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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NORMAN ROBINSON, ET AL

V. DOCKET NO. 06-CV-2268
NEW ORLEANS, LOUISIANA
WEDNESDAY, APRIL 29, 2009

UNITED STATES OF AMERICA, ET AL

TRANSCRIPT OF TRIAL PROCEEDINGS
HEARD BEFORE THE HONORABLE STANWOOD R. DUVAL, JR.
UNITED STATES DISTRICT JUDGE
VOLUME 8 - MORNING SESSION

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ALSO PRESENT:

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER.

P R O C E E D I N G S

(WEDNESDAY, APRIL 29, 2009)

(MORNING SESSION)

09:37:09 4

09:37:24 5

THE DEPUTY CLERK: COURT'S IN SESSION, PLEASE BE SEATED.

09:37:28 6

THE COURT: GOOD MORNING. I INTEND TO TAKE UP THIS

09:37:32 7

MATTER, AND I KNOW IT'S SHORT NOTICE, EVERYTHING HAS BEEN SHORT

09:37:35 8

NOTICE, BUT THIS TRIAL IS GOING TO BE GOING ON. IN THE EVENT THAT I

09:37:40 9

FIND THAT THE ATTORNEYS ARE NOT DISQUALIFIED, I HAVE REVIEWED THE

09:37:43 10

MATTER, I DO NOT THINK -- AND I THINK THAT IT CAN BE TAKEN UP NOW.

09:37:50 11

THE GOVERNMENT I KNOW JUST GOT THE OPPOSITION, IT CAN GET

09:37:54 12

ANYTHING IT WANTS TO SAY ON THE RECORD QUICKLY NOW.

09:37:58 13

MR. SMITH: YOUR HONOR, WE WOULD LIKE A HALF AN HOUR TO

09:38:00 14

STUDY THEIR PAPERS.

09:38:01 15

THE COURT: HALF AN HOUR IS A PRETTY REASONABLE REQUEST.

09:38:04 16

I AM GOING TO GRANT IT, A REASONABLE REQUEST I MUST GRANT.

09:38:09 17

MR. SMITH: THANK YOU.

09:38:11 18

THE COURT: DONE. HALF AN HOUR, WE WILL COME BACK AT TEN.

09:38:14 19

THE DEPUTY CLERK: ALL RISE, PLEASE.

09:38:16 20

(WHEREUPON, A RECESS WAS TAKEN.)

10:05:17 21

(OPEN COURT.)

10:05:27 22

THE DEPUTY CLERK: COURT'S IN SESSION, PLEASE BE SEATED.

10:05:32 23

THE COURT: OKAY. GOOD MORNING. LET ME START OUT BY

10:05:38 24

SAYING HOW THE HEARING WILL BE CONDUCTED, AND IT'S THE COURT'S VIEW

10:05:46 25

THAT THE GOVERNMENT HAS THE BURDEN. I AM GOING TO LET THE

10:05:48 1 GOVERNMENT GO FIRST AND I AM GOING TO LET THE GOVERNMENT REBUT IF IT
10:05:53 2 WISHES TO REBUT. IT'S GOING TO BE DONE BY NOON AND RULED ON BY
10:06:00 3 NOON.

10:06:03 4 FIRST, LET ME TELL YOU THE COURT'S CONCERNS. SOME OF THEM
10:06:11 5 ARE IN AN E-MAIL WE SENT LAST NIGHT ABOUT 11 O'CLOCK OR SO, WHICH
10:06:15 6 WILL BE CONVERTED TO A MINUTE ENTRY THAT WE E-MAILED TO THE PARTIES.

10:06:21 7 BUT THIS IS, AS WE ALL KNOW, A HIGHLY COMPLEX LEGAL AND
10:06:30 8 FACTUAL CASE. IT HAS BEEN CERTAINLY THE COURT'S EMPHASIS, AND THIS
10:06:39 9 MOTION, HOWEVER IT'S RESOLVED, WILL NOT HAVE ANY AFFECT ON THE
10:06:42 10 COURT'S ANALYSIS OF THE VERY COMPLEX LEGAL AND FACTUAL ISSUES IN
10:06:50 11 THIS CASE. JUST TO LET EVERYONE KNOW, NO MATTER WHAT THE OTHER
10:06:57 12 ASPECTS OF IT IS.

10:06:59 13 LET'S TRY AS BEST WE CAN, INCLUDING ME, TO KEEP THIS AS
10:07:09 14 IMPERSONAL AS POSSIBLE UNDER THE CIRCUMSTANCES.

10:07:14 15 HERE IS THE COURT'S PROBLEM: ONE, THE COURT IS NOT AWARE
10:07:21 16 OF THE SPECIFIC FACTS RELATING TO THIS ALLEGED CONFLICT OF INTEREST,
10:07:29 17 EXCEPT TO THE EXTENT THAT I'VE NOW READ THE GOVERNMENT'S MOTION AND
10:07:33 18 THE PLAINTIFFS' RESPONSE. BUT I AM VERY, VERY, VERY AWARE OF THE
10:07:40 19 VARIOUS LAWSUITS INVOLVING THE KATRINA LITIGATION, OBVIOUSLY.

10:07:48 20 I HAVE REVIEWED THE JOINT DEFENSE AGREEMENT, AND IN ORDER
10:07:55 21 FOR THE CANNONS OF ETHICS TO TO APPLY, MS. SHERMAN -- IS THAT THE
10:08:00 22 CORRECT PRONUNCIATION -- SHERMAN MUST BE, IN ESSENCE THE GOVERNMENT
10:08:05 23 MUST BE HER CLIENT THE WAY I READ IT, AND CLEARLY ON THE JOINT
10:08:09 24 DEFENSE AGREEMENT THE GOVERNMENT IS NOT. SO I AM BEFUDDLED BY THAT.
10:08:15 25 THIS SPECIFIC PARAGRAPH 17 SPECIFICALLY OF THE JOINT DEFENSE

10:08:22 1 AGREEMENT MAKES IT CLEAR, MANIFESTS THAT NO ONE IS ANYBODY'S CLIENT,
10:08:27 2 OTHER THAN THE ONE THEY REPRESENT IN THE AGREEMENT.

10:08:31 3 RULE 1.9, THE INTEREST INVOLVED HAS TO BE ADVERSE TO THE
10:08:38 4 CLIENT WHICH IS AT THE TIME WAS JEFFERSON PARISH. SO I AM CONCERNED
10:08:42 5 ABOUT THAT. I DIDN'T SEE IT IN THE MOTION.

10:08:45 6 TWO: I AM A LITTLE LESS CONCERNED ABOUT PARAGRAPH 20
10:08:49 7 WHICH DEALS WITH CONFLICT OF INTEREST. THE PLAINTIFFS MAY ARGUE IT,
10:08:57 8 IT'S NOT AS CLEAR TO ME AS THE CLIENT PROVISION BUT IT INTERESTS ME.
10:09:04 9 WE MAY NOT BE GETTING INTO THE FACTS YET, THAT'S FOR YOU TO TELL ME.

10:09:08 10 AND AS STATED IN MY E-MAIL LAST NIGHT, I AM INTERESTED IN
10:09:14 11 THE TIMING OF THIS. IT WAS HARD TO RECONSTRUCT THIS LAST NIGHT, BUT
10:09:21 12 WE WENT THROUGH ALL OF THE DEPOSITION NOTICES AND SAW WHO ATTENDED
10:09:28 13 AND IT WAS A BUNCH, ALL WHO ATTENDED AND IT APPEARS -- BECAUSE SOME
10:09:34 14 OF THE PAGES WERE MISSING -- THEY WERE SKEWED IN THE SUBMISSION SO
10:09:40 15 IT WAS HARD TO ASCERTAIN UNDER SOME WHO APPEARED ON BEHALF OF THE
10:09:42 16 GOVERNMENT. I SIMPLY AM TRYING TO FIND OUT WHEN THE ALLEGED
10:09:46 17 CONFLICT WAS NOTED BY THE GOVERNMENT OR SHOULD HAVE BEEN NOTED BY
10:09:52 18 THE GOVERNMENT. AND I NOTICED THERE'S SOMETHING IN THE PLAINTIFFS'
10:09:56 19 BRIEF ABOUT THAT, THOSE ARE SIGNIFICANT ISSUES.

10:09:59 20 AND THEN IN THE FINAL ANALYSIS, OF COURSE, WHAT PORTION OF
10:10:03 21 THE JOINT DEFENSE AGREEMENT, WHAT CONFIDENT -- IF RELEVANT, WHAT
10:10:10 22 PORTION -- WHAT INFORMATION COVERED BY THE JOINT DEFENSE AGREEMENT
10:10:15 23 WAS DIVULGED TO MS. SHERMAN AND TO WHAT EXTENT, AS I STATED, THAT
10:10:23 24 SHE SHARED THAT, IF ANY, WITH MR. ANDRY -- I NOTICE THERE IS AN
10:10:27 25 AFFIDAVIT TO THE EFFECT THAT IT WAS NOT, BUT I WANT TO HEAR IT. AND

10:10:32 1 DID IT GO FURTHER UP THE LINE TO ANY OTHER PLAINTIFFS' ATTORNEYS.

10:10:37 2 THOSE ARE THE THINGS I AM INTERESTED IN. AND WE'RE GOING
10:10:40 3 TO DO THIS IN A COMPRESSED FASHION. THIS IS THE SEVENTH DAY OF THIS
10:10:45 4 TRIAL. I SPENT A MONTH, I MEAN NIGHT AND DAY READING ALL OF THESE,
10:10:54 5 READING THE DEPOSITION, SYNOPSISING THEM MYSELF; READING THE EXPERT
10:10:59 6 REPORTS, SYNOPSISING IT MYSELF. WE HAVE A LOT ELSE GOING ON AND IT
10:11:04 7 IS IN THE INTEREST OF JUSTICE THAT THIS CASE GO TO TRIAL, GET
10:11:10 8 DECIDED EVENTUALLY. IT'S GOING TO BE A VERY DIFFICULT DECISION
10:11:12 9 REQUIRING A LOT OF TIME ON THE COURT, AND GET TO THE COURT OF
10:11:15 10 APPEAL, WHICH IS MY JOB. THIS CAN GO RIGHT ALONG WITH IT.

10:11:20 11 BUT I DARE SAY, WHEN ALL IS SAID AND DONE THAT THE ISSUES
10:11:27 12 FOR THE COURT OF APPEAL, THE MORE VEXING ISSUES, HOWEVER I RULE FOR
10:11:31 13 THE DEFENDANT OR FOR THE PLAINTIFF, DISCRETIONARY FUNCTION
10:11:35 14 EXCEPTION, 702C ISSUES, AND THE SCIENCE WHICH WE HAVE AND THE
10:11:43 15 FACTUAL TESTIMONY AND EXPERT TESTIMONY, WHICH WE HAVE BEEN HAVING
10:11:49 16 THUS FAR AND WHICH WE WILL HAVE IN THE DAYS TO COME, HOPEFULLY
10:11:54 17 WITHOUT TOO MANY MORE INTERRUPTIONS LIKE THIS OR ANYMORE HOPEFULLY.

10:11:58 18 BUT WITH ALL OF THAT SAID, I WOULD LIKE THE GOVERNMENT TO
10:12:04 19 START OFF AND THEN WE'LL HAVE THE PLAINTIFFS AND THE GOVERNMENT WITH
10:12:10 20 REBUTTAL.

10:12:12 21 MR. SMITH: GOOD MORNING. THANK YOU, YOUR HONOR.

10:12:18 22 THE COURT: YES, SIR.

10:12:19 23 MR. SMITH: THE UNITED STATES ENTERED INTO A JOINT DEFENSE
10:12:24 24 AGREEMENT WITH JEFFERSON PARISH, AMONG OTHER PARTIES, TO THE IN RE:

10:12:29 25 KATRINA CANAL BREACHES --

10:12:31 1 THE COURT: MR. SMITH, I AM SO SORRY TO INTERRUPT YOU
10:12:34 2 RIGHT NOW. I THOUGHT I HAD THE AGREEMENT ON MY DESK, THE JOINT
10:12:37 3 DEFENSE AGREEMENT, IT WAS SUPPOSED TO BE HERE AND IT'S NOT. AND
10:12:48 4 IT'S THE COURT'S FAULT. I HAD IT IN MY HAND AND DIDN'T BRING IT
10:12:53 5 OUT. THIS IS GOOD BECAUSE I HAD UNDERLINED SOMETHING.

10:12:58 6 ALL RIGHT. YES, SIR. I'M SORRY, GO AHEAD.

10:13:00 7 MR. SMITH: YES, YOUR HONOR. THANK YOU. WE ENTERED INTO
10:13:02 8 A JOINT DEFENSE AGREEMENT WITH JEFFERSON PARISH AND OTHER PARTIES TO
10:13:08 9 THE IN RE: KATRINA CANAL BREACHES CONSOLIDATED LITIGATION. WE
10:13:13 10 ENTERED INTO A JOINT DEFENSE AGREEMENT IN THE LEVEE CATEGORY AND
10:13:16 11 ALSO WITH CERTAIN DEFENDANTS IN THE MRGO CATEGORY. THE JOINT
10:13:20 12 DEFENSE AGREEMENT THAT'S RELEVANT HERE IS THE ONE THAT WAS ENTERED
10:13:24 13 INTO WITH OTHER PARTIES WHO WERE DEFENDANTS IN THE LEVEE TRACK OF
10:13:30 14 THIS CONSOLIDATED LITIGATION.

10:13:31 15 THE PURPOSE OF THOSE JOINT DEFENSE AGREEMENTS WAS TO ALLOW
10:13:36 16 THE DEFENDANTS TO SHARE CONFIDENCES AND SECRETS AND CONFIDENTIAL
10:13:42 17 INFORMATION WITH OTHER DEFENDANTS SO THAT WE COULD BENEFIT FROM EACH
10:13:46 18 OTHER'S INFORMATION AND KNOWLEDGE IN PREPARING OUR OWN DEFENSES IN
10:13:51 19 THIS CASE AND IN OTHERS. AND AS A RESULT OF THAT JOINT DEFENSE
10:13:57 20 AGREEMENT, THERE WERE NUMEROUS STRATEGY SESSIONS THAT WERE HELD
10:14:01 21 INVOLVING COUNSEL FOR VARIOUS DEFENDANTS, INCLUDING JEFFERSON
10:14:06 22 PARISH. AND INCLUDING SPECIFICALLY MS. KEA SHERMAN, WHOSE
10:14:13 23 PARTICIPATION AS A REPRESENTATIVE, A LAWYER REPRESENTING JEFFERSON
10:14:17 24 PARISH IS WHAT PROMPTED THE DEFENDANTS'S MOTION.

10:14:24 25 WE'RE AWARE OF JUST ONE AT THE PRESENT TIME, OF JUST ONE

10:14:31 1 STRATEGY SESSION INVOLVING THE CLASS ACTION EXPERT THAT WAS A JOINT
10:14:35 2 EXPERT FOR THE UNITED STATES AND OTHER DEFENDANTS THAT WAS ATTENDED
10:14:40 3 BY MS. SHERMAN. THERE MAY HAVE BEEN OTHERS. WE DON'T KNOW HOW MANY
10:14:46 4 STRATEGY SESSIONS SHE MAY HAVE ATTENDED OR OTHER ATTORNEYS FROM THE
10:14:49 5 LAW FIRM THAT EMPLOYED HER MAY HAVE ATTENDED. AND WE DO NOT
10:14:54 6 BELIEVE -- I KNOW THE COURT THINKS THAT IT CAN RESOLVE THIS MATTER
10:14:58 7 TODAY, BUT WE DO NOT BELIEVE THAT THERE'S BEEN AN ADEQUATE
10:15:01 8 OPPORTUNITY FOR US TO DEVELOP THE RECORD CONCERNING ANY POSSIBLE
10:15:05 9 PREJUDICE THAT THE UNITED STATES MAY HAVE INCURRED AS A RESULT OF
10:15:09 10 MS. SHERMAN'S CHANGE IN EMPLOYMENT.

10:15:11 11 THE COURT: WOULD YOU START OFF BY TELLING ME WHY YOU'RE
10:15:13 12 HER CLIENT UNDER RULE 1.9?

10:15:16 13 MR. SMITH: WE ARE NOT HER CLIENT, YOUR HONOR.

10:15:17 14 THE COURT: HOW DOES 1.9 APPLY? HOW DO THE RULES OF
10:15:20 15 ETHICS APPLY?

10:15:22 16 MR. SMITH: YOUR HONOR, WE THINK THAT SHE AND MR. ANDRY,
10:15:25 17 HIS FIRM ARE DISQUALIFIED BY VIRTUE OF THE JOINT DEFENSE AGREEMENT,
10:15:30 18 NOT BECAUSE SHE REPRESENTED THE UNITED STATES --

10:15:33 19 THE COURT: YOU MENTIONED 1.9 IN YOUR BRIEF AND THAT
10:15:36 20 DOESN'T SEEM TO APPLY. DO YOU HAVE ANY CASES ON A JOINT DEFENSE
10:15:40 21 AGREEMENT?

