

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION - LOS ANGELES)

JEFFREY POWERS, ET AL,) CASE NO: 2:22-cv-08357-DOC-KS
)
Plaintiffs,) CIVIL
)
vs.) Los Angeles, California
)
DENIS RICHARD MCDONOUGH,) Tuesday, October 8, 2024
ET AL,)
) (10:12 a.m. to 10:44 a.m.)
Defendants.) (11:11 a.m. to 11:38 a.m.)

HEARING ON INJUNCTIVE RELIEF

BEFORE THE HONORABLE DAVID O. CARTER,
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

Court Reporter: Recorded; CourtSmart

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Also present:

CHELSEA BLACK
RANDY JOHNSON
SKIP MILLER

1 Los Angeles, California; Tuesday, October 8, 2024; 10:12 a.m.

2 --oOo--

3 **THE COURT:** Folks, do you feel comfortable going on
4 the record on the Veterans' case? All right. Then let me just
5 indicate that all counsel are present but we're on CourtSmart.
6 So what I need is your -- that's okay. That'll be fine. Just
7 to state who you are and what you speak.

8 Do you have any updates or are we in the same
9 position that we were yesterday?

10 **MR. SILBERFELD:** I think the Government has an
11 update, Your Honor.

12 **THE COURT:** Okay. All right. That was --

13 **MR. SILBERFELD:** Oh, sorry. Roman Silberfeld for the
14 Plaintiffs.

15 **THE COURT:** Okay. Brad, and just remain seated if
16 you'd like to. And pull the mike closer though because we're
17 on CourtSmart.

18 **MR. ROSENBERG:** Sure. This is Brad Rosenberg from
19 the Department of Justice on behalf of the Federal Defendants.
20 Counsel for Plaintiffs and for Brentwood forwarded an updated
21 draft of the settlement agreement to us and we've had a chance
22 to review it. We remain concerned about provisions in the
23 agreement and at this point, we don't see a path forward in
24 terms of a settlement unless there are significant structural
25 changes made to that agreement.

1 **THE COURT:** Okay. Do we at least all agree that if
2 we could get through these procedural or structural issues that
3 there would be predominant focus or principally benefit -- I
4 don't see the difference between the terms, frankly, but -- for
5 the veterans if we could maintain these facilities that the VA
6 is probably not obligated to build in terms of a swimming pool
7 or track --

8 **MR. SILBERFELD:** That's our --

9 **THE COURT:** -- weight rooms?

10 **MR. SILBERFELD:** -- that's our belief.

11 **THE COURT:** Yeah. And so really we don't want to
12 lose those; do we?

13 **MR. SILBERFELD:** Right.

14 **THE COURT:** Number two, there's a significant gain in
15 terms of the \$5 million, however we resolve that, that wasn't
16 on the table before, correct?

17 **MR. SILBERFELD:** Correct.

18 **THE COURT:** Okay. There's a significant gain in
19 terms of the 3-percent increase each year or the CPI, correct?

20 **MR. SILBERFELD:** Correct.

21 **THE COURT:** There's a significant benefit for
22 Brentwood being able to maintain these facilities for the
23 children there but the veterans really have the majority of
24 time. In other words, this agreement appears to be the old
25 agreement that John was talking to me about when he carves out

1 a section for Brentwood for two to whatever hours and the rest
2 of the day during the weekday except Friday belongs to the
3 veterans. So if they took proportional time, the veterans have
4 most of the time. The effort is to keep the children and the
5 veterans, of course, adults and children apart. So a
6 significant change in terms of the hours from 5:30 to 7:30,
7 right?

8 **MR. SILBERFELD:** Yes, Your Honor.

9 **THE COURT:** A significant change is Brentwood having
10 the ability to say to their future students, look, we may have
11 this for one year but we're setting precedents. And come to
12 Brentwood School because we have core facilities and if they
13 were ever considered by a Court for building, those would be
14 the last core facilities within those 22 acres, a tremendous
15 benefit for Brentwood, correct?

16 **MR. SILBERFELD:** Correct.

17 **THE COURT:** Additionally, I can't help but note that
18 Brentwood has stepped up and been in court everyday trying to
19 negotiate in good faith with the parties, far different from
20 UCLA. They've offered substantial terms continually or made
21 the effort, far different from UCLA.

22 So what's holding us up is these procedural issues
23 and one of the issues I hear is the following. I don't know
24 what the new agreement states but I know that there's a
25 tremendous distrust by the veterans with the VA, bluntly.

1 And that's only exacerbated by the statements that
2 McKindrick and Braverman make literally in terms of having
3 knowledge that this lease was out of compliance and then
4 literally making those statements and knowing that deciding not
5 to take action on a lease that was not in compliance and the
6 distrust has to occur when the VA simply says to the OIG, I see
7 these reports. I hear this input but we just disagree. So for
8 2018, it sits without any action.

9 By the same token, this is in a sense with some
10 overlap maybe the old VA that we dealt with. I think it should
11 be recognized that this group has tried to make some effort --
12 and I'll be blunt -- that Obama didn't make, Trump didn't make.
13 But this group has tried to after COVID move too slowly -- too
14 slowly but still move forward in some way. Now, I've written
15 and firmly believe that's only because of your lawsuit.

16 So, Skip, I'm going to toss out something that I
17 heard yesterday that you'd have to bend on. And don't give me
18 a comment. Just listen for a moment. The VA can't afford not
19 to have appeal rights. First of all, I think that they would
20 want to take this Court up on the charitable trust issue which
21 they strongly disagree with.

22 But the VA is more likely to be amenable if there's
23 some way of carving out through precedence some years of
24 workmanship or working together and I'm speculating last
25 evening that you have a concern about putting 3 million and 2

1 million in if there was a chance after putting that money in
2 that the Circuit reversed the Court.

3 Now, hold on. Okay. I spent most of the night
4 trying to think through this.

5 **MR. SILBERFELD:** Okay.

6 **THE COURT:** But you're always going to be in an
7 uncomfortable position. You're in an uncomfortable position
8 whether it's a one-year term. And what I don't want is I don't
9 want to make a ruling that damages the school just by making a
10 ruling about Brentwood School if we can reach an accommodation.
11 That's harmful to the school and unnecessarily so. I'd like to
12 get you off the skyline and back.

13 Without comment because I want to go around the room
14 for just a moment, eventually, if this is going to be an
15 accommodation, my belief is they are going to have to allow the
16 VA to appeal and I'm not certain it makes any difference
17 because even if they were successful with Brentwood, if the
18 Circuit overturned me, we'd be right back to a lease that runs
19 in 2027. If it was an extension, you might have gained two
20 years. So stay with us for a moment, okay? I think you're
21 going to have to bend on that if we reach an agreement.

