

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CALEB STOLL, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	1:08-cv-01798-RPM
)	
CHRISTIAN WORLD ADOPTION,)	
CHRISTIAN WORLD ADOPTION)	
FOUNDATION, INC.)	
)	
Defendants.)	

MOTION HEARING
TRANSCRIPT OF PROCEEDINGS

Proceedings held before the HONORABLE RICHARD P. MATSCH, U.S. District Judge for the District of Colorado, beginning at 1:58 p.m. on the 1st day of June, 2009, in Courtroom A, United States Courthouse, Denver, Colorado.

APPEARANCES

For the Plaintiffs:	Jonathan Marshall Sirkis, Esq. Jon Sirkis, LLC 1911 11 th Street, #301 Boulder, Colorado 80302
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For the Defendants:	Marni Nathan Kloster, Esq. J. Andrew Nathan, Esq. Nathan, Bremer, Dumm & Myers 3900 E. Mexico Avenue, #1000 Denver, Colorado 80210
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 P R O C E E D I N G S

2 (At 1:58 p.m. on June 1, 2009, in the United States
3 District Court at Denver, Colorado, before the HONORABLE
4 RICHARD P. MATSCH, U.S. District Judge, with counsel for the
5 parties present, the following proceedings were had:)

6 THE COURT: Be seated, please.

7 This is Civil Action 8-CV-1798, Caleb and Jessica
8 Stoll against Christian World Adoption and Christian World
9 Adoption Foundation, Incorporated. We're here on the
10 defendants' motion to compel arbitration.

11 So, Mr. Sirkis for the plaintiff?

12 MR. SIRKIS: Yes, Your Honor.

13 THE COURT: Plaintiffs. Mr. Nathan for the defendants?

14 MR. NATHAN: Yes. Mr. Nathan and Ms. Kloster.

15 THE COURT: So, the briefing has been on the
16 applicability of the Federal Arbitration Act, and the
17 question raised by the plaintiff has been the South Carolina
18 statute concerning arbitration. But, I have a number of
19 questions related to the pleadings that have been filed since
20 the motion to compel arbitration, that is, the amended
21 complaint and the answer to the amended complaint. So, Mr.
22 Nathan, I'll ask these questions of you.

23 I don't understand exactly the relationship between
24 Christian World Adoption and Christian World Adoption
25 Ethiopia and Children's' Cross-Connections Ethiopia.

1 Plaintiff refers to--plaintiffs refer to them as being
2 controlled by your client. You refer to them in the answer
3 as international affiliates. Now, I don't have any idea what
4 that means, but as I understand the substance of this case,
5 much of what occurred was in Ethiopia.

6 MR. NATHAN: Yes, Your Honor.

7 THE COURT: And, therefore, the acting--the people who
8 were doing the acting here, including this Ms. Fraker
9 (phonetic), appear to be employees or associated in some way
10 with Adoption Ethiopia. So, I'm not sure, you know, if
11 there's a--some of these claims have validity, it would seem
12 to be because of the actions of the people with these
13 organizations in Ethiopia.

14 MR. NATHAN: Well, Your Honor requested the scheduling
15 conference, which was held some time ago, we did an
16 investigation into--

17 THE COURT: Yeah.

18 MR. NATHAN: --who did what to whom. And, wrote Mr.
19 Sirkis a letter explaining what we had learned, and some of
20 the people involved are agents, and we have identified those,
21 of Christian World Adoption, and some we contend are not.
22 So, we did an analysis of who was who. But, what we've said
23 in the briefing is that Christian World Adoption and
24 Christian World Adoption Foundation are two separate distinct
25 entities, and that Christian World Adoption Foundation has

1 nothing to do with this case.

2 THE COURT: Right. But, I'm talking about what
3 Christian World Adoption's responsibility is for what was
4 done by Christian World Adoption Ethiopia and Children's
5 Cross-Connection Ethiopia.

6 MR. NATHAN: And--

7 THE COURT: These seem to be the people on the ground,
8 so to speak.

9 MR. NATHAN: I agree, and without reviewing that letter,
10 I would not be able to answer that question. If you'd like
11 me to do so, I will, Your Honor.

12 THE COURT: Well, if it is the Christian World Adoption
13 is responsible for these entities and what they did in
14 Ethiopia, I don't think the arbitration is going to solve it.