10:15:40 22 MR. SMITH: I DO HAVE A CASE, YOUR HONOR, IT'S A FIFTH
10:15:40 23 CASE.

10:15:40 24 THE COURT: OKAY. WHAT'S THAT?

10:15:42 25 MR. SMITH: WILSON P. ABRAHAM CONSTRUCTION CORPORATION V.

10:15:46 1 ARMCO STEEL CORPORATION, 559 F.2D 250.

10:15:53 2 THE COURT: OKAY. LET ME GET THAT. 559 F.2D --

10:15:57 3 MR. SMITH: 250, FIFTH CIRCUIT, 1977. QUOTING FROM PAGE
10:16:02 4 253: "JUST AS AN ATTORNEY WOULD NOT BE ALLOWED TO PROCEED AGAINST
10:16:07 5 HIS FORMER CLIENT IN A CAUSE OF ACTION SUBSTANTIALLY RELATED TO THE
10:16:11 6 MATTERS IN WHICH HE PREVIOUSLY REPRESENTED THAT CLIENT, AN ATTORNEY
10:16:16 7 SHOULD ALSO NOT BE ALLOWED TO PROCEED AGAINST A CODEFENDANT OF A
10:16:19 8 FORMER CLIENT WHEREIN THE SUBJECT MATTER OF THE PRESENT CONTROVERSY
10:16:24 9 IS SUBSTANTIALLY RELATED."

10:16:26 10 THE COURT: IS THERE A CODEFENDANT HERE NAMED JEFFERSON
10:16:30 11 PARISH?

10:16:30 12 MR. SMITH: THERE IS, YOUR HONOR.

10:16:31 13 THE COURT: IN THE ROBINSON CASE?

10:16:33 14 MR. SMITH: NO, IN THE IN RE: KATRINA CANAL BREACHES
10:16:36 15 CONSOLIDATED --

10:16:36 16 THE COURT: MR. SMITH, THAT IS SO FASCICLED, YOU KNOW
10:16:39 17 BETTER THAN THAT. I HAVE RESPONDERS IN THAT, I HAVE DREDGERS IN
10:16:42 18 THAT, AND WHAT DO THEY HAVE TO DO WITH THE ISSUES IN THIS CASE?

10:16:47 19 MR. SMITH: YOUR HONOR --

10:16:47 20 THE COURT: LET ME FINISH. THIS IS AN UMBRELLA WITH EIGHT
10:16:50 21 CATEGORIES. MANY OF THEM ARE ONLY HERE BECAUSE THEY HAVE INSURANCE,
10:16:56 22 BECAUSE OF THE DISCOVERY REFERENCED LEVEE BREACHES. THE LEVEE
10:16:58 23 BREACHES AT THE 17TH STREET CANAL DON'T HAVE A WIT TO DO WITH, YOU
10:17:06 24 CAN MAYBE EDUCATE ME, WITH THIS CASE.

10:17:06 25 SO BECAUSE IT'S CONSOLIDATED, SIR, IT DOES NOT MAKE IT

10:17:13 1 SUBSTANTIALLY RELATED. IT WAS CONSOLIDATED, MANY DIFFERENT TYPES OF
10:17:15 2 LITIGATION BARELY RELATED TO EACH OTHER AT ALL, IF AT ALL, WERE
10:17:20 3 INCLUDED UNDER THIS UMBRELLA, WISELY OR NOT, TO ACCOMMODATE AND
10:17:25 4 ASSIST THE PARTIES AND THE COURT IN CERTAIN DISCOVERY ISSUES.

10:17:31 5 SO DON'T JUST TELL ME 4182, THAT IS FASCICLED. TELL ME
10:17:37 6 WHY THEY'RE SUBSTANTIALLY RELATED. YOU GAVE ME A CASE -- WHICH I
10:17:41 7 DON'T RECALL WAS IN THE BRIEF. IF IT WAS, I MISSED IT -- ABOUT
10:17:45 8 JOINT DEFENSE AGREEMENTS BECAUSE I AM INTERESTED IN THAT BECAUSE THE
10:17:47 9 CANNONS OF ETHICS DON'T SEEM TO APPLY TO THIS PARTICULAR INCIDENT.

10:17:51 10 BUT GO AHEAD AND YOU WERE READING A QUOTE. I DON'T KNOW
10:17:55 11 IF YOU FINISHED.

10:17:56 12 MR. SMITH: YES, YOUR HONOR, JUST TO CONTINUE. "THE
10:17:57 13 ATTORNEY SHOULD NOT BE ALLOWED TO PROCEED AGAINST A CODEFENDANT OF A
10:18:01 14 FORMER CLIENT WHEREIN THE SUBJECT MATTER OF THE PRESENT CONTROVERSY
10:18:05 15 IS SUBSTANTIALLY RELATED TO THE MATTERS IN WHICH THE ATTORNEY WAS
10:18:09 16 PREVIOUSLY INVOLVED, AND WHEREIN CONFIDENTIAL EXCHANGES OF
10:18:14 17 INFORMATION TOOK PLACE BETWEEN THE VARIOUS CODEFENDANTS IN
10:18:17 18 PREPARATION OF A JOINT DEFENSE."

10:18:18 19 THE COURT: OKAY.

10:18:19 20 MR. SMITH: IN RESPONSE TO YOUR HONOR'S COMMENTS, I WOULD
10:18:23 21 RESPECTFULLY SUGGEST THAT THIS IS NOT A FASCICLE ARGUMENT THAT I AM
10:18:29 22 PRESENTING HERE.

10:18:30 23 THE COURT: I AM NOT SAYING THAT IS, WHEN YOU USE 4182
10:18:33 24 IT'S FASCICLED. YOU TELL ME HOW -- WHAT WAS RELATED TO THE CLASS
10:18:38 25 CERTIFICATION. TELL ME WHAT WAS RELATED -- LET ME FINISH MY

10:18:41 1 QUESTION, SIR -- WHAT WAS RELATED TO THE CLASS CERTIFICATION ISSUE
10:18:44 2 IN LEVEE, HOW IT RELATES TO THE ISSUES I'VE BEEN HEARING HERE IN THE
10:18:48 3 MRGO HOW IT'S SUBSTANTIALLY RELATED, AND YOU TELL ME HOW THAT IS.

10:18:52 4 THAT'S A LEGITIMATE QUESTION AND THAT'S CERTAINLY NOT
10:18:55 5 FASCICLED IF IT'S SUBSTANTIALLY RELATED.

10:18:57 6 MR. SMITH: YOUR HONOR, I WOULD LIKE TO READ TO YOU FROM
10:19:00 7 THE PLAINTIFFS' RESTATED LEVEE MASTER CONSOLIDATED CLASS ACTION
10:19:04 8 COMPLAINT.

10:19:05 9 THE COURT: OKAY.

10:19:06 10 MR. SMITH: NOT THE COMPLAINT IN THIS ACTION, BUT THE
10:19:08 11 COMPLAINT IN THE LEVEE CATEGORY, AND IT WAS IN THE LEVEE CATEGORY
10:19:13 12 THAT THIS JOINT DEFENSE AGREEMENT WAS EXECUTED.

10:19:15 13 THE COURT: I UNDERSTAND THAT. I AM SAYING -- I
10:19:17 14 UNDERSTAND THAT. I GOT THAT.

10:19:20 15 MR. SMITH: I AM READING FROM THE INTRODUCTION TO THIS
10:19:22 16 LEVEE MASTER CLASS ACTION RESTATED CONSOLIDATED COMPLAINT. IT'S
10:19:28 17 PARAGRAPH ONE, MIDWAY THROUGH THE FIRST PARAGRAPH, "THROUGH THE
10:19:32 18 FAULT AND NEGLIGENCE OF DEFENDANTS, KATRINA'S SURGE RUSHED FROM THE
10:19:37 19 GULF OF MEXICO THROUGH THE MISSISSIPPI GULF OUTLET (MRGO) AND
10:19:42 20 CONVERGED WITH ANOTHER STORM SURGE RUSHING FROM LAKE BORGNE THROUGH
10:19:48 21 THE GIWW. THE COMBINED SURGE WAS THEN FUNNELED INTO THE JOINT
10:19:52 22 MRGO-GIWW, OTHERWISE KNOWN AS REACH ONE OF THE MRGO, INUNDATING THE
10:19:58 23 HEART OF THE CITY OF NEW ORLEANS FROM THE EAST BY OVERWHELMING
10:20:01 24 LEVEES, FLOODWALLS, AND/OR SPOIL BANKS THAT HAD BEEN NEGLIGENTLY
10:20:05 25 DESIGNED, CONSTRUCTED, MAINTAINED, UNDERMINED, WEAKENED, INSPECTED

10:20:09 1 AND/OR OPERATED BY THE DEFENDANTS.

10:20:14 2 YOUR HONOR, I RESPECTFULLY SUGGEST THAT THAT'S WHAT YOUR
10:20:17 3 HONOR HAS BEEN HEARING EVIDENCE ABOUT FOR THE LAST SEVEN-DAYS.

10:20:19 4 THE COURT: WELL, SIR, WE HAVE -- YOU'RE TELLING ME THAT
10:20:27 5 WE'RE BEING -- THAT THE MRGO WAS INVOLVED IN -- THE FAILURE OF THE
10:20:34 6 MRGO WAS INVOLVED IN -- FIRST, WAS IT INVOLVED IN THE CLASS
10:20:39 7 CERTIFICATION ISSUE --

10:20:40 8 MR. SMITH: YES.

10:20:41 9 THE COURT: -- THE FAILURE OF THE MRGO.

10:20:43 10 MR. SMITH: YOUR HONOR, THE SPECIFIC --

10:20:44 11 THE COURT: EXCUSE ME, WHEN I SAY THE FAILURE OF THE MRGO,
10:20:47 12 THE ALLEGED DEFECTS OF THE MRGO.

10:20:49 13 AS I RECALL THE LEVEE CASE, WHICH YOU GOT OUT ON 702C
10:20:53 14 IMMUNITY, IT INVOLVED THE OUTFALL CANALS, THAT'S WHY YOU'RE NOT IN
10:20:57 15 THE LEVEE CASE ANYMORE. IT DIDN'T INVOLVE THE MRGO. SO YOU CAN
10:21:00 16 READ THAT HEADING BUT I KNOW WHAT THE CASE IS ABOUT AND YOU KNOW
10:21:03 17 WHAT IT'S ABOUT, SO PLEASE UNDERSTAND THAT WHAT YOU JUST READ
10:21:11 18 DOESN'T -- THEN WHY ARE YOU STILL -- WHY ARE YOU NOT IN THE LEVEE
10:21:13 19 CASE IF IT INVOLVES THE MRGO BECAUSE I FOUND THE MRGO, RIGHT OR
10:21:17 20 WRONG, 702C IMMUNITY DIDN'T APPLY.

10:21:20 21 SO YOU TELL ME HOW READING ME A BLURB FROM THERE HOW
10:21:24 22 THAT'S SUBSTANTIALLY RELATED TO THIS CASE.

10:21:27 23 PLUS, I'D LIKE TO EVENTUALLY HEAR AND I AM GOING TO LET
10:21:31 24 YOU, IF YOU WANT, PUT HER ON THE STAND AND ASK HER WHAT CONFIDENTIAL
10:21:34 25 INFORMATION SHE RECEIVED RELATING, RELATING TO THE ISSUES IN THIS

10:21:39 1 CASE THAT WERE CONFIDENTIAL. IN THIS ROBINSON CASE. AND THEN WE'LL
10:21:43 2 GO FROM THERE.

10:21:45 3 OKAY. I UNDERSTAND YOU READ THE BLURB, I KNOW WHAT IT WAS
10:21:48 4 ABOUT. AND YOU'RE NOT IN THE CASE ANYMORE BECAUSE YOU'RE DISMISSED,
10:21:52 5 YOU'RE NOT IN IT, YOU WON. SO FAR. AND IF THE MRGO WERE INVOLVED,
10:22:03 6 YOU WOULDN'T. SO THAT'S ABOUT THE OUTFALL CANALS. GO AHEAD, SIR.

10:22:06 7 MR. SMITH: YOUR HONOR MAY RECALL THAT THERE WERE
10:22:10 8 ALLEGATIONS CONCERNING THIS PARAGRAPH THAT I JUST READ TO YOU AND
10:22:14 9 THAT THOSE ALLEGATIONS WERE TRANSFERRED FROM THE LEVEE MASTER
10:22:18 10 COMPLAINT INTO THE MRGO. SO THOSE ALLEGATIONS WERE PART OF THE
10:22:24 11 LEVEE SUIT AT THE TIMES THAT MS. SHERMAN WAS REPRESENTING JEFFERSON
10:22:30 12 PARISH.

10:22:30 13 THE COURT: I DON'T KNOW THOSE TIMES.

10:22:32 14 MR. SMITH: AND THOSE CLAIMS ARE THE CLAIMS THAT ARE BEING
10:22:38 15 LITIGATED NOW IN THIS CASE.

10:22:38 16 THE COURT: OKAY.

10:22:39 17 MR. SMITH: I WOULD FURTHER SUGGEST, YOUR HONOR, THERE'S A
10:22:43 18 SECOND CASE I WOULD LIKE YOUR HONOR TO CONSIDER SINCE YOU'VE ASKED
10:22:47 19 FOR CASES.

10:22:47 20 THE COURT: OKAY.

10:22:48 21 MR. SMITH: IN RE: GABAPENTIN PATENT LITIGATION,
10:23:01 22 407 F.SUPP.2D 607, THAT'S THE DISTRICT OF NEW JERSEY, 2005.

10:23:08 23 THE COURT: OKAY.

10:23:10 24 MR. SMITH: AND AT PAGES 613 AND 614, THE COURT SETS FORTH
10:23:15 25 ITS HOLDING STATING THAT: "BECAUSE THE TERMS OF THE JOINT DEFENSE

10:23:21 1 AGREEMENT REVEAL A CLEAR INTENT THAT ANY VOLUNTARILY SHARED
10:23:27 2 INFORMATION WOULD REMAIN CONFIDENTIAL AND BE PROTECTED, THE
10:23:33 3 NON-CLIENT COULD ASSERT A CONFLICT OF INTEREST."

10:23:36 4 SO IN RESPONSE TO YOUR HONOR'S OBSERVATION, IT'S NOT OUR
10:23:40 5 CONTENTION AND WE DON'T THINK THE FACTS SUPPORT A FINDING THAT
10:23:44 6 MS. SHERMAN OR HER FIRM WERE REPRESENTING THE UNITED STATES, BUT OUR
10:23:51 7 ARGUMENT IS BASED UPON THE FACT THAT WE ENTERED INTO THIS JOINT
10:23:55 8 DEFENSE AGREEMENT AND CERTAIN CONFIDENCES WERE SHARED PURSUANT TO
10:23:59 9 THAT JOINT DEFENSE AGREEMENT IN THE UNDERSTANDING THAT THOSE
10:24:02 10 CONFIDENCES WOULD NOT BE SHARED WITH NON-PARTIES TO THE AGREEMENT.

10:24:06 11 THE COURT: DO YOU AGREE THAT THE CLASS CERTIFICATION
10:24:08 12 ISSUE IN THE MRGO DOESN'T HAVE A WIT TO DO WITH THE ISSUES IN THIS
10:24:12 13 CASE, SIR? AND IF YOU DON'T AGREE, PLEASE ARTICULATE WHY.

10:24:17 14 MR. SMITH: I DO DISAGREE, YOUR HONOR. AND HERE IS THE
10:24:21 15 REASON WHY. MR. KUHLMEIER OR DR. KUHLMEIER, I AM NOT SURE.

10:24:26 16 THE COURT: WE'LL CALL HIM DOCTOR.

10:24:28 17 MR. SMITH: THE EXPERT THAT MS. SHERMAN PARTICIPATED IN
10:24:31 18 HIS PREP SESSION, WAS AN EXPERT IN MODELING INTERNAL FLOODING, AND
10:24:42 19 HE WOULD HAVE BEEN CONCERNED ABOUT INFLOWS FROM THE IHNC, THE SAME
10:24:49 20 SORTS OF FLOODING THAT OCCURRED AS A RESULT OF INFLOWS INTO THE IHNC
10:24:54 21 IN THIS CASE.

