

THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

\* \* \* \* \*

WESTERN FALCON, INC. and \* CIVIL NO. H-13-2963  
WAGON TRAIL VENTURES, INC. \* Houston, Texas

\*

Versus

\*

MOORE ROD & PIPE, LLC \* 4:10 p.m. - 4:37 p.m.  
and MOORE PIPE, INC. \* October 29, 2014

\* \* \* \* \*

**MOTION HEARING**

BEFORE THE HONORABLE LEE H. ROSENTHAL  
UNITED STATES DISTRICT JUDGE

\* \* \* \* \*

Proceedings recorded by computer stenography  
Produced by computer-aided transcription

*Edward L. Reed*  
Court Reporter  
9251 Lynne Circle  
Orange, Texas 77630 \* 409-330-1605

1           **APPEARANCES:**

2           For the Plaintiffs:

3           MR. DOUGLAS H. ELLIOTT  
4           MR. ERIC M. ADAMS  
5           **The Elliott Law Firm**  
6           6750 W. Loop South, Suite 995  
7           Bellaire, Texas 77401

8           MR. DALE JEFFERSON  
9           **Martin Disiere Jefferson & Wisdom, LLP**  
10          808 Travis, 20th Floor  
11          Houston, Texas 77002

12          For the Defendants:

13          MR. DANIEL J. KASPRZAK  
14          MR. MARK A. BANKSTON  
15          **Johnson DeLuca Kurisky & Gould, P.C.**  
16          1221 Lamar, Suite 1000  
17          Houston, Texas 77010

18          Case Manager:

19          LISA EDDINS

20          Court Reporter:

21          EDWARD L. REED

22

23

24

25

*Edward L. Reed*  
Court Reporter  
9251 Lynne Circle  
Orange, Texas 77630 \* 409-330-1605

1                   **P R O C E E D I N G S**2                   **4:10 P.M. - OCTOBER 29, 2014**3                   THE COURT: Go ahead and state your  
4 appearances, please.5                   MR. KASPRZAK: Your Honor, Dan Kasprzak and  
6 Mark Bankston for the Defendants, Moore Rod & Pipe and  
7 Moore Pipe, Incorporated.8                   MR. ELLIOTT: Your Honor, Doug Elliott for the  
9 Plaintiffs, Western Falcon and Wagon Trail Ventures.10                  MR. JEFFERSON: Dale Jefferson also for the  
11 Plaintiffs.12                  MR. ADAMS: Eric Adams also for the  
13 Plaintiffs, Your Honor.14                  THE COURT: All right, you may all be seated.  
15 Thank you.16                  So we're at an interesting juncture.  
17 We've got an Agreed Stay and Injunction in place. We  
18 have a Motion to Lift the Stay and Dissolve the  
19 Injunction because, number one, we have the result of  
20 the IPR. The result of the IPR is a detailed order  
21 finding that there is -- that the claims are  
22 unpatentable. There is obviously opportunity for  
23 reconsideration and rehearing, but this significantly  
24 bears on the likelihood of success on the merits,  
25 obviously.

1                   MR. ELLIOTT: Yes, Your Honor.

2                   THE COURT: That's one point. The other point  
3 is the issue of whether there has been a change in the  
4 case law because of the *Limelight* decision given the  
5 allegations in this case. Frankly, I think that's a  
6 less strong argument. So let's take up the first  
7 argument first.

8                   We're only five weeks away, less at this  
9 point -- a month away, effectively -- from when the  
10 stay is going to expire of its own terms, when the  
11 patent expires, when you guys are free to do whatever  
12 you want to do.

13                  So given where we are, I have one  
14 question, which is whether 30 days is worth the cancel,  
15 one way or t'other.

