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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
RAPOWER-3, LLC,)
INTERNATIONAL AUTOMATED)
SYSTEMS, INC., LTBI, LLC,)
R. GREGORY SHEPARD, NELDON)
JOHNSON and ROGER)
FREEBORN,)
)
Defendants,

Case No: 2:15-CV-828DN

BEFORE THE HONORABLE DAVID NUFFER

MAY 28, 2019

CLOSING ARGUMENTS AND COURT'S RULING

Reported by:
KELLY BROWN HICKEN, RPR, RMR
801-521-7238

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A P P E A R A N C E S

FOR THE U.S.:

U.S. DEPARTMENT OF JUSTICE

BY: ERIN HEALY GALLAGHER

Attorney at Law

P.O. BOX 7238

BEN FRANKLIN STATION

WASHINGTON, D.C. 20044

FOR THE DEFENDANTS:

NELSON, SNUFFER, DAHLE & POULSEN

BY: STEVEN R. PAUL

Attorneys at Law

10885 SOUTH STATE STREET

SANDY CITY, UTAH 84070

1 SALT LAKE CITY, UTAH, TUESDAY, MAY 28, 2019

2 * * * * *

3 THE COURT: We're convened again in United States
4 vs. RaPower in our contempt proceeding. We've completed
14:33:57 5 proof; is that right?

6 MS. HEALY-GALLAGHER: Yes, Your Honor.

7 THE COURT: And are there any other matters we
8 should take care before we argue?

9 MS. HEALY-GALLAGHER: Not to my knowledge.

14:34:06 10 THE COURT: Anything else, Mr. Wall?

11 MR. WALL: Nothing from Mr. Johnson.

12 MR. PAUL: Nothing that I'm aware of, Your Honor.

13 THE COURT: Okay. Then let's go ahead.

14 Ms. Healy-Gallagher or Mr. Lehr, who's going to
14:34:19 15 lead?

16 MS. HEALY-GALLAGHER: I can take the lead, Your
17 Honor.

18 THE COURT: Go ahead.

19 MS. HEALY-GALLAGHER: Would you like me at the
14:34:24 20 lectern?

21 THE COURT: Yeah. Go ahead, please.

22 MS. HEALY-GALLAGHER: Thank you, Your Honor.

23 When we filed our motion in January we pointed out
24 to the Court that there are both affirmative obligations that
14:34:45 25 the corrective receivership order places on the respondents in

1 this case, and there is also for everyone the duty to
2 cooperate with the receiver and answer questions that the
3 receiver may ask promptly and truthfully. That duty to
4 cooperate is in Paragraph 23 of the receivership order.

14:35:05 5 We've also talked about one of the affirmative
6 obligations in Paragraph 24. Paragraph 24 requires the
7 receivership defendants and their insiders to promptly turn
8 over all records relating to the receivership defendants,
9 receivership entities and their assets. And particularly
14:35:28 10 we've heard from Mr. Klein how important that is to provide
11 the receiver with a roadmap of what he can expect.

12 So that means if those documents and records are no
13 longer within their control the respondents have to provide
14 information to the receiver identifying the records what used
14:35:49 15 to exist, people in control of the records and any efforts
16 undertaken to recover the records.

17 We also talked about the particular affirmative
18 obligation that Mr. Johnson and Mr. Shepard have, which was to
19 file a sworn financial disclosure that under the corrected
14:36:17 20 receivership order was due on December 31st, 2018. A number
21 of things are required by that provision including identifying
22 all assets they received from a person or entity; all funds
23 they received from the solar energy scheme; expenditures then
24 made for themselves or on behalf of someone else of more than
14:36:40 25 \$1,000; and all asset transfers that they made. Again, this

1 is meant to provide the receiver with the information that he
2 needs to begin to investigate what property and assets and
3 money exists for any of the receivership defendants.

4 These obligations, these duties are laid out quite
14:37:06 5 clearly in the corrected receivership order. In our last
6 setting, Your Honor, you correctly identified that this is
7 written at a Fifth Grade level. It's not complex. It's not
8 hard to understand. It is as clear as the words on the page.

9 Further, the United States' motion for order to
14:37:26 10 show cause filed in January clearly identified to all
11 respondents exactly where they had failed and pointed them to
12 the receivership order so that they could understand what they
13 needed to do to cure that failure.

14 Not only that, with respect in particular to Neldon
14:37:46 15 and Glenda Johnson also in January of this year he issued
16 documents subpoenas. Because they had not made the
17 affirmative disclosures that the corrected receivership order
18 required, the receiver took it upon themselves to go out and
19 get that information. They failed to comply with those
14:38:07 20 subpoenas. Those subpoenas were also written at a very easily
21 comprehensible level that is not confusing, is not complex, is
22 clear as the words on the page.

23 For Neldon and Glenda Johnson, as well, the
24 receiver issued subpoenas for deposition. That was, of
14:38:27 25 course, because they had failed to voluntarily appear for a

1 deposition early in January. At least twice Mrs. Johnson
2 didn't show up, and at least once Mr. Johnson failed to show
3 up.

4 Since then the Court has held this is the third
14:38:48 5 evidentiary hearing on the United States' motion for order to
6 show cause. The first in April -- on April 26th highlighted
7 the gross failures of all the respondents to comply with their
8 obligations under the receivership order. The Court gave
9 specific compliance instructions to be addressed in the
14:39:09 10 following week. There was a flurry of activity. The
11 depositions were taken, some documents and materials were
12 produced, and we came back May 3rd.

13 May 3rd at the very latest we walked through
14 exactly what the outstanding failures were including for
14:39:33 15 LaGrand and Randy Johnson that had they not identified
16 documents and records that were in their possession or had
17 been in their possession; where those documents were; who had
18 them now; and importantly what, if any, efforts they had
19 undertaken to retrieve the documents from wherever they might
14:39:56 20 be at this time.

21 With respect to Glenda Johnson, we identified a
22 number of sets of documents that she was to produce, and with
23 respect to Neldon Johnson it was abundantly clear from
24 colloquy with the Court and the Court's instructions to him
14:40:14 25 that he was to obtain documents that had belonged or, in fact,

1 did still belong to the receivership entities.

2 Mr. Johnson during the May 3rd hearing claimed that
3 he was going to go to the accountants and see if they still
4 have all -- have the documents or if they know where the
14:40:42 5 documents are at. He admitted he hadn't tried to do that
6 before. Instead, in just one of his many attempts to shove
7 the burden onto Mr. Klein to comply with the receivership
8 order, he just had assumed someone else would take care of it.
9 He ignored his obligations under the plain terms of the
14:41:06 10 corrected receivership order.

11 And that quote that I was taking was from the
12 transcript from the last setting, Page 157, Lines 10 to 18.

13 Not long after that portion of Mr. Johnson's
14 statement the Court told him explicitly at Page 172 starting
14:41:26 15 at Line 17:

16 But, Mr. Johnson, it's my view that you have always
17 been under the obligation to assemble documents from any of
18 the entities, any of the entities and your personal records
19 and produced them to the receiver and that you had no
14:41:41 20 constraint against doing that.

21 Nonetheless, what we see today is Mr. Johnson again
22 attempting to foist his obligation off onto the receiver and
23 third parties and not comply with this Court's order.

24 Further, Mr. Johnson has failed to comply with his
14:42:03 25 affirmative obligation under Paragraph 26. He has provided

1 general assertions with respect to his financial life since
2 2005. He's first disclaimed having any information, and then,
3 you know, things trickle out. And, oh, well, you know, as of
4 May 21st Mr. Johnson decided to start compiling a list of bank
14:42:31 5 accounts that he may have used since 2005. That obligation
6 was incumbent upon him when he received this receivership
7 order to have that ready for the deadline that it states.
8 Those are just a couple of examples of the failures that we've
9 shown on behalf of Neldon Johnson.

14:42:50 10 All of the respondents to the extent that they have
11 come into compliance at all have done so only after the
12 United States' motion was filed and generally after the first
13 evidentiary hearing, much less after May 3rd. Therefore, Your
14 Honor, I ask for a finding of contempt for failure to comply
14:43:21 15 with the corrected receivership order be entered against all
16 respondents, even if, as I will discuss, you find that some
17 may have purged some level of that contempt as of today.

18 And as this court found -- well, observed last time
19 in the transcript Page 191 starting at Line 12:

14:43:47 20 The essential elements of contempt are fairly
21 simple. And they, meaning the respondents -- excuse me --
22 they are that they meaning the respondents are aware of an
23 order and, in fact, there is an acknowledgement that they
24 receive it. It is a valid court order. And the evidence so
14:44:07 25 far before me shows that none of them have complied adequately

1 with the order and still continue not to.

2 While some additional compliance has been had since
3 May 3rd, it is not complete. So, for example, with respect to
4 Randale and LaGrand Johnson, we have shown that they filed
14:44:35 5 declarations with this court that were false stating that they
6 didn't have any records. Only later did they deliver
7 documents after the April 26th hearing which documents should
8 have been produced promptly. There's still no information
9 today as far as what documents existed that they ever had or
14:44:59 10 saw or had control over, where the docs went, where the
11 documents went after they were in either LaGrand or Randy's
12 possession, and neither of them articulated any efforts to get
13 them back. So they remain noncompliant with Paragraph 24 of
14 the corrected receivership order. Therefore, we ask that you
14:45:24 15 enter a finding of civil contempt, they're guilty of civil
16 contempt, even if you also find that they may have delivered
17 some documents.

18 For that contempt we ask that the Court enter an
19 order that they be find \$1,000 per day up to seven days. If
14:45:48 20 they comply with their obligations at the end of those seven
21 days we ask that the Court order the fine be stricken. If
22 they do not comply at the end of seven days we ask for a
23 course of incarceration until they comply.

24 As for --

14:46:19 25 THE COURT: Let me stop right there. Mr. LaGrand

1 Johnson, Mr. Randale Johnson. The biggest deficiencies now
2 are, there's one past deficiency that they made no efforts to
3 obtain documents. They made no efforts to obtain them from
4 third parties. They simply pointed you to them. Do you have
14:46:41 5 any evidence that they have documents in their possession that
6 they have not produced?

7 MS. HEALY-GALLAGHER: We don't, Your Honor; because
8 they also have not articulated what documents existed such
9 that -- at any point such that we could know. And I would
14:47:02 10 note here, Your Honor, we talked a lot about corporate books
11 and records. It also was clear from exhibits and testimony at
12 trial that there is a domain IAS.com, and both LaGrand and
13 Randale Johnson and Neldon Johnson for that matter have e-mail
14 addresses connected with that domain, and none of those
14:47:25 15 records have been turned over to the receiver.

16 So we're able to articulate what, for example,
17 Mr. Klein would expect to see from a publicly held company
18 and, you know, officers of that company what he would expect
19 them to have in their records. But because they have not
14:47:44 20 articulated what they had we can't know what now Mr. Klein
21 doesn't have.

22 As for Glenda Johnson, Mrs. Johnson has it seems
23 made substantial efforts to provide documents and information
24 to the receiver. That said, she remains in continued
14:48:13 25 noncompliance with her obligations under the corrected

1 receivership order and the subpoenas that Mr. Klein -- I'm
2 sorry -- the subpoena singular that he issued to her for the
3 production of documents primarily in failing to complete her
4 production of banking records even after the receiver did the
14:48:33 5 work of identifying missing statements and years. And those,
6 Your Honor, missing pages and statements can be found at
7 Plaintiff's Exhibit 952 from Mr. Klein's testimony today; and
8 there have been some the banking records from 2013 to the
9 present, which the Court ordered to be produced no later than
14:48:55 10 May 17th.

