

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION - LOS ANGELES)

JEFFREY POWERS, ET AL,) CASE NO: 2:22-cv-08357-DOC-KS
)
Plaintiffs,) CIVIL
)
vs.) Los Angeles, California
)
DENIS RICHARD MCDONOUGH,) Monday, October 7, 2024
ET AL,)
) (1:39 p.m. to 4:38 p.m.)
Defendants.)

HEARING ON INJUNCTIVE RELIEF

BEFORE THE HONORABLE DAVID O. CARTER,
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

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INDEX

WITNESS TESTIMONY

NONE

PLAINTIFFS' EXHIBIT

RECEIVED

251

8

1 Los Angeles, CA; Monday, October 7, 2024; 1:39 p.m.

2 --oOo--

3 **THE COURT:** Then we're back in session. And let me
4 just state that all counsel appear to be present and the
5 parties are present. And the first thing I'd like to take up
6 this morning are the emergency orders submitted to the Court in
7 emergency order number one, and if you'd be kind enough to put
8 that up on the ELMO. You filed that on Friday.

9 I've got a copy. If you don't have it, that's fine.
10 Well, I don't want you to read my handwriting, so.

11 **MR. SILBERFELD:** It was revised in the filing on
12 Saturday.

13 **THE COURT:** Okay.

14 **COURT REPORTER:** Name.

15 **MR. SILBERFELD:** Oh, sorry, Roman Silberfeld for the
16 plaintiffs.

17 **THE COURT:** Just put it up. And if you need a copy,
18 send it to my clerk and we'll put it up.

19 **MR. SILBERFELD:** I don't have a printed copy of it.
20 I have it on my phone.

21 **THE COURT:** Just email it to us for a moment.

22 **MR. SILBERFELD:** Forward it to Allie?

23 **THE COURT:** This would have been filed on October
24 5th; is that correct?

25 **MR. SILBERFELD:** Yes.

1 **THE COURT:** Okay. I've got it. I've just got some
2 handwriting on it, which is why I don't want to share it with
3 you.

4 **MR. ROSENBERG:** Actually, I think, Your Honor, the
5 most recent version, there were a couple of filings over the
6 weekend. It would be ECF No. 336-1, which was attached to
7 plaintiffs' notice of lodging.

8 **THE COURT:** Oh, we've got 335, so let's make sure
9 we've got 336.1. Thanks.

10 **MR. SILBERFELD:** They're identical. The ones filed
11 Saturday and Sunday are identical.

12 **THE COURT:** Folks, it doesn't matter. Just put the
13 latest version up. Okay. And that's -- so 335, for our
14 record, is the same as 336-1?

15 **MR. ROSENBERG:** Correct.

16 **THE COURT:** Okay. Would one of you put that up, or
17 send that to the clerk, and then we'll put that up so we can
18 all see it.

19 **(Pause)**

20 **THE COURT:** Okay. And, Karlen, if I could get a
21 copy, and then if you could put up the latest version, and if
22 it's 336-1, that's fine.

23 All right. Now, for the record, since it's been
24 represented by counsel that 335 and 336-1 are the same, the
25 clerks and I were working on Saturday on 335, and I didn't

1 check Sunday, and so we still worked on 335 with any questions
2 we have today, but we'll be referring, for our record, to 336-
3 1.

4 **(Pause)**

5 **THE COURT:** Karlen, thank you so much. So I get a
6 copy, and then we can put a copy up, right? All right.

7 Okay. If you'd put up 336-1 on the ELMO, and just
8 some minutiae changes I might suggest, would you go down to
9 page 2, line 6? I'm always having trouble matching up the day
10 of the week by the date, so when we say October 11th, I have to
11 go back to a calendar. Could I just suggest that we write
12 Friday, October 11th, 2024, so we always know what day of the
13 week? We always know the date. It's a minutiae change, but it
14 just makes it easier not to look back in the calendar. If you
15 do that also in paragraph 2, it might be helpful, the first
16 line, and in paragraph 3, line 1.

17 Now, would you go back to an exhibit you put on the
18 ELMO last week, and that's when we had two Bs: one I'm going to
19 call a yellow B, and one called a magenta B. I don't believe
20 that this has been marked or updated on our record.

21 We have a prior document, and if you'd put up the
22 prior document down by the ELMO, there's another one. That is
23 the exhibit that's been shown repeatedly, and that exhibit
24 number -- no, keep that up for just a moment. That exhibit
25 number is what? This was option one.

1 **MR. SILBERFELD:** This is -- I can't recall now
2 whether this was.

3 **THE COURT:** That's okay.

4 **MR. SILBERFELD:** 248 or 249 or 250.

5 **THE COURT:** Don't guess. Just find it for me,
6 because I don't like this record right now, because we have two
7 Bs, one B. I want to get this record straight.

8 This is an exhibit that was produced during trial.
9 It has the stadium, no, there we go. It has the stadium and
10 the parking lot in yellow as B. You then put up a subsequent
11 document right below it. Don't put it up yet, and there were
12 two Bs on that, and that's when Mr. Soboroff and I were trying
13 to figure out the two Bs. One is a yellow B, one is a magenta
14 B.

15 That document, I don't believe, has been marked for
16 the record, so any reviewing court is going to look at B and be
17 confused.

18 **MR. SILBERFELD:** Actually, that one with the magenta
19 coloring on it was attached to a prior version from Friday of
20 the emergency orders.

21 **THE COURT:** Then give me an exhibit number for it.
22 In other words, I don't want the circuit to have to look back
23 at a filing. I want them to see what documents we're looking
24 at because it's confusing with B and now BB, so just give me an
25 exhibit number. It can be dash one if you want.

1 **MR. SILBERFELD:** I think the last exhibit the
2 plaintiffs marked in the trial was 250. With the Court's
3 permission, I'll mark this one with the magenta coloring as
4 251.

5 **THE COURT:** Now, remind me that this is 251. It's
6 received into evidence, and for any reviewing court, what will
7 be confusing is the trial exhibit that's already been received
8 where the stadium and the parking lot were in yellow and marked
9 B, and now 251, which is a subsequent rendition where you've
10 drawn B for the stadium and then magenta B in purple for the
11 parking lot. Hopefully that record's clear.

12 **(Plaintiffs' Exhibit Number 251 received in evidence)**

13 **THE COURT:** All right. Now, I would suggest that
14 since we have the paved portions in paragraph one as 4A, 5, 7,
15 and B, that paragraph 2 -- so if you'd go back to your
16 emergency order, Docket 336-1, go down to subparagraph 2. So
17 the parcels we should be looking at here would be the unpaved
18 parcels of 1 and 2, 4, and now it should be yellow B, and
19 yellow B should be added, which is the stadium.

20 **MR. SILBERFELD:** We can certainly do that.

21 **THE COURT:** Absolutely. So yellow B now is an
22 unpaved stadium. It's got grass, and that's contiguous to
23 magenta B, which is paved. Seven. No, no, keep that up there
24 for just a moment. Let me -- go back to that. If you take
25 that off just for a moment, yeah, which is also another paved

1 lot, 7, 5, and 4A, and let's just make sure that that is set
2 out in that paragraph. So it should read now -- no, take that
3 down for just a moment. 1, 2, 4, and yellow B.

4 **MR. SILBERFELD:** That's what I edited.

5 **THE COURT:** Perfect. Now take it down again and just
6 double-check what I'm saying. When we go up to paragraph 2, so
7 there's no mistake -- I'm sorry, paragraph 1, we should be
8 looking at the paved areas of 4A, 5, 7, and I'm going to call
9 that magenta B.

10 **MR. SILBERFELD:** Which I've interlineated.

11 **THE COURT:** Okay? Okay, now. I'm prepared to sign
12 emergency order number one, subject to any input.

13 I want to go to number two. If you put up emergency
14 order number two, my concern is that I'm making an order that
15 either can't be carried out or is too broad. And in paragraph
16 -- well, here. In fact, why don't you put this up, because
17 I've got yellow underlined without any comments on it.

18 So we're going to put up my version for a moment
19 that's underlined, or yellow. Mr. Johnson, Mr. Soboroff, I may
20 need your input for a moment. Mr. Kuhn's here. I may need his
21 input. If UCLA is here -- is UCLA here? Well, if somebody has
22 a phone, you might ask them to come down. It's just a request,
23 but hopefully they would be here because this could affect
24 them. All right.

25 The vendors for modular housing shall qualify for

1 consideration only if they're able to deliver and install 200
2 to 300 modular housing units within 90 to 120 days of a
3 purchase order for which such modular housing units -- two
4 concerns.