10:24:57 22 MY POINT, YOUR HONOR, WOULD BE THE BROADER POINT, I THINK,
10:25:01 23 WHICH IS BECAUSE CONFIDENCES WERE SHARED WITH OTHER MEMBERS OF THE
10:25:07 24 DEFENSE, MEMBERS OF THE JOINT DEFENSE AGREEMENT, OTHER PARTIES TO
10:25:11 25 THE JOINT DEFENSE AGREEMENT, IT WOULD BE IMPOSSIBLE FOR MS. SHERMAN

10:25:16 1 TO KNOW WHETHER SHE RECEIVED CONFIDENTIALLY DISCLOSED INFORMATION
10:25:22 2 FROM OTHER MEMBERS OF THE JOINT DEFENSE AGREEMENT BECAUSE WE -- IT
10:25:25 3 WOULDN'T NECESSARILY HAVE COME DIRECTLY FROM THE UNITED STATES OR
10:25:28 4 FROM AN EMPLOYEE OF THE UNITED STATES OR A WITNESS FOR THE UNITED
10:25:34 5 STATES BECAUSE WE WOULD -- WE'VE TALKED TO OTHER PEOPLE AND THEY
10:25:37 6 TALKED TO OTHER PEOPLE THAT ARE PARTS OF THE JOINT DEFENSE
10:25:40 7 AGREEMENT.

10:25:40 8 THE COURT: AND EVENTUALLY I HAVE TO DETERMINE HOW THOSE
10:25:43 9 CONFIDENCES RELATE TO WHETHER THEY REACH 2 LEVEES AND THE MRGO
10:25:49 10 FAILED, THE ISSUES BECAUSE OF ONE THING OR ANOTHER, WHETHER NEW
10:25:55 11 ORLEANS EAST WAS INVOLVED, I DON'T RECALL NEW ORLEANS EAST BEING
10:25:57 12 INVOLVED IN THE -- OR JEFFERSON PARISH FOR THAT MATTER. JEFFERSON
10:26:03 13 PARISH WAS NOT INVOLVED CERTAINLY IN THE MRGO OR ROBINSON.

10:26:08 14 MR. SMITH: THAT'S TRUE, YOUR HONOR.

10:26:10 15 THE COURT: ALL RIGHT. AND WHAT HAPPENED, AND I DON'T
10:26:13 16 REMEMBER, WHAT HAPPENED TO JEFFERSON PARISH IN THE LEVEE LITIGATION?
10:26:19 17 I JUST DON'T REMEMBER.

10:26:20 18 MR. SMITH: YOUR HONOR, I DON'T KNOW WHETHER THEY WERE
10:26:22 19 ACTUALLY A DEFENDANT IN THE LEVEE CATEGORY.

10:26:24 20 THE COURT: I DON'T THINK THEY WERE BUT I AM NOT POSITIVE.
10:26:26 21 AND IF YOU DON'T KNOW, THAT'S FINE.

10:26:28 22 MR. SMITH: WE DID THOUGH CHECK THE DOCKET THIS MORNING
10:26:31 23 AND WE DO KNOW THAT THEY WERE A PARTY IN THIS BROAD CATEGORY.

10:26:35 24 THE COURT: THEY WERE REMOVED, I KNOW, AND THIS IS -- I AM
10:26:39 25 NOT QUESTIONING YOU HERE, I AM SIMPLY TRYING TO RECREATE MY OWN

10:26:43 1 MEMORY BECAUSE WE DIDN'T HAVE TIME, AS YOURSELF, WE HAVE TIME
10:26:46 2 CONSTRAINTS. AS I RECALL, I WAS TRYING TO FIGURE HOW JEFFERSON
10:26:51 3 PARISH FIGURED INTO THE SCHEME OF THINGS HERE, THE FORMER CLIENT OF
10:26:55 4 MS. SHERMAN.

10:26:55 5 AND AS I RECALL, IT WAS REMOVED FROM -- ONE GROUP OF CASES
10:26:59 6 WERE REMOVED FROM STATE COURT AND WE REMANDED THEM, THEY WERE
10:27:03 7 REMOVED AGAIN AND WE REMANDED THEM. REMANDED THEM UNDER CAFA. THEY
10:27:11 8 WERE REMOVED UNDER CAFA AND WE'VE NOW REMANDED IT TWICE. THAT'S MY
10:27:14 9 RECOLLECTION.

10:27:14 10 NOW, I DON'T REMEMBER WHETHER THEY WERE AN ORIGINAL
10:27:19 11 DEFENDANT -- I KNOW IN THE RESPONDER CASE THEY WERE, BUT I AM NOT --
10:27:23 12 SO THEY WERE PROBABLY UNDER THE UMBRELLA IN THE RESPONDER CASE AND I
10:27:28 13 DISMISSED THEM.

10:27:29 14 MR. SMITH: I'VE ACTUALLY BEEN HANDED A COUPLE OF CASE
10:27:32 15 NUMBER, CIVIL ACTION NUMBERS. I THINK THESE WERE CASES THAT FILED
10:27:37 16 BY MR. GAMBLE SO THEY WEREN'T CLASS ACTIONS.

10:27:39 17 THE COURT: RIGHT.

10:27:40 18 MR. SMITH: BUT THEY WERE IN THE LEVEE CATEGORY.

10:27:44 19 THE COURT: THOSE ARE NOW IN JEFFERSON PARISH?

10:27:46 20 MR. SMITH: I THINK YOUR HONOR -- NO, I THINK YOUR HONOR
10:27:48 21 ACTUALLY GRANTED A MOTION TO DISMISS.

10:27:51 22 THE COURT: I MAY HAVE.

10:27:52 23 MR. SMITH: SIMS WAS ONE CASE.

10:27:55 24 THE COURT: I HONESTLY DON'T REMEMBER.

10:27:57 25 MR. SMITH: THE CIVIL ACTION NUMBER IS 06-5116.

10:28:34 1 THE COURT: YES, SIR. WE ARE TRYING TO GET INFORMATION
10:28:36 2 OURSELVES.

10:28:37 3 MR. SMITH: I UNDERSTAND, YOUR HONOR. THE SECOND CASE
10:28:39 4 THAT I BELIEVE THE UNITED STATES AND JEFFERSON PARISH WERE
10:28:44 5 DEFENDANTS IN IS THE DEPASS CASE, D-E --

10:28:49 6 THE COURT: THAT'S THE ONE, I KNOW THAT WAS REMOVED AND,
10:28:52 7 AS I RECALL, REMOVED AND REMANDED.

10:28:55 8 MR. SMITH: AND THAT CIVIL ACTION NUMBER IS 06-5127.

10:29:00 9 THE COURT: I COULDN'T REMAND YOU, SO I MAY BE GETTING --
10:29:05 10 IT'S HARD THERE HAVE BEEN SO MANY.

10:29:06 11 MR. SMITH: YEAH. IN THAT CASE, IN THOSE CASES NEGLIGENT
10:29:12 12 CONSTRUCTION, OPERATION AND MAINTENANCE OF THE IHNC WAS ALLEGED, AS
10:29:17 13 WELL AS THE SPECIFIC ALLEGATION THAT COMPROMISE OF A PORTION OF THE
10:29:23 14 FLOOD CONTROL SYSTEM REFERENCED DUE TO ITS PROXIMITY TO THE MRGO.

10:29:29 15 THE COURT: DO YOU KNOW WHEN THE COURT, YOU MAY HAVE THE
10:29:34 16 DATE, WHEN THE COURT SEPARATED THE MRGO FROM THE LEVEE, ANYTHING
10:29:45 17 RELATING TO THE MRGO FROM THE LEVEE ALLEGATIONS?

10:29:47 18 MR. SMITH: I'M SORRY, YOUR HONOR, I DON'T RECALL.

10:29:50 19 THE COURT: THOSE DATES COULD BECOME IMPORTANT.

10:29:52 20 MR. SMITH: I JUST DON'T RECALL WHEN THAT OCCURRED.

10:29:55 21 THE COURT: ALL RIGHT. AND THE JOINT DEFENSE AGREEMENT
10:29:59 22 WAS ENTERED INTO ON? LET'S JUST GET THAT.

10:30:08 23 MR. ROY: YOUR HONOR --

10:30:09 24 THE COURT: SOMETIME IN JULY OF '07. AT LEAST THAT'S WHAT
10:30:13 25 IT LOOKS LIKE.

10:30:14 1 MR. SMITH: YES, YOUR HONOR, I THINK THAT'S CORRECT.

10:30:14 2 THE COURT: OKAY.

10:30:18 3 MR. SMITH: I THINK THAT -- WHY THOSE CASES ARE
10:30:23 4 SUBSTANTIALLY RELATED TO THIS CASE IS THAT THE FACTS AS WE'VE CITED
10:30:29 5 IN SOME OF THESE SPECIFIC CASES ARE SIMILAR AND INVOLVE SOME OF THE
10:30:32 6 SIMILAR ALLEGATIONS THAT WE'RE LITIGATING IN THIS CASE, THEY BOTH
10:30:37 7 IMPLICATED THE LAKE PONTCHARTRAIN AND VICINITY HURRICANE PROTECTION
10:30:43 8 SYSTEM --

10:30:45 9 THE COURT: THAT DATE WAS JANUARY 30TH, 2008, BY THE WAY,
10:30:48 10 THAT WE SEPARATED OUT.

10:30:50 11 MR. SMITH: -- THEY BOTH INVOLVED ALLEGATIONS CONCERNING
10:30:53 12 THE MRGO AND THEN THEY RAISED THE SAME SORTS OF JURISDICTIONAL LEGAL
10:30:59 13 DEFENSES THAT WE'VE ASSERTED IN THIS CASE CONCERNING THE
10:31:02 14 DISCRETIONARY FUNCTION EXCEPTION AND FLOOD CONTROL.

10:31:07 15 THE COURT: NONE OF THAT WOULD BE A SECRET, I DON'T THINK.
10:31:09 16 BUT ANY WAY.

10:31:10 17 MR. SMITH: I AM NOT SURE THAT WE WOULD HAVE SHARED ANY
10:31:12 18 CONFIDENCES WITH RESPECT TO THOSE WITH OTHER PARTIES EITHER, YOUR
10:31:15 19 HONOR.

10:31:15 20 THE COURT: THANK YOU. THAT'S WHAT I'M INTERESTED IN,
10:31:18 21 SHARING CONFIDENCES.

10:31:20 22 MR. SMITH: I WOULD THINK NOT.

10:31:21 23 THE COURT: THAT'S WHAT IMPLICATES A JOINT DEFENSE
10:31:23 24 AGREEMENT IF CONFIDENCE WAS SHARED, I UNDERSTAND.

10:31:25 25 MR. SMITH: AND MANY OF THE WITNESSES IN THIS CASE WERE

10:31:29 1 ALSO WITNESSES IN THE LEVEE AND THE MRGO CATEGORIES AS WELL. AND I
10:31:35 2 THINK FRANKLY MS. SHERMAN'S CONTINUED ATTENDANCE AT THE DEPOSITIONS
10:31:41 3 THAT WERE TAKEN IN ROBINSON IN THE MRGO CATEGORY AND THE LEVEE
10:31:48 4 CATEGORY SHOW THAT HER CLIENT, AT THAT TIME JEFFERSON PARISH,
10:31:51 5 BELIEVED THERE WAS ENOUGH RELATIONSHIP BETWEEN WHAT WAS GOING ON IN
10:31:55 6 THIS LITIGATION AND THEIR OWN LITIGATION TO WARRANT HAVING HER
10:31:59 7 ATTEND THESE DEPOSITIONS AND MONITOR THEM FOR THEM.

10:32:05 8 THE COURT: I SEE. MR. SMITH, AGAIN, I DON'T WANT TO
10:32:13 9 INTERRUPT YOU IN A FLOW. ONE OF THE THINGS I WAS INTERESTED IS WHEN
10:32:17 10 THE GOVERNMENT BECAME -- YOU SHOULD HAVE KNOWN, AND I'VE LOOKED AT,
10:32:20 11 I HAVE SOME --

10:32:21 12 MR. SMITH: YEAH, I'LL JUST ADDRESS THAT NOW, YOUR HONOR,
10:32:23 13 SINCE YOU'VE RAISED IT BECAUSE I THINK IT'S A CLEAR ISSUE.

10:32:30 14 THE THING WE'VE DISCOVERED IN TALKING TO THE ATTORNEYS ON
10:32:30 15 OUR TEAM IS THAT SOME ATTORNEYS UNDERSTOOD THAT SHE REPRESENTED
10:32:35 16 JEFFERSON PARISH AND OTHER ATTORNEYS BELIEVED THAT SHE REPRESENTED
10:32:39 17 THE PLAINTIFFS. BUT NO ONE THAT WE'VE -- AND I'VE ASKED EVERYBODY
10:32:44 18 ON OUR TRIAL TEAM TO TELL ME IF THEY WERE AWARE OF THIS -- NO ONE
10:32:48 19 KNEW THAT SHE REPRESENTED BOTH. IN OTHER WORDS, IN SOME
10:32:52 20 DEPOSITIONS --

10:32:53 21 THE COURT: BUT NOT AT THE SAME TIME.

10:32:54 22 MR. SMITH: NOT AT THE SAME TIME, BUT NOBODY KNEW THAT SHE
10:32:58 23 HAD GONE FROM EMPLOYMENT BY A DEFENDANT IN THESE CASES TO EMPLOYMENT
10:33:04 24 BY THE PLAINTIFFS.

10:33:05 25 THE COURT: DID YOU HAVE AN OPPORTUNITY TO READ THE

10:33:06 1 AFFIDAVIT IN THE OPPOSITION?

10:33:08 2 MR. SMITH: I DID, I DID READ THAT. AND SPECIFICALLY THE
10:33:11 3 ONE BY MR. SULLIVAN I BELIEVE.

10:33:14 4 THE COURT: YOUR MEMORY IS BETTER THAN MINE.

10:33:16 5 MR. SMITH: AND HE REFERENCED SOME JOKING ABOUT THE SWITCH
10:33:20 6 IN MS. SHERMAN'S EMPLOYMENT. I HAVE TO SAY, YOUR HONOR, IF I WAS
10:33:27 7 PRESENT WHEN THAT JOKING WAS GOING ON, IT WENT OVER MY HEAD. I
10:33:32 8 DIDN'T KNOW MS. SHERMAN'S NAME, FRANKLY, UNTIL THIS ISSUE WAS
10:33:34 9 BROUGHT TO MY ATTENTION AT TRIAL. I SAW HER AT DEPOSITIONS. I
10:33:39 10 DON'T BELIEVE I EVER SPOKE TO HER MYSELF.

10:33:43 11 THE COURT: YEAH, YOU WERE AT THE DEPOSITION OF WALTER
10:33:46 12 BAUMY --

10:33:48 13 MR. SMITH: LAST OCTOBER. YEAH, WE HAD THE 30(B)(6)
10:33:52 14 DEPOSITION OF THE CORPS OF ENGINEERS IN LATE SEPTEMBER AND EARLY
10:33:55 15 OCTOBER, AND SHE WAS IN ATTENDANCE AT THOSE DEPOSITIONS, AND IT WAS
10:33:58 16 OBVIOUS TO ME AT THAT TIME SHE WAS CONFERRING AND CONSULTING WITH
10:34:04 17 PLAINTIFFS' COUNSEL.

10:34:06 18 THE COURT: I MISSPOKE, SIR. I SHOULD HAVE SAID GREGORY
10:34:13 19 MILLER.

10:34:15 20 MR. SMITH: WELL --

10:34:16 21 THE COURT: AND MR. PODANY AND DR. DAY.

10:34:19 22 MR. SMITH: THOSE WERE ALL WITNESSES IN THE 30(B)(6)
10:34:22 23 DEPOSITION THAT TOOK PLACE OVER A PERIOD OF I THINK THREE WEEKS.

10:34:25 24 THE COURT: AND YOU SAW THEN THAT SHE WAS CONFERRING WITH
10:34:28 25 THE PLAINTIFFS.

10:34:28 1 MR. SMITH: RIGHT. SO I DIDN'T KNOW HER NAME. SHE WAS --
10:34:32 2 I DIDN'T, FRANKLY I DIDN'T KNOW IF SHE WAS AN ATTORNEY OR PARALEGAL,
10:34:35 3 BUT SHE WAS ASSISTING IN THE TAKING OF THE DEPOSITION. AND OTHER
10:34:43 4 ATTORNEYS HAD PREVIOUSLY BEEN AT DEPOSITIONS IN WHICH THEY WERE
10:34:45 5 AWARE THAT SHE REPRESENTED JEFFERSON PARISH. BUT THAT INFORMATION
10:34:50 6 JUST DIDN'T -- IT NEVER CAME TOGETHER UNTIL WE GOT TO TRIAL.

10:34:57 7 THE COURT: THANK YOU, SIR.

10:34:59 8 MR. SMITH: AND WHEN WE CAME TO TRIAL, ONE OF THE MEMBERS
10:35:01 9 OF OUR TEAM WENT OVER AND ASKED MS. SHERMAN, JUST COMMENTED THAT HE
10:35:07 10 THOUGHT SHE HAD REPRESENTED JEFFERSON PARISH PREVIOUSLY AND THEN
10:35:11 11 THAT'S HOW WE BASICALLY BECAME AWARE OF THIS, IT WAS DURING THE
10:35:14 12 FIRST WEEK OF TRIAL JUST OUT OF CURIOSITY BECAUSE SHE WAS SEATED ON
10:35:21 13 THE SIDE WITH THE PLAINTIFFS.

