

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO. 17-5512 (JMV)

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3			:
4	YISROEL FRIEDMAN, et al.,		:
5	Plaintiffs,		:
6	-v-		:
7			:
8	THE BOROUGH OF UPPER SADDLE		:
9	RIVER, et al.,		:
10			:
11	Defendants.		:
12	- - - - -	- - - - -	x

TRANSCRIPT  
OF  
PROCEEDINGS

January 9, 2018  
Newark, New Jersey

B E F O R E:     HONORABLE JOHN MICHAEL VAZQUEZ, U.S.D.J.

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following transcript is certified to be an accurate record  
taken stenographically in the above entitled proceedings.

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JOHN KEVIN STONE,  
Official Court Reporter

1 THE CLERK: All rise.

2 THE COURT: Thank you. Please be seated.

3 All right. Good morning.

4 We're on the record in the matter of the Bergen  
5 Rockland Eruv Association, et al, versus the Borough of  
6 Upper Saddle River. The Docket Number is 17-05512.

7 Can I please have the appearances of counsel.

8 MR. BUCHWEITZ: Yehudah Buckweitz; Weil, Gotshal  
9 and Manges, for the plaintiffs. And with me is Bob Sugarman  
10 and David Yolkut from Weil, Gotshal.

11 THE COURT: Good morning.

12 MR. ROSEN: Bruce Rosen; McCusker, Anselmi, Rosen  
13 and Carvelli, for the defendant Borough of Upper Saddle  
14 River. With me from my firm is Alicyn Craig and Allison  
15 Zsamba, and I'd like to introduce to the Court, pro hac  
16 vice, Joel Kurtzberg.

17 THE COURT: Good morning, counsel.

18 MR. KURTZBERG: Good morning, Your Honor.

19 THE COURT: All right.

20 Pending before the Court are two motions: The  
21 defendant has moved to dismiss the amended complaint and the  
22 plaintiff has moved for injunctive relief.

23 I've reviewed all the briefing of the parties,  
24 along with the submissions that accompanied them, including,  
25 excuse me, the numerous declarations and certifications with

1 exhibits.

2 This matter concerns an eruv in Upper Saddle River,  
3 one that currently exists pursuant to a standstill agreement  
4 between the parties, and then also planned expansion of the  
5 eruv. It also impacts two towns that are abutting Upper  
6 Saddle River, that would be Mahwah and Montvale. The cases  
7 have also been filed against those towns, and one issue I  
8 was going to address, if necessary, is I was going to move  
9 to consolidate all three cases, they're all assigned to me,  
10 but they all seem to have common issues of fact and law.

11 Essentially, this matter focuses on the First  
12 Amendment, which has two requirements: One, that as it  
13 applies to the states through the 14th Amendment due process  
14 clause, that the Government cannot establish a religion, but  
15 at the same time the Government cannot prohibit the free  
16 exercise of religion. And as the parties have pointed out,  
17 normally when we are addressing the free exercise, the  
18 question becomes whether a Government entity can make a  
19 reasonable accommodation for religious purposes.

20 In particular, the Borough ordinance which is at  
21 issue is the Upper Saddle River Ordinance 16-15, which was  
22 approved by the Borough in October of 2015. And the Borough  
23 has also raised issues concerning N.J.S.A. 48:3-19.

24 I begin by saying I do think this case would be  
25 ripe for some type of mediation or settlement conference.

1 Given the issues and the facts, I do think the parties would  
2 be better served if they sat down and tried to resolve their  
3 differences. Particularly if they can do so in light of any  
4 discussions with Mahwah and Montvale.

5 That being said, I want to give the parties the  
6 benefit of my preliminary views on this matter. None of  
7 these views are findings of the Court, and I repeat that,  
8 they are not findings of the Court. They are my preliminary  
9 views based on reviewing all of the information available to  
10 me, and these are going to be the questions that I have.