16                  MR. KASPRZAK: To my disgruntled client it is,  
17 Your Honor.

18                  THE COURT: And forget principals. Let's talk  
19 about practical --

20                  MR. KASPRZAK: I can't tell you how many times  
21 I've been criticized for agreeing to that order in the  
22 first place or talking them into agreeing to that order.  
23 But from our perspective, it's really more about the  
24 last year that we've wrongfully been deprived as a  
25 result of the Agreed Order we agreed to. But we've

1       wrongfully been deprived from being able to fairly  
2       compete with somebody who it turns out does not have a  
3       patent that would prohibit us from competing.

4                   I understand there's a long, drawn-out  
5       process where that could theoretically be reversed.  
6       But we believe that in light of the strength of the  
7       written opinion, that reversal of that is extremely  
8       unlikely. And in viewing the technical language of the  
9       Agreed Order, we're not sure that everything goes away  
10      on December 7th. Only those two items go away  
11      automatically on December 7th.

12                  And in light of that, my client has urged  
13      me to make this motion as early as possible. And at  
14      the time we filed the motion, of course, we didn't know  
15      if the plaintiffs were going to appeal the decision or  
16      not. They filed their Motion for Rehearing on Monday  
17      of this week. So it's all happening fairly quickly.

18                  THE COURT: So here's one question: I found  
19      one footnote in one case so far that addresses the  
20      ability of the Court -- District Court to act in  
21      litigation that has previously been stayed if there is  
22      an opinion that issues from the IPR, but it is still  
23      subject to reconsideration motions and potential  
24      appeal. And this footnote says, sure, you can do it  
25      because it clearly bears on the likelihood of success

1 on the merits. But that's a footnote in one case  
2 that's not -- is anybody aware of any better authority?

3 MR. KASPRZAK: On that specific issue I'm not,  
4 but the case law generally accords the Court great  
5 amount of discretion, only to be reversed on an abuse  
6 of discretion, and I don't think we're anywhere close  
7 to that at this point. But we are clearly asking the  
8 Court to exercise its discretion in that way.

9 THE COURT: Of course, we're already in sort  
10 of an odd territory because we already granted both a  
11 stay and a Preliminary Junction, which case law seems  
12 to suggest is not generally done.

13 MR. KASPRZAK: In cases of this type, correct.

14 THE COURT: Yes. So we're already in an  
15 unusual, but consensual territory.

16 MR. KASPRZAK: Yes.

17 MR. ELLIOTT: Your Honor, if I might address  
18 the issue of the injunction or in light of the final  
19 written decision, the language that not only did the  
20 Court agree to enter --

21 THE COURT: I understand, but things have  
22 changed, so address for me the substantial likelihood  
23 of success on the merits.

24 MR. ELLIOTT: At this stage, Your Honor, we  
25 believe that the arguments that we've made, that we've

1 asked the Court for rehearing will be reheard because  
2 of the fundamental errors with the -- the legal errors  
3 and the factual errors. On the other hand, if the stay  
4 is lifted, the language of the stay actually says that  
5 the parties will be estopped.

6 THE COURT: Can I keep the stay in place of  
7 the litigation and lift the injunction? Does that make  
8 sense? Can I, A; should I, B?

9 MR. KASPRZAK: As a practical matter, I  
10 believe you can. Technically, it may require the stay  
11 to be lifted momentarily for the Court to --

12 THE COURT: Lift the injunction.

13 MR. KASPRZAK: -- resolve the injunction.

14 THE COURT: Right.

15 MR. KASPRZAK: And then put the stay back in  
16 place, but I think that's --

17 THE COURT: I don't disagree with that. But  
18 first, is there a legal basis to do that, a basis in  
19 the record to support it? And what that does is  
20 prevent litigation that could conflict with whatever  
21 happens above. It, however, recognizes that the  
22 issuance of this opinion from the IPR proceeding really  
23 does change things.

24 MR. KASPRZAK: Well, and we do not dispute  
25 that there is still time for the USPTO to either affirm

1 or overrule its prior decision.

