

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

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3	LIGHTSPEED MEDIA CORPORATION,)	
)	
4	Plaintiff,)	
)	
5	vs.)	No. 12-cv-00889-DRH
)	
6	ANTHONY SMITH, ET AL.,)	
)	February 13, 2014
7	Defendant.)	

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9 **TRANSCRIPT OF PROCEEDINGS**

10 **SHOW CAUSE HEARING**

11 **BEFORE THE HONORABLE DAVID R. HERNDON**

12 **CHIEF UNITED STATES DISTRICT COURT JUDGE**

13 **APPEARANCES:**

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24 Proceedings recorded by mechanical stenography;
25 transcript produced by computer.

1 **(Court convened)**

2 *THE COURT:* Let the record reflect that we're in
3 open court. We've called the case of *Lightspeed Media vs.*
4 *Anthony Smith*, 12-889. Who's on the phone?

5 *MR. DUFFY:* Paul Duffy.

6 *THE COURT:* Paul Duffy, I heard. Who else?

7 *MR. HUFFMAN:* Bart Huffman for AT&T.

8 *MR. SWEET:* Jason Sweet for Anthony Smith.

9 *MR. BOOTH:* Dan Booth for Anthony Smith.

10 *THE COURT:* The one I kind of think I heard was
11 Bart Huffman. Was that the second person that spoke?

12 *MR. HUFFMAN:* Yes, Your Honor. Bart Huffman
13 representing AT&T.

14 *THE COURT:* I think on the phone we have
15 Paul Duffy, Daniel Booth, Jason Sweet, and Bart Huffman,
16 correct?

17 *UNIDENTIFIED SPEAKER:* Correct, Your Honor.

18 *THE COURT:* Who do we have in the courtroom to my
19 left?

20 *MR. HANSMEIER:* Paul Hansmeier.

21 *MR. STEELE:* Your Honor, John Steele.

22 *MR. TOENNIES:* Andrew Toennies for ComCast.

23 *MR. BOZARTH:* Troy Bozarth, Your Honor, for AT&T.

24 *THE COURT:* Okay. Mr. Bozarth's the only one I
25 recognize out of the whole bunch.

1 Okay. So now, we've called this on Defendants'
2 motions for rule to show cause why Plaintiff's counsel
3 should not be held in contempt. I inherited this case from
4 Judge Murphy, who's enjoying his golden years, now left us
5 behind, but not before he entered an order assessing certain
6 sanctions against Plaintiff's counsel. So who's going to
7 argue on behalf of the motions? And we've got, I think,
8 more than one motion. But who's going to argue on behalf of
9 the motion? Let's take first the ComCast -- the
10 Anthony Smith ComCast and SBC motion at Doc. 107. Who's
11 going --

12 *MR. BOZARTH:* Judge, I'm going to start off on that
13 one.

14 *THE COURT:* Make sure you speak into the
15 microphone, Mr. Bozarth, so everyone on the phone can hear
16 you.

17 *MR. BOZARTH:* Absolutely. Thank you, Judge.

18 This is a joint motion brought on behalf of all
19 Defendants that were assessed fees in Judge Murphy's
20 November 27th, '13 order.

21 *THE COURT:* Let me just stop you right there. Can
22 everybody hear Mr. Bozarth?

23 *MR. DUFFY:* Your Honor, this is Paul Duffy. I
24 cannot hear him.

25 *THE COURT:* Make sure the green light's on on the

1 base there, Mr. Bozarth.

2 MR. BOZARTH: Green light's on.

3 Your Honor, this motion was brought on behalf of
4 all of the parties that were awarded fees under
5 Judge Murphy's 11/27/13 order. This case, as you're
6 probably aware, has quite a long history, and the
7 culmination, at least in this court before Judge Murphy, was
8 a hearing where we had all parties present, including
9 Mr. Hansmeier, Mr. Duffy, Mr. Steele, at least on the phone
10 or in person. Judge Murphy heard argument and then took the
11 matter under advisement.

12 On 11/2/0107, he entered his order. That order was
13 extremely clear, and it provided for fees and costs in an
14 amount certain to be paid to my client, to ComCast, and to
15 Mr. Smith as well. The order also provided for 14 days for
16 that to occur. The 14 days elapsed and there was no
17 filings, no payment. And clearly, the next step from our
18 perspective would be seeking to enforce that order with the
19 Court that entered it.

20 Under Seventh Circuit law this is clearly a case of
21 contempt. The order was clear. The order was not complied
22 with and there's been no excuse provided or even an
23 attempted excuse provided, so we would ask that the Court
24 enter a contempt finding and take steps necessary to insure
25 that the order is complied with.

1 *THE COURT:* All right. So is anybody else going to
2 speak in favor of the motion for rule to show cause?

3 *MR. TOENNIES:* Judge, Andy Toennies for ComCast,
4 here in the courtroom.

5 One motion to stay was filed by Mr. Steele out of
6 time. No bond was posted by the attorneys who were
7 sanctioned. Just the one motion. They did file an appeal,
8 obviously. That's all that's been done by the sanctioned
9 parties in this case.

10 *THE COURT:* All right. So -- and Mr. Duffy, are
11 you going to argue the opposing side?

12 *MR. DUFFY:* I think Mr. Hansmeier is going to take
13 the lead.

14 *MR. HANSMEIER:* Thank you, Your Honor.

15 The elements of civil contempt are well established
16 in the Seventh Circuit. I think that none of the sanctioned
17 attorneys disputes the fact that if Judge Murphy's order was
18 entered in the form of an equitable decree, we, as officers,
19 have an obligation to follow it to the extent we're able to
20 do so.

