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DISTRICT COURT  
CLARK COUNTY, NEVADA

JOHNSON LAW GROUP, PC, et al., )  
)  
Plaintiffs, ) Case No. 570736  
)  
vs. ) Dept No. XXV  
)  
ENDOSCOPY CENTER OF SOUTHERN )  
NEVADA, LLC, et al., )  
)  
Defendants. )  
\_\_\_\_\_ )

BEFORE THE HONORABLE KATHLEEN DELANEY  
DECEMBER 20, 2010, 9:00 A.M.

REPORTER'S TRANSCRIPT  
OF  
DEFENDANTS' NOTICE OF MOTION FOR SANCTIONS  
AND ATTORNEY'S FEES AND COSTS PURSUANT TO  
RULE 11, NRCP; DEFENDANTS' NOTICE OF SECOND  
MOTION FOR SANCTIONS AND ATTORNEY'S FEES  
AND COSTS PURSUANT TO RULE 11, NRCP;  
MANDATORY RULE 16 CONFERENCE

APPEARANCES:  
(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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APPEARANCES:

For the Plaintiffs:

JOSEPH GANLEY, ESQ. (Via Telephone)  
PATRICIA LEE, ESQ.  
HUTCHISON & STEFFEN, LLC  
10080 W. Alta Drive  
Suite 200  
Las Vegas, Nevada 89145

For Defendants:

SARAH L. DE DIEGO, ESQ.  
LAW OFFICE OF SARAH L. DE DIEGO  
1223 Wilshire Boulevard  
Suite 148  
Santa Monica, California 90403

Also Present: PAUL CONSTANTINOU

1 LAS VEGAS, CLARK COUNTY, NEVADA  
 2 MONDAY, DECEMBER 20, 2010  
 3 9:00 A.M.  
 4  
 5 THE COURT: We now have Mr. Ganley on the phone.  
 6 Ms. Lee is here. Ms. de Diego is here, and we have  
 7 Mr. Constantinou present in the courtroom.  
 8 Can you hear us okay, Mr. Ganley?  
 9 MR. GANLEY: I can, Judge, thank you.  
 10 THE COURT: All right. If you have any  
 11 difficulties, please let us know.  
 12 This is the continuation date for the motions  
 13 that were filed and styled as, or at least commonly  
 14 referred to them as, motions first and second for NRCP 11  
 15 sanctions.  
 16 As I started to say before we got you on the  
 17 horn, Mr. Ganley, the dilemma here of course is how to  
 18 move past this part of the dispute in this case is to get  
 19 some of these issues resolved once and for all so that we  
 20 can actually proceed to where we need to go and with  
 21 things hanging over our head -- these things being certain  
 22 assertions of factual statements in a complaint that  
 23 argument is being made aren't factual, and some further  
 24 argument being made that obviously it has been well-stated  
 25 that counsel was not only aware that they were not factual

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1 but pursued them anyway.  
 2 I think we are even past the point of arguing for  
 3 lack of investigation. I think the allegation that has  
 4 been put forward is that there was perhaps no pursuit of  
 5 these even with investigation, but I do not want to  
 6 overstate it.  
 7 When we were here last, there was some indication  
 8 that there might be an opportunity to get together and see  
 9 if this case could be resolved. I take it since we are  
 10 all sitting here, we could not resolve those issues; is  
 11 that correct? Let me ask Mr. Ganley on the phone first.  
 12 MR. GANLEY: That is correct, Judge, in the sense  
 13 that we have not reached a summary resolution.  
 14 But I would like to report to the Court, and I  
 15 think Ms. de Diego would agree, that we have had progress.  
 16 When I think about how far apart the parties were before  
 17 and where we are now -- we have been communicating an  
 18 offer and there has been a counteroffer, which is where we  
 19 stand now, and that ball is in our court, Judge.  
 20 We still have some time, but limited time. And  
 21 the last time we were in, the Court expressed an opinion  
 22 that if we needed help along the way that you would be  
 23 willing to offer that, and I have not had a chance to  
 24 discuss with Ms. de Diego what I am about to propose  
 25 because of my travel schedule, but that is, Judge, if

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1 there is a possibility that the case could be referred  
 2 over to a settlement conference, I think that would be  
 3 helpful for these parties. So that is something that we  
 4 would suggest or requesting of the Court at this point,  
 5 and I think it would be fruitful. I think we are making  
 6 progress. I think there is a real chance for a resolution  
 7 of the whole case and that is why I proffer that.  
 8 THE COURT: Ms. de Diego, you were both open to  
 9 some discussions, it sounds like it wasn't all that. I  
 10 understand things may not have been completely resolved.  
 11 We are prepared to proceed today with at least the matters  
 12 that were continued on the calendar, maybe not the case  
 13 management conference because that would make sense to be  
 14 something that perhaps got delayed if there was an  
 15 opportunity to have a meaningful settlement conference,  
 16 and I do not know how many settlement conferences you may  
 17 have participated in here in our jurisdiction, but there  
 18 are certainly some judges that are spot on sometimes when  
 19 it comes to cases like this, where they can really get to  
 20 the heart of it and get a resolution. And there are other  
 21 judges where maybe it's kind of a, if settlement comes,  
 22 settlement comes. If we get somewhere, we get somewhere.  
 23 If not, we don't.  
 24 So depending on if we had the right person  
 25 involved, do you think there is an opportunity here to

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1 further discuss settlement; how would you say that that  
 2 opportunity, if you see it, would impact you with how we  
 3 would proceed today. We still have some leverage and we  
 4 still have some benefit maybe to resolving some issues  
 5 before. My concern, which is depending on how we proceed  
 6 with these motions what might explode this case into  
 7 something I don't think any of us really want it to be.  
 8 Ms. de Diego.  
 9 MS. DE DIEGO: Your Honor, I actually was not  
 10 aware that we made any progress. This is news to me. We  
 11 did submit a counteroffer and we received an e-mail a  
 12 couple days later that went to his client and he would get  
 13 back to me, and no one got back to me. So if there is  
 14 some progress and they are willing to take our offer and  
 15 to move forward on that, I was not aware of that.  
 16 He has my e-mail and he has my phone number, he  
 17 could have easily contacted me before the hearing at  
 18 anytime if there really was some progress on that.  
 19 THE COURT: The way I understood the progress,  
 20 Mr. Ganley was stating was really up to the point where  
 21 you made the counteroffer. I did not understand him to  
 22 say that they were ready to give you a counteroffer back,  
 23 or anything other than they were digesting and reviewing  
 24 your counteroffer.  
 25 But I think that is what they meant by "some

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1 progress" that there was an offer and there was a  
2 counteroffer. And maybe if we can head into a meaningful  
3 settlement conference there would be some value to it. I  
4 think the question becomes, is there still value if we  
5 proceed substantively with today's hearing. I tend to  
6 think, yes. But I wanted to get your take on that before  
7 Mr. Ganley or Ms. Lee.

