

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE,
20TH JUDICIAL DISTRICT AT NASHVILLE, PART II

STATE OF TENNESSEE,)
EX REL. JULIE MIX MCPEAK,)
SOLELY IN HER OFFICIAL CAPACITY)
AS COMMISSIONER OF COMMERCE)
AND INSURANCE,)

Plaintiff,)

v.)

No. 14-102-II)

GALILEE MEMORIAL GARDENS,)
JM&M SERVICES, INC.,)
LAMBERT MEMORIAL CO., AKA)
LAMBERT MEMORIALS, INC.)
LAMBERT & SONS, INC.)
JEMAR LAMBERT, MARJE LAMBERT,)
AND MARY H. LAMBERT, AND ALL)
PERSONS ACTING IN CONCERT)
WITH THEM)

Defendants.)

TRANSCRIPT OF PROCEEDINGS

Wednesday, November 1, 2017

Reported By:
Susan D. Delac, LCR, RPR, CCR

1 APPEARANCES

2 Counsel for Julie Mix McPeak, Commissioner
3 of the Tennessee Department of Commerce & Insurance,
as Receiver for Galilee Memorial Gardens:

4 Ms. Sarah Ann Hiestand
5 Mr. Scott Jackson
6 Tennessee Attorney General's Office
7 P.O. Box 20207
8 Nashville, TN 37202
9 615-741-6035
10 sarah.hiestand@ag.tn.gov
11 scott.jackson@ag.tn.gov

12 Mr. Jef Feibelman
13 Attorney at Law
14 Burch, Porter, and Johnson
15 130 North Court Avenue
16 Memphis, TN 38103
17 901-524-5109
jfeibelman@bpjlaw.com

18 For the Edwards Entities:

19 Mr. John R. Branson
20 Attorney at Law
21 Baker Donelson
22 Suite 2000
23 165 Madison Avenue
24 Memphis, TN 38103
25 901-577-2323
jbranson@bakerdonelson.com

For J.D. Herndon Funeral Home, LLC, and R.S. Lewis:

Mr. R. Scott McCullough
Attorney at Law
McNabb, Bragorgos, Burgess & Sorin
Sixth Floor
81 Monroe Avenue
Memphis, TN 38103
901-624-0640
smccullough@mbbslaw.com

1 For the Wofford Plaintiffs:

2 Ms. Kathryn E. Barnett
3 Attorney at Law
4 Morgan & Morgan
5 Suite 105
6 8100 Broadway
7 Nashville, TN 37203

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (The aforementioned cause came on to be
2 heard on Wednesday, November 1, 2017, beginning
3 at 9:30 A.M., before the Honorable William E. Young,
4 Chancellor, when the following proceedings were had,
5 to-wit:)

6 THE COURT: Mr. Feibelman, always good
7 to see you, sir.

8 MR. FEIBELMAN: Good to see you, Your
9 Honor. The three players are here, but I don't know
10 if -- I mean, the class-action plaintiffs are here and
11 the --

12 THE COURT: I see the State is here.
13 And always good to see the folks from the State
14 Attorney General's Office.

15 MR. FEIBELMAN: We don't know who's
16 coming. So all the players are here.

17 THE COURT: Well, Mr. Feibelman, I'm at
18 your discretion. I can take a 15-minute break and
19 we'll see who else shows up, or we can proceed forward.

20 I see the Attorney General is shaking
21 their head that a 15-minute break would be appropriate
22 to make sure we get everybody here.

23 Let's take a 15-minute break. The
24 Court will come back in at 9:30 when this is scheduled.
25 Court's adjourned until 9:30.

1 (Off the record from 9:15 to 9:34.)

2 THE COURT: Good morning everyone.

3 Glad to have a full courtroom today.

4 Mr. McCullough, I believe that we're
5 here on your motion. But before we get to that, there
6 is also a motion for a protective order that the Court
7 has not signed. And the Court was going to sign that,
8 but wanted to make sure that there was no opposition to
9 it. Does anyone have any opposition to the protective
10 order that was filed with the Court?

11 MS. HIESTAND: None that we're aware
12 of.

13 MS. BARNETT: We don't have any
14 opposition, Your Honor.

15 THE COURT: Okay. Thank you.

16 MR. BRANSON: Your Honor, I represent
17 the Edwards entities. My name is John Branson. I have
18 no opposition.

19 THE COURT: Okay.

20 MR. MCCULLOUGH: No opposition.

21 THE COURT: Okay. Well, the Court will
22 go ahead and sign that one.

23 MS. HIESTAND: Thank you.

24 THE COURT: Mr. McCullough, am I
25 correct that you're here on the motion to basically, I

1 think, set aside the stay to allow discovery to
2 proceed?

3 MR. MCCULLOUGH: Your Honor, that is
4 our kind of joint motion we're all working on.
5 Mr. Branson is probably going to be the one --

6 THE COURT: Mr. Branson, are you going
7 to take the lead on this one?

8 I asked for you, Mr. McCullough, just
9 because your name was on the certificate of service.
10 So I saw there were several names on there. I thought
11 I picked the right one, but apparently I didn't.

12 MR. MCCULLOUGH: You absolutely did,
13 Your Honor. Thank you, Your Honor.

14 THE COURT: Sure. Mr. Branson, go
15 ahead.

16 MR. BRANSON: Thank you, Your Honor.

17 Your Honor, this did, indeed, begin
18 life as a motion not filed by me; it's filed actually
19 by the plaintiffs. The plaintiffs filed the motion to
20 lift Your Honor's stay for the limited purpose of
21 allowing the parties in the Memphis case, the Shelby
22 County class-action case, to depose Mr. Robert Moore.
23 Mr. Moore is the designee of the receiver that Your
24 Honor appointed to run the Galilee cemetery.

25 I'm pleased to be able to report that

1 the parties, working with the State, were able to
2 resolve much of the -- many of the questions involving
3 Mr. Moore's deposition such that Mr. Moore's deposition
4 has been agreed to, has been scheduled. We've worked
5 out an arrangement on the documents. We submitted that
6 order. And the reason there was no opposition is that
7 these lawyers with the State, the receivership,
8 courteously sent around drafts. We've all worked on
9 that and got that done.

10 So we've narrowed down the issues such
11 that only a couple remain. I've got a couple questions
12 for the Court about Mr. Moore's deposition. And then I
13 wanted to give the Court a status report on the Memphis
14 case and how that might impact Your Honor's
15 receivership order.

16 The questions I have about Mr. Moore's
17 deposition are two. I'm confident I know the Court's
18 answers to my questions, but I have lots of
19 constituents in this case, it's a good case, and I need
20 to have the Court rule on those.

