

1 CAUTIONS IN USING A REALTIME PARTIALLY EDITED TRANSCRIPT

2

3 IN A REALTIME PARTIALLY EDITED TRANSCRIPT, YOU MAY
4 SEE THE REPORTER'S RAW SHORTHAND NOTES. CONSEQUENTLY, YOU
5 MAY SEE ERRORS IN CAPITALIZATION AND PUNCTUATION,
6 MISSPELLINGS, SMALL WORDS MISSING (SUCH AS "THE," "IT,"
7 "A"), TRANSPOSED WORDS, DOUBLE WORDS, CONTEXTUAL HEARING
8 MISTAKES, HEARING MISTAKES OF SOUND-ALIKE WORDS, POSSIBLE
9 INCORRECT SPEAKER IDENTIFICATION, AND AT TIMES STENO
10 OUTLINES THAT HAVE NOT BEEN TRANSLATED.

11 BE ASSURED THAT IN THE FINAL EDITED VERSION OF THE
12 TRANSCRIPT, ALL ERRORS ARE CORRECTED. AN UNEDITED OR
13 PARTIALLY EDITED TRANSCRIPT REPRESENTS A FIRST DRAFT AND
14 SHOULD BE USED ACCORDINGLY.

15 THEREFORE, IT IS NOT RECOMMENDED YOU RELY ON THE
16 UNEDITED VERSION AS YOU WOULD A FINAL EVIDENTIARY CERTIFIED
17 TRANSCRIPT. ALTHOUGH AN UNEDITED OR PARTIALLY EDITED
18 TRANSCRIPT WILL BE VERY READABLE AND MOSTLY ACCURATE, IT
19 SHOULD BE USED WITH GREAT CARE.

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GABRIELINO-TONGVA TRIBE VS. STEIN

TRIAL DAY 60

10:23 AM.

THE COURT: Gabrielino versus Stein, BC361307.
Good morning counsel make your appearance.

MS. IBARRA: Good morning. Delia Ibarra on behalf
of plaintiff Gabrielino-Tongva Tribe.

MR. FORDYCE: Good morning Your Honor Niall
Fordyce on behalf of Mr. Stein and law offices of Jonathan
Stein.

THE COURT: Okay thank you. Well Mr. Stein -- we
received a telephone call, actually my court assistant
received a telephone call from Mr. Stein about 2:00 o'clock
in the afternoon, I'd like her to sort of recount what it
was that Mr. Stein stated to her.

THE COURT ATTENDANT: Yes, Your Honor. On March
17 at 2:11 p.m. I received a telephone call by Mr. Jonathan
Stein, he introduced himself and then he said quotation
marks, the judge gave me a heart attack. I'm in the
emergency room at Saint John's hospital in Saint Monica he
informed that he won't be able to appear on Monday and he's
calling so the judge would not issue an order re: Contempt
I told him that I had to communicate that information to
the judge, I told the judge that Mr. Stein that the judge
told me to ask Mr. Stein when he will be available to
return to trial and also to have a doctors report in his
situation in the emergency room, Mr. Stein told me that he
didn't know when he will be able to return back but he will

1 make sure that a doctor's note will be delivered to the
2 court on Monday, March 20th. He also indicated that he
3 needed to contact his main doctor, Dr. Gorlitskey,
4 G-o-r-l-i-t-s-k-e-y, as to when he will be available to
5 return to trial.

6 THE COURT: Okay. Well obviously Mr. Fordyce that
7 caused the court concern on a number of levels, one
8 whether in fact Mr. Stein had a heart attack obviously
9 that's concerning but two, the accusation that somehow the
10 court had quote caused his heart attack. You know Mr.
11 Stein, it appears to the court that when he comes under
12 pressure in the lawsuit in my manner whether it's from
13 questioning, cross-examination or just he doesn't like
14 whatever testimony is coming out he lashes out, he gets up
15 set he raises his voice, he points at people, he starts
16 yelling or he makes accusations like he did over the
17 telephone. So given that, I want to know what your
18 position is what you have to report.

19 MR. FORDYCE: Well Your Honor I think pretty much
20 what's in the health summary and honestly I don't know what
21 the status right now. My understanding is that Mr. Stein
22 is going to go and see his doctor, Gorlitskey after going
23 to the emergency room on Friday and we're going to see --.