5 One, do we have a vendor who can supply 250 to 300?
6 And I'll get to you in a moment, Mr. Soboroff. And number two,
7 since we've got an emergency that I'm about to sign, why am I
8 waiting 90 to 120 days? Why can't we get some of these going,
9 whether it's 30 or 50 on this parking lot, because that's 30 to
10 50 veterans who aren't in the rain. And lastly, if we're going
11 to run into problems, let's run into those troubles right now.
12 So if we can get 30 to 50 modulars off the ground, I want to
13 know that just immediately because then why are we waiting for
14 250 to 300?

15 So -- no, just a moment, Mr. Soboroff. So I would
16 appreciate you considering the following. Brad raised the
17 problems of an order that the Court would make, and it might
18 bypass temporarily some procurement requirements versus
19 minority, for instance, developers, et cetera. I'm not willing
20 to cut out those minority developers, but by the same token,
21 this is an emergency, and I'd minimally like to see a start and
22 break this iceberg, if you will, of getting some kind of
23 housing in immediately for the veterans.

24 So I'm prepared to make this order, but I don't want
25 to wait for 2 to 300 modulars, Mr. Johnson, and I don't want to

1 wait 90 to 120 days since I've got the rains coming. So I
2 would suggest that this is an order somehow that always states
3 that whatever modulars we're putting on in any parcel, that we
4 have the same vendor.

5 So let's say that we take an acre and a half, and
6 let's say that Mr. Johnson and Mr. Kuhn tell me that we can put
7 up 40, hypothetically. Then we don't want to go to different
8 vendors for that, so for that particular parcel, we minimally
9 should have the same vendor so we don't mix those vendors,
10 okay? But we might have another lot that's able to come on,
11 like 4A, and we shouldn't be waiting for somebody who can
12 represent that they've got 250 ready to go, because they may
13 not.

14 So I just ask you to consider that, and next, go down
15 to paragraph 4. The VA shall pay the costs associated with the
16 purchase and installation of modular housing, site preparation,
17 cost and infrastructure, connection costs contemplated by this
18 order from its minor construction funds or other sources within
19 the budget.

20 I would be more inclined to sign this order if I
21 struck from minor construction funds or other sources within
22 its budget. The VA can come up with whatever funding they
23 choose, but I don't tend to limit this to their present budget
24 because I'm going to hear, first of all, the budget's been
25 approved, that they're already over budget by \$1 billion, and

1 I'm not going to direct from a minor construction fund if I
2 make the order, it's the VA's job to produce. So I would just
3 suggest that.

4 Other than that, I'm inclined to sign this order.

5 **MR. SILBERFELD:** I made the change.

6 **THE COURT:** Well, that's -- but you haven't dealt
7 with paragraph 3, so deal with paragraph 3. All of you go talk
8 for a moment how you're going to draft that, because I'm not
9 waiting for 250 to 300 from one vendor, and I'm not waiting 90
10 to 120 days to get started.

11 And we're going to sit here, and we're going to
12 process that, and we're going to do it one at a time by the
13 numbers so we complete something seriatim.

14 And I want to thank, on the record, Craig, John
15 Houston, and my team for being in constant session over the
16 weekend. You really deserve a compliment for that since you're
17 doing this pro bono. I didn't think you'd ever expect to be
18 Saturday and Sundays and late at night, so thank you.

19 And we're all fortunate to have them as monitors
20 because if they were charging, trust me, it would be expensive.

21 And while we're waiting, Mr. Miller, I want to
22 compliment you as well, and Brentwood. I know that you were
23 working hard over the weekend. John and I have been in
24 constant contact, along with Craig and my team all weekend. I
25 know how diligent your efforts have been. You deserve that

1 compliment on the record.

2 **MR. MILLER:** Most of the credit goes to Mr. Sandler,
3 my colleague --

4 **THE COURT:** Well, wait. I can't hear. Hang on.

5 We're going to get through these emergency orders one
6 way or the other first. And, Maren, start processing this with
7 the suggestions. In other words, give me a new order.

8 **(Recessed at 1:55 p.m.; to reconvene at 1:56 p.m.)**

9 **(Pause)**

10 **THE COURT:** Counsel, I'm going to hand you a document
11 that we're editing at the same time to save time, based on the
12 Court's comments to see if this is acceptable.

13 **(Pause)**

14 **THE COURT:** All right. Then is it acceptable if we
15 go back on the record concerning emergency order number one or
16 emergency order number two?

17 **MR. SILBERFELD:** Yes, Your Honor.

18 **THE COURT:** Okay. Then all parties are present and
19 the Court's received now copies of emergency order number one.
20 Is this acceptable to the plaintiffs?

21 **MR. SILBERFELD:** Yes, Your Honor.

22 **THE COURT:** To the government, or would you rather
23 remain silent?

24 **MR. ROSENBERG:** We would just reiterate our
25 objections from Friday regarding the entry of these orders,

1 both generally and as to specific provisions.

2 **THE COURT:** And will Exhibit 251 be attached, then,
3 to emergency order number one?

4 **MR. SILBERFELD:** Yes, Your Honor.

5 **THE COURT:** All right. What time do you want to be
6 back on Friday, October 11th? I'm trying to make that
7 convenient for you folks. The way we're going, we still may be
8 in session by that time, because we're here continuously until
9 we get it done. So --

10 **MR. SILBERFELD:** Sure. 8:00 a.m.

11 **THE COURT:** 8:00 a.m. All right.

12 Karlen, if you'd be so kind, would you docket
13 emergency order number one and Exhibit 251? And the
14 substantive changes that have been made to emergency order
15 number two, because I'm seeing this, once again, for the first
16 time, I saw you over in the corner working, but the vendors of
17 modular housing shall qualify for consideration only if they
18 are able to individually deliver and install 50 units within 45
19 days of a purchase order and collectively 200 to 300 modular
20 housing units within 90 to 120 days of a purchase order for
21 such modular housing units.

22 In paragraph four, the VA shall pay the costs
23 associated with the purchase and installation of modular
24 housing, site preparation costs, and infrastructure connection
25 costs contemplated by this order. Is this the request of the

1 plaintiff?

2 **MR. SILBERFELD:** Yes, Your Honor.

3 **THE COURT:** And, Brad, your position?

4 **MR. ROSENBERG:** As with emergency order number one,
5 we reiterate our objections from Friday.

6 **THE COURT:** All right. The Court has now signed
7 emergency order number two. Karlen, if you would dock at that
8 as well. And both of these. This is one with the attached
9 document, 251, and this is two, Karlen, I appreciate it.

10 Earlier this morning, the Court corrected and has
11 docketed the request to strike the word "conventional" on page
12 124, lines 14 through 17 of the September 6th, 2024 post-trial
13 opinion findings of fact and conclusions of law in order to
14 make that finding consistent with the Court's opinion at page
15 46, lines 14 to 22.

16 At page 124, lines 14 through 17, now read as
17 follows. "For any permanent supportive housing unit on the
18 West LA VA grounds built pursuant to this order, federal
19 defendants shall employ the most efficient, affordable, and
20 time-sensitive financing of its housing objectives." That's
21 obvious errata in this matter because the Court, in its
22 opinion, set forth three potential ways of financing: first,
23 through the present tax credit system; second, through the what
24 I'm going to call small market rate; and also the direct
25 funding by the VA.

1 All right, where would you like to go next?

2 **MR. SILBERFELD:** We could probably give an update
3 about Brentwood, Your Honor.

4 **THE COURT:** Please. Mr. Miller, thank you. I've got
5 representatives of Brentwood here and I know you worked through
6 the weekend. My compliments to all of you.

7 **MR. MILLER:** We did, Your Honor. It was mainly
8 Mr. Silberfeld and Mr. Sandler worked on the weekend. I was
9 involved too. And we've reached -- as I reported in court on
10 Friday, we've reached agreement, subject to maybe, you know,
11 typos and tweaks here and there, but we've reached agreement
12 with the plaintiffs. It's an agreement -- I don't know the
13 exact technical real estate terminology, but it's an agreement
14 for Brentwood to continue using the property on the
15 arrangements that we discussed previously with the veterans.

16 It's a three-party agreement. It contemplates,
17 obviously, the plaintiffs. We're not technically a party to
18 the lawsuit, but I think we can do a settlement agreement. And
19 it contemplates the property owner, which is the United States
20 government, the VA, I guess, also signing off. So those two
21 parties need to come together on any terms that they need to
22 come together on. And we're kind of -- you know, we're done.

23 **MR. SILBERFELD:** So we do have a roadblock that we
24 need to clear if there's to be a deal with Brentwood. And the
25 roadblock concerns the timing of the new financial terms that

1 the term sheet contemplated and that either a final settlement
2 agreement would contemplate or some injunctive relief from the
3 Court would contemplate. Here's the issue.

