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4 GEOFF DAVIDIAN,

5 Plaintiff,

6 -vs-

Case Nos. 06-CV-011909
06-SC-045116

7 JP MORGAN CHASE BANK, et al,

8 Defendants.
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10 **HEARING ON MOTIONS AND SCHEDULING**
11 -----

12 JUNE 26, 2007

13
14 Proceedings held before the
15 Honorable DENNIS FLYNN,
16 Circuit Court Reserve Judge Presiding.

17 **A P P E A R A N C E S:**

18
19 GEOFF DAVIDIAN, the Plaintiff, appeared in person pro
20 se.

21
22 KEVIN LONG and NATALIE REMINGTON, Attorneys at Law,
23 appeared on behalf of the Defendants.

24 **NANCY CZERNIEJEWSKI, RPR**
25 **Official Court Reporter**

1 **TRANSCRIPT OF PROCEEDINGS**

2 THE CLERK: Case No. 06-CV-011909, Geoff
3 Davidian vs. JP Morgan Chase Bank et al; and,
4 06-SC-045116, same parties.

5 Appearances.

6 MR. DAVIDIAN: Geoff Davidian appears
7 pro se, Your Honor, for the plaintiff.

8 THE COURT: Okay.

9 MR. LONG: Kevin Long and Natalie
10 Remington appearing on behalf of all of the
11 defendants, and with Counsel in court today is
12 Defendant Jeff Childs.

13 I would also note for the record
14 there are issues with respect to personal
15 jurisdiction over individual Defendants Mr. James
16 Dimon and Mr. William Harrison, who are not
17 residents of the State of Wisconsin, and we would
18 reserve our objection to jurisdiction with
19 respect to those defendants.

20 THE COURT: All right.

21 Welcome all of you. This is the
22 first time I'm meeting with all of you, and I
23 hope to work together to ultimately resolve this
24 matter. Each of you have a number of motions. I
25 believe there are sixteen unresolved motions.

1 Some are matters filed entitled motion to
2 whatever, others are letters that ask that
3 something be done. Ultimately, even before there
4 can be a dispositive resolution, those matters
5 have to be addressed. I have no preference as to
6 the order at all. If the parties have some
7 preference as to which matter or matters you want
8 to address, I would be glad to follow that.

9 Mr. Davidian, which matters do you
10 wish to be heard first, or what is the order of
11 resolving these matters?

12 MR. DAVIDIAN: Your Honor, forgive me,
13 because I'm not very good at this, this seems to
14 be complex litigation, and I don't know whether
15 it is or not, but it is certainly complex to me.
16 I sent a motion to the Court to compel the
17 settlement agreement that I filed last week. If
18 that is given, then the rest of them are moot,
19 that is the one that makes sense first to me, the
20 others don't matter.

21 THE COURT: That is 19, June, 2007, the
22 motion to enforce settlement, the last of the
23 motions that the plaintiff has filed.

24 Mr. Long, Ms. Remington?

25 MR. LONG: Primarily me, Your Honor

1 there are discrete, factual issues on procedural
2 issues that, if I could, with the Court's
3 indulgence--

4 THE COURT: You can alert me, and I will
5 address you on behalf of the defendant unless
6 Ms. Remington indicates it should be her.

7 Mr. Long, on the request by
8 Mr. Davidian to address first the motion he filed
9 on 19, June, to enforce settlement?

10 MR. LONG: I believe I don't have a
11 strong opinion on that motion, but if it please
12 the Court, I believe that the motion for -- the
13 motion to consolidate ought to be the first
14 motion, because we have two actions that are very
15 interrelated. And instead of making a decision,
16 they ought to be applied to -- the motion to
17 consolidate ought to be the first motion heard.
18 Then the next motion heard, in my mind, ought to
19 be the motion for sanctions, which includes the
20 sanction for dismissal, because we believe that
21 motion makes all other motions moot.

22 That being said, Mr. Davidian makes
23 the same point with respect to the settlement
24 motion. I believe the settlement motion is not
25 particularly complicated. And although the

1 technical position would be this motion for
2 sanctions, it should be decided first.

3 THE COURT: All right.

4 There's not an agreement, we will
5 hear all of them. What we will do is take
6 Mr. Davidian's approach, and we will address
7 first the motion he has filed to enforce
8 settlement. Following that, we will deal with
9 defendant's motion to consolidate, and at that
10 point -- if we even get beyond that -- then we
11 will address which should be the next motion.

12 Mr. Davidian, on your motion to
13 enforce settlement, sir?

14 MR. DAVIDIAN: Your Honor, if I may ask
15 Jeff Childs to take the stand, he signed the
16 settlement agreement on behalf of the defendants.

17 THE COURT: Is there any dispute on that
18 fact, Mr. Long?

19 MR. LONG: There's no dispute with
20 respect to the documents that have been provided.

21 THE COURT: I will need you to be much
22 more precise. I'm focusing on the head of a pin,
23 I'm looking at the head of the pin.

24 Is there any dispute with respect
25 to the fact that Mr. Childs signed the

1 stipulation document?

2 MR. LONG: No, there's not.

3 THE COURT: That fact accepted, in other
4 words, I'm trying to deal with the matter. That
5 fact will be accepted by the Court, that it was
6 signed by Mr. Childs, given back to Mr. Davidian,
7 and on your motion?

8 MR. DAVIDIAN: Your Honor, once two
9 parties have signed a stipulation, I also
10 signed-- Your Honor, I signed a settlement
11 agreement, I also signed a stipulation. If the
12 defense will stipulate that Mr. Childs also
13 signed the stipulation and order dismissing the
14 case, that will resolve that.

15 THE COURT: Do you have any other
16 evidence you want to present on that issue, any
17 other comments you want to make?

18 MR. DAVIDIAN: No, sir.

19 THE COURT: Mr. Long, same motion.

20 MR. LONG: Our response to this motion
21 essentially is that a key component of the
22 settlement agreement was the inclusion of
23 Ms. Grant in the settlement, and Ms. Grant did
24 not sign the settlement agreement on the date of
25 January 9th when we were with then Judge DiMotto.

1 Mr. Davidian indicated that he would only settle
2 the case if, in fact, he could continue to take
3 discovery in the case. And, thereafter, as you
4 can see in the affidavit Ms. Remington filed on
5 June 22nd attached to Exhibit A is an E-mail sent
6 the following day by Mr. Davidian to me in which
7 he asks for additional discovery to continue to
8 go forward. And he also says in the second to
9 bottom paragraph it is also widely why this suit
10 is not being dropped.

11 Thereafter, Mr. Davidian began
12 other activities involving the distribution of
13 leaflets, and we withdrew any agreement to settle
14 with Mr. Davidian at that time. We did follow up
15 with a statutory offer under 807.01, which was
16 not accepted by Mr. Davidian for a different
17 amount, and accordingly we don't believe that a
18 settlement occurred in this case.

19 THE COURT: Looking at Exhibit F, as in
20 foxtrot, there is a copy of the settlement
21 agreement that the parties are referring to.
22 That document is under date of 8, January, of
23 '07, and has the signature by Mr. Childs. Above
24 his signature it states that I have read the
25 above terms of this release and settlement

1 agreement and agree to be bound thereby; JP
2 Morgan Chase Bank NA, Jeff Childs, James Dimon,
3 and William Harrison by Jeff Childs, authorized
4 representative.

5 On this copy there's not the
6 signature of Mr. Davidian, and I did see an
7 exhibit that had his signature as well, and I
8 think that's also dated 8, January, of '07.

9 Exhibit G, girl, is a document
10 entitled stipulation and order for dismissal, and
11 that would have ultimately -- because it has in
12 typewritten fashion -- information for Mr. Long
13 to sign on behalf of the defendants and
14 Mr. Davidian to sign on behalf of himself, and
15 then Judge John J. DiMotto to sign as the Court.

16 Now, the statute I'm paying
17 particular attention to in this case is 904.08.
18 904.08 is basically a statute that indicates that
19 settlement discussions are privileged. I'm not
20 to know about them, the parties are really not to
21 spread them on the record, they're private
22 matters between the parties, and the policy
23 reason behind that in the State of Wisconsin is
24 to encourage the parties to have frank and candid
25 discussions and ultimately to resolve as many

1 cases as possible.

2 So, basically, it's like a big
3 screen is put up so you can go behind the screen
4 and do all of the things you can to resolve the
5 case, and to do that is great. If you don't,
6 that's great, but whatever happens, happens
7 behind the screen. It's confidential, it's not
8 to be exposed to the light of day. Now, again,
9 that reflects the policy of the State of
10 Wisconsin as it relates to the conduct of the
11 parties regarding settlement.

12 Now, the parties can have
13 discussions as to settlement in many ways. The
14 litigants can talk among themselves, a pro se
15 party can talk with an attorney for the other
16 side -- as we have in this case -- not to be able
17 to talk to an individual litigant, but to talk to
18 the attorney, or any of the other nine or ten
19 options that Wisconsin affords under ADR, any of
20 those can be used. There is not one on the
21 pecking order that's a better approach, it's
22 whatever you, as parties, want to do, great, do
23 exactly that.

24 Now in this case the parties did
25 have discussions. In fact, as I reviewed the

1 file over many, many hours, you have had a number
2 of discussions regarding settlement over time.
3 Normally a court would never know about that,
4 that's not information that's supposed to be
5 presented, so I wouldn't know anything about it.
6 But in this case you have had discussions, and at
7 least in this case as to the 8, January, document
8 of '07 a signing occurred -- and I want to give
9 it the right title -- again the document was
10 titled settlement agreement. But it was not
11 signed by an intended party, Christine Grant.

12 The order, the stipulation, the
13 agreement of the parties, ultimately then goes to
14 the judge, and the order was never signed by the
15 judge. So at issue legally is can a court, on a
16 motion of the parties, issue an order directing
17 that a settlement agreement that at one time was
18 reached, be fully implemented by the parties
19 where one or more of the parties has backed out
20 or simply hasn't approached it and the order has
21 never been signed by a judge.

22 And the most common definition for
23 a stipulation is an agreement made by the parties
24 during the course of a proceeding which is then
25 approved by the court. And once it is approved

1 and contract law actually applies, it becomes a
2 contract of the parties and the parties in the
3 context of that proceeding are bound by whatever
4 that stipulation is.

5 Now in the context of this case,
6 one of the attended parties, Ms. Grant, has not
7 signed it yet. Ms. Grant is not a party, and we
8 will get to that at a different point. As this
9 point I don't view that as a filing. The
10 document is not signed by the attorney. Normally
11 over my years of practice, it is always signed by
12 an attorney as well. In this case, for some
13 reason, Mr. Childs signed, the other two named
14 defendants did not sign, and the attorney didn't
15 sign.

16 That can happen, I'm not saying it
17 can't, but usually the attorney signs it. So the
18 parties have signed, but the court has not
19 signed. As a result, the Court finds in this
20 case, because the court did not sign, that there
21 is, in fact, no lawful stipulation. The
22 agreement of the parties of 8, January, 2007, was
23 never accepted, and the document contained in the
24 motion as Exhibit G, as in gulf, stipulation and
25 order for dismissal -- with emphasis on order --

1 the order was never signed.

2 As a result there is no binding
3 stipulation, a stipulation, which this Court
4 could say -- irrespective of how it was arrived
5 at -- the parties, in fact, made a stipulation,
6 the Court accepted it, or that is now binding on
7 the parties. Again, I would use the analogy the
8 Supreme Court does of contract law. Because the
9 court never approved the document, I find that
10 there is not a lawful stipulation which this
11 Court can then enforce. As a result, the motion
12 that was made to enforce the settlement agreement
13 is denied for the reasons stated.

14 That is one motion. Again, there
15 are many, many.

16 The next motion -- it's like being
17 in a strange house, I don't know where to put
18 things, I have to get myself-- All right.

19 The next motion is a plaintiff's
20 motion -- I'm sorry -- a defendant's motion to
21 consolidate, and I will hear from both sides, but
22 we will begin with the movant, Attorney Long.

23 MR. LONG: Thank you, Your Honor.

24 Under Wisconsin Statute Section
25 805.05, consolidating Milwaukee County Case No.

1 06-SC-450 -- I'm sorry, 5116 with Milwaukee
2 County Case No. 06-CV-11909 -- did I misspeak --
3 the Small Case No. 06-SC-045116.

4 THE COURT: Actually, in your motion,
5 you call it -- the last number, 4516, you typed
6 5416.

7 MR. LONG: I believe it's a
8 transposition and erroneous.

9 THE COURT: Any one of the ways it was
10 done, I noted it.

11 MR. LONG: And it is essentially the
12 basis for this motion, both of these cases of
13 action arise out of the same facts and involve
14 the same parties, they all arise out of
15 Mr. Davidian's account with Chase Bank and the
16 efficient administration of justice is served by
17 having the two matters consolidated.

18 THE COURT: Mr. Davidian?

19 MR. DAVIDIAN: Your Honor, without being
20 argumentative with Mr. Long, the cases are
21 distinct for two reasons. The first reason is
22 that the two cases -- the two bank accounts are,
23 from which these cases arise, are distinct. One
24 of them is an account I have with my wife,
25 Christine Grant, one of them is -- I do not have

1 with Christine Grant. It seems to me that to--
2 One of the next motions would be to bring her
3 into the case, and it doesn't seem fair as her
4 husband, I would say, to have her brought into
5 one case in which she has nothing to do with it.
6 The accounts are distinct, and to join them would
7 force her to participate at some expense in
8 issues that she has no part of, but she would be
9 forced to because they were joined.

10 THE COURT: In the motion for settlement
11 at Exhibit H, as in hotel, there is an affidavit
12 from Mr. Edward N. David. In that affidavit --
13 which the Court had to read as I addressed the
14 motion to enforce the settlement agreement, as
15 information is contained that impacts on the
16 motion to consolidate -- in that affidavit
17 Mr. David indicates that he's an attorney, that
18 he does represent Ms. Christine Grant, that he
19 was present on 9, January, of '07 in a status
20 conference with Judge DiMotto in which the
21 parties agreed that Christine Grant would execute
22 a separate settlement agreement whereby she would
23 bring no action arising from the events related
24 to the case and the defendants would settle
25 without her signing the main settlement

1 agreement. It notes that Christine Grant's only
2 relationship to the lawsuit is that she's married
3 to the plaintiff and is a cosigner on one of the
4 accounts that is the subject of one of these
5 cases, and then it goes on.

