

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
DAVIES, TEALA, : Docket #1:19-cv-10788-
 : GHW-DCF
 :
Plaintiff, :
 :
- against - :
 :
INDYKE, DARREN K. et al, : New York, New York
 : May 22, 2020
 :
Defendants. :
 : TELEPHONE CONFERENCE
----- :

PROCEEDINGS BEFORE
THE HONORABLE JUDGE DEBRA C. FREEMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiffs: Cuti Hecker Wang, LLP (NYC)
By: Mariann M. Wang, Esq.
Daniel Mullkoff, Esq.
305 Broadway, Suite 607
New York, NY 10007
212-620-2603

For the Defendants: Troutman Sanders LLP (NYC)
By: Bennet J. Moskowitz, Esq.
Matthew J. Aaronson, Esq.
Valerie Sirota, Esq.
875 Third Avenue
New York, NY 10022
212-704-6087

Transcription Service: Carole Ludwig, *Transcription Services*
155 East Fourth Street #3C
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

APPEARANCES - CONTINUED:

For the Defendants: Troutman Sanders
By: Molly S. DiRago, Esq.
27 West Monroe Street - Suite 3900
Chicago, IL 60606
312-759-1926

Proceedings conducted telephonically and recorded by
electronic sound recording;
Transcript produced by transcription service

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 HONORABLE DEBRA C. FREEMAN (THE COURT): All
3 right, so this is Judge Freeman. And if I've got this
4 calendared right, this should be a conference in three of
5 the cases involving the Jeffrey Epstein Estate: Jane Doe
6 v. Indyke, 19-cv-10653; Mary Doe v. Indyke, 19-cv-10758;
7 and Davies v. Indyke, 19-cv-10788.

8 Anybody have a different understanding as to why
9 you're here?

10 (No response.)

11 THE COURT: No. Can I have your appearances,
12 starting with the first of the cases that I listed, the
13 Jane Doe case?

14 MS. MARIANN M. WANG: So for plaintiffs, Mariann
15 Wang. And I believe my colleague, Dan Mullkoff, is on the
16 line. And we represent the plaintiffs in all three cases,
17 so -- (Stopped talking.)

18 THE COURT: Okay. And on defendants' side?

19 MR. BENNET J. MOSKOWITZ: Good morning, your Honor.
20 Bennet Moskowitz, Troutman Sanders, for the co-executors. And
21 on the line should be my colleagues, Matthew Aaronson, Valerie
22 Sirota, and Molly DiRago. And that's true for all three of
23 the actions.

24 THE COURT: Okay. So that would count for 1, 2, 3,
25 4, 5, 6 people. Is my law clerk on?

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2 MS. HANNAH MARTIN: Yes, Judge, I'm here.

3 THE COURT: Okay, that's Hannah Martin. She's one
4 of my clerks. There should be still more people on, based on
5 what I heard when I joined the call. Is there anyone else on
6 the call?

7 MS. EMILY FALL: Hi. My name is Emily Fall; I'm a
8 reporter with 3M Canny 4 Productions. I'm also on the call.

9 THE COURT: Okay, is there anyone else on?

10 MR. JAMES HILL: Your Honor, this is James Hill.
11 I'm a reporter with ABC News, and I am monitoring the call and
12 will keep my line on mute.

13 THE COURT: Okay. I've slightly lost count. If
14 there's anyone else on the call from the public or press, you
15 are, of course, welcome to listen in. I would appreciate it
16 if you would keep your phones on mute, which you seem to have
17 been doing until I asked who was here.

18 Do we have a court reporter? I know that in one of
19 the conferences scheduled today -- it may have been the one
20 that's at 11 o'clock -- there was a request to have a court
21 reporter. No?

22 All right. So the conference is being recorded
23 through the AT & T conference system. And if anyone wants a
24 transcript, you can get it through us through that system.
25 Because someone may be trying to transcribe it from an audio

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recording, if you do speak, please state your name before you speak so someone can keep the voices straight and be able to make a transcript that makes sense if there should be a need.