4 As originally envisioned in the term sheet, Brentwood
5 would make its \$3 million contribution upon the issuance of a
6 final order of settlement approval by this Court and would make
7 its \$2 million cash payment one year later. And it would pay
8 rent, as reflected in the term sheet, and would pay money
9 towards a charity or some other vehicle, all triggered off of a
10 final order of this Court.

11 Today, that term changed in that Brentwood still
12 wants to keep the financial terms the same, but only wants to
13 make the payment upon a final judgment after all appeals have
14 been exhausted, which is, of course, something that may not
15 occur for several years. That's a significant issue.

16 I've had discussions with counsel for VA about
17 whether they are prepared to commit one way or the other about
18 whether they intend to appeal any final judgment of this Court.
19 And not to speak for counsel, but my understanding is no
20 decision has been made about that and they're not prepared to
21 commit either way today. So that's the issue that we're faced
22 with this afternoon.

23 **MR. MILLER:** That's not 100 percent accurate in the
24 sense that we don't want to slow this down. We don't want
25 delay. Brentwood School wants to go on, make the payment as

1 soon as possible.

2 It's purely -- it's a property issue. The property
3 owner is the VA. And we're paying this money for usage of the
4 property. So we don't want to pay the money and then be told
5 by the property owner, well, that was a voluntary payment or a
6 gift or something like that. That's your problem. You've got
7 to pay us X dollars.

8 So what I've suggested we do is if there's going to
9 be an appeal, I hope there's not an appeal. I hope we can just
10 write a check, ASAP. And if there's going to be an appeal,
11 what I've suggested we do is we ask the district court, Your
12 Honor, to, I don't know, certify it under 1292(b) or at least
13 recommend an expedited appeal so we can get this done as
14 quickly as possible. We don't want delay. We don't want to be
15 in a position where we're being whipsawed between the property
16 owner and the plaintiffs in a lawsuit we're not even a party
17 to. We just want to go on with our school and our facilities
18 as before.

19 **THE COURT:** This wasn't called to my attention
20 through either John Houston or Craig over the weekend. When
21 did this occur? This morning? Is this the -- when did this
22 occur?

23 **MR. SILBERFELD:** This morning.

24 **THE COURT:** This morning. So that's why the Court's
25 not aware of it.

1 **MR. MILLER:** The draft has terminology, final order.

2 **MR. SANDLER:** Your Honor, we're -- Jonathan Sandler,
3 Your Honor.

4 Plaintiffs and Brentwood have negotiated and worked
5 hard to get to this settlement agreement.

6 **THE COURT:** Stipulated. You've worked hard.

7 **MR. SANDLER:** What Brentwood and I believe plaintiffs
8 are struggling with is the third party to the settlement
9 agreement, the VA, hasn't given us yes, no, we're going to take
10 this up, we're not going to take this up. And I understand the
11 VA has gotten the settlement agreement. We sent it to them
12 yesterday. They had the term sheets. I understand they can't
13 tell us whether they're going to appeal yet. I understand
14 these decisions are made beyond the lawyers in this courtroom.

15 But what we are trying to account for, Your Honor, is
16 that they do take it up and everything gets frozen. And I
17 don't know how to deal with that. That is a procedural
18 difficulty. That doesn't mean that we're not operating in good
19 faith. It doesn't mean that we haven't come to the terms with
20 the plaintiff.

21 As my co-counsel said, we're willing to do something
22 with the money, just don't know how to do it if the VA takes it
23 up and stays everything. We get frozen.

24 **MR. MILLER:** I want to add, Your Honor, that we are
25 adjusting. We're already carrying out this deal. We're

1 adjusting the shuttle schedule to make it co-terminus with the
2 usage by the veterans. And we're implementing the settlement
3 as we speak now. We're not waiting until the ink is dry and so
4 forth.

5 So Brentwood is ready, willing, and able and is going
6 forward. We just need to get past this hump so we're not, in
7 effect, paying \$5 million twice to somebody else.

8 **THE COURT:** Okay. Any suggestions how this gets
9 resolved?

10 **MR. MILLER:** My suggestion was to accelerate the
11 appeal if there's going to be one. I mean, my first choice,
12 obviously, is no appeal. Judgment of this court becomes final.
13 It's final order. We're done. If there's going to be an
14 appeal, then we accelerate it and we ask the Ninth Circuit to
15 move it forward, accelerate it. This is money that is very
16 much needed and wanted by the veterans. That was my idea.

17 **THE COURT:** Roman, Brad, any ideas?

18 **MR. SILBERFELD:** I know it's unusual, but I think we
19 have unusual circumstances here. I really do think that we're
20 now a full month since the Court issued its post-trial opinion.
21 Even though we don't have a final judgment yet from which the
22 appeal time would run, I don't think it's unreasonable,
23 candidly, to ask the government to take a position by a date
24 certain as to whether or not an appeal will be taken, because
25 that will inform what we may or may not be able to do with

1 Brentwood.

2 That's the block right now, and nothing about the
3 Court's opinion is going to change. The final judgment will be
4 simply a reduction of that opinion into a judgment. That's an
5 opinion that's been out there for a month, and can they take to
6 the last day legally? Sure. But I do think these are
7 extraordinary circumstances that we're facing, and the VA's and
8 maybe HUD's too, the government's inability at the moment, I
9 won't say unwillingness, inability at the moment to say that
10 they will or won't appeal this decision is an impediment to
11 this settlement going forward.

12 So if there was a way to strongly request something
13 short of an order that the government tell us --

14 **THE COURT:** How strongly do I request that? I'm just
15 joking with you.

16 **MR. SILBERFELD:** As strongly as possible.

17 **THE COURT:** I prefer to make orders and not --

18 **MR. SILBERFELD:** Yeah, I know that.

19 **THE COURT:** I've been trying to be polite about the
20 requests concerning these lots so far, but --

21 **MR. MILLER:** Maybe I'm missing something, but we're
22 all here for the benefit of the veterans. Veterans are human
23 beings. That's the plaintiffs' agenda, and I assume that's the
24 VA's agenda.

25 **THE COURT:** Well, thank you. No, thank you very

1 much. Okay, let's just end with veterans are human beings. Of
2 course they are. Now stop. We're wasting time.

3 I want to walk you through a whole set of narratives
4 that aren't rulings for a moment. Okay?

5 First of all, you both believe, Brentwood and
6 plaintiffs, that this principally benefits veterans in the
7 following way.

8 First, my understanding is that there would be
9 limited hours by Brentwood School that would fit within the
10 needs of the school and that that would be from 2 o'clock to
11 some hours in the evening, and that is a substantial
12 improvement over the 5:30 to 7:30 hours. You need to be
13 complimented for that.

14 Second, there's a \$5 million, let's say, payment over
15 two years which is substantial and which would not come into
16 our lawsuit without this agreement.

17 Third, there's a cost of living index, I'm going to
18 call it cost of CPI, but cost of living, a 3 percent or more,
19 my understanding from Mr. Houston, and that it's recognized
20 that the veterans would never have what I'm going to call joint
21 usage to these facilities but for this agreement.

22 So in the future, the VA would take the position
23 that, Judge, we might be building temporary and long-term
24 supportive housing but we're not mandated to build a swimming
25 pool, a track, a weight room, tennis courts, and to have that

1 fully funded by Brentwood. So the veterans seem to recognize
2 that this has tremendous value to them, especially as they
3 increase from 233 to 1,800, 2,000 because this usage is going
4 to increase.

5 It was also recognized in this agreement that the
6 baseball field and parcel number nine would be the first
7 parcels that the Court looked at, that the core that everyone
8 is trying to protect would be within those 22 acres, the last
9 acreage that the Court would look at within the 22 acres.

10 I can't imagine how that is a not only a principal
11 benefit to the veterans, but a substantial opportunity for both
12 parties. So you've entered into good faith in that and I want
13 to compliment you.

14 The problem is that Brad needs a long form completed
15 to send back to whoever's making that decision. So until
16 that's in some form that gets sent back to DOJ, I don't think
17 that he has the authority to make that decision and I've asked
18 Secretary McDonough to come out. He's not here and I don't see
19 why these decisions aren't being made in something so
20 substantial with all of us in the room, and if the Mayor of Los
21 Angeles could be here courteously and other members, I'm
22 baffled why the Director of the Veterans Administration,
23 although you have authority, calls are being made and I'm
24 really amazed at the inattention, I think is the best and
25 kindest word I can make.

1 I want to walk through a couple things I thought
2 about this weekend when, because it's constantly changing and
3 for you folks with the 1886 fund, Steve Peck, et cetera, I
4 initially was inclined to try to steer and direct some of these
5 funds to you because I was concerned about the chapel and you
6 were at \$20 million. You needed \$22 million. If you cut out
7 the healing room, your budget was actually greater if you had
8 the healing room.