21 I think what the points of contention are between
22 our side and their side boil down to two points. The first
23 point is: What does this order say? In our papers we have
24 made extensive argument to the effect that this is not an
25 equitable decree but that this particular sanctions order

1 was entered in the form of money judgment, and we point to
2 several different factors that would suggest that this is
3 the case.

4 The first factor we point to is the language of the
5 order itself where it says: *For a total judgment of the*
6 *sanctions amount with interest as provided by law.* And when
7 we read that order -- we read it and we continued to read it
8 as money judgment. The point of ambiguity in the order that
9 was referenced by opposing counsel here was the 14-day time
10 for compliance that they referenced. However, the 14-day
11 time for compliance mirrors Rule 62's 14-day time for stay
12 of the execution, and we read that -- or at least when we
13 read the order we interpreted that as the 14 days elapses
14 and they have their rights as provided under law that the
15 automatic stay expires and they have the ability to sieze
16 and sell assets as any judgment creditor does.

17 Further lending to our interpretation of the order
18 of judgment as this being a money judgment versus an
19 equitable decree is the conduct of the counsel for the
20 moving parties themselves. While they're appearing before
21 this Court and saying, *Look, this is an order to pay, this*
22 *is an equitable decree, and contempt is appropriate,* at the
23 same time they're taking steps to enforce the judgment just
24 as a judgment creditor would.

25 Currently before the Court is a motion to quash,

1 which includes exemplars of the subpoenas they've been
2 issuing in order to enforce their judgment. Furthermore,
3 they've been holding themselves out to these third party
4 banks and other institutions from which they're seeking to
5 enforce the judgment with as judgment creditors, so on the
6 one hand appears calling this order a contempt but on the
7 other hand they're invoking the power and name of the court
8 to compel third parties to disclose information under the
9 rubric of a judgment creditor.

10 And finally, with respect to the final element,
11 ability to comply, if this Court does, in fact, interpret
12 the judgment or Judge Murphy's order as an equitable decree
13 versus a money judgment, I personally would ask for leave
14 from the Court to submit financial documentation under seal
15 so that I may show I do not, in fact, have a quarter of a
16 million dollars to satisfy this payment amount with. I
17 certainly recognize my obligation to do everything in my
18 power, and I certainly fully intend to do so, but I simply
19 do not have \$250,000, would simply ask for the opportunity
20 to present that to the Court so the Court can evaluate my
21 financial status.

22 *THE COURT:* So they acknowledge they haven't paid
23 these monies, right?

24 *MR. HANSMEIER:* Your Honor, I can only speak for
25 myself. I have not paid the other side \$250,000, that's

1 correct.

2 *THE COURT:* The basis for the fee, the order to pay
3 the fees, was 20 United States Code, Section 1927, correct?

4 *MR. HANSMEIER:* That's correct, Your Honor.

5 *THE COURT:* And in order to make such an order, the
6 Court would have had to make a finding that the actions of
7 counsel were unreasonable and vexatious, am I correct?

8 *MR. HANSMEIER:* That is correct, Your Honor.

9 *THE COURT:* So the basis of the finding of the
10 Court, in essence, would be a sanction?

11 *MR. STEELE:* Your Honor, John Steele speaking.

12 Yes, I agree with that.

13 One thing that I personally am having trouble
14 understanding, and why the order doesn't appear clear to me,
15 as I'm trying to understand, under the applicable statute
16 and rule, the individual attorneys have to be allocated,
17 *Okay, this is what you did vexatious and this is why you're*
18 *liable for this amount,* and so on. I'm not clear as to what
19 part of this case, given that I appeared merely for one oral
20 argument, what percentage of the \$250,000 which covers the
21 entire case, that I'm responsible for. It's undisputed and
22 I don't think anyone contests it. Most of the people -- I
23 think the three attorneys sanctioned weren't even in this
24 case, at least I know I wasn't, except the morning of one
25 oral argument which I shortly thereafter withdrew, so I

1 don't understand what portion that I should be responsible
2 for.

3 And it's clear, I think no one would dispute that
4 the statute's extremely clear that the Court has to say, *You*
5 *are responsible for this action, you did this wrong, and*
6 *this is the amount of money you should pay,* and this other
7 attorney over here, *This is what you did wrong. This is*
8 *what you should pay.*

9 And I'm confused, with all due respect, and I would
10 second Mr. Hansmeier saying, and hopefully -- in the
11 unfortunate event that this Court does rule it as an
12 equitable decree, I would also like to have the opportunity
13 to submit documentation under seal that I do not have the
14 ability to write a check for \$250,000 on a case that I
15 stepped in for oral argument as a favor which I was not
16 compensated for in the first place.

17 *THE COURT:* Well, perhaps you are in complete
18 disagreement with Judge Murphy, but it seems that your --
19 the answer to your question comes in the last sentence
20 before the conclusion where he says:

21 *The Court finds that these men acted in concert*
22 *throughout the entirety of the proceedings in this*
23 *matter, shared total responsible for their actions*
24 *and are jointly and severally liable for the fees and*
25 *costs of Defendants.*

1 *MR. STEELE:* I understand that. We didn't -- the
2 way that this proceeded was, I was not -- and I don't
3 believe Mr. Hansmeier, I don't know Mr. Duffy -- we didn't
4 even know this was occurring until after the judge had ruled
5 on the matter. I find it hard to believe that we've not had
6 an opportunity to even contest this until today. And I
7 believe the record makes it clear -- I mean with all due
8 respect to Judge Murphy, the record is clear as to when I
9 appeared in this case, which was long after the case was
10 filed, and the other -- at least one other attorney in this
11 case, actually the one that did file the case and the one
12 that was throughout the whole case, was found not to have
13 conducted any sanctionable conduct. And the one hearing I
14 appeared with that counsel I'm found to be liable for
15 \$250,000. I don't know what I said during that 20-minute
16 hearing to deserve that, and I'll respect Judge Murphy. I'm
17 sure he had a reason for saying this, but I don't --

18 *THE COURT:* Well --

19 *MR. HUFFMAN:* Your Honor, this is Bart Huffman. If
20 the Court wants to entertain discussion on this, I'd be
21 happy to recount in detail Mr. Steele's involvement
22 throughout this proceeding, beginning in state court and
23 beginning with the Prenda law firm being primary counsel and
24 my interaction with local counsel as local counsel
25 throughout, but I agree with Your Honor that Judge Murphy

1 has already considered this issue.

