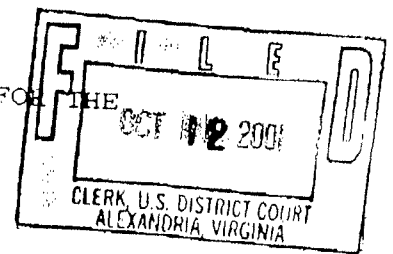


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



TAKESHA BEY, ET AL)
)
Plaintiffs,)
)
v.)
)
GLASCOCK AUTO SALES)
INC., ET AL)
)
Defendants.)

Civil Action No. 01-281-A

ORDER

For the reasons stated in open court, Defendants' Renewed Motion to Dismiss is GRANTED in part and DENIED in part.

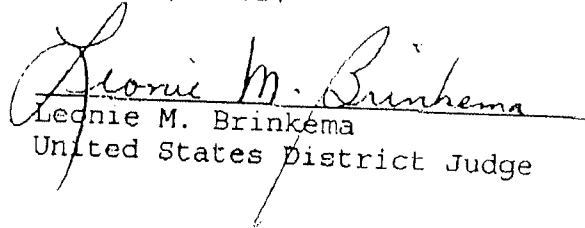
To the extent that Count I asserts a claim that the defendants violated Regulation Z of the Truth in Lending Act, 12 C.F.R. 226.17(a)(2), by treating the disclosures on the Credit Contract as estimates, Defendants' Renewed Motion to Dismiss that portion of Count I is GRANTED. To the extent that Count I asserts a claim that the defendants violated the Truth in Lending Act by improperly including the \$395 processing fee in the amount financed, Defendants' Renewed Motion to Dismiss that portion of Count I is DENIED.

Defendants' Renewed Motion to Dismiss Count II (Federal

Odometer Act claim) is DENIED.

The Clerk is directed to forward copies of this Order to
counsel of record.

Entered this 12th day of October, 2001.


Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

----- :
TAKEYSHA BEY, et al., :

Plaintiffs, :

- vs - :

CA 01-281-A

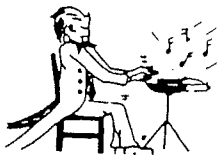
GLASSCOCK AUTO SALES, INC., :
et al., :

Defendants. :
----- :

MOTION HEARING

October 12, 2001

Before: Leoni M. Brinkema, Judge



MCCOY COURT REPORTING ASSOCIATES

8120 Little River Turnpike
ANNANDALE (Fairfax County), VIRGINIA 22003

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APPEARANCES:

FOR THE PLAINTIFFS:

THOMAS D. DOMONOSKE, ESQ.

FOR THE DEFENDANTS:

THEODORE EDLICH, ESQ.

WITNESSES:

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
(None)			

1 MR. DOMONOSKE: We ask that --

2 THE COURT: Would you go to the lectern,
3 please.

4 MR. DOMONOSKE: Your Honor, the parties
5 both asked that the discovery deadlines be reset
6 following the decision of this Court on the motion.

7 THE COURT: Have you not been conducting
8 discovery in this case?

9 This Court is not a Court that in any
10 respect favors delays in discovery.

11 How much time are you asking for?

12 MR. DOMONOSKE: Your Honor, there wasn't
13 a specific time that was asked for. We did
14 exchange the pretrial disclosures.

15 And between the lawyers in this case,
16 there has been significant discovery about the
17 practices in issue. And it is not like we are
18 starting from basic square one of doing discovery.

19 THE COURT: We believe that Judge Poretz
20 has denied the request. I guess my clerk is
21 looking through the file right now.

22 In this Court, you are never going to get
23 a discovery extension unless you have a specific
24 representation. If there's, for example, two
25 experts you can't get in the time frame, and you

1 want, you know, an extra two weeks to get those
2 expert discovery depositions done, you will
3 normally get that. All right.