22 Number two, with the veterans' position, eventually,
23 there's going to have to be some trust that you're unwilling to
24 give in the VA because even if this \$5 million came a certain
25 way, we're going to have to be dependent upon the VA and their

1 goodwill eventually to build out significant amounts of
2 temporary and permanent housing.

3 And because they have a bureaucracy that is either
4 slow-footing or not cooperative where we can demonstrate some
5 ability to work together, you're going to fight for everything
6 that you want to achieve. So I've said to the veterans a
7 number of times, you've got to put away your wounds and take
8 the high road even if you were shut out, even if people died,
9 unfortunately. You're going to have to get past it.

10 And, also, I don't want to violate by making an order
11 The West L.A. VA Act. If I'm going to go to the Circuit, I
12 want this to go on the merits of what the Court found. I don't
13 want to take the next step and actually have the Court in
14 violation of The West L.A. VA Act if there's not a vehicle to
15 get there. Now, I understand I could write injunctive relief,
16 et cetera, but I'd rather try to work together.

17 So I think that this should be a joint usage of
18 facilities agreement. You heard that a number of times. But
19 in the body that I got of some of your negotiations, it talks
20 about a lease, a one-year lease. I don't see why it's not
21 captioned as a use agreement, a joint usage agreement but in
22 the body, it remains a one-year lease. Hold on. Hold on. I
23 know you're already chaffing at it. Okay. And I know that you
24 don't trust the VA -- I got it -- because of the comingled
25 funds and where they go.

1 But the VA has the ability to designate out parcels
2 of money. In other words, they can specify -- at least I think
3 it's Section P. I've got to -- yeah, I think it's P. They can
4 actually designate out that the money goes in and the money has
5 to go out and here's the different position you're in. You've
6 got a very good monitor and hopefully a decent judge who's
7 going to back this us because when you first came in, Mark,
8 your first statement to me -- and I was astounded by your
9 candidness -- Judge, we screwed up. We trusted the Government.

10 Now you're in a much different position because
11 you've got the power of the Court. And I can't imagine what
12 the notoriety and scrutiny by the public of this case that if
13 the VA receives this money, they're going to do anything else
14 but put the money right back in.

15 Here's the problem. Should the money go into
16 emergency housing or should it go into another kind of coffer
17 like the church or something else that you might need? Or if
18 the Brentwood land was ever reverted back in the core, you
19 might need money to operate that pool for a period of years
20 because Brentwood is no longer operating it.

21 So I can understand how you might want to reserve but
22 it's kind of silly to collect all this money and to sit on it
23 like we have this \$5 million presently in this restitution fund
24 doing nothing. We ought to be using it immediately. So I'm
25 not pressing but one of the reasons that I thought that putting

1 this in an emergency is because I truly believe this is an
2 emergency and if it's truly an emergency, I want to get the
3 most funds in there.

4 So if you disagree with it, it's a dead deal and
5 veterans may take the position they're liable for housing,
6 they're liable for shelter. That's it. Okay. But I think
7 you've got the power of the Court now to assure this and I
8 think you have an awful lot of notoriety and public scrutiny,
9 quite frankly, from the public and I can't imagine the VA not
10 receiving this money and not in good faith putting it back into
11 a local project and I think without Brad saying it, he wants it
12 locally also.

13 For the VA, when you take this to the Circuit, I
14 don't what the Circuit will do. I feel my findings of fact are
15 very strong. But do you really want, if you do lose, to be
16 memorialized in the legal annals of history being written up in
17 here for the Ninth Circuit? Do you really want to be in a
18 position of in a sense using a legal right that you have but in
19 a sense stalling veterans in a practical way through tying this
20 up through litigation?

21 I don't think that's the way you want to be. I think
22 we've got a fresh start, a potential here. But maybe you do.
23 So when you get into all this procedural niceties, let's just
24 assume that you have to have it come to you in a lease.

25 But yesterday I heard from Craig that, Ms. Black, you

1 thought that you could maybe get procurement within two weeks.

2 Now, that was hearsay. Craig walked over and said I
3 want to work with this lady. He said, "I want to work with
4 this lady." He said -- I said, "I think that's her." You can
5 talk to Brad but if we were cooperative, could we start getting
6 procurement in a reasonable period of time?

7 **MS. BLACK:** Procurement is -- if everything -- as far
8 as the line, everything goes perfectly, the key component --
9 Chelsea Black for the VA. Sorry.

10 That is the -- that can reasonably be done if we had
11 a vendor in mind and that is something that I've told Craig
12 that I didn't think it was possible to get a vendor who had
13 available stock within 45 days to deliver and install temporary
14 housing.

15 **THE COURT:** Yeah. What number though? In other
16 words, 200, I agree, would be unreasonable. What happens if we
17 had this original 40 to 60, et cetera?

18 And, Mr. Silberfeld -- Mr. Johnson is here. Thank
19 you.

20 I don't know what that acre holds but they're
21 representing 20 to 30 -- acre and a half, let's just say 30 to
22 40. Let's say the back acre, let's say 60 to be conservative.
23 I'm sure we can find a vendor for that.

24 **MS. BLACK:** We did some preliminary research around
25 two years ago and we surveyed, I think, three or four vendors.

1 And just at that time, I think the units they were able to
2 produce were 43 in about six to nine months.

3 **THE COURT:** Yeah.

4 **MS. BLACK:** And that was the fabrication. But,
5 again, we can update the market research.

6 **THE COURT:** Yeah. I heard you got a -- from my
7 perspective, an astronomical figure. I heard that this came in
8 2022 or 2023, this bid, and it was for how many units, about a
9 50?

10 **MS. BLACK:** We never got an actual bid. We did
11 market research. So it was about 43 to 50 units.

12 **THE COURT:** And how much was it going to cost?

13 **MS. BLACK:** All the units plus the infrastructure
14 work, I believe, came in around, like, 8 to \$10 million.

15 **THE COURT:** Okay. Now, hold on. Let's just say,
16 what, 50 units at -- let's be conservative -- \$10 million.
17 Let's take the high side for a moment. Was that the work that
18 required, for instance, putting some kind of foundation in or a
19 parking lot in?

20 **MS. BLACK:** That was not, no. That was just some --

21 **THE COURT:** Was it dirt that we were looking at?

22 **MS. BLACK:** We would have to do the paving
23 separately.

24 **THE COURT:** Yeah.

25 **MS. BLACK:** So that was a separate contract.

1 **THE COURT:** So here we've got some parking lots,
2 don't we, in that acre and a half paved parking? No?