6 Before I address the motion here
7 for consolidation, I need to know from the
8 parties is this information contested that is in
9 the affidavit of Mr. David relative to what the
10 parties intend to do regarding Ms. Grant?

11 MR. LONG: Your Honor--

12 THE COURT: Both sides, why don't we
13 stick with the plaintiff first?

14 MR. DAVIDIAN: I cannot speak for my
15 wife. In the context of the settlement
16 agreement, I can say that what she said there is
17 true and what Mr. David says there is correct.
18 What happens beyond this would be between her and
19 her lawyer, but I have no knowledge that she
20 intends anything.

21 THE COURT: Thank you.

22 Mr. Long?

23 MR. LONG: The only portion of the
24 affidavit that you read that we take issue with
25 is the statement of the defendant's that they

1 agree to settle the case without her being
2 required to sign the main settlement agreement.
3 It is not an accurate statement. It does not
4 bear on the issue to consolidate, but I would
5 state on the record that we would contest that.

6 THE COURT: All right.

7 Also, there's a motion for
8 mandatory joinder of Ms. Grant that's not now
9 before us, but that's one of the motions that's
10 filed.

11 Fortunately in Wisconsin we have
12 rich case law relative to this particular motion.
13 It's not a motion that's heard once every two
14 years, it's a pretty oft made motion such as in
15 Wisconsin Brick and Block Corporation vs. Vogel,
16 54 Wis.2d 321, a 1972 decision by the Wisconsin
17 Supreme Court, under 805.05 the Court is to
18 address the case as a case brought in as a single
19 action. Also the Court is to look as to whether
20 unnecessary costs in delay and delay could be
21 avoided if there were joinder. Courts are
22 instructed to act to avoid prejudice to any of
23 the parties and also to ensure that the right to
24 a jury trial is preserved for anyone who has such
25 a right.

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Which of the two actions, small claim or large claim, is the joint account between Mr. Davidian and Ms. Grant, his spouse?

MR. DAVIDIAN: Large claim, Your Honor.

THE COURT: And then the small claim is only Mr. Davidian?

Well, that's the logical conclusion.

MR. DAVIDIAN: Your Honor, I'm going to try my best to be honest, I would say yes, there may be some overlay. The second case refers to my -- mainly to my personal account.

THE COURT: I'm not able to understand the term "second complaint." Let's use small claim or large claim.

MR. DAVIDIAN: Small claim, I understand your point.

I believe I'm telling you the truth.

THE COURT: So the facts indicate, then, that the large claim case has both spouses and the small claims case involves the account only of Mr. Davidian. Now, the large claims case, as a result of the filings by both sides, is a matter that we try to a jury. The small claims

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matter, of course, is tried to the court as the trier of fact.

The result if there were joinder is all of the data would come as to the large claims matter, and the Court would only consider those matters as deal with the small claims matter. Other matters in material relevance would be presented to the jury as the parties felt appropriate, both sides having all kinds of rights relative to choices they would make as to what they would present in the context of this case. And in order to save the time of the parties and any of witnesses that may be called to testify and to expedite ultimately a resolution at some point of the issues involved, the Court will grant the motion to consolidate the two cases.

And at trial, if we ever get to that point -- we have other motions that may resolve everything -- if we ever get to trial, the parties will present whatever they wish to present to the jury, and the Court will cull from that only those matters that are applicable in A, the small claims matter, and the Court will render its own decision. For the parties, if you

1 have any evidence that you wish to present that
2 is applicable only in the small claims case, then
3 the jury would be excused, I would hear that
4 evidence, the jury would not, and when we are
5 done with that the jury would come back in. But
6 it should result in witnesses only having to
7 testify once. It deals with efficiency, but it
8 is also considerate of the parties and potential
9 witnesses and the costs involved in the various
10 trials.

11 As a result the motion which was
12 made to consolidate 06-SC-045116 and 06-011909 is
13 granted.

14 MR. DAVIDIAN: Your Honor, may I ask a
15 pressing issue, can I take my coat off? It's
16 very hot.

17 THE COURT: Yes, please do. The parties
18 are welcome to be as comfortable as you can.

19 MR. LONG: Your Honor, can I make a
20 point of clarification?

21 There's a reference made to the
22 right to a jury trial, I don't believe it has to
23 anything to do with what's pending before the
24 Court -- pending before the Court today. In the
25 large claims matter, contractually it's not that

1 we want to waive a jury, it's just I don't think
2 that's a matter that needs to be developed today
3 or even has a right to be resolved today or-- I
4 don't want anything to indicate that that was an
5 issue we somehow waived or agreed to.

6 THE COURT: I believe the defendants on
7 15, November, 2006, paid the jury fee for a
8 six-person jury in the large claims case.

9 MR. LONG: Thank you, Your Honor, that
10 was before we were involved.

11 MR. DAVIDIAN: The plaintiff paid.

12 THE COURT: Words make a difference.

13 What I hear Mr. Davidian saying is
14 it was not the defendant, but it was the
15 plaintiff. Let's deal that issue. We're not at
16 the head of the pin, we're dealing with it.

17 I articulated that the defendants
18 paid a jury fee with the court stamp of 15,
19 November, 2006. We have the date 15, November,
20 2006, and I will go over to the plaintiff's
21 portion of the case. On 13, December, 2006 --
22 13, December, is not the same as 15, November --
23 on 13, December, 2006, the plaintiff paid the fee
24 and made his demand for a six-person jury.
25 Again, the plaintiff has filed a demand for a

1 jury trial in the large claim case, and the
2 defendants have filed a demand and paid the fee
3 for a six-person jury.

4 Now we will leave that issue and
5 now go back to the motions. We have dealt with
6 two of the motions filed by the parties, and only
7 two.

8 Mr. Davidian, what motion do you
9 wish to next have heard, sir?

10 MR. LONG: Was that directed to the
11 defendants or the plaintiff?

12 THE COURT: I would ask the Reporter
13 read back what I just said.

14 (Whereupon, the requested question was
15 question was read back by the Court Reporter.)

16 MR. DAVIDIAN: Well, Your Honor, I guess
17 the motion for sanctions.

18 THE COURT: I will go back and forth and
19 do that motion for Mr. Davidian, and I will look
20 to Mr. Long for the next motion after that.

21 Now, the motion for sanctions is
22 not a plaintiff's motion. The motion for
23 sanctions is a defendant's motion. Since the
24 burden is on the proponent, I will go to Mr. Long
25 to speak first on the motion for sanctions. I do

1 note that the parties both, one in a responsive
2 pleading and the other in a formal motion, asked
3 for an opportunity to be heard on this motion in
4 court. Obviously by hearing you now, that is
5 being granted.

6 Mr. Long?

7 MR. LONG: Thank you, Your Honor.

8 This motion is governed by
9 Wisconsin Statute Section 802.05. I want to
10 focus my inquiry to be as helpful as possible to
11 the Court, so please stop me if I'm telling you
12 stuff you know or don't want to hear more about.

13 802.05 was revised recently to
14 correlate more with Federal Rule 11 in the last
15 few years, and it is somewhat different than it
16 had been previously, though it is generally the
17 same. The two provisions that we believe are
18 applicable here are 802.05(2)(a) and
19 802.05(2)(b).

20 802.05 says "by presenting to the
21 court whether by signing, filing, or submitting,
22 or later advocating a pleading, written motion,
23 or other paper, an attorney or unrepresented
24 party is certifying that to the best of the
25 person's knowledge, information, and belief,

1 formed after an inquiry reasonable under the
2 circumstances, all of the following:"

3 "(A) The paper is not being
4 presented for any improper purpose such as to
5 harass or to cause unnecessary delay or needless
6 increase in the cost of litigation;"

7 Which also includes -- which also
8 refers to the preamble, is that--

9 "(B) The claims, defenses, and
10 other legal contentions stated in the papers are
11 warranted by existing law or by a nonfrivolous
12 argument for the extension, modification, or
13 reversal of existing law or the establishment of
14 new law."

15 Section 802.05(3) deals with
16 sanctions and (3)(a) indicates how such a motion
17 may be initiated. Subsection (3)(a) is sometimes
18 referred to as the safe harbor provision and that
19 says:

20 "A motion for sanctions under this
21 rule shall be made separately from other motions
22 or requests and shall describe the specific
23 conduct alleged to violate (2). The motion shall
24 be served as provided in Section 801.14, but
25 should not be filed with or presented to the

1 court unless, within twenty-one days after
2 service the motion or such other period as the
3 court may prescribe, the challenged paper, claim,
4 defense, contention, allegation, or denial is not
5 withdrawn or appropriately corrected. If
6 warranted, the court may award to the party
7 prevailing on the motion reasonable expenses and
8 attorney fees incurred in presenting or opposing
9 the motion. Absent exceptional circumstances, a
10 law firm shall be held jointly responsible for
11 violations committed by its partners, associates,
12 and employees."

13 THE COURT: Now, you mentioned 802.05
14 sub?

15 MR. LONG: Three.

16 MR. DAVIDIAN: Sub?

17 MR. LONG: A, and I have copies.

18 THE COURT: I have it.

19 MR. LONG: And (b) deals with the nature
20 of the sanctions.

21 And also very important in
22 particular aspects of this case, it says:

23 "A sanction imposed for violation
24 of this rule shall be limited to what is
25 sufficient to deter repetition of such conduct or

1 comparable conduct by others similarly situated.
2 Subject to the limitations and subdivisions in
3 one and two, the sanction may consist of, or
4 include, directives of a nonmonetary nature, an
5 order to pay a penalty into court, or if imposed
6 on motion and warranted for effective deterrence,
7 an order directing payment to the movant of some
8 or all of the reasonable attorney fees and other
9 expenses incurred as a direct result of the
10 violation subject to all of the following:"

11 (1) is monetary sanctions may not
12 be awarded against a represented party for
13 violation of (2)(b). Not applicable here.

14 (2) is monetary sanctions may not
15 be awarded on the court's initiative unless the
16 court issues its order to show cause before a
17 voluntary dismissal or settlement of the claims
18 made by or against the party that is or the
19 attorneys who are to be sanctioned. Also not
20 applicable here.

21 The importance of the sanctions
22 section is there are two major changes to the
23 law. One is there is a safe harbor provision;
24 and, secondly, although I think its technically a
25 minor change, it also indicates that the court,

1 if it finds that the statute has been met, has
2 great latitude to craft an appropriate sanction
3 to deter repetition of such conduct.

4 THE COURT: Focus if you could, on the
5 conduct, what is the specific conduct that you
6 say needs to be addressed through some form of
7 sanction?

8 MR. LONG: The conduct is essentially
9 beginning and continuing the lawsuit in a manner
10 that's done primarily to harass or to cause
11 unnecessarily delay or needless increase in cost
12 of litigation. In this case I think that a
13 review of the underlying facts is necessary to
14 get a flavor for why this is.

15 In this case there was a \$150
16 charge that was placed on Mr. Davidian's account
17 that Mr. Davidian says was inappropriate that the
18 bank ultimately agreed was inappropriate. The
19 bank reversed the charge. Then there were \$8.95
20 charges that were assessed to Mr. Davidian's
21 account, between five to seven amounts, all those
22 charges were also reversed by the bank. And in
23 both cases as of today, as we sit here, all
24 monies have been returned to Mr. Davidian.

25 Mr. Davidian, in fact, attempted to

1 give back the money to the court -- or rather to
2 the bank, and then when the bank said no, this is
3 your money, he tried to send it to the court, and
4 the court said no, we can't keep that either.
5 It's indicative of the fact that courts of law
6 exist for parties to resolve disputes, not
7 disputes that are moot, not for purposes of
8 gaining access to discovery to see if you can
9 find out whether there are any other violations
10 of journalistic interest to you or to harass.

11 In this case Mr. Davidian has
12 handed out fliers -- he did it in January of this
13 year -- and those fliers stated--

14 THE COURT: I have one of those.

15 MR. LONG: Chase Bank fee lawsuit. Two
16 Milwaukee County lawsuits allege that JP Morgan
17 Chase Bank charges phony fees without
18 authorization and preys on the elderly. The
19 lawsuits name JP Morgan Chase Bank and the local
20 branch manager Jeff Childs, William Harrison,
21 James Dimon, and the downtown local bank branch
22 in a racketeering scheme in violation of state
23 law. If you are a victim of Chase Bank and have
24 been charged fees you do not owe, or if the bank
25 refused to refund fees it has taken without

1 authorization contact me at (414) 964-2113 or by
2 E-mail at geoff@shoreoodvillage.com. Thank you,
3 Geoff Davidian. There is an asterisk and then it
4 says see putnampit.com to have a sub address to a
5 web site that Mr. Davidian presently operates.

6 Mr. Davidian has placed similar
7 statements on his web site. Those statements are
8 important and really are the crux of the (a)
9 component of this motion, which is that the
10 purpose of continuing the lawsuit is to enable
11 Mr. Davidian to hand out fliers that have
12 Mr. Childs' name on it to harass Mr. Childs and
13 are meant to essentially obtain other information
14 about Chase Bank operations.

15 It is important to look at the
16 statements in here. The racketeering scheme,
17 praying on the elderly, and a scheme in violation
18 of state law exist only because Mr. Davidian has
19 filed claims that do not have a good basis in
20 law. We can talk about (2)(b) in a moment, but
21 this is evidence of the fact that Mr. Davidian's
22 continuing the lawsuit is not for a proper
23 purpose which is I have been wronged and I'm
24 entitled to payment of money. This is a civil
25 court system, and when people are wronged they

1 are entitled to sue to obtain the return of their
2 money. Mr. Davidian has already achieved the
3 return of his money, and his objective is
4 something different than that, and that objective
5 is not an appropriate objective under Wisconsin
6 law in our view.

7 Also with respect to (a),
8 Mr. Davidian has made comments indicating that he
9 has continued this lawsuit in order to force
10 Chase Bank to spend money on attorney fees. The
11 initial inquiry from Mr. Davidian to me in this
12 case, after our law firm became involved, was an
13 E-mail which stated "welcome aboard, I hope to
14 make you a lot of money." That was from
15 Mr. Davidian to me, as a lawyer at Quarles &
16 Brady undertaking the representation of Chase
17 Bank. The long letter in this matter goes on to
18 talk about the money that Chase Bank will need to
19 spend, and those are the bases that show that the
20 (2)(a) prong of Section 802.05 has been met.

21 With respect to the (2)(b) prong,
22 that has also been met in this case. Once again,
23 (2)(b) states:

24 "The claims, defenses, or other
25 legal contentions stated in the paper are

1 warranted by existing law or by a nonfrivolous
2 argument for the extension, modification, or
3 reversal of existing law or the establishment of
4 new law."

