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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

TRADEMARK PROPERTIES, INC. :  
and RICHARD C. DAVIS :  
vs. :  
A&E TELEVISION NETWORKS : 2:06 CV 2195

Motion Hearing in the above-captioned matter held on  
Tuesday, February 6, 2007, commencing at 11:14 a.m., before  
the Hon. C. Weston Houck, in Courtroom IV, United States  
Courthouse, 85 Broad Street, Charleston, South Carolina.

APPEARANCES:

FRANK M. CISA, ESQUIRE, 622 Johnnie Dodds Blvd.,  
Mt. Pleasant, SC, appeared for plaintiff.

RICHARD A. FARRIER, JR., ESQUIRE and ROBERT H.  
JORDAN, ESQUIRE, P.O. Box 1806, Charleston, SC,  
appeared for defendant.

REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR  
P.O. Box 835  
Charleston, SC 29402  
843/723-2208

1 THE COURT: This is Civil Action 06-2195, Trademark  
2 Properties, Inc., et al., plaintiffs, against A&E Television  
3 Networks, defendants.

4 I understand, Mr. Cisa, you have a conflict in State  
5 Court, so let's get to this and kind of get you out of here.

6 MR. CISA: Judge, that's been taken care of, as it  
7 turned out.

8 THE COURT: Fine. We'll still get you out of here.

9 MR. CISA: Thank you.

10 THE COURT: The motion to amend, I understand there's  
11 no objection to that.

12 MR. FARRIER: That's right.

13 THE COURT: Motion to amend the complaint? Is that  
14 correct?

15 MR. CISA: That's what I understand, Judge.

16 MR. FARRIER: That's correct, Your Honor.

17 THE COURT: Okay. So I'll give you ten days to file  
18 and serve the amended complaint, per your motion.

19 MR. CISA: Thank you.

20 THE COURT: Okay. We've got motions by both sides to  
21 compel discovery. Are all those motions still outstanding;  
22 any of them been disposed of?

23 MR. FARRIER: Your Honor, Mr. Cisa and I have been  
24 working, continue to work to try to resolve things. As to our  
25 motion, there's really one issue remaining, and I can go

1 through. We boiled it down to four, and if I could --

2 THE COURT: Sure.

3 MR. CISA: -- just update the Court. We were  
4 prepared to argue today, all these requests for production,  
5 No. 7, No. 8, No. 26 and No. 10. And we have been able to  
6 resolve over half of those.

7 THE COURT: Tell me which ones you resolved.

8 MR. FARRIER: No. 7 was a request in which we  
9 asked --

10 THE COURT: Has that been resolved?

11 MR. FARRIER: That's resolved.

12 THE COURT: Okay. Let's go.

13 MR. FARRIER: No. 10 has been resolved.

14 THE COURT: No. 8 has been resolved?

15 MR. FARRIER: No, No. 10 and No. 7 resolved. No. 8  
16 and 26 remain.

17 THE COURT: Okay. And let's see now. Eight is all  
18 documents concerning communications between plaintiff and  
19 television networks other than A&E, including The Learning  
20 Channel. I think in light of the defendants' counterclaim,  
21 they contend that the plaintiffs broke -- that you had a  
22 contract to begin with, and then that the plaintiffs broke the  
23 contract and went out and signed up with a competing network  
24 to do the same thing. That's what the counterclaim claims,  
25 isn't it?

1 MR. FARRIER: Yes, sir, actually in reverse order,  
2 that they went and shopped and then breached, once they got --

3 THE COURT: It seems to me that if they're going to  
4 prove that breach, they need to have available to them, the  
5 communications that you have made with other competing  
6 networks. Now, it may be that eight is too broad. I mean,  
7 all documents concerning communications between plaintiff and  
8 television networks other than A&E, including The Learning  
9 Channel. You may, in a normal course of business, have a lot  
10 of communications that have nothing to do with this lawsuit.