15 MR. NATHAN: And, why is that, Your Honor?

16 THE COURT: Well, because that isn't part of the
17 agreement. There isn't anything in the agency agreement that
18 refers to these entities.

19 MR. NATHAN: But, those entities aren't sued, Your
20 Honor. They haven't been named in the--

21 THE COURT: That's why I'm asking whether there's a
22 respondeat superior liability for what they did.

23 MR. NATHAN: And, all I can tell you right now is that
24 we've gone through it and determined for whom these people
25 are acting as agents, and have advised Mr. Sirkis of that.

1 But, I just don't recall it at this point right now, Your
2 Honor.

3 THE COURT: Well, your purpose in proceeding to
4 arbitration is to have the arbitrator enforce the exculpatory
5 clause; right?

6 MR. NATHAN: My purpose is to have the arbitrator
7 determine all the issues between the parties, including the
8 exculpatory clause.

9 THE COURT: And, your contention here is that this South
10 Carolina statute doesn't have anything to do with this?

11 MR. NATHAN: My contention is is that state law, which
12 affects the viability of contracts itself, as determined by
13 the Buckeye case, applies in this type of an analysis, but
14 state law that applies to arbitration agreements, which is
15 what the South Carolina statute is, does not. The Federal
16 Arbitration Act preempts those laws.

17 THE COURT: That's it?

18 MR. NATHAN: That's my argument.

19 THE COURT: Yes, okay. Well, you made it. Mr. Sirkis?

20 MR. SIRKIS: Yes, Your Honor.

21 THE COURT: Why do you have your tie undone?

22 MR. SIRKIS: I'm sorry? Oh. I apologize.

23 THE COURT: Thank you.

24 MR. SIRKIS: Thank you, Your Honor.

25 If I may, with regard to the question you asked, we

1 have evidence that shows that--from a former employee, that
2 shows that CWAE and Children's Cross-connection of Ethiopia
3 were in fact agents.

4 THE COURT: Yes. And, who is that? I mean, who--

5 MR. SIRKIS: Tracy Fraker--I'm sorry--Michelle Gardner,
6 former employee.

7 THE COURT: Of whom?

8 MR. SIRKIS: CWA United States. And, she was the person
9 who first set these operations up, and she would be willing
10 to testify to that, if that's necessary.

11 THE COURT: Well, you agree the Foundation is not a
12 proper party, don't you?

13 MR. SIRKIS: I believe that the Foundation is an alter
14 ego of CWAE--of CWA. I believe the Foundation is run by the
15 same person, and that its--

16 THE COURT: Yeah, but its purpose, as I understand it,
17 is to collect money as a charity.

18 MR. SIRKIS: It appears to be. But, it also appears
19 that they have taken--and, I do not have--I do not have
20 evidence to present at this time, but--

21 THE COURT: Well, what do you know about Christian World
22 Foundation?

23 MR. SIRKIS: I know that it's an organization that is so
24 closely linked to Christian World Adoption that it's
25 difficult to tell what they do. They have a different tax

1 status, but the same person runs it. It appears that what
2 they--and, again, it's difficult to tell because we don't
3 have access yet to information about them, but it appears
4 that they take some of this money and actually do some of the
5 work that CWA claims--or, that CWA takes credit for.

6 So, for example, the orphanage, it appears that one
7 of the orphanages under Children's Cross-connection was paid
8 for by CWA. So, the orphanage was actually paid for by this
9 organization, yet CWA retains control. It appears that it's
10 an alter ego. Now, I do not have conclusive evidence of
11 that, but that's what it appears. That's why they're
12 included. And, that is the substance of my argument in that
13 regard.

14 THE COURT: But, the mix-up of the children occurs, as
15 far as you know, in Ethiopia in the orphanage?

16 MR. SIRKIS: In several places.

17 THE COURT: Or not?

18 MR. SIRKIS: Including the orphanage, yes, Your Honor.
19 It was not one act. It was a series of acts. It was a
20 series of misrepresentations.

21 THE COURT: And, is one of these either Ethiopia,
22 Adoption Ethiopia, or Connections Ethiopia, go through the
23 bureaucracy and the court process that is necessary to
24 achieve the adoption under Ethiopian law?