10:35:22 14 THE COURT: HER AFFIDAVIT INDICATED SOMEBODY KNEW IT WELL
10:35:28 15 BEFORE.

10:35:28 16 MR. SMITH: THE AFFIDAVIT SAYS THERE WAS JOKING GOING ON
10:35:33 17 AND I THINK THAT --

10:35:33 18 THE COURT: IT CLEARLY IMPLIES KNOWLEDGE.

10:35:36 19 MR. SMITH: WE CAN FILE DECLARATIONS, YOUR HONOR, IF YOU
10:35:38 20 NEED AFFIDAVITS FROM OUR ATTORNEYS.

10:35:39 21 THE COURT: I MEAN, UNLESS YOU CONTEST THAT UNLESS YOU SAY
10:35:43 22 SOMEBODY'S FILED SOMETHING FALSELY WITH THIS COURT, WHICH WHOEVER IT
10:35:46 23 IS IS GOING TO BE IN TROUBLE.

10:35:48 24 MR. SMITH: I JUST THINK IT MAY BE A DIFFERENCE OF
10:35:50 25 MISUNDERSTANDING. I THINK THE INFERENCE THAT WAS MADE WAS THAT WE

10:35:52 1 WERE AWARE OF IT BECAUSE WE WERE PRESENT. BUT FRANKLY, IT WASN'T
10:35:59 2 IMPORTANT. I MEAN, TO ME AT THE TIME IF THIS WAS GOING ON I WAS NOT
10:36:02 3 THINKING ABOUT THIS BECAUSE IT JUST WASN'T WHAT I WAS THERE TO DO.

10:36:07 4 THE COURT: I UNDERSTAND.

10:36:11 5 MR. SMITH: AS I'VE SAID, I'VE INQUIRED OF OUR WHOLE TEAM
10:36:15 6 AND NO ONE HAS INDICATED THAT THEY WERE AWARE OF THIS BEFORE WE GOT
10:36:19 7 HERE LAST WEEK.

10:36:20 8 THE COURT: AT THE DEPOSITION AND NOBODY -- THEY DIDN'T GO
10:36:24 9 THROUGH A ROLE CALL WHO YOU REPRESENT, THAT KIND OF THING?

10:36:27 10 MR. SMITH: YOU KNOW, USUALLY WHAT HAPPENS AT THE
10:36:31 11 DEPOSITION IS THEY SEND AROUND A SIGN-IN SHEET AND PEOPLE SIGN IN.
10:36:34 12 BUT I DON'T KNOW THAT -- I HAVEN'T PAID ATTENTION TO WHO SIGNS IN AS
10:36:39 13 WHOM.

10:36:39 14 THE COURT: I'M SURE THERE IS A CASE OUT THERE, MR. SMITH,
10:36:41 15 BUT I HAVEN'T FOUND ONE YET, AND I'M SURE THEY'RE OUT THERE, WHERE
10:36:45 16 THE MOTION TO DISQUALIFY WAS FILED THIS LATE INTO THE TRIAL.
10:36:49 17 USUALLY IT'S ON THE EVE OF TRIAL OR BEFORE, AND THERE MAY BE GOOD
10:36:53 18 REASON, I CAN I AM NOT PREJUDGING THAT, I NEED TO HEAR EVERYTHING.

10:36:57 19 MR. SMITH: I DO THINK --

10:36:59 20 THE COURT: I DIDN'T FIND A CASE.

10:37:01 21 MR. SMITH: FRANKLY, IN TRYING TO EXPLAIN THIS TO THE
10:37:03 22 PEOPLE BACK IN WASHINGTON, IN A TYPICAL CASE NOT INVOLVING SO MANY
10:37:07 23 PARTIES YOU KNOW WHO IS IN THE ROOM AND YOU KNOW WHO THEY REPRESENT;
10:37:11 24 BUT IN THIS CASE, AS YOU POINTED OUT, WE'VE GOT INSURERS, WE'VE GOT
10:37:16 25 BARGE PEOPLE, AND PEOPLE SHOW UP FOR THESE DEPOSITIONS TO OBSERVE

10:37:24 1 AND IT'S OF NO INTEREST TO THE ATTORNEY TAKING THE DEPOSITION OR
10:37:26 2 DEFENDING THE DEPOSITION TO KNOW THE SPECIFIC REPRESENTATION OF
10:37:31 3 EVERY PERSON THAT'S IN THE ROOM AT THAT TIME. WE ALL KNOW THAT
10:37:34 4 THERE WILL BE DIFFERENT PEOPLE SHOWING UP FOR DIFFERENT DEPOSITIONS,
10:37:37 5 AND WE JUST ACCEPT THAT FACT AND GO ON.

10:37:41 6 AND I THINK THAT'S BECAUSE THIS IS SO UNUSUAL IN THAT
10:37:45 7 SENSE, IT SEEMS -- IT SEEMS IMPLAUSIBLE, IF YOU WILL, ON ITS FACE
10:37:50 8 THAT NO ONE COULD HAVE RECOGNIZED OR DID RECOGNIZE THIS BEFORE WE
10:37:54 9 GOT TO TRIAL. BUT THAT'S MY REPRESENTATION TO THE COURT IS THAT'S
10:37:59 10 MY UNDERSTANDING OF WHAT HAPPENED.

10:38:01 11 THE COURT: ALL RIGHT. I ACCEPT THAT.

10:38:19 12 MR. SMITH: YOUR HONOR, THE LAST POINT I THINK I WOULD
10:38:30 13 LIKE TO ADDRESS IS THE POINT THAT --

10:38:35 14 THE COURT: WHAT ABOUT -- GO AHEAD, WE MAY BE ON THE SAME
10:38:39 15 PAGE -- PARAGRAPH 20 OF THE JOINT DEFENSE AGREEMENT, THAT'S A
10:38:44 16 CONFLICT OF INTEREST PROVISION, WHAT'S YOUR INTERPRETATION OF IT?

10:38:47 17 MR. SMITH: YES, YOUR HONOR, THE WAIVER.

10:38:48 18 THE COURT: YES.

10:38:50 19 MR. SMITH: I JUST READ IT SPECIFICALLY BECAUSE I THINK
10:38:54 20 YOU HAVE TO GO TO THE TERMS, YOU KNOW, OF THE AGREEMENT TO
10:38:57 21 DETERMINE -- TO INTERPRET IT OBVIOUSLY, IT'S GOVERNED BY ITS TERMS.
10:39:02 22 AND WHAT IT SAYS IN PARAGRAPH 20 IS: "ANY CONFLICT OF INTEREST
10:39:06 23 ARISING OUT OF THE SHARING OF PROTECTED INFORMATION UNDER THIS
10:39:10 24 AGREEMENT IS WAIVED. EACH PARTY AND ITS COUNSEL EXPRESSLY WAIVE ANY
10:39:13 25 RIGHT TO SEEK THE DISQUALIFICATION OF COUNSEL FOR ANY OTHER PARTY OR

10:39:18 1 PARTIES TO THIS AGREEMENT IN THE LITIGATION OR IN ANY SUBSTANTIALLY
10:39:22 2 RELATED FUTURE LITIGATION," AND THIS IS THE PHRASE I THINK THAT I
10:39:28 3 THINK IS WHY WE DON'T BELIEVE THIS HAS BEEN WAIVED, "ON THE GROUNDS
10:39:31 4 THAT SUCH ATTORNEY HAS RECEIVED PROTECTED INFORMATION SHARED UNDER
10:39:35 5 THIS AGREEMENT. THE PARTIES TO THIS AGREEMENT EXPRESSLY AGREE NOT
10:39:41 6 TO SEEK SUCH DISQUALIFICATION OF AN ATTORNEY UNDER ANY APPLICABLE
10:39:45 7 STATUTE OR CODE, WHETHER EXISTING OR PROPOSED, UNDER ANY FORMAL OR
10:39:49 8 INFORMAL RULE OF COURT OR UNDER ANY STATE OR FEDERAL COMMON LAW
10:39:53 9 RULE..." AND THEN IT GOES ON.

10:39:57 10 BUT THE POINT IS THAT OUR MOTION ASKING THE COURT TO ENTER
10:40:02 11 AN ORDER FOR THE PLAINTIFFS TO SHOW CAUSE WHY MS. SHERMAN AND
10:40:07 12 MR. ANDRY SHOULD NOT BE DISQUALIFIED, WAS NOT BASED UPON THE FACT
10:40:11 13 THAT SHE RECEIVED INFORMATION FROM US UNDER THE JOINT DEFENSE
10:40:20 14 AGREEMENT. IF SHE WERE STILL REPRESENTING JEFFERSON PARISH AND WE
10:40:21 15 WERE IN LITIGATION WITH JEFFERSON PARISH AND THEY WERE ATTEMPTING TO
10:40:25 16 USE -- WE COULDN'T SAY, OH, THIS FIRM, HER FIRM CAN'T BE -- HAS TO
10:40:31 17 BE RECUSED OR DISQUALIFIED IN THIS LITIGATION BECAUSE WE WERE
10:40:38 18 MEMBERS OF THIS JOINT DEFENSE AGREEMENT. THE PARTIES ENTERED INTO
10:40:40 19 THESE JOINT DEFENSE AGREEMENTS AWARE THAT OUR INTERESTS WEREN'T
10:40:43 20 PERFECTLY ALIGNED AND THAT AT SOME POINT IN THIS LITIGATION WE VERY
10:40:47 21 WELL MIGHT BE LITIGATING AGAINST EACH OTHER. AND SO WE NEEDED A
10:40:52 22 PROVISION WRITTEN IN HERE THAT WOULD REFLECT THE REALTY THAT IF
10:40:57 23 LATER ON WE FOUND OURSELVES ON OPPOSITE SIDES OF THE FENCE, ALL OF
10:41:01 24 THESE FIRMS THAT ALL OF THESE PARTIES HAD RETAINED WEREN'T GOING TO
10:41:06 25 BE DISQUALIFIED AND NO LONGER BE ALLOWED.

10:41:08 1 SO IT'S NOT HER RECEIPT OF THE INFORMATION, YOUR HONOR,
10:41:10 2 IT'S THE FACT THAT SHE RECEIVED INFORMATION AND NOW IS EMPLOYED BY
10:41:14 3 THE PLAINTIFFS.

10:41:15 4 AND, FRANKLY, AS YOUR HONOR HAS POINTED OUT, IT'S THE
10:41:21 5 POTENTIAL CONFLICT OF INTEREST THAT ARISES. WE DON'T KNOW WHETHER
10:41:23 6 SHE RECEIVED ANY OF THIS CONFIDENTIAL INFORMATION, WE DON'T KNOW
10:41:27 7 WHETHER SHE DISCLOSED ANY OF IT TO HER PRESENT EMPLOYER, AND WE
10:41:30 8 DON'T KNOW IF THE PLAINTIFFS HAVE BENEFITED FROM THAT. BUT I THINK
10:41:36 9 TO KNOW THAT REQUIRES MORE THAN CAN BE ASCERTAINED THIS MORNING.

10:41:40 10 THE COURT: WE'RE GOING TO HAVE HER UNDER OATH AND
10:41:43 11 ASCERTAIN HER THIS MORNING AND THIS TRIAL IS GOING TO GO ON. SO...

10:41:47 12 MR. SMITH: THAT'S ALL I HAVE AT THIS TIME.

10:41:48 13 THE COURT: I KNOW IT'S TOUGH TO UNDERSTAND, BUT YOU'LL
10:41:51 14 HAVE YOUR SHOT TO QUESTION HER UNDER OATH. AND IT'S NOT QUITE AS
10:41:54 15 DIFFICULT AS DECIDING WHAT HAPPENED TO THE MRGO AND WE'RE GOING TO
10:41:57 16 DO THIS MORNING.

10:41:58 17 MR. SMITH: YOUR HONOR, I HAVE SOME MORE CASE, I'M SORRY.
10:42:00 18 I WAS HANDED AND I SHOULD HAVE GIVEN THIS TO YOU EARLIER.

10:42:04 19 THE COURT: UNFORTUNATELY THEY WEREN'T IN YOUR ORIGINAL
10:42:06 20 MEMORANDUM. GO AHEAD. WE DIDN'T HAVE A CHANCE TO LOOK AT THEM LAST
10:42:10 21 NIGHT OR WE WOULD HAVE.

10:42:11 22 MR. SMITH: I'M SORRY, YES, I WAS JUST TOLD THAT WE LOOKED
10:42:14 23 FOR THESE IN RESPONSE TO THE E-MAIL WE RECEIVED LAST NIGHT.

10:42:16 24 THE COURT: RIGHT, RIGHT. BECAUSE I WAS CONCERNED ABOUT
10:42:20 25 1.9 SINCE THAT WAS THE LIGHT MOTIF OF YOUR ORIGINAL MEMORANDUM. GO

10:42:24 1 AHEAD. IT'S NOW MORPHED.

10:42:26 2 MR. SMITH: SURE. IN BROWN & WILLIAMSON TOBACCO
10:42:31 3 CORPORATION V. DANIEL INTERNATIONAL CORPORATION, 563 F.2D 671, FIFTH
10:42:42 4 CIRCUIT, 1977 AT PAGE 673. THE FIFTH CIRCUIT STATES THIS:
10:42:51 5 "APPELLATE HAS STANDING TO SEEK DISQUALIFICATION EVEN THOUGH IT IS
10:42:55 6 NOT AN AGREED CLIENT BECAUSE ITS ATTORNEYS ARE AUTHORIZED TO REPORT
10:43:01 7 ANY ETHICAL VIOLATIONS IN THIS CASE."

10:43:05 8 IT WAS IN THAT VEIN THAT WE MADE THE COURT AWARE OF THIS
10:43:09 9 INFORMATION.

10:43:10 10 THE COURT: I UNDERSTAND THAT BUT YOU FIRST HAVE TO FIND
10:43:12 11 AN ETHICAL VIOLATION AND 1.9 IS OUT, YOU HAVEN'T MENTIONED ANOTHER
10:43:16 12 PROVISION OF THE CODE OF ETHICS THAT APPLIES. I UNDERSTAND YOUR
10:43:19 13 STANDING, I AM NOT TALKING ABOUT THAT. I AM WONDERING WHAT
10:43:22 14 SPECIFIC, OTHER THAN THE JOINT DEFENSE AGREEMENT, ANY ARTICLE OF THE
10:43:25 15 CODE OF ETHICS WOULD BE INTERESTING TO ME OTHER THAN 1.9. WHICH WAS
10:43:35 16 NOT IN YOUR ORIGINAL BRIEF.

10:43:41 17 MR. SMITH: YES, YOUR HONOR. THE POINT I THINK WOULD BE
10:43:44 18 THE CONFLICT -- IT WOULDN'T BE A CONFLICT WITH US, IT WOULD BE A
10:43:49 19 CONFLICT BETWEEN JEFFERSON PARISH AND THE PLAINTIFFS. IN OTHER
10:43:51 20 WORDS, IT'S NOT THAT --

10:43:53 21 THE COURT: IF JEFFERSON PARISH HAS A DOG IN THIS HUNT, I
10:43:56 22 DON'T KNOW WHAT IT IS IN THE ROBINSON CASE. THERE'S NOT ONE PIECE
10:44:00 23 OF JEFFERSON PARISH THAT'S INVOLVED. HOW IS ITS INTEREST ADVERSE TO
10:44:09 24 WHAT HAPPENS TO THE MRGO? AND IT'S AN ETHICAL -- YOU MENTIONED
10:44:09 25 ETHICAL --

10:44:10 1 MY QUESTION, YOU MENTIONED ETHICAL VIOLATION, THERE MAY BE
10:44:14 2 A VIOLATION OF THE DEFENSE AGREEMENT, JOINT DEFENSE AGREEMENT, I
10:44:17 3 HAVEN'T DECIDED THAT YET; AND THAT TO ME IS THE THRUST OF YOUR
10:44:22 4 MOTION BECAUSE I HAVE -- I AM NOT -- I DON'T SEE AN ETHICAL
10:44:27 5 VIOLATION AT THIS TIME.

10:44:28 6 MR. SMITH: YOUR HONOR, THE QUESTION, ONE QUESTION THAT
10:44:34 7 COULD BE ASKED WAS WHETHER SHE RECEIVED A WAIVER FROM JEFFERSON
10:44:40 8 PARISH.

10:44:40 9 THE COURT: WHY DOES SHE NEED A WAIVER UNDER 1.9 WHEN
10:44:45 10 JEFFERSON PARISH'S INTERESTS ARE NOT ADVERSELY AFFECTED BY THIS
10:44:48 11 CASE.

10:44:48 12 MR. SMITH: THEY MAY FEEL THAT THEY ARE, YOUR HONOR, I
10:44:51 13 MEAN --

10:44:51 14 THE COURT: I DON'T CARE WHAT THEY FEEL, THEY'RE NOT.
10:44:54 15 THEY'RE NOT IN IT, THEY'RE NOT AFFECTED. THERE'S NOT A PART OF
10:44:58 16 JEFFERSON PARISH THAT'S INVOLVED IN THE MRGO.