8 And then is there more value perhaps is the  
9 better way to put it if we get you set up for a meaningful  
10 settlement conference somewhere, and it would be with one  
11 of the two business court judges because this is a  
12 business court case. And so we are usually more readily  
13 able to pick a date, put you in there and have something  
14 firm for you all to look at. Would there be more value  
15 for us waiting on these matters to do that.

16 And so I appreciate we are sort of in a vacuum  
17 here as to where value might be or not be, but I also  
18 don't want to waste your folks' time.

19 These kinds of determinations here, though, with  
20 your motions for Rule 11 sanctions, I do not know that  
21 they necessarily go to the heart of the case in terms of  
22 what is going to happen with the case, so in that respect  
23 they can kind of can be addressed at anytime.

24 On the other hand, maybe there is some value in  
25 putting them to bed and letting the dust settle and see

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1 where we go.

2 MS. DE DIEGO: Your Honor, I would disagree with  
3 you, though, on that. We do believe that these go to the  
4 very heart of the case and things really got blown out of  
5 proportion, had moved along in a way that you would not  
6 have wanted so it ended in somewhat of an unusual course  
7 because of the largeness of the allegations that are made,  
8 you know, saying that my client stole millions of dollars.  
9 It was something that wasn't that out of proportion. And  
10 we do believe that these statements do go to the heart of  
11 the case. We would not be here in the first place if  
12 these statements hadn't been made.

13 With regard to a settlement conference, we are of  
14 course always open to meaningful settlement discussions  
15 and we don't have a problem with setting a time and a date  
16 for a settlement conference; however, we would ask that  
17 this court go forward with preferably setting the  
18 evidentiary hearing.

19 I am fine with having a Rule 11. I am fine with  
20 having the settlement conference before then, that doesn't  
21 bother me. But we also do not want to stall on this and  
22 we agreed to push your determination on it a week and a  
23 half ago to today to allow us time; however, in my  
24 opinion, we did not really get anywhere. We did not get  
25 the order that we were promised from our hearing in

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1 September. It is not going anywhere and I do not want to  
2 keep stalling and stalling the case with some hope of  
3 settlement. So we are fine with doing a settlement  
4 conference, setting that or even setting before we would  
5 ask that the Court go forward with their ruling on the  
6 motions on our calendar today or setting those for an  
7 evidentiary hearing in the future.

8 THE COURT: Thank you, Ms. de Diego.

9 Ms. Lee, is standing, Mr. Ganley, so I want to  
10 see what Ms. Lee has to say first.

11 MS. LEE: Your Honor, I was not here last time  
12 but I have been filled in by Mr. Ganley on what had  
13 transpired. And I just wanted to bring this Court's  
14 attention back to Rule 11 itself. The rule itself that  
15 they are referring to is Subsection 3, specifically. It  
16 has nothing to do with the claims that were brought. It  
17 is the factual allegations underlying the claim.

18 Subsection 3 of Rule 11 says that factual  
19 contentions must have evidentiary support, or they are  
20 likely to have evidentiary support after a reasonable  
21 opportunity for further investigation or discovery.

22 The rule itself contemplates that Rule 11 motions  
23 will not be brought to the parties even if your claim does  
24 not have reasonable basis that they will have evidentiary  
25 support once an investigation and discovery is done.

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1 Rule 11 is such a big deal, Your Honor. I know  
2 you do not see them very often. I have been practicing in  
3 this jurisdiction for eight years and I have never seen  
4 one come across my desk. It is very rarely used. It is  
5 the last bow in the quiver, usually, that the attorney  
6 will shoot out, and that is usually after there's been  
7 some kind of summary adjudication on the claims and the  
8 claims were so outrageously frivolous that they are  
9 entitled to summary judgment.

10 There has been no summary judgment granted to  
11 these parties. There have been no motions in limine  
12 granted to these parties. There has not even been any  
13 discovery done. So to jump right out of gate and say you  
14 lied in your affidavit and you lied in your complaint;  
15 therefore, we need to now go and do a Rule 11 evidentiary  
16 hearing to parse out the factual disputes that are now  
17 coming to light. I mean, we have a process for that and  
18 it's called trial.

19 It just seems so strange to me that we would be  
20 at this stage of the litigation trying to have an  
21 evidentiary hearing when they have submitted numerous  
22 affidavits, those people we need to have their  
23 depositions taken to figure out what kind of bias they may  
24 have in favor of these people testifying. There are  
25 former ACS employees that we would also like to interview

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1 and/or depose because they may have different opinions and  
2 different facts, factual allegations, and a lot of the  
3 things that they are alleging, Your Honor, they are just  
4 evidence to the contrary. It's not dispositive proof that  
5 anything wrong has happened here, it is just evidence to  
6 the contrary, and that is what litigation is. They  
7 present evidence to the contrary, we present evidence to  
8 the contrary.

9 And I would also like to point out, importantly,  
10 we have asked for a jury in this matter and if we are to  
11 accelerate the litigation of all these claims because they  
12 are actually disputing every material allegation in the  
13 complaint and in the affidavit supporting various motions,  
14 if we are to have a trial on that right now, which is  
15 basically what this evidentiary hearing would be, it  
16 deprives us of the right to have these matters heard by a  
17 jury. And I think it is important that a jury judge the  
18 demeanor of the parties that are willing to testify,  
19 reviewing the evidence that we still have not obtained  
20 because no discovery has happened. I just think it is  
21 premature, Your Honor.

22 And as to my law firm and the particular claims  
23 that have been brought against Mr. Ganley and Ms. Perkins,  
24 I would ask that, Your Honor, just immediately dismiss  
25 those. There is no evidence that my firm had any

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1 knowledge, even if what they say is true, that these  
2 allegations were false, and to investigate those claims,  
3 we would have to go talk to the people that submitted  
4 affidavits in this action in their favor.