11 Here I would also note, Your Honor, that in the
12 order you entered on Friday, there was a provision including a
13 requirement that Mrs. Johnson account for the cash withdrawals
14 that she had made from her account which included funds from
14:49:20 15 Cobblestone, withdrawals that she had made since the entry of
16 the asset freeze order on August 22nd. I will say there, I
17 rechecked my notes, and during the hearing on May 3rd you did
18 not -- you had not required a particular date certain for that
19 accounting to be done. So we're not arguing that she's not in
14:49:45 20 compliance with that order, but we would ask that that
21 accounting be completed within seven days.

22 So for Mrs. Glenda Johnson in terms of the relief
23 that we're requesting that the Court enter a finding that she
24 is in contempt as of today and has been in contempt since the
14:50:12 25 beginning of the proceedings, some of which she may have

1 purged. But nonetheless, she remains in contempt as of today.
2 And if she does not comply with the completion of her
3 production of banking records within seven days, have the same
4 results as with respect to Randale and LaGrand Johnson, a fine
14:50:38 5 of \$1,000 per day up to seven days. If compliance is obtained
6 within seven days, the fine be stricken, and if she remains
7 noncompliant after seven days, a course of incarceration.
8 And, of course, with respect to both -- well, with respect to
9 all of the Johnsons any fine that would be entered would need
14:51:01 10 to be from non-receivership assets.

11 THE COURT: Let me ask again about the biggest
12 efficiency you see in Ms. Glenda Johnson's response. Is it
13 the banking records and the missing statements that have
14 already been listed for her to provide?

14:51:20 15 MS. HEALY-GALLAGHER: Those are part of the banking
16 records, and then we have the order that she produce
17 documents, banking records from 2013. I believe that she had
18 produced banking records from 2016 to the present, if I'm not
19 mistaken. Among those records there were gaps that Mr. Klein
14:51:42 20 identified, but in the last setting the Court required her to
21 go back to at least 2013.

22 THE COURT: And do you have any of her banking
23 records from 2013, '14, and '15?

24 MS. HEALY-GALLAGHER: Mr. Klein can address that.

14:51:56 25 MR. KLEIN: Yes, Your Honor.

1 THE COURT: You do?

2 MR. KLEIN: Yes, we have some.

3 THE COURT: But there's deficiencies there?

4 MR. KLEIN: Yes.

14:52:03 5 THE COURT: Has a list been provided to Miss Glenda
6 Johnson?

7 MR. KLEIN: To her attorney, Your Honor.

8 THE COURT: When was that provided?

9 MR. PAUL: That was May 6th, Your Honor.

14:52:14 10 THE COURT: Okay.

11 MS. HEALY-GALLAGHER: Well, then, perhaps I
12 misunderstood. Is the May 6th e-mail the entirety of what is
13 missing?

14 MR. KLEIN: No. May 6 list was identifying missing
14:52:27 15 pages among documents she had provided.

16 THE COURT: Okay. Do we have a list of the records
17 which are missing?

18 MR. KLEIN: I do not think that I have done an
19 inventory of all the records we have to identify all of the
14:52:50 20 missing ones, no.

21 THE COURT: Okay. Okay. Thank you.

22 MS. HEALY-GALLAGHER: And at this point, Your
23 Honor, to the extent that the Court is interested in such an
24 inventory, the burden is on Mrs. Johnson to identify what she
14:53:04 25 has produced to demonstrate her compliance.

1 THE COURT: Thank you.

2 MS. HEALY-GALLAGHER: With respect to Greg Shepard,
3 from Mr. Klein's testimony today and the efforts that he has
4 undertaken, it appears that Mr. Shepard may no longer be in
14:53:31 5 contempt or be in violation of the corrected receivership
6 order. Nonetheless, we would ask that the Court find him in
7 contempt and that he had purged that contempt as of May 23rd,
8 at least to the best of our knowledge, because Mr. Klein, of
9 course, did testify to surprise in terms of new documents that
14:53:56 10 were produced that day. But as Mr. Klein testified, he does
11 not know that he is missing any information from
12 Mr. Shepard at this time.

13 Then as for Neldon Johnson, each of these hearings
14 has resulted in a litany of reasons that Mr. Johnson is in
14:54:34 15 violation of the corrected receivership order. He has failed
16 to produce documents that he was ordered to produce even when
17 this Court instructed him personally that he was under that
18 obligation. He has failed to meet his obligations to provide
19 information about his assets, about his bank accounts, about
14:55:03 20 shares of stock that he may own or not own. Who can really
21 tell? The answer is no one can because the records have not
22 been produced.

23 He continually attempts to foist his burden imposed
24 by the receivership order onto other people and entities.
14:55:26 25 Well, Mr. Klein should go call the accountant. Well, Pacific

1 Stock Transfer has all of this information. Why don't you go
2 get it from them? That is not what the receivership order
3 requires. The receivership order requires him to undertake
4 actions to meet his duties. And he has consistently failed to
14:55:52 5 do that.

6 What we have seen from Mr. Johnson is that court
7 orders do not work to compel his compliance with the law.
8 Fines are not likely to work to compel his compliance with
9 this Court's orders. Therefore, we are asking that
14:56:14 10 Mr. Johnson be incarcerated until he complies with his
11 obligations under the corrected receivership order.

12 This is appropriate under US v. Ford,
13 514 F.3d 1047, 10th Circuit, 2008. If this court were to
14 order a course of incarceration it would be solely to enforce
14:56:48 15 Mr. Johnson's compliance with the corrected receivership
16 order. In that way, Mr. Johnson would hold the keys to the
17 jailhouse door. He could comply, and then he could get out.

18 THE COURT: Tell me the name of that case again.

19 MS. HEALY-GALLAGHER: US v. Ford, F-O-R-D.

14:57:12 20 THE COURT: And the citation?

21 MS. HEALY-GALLAGHER: 514 F.3d. 1047.

22 THE COURT: Thanks.

23 MS. HEALY-GALLAGHER: That is what we're asking,
24 Your Honor. We have met our burden of showing that all
14:57:28 25 respondents in some fashion or another have been or continue

1 to be in violation of the corrected receivership order. If
2 the respondents -- well, I take that back. Because the
3 United States has met its burden, the burden shifts to the
4 respondents to show either that they have complied with the
14:57:54 5 corrected receivership order or that it's impossible for them
6 to comply with the corrected receivership order, and not one
7 respondent has made either of those two showings.

8 For all of these reasons we ask that the Court
9 enter the findings of contempt and the relief that we've
14:58:27 10 requested. We also ask that the Court order that all
11 respondents are jointly and severally liable to pay the fees
12 and costs for the United States in bringing this motion. And
13 we ask that the Court make whatever referral for criminal
14 contempt may be appropriate over to the United States
14:58:52 15 Attorney's Office.

16 THE COURT: Let me ask, where do we go from here
17 with regard to accomplishing the purposes of the receivership?
18 We still don't really know what's in the 31 boxes, on the
19 thumb drive, on the computer; right?

14:59:16 20 MS. HEALY-GALLAGHER: Well, there are people who
21 know, and they are the respondents in this matter. They chose
22 not to present to the Court exactly what was in those
23 materials to demonstrate that they had met their burden under
24 the receivership order.

14:59:30 25 THE COURT: I totally agree with you there. But

1 I'm interested in how we get the receiver in possession of all
2 the information. It may be that he'll go through there and
3 find out that the boxes are stuffed with year-old newspapers,
4 that there's really nothing useful and we haven't really moved
14:59:46 5 forward here. But it may be that there is 30 percent of what
6 would be anticipated to be there missing, and then we would
7 know that the receiver needs more.

8 My suspicion is that this was a publicly-held
9 company in name but not in practice and that it was operated
15:00:10 10 and probably the other entities, too, in a very casual
11 haphazard manner, and that we won't ever see records that
12 should be present. Mr. Johnson's testimony at trial was that
13 he could do anything he wanted with the companies and run them
14 the way he wanted, and that doesn't suggest to me that there's
15:00:28 15 ever going to be documentation of what happened. But the
16 receiver's going to have to fill in gaps.

17 But I'm interested in just information gathering,
18 not contempt, but on an information gathering what would be
19 the next step after the receiver looks at all of this
15:00:45 20 information? Maybe we shouldn't reconvene. Maybe it should
21 be another separate motion for an order to show cause. But
22 one thing I think that's developed out of these hearings is
23 that for some reason the responding parties have finally
24 realized they have to do something, and they've produced
15:01:01 25 massive amounts of information which was long available to

1 them. And they took no effort to do it beforehand, but
2 somehow the heavens parted and now they see that they should
3 do some things. I'm not convinced there's not another 15 or
4 30 boxes out there. I don't know. They haven't told us if
15:01:20 5 there are or aren't. We have no accounting.

6 So what do we -- do we need to do anything further
7 to ensure that the receiver has the best information other
8 than what the remedies you're proposing?

9 MS. HEALY-GALLAGHER: Well, I would defer to
15:01:37 10 Mr. Klein on that.

11 THE COURT: Okay. Mr. Klein or Mr. Lehr?

12 MR. KLEIN: Your Honor, I've been through the boxes
13 so I know what's in the boxes.

14 THE COURT: Okay.

15:01:47 15 MR. KLEIN: That doesn't answer the question about
16 what isn't there.

17 THE COURT: Yeah.

18 MR. KLEIN: So what -- it would be very helpful to
19 me to have an explanation from the defendants or the
15:02:02 20 respondents as to whether or not other documents are there or
21 if they've had other documents where they are. We've had
22 prior indications they were at Snell and Wilmer or the
23 accountant Gary Peterson.

24 So if they can identify -- if they can state, for
15:02:23 25 example, that the corporate resolutions and the corporate

1 minutes we provided to you are the only minutes that exist,
2 that would help me. That answers the question as to whether
3 or not I should be looking for more. If they tell me that the
4 confirmation statements from the brokerage firm identifying
15:02:46 5 what stock sales have occurred from 2003 through 2007 that
6 those are the only stock sales, that would help me. If they
7 say there were other stock sales and I don't have the confirms
8 that would also help me. But I need some sort of explanation
9 about what my expectation is for what I don't have.

15:03:09 10 MR. WALL: I apologize. My computer has decided to
11 talk.

12 THE COURT: You're just lucky that didn't happen
13 during your homicide sentencing.

14 MR. LEHR: Your Honor, we would think that what
15:03:21 15 Mr. Klein just talked about is clearly accounted for under
16 Paragraph 24 in the last sentence. They have to identify and
17 explain the efforts they have undertaken, as well. We think
18 that burden is on them.

19 THE COURT: This is what baffles me here. We have
15:03:37 20 a record with the receivership order, the motion made things
21 clear it relied on receivership reports and summaries 552 and
22 557. We've had multiple hearings now. We have received
23 documents, but we still don't have a statement of anything
24 that's been done or what else is out there. They just parked
15:04:06 25 that on your doorstep and walked away. So I don't know how we

1 get them to do something that they seem determined not to do.