21 Mr. Moore is obviously an important
22 witness. He's the individual who will know the most
23 about literally where the bodies are buried. To the
24 extent that anybody knows, Mr. Moore is the guy who
25 knows the most. And he is the --

1 THE COURT: Having worked with
2 Mr. Moore in the past, I would say that's probably
3 true.

4 MR. BRANSON: That's right, Your Honor.

5 Mr. Moore, other than the receivership
6 and the stay, would be just another citizen who's a
7 potential witness and would be subject to subpoena in
8 the Memphis case for trial. And so rather than lie
9 awake at night worrying about whether I should send him
10 a subpoena or waive the subpoena for trial, and that
11 kind of thing, I thought I would just ask the Court.

12 In view of the Court's receivership
13 order, the stay, will the Court or will the Court not
14 permit the parties to require Mr. Moore to come to
15 Memphis to testify live at trial?

16 THE COURT: Well, let me ask you a
17 question. Perhaps this is better addressed to the
18 State's counsel. Am I correct in reading this that the
19 parties assume there's a stay on discovery pursuant
20 to -- I guess it's Section H of the order previously
21 entered by the Court in February of 2014? Is that why
22 we assume there's a stay in this issue on discovery?

23 MR. BRANSON: Your Honor, it's not just
24 that. We've been before Your Honor's predecessor on
25 this issue in the past, and that Chancellor assured us

1 that the stay covered discovery. And she told us that
2 we could take all the discovery we wanted to provided
3 it did not meet objection from the receiver's lawyers.
4 And so we have operated ever since under the assumption
5 that if we wanted any discovery that they were not
6 willing to agree to, we had to come back and ask this
7 court for permission to do it.

8 THE COURT: And I seldom, if ever, will
9 disagree with my predecessor, Chancellor McCoy, who is
10 a dear friend. But in reading H -- and perhaps this is
11 best addressed to the state's counsel -- that says
12 there shall be no complaint, countercomplaint, or
13 similar action initiated or continued against the
14 cemetery, the property, the receivership, the receiver,
15 or those of the receiver's agents in connection with
16 this receivership otherwise then appearing in this
17 cause and with the permission of the Court, which is
18 why I understand you're here today.

19 And maybe it's a moot question. But my
20 understanding is neither the State nor any of these
21 parties are named in the pending litigation down in
22 Shelby County. Is that true?

23 MR. BRANSON: Your Honor, it's true
24 that the State itself is not a party, but the
25 cemetery's owners are parties; they're sued as

1 defendants for money damages. And there's also a claim
2 for equitable relief as to the grounds of the cemetery,
3 the disposition of the remains, and that kind of thing.

4 THE COURT: So they are included in
5 that. So tell me what is the discovery seeking to do
6 here? It seems like you're trying to show that there
7 was some negligence to protect the clients that are
8 there, comparative negligence, as I read the motion.

9 MR. BRANSON: Well, Your Honor, both
10 sides, the plaintiffs and defendants, would like to
11 depose Mr. Moore because since the receivership was
12 imposed, the cemetery grounds have been off limits to
13 us. So we haven't been able to find out anything about
14 the records of the cemetery. We've taken a deposition
15 or two of gravediggers, but they don't know much.

16 We haven't seen any of the records to
17 show at least what the records show as far as who is
18 buried where, how many bodies are there, is anyone
19 buried over on that adjacent property, and that kind of
20 thing.

21 And then Mr. Moore, I understand from
22 reading the reports, also went around the grounds with
23 probes, long poles, and poked down to see if they hit a
24 casket, as well as hired an archaeological firm to come
25 along with ground-penetrating radar to try to mark the

1 anomalies under the soil and that kind of thing.

2 We don't know how much probative value
3 it would have because, frankly, we don't know what the
4 proof will be.

5 THE COURT: So the Court, the current
6 posture of this case, Mr. Branson, the Court has
7 allowed the deposition of Mr. Moore to continue
8 pursuant to the Court's order, and we've also got the
9 protective order that the Court will sign shortly, that
10 all parties have agreed to that protective order, and
11 it certainly looks reasonable to the Court.

12 So what other discovery are you seeking
13 here today?

14 MR. BRANSON: Well, I have two
15 questions, Your Honor, about the discovery which are
16 really intertwined. One is whether you're going to
17 allow Mr. Moore to be required to testify live at
18 trial. Because, if you are, that means --

19 THE COURT: Are you asking that the
20 Court allow Mr. Moore to testify at trial?

21 MR. BRANSON: Well, I would prefer that
22 if Your Honor would allow it.

23 MS. HIESTAND: The State objects to
24 that and the receiver objects to that second
25 deposition. It also is beyond 100 miles from that

1 court, and we're insistent on that too.

2 THE COURT: Let me see what Mr. Branson
3 really wants this Court to do, and then I'll hear from
4 the State.

5 MR. BRANSON: Your Honor, if it weren't
6 for the stay, I could subpoena Mr. Moore. They've
7 changed that 100-mile rule. I could send him a
8 subpoena anywhere in the state under Rule 45. And
9 that's since 1995. He could come into court and say
10 it's burdensome and I shouldn't have to be there, I'm
11 exempt for some reason. But to do my job --

12 THE COURT: Let Chancellor Kyle deal
13 with that?

14 MR. BRANSON: Yes, sir. To do my job I
15 would send the man a trial subpoena, and then I'd do my
16 best to get him here.

17 THE COURT: And that would really be an
18 issue -- as to whether Mr. Moore is testifying live or
19 testifies by deposition, wouldn't that be
20 appropriately -- if this Court were to allow the stay
21 to be lifted, that issue would be decided by Chancellor
22 Kyle, not by this Court, and it would be appropriate
23 for Chancellor Kyle to so decide, would it not?

24 MR. BRANSON: I think it would, Your
25 Honor. So it's a two-layer question. One layer

1 because of Your Honor's stay, and can I even approach
2 Mr. Moore with a subpoena. If Your Honor allows that
3 and I get him a subpoena, then he's got the right to go
4 to Chancellor Kyle and say, "Branson served me with a
5 subpoena but he shouldn't make me appear, here's why."

6 And so my question for you is whether
7 you will lift your stay so as to allow Mr. Moore to
8 testify live at trial.

9 THE COURT: To me, Mr. Branson -- and,
10 again, this is perhaps best for the State's attorneys.

11 The question for this Court is whether
12 or not the stay should be left in. How Mr. Moore
13 testifies seems to be in the purview of Chancellor
14 Kyle.

15 MR. BRANSON: That's right, Your Honor.
16 That's all I'm saying. I don't even get to Chancellor
17 Kyle if Your Honor says, Branson in no way can subpoena
18 my receiver, deputy receiver, Mr. Moore. I won't
19 bother you any further.