5 Mr. Constantinou and Mr. Kestenbaum are not going to be  
6 people that are going to talk to validate our claims. A  
7 reasonable investigation was. Spoke to our client. We  
8 got daily reports from our client.

9 This is an ongoing contentious situation where  
10 daily there were these threats happening, threats of  
11 everything from shutting down the company to other types  
12 of threats, which will all be parsed out in this  
13 litigation. And if at the end of the day the jury does  
14 not believe the factual allegations brought by our client,  
15 then they can weigh that credibility at the time of the  
16 trial.

17 It is still premature and within the number of  
18 witnesses that have submitted affidavit, as well as the  
19 documentary evidence that we would like to subpoena in  
20 preparation for the evidentiary hearing, and depositions  
21 that we want to take, I anticipate this will be a very  
22 lengthy evidentiary hearing akin to a trial, 10 to 12 days  
23 it could be.

24 This is just not the stuff that Rule 11 is made  
25 of, and I think it is being brought by overly sensitive,

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1 overreactions to allegations that were made and they have  
2 not proven dispositively that those allegations are false.  
3 They have just presented evidence to the contrary, which  
4 is what litigation is.

5 THE COURT: Taking that last point that you just  
6 made, I would agree with you on a number of the asserted  
7 false allegations in these motions. We're just talking  
8 about contrary things, and I think the one that is at the  
9 heart of one that is so troubling to Ms. de Diego and  
10 Mr. Constantinou is this idea of what happened to the  
11 185,000? Perhaps there has been other monies taken for  
12 whatever use.

13 Truthfully, the evidence that has been put  
14 forward so far to support Rule 11 sections is too weak, in  
15 my opinion, to support Rule 11 sanctions, but there are  
16 other facts that are asserted. And the point that you  
17 just made about it is too early and maybe we need to wait  
18 until we go to trial to look at these things -- oh, no.  
19 That there is no evidence to support that these are false,  
20 that is not true for at least one of the areas and that is  
21 Mr. Eldredge's knowledge of the circumstances of these  
22 arrangements.

23 I mean some of the alleged unsupported frivolous  
24 statements talking about Mr. Eldredge not becoming aware  
25 of the services agreement until a certain date and not

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1 understanding how a deal worked, and the fact that he was  
2 not sure what was happening on the accounts, the fact that  
3 he did not have access to the accounts, the fact that he  
4 didn't get any profit because they never ran at a profit,  
5 there is pretty overwhelming evidence that has been  
6 supported provided by Ms. de Diego in support of her Rule  
7 11 motion for at least some of those facts.

8 Now, contrary affidavits saying that there was an  
9 accounting error, there wasn't any malfeasance, that stuff  
10 is he said, he said. That is up in the air kind of thing.  
11 That is not going to support a Rule 11 sanction. But I am  
12 concerned about certain allegations being put forward that  
13 don't appear to have any factual basis and don't appear  
14 through reasonable discovery to be able to have a factual  
15 basis to assert them because here is what is going to go  
16 happen on some of these; what did Mr. Eldredge's know and  
17 when, that is all in his head, and there is going to be  
18 him saying I did not know.

19 And then there is going to be all of this  
20 documentation and communications and e-mails and different  
21 things that say he absolutely did know. And I think those  
22 are some things that have to get put to bed before we  
23 proceed.

24 So what I said I was going to do at the last  
25 hearing, and I did do that, is I went through as detailed

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1 as possible as I could the approximately 18 to 20 false  
2 allegations, alleged false allegation, or frivolous  
3 statements that were put forward in the complaint and I  
4 have only come up with maybe three or four where I think  
5 that the evidence asserted to support them as being  
6 unsupported, false or frivolous, is sufficient to possibly  
7 warrant a sanction against Mr. Eldredge.

8 And I think those really go to the heart of what  
9 is troubling to Ms. de Diego and Mr. Constantinou. I  
10 don't find are going to be subject to sanction because it  
11 really is just a he said he said, or there is some sort of  
12 accounting error, or are there people who are going to say  
13 certain things?

14 I did contemplate an evidentiary hearing  
15 depending on how many of these facts really were potential  
16 to support a Rule 11 sanction, and honestly, I backtrack  
17 on that thought process because I do not think it serves  
18 us any purpose.

19 I think the issue before us is, is there enough  
20 evidence to support Rule 11 sanctions on one or more of  
21 these facts that were asserted under Rule 11(d)3 that the  
22 allegations or the other factual contentions to support  
23 Rule 11 do not have evidentiary support or are not likely  
24 to have evidentiary support or to have reasonable  
25 opportunity for further investigation.

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1 I think there are a handful, less than a handful,  
2 honestly, of facts that fall into that category that would  
3 warrant sanctions. And I think the remainder, there is  
4 not enough to grant Rule 11 sanctions. I do not think on  
5 any level that there are enough to grant Rule 11 sanctions  
6 against the attorney, but I think with regard to  
7 Mr. Eldredge I think there is some basis.

8 So it is my intent to today, but I am going to  
9 hear from both counsel, now that I have sort of  
10 foreshadowed my thought process, I am going to want to  
11 hear from both counsel on whether you want me to proceed  
12 on and actually issue a final decision for purposes of  
13 settlement conference, or some other alternative that you  
14 may want to seek.

15 I appreciate Ms. de Diego was willing to pursue  
16 the offer of an evidentiary hearing, but at this point, I  
17 am not inclined to set one of those. I think it would  
18 essentially take this case off track and take us down a  
19 path where we do not need or want to go. But I do think  
20 there is factual allegations that need to be resolved as  
21 we proceed. They may not be the ones that Ms. de Diego or  
22 Mr. Constantinou would like resolved, but there are some  
23 that need to be resolved. So let me hear from Ms. Lee,  
24 and then I will hear from Ms. de Diego.

25 MS. LEE: Thank you, Your Honor.

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1 Well, certainly, what Mr. Ganley proposed the  
2 most was the settlement conference. We fully endorse that  
3 and staying everything until the settlement conference.  
4 If Ms. de Diego would like to move forward, irrespective  
5 of whether or not there is going to be a settlement  
6 conference.

