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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TIGERS LIMITED AND TIGERS)	
(USA) GLOBAL LOGISTICS,)	
INC.,)	
)	
Plaintiffs,)	Case No. 1:15-cv-947
)	Alexandria, Virginia
v.)	
)	May 17, 2016
TAMERLANE GLOBAL SERVICES,)	10:04 a.m.
ARTEMIS GLOBAL, INC., AND)	
JAMES M. O'BRIEN,)	
)	
Defendants.)	

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE
AND A JURY

APPEARANCES:

For the Plaintiffs: Katherine L. McKnight, Esq.
John C. McIlwee, Esq.

For the Defendants: Glenn H. Silver, Esq.
Erik B. Lawson, Esq.

Court Reporter: Tracy L. Westfall, RPR, CMRS, CCR

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 THE CLERK: Civil action 2015-947, *Tigers Limited and*
3 *Tigers (USA) Global Logistics, Inc. v. Tamerlane Global*
4 *Services, Artemis Global, Inc., and James O'Brien.*

5 MS. MCKNIGHT: Good morning, Your Honor. Kate McKnight
6 from BakerHostetler. With me is John McIlwee, my colleague in
7 our Chicago office. He's admitted *pro hac vice*.

8 Also with me at counsel's table are our clients, the
9 president of Tigers, Sabastian Tschackert, and Mark Bongean.

10 THE COURT: Good morning.

11 MR. SILVER: Good morning, Your Honor. Glenn Silver of
12 Silver & Brown appearing for the defendants, Tamerlane Global
13 Services, Artemis Global, Inc., and James O'Brien. With me is
14 my associate, Erik Lawson.

15 And sitting at counsel table is Jim O'Brien and Candice
16 Kennedy, who are the representatives of the two corporate
17 defendants.

18 THE COURT: All right. Good morning.

19 We have two motions in limine. Who wants to go first?

20 MR. SILVER: Your Honor, Mr. Lawson is going to handle
21 the motions in limine for our side.

22 THE COURT: All right.

23 MR. LAWSON: Good morning, Your Honor.

24 If you'll recall, this complaint was a breach of
25 contract claim along with a bunch of tort counts. The counts

1 for fraud, unjust enrichment, conversion, breach of implied
2 covenant of good faith and fair dealing, and declaratory
3 judgment were dismissed on our 12(c) motion after the close of
4 discovery, which leaves us with a sole breach of contract
5 action.

6 I think in order to address these motions in limine, we
7 need to first turn to the complaint. And if we direct your
8 attention to the first and only count of the complaint on
9 page 7, it is a breach of contract action against Tamerlane and
10 Artemis. There's no claim remaining against Jim O'Brien
11 personally.

12 The facts concerning the breach of contract as alleged
13 in the complaint in Count 1 are that one logistics move from
14 Afghanistan to Pakistan wasn't completed under an agency
15 agreement between -- signed by Tigers -- between Tigers Limited
16 and Tamerlane and signed by Tigers Global, which is one --
17 between the two plaintiffs.

18 Artemis is not a party to the contract. Instead, there
19 is a single allegation of background fact in paragraph 1 which
20 mentions an alterego theory of imputing liability between
21 Tamerlane and Artemis, but the grounds for that appears to be
22 the same fraud that was dismissed under the 12(c) motion.

23 Our motion in limine is focused on the prevention of
24 use of prejudicial character evidence against Jim O'Brien to
25 poison the well and confuse the issue away from the simple

1 breach of contract by attacking him personally. We're seeking
2 to prevent the use of five categories of evidence.

3 The first is a conviction for issuing a bad check in
4 1993 when Mr. O'Brien was 19 years old. That's greater than ten
5 years ago, and it should be excluded.

6 The second is discharge from the Army for failing to
7 report to his post when he was 18 years old. That would be
8 specific character evidence -- specific extrinsic evidence
9 regarding something that has nothing to do with truthfulness or
10 falsity.

