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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 15-21124-CIV-JG

MARLA MARTINS, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
-v-	)	
	)	
ROYAL CARIBBEAN CRUISES LTD.,	)	
	)	
DEFENDANT.	)	Miami, Florida
	)	September 15, 2016
	)	

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TRANSCRIPT OF TELEPHONIC PRETRIAL CONFERENCE  
PROCEEDINGS BEFORE THE HONORABLE JONATHAN GOODMAN  
UNITED STATES MAGISTRATE JUDGE

Appearances:

(On Page 2.)

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1 (Call to the order of the Court.)

2 THE COURTROOM DEPUTY: Calling case  
3 15-21124-Civil-Goodman, Martins, et al. versus Royal Caribbean  
4 Cruises, LTD. The Honorable Jonathan Goodman presiding.

5 THE COURT: Good afternoon, folks. It's Jonathan  
6 Goodman. Thanks for phoning in.

7 Let's have appearances, please, starting first with  
8 the plaintiff.

9 MR. BRILL: Yes, sir. Good afternoon, Your Honor.  
10 Always a pleasure, sir. This is David Brill, and also on the  
11 line is my law partner, Joe Rinaldi, on behalf of Martins, et  
12 al.

13 THE COURT: Thank you both.  
14 For the defense?

15 MR. DRAHOS: Yes, good afternoon, Your Honor.  
16 Michael Drahos, from the law firm of Fowler White, on behalf  
17 of the defendant, Royal Caribbean.

18 THE COURT: Sir, I can barely hear you. It sounds  
19 like you're speaking at the end of a tunnel through a towel  
20 that's been dipped in water. So I don't know what's going on,  
21 but can you increase the volume, get the phone closure to your  
22 mouth or do something?

23 MR. DRAHOS: Is there something we can do to  
24 increase the volume on this phone?

25 Your Honor, I'm actually a guest in someone's office

1 building, because I didn't want to call in on my cellphone.

2 So we will do our best here.

3 Can you hear me better now?

4 THE COURT: It's a little bit better. Let me turn  
5 the volume up here a little bit.

6 Try speaking again.

7 MR. DRAHOS: I will speak up a little bit louder, as  
8 well. Does that help Your Honor?

9 THE COURT: Yes, it does.

10 MR. DRAHOS: Okay.

11 THE COURT: Thank you so much.

12 MR. DRAHOS: Thank you.

13 THE COURT: So, folks, I wanted you to phone in, and  
14 thank you for doing that, to clear up a couple of lingering  
15 issues.

16 And these -- the first issue has to do with the  
17 plaintiff's amended motion for pretrial conference having to  
18 do with the relationship between Marla Martins and the minor  
19 plaintiff, GE, and GE's biological father, and some suspicions  
20 that Ms. Martins seems to have about the bona fides of the  
21 father's perspective on the relationship with his daughter and  
22 whether or not he even knows that this case is going on. So  
23 that motion and the amended motion was filed back in May.

24 So maybe, first of all, if you folks could give me a  
25 status report. From the plaintiff's perspective, what's been



1 we're all here to answer any questions concerning these  
2 requests.

3 But to firstly enter an order permitting Marla  
4 Martins to indeed continue as next friend.

5 Then, if -- we would respectfully ask Your Honor to  
6 rule as promptly as Your Honor's calendar would permit on the  
7 summary judgment, including a decision on the NIED issue.

8 And then, inasmuch as plaintiffs' motion to amend  
9 the complaint has really only one discrete effect on the  
10 matter of the summary judgment, which I know, as we all know,  
11 is an issue that Your Honor identified for the hearing today  
12 to just two, and that very discrete issue, Your Honor, is on  
13 liability only to the extent Your Honor would determine the  
14 ship doctors do not engender vicarious liability on the  
15 defendant because they're not agents or apparent agents, but  
16 the nurses are, all of which has been briefed by the parties.

17 And insofar as the parties have taken that into  
18 consideration in their settlement agreement, we ask, thirdly,  
19 that Your Honor essentially just stay, or abate, or hold off  
20 ruling on the motion to amend the complaint as essentially  
21 not necessary to, therefore, the ruling on the summary  
22 judgment.

23 And then, lastly, the parties would ask that Your  
24 Honor rule after -- thereafter the summary judgment, not make  
25 a priority at all the Daubert motion, because that takes, you

1 know, far less relevance or significance in the parties'  
2 settlement agreement.

