

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

AFFINITY WEALTH MANAGEMENT,	:	
INC., a Delaware corporation,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 5813-VCP
STEVEN V. CHANTLER, MATTHEW J.	:	
RILEY and GENESIS ADVISORS,	:	
LLC, a Delaware limited	:	
liability corporation,	:	
	:	
Defendants.	:	

New Castle County Courthouse  
Wilmington, Delaware  
Wednesday, September 22, 2010  
11:00 a.m.

- - -

BEFORE: HON. DONALD F. PARSONS, JR., Vice Chancellor.

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TELECONFERENCE

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CHANCERY COURT REPORTERS  
500 North King Street - Suite 11400  
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APPEARANCES: (via telephone)

FRANCIS G.X. PILEGGI, ESQ.  
AUSTEN C. ENDERSBY, ESQ.  
Fox Rothschild, LLP  
for Plaintiff

JOSEPH H. HUSTON, JR., ESQ.  
KENNETH D. KLEINMAN, ESQ.  
THERESA M. ZECHMAN, ESQ.  
Stevens & Lee, P.C.  
for Defendants

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THE COURT: Good morning.

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MR. PILEGGI: Good morning,

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Your Honor.

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MS. ZECHMAN: Good morning.

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MR. KLEINMAN: Good morning, Your

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Honor.

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MR. HUSTON: Good morning, Your Honor.

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MR. PILEGGI: Would you like a roll

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call, Your Honor?

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THE COURT: Yes, I'd appreciate that.

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MR. PILEGGI: This is Francis Pileggi

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from Fox Rothschild for Affinity Wealth Management,

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and in my office with me is Austen Endersby.

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MR. HUSTON: Good morning, Your Honor.

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May it please the Court, this is Joseph Huston of

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Stevens & Lee. We're here on behalf of Steven

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Chantler, Matthew Riley and the corporate defendant.

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And with me is my fellow shareholder, Kenneth

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Kleinman, and our associate, Theresa Zechman.

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Mr. Kleinman will take the lead on

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this, with Your Honor's permission.

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THE COURT: All right.

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Now, as far as I know, there are no

1 papers from the defendants at this point. Is that  
2 right?

3 MR. KLEINMAN: That's correct,  
4 Your Honor. I think we've just recently been  
5 retained. We're in the process of entering an  
6 appearance and getting pro hac motions filed, but  
7 there have been no responsive pleadings filed to date.

8 MR. PILEGGI: Well, Your Honor, if I  
9 can just clarify, there is an acceptance of service  
10 that Matthew O'Toole from Stevens & Lee signed and  
11 that we filed on September 14th. So I realize that  
12 might not be the same as an entry of appearance, but  
13 it's pretty close. They accepted service of the  
14 complaint that was filed on September 10th and the  
15 motion for expedited proceedings that was filed on  
16 September 10th.

17 THE COURT: All right. Well, what are  
18 we talking about?

19 MR. PILEGGI: Your Honor, if I may, I  
20 think I can make this very simple, and hopefully, it  
21 won't take up more than 5 minutes of the Court's time.  
22 All I'm requesting on behalf of the plaintiffs is a  
23 date for a preliminary injunction hearing. And if we  
24 get that date, Your Honor, then we can back up from

1 there and prepare and agree among ourselves on all the  
2 other preliminary deadlines prior to the hearing date,  
3 and then submit a proposed scheduling order. And if  
4 you like, Your Honor, I can just take two or three  
5 minutes and give you an overview of sort of the  
6 background of how we got here today.

7 THE COURT: Well, I've read the  
8 complaint and the motion papers, and I've read the  
9 motion, the brief in support of the preliminary  
10 injunction, the motion to expedite, so I don't need to  
11 hear any of those things again. I guess what I'm most  
12 interested in is what time are you looking for? You  
13 know, are we talking about a month, a week?

14 MR. PILEGGI: Well, Your Honor, we're  
15 not looking for anything in the nature of a TRO type  
16 of scheduling order, but if we could get a date  
17 sometime in November, if the Court has any time in  
18 November for a hearing on our preliminary injunction  
19 motion, we could back up from there and do all the  
20 prehearing deadlines.