25 MR. SIRKIS: It appears that CWAE did this. But, again,

1 it also appears that CWA--I think, I'm not sure if the other
2 side has admitted this, but I believe, and I could be wrong,
3 but I believe they have essentially admitted that CWAE is an
4 agent of--

5 THE COURT: Well, they said an international affiliate.

6 MR. SIRKIS: Okay.

7 THE COURT: That's the language that I asked Mr. Nathan
8 about.

9 MR. SIRKIS: I'm not sure what that means.

10 THE COURT: Well, that's what I said.

11 MR. SIRKIS: Yes, they went through this process, but
12 they went through the process knowing that they had given the
13 wrong child--

14 THE COURT: Yeah.

15 MR. SIRKIS: And, that's the substance of our claim.

16 THE COURT: What I'm getting to is the actors--

17 MR. SIRKIS: Yes, Your Honor.

18 THE COURT: --the people who are responsible for this,
19 to your understanding, are people working with CWAE and CCCE?

20 MR. SIRKIS: And CWA itself, Your Honor.

21 THE COURT: Yeah.

22 MR. SIRKIS: Tracy Fraker is an employee of CWA United
23 States, and she was the one who gave false information.

24 THE COURT: But, is she in South Carolina?

25 MR. SIRKIS: I believe she is, Your Honor, yes.

1 THE COURT: And, how did your clients get mixed up with
2 these people? Was it through the internet or--

3 MR. SIRKIS: No, Your Honor, it was through a church.
4 They were approached--where they approached someone who was a
5 sales representative of CWA that works through churches in
6 Colorado. They have a sort of marketing outreach that they
7 do, and these people are paid--we understand that they're
8 paid on a commission, and they seek out people to do
9 adoptions. They advertise on the internet locally. They go
10 to church groups and they seek people out to do these
11 adoptions, and that's how Caleb and Jessica met them. I
12 think Caleb and Jessica were 22 or 23 at the time, something
13 like that.

14 THE COURT: Now, is this one child's immigration status
15 been resolved?

16 MR. SIRKIS: Unfortunately, both child's immigration
17 statuses are not resolved, and there are serious--they can't
18 get Social Security numbers, they have no legal status at
19 this point. We're concerned about the--I think ultimately,
20 we will prevail. I'm an immigration attorney as well. I
21 believe that we will prevail against CIS, but they could face
22 deportation.

23 THE COURT: On the legal issue that's briefed, your
24 position, as I understand it, is that this agreement is not
25 valid in South Carolina.

1 MR. SIRKIS: Our agreement--

2 THE COURT: I'm talking about the arbitration clause in
3 the agreement.

4 MR. SIRKIS: Yes, Your Honor. And, my position--

5 THE COURT: As well as the exculpatory clause.

6 MR. SIRKIS: Yes, Your Honor. My position is similar to
7 that. I believe the exculpatory clause is voidable, or void.
8 But, I believe there never was an arbitration agreement.
9 There was never the intent by the Stolls to agree to
10 arbitration. The arbitration language is mentioned in an
11 indemnify and hold harmless clause as Part B. If you will
12 notice, that's what is listed under--

13 THE COURT: Yes.

14 MR. SIRKIS: The Stolls have indemnified CWA for
15 everything. It's a complete exculpatory clause and
16 indemnification. It's clear that the arbitration clause
17 applies only by actions of CWA against my clients. There's
18 no other logical reading of it. They have completely
19 indemnified them. So, even if they went to arbitration, were
20 they to get a judgment, they'd have to pay that and costs
21 back to CWA. I think it's clear that the arbitration
22 agreement--

23 THE COURT: I didn't follow your argument.

24 MR. SIRKIS: Sorry.

25 THE COURT: I'm looking at the Section 8, hold harmless,

1 which has two clauses, A and B.

2 MR. SIRKIS: Yes, Your Honor.

3 THE COURT: And, A says the adoptive parent agrees to
4 indemnify the agency.

5 MR. SIRKIS: Yes.

6 THE COURT: All right.

7 MR. SIRKIS: For any cause whatsoever. Part B says that
8 the parties shall arbitrate all claims, but although it's
9 badly worded and ambiguous, what that means to me is that the
10 only claims left are the claims by CWA against Caleb and
11 Jessica. It can't really have any other meaning. It would
12 be an absurd result to say that you have the right to
13 arbitrate, but you've indemnified the other parties, so,
14 therefore, if you arbitrate and win, you pay us the money
15 anyway.