4 But to just say, We need more time for
5 discovery, you will never get that in this court.
6 I would be shocked.

7 So what I'm suggesting to you-all is
8 that -- the reason I ask you this question is some
9 of the issues that are in this motion to dismiss,
10 you-all point out, or at least the plaintiff is
11 arguing, you need to have a summary -- this really
12 should be a motion for summary judgment. There
13 needs to be a record developed.

14 And then I looked at my papers here, and
15 I say, Well, you are almost at the end of
16 discovery. So I don't know what evidence there is
17 still out there to get.

18 But, for example, just jumping ahead to
19 one of the issues, the issue about whether or not
20 the processing fee is an actual processing fee or a
21 hidden cost of the credit transaction, is a
22 fact-based issue.

23 And normally an issue that requires facts
24 to determine one way or the other would require
25 that it be raised in a summary judgment motion, or

1 I would -- the Court converts a motion to dismiss
2 to a summary judgment motion and takes evidence.

3 But if the discovery process has not been
4 completed, then normally we wouldn't do that.

5 Sometimes, however, the discovery on an
6 issue is finished before the discovery deadline.
7 So just jumping to that particular issue, because
8 that's one of the two that concerns me in terms of
9 the record, what evidence is there left to be
10 discovered as to the defendant's practice with that
11 \$395 fee, or has that issue been fully discovered?

12 MR. DOMONOSKE: Your Honor, as for the
13 plaintiffs, who I represent, we were not planning
14 on making a motion for summary judgment.

15 THE COURT: No. I'm not asking who is
16 making a motion for anything.

17 Right now I have a motion to dismiss from
18 the defendant. What I'm saying to you is if
19 discovery on that issue has been completed, I can
20 convert that motion to dismiss to a motion for
21 summary judgment.

22 I want to know what discovery is still
23 out there to be done on the issue of the finance
24 fee.

25 MR. DOMONOSKE: The plaintiff has

1 sufficient evidence from previous discovery
2 responses from this defendant to try their case and
3 to rebut a summary judgment if such a summary
4 judgment motion was filed.

5 THE COURT: The defendant argues that,
6 number one, its documents indicate that whether a
7 transaction is a cash transaction or a credit
8 transaction, the \$395 processing fee is imposed.

9 If that is the case factually, then under
10 my understanding of the Alston case in the Fourth
11 Circuit, that \$395 processing fee would not be the
12 kind of thing that you can sue on. It's a fee that
13 cuts across the boards.

14 MR. DOMONOSKE: And I think Your Honor
15 understands the Alston case perfectly.

16 We have corporate deposition testimony
17 from this defendant that a cash customer has the
18 option of performing their own Department of Motor
19 Vehicles work. And in that event, the cash
20 customer would not pay the processing fee.

21 Now, the defendant's position is that
22 that deposition testimony was in error, and they
23 seek to rebut that deposition testimony.

24 But if this had been a motion for summary
25 judgment filed by the defendants with an affidavit

1 saying that we charge this to cash customers, what
2 you would have seen in response was this 30(B)(6)
3 deposition.

4 In fact, Mr. Doe was the deponent
5 representing Falk Auto at that deposition. And I
6 was asking him the questions in the case. And I
7 walked him right straight through the analysis
8 about, What about a cash customer who takes their
9 own work to the DMV. And his testimony was
10 unequivocal: No fee.

11 And the interesting thing at that
12 deposition -- and this is what is on appeal to the
13 Fourth Circuit, is right at that point Falk Auto's
14 lawyer, different counsel, not Mr. Edlich, jumped
15 up and said, Well, Tom, you know that's not right;
16 and took his client outside, talked to his client.

17 Mr. Doe came back in the room and said,
18 What I just told you isn't right.

19 And the issue that the Fourth Circuit is
20 going to decide --

21 THE COURT: You have an interlocutory
22 appeal in this case.

23 MR. DOMONOSKE: No, I'm sorry. This
24 issue was placed in front of Judge Spencer in the
25 Tripp case.

1 THE COURT: Okay.

2 MR. DOMONOSKE: And Judge Spencer's
3 decision on the Tripp case was we had no evidence
4 that the processing fee was also charged to cash
5 customers. He completely disregarded the
6 deposition testimony.

