

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

4 OWENS?ILLINOIS, INC. * Civil Docket No.
5 VS. * 2299?CV?117
6 T&N, LTD, Et Al * Marshall, Texas
August 3, 2000
10:30 a.m.

7 TELEPHONE CONFERENCE HEARING
8 BEFORE THE HONORABLE T. JOHN WARD
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS

9 APPEARANCES:

10 FOR THE PLAINTIFF: MR. PAUL SADLER
11 OWENS?ILLINOIS, INC. Wellborn, Houston, Adkison,
12 Mann, Sadler & Hill
300 West Main Street
Henderson, Texas 75653?1109

14 FOR THE DEFENDANT: MR. W. MARK LANIER
15 T&N, LTD Lanier, Parker & Sullivan
1331 Lamar, Suite 1550
Houston, Texas 77010

16 MR. SHEPARD A. HOFFMAN
17 Law Office of Shepard A. Hoffman
3100 Monticello Ave. Ste. 750
18 Dallas, Texas 75205

19 MR. KIP GLASSCOCK
20 Attorney at Law
550 Fannin, Suite 1350
Beaumont, Texas 77001

21 MS. JANE CONROY
22 Coblenz & Warner
415 Madison Avenue
23 New York, New York 10017

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1 FOR THE DEFENDANT: MS. BETH ARDANOWSKI
2 FEDERAL?MOGUL CORP. DeHay & Elliston
901 Main
3500 Bank of America Plaza
3 Dallas, Texas 75202

5 COURT REPORTER: Susan Simmons, C.S.R.
6 Official Court Reporter
211 West Ferguson, Suite 318
7 Tyler, Texas 75702
903/590?1187

8 (Proceedings recorded by mechanical stenography,
9 transcript produced by CAT system.)

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1 PROCEEDINGS

2 THE COURT: Who is on the call for the
3 plaintiffs, O?I?

4 MR. SADLER: I am sorry, Judge, I didn't hear
5 you.

6 THE COURT: All right. Well, I hear you, Mr.
7 Sadler, you are here for the plaintiffs. Anybody else on
8 the call for O?I?

9 MR. SADLER: Just me.

10 THE COURT: All right. Who is on the call for
11 T&N?

12 MR. LANIER: Your Honor, Mark Lanier here, we
13 have kind of heavy?weighted this one, I guess, to the
14 extent that I also have Shep Hoffman on the phone, Kip
15 Glasscock, Dara Hegar, from my office, and Jane Conroy
16 who works with Paul Hanly, Paul Hanly is out of the
17 country, but she is on the phone though not a counsel of
18 record in the case.

19 THE COURT: Well, Mr. Lanier, you will speak
20 for T&N then?

21 MR. LANIER: Yes, Your Honor, yes.

22 THE COURT: Who is on here for Federal?Mogul?

23 MS. ARDANOWSKI: Beth Ardanowski, Your Honor,
24 and also, I believe, Jane Conroy from Coblenz & Warner.

25 THE COURT: Okay. Where is Mr. Elliston?

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1 MS. ARDANOWSKI: He is out of the country.

2 THE COURT: Well, I guess that that excuses him
3 then, sounds to me like he ought to be excused. But you
4 can tell him I thought about contempt for him.

5 MS. ARDANOWSKI: He will enjoy hearing that.

6 THE COURT: I am sure he will.

7 Okay. We have got ?? as the Court is trying
8 to rule on y'all's' motions quickly when they get filed,
9 we have several that have been filed here in the last few
10 days. But it looks like the most pressing one now that
11 might have affect on everything, is T&N's Motion for
12 Continuance in this case. So, Mr. Lanier, give me your
13 best shot about why you think the Court ought to continue
14 this case in light of all prior representations to this
15 Court as to why ?? how T&N wanted to go to trial as bad
16 as the plaintiffs does?