11 MR. FARRIER: Your Honor, actually, and I may -- this  
12 is our request to Frank, but we are seeking -- Mr. Cisa  
13 represents Richard Davis. We represent AETN. And what we're  
14 looking for is Mr. Davis' contact while he's shopping --

15 THE COURT: I'm sorry, you know, I don't pay  
16 attention to who represents who. But yeah, it seems to me  
17 that the plaintiff cannot object to that information. I can  
18 sustain the objection, because it's somewhat broad, but I  
19 think if we cut it down and focus on communications that the  
20 plaintiffs had with other networks concerning this type show  
21 or anything similar to that, I think it's something that's  
22 subject to being produced.

23 MR. CISA: Yes. The way I read the counterclaim,  
24 Judge, is it's founded on the ground that Davis refused to  
25 continue with the second season. We acknowledge that; we

1 refused to continue with the second season. And they're  
2 saying as a result of that, that they've been damaged. I was  
3 thinking that it really -- that's a given. We didn't continue  
4 with the second season.

5 THE COURT: If we take eight and focus it in as I've  
6 suggested, is that what you want?

7 MR. FARRIER: Yes, sir.

8 THE COURT: In that case, with that correction, I'm  
9 going to require the plaintiffs to answer eight -- respond to  
10 eight, and, therefore, overrule the objection to that.

11 We then go to No. 26, all documents reflecting any  
12 executed or final agreement between plaintiffs and The  
13 Learning Channel or any affiliate.

14 It seems to me that the reasons that the defendants give  
15 for wanting that information is sound. Why should you not  
16 produce that, Mr. Cisa?

17 MR. CISA: Same reason, Judge, is that in their  
18 counterclaim where they allege we breached the agreement to  
19 continue with the second season, and the relationship that my  
20 client has with The Learning Channel has nothing to do with  
21 the relationship between these parties.

22 THE COURT: Sure it does. Sure it does. Yeah, I  
23 think it does. I mean, you know, we can't be sure, obviously,  
24 but it certainly is the type evidence that could lead to  
25 relevant evidence. And now, if that contract has some

1 information in it or something that's private or proprietary,  
2 then we may have to excise some of that out. But as far as  
3 the general contract itself is concerned, they're entitled to  
4 it.

5 MR. CISA: You've issued a confidentiality order,  
6 Judge, and I think that helps.

7 THE COURT: It may or may not, I don't know, I'm just  
8 suggesting if you need something else, you can get it, but I  
9 think you have to respond to 26.

10 Let's look at the plaintiff's motion to compel. Are all  
11 of those still outstanding?

12 MR. CISA: I believe they are, Your Honor. And  
13 really, Judge, I think we can kind of lump them into two  
14 different areas. One is, I sent an interrogatory saying what  
15 are the damages that you claim on your counterclaim. And they  
16 say that was premature. In my mind I have a difficult time  
17 understanding why that's premature from their standpoint, when  
18 they're claiming damages. My client --

19 THE COURT: I don't think it's premature. I agree  
20 with you.

21 MR. CISA: That's one, Judge. The other --

22 THE COURT: Sometimes we hold punitive damages are  
23 premature, but as far as actual damages, I think you need to  
24 be ready to go forward.

25 MR. CISA: Judge, interrogatories three, four, five

1 and six, and the request to produce Nos. 30 and 31 -- I  
2 guess -- 30 and 31, all pertain to the same idea. What we've  
3 alleged in the complaint is that my client had an oral  
4 agreement with A&E whereby he would be reimbursed for his  
5 expenses for producing this series, and then they would split  
6 net revenues. So all of those discovery requests relate to  
7 give me information concerning your gross revenues, give me  
8 information concerning your expenses, so I can determine,  
9 based upon what my client tells me the agreement was, what our  
10 damages are. So they all relate to the same thing. What I'm  
11 asking for is --

12 THE COURT: What about that, Mr. Farris; seems like  
13 that's basic information.

14 MR. FARRIER: Your Honor, and that's what I thought  
15 when I first began to look at this case. And what I'd like to  
16 do is take an opportunity to explain to you why this case is  
17 really different in our mind. There are really three bases  
18 for our objection. I only want to concentrate on one. And  
19 they're all somewhat different in nature.

20 First, we objected on the basis that the plaintiff has  
21 evidenced a propensity for publication. And frankly, that has  
22 to do with the Court's contempt powers, and we have confidence  
23 that whatever order is entered into to protect those issues  
24 can be enforced by the Court.

