

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Judge David Folsom

DATATREASURY CORPORATION)	
	(
V.)	CIVIL NO. 2:06CV72
	(
WELLS FARGO)	

ATTORNEY FOR PLAINTIFFS: Ed Hohn; Rodney Cooper; Ed Chin; Anthony Bruster; Karl Rupp

ATTORNEY FOR DEFENDANTS: Robert Parker; Sam Baxter; Tom Melsheimer; Brett Johnson

LAW CLERK: David Keyzer & Jonathan Hardt

COURTROOM DEPUTY: Mel Martin

COURT REPORTER: Libby Crawford

SCHEDULING CONFERENCE
October 19, 2006 @ 1:00 p.m.

OPEN: 1:03 _____ ADJOURN: 2:01

- 1:03 ct opens;
- 1:03 ct/ add ptys group that wanted to call in has not; and we need to get started so that Judge Ward can continue with his trial;
- 1:03 Baxter/ I will your honor
- 1:03 ct/ will discuss matters I don't agree with; 10 mins for each side on motion;
- 1:04 Hohn/ approach the podium
- 1:04 ct/ management issues; trial plan

- 1:05 Hohn/ add the ct; thinks
- 1:06 ct/ add group that is attending by phone and will allow to e-mail a list of who was involved via phone;
- 1:07 Hohn/ argues motion
- 1:07 ct/ all deposition hrs will be counted against time allotted;
- 1:07 Hohn/ 200 per dft
- 1:08 Johnson/ for Fish & Richardson;
- 1:08 ct/ will take these up by groups, ct will entertain additional hrs
- 1:09 Hohn/ don't mind doing discovery but don't want it coming out of the 200
- 1:09 ct/ talk in how many hrs you want, it will count against your hours
- 1:09 Hohn/ we will need 250 hrs
- 1:10 Johnson/ 6,000 hrs; consolidated everyone's views; 6,000 hrs is ridiculously...; 1:11 expert sharing;
- 1:11 ct/ not enough experts; different issue on how we approach the trial
- 1:11 Johnson/ 150 hrs
- 1:11 ct/ will give 175 hrs per litigation group; don't use all that time and then think you will file a motion for additional time; includes all depositions; talk in more detail 10 hrs per expert and 30(b)6;
- 1:12 Hohn/ request for admissions;
- 1:16 Johnson/ have proposed 100;
- 1:16 ct/ that is too low;
- 1:16 Johnson/ address' the ct;
- 1:16 ct/ start with a group of no more than 500;
- 1:16 Johnson/ 500 rfa's per litigant group;
- 1:17 Hohn/ special master; Danny Williams;

- 1:17 ct/ in terms of SM one for discovery and one as a Technical Advisor;
- 1:18 Hohn/ same person
- 1:18 ct/ talking in terms of 2 individuals;
- 1:18 Parker/ should be split;
- 1:19 ct/ tend to agree;
- 1:19 Hohn/ just adding cost
- 1:19 ct/ looking around and nobody particular concerned with adding cost;
- 1:19 Parker/ we have a problem with Danny Williams;
- 1:20 ct/ not talking in terms of who it is going to be; meet and confer on these issues and work through it; and ct will adopt choice of ptys; if you can't agree then ct will choose; conflicts issue; how much time needed to meet and confer about this process, can this be done in a couple of weeks;
- 1:21 Parker/ can be done this afternoon;
- 1:21 Hohn/ 48 hrs
- 1:21 ct/ if you can't agree determine selection if they have a conflict, you 2 gentlemen report to me directly if you are able to agree; within a week or so;
- 1:22 Hohn/ issue deposition protocol;
- 1:22 ct/ do ptys continue to work on that;
- 1:22 Hohn/ responds, this is where we are;
- 1:23 ct/ not suggested in report and may need some time to give thought to this issue
- 1:23 Johnson/ responds
- 1:23 ct/ can't imagine ptys trying to coordinating everybody being available for depositions;
- 1:23 Johnson/ responds;
- 1:24 ct/ need to be some tweaking on standard limitation re: expert time; ptys will need to work some more on this issue; we will come back to this topic;

