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CLERK, CIRCUIT COURT  
FAIRFAX, VA

# Transcript of Hearing

**Date:** June 26, 2020  
**Case:** Depp, II -v- Heard

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Transcript of Hearing  
Conducted on June 26, 2020

<p>1 V I R G I N I A: 2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY 3 -----x 4 JOHNNY C. DEPP, II, : 5 Plaintiff, : 6 v. : Case No. CL-2019-0002911 7 AMBER LAURA HEARD, : 8 Defendant. : 9 -----x 10 11 HEARING 12 BEFORE THE HONORABLE BRUCE D. WHITE 13 Conducted Virtually 14 Friday, June 26, 2020 15 11:41 a.m. EST 16 17 18 19 20 Job No.: 305494 21 Pages: 1 - 25 22 Reported By: Victoria Lynn Wilson, RMR, CRR</p>	<p>1 A P P E A R A N C E S 2 ON BEHALF OF THE PLAINTIFF: 3 BENJAMIN G. CHEW, ESQUIRE 4 ANDREW C. CRAWFORD, ESQUIRE 5 BROWN RUDNICK, LLP 6 601 Thirteenth Street, NW 7 Suite 600 8 Washington, DC 20005 9 (202) 536-1700 10 11 ON BEHALF OF THE DEFENDANT: 12 J. BENJAMIN ROTTENBORN, ESQUIRE 13 WOODS ROGERS, PLC 14 10 South Jefferson Street 15 Suite 1400 16 Roanoke, VA 24011-1319 17 (540) 983-7600 18 19 20 21 22</p>
<p>1 HEARING BEFORE THE HONORABLE BRUCE D. WHITE, 2 conducted virtually. 3 4 5 6 7 8 9 Pursuant to docketing, before Victoria Lynn 10 Wilson, Registered Merit Reporter, Certified 11 Realtime Reporter, E-Notary Public in and for the 12 Commonwealth of Virginia. 13 14 15 16 17 18 19 20 21 22</p>	<p>1 A P P E A R A N C E S C O N T I N U E D 2 ON BEHALF OF THE DEFENDANT: 3 DAVID MURPHY, ESQUIRE 4 CHARLSON BREDEHOFT COHEN &amp; BROWN, PC 5 11260 Roger Bacon Drive 6 Suite 201 7 Reston, VA 20190 8 (703) 318-6800 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>

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2 (5 to 8)

