

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

KLEEN PRODUCTS LLC, et al.  
individually and on behalf of all those  
similarly situated,

Plaintiff,

v.

PACKAGING CORPORATION OF  
AMERICA, et al,

Defendants.

Civil Case No. 1:10-cv-05711

Hon. Milton I. Shadur

**JOINT STATUS CONFERENCE REPORT NO. 3**

Plaintiffs and Defendants submit this joint report for the Court's consideration at the status conference scheduled for May 22, 2012 at 9:00 a.m. before the Hon. Milton I. Shadur. As noted below, Judge Nolan has conducted two days of evidentiary hearings and several status conferences related to discovery matters, with another status hearing to be held by Judge Nolan at 2:30 on May 22.

**A. Background**

*Kleen Products LLC* (Case No. 1:10-cv-05711), the first-filed case in these consolidated actions, was filed on September 9, 2010 and the related later-filed cases were subsequently reassigned to this Court. On November 8, 2010, Plaintiffs filed a Consolidated and Amended Complaint ("Complaint") (Dkt. 65). On January 14, 2011, Defendants filed motions to dismiss.

On April 8, 2011, the Court entered a memorandum Opinion and Order denying Defendants' motions (Dkt.193). On May 2, 2011, Defendants filed their Answers.<sup>1</sup>

On May 9, 2011, the Court held a status conference and indicated its preference that counsel establish a case management schedule amongst themselves and that issues requiring Court intervention be handled by noticed motion. The Court also said that it would set periodic status conferences. The Court conducted another status conference on August 16, 2011. Prior to the August status conference, the parties submitted a joint status conference statement (Dkt. 222), and at the status conference the Court requested that the parties continue that practice, stating that it would review the joint status conference statements in advance and unless the Court advised otherwise, counsel would not have to appear and another status conference date would be calendared.<sup>2</sup> At the December 15, 2011 status conference the Court decided to refer discovery to the Hon. Nan Nolan including the following topics set forth in *Joint Status Conference Report No. 2* (Document No. 265): (1) Plaintiffs' Request for Defendants' to Provide Indexes for Their Document Production, (2) Electronically Stored Information Search Methods, (3) Electronically Stored Information Search Scope, and (4) Relevant Time Periods. The Court subsequently postponed the status conference that had been set for March 15, first resetting it for April 30 and then for May 22.

#### **B. Proceedings before Magistrate Judge Nolan**

Judge Nolan held her first status conference with the parties on January 17, 2012, set a schedule for briefing on the discovery issues and held the first day of an evidentiary hearing on February 21 and a second day on March 28. Five witnesses testified during the two days of

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<sup>1</sup> Pursuant to the unopposed motion of Defendant Smurfit Stone (Dkt. 202), on June 16, 2011, the Court allowed RockTenn CP, LLC to be substituted as a defendant in place of Smurfit-Stone Container Corp (Dkt. 205).

<sup>2</sup> Transcript of Proceedings, August 16, 2011, pp. 6:19-7:28.

hearings and, at the conclusion of the March 28 evidentiary hearing, there remained the continued cross-examination of one witness and Plaintiffs indicated that they intended to call two more witnesses (one an expert to be recalled to testify in response to testimony of an expert called for Defendants).

At the conclusion of the March 28 session, Judge Nolan met with the lawyers for all parties and encouraged them to explore whether a negotiated resolution could be reached on the issues before her. Judge Nolan held subsequent status conferences to address the discovery issues on April 3 and on April 19, and the parties are schedule to meet with Judge Nolan again on May 22 at 2:30 p.m. Excerpts from the transcripts of the post-hearing session on March 28, the April 3 hearing and the April 19 hearing are attached hereto as Exhibits A, B and C. Prior to the April 19 hearing, separate in-person meet and confer sessions occurred between Plaintiffs and each Defendant. Another round of in-person meet and confer sessions began on May 16 and are scheduled for May 18, 21 and 22. The parties also have exchanged correspondence and other information in a good faith attempt to address the discovery disputes.

### **C. Discovery**

To date, Plaintiffs have produced approximately 25,000 pages of documents and Defendants have produced documents believed to be the equivalent of more than 3 million pages. Plaintiffs' ESI is being processed by a vendor for production to Defendants, and Plaintiffs expect to produce additional responsive documents within the next few weeks.

Defendants' productions include both hard copy documents and ESI, which includes e-mails, Word documents, electronic calendars and spreadsheets. Defendants have indicated that they expect to continue making substantial productions over the next few months.

Plaintiffs have taken Rule 30(b)(6) depositions of Defendants International Paper, Temple Inland, Packaging Corporation of America, RockTenn and Weyerhaeuser. Defendants have taken a Rule 30(b)(6) deposition of Plaintiff Chandler Packaging.

**D. CONCLUSION**

The parties request that the next status conference be scheduled for a date in mid to late July and approximately each 45 days thereafter until circumstances change.

Dated: May 17, 2012

Respectfully submitted,

/s/ Michael J. Freed

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*Report only, on behalf of Defendants*  
PACKAGING CORPORATION OF AMERICA;  
CASCADES CANADA, INC.;  
INTERNATIONAL PAPER COMPANY;  
NORAMPAC HOLDINGS U.S. INC.;  
WEYERHAEUSER COMPANY; GEORGIA  
PACIFIC LLC; TEMPLE-INLAND INC.; and  
ROCKTENN CP, LLC

# Exhibit A

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

KLEEN PRODUCTS, LLC, et al.,	}	Docket No. 10 C 5711
Plaintiffs,		
vs.		
PACKAGING CORPORATION OF AMERICA, et al.,	}	Chicago, Illinois March 28, 2012 8:00 o'clock a.m.
Defendants.		

TRANSCRIPT OF PROCEEDINGS - EVIDENTIARY HEARING  
BEFORE THE HONORABLE MAGISTRATE JUDGE NAN R. NOLAN  
VOLUME 2-A

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05:06:50 1 are the best sport for coming two days. We will be back to  
05:07:00 2 you shortly on what our next step will be here.

05:07:04 3 You can step down, Mr. Regard.

05:07:06 4 THE WITNESS: Thank you, your Honor.

05:07:06 5 (Witness leaves the stand.)

05:07:06 6 THE COURT: We are going to be finished if you are  
05:07:08 7 running for a plane. We are going to be finished in a few  
05:07:10 8 minutes, I promise you.

05:08:18 9 Okay. So this is what I am calling, if everybody can  
05:08:20 10 hear me, when I received this referral in December, it was  
05:08:30 11 from my darling Judge Shadur, who never sends anything to me.  
05:08:34 12 I am putting this in context. Okay? And it said, Conduct an  
05:08:38 13 evidentiary hearing. So I thought -- being the obedient  
05:08:44 14 little magistrate judge that I am, I thought, Oh, I better set  
05:08:48 15 this thing real fast. So we did. And this is quite a large  
05:08:54 16 group here.

05:08:56 17 If I had one thing to do over, and that's what I am  
05:09:00 18 doing right now, if we could go back to that day, and I had  
05:09:06 19 reviewed as many documents as I now have reviewed, I want to  
05:09:12 20 say a couple things because I don't think it's too late to go  
05:09:16 21 back to that original place.

05:09:18 22 I am a believer of principle 6 of Sedona, and I'm not  
05:09:28 23 just because it's Sedona, but I think the people who are  
05:09:30 24 producing the records, producing the documents, are in a  
05:09:36 25 better position to know, since they have to do the work, spend

05:09:42 1 the money, spend the time, they know their people, they know  
05:09:46 2 their material, so as a basic premise, I think that's a pretty  
05:09:50 3 fair premise here.

05:09:52 4 I also think I don't quite understand why they went  
05:10:00 5 so fast without getting you involved. Okay? But as soon as  
05:10:06 6 they found out, I'm sort of assuming, they were trying to  
05:10:10 7 figure out, all seven of them, of what the heck was going on,  
05:10:14 8 I'd say by August, and Judge Shadur did not decide his motion  
05:10:18 9 to dismiss until April. So by August, I think the dialog  
05:10:24 10 starts.

05:10:26 11 And the reason I'm even going to suggest what I am  
05:10:30 12 going to suggest is I think -- I would give you a B plus for  
05:10:38 13 cooperation, communication with each other. I actually think  
05:10:42 14 you really did -- once it got started, I think you did a  
05:10:48 15 really good job.

05:10:50 16 I don't know whether the indexing issue started to  
05:10:54 17 send this off on this kind of I'd almost call it a detour  
05:11:02 18 we're on with quote, unquote, predictive quoting, what all the  
05:11:08 19 blogs are talking about us.

05:11:10 20 I assume you and Dr. Lewis, what you really are  
05:11:16 21 interested in is a search, regardless if it's Boolean or  
05:11:24 22 computer-assisted, that is fair and statistically -- and that  
05:11:32 23 can be validated statistically because that would be a good  
05:11:38 24 word search.

05:11:40 25 My question to all of you right now -- really, it's

05:11:44 1 to you, and you don't have to answer me today; I even have a  
05:11:50 2 time we are going to call up again -- is there a way, rather  
05:11:56 3 than starting all over with all of the good work that is here,  
05:12:04 4 if Dr. Lewis and Mr. Regard were able to help and we were able  
05:12:12 5 to within a same framework take their search and be able to  
05:12:20 6 tweak it and make it something that you could be comfortable  
05:12:24 7 with?

05:12:24 8 MR. MOGIN: You're right. I won't answer you today.

05:12:26 9 THE COURT: You don't have to answer me today. And I  
05:12:30 10 understand that I am sort of -- and I have no idea. Now, I  
05:12:36 11 have no idea if they want to go to the mat as the Godfather  
05:12:40 12 would say, with their search as it is. Maybe they don't want  
05:12:44 13 to tweak anything.

05:12:46 14 MR. MOGIN: I will --

05:12:46 15 THE COURT: I don't know. I don't know.

05:12:50 16 What I have gotten out of this -- and I think there  
05:12:58 17 is a bigger hole in the case book of what is statistically  
05:13:04 18 correct. I have been walking around saying to Chris for the  
05:13:10 19 last week, because we spend so much time fighting with parties  
05:13:16 20 about agree, agree, agree, all of the case law, all of my  
05:13:22 21 time, all of my opinions in this area, as Joe knows, is  
05:13:26 22 beating people over the head to agree what the search terms  
05:13:30 23 are. We never get to -- I really, you know, you can all jump  
05:13:34 24 in here. You start telling me cases you know, other than Paul  
05:13:40 25 Grimm kind of waxing on that it should be statistically valid,

05:13:48 1 and what Judge Facciola said, there hasn't -- judges just  
05:13:54 2 haven't -- parties haven't been thinking like that, judges  
05:13:58 3 haven't been thinking like that, and I actually think that's  
05:14:02 4 probably the more helpful part of the case is what I am trying  
05:14:08 5 to say. And I happen to think it should be, it should be  
05:14:14 6 valid. It shouldn't be, Oh, my God, oh, my God, let's just  
05:14:18 7 move on, let's just get rid of this.

05:14:22 8           So your homework assignment is I want you to talk to  
05:14:28 9 each other, see if Dan would come up with -- if Dan would  
05:14:34 10 agree that he would go -- he would go along with the Boolean  
05:14:38 11 search and he tell you what kind of changes, what kind of  
05:14:44 12 tweaking, what kind of running, whatever he needs, whatever  
05:14:50 13 kind of validation they need, if you would be willing to do  
05:14:52 14 that.

05:14:56 15           In exchange for that, here is my quid pro quo. We  
05:15:00 16 could take -- it is five months tomorrow that I leave here. I  
05:15:06 17 will work with you for the next five months on trying to  
05:15:08 18 figure out privilege, indexing, 30(b)(6)s. We could take the  
05:15:18 19 five months and try to get you in some kind of shape where  
05:15:24 20 maybe you could get your arms around the rest of the discovery  
05:15:28 21 issues here.

05:15:30 22           I actually think -- I mean, when you say, you know,  
05:15:34 23 you're not exaggerating that you could be coming in on motions  
05:15:38 24 to compel on this for the next two years to whoever the new  
05:15:42 25 magistrate judge is.

05:15:46 1 So I don't know. I think it's kind of a matter of  
05:15:48 2 where you want to put your resources. I know you all have  
05:15:54 3 clients, and you've got all those other plaintiffs' lawyers,  
05:15:58 4 and I mean it as somebody who used to get kicked around every  
05:16:04 5 courtroom in this building as a criminal defense lawyer, you  
05:16:06 6 can imagine, I am not going to take this personal, but I did  
05:16:10 7 not want to walk out of here today and not say to you, Hey,  
05:16:16 8 why don't we all take a nice, big, deep breath, step back, and  
05:16:22 9 see if there's not something we could do to save this right  
05:16:26 10 now. And not only save it, make it better.

05:16:28 11 MR. MOGIN: I appreciate what you're saying. I will  
05:16:30 12 give it good-faith consideration.

05:16:32 13 THE COURT: Good.

05:16:32 14 MR. MOGIN: However, just so defense counsel hears it  
05:16:36 15 loud and clear, so that they can't accuse us of any holding  
05:16:40 16 back, since December 2010 when Mr. Neuwirth and I had a heated  
05:16:48 17 exchange in the hallway, we have said we will not tolerate a  
05:16:52 18 search that is restricted to these custodians. It won't -- we  
05:16:58 19 will not make that agreement.

05:17:00 20 THE COURT: So that would be one of the things you  
05:17:06 21 would come back, is you would want to propose custodians?

05:17:10 22 MR. MOGIN: No. It's going to have to be some other  
05:17:12 23 way besides custodians.

05:17:16 24 THE COURT: Oh, you won't do a custodian-based  
05:17:18 25 search.

05:17:18 1 MR. MOGIN: I certainly won't do these top custodians  
05:17:20 2 that they have picked out.

05:17:22 3 THE COURT: I see.

05:17:24 4 MR. ECHOLS: Your Honor, Barack EchoIs. Ms. Miller  
05:17:28 5 and I, during the course of the summer and after, have had  
05:17:30 6 some of those conversations. I think you saw some of that  
05:17:32 7 correspondence that we sent to you. And our position has  
05:17:36 8 always been that this is our position as to the ones that make  
05:17:40 9 the most sense. We think this may be all. We understand you  
05:17:44 10 disagree, we understand there may have to be a conversation  
05:17:48 11 about additional custodians at some point, but we never have  
05:17:50 12 been able to get into that, even at which seems to be a  
05:17:54 13 reasonable place to be because, as you said, we took a little  
05:17:58 14 bit of a detour.

05:18:00 15 THE COURT: Can you do -- experts, could you do I  
05:18:06 16 would call what Mr. Mogin is saying as some kind of concept or  
05:18:12 17 a broader-based search, what would you call it, other than the  
05:18:16 18 non-custodial? Can you do that with Boolean?

05:18:24 19 DR. LEWIS: You are asking me?

05:18:24 20 THE COURT: Yes.

05:18:26 21 DR. LEWIS: That is can you do a Boolean search on  
05:18:28 22 material that wasn't gathered by custodians but were gathered  
05:18:30 23 some other way?

05:18:32 24 THE COURT: Yes.

05:18:32 25 DR. LEWIS: Yes.

05:18:32 1 THE COURT: Clusters or concepts or any --

05:18:34 2 DR. LEWIS: Well, no, I'm saying -- you are talking  
05:18:36 3 about the collection procedure, whether it's collection --

05:18:38 4 THE COURT: You're right. But you could use Boolean  
05:18:40 5 for a non-custodial search?

05:18:44 6 DR. LEWIS: Yes.

05:18:44 7 THE COURT: All right.

05:18:50 8 MR. McKEOWN: The scope of what is going to be in the  
05:18:52 9 universe is a very big question. We have other custodial  
05:18:56 10 documents that we have collected and are reviewing, and we  
05:18:58 11 have shared servers that we have collected and are reviewing.  
05:19:02 12 But if it's -- we have to take every document in the company,  
05:19:04 13 and that's a major problem.

05:19:06 14 THE COURT: When I would like to talk to you is  
05:19:08 15 Tuesday at 4:00 o'clock, if I can, Chicago time. And one of  
05:19:14 16 you must have a bridge line with all your technology --

05:19:22 17 MS. MILLER: We will provide it, your Honor. We will  
05:19:24 18 take care of it.