3 **MS. BLACK:** We do. We have paved parking but at the
4 same point, we don't know -- we're doing some studies on
5 utilities and depending on where the utility connections are,
6 you would have to dig up the paving to connect --

7 **THE COURT:** Yeah, but let me walk through. I hear
8 the parade of horrors but if I was just to make a judgment
9 call, it would seem to me I'd rather always work with a paved
10 area than an unpaved area. I may be wrong. I would rather
11 work with utilities in the same --

12 Quit shaking your head. Okay? If you want to speak,
13 speak in just a moment but I don't like body language. Okay?
14 Understood?

15 **MR. SPEAKER:** Yes.

16 **THE COURT:** Otherwise, leave.

17 I know that those lots have to have utilities because
18 they've got flood lights at the stadium. You've got to have
19 plumbing. I'm not dealing with a solar panel lot which is
20 dirt. So it'd be interesting how we got that quote years ago
21 and what area we were working with because we might be able to
22 do this at a lot less cost. What I don't understand, naively,
23 is why this can't be done.

24 **MS. BLACK:** I don't think we're saying that it can't
25 be done. I think we've always wanted to develop housing.

1 **THE COURT:** So the hang-up is getting a vendor to
2 start with that could supply, let's say, 50 to 60 units?

3 **MS. BLACK:** When I first talked about the procurement
4 process, if you're competing for the -- if you're competing
5 bids that there's a possible --

6 **THE COURT:** Let's assume I waived that. Let's assume
7 this is an emergency and I'm willing to waive that competitive
8 process for the first 50 or 60, not the 200.

9 **MS. BLACK:** Right.

10 **THE COURT:** That I want to be competitive with the
11 rest of it but we really want to get something off the ground
12 before the rain.

13 **MS. BLACK:** Uh-huh.

14 **THE COURT:** Okay.

15 **MS. BLACK:** The key is to have a vendor who can
16 produce those units.

17 **THE COURT:** Okay. Mr. Johnson, come on up. Can we
18 find a vendor for 50 to 60 units? If you can't, I can. So
19 I'll make the call if you can't.

20 **MR. JOHNSON:** Well, we think -- first of all, she's
21 correct as far as how long it takes. It's going to take four
22 or five months to do it from scratch. So what you're really
23 relying on, who's got inventory? So we're calling vendors to
24 see who's got inventory and then once you put it down, then
25 you've got the site development that you've got to work -- and

1 so the backup plan would be if you don't have the requisite
2 sewer or water, you've got temporary sewer, temporary water
3 that you could solve it with.

4 **THE COURT:** Okay. Michelle, how quickly did you
5 build the shelter in Santa Ana? Tell these folks.

6 **MS. MARTINEZ:** Ninety days.

7 **THE COURT:** Ninety days. Anaheim did it in 27. Did
8 you know that?

9 Now, there's no reason that I even have to hook up to
10 sewer. I can run portable toilets in and showers in and I
11 prefer to do that on a temporary basis and get people off the
12 streets. So instead of the perfect, I might settle for the
13 good. And if we can put 40 or 50 or 60 modular 400-square-foot
14 on that acreage, then there's no reason that we can't bring in
15 temporary showers and temporary toilets and get these folks out
16 of the rain and then we can worry about the sewer problem.

17 So it seems to me that we're backward, that our focus
18 should be on, how do we get people into shelter immediately?
19 And then we could worry about the permanency of the sewer. So
20 that's what's baffling to me, why this can't be done.

21 And by the way, I'll put it up again ad nauseam.
22 I've watched it done. I didn't do it. I watched it being
23 done. And I watched it in Afghanistan, in Pakistan, in
24 countries that you don't even know about. This government can
25 do it. And so can you.

1 So what I don't want to work with is a recalcitrant
2 agency and I don't think you are. I'm paying you a compliment.
3 I think that maybe that you're the group that could turn this
4 around because at least you made an effort, maybe too small
5 from the Court's perspective but certainly through past
6 administrations. Well, and Obama and Trump didn't build a
7 thing out there.

8 So I'm going to meet on Friday -- I guess I'm going
9 to be here constantly now. And I'd like to hear who our
10 vendors are.

11 **MR. JOHNSON:** We can do that.

12 **THE COURT:** Okay, 40 to 60, okay?

13 **MR. JOHNSON:** Got it.

14 **THE COURT:** And if you don't, I can give you some
15 numbers, okay?

16 **MR. JOHNSON:** Okay.

17 **THE COURT:** Okay. So all that's holding this up for
18 the benefit of the -- principal benefit of the veterans or the
19 predominant focus is the procedural morass called
20 "bureaucracy." And your concern about this going to the
21 government that you don't trust because they do have a past
22 history of comingling and they couldn't find funds years ago.
23 I understand that.

24 But at some point, you're going to have to trust them
25 with some of these funds because 5 million is just a beginning.

1 It's that. That's all it is compared to where we need to go.
2 And if you can't get past that hurdle, then take it up with the
3 Circuit, okay, because you're all stalling, frankly.

4 Now, Skip, anything that you want to say? Because
5 this is resolvable. It's just your ability and willingness to
6 do it.

7 **MR. MILLER:** Well, I --

8 **THE COURT:** And I think we need to get you off the
9 skyline and get that one settled.

10 **MR. MILLER:** That would be nice. That would good. I
11 have an idea.

12 **THE COURT:** Yeah. And this is Skip Miller.

13 **MR. MILLER:** Skip Miller, I represent Brentwood
14 School. I'm appearing specially. We're not a party to this
15 litigation but we want to be part of the solution. Here's -- I
16 made a suggestion yesterday.

17 **THE COURT:** Well, let's hear it transparently. Let's
18 just hear what's going on.

19 **MR. MILLER:** Yeah.

20 **THE COURT:** I'm in the dark and then this MOU -- or
21 this agreement is coming in with something new and you don't
22 agree. I have no idea where you are right now.

23 **MR. MILLER:** I made a suggestion yesterday that the
24 Court be the one that decides how the 5 million is spent.
25 That's out there. I haven't --

1 **THE COURT:** Just a moment. Let's start with that.

2 I agree. Here's the problem. The VA is not going to
3 agree because anytime it comes out, the normal channels of the
4 VA on a lease basis --

5 **MR. MILLER:** Got it.

6 **THE COURT:** -- they're going to take the position
7 that Judge Carter shouldn't have this or a private monitor
8 shouldn't have this. And once again, I say we're dealing with
9 a very small amount of money in \$5 million where we have to go
10 to. They're not going to agree.

11 **MR. MILLER:** So I have another idea, another
12 suggestion. We are currently already adjusting the hours of
13 the shuttle and the hours that are in the agreement to give
14 access.