3 And if I could just add one last thing, and then, of  
4 course, whatever Your Honor might -- might have to inquire,  
5 we're all yours and all ears. The one thing we want to make  
6 sure Your Honor feels comfortable with with respect to leaving  
7 Marla Martins as the next friend, especially in as much as the  
8 parties have essentially resolved the matter as identified, is  
9 that any -- to the extent the summary judgment would result in  
10 a plaintiff-favorable finding, and therefore there would be  
11 any monies that would be earmarked for GE, please rest  
12 assured, Your Honor, that we would then present -- first,  
13 we'll have that money allocated in an annuity for the child  
14 for when the child reaches majority, present that to Your  
15 Honor for Your Honor's imprimatur, and then, of course, that  
16 money would not be available to anyone other than GE, and only  
17 to her upon majority, in reaching 18.

18 So at bottom, it doesn't matter too terribly much  
19 who ends up being next friend or guardian, if you will, for  
20 GE, because no one had -- would have any avenue for the money  
21 other than the child in any event.

22 So I'm guessing this comes as somewhat of a  
23 significant surprise, but ultimately one that pleases the  
24 Court, all this information.

25 THE COURT: So I'm trying to just digest all of this

1 information, and not that I in any way doubt you, but let me  
2 just ask defense counsel.

3 Are you completely onboard with the explanation, or  
4 do you think that some sort of a clarification or further  
5 explanation or nuanced point needs to be made to me? Tell me  
6 what -- what your view is about what we've just heard these  
7 past six or seven minutes.

8 MR. DRAHOS: Yes, Your Honor.

9 And I know that you have a bunch of information  
10 just --

11 THE COURT: Speak loud. Keep your voice up, please.

12 MR. DRAHOS: Sorry, Judge.

13 Yes, I know you just heard a lot of information from  
14 counsel, and so certainly I'll do my best to clarify if need  
15 be, but Mr. Brill has summarized the parties' position I think  
16 rather accurately and clearly as it relates to specifically  
17 what we're requesting. There are some nuances or semantical  
18 differences perhaps in the way some of that was phrased, but  
19 as it relates to the relief we're requesting, we are in  
20 agreement as it relates to all that Mr. Brill has asked for  
21 here, with the exception, minor exception, that it really does  
22 not matter to Royal Caribbean whether or not the Court decides  
23 to rule on the pending Daubert motions. The priority from our  
24 point of view is the summary judgment motion. But if Your  
25 Honor is inclined to rule on the Daubert motion, as well, we



1 certainly are not in the position right now to withdraw it.

2 So other than that, everything that Mr. Brill has  
3 relaid to the Court is jointly agreed upon.

4 MR. BRILL: And, Your Honor, David Brill here.

5 I should make clear that we indeed concur a hundred  
6 percent with Mr. Drahos' point that the summary judgment is  
7 priority one, two and three as compared to the Daubert. But  
8 insofar as -- and understandably we respect counsel's position  
9 in this regard -- that they're not withdrawing that motion,  
10 you know, the Daubert one, that that's out there. But the  
11 summary judgment is the key.

12 THE COURT: Understood.

13 So a few questions from my end.

14 First question is how old is GE now?

15 MR. BRILL: Let me get you the exact date of birth,  
16 Judge. I'm sorry. I should have been prepared for that.

17 If I could trouble Joe also, if you wouldn't mind  
18 logging in?

19 MR. RINALDI: I'm looking, as well.

20 I believe she's 10, but I'm just trying to confirm  
21 it.

22 MR. BRILL: That's my recollection, too, Judge. And  
23 I'm sorry.

24 THE COURT: Was anybody with her at the deposition?  
25 A relative, a friend, an attorney, a guardian, anybody with GE

1 when you took her deposition?

2 MR. BRILL: Oh, Marla Martins was with her.

3 THE COURT: So I'm in no immediate hurry. If you  
4 could just track down that date of birth that would be  
5 helpful. Maybe it's in a deposition transcript or some other  
6 record that you have there in the file.

7 MR. BRILL: That's exactly where I'm looking, as  
8 well, Your Honor, is the deposition. Inauspicious start when  
9 I don't have the answer to your very first question, Your  
10 Honor.

11 MR. RINALDI: Your Honor, we actually redacted her  
12 date of birth in her deposition, but when asked, "how old are  
13 you," she answers "10", which is not redacted.

14 THE COURT: All right. And that deposition was  
15 taken when?

16 MR. BRILL: May 17, Your Honor, of this year.

17 THE COURT: All right. Thank you for that.

18 So currently, when you say that Marla is the current  
19 best friend of GE, was that pursuant to a court order, a  
20 ruling, or was it simply how you phrase the allegation in your  
21 complaint?

22 MR. BRILL: That's an excellent question.

23 At the time of the filing of the complaint, she was  
24 identified as next friend based on two things:

25 Firstly because the rule of procedure, as I'm sure

1 Your Honor knows, allows for anyone in a custodial capacity of  
2 sorts to be named as next friend. So any adult really could  
3 be next friend for a minor.

