

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

**ESTATE OF RAHEEM KHALAF SA'ADOON,
et al.,**

Plaintiffs,

v.

ERIK PRINCE, et al.,

Defendants.

Civil Action No. 1:09-cv-615 (TSE/IDD)

JOINT REPORT PURSUANT TO F.R.C.P. 26(f)

Plaintiffs Estate of Raheem Khalaf Sa'adoon, et al. and Defendants Erik Prince, et al., by counsel, jointly file this report pursuant to Federal Rule of Civil Procedure 26(f) and the Court's Scheduling Order of June 16, 2009 ("June 16 Order").

The parties have conferred in accordance with Rule 26(f) and as directed by the Court, and respectfully inform the Court that they have reached the following agreements:

(1) This case should not be assigned to a magistrate judge for purposes of resolving dispositive motions.

(2) Assuming all discovery must be completed by September 11, 2009, pursuant to the June 16 Order:

(a) The parties will exchange the disclosures required by Federal Rule of Civil Procedure 26(a)(1) by August 17, 2009, under the current conference schedule, or within 30 days of the pretrial conference if the date of the pretrial conference changes.

(b) The parties will exchange the expert disclosures required by Federal Rule of Civil Procedure 26(a)(2) on August 24, 2009, and expert depositions will be completed by September 11, 2009.

(3) Defendants are also defendants in four other cases pending in this Court, all of which concern events that occurred in Baghdad, Iraq: *Estate of Sabah Salman Hassoon et al. v. Prince et al.*, 09-cv-618; *Estate of Himoud Saed Abtan et. al. v. Prince et al.*, 09-cv-617; *Estate of Ali Hussamaldeen Ibrahim Albazzaz et al. v Prince et al.*, 09-cv-616; *Estate of Husain Salih Rabea, et al. v. Prince, et al.*, 09-cv-645. To minimize the burden on the parties and to promote judicial efficiency, the parties agree that to work together to prevent any single company witness from being deposed multiple times. Notwithstanding this agreement to cooperate, Defendants retain all their rights to seek a protective order against the taking of any particular deposition.

(4) Defendants seek a protective order from the Court that will govern the handling of documents produced in this case. Plaintiffs have agreed to the entry of such an order, and the parties anticipate jointly submitting a proposed order to the Court within three days.

(5) The parties have held settlement discussions, but no settlement has been reached at this time.

The parties could not reach agreement on the schedule of discovery. As a result, below is each party's position on the schedule of discovery.

PLAINTIFFS' POSITION ON DISCOVERY

(1) This is a wrongful death action involving a single victim. Although the location of the wrongful shooting was Iraq, Plaintiffs are able to complete the discovery by the September 11, 2009, discovery cutoff date set by the June 16 Order. The eyewitnesses to the shooting have been identified and are able to travel to the United States for depositions and trial.

(2) The June 16 Order states that discovery may commence upon receipt of the Order.

To date, Plaintiffs have served Requests for Documents (July 2, 2009) and Requests for Admissions (July 7, 2007). To date, Defendants have not served any discovery.

(3) Plaintiffs anticipate that they may need to seek leave of the Court to conduct a limited number of additional third party depositions in this matter. Plaintiffs shall seek such leave, if needed, by motion.

(4) Plaintiffs respectfully request that the Court set a date certain for trial during the July 15, 2009, status conference. Such a date certain will permit Plaintiffs to obtain the necessary visas to travel to the United States for trial.

(5) Plaintiffs intend to oppose any motion for stay filed by Defendants.

DEFENDANTS' POSITION ON DISCOVERY

(1) Discovery should not commence at this time. On July 13, 2009, Defendants will file a motion to dismiss that may completely dispose of this case or reduce the number of claims. In addition, Defendants will be filing a pleading that seeks immunity from suit. In the interests of judicial economy and efficiency, discovery should be stayed until the Court has decided Defendants' immunity claims and its arguments for dismissal. Defendants intend to file a motion seeking to stay discovery. Defendants may need to file motions seeking protection from one or more deposition notices.

(2) In the event the Court elects not to stay discovery, the current discovery deadline of September 11, 2009, should be extended until December 31, 2009. This is a complex case, involving difficult issues such as immunity from suit, the political question doctrine, and the application of foreign (Iraqi) law, which if not dismissed, will require testimony from witnesses currently in Iraq. Moreover, a number of significant witnesses are employed by the United

States government, and it is unlikely that the parties will be able to secure testimony and documents from these witnesses through the *Touhy* process by the current discovery deadline. Finally, we understand that a grand jury sitting in Washington state is currently investigating the event that gave rise to the lawsuit, which could also complicate and delay the discovery process.

Based on a discovery deadline of December 31, 2009, Defendants propose that:

- (a) The parties exchange the disclosures required by Federal Rule of Civil Procedure 26(a)(1) by September 11, 2009.
- (b) Non-expert fact discovery conclude on November 30, 2009.
- (c) The parties exchange the expert disclosures required by Federal Rule of Civil Procedure 26(a)(2) on December 7, 2009, with expert depositions to be completed by December 31, 2009.

(3) Defendants believe that the number of depositions under the Federal Rules of Civil Procedure, the local rules, and the June 16 Order are sufficient, but reserve their right to seek leave for additional depositions if deemed needed. In addition, it is Defendants' position that all depositions occur in the jurisdiction dictated by the Federal Rules of Civil Procedure and Local Civil Rule 30(A), and Defendants have no objection to an extension of the discovery schedule to facilitate depositions of witnesses or parties residing or working outside the United States.

Respectfully submitted,

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