2 MR. KLEIN: I don't have an answer for that, Your
3 Honor.

4 THE COURT: Okay. All right.

15:04:23 5 MS. HEALY-GALLAGHER: One answer is the course of
6 sanctions that we've proposed.

7 THE COURT: Yeah. All right. Anything else,
8 Miss Healy-Gallagher?

9 MS. HEALY-GALLAGHER: And I would just -- Your
15:04:33 10 Honor is well aware after three settings on this. But even if
11 in an ideal world the documents delivered to Mr. Klein contain
12 the universe of documents, Neldon Johnson remains in outright
13 defiance of this Court's order by not providing the sworn
14 accounting in the detail required in black and white in
15:04:58 15 Paragraph 26.

16 THE COURT: Okay. Thank you.

17 Mr. Wall, do you want to go first?

18 MR. WALL: Sure.

19 THE COURT: Go ahead.

15:05:08 20 MR. WALL: Your Honor, I think that it's pretty
21 straight forward with regard to the outset that noncompliance
22 is in place in this case.

23 THE COURT: Uh-huh (affirmative).

24 MR. WALL: So I think the Court asks the most
15:05:24 25 appropriate question, and that is, where do we go from here?

1 How does one secure compliance? And I would suggest that
2 where we go from here and securing compliance also goes hand
3 in hand with whether or not there has been willful conduct in
4 contempt of the Court's order or whether it's been non-willful
15:05:45 5 due to the manner and the way in which Mr. Nelson (sic) has
6 read and construed the Court's order. One of the things that
7 stands out and has stood out to me since the moment I got this
8 case and started reviewing the documents is that in particular
9 with regard to his declaration it provides assertions, but it
15:06:07 10 doesn't contain affirmative representations. In other words,
11 it says, I provided you all the documents, but it doesn't
12 contain affirmative representations that are, in fact,
13 delineated in Paragraph 26 of the Court's order with regard to
14 the appointment of receiver that seeks the itemization of
15:06:30 15 information. But I think also in what we've heard here and is
16 not in that order a representation to the effect that there is
17 nothing further than that which has been disclosed.

18 So what I'm suggesting first overall is that the
19 Court not find my client in contempt at this time but reserve
15:06:51 20 judgment on that and put in place a program whereby I think
21 everything that needs to be done can be achieved. And if it
22 can't, if for whatever reason this program does not work, then
23 I think that the Court's going to be able to find that that's
24 very strong evidence of willful noncompliance and contemptuous
15:07:15 25 conduct. If on the other hand they move forward as you

1 indicated they've suddenly started responding I would submit
2 that that's because they are starting, in particular my client
3 is starting to see that the way to read or construe the
4 Court's order might not be in line with what they originally
15:07:33 5 perceived and now they're moving forward. And if the Court
6 gets the information that's necessary, then obviously that
7 indicates that the noncompliance wasn't willful, but it was a
8 failure to read and understand and appreciate the detail that
9 the Court has required in its order. We're not contesting
15:07:52 10 that the Court's order isn't clear with regard to detail. The
11 issue has been the way in which it has been appreciated and
12 comprehended by my client.

13 So what I would suggest, Your Honor, is, and I
14 don't know that a seven-day period is sufficient. But I think
15:08:10 15 that what Mr. Klein has indicated he needs is a roadmap, and
16 that roadmap needs to be very clearly delineated, and the
17 Court's order requires that. The problem is he doesn't have
18 one now. And absent ever having a roadmap he's literally
19 going to be looking at this pile of material trying to sort
15:08:31 20 through it and figure out what it means.

21 And that roadmap would be a declaration with
22 affirmative representations regarding accounts that do exist
23 and all the relevant information he related with regard to
24 those accounts and who holds them and when they were held and
15:08:47 25 if they were closed who closed them and where things were

1 transferred, but also after disclosing all of those accounts
2 that there are no further accounts. Same with regard to
3 stocks. Same with regard to real estate. Same with regard to
4 any kind of asset, and fulfill the Court's request with regard
15:09:07 5 to that, but also the disclosure that there's nothing further
6 to be found.

7 Now as I think everyone is aware, if an affirmative
8 representation is made, for example, that there is only one
9 account and there are no others and, in fact, it turns out in
15:09:22 10 are others, then that's not only contemptuous, but it
11 constitutes perjury. And that puts a very strong influence in
12 not only seeing to it that the records and the information is
13 complete but also with my client, who I perceive and I would
14 represent has not been willful, that it will go along way to
15:09:45 15 show that he has not willfully been in contempt of this court
16 and can purge that.

17 The value of that roadmap is clear because it will
18 allow the receiver to, in fact, see if the roadmap matches the
19 road that he finds, matches the documents, information,
15:10:03 20 records. I'm talking too fast for the court reporter, I
21 think.

22 But that will allow the receiver to assess all of
23 the assets that are present and more particularly benefit all
24 sides in that the receiver can then figure out what proceeds
15:10:18 25 come from this, the various enterprises and activities and

1 what proceeds, what funds come from their own private
2 resources such as inheritances and other funds that they had
3 from before.

4 I'm not going to speak to the specifics with regard
15:10:34 5 to the various aspects, but I will point out, Your Honor, if
6 the Court finds my client in contempt and places him in
7 custody he has repeatedly stated not throughout -- not only
8 throughout his deposition but I think with regard to
9 everything that where he doesn't have the records, he doesn't
15:10:53 10 know and he doesn't remember, he would literally be sitting in
11 jail, and he's not going to perceive or remember all of the
12 records and documents and be able to put them together while
13 sitting in custody. He's just going to be sitting in custody.
14 So he may have the keys to his own cell, but lacking the
15:11:12 15 documents and information, which he has now affirmatively
16 represented all have been provided to the receiver, he's not
17 going to be able to reconstruct anything.

18 So what I would suggest, Your Honor, is, and this
19 is a serious contempt proceeding which has custodial
15:11:29 20 consequences which justify my presence here under the Criminal
21 Justice Act, but also that the Court consider adding to the
22 team that I have under the Criminal Justice Act a paralegal or
23 an assistant that would assist in going through in detail not
24 only with my client what he recalls but also going through the
15:11:55 25 documents and materials that have been turned over to

1 Mr. Klein so that he can put together a clear roadmap.

2 To do that, one of two things has to occur. One
3 would be that we have access to materials that are now in the
4 possession of the receiver directly. The second alternative
15:12:15 5 would be to have a reproduction made of the documents and
6 materials that are in the possession of the receiver. And I
7 don't know how Mr. Klein would feel about having someone come
8 into his office, but I could represent to the Court that that
9 individual would either be if it's a legal assistant an
15:12:34 10 attorney that would be appointed as an assistant under the CJA
11 panel structure or a paralegal that would be working for me.
12 That's to secure the documents, make sure that nothing gets
13 moved around. But also it would be tremendously helpful to
14 have copies of the digital information and then have this
15:12:53 15 project of literally my client working with me and my team
16 putting together a declaration which is a roadmap. But also
17 in doing that, and I know that Mr. Klein's gone to the extent
18 of doing this, he's put together Bates stamp numbers with
19 regard to all of this, and we could put together specifically
15:13:14 20 where he could find it.

21 I know that extends what has been going on here in
22 this case literally for six months or more. But at this point
23 we are seeing responses. And with those responses I think
24 that we can keep things moving forward. And I would suggest
15:13:30 25 that rather than the sanction of putting my client in custody

1 and waiting to see what happens that the Court not place my
2 client in custody, but require my client to fully cooperate
3 with me and my team and have a review hearing in 30 days to
4 see where we are and what kind of progress has been made.

15:13:48

5 And, Your Honor, I would be seeking on my team individuals who
6 can devote substantial periods of time to getting it done,
7 because it sound like, although you know we've dealt with
8 cases that are much larger, it sounds like something needs to
9 be done quickly. And then if progress has, in fact, been made
10 in 30 days, then you're going to see that this is headed in
11 the direction of not being willful contempt.

15:14:05

12 And quite frankly, if me in my efforts and my team
13 find that we run into the same kinds of roadblocks that this
14 court has had throughout, what appears to be its frustration,
15 I anticipate we won't, but if we run into the same kind of
16 roadblocks, then the Court will obviously know that this is a
17 willful contemptuous situation.

15:14:24

18 I know there's some other pending motions that can
19 be filed, we'll address those as they come along, but I think
20 that gives you a plan to make progress.

15:14:39

21 THE COURT: Let's talk about the plan. You know
22 the volume of the documents. You haven't actually seen the
23 31 boxes, though.

24 MR. WALL: I haven't. But, Your Honor, there's
25 only about 3,000 pages per box. And so if you do the math,

15:14:51

1 and it's not overwhelming when one has, if you will, a guide.
2 And my client will be the person who will be the guide. If
3 you're just looking at documents and try to sort it out, which
4 I do in most of my cases, it's a fascinating experience, but I
15:15:10 5 get pretty good at it. But on this situation I'll have an
6 individual who can say, here's what I recall with regard to
7 accounts that I had. He's not going to be making statements
8 under oath. He's going to be talking to me. And we can then
9 structure looking through the documents and materials to
15:15:26 10 identify where those are, but also can tell us, for example,
11 I've never had an X, Y, Z. And we can make an affirmative
12 declaration that, you're not going to find those in the
13 documents because they don't exist. And hypothetically, and
14 we already know there are some board meetings. But if my
15:15:46 15 client were to tell me, you know, there was never anyone who
16 kept minutes for the board, well, we don't need to look
17 further. We know, and we can make those affirmative
18 representations where things don't exist which will narrow
19 substantially what it is that needs to be done by the
15:16:00 20 receiver. But also with the assistance of my client having
21 originally been involved with those documents, it should not
22 be as onerous as one might think with something like, you
23 know, 30,000 documents.

24 THE COURT: Knowing the size of the data that we
15:16:18 25 have to deal with but not knowing what's on the computer, but

1 knowing what the receivership order requires, when would you
2 have a draft of the declaration ready?

3 MR. WALL: Your Honor, if the Court were to have us
4 do that, I would shoot -- my target would be to have a draft
15:16:39 5 ready in about three weeks and would require that I have a
6 legal assistant and a paralegal work on it and focus on it
7 full-time. But I think in three weeks we could have a draft.
8 And quite frankly, I would shoot to have that draft -- not
9 just a draft, I mean I can tell you that I have a draft.

15:17:02 10 THE COURT: Here's what I intend to do, and that's
11 why I'm letting you set your own deadline also known as lay
12 your own trap --

13 MR. WALL: We've done this before in many cases,
14 Your Honor.

15:17:15 15 THE COURT: Yeah. You say you need three weeks,
16 the 21st of June. If you were to deliver a draft to the
17 receiver and the United States they could return comments
18 within 10 days, and then you would make your final submission.
19 I think that you are telling me that this can be done, that
15:17:37 20 you understand what needs to be done. I believe in your
21 ability to do it. I would have no hesitation granting you the
22 staff that you need to do it.

