

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA) CA 97-10052
) Boston, MA
v.) August 5, 2003
) LOBBY
HENRY LEWIS, ET AL)

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE

APPEARANCES:

(As previously noted.)

ORIGINAL

JUDITH A. TWOMEY, RPR
Official Court Reporter
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Courtroom 10-Room 5200
Boston, MA 02210
(617)946-2577

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8/5/03 ✓

1 THE COURT: Would you each please identify
2 yourselves for the record.

3 MR. LEVITT: Peter Levitt on behalf of the
4 government.

5 MR. JOHNSON: Laurence Johnson on behalf of all
6 defendants, all party defendants.

7 MR. MELIKIAN: Harry Melikian.

8 (Discussion off the record.)

9 THE COURT: Let's go on the record for a minute.

10 Okay. We've had some discussion about the
11 status of the settlement talks in this case. It's my
12 understanding that the key points are the following.

13 When I saw the parties in June, the defendant
14 was willing to pay three and-a-half million dollars, and
15 the plaintiff would not go below four and-a-half million
16 dollars. The defendant is now willing to pay more. The
17 plaintiff is not willing to take any less. There isn't
18 an agreement on the amount.

19 The parties have agreed in principle to what
20 they call look back, however. The defendant could have
21 five years to pay or more if it persuaded the government
22 that it couldn't pay in five years by producing financial
23 information.

24 The government is willing to agree that if by
25 act of Congress or in any other way its clarified that

1 the recent or if in some way the recently revised
2 Cooperative Mail Rule under which the defendants would
3 not be liable in this case is clearly made retroactive,
4 any payments not made would not have to be made.

5 MR. LEVITT: Your Honor, could I add one point
6 to that. This is something I did talk to Mr. Johnson,
7 talked about that look back provision. The way it's
8 structured in other situations is that the caveat to that
9 is that if the government is litigating the issue of
10 retroactivity, then that issue is -- you know, the
11 payments still have to be made. If the government loses
12 and doesn't appeal and it's over, then it kicks in. If
13 the government doesn't dispute it in the first place, it
14 kicks in.

15 THE COURT: The parties also want something that
16 memorializing the decision I made concerning the
17 Cooperative Mail Rule, and each party would give up its
18 right to appeal. The defendant would pay over five years
19 or, as I said, if it gave the government persuasive
20 financial information that it couldn't reasonably pay in
21 five years, might get more years. But I've urged the
22 parties not to or, at least the defendant, not to try to
23 go beyond five years. I think one of the values of
24 settlement is it's over.

25 The last point and the point that precludes

1 people making final decisions as to whether they'll
2 settle or not now is that Mr. Melikian wants, I would say
3 reasonably, an assurance that the government will either
4 intervene in the Barton Cotton case in which he's the
5 relator or announce its decision not to intervene by the
6 deadline, the most recent deadline set by Judge Lasker,
7 which is September 30. That requires consultation with
8 Assistant United States Attorney Antone Giedt and perhaps
9 the head of the Civil Division, Jennifer Boal. Neither
10 of them can be reached. It's now about 5:20.

11 In the circumstances, while this transcript will
12 be sealed, and I'm essentially making it to see if I
13 accurately understand what I've been told and, if the
14 parties agree these are the material points, then I'll
15 see the parties tomorrow afternoon at four o'clock. And
16 I think at that point, you know, hopefully, the Barton
17 Cotton issue will be resolved, since it seems to require
18 focus more than anything else, focus by the government,
19 and the open issue will be the conventional issue of how
20 much, which is something I urge everyone, including but
21 not limited to Mr. Levitt, to think further about.

22 Have I reliably summarized where things are?

23 MR. JOHNSON: Absolutely.

24 MR. LEVITT: Yes.

25 THE COURT: And as far as I'm concerned,

1 tomorrow is going to be the end of it. If there's not a
2 settlement tomorrow afternoon, I've got the trial order
3 here. We'll go back to the discovery sanctions which, I
4 think, is the only other thing we have to, you know, that
5 I have to resolve.

6 But, frankly, you have made a lot of progress.
7 I'm sorry you haven't made somewhat more. And it seems
8 to me that, given the progress you've made, the remaining
9 distance should be coverable.

10 But I'll see tomorrow. Okay?

11 MR. JOHNSON: Thank you, judge.

12 MR. LEVITT: Thank you.

13 MR. MELIKIAN: Thank you, your Honor.
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

I, JUDITH A. TWOMEY, RPR, Official Court Reporter for the United States District Court, District of Massachusetts, do hereby certify that the foregoing transcript, pages 1 through 5 inclusive, was taken by me stenographically and thereafter by me reduced to transcription and is a true record of the proceedings in the above-entitled matter to the best of my ability.

JUDITH A. TWOMEY, RPR
Official Court Reporter

WITNESSED:

As previously noted.

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