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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

-----X

WADE ROBERTSON,  
  
Plaintiff

v. Civil Action 09-1642

WILLIAM C. CARTINHOOR, JR.,  
  
Defendant,

-----X Washington, D.C.  
Monday, November 29, 2010  
2:40 P.M.

TRANSCRIPT OF PRETRIAL CONFERENCE  
BEFORE THE HONORABLE ELLEN SEGAL HUVELLE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Court Reporter: Lisa Walker Griffith, RPR  
U.S. District Courthouse  
Room 6507  
Washington, D.C. 20001  
(202) 354-3247

Proceedings recorded by mechanical stenography, transcript  
produced by computer.

## 1 P R O C E E D I N G S

2 THE COURTROOM DEPUTY: This is civil action 09-1642.  
3 Wade Robertson versus William C. Cartinhour.

4 Edward Griffin for the plaintiff. Patrick Kearney  
5 and Robert Selzer for the defendant.

6 THE COURT: Mr. Kearney, why don't you give me some  
7 update on what is going on with Mr. Cartinhour's health.

8 MR. KEARNEY: Your Honor, I spoke with the doctor  
9 who saw him, Dr. Rogers, who said he had a very increased  
10 heart beat. He had been given medication. He is supposed to  
11 see his primary care physician, Dr. Santini, tomorrow. He  
12 said that he shouldn't be in court all week. And that maybe  
13 Dr. Santini could give us a better idea tomorrow.

14 THE COURT: Dr. Santini is what kind of doctor?

15 MR. KEARNEY: He is his internal medicine doctor.

16 THE COURT: And who were you talking to?

17 MR. KEARNEY: Dr. Rogers, who is in the same group.

18 THE COURT: Why don't you go back a little bit.

19 What happened when?

20 MR. KEARNEY: On Friday, Dr. Cartinhour was  
21 complaining of -- he didn't feel well. He went to see  
22 Dr. Rogers on Friday. I tried to contact Dr. Rogers after I  
23 learned about that from Dr. Cartinhour but the practice had  
24 closed for the day at noon by the time I tried to get ahold  
25 of him.

1 I met with Dr. Cartinhour on Sunday. He did not  
2 feel well. And said that he didn't think that he could  
3 testify. I said well if we shorten the testimony could we  
4 figure something out. He called me in 5:00 this morning in  
5 an absolute panic, that his heart was still racing. He had  
6 been taking his medication. And he just couldn't do anything  
7 about it.

8 I called Dr. Rogers -- Mr. Griffin about quarter to  
9 8:00 this morning. I e-mailed him and he called me. We  
10 spoke with your clerk. I filed a motion. I spoke with  
11 Dr. Rogers.

12 THE COURT: Mr. Robertson has now opposed the  
13 motion.

14 MR. KEARNEY: Yes, Your Honor.

15 THE COURT: So what time is his appointment  
16 tomorrow?

17 MR. KEARNEY: I don't have the time. I assume it is  
18 in the morning.

19 THE COURT: Maybe we'll know more. You know, if he  
20 can testify, he doesn't have to sit here the whole week.

21 MR. KEARNEY: I agree he doesn't. Although, if you  
22 look particularly even at the opposition that was filed --

23 THE COURT: Nasty, Mr. Griffin, really nasty  
24 opposition. Unbelievable. I hope you don't ever have a  
25 heart attack and anybody ask you to continue something.

1       Anyway, you don't have to stand up. I'm just telling you, I  
2       consider this one of the nastier oppositions I've ever read.

3               MR. KEARNEY: For the part of the opposition where  
4       he lays out the specifics of what he is going to prove  
5       against Dr. Cartinhour, and I didn't get the benefit of  
6       reading the whole thing, but I got enough of it.

7               THE COURT: I know, I mean, he has to testify. He  
8       was deposed but not by you.

9               MR. KEARNEY: That is correct, Your Honor. I had  
10      not taking the de bene esse deposition of Dr. Cartinhour  
11      because health seemed, not well, but manageable. And he  
12      hadn't had this kind of episode before.

13              THE COURT: Here is what I suggest: there are one or  
14      two possibilities here, or three. One, his doctor gives him  
15      a clean of bill of health and he can go ahead. Two, you can  
16      take a trial deposition by video on the theory that he may  
17      never make it to trial.

