

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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3	HISTORY ASSOCIATES INCORPORATED,)	CIVIL NO.:
4	Plaintiff,)	24-1857-ACR
5	vs.)	
6	FEDERAL DEPOSIT INSURANCE)	
7	CORPORATION,)	
8	Defendant.)	January 22, 2025
9)	Washington, D.C.
10)	2:30 p.m.

Transcript of Status Conference
Before the Honorable Ana C. Reyes
United States District Judge

APPEARANCES:

For the Plaintiff: Denis Nicholas Harper, Esquire
Jonathan C. Bond, Esquire
Aaron Hauptman, Esquire
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P R O C E E D I N G S

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2 THE CLERK: We are on the record with civil case
3 24-1857, History Associates Incorporated versus Federal
4 Deposit Insurance Corporation. Counsel, starting with the
5 plaintiff, please state your appearance for the record.

6 MR. HARPER: Good morning, Your Honor -- or good
7 afternoon, Your Honor. Nick Harper for History Associates
8 Incorporated. With me at counsel's table my colleagues from
9 Gibson Dunn, Jonathan Bond and Aaron Hauptman.

10 THE COURT: All right.

11 MR. DOBER: Good afternoon, Your Honor. Andrew
12 Dober on behalf of the FDIC and at counsel's table with me is
13 Lina Soni.

14 THE COURT: Who's behind you?

15 MR. DOBER: That is Ms. Strapoli (phonetic), she is
16 an attorney at the FDIC as well, but has not entered an
17 appearance in the case.

18 THE COURT: Can you please explain to me why you
19 took the position you did with respect to the interpretation
20 of the FOIA request, which was pretty obvious on its face not
21 limited as you limited it? And then also explain to me what
22 efforts you made when you got the FOIA request to preserve
23 documents, and whether any documents have been destroyed,
24 intentionally or otherwise, since the issuance of the FOIA
25 request?

1 MR. DOBER: Yes, Your Honor, may I --

2 THE COURT: No, you can answer my questions.

3 MR. DOBER: I was going to ask to go back and grab
4 my papers.

5 THE COURT: Oh, yes.

6 MR. DOBER: I do have a statement on those issues,
7 Your Honor. The FDIC respectfully requests that the Court
8 stay the case for three weeks --

9 THE COURT: No. No. I want you to answer my
10 question.

11 MR. DOBER: -- due to a change in leadership --

12 THE COURT: I want you to answer my questions right
13 now.

14 MR. DOBER: Yes, Your Honor. Could Your Honor
15 repeat those questions.

16 THE COURT: Who took the incredibly narrow illogical
17 view of their FOIA request.

18 MR. DOBER: Your Honor, I would say that was the way
19 that it was interpreted --

20 THE COURT: I didn't ask the way it was interpreted.
21 It was interpreted way too narrowly, in a way that's barely
22 laugh -- it's almost laughable. Now, who did that?

23 MR. DOBER: I don't have on -- offhand the name of
24 the original person who processed the FOIA request.

25 THE COURT: Any time since the initial FOIA request

1 was sent in were any documents relating to, this is letters to
2 banks about crypto, right? How do I say that to encompass
3 precisely what you all have asked for? I need a phrase.

4 MR. DOBER: Pause letters.

5 MR. HARPER: Pause letters.

6 THE COURT: What's that?

7 MR. HARPER: Pause letters.

8 THE COURT: Pause letters.

9 MR. HARPER: Yes.

10 THE COURT: Pause letters sent by the FDIC to a
11 number of banks and to pause their crypto activities. So can
12 everyone in this room agree that when I say pause -- crypto
13 pause letters that's what we're talking about, yes?

14 MR. HARPER: Yes.

15 MR. DOBER: Yes, Your Honor.

16 THE COURT: Okay. Have any documents whatsoever,
17 emails, texts, hard copies, soft copies, anything sent by
18 carrier pigeon been destroyed since the issuance of the FOIA
19 request on --

20 MR. HARPER: Crypto pause --

21 THE COURT: On what date?

22 MR. HARPER: Oh, I'm sorry, November 8th, 2023.

23 THE COURT: November 8th, 2023.

24 MR. DOBER: Not to my knowledge, Your Honor. We
25 have robust document retention practices at the Agency for all

1 electronic records.