All right, so what I thought I would do, rather than have a conference in all of the cases that I have in front of me for supervision, I thought I would take them in clusters where issues had arisen. In each of these three cases there was a consent letter filed for an extension of time. And even though it was on consent, I thought I would hear from you as to this concept of an informal stay and just what was happening. And I don't mind a 30-day extension of deadlines, but I wanted to get a sense of where things were with respect to potential settlement. And, you know, I read in the news as much as anyone else, but that doesn't really tell me the full story. So can I just hear from plaintiffs' counsel about general status here?

MS. WANG: Sure, your Honor. This is Mariann Wang again. So we have made some progress in terms of the litigation; that is, we've exchanged discovery responses, interrogatory responses --

THE COURT: Hold on a second. Did someone join the call? No? I want to make sure --

MS. LAURA MENNINGER: Hi. I'm just -- I'm listening in, your Honor. It's counsel for another party.

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2 THE COURT: Oh, that's fine. Okay.

3 MS. WANG: Can I just ask counsel for which party?
4 Just to know.

5 MS. MENNINGER: Oh, I'm sorry.

6 THE COURT: Are you counsel in another case that's
7 pending in front of me?

8 MS. MENNINGER: Yes, your Honor. I have a hearing
9 in front of you at nine o'clock AM. This is Laura Menninger
10 for Ms. Maxwell.

11 THE COURT: At nine o'clock? You must mean 11
12 o'clock New York time?

13 MS. MENNINGER: Oh, I'm sorry, yes. I'm in
14 Colorado. Yeah, 11 o'clock Eastern time. Thank you.

15 THE COURT: Okay. You're welcome.

16 All right, you were saying, counsel?

17 MS. WANG: Sure. So, again, Mariann Wang for
18 plaintiffs. So we have made some progress. We're also --
19 we were kind of on the cusp of about to exchange a lot of
20 paper discovery and starting to talk about depositions.
21 And so there was progress being made on the litigation
22 side. At the same time that aspect of litigation was
23 not -- was hindered a bit because of the pandemic, just in
24 terms of communications and timeliness and ease of
25 gathering things because of, obviously, not being able to

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meet in person with the clients. We had also started to have some essentially, I guess, one would say some conflicts potentially with defense counsel about whether and how depositions can proceed, in person or remotely.

In any event, because of the kind of -- the combination of perfect storm of both the hindrance of the pandemic and logistics -- should I stop?

THE COURT: Yes. Did someone just join the call?

MALE: Yes. Inner City Press. Not a participant.

THE COURT: Okay. Fine. If you could keep your phone on mute, I would appreciate that.

MALE: I will. Thanks.

THE COURT: Go ahead, Ms. Wang.

MS. WANG: Again, Ms. Mariann Wang. And, at the same time, our understanding that in the Virgin Islands there seems to be potential progress and potentially in the short term a possibility, really, of getting the claims resolution process started. We just felt that it might make sense to put a pause and see whether that would have some, you know, traction and whether we could get going on that before essentially, really, both working extremely hard and potentially draining resources on the estate front of, you know, having apparently four or five lawyers working nonstop on fighting us to some degree. It just

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2 seemed to make sense to hit pause for a little while. So
3 that's the basic concept.

4 THE COURT: I will say on defendants' side you
5 seem to have four attorneys on this call. I hope you're
6 keeping costs under control under the circumstances.

7 So I gather what you want to do is you don't want
8 an extension of discovery; what you want to do is basically
9 have a hiatus of discovery and then put the same amount of
10 time back on the clock as you had before? You want to stop
11 everything for 30 days and have another 30 days thereafter
12 to finish discovery if you need it?

13 MS. WANG: That was the idea, yes, your Honor.

14 THE COURT: How much optimism do you have during
15 this 30-day period this process is going to get rolling and
16 you'll be able to enter into it and get these cases
17 resolved?