18              MR. KEARNEY: Your Honor, I think I have to do that  
19      at this point. I would prefer not to but I think I have to.

20              THE COURT: I would think so. He can do it under  
21      controlled conditions of a doctor, because I can tell you  
22      that -- or the other thing is maybe everybody wants to agree  
23      to get rid of all legal claims and just go in front of me. I  
24      have some concerns about it but if Mr. Robertson is so  
25      anxious to go to trial, we can do the equitable and they will

1 give up their legal claims. But still not having him testify  
2 is really difficult.

3 MR. KEARNEY: I think it is almost impossible, Your  
4 Honor.

5 THE COURT: I think that's probably right. It may  
6 be that you should talk to this doctor tomorrow.

7 MR. KEARNEY: I will leave a message to please call  
8 me as soon as the appointment is done.

9 THE COURT: How do you expect us to go forward  
10 without the plaintiff, Mr. Griffin? Really? How heartless  
11 can you be?

12 MR. GRIFFIN: Well, I believe that they can't make  
13 their case without going forward with the plaintiff and  
14 having Dr. Cartinhour's testimony.

15 THE COURT: Would you look up and speak so I can  
16 hear you please. I can't hear you if you are looking down  
17 like that.

18 MR. GRIFFIN: My apologies, Your Honor. I believe  
19 that Dr. Cartinhour would have to be present in order to give  
20 testimony in order for their case to be able to go forward.

21 THE COURT: I still don't hear you. You believe Dr.  
22 Cartinhour would what?

23 MR. GRIFFIN: That without his testimony, that they  
24 would not be able to go forward with their case.

25 THE COURT: Right. So what would you suggest I do,

1 if I don't continue the trial? Throw his case out?

2 MR. GRIFFIN: That would be our position, yes, Your  
3 Honor.

4 THE COURT: What if your client got sick, would I  
5 enter a default judgment against him; is that what you're  
6 saying? What if you got sick? You are suggesting that, when  
7 his doctor -- either you are suggesting that Mr. Kearney is  
8 lying or that his ought to be thrown out because an old man  
9 got sick.

10 I think you really ought to look me right in the  
11 eye, sir, and tell me what you really think.

12 MR. GRIFFIN: That is my position, Your Honor.

13 THE COURT: That's your client's position.

14 Don't forget who sued first here. Okay. The trial  
15 has to be continued. We're not going to be able to start  
16 tomorrow. The motion to continue the trial at least until  
17 Wednesday will be granted. We'll have to reconvene and find  
18 out where we are. I have problems doing this trial any time  
19 in the foreseeable future. That's what I have to tell you  
20 because I have criminal cases, one in December, a long one in  
21 January. Four trials in February. I'm unavailable in March,  
22 I have one in April and one in May. So trial dates are not  
23 simple.

24 MR. KEARNEY: Your Honor, that's kind of, that is  
25 going to go with the territory. I know that is what has to

1       happen.

2               THE COURT: I would suggest you try to settle this  
3 case frankly. I would be willing to go on Wednesday because  
4 I don't think it's going to take us that long. I have a  
5 little free time next week. But I --

6               MR. KEARNEY: I have serious concerns, if he is as  
7 sick as he is, to try to force him to come in on Wednesday.

8               THE COURT: I think you ought to take your de bene  
9 esse deposition so he doesn't have to attend.

10              MR. KEARNEY: I think that's what I have to do, Your  
11 Honor.

12              THE COURT: If you get his testimony, we don't have  
13 to worry about beating it. There are a couple of things that  
14 were hanging loose that we can take care of. Here is the  
15 statement of the case. I tried to shorten it up.

16              I intend to read this to the jury, find out if  
17 anybody knows anything about the case. I thought that the  
18 one you gave me would put the jury to sleep. All I want to  
19 know is whether they know anything about the case.

20              I'll double book a trial in January. These criminal  
21 cases just can't settle. That's the problem. I'll put it  
22 down on the 21st of February. I have another civil case that  
23 day. At least it is civil and secondly it has a chance of  
24 settling. I read the order by the judge in Memphis. I got a  
25 copy of that order. So I take it that is not a problem at

1 the moment.