2 *THE COURT:* Well, I'm not going to entertain
3 argument on it. What I was about to say is he can --
4 Mr. Steele confuses me with the Seventh Circuit. You know,
5 I'm not here to rehash this order entered by Judge Murphy.
6 And you're really getting away from the question that I
7 asked, which was the basis for Judge Murphy's ruling when
8 you look at the statute upon which he drew for his authority
9 here ultimately is that he's imposing a sanction.

10 Now, as such, a sanction is not a money judgment.
11 The Seventh Circuit is clear on that. So it looks to me
12 like any way you slice this, even if you disagree with --
13 even as you disagree with Judge Murphy's findings and
14 conclusions, what you have here is a sanction based on
15 unreasonable and vexatious conduct which he found you all to
16 share responsibility in, and he imposes a sanction. The
17 amount that he found, and it results in a sanction, which
18 is, under Seventh Circuit jurisprudence, not a money
19 judgment.

20 *MR. HANSMEIER:* Your Honor, may I present argument
21 on that very specific point?

22 *THE COURT:* Yes.

23 *MR. HANSMEIER:* I went back -- I think what the
24 Court is drawing its conclusion that a money judgment -- or
25 I'm sorry, that a sanction is clearly not a money judgment

1 might be the *Cleveland Hair Clinic* case presented in the
2 movant's reply brief. And to the extent that's where the
3 Court is drawing its conclusion that Seventh Circuit
4 precedent is clear, my argument on that point would be that
5 in that case the Seventh Circuit doesn't say that a sanction
6 must take the form of an equitable decree.

7 In that case the lower court had ordered the
8 attorneys to pay a sum of money to the other side, I believe
9 it was \$174,000 or \$100,000 forthwith. In other words, in
10 the case below it was clear that the order was imposing an
11 obligation on the attorneys to do something right now, right
12 away, no questions asked. And if you read the very specific
13 language cited by the movants in their brief, what I think
14 the Seventh Circuit was saying in that case was not that
15 this -- a sanction must be an equitable decree and District
16 Courts have no discretion whatsoever to issue a sanction in
17 the form of a money judgment. I think what the
18 Seventh Circuit was saying, well, in this case we have
19 what's clearly an equitable decree an order to do something,
20 and when that's occurring then it's not a money judgment,
21 it's not enforceable as a money judgment.

22 As further support for this proposition I looked at
23 some of the sanctions orders that underlie some of the
24 seminal 1927 Seventh Circuit decisions. For example, in
25 *FM Industries vs. Citicorp Credit Services*, if you review

1 the sanctions order that was entered in that case, it was in
2 the form of money judgment and it was enforced through writs
3 of execution, citations to discover assets and so forth.

4 And so I think it's not necessarily -- I guess to
5 sum up my argument, I think the Seventh Circuit has never
6 foreclosed the possibility and never limited a District
7 Court's very, very, very broad discretion to enter sanctions
8 however it chooses to do so, so for that reason I think it's
9 important to look at the language of the order rather than
10 arriving at the conclusion that because it's a sanction,
11 therefore, must be an equitable decree.

12 *THE COURT:* Mr. Bozarth, you have any additional
13 argument?

14 *MR. BOZARTH:* No. Just -- I don't think that the
15 order could be any clearer, Judge. What we just heard
16 Counsel say was that it was an equitable decree in the
17 *Cleveland Clinic* matter because it said to pay forthwith, so
18 therefore, there was a time that they were supposed to do
19 something with immediacy. Our order here says pay within 14
20 days. I think it's even clearer than the case he was just
21 trying to.

22 *THE COURT:* The part of the order that talks about
23 interest is provided by law. What specifically does the law
24 provide as far as interest is concerned and what does that
25 do in this particular order as far as making it equitable

1 versus a money judgment?

2 *MR. HANSMEIER:* Your Honor, I'm not familiar --

3 *THE COURT:* I was actually asking Mr. Bozarth.

4 *MR. HANSMEIER:* I apologize.

5 *MR. TOENNIES:* I think it's 5 percent in Illinois
6 on a judgment, if I understand what you're asking. On an
7 order like this there would be 5 percent beginning on the
8 date of the order or the date that it began to run. That's
9 my understanding.

10 *THE COURT:* You say in Illinois. Are you applying
11 an Illinois state statute or the federal interest?

12 *MR. TOENNIES:* Illinois state.

13 *THE COURT:* And why would you apply Illinois state
14 versus the federal procedural?

15 *MR. TOENNIES:* Just seemed to me that would be
16 applicable here, unless the Court chooses to apply the
17 federal statute, that's appropriate as well.

18 *THE COURT:* I thought the federal interest rate on
19 judgments had something to do with the prime interest rate
20 or something like that. But does that -- getting back to
21 Mr. Hansmeier's argument, does that -- by operation of the
22 language of the order, does that take this from equity to a
23 money judgment because he specifically provided for interest
24 as provided by law?

