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1 THE COURT: All right. In the meantime, do we  
2 have everybody on Dulberg?

3 MR. FLYNN: I believe so, your Honor.

4 THE COURT: Mr. Dulberg has, I think you can see  
5 it, I tested my speakers. They work. I believe the  
6 Court has my audio muted. I do not. I have done  
7 nothing. So I don't know what the problem is. In  
8 any event, although, I might think about it -- might  
9 have thought about doing that, but in any event --  
10 and that's because of the prior issues regarding the  
11 recording of these proceedings.

12 In any event, Mr. Talarico, do you have the  
13 records from the former attorneys? Do you have  
14 everything?

15 MR. TALARICO: I have -- I have a response  
16 from -- yes. I have response from Williams and  
17 Clinton.

18 THE COURT: Okay. Are you satisfied they are  
19 complete?

20 MR. TALARICO: I am.

21 THE COURT: Okay. Mr. Flynn, do you have a  
22 motion?

23 MR. FLYNN: Yes, I do. And this relates to that  
24 production. Judge, after we were on the record,

1 after the parties went back and forth on the  
2 language of your order from November 9, Ms. Williams  
3 and Mr. Clinton forwarded by email the records that  
4 were at issue that had previously been tendered to  
5 the Court and had been identified as responsive to  
6 Mr. Talarico, Mr. Dulberg's subpoena. And what I  
7 received were redacted copies, even though the  
8 understanding was that unredacted copies would be  
9 sent to me and to Mr. Talarico.

10 So they sent me a redacted copy. They sent  
11 an unredacted and a redacted copy to Mr. Talarico.  
12 So I emailed Ms. Williams and asked what was going  
13 on, and she said, well, we have now determined that  
14 those withheld documents are not responsive to the  
15 subpoena, even though, as I indicated in my motion,  
16 they identified them as being responsive before.

17 So -- so we filed a motion to enforce your  
18 order from November 9. I've got the motion. I  
19 don't know what to say other than that there was an  
20 agreement. There were plenty of representations on  
21 the record, and we should have these records.

22 THE COURT: Okay. Forgive me, but I'm confused.  
23 So let me explain or tell you what I'm drawing from  
24 this. After the fact, Clinton and company decided

1       that certain of their records were nonresponsive and  
2       withheld them or redacted them or both?

3             MR. FLYNN:  They were redacted.

4             THE COURT:  All right.  So -- but as far as the  
5       documents are concerned, you guys have everything  
6       you think you are entitled to.

7             MR. FLYNN:  I think we had those in the first  
8       place, Judge.  The whole purpose of that hearing  
9       was -- was relative to those documents.  So I don't  
10      know what the whole point of the November 9 hearing  
11      was because we already had those -- your Honor had  
12      copies of those for an in camera inspection which  
13      never occurred.  And then they decided, okay, well,  
14      we are not going to produce the unredacted copies to  
15      defense counsel, only to plaintiff's counsel  
16      pursuant to a subpoena.

17            THE COURT:  If -- if -- all right.  
18      Mr. Talarico, what comment, if any, do you have?

19            MR. TALARICO:  May I start, Judge, with happy  
20      holidays --

21            THE COURT:  Thank you.

22            MR. TALARICO:  -- to you and Mr. Dulberg and  
23      Mr. Flynn.  And I'm sorry to hear that things are  
24      going to be changing there as far as what kind of

1 cases you'll be hearing. I think -- well, I won't  
2 tell you what I think, but -- okay.

3 Now, as far as -- first thing is there is a  
4 motion that's just up. I want time to respond. I  
5 mean -- but if you want me to tell you what I'm  
6 thinking, that's easy. But I would like time to  
7 respond to the motion so I have -- so I have it of  
8 record.

9 THE COURT: Well, here is my -- let me walk  
10 through a little of this.

11 The prior order says attorney-client and  
12 work-product privileges are waived. Therefore, any  
13 redactions based upon attorney-client privilege or  
14 work product are inappropriate based on my order. I  
15 think that's pretty black and white, and I covered  
16 it, I think, extensively because I was concerned  
17 about this issue. And I was concerned that Clintons  
18 would be afraid of disclosing documents for fear of  
19 a malpractice claim.

20 So I'm at a loss to see what -- what  
21 remains at issue because my order is straightforward  
22 and we addressed this. But Mr. Talarico, I'll let  
23 you respond.