2 THE COURT: Are they likely to do anything in  
3 a month?

4 MR. KASPRZAK: Not in a month.

5 THE COURT: Well, if they don't act in a  
6 month, the patent's gone and the whole thing is moot  
7 anyway. So, if what we're really talking about is  
8 they're not going to do anything in the time available  
9 for it to matter for us, I don't see a reason to wait  
10 for them, to do nothing on time.

11 MR. KASPRZAK: We agree.

12 THE COURT: And that's kind of where -- I'm  
13 worried about the --

14 MR. ELLIOTT: The concern I have, Your Honor,  
15 is the language of your order, which says: Once the  
16 stay is lifted, each and every party to this case  
17 agrees that they will be estopped from asserting or  
18 maintaining claims --

19 THE COURT: We can modify that based on the  
20 change in circumstances. There's no reason we can't  
21 address that in the order lifting the stay, that this  
22 lifting of the stay, given that the IPO proceedings  
23 have not concluded, does not trigger any estoppel. We  
24 could say that in the order. And then what we could do  
25 is lift the Preliminary Injunction on the basis of the

1 change in the substantial likelihood of success on the  
2 merits prong necessary to its issuance, and then  
3 re-impose the stay until the life of the patent ends  
4 and specify in it that the re-imposed stay, if lifted --  
5 how am I going to put that? That if the stay is lifted  
6 because of the final result of the IPR proceeding, then  
7 the estoppel will be triggered.

8 MR. ELLIOTT: Your Honor, here's my concern  
9 about the last five weeks of the life of the patent.  
10 Let's say that the Preliminary Injunction is dissolved,  
11 and on --

12 MR. KASPRZAK: December 6th.

13 MR. ELLIOTT: Well, let's just say tomorrow  
14 the defendants start supplying products and install the  
15 liners in the rod pumping wells of their customers.  
16 So at that point in time two things happen:

17 Number one, the patent is still good, the  
18 claims have not yet been cancelled. Number two, they  
19 would be directly infringing. The customers would be  
20 directly infringing. So our cause of action would  
21 actually -- we'd have to go to trial to see what kind  
22 of liability is imposed for that five weeks of direct  
23 infringement and inducement of infringement.

24 On the other hand, if the injunction is  
25 permitted to dissolve on its own terms --

1           THE COURT: How is that different from any  
2 other case in which the IPR proceeding results in an  
3 opinion on invalidity that says patent claims are no  
4 good and an injunction that was previously imposed gets  
5 lifted?

6           MR. ELLIOTT: There's two cases that we cited  
7 in our response: The *ePlus* case, which refers to --  
8 both of them refer to re-examination proceedings. The  
9 *ePlus* case and the *Fresenius* case, both of them said,  
10 once you have cancellation of the claims --

11          THE COURT: I understand that, but they don't  
12 address what happens before then. So we're before.

13          MR. ELLIOTT: They actually --

14          THE COURT: Does anybody address --

15          MR. ELLIOTT: The *ePlus* case does address it.

16          THE COURT: Okay.

17          MR. ELLIOTT: It actually goes back and says  
18 any liability that could have been imposed is gone.  
19 But that doesn't happen until you have estoppel, which  
20 is when the certificate issues.

21          THE COURT: So what happens -- that doesn't  
22 say what happens before. So what happens if you get  
23 this weird -- what I'm being told is unlikely -- you  
24 have a month of direct infringement because the result  
25 on reconsideration or on appeal is to find that you

1       were a valid patent, okay? So you get a month's worth  
2       of infringement, maybe less. By the times things get  
3       geared up, I would suspect we're looking at more like  
4       three weeks, but you know the industry a whole lot more  
5       than I do because I don't know it at all.

6                   MR. KASPRZAK: Right now it's moving rather  
7       quickly, which is one of the reasons my client --

8                   THE COURT: I understand.

9                   MR. KASPRZAK: -- wants to take advantage of  
10      you make hay while the sun shines.

11                  THE COURT: Right.

12                  MR. KASPRZAK: It might not be shining in  
13      February.

14                  THE COURT: I understand. So say even then  
15      you still have to get orders, you've got to get -- so  
16      say three weeks, roughly.