5 And in this case Mr. Davidian has
6 brought a number of causes of action, any number
7 of which standing alone by itself is sufficient
8 to warrant the granting of this motion. And, in
9 fact, 802.05 and the case law interpreting Rule
10 11 upon which that is based indicate just because
11 there are nonfrivolous portions of a complaint
12 does not mean you have a free pass to include
13 frivolous portions of a complaint, and here
14 Mr. Davidian has brought causes of action based
15 on racketeering, he has brought causes of action
16 based on Wisconsin Statute 100.264 and 100.18.

17 In order to state a claim under
18 RICCO, a plaintiff must allege the conduct of an
19 enterprise through a pattern of racketeering
20 activity. In this case Mr. Davidian is able to
21 allege only that the bank charged him \$150 in
22 fees that it returned thirteen days later. The
23 bank also charged \$8.95 of charges that were also
24 returned later. We contend there isn't a good
25 faith basis for an allegation that a RICCO claim

1 is tenable here.

2 I'm sorry, I'm informed the money
3 fees are \$9.95 not \$8.95.

4 Wisconsin Statute 100.264 is an age
5 discretion statute, and that's the statute that's
6 specifically is referenced in Mr. Davidian's
7 fliers. It says that it will provide for
8 additional information in the event that fines
9 and forfeitures are ordered by appropriate
10 officials, that if an official of the State of
11 Wisconsin finds an organization is involved in
12 some sort of age discrimination or is acting
13 inappropriately, there are civil penalties or
14 civil causes of action that come off of that.
15 There has been no such action by any official and
16 no basis for any 100.264 claim.

17 The 100.18 claim is based on
18 Mr. Davidian's belief that he's entitled to
19 credit card rewards, and because his account, at
20 the beginning -- at the pendency of this lawsuit,
21 was closed, he was not able to achieve savings
22 and points that would accumulate under a credit
23 card rewards program. The bank, by contract, had
24 the right to terminate this contract, it was a
25 contract, essentially, at will, and, accordingly,

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there's no basis under 100.18.

Importantly, there's no basis for personal liability in this case. Mr. Davidian has included costs of the action against Mr. Childs, who's the bank manager, and an individual who Mr. Davidian had had some contact with. It is also brought against two other individuals, William B. Harrison, Junior, and James Dimon, who Mr. Davidian had no contact with whatsoever.

Wisconsin case law in Harmon vs. La Crosse Tribune, 117 Wis.2nd 448 at 455, which is also at 344 N.W.2nd at 536, a 1984 Court of Appeals opinion says: When an individual is acting in good faith for the protection of the interests of their corporation and in course of their official duty, they will sustain liability of the alleged breach of contract. We believe that the individual claims brought by Mr. Davidian lack a good faith basis, and are not warranted by existing law.

Lastly, the remainder of the claims are moot. Mr. Davidian has been paid the money that he has been owed that he contends that was wrongly taken from him. It's a moot claim. You

1 know, there's no basis for damages because the
2 claims have been made moot. All the remaining
3 claims, whether converse or denominated as breach
4 of contract claims, essentially all that money
5 has already been paid back to Mr. Davidian, and,
6 accordingly, there's no basis for a continuation
7 of those claims.

8 It's important to understand in
9 order to meet the burden on this motion the Court
10 need not agree with us on each and every one of
11 those elements. The Court need only agree with
12 us on one in order for us -- the Court to have
13 discretion in order to craft an appropriation
14 sanction. The crafting of an appropriation
15 sanction is an important part of, we believe, the
16 motion, and we're prepared to talk about that,
17 and we will continue on if the Court would like
18 or if the Court would like to defer that
19 discussion until later, I would be happy to do
20 that as well.

21 THE COURT: Thank you.

22 Mr. Davidian, your comments.

23 MR. DAVIDIAN: Thank you, Your Honor.

24 As you recall, the first motion we
25 heard today was to order the case, the

1 settlement. Since I signed that settlement, it's
2 hard to understand the argument that I'm dragging
3 the case on for the wrong reasons. I signed it
4 and agreed to the settlement. At no time-- It's
5 the defendants who have refused to settle the
6 case, even though Mr. Childs signed. So let me
7 just say that bringing the case for the -- trying
8 to drag it out to cost them money is simply not
9 true in light of the fact that I agreed to settle
10 and the bank has refused.

11 Now, is this case brought and
12 continued for the wrong purpose, an improper
13 purpose? The bank took money. They did not
14 try-- I was to the bank time after time to ask
15 for the money back and Mr. Childs refused. He
16 said these are correct fees, I gave them the
17 chance. The only way I got my money back was by
18 suing. In this Country we have a system where a
19 person who has a complaint comes to court and
20 tries to get their money back. I did that.
21 That's the reason why I brought this case.

22 Your Honor, forgive me, I don't
23 have an analytical mind, and I will respond to
24 things in the way that they're on my paper, and I
25 hope that somehow it will make sense to you.

1 The safe harbor provision would
2 allow a party twenty-one days to amend a
3 complaint to take away, if there were,
4 unwarranted claims. We did not have a judge and
5 I had already amended my complaints, and in
6 Wisconsin you may only amend once without the
7 court's leave. There would have been no way,
8 there would have been a violation of the civil
9 proceedings, no way to say, judge, may I amend,
10 so it's unfair to hold it against me if I chose
11 to take advantage of safe harbor because there
12 was no one to ask if I could amend.

13 The defendants want sanctions
14 sufficient to stop future conduct by this party
15 or those similarly situated. Let's see, anybody
16 else who has had their money taken by Chase
17 should be chilled from coming to court because
18 Chase will ask for \$10,000 in sanctions against
19 them. I'm not a lawyer. It's not clear to me
20 the best way and the most effective way to
21 articulate a claim, and there are many of us who
22 are not lawyers, Your Honor, there are a whole
23 bunch of us, but we come to court hoping for a
24 resolution.

25 If the bank wants to only be sued

1 by people who can efficiently and articulately
2 state their cause, they should only take money
3 from lawyers, but the rest of us have to have
4 somewhere to go too. And it's not always clear,
5 and it's not clear to me how \$10,000 will keep me
6 from doing something else that I don't
7 understand. The only thing, Your Honor, that I
8 think that you can do is that -- the Court can do
9 to see that you don't do anything frivolous is to
10 teach me what frivolousness is, and that would be
11 to order me to go to law school. I don't have
12 that knowledge. It's not inherent. I wasn't
13 born with it.

14 The reason these fliers are being
15 handed out is because the damages would depend on
16 how widespread the practice is of taking people's
17 money. If it was just me, then my \$150 might
18 suffice plus interest on the time that it
19 happened, but it depends. In response to my
20 interrogatories and request for documents they
21 have refused to enumerate anything or name other
22 people that they have taken money from
23 improperly. How am I to know who other potential
24 victims are unless I cast my net? What is the
25 best way to do that? I'm going outside the bank,

1 that's the most efficient way to contact bank
2 customers, to go outside of the bank, ask are you
3 a Chase customer, here, let me know if you have
4 been a victim, and I've gotten responses.

5 As a matter of fact, Your Honor--
6 Well, I don't know the proper way to say it, but
7 I have another woman in New York who's willing to
8 testify by telephone today, if you want to do
9 that, and I asked the clerk if she would agree,
10 if she would ask you. Apparently she did not
11 have the opportunity yet to get a response, but
12 there are others who have come forward as a
13 result of my efforts to contact people, and I've
14 seen a wide pattern to this scheme, not just in
15 Wisconsin, but elsewhere. So I think there's a
16 right to discovery if they're not going to give
17 it to me. If they want to stop me from
18 contacting other people, if they don't want to
19 answer my interrogatories or give a deposition,
20 how in the world is someone going to prove their
21 case. It's just unfair.

22 Your Honor, I agree with Mr. Long
23 that the statute -- I don't have the number --
24 that the statute about marketing to the elderly
25 is inappropriate for me to bring. I wasn't-- My

1 point -- and if the Court will allow, I will
2 amend the pleading. The point was to show the
3 dollar value the State places on that violation
4 as a reference point. But I agree with Mr. Long,
5 and I agree that it's inappropriately in this
6 complaint.

7 Mr. Long tenders the defense that
8 all of the money has been returned, that's not
9 true. The debit card -- there's a charge for the
10 debit card. I pay some \$65.00 for a year, I have
11 bought that, I paid for that, for that right to
12 get airline miles based on the amount of money
13 that I spend. When the bank, which had the right
14 to cancel my account because I complained too
15 much when they took my money-- Mr. Childs was
16 distracted because I kept coming back asking for
17 the money, ultimately which the bank agrees was
18 mine, but I should have somehow stopped asking
19 and given up in order to keep the account where
20 they take my money from me? So he closed my
21 account and did not give me back the money that I
22 paid for the year's use for miles, so that has
23 not been given back.

24 And it's my understanding -- and
25 I'm not going by using the statutes -- but I know

1 conversion is not theft, but theft is a form of
2 conversion, and for the bank to take my-- The
3 bank takes my money, and they take my money and
4 then slip it back into my account. What they did
5 is they stole my money and put it back, and I
6 can't accept stolen property. I asked Judge
7 DiMotto whether or not this was stolen property,
8 was the property stolen yes or no. I say it's
9 stolen, and I say they do this across the
10 Country.

11 I have somebody willing to testify
12 today by telephone who has been -- who they took
13 all of her money in fees, even though she has
14 money in the bank, just like with me, and with
15 the same catch word as a "courtesy," as a
16 "courtesy" they will give me back the money they
17 stole. It's a courtesy.

18 So when they say sanction, this is
19 a heavy-handed way to shut down a customer that
20 was wronged by the bank. They don't want to have
21 any liability. I agreed to settle, and they
22 wouldn't, so this isn't a frivolous pleading,
23 Your Honor.

24 THE COURT: All right.

25 Thanks to both side for the

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comments that you had made with respect to the motion filed by the defendants.

This is an 802.05 motion, as both sides have noted. The emphasis is upon (3)(a) for sanctions for the conduct. The defendants assert that the plaintiff has engaged in improper conduct both in filing and initiating his cause of action and dealing here with the amended -- it is amended, verified and substantive, and somehow all of those words merge by bringing that cause of action and then by continuing that cause of action against the defendants. It is asserted that the action is really brought to harass, to cause delay, words used in the motion are disparage, libel, and journalistic interest, that is had by the plaintiff in the lawsuit as opposed to and then seeking justice, a fair or just resolution in a dispute with the parties.

The defendants also assert that the claims brought by the plaintiff are not patented as a matter of law.

Now this is not a summary judgement motion and that law does not apply. It's not a motion to dismiss alleging some vague standard not being met, this is very specific under the

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802.05, particularly (2) and (3).

Now, the defendants indicate in terms of the facts and assert there's not a dispute as to them, that the facts that support their contention that sanctions should be imposed are that the plaintiff complains that he lost \$150 as a result of money taken from his account and then converted by the bank because that money was given back, it was returned. Then there were five times a \$9.95 charge was imposed, and the fact asserted was that those have been returned. The Court also notes there's an offer to settle -- 804.07 -- an offer to settle that was filed in this case as well.

The plaintiff, it was also noted, handed out fliers with data exactly as noted. Those are in the file as well, and a photocopy of that is in the file. It is asserted that the fliers act to harass defendants, in particular Mr. Childs. Also it is asserted that the plaintiff has placed data about this lawsuit upon his web site.

Much of the data that the defendants say have occurred in the context of interacting with the plaintiff, and those

1 interactions generally all went toward
2 settlement, although they weren't productive,
3 there were comments, statements, sometimes
4 hostile, that were made during the course of
5 settlement discussions generally.

6 The RICCO and racketeering and the
7 age discrimination matters are the subject of
8 other motions that are going to be heard this
9 morning, and I will really not go into those, but
10 those are some specific motions with regard to
11 this morning, and I will deal with those latter
12 on.

13 The conclusion, really, that the
14 defendants reach is that since payments have been
15 made of \$150 and \$9.95 five times that the
16 subject matter of the dispute is moot. The
17 plaintiff counters both in his statements here in
18 court today and in his written response that in a
19 large claim civil matter he seeks not roughly
20 \$200, \$150 plus \$9.95 five times, but he seeks
21 over \$90,000 as he breaks down his damages. He
22 also notes that the fliers, while stating the
23 facts as he sees them from his point of view --
24 and it may be unpleasant -- are not untrue.

25 How a person getting a flier may

1 view that information is not known and the Court
2 will not speculate, but the data in the fliers
3 themselves -- I just can't find a sentence that
4 would say this is an untrue statement. It talks
5 about the nature of the claims brought by the
6 plaintiff, not ultimately wrongdoing or
7 wrongdoing having been established, and certainly
8 a person has a right to basically cast his or her
9 net to try to get other persons who may have been
10 similarly harmed to make contact with them.

11 The plaintiff's comments in
12 welcoming apparently Mr. Long and Ms. Remington,
13 or at least their firm, are really not the type
14 of things that shock the conscience of the Court.
15 It's not the type of thing where one says oh, my
16 heavens, it does shock the conscience. In terms
17 of real world interaction, it would be nicer if
18 one just said welcome and then shook hands
19 without the other comments. I'm going to note
20 that civility is very important and the Wisconsin
21 Supreme Court has a Supreme Court Rule dealing
22 with civility, and the parties in court will be
23 held accountable and will be held to those same
24 high standards in courts in Wisconsin.

25 Ultimately, the objective is to

1 resolve a dispute, and there's nothing wrong with
2 that. And when the Court is resolving a dispute,
3 browbeating, pushing people around, or name
4 calling doesn't help anything in terms of
5 resolution of matters. My experience in over
6 1,000 jury trials is that juries don't like that
7 as well, and the person who engages in that type
8 of activity is dealt with rather directly and
9 harshly by the jury, although your experience may
10 differ.

11 Also, I note that the plaintiff has
12 asserted in response to the defendant's claim as
13 to Mr. Childs at least the conduct of the
14 plaintiff constitutes borderline stalking. The
15 plaintiff asserts no, he's engaged in an activity
16 seeking legitimate discovery.

17 Now, I did note as well that the
18 plaintiff said he will file some motions, and out
19 of the thousands of motions I have heard, but to
20 ask that there be a mental exam, that was
21 apparently an underhanded comment that if a
22 person objected or the impact on a person was
23 that it was like stalking, that he's going to
24 request a mental exam. Anybody can bring any
25 motion in the world they want, but I deal with it

1 as well if it does come up, but essentially the
2 claim is that it was borderline stalking from the
3 defense, and the plaintiff responded that no, it
4 is not, it's an effort to get discovery.