10:44:59 17 MR. SMITH: BUT IF --

10:45:01 18 THE COURT: I UNDERSTAND. THAT'S YOUR POINT, YOUR POINT
10:45:04 19 IS THAT SHE SHOULD HAVE A WAIVER UNDER 1.9.

10:45:07 20 MR. SMITH: RIGHT. AND AS I READ HER DECLARATION, IT
10:45:09 21 APPEARS SHE DID NOT GET A WAIVER FROM JEFFERSON PARISH. THERE'S NO
10:45:13 22 MENTION WHETHER SHE RECEIVED A WAIVER FROM THE PLAINTIFFS CONCERNING
10:45:16 23 HER CHANGE IN EMPLOYMENT.

10:45:18 24 THE COURT: I'M ASSUMING THERE IS NONE. THERE ARE NONE.

10:45:23 25 MR. SMITH: THERE IS NO EVIDENCE THAT SHE OBTAINED A

10:45:25 1 WAIVER FROM ANY OF THE OTHER PARTIES TO THE JOINT DEFENSE AGREEMENT
10:45:28 2 EITHER, OR EVEN INFORMED THEM THAT SHE WAS GOING TO BE LEAVING HER
10:45:32 3 EMPLOYMENT AS ONE, AS A REPRESENTATIVE OF ONE PARTY.

10:45:36 4 THE COURT: I'VE SEEN NO EVIDENCE TO THE CONTRARY AND
10:45:39 5 UNTIL REBUTTED, I AGREE. OR UNLESS REBUTTED. AND I AM GOING TO
10:45:48 6 GIVE YOU THE LAST SHOT.

10:45:49 7 MR. SMITH: JUST A COUPLE MORE CASES, YOUR HONOR.

10:45:51 8 THE COURT: SURE.

10:45:53 9 MR. SMITH: IN RE: GOPMAN, G-O-P-M-A-N, 531 F.2D 262,
10:46:01 10 THAT'S A FIFTH CIRCUIT CASE, 1976. THIS IS A QUOTE: "WHEN AN
10:46:08 11 ATTORNEY DISCOVERS A POSSIBLE ETHICAL VIOLATION CONCERNING A MATTER
10:46:12 12 BEFORE THE COURT, HE IS NOT ONLY AUTHORIZED BUT IS IN FACT OBLIGATED
10:46:16 13 TO BRING THE PROBLEM TO THAT COURT'S ATTENTION."

10:46:18 14 THE COURT: THE COURT AGREES WITH THAT, THAT IS THE LAW
10:46:21 15 ABSOLUTELY. I AM WELL FAMILIAR WITH IT. THERE ARE MULTITUDE OF
10:46:25 16 CITATIONS.

10:46:26 17 MR. SMITH: I WON'T GIVE YOU ANYMORE CASES.

10:46:28 18 THE COURT: THAT IS IN FACT THE LAW, AT LEAST I THINK IT
10:46:31 19 IS THE LAW.

10:46:32 20 MR. SMITH: AND WE FELT LIKE WHETHER THE UNITED STATES HAS
10:46:37 21 BEEN PREJUDICED IN THIS MATTER, IT'S NOT APPARENT. IT WAS NOT
10:46:42 22 APPARENT TO US, IT WASN'T -- THIS WAS NOT BROUGHT TO THE COURT'S
10:46:46 23 ATTENTION BECAUSE WE HAVE EVIDENCE THAT WE HAVE BEEN PREJUDICED, IT
10:46:55 24 WAS BROUGHT TO THE COURT'S ATTENTION BECAUSE THERE WAS A CHANGE IN
10:46:55 25 EMPLOYMENT WE WERE UNAWARE OF UNTIL WE GOT TO TRIAL AND IT SEEMED

10:46:56 1 LIKE IT WAS A POTENTIAL CONFLICT OF INTEREST.

10:46:58 2 THE COURT: I UNDERSTAND AND YOU ARE OBTAINED TO DO IT,
10:47:02 3 YOU ARE CORRECT. THE COURT RECOGNIZES THAT AND THAT IS THE TRUTH.

10:47:09 4 MR. SMITH: THAT'S ALL AT THIS TIME, YOUR HONOR.

10:47:11 5 THE COURT: THANK YOU, MR. SMITH. WHO IS GOING TO HANDLE
10:47:14 6 THIS FOR THE PLAINTIFFS? ALTHOUGH RIGHT NOW -- AND THE COURT DID
10:47:22 7 NOTE AND MR. SMITH CAN TALK ABOUT IT LATER, A FOOTNOTE WHICH REALLY
10:47:26 8 GOT THE COURT'S ATTENTION AND COMPELLED THE COURT TO STAY UP A
10:47:31 9 LITTLE LATER THAN IT WANTED TO, WAS THE FOOTNOTE ABOUT ALL
10:47:35 10 PLAINTIFFS' ATTORNEYS, MEANING -- AGAIN, AS YOU KNOW, THE COURT IS
10:47:40 11 INTERESTED IN GETTING THIS FAIRLY TRIED AND TO THE COURT OF APPEAL
10:47:43 12 IN SOME KIND OF TIMELY FASHION. AND IF ALL OF THE PLAINTIFFS'
10:47:47 13 ATTORNEYS ARE DISQUALIFIED, THAT WILL BE A REAL PROBLEM. SO I SAW A
10:47:50 14 FOOTNOTE, IT WAS JUST A FOOTNOTE, AND PROBABLY OUT OF AN ABUNDANCE
10:47:55 15 OF CAUTION BUT IT CAUGHT MY ATTENTION. GO AHEAD, SIR.

10:47:58 16 MR. ROY: THANK YOU, YOUR HONOR. JIM ROY COURT APPOINTED
10:48:00 17 LIAISON COUNSEL FOR THE MRGO PSLC, AND ALSO SPEAKING TODAY ON BEHALF
10:48:06 18 OF THE ENTIRE ROBINSON TRIAL TEAM.

10:48:08 19 FIRST, LET ME MAKE A COUPLE OF OBSERVATIONS, YOUR HONOR.

10:48:12 20 THE COURT: YES, SIR, I AM LISTENING TO YOU.

10:48:14 21 MR. ROY: OUR ETHICS COUNSEL, BASILE UDDO, WHOSE
10:48:19 22 DECLARATION WE FURNISHED THE COURT THIS MORNING, WOULD HAVE BEEN
10:48:22 23 HERE HIMSELF. WE WANT TO MAKE IT CLEAR, THE ONLY REASON THAT HE IS
10:48:25 24 NOT IS HE HAD A MEDICAL PROCEDURE REQUIRING HIM TO HAVE A DRIVER TO
10:48:28 25 TAKE HIM FROM THE FACILITY THIS MORNING. AND IF FOR ANY REASON

10:48:33 1 ANYONE OBJECTS TO THE AFFIDAVIT BEING FILED, THEN WE WOULD OFFER IT
10:48:37 2 IN THE FORM OF A SUPPLEMENTAL LEGAL BRIEFING, BECAUSE THE
10:48:39 3 OBSERVATIONS ARE IMPORTANT SINCE OF COURSE MR. UDDO SPECIALIZES IN
10:48:44 4 THE FIELD OF ETHICS LAW. AND CONCLUDES THAT UNDER THE SCENARIOS
10:48:48 5 PRESENTED, THERE IS NO ETHICS CONFLICT AT ALL.

10:48:51 6 THE SECOND OBSERVATION: OUR OVERALL IN RE: KATRINA
10:48:55 7 PLAINTIFF LIAISON COUNSEL, MR. BRUNO, WHILE HE HAS BEEN WORKING ALL
10:48:59 8 DAY YESTERDAY AND TODAY TO PREPARE FOR THE FIRST WITNESS, EXPERT
10:49:04 9 WITNESS PRESUMABLY TO BE CALLED BY THE EXPERT -- BY THE DEFENSE,
10:49:08 10 HOPEFULLY TOMORROW, NEVERTHELESS PUT ON A COAT AND TIE THIS MORNING
10:49:15 11 AND WAS HEADED OVER HERE AND GOT IN AN AUTOMOBILE ACCIDENT

10:49:18 12 THE COURT: THIS CASE MAY BE HAUNTED. IT MAY BE ONE OF
10:49:21 13 THOSE CASES THAT'S ACTUALLY HAUNTED.

10:49:23 14 MR. ROY: HE IS NOT HURT BUT WE PREVAILED UPON HIM TO GO
10:49:30 15 BACK AND CONTINUE TO PREPARE FOR THAT EXPERT, BUT HE IS AVAILABLE
10:49:30 16 SHOULD THIS COURT NEED HIM ON 10, 15 MINUTES NOTICE.

10:49:32 17 THE THIRD THING: MS. SHERMAN AND MR. ANDRY ARE PREPARED
10:49:37 18 TO ANSWER ANY QUESTIONS. WE WOULD SUBMIT THOUGH, YOUR HONOR, WITH
10:49:39 19 ALL DUE RESPECT, RATHER THAN SUBMITTING THEM TO BLIND FISHING
10:49:41 20 EXPEDITIONS OF THE GOVERNMENT ON THE STAND, WE WOULD SUBMIT THAT
10:49:44 21 YOUR HONOR MIGHT BE THE APPROPRIATE PARTY TO ACTUALLY QUESTION THEM
10:49:47 22 AS A NEUTRAL; BUT THAT, OF COURSE, IS IN YOUR DISCRETION, WHICHEVER
10:49:51 23 WAY.

10:49:52 24 THE COURT: THANK YOU, SIR.

10:49:53 25 MR. ROY: FACTUAL OBSERVATIONS. FIRST OF ALL, GOODNESS

10:50:00 1 ONLY KNOWS HOW MANY DOZENS OF, IF NOT HUNDREDS, IF NOT THOUSANDS OF
10:50:06 2 INDIVIDUAL LAWSUITS, INCLUDING MANY CLASS ACTIONS, WERE FILED BY
10:50:11 3 MANY DIFFERENT INDIVIDUALS. YOUR HONOR RECALLS, AND I FORGET THE
10:50:16 4 EXACT DATES, IT STRIKES ME AS EARLY 2006, I BELIEVE WHEN YOU IMPOSED
10:50:22 5 CMO NO. 4, THAT A COUPLE OF THINGS HAPPENED. YOU FIRST APPOINTED A
10:50:27 6 MRGO PSLC, WHICH INCLUDES MYSELF, MR. ANDRY, MR. O'DONNELL AND MAX
10:50:35 7 SCHULTZ'S PARTNER IN FLORIDA, AND YOU SEPARATELY APPOINTED FOR THE
10:50:39 8 LEVEE DIVISION OF THE IN RE: KATRINA MR. MEUNIER AS ITS PSLC
10:50:46 9 LIAISON, AND A NUMBER OF OTHER INDIVIDUALS TO THAT COMMITTEE.

10:50:50 10 YOU ALSO INSTRUCTED US EACH TO DECIDE TO FILE A MASTER
10:50:58 11 CLASS COMPLAINT ON BEHALF OF THE LEVEE THAT WAS THAT PSLC'S INITIAL
10:51:04 12 TASK LEVEE, AND YOU INSTRUCTED THE MRGO PSLC TO FILE ITS MASTER
10:51:09 13 CLASS COMPLAINT. SO YOU, YOUR HONOR DID NOT HAVE TO DEAL WITH
10:51:14 14 DOZENS, IF NOT A MULTITUDE, YOU WOULD HAVE IT UNDER ONE UMBRELLA
10:51:20 15 SEPARATELY.

10:51:21 16 AT THE TIME THAT THESE WERE FILED, THE LEVEE MASTER CLASS
10:51:24 17 COMPLAINT THAT WAS FILED BY YOUR COURT APPOINTED PSLC FOR LEVEE
10:51:28 18 FILED AND IT BASICALLY PICKED UP ALLEGATIONS INVOLVING LEVEES TO THE
10:51:36 19 WEST OF THE IHNC. THERE WAS A VERY SMALL PART OF I BELIEVE THE
10:51:42 20 UPPER NINTH WARD THAT YOUR HONOR LATER WHEN YOU RULED ON THE 702C
10:51:47 21 MOTION BY THE GOVERNMENT AND DISMISSED THE GOVERNMENT FROM THE LEVEE
10:51:52 22 CASE, YOU CARVED OUT THAT SMALL DISCRETE AREA OF THE UPPER NINTH
10:51:58 23 WARD AND CONSOLIDATED THAT INTO THE MRGO. AND THE MRGO MASTER CLASS
10:52:04 24 FILED BY YOUR COURT APPOINTED COMMITTEE ALSO, IN FACT, FILED AND IT
10:52:16 25 REPRESENTED EVERYTHING TO THE EAST OF THE IHNC.

10:52:16 1 I CAN TELL YOU WITH CERTAINTY THAT THE ROBINSON PLAINTIFFS
10:52:18 2 NEVER SUED JEFFERSON PARISH, I CAN TELL YOU WITH CERTAINTY THAT THE
10:52:22 3 MRGO PSLC NEVER SUED, EVER, E-V-E-R, SUED JEFFERSON PARISH, AND I
10:52:30 4 CAN TELL YOU WITH 99 PERCENT, BUT I CAN'T SAY CERTAINTY, YOUR HONOR,
10:52:34 5 BECAUSE I HAVE NOT PERSONALLY -- I WAS NOT A MEMBER OF THE LEVEE
10:52:37 6 GROUP SO I DON'T KNOW FOR SURE, BUT IT HAS BEEN REPRESENTED TO ME
10:52:41 7 AND I AM FAIRLY CERTAIN THAT THE LEVEE DIVISION OF THIS COURT
10:52:46 8 APPOINTED PSLC NEVER SUED JEFFERSON PARISH EITHER.

10:52:50 9 THESE ARE THE THREE -- FIRST, I DON'T BELIEVE THE LEVEE IS
10:52:55 10 IN ANY WAY RELATED TO THE MRGO OR ROBINSON; BUT EVEN IF IT WERE,
10:53:01 11 JEFFERSON PARISH WAS NEVER A DEFENDANT.

10:53:04 12 NOW, I APOLOGIZE FOR TAKING THE TIME TO REFRESH.

10:53:07 13 THE COURT: QUITE ALL RIGHT. ALL OF THAT IS IMPORTANT.

10:53:10 14 MR. ROY: AT EVERY DEPOSITION, TO MY KNOWLEDGE, THAT WAS
10:53:15 15 TAKEN IN EITHER THE MRGO OR ROBINSON, IT WAS PRETTY MUCH STANDARD
10:53:22 16 PRACTICE -- I CANNOT REPRESENT TO THE COURT THAT IT WAS DONE EVERY
10:53:24 17 TIME, WE'RE HAVING IT RESEARCHED RIGHT NOW. BUT I BELIEVE THAT
10:53:29 18 PRIOR TO COURT STARTED -- THE DEPOSITIONS COMMENCING ON VIDEOTAPE
10:53:35 19 EVERYONE WENT AROUND THE TABLE IDENTIFYING THEMSELVES BY NAME AND
10:53:39 20 WHO THEY WERE THERE REPRESENTING. THERE WAS NO GUESSWORK, YOUR
10:53:42 21 HONOR, THERE WERE NO DOTS TO CONNECT. ANYBODY REASONABLY PAYING
10:53:46 22 ATTENTION TO WHAT WAS GOING ON HAD TO BE AWARE OF WHO WAS THERE FOR
10:53:49 23 WHO.

10:53:51 24 NUMBER TWO: THE ASSERTION BY MR. SMITH THAT THE FIRST
10:53:59 25 KNOWLEDGE THAT THE GOVERNMENT LAWYERS OR ANY OF THEM HAD OF KEA

10:54:06 1 SHERMAN'S REPRESENTATION PREVIOUSLY OF -- WELL, THAT SHE NOW WAS
10:54:12 2 INVOLVED WITH THE ROBINSON TRIAL TEAM OR THE MRGO TRIAL TEAM, MRGO
10:54:16 3 GROUP, WAS DURING THIS TRIAL WE BELIEVE IS JUST SIMPLY PATENTLY
10:54:20 4 UNTRUE. THAT MAY BE MR. SMITH'S RECOLLECTION.

10:54:23 5 ROBIN, I AM NOT SUGGESTING YOU ARE PERPETRATING ANYTHING
10:54:26 6 INTENTIONALLY, THAT'S NOT MY PURPOSE OF STATING IT. BUT I BELIEVE
10:54:29 7 THE FACTS WILL BELIE THAT. AND MR. ANDRY IS PREPARED TO, IF YOUR
10:54:36 8 HONOR WISH, DIRECTLY ADDRESS IT.

10:54:38 9 I ONLY HAVE THREE MORE COMMENTS INVOLVING THE CASES CITED.