24 MR. TALARICO: Your Honor, what Ms. Clinton

1 redacted was nonresponsive answers. There were --  
2 there were a time frame and a subject matter and  
3 your order was -- and we waived all attorney-client  
4 privilege and work product in response to the  
5 subpoena. And Mr. -- Mr. Flynn received those.

6 THE COURT: But then she decided that -- all  
7 right. So you are saying that the redactions  
8 contain irrelevant information.

9 MR. TALARICO: Correct.

10 THE COURT: All right. And the -- if that's the  
11 basis of your position, I don't think it's a valid  
12 one because you don't make the determination of  
13 relevance at this stage. Relevance is determined at  
14 trial. And certainly, it may not be permitted at  
15 trial, but --

16 MR. TALARICO: I'm sorry.

17 THE COURT: It's not a -- relevance is not an  
18 objection I put a lot of weight on in the course of  
19 written discovery.

20 MR. TALARICO: Judge, the word relevant -- I'm  
21 not saying relevant.

22 THE COURT: Okay.

23 MR. TALARICO: Responsive. Responsive. That's  
24 what we waived, what was responsive to the subpoena.

1 Anything and everything she had that was responsive,  
2 and Mr. Flynn has received that.

3 THE COURT: But you got them too.

4 MR. TALARICO: Of course.

5 THE COURT: So he is being denied possession of  
6 documents that you were given, and the contention is  
7 that they -- what you were given isn't responsive.  
8 I guess I'm having a hard time reconciling this  
9 argument with the discussion we had, and I've also  
10 reviewed those documents, although, I don't have  
11 them in front of me right now. And that wasn't an  
12 issue that jumped out at me as I read them.

13 So I really don't know where we are going  
14 because responsive is kind of an odd objection. I  
15 think that really is something that rests with the  
16 defendant in this case, not you, on behalf of  
17 Clinton.

18 MR. TALARICO: Well, Judge, I'm not objecting.  
19 This is what Ms. Williams decided was responsive to  
20 the subpoena, and she sent it to Mr. Flynn. Now,  
21 what we are talking about as what's responsive and  
22 not responsive is documents that are outside the  
23 date range, outside the subject range, anything and  
24 anything -- anything and everything that are not

1 responsive, we didn't waive. We waived everything  
2 that's responsive. Anything that's from a year ago  
3 that's in those documents is not responsive, and  
4 she -- and she -- she struck that.

5 And I -- I (indiscernible) Mr. Flynn if he  
6 has an issue, it's with her, not with me. I'm not  
7 going to turn over documents that I wasn't ordered  
8 to turn over. But we are only talking about things  
9 that were stricken that were not responsive, dates  
10 and subject matter. If they are talking about -- or  
11 if their documents are in reference to something  
12 other than what the subpoena called for which was  
13 the deposition of Hans Mast on June, I believe 25,  
14 2020, that's not -- that's not what we waived.

15 THE COURT: Okay. But then, if you have waived  
16 your attorney-client and work-product privilege,  
17 then there really doesn't seem to be a basis on  
18 which you can withhold the documents, and I --

19 MR. TALARICO: Judge, we didn't waive -- I'm  
20 sorry. I apologize.

21 THE COURT: Well, that's where I'm having a  
22 problem.

23 MR. TALARICO: Judge, we didn't waive all  
24 attorney-client. It was a limited waiver, if you

1 remember. It was limited to the responses to the  
2 subpoena.

3 THE COURT: Those documents. No. No. I'm not  
4 buying this. Mr. Flynn, what do you got?

5 MR. FLYNN: Same argument, your Honor. I mean,  
6 these documents were tendered to the Court as being  
7 responsive to that subpoena. There was a subpoena  
8 response that Williams and Clinton served, and they  
9 served an amended response.

10 THE COURT: Okay.

11 MR. FLYNN: We had a lengthy discussion on the  
12 record. I have attached the transcript and the  
13 order to my motion this morning. Now, they -- to  
14 turn around in their third -- third swoop here and  
15 saying, well, they are not responsive. Well, I  
16 don't buy it either. Of course, I can't read the  
17 documents because I -- they are redacted as far as  
18 the version I got. But they can't have it both  
19 ways.

20 THE COURT: All right. So Mr. Flynn, what's the  
21 relief you're asking for?

22 MR. FLYNN: I didn't notice Ms. Clinton and  
23 Mr. Williams -- I'm sorry, Mr. Clinton and  
24 Ms. Williams on this motion because plaintiff has

1 copies of these records. They are pursuant to this  
2 subpoena. I'm just asking that the Court order the  
3 plaintiff to turn these over unredacted.