05:19:26 19 THE COURT: And at least maybe you will give one  
05:19:28 20 call, somebody, whoever has the most charm, some Irish person,  
05:19:34 21 some other Irish person, and try to have a conversation here  
05:19:40 22 before Tuesday, and if the answer is no, the answer is no.  
05:19:44 23 And then we know what to do. We will go back to -- we will  
05:19:50 24 figure out who else has to be heard on the hearing. I have  
05:19:54 25 Friday, April 29th, a full day.



05:20:04 1 MS. MILLER: April 29th is a Sunday.

05:20:06 2 THE COURT: Thank you. April 27th. I do have  
05:20:10 3 Friday, April 27th, open. We could do another round if you  
05:20:16 4 wanted to have another day. That gives you enough time. This  
05:20:22 5 group is just so darn hard -- now, here is the other thing.  
05:20:26 6 That's my suggestion in here. I would love to hear anybody  
05:20:32 7 else's suggestion, what we could do, short of starting over  
05:20:38 8 from scratch, and that would free Chris and I up.

05:20:48 9 If we spend all of our time, regardless of how we  
05:20:52 10 turn out, I am not available to you to do anything else. And  
05:20:58 11 I am really good at some form of mediation in this. So it's  
05:21:02 12 kind of -- so if you have any other suggestion of what we  
05:21:10 13 could do for the next five months, I also want to hear that.

05:21:18 14 MR. MAROVITZ: Judge, can I --

05:21:20 15 THE COURT: Sure.

05:21:20 16 MR. MAROVITZ: Far be it from me to throw a kink in  
05:21:24 17 the works here, and I hope that we wouldn't need the 27th. I  
05:21:28 18 have a multiparty -- I can move many things, I have a  
05:21:30 19 multiparty mediation scheduled for that day. I cannot move  
05:21:34 20 that.

05:21:34 21 THE COURT: So Tuesday then. When we talk Tuesday, I  
05:21:38 22 will have to have -- you know, we might have to do it on a  
05:21:42 23 Saturday.

05:21:42 24 MR. MAROVITZ: I apologize.

05:21:44 25 THE COURT: Maybe we will just do it on a Saturday or

05:21:46 1 something in New York.

05:21:50 2 MR. MOGIN: San Diego.

05:21:52 3 THE COURT: Or San Diego. Absolutely.

05:21:54 4 Anybody want to say anything? You don't even have to  
05:21:58 5 be on the record.

05:22:02 6 MR. McKEOWN: We will communicate prior to Tuesday.

05:22:04 7 THE COURT: Good. And you talk to each other before  
05:22:06 8 Tuesday and see if, you know, I am just being the old dreamer  
05:22:12 9 that I am.

05:22:14 10 Thank you, everybody.

05:22:16 11 MR. McKEOWN: Thank you.

05:22:16 12 MS. MILLER: Thank you, your Honor.

05:22:18 13 MR. MAROVITZ: Judge, one other final note just in  
05:22:20 14 terms of my pet project, the witness rule. Again, I am  
05:22:24 15 hopeful that we won't need to come back, but if we do, can I  
05:22:28 16 talk to Mr. Regard?

05:22:28 17 THE COURT: You may talk to Mr. Regard, you may talk  
05:22:30 18 to Dr. Lewis, you may talk to Ms. Tenny. You may talk to --  
05:22:38 19 Dr. Tenny, yes, excuse me.

05:22:40 20 MR. MAROVITZ: Thank you, Judge.

05:22:40 21 THE COURT: And you can talk to anybody else you  
05:22:42 22 want, Mr. Marovitz.

05:22:44 23 Bye, everybody.

05:22:46 24 MS. MILLER: Thank you, your Honor.

05:22:46 25 MR. McKEOWN: Thank you, your Honor.

05:22:48 1 MR. NEUWIRTH: Thank you, your Honor.

05:22:56 2 THE COURT: Hold on.

05:23:00 3 MR. CAMPBELL: I just think the question needs to be  
05:23:04 4 about how do we satisfy our comfort level if the response -- a  
05:23:12 5 vacuum is produced. And I would hope that things don't have  
05:23:14 6 to be taken off the table as long as you get to that comfort  
05:23:18 7 level because that what we are talking about, producing  
05:23:20 8 responsive documents.

05:23:22 9 THE COURT: That's the way we are seeing it. In the  
05:23:26 10 end, that's what your responsibility to your clients are.  
05:23:32 11 Okay? Thanks, everybody.

05:23:34 12 MR. McKEOWN: Thank you, your Honor.

05:23:34 13 MS. MILLER: Thank you.

14 (Which were all the proceedings had in the above-entitled  
15 cause on the day and date aforesaid.)

16 I certify that the foregoing is a correct transcript from  
17 the record of proceedings in the above-entitled matter.

18 \_\_\_\_\_  
Carolyn R. Cox  
Official Court Reporter  
19 Northern District of Illinois

\_\_\_\_\_  
Date

20 /s/Carolyn R. Cox, CSR, RPR, CRR, FCRR

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# Exhibit B

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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2			
3	KLEEN PRODUCTS LLC, et al.,	)	
4		)	Docket No. 10 C 5711
5	Plaintiffs,	)	
6		)	Chicago, Illinois
7	v	)	April 2, 2012
8		)	4:03 p.m.
9	PACKAGING CORPORATION OF	)	
10	AMERICA, et al.,	)	
11		)	
12	Defendants	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE NAN NOLAN

PRESENT:

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1 PRESENT: (Cont'd)

2 For Defendant Packaging: KIRKLAND & ELLIS LLP  
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6 International Paper: 777 East Wisconsin Avenue  
7 Milwaukee, Wisconsin 53202  
BY: MR. JAMES T. McKEOWN

8 For Defendant MAYER BROWN LLP  
9 Temple-Inland: 71 South Wacker Drive  
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10 BY: MR. ANDREW S. MAROVITZ  
MS. BRITT M. MILLER

11 For Defendants K&L GATES LLP  
12 Cascades and Norampac: 70 West Madison Street  
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13 BY: MR. SCOTT M. MENDEL

14 For Defendant QUINN EMANUEL URQUHART &  
15 Georgia Pacific: SULLIVAN LLP  
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16 New York, New York 10010  
BY: MR. STEPHEN R. NEUWIRTH

17 For Defendant WINSTON & STRAWN  
18 RockTenn CP, LLC: 227 West Monroe Street  
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19 Chicago, Illinois 60606-5096  
BY: MR. R. MARK McCAREINS

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21 For Defendant McDERMOTT WILL & EMERY LLP  
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24 (TRANSCRIBED FROM DIGITAL RECORDING.  
25 PLEASE SUPPLY CORRECT SPEAKER IDENTIFICATION)

1 THE CLERK: 10 C 5711, Kleen Products v Packaging  
2 Corporation.

3 THE COURT: Good afternoon, everyone. I have quite a  
4 few people here, even out-of-town people. Nice to see you  
5 all. So will the plaintiffs identify themselves first,  
6 please.

7 MR. FREED: Michael Freed and Robert Wozniak.

8 THE COURT: Mr. Freed, Mr. Wozniak. Is Mr. Mogin on the  
9 phone?

10 MR. MOGIN: I am, your Honor.

11 THE COURT: Hi, Mr. Mogin.

12 MR. MOGIN: Also Mr. Noss and Mr. Clark are also on the  
13 phone.

14 THE COURT: Is that N-o-d?

15 MR. MOGIN: N-o-s-s.

16 THE COURT: Oh, N-o-s-s, okay. And who is the other  
17 gentleman?

18 MR. MOGIN: Brian Clark.

19 THE COURT: Mr. Clark, okay.

20 And for our defendants, we will start with you, Mr.  
21 Neuwirth.

22 MR. NEUWIRTH: Stephen Neuwirth for Georgia Pacific.

23 THE COURT: Okay, good. Next on the roll call.

24 MR. MC KEOWN: James McKeown of International Paper.

25 THE COURT: Thanks, Mr. McKeown.

1 MR. MAROVITZ: Good afternoon, Judge, Andy Marovitz and  
2 Britt Miller is here with me for Temple-Inland.

3 THE COURT: Okay, thank you.

4 MR. ECHOLS: Good afternoon, your Honor, Barack Echols  
5 on behalf of Packaging Corporation of America.

6 THE COURT: Thanks, Mr. Echols.

7 MR. MC CAREINS: Mark McCareins for RockTenn.

8 THE COURT: Mr. McCareins.

9 MR. MENDEL: Scott Mendel for Cascades and Norampac.

10 THE COURT: Okay, thank you, Mr. Mendel. Hi, Ms.  
11 Miller. Okay. And is there anybody else on the telephone,  
12 any other defendant? I think we're all here.

13 MS. LEWIS: Rachael Lewis for Weyerhaeuser Company.

14 THE COURT: Okay, thanks, Ms. Lewis. Okay. Well, at  
15 the end of our evidentiary hearing, after I so rudely closed  
16 the courtroom, I was pretty weary, but as they would say in  
17 the NFL, this was my last final Hail Mary here, and I didn't  
18 know if I got any takers that maybe we could get some -- maybe  
19 there would be another way to resolve this portion of the case  
20 without having more hearings on search.

21 So I asked you all to meet and confer, and I don't know  
22 who will be your spokesperson about what the result of that  
23 is.

24 MR. NEUWIRTH: Well, maybe I can start, your Honor, for  
25 defendants.



1 THE COURT: Good.

2 MR. NEUWIRTH: Your Honor, defendants are takers, and we  
3 agree with what we heard your Honor say, that finding an  
4 alternative to continuing with this hearing and freeing you up  
5 to help with other matters in the case would be a very good  
6 idea, and the defendants are very prepared to go that way.

7 And I should add that the defendants heard what you  
8 said -- defendants' counsel who were there and we all spoke to  
9 our clients, and I can represent to the court that the  
10 defendants are really prepared to try to find a way forward to  
11 get this resolved. And we thought it would be helpful if I  
12 could report to you what the defendants are prepared to do  
13 immediately --

14 THE COURT: Good, that will help.

15 MR. NEUWIRTH: -- to try to advance that goal. And  
16 there are really three main points.

17 First, the defendants are prepared, and I'm going to use  
18 the word "immediately" in the broad sense to mean starting by  
19 next week and hopefully to be largely done within 30 days, to  
20 make a very substantial production of materials that were  
21 collected through the process that was described in court.

22 And in the case of Georgia Pacific, my client, this will  
23 be virtually the entire production that would come from that  
24 process that you heard about over the two days of hearings,  
25 and there are several other defendants that will be able not

1 to make necessarily as complete a production as Georgia  
2 Pacific, but very substantial production. It's not all the  
3 defendants, but many of them are in a position to do that and  
4 we believe that that means that within several weeks there  
5 would be a production of over a million pages of ESI, and the  
6 reason that we think this is so important is because we have  
7 been spending a lot of time talking in the abstract about  
8 different things. We think that what might really be a first  
9 step to move this forward would be to make this major  
10 production, which would be coupled with some materials we  
11 previously produced and let the plaintiffs look at it, and we  
12 would be very open once they have looked at it, if at that  
13 point they feel that there are categories of materials that  
14 need to be added or if they learn about custodians that were  
15 not mentioned in Ms. Miller's letter last year that they think  
16 need to be added based on looking at actual documents, the  
17 defendants are prepared to have very serious good faith  
18 discussions that would be informed by looking at the  
19 documents.

20 The second thing that the defendants are prepared to do  
21 is immediately, not waiting for that process to be done, but  
22 immediately as soon as the plaintiffs are ready, to engage in  
23 serious good faith discussions about some of the other issues  
24 that the plaintiffs have said were important to them that were  
25 not yet addressed at the hearing, including the full time

1 period for production, and including the issue of what sources  
2 need to be searched in terms of active versus inactive, and I  
3 think all of the defendants' counsel and now the defendants  
4 have heard what you said about the need to have constructive  
5 conversations and to cooperate and we are prepared to do that.  
6 And then the third thing that the defendants are prepared to  
7 do also immediately, is to have a discussion with the  
8 plaintiffs about what transactional data fields the plaintiffs  
9 are interested in having the defendants produce and to as  
10 quickly as possible make a production of transactional data  
11 which is another source of information that certainly will be  
12 important to the defendants' requests -- or to the plaintiff's  
13 requests certification and also a way to advance this. And  
14 just on these last 2 points, the one thing we want to make  
15 clear is both for transaction data and for time periods and  
16 for active versus inactive, you know, there are some issues  
17 that are defendant specific because each defendant has  
18 different systems. We're prepared to engage, to the extent we  
19 can, in discussions on behalf of all the defendants that would  
20 be case wide with the idea that those might have to be  
21 supplemented as quickly as the plaintiffs want to with  
22 defendant by defendant discussions. But there is no goal to  
23 delay here. And in fact, the defendants are prepared to put a  
24 time limit on this to say that the parties have to try to get  
25 this done within 45 days and report back to you at that time

1 whether we have been able to work it out or whether there is  
2 some issue that the parties would like your help in resolving.  
3 But the defendants are very serious in this attitude and our  
4 overall goal is to move the case forward. We genuinely want,  
5 to do that and we hope that this type of proposal,  
6 particularly making all these documents available, would allow  
7 the plaintiffs to really look at what our process produced and  
8 then we can have an informed discussion about what more might  
9 be appropriate.

10 THE COURT: Okay. Well, that sounds terrific. It's  
11 certainly in the spirit. Whether or not it's going to work,  
12 it's certainly in the spirit of what I was talking about. So  
13 I want to thank you for your work.

14 MR. NEUWIRTH: Thank you.

15 THE COURT: Mr. Mogin.

16 MR. FREED: If I may, your Honor.

17 THE COURT: Mr. Freed. Yes. I have a live person here  
18 in the courtroom, right.

19 MR. FREED: I thought it might be easier with a live  
20 person. I'll do sort of the broad outline. Mr. Mogin --

21 THE COURT: So you knew what they were going to say.

22 MR. FREED: Yes.

23 THE COURT: Good, good.

24 MR. FREED: I should add that we had a conversation  
25 yesterday where the defendants proposed this as a way to move

1 forward. We told them we had some ideas, protocol we were  
2 working on, and the first thing I can say, which I think is  
3 constructive, is we have only a very minor quarrel with what  
4 they have said. They are prepared to produce documents, we  
5 are prepared to take documents. We hope that when it gets  
6 down to what Mr. Neuwirth has called individual discussions,  
7 there may be some commonality, for example, in time frames.

8 We appreciate that certain defendants may have different  
9 availability of material for certain time frames, but the  
10 broad structure of what the appropriate time frame should be  
11 we think should be something which could be discussed on a  
12 common basis.

13 The major issue which remains from our perspective is  
14 that defendants have done what defendants have described to  
15 the court in the two previous hearings the way they want to  
16 proceed with their Boolean search or search term search. And  
17 I wasn't in court, but I have read the transcript, I have  
18 spoken with our colleagues as well as our experts, and our  
19 group thought that what your Honor was proposing was to see if  
20 we could narrow the gap between the plaintiffs and the  
21 defendants between predictive coding and Boolean search, and  
22 we felt that your Honor seemed to be leaning towards some sort  
23 of a compromise which might expand on Boolean search. You  
24 certainly didn't specifically say, you told us to go out and  
25 try to work out some arrangement.

1           So we still have the objections to what we see as certain  
2 limitations on the way that the defendants proceeded. And  
3 with that in mind we went to our experts and spent a fair  
4 amount of time and have come up with a protocol, which we only  
5 admittedly gave them very recently, which we think would be a  
6 way to test the way they have proceeded on their Boolean  
7 search. It's very detailed and comprehensive, and I would be  
8 happy to submit it to your Honor or not, as you prefer,  
9 because we have not had an opportunity to discuss it with them  
10 yet.