17                  MR. KASPRZAK: Minimum.

18                  THE COURT: So you're looking at something  
19      fairly *de minimis*. But the question then is, is that a  
20      risk you and your clients are willing to run?

21                  MR. KASPRZAK: Those were the next words out  
22      of my mouth, Your Honor. We've not been allowed to  
23      compete since February, we're not competing today. But  
24      if we can get the injunction dissolved, we will start  
25      soliciting orders tomorrow. We probably won't be able

1 to fill any until January, anyway. So any lead time we  
2 can get just helps us just to get back into the fair  
3 competition market at a time when the market is good  
4 for all vendors in the market, except us.

5 MR. ELLIOTT: Your Honor, we agreed to the  
6 terms of the stay and the injunction.

7 THE COURT: I understand, but things have  
8 changed, so we keep coming back to that.

9 MR. ELLIOTT: Actually, they really haven't  
10 changed, not in the context of the circumstances,  
11 because they expected -- they expected all along that  
12 they would win their case in the Patent Office. But  
13 the parties agreed to wait --

14 THE COURT: You've been telling me from day  
15 one that you expected to be able to show X, Y and Z,  
16 and I'm waiting for some of that, and you expected to  
17 prevail in the Patent Office, too. You're now telling  
18 me you're competent you're going to ultimately prevail.  
19 So welcome to litigation. You both walk in, in full  
20 chest-thumping mode, and that doesn't really persuade  
21 me too much, other than that you've met your Rule 11  
22 obligations.

23 MR. KASPRZAK: Your Honor, part of the reasons  
24 we agreed to the temporary injunction, it arose -- I  
25 reviewed the transcript because Mr. Elliott quoted me

1 from that transcript. So I went back and read the  
2 whole thing. And it arose when I was explaining to the  
3 Court that, Judge, my client is not going to do any of  
4 those things, they don't need to be enjoined from doing  
5 them. And you said, like all judges do when you make  
6 that argument, if they are not going to do it, what's  
7 the bother with agreeing to an injunction?

8                   And partly as an accommodation to the  
9 Court, I talked my client into agreeing to that  
10 injunction and Mr. Elliott and I worked it out and it's  
11 worked as it was designed to work up until this point  
12 in time. My client hasn't been happy with it since the  
13 day I talked them into letting me sign it, but that's  
14 another story. At this point it's not working the way  
15 it was intended.

16                 THE COURT: Well, perhaps you can tell me one  
17 other just practical question. What is the frequency  
18 of following an opinion like this from the Patent  
19 Office of having it either significantly reversed on  
20 reconsideration or having it significantly reversed on  
21 appeal?

22                 MR. KASPRZAK: I'm no expert in that regard  
23 and would only be speculating. But I know that in  
24 cases in general where you go back to the body that  
25 decide it --

1                   THE COURT: Well, but that's not really  
2 helpful, because this is a pretty technical proceeding.  
3 And I would be interested in knowing that information,  
4 because what you're in the business of doing is  
5 weighing your risks and to some extent I am, too. I  
6 don't want to jump any guns here, but it is a pretty  
7 clear opinion and that does give me some pause.

8                   MR. ELLIOTT: Your Honor, we agreed that it  
9 was an opinion that was strongly worded, as we  
10 contended in our Request for Rehearing. We think there  
11 are some things that they missed and we think, if they  
12 considered those, they will -- there's a possibility  
13 that they would change the ruling.

14                   Now, obviously, if they don't -- right  
15 now, nobody knows what the statistics are with the  
16 Patent Office, the Trial and Appeal Board, or the  
17 Federal Circuit.

18                   THE COURT: I understand that these are being  
19 granted -- re-examinations are coming much faster and  
20 more frequently than they used to.