24 THE COURT: Well were you with him.

25 MR. FORDYCE: I was not, no.

26 THE COURT: So you don't know what happened to him
27 when he left.

28 MR. FORDYCE: Correct Your Honor, all I have is

1 the health update and he called me probably I would guess
2 at a very similar time as to when he called the court clerk
3 and said I think I'm having a heart attack I'm on my way to
4 Saint John's and you know my response was do you need my
5 help, do you need --.

6 THE COURT: Uh-huh.

7 MR. FORDYCE: You know and I said no I'm basically
8 there already. So you know to my knowledge, that's where
9 we are.

10 THE COURT: Yes.

11 MR. FORDYCE: My understanding is he's going to go
12 and see [TKPWO*ER].

13 THE COURT: Yeah well he said he had an
14 appointment March 17th which was Friday so --.

15 MR. FORDYCE: And I don't know what actually
16 became of that Your Honor.

17 THE COURT: He was supposed to provide a report to
18 the court after visiting the doctor so we could determine
19 whether he could get off the two hour a day scenario and
20 participate in the trial for a full day. It doesn't likely
21 he got there, I don't know.

22 MR. FORDYCE: Your Honor I think you're right, I
23 think that would be correct that this through a [SPHAPB]-er
24 in the works as it were. I don't know who his scheduling
25 was I was prepared to go and finish on Friday and that
26 didn't happen and now with the -- with the -- the emergency
27 matter, that happened, I simply don't know the status, you
28 know beyond what we're looking at.

1 MS. IBARRA: For the record Your Honor, the
2 medical status update we got doesn't make a reference to a
3 heart attack or --.

4 THE COURT: Obviously I was going to make that
5 observation, that I have this after visit summary prepared
6 for Jonathan Stein by provident health and services and it
7 doesn't look like he checked himself in and it says your
8 diagnosis was chest pain, unspecified type and he was sent
9 home with baby aspirin.

10 MR. FORDYCE: Right.

11 THE COURT: And let's see -- I think that was it.

12 MR. FORDYCE: But I think Your Honor on the last
13 page and it does say follow-up with [TKPWO*ER], schedule
14 appointment ASAP.

15 THE COURT: Right but [A*] it appears he didn't
16 have a heart attack, it appears he had chest pain if he had
17 a heart attack they probably would have kept him there.

18 MR. FORDYCE: I think Her Honor is right but even
19 though I've got doctors adds parents I'm not eye doctor so
20 I don't know.

21 THE COURT: But [THEUF] if the did I go us was
22 heart attack it would have been there correct.

23 MS. IBARRA: Also --.

24 THE COURT: Which is why also I needed something
25 from a doctor [WO*] which would indicate when he would be
26 able to return. Now maybe we can set something out so a
27 doctor can evaluate him further and give me a date as to
28 when he can return. As it stands right now all I have is

1 the summary that says that he checked himself in, they said
2 he had chest pain and September him home with babe aspirin.

3 MS. IBARRA: One point on that matter --

4 THE COURT: Now, I will note that Mr. Stein filed
5 something himself, something he calls status update.

6 MR. FORDYCE: Yes, Your Honor.

7 THE COURT: Which he says during cross-examination
8 the court prosecuted a series of aggressive and verbally
9 abusive lines of questioning against Mr. Stein. I didn't
10 see any verbally aggressive or abusive.

11 MS. IBARRA: That's not what I recall either, Your
12 Honor.

13 MR. FORDYCE: Your Honor I think what he's
14 referring to the difficult situation where Your Honor was
15 demanding a yes or no answer for something that was not a
16 yes or no question and I think that's what Mr. Stein was
17 referring to. The SMDC agreement is for a set monthly
18 amount, it acknowledges and on the plates quantum meriut
19 without saying that there has to be hours kept, Mr. Stein
20 was actually pretty meticulous in keeping hours but I kept
21 them as he said in kind of diary form and when Plaintiffs
22 counsel questioned him on those entries, I was actually --
23 I read them of course but they're absolutely accurate with
24 what Mr. Stein has testified through the course of this
25 trial but you know is there a phone call missing is there
26 something there, so when Your Honor says when they're
27 accurate yes or no, he felt like he was being put in a
28 difficult situation of well kind of, you know so -- so I

1 believe --.