11           THE COURT:    No, I think you should do that first. I  
12 mean, I think that makes more sense.

13           MR. FREED:    Yes, that's fine.

14           THE COURT:    Right.

15           MR. FREED:    And that is what we would like to do because  
16 we don't feel -- basically, with all due respect to what the  
17 defendants have said, while it is forthcoming to produce  
18 documents and talk about meeting, about time frames, remote  
19 servers, et cetera, that's always been their position. It  
20 isn't really a compromise of any sort as we see it, and that's  
21 not to discredit what they have proposed, it is basically  
22 their position in saying "Now we have moved forward further  
23 with our position and we would like to have you look at our  
24 documents and then see what you think and that," but we feel  
25 that while we will be happy to look at their documents, start

1 the process, and we think it's constructive, that there are  
2 limitations, and it is not harmful at all on a parallel track  
3 to test some of the underpinnings of the way they have  
4 proceeded with a more refined search on a relatively limited  
5 number of documents.

6 The only thing I'll say about our proposal is that it's  
7 about 2,400 documents per defendant. So we're not talking  
8 about applying our proposal to a huge universe of documents.  
9 In terms of --

10 THE COURT: Maybe I should take a look at it. Why don't  
11 you give it to me.

12 MR. FREED: Yes. And I was going to say in terms of --  
13 and it's very detailed.

14 THE COURT: Do you have one for Chris and do you have  
15 them for all the defendants?

16 MR. FREED: They have them. Now, I have pretty much  
17 exhausted what I can say about our proposal because most of  
18 the work has been done on the West Coast with our experts, Mr.  
19 Mogin supervising, so if there are any specific questions  
20 about that, but the point I want to make is we certainly don't  
21 object to what the defendants have said. We think it will  
22 move us forward in certain respects, but it won't resolve the  
23 issue which we have had two hearings about and that's the  
24 problem we have. We would like to at the same time have some  
25 opportunity to test some of what we think are deficiencies in

1 the way they went about it. And we don't see that that's  
2 inconsistent -- if we wait and look at their documents, we  
3 still will always be concerned about the deficiencies as we  
4 see it and we will want to come forward with this as well.

5 This is not abandoning our position on predictive coding  
6 or CBAA, this is an attempt to resolve the issue. If we can't  
7 resolve the issue, we may revert back to that and feel that  
8 that's where we're going to need to go.

9 THE COURT: So let's just put it in real -- so we would  
10 be agreeing that we would be doing a custodian based Boolean  
11 search?

12 MR. MOGIN: Not entirely, your Honor.

13 THE COURT: Not entirely, okay.

14 MR. MOGIN: You asked us to confer with our experts --

15 THE COURT: Right.

16 MR. MOGIN: -- and to see if there was some way we could  
17 go about coming up with a Boolean search that might be  
18 feasible and that's what we did.

19 THE COURT: I did say that to you, that's correct, and I  
20 said that in the context of that the defendants had done a lot  
21 of work, the defendant under Sedona 6 has the right to pick  
22 the method. Now, we all know, every court in the country has  
23 used Boolean search, I mean, this is not like some freak thing  
24 that they picked out, but what I was learning from the two  
25 days, and this is something no other court in the country has



1 really done too, is how important it is to have quality  
2 search. I mean, if we want to use the term "quality" or  
3 "accurate," but we all want this. I mean, I don't think this  
4 is even anything, but ironically, there aren't really any  
5 cases on how do you do the accurate either.

6 I mean, I think we're actually in more interesting  
7 territory than what kind of a word search or what kind of a  
8 search method is in how you -- how do you verify the work that  
9 you have done already, is the way I put it.

10 So that's, Mr. Mogin, what -- I mean, I was saying in a  
11 very weary way at the end of the day, you know, and I thought  
12 that would work in a cooperative mode much more than me  
13 writing an opinion ordering it because a judge writing an  
14 opinion ordering people working together doesn't have the same  
15 input as if the people can actually just take a big deep  
16 breath and say "Okay, I don't like this pill, but I'm doing  
17 it."

18 MR. FREED: And that's what our proposal is and I think  
19 that's what Mr. Mogin was going to amplify on.

20 THE COURT: Okay. Now I'm going to hope my friend, Mr.  
21 McKeown, have you read this?

22 MR. MC KEOWN: I have, your Honor. We got it about a  
23 half hour before I headed over here, but we talked about it  
24 generally yesterday. I mean, there are some serious problems  
25 with this proposal from the defendants' perspective.

1 THE COURT: Okay.

2 MR. MC KEOWN: One of which is it assumes not just that  
3 we take all the documents we have collected so far, but that  
4 at least as we understand this proposal, we have to go gather  
5 all the backup tapes and everything else and collect them all  
6 and load them all into a server or in the collection and then  
7 sample that collection and then create a word index of every  
8 word that is in any document, any metadata piece that is in  
9 any document and then basically start over with the Boolean  
10 approach.

11 Our view is we have already spent millions of dollars on  
12 this. We already have collections. We can argue and meet and  
13 confer about whether those collections may be broadened in  
14 certain respects as we go forward. We already have a lot of  
15 documents that are going to be produced within the next month  
16 that you know, the production of those documents would allow  
17 the plaintiffs then to look if they think there is a weakness  
18 in our Boolean searches, to work off of that as opposed to  
19 going back to A, a ground zero, and B, a much broader and even  
20 more expensive than what we have already undertaken.

21 THE COURT: Is that a fair telling, Mr. Mogin, do you  
22 think, of what your proposal is?

23 MR. MOGIN: I don't think so, your Honor.

24 THE COURT: How would you describe it? Tell me how you  
25 would describe it. I mean, I'm literally reading this as we

1 are talking here, but it looks like -- okay, you tell me,  
2 please.

3 MR. MOGIN: Well, your Honor, first off, we have been  
4 consistent throughout the proceedings that there were serious  
5 issues with respect to sources.

6 THE COURT: To sources.

7 MR. MOGIN: Sources of the collections.

8 THE COURT: Yes.

9 MR. MOGIN: You have heard our expert testify that one  
10 cannot test parts of the collection, that the collection as a  
11 whole has to be tested. So what the defendants are proposing  
12 to do, your Honor, is nothing different than what they have  
13 been doing all along as if the hearing -- as if they have  
14 prevailed at the hearing.

15 And what we have tried to do very hard with a great deal  
16 of effort and expert input is to come up with a compromise  
17 position, something that was consistent with your request.  
18 And so does it require that the defendants do different work  
19 than they were planning on doing? Yes, it certainly does.  
20 Does it mean that they have to go back to step one? Well,  
21 they can characterize it that way, but that simply isn't so.  
22 We will not accept a situation where defendants refuse to  
23 search in the places that we think they need to search. It  
24 can't happen from our perspective. So that's the first thing  
25 that we have to get over.

1           The second thing is we asked for a random sample, 2,401  
2 documents --

3           THE COURT:     So is that in Step 1?

4           MR. MOGIN:     Step 1 is let's get the collection right.  
5 Step 2 is take your collection and load it into whatever tool  
6 they wish to use, whether it's Clearwell or something else.  
7 The next step is pull 2,401 documents from a proper  
8 collection. Let's see what the responsiveness is on that and  
9 then we will begin to move forward and then we have Steps 3, 4  
10 and 5, which are, you know, quite specific, consistent with  
11 what we have outlined in the testimony. That is, you know,  
12 let's see what comes back from the random sampling. Let's get  
13 unique word counts. Let's see the metadata.

14           By the way, there is nothing new in this metadata.  
15 They're required to give us the metadata under the terms of  
16 the ESI protocol. Now, we are not asking for anything more  
17 than what we are entitled to under that (sound fades). Then  
18 we will go through an iterative, cooperative process with  
19 respect to Boolean query based upon statistical validations.  
20 And that's the best we can do in terms of coming up with a  
21 Boolean methodology. But what the defendants have proposed to  
22 do, your Honor, is nothing. It's nothing.

23           THE COURT:     No, no.

24           MR. MOGIN:     They say they will give us a million  
25 documents based upon exactly what they have been doing.

1 THE COURT: Well, I'm sorry, Mr. Mogin, they must do  
2 things very different in California than they do in Chicago.  
3 I have had too many ESI cases to let that statement stand,  
4 okay? They have done -- they have done a wonderful job. Is  
5 it a perfect job? Is it -- could it use some help? But I  
6 don't want this record to be that I'm sitting here silent on  
7 this because that's not true.

8 MR. FREED: May I just say this, your Honor. I think  
9 the word "more" wasn't said, they have done nothing more and  
10 that was the point Mr. Mogin was making, because the  
11 hearing --

12 THE COURT: I mean, my office is filled to the ceiling  
13 with what you have all done. And look, you know, this isn't  
14 just the defendants. I mean, the reason I had the nerve, Mr.  
15 Freed, to even bring this up to you after everything that was  
16 done for the two days is frankly, you two did a lot of work  
17 together. There was a real basis for this. I have got, you  
18 know, you have practically talked to each other -- you have  
19 talked to each other more than you talk to your significant  
20 others for nine months straight. Okay? So I have  
21 verification of all of that.

22 Now, I want to --

23 (Pause)

24 THE COURT: I want to make sure I even understand the  
25 words I'm reading. I'm still on Step 1, okay? Each defendant

1 will collect all sources, that is, sources that include  
2 corporate function as defined in the requests to produce  
3 documents, the 97 -- the way that you sent your requests to  
4 produce documents, the 97 of them. Chris and I were looking  
5 at those earlier today.

6 MR. ECHOLS: Right, Judge. This is Barack Echols on  
7 behalf of PCA, and consistent with what you have heard  
8 already, going back to my client as well, I was instructed to  
9 be coming here to say we are prepared to do more, to have  
10 those conversations, but Step 1 really here is start over,  
11 start from scratch. And that wasn't what I took from your  
12 comments and directions to us at the hearing, it was rather  
13 that because the defendants are in a position to know who the  
14 right people are and what the general locations are to start  
15 off with, that we should make sure to be cooperative in  
16 discussing that, providing the information, as you said,  
17 Judge, from the conversations we had over the summer,  
18 explaining these things so that we are not operating in an  
19 entire vacuum here, but we are speaking concretely.

20 If there are people or specific sources that based on  
21 looking at what the facts of the case are, the allegations and  
22 what we are providing or prepared to provide, that if Mr.  
23 Freed or Mr. Mogin comes and says you know, "PCA, why don't  
24 you have these sources," then that's a conversation that I  
25 have always been willing to have. But it doesn't make sense

1 to say start over from scratch because this, frankly, I could  
2 not explain Step 1 to my client as far as what this means. I  
3 don't know what it means to get all appropriate sources. I  
4 think I got all appropriate sources in the first instance.  
5 This is saying something other than that. And so we're  
6 operating here against something --

7 THE COURT: Well, that's why we got Mr. Mogin on the  
8 phone, okay? What do you mean by "all sources"?

9 MR. MOGIN: Precisely what we have been saying all  
10 along, your Honor. What the defendants have said that they're  
11 going to search is current media, and it's current media  
12 that's impacted by their document retention policy for ESI so  
13 that the likelihood, for example, of an e-mail from 2005 ever  
14 being seen is very slim unless they go to their backup tapes.  
15 They will be unable to come up with e-mail that covers the  
16 relevant time period. That's just one example.

17 Employees work on lap tops as well. To the extent that  
18 that material has been collected, it's quite likely in a case  
19 of this nature to be relevant. This is precisely the type of  
20 point --

21 THE COURT: Did you hear Mr. Neuwirth say, though,  
22 because that was one of the things that I wrote down, Mr.  
23 Neuwirth said, you know, and I know too we have to get to the  
24 issue -- I wouldn't have called that sources. I would have,  
25 you know -- I don't like the online, offline active, I don't

1 like all those terms, but I am not clear after two days of  
2 what sources did not get searched, okay, or haven't been  
3 searched yet, okay? The defendants just said to you that is  
4 something they would do in the next 45 days. They're aware of  
5 that too.

6 MR. ECHOLS: And, Judge, we tried to talk about this in  
7 a concrete fashion. Again, I'm speaking just for PCA in this  
8 particular instance, but for instance, there are issues  
9 related to pricing and production. There are documents in our  
10 financial department that have all of our standardized reports  
11 with detailed information relating to pricing and production.  
12 That is not impacted whatsoever by whether I am only going to  
13 the Accurate system because I have it. I have it going all  
14 the way back to this time period. And I'm going to produce  
15 that. And that was the intention all along.

16 And then to say immediately up front, "Well, I want you  
17 to go to backup tapes or to some other place for that  
18 information" doesn't make any sense because I'm providing it  
19 in the first instance.

20 Now, there are going to be situations where that  
21 conversation has to be had in a concrete fashion, but to do it  
22 in the abstract at the beginning and say just start all over  
23 and ignore everything that you have done and everything that  
24 you have thoughtfully gone through on a topic by topic basis  
25 to collect doesn't make any sense, Judge. That's not the way



1 that any of us have ever done this. In this room you have  
2 probably got 25 or 30 years of the most, the largest antitrust  
3 cases everybody has had here if you take our firms in the last  
4 50 years, and this is a different way of approaching this than  
5 any of us ever experienced.

6 THE COURT: Let me go back again. Just indulge me for a  
7 minute because I'm trying to figure this out. Mr. Mogin, each  
8 defendant will collect all sources. Now, by that I know you  
9 mean sources as locations of where media might be, okay, not  
10 PDAs, not that kind of sources, or do you mean that kind of  
11 sources?

12 MR. MOGIN: PDAs?

13 THE COURT: Like hand-held -- you mean active, inactive?  
14 Some of them merged with other companies it seemed like. I  
15 mean, so the first is we'll collect all sources and how are  
16 they going to collect it? Do you mean they're going to put it  
17 on one server? What do you mean by "collect all sources"?  
18 They're going to give you a list of all sources, is that it,  
19 or are they actually going to do something?

20 MR. MOGIN: The list is part of it.

21 THE COURT: Okay.

22 MR. MOGIN: Certainly -- let me just go back if I might.

23 THE COURT: Sure.

24 MR. MOGIN: So Mr. Echols was describing for you that  
25 they were going to go to the central location for financial.

1 THE COURT: Right.

2 MR. MOGIN: Well, that's very interesting, but if we  
3 focus, your Honor, on the e-mails we get a very different  
4 story. And the e-mails have very aggressive deletion  
5 policies. So the only place that most e-mails are likely to  
6 tie that cover the relevant time period of the case are not on  
7 active servers. That's just simply a fact. And that there  
8 may be a random e-mail that was somehow preserved in the  
9 active file from 2004 doesn't really cover the fact that the  
10 bulk of the 2004 e-mails are on backup tapes.

11 THE COURT: Okay.

12 MR. MOGIN: So to me the e-mails are particularly  
13 important and they are much more relevant to the discussion  
14 than to talk about the financial documents.

15 THE COURT: Okay.

16 MR. MOGIN: What I'm looking for is I want to see what  
17 the defendants were saying to themselves, to each other, and  
18 to other people in the community, and by and large, the medium  
19 by which that's accomplished is e-mails. And sometimes  
20 e-mails get sent to desktops and sometimes e-mails get sent to  
21 lap tops, and these days BlackBerrys, and sometimes there is a  
22 way to capture it and sometimes there isn't. That's the  
23 reality that we have to live with.

24 THE COURT: So we're still using -- so let me just say  
25 who is general -- give me a name, who is your main person

1 here? Okay. So you want Nan Nolan -- I'll use myself -- you  
2 want Nan Nolan's e-mail.

3 MR. MOGIN: Of course.

4 THE COURT: Of course. And you have gotten some of Nan  
5 Nolan's e-mail, but you think, Mr. Mogin, that you have only  
6 got Nan Nolan's e-mail on active servers.

7 MR. MOGIN: Correct.

8 THE COURT: Okay. So just for one minute, what you said  
9 sounded like you were going to go back, you disagree on the  
10 time frame, Mr. Mogin wants 2000, it looks like you go to  
11 2002. There is like a discrepancy on the time. But you're  
12 willing to talk about going back on the specifics and getting  
13 him e-mails if it's possible, if it doesn't cost 27 gazillion  
14 dollars, yada, yada, yada, you're willing to talk about that.