18 MS. WANG: Well, this is where it is a little bit
19 trying to balance. And I think that -- I mean, I have -- I
20 guess I probably would have more optimism -- I have
21 optimism that in 30 days we will know much more and we will
22 be able to then -- at least that's my hope -- be able to
23 really say okay, let's turn back to the litigation; or,
24 okay, let's really, you know, put this on hold/pause for
25 more amount of time because it looks like that's going.

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2 That's my hope, at least. Perhaps the estate would know
3 better, in fact, what -- you know, whether or not my
4 optimism is warranted.

5 MR. MOSKOWITZ: Your Honor, Bennet Moskowitz. If
6 I may, I'm happy to provide an update about the Epstein
7 Victims Compensation Program.

8 THE COURT: I'd appreciate it.

9 MR. MOSKOWITZ: Sure. And I'd first, since you've
10 raised it, like to address the issue of keeping costs --
11 and I can assure your Honor that the sole reason the
12 attorneys are on who are on is because it is more efficient
13 in terms of managing all the 15 or so active cases for only
14 those who are on to be on rather than have lengthy back-
15 and-forth follow-ups with each other. And, in fact, we are
16 very concerned about litigation costs. And the people
17 driving those costs have been various plaintiffs' firms. I
18 will not necessarily pin that on Ms. Wang, as she is
19 actually trying to be reasonable here with the stay of some
20 sort, although -- which I'll get to -- we disagreed on how
21 to best do that.

22 But it bears mentioning the biggest drivers have
23 been the plaintiffs' firms, including making the estate
24 fight for months over whether they can get punitive
25 damages, which Judge Engelmayer in two cases ruled that no,

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they can't; and as we've been saying all along, it's black letter law. And those are two of the cases on which we're meeting for you now. So I'm surprised to hear any comment by plaintiffs' counsel attributing cost concerns to us. The other culprit is the U.S. Virgin Islands attorney general, which I'll get to.

But to get back to the program, we are confident that the program will commence by June 15, at the latest. To date, counsel for around 69 individual claimants have come forward, including through the U.S.V.I. Probate Court, in support of the program. We believe that figure constitutes the vast majority of claimants. In fact, we are only aware of one claimant through her counsel who has stated that she does not intend to participate. That's one of the state court plaintiffs, not one of the cases before your Honor. And I don't even know if that's the current position of that individual.

As your Honor is probably aware, we're now up to seven Southern District of New York plaintiffs in three lawsuits who have formally stayed their actions pending their participation in the program, including most recently Maria Farmer, whom Boies Schiller represents. Ms. Wang's three clients, of course, as they put it, sought this informal stay, and they intend to participate in the

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program. The program administrator and the designers have nearly finalized the protocol for the program. Recall that's the nuts and bolts of how the program actually works. They've done that in close consultation with claimants' counsel and with input from the co-executors.

So to recall, the only reason that the program did not formally commence several months ago, which is what we wanted, which would have avoided all these litigation costs, is that in January 2020, the U.S. Virgin Islands attorney general, who again does not represent a single alleged victim, unilaterally imposed liens on the estate's bank accounts in the Virgin Islands, freezing then-available funds for administration of the estate and implementation of the program. That caused a huge delay solely attributable to the attorney general of the Virgin Islands.

I am pleased to report that just a few days ago, the estate and the U.S. Virgin Islands attorney general have reached a resolution in principle, which I understand would involve the attorney general finally stepping aside so the program can finally formally proceed. There are a few, I'd say, less contentious matters that still need to be ironed out in that regard, but we expect that that resolution would be finalized by next week and that we

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would notify the U.S.V.I. Probate Court about that sometime next week. If, however, something unexpected occurs, and because the need for the program has grown increasingly urgent, and with the overwhelming support of claimants' counsel, the co-executors in any event intend to seek commencement of the program on June 15, absent some contrary direction from the U.S.V.I. Probate Court, which we do not expect.

