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Transcript of Hearing

Date: August 21, 2020 Case: Depp, II -v- Heard

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Transcript	t of Hearing	1 (1 to 4)
Conducted on A	August 21, 2020	
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1 VIRGINIA:	1 APPEARANCÉS	
2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY	2 ON BEHALF OF THE PLAINTIFF:	· · ·
3	3 BENJAMIN G. CHEW, ESQUIRE	
4' JOHŃNY C. DEPP, II, :	4 BROWN RUDNICK, LLP	
5 Plaintiff, :	5 601 Thirteenth Street, NW	
6 v. : Case No. CL-2019-0002911	6 Suite 600	
7 AMBER LAURA HEARD, :	7 Washington, DC 20005	•
8 Defendant. :	8 (202) 536-1700	1
9x	9	• • •
10	10 ON BEHALF OF THE DEFENDANT:	
11 HEARING	11 J. BENJAMIN ROTTENBORN, ESQUIRE	· · · · ·
12 BEFORE THE HONORABLE BRUCE D. WHITE	12 WOODS ROGERS, PLC	,
13 Conducted Virtually	13 10 South Jefferson Street	•
14 Friday, August 21, 2020	14 Suite 1400	
15 12:03 p.m. EST	15 Roanoke, VA 24011-1319	
16	16 (540) 983-7600	
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20 Job No.: 315574	20	
21 Pages: 1 - 21	21 .	
22 Reported By: Victoria Lynn Wilson, RMR, CRR	22	
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2		, 4
1 HEARING BEFORE THE HONORABLE BRUCE D. WHITE,	1 APPEARANCES CONTINUED	
2 conducted virtually.	2 ON BEHALF OF THE DEFENDANT:	· · · ·
3	3 ELAINE CHARLSON BREDEHOFT, ESQUIRE	
4	4 CHARLSON BREDEHOFT COHEN & BROWN, PC	
5	5 11260 Roger Bacon Drive	
6 · · · ·	6 Suite 201	
7	7 Reston, VA 20190	
8	8 (703) 318-6800	
9 Pursuant to docketing, before Victoria Lynn	9	
10 Wilson, Registered Merit Reporter, Certified	10	
11 Realtime Reporter, E-Notary Public in and for the	11	
12 Commonwealth of Virginia.	12	·
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	August 21, 2020
1 PROCEEDINGS	1 this before I came in in June, but unless we bring
2 (The court reporter was sworn.)	2 a motion to compel and unless we get an order, we
3 THE COURT: Good morning, everybody.	3 do not get responses and we do not get documents,
4 MS. BREDEHOFT: Good morning, your Honor.	4 no matter how hard we try.
5 THE COURT: I see we have a court	5 And the uniqueness of this case, your
6 reporter.	6 Honor, is that our deponents, the vast majority
7 MR. CHEW: Good morning, your Honor.	7 the plaintiffs have listed 42 individuals who have
8 THE COURT: Can I get the court reporter	8 knowledge in this case. The vast majority of them
9 to raise her hand to be swom.	9 are in California. We have started to set up
10 (The court reporter was sworn.)	10 these depositions because we have a trial in
11 THE COURT: Thank you.	11 January. We have a number of depositions
12 All right. Before we get started, I guess	12 scheduled for September and early October.
13 I should express my disappointment to you and get	13 These are one-offs, your Honor. We can't
14 it out there at the outset. I have, I guess, been	14 expect them to show up at trial. This is our shot
15 too nice to everybody in regards to discovery	15 for trial testimony. If we don't get the
16 matters and made myself too available and feel	16 responsive documents from them and have them in
17 that that process is something I need to address.	17 time to prepare for and take these depositions, we
18 I'm not sure that you all always	18 are going to be at a significant disadvantage.
19 completely confer and give consideration to the	19 And that's why we're pushing forward on this.