2 MR. KEARNEY: That is correct, Your Honor.

3 THE COURT: All right. The motion to continue the  
4 trial is granted. The 21st of February is my best date.

5 MR. KEARNEY: That's fine, Your Honor.

6 THE COURT: Mr. Griffin, the 21st?

7 MR. GRIFFIN: Can we start the 22nd of February,  
8 Your Honor?

9 THE COURT: 21st, that's a Monday.

10 Now, based on where we were when we left off last  
11 time, it appears to me that the negligent misrepresentation,  
12 if you pursue that claim, Mr. Kearney, then they will get,  
13 that's the only time contributory negligence and assumption  
14 of the risk would apply.

15 MR. KEARNEY: Your Honor, it would apply to  
16 malpractice, too.

17 THE COURT: No. I don't think so. I couldn't find  
18 anything that says that.

19 MR. KEARNEY: I think there is controlling in the  
20 District of Columbia. I'll provide it to the Court. I don't  
21 want to take something that is not. I would like to argue  
22 against it but I don't think I can.

23 THE COURT: Then it will be malpractice. What's the  
24 case?

25 MR. KEARNEY: I don't have it with me.

1 THE COURT: The argument is he assumed the risk  
2 because he knew all that there was to know.

3 And contributory negligence, Mr. Griffin, what is  
4 the factual argument for contributory negligence?

5 MR. GRIFFIN: That Dr. Cartinhour was informed in  
6 reading and orally by Mr. Robertson and others that he needed  
7 his own counsel advising him on the partnership agreements,  
8 his own methods for monitoring a lawsuit and his own methods  
9 for monitoring the partnership activities.

10 THE COURT: What is the contributory negligence?  
11 All you've done is say what the agreements allegedly say.  
12 What did he do that was contributorily negligent is what I  
13 want to know.

14 MR. GRIFFIN: He failed to follow the advice of his  
15 attorney, Mr. Ash, who advised him not to enter into the  
16 partnership agreement.

17 THE COURT: He failed to follow Ash's advice. So  
18 that was contributory negligence that bars him from  
19 recovering, right? Anything else?

20 MR. GRIFFIN: He failed to read the agreements which  
21 allow for the loan provisions, which have the loan provisions  
22 which allow for the loans to be made to Mr. Robertson. That  
23 would be the business agreement that was entered into on  
24 September 16, 2004 and the partnership agreement itself.

25 THE COURT: Okay. Anything else?

1 MR. GRIFFIN: And he failed to review the other  
2 partnership documents that were provided to him.

3 THE COURT: The partnership documents meaning what?

4 MR. GRIFFIN: Meaning the promissory notes.

5 THE COURT: All right. So, your allegation is  
6 contributory negligence because he failed to file Ash's  
7 advice, failed to read the agreements which allowed loans and  
8 including the business agreement and the partnership  
9 agreement. He failed to review the promissory notes.  
10 Anything else? I just want to make sure I understand. I'm  
11 going the write up instructions that will include what the  
12 allegations are so to speak.

13 MR. GRIFFIN: Mr. Robertson will testify that he  
14 advised Dr. Cartinhour about the loans.

15 THE COURT: That's not contributory negligence.  
16 That's assumption of the risk. Assumption of risk is he knew  
17 everything there was to know and he continued to invest,  
18 right?

19 MR. GRIFFIN: That is correct, Your Honor.

20 THE COURT: Any other elements of contributory  
21 negligence that I need to know about? He was negligent  
22 because--? Is the question.

23 MR. GRIFFIN: That is correct. For not following  
24 the advice of his counsel.

25 THE COURT: I got all that. Anything else?

1 MR. GRIFFIN: Nothing else, Your Honor.

2 THE COURT: Assumption of risk, he knew the risks  
3 and he invested anyway and continued to invest. Okay.

4 I am unable to find any law whatsoever that would  
5 allow me to submit the set-off to the jury. It is equitable.  
6 It goes to the rescission claim only. It will not be argued  
7 or presented to the jury.

8 So as a result -- the Court previously reserved but  
9 I believe, I mean, Mr. Griffin, you can tell me why I'm wrong  
10 in a pleading. But otherwise exhibits 49 will be excluded.  
11 Those are the time sheets. 57 is excluded for the same  
12 reason because it's not going to the jury, the set-off.