21 It's not an emergency, but it's the  
22 type of injunctive relief that we, I think, should get  
23 expedited proceedings because the longer we wait, of  
24 course, the less helpful injunctive relief would be.

1           And I think I should mention, at least  
2 in passing, that the reason why we didn't file this  
3 complaint sooner is because my client was speaking  
4 directly with the principal defendants to try to work  
5 something out.

6           And even after we filed the complaint,  
7 although we did file a motion for expedited  
8 proceedings the same day, we didn't file a motion for  
9 a preliminary injunction right away. We waited a  
10 couple days because, again, we were hoping that there  
11 could still be some amicable resolution. And so  
12 that's the reason why we didn't file immediately and  
13 the reason why we didn't press our motion for  
14 expedited proceedings immediately, because of that.

15           And the reason why we're here now is  
16 because we submitted a proposed scheduling order to  
17 the defendants, and I just don't think we're on the  
18 same page in terms of the need for expedited hearing.  
19 And I'm not going to put words in the mouth of the  
20 defendants. They're more eloquent than I am to  
21 describe their position, but I'm not 100 percent  
22 certain that there is going to be an issue about  
23 whether the covenant not to compete was breached, at  
24 least in some respects.

1                   So unless they're agreeing to  
2 stipulate to injunction, we'd like to get a hearing  
3 date to move it forward. And I know that we talked  
4 about ADR, and counsel has had discussions about ADR,  
5 and we're not opposed to it, but our position is that  
6 it should go forward on a parallel track because we  
7 don't want to be too much from now in a position where  
8 we have nothing to show for it.

9                   My understanding about why we asked  
10 for the Court's involvement for a schedule is because  
11 the defendants would prefer to have a month or so to  
12 allow for ADR before imposing any deadlines; and our  
13 position is that we've already waited long enough,  
14 longer than we wanted to, before we established some  
15 Court imposed deadlines. And that's why we're looking  
16 for Court-imposed deadlines now. And if they want to  
17 have ADR on a parallel track, we're not opposed to  
18 that, but the Court doesn't need to be involved in it.

19                   THE COURT: All right. Why don't I  
20 hear what the defendants' position is.

21                   MR. KLEINMAN: Thank you, Your Honor,  
22 this is Ken Kleinman.

23                   We would like the Court's involvement  
24 in the ADR because of the way the discussions have

1 gone. And I have a little bit different view of those  
2 discussions and Mr. Pileggi's characterization of it.  
3 I think it might be helpful to give a little bit of  
4 context.

5           Mr. Chandler and Mr. Riley left AWM on  
6 July 1st. And Mr. Kalil, the head of AWM, waited a  
7 month. He knew what they were doing, but he waited a  
8 month, and he contacted them the end of July to say,  
9 Let's sit down and see what we can do to deal with  
10 this. They set up a meeting for mid-August.

11           At the meeting in mid-August,  
12 Mr. Kalil handed Mr. Chantler a letter saying, We  
13 think that you're in violation of the non-compete.  
14 But interestingly, in the letter, he didn't ask for  
15 Mr. Chantler to stop servicing the clients or turn all  
16 the clients over. He asked for a list of the clients,  
17 and basically, a proposal in order to make AWM whole.

18           One of the things that I think is very  
19 significant in this case that's very different from  
20 the cases that have been cited by Mr. Pileggi is this  
21 is a personal services industry. I mean, we're  
22 talking about individuals. We're not talking about  
23 Wilmington Steel, providing steel frames to a customer  
24 of Wilmington Steel. We're talking about individuals

1 who asked for financial advice for their retirement  
2 accounts and portfolios from individuals.

3           And so they have a personal  
4 relationship; and there are people that want to stay  
5 with Chantler, and there are some that are clear that  
6 Chantler has a right to retain and there are some not  
7 so clear.

8           So we got a letter from Mr. Kalil in  
9 mid-August, and that was followed up by a letter from  
10 Mr. Pileggi on September 2nd basically saying the same  
11 thing, and saying, Look, you know, we need a list of  
12 your clients and what the revenues are so we can see  
13 whether or not there is a way to resolve this.