21                   MR. ELLIOTT: The one thing we do know is that  
22 in five weeks there's not going to be any more case or  
23 controversy, which is the only claim we have against  
24 Moore Rod & Pipe.

25                   THE COURT: So will that resolve your IPR?

1 Does that end the re-examination proceeding, including  
2 the appeal?

3 MR. ELLIOTT: It would end it if we got an  
4 agreement with the other side that the case should be  
5 settled, because at that point --

6 THE COURT: Okay, let's assume there's no  
7 settlement. If we just wait until the five weeks, are  
8 you going to -- would you then notify the Patent Office  
9 that there was no live appeal any longer to be decided?

10 MR. ELLIOTT: We would, Your Honor. It's my  
11 understanding --

12 THE COURT: Because it moots that, as well.

13 MR. ELLIOTT: I'm sorry?

14 THE COURT: So what you're telling me is that  
15 if we just let things run, everything is moot.  
16 Everything.

17 MR. ELLIOTT: Everything related to the patent  
18 would go away.

19 THE COURT: And if you're not -- if we do  
20 lift the stay out long enough to lift the Preliminary  
21 Injunction and then re-impose the stay, then the only  
22 thing that you could be possibly litigating in the  
23 Patent Office, if they granted the relief you seek, is  
24 roughly three weeks of whatever damages you can  
25 plausibly assert?

1                   MR. KASPRZAK: If we're even able to make a  
2 sale based on our efforts beginning tomorrow.

3                   MR. ELLIOTT: Well, there is some infringement  
4 against the other defendant, Moore Pipe, Inc., that  
5 took place in North Dakota earlier on in the case.

6                   THE COURT: It's fairly limited, I  
7 think everybody agrees.

8                   MR. ELLIOTT: Yes, Your Honor.

9                   THE COURT: So, this is a tiny damages case  
10 at best even if everything goes your way in the legal  
11 proceedings pending the Patent Office.

12                  What are you guys doing?

13                  MR. ELLIOTT: Your Honor, my client feels very  
14 strongly about the fact that it was awarded the patent.  
15 It paid lots of money for a patent back in the 1990's.  
16 And instead of waiting until the patent expired, Moore  
17 Rod & Pipe infringed.

18                  THE COURT: Your client has every right to  
19 file the lawsuit and pursue it. I'm not questioning  
20 that for a minute. But just on a practical level,  
21 there's a lot of attorney's fees being spent at this  
22 juncture to pursue relief that everybody seems to  
23 recognize that under the circumstances, most favorable  
24 to the plaintiff, are going to provide nothing very  
25 significant, and that just strikes me as not the way

1 the system was really working at its most optimum.

2 That's all.

3 Now, having said all of that, it seems  
4 to me to be worth the risk that you have outlined to  
5 proceed as I tried to outline, which is to lift the  
6 stay only long enough to lift the injunction, to hedge  
7 it about with language that says, "This lifting of the  
8 stay doesn't trigger the estoppel. That is only  
9 triggered under the circumstances" -- and then you can  
10 specify what those circumstances would be to trigger  
11 the estoppel and --

12 MR. KASPRZAK: Dissolve that --

13 THE COURT: Dissolve the injunction.

14 MR. KASPRZAK: And the re-impose --

15 THE COURT: And re-impose the stay with it  
16 modified to make clear that potentially, if the Patent  
17 Office doesn't grant a reconsideration by December  
18 6th -- is that the date you said?

19 MR. KASPRZAK: December 7th.

20 THE COURT: 7th, oh, great, Pearl Harbor Day.

21 MR. KASPRZAK: Pearl Harbor Day.

22 THE COURT: -- then the stay would itself  
23 automatically expire and the estoppel would then be  
24 triggered. Or maybe it wouldn't be. Yeah, it would be  
25 under the terms that you agreed to earlier.

1                   MR. ELLIOTT: Your Honor, I'm assuming that  
2 you're referring to the two provisions relating -- the  
3 injunctive relief relating to the patent actions,  
4 which is I think the first two of the five provisions.