13 MR. GRIFFIN: I believe Your Honor that those  
14 exhibits would still be relevant because they go to  
15 Mr. Robertson's provision of services to the partnership.

16 THE COURT: Why is that relevant to whether or not  
17 Mr. Cartinhour proves breach of fiduciary or malpractice  
18 or -- he is suing him for torts to him.

19 MR. GRIFFIN: That is correct. But he has also  
20 alleged that the partnership was fictitious, that  
21 Mr. Robertson never did any work on the case.

22 THE COURT: I don't think he does. Does he allege  
23 that?

24 MR. GRIFFIN: He has in his deposition testimony.

25 THE COURT: I thought it was the breach fiduciary,

1 malpractice. Two kinds of breach of fiduciary and negligent  
2 misrepresentation.

3 MR. KEARNEY: Those are the legal theories. I think  
4 what Mr. Griffin is referring to is during his deposition, he  
5 asked Dr. Cartinhour what did Mr. Robertson do. He said I  
6 don't know; it was all a fake, or something along those  
7 lines. I don't know that he is competent to testify to that  
8 or not. Mr. Robertson is going testify he did all this work.  
9 I assume Mr. Watts is going to come in and testify that he  
10 worked really hard because that's what his affidavit said.

11 THE COURT: But that's recovery against the  
12 partnership. This is a suit between the two of them. The  
13 Court, you can file something to preserve your rights. But  
14 at least for the purpose -- my understanding is it would be  
15 relevant to the rescission claim but not to the legal claims.

16 The Court will exclude exhibits 59 to 64, 50, 49 and  
17 57. I believe those are all just expenses of the  
18 partnership. If he has a claim against the partnership, that  
19 may be or it's an offset to the rescission. The work doesn't  
20 necessarily have to be paid by the individual defendant.

21 You are welcome to tell me why that's wrong. Put  
22 the offset is part of equitable claim, it is not before the  
23 jury. And I can only understand those exhibits as being  
24 probative of the offset.

25 Now, Mr. Kearney, what is the negligent

1 misrepresentation? What is negligently communicated false  
2 information, plaintiff relied and it was reasonable to reply.

3 MR. KEARNEY: Your Honor, if it wasn't direct fraud,  
4 maybe he didn't mean to but he didn't tell him what was going  
5 on in the case. My real case is that he actually meant to  
6 mislead.

7 THE COURT: That's part of the rescission claim?

8 MR. KEARNEY: Yes, Your Honor.

9 THE COURT: What are we putting to the jury? That's  
10 what I want to know.

11 MR. KEARNEY: The flip to the jury is that maybe,  
12 I'm not going to try to prove scienter that he was actually  
13 intending to deceive but that he did deceive by his failure  
14 to adequately disclose.

15 THE COURT: Failure to disclose what?

16 MR. KEARNEY: Both with the loans and the status of  
17 the case.

18 THE COURT: Okay. Meaning that it had been thrown  
19 out in the District Court?

20 MR. KEARNEY: Yes, Your Honor, and that the appeal  
21 had been denied, or the dismissal had been affirmed.

22 THE COURT: Okay. So, it is not at the time -- Are  
23 you saying he was negligent at the time they formulated the  
24 partnership or some later time or both?

25 MR. KEARNEY: No, it would be after the partnership

1 was put together, Your Honor. And certainly with respect to  
2 the 2nd and 3rd tranches of Cartinhour's investment.

3 THE COURT: Before we forget the case entirely,  
4 we're trying to figure out what to do about jury  
5 instructions.

6 MR. KEARNEY: Yes, Your Honor.

7 THE COURT: So he admitted certain facts. But your  
8 rescission claim is that he got him into the partnership in  
9 the beginning based on false representations.

10 MR. KEARNEY: In the beginning and then with the  
11 additional tranches, yes, Your Honor.

12 THE COURT: So the rescission claim goes back to the  
13 initial formulation of the partnership.

14 MR. KEARNEY: Yes, Your Honor. Right to the  
15 business agreement.

16 THE COURT: Because my understanding as to the  
17 additional tranches, if the jury were to reject your claims,  
18 that would bind me.

