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IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

JOHN DOE CORP. 1 AND JOHN DOE)
CORP.2,)
)
Plaintiffs,)
)
-vs-)
)
HUIZENGA MANAGERS FUND LLC,)
and HUIZENGA CAPITAL)
MANAGEMENT, LLC,)
Defendants.)
)

2018 CH 236
MOTIONS

REPORT OF PROCEEDINGS had at the
HEARING of the above-entitled cause, before the
Honorable BONNIE M. WHEATON, Judge of said Court,
recorded on the DuPage County Computer Based Digital
Recording System, DuPage County, Illinois, and
transcribed by NOELLE M. PIEMONTE, Certified Shorthand
Official Court Reporter, commencing on the 19th day of
April, 2019.

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PRESENT:

WINSTON & STRAWN LLP, by
MR. DAN K. WEBB AND MR. SEAN G. WIEBER,

appeared on behalf of Plaintiffs.

THE LAW OFFICE OF JEFFRY E. CRANE, LLC, by
MR. JEFFREY E. CRANE,

appeared on behalf of Plaintiffs;

WILLIAMS, MONTGOMERY & JOHN LTD, by
MR. GARY W. GARNER AND MR. STEPHEN A. FRASER,

appeared on behalf of Defendants.

THOMPSON COBURN LLP, by
MS. CHRISTINA M. BERISH, ESQ

appeared on behalf of Clayborne, Sabo &
Wagner LLP, John E. Sabo and B. Jay Dowling

ALSO PRESENT:

MR. B. JAY DOWLING

1 THE CLERK: Line 12, John Doe versus Huizenga.

2 MR. WIEBER: Actually, your Honor, one of the co
3 counsels was just told by the sheriffs that she had to
4 take her child down to the Safe Haven room.

5 THE COURT: Yes.

6 MR. WIEBER: So I told her that if the case -- she
7 just left the courtroom. I think she was just
8 informed. We are ready to proceed. I wanted to make
9 sure.

10 THE COURT: Not by himself, I hope?

11 MS. BERISH: There's people in there.

12 MR. WIEBER: They just called the case.

13 THE COURT: All right. Let's start over here.

14 MR. FRASER: Stephen Fraser from Williams
15 Montgomery and Johnson on behalf of Huizenga. Last
16 name is spelled F-r-a-s-e-r.

17 MR. GARNER: Good morning, Judge, Gary Garner,
18 G-a-r-n-e-r here for the Defendants.

19 MR. WEBB: Dan Webb and Sean Wieber from Winston
20 Strawn on behalf of Plaintiffs.

21 THE COURT: Spell your last names, please.

22 MR. WEBB: Webb, W-e-b-b.

23 MR. WIEBER: Wieber, W-i-e-b-e-r.

24 THE COURT: On behalf of?

1 MR. WIEBER: Plaintiff's.

2 MR. CRANE: Jeffrey Crane, C-r-a-n-e.

3 THE COURT: On behalf of whom?

4 MR. CRANE: Plaintiff.

5 MS. BERISH: Christina Berish, B-e-r-i-s-h on
6 behalf of attorney Defendants or Respondents. I'm here
7 with my client Jay Dowling.

8 THE COURT: And, Mr. Dowling, would you spell your
9 last name, please?

10 MR. DOWLING: D-o-w-l-i-n-g.

11 MS. BERISH: If I could speak, your Honor. I do
12 have one matter I would like to address the Court on.
13 I have motion to withdraw as counsel that's up for
14 today. We don't want to delay hearing on the motion to
15 dismiss. I've conferred with my clients about that.
16 We have joined in on Plaintiff's motion and so Winston
17 Strawn will be arguing that. The only thing I would
18 like to ask so that my clients have -- if there's any
19 further proceedings after today that they have 21 days
20 to get new counsel if anything happens, if there's
21 anything else after today.

22 THE COURT: Certainly. I'm only going to allow
23 one person to argue on behalf of Defendant. So you
24 have two attorneys for the Defendant. Who's going to

1 argue?

2 MR. WIEBER: Two for the Plaintiff. And Mr. Webb
3 will be presenting Plaintiff's argument.

4 THE DEPUTY: Ma'am, there's nobody in that room
5 with your child. You're going to have to take him down
6 to Safe Harbor.

7 MS. BERISH: Is my motion granted?

8 THE COURT: Your motion is granted so you can take
9 your child.

10 MS. BERISH: Thank you, your Honor.

11 MR. GARNER: Can I raise one thing with respect to
12 that? Mr. Dowling and his firm still have an
13 appearance on file and they are subject of the
14 sanctions motion, so as long as it's clear they still
15 are under the Court's jurisdiction in that respect?

16 THE COURT: Right.

17 MR. GARNER: We have no objection the way they are
18 proposing to proceed.

19 MS. BERISH: That's correct. Thank you.

20 THE COURT: Okay. This is up on two motions. The
21 motion with regard to discovery and the motion to
22 dismiss.

23 MR. GARNER: I think it's all one motion. The
24 main event is the motion to dismiss with the corollary

1 to stay discovery until you decide that.