9 But over the weekend it occurred to me that where are
10 we going to get the money if the VA takes the position, Judge,
11 we're over budget, where does the money come from for the
12 modulars?

13 So what I was going to raise with you today was
14 whether, in fact, that first \$3 million, since this is an
15 emergency, could be applied towards modulars.

16 Now that's not a decision, I was just going to toss
17 that out to you because if you're short of money, you've got a
18 real opportunity here for 30 or 40 of that \$3 million, and that
19 unfortunately would leave the chapel in the situation of
20 raising that last \$2 million privately.

21 But if you weren't successful we're back next year
22 with another \$2 million payment. So we've got all the options
23 in a sense to get that chapel going in year two and I don't
24 want to harm your private fundraising efforts.

25 So that's a little bit of a change in my thought

1 process over the weekend because I truly have signed off that
2 this is an emergency. I truly believe that if we can save one
3 veteran's life, if we can get people out of the rain, that's
4 it. That's our bottom line.

5 Second, I recognize that there has to be some
6 disagreement in the VA's hierarchy because that's in a tough
7 position. First of all, for Brentwood, I would think that you
8 would want to keep this money local. I would think that you
9 deserve some recognition from the bench and from the parties
10 about your good faith efforts.

11 And by the way, it might be viewed that you are
12 significantly different than UCLA. That's why I wish UCLA was
13 here because apparently they dropped by to ask but they don't
14 attend hearings that have an effect on them. I find that
15 difficult and wonder why they aren't constantly here.

16 So here's the difference. You have young people out
17 at that school that believe that they did good things. They
18 supplied tents. The criticism is too small. They supplied
19 tents initially when nobody else would.

20 So young people out there, I believe, that you're
21 giving scholarships, that you're helping in some ways, in a
22 sense, regardless of the wealth that's been thrown around by
23 the respective intuition, these are kids who believe that
24 they've done a good job out there. So it may be too little,
25 OIG warned. For a long time, you've got this land literally

1 for free up until the 1990s.

2 Now what's the difference with UCLA? UCLA is
3 collusive. Let me repeat that. They're implicated. They're
4 not innocent. The difference is they got the same warnings by
5 OIG. They got the same concern from Congress. I think this
6 case started to turn in my mind with this conversation between
7 one VA official calling another VA official, worried about a
8 FOIA request and keeping that from the press.

9 This case started to concern me from where I
10 initially started with the VA then calling over to the
11 Assistant Athletic Director, or to Tony, to contact the
12 Assistant Director or Athletic Director, who then phones UCLA's
13 Strategic Planning Department, their Communications Department,
14 and lo and behold, the Chief of Staff to the Chancellor.

15 Now, I can't imagine why the Chief of Staff to the
16 Chancellor would be on this phone call other than a very strong
17 inference that the Chancellor has to know about this effort to
18 stop the FOIA request from becoming public by the press and,
19 quite frankly, to become complicit with the VA officials who
20 are trying to keep this from the veterans so that they can't
21 complain. UCLA is not innocent.

22 If you can't reach a long-form agreement, then
23 there's nothing that Brad can submit. But I'd humbly like to
24 ask, who is making the decision? Do we have the authority in
25 this room? You don't have to answer that. You can take the

1 Fifth, just joking. But who do we have to call? I mean, who's
2 the wizard behind the curtain here? Can anybody share with me?
3 Do you have full authority to make that decision here? Because
4 we're in continuous session.

5 Now, here's what's happening. I would like to avoid
6 further litigation, because I can guarantee you the following.
7 You don't know it, but Mr. Miller is excellent counsel. And I
8 bet you he's thinking if this falls through, he's about to sue
9 the VA. Let's just put it right on the table.

10 So now you have plaintiff suing, you've got Brentwood
11 potentially suing, and the reason for that is there's a CNN
12 tape we recently got. You want to put that up for just a
13 moment? Can we pull that up? I want to show you something
14 that didn't come into evidence after the findings. I want to
15 play the CNN tape with McKitrick (phonetic)-- hold on,
16 McKitrick and Braverman. That's not part of this record, not
17 part of my decision, but actually stating on this tape at -- go
18 to 2:20 to save a little -- play the whole tape for a moment.

19 They were sitting in a room, being questioned by CNN,
20 and that was that nice lady in here. Don't go away counsel,
21 come on back here, you're going to be interested in this. And
22 they basically say on this tape the following, no word about
23 being sued. You want to listen to this? It's not a piece of
24 the evidence. We're going to type this in so all of you are
25 going to be patient, we're going to watch CNN for a moment.

1 Oh yeah, we're going to, this is going to be very
2 interesting.

3 **THE CLERK:** Judge, can I put it on --

4 **THE COURT:** Yeah, I want this on the screen. I want
5 to see this. Because McKitrick should be called in here to
6 verify this statement since it's technically hearsay, but he
7 and Braverman are sitting in the same room, saying we're afraid
8 of being sued. So Skip, they're afraid of being sued by you.

9 Now, I've questioned whether UCLA would sue them
10 because if UCLA is complicit in this, as I strongly suspect,
11 then there's no motivation for UCLA to sue the VA. They're not
12 an innocent party. So let's watch CNN for just a moment.

13 **THE CLERK:** That's on YouTube, Judge? It's on
14 YouTube?

15 **THE COURT:** Yeah. It's on YouTube.

16 Well actually, you have to go -- yeah, let's put this
17 up. So Skip, I think they feared Brentwood suing and decided
18 not to make the tough call. You have to --

19 **MR. MILLER:** Your Honor, for the record.

20 **THE COURT:** No, just a moment. We're going to do
21 this by the numbers now.

22 **MR. MILLER:** Okay.

23 **THE COURT:** I'm just wondering why we don't verify
24 this by calling in McKitrick.

25 Now, I'd like to quit -- I'd like to stop further

1 litigation between all of the parties. But by the same token,
2 let's take a look at the motivation apparently on tape. Now,
3 somebody might call the counsel for UCLA out of courtesy just
4 to know that we're discussing his client.

5 **(Pause)**

6 **THE COURT:** Okay, here we go.

7 **(Court confers with Clerk)**

8 **(Pause)**

9 **(Video played at 2:52 p.m.)**

10 "UNIDENTIFIED SPEAKER: The community said we don't
11 want Vietnam-disabled" --

12 **THE COURT:** No, blow that up.

13 "UNIDENTIFIED SPEAKER: -- vets out here. And so the
14 vets were kicked out.

15 "UNIDENTIFIED SPEAKER: 4,000 vets once lived
16 here" --

17 **THE COURT:** No. Go to about 2:18 or so.

18 "UNIDENTIFIED SPEAKER: -- roughly the same number of
19 homeless veterans in LA today. Late last night in an
20 LA courthouse -- Joshua Pettit served in Iraq, lived
21 for a year outside --

22 "UNIDENTIFIED SPEAKER: Are they going to build us
23 housing? But no, they don't want us here, bro. I
24 mean, I get it, but I don't care."

25 **THE COURT:** Well, let's just leave it there.

1 "UNIDENTIFIED SPEAKER: They can send us to war, we
2 can get these problems and you're not going to deal
3 with us? No, no.

4 "UNIDENTIFIED SPEAKER: Back in 2016, after a lawsuit
5 and pressure from veterans and advocates, the VA
6 promised to house homeless veterans here. When we
7 visited in March, more than 700 new units should have
8 been completed. Not one was complete. Zero.

9 "UNIDENTIFIED SPEAKER: They're all studio
10 apartments.

11 "UNIDENTIFIED SPEAKER: About 180 were under
12 construction, scheduled to open this fall. They're
13 not open.

14 "UNIDENTIFIED SPEAKER: And now we're being told next
15 year, January, February timeframe. So it's always
16 delays.

17 "UNIDENTIFIED SPEAKER: Back in 2016, an act of
18 Congress also decreed that leaseholders on this land
19 must principally benefit veterans.

20 "UNIDENTIFIED SPEAKER: What's the point of a law if
21 our own federal government's not going to follow it?
22 And then the end result of this is that people are
23 dying on the street. I mean, it's serious.

24 "UNIDENTIFIED SPEAKER: The VA privately signed a
25 lease amendment with UCLA, allowing a practice field.

1 "UNIDENTIFIED SPEAKER: If we were to say no to that,
2 they could have gone to a judge or somewhere.

3 "UNIDENTIFIED SPEAKER: The VA signed a new agreement
4 with an oil drilling company and another 10-year
5 lease with Brentwood School.

6 "UNIDENTIFIED SPEAKER: Back in March, VA brass told
7 me this.