<p style="text-align: right;">5</p> <p>1 PROCEEDINGS 2 (The court reporter was sworn.) 3 THE COURT: Can I get everybody to note 4 their appearances, please. 5 MR. CHEW: Yes. Good morning, your Honor. 6 May it please the Court. Ben Chew and Andrew 7 Crawford for Plaintiff Johnny Depp. 8 THE COURT: Good morning. 9 MR. MURPHY: Good morning, your Honor. I 10 won't be arguing, but David Murphy on behalf of 11 Amber Heard. And I believe Mr. Rottenborn is 12 coming in momentarily. 13 THE COURT: Okay. We'll hold on for him 14 then. 15 MR. MURPHY: So, I'm going to mute myself 16 because I'm not arguing, but I'm here. 17 THE COURT: Thank you. 18 Don't see Mr. Rottenborn's name on our 19 participant list but -- here we go. 20 MR. ROTTENBORN: Good morning, your Honor. 21 Can you hear me? 22 THE COURT: I can. Can you hear me?</p>	<p style="text-align: right;">7</p> <p>1 Dr. Cowen. And, again, those are only scattered 2 records from those two doctors. 3 Ms. Heard has produced nothing from 4 Dr. Jacobs, Dr. Anderson, Dr. Banks, or 5 Dr. Sugarman, any of the other four doctors that 6 she identified. Indeed, Ms. Heard has not 7 produced a single medical record evidencing the 8 supposed severe abuse she claims was inflicted by 9 Mr. Depp. 10 Pursuant to Section 8.01-399 of the 11 Virginia Code, we respectfully submit that the 12 Court should order the HIPPA waiver because 13 Ms. Heard's physical and mental condition are 14 directly at issue in this case. 15 As your Honor recalls, the Court 16 previously ordered Mr. Depp to execute 17 comprehensive HIPPA waivers, and he did so months 18 ago. 19 Ms. Heard's records are every bit as 20 relevant and every bit at issue as Mr. Depp's, for 21 two reasons. First, your Honor, as your Honor may 22 recall, in the self-serving declaration that she</p>
<p style="text-align: right;">6</p> <p>1 MR. ROTTENBORN: Yes, sir. Good morning. 2 THE COURT: I think we have everybody 3 who's going to be participating. The court 4 reporter has been sworn. 5 This is here on plaintiff's motion to 6 compel execution of certain HIPPA practices. So, 7 we can go ahead and start up if you're ready. 8 MR. CHEW: Thank you, your Honor. Good 9 morning again. Ben Chew for Plaintiff Johnny 10 Depp. 11 As your Honor just stated, we're here on 12 Mr. Depp's motion to compel Defendant Amber Heard 13 to provide a HIPPA waiver for her mental and 14 physical health records, including those relating 15 to alcohol and substance abuse. We have been 16 asking for these materials for this release for 17 months. 18 Defendant admits these records are 19 relevant; yet, to date, Ms. Heard has only 20 produced incomplete records from two of the six 21 doctors that she identified in response to 22 Mr. Depp's interrogatories, Dr. Kipper and</p>	<p style="text-align: right;">8</p> <p>1 submitted and attached to the first of her two 2 motions to dismiss, Ms. Heard alleged 14 instances 3 of violent abuse by Mr. Depp. It is inconceivable 4 that she would not have required and sought 5 treatment from one or more doctors in light of the 6 violent incidents that she described. 7 Ms. Heard's statement at page four of her 8 opposition that some victims may be reluctant to 9 report abuse conspicuously do not apply to 10 Ms. Heard, who shouted these allegations from the 11 rafters, both in her divorce proceedings and 12 after. 13 Clearly, the issue of whether Ms. Heard 14 sought treatment for these 14 beatings is germane 15 to the issue of whether, in fact, they occurred. 16 And as your Honor knows, Mr. Depp vehemently 17 denies that they did. 18 The second basis for why these are at 19 issue and crucially relevant, as your Honor knows, 20 Mr. Depp alleges throughout his complaint that 21 Ms. Heard was the perpetrator of the domestic 22 abuse, not Mr. Depp. Specifically, Mr. Depp</p>