11 There's a reckless driving conviction in the spring of
12 2012. In general, all of this, we believe, is irrelevant.

13 THE COURT: All right. What else?

14 MR. LAWSON: There's also evidence that Artemis and
15 Tamerlane were debarred last year. Specifically in the
16 opposition, they've attached to the -- a letter of debarment
17 from an attorney working for the U.S. Air Force, which is a
18 government agency that Artemis and Tamerlane never did business
19 with. They've claimed in their opposition that they want to use
20 it to impeach Jim O'Brien to attack his character for
21 truthfulness.

22 But the problem is is that the nature of the debarment
23 letter is such that it's talking about the relationship between
24 Jim O'Brien and Artemis and Tamerlane and is saying that under
25 the debarment rules, simply being affiliated with one another is

1 enough to say if one is debarred, all are debarred.

2 So it really has nothing to do with fraud. It has
3 nothing to do with alterego or a sham or a purpose, a specific
4 purpose related to this case in defrauding anyone or defrauding
5 anyone at all.

6 THE COURT: All right. I've got it. Is there anything
7 else?

8 MR. LAWSON: Their memorandum only addresses the
9 debarment proceedings, Your Honor.

10 THE COURT: Let me hear from them then. Maybe they're
11 not going to use any of it.

12 MR. LAWSON: Thank you, Your Honor.

13 MS. MCKNIGHT: Thank you, Your Honor. I'll address a
14 few points that counsel just raised.

15 First of all, credibility of a witness in a case is
16 always an issue. Whatever the complaint says, if there is going
17 to be a witness on the stand, their credibility is an issue.
18 Not only that, there is a specific Federal Rule of Evidence on
19 this issue allowing for this type of evidence to be admitted.

20 That rule is 608(b). It says that specific instances
21 of conduct may be admitted in cross-examination and they may be
22 allowed -- they may be inquired into if they are probative of
23 the character of untruthfulness of a witness.

24 That's the situation we have here with these debarment
25 letters.

1 Now, he mentioned categories of evidence. As we noted
2 in our papers, there are certain types of evidence that we're
3 not interested in raising with the jury. For example, we don't
4 intend to explore Mr. O'Brien's bad check. But one
5 representation that counsel made to you was that the discharge
6 from the Army has nothing to do with truthfulness. In fact,
7 that was a basis for the debarment.

8 The U.S. Army found that Mr. O'Brien had been had lied
9 in his application, online application, indicating that he had
10 been discharged honorably. He had not been discharged
11 honorably. That was one of the reasons that the U.S. Army found
12 that his lies, his deceit, merited debarment.

13 Not only that, it's not just Mr. O'Brien being
14 debarred. It's his two companies who are also defendants in
15 this matter, Tamerlane and Artemis.

16 Now, counsel mentioned that this was a letter -- a
17 letter from the Air Force and that there are no contracts with
18 the Air Force. The debarment is government-wide for three
19 years. No matter where the contract comes from, it's
20 government-wide and the debarment letters make that clear.

21 Another point I would like to make, misconduct is at
22 issue in this contract. Now, let me step back. We believe that
23 this evidence may be admitted under Federal Rule 608(b). We
24 also believe that if counsel for defendant requires, a limiting
25 instruction would be proper for how to limit the use of that

1 evidence.

2 If limiting instructions have any value, they have a
3 value in this instance of focusing the jury on why this piece of
4 evidence is being entered. Again, it has to do with the
5 credibility of Mr. O'Brien to testify, not only for himself, but
6 for his company.

7 THE COURT: All right. I understand your position.

8 I'm going to grant the motion as to this bad check and
9 reckless driving, and would grant it as well to just simply the
10 admission of being AWOL. However, I'll deny it as to the
11 debarment. And if what's represented to me is some
12 untruthfulness was a cause of the disbarment, I'll see. I'm
13 going to rule on this, as far as the debarment is concerned, I'm
14 going to rule on that as I hear the evidence.

15 MR. SILVER: Your Honor, can I say just one thing?

16 The debarment letter that was attached to their
17 pleading is not an exhibit in their exhibit list, and they have
18 no witness with respect to the debarment either. So it's all
19 hearsay.

20 THE COURT: But there's cross-examining and rebuttal,
21 in any event, to his testimony. So I'm just going to have to
22 rule on it at the time.