7 And along those lines, I would just say that with  
8 regard to the specific allegations that Your Honor is  
9 concerned with there has to be an opportunity to do --  
10 there has to be reasonable opportunity for further  
11 investigation or discovery. And I just think that the  
12 rule itself says that, so we don't have the situation we  
13 have now where you have these allegations being made at  
14 this point and I understand Your Honor's concern, there  
15 were e-mails produced where the contract was supposedly  
16 attached and said to Mark Eldredge, what you don't see is  
17 anything from Mark Eldridge going back to these people  
18 accepting a contract.

19 We don't know if they selectively handpicked  
20 certain e-mails and omitted others. We need to do further  
21 discovery even on issues which Your Honor seems to be  
22 convinced that that is absolutely a false statement. And  
23 that statement that Mark Eldridge made was that he didn't  
24 know about this agreement to the extent that he did not  
25 become aware that Kestenbaum and ACS was not just a firm

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1 administrator but controlled JLG's administrative and  
2 nonadministrative personnel among other things. So even  
3 if he saw the contract, it doesn't mean that he  
4 appreciated that magnitude of it, or appreciated the level  
5 of control that was exerted over the company that he was  
6 buying into.

7 And, again, Mark Eldridge has not been deposed.  
8 I cannot speak for Mr. Eldridge in terms of what was in  
9 his mind. But there should be an opportunity to explore  
10 that to also get into some electronic discovery so they  
11 can produce all of the e-mails, not just selectively  
12 handpicked and choose the ones that favor their side, but  
13 do a complete e-mail discovery, electronic discovery, talk  
14 to Mr. Crowther (phonetic), test his memory. There are  
15 things that should happen before just simply issuing Rule  
16 11 sanctions.

17 I think that the rule itself that you have to  
18 have a reasonable opportunity for further investigation or  
19 discovery before you can issue Rule 11 sanctions. That is  
20 just the most extreme position to take. There are other  
21 mechanisms and tools that they can use to parse out these  
22 issues that fall short of the Rule 11 sanctions.

23 And I would also endorse Your Honor's  
24 foreshadowing that the attorneys absolutely have no  
25 business in this motion for Rule 11 sanctions. Cami

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1 Perkins and Joe Ganley have been practicing in this -- Joe  
2 Ganley particularly has been practicing in this  
3 jurisdiction forever and a day. I think his ethics are  
4 above reproach. There is no way that they have alleged  
5 anything that would implicate either Cami Perkins or Joe  
6 Ganley of any type of wrongdoing other than counseling  
7 their client, speaking with their client, and getting  
8 information to put in their complaint, which is what we  
9 all do as attorneys when we draft these pleadings.

10 THE COURT: Ms. de Diego I want your response,  
11 but I know that you have a belief that we would not be  
12 where we are in this case if certain things hadn't been  
13 alleged. But I will tell you that I don't agree with that  
14 assessment on one level. If why you say that is a belief  
15 that you think that somehow these folks portrayed your  
16 clients as bad guys, and therefore, because this court may  
17 have thought they were bad guy is why it did what it did,  
18 that is just not why the Court did what it did.

19 I am a firm believer and I guess this is apropos  
20 of nothing other than I am a firm believer of you don't  
21 prevail in your cases because you make the other side look  
22 like the bad guys. I know a lot of lawyers think that is  
23 a good way to go and they like to pursue in especially in  
24 trial, but it never works in my opinion.

25 But ultimately, that is just not what I look at.

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1 I look at what I looked at, which was the agreement and  
2 the terms and conditions of the agreement. I ultimately  
3 made my conclusion that the agreement was void, but all  
4 the other circumstances up to this point were not made  
5 because the Court believes any wrongdoing on anybody's  
6 part, but because of the circumstances of the relationship  
7 between Mr. Eldredge and his firm and what was going on  
8 with it at the time of its dealings with the public.

9 So for what it's worth, I just wanted you to have  
10 that. But by no stretch of the imagination, from what I  
11 can see in your motion, do you have sufficient evidence on  
12 the more troubling of the allegations, the disappearance  
13 of the 185,000, the taking of monies and using them for  
14 personal things. I just do not see enough evidence that  
15 would show that those are absolutely false statements for  
16 purposes of a Rule 11 sanction motion.

17 Now, that does not mean that there can't be down  
18 the road another motion which deals with those issues, if  
19 in fact, through discovery that is not further deduced,  
20 but having an affidavit that says no, and having  
21 affidavits that it is an accounting error, that is just  
22 not enough.

23 The only areas where I see potentially troubling  
24 factual allegations in terms of if we go forward with  
25 those, and they are not true, then, again, what did

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1 Mr. Eldredge know or not know at a given time with regard  
2 to his relationship with his company, whether or not he  
3 received profits out of the circumstances when he said he  
4 didn't. And basically that financial aspect of the  
5 accounts and Mr. Eldredge's role in those accounts.

6 So with that said, what is your take on where we  
7 go from here and whether or not you would like me to make  
8 a ruling on your motion and put that issue to bed once and  
9 for all, with the understanding that I am not inclined at  
10 this time to have an evidentiary hearing.

11 MS. DE DIEGO: Your Honor, just to clarify, I did  
12 hear your point that was in relation to the last time we  
13 were here. I am not referencing why we are here in this  
14 court or how this proceeding has gone forward and not the  
15 issue for summary judgment. Rule 11 would require before  
16 we even received a motion for summary judgment that was  
17 something that we are already contemplating on submitting.  
18 And we were planning it when Your Honor mentioned before  
19 to do them for those misstatements in each of the  
20 pleadings sent beyond these ones as well.

21 What that was in reference to was the very first  
22 hearing, the court had entered the original temporary  
23 restraining order, I don't believe that that would have  
24 ever happened if they had not come into court and said  
25 that my client stole millions of dollars, that this court

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1 did not know anything about the services agreement, they  
2 have taken \$185,000 out of his trust account, threatening  
3 to beat him up, horrible, horrible things, that the court  
4 would not have issued that original temporary restraining  
5 order if it had not been privy to those things.

6 It is not just that the client might be lying; I  
7 understand that clients lie, that is something that we  
8 unfortunately deal with quite often. It is maybe not  
9 quite telling you the whole truth or telling you the whole  
10 story, and that is why there is rules for reasonable  
11 investigation. That if you put forth the facts in the  
12 beginning and you don't have anything to support it at  
13 that time, you have to find more support.