2 MR. WEBB: I think the parties kind of agreed that
3 we will just delay discovery issues until after we get
4 a ruling on the motion to dismiss if that's okay with,
5 your Honor.

6 THE COURT: That's fine. You may proceed.

7 MR. WEBB: Your Honor, Dan Webb on behalf of
8 Plaintiffs. This is our motion to dismiss. We are
9 asking to dismiss Huizenga's counter claims. They have
10 two counter claims, your Honor. Very briefly, we have
11 a counterclaim under Section 110 which is basically the
12 Illinois statute that deals with damages in connection
13 with an improperly issued TRO. They also have a claim
14 under Supreme Court Sanction Rule 137 A. So those two
15 counterclaims we are moving to dismiss. The motion to
16 dismiss is on a pretty simple basis. We are presenting
17 to your Honor an argument that under Illinois law when
18 a claim does become moot under Illinois law, then that
19 claim can be dismissed if it's moot. And our theory of
20 mootness is based on a line of cases that we cite in
21 our brief. The lead case is a case called the Alderson
22 case, a Second District case which basically says that
23 a lawsuit is moot and can be dismissed when we, the
24 Plaintiff or the other side in this case the Plaintiff

1 has tendered to the claimant the essential relief
2 demanded, and we have done that in this case. And I'll
3 explain that to your Honor. The bottom line of our
4 motion is that throughout the proceedings before your
5 Honor the counter claimants were claiming legal fee
6 damages. And they filed two affidavits in front of
7 your Honor that set forth the amount of their legal
8 fees that they claim they incurred in connection with
9 trying to dissolve the injunction that was issued in
10 Madison County and on the theory that that issued TR0
11 was improper, and that they had to make efforts to
12 dissolve it and they had legal fee damages. They also
13 then just in this brief they just filed are trying to
14 claim non monetary relief which I will address because
15 we don't believe under Illinois law they even can claim
16 that form of non monetary relief.

17 So let me first talk just about the monetary
18 relief and why we have asked to dismiss the complaint.
19 The case starts with this injunction coming down in
20 Madison County.

21 THE COURT: I am very familiar with this
22 particular case.

23 MR. WEBB: I know you are. I'm not going through
24 any of that at all. I'm just going to get right to the

1 heart of it, and I completely agree with your Honor.
2 They tendered two legal fee affidavits. One on May 7,
3 2018 for \$32,700, and that was pled as being what it
4 cost them to go down to Madison County and file a
5 motion to dissolve the injunction. We actually believe
6 that was a proper claim. They then filed a second
7 claim for legal fee damages on January 11th of this
8 year 2019 for another \$219,000 based on proceedings
9 before your Honor where they after the injunction had
10 terminated as a matter of law in Madison County on
11 February 8, 2018, the injunction had terminated. They
12 filed for another \$219,000 based on proceedings before
13 your Honor as they are pursuing generally this case,
14 sanctions, an issue about whether you can dissolve
15 that's already terminated. I know you're familiar with
16 it. They perceived it. We first tendered them a check
17 for the \$32,000 to moot it out. We thought that would
18 get rid of the case. When we got involved there were
19 discussions about is there a way to get rid of this
20 case. And I had discussions with folks on the other
21 side, amicable discussions. We tendered the \$32,000.
22 They then said no, they had more claims than that, so
23 then they filed the second fee petition in January for
24 \$219,000, which quite frankly under the case law we put

1 in our brief they cannot even again get under Illinois
2 law. So if we litigated this, we got discovery. Went
3 through some hearing in front of your Honor for three
4 days and they presented all the evidence. They can't
5 get that \$219,000, I don't believe under Illinois law
6 because of case law that says all you can get are
7 damages in connection with trying to dissolve the TRO
8 while it exists and this TRO ceased to exist on
9 February 8, 2018. However, to get rid of the case, I
10 talked to my client. So we tendered the 219,000 also.
11 So we now tendered to them \$252,000 even though it's
12 four times what they would get if they litigated this
13 case. We gave it to get rid of the case. So we
14 tendered. We have tendered it so the monetary under
15 the Alderson case and other cases in Illinois. If we
16 tender what they are demanding the case becomes moot
17 under that case law and it should be dismissed, and
18 that's the motion that we filed because there is no
19 other issue left in the case.

20 Your Honor in June of this year dismissed the
21 TRO complaint based on a motion by Mr. Dowling which
22 they -- to voluntarily dismiss it. Huizenga objected
23 to that. Your Honor ruled on the motion, denied it and
24 dismissed that complaint at that time on Mr. Dowling's