23 MR. SILVER: Thank you, Your Honor.

24 THE COURT: All right. You've got -- plaintiffs have
25 got a motion in limine?

1 MS. MCKNIGHT: Yes, Your Honor. Plaintiffs have
2 several motions in limine. I'd like to address them somewhat
3 out of order, if you don't mind.

4 First of all, we have a motion to exclude evidence that
5 was not produced in discovery. This is evidence and these are
6 documents that defendants have put forward and proposed as
7 defendants' exhibits in this matter. They're documents that
8 were responsive to discovery requests in this matter. They were
9 not produced during discovery in this matter.

10 As you may know from the docket, there was -- we had to
11 fight for a number of discovery responses from defendants,
12 including a motion to compel that was granted by Judge
13 Nachmanoff.

14 So these documents, these materials, were not produced
15 in discovery. We did not have an opportunity to ask witnesses
16 about them in deposition.

17 THE COURT: What documents are they?

18 MS. MCKNIGHT: So these would include, first,
19 Plaintiffs' Exhibit 2.

20 Pardon me. Let me find that for you, Your Honor.

21 THE COURT: All right.

22 MS. MCKNIGHT: Pardon me, Your Honor. One moment.

23 THE COURT: Well, I'll tell you. Why don't we just
24 reserve -- well, you can object. If they try to offer those
25 some time during the trial, you can object that they weren't

1 timely produced and I'll resolve it then.

2 What else do you have?

3 MS. MCKNIGHT: Okay, Your Honor.

4 Another point is a motion to exclude any testimony or
5 other evidence that LBG, and this is a third company, this is
6 the company that Tigers and Tamerlane contracted to move
7 equipment for, motion to exclude any evidence that LBG, quote,
8 unquote, illegally moved cargo into Afghanistan. We think this
9 is irrelevant. We don't think it's supported. It's come up in
10 some of their filings.

11 The focus on this case is Tamerlane's and Tigers'
12 performance of the contract to move equipment. It doesn't
13 matter how -- what does not matter is Mr. O'Brien's opinion
14 about how LBG brought the cargo into the country.

15 If he would like to testify about how it was brought
16 in, that's one thing. If he would like to testify referring to
17 it as being illegal, that's another thing, and that's what we
18 would like to exclude.

19 THE COURT: Is there going to be such testimony?

20 MR. SILVER: Excuse me, Your Honor?

21 THE COURT: Is there going to be such testimony?

22 MR. SILVER: The testimony is going to be that they're
23 complaining that the -- that the uncompleted move was not
24 completed, and the reason for that, one of the reasons that
25 we're going to have as an explanation, besides there not being a

1 contract for it, is that they didn't have the proper
2 documentation to bring it across the borders.

3 So that's what we're going to say. It couldn't be
4 moved anyway because there wasn't proper documentation. Whether
5 or not that's illegal, the jury can infer --

6 THE COURT: All right. I'll just have to rule on that
7 as it comes up.

8 MS. MCKNIGHT: Your Honor, we only have two more
9 motions to address with you. The first is defendants have
10 proposed an as exhibit findings of fact and conclusions of law
11 reached in a collection dispute between Tamerlane and a third
12 party in Fairfax County Circuit Court.

13 Now, not only does this have -- are the parties
14 different in this case, it is in a different court. Plaintiffs
15 had no part of that case. But we believe that defendants are
16 proposing to show that evidence to the jury for an improper
17 reason, and that is for the jury to come to a conclusion based
18 on the Fairfax County finding that Tamerlane and Artemis are
19 somehow separate and different.

20 THE COURT: All right. Do you intend to introduce
21 that?

22 MR. SILVER: Your Honor, I'm not quite sure yet. The
23 reason that we've put that into our exhibits was in their
24 paragraph No. 1 of their complaint, they make a direct statement
25 about it. They say Tamerlane and Artemis are and were entities

1 that are alteregos of O'Brien which he controls and operates and
2 uses for the purpose of defrauding Tigers and other logistics
3 companies in avoiding judgments.

4 Then they cite the exact case that they don't want us
5 now to talk about. I assume they're going to talk about it
6 since they have it in their pleadings. And what happened in
7 Fairfax County is the Fairfax County Court said Artemis and
8 Tamerlane are two separate and distinct companies.