14 But if you don't find support for those, you also  
15 need to correct whatever you said in the first place. And  
16 in this case, it's not just that the client said something  
17 wrong, as part of that original application for TRO,  
18 Ms. Cami Perkins stated that they have already stole large  
19 sums of money and they are going to abscond the  
20 jurisdiction. They have stolen millions of dollars.  
21 Millions of dollars. Not \$185,000, not \$20,000, not  
22 anything that they, you know, maybe think that they can  
23 prove at trial, but millions of dollars. That is a huge  
24 allegation. That's not some little thing that we are  
25 disputing a fact about. There is nothing about millions

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1 of dollars missing since then. There have been discussion  
2 of maybe it's \$165 or \$185 supposedly missing from the  
3 trust account, but the other attorney stated in her  
4 affidavit to the court that they stole millions of dollars  
5 and that is a lie, and that is something that we are  
6 asking the Court to address, statements like that maybe  
7 not to this court, but to the previous court and then kind  
8 of set the tone for this whole case.

9 In regards specifically to whether or not  
10 Eldredge new about the services agreement, Ms. Lee stated,  
11 you know, well, he just didn't know about it, or if he  
12 knew about it he did not appreciate the full scope of it.  
13 Again, that is not what we are talking about here.  
14 Ms. Perkins said after Eldredge became a 99 percent owner  
15 of JLG California, he became aware of the services  
16 agreement. They are not saying that maybe he knew about  
17 it, or maybe he didn't understand it, or he wasn't fully  
18 aware of the consequences, or a 2 million dollar  
19 termination fee, or all these claims. They are saying  
20 that he never knew anything about it.

21 And they came into this court and got a temporary  
22 restraining order against my clients' company. And then  
23 you know the series of events that came after that based  
24 on misrepresentations to the court and flat out lied. And  
25 as much as I know that this is unusual, I have never filed

23

1 a Rule 11 motion before, but I have never seen a case  
2 where it is warranted, and especially not against other  
3 attorneys; however, in this case we do feel that it's  
4 warranted. They lied on behalf of their client and they  
5 haven't retracted it and they have had a reasonable  
6 opportunity to do it. And since that time it has  
7 continued in each pleading and each hearing.

8 And as I mentioned earlier in the month that we  
9 were planning to put forth more requests for sanctions, or  
10 maybe a motion to strike as other things have come out,  
11 besides taking over the bankruptcy and being able to read  
12 some of the transcripts of the depositions that were taken  
13 in that, we could come up with just tons of other things  
14 that they stood here in court and lied about. And not  
15 just from their client either, it is his attorneys and  
16 that is a huge problem and that is not an appropriate way  
17 to ask of this court or to act in or put forward to my  
18 client, to my client that has to defend this over and over  
19 again, and it has been nine months.

20 This is what I want to point out: They have had  
21 ample time, more than reasonable time to find the facts to  
22 support these statements. They have their complete books.  
23 They have a forensic accounting firm that they have had  
24 well before the trial even started -- well, before they  
25 have filed the Complaint. They have had months and months

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1 and months to go through the books to do their accounting  
2 and figure out where these millions of dollars are. If  
3 there is millions of dollars, I welcome them to show that  
4 but it is just not true. They have had plenty of time to  
5 figure that out. It has been nine months. That is plenty  
6 of time to figure that out and plenty of time to come up  
7 with the facts to support these allegations that they  
8 made.

9 THE COURT: Thank you.  
10 Anything further, Ms. Lee?

11 MS. LEE: And I would also just like to point out  
12 to the court that the only remaining claims that are  
13 remaining after Your Honor's last ruling from our  
14 standpoint, really, is just the accounting, which has not  
15 been done. I mean, we had five causes of action with the  
16 declaratory relief that was granted and knocked out, three  
17 of the other causes of action and preliminary injunctive  
18 relief is moot at this point.

19 So from our end, all we have is the accounting  
20 cause of action left. On their end on their counterclaim  
21 they have fraud against Eldredge and misrepresentation of  
22 fraud against Eldredge. But I think it is important  
23 because of the absolute specific allegations that are  
24 concerning to Your Honor whether or not Mark Eldredge knew  
25 about the contract before he became a partner.

25

1 And just to correct one of the quotes that Ms. de  
2 Diego brought up, the specific quote actually says:  
3 "After Eldredge became a 99 percent owner of  
4 JLG California, now JLG, he became aware of a  
5 services agreement JLG California had entered  
6 with ACS in October of 2006."

7 But the first time Eldridge became aware that  
8 Kestenbaum, via ACS, was not simply the firm administrator  
9 but controlled JLG's administrative and non-attorney  
10 personnel, among other things, so I think we should have  
11 the court read that whole quote into the record so we have  
12 a clear record of what exactly the allegation is.

13 At this point when Mr. Eldredge knew about the  
14 service agreement certainly needs to be explored; however,  
15 it is not germane to the many allegations of the  
16 Complaint, at least not from our end. Our only remaining  
17 allegation is an accounting, which we need to do for  
18 discovery and then we could figure out whether or not the  
19 numbers that are being locked in by ACS on their end are  
20 valid, had been manipulated, that don't match up. There  
21 is an accounting that needs to be done, and we have not  
22 done a forensic accounting because no one has done  
23 discovery yet.

24 And Ms. de Diego implied that we have been doing  
25 nothing for nine months, I think Your Honor knows that we

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1 have been doing a lot in nine months. We have gone  
2 through, not just her but another law firm that we sought  
3 to disqualify with a 45-page motion to disqualify the day  
4 before the hearing they file a motion to withdraw and then  
5 Ms. de Diego shows up.

6 I mean, there has been a lot of action going on  
7 in this case in the last nine months. It is not like we  
8 have been sitting idly on our hands not trying to do  
9 anything. That there had been numerous attempts to  
10 settle, not with just Ms. de Diego, but with the prior  
11 firm, so when she says she has nine-months, they also had  
12 nine months. That first thing that we filed right out of  
13 the gate was the TRO. They had that affidavit from day  
14 one. They didn't file Rule 11 sanctions back then because  
15 it does not prejudice them to bringing it later.

16 It does not prejudice them to wait now to go  
17 forward in the litigation and do some discovery to figure  
18 out whether or not these Rule 11 sanctions would be  
19 warranted. If they can wait nine months, they can wait  
20 longer. There is absolutely no prejudice whatsoever to  
21 allow us to go do some discovery. So when she brings up  
22 the period of the nine months, I think that cuts both  
23 ways. They had nine months knowing about this affidavit  
24 and just bring it up for the first time in the last few  
25 months. And I think that just evidences that there is no

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1 prejudice, there is no need to decide this issue now, and  
2 it is their burden to show it. They have to prove it, and  
3 it is a very, very high standard. And all inferences have  
4 to be drawn in favor of Mr. Eldredge, just like a summary  
5 judgment motion, only even a higher standard than that.

