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1 (Court in Session at 11:57 a.m.)

2 THE COURT: All right. We're here on Case No. 08-26.
3 I'm going to have those of you that are participating by phone go
4 ahead and state your appearance. We're missing Mr. Osgood, and
5 we'll talk about that here in just a minute. But if those of you
6 on the phone can state your appearance.

7 MR. BOHLING: Curt Bohling for the United States.

8 MR. LEWIS: Chip Lewis and Mary Grace Ruden for Mr.
9 Solomon.

10 THE COURT: And, I'm sorry, you're going to have to
11 speak up.

12 MR. LEWIS: Chip Lewis and Mary Grace Ruden for Mr.
13 Solomon.

14 MR. FULCHER: Darren Fulcher on behalf of Mr. Johnson,
15 Delmon.

16 THE COURT: All right. Mr. Osgood is in trial right now
17 on another floor and thought they would have recessed by this
18 time so he could participate in this discussion. Because it's
19 really just to give the court a status update, we're going to go
20 ahead with those of you that are present and then if Mr. Osgood
21 comes in, he can join us. If not, I can get him on the phone at
22 a later date. I'll get a copy of this transcript made so that
23 everyone will have it. You're set for trial February 23rd and I
24 was really just wanting to get an assessment of where we were to
25 make sure since we've had difficulties in this case in the past,

1 that we're on track for that February setting.

2 MR. BOHLING: Your Honor, this is Curt Bohling. Mr.
3 Rhodes has just joined me actually as well. I think we are. We
4 have worked to get all of the discovery material scanned and
5 Bates stamped and provided those to the defense. So, I think
6 from our perspective, that date is still firm for us.

7 THE COURT: So, all the discovery now is to the
8 defendants?

9 MR. BOHLING: I believe. Yes. Yes, it is.

10 THE COURT: How long have the defendants had it?

11 MR. BOHLING: I'm going to check with Mr. Rhodes here.

12 THE COURT: Or defendants can chime in.

13 MR. LEWIS: Your Honor, Chip Lewis here. We received by
14 cover letter November 24th of 2009, a letter by the Government in
15 which they included the CDs I believe that are the fruits of
16 their labor. By my counts there's approximately 15 compact disks
17 that comprise the universe of discovery, according to them. We
18 have made it through about half of those disks. It looks to be
19 very complete, but you might well imagine the universe of
20 discovery has grown greatly since we saw you last in that they
21 have through their work scanned all this and got it all
22 sequentially Bates labeled. Assuming they are correct, that it
23 is the entire universe, I can't really tell you how much longer
24 it will take us to get through it, but it makes the trial date
25 somewhat realistic to me.

1 MR. FULCHER: And I would concur with that. I am
2 probably about one-fourth through the discovery. I think I
3 received it the end of -- the middle to end of November. I think
4 there's one more disk that I need to pick up, but I'm still
5 working through it and I anticipate being completely through it
6 begin -- by the beginning of January.

7 MR. LEWIS: And, Your Honor, Mr. Lewis one more time.
8 The Government this week, yesterday, sent us a recent interview
9 they did. It was a fairly uneventful one because the witness
10 didn't seem to want to cooperate too much. I understand they've
11 got to do trial preparations, but in light of continuing
12 discovery, I don't know what else they have coming. They're
13 obviously better to speak to that than us. But this discovery
14 that we do have looks a lot different than what we did before in
15 that it is sequentially Bates labeled and I will take them at
16 their word that this is everything, but would like to know if
17 they anticipate any more discovery other than what we have to
18 date.

19 MR. BOHLING: Your Honor, this is Mr. Bohling. As the
20 Court is aware, there is an ongoing investigation in Houston
21 which somewhat overlaps our issues, and I have no -- we have no
22 control over that. What we are doing is ensuring that we get
23 material as soon as it is produced down there and provide it to
24 the defense. So, I guess the short answer is, I don't know at
25 this point whether there will be further discovery. I would

1 anticipate that there will be more material generated through the
2 Houston investigation. I do not anticipate that it will be very
3 much compared to what we've already provided, and I -- we have,
4 you know, this arrangement in place to insure that even though
5 that's an open investigation, that we will provide the defense
6 counsel up here with that discovery shortly after it's generated.