17 MR. LANIER: Your Honor, my best shot is to
18 just lay out the facts to you. We are not in full
19 possession of all of the documents yet. The critical
20 documents are the ones that we're really missing. About
21 all we have gotten so far are just typical documents that

21 all we have gotten so far are just typical documents that
22 O?I produces to me in personal injury litigation. I do
23 not have the documents that ?? I have got a Motion to
24 Compel on file that I understand will be heard August
25 31st. There are substantial documents that I need to get

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1 my experts ready, substantial documents that I need to
2 try and figure out what kind of experts I am going to use
3 where I am going to fight these fights. As you pointed
4 out to me in our very first phone conference when I told
5 you I hoped we could move this along quickly, and it
6 would be my desire for a quick resolution and a quick
7 setting, one of the biggest delays in a case like this
8 frequently is trying to get all of the documents put
9 together, and that is a frustrating delay. We did
10 finally receive, Monday of this week, the first set of
11 documents from our first look?see up at Owens?Illinois.
12 This is a case where obviously the life or death of our
13 company is on the line. Federal?Mogul either exists when
14 this case is over or they go into bankruptcy if they
15 lose. And in an effort to try and save the company, in
16 essence, I don't want to leave any stone unturned. And I
17 have got major boulders where I have got documents that I
18 haven't been able to see.

19 I have tried to notice the depositions, and we
20 have got them set to start next week, but since my very
21 first conference with the Court where I urged an early
22 trial setting, we have needed to go the route of 30(b)(6)
23 depositions instead of kind of sniper?bullet, specific
24 witnesses that we think would carry the day on a Motion
25 for Summary Judgement, for example, on the statute of

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1 limitations, and so we are going the 30(b)(6) route.

2 Those depositions ?? because the document
3 subpoenas that are going with them, on documents that
4 have not been produced to us yet, those depositions are
5 scheduled right now, next week, but it is really just the
6 first wave of depositions.

7 As I have learned more about this case, and
8 learned about the involvement of McCarter & English, and
9 learned about the possible information on Johns?Manville
10 and the fiber sales to O?I from some other folks, as we
11 have gotten involved in this case, and there has been a
12 verdict handed out in California saying that O?I was in a
13 conspiracy with Johns?Manville, it has caused me to have
14 to probe the Johns?Manville repository, which we started
15 doing. We sent handfuls of lawyers up there to start
16 going through and looking for documents there. But that
17 is a vast repository of documents, and that is taking a
18 lot of time.

19 In short, Your Honor, there are a number of
20 issues that have arisen since our very first conference
21 where we spoke with you, and where I did specifically
22 say, you know, we ought to be able to put this thing on a
23 fast track, and move it quickly. You had warned us about
24 some of the pitfalls that could arise. We have tried to
25 steer clear of them, but we haven't managed to be

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1 successful in that regard. And so, that is just where we
2 are, Your Honor. I am between a rock and a hard place, I
3 don't get my depositions started until next week, and now they
4 are trying to be put off, and I am supposed to give
5 expert reports right around the corner, and I haven't
6 gotten ?? I haven't even gotten the documents yet. I
7 won't even get a ruling on a lot of the Motions to Compel
8 until August 31st, and then when those documents are
9 finally put together, I don't see any way I can feasibly
10 do this and be ready for trial in December.

11 THE COURT: Well, the Motion to Compel that is
12 set for August 31st dealt with privileged documents, that
13 is the only thing that I was ?? recall that I knew
14 anything about, that we had some claims about privilege.
15 So, your other Motion to Compel, the one that you filed
16 yesterday, is going to be heard long before then. It is
17 going to be heard next week.

18 MR. LANIER: Oh, good, well that helps.

19 MR. SADLER: We can hear it today if you want
20 to, Judge.

21 THE COURT: Or today, we will see what we can
22 do, but we are going to move along here.

23 What response ?? is that all you have to say to
24 me on your Motion for Continuance?

25 MR. LANIER: Yes, Your Honor.

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1 THE COURT: Okay. What do you have to say, Mr.
2 Sadler?

3 MR. SADLER: Your Honor, we are still committed
4 to the December 4th trial schedule, and I will go item by
5 item of Mr. Lanier's comments to you.