14           The next day, I sent him that  
15 information. I sent him a list of all the clients  
16 that were potentially at issue with a list of all the  
17 revenue associated with those clients. In response to  
18 that, instead of calling me and saying, Let's see if  
19 we can work this out, he filed the complaint.

20           So I called -- and that was  
21 September 10th. So I called the next business day and  
22 said, Okay, I gave you the information. You obviously  
23 didn't find that information sufficient. It makes  
24 sense to me to try to mediate this case because one of

1 the issues in the employment agreement is it provides  
2 that if they prevail in a preliminary injunction  
3 proceeding, then they get attorneys' fees. So I don't  
4 think it's necessary or appropriate to run up  
5 attorneys' fees. It's not necessary, number one.

6           Number two, one of the reasons we  
7 believe that they were sort of ginger about filing a  
8 motion for preliminary injunction, which is true, they  
9 didn't do right away, is because if this case goes  
10 through the injunction proceeding, ultimately,  
11 everybody loses, because if -- potentially ultimately  
12 loses.

13           Even if they win and they're enjoined,  
14 any individual who is told you can't use Chantler,  
15 even though you want to use Chantler, you have to use  
16 us, obviously they're not going to use them, and so  
17 the client will be lost altogether, and the potential  
18 for a negotiation for what the value of that client  
19 would be is lost. So it made sense to try to sit  
20 down.

21           I called Mr. Pileggi immediately after  
22 he filed the complaint and said, Let's mediate this.  
23 He said, I'd like to go on parallel tracks. I said, I  
24 don't have any problem with having the litigation out

1 there, and I'm not looking to delay this unduly, but  
2 it seems to me that we should mediate it, and let's  
3 see if we can agree on what is at issue here. I mean,  
4 what are the clients? What's the revenue. And so he  
5 said okay.

6           You sent me a list of the clients that  
7 you think are at issue, but there are some referrals  
8 that would not be at issue; but we want to make sure  
9 that your list of referrals is the same as our list of  
10 referrals because under the contract, original clients  
11 and referrals of original clients are allowed to be  
12 retained by Mr. Chantler.

13           And by the way, there isn't any  
14 question that one of the limits in the agreement is  
15 that he can't be two miles, and he's not. So there  
16 isn't a question of the business itself. It's only a  
17 question of the clients.

18           So the next day, I prepared a letter  
19 and forwarded it to Mr. Pileggi with that information,  
20 all the lists of the referrals. Instead of giving me  
21 a response, he filed a motion for a preliminary  
22 injunction and discovery.

23           So again, his statement that, you  
24 know, we tried to work this out really isn't true,

1 because every time he asked for something, I gave it  
2 to him, and every time, in response to that, I got  
3 another pleading. In fact, the next time I called  
4 him, I said, I'm going to stop sending you letters  
5 because every time I send a letter, I get another  
6 pleading.

7                   So I contacted him. Then he sent me  
8 this stipulated scheduling order. And his stipulated  
9 scheduling order was, Okay, the discovery we sent you  
10 late Thursday, this is last Thursday, we want our  
11 response in six business days. Well, I mean, you  
12 know, it was absurd and not consistent, when you look  
13 at the cases.

14                   And the cases he attached to his  
15 motion for expedited discovery, first of all, none of  
16 the cases even talk about expedited discovery or  
17 motions for expedited discovery. There is no  
18 reference in any of them to that.

19                   Secondly, the one case where there is,  
20 by inference, expedited discovery is the Concord Steel  
21 case where the complaint was filed in November and the  
22 hearing was held in March, which is four months later.

23                   And for that, what I did is I called  
24 him and I said, Look, I don't have a problem

1 stipulating to a scheduling order, but here's what I  
2 would like to do. What I would like to do is rather  
3 than running up legal fees, if you're agreeing to  
4 mediation, it doesn't make any sense to me to litigate  
5 at the same time as you are mediating, because then,  
6 in the mediation, the legal fees become an additional  
7 roadblock and a harder obstacle to overcome.