25 The second issue has to do with our ability actually to

1 produce data in the form it's being requested. And I'll talk  
2 briefly about that in the end.

3 But the real question is, in my mind, how is this case  
4 different, that is, why should the Court seek to protect, in a  
5 little bit of an unusual nature, this damages discovery.  
6 Because as I say, when I first looked at this case -- I do a  
7 lot of commercial litigation -- if the idea was that in every  
8 commercial case there's some sensitivity as to the financial  
9 data, then the Court would just make it a routine matter to  
10 bifurcate between liability and damages. In this case what's  
11 different about it, and as I began to look at it, are three  
12 things. First of all, the industry is different,  
13 significantly different. The parties are different in  
14 alignment. And third, the actual identity of our client is a  
15 little bit different.

16 The industry is different, in that there is tremendous  
17 sensitivity and nondisclosure about the actual information  
18 Mr. Cisa is seeking here. And if there was a formula for Coke  
19 in the entertainment industry, it is this type of financial  
20 data, how we price, how we negotiate our contracts with  
21 actors, with producers, how we're segmenting our financial  
22 product. It's the heart and soul of our business. For that  
23 reason, the entire industry is very reticent about sharing any  
24 of this type of information. In Mr. Linear's affidavit, which  
25 we produced to you, we've given evidence of how this has come



1 back to really damage us in the past when we were forced to  
2 produce certain information, and that was immediately used  
3 within the industry to try to renegotiate contracts with a  
4 group of artists.

5 Moreover, the client relationship is very different in  
6 this instance. According to Mr. Davis, Mr. Davis cast himself  
7 as a direct competitor to this product, and to AETN. He's  
8 producing another Flip This House program, designed to compete  
9 with our Flip This House program. The information which he  
10 seeks can be used in the process of development of this  
11 product, and he can't very well unlearn this information.

12 The third issue is that our client is not a public  
13 corporation, it's not owned by public corporations, it's a  
14 private partnership in which all three partners are privately  
15 owned as well. This information has never been disclosed.  
16 Now, at the end of the day, certainly in order for Mr. Cisa to  
17 prove his case, if he proves the case of liability, he's going  
18 to have to prove his case of damages, and certainly he'd be  
19 entitled to this information.

20 What we're asking the Court to do, and we realize this is  
21 a little unusual in the context of a general commercial case,  
22 but I'd like to suggest that it's not so different in an  
23 intellectual property case, which this really is sort of an  
24 intellectual property case, where one will go through an  
25 initial set of hearings to determine claims construction in a

1 patent case, whether or not copyright material was actually  
2 protected. And what we'd like to suggest to the Court is that  
3 we go through the damages discovery, which can be completed in  
4 short order, and that we be prepared to produce, within a very  
5 brief period of time, ten days or so, all the financial  
6 information that's being sought by Mr. Cisa. That we then  
7 engage in discovery, both on the defense of his claim and our  
8 counterclaim on damages.

9 The current scheduling order has the case being tried in  
10 March; that's a little bit unrealistic. I don't want to be  
11 presumptuous, but I suspect we're going to have to enter into  
12 a revised scheduling order. There's no reason the case can't  
13 be tried in June, July. Even if we sequence discovery as we  
14 suggest, it would be a means by which the Court, as we feel  
15 like the Court is fully able to, and, in fact, should be ready  
16 to protect these significant property interests, does so  
17 typically with confidentiality order. We think the issues in  
18 this case are unique enough to adopt a little bit different  
19 approach.

20 So what we'd like, and we suggested this to Mr. Cisa and  
21 it's just not something he's amenable to, I don't believe, is  
22 that we have sequenced discovery, that we be required to  
23 produce damages discovery. At the close, if the motions for  
24 summary judgment on liability do not resolve the case, that we  
25 produce immediately, and aggressively engage in damages

1 discovery, and then if the case is surviving, we can go to  
2 trial.

3 The only additional protection we'd like is a two-tiered  
4 confidentiality order, so that this information can be used by  
5 Mr. Cisa, can be used by whatever experts he uses, but is not  
6 going to be revealed to Mr. Davis, or certainly to our  
7 competitor channel, The Learning Channel.