7 And the Fourth Circuit is going to be
8 asked to decide whether a lawyer's intervention in
9 a deposition where the lawyer knows that the fact
10 that it has just been admitted by corporation will
11 establish liability, whether when what lawyer
12 intervenes, can that change the record and change
13 the facts.

14 We have the deposition. We would put the
15 same deposition testimony in front of this Court
16 that was put in front of Judge Spencer.

17 Judge Spencer decided it did not raise an
18 issue of fact.

19 We have docketed an appeal. It is going
20 on in the Fourth Circuit.

21 So these issues have been fully
22 discovered on the corporate side.

23 We believe the defendants want to take a
24 personal deposition of the plaintiffs, and we have
25 never opposed that. Both sides were trying to hold

1 off on discovery for various reason.

2 But as to the plaintiffs, the corporate
3 practices that are in issue, Your Honor, literally,
4 I have a box full of depositions of this
5 corporation all about these practices, multiple
6 30(B)(6) depositions.

7 And neither Mr. Edlich nor I want to
8 repeat depositions that have already been taken
9 that have gone on for many days.

10 THE COURT: All right. That's fine.

11 All right. The processing fee, whether
12 it's a finance charge or not, from our discussion
13 clearly cannot be resolved on a motion to dismiss.

14 So I denying the motion to dismiss that
15 aspect of the plaintiff's case.

16 If the plaintiff's representations are
17 accurate -- and I'm just saying "if" -- then at the
18 very least there would be a definite clash in the
19 evidence on this issue.

20 MR. EDLICH: Your Honor, may I respond
21 just briefly?

22 THE COURT: Yes, you may.

23 MR. EDLICH: The plaintiffs'
24 representations are not -- I don't know whether the
25 Court has a full feel -- understanding of what they

1 are.

2 What the plaintiff has done is in a case
3 that preceded the Tripp case -- it was the Bank's
4 case -- and it's a case in which I was not involved
5 as counsel, but they took a deposition of Charlie
6 Falk's Auto Wholesale, CFAW, and Mr. Doe did
7 testify, but then corrected his testimony.

8 In the Tripp case, which is the case that
9 Judge Spencer decided and recently issued an
10 opinion -- and I have attached that for the
11 Court -- Judge Spencer -- we moved for summary
12 judgment.

13 In that case, plaintiffs' counsel and I
14 agreed that a reasonable period for transactions
15 showing the cash and credit transactions was the
16 three months surrounding the Tripp transaction to
17 see whether the processing fee was charged on each
18 one of those.

19 Plus the -- we had deposition testimony
20 at that time that the fee was charged for cash and
21 credit customers.

22 In addition, we had an affidavit that the
23 practice in accordance with the Alston case was to
24 charge it for cash and credit customers, not just
25 that it was charged, but the practice was

1 charged -- I mean, was to charge.

2 And based on that record, the same facts
3 that Mr. Domonoske says creates an issue, Judge
4 Spencer found out that it did not create an issue.

5 Now, I understand your ruling that we may
6 have to present that evidence again to the Court,
7 but I just wanted you to have a good understanding
8 of the reason for Judge Spencer's decision.

9 THE COURT: Well, I'm going to deny the
10 motion to dismiss at this point.

11 As I said, that's how this has come to
12 me. And the procedural posture of your motion
13 limits the Court to a significant degree.

14 So it's denied as to that issue.

15 Now, the other issue is credit terms as
16 estimates. Again, we are under the, I believe, the
17 TELA (phonetic) statute.