19 MR. KEARNEY: Yes, Your Honor.

20 THE COURT: If you don't prove negligent  
21 misrepresentation as to those tranches in front of a jury,  
22 that's binding on me.

23 MR. KEARNEY: I can't disagree, Your Honor.

24 THE COURT: If there is any change in heart in terms  
25 of any of your claims, could you let us know within the week?

1 MR. KEARNEY: Yes, Your Honor.

2 THE COURT: Right now we have four basically.

3 MR. KEARNEY: Yes, Your Honor.

4 THE COURT: If you are going to reduce in any way  
5 because it affects the entire, the contours of the jury  
6 instruction. And I guess I should know the malpractice. I  
7 was not aware of it.

8 The only other thing about the rulings on these  
9 exhibits, if you open the door in terms of Statute of  
10 Limitations issues then it may come in any ways.

11 MR. KEARNEY: Yes, Your Honor.

12 THE COURT: So those things are not going to be part  
13 of the case unless you open the door. If you open the door  
14 then they come in because if you want to talk about the work  
15 he is doing on the partnership --

16 MR. KEARNEY: I don't plan on it, Your Honor.

17 THE COURT: I don't know what you are going to say  
18 about the Statute of Limitations or continuous representation  
19 or discovery. I don't know. So, I understand those rulings  
20 obviously can be overcome by opening the door.

21 Any other preliminary matters? Do you have those  
22 jury instructions either of you in Word or Word Perfect.

23 MR. KEARNEY: I have them in Word, Your Honor.

24 THE COURT: Can you send us the disk, the standard  
25 and the non standard?

1 MR. KEARNEY: Yes, Your Honor.

2 THE COURT: Does anyone have an objection to the  
3 introductory statement? I took it from your stipulated  
4 facts.

5 MR. KEARNEY: No objection, Your Honor.

6 THE COURT: Mr. Griffin?

7 MR. GRIFFIN: Your Honor, the lawsuit was actually  
8 filed in Florida.

9 THE COURT: Initially.

10 MR. GRIFFIN: Initially, then it was transferred to  
11 the Southern District of New York.

12 THE COURT: Sir, I honestly can't hear. If you keep  
13 your head down, I can't hear and the jury won't be able to  
14 hear you either.

15 I would like to have a conference call tomorrow  
16 after you get an update from the doctor so we know. If I  
17 have to figure out some other trial date, I'll have to figure  
18 out some other trial date. This is a tentative one.

19 What is it now that I'm correcting? And to invest  
20 in a large class action that was pending in the Southern  
21 District. How about that? It was pending in the Southern  
22 District.

23 MR. GRIFFIN: That is correct, Your Honor.

24 THE COURT: It was initially filed in Florida. I  
25 agree with that. All right. It was pending in the Southern

1 District of New York.

2 MR. GRIFFIN: And then I would say that, during that  
3 same time period, Mr. Robertson, instead of "arranged to"  
4 "He loaned himself--".

5 THE COURT: Okay, loaned himself over 3.4 million  
6 from the partnership without interest.

7 MR. GRIFFIN: I'd say that, that was pursuant to a  
8 promissory note.

9 THE COURT: It was more than one. Several  
10 promissory notes, right?

11 MR. GRIFFIN: That's true, there was the first  
12 promissory note which was paid in full, then there was a  
13 second and third promissory note.

14 THE COURT: Okay. "Loaned himself over 3.4 million  
15 without interest pursuant to several promissory notes."  
16 Okay?

17 MR. GRIFFIN: Yes, Your Honor.

18 THE COURT: You can correct that, thank you.

19 Let's look back at this order quickly and see where  
20 we are. The motion to continue the jury trial is granted.  
21 We'll talk by phone tomorrow. Let's pick a time. Do you  
22 know if it is morning or afternoon?

23 MR. KEARNEY: I'll leave a message with Dr. Santini  
24 teeny, later in the afternoon would be better.

25 THE COURT: Do you know when he is going or you

1 don't know?

2 MR. KEARNEY: I think it might occur in the morning  
3 but I'm not sure. I was doing too many things this morning  
4 trying to get this done.

5 MR. GRIFFIN: Perhaps we could do a call on  
6 Wednesday, Your Honor?

7 MR. KEARNEY: That would be easier, Your Honor.

8 THE COURT: Wednesday morning at 10:00, we'll have a  
9 conference call. I'm not going to set this doing for the  
10 12th yet. I think I need more information.

