 45 DAYS, YOUR HONOR, FROM
17 THE END OF THE DEPOSITIONS.

18 THE COURT: LET'S DO THAT. 45 DAYS TO GET THAT FILED
19 WITH THE COURT, AND THEN I GUESS AFTER THAT WE JUST NEED TO SET
20 A DATE FOR FILING THE PROPOSED PRETRIAL ORDER.

21 HOW MUCH TIME DO YOU WANT FOR THAT?

22 MR. SCHAETZEL: TWO THOUGHTS ON THAT, YOUR HONOR.
23 FIRST, I'D LIKE TO BE CERTAIN THAT THE COURT IS AWARE THAT LATE
24 YESTERDAY WE FILED A MOTION TO DISMISS. SO THAT'S --

25 THE COURT: I HAVE SEEN IT. JUST GLANCED AT IT. I

1 HAVE NOT HAD A CHANCE TO READ IT.

2 MR. SCHAETZEL: CERTAINLY, I UNDERSTAND. I WANTED
3 YOU TO BE AWARE OF THAT AS WE TALKED ABOUT TIME, BUT OBVIOUSLY
4 IF WE JUST USE THE LOCAL RULE PROVISION, SOMETHING LIKE ANOTHER
5 30 TO 45 DAYS TO PREPARE THE PRETRIAL ORDER.

6 MR. RICH: I WOULD AGREE WITH THAT.

7 THE COURT: OKAY. 30 DAYS AFTER THE FILING OF THAT
8 LIST, YOU GET THE PROPOSED PRETRIAL ORDER IN, AND I GUESS AS
9 SOON AS I GET THAT PRETRIAL ORDER, I'LL SET A TRIAL DATE.

10 OKAY. SO WHAT WE HAVE OUTSTANDING OTHER THAN THIS
11 ISSUE ABOUT THE CLAIMS OF INFRINGEMENT, WE HAVE THE PLAINTIFFS'
12 MOTION FOR RECONSIDERATION THAT WAS FILED A COUPLE OF WEEKS AGO
13 I THINK AND --

14 MR. RICH: THE SECOND PORTION OF WHICH IS NOW MOOT
15 FROM TODAY.

16 THE COURT: RIGHT, I GUESS SO SOME OF IT IS MOOT.
17 ARE YOU ALL GOING TO FILE A RESPONSE TO THAT?

18 MR. SCHAETZEL: YES, IT'S DUE MONDAY.

19 THE COURT: ALL RIGHT. I'LL LOOK AT THAT, AND WE'LL
20 JUST TAKE THAT UNDER ADVISEMENT FROM THAT POINT, AND THEN AS
21 SOON AS I GET YOU ALL'S RESPONSE TO THE MOTION TO DISMISS,
22 WE'LL GET BUSY ON THAT.

23 I THINK THAT PRETTY WELL WRAPS UP THE AGENDA. CAN
24 YOU ALL THINK OF ANYTHING ELSE?

25 MR. LARSON: YOUR HONOR, IF I COULD ON SECTION A OF

1 THE PROPOSED SCHEDULE, THE ENTIRE DISCOVERY SCHEDULE IS KEYED
2 OFF OF THE DATE OF EITHER NOVEMBER 30 OR 15 DAYS AFTER YOUR
3 DECISION ON THE MOTION FOR RECONSIDERATION. I TAKE IT FROM
4 WHAT YOU JUST SAID THAT WE SHOULD PLAN OUR DATES BASED ON YOUR
5 RESPONSE THEN TO THE MOTION FOR RECONSIDERATION?

6 MR. KRUGMAN: NO, I DON'T THINK THAT'S NECESSARY.
7 IT'S ONLY PART TWO OF THE MOTION FOR CONSIDERATION.

8 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

9 THE LAW CLERK: MAY I CLARIFY ONE THING, THE
10 SUBMISSION OF THE LIST, YOU REFERRED TO IT AS A LISTING OF THE
11 CHARTS. DO YOU PREFER THAT IN A CHART FORMAT, OR DO YOU PREFER
12 IT IN LIKE ONE PAGE FOR EACH ITEM? IT MIGHT BE EASIER TO
13 CLARIFY NOW EXACTLY HOW THAT WILL BE DONE.

14 THE COURT: I WOULD LIKE ONE PAGE FOR EACH.

15 MR. SCHAETZEL: YES, I HEARD 127 PAGES.

16 THE COURT: YOU KNOW, I'M NOT SURE WHETHER A CHART IS
17 FEASIBLE.

18 MR. RICH: DID YOU FIND THE CHART HELPFUL ON THE
19 SUBMISSION?

20 THE COURT: I DID.

21 MR. SCHAETZEL: WE CAN DO BOTH.

22 THE COURT: BOTH WOULD BE GREAT.

23 OKAY. THANK YOU.

24 (PROCEEDINGS CONCLUDED.)

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C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF GEORGIA

I, ANDRE G. ASHLEY, DO HEREBY CERTIFY THAT I AM A
U.S. DISTRICT REPORTER FOR THE NORTHERN DISTRICT OF GEORGIA,
THAT I REPORTED THE FOREGOING AND THE SAME IS A TRUE AND
ACCURATE TRANSCRIPTION OF MY MACHINE SHORTHAND NOTES AS TAKEN
AFORESAID.

IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND ON
THIS 10TH DAY OF FEBRUARY, 2011.

ANDRE G. ASHLEY
OFFICIAL COURT REPORTER
NORTHERN DISTRICT OF GEORGIA