16 THE COURT: Oh, I see what you're saying.

17 MR. SIRKIS: Yes. There was no intent at the beginning
18 for Caleb and Jessica to arbitrate. And, in fact, CWA, as
19 you've just heard a minute ago, they said that in
20 arbitration, they would move to dismiss because Caleb and
21 Jessica have waived all their rights and indemnified CWA,
22 which is true. They have. And, that, regarding the
23 interpretation of the contract, means that there is no
24 arbitration agreement.

25 THE COURT: Well, you know, the Supreme Court, as you

1 know, way back when it did the Prima Paint (phonetic), and
2 then more recently, in the Buckeye Check Cashing, has always
3 seemed to me they got it backwards, but then, it's the
4 Supreme Court, because as I understand the law under Federal
5 Arbitration, that if the validity of the agreement, the
6 contract, which contains an arbitration clause, is disputed
7 for whatever reason, the arbitrator decides whether there's a
8 valid contract. If, however, the challenge is to the
9 arbitration clause in the contract, the court decides. And,
10 in this case, your challenge is to the arbitration clause in
11 the contract.

12 MR. SIRKIS: The arbitration clause itself. We're
13 saying that there isn't one.

14 THE COURT: But, you're not challenging the hold
15 harmless clause as invalid, but unenforceable, saying it's
16 unenforceable; is that it?

17 MR. SIRKIS: What I'm saying, Your Honor, is the hold
18 harmless clause has to be read with the arbitration portion
19 of the hold harmless clause to determine the intent of the
20 parties. And, yes, we do believe that after that analysis,
21 the hold harmless clause will be thrown out, certainly--

22 THE COURT: You're not challenging the agency agreement
23 as a contract. In fact, you're suing under it.

24 MR. SIRKIS: That's right.

25 THE COURT: For a breach.

1 MR. SIRKIS: That's right.

2 THE COURT: But, the challenge is to that particular
3 clause. So--

4 MR. SIRKIS: Just to the arbitration clause, Your Honor,
5 yes.

6 THE COURT: And, then, the other provision--

7 MR. SIRKIS: Once we get past the arbitration clause, if
8 the Court will hear the case, then we would challenge that.

9 THE COURT: Do you know--there's so many ways to find
10 out information these days, that I don't know. Do you know
11 any more about this Christian World Adoption Ethiopia and
12 Cross-connections Ethiopia than what's been said here?

13 MR. SIRKIS: I know a little bit more, in that I had--

14 THE COURT: Did you look them up on the internet, or
15 something?

16 MR. SIRKIS: Yeah, we've certainly done that, Your
17 Honor. But, I've spoken with a former employee of both, who
18 is a key employee, not just--

19 THE COURT: Yes. Well, are they organized under the
20 laws of Ethiopia?

21 MR. SIRKIS: Organization, it appears that they have
22 registered with Ethiopia, so it appears that they have done
23 what little needs to be done over there. That's my
24 understanding, that they are recognized there. I don't know
25 what that entails specifically, but I know that they have

1 permission to do what they're doing. They appear to be in
2 violation of the law in Ethiopia.

3 THE COURT: Well, the Stolls at one time retained a
4 lawyer in Ethiopia.

5 MR. SIRKIS: They did, Your Honor.

6 THE COURT: Have you been in communication with that
7 person?

8 MR. SIRKIS: I have--I don't speak inhirac (phonetic),
9 so I--they have retained another attorney in DC--

10 THE COURT: Yeah.

11 MR. SIRKIS: --who speaks English and inhirac, and we
12 kind of go back and forth that way. And, it was through him
13 that we--the guy in Ethiopia, his name is Hilou, they often
14 go by one name, and Hilou attempted to get--it gets a little
15 confusing--Terriquitis Fia (phonetic), who is now known as
16 Daria--Terriquitis Fia was languishing in an orphanage even
17 though they had legally adopted her by accident, because of
18 all of this--

19 THE COURT: Yeah, both couples agreed to keep the baby
20 they got.

21 MR. SIRKIS: Yeah, different babies.

22 THE COURT: Yes. But, I mean, we had a switch here--

23 MR. SIRKIS: Three-way switch, yes.

24 THE COURT: Yes. The other couple decided that even
25 though this isn't the right baby they thought they were

1 getting, they would keep her.