18 You assert that the complaint fails to
19 adequately plead that the Regulation Z has been
20 involved here because, if I understand it, the
21 language involved here is that the terms, the
22 credit terms and the terms of this transaction were
23 given to the plaintiff with the caveat that they
24 were basically subject to the approval of the
25 actual lender.

1 Now, in this case, just remind me, did
2 the lender ultimately approve those conditions?

3 MR. EDLICH: The lender ultimately
4 declined to purchase the contract.

5 THE COURT: That's right.

6 MR. EDLICH: The condition failed, and
7 the contract was --

8 THE COURT: All right.

9 Again, my understanding of the case
10 law -- and I think this is the correct logic -- is
11 that if there is like a condition precedent that
12 has to be satisfied, but that the terms and
13 conditions themselves aren't going to change, that
14 that's not a violation of the statute.

15 And it is not an estimate. The language
16 certainly wasn't used. Here are the terms subject
17 to somebody's approval.

18 I think actually as this count is pled, I
19 don't think evidence is needed on this. It does
20 fail to comply with the pleading requirements here.

21 All the information that was -- that is
22 needed for the creditor to make the decision is in
23 that package. And if the creditor does not approve
24 it, then it doesn't go through.

25 So I will let the plaintiff respond to

1 that briefly, but I don't believe that the credit
2 terms here were -- as it was done was a violation.

3 MR. DOMONOSKE: I agree with your first
4 point, Your Honor, that as pled this can be decided
5 as a matter of law. We pled it specifically so
6 that this could be brought before the Court and get
7 the Court's ruling on that.

8 We are alleging that because it was a
9 condition precedent, because the creditor was
10 estimating whether or not the credit was going to
11 be given, that it indeed was required to label
12 those as estimates.

13 Again, we lost this in front of Judge
14 Spencer. This issue is on appeal to the Fourth
15 Circuit.

16 THE COURT: Well, I think Judge Spencer
17 analyzed it correctly. I don't think regulation Z
18 indicates that a condition on the entire contract
19 renders the credit terms mere estimates.

20 And so I would adopt, you know, his basic
21 reasoning on that point. That will be the law of
22 the case as well.

23 So that aspect of the case will be
24 dismissed.

25 And I believe then that that leaves us

1 sort of the remaining issue, the interesting
2 odometer issue.

3 I am going to part ways with my Richmond
4 colleague and I guess my colleague in the Western
5 District in this respect.

6 I think that the necessary fraudulent
7 intent needed in these odometer cases is an intent
8 to defraud generally and not a specific intent to
9 defraud as to the odometer reading.

10 The reason why I say that is in the
11 abstract, an odometer reading has -- has no
12 significance.

13 The reason why odometers get tampered
14 with sometimes is to entice a buyer to either
15 purchase a vehicle or pay a particular price for a
16 vehicle.

17 So I don't see how one can rationally
18 talk about odometer fraud or odometer tampering
19 outside of the total context of an attempted sale
20 of an automobile.

21 Therefore, I think as long as the
22 plaintiff has pled that there has been some
23 violation of the odometer statute with the intent
24 to defraud and can show that there was an intent to
25 defraud as to the total purchase of the car, that's

1 all they need to plead.

2 Now, in this case, as I understand it,
3 there is not a dispute as to the accuracy of the
4 odometer number given to the plaintiff so much as
5 there is a dispute as to whether the statute
6 requires -- or as to whether the statute is
7 violated with a placement, with a misplacement of
8 the odometer number.

9 Is that still your position? I guess I
10 should ask the plaintiff. That is, you are really
11 not arguing in this case that the number on the
12 odometer -- given to your client was itself
13 inaccurate.

14 MR. DOMONOSKE: We are not basing our
15 case on the fact that the number was itself
16 inaccurate, but neither are we conceding that it
17 was accurate.

18 THE COURT: I understand. In this case,
19 that might be difficult.

20 But the real issue is placement.

21 Now, am I correct, do both parties agree
22 that the statute requires that the placement either
23 be on the title or on a document that reassigns the
24 title, that those are really the two alternative
25 vehicles on which the odometer reading is supposed

1 to be placed by statute?