25 *MR. BOZARTH:* Judge, I don't believe so. I think

1 when you look at what Judge Murphy was trying to do in this
2 order, he was trying to make the aggrieved parties whole.
3 They had been engaged in litigation for a substantial amount
4 of time and he found that that litigation was frivolous and
5 should not have been brought. Frankly, as many other
6 federal judges around the country have found dealing with
7 these particular counsel, the fact that he chose to set an
8 amount certain, and then maybe fortuitously looking that
9 that amount might not be paid as we're sitting here today,
10 and wanted to create a mechanism that would increase that
11 amount over time. I don't think it automatically turns it
12 into a judgment just because he is using that terminology.
13 I think he can make an equitable decree and set an amount
14 certain and then increase that amount as it goes forward if
15 it's not paid, if it's not complied with. In essence that's
16 really kind of the first contempt type push, as judges often
17 do, to try to get these things paid.

18 *THE COURT:* So that's where the part comes in, the
19 sanction on top of the sanction where you ask in your prayer
20 for relief that I impose an additional sanction of so much
21 in addition to the interest, so much per day, or every day
22 it's not paid, a thousand dollars or something like that?

23 *MR. BOZARTH:* That's something that other judges
24 have done in particular cases with these lawyers to try to
25 get these paid. I don't know if we specifically asked for

1 it but I think also would be appropriate, the time that the
2 counsel has spent trying to get it paid and preparing for
3 this hearing today and our motion because it's not
4 insignificant and there has been no basis whatsoever put
5 forward, a motion for clarification, some -- anything. It's
6 just, *We aren't paying it.*

7 *THE COURT:* Now, on the subject that Mr. Hansmeier
8 and Mr. Steele brought up about if I do find them, as well
9 as Mr. Duffy, in contempt, they make a personal plea for
10 time or for me to look at their net worth statements in
11 camera. My question is, one: Are their net worth
12 statements relevant? And two: Were they ordered to pay in
13 the California situation and did they, in fact, pay there?
14 \$100,000 or something?

15 *MR. STEELE:* Your Honor, I can answer what we paid.

16 *MR. BOZARTH:* I think -- I was not in that
17 litigation. I think there's probably other counsel on the
18 phone and these parties that could probably answer.

19 *THE COURT:* So answer the relevance part. Answer
20 the question I have about relevance.

21 *MR. BOZARTH:* I don't think it's relevant.

22 *THE COURT:* So what did you pay there?

23 *MR. STEELE:* Your Honor, just clarification, some
24 earlier comments. The only time there's been a contempt I'm
25 aware of in these kind of issues was in DC, which was a

1 different case, which we won, and the ISP'sSP's were found
2 in contempt, and the judge stated, pending their appeal,
3 which is currently pending. So as far as California goes,
4 the judge, you know, issued sanctions order which we
5 appealed and filed a bond for, even though the sanctions
6 order was -- the request was \$40,000. We had to file a
7 \$250,000 bond, which I still don't quite understand why, but
8 just to be able to appeal that matter, and we understand
9 that certain judges have looked at that California order and
10 sort of adopted it, but many have not.

11 And the insinuation that every judge in the country
12 who's ever dealt with any of these cases has found against
13 us is completely wrong. There's been many judges that have
14 said this is not improper and vexatious, so I don't want
15 this -- it's important to point out to the Court, this is
16 not some situation where there's a universal agreement. In
17 fact, there's very, very large disagreement between the
18 various judges, some who are in favor, and the exact same
19 counsel that's on the phone today is appealing it and some
20 courts have ruled against us.

21 But I don't want to get into my motion to stay, but
22 as far as what we paid, we've paid \$250,000 bond in
23 California so that we could appeal that matter, just like
24 we've appealed this matter. But this matter -- the courts
25 that have dismissed motions for sanctions and so on in

1 various states like Arizona and Illinois and whatnot, we
2 haven't had to, obviously, post any bond or whatever the --
3 the matter has been thrown out. And one or two courts there
4 has been a sanctions order issued. Normally it's done
5 without us knowing about it, like on an ex parte basis like
6 here, but I do think it's very relevant how much money we're
7 able to post for, or pay for the sanction or post for a bond
8 because inability to pay is most certainly a prong of the
9 sanctions order.

10 With all due respect to opposing counsel, it's
11 extremely important because if the Court issues sanction
12 order for, I don't know, a billion dollars, we can't pay it.
13 And I don't believe that there's any case law to establish
14 that -- there's not a debtor's prison. I mean if we can't
15 pay it, we can't pay it. I do think it's very important.

16 *MR. HUFFMAN:* Your Honor, if I can just interject
17 that Mr. Steele is incorrect that the ISP's were ever found
18 in contempt.

19 *UNIDENTIFIED SPEAKER:* Judge Howell, two years ago,
20 denied a Motion to Quash. That is pending appeal.
21 Mr. Steele has withdrawn from that case. And frankly, that
22 case, we would argue incorrect as of the timing and
23 certainly incorrect under today's standards, but that would
24 be shown in the -- but the ISP's were certainly never, ever
25 found in contempt of any --

1 *MR. STEELE:* Your Honor, I was personally there
2 while Mr. Huffman asked the Court to issue a 50-dollar
3 sanction, de minimis sanction, so that he could appeal it
4 without having to incur liability of his client.

5 *MR. HUFFMAN:* Well, yes, we asked for a friendly
6 contempt perhaps in the alternative, but that wasn't
7 necessary because the Court granted the interlocutory
8 appeal. I understand Mr. Steele's trying to twist things
9 somehow in his favor, but that has no basis for reality.

10 *THE COURT:* Okay. Thanks, Mr. Huffman.

11 Okay. Well, Mr. Duffy, you're on the phone. You
12 haven't paid anything toward the -- with respect to the
13 order?

14 *MR. DUFFY:* Well, Your Honor, I would just like to
15 amplify the judge did include interest. That would suggest
16 there would be post-judgment interest to be added to it, to
17 the amounts referenced in the order, and Judge Murphy did
18 refer to it. He used the term "judgment" when he referred
19 to the award that he mentioned in his order, so I think
20 there's -- you know, there's evidence suggesting that
21 Judge Murphy himself intended that to be a judgment in
22 connection with the case. It was the last issue pending in
23 that litigation, and he addressed it by what he himself
24 referred to as a judgment in connection with a 1927 order.