2 MR. SIRKIS: That's right.

3 THE COURT: The same with your clients.

4 MR. SIRKIS: Exactly.

5 THE COURT: Instead of going through this unwinding the
6 confusion.

7 MR. SIRKIS: Yes. And, there was no emotional
8 connection made--

9 THE COURT: I mean, I understand that as a matter of not
10 only their interest, but the interest of the child.

11 MR. SIRKIS: Yes, Your Honor.

12 THE COURT: The two children. Well, it's a strange set
13 of circumstances. And, so, given that the immigration status
14 of these children has not been clarified, there's ongoing
15 damages, or--is that your position?

16 MR. SIRKIS: Yes, there are ongoing, and that's one of
17 the things we're claiming for, is the ongoing damages,
18 particularly the fees, costs and emotional trauma of
19 potential deportation.

20 THE COURT: But, that's being handled by counsel
21 different from you?

22 MR. SIRKIS: It's--I'm handling part of that, and then
23 other--

24 THE COURT: Somebody with immigration expertise?

25 MR. SIRKIS: I actually do immigration law as well.

1 THE COURT: Oh, you do.

2 MR. SIRKIS: I do.

3 THE COURT: Okay, I didn't know.

4 MR. SIRKIS: Yes, Your Honor. So, that is ongoing, and
5 obviously of great concern.

6 THE COURT: Well, is that in the immigration court?

7 MR. SIRKIS: No, it has not gotten to court yet. The
8 first step in immigration is you have to go through an
9 administrative procedure.

10 THE COURT: Yeah.

11 MR. SIRKIS: And, before you go through the
12 administrative procedure, we had to go through a civil
13 procedure in domestic relations court regarding this problem.
14 That was resolved fairly recently, and we're in the process
15 of figuring out how we're going to approach this. There are
16 a number of different ways, and actually two different
17 agencies can be approached to do this. One possibility is to
18 avoid--possibility, to avoid CIS altogether, and go through
19 the State Department. We have support from the State
20 Department. In Ethiopia, they have written letters
21 explaining what happened. So, I think on the equities, we
22 have a good case. But, we're dealing with a very large
23 bureaucracy that very often doesn't take details into
24 account, and can cause--

25 THE COURT: And, I don't--you know, is there some

1 international--well, apparently, there's the Hague
2 Convention, of course.

3 MR. SIRKIS: Yes, Your Honor.

4 THE COURT: But, Ethiopia is not a member?

5 MR. SIRKIS: The agencies themselves are certified by
6 the Hague Convention, and I do not know if Ethiopia is a
7 signatory to the contract, but I think they may well be. I
8 can't say for sure. But the agencies have to be certified by
9 the Hague Convention, and it's not clear at this point if CWA
10 has received their certification or not. I know they were in
11 the process of receiving--or, applying for it. I don't know
12 what happens if you're not a signatory, but I know that a lot
13 of countries are cracking down. They want people to be
14 approved by the Hague, and I don't know the details.

15 THE COURT: Now, does the Hague Convention have some
16 provision applicable to this kind of a problem with respect
17 to the laws of immigration and the reverse?

18 MR. SIRKIS: No, Your Honor, not regarding immigration.
19 I believe they have, and again my knowledge is very thin on
20 this, I believe that they have some sort of a grievance
21 process that you can take, but I think that's simply a, you
22 know, lodging a complaint against the agency.

23 THE COURT: Yeah. Well, they also cover discovery in
24 disputes. So, that may be a part of what you have to do in
25 this case.

1 MR. SIRKIS: It may, Your Honor. And, again, I'm not--I
2 don't want to make statements--

3 THE COURT: Yeah, okay. Well, we're here on the narrow
4 question.

5 MR. SIRKIS: Yes, Your Honor.

6 THE COURT: Of whether I should turn this case over to
7 an arbitrator. And, the arbitrator, also the arbitration
8 service seems to have a connection, because it's called
9 Christian Conciliation Services.

10 MR. SIRKIS: Yes, Your Honor.

11 THE COURT: Now, who is that?

12 MR. SIRKIS: They no longer exist as far as we know.
13 But, it is our understanding, and this is based on a brief
14 conversation that my client had with the attorney for CWA,
15 not the attorney for the insurance company, but the attorney,
16 private attorney for CWA itself, Curtis Bostick, that he was
17 one of the potential arbiters in this case.

18 Now, I do not know--the CCS appears not to exist
19 anymore. It appears there is some kind of connection. We
20 have no evidence that we can present to the Court. It is
21 based on I think a valid concern, and some information that
22 there is a connection, but we can't present any evidence to
23 the Court, so I don't want to make any claims.