6 First, his claim that the damage documents have
7 not been sent to him is simply not true. He has received
8 all of the damage documents that support the testimony
9 that was before the Default Judgement, includes the
10 testimony of Dr. Francher. They have in their possession
11 that complete file. They have gray?backs that include
12 all of the O?I accounting records and journals. And all
13 of the audited financial statements of this company, it
14 is a publicly?held company, it is independently audited,
15 they have all of them, and all the annual reports. They
16 have all of the documents that supported Lee Wasserman's

16 have all of the documents that supported Bob Grim's
17 testimony as the chief financial officer. They have all
18 of the documents that supported Bob Grim's testimony
19 also. So, they have received all of those things that
20 they say they have not.

21 What they have asked for are individual
22 settlement agreements in 222,000 cases. Now, you are
23 familiar with a settlement agreement.

24 THE COURT: I have heard of them.

25 MR. SADLER: I don't know of anything in a

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1 settlement agreement that is going to prove or disprove
2 the damage claim any better than the independent audited
3 financial reports of this company. If they want 222,000
4 settlement agreements that will look all just alike, and
5 many of which, I am sure, say "Ten dollars and other good
6 and valuable consideration," then I am sure we can get it
7 for them. But I can't imagine that being necessary for
8 them to calculate damages with this other ?? the other
9 information that we have given them.

10 The second thing they have said is that now
11 they ?? the third?party defendants that they can't get
12 ready for. In writing they have told this Court that the
13 bringing in those third?party defendants would not delay
14 the trial of this case. They have not obtained service,
15 to my knowledge, as of yet. That is not a situation O?I
16 created. In fact, I warned the Court as well as them,
17 that they would probably end up doing this, and now here
18 we are. So, I don't have much sympathy in that regard.

19 The depositions for next week, we have been
20 going forward trying to prepare for. The difficulty,
21 Judge, I think you can appreciate, that I don't want to
22 offer my witnesses and do it twice, I just want to do it
23 once, and I think it would be malpractice of me to do it
24 twice, particularly where one of the witnesses that is
25 going to be brought forward is one of the third?party

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1 defendants, who has a right to be served and have his own
2 counsel present. If they wanted it done next week, they
3 should have gotten their service accomplished and gotten
4 the lawyers hired and got them in here. They are the
5 ones that said they were necessary for this litigation, I
6 did not. All I have asked is that they slide the
7 deposition a couple of weeks until they obtain their
8 service, and have all of the parties before the Court. I
9 only want to do it once, I don't have time to do this
10 stuff twice, I would like to do it just once.

11 The other items they complain about, the
12 Johns?Manville document repository, we have already done
13 that. I don't know why they haven't, but we did.

14 They complain that they don't have the fiber
15 supplier documents in their Motion to Compel, and yet in
16 the Motion for Continuance, they say "O?I has revealed
17 fiber suppliers and some of them may properly be deposed
18 and made the subject of documentary discovery." I will
19 tell you that all of the fiber documents that exist for
20 Owens?Illinois have been produced. They either don't
21 know what they are, or they don't know where to look, and
22 I will be glad to try to help them find them within all
23 of the documents that we have produced, if that will help
24 them. I will tell them the box and the file number, if
25 that will help them.

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1 Their final area says that ?? has to do with
2 McCarter & English documents, and I believe there was a
3 subpoena sent out to McCarter & English by them with a
4 notice, and I believe some of those documents have been
5 produced to them already, as well as Shaw's office, I
6 believe. Nevertheless, that still falls within the
7 category of the items that they represented to this Court
8 would not cause a delay in this case.

9 So, based on all of that, Judge, we're still
10 trying to proceed as best we can to be prepared for
11 December 4th, and we would like to maintain the trial
12 setting. We do think that the current scheduling order
13 or docket control order is not feasible with the joinder
14 of these other parties. It doesn't make a lot of sense
15 to cut off discovery in a month, when we don't even have
16 service on them.