11 Cartinhour is a doctor? What kind of doctor is he?

12 MR. KEARNEY: He is a physician. He has medical  
13 training. He has not practiced as a physician in probably 50  
14 years.

15 THE COURT: So he should be Dr. Cartinhour, is that  
16 it?

17 MR. KEARNEY: When he is addressed by somebody  
18 outside of this, he prefers to be called Dr. Cartinhour.

19 THE COURT: Okay. Is there anything else? Let me  
20 just check the order from last time to see where we are. We  
21 still have the four claims. If you are going to change that,  
22 let us know within the week.

23 MR. KEARNEY: Yes, Your Honor.

24 THE COURT: Dr. Cartinhour has excluded any prior  
25 bad acts. So that is now moot. Are there any other

1 questions about the order I issued? Is it accurate as far as  
2 everybody knows?

3 MR. KEARNEY: Nothing further with the order, Your  
4 Honor.

5 THE COURT: Why would you be introducing all that  
6 deposition testimony of Dr. Cartinhour? You had all those  
7 counter designations. He would be testifying --

8 MR. KEARNEY: They were merely fairness issue, Your  
9 Honor, where I think they were not quite in context. I  
10 didn't think it was particularly significant additions.  
11 There weren't pages and pages.

12 THE COURT: I didn't go through them. Do you have  
13 any objection to his counter designations?

14 MR. GRIFFIN: Your Honor, I filed a response to the  
15 counter designations.

16 THE COURT: What did it say?

17 MR. GRIFFIN: Where I put them in a chart, I hope  
18 they will be helpful.

19 MR. KEARNEY: It is document 136, Your Honor.

20 MR. GRIFFIN: Your Honor asked me to file it last  
21 Monday.

22 THE COURT: I'm not sure if I remember. Document  
23 number -- I have 139.

24 I don't know where it is. Can I see it for a  
25 minute?

1           So this means now -- I did see this, I'm sorry.  
2       Let's see plaintiff's response. Maybe it is attached to  
3       this.

4           Okay, he has withdrawn some of the designations.

5           MR. KEARNEY: Your Honor, I'm fine with all the  
6       redesignations. On one, Dr. Cartinhour said it was the  
7       agreement from hell or something along those lines. And he  
8       wants the expletive deleted out of that. I have a problem  
9       with that.

10          The last two designations, I'm still going to object  
11       to that when it is brought up as being hearsay because they  
12       are questions on, did somebody advise you, did Vezna, one of  
13       the Serbian girls, advise you not to put the last tranche of  
14       money in. The answer was Vezna didn't want me to and then  
15       something along the lines of why.

16          THE COURT: Which one are we referring to? The  
17       first designation is out, correct?

18          MR. KEARNEY: Yes.

19          THE COURT: And then what do you say as to the  
20       second?

21          MR. KEARNEY: That's fine, Your Honor.

22          THE COURT: I'm looking now at 45, four to eight.  
23       The question is the counter designation.

24          MR. KEARNEY: Your Honor, he proposes in his  
25       pleading to read 45, line four through page 48 line 11.

1 THE COURT: How about the next one, the plaintiff  
2 proposes reading 45 to 48?

3 MR. KEARNEY: That's the same thing. We combined  
4 those.

5 THE COURT: Those are now solved. I afraid if he  
6 says "hell," that's okay. Overruled as to "hell."

7 Plaintiff withdraws his designation. No problem  
8 there.

9 MR. KEARNEY: No problem.

10 THE COURT: Plaintiff wants to read 77, 13 through  
11 11.

12 MR. KEARNEY: No objection.

13 THE COURT: That's okay. No objection, no  
14 objection, no objection, no objection. I don't have these.  
15 Is there still a hearsay problem?

16 MR. KEARNEY: Yes, Your Honor.

17 THE COURT: Without seeing them, I'll have to  
18 reserve on those two. I've never seen the deposition. And  
19 nobody chose to give it to me. So we'll reserve on the last  
20 two.