4 And, secondly -- and I -- if memory serves, I  
5 believe we briefed this, as well -- at the time of the filing  
6 of the complaint, Marla Martins was indeed a loco parentis for  
7 the child for, you know, two reasons. One -- and that  
8 persisted after the filing of the complaint. But, one,  
9 because she largely was raising the child, who is her  
10 granddaughter, is the daughter of her oldest child, her oldest  
11 daughter, and assisting in the raising. And then subsequent,  
12 as Your Honor may recall, that older daughter also passed away  
13 suddenly --

14 THE COURT: I remember.

15 MR. BRILL: -- and quite tragically.

16 So for a significant period of time after that, the  
17 daughter did, in fact, live exclusively with Marla, and it was  
18 only at some point in time after that that the -- the father  
19 of GE got into the picture and started to seek parental  
20 rights.

21 I will also proffer to the Court that there was, in  
22 fact, a written document that the father had signed, or -- and  
23 executing to say that he had given up his parental rights to  
24 Marla. He later in the case in New Jersey claimed that that  
25 was done under some sort of false pretenses and revoked it.

1           So I hope that gives a clearer picture of the bases  
2 for, at various times along the chain, the next friend  
3 identification.

4           THE COURT: So as of today, in September of 2016,  
5 where is GE currently residing, with her biological father?

6           MR. BRILL: That is correct; with rights of  
7 visitation for Marla.

8           THE COURT: And are there still proceedings going  
9 on~-- and I can't remember. Was this in New Jersey, in New  
10 York, some place up north, in the Northeast, right?

11           MR. BRILL: Yes, it was. In New Jersey, Your Honor.  
12 That's correct.

13           THE COURT: New Jersey.

14           So are there still proceedings going on in New  
15 Jersey relating to custody rights, visitation or  
16 family-related issues?

17           MR. BRILL: There -- I believe that at least as of  
18 now, they are resolved at the trial level, with the father  
19 having custody, but without prejudice for Marla. She just  
20 doesn't have -- as I understand it -- and obviously I'm not  
21 involved in it other than what she's told us -- she has to,  
22 you know, get more funds in order to persist in trying to get  
23 full custody.

24           THE COURT: So, for example, in this motion, which  
25 was filed back in late May, you represented in paragraph 5:

1 "Plaintiff, Marla Martins, continues to fight the Court's  
2 custody decision in New Jersey and hopes to regain custody of  
3 plaintiff GE."

4 Is that still an accurate statement, or has time  
5 passed and renders that statement outdated?

6 MR. BRILL: A little of both.

7 It -- it's still her hope, but at the time in May,  
8 being candid, as I always am with the Court, it was still  
9 being heavily litigated. It is being less litigated now, but  
10 as I've insinuated, Marla has not resigned herself to the --  
11 you know, that -- the father having sole custody. It's just  
12 that since May there have been -- and, again, my  
13 understanding --

14 And please, Joe, correct me if I'm misapprehending.

15 -- there have been more I guess preliminarily final  
16 results in that forum than when we wrote it in May.

17 THE COURT: So --

18 MR. BRILL: But I do emphasize, Your Honor, she does  
19 have court-ordered rights, which is significant for a  
20 grandparent.

21 THE COURT: Court-ordered visitation rights.

22 MR. BRILL: That is correct.

23 And, for example, even during the time in May when  
24 she was deposed, she's allowed to have, you know, the  
25 visitation, travel to Florida from New Jersey, frequent

1 telephonic -- no, daily telephonic contact -- those things.  
2 So it is not at all a foregone conclusion that the father will  
3 have permanent rights to the exclusion of the grandmother,  
4 Marla, but . . .

5 And for our purposes, there's no dispute that Marla  
6 has been able to, consistent with the case law to which we  
7 cited, prosecute the claim on GE's behalf from inception until  
8 now what we can say following the settlement conclusion.

9 And I think, bluntly speaking, with Your Honor's  
10 help, following the summary judgment ruling, and to the extent  
11 necessary we come before the Court and can have a  
12 determination that indeed any allocation of settlement  
13 proceeds to the child would be fair and reasonable and also  
14 secure for the child, and by being placed in a structured  
15 annuity, and hence therefore there's no concern whether the  
16 next friend, guardian, or whatever person serves as the  
17 conduit for the child's claim really is all that material. At  
18 the end of the day, it's the child's claim and the child's  
19 money.

20 THE COURT: So does the father know about this  
21 lawsuit, the biological father?

22 MR. BRILL: According to the plaintiffs, yes.

23 THE COURT: Well, according to your motion, your  
24 amended motion for pretrial conference, numbered  
25 paragraph 6 -- I'm sorry, numbered paragraph 7: "Plaintiff

1 Marla Martins does not know the extent of GE's biological  
2 father's knowledge about this lawsuit."

3 MR. BRILL: Yes, that was correct then.

4 THE COURT: "But plaintiff does not believe that the  
5 father knows that GE is named as a plaintiff in this lawsuit."

6 MR. BRILL: That -- that was correct at the writing.

7 My understanding is that since -- and when, at the  
8 time of the deposition, counsel asked explicitly does your  
9 father know that you are being deposed here and that you're  
10 here in Florida, in pertinent part, to give your deposition,  
11 the child answered "yes".