23 And as I say this, I'm going to find your client in
24 contempt. I'm not going to incarcerate him right now, but I'm
15:17:57 25 clearly going to find him in contempt. There's no other way

1 to describe it. It's stunning contempt, and I'm going to find
2 findings in a minute. But I'm interested in having this
3 receivership go forward, and I don't want to punish
4 Mr. Johnson unnecessarily. But if you get the resources and
15:18:13 5 you've got the time and it's still nonresponsive and
6 insufficient, he is going to be incarcerated. I think you
7 know that, and that's why you're laying out the plan that you
8 have, because I have to have a solution and he's the guy. And
9 if he's not going to guide me, then I'm going to make him
15:18:37 10 guide me.

11 MR. WALL: And, Your Honor, I know in these
12 circumstances the requirement is that my client cooperate with
13 me at all times in all manner and attend every meeting.

14 THE COURT: Yeah.

15:18:49 15 MR. WALL: And that there not be any delay --

16 THE COURT: Yeah.

17 MR. WALL: -- or failure to attend and the like. I
18 think that can be done. I may be the only attorney in this
19 room who has had clients spend substantial periods of time if
15:19:03 20 not life in prison. But I've dealt with these cases before,
21 and I know that when focused and motivated my clients can come
22 through. And quite frankly, I find that Mr. Johnson is a very
23 gifted person. He's very bright. But I think having the
24 actual materials to assist him, which is a key factor, is
15:19:22 25 critical.

1 So I'll let the United States and Mr. Klein speak
2 to how they will make those materials available, whether it's
3 directly at their office or through copies. Quite clearly the
4 most efficient way would not to messing around making copies,
15:19:36 5 but to let -- give us access to them directly.

6 With regard to the digital information, they can
7 easily mirror the hard drive that they have. I don't know
8 that that would be something they can do. But I don't know.
9 They keep referring to some forensic lab they took it to. I
15:19:56 10 think it might be Rocky Mountain Forensic Crime Lab they took
11 it to, but if not some other organization. They should be
12 able to make immediate duplicates of that hard drive, which
13 I've dealt before as well as the flash drive.

14 So I really think we can do this if everybody is
15:20:12 15 willing to do this and if everybody is willing to work with
16 one other. And quite frankly, the failure of any party to
17 cooperate can be brought to the attention of the Court.

18 THE COURT: So, Mr. Klein, let me speak to this
19 issue of access that Mr. Wall talks about. This happens a lot
15:20:28 20 in criminal cases, too. We take the documents away from them
21 and we ask them to develop their case. And usually in those
22 cases everything gets duplicated and sent back to the person
23 who has the search warrant. What do you propose here? You've
24 dealt with these receivership circumstances where some of the
15:20:46 25 requirements are made and often there's a criminal proceeding.

1 How do we handle access so that we can have a reasonable
2 expectation of Mr. Johnson saying, here's what I've provided.
3 Here's what I know is available somewhere. Here's what never
4 existed.

15:21:00

5 MR. KLEIN: A number of observations, Your Honor.
6 One is that I know there was an IRS criminal investigation
7 that took some records at some earlier point, and then they
8 copied those records and gave them back. So I don't know the
9 extent. So --

15:21:22

10 THE COURT: That was 2012; that is right? Who
11 remembers when that search was executed?

12 MS. HEALY-GALLAGHER: The search was executed in
13 2012. It is my understanding that all of those records were
14 returned.

15:21:34

15 MR. KLEIN: But more specifically, here's what I
16 think are some fairly easy answers.

17 THE COURT: Boy, that's the best thing I've heard
18 today.

15:21:53

19 MR. KLEIN: For the first 16 boxes I sent them out
20 to be imaged and to have Bates numbers applied. So I will end
21 up with an electronic hard drive that has those documents, and
22 they will have, should have Bates numbers on them.

23 For the subsequent 15 boxes there are not
24 sufficient documents in there that I think are justified to
15:22:21 25 scan them and affix Bates numbers, but I will make them

1 available to Mr. Wall and his paralegal or assistant even
2 though -- you know, I'm even willing to check those boxes out
3 to him.

15:22:40

4 THE COURT: How is it that there are 16 boxes with
5 not enough to image and Bates stamp? I don't understand. Is
6 there just a few documents in each box?

7 MR. KLEIN: No. No. No. It's that the documents
8 in them don't have probative value --

9 THE COURT: Oh.

15:22:53

10 MR. KLEIN: -- that I want to justify the expense
11 of doing that.

12 THE COURT: Okay. I see then.

15:23:05

13 MR. KLEIN: As to the computer that has been
14 imaged, and I've got a drive and I can copy that drive and
15 give it to him, give to Mr. Wall. So in terms of the hard
16 copy documents and the computer, I guess we consider those
17 three different pieces, I will have electronic drives with two
18 of them, and for the third batch I will be willing to let him
19 look at them in my office or check those boxes out to him.

15:23:29

20 THE COURT: Let's talk about the computer for a
21 minute because I thought it had crashed and couldn't be
22 operated, but apparently we recovered data?

23

24 MR. WALL: He testified that it would be about two
15:23:43 25 weeks before he had the opportunity to fully evaluate. He
didn't testify about when he would receive back.

1 MR. KLEIN: I have a drive that contains the copy,
2 contains a copy of data from the laptop.

3 THE COURT: Okay.

15:23:57

4 MR. KLEIN: And that drive can be copied and a copy
5 given to Mr. Wall.

6 THE COURT: Okay. So the original computer doesn't
7 run, but we've got the data off of it.

15:24:08

8 MR. KLEIN: I don't know if the original computer
9 runs. You know, the forensic people were able to extract the
10 data. And I don't yet know whether or not there was any
11 corruption, whether or not there are any deletions, but I do
12 have a drive that contains the contents of the computer.

13 THE COURT: And what is on the flash drive and what
14 was its genesis?

15:24:26

15 MR. KLEIN: The flash drive was delivered on
16 May 17th along with the boxes of documents. And so it's a
17 flash drive that I believe was represented to contain IAS
18 materials that for some reason they had electronically.

15:24:51

19 MR. WALL: And it may contain QuickBooks
20 information, as well.

21 THE COURT: And the laptop had QuickBooks
22 information.

23 MR. KLEIN: Yes.

15:24:59

24 THE COURT: Okay. So does anybody here know, and,
25 Mr. Paul, I'm asking you, too, was that flash drive taken from

1 this laptop at this point or is there another computer out
2 there?

3 MR. PAUL: I don't know the answer to that.

4 THE COURT: Who does?

15:25:09 5 MR. PAUL: I suppose the Johnsons may know.

6 THE COURT: Okay. Let's while we're doing this
7 take a minute and talk to them.

8 MR. WALL: And I visited with my client. He
9 doesn't have any understanding of --

15:25:20 10 THE COURT: You're talking about LaGrand and
11 Randale; right, Mr. Paul?

12 MR. PAUL: I'll step outside for a minute with the
13 three of them, if I may, and it will only take a moment.

14 THE COURT: Let's do that. We're going to just
15:25:35 15 stay right here and let you do that.

16 (Time lapse.)

17 MR. WALL: Your Honor, it's my understanding that
18 the flash drive may substantially be duplicatus of what is on
19 the imaged hard drive because the source of the original data
15:31:02 20 that ended up on the flash drive was that computer. The only
21 issue is one of timing because the flash drive was created at
22 a time separate and different from the timeline when the
23 computer crashed.

24 THE COURT: All right. Thanks. That helps.

15:31:18 25 All right. Anything else, Mr. Wall?

1 MR. WALL: No, Your Honor; unless the Court has any
2 questions.

3 THE COURT: I don't think so.

4 Mr. Paul, did you want to be heard?

15:31:26 5 MR. PAUL: I do, Your Honor. Thank you.

6 As the Court is aware, I'm here today representing
7 Glenda Johnson, Randale Johnson and LaGrand Johnson. I would
8 like to share in conclusion today first regarding
9 Mrs. Johnson, Mrs. Glenda Johnson. And we understand there
10 are two bases on which we're here today, her disclosure
11 obligation under Section 24 of the corrected receivership
12 order, as well as the deposition subpoena which she received.
13 And I believe it's clear that at this point she didn't fully
14 understand the scope of what she was required to disclose.

15:32:35 15 As the Court is well aware there were some issues
16 surrounding the depositions, and she was unfortunately caught
17 up in the wake of Neldon Johnson's defenses to the depositions
18 and essentially followed his lead, but since that time has
19 been forthright in this matter providing the documents and
15:32:58 20 deposition testimony after this Court's original hearing as
21 well as providing substantial documents during the course of
22 these proceedings. And it has essentially been a full-time
23 job for Mrs. Johnson to compile and organize the production to
24 the receiver and has provided everything that is within her
15:33:23 25 control and power that she's aware of.

1 We believe that at this point she is now compliant.
2 Today the receiver said the only thing he was missing from
3 Mrs. Johnson are specifically identified bank records. And as
4 indicated in the boxes that were produced it was
15:33:41 5 Mrs. Johnson's understanding that those bank records were also
6 produced together with the boxes. And if there are still
7 shortcomings she is certainly willing to provide additional
8 bank records. And in my conversations with Mr. Klein, I've
9 committed and we've committed to cooperate to make sure that
15:34:02 10 those records are produced.

11 Mr. Klein said that he was not sure today what had
12 or had not been produced, and he has no reason today to doubt
13 that Glenda Johnson is in substantially full compliance,
14 although I think there was some misunderstanding, even my own
15:34:22 15 misunderstanding of what the spreadsheet entailed and what the
16 obligation was to comply with the spreadsheet because there
17 were certain highlighted portions on the spreadsheet. I
18 understood that those highlighted portions are what was
19 missing, but the spreadsheet was a complete list of what had
15:34:40 20 been produced, and there were highlights what was missing
21 where I think the actual intent of the spreadsheet was an
22 overall picture of what was missing.

23 THE COURT: But from 2016 forward, right,
24 Mr. Klein? The spreadsheet does not enumerate anything
15:34:56 25 missing before 2016?

1 MR. KLEIN: The spreadsheet enumerates some items
2 missing from '14, '15 -- starting in '14, 2014.

3 THE COURT: Okay. Do you think it's an exhaustive
4 list of what's missing in 2014 forward?

15:35:24 5 MR. KLEIN: No. What this list is, Glenda Johnson
6 provided some bank records, and so this list was an
7 identification of what was missing among the records she did
8 produce.

9 THE COURT: Okay. But she didn't produce an
15:35:40 10 overall picture of all the bank records. She didn't list what
11 all the accounts were and so you don't know; is that right?

12 MR. KLEIN: Correct.

13 MR. PAUL: Well, I do believe she's provided a list
14 of what accounts exist.

15:35:54 15 THE COURT: Where is that?

16 MR. PAUL: Am I misunderstanding?

17 THE COURT: Is that in one of her compliance
18 declarations?

19 MR. PAUL: I believe it's in the documents. I
15:36:06 20 don't think she's provided -- well, she has provided
21 compliance to this declaration.

22 MS. HEALY-GALLAGHER: Your Honor, this is one
23 example of information that the respondents could have
24 provided if they felt they had complied with the order.

15:36:20 25 THE COURT: She filed a two-page declaration on

1 April 29th, and it's --

2 MR. PAUL: I believe during the course of her
3 deposition as well as documents that have been produced after
4 her deposition in the course of these proceedings that a
15:36:39 5 complete list of all of the accounts have been provided. If
6 that's not the case, then we certainly are willing to provide
7 that.