7 THE COURT: Let me ask this question. The discovery
8 that's being generated in Houston. While I understand why
9 defendants may want to see it, is any of that discovery material
10 that you will end up using in your case-in-chief?

11 MR. BOHLING: It could be. I mean, that's hard to say
12 without looking at the specifics, but I certainly would say
13 that's possible, yes. I mean, some of it is very relevant, some
14 of it is less so.

15 MR. LEWIS: Your Honor, Chip Lewis again. Your question
16 is insightful and very important to us in that the companion
17 investigation is against Dr. Okose and our client, Troy Solomon,
18 as I understand it, principally. It may involve Mr. Johnson to
19 some extent, but I don't know that for a fact. I am close with
20 and have spoken regularly with the AUSA down there who is in
21 charge of this investigation. Given the fact that it's an
22 ongoing investigation, it makes it very difficult for him to give
23 me useful information, which I understand and respect. But the
24 point being some of that information, while not directly relevant
25 for the prosecution's purposes, is very relevant for us in that

1 we believe the true perpetrators of the fraud here and -- are
2 involved in that other investigation. So, when we get
3 information on what we call it the Okose investigation, some of
4 that is, in fact, very helpful for our defense. So, we
5 definitely want it. I understand the Government may have to make
6 use of it, but that is a wild card that I would like to bring to
7 the Court's attention.

8 THE COURT: Well, one of the motions that we have
9 pending is a Motion to Reconsider the Denial of the Request for
10 Transfer to Texas.

11 MR. LEWIS: Yes, Your Honor.

12 THE COURT: And, of course, one of the reasons the Court
13 had put off ruling on that was hoping there would be some
14 additional briefing in terms of, you know, I thought by now
15 perhaps we would know if additional charges were going to be
16 filed against one or more individuals in Texas and that might be
17 helpful to the Court in making that ruling. But I take it Texas
18 is still just investigating. They're never charged anyone?

19 MR. LEWIS: They have not charged anyone at this time,
20 Your Honor. Stuart Burns, the AUSA in charge of the case, has
21 told me that he anticipates Mr. Solomon being charged along with
22 Dr. Okose and others. As I don't have a dog in the fight other
23 than Mr. Solomon, I didn't receive the information as to who the
24 others were. He could not give me a definitive time frame but
25 said it could be January, it could be February. He knows of the

1 trial date in Kansas City and he knows of the complication this
2 creates in which the dog starts to be wagged by the tail. My
3 suggestion is one of perhaps the Court or Mr. Bohling could have
4 a private conversation with Mr. Burns. They did -- Mr. Bohling
5 could file something under seal with His Honor *ex parte* to give
6 the Court an idea of what imminent really means, if it does mean
7 anything, so that we don't waste judicial resources when we could
8 have this whole thing in one case.

9 MR. BOHLING: This is Mr. Bohling. Your Honor, I'm
10 happy to do that. We have had an ongoing conversation with Mr.
11 Burns in the Houston office since the inception of this case on
12 this very topic. And I guess I would say that we certainly
13 recognize the issues that are brought to bear by the existence of
14 the Houston investigation and I understand, you know, that this
15 isn't an idea situation, nor is it for us, frankly. And it would
16 be best from everyone's planning perspective and to safeguards
17 the rights of the defendants here if we could get more -- a
18 better idea of how the Texas folks were going to proceed and
19 when. And but -- and as I've told the Court when we started out
20 with this, we anticipated that their indictment was -- or that
21 their action -- the action they were going to take was going to
22 be much closer on the heels of our indictment, but, of course,
23 that has proven not to be the case. But I think the suggestion
24 made is a good one and one that we actually are going to do
25 anyway. So, I would be happy to sit down, Mr. Rhodes and I, to

1 talk to Mr. Burns and see if we can -- see if we can -- at least
2 at this point get a more firm idea of how they want to proceed,
3 and I understand that that might impact the issues that are
4 before the Court.

5 THE COURT: I think that would be very helpful. I
6 certainly wouldn't -- I think the suggestion was either that the
7 Court talk to them or you talk to them. I don't think it would
8 be appropriate necessarily for me to sit down and have a
9 discussion with the AUSA in Texas, but certainly since you're
10 already working with them, are already funneling them
11 information, I think that would be helpful and perhaps if I gave
12 you a deadline for filing something, some report with the Court,
13 that would also give them an incentive to talk to you sooner
14 rather than later.

