

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JEFF BOARDMAN, et al.,

Plaintiffs,

vs.

CASE NO. 15-CV-00108

PACIFIC SEAFOOD GROUP, et al.,

MEDFORD, OREGON
JANUARY 30, 2015

Defendants.

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TRANSCRIPT OF PROCEEDINGS - TELEPHONE HEARING
MOTION FOR PROTECTIVE ORDER
BEFORE THE HONORABLE JUDGE OWEN M. PANNER
UNITED STATES DISTRICT COURT JUDGE

COURT REPORTER :

MELANIE J. SAVORD
CSR. NO. 96-0325

APPEARANCES

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1 MEDFORD, OREGON - FRIDAY, JANUARY 30, 2015 - 9:00 A.M.

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3 THE CLERK: This is the U.S. District Court.
4 And we have a phone call on a motion for protective order
5 in Boardman, et al., versus Pacific Seafood Group, et al.,
6 Case 15-CV-108, Judge Panner presiding. Would the parties
7 for the Defendants please identify themselves.

8 MR. STEPHENS: John Stephens, your Honor.

9 MS. BUCKLEY: And Kim Buckley.

10 MR. STEPHENS: And also on the phone are the
11 general counsel of Pacific Seafood, Dan Occhipinti. He's
12 not with us; he's on a different line. And also Pacific
13 Seafood transactions lawyer Robert Preston.

14 THE CLERK: Thank you. And for the Plaintiff.

15 MR. STEPHENS: He's not with us either.

16 THE CLERK: For the Plaintiff.

17 MR. HAGLUND: Mike Haglund and Mike Kelley.

18 THE CLERK: Thank you. Here is Judge Panner.
19 As I said, we do have a court reporter so will you please
20 identify yourself when you speak. Thank you.

21 THE COURT: Good morning, gentlemen. I am most
22 sympathetic to Michael Esler's problems, and I want to
23 make sure we accommodate those. Any late word you can
24 give us, John or Kim, about his condition?

25 MR. STEPHENS: Well, he's in New York City today

1 at the Sloan Kettering Institute. And just sort of the
2 basic thing is he was diagnosed as having prostate cancer
3 and recently had prostate surgery. And so they had done
4 some additional tests and it appeared that on the basis of
5 that there was still some reason to think maybe they quite
6 haven't gotten everything with the surgery. So he's in
7 New York City today being tested for that. He's getting a
8 CAT scan and also an MRI. So the scheduling of it all,
9 unfortunately, this motion and that ended up basically
10 happening at the same time.

11 As you know, this was a motion that he was
12 intending to handle and, you know, obviously he was aware
13 that this appointment was happening but was in a situation
14 where -- well, your Honor have talked about people who
15 love the practice of law, and Mike certainly is one of
16 those people. And so the idea that he couldn't do
17 something wasn't something that -- you know, that wasn't
18 sort of front and center in his mind because he likes to
19 be a can-do person and do everything. So I think that's
20 the reason why you didn't hear earlier from him was
21 because maybe, you know, undue -- I don't know -- undue
22 optimism or undue can-do attitude on his part.

23 So that's why it was really -- wasn't until last
24 night that it all kind of dawned on him that, you know,
25 this probably wasn't a good time for him to be -- for him

1 to be doing oral argument. And like I said, this was
2 something that he and Kim had been working on. And I
3 think you may recall Kim is a little bit new to this whole
4 matter from the prior case. Anyway, he did get his
5 injection of the nuclear isotopes that they use for the
6 PET scan. So that's the situation that he's in currently.

7 So that's why it was that we were asking that
8 this hearing be postponed so that he could, well, one,
9 participate, but like I said this is really a matter that
10 he had been focusing on. And in that regard -- and this
11 really relates to the whole thing. One of the things that
12 he indicates in his E-mail is that from our end we are
13 willing to continue the temporary restraining order that
14 the Court put in place last week and think that -- you
15 know, we have now -- this case, of course, is just
16 brand-new and there's been a whole flurry of activity on
17 both sides this last week.

18 But sort of taking stock where we are, we think
19 we are in a situation where it really makes the most sense
20 for the Court to continue the TRO that the Court has
21 entered and not to put off the preliminary injunction
22 filings. And then also to put off the preliminary
23 injunction hearing so that we can get to that, and the
24 Court can get to that in a more orderly manner, you know,
25 as contemplated by the rules. And those rules are in

1 place because they tend to lead to the most orderly
2 result.

3 And I certainly appreciate the Court setting
4 down the hearing at the time that it did because, of
5 course, if -- without a parties' agreement like we are
6 giving here on the TRO, obviously it's supposed to expire
7 quickly, and a preliminary injunction hearing is supposed
8 to be held quickly.

9 So one of the other things that, you know, again
10 on reflection, and we are putting together this week is
11 that really this case isn't just about, you know, these
12 six fishermen and Pacific Seafood. It's particularly
13 about the other shareholders of Ocean Gold and in
14 particular we have in mind the Rideman family.