1 motion. So as far as I know the only thing in the case
2 was the legal fee claim. And I've now tendered all the
3 money for the legal fee claim and I believe it's moot.
4 Now they then argue in their brief that they say well,
5 wait a minute we want to get, we want non monetary
6 relief in addition to the money relief. We want to
7 have the complaint dismissed with prejudice. And my
8 response to that is that the complaint is already
9 dismissed under Illinois law based on your motion. The
10 30 days to modify or vacate is long expired and there's
11 no ability under Illinois law for them to somehow get
12 rid of. It's already been dismissed once, and so I
13 don't see -- I know of no ability under Illinois law
14 to dismiss it a second time. So they are not entitled
15 to that relief under Illinois law. Number two, they
16 also ask for non monetary sanction that you create some
17 time of limitation on the ability of my clients to file
18 cases, that you put some kind of litigation requirement
19 that are before they can file any case, I guess
20 anywhere in America they would have to come to your
21 Honor to get approval for that. And we cite in our
22 brief the Illinois Supreme Court opinion the William's
23 case which basically pointed out that this -- there's a
24 case in Cook County where they are trying to limit

1 venue and the Illinois Supreme Court said we keep our
2 court system open to our citizens to be able to go use
3 our court system. That this kind of limitation cannot
4 be imposed at all, and they don't even -- I actually
5 don't know what they are really asking for you to do,
6 but I believe under the William's case you would not
7 have the authority to do it because it would be a pre
8 condition that we could have to come and ask permission
9 to file a lawsuit in Connecticut which I don't think
10 can be done. So, the bottom line is that we have
11 tendered all the money for all the legal fee money and
12 satisfied the Alderson case and there's no non monetary
13 relief and we ask the case to be dismissed.

14 MR. GARNER: Good morning, your Honor. Thank you
15 for your time. I will try to be brief. I do know
16 you're fairly familiar, but there were a lot of details
17 that were sort of glossed over there. Let me hit very
18 quickly before Mr. Webb said before we go further.
19 There was -- it's not just the injunction. There's a
20 Rule 137 sanctions motion which you said you were
21 inclined to grant, but you wanted to know who the heck
22 the Plaintiff's even are and whatever reasonable fees
23 would be which you would determine plus what additional
24 sanction would be sufficient to deter the Plaintiff's

1 who we still don't have a recognition in the record of
2 what they even are. And counsel would be deterred
3 which is one of the purposes of Rule 137 which Mr. Webb
4 acknowledged. We did ask for sanctions in form of fees
5 and such other relief as the Court deemed appropriate,
6 and you did indicate you wanted to understand what, who
7 the heck the Plaintiff's were and what happened because
8 you were considering other relief to deter. The --
9 I'm glad to hear Mr. Webb acknowledged our
10 counterclaims. The argument that the voluntary
11 dismissal is a final judgment is contrary to Illinois
12 law cited in their opening brief. The Illinois Supreme
13 Court where you have a rule -- first of all when you
14 have counter claims pending which they have
15 acknowledged. It's not a final resolution of the whole
16 case. There was no 304 A finding in that rule, and
17 under Rule 137 and Illinois Supreme Court decisions.
18 When you file a 137 motion within 30 days of dismissal
19 it's a live claim as he have acknowledged it's not a
20 final judgment. Absolute point, right on point
21 Illinois Supreme Court cases they cited. So to come
22 back in reply and say that's a final judgment which
23 frankly was procured by Mr. Dowling coming in at the
24 11th-hour and telling you about this petition to vacate

1 which it's now been found by Judge Flynn was frivolous
2 which I told you that day. So, it's not a final
3 judgment. But let's go. I will try to be brief. The
4 complaint. There was more at issue in he sanctions
5 motion than the TR0. The complaint in this case is a
6 fraud on the court. It's filled with factual
7 misstatements. As confirmed by some of the bankruptcy
8 court sworn pleadings that we talked about during the
9 sanction, the Plaintiff's still won't identify
10 themselves. They want to talk about saying they talked
11 about settlement, but what they want to do as
12 demonstrated by the motion is come in have an
13 unidentified party tender us checks through law firms
14 that aren't even here, enter no judgment against them,
15 enter no enforceable order and keep their dismissal and
16 be able to go re file their suit. They literally have
17 not ever admitted or said in the record who they are.
18 So the reference to these other suits as being, you
19 know, we always hear, oh, those are different parties.
20 We have no idea for sure who the heck they are. That
21 was dismissed, but that was the fund that was the issue
22 in the case with Judge Flynn as I pointed out when Mr.
23 Dowling came in and said he has his petition to vacate
24 the judgment against that entity which is the fund that

1 is alleged to be at issue here. Richie Risk
2 Strategies, LLC. Have gone all the way up to US
3 Supreme Court and they keep trying to relitigate it.
4 That's why Judge Flynn found it sanctionable. And the
5 amended complaint in this case raises all those
6 arguments. That was sanctionable frankly. The entire
7 case was based on false statements. They won't
8 identify themselves and frankly, every single thing we
9 have done in this case has been a reaction to that, and
10 the fee petitions that are in today are not all the
11 fees. We are still here. This is not a case about
12 trying to generate fees. Our client is not here
13 because they want to -- they think this is a money
14 making proposition. As you know, as you stated in your
15 ruling on the sanctions motion. There were cases in
16 four counties and, you know, 58 or however many other
17 counties that were still out there, and then there's
18 cases in Delaware that had been filed by the same group
19 of entities which frankly our position is they are not
20 really entities. That's why they won't identify
21 themselves. So to say that the other cases are
22 unrelated. Frankly, this is a motion to dismiss where
23 they acknowledge or claim as a sanctions motion and you
24 have to take what we have alleged as true on a motion