20 THE COURT: If this Court were to lift
21 the stay and say Mr. Moore can testify, then how that
22 happens, I think, in that case, really is in Chancellor
23 Kyle's bailiwick, not this Court's. And I'll allow the
24 State to address that too.

25 What else? You're looking for

1 Mr. Moore to testify, the stay to be lifted to allow
2 him to testify. What else are you looking for?

3 MR. BRANSON: Your Honor, my second
4 question is sort of the second part of the first
5 question. If Your Honor rules that Mr. Moore is not
6 subject to subpoena, that means his deposition that was
7 scheduled to be taken in January is a deposition for
8 evidence. And that's fine.

9 That will change how we conduct the
10 deposition. For example, I'll object to the form of
11 the question -- rather to all objections since it's an
12 evidentiary testimony deposition rather than just a
13 discovery deposition. In that event, my next question
14 for you is, assuming that the deposition of Mr. Moore
15 is evidentiary, will you lift the stay so as to allow
16 me to take another deposition ahead of that, prior to
17 that, for discovery so that I won't hear his trial
18 testimony for the first time when he testifies at his
19 evidentiary deposition?

20 THE COURT: Okay. Any other discovery
21 you're seeking here today other than how we depose or
22 get the testimony of Mr. Moore?

23 MR. BRANSON: Those are my only
24 discovery issues, Your Honor. I do have one more
25 issue.

1 THE COURT: Sure, go ahead.

2 MR. BRANSON: Well, the other issue is
3 this. We now have a trial date in the Memphis case,
4 it's April 30, 2018. And I thought while we're going
5 to be addressing the Court on the discovery issues, I'd
6 apprise the Court of the status of the Memphis case.

7 It's been pretty well on hold for a
8 couple of years because various issues were being
9 appealed. Those appeals have now been resolved. And
10 the Chancellor's order certifying the case as a class
11 action has been upheld by the Supreme Court, and so we
12 now know it's a class action and it's set for trial on
13 April 30.

14 And, again, Your Honor, there are
15 claims in the third amended complaint that appear to
16 impede or impinge on Your Honor's order imposing a stay
17 as to receivership. And so we had told the Chancellor
18 prior to Your Honor we would let her know the status as
19 things went along in the Memphis case.

20 So the status is things have changed.
21 We're now in the chancery court for sure. The appeals
22 have been resolved, we have a trial date, we're all
23 gearing up for a trial the end of April, and yet in the
24 Memphis case there are claims by the plaintiffs that
25 would impact the grounds and the remains, and there are

1 claims in the Memphis case by the plaintiffs that are
2 for money damages against the entities that own the
3 cemetery. And those appear to me to be prohibited by
4 the stay.

5 THE COURT: That would be my read of
6 the order. But, I mean, anything -- is there any
7 request that this Court change that?

8 MR. BRANSON: There's not by me, Your
9 Honor. I just wanted to tell you the status just so we
10 know we've got these competing cases, sort of. We've
11 got the one in Memphis rocking along toward a trial the
12 end of April that involves issues that appear to
13 impinge upon Your Honor's stay here in Davidson County.

14 THE COURT: Am I correct that really
15 the interest -- and correct me if I'm wrong. The
16 interest of the other, I guess, defendants in that
17 class action is to show -- is to switch the negligence
18 from them to the defendants that are now in
19 receivership in this court?

20 MR. BRANSON: That's one of the
21 affirmative defenses, Your Honor, to try to impose some
22 form of comparative fault, some degree of comparative
23 fault on the Galilee defendants, of course, who were
24 the ones that actually mishandled the bodies.

25 THE COURT: And to the extent that was

1 done, they couldn't pursue that claim given there's a
2 stay in this case.

3 MR. BRANSON: None of the defendants,
4 Your Honor, have cross-claimed against the --

5 THE COURT: When I say "they," I mean
6 the plaintiffs.

7 MR. BRANSON: That's right. The
8 defendants all have pleaded the alleged comparative
9 fault of the Galilee entities. Only the plaintiffs
10 have sued for relief from the Galilee entities.

11 THE COURT: Right. And then the state
12 would preclude the plaintiffs from going against the
13 defendants in this court who are currently under the
14 protection of the receivership order.

15 MR. BRANSON: That's how I read it,
16 Your Honor.

17 THE COURT: The others, the
18 codefendants, I guess, need to be able to make that
19 argument to determine who's at fault.

20 MR. BRANSON: Well, I think the
21 defendants will be able to argue comparative fault even
22 in light of Your Honor's receivership stay order. We
23 can argue that the jury should apportion fault against
24 the Galilee entities even though they can't actually be
25 required to pay damages. So I think we can maintain

1 our affirmative defenses as we are. I'm not asking for
2 any changes there. The problem is these claims of the
3 plaintiffs' for money damages and for equitable relief
4 appear to impinge upon Your Honor's stay.

5 THE COURT: But there's nothing before
6 the Court today. The only thing I hear you requesting
7 on behalf of the intervening parties today is to allow
8 Mr. Moore to testify.

9 MR. BRANSON: Correct, Your Honor.
10 Whether you'll allow him to testify and, if not,
11 whether I can take another deposition in advance of --

12 THE COURT: To lift the stay to allow
13 him to testify.

14 MR. BRANSON: Yes, Your Honor.

15 THE COURT: All right. The Court
16 understands it. Thank you, Mr. Branson. I appreciate
17 it.

18 MR. BRANSON: Yes, sir.

19 THE COURT: I appreciate you bringing
20 some clarity to this.

21 Ms. Hiestand, I see you're standing up,
22 so I assume you're representing these other two
23 gentlemen here.

24 MS. HIESTAND: Yes, sir. Sarah
25 Hiestand for the receiver, Mr. McPeak. And Jef

1 Feibelman from Burch Porter in Memphis represents the
2 receiver. And Scott Jackson also from the Attorney
3 General's office.

4 THE COURT: I appreciate Mr. Feibelman
5 being up here all the way from Shelby County.

6 MS. HIESTAND: We also have in the
7 courtroom Michael Driver who is an attorney from --

8 THE COURT: Mr. Driver, good to see you
9 as always.

10 MS. HIESTAND: The last point that was
11 discussed is perhaps the most important point. And it
12 relates to the orders in the receivership that were
13 entered and the statute under which it was being
14 entered which is to place a proceeding that is known as
15 a receivership of the cemetery and the entities that
16 ran or owned the cemetery, into this court. And that's
17 that statute 46-1-312.

18 And so there are elements of the
19 receivership order and the injunctions that have been
20 named part of it, including interference with the
21 receiver which is another long set of provisions that
22 went into further interpretations of those provisions
23 for there shall be no claim against the cemetery except
24 in this court; and the other provision that you can't
25 do any action anywhere else to interfere with judicial

1 claims against -- to get property of the receivership.