2 THE COURT: And what efforts have you made to
3 undertake that representation to me? Because you've gotten an
4 assertion, an allegation that documents were ordered to be
5 destroyed. And I assume that because of that you didn't just
6 come in here having relied on policies and procedures without
7 doing some investigation as to whether those allegations were
8 correct, right? Or did you just come in here and say, yeah,
9 we follow policies and procedures?

10 MR. DOBER: Your Honor, if I gave that impression I
11 do apologize. There are massive amounts of litigation holds
12 in place at the FDIC.

13 THE COURT: Okay. I'm asking about this litigation
14 hold. When was this litigation hold put in place? Was there
15 a litigation hold put in place specifically for their FOIA
16 letter?

17 MR. DOBER: Not -- no, Your Honor. I don't believe
18 so.

19 THE COURT: Was there a litigation hold put for
20 their FOIA letter, when did you all file this lawsuit?

21 MR. HARPER: It was June 2024.

22 THE COURT: Was there a litigation hold put on June
23 2024 when you all -- 2024 when you all received this lawsuit?

24 MR. DOBER: No, Your Honor.

25 THE COURT: How is that -- how is that possible?

1 MR. DOBER: The agent --

2 THE COURT: Do you understand that right now if I
3 find -- and there's going to be an investigation -- that any
4 documents were destroyed, or if we can't figure out whether
5 any documents were destroyed, you guys are going to come in
6 for some serious sanctions?

7 MR. DOBER: Yes, Your Honor.

8 THE COURT: Can you explain to me why no litigation
9 hold was put in place? Also, not only are you in for serious
10 sanctions, you don't have attorney work product protection
11 anymore. You understand that; right? Because attorney work
12 product protection only attaches to documents once a
13 litigation hold has been put in place. You understand that
14 you all now have waived potentially all of your attorney work
15 product protection? Do you understand that?

16 MR. DOBER: I -- I understand what the Court is
17 saying, Your Honor. It's -- I haven't looked at the law on
18 that issue in a while. But I do understand what the Court is
19 saying.

20 THE COURT: Did you undertake any investigation to
21 determine why no litigation hold was put in place?

22 MR. DOBER: I have not, Your Honor. No.

23 THE COURT: Have you undertaken any specific
24 investigation with respect to the allegations that documents
25 related to crypto pause letters were destroyed?

1 MR. DOBER: Your Honor, yes, I have -- I have spoken
2 with --

3 THE COURT: Okay. What was that investigation?

4 MR. DOBER: Well, we have spoken with clients about
5 it and about that issue, yes.

6 THE COURT: Who did you speak to?

7 MR. DOBER: Personnel in RMS which I --

8 THE COURT: Personnel where?

9 MR. DOBER: In our bank -- in our supervision, bank
10 supervision section that maintains the supervisory
11 correspondence that go back and forth with banks.

12 THE COURT: Well, I'm not just talking about the
13 back and forth with the banks, I'm talking about everything
14 internal to FDIC which would also have to have been held. Did
15 you do any investigation about whether internal communications
16 were destroyed?

17 MR. DOBER: Your Honor, I'm -- I'm -- I'm cognizant
18 of the Court's point, I have not looked at the law on this in
19 advance of this. I -- but I am not in a position to agree
20 that the hold that you envision for a FOIA request is
21 something that -- is something that is required in FOIA, in
22 terms of asking for the hold of -- to give you an example, we
23 get a thousand FOIA requests a year.

24 THE COURT: You don't get a thousand FOIA lawsuits a
25 year, do you? I'm talking about a lawsuit.

1 MR. DOBER: Yes, Your Honor.

2 THE COURT: I don't know whether you need to put a
3 litigation hold in place once you get the FOIA. I assume you
4 don't. But you do need to put it as soon as litigation is
5 reasonably anticipated. And can you and I both agree that the
6 last date litigation can be reasonably anticipated is the day
7 you actually get a lawsuit?

8 MR. DOBER: I would agree.

9 THE COURT: So at a minimum, at the absolute
10 minimum, a litigation hold should have been put in place in
11 June of 2024 when this case was filed; right?

12 MR. DOBER: Your Honor, I'd have to look at the law
13 on that as it pertains to FOIA lawsuits.

14 THE COURT: Do you think that -- I'm sorry, is there
15 an exception to the Federal Rules of Civil Procedure that I'm
16 unaware of? Is there a Federal Rule of Civil Procedure 9 and
17 a half that says discovery doesn't apply to lawsuits brought
18 against the government under the Freedom of Information Act?