5 The plaintiff alleges that the
6 defendants have engaged not only in causing harm
7 to him, but also to other persons who are
8 similarly situated and he seeks in the context of
9 discovery evidence rather that's relevant,
10 904.01, but that may lead to discovery; that is,
11 relevant to get information about others that
12 have been so harmed so he can present that
13 information to the trier of fact.

14 The plaintiff finally says that
15 100.18, the fraudulent representation issue, is
16 really not appropriate, but we will have motions
17 on that a little later down the line here today,
18 and I assume we will revisit that and see if the
19 same position adheres.

20 Now, in the context of this
21 particular case, the Court concludes that
22 sanctions here are not warranted. The defendants
23 have not established their burden that the
24 plaintiff's claims are brought for an improper
25 reason, for frivolous reasons, or even in bad

1 faith. The best way ultimately to end the
2 conduct issues that defendants talk about is to
3 ultimately resolve the dispute one way or
4 another. But law isn't exact in the handling of
5 cases nice and neat with all 90 degree angles,
6 sometimes things get a little frayed, yet there
7 are still requirements that relate to civility.
8 But I don't find in the context of this case that
9 802.05 sanctions would be appropriate.

10 Again, the burden hasn't been meet,
11 the motion, therefore, for sanctions brought by
12 the defense is denied.

13 MR. DAVIDIAN: Your Honor, may I speak
14 to the Court, may I make a statement?

15 THE COURT: Now, we just dealt a motion
16 in this case, the plaintiff has prevailed. In a
17 theoretical sense unless it is for
18 clarification-- You can be heard if it is for a
19 legitimate reason, absolutely.

20 MR. DAVIDIAN: Your Honor, thank you for
21 finding that sanctions are not appropriate, I
22 will not speak about that.

23 What I will say is with the Court's
24 agreement, I will amend the complaint and remove
25 the offensive -- or I will re-cast it in a way

1 that is more in tune with how I see it now thanks
2 to Mr. Long's instruction.

3 THE COURT: Mr. Long, if Mr. Davidian's
4 comments go to a request to amend his complaint
5 to withdraw the 100.18 averments, what is the
6 defendants' position?

7 MR. LONG: We do not object to any
8 amendment that would withdraw any complaint.

9 THE COURT: Then the request is granted.

10 I time everything, is ten days
11 reasonable or twenty or thirty or sixty or two
12 thousand? In other words, it isn't just a task,
13 but every task will be time lined. So we come
14 back to Mr. Davidian.

15 How much time do you reasonably
16 believe you need to amend your complaint as you
17 indicated you're going to do?

18 MR. DAVIDIAN: My reason cannot approach
19 that question. Whatever deadline. If you give
20 me thirty days, I would have it completed in
21 thirty days. I would have it done in ten days.
22 How good a job I did-- If you gave me thirty
23 days, I would do the best. This is what I
24 believe I would do. I would write one complaint,
25 and that would include both of the cases, and we

1 would have one document without -- this is how --
2 without the claims I see should not be in it.

3 THE COURT: Logic is a wonderful course
4 to take in college. It teaches good discipline,
5 just like the military does. We have started out
6 with an amendment of the first amended complaint,
7 real simply we now have the second amended
8 complaint that would myopically do one thing;
9 withdraw the 100.18 averments. We have now
10 obliquely, without making any motion at all,
11 said--

12 Well, the plaintiff has said that
13 he further is going to amend the complaint to
14 create a single document that would be inclusive
15 of both the large claim and small claims matter,
16 that is A and B. He has said that he would
17 otherwise address amendments consistent with his
18 approach or theories on the case. We're going
19 down a slippery slope, and I have no idea where
20 that's going. We will remain focused.

21 There was a single request made,
22 and we still have many, many, many motions to
23 resolve here this morning and this afternoon or
24 tomorrow. And the one request that was made I
25 granted, and I'm not going to now turn it into

1 all kinds of other amendments, at least not
2 without any requests and where there's just an
3 oblique presentation made and no one in the world
4 has an idea where this will go.

5 MR. DAVIDIAN: Your Honor--

6 THE COURT: No, no.

7 So there's twenty days provided --
8 and the Clerk will note it -- for the plaintiff
9 to file his amended complaint, presumably the
10 second amended complaint, and the other words
11 that were used, dealing with the 100.18 issue
12 only.

13 Now, the third motion we dealt with
14 Mr. Davidian selected, we're now at the fourth
15 motion, and I will go to Mr. Long.

16 Which motion, sir?

17 MR. LONG: Your Honor, we would like to
18 proceed with the motion to join Christine Grant.

19 THE COURT: The motion to what?

20 MR. LONG: Join Christine Grant as a
21 party to the lawsuit.

22 THE COURT: One second.

23 Now, you filed, "you" being the
24 defendants, filed multiple motions. There are
25 actually seven of them in a single document on

1 19, January, the year 2007. The third of those
2 seven motions dealt with a motion for an order
3 joining Ms. Christine Grant, that would be the
4 motion that will now be heard.

5 Mr. Long?

6 MR. LONG: I believe this matter is
7 handled under Statute Section 803.03(1)(a)
8 because Ms. Grant has rights relating to the
9 joint checking account. My resolution of the
10 above matters must include her, and I apologize
11 because I don't have the exact verbiage of
12 803.03(1)(a), but I believe my reasoning is that
13 it's quite specific as to the joining of spouses
14 in that situation.

15 THE COURT: Mr. Long, thank you.

16 Mr. Davidian?

17 MR. DAVIDIAN: Your Honor, I don't want
18 to drag my wife into this, but the law prevails.
19 I have no argument. She's an innocent person
20 being dragged into a lawsuit to sue the defendant
21 by the defendant.

22 THE COURT: Thank you.

23 Now a question to both sides.
24 Going back to the affidavit that was filed in the
25 motion to enforce settlement agreement, not

1 dealing with that motion now, but dwelling on
2 Exhibit H, the affidavit of Edward David. If
3 Ms. Christine Grant is a party, if she opts out
4 by signing a stipulation, will that resolve the
5 matter; A, keeping her out, but ensuring that the
6 defendants don't have any exposure at any time in
7 the future?

8 MR. LONG: It may.

9 THE COURT: All right.

10 Mr. Davidian, your response
11 pending?

12 MR. DAVIDIAN: That would be fine with
13 me, Your Honor, she has already agreed to that,
14 so it's fine with me.

15 THE COURT: Okay, thank you.

16 Ms. Grant is the wife of
17 Mr. Davidian--

18 MR. DAVIDIAN: Yes, sir.

19 THE COURT: I'm stating certain facts,
20 now.

21 In the large claim dispute, the
22 Chase Bank account at issue was a joint checking
23 account. At this time Ms. Grant is not included
24 as a party plaintiff. The law favors a full
25 resolution of disputes and has a desire stated in

1 the law to avoid multiple trials and Rule
2 803.03(1)(a) talks about joinder being
3 discretionary. Discretion being a concept where
4 one states the facts, applies the law, and then
5 evidence is a process of reasoning in reaching a
6 decision. The McCleary case is probably the
7 seminal case in the area of discretion.

8 The rule mandatory in the critical
9 decision of joinder is talked about in Kluth vs.
10 General Casualty Company of Wisconsin, 178
11 Wis.2nd 808, a 1993 decision, Wisconsin Supreme
12 Court.

13 In this case I do find that
14 Ms. Grant is a necessary party to the ultimate
15 resolution of the dispute between the parties.
16 As such, she should be joined as a party
17 plaintiff.

18 To the extent that the parties in
19 the next ten days can reach a stipulation with
20 Ms. Grant and her attorney -- I don't know if it
21 is still Mr. David, assuming it is still
22 Mr. David, or whoever the attorney may be -- one,
23 if they can reach an agreement that satisfies the
24 parties, keeping in mind the goals of the parties
25 of having Ms. Grant not be a party, not having

1 his wife grabbed into this; and, two, granting
2 what the defendants are seeking, resolving this
3 case and resolving all of these matters and
4 having some type of agreement.

5 I don't know if the agreement that
6 the parties reached on 9, January, in the hearing
7 before Judge DiMotto is the approach or some of
8 the words. I'm not indicating at all what the
9 language should be, but if within the next ten
10 days the parties can reach an agreement and
11 reduce it to writing and have it signed by all of
12 the parties, then there would not have to be
13 joinder and then all matters related to Ms. Grant
14 would have been resolved both from the
15 plaintiff's perspective and from the defendant's
16 perspective.

17 But if that agreement is not
18 reached within ten days, then the motion as made
19 is granted and within twenty days from today the
20 amended complaint is to be filed and it would
21 deal with including as a necessary party
22 Ms. Christine Grant in the large claim civil
23 dispute. She is not necessarily a party in the
24 small claims matter because that deals only with
25 the account of Mr. Davidian.

1 MR. DAVIDIAN: May I ask for a
2 clarification, Your Honor.

3 THE COURT: Sir?

4 MR. DAVIDIAN: When you combine the
5 cases, have we done that, have we combined the
6 cases?

7 THE COURT: Yes, that was Motion No. 3
8 we heard about ten minutes ago.

9 MR. DAVIDIAN: Then when I suggested
10 this earlier, it was to-- When I said combine
11 them into one, combine the two cases into one
12 pleading to simplify it by making one document, I
13 guess you don't mean that, you want me to just
14 redo the large claim and there will be two
15 separate pleadings?

16 THE COURT: Sir, I'm not indicating what
17 type of document you need to file other than you
18 need a new document. I will not advise the
19 plaintiff nor the defendant on how to proceed.

20 MR. DAVIDIAN: The other question, Your
21 Honor, is, is it appropriate for the defendants
22 to offer the document to Christine Grant for her
23 acceptance, or it is the responsibility of
24 Christine Grant to have an attorney draw this up?
25 Because it has to--

1 Can you -- will you draw up the
2 document, Mr. Long?

3 MR. LONG: I don't know what's being
4 asked of me?

5 MR. DAVIDIAN: The agreement between the
6 defendant and Christine Grant that would keep her
7 out of the lawsuit is to be reduced to writing,
8 will you reduce it to writing so that it will
9 accommodate your clients so that it will have not
10 have to go back and forth?

11 MR. LONG: To be the helpful in
12 accepting negotiations, I will be happy to do
13 that. I will certainly go on the record as
14 saying we will certainly be willing to consider
15 all options.

16 THE COURT: And the chicken and the egg.
17 The Court doesn't care whether the
18 document is drafted by Ms. Grant, Mr. Davidian,
19 respective counsel, the defendants, or any of
20 them individually or through their respective
21 counsel, but I set a ten-day time line. If it's
22 done to everyone's satisfaction and requirements,
23 fine. If it's not done, it's simply to be the
24 complaint, the summons and complaint to be
25 amended as the motion has suggested.

1 Now I go to Mr. Davidian. We have
2 dealt with two of your motions and two of the
3 defense motions, and now I look to the next
4 motion you would like to consider.

5 MR. DAVIDIAN: Your Honor, I made a
6 motion that Mr. Childs' affidavit not be
7 admitted.

8 THE COURT: On 6, February, 2007, you
9 filed a motion to exclude the affidavit of
10 Mr. Jeff Childs.

11 MR. DAVIDIAN: Your Honor, just about
12 everything in this affidavit is wrong, and I
13 would like to confront Mr. Childs with the
14 statements number by number so that the Court--
15 I have found, Your Honor, looking at appellate
16 opinions, once wrong information is in the
17 record, it finds its way up to the top and the
18 wrong stuff gets picked up. I would like to
19 clarify it now and have Mr. Childs justify the
20 statements that he has made under oath and signed
21 so that the Court will not take into
22 consideration false and misleading statements.

23 THE COURT: Mr. Long?

24 MR. LONG: I don't believe this motion
25 should be granted because I don't believe it is

1 further consideration of any other motion before
2 the Court today, and I don't believe that it
3 serves any purpose. Accordingly, I would oppose
4 the motion.

5 THE COURT: Question, Mr. Davidian. The
6 affidavit of Mr. Childs was presented in a
7 document that the defense submitted, and the
8 document was submitted in support of what
9 contention by the defendants?

10 MR. DAVIDIAN: That I was harassing
11 Mr. Childs as part of the restraining order
12 injunction motion that the defendants have made.

13 THE COURT: Mr. Long, same issue, the
14 affidavit in question was submitted by defendants
15 as submitted data or documents in support of a
16 contention, what was the contention?

17 MR. LONG: The contention was that the
18 Court ought to put limits on any discovery that
19 goes forward. There was a motion at that time
20 that the Court should -- that there should be a
21 protective order and there should be a limit to
22 the scope of any deposition taken in this case as
23 well as documents produced and answers to
24 requests for discovery if that becomes relevant,
25 and that remains pending.

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THE COURT: All right.

With respect to the motion, then, and it is the 6, February, 2007, motion by plaintiff to exclude the affidavit of Mr. Childs, the motion is denied, and the reason for this is very direct. Each party has a right to present its own evidence. Ultimately that evidence can be countered, and the evidence may ultimately turn out to be true or incorrect. At this point I have no idea, but it would be a denial of the parties right to present its own position or own facts on issue if the affidavit itself was struck.

Ultimately all evidence is looked at in terms of credibility and weight. Usually that comes as a party makes certain statements or somehow presents evidence, and then on cross-examination the contentions made on direct are challenged or confronted and through that process ultimately the goal is to determine the truth, and the truth is ascertained as a result of the trier of fact hearing both sides and ultimately determining what statements are true and what statements are not true.

The motion at issue is not the

1 trial on the issue itself. The parties -- both
2 sides have a right to present evidence in support
3 of various contentions made, and in this case a
4 contention was brought by the defense to not have
5 to submit -- the person who submitted the
6 affidavit in this case, Mr. Childs, to
7 examination or cross-examination in a hearing on
8 a motion -- and that would make no sense at all
9 -- because that would act to intimidate.

10 Now, there's a right in discovery
11 to ask questions and there's a right to have
12 other persons come in with different data if
13 other persons have different data so the trier of
14 fact can ultimately determine what the issues of
15 fact are. In the context of this matter, the
16 motion made to exclude the affidavit of Mr. Jeff
17 Childs regarding the contentions of the
18 defendants is denied.