8 THE COURT: Mr. Kleinman, we hear  
9 these kinds of things all the time, and parties enter  
10 into standstills and status quo orders and things like  
11 that, and you can take your sweet time. I don't care  
12 how long you take before you get around to litigation.

13 MR. KLEINMAN: I'm not suggesting that  
14 we do that.

15 THE COURT: We don't have anything  
16 like that in place here.

17 MR. KLEINMAN: Here's what I'm  
18 proposing.

19 THE COURT: What you're telling me is  
20 he's not proceeding the way you wish he was, as far as  
21 negotiations. Well, that's always the case here.

22 MR. KLEINMAN: Well, I have a  
23 proposal.

24 THE COURT: They filed a litigation.

1 That's what I'm here to talk about. They have got a  
2 colorable claim for breach of contract. They've got a  
3 basis for alleging irreparable harm that doesn't  
4 indicate that the house is on fire, but proceeding to  
5 a preliminary injunction hearing in November is not  
6 proceeding as though the house is on fire.

7 MR. KLEINMAN: I actually only have  
8 one -- and it's consistent with what I suggested to  
9 Mr. Pileggi with what my proposal is. And it  
10 doesn't -- it isn't consistent with -- it's only  
11 inconsistent in one respect with what he's looking  
12 for.

13 What I would request is, since the  
14 parties are willing to engage in mediation, what I  
15 would request is that the parties be instructed to do  
16 so within a date certain. We can say a couple of  
17 weeks. And if the mediation is unsuccessful, then I  
18 don't have any problem with saying, Okay, that there  
19 will be, regardless -- it can be in the order as well,  
20 that the parties -- that there will be a hearing at  
21 the end of November, beginning of December. I don't  
22 have a problem with that.

23 I just want to -- the only difference  
24 between my position and Mr. Pileggi's position is I

1 think that for the next -- that we should try  
2 mediation first before we spend a lot of time and  
3 money in discovery. If there is anything further that  
4 he needs, I'll provide it to him. But I don't have a  
5 problem with having a hearing in either late November,  
6 early December. That's certainly consistent, shorter,  
7 than the Concord Steel timetable. I just want to go  
8 to mediation first.

9 THE COURT: Mr. Pileggi, before I let  
10 you respond, let me just -- I'm going to put you on  
11 hold. I have my assistant here, and I'll see what I  
12 have available. And we're talking here about a  
13 preliminary injunction hearing, not a trial on the  
14 merits?

15 MR. PILEGGI: Correct, Your Honor.

16 THE COURT: And you think a single day  
17 is going to be sufficient for that?

18 MR. PILEGGI: I think so, Your Honor.  
19 I think that really, as far as these cases go, it's  
20 among the simpler in terms of the facts. The facts  
21 are not complicated or complex.

22 THE COURT: I'll put you on hold for a  
23 moment and then get back to you.

24 MR. PILEGGI: Thank you, Your Honor.

1 MR. KLEINMAN: Yes, Your Honor.

2 (A recess was taken.)

3 THE COURT: All right. Counsel, I'm  
4 going to give you some dates when I could do the  
5 preliminary injunction in November. At the moment,  
6 we've offered these dates to some other people in  
7 connection with arguments and things like that, but I  
8 don't think they're all going to be spoken for, so  
9 we'll try to pin this down as quickly as we can.

10 The one possibility would be on  
11 November 16th or 17th or in the week leading up to  
12 Thanksgiving, so it's November 22nd, 23rd, 24th.  
13 That's eight or nine weeks from now.

14 In terms of whatever schedule you  
15 agree to, I mean, what you should figure is I ought to  
16 have the last brief two days before, so let's just say  
17 if we went, let's say November 16th. Then I probably  
18 should get the reply brief, you know, by Friday, the  
19 12th.

20 And you'd have to work back from that  
21 kind of thing. If it's the 17th, I could get the  
22 reply brief by the close of business on the 15th, that  
23 sort of thing. So the 22nd or 23rd, we just might  
24 have to have the brief the 18th or 19th, that kind of

1 thing. And beyond that, it's for you all to work out  
2 a schedule.