15 **THE COURT:** Thank you.

16 **MR. MILLER:** We're doing that.

17 **THE COURT:** Regardless of the settlement?

18 **MR. MILLER:** Regardless of the settlement.

19 **THE COURT:** Thank you.

20 **MR. MILLER:** We're just -- we're performing. Yes.

21 **THE COURT:** Thank you.

22 **MR. MILLER:** Absolutely, we're doing that. And so
23 it's really the \$5 million. So what we could do is interplead
24 the money while the -- while maybe they work things out and we
25 finalize the terms of the settlement. We need the settlement.

1 We want a release for our \$5 million. We don't want to be sued
2 anymore. Or the 5 million sits in the interpleader account
3 while the appeal is pending. We certainly can do that if we
4 have to.

5 **THE COURT:** No, that's not helpful. We need that
6 money right away.

7 **MR. MILLER:** Yeah, well, that's -- I mean, it can
8 come out of the interpleader account as soon as there's
9 agreement. I mean, I wracked my brain to try to figure
10 something out here and --

11 **THE COURT:** This Court's been pretty strong in its
12 findings and rulings because I genuinely believe what I wrote.

13 **MR. MILLER:** Yeah.

14 **THE COURT:** I hesitate though going against The West
15 L.A. VA Act. I hesitate giving this to the Circuit on an
16 appealable issue because if I go too far with that, there's
17 going to be a reversal and we'll be back at six months or a
18 year or two years, the very thing that the Plaintiffs don't
19 want.

20 So I urge a little bit of caution on the next step
21 that we take and, therefore, it would seem to me that if we can
22 reach an agreement that we call this a "joint facilities use
23 agreement," that the body states that it's a one-year lease,
24 that you trust temporarily because you've got the power of the
25 Court and the power of the Special Master, that this goes into

1 a fund that you agree to designate under P so it -- there's
2 guarantee of it coming back, that we ought to get off the
3 ground with the first \$3 million and then the question is,
4 where should that go? Should that go to emergency housing
5 which you believe that they should pay for or does it go to the
6 capital?

7 And I would encourage this. I've thought a lot about
8 making this statement. I would encourage emergency housing for
9 this reason. You've got \$2 million coming next year that we
10 can deal with in terms of that chapel if they don't raise the
11 money and there's no place else we can put the money right now
12 that makes a significant difference to veterans that I can see
13 other than holding it in a reserve for something.

14 So that 3 million is going in. I would ask the VA to
15 start stepping up with minimally maybe the 5 million that's
16 being held, maybe another 3 million so we have this \$10
17 million. And have them minimally match you if not outdistance
18 you in terms of this funding significantly because if this is
19 an emergency, then it is an emergency and we need to get people
20 off the street now.

21 Otherwise, you're just going to take it up on appeal
22 and we're going to wait two or three years or six months and
23 the veterans are going to lose. They sold the school because
24 nobody is going to want to go to Brentwood without some belief
25 that their kids are basically going to have some facilities or

1 something in the future in good faith. It makes it very
2 difficult for Brentwood and I understand that.

3 So let me turn back to you, Brad. You really, in a
4 sense, hold the cards procedurally, I think, because I don't
5 want to err other than what you think the error of the Court
6 already is, in my opinion. But I don't want to err and then
7 have this reversed by going too far and we're back right here
8 in six months or two years. That's very harmful for all of us.

9 Are you folks willing to step up in terms of
10 procurement? Are you willing to step up and put a significant
11 amount of money on the line whatever fund it's from to make
12 this work for 50 to 60 modulars so we can get off the ground on
13 that acre and a half and that half acre? If you were to
14 collaborate with -- I think, Ms. Black, I think you can. I
15 just -- the hierarchy has to.

16 And I don't know who's making this decision, Brad,
17 back in D.C.

18 Any better suggestion? It's more like a mediator's
19 proposal. Why don't you talk for a moment and tell me no?
20 Then we'll take it to the next step.

21 **MR. MILLER:** What exactly is the mediator's proposal,
22 Your Honor?

23 **THE COURT:** Okay. First of all, to break this logjam
24 and do something instead of nothing and to give your school
25 some benefit here of stepping up and give these kids some

1 solidarity in the future that their facilities aren't going to
2 be threatened, et cetera, unless they're core facilities and to
3 get the veterans something immediately that's tangible and not
4 holding money in reserve and to comply with Brad's needs for
5 this lease the following, 3 million and 2 million as agreed to,
6 that the 3 million, in fact, it does go to the VA with I think
7 it's Section P.

8 And, Cody, you have to correct me. It's P; isn't it?
9 I tried to look it up last night.

10 **MR. KNAPP:** I think it might be Subsection D.

11 **THE COURT:** Yeah. I was looking at it last night and
12 fell asleep. But you designate that specifically back for
13 emergency housing to break this logjam but you also come up
14 with additional funds so that we have 50 to 60 modulars out
15 there and then we work on this (indisc.) and your procurement
16 and by Friday, we know from Mr. Johnson who our vendors are or
17 we just stay on the phone until we do. Okay?

18 And if we can do that, I think you've got 50 or 60
19 veterans out of the rain but more importantly, we will have
20 broken the logjam and I don't see any place else to put that \$3
21 million right now because I think that they're going to
22 successfully raise the \$2 million for the chapel and that's not
23 housing anybody immediately and we need to house people now.

24 And, number two, you've got \$2 million coming in next
25 year. If that's still someplace we want to put money that we

1 can look at the chapel then and maybe that's a direct payment
2 from the chapel -- from Brentwood to you. I don't know how to
3 work that out.

4 So, Ramon, I don't have any better solution other
5 than you asked me for an emergency. It is an emergency and if
6 it's an emergency. Get these people off the street.

7 And, Brad, hopefully that gives you the ability to go
8 back to whoever is behind the magic curtain here and say to
9 them, look, we've got that as a lease. We have to designate
10 this though and you have to step up with more money. You can't
11 come and tell me you're broke, not with 407 or \$360 billion.
12 Okay. That would always be an excuse to do nothing.

13 Now you go talk for a moment. If that's not
14 acceptable, just tell me because then we'll take the next
15 steps, whatever they are. We'll see you in about 20 minutes.
16 Okay.

17 **MR. MILLER:** Okay.

18 **THE COURT:** And part of the mediator's proposal is
19 the same thing. Skip, it's the same thing. The core facility
20 that you're trying to protect --

21 **MR. MILLER:** Yeah, we would sign the settlement --

22 **THE COURT:** -- Parcel 9 is available with 180 days,
23 ballfield 41 days. We'll work in good faith. I can't imagine
24 not working longer with you but fair enough.