20 other side's positions. Although I don't say it	20 But we made a genuine effort to try to
21 at the hearings, there are some requests that are	21 resolve all these. And your Honor will see the
22 made and some objections that are made that would	22 documents that I sent yesterday, even after we had
6	
1 fall into the category of being ridiculous, and	1 that extensive meet and confer, and it was
2 that continues even through today, in my view.	2 extensive and very much in good faith
3 So what I want to know first is how much-	3 Mr. Rottenborn was with me for that then
4 time did you all actually spend in a good faith	4 counsel for defendant or plaintiff claims in
5 meeting and conferring about the discovery issues	5 its opposition, "Oh, we've resolved all of these."
6 that I've got on the docket right now. And part	6 So I sent a consent order saying, "That's
7 of the reason I mention that is that I understand	7 great," because they didn't after we left the
8 that you all have already requested my available	8 meeting on Wednesday night, they said, "Well, we
9 Fridays for essentially the next two months,	9 still have to check with our counsel in Virginia."
10 meaning that there are more of these type of	10 We said, "Okay. Get back to us." And then we get
11 motions to come, in my estimation.	11 the opposition saying, "Well, we're agreed to
12 So I don't know who wants to go first, but	12 these and these and these."
13 I'll hear from everybody.	13 So I sent a consent order saying, "Great.
14 MS. BREDEHOFT: I'll be happy to go, your	14 Let's get these off the judge's docket" and
15 Honor. We spent almost two hours on the phone,	15 that's one of my attachments, too, your Honor
16 Mr. Rottenborn and I spent, with the two	16 "So these I understand you're agreeing to now. Go
17 California counsel the Virginia counsel were	17 ahead and let me know if you've got any edits.
18 not present on behalf of plaintiff and we went	18 Let's get this in to the judge so they don't have
19 through in great detail these requests.	19 to spend the time on this."
20 Our experience and I completely agree	20 He responds, Mr. Chew responds, by saying,
21 and share your Honor's frustration, but it	21 "Look, since you wouldn't do the meet and confer
22 appears, and I think Ben Rottenborn can speak to	22 before you filed the motion, I'm not going to

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1 agree to any consent order: # He didn't compain 1 2 about any of the conditions. He just wouldn't 1 want to address the question you asked. There was 3 sign a consent order that agreed to produce these 4 documents which we desperately need. 4 documents which we desperately need. 3 motion. The first request that came in came in by 4 documents which we desperately need. 3 motion. The first request that came in by 5 So that's why we're here, your Honor. 5 I responded to Mr. Nadelhaft and 6 Mo, na with requesting the Fridays, you 7 that I was booked in depositions thranday and 9 moment, he's going to move to continue the trial, 9 early the next meek. And instead offset for Monday, they went abaed 11 apparendly, the next motion, and we have some 11 and filed the motion without any meet and confer for Monday, they went abaed 12 source the in in scheduling bloes depositions in 16 after-the-fact meet and confer for Monday, they went abaed 13 So (eve we have to have a huge lead time 16 after-the-fact meet and confer for Monday, they went abaed 14 sought least, Let us know in the weare 10 10 after the-fact meet and confer for Monday, they went abaed 14 proposed dates. Let us know if these are <t< th=""><th></th><th></th><th></th></t<>			
2 no meet and confer before MS. Heard filed her 3 sign a consent order that agreed to produce these 4 documents which we desperately need. 5 So that's why we're here, your Honor. 6 Now, as with requesting the Fridays, you 7 know, part of that is to determine what needs to 8 be here, but I think Mr. Chew will tell you in a 9 moment, he's going to move to continue the trial, 11 apparently, the next motion, and we have some 11 additad's one of the - that's going to be, 12 asparently, the next motion, and we have some 12 and that's one of the - that's going to be, 13 We're also having a very hard time 14 scheduling depositions and getting their 13 13 So, despite the fact that Ms. Heard made 14 accherture foreign subpoeras. 14 and field the motion without any meet and confer or we - we agreed to 15 cooperation in scheduling these depositions in 16 adti-refact meet and confer or We and seday, 17 August 12th - 1 was in deposition that day, 18 and field the motion without any meet and confer, make we had an after-the-fact meet and confer, and use had an after-th	9	1 want to address the question you asked. There was	· 1ļ