19 Mr. -- someone from Gibson, is there such a
20 exception that I'm not aware of?

21 MR. HARPER: I'm not aware, Your Honor.

22 MR. DOBER: FOIA lawsuits do not generally -- do
23 not -- are not discovery lawsuits, Your Honor. They're
24 administrative record, Your Honor. But I do want to emphasize
25 to the Court that we do have new management in the FDIC and

1 new leadership as of yesterday that they took new positions.
2 And they do want to re-evaluate the positions that were taken
3 in this case. And for that reason, we would request that the
4 Court stay the case --

5 THE COURT: I'm not staying this case.

6 MR. DOBER: -- for the time --

7 THE COURT: I'm not staying this case at all, in
8 fact, I'm speeding it up dramatically. You're going to have a
9 30(b)(6) to them within a week. They're going to take a
10 30(b)(6) deposition of everything that was done with respect
11 to the issuance of this FOIA request and how it was processed.
12 That includes any internal nonprivileged communications about
13 the request. It includes them -- someone had -- you issue by
14 tomorrow at 2:42 the subject's for a Rule 30(b)(6). And
15 you're going to get a deponent who is going to be well prepped
16 and well versed on what happened within a week. And if they
17 come back to me and they say that your Rule 30(b)(6) witness
18 didn't know anything or was uncommunicative or was
19 unresponsive or the defending attorney impeded the deposition,
20 life will become very, very, very unpleasant for the FDIC. Do
21 I make myself clear?

22 MR. DOBER: Yes, sir.

23 THE COURT: And I don't care who your management is,
24 all right?

25 MR. DOBER: Yes, Your Honor.

1 THE COURT: Is there anything else you guys want?

2 MR. HARPER: Just a couple of points, Your Honor.
3 We would ask that they be -- the FDIC be required to
4 produce -- to search for and produce all -- any other pause
5 letters that might exist beyond those shared with the OIG as
6 soon as possible.

7 THE COURT: I thought they were already doing
8 that.

9 MR. DOBER: We are, Your Honor.

10 THE COURT: Okay. How long do you need for that? I
11 mean, it can't be that hard, right? There must be a database
12 where these just exist.

13 MR. DOBER: February the 14th. I just, Your Honor,
14 we are not -- I do not know whether there are or the volume
15 of --

16 THE COURT: Well, you're going to tell me, the Court
17 and opposing counsel, what the volume is by 5:00 p.m. on the
18 24th, on January 24th. And then depending on that volume we
19 will determine when you get your pause letters. It's not
20 going to be -- I mean, the latest it's going to be is February
21 14th, it might be quite earlier than that. What else would
22 you like?

23 MR. HARPER: So I just wanted to again inform the
24 Court that we intend to file a motion for to leave to amend
25 the complaint to --

1 THE COURT: It's granted.

2 MR. HARPER: That's all, Your Honor.

3 THE COURT: File your amended complaint. Do we have
4 pending summary judgment motions?

5 MR. HARPER: No, Your Honor.

6 THE COURT: Okay. File your amended complaint.

7 MR. HARPER: Thank you, Your Honor.

8 THE COURT: All right. Stay up here for a moment.
9 No, no, you.

10 MR. HARPER: Me?

11 THE COURT: Threats against the FDIC lawyers are
12 totally inexcusable. Do you know who this whistle blower is?

13 MR. HARPER: So I do -- after the public allegations
14 came out on the FDIC exposed Twitter account, the
15 whistleblower, whose name is Michael Williams reached out to a
16 client of ours and we had a couple phone con- -- I had two
17 phone conversations with him over the past week. He informed
18 me on those phone calls that he is a former FDIC employee and
19 provided information about substantiating the allegations that
20 were made on the Twitter account. But we had no awareness
21 whatsoever that he was intending to reach out to opposing
22 counsel.

23 THE COURT: But he is the person who reached out to
24 opposing counsel?

25 MR. HARPER: I assume so. All I saw was the same

1 text you saw. We didn't have any awareness beyond that.

2 THE COURT: Well, I'm entering an order to prevent
3 him from contacting FDIC opposing counsel. And how do I get
4 that order to him?

5 MR. HARPER: We -- I'd be happy to -- I did also --
6 we have his email address, I would be happy to email it to him
7 if you issue such an order.