19 Mr. Long?

20 MR. LONG: Your Honor, I would like to
21 move to the summary judgment motions which were
22 filed on January 19th, 2007.

23 THE COURT: That's a part of your seven
24 motions?

25 MR. LONG: That's correct, Your Honor.

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THE COURT: Your fourth motion was for summary judgment on the three individual defendants?

MR. LONG: Correct.

THE COURT: Your fifth motion was partial summary judgment as to claims brought under 100.264 and 100.18.

Your sixth motion was for partial summary judgment in favor of Chase to dismiss claims under 946.85 and related relief under 946.87, and your seventh motion was the summary judgment motion you sought granted in favor of Chase alleging no damages exist as a matter of law.

So it would be four, five, six, and seven, those are the four motions you brought on 19, January, that dealt with summary judgment. Do you want to deal with those four seriatim, or do you want to focus on one?

MR. LONG: I will deal with whatever you wish.

THE COURT: I'm well prepared to deal with all four.

MR. LONG: I don't have a preference. I would like to deal with--

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Let me deal with all of them, and we will see if the Court has other inquiries as to one or the other, and we can certainly address them.

With respect to the dismissal, dismissal and summary judgment, the dismissal of all of the claims against the defendants as indicated previously to the Court, Wisconsin case law holds that individual defendants that are acting in good faith in furtherance of their job duties are not -- will sustain no liability for an alleged breach of contract, Harmon vs. La Crosse at 117 Wis.2nd at 448, it's at 445.

All the actions here by Mr. Childs were taken during regular business hours, taken during the performance of duties as a branch manager for Chase Bank. Any, you know, breach of contract that occurred with respect to Mr. Davidian's account was not done by Mr. Childs in his personal capacity in any way, or even done by Mr. Childs, and was likely some administrative accounting issue. Mr. Childs was the person who at various times had to deal with Mr. Davidian and was the person who had contact with Mr. Davidian, but with respect to the alleged

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transgressions, Mr. Childs played no role.

And even more divorced from the facts in this case are Mr. Harrison and Mr. Dimon, who had no role whatsoever in either the accounts of Mr. Davidian or any activity with respect to those accounts, and for all of those reasons those individual defendants should be dismissed.

With respect to what should be defense Motion No. 4 in our brief -- that was our Motion No. 4 -- our next motion would be Motion No. 5, which is the claim which was agreed to be dismissed by Mr. Davidian, Section 100.264, the age discretion statute, and for the reasons stated earlier on the record, that's the statute, there are just the fines or the forfeitures and the basis for a claim under that statute by Mr. Davidian, and, accordingly, that claim ought to be dismissed.

And with respect to the racketeering claim, the claim brought under Wisconsin Statutes 946.83 and 946.85, in this situation Mr. Davidian needs to establish there is conduct of enterprise through a pattern of racketeering activity, and we cited the City of

1 Milwaukee vs. Universal Mortgage case, which is
2 at 692 F.Supp. 992, 998. In either case the
3 burden on the pleading party is a heavy one to
4 demonstrate that there's a pattern of activity
5 going on, and that pleading, that just hasn't
6 been met, either in the pleadings or in proof
7 that has been provided by Mr. Davidian.

8 And lastly and importantly, the
9 damages in this case. There are two
10 inter-related arguments. One is the case is moot
11 because there are no damages, and to the extent
12 that Mr. Davidian alleges that he's entitled to
13 interest of some sort on the eleven days that the
14 \$150 wasn't in his account that should have been
15 in his account, all of those facts are
16 undisputed. The facts as to what happened to
17 that money is not in dispute. Accordingly,
18 summary judgment ought to be granted, and we
19 believe those are not appropriate damages
20 allowable to Mr. Davidian.

21 THE COURT: Okay, thank you.

22 Mr. Davidian?

23 MR. DAVIDIAN: Thank you, Your Honor.

24 Did Mr. Childs act in his personal
25 capacity? I have Mr. Thurman-- Your Honor, this

1 is not a documented case, it's a document.
2 Mr. Thurman, who's the regional manager of Chase,
3 told me when we were in the court commission --
4 before the court commissioner that he told
5 Mr. Childs to refund -- to put the money back in
6 my account. Mr. Childs decided not to, that was
7 a personal act. Mr. Childs acted personally and
8 not in his official capacity when he made that
9 decision to keep my money.

10 The defense says that Mr. Dimon and
11 Mr. Harrison had no role. How do we know that
12 without discovery, and the defense has stopped
13 all discovery. They will not give Mr. Dimon to
14 testify. They will not let Mr. -- they have yet
15 let Mr. Childs testify, and in the absence of any
16 testimony they're arguing there's no evidence.
17 Well, Your Honor, on December the 6th -- excuse
18 me -- on October the 1st, 2003, the Justice
19 Department -- or the Security and Exchange
20 Commission named Chase Bank as the enabler of
21 ENRON by loaning ENRON money illegally or falsely
22 stating the nature of the transfer of money Chase
23 Bank allowed ENRON to bilk thousands of people
24 out of millions of dollars. That was--

25 And City Bank was the second bank,

1 and Mr. Harrison and Mr. Dimon were part of that
2 SCC sanction. That was one of the racketeering
3 aspects. That would be one of the predicate
4 acts, the loans that City Bank and JP Morgan made
5 to ENRON. Although it was civilly through the
6 payment of fines doesn't mean it wasn't criminal.

7 Your Honor, I'm going to offer -- I
8 think you call it an offer of proof -- that the
9 discovery will show it was criminal activity, but
10 that they were able buy themselves out with
11 money, just like they first agreed to a buyout of
12 it with this one. Your Honor, the Senate, the
13 Attorney General of New York recently had
14 hearings about the student loan scam where banks
15 would pay college counselors to direct students
16 to them, to the banks.

17 Chase says that it's no longer
18 going to do that, but it was involved in that.
19 That's a criminal act, or might be through
20 further discovery. We don't know what the
21 records are that the defendants have on that. I
22 will get them through discovery, but until then,
23 the records of JP Morgan Chase and its officers
24 being involved with ENRON, being involved with
25 the student loans, with credit card fees that are

1 under investigation by Congress, all of these are
2 civil, and nobody gets to who did what. I want
3 to get to that in this case, and at some point
4 someone gets to challenge them. This is not the
5 playground for the rich, this is my money that
6 they took, and I'm one of thousands that they
7 have done this to. So for once Mr. Dimon and
8 Mr. Harrison need to answer for what they do, and
9 I would have them do it here.

10 THE COURT: All right, thank you.

11 There are four summary judgement
12 motions before us. The first one I will deal
13 with I will call No. 4, it is the fourth of the
14 seven motions brought on the 19th of January,
15 '07, by the defendants.

16 Mr. Childs is alleged to be the
17 manager of the defendant bank of where the
18 alleged wrongdoing occurred. Mr. Dimon is the
19 Chairman of the Board and the CEO of defendant
20 Chase. Mr. Harrison is a former Chairman of the
21 Board and CEO of defendant Chase. It's alleged
22 that the only "contact" that Mr. Davidian has had
23 with Mr. Dimon and Mr. Harrison was on documents
24 allegedly send in April of 2004 with respect to
25 the merger of Bank One into Chase.

1 Regarding general statements on
2 summary judgment, I'm going to Kara B. vs. Dane
3 County, 198 Wis.2nd 24, Page 25, Court of
4 Appeals, 1995. "Summary judgment is appropriate
5 in cases where there is no genuine issue of
6 material fact and moving party has established
7 his or her entitlement to judgment as a matter of
8 law."

9 The Court believes Counsel has a
10 genuine issue of material fact. I also note,
11 since we're in Milwaukee County, comments made in
12 December, 1983, by Judge Marvin C. Holz, a very
13 experienced trial judge here in Milwaukee, in
14 *Milwaukee Lawyer Magazine* in an article he wrote
15 entitled "The Art of Effective Presentation of a
16 Motion for Summary Judgment." And the quote I
17 will read from has been oft repeated in the
18 Wisconsin Supreme Court.

19 "The hearing in deciding motions of
20 for summary judgment probably constitutes the
21 most unproductive work of a trial judge. They
22 are time consuming and few are granted."

23 It is noted the Wisconsin Supreme
24 Court has expressed concern about the possible
25 overuse of such motions and the volume of appeals

1 they generate in the civil area. They're the
2 most significant things dealt with, at least at
3 the Court of Appeals level, before we certiorari
4 to the Supreme Court.

5 Now, in this case the plaintiff
6 alleges that Chase provided him with false
7 advertising. He was told he would receive a 5
8 percent discount on Continental Airline tickets,
9 and then by closing his account he was denied
10 this advertized benefit he states. Chase states
11 that it has an absolute right as a defendant to
12 close the joint account at issue. It certainly
13 has a right, but when "absolutely" is used it
14 always raises flags. You couldn't terminate
15 everyone of Irish descent, that would be
16 discriminatory, but you have a right. But you
17 can't exercise a right to implement something for
18 unlawful purposes, that's pretty consistent with
19 the law.

20 Now, as to Mr. Dimon and
21 Mr. Harrison, I find no genuine issue of material
22 fact that's presented in the pleadings as to
23 these two persons. At this point we don't even
24 have service upon them, as I understand the
25 record.

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MR. DAVIDIAN: Your Honor, I have returned the signed proof of service to the court.

THE COURT: I missed that, there are thousands of sheets of paper, but I will accept that service has been made.

MR. LONG: It was not personal service, but it was service.

THE COURT: Certainly.

But persons who are officers or directors of the corporation in another state where the corporation does business in this state are not necessarily parties, and the plaintiff is not denied his right to obtain justice by being limited to the corporation as opposed to Messrs. Dimon and Harrison to the extent here that Messrs. Dimon or Harrison have critical information that could be provided in discovery. If the parties subpoenas them or the discovery comes in and they are to present evidence, they will have to come in and present evidence.

But when we're talking about the right of the plaintiff -- if he's successful -- to obtain the relief that he's entitled to, that's not dependent upon having here one of the

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persons as the named parties.

As to Mr. Dimon and Mr. Harrison,
the motion is granted.

As to Mr. Childs the motion is
denied. There's a genuine issue of material
fact. What the extent and nature of his contacts
that were directly with Mr. Davidian, those
contacts are at issue. Did he, in his actions,
exceed the scope of his duties as the manager of
this particular branch or did he not? I have no
idea, but there are issues made by the plaintiff
that the contact by Mr. Childs with him was
personal and involved malice.

The motion as to Mr. Childs is
denied.

Now, dealing with the 100.18 and
100.264 claims, as to 100.18, the plaintiff,
again, I'm going to ask am I correct you're
stipulating that that matter is going to be
culled out from this cause of action?

MR. DAVIDIAN: I so stipulate, Your
Honor.

THE COURT: And that's a matter for
which an amended complaint, a second amended
complaint is going to be filed within twenty

1 days, so really what I'm myopically focusing on
2 is 100.264, the age discrimination issue, and the
3 first amended complaint allegation in Paragraph 1
4 that the plaintiff is sixty-two years of age.
5 Statute 100.264 kicks in for persons who are
6 elderly, and that goes to that section, and his
7 cause of action -- "his" being the plaintiff's --
8 is 8 and 9, focusing in part on this issue.

9 I note 264 also provides added
10 penalties if fines or forfeitures are added, and
11 it may turn out, as counsel for the defendants
12 have argued, that there are no fines or
13 forfeitures here; that means fines or forfeitures
14 from the court or some other deliberative body,
15 or they may be the losses that are referred to by
16 the plaintiff. We will know that certainly at
17 the end of the trial. And since it relates to
18 damages, the motion which is made for partial
19 summary judgment on that issue is denied.

20 There are genuine issues of
21 material fact to be resolved, either at the trial
22 it will be granted or it won't. But at this
23 point it would be error to grant it.

24 The next motion for summary
25 judgment is the sixth one, and it focused on

1 RICCO and the racketeering claim. The law on
2 summary judgment is the same as has already been
3 stated. As to racketeering, it must allege there
4 was conduct of an enterprise that involved a
5 pattern of racketeering activity. In City of
6 Milwaukee vs. Universal Mortgage, in that
7 particular case, the pleadings, as the defense
8 argues, do not allege conduct of an enterprise,
9 nor do they allege a pattern of racketeering
10 activity.

11 Probably some of the most difficult
12 pleadings that I have experienced in my career
13 are pleadings where an attempt is made to invoke
14 the Wisconsin Organized Crime Act. They are
15 very, very specific, and I find in this case,
16 given the pleadings and the averments made and
17 taking the facts or viewing the facts in the
18 light most favorable to the plaintiff that there
19 is not a genuine issue of material fact, and,
20 therefore, the motion is granted as to partial
21 summary judgement as to 946.75 and related
22 claims.

23 The last of the motions for summary
24 judgement seeks full summary judgement for Chase
25 on the issue of damages, and the same law

1 applies. The parties obviously see damages
2 differently, but there's a genuine issue of
3 material fact. The plaintiff's assertion is that
4 damages are in excess of \$90,000. It would be
5 error to say no, they're only \$150 and basically
6 \$49.75, dealing with five payments of \$9.95.

7 The plaintiff alleges that it was
8 fraud and inducement, and he received a loss of
9 his flight discount of 5 percent. At that time
10 he points out that his wife was unemployed and
11 had no health insurance and this provided some
12 stress during this period of time on his family,
13 and he asserts that there were emotional damages
14 because of the conduct of the defendant bank and
15 Mr. Childs and he experienced great worry that
16 the automatic check payments that were to be paid
17 to his creditors would not be paid and that that
18 would impact his credit status.

19 Genuine issues of material fact do
20 exist as to damages, and, therefore, the motion
21 that -- the motion that was made for summary
22 judgement is denied.

23 All right, Mr. Davidian?

24 MR. DAVIDIAN: Your Honor, in my amended
25 -- my second amended pleading, is it appropriate

1 for me to leave Mr. Dimon and Mr. Harrison as
2 parties and to just make the changes as the Court
3 has ruled today?

4 THE COURT: Mr. Long?

5 MR. LONG: I believe-- I'm not certain
6 -- but to be candid -- that an amended reading,
7 other than the adding of Ms. Grant, is needed. I
8 believe that an order expressing the rulings of
9 the Court today by its existence eliminates
10 Mr. Dimon and Mr. Harrison and eliminates the
11 claims the Court dismissed, and I question
12 whether this might be better handled simply by an
13 order.