15 MR. NEUWIRTH: Right. To be clear, the premise I think  
16 may be a little bit inaccurate because in the case of Georgia  
17 Pacific and I believe the other defendants, we collected  
18 everything from the custodians, which would be any existing  
19 e-mail that is on any active server, and what we told you  
20 today is we are prepared to have serious discussions in good  
21 faith to talk about whether there is a practical way to go to  
22 inactive servers to collect any additional information, and  
23 what we told you was we're prepared to try to do as much of  
24 that as possible for all defendants, but given that each  
25 defendant has a different system, we need to have defendant by

1 defendant discussions.

2 We also believe that those discussions would be well  
3 informed if the plaintiffs can look at what we're producing  
4 because then we can have a shared understanding of what it is  
5 we are giving and work with them to figure out how to get this  
6 resolved. The defendants really want to work this out. We're  
7 not here --

8 THE COURT: Right. So let's take that. I agree with  
9 you -- and Mr. McKeown is just dying to talk, so I think you  
10 should talk. Okay, you drove all the way here from Milwaukee.

11 MR. MC KEOWN: Actually, I took the train, your Honor.

12 THE COURT: All right. Well, we should let you talk  
13 since you came from Milwaukee.

14 MR. MC KEOWN: Well, I think we have two buckets of  
15 issues.

16 THE COURT: Okay.

17 MR. MC KEOWN: The one is the scope of the information,  
18 the other is the Boolean searches and what ought to be in the  
19 Boolean searches. And our disconnect right now, as I see it,  
20 is that Mr. Mogin wants us to take everything that's a  
21 possible source and then run our Boolean search just through  
22 that.

23 Our position is we have already run the Boolean search  
24 terms through what we have collected and what we believe is  
25 correct, that on the other types of sources, to the extent

1 there are discussions, those are really defendant individual  
2 and those ought to be meet and confer with the individual  
3 defendants in terms of whether there is some defendant that  
4 has a backup tape that may have additional e-mails or  
5 additional documents and what the cost would be of restoring  
6 that if that becomes a question. But one of the problems with  
7 their proposal is that it presumes from the beginning that  
8 everything, all sources has to go in and we don't think that  
9 that's appropriate. We think that our documents that we're  
10 producing greatly inform the Boolean search terms.

11 THE COURT: All right, I'm still asking, does "source"  
12 mean more than active, inactive, online, offline, does it mean  
13 devices --

14 MR. MC KEOWN: Sources means -- we have gone into this  
15 at some length in our 30(b)(6) discussions and at those  
16 depositions, but we have collections from shared drives, we  
17 have collections from imaged lap tops of custodians, we have  
18 things that have been taken from the exchange server.

19 Documents have been taken from a whole list of sources,  
20 which is again why we think any discussion about broadening,  
21 what are the sources to be included in the universe is a  
22 defendant by defendant discussion as opposed to something  
23 where one rule applies across all defendants.

24 MR. MOGIN: Your Honor, if I may?

25 THE COURT: Of course.

1 MR. MOGIN: I appreciate what Mr. McKeown is saying.  
2 However, we have had defendant by defendant discussions. They  
3 didn't work. We served 30(b)(6) deposition notices. They  
4 offered us information in terms of letters. We didn't find  
5 them to be sufficient. We were forced to proceed with  
6 depositions, and there now will be more discussions coming out  
7 of those depositions. So while I appreciate the fact that  
8 they want to discuss these issues, it's not as if these issues  
9 haven't been discussed at some point.

10 MR. MC KEOWN: A little bit different, Judge, as I  
11 mentioned to you at the hearing because we have had this  
12 detour into the methodology dispute and that has held  
13 everything up frankly. We have been preparing to have things  
14 produced and to have substantive discussions, but we have been  
15 detoured by this process and we are trying to break that  
16 logjam and move ahead now. And that's why we said that we are  
17 amenable to putting a tight timetable on it.

18 We don't want to be having ESI discussions for two years  
19 and we don't want to be discussing the hypothetical 6-foot  
20 tall motions to compel. None of that should be necessary.  
21 That's not the way any of us operates. We want to have the  
22 documents that are supposed to be produced produced, disputes  
23 identified and resolved so we can get on to the merits.

24 And frankly, and I have not had individual defendant by  
25 defendant discussions because of the detour we have had into

1 this issue on the methodology, I have a sense that there are a  
2 lot of these issues that would be trimmed away if we could get  
3 past this and it will be a much narrower focus and scope of  
4 any discussions we need to ask your Honor to help us out with  
5 if we could get there.

6 THE COURT: Mr. Mogin.

7 MR. MOGIN: Yes, Judge.

8 THE COURT: Now, I have just heard about both proposals  
9 five minutes ago. So would you be willing to start with the  
10 defendants' proposal and have -- and I can offer my courtroom  
11 as a space to do this. I think it's a great idea if you can  
12 do this yourself without me. But I also would be willing to  
13 sit down if that, you know, helps or certainly if it doesn't  
14 help, I don't want to do it.

15 Could we begin with one of these examples of what the  
16 defendants are saying about why don't we sit down and try one  
17 of these meet and confers, talk about -- I mean, I hear you on  
18 the sources, okay? You know, we need to know where the  
19 potential sources of each of the named custodians are. I  
20 couldn't agree with you more. You have down here defined in  
21 the RPDs so I guess that's from the requests to produce  
22 documents, the 97, proper -- is there something I'm missing in  
23 the RPD? I mean, is there something about that that defines  
24 it that I don't know about? What is it?

25 MR. MOGIN: I'm sorry, I didn't understand that.

1 THE COURT: I know. It was a horrible question. But I  
2 mean is there -- Chris and I just started looking at them  
3 today and they look to be a very logical progression. The way  
4 you set it up, Mr. Mogin, it was kind of logical progression  
5 of the way the documents or the information may be kept. I  
6 mean, is there -- it's not a custodian based RFP, it's kind of  
7 like asking -- it's like a subject matter -- I mean, I  
8 guess -- but it's going towards what would be in ESI, is the  
9 way I would say it. Do you agree with me?

10 MR. MOGIN: I think so.

11 MR. MC KEOWN: I think the dispute or the disconnect,  
12 Judge, may be on this corporate function definition.

13 THE COURT: All right. So that includes corporate  
14 function. Now, can you tell us more what you mean by this  
15 corporate function? I am assuming these decision makers,  
16 let's just say hypothetically an antitrust case. I am sure  
17 it's not the the messenger who was setting the prices, so I  
18 mean, I think it must be corporate function.

19 What do you mean by "corporate function"? I have been  
20 going along for the last two months thinking this is probably  
21 the main honchos here that they're talking about. Do you  
22 agree, Mr. Mogin?

23 MR. MOGIN: Yes and no, your Honor.

24 THE COURT: Tell me what the "no" is.

25 MR. MOGIN: Okay. First off, the corporate function



1 that we're talking about are each defined terms within the RPD  
2 because our task after looking at the organizational chart is  
3 to try to define "corporate function," and while yes, your  
4 Honor, it is quite likely that the people who you have  
5 described as the honchos --

6 (Pause)

7 THE COURT: Sorry. I'm on the record, okay? Okay? No,  
8 stay on the record. Stay on the record. Thanks, Lynette, for  
9 trying to protect me, okay? The executives, okay?

10 MR. MOGIN: The senior people.

11 THE COURT: The senior people, thank you.

12 MR. MOGIN: So while the senior people may have been the  
13 decision makers --

14 THE COURT: Right.

15 MR. MOGIN: -- history teaches that they may not be the  
16 record keepers. For example, I keep coming back to the very  
17 famous case that took place right there in your courthouse,  
18 the A.D. Young case, which dealt with bastards, that would be  
19 the senior people, and what they called sherpas, the junior  
20 people. And it was the junior people who maintained the  
21 records and basically were the ledger keepers, if you will,  
22 for the conspiracy. I'm very concerned, particularly in light  
23 of the history of this industry, that we have a situation like  
24 that. And that's why we have been resistant to the (UI) idea  
25 where the custodians were primarily the senior people because

1 we felt with this that there would be a trove of important  
2 documents held at (UI) Mountain.

3 So certainly, I won't dispute that any decisions that got  
4 made were probably made by senior people, but again, I do  
5 think that there is a substantial likelihood based on history  
6 that it was other people who were the record keepers, and  
7 that's why we have been resistant to the custodial approach.

8 THE COURT: But that's still a custodian-based search.  
9 It's just getting the right people.

10 MR. MOGIN: You could put it that way, but getting the  
11 right people is matching functions as well.

12 THE COURT: Okay, all right. Well, I --

13 MR. MOGIN: May I make a suggestion to you?

14 THE COURT: Yes.

15 MR. MOGIN: This is very difficult for me over the  
16 telephone. Would it be possible if I could travel next week  
17 that we could have meet and confers amongst ourselves, say, on  
18 Monday and Tuesday of next week and we could report to you on  
19 Wednesday?

20 MR. NEUWIRTH: Your Honor, I'm afraid unfortunately that  
21 does not work for me. As some of the counsel here know, I'm  
22 taking my wife to Jamaica for our 30th anniversary.

23 THE COURT: Oh, you're not old enough.

24 MR. NEUWIRTH: My wife tells me I was supposed to have  
25 done this for our 25th anniversary. So I'm five years late

1 already.

2 THE COURT: Wow.

3 MR. NEUWIRTH: The following week is fine.

4 THE COURT: And Chris is away next week, and if you  
5 think you're in trouble with me without Chris -- and so -- but  
6 I like the idea, Mr. Mogin, I agree, I think this is very hard  
7 to do over the telephone. I think it would be very good if  
8 you could have some -- I mean, what I'm just trying to do is  
9 like I hear you what you're saying and there might be other  
10 people in given companies -- let me ask a background question.  
11 How many 30(b)(6)s have you done already, depositions? How  
12 many have they taken already? Ms. Miller is saying four.

13 MR. MOGIN: Yes, I was going to say I believe it's four  
14 companies. It may be five.

15 MR. NEUWIRTH: If I could just say, your Honor, I think  
16 that what we proposed earlier would fit with the type of  
17 discussion that Mr. Mogin is now suggesting that we have.

18 THE COURT: Right.

19 MR. NEUWIRTH: And we believe it can only be helpful to  
20 the process for defendants to make the production we talked  
21 about, to hopefully have that inform the discussions we have  
22 going forward because I think we all know, for example, that  
23 when you look at e-mails you will sometimes find names that  
24 you think are important or you might not and you might see how  
25 things happen. We can do that, we can have this meet and

1 confer and hopefully use it as a way to start the discussion  
2 on things like time periods and what servers, et cetera, need  
3 to be included and I think we can do it on a fast timetable,  
4 and that would not scheme to impede anything, and we're not  
5 foreclosing anything.

6 THE COURT: Right.

7 MR. NEUWIRTH: But our idea has always been let's do  
8 this and have an informed discussion where we are all looking  
9 at something concrete because the abstract discussions are  
10 somewhat like discussions on the telephone.

11 THE COURT: Right.

12 MR. NEUWIRTH: We're sort of shooting in the dark.

13 THE COURT: Mr. Mogin, when I heard the other day that  
14 you had a million documents already, I was like rather  
15 stunned, and I thought -- I came down, the first thing I said  
16 to Chris is well, who is the CC on all these e-mails. I mean,  
17 like you must know, you must know a lot -- yes, you want to  
18 say something?

19 MR. FREED: Only this, your Honor, those are hard  
20 copies.

21 MR. That's not true.

22 THE COURT: No. But I mean, see, I think -- Mr. Mogin,  
23 you know, here is a whole group in Chicago and you out there  
24 in sunny San Diego.

25 MR. MOGIN: Actually, your Honor, I'm sitting in a phone

1 booth.

2 THE COURT: In a phone booth. This is pathetic.

3 (Laughter)

4 THE COURT: How about the week after next coming to  
5 Chicago?

6 MR. MOGIN: That would be the week of the 16th?

7 MR. FREED: Could I propose Thursday the 19th as a date  
8 for doing that?

9 MR. MOGIN: What I would propose, your Honor, would be  
10 two days of meet and confers followed by a report to you on  
11 Thursday.

12 THE COURT: So what would be ideal for me, I can bump a  
13 settlement and I can work with you if you want or at least  
14 part of the day. We also have extra rooms here too so you  
15 could -- Thursday, April 19th would be perfect with me.

16 MR. MOGIN: That would be fine. So what I would  
17 propose, your Honor, is that we will meet with the defendants  
18 on the 17th and 18th and report to you sometime on the 19th.

19 THE COURT: It probably wouldn't be bad, though, if Mr.  
20 Mogin got here and maybe talked to some -- I mean, tried to do  
21 some private the day before because to do all eight in one day  
22 is going to be pretty hard.

23 MR. MAROVITZ: Judge, Andy Marovitz for Temple-Inland.  
24 Just a practical matter. I'm in a deposition the 16th through  
25 18th. So the 19th is fine. That's the day you were

1 recommending for Temple-Inland. If we can have the 19th,  
2 that's okay with us.

3 THE COURT: But can you talk to Mr. Mogin before the  
4 19th. I mean, I definitely either think somebody ought to  
5 start this ball rolling and you send him some real things to  
6 take a look at. I mean, you don't want to just walk in and  
7 start from scratch, your Honor.

8 MR. MAROVITZ: My only point, your Honor, was not that  
9 everybody has to be on the same schedule, I didn't want Dan to  
10 misunderstand that he can see everyone here. For me at least  
11 and for Britt, who if she could do it I wouldn't be standing  
12 up, but she will be out that same day, the first day that we  
13 can actually be present with him would be the 19th. Maybe  
14 other folks could start earlier.

15 THE COURT: Now, I have -- where is Winston's person? I  
16 have a settlement conference with your folks on the 20th so  
17 I'm not going to be available, on a case that has gone on for  
18 five years. So I have to -- so I mean, my availability is  
19 only going to be -- but some of you are not available  
20 Wednesday. Like Mr. Neuwirth, are you going to be here  
21 Wednesday? Could you come Wednesday?

22 MR. NEUWIRTH: I can't, I have a commitment in another  
23 matter on the 17th and another one on the 18th. However, to  
24 make this work, I certainly could talk to Mr. Mogin by phone  
25 or work out some other arrangement to speak with him so that

1 when we get here on the 19th, we're not trying from scratch  
2 and assuming your Honor doesn't disagree, we will be prepared  
3 by next week to make this major production.

4 THE COURT: How does that sound, Mr. Mogin?

5 MR. MOGIN: As long as the understanding is clear that  
6 any production that's made is wholly without prejudice and all  
7 reservation of rights, and --

8 THE COURT: It is, it is.

9 MR. MOGIN: We will do our best, but I would like as  
10 much as possible, your Honor, to have face-to-face meetings in  
11 Chicago before we come see you.

12 THE COURT: Well, can anybody meet with him on  
13 Wednesday? You can. Oh, good. So good, that's good, okay.  
14 So you have got two meetings on Wednesday.

15 MR. MOGIN: I couldn't see the hands, your Honor.

16 THE COURT: I'm sorry.

17 MR. MENDEL: It's Mr. Mendel from Norampac available on  
18 Wednesday.

19 THE COURT: Okay, thanks, Mr. Mendel.

20 MR. MC CAREINS: I'll join the group. Mark McCareins for  
21 RockTenn with the following observation.

22 THE COURT: Okay.

23 MR. MC CAREINS: It would be very helpful and productive  
24 since Mr. Clark, who is on the phone, did a wonderful job of  
25 deposing our 30(b)(6) witness for about six hours in Atlanta

1 about a month ago on backup tapes, archives, and those kind of  
2 things. We haven't heard word boo about that deposition.

3 THE COURT: Okay.

4 MR. MC CAREINS: It would be good to have some very  
5 precise issues that the plaintiffs would like to discuss with  
6 us at the meet and confer that are defendant specific in  
7 advance of the meet and confer so we would have an opportunity  
8 to work on that information, talk to our clients if possible  
9 and make that meeting productive. So a meeting on April 18th  
10 with RockTenn, fine, as long as there is some precision.