9 So if they're going to talk about defrauding, which I
10 don't think they can because I think you already ruled on that,
11 but if they get into that this is the alterego for the sole
12 reason in paragraph 1 of their complaint, then we ought to be
13 free to say this has already been ruled on and we are two
14 separate and distinct corporations, which is also consistent
15 with their other allegation in the complaint that Artemis is a
16 Virginia corporation and Tamerlane is a Virginia corporation.

17 THE COURT: All right. I'll have to rule on this after
18 I listen to the evidence.

19 MS. MCKNIGHT: Your Honor, bear with me for one
20 additional point on that.

21 Counsel just said that it's the exact same case. It is
22 not. If you look at our complaint, the case at issue there is a
23 case where -- there are two cases cited where Mr. O'Brien was in
24 litigation in this court, in the EDVA.

25 THE COURT: All right. I'll sort it out as I listen to

1 the evidence. What else do you have?

2 MS. MCKNIGHT: So the last motion we have for you, Your
3 Honor, is a motion to exclude evidence that Tigers knew of the
4 1.9 million judgment against Tamerlane entered in October 2013.

5 The reason this is irrelevant is because the timing of
6 when Tigers knew of this judgment. They're trying to put this
7 into evidence to show that somehow Tigers knew that Tamerlane
8 was approaching liquidation or had this large debt before or
9 while they were entering into the contract. We don't think it's
10 appropriate evidence and we think it's prejudicial.

11 THE COURT: Boy, I don't know. I'm going to have to
12 sort that out after I listen to the case as well. I'll rule on
13 that. You'll have to object again now as you go along with the
14 evidence.

15 MS. MCKNIGHT: Thank you, Your Honor.

16 THE COURT: Are we ready for the jury?

17 MR. SILVER: Yes, Your Honor.

18 MS. MCKNIGHT: Your Honor, we have not yet -- and
19 pardon me. I'm sorry to interrupt. But will we decide on jury
20 instructions after?

21 THE COURT: After.

22 MS. MCKNIGHT: After. Great. Thank you, Your Honor.

23 (The jury panel enters at 10:23 a.m.)

24 THE CLERK: Ladies and gentlemen of the jury, as I call
25 your name, please stand, answer present, and be seated until the

1 next name is called.

2 Claudia Alfaro.

3 THE PROSPECTIVE JUROR: Present.

4 THE CLERK: Sujatha Ammanbrolu.

5 THE PROSPECTIVE JUROR: Present.

6 THE CLERK: You can have a seat. Darryl Austin, Jr.

7 THE PROSPECTIVE JUROR: Present.

8 THE CLERK: Jacob Baines.

9 THE PROSPECTIVE JUROR: Present.

10 THE CLERK: Liza Cicirelli.

11 THE PROSPECTIVE JUROR: Present.

12 THE CLERK: Thank you. Jan Clausen.

13 THE PROSPECTIVE JUROR: Present.

14 THE CLERK: Melinda Conway.

15 THE PROSPECTIVE JUROR: Present.

16 THE CLERK: Mark Cummings.

17 THE PROSPECTIVE JUROR: Present.

18 THE CLERK: Buddy Dees, Jr.

19 THE PROSPECTIVE JUROR: Present.

20 THE CLERK: Edmond -- oh, sorry. Eddie Driver.

21 THE PROSPECTIVE JUROR: Present.

22 THE CLERK: Graham Drozeski.

23 THE PROSPECTIVE JUROR: Present.

24 THE CLERK: Jeri Emery.

25 THE PROSPECTIVE JUROR: Present.

1 THE CLERK: Tesfahun Ersumu.
2 THE PROSPECTIVE JUROR: Present.
3 THE CLERK: Thomas Grycewicz.
4 THE PROSPECTIVE JUROR: Present.
5 THE CLERK: Heather Gustin.
6 THE PROSPECTIVE JUROR: Present.
7 THE CLERK: Jessica Hopson.
8 THE PROSPECTIVE JUROR: Present.
9 THE CLERK: Patricia Howe.
10 THE PROSPECTIVE JUROR: Present.
11 THE CLERK: Jonathan Hoyes. Jonathan Hoyes?
12 William Jackson, Jr.
13 THE PROSPECTIVE JUROR: Present.
14 THE CLERK: Michael Jefferson.
15 THE PROSPECTIVE JUROR: Present.
16 THE CLERK: David Krohmal.
17 THE PROSPECTIVE JUROR: Present.
18 THE CLERK: Samer Louh.
19 THE PROSPECTIVE JUROR: Present.
20 THE CLERK: Katherine Mills.
21 THE PROSPECTIVE JUROR: Present.
22 THE CLERK: Donald Myers.
23 THE PROSPECTIVE JUROR: Present.
24 THE CLERK: Tu Xuan Nguyen.
25 THE PROSPECTIVE JUROR: Present.