25 *THE COURT:* So that's a "yes"? You haven't paid

1 anything?

2 *MR. DUFFY:* I'm sorry, Your Honor. I couldn't hear
3 you.

4 *THE COURT:* You have not paid anything toward the
5 order Judge Murphy ordered?

6 *MR. DUFFY:* I have not. And I would like, if the
7 Court does term it's an equitable order, the opportunity to
8 submit financial information demonstrating my inability to
9 pay it.

10 *THE COURT:* Is there a reason why none of the three
11 of you have submitted your financial affidavits regarding
12 your financial assets prior to now?

13 *MR. HANSMEIER:* Your Honor, I can only speak on
14 behalf of myself, but I think they point to the fact that
15 none of the money's been paid, that no one's complying with
16 this order and so forth, but up until this point I've had a
17 genuine belief that this is a judgment. I continue to
18 believe it's a judgment, and that, frankly, that's one of
19 the reasons or one of the elements of contempt is how clear
20 the order is.

21 And it does feel like a little bit of a bait and
22 switch on the one hand for the order to say a judgment of
23 this amount of money with interest provided by law as every
24 other judgment I've read has always stated, and then to come
25 in and find out now this is actually going to be an

1 equitable decree. And if that's how the Court interprets
2 and rules, we have a duty and absolute obligation to comply,
3 but until we were able to receive clarification of what this
4 order actually is, it's hard to know how to actually respond
5 to or deal with the order.

6 And so in direct answer to your question, why
7 haven't we submitted financial affidavits, the reason is we
8 still don't know how the Court is going to interpret this
9 order, and certainly once the order becomes clear and
10 there's no ambiguity as to what it says -- and I would argue
11 it's clear that's the judgment. But once it becomes clear
12 what it is, we have an obligation to comply with it or show
13 why we can't comply, and so that's the reason I personally
14 have not submitted a financial affidavit. I'm still waiting
15 to find out what this order is, and when I do, I will
16 fulfill my obligations to pay what I can, but I can't pay
17 what I don't have.

18 *MR. HUFFMAN:* Your Honor, just briefly. The
19 judgment -- they aren't parties. They were sanctioned as
20 attorneys, officers of the court that have caused other
21 parties to needlessly incur expense. They weren't
22 awarded -- we weren't awarded a money judgment against an
23 opposing party, so in the first instance makes sense that
24 this would be a judgment because they're sanctioned
25 attorneys.

1 Secondly, these are lawyers that they've made
2 millions of dollars across the country and when they were
3 sanctioned per day in Judge Wright's court in situation,
4 they went ahead and posted the bond at that time and somehow
5 had the money to do so, so I think we know what's really
6 going on.

7 *MR. HANSMEIER:* I would ask Mr. Huffman to point
8 out the publication where I have publicly touted millions of
9 dollars that I've made.

10 *MR. DUFFY:* Your Honor, I would like to say that
11 that statement is simply false as pertains to me. I've
12 never made any statement --

13 *UNIDENTIFIED SPEAKER:* I think Mr. Steele was in
14 Forbes.com describing the enterprise which you all have been
15 repeatedly found to be intimately involved.

16 *MR. STEELE:* No, absolutely, I never did, and I
17 resent being told that I've said something that's not true.
18 If Mr. Huffman would like to present something that I
19 personally made money of a certain amount, feel free, but it
20 will never come, Your Honor.

21 The behavior of the opposing parties indicate that
22 they believe it's a judgment too; otherwise, if they do
23 believe it's an equitable relief, simultaneously subpoenaed
24 every bank, me, my family, and my former clients, and
25 everyone that possibly has, and they're treating it like a

1 judgment. It seems a bit disingenuous to treat it like a
2 judgment from day one and simultaneously argue it's not a
3 judgment in front of you.

4 *UNIDENTIFIED SPEAKER:* -- any subpoenas in contrast
5 hasn't either.

6 *THE COURT:* Okay. So --

7 *MR. SWEET:* Your Honor, this is Jason Sweet,
8 attorney for Anthony Smith.

9 I would just note that in Mr. Steele's motion to
10 stay, the criteria he sets forth for the stay is for
11 injunctive relief, not for a money judgment. So it's a
12 little disingenuous for him to stand up and argue that they
13 think it's a money judgment when in their pleadings they're
14 arguing for injunctive relief.

15 *MR. STEELE:* Your Honor, if we want to -- I'm
16 assuming that we would deal with my motion to stay after
17 this, but if Your Honor would like to begin discussing that,
18 of course I can address those questions. And I do believe
19 it's important to address the motion to stay for the reasons
20 I outlined in my motion, but again, the point is that I'm
21 not familiar with an equitable judgment -- an equitable
22 order that states things such as interest rates and uses the
23 word "judgment" and so on.

24 To the extent if this Court were to find that
25 somehow, you know, we're just obligated to pay a quarter

1 million dollars in 14 days, then I would believe that it's
2 very important to allow me to argue and the other side to
3 address my motion to stay.

4 *THE COURT:* Okay. So first of all, the finding of
5 this Court is that Judge Murphy's order is not a money
6 judgment; it is a judgment based on a sanction, and,
7 therefore, was equitable in nature. The order required that
8 the -- that Mr. Duffy, Mr. Hansmeier, and Mr. Steele,
9 jointly and severally, were to pay \$261,025.11 no later than
10 14 days after the entry of that order, which was
11 November 27th, 2013.