11 THE COURT: Does that make sense to you, Mr. Mogin?

12 MR. MOGIN: Somewhat, your Honor.

13 THE COURT: Well, I mean part of this is -- I mean we  
14 need to individualize here because I was getting kind of  
15 nervous of everybody getting -- I was in too many criminal  
16 defendant cases where it was like all of the defendants were  
17 being called the defendants okay. We need to be able to  
18 individualize to each of these folks here. So I like this  
19 idea. I'm glad you suggested this, Mr. Mogin. And so you  
20 have got three takers for Wednesday. You have got a little  
21 dry run here. Maybe you will just do so perfect -- does  
22 everybody have an office in Chicago because you're more than  
23 welcome to use our -- I can get you space here in the  
24 courthouse if you needed it, but you have got all kinds of  
25 offers with much better food than I have to offer, Mr. Mogin,



1 so take them up on it.

2 MR. ECHOLS: Judge, this is Barack Echols. I just  
3 wanted to advise that I myself personally won't be able to be  
4 here during that week. I'm in a two-week arbitration  
5 beginning on April 16th. I as well will be glad to speak with  
6 Mr. Mogin by telephone in advance with my colleagues, and if I  
7 know precisely, as Mr. McCareins said, what my give is to help  
8 resolve this --

9 THE COURT: Good. Okay. Mr. Mogin, you are not waiving  
10 anything, okay? I want to try this, okay? I want to try this  
11 because we are all going to know a lot more and we don't need  
12 any more experts. We are pretty much experts sort of, sort  
13 of. We are knowledgeable people here. Let's see what we can  
14 figure out here, okay, even if we're using the wrong terms.

15 Anybody else want to say -- yes, Mr. Neuwirth.

16 MR. NEUWIRTH: One question, your Honor. On the 19th  
17 when at least Temple-Inland and Georgia Pacific will be having  
18 our meetings with the plaintiffs, does it make sense to  
19 schedule a time that day when we will come to see you so that  
20 we can actually do the reporting?

21 THE COURT: What I was actually going to do is clear it.  
22 So I have court. I have a 9:00, a 9:30. I am free from 10:00  
23 on. And I'm at your -- I'm telling you we have two jury rooms  
24 on either side. We have nice -- I mean, if you wanted to do  
25 that, we could kind of do a little shuttle if we wanted to.

1 If you want to do -- whatever is going to work for you, but we  
2 can certainly set a time in the afternoon because Mr. Mogin,  
3 it would be nice to see you.

4 MR. MOGIN: I think it would be useful.

5 THE COURT: No, it would, and then we can kind of sit  
6 around the table and talk about it. I'm clearing the whole  
7 day.

8 MR. NEUWIRTH: Okay, that's fine, and I think maybe it  
9 might facilitate the process if we set a time definite where  
10 we will definitely be coming to see you to report, so maybe,  
11 you know, at 3:00 that day.

12 THE COURT: Or 1:30, 2:00. Let's do 2:00. And if you  
13 need more time, then I'll just go back inside my room and you  
14 will have more time, okay?

15 MR. We would have, just so I'm clear, the  
16 Georgia Pacific and the Temple-Inland meet first that morning  
17 and it sounds like if we needed to, we could also call you to  
18 help us with that process

19 THE COURT: I also have the evening. What I was going  
20 to do on the hearing date because of all the out-of-town  
21 folks, is whatever our next date is I was picking a date where  
22 we are free in the evening too. Okay?

23 Thanks guys. And Ms. Miller, you're a guy.

24 MS. MILLER: Thank you, your Honor.

25 (Laughter)

1 THE COURT: Good Passover, good Easter. Bye, Mr. Mogin.

2 MR. MOGIN: Good-bye, your Honor.

3 THE COURT: You can leave the telephone booth, Superman.

4 Okay.

5 MR. MOGIN: Bye.

6 \* \* \*

7

8 I certify that the above was transcribed was

9 digital recording to the best of my ability.

10 /s/ Lois A. LaCorte

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12 Lois A. LaCorte

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

KLEEN PRODUCTS, LLC., et al., Plaintiffs,	}	No. 2010 C 5711 April 19, 2012 2:15 P.M.
v.		
PACKAGING CORPORATION OF AMERICA, et al., Defendants.	}	

TRANSCRIPT OF PROCEEDINGS - STATUS  
BEFORE THE HON. NAN NOLAN

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1 THE CLERK: 10 C 5711, Kleen Products versus  
2 Packaging.

3 THE COURT: Okay. So we are back. Well, Mr. Snyder  
4 is here too. I hope you have met everyone, Mr. Snyder.

02:18:15

5 So for our plaintiffs, please, will you identify  
6 yourself and your team, please.

7 MR. MOGIN: Dan Mogin for the plaintiffs, Your Honor.  
8 Also with me are Walter Haas, ScottScott; Charles Goodwin from  
9 Berger & Montague; Brian Clark from the Lockridge firm; and Mr.  
10 Wozniak from Freed Kanner.

02:18:31

11 THE COURT: Good. Thank you. Hi, everybody.  
12 Welcome.

13 And for Mr. Neuwirth, we'll begin with you. You have  
14 the named party.

02:18:41

15 MR. NEUWIRTH: Thank you. Stephen Neuwirth for  
16 defendant Georgia Pacific.

17 THE COURT: Okay. And?

18 MR. McKEOWN: James McKeown for International Paper.

19 THE COURT: Hi, Mr. McKeown. Thank you.

02:18:52

20 MR. MAROVITZ: Good afternoon. Andy Marovitz and  
21 Britt Miller for Temple-Inland.

22 THE COURT: Okay, Mr. Marovitz and Miss Miller for  
23 Temple.

24 MR. McCAREINS: Mark McCareins and Mike Mayer for  
25 RockTenn.

02:19:04

1 THE COURT: Thank you.

2 MR. MENDEL: Scott Mendel for Cascades and Norampac.

3 THE COURT: Thank you, Mr. Mendel.

02:19:14

4 MS. DIVER: Jennifer Diver and Rachel Lewis for  
5 Weyerhaeuser Company.

6 THE COURT: Thank you.

7 MR. FELLER: And, Your Honor, Leonid Feller and Daniel  
8 Laytin on behalf of Packaging Corporation of America.

9 THE COURT: Good. All right.

02:19:22

10 So when we last met, we decided that, it was agreed  
11 between the parties that between that date and today the  
12 plaintiffs would meet with the defendants individually in meet  
13 and confers in order to be able to see if there was a way to  
14 resolve not only the search issues but we could also start  
15 talking about other issues too cooperatively or if we were  
16 going to have to resume the hearing again.

02:19:56

17 So let's begin with Mr. Mogin, okay? So, Mr. Mogin,  
18 how many of these meet and confers did you have?

19 MR. MOGIN: We have had seven, Your Honor.

02:20:15

20 THE COURT: Seven?

21 MR. MOGIN: Yes. Beginning Tuesday afternoon with  
22 Cascades Norampac and concluding just now with PCA.

23 THE COURT: Okay.

02:20:33

24 MR. MOGIN: On Wednesday we met in order with  
25 Weyerhaeuser, International Paper and RockTenn.



1 THE COURT: Okay.

2 MR. MOGIN: And this morning we met with Temple-Inland  
3 and Georgia Pacific.

4 THE COURT: Well, that's very productive.

02:20:46

5 MR. MOGIN: It was informative.

6 THE COURT: Yes.

7 MR. MOGIN: And I guess what I would report to Your  
8 Honor is that I can't report progress. I can report that there  
9 has been an exchange of information and an exchange of views

02:21:06

10 that was helpful. I now better understand both the defendants'  
11 position, the feasibility from their point of view of their  
12 ability to comply with our various requests, and I also have a  
13 better understanding of the process that they went through as  
14 well as a better understanding of their actual responses to the  
15 document requests.

02:21:30

16 There is a lot of uniformity that emerged in these  
17 meetings. I would say that there were more uniformity than  
18 there were differences among the defendants.

19 Ultimately, though, Your Honor, you will recall at the  
20 last hearing after you -- Mr. Regard, we were about halfway  
21 through Mr. Regard's testimony, and you had a meeting I think  
22 with the chief judge that you had to get off to, and you asked  
23 us to do something very specific. You asked us to get together  
24 with our experts and see if we could devise a protocol that fit  
25 within the boolean system that the defendants had devised, that

02:21:50

02:22:12

1 the testimony had been about, and we did that. We got together  
2 with Mr. Lewis, Dr. Lewis, and our other consultants and spent,  
3 moved as quickly as we could but spent a considerable amount of  
4 time on it. And we tried to come up with a way to accomplish  
02:22:38 5 this, that is, preserve the boolean search methodology, give us  
6 better measures of validation, the type of measures that we  
7 were seeking which were recall oriented, and to mix some of the  
8 principles that Dr. Lewis talked about in terms of supervised  
9 learning and random sampling in the sense that, yes, there  
02:23:05 10 would be two random samples, small random samples by each  
11 defendant, which, as some people characterize, that the  
12 plaintiffs would look over their shoulder. So there would be  
13 first cut of documents, and this is described in the protocol  
14 which I believe Your Honor has that we gave the defendants on  
02:23:23 15 the 3rd of April, a first cut of documents where we looked at  
16 the totality of the corpus that defendants had collected,  
17 putting aside the disagreements that we've been having to this  
18 point about what should be in that corpus, taking a measurement  
19 so that we got some sense of the number of responsive documents  
02:23:46 20 or hits, if you will, using the boolean strings as to the  
21 corpus; then taking a look at the hit set itself, and again  
22 doing another measurement.

23 At each level the plaintiffs would see nonprivileged  
24 but some amount of nonresponsive documents as well. Recall,  
02:24:14 25 Your Honor, that with respect to that, there is a pretty strong

02:24:35

1 protective order in place so there would be no misuse of  
2 documents, as well as if the defendants have competitive  
3 concerns about the nonresponsive documents that would be  
4 produced in this set, they could designate them under the terms  
5 of that confidentiality order so that only outside counsel  
6 would be able to see them.

02:25:01

7           So that is a degree of cooperation consistent with the  
8 Sedona concept of cooperation that we've asked for, and I will  
9 say that not a single defendant has accepted that. Some are in  
10 consideration of some aspects of that request. Most have  
11 unilaterally rejected, or I shouldn't say unilaterally, I  
12 should say categorically rejected it. So I don't know how much  
13 further down the pike we are with respect to testing and trying  
14 to work within that boolean construct that the defendants  
15 devised.

02:25:28

02:25:48

16           Now, that's not the only thing that we discussed. We  
17 discussed custodians, we discussed methods for discovering  
18 other potential custodians other than merely looking through  
19 what at this point amounts to some volume of documents, and  
20 I'll come back to that in just a second, and we haven't made a  
21 great deal of progress on that, but there has been a fair  
22 amount of discussion with respect to that.

02:26:09

23           Now, one of the things that we have asked for, which  
24 has not been categorically rejected across the board, is using  
25 the boolean process is a dictionary. As I understand it, each

1 of the tools as it processes the documents categorizes or lists  
2 each of the words that are used. So for each defendant there  
3 would be a set of words that was unique to that particular  
4 defendant.

02:26:32

5 For example, the best --

6 THE COURT: That's not a keyword?

7 MR. MOGIN: It would be a keyword. In other words, it  
8 would be a word that was within the corpus of the defendants'  
9 documents, a word that would be used by the company itself. So

02:26:48

10 similar, Your Honor, if you recall the deposition transcripts,  
11 particularly the mini transcripts that we get these days, you  
12 look in the back and you see there's a list of words. And it  
13 tells you you can find the word "magistrate" on page 5, page  
14 15, page 13. So you get a sense with each word that's used by  
15 the company of how --

02:27:09

16 THE COURT: And the computer automatically can do  
17 that?

18 MR. MOGIN: Yes. Each of the --

19 THE COURT: The court reporter's computer can do that  
20 too? When you say from the -- I know, I just mean from the  
21 transcript. When you say it was at the back of the transcript,  
22 it's like an index, it's like an automatic index?

02:27:20

23 MR. MOGIN: Yes, Your Honor.

24 THE COURT: Well, what do you know?

02:27:33

25 MR. MOGIN: So each of the defendants could do that.

1 We could then take that list, review that list, work with our  
2 linguists and Dr. Lewis to see if we couldn't come up with  
3 different strings that would be usable for us.

02:27:53

4 Most of the defendants will tell you that they don't  
5 want to do that. What they prefer us to do is to review the  
6 documents that are being produced and then come back to them  
7 sort of in the traditional iterative way, and we'll consider  
8 this string, we'll consider that custodian, that type of thing  
9 as has traditionally been done, which from our viewpoint, quite  
10 frankly, Your Honor, is not satisfactory. It would delay the  
11 process for many months.

02:28:17

12 Now, with respect to the actual productions that have  
13 occurred so far, as I stand here today I have received  
14 approximately, I have received a hard drive yesterday from  
15 International Paper that I'm told has approximately 200,000  
16 pages of hard copy documents, not ESI.

02:28:38

17 THE COURT: Not?

18 MR. MOGIN: Not.

19 THE COURT: 200,000, okay.

02:28:52

20 MR. MOGIN: PCA approximately a week ago produced what  
21 they have represented is about half of the totality of their  
22 production, which includes other, which includes a substantial  
23 amount of ESI.

24 THE COURT: Okay. Is that email or is that --

02:29:17

25 MR. MOGIN: Yes.

1 THE COURT: That's email? Okay.

2 MR. MOGIN: Yes. We have received schedules, sort of  
3 loose but good faith schedules from the rest of the defendants  
4 with respect to their intended production. It's a bit unique  
02:29:36 5 as to each defendant. Some are producing in kind of defined  
6 batches, others are producing in less defined batches, some  
7 aren't really batching at all. So we have a better  
8 understanding of that. We have some rudimentary understanding,  
9 and I do mean rudimentary, of what's in the batches. And  
02:30:02 10 that's about where we stand from the plaintiffs' perspective.

11 So to put a bottom line to it, we have a better  
12 understanding of what's been done, but not agreement about  
13 what's to be done other than the defendants more or less say  
14 that they will proceed the way they have been proceeding and  
02:30:32 15 will at the end of the process or as plaintiffs review the  
16 documents accept additional suggestions in terms of custodians  
17 or in terms of search requirements.

18 We will not see -- first off, all of the productions  
19 as a totality from what I understand this morning won't be  
02:30:54 20 completed for at least six months. And all of the defendants  
21 propose that privilege logs, which in these types of cases are  
22 particularly important, won't be produced until the end of each  
23 of their respective productions. So that's another 60 days  
24 plus for each defendant as they end.

02:31:24 25 So that takes us approximately, by my reckoning, sort

1 of a best case scenario is we are back here in a year. I'm  
2 sorry. We are back here toward the end of the year. And as I  
3 understand it, a new magistrate has to drink from the fire hose  
4 and try to understand this case.

02:31:53

5 THE COURT: Or Judge Shadur, because Judge Shadur  
6 usually doesn't refer cases, so it may be Judge Shadur. This  
7 was a special, this was a special referral.

02:32:15

8 MR. MOGIN: So I can't tell you that I know precisely  
9 where we go from here. The idea that the defendants have  
10 raised, which is review all of our documents and then get back  
11 to us, is problematic from the plaintiffs' standpoint. It's as  
12 if the past year hasn't happened, from our perspective; it's as  
13 if the hearings and all the briefing hasn't taken place.

02:32:44

14 So I'm sure you'll want to hear from the defendants,  
15 and I'm sure they'll tell you that I'm all wrong, but I don't  
16 know at this point. And when I say I don't know, I truly don't  
17 know what it's productive to do in terms of continuing the  
18 hearing or going down another path. And some of these  
19 discussions I will tell you are far from complete, and we've  
20 made pledges in good faith to continue in very short time to  
21 follow up and with more discussions.

02:33:08

02:33:38

22 THE COURT: Well, you are, I want to say, I mean, this  
23 entire case has been a work in progress, okay, for me. You are  
24 accurate that at the end of the second day of the evidentiary  
25 hearing, when I was talking off the seat of my pants or a

1 little bit of thought, I mean more than the seat of my pants,  
2 but I was saying that I wanted you to think about if we were  
3 to -- that what I learned from the hearing, what seemed to be  
4 the most important is that whatever your method would be,  
5 whether it would be boolean or predictive coding or whatever  
6 they are going to call it next year, is that the parties and to  
7 a certain extent the Court, but I think it's more the parties,  
8 want to feel and be able to say that this is a verifiable,  
9 somewhat verifiable and accurate method that they have chosen.