11 First is the motion to dismiss. Defendants raise  
12 numerous arguments. First, that the alleged license  
13 agreement is invalid. They point to a joint use agreement  
14 between Verizon and O & R. Currently, the plaintiffs have a  
15 license for certain utility poles with O & R and it's  
16 subsidiary in New Jersey. And the plaintiffs have pointed  
17 out that some of the poles also need the approval of  
18 Verizon. And that even if I do not look at the Verizon  
19 issue, plaintiffs have not gotten licenses for all of the  
20 poles they intend to use. And I believe the exact number  
21 is, defendant points out there's 109 utility poles, and  
22 plaintiffs only have an endorsement, based on their license,  
23 for 40 of the poles. 36 of which are in Upper Saddle River.

24 Preliminary thinking is that when I looked at the  
25 joint use agreement submitted by the defendants, they focus

1 on language that does not appear to be applicable to this  
2 case. The joint use agreement between Verizon and O & R  
3 discusses permission, reference other parties using supply  
4 circuits to attach supply wires and cables. The eruv and  
5 the lackies in this case do not appear to fit within those  
6 definitions.

7 The eruv though, on the other hand, the plaintiffs,  
8 argue they are authorized by law to do so, and they point to  
9 the O & R license agreement that is still operative, and to  
10 the extent defendants point out that they need additional  
11 licenses, plaintiffs accuse them of being nit-picking and  
12 hypertechnical. I do not think it's nit-picking and  
13 hypertechnical, because it was really the thrust of  
14 plaintiffs' argument that they had the proper licenses. So  
15 I do not agree with that characterization by the plaintiffs.

16 That being said, plaintiffs have now presented  
17 evidence that O & R and Verizon are going to give any  
18 necessary additional licenses to complete the eruv, so it  
19 doesn't seem like it's going to be a real issue in this  
20 case.

21 Of course to the extent there's any alleged danger,  
22 on ground of metal wire making physical contact with  
23 Verizon's conduit and so forth, I would never require the  
24 town to do something that's a true safety issue, but at the  
25 same time I would ask the town to check with both Verizon

1 and O & R to make sure that they agree it is a safety issue.

2 The big issue raised is as to whether this case is  
3 ripe or not, and whether it required municipal approval.

4 I'm going to deal with this in a moment when I go look to  
5 the facts concerning the preliminary injunction.

6 But the defendants claim that they need, that the  
7 plaintiffs need municipal consent and have never asked for  
8 it. There is a question of fact there, but when I get to  
9 the later issues it certainly seems as though the plaintiffs  
10 went to the correct people, or at least people with the  
11 apparent authority to give approval, and this was an after  
12 the fact litigation tactic by the defendants to try to  
13 slowdown this case, saying that they needed to get municipal  
14 consent.

15 The ordinance which I referred to doesn't refer to  
16 getting municipal consent. It seems as though the town  
17 attorney has come up with some ad hoc process to get  
18 municipal consent, which is not defined in the code. And,  
19 frankly, based on page 47 of the defendants' brief, where  
20 they said that Upper Saddle River may not unilaterally grant  
21 immunity of the laws of Saddle River or the laws of New  
22 Jersey without violating the state and federal constitutions  
23 under due process and separation of church and state  
24 theories, it seems to me that that's an admission by the  
25 plaintiffs -- I'm sorry, the defendants, that they are never

1 going to grant this application under that theory. So it  
2 would be completely futile. And I will address the facts  
3 more closely when I get down below.

4 Defendants also point to the lack of standing of  
5 certain plaintiffs. Oh, by the way, as to the alleged  
6 license agreement, it doesn't change the fact that it's  
7 still sufficient as to the 36 utility poles for which  
8 plaintiffs do have a license to put the lechis on. And  
9 John, that's l-e-c-h-i-s, and eruv is e-r-u-v. The plural  
10 of which is eruvin, e-r-u-v-i-n.