14 THE COURT: You may prepare your second
15 amended summons and complaint as you choose.

16 MR. DAVIDIAN: Thank you, Your Honor.

17 THE COURT: The last four motions were
18 from Mr. Long, the defense.

19 And, Mr. Davidian, which one do you
20 want next from your motions?

21 MR. DAVIDIAN: Discovery, Your Honor,
22 and I don't know what number it is, the
23 defendants ask that there be a stay or a ruling
24 on whether a stay on discovery remains, and, Your
25 Honor, I think that's a new one.

1 MR. LONG: Your Honor, referring to the
2 motions, you have sort of a protective order on
3 discovery.

4 MR. DAVIDIAN: June the 15th, Your
5 Honor.

6 THE COURT: There are three motions not
7 yet resolved brought by the defendants that touch
8 on discovery. One is a 30, August, 2006, motion
9 for protective order to quash the subpoenas for
10 Mr. Childs and Mr. Thurman. Next is a 23,
11 January, 2007, motion for a temporary injunction
12 and for a protective order restricting discovery.
13 The third is a 15, June, 2007, motion for oral
14 arguments on the sanction motion, or in the
15 alternative, a motion to confirm the stay on
16 discovery.

17 So when Mr. Davidian says he wants
18 to address the discovery motion, I don't know
19 which one of the three Mr. Davidian is referring
20 to.

21 MR. DAVIDIAN: Your Honor, I don't
22 either. I'm not an attorney and I'm not as
23 organized as I should be, but I think all those
24 hit what the attorneys set out, what discovery we
25 can have, and what is appropriate discovery.

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May I be the first to speak, or
does the movant?

THE COURT: What I think you're telling
the Court is you want to address defendants'
motions?

MR. DAVIDIAN: Yes.

THE COURT: If we take that approach and
I follow what each side has said, the first
opportunity to speak is by the proponent of the
motion. Which of the three or all three do you
want the defendant to address?

MR. DAVIDIAN: I think we should do all
of them and get it over with.

THE COURT: And the request then as to
Mr. Long, the preference as to the three, or as
Mr. Davidian asked, or all three at the same
time?

MR. LONG: I believe all three at the
same time, because I think the third is now
irrelevant.

THE COURT: And, Mr. Long, on your -- on
the defendants' discovery motions?

MR. LONG: Your Honor, the second of the
three motions deals with, I think, the motion to
squash subpoenas that ask Mr. Childs and

1 Mr. Thurman for certain materials that appeared
2 before, candidly, I was involved with the case,
3 so I'm not familiar with that motion, but with
4 the January motion we asked for the motion
5 under--

6 THE COURT: The motion of January 23?

7 MR. LONG: For the motion of January
8 23rd, 2007, pursuant to Wisconsin State Statute
9 804.01(3) and the Court's inherent powers for an
10 order prohibiting inquiry in the upcoming
11 deposition of Jeff Childs, or any other future
12 written or deposition discovery in the following
13 areas;

14 Personal life of Jeff Childs or any
15 potential witness, including information
16 regarding home address, family members, and
17 others;

18 The professional background of Jeff
19 Childs, including present or former jobs;

20 Relationships with JP Morgan Chase
21 and respective bank colleagues;

22 Positive and negative feedback
23 received at Chase;

24 Feedback with any other bank
25 customers, including but not limited to any

1 positive or negative feedback received by JP
2 Morgan Chase from any other bank customers;

3 Any aspect of operations of JP
4 Morgan Chase not dealing with the accounts of
5 Mr. Davidian or Ms. Grant;

6 Information, contact information
7 with respect to Mr. Dimon or Mr. Harrison;

8 We also asked under (3) of that
9 motion for an order requiring questioners --
10 allowing witnesses to conclude their answers
11 without interrupting them, prohibiting the
12 webcasting of the deposition either during or
13 after the deposition, requiring the use of a
14 certified court reporter and videographer,
15 requiring that forty-eight hour notice of the
16 names and affiliates of the court reporter and
17 the videographer and location of the deposition
18 be provided by all parties.

19 And the last motion is that we ask
20 the deposition location be at the Milwaukee Bar
21 Association, or a neutral location agreed to by
22 all counsel.

23 I believe that all of those motions
24 are appropriate because there needs to be a
25 balance here. In the case of Vincent & Vincent

1 vs. Spacek, 102 Wis.2d 266, 306 N.W.2nd 85, the
2 Court of Appeals held that the magnitude of the
3 amount at issue bears on the appropriate scope of
4 discovery.

5 Now, the Court had made comments
6 that Mr. Davidian is alleging this is a \$90,000
7 case, that there is \$90,000 in damages. What's
8 important to understand about that allegation is
9 that's not subtracting the amounts that
10 Mr. Davidian has the knowledge that he's
11 withdrawn. He has withdrawn the age discretion
12 claims, he's withdrawn-- He has no basis for
13 those age discrimination claims for which he
14 gives the \$10,000 amount, that gives us a \$10,000
15 credit, so that gets you-- You no longer have a
16 \$91,000 claim at that point, you have a claim
17 that's worth, perhaps, the interest on perhaps
18 \$150. Perhaps the interest on the rolling
19 average of \$9.95 over five months, and I think
20 that's it.

21 And I believe under the Vincent
22 case it's appropriate for the Court to not allow
23 this to become a case that's -- that involves
24 matters that don't have anything to do with the
25 allegations in this case. Mr. Davidian has

1 alleged things about ENRON, he has alleged things
2 about other investigations. JP Morgan Chase Bank
3 is a large organization. They have operations
4 all over the world. They have over one million
5 customers. There are -- there are disputes all
6 over the world, and none of that's relevant or
7 reasonably calculated to lead to admissible
8 evidence in this case.

9 Additionally, JP Morgan Chase Bank
10 with respect to it's customers is subject to lots
11 of administrative regulations with respect to
12 privacy, and I think that it would be unwise to
13 allow discovery that would get us into a hornet's
14 nest of disclosing or being asked to disclose or
15 even considering disclosing information
16 respecting other customer's relationship's
17 because I don't think the bank is in a position
18 to respond to those inquiries.

19 And for all of those reasons, I
20 think the Court needs to direct the parties to
21 what kinds of inquiries the Court believes are
22 appropriate and what types of inquiries the Court
23 believes are appropriate. And I think if the
24 parties believe they should get into other areas,
25 they can come back and ask. We believe that that

1 motion should be granted under 804.01(3).

2 THE COURT: Thank you.

3 Mr. Davidian?

4 MR. DAVIDIAN: Well, Your Honor, I'd
5 like to have the same rights of discovery as
6 anybody else who brings a case in court. I
7 understand that Chase Bank has one million
8 customers, and I bet you -- I don't mean I bet
9 you -- I have looked at the current records, I
10 have feedback from my fliers, and there are many
11 of those one million customers that are getting
12 fees taken from them. I understand that the
13 defendants do not want to be scrutinized, but
14 they shouldn't have taken my money.

15 Now that we're in here, we want to
16 know how widespread it is. I think damages
17 should be based on whether, for example,
18 Mr. Childs has done this to other people. Maybe
19 they know that Mr. Childs has done this and it's
20 in his personnel record and they kept him there
21 any way. Maybe the bank is a nuisance and it
22 should not be here anymore. I would like to get
23 to those issues, and I think they're legitimate
24 issues.

25 I should have been protected, the

1 laws didn't protect me, Mr. Childs didn't protect
2 me, the bank didn't protect me. Now I'm not
3 supposed to go and see how widespread or how
4 often they do this? So I would like to say I
5 would like to have full access to discovery of
6 anything that is likely to lead to something that
7 is admissible like anybody else in any other
8 lawsuit, Your Honor.

9 THE COURT: All right, thank you both.

10 There are three motions that are
11 before us dealing with discovery issues brought
12 by the defense. The first is 30, August, of
13 2006. It was the first motion actually brought
14 by the defense, and it was for a protective order
15 to quash subpoenas for Mr. Childs or for
16 Mr. Thurman, and this may be moot because they
17 never occurred, but the assertion is that the
18 depositions were an annoyance, embarrassment,
19 oppression, undue burden, or expense.

20 And there's also a claim at this
21 time for improper service, which has been
22 remediated. After the motion was filed, before
23 any deposition occurred, the first amended
24 complaint was filed. Mr. Childs then became
25 party, and then there was a new notice of

1 deposition served on Mr. Childs on the 29th of
2 November, 2006, and it was roughly two months
3 later when the motion for a temporary injunction
4 and protective order respecting discovery was
5 filed. The motion that was filed on 23, January,
6 again, was for temporary injunction and
7 protective order. We're dealing only with the
8 discovery aspect.

9 Certainly there's an authority for
10 good cause under 804.01(3)(a), alpha, to make an
11 order which justice requires to protect a party
12 or person from annoyance, embarrassment,
13 oppression, or undue burden or expense. That
14 statute, 804.01, has been affirmed in the case
15 law and is found at State vs. Beloit Concrete
16 Stone Company, 103 Wis.2d 506, at Page 511, Court
17 of Appeals, 1981. And the remedy that's possible
18 under three, alpha, is to authorize the court to
19 make an order which justice requires. When we go
20 to the general concept of discovery itself,
21 Wisconsin falls into those states that have very,
22 very broad discovery. 804.01(2) alpha indicates
23 that it's not just an ability to get discovery or
24 evidence or data that would be relevant under
25 904.01, but also to get discovery with respect to

1 information that may reasonably lead to the
2 discovery of other admissible evidence. Again, a
3 very, very broad standard.

4 And the reasons that are usually
5 offered in the case law and in support of
6 Wisconsin's broad discovery standard, first, it
7 assists the party in gathering information, and
8 through that information the parties are able to
9 settle many disputes. If a dispute is not
10 settled, that broad discovery allows both sides
11 to have an abundance of data so that they can
12 effectively and efficiently present their case at
13 trial. So both reasons are supportive of the
14 broad mandate that the Legislature has in
15 Wisconsin in the statutes in open discovery in
16 Wisconsin.

17 Now, at issue are ten specific
18 motions. One worry that I'm having is that it's
19 not going to stop with just these ten, it's going
20 to continue with 40 or 400 or 4,000. I have no
21 idea where we're going.

22 For instance, the one that says no
23 interrupting of witnesses before an answer is
24 concluded. Usually that occurs during trials or
25 depositions where one counsel will say to the

1 other party, if you would please give the witness
2 an opportunity to answer his/her question. Very
3 normal, usual, and then one side or the other
4 side usually does that and the matter is often
5 done with. I have no idea where that was culled
6 from. All of the potential issues that could be
7 addressed.

8 There's no obligation that either
9 party has counsel. Mr. Davidian is appearing pro
10 se, and he has an absolute right to appear pro
11 se, and he has an absolute obligation to follow
12 the rules of law as they exist.

13 So I will deal with all ten, but
14 I'm noting, at least in forbearance, there's an
15 infinite number of objections that can be made in
16 depositions and at trial, and they will all be
17 dealt with. We're only dealing with ten here,
18 and the first one is to limit discovery questions
19 respecting the personal life of Mr. Childs.

20 That motion is denied, but only in
21 terms of degree. The jury is entitled to know,
22 because if Mr. Davidian calls Mr. Childs, he will
23 ask them. And if not, Mr. Long calls Mr. Childs.
24 If he does so, he will get the information out so
25 he can know who the human being is, Mr. Childs,

1 to know information. Not his personal address,
2 but where he works, how long he's worked there,
3 where he went to school, those all are called
4 foundation questions. Usually they take but a
5 few moments, but to deny a party an ability to
6 even get that basic foundation information in, I
7 think, would be improper.

8 Again, I have never seen a case
9 where at least limited foundation was not allowed
10 as to any witness who has testified. That
11 doesn't go into how many children, it doesn't go
12 into the name and birth dates. It's children,
13 how many times he was married. It's an honor
14 thing, but the way it's requested, the personal
15 life of Mr. Childs, no. There may well be
16 specific objections that may line up, but I will
17 deal with them when they're brought up. But the
18 error would be granting the motion as it's
19 stated, so the motion is denied.

20 Next, the professional background
21 of Mr. Childs. The motion is denied in terms of
22 the protective order here. The background of
23 Mr. Childs, both with his employer and
24 academically and with other employers, may well
25 impact on decisions Mr. Childs made or actions he

1 should take, and those may become a 907.02 issue
2 in terms of expertise, in terms of background
3 information under 907.01, and lay decisions he
4 made with respect to conduct that he engaged in,
5 so the motion is denied as stated.

6 Number three, other bank customers.
7 Clearly the plaintiff does not have a right to,
8 if-- I have no idea. A million is a big number.
9 If there's a million customers, there's not a
10 right to get the names, a million names, but if
11 other customers were similarly situated and had
12 the very same objection at the same branch, those
13 customers may well be relevant to the theory of
14 the `plaintiff, that this impacted the plaintiff,
15 that this is part of an ongoing practice by the
16 bank.

17 On the other hand if there were no
18 other customers who were similarly situated, it
19 can just be stated but phrased "as other
20 customers" but with the caveat that the plaintiff
21 has the right under discovery to get information
22 regarding customers. But taking into account the
23 special duties of Chase toward its customers if
24 it's not proper and it doesn't lead to relevant
25 evidence or evidence relative to lead to the

1 production of material evidence.

2 Number four, aspects of the bank
3 not dealing with Mr. Davidian. I'm not really
4 able to determine what that means. It will have
5 to be resolved on a question by question basis.
6 Certainly the focus here is the alleged wrong the
7 plaintiff claims was done to him. There are both
8 questions that would be relevant to the bank's
9 rules and there would be questions that would be
10 irrelevant if they were remote. So as phrased
11 the motion is denied. But, if any objections are
12 made, they will be dealt with seriatim.

13 Contact information as to
14 Mr. Dimon and Mr. Harrison. If-- Part of this
15 is I don't know if they're people -- assuming
16 that they're people that the plaintiff wants to
17 examine to the extent that they were involved --
18 there would be a right to obtain that
19 information. That doesn't mean that jurisdiction
20 will attach to their person or that they're
21 available. But if information exists as to
22 contact, that should be available to the
23 plaintiff as well. So that motion as made is
24 denied.

25 Number six is the plaintiff should

1 not interrupt a witness before answers are
2 concluded. Certainly that's the rule, courtesy
3 even for a witness you disagree with. Courtesy
4 should be observed, and the witness should be
5 allowed to fully answer. If there is an issue,
6 whatever that issue is, you can deal with that.
7 Certainly, common courtesy should be afforded.
8 Just as the witness shouldn't answer until the
9 question is fully asked, the questioner shouldn't
10 interrupt until the answer is fully given.