1 THE CLERK: Corey Nichols. Corey Nichols?

2 Deborah Ramsey.

3 THE PROSPECTIVE JUROR: Present.

4 THE CLERK: Kyle Rodgers.

5 THE PROSPECTIVE JUROR: Present.

6 THE CLERK: Thomas Uiselt.

7 THE PROSPECTIVE JUROR: Present.

8 THE CLERK: Zo Wang.

9 THE PROSPECTIVE JUROR: Present.

10 THE CLERK: Sin Hyang Yi.

11 THE PROSPECTIVE JUROR: Present.

12 THE CLERK: And Monaa Zafar.

13 THE PROSPECTIVE JUROR: (No audible response.)

14 Ladies and gentlemen of the jury, please stand, raise
15 your right hands, and respond after the oath.

16 (The jury panel is sworn.)

17 THE CLERK: Please be seated.

18 THE COURT: All right. Ladies and gentlemen, we have
19 for trial today a civil case wherein the plaintiffs, Tigers
20 Limited and Tigers (USA) Global Logistics, Inc., has filed this
21 breach of contract action against the defendants, Tamerlane
22 Global Services, Artemis Global, Inc., and James O'Brien,
23 although James O'Brien, I believe, is no longer in the suit.
24 It's simply the corporation.

25 MS. MCKNIGHT: He's still in the suit, Your Honor.

1 THE COURT: He's still in the suit. All right. So we
2 have three defendants.

3 MR. SILVER: Your Honor, I'm not sure he is in the
4 suit.

5 THE COURT: Well, we'll have to hassle it out after
6 awhile. I'll tell the jury that he's in it for the moment and
7 we'll go on.

8 The plaintiffs are being represented by Ms. Kate
9 McKnight and Mr. John McIlwee, seated at the table to my left.

10 The defendants are being represented by Mr. Glenn
11 Silver and Mr. Erik Lawson, seated at the table to my right.

12 The plaintiff alleges a breach of contract that was
13 entered into on or about September 6th of 2013 for the movement
14 of equipment, one within Afghanistan and a second move of
15 equipment from Afghanistan to Pakistan.

16 I would ask if any of you know anything about the facts
17 and circumstances of this case?

18 Are any of you either close personal friends, relatives
19 of, have any kind of business relationship with either the
20 plaintiff, the defendants, or any of the lawyers involved in
21 this case?

22 Have any of you been involved in a civil case before
23 either as a plaintiff or a defendant?

24 Yes. Would you stand and tell me your name and the
25 circumstances briefly.

1 THE PROSPECTIVE JUROR: My name is Deborah Ramsey. And
2 in '97, I was involved in a civil case as a plaintiff, medical
3 malpractice.

4 THE COURT: All right. Thank you. Anyone else as a
5 plaintiff or a defendant?

6 Are any of you or any members of your -- I'm sorry.
7 Yes, sir.

8 THE PROSPECTIVE JUROR: I was involved in a case with a
9 roofing contractor. My name is David Krohmal.

10 THE COURT: Thank you.

11 Are any of you or any members of your immediate family
12 involved in the moving or the transportation and moving of
13 equipment of any kind?

14 Do any of you have any specialized knowledge or
15 workings in government contracts?

16 Yes.

17 THE PROSPECTIVE JUROR: I'm Patricia Howe. I work for
18 an organization that is a USA contractor.

19 THE COURT: Thank you. Yes, sir.

20 THE PROSPECTIVE JUROR: My name is Donald Myers. I
21 work with an IT contractor that has contracts with the
22 government.