12 THE COURT: So are either of the two sides in any  
13 way concerned --

14 Well, let me withdraw that question, or the start of  
15 that question, and ask a little bit of a different question.  
16 So --

17 MR. BRILL: Yes, Your Honor. Yes, sir.

18 THE COURT: So I'm guessing among these -- this  
19 multi-pronged request for relief, one thing you want me to do  
20 is, in effect, remove the case from the trial calendar because  
21 you're not going to be going to trial next month.

22 MR. BRILL: Yeah, that is correct, sir.

23 THE COURT: And would I be correct in thinking that  
24 the case has been settled, at least conditionally, along the  
25 following format? If the plaintiff wins, then -- in other

1 words, if I deny the defense summary judgment motion, then you  
2 have agreed that a certain amount of money will be paid to the  
3 plaintiff. But if I grant the summary judgment motion, then  
4 no money will be paid. Is that sort of the general framework  
5 for the settlement?

6 MR. BRILL: I would -- at the request of both  
7 parties, I think --

8 And Michael -- or Mr. Drahos, please chime in if  
9 what I said here is incorrect.

10 We're sensitive to the idea that -- well, may I have  
11 permission to speak very bluntly to the Court?

12 THE COURT: Sure.

13 MR. BRILL: We -- we would like Your Honor to kind  
14 of know as little about that as possible, only because we want  
15 Your Honor to have no preconceived ideas, and because, not to  
16 just be flattering to Your Honor, because this is true from  
17 both parties, we had -- both parties have faith in Your Honor  
18 to rule on the summary judgment based on the facts and the  
19 law, without any idea of what the settlement would entail.

20 And really, Your Honor, you should take that exactly  
21 how we intend it, because if it were another judge, that  
22 settlement wouldn't go that way. And so we were a little  
23 apprehensive to give you any detail, of course, unless Your  
24 Honor requires it. You're the boss, and we will do it if you  
25 insist. We would just prefer not to tell you any more so that



1 we don't have you subconsciously think anything other than  
2 doing exactly that.

3 THE COURT: I understand.

4 MR. BRILL: Does that make sense?

5 THE COURT: That makes perfect sense.

6 First of all, thank you for those flattering  
7 comments. I didn't realize that you started to drink at 4:45  
8 in the afternoon. You're apparently under the influence of  
9 alcohol.

10 MR. BRILL: That's awesome.

11 THE COURT: So thank you for those comments. I  
12 appreciate them. And I really don't need to know anything at  
13 all about the details of the settlement, nor do I need to know  
14 the general framework.

15 But let me tell you why I asked the question. So  
16 I'm going to be very blunt and candid with you. And then  
17 maybe we can talk about my concern, and then we can maybe  
18 figure out a way to address it.

19 So here's my concern.

20 Whatever your arrangement is, I don't need to know  
21 about it, but what if sometime down the line, two months from  
22 now, four months from now, five months from now, I issue an  
23 order on the summary judgment, and at that point GE's  
24 biological father finds out about it. I mean, our courts are  
25 public. I'm not going to issue an order under seal. The

1 courts are public, and maybe the biological father is checking  
2 the court filings, or maybe somebody will let him know about  
3 it.

4 But in any event, lets assume that the biological  
5 father says I don't approve. This settlement is not a good  
6 one. It's not in the best interest of my daughter. The  
7 settlement could have been on different terms. The settlement  
8 could have been better. Maybe the biological father retains  
9 an attorney to review what has been done to challenge it in  
10 some way. This is what I'm concerned about.

11 So right now, whatever arrangement the two sides  
12 have worked out -- and it's always, generally speaking,  
13 favorable news to hear that the parties have worked things  
14 out, or some of the things out. But we have somewhat of an  
15 odd situation here with the biological father of the  
16 plaintiff, GE, a minor, who, in fact, has full-time custody  
17 rights to his plaintiff daughter, minor daughter, GE, and  
18 although the grandmother has visitation rights, you know,  
19 thousands of miles away, the fact of the matter is the man is  
20 the biological father of GE, and GE is living with him at the  
21 time.

22 So I'm saying to myself, how can we go ahead and  
23 take steps which, in effect, are sort of like a secret  
24 settlement? And I don't say that to say that any of you have  
25 done anything improper. What I'm suggesting is that if you

1 haven't brought the father into the loop, and he doesn't know  
2 what the arrangement is and wasn't even told about it and  
3 didn't authorize it and didn't buy in, then aren't you all at  
4 risk for a later challenge and an effort to undo all the  
5 things that you've worked out?