02:34:08

10 That's what I was trying to say. I don't think that I said --  
11 and I suggest it because I actually think Mr. Regard and Dr.  
12 Lewis were, you know, and maybe Dr. Tenny too, maybe could help  
13 in trying to do that.

02:34:37

14 Now, the only cases Chris and I have found that have  
15 even discussed that are Victor Stanley and Judge Facciola. But  
16 they kind of just talk about it in general. I was only talking  
17 about it in general when I threw it back to you.

02:35:04

18 We fast forward to two weeks ago. I think you're  
19 putting the horse before the cart here as a method goes because  
20 to me I feel like I have learned a lot more about what the  
21 nature of the search is than I knew two weeks ago.

02:35:39

22 One day -- I owe you an apology. I was very rude to  
23 you. You wanted to say something about preservation, and I  
24 jumped down your throat because I thought, oh, my God, you're  
25 going to start some sanctions thing is what I thought, okay?

02:36:02



1           Instead, if I had to do it over again, I would have  
2 said, are you talking about sources of information, are they  
3 accessible, are they not reasonably accessible, you know, and  
4 not even think about sanctions or anything like that. What I'm  
02:36:27 5 seeing now between what, I think Miss Miller keeps giving me  
6 these scripts for everything, which I really appreciate. I  
7 have more of the 30(b)(6). We've read some of the 30(b)(6), so  
8 we are starting to get it just like you are starting to get a  
9 better understanding of these systems, the letters or the, your  
02:36:55 10 new checklist here that you provided following or for the meet  
11 and confers.

12           MR. MOGIN: Right, the agenda that the defendants had  
13 requested.

14           THE COURT: Right. I'm not, I don't have, because I'm  
02:37:16 15 going to be out of here September 30th, I don't have the luxury  
16 to put you off or, you know, to try to just push this off. But  
17 I don't think you could do or Dr. Lewis and Dr. Regard are in a  
18 position to test the corpus yet, because unless you know a lot  
19 more than I know, until we figure out some of the answers to  
02:37:44 20 the questions on what's active, was not active or what's  
21 accessible, what's not accessible, what has been searched, what  
22 hasn't been searched, I don't know why you'd want to do these,  
23 the statistical check until you get that information.

24           MR. MOGIN: Frankly, Your Honor, respectfully I was  
02:38:03 25 following your lead in the sense that --

1 THE COURT: Well, I know, and I'm telling you what  
2 happened. I mean, I now get that if we are going to do it, you  
3 don't -- I mean, I don't know what the it is, okay? I don't  
4 know what because I don't know -- and until you look at this is  
5 where I think too until you're able to look at some of the  
6 materials that are turned over and you can in fact go back to  
7 them and say, hey, I need da da da da da, that's what I am  
8 seeing.

9 And this isn't, this is just a really iterative  
10 process here is what I'm trying to say. I don't know if the  
11 defendants, and today we are going to try to give everybody an  
12 individual opportunity here too, I don't want to be clumping  
13 them as the defendants; but I don't know if they are saying no,  
14 we don't want any kind of testing or -- I don't even know what  
15 testing means, but, you know, a check, some kind of a  
16 reasonable check. I would think they would want to know  
17 they've done a good search. They may need these documents.

18 I mean, this is the irony of this. In every white  
19 collar case, not that you're a white collar case, but in every  
20 white collar case I was in in this building for 25 years, I  
21 needed the documents as much as the government needed the  
22 documents.

23 So I don't -- I mean, I don't think even if we, even  
24 if all seven of them said "We want to do the search, we want to  
25 be tested," I don't know what you would, you would only be

1 testing now without having a bigger portion of each one of  
2 their work, right?

3 MR. MOGIN: Correct, Your Honor, but as I said in  
4 light of the Court's comments, and in order to avoid what could  
5 have been World War III with respect to what should be in the  
6 corpus, for purposes of these discussions, to see if we could  
7 get something to come back over the table to us, we were  
8 willing to table the discussion of collection to see if we  
9 could get a cooperative movement going. And I'm disappointed  
10 to be able to tell you that no defendant will commit, none will  
11 commit to a version of the protocol, even taking step one which  
12 has to do with the collection, off of the table. No defendant  
13 will commit at this point. Some have said they are checking on  
14 it, but none have committed to even giving us the simple data  
15 dictionary that I just described for you, which is the product  
16 of, that's essentially the same thing as taking a look at the  
17 documents that they are producing. It's just an abbreviation.  
18 It gets us a lot of relevant information quickly, painlessly  
19 and inexpensively from the defendants' perspective so that it  
20 accelerates our ability to look at their documents and to have  
21 an understanding of their documents as well as to get some  
22 sense of the real world deficiencies in their search strings.  
23 Admittedly to this point we have been talking without having an  
24 actual knowledge of what's in the corpus.

25 THE COURT: Do you feel that after these seven

1 meetings, you now understand or have a better understanding of  
2 accessible, nonaccessible data? I mean, do you have an idea of  
3 what's in their collection?

4 MR. MOGIN: I certainly have a better understanding.

02:42:31

5 THE COURT: Okay. So let's take example that the one  
6 that's just turned over the 250,000, who just turned over the  
7 one with some emails in it? Was that you, Jim?

8 MR. NEUWIRTH: No, that was --

9 MR. FELLER: Yes, Your Honor?

02:42:49

10 THE COURT: So on that, sir, if you can, will you tell  
11 me that -- I'm so trying to stay away from backup -- I'm trying  
12 to stay away from buzz words that everybody uses different buzz  
13 words. So of your production, does it include both active data  
14 and backup tapes? Does it, you know, of your email, what did  
15 you search?

02:43:19

16 MR. FELLER: Sure, Your Honor. And it's Leonid Feller  
17 for PCA.

18 Our collection which we just produced is about 47,000  
19 documents or document equivalent total. A portion of that is  
20 hard copy, a portion of that is ESI. The ESI consists of  
21 emails, it consists of Microsoft Word documents, Excel  
22 documents, PowerPoints, all those sorts of things.

02:43:32

23 In the lingo that we've been using in court, those  
24 would all be active server type documents. We, with a very  
25 narrow exception, did not go to any backup tapes to produce

02:43:56

1 that, that ESI.

02:44:24

2 THE COURT: In your explanation to Mr. Mogin, did you  
3 explain to him what periods of time you have active data, where  
4 the backup tape -- I mean, what kind of a guide did you give  
5 him in addition to giving him the documents?

02:44:41

6 ATTORNEY NO. 2: So I think we covered some of that  
7 today when we met earlier. A lot of that information was  
8 provided in our 30(b)(6) written submission. I imagine we'll  
9 cover more of it when we have the actual 30(b)(6) deposition.  
10 But I would hope that Mr. Mogin and his team have a fairly good  
11 understanding of all of those issues.

02:45:09

12 THE COURT: Okay. And has he -- you've given him a  
13 list of your custodians that you searched under, and did he ask  
14 you to increase any of your custodians or did he offer to you  
15 any words that he wanted you to search?

02:45:25

16 MR. FELLER: Your Honor, we have provided a list of  
17 custodians, and what we have said is we are perfectly willing  
18 to take under consideration any additional custodians  
19 plaintiffs would like to suggest. They have not done that yet,  
20 but I understand that's going to be an ongoing process and they  
21 may do that in the future. And similarly with search terms,  
22 they haven't at this point suggested any additional search  
23 terms, but we understand they may do that in the future.

02:45:40

24 MR. MOGIN: May I address the custodian issue?

25 THE COURT: Yes.

1 MR. MOGIN: With respect to the defendants, Your  
2 Honor, if you look at the backup, as you know, from the  
3 inception the plaintiffs have been clear that they were  
4 uncomfortable with the custodial approach.

02:45:53

5 THE COURT: Right.

6 MR. MOGIN: The defendants' position was essentially  
7 that it was the only feasible way for them to conduct the  
8 search.

02:46:03

9 If you go back and you look at the requests for  
10 production of documents, I believe it's definition or  
11 instruction No. 9 lists corporate functions that we are  
12 interested in, identifies those corporate functions. It's not  
13 quite a job description, but it's who performs the following  
14 functions. And then there are various requests for production  
15 that ask for materials from particular corporate functions.

02:46:25

16 Corporate functions aren't quite the same thing as the  
17 custodians. What the defendants will tell you is that by and  
18 large the custodians that they have tendered are the top people  
19 that fulfill those functions.

02:46:51

20 Some defendants, and as I'm standing here I can't tell  
21 you which one, have given me job descriptions, and the joke  
22 during our meet and confers was those are great but they are in  
23 HR-speak; I speak antitrust and English, I don't know HR, and I  
24 don't want to hire another linguist. So some of the defendants  
25 are considering whether to give us more or different

02:47:14

1 descriptions.

2 But the issue is to what extent can the custodians  
3 match the functions.

4 THE COURT: It's No. 9.

02:47:27

5 MR. MOGIN: It is No. 9. And defendants go,  
6 defendants by and large, their custodians are, as they describe  
7 them, top people, decisionmakers if you will, which is all well  
8 and good. From our perspective, those may be the people who  
9 actually effectuated the conspiracy. But that does not mean  
10 those are the people who made records that would reveal the  
11 conspiracy.

02:47:54

12 Recall, please, Your Honor, that as this is pleaded in  
13 the complaint, and this is something that Judge Shadur made  
14 specific reference to in his opinion denying the motions to  
15 dismiss, we are not writing on a blank slate here. This is an  
16 industry with a history. In fact, we even alleged that there  
17 was a seminar that took place at a trade association meeting,  
18 the American Forest Products Association, in 2005, just as the  
19 conspiracy was taking off, and the seminar was entitled "Are  
20 you vulnerable to antitrust lawsuits?" From the information  
21 that we have, it was as much about how to conceal an antitrust  
22 conspiracy as it was about anything else.

02:48:12

02:48:37

23 The defendants, of course, the trade association will  
24 dispute that characterization. However, I would note, you  
25 know, we all live in a world where the headlines are out there.

02:48:57

1 You probably heard of the eBooks case that the justice  
2 department just filed against Apple and other publishers, and  
3 there is a specific reference to that type of thing in the  
4 justice department's allegations that says that the defendants  
5 went to great pains, the chief executives met, that they went  
6 to great pains to avoid leaving paper trails, things like be  
7 sure, they would tell each other, to double delete.

8 So given this industry's history, that is precisely  
9 the type of situation that I think it's reasonable for us to  
10 use as our investigative assumption, and because of that we  
11 have to go deeper on these organizational charts with respect  
12 to custodians than most of the defendants have gone to this  
13 point. And in order to do that, I need some sort of matching,  
14 and you'll see that on the agenda, Your Honor, I asked for this  
15 in the meet and confer, what can we do to bridge the gap  
16 between your custodian list and my corporate function list, and  
17 so that I can get an understanding of who might be a possible  
18 record keeper of the conspiracy as opposed to decisionmaker.

19 THE COURT: You know, I saw that. What do you mean by  
20 that? I saw that in one of your -- how would someone be the  
21 record keeper of the conspiracy? What do you mean?

22 MR. MOGIN: It's fairly simple. I'm the chief  
23 executive officer, and I met with my fellow chief executive  
24 officers, and we all agreed we would raise prices by \$50 a ton,  
25 and we would reduce our capacity at about the same time.



1 Well, I'm not going to, as the CEO, write a memo that  
2 says that I just broke the antitrust laws and I've exposed  
3 myself to criminal liability and my corporation to treble  
4 damages. But I may say something to somebody on my staff who  
02:51:07 5 will write something down to justify other conduct. This is  
6 what my 32 years has taught me, that that is the type of  
7 evidence that we see in these cases.

8 MR. FELLER: And, Your Honor, what Mr. Mogin just said  
9 is -- I'll speak for PCA -- is exactly why we think you're  
02:51:30 10 exactly right, that plaintiffs have to get through some of  
11 these documents and actually look at what we've produced.  
12 We've picked 14 custodians for PCA. Mr. Mogin is exactly  
13 right. It's our CEO, it's our CFO, it's our highest level  
14 officials having to do with any issues in the complaint. We  
02:51:48 15 think they are the right people. We think they are -- we think  
16 they are the appropriate people.

17 If Mr. Mogin looks at the documents and says well,  
18 what about this person, or our organization chart and that  
19 person, we are entirely prepared to have that discussion. We  
02:52:05 20 haven't been -- the plaintiffs haven't, for whatever reason,  
21 proposed any additional names to us yet.

22 What we can't do, what we just as Mr. Echols said at  
23 the last hearing, what we don't know how to do is collect by  
24 corporate function. That is, it has no meaning to us as a  
02:52:22 25 practical thing that we can actually go out and do.

1           So what we are waiting on and the conversation we are  
2 perfectly happy to have is for suggestions of additional  
3 custodians and to have a meaningful discussion as to whether  
4 those are appropriate or not.

02:52:35 5           MR. NEUWIRTH: May I address this, Your Honor?

6           THE COURT: Sure.

7           MR. NEUWIRTH: May I have the podium again?

8           Your Honor, the --

9           If you can give me some space?

02:52:52 10          Your Honor, we appreciate that you want to hear  
11 perhaps from multiple defendants today, but there are a few  
12 things that I believe I can say on behalf of all the defendants  
13 on the issues that have been discussed, and Mr. McKeown has  
14 some additional points if it would please the Court.

02:53:08 15          But as a general matter, we told you at the last  
16 conference before Your Honor that the defendants are seriously  
17 interested, as you said, in trying to get a complete and valid  
18 production done that will enable us as well as the plaintiffs  
19 to make our case to the Judge on the merits. We want the  
02:53:32 20 evidence in the record.

21          As we told Mr. Mogin when we met with him today on  
22 behalf of Georgia Pacific, and I know other defendants have  
23 said, the corporate functions that are listed in No. 9 are very  
24 broad corporate functions that in the case of Georgia Pacific  
02:53:50 25 could, if taken literally, cover almost the entire business.

1 And we explained in our meet and confer with Mr. Mogin that the  
2 problem here, and your word "ironic" is correct, is that we  
3 really believe both sides are trying to do the same thing which  
4 is to figure out who are the people and where are the places in  
5 the company where responsive, relevant information exists and  
6 how can we get it produced?

02:54:14

7 The difference is that because the plaintiffs are  
8 obviously coming to this without having worked at these  
9 companies, they need to describe things in a certain level of  
10 generality, and the companies very familiar with how their  
11 businesses work have attempted to identify the actual people  
12 who are doing the things that are the subject matter of the  
13 plaintiffs' complaint.

02:54:34

14 Now, in the abstract we understand that it is always  
15 possible for people to say well, isn't there possibly someone  
16 else out there? And that's why we have so strongly suggested  
17 to Your Honor last week and have continued to suggest today  
18 that through the productions that are being made, the  
19 plaintiffs will have an opportunity to see in concrete form  
20 what it is that we are producing from these custodians' files  
21 so that, to the extent the plaintiffs still feel it is  
22 necessary to do so, we can have a well-informed and concrete  
23 discussion about what else it may make sense to do.

02:54:51

02:55:12

24 And just to put this in perspective, as Mr. Mogin  
25 mentioned, there's already been a production by PCA and by

02:55:34

1 Weyerhaeuser. As we told you last week, Georgia Pacific is on  
2 the verge, and we've committed to doing it by the Tuesday, to  
3 producing over 700,000 pages of documents which with limited  
4 exception is going to be the full production of ESI based on  
02:55:53 5 the search term process that was described to Your Honor.  
6 That's going to be on Tuesday, which will mean that if you take  
7 what's been produced plus what I understand is the more than  
8 90,000 pages that Weyerhaeuser is going to be producing today,  
9 by Tuesday there will be over a million pages of new documents  
02:56:12 10 that have been produced since the last time we were with Your  
11 Honor.