23 THE COURT: Thank you.

24 THE PROSPECTIVE JUROR: Graham Drozeski. I'm a defense
25 contractor. I work on research and development contracts.

1 THE COURT: Thank you.

2 THE PROSPECTIVE JUROR: My name is Michael Jefferson.
3 I work on a team that reviews government contracts.

4 THE COURT: Thank you.

5 THE PROSPECTIVE JUROR: Buddy Dees. I also work with a
6 government team that reviews contracts.

7 THE PROSPECTIVE JUROR: Thomas Grycewicz. I'm a
8 retired Air Force officer, and I oversaw a number of contracts
9 during that period.

10 THE COURT: Thank you.

11 THE PROSPECTIVE JUROR: Dave Krohmal. I'm a retired
12 federal employee and managed a number of contracts for the
13 government.

14 THE COURT: All right.

15 THE PROSPECTIVE JUROR: Tesfahun Ersumu. I work for a
16 government contractor called URS Corporation.

17 THE COURT: How long do you think this case is going to
18 take?

19 MS. MCKNIGHT: Your Honor, we don't expect this case to
20 take longer than today.

21 THE COURT: How many witnesses do you have?

22 MS. MCKNIGHT: We will be calling two witnesses.

23 THE COURT: Okay. How many do you have?

24 MR. SILVER: Your Honor, I believe one of their
25 witnesses will be the same as ours and we have one more witness.

1 THE COURT: All right. Okay. Apparently, we may
2 finish this case today or it might go over till tomorrow once
3 you've heard the evidence and have to deliberate.

4 Do any of you have any particular difficulty or
5 disability that would prevent you from sitting on this jury
6 today and tomorrow?

7 All right. Considering all of the questions I've asked
8 you, is there any reason why any one of you could not sit on
9 this jury, render a fair and impartial verdict based on the
10 evidence presented here in the courtroom and the instructions on
11 the law as will be given you by the Court?

12 All right. Pick the jury.

13 THE CLERK: Ladies and gentlemen of the jury, as I call
14 your name, please come forward have a seat in the jury box as
15 directed by the marshal:

16 Juror No. 17, Heather Gustin.

17 Juror No. 16, Thomas Grycewicz.

18 Juror No. 22, Michael Jefferson.

19 Juror No. 1, Claudia Alfaro.

20 Juror No. 34, Sin Hyang Yi.

21 And Juror No. 33, Zo Jane Wang.

22 (Pause.)

23 THE CLERK: Will the following jurors please return to
24 your seats in the courtroom: Juror No. 17, Heather Gustin; Juror
25 No. 16, Thomas Grycewicz; and Juror No. 22, Michael Jefferson.

1 Will the following jurors please come forward and have
2 a seat in the jury box:

3 Juror No. 21, William Jackson, Jr.

4 Juror No. 32, Thomas Uiselt.

5 Juror No. 6, Jan Clausen.

6 (Pause.)

7 THE COURT: Okay.

8 THE CLERK: Ladies and gentlemen of the jury, please
9 stand, raise your right hands, and respond after the oath.

10 (The jury is sworn.)

11 THE CLERK: Please be seated. Those jurors not
12 selected are excused until your next court date.

13 (Potential jurors not selected exit at 10:38 a.m.)

14 THE COURT: Members of the jury, now that you've been
15 sworn, I'll give you some preliminary instructions which I hope
16 will guide you in your participation in the trial.

17 It's going to be your duty to find from the evidence
18 what the facts are. You and you alone are the judges of the
19 facts. You will then have to apply those facts to the law as
20 the Court will give it to you. You must follow that law whether
21 you agree with it or not.

22 Now, the evidence from which you will find the facts
23 will consist of the testimony of witnesses, documents received
24 into the record as exhibits, any facts that the lawyers
25 stipulate to or any facts that the Court instructs you to find.

1 Certain things are not evidence and must not be
2 considered by you. Statements or arguments and questions by
3 lawyers are not evidence. Now, objections to questions, of
4 course, are not evidence. The lawyers have an obligation to
5 object when they feel that evidence is being offered which is
6 improper under the Rules of Evidence.

7 You should not be influenced by the objection or by the
8 Court's ruling on it. If the objection is sustained, ignore the
9 question. If it is overruled, treat the answer like any other.