5                   THE COURT: We've really been talking about  
6 the injunctive relief relating not to the patent  
7 actions, but to sale activities.

8                   MR. ELLIOTT: Right, advertising and sale,  
9 yes.

10                  THE COURT: And that's what you care about;  
11 right?

12                  MR. KASPRZAK: Well, I'd love to get the whole  
13 injunction resolved because there has been a change in  
14 circumstances that would not permit them to get any  
15 injunction at this point in time if they were to move  
16 forward today. The other provision --

17                  THE COURT: In the Patent Office. In the  
18 Patent Office.

19                  MR. KASPRZAK: No, the injunction in this  
20 court.

21                  THE COURT: I think we're talking -- I perhaps  
22 am not understanding what you're asking. So I would  
23 lift the injunction prohibiting competition. That's  
24 the proposal. The injunction that you are referring to  
25 would be what?

1                   MR. ELLIOTT: The false advertising, the false  
2 advertising relating to temperature capabilities and  
3 the trade secret --

4                   THE COURT: We haven't resolved that. Those  
5 remain. So I am not going to -- I don't think I'm  
6 being asked to lift an injunction, I mean, except for  
7 general terms. But I'm lifting the injunction that  
8 prohibits you from competing in the areas that were  
9 patented, but are no longer -- but have been declared  
10 by an opinion that is not yet final to be unpatentable.

11                  MR. KASPRZAK: But not the two or three  
12 provisions in the injunction --

13                  THE COURT: I'm not changing those.

14                  MR. KASPRZAK: -- that apply generally?

15                  THE COURT: Exactly. I'm not changing those.

16                  MR. KASPRZAK: Okay.

17                  THE COURT: And thank you for that  
18 clarification.

19                  MR. KASPRZAK: That's your prerogative, Judge.  
20 I'll take what I can get.

21                  THE COURT: Yes, sir. So what I'd like you to  
22 do is draft up something and get it over to me tomorrow  
23 morning first thing, if can, or at least well before  
24 noon, so that I can get that out. And if you can  
25 agree, great. If you can't, let Ms. Eddins know and I

1 can have you both over here tomorrow morning.

2 MR. KASPRZAK: The provision -- the third  
3 provision of this Agreed Order would be to have the  
4 stay lift automatically on December 7th.

5 THE COURT: I think it should because at that  
6 point let's assume the patent's gone --

7 MR. KASPRZAK: Yes.

8 THE COURT: -- of its own terms. The --

9 MR. KASPRZAK: What I was getting to was the  
10 fact that I'm assuming that the temporary -- the  
11 remaining portions of the Preliminary Injunction would  
12 not automatically dissolve on December 7th, they would  
13 stay in place until the unstayed case was finally  
14 resolved; correct?

15 THE COURT: Yes, I think that is correct.

16 Anybody disagree with that?

17 MR. ELLIOTT: That would be correct, Your  
18 Honor.

19 THE COURT: All right. So put all that in the  
20 order. I'm just sort of focusing on the "it's moot" at  
21 that point. If there is no relief granted by the  
22 Patent Office timely, if everything is -- if the patent  
23 is expired of its own terms, then there is no need for  
24 a stay, there isn't any need for anything in this  
25 court. We're just going to churn out the resolution of

1 the remaining issues that have to be decided.

2 MR. KASPRZAK: Would it be appropriate at that  
3 point in time to take up the issues raised in our  
4 Motion for Summary Judgment?

5 THE COURT: Probably.

6 MR. KASPRZAK: To wait until that point in  
7 time?

8 THE COURT: I think that's correct.

9 MR. ELLIOTT: Your Honor, that was actually  
10 the point that I was going to raise, is they have filed  
11 a no evidence summary judgment motion on not only  
12 patent issues, but also from the other issues. At  
13 this point there has been no -- there has been a final  
14 written decision, but there has not been a cancellation  
15 of the claims.