8 "UNIDENTIFIED SPEAKER: So the arrangement with the
9 school is non-compliant. I'm sure if we terminated
10 the lease, they would take us to court over it.

11 "UNIDENTIFIED SPEAKER: So he agrees" --

12 **THE COURT:** Stop it.

13 "UNIDENTIFIED SPEAKER: -- with one key part of this
14 new lawsuit. Brentwood School's athletic" --

15 **THE COURT:** Just stop it.

16 **(Video stopped at 2:54 p.m.)**

17 **THE COURT:** Now, that's not part of our record.
18 That's not part of the findings. This is subsequent. I
19 understand that this is hearsay. Does anybody want to call
20 Mr. McKitrick in to verify this?

21 In other words, the motivation, Skip, out there may
22 be, and I haven't made a finding on that, but it may be that
23 they feared a lawsuit from Brentwood School specifically. Now,
24 I would hope that we could avoid the litigation. Do I have
25 your attention?

1 **MR. MILLER:** Brentwood School is not looking for --

2 **THE COURT:** Do I have your attention?

3 **MR. MILLER:** Yeah.

4 **THE COURT:** Okay. Because if they take a
5 contraposition, Skip, then I'm prepared, I think, from what I
6 understand from John Houston and going over these, what I think
7 I understand, because I don't have the actual, final, long
8 term, I think I would be inclined to find that this is the
9 predominant focus. And if I needed to intermix that, the
10 principal benefit to the veterans, and I'm going to be inclined
11 to approve this.

12 Now, what happens if the VA takes the position from
13 somebody who we don't know in Washington, DC, that they're
14 opposed to this? What would the Court do? I can either sit
15 here and ask the VA why they're taking that position, having
16 made those findings. I can take the position I wasn't going to
17 accept the agreement, or I could take the position, regardless
18 of the VA's position, that I was accepting the agreement.

19 We haven't gotten to that point yet. And I would
20 still like to know, although I don't know if Brad knows, who's
21 making this decision back there? Mr. Kuhn? You? Counsel?
22 You're here as the representative.

23 Walk over to the gentleman right there. I forgot his
24 name. No, next to you. Who's making the decision? In other
25 words, who's the wizard behind the curtain and why aren't they

1 here?

2 **MR. ROSENBERG:** Can I speak to that, Your Honor?

3 **THE COURT:** Yeah, please. This is frustrating.

4 **MR. ROSENBERG:** Brad Rosenberg from the Department of
5 Justice on behalf of the United States.

6 To answer some of the Court's questions, and there
7 are actually some other issues that I would like to flag as
8 well. As I've indicated previously, because this is a matter
9 in litigation, ultimate settlement authority lies with the
10 Department of Justice.

11 **THE COURT:** Right.

12 **MR. ROSENBERG:** And the Court can find those
13 regulations at, I believe it's 28 CFR Part 0, Subpart Y. It
14 depends on the nature of the approving authority depends on the
15 nature of the settlement agreement and the relief involved.

16 **THE COURT:** Right. But you will make that, Brad, in
17 conjunction with the VA. The DOJ absolutely has the final
18 authority. I understand that. But you're not going to act
19 without your client's acquiescence.

20 **MR. ROSENBERG:** I will flag, and the Court is correct
21 about that. The way the process typically works is the
22 Department of Justice attorneys, along with agency counsel, are
23 involved in settlement discussions and see if there is a deal
24 that can be worked out.

25 And then when you have a deal that the agency can

1 support, typically a memo is prepared, and that's sent up
2 through the chain, and ultimately there's either an approval or
3 there's not an approval.

4 We were provided with a copy of the current draft of
5 the long-form agreement last night. I don't know offhand
6 whether it reflects -- I don't think it reflects the issue that
7 the parties have raised this morning. I will note that I
8 received the draft literally as I was heading out of my house
9 on the way to the airport to come back here.

10 **THE COURT:** Right.

11 **MR. ROSENBERG:** But we have had an opportunity to
12 review it. And I'll note that there are some substantial
13 roadblocks that even before we could get to a formal approval
14 process, the government has some significant concerns about the
15 settlement agreement and where it stands right now.

16 **THE COURT:** Can you share that so we have a preview?

17 **MR. ROSENBERG:** Sure. I can walk through, and again,
18 this is without prejudice to identifying additional concerns.
19 I would say the biggest concern right now is VA shares, I
20 think, all of the party's interests in ensuring that the money
21 stays local. We want that money to be used on the West L.A.
22 campus to support veterans.

23 However, the government's view is that any revenue
24 from the lease that would ultimately be the product of the
25 settlement agreement, be it lease revenues or donations, should

1 go to VA and not to third parties. It should be characterized
2 as lease revenue, so it goes into the lease revenue fund and
3 then can be used to support veterans.

4 And this Court actually raised that question just a
5 few minutes ago when it asked about the \$2 million, which
6 currently is framed in the settlement agreement as a donation.
7 In the government's view, if it's an upfront payment, it
8 probably could be characterized as a lease revenue of some
9 sort. It could go into the lease revenue fund, and then money
10 in the lease revenue fund can be used to build temporary
11 housing or procure temporary housing of the type that we've
12 spent much of this afternoon already discussing.

13 **THE COURT:** Okay.

14 **MR. ROSENBERG:** And we also think, and I want to be
15 clear about this, that it would be unlawful and certainly odd
16 to have proceeds that are derived from federal property being
17 diverted to third parties. And right now in this agreement, we
18 don't even know who those third parties are. There are blanks
19 in the agreement that were shared with us.

20 And so it's impossible for us to opine on the
21 appropriateness of any of those third parties. But just as a
22 general matter, for money that is derived from federal property
23 to be sent to a third party, we think is unlawful and
24 inconsistent with the West L.A. Leasing Act.

25 And it's certainly ironic that that Leasing Act,

1 which forms the basis of plaintiffs' claims, whether they're
2 brought under the APA or they're fiduciary claims, would then
3 be set aside for purposes of this proposed settlement to allow
4 payments from the federal property to be used to support third
5 parties that right now we don't know anything about.

6 **THE COURT:** Okay. Let me ask you both some questions
7 then.

8 You can imagine Brentwood's position, and I'm
9 speculating, but they, in stepping forward from their
10 viewpoint, would, of course, like to be given credit for that
11 effort locally. And before it was argued that when this money
12 went into a fund, the argument was we don't know in this
13 national fund how this money would be distributed. And, in
14 fact, we don't even know that if this 3 plus \$2 million went
15 into the fund, that there's any guarantee of that 3 or \$2
16 million or \$5 million ever coming back locally. Because that's
17 controlled by somebody in a national fund, making some decision
18 that may not benefit the local community.

19 If I have the power, and I'm not sure I do, I would
20 love to override that and make certain that funds are spent
21 locally. But if you check back, apparently there was some
22 concern about \$40 million in the early 2000s. It came out in
23 some brief someplace, or not a brief, but someplace, about this
24 commingling of funds that the VA couldn't keep track of.

25 Now, that's not you folks. I want it absolutely

1 clear that the parties in front of the Court have been ethical.
2 No reflection on you. But there's been a constant concern --
3 strike that, a historic concern about this commingling, because
4 once it goes in, nobody can account for it. Nobody knows that
5 those funds, where they're going, to Missouri, to Alabama, to
6 wherever, or the constant refrain, we don't have enough money.

7 Now, Skip, what I'm worried about is that you step
8 forward in good faith that this money never comes back to some
9 cause that you're a champion of in terms of trying to help
10 veterans. Do any of you have a solution to that? I mean, can
11 we reach an agreement that this money is going to specifically
12 come back, or a like sum of \$5 million? Can it go into the VA
13 coffers with a guarantee that this money and \$5 million come
14 back?

15 And I think the reflection is going to be, Judge, we
16 can't tell you until we talk to somebody in Washington, DC, and
17 after we spend that amount of time talking to somebody in
18 Washington, DC, we'll still be here a month from now. That's
19 why I think I deserve the courtesy of having decision-makers in
20 this room like you are, Skip, on behalf of Brentwood, like the
21 plaintiffs are, and I'm not getting that.

22 **MR. ROSENBERG:** Your Honor, under the Leasing Act, as
23 amended, if this is a lease and the revenues identified in any
24 lease that might be executed pursuant to a settlement agreement
25 are characterized as lease revenues, be it the \$5 million

1 donation identified in the current draft agreement or the
2 \$650,000 that I believe is in a different paragraph, you know,
3 paragraph 4.2 of the current agreement. If they're
4 characterized as lease revenues, it goes into the lease revenue
5 fund, it stays in West L.A., and it's managed here in West L.A.