And, indeed, it bears mentioning that during the February 4 hearing at the U.S.V.I. Probate Court, the judge said, quote, "I think we agreed that everybody believes this program is a great program," end quote. So, again, the sole holdup here has been the attorney general of the Virgin Islands. So I am confident in saying that the program will formally move forward soon, that it will have an overwhelmingly successful participation rate and be a great success, which we always expect and that's what everyone's been working hard towards.

Meanwhile, I agree with Ms. Wang -- and, actually, counsel for Maxwell has said this in a letter to the Court, as well -- that every dollar spent on litigation, which again plaintiffs' counsel in some of the other matters before your Honor have been driving up through, you know, unnecessary motions, unnecessary requests to make discovery

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motions, that is money that will never possibly be available to fund the program, which we have been trying to do since day one. You may recall, your Honor, that it was plaintiffs' counsel, different plaintiffs' counsel, who resisted stays of litigation. So, again, I was surprised to hear the comments about cost concerns.

But we agree with where Ms. Wang is at this now, it would be a disservice to claimants and a waste of judicial resources during a time when such resources are, as evidenced by, you know, this conference call, stretched very thin due to the unprecedented situation we find ourselves in with the pandemic, for money to be spent on litigation. It was for that reason that when Ms. Wang approached us, which also bears mentioning that they approached us about this concept of an informal stay, we proposed that we do the same stay that we've done in some of the other actions before your Honor, which if your Honor recalls, those orders -- basically, people can lift them at any time if they decide they don't want to participate in the program or for whatever reason. They can go to your Honor and request a lift of the stay. Ms. Wang didn't agree to that; and, therefore, we, you know, agreed to what was offered, which was this kind of informal stay, followed by a --

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THE COURT: Hold on one second. Did someone join the call?

MALE: Hello. Member of the press here.

THE COURT: Okay. Fine.

I'm sorry, please continue.

MR. MOSKOWITZ: So I was about to wrap up, your Honor. So, in any event, you know, like I said, I'm pleased to report that I have confidence the program will start soon, matter of weeks, not months, finally. And I agree with the call's concerns, which is that all these actions to be stayed for people that intend to participate in the program, which as I understand it, is every plaintiff in every action that's before your Honor, including the ones that we're here talking about now.

THE COURT: Okay. So on the deadlines, what you're looking for -- correct me if I'm wrong on this -- for fact discovery, you want deadline extension from July 10 to October 8, is that right?

MS. WANG: I believe that's correct. There's a letter --

THE COURT: That's -- oh, I'm sorry, I may be looking at the wrong -- no, I think so. Yes. That's not a 30-days?

MS. WANG: I apologize, your Honor. This is --

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THE COURT: The letter -- I pulled up the letter in, I think it's the same letter that was written in all three cases. And it says in the letter that you're looking for -- oh, I'm sorry, you're looking for 90 days. You're looking for 90 days and an extension --

MS. WANG: That's correct.

THE COURT: -- on the answer deadline for 30.

MS. WANG: Yes, your Honor. And if I may -- this is plaintiffs' counsel, Mariann Wang, again. The idea was for this informal stay of 30 days and essentially to kind of reassess at that time; and, therefore, we were building in a larger cushion at the back end.

And just for the record, for purposes of the record, I just will have to say that I dispute some of the things that Mr. Moskowitz said. But I don't think it's worth going into now. I think there was a lot of effort on the estate's part not to produce any documents or cooperate until it decided that it could put four or five attorneys on this matter.

But, in any event, for purposes of what's going on right now, that is correct. The idea was to build in a little bit of extra cushion at the back end.

THE COURT: So let me see if I understand this. What you're saying is kick all the deadlines out by 90

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2 days, discovery deadlines; don't do anything for 30 -- and
3 some time has already passed since you wrote the letter,
4 perhaps you're not even looking at 30 anymore -- and then
5 once those 30 days go by, start up again but at a more
6 leisurely pace because you have another 60 days?