- 1:24 Hohn/ responds
- 1:24 ct/ number of lawyers; doesn't necessarily mean that can happen; SM assisting with discovery may need to assist on deposition times and working through those;
- 1:25 Hohn/ limitation of claims;
- 1:25 ct/ see it difficult to go forward with 200 asserted claims; wrong with dfts proposal, 50 asserted claims;
- 1:26 Hohn/ nothing and we have done it with every dft so far; narrow claims after discovery;
- 1:27 Parker/ grant motion to stay you get rid of 93 claims right there;
- 1:27 ct/ tough time convincing me on one without the other;
- 1:28 Parker/ failed before;
- 1:28 ct/ time left; what ptys have thought of actual trial of this case;
- 1:28 Johnson/ proposed a pre, pre-trial conference in the Summer of '08;
- 1:28 ct/ try first group in October of '08; why didn't ptys think in terms of March '08
- 1:29 Hohn/ we did;
- 1:29 Johnson/ responds;
- 1:29 ct/ we have one set here in March; those have a way of changing;
- 1:30 Johnson/ responds;
- 1:30 ct/ that was to be done by November 29th;
- 1:30 Hohn/ we will have it done by 11/29th
- 1:30 ct/ limit to 50 asserted claims by 11/29th;
- 1:31 Hohn/ different issue;
- 1:31 ct/ when does that take place, the 50
- 1:31 Johnson/ end of November;
- 1:31 ct/ understand dfts proposal they limit themselves to 50 asserted claims and then March

they narrow to 10

1:32 Johnson/ for each litigant group

1:32 ct/ each litigant group, I understand; what has been done by way of disclosure

1:32 Hohn/ just getting going on that;

1:32 ct/ assume that I am going to limit you what would be a reasonable time;

1:33 Hohn/ 3 mos after we get their documents

1:33 ct/ what is so unreasonable about that

1:33 Johnson/ responds

1:33 ct/ spirit of cooperation

1:33 Johnson/ evaporates at key times; 50 claims is a large number

1:34 ct/ sever out those unless ptys can agree to some stipulation; can explore at a later date; claims involved in Polycom case;

1:34 Baxter/ don't remember;

1:34 ct/ what other areas other than stay issue

1:34 Hohn/ e-discovery;

1:35 Johnson/ we will be able to work through that in the next week or two;

1:35 ct/ much thought to trial plan; how cases are going to be broken up;

1:35 Hohn/ common factor;

1:37 ct/ doesn't have to be decided now; we need to make a decision who is going to be tried and in what order;

1:37 Johnson/ we don't agree with organizing principal;

1:38 ct/ luxury of time on this issue; number of pending motions;

1:38 Melsheimer/ add the ct;

1:39 ct/ local rule that you have got to make disclosure even if there is a pending motion;

- 1:39 Johnson/ took place about 10 days ago;
- 1:39 Bruster/address the ct;
- 1:40 Johnson/ administrative matter;
- 1:41 ct/ no reason why that can't be done;
- 1:41 Hohn/ trouble getting stuff that they did with court reporters and videographers;
- 1:42 Johnson/ list
- 1:42 ct/ they just said a list and don't see a problem with that;
- 1:43 Hohn/ will go forward on motion;
- 1:43 ct/ add ptys;
- 1:43 Parker/ argues motion, conferred with Mr. Baxter and in agreement; speak today for the defense group;
- 1:44 ct/ heart of the issue; opportunity to see order entered in Antor;
- 1:44 Parker/ argues motion;
- 1:46 ct/ can limit claim reduction; Ballard group; clients want both of best worlds;
- 1:47 Parker/ continues with motion; obviously some settlements;
- 1:48 Baxter/ argues motion, a little different from Antor;
- 1:52 ct/ response;
- 1:52 Rupp/ responds to motion;
- 1:57 Parker/ mention one other thing;
- 1:57 ct/ yes you may;
- 1:57 Parker/ extend opportunity to dfts to reassert it;
- 1:57 ct/ reasonable; claim construction suggested date is agreeable for my docket; 9/24/07; how long needed for claim construction;
- 1:58 Hohn/ one day is plenty;

- 1:58 ct/ limiting term that are construed and no case authority on that;
- 1:59 Johnson/ 2 days;
- 1:59 ct/ we will set aside 2 days; report back within a week on SM and TA; order next week on stay; approach issue on asserted claims;
- 1:59 Rupp/ carve out issue on asserted claims;
- 2:00 ct/ plan to have order out on stay issue next week and that will give everybody some guidance; any other matters;
- 2:01 recess;