1 to dismiss under 2-619. We pointed out to you that the
2 pleadings in this case have St. Claire County on them,
3 and that our contention is Mr. Dowling went to St.
4 Claire County ex parte and couldn't get this TR0 and
5 then went to Madison County. No one has ever said that
6 didn't happen. They won't respond to discovery
7 including identifying who they are. Judge Taylor found
8 he believes that was a fraud on the Court and he
9 entered a sanction ruling. In this case you found
10 sanctions appropriate. You noted the multiple
11 counties, the failure to give notice of the TR0. The
12 material omissions by counsel to Judge Dugan. And you
13 said, you know, you wanted, you wanted to have
14 discovery because one, you didn't know who the
15 Plaintiff's were. Two, you would have to determine
16 reasonable amount of fees, and in addition what sum is
17 appropriate to discourage this type of conduct by the
18 parties and counsel or both. That's exactly what you
19 should do under Rule 137 motion because it's a
20 discretionary decision on your part. The cases we cite
21 and the plaintiff's admit. It's not only compensatory,
22 but it's punitive. It's to protect the integrity of
23 the Court. It's discretionary based on the
24 circumstances and you need to know the facts. They

1 don't want an order entered with their names in it.
2 They just want to tender us a check which by the way
3 one of the checks is expired. I'll show that to you.
4 The tender is not even valid any more. And then does
5 appear into the night without even having their name
6 mentioned while holding onto a voluntary dismissal so
7 they can go re file a suit. You know even if counsel
8 here was very distinguished, counsel said they are not
9 going to re file the suit. We've seen a parade of in
10 the 30's of different lawyers. We have sent several
11 here in this case. We don't even know who authorized
12 this lawsuit. We have two entities supposedly all from
13 Bermuda which the Bermuda government says are not even
14 doing business. So, they have gone to great pains to
15 not say who they are. The tendered checks and I should
16 show you and hand to counsel come through law firms
17 that aren't even involved in this case. The one, the
18 32,000 check, her's a copy for counsel is void after
19 120 days. It written on December 11th. By the time we
20 have gotten to this hearing, it's void. It's General
21 Counsel Services, LLC. I believe that's a signature of
22 Mr. Sabo who's not here. We also have a check from the
23 Patterson Law Firm which is not appearing here although
24 they are appearing for Richie Entities before Judge

1 Taylor on the second TRO. Mr. Simpson's affidavit
2 doesn't say who the money came from because they aren't
3 identifying who they are. One of the reasons is that
4 would confirm the fraudulent conduct. Because if they
5 say who they are, it's clear from the evidence
6 presented in other court's that the facts are -- they
7 are not even facts they are false. They want to retain
8 their right to go forward under voluntary dismissal
9 and, you know, what to say this is sort of us trying to
10 generate fees for our client to collect from them.
11 That's not why we are here. The clients would tell you
12 what kind of system do we have where you can take a
13 case, go all the way to the US Supreme Court and back
14 down, have the judgment affirmed and then after that
15 people going around filing lawsuits not identifying
16 themselves ex parte, getting orders all over the state,
17 filing complaints that have false facts in them, then
18 refusing to even identify who they are. And then to
19 say well, we will pay part of your fees or at least
20 what was up to that date and then we will just
21 disappear into the night with a voluntary dismissal
22 with no judgment order saying who it's against. If
23 they go re file the case, we don't have anything to
24 even point to as to who filed this case for res

1 judicata, law of the case, any other purposes. We
2 tried to stream line the discovery. We sent them an
3 e-mail saying we will stipulate to these facts.
4 Unfortunately for them they show that their complaint
5 is false so they didn't respond. They have never yet
6 denied that those facts as we state that they are not
7 true. So how do they try to do it? Again, they tender
8 these checks and even under the cases they have cited,
9 the tender has to be unconditional. They have reserved
10 the right denying all the facts in this case. For your
11 ruling to say it's unconditional, we reserve the right
12 to contest whoever we want. Don't enter an order with
13 our name and let us go into the night. Those
14 conditions render the tender. It's not a proper
15 tender. The mootness cases they cite talk about, you
16 know, if the tender gave the essential relief which by
17 the way doesn't address the relief you wanted to
18 address, with what punitive sanctions if any should I
19 add to discourage this kind of conduct takes the case
20 out of issue so that there's not a party with a real
21 interest to argue. My clients have a real interest
22 here because they want this nonsense to stop and the
23 order they want entered is not going to be a judgment.
24 Is not going to name them, not anything else. In fact

