

1 want to give that to somebody in-house who's advising her  
2 client and working on a regular basis on these very issues.

3 I'm sure she has integrity and good faith. No  
4 one's questioning that. But courts over many, many years  
5 have dealt with this exact issue and set up standards that  
6 declined to provide it to in-house counsel in these  
7 circumstances. I've litigated many of these cases, not just  
8 in courts, in administrative proceedings, in government  
9 contract disputes.

10 In fact, some of them involving other attorneys at  
11 Arnold and Porter over at GAO, in the former -- it used to  
12 be over in GSBICA, was another venue. All the time orders  
13 are entered precluding in-house counsel from seeing this  
14 material. U.S. Steel was a case that applied this; the  
15 Exxon case we cited; you know, Brown Bag Software. There's  
16 nothing unusual about precluding in-house counsel from  
17 seeing sensitive material.

18 JUDGE CHACHKIN: Well, how did they deal with that  
19 case, the argument that if they couldn't consult with  
20 counsel, they really couldn't do a decent -- couldn't really  
21 represent counsel --

22 MR. DAVIS: Never worked. That argument has been  
23 proffered every time where these protective orders are  
24 discussed. And the courts always say no. This isn't a 6th  
25 Amendment criminal defense problem, that's a different

1 story. Where you're accusing someone of a crime and they're  
2 on trial, and the attorney needs to confer with them, and  
3 you have constitutional protections.

4 This is a civil dispute with the court -- they  
5 have no entitlement by filing a civil actio to acquire trade  
6 secrets through discovery for their use by in-house people.  
7 There's no right or entitlement, and no constitutional  
8 protection whatsoever.

9 MR. HORTON: Well, there is a presumption, Your  
10 Honor, that discovery material is freely available for use,  
11 unless the Court finds that there's a reason for it not to  
12 be. I'm not claiming I have a 6th Amendment right to do  
13 this, obviously. But on the other hand, the notion that  
14 courts routinely restrict discovery to attorney's eyes only,  
15 I would take great exception.

16 I've never agreed to one of these things. They  
17 give me great pause in this profession, to think that I  
18 would not be able to render proper advice to my client.

19 JUDGE CHACHKIN: And there's one other --

20 MS. KLEIN: Your Honor?

21 JUDGE CHACHKIN: Oh, I'm sorry. I didn't mean to  
22 leave you out.

23 MS. KLEIN: Just as an example, there is a  
24 standardized protective order that's in use at the  
25 Commission, that does allow in-house counsel actively

1 engaged in the conduct or pursuit to --

2 MR. HORTON: I can certainly represent that the  
3 in-house counsel I'm using here is someone who is actively  
4 engaged. She is our day-to-day contact, working out matters  
5 on this case. That person would be called to coordinate,  
6 because that's her job.

7 MR. DAVIS: Your Honor, this is incredible.  
8 Really, honestly incredible that an in-house counsel who's  
9 involved in the business end for a small entity should have  
10 access to all discovery materials. It is truly amazing. If  
11 they, for a particular document, disagree with the way it's  
12 designated or want to share it with in-house counsel, we can  
13 take it up and it can be ruled on a document by document  
14 basis.

15 But to say, out of hand at the beginning, that she  
16 will have access to all materials and anything they saw in a  
17 deposition is truly amazing. And it presents, really,  
18 unlimited amounts of problems for inadvertent or advertent  
19 misuse or disclosure.

20 JUDGE CHACHKIN: Well, there's one other  
21 possibility. I don't know to what extent it would be  
22 useful, but of course portions of documents can be deleted.  
23 But of course it may be that you'd say the whole thing is  
24 something you wouldn't want to make available to in-house  
25 counsel.

1 MR. DAVIS: It's in their interest, ordinarily,  
2 not to have redactions. Because their normal --

3 JUDGE CHACHKIN: No, their copy wouldn't have  
4 redactions. The copy that would be supplied to in-house  
5 counsel would have redactions.

6 MR. DAVIS: That's a lot of work, but if on a  
7 particular document that comes up, we certainly can  
8 entertain that. But it's a lot of work on all the  
9 documents, to go through and redact each one. But if it  
10 comes up, we'd be happy to do that, if it's appropriate.

11 JUDGE CHACHKIN: Well, again, we're dealing here  
12 with a vacuum, because I don't know what these documents  
13 are, I don't know how sensitive they are. The question is,  
14 this can be resolved without disturbing the hearing process,  
15 if you would produce these documents in short order before  
16 the depositions take place. I assume you want to include  
17 depositions --

18 MR. HORTON: I'm certainly hoping I'll get them  
19 before then.

20 JUDGE CHACHKIN: And then if you feel one of these  
21 documents is so sensitive that it shouldn't be shown to in-  
22 house counsel in a particular case, then I could resolve  
23 where they should be shown or whether parts of it could be  
24 redacted and there can be agreement what could be redacted  
25 could be shown to in-house counsel.