6 All favorable instances that can be drawn in  
7 favor of Mr. Eldredge have to be drawn in favor of  
8 Mr. Eldredge in considering Rule 11 sanction motions. And  
9 I just don't think at this time there has been enough  
10 discovery, enough production, not even one deposition has  
11 been taken of this action to warrant Rule 11 sanction  
12 motion.

13 I think that we should err on the side of caution  
14 with these types of motions because we do not want to  
15 encourage, and this being the first motion out of the gate  
16 to address what they believe to be false allegations.

17 THE COURT: Thank you, Ms. Lee.

18 Your point at the end is well taken. The last  
19 thing in the world this court wants to do is encourage  
20 further motions like this; however, I think that this case  
21 has an issue that needs to be addressed, and I think the  
22 court's concern exists that there have been statements put  
23 forward by Mr. Eldredge that do not have factual support  
24 and are not going to have factual support upon further  
25 investigation and evidence coming to light, and those are

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1 not all of the allegations that have been claimed by  
2 Ms. de Diego on behalf of her clients, but they are some  
3 of them. And I think that for some of them, some minimal  
4 sanction is appropriate, and I am going to award such.  
5 And then I hope what we will do is put this to bed and we  
6 will now try this case for whatever remains of the claims  
7 and we will go through the discovery process.

8 I am not going to be terribly amenable to future  
9 motions such as this, because now that we will be going  
10 forward through the discovery process in this case, I will  
11 certainly be amenable for the motions of the dispositive  
12 in nature down the road. But I think what we have here  
13 and what concerns this court, although, again it is not  
14 all the matters pointed to by Ms. de Diego, and that there  
15 is evidence that this court can adduce from what has been  
16 put forward to indicate that Mr. Eldridge did receive a  
17 profit from these arrangements, even though he asserted  
18 that JLG never had a profit and that he wasn't entitled to  
19 and never did get a profit, but he did in fact receive a  
20 profit out of his cut of profit, if you will, and that he  
21 asserted through his attorneys that he was not able to see  
22 details of expenses, even though there is overwhelming  
23 evidence that he was provided with those pieces of  
24 information with regard to the handling of the account,  
25 and specifically talking about the monies that were

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1 deposited into the JLG accounts first, and the fact that  
2 he indicates that he was not aware of the circumstances of  
3 the service agreement and how it operated, all which I  
4 find disturbing and troubling in terms of how they were  
5 asserted and from the evidence that I can see being put  
6 forward by Ms. de Diego.

7 Anything beyond that I think is, again, as said,  
8 it is necessary to further explore not for purposes of  
9 Rule 11 sanctions as part of this case. That there is  
10 reasonable dispute as to what might be the operative fact  
11 under these other assertions including the missing monies,  
12 et cetera, or the lack of accounting for monies, that is  
13 one of the causes of action that still exist.

14 So what I am going to do -- and I am not going to  
15 hold an evidentiary hearing. I am going to grant the  
16 first motion for Rule 11 sanctions in part, deny in part.  
17 I am going to deny the second motion for Rule 11 sanctions  
18 on the matters that I am finding in favor of the  
19 defendant. So we will have one order as to the first  
20 motion for Rule 11 sanctions. The only aspect is I will  
21 grant the sanctions, and it is only as to Mr. Eldredge, I  
22 do not find sufficient evidence to warrant finding any  
23 wrongdoing on the part of the counsel, but as to  
24 Mr. Eldredge. I don't do the sanctioning lightly. I have  
25 only done it in one other case that I can think of, but I

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1 think in this circumstance it is appropriate. I am going  
2 to issue sanctions against Mr. Eldredge for false  
3 statements with regard to his obtaining a profit, his  
4 ability to see those account details of what is happening  
5 with the JLG account and his knowledge of the time and  
6 circumstances of the services agreement and its operation,  
7 if you will, and on those basis I will issue a \$1,000  
8 sanction that is to be paid to the defendants in part to  
9 defray their attorney's fees and costs for having to  
10 defend those matters.

11 Ms. de Diego, I will ask you to be very  
12 particular in how you draft the order. Just talk about  
13 those few matters. Obviously, you will have to run it by  
14 Ms. Lee and Mr. Ganley. There may be a dispute as to what  
15 this order should look like.

16 For the sanctions, Mr. Eldredge will have 30 days  
17 to pay them. And I hope that that puts to bed once and  
18 for all the issues where the court can see that there was  
19 simply false statements being put forward, and that the  
20 remainder of this case will be tried in the normal course,  
21 and we'll go from there.

22 Now, I do have a couple of dates that I could  
23 look at and possibly give you for a settlement conference.  
24 Neither Department 11 or Department 13 is available before  
25 the month of February for a date certain, but I think it

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1 is not a bad idea to have a date out there by which you  
2 work towards. If you can't resolve it yourself in  
3 advance, then the last thing in the world I want to do is  
4 incur the wrath of my fellow business court judges because  
5 you end up going to a settlement conference that you are  
6 not prepared for, so I guess I would ask you to  
7 self-police. If you really feel that there is no basis  
8 for it, then call it off.

9 But I am going to set something so that you have  
10 something to work towards, and perhaps, you will be able  
11 to even resolve it prior to that, but at least you'll know  
12 that you will be expected to come forward with all parties  
13 and their counsel in good faith here at a date in February  
14 where hopefully you can get this resolved. And if you  
15 can't do that and you are not going to make it meaningful,  
16 then, again, pull the plug or call it off.

17 MS. DE DIEGO: Your Honor, before you do that, I  
18 would just like to ask, could you please get a specific  
19 ruling on the other very important part of the attachment  
20 of Mr. Constantinou's felony conviction and whether or not  
21 that was --

22 THE COURT: I honestly thought I ruled on that  
23 last time, but I thought it was appropriate to be included  
24 in that it should be stricken. If I did not communicate  
25 that, then that is not a basis for sanctions, but I do

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1 believe that is inappropriate and that it should be  
2 stricken.