12 The question remains whether the Respondents are
13 guilty of a civil contempt, and, therefore, subject to
14 sanction by the Court. The Court, in reviewing such an
15 issue, must look at these factors: Harm from noncompliance,
16 probable; effectiveness of such a sanction; the contemptors'
17 financial resources and the burden of sanctions may impose;
18 and the contemptors' willfullness in disregarding the
19 Court's orders.

20 So since I don't know the financial resources of
21 Messrs. Duffy , Hansmeier and Steele, I will give them seven
22 days to submit affidavits regarding their financial
23 resources and take the matter of the contempt -- the
24 petition for rule to show cost or motion for rule to show
25 cause under advisement.

1 Are the Defendants prepared to talk about
2 Mr. Steele's Motion for Stay?

3 *MR. BOZARTH:* Your Honor, if you would like to take
4 that up.

5 *THE COURT:* Mr. Bozarth says "yes".

6 So Mr. Steele, clearly you filed your motion quite
7 late. Do you not think it's an untimely motion?

8 *MR. STEELE:* Well, Your Honor, the IPF's filed
9 their Motion for Sanctions nine months after the case was
10 closed. I think that the only untimely filing in this
11 matter has been the IFP's sudden Motion for Sanctions. I
12 think the motion to stay, if it's appropriate, is
13 appropriate whenever -- I guess I don't want to repeat
14 myself -- whenever it's appropriate. I think that for the
15 reasons outlined -- I don't want to repeat, you know, the --

16 *THE COURT:* Your motion to stay -- regardless of
17 when they filed their Motion for Sanction, your Motion for
18 Stay is related apparently to Judge Murphy's order, which
19 was entered on November the 27th. Your motion to stay was
20 filed -- when was it filed? It was filed January the 29th,
21 which was over a month after the Motion for Contempt was
22 filed.

23 *MR. STEELE:* Yes. I reached out -- during that
24 time immediately after the order was issued, I did reach out
25 to the ISP's and tried -- you know, and made an effort to

1 try to resolve this matter in some way, which was
2 unsuccessful. And you know, obviously, once the Motion for
3 Contempt was filed, my options to seek relief from this
4 Court pending the appeal, which had already been filed, was
5 to ask for a stay, and I do believe that a motion to stay is
6 appropriate at any time as long as the criteria for a stay
7 is met.

8 Quite frankly, you know, there are many times in
9 which it's just to have a stay -- it's not necessarily
10 appropriate to have a stay at one point but yet later on it
11 would be appropriate.

12 *MR. HANSMEIER:* Your Honor, if I may just add -- I
13 also requested the alternative relief of a stay in my
14 motion. I would say that the timing of the stay -- you
15 referenced the point that it's 30 days after or roughly 30
16 days after the Motion for Contempt was filed. That is a bit
17 of a product of their own making because I think there's
18 reference to Mr. Duffy's brief, the -- our opening brief to
19 the U.S. Court of Appeals for the Seventh Circuit was due 30
20 days after they filed their motion, which I think is one of
21 the reasons that explains the timing of their motion.

22 So certainly you want to seek a stay as soon as you
23 possibly can to minimize any form of prejudice to the
24 opposing party. But in this case we did file -- I mean I
25 requested alternative relief because the interim I was

1 working very diligently on that opening brief. And I'm not
2 aware of a specific timing for seeking a stay. I would
3 suppose that, unless I'm wrong, and there is a specific
4 deadline for seeking a stay, I suppose it would be, you look
5 to the equities. And I'm not sure what the prejudice to the
6 respondent parties of a stay would be at this time,
7 specifically since they're seeking to hold people in
8 contempt.

9 *THE COURT:* Mr. Bozarth?

10 *MR. BOZARTH:* Well, Judge, the parties, defendants
11 have not filed a specific response to this motion, and one
12 of the reasons why we have not is because we don't feel that
13 their request has been perfected. They haven't issued or
14 put up a bond. There's multiple issues that we think make a
15 stay inappropriate, but to point went out I think the --

16 *UNIDENTIFIED SPEAKER:* Your Honor, I'm sorry.
17 John Seiver. Could the Court ask everyone to speak up.
18 It's very difficult to hear the last two speakers.

19 *MR. BOZARTH:* Sorry, John.

20 What we're dealing with, Judge -- and I think
21 you're beginning to get a fairly clear picture of what my
22 client has been dealing with for a number of years -- is
23 really a legal shell game. You're going to get shortly,
24 presumably some affidavits that are going to say something
25 about the financial condition of these gentlemen. What

1 relevance that has and what accuracy that has I think is
2 rightly potentially in question.

3 With regard to the motion to stay itself, I think
4 the fact that it was brought extremely late after they were
5 put to the task of having to comply with the order is a bit
6 telling. They tell you that they are not sure what the
7 order meant but are waiting until today to do something
8 about it. That's some 60-plus days after they were ordered
9 to pay.

10 When you look at just the factors of the motion
11 itself, which we've already dealt with several of them,
12 Judge Murphy talks about the due process that was afforded
13 in his order. That's one of the things that -- their
14 likelihood of success, that they were not afforded due
15 process. Judge Murphy deals with that in the order.

16 I think the failure to perform the inquiry about
17 individual acts, Judge Murphy, as you pointed out, has dealt
18 with that, that they acted in concert, that these actions
19 were not baseless. Again, from my client's perspective, in
20 essence -- and we haven't really dealt with this too much,
21 but Judge Murphy found that their likelihood of success on
22 the merits at the appeal is somewhere between slim and less
23 than none.

24 Now, they actually sued my client in this case,
25 which was removed to federal court, for exercising its

1 rights in getting a subpoena quashed in the Illinois Supreme
2 Court. That's basically the conspiratorial conduct that was
3 alleged to have been undertaken by my client. And when you
4 look at all of it in totality and what they've done, that's
5 the reason I think why Judge Murphy entered the order that
6 he did. So to say that this was not baseless, and other
7 courts around the country have entertained it, my client has
8 not been sued as a co-conspirator in an effort to extract
9 discovery, which was what happened in this case and what
10 Judge Murphy found.