4 THE COURT: Okay. I'm going to grant that  
5 request. I'm going to direct plaintiff to turn them  
6 over to you in seven days, and -- because I -- we  
7 have been through this and we have been through this  
8 extensively, and I don't think nonresponsive is a  
9 valid objection at this stage, particularly in light  
10 of the fact that I have previously reviewed the  
11 documents.

12 And responsiveness, I don't think that  
13 that's an objection that the plaintiff is able to  
14 make when we are talking about documents that were  
15 produced by a third party. So they can't be  
16 withheld, and since plaintiff has them, defendant  
17 gets them. And the only bases under which I would  
18 allow plaintiff to withhold them is if they breached  
19 attorney-client or work-product privilege, but as we  
20 have disclosed, that's been waived.

21 So plaintiff has seven days to turn them  
22 over, and let's come back in ten days for status of  
23 compliance. Ten days would take us to  
24 December 15th, that's a Thursday. Does that day

1 work for both of you? 16th is fine too.

2 MR. FLYNN: The 15th is better for me, your  
3 Honor, if that's okay.

4 MR. TALARICO: 16th is better for me.

5 THE COURT: All right. Let's check 16th. How  
6 about 9:15 on the 16th?

7 MR. FLYNN: I have a 9:00 o'clock. Can we make  
8 it say 9:30 or 9:45?

9 THE COURT: 9:30.

10 MR. FLYNN: Okay.

11 THE COURT: Sorry. I can't give you 10:00.

12 MR. FLYNN: And then there is the other matter,  
13 Judge, the motion to exclude the Hans Mast  
14 deposition. Plaintiff filed his --

15 THE COURT: All right. Let me switch gears for  
16 a moment because Ms. Vernagallo and Ms. Polo are  
17 waiting, and they have -- want something really  
18 simple.

19 (Whereupon the afore-captioned  
20 cause was recalled.)

21 THE COURT: All right. Now, we will go back to  
22 Dulberg. Mr. Flynn, what were you saying?

23 MR. FLYNN: Yes, your Honor. The Court granted  
24 the plaintiff leave to file a second amended motion

1 to exclude the Hans Mast deposition. We had some  
2 extensive argument about the motion at the last  
3 hearing. At the time, I didn't expect to file a  
4 response, but after having received the second  
5 amended motion that was filed after the hearing, and  
6 despite my knee replacement, I decided -- I thought  
7 I'd get something on record. So I did file a  
8 response on November 30.

9 THE COURT: Okay. So Mr. Talarico?

10 MR. TALARICO: Judge, I'd like to -- I want to  
11 file a reply.

12 THE COURT: All right.

13 MR. TALARICO: I'd like 14 days.

14 THE COURT: Sure. I'll give you 14 days. All  
15 right. 14 days will give you until the 19th, and I  
16 think one way or another, even if I'm gone, this is  
17 more appropriately brought back in front of me. So  
18 I can do the hearing at 9:30 on December 21, that is  
19 a Wednesday. Does that work for you guys?

20 MR. FLYNN: That day works, Judge. May I just  
21 address the request for the reply, though?

22 THE COURT: Yeah.

23 MR. FLYNN: Given that this is the second  
24 amended motion, I mean, this -- I did file a

1 response, you know, not even pursuant to the  
2 briefing schedule. I got it on file quickly.

3 We have a summary judgment motion pending.  
4 The last thing that I want is for the dates to be  
5 affected by any of these motions.

6 THE COURT: What's the date of your summary  
7 judgment?

8 MR. FLYNN: It's -- the plaintiff's response is  
9 due on December 28. The motion was originally filed  
10 way back on September 15. So it's -- we have had an  
11 extensive amount of time.

12 THE COURT: I won't be hearing the summary  
13 judgment. So --

14 MR. FLYNN: Yeah. I understood there was some  
15 comments being made before I left about your Honor's  
16 handling the case or --

17 THE COURT: Well, after 13 years, they have  
18 decided this is the worst place for me. So I'm  
19 being moved to traffic, and then, Judge Berg is  
20 taking over January 1. So it's -- I don't know  
21 what's going to happen with the scheduling of your  
22 summary judgment because he's going to be combining  
23 his small claims call with a law division jury, and  
24 I -- I question the practicality of that but that's

1 not my -- that's not my call.

2 MR. FLYNN: Well, then, I would request from the  
3 chief judge that your Honor hear this motion through  
4 since it's -- because of your familiarity with the  
5 case over these many years.