1 it's not clear who's paying the fees. Mr. Dowling's
2 papers said they are paying part of them, but they are
3 just sent to these, our firms. So we have a real
4 concern about this case coming to life in another form.
5 It's not the paranoia thing because it's happened, you
6 know, with eight or ten suits out there. The Alderson
7 case that they rely heavily on is a recent Second
8 District case. It discusses the fact that the need to
9 have mootness to result in a situation where the issues
10 have been resolved, so there's no real controversy. We
11 still have a controversy. In the notion that we are
12 doing this for leverage which is raised in the brief.
13 It's not what's going on. We want some finality for
14 this. What they are proposing provides no finality.
15 And again one of other the exceptions to mootness.
16 Well, let me back up. They make the argument that you
17 can, you know, even if we don't accept the tender it's
18 sufficient. The Alderson case which is I believe 2018,
19 the Second District case acknowledged that or says the
20 law is changing on that or said the law is changing on
21 that. That may not be the law any more, but we don't
22 really need to address that issue because in that case
23 it was a class action, proposed class action. The
24 Plaintiff accepted the tender. It was a case about

1 filing fees being wrongfully charged by the clerk of
2 the court. Accepted the payment and there was an
3 affidavit from the clerk that the clerk would not
4 charge anyone else, so the Court said look on the
5 evidence before me. This isn't going anywhere. And so
6 and so it is moot and that wasn't a sanctions case.
7 So, in addition they acknowledge in the brief that they
8 have submitted to whatever additional sanctions if any
9 that you find are appropriate. I don't know how the
10 case ends if they are going to do that, and, frankly,
11 you said understandably I need some information in
12 order to make an informed decision as to what sanction
13 is appropriate. You still don't even know who the
14 parties are. They wouldn't tell us who authorized this
15 lawsuit. That's not to drive a wedge between counsel
16 and Mr. Dowling's firm and the Doe Plaintiff's. If
17 there's a wedge it's because they don't want to say who
18 filed the false pleadings and who authorized them.
19 Because the fact of the matter is in the last two weeks
20 Mr. Dowling's firm has withdrawn from Judge Taylor's
21 case which is a Richie Multi Strategy Fund which is the
22 95 percent owner of the fund at issue here citing
23 irreconcilable conflicts. Withdrew on Monday before
24 Judge Flynn citing irreconcilable conflicts. They said

1 there are conflicts. They are already there. The
2 other problem is that we have been threatened with this
3 before. Part of the complaint which is the operating
4 agreement and all of that the Second District found
5 should not be filed under seal despite multiple
6 attempts by the Plaintiffs. There's a provision in the
7 operating agreement which is Exhibit 3 to the complaint
8 which is part of the record. Give Mr. Webb this page
9 and you which is page 78 and there's a provision
10 Section 9.23 B which says any member which would be our
11 client that invested in this if they are still a
12 member. That's in dispute. Upon final judgment
13 tendered without further opportunity to appeal or not
14 timely appealed relating to the fund shall pay the
15 legal fees and costs of in this case would be the
16 Plaintiff. So if there's no judgment on anything here,
17 what we are going to hear, what we may hear and it's
18 been sort of threatened out there in the weeds. Oh, we
19 paid your \$250,000, but you didn't get a judgment. You
20 lost. Now you have to pay us back. And if that sounds
21 crazy, it's happened in other cases. We are getting
22 that argument elsewhere. So we need some finality
23 here. Not just to, you know, well, no harm, no foul.
24 We are all going to leave. We are even not going to

1 say who we are. The sanctions issue as you, you know,
2 understood. It's your discretion. It's a penalty
3 provision in senses which the Plaintiff's argue. The
4 Second District case for instance the Hechinger v.
5 Lausch case talks about the deterrence reason and that
6 the fees don't even have to be a direct result which
7 they are arguing now based on what Judge Flynn said of
8 the action. In this case the complaint itself is a
9 fraud. So everything arises out of that, but again the
10 voluntary dismissal arose out of Mr. Dowling coming in
11 here telling you he had a valid petition to vacate. It
12 was totally contrary to Illinois Supreme Court law.
13 The Plaintiff's in that case are going to be
14 sanctioned. That was a way to try to remember he asked
15 you to stay it. Never heard any Plaintiff wanting me
16 to stay a case indefinitely. So you gave him the
17 option to voluntarily dismiss. That was all a ruse to
18 stop this Court from getting to the argument on the
19 motion to dismiss which was up that day, which would
20 have been a ruling on the merits one way or the other.
21 So here we are. The Plaintiff's still won't identify
22 themselves. You know frankly given, you know, seven
23 months ago, you said you want to know who they are.
24 They still haven't said. And you said I need discovery

1 to understand what's going on here. You do have the
2 ability to vacate that voluntary dismissal. It's an
3 interlocutory order. There was no final judgment here.
4 The case is the John G. Phillips & Associates v. Brown
5 case cited the Plaintiff's opening brief and it's a
6 reiteration of the 137 motion renders whatever judgment
7 was entered not final. The point was made that well,
8 these parties in other cases aren't even related or the
9 same, so you shouldn't listen to what's going on there.
10 We don't know who the party is here, frankly, you
11 don't. But the point to Judge Flynn not ruling on what
12 he called the shenanigans in the other cases. If you
13 look at that transcript he said I'm not going to rule
14 one way or another because there are people closer to
15 the facts. Those Courts should rule. In this case
16 unfortunately that needs to be you. He also mentioned
17 the ARDC and he said he was tempted to refer the
18 conduct there, but he again was cognizant of that. We
19 have these proceedings out here where things are still
20 ongoing and the judges who are handling them haven't
21 had a chance to rule. Mr. Fraser has pointed out to me
22 that Mr. Dowling was counsel for each of those parties.
23 Was counsel for the Risk fund before Judge Flynn that
24 filed a frivolous petition to vacate. He was counsel

1 for the multi strat fund that filed a case down in St.
2 Claire county just now before Judge Taylor until he
3 withdrew earlier this case based on irreconcilable
4 conflict.