25 **MR. MILLER:** Yeah. We signed the settlement

1 agreement --

2 **THE COURT:** We don't --

3 **MR. MILLER:** -- today with the terms that are in it
4 plus this proposal --

5 **THE COURT:** Hold on, hold on. I'm not privy to that.
6 I'm hearing from John and getting a piece of this, okay, that
7 we have it up to 2:00 o'clock, I was told, for the veterans.
8 The carve-out is for -- I mean, the carve-out is for the school
9 from 2:00 o'clock on to whatever hours. Friday nights you have
10 a different arrangement, I understand from John, so the kids
11 can play football or whatever. Saturday has got a little bit
12 of different arrangement but John's aware of that and so is
13 Craig. John is on the phone in New York and Craig has a
14 doctor's appointment. We've got a CPI. We've got a 3 percent
15 raise every year.

16 And for goodness sakes, this is for one year. The
17 only figure is not drawing. That's where we'll fail. So for
18 one year --

19 **MR. MILLER:** Everything is worked out. Hours -- all
20 that's been worked out. It's just the money.

21 **THE COURT:** Yeah. I don't see it yet but you go
22 talk. It's worked out from your perspective.

23 **MR. MILLER:** All right.

24 **THE COURT:** And Ramon -- Ramon, you folks, listen to
25 this. One other thing and John just emailed me from New York.

1 Look, listen -- Brad, listen. You've also got for the first
2 time oversight. You never had that before. Got it? And that
3 was your initial complaint. I -- in fact, I expected the case
4 to settle long before we got to the point of me having a trial,
5 frankly, because I thought it was settled because, really, you
6 needed the Court oversight. You've got it. All right. Now go
7 talk.

8 **(A recess is taken from 10:44 a.m. to 11:11 a.m.)**

9 **THE COURT:** Then, Counsel, we're back on the record.
10 And all counsel and parties are present.

11 **MR. ROSENBERG:** Brad Rosenberg from the Department of
12 Justice on behalf of the Federal Defendants. One of the things
13 that the Court has highlighted in the last few minutes this
14 morning is the importance of the Government to preserve any
15 appeal rights that it may have and as I have indicated several
16 times, any decision on a potential appeal is a decision for the
17 Solicitor General of the United States, something that is far
18 above my pay grade.

19 **THE COURT:** Right.

20 **MR. ROSENBERG:** And that makes a path forward at this
21 point somewhat complicated because, among other things, to the
22 extent there is to be a settlement that the United States could
23 sign off on regarding the Brentwood School and as the Court
24 knows, any settlement ultimately has to be approved by the
25 Department of Justice.

1 Any such settlement would need to be evaluated in the
2 context of a potential appeal that the Solicitor General might
3 potentially authorize. We've been provided with a copy of the
4 current settlement agreement and I think that there is a lot to
5 like, as the Court has acknowledged in that agreement.

6 The challenge that we face is we need just a little
7 bit of time to be able to take something like this back and
8 evaluate it in the context of what will happen next in this
9 litigation. The Court's identified and I think we have
10 identified the principal stumbling block that we face at this
11 point which is that any payment that Brentwood would make
12 should stay on the West L.A. campus. I don't think there's
13 anyone in this courtroom that disagrees with that. VA one
14 hundred percent agrees with that.

15 We also strongly believe, as the Court knows, that
16 any payment as a result of a settlement should go to the
17 Department of Veterans Affairs and we've said that one way to
18 do that would be to make sure that this is structured as a
19 lease so that it goes into the lease revenue fund and stays on
20 the West L.A. campus.

21 It seems that there is some flexibility amongst the
22 parties for that to happen and that if that's the case and it
23 seems to be the case, then that removes a major stumbling block
24 and it's something that the Government would like to pursue and
25 consider. I can't, standing here today, make a representation

1 as to whether or not the Government would ultimately sign off
2 on that settlement agreement even if all of that money goes to
3 VA but I need an opportunity to take that back.

4 And so what I would propose is that we're already
5 going to be back in court this Friday at 8:00 a.m. That's just
6 three days from now. Provide us with an opportunity to do the
7 work with counsel for Plaintiffs and counsel for Brentwood and
8 allow me an opportunity to coordinate with people who at the
9 Department of Justice are ultimately responsible for making any
10 decisions to see whether this is something that is feasible in
11 the context of the overall litigation and potential next steps.

12 **THE COURT:** Do you have this long form of agreement
13 in your possession? Is it complete?

14 **MR. ROSENBERG:** I have the current draft that was
15 provided to me last night. So, yes, I believe that it -- my
16 understanding is that this represents what Plaintiffs and
17 Brentwood have agreed to. There are a few other provisions
18 that we'll need to discuss that I saw in this as well but I
19 think those are issues that we potentially could work through.

20 But we need an opportunity to be able to work that
21 process and being here in court every day, candidly, does not
22 -- is incompatible with that process because I need a
23 meaningful opportunity to be able to engage with folks on my
24 end. And, again, I can't make a representation that this is
25 something that definitively we would sign off on or not sign

1 off on but there's the potential here and we'd like to at least
2 be able to explore that potential and see where that takes us.

3 **THE COURT:** Okay, just one moment.

4 **(Pause)**

5 Will the top of the document read, "Shared Facilities
6 Agreement"? In other words, the body is going to read,
7 "Lease." I was told that by John Hueston. And that way, we
8 would have your lease but this is also a shared facilities
9 agreement.

10 **MR. ROSENBERG:** That's an example of one of the
11 issues that we need to explore. So the Court, I think, has
12 seen Kristen Grotecloss who is Agency Counsel for VA. She's
13 really the expert on the leasing act and its requirements. And
14 she's somebody that we've started the consultation process.

15 **THE COURT:** Don't mislead it. Write in "Shared
16 Facilities Agreement" at the top. The rest of it reads "Lease"
17 so that there's no misleading on it.

18 And I don't know what this final agreement looks
19 like. Should I look at that, Counsel, or just leave that to
20 the agreement between you and Brentwood with a "Yes" or "No"
21 from the VA? I know enough from John Hueston over the weekend.
22 We were talking constantly. In fact, we were talking at 6:00
23 o'clock this morning, our time, 9:00 o'clock New York time.

24 So I know a lot about the agreement but I don't know
25 the variations that are taking place which on Monday, you came

1 in and said there was an impediment because Brentwood had said
2 something about the appeal that day. I'm happy to stay out of
3 it if both of you are in agreement. I think I understand the
4 basics of it.