6 What do you think about that?

7 MR. BRILL: Well, we have indeed thought about that,  
8 and we believe took into consideration exactly how to resolve  
9 that. And what we did is essentially borrow sort of ideas  
10 from how state courts have handled this historically, and  
11 namely, by presenting it to Your Honor after the summary  
12 judgment decision, where the issue of what, if any, monies  
13 would be earmarked to the child under the terms of our  
14 agreement for Your Honor to then consider, and we frankly at  
15 that point would really love to be able to be in front of you  
16 in person so that we can have -- or even on the phone, but  
17 minimally so that there's some oral discourse to communicate  
18 all of the various factors that militate for or against that  
19 particular earmarked amount, so that Your Honor can make the  
20 independent decision exclusive of plaintiffs' counsel, defense  
21 counsel, Marla as next friend, as to the fairness of the  
22 allocation to that child.

23 And with or without dad's import -- or input,  
24 pardon, that becomes and always is something that is  
25 objective, that you divorce -- as the Judge, divorce yourself



1 basically stand down until there's a ruling on the summary  
2 judgment motion? What if the father takes the position,  
3 listen, these plaintiffs' lawyers, they let the defendant out.  
4 We should have, you know, held the defendant's feet to the  
5 fire. We should have forced everybody to go to trial in  
6 October as scheduled, and that's the only way you get any  
7 decent amount of money from a defendant, you have to force  
8 them to go to trial, don't agree to continue the case? I  
9 mean, what if the father takes that kind of a position, just  
10 sort of a challenge to the approach of not having the trial  
11 next month? Wouldn't that be of concern to you?

12 MR. BRILL: Frankly speaking, not in the least,  
13 because as the rule permits, and especially because there was  
14 no adverse ruling on the issue, we have been the duly  
15 appointed attorneys retained by Marla individually, Marla, as  
16 the New Jersey label equivalent of the personal representative  
17 of the estate of the decedent, Briana, Marcelo Costa  
18 individually, Tatiana individually, and Marla for and on  
19 behalf of GE as next friend.

20 The rules, put differently, Your Honor, contemplate  
21 this very type of thing by permitting, as I said earlier,  
22 anyone to act as next friend. If there had been some contrary  
23 ruling between the time of the date of the filing of the  
24 complaint and our settlement, there could be a potential  
25 pitfall, but there isn't. So we have been cloaked with that





1 THE COURT: So let me flag one other issue for you,  
2 which is -- I appreciate the explanations that you have given  
3 so far, and this might be a little bit premature, but I can  
4 tell you that in some other cases that I've had, personal  
5 injury cases, where there's been a settlement in which a minor  
6 is a beneficiary, the parties have jointly filed a motion to  
7 appoint an independent lawyer. Typically it's a lawyer who  
8 deals with probate matters, or family matters, or both, to  
9 evaluate the settlement and to opine on its fairness and to  
10 assess whether it's in the best interests of the minor.

11 And, in fact, I have a case that is pending in front  
12 of me right now having to do with the proceeds of a life  
13 insurance policy, where the father was murdered, as a matter  
14 of fact. And there was a resolution, but there was a minor  
15 beneficiary, and I appointed a lawyer at the request of the  
16 parties to evaluate the settlement, to interview the people  
17 involved, and to, in effect, file a report with the Court.

18 Is that procedure something that either of you have  
19 done in your careers in similar situations?

20 MR. BRILL: This is David Brill.

21 Yes. And it's interesting you ask. We talked about  
22 that in the context of this case, as well, and we've had a  
23 couple of cases in federal court involving minors where it has  
24 been done and those where -- in fact, one case where one judge  
25 did it when -- on one settlement, but decided that it was



1 unnecessary to do with a settlement with another defendant in  
2 the same case.

3 In my humble experience -- and we do it all the time  
4 in state court because of state rules mandate that it be done,  
5 it is a hurdle that is more time consuming and  
6 administratively --

7 THE COURT: Cumbersome.

8 MR. BRILL: Yes.

9 -- than necessary. I've never had an appointed  
10 guardian ad litem disagree and report to the contrary to the  
11 Court, and the one that ultimately decides is the Court  
12 anyway.

13 So what we thought was to cut out the middleman, so  
14 to speak, and just go right to you. If Your Honor,  
15 nonetheless, feels you would prefer to have that middleman or  
16 woman as sort of the buffer, we could do that, but, again, it  
17 just seemed to us to be, as you said, cumbersome, and it ends  
18 up -- you know, the --

19 The Florida legislature mandated this many, many  
20 years ago in the state context, and there are good reasons for  
21 it, because there were, you know, a lot of folks who would not  
22 do the right thing, unfortunately, both the named plaintiffs  
23 and often, at least not infrequently enough, the lawyers, and  
24 they didn't want to burden just the state court judges to  
25 decide it.





