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OFFICIAL COURT REPORTER

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2 THE COURT: This is your motion?

3 MR. NEUHAUS: Yes, your Honor. I'm Joe
4 Neuhaus from Sullivan & Cromwell for Bank of Nova
5 Scotia. This is a motion to strike the jury demand
6 contained in the note of issue of May 15th of the
7 plaintiffs' side. The motion is based on four basic
8 propositions, your Honor --

9 THE COURT: Let me interrupt you. The
10 larger issue here is the issue of the plaintiffs
11 filing an amended complaint; right? Isn't that one of
12 the issues?

13 MR. GRAHAM: That's the other issue, your
14 Honor. But late last night we believe that
15 procedurally we resolved that problem. Mr. Frankel is
16 prepared to tell you what we did to take that off your
17 Honor's docket today.

18 MR. FRANKEL: Your Honor, I guess,
19 certainly subject to the court's approval, we think we
20 have worked out the issues in their -- they call it a
21 motion for leave to -- no, a motion to compel us --

22 THE COURT: Compel.

23 MR. FRANKEL: -- compel us to file an
24 amended complaint.

25 THE COURT: Right.

26 MR. FRANKEL: What we have agreed upon is

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2 that we will go ahead and file a fourth amended
3 complaint to stay the contract issues that they raised
4 in the motion. They want more detail about the
5 contract claim. We said we'd do that and we'd do that
6 within 14 days. I think their motion said twenty. We
7 think we can deal with it within 14.

8 We anticipate that at the same time within
9 14 days we would file a motion for leave to add some
10 additional claims under Mexican law given that you've
11 now ruled that Mexican law governs and we've never
12 really had a chance to plead Mexican law. The
13 pleadings have been under New York law.

14 They said they're going to publish that.
15 We're going to try to put that on the fast track,
16 where we file our motion, they have a week or 8 days
17 or whatever to file a reply and hopefully we can get
18 before your Honor in early November. If that
19 resolved, then they would file their answer and
20 summary judgment motions and we'd be ready to go.
21 That's what we're hoping for.

22 THE COURT: If you hadn't agreed to that,
23 you would have been directed to do that. That's --
24 my point is, I think I'd rather not entertain your
25 motion to strike the jury demand until I have the full
26 flavor of what is going to be in or out of the

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complaint.

You might want to consider, unless there are constraints on your time, but you might want to consider moving by way of order to show cause. I mean, it's quicker, so, as opposed to the whole extended motion practice. I don't want to interfere with whatever understanding both sides have agreed to, but I'm just saying that there's a quicker way to do it.

MR. FRANKEL: I think we're both interested in getting as quickly to the finish line, here's what the case is, they can file the summary judgment motion, let's have it heard, decided, and get on with the case.

MR. GRAHAM: We can confer about this on --

THE COURT: Sure. I just -- just so that we can minimize the efforts on both sides, I read part of your opposition to plaintiffs' desire to add an additional cause of action under Mexican law. And it strikes me that the plaintiffs have a viable argument that it is the court, not them, the Court rendered a determination that Mexican law governs in this case. Having done that, they now should have an opportunity, if that is the case, to see if they have viable causes of action under Mexican law, given the facts and

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2 circumstances.

3 MR. GRAHAM: We'll try to restrict our
4 papers to addressing just that issue.

5 THE COURT: I'm just trying to suggest to
6 you that that's how the court feels at this juncture,
7 so to limit your efforts --

8 MR. GRAHAM: We'll try to answer precisely
9 that question and nothing else.

10 THE COURT: Okay.

11 MR. FRANKEL: Your Honor, before you leave,
12 we came here, we're the only ones here today, is it
13 possible that we can discuss at least your Honor's
14 thinking in terms of a trial date or where we're going
15 to go with this case? The schedule that was in place
16 is kind of thrown out because of the period preparing
17 and rendering the opinion on the motion to dismiss and
18 so we're somewhat in flux and I think it might be to
19 all of our benefit to get your Honor's thinking should
20 we request a trial date now.

21 THE COURT: No, no, and I'll tell you why.
22 A, for example setting a trial date; that's going to
23 be dependent in terms of how soon or how far out. It
24 will be dependent on the results of the motion to
25 strike the jury demand, because if it's a non-jury
26 trial, I can fit that in my calendar much quicker than

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2 I can my jury demands trial. So it's a little hard
3 for me to do that now.

4 What I can suggest to you or ask you, have
5 you attempted to settle this?

6 MR. GRAHAM: We've had no substantive
7 discussions about that, your Honor.

8 THE COURT: Is that because you don't
9 believe it's settleable or that you just haven't had
10 the opportunity?

11 MR. GRAHAM: There's no case that's not
12 settleable. We have not and I have no instructions
13 from the client that would permit me to do that.
14 There's the final dispositive motion that we intend to
15 make that focuses in mind and there may be a time.

16 THE COURT: Let's put it on the fast track
17 but let's get these things done and then we'll be in a
18 better position to lay out when we're going to try the
19 case. All right?

20 MR. GRAHAM: Thank you, your Honor.

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C E R T I F I C A T E

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

Michael J. Daugenti

MICHAEL J. DAUGENTI, CSR, RPR, RMR, CRR
OFFICIAL COURT REPORTER
SUPREME COURT-NEW YORK COUNTY