3 MR. PILEGGI: Thank you, Your Honor.  
4 This is Francis Pileggi. Any of those dates are good  
5 for me. I'm available. I don't know if the Court  
6 wants us to pick one. Obviously, the Court wants us  
7 to pick one, but I'm happy to take any of those dates,  
8 and I'll leave it up to the defendant which one he  
9 prefers.

10 MR. KLEINMAN: I guess I would have to  
11 confer with my client. And the other question I have  
12 is, is Your Honor willing to enter an order with  
13 regard to ADR or not?

14 THE COURT: Well, I don't -- number  
15 one, why don't we leave it that you'll get back to my  
16 chambers by noon tomorrow as to -- and confer with  
17 Mr. Pileggi, but give us two or three of those dates,  
18 however many work for you; and we'll get back to you  
19 very quickly as to which particular date it's going to  
20 be.

21 Then, as far as mediation, it  
22 certainly can proceed on a parallel track. It looks  
23 like there is enough time out here now that you can,  
24 you know, you can proceed with, I would say, with the

1 discovery immediately. Maybe you can hold off on  
2 depositions, agree to hold off on depositions for a  
3 couple of weeks, three weeks, or some sort of thing  
4 like that, while you try to set up some kind of  
5 mediation.

6 But first, I need to let you see if  
7 you can't work something out. And if something -- if  
8 there are not going to be any restrictions on the way  
9 in the meantime between now and where we get to in  
10 November, as to how the defendants operate, then I'm  
11 going to be focused on whether the plaintiffs have  
12 enough time that they're going to be able to get the  
13 case up and ready you know, to be tried. And I don't  
14 think that we've got the luxury of doing nothing for  
15 half of the time period that I have given you.

16 MR. KLEINMAN: I'm not contesting  
17 that, Your Honor.

18 THE COURT: So now the thing is, I  
19 don't know -- you can pursue a mediation, as you know,  
20 privately on any schedule you want. The other  
21 possibility is that you can go under Rule 174 here,  
22 which would mean you would need to get on the calendar  
23 of one of the other judges in Chancery. You don't  
24 have to do that. You're welcome to do that.

1                   If that's what's involved, then I  
2 would refer the case, I certainly will refer the case  
3 to mediation, but I don't know how soon one of the  
4 other judges would be available. I would assume there  
5 would be a decent chance somebody would be available  
6 within a month. Whether they could be available in  
7 two weeks, I don't know about that, but that's up to  
8 you to work out.

9                   I think you should decide whether you  
10 want a private mediation or mediation before one of  
11 the judicial officers. And that could also include  
12 Master Glasscock or Master Ayvazian, who are quite  
13 skilled in mediation also. And then just advise me.  
14 But if it's going to be private mediation, then I  
15 won't be involved in that at all. It will just  
16 proceed on a parallel track.

17                   So I'm thinking, Mr. Pileggi, that  
18 you're probably not going to need too many depositions  
19 in this case, do you think?

20                   MR. PILEGGI: No, Your Honor. I think  
21 if we have two or three, maybe four at the very most,  
22 that would be enough. There are not that many people  
23 involved.

24                   THE COURT: Well, then, what I would

1 think is that we can probably go out three to four  
2 weeks before there would be -- possibly four weeks  
3 before there could be any depositions.

4 MR. PILEGGI: Yes, Your Honor. But as  
5 far as mediation, I think it could be helpful to have  
6 some written discovery responses in order to make  
7 mediation more fruitful, at least from our  
8 perspective.

9 THE COURT: And this is a -- I would  
10 say that there has been enough of a showing here for a  
11 motion to expedite. So under our motion to expedite  
12 standard, we don't set matters for an expedited  
13 hearing or permit expedited discovery unless there is  
14 a showing of good cause why that's necessary, but we  
15 traditionally have acted with solicitude for the  
16 plaintiffs in this kind of a procedural setting and  
17 have followed the practice of erring on the side of  
18 setting more hearings rather than fewer.

19 And when we decide a motion for  
20 expedited proceedings, we have to determine, and this  
21 is a quote from one of our cases, whether in the  
22 circumstances, the plaintiff has articulated a  
23 sufficiently colorable claim and shown a sufficient  
24 possibility of a threatened irreparable injury as

1 would justify imposing on the defendants and the  
2 public the extra costs of an expedited preliminary  
3 injunction proceeding.