8 THE COURT: Is it in evidence? I don't see it in
9 evidence.

15:36:50 10 MR. PAUL: I don't believe it's in evidence, but it
11 has been provided to the receiver, is my understanding.

12 THE COURT: Well, the whole purpose of this
13 hearing, Mr. Paul, is to find out what's been done.

14 MR. PAUL: I haven't heard today, this is the first
15:37:02 15 time I've heard today that there hasn't been compliance with
16 providing information as to all of her bank accounts. My
17 understanding was we have a list of missing statements,
18 because she has produced all of the information regarding all
19 of her accounts. I mean, that would be in addition to.

15:37:19 20 THE COURT: How do you know that if you haven't
21 been through the boxes to see if those missing pages are in
22 there? How can you represent that to me?

23 MR. PAUL: Based on representations of
24 Mrs. Johnson, that she has provided to the receiver all that
15:37:30 25 the receiver has asked for. And then we receive --

1 THE COURT: Well, let's be clear that that kind of
2 answer isn't going to work. For bank accounts we need the
3 date of inception of the account -- put your hand down,
4 Mrs. Johnson. I'll let your attorney talk to you. We need
15:37:47 5 the date of the inception of the account, how long the account
6 was in existence and the statements that have been produced,
7 and if not, what efforts she's made to get the statements that
8 weren't produced. That's what the order requires. November,
9 December, January, February, March, April and May, and I'm
15:38:06 10 still telling people what the order requires.

11 Do you want to go talk to your client, Mr. Paul?
12 She apparently wanted to say something.

13 MR. PAUL: Thank you.

14 (Time lapse.)

15:39:10 15 MR. PAUL: Your Honor, I will reiterate that
16 Mrs. Johnson has attempted to comply with everything that she
17 understands that the receivership order --

18 THE COURT: Not good enough, Mr. Paul.

19 MR. PAUL: I understand that. And that's why we're
15:39:25 20 here. You know, but the fact that the effort --

21 THE COURT: The fact that she doesn't know how to
22 read or doesn't care to read or doesn't want to understand or
23 won't ask their attorney, what do I really need to do, does
24 not excuse contempt. Orders are to be complied with. If I go
15:39:39 25 down the street and I say, gosh, I didn't know it was a

1 40 miles an hour speed zone and I'm going 60, does not matter.

2 And the clients have got to wake up to this, that
3 the law is to be complied with. Two-page declaration doesn't
4 even start to do what's asked for in the corrected

15:40:02

5 receivership order. You know, that receivership order has
6 been in circulation since September, I'm realizing looking at
7 the docket here.

8 MR. PAUL: But we're talking about Mrs. Johnson's
9 bank records. That's not in the receivership order. That was
10 requested in the subpoena to appear at her deposition.

15:40:21

11 THE COURT: You're right. You're right. Okay.
12 Well, we know we're missing some bank records; right?

13 MR. PAUL: Right.

14 THE COURT: You have a spreadsheet. We don't know
15 what's in the boxes because there was no inventory taken
16 before they were delivered; right?

15:40:35

17 MR. PAUL: Correct.

18 THE COURT: So we don't know overall what's missing
19 right now. How can your client make an inventory of the bank
20 records for the accounts to which she was a signator?

15:40:49

21 MR. PAUL: First I believe that information is in
22 the record. The documents, the May 16th e-mail with the
23 spreadsheet from Mr. Klein includes all of the bank accounts
24 held or controlled by Mrs. Johnson.

15:41:17

25 THE COURT: And where has she affirmed that under

1 oath?

2 MR. PAUL: And she has not done that. But there
3 hasn't been an obligation to do that. That is not part of the
4 receivership order. She will if the Court requests it.

15:41:29 5 THE COURT: Well, let's --

6 MR. PAUL: We will do it, anyway, without a court
7 order.

8 THE COURT: Let's talk about the subpoena. The
9 subpoena is attached to the order to show cause, isn't it,
10 Miss Healy-Gallagher?

11 MS. HEALY-GALLAGHER: I would have to check. I'm
12 sure it's somewhere. Actually I believe it was an exhibit on
13 our original list.

14 THE COURT: The subpoena to Glenda Johnson is
15 attached -- I can't read the header because it's been filed
16 multiple times. All records for banks or other financial
17 institutions showing you were authorized to sign checks or
18 have online access to accounts at any time.

19 So that's what we have there. Documents showing
15:42:27 20 the bank accounts from which various items had been paid.

21 MS. HEALY-GALLAGHER: Your Honor, it's Plaintiff's
22 Exhibit 937 in these proceedings.

23 THE COURT: 937? Yeah. That's the same thing I'm
24 looking to. It's attached to the order to show cause.

15:43:00 25 Well, Ms. Healy-Gallagher, she was not required to

1 respond to Paragraphs 24 and 26; right?

2 MR. PAUL: 24 only. Sorry.

3 THE COURT: Was she required to respond to 24,
4 Mr. Paul?

15:43:10 5 MR. PAUL: To 24, yes.

6 MS. HEALY-GALLAGHER: 24, yes. 26, no.

7 THE COURT: But not 26. Let me go to that.

8 Preserve and turn over. But she's not required to
9 provide a compliance declaration; is that right?

15:43:49 10 MS. HEALY-GALLAGHER: That's correct. And, Your
11 Honor, did you flag the sixth document requests -- sixth entry
12 on the documents requested list on the subpoena?

13 THE COURT: Uh-huh (affirmative).

14 MS. HEALY-GALLAGHER: On Plaintiff's Exhibit 937
15:44:06 15 which required her to produce all records from banks or other
16 financial institutions.

17 THE COURT: That's the one I read, yes.

18 MS. HEALY-GALLAGHER: Okay. Okay.

19 THE COURT: Okay.

15:44:16 20 MS. HEALY-GALLAGHER: And that was also part of the
21 documents she was ordered to produce on May 3rd.

22 THE COURT: In that order.

23 MS. HEALY-GALLAGHER: In that order, which the
24 Court entered on the docket on Friday.

15:44:29 25 THE COURT: So I was mistaken. She wasn't required

1 to file a declaration. Was Mr. Randale or Mr. LaGrand Johnson
2 required to file a declaration of compliance?

3 MR. PAUL: No, Your Honor.

15:44:42

4 MS. HEALY-GALLAGHER: Yes, Your Honor. Under
5 Paragraph 24.

6 THE COURT: Well, let me go back there.

15:44:56

7 MS. HEALY-GALLAGHER: Paragraph 24 of the
8 receivership order that had to do with, for example, if
9 someone -- if an insider, if an officer or director of
10 International Automated Systems no longer had records in his
11 possession he needs to file a declaration stating --

12 THE COURT: Well, it says, they must provide
13 information to the receiver identifying the record, persons in
14 control. So that's what you're relying on?

15:45:15

15 MS. HEALY-GALLAGHER: Right. And I take it back.
16 It doesn't have to be sworn.

17 THE COURT: Okay. All right. Well, our big
18 dispute as far as Ms. Glenda Johnson is the bank records, and
19 we really don't have the defined total list of what's missing.
20 Is that right, Mr. Klein?

15:45:32

21 MR. KLEIN: Correct.

22 THE COURT: We have a fairly complete list, but we
23 don't know because we haven't been in the boxes.

15:45:42

24 MR. PAUL: That's correct. And I'm not trying to
25 back pedal from that obligation to produce. What I'm trying

1 to argue to the Court is that Mrs. Johnson has tried, and
2 surely she has tried in the context of these proceedings.

3 THE COURT: Right.

15:45:55

4 MR. PAUL: But she has tried, and she has made a
5 substantial effort and has committed to continuing to provide
6 that.

15:46:08

7 THE COURT: She's the person who best knows what
8 accounts there were and would be able to go through the
9 statements. And Mr. Klein's attempted to do it or his staff
10 did. But are you willing to have her go through the documents
11 that were produced and find out the bank statements, for her
12 to reconcile them and then make a more diligent search of
13 others that are missing?

15:46:25

14 MR. PAUL: Yes, absolutely. And I think that has
15 been her commitment all along. She's really the impetus
16 behind the production of the boxes and especially her personal
17 bank records --

18 THE COURT: Okay.

15:46:40

19 MR. PAUL: -- at that time. So, and she's
20 committed and I'm committed to work with her with the
21 spreadsheet that Mr. Klein has provided, and if there's
22 anything else in addition to that that needs to be produced.

23 THE COURT: What else do we need from
24 Ms. Glenda Johnson that you know of, Mr. Klein?

15:46:57

25 MR. KLEIN: The bank records are the only item

1 other than Miss Healy-Gallagher talked about stuff from the
2 order last week in terms of disposition of funds that she's
3 received.

15:47:10

4 THE COURT: Right; because I did order that in
5 addition. And did we get something outlining the disposition
6 of funds she had received?

7 MR. PAUL: No. And I apologize if that fell off of
8 my radar.

9 THE COURT: Let's see.

15:47:27

10 MS. HEALY-GALLAGHER: During the last hearing, Your
11 Honor, you stated that there needed to be an accounting of
12 those funds.

13 THE COURT: Right.

15:47:34

14 MS. HEALY-GALLAGHER: I thought that that was
15 included on one of the dates certain in May, but when I looked
16 back that was not -- you didn't give that a date certain
17 during the hearing, so that's where the misunderstanding may
18 have come in.

15:47:50

19 THE COURT: Okay. Well, how long would you need,
20 Mr. Paul, to go through the records in Mr. Klein's office or
21 on the image that's been created of the documents that have
22 been scanned and to prepare that summary of the disposition of
23 funds?

15:48:11

24 MR. PAUL: I'm certain we could do that within two
25 weeks of receiving those records back from the receiver.

1 THE COURT: When would duplicate images be
2 available, Mr. Klein?

3 MR. KLEIN: I'm told that I'll have the boxes back
4 on Wednesday or Thursday of this week.

15:48:25 5 THE COURT: Okay. So the images will probably come
6 back then.

7 MR. KLEIN: I would expect I would get the images
8 then.

9 THE COURT: I'm having a hard time remembering what
15:48:34 10 day it is. Is that --

11 MR. KLEIN: Mañana.

12 THE COURT: The 1st or the 2nd; is that what you're
13 telling me?

14 MR. PAUL: The 1st is Saturday, I believe.

15:48:46 15 THE COURT: I'm sorry. Yeah.

16 MR. KLEIN: I'm supposed to get those records back
17 tomorrow or Thursday of this week.

18 THE COURT: 29th or 30th of this week.

19 MR. KLEIN: Yes.

15:48:54 20 THE COURT: So you would be able to get something
21 back to Mr. Klein by the 14th.

22 MR. PAUL: I believe that is accomplishable.

23 THE COURT: All right. Well, I appreciate you
24 working towards a solution with you, Mr. Paul. And I
15:49:09 25 apologize for my misunderstanding.

1 MR. PAUL: So if I can jump back into my notes?

2 THE COURT: Yeah. Well, I'm doing the same thing.

3 MR. PAUL: Okay. So I'll pick up from my notes

4 that if there are still records missing even after reviewing

15:49:35 5 what the receiver has, even after filing our compliance with

6 the receiver, Mrs. Johnson is still willing to cooperate and

7 provide that as promptly as she is able. We don't believe

8 that contempt has been shown on behalf of Mrs. Johnson.