24 THE COURT: Well, you at one time were trying to work
25 out a way to arbitrate the whole thing; right?

1 MR. SIRKIS: We were, Your Honor, until it was made
2 clear to us that the other side was willing to try to enforce
3 the waiver--the exculpatory clause and indemnify them. So,
4 that even if we did arbitrate--

5 THE COURT: You're going to lose.

6 MR. SIRKIS: We're going to lose, exactly. So, we
7 decided that that was not viable, that and other reasons.
8 And, again, I think that goes to the interpretation of
9 whether or not they agree to arbitrate in the first place.
10 That's why I say that since we have to construe the contract
11 against this maker, which was CWA, it is a fairly reasonable
12 reading of this to say that there was no agreement by the
13 Stolls to arbitrate, only an understanding that as it puts in
14 the contract, as a further inducement, that--

15 THE COURT: Okay. Excuse me. All right, thank you.

16 MR. SIRKIS: Thank you, Your Honor.

17 THE COURT: Well, Mr. Nathan, back to you. Who's going
18 to do the arbitration?

19 MR. NATHAN: Well, Mr. Sirkis's indication that CCS is
20 not a viable entity is news to me. The last time I heard,
21 they were a viable entity and still in existence.

22 THE COURT: Well, who are they?

23 MR. NATHAN: They are a separate entity from CWA.

24 THE COURT: That doesn't answer my question.

25 MR. NATHAN: It's a separate entity. That's all I know

1 about them, Your Honor. There's been no allegation in this
2 case that they're biased. As a matter of fact, there's a
3 presumption they're not biased.

4 THE COURT: Why is there a presumption they're not
5 biased?

6 MR. NATHAN: Well, I think you have to come forward with
7 some sort of evidence, otherwise, there's--isn't there a
8 presumption of impartiality--

9 THE COURT: Well, you're talking about if there were a
10 normal arbitration clause where they pick out arbitrators.
11 But, it looks like this is a, you know, you arbitrate with
12 our--

13 MR. NATHAN: Well, just because--it's my understanding
14 there's no connection, just because the name Christian is in
15 the Conciliation Services doesn't mean it's affiliated with
16 CWA.

17 THE COURT: I'm not going to grant your motion to compel
18 arbitration. This whole thing looks illusory to me.

19 MR. NATHAN: Well, do you want any more argument, Your
20 Honor?

21 THE COURT: No, I don't.

22 MR. NATHAN: Okay.

23 THE COURT: I think this is just a knuckle under clause.
24 So, my technical ruling is that the arbitration provision in
25 the contract is not viable. So, we're going to go forward.

1 And, I think you'd better find out who these other agencies
2 are.

3 MR. NATHAN: I looked at the letter, Your Honor, that we
4 wrote to Mr. Sirkis, and we indicated that Children's Cross-
5 connections Ethiopia is a separate and independent entity,
6 not part of CWA or Christian World Adoption Ethiopia.
7 Christian World Adoption Ethiopia, however, is a part of CWA.

8 THE COURT: Well, they seem to be the culprit, if these
9 allegations are correct, which I'm assuming, for present
10 purposes.

11 So, what are you going to do? What's the next step
12 here?

13 MR. NATHAN: Well, I suppose that we, Your Honor, put on
14 a--the scheduling order, and Mr. Sirkis and I should get
15 together and work on a proposed scheduling order to update
16 it.

17 THE COURT: So, why don't you do that without my having
18 to hold your hand?

19 MR. NATHAN: We will.

20 THE COURT: You submit an agreed scheduling order, what,
21 20 days?

22 MR. NATHAN: That's fine.

23 THE COURT: Is that all right with you, Mr. Sirkis?

24 MR. SIRKIS: Yes, sir.

25 THE COURT: Then, we'll see what we've got.

1 MR. NATHAN: Okay.

2 THE COURT: All right, thank you. Recess.

3 (2:26 p.m. - Whereupon, the proceedings were concluded.)

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TRANSCRIBER'S CERTIFICATE

I hereby certify that the foregoing has been transcribed by me to the best of my ability and constitutes a true and accurate transcript of the mechanically recorded proceedings in the above matter.

Dated at Aurora, Colorado, this 7th day of July, 2009.

s/Mary Chevalier
Mary Chevalier
Federal Reporting Service, Inc.
17454 East Asbury Place
Aurora, Colorado 80013
(303) 751-2777