15 MR. BOHLING: And that's fine. I'm happy to take the
16 deadline, Judge. I don't think the issue -- I mean we've
17 certainly built a very cooperative relationship and I think it --
18 all to the credit of the folks in Houston. They have been very
19 open about allowing us to provide information that's essentially
20 being generated in an ongoing investigation, which is not
21 typical. So I think that's to their credit. I think the problem
22 is is that their case is just much bigger in scope than ours is
23 and I think it's just been an issue of getting around all of the
24 information. Much of which -- and understanding it's been a
25 theory here much of which is not directly relevant here, but is

1 relevant to some of the issues that they're looking at.

2 THE COURT: Well, --

3 MR. BOHLING: But a deadline would be fine, Judge.

4 THE COURT: Well, and, too, it's just it might help us
5 all put it in perspective of when we're doing various issues and
6 having hearings on various motions. I know that in the next
7 couple of weeks some people plan to be gone. So, I guess I'm
8 looking to you for what would be a realistic deadline that would
9 fit within your schedule?

10 MR. BOHLING: I think January 11th, Judge. Does that
11 sound reasonable?

12 THE COURT: All right. And, of course, one additional
13 question we have is not only when will the indictment be coming
14 down in Texas, but I think you refer to the fact that it would
15 charge Solomon, Okose and others. Actually, I think that was
16 maybe a reference by Mr. Lewis.

17 MR. BOHLING: Correct.

18 THE COURT: And I guess I'm interested in if the others
19 include Elder and Johnson. In other words, what I'm trying to
20 find out is not only when is the indictment going to come down,
21 but is it possible that it would be not just Solomon, but
22 Solomon, Elder and Johnson, the same people that I have left in
23 the case here.

24 MR. BOHLING: I'll ask. Mr. Lewis has more information
25 than I do at this point.

1 MR. LEWIS: Yeah, and I think Mr. Bohling can extract
2 that out of Mr. Burns, if he -- if Mr. Burns knows it's going to
3 the Court and not for my edification. But I will tell Your Honor
4 just reading the tea leaves, I think Mr. Johnson is in harms way.
5 He's clearly not in the same position that Mr. Solomon is because
6 of the relationship with Okose, but when Mr. Burns told me
7 there's other parties likely to be indicted, it made it seem to
8 me there were a handful -- at least a handful of folks. It is a
9 large investigation.

10 MR. BOHLING: Yes, I'll be happy to check. I have my
11 guesses about that, but, yes, it's not based on conversations.
12 So, I'd be happy to bring that as a part of the conversation.

13 THE COURT: Now, I may have already asked this question
14 and if so, I apologize. But as you were talking about the
15 additional discovery that you're reviewing, the additional CDs,
16 the fact that it's all sequentially numbered, which we do
17 appreciate, one question that comes to mind is whether, as you
18 see new material, it's going to result in the need to file any
19 additional motions. Does anyone have a handle on that at this
20 point in time?

21 MR. LEWIS: I've seen nothing in the what I will call
22 the reclassification or the reorganization of the prior materials
23 that necessitates the filing of a new motion. There is some
24 possible litigation stemming from the search of the Ascentia
25 Pharmacy, but we've briefed some of that and I haven't seen

1 anything, Your Honor, that makes me need to file any additional
2 motions on that. However, I don't know what's coming and the
3 Court's question is suggestive of that. But right now, from the
4 Solomon camp, we've seen nothing that makes us need to file
5 additional motions.

6 MR. FULCHER: And, Your Honor, this is Darren Fulcher.
7 At this time it's just hard for me to tell.

8 THE COURT: All right.

9 MR. BOHLING: And, Your Honor, I'd like -- this is Mr.
10 Bohling, just quickly. I think what we've done is more organized
11 than the material we've provided in the past as opposed to
12 providing just a tremendous amount of new material. While we had
13 some initial material that was already on CD and Bates stamped,
14 but then we had started to provide material because of the nature
15 of the case and in retrospect probably not the best idea, but
16 we'd started to provided it, it's kind of seriatim and not
17 continue with the Bates stamping. And we've gone back and kind
18 of tidied all of that up. But there shouldn't be -- I'm sure
19 there's some new material but there really shouldn't be a lot of
20 new material compared to the material we have provided either on
21 CD or in these kind of periodic provisions of information from
22 time to time. So, it ought not to be that much new material
23 really in those CDs.