10:54:41 10 FIRST, THE ABRAHAM V. ARMCO CASE THAT WAS CITED BY
10:54:47 11 MR. SMITH, 559 F.2D 250 AT 253 IS WHERE I WOULD LIKE YOUR HONOR TO
10:54:52 12 LOOK. THIS INVOLVED A CASE ALLEGING CONSPIRACY. AND, IN FACT,
10:55:01 13 SUBSETS OF THE RELATED LITIGATION, NOT RELATED BUT THE UNDERLYING
10:55:10 14 FACTS INVOLVED A CRIMINAL CONSPIRACY.

10:55:10 15 THE COURT: THE COURT HAPPENS TO BE -- THE COURT WAS A
10:55:12 16 LAWYER ONCE AND REMEMBERS THAT.

10:55:14 17 MR. ROY: SO THIS IS A VERY, VERY, VERY, VERY SPECIAL
10:55:17 18 PRONOUNCEMENT OF THE FIFTH CIRCUIT IN ADDRESSING A CIVIL JOINT
10:55:23 19 DEFENSE AGREEMENT IN THE CONTEXT OF ALLEGATIONS OF A CIVIL
10:55:28 20 CONSPIRACY THAT ARISE OUT OF AN ALLEGED CRIMINAL CONSPIRACY. AND
10:55:33 21 EXACTLY WHAT THE FIFTH CIRCUIT SAID WAS THE FOLLOWING: "IN A JOINT
10:55:39 22 DEFENSE OF A CONSPIRACY CHARGE, THE COUNSEL OF EACH DEFENDANT IS, IN
10:55:45 23 EFFECT, THE COUNSEL OF ALL FOR THE PURPOSES OF INVOKING THE
10:55:48 24 ATTORNEY-CLIENT PRIVILEGE IN ORDER TO SHIELD MUTUALLY SHARED
10:55:51 25 CONFIDENCES."

10:55:52 1 WE AGREE. THE COURT SAID IT. BUT IT WAS IN THAT NARROW
10:55:56 2 FACTUAL PATTERN, CIVIL CONSPIRACY ARISING OUT OF CRIMINAL CONSPIRACY
10:56:01 3 JOINT DEFENSE AGREEMENT. AND THE COURT, OUR FIFTH CIRCUIT, OF
10:56:07 4 COURSE, SAID AT THAT SAME PAGE: "HERE THERE IS NO PRESUMPTION THAT
10:56:12 5 CONFIDENTIAL INFORMATION WAS EXCHANGED AS THERE WAS NO DIRECT
10:56:16 6 ATTORNEY-CLIENT RELATIONSHIP." IN THIS CASE, "MR. SUSSMAN SHOULD
10:56:20 7 NOT BE DISQUALIFIED UNLESS THE TRIAL COURT SHOULD DETERMINE THAT
10:56:23 8 MR. SUSSMAN WAS ACTUALLY PRIVY TO CONFIDENTIAL INFORMATION."

10:56:27 9 THAT'S IN A CRIMINAL -- A CIVIL CONSPIRACY CASE ARISING
10:56:30 10 OUT OF A CRIMINAL. THAT'S, OF COURSE, NOT WHAT WE HAVE NOW. WE'RE
10:56:33 11 NOT AWARE NOR HAVE WE EVER ALLEGED NOR ARE WE AWARE OF ANY
10:56:37 12 ALLEGATION WITH THE POSSIBLE EXCEPTION OF ONE TOTALLY UNRELATED
10:56:41 13 PLAINTIFF, WHO I WILL NOT NAME, BUT WHO MY UNDERSTANDING IS, IN
10:56:45 14 FACT, MAY HAVE MADE CONSPIRACY ALLEGATIONS.

10:56:48 15 OTHER THAN THAT ONE, CERTAINLY NO ONE IN THE MRGO,
10:56:52 16 CERTAINLY NO ONE IN ROBINSON, AND THIS TRIAL TEAM HAS EVER MADE
10:56:56 17 CONSPIRACY ALLEGATIONS AND WE HAVE NO INTENTIONS OF DOING SO.

10:57:03 18 THE STEPNEY CASE, WHICH I BELIEVE WAS ALSO RAISED BY MR.
10:57:07 19 SMITH, 246 F.SUPP.2D 1069, WHICH IS NORTHERN DISTRICT OF CALIFORNIA;
10:57:13 20 BUT NEVERTHELESS IT IS RELEVANT AND IT IS ARGUABLY INFERENTIALLY
10:57:20 21 APPLICABLE TO THE CIRCUMSTANCES. IT BASICALLY HOLDS: WHILE JOINT
10:57:25 22 DEFENSE AGREEMENT DOES IMPOSE A DUTY OF CONFIDENTIALITY, THAT DUTY
10:57:29 23 IS LIMITED IN THAT THE SHOWING REQUIRED TO ESTABLISH A CONFLICT OF
10:57:33 24 INTEREST ARISING FROM PRIOR PARTICIPATION IS SIGNIFICANTLY HIGHER.

10:57:36 25 AND THAT'S THE POINT I WANT TO MAKE IS THAT IT'S NOT THE

10:57:40 1 ORDINARY BURDEN OF SHOWING A CONFLICT, IT'S NOT THE ORDINARY BURDEN
10:57:45 2 OF A CRIMINAL CONTEXT IN A CIVIL OVERLAY CONSPIRACY LIKE OUR FIFTH
10:57:51 3 CIRCUIT ADDRESSED, IT'S A SPECIAL HIGHER BURDEN AND WE AWAIT
10:57:55 4 MR. ROBIN SMITH'S AND TEAM PROVING THAT.

10:57:58 5 FINALLY, THE LAST CASE CITED WHICH WAS THE, ACTUALLY IS
10:58:05 6 THE STEPNEY CASE, I AM REPEATING MYSELF. IT REPEATS THE WHOLE LINE
10:58:05 7 OF CASES, YOUR HONOR, THAT START WITH FRED WEBER V. SHELL OIL, AN
10:58:10 8 EIGHTH CIRCUIT CASE AND A NUMBER OF OTHER STRING CITES.

10:58:13 9 BUT THE BOTTOM LINE IS WE'RE HERE, MR. ANDRY AND
10:58:17 10 MS. SHERMAN ARE PREPARED TO ANSWER ANY QUESTIONS THE COURT MAY HAVE.
10:58:20 11 AND WHEN ALL OF THAT IS DONE, IF YOU PERMIT US TO CONTINUE, I AM
10:58:23 12 PREPARED TO ROLL WITHOUT BREAKING TO THE DIRECT TESTIMONY OF
10:58:27 13 DR. PAUL KEMP.

10:58:27 14 THE COURT: OKAY. DO YOU HAVE A DATE WHERE YOU THINK THE
10:58:30 15 GOVERNMENT KNEW OR SHOULD HAVE KNOWN OF THE REPRESENTATION OF --

10:58:37 16 MR. ROY: YES, YOUR HONOR.

10:58:38 17 THE COURT: -- MS. SHERMAN.

10:58:40 18 MR. ROY: YES, YOUR HONOR, OCTOBER THE 2ND OF 2008.

10:58:49 19 THE COURT: THAT WAS THE DEPOSITION --

10:58:51 20 MR. ROY: THIS IS VOLUME I, YOUR HONOR, THE RULE 30(B)(6)
10:58:54 21 DEPOSITION OF THE UNITED STATES OF AMERICA THROUGH GREG MILLER, ITS
10:59:01 22 DESIGNEE, REPORTED BY THE COURT REPORTER JOE FAIRBANKS. I ACTUALLY
10:59:05 23 THOUGHT WE HAD ATTACHED THIS TO MR. ANDRY'S OPPOSITION, BUT WE'VE
10:59:09 24 GOT -- WE HAVE THE WHOLE DEPOSITION HERE IF NECESSARY.

10:59:11 25 THE COURT: YOU HAVE IN THE OPPOSITION YOU HAVE SOME OF

10:59:15 1 IT, SOME DEPOSITION. YOU HAVE THE DEPOSITION OF -- NO, NO, IT'S
10:59:21 2 SOMETHING ELSE.

10:59:23 3 MR. ROY: YOUR HONOR, I AM ADVISED THAT THESE ARE IN
10:59:27 4 ADDITION BEYOND WHAT WE EARLIER FURNISHED THE COURT. SO WE WOULD
10:59:29 5 LIKE TO SUPPLEMENT THE RECORD, IF YOU WOULD THEN, WITH THE OCTOBER
10:59:33 6 2ND, 2008 30(B)(6) DEPOSITION, THE FRONT PAGES WITH THE APPEARANCES
10:59:40 7 OF VOLUME I, THAT'S IN RE: PERTAINS TO MRGO AND ROBINSON; VOLUME
10:59:45 8 III, 30(B)(6) DEPOSITION JOHN SAIA THE DESIGNEE. THIS SHOWS KEA
11:00:03 9 SHERMAN IS PRESENT, ALTHOUGH ON THAT IT DOES NOT SHOW WHO SHE IS
11:00:06 10 REPRESENTING. I AM WAITING TO SEE IF WE CAN GET THE ACTUAL
11:00:09 11 DEPOSITIONS UP HERE.

11:00:10 12 THE COURT: IT SHOWS SHE IS REPRESENTING PLAINTIFFS ON
11:00:14 13 OCTOBER 2ND, WE'VE GONE OVER THE DEPOSITION NOTICE. ON OCTOBER 2ND,
11:00:18 14 2008, MS. SHERMAN IS SHOWN AS REPRESENTING PLAINTIFFS AND FOR THE
11:00:22 15 CORPS MR. SMITH, CONOR KELLS -- AND EXCUSE ME IF I MISPRONOUNCE
11:00:26 16 THIS, JENNIFER LABRADETTE (PHONETIC).

11:00:29 17 MR. ROY: AND THEN GREGORY MILLER DEPOSITION --

11:00:32 18 THE COURT: THAT'S ONE I THINK OCTOBER 2ND I WAS TALKING
11:00:35 19 ABOUT, GREGORY MILLER.

11:00:37 20 MR. ROY: SO WE HAVE OCTOBER 2ND, TWO ON OCTOBER 2ND OF
11:00:40 21 '08, VOLUME II AND III; AND THEN WE HAVE GREG MILLER TAKEN
11:00:44 22 OCTOBER 16TH -- EXCUSE ME, APRIL 16TH OF '08. WHICH -- TO TELL YOU
11:00:59 23 THE TRUTH, YOUR HONOR, I AM NOT REAL SURE WHY IT WAS HANDED TO ME.

11:01:01 24 THE COURT: THAT'S THE TIME THAT YOU THINK THEY KNEW OR
11:01:08 25 SHOULD HAVE KNOWN?

11:01:08 1 MR. ROY: WE BELIEVE THAT'S OCTOBER AND WE BELIEVE
11:01:08 2 MR. ANDRY, IF YOUR HONOR PUTS HIM ON THE STAND, MR. ANDRY IS
11:01:10 3 PREPARED TO FURTHER CLARIFY THE MATTER WITH OTHER MATTERS NOT
11:01:13 4 INCLUDED IN THIS AFFIDAVIT AS TO WHEN ACTUAL CONVERSATIONS TOOK
11:01:18 5 PLACE THAT CLEARLY ESTABLISH. MAY I RETURN THE MIKE OVER, YOUR
11:01:23 6 HONOR?

11:01:23 7 THE COURT: YES.

11:01:24 8 MR. ANDRY: YOUR HONOR, AS WE SAT THIS MORNING, I WAS
11:01:26 9 REMINDED OF AN E-MAIL EXCHANGE THAT I HAD WITH MR. ROBIN SMITH
11:01:29 10 APPROXIMATELY A YEAR AGO. THERE WAS AN ISSUE IN THE SAVOYE MATTER
11:01:32 11 WHICH IS BEING PENDING BEFORE JUDGE FELDMAN NOW AS TO WHETHER IT
11:01:37 12 WILL BE DISMISSED OR WHETHER IT WAS GOING TO BE OPEN. I INSTRUCTED
11:01:40 13 MS. SHERMAN TO INVESTIGATE THE CLOSURE PLAN OF THE CORPS.

11:01:44 14 IN DOING SO, SHE APPARENTLY LEFT A VOICE MAIL MESSAGE ON A
11:01:48 15 CORPS EMPLOYEE'S VOICE MAIL, JUST ATTEMPTING TO FIND OUT PUBLICLY
11:01:53 16 AVAILABLE INFORMATION, NOTHING SURREPTITIOUS. I RECEIVED AN E-MAIL
11:01:57 17 CORRESPONDENCE FROM MR. ROBIN SMITH INDICATING TO ME -- AND I AM
11:02:00 18 TRYING TO SEARCH MY E-MAILS TO FIND IT, YOUR HONOR, AND I WILL
11:02:02 19 SUBMIT IT TO THE COURT. I RECEIVED AN E-MAIL FROM MR. ROBIN SMITH
11:02:06 20 SAYING ONE OF YOUR EMPLOYEES, MS. SHERMAN, LEFT A VOICE MAIL MESSAGE
11:02:11 21 ON A CORPS EMPLOYEE'S VOICE MAIL, AND THEY CAN'T DO THAT WITHOUT THE
11:02:15 22 CORPS BEING PRESENT.

11:02:17 23 I APOLOGIZED TO MR. SMITH, I EXPLAINED TO HIM THAT IT WAS
11:02:19 24 AN ERROR AND I WOULD INSTRUCT MR. SMITH TO FOREGO ANY ATTEMPTS TO
11:02:25 25 CONTACT CORPS EMPLOYEES TO GAIN INFORMATION. AT THAT POINT --

11:02:28 1 THE COURT: MS. SHERMAN.

11:02:29 2 MR. ANDRY: EXCUSE ME, I'M SORRY, MS. SHERMAN. AT THAT
11:02:33 3 POINT UNEQUIVOCALLY MR. SMITH AND I DISCUSSED MS. SHERMAN'S
11:02:37 4 PARTICIPATION IN THIS CASE AND EMPLOYMENT WITH MY FIRM, AND I WILL
11:02:40 5 PROVIDE THE COURT THE E-MAILS ASSOCIATED.

11:02:42 6 THE COURT: WELL, I AM GOING TO ASK THE GOVERNMENT,
11:02:46 7 MR. SMITH, DURING MR. ANDRY'S PRESENTATION -- I AM GOING TO LET YOU
11:02:51 8 HAVE A REBUTTAL AFTER EVERYTHING. I JUST WANT TO ASK YOU,
11:02:55 9 MR. ANDRY'S PRESENTATION, WOULD YOU AS AN OFFICER OF THE COURT
11:03:01 10 ACCEPT WHAT HE IS DOING HERE OR WOULD YOU PREFER HIM TO BE SWORN?

11:03:04 11 MR. SMITH: THAT IS FINE. I DON'T HAVE ANY PROBLEM WITH
11:03:08 12 THAT.

11:03:09 13 THE COURT: MR. ANDRY, YOU MIGHT WANT TO GIVE YOUR --
11:03:11 14 MR. ROY HAD -- I AM GOING TO ASK YOU SOME QUESTIONS AND AS AN
11:03:18 15 OFFICER OF THE COURT, AS YOU KNOW, YOUR LICENSE DEPENDS ON THE
11:03:22 16 VERACITY THEREOF.

11:03:24 17 MR. ANDRY: YES, YOUR HONOR.

11:03:28 18 THE COURT: WHEN DID YOU FIRST EMPLOY MS. SHERMAN?

11:03:30 19 MR. ANDRY: MAY 1ST OF 2008, YOUR HONOR.

11:03:36 20 THE COURT: YOU WERE AWARE THAT SHE HAD REPRESENTED THE
11:03:40 21 PARISH OF JEFFERSON PRIOR TO YOUR RETAINING HER?

11:03:46 22 MR. ANDRY: YES, YOUR HONOR.

11:03:46 23 THE COURT: DID YOU DISCUSS ANY POTENTIAL CONFLICT OF
11:03:51 24 INTEREST AT THAT POINT?

11:03:52 25 MR. ANDRY: YES, I DID. AND ASKED MS. SHERMAN TO CONTACT

11:03:56 1 HER EMPLOYER IN JEFFERSON PARISH, IF NEED BE, IF THEY THOUGHT
11:03:59 2 NECESSARY TO DETERMINE IF THERE WAS A CONFLICT OR A POTENTIAL
11:04:02 3 CONFLICT.

11:04:03 4 THE COURT: GO AHEAD.

11:04:05 5 MR. ANDRY: AND I WAS INFORMED THAT THERE WAS NONE.

11:04:15 6 THE COURT: WHAT CASES RELATING TO THE UMBRELLA HAS SHE
11:04:24 7 BEEN WORKING ON?

11:04:25 8 MR. ANDRY: SHE'S BEEN WORKING ON ROBINSON V. THE UNITED
11:04:29 9 STATES AND SEVERAL OTHER, A FEW OTHER MASS TORT CASES THAT I HAVE IN
11:04:33 10 MY OFFICE.