17 THE COURT: All right. Anything else?

18 MR. LANIER: Your Honor, Mark Lanier, if I
19 could respond briefly.

20 THE COURT: Okay.

21 MR. LANIER: First of all, on the idea that I
22 have received all of the damage documents and the
23 underlying documents, I take issue with Mr. Sadler.
24 Maybe there is a misunderstanding on what it is that I
25 believe I need, but Mr. Sadler has not produced for me

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1 any documentation that supports the fair and
2 reasonableness of over four hundred million dollars in
3 attorneys fees that they are claiming.

4 Likewise, Mr. Sadler's client is asking us to
5 pay over eight hundred or nine hundred million dollars in
6 reimbursement of settlement expenses that O?I claims were
7 reasonable and necessary settlements. And I do not ?? I
8 am not looking for 220 (sic) releases that say "For ten
9 dollars and other due consideration." I would like to
10 see how much was paid, what the allegations were in the
11 case. For example, if O?I is paying two million dollars

11 case. For example, if O?I is paying one million dollars
12 to Kasun out in California on a conspiracy case where O?I
13 got hit for conspiracy with Johns?Manville, that is not
14 something that is properly due and payable under any
15 stretch of this argument that they have got in front of
16 you, as something that I am supposed to pay. And yet,
17 I'm not being told, "Okay, Lanier, you can look at our
18 documents and see how much we have paid, what kind of
19 cases we have paid it in, whether we paid something as a
20 contribution or whether we paid it as a result of a
21 verdict, whether we had settlement offers that we could
22 have or should have taken, and instead of taking them
23 went to verdict." I have not been given any of that
24 data, and I do believe that that is critical data. My
25 experts have to analyze that data. I have to have an

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1 expert who is going to look at all of their attorneys
2 fees' data to decide and testify whether or not four
3 hundred million dollars is reasonable and necessary
4 attorneys fees for handling cases like this, or whether
5 another approach, if O?I had opted for another approach,
6 might have reduced their attorneys fees in half or a
7 fourth or ?? you know, I don't know what they may say.
8 But if I don't have that data underlying that damage
9 claim, I don't have it.

10 The other documents that I don't have, O?I has
11 been in a fight with its' insurance company, where the
12 insurance company says, "O?I, you are not supposed to
13 have coverage because what has actually happened is you
14 have volitionally or on your own or with fraud or with
15 full knowledge incurred these asbestos liability
16 damages." That fight has been ongoing. I have asked for
17 access to those documents, and I haven't been given those
18 documents.

19 There is a third set of documents that I
20 haven't been given access to. O?I had a fight with OCF,
21 and OCF said, "O?I, you owe us money because you, O?I,
22 sold us a defective designed product, Kaylo." And so the
23 OCF fight was one where, I understand, O?I may have paid
24 some money, at least made some concessions. And if any
25 of that money was paid or if O?I got any remuneration or

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1 concessions from OCF, I am entitled to that data. But I
2 am also entitled to find out who ?? what was being thrown
3 back and forth as far as knowledge and defect, and who
4 got into the business, and why they got into the
5 business. So, the fight between those two; I have been
6 denied those documents.

7 The third?parties, Your Honor, you granted the
8 motion for them to come in on July 11th. It was filed by

9 you with the clerk on July 14th, I got it in the mail
10 July the 17th. I immediately turned around and sent a
11 request for summons, and I sent it out by letter dated
12 July 20th. I say immediately, it was three days after
13 the July 17th receipt by my office that I sent it out.
14 We have spoken with Karla, in the clerk's office, on
15 multiple occasions. We had not gotten the summons. We
16 overnited them another request, and hoped to have the
17 summons and hoped to have it served, but I am sure that
18 Phil McWeeny has known, ever since I have known, that you
19 have granted it, and that he is allowed to come in. I
20 know McCarter & English has because I have spoken
21 personally with Gene Williams, and he is the lawyer in
22 Beaumont that has been hired by the insurance carrier for
23 McCarter & English to make an appearance. He is trying
24 to find out if he can accept service or process for them.
25 I think the idea that ?? you know, I would love

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1 to say that bringing them in would not delay this
2 process, and I did make that representation to the Court,
3 and ?? but I am at a position now where it is slow
4 getting them in and slow getting them in. My motion, you
5 know, it took some time to get a ruling on it. We have
6 got a position now where, you know, Mr. McWeeny wants
7 personal service on him before he is going to make an
8 answer. And the depositions are now being sought to be
9 put off because evidently Mr. McWeeny is going to have ??
10 you know, his lawyers are going to have other questions
11 beyond what Mr. Sadler would or what I would at the
12 depositions. And the net effect is a delay at this point
13 in time.