8 THE COURT: How -- okay. Sit down.

9 How would you like me to handle this? I mean, this
10 is totally unacceptable. I mean, it's beyond unacceptable.
11 I'm not even -- this isn't going to happen again, because
12 these lawyers have to deal with me, but they're not going to
13 have to deal with threats from outside parties.

14 MR. HARPER: Understood, Your Honor.

15 THE COURT: What can I do to alleviate this issue?
16 I mean, if I enter an order I don't know if this guy is going
17 to go, you know, do more. So if you want to think about it,
18 but I'll do what you want me to do.

19 MR. DOBER: Thank you, Your Honor. It has been a
20 tumultuous 48 hours. You know, if I could ask you to turn
21 back time I would, but I know that's -- powerful as the Courts
22 are, they're not that powerful.

23 THE COURT: It's actually unclear whether under the
24 law of physics it is possible to turn back time, entropy.

25 MR. DOBER: Point taken, Your Honor. So I think the

1 best I can have for an ask, in addition -- I would like to
2 think on the order, but I do think an order makes sense and I
3 think the order should extend to family members,
4 unfortunately, because this individual's first contact was to
5 my wife to be clear. He texted my wife on her personal cell
6 phone.

7 THE COURT: How did that -- how --

8 MR. DOBER: He looked it up and he found it, because
9 that's what he does. It's not hard the fine somebody's
10 personal cell phone if you know their first and their last
11 name.

12 THE COURT: Okay. Here's what we're going to do,
13 you two are going to get together and you're going to draft an
14 order saying exactly what you want me to say. We're going
15 issue the order. I'm going to put it on Heritage to make sure
16 this guy, what's his name?

17 MR. DOBER: Michael Williams.

18 THE COURT: Michael Williams sees the order. If Mr.
19 Williams violates the order he's going to be under violation
20 of a court order and then there are going to be serious
21 problems for Mr. Williams. I mean, I don't --

22 MR. DOBER: Thank you, Your Honor.

23 THE COURT: I guess I can -- I don't know, can I --
24 I guess I can keep the order under seal and just give it to
25 Mr. Williams. You draft it the way that you want it. As soon

1 as I get it after -- when I say Heritage signs off, I mean
2 Heritage does what you want them to do and the order. And if
3 you have anything to add that's beneficial you can do that.
4 As soon as you get me the order, whatever you get me, I will
5 enter it.

6 MR. DOBER: Thank you, Your Honor. The other issue
7 is what really -- what set this off from my perspective, was
8 the filing and the attachment of anonymous, these anonymous
9 blog posts with salacious allegations from this -- from this
10 site. And those posts, it would seem to me would be helpful
11 if the Court were to instruct counsel to stop filing anonymous
12 blog posts in a filing with salacious allegations. And I can
13 go through -- I mean, you have some allegations in there that
14 are just so far from even relevant. Putting aside that it's
15 all anonymous and it's all from somebody with a disturbed
16 individual with a vendetta, who told me that he was going to
17 have guys send a package to my house and identified my home
18 street address in that message. And then told me he knew my
19 wife's name and he had my wife's number mixed up and my number
20 mixed up in his cell phone. But the --

21 THE COURT: I mean, do I need to send a Marshal out
22 to this guy?

23 MR. DOBER: I would ask -- Your Honor, my
24 understanding, the time stamps on the email and the phone
25 numbers are from Australia or New Zealand, maybe they know,

1 they've talked to him.

2 THE COURT: Is this guy in Australia?

3 MR. HARPER: Yes, Your Honor, that's what I --

4 THE COURT: Okay.

5 MR. DOBER: I don't even know if that's within --
6 enforcement of that order would become difficult to say the
7 least, but I think there's value -- there's value in it. And
8 he says he's going to have his guys send a package. I don't
9 know what we can do with that.

10 THE COURT: Well, by the way, one thing that you can
11 do, you personally if you want, just a suggestion, is if you
12 order anything, order it using a different name so that
13 anything that comes to your house that's under your name or
14 your wife's name you don't open. Does the FDIC have a way to
15 screen packages that come to the FDIC.

16 MR. DOBER: The FDIC does screen packages that come
17 to agency, yes.

18 THE COURT: All right. Do you want me to order the
19 FDIC to have -- you have packages sent to them for a while and
20 that they screen them even if they're personal?