9 There's no willful disobedience to the Court's orders.

15:49:54 10 THE COURT: How is that?

11 MR. PAUL: Because she has tried, and it has

12 been --

13 THE COURT: She has tried, but how does that not

14 make it willful?

15:50:01 15 MR. PAUL: Because she didn't understand the scope

16 of what was required of her to rise to the level of willful

17 disobedience. She understood that she had to produce records

18 in her possession or control. She understood that that had

19 been done. I understand that that's not acceptable to the

15:50:24 20 Court. And it has been proven at this point that there is --

21 that is not an acceptable position. But that is the position

22 that she thought was what she needed to convey at the time.

23 THE COURT: When were the financial records due

24 under the subpoena?

15:50:43 25 MR. PAUL: I believe in January, and then I think

1 you ordered her to appear in a deposition no later than --

2 MR. LEHR: Your Honor, I believe the documents were
3 due early February, and the depositions were in January and
4 another one in February.

15:50:55 5 THE COURT: Okay. And when were they actually
6 produced?

7 MR. PAUL: Within the last 30 days.

8 THE COURT: All right. That's what I remember.
9 Okay. Thanks.

15:51:07 10 MR. PAUL: I think the task has proven to be much
11 larger than was anticipated at any time by my clients.

12 THE COURT: That the what was anticipated?

13 MR. PAUL: The task of producing these documents
14 and information.

15:51:26 15 THE COURT: Yeah.

16 MR. PAUL: And I believe at this point if there was
17 contempt in failing to comply it has been cured. Right now I
18 don't believe that Glenda Johnson is in contempt. While there
19 still may be some additional documents that have to be
15:51:41 20 produced it is clear that those documents relate to the
21 subpoena as opposed to the receivership order.

22 THE COURT: What about that last sentence in
23 Paragraph 24 that if the documents and records are no longer
24 within her control? You're saying that she's produced
15:52:02 25 everything that she ever had access to?

1 MR. PAUL: I believe at this point substantially
2 yes. The --

3 THE COURT: The -- excuse me. Go ahead.

4 MR. PAUL: The requirement to explain, the
15:52:25 5 Paragraph 24 language, if documents are no longer within their
6 control to provide information to the receiver identifying the
7 records and the persons in control of the records and the
8 efforts undertaken, I believe has been provided to, again not
9 to the level of compliance that the Court's expecting at this
15:52:44 10 point, but at the time of the requirement because she believed
11 those records were in the government's possession or those
12 records were in the possession of the bankruptcy lawyers or
13 those were in the possession of others. And everybody in the
14 universe, in this courtroom, anyway, knew that that was -- I'm
15:53:02 15 not saying that's correct. I'm saying that was her
16 understanding and would have been her answer to that question
17 at the time.

18 We know better now. And she has complied now. And
19 based on the receiver's testimony today that is not an issue
15:53:21 20 that concerns the receiver at this point. But I would express
21 if it becomes a concern that Mrs. Johnson is willing to
22 cooperate and comply and provide answers to those questions.
23 And I think you pointed out yourself that this is not a
24 standard publicly traded company with operating procedures
15:53:43 25 that a regular company even of this scale might otherwise

1 undertake.

2 There's a very small corporate headquarters, so to
3 speak. And it is the universe of the documents and access and
4 control of what those are, and that's Mr. and Mrs. Johnson.

15:54:03

5 And by producing what they have I don't think there's a
6 statement that they can make that says they used to be
7 somewhere else and this is what I've done to collect them,
8 other than what they've said, which is bankruptcy lawyers,
9 accountants.

15:54:20

10 THE COURT: What efforts has Glenda Johnson done to
11 get any of that back?

12 MR. PAUL: I think the effort is to get out what is
13 possibly there and deliver it to the receiver. That has
14 happened in the context of these proceedings.

15:54:35

15 THE COURT: It has happened?

16 MR. PAUL: It has happened. The 31 boxes are
17 really related to Glenda's efforts.

18 THE COURT: What about Snell and Wilmer?

15:54:46

19 MR. PAUL: I do not know -- I have not had contact
20 with Snell and Wilmer as to what records they still have, But
21 I will undertake that task to chase that loose end as well as
22 the Gary Peterson loose end, if the Court is so inclined.

23 THE COURT: Well, that's the obligation, again,
24 that and the receivership order, so we're talking about
15:55:01 25 others. But I'm just having such a hard time conceptually

1 with handing things over and saying, you figure out what's in
2 there and I'm not going to tell you, I'm not going to give you
3 the big picture. I just have such a hard time understanding
4 that when I think the orders have been pretty clear.

15:55:20

5 MR. PAUL: This just occurs to me so it may or may
6 not be relevant. But, you know, each one of these individuals
7 has an individual role in the business operations.

8 THE COURT: Yeah.

15:55:31

9 MR. PAUL: But the question is being asked of all
10 of the documents and records. And so while Glenda's role may
11 have been limited to, you know, checking and banking and
12 commissions and basically the laptop is the universe of her
13 interaction, she's still being expected to find out what
14 happened to the minutes and what happened to the, you know,
15 the 10K productions and the accountants. And I think there's
16 an expectation that each one of these individuals know where
17 the universe of documents are --

18 THE COURT: Yeah.

15:56:05

19 MR. PAUL: -- and should have an answer as to where
20 that is. And I think that might be beyond the scope of the
21 individual who's responding to Paragraph 24 and says, I
22 don't -- I never had that interaction. So, you know, I'm
23 being asked to explain where those documents were that someone
24 assumes came into my possession but they never did. So --

15:56:23

25 THE COURT: But they were all officers or directors

1 or employees with responsibilities and authority in the
2 company.

3 MR. PAUL: Sure. But a narrow responsibility, not
4 a global responsibility.

15:56:36 5 THE COURT: But who is best suited other than those
6 people to just say to somebody else, the receiver, we really
7 can't help you here. We can't explain it. I mean, she hasn't
8 explained what her role was, to my knowledge.

9 MR. PAUL: She has. Through her deposition the
15:56:57 10 receiver had a chance to ask all of those questions and
11 understand the scope of that relationship. She's been
12 deposed -- well, Mr. Johnson has been deposed several times
13 both in the underlying case as well as by the receiver to
14 answer those questions.

15:57:10 15 So again, I don't want to offer excuses. I mean,
16 I'm offering an explanation that to the best of my
17 understanding the reason why we're here today and this wasn't
18 resolved back in January.

19 THE COURT: So what has she done under the last
15:57:26 20 sentence of Paragraph 24 as to documents and records no longer
21 within her control, to provide information to the receiver
22 identifying those records, the persons in control and the
23 efforts undertaken to recover them?

24 MR. PAUL: She has expressed that those any other
15:57:45 25 documents would be in the possession of the bankruptcy

1 lawyers, of the accountants, and I don't know who else she may
2 have testified to or expressed may have records. What she has
3 done is go get the boxes that she knows about and Mr. Johnson
4 know about, put them in their vehicle and deliver them to
15:58:05 5 Mr. Klein.

6 THE COURT: And that was what was at Oasis.

7 MR. PAUL: I don't know the answer to that. I
8 don't know where the boxes came from.

9 THE COURT: Okay. And she was ordered by May 10th
15:58:16 10 to provide records for any bank account entitled in her name
11 or over which she had signature authority. The receiver was
12 to promptly notify her of anything missing among the ones she
13 delivered on April 29th. Did she produce additional records
14 May 10th?

15:58:33 15 MR. PAUL: I don't know the answer to that. I do
16 know when the boxes were delivered they included additional
17 information.

18 MR. KLEIN: On May 9th I received from Ms. Johnson
19 the laptop computer and then these bank statements.

15:58:49 20 THE COURT: So some more, okay. Did you get an
21 accounting of the cash withdrawals she made since August 22nd,
22 2018?

23 MR. KLEIN: No.

24 THE COURT: Did you deliver one?

15:59:00 25 MR. PAUL: No. And as I said earlier, I believe

1 that fell off of my radar. I was not --

2 THE COURT: Mr. Paul, you've helped me understand
3 here quite a bit about Ms. Johnson's position. Do you want to
4 speak to LaGrand and Randale Johnson?

15:59:15

5 MR. PAUL: I do. Before the motion both Randale
6 and LaGrand were not fully aware that they had a compliance
7 obligation. And I know, again, that's an explanation, not
8 necessarily an excuse. Paragraph 24, and I think you've
9 probably still have this in front of you, but it is not as
10 clear as the Court may think it is. It says:

15:59:40

11 The receivership defendants, so we know who those
12 are, and past and present officers, directors, agents,
13 managers, general and limited partners, trustees, attorneys,
14 transfer agents, website and electronic mail administrators,
15 database administrators, accountants and employees --

15:59:56

16 THE COURT: Slow down, please.

17 MR. PAUL: I think that kind of makes my point, as
18 well. I mean, this is -- and there's a lot. The scope of who
19 is responsible to comply under this Paragraph 24 is
20 substantial. And what they're supposed to provide is to turn
21 over -- first to preserve and second to turn over to the
22 receiver all paper and electronic information of or relating
23 to the receivership defendants or receivership property. So
24 there's a narrowing. I mean, it's not the world universe of
25 information, but it's what relates to the receivership

16:00:33

1 defendants or receivership property. Those are defined in
2 other places, and it's not absolutely crystal clear even what
3 those are.

4 Such information shall include but is not limited
16:00:47 5 to books, records, documents, accounts, stock certificates,
6 intellectual property records, evidence of intellectual
7 property rights, computer and electronic records and all other
8 instruments and papers.

9 There's a lot of information there. And it's easy
16:01:03 10 to understand why people who have received the receivership
11 order who may not even consider themselves insiders would not
12 realize that they had an obligation to produce any information
13 under Paragraph 24.

14 So my contention today is that the failure to
16:01:26 15 provide information was not willful. There was no contact
16 from the receiver to inform Randale and LaGrand that they
17 were, they had a compliance obligation. There is no contact
18 from the government to inform Randale and LaGrand that they
19 had a compliance obligation. Randy and LaGrand were not
16:01:48 20 represented at the time before the motion for order to show
21 cause was filed. My understanding is that there was no effort
22 to communicate with either Randale or LaGrand either directly
23 or indirectly through our office that there was an expectation
24 of their compliance with this record until we received the
16:02:10 25 motion for order to show cause.

1 Paragraph 24 really throws a very broad net, and it
2 was received by -- you know, the receivership order was served
3 on others who were not named in the motion for order to show
4 cause, it was sent to others who were not named in an order to
16:02:30 5 show cause, and it really does require a careful reading.

6 And so my clients, Randy and LaGrand, wonder why
7 they are singled out as opposed to others and how would they
8 know of this obligation without having some prior contact from
9 the receiver or the government or our office as to what that
16:02:58 10 obligation might be. But, however, once they understood that
11 obligation of what was expected of them they complied with
12 compliance declarations on April 29th, that's Document 621 and
13 622.

14 Now the receiver is not convinced that Randy and
16:03:21 15 LaGrand don't have additional records. He seems to be okay
16 with the response that they don't have any records now in
17 their possession. The only issue of noncompliance for Randale
18 and LaGrand is their responses and how their declarations were
19 written. I believe we've tried to convey that Randale and
16:03:43 20 LaGrand don't have any more information to share with
21 Mr. Klein about the company records, but he's not satisfied
22 because he assumes that there is more to know.