16 THE COURT: I understand.

17 MR. ELLIOTT: So, under the law, the estoppel  
18 would not trigger until actually a final resolution,  
19 which is going to be possibly a year in advance.

20 THE COURT: And you may be right about that.  
21 But what that means we need to do is you, in the first  
22 instance, need to craft the language on what will  
23 trigger the estoppel with great care. Think about  
24 that. I'm happy to weigh in once you've had that  
25 opportunity, but I don't think we're there yet. I

1 think you need to sit down and try to figure out how  
2 you are going to make clear that the fact that I am  
3 lifting the injunction and lifting the stay in order to  
4 permit that to be done does not in itself trigger the  
5 estoppel, okay, contrary to what we put into place  
6 earlier when circumstances were different than they are  
7 now. That's all I'm saying.

8 MR. KASPRZAK: What about December 7th, when  
9 the stay -- the re-inserted stay is automatically  
10 lifted? That will trigger estoppel. That's what I  
11 understand the Court to be saying.

12 THE COURT: That's the question, that's what  
13 you guys need to look at. I don't know if it is the  
14 lifting of the stay because everything's moot or if  
15 other things will remain in play. That's something  
16 that you will know better than I do, so --

17 MR. KASPRZAK: If Wagon Trails is going to  
18 abandon their appeal in the IPR proceeding at that  
19 point, then it will work.

20 THE COURT: I agree.

21 MR. KASPRZAK: If they don't abandon their  
22 appeal at that point, then it will be further delay.

23 THE COURT: Right.

24 MR. ELLIOTT: Well, Your Honor, I think the  
25 stay should be applied to their Motions for Summary

1 Judgment.

2 THE COURT: We're not going to take up the  
3 summary judgment motions until December at the  
4 earliest, until after the patent has expired and we  
5 know what has happened in the Federal -- in the Patent  
6 Office. Okay, I think that takes care of your issue.

7 MR. ELLIOTT: Yes, so until estoppel happens,  
8 the summary judgment motion --

9 THE COURT: Right, and that means you got to  
10 put in when estoppel is going to happen. Okay, that's  
11 the -- that was the point I was trying to get to and  
12 not doing it very well.

13 MR. ELLIOTT: Okay.

14 THE COURT: But we're going to say it doesn't  
15 happen now. Then you're going to want to specify when  
16 it does happen. And that's all I'm saying.

17 MR. ELLIOTT: We can do that, Your Honor.

18 THE COURT: Okay, that's good.

19 MR. KASPRZAK: If Mr. Elliott says we can do  
20 it, we can do it.

21 THE COURT: Yeah, I think you guys can do it.

22 Okay. Anything else we need to do now,  
23 other than give you a chance to do this drafting and  
24 report back?

25 MR. KASPRZAK: And the Court wants this as

1 soon as possible tomorrow?

2 THE COURT: That will be good. Early enough  
3 that if you need some assistance in making sure that  
4 everyone is satisfied with a workable, accurate order,  
5 then we can provide it timely.

6 MR. KASPRZAK: I think that's all we need  
7 today, assuming we can work this out in the next 24  
8 hours or less, and I'm confident we can if we put our  
9 hearts to it.

10 MR. ELLIOTT: I agree, Your Honor.

11 THE COURT: Okay. Go try.

12 MR. KASPRZAK: Thank you, Judge.

13 THE COURT: That sounds great. Thank you.  
14 You all are excused.

15 **[4:37 p.m. - Proceedings adjourned]**

16

17 REPORTER'S CERTIFICATE

18

19 I certify that the foregoing is a correct transcript  
20 from the record of proceedings in the above-entitled  
21 cause.

22

23 /s/ Ed Reed  
Edward L. Reed  
24 Official Court Reporter

11-5-14  
Date

25

*Edward L. Reed*  
Court Reporter  
9251 Lynne Circle  
Orange, Texas 77630 \* 409-330-1605