11 As to the lack of standing, first, I don't  
12 understand why the lead plaintiff would not have standing,  
13 the Bergen Rockland Eruv Association. Plaintiffs point out  
14 that it was -- I just want to make sure I get the name  
15 right, the Baad, B-a-a-d, Ha Eruv, H-a-E-r-u-v, who actually  
16 went about getting the license, but the plaintiffs plead  
17 that Baad HaEruv, and I apologize if I'm mispronouncing any  
18 names, it's not intentional. But that was plaintiffs  
19 designated agent for planning, organization and construction  
20 of the eruv.

21 As to the individual plaintiffs, not the  
22 association, defendants point out that the individual  
23 plaintiffs are in Rockland County, that their synagogue is  
24 in Rockland County, and that the purpose of the eruv is to  
25 provide a boundary in which observant, or certain persons in

1 the Jewish community, here the plaintiffs, in the orthodox  
2 community, have the strongly held religious belief that on  
3 Sabbath and Yom Kippur, and I assume some other at least  
4 holy days in the Jewish calendar, can not, when they leave  
5 their home, without the benefit of the eruv, push or carry.  
6 Push would be important as to strollers and wheelchairs and  
7 walking devices; carry could be a number of items, including  
8 prayer shawls, water and food. And the defendants' point is  
9 that since the individual plaintiffs are in the Rockland  
10 County and Sullivan synagogue, that at this point they're  
11 not prohibited from doing those activities within the  
12 confines of the eruv in Rockland County.

13 Truthfully, some plaintiffs are from a town called,  
14 I believe it's Monsey, M-o-n-s-e-y, on the map it didn't  
15 appear to me why those plaintiffs would be affected by the  
16 planned eruv or the standing eruv. They seem to be a town  
17 removed.

18 Airmonk raises a different question. And that  
19 would lead to the factual questions I have for counsel as to  
20 the prohibitions on the individual plaintiffs and how the  
21 eruv would or would not affect them. I'm not going to rule  
22 on that, but those are questions that I would have.

23 As to the preliminary injunction issue, at the  
24 outset I'll say what I find is the issue is the  
25 constitutionality of the ordinance. Plaintiffs have raised



1 the RLUIPA, which is 42 U.S.C. 2000(c)(C). However, when I  
2 started researching that issue, such as the East End Eruv  
3 Association versus the Village of West Hampton, I think, Mr.  
4 Sugarman, you were counsel in that, 828 F. Supp. 2nd 526,  
5 out of the Eastern District of New York, the Court found  
6 that a license does not rise to an actual interest in real  
7 property under the statute, and I was going to ask  
8 plaintiffs for cases to the contrary. I was not able to  
9 find any.

10 As to the issue as to whether the ordinance is  
11 unconstitutionally vague, certainly the term "matter" is a  
12 broad term and gives the Court concern. I don't -- it seems  
13 as though the town is not removing all matter from the  
14 utility poles. At least based on the pictures. They may  
15 have removed more sizeable matter, which is a somewhat  
16 ambiguous term. But there's other things, including plaque  
17 strips and nails and staples and tacks, and it really raises  
18 the question of, is the town enforcing that as to all  
19 matter, as the ordinance provides, or just some matter.

20 But that being said, when the term "sign" is  
21 defined by the code, the other terms are not, I would look  
22 to the normal dictionary definition, but unfortunately  
23 neither counsel gives me dictionary definitions as to why  
24 they either are or are unconstitutionally vague, and I would  
25 need additional information to support those arguments.

1           As to N.J.S.A. 48:3-19, concerning the consent of  
2           the municipality, which shall be obtained for the use by  
3           person of poles of another person, unless each person has a  
4           lawful right to maintain poles in such street, highways or  
5           public places relied upon by the town, I could not find one  
6           case to interpret that statute. Not one. And it's been on  
7           the books, I think it was last modified in the 1960's. I  
8           didn't see it mentioned in Tenafly. And that would require  
9           a lot more work on behalf of the Court before I determine  
10          whether that applies or not. And, truthfully, as the  
11          parties rely upon it, defendants did not submit sufficient  
12          information to show that it applies.