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<p style="text-align: right;">9</p> <p>1 alleges this in paragraphs 3, 23 through 25, 28, 2 30, 61, 78, 89, and 100 of his complaint. 3 As alleged, Ms. Heard is the one with the 4 criminal record for domestic violence against her 5 former domestic partner Tasye van Ree. She was 6 the one who was arrested. And it was Ms. Heard 7 who severed part of Mr. Depp's finger with a 8 broken vodka bottle. 9 Recall, your Honor, that in seeking a 10 broad HIPPA waiver from Mr. Depp, Mr. Rottenborn 11 successfully argued that there could be a 12 correlation between Mr. Depp's alleged alcohol and 13 substance abuse, on one hand, and his propensity 14 for domestic violence, on the other. 15 That same logic applies to Ms. Heard. She 16 can't say, on the one hand, that she needs 17 Mr. Depp's medical records, which she now has, 18 while on -- because they bear on his violence, 19 alleged violence, while saying her medical records 20 don't relate to her violence as Mr. Depp alleges 21 in his complaint. 22 Ms. Heard's other objections are</p>	<p style="text-align: right;">11</p> <p>1 hac vice or otherwise, disclose somebody's medical 2 records. And, in fact, none of the records that 3 Mr. Depp has produced and none of the cherry- 4 picked limited medical records that Ms. Heard has 5 produced has been leaked or has appeared in the 6 press. 7 And, finally, and I won't discuss this 8 much, but the fact that Ms. Heard would make this 9 allegation, the concern of leaking, is a bit 10 ironic given what happened after your Honor 11 directed counsel not to spin the reasons behind 12 his first continuance and especially ironic when 13 what happened yesterday in London occurred. 14 The Sun's counsel apparently read in open 15 court a document stamped confidential by Mr. Depp 16 in this case, which he claimed had been provided 17 to him by Ms. Heard's American counsel. I will 18 just quote from the Daily Mail article. "The 19 Sun's barrister, Adam Wolanski, QC, told the Court 20 that his client had recently obtained a series of 21 text messages between Mr. Depp and his assistant 22 Nathan Holmes from Ms. Heard's American lawyers."</p>
<p style="text-align: right;">10</p> <p>1 unavailing. The fact that Ms. Heard's treatment 2 or lack thereof is also relevant to Mr. Depp's 3 defamation case against the Sun tabloid, which 4 starts on July 7th in London, does not vitiate his 5 need for the waiver in this case. We've been 6 asking for this waiver for months. 7 And even if your Honor orders Ms. Heard to 8 provide the comprehensive HIPPA waiver by Tuesday, 9 June 30, it's highly doubtful, as a practical 10 matter, that Mr. Depp would receive any additional 11 records from the six doctors before that ten-day 12 trial ends in mid-July. 13 So, as a practical matter, the fruits of 14 the HIPPA waiver will be used only in this case, 15 although they certainly would have been relevant 16 for the defamation case against the Sun. 17 Nor would anyone on Mr. Depp's team 18 disclose Ms. Heard's medical records in this case 19 to anyone. Medical records explicitly fit the 20 definition of "confidential" under the protective 21 order in this case. We all understand the grave 22 consequences that would ensue if any counsel, pro</p>	<p style="text-align: right;">12</p> <p>1 So, I'm not here to throw rocks, your 2 Honor, but it is ironic that this allegation is 3 coming from them in light of the history here. 4 But in any case, I can assure the Court, as an 5 officer of the Court, that there is no danger 6 whatsoever that we would disclose in violation of 7 the protective order the fruits of the HIPPA 8 waiver. Thank you, your Honor. 9 MR. ROTTENBORN: Good morning, your Honor. 10 Ben Rottenborn here on behalf of the Defendant 11 Amber Heard. With me today is my new co-counsel, 12 David Murphy, colleague of Elaine Bredehoff. We 13 appreciate your time this morning, your Honor. 14 And I'll start with the statute, which is 15 Section 8.01-399. I think that's perhaps the one 16 thing that we agree on today, your Honor, is that 17 that's the statute that governs the Court's 18 analysis here. 19 And, importantly, when you look at the 20 words of the statute, that statute does not 21 provide anyone an entitlement to a HIPPA waiver. 22 It does explicitly provide that certain medical</p>