4           In doing that, the Court accepts the  
5 well-pleaded allegations of the complaint as true, and  
6 it recognizes that establishing a colorable claim is  
7 not an onerous burden for a plaintiff to meet.

8           And in the circumstances here, the  
9 only papers before me are the plaintiff's papers; and  
10 I believe they do meet the standard of having a  
11 colorable claim for breach of contract and other  
12 relief against a named defendant.

13           And then we look to determine whether  
14 or not there has been a showing of possible  
15 irreparable harm. And I think in this case, we've got  
16 a situation where the agreements indicate that  
17 injunctive relief would be available.

18           These are noncompetition agreements,  
19 so to the extent that the individual defendants and  
20 the company that they have formed are out there,  
21 taking away customers, as was noted by counsel, it  
22 probably means that if the Court ever entered  
23 injunctive relief, they're not going to -- it's going  
24 to be very difficult to get them back, but it's also

1 going to be very difficult to determine what  
2 plaintiffs' damages are to quantify that. And in  
3 those sorts of situations, we usually set hearings  
4 fairly promptly, and we grant expedited discovery.

5           So expedited responses to the  
6 interrogatories, document requests, that's in order.  
7 How fast it has to go, I guess the slowest it can go,  
8 probably, is two weeks. But if that's going to cause  
9 problems in terms of the mediation -- if you can't  
10 reach agreement on discovery for the mediation, you're  
11 probably not going to get anywhere in the mediation,  
12 so it's a parallel track.

13           I'm granting the motion to expedite.  
14 I'll order that all written discovery and document  
15 discovery be completed within two weeks of when the  
16 requests are outstanding, absent some other agreement  
17 by the parties. Obviously, if you're making some sort  
18 of progress and you can agree to put off some of these  
19 dates, great; but if you haven't made that kind of  
20 progress, I'm not going to be giving the defendants  
21 much comfort.

22           MR. KLEINMAN: Well, it's already been  
23 a week since the discovery was issued, and we've been  
24 trying to talk during that time frame. And so --

1 THE COURT: Let me say that I'm  
2 talking about the earliest, two weeks from today.

3 MR. KLEINMAN: Okay.

4 THE COURT: Two weeks from today. Not  
5 two weeks from the date that previous discovery  
6 requests were served, but two weeks from today, for  
7 the outstanding discovery requests. Two weeks from  
8 the date of serving any future discovery requests that  
9 are related to this preliminary injunction. All  
10 right?

11 And I'll ask you, then, let's say by  
12 next Wednesday, you should submit a proposed  
13 scheduling order that's going to indicate when these  
14 briefs are coming in and what other timetable you've  
15 agreed to. All right?

16 Is there anything more?

17 MR. PILEGGI: No, Your Honor.

18 I suppose you don't want any pretrial  
19 conference or conference call before the hearing date,  
20 do you?

21 THE COURT: Not for a preliminary  
22 injunction.

23 MR. PILEGGI: Thank you very much,  
24 Your Honor.

1                   MR. KLEINMAN: Your Honor, one other  
2 thing. It would probably be helpful, unless  
3 Mr. Pileggi objects, to see what the availability of  
4 mediation with the masters or other chancellors would  
5 be under Rule 174.

6                   THE COURT: What I'll do is I'll send  
7 out an e-mail. And you would like to do this within  
8 the next two to four weeks, I'll say.

9                   MR. KLEINMAN: Right.

10                  THE COURT: And sooner rather than  
11 later, if possible.

12                  MR. KLEINMAN: If possible.

13                  THE COURT: And I'll try to send that  
14 out today. And I'll have my office get back to you as  
15 to whether somebody associated with the Court could  
16 meet that kind of time frame.

17                  MR. PILEGGI: Thank you very much,  
18 Your Honor.

19                  MR. KLEINMAN: Thank you, Your Honor.

20                  THE COURT: Thank you. Counsel.

21                  (Proceedings adjourned at 11:33 a.m.)

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24