13                 Plaintiffs point out I have to read it in  
14          conjunction with the preceding section, 48:3-18, and they've  
15          also pointed out the legislative history shows that it was  
16          to prevent the proliferation of utility poles. So to the  
17          extent that's a basis, it would require a lot more work by  
18          the Court and by the parties to determine the applicability  
19          of that statute.

20                 So as I said, it seems to me under the preliminary  
21          injunction the question would be the issue of  
22          constitutionality of the ordinance. The standard of review  
23          becomes critical. Defendants point out it's facially  
24          neutral and generally applicable. Therefore, I would have  
25          to uphold the constitutionality.

1           The Tenafly decision also, which the parties are  
2 well aware of, and I believe Mr. Sugarman and Mr. Rosen were  
3 counsel in that case, that depends upon the effect of the  
4 statute. So I don't just look -- I have to look to see  
5 whether there was a disparate affect on the plaintiffs here.  
6 I know defendants say that discriminatory intent is  
7 irrelevant. And they point to Justice Scalia's concurrence  
8 in Acume. Them also say, at best, it's an open question at  
9 the Supreme Court level. But to the extent it's an open  
10 question at the Supreme Court level, I look to the circuit,  
11 and Tenafly clearly says I should consider whether there's  
12 discriminatory intent in reading the law.

13           I looked to the town ordinance history. I will  
14 give you what my concerns are. Because I think the  
15 plaintiffs have raised real concerns about a discriminatory  
16 intent in invoking this law, and that the effect was to only  
17 harm the plaintiffs.

18           Now, whether that rises to a possibility of success  
19 or a probability of success, I would have to go through the  
20 entire analysis. But I'll give the parties the benefit of  
21 my thoughts.

22           Defendants say that the legislation came about  
23 because of 2014 election challenge concerning political  
24 signs that were illegally attached to utility poles.

25           First, they provide me with no contemporaneous

1 evidence that this was a major concern of sign pollution. I  
2 have after the fact certifications, but nothing at the time  
3 that the town was very concerned with this proliferation of  
4 political signs.

5 More importantly, they already had an ordinance  
6 that prohibited what the major concern was: Political  
7 signage. The ordinance already prohibited signs. So to the  
8 extent they were worried about signs, they already had a  
9 ordinance on the book to confront that.

10 It wasn't revisited for more than a year. Counsel  
11 says the town was sidetracked by other more pressing legal  
12 issues, whatever they may be. And it wasn't until the  
13 summer of 2015 that it was brought up again. And defense  
14 say they were anticipating an active election season. So in  
15 August 18th of 2015, in a closed session of Borough Council,  
16 the mayor said she heard there had been an agreement between  
17 Baad HaEruv and Rockland Electric Company as to the eruv  
18 system and new specific streets. That was August 18th.

19 The ordinance was then introduced. Approximately  
20 two weeks later, on September 3rd, and passed on October  
21 1st. Defendants say I cannot infer any discriminatory  
22 intent from the mayor's comments. Maybe, but maybe not.  
23 Timing can be extremely important in looking for reasonable  
24 inferences.

25 So, for example, if the ordinance in question had

1       been passed in 1980, and had been on the books al la  
2       Tenafly, Tenafly the issue was different, they had an  
3       ordinance on the book that they were giving exceptions to a  
4       number of groups, they just would not give an exception to  
5       the eruv.

6               But, what we do know for certain, is that the mayor  
7       in the closed session was aware of the eruv, and then it  
8       appears in the next session the law was amended. So I do  
9       not think, when the defendants say I can't draw any negative  
10      inference from it, that they're correct.