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<p style="text-align: right;">13</p> <p>1 records might be produced in a civil action, and 2 it explicitly states that the disclosure of those 3 medical records should be restricted to those 4 medical records that relate to the physical or 5 mental conditions at issue in this case. 6 Now, this is a case in which Mr. Depp has 7 sued Ms. Heard for defamation relating to her 8 statements that he abused her. This is not a case 9 about whether Ms. Heard abused Mr. Depp other than 10 the gratuitous allegations that are in plaintiff's 11 complaint. 12 We have complied with the section of the 13 code, Section 399, your Honor. We've produced 14 records from medical providers on the lone 15 relevant issue in the case, which is whether 16 Mr. Depp abused Ms. Heard. 17 Now, I can't sit here and go through the 18 records chapter and verse, but I do take issue 19 with Mr. Chew's statement that she hasn't produced 20 any records in that regard. We have taken that 21 obligation seriously, collected those records from 22 medical providers, and produced them, which is</p>	<p style="text-align: right;">15</p> <p>1 case. Nothing about Ms. Heard's mental conditions 2 or any alleged substance abuse by Ms. Heard has 3 been put at issue. And contrary to what Mr. Chew 4 said, we simply did not admit that these are 5 relevant. 6 Without belaboring this point, we also 7 take issue with the statement that Mr. Depp has 8 produced all of his medical records. This will be 9 before the Court on July 10th. But he still 10 hasn't complied fully with the Court's order from 11 eight months ago requiring him to produce those 12 records. 13 So, I'm not here to argue that, but 14 certainly it's a bold claim by Mr. Depp to ask 15 Ms. Heard to provide everything by Tuesday when he 16 hasn't complied with the Court's order from eight 17 months ago. 18 To the extent that there haven't been 19 complete records or that Mr. Depp believes there 20 haven't been complete records that have been 21 produced by certain doctors, we offered a solution 22 to that because we want -- some of these doctors</p>
<p style="text-align: right;">14</p> <p>1 what the statute entitles Mr. Depp to. And to the 2 extent that there are documents that haven't been 3 produced, we will supplement our production. I'm 4 not aware of any sitting here today, but we will 5 certainly, you know, comply with our discovery 6 obligations, as we have thus far. 7 What is relevant for Ms. Heard in this 8 case is very different from what is relevant for 9 Mr. Depp. Mr. Depp put at issue his injuries, 10 particularly the finger injury, but others, as 11 well, in his complaint, and he refused to provide 12 the medical records. And Ms. Heard did file a 13 declaration indicating that Mr. Depp turned into 14 what she called a "monster" oftentimes when he 15 abused drugs or alcohol and that made him violent. 16 Those issues, Mr. Depp's reaction to drugs 17 and alcohol and his propensity for violence, and 18 Mr. Depp's alleged injuries and medical condition 19 have been placed at issue in this case, as your 20 Honor found on October 18. 21 Ms. Heard has not similarly placed or had 22 placed issues relating to her at issue in this</p>	<p style="text-align: right;">16</p> <p>1 are doctors that both Ms. Heard and Mr. Depp saw. 2 And we offered a solution during the meet and 3 confer process. We said, "Look, if that's the 4 issue, and we're not aware that the records are 5 incomplete, let's both reach out to the doctors 6 and instruct them, 'Produce everything,' and then 7 we will review the records and we'll produce 8 what's relevant and discoverable in this case." 9 But what Mr. Depp wants to do is to use 10 this to prove a negative. He wants to say the 11 absence of medical records somehow show that the 12 abuse didn't occur. And while I certainly take 13 issue with that for reasons that we explain in our 14 brief, they can do that regardless of whether or 15 not they get a HIPPA waiver by looking at what 16 Ms. Heard produces in her production. 17 If they want to claim that there's too few 18 records to support claims of abuse, then they can 19 do that, but it's not appropriate to give them an 20 unfettered look at all of Ms. Heard's medical 21 history through a blanket HIPPA waiver, which is 22 exactly what they request. That's just totally</p>

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5 (17 to 20)