1 that notice?

2 Because right now, it seems to me the only specific  
3 information that you have about the scope of the custodial  
4 father's knowledge of the case is the fact that in a  
5 deposition, a 10-year-old girl said, yes, my father knows that  
6 I'm down here in Florida giving a deposition. And from that,  
7 you're construing some things about the father's knowledge  
8 about the lawsuit, about his daughter's involvement about the  
9 lawsuit and his daughter's potential benefit from a recovery  
10 in the lawsuit, and I'm not sure if all those inferences  
11 necessarily are completely available based on the limited  
12 amount of information.

13 So what would be the problem in just providing that  
14 notice?

15 MR. BRILL: David here again, sir.

16 I'd go -- I'd say this firstly.

17 Let's even go, if Your Honor would indulge me, a  
18 step further down that direction of let's assume the father  
19 even knew nothing, that the daughter -- because I understand  
20 that, you know, we're counting on, in part, the child. We  
21 also are counting on Marla Martins, that she believes, too,  
22 that the father understands the whole dynamics. But let's  
23 assume he's completely in the dark.

24 The first of two points that I'd make in answering  
25 Your Honor's question is sort of rhetorically, and I don't

1 mean to be snide at all, but so I mean that somewhat because  
2 we still are carrying under that cloak of initial and  
3 continuing authority as next friend someone that can bring the  
4 claim.

5           As Your Honor has seen, and I know in your years,  
6 all folks -- all kinds of folks give a -- can play that role  
7 of next friend. Doesn't have to be the custodial parent.  
8 Doesn't have to be even a relative. It could be a complete  
9 stranger, an attorney, what have you. Anyone that has proven  
10 him or herself, or would prove and continue to prove him or  
11 herself valuable and viable as on behalf of that child. And  
12 there's no question from either side that Marla has done that.

13           The second point is, in directly answering your  
14 question, is what -- we don't see anything other than  
15 potentially bad news to come out of that. If, as we  
16 understand the case to be, that the animus between Marla and  
17 that -- the biological father is as profound as it appears to  
18 be and as she says it is, and if, in fact, the child is as  
19 unhappy and dissatisfied with her living arrangements with her  
20 biological father, which she says she is, then the father  
21 could disrupt what has been very hard earned by both sides to  
22 get to where we are right now just because. Not because  
23 there's anything meritorious to being a thorn in the side of  
24 everyone, but just because it would be fun to do that.

25           Now, I don't know that he would, but there certainly

1 seems to be a real potential for that than him -- just as much  
2 it would be for him to take a ho-hum attitude about it and  
3 give his, you know, continence to the whole thing.

4           Given that there's nothing really to gain, we just  
5 think that it's safer because it (indiscernible), again, the  
6 child's own individual claim and not the father's or Marla's,  
7 to let it -- let it be. If -- if -- wherever we end up being,  
8 Your Honor, after that summary judgment ruling, Your Honor  
9 ends up -- you're the ultimate arbiter. You're the neutral  
10 party who will keep everyone, including me, including all --  
11 you know, the defense, including Marla, the child, everyone  
12 honest, to make sure that we really did our job, all sides, in  
13 protecting the interests of this child, and I think less --  
14 less is more.

15           MR. DRAHOS: Can I (indiscernible) on that one, Your  
16 Honor, as well?

17           THE COURT: Yes, you may.

18           MR. DRAHOS: Okay. Because I think my perspective  
19 on this would be helpful for the Court, as well.

20           And that is that, you know, I've been doing  
21 shipboard medical malpractice work now for over 14 years, and  
22 I can tell Your Honor that this particular case has involved  
23 complex medical issues, more complex than the typical case  
24 that I work on. And so I would have concern from the defense  
25 perspective that someone coming in and reviewing this case and

1 beginning to question, you know, what had gone on, really  
2 would not be in a good position to do that. They have not sat  
3 through two years of depositions that we have, both Mr. Brill  
4 and Mr. Rinaldi and I have fought over over the last two  
5 years. They haven't spent the time with the experts like I  
6 have, and Mr. Brill and Mr. Rinaldi has, and I just don't  
7 think could get a clear picture of exactly what this case is  
8 and what it's like and how it would present in an abbreviated  
9 period of time.

10           So I don't know the dynamics between Marla and this  
11 father, but, quite frankly, from just a legal point of view  
12 and an experienced medical malpractice defense attorney point  
13 of view, I believe that Mr. Brill and Mr. Rinaldi are in a  
14 much superior position to make this decision than some  
15 independent third lawyer coming in and looking at it, and I  
16 would have concerns. Because this has been a delicate  
17 negotiation that we've worked on up through today, Your Honor.  
18 And so it would be unfortunate if all the work we put into  
19 this would be ruined simply to make things difficult for Marla  
20 Martins.