11             Importantly, as I noted, they already had  
12      ordinances to address the political signage, which they said  
13      is the stated reason for the new ordinance. That doesn't  
14      make any sense to me. If you already have one that -- if  
15      the problem is signs and you already have an ordinance for  
16      signs, it doesn't make sense to me you have to amend it for  
17      other things other than signs. And they added the word  
18      "device." Which I didn't see any issue from the town that  
19      they were having problems with devices before, but now that  
20      seems to be one of the main issues for the town, is that the  
21      eruv constitutes a device under this ordinance.

22             The town also points out that after the 2015  
23      election, that O & R complained about political signage.  
24      So, two comments: I guess the new ordinance was not  
25      effective because they still had the same problem in 2015.

1 And it's not lost on the Court that to the extent that O & R  
2 complained in 2015 about political signs, it's the same  
3 group that granted the license to the plaintiff eruv in this  
4 case. So to the extent they were complaining about  
5 political signs, the facts seem to show they were in  
6 agreement with the eruv.

7 The town has said they've had a history of  
8 enforcement of the ordinance. They essentially say it's  
9 always enforced. They have specific training for the police  
10 officers; they have officers on patrol.

11 However, there were several violations of the  
12 ordinance which somehow the town was not aware of until the  
13 plaintiff pointed it out in their filings. Some of them  
14 were lost pet signs, which the Court understands can only be  
15 up for a relatively short period of time. But others were  
16 permanent fixtures, such as mailbox. And if the town did do  
17 proper training and they had police officers on patrol, the  
18 Court has concerns over the town's claim that they were  
19 always enforcing this ordinance before the plaintiffs  
20 brought these violations to the town's attention.

21 More importantly, the Court's concerned over the  
22 facts and the way they played out in the putting up of the  
23 eruv. So in 2017, in June of 2017, the eruvs started to be  
24 put up. On June 12th of 2017, Rabbi Steinmetz called the  
25 police station, the defendants takes issue because Steinmetz

1 did not say who he was and he said he needed utility work,  
2 although it seems that O & R agrees that this is in fact  
3 utility work.

4 On June 12th they started installing the lechis.  
5 They were told to discontinue by Upper Saddle River Code  
6 Official James Dougherty. On approximately June 15th, the  
7 Baad HaEruv and one of the plaintiffs met with Mr.  
8 Dougherty, along with Mr. Forbes, another borough official.  
9 They asked what needed be done to install lechis on the  
10 utility poles that create an eruv. Ford said they were  
11 devices under the ordinance. Dougherty then spoke with the  
12 Town Administrator Preusch, P-r-e-u-s-c-h, and Dougherty is  
13 D-o-u-g-h-e-r-t-y. And Preusch advised Dougherty to have  
14 the Baad HaEruv representatives meet with the police  
15 department, because the police department was responsible  
16 for enforcing the USB code.

17 Dougherty said that he understood Preusch to mean  
18 that they could -- that the eruv could proceed temporarily  
19 while the Borough considered the issue.

20 So things two things with that issue. I don't  
21 understand how they came up with they could proceed  
22 temporarily. Nobody ever indicated that this eruv was  
23 supposed to be temporary.

24 And second of all, it also seems as though it was  
25 under consideration by the Borough at that point, which the

1 Borough says they never did.

2 Subsequently Preusch learned from counsel that they  
3 needed approval of the governing body. This also causes  
4 concern to the Court, with the town's claims that everyone  
5 knew about the ordinance and was enforcing it, because it  
6 doesn't appear that anybody who was charged with enforcing  
7 the ordinance knew about it.

8 So they were first told to stop. They stopped,  
9 meaning the eruv construction. Three days later -- three  
10 days later they met with the Upper Saddle River code  
11 official, a property maintenance zoning officer, and who,  
12 the town officials also got advice from the Town  
13 Administrator. And the plaintiffs were told to go to the  
14 Upper Saddle River Police who enforce the code. And that's  
15 exactly what they did.