5 **MR. SILBERFELD:** Right. I think what would be is if
6 -- other than telling us that this agreement may impair the
7 Government's appellate strategy, it would be helpful -- in the
8 interest of complete transparency --

9 **THE COURT:** Yeah.

10 **MR. SILBERFELD:** -- it would helpful if the
11 Government were to tell us -- without prejudice to more changes
12 later or objections later, tell us what the problems are today.

13 **THE COURT:** Yeah. I agree with you. I don't want to
14 come back. I've got a feeling that we're getting into this
15 procedural morass and we're bypassing the emergency that this
16 is. So I would think that we ought to get all of the problems
17 laid out that you might foresee with a call back so that if
18 this is agreeable to the Government, there's no -- there's very
19 little modification, if any. We're not spending another week.
20 We're not having to fly back and forth.

21 I think that this can be, quite frankly -- first of
22 all, I agree. You need to be present when we have this
23 discussion, Brad. You're trial counsel. You know what
24 happened here. I doubt anybody has read the transcript back
25 there. But if there are major concerns, maybe the Court could

1 intercede with suggestions. Maybe John could.

2 **MR. SILBERFELD:** We would just like to hear what they
3 are.

4 **THE COURT:** Yeah.

5 **MR. ROSENBERG:** So I will flag -- number one, it's
6 critical that all the money generated pursuant to this
7 agreement go to the VA and not third parties.

8 **THE COURT:** Okay. Just one moment. And let's say
9 that that was agreeable for the first \$3 million but as to the
10 next \$2 million, we've got a one-year term. So we're not
11 binding ourselves into that second year with the \$2 million if
12 that's still on the table. Now, I expect in good faith that's
13 going to happen. If we do well with the 3 million, I can't
14 imagine why we wouldn't but I don't see why the pointers are
15 tied to that other 2 million right now. This is one year.
16 Now, if we had all 5 million the first year, I agree with you.
17 We don't. We've got three and two.

18 Okay. What's the next issue?

19 **MR. ROSENBERG:** The next issue beyond the specific
20 financial contribution up front that any subsequent payments
21 that are in the lease also go to VA.

22 **THE COURT:** I think that's a given. I think that --

23 **MR. ROSENBERG:** Well --

24 **THE COURT:** -- any of these -- well, hold on. I
25 thought that any of these lease payments when I was talking to

1 John -- what I call the "normal lease payments" over the years,
2 I was calling them a term but you're referring to them as a
3 "lease." And that these payments would go to the VA. Ramon?

4 **MR. SILBERFELD:** No, Your Honor. The way the
5 settlement agreement reads currently, there's the 3 million
6 that the Court knows about. There's the 2 million that the
7 Court knows about.

8 **THE COURT:** Right.

9 **MR. SILBERFELD:** There's a rent component of \$350,000
10 annually that Brentwood would pay to the VA. But for every
11 year that Brentwood occupies the land, they would pay \$650,000
12 to an entity to be designated by the Court. That's the way it
13 currently reads.

14 **THE COURT:** Oh, I didn't -- I don't have that
15 agreement in front of me. I don't know. Okay.

16 **MR. SILBERFELD:** So that is a significant amount of
17 money. If Brentwood stays ten years, that's six and a half
18 million dollars escalating at 3 percent as well. So it's not
19 trivial money.

20 **THE COURT:** But why are we dealing with that when
21 this is only a one-year term?

22 **MR. SILBERFELD:** I --

23 **THE COURT:** In other words, if this 350, why can't we
24 agree at least for the first year that we do the 350 and the
25 650 into the lease as you suggest -- you receive it the first

1 year but this is -- if this isn't working, we're going to know
2 that within the year.

3 In other words, let me say it a different way. We're
4 back in one year. We can adjust. If it's misspent,
5 misutilized, if you have a different place for it to go, we can
6 discuss that again but they can't bind you to the future. They
7 can't bind you to multiple years. This is a one-year term.
8 So, therefore, you've got all the safeguards that first year of
9 knowing that this has to be designated money; don't you?

10 **MR. SILBERFELD:** So long as the Government also
11 agrees that we will reevaluate this on a yearly --

12 **THE COURT:** Oh, no. That's my -- Brad, this is
13 looked at again in a year. We're just trying to break the ice
14 right now. And I'm not willing to get tied into a long-term
15 commitment on either one of your parts. This is for one year
16 to get this off the ground and to break this logjam.

17 And that's what I objected to when I originally heard
18 from Brentwood about this seven-year period of time when we had
19 300-some-thousand the first year and we escalated it up.
20 That's nothing more than a long-term lease. No, we're just
21 seeing if this works for a year. There's very little downside
22 to both of you.

23 **MR. ROSENBERG:** So just to make sure that I
24 understand what the Court's contemplating because this might be
25 a substantial modification to what the parties have proposed,

1 at least for --

2 **THE COURT:** I'll make it simple. It all goes into a
3 lease the first year, the 650 and the 350.

4 **MR. ROSENBERG:** Right.

5 **THE COURT:** It's as simple as that.

6 **MR. ROSENBERG:** Don't deal with any -- stop on the
7 out years.

8 **THE COURT:** Don't deal with the future. Let's make
9 this work. Let's make the good get ahead of the perfect.
10 Okay.

11 **MR. ROSENBERG:** Okay. Obviously, the role --

12 **THE COURT:** Now, that's what we're talking about.
13 That's just a suggestion.

14 Ramon, you can tell me no, et cetera, but it seems
15 silly not to break this ice pack for one year and get the
16 modular housing up.

17 And, Mr. Johnson, I don't need permanency. Get me
18 some showers and some toilets in there because at least we're
19 supplying 400-square-foot modulars. It beats the hell out of a
20 tiny shed; doesn't it?

21 Power, no problem. If you can't do it, you and I can
22 put up poles. Okay. Among the many things I used to do, I
23 used to climb telephone poles and try to put wires up for
24 Western Union. God help us.

25 **MR. ROSENBERG:** The Court has referred to a role

1 either directly or with a monitor in terms of oversight.

2 **THE COURT:** Uh-huh.

3 **MR. ROSENBERG:** And that's -- obviously, we'd have to
4 work out the details on that.

5 **THE COURT:** No, just a moment. That's where I'm
6 going to back up. I've backed you so far but no. Oversight
7 means I'm watching you. Okay. Oversight means you comply.
8 You've got no problems from me if you comply. There's no
9 problem here. So don't try to define my powers. Okay. My
10 power is Mr. Hueston looking at what you're doing. You comply,
11 no problem. I'm not trying to trap you. Okay.

12 **MR. ROSENBERG:** Does the agency have an opportunity
13 in the first instance though to exercise its discretion within
14 the context of whatever is agreed to in a settlement agreement
15 to implement the terms of a settlement agreement?