21           MR. BRILL: Better said than I.

22           THE COURT: So when you say you want me to permit  
23 Marla to continue as the next friend, is there currently an  
24 order that I have entered or another judge in this case has  
25 ordered approving of that arrangement, or it's simply because

1 that's how the lawsuit was styled, and no one has ruled to the  
2 contrary?

3 MR. BRILL: The latter, Your Honor, the latter.

4 THE COURT: All right. So, in other words, there's  
5 no motion to remove Marla as next friend of GE. There's no  
6 motion to disqualify her. There's no motion to challenge her  
7 status in any way. Am I right?

8 MR. DRAHOS: There is not.

9 THE COURT: So how about this for a game plan.

10 We, number one, remove the case from the trial  
11 calendar.

12 Number two, I don't issue any ruling one way or the  
13 other about whether Marla can continue as next friend or not.  
14 There's no motion filed requiring a ruling from me on that  
15 point. We just simply have a complaint filed by Marla  
16 individually and as administrator ad prosequendum for the  
17 Estate of Briana Martins.

18 And the next component of the summary that I'm  
19 outlining here would be I would, at your request, stay a  
20 ruling on the motion to amend the complaint.

21 And then, number four, I would issue a ruling on the  
22 summary judgment motion that we all could be proud of,  
23 especially me. And I thank you for your confidence in  
24 whatever that ruling would be.

25 And then once that ruling happens, there may be some





1 for giving me the opportunity for -- to look into it.

2           You know, I know that years ago when I used to do a  
3 little medical malpractice defense work years ago when I was  
4 at the U.S. Attorney's Office, initially civilly, I had to  
5 represent the VA hospital in a certain Federal Tort Claims Act  
6 cases against the Government in medical malpractice scenarios.  
7 And I know that from, in those days, looking at medical  
8 records or looking at charts and so forth, I would often see a  
9 report from a consulting physician, and the end of the report  
10 would always say something like: Thank you for the  
11 opportunity to examine your patient; or thank you so much for  
12 the fascinating consult; or thank you for this opportunity to  
13 examine your patient and issue this report.

14           And I'm just wondering, is that the kind of language  
15 that doctors still write in their reports nowadays, or is that  
16 sort of an old folksy saying from the old days that no longer  
17 appears in current medical reports?

18           MR. BRILL: Oh, no, you'll see that.

19           Yeah, and you'll still -- my favorite is: Thank you  
20 for -- and Michael probably sees this all the time, too,  
21 because he's -- his focus is on malpractice a lot, as well --  
22 letting me treat this very pleasant person. And even though  
23 there is people -- and we've all had the clients that aren't  
24 very pleasant, they'll call those folks pleasant, too.

25           THE COURT: Right.

1 MR. BRILL: So, you know, you'll have some real  
2 crotchety not-so-pleasant person, and yet those doctors will  
3 still put on the report: Thank you for letting me, you know,  
4 render treatment or care as a consult to this very pleasant  
5 man or woman.

6 THE COURT: Right.

7 MR. BRILL: So they still do that and add that  
8 "pleasant" in there quite often.

9 THE COURT: So thank you for the opportunity to look  
10 at this pleasant case, this fascinating, stimulating case.

11 I can tell you -- and I think all the lawyers on the  
12 line would appreciate the challenge that I was confronted with  
13 years ago, but I do remember one medical malpractice case in  
14 particular where the VA had lost all of the medical records,  
15 and I had to defend the VA with no medical records.

16 MR. BRILL: Wow.

17 MR. DRAHOS: Sounds like an easy case to defend,  
18 Judge.

19 THE COURT: Well, the case settled.

20 MR. DRAHOS: Yeah, I can imagine.

21 THE COURT: As you can imagine.

22 MR. BRILL: I would imagine there would have been a  
23 lot of what they call in the state level, anyway, the  
24 Valson-type presumptions for having no records with which to  
25 defend. That's not an easy task.

1 THE COURT: In any event, folks, listen --

2 MR. BRILL: Before we --

3 THE COURT: Yes.

4 MR. BRILL: Before we depart, Your Honor, may we  
5 ask -- and, of course, we would never hold you to any specific  
6 thing just because we know how busy the Court is -- do you  
7 have an estimate that we could perhaps, you know, kind of tell  
8 our respective clients about how long Your Honor would  
9 anticipate, with what other things you might have to do, and  
10 considering the comprehensive nature of this particular  
11 motion, that we might expect an order on the summary judgment?

12 THE COURT: So, let's see, it's 5:28 now . . .

13 I wish that I could give you an estimate. I'm going  
14 to -- I'm going to -- listen, I understand the situation, and  
15 I'm going to do my very best to do the best possible job on  
16 this and get it out in a timely way. I just feel a little  
17 uncomfortable giving you a particular prediction.