21 MR. DOBER: That's a very good idea, I hadn't
22 thought of it. That would -- yes.

23 THE COURT: All right. I'll enter an order to that
24 effect, so that you're allowed to send your personal packages
25 through the FDIC, that they'll screen them and get them there

1 beforehand. That's what happens here. And if there's an
2 issue with that, reach out to my chambers and we'll figure
3 that out, okay?

4 MR. DOBER: And I am aware that others go through
5 more than I do.

6 THE COURT: So there --

7 MR. DOBER: No. No. Judges and members of the
8 Court, you know, and other federal prosecutors are subjected
9 to threats, I understand that.

10 THE COURT: No, this is totally unacceptable. I
11 mean -- were you the only one targeted or were there other
12 lawyers targeted?

13 MR. DOBER: Well, the first was an email sent to our
14 work addresses and those were to me, Ms. Soni and
15 Mr. Kurtenbach who work with me and work for me. The personal
16 text messages to my spouse and to me at our personal numbers
17 were only sent to me.

18 THE COURT: All right. Well, if you want anyone
19 else covered by the order just put them in the order. If you
20 want anyone else covered with the FDIC thing, just add that.
21 You don't have to tell me right now, just add it and we'll do
22 it.

23 MR. DOBER: Thank you, Your Honor. And I would just
24 say on, you know, in Exhibit E of their posting, their filing,
25 you know, they attach a lengthy post from the individual. And

1 that has information -- it talks about alleged sex scandals,
2 insider trading, it's in the public filing, it's a rape
3 victim, it's -- or alleged -- it's a coworker's cookbook. And
4 I'm aware that Your Honor's rules of standing order say only
5 provide the pertinent information and it seems like here the
6 pertinent information was not -- was not provided.

7 THE COURT: All right. Do you guys want to talk
8 about that? I mean, I can seal the order -- I can seal the
9 exhibit but I don't think that's going to do you any good
10 because it's already on the internet. But if you want me to
11 seal it, I'll seal it. But why don't you come up and tell me
12 why you attached that. I mean, first of all, I think we can
13 all agree that they did not intend for any of this to happen
14 when they posted that. I'm not sure it wasn't foreseeable.

15 But come on up. First of all, you're not going to
16 post anything else from this person or anyone else anonymously
17 on the public docket. And if any of the allegations of what
18 he said are in your second amended complaint, that's going to
19 be filed under seal and then they're going to tell me what
20 they are agreed to not seal.

21 MR. HARPER: Okay, Your Honor. So we filed the
22 full -- I mean, I -- we filed the full Twitter post, not to --
23 we didn't -- there was just certain of these allegations that
24 were in certain of these like paragraphs. Since we filed the
25 whole thing for context we did not intend to --

1 THE COURT: No, I know you didn't intend for this to
2 happen. But I mean, maybe you don't have the most credible
3 witness here.

4 MR. HARPER: Yeah, I --

5 THE COURT: Which is something you might want to
6 think about as you're drafting your second amended
7 complaint.

8 MR. HARPER: Certainly, Your Honor. I will say that
9 we -- I spoke to Mr. Williams, and as I think the FDIC has
10 acknowledged, he is a former FDIC employee. So I mean, based
11 on those conversations there seem to be some indicia of
12 credibility there. I'm not saying -- I had no idea that all
13 this was going to happen.

14 THE COURT: Of course.

15 MR. HARPER: But then -- and beyond that we
16 approached the FDIC with these allegations over a week ago on
17 January 10th. That's what we did first, we went to them and
18 said are these true, do they affect -- they're specific
19 allegations that affected the response in this case, that
20 there were 150 documents that were not disclosed in this case
21 because of insufficient searches and so forth. So we
22 approached the FDIC. They didn't respond to those allegations
23 for over a week. And that's when we brought it to the
24 attention of the Court.

25 And beyond that I will say, you know, and this will

1 come out in our amended complaint, but there's other requests
2 that I think FDIC's conduct in this case and other requests
3 that we've had before them that have been denied and some that
4 are still pending, raise similar questions about the adequacy
5 of their FOIA processes. So I don't think this was -- we were
6 not relying solely on these anonymous allegations.

7 THE COURT: All right. Anything else of this nature
8 you're going to file under seal. And then we're going to talk
9 about what can be unsealed later, okay, we're not doing this
10 again. I know you did not intend -- I understand precisely
11 why you did what you did, probably would have done the same
12 thing. I don't know. I can imagine a reasonable person
13 would, another reasonable person might not. I don't know.
14 Don't do it again because now we know what we're dealing
15 with.