2 MR. EDLICH: I would agree that the
3 statute -- I mean, we disagree that civil
4 liability --

5 THE COURT: No, I don't want to hear
6 about that. I want to just --

7 MR. EDLICH: But I agree that we believe
8 that the odometer, that the odometer act says that
9 you use the title, or if you, as set forth in our
10 brief and Judge Spencer's decision, that you can
11 use the reassignment form as well.

12 THE COURT: Right. But it has to be
13 either the reassignment form or the title.

14 MR. EDLICH: That's correct.

15 THE COURT: Does the plaintiff agree with
16 that?

17 MR. DOMONOSKE: With one clarification,
18 Your Honor, is that no matter what, it has to be a
19 document that is assigning title.

20 And so that document can be the title
21 document. Or if the state allows, and Virginia
22 does, if the title itself is full, it can be a
23 reassignment document that is prepared by a state
24 and used according to the state's rules.

25 But what the federal act requires is that

1 it be on the document assigning title. And the
2 reason goes to that's the document that necessarily
3 becomes part of the public record.

4 THE COURT: Now, of course the problem
5 you have in this case -- you might want to stay up
6 there -- is that in this case no title was ever
7 assigned.

8 MR. DOMONOSKE: In this case, the
9 defendant car dealer took the reassignment form
10 that is allowed by Virginia law, we believe, and
11 gave that to the consumer and then didn't send that
12 to the DMV.

13 Now, the consumer thought title had been
14 reassigned. The dealer used a document that would
15 reassign title.

16 And in fact the dealer will confirm in
17 evidence that this was the only document they were
18 going to use to reassign title.

19 The dealer charged the consumer \$395 to
20 process the documents with the DMV. And contrary
21 to Virginia law, the dealer didn't give the
22 consumer the option of doing their own DMV work.

23 And so this document, which if it had
24 been submitted to the state, would have reassigned
25 title, was not submitted to the state pursuant --

1 THE COURT: Here is my problem.

2 Does the statute use any language to the
3 effect "attempt to assign"? It just says
4 "assigning title." Isn't that how it speaks?

5 MR. DOMONOSKE: The statute talks about
6 the document used to assign title. The statute
7 talks --

8 THE COURT: Not to attempt to assign
9 title?

10 MR. DOMONOSKE: That's right.

11 THE COURT: And I think it's undisputed
12 in this case, is it not, that there was never an
13 assignment of title?

14 MR. DOMONOSKE: It is undisputed in this
15 case that the requirements under Virginia law to
16 get that document to the DMV were never followed by
17 the dealer.

18 And the analogy that I would make, Your
19 Honor, is if I sold you my car and if I took the
20 title and if I signed it over to you and I made the
21 odometer disclosure on the title, but then I took
22 that title back from you, ripped it up, destroyed
23 it, I could not come to Court and say, Well, there
24 was no assignment.

25 When the dealer took and destroyed the

1 means by which the assignment would be recorded
2 with the DMV, that didn't change the fact that the
3 dealer represented to the consumer, The document
4 I'm giving you is assigning title.

5 And in fact, the document I'm giving you
6 shows how I got the car, and I'm assigning title
7 away.

8 THE COURT: I don't disagree with you
9 that what you allege here, if it happened, is quite
10 odious, and it's fraud up the kazoo.

11 The question I have, though, is the
12 statute does not appear, if one reads it literally,
13 to cover this situation because it is undisputed in
14 this record that there was no title assigned;
15 correct?

16 MR. DOMONOSKE: There was no title
17 properly assigned.

18 THE COURT: Well, it is either assigned
19 or it is not assigned, isn't it?

20 MR. DOMONOSKE: Well, Your Honor, the
21 evidence is going to show in this case that this
22 car dealer, Glasscock Auto, didn't even have title
23 to the car.