<p style="text-align: right;">17</p> <p>1 improper and not what the statute calls for. 2 A final couple points, your Honor -- they 3 make very clear in their brief that they want 4 these documents because they want to use them in 5 the U.K. case. Again, that's -- I'm not going to 6 belabor this, but that's an improper use of 7 discovery in this case to use in the London 8 proceedings. 9 And I will also say, and I alluded to this 10 in the brief, we don't believe that Mr. Depp's 11 side can be trusted with records that are marked 12 confidential for two reasons. And I'll address 13 Mr. Chew's allegations of statements made in court 14 by the Sun yesterday to the extent that I have 15 just become aware of them. 16 But in the last two to three weeks, there 17 have been at least two instances, your Honor, in 18 which Mr. Depp -- and I'm not accusing Mr. Chew of 19 this -- but Mr. Depp's side has leaked documents 20 that were clearly marked confidential under the 21 protective order to the press. One of them was a 22 deposition of a third-party witness that was</p>	<p style="text-align: right;">19</p> <p>1 marked confidential materials to the press. But 2 not only did that happen two or three weeks ago 3 with this deposition, it just happened again this 4 week. 5 We received reach-out from a media 6 organization in the U.K., I believe, about some 7 texts that Ms. Heard had produced and that were 8 marked confidential and that had been leaked to 9 that outlet. And, again, I'm not accusing 10 Mr. Chew of doing this. I don't believe that he 11 did or had anything to do with that. But I do 12 believe that his pro hac vice co-counsel did, and 13 the leaking from that side has been egregious. 14 And, so, that's another reason why -- I 15 don't doubt Mr. Chew's statement that he would 16 personally not leak Ms. Heard's medical records 17 that have nothing to do with this case, but his 18 cohorts cannot be trusted to do the same. 19 I'll address very briefly in closing, your 20 Honor, the two points that Mr. Chew made. First 21 of all, and we've said this time and again, there 22 was no -- there were no statements made by my</p>
<p style="text-align: right;">18</p> <p>1 designated confidential, and it was leaked to the 2 press. 3 Mr. Chew's side was informed when we 4 received a media inquiry of how improper we 5 thought this was and, nonetheless, media articles 6 showed up on it. And I'll note that in that 7 deposition, which I didn't attend, but my former 8 co-counsel and Mr. Chew sparred a little bit about 9 what you can designate, and Mr. Chew was -- or my 10 former co-counsel objected that Mr. Chew had over- 11 designated material. And he said, "Look, we can 12 designate what we want but there's a way to 13 challenge designations under the protective order, 14 and if you want to do that, you can." 15 And that's the way that it should work. 16 If one party believes that another side has over- 17 designated something, section two of the 18 protective order deals with the meet and confer 19 process on that and, if necessary, coming to the 20 Court. 21 What section two and no part of the 22 protective order condones is leaking clearly</p>	<p style="text-align: right;">20</p> <p>1 co-counsel or me to the press after your Honor's 2 ruling on the continuance. There just absolutely 3 were not. 4 One of the media articles, and we've said 5 this in the letter to the Court, because we 6 were -- you know, we were, frankly, very concerned 7 that your Honor thought that we wouldn't take your 8 advice to heart and follow your directions, I 9 believe one of the articles had pulled a quote 10 that had been given well before the hearing on the 11 continuance. So, we just have not violated any 12 court orders on that. 13 And the issue that Mr. Chew raises 14 yesterday, I don't know -- I was made aware of it 15 for the first time yesterday afternoon, but my 16 understanding is that Mr. Depp had to waive 17 confidentiality of the documents that had been 18 produced in this case by order of the Court in the 19 U.K. for use in those proceedings and that he had 20 not produced all of them. 21 So, I -- Mr. Chew and I, obviously, need 22 to discuss this further, and we're going to meet</p>

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6 (21 to 24)