11 Usually there's a little give and
12 take inside a minute or two, a little give and
13 take. If this issue does come up -- and at this
14 point it hasn't. This isn't in terms of motions,
15 it's not a law school class where we're telling
16 either side-- I won't presume either side -- to
17 tell either side how to do the work they do, they
18 will make the their own decisions, so this motion
19 is denied.

20 Number seven, webcasting of the
21 deposition during or after. No reason has been
22 given as to the harm that would occur, so the
23 motion is denied. The Court can't speculate as
24 to the harm that will occur. In addition,
25 there's First Amendment issues. The motion as

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made in court, as it is made, indicates that the motion should be denied.

Use of a court reporter, of course, and I don't know if it will be a discovery deposition, A, or a testamentary deposition, so the parties will determine whether a videographer will be present. A personal choice, either side can make it, but I will not order either side to use one unless they choose to. In many case as the screen is shown the jury hears the witness and sees the witness on the screen. In other cases somebody sits in a witness chair and somebody is at counsel table and will be reading off the questions and answers back and forth and the jury gets the information that way. The Court can't take over how the parties present their case. It's up to the parties to decide and do it as you choose. So as that motion is made, it is denied as to the videographer.

But if there is a deposition, there certainly has to be a court reporter to create a record, and the party usually scheduling the deposition would arrange for the court reporter, that's up to the parties.

Number nine is defendants seek

1 forty-eight hours advance notice of who the court
2 reporter is. If a videographer is used, who the
3 videographer is, and the location of the
4 deposition. Those are all very reasonable. In
5 terms of working together, hopefully it would be
6 more than forty-eight hours, but that's
7 reasonable, and they should get that. So if it
8 can be helped, whenever you know the address.
9 Usually, you tend to know who the court reporter
10 is when you get there, but if you want to know in
11 advance, that's fine, that's reasonable, that's
12 nothing unusual. Whether or nor there will be a
13 videographer who's going to be present and if
14 one's going to used, that should be shared as
15 well to try and leave any communication avenues
16 open between the parties, that request is
17 granted.

18 Number ten, the location of the
19 depositions, that request is denied. The party
20 who's scheduling the witness for deposition will
21 select where it is be held. It's usually
22 somewhere near the community were the dispute
23 occurs. I don't know who all of the witnesses
24 are here or if you will go out of state or what,
25 but there's nothing wrong with the Milwaukee Bar

1 Association Offices. I don't know what's
2 neutral, each side is subjected to a neutral
3 location, but it's the party scheduling the
4 deposition who will schedule where it will be
5 done. It's subject to whatever scheduling to
6 give the other side notice so they can be present
7 timely, and it should be in a facility that
8 allows the court reporter to do her or his
9 business, and do it well, also the videographer
10 to do his or her business, the parties to have
11 enough room so they can ask questions and have
12 enough room so each side is not looking at the
13 other person's handwriting.

14 Having said that, the possibilities
15 are virtually endless. So it's these ten.

16 I have dealt with the discovery
17 motions, again noting that discovery is a broad
18 right in Wisconsin, looking to broad evidence,
19 and evidence that may lead to material evidence.

20 That's the motions filed on 23,
21 January, that relate to the protective order and
22 with respect to discovery.

23 The earlier 6, September -- no --
24 5, September -- 30, August, motion for protective
25 order and to quash the subpoena for Mr. Childs

1 and Mr. Thurman, that's really rendered moot
2 since the second subpoena went out for Mr. Childs
3 and Mr. Thurman is to be subpoenaed, and he,
4 again, would have to have another subpoena
5 served, so that matter remains moot.

6 And the third of the discovery
7 issues is the 15, June, 2007, request to confirm
8 the stay of discovery as ordered by Chief Judge
9 Brennan on 20 -- sometime in February, 2007, when
10 the case was sent to the Director of State Court
11 for assignment. I think there also was-- The
12 parties had a brief talk about Judge DiMotto
13 entering an oral stay on discovery, and the law
14 is once the matter is filed and the issue is
15 joined, the parties have discovery rights, so
16 there should not be a stay. So to the extent
17 there's a right, now a stay, that stay is lifted.

18 The parties-- The plaintiffs have
19 the same rights everybody else would. The
20 parties in a civil action have the right to
21 utilize discovery rights in Wisconsin, and,
22 again, the parties have the obligation and the
23 right to do so. The Court does not mean to in
24 any way teach or advise parties about discovery
25 rights. And the stay issued by Judge Pekowsky--

1 So whatever-- Now, I have gone through-- There
2 are so many pages --

3 So whether it was that Judge
4 DiMotto, Judge Brennan, or Judge Pekowsky -- if
5 any or all of them issued, on discovery, those
6 stays are lifted -- for both sides -- for
7 discovery under the rules that exist in
8 Wisconsin.

9 That dealt with the three motions,
10 and that was at the request of Mr. Davidian that
11 we dealt with the discovery issues.

12 What we will do now is take a
13 ten-minute break and come back and deal with the
14 next motion.

15 MR. LONG: Thank you.

16 (Recess taken.)

17 THE COURT: All right. We're back on
18 the record.

19 Mr. Long, to you next, which motion
20 do you wish to address?

21 MR. LONG: Your Honor, I'm not aware of
22 any motion that has been not addressed yet that
23 remains relevant. I note that there's a motion
24 that the plaintiff filed for motion to dismiss
25 without prejudice on March 27th, 2007.

1 THE COURT: There's a motion by the
2 defense. It's the first of your motions filed on
3 19, January, 2007. It's a motion for relief from
4 the scheduling order. What do you want to do as
5 to that?

6 MR. LONG: I would ask that that motion
7 be granted. I believe it was technically granted
8 when the motion -- when the matter was stayed by
9 Judge DiMotto. I believe the parties need to do
10 a new scheduling order.

11 THE COURT: The matter would be moot.
12 We have to deal with a scheduling order, but the
13 matter is moot now that you've had that time.

14 MR. LONG: I believe that's correct,
15 right, it had to do with the timing for the
16 motion for summary judgement.

17 THE COURT: Do you have a different
18 position, Mr. Davidian, on the defendants' motion
19 for relief from the scheduling order?

20 MR. DAVIDIAN: Your Honor, I believe it
21 was already addressed when -- briefly, Judge--
22 Anyway, I believe that it's no longer valid, the
23 scheduling order.

24 THE COURT: All right.

25 That matter will be ordered

1 resolved, either through the actions of Judge
2 DiMotto or simply it's moot. The time has
3 passed, and we clearly do need to address new and
4 fresh issues relating to the scheduling order.

5 Still sticking on the defense
6 motions, I'm not aware of any others, but I would
7 love to be educated as to any others by either
8 defense attorney. If you tell me what they are,
9 I will try to deal with them.

10 MR. LONG: I'm not aware of any.

11 THE COURT: Then I will go from the
12 defense side to the plaintiff's side.

13 What other motions do you see,
14 Mr. Davidian?

15 MR. DAVIDIAN: I don't know what other
16 motions there are, Your Honor.

17 THE COURT: Let's see.

18 I can see that at the hearing that
19 we had both a motion, a formal motion to do or
20 deny, but we also have letters, and out of
21 caution for at least one side appearing pro se, I
22 note that on 5, September, 2006, there was a
23 letter by Mr. Davidian objecting to a settlement
24 that had been reached early on in the case as a
25 result of mediation.

1 MR. DAVIDIAN: That's moot, Your Honor.

2 THE COURT: From the plaintiff's side.

3 From the defense side on that
4 issue?

5 MR. LONG: I believe that's moot as
6 well.

7 THE COURT: All right. The Court will
8 accept that position, that that matter is moot.
9 In effect, it is similar to what we've heard
10 earlier, that a settlement agreement was
11 presented or something was sent, and the ruling
12 would follow the same law as the first motion I
13 think we heard today dealing with the first,
14 second, or third, dealing with a mandate to
15 implement a settlement, but here there was no
16 order signed by any judge.

17 Again, there's a letter, and I want
18 to be sure I covered all bases here, a letter of
19 4, January, 2007, that's either date stamped by
20 the court or the date of the letter, I can't
21 remember when I went through it. I actually take
22 the date stamp by the court, but it was a letter,
23 Mr. Davidian, where you demanded of Judge DiMotto
24 that he dismiss the case so that you could change
25 venue to another state if the case was not

1 settled.

2 What do you want done with respect
3 to that matter?

4 MR. DAVIDIAN: Let's talk about that,
5 Your Honor. I wrote an article. The reason I
6 wrote that letter is about a magazine article I
7 wrote regarding the way judges in Milwaukee
8 County hear cases in which they have a financial
9 interest in one of the parties. I thought that
10 article would spoil my chance for fairness in
11 Milwaukee County. Now that we have an
12 out-of-county judge, I'm satisfied that there's
13 no -- that that risk has diminished considerably,
14 and I will withdraw that.

15 THE COURT: Mr. Long, any input?

16 MR. LONG: I have no input, other than--
17 I have no input.

18 THE COURT: The Court will accept the
19 position of the movant, Mr. Davidian, that he
20 withdraws that motion, the motion is withdrawn.

21 Both sides then made responses to
22 what the other side submitted, but they weren't
23 independent motions.

24 Are there any other motions,
25 whether formal motions or letter motions, that

1 need to be resolved, Mr. Davidian, from your point
2 of view as the plaintiff?

3 MR. DAVIDIAN: No, sir.

4 THE COURT: Again, I believe the defense
5 indicated through Mr. Long there are no other
6 motions?

7 MR. LONG: Correct, Your Honor.

8 THE COURT: First there needs to be an
9 order prepared on these motions so that it will
10 be reflected in the file, and, Attorney Long, I
11 will look to you for the preparation of the
12 order. A copy should go to the other side, and
13 then it can come to the Court for signing.

14 Is two weeks adequate under the
15 standard reasonableness?

16 MR. LONG: It is certainly adequate.

17 Your Honor, to what extent would
18 you like me to share this with opposing counsel
19 before I share it with the Court?

20 THE COURT: With Mr. Davidian?

21 MR. LONG: And to the extent there are
22 disagreements, what process ought to be taken?

23 THE COURT: The practice I've used for
24 thirty years is where everybody comes to court
25 and I hear what you have to say and make a ruling

1 on the spot. My experience is people can get
2 together. I try to be specific on the rulings,
3 but if there are disputes the parties can't
4 resolve, immediately schedule it into court
5 through the clerk. All contacts are through
6 court with the clerk, no personal contacts will
7 occur. Anything that will occur is through the
8 clerk, and if anything is needed, the clerk will
9 alert me.

10 MR. LONG: A point of clarification.

11 Some judges prefer the practice of
12 placing in the order of the parties and the
13 litigants, crafting the reasons for the
14 litigation and whether the motion is granted or
15 denied for the reasons stated on the record, is
16 that your preferred practice?

17 THE COURT: Absolutely, yes.

18 MR. LONG: Okay.

19 MR. DAVIDIAN: Your Honor, on that
20 issue--

21 THE COURT: Yes, sir?

22 MR. DAVIDIAN: There has been so much
23 covered today, that until I see those orders, I
24 may not fully grasp what occurred here. So I
25 wonder if your deadlines on filing an amended

1 complaint and the contract with Christine Grant,
2 whether those could be done within a more
3 generous time period. If you give him two weeks
4 to give the order, that reduces my time to
5 competently -- to competently craft something in
6 response.

7 THE COURT: And, certainly, if there is
8 that agreement, Mr. Davidian, between yourself
9 and Mr. Long, then you contact the clerk and she
10 would arrange a hearing and we will come back to
11 court like today and we will resolve the matter,
12 but it's not--

13 MR. DAVIDIAN: I'm asking--

14 THE COURT: Both sides are entitled to
15 have the case resolved, and the time line should
16 be reasonable. I think two weeks is enough time
17 to prepare an order. You will either review it
18 and say "yes" or "no."

19 MR. DAVIDIAN: I'm asking the time from
20 that that I would have to file my pleading, if I
21 could have more time to at least have the orders
22 to understand what's done so it-- For me it's an
23 awful lot.

24 THE COURT: You're drawing a nexus
25 between the order that Mr. Long will prepare and

1 your second amended complaint?

2 MR. DAVIDIAN: Yes, I am.

3 THE COURT: And what is that nexus?

4 MR. DAVIDIAN: The nexus is that I want
5 to take -- I want to absorb -- and I guess it is
6 what was done today to understand what it is I'm
7 supposed to do on my own.

8 THE COURT: Mr. Long?

9 MR. LONG: We want to move this,
10 obviously, to completion as quickly as possible.
11 That being said, we can get an order to the Court
12 in a week, if that would be helpful.

13 THE COURT: Okay, a week.

14 And then you would have two weeks
15 after that to do your amended complaint, that's
16 twenty-one days from today.

17 MR. DAVIDIAN: Okay.

18 THE COURT: Is that reasonable?

19 MR. DAVIDIAN: Yes, sir, it's
20 reasonable.

21 THE COURT: It's not impossible, it just
22 takes a little longer. Just because something is
23 hard doesn't mean we shy away from it. We want
24 to do the hard work because it brings us to the
25 point where both sides can have a fair and just

1 resolution. Just because it's hard we don't back
2 away from it.

3 We will next focus on scheduling
4 order issues. I like to work back from -- really
5 to a trial date backwards. Sometimes, though, I
6 need to address how much time is needed for
7 discovery. It depends. I will take discovery
8 first.

9 How much time do you need to
10 complete discovery, Mr. Davidian?

11 MR. DAVIDIAN: Six weeks.

12 THE COURT: And, Mr. Long?

13 MR. LONG: That would be sufficient.

14 THE COURT: I'd like to give a date as
15 well, do you have a calendar there as well?

16 Each side will have six weeks to
17 conclude discovery.

18 THE CLERK: That will be August 7th,
19 Judge.

20 THE COURT: 7, August?

21 THE CLERK: Yes.

22 THE COURT: Okay.

23 MR. LONG: Your Honor, the Court's
24 permission to access my electronic calendar?

25 THE COURT: Both sides can.

1 Both sides will have until 7,
2 August, to complete discovery.

3 Again, there is an obligation in
4 law to cooperate with one another.

5 Anyone taking exotic trips during
6 the summer to far off places, or will you be
7 basically available?

8 MR. LONG: Does Appleton count?

9 THE COURT: Sure, great city.

10 So basically everyone will be
11 available, as Quarles & Brady has hundreds and
12 hundreds and hundreds of Carl Sagan type numbers
13 of attorneys.