24 That at the -- and this is alleged in the
25 complaint --

1 THE COURT: I understand.

2 MR. DOMONOSKE: That at the time of the
3 sale Glasscock Auto had not even had title assigned
4 to it.

5 And one of the cases we cited to you,
6 Mills v. Manns (phonetic), was where they let a
7 jury decide was there intent to defraud when a car
8 dealer made an odometer representation without
9 getting a proper odometer disclosure in to it.

10 Given that the only proper odometer
11 disclosure is one on a title, Glasscock Auto didn't
12 have title to the car, formal official title to
13 transfer.

14 And it tricked the customer by pulling
15 out the reassignment form.

16 And on that reassignment form, it will
17 have further tricked the customer and said, I got
18 this car from Charlie Falk Auto. And there is
19 going to be a date on there, and it's going to be a
20 fictitious transfer.

21 So when a dealer uses a document, an
22 official document -- these are secure documents.
23 They have control numbers. They are supposed to be
24 attached to the title.

25 When that dealer separates that document,

1 uses it without a title, falsifies information to
2 show that it did receive title, and then makes the
3 only odometer disclosure it was ever going to
4 make -- and I think that's the important point,
5 Your Honor -- the evidence will show that this
6 odometer disclosure on the reassignment of title is
7 the only odometer disclosure Glasscock Auto was
8 going to make, even if the loan got approved.

9 If the loan got approved, there was never
10 going to be another odometer disclosure.

11 The dealer held this out as the odometer
12 disclosure. The dealer held it out as saying, I am
13 transferring title to you, and put temporary tags
14 on the car, again, representing that the title had
15 been transferred because they are only allowed to
16 put temporary tags on a car that belongs to the
17 consumer.

18 THE COURT: All right.

19 MR. DOMONOSKE: So, yes, ultimately this
20 car never has this consumer's name show up in the
21 title history, but that's the violation.

22 THE COURT: In the case that went to
23 trial or the jury was allowed to decide this issue,
24 what happened there?

25 MR. DOMONOSKE: The Mills v. Manns case

1 that I was citing, what actually happened is it's
2 an appeal case. The lower court did not let the
3 jury decide, so all we have is -- or all I know
4 about the case is that it was remanded, and it said
5 that the jury should decide.

6 THE COURT: On the federal odometer
7 statute?

8 MR. DOMONOSKE: Yes.

9 THE COURT: That the cause of action?
10 And you don't what -- what did the
11 jury -- you don't know what happened on retrial?

12 MR. DOMONOSKE: No, I don't, Your Honor.
13 It is an Ohio case.

14 THE COURT: Okay.

15 MR. DOMONOSKE: We also cited a
16 California case where a consumer identified an
17 odometer violation and thereby chose to not
18 complete the process.

19 And that Court found that even though the
20 process wasn't completed, that that is exactly the
21 type of person that we want to enforce the odometer
22 act.

23 THE COURT: Does the defense want to
24 respond to that in any respect?

25 MR. EDLICH: I do, Your Honor.

1 I believe that you are correct, and I
2 believe that Mr. Domonoske has talked about some
3 bad facts in a case in order to sidestep the
4 question.

5 I believe the question was whether the
6 odometer act under a strict reading is only
7 implicated upon assignment of title.

8 In fact, the odometer act, under a strict
9 reading, I believe that's the way the Court should
10 construe it, and that's the way Judge Spencer
11 construed it.

12 The odometer act is implicated upon
13 transfer of ownership. Under Virginia law,
14 transfer of ownership only occurs when title
15 passes.

16 THE COURT: Although you would agree on
17 the facts of this case, this car physically was
18 transferred to the plaintiff with these temporary
19 tags so that for at least the week or two that the
20 plaintiff had the car, to any law enforcement
21 official on the roads, any police officer,
22 whatever, there had been an apparent transfer of
23 title.