16 MR. HARPER: Understood.

17 THE COURT: All right. I am very sorry for your
18 last 48 hours, that is not anything I would wish on anyone.

19 MR. DOBER: Thank you, Your Honor. Permission to
20 approach with counsel.

21 THE COURT: Yeah, sure.

22 (Bench conference off the record.)

23 THE COURT: We'll seal the transcript. If you want
24 to order the transcript you're allowed to order the
25 transcript, but otherwise the transcript is sealed. Is that

1 what I need to do? All right.

2 Okay. FDIC counsel, it occurs to me I should
3 actually give you an opportunity to respond on the 30(b)(6).
4 If you want to respond on the 30(b)(6) as to why I'm not
5 permitted to grant it, you can do that by COB Friday. But in
6 the meantime you should continue to prepare your guy for a
7 30(b)(6), because unless there's a D.C. Circuit case telling
8 me I can't do it, it's going to get ordered. Okay.

9 MR. DOBER: Yes, Your Honor. We'll research the
10 issue. It's just not something that I've ever come across or
11 was in my mind today.

12 THE COURT: Fair enough. I mean, it may well be
13 that in regular FOIA litigation, if it is just on the
14 administrative record -- I have this actually in another case
15 right now. Whatever the typical rule is for FOIA, right now
16 we're dealing with allegations of intentional destruction of
17 documents. And so that's where I'm basing the 30(b)(6)
18 inquiry into how documents have been handled in this matter.

19 MR. DOBER: Your Honor, those allegations are all
20 from one source to be clear.

21 THE COURT: Well, they're from one source,
22 understood. But it's also as I understand it, a pattern of
23 narrowly construing FOIA documents so as to avoid the actual
24 providing the documents, which I understand has not just come
25 from one individual; is that correct?

1 MR. HARPER: That's correct, Your Honor. May I
2 approach?

3 That's correct, Your Honor. I also don't think that
4 we know from sure that this all comes from one individual.
5 The letters sent by Senator Lummis to --

6 THE COURT: Oh, right, there's a senator letter.
7 Who was talking to Senator Lummis?

8 MR. HARPER: It just says whistleblowers plural, we
9 don't know. I don't know.

10 THE COURT: Have you reached out to her staff?

11 MR. HARPER: I have not.

12 THE COURT: I'm not going to tell you how to do your
13 job, but I know what I would do.

14 All right. Tell me by Friday, file something if you
15 want to oppose a 30(b)(6) if you absolutely can't get it done
16 by Friday, let me know. We'll figure out more time. But in
17 the meantime, I would try to get your head around this,
18 because what's not going to happen is unless there's -- if
19 there's a D.C. case telling me I can't do what I want to do
20 then of course I'm not going to do it. But if I have any
21 power whatsoever to allow them to investigate what's going on
22 here, it's going to happen, okay?

23 MR. DOBER: I understand --

24 THE COURT: I also don't want to put you at a --
25 given the two days that you've had -- all right, just strike

1 all the dates. I'm giving you a week to respond on the
2 30(b)(6), whether you oppose the 30(b)(6) and if so why. You
3 can reply in a couple days. I'll issue a decision quickly.
4 If I need a hearing, I'll have it. You're not going to have a
5 30(b)(6) prepped in a week. Put that off for a moment, focus
6 on the opposition. But be prepared that if I grant a -- are
7 you moving to get a 30(b)(6)?

8 MR. HARPER: Yes.

9 THE COURT: Okay. If I grant that motion it's going
10 to happen quickly after their reply. So just be prepared that
11 some things might move quickly after that, okay?

12 MR. DOBER: Yes, Your Honor. I understand the
13 Court's concern and I'll preface this by saying I --
14 divulging, I am a Yankees fan, so but if there's -- I can't
15 emphasize that there's a lot of turnover at the Agency right
16 now. So a 30(b)(6) witness is going to be challenging. We
17 have brand new leadership and on a personal note, the reason
18 Mr. Kurtenbach is not here today is because he's having
19 surgery.

20 THE COURT: And are you having surgery later?

21 MR. DOBER: I'm having surgery on Monday, Your
22 Honor. It's a hip surgery. You know, it's not as serious as
23 the other one, but there's several weeks when I am not going
24 to be mobile and I'm planning to take two weeks off. I -- we
25 can work on getting other people up to speed on this matter.