16 On June 20th of 2017 they met with Police Chief  
17 Patella, Rabbi Steinmetz and plaintiff Moshe Pinkasovits.  
18 The town says while the Chief did not authorize or condone  
19 them putting up the eruv, but they had just been told three  
20 days prior that they were allowed to go forward and go see  
21 the Police Chief, and indeed the Police Chief was the one in  
22 charge of enforcing the code. So at a minimum, it seems  
23 like the Police Chief wasn't aware of the code or the  
24 ordinance that the town now says is being enforced  
25 universally by the town at that point. And in fact, it



1 doesn't seem that any of the town officials, who plaintiffs  
2 spoke with, were aware of the ordinance.

3 So again, that cuts against the claim that they've  
4 always, that the town has always enforced the ordinance.  
5 Because it doesn't even seem as though the critical people  
6 were aware of the ordinance, or that this would be a  
7 violation of the ordinance.

8 After the plaintiffs did the contractor road  
9 construction form on June 20, 2017, it was voided. Not  
10 immediately, but approximately one month later.

11 Again, to the extent the ordinance was always being  
12 enforced, it certainly cuts against that argument. Because  
13 it seems as though it took somebody about a month to realize  
14 that they were going to stop the construction pursuant to  
15 the ordinance.

16 Thereafter came the town council's letter, telling  
17 them, telling plaintiffs to cease and get municipal  
18 approval. They never said to get municipal approval, they  
19 did not mention these now, what's been indicated by  
20 plaintiffs, the process to go through. And it was really  
21 what preceded this lawsuit. Because even the utility  
22 company told the town there's no reason for an accelerated  
23 time frame, there's no threat to public safety. Although  
24 now the town says there is a threat to public safety.

25 And then, according to plaintiffs, soon after these

1 letters were exchanged at the end of July of 2017, Upper  
2 Saddle River had a quote, "administrative policy" concerning  
3 computer aided dispatch, whenever officers removed  
4 unauthorized signs, devices or other matters, and also had  
5 to remind its officers that they were to enforce the  
6 ordinance. Of course, if they were always enforcing the  
7 ordinance, the Court is at a loss as to why they needed to  
8 be reminded, particularly with timing coming so close to the  
9 letters that were exchanged with the town council.

10 Ultimately, I do believe the issue is going to be  
11 whether there's a possible -- whether plaintiffs have shown  
12 possibility of success or probability of success. What I  
13 would encourage, however, and these are all going to be  
14 questions that I have for both parties as we go through this  
15 hearing, what I would strongly recommend, and I'd like to  
16 take a recess, is that the parties talk to their clients and  
17 determine whether it might be fruitful, before going forward  
18 with this hearing, that the Court adjourn it to February 7th  
19 of 2018, to give the parties an opportunity to talk, to see  
20 if resolution can be reached.

21 I am prepared to rule today. That being said, I do  
22 have a lot of questions for counsel before I make any final  
23 decisions, and I mean that. But you now know what my  
24 questions would be.

25 So if we do come back on the 7th, you know what to

1 address. But I also think it would be in both parties'  
2 interest to sit down and try and reach an amicable  
3 resolution, and to see if one can also be reached with  
4 the other two towns that are part of this matter -- well,  
5 not this particular case, but pending matters relating to  
6 this issue of the eruv, in the portions of Bergen County or  
7 Rockland County where part of the eruv stands and where  
8 plaintiffs want to put the additional portion of the  
9 additional eruv.

10 So what I'm going to do is take a five minute --  
11 10-minute recess so that the parties can talk to their  
12 clients. If the parties believe that it would be worthwhile  
13 to sit down and see if a resolution can be reached, I will  
14 adjourn this matter 'til February 7th of 2018 at 10:30 a.m.  
15 If the parties believe that it would be fruitless, then  
16 we'll address the questions that I raised in those  
17 statements.