12 And nobody is saying to the plaintiffs that you have  
13 to look at every single thing that's been produced before we'll  
14 talk to you further. We've already started talking, and we  
02:56:24 15 think in some respects the conversations have been  
16 constructive. And I know Georgia Pacific like many other of  
17 the defendants agreed today to take certain topics that the  
18 plaintiffs raised and get back to them, and we can give you the  
19 examples if it would be helpful. But in general all that we  
02:56:40 20 are trying to do here is have a discussion which is concrete.  
21 Nobody is looking to put this off by six months or a year. We  
22 think that over the next coming weeks when the plaintiffs are  
23 producing what will end up being several million pages of  
24 documents, there will be something concrete in the ESI for the  
02:56:58 25 plaintiffs to look at. We'll continue to meet with them. We

1 are interested in continuing to talk about the time periods for  
2 the production.

3           And I would just add in terms of, just very quickly in  
4 terms of this issue of active versus inactive. Certainly one  
5 of the things we are all trying to do is make sure that we are  
6 getting documents from the entire time period, not just from  
7 the recent period. And I can tell you that in the case of  
8 Georgia Pacific, we are producing tens of thousands of  
9 documents of ESI from the years 2004, 2005, 2006 that have been  
10 collected from the custodian files and the shared files and the  
11 other sources that we went to to collect the documents.

12           The goal here is to have an informed discussion that  
13 will be concrete and not abstract, that will allow us to work  
14 with the plaintiffs to figure things out. And I can assure you  
15 that in the case of Georgia Pacific and I think all the  
16 defendants, we are prepared to talk about other custodians, we  
17 are prepared to talk about other search terms, but we think to  
18 talk in broad generalities about going from where we are to a  
19 completely different broad process that's reflected in the type  
20 of protocol that's been presented is not the most constructive  
21 way to move forward. We think the most constructive way is to  
22 produce what we are producing and continue to talk to the  
23 plaintiffs based on the content that's being produced about  
24 what it makes sense to do more.

25           And as Mr. McKeown will explain, in the one example

1 that Mr. Mogin gave of whether or not we are willing to produce  
2 these word indexes, I believe all the defendants are prepared  
3 to do that and several of them already told that to Mr. Mogin  
4 today. So I'm a little surprised by that.

02:58:51

5 But I think our goal is to move this forward, as we  
6 said last time, with serious discussions, but to try to do it  
7 in a way that will allow us to make real progress by giving  
8 these documents to the plaintiffs, having them talk to us about  
9 what's in them, finding, you know, if they believe that the  
10 custodians we have identified as reflected in the documents are  
11 not sufficient, we can then have a meaningful discussion and  
12 involve you in it if necessary about how to move forward.

02:59:09

13 And if it please the Court, Mr. McKeown I think can  
14 talk about some of the specific things that came up in some of  
15 the meet and confers that we are prepared to do.

02:59:27

16 THE COURT: Sure.

17 MR. McKEOWN: Actually, I'm not going to have too much  
18 at this point, Your Honor, other than Mr. Mogin is correct that  
19 yesterday he had asked us about would we be willing to create  
20 and prepare a list of all the words that are in our documents  
21 according to the, I think Clearwell is what we used. And we  
22 checked this morning, and at least International Paper is  
23 prepared to prepare that list. We need to talk a little more  
24 about some of the logistics, but I wanted to use that as an  
25 example.

02:59:46

03:00:04

1 I think these discussions over the past three days  
2 have been very productive. Ours went for over two hours. Mr.  
3 Sprung is not with us today, but he was also involved in ours.  
4 He came with a list of custodians, and we talked about people  
03:00:19 5 and their jobs, and that will continue. We have indicated if  
6 there is a particular custodian to talk about, let's talk about  
7 it.

8 On search terms, we've also indicated that to the  
9 extent that you look in our documents and you think we are  
03:00:30 10 missing something and you want us to test some additional  
11 search terms, we are prepared to test additional search terms.

12 THE COURT: What do you mean by test?

13 MR. McKEOWN: Well, let's say, for example, that they  
14 look at our documents and they say "We have found" -- they look  
03:00:41 15 at this data list and they say "We have found that you have not  
16 used this term, and we want you to test it."

17 We could run that search term against the documents  
18 that we have in our collection that have not yet been hit by  
19 any of the search terms, and we can find out if it hits 400  
03:00:57 20 documents or 400,000 documents. If it hits 400 documents, if  
21 there's a reasonable list of additional search terms, you know,  
22 I'm not going to fight in here over 400 documents. If it hits  
23 400,000 documents, that's a whole different kettle of fish.

24 So that's why we think we are going to be making the  
03:01:18 25 production of the ESI for our 26 named custodians in about

1 three weeks. With that plus this list of all the terms that  
2 are in the documents, that would help the discussion we think.

03:01:43 3 THE COURT: What did Clearwell tell you how, either  
4 how -- so Clearwell can make a dictionary, I mean, they can  
5 create this dictionary?

6 MR. McKEOWN: I am told, and I didn't get it straight  
7 from Clearwell, I got it from one of the ESI folks that is  
8 helping us. I am told that, at least the way we have our  
9 database collected, we can create a list of all the words that  
10 are found somewhere in our documents.

11 THE COURT: And then does it tell them where it is?

12 MR. McKEOWN: No.

13 THE COURT: It just says --

14 MR. McKEOWN: It says "These are all the terms."

03:02:08 15 But if you're worried that someone is misspelling some  
16 word and you want to see the various misspellings, it was  
17 something that came up yesterday in our meet and confer  
18 yesterday afternoon.

19 THE COURT: Right.

03:02:19 20 MR. McKEOWN: They asked about it, and we can do that,  
21 and we are prepared to do that, but I think those are the types  
22 of discussions that probably need to continue. Each side took  
23 their homework home, at least in our case, for what goes next.

24 MR. MOGIN: May I just say one thing about that,  
03:02:34 25 please, Your Honor?



1 THE COURT: Sure.

03:02:43

2 MR. MOGIN: I very much appreciate Mr. McKeown's  
3 commitment, that is, we've checked our notes. That's the first  
4 commitment that we've heard, and it's very significant that  
5 it's coming from Mr. McKeown because at this point, given the  
6 Temple-Inland acquisition by his client International Paper and  
7 the prior acquisition of Weyerhaeuser by International Paper,  
8 it could be that Mr. McKeown's commitment works for three of  
9 the seven defendants, and if the other defendants are prepared  
10 at this point to commit on the record, that would be very  
11 helpful. I don't know whether he's speaking for IP in his  
12 commitment.

03:03:05

13 THE COURT: Now, wait.

14 MR. MOGIN: The totality of the IP defendants.

03:03:15

15 THE COURT: But would that, you know, you're being a  
16 good plaintiffs' lawyer, and good trial lawyers sometimes have  
17 to ask for more than what they really have to have, and part of  
18 my job is to sort of get things down here. I think you have  
19 done a very thorough job here, Mr. Mogin, and I'm, I am trying  
20 to get you so you can get comfortable with this because they  
21 are willing to give up the hearing. That's really what the  
22 crux of today is. I mean, it is, is can we -- because time  
23 wise we can't do both. I mean, truthfully, we can't, okay?

03:03:44

24 So what I'm trying to do, the defendants have all said  
25 on behalf of their clients that, you know, I kind of put it how

03:04:06

1 do you want to spend the next five months, but it is kind of in  
2 reality. So we need to get you a comfort level here too, I  
3 mean, is what I'm trying to do here.

03:04:37

4 So if -- I literally don't know what this -- I mean,  
5 you just directed us to No. 9 corporate functions. You  
6 mentioned the dictionary. And I don't think you're just upping  
7 the ante here. I think you're looking for some way that you  
8 can be comfortable on behalf of the class that you're getting  
9 the, you're getting -- it's sure as heck never perfection, but  
10 you're getting enough information so you can try your case.

03:05:08

11 Now, would this dictionary, if I could get this  
12 dictionary, if I could get the other defendants to commit to at  
13 least calling, I don't know what system they used, but if I  
14 could get them to commit to calling, figuring out the  
15 dictionary, would that help in your, would that help you in  
16 saying that you think we could work this out?

03:05:28

17 MR. MOGIN: That would certainly be a help, Your  
18 Honor. It's not --

19 THE COURT: The end-all?

03:05:41

20 MR. MOGIN: It's not the silver bullet. It's one  
21 piece of many pieces.

22 THE COURT: Okay. You're a very good peacemaker, Mr.  
23 McKeown.

24 MR. NEUWIRTH: And I think I can say unless --

03:05:54

25 THE COURT: Again, this to me --

1 MR. NEUWIRTH: We can all try.

2 THE COURT: -- is something that would help you.

3 MR. NEUWIRTH: We can all try. I think we use  
4 Clearwell also, so I think we can do it.

03:06:04 5 THE COURT: And Mr. McKeown might have the other three  
6 that are kind of connected.

7 MR. MAROVITZ: Judge, if I may? If I were a client, I  
8 would be very happy to have Mr. McKeown represent me.

9 I'm Andy Marovitz. I represent Temple-Inland. And I  
03:06:24 10 don't remember, I don't want the record to be unclear, I do  
11 represent Temple-Inland, and in connection with this case, Mr.  
12 McKeown does not speak for Temple-Inland or for me.

13 THE COURT: I'm sorry.

14 MR. MAROVITZ: No, no worry. Just, given what Mr.  
03:06:35 15 Mogin said, I want the record to be very clear about that.

16 That said, for purposes of the data dictionary this  
17 morning, Mr. Mogin asked us about it. We said we would go back  
18 and check into that, and we, to the extent that our system  
19 allows us to do that, we'll be happy to provide it, to provide  
03:06:54 20 the -- I think it's a data dictionary. I think it's a word  
21 dictionary.

22 MR. FELLER: And, Your Honor, again, Leonid Feller for  
23 PCA.

24 We heard about the data dictionary for the first time  
03:07:03 25 today at 1:30. We did not use Clearwell, and so, again, I

03:07:22 1 don't even know if we have the capability. If we do have the  
2 capability, I don't think we have an objection conceptually to  
3 producing it. We have some concerns down the road about what  
4 it could and should be used for and how it actually advances  
5 the process. So subject to whether or not it actually exists  
6 and whether our technology is capable of producing it, we don't  
7 have an objection to it.

8 THE COURT: Hi.

9 MR. McCAREINS: Mark McCareins for RockTenn.

03:07:37 10 I don't think this dictionary thing came up in our  
11 two-hour meet and confer.

12 THE COURT: Okay.

13 MR. McCAREINS: But they asked us in three different  
14 letters like a hundred questions, so we spent a lot of time  
03:07:49 15 answering those.

16 THE COURT: They did. They are very thorough.

17 MR. McCAREINS: And they are tough graders too.

18 THE COURT: Yes, they are.

19 MR. McCAREINS: So my guru on this subject is Mr.  
03:07:59 20 Mayer.

21 THE COURT: Yes.

22 MR. McCAREINS: Britt Miller sitting back there. And  
23 I don't know if we have this dictionary, so we are checking on  
24 it.

03:08:08 25 THE COURT: Sounds good. That's what I want to hear.

1 MR. McCAREINS: Yes.

2 THE COURT: That's what I need to hear. I never heard  
3 of it either.

4 MR. McCAREINS: It's news to me.

03:08:16 5 THE COURT: Right. Okay.

6 MR. MENDEL: Your Honor, Scott Mendel.

7 We had the first meet and confer for Mr. Mogin, and  
8 that did not come up in our meeting, so I'm hearing about it.

03:08:33 9 THE COURT: See, he got better as the meet and confers  
10 went on, and that is good. And you volunteered, you were the  
11 nice person who started this all off last time.

12 MR. MENDEL: And we do use a different platform for  
13 our documents, but I will check and see if the dictionary is  
14 possible and, if so, what we can do to provide it.

03:08:48 15 THE COURT: Mr. Mogin -- I want to ask a question.  
16 Mr. Mogin, is this dictionary referred to as anything else  
17 other than a dictionary? I mean, is there like another term of  
18 art on this? Mr. McKeown too.

19 MR. McKEOWN: Your Honor, we had the discussion --

03:09:08 20 MS. BARRY: You can call it an index or a word list.  
21 Any system that does boolean search indexes every single word  
22 in the data set so that it can find them.

03:09:23 23 MR. MOGIN: For the record, that was our consultant  
24 Diane Barry, and that was our understanding as well after our  
25 conversation yesterday with Mr. Mogin and his team, that what

1 they are looking for is a list of all the words in the  
2 documents and that we can produce this list of all the words.

03:09:39

3 I also understand it will be fairly lengthy, so it,  
4 therefore, may be transmitted electronically rather than on  
5 paper.

6 THE COURT: Okay. Well, gee, it was worth a trip to  
7 Chicago today. We all learned something knew.

8 I didn't mean to cut you off.

03:09:49

9 MS. DIVER: That's okay, Your Honor. Jennifer Diver  
10 on behalf of Weyerhaeuser Company.

11 We are using the Clearwell search system, and although  
12 this issue did not come up in our meet and confer with Mr.  
13 Mogin, it's my understanding that we are able and prepared to  
14 provide this word index as well.

03:10:02

15 THE COURT: Okay.

16 MR. MOGIN: I don't know how I could have missed all  
17 of these, Your Honor, with the script that I was using.

18 THE COURT: Well, you had a lot to do. Okay.

03:10:24

19 MR. MOGIN: So we got a little sidetracked. We have  
20 worked through one of the issues. The custodian issue remains  
21 open.

03:10:43

22 THE COURT: Well, except what they are saying, what  
23 every single person who stood up here today said is they are  
24 open to, after you look at some of the documents, and it's not  
25 a quid pro quo, but it just makes more sense because they are

1 also acknowledging, unlike an employment case, you don't have  
2 an insider -- I mean I'm assuming you don't have an insider at  
3 seven companies -- so you're not going to know who might be  
4 more appropriate people or more -- I don't even mean  
03:11:06 5 appropriate, but more targeted people. So as soon as you can  
6 get to some of the key and you find out that Mann is sending to  
7 Chris and you didn't know about Chris, maybe you want Chris,  
8 maybe you want to add Chris as a custodian.

9 MR. MOGIN: All I was searching for, Your Honor --

03:11:29 10 THE COURT: They are saying, I affirmatively heard  
11 them say on the record they are willing to do it. Now, if you  
12 come back with 500, they may be in here saying to me "I didn't  
13 agree to 500." But, I mean, as it is, as the record is right  
14 now, all seven, correct, fellows, ladies, all seven said they  
03:11:54 15 will entertain.

16 Now, I am not saying that takes away everything you've  
17 said here, but as the judge here I have to decide whether we  
18 are going back to the hearing or whether we are going to  
19 continue. And I'm inclined to, I'm certainly inclined today  
03:12:34 20 for you to get at least a look-see at these documents. I think  
21 you're going to know much more than you know right now.

22 I think after you also take a look-see, another round  
23 of meet and confers, and I didn't offer the last time, but I'm  
24 happy to sit in if you want it. I mean, I think you're doing  
03:13:10 25 just fine without me, but I would be willing to do that.

1 MR. MOGIN: If you were there, Your Honor, we would  
2 not get the full benefit of Mr. McCareins' sense of humor.

3 THE COURT: No, I actually know Jim. Jim is on our  
4 committee. I actually know Jim. He does have a good sense of  
5 humor, don't you think?

03:13:28

6 MR. MOGIN: Your Honor, may I suggest this then? I  
7 realize that you would prefer not to have to go back to the  
8 hearing.

9 THE COURT: I'd prefer not to what?

03:13:41

10 MR. MOGIN: Yes, not to have to go back to the  
11 hearing.

12 THE COURT: Well --

13 MR. MOGIN: To try to resolve this a different way.

03:13:50

14 THE COURT: Well, that's for sure. That's for sure,  
15 because I am trying to get, I think it's a more direct way for  
16 you to get this information than kind of where we were going.  
17 I would like to get us as good of a search method as possible.  
18 I think, I think we all want the same thing here, actually.

03:14:30

19 MR. MOGIN: Well, I was going to say that one of the  
20 things that seems to get lost in the discussion when the  
21 defendants talk about their efforts and their burden and their  
22 expense, it works two ways. It's not as if I want an unlimited  
23 universe of documents for people to have to plow through. That  
24 just costs me time and money, and as a good plaintiff's lawyer,  
25 I would just as soon get this case over sooner rather than

03:14:51



1 later.