2 THE COURT: Well that seems like a straight yes or
3 no are they accurate, that doesn't seem like -- and if he
4 want to the explain then the court would allow him to
5 explain but he needs to answer the questions directly and
6 un for the neatly for Mr. Stein when he gets put under you
7 know difficult questions, when he's asked difficult
8 questions or what he perceives to be difficult questions he
9 lashes out and accuses those asking him the questions of
10 being aggressive or somehow abusing him which I think
11 everybody here has said did not occur.

12 MS. IBARRA: And the record doesn't show that.

13 THE COURT: And you're putting your hands up
14 saying I don't know judge, I don't know what to tell you
15 because I think you would agree that you know that's the
16 situation.

17 MR. FORDYCE: I see -- I see Your Honor, I see
18 both sides of the issue and in nine years of doing this,
19 this is unique but getting back to Jonathan Stein's health
20 issue, what would Your Honor like me to do.

21 MS. IBARRA: Before we move off the topic just one
22 more thing, ostensibly the reason why we are going half
23 days is because this is a man with a history of heart
24 conditions, nothing is referenced in the emergency visit
25 about that so I'm just left wondering why if he has a
26 history and he's experienced chest pain, ordinarily you
27 would expect them to have taken a different course of
28 action than they did here that's all.

1 MR. FORDYCE: Your Honor I don't understand what
2 that means and as far as I know Plaintiffs counsel is a
3 licensed and qualified attorney but these not a doctor.

4 MS. IBARRA: That is true, I'm just making an
5 observation having reviewed a lot of these.

6 MR. FORDYCE: And in fact -- and much to my
7 displeasure in the course of this entertaining lawsuit
8 Plaintiffs counsel has suggested that Mr. Stein is
9 malingering, his health --.

10 THE COURT: I think that is the suggestion, I
11 think that may be the suggestion. But you know Mr. Fordyce
12 the problem is we just don't get full reports on Mr.
13 Stein's condition and his history, he says he has a
14 history -- you know when things aren't going well for him
15 in trial he has these incident whether they're in court or
16 outside of court and he comes back with a note, the last
17 time we got a note he went through six months the [*F] of
18 testing and he comes back he's had no surgery, no nothing.

19 MR. FORDYCE: Had an angiogram Your Honor.

20 THE COURT: I understand that he's had -- Mr.
21 Fordyce lit en to me.

22 MR. FORDYCE: Yes.

23 THE COURT: He's had testing, the problem is
24 there's been nothing since and we've had no report as to
25 what he's going to do, if he needs surgery, if there's
26 something else. Now he came in and, he said I can only do
27 trial two hours a day, and I said fine Mr. Stein, come to
28 found out that he's actually working in the afternoons,

1 he's doing depositions he's doing other things, despite the
2 fact the court was aware of that the court respected Mr.
3 Stein and his continue and said you know Mr. Stein fine
4 we'll do two hours a day but now we're into the situation
5 where he's the very last witness, according to his pleading
6 that he filed he is the last witness, he has no other
7 witnesses he was going to call.

8 MR. FORDYCE: I think that's right Your Honor
9 yeah.

10 THE COURT: And you didn't name any witnesses you
11 were calling.

12 MR. FORDYCE: No.

13 THE COURT: Even plaintiff I said she didn't have
14 anything. He's the last one we're a stones throw away from
15 the end of the trial and Mr. Stein didn't like the
16 questioning either on cross or from the court and he
17 doesn't want to proceed or at least that's the perception.

18 MR. FORDYCE: Understood Your Honor and I see
19 absolutely what Your Honor is saying, I mean to be fair,
20 you know an angiogram is actually an invasive procedure.
21 In my years as a human being not just [AEUZ] lawyer I'm not
22 aware of anyone malingering to the extent of having an
23 invasive heart procedure [do not|done] so you know I'm
24 between a rock and a hard place here, I don't know -- I
25 simply don't know what --.