1           And it wouldn't disturb the hearing, as I say, or  
2 the depositions if you could turn over these documents in  
3 short order. But apparently you haven't turned over any  
4 documents yet?

5           MR. DAVIS: That's correct, Your Honor.

6           JUDGE CHACHKIN: And how soon can you turn over  
7 documents?

8           MR. DAVIS: Well, we can begin turning them over  
9 in fairly short order because we've begun the process of  
10 collecting them. We haven't completed it, and of course  
11 we're discussing here some of the scope of it. So we can  
12 begin turning them over, certainly, in two weeks or so. I'd  
13 say two weeks from today we can begin turning the documents  
14 over.

15           JUDGE CHACHKIN: And when will the deposition be  
16 taken?

17           MR. DAVIS: The first one -- and again, we're  
18 going to negotiate on actual days. The first one, I  
19 believe, is actually noticed for the 17th, which is three  
20 days shy of two weeks from today.

21           JUDGE CHACHKIN: Well, then you're going to have  
22 to move quicker on the production. Now that we've discussed  
23 limitations on what you have to produce, it seems to me you  
24 can move quicker on producing these documents. There's not  
25 a wide range of documents anymore.

1 MR. DAVIS: No. And I thought two weeks was  
2 pretty quick. But the client is already compiling them, and  
3 has compiled some. It's solely a matter of you have to get  
4 them, counsel has to review them to make sure that's there's  
5 not privileged, attorney/client privilege in the material  
6 and the like. Make sure they're responsive to the request.  
7 That's why I was saying two weeks. We'll, you know, burn  
8 the midnight oil and do it in 10 days if that will be  
9 helpful, Your Honor.

10 JUDGE CHACHKIN: Well, how soon do you need it  
11 before the depositions?

12 MR. HORTON: Well, 10 days will be the Sunday  
13 before the first deposition is noticed for, Your Honor. We  
14 filed our document request right after the initial status  
15 conference that we had with you.

16 JUDGE CHACHKIN: So some should have been produced  
17 by now.

18 MR. DAVIS: Well, the problem is the protective  
19 order. It's not that -- that's the issue. It's not that --

20 JUDGE CHACHKIN: Well, but I want you to start  
21 producing them as soon as they're ready. Not to wait to get  
22 the whole batch together, but start producing them now so  
23 they can start working on them. And I want them produced at  
24 least -- how much time before the depositions do you want  
25 the documents? I mean, to the extent to which they're

1 available? If others dribble in afterwards, we'll have to  
2 deal with that.

3 MR. HORTON: I obviously may find myself in the  
4 position of saying now I've got to keep at documents with  
5 the name of someone that's already been deposed.

6 JUDGE CHACHKIN: Well, how soon do you need it  
7 before you start deposing?

8 MR. DAVIS: Well, the problem here, Your Honor, is  
9 that if we give them a substantial amount of the documents  
10 10 days from today, and we're all agreeing that we're going  
11 to produce them as they've been located and what have you,  
12 then I don't want to be in a position where they then want  
13 to redepose somebody they've just deposed, because they get  
14 another document that cc's that person. So this is a little  
15 awkward.

16 I'm happy to get them out as they're collected,  
17 but then at the same time, I don't want to be taken  
18 advantage of because we do that.

19 MR. HORTON: Well, Your Honor, I'm not taking  
20 advantage of anyone. We've filed this document request  
21 quite some time ago, and 10 days from today is the Sunday  
22 before the Monday on which the first deposition is  
23 scheduled.

24 JUDGE CHACHKIN: Is that satisfactory, or do you  
25 want them by Friday?

1 MR. HORTON: It seems to me they certainly ought  
2 to be in my office by sometime on the previous Friday, so  
3 that at the very least we can look at them over the weekend  
4 and be prepared to --

5 JUDGE CHACHKIN: Yes. That Friday before the  
6 depositions, they should be made available. If you have to  
7 burn the midnight oil, it should have been at least -- I  
8 mean, there's no reason because of the question of  
9 protective order, why these documents weren't gathered.

10 MR. DAVIS: They're being gathered. There's no  
11 question --

12 JUDGE CHACHKIN: I mean, why they weren't gathered  
13 as soon as the motion for production of documents -- and you  
14 agreed that you were going to produce them. At that point  
15 you should have started gathering them.