5 At a minimum we need some sort of enforceable
6 order to go along with this even if you find the tender
7 to be sufficient. In order to do that, we do need a
8 live check. We would need to make sure we got the
9 funds any way because the one tender expired. You
10 can't really say would it be fair to put us in the
11 trick box of saying cash that check and accept our
12 tender or it's going to expire and. We will get the
13 case dismissed because you didn't accept it and then
14 you wouldn't get anything. That would be the biggest
15 travesty of justice here. So, you can either vacate
16 the order, the voluntary dismissal, and I don't think
17 anyone disputes that in the right circumstances. You
18 can, you know, dismiss their complaint with prejudice.
19 Based on the shenanigans to date you can do that,
20 however. The proper prudent Court which you suggested
21 was I need more information. I need to know who these
22 people are. What happened. Because it is a
23 discretionary decision on your part and it requires
24 looking at the evidence. We don't even know who they

1 are. So, they haven't denied that the complaint is
2 full of falsehoods. They ignored our efforts to
3 stipulate. They wouldn't respond to the request to
4 admits and we did agree once they filed this motion we
5 weren't going to come in and move to compel. We would
6 hold it in abeyance until you can address this. We
7 didn't and there was some times where we were holding
8 it is abeyance while we talked settlement of all the
9 litigation, not just this case. So, whatever you do we
10 need -- if you're going to accept their argument which
11 is not all our fees, we need to actually get the money
12 and we need some sort of order, at least identifying
13 the Plaintiff's and whoever you're sanctioning saying
14 this is, you know, who's been sanctioned. And so we
15 have something if we get another lawsuit filed by these
16 Doe Plaintiff's or one of their affiliates, that if we
17 have to go to another Court we can say look, they
18 already brought this case for sanction. Right now we
19 don't have the ability to do that, but to address what
20 happened in detail we need to go back to where you
21 suggested in the first place. Discovering who the
22 Plaintiff's are, how this occurred. Who should I
23 sanction? It's not just attorneys fees. You
24 specifically said I need to consider what beyond fees

1 is sufficient to deter this kind of conduct. So right
2 now the Doe Plaintiff's are looking for a pass. We
3 won't tell anyone who we are. You take the checks. We
4 disappear into the night. We will hang around if you
5 think we will be sanctioned more. I don't know how you
6 can really do that since they haven't given any of the
7 information you wanted. We need some finality here.
8 So hopefully I hit most of the case. I may if you let
9 me address whatever I hear in reply in response. I
10 will stop there.

11 MR. WEBB: I'll be brief. First of all counsel
12 knows we are not trying to conceal the names of the
13 Doe's. We have told them who the Doe's -- I'll put the
14 names on the record right now.

15 THE COURT: Please do.

16 MR. WEBB: I will do so right now, your Honor.
17 And I will send you a pleading to that also, so here's
18 the names of the Doe Plaintiff's. Doe 1 is Richie Risk
19 Link Strategies Bermuda comma LTD. That is Doe 1.
20 I'll repeat it. Ritchie Risk-linked Strategies Bermuda
21 LTD. That's Doe 1. Doe 2 is Richie Risk-linked
22 Strategies Trading comma, LTD. Again Doe 2 is Ritchie
23 Risk-linked Strategies Trading, comma, LTD.

24 Second issue, as far as counsel's. I'm

1 trying to get this case resolved. We sent them these
2 two checks and we tendered them the way the law
3 requires. No conditions. There are no conditions in
4 those tendered. They would not accept the checks.
5 They went back said we wouldn't accept them or we won't
6 reject them. And they are holding those checks. So.
7 I went and looked at this yesterday because no, they
8 are going to get their checks. The one check that's
9 expired actually is not expired under Illinois law
10 because of the USS. I'll state on the record that
11 check under Illinois under the USS, that check unless
12 we stop payment on it. They can cash it tomorrow. So
13 they have the two checks. If they need a new check --
14 I'm not trying to deprive them of a check. They didn't
15 cash the check. That's not my fault. So this one
16 check on its face is expired which Illinois law says
17 it's not expired unless I stop payment. I'm submit
18 right now I'm not stopping payment. They can cash both
19 checks today. So there's no question about the tender
20 is not being conditional and they can cash the checks
21 today. As far as whether this is all of their fees.
22 As we set forth in our brief, your Honor, under
23 Illinois law they actually couldn't have gotten legal
24 fees beyond the first motion to dissolve back down in