26 THE COURT: Hence the unusual nature of this case.

27 MR. FORDYCE: Well Your Honor puts it gently and I
28 would agree having been in very busy litigation practices

1 this is all fairly new to me. What would Your Honor like
2 to do.

3 THE COURT: Well I'd like a declaration from the
4 physician, I don't want a report, I have want a declaration
5 under penalty of perjury that what Mr. Stein's diagnosis is
6 and when he can return to court to finish the trial.

7 MR. FORDYCE: Okay.

8 THE COURT: There is an alternative which I think
9 perhaps we should entertain and that is that since Mr.
10 Stein is the last witness, if plaintiff for goes any
11 further cross-examination and strikes -- agrees to strike
12 the cross-examination that's already been conducted, then
13 we can conclude.

14 MS. IBARRA: So agrees to strike.

15 THE COURT: The cross-examination. Not his direct
16 but he called himself on direct but if you agree to strike
17 the cross then we can conclude.

18 MR. FORDYCE: And Your Honor because Mr. Stein is
19 not only a defendant but counsel obviously I have to run
20 this by him.

21 MS. IBARRA: Well but the court isn't presenting
22 that option to SMDC and Mr. Stein Stein correct.

23 THE COURT: No I'm saying we can conclude it once
24 you -- once you agree that --.

25 MS. IBARRA: That's to strike all the testimony
26 that was elicited on cross.

27 THE COURT: Right. [STPRAOEUBG] the testimony
28 that was he [HREUS] Ted on cross, there's no further

1 redirect, it's concluded.

2 MR. FORDYCE: So in other words we basically wrap
3 up as it stands now.

4 THE COURT: Right.

5 MR. FORDYCE: With cross.

6 THE COURT: Leave it with the -- no, actually not
7 leave it with the cross, the cross will be stricken,
8 otherwise because I told Mr. Fordyce I would allow him
9 based on what had be elicited on cross.

10 MR. FORDYCE: Yes.

11 THE COURT: That he could ask more questions. So
12 the only way it could happen is if you agree not just to
13 conclude cross, but to allow cross stricken and just leave
14 his testimony.

15 MR. FORDYCE: You did, Your Honor.

16 MS. IBARRA: That is very tempting, but he did
17 testify as an Indian law expert and there was just all.

18 MR. FORDYCE: That's not part of your cross.

19 MS. IBARRA: No I know.

20 MR. FORDYCE: That was rebuttal.

21 MS. IBARRA: That was -- all right.

22 MR. FORDYCE: So that's a possibility.

23 MS. IBARRA: If that's a possibility, do I need to
24 make my decision right now.

25 THE COURT: Well I mean it would be a good idea.

26 MR. FORDYCE: And again I can't speak for Mr.
27 Stein right now.

28 THE COURT: I don't think he needs to agree to it

1 it's just the testimony just ends, he has no further
2 witnesses to present, there's nothing to present, so once
3 his testimony is in, it's done and his testimony is in.

4 MS. IBARRA: His testimony is in. I would like to
5 confer with my client for five minutes.

6 MR. FORDYCE: And I'd like to confer with Mr.
7 Stein and have him make that --.

8 THE COURT: Sure because there's nothing left,
9 there's nothing left for the case except for Mr. Stein's
10 testimony as everybody has represented including Mr.
11 Stein's in his filing of March 20th so as long as you agree
12 to strike that cross then.

13 MS. IBARRA: And he has testified for like 20, 30
14 days so yes [-FPLTS] okay can we just confer.

15 THE COURT: Yes.

16 MR. FORDYCE: Your Honor let me try and get Mr.
17 Stein on the phone, and by the way Your Honor thank you for
18 your patience.

19 (Break taken.) 10:39 AM to 10:48 AM.

20 THE COURT: Gabrielino versus Stein, BC361307.

21 MS. IBARRA: Good morning. So plaintiff has
22 conferred with counsel and plaintiff has decided to submit
23 so we're submitting.

24 MR. FORDYCE: Okay. And so understand that, that
25 means that you're accepting Mr. Stein's direct testimony,
26 all the cross will be stricken and we're done.

27 MS. IBARRA: Completed.

28 THE COURT: Well what I'm saying is Yes, I will

1 allow his testimony to stand I'm not saying I'm accepting
2 it as true.