2 THE COURT: Right.

3 MR. MOGIN: Your Honor, may I make the following  
4 suggestion?

03:15:00 5 THE COURT: Sure.

6 MR. MOGIN: There are still a number of issues that  
7 are outstanding, a number of things that were discussed during  
8 the meet and confers that the defendants still have to get back  
9 to us on, similar to what we just went through with the  
03:15:14 10 dictionary issue. Might I suggest that we schedule another  
11 status conference. We'll continue with the meet and confer  
12 process. Perhaps we'll come back here in about three weeks or  
13 so, depending upon your schedule, and we'll report our  
14 iterative progress to you at that point, at which time I will  
03:15:35 15 have had some chance, not a great one, but some chance to have  
16 a look-see. I should hopefully have these dictionaries in  
17 hand.

18 THE COURT: Do you think, Mr. McKeown, did they say  
19 how long it would take to get the dictionary?

03:15:52 20 MR. McKEOWN: Not entirely clear, Your Honor, and with  
21 IT people, when they give me an estimate, I usually have to  
22 quadruple it. But we'll try to get it within the next week or  
23 so.

24 THE COURT: Well, since you started it, it would also  
03:16:05 25 help if maybe you could get Mr. Mogin one of them. When does

1 he get your documents?

2 MR. McKEOWN: He has our hard copy documents, our ESI  
3 documents with the 26 named custodians will be in about three  
4 weeks.

03:16:24

5 MR. NEUWIRTH: We were going to suggest, Your Honor,  
6 that maybe in light of those facts, that it might make sense to  
7 try to do this in the third or fourth week of May so that  
8 there's enough time for us to give what we are giving, have  
9 some opportunity to look at it, and perhaps have some further  
10 meet and confer.

03:16:43

11 MR. McKEOWN: I don't have a problem giving the list  
12 of words sooner rather than later.

13 THE COURT: Well, I'm just thinking. PCA, our PCA  
14 fellow, you've given the documents already?

03:16:55

15 MR. FELLER: Yes, Your Honor.

16 THE COURT: So if you were to go back --

17 MR. FELLER: Yes.

18 THE COURT: And you were -- and who is your, you don't  
19 have Clearwell, do you?

03:17:06

20 MR. FELLER: We don't have Clearwell. Our vendor is  
21 Epiq, and I can certainly call them as soon as we are back. I  
22 take Miss Barry on her word, but candidly I don't know that it  
23 exists or not. But assuming it does --

03:17:22

24 THE COURT: If you could get them yours the quickest,  
25 there might be a way to see how effective, I mean, since Mr.

1 Mogin -- I mean, that would just help if he had the dictionary  
2 and one set of the documents. And then when you come back, we  
3 could talk about something concrete. What do you think about  
4 that?

03:17:41

5 MR. FELLER: Your Honor, again I'm happy to try.

6 THE COURT: Good.

7 MR. FELLER: I don't know that it exists yet much less  
8 how long it will take, but I'm certainly happy to try.

03:17:52

9 MR. McKEOWN: And I don't have a problem, assuming we  
10 can create this word list off the computer, giving the word  
11 list to Mr. Mogin before.

12 THE COURT: Then at least he could see that too. That  
13 would help too. Okay.

03:18:11

14 Well, I think we should do another round, clearly do  
15 another round. You're learning, as you just said, you were  
16 very candid, you've also learned a lot more in talking about  
17 things too. I'm not into taking -- sure.

03:18:42

18 MR. McKEOWN: Yes. Your Honor, I just wanted to  
19 clarify one thing with respect to the dictionaries before we  
20 all broke and started talking about other subjects.

21 Many of the programs have the ability to put in sort  
22 of a hit count next to the word. So if it's the word "Nolan,"  
23 it will say, you'll get a sense that Nolan was hit on 38 times,  
24 40 times, whatever.

03:19:02

25 THE COURT: Okay. Well, if they can do that, that's

1 even better. It helps everybody then. Okay?

2 MR. McKEOWN: I don't know whether or not we can do  
3 that, Your Honor. We will check to see if it can be done and  
4 how hard it would be to do.

03:19:14

5 THE COURT: Right.

6 MR. McKEOWN: Because what I also don't want to do is  
7 shut down my electronic discovery process to occupy computer  
8 time if this is going to take three weeks to run it with a hit  
9 count. I just don't know how hard it is.

03:19:28

10 THE COURT: Well, you find out, and let Mr. Mogin  
11 know.

12 MR. McKEOWN: We will.

13 THE COURT: Okay. Now.

14 MR. MAROVITZ: Judge, Andy Marovitz for Temple-Inland.

03:19:40

15 We think Mr. Mogin's idea of coming back at some point  
16 is a good one. We do think that it would make sense for all  
17 the defendants to have an opportunity to be able to produce  
18 something in addition, and we mentioned to Mr. Mogin this  
19 morning that we are shooting to make a production during the  
20 week of April 30th that would go sometime until the 4th.

03:19:59

21 We would look for a day maybe in the middle of May to  
22 give Mr. Mogin and his team a chance to look at whatever  
23 documents they wanted to from the other defendants as well, so  
24 we were hopeful for some time during the week of May 14th if  
25 that's suitable with the Court.

03:20:21

1 THE COURT: Well, I was going to, I mean, that's fine.  
2 We'll find a date here. I had even wanted to give Mr. Mogin,  
3 if this would give him any kind of a comfort level so it  
4 doesn't just get out there, is I don't do settlement  
03:21:00 5 conferences on Fridays. So if we can get the ball rolling  
6 here, we could do telephone statuses so all of you don't have  
7 to travel all the time, but we could do some series of  
8 conferences, telephone conferences for people to make sure  
9 things were happening, productions were happening.

03:21:22 10 I think the next one ought to be in person again,  
11 though, because I think you're going to need feedback. But  
12 this isn't to -- I mean, I want to do everything we can to keep  
13 this momentum going is what I'm saying. I mean I'm saying it  
14 to the defendants too, because I think that would give you,  
03:21:43 15 Fridays can be kind of a clean, you know, like the old ravioli  
16 day, whatever that ad was.

17 MR. MAROVITZ: Wednesday is Prince Spaghetti day.

18 THE COURT: Right, it can be Prince Spaghetti, this  
19 can be clean day or something if you wanted to, because I don't  
03:22:00 20 do mediations on Friday. So let's do directly, if we were  
21 going to try to do, what's that week? You know, let me go get  
22 my sheets.

23 MR. MOGIN: The week that the defendants were  
24 mentioning was a little tough for us. Would the following week  
03:22:21 25 be possible? That would be the week of the 21st of May.

1 THE COURT: Okay.

2 (Pause.)

03:23:12

3 MR. MAROVITZ: Judge, we just took an informal caucus  
4 and got no dissent for May 22nd. But your schedule is the most  
5 important, so if May 22nd is a good date for you, that works  
6 for all the lawyers.

7 THE COURT: Well, I think we are going to make it  
8 work.

03:23:31

9 MR. MAROVITZ: Your Honor, what time would be  
10 convenient?

03:23:57

11 THE COURT: Well, do you think you'd try to have  
12 meetings again? Would you kind of -- this seems to be very  
13 productive. They are going to know a lot more. Can you do the  
14 Monday-Tuesday again, and then come if you wanted to come  
15 Tuesday at 1:30?

16 MR. MOGIN: I'll try, Your Honor. There's seven  
17 defendants, and it's very difficult to meet individually with  
18 the defendants, seven of them in one day basically.

03:24:11

19 THE COURT: But I meant if you started on Monday, the  
20 21st, would that work?

21 MR. MOGIN: Three to four a day is about what it  
22 takes.

03:24:23

23 THE COURT: Well, we can do 3 o'clock. I work at  
24 night. I mean we can start at, we can easily start at 3  
25 o'clock. Would 3:30 be better?

1 MR. MOGIN: How about we'll split the baby. How about  
2 2:30?

3 THE COURT: That's fine with me. I'm here.

03:24:34

4 MR. MOGIN: And I'll see what I can do by telephone  
5 and what I can do in person.

6 THE COURT: Yes. Does that, can some of you commit to  
7 the first day if Mr. Mogin comes from California?

8 MR. MAROVITZ: Sure.

9 THE COURT: Okay.

03:24:45

10 MR. McKEOWN: We'll make it work, Your Honor.

11 THE COURT: Sounds good.

03:25:02

12 What are we telling Judge Shadur? Here's what I want  
13 to know, because you've got the April 30th status. I think  
14 when I called him the last time, I think he reset it till April  
15 30th.

16 MR. MAROVITZ: Yes. Our thought for the defendants  
17 would be it would make sense to reset that again till at least  
18 sometime after we've had a chance to meet with you.

03:25:17

19 THE COURT: Well, one thing I could do if you're all  
20 going to be here the 22nd of May, I mean, maybe would you like  
21 to meet with him? Do you want to tell him yourself what's  
22 going on or, I mean --

23 MR. MOGIN: I think that would be productive, Your  
24 Honor.

03:25:30

25 THE COURT: I have no idea if he sits on Tuesday. I

1 have no idea on anything.

2 MR. MOGIN: Judge Shadur? I can't believe he doesn't  
3 sit on Sundays.

4 THE COURT: Right, that's true.

03:25:40

5 MR. MAROVITZ: Judge, obviously if Judge Shadur is  
6 interested in hearing the status, we would present it to him.  
7 We don't, I don't know that there's a need to take up his time  
8 until we have some resolution one way or the other. I think we  
9 are working toward --

03:25:54

10 THE COURT: Well, that is true because we don't know  
11 yet.

12 MR. MAROVITZ: We are working right now towards  
13 resolution, and, frankly, it might be better for everybody if  
14 we got either to a place where we had a more concrete  
15 resolution of the issues or a live dispute for Your Honor or  
16 Judge Shadur to resolve.

03:26:06

17 MR. MOGIN: It's a good point, Your Honor.

18 THE COURT: Yes.

19 MR. MOGIN: Maybe the best thing to do is Judge Shadur  
20 would probably rather hear from you than us.

03:26:16

21 THE COURT: That's true because he likes Nan so much.

22 MR. MOGIN: So perhaps if you conferred with him, and  
23 we'll do whatever you guys decide, obviously.

24 THE COURT: Right. And if he wanted to, I can offer  
25 to him that you're here. If he needs to, I think he'll be

03:26:29



1 happy to do it this way.

2 And so we are going to continue to try, and that will  
3 still give us plenty of time that if we are not able to do it  
4 and you want to either continue with argument, the hearing,  
03:26:52 5 whatever you want, you're going to have the ability to do that.

6 MR. MOGIN: There's one other subject that I would  
7 like to raise, Your Honor.

8 THE COURT: Sure.

9 MR. MOGIN: And not to anticipate in advance or to  
03:27:06 10 somehow ruin the possibility of agreement, but we had been  
11 looking at the Court's procedures on motions to compel, and  
12 they, we gamed out how much time it might take for a typical  
13 motion and it was about a six- to seven-week process.

14 THE COURT: All right. Now, let me just tell you,  
03:27:25 15 though, on that procedure, we just instituted about a year ago,  
16 I looked at Shira Scheindlin's web site. She also told me at  
17 some conference I was at, her web site says no discovery  
18 motions, or discovery motions are prohibited, and I guess I  
19 thought oh, maybe I should start increasing the ante for  
03:27:57 20 discovery motions.

21 In this case, you have to have a meet and confer.  
22 Obviously you have to have a real meet and confer. You do not  
23 have to -- I'm not holding you to that entire process. If your  
24 meet and confer cannot work, you can even agree upon a  
03:28:15 25 discovery schedule.

1 MR. MOGIN: Thank you, Your Honor. Appreciate it.

2 THE COURT: That will take that away because I do in  
3 fact want to do as much of the discovery in this case as  
4 possible.

03:28:26

5 MR. MOGIN: Thank you, Your Honor. That's very  
6 helpful.

7 THE COURT: And the same thing for the defendants too  
8 if you're having a problem too.

9 MR. McKEOWN: Thank you.

03:28:34

10 THE COURT: You have a protective order already.

11 MR. MOGIN: Yes, ma'am.

12 THE COURT: Now, I do have another question. How far  
13 are you on the 30(b)(6)s?

03:28:47

14 MR. MOGIN: We still have PCA which is scheduled I  
15 believe for May the 6th?

16 MR. FELLER: 10th.

17 MR. MOGIN: May the 10th. And we still have -- let  
18 the record note that Ms. Miller just threw Mr. Mandell under  
19 the bus, pointed him out. So we still have his client to go,  
20 and Georgia Pacific.

03:29:05

21 THE COURT: All right. Something I utilized with Miss  
22 Miller in our last antitrust case that if I could impose, this  
23 would help because we were trying to do working statuses, is  
24 that I would ask that the day before, it doesn't even have to  
25 be before that, if I could have a short status letter or a

03:29:34

03:29:56 1 report, whatever you want, if you want it for the record or you  
2 can -- and these would be, it would kind of get you thinking  
3 issues for the agenda too. And it doesn't have to be long,  
4 complicated, grammatically correct. It doesn't have to be  
5 anything. It's just kind of here we go, Judge, here's what we  
6 need to talk about, okay?

7 MR. MOGIN: Could I beg a favor on that, Your Honor?

8 THE COURT: Sure.

9 MR. MOGIN: Make it a very short page limitation.

03:30:09 10 THE COURT: I don't even do that. I mean, it's just  
11 very, it's just very simple here are the things. You know,  
12 we've got agreements on this, we don't need to talk about this,  
13 but here are the issues.

14 I'm really curious to see, will you let me know on  
03:30:25 15 this dictionary? This would be helpful.

16 MR. McKEOWN: Your Honor, we could probably get you a  
17 copy if you would like one.

18 THE COURT: No, no.

19 MR. McKEOWN: I think I have my answer.

03:30:36 20 THE COURT: Okay, thank you.

21 Do any of the defendants, does anyone wish to say  
22 anything? I am really conscious that each of you are getting  
23 individual consideration. I think a lot of clients now read  
24 transcripts, and I want to make sure that everyone, if anyone  
03:30:57 25 needs, would like to say anything about their client, they have

1 an opportunity to do so.

2 Okay. Well, new plaintiffs' counsel, who is new here  
3 who wasn't here before? Anybody new.

03:31:12

4 MR. MOGIN: This is our co-counsel, Mr. Goodwin from  
5 Philadelphia.

6 THE COURT: Hi, Mr. Goodwin. I'm glad you're here. I  
7 saw your name.

03:31:25

8 MR. MOGIN: What I didn't tell Your Honor is that the  
9 plaintiffs have for each defendant and for certain third  
10 parties our co-counsel we have assigned so they specialize in  
11 particular defendants. So Mr. Goodwin is the specialist in  
12 Georgia Pacific.

13 THE COURT: Well, good.

03:31:37

14 MR. MOGIN: Mr. Eisler was here before. He was for  
15 PCA.

16 THE COURT: That's good.

17 MR. MOGIN: So each of those came in for these meet  
18 and confers.

03:31:44

19 THE COURT: I noticed that on the 30(b)(6)s there were  
20 people other than you sending letters, and I couldn't figure  
21 out how that was happening.

22 MR. MOGIN: So each of them came into Chicago and  
23 participated in the meet and confers.

24 THE COURT: Good. Does that work for you, sir?

03:31:57

25 MR. GOODWIN: Yes, that's working just fine. Thank

1 you, Your Honor.

2 THE COURT: Okay, thank you.

3 Well, we'll see everybody. If you have any  
4 emergencies, anything like that, we take phone calls here,  
5 okay. You can always email Chris.

03:32:08

6 Peace. Bye.

7 MR. MOGIN: Thank you, Your Honor.

8 MR. McKEOWN: Thank you, Your Honor.

9 THE COURT: See you in a couple weeks.

10 (Proceedings concluded.)

11 C E R T I F I C A T E

12 I, Michael P. Snyder, do hereby certify that the  
13 foregoing is a complete, true, and accurate transcript of the  
14 proceedings had in the above-entitled case before the Honorable  
15 NAN NOLAN, one of the judges of said Court, at Chicago,  
16 Illinois, on April 19, 2012.

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/s/ Michael P. Snyder  
Official Court Reporter  
United States District Court  
Northern District of Illinois  
Eastern Division