8 That's what we'd request, Your Honor, and in the end it,  
9 A, protects what we believe is a very legitimate interest on  
10 our part, and will not delay the case. Now, I would like to  
11 say --

12 THE COURT: You contend there was no contract between  
13 the parties?

14 MR. FARRIER: There was a single contract between the  
15 parties, which does not relate to the plaintiff's claim.

16 THE COURT: And what was that contract?

17 MR. FARRIER: That Mr. Davis would appear and  
18 participate in the second season of Flip This House. In fact,  
19 the factual allegations are pretty easy to distill. The  
20 plaintiff's allegation is that there was an oral agreement  
21 whereby the parties would split revenue fifty-fifty, and the  
22 plaintiff would have creative control over his product. Our  
23 version is exactly the opposite. There was no agreement to  
24 split revenue. The deal was Mr. Davis wanted publicity, we  
25 agreed to produce, carry the costs and production of the show,

1 we would retain all creative control and all profit. And  
2 Mr. Davis would have, in essence, a great deal of significant  
3 free publicity. Those two factual positions are relatively  
4 irreconcilable.

5 At the end of the first season we began negotiations over  
6 an actual contract. Under New York law, we believe we entered  
7 into a contract, it was all done except for the execution, and  
8 that the duty of good faith and fair dealing arose as a result  
9 of that.

10 Prior to that time, unbeknownst to us, Mr. Davis had  
11 negotiated another deal in which he got better terms, and  
12 breached his contract with us, causing us damage, in that we  
13 had to go hire a replacement cast. That's the case in a  
14 nutshell.

15 THE COURT: Yes, sir.

16 MR. FARRIER: And, Your Honor, I'm sorry, one other  
17 thing I'd like to point out. This is not an insignificant  
18 motion for our client. Frank and I have had other cases  
19 together, we work well in terms of trying to resolve discovery  
20 issues. It's significant enough that the client flew a  
21 representative down here from New York for this specific  
22 issue. So this -- we don't make this -- when I first saw  
23 this, I saw it as an unusual request. It is unusual, but it's  
24 also very significant to our client that these property rights  
25 be protected.

1 THE COURT: Okay. Yes, sir.

2 MR. CISA: Your Honor, as I understand what Richard  
3 Farrier is saying is he wants to bifurcate the liability issue  
4 from the damages issue.

5 THE COURT: He wants to make you show that you have a  
6 contract.

7 MR. CISA: Well, judge --

8 THE COURT: And if you don't have a contract, you  
9 don't have a case, is his statement, and if you don't have a  
10 case, then he doesn't have to come forward with those damages  
11 until he gets ready to prove his counterclaim.

12 MR. CISA: I understand. But, Judge, my client's  
13 going to testify. I talked to him again about this, this  
14 morning, after I talked with Richard Farrier again. His  
15 testimony is, is that I had an oral agreement with A&E whereby  
16 we agreed that we would do the pilot -- we would do this show,  
17 and I would receive as compensation, one-half of the net  
18 revenues from the show. That's his agreement. He said I had  
19 that oral agreement. They kept saying yeah, that's the  
20 agreement, that's the agreement, and we will put it in  
21 writing, but they never would put it in writing. So his  
22 testimony is going to be, whether by affidavit at a summary  
23 judgment motion or at trial, is that I had an oral agreement  
24 with Charles Norlander, who was running A&E at the time, that  
25 this was our agreement. My client --

1 THE COURT: Do you have any authority that an oral  
2 agreement under these circumstances is unenforceable? Does it  
3 have to be in writing?

4 MR. FARRIER: Your Honor, I really am not prepared to  
5 argue that at this stage. But there is --

6 THE COURT: You should be. I mean, that's the key  
7 issue. I mean, I knew before I came in here, he was claiming  
8 they had an oral agreement.

9 MR. FARRIER: There's not a shred of evidence to  
10 support that claim. In fact --

11 THE COURT: His testimony is sufficient, unless some  
12 form of Statute of Frauds covers the agreement, thereby  
13 requiring it be in writing. And I don't know of any. You  
14 spoke of New York law, and I don't claim to know any New York  
15 law, I don't even know whether New York law applies to this  
16 case or whether South Carolina law or somewhere in between.  
17 And I haven't looked at the Statute of Frauds. But it seems  
18 to me that's the first place you're going to look. Because if  
19 the Statute of Frauds doesn't prohibit his establishment of a  
20 contract, oral contract, enforceable oral contract, then his  
21 testimony is enough to override any summary judgment. It  
22 creates a genuine issue of fact.