23 We believe that that can be a dangerous assumption
24 because there are no facts to base his assumption that there
16:04:00 25 are additional documents and information. There is no

1 evidence to base that assumption on that there is additional
2 documents or evidence, and there is no proof in the record
3 today of these proceedings that that assumption that they were
4 or have been in possession of documents outside of the
16:04:18 5 corporate offices on which to base an assumption that they
6 continue to be in noncompliance with the receivership order.

7 Mr. Klein believes that because they were officers
8 they must have some useful information. But again, I have not
9 heard a basis for that assumption other than the fact that
16:04:35 10 they were officers and he would expect that they would at some
11 point would have had access or possession of that information,
12 and they no longer do.

13 If the Court remains unsatisfied with the
14 disclosures we will amend the disclosures with clear language
16:04:50 15 that Randale and LaGrand Johnson don't have useful information
16 about the company books and records. They didn't have that
17 kind of access at the time. They didn't have it in their --
18 they didn't work out of home offices. They didn't take
19 documents or records outside of the company offices. They
16:05:08 20 worked underneath that direction and control.

21 And so we don't believe that the Court should find
22 contempt on behalf of Randale and LaGrand Johnson. We don't
23 believe there is sufficient proof of willful disobedience.
24 There is no evidence of actual knowledge of the requirement to
16:05:28 25 provide the information and a specific inclination not to

1 comply with the Court order. They simply didn't understand
2 that they had that requirement.

3 And I believe the Court pointed out the burden of
4 proof that is required in order to find a contempt. And it's
16:05:52 5 not only simply that there was an order and it wasn't complied
6 with, but the parties have to know what was required of them
7 and have the ability to comply.

8 THE COURT: They had knowledge of the order,
9 Mr. Paul.

16:06:04 10 MR. PAUL: They have to understand what was
11 required of them, not simply knowledge of the existence of an
12 order.

13 THE COURT: It's not subjective.

14 MR. PAUL: Well, I would ask the Court to take
16:06:14 15 notice of the Von Hake vs. Thomas case, which is a Utah case,
16 759 P.2d. 1162. And more recent case Widdison vs. Kirkham,
17 it's a 2018 Utah app case, 2005. I believe the Von Hake case
18 deals with knowledge of the specific requirement that is in
19 the Court order.

16:06:42 20 And then the final requirement is that the party
21 intentionally failed or refused to comply with the Court's
22 order. And I would offer to the Court that these two
23 individuals did not have the kind of level of knowledge and
24 understanding of the Court's order to have willful
16:07:03 25 noncompliance with it.

1 And although, again, they've -- I believe they're
2 in compliance. The receiver's concern with them is merely an
3 additional statement in their declarations as to what
4 documents they may have had access to in the past and where
16:07:25 5 they are now and what they've done to recover them. And I
6 think that is simply a response that's missing rather than
7 production of information or documents that would be helpful
8 to the Court -- or to the receiver, excuse me. And with that
9 I have nothing further.

16:07:42 10 THE COURT: Okay. Thanks.

11 Mr. Shepard, did you want to be heard further?

12 MR. SHEPARD: Yes. Very quickly.

13 THE COURT: Come on up.

14 MS. HEALY-GALLAGHER: May I just ask, Your Honor,
16:07:52 15 I've been hoping to make my flight this evening, and it looks
16 like that may not happen.

17 THE COURT: What time is it?

18 MS. HEALY-GALLAGHER: I would need to be in a car
19 really no later than 4:40. I don't want to rush us.

16:08:07 20 THE COURT: No. You will be.

21 MS. HEALY-GALLAGHER: Because I would like the
22 opportunity to respond.

23 THE COURT: Mr. Shepard, come on up.

24 MR. SHEPARD: Your Honor, it was never my intent to
16:08:22 25 be in contempt. I tried to always comply, and I sincerely

1 apologize for not providing enough info in a timely manner.
2 It was always my intent to comply with any and all info. I
3 just never understood as to the depth of info that was
4 required. I continually gave Mr. Klein info as testified in
16:08:49 5 earlier testimony, quite a number of e-mails that went back
6 and forth between Mr. Klein and myself, and that was from
7 January on of 2019.

8 As previously stated I was really motivated to be
9 in compliance in order to get my full and desperately needed
16:09:11 10 living allowances. After meeting with Erin Healy-Gallagher
11 and Wayne Klein as directed by the Court I finally understood
12 the extraordinary level of detailed information that was
13 required. Once understood I promptly complied, and this now
14 has satisfied Wayne Klein that I am in full compliance.

16:09:36 15 As far as the surprise documents alluded to by
16 Erin Healy-Gallagher, it was never my intent to surprise
17 Mr. Klein, but to only give every possible detail. I submit
18 that today I have satisfactorily answered those surprise
19 questions.

16:09:59 20 Your Honor, I ask the Court to find me not in it
21 contempt and not responsible for any legal fees or at least
22 only a proportional amount. Thank you.

23 THE COURT: Thank you.

24 Ms. Healy-Gallagher, did you want to sum up,
16:10:20 25 keeping in mind that you want me to rule in time for you to

1 get in a car at 4:40?

2 MS. HEALY-GALLAGHER: Indeed. I'll be brief.

3 Your Honor, in the first instance no respondent has
4 shown either full compliance in a timely fashion with the
16:10:37 5 Court's receivership order or the impossibility of having done
6 so. Further, Mr. Wall initially brought up this willfulness
7 prong. That's not at all an issue in a civil contempt motion.
8 That's an issue for criminal contempt.

9 Nonetheless, all of the examples of behavior that
16:11:00 10 according to Mr. Wall would signal a willful violation of a
11 court's order is exactly what happened here. Mr. Wall wanted
12 the Court to enter a program for Mr. Johnson to understand
13 what he needs to do in order to comply with the Court's order.
14 That's what we have been doing since November, since January
16:11:23 15 when the United States filed its motion and in each of these
16 evidentiary hearings. Mr. Johnson has had more than enough
17 opportunity to comply with this Court's order.

18 Further, many of the arguments presented by counsel
19 today throwing their clients on the mercy of this court
16:11:42 20 because they didn't understand or didn't have time or whatever
21 their excuse is, I'd like to remind the Court that not one
22 respondent filed a written response to the United States
23 motion in January, not one, where all of these things could
24 have been addressed. They said the United States never
16:12:03 25 reached out to them to tell them exactly how they hadn't

1 complied with this Court's order. We did. That was our
2 motion at the end of January 2019.

3 Now here we are at the end of May, and Mr. Wall
4 still wants more time for Neldon Johnson to delay the natural
16:12:24 5 effect of his own behavior. Mr. Wall who Mr. Johnson tried to
6 fire mere weeks ago is now promising Neldon Johnson's
7 cooperation.

8 So to the extent the Court is considering this
9 program that Mr. Wall proposes, I would submit that Mr. Wall
16:12:47 10 should report to the Court or to the receiver or to the
11 United States or to all of us exactly his schedule with
12 Mr. Johnson for sitting down and getting all of this
13 information on paper. And the very first time that
14 Mr. Johnson doesn't show up like he did to his depositions,
16:13:07 15 that he blows off Mr. Wall's request for documents like he
16 blew off the subpoena in this case, that be reported to the
17 Court, and at that time Mr. Johnson be submitted to the course
18 of incarceration.

19 To Mr. Paul's points, neither Gary Peterson nor
16:13:33 20 Snell and Wilmer are a loose end to be tied up in this matter.
21 The respondents had an obligation to go out and get documents
22 from those two sources and many others including Pacific Stock
23 Transfer. They have not done so.

24 Each individual in this matter, each of Mr. Paul's
16:14:04 25 clients are not required to know the universe of the documents

1 in this case even the universe of documents that International
2 Automated Systems had. What's required of them is only what's
3 reasonable, and that's to tell the receiver what documents
4 they had, what documents they saw in the course of their
16:14:25 5 duties, where those documents are now and what efforts they
6 have undertaken to recover them.

7 All of the respondents have been in violation of
8 the corrected receivership order. Some have purged a certain
9 level of contempt, but all should be found in contempt, all
16:14:43 10 should be required to pay the United States' fees and costs in
11 this matter. And again, we submit that each defendant should
12 have the consequences that I relayed in my opening -- closing.

13 THE COURT: Thank you. I'm going to ask,
14 Ms. Healy-Gallagher, that you take notes here because I'm
16:14:59 15 going to ask you to prepare an order that will be in draft
16 form by the 10th of June and provide it to opposing counsel on
17 that date. Counsel will make their objections by the 17th of
18 June, and then you'll submit a final version on the 24th. The
19 way I like to do that is to have you at every stage when you
16:15:25 20 prepare your order, when the objections are made by defense
21 counsel and then on the 24th file the current draft under the
22 event notice and e-mail a word processing copy to my chambers.

23 So the deadlines are draft to all counsel and it
24 hits the docket on the 10th; objections, and I would recommend
16:15:55 25 counsel provide a redline, by the 17th of June; and then the

1 24th is the date for you, Miss Healy-Gallagher, to submit the
2 final. Now, having given you the responsibility of drafting
3 I'm going to give you some findings that need to go in that
4 document.

16:16:17 5 We have a long record in this case since the trial
6 was held last year. The corrected receivership order was
7 subject of negotiations since the summer of 2018. The order
8 entered November 1st is very clear. And the receiver's
9 reports on December 18th, 552 and 557, should have given a
16:16:44 10 very clear signal to the defendants and the other respondents
11 that noncompliance was serious.

12 This motion filed on January 29th, Docket
13 Number 559, made it very clear that there was noncompliance
14 and there was going to be consequences that raise not only the
16:17:04 15 issue of the order but also the subpoena for documents and the
16 noncompliance with depositions. We've had other interim
17 orders entered in-between that time, but we've been in
18 involved in these proceedings for three days now. And it's
19 clear to me that each of those that who are here, LaGrand
16:17:28 20 Johnson, Randale Johnson, Glenda Johnson, Mr. Shepard and
21 Mr. Neldon Johnson, have what I would characterize as a
22 cavalier attitude of indifference to the orders of the court
23 and the requirements of the law.

24 In the case of some of those other than
16:17:50 25 Mr. Neldon Johnson I think to some extent this is due to their

1 undue deference to Mr. Neldon Johnson, their belief that
2 whatever needs to be handled he'll handle, but this does not
3 excuse their own noncompliance. It may be that Randale
4 Johnson, LaGrand Johnson and Glenda Johnson did not understand
16:18:13 5 their roles in the corporation, but they had legal
6 obligations, and they have legal obligations to the Court and
7 the receivership. The efforts of the United States to enforce
8 the receivership and to create the remedy that the Court
9 ordered have been severely impaired by all of the respondents'
16:18:35 10 actions or lack of actions. This is not a stage to argue the
11 order. It's not a stage to defer duties to someone else or to
12 fail to contact third parties or to claim that there's no
13 control or to fail to list records and identify transactions
14 and to provide documents.