2 so if we have a problem in relation to
3 the shelby county cases if that has not been understood
4 by the plaintiffs that not only are those claims
5 against the named Galilee Memorial Gardens Cemetery and
6 the other entities, but they cannot bring that there
7 because the nature of this proceeding is the
8 receivership.

9 THE COURT: With the stay in effect --
10 and as I understand Mr. Branson's argument, he's not
11 here -- I mean, he's representing the intervening, I
12 guess, codefendants in the case. But he's here asking
13 for one thing, and one thing only, as I understand it,
14 to allow Mr. Moore to give evidence, to be heard in
15 that shelby Chancery proceeding. That's all he's
16 asking for. And the state has entered into an agreed
17 order to allow the deposition of Mr. Moore to be taken.

18 Is the state -- having done that, it
19 seems like you've crossed the rubicon. You've agreed
20 that Mr. Moore can testify in the shelby county
21 proceeding. Am I missing something there,
22 Ms. Hiestand? Have you agreed to that?

23 MS. HIESTAND: We have -- in the order
24 that set off this deposition that was presented and
25 signed by Your Honor, that provided for a single

1 deposition of Mr. Moore.

2 THE COURT: Right.

3 MS. HIESTAND: And it provided this
4 Court with jurisdiction over the issues related to that
5 deposition, not to the admissibility of the deposition
6 in the Shelby County case, but for matters of the
7 receiver's privileges, the confidentiality. You've
8 also now entered, or about to enter, another order that
9 provides for the confidentiality of the records in the
10 receivership. That would have to transfer and be
11 incorporated into however those are used in the Shelby
12 matter.

13 But we do not want to be arguing our
14 privilege issues also over in that court. This
15 deposition is being taken under this case's caption.

16 THE COURT: That's where this Court is
17 struggling. What we're talking about is a stay, a stay
18 to prohibit, as it existed before the order was signed,
19 I assume, prohibit Mr. Moore from testifying anywhere
20 in the country.

21 And the Court is not convinced the
22 Court reads the order that broadly. But, albeit, if
23 the Court lifts the stay to allow Mr. Moore to testify
24 because these defendants need his testimony to
25 basically make their defense in the case, why should

1 this Court assume the responsibility of Chancellor Kyle
2 who has this case in determining how that testimony is
3 to be presented in his courtroom?

4 Once this Court decided to allow
5 Mr. Moore's testimony -- it was actually done by agreed
6 order. Once the door was opened to allow Mr. Moore to
7 testify, shouldn't this Court cede how it's done to the
8 Court that has jurisdiction over the case when
9 Mr. Moore is testifying?

10 Seems to me that this Court would be
11 interfering with Chancellor Kyle's jurisdiction on how
12 that testimony is to be either done or used in his
13 courtroom. And that once this Court lifts the stay,
14 how it's done is really no longer this Court's
15 responsibility, but Chancellor Kyle's. Am I wrong on
16 that?

17 MS. HIESTAND: Well, we've got a couple
18 threshold problems. One is what is the status of
19 Galilee in relation to those cases when such a
20 deposition is taken? And part of the briefing that's
21 gone forward here is actually illustrated and brought
22 out that there are strong disagreements about whether
23 or not there can be those entities in that action.

24 THE COURT: But no one is asking for
25 relief from the stay to allow any judgment to be

1 entered against the entities that are in receivership
2 in this Court. Clearly that's stayed. Those entities,
3 you can't proceed against them in that Court. The stay
4 that -- all the claims are to be resolved in this
5 court. The Court has no problem with that.

6 But I don't hear Mr. Branson asking for
7 that here today. He's not asking for that portion of
8 the stay to be lifted to allow any sort of action to be
9 going against these defendants in the Shelby County
10 court. All he wants is the testimony of Mr. Moore. Am
11 I wrong?

12 MS. HIESTAND: There's one more aspect
13 about this whole receivership. It is being funded out
14 of the State Cemetery Consumer Fund. There are no
15 assets. And I think the protection that Chancellor
16 McCoy entered, especially at the beginning, was
17 recognizing essentially a no asset estate that was
18 having to discover its own conditions.

19 And so the protection from interference
20 with the receiver, which is actually quite -- still
21 it's been quite harsh for the last month and a half to
22 even fulfill this deposition preparation --

23 THE COURT: Is the receiver's concern
24 then that if he's required to give multiple depositions
25 or he's required to appear in Shelby County that that's

1 going to deplete the funds?

2 MS. HIESTAND: Absolutely. And it's
3 funds that are set aside for when there are not assets
4 to run the administration of the cemetery receivership.
5 This is what we have. We have no money from the
6 cemetery to run the administration of this matter which
7 becomes infinitely more complex every time the Shelby
8 County actions have had motions in this court.

9 And that's why we brought to Your
10 Honor's attention the two prior orders specifically
11 addressing the Shelby County cases. Chancellor McCoy
12 addressed why it was important to have anything
13 concerning the cemetery, the cemetery grounds or
14 property on the cemetery, anything affecting that here.
15 So you can read that and --

16 THE COURT: And I agree with Chancellor
17 McCoy on that. But it appears that all Mr. Branson and
18 his clients want is the testimony of Mr. Moore. That's
19 all they're asking for. And, indeed, the stay's been
20 lifted to allow Mr. Moore to testify. Admittedly the
21 stay has been lifted in a limited respect. And the
22 Court is concerned about Mr. Moore's expenses being
23 paid.

24 What if Mr. Branson's clients were
25 willing to pay the expenses of travel to the court and

1 travel for any deposition, his time. I'm not putting
2 words in his mouth, but what if they volunteered to do
3 that? Would that make the State feel more comfortable
4 in allowing Mr. Moore's deposition?

5 MS. HIESTAND: That's an absolute
6 requirement is that the expenses be paid in any of
7 these situations. It's already built into the order
8 that was entered. The issue is all --

9 THE COURT: So if an order were
10 expanded to Mr. Branson paid his expenses, whatever the
11 expenses were -- let's say he had to take two
12 depositions, say he had to go to Shelby County and
13 testify, Chancellor Kyle found that that was
14 appropriate, as long as Mr. Branson's clients are
15 paying the expenses, what's the State's concern here?

16 MS. HIESTAND: The amount of
17 preparation that's having to go into all of the
18 surrounding work which is legal support by
19 Mr. Feibelman's office, by the State's office, by the
20 staff, it's not been that easy. And Mr. Moore is a
21 very busy individual. We were having a hard time
22 getting open dates simply for this deposition that's
23 now set for January 11th. So it was a question of
24 trying to define the acceptable amount of factual
25 development which was necessary to their case.

1 so our objection is cost, trouble,
2 time, wondering whether that case will continue. It's
3 already been up on appeal, very litigious. And also
4 there are multiple parties that are, I guess, on the
5 plaintiff's cases.