3 sign a consent order that agreed to produce these 3 motion. The first request that came in came in by 4 documents which we desperately need. 3 motion. The first request that came in came in by 4 documents which we desperately need. 5 So that's why we're here, your Honor. 6 Now, as with requesting the Fridays, you 6 Ms. Bresnahar's office seven minutes later saying 7 know, part of that is to determine what needs to 8 Mr. Nadelhaft and 8 be here, but I think Mr. Chew will tell you in a 9 moment, he's going to move to continue the trial, 9 moment, he's going to move to continue the trial, 9 early the next week. And instead of setting up 10 and that's one of the - that's going to be, 11 and filed the motion without any meet and confer 12 sugs there. 12 and that's object on sugnetization in 16 California. And we have to have a huge lead time 13 So, despite the fact that Ms. Heard made 14 scheduling those depositions in 16 after-the-fact meet and confer, and up at a stant and ender. 19 time from service before we can schedule. 20 ast two times, when Ms. Heard moved to compel, 21 your Honor, to them saying. "Here's a number of 21 although at least in those cases, there was at 22 tore we want o depose. Here are our 22 least a cursory attempt at meet and confer, there <td< td=""><td></td><td></td><td></td></td<>			
4 documents which we desperately preed. 4 email at 2:42 p.m. on Wednesday, August 5. 5 So that's why we're here, your Honor. 5 So that's why we're here, your Honor. 6 Now, as with requesting the Fridays, you 7 Row, part of that is to determine what needs to 7 Row, part of that is to determine what needs to 7 Ms. Bresmahan's office seven nimutes later saying 9 moment, he's going to move to continue the trial, 9 early the next week. And instead of setting up 10 and that's one of the - that's going to be, 11 and field the motion without any meet and confer 12 11 apparently, the next motion, and we have some 11 and field the motion without any meet and confer 13 12 supsets ther. 13 So, despite the fact that Ms. Heard made 14 scheduling depositions and getting their 13 So, despite the fact that Ms. Heard made 14 scheduling depositions and getting out proposed dates, 10 16 after-the-fact meet and confer or Weednesday, 18 California law, we have to give them sufficient 18 to - so two of my colleagues had an after-the- 19 ime from service before we can schedule. 10 10 16 after the-fact meet and confer or Weednesday, 21 your Honor, to thema saying "Here's a numbe			
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17 because they're foreign subpoenas. Then, under 18 California law, we have to give them sufficient 19 time from service before we can schedule.17 August 12th I was in deposition that day, 18 too so two of my colleagues had an after-the- 19 fact two times, when Ms. Heard moved to compel, 21 your Honor, to them saying. "Here's a number of 22 these people we want to depose. Here are our 22 tense people we want to depose. Here are our 22 tense people we want to depose. Here are our 22 tense people, we want to depose. Here are our 22 tense people, we want to depose. Here are our 22 tense people, we want to depose. Here are our 22 tense people, we want to depose. Here are our 22 tense people, we want to depose. Here are our 22 tense people, we want to depose. Here are our 22 tense people, we want to depose. Here are our 22 tense people, let us know so we 4 don't have to issue subpoenas. 5 Crickets. They just don't respond. 6 Then a week or two later, they say, "Well, 7 we'll do a meet and confer with you on this in 8 another week." Well, by that time, that would 9 have knocked out all of the September depositions 10 because we wouldn't have had enough time to serve 11 that you have a meet and confer the fore 13 toom, and I hear your Honor's frustration and I 13 terp tirst request for a meet and confer the 13 advays been my understanding 11 that you have a meet and confer term said 14 tould do it the Monday. 15 And that's been a source of frustration, 16 but we are certainly willing to redouble our 17 offorts to we haven't been filing any of these 18 THE COURT: Mr. Chew, your microphone is 19 on you're on mute. Thank you. 20 MR. CHEW: Tank you, your Honor? 21 THE COURT: I can. 22 MR. CHEW: Thank you, your Honor. I just17 Adust 12th I was in deposition that day, 12 The COURT: I can. 22 I do have to push back on this not			
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13 1 delay. We have bent over backwards, appropriately	1 we please hear from you on your availability for a	15
2 so, to comply with the Court's orders and make	2 call on Monday." That's in here. None of that	
3 massive productions of documents on August 14th	3 was attached to Mr. Chew's opposition. He only	
4 and again today, August 21. We made full	4 put what he wanted your Honor to see. He didn't	
5 compliance with the Court's order last Friday, and	5 give the entire set.	· .