1 Madison County because the TR0 then expired on
2 February 8th. They could get \$32,000. The money they
3 are spending now which is pursuing sanctions, et
4 cetera. The Illinois cases say you can't get that
5 under the TR0 remedy statute. So the cases are very,
6 very clear. They actually now have because I want to
7 get this case resolved. They have four times what they
8 can actually recover and they are not entitled to any
9 more legal fees under Illinois law. As far as what
10 your Honor could do if we went through some long spent
11 a whole bunch of money on discovery and then went
12 through an evidentiary hearing of some type. They have
13 identified in their reply what they think you can do
14 which under Illinois law I respectfully think you can't
15 do is because all the arguments they are making about
16 why this TR0 complaint should not have been dismissed
17 on Mr. Dowling's motion. On June 19th of this year
18 they objected to all the same things they are telling
19 you again and your Honor said in my discretion I'm
20 granting the motion. That was a final decision and the
21 30 days has expired and so you can't go out and do it
22 all over again I don't believe under Illinois law. But
23 in any events and the idea that there's going to be
24 some remedy of putting limit on whether they can file

1 lawsuits any more in America, I don't even know if that
2 was a serious suggestion. So all I'm respectfully
3 saying to your Honor is that we under that Alderson
4 case we truly have tendered checks to give them
5 everything they are demanding. They are now trying to
6 demand other things that they can't even obtain under
7 Illinois law. And respectfully we have satisfied the
8 requirement that we have tendered the demand, and under
9 the Alderson line of cases I respectfully suggest that
10 this case should be dismissed.

11 THE COURT: You look like you want to say
12 something?

13 MR. DOWLING: Do I get to?

14 THE COURT: Do you want to say something without
15 counsel?

16 MR. DOWLING: Well, obviously I don't want to
17 waive any of the issues on that. I just want to
18 buttress some of the things that Mr. Webb said and
19 perhaps even clear the record on some of the things Mr.
20 Garner has indicated. If you put it in context,
21 obviously the historical context. You had the TRO
22 that was entered. Judge Dugan had the right to either
23 enter it as an ex parte or demand --

24 THE COURT: Let's not go down that road.

1 MR. DOWLING: I understand that, ma'am. I just
2 want to put this in context. Because ultimately what
3 it boils down to is this. There were the two motions
4 that were filed. One, the motion to dismiss and
5 dissolve and the other subsequently later the 137
6 sanction motion that was filed. Under 137 their
7 argument is in their brief the punishment, the
8 deterrent has to fit the crime. There has to be some
9 sort of correlation between the two. And as Mr. Webb
10 has pointed out, as far as the motion to dismiss and
11 for damages under the injunctive relief claim they are
12 entitled to or potentially entitled to the \$32,000 that
13 they claimed. Obviously the Court is aware that issue
14 went up on appeal as to whether or not you can dissolve
15 an already expired TR0 and so forth, and whether or not
16 damages would be permitted. And that's already been
17 addressed. So the next issue simply becomes is after
18 tendered under \$219,000 on something that they
19 potentially couldn't get under the injunctive relief is
20 that number of deterrents under Section 137. Isn't the
21 message been sent which is really under Dugan's
22 indications was more of venue issues than anything
23 else. The transcript if you look at that, hasn't the
24 message been sent. Don't you believe that the parties

1 that are involved have clearly heard and understood
2 what the issue is. And again what is the
3 appropriateness between a 10 day TRO that expired that
4 says simply comply with the contract. Don't disparage
5 me. Don't relief confidential information so when the
6 only damages that were suffered were in fact attorneys
7 fees. And I would represent to you that I asked Mr.
8 Garner at one point in time why are you doing this.
9 Why are you continuing to pursue this? His own answer
10 was attorneys fees, period.

11 MR. GARNER: I didn't say that, your Honor.

12 THE COURT: Whether you said that or not, it really
13 doesn't bear into any analysis of this situation. I
14 believe that what Mr. Garner's clients are asking for
15 is not only attorneys fees but that there be an end to
16 this serial litigation. If I can characterize what Mr.
17 Garner has said his clients are looking for is an end
18 to a game of Wac-a-mole where they have to go to
19 various jurisdictions to fight the same fight. I don't
20 know if that is the case or not. That's the purpose of
21 discovery. Now 14 months after this case was
22 originally filed, I've heard for the first time the
23 identity of the Plaintiffs. I don't know what if any
24 sanctions are appropriate in this case. I think I made

1 myself pretty clear when you were in several months ago
2 and I won't reiterate what I said back then. I don't
3 know if sanctions are appropriate. It seems from what
4 I've read in the papers that other judges have felt
5 that when various iterations of this case have appeared
6 in their courtrooms, they have felt that sanctions were
7 available. And I think it is now a question that has
8 been placed directly in my lap. If there is serial
9 litigation and there is further threat of more
10 litigation, what would be appropriate to deter these
11 two now named Plaintiffs from bringing similar cases in
12 Utah or Maine or New Mexico. I don't know if that's a
13 valid threat, and if so what sanction would be
14 appropriate. Mr. Dowling has asked hasn't the tender
15 of attorneys fees been sufficient to send a message? I
16 don't know. And I think discovery is appropriate. I'm
17 not inclined to dismiss this case under 2-619 because I
18 think there are still very important questions to be
19 answered. I'm concerned that if I, if I vacate the
20 voluntary dismissal or rather if I convert the
21 voluntary dismissal to a final dismissal with prejudice
22 that one of the things that I could possibly do would
23 be to prevent the Plaintiffs from bringing an action in
24 this court. But I know of no case law where I would be

1 able to prevent them or enjoin them from bringing it in
2 any other jurisdiction. And so I think that is an
3 important thing to consider as well. I'm going to deny
4 the motion to dismiss and I am going to deny the motion
5 to stay discovery. I believe that discovery is
6 essential for the reasons that I have just iterated.