6 **THE COURT:** I'm concerned because I've always thought
7 of this as being a shared facilities agreement, and there's a
8 tremendous difference between a shared usage -- well,
9 tremendous. There's a difference between shared usage and
10 lease, and we're not simply going from one lease to another,
11 and so I thought this would be a term of one year because this
12 would be a shared facilities agreement. That's what it really
13 is.

14 **MR. SILBERFELD:** So the concept is it is a shared
15 facilities use agreement.

16 **THE COURT:** Absolutely.

17 **MR. SILBERFELD:** It is a one-year term.

18 **THE COURT:** Absolutely.

19 **MR. SILBERFELD:** But to address what counsel just
20 said, and this is a bit of an aside but an important one, the
21 VA has, in my judgment, forfeited the right to do anything of a
22 veteran-focused nature other than to build the housing that is
23 ongoing on the property.

24 The Court will recall that they had a fund. I forget
25 what it was called, like a forfeiture fund of like \$5 million,

1 and there was a plan in 2023 to build 46 housing units, a
2 rather modest proposal, and they couldn't accomplish that.
3 They've accomplished nothing other than the sheds that are out
4 there to help with this homelessness crisis that we face.

5 And it took this lawsuit to get some of the changes
6 made that we've talked about, which will hopefully in time
7 improve the situation.

8 So as I think about this, going forward, I would not
9 spend any money in the hands of VA to try to improve the lot of
10 the homeless or the veterans on this campus by enriching their
11 experience there, because in my judgment, they forfeited the
12 right to do that when they failed to do it for the last 5, 10,
13 20, 30, 40, 50 years.

14 And I think the way to do this now, if there's to be
15 an agreement with Brentwood, and we still have that when is the
16 payment made question to answer, I don't want to lose sight of
17 that, but I think the way to move forward now with an agreement
18 with Brentwood, if there is to be one, is to have the Court and
19 the Court's monitor make decisions about what gets done with
20 this money, not the VA, not in a lease revenue fund that the
21 money will go in, it will never come back out. It will never
22 come back out. The time to make a change --

23 **THE COURT:** Or if it does, it will come out too
24 slowly. That's my concern. In other words, if this is an
25 emergency and the VA won't pay, or in a sense, and not you

1 folks, once again, I do not want this record to reflect Cody
2 and all of you folks, okay, Brad.

3 I'm worried about getting slow-walked by bureaucracy.

4 **MR. SILBERFELD:** Yeah. Which is why --

5 **THE COURT:** This has taken so long that unless we cut
6 through this somehow, we'll still be here dealing with some
7 unknown person in either the VA or the Justice Department who
8 isn't in Court making these calls. With respect to Brad, I
9 don't think he has that authority.

10 **MR. SILBERFELD:** So that's the plaintiffs' point of
11 view.

12 **THE COURT:** Okay. I'm trying to avoid the litigation
13 because if I declined Brentwood, which I'm trying not to do,
14 Skip, because the predominant focus does seem to be now on the
15 veterans, from what I know from John Houston, okay, and I
16 haven't seen the long form yet, or I've seen -- I've heard
17 portions of it, then this is a substantial step forward.

18 And once again, I repeat, I don't think the veterans
19 will ever have access to these kinds of facilities in the
20 future because from the VA's position, why would they build a
21 swimming pool, you know, a track, et cetera. So I commend you.

22 How do we get around this? In other words, if we're
23 going to go up on appeal eventually, then maybe this is where
24 we go. Maybe this is the line that gets drawn and the Court
25 simply makes this decision.

1 Now the other thing is I'm dealing with an agency,
2 and once again, not Brad and Cody, let me make that clear, who
3 not only can get angry but can slow walk, bureaucracy. And
4 therefore, I would hope that if we have \$3 million and maybe 30
5 to 45 units, that the VA would be stepping up also at the same
6 time as you look at two lots, one the acre and a half and the
7 other that back lot with some additional units because we've
8 got infrastructure out there, it's cost effective, but I can
9 have somebody in DC sitting there piqued by this quite frankly
10 and making decisions behind the curtain who haven't even been
11 here or heard this record.

12 So where do we go from here besides a recess in just
13 a moment.

14 **MR. MILLER:** I'll tell you what I think, Your Honor.
15 Brentwood School wants this money to benefit -- principally
16 benefit veterans. It's what the law requires and that's what
17 we want. So that's simple and that's easy. I don't understand
18 why the plaintiffs and the VA can't get together and decide
19 what's best for the veterans and how to spend this money. It
20 shouldn't be that difficult. That's my personal take on it.

21 **THE COURT:** Folks, I'd really like to avoid what I'm
22 going to speculate would be increased litigation in the future,
23 and that is if the court can't get an accord between the two of
24 you and I am back in the position of Brentwood and not
25 accepting this between you and the plaintiffs, I can pretty

1 well foresee without too much speculation that Brentwood's
2 going to sue the VA. I've tried to figure out if UCLA would,
3 but pretty collusive on their part. So now that gets that gets
4 a lot more litigation, doesn't it? All of which we're trying
5 to avoid.

6 So who's making the decision? Mayor Garland? I'm
7 not demanding he come out here, but who is making the decision
8 back there? Who are we talking to? Do we have a name? Do we
9 even have somebody that we consult?

10 Okay. I'm going to take a 15-minute recess. We've
11 been in session long enough. We'll be back in 15 minutes.

12 **(Recessed at 3:11 p.m.; reconvened at 4:14 p.m.)**

13 **THE COURT:** Okay. We're back in session. I know
14 counsel have been talking to each other. I'm not aware of your
15 conversation, so I'll have any counsel lead off with their
16 thoughts.

17 **MR. MILLER:** I'll start and then I'll turn it over to
18 whoever else wants to. We've been --

19 **THE COURT:** Can you move that just a little closer?
20 Thank you.

21 **MR. MILLER:** We've been meeting, conferring,
22 consulting, I suggested one compromise. Brentwood wants a
23 consensual settlement, a three way settlement, no more
24 litigation.

25 **THE COURT:** A three way settlement including the VA?

1 **MR. MILLER:** Including the VA, including the
2 plaintiffs, and including Brentwood. That's by far and away
3 our first choice. Okay.

4 We want to spend our time, you know, providing
5 services and working through this agreement --

6 **THE COURT:** Sure.

7 **MR. MILLER:** -- and making it beneficial for the
8 veterans and for our students.

9 So the suggestion I have is, I want to say this
10 right, there isn't a lot of agreement between the veterans
11 plaintiffs and the VA. So -- and I've been sitting in this
12 courtroom now for several days and getting to know everybody.
13 So my suggestion was, with respect to the Brentwood money, the
14 Brentwood 5 million that Judge Carter decide, ultimately be the
15 decisionmaker on how that money is spent on the West LA campus.

16 Now, there are legal parameters and legal issues with
17 that the VA counsel, the DOJ counsel is going to explore. I'm
18 going to send them an e-mail with a general proposal, you know,
19 I don't know the DOJ rules and structures that way, I'm not a
20 government lawyer obviously. But they'll run it up the flag
21 pole and look at it.

22 I've discussed it with Mr. Silberfeld. He seems
23 amenable in general to, I'll let him speak for himself, to
24 Judge Carter deciding how the Brentwood money is spent on the
25 VA -- on the West LA VA campus.

1 So that's the compromise. And everything else in the
2 agreement has pretty much been agreed to.

3 **THE COURT:** Okay.

4 **MR. MILLER:** So that's one suggestion that's out
5 there.

6 **THE COURT:** Okay. Thank you. Do you have anything
7 to add also as counsel, are you comfortable?

8 **MR. SANDLER:** Thank you, Your Honor, I'll wait.

9 **THE COURT:** I'll hear from the parties then.

10 **MR. SILBERFELD:** So the issue, Your Honor, has to do
11 with, and Mr. Miller didn't say this part of it, his idea
12 depends upon VA and HUD agreeing not to contest the settlement.
13 They would have to consent to it in order for this plan to work
14 and we want to give counsel an opportunity obviously to get
15 that authority if they can get it, perhaps as soon as by the
16 end of this week hopefully.

17 **THE COURT:** No, no, we're in continuous session now.

18 **MR. SILBERFELD:** All right.

19 **THE COURT:** I hate to be the downer on this, but I
20 will be sitting here each and every day.

21 **MR. SILBERFELD:** That's fine.

22 From the discussion we had and again I'll let
23 Mr. Rosenberg speak for himself, my understanding is that the -
24 - none of that controversy, that idea is that VA wants those
25 proceeds in its funds and its accounts. That's not something

1 I'm prepared to agree to for all the reasons stated and for a
2 month's worth of trial before that.

3 So that's the rub there, with respect to that idea.
4 I had an alternative idea which Mr. Miller, on behalf of his
5 client is not yet prepared to agree to, nor is the Government
6 by the way, and that is to avoid the entire class settlement
7 preliminary approval and fairness hearing process and instead
8 take the terms of the Brentwood settlement, put them into an
9 injunction, which we're prepared to circulate to everybody
10 within a day or so and come back on Friday and have a hearing
11 where we ask the Court to enter that injunction.