3 MS. DE DIEGO: Thank you.

4 THE COURT: The date that I would like to give  
5 you is February 18th for Department 13. I will make sure  
6 my clerk and my staff advises Department 13 that we are  
7 setting this, but it will be set on their calendar and  
8 what will happen is they will notify you at some point in  
9 advance on what their requirements are for the settlement  
10 conference is. If you have any specific questions of  
11 them, you should contact them directly. But it will be  
12 February 18th, which is a Friday, at 9:30 a.m., and that  
13 will be the settlement conference for this case.

14 Again, make a date to check in with each other  
15 and make sure that you still are thinking it is going to  
16 be meaningful to do it before you do bring everybody  
17 together for it. Cancel it otherwise. But I do think it  
18 is appropriate to have some date that we are working  
19 towards in the future.

20 Ms. de Diego, you will prepare the order. I am  
21 granting the first of the Rule 11 sanction motion. I am  
22 denying the second one in its entirety because the basis  
23 for the granting would be redundant and the other matters  
24 will not be granted. The denial of the Rule 11 sanctions  
25 as to the attorneys and as to the other matters is that it

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1 is substantial or appropriate evidentiary basis to find  
2 those sanctions.

3 MS. LEE: Can I ask just --

4 MR. GANLEY: Your Honor, if I may --

5 THE COURT: Yes, Mr. Ganley.

6 MR. GANLEY: Respectfully, I understand the  
7 Court's decision here, and I understand the Court has made  
8 its ruling, and this may just be for purposes of the  
9 record, I am not sure, but I proffer it anyway. We would  
10 ask that the party against whom Rule 11 sanctions is being  
11 issued that we are entitled to an evidentiary hearing on  
12 that. We think that the case law supports that. It is  
13 discretionary with the court, if I understand the case law  
14 on that. I am not sure you were briefed on that  
15 particular issue, but we could certainly brief that if you  
16 want, Judge.

17 But as to the party against whom Rule 11  
18 sanctions is being awarded we would ask that we are  
19 entitled to a evidentiary hearing and could do some  
20 discovery before that hearing. Alternatively, or in  
21 conjunction, we ask that the Court stay implementation of  
22 the sanction until the deposition of Mr. Crowther,  
23 Mr. Kestenbaum, Mr. Carrelli (phonetic), the e-mails, the  
24 Carrelli notes to explore in discovery. Because we think  
25 after that happens, that the Court will not be of mind to

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1 think that there is overwhelming evidence against the  
2 statements of Mr. Eldredge once that due process right to  
3 flush those things out and present that to the Court at  
4 another time, in fact those sanctions then would be  
5 lifted.

6 And then, Judge, as far as the other points of  
7 the motions that were brought by the opposing party, we  
8 ask that we have the right to come back later on after  
9 discovery shows that what they put in their Rule 11 motion  
10 as the Court understands, they will have to be held to the  
11 same standard. That's the law. That we be allowed to  
12 bring sanctions for them for bringing that motion in a  
13 frivolous manner.

14 THE COURT: Is there anything that you want to  
15 add to that, Ms. Lee?

16 MS. LEE: I was just going to ask you a technical  
17 question in terms of the 30 days, but I will let you  
18 respond to Mr. Ganley first because that will address it.

19 THE COURT: Okay. Mr. Ganley, the thing that  
20 concerns me the most about what you just said is this idea  
21 that we are going down some tit-for-tat road here. I am  
22 not inclined to do it. If I see it happening I will nip  
23 it in the bud, I promise you, on both sides.

24 But looking at these motions at face value with  
25 those few matters that I do believe that the evidence is

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1 clear are not factual and will not ever be able to be  
2 determined to be factual. I am going to grant that  
3 sanction and I am going to deny your request for the  
4 evidentiary hearing and I am going to deny your request to  
5 stay it. But what I do not want to see here, and one of  
6 the reasons why I did not go for an evidentiary hearing at  
7 this stage, and one of the reasons why I am trying to  
8 resolve what I think are concerning issues, but resolve  
9 them in a way that removes counsel from the allegations  
10 because that is clearly not supported, and removes  
11 hopefully, the impetus or the desire, or whatever, to  
12 bring more of these types of motions and to make it clear  
13 that I think at this point I think the case needs to  
14 proceed in the normal course.

15 For the most part, Mr. Eldredge did prevail in  
16 his opposition but there were a couple of areas that I  
17 just thought that there was no way around it, even at the  
18 highest possible standard the facts are there. So down  
19 the road, if you can think of a procedural mechanism to  
20 rechallenge it, I'm certainly never going to say no to any  
21 motion that somebody wants to bring that is properly  
22 brought before this court. But I am not going to grant an  
23 evidentiary hearing on these matters. I can see what I  
24 need to see from the records. I think it is sufficient.  
25 I am not going to stay it.

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1 I am going to strongly discourage either side  
2 from any of these types of motions regardless of what the  
3 Court ordered right now.

4 And we had a technical question with regard to  
5 that 30 days.

6 MS. LEE: Is that 30 days from the notice of  
7 entry?

8 THE COURT: Notice of entry.

9 MS. LEE: And then also with regard to the three  
10 points that Your Honor has ruled on today. I just want to  
11 clarify, this does not serve as a motion in limine,  
12 meaning, if we do find evidentiary support for it later,  
13 we can present it to the jury or the finder of fact at the  
14 time, or are you completely striking those allegations  
15 from the pleadings and we would have to move to amend to  
16 replead them.

17 THE COURT: At this stage, in order to plead that  
18 there was never a profit, that Mr. Eldredge could not do  
19 anything with these accounts or see these accounts the way  
20 these specific three matters are alleged in order to have  
21 those, you will have to come up with some evidentiary  
22 support to bring them back in because at this point I do  
23 not see them. I see overwhelming evidence to the contrary  
24 to them and I think that Mr. Eldridge knew what he knew  
25 when he knew it, and I think that trying to position this

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1 thing as he is the innocent party in this is not flying  
2 with this court. It has not flown with this court before  
3 and it is not flying with this court now.

4 Beyond that, however, we still have these issues  
5 to deal with what remains in this case, which is this  
6 accounting. We also have these issues in terms of the  
7 counterclaims, and we will deal with them in the normal  
8 course. But I believe the Court in making the finding  
9 today to award sanctions show that these allegations are  
10 frivolous and they are out of the case unless and until  
11 there is something to support bringing them back in.