16 **THE COURT:** I don't understand what you just said.
17 I'm sorry.

18 **MR. ROSENBERG:** Well, in other words, agencies
19 operate. The Department of Veteran Affairs has an obligation
20 to support veterans at a very high level. And they make
21 decisions based on what they think is best as an agency to
22 implement their mission. The settlement agreement is going to
23 contemplate that the money that the Brentwood School will be
24 providing through a lease -- a lease-revenue fund would be
25 used, for example, to build temporary housing.

1 The agency still needs the discretion, subject to the
2 Court's oversight, to be able to make some of those decisions
3 in the first instance as to what it thinks is the most
4 efficient way to provide that housing, what that housing will
5 look like, where -- things like that. And that's where it fits
6 into the context of some of the broader issues in this
7 litigation.

8 **THE COURT:** I'm not sure I understand the problem. I
9 understand your concern. I don't see the problems on the
10 horizon that I'm having to deal with right now.

11 **MR. ROSENBERG:** There may not necessarily be a
12 problem and this is -- but I do think that the settlement
13 agreement will need to specifically delineate what that
14 oversight role is.

15 **THE COURT:** I don't. You're not going to extract
16 power from the Court in terms of monitoring and oversight. And
17 that was the complaint when the Plaintiffs came in last time
18 and that is, they didn't have any judicial enforcement behind
19 them. I just can't imagine how that would be exercised or why
20 the first year if we're all in good faith.

21 I mean, to me, this is a -- well, never mind.

22 **MR. ROSENBERG:** Let me -- there's one more --

23 **THE COURT:** I don't see this as a problem, Brad --

24 **MR. ROSENBERG:** Okay.

25 **THE COURT:** -- frankly, but you're not going to

1 define my power. My power is that of through the monitor,
2 et cetera, and that's where I draw the line.

3 **MR. ROSENBERG:** Message received.

4 **THE COURT:** Okay. Take that back to Justice on that
5 one.

6 **MR. ROSENBERG:** One last point. The current version
7 of the settlement agreement added a provision that restricts
8 Brentwood's ability to lobby either VA or Congress and the
9 Government cannot agree as part of an agreement to restrict a
10 party's First Amendment right to petition their own government.

11 **THE COURT:** I tend to agree with you on that. I
12 don't think we can restrict that but I think that -- I'd love
13 to know if Brentwood was lobbying a Congressperson in the
14 future to get it on the Court's ruling and to take this to
15 Congress. I think that would be very interesting. But I
16 agree. You can't take away a First Amendment right. That's up
17 to Brentwood. I don't think they're going to do that though.

18 So let me talk to Skip for a moment. Lobbying in the
19 past, I'm not going to take that right away from you but I
20 think in good faith as we're entering into this agreement,
21 that's the last place that Brentwood would want to be.

22 **MR. MILLER:** Once we sign off on the agreement, we
23 would have no reason to lobby.

24 **THE COURT:** Exactly. Yeah, I don't think this is
25 their concern. I think this is something that you're abiding

1 by. If you want to lobby, that's fine but I don't have a
2 Congressperson in here with a little contribution going to bat
3 for this. That would be very interesting. I don't think any
4 Congressman wants to touch this right now, frankly.

5 **MR. MILLER:** I would agree with that, too.

6 **THE COURT:** Yeah. I think this is hot enough that --
7 like that a Congressman up in -- never mind. So I think we're
8 wise enough not to do that.

9 **MR. MILLER:** I think that clause should come out.

10 **THE COURT:** Yeah. I think -- I don't think this is a
11 concern, Brad. And it's not your concern. This is Brentwood's
12 concern. Okay.

13 It sounds to me we're pretty close to agreement
14 potentially. Okay. Now you want to come back Friday then?

15 Mark, I want to hear from you though and I want to
16 make sure.

17 **MR. ROSENBAUM:** Friday works and we'll use that time
18 to consult with our clients.

19 **THE COURT:** A little closer, Mark. I'm sorry.

20 **MR. ROSENBAUM:** First of all, we appreciate
21 everybody's efforts on this.

22 **THE COURT:** Yeah.

23 **MR. ROSENBAUM:** Friday works with us. We'll consult
24 with our clients during that period.

25 **THE COURT:** Okay. And you understand here -- let me

1 repeat it back. If there was a better place to put that
2 initial \$3 million except in a bank, I'm open to that. But why
3 are we taking away the private fundraising ability of the
4 chapel who can raise maybe this \$2 million privately? It gives
5 us more money; doesn't it? And it takes away the goodness of
6 the folks trying to contribute to the chapel. That's one.

7 Number two, look, it is an emergency. I signed off
8 on that. If so, Mark, I need that money -- or we -- strike
9 that.

10 We need that money for shelter as quickly as
11 possible. I can't think of a better place for it. Now, if
12 this goes sideways, you still have \$2 million out there and I'm
13 not going to let Brad tie you down to that next \$2 million. So
14 if you have a better place to put it, I mean, tell me.

15 But right now, getting folks out of the rain, keeping
16 them from dying, I think that was your complaint when you came
17 in. The VA barred the gates basically. Brentwood -- while I'm
18 sorry that UCLA wouldn't give you the acre and a half of land
19 while it sat empty and everybody said, play ball.

20 **MR. ROSENBAUM:** We understand the --

21 **THE COURT:** Yeah.

22 **MR. ROSENBAUM:** -- supreme priority of getting
23 veterans into housing.

24 **THE COURT:** Yeah. Let's get this done. Okay.

25 Okay. Brad, okay?

1 Get on the plan. I think you're the best
2 representative we could have whether you agree with it or not
3 because you're here. Does that make sense? You're here. And
4 regardless of the strength of the opinion, I'd like to turn the
5 corner because it's essential that the VA works with all of us
6 in this matter. I understand that and I also understand that
7 this is a beginning. This \$3 million, et cetera, I'm hoping
8 that you'll step up with a lot more money because \$3 million
9 doesn't get us, with your evaluation, the 50 or 60 units that
10 we need. But I do believe that we've got the money. Okay. We
11 can find it.

12 So why don't I recess? And we'll see you on Friday
13 at what time, 9:00 o'clock?

14 **MR. SILBERFELD:** 8:00 a.m., Your Honor.

15 **THE COURT:** 8:00 a.m., okay.

16 Now, could I speak to Mr. Johnson for a moment? He
17 has a number of phone calls to make and I might be able to help
18 him. Would that be okay?

19 **MR. ROSENBAUM:** Sure.