7 MS. WANG: No, your Honor. The idea would be in
8 30 days we would report back to the Court about what the
9 best approach -- what the best approach would be --

10 THE COURT: Let me ask again if someone's joined
11 the line. Has someone joined on the line? Hello? Those
12 beeps might mean someone left or someone joined.

13 Let me just make sure defense counsel is still
14 present. Mr. Moskowitz?

15 MR. MOSKOWITZ: I'm here, your Honor, Bennet
16 Moskowitz.

17 THE COURT: Okay. All right. I haven't set this
18 up with the computer dashboard that identifies people and
19 lets me know who joined and who dropped. We're just doing
20 this as a straight phone call, so that's why I keep asking
21 the questions, to try to figure out who's present in my
22 courtroom, so to speak. If a lawyer who's making an
23 argument suddenly gets up and walks out of the courtroom,
24 that's something I can see; but on the phone call, I have
25 to just make sure that that's not what happened, you know,

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through some kind of dropped call or something.

Okay, so you were saying, counsel? I'm sorry.

MS. WANG: Yes, of course. So, your Honor, the idea was really basically a stay for 30 days and then essentially an opportunity to reassess and confer with opposing counsel and basically report to the Court about the next steps of, you know, whether we are going back into, you know, full-on litigation because everything seems to be falling apart in the other -- in the other method of resolution; or if, you know, it would appear that we can go back or we can even enter into a more formal permanent stay.

And to be clear, the reason I didn't like the others -- and which -- and my clients were not amenable to it is that my understanding is and the way it appeared is that those other actions are essentially stays that don't allow to pick up as easily. If your Honor prefers a different method of approach, I'm happy to confer with my clients and opposing counsel and see if there's, you know, a different method of doing this. But the main thing from my clients' perspective is the ability, essentially to, you know, step back into litigation full bore if things are seeming to not go in the right direction. I'm very glad to hear -- it's the first I'm hearing from Mr. Moskowitz,

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although I had asked him earlier about, you know, news on the V.I. proceeding -- I'm glad to hear that there is progress. And this is the first I'm hearing of this June 15 start time.

THE COURT: Okay. So I am still not quite understanding your letter in light of what you're saying, because you wrote the letter May 11. So if I had granted it immediately upon its receipt, your informal stay would have lasted until June 10. And then if what you say is it would have given you an opportunity to report back shortly thereafter -- let's say you would have reported back to me by, say, June 12 or maybe June 15, if not June 10, you're asking for an extension, based on this letter, to submit a joint status report regarding, including, you know, among other things, the progress of settlement discussions, to be extended from June 1 to August 31. August 31 is not in and around the middle of June.

Why don't I just kick out the dates by some reasonable period of time from now and ask for a status report by a certain date? And if you find that you still need more time because, you know, things are logistically difficult to get done because of the pandemic or something, you can let me know, and I'll kick out the dates specifically so that you can have a hiatus and save

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resources and still have time on the clock to get discovery done if you need it. But some of these dates aren't quite making sense to me, and I'm not sure I'm understanding why the 90 is necessary, why we need more time than the hiatus time.

And if the more time is needed because you're having problems agreeing on whether depositions can proceed by remote means, I'll tell you what I'm telling everyone else in the city of New York who's trying to litigate cases right now, which is learn how to take depositions by remote means. Everybody is learning, and the providers have gone up that learning curve, and things seem to be moving pretty well. I'm not forcing people's hands, but I am strongly urging it. And it seems to be pretty successful. And if you're in that kind of situation where you're trying to negotiate protocol for remote depositions, I can give you a case cite that I've been passing around. The parties don't even know, I'm sure, that I've been passing it around. One of my colleagues sent around a proposed remote deposition protocol that litigants had submitted in a case, didn't bless it, didn't endorse it. There was particular provider mentioned, and certainly the Court's not endorsing any particular provider or anything, but it showed some thought. And I've been passing this citation onto other

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lawyers as something to glance at as maybe giving rise to ideas and having a basis for discussion. I thought it showed that some time and effort was put into considering the issues that can arise. So let me give you that citation. It's *Compus Productions International v. Charter Communication*. It's 18-cv-12296. It's a case before Judge Marrero and Magistrate Judge Moses, and it's Docket 51 in that case, 18-cv-12296. Again, I'm not blessing it; I'm just pointing it out as people wrestle with these kinds of concepts.