3 MR. FORDYCE: Of course Your Honor.

4 THE COURT: I'm just saying it's evidence of the
5 trial.

6 MR. FORDYCE: No no, yeah.

7 THE COURT: But in order to have this matter go to
8 argument which I'm going to allow you to do on paper by the
9 wait.

10 MS. IBARRA: Oh okay.

11 THE COURT: So you have don't have to prepare for
12 a two hour oral argument you can put it in writing.

13 MR. FORDYCE: And Your Honor I've had left a voice
14 message for Mr. Stein because he is also counsel of record
15 in the matter and I haven't heard [PWA*PL] back, I'm just
16 fibbing an e-mail to him now. I would assume he has --
17 well let me ask Your Honor, does he have say in this.

18 THE COURT: Well what do you mean does he have
19 say? He can always state his position concerning the
20 Court's suggestion. All I'm saying is in his -- I mean the
21 reason I thought of it is because he says here somewhere in
22 his pleading that he's the last witness.

23 MR. FORDYCE: I believe that's right Your Honor.

24 MS. IBARRA: Yes.

25 THE COURT: Mr. Stein d and he's always
26 represented that I don't think that's a change from what he
27 stated it says on Page 3 Mr. Stein is the last witness in
28 the SMDC and crane case in chief so I mean.

1 MR. FORDYCE: And Your Honor just to be clear, Mr.
2 Stein gave testimony that crane was involved in the federal
3 recognition issue and that's for cranes cross-complaint as
4 well and yeah I think Your Honor is right, I think you're
5 absolutely right.

6 THE COURT: I mean we had a discussion -- well
7 we've been talking throughout the trial as to the number of
8 witnesses and who is going to be called and Mr. Stein is
9 the last one and he's done on direct so the question is
10 because there were new issues raised on the cross is why I
11 said well there would be any redirect but once that's
12 stricken then we can just.

13 MR. FORDYCE: Yeah I mean -- Your Honor for me
14 personally that makes good sense but the only thing is I'm
15 reticent to commit on behalf of Jonathan Stein who's both
16 my client who I can't get a hold of and who is also
17 co-counsel representing one of the Defendants slash cross
18 complaint ants.

19 THE COURT: Well you're representing Mr. Stein.

20 MR. FORDYCE: Correct, correct.

21 THE COURT: So your position I understand but his
22 position was with respect to SMDC and Stein was somewhat
23 already stated in his March 20th filing, that's today
24 right, today's filing.

25 MR. FORDYCE: Correct Your Honor yes.

26 THE COURT: Although he doesn't -- I mean even if
27 he were here and he said I object, what could he object to,
28 there would be nothing to object to in the sense that his

1 testimony stand I'm striking the cross so there's November
2 redirect, there's nothing else to do.

3 MR. FORDYCE: Your Honor brings up a very good
4 point.

5 THE COURT: Obviously if he wants to object he can
6 file an objection in writing whatever I just don't think
7 he -- or around objection through you but ultimately I
8 don't think it really matters based on what he presented in
9 writing to the court today and based on the fact there's
10 just nothing else, once the cross is done, there's nothing
11 left.

12 MR. FORDYCE: Okay so Your Honor's thought is then
13 go this route and if Mr. Stein wants to object because I've
14 not been able to get ahold of him, then he can do so on
15 behalf of SMDC or through me if -- because again I find
16 myself in a slightly awkward situation of not being able to
17 get ahold of him with a major issue that affects him both
18 as client and counsel and Defendants and cross complainants
19 so that's my only reticents.

20 THE COURT: I understand, my point is even if he
21 objected I don't think interests if I barrier, there's
22 inform barrier to the court, it's just done, the case is
23 done, there's nothing left to do once -- I mean there just
24 isn't, except argument and of course I can --.

25 MR. FORDYCE: And Your Honor I fully --.

26 THE COURT: But I understand.

27 MR. FORDYCE: And I understand Your Honor's
28 position.

1 THE COURT: Correct.

2 MR. FORDYCE: Very very much so.

3 THE COURT: And I still need an update on his
4 condition.

5 MR. FORDYCE: Yes.

6 THE COURT: Because if he's going to write a brief
7 he needs to let me know when he will be fully capable of
8 writing a brief.