21 MR. GRIFFIN: I believe a copy of the deposition  
22 transcript in the plaintiff's exhibit binder, Your Honor.

23 THE COURT: We're not giving that all to the jury  
24 anyway.

25 MR. GRIFFIN: They've been removed in the copies

1 that go to the jury.

2 THE COURT: Which number is it? Maybe I can look at  
3 it. What number exhibit is it? Here is 149, number 47 is  
4 Cartinhour.

5 MR. GRIFFIN: I believe it is 47 and 48.

6 THE COURT: All right. Okay, I go to 189. I don't  
7 think it is being offered for the truth, is it?

8 MR. GRIFFIN: No, Your Honor, it's going to notice,  
9 the Statute of Limitations issue and to assumption of the  
10 risk and contributory negligence.

11 THE COURT: This is in April '06. The statute  
12 starts three years before filing suit is October --

13 MR. KEARNEY: October.

14 MR. GRIFFIN: October 31, 2006.

15 THE COURT: I see. Okay. I'm not so sure this  
16 does -- well, it is not going for the truth.

17 MR. KEARNEY: But part of it doesn't quite explain  
18 it. At page 190 at line five: "But Vezna advised you against  
19 it?

20 "Answer: Yes.

21 "Question: Do you know why?

22 "Answer: I think she was -- had gone sour on Wade.  
23 It is not a very good word grown questioning of Wade maybe."

24 "If the statement was Wade stealing from you or  
25 something like that maybe that would go to what kind of

1 notice he had but that there was some kind of question about  
2 gone sour on him."

3 THE COURT: I don't know what grown questioning of  
4 Wade, excuse me -- you need something more to drink? I think  
5 it is not going in for the truth. Overruled those two.  
6 Okay. I don't know exactly what the jury will make of it but  
7 okay.

8 Anything else at this time other than we will have a  
9 conference call on Wednesday morning?

10 MR. KEARNEY: Would Your Honor hear us on request  
11 for injunction on the New York case?

12 THE COURT: I'm not prepared to do so. If  
13 somebody's time is going to run out, you had better do what  
14 you have to do.

15 MR. KEARNEY: Yes, Your Honor.

16 THE COURT: I would suggest, Mr. Kearney, you can  
17 reopen settlement, otherwise you are going to have to go  
18 forward and take this guy's deposition. I don't know what  
19 his health is.

20 MR. KEARNEY: Yes, Your Honor.

21 MR. GRIFFIN: Yes, Your Honor. We did have some  
22 settlement negotiations on Thanksgiving day.

23 THE COURT: That's up to you. If you need  
24 Magistrate Judge Kay, you can always, he will be happy to  
25 meet with you. He may be down there now for all I know.

1 I'm sorry. Are you talking to the record or are you  
2 just talking to him?

3 I have no idea what he said.

4 MR. KEARNEY: He had indicate that Dr. Cartinhour  
5 wasn't with Magistrate Judge Kay last time and he was.

6 THE COURT: I don't know what that is all about.

7 MR. GRIFFIN: I have some demonstrative exhibits. I  
8 don't know if the Court would want to rule on those now.

9 THE COURT: I'll look at them now.

10 Show it to them.

11 MR. KEARNEY: He has shown them to me. Some are  
12 photographs I would have a problem with that. But all they  
13 are are enlargements and I don't have a problem with that.

14 THE COURT: I've ruled on as many as I can. Some  
15 I've taken under advisement.

16 MR. GRIFFIN: They're just enlargements of some of  
17 the exhibits. The only thing that has not been ruled on are  
18 the photographs. I think they were admitted.

19 MR. KEARNEY: I think it was reserved if they were  
20 identified.

21 THE COURT: Yeah, somebody had to date them,  
22 authenticate them. So you can't use them until they go in.  
23 But once you do that, you can.

24 MR. GRIFFIN: Thank you, Your Honor.

25 THE COURT: If you want to talk to the magistrate

1 judge, go down there now. But don't waste his time.  
2 Mr. Robertson knows what he has to do to settle this I  
3 suspect. Don't waste the magistrate judge's time whatever  
4 you do. Maybe they settle for less now that they know he is  
5 sick. We'll talk on Wednesday.

6 (Whereupon, at 3:17 P.M., the hearing was  
7 concluded.)

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CERTIFICATE OF REPORTER

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Lisa Walker Griffith, RPR

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Date

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