12 THE COURT: Mr. Ganley.

13 MR. GANLEY: Just one final point, Your Honor,  
14 and then you reminded me it in the comments you just made.  
15 There was an allegation against the attorneys personally  
16 and we think that that was a reckless allegation, and the  
17 reason we think that, Judge, is that the parties bringing  
18 that and the counsel bringing that needs to have, like you  
19 said, overwhelming evidence that the attorneys lied to  
20 this court.

21 Now, Ms. de Diego has said that multiple times to  
22 this Court that the attorneys, Cami Perkins and Joe Ganley  
23 lied to the Court. The law firm lied to the Court. And  
24 what she needs, Judge, is evidence that shows that Mr.  
25 Eldredge came to us and said, hey, I knew about this

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1 service agreement since I was ten years old. I have known  
2 about this all along, but I don't write. Write something  
3 directly contrary to that and put that in our pleading.  
4 That is the type of evidence that Counsel needs  
5 to be able to bring that, and she could never have that,  
6 will never have that, it never happened, it would never  
7 happen. And she is not even close to coming to that type  
8 of evidence, Judge, but she made the allegation and it is  
9 improper and Rule 11 said it is improper.  
10 And if the moveant under Rule 11 comes with that  
11 type of allegation without the evidence to support that,  
12 then that is sanctionable. And you know, Judge, we have a  
13 countermotion for sanctions and I would ask the Court to  
14 rule on that because we think that there should be  
15 sanctions for that behavior.  
16 MS. LEE: I'm sorry. If I could just interject  
17 in terms of that, and this is just kind of par for the  
18 course, I know when Ms. de Diego first got into this  
19 litigation one of the first things she did was she tried  
20 to disqualify Cami Perkins from being an attorney on this  
21 case because she submitted an affidavit in support of an  
22 OST motion followed by -- we submitted a letter from  
23 discovery commissioner Mr. Beecroft to support one of our  
24 positions and there were allegations that we could have  
25 doctored that letter ourselves on the discovery

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1 commissioner's letterhead. I will just address this.  
2 I think that the level of zealousness on the  
3 other side I think is a bit far fetched and I think that  
4 is what Mr. Ganley is going for is that there has to be  
5 some care taken when you are going against counsel who has  
6 done nothing inappropriate in the case other than be  
7 advocate for the client.  
8 THE COURT: Mr. Ganley, I am growing tired of  
9 this argument. You have already prevailed on this issue.  
10 I did not see in the record a countermotion for sanctions  
11 on that issue. I know you very strongly argued for that.  
12 I have found that it wasn't substantiated but I am not  
13 going so far as to find it itself, meaning, the  
14 allegations against you and Ms. Perkins are subject to its  
15 own Rule 11 sanction at this stage. I am simply granting  
16 you the relief that you are seeking.  
17 I have found that it was not substantiated enough  
18 to grant Rule 11 sanctions. I want to put this to bed,  
19 but I m growing weary of this being about the attorneys on  
20 this case. I have put it to bed. You want to bring it up  
21 again, file it in motions. But at this time, I am  
22 granting the sanctions I am granting. I am denying any  
23 other request for sanctions. Again, I don't see the  
24 countermotion, but if it's there, so be it. It is denied.  
25 Let's move on with this case, okay.

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1 MR. GANLEY: Thank you, Your Honor.  
2 THE COURT: Anything further, Ms. de Diego?  
3 MS. DE DIEGO: Your Honor, I have a question  
4 about the order for the September 30th hearing, I have not  
5 received that to review and I would like to get that in  
6 and my question is actually on that and I think the  
7 plaintiffs are planning to appeal that, however, with the  
8 stay being in place against the other plaintiffs, I wanted  
9 to ask the Court's opinion on that. How does this work?  
10 I know we obviously have a limited time to file the appeal  
11 once that is entered.  
12 When we see you again it will be past the  
13 deadline to stay the issue. I know we have had some back  
14 and forth on the stay and I want to make sure we don't  
15 miss the deadline.  
16 THE COURT: Well, I certainly haven't crunched  
17 those numbers or looked at that for that specific person.  
18 I mean JLG itself are on, for all intents and purposes,  
19 because of the bankruptcy is not moving forward in this  
20 matter, it cannot be asked to move forward on this matter.  
21 But we do have Mr. Eldredge and I think in terms of the  
22 decision, as far as the fact that the contract was void,  
23 we do need to get that order in and I did beg the  
24 indulgence of the plaintiff's attorney to prepare that  
25 order absent further written documentation from the Court

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1 that was going to be done.  
2 I trust that it is still forthcoming, in fact I  
3 think Mr. Ganley represented the last time he was here  
4 that they had already started the process of drafting  
5 that, and I would like to get that in. But I am not  
6 prepared today to tell you whether or not you are  
7 precluded from appealing that or not. And I have not  
8 really looked at it so I really can't say.  
9 So take a look at that and see what you need to  
10 see as far as that goes. And, honestly, my gut tells me  
11 that if it was styled and fashioned correctly it could be  
12 done in a way not to implicate the corporation to violate  
13 the bankruptcy stay, which you may need to go to the  
14 bankruptcy court to get relief in order to be able to do  
15 because otherwise it is a little too tricky and you don't  
16 want the bankruptcy court coming over and having a fit.  
17 Now we have had the benefit, until today, of  
18 Counsel being here. I excused them for purposes of today.  
19 I do think ultimately that is a question that they would  
20 best answer.  
21 MS. DE DIEGO: I will discuss it with them.  
22 THE COURT: But you may need to get relief for  
23 the stay to challenge it, and it is worthy of the Supreme  
24 Court looking at it. I don't dispute that. I absolutely  
25 agree with that, but how and when you get that there --

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1 but we do need to get that order in and I trust that we  
2 will get that as quickly as possible.

3 MS. DE DIEGO: Thank you, Your Honor.

4 THE COURT: Thank you so much.

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REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, BRENDA SCHROEDER, a certified court reporter in and for the State of Nevada, do hereby certify that the foregoing and attached pages 1-44, inclusive, comprise a true, and accurate transcript of the proceedings reported by me in the matter of JOHNSON LAW GROUP, PC, et al., Plaintiffs, versus ADVANCED CLIENT SOLUTIONS, LLC, et al., Defendants, Case No. A612447; and on December 20, 2010.

Dated this 29th day of December, 2010.

BRENDA SCHROEDER, CCR NO. 867