11 *MR. STEELE:* Your Honor, I haven't had an
12 opportunity to even --

13 *THE COURT:* Stop talking over other people.
14 Please. I will -- stop talking over other people. He's
15 talking.

16 *MR. STEELE:* Apologize, Your Honor. I didn't know
17 that he was still talking. I thought he was finished.

18 *MR. BOZARTH:* So to state that this claim had merit
19 again is just trying to rehash. What we're dealing with is
20 kind of a run-out-the-clock scenario, which is why it's so
21 important for this matter to not be stayed and for this
22 order to be entered compelling them to do the things that
23 they're supposed to do.

24 I can tick through the rest of them, but one of the
25 things I think, again, that Mr. Steele put in his motion was

1 public interest and he only showed up at one hearing.
2 Your Honor, this litigation had gone on for approximately a
3 year in state court before it was removed. Mr. Steele was
4 in court all the time. To tell this Court, *I was only -- I*
5 *only showed up for one hearing as a favor*, Your Honor, what
6 judges have found, these gentlemen are not giving courts the
7 true story, and you can -- I can cite you to orders.
8 They're in our papers. It's literally a say or do anything
9 in front of the judge that they're looking at that day to
10 try to get out of it, and it just has to stop sometime. My
11 client has paid exorbitant amounts of money to their
12 attorneys, and that needs to be -- so this should not be
13 stayed, Judge.

14 *THE COURT:* Mr. Steele, talk into the microphone.

15 *MR. STEELE:* Yes, Your Honor.

16 Obviously, I disagree with the concept that anyone
17 is misleading this Court, from either myself or the other
18 people subject to the sanctions motion, and it's simply just
19 not the case that there's some unanimity amongst federal
20 judges that this is somehow improper. It's simply a fact
21 that other Illinois federal judges had said the proper way
22 to do this type of litigation is to actually name the ISP's.
23 The July in the Northern District of Illinois, Judge Baker,
24 said in his order we have had judges that have ruled in our
25 favor. It's simply a fact from the record. So the idea

1 that this is just some universally accepted fact that we've
2 done something improper is simply not true. And so I
3 would -- you know, in arguing my motion to stay, I mean with
4 all due respect to Judge Murphy, it's not -- I don't think
5 it's fair -- if we're appealing the process by which the
6 sanctions order was issued to rely on the actual judge we're
7 appealing from to determine it was okay and thus my motion
8 to stay is improper seems a bit circular. I mean if the
9 judge did something improper such as under -- clearly under
10 Seventh Circuit case law the judge is required to show what
11 I did wrong and how I should be -- and I mean obviously the
12 judge decided not to follow that, and that's fine. I mean
13 that's his -- he's obviously the judge. But that's a very
14 valid point to appeal.

15 I mean and the fact that there were certain
16 terminations made mostly before I knew there was a motion
17 for sanctions in this case, because I was no longer in the
18 case at the time it was filed, it doesn't seem at all fair
19 and due process. Simply saying that I received due process
20 does not mean I did, and so I think it's important for this
21 Court to -- of course, its duty to make sure that the orders
22 are just, that the process has been followed and not simply
23 say, *Well, someone else says the process was followed*
24 *properly so I'm not going to second guess that.* I mean
25 it's -- certain things are on the record. It's just a fact

1 that whether or not I filed the complaint in this case,
2 whether I appeared in state court in a different case, how
3 is that relevant to my conduct in this case I'll never
4 understand. And so trying the lump things in and cherry
5 pick certain orders from one or two judges that are also
6 under appeal doesn't seem to be a fair way of analyzing my
7 motion to stay.

8 We have to look at several prongs, including harm.
9 I know we're looking at bankrupting attorneys that have not
10 been disciplined by any bar association whatever, for the
11 conduct. I think that's important to understand. In fact,
12 one of ours is already cleared, one of the attorneys in this
13 matter, I believe Mr. Duffy. So the point is that the harm
14 is simple, that this Court could, on one hand, bankrupt
15 various people that are clearly crying out that they did not
16 even get due process here, and I think that's very
17 dangerous, versus several Fortune 50 companies that probably
18 aren't going to really go under if they don't get this for a
19 few months when the Seventh Circuit is going to rule on
20 this. They have -- and from what I understand, Mr. Smith, I
21 believe the original defendant in this case, hasn't even
22 been billed by his attorneys, from our understanding, and
23 hasn't paid any money, so I don't see any harm there either.

24 All we're asking for -- all I'm asking for, and I
25 believe Mr. Hansmeier and Mr. Duffy also, is simply to stay

1 this pending the determination by the appellate court for
2 the already filed appeal that we have been very timely on.
3 We have burned midnight oil, so to speak, to get as fast as
4 we can to appeal this matter, to appropriately address this,
5 to contact the other side. I'm not -- I know personally I'm
6 not hiding out or not addressing these issues. This is very
7 concerning. This is literally life changing, for not only
8 me, but I'm sure for several other people here, and this is
9 something that's very, very serious, and to simply say, *Well*
10 *you were afforded due process because the person that you're*
11 *claiming didn't give it to you said he did.* That's not good
12 enough, with all due respect to this Court.

13 If you review my motion to stay, it lays out very
14 clearly the harm and it also lays out the serious defects in
15 how this has progressed. And I don't want to second
16 guess -- I know this is not a Motion Reconsider. I'm not
17 asking this Court to entertain a Motion to Reconsider. In
18 fact, obviously, it's on appeal so it can't be changed. But
19 all I'm asking for is -- there are other judges, there are
20 other districts that have ruled in our favor. There's
21 judges that have denied their Motion for Sanctions. I
22 believe they even agreed to that simple statement. I can
23 certainly provide it to the Court, orders denying their
24 Motion for Sanctions on the same issues.