14 We have ?? on the Johns?Manville documents, Mr.
15 Sadler doesn't know why we haven't seen them ?? done that
16 yet. He said that his folks have. His folks did, they
17 did it before they sued us. We didn't know the suit was
18 coming back then. We, in fact, see some of their
19 Johns?Manville documents when we did the document
20 production up at the O?I headquarters, and we saw the
21 dates that they had gone and gotten those documents.
22 They had been working on this for about eighteen months
23 before they filed it, and so for eighteen months they
24 have been getting documents from Johns?Manville and from
25 the Chase case and from a number of different places.

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1 I found out they have been contacting witnesses
2 over in England for at least eighteen months before this,
3 trying to get their documents and get them to work. Mr.
4 Sadler had a nice jump start before the suit was filed,
5 but we didn't have that. We got to see their
6 Johns?Manville documents and understand some of the

5 JOHN: I HAVE THE DOCUMENTS AND UNDERSTAND SOME OF THE
7 implications within the last month or so. And for us to
8 now be told that we have got to go up in the repository
9 and do their eighteen months of work in a few weeks is a
10 difficult position for us. And I just set it before the
11 Court as another reason that we are having trouble
12 meeting this deadline, and we would like the Court to
13 give us a shot to continue the case.

14 The final aspect of this, and then I will shut
15 up, is obviously we do have the overlay of the MDL
16 question, and what is going to be done with that. I
17 understand that the MDL court is now ?? the record has
18 been unsealed enough for the MDL court to get a copy of
19 the petition, but yet add all of that together with O?I's
20 admitted need to put off the docket control order in all
21 aspects except for the trial setting, and I would just
22 ask the Court to put us on hold and continue this case
23 from the December setting, and let's see how we can best
24 get this thing ready so justice is served.

25 THE COURT: All right. Here is what the Court

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1 is going to do, the Court is severing the third?party
2 actions. All discovery in that ?? that is severed as a
3 separate cause, and all discovery in that case is
4 stayed.

5 You know, we have checked with the Clerk's
6 Office and there has been some conversations, but
7 apparently you sent the summons request to the wrong
8 address.

9 It is obvious to me that T&N has developed a
10 different strategy in this case from what ?? when you
11 originally talked to me, that they do not want to go to
12 trial, they are hoping this MDL ?? and I hope the MDL
13 takes this case, but I am not staying it because this is
14 not the ordinary case that is up at MDL. Y'all ?? you
15 know, I am going on with the case.

16 Now, I am going to have to have a separate
17 hearing on all of these Motions to Compel. I cannot
18 resolve this with ?? I will have to be off the line, I
19 have got an emergency. Y'all just stand by.

20 (Short pause in proceedings.)

21 THE COURT: Okay. We're back on the record.

22 I am severing the third?party actions, you
23 know, I am not convinced that T&N's strategy is what they
24 have represented it to the Court, and to the extent you
25 may have to later produce witnesses twice, Mr. Sadler,

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1 that is just ?? that is just part of litigation, I guess.
2 So, I am going on with it. To the extent that it turns
3 out that O?I has not produced documentation that would