10 If you're instructed that some item of evidence is
11 received for a limited purpose only, you must follow that
12 instruction.

13 Now, testimony that the Court has excluded or told you
14 to disregard is not evidence and must not be considered by you.
15 Anything you've seen or heard outside the courtroom is not
16 evidence in this case. You're to decide this case solely on the
17 evidence presented here in the courtroom.

18 Now, just a few words as to your conduct as jurors. I
19 would first instruct you that during the trial you should not
20 discuss this case with anyone nor permit anyone to discuss it
21 with you.

22 Until you retire to the jury room at the end of the
23 case to deliberate on your verdict, you simply should not talk
24 about the case. Don't read or listen to anything touching the
25 case in any way. If anyone should try to talk to you about it,

1 bring it to the Court's attention promptly.

2 Finally, don't make any -- don't form any opinion until
3 all of the evidence is in. Keep an open mind until you begin
4 your deliberations at the end of the case.

5 Now, I would prefer that you-all not take notes but
6 simply listen to the evidence as the testimony comes in and the
7 exhibits are presented, and rely on your collective recollection
8 when you retire to the jury room.

9 Now, the lawyers will make opening statements. We'll
10 hear the evidence in the case. Once all of the evidence is in,
11 the lawyers will make their closing arguments. Then I will
12 instruct you on the law and you'll retire to deliberate on your
13 verdict.

14 We'll try to take a recess here in the middle of the
15 morning, recess for lunch about 1 o'clock, and see how quickly
16 we can finish the case.

17 All right. Ms. McKnight.

18 MR. SILVER: Before we begin, there are two issues that
19 I would like to bring up with the Court if we could approach the
20 bench.

21 THE COURT: All right.

22 (Conference at the bench, as follows:)

23 MR. SILVER: Your Honor, two things. First, on the
24 motions in limine, with respect to the debarment, one of the
25 jurors, and this is the second juror, works for the United

1 States Air Force and is in the law department.

2 I'm afraid that the prejudicial effect of that
3 debarment from the United States Air Force, which is what it is,
4 from a colleague of his in the law department is going to be so
5 highly prejudicial to my clients that it shouldn't allowed. I
6 wanted to bring that to the Court's attention.

7 THE COURT: You've raised that too late. We've excused
8 the jury. You should have objected when -- at the time.

9 MR. SILVER: You excused them before I could stand up,
10 Your Honor.

11 THE COURT: Oh, no, I didn't.

12 MR. SILVER: Your Honor, I apologize. But that's a --

13 THE COURT: Well, I can't do anything now because I've
14 got no jurors.

15 MR. SILVER: You can exclude that evidence.

16 THE COURT: No, you can't do that. I'm going to listen
17 the evidence. Now, you had the opportunity to object. You're
18 not going to get the evidence excluded on that basis. You may
19 get it excluded, but not on that basis.

20 MR. SILVER: All right. The second thing, Your Honor,
21 based on their pleadings, the only case that is here is the
22 complaint against Artemis and Tamerlane. Supposed to be notice
23 pleadings, and at this point, there's nothing against Jim
24 O'Brien other than this alterego theory based on fraud.

25 THE COURT: That's a motion you'll have to make at the

1 end of her case. If there's no evidence against O'Brien, the
2 case will be dismissed.

3 MR. SILVER: But I don't think she gets to put in the
4 evidence against O'Brien if he's not a party to the action.

5 THE COURT: How could he not be a party? She's named
6 him in the suit.

7 MR. SILVER: Because if you look at the complaint,
8 there were --

9 THE COURT: I've already done that.

10 MR. SILVER: But this is against Artemis and Tamerlane
11 only on a breach of contract.

12 THE COURT: I don't believe that they're limited to
13 that.

14 MR. SILVER: There are no allegations --

15 THE COURT: I have ruled.

16 MR. SILVER: Okay.

17 (Thereupon, the following proceedings continued in open
18 court:)

19 (Pause.)