6 We were trying to say that this Court's
7 in charge of what the responsibility is of the receiver
8 to any other action, especially given that they're
9 raising issues concerning the cemetery itself which the
10 receiver is trying to resolve, the same types of issues
11 for a much larger group of burials. 10,000 people, at
12 least, have been buried in the cemetery. And that's
13 the comprehensive approach to how to deal with that.
14 The resolution and the wind up, which we have been
15 ordered to do, is being prevented by having this
16 possibility of further orders coming out of Shelby
17 County, or the imagination that there could be orders
18 out of Shelby County that affect the cemetery. If
19 there are no orders that can come out of --

20 THE COURT: But then, again, though,
21 we're only talking here -- I have absolute faith in
22 Chancellor Kyle applying the law. And he can read the
23 stay order as well as I can.

24 The only thing we're talking about here
25 is the testimony of Mr. Moore. That's the only thing

1 that's being requested, that the stay be amended to
2 allow the receiver to testify in this proceeding
3 pending in Shelby County.

4 MS. HIESTAND: Mr. Jackson has a good
5 answer for you.

6 MR. JACKSON: Well, I don't know. I
7 have something to say.

8 THE COURT: Sure. Go ahead,
9 Mr. Jackson.

10 MR. JACKSON: I'll let the Court decide
11 if it's a good answer or not.

12 Your Honor, Scott Jackson of the
13 Attorney General's office.

14 Now that Your Honor has clarified that
15 really the only thing we're here to talk about today is
16 whether Mr. Moore will be allowed to testify further
17 than the deposition that we've all already agreed to
18 and, if so, in what form, I think the answer to your
19 question is, our concern is that until all issues with
20 regard to the ability of the Shelby County litigation
21 can reach the Galilee defendants or the Galilee grounds
22 are resolved, we're uncomfortable with Mr. Moore
23 testifying in a matter where issues with regard to
24 privilege or other things like that that directly
25 affect the receivership are in the hands of anyone

1 other than Your Honor and this Court.

2 And that -- we've already -- we
3 recognized early on that Mr. Moore had unique knowledge
4 about the facts that went on at Galilee. That's why
5 we're happy to make him available, assuming we can
6 reach terms that everybody's happy with, because he has
7 things that only he knows that they need to understand
8 that will help them adjudicate their case in Shelby
9 County.

10 But when -- as long as the Shelby
11 County -- as the Galilee entities are still officially
12 named as parties in that lawsuit, then the Court there
13 might consider them to be under his purview as part of
14 that lawsuit, we're uncomfortable with the receiver
15 being brought down there to testify without -- the
16 interest of that Court and this Court might not be the
17 same. And that is our concern. I'm not sure I've
18 explained it very clearly, but --

19 THE COURT: Well, I would hate to imply
20 that Chancellor Kyle would do anything to violate the
21 order of this Court, as I would not do anything to
22 violate any order that Chancellor Kyle has entered.

23 I guess, Mr. Jackson, what the Court is
24 struggling with here is that there is no request. And
25 the order entered by this Court is clear that the

1 defendants in this case cannot be sued in any other
2 court. No judgment can be entered against them. All
3 of those actions are stayed completely. And no one is
4 here today asking that that stay be modified. The only
5 thing that's being asked by Mr. Branson is this
6 receiver, based on his long investigation into this
7 matter, has potentially information that could be
8 helpful to his claims in this class action pending in
9 Shelby County.

10 And, as I understand it, he has stated
11 that he is willing to pay the expenses of Mr. Moore in
12 traveling to the deposition and traveling to any
13 testimony.

14 And where this Court becomes
15 uncomfortable is once the stay is lifted to allow
16 Mr. Moore to testify, this Court becomes very
17 uncomfortable in defining how that testimony is to be
18 handled in another proceeding. I mean, that seems to
19 be this Court would be interfering with Chancellor
20 Kyle's determination of what the witness in his case
21 can say or not say or how that witness appears in this
22 case under applicable Tennessee law in this case. So
23 that's the Court's concern. Can you address that?

24 MR. JACKSON: I can, I think, Your
25 Honor.

1 And I agree with what you are saying.
2 I think once a witness is made available in a case
3 subject to any orders or anything in other cases, then
4 how it's handled in the second case is within the
5 pursue of the judge in that case.

6 And I also agree with Your Honor that
7 Chancellor Kyle, or any other judge in Shelby County,
8 would not knowingly do things in their case that would
9 violate the stay in this case.

10 I think the issue is because this is a
11 fairly unique situation and the orders that were
12 entered in this case were in the very beginning when we
13 didn't really know what we had, that perhaps there
14 could be some ambiguity.

15 This Court and that Court may not see
16 the order the same. So there would be no intentional
17 interference, but something that we, perhaps, would
18 deem to be interference.

19 THE COURT: This Court is retaining
20 jurisdiction to protect these defendants in this
21 receivership. And this Court is just like a bankruptcy
22 court where you have a stay; it's very similar. And
23 this Court would not act against Chancellor Kyle, but
24 would act against any party that violated the stay
25 that's currently in this court.

1 But I don't hear Mr. Branson or anyone
2 else saying that there's any intent to go after these
3 defendants at this time in the Shelby County Court.
4 There may be some intent to put blame on them in order
5 to protect the other codefendants in that class action,
6 but I don't see any danger of that.

7 Let me ask you this, Mr. Jackson.
8 Perhaps I should have asked you in the beginning. What
9 does the State want out of this hearing, or the
10 receiver?

11 MR. JACKSON: Well, Your Honor, it's
12 interesting that you ask that because we're trying to
13 clarify that. The whole issue about the stay -- and,
14 you're right, that's not before the Court. We don't
15 need to resolve that today.

16 I guess what we're articulating to you
17 is our concern that there is an underlying issue behind
18 this request to further seek testimony from Mr. Moore
19 that we're trying to cut off ahead of time.

20 So as long as Your Honor's order to
21 allow further testimony made clear that anybody who
22 brings Mr. Moore to testify in whatever way we can even
23 agree or not agree that it would happen, they have to
24 pay for it because the State is funding this out of
25 taxpayer money, for lack of a better word, and that

1 this Court retains all jurisdiction over the cemetery,
2 the grounds, and the defendants, then I think that's
3 what we would be after in this case.

4 You're right. Once we've allowed him
5 to testify, it's a little hard for us to try to shape
6 how they use it in another case but for the issues we
7 have in this case.

8 THE COURT: So the issues of -- if I
9 hear you correctly, Mr. Jackson, the issues of how
10 Mr. Moore testifies, the issues of whether anything
11 that he's testifying to is confidential or privileged,
12 those would be handled by Chancellor Kyle in that
13 proceeding?