14 And you would be available as well,
15 Mr. Davidian?

16 MR. DAVIDIAN: I anticipate it, sir.

17 THE COURT: You anticipate it?

18 MR. DAVIDIAN: I anticipate being
19 available.

20 THE COURT: All right, good.

21 I hope everyone has a great summer
22 too, but we will fit this in.

23 How long do you anticipate the
24 trial will be, Mr. Davidian?

25 MR. DAVIDIAN: I don't now how to

1 approach that, Your Honor, I just don't know.

2 THE COURT: Okay, thank you.

3 Mr. Long?

4 MR. LONG: One day.

5 THE COURT: All right.

6 What I'm going to do is I will
7 follow the Milwaukee approach, and apparently the
8 selection of the jury occurs. I know it's in the
9 afternoon, is it a particular day of the week?

10 THE CLERK: Normally Mondays and
11 Wednesdays at 1:30.

12 THE COURT: We begin the trial on Monday
13 in terms of jury selection, and I want to set
14 aside four days. I hope we're done in one, but
15 so we have enough time, we will begin on Monday
16 and carry through to Thursday. If we need more
17 time after that, we would continue on. If we are
18 focused, maybe one day, but since we only have a
19 half day on Monday, we would need to go into the
20 morning on the following day, okay.

21 To the extent that additional-- We
22 will go to the trial date.

23 When would you like the trial to
24 occur, Mr. Davidian?

25 MR. DAVIDIAN: October.

1 THE COURT: Okay.

2 THE COURT: Mr. Long?

3 MR. LONG: I question why it couldn't
4 happen as soon as discovery is closed or earlier
5 than that, but.

6 THE CLERK: We need a little more lead
7 time.

8 MR. LONG: I think October is fine.

9 THE COURT: What's the first Monday in
10 October.

11 THE CLERK: The first Monday is October
12 1.

13 THE COURT: Would October 1 be
14 acceptable, Mr. Davidian?

15 MR. DAVIDIAN: Yes, sir.

16 THE COURT: And, Mr. Long?

17 MR. LONG: Yes.

18 THE COURT: The trial will be 1 through
19 4, October, 2007, beginning at 1 p.m. on the 1st,
20 with the jury apparently coming in at 1:30. That
21 gives you a half hour to resolve any matters that
22 would be needed. Thereafter in the morning what
23 is the practice in Milwaukee County, when do the
24 jurors begin in the morning?

25 THE CLERK: The jurors, not normally

1 before 8:30.

2 THE COURT: Would 8:30 be acceptable,
3 Mr. Davidian?

4 MR. DAVIDIAN: Yes, sir.

5 THE COURT: Mr. Long?

6 MR. LONG: Yes.

7 THE COURT: The trial will begin at
8 8:30, except the first day will begin at 1, with
9 the jury coming in at 1:30.

10 Any additional motions to be filed
11 after the completion of discovery, how much time
12 would you need? You may file none, but if you
13 wish to file motions, how much time after the
14 close of discovery on 7, August, would you want?

15 MR. DAVIDIAN: Ten days.

16 THE COURT: By 17, August, Mr. Long?

17 MR. DAVIDIAN: Yeah, 17, August.

18 MR. LONG: That would be fine. Would
19 this include motions in limine and that type of
20 stuff as well as anything else, sort of a
21 catchall?

22 THE COURT: Yes, any motions.

23 I noted in the file, and I think
24 both sides are filing lists of witnesses that may
25 or may not be the same witnesses. But in terms

1 of filing a document with your lists of
2 witnesses, when would you have that done by,
3 Mr. Davidian?

4 MR. DAVIDIAN: How about the 17th,
5 again.

6 THE COURT: Mr. Long?

7 MR. LONG: Two weeks thereafter.

8 THE COURT: The 31st of August.

9 MR. LONG: There is the issue of--

10 How is the Court dealing with these
11 witness lists differently than the witness lists
12 that have already been exchanged by both parties?

13 THE COURT: You may want to state the
14 witnesses lists hard filed or redo the document,
15 I have no idea. The plaintiff will do it by 17,
16 August, the defendant by 31, August, and it will
17 include both lay and expert witnesses.

18 MR. LONG: Well, my concern is that may
19 impact discovery issues, and I believe that both
20 sides have sort of viewed the witness lists as
21 being complete subject to motions.

22 THE COURT: If you filed them already,
23 you don't have to refile everything else. If you
24 have your list of witnesses, that's fine.

25 MR. DAVIDIAN: Your Honor, if I may

1 interject something.

2 If it turns out that the defense
3 puts someone on the new witness list after the
4 close of discovery, is there leeway for them
5 taking a deposition of a potential witness after
6 the time for discovery has elapsed?

7 THE COURT: The answer is yes, but I
8 need to ask the existing witnesses, being those
9 already listed by both sides in papers in the
10 file already, is that what you mean?

11 MR. DAVIDIAN: Let's suppose-- No, I
12 don't think so. For example, I may have new
13 witnesses that I don't know about yet as a result
14 of the material that I have been handing out. If
15 after the close of discovery I file my new
16 witness list that has names that the defense does
17 not know about, they may want to depose them
18 themselves. So after the close of discovery if
19 new witnesses from the other party are named, do
20 we get to depose them as well?

21 MR. LONG: Mr. Davidian makes a good
22 point. I'm fearful of blowing up discovery even
23 more than risking a trial. I think it's to the
24 advantage of all parties in the system to move
25 this to completion as quickly as possible.

1 Perhaps we should move these disclosure dates to
2 dates in July.

3 THE COURT: Are you able, both sides, to
4 give your list of witnesses at a point in July,
5 in the month of July, so that you have discovery
6 to 7, August? If you did it by mid-July, a
7 couple weeks from now, it would still give you
8 three weeks?

9 MR. DAVIDIAN: Your Honor, I would like
10 more time to get more witnesses. I'm-- This is
11 out of reach. For example, if I make a request
12 to the defendant for the names of or depositors
13 at the bank that have had fees taken and have
14 contested those, I will have to talk to those
15 people, depose them, and talk to them, and they
16 would have to do that as well. I'm thinking that
17 there are hundreds of people that have been
18 victimized here.

19 THE COURT: Mr. Davidian, let's go
20 further. Let's assume there will be thousands.

21 MR. DAVIDIAN: Okay.

22 THE COURT: We still have to create and
23 order a structure that allows both sides to go
24 through so at the end each side can fairly
25 present their case to the trier of fact. Now,

1 again, just because it's hard doesn't mean we shy
2 away from it.

3 We're looking for a date, sir, can
4 you do it any day at all before the 17th of
5 August in the year 2007 that's the date you
6 initially gave?

7 MR. DAVIDIAN: Yes, Your Honor, I can.

8 THE COURT: What date?

9 MR. DAVIDIAN: The witness list, I will
10 give it -- how about the 7th?

11 THE COURT: Okay, 7 August, okay.

12 To Mr. Long, when can you do it if
13 you receive the plaintiff's list of witnesses on
14 7, August?

15 MR. LONG: We could do it by two weeks
16 thereafter.

17 THE COURT: That would be 21, August.

18 Now, how much time thereafter do
19 the parties consider reasonable for taking
20 depositions of persons off those lists, what do
21 you think is reasonable?

22 MR. DAVIDIAN: We have to give seven
23 days notice, Mr. Long?

24 MR. LONG: Yes, that would be fine.

25 MR. DAVIDIAN: I would say two weeks.

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THE COURT: 21, August.

What's two weeks from 21, August,
on the calendar?

THE CLERK: September 4.

THE COURT: If the discovery deadline
were changed from 7, August to 4, September,
would that accommodate that additional time and
give you time to get all witnesses in?

MR. DAVIDIAN: It would, Your Honor, and
at the risk of being frivolous, if worse comes to
worse and I put every name on it and continue to
interview them, I can certainly meet the formal
requirement.

THE COURT: And, Mr. Long?

MR. LONG: The time would be sufficient.

THE COURT: Discovery will continue
until 4, September, 2007, to give the parties
time after the exchange of witnesses to do other
discovery as they want. And, again, I'm taking
those dates and using participatory management.
All of us own responsibility for those dates, and
should you say it doesn't work and tell me now
you want to try to extend it now that it fits
into the back end and you want more time, you own
these dates as much as the Court does.

1 Verdict forms and requested jury
2 instructions, when will they be submitted by,
3 Mr. Davidian?

4 MR. DAVIDIAN: One week before trial,
5 October 1st.

6 THE COURT: 1, October, okay.

7 And, Mr. Long?

8 MR. LONG: I believe that's sufficient.

9 Does the Court like to have a
10 conference with respect to that before the trial?

11 THE COURT: If that's the practice here,
12 I will follow that approach.

13 MR. LONG: Judge, normally they set a
14 pretrial conference two weeks before the trial
15 date, and at that time, a week before that, the
16 pretrial report is due, which encompasses the
17 motions in limine.

18 THE COURT: If that's the practice, I
19 want to follow that. I will fit that in with the
20 times here.

21 The week at the end of discovery
22 would be the 11th, are the parties able to submit
23 their documents on the 11th of September, 2007?

24 MR. LONG: Yes.

25 MR. DAVIDIAN: Yes, sir.

1 THE COURT: Okay, that will be the date
2 for the -- are they called pretrial reports?

3 THE CLERK: Pretrial reports.

4 THE COURT: These documents, pretrial
5 reports, the jury instructions, and verdict
6 forms.

7 Now, a date and time, let me look
8 to our clerk, a date and time for--

9 THE CLERK: The week of the 17th, Judge,
10 or the 24th, Judge, either one is fine.

11 September 25th.

12 THE COURT: The week of the 17th is
13 better.

14 The 19th of September for final
15 pretrial?

16 MR. DAVIDIAN: Yes, sir.

17 THE COURT: Mr. Davidian?

18 MR. DAVIDIAN: Yes, sir.

19 MR. LONG: Fine with us, Your Honor.

20 THE COURT: At what time?

21 THE CLERK: Nine a.m.

22 THE COURT: Mr. Davidian?

23 MR. DAVIDIAN: Yes, sir.

24 THE COURT: Mr. Long?

25 MR. LONG: Yes, that's fine.

1 THE COURT: Here's the order.

2 Is there anything else that's
3 covered in Milwaukee County.

4 THE CLERK: The only other question is
5 mediation, there's a line on there for mediation.

6 THE COURT: The parties already used
7 mediation; is that correct?

8 MR. DAVIDIAN: No, Judge DiMotto felt
9 that it was pointless.

10 THE COURT: Okay.

11 What's the wish of the parties as
12 to mediation?

13 MR. DAVIDIAN: No.

14 THE COURT: Mr. Long?

15 MR. LONG: If that's the response of the
16 plaintiff, I don't feel that anything's
17 different.

18 THE COURT: Is there anything else you
19 want in the pretrial order, Mr. Davidian?

20 MR. DAVIDIAN: No, sir.

21 THE COURT: And, Mr. Long?

22 MR. LONG: No, Your Honor.

23 MR. DAVIDIAN: The amended -- the second
24 amended complaint is to be filed when, in two
25 weeks, you said two weeks, Judge? I counted that

1 out, Judge, you said twenty days.

2 THE COURT: And that date is in the
3 order.

4 The Clerk has the scheduling order,
5 it has been signed, so you will actually have the
6 document before you. We have now dealt with
7 motions and the scheduling order, and a copy will
8 go to both sides.

9 Is there anything more the parties
10 would want done now, Mr. Davidian?

11 MR. DAVIDIAN: Not that I can think of,
12 Your Honor.

13 THE COURT: And, Attorney Long?

14 MR. LONG: There's nothing else further
15 that we're asking for.

16 I would say with complete candor to
17 the Tribunal, if there are discovery disputes,
18 might it be wise to build in a mechanism for the
19 resolution of those disputes.

20 THE COURT: Sure.

21 Discovery goes through to 4,
22 September. The 19th of September, you indicated
23 was a Wednesday?

24 THE CLERK: Correct.

25 THE COURT: Is the 17th of September, a

1 Monday, within the time frame that would work for
2 the parties?

3 MR. LONG: Sure.

4 MR. DAVIDIAN: Which would be a date to
5 take up discovery problems, or a mechanism to
6 resolve them, I guess the Court is the mechanism?

7 THE COURT: Yes. We're looking for a
8 date. If -- and it's a big if, underline it, put
9 a circle around it -- if there are discovery
10 issues that need resolving, they should be
11 resolved, and we're looking for a date and time
12 for them to be resolved. It's not just picking a
13 date.

14 Does Monday the 17th work at 9 in
15 the morning?

16 MR. DAVIDIAN: Yes, sir.

17 MR. LONG: It's fine. I know that the
18 Clerk had indicated that's a tough date to get a
19 courtroom.

20 THE CLERK: A lot of times they're taken
21 up at pretrial, did you want to do it before the
22 pretrial?

23 THE COURT: I really would. I've had
24 hundreds of these types of motions, and it's a
25 good idea to give the parties some type of

1 resolution. I want to do it immediately prior to
2 pretrial, or would that not work. I would do it
3 the 17th.

4 THE CLERK: I would try my best to get a
5 courtroom.

6 THE COURT: If it's not a courtroom, if
7 Judge DiMotto is here, fine, we'll be in a
8 hearing room. We'll get a room somewhere in the
9 building, and that should be in the order as
10 well.

11 THE CLERK: Very good.

12 THE COURT: Mr. Long, we've dealt with
13 that issue, anything more?

14 MR. LONG: Nothing, Your Honor.

15 THE COURT: Thanks to both sides for
16 your argument, and when the order is presented it
17 will be signed. Good luck to you on your
18 discovery, and we will see you back at the next
19 hearing in court.

20 MR. DAVIDIAN: Thank you very much, Your
21 Honor.

22 MR. LONG: Thank you, Your Honor.

23 (Whereupon, the proceedings were
24 concluded at 12:08 o'clock in the afternoon.)

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STATE OF WISCONSIN)

) ss.

COUNTY OF MILWAUKEE)

I, NANCY CZERNIEJEWSKI, RPR, an Official Court Reporter for the Circuit Court of Milwaukee County, do hereby certify that the foregoing is a true and correct transcript of all proceedings had and testimony taken in the above-entitled matter as the same are contained in my original machine shorthand notes on said trial or proceeding.


Nancy Czerniejewski, RPR
Official Court Reporter

Dated at Milwaukee, Wisconsin
this 13th day of July, 2007.