12 Allow the Government their opportunity to object and
13 be heard fully and if the Court decides to enter that
14 injunction, that will have the same force and effect as a
15 settlement agreement but it will happen this week.

16 **THE COURT:** Which would then preclude the agreement
17 that Mr. Miller is seeking.

18 **MR. SILBERFELD:** Correct.

19 **THE COURT:** I see.

20 **MR. SILBERFELD:** And it would save probably three,
21 four, maybe five months' worth of time for all the notice
22 periods involved in preliminary approval and a fairness
23 hearing. We would then submit the final version of the final
24 judgment and ask the Court to enter that judgment again on
25 Friday, which would start the Government's appeal clock running

1 and they would then have to make a decision within 60 days.
2 And it would shorten the time when that money is paid by
3 Brentwood, whether it's to a fund that, you know, the Court
4 creates or some other fund. It would shorten that time from
5 probably five months to two.

6 And so the idea -- and I'd be happy to share the
7 authority for this proposition with both the monitor and all
8 the parties and Brentwood. But it seems to us that if we're
9 getting to exactly the same place, which is what the objective
10 is, we're not changing any of the terms of the proposed
11 settlement with Brentwood, but we're just shortcutting months
12 and months of delay, that that would be an idea way of
13 proceeding.

14 The only other thing and I hate to change subjects, I
15 don't know if the Court is aware, UCLA filed a notice of appeal
16 this afternoon. And we have a brief due on Friday on the very
17 motion that they filed last Thursday night at midnight for
18 Friday hearing.

19 **THE COURT:** Well, first of all, how can they appeal
20 if procedurally they haven't complied with the procedure for a
21 preliminary injunction?

22 **MR. SILBERFELD:** I don't know. I just know that they
23 filed a notice of appeal this afternoon. And because we want
24 to focus on Brentwood and many other things that are important
25 about getting this case moving, we would like to be relieved of

1 the obligation to file a brief on Friday in connection with
2 what is now a motion that's probably moot and I would ask the
3 Court to order that motion off calendar, in light of the notice
4 of appeal.

5 **THE COURT:** Well, first your position -- I think it's
6 well taken that the UCLA didn't file the correct -- follow the
7 correct procedure.

8 **MR. SILBERFELD:** Correct.

9 **THE COURT:** You're entitled not only to have notice,
10 you're entitled to respond and the Court's entitled with a
11 motion for preliminary injunction to set that for hearing.

12 I don't see how they presently have the ability to
13 appeal, but I guess you could -- well, they've taken their
14 position.

15 **MR. SILBERFELD:** Right.

16 **THE COURT:** Let me hear from the Government if they
17 care to share and --

18 **MR. ROSENBERG:** Brad Rosenberg from the Department of
19 Justice on behalf of the federal defendants.

20 There are a couple of potential paths forward. The
21 challenge that I face, and I think as the Court has
22 acknowledged --

23 **THE COURT:** Yeah.

24 **MR. ROSENBERG:** -- is that I'm not a decision maker.

25 **THE COURT:** Right.

1 **MR. ROSENBERG:** But Mr. Miller is committed to
2 putting something in writing that I can forward on to, you
3 know, the decision makers to see if it's a viable -- if
4 Brentwood's proposal is a viable path forward. I'm not sure
5 that it is.

6 But we're happy to explore that. We think it's more
7 productive as Mr. Miller is prepared to do, to have something
8 in writing that people can actually look at, think about and
9 determine whether this is something that's worthwhile to
10 pursue.

11 And the same goes to Mr. Silberfeld's proposal to
12 have the Court enter an injunction over the Government's
13 objections. And that is in some respects, you know, what has
14 been happening, or similar to what has been happening over the
15 past few days with the emergency orders that the Court has
16 entered. But we need to consider whether that also presents a
17 viable path forward.

18 But we do need a little bit of time and space to be
19 able to digest some of this information and be able to come up
20 with an intelligent response, recognizing that the Court has
21 ordered a continuous session, we will, of course, be prepared,
22 you know, to be here as necessary every day.

23 **THE COURT:** Okay. All right. Craig, do you have any
24 comments? You' e been talking to the parties and I haven't.
25 If you can -- if you have any comments, this would be a time to

1 speak, if not, that's your prerogative.

2 **MR. FLIGOR:** Thank you, Judge. Craig Fligor.

3 As I understand it, the main dispute between the
4 parties is where the \$5 million goes and I understand from
5 Mr. Rosenberg that the VA believes that it's unlawful or
6 potentially unlawful for that to go anywhere except the VA, but
7 they're exploring this new proposal or will explore the new
8 proposal.

9 Plaintiffs' counsel has separately represented to me
10 that they believe they have authority that it would be lawful
11 for this money not to go directly to the VA and instead go to a
12 third party.

13 So my ask of the parties would be that they submit
14 that authority. It can be informally to John and myself, so
15 that we can help evaluate for the Court who's right. And this
16 may help bridge the gap, bridge the divide in between the
17 parties in understanding what authority is out there, where
18 this money can actually go and that might help bridge the gap.

19 **MR. MILLER:** I just want to clarify one point. It's
20 not so much where the money goes, I mean, the money has to go
21 where it's supposed to go. If there's a particular legal place
22 for it, the -- my point, my compromise proposal is that Your
23 Honor, Judge Carter make the decision on how that money is
24 spent on the West LA VA campus, wherever it goes.

25 **THE COURT:** Okay. All right. And the VA may be

1 opposed to that, Mr. Miller, because they may still perceive
2 it's going outside their traditional leasing arrangement.

3 **MR. MILLER:** Well, I hope not.

4 **THE COURT:** Well, go over and ask him.

5 **MR. MILLER:** He doesn't have final say.

6 **THE COURT:** Well, that's why --

7 **MR. ROSENBERG:** I can speak to that and I mean --
8 again, Brad Rosenberg from the Justice Department.

9 I think it is unlikely that that is an agreement that
10 the Government would be able to reach, but we are willing to
11 explore it and need something in writing to be able to make a
12 definitive decision. It is very difficult to be able to
13 discuss complicated concepts on the fly in open court and so
14 that's why we've asked for something in writing, so we can look
15 at it, evaluate it and consider whether it's something that is
16 worth pursuing.

17 Perhaps there's an issue that we're missing, but I am
18 skeptical that that's something that the Government would
19 ultimately be able to agree to.

20 I also just want to be clear regarding plaintiffs'
21 proposal that as with many of these proceedings and I think the
22 Court has been clear about this, we would of course, object to
23 the entry of relief that the Court might consider pursuant to
24 plaintiffs' proposal, but we would want at least an opportunity
25 to make our record on that.

1 **THE COURT:** Can I suggest that we at least get the
2 long form agreement that you believe you've tentatively reached
3 into a form for presentation to DOJ?

4 **MR. SANDLER:** It went sent yesterday.

5 **THE COURT:** Oh, I don't know that.

6 **MR. SANDLER:** Yes.

7 **THE COURT:** Is it final from your perspective? In
8 other words, what else needs to be done because I don't know
9 that the DOJ -- they haven't represented to me that it's in a
10 final form subject to submission back to --

11 **MR. SANDLER:** It's darn close, Your Honor.

12 **THE COURT:** Pardon me?

13 **MR. SANDLER:** It's darn close, the material --

14 **THE COURT:** No, hold on, darn close.

15 **MR. SANDLER:** -- terms -- yes.

16 **THE COURT:** The parties, it's not final.

17 **MR. SANDLER:** The material terms are final.

18 **THE COURT:** Yeah, but I haven't seen that. They've
19 got to have something in writing that's final from your
20 perspective with Brentwood and the plaintiffs. I think that's
21 only fair that we get that done.

22 **MR. SANDLER:** We'll have that to them tomorrow, Your
23 Honor.

24 **THE COURT:** Okay. I know you want to go home and I
25 know you want to set different dates and I apologize to you,

1 but not a big apology. Nothing's going to get done if we cease
2 these proceedings unfortunately. And because -- well. My
3 impression is nothing will get done.

4 We need to reach, you know, long form, have Brad make
5 those calls. I don't want a future where we continue this to
6 Friday and then there's another request for another Friday, et
7 cetera. If the Court deems this is an emergency, which I have,
8 this is an emergency. It's as simple as that. It demands our
9 attention every single day until we reach an agreement or an
10 impasse. And therefore, I don't know who's making these
11 decisions back in DOJ, but hopefully they're alert to your
12 concerns out here, because here is where you will be.