11:04:34 11 THE COURT: BUT INSOFAR AS THIS UMBRELLA BEFORE THIS COURT
11:04:41 12 OR ANYTHING RELATING TO LEVEE BREACHES, YOU'RE TELLING ME SHE'S ONLY
11:04:48 13 WORKED ON THE ROBINSON CASE?

11:04:51 14 MR. ANDRY: YES, YOUR HONOR. AND AS A POINT OF FACT, I AM
11:04:54 15 NOT INVOLVED, NOR HAVE I EVER BEEN INVOLVED, NOR HAS MY FIRM BEEN
11:04:56 16 INVOLVED IN ANY OF THE LEVEE CASES.

11:05:01 17 THE COURT: TO THE BEST OF YOUR KNOWLEDGE AND BELIEF, DID
11:05:04 18 MS. SHERMAN GIVE YOU ANY INFORMATION, AND I AM NOT TALKING ABOUT --
11:05:08 19 I AM NOT GOING TO TRY TO DETERMINE WHAT IT IS YET -- ANY INFORMATION
11:05:12 20 RELATING TO ANYTHING THAT MIGHT HAVE EMANATED FROM THE LITIGATION
11:05:22 21 JEFFERSON PARISH WAS IN THAT MAY RELATE TO THE LEVEE, THE LEVEE
11:05:27 22 CASES IN THIS COURT?

11:05:28 23 MR. ANDRY: NO, YOUR HONOR.

11:05:29 24 THE COURT: THAT'S STILL IN THIS COURT I MIGHT SAY, THE
11:05:32 25 GOVERNMENT IS NOT IN IT BUT IT'S STILL HERE. OKAY.

11:05:36 1 HOLD ON ONE SECOND. MR. ANDRY, WHO INFORMED YOU THAT
11:06:13 2 THERE WAS NO CONFLICT OF INTEREST?

11:06:15 3 MR. ANDRY: MS. SHERMAN TOLD ME IS THAT SHE HAD CHECKED IT
11:06:19 4 OUT WITH HER SUPERIOR ATTORNEY, THAT THEY DID NOT HAVE AN ISSUE WITH
11:06:23 5 HER COMING TO WORK AT MY FIRM.

11:06:25 6 THE COURT: THEY BEING?

11:06:26 7 MR. ANDRY: THEY BEING HER EMPLOYER, BURGLASS AND
11:06:30 8 TANKERSLEY DID NOT HAVE AN ISSUE ACCORDING TO HER SUPERIOR ATTORNEY.

11:06:34 9 THE COURT: THERE ARE NO WAIVERS -- AND I AM GOING TO
11:06:37 10 ACCEPT FOR THE RECORD WE HAVE NO WAIVERS FROM JEFFERSON PARISH, FROM
11:06:42 11 OBVIOUSLY THE CORPS OR ANYONE ELSE, SIGNED WAIVERS, OR THE
11:06:46 12 PLAINTIFFS; IS THAT CORRECT?

11:06:47 13 MR. ANDRY: THAT'S CORRECT, YOUR HONOR.

11:06:48 14 THE COURT: LET'S GET EVERYTHING ON THE RECORD HERE. WERE
11:06:55 15 YOU AWARE THAT THERE WAS A JOINT DEFENSE AGREEMENT?

11:06:58 16 MR. ANDRY: NO, YOUR HONOR.

11:06:59 17 THE COURT: WHEN DID YOU FIRST BECOME AWARE?

11:07:02 18 MR. ANDRY: WHEN I READ THE MOTION WHEN IT WAS HANDED TO
11:07:04 19 ME YESTERDAY AFTERNOON AT 5:30.

11:07:12 20 THE COURT: I DON'T THINK I HAVE ANYMORE QUESTIONS.

11:07:20 21 MR. SMITH, I THINK THE BEST WAY TO DO THIS IS, IF THERE'S ANYTHING
11:07:24 22 YOU WANT ME TO EXPLORE WITH MR. ANDRY I WILL DO SO.

11:07:32 23 MR. SMITH: NO, YOUR HONOR.

11:07:32 24 THE COURT: ALL RIGHT. THANK YOU, MR. ANDRY.

11:07:32 25 MR. ANDRY: THANK YOU, YOUR HONOR.

11:07:33 1 THE COURT: IF WE COULD HEAR FROM MS. SHERMAN.

11:07:35 2 MR. ROY: YES, YOUR HONOR.

11:08:01 3 THE COURT: OKAY. DO YOU WANT TO STATE YOUR NAME FOR THE
11:08:03 4 RECORD.

11:08:03 5 MS. SHERMAN: YES, YOUR HONOR. KEA SHERMAN.

11:08:05 6 THE COURT: AND I ASSUME YOU'RE LICENSED TO PRACTICE LAW
11:08:08 7 WITHIN THE STATE OF LOUISIANA?

11:08:09 8 MS. SHERMAN: YES, YOUR HONOR.

11:08:10 9 THE COURT: WHEN DID YOU RECEIVE YOUR LICENSE?

11:08:12 10 MS. SHERMAN: APRIL OF '06.

11:08:16 11 THE COURT: AND YOU WENT WITH MR. ANDRY'S FIRM IN MAY OF
11:08:23 12 '08?

11:08:24 13 MS. SHERMAN: MAY OF 2008, MAY 1ST.

11:08:28 14 THE COURT: AND WHAT PERIOD OF TIME DID YOU OR YOUR FIRM
11:08:32 15 REPRESENT JEFFERSON PARISH, IF YOU KNOW?

11:08:34 16 MS. SHERMAN: I BEGAN WORKING WITH BURGLASS AND TANKERSLEY
11:08:38 17 JULY OF 2007, AND SO WHEN I STARTED WORKING WITH THEM I BELIEVE THEY
11:08:42 18 MAY HAVE ALREADY BEEN A CLIENT OF THE FIRM.

11:08:44 19 THE COURT: SO YOUR WORK WITH THAT FIRM THAT REPRESENTED
11:08:47 20 JEFFERSON PARISH WAS FROM JULY UNTIL MAY OF THE NEXT -- JULY '07 TO
11:08:55 21 MAY OF '08?

11:08:57 22 MS. SHERMAN: TO THE END OF APRIL OF '08, YES, SIR.

11:09:00 23 THE COURT: OKAY. WHEN DID YOU FIRST BECOME AWARE OF THE
11:09:04 24 JOINT DEFENSE AGREEMENT.

11:09:05 25 MS. SHERMAN: YESTERDAY, WHEN I READ THE MOTION.

11:09:08 1 THE COURT: SO YOU WERE NOT AWARE OF ANY JOINT DEFENSE
11:09:10 2 AGREEMENT WHEN YOU WERE WORKING --

11:09:13 3 MS. SHERMAN: NO, YOUR HONOR.

11:09:17 4 THE COURT: WHEN YOU WENT TO THE -- LET'S TALK ABOUT THE
11:09:20 5 MEETING WITH -- AND I'LL CALL HIM DOCTOR, WE DON'T WANT TO INSULT
11:09:24 6 HIM SO, MR. SMITH AND I ARE BOTH NOT CERTAIN WHAT HIS CREDENTIALS
11:09:29 7 ARE. IS THAT DR. --

11:09:33 8 MR. SMITH: KUHLMIEIER, K-U-H-L-M-E-I-E-R.

11:09:40 9 THE COURT: WHEN YOU WERE -- DO YOU RECALL THE MEETING
11:09:42 10 WITH DR. KUHLMIEIER?

11:09:46 11 MS. SHERMAN: YES, YOUR HONOR.

11:09:47 12 THE COURT: AND I AM NOT SURE WITHOUT HOW MUCH -- THIS IS
11:09:50 13 WHERE IT GETS TOUGH. WITHOUT TELLING ME -- WE MIGHT HAVE TO GO IN
11:09:58 14 CAMERA UNFORTUNATELY; BUT, IF I DO GO IN CAMERA, LET ME ASK YOU
11:10:07 15 THIS -- AND I HATE TO CLEAR THE COURTROOM -- IF I DO GO IN CAMERA,
11:10:12 16 CAN WE AGREE ON WHO CAN STAY? DOES THE GOVERNMENT HAVE ANY VIEW ON
11:10:17 17 THAT?

11:10:22 18 MR. SMITH: YOUR HONOR, I THINK ANY COUNSEL FOR MEMBERS OF
11:10:29 19 THE PARTIES TO THE JOINT DEFENSE AGREEMENT COULD BE PRESENT, BUT I
11:10:32 20 WOULD OBJECT TO THE PRESENCE OF ANY --

11:10:34 21 THE COURT: I'M AFRAID I WOULD HAVE TO -- THAT COULD BE A
11:10:37 22 BIND, BUT I THINK I HAVE TO DO THAT.

11:10:39 23 MR. ROY: YOUR HONOR, I THINK I AGREE.

11:10:41 24 THE COURT: ALL RIGHT. WE'RE GOING TO NOW AT THIS POINT,
11:10:43 25 SORRY, WE'RE GOING TO ASK ALL PERSONS OTHER THAN THOSE REPRESENTING

11:10:48 1 PARTIES TO THE JOINT DEFENSE AGREEMENT WILL HAVE TO STEP OUT, AND
11:10:56 2 THAT INCLUDES THE PLAINTIFFS.

11:10:56 3 (WHEREUPON, A PORTION OF THE HEARING WAS HELD IN CAMERA.)

11:29:31 4 (OPEN COURT.)

11:29:31 5 THE COURT: OKAY. WOULD THE PLAINTIFF LIKE TO CLOSE OUT
11:29:38 6 OR HAS THE PLAINTIFF COMPLETED ITS PRESENTATION?

11:29:41 7 MR. ROY: YOUR HONOR, IN THE ABSENCE OF HAVING A COAT TUG
11:29:47 8 OR BE TOLD TO THE CONTRARY, I THINK WE'VE SAID EVERYTHING WE NEED TO
11:29:50 9 SAY. UNLESS WE'RE GIVEN AN OPPORTUNITY TO REBUT WHAT YOU CAN'T TELL
11:29:54 10 US.

11:29:58 11 THE COURT: MR. SMITH.

11:30:01 12 MR. ROY: OR UNLESS THE COURT HAS ANY QUESTIONS, YOUR
11:30:03 13 HONOR.

11:30:03 14 THE COURT: NOT AT THIS TIME, NO, SIR.

11:30:05 15 MR. SMITH: YOUR HONOR, JUST WANT TO CLARIFY ONE POINT,
11:30:08 16 WHICH I MAY HAVE MUDDIED BY MY LACK OF APPRECIATION FOR OUR ARGUMENT
11:30:13 17 SET FORTH IN OUR PAPERS. THIS IS SOMETHING YOU WERE INTERESTED IN
11:30:15 18 INITIALLY ABOUT RULE 1.9 OF THE LOUISIANA RULES OF PROFESSIONAL
11:30:20 19 CONDUCT.

11:30:21 20 THE COURT: YES.

11:30:21 21 MR. SMITH: SUBSECTION "A" SAYS: "A LAWYER WHO HAS
11:30:25 22 FORMERLY REPRESENTED A CLIENT IN A MATTER SHALL NOT THEREAFTER
11:30:29 23 REPRESENT ANOTHER PERSON IN THE SAME OR A SUBSTANTIALLY RELATED
11:30:34 24 MATTER IN WHICH THAT PERSON'S INTERESTS ARE MATERIALLY ADVERSE TO
11:30:38 25 THE INTERESTS OF THE FORMER CLIENT --

11:30:41 1 THE COURT: WAIT, I AM READING LOUISIANA 1.9 --

11:30:45 2 MR. SMITH: SUBSECTION "A".

11:30:47 3 THE COURT: OKAY.

11:30:48 4 MR. SMITH: "UNLESS THE FORMER CLIENT GIVES INFORMED
11:30:51 5 CONSENT CONFIRMED IN WRITING."

11:30:53 6 THE COURT: IT'S MATERIALLY ADVERSE.

11:30:55 7 MR. SMITH: YES, YOUR HONOR, I AGREE. WE ESTABLISHED THAT
11:30:57 8 THERE WAS NO WRITTEN CONSENT.

11:30:59 9 AND MY ONLY POINT WOULD BE THIS POINT, WHICH IS JEFFERSON
11:31:02 10 PARISH ISN'T HERE TODAY, THEY HAVEN'T BEEN HEARD FROM --

11:31:05 11 THE COURT: THEY ARE HERE?

11:31:07 12 MR. SMITH: NO, THEY'RE NOT HERE TODAY.

11:31:08 13 THE COURT: I'M SORRY.

11:31:09 14 MR. SMITH: AND SO THEIR VIEWS -- MS. SHERMAN, YOU KNOW,
11:31:13 15 IS NOT FULLY AWARE OF WHAT JEFFERSON PARISH'S INTERESTS MAY HAVE
11:31:18 16 BEEN BECAUSE OF HER LIMITED ROLE IN THIS LITIGATION REPRESENTING
11:31:25 17 THEM AND WITHOUT KNOWING WHAT THEIR VIEW OF THE MATTER, WHETHER THEY
11:31:29 18 THINK THEIR INTERESTS WERE MATERIAL ADVERSE AFFECTED SEEMS TO
11:31:37 19 ME IT'S -- THAT'S OUR ARGUMENT, YOUR HONOR, I THINK THAT NEEDS TO BE
11:31:40 20 LOOKED INTO. THANK YOU.

11:31:41 21 THE COURT: ALL RIGHT. THANK YOU. GIVE THE COURT A
11:31:46 22 SECOND AND I AM GOING TO RULE ON THE MOTION. AND IT CAN GO ON UP
11:31:57 23 WITH A LOT OF OTHER THINGS THAT WILL BE GOING TO MY DEAR COLLEAGUES
11:32:00 24 NEXT DOOR. GIVE ME A SECOND. I'VE GOT MORE PAPER THAN I NEED, I
11:32:20 25 CAN TELL YOU THAT. I GOT IT, OKAY.

11:32:26 1 IT'S GOING TO BE RATHER INFORMAL, EVEN THOUGH IT'S A
11:32:29 2 SERIOUS MATTER. FIRST, BEFORE I RULE: ANY DISRUPTION OF THE TRIAL
11:32:40 3 THAT'S SIGNIFICANT AFFECTS ALL OF US, AND -- BUT THAT DOESN'T MEAN
11:32:49 4 THE DISRUPTION ISN'T ON OCCASION NECESSARY. THE COURT'S GOING TO
11:33:02 5 ACCEPT THE GOVERNMENT'S POINT THAT IT IN GOOD FAITH THOUGHT THERE
11:33:06 6 MIGHT BE A POTENTIAL CONFLICT OF INTEREST OR A POTENTIAL VIOLATION
11:33:10 7 OF THE JOINT DEFENSE AGREEMENT AND APPRISED THE COURT ACCORDINGLY.
11:33:17 8 SO THE COURT'S GOING TO ASSUME THIS MOTION WAS MADE IN GOOD FAITH,
11:33:22 9 AS THERE IS AN OBLIGATION IF ONE IN GOOD FAITH BELIEVES THAT THERE
11:33:27 10 IS AN ETHICAL ISSUES, OF COURSE IT MUST BE BROUGHT TO THE COURT.

11:33:36 11 AND FURTHER, ALTHOUGH THE JOINT DEFENSE AGREEMENT IS
11:33:43 12 NOT -- DOESN'T STRICTLY FIT UNDER THE RUBRIC OF THE CODE OF ETHICS,
11:33:50 13 THE COURT UNDERSTANDS THE CASES CITED AND ACCEPTS THE FACT THAT
11:33:56 14 THERE COULD HAVE BEEN A POTENTIAL VIOLATION THEREOF.

11:34:00 15 SO THE UNITED STATES SEEKS TO DISQUALIFY PLAINTIFFS'
11:34:06 16 ATTORNEYS KEA SHERMAN AND JONATHAN B. ANDRY, AND THE UNITED STATES
11:34:11 17 ASSERTS THAT THE DISQUALIFICATION IS APPROPRIATE BECAUSE MS. SHERMAN
11:34:14 18 PREVIOUSLY REPRESENTED JEFFERSON PARISH AND SHE SPECIFICALLY
11:34:17 19 REPRESENTED THEM DURING -- IN THE LEVEE PORTION OF THIS VAST AND
11:34:25 20 MYRIAD LITIGATION THAT HAPPENS TO BE UNDER THIS UMBRELLA.

11:34:32 21 IN PARTICULAR, THE GOVERNMENT ALLEGES THAT MS. SHERMAN
11:34:38 22 PARTICIPATED IN DISCUSSIONS WITH THE ATTORNEY WITH THE UNITED STATES
11:34:40 23 PURSUANT TO A JOINT DEFENSE AGREEMENT, WHICH IS IN THE RECORD. AND
11:34:48 24 THE JOINT DEFENSE AGREEMENT WAS ENTERED INTO BY THE UNITED STATES,
11:34:51 25 JEFFERSON PARISH, THE BOARD OF COMMISSIONERS OF THE ORLEANS PARISH

11:34:56 1 LEVEE DISTRICT, THE SEWERAGE & WATER BOARD OF NEW ORLEANS, AND THE
11:34:59 2 BOARD OF COMMISSIONERS OF THE EAST JEFFERSON LEVEE DISTRICT, AND THE
11:35:03 3 STATE OF LOUISIANA'S DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
11:35:05 4 AND THE BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS.