<p style="text-align: right;">21</p> <p>1 and confer about that particular issue, but I can 2 say that based on the very limited looking into it 3 that I've done, there was absolutely no violation 4 of the protective order in this case because 5 Mr. Depp had already waived confidentiality of any 6 documents and should have produced them. 7 But all that's a digression from what's at 8 issue in front of the Court today, which is, 9 simply put, Ms. Heard should not have to give a 10 blanket HIPPA waiver to Mr. Depp's lawyers to 11 delve into her medical history when those records 12 simply are not at issue. 13 And under the plain terms of 8.01-399, 14 what is at issue for Mr. Depp with respect to his 15 medical records is very different from what is at 16 issue with respect to Ms. Heard's medical records, 17 and we have grave concern about what amounts to a 18 fishing expedition by the plaintiff in this case. 19 And even their request for a narrowed 20 HIPPA waiver that would allow them to look into 21 things like alleged drug and alcohol abuse or 22 Ms. Heard's mental conditions have absolutely</p>	<p style="text-align: right;">23</p> <p>1 send to me a proposed order, and I'm going to ask 2 that in your order, as it deals with the HIPPA 3 issues, that you be specific as to the nature of 4 what each of you thinks I should order, as opposed 5 to being general as to the specific nature of what 6 you think I should order. 7 After I get those things, I'll review them 8 and give you all a ruling on the case. 9 We're in the process now of trying to 10 formulate some plans to try to see when we can 11 roll out, and we're going to initially roll out 12 jury trials related to criminal matters and first 13 up with people who were incarcerated and might 14 have speedy trial issues and those type of things. 15 So, those are the things in the foremost 16 part of my mind right now, so I regret that the 17 way my schedule is, I'm not so sure I'll be able 18 to get you all a ruling before that case in London 19 is completed. But I don't want anyone to draw any 20 other inferences from that other than that I want 21 to give all those issues full consideration before 22 I make decisions in them.</p>
<p style="text-align: right;">22</p> <p>1 nothing to do with this case. 2 And the one thing that does have to do 3 with this case from her medical records are 4 statements that she may have made or received from 5 medical providers relating to violence by Johnny 6 Depp. And those have been produced in this case 7 to the extent that we have them, and to the extent 8 that we are made aware of more, we will produce 9 them in accordance with our discovery obligations. 10 So, for those reasons, your Honor, we ask 11 that the motion be denied. 12 THE COURT: Anything further, Mr. Chew? 13 MR. CHEW: No. Thank you, your Honor. 14 THE COURT: All right. I've reviewed your 15 submitted materials, and I'm always happy to hear 16 from counsel, as I think the oral arguments are 17 significant. And what I'm going to do is ask that 18 you all have the court reporter transcribe your 19 arguments today and send them to me so I can 20 review them in more detail before I do make a 21 ruling. 22 I'm going to also ask that you all each</p>	<p style="text-align: right;">24</p> <p>1 So, if you all can get those things to me, 2 I'd appreciate it. And I appreciate the arguments 3 today and hope everybody stays safe. Thank you. 4 MR. CHEW: Thank you very much, your 5 Honor. 6 MR. ROTTENBORN: Your Honor, you, as well. 7 MR. CHEW: Thank you very much, your 8 Honor. I just had one question by way of 9 clarification. May we please have until 5 p.m. on 10 Monday to get you our proposed orders? 11 THE COURT: It need not even be that 12 quick. Certainly why don't you all take a week, 13 if you want, because you're going to give me the 14 transcript, and I don't want her to have to work 15 over the weekend either. 16 MR. CHEW: Thank you very much, your 17 Honor. Appreciate it. 18 MR. ROTTENBORN: Thank you, your Honor. 19 MR. CHEW: Thank you. 20 (Off the record at 12:03 p.m. EST) 21 22</p>

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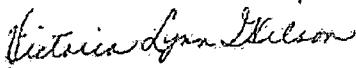
7 (25 to 28)

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1 CERTIFICATE OF SHORTHAND REPORTER-E-NOTARY PUBLIC

2 I, Victoria Lynn Wilson, the officer  
3 before whom the foregoing proceedings were taken,  
4 do hereby certify that the foregoing transcript is  
5 a true and correct record of the proceedings; that  
6 said proceedings were taken by me stenographically  
7 and thereafter reduced to typewriting under my  
8 direction; and that I am neither counsel for,  
9 related to, nor employed by any of the parties to  
10 this case and have no interest, financial or  
11 otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my  
13 hand and affixed my notarial seal this 27th day of  
14 June, 2020.  
15 My commission expires May 31, 2023.

16  
17 

18 \_\_\_\_\_  
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21 THE COMMONWEALTH OF VIRGINIA  
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