23 MR. FARRIER: I don't agree, Your Honor. There's a  
24 lot of his purported contract that falls into the genre of  
25 intellectual property. And there are steps that must be taken

1 to protect his ownership of the concepts involved that he  
2 alleges were, in essence, stolen from him by our client. A  
3 mere oral agreement about these things will not create those  
4 property rights. So it really -- this is a very broad -- and  
5 I know that Mr. Cisa's about to amend to restate his  
6 allegations, but it's easy enough to say we have an oral  
7 contract, and, therefore, everything is going to the jury.  
8 But this case could be significantly reduced, if not  
9 eliminated, and his damages claim likewise could be  
10 significantly reduced, if not eliminated.

11 THE COURT: How are you going to prove your damages?

12 MR. FARRIER: Your Honor, if, in fact -- that's going  
13 to be very very rough justice, which we've outlined in our  
14 affidavit. It's very difficult to attribute revenue.  
15 However, we can attribute a lot of hard costs to our having to  
16 go out and hire another production company, to find  
17 replacement actors, et cetera. It's a really different  
18 concept, in that we are not seeking a diminution in revenue as  
19 a result of season two. What we're claiming is that because  
20 of the breach, because we had to go out with little or no  
21 notice and find a replacement cast, replacement production and  
22 so on, those are specific hard costs involved.

23 THE COURT: Well, if you don't know what your  
24 production costs were with the plaintiff, you can't really  
25 determine what your damages are.

1           MR. FARRIER: Okay. And, Your Honor, the reason for  
2 our response -- back to the interrogatory -- is that it's a  
3 little unfair for us to say we should be able to do damages  
4 discovery, we should engage in this at the same time we're  
5 asking you to hold off past summary judgment. And maybe I  
6 didn't articulate this well enough for Mr. Cisa. But the idea  
7 is, sauce for the goose, sauce for the gander. What we're  
8 going to do is move damages into another phase of discovery.  
9 We'd like to have all that occur at the same time.

10           THE COURT: What about your discovery; how far has it  
11 proceeded now?

12           MR. FARRIER: Your Honor, on Friday, within the time  
13 frame for discovery, after -- as soon as we got the  
14 confidentiality order, we produced 7200 pages of documents to  
15 Mr. Cisa. My co-counsel from New York is out taking  
16 depositions in California today. Mr. Cisa has produced 1600  
17 pages of documents to us, and I'd say we're moving along  
18 pretty well for a case of this magnitude. It's been filed for  
19 about six months.

20           THE COURT: But you didn't do any discovery till last  
21 week.

22           MR. FARRIER: No, Your Honor. We served discovery  
23 late summer, early fall. Frank served his discovery within a  
24 month or so after that.

25           THE COURT: When is discovery over?



1 MR. FARRIER: April 1, Your Honor.

2 THE COURT: Does that give you time to do what you  
3 have to do?

4 MR. FARRIER: It depends on the Court's ruling on  
5 damages. I think that in terms of working with the Court and  
6 working with opposing counsel, there was a discovery  
7 deadline --

8 THE COURT: What about it, Mr. Cisa, if I bifurcate  
9 the discovery as Mr. Farrier suggests, can you complete  
10 discovery by April the 1st?

11 MR. CISA: No, sir. There's no way, Judge. And,  
12 Your Honor, this is -- I don't even know their position on  
13 liability. Their position is pretty simple. We didn't have  
14 an oral agreement with Richard Davis. We never would have an  
15 oral agreement with anybody. That's not industry standards.  
16 And we didn't have an agreement, period. That's their  
17 position. I understand that. I don't need discovery on the  
18 liability issue, I need discovery on the damages issue.