24 MR. EDLICH: There had been apparent
25 temporary registration issued, yes, Your Honor.

1 But in terms of transfer of title,
2 Virginia is saying that the state of the transfer
3 of title can only occur when title is transferred.

4 But the ownership is transferred only
5 when title is transferred.

6 THE COURT: Well, I'm not going to grant
7 the motion to dismiss.

8 Again, I may be parting ways with some of
9 my colleagues, and this is something that
10 ultimately will be fleshed out apparently in the
11 Circuit in the next year or two.

12 But I think that, again, this is a case
13 where I think that the nuance of facts may give us
14 a better picture of what really is going on here.

15 There is just not that much case law out
16 there. There appear to be cases going both
17 directions on how strictly the statute is to be
18 construed.

19 Clearly the legislative intent, again,
20 behind having these types of rules I would think
21 would encompass this kind of situation. I mean,
22 why have these laws if they don't exist to protect
23 from this type of conduct.

24 So I'm going to go ahead and permit this
25 count to go through.

1 And I believe we have touched on the
2 title issue and the odometer. We have touched on I
3 think all three issues; correct?

4 All right. So I'm granting in part and
5 denying in part your motion to dismiss.

6 Now, on your aborted efforts to get a
7 little relief on discovery, if you-all want to go
8 back to the drawing boards, think together -- first
9 of all, you may settle this case when you work
10 together on discovery.

11 But, secondly, if you are unable to
12 resolve it and you can make a specific requests as
13 to what it is you need extra time for in the
14 discovery issue, all right, and give the Court a
15 reasonable amount of additional time that you need,
16 I will consider that.

17 Now, I'm not changing the pretrial date,
18 so don't even think about that. You have got a
19 pretrial, final pretrial conference on November 15.
20 That's going to happen, and you are going to get a
21 trial date probably for I would think January.

22 But I am willing, if you both come to an
23 agreement, to give you a little extra breathing
24 space on your discovery, but it needs to be
25 specific. I'm not going to give you a blank check

1 on that.

2 MR. EDLICH: May I say one more thing?

3 THE COURT: Yes, sir.

4 MR. EDLICH: Please indulge me. But I
5 just -- I don't know whether you are going to be
6 assigned this case or not.

7 THE COURT: There is no guarantee in this
8 Court. We are on a master calendar, unlike
9 Richmond.

10 MR. EDLICH: That's fine. I just wanted
11 to -- and for the benefit of my client, too, and
12 also to say that, you know, in these case -- and I
13 have had many cases with Mr. Domonoske and have
14 more as well.

15 It is one of the tactics of the
16 plaintiffs' lawyers to come in and talk about all
17 the bad things and call the defendants criminals
18 and things of that nature, and I certainly don't
19 want that to persuade the Court without me having
20 to respond.

21 I mean, I have sat here and listened and
22 responded to the issues.

23 THE COURT: But the --

24 MR. EDLICH: At the same time --

25 THE COURT: A case like this, with a

1 motion to dismiss, while there are some interesting
2 legal issues, a lot of times you need meat on those
3 bones to make -- have a better picture.

4 There is never any real downside risk,
5 especially this late in discovery, to going forward
6 to summary judgment and/or even letting it go to
7 trial and then looking at the issue after the fact.

8 But, no, I have certainly not prejudged
9 the case despite what I might have said.

10 I have to make findings in order to give
11 a rational basis to my ruling, but I don't know who
12 will get the case.

13 MR. EDLICH: I appreciate that, Your
14 Honor. I just wanted to add that.

15 I understand the legal reasons for the
16 decision.

17 THE COURT: Thank you.

18 (Whereupon, the proceedings in the
19 above-captioned matter were concluded.)
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CERTIFICATE OF REPORTER

I, Joseph A. Inabnet, do hereby certify that the proceedings in the foregoing matter were taken by me in Stenotype and thereafter reduced to typewriting under my supervision; that said transcript is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action involved in these proceedings; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Joseph A. Inabnet
Court Reporter