4 establish the reasonableness and necessariness of the
5 amounts of the settlement or the amounts of the attorneys
6 fees or the expenses associated with the settlement,
7 well, they are certainly not going to be ?? you know,
8 they are just not going to be able to make proof of their
9 case. You know, whatever ?? what you are saying to me,
10 Mr. Lanier, is that they haven't given you any documents.
11 Well, I don't know how they can prove reasonableness and
12 necessary without the underlying documents. And if they
13 didn't produce them to you, then somebody's opinion is
14 not going to be ?? ever allowed in the courtroom. So, I
15 will just have to deal with that, and, you know, Mr.
16 Sadler, you know whether you have or you haven't produced
17 the underlying support documents. But, you know, an
18 expert that has got an opinion that doesn't have the
19 necessary support, is not ever going to ?? his opinion is
20 not going to see the light of day in this courtroom. So,
21 I don't know whether that is true or not true, but we
22 will just have to deal with that.
23 So, I am not continuing this case. As far as I
24 know there is nothing that has prevented T&N from, you
25 know, you ?? you make in paragraph 7 on page 3, you talk

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1 about allegations regarding T&N and Johns?Manville.
2 Well, y'all have known about those allegations for
3 months, the fact that you have not sought to do any
4 discovery on it is really not the Court's problem. And I
5 don't see how that is attributable to O?I that you didn't
6 try to do something to go into those allegations.
7 And the same thing with these other complaints
8 about you haven't got your discovery, I don't know of
9 anything that they have done that hasn't ?? that O?I has
10 done that has prevented you from getting this third?party
11 discovery.
12 So, the Court is not impressed at all with this
13 request for a continuance. You know, it is just obvious
14 to me that your parent company and T&N has got a
15 different strategy. Which is fine if it works, if the
16 MDL takes this, no one will be happier than this Court.
17 But at the same time, if they don't take it, I am going
18 forward. And the request to stay this is denied because
19 I just don't see this as the same type of case, whether
20 it is up there ?? you know, they may or may not take it.
21 If they do take it, all of the discovery that you have in
22 this case will be ?? can be used in the MDL trial of this
23 case once it gets there. So, I don't see that you are
24 going to be prejudiced by that.
25 Now, then to the extent that documents have not

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1 been produced. I want everybody to be fully aware that

1 been produced, I want everybody to be fully aware that
2 when I find that out, Mr. Sadler, if that turns out to be
3 true, this Court does not ordinarily exclude evidence,
4 and I probably won't exclude it this time, but what you
5 ?? everybody that is playing games, if it turns out that
6 way and I do not know, you can just rest assured that you
7 will not have the same number of jury strikes, you will
8 not have the same amount of time for interim statements,
9 you will not have the same amount of time for opening
10 statements, and you will not have the same amount of time
11 for closing statements; just as an indication of how the
12 Court will start out with sanctions. And my last
13 sanction would be the exclusion of evidence or the entry
14 of some ?? or the striking of any expert. Because the
15 Court believes, you know, that everybody has got a
16 constitutional right to a jury trial, and to use all of
17 the relevant, admissible evidence available. So, my view
18 on striking evidence or excluding witnesses, it may be
19 different from other judges in this district, but I will
20 penalize people as severely as I can without limiting the
21 jury's ability to evaluate what the true facts of the
22 case are. So, generally, most trial lawyers ?? and I
23 know I have got two good ones on the phone ?? and some
24 other ones that will hear about this, generally feel like
25 that jury strikes are relatively important up in this

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1 district. And so, that is the first loss that you will
2 receive. The next loss you will receive is part of these
3 interim statements that I am going to give you. It will
4 be unequal amount if ?? or possibly all of it taken away
5 from one party if it turns out that there is abuse of
6 this discovery process.

7 Now, do y'all want to take depositions ?? we
8 can have a hearing on the Motion to Compel, I can do it
9 next week.

10 MR. LANIER: That would be great, Judge.

11 MR. SADLER: Judge, can I make one comment?

12 THE COURT: But I thought we had depositions
13 scheduled next week?

14 MR. GLASSCOCK: Judge, this is Kip Glasscock,
15 can I be excused?

16 THE COURT: Yes.

17 MR. GLASSCOCK: Thank you, Judge.

18 MR. SADLER: Can I ask the Court a question?

19 THE COURT: Sure.

20 MR. SADLER: Judge?

21 THE COURT: Yes.

22 MR. SADLER: I assume ??

23 THE COURT: And there is going to be a new
24 scheduling order.

25 MR. SADLER: The last hearing we had, if you

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1 will recall, I said there were three or four items that
2 we had, and I suspect three or four items that Mr. Lanier
3 had that were good faith disputes about what to produce.