But so why don't I just extend your deadlines somewhat? It's now already May 22, so I could kick them out to, let's say -- or by 45 days or something like that; ask for a status report by the middle of June; and you'll tell me what's going on. And the reason for me to kick it out is with the understanding that you want to pause things, try to preserve resources, and I'm putting another 45 days at the end of the schedule to enable you to get things done. And you can, you know, map out a deposition schedule if you have to for that time. And if you run into logistical problems, you can get back to me and tell me what those logistical problems are. Or maybe even 60. But, you know, what you put out here doesn't seem to quite hold together.

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MS. WANG: This is plaintiffs' counsel. Fair enough, your Honor. That makes perfect sense from our perspective.

THE COURT: Okay, look, so here's what I'm going to do. I'm going to move out all deadlines on your scheduling order by 60 days, with the understanding that if for the next, well, until the middle of June when you know if this program is starting, anyway, whatever makes sense, whether it's 30 days or until June 15, you can discuss that between you, for some period of time you're going to hold off on incurring costs. And then, at the end of that point in time, maybe by June -- why don't I just say by June 19 -- by June 19, which is the end of that week that starts June 15 -- by June 19, send me a status report, which is either things are going great, we want to stay this longer because we really are participating in this program; or things look grim, it's taken a downturn in the Virgin Islands, and we want to get back on the calendar and we've started talking about that; and because of some logistical issues, we think we need more time or we think we're okay or whatever. But 60 days on the dates, with an understanding that you're going to pause things cooperatively and give me a status report by June 19. Rational?

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MS. WANG: Yes, your Honor. Thank you.

THE COURT: Defendants' side?

MR. MOSKOWITZ: That is acceptable to us. Bennet Moskowitz. Thank you.

THE COURT: Okay. I will issue an order, probably just a text order on the docket, that will confirm that for you. I will look at the schedule we have and put firm dates on that are 60 days out so you have definite dates for various and assorted things. If some dates have already gone by, don't worry about it because they'll have kicked out 60, you know, retroactively. And I am assuming that neither of you is going to start jumping up and down, saying this week we must now have depositions happening. I assume that you're going to wait until approximately June 15 to see if it's really necessary and report by June 19.

MR. MOSKOWITZ: Bennet Moskowitz here. We have, yes, no intention of that, your Honor, and I just --

THE COURT: I'm sure.

MR. MOSKOWITZ: Yes. Not what I want.

THE COURT: I'm sure. I'm sure. Look, my intention is to balance things. You know, if there's a realistic chance of it getting settled, any of these cases getting settled, that's great. And I don't want you

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spending unnecessary funds. But if there are problems with it, I want to keep discovery moving in a rational way, keeping costs reasonably under control, keep you talking, keep you planning. That was the concept all along. And so that's the balancing act. Okay?

MS. WANG: Understood. Thank you, your Honor.

THE COURT: Okay. And I --

MR. MOSKOWITZ: Thank you, your Honor.

THE COURT: -- realize different cases may be handled somewhat differently with different counsel, and so be it. I was thinking I'd try to get you all more or less on the same track, but there are always going to be some divergences.

Okay. Thank you, all.

MS. WANG: Thank you.

THE COURT: I will talk to at least certain of you again in half an hour.

MR. MOSKOWITZ: Thank you.

THE COURT: All right. Take care, everybody. Be well.

(Whereupon, the matter is recessed.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Davies v. Indyke et al, Docket #19-cv-10788-GHW-DCF, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: May 29, 2020