24 THE COURT: And while I appreciate that, I mean the
25 problem is anytime you have any new material, it always raises

1 the possibility that there might be new motions that need to be
2 filed. And so, if anyone sees anything that's going to cause
3 them to want to do that, I mean you need to immediately let the
4 Court know so that we can get on the phone and talk about that
5 because with a February trial setting come up, we really wouldn't
6 have a lot of time in which to consider case dispositives, you
7 know, motions and we would certainly have to have abbreviated
8 briefing and hearing schedules at this point.

9 MR. BOHLING: No, I understand, Your Honor.

10 THE COURT: Another matter that I want to discuss and,
11 obviously, I'm going to have to have the discussion with Mr.
12 Osgood because some of it -- a lot of it resolves around
13 pleadings that he has filed. I think some of you may have joined
14 in those pleadings. But we had an issue concerning a Houston
15 police officer that had been raised really both by way of *Daubert*
16 and by motion in limine. Do the parties know what I'm speaking
17 of?

18 MR. FULCHER: Yes, Your Honor.

19 MR. BOHLING: Yes.

20 MR. LEWIS: Yes.

21 THE COURT: And one of the things it seemed that there
22 was maybe a disconnect between the motion and the opposition in
23 terms of perhaps the defendants not really knowing what kind of
24 expert testimony you intended to elicit from the Houston police
25 officer. And I know there was a footnote in one of the pleadings

1 talking about the defendants didn't really feel you'd complied
2 with the Court's directives on identifying expert witnesses,
3 which applies to both sides where you really have to give the
4 substance of their opinions. So my question first off is has the
5 Government given a more definitive description of what this
6 officer is going to be called to testify on with respect to
7 expert opinions?

8 MR. BOHLING: We believe we have. Mr. Rhodes can
9 perhaps address that.

10 THE COURT: Well, let me ask you this. Was that -- has
11 that been provided since the motions were filed?

12 MR. RHODES: Yes, it was provided to the defense
13 counsel. It was placed on file. I don't have the exact pleading
14 number in front of me, but they were given more information about
15 his testimony.

16 MR. LEWIS: Your Honor, I don't want to speak for Mr.
17 Osgood. I recall seeing that filing. It was some time ago, if
18 I'm right, Mr. Rhodes, but I don't know if Osgood, if he's
19 briefed that motion and felt it was satisfactory in keeping with
20 the rule. But I have written myself a note to check with Osgood
21 and we'll follow up if he thinks it's insufficient.

22 THE COURT: Well, I think it --

23 MR. LEWIS: I am fairly confident I would have heard
24 from him or we all would have had via e-mail if it was not, and I
25 just don't remember the specifics of it enough, Your Honor, to

1 obligate myself right now.

2 THE COURT: All right. And I would -- I think he was
3 the driving force behind some of those motions. So, I think I
4 want to do is defer that and we'll get everybody back on the line
5 when he is available to talk about that because it seemed to me
6 that he had asked for pretrial hearings on two issues. One dealt
7 with the Houston police officer and one dealt with the
8 handwriting expert. And as I looked at the briefing of the
9 parties, it seemed to me that if a more detailed description was
10 given by the Government as to what the Houston police officer was
11 going to testify to, it might eliminate the need for a hearing
12 because Mr. Osgood seemed to be suggesting that he was going to
13 be talking about a lot of things pertaining to medications and
14 prescriptions and things that I think Mr. Osgood was claiming
15 were outside the area of the expertise of the police officer.
16 And it just seemed to me that if we got a better description of
17 what was going to be his areas of expertise, we might just be
18 able to deal with that motion without having a further hearing.
19 So, that would be kind of first on my list. And then secondly
20 was to talk to the parties about the request for a hearing with
21 respect to the handwriting expert to see if there had been any
22 developments in that area since those pleadings were filed. Some
23 of you may have joined in that but I believe that Mr. Osgood
24 pretty much took the lead on the handwriting expert as well, if I
25 recall.