25 And so my point is, there's a disagreement amongst

1 judges. It's simply a fact of the court record that Judge
2 Howell in DC, that -- I don't remember the judge's name in
3 Arizona, but there's other courts that have said, *No,*
4 *they're right,* and, of course, they're appealing those
5 decisions right now, at least the one in DC. And that's
6 fine, but with this disagreement, how can Judge Baker in the
7 Northern District say, *Well, to do this properly you have to*
8 *name and serve the ISP's.* That's the way you got to do it
9 in that district, but down here doing that causes me to be
10 liable for a quarter million dollars in sanctions by just
11 appearing for oral argument.

12 So I believe that there are very serious equitable
13 reasons to look at this and say, okay, what's the harm of
14 waiting a couple more months to let the appellate court
15 review this? I doubt that AT&T and, you know, ComCast are
16 going to be unduly harmed by a brief stay. I know for a
17 fact that I will be incredibly harmed, and I believe,
18 talking to some of the other attorneys, that this is
19 literally a life-changing in a negative way event.

20 Obviously I can go on. I do not want to waste this
21 Court's time but I do want to make it very clear that this
22 constant insinuation that we are somehow misleading the
23 Court is, simply, I don't believe accurate, and I think that
24 my arguments that I raised -- that I will not obviously go
25 through point-by-point because obviously this Court has read

1 my motion to stay -- points out the serious issues, the
2 serious due process questions, the fact that, you know, the
3 Court even asked the attorneys if they'd like to actually go
4 back and fix the service problem that they had, and they
5 said, *No, we'll just be fine with this*, that there are so
6 many problems with finding a sanction order of such a
7 magnitude, such an amount, against people that were not even
8 in the case at the time it was filed, and there's absolutely
9 no evidence that I'm aware of that we received notice on all
10 these things.

11 I do not want to argue and rehash and have a motion
12 to reconsider impromptu. I'm very respectful to the Court
13 and I do not want the Court to think I'm trying to do that.
14 The motion to stay is simply an analysis of the prongs
15 necessary motion to stay, whether it's likelihood of success
16 on the merits, the harm, and obviously the public.
17 Obviously, if someone can file a Motion for Sanctions
18 against somebody and they never even know that there's a
19 current pending Motion for Sanctions, that's a real problem,
20 I believe, for our judicial system.

21 So I do think all the prongs necessary for a motion
22 to stay have been met here, and there's interest accruing on
23 it, so obviously -- I believe it's a judgment. Obviously
24 this Court just recently said it doesn't believe its a
25 judgment, but there's an interest accruing on whatever this

1 is going to be called, and so if we're wrong and somehow it
2 doesn't matter that -- well, I don't want to characterize
3 the -- if it's wrong then we'll --

4 *THE COURT:* I've got another setting at 10, so --
5 the problem with your motion is it should have been -- if
6 you didn't understand the order, first of all, why didn't
7 you file a motion to clarify with Judge Murphy? Your
8 order -- your motion to stay should have been filed in
9 conjunction with your notice of appeal and you should have
10 been talking about a bond. You guys were afraid of a bond
11 because you've already filed a bond in another jurisdiction.
12 You didn't want to file a bond, so you didn't file a motion
13 to stay, didn't file a bond. You didn't want to touch that.
14 You didn't think about a motion to stay until this contempt
15 motion came in, so that's why you were too late. Your
16 likelihood of success on the merits is next to nil. You're
17 not going to win your appeal.

18 When you're talking about harm, if you wanted to
19 talk about harm you'd have filed your profits and loss or
20 your net worth statement with your motion to stay. You
21 haven't provided me with the advantage of being able to look
22 at what you're talking about in terms of what harm this is
23 going to do to you. And let me revise what I said earlier
24 about what you need to provide me so that I can decide the
25 contempt motion. I don't want your affidavit. I want your

1 assets statement from a certified public accountant. I
2 don't want it from you. After looking at Judge Murphy's
3 order, I want that from a certified public accountant. I
4 want a certified profits and loss or certified net worth
5 statement.

6 So with respect to talking about the community, the
7 community has to worry about lawyers who file unreasonable
8 and vexatious claims. That's where the harm to the
9 community is when you talk about harm to the community. The
10 community is worried about lawyers, worried about lawyers
11 that file these kind of lawsuits. So if, in fact,
12 Judge Murphy is right -- and for the time being until the
13 Seventh Circuit says something differently, I have to assume
14 he is -- the community is worried about guys like you. So
15 that's where we are with the community. So your motion to
16 stay is denied.

17 You did everything wrong when you're talking about
18 a motion to stay. If you'd have done it right I probably
19 would have been in a very good position to say, well, I got
20 some question about whether or not you're going to prevail
21 on appeal, but as far as the playing field is concerned
22 here, maybe we'll do the motion to -- maybe we'll stay this
23 thing and see what the Seventh Circuit says. But you didn't
24 do it right, which leads me to believe that Judge Murphy was
25 right all along. So motion to stay is denied.

1 Now, since you've got to go to a certified public
2 accountant I'll give you ten days instead of seven for that
3 certified statement as to your net worth, but get that to me
4 so that I can decide this other thing. I have to take that
5 under advisement.

6 This hearing is adjourned.

7 ***(Court adjourned)***

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REPORTER'S CERTIFICATE

I, Laura A. Blatz, RPR, Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported in shorthand the proceedings contained in the foregoing 39 pages, and that the same is a full, true, correct, and complete transcript from the record of proceedings in the above-entitled matter.

Dated this 27th day of February, 2014.

/s/

LAURA A. BLATZ, RPR

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