19 What they want me to do, Judge, is fly up to New York and  
20 take depositions and not ask questions about damages, and then  
21 come back, and then fly up to New York again. I just -- I  
22 understand the liability issue, Your Honor. We're not going  
23 to resolve that through discovery. I mean, I know my client  
24 was the creator of this series, he was credited as creator of  
25 this series. I know he didn't make a dime on this series. I

1 know he did the pilot for the series. I know he sent it to  
2 A&E and they loved it. I know what the liability issue is. I  
3 don't have to really deal with that. I know their position.  
4 I just need to deal with the damages issue, Judge.

5 And I just don't want to fly and -- you know, I go up  
6 there and question Mr. Norlander, he's going to say no, that  
7 didn't happen. You know, I know what their position is, Your  
8 Honor. I need to move forward with damages.

9 I think we're going to have to -- I was supposed to have  
10 an expert report to the other side by February 1. I can't get  
11 an expert report to the -- pursuant to the scheduling order,  
12 to the other side by February 1, because I don't have  
13 documents that I can analyze as to whether there was net  
14 profit or not. So this -- I'm going to have to move to amend  
15 the scheduling order already, because I don't have the  
16 information. I had requested it in time, to be able to get an  
17 expert lined up and do that. But they haven't produced it, so  
18 we're falling behind already. I just don't -- if we bifurcate  
19 things, Judge, we can't get it then. There's no way we can  
20 get close to April 1, I don't believe.

21 THE COURT: Well, you're saying you know everything  
22 you need to know about liability; the only thing that is  
23 bothering you is damages.

24 MR. CISA: Yes, sir.

25 THE COURT: Well, if we bifurcate it, then the

1 damages are out of the picture. So it seems to me -- I don't  
2 understand what you're saying. You're saying you're ready to  
3 go on liability right now.

4 MR. CISA: Well, Judge, I mean I've got an oral  
5 agreement. I mean, I know what I've got. I know their  
6 position. I know what they're going to testify, that no,  
7 there was no oral agreement. I don't know what else more  
8 there's much to do on the liability issue. The damages issue  
9 is the crucial thing. If, through discovery, I find that they  
10 didn't make any money, there was no net revenues, I think  
11 that's a problem for me. Although I doubt that that was the  
12 case, but what I'm suggesting is, is I don't really view --

13 THE COURT: Mr. Farrier, what do you need to do  
14 before you can make a motion for summary judgment on  
15 liability?

16 MR. FARRIER: I think we can move pretty quickly.  
17 And I think that as long as we can schedule -- there are not  
18 many witnesses. We needed to get our documents in before we  
19 scheduled the deposition of Mr. Davis. I think that --

20 THE COURT: Why do you need to take any depositions?  
21 You know what his client's going to say.

22 MR. FARRIER: Well, it's one thing between knowing it  
23 and having him under oath, Your Honor. I think he's going to  
24 have to concede a lot of the facts that he's alleging in his  
25 complaint that will largely dispose of some of the issues in

1 the case. But I think that we can move very promptly within  
2 45 days to be ready for motions for summary judgment on  
3 liability. There's no question that we would have to  
4 request -- it's up to the Court, of course -- that both Frank  
5 and I are going to need some additional time on this case.  
6 Can easily be ready for trial in the summer. It's not going  
7 to be ready for trial -- unless the Court so orders -- on  
8 May 7, 2007.

9 THE COURT: I don't see any real urgency to the issue  
10 of damages. I don't understand what you're saying. And I  
11 don't -- and, therefore, am not convinced that these people  
12 can't furnish their damages, the money, the figures that the  
13 plaintiff wants. And I just can't believe they can't furnish  
14 that, and I can't believe it's as devastating to them as you  
15 claim it is. But I'm willing to give you the benefit of the  
16 doubt. We'll see whether they're telling you the truth at  
17 some point in time in this case. But for the time being, I  
18 don't see any real problem with accommodating their plea to  
19 put off the damage issue. I just don't think it's going to be  
20 that difficult. It might slow the case down 30 days or  
21 something like that, but that's not the end of the world.

22 So I think that we can -- Let's require you to file any  
23 motion you're going to file for summary judgment by April the  
24 1st. You've got a month and a half before then, you've got  
25 all of March, you've got most of February, you can do whatever

1 discovery you've got to do, and then you can file your motion  
2 by April the 1st, and we can dispose of it promptly, see where  
3 we're going, and then outline the procedure for completing the  
4 rest of the discovery.