20 **MR. GUADIANA:** And, Your Honor, I just want to make
21 sure that you still plan on --

22 **THE COURT:** Oh, I'm sorry. I'll be right with you.

23 Mr. Johnson, will you stay for a moment? We need to
24 find some vendors and if you've got a Rolex, fine. If not, I
25 think I've got some for you. But I don't want to place those

1 calls. I know them from the past from some other efforts like
2 this.

3 Okay. Let's go back to Bridgeland (phonetic) before
4 we recess. Yesterday I tossed out, if the Circuit reversed me,
5 you shouldn't have the expense of actually capping the well.
6 In other words, you're up and running again with oil from
7 Sawtel 2. But your representation was that that oil -- or that
8 well wasn't drawing oil at the present time -- extracting oil.
9 If that's the case, maybe we can save the expense of you
10 actually capping the well with the representation that you're
11 not taking oil from Sawtel 2.

12 Now, if you are, then I'm going to stay with my
13 order. Okay.

14 **MR. GUADIANA:** That's fine, Your Honor. Let me
15 explain this. So the well is currently down. It has not been
16 producing oil since your order was issued.

17 **THE COURT:** Okay, fair enough.

18 **MR. GUADIANA:** However, one of the issues here is
19 irreparable harm and this is -- the Sawtel private leases are
20 regular oil and gas leases that terminate upon oil and gas
21 ceasing production for a prolonged period. And for that
22 reason, we have to have the ability to turn on the well.

23 **THE COURT:** Okay. Now just a moment. I -- my option
24 to you in good faith is that I'm going to stay with the order
25 that Sawtel not produce oil. What I rethought was, if I was

1 being unfair in terms of asking -- telling you to cap the well
2 because as long as the well is not producing oil, I'm
3 comfortable. I worry though that if I was corrected by the
4 Circuit that I'd cause an unnecessary expense to you in
5 actually capping the well.

6 So from my perspective, if the well is not producing
7 well, I'm more than satisfied. If I can save you the expense
8 of capping it at the present time in case the Circuit reverses
9 me, I don't wish that additional expense on you. That's my
10 offer to you.

11 **MR. GUADIANA:** Well, the issue, Your Honor, is that
12 we may not be able to produce that if we don't -- to the extent
13 we cease production for a prolonged period, the leases will
14 terminate and we won't be able to produce that well anyway. So
15 either way, either if you require --

16 **THE COURT:** Oh, I see.

17 **MR. GUADIANA:** -- us to plug it or you require us to
18 cease production --

19 **THE COURT:** So in other words, if it went up to the
20 Circuit and your lease is terminated in 2027? That's when your
21 lease terminates under the present --

22 **MR. GUADIANA:** The revocable license, yes. If the
23 revocable license terminates in 2027 and we don't enter into a
24 new one and we have no other rights to produce Sawtel 2 and the
25 production of Sawtel 2 ceases for a prolonged period, our

1 private leases will terminate.

2 **THE COURT:** And that's what I don't understand.
3 Right now under my order, you're not able to extract oil.

4 **MR. GUADIANA:** And that's why we're requesting the
5 stay.

6 **THE COURT:** And that order is not going to change, at
7 least in regard to the extraction of oil. What I'm offering
8 you is to make certain you don't have the unnecessary expense
9 of actually capping the well which is what I thought you were
10 referring to. If you're asking me to change that order, the
11 order is not changed in terms of extracting oil. I'm only
12 offering you a decreased cost in case the Circuit reversed
13 me --

14 **MR. GUADIANA:** Your Honor, it's more than just --

15 **THE COURT:** -- in terms of capping.

16 **MR. GUADIANA:** It -- I appreciate the Court's offer
17 but it's more than just a decreased cost. First off, once you
18 plug a well, you cannot unplug it. Right. Once you plug it,
19 you put cement inside of it. It is done. That well will
20 never --

21 **THE COURT:** I didn't ask you to put cement inside of
22 it. I told -- if you stop extracting oil, there's no issue.
23 I'm not trying to increase your costs.

24 **MR. GUADIANA:** And the problem is that if we stop
25 extracting oil, then we will lose our private leases that allow

1 us to extract oil.

2 **THE COURT:** No. You lose your private leases by
3 2027.

4 **MR. GUADIANA:** No -- no, Your Honor. The revocable
5 license is simply a pass-through right that allows us to pass
6 through the VA's property to produce the private leases, the
7 private minerals that are outside the Federal minerals. If we
8 cease producing the private minerals, then we will lose those
9 leases and --

10 **THE COURT:** And what's your timeframe?

11 **MR. GUADIANA:** Three months.

12 **THE COURT:** Well, then you can take a -- when you go
13 to the Circuit, you can ask for an emergency order from the
14 Circuit.

15 **MR. GUADIANA:** Which is what we intend to do.

16 **THE COURT:** Yeah, exactly. I mean, in other words,
17 all I'm offering you is less cost in the interim period of time
18 so that you're not having to actually cap the well or pour
19 cement into it so in case the Circuit reverses me, then you
20 don't have that additional cost. But my bottom line is, you're
21 not to extract oil from that well.

22 Now, if the Circuit is concerned, they'll write to me
23 immediately and put a stay on my order and you have that
24 option. Okay. So if I was you, I'd take it to the Circuit and
25 say, I want an immediate stay from Judge Carter's order.

1 **MR. GUADIANA:** Yes, Your Honor.

2 **THE COURT:** All I'm offering you is a decreased cost
3 in case the Circuit did reverse me so you're not having to pour
4 cement in the well.

5 Now, I'll leave that to you. I'm around by Friday.
6 Why don't you think about it? I'm not pressing it. I'm
7 satisfied with my order as it is. I'm just offering to save
8 you a little bit of money in case I'm wrong.

9 **MR. GUADIANA:** Your Honor, I think I've been clear on
10 this and we are fine with you denying the motion to stay on the
11 grounds that we --

12 **THE COURT:** No, I'll write to you, Counsel. I'm not
13 going to do that from the bench right now. I'll take a look at
14 it and I'll write to you.

15 **MR. GUADIANA:** Understood, Your Honor.

16 **THE COURT:** Okay. Now anything else?

17 Okay. Then we're in recess until Friday at 8:00
18 o'clock. Okay. If you need John Hueston, he is available in
19 New York. Craig is available tomorrow and I'm available also
20 but I prefer that I have a transparent conversation with all of
21 you at one time rather than an ex parte, except I'd like to
22 talk to Mr. Johnson for a moment. Thank you very much.

23 **(This proceeding adjourned at 11:38 a.m.)**

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

October 9, 2024

Signed

Dated

TONI HUDSON, TRANSCRIBER