14 MR. JACKSON: Your Honor, I think
15 you're right if we went that -- if that's where we end
16 up. I think that's where --

17 THE COURT: Is that the receiver's
18 position of where we should end up? That's what I'm
19 asking. Does the receiver have any problem with
20 Chancellor Kyle making those determinations in that
21 particular case?

22 MR. FEIBELMAN: Your Honor makes a good
23 point. Those are important questions that perhaps we
24 don't need to resolve right now. Maybe the best thing
25 is take Mr. Moore's deposition, see what we get. We

1 might be having a hypothetical argument. They may be
2 satisfied that, you know, they can put in stipulations
3 or whatever, you know, because what he knows is factual
4 information. Maybe that's the wisest course here is to
5 let the deposition go forward and if immediately
6 thereafter there are further issues we can either
7 resolve them among ourselves or come back to the court
8 if we have to. I don't know that we need to --

9 THE COURT: So you're saying it's
10 premature. I guess I can ask Mr. Branson this. What I
11 understood his argument to be is he needed an answer
12 today because he needs to know what kind of deposition
13 he's going to take. Is he going to take one as an
14 evidentiary deposition or is he just taking a
15 deposition and then he's going to bring Mr. Moore back
16 for testimony.

17 And, you know, whether he can compel
18 Mr. Moore to come to Shelby County is an issue this
19 court would prefer to let Chancellor Kyle resolve. I
20 think it's in his bailiwick, not in this court's. But
21 I understand your point that perhaps we should let that
22 play out.

23 MR. JACKSON: Your Honor, we may be
24 back here in mid-January making these same arguments
25 again, but there's a chance we might not be. I don't

1 know that we need to delve into all these other side
2 issues.

3 THE COURT: Okay.

4 MR. JACKSON: But I guess that would be
5 our preference. But if Your Honor feels the need to
6 resolve it today, then perhaps we can dig into those.

7 THE COURT: Let's see what Mr. Branson
8 has on this one.

9 Mr. Branson, should we just put this
10 off till another day and let you go ahead with your
11 deposition of Mr. Moore and see where we end up?

12 MR. BRANSON: That is one option, Your
13 Honor. It's got some -- like everything else in life,
14 it's got some positives and some negatives. The
15 positive would be that we may, as Mr. Jackson noted, we
16 may be arguing about nothing as it turns out. That
17 could happen. I acknowledge that.

18 On the other hand, you have probably,
19 what, 13, 14, 15 lawyers that can all be there asking
20 Mr. Moore questions. And, remember, it was the
21 plaintiffs that originally moved to take his
22 deposition, so I guess they'll go first. We'll have a
23 dozen or more defense lawyers there. We're all going
24 to have to make a record if it might be used for
25 evidence, not just on the form of the question, on

1 relevancy, hearsay, general admissibility, anything
2 else we can think of because if we don't make it right
3 there on January the 11th, it never happened if the man
4 doesn't come back and testify at trial.

5 THE COURT: Isn't the issue of whether
6 Mr. Moore would be required to testify at trial --
7 shouldn't that be resolved by Chancellor Kyle?

8 MR. BRANSON: Well, it should be in the
9 second phase. The first phase, Your Honor, is
10 immediately you need to tell me, tell us all, really,
11 it's not just me, whether we're going to be allowed to
12 even serve a subpoena on Mr. Moore at all. Setting
13 aside anything else, whether it's a valid subpoena,
14 whether he has reasons not to be there.

15 I can't approach Mr. Moore. I don't
16 get near Mr. Moore pursuant to this Court's earlier
17 orders. And so what I would like to know is, are you
18 going to let me serve him a subpoena? If he then comes
19 in and objects, I'll take that up with Chancellor Kyle.

20 If you're going to let me serve him
21 with a subpoena, that means I'll probably, along with
22 the other parties, take his deposition in January for
23 discovery because it won't be the first time I'm
24 hearing his testimony on the record.

25 If you say, no, Mr. Branson, he's my

1 receiver, you're stayed and you can't serve him with a
2 subpoena, that's okay. Then I'll know that the
3 deposition in January is for evidence; it's his trial
4 testimony.

5 And, in that instance, my second
6 request is -- or question is, okay, will you let me
7 take a prior deposition for discovery so I don't hear
8 his testimony on the record for the first time.

9 And I don't mean to imply these lawyers
10 over here have waived anything. We agreed that we
11 could depose Mr. Moore, no precedential matters, or
12 anything further than that. And I said, okay, we all
13 agree to that. Let's get that order in the record.
14 Because Mr. Moore is so busy, we need to go ahead and
15 do that, and I'll take up my other questions that we
16 don't agree on later.

17 THE COURT: Are your clients willing to
18 pay Mr. Moore's expenses for the deposition and the
19 testimony at trial?

20 MR. BRANSON: Your Honor, we have
21 agreed amongst all of the parties to split his fees and
22 costs for the deposition. And I'm presuming that the
23 same would apply for all who would want him to testify
24 at another deposition or at trial. I reserve the right
25 to change my mind if I listen to his testimony in

1 January and don't need him, or my client says,
2 "Branson, you're a fool. We're not going to pay for
3 that."

4 But I will stipulate that -- I
5 recognize that these are -- I don't know if they're
6 taxpayer funds, but they are funds paid into this
7 protective fund. That's not money that ought to be
8 wasted.

9 I'll stipulate that it would be
10 reasonable for the Court to impose as a condition of
11 any further testimony by Mr. Moore, deposition, trial,
12 whatever, whoever wants him there should pool their
13 funds and pay reasonable costs and expenses.

14 THE COURT: I'm trying to find out
15 where you are, Mr. Branson. It seems like you-all are
16 really close. But should the Court just allow your
17 preliminary deposition to go forward and see where we
18 end up from there? And you can come back to this Court
19 on the evidentiary deposition or the testimony?

20 It just seems, as Mr. Jackson makes
21 perhaps a good point, that we're being premature here.
22 I can open it up and just say, hey, let him go for
23 whatever. But it seems like maybe we just take this
24 first step that the parties have agreed to. Take his
25 deposition, not as an evidentiary deposition, but just

1 take his deposition, that's what the parties have
2 agreed to. See what you find out, and then come back
3 to this Court if you think you need either an
4 evidentiary deposition or have him testify at trial.

5 In the interim, perhaps, to modify that
6 order to allow Chancellor Kyle to go ahead, if we need
7 to, and let's find out whether he's going to require
8 Mr. Moore to appear in person or whether he thinks that
9 he should just give an evidentiary deposition. That,
10 to me, seems a question that Chancellor Kyle needs to
11 resolve.