6 we intend to make full compliance with the Court's	6 So, once we did not hear and did not hear,	
7 order this Friday, even though all of those	7 and this is a history, your Honor, of delay	
8 documents were already in possession of	8 tactics. We've never even do anything quickly.	
9 Ms. Heard's counsel.	9 So when we didn't hear from them by Friday, we	
10 Ms. Bresnahan attended the entire trial in	10 prepared the motion to compel because your Honor's	
11 London, and she participated in giving The Sun all	11 last Friday in August was this date, and we have	
12 the documents they could have wanted, even	12 depositions set for September 8th going on, you	
13 confidential documents from this case. That's	13 know, days, you know, all the way through the rest	
14 fine. We produced them all to her. We've done	14 of that month and into October. And, so, we	
15 everything the Court has required. And we will	15 needed to get these documents, and if he wasn't	
16 continue to do that, your Honor. But we would	16 going to do a meet and confer, which we perceived	
17 like we would like meet and confers before they	17 at that time, then we needed to file.	
18 file their umpteenth motion.	18 Then he comes back on Monday and says,	
19 THE COURT: Okay.	19 "Withdrawn," and that's when we responded, and	
20 MS. BREDEHOFT: Your Honor	20 that's on pages that's on pages nine, your	
21 THE COURT: Ms. Bredehoft.	21 Honor, nine and ten. We responded why we filed	
22 MS. BREDEHOFT: Thank you, your Honor.	22 but said, "Look, we'll still do the meet and	
14		16
1 One of the documents that I submitted to Mister	1 confer. If you're ready to do the meet and	
2 (indecipherable) yesterday was the emails	2 confer, we'll take the date you've offered. I'm	
3 respecting the meet and confer. And you'll see	3 sending a calendar invite."	
4 from that that we made a genuine effort to meet	4 Mr. Rottenborn and I were there available.	
5 and confer, including Mr. Nadelhaft from my office	5 We can resolve it and take it off the docket,	
6 sent a detailed detailed email setting out all	6 that's great, but if we don't do this, your Honor,	
7 the of the issues with each of the objections to	7 he's not going to respond. That's the problem	
8 the (no audio).	8 we've had. And I think Mr. Rottenborn can address	
9 THE COURT: Responded seven minutes later	9 this much more than I have he's been in the	
10 and you filed your motion without having a (no	10 case much longer but that's been a pattern.	
11 audio).	11 The reason we have to bring the motions is	
12 MS. BREDEHOFT: Your Honor could look at	12 because we don't get any documents. We have four	
13 page two of the emails respecting meet and confer	13 sets of requests for production that we issued,	
14 that I submitted yesterday. You'll see that	14 yes, as a result of being and in U.K. and hearing	
15 Mr. Chew did not say he was available on Monday.	15 representations by counsel for Mr. Depp over there	
16 He said, "We're happy to discuss next week, but	16 about what he possessed and what he wanted from	
17 I've booked for the next two days." And	17 Ms. Heard. That's what spawned these issues.	
18 Mr. Nadelhaft (indecipherable) responded very	18 We haven't received one document, not one.	
19 briefly as to that, saying, "How is 9:00 on	19 They were all due in different July time frames	
20 Monday." And that's on page one of that.	20 and early August. Not one document. And they're	
21 We hear nothing. So another full day goes	21 not going to give us any unless we come in and get	
22 by. Adam says again Nadelhaft says again, "Can	22 an order. And that's untenable to us, but we have	
	3	

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по choice.	1 we'll look at it and if we find something on	19
	2 Tuesday, we'll give it to you on Wednesday," well,	
	3 that's fine, but it doesn't remove you of the	
B lost patience with both sides, frankly, and I		
4 don't find this to be a one-sided thing. And I		
5 don't want to since Mr. Rottenborn has been in		
5 the case, things have been better on that side. I	6 MR. CHEW: Understood, your Honor.	