18 MR. BRILL: No worries. I didn't mean to make you  
19 feel uncomfortable, Judge. I'm sorry.

20 THE COURT: So in any event, anything else that we  
21 can chat about this afternoon that I can help you out with?

22 MR. BRILL: No, sir.

23 MR. DRAHOS: That's it for the defense.

24 THE COURT: No?

25 Okay. Well, thanks once again for phoning in.

1           You're phoning in from Weston. So is there still an  
2 Anthony's Coal Fired Pizza up in Weston?

3           MR. BRILL: Exactly one mile and a half away.

4           THE COURT: I see.

5           All right. So you have been there before, I take  
6 it?

7           MR. BRILL: Oh, only one or 2000 times, yes, sir.

8           THE COURT: So I believe that the fella who owns  
9 that, Anthony, I think his father owns the Runway 84  
10 restaurant on State Road 84, right?

11           MR. BRILL: That's exactly right. Another one of  
12 our favorite haunts.

13           In fact, Joe and I went there just about a month ago  
14 after a hearing in Broward, and it's -- it's one of my  
15 favorites. And my wife and I like to go. It's a great place  
16 to go with friends, you know, on a Friday or Saturday night,  
17 because, you know, they play all of us old guys' classic rock  
18 music, and, you know, '80s tunes, you know. The food is  
19 fantastic.

20           And back way back when, when I first got to Florida,  
21 Your Honor, you know, used to say Dan Marino in there a lot,  
22 because he was friends with Anthony, and you'd see a lot of  
23 the -- let's just say the good fellas that were there, because  
24 it was very --

25           THE COURT: Well, Dan Marino is one of the investors

1 in Anthony's Coal Fired Pizza.

2 MR. BRILL: That's right.

3 THE COURT: I don't know if you knew that.

4 MR. BRILL: Yes.

5 THE COURT: But that's why, when you go to all of  
6 the Cold Fired Pizza restaurants, there are photographs of  
7 Marino on the walls of every restaurant.

8 MR. BRILL: Indeed. Indeed. Yes, that is exactly  
9 right.

10 But he -- and that was because back when he, in his  
11 playing days, he would go there all the time. You'd see him  
12 all the time on the weekends, and he became friends with the  
13 son. But it was -- it -- you know, the folks are now old, or  
14 in prison, or dead, but, you know, 20 years ago you would see  
15 pretty famous purported mob figures hanging out at the bar and  
16 eating, and it was -- it was quite the place.

17 THE COURT: So --

18 MR. BRILL: Now it's just really good food and . . .

19 THE COURT: So since you mentioned concerts and  
20 classic rock, who do you think I went to see last night in  
21 concert?

22 MR. BRILL: Let's see, who was it last night?

23 MR. DRAHOS: Your Honor --

24 THE COURT: Yes.

25 MR. DRAHOS: -- this is Michael Drahos. I'm

1 terribly sorry, but you may remember, in the beginning of the  
2 call I mentioned I'm in an office building, and --

3 MR. BRILL: Oh, that's right, Michael. I'm sorry.

4 MR. DRAHOS: And the administrator's standing over  
5 me, and I think they're going to call the police if I don't  
6 leave in a minute.

7 THE COURT: All right.

8 MR. BRILL: To answer the question, was it AC/DC?

9 THE COURT: No. The answer to the question was  
10 Brian Wilson, one of the founding members of the Beach Boys.

11 MR. BRILL: Oh, sure. That's awesome.

12 THE COURT: Anyway, let's give Mr. Drahos the  
13 opportunity to --

14 MR. DRAHOS: I'm sorry to cut us short, yeah, but  
15 they're very anxious to get --

16 THE COURT: No, no, that's fine.

17 MR. BRILL: We're sorry, Michael. I'm sorry.

18 MR. DRAHOS: No, no, not a problem.

19 Okay. Thank you all very much.

20 THE COURT: Excuse me for prattling on here.

21 So thanks for phoning in. We'll be in recess. Take  
22 care. Bye, now.

23 (Proceedings concluded.)

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I N D E X

Telephonic Pretrial Conference 3

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E X H I B I T S

(None.)

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CERTIFICATE

I, Stephen W. Franklin, Registered Merit Reporter, and Certified Realtime Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 1st day of FEBRUARY, 2017.

/s/Stephen W. Franklin

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Stephen W. Franklin, RMR, CRR



<p><b>MR. BRILL:</b> [62]  <b>MR. DRAHOS:</b> [25]                  3/14 3/22 4/6 4/9 4/11                  8/7 8/11 22/4 23/23 27/3                  27/5 27/7 30/14 30/17                  32/7 33/10 33/16 35/16                  35/19 36/22 38/22 38/24                  39/3 39/13 39/17  <b>MR. 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