16:19:05 15 The most stunning development in the record over
16 the last three months is the recent deliveries of massive
17 amounts of data. The computer and the QuickBooks files which
18 were never produced in the litigation were apparently
19 available, and they would have been the obvious source to go
16:19:25 20 to when complying with the corrected receivership order. But
21 somehow they all became available when this became serious and
22 apparent. The fact that the corporation was run informally
23 with sloppy or inadequate records doesn't excuse the
24 responsibility of the respondents to provide a roadmap.

16:19:56 25 A data dump is not a response to the obligations

1 that Mr. Shepard and Mr. Neldon Johnson had under the order,
2 nor to the respondents Glenda, LaGrand and Randale Johnson
3 under Paragraph 24 with specific reporting requirements.

4 The elements required to be proven on a motion to
16:20:35 5 find contempt are not very complex, and it was never disputed
6 that a valid court order existed or that the defendant had
7 knowledge of the order. I disagree with Mr. Paul about the
8 standard, that the defendant has to subjectively understand
9 the requirement of the order. The only issue in these
16:20:56 10 hearings is whether the defendant disobeyed the order. The
11 more recent productions have shown that Mr. Neldon Johnson,
12 Miss Glenda Johnson, Mr. Randale Johnson, Mr. LaGrand Johnson
13 clearly disobeyed the order. Mr. Shepard is a little more
14 tangential, but he woke up to his obligations and did the best
16:21:17 15 job of purging his contempt. But every one of the defendants
16 is in contempt, every one of the respondents is in contempt.

17 Now, the declaration of compliance filed by LaGrand
18 and Randale Johnson are inadequate. They purport to pass off
19 responsibility in the LaGrand Johnson deposition to Gary
16:21:45 20 Peterson without reciting any effort made to retrieve the
21 documents. Ms. Glenda Johnson's declaration attempts to pass
22 off obligations to Snell and Wilmer. Any one of these
23 individuals, LaGrand Johnson, Randale Johnson, Glenda Johnson,
24 had positions in the corporation that would require them to
16:22:09 25 make the approach to those third parties, and no one to date,

1 LaGrand Johnson, Randale Johnson, Glenda Johnson or Neldon
2 Johnson, can say that they have made that effort.

3 With regard to Mr. Neldon Johnson, and I'm going to
4 try to follow what we talked about, Mr. Wall, a draft of the
16:22:53 5 compliant declaration with Paragraph 26 of the receivership
6 order would be provided by the 21st of June. Is that about
7 the timeframe we talked about?

8 MR. WALL: Yes, Your Honor.

9 THE COURT: I want you to provide that to the
16:23:11 10 receiver and to the United States, and they'll give you a
11 response by the 28th of June and let you know what's
12 sufficient. And the final version will be submitted by the
13 8th of July.

14 It needs to be a complete statement of records
16:23:26 15 which were in existence at one time, provide records and
16 inventory records that have been produced. The receiver said
17 he'll give you access either by image or by access of the
18 16 boxes that aren't going to be imaged. You'll get the image
19 of the documents that are being imaged, and you'll get an
16:23:48 20 image of the hard drive and the thumb drive.

21 This case was filed in 2015. These records have
22 been at issue since then, and here we are in 2019, maybe
23 finally getting to the end of it.

24 With regard to Mr. -- Ms. Glenda Johnson, I don't
16:24:25 25 remember what we talked about, Mr. Paul, but I want her to go

1 through the documents, as well, and really itemize out the
2 statements and meet the obligations of the order regarding
3 production in Paragraphs 4 and 5. It sounds like she provided
4 the real estate records for Paragraph 6. But I want you to
16:24:50 5 work cooperatively with the receiver, but I want a final
6 statement provided that complies with Paragraphs 4 and 5. Any
7 question about that, Mr. Paul?

8 MR. PAUL: Give me a minute. Paragraph 4 and 5 of
9 the order --

16:25:08 10 THE COURT: Docket 576 filed May 24th.

11 MR. PAUL: Of the subpoena?

12 THE COURT: No. That's my order.

13 MS. HEALY-GALLAGHER: The order that was given
14 orally May 3rd and entered on the docket on Friday; is that
16:25:21 15 correct?

16 THE COURT: That's right.

17 MR. PAUL: Okay.

18 THE COURT: It's Docket Number -- well, I had it
19 and I lost it.

16:25:31 20 MR. WALL: It's 676, Your Honor.

21 THE COURT: Is that what it is? Yes. 676 filed
22 May 24th.

23 Now, as to -- I think that that resolves most of
24 our issues, especially since we've got the QuickBooks
16:25:47 25 software. But what else would need to be provided to fill the

1 gaps of the subpoena directly to her?

2 MR. LEHR: At this time we don't have anything,
3 Your Honor. We would ask as the order requires anyway under
4 Paragraph 28 that if we have further questions he would be
16:26:02 5 compliant.

6 THE COURT: And that obligation continues.

7 Now as to LaGrand and Randale Johnson, we still
8 need them to make efforts to retrieve the documents from the
9 third parties and to provide a statement that's much more
16:26:17 10 clear, if they never had access to corporate records, if they
11 did have access to corporate reports where the records were
12 kept, what they were. That's what's required under
13 Paragraph 24, so we still need that.

14 We've made a lot of headway in this case since we
16:26:34 15 started these hearings at the start of April, but it's just a
16 shame that we've had to spend this amount of time for everyone
17 involved including the respondents to try to get done what was
18 ordered last November and what was apparent as not having been
19 done by January 29th. It's been a rough and rocky road.

16:26:58 20 For that reason the receiver will also file by
21 June 30th a motion seeking an award -- by July 1st a motion
22 seeking an award of attorney's fees. And I will make a
23 determination of how those attorney's fees will be
24 apportioned. From what I now understand about access to the
16:27:22 25 documents, it's my belief, my subjective belief right now, and

1 it can be changed by the briefing on this motion, that
2 Mr. Shepard had the least access; that Miss Glenda Johnson --
3 I'm sorry -- Mr. Randale and Mr. LaGrand Johnson may have had
4 the next least access; Miss Glenda Johnson had the next
16:27:44 5 access; but Mr. Neldon Johnson had the greatest access and
6 control of records, and he exercised that through these other
7 parties. As he often said in the hearings that we had, the
8 trial hearings, he told people what to do. It was his, and he
9 can decide what to do. And I have no doubt that they were
16:28:07 10 subject to his control. But they have independent fiduciary
11 obligations and obligations to the Court that have been
12 adjudicated today.

13 What have I left out of findings or my order,
14 Miss Healy-Gallagher? I am not going to order a fine right
16:28:24 15 now. That's purposeful. I found the defendants and
16 respondents in contempt. That's purposeful. I've not ordered
17 incarceration of anyone because it's my great hope that this
18 process will work.

19 MS. HEALY-GALLAGHER: One note that I did leave out
16:28:44 20 is that if -- because at the beginning of the proceedings,
21 although I don't see him here now, Mr. Snuffer represented
22 that there was some kind of change in counsel.

23 THE COURT: Do you know what's happening there,
24 Mr. Wall?

16:28:58 25 MR. NELDON JOHNSON: There will be no change in

1 counsel.

2 MR. WALL: I believe that my client is satisfied
3 with my representation today. He does not intend to change
4 counsel at this point.

16:29:16 5 THE COURT: Okay.

6 MS. HEALY-GALLAGHER: Understanding that, in the
7 event there is a change in mind --

8 THE COURT: I won't permit it.

9 MS. HEALY-GALLAGHER: Okay.

16:29:21 10 THE COURT: I just can't imagine how we would do
11 that given the obligations that Mr. Wall has undertaken.

12 By the way, Mr. Wall, you need to submit an order
13 right away appointing those extra people you want, okay?

14 MR. WALL: I will, Your Honor. Your Honor, knowing
16:29:37 15 how things can be in flux, the only way there can be
16 substitution of counsel is if there was a motion, and that
17 motion would have to be heard by the Court. And I'm sure the
18 United States would respond to that. So I don't know if
19 there's any point, especially given the amount of time.

16:29:50 20 THE COURT: Your motion to withdraw is denied.

21 MR. WALL: I notice that. But if somebody were to
22 file a motion to substitute counsel, it would have to be heard
23 by the Court.

24 THE COURT: I would hear it in September when this
16:30:01 25 is all done.

1 MR. WALL: Okay. So I don't think there's going to
2 be a change of counsel.

3 THE COURT: Okay.

4 MS. HEALY-GALLAGHER: That's all I had.

16:30:12 5 THE COURT: Mr. Lehr?

6 MR. LEHR: Quick clarification. You mentioned
7 June 30th and July 1st when you were talking about the
8 attorney's fees motion?

9 THE COURT: July 1. June 30th is a Sunday. I want
16:30:23 10 you to work all weekend, but don't file it on Sunday because I
11 don't want to read it on Sunday.

12 MR. LEHR: Understood, Your Honor.

13 THE COURT: Mr. Wall, any questions?

14 MR. WALL: No, Your Honor. Nothing further.

16:30:30 15 THE COURT: Mr. Paul?

16 MR. PAUL: No, Your Honor. Nothing further.

17 THE COURT: Mr. Shepard?

18 MR. SHEPARD: I'm good. Thank you.

19 MS. HEALY-GALLAGHER: So sorry. One more thing.

16:30:39 20 THE COURT: Okay.

21 MS. HEALY-GALLAGHER: What about the request for
22 Mr. Wall to submit the calendar of his scheduled times with
23 Mr. Johnson and should Mr. Johnson fail to appear or --

24 MR. WALL: Your Honor, I just ask you to rely on my
16:30:51 25 diligence. The Court has seen me work in this court for some

1 26 years. I don't think I need to start reporting to the
2 United States with regard to everything I do.

3 THE COURT: Well, Mr. Wall, what I want you to
4 report is any instance in which Mr. Shepard fails --
16:31:07 5 Mr. Johnson, thanks for the arrow, Mr. Paul, fails to keep a
6 schedule appearance.

7 MS. HEALY-GALLAGHER: And Mr. Wall no doubt has an
8 outstanding reputation and was carefully selected by the
9 Court, and Mr. Wall has known Mr. Johnson for not as long as
16:31:24 10 the Court and the United States have. So that was the reason
11 and the sole reason for that request.

12 THE COURT: I understand. And I don't take
13 anything else by it.

14 Anything else today?

16:31:35 15 MS. HEALY-GALLAGHER: Not from the United States.

16 THE COURT: I want to thank all counsel for their
17 participation in this hearing today, for the diligence and
18 decisions and clarity that you've expressed. These are not
19 easy things, I know that, but I respect the positions you've
16:31:51 20 been put in and the way you've carried yourself. It's a
21 pleasure to work with good counsel regardless of how hard the
22 dispute is. So thank you. We're in recess.

23 (Whereupon, the court proceedings were concluded.)

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25 STATE OF UTAH)

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) ss.

COUNTY OF SALT LAKE)

I, KELLY BROWN HICKEN, do hereby certify that I am a certified court reporter for the State of Utah;

That as such reporter, I attended the hearing of the foregoing matter on May 28, 2019, and thereat reported in Stenotype all of the testimony and proceedings had, and caused said notes to be transcribed into typewriting; and the foregoing pages number from 3 through 73 constitute a full, true and correct report of the same.

That I am not of kin to any of the parties and have no interest in the outcome of the matter;

And hereby set my hand and seal, this ____ day of _____ 2019.

KELLY BROWN HICKEN, CSR, RPR, RMR