7 agree with that. And, hopefully, all current	7 MS. BREDEHOFT: Thank you, your Honor.	
counsel are going to be able to do this.	8 That's helpful, very helpful.	·
But what I'm going to direct I'm not	9 THE COURT: Okay. Anything else that I ,	
0 going to rule on anything today. I'm going to	10 can help you with on the discovery side in the	
11 make you all meet again in either Zoom or Webex or	11 context of what we've been talking about today?	
2 some face-to-face type of remote proceeding to	12 MR. CHEW: No. Thank you, your Honor. We	
13 talk about what remains.	13 understand your clear direction.	
14 I'm going to want an order on what's	14 MS. BREDEHOFT: Your Honor, there is	
15 already been agreed to. And before we put this	15 something that's going to come up with your Honor	
16 back on the docket, I want you to certify that you	16 that Mr. Chew brought to our attention yesterday	
7 each have had that meeting in good faith and made	17 and, I guess, the night before, that they are	
18 attempts to resolve things. I want everybody to	18 going to attempt to move to continue the trial.	
19 look at the scope of the discovery as to whether	19 THE COURT: Well, when they do that, then	
20 these are overbroad or not, as to whether you're	20 I'll hear it when they do it. I'm not going to	
21 asking for things you already have, asking for	21 let you now argue against a motion he hasn't filed	
22 things that you have already given to other people	22 yet.	.*
18		20
1 on both sides of this equation.	1 MS. BREDEHOFT: Okay. That's fair, your	
2 And what I want you to convey to your	2 Honor.	
3 clients or your co-counsel or whatever you think	3 THE COURT: Known you for a long time,	
4 needs to be conveyed is the attorneys' fees are in	4 Elaine.	
5 the picture. I've trying to avoid doing that on	5 MS. BREDEHOFT: Yeah, your Honor. Thank	
6 discovery. I don't like to do that on discovery,	6 you.	
7 but that, apparently, is going to be the only	7 THE COURT: All right. Okay. Make sure	
3 thing I can do to change the way the case has been	8 your clients understand what I said, and what I	
9 litigated so far.	9 haven't said so much in that but is, I guess,	
10 MS. BREDEHOFT: Your Honor, may I ask one	10 implicit in it is the discovery is for the purpose	
11 question that I think has been an ongoing issue in	11 of our trial, not for the purpose of the press or	
12 this case that will help us in this and we will	12 for the purpose of public opinion. Okay.	
13 absolutely do exactly what your Honor has	13 MR. CHEW: Understood, your Honor. Thank	
14 directed. The plaintiffs in this case have said	14 you very much.	÷ .
15 we will produce on an ongoing rolling basis.	15 MS. BREDEHOFT: Thank you.	
16 That's in every single one of their responses.	16 THE COURT: Thank you all.	
17 And then they	17 MS. BREDEHOFT: Good to see you.	
18 THE COURT: Say produce pursuant to the	18 (Off the record at 12:19 p.m. ET.)	
19 Virginia Rules, and the Virginia Rules have a	19	
20 requirement that you continue to supplement, but	20	
21 they don't say you can wait until you feel like it	21	
	-	
22 to roll things out. So simply saying, "I'll	22	

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I, Victoria Lynn Wilson, the officer	·
before whom the foregoing proceedings were taken,	
do hereby certify that the foregoing transcript is	
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said proceedings were taken by me stenographically	
and thereafter reduced to typewriting under my	
direction; and that I am neither counsel for,	
related to, nor employed by any of the parties to	
this case and have no interest, financial or	
otherwise, in its outcome.	
IN WITNESS WHEREOF, I have hereunto set my	
hand and affixed my notarial seal this 28th day of	
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My commission expires May 31, 2023.	· ·
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