12 MR. BRANSON: Well, Your Honor, the
13 problem there is that Chancellor Kyle might well defer
14 to Your Honor because you've --

15 THE COURT: Well, if he wants to defer
16 to me, I'm happy for Chancellor Kyle to defer to me and
17 I'll be happy to make a decision. But the Court's
18 concerned about -- I seem to be -- this Court seems to
19 be stepping into his case. And how witnesses testify
20 in that case in Shelby County seems to me, seems to
21 this Court, to be within Chancellor Kyle's discretion
22 and determination.

23 This Court can determine how to lift
24 the stay or not lift the stay. But once the stay is
25 lifted, those other issues really need to be resolved

1 by Chancellor Kyle.

2 So, Mr. Branson, what do you think
3 about the Court's suggestion that we just go ahead as
4 we are, see what happens, and then reserve any further
5 amendment of the stay pending -- seeing what all the
6 parties find out in this first initial deposition?

7 MR. BRANSON: Your Honor, that is a
8 possibility. It's not a ridiculous suggestion by
9 Mr. Jackson. But, again, it's going to take a one-day
10 deposition and make it a two day. Because we're going
11 to have -- I guess we can designate a lawyer for the
12 defendants to make all the objections for everybody;
13 we'll pass Post-it Notes. But we're all going to have
14 to protect that record to protect ourselves because we
15 won't know whether Your Honor and/or Chancellor Kyle,
16 how you-all will rule on what we're going to do with
17 Mr. Moore going forward. And so that deposition in
18 January is --

19 THE COURT: What about opening up the
20 possibility to let Chancellor Kyle deal with that
21 issue? Let's go ahead and take Mr. Moore's deposition
22 but also lift the stay to allow -- to the extent it
23 needs to be lifted. I tell you, this Court's not
24 convinced this stay applies to discovery. The stay is
25 intended to protect the defendants in this case from

1 being sued in other courts while the receivership is
2 pending.

3 To say that the stay extends to protect
4 the receiver from normal discovery in some other case
5 that the receiver's testimony might be needed seems to
6 be stretching the intent of the order here. But, be
7 that as it may, the Court is not asked to decide that
8 today.

9 But in the order to allow Chancellor
10 Kyle to make a determination of whether Mr. Moore is
11 required to testify in person or by evidentiary
12 deposition, that seems to be a disputed issue. The
13 receiver seems to take the position that, no, he's not
14 required to come down to testify in person. You, on
15 the other hand, seem to say, well, yeah, he is, and let
16 Chancellor Kyle resolve that issue and then come back
17 here and see what we want to do. How about that?

18 MR. BRANSON: Well, I oppose that, Your
19 Honor, but Your Honor can do that.

20 THE COURT: Well, why do you oppose it?

21 MR. BRANSON: Again, I oppose it
22 because we've got a trial the end of April that's
23 scheduled to last at least a month. It's a
24 class-action trial. And we had been operating -- or I
25 had been operating, I'll say, under the belief that it

1 would be limited to common issues, issues that were
2 common between the class and the defendants.

3 Chancellor Kyle has now said in
4 response to several questions from the lawyers, no, as
5 of right now that trial April 30 is the trial. May
6 limit it later, may not. Right now it's the trial.

7 So we're faced with a trial with over a
8 thousand, probably 1300, 1400 people, against a dozen
9 or so defendants. And we have the one witness who
10 knows really anything about what happened at Galilee
11 Cemetery who's made an independent investigation, who's
12 gone out there and trod the grounds and looked at the
13 records and poked with the probes, had the guys run the
14 ground penetrating radar. He's a key witness. And if
15 it weren't for the receivership, he's just another
16 witness who is subject to subpoena. No big deal.

17 The fact that the receivership exists
18 has been interpreted by this Court previously as
19 precluding discovery for any involvement at all by
20 anyone to do with the receivership without the
21 permission of the Court, requires us to come to the
22 Court and say will you allow Mr. Moore to testify at
23 trial, setting aside all issues of relevancy,
24 admissibility, whether it's too much trouble for him,
25 whether it's an invalid subpoena, set aside all that,

1 whether you allow me to serve him a subpoena, no more
2 than that, to be there at trial.

3 And the reason that's important is that
4 these lawyers have worked hard. They've graciously
5 worked hard with us to schedule his deposition in
6 January. But that's a deposition that could be for
7 discovery, it could be for evidence.

8 As Your Honor knows, if it's for
9 evidence, that's a different deal than one for
10 discovery. It's going to take a lot longer with all
11 these objections and everyone carefully protecting the
12 record. And it's -- we've already agreed that the
13 parties to the Shelby County case will pay Mr. Moore's
14 expenses for that deposition.

15 THE COURT: Are you willing to pay
16 for -- have the parties agreed to pay for his
17 preparation time as well?

18 MR. BRANSON: I don't know that that
19 was specifically addressed. But I don't know if he's
20 really going to have much, just going to ask him what
21 he knows and what his records show. So I don't know.

22 THE COURT: Mr. Feibelman.

23 MR. FEIBELMAN: The reason why I think
24 the best course is to say let's see what will happen is
25 that unlike a lot of witnesses, Mr. Moore has filed

1 voluminous reports with this Court, not only his
2 reports, his investigation, his conclusions, the backup
3 material. We have agreed to produce documents, and
4 we're going to do it shortly, and they will certainly
5 take up all of one desk and maybe take up both desks.

6 The notion that there's going to be
7 anything factual that comes as a surprise is really,
8 frankly, just unimaginable. I cannot scarcely imagine
9 a witness whose preparation, conclusions, work product
10 in everything is more available than Mr. Moore's.

11 Now, the problems that might come in,
12 frankly, are very difficult privilege problems. Why
13 did the state agree to do this instead of this? And
14 there you get into deliberative privilege issues, and
15 that's a whole separate issue.

16 But I would say let's take his
17 deposition. I suspect -- I could be wrong. But my bet
18 is that this business about discovery, evidentiary,
19 surprise at trial, and so forth, the likelihood is that
20 it will wind up being a nonissue because Mr. Moore is
21 going to methodically, I'm sure, in response to
22 questions, walk through what he has done, why he has
23 reached the conclusions that he has reached. And they
24 may probe that, but that will be that. And, again,
25 beyond that is really just a leap into the unknown

1 really for no compelling reason at this point.

2 THE COURT: Thank you, Mr. Feibelman.

3 MS. BARNETT: Your Honor, could I be
4 heard just very briefly?

5 THE COURT: Go ahead. I should have
6 asked you to just come on up, Ms. Barnett, but you
7 wanted to stay in the back.

8 MS. BARNETT: I don't even have a
9 motion before the Court. I'm Kathryn Barnett on behalf
10 of the class. And I just -- the only thing I want to
11 be clear about with this discussion is this.