9 MR. FORDYCE: Yes.

10 THE COURT: So I still need to know what his
11 situation is in order to set a schedule so.

12 MR. FORDYCE: And Your Honor that would be the --
13 even for the brief that would be a declaration from his
14 healthcare provider under penalty of perjury.

15 THE COURT: Right so I would want to know when he
16 can -- at this point everything that's left is really in
17 writing. You have all the exhibits that you need so.

18 MR. FORDYCE: Actually Your Honor brings a great
19 point, when would we talk about that, about the exhibits.

20 THE COURT: I guess you can meet and confer and
21 talk about it.

22 MS. IBARRA: Yeah.

23 MR. FORDYCE: All right.

24 MS. IBARRA: I need to review all the transcripts.

25 MR. FORDYCE: Yeah fair enough I've got --.

26 THE COURT: What I can do is before we set the
27 briefing schedule, maybe you can just meet and confer on
28 the exhibits but that will probably talk a while because

1 you can talk with Neli and then we can talk about a
2 briefing schedule and maybe Mr. Stein his doctor will have
3 a report as to when he can write his brief.

4 MS. IBARRA: Okay. So then it sounds like we
5 should have another status conference and then so we can
6 talk about briefing schedule and Mr. Stein's condition.

7 MR. FORDYCE: That sounds like -- that sounds
8 reasonable to me, Your Honor.

9 THE COURT: But I mean I do need to know Mr.
10 Stein's position, so why don't we just kind of continue
11 this a little bit so we can set up dates, we can -- I'm
12 assuming his doctor is not going to be able to turn
13 something around tomorrow, he's going to need time to do a
14 report, talk to Mr. Stein, get a sense of --

15 MR. FORDYCE: Yes Your Honor.

16 THE COURT: How about -- is two weeks ago.

17 MR. FORDYCE: That's fine.

18 THE COURT: That should be enough time to --.

19 MR. FORDYCE: Yes.

20 MS. IBARRA: Yes.

21 THE CLERK: And that's just a status conference,
22 are we calling it a status conference.

23 MR. FORDYCE: Update on Stein health condition.

24 MS. IBARRA: Status conference makes it easy.

25 MR. FORDYCE: And you and I can meet and confer.

26 THE COURT: Yeah in two weeks. In the meantime,
27 yeah maybe you two should meet and confer on the exhibits.

28 MR. FORDYCE: I think that's a good idea Your

1 Honor yes.

2 MS. IBARRA: Yes.

3 THE COURT: So status conference two weeks is
4 April 3rd that's a Monday shall we pick another day.

5 THE CLERK: Her Honor Wednesday April 5th is a
6 better day.

7 THE COURT: April 5th.

8 THE CLERK: At 9:30.

9 THE COURT: Yeah 9:30 is fine.

10 MR. FORDYCE: April 5 Neli is that.

11 THE CLERK: Yes nine 340.

12 THE COURT: And that concerns a declaration from
13 Mr. Stein's M.D. as to I guess his medical condition and
14 return to the practice basically.

15 MR. FORDYCE: Understood.

16 THE COURT: Now the trial though since we're going
17 to do conclude it is just when he can get to writing a
18 brief and reviewing evidence or whatever he needs to do,
19 spend time to do a belief and if he needs more time than
20 would probably normally be allotted for a closing brief I
21 will take that into consideration, if he can only work a
22 few hours a day or whatever.

23 MR. FORDYCE: Thank you, Your Honor.

24 THE COURT: I will remain flexible in terms of the
25 number of hour that he can work per day on a closing brief,
26 can't let it go on forever.

27 MR. FORDYCE: Well you know when was the case
28 filed, why not another four years. Yes agreed.

1 THE COURT: That's why I need a doctor to tell me
2 how much time he can devote to doing something like that.

3 MR. FORDYCE: Okay super. And again thanks Your
4 Honor I -- yeah.

5 THE COURT: Okay. It's just I think it's time to
6 end the trial.

7 MS. IBARRA: Yes, it is.

8 THE COURT: And you can work it out. Now things
9 are in writing so it will be a little bit I think easier.
10 He can work from home.