7 MR. WEBB: Your Honor, can I ask a question and
8 because I'm trying to find -- I'm not going to repeat
9 my argument. I'm trying to find a way to get
10 everything on the table and get it resolved so that we
11 don't have to go through enormous discovery and a lot
12 more money. If the issue is the threat of more
13 litigation by the Plaintiffs that I have identified.

14 THE COURT: Or their entities, their subsidiaries,
15 their parent corporations. I don't know what the
16 structure is of all of these organizations. I don't
17 know if this would like zombie coming up after its
18 death.

19 MR. WEBB: And I don't know everything to answer
20 that question. So I'm not going to say anything that's
21 wrong. Okay. Because I think you're probably right,
22 that I would have authority to maybe enter an order
23 that would prevent litigation in your courtroom or I
24 don't want to argue. You said you're probably doing --

1 if I can find some way so that it's clear that and I
2 don't know if I can do this. Okay. I don't know, but
3 I'm asking before we go through to ask you to consider
4 not starting discovery for another week I'll say.
5 Okay. Until I at least address that issue.

6 THE COURT: Now Mr. Dowling wants to say
7 something.

8 MR. DOWLING: I'm going obviously you know, with
9 Ms. Berish withdrawing.

10 THE COURT: You have 21 days.

11 MR. DOWLING: 21 days.

12 THE COURT: Right.

13 MR. DOWLING: So I would think there would
14 hopefully be at least a stay for the 21 days before
15 anything further goes on so we can possibly find an
16 attorney and have one enter an appearance and move
17 forward.

18 THE COURT: Well, you may propound discovery, but
19 I'm not going to require that the discovery be answered
20 within 21 days.

21 MR. DOWLING: I just want to make sure. Thank
22 you.

23 THE COURT: All right.

24 MR. WEBB: I was just going to if I could maybe

1 have a status report to come back and report to your
2 Honor on that issue. The issues about whether there
3 would be some way to make sure that these entities
4 cannot litigate in your courtroom. I'm trying to make
5 sure I'm addressing your Honor's concern or what you
6 believe your power would be if we went through
7 discovery and had a hearing and then what would you be
8 able. I'm trying to address that so maybe we don't
9 have to go through all that.

10 THE COURT: I'm thinking dollar signs. If you
11 have something you want to bring to my attention you
12 may certainly notice it up. But at this point I think
13 I should give you a status date in approximately
14 90 days.

15 MR. DOWLING: Would you clarify maybe when you
16 said you were thinking dollar signs. I mean what that
17 you believe the appropriate sanction if there is one
18 some monetary amount.

19 THE COURT: That seems like it would be the only
20 thing that would be a deterrent, but I'm not saying
21 that is appropriate.

22 MR. DOWLING: I understand. I just want to make
23 sure I understood what you meant by that.

24 THE COURT: I think that's there's nothing more I

1 can say.

2 MR. DOWLING: Thank you, ma'am.

3 MR. WEBB: Thank you.

4 THE COURT: 90 days. Believe it or not that takes
5 us to July. How about July 19th?

6 MR. GARNER: Check real quick. I've got a trial
7 going on this summer. I think we are good. July 19th
8 would be fine with the Defendant.

9 MR. WEBB: That's fine, your Honor.

10 THE COURT: 9:00 o'clock. And, Mr. Dowling,
11 certainly your substitute counsel can file an
12 appearance any time.

13 MR. DOWLING: Just so you know I suspect with
14 obviously what was going on and when I filed the motion
15 to withdraw as attorney of record in other cases. I
16 didn't want to interfere with this one because we knew
17 we had a hearing that was going to be substantive as
18 opposed to the other cases there. It wasn't really
19 substantive things going on for the most part. So I
20 will be filing a motion to withdraw you know in this
21 case on behalf. Because I've obviously been
22 represented by Winston Strawn and other attorneys for
23 quite some time.

24 THE COURT: All right. Thank you.

1 MR. DOWLING: Thank you.

2 MR. GARNER: Thank you, your Honor.

3 MR. WEBB: Thank you.

4 (Which were all the proceedings had.
5 at the hearing of the above-entitled
6 cause, this date.)
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IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT.
DU PAGE COUNTY, ILLINOIS

I, NOELLE M. PIEMONTE, certify the foregoing
to be a true and accurate transcript of the computer
based digitally recorded proceedings of the
above-entitled cause to the best of my ability to hear
and understand, based upon the quality of the audio
recording, pursuant to Local Rule 1.03(c).

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