1 MR. LEWIS: You're correct, Your Honor. Mr. Solomon did
2 not join in that motion as we're unaware of any handwriting that
3 they're trying to attribute to Troy Solomon.

4 THE COURT: All right. Well, both of those issues I
5 want to address with Mr. Osgood so we know where we are with
6 respect to those matters. When I have that discussion with him,
7 do any of the other defense counsel have an interest in those
8 motions and do you want to be included in any telephone
9 conference about those motions?

10 MR. LEWIS: For Mr. Solomon, Your Honor, we would like
11 to be included.

12 THE COURT: Okay.

13 MR. FULCHER: We would like to be included as well, Your
14 Honor.

15 THE COURT: All right. I guess the other thing that I
16 just, as a part of our status conference, wanted to get a handle
17 on was -- and I think I have the answer to that -- the parties do
18 believe that the February 23 setting is still realistic, correct?

19 MR. LEWIS: With one caveat, Your Honor. We have --
20 Mary Grace Ruden, my co-counsel, through a bunch of arm-twisting
21 and cajoling has managed to impregnate herself. She has some
22 upcoming doctor visits. I don't want to burden the Court with
23 that or anything, but she's expecting with twins and I'm not sure
24 what the doctor is going to say about her travel, et cetera, but
25 we will keep the Court informed.

1 THE COURT: All right. Well, so what you're saying is
2 there is a possibility she wouldn't be available in February?

3 MR. LEWIS: I'm afraid there may be some restrictions as
4 to her travel, but we're going to find out in the next couple of
5 weeks and we'll let the Court know.

6 THE COURT: All right.

7 MR. LEWIS: Another good reason, Your Honor, to ship
8 this thing down to Texas and rid yourself of these worries.

9 THE COURT: In addition to that, I guess I'm interested,
10 as we've lost defendants in the case and we're now down to three,
11 what are the parties thinking in terms of the time frame for
12 trying the case? In other words, how long will it take?

13 MR. BOHLING: This is Mr. Bohling. We're thinking four
14 to five days for the Government's case. About a week of trial
15 time probably for the Government's case.

16 THE COURT: And what about for the defendants?

17 MR. LEWIS: Mr. Solomon, Your Honor, I think a fair
18 estimate with what the Government said is ten working days of
19 trial.

20 MR. FULCHER: And I think that's fair.

21 THE COURT: So, really two -- you're still anticipating
22 it's going to take two weeks to try.

23 MR. BOHLING: Yes.

24 MR. FULCHER: Yes, Your Honor.

25 MR. LEWIS: Yes, Your Honor.

1 MR. BOHLING: This is Mr. Bohling. I'm not sure that
2 the defendants dropping out really changes the nature of the
3 evidence in the case at all. In fact, it increases the number of
4 witnesses.

5 THE COURT: Okay.

6 MR. BOHLING: The defendants, as everyone knows, are
7 going to testify.

8 THE COURT: All right. Anything further, any concerns,
9 or any issues that any of the parties think need to be promptly
10 addressed to make sure we're ready for trial in February?

11 MR. BOHLING: Not from the Government, Your Honor.
12 Thank you.

13 MR. LEWIS: Nothing else from Mr. Solomon at this time,
14 Your Honor.

15 MR. FULCHER: Nothing from Mr. Johnson at this time.

16 THE COURT: Okay. I appreciate everyone participating
17 and because Mr. Osgood apparently wasn't available today, I think
18 you can anticipate that when his trial is concluded and we have
19 some free time, we will get you all back on the phone. It may
20 not yet, you know, be in the next week or two but just as soon as
21 we can to address his pending motions, because to the extent we
22 need to have some further hearings, I'd like to get those set in
23 January.

24 MR. BOHLING: Very good, Your Honor.

25 THE COURT: All right. We'll be in recess.

1 MR. LEWIS: Okay. Thank you.

2 MR. FULCHER: Thank you.

3 (Court Adjourned at 12:22 p.m.)

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

8
9 /s/ Lissa C. Whittaker
Signature of transcriber

December 22, 2009
Date

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