1 THE COURT: When do you get back to the office?
2 When are you scheduled to be back to the office?

3 MR. DOBER: I think it's February -- two weeks from
4 January 27th. My calendar is not with me. February --
5 February 10th.

6 THE COURT: All right. I will give you until
7 February 14th to get the additional notice letters out,
8 additional pause letters out. Every date I've given so far is
9 off the table, okay. I'm giving you brand new dates on
10 everything.

11 MR. DOBER: My management is very serious about
12 responding to this, and that could moot the whole issue. We
13 could have all of these pause letters to opposing counsel. I
14 mean, that's -- as, you know, by then or at least have a very
15 much a date certain, which would really promote judicial
16 economy to the Court and efficiency and might, you know, lead
17 to a resolution of the case. I also have, you know, brand new
18 leadership in the agency.

19 THE COURT: Well, they're also concerned -- I mean,
20 first they're concerned about getting the pause letters, but
21 then there are also concerns about redactions; correct?

22 MR. DOBER: Yes, which we're happy -- we have the
23 redactions, we can show them to the Court at any time, on
24 first set if it's helpful.

25 THE COURT: I mean, I will say that just glancing at

1 the renewed redactions, they do seem like legitimate
2 redactions. Like they were only redacting names. So I'm not
3 sure you're going to get very far with me on saying that they
4 have to unredact everything. But --

5 MR. HARPER: Your Honor, could I just say one thing
6 about timing.

7 Thank you, Your Honor, I understand that the FDIC
8 counsel's predicament and don't want to be disrespectful. I
9 do think we're willing to work with them on the timing of the
10 30(b)(6). I would ask that we have a quicker turnaround on
11 the letters. I don't know how involved, like the litigation
12 counsel is with sort of finding and reviewing those letters.
13 But, you know, especially given the allegations of document
14 destruction, like I don't want a month to pass between now and
15 when they actually --

16 THE COURT: Well, February 14th isn't exactly a
17 month.

18 MR. HARPER: Okay. And I would -- I think a couple
19 of weeks for them -- two weeks for them to identify the
20 universe of records is --

21 THE COURT: All right. You guys have until February
22 7th to get them the letters. If you need more time than that,
23 you should tell me by Friday. And then we'll get on a phone
24 call to assess whether or not you need that additional time.
25 All right?

1 MR. DOBER: Yes.

2 THE COURT: If your supervisors are new to the
3 government, tell them welcome to the NFL, things move quickly.
4 All right.

5 MR. HARPER: Thank you, Your Honor.

6 THE COURT: All right. On the 30(b)(6) issue, just
7 put a pause on it, after -- we're just going to put a pause on
8 it. After you get the letters, you tell me whether you want
9 to make the motion. If so, after you tell me that you want to
10 make the motion and you tell them, I'll give them two weeks to
11 respond and then we'll go from there. Does that make sense?

12 MR. HARPER: Yes.

13 THE COURT: Please be sensitive to his time while
14 he's away, because he shouldn't have to be dealing with
15 overseeing legal research after what he's gone through plus as
16 he's going through surgery, okay?

17 MR. HARPER: Understood.

18 THE COURT: Okay. So I guess the main thing that
19 we're all working towards now is him getting the full pause
20 letters, all right?

21 MR. HARPER: Thank you, Your Honor.

22 MR. DOBER: Yes, Your Honor. I just add also the
23 added time could help bring down the temperature in the -- out
24 there as well.

25 THE COURT: Okay. But you're going to send me

1 whatever proposed order, right, for you?

2 MR. DOBER: Yes, before I -- before my surgery, yes,
3 my -- this will be music to my wife's ear, Your Honor.

4 THE COURT: Totally on your time, whenever you want
5 it, just know that whenever you send it to us, as soon as
6 we're able to it, will get uploaded. Okay.

7 MR. DOBER: Thank you, Your Honor.

8 THE COURT: Thank you, everyone.

9 (The proceedings were concluded at 3:04 p.m.)

10 I, Christine Asif, RPR, FCRR, do hereby certify that
11 the foregoing is a correct transcript from the stenographic
12 record of proceedings in the above-entitled matter.

13 /s/
14 Christine T. Asif
15 Official Court Reporter
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