15 As the Court will recall from the prior case,
16 Dennis Rideman was the person who attended the hearings
17 and submitted declarations; he was the general manager of
18 Ocean Gold. And he's the one that from the Ocean Gold
19 side of things built up that whole business. He was the
20 30 percent shareholder of Ocean Gold and, unfortunately,
21 passed away from a heart attack in November. His widow
22 Jackie Rideman and his three grown sons now are
23 obviously -- they have or are inheriting his shares and
24 anything that happens with respect to this action is a
25 matter that's going to seriously affect the value of their

1 shares.

2 And we think, and certainly have gotten this
3 indication or that understanding from their lawyer
4 Mr. Choquette, that it's important in this case that they
5 be given an opportunity to get involved, to have an
6 opportunity to be heard even on this particular matter and
7 particularly on this matter with respect to the
8 transaction documents because, of course, they are the
9 other half of it. And their interests are as much
10 implicated by anything that this Court does.

11 And so that's one of our motivations for
12 agreeing that, yes, we think that the TRO should continue
13 and -- but that we should put off the preliminary
14 injunction and actually not put -- also put off this
15 determination with respect to documents so that we can
16 give Mrs. Rideman and her family an opportunity to get
17 involved and to be heard with respect to this issue and
18 with respect to other issues if they have an interest in
19 that.

20 There's one other development as of yesterday,
21 again, from the Pacific Seafood end of things and that is
22 that I talked yesterday with Ken Nord who's special
23 counsel at the Oregon Department of Justice, and he's the
24 person who's in charge of anti-trust matters at the state.
25 And he indicated to me or told me that they are intending

1 to issue a CID, Civil Investigative Demand, to Pacific
2 Seafood with respect to all of this. And one of the
3 things they wanted was for Pacific Seafood to agree --
4 well, at a minimum this is one of the things I'm going to
5 be discussing with them is what I should be saying. Is
6 that there wouldn't be any transaction between Ocean Gold
7 and Pacific Seafood, you know, with respect to
8 acquisitions or anything like that until such time as the
9 state has concluded its investigation.

10 And so what I'm intending to propose to him
11 today is that we would enter into an agreement with the
12 state that we -- there wouldn't be anything like that
13 pending their investigation which, obviously, is going to
14 take some time. And I should add that I'm going to
15 propose to him that would be subject to a 60-day
16 termination so we are not potentially subject to something
17 that goes on indefinitely. But the idea they would have a
18 60-day period if they didn't like it, then the state could
19 do something to stop any transaction from going on.

20 But so -- but I wanted the Court to be aware of
21 that too. Coming back, given what it is that we are
22 prepared to do from our end, we think that we can all
23 effectively not take a breather in this but step back just
24 a little bit and follow the more orderly, you know,
25 more -- give more due process in effect to discovery and

1 to the resolution and, you know, the ultimate disposition
2 of this matter.

3 So that's kind of a long intro for the Court's
4 question but that's basically, I think, where things are
5 from our end.

6 THE COURT: Yes, John, that's a lawyer's comment
7 on Mike Esler's condition. And I appreciate it. I think
8 the one thing that I recall, and I'm relying on my memory
9 now, the temporary injunction did require the delivery of
10 materials relating to that proposed transaction. And
11 there is -- I want to hear from the Plaintiffs in
12 connection with that. But I don't see anything wrong with
13 turning over the documents just to the lawyers, and I
14 gather maybe that was the Defendants' position also.
15 Mike Haglund, do you have any comments about John's
16 speech?

17 MR. HAGLUND: Yes, your Honor. Mike Haglund.
18 First of all, we have enormous respect and like for Mike
19 Esler and more than happy to see the dates for the
20 preliminary injunction hearing put off to a time when that
21 will accommodate his schedule and his medical needs.

22 But as to the documents, we believe that we need
23 access to those documents to, as John Stephens just put
24 it, to take stock of where we are and where they are.
25 Designated as attorneys eyes only, there is no potential

1 for irreparable harm. I would also note that
2 Mr. Choquette has also made clear his clients' position in
3 a declaration that they filed; they had over a week to
4 intervene in the case if they so wished but expressed
5 their point of view in a declaration that he filed, and we
6 responded to. Their big concern was potential irreparable
7 harm from release of the documents.

8 And in an attorneys-eyes-only situation they are
9 not going to be seen by anybody but the lawyers and any
10 experts and everyone within agreement under the terms of
11 the stipulated protective order in the prior case that we
12 offered to make applicable here that it just can't be used
13 in any fashion outside the terms of that order. So we
14 think the documents should be required to be provided to
15 us immediately.

16 THE COURT: I have thought about this quite a
17 little bit, and I recognize that both the estate and the
18 Defendants, I think, are anxious to complete this sale,
19 and I think for that reason there's every reason to go
20 ahead and require all the documents -- all documents be
21 submitted in connection with that transaction which was
22 proposed with the understanding that they are to be
23 limited strictly to the lawyers. And, John Stephens, do
24 you have any objection to that?