4 THE COURT: Well, I thought that dealt with
5 privilege.

6 MR. SADLER: Well, other than the privilege
7 there were about three areas, and you said, "Well, the
8 only thing I know to do is y'all file Motions to Compel,"
9 and I assumed that's what Mr. Lanier is doing here
10 because there are about three areas that ?? and I think
11 if you will hear those three areas, and they happen to be
12 the three areas, some of the areas that he talked about
13 would assist us. I would like to have the Motion to
14 Compel hearing because I would like to have a ruling one
15 way or the other and tell us what the Court believes or
16 thinks.

17 For example, there is a dispute ?? there was a
18 dispute between Owens?Illinois and Owens Corning
19 Fiberglas. They went through an arbitration proceeding,
20 there was an arbitration award that is sealed. We are
21 required not to violate that sealing, and we have to give
22 Owens Corning Fiberglas notice if anyone requests that
23 documentation. I have been abiding by that award, but I
24 have also told Mr. Lanier the documents exist, where they
25 are, and that the award is out there. But I can't do

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1 anything with it unless the Court tells me, "You are
2 going to produce them, or no, it is not relevant, leave
3 it alone." I think that is a good faith position with
4 the Court, I hope it is.

5 THE COURT: Well, I ??

6 MR. SADLER: But I think there are a couple of
7 items like that that I think would be in everyone's best
8 interest if we could do it as quickly as possible.

9 THE COURT: Well, I can do it Tuesday or
10 Wednesday of next week. Y'all want to talk on the phone
11 and then get back to the Court this morning as to which
12 time you want?

13 MR. LANIER: Mark Lanier, here. Your Honor,
14 because time is of the essence to us, and even a day may
15 make a difference, I will quickly tell you right now that
16 Tuesday is advantageous.

17 THE COURT: Mr. Sadler, you know what your
18 calendar is?

19 MR. SADLER: Yes, I have got jury selection
20 Tuesday morning, but I will make arrangements. You tell
21 me the time, and either I will be on the phone or I will
22 have somebody.

23 THE COURT: No, I want to look at some people.

24 I want to hear something that, you know, other than just
25 ?? I have got to have a little more feel for what I am

24

1 talking about.
2 MR. SADLER: Okay.
3 THE COURT: I can give you Monday afternoon, if
4 that is all right?
5 MR. SADLER: Monday afternoon?
6 THE COURT: Yes.
7 MR. SADLER: I can do Monday afternoon.
8 THE COURT: Well, I was trying to accommodate
9 your schedule there.
10 MR. SADLER: Well, my trial ?? jury selection
11 is in Odessa, but I will still make it. I will find a
12 way to get out there. Hopefully, it will resolve between
13 now and then.
14 THE COURT: Well, what does Monday afternoon
15 look like ??
16 MR. LANIER: Your Honor, I am supposed to pick
17 up my two girls from the airport, but I will get someone
18 else to do it, and ?? they have been at summer camp, and
19 I will get someone else to pick them up and I will be
20 there if Monday afternoon works.
21 THE COURT: One?thirty, Tyler, Texas.
22 MR. LANIER: I will tell the Court that we have
23 got depositions scheduled Monday and Tuesday, so I have
24 got my office picking up the girls anyway. We should be
25 up there for those depositions hopefully.

25

1 THE COURT: I am not staying ?? I am not
2 stopping those depositions because I just took care of
3 the third?party action.
4 MR. LANIER: Okay.
5 THE COURT: I severed them, and y'all ?? and
6 the discovery is going to go on until we resolve this
7 case. Then if we resolve this case and somebody gets
8 stuck and you need to file a third ?? you know, pursue
9 your third?party action against them, well, then you will
10 have your ability to do so.
11 MR. SADLER: Well, I am assuming, Judge ??
12 well, that is fine.
13 THE COURT: You are assuming what, Mr. Sadler?
14 MR. SADLER: Well, just thinking through that,
15 Judge, I ?? that will be fine. I will handle it with Mr.
16 McWeeny.
17 THE COURT: Well, you know ??
18 MR. SADLER: If Mr. Berry and McCarter &
19 English are not parties to this action, but they are
20 going to be parties to a separate action, then the
21 discovery ?? well we will just deal with it separately

21 discovery. Well, we will just deal with it separately.