12 So the deposition that's set now, we
13 originally set it for November 7th. There was a
14 request that it be moved later by the defendants, we
15 agreed. It's now in January. That's later than we'd
16 like, but we're going to go forward with it then.

17 We worked hard. We had a motion
18 pending, we had an agreed order to do that deposition,
19 and there's no limitation on how that could be used at
20 trial.

21 So I would be very much against, in the
22 context of this hearing, the deposition that I fought
23 hard to get being called discovery, not for proof.
24 That's the only part of the discussion that troubles
25 me.

1 My position, which is what I told the
2 defendants, just like any deposition, they should make
3 whatever objections they need to make because Mr. Moore
4 might win the lottery and run off to Tahiti. Or he
5 might be hit by a car. You never know.

6 THE COURT: And knowing Mr. Moore as
7 well as I do, I certainly hope he wins the lottery and
8 goes to Tahiti. I'm sure he would appreciate that.

9 Ms. Barnett, just hearing from you
10 representing the plaintiffs in this proceeding, is your
11 position that the Court should just hold the course,
12 let this deposition proceed, and then we'll go from
13 there?

14 MS. BARNETT: It matters not to me.
15 The only thing that matters to me is I would not want
16 the deposition that we have worked hard to schedule to
17 be called discovery only, not for trial.

18 THE COURT: And the order doesn't say
19 one way or the other?

20 MS. BARNETT: That's right. That may
21 be something that Chancellor Kyle may do, but to the
22 extent the defendants are worried about making
23 objections, they should make their objection. We can
24 probably work out an agreement where they don't even
25 have to do that on the record. But, you know, it's

1 just like any deposition, may be used at trial, may
2 not. It doesn't matter to me if he comes live to trial
3 or if we use his deposition. None of that matters to
4 me, but I just would not want my deposition -- not
5 mine, our deposition, but the one that we've worked
6 hard to schedule, to be called discovery only.

7 THE COURT: Thank you, Ms. Barnett.

8 MR. BRANSON: Your Honor, for
9 clarification, I don't mean to imply that we would ask
10 that the deposition be designated in one form or
11 another. And, of course, there's no such thing.

12 That ties into my question, of course,
13 about whether he'll testify at trial. If I think he's
14 going to be at trial, I will do my deposition a little
15 differently in January, but it doesn't mean I would
16 ever suggest to the plaintiffs, oh, that was discovery
17 only. You can't use it. We all know --

18 THE COURT: On the agreed order entered
19 by the parties it just doesn't say.

20 MR. BRANSON: That's right.

21 THE COURT: So the Court is not going
22 to interfere with an agreed order entered by the
23 parties. It says what it says.

24 At this point, I think the Court is
25 ready to rule on this one.

1 The Court is concerned that this Court
2 is being dragged into a proceeding pending in Shelby
3 County that Chancellor Kyle should have jurisdiction to
4 determine how witnesses testify in his court in that
5 proceeding.

6 Having said that, the Court shares the
7 State's concerns, the Receiver's concerns, about the
8 expense of this matter. The Court is fully aware that
9 there are no resources here other than the State's
10 resources through the fund to pay the Receiver.

11 The parties have agreed to a mechanism
12 to allow Mr. Moore to testify. The Court finds
13 persuasive the argument of Receiver's counsel that at
14 this point in time the court should allow that process
15 to go forward, see what happens, and allow the parties
16 to come back to this court after that deposition is
17 taken to see if any further relief needs to be provided
18 from the stay.

19 So at this point the Court is going to
20 decline to revise what is an agreed order between the
21 parties as to how the deposition of Mr. Moore is to be
22 taken. The deposition will be taken in conformance
23 with that agreed order. However, the Court reserves
24 the right for Mr. Branson, or any other party, to come
25 back to this Court after that deposition is taken to

1 request any further relief from the stay regarding how
2 Mr. Moore should be available to the Court in Shelby
3 County.

4 And, again, in saying that, the Court
5 is very concerned here that the parties are seeking to
6 have this Court craft how Mr. Moore testifies and how
7 that testimony is to be used in the case pending in
8 Shelby County. The only question this Court should be
9 concerned about is whether the stay should be lifted or
10 not. Once the stay is lifted, the question of what
11 testimony is to be given by Mr. Moore, how that
12 testimony is to be given in the Shelby County case,
13 really should be in the province of Chancellor Kyle
14 who's in charge of that case rather than this Court.

15 But, having said that, the Court is not
16 going to amend this agreed order at this time. The
17 Court is going to allow the deposition to go forward
18 because the Court feels, as Mr. Feibelman indicated,
19 it's premature. See what happens. And if you need
20 further relief after that deposition, the Court
21 certainly is willing to entertain it. And I think the
22 Court has indicated preference where the Court will go
23 at that point in time for the parties' benefit.

24 But at this point the Court feels that
25 Mr. Feibelman and Mr. Jackson both have made the point

1 let's see what happens and let's not interfere with an
2 agreed order that the parties have spent a lot of time
3 and effort drafting. As Ms. Barnett points out, she
4 was involved in this -- she's not even here today other
5 than an observer -- and she worked very hard to get
6 that order to say exactly what her clients wanted it to
7 say.

8 So the Court is going to let the
9 parties abide by that order and deny the relief at this
10 time without prejudice to your clients, Mr. McCullough
11 and Mr. Branson. Come back into this Court once that
12 deposition is taken and seek any further relief you
13 might need regarding Mr. Moore's testimony, relief from
14 the stay.

15 So with that, are there any questions?

16 Ms. Hiestand, I would ask you to
17 prepare the order for the Court.

18 MS. HIESTAND: I will do that.

19 THE COURT: Basically it's pretty
20 simple, I'm denying the request.

21 MS. HIESTAND: Incorporate the ruling?
22 We'll need the ruling.

23 THE COURT: Yes. Based on the ruling
24 in open court, the motion to grant relief from the stay
25 beyond the scope of the agreed order is currently

1 entered into by the parties is denied without prejudice
2 to Mr. Branson's clients coming back to this court
3 after the deposition of Mr. Moore and asking for
4 further relief.

5 MR. BRANSON: Thank you, Your Honor.

6 THE COURT: Thank you. And thank you
7 for your help today. It's a very difficult matter
8 given we've got two proceedings going on in two
9 different places. Thank you.

10 (Proceedings concluded at 10:30 A.M.)

REPORTER'S CERTIFICATE

I, Susan D. Delac, Licensed Court Reporter, Registered Professional Reporter, Certified Court Reporter, and Notary Public for the State of Tennessee, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 9th day of November, 2017.

SUSAN D. DELAC, LCR, RPR, CCR
AND NOTARY PUBLIC FOR THE STATE
OF TENNESSEE

LCR No. 137 Expires 6/30/2018

Notary Commission Expires 1/6/2020