6 THE COURT: Yeah, but I don't make the rules.  
7 So --

8 MR. FLYNN: Sure. I understand.

9 THE COURT: Mr. Talarico, what did you want to  
10 say?

11 MR. TALARICO: Yes, Judge. I was allowed to  
12 file an amended motion, and Mr. Flynn has filed two  
13 responses. The first one was before you, an oral  
14 response, if you remember --

15 THE COURT: Yes.

16 MR. TALARICO: -- the transcript. And you said  
17 to him, if you decide to do a written one -- he  
18 called it a sur-response, I want to sur-reply.

19 THE COURT: Okay.

20 MR. TALARICO: He's had two shots at this  
21 already.

22 THE COURT: You got it. You got it.

23 MR. TALARICO: But he's -- yes. Thank you.

24 THE COURT: So can we do the hearing on the Hans

1 Mast deposition on the 21st?

2 MR. TALARICO: Judge, that's -- can we do it the  
3 9th? It's going to affect my time no matter what.  
4 Can it be done closer to Christmas, like the 23rd  
5 or -- the 23rd I can do.

6 THE COURT: Nope. Nope.

7 MR. FLYNN: The 21st works for me.

8 THE COURT: The 21st is my last day before  
9 vacation. And as much as I love you guys, I'm not  
10 coming back for you. It will -- yeah, we got to get  
11 it done on the 21st, and -- because, frankly, given  
12 the status of this motion, I can't imagine Judge  
13 Berg not sending it back to me to complete it.

14 So I think for -- it's all in our best  
15 interests to get this done in front of me before the  
16 21st. So that's why I'm picking 9:30 on the 21st.  
17 Can we do that?

18 MR. FLYNN: That works for me, Judge.

19 MR. TALARICO: Judge, I'll move things around.

20 THE COURT: Okay. I mean, is there a time that  
21 day that works better?

22 MR. TALARICO: I have to move things around no  
23 matter what.

24 THE COURT: You know what, I can do -- I can do

1       it later. I've got -- I could do it at 10:00  
2       o'clock or -- also.

3           MR. FLYNN: What is the other date that we are  
4       coming back, Judge?

5           THE COURT: I don't know.

6           THE CLERK: December 16.

7           THE COURT: The 15th?

8           THE CLERK: 16th.

9           THE COURT: 16th we are coming back.

10          MR. FLYNN: I mean, could this be done by then?  
11       I mean, I've got my response on file, given the knee  
12       replacement and Thanksgiving holiday, a couple of  
13       days. So --

14          THE COURT: We can --

15          MR. TALARICO: I'm sorry.

16          THE COURT: Why don't we do both hearings at the  
17       same time rather than come back on the 16th. I --  
18       that makes sense since it's only four days -- five  
19       days. Can we do them both on the 21st?

20          MR. FLYNN: Sure.

21          MR. TALARICO: Yeah. Yes, Judge.

22          THE COURT: What time do you want because I'm  
23       free from 10:00 o'clock on?

24          MR. TALARICO: Like I said, whatever is more

1 convenient for Mr. Flynn. I have to move things  
2 around one way or the other. Morning or afternoon.

3 MR. FLYNN: I'm wide open on the 21st.

4 THE COURT: All right. Why don't we say at  
5 10:00 o'clock. And Mr. Flynn, I would ask that you  
6 prepare the order --

7 MR. FLYNN: I will.

8 THE COURT: -- and send that in. As soon as I  
9 see it, I'll sign it.

10 MR. FLYNN: Okay.

11 THE COURT: All right.

12 MR. FLYNN: Thank you, your Honor.

13 THE COURT: Okay. Thank you. Anything else?

14 MR. TALARICO: No. Just happy holidays to  
15 everyone.

16 THE COURT: Thanks.

17 MR. FLYNN: Happy holidays.

18 THE COURT: Thank you. All right. We will see  
19 you the 21st.

20 MR. TALARICO: All right. Thank you.

21 (Which were all the proceedings  
22 had in the above-entitled cause  
23 this date.)  
24

STATE OF ILLINOIS     )  
                              ) SS:  
COUNTY OF McHENRY    )

I, JUDY CARLSON, an official Court Reporter  
for the Circuit Court of McHenry County,  
Twenty-Second Judicial Circuit of Illinois,  
transcribed the electronic recording of the  
proceeding in the above-entitled cause to the best  
of my ability and based on the quality of the  
recording, and I hereby certify the foregoing to be  
a true and accurate transcript of said electronic  
recording.

*Judy R. Carlson*  
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