22 That is fine. We will do it that way.

23 THE COURT: I can't do it both ways.

24 MR. SADLER: I understand, I understand.

25 THE COURT: So, that is the way the Court is

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1 going to do it.

2 MR. SADLER: That will be fine, Your Honor.

3 THE COURT: So, y'all better get fleshed out
4 your positions about these Motions to Compel, if you got
5 any evidence or something, to show me so I can really get
6 a feel for things, it would be helpful.

7 MR. HOFFMAN: Your Honor, this is Shep Hoffman,
8 would it be possible for me to comment for a moment.

9 THE COURT: Well, it looks like ??

10 MR. HOFFMAN: I just wanted to ask a question.

11 THE COURT: Well, okay, yeah.

12 MR. HOFFMAN: We have depositions scheduled
13 next week with Owens?Illinois. The deposition notices
14 call for the production of documents, to the extent that
15 documents are not produced, does the Court entertain
16 motions during the deposition or prefer that we complete
17 the depositions, get everything on the record and then
18 come back to you seratim with motion after motion after
19 each of the depositions?

20 THE COURT: Well, it is very difficult to rule
21 on motions over the phone. I am available to you by
22 phone if it is something that the parties think that I
23 might could resolve, you know. I don't know how else to
24 answer you question.

25 MR. HOFFMAN: That is helpful. I think the

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1 message I will take from that is that we will complete
2 each deposition as best we can, and then bring on with,
3 hopefully some examples, and maybe some demonstrative
4 aids to show what the stuff is that we believe exists and
5 hasn't been produced.

6 THE COURT: There is a lot of things I do
7 resolve by phone during depositions or I can, but I am
8 just ?? you know, you will just have to play it by ear as
9 an experienced litigator as to whether it is something
10 that you think that I could really get a handle on.

11 MR. LANIER: Your Honor, Mark Lanier, we will
12 be taking the depositions in ?? we have got an additional
13 counsel who hasn't made an appearance yet, but Franklin
14 Jones who is also assisting us in this case, and so we
15 are going to be in the offices that he uses up there to
16 take the depositions. So, we will be close by if at any
17 point you want us to come over so you can yell at us or
18 something, because we will be there.

19 THE COURT: Well, I will be in Tyler next week,
20 I won't be in Marshall.
21 MR. SADLER: So, this one?thirty hearing will
22 be in Tyler or Marshall?
23 THE COURT: Well, in light of what you just
24 said, I will just come to Marshall at one?thirty. I will
25 just drive over here. We will just make it in Marshall,

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1 Texas since y'all are going to be here. My hearings in
2 Tyler are over by ?? let me see here ?? if I have got
3 enough sense here to operate this computer. Don't
4 anybody comment on that statement.
5 (Judge looks at computer.)
6 THE COURT: Yes, I can be here by one?thirty.
7 You can be here by one?thirty?
8 COURT REPORTER: Yes, sir.
9 THE COURT: My court reporter says she can be
10 here, she doesn't like it, but she can be here.
11 Yeah, we will do it here in Marshall at
12 one?thirty.
13 And then, by then maybe if y'all have gotten
14 into any arguments on depositions, we will take that up
15 then. Okay?
16 MR. LANIER: Great.
17 THE COURT: All right. I will see you at
18 one?thirty. Thank you.
19 (Telephone conference concluded.)
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CERTIFICATION

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3 I HEREBY CERTIFY that the foregoing is a true
4 and correct transcript from the stenographic notes of the
5 proceedings in the above?entitled matter to the best of
6 my ability.
7

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9 SUSAN SIMMONS, CSR _____ Date _____
10 Official Court Reporter
11 State of Texas No.: 267
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