11:35:09 5 THE THRUST OF THE MOTION AS I ORIGINALLY PERCEIVED IT FROM
11:35:19 6 THE GOVERNMENT WAS THAT THERE WAS A POTENTIAL VIOLATION OF RULE
11:35:22 7 1.9(A) OF THE LOUISIANA RULES OF PROFESSIONAL CONDUCT, WHICH STATES:
11:35:28 8 A LAWYER WHO HAS FORMERLY REPRESENTED A CLIENT IN A MATTER SHALL NOT
11:35:31 9 THEREAFTER REPRESENT ANOTHER PERSON IN THE SAME OR A SUBSTANTIALLY
11:35:34 10 RELATED MATTER IN WHICH THAT PERSON'S INTEREST ARE MATERIALLY
11:35:38 11 ADVERSE TO THE INTERESTS OF THE FORMER CLIENT UNLESS THE FORMER
11:35:41 12 CLIENT GIVES INFORMED CONSENT, CONFIRMED IN WRITING."

11:35:50 13 THE COURT IS -- HOW CAN I SAY THIS? THE COURT IS AS
11:35:54 14 FAMILIAR WITH THIS LITIGATION AND THE NUANCE OF IT AS IT IS WITH ITS
11:36:03 15 OWN WITHERING AND DEBILITATED PHYSIOLOGY. JEFFERSON PARISH HAS
11:36:19 16 ABSOLUTELY NOTHING TO DO IN THIS ROBINSON LITIGATION. IT HAS NOT
11:36:24 17 AND NEVER HAS BEEN AND PROBABLY NEVER WILL BE A DEFENDANT IN THIS
11:36:30 18 CASE. THE PERSONS WHO ARE AGGRIEVED DO NOT LIVE IN JEFFERSON
11:36:42 19 PARISH, IT'S EITHER ST. BERNARD OR ORLEANS, I THINK I AM CORRECT.

11:36:49 20 MOREOVER, THE ALLEGED MALEFACTOR, THAT IS THE MRGO, HAS
11:36:53 21 NOTHING TO DO WITH JEFFERSON PARISH, IT DIDN'T HAVE ANY OBLIGATION,
11:36:57 22 IT DIDN'T DIG IT, IT DIDN'T HAVE ANY OBLIGATION TO MAINTAIN IT.
11:37:00 23 IT'S COMPLETELY DIFFERENT. THEREFORE, I FIND THAT, ONE, ITS
11:37:06 24 INTERESTS AREN'T MATERIALLY AFFECTED. AND RULE 1.9 DOESN'T APPLY.

11:37:23 25 MOREOVER -- AND THAT'S WHOSE INTEREST WE HAVE TO LOOK AT,

11:37:27 1 JEFFERSON PARISH, BECAUSE THAT WOULD BE THE FORMER CLIENT UNDER 1.9
11:37:32 2 AS THE JOINT DEFENSE AGREEMENT, PARAGRAPH 17 CLEARLY PROVIDES THAT
11:37:35 3 THE PARTY, THE ATTORNEYS THERETO ARE NOT CLIENTS FOR ANY OTHER PARTY
11:37:40 4 OF THE JOINT DEFENSE AGREEMENT.

11:37:45 5 NOW AS TO THE JOINT DEFENSE AGREEMENT SETS UP CERTAIN
11:37:49 6 PROTOCOLS WHERE ONE IS NOT TO DIVULGE ANY CONFIDENTIAL INFORMATION
11:37:56 7 RECEIVED TO ANY PARTY WHO IS NOT A PARTY TO THE JOINT DEFENSE
11:38:01 8 AGREEMENT. THE COURT FINDS IN THIS CASE AS A FACT THAT THAT WAS NOT
11:38:08 9 DONE, THAT THERE WAS NO CONFIDENTIAL INFORMATION DIVULGED BY
11:38:20 10 MS. SHERMAN TO ANYONE ELSE, INCLUDING MR. ANDRY, THAT SHE MAY HAVE
11:38:26 11 RECEIVED FROM THE DEFENDANTS, FROM THE SIGNATORIES TO THE JOINT
11:38:33 12 DEFENSE AGREEMENT.

11:38:42 13 THEREFORE, THE COURT NOT ONLY FINDS NO ETHICAL VIOLATION
11:38:45 14 BUT NO VIOLATION OF THE JOINT DEFENSE AGREEMENT'S TERMS. ANY
11:38:49 15 INFORMATION SHE MAY HAVE RECEIVED, ALBEIT ONE WAS PRIMARILY RELATED
11:38:59 16 TO A CLASS ACTION CERTIFICATION HEARING IN THE LEVEE, WHICH IS,
11:39:09 17 SHALL WE SAY, GALACTICALLY ATTENUATED FROM THE ISSUES IN THIS CASE
11:39:14 18 BY THE COURT'S LIGHTS.

11:39:25 19 THE COURT FURTHER FINDS THAT ALTHOUGH THIS IS MURKIER
11:39:33 20 THAN -- A DISQUALIFICATION FILED SEVEN DAYS INTO TRIAL, HOWEVER I
11:39:44 21 FOUND IN GOOD FAITH, IS SIMPLY NOT TIMELY BASED ON THE RAW FACTS
11:39:49 22 THAT I HAVE BEFORE ME. CLEARLY MS. SHERMAN ATTENDED DEPOSITIONS AND
11:39:58 23 A MEETING, AT LEAST ONE MEETING, WITH GOVERNMENT ATTORNEYS WHILE SHE
11:40:03 24 WAS REPRESENTING JEFFERSON PARISH. SHE ALSO ATTENDED DEPOSITIONS,
11:40:10 25 CERTAINLY AS EARLY AS OCTOBER 2ND, 2008, WHEN SHE WAS REPRESENTING

11:40:19 1 PLAINTIFFS' INTEREST WHERE GOVERNMENT ATTORNEYS WERE PRESENT. THERE
11:40:23 2 IS EVIDENCE IN THE RECORD THAT THIS WAS EVEN DISCUSSED.

11:40:30 3 SO I UNDERSTAND WHAT MR. SMITH SAID ABOUT WE HAVE A LOT OF
11:40:34 4 ATTORNEYS AND SOMETIMES IT'S NOT ALL -- IT'S A LITTLE DIFFICULT TO
11:40:41 5 DECIDE WHO'S WHO, BUT BASED ON THE NUMBER OF DEPOSITIONS, AND THERE
11:40:46 6 WERE SEVERAL, AND THE NUMBER OF ENCOUNTERS BOTH BEFORE -- WHILE
11:40:50 7 REPRESENTING JEFFERSON AND THEN WHILE REPRESENTING THE PLAINTIFF,
11:40:53 8 THE GOVERNMENT KNEW OR CERTAINLY SHOULD HAVE KNOWN ABOUT A POTENTIAL
11:40:59 9 DISQUALIFICATION.

11:40:59 10 AND, FRANKLY, TO DO IT, THE COURT FINDS IT IS UNTIMELY TO
11:41:05 11 DO IT, AS AN ANCILLARY FINDING, TO FILE THIS MOTION TO DISQUALIFY
11:41:13 12 SEVEN DAYS INTO THIS TRIAL CONSIDERING THE SIGNIFICANCE ITSELF. THE
11:41:21 13 FIRST TIME THERE WAS A WISP, SHOULD HAVE BEEN A WISP OF A POTENTIAL
11:41:24 14 CONFLICT, IT SHOULD HAVE BEEN FILED.

11:41:27 15 AGAIN, THIS IS AN ANCILLARY RULING, BUT THE COURTS HAVE
11:41:30 16 FOUND THAT IMPLIED WAIVERS WHEN A MOTION TO DISQUALIFY WAS NOT
11:41:35 17 TIMELY MADE, AND I'M CITING CITY OF EL PASO V. SALAS-PORRAS SOULE,
11:41:45 18 6 F.SUPP.2D 616 AT 621, THAT'S WESTERN DISTRICT OF TEXAS 1998, IT
11:41:53 19 STATES: A MOTION TO DISQUALIFY SHOULD BE MADE WITH REASONABLE
11:41:55 20 PROMPTNESS AFTER A PARTY DISCOVERS THE FACTS PLED IN THE MOTION. A
11:41:59 21 LITIGANT MAY NOT DELAY FILING OF A MOTION TO DISQUALIFY IN ORDER TO
11:42:02 22 USE THE MOTION LATER AS A TOOL TO DEPRIVE HIS OPPONENT OF COUNSEL OF
11:42:06 23 HIS CHOICE AFTER SUBSTANTIAL PREPARATION OF THE CASE HAS BEEN
11:42:08 24 COMPLETED.

11:42:09 25 SO THIS IS NOT ONLY AFTER SUBSTANTIAL PREPARATION, THIS IS

11:42:11 1 AFTER SEVEN DAYS OF TRIAL. THE COURT JUST FINDS -- AGAIN, THIS IS
11:42:25 2 MURKIER THAN MY OTHER FINDINGS, BUT I DO FIND, FRANKLY, THAT
11:42:33 3 MS. SHERMAN HAS BEEN EVIDENT, SHOULD HAVE BEEN EVIDENT TO THE
11:42:36 4 GOVERNMENT SINCE OCTOBER THE 2ND. THEY KNEW SHE WAS REPRESENTING
11:42:41 5 JEFFERSON BEFORE AND THEY KNEW SHE WAS REPRESENTING THE PLAINTIFFS
11:42:43 6 IN OCTOBER, IT'S NOW, WELL, ALMOST MAY, AND WE'RE INTO THE TRIAL.

11:42:54 7 I THINK ON THE EVE OF TRIAL I PROBABLY WOULD HAVE FOUND IT
11:42:56 8 AT LEAST PERHAPS TIMELY BUT NOT NOW. BUT THAT'S SECONDARY TO MY
11:43:01 9 FINDING THAT THERE IS NO ETHICAL VIOLATION, THERE IS NO VIOLATION OF
11:43:05 10 THE JOINT DEFENSE AGREEMENT, THERE IS NO POSSIBLE, EVEN IN THE MOST,
11:43:12 11 THE MOST IMAGINATIVE OF LAWYERS, ADVERSE INTEREST TO JEFFERSON
11:43:20 12 PARISH IN THIS ROBINSON LITIGATION, OF WHICH THE COURT IS FAMILIAR
11:43:21 13 WITH, AS WELL AS ALL OF THE OTHER CASES UNDER THE UMBRELLA.

11:43:31 14 I AM LOOKING AT THE DEPOSITION LIST AND I AM GOING TO TAKE
11:43:40 15 MR. SMITH -- MR. SMITH IS A MAN OF INTEGRITY AND I AM GOING TO TAKE
11:43:48 16 HIM AT HIS WORD, OF COURSE. BUT MS. -- I HAVE ON THE LIST PROVIDED
11:43:58 17 BY THE GOVERNMENT, I MIGHT SAY, THAT SHE ATTENDED A GOOD MANY
11:44:05 18 DEPOSITIONS WHILE REPRESENTING JEFFERSON PARISH. AND ALTHOUGH I
11:44:12 19 DON'T HAVE ALL OF THE PAGES SHOWING WHAT GOVERNMENT ATTORNEYS WERE
11:44:16 20 PRESENT, IF ANY, CERTAINLY ON NOVEMBER 27TH, 2007, SHE APPEARED,
11:44:24 21 MR. SMITH AND MR. WOODCOCK WERE THERE; ON MARCH 4TH, 2008 -- EXCUSE
11:44:30 22 ME, WE DON'T KNOW THE SUBMISSION PAGE. ON MARCH 5TH, 2008, KEITH
11:44:37 23 LIDDLE AND JESSICA SULLIVAN. AND I UNDERSTAND SHE WAS MONITORING
11:44:42 24 FOR JEFFERSON PARISH AND IT MAY NOT HAVE BEEN MANIFESTLY EVIDENT.

11:44:52 25 BUT JUST FOR THE RECORD, AND AGAIN ON MARCH 5TH, 2008

11:44:56 1 KEITH LIDDLE AND JESSICA SULLIVAN; ON MARCH 31ST, 2008 SARAH SOJA,
11:45:09 2 RICHARD STONE AND MITCH MARZONI (PHONETIC); ON APRIL 1ST, 2008 WE
11:45:16 3 KNOW RITA TROTTER WAS THERE; WE ARE MISSING SOME PAGES. APRIL 3RD,
11:45:23 4 2008, PAUL LEVINE, JACK WOODCOCK AND KEITH LIDDLE, I THINK IT'S
11:45:29 5 L-I-D-D-L-E; APRIL 4TH, 2008 PAUL LEVINE AND KEITH LIDDLE; APRIL
11:45:37 6 7TH, 2008, JOHN WOODCOCK AND JEFFREY EHRLICH, E-H-R-L-I-C-H;
11:45:43 7 APRIL 9TH, 2008, ROBIN SMITH AND MITCH MARZONI. APRIL 11, 2008,
11:45:48 8 KEITH LIDDLE AND PAUL LEVINE; APRIL 14TH, 2008 MICHELLE GREIF AND
11:45:54 9 KARA MILLER.

11:45:57 10 AND, FRANKLY, THERE'S A LOT MORE. SO SHE -- I AM NOT
11:46:00 11 GOING TO GO THROUGH THEM ALL. SO...

11:46:04 12 AND THEN SHE APPEARED ON OCTOBER 2ND, 2008, REPRESENTING
11:46:12 13 PLAINTIFFS, MR. SMITH WAS THERE, ROBIN SMITH, CONOR KELLS AND AGAIN
11:46:18 14 JENNIFER LABRADETTE. ON OCTOBER 8TH I DON'T HAVE WHO WAS THERE,
11:46:24 15 MR. PODANY, BECAUSE THE PAGES WE RECEIVED DON'T HAVE THE SUBMISSION.

11:46:30 16 MR. STEVENS: WE'RE PRINTING THOSE UP NOW, YOUR HONOR.

11:46:31 17 THE COURT: THE POINT IS CERTAINLY AS EARLY AS
11:46:34 18 OCTOBER 2ND, AND THAT'S ON THE TIMELINESS ISSUE WHICH I FEEL IS
11:46:38 19 FRANKLY NOT AS DEFINITIVE AT ALL AS THE OTHER ISSUES WHICH I HAVE
11:46:43 20 FOUND.

11:46:44 21 AND FOR THOSE REASONS, I DENY THE MOTION FOR
11:46:48 22 DISQUALIFICATION. I AM ASSUMING IT WILL BE ANOTHER MATTER THAT CAN
11:46:57 23 BE TAKEN UP AT ANOTHER LEVEL WHEN THIS TRIAL IS OVER WITH.

11:47:03 24 MR. ROY: YOUR HONOR, IN CONNECTION WITH YOUR RULING, WE
11:47:08 25 WOULD ASK PERMISSION, UNLESS MR. SMITH OBJECTS TO, AFTER COURT TODAY

11:47:12 1 PUT THE 13 DEPOSITION, TOTAL DEPOSITIONS, THE 13 THAT WE'VE LOCATED
11:47:17 2 INTO THE RECORD FOR THAT PURPOSE THAT --

11:47:21 3 THE COURT: YOU MEAN FOR THE PAGES SO WE'LL KNOW WHO WAS
11:47:23 4 PRESENT?

11:47:24 5 MR. ROY: IT MAKES SENSE, THE 13 WE BELIEVE MS. SHERMAN
11:47:27 6 WAS ACTUALLY CLEARLY REPRESENTING --

11:47:29 7 THE COURT: ANY OBJECTION, MR. SMITH?

11:47:31 8 MR. ROY: -- THE PLAINTIFFS.

11:47:32 9 MR. SMITH: NO, YOUR HONOR.

11:47:33 10 THE COURT: ALL RIGHT.

11:47:34 11 MR. ROY: AND, YOUR HONOR, AT YOUR PLEASURE I AM PREPARED
11:47:38 12 TO START DR. KEMP NOW AND BREAK FOR LUNCH OR DO WHATEVER YOU WANT.

11:47:47 13 THE COURT: WE'RE GOING TO BREAK FOR LUNCH AND START AT
11:47:47 14 ONE O'CLOCK.

11:47:47 15 MR. ROY: THANK YOU, YOUR HONOR.

11:47:47 16 (WHEREUPON, A LUNCH RECESS WAS TAKEN.)

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REPORTER'S CERTIFICATE

I, KAREN A. IBOS, CCR, OFFICIAL COURT REPORTER, UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT, TO THE BEST OF MY ABILITY AND UNDERSTANDING, FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED AND NUMBERED MATTER.



KAREN A. IBOS, CCR, RPR, CRR
OFFICIAL COURT REPORTER

[Note: Pages 54-79 consist of a word index that has been deleted from this file.]