25 MR. OCCHIPINTI: Your Honor, this is

1 Dan Occhipinti with Pacific Seafood. Can I be heard
2 briefly, your Honor?

3 THE COURT: Yes, you may.

4 MR. OCCHIPINTI: Thank you, Judge. My name is
5 Dan Occhipinti; I'm the brand-new general counsel. I'm 31
6 years old. I was not involved in the prior litigation.
7 And so -- I'm also on the road and have been five out of
8 the last seven days. This case, your Honor, as you know
9 was just filed one week ago today and has been moving at
10 an extraordinarily fast pace, the fastest that I have ever
11 seen. And we gave Plaintiffs notice of the proposed
12 transaction back in December, and we didn't receive an
13 objection until January. And the moment we did, we called
14 off the transaction. So there is no deal. The deal is
15 terminated. And we are willing to extend the TRO as long
16 as we need to so the parties can all calm down, take this
17 a little slower.

18 I would ask the Court consider to put this on a
19 regular schedule, let us be served with discovery requests
20 in the regular course. Your Honor, I haven't even had a
21 chance to review the types of documents they are
22 requesting. I would like to get back to Portland, review
23 their request, confer with counsel and come down and see
24 you in your courtroom with all the parties so we can take
25 a deep breath here.

1 There's no immediate urge or need to have this
2 documents production or have this litigation proceed, your
3 Honor. So I request that we put this out on a normal
4 course and set off the preliminary injunction hearing
5 until February.

6 THE COURT: I'm appreciative of your thoughts,
7 Dan, however --

8 MR. PRESTON: This is Robert Preston. There is
9 one other thing. You made a statement a moment ago that
10 the parties, the Defendant says, and the estate are
11 anxious to proceed. I can't speak for the estate. The
12 Defendant is not --

13 THE COURT: Let me stop you here. There's only
14 so many lawyers can argue this all at once. But I stand
15 by my previous statement. I think the evidence in this
16 case in the past has indicated a strong desire of the
17 Defendant to own Ocean Gold. I understand, and I'm most
18 appreciative of their delaying this matter, but I don't
19 expect it to go away because basically, considering all
20 the facts in this case, we are going to be faced with that
21 again. We were nearly faced with it before and it has
22 been stopped by the stipulation of the Defendant.
23 However, I'm prepared to move ahead, and I do want those
24 documents to be delivered, all of the documents to the
25 Plaintiffs promptly with the understanding that they will

1 not be exposed to anyone other than the lawyers.

2 That's been the order and it will continue, and
3 I want that done promptly. As far as --

4 MR. OCCHIPINTI: Dan Occhipinti. One more point
5 for the Court's consideration. Plaintiffs' papers, your
6 Honor -- they ask for an injunction. They say all of this
7 will go away if we were willing to stipulate to an
8 injunction. I feel like we are standing on the precipice
9 of long, extended discovery and litigation.

10 THE COURT: Wait a minute, wait a minute, wait a
11 minute, wait a minute. Dan, hold it. Hold it. I gave
12 you a good opportunity to talk; you are repeating, I'm
13 sure, most of what you have said. And that's going to be
14 my order, that the documents be turned over to the
15 attorneys. And that's to be done immediately. And then
16 we will work as far as the time goes to everybody's
17 convenience. There is a limit to how long a preliminary
18 injunction can last. I will take that into account, and
19 we will then set a preliminary injunction if necessary.

20 I'm hoping the parties can resolve this. But I
21 have had quite a little experience with this case, and I
22 understand some of the motives of all the parties. That
23 will be my order, and I will issue a written order
24 promptly.

25 MR. STEPHENS: I just wanted to confirm we have

1 two pending dates for the Plaintiffs and us to exchange
2 further briefs on February 3rd and then the hearing on
3 February 9th. Am I understanding that both those dates
4 are continued now?

5 THE COURT: They are.

6 MR. STEPHENS: Thank you.

7 MR. PRESTON: Would you perhaps -- I want to
8 inquire of the judge as to what the scope of the order is.
9 I'm unclear as to what it is and what we are complying
10 with.

11 THE COURT: Excuse me. I will issue a written
12 order documenting precisely what I'm deciding. That is
13 that all documents connected with the proposed sale be
14 delivered only to Plaintiffs' counsel. And I will
15 document that in writing along with the new dates that we
16 will set. Anything further at this time?

17 MR. HAGLUND: Not for the Plaintiffs, your
18 Honor.

19 MR. STEPHENS: Thank you, your Honor

20 THE COURT: Talk to you later.

21 (Proceedings concluded at 9:28 a.m.)

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CERTIFICATE

I, MELANIE J. SAVORD, Certified Shorthand Reporter for the State of Oregon, do hereby certify that I was present at and reported in machine shorthand the oral proceedings had in the above-entitled matter.

I hereby certify that the foregoing is a true and correct transcript, to the best of my skill and ability.

Dated this 19th day of February, 2015.

Melanie J. Savord
CSR Cert. No. 96-0325