13 I have a matter with counsel tonight on some
14 immigration matters that they've been patiently waiting to hear
15 this evening and there's another hearing at 9 o'clock I
16 believe, correct? Carla? Which mean --

17 THE CLERK: Which --

18 **THE COURT:** Department 6A on LA Alliance which is not
19 connected with you. And so I would suggest that we reconvene
20 your matter at 10 o'clock tomorrow, so you're not
21 inconvenienced and all parties will be ordered back.

22 In the meantime, I'm prepared to submit into evidence
23 this video played on CNN or the officials, Mr. McKendrick and
24 Mr. Braverman made comments as to having a fear of being sued
25 while they continued to maintain these leases with Brentwood

1 and UCLA that are now void.

2 I believe this may be relevant and not in terms of
3 the original findings, but to possibly show this fear of
4 litigation is a motivator. And it's certainly apparently was a
5 disagreement with the Office of Inspector General's findings.
6 It is though at the present time is hearsay. And I've got two
7 ways to go on that.

8 First, is to require the testimony of McKittrick and
9 Braverman concerning these statements made to continue not to
10 take action concerning the Office of the Inspector General's
11 report.

12 There's another option, you can simply stipulate to
13 these statements that these OIG reports during the trial, it
14 was represented were well known to the VA and if the VA took
15 the position that they were going to just disregard these
16 reports and sat with the status quo for years, saying simply
17 that they disagreed with the Officer of Inspector General, then
18 there may be a fear of being sued in light of their own
19 admissions that these leases, quote, the arrangement with the
20 VA or the arrangement with the school is non-compliant. And I
21 looked at that tape again to get the actual wording.

22 And so I'm hopeful that this doesn't break out in
23 further litigation. And that we have a lawsuit in the present
24 condition, regardless of the appeals, based on the Court's
25 ruling, but I'm concerned unless we reach an accommodation,

1 there could be future litigation. And I think any of us could
2 easily speculate that that would be Brentwood, in a sense,
3 suing the VA. If we can avoid that, I think we need to
4 remember that the predominant focus is for the veterans in this
5 case. And any delay concerning this emergency is going to only
6 hurting our veterans on the streets.

7 So we'll see you tomorrow at 10 o'clock. Goodnight.

8 **MR. SILBERFELD:** Your Honor, one other thing about
9 UCLA and that brief that's due Friday, can that motion go off
10 calendar in light of the notice of appeal and can we be
11 relieved of the obligation of filing a brief in response? It
12 seems moot at this point.

13 **THE COURT:** I'm not sure of that and I may give you
14 more time because you're under a lot of pressure right now in
15 terms of drafting. But I'm not certain that UCLA has standing
16 to take this appeal. And therefore, I think you have the right
17 to respond to UCLA and I don't need to have that Friday. But I
18 don't think I'm going to relieve you of that obligation.

19 **MR. SILBERFELD:** All right.

20 **THE COURT:** I think that this deserves a response
21 quite frankly by the plaintiffs and your position, you've made
22 that known ad nauseum, but many times that these were OIG
23 reports that they were aware of, that --

24 **MR. SILBERFELD:** Can I just propose the 18th.

25 **THE COURT:** -- even their own 30(b)(6) witness stated

1 that categorically --

2 **MR. SILBERFELD:** Sure.

3 **THE COURT:** -- that this was not for the predominant
4 focus --

5 **MR. SILBERFELD:** Right.

6 **THE COURT:** -- of the veterans. And you've got this
7 collusion and complicity, quite frankly, in holding back news
8 to the public and the press and FOIA requests and you've got
9 this reaching all the way from the VA in a discussion, over to
10 the Chancellor's Office.

11 **MR. SILBERFELD:** Right.

12 **THE COURT:** I would imagine that the Circuit is --
13 well, I can't imagine, but whatever the Circuit decides, of
14 course, this Court will obey immediately. But there's a good
15 chance that this is not a procedural -- that this appeal is
16 procedure defective.

17 **MR. SILBERFELD:** Right.

18 **THE COURT:** And if so, you need to reply at some
19 point.

20 **MR. SILBERFELD:** Right. May we have till the 18th to
21 do that?

22 **THE COURT:** Absolutely. I'll make this to the 18th
23 as a courtesy. I know your hands are full.

24 **MR. SILBERFELD:** Your Honor --

25 **THE COURT:** Let me finish by just complimenting your

1 folks. Skip, I want you to hear this closely and Brentwood.

2 You've stepped up repeatedly along with the Chair,
3 thank you, in a good faith effort to try to come to the table
4 with something meaningful. You need to hear that the Court is
5 very complimentary of those efforts. I hope that this works
6 out. I hope that --

7 **MR. MILLER:** Thank you.

8 **THE COURT:** -- this works out. I hope that this
9 doesn't end up in further litigation, but I want to recognize
10 that all parties do perceive that this is the predominant focus
11 here is really for the veterans.

12 And this is an opportunity, quite frankly, for
13 facilities that I don't think the veterans would ever have
14 because I think that Brad and the VA would take the position
15 that they're not building swimming pools, you're not building
16 golf courses, that your -- a need for housing and so once those
17 are lost, that would be the tragedy of this.

18 Now, anything further? Otherwise 10 o'clock
19 tomorrow? And we'll be up --

20 **MR. SANDLER:** Just for a moment, please, Your Honor.
21 Brentwood's Chairman of the Board, Adam Cohn has been
22 here.

23 **THE COURT:** I'm sorry?

24 **MR. SANDLER:** Our Chairman has been here, Your Honor,
25 every day. He's unable to be here --

1 **THE COURT:** That's fine. You've been very courteous.
2 I appreciate your attendance. They can contact you by phone
3 tomorrow. But we're sitting here until we have some answers
4 all the way across, otherwise we'll be back next week, we'll be
5 back next week, we'll be back next week, we'll be back next
6 week, on and on and on.

7 **MR. SANDLER:** And I've been assured you'll be
8 available Friday.

9 **THE COURT:** Yeah, fair enough.

10 **MR. SANDLER:** Just in case he has --

11 **THE COURT:** Thank you very much for your courtesy.

12 **MR. GUADIANA:** Your Honor, you'd -- Ernest Guadiana
13 for Bridgeland Resources. You had mentioned at Friday's
14 hearing that you wanted the weekend to consider our motion to
15 stay, so I was just wondering if you --

16 **THE COURT:** Yeah, let me ask you something --

17 **MR. GUADIANA:** -- have any position?

18 **THE COURT:** No, let me ask you something. Yeah, let
19 me ask you something.

20 You've represented a couple of times and I've been
21 rethinking some of the things you've said that Sawtel 2 is not
22 producing oil at the present time; is that correct?

23 **MR. GUADIANA:** It is down right now, yes, Your Honor.

24 **THE COURT:** Well, let me say that again, no oil's
25 coming out of the ground, it's that simple, Sawtel 2?

1 **MR. GUADIANA:** Correct.

2 **THE COURT:** Is the real concern on your part that
3 it's the capping of Sawtel 2, in other words, it's enough for
4 the Court to order capping and then you have to go through a
5 process to cap and I'm wondering if a better position would be
6 if you're representing that oil's not being taken out of Sawtel
7 2 then I might be in a position of not ordering the actual
8 capping that's more expensive, so you can take this up on
9 appeal, and if the Court's wrong, then I haven't caused an
10 unnecessary encumbrance to you.

11 And so you mentioned that you have an intent that was
12 filed, and I think if I have your representation --

13 **MR. GUADIANA:** No, Your Honor, the notice of intent
14 has not been filed.

15 **THE COURT:** -- that no -- pardon me?

16 **MR. GUADIANA:** It is being prepared. The notice of
17 intent is being prepared.

18 **THE COURT:** Okay. Prepared. If your representation
19 is that Sawtel 2 isn't bringing oil up out of the ground,
20 however you want to term it, then I don't know any reason that
21 I would actually cause you capping the well, if no oil is being
22 produced, because in case the Circuit overturns me, why am I
23 inflicting that additional cost on you. Why don't you consult
24 with your client, come back tomorrow.

25 **MR. GUADIANA:** Will do, Your Honor.

1 **THE COURT:** Okay?

2 **MR. GUADIANA:** Yes.

3 **THE COURT:** And if so, perhaps I'm willing to modify
4 that order, as long as Sawtel 2 isn't producing. Fair enough?

5 **MR. GUADIANA:** Fair enough, Your Honor.

6 **THE COURT:** Okay. Anything else?

7 **MR. MILLER:** No, Your Honor.

8 **THE COURT:** Okay. Good night.

9 **(Proceedings concluded at 4:38 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



October 8, 2024

Signed

Dated

TONI HUDSON, TRANSCRIBER