20 THE COURT: All right. Counsel, we've got to approach
21 the bench again.

22 (Conference at the bench, as follows:)

23 THE COURT: I have a juror that sent me a note. Sin
24 Yi? -- or whatever her name is. I've forgotten.

25 Sin Hyang Yi says she's having trouble understanding

1 English, which, again, is a poor time to bring that up.

2 MR. SILVER: I think we need to dismiss her.

3 THE COURT: Then we've got a mistrial, don't we?

4 MR. SILVER: I would be willing to have the Court hear
5 this case.

6 THE CLERK: Judge, we can call downstairs, Judge, too
7 and see if they hold them.

8 MS. MCKNIGHT: Your Honor, could we check if there
9 are --

10 THE COURT: We can see if there are some additional,
11 yeah.

12 MR. MCILWEE: Makes sense.

13 MR. SILVER: I would ask that two be brought up for the
14 reason we talked about it.

15 MS. MCKNIGHT: Your Honor, I would -- you've already
16 ruled on that. And not only that, they said they would be able
17 to make an unbiased decision in this case.

18 THE COURT: Well, I'll bring up a bunch. See if
19 there's any down there.

20 We're going to have to take just a brief recess.

21 (The jury exits at 10:48 a.m.; recess taken at 10:47 a.m.
22 until 10:55 a.m.)

23 THE COURT: All right. We haven't gotten any more
24 jurors. This lady obviously doesn't understand English.
25 Apparently, she had her son here with her to help understand

1 what was going on, and he just sat there and said nothing. So
2 that's our situation.

3 MR. SILVER: Your Honor, we would be willing to waive
4 jury and have the Court hear this case.

5 MS. MCKNIGHT: Your Honor, first, we would like to ask
6 if there's a possibility to continue the trial to some point in
7 the next week to two weeks.

8 THE COURT: I don't know if I can do it -- I don't know
9 if I can do that quick. I don't have my book with me. We can
10 try it during the summer sometime. We don't -- it's not likely
11 going six months away, but I don't know if we can do it within
12 two weeks.

13 MS. MCKNIGHT: We'd be willing to look beyond two
14 weeks, Your Honor.

15 THE COURT: You don't want to waive the jury. You-all
16 want to agree to five jurors?

17 MR. SILVER: No, Your Honor.

18 THE COURT: All right. Well, I guess the only thing to
19 do is declare a mistrial. If you'll call the jury, I'll explain
20 that to them.

21 MS. MCKNIGHT: Your Honor, if you declare a mistrial,
22 will you be able to reschedule the trial? Is that the
23 procedure, that you would then --

24 THE COURT: I'll set a date. I'll get my book and
25 we'll set a date today.

1 MS. MCKNIGHT: I understand. Okay. Thank you, Your
2 Honor.

3 (The jury enters at 10:57 a.m.)

4 THE COURT: You-all can sit anywhere. That will be
5 fine.

6 Ladies and gentlemen, unfortunately, it's come to my
7 attention that one of you-all on the jury just simply doesn't
8 understand the English language. And I'm sorry I didn't know
9 about that beforehand and could have taken care of it before we
10 got this far.

11 That leaves us without a jury. So I have no
12 alternative but to declare a mistrial. I'll excuse you-all.
13 Thank you very much for your service, and we'll reschedule this
14 trial here as soon as you-all leave. Thank you very much.

15 (The jury exits at 10:58 a.m.)

16 THE COURT: What about June 27?

17 MS. MCKNIGHT: Your Honor, that date should be fine for
18 plaintiffs.

19 MR. SILVER: Your Honor, our client tells me he is
20 unavailable.

21 MR. O'BRIEN: That's correct. Your Honor, I'm going to
22 be in Alabama the 25th through the 27th for business reasons,
23 sir.

24 THE COURT: What about July 11?

25 MR. SILVER: That works for us, Your Honor.

1 MS. MCKNIGHT: Your Honor, that date works for
2 plaintiffs.

3 THE COURT: Okay. The case will be continued to July
4 the 11th.

5 And we don't need to do anything further, I guess.
6 We'll stand in recess till tomorrow morning at 9:30.

7 * * *

8 (Proceedings concluded at 11:01 a.m.)

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CERTIFICATION

I certify, this 31st day of May 2016, that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter to the best of my ability.

/s/

Tracy Westfall, RPR, CMRS, CCR