18 Honestly, I always give parties a preliminary view.  
19 Today I went into much more detail than I normally do. I  
20 save them for questioning, but because I strongly feel this  
21 matter may be able to be resolved if reasonable minds  
22 prevail, I wanted to give the parties notice that I have  
23 certainly read all of the materials and the legal arguments  
24 and the questions that I do have. And then if we have to  
25 come back on the 7th, or even today, the parties would be

1 well warned as to the issues I'm going to be addressing.

2 Okay. So we'll take ten minutes, and then I'll  
3 come back out, or you can let Roe know if you'd like to see  
4 me in chambers. And if plaintiffs and defendants think this  
5 might be the time to take a respite from ruling on this, so  
6 that they can talk privately, I'm happy to do so. Okay.

7 MR. BUCHWEITZ: Thank you, Your Honor.

8 MR. ROSEN: Judge, can we use your anteroom?

9 THE COURT: You'd like to use this --

10 MR. ROSEN: To talk to clients.

11 THE COURT: Yes, of course you can. Let me just  
12 -- tell you what, give me -- Mr. Rosen, we have a jury room  
13 down the hall. Would you be able to --

14 MR. ROSEN: Absolutely.

15 THE COURT: use -- 349.

16 MR. ROSEN: Yes, the one --

17 THE COURT: And if plaintiffs need a separate jury  
18 room, we have one on the fourth floor, the Whipple  
19 Conference Room. So there's two conference rooms, one on  
20 this floor and one on the fourth floor.

21 MR. BUCHWEITZ: Thank you. Okay.

22 MR. ROSEN: Thank you.

23 ( After a brief recess court resumed ).

24 THE CLERK: All rise.

25 THE COURT: All right.

1 Thank you. Please be seated.

2 All right. We've had a chance to conference with  
3 counsel. I do want to reiterate that the information I  
4 provided earlier were preliminary views. I've not made any  
5 factual findings. But at this time, instead of proceeding  
6 today, we're going to adjourn until September 7th of 2018 --

7 MR. BUCHWEITZ: February 7th.

8 ( Laughter ).

9 THE COURT: I'm sorry. Mr. Buchweitz, you almost  
10 had a heart attack. I apologize for that. Thought we were  
11 going to have to call in for a cardiologist. February 7th,  
12 2018, at 10:30, to give the parties an opportunity to  
13 discuss this matter.

14 Again, I do strongly believe that this is a matter  
15 that the parties should be, if they're willing to be  
16 reasonable, reach a resolution on. To the extent the Court  
17 can be helpful, I'm always available.

18 Prior to the hearing, if the parties believe that  
19 further discussions would be fruitless, you can always call  
20 the Court and we'll try to get you in earlier.

21 Similarly, if February 7th is going to proceed, I  
22 note that at least the defendant has indicated that you may  
23 want to have certain factual issues subject to a hearing.  
24 Please submit those issues at least a week in advance, and  
25 let me know who you would like to call, and how long you

1 propose the testimony to be.

2 Then of course I'll hear from plaintiffs as to the  
3 necessity of such testimony, and how long you think you  
4 would need if you wanted to call any witnesses yourself.  
5 Okay?

6 All right. Anything else from the plaintiffs?

7 MR. BUCHWEITZ: No, Your Honor,  
8 Thank you for your time. Thank you.

9 THE COURT: From the defense?

10 MR. ROSEN: No, Your Honor. Thank you.

11 THE COURT: All right.

12 Thank you all. See you on February 7th if not  
13 sooner.

14 Last thing if -- if it looks like the parties of  
15 course are making some headway and both parties believe that  
16 that February 7th date should be extended somewhat to allow  
17 for further communications, I'm happy to accommodate. If  
18 you can just let me know as soon as possible so we can clear  
19 up the calendar.

20 MR. ROSEN: Thank you, Judge.

21 MR. BUCHWEITZ: Thank you.

22 THE COURT: Thank you.

23 ( Court adjourned ).

24

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