5 MR. CISA: Judge, do I need to move now -- I know the  
6 deadline, like I say, expert was February 1 to the other side.  
7 They've got deadlines March 1st on naming an expert. Do we  
8 need to address any of that at this juncture, or do we just  
9 wait and see where we are after the motion --

10 THE COURT: What type expert are you having?

11 MR. CISA: Judge, probably an accounting type expert,  
12 an economist, to be able to analyze what documents they give  
13 me on the damages issue, to be able to form --

14 THE COURT: Obviously since we are today bifurcating  
15 that issue from the other issues, certainly your time for  
16 presenting an expert report will be opened up, be open ended,  
17 and we'll wait until we get there and then we'll see how long  
18 it takes you.

19 MR. CISA: Judge, does that mean that the bifurcation  
20 is -- that they cannot seek discovery on their damages issue  
21 relative to their counterclaim also, or are we going to -- In  
22 other words, if you granted them summary judgment on their  
23 claim, you still have a counterclaim out there.

24 THE COURT: No, what they've asked me to do is let  
25 them pursue -- to bifurcate discovery.

1 MR. CISA: Yes, sir.

2 THE COURT: And to let them pursue discovery on the  
3 issue of liability, whether or not you had an enforceable  
4 contract against them, first. And then assuming that they do  
5 not prevail on that, then we'd go into full discovery on  
6 whatever you wanted to.

7 MR. CISA: Yes, sir.

8 THE COURT: But I don't see any problem with giving  
9 them until April the 1st to file any motion in that regard.

10 Isn't that what you're asking me to do?

11 MR. FARRIER: Yes, Your Honor.

12 THE COURT: Now --

13 MR. FARRIER: Your Honor --

14 THE COURT: Let's go back and look at the rulings  
15 that I've made that -- the rulings that I made on the  
16 discovery requested by the defendant. Now, do they involve  
17 damages?

18 Let me say this. I've ruled that you've got to answer  
19 certain interrogatories and produce certain documents. To the  
20 extent that those discovery requests involve damages, you  
21 don't have to respond to them because we're bifurcating the  
22 case as to damages. So I'm going to require you to make the  
23 responses I previously ordered, within 15 days of today. But  
24 to the extent those responses involve damages, you don't have  
25 to make them then.

1 MR. CISA: Yes, sir.

2 THE COURT: Okay. Anything else?

3 MR. FARRIER: Your Honor, one thing, just because I  
4 don't want to get away and for us to realize we've got --  
5 There's one other early date that requires mediation to be  
6 completed March 1.

7 THE COURT: Say what now?

8 MR. FARRIER: Your current order requires mediation  
9 be completed by March 1. I would think that that may be  
10 premature, but if you'd like for us to comply with that --

11 THE COURT: I don't think March 1 is the least bit  
12 premature. I would think if you really wanted to mediate it,  
13 you could do it.

14 Now, even though we order mediation, if you don't want to  
15 mediate, don't mediate. If both sides say it's futile, then  
16 obviously we don't want people spending money coming up to the  
17 courthouse to meet, when you're not going to accomplish  
18 anything.

19 But it seems to me, March the 1st, just looking at it  
20 right now, knowing what I know about the case, seems like a  
21 pretty opportune time to mediate. You're talking about filing  
22 your motion for summary judgment on April the 1st, that's 30  
23 days before then, it's a good time to sit down and talk about  
24 the case. I know y'all don't like to do that, you'd like to  
25 wait till you get all your discovery done and all your billing

1 done and all that. But mediation doesn't have to come at the  
2 end.

3 MR. CISA: We may need to mediate twice, Judge.

4 THE COURT: You may not need to mediate it at all.  
5 If you don't want to mediate it, just let me know why you  
6 don't want to, and if it's a reasonable request, I'll relieve  
7 you of that obligation.

8 Okay. Thank you very much.

9 MR. FARRIER: Thank you, Your Honor.

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11 (Court adjourned at 11:42 a.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the stenographically recorded above proceedings.

S/Debra L. Potocki  
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Debra L. Potocki, RMR, RDR, CRR