11 MR. FORDYCE: Uh-huh. What's the phrase, we laugh
12 that we may not weep.

13 THE COURT: So April 5th I do want you to come to
14 court.

15 MR. FORDYCE: I will be here Your Honor.

16 THE COURT: And we can discuss for the plaintiff
17 so we can discuss where to go from here in terms of
18 briefing or whatever, but maybe you can talk to each other
19 and tell me about reviewing the exhibits.

20 MR. FORDYCE: Sure absolutely. And Delia I'm
21 happy to do that, you know you and I can meet and confer.

22 MS. IBARRA: Yeah.

23 THE COURT: But you may need Neli for that so
24 that's why I'm saying if you want to come to for the you
25 can even work in my jury room and then when you need to
26 consult Neli for something.

27 MR. FORDYCE: Great I'll touch base with you.

28 MS. IBARRA: And maybe we can come in in the

1 afternoon.

2 MR. FORDYCE: Yeah that would be fine.

3 THE CLERK: This afternoon.

4 MS. IBARRA: Not this afternoon.

5 MR. FORDYCE: No.

6 MS. IBARRA: Not this afternoon and we'll just
7 call you and set up a time because there's also trial here
8 right.

9 THE COURT: Yes.

10 THE CLERK: Yes.

11 MR. STEIN: Well and and you I can work it out.

12 MS. IBARRA: And we can work it out with the
13 transcripts once we review them.

14 MR. FORDYCE: Thank you Your Honor.

15 THE COURT: Thank you. Let's hope Mr. Stein gets
16 better soon.

17 MR. FORDYCE: Yep.

18 MS. IBARRA: And can we leave our books here or
19 shall we take them.

20 MR. FORDYCE: I can [K-PL] in and start picking
21 our stuff up.

22 THE COURT: Buff you may want to keep them.

23 THE CLERK: You can take them but make sure you
24 keep -- don't throw them away.

25 MR. FORDYCE: Can we leave them here just for
26 right now.

27 THE CLERK: Yeah.

28 MR. FORDYCE: Thanks a bunch, thanks Neli. 10:59

1 AM.

2 (Break taken.) 11:01 AM.

3 THE COURT: Gabrielino versus Stein, BC361307. I
4 thought of probably another thing we could do and that is I
5 could sever the SMDC portion of it and then finish I guess
6 with respect to that later, although again I don't know if
7 there's really anything to finish but I can do that if
8 that --.

9 MR. FORDYCE: Your Honor that's a good --.

10 THE COURT: I mean Mr. Stein feels like he wants
11 to be here because he wants to go through cross, I don't
12 know it doesn't really make sense to me so I'm just saying,
13 in order to --.

14 MR. FORDYCE: I will offer -- I will let him know
15 that possibility. Honestly Your Honor I agree with you,
16 I'm not totally sure after his direct what point it serves,
17 I have mean I --.

18 THE COURT: I'll just offering that.

19 MR. FORDYCE: I did direct on the SMDC
20 cross-complaint, but I'll at least -- and much appreciated
21 from Your Honor I'll put that to him but you know.

22 THE COURT: And it's an offer, I don't think --
23 you know like I said I'm not sure there really is much of
24 anything else left to do after that but it's --.

25 MR. FORDYCE: I was finished with him on direct
26 that's for sure so --.

27 THE COURT: Okay.

28 MR. FORDYCE: Thank you Your Honor.

1 THE COURT: And based upon what he said in his
2 filing it seems like really there isn't anything but I
3 don't know. It's a -- I just want to throw everything out
4 there to all of you and maybe if you have another idea or a
5 thought or a comment on my suggestions then you can come
6 back and let me know since I'll be seeing you about about a
7 week or so or two.

8 MR. FORDYCE: I have lots of thoughts and comments
9 but those are probably left.

10 THE COURT: Left unsaid.

11 MR. FORDYCE: Yes Your Honor thank you.

12 THE COURT: Thank you.

13 MS. IBARRA: Thank you.

14 MR. FORDYCE: Thanks Your Honor. 11:03 AM.

15

16

17

18

19

20

21

22

23

24

25

26

27

28