16 MR. DAVIS: We have.

17 JUDGE CHACHKIN: Well, then if they're available  
18 then they should be turned over.

19 MR. DAVIS: We'll be happy to produce them next  
20 Friday, Your Honor.

21 JUDGE CHACHKIN: All right. And if some important  
22 document comes up afterwards, if we have to redepose  
23 somebody, it may be necessary. Hopefully it won't happen,  
24 but if it happens, if happens.

25 MR. DAVIS: We'll get it done, Your Honor. They

1 will get it next Friday.

2 MR. HORTON: I'm sorry. I assume to the extent  
3 that they can be reasonably made available before then --  
4 again, I don't want to wait until the bag is full.

5 JUDGE CHACHKIN: Well, that's what I'm saying. I  
6 want them to be completed by next Friday, but to the extent  
7 that they're available before -- if they have to be made  
8 available in dribs and drabs, at least counsel can start  
9 working on them.

10 MR. DAVIS: We'll do our best, Your Honor.

11 JUDGE CHACHKIN: Like you said, they've gathered  
12 some documents.

13 MR. DAVIS: They absolutely have, Your Honor.

14 JUDGE CHACHKIN: So turn them over.

15 MR. DAVIS: Very well, Your Honor.

16 JUDGE CHACHKIN: Let's not wait until Friday.  
17 Friday will be the deadline. But they should be turned over  
18 in rolling fashion. All right. Now, as far as the  
19 protective order is concerned, I would be agreeable to  
20 signing a protective order, first of all, indicating the --  
21 some kind of compromise between the two of you, as to the  
22 process. Namely, that if you have anybody else you want to  
23 include in the definition of who is an expert, you can  
24 include it. There can be discussions about that.

25 But secondly, if you want to include something

1 that we discussed, that if there's a particular document  
2 that's of disagreement, and whether that should be turned  
3 over to in-house counsel -- or that should be turned over to  
4 the expert -- no, wait a minute. We're talking about the  
5 expert, there's disagreement that the expert -- we agreed  
6 that 48 hours --

7 MR. DAVIS: Correct, Your Honor.

8 JUDGE CHACHKIN: 48 hours that you would come to  
9 me and I would rule on it.

10 MR. HORTON: That's fine.

11 MR. DAVIS: That's right.

12 JUDGE CHACHKIN: And as far as in-house counsel is  
13 making it available to either a designated party or General  
14 Counsel, whichever one you agree to, a similar procedure, I  
15 guess.

16 MR. HORTON: I think the way it would work is that  
17 the -- is that Mr. Davis has suggested a two-tiered concept,  
18 or as some documents could be marked as confidential but  
19 could be turned over to inside counsel. And he would have a  
20 second category of highly confidential documents which could  
21 not. So if he -- if it's a highly confidential document  
22 that I feel I need to discuss with my client, the first  
23 thing I would do is ask him to withdraw the designation and  
24 drop it back to confidential. And if he can do so within --  
25 if he does so within 48 hours, then we won't have a problem.

1 If he doesn't, and I feel so strong that I need to do this,  
2 then I guess we'll come to you and --

3 JUDGE CHACHKIN: Unless --

4 MR. HORTON: It might be that we have to submit  
5 the document in camera.

6 JUDGE CHACHKIN: That's true.

7 MR. DAVIS: That's right.

8 MR. HORTON: For you to make an assessment.

9 JUDGE CHACHKIN: And also you may agree on certain  
10 redactions, which make the document no longer --

11 MR. DAVIS: That's acceptable, Your Honor.

12 JUDGE CHACHKIN: Now, if you come up with some  
13 kind of procedure like that, I'll sign it how we're going to  
14 proceed as far as protective order is concerned. Does that  
15 take care of all of it? We've been here three hours now, I  
16 hope we've gotten something done.

17 MR. DAVIS: Three hours? No.

18 JUDGE CHACHKIN: No, no. Two hours and 15  
19 minutes. Sometimes they last longer than that, but this one  
20 seems like we've come to the end of the day. Is there  
21 anything else that we have to --

22 MR. HORTON: Your Honor, I think we'll try to make  
23 sure we've agreed on the language of the protective order  
24 between the three of us, and have it submitted to you for  
25 signature once we have --

1 MR. DAVIS: Your Honor, for the Friday deadline  
2 for production of documents, does that apply to both  
3 parties? The documents we've requested from them?

4 JUDGE CHACHKIN: Well, we haven't gotten to the  
5 interrogatories directed to Classic Sports, and I don't know  
6 what your view is. Do you have problems with some of them?

7 MR. DAVIS: I don't need to raise it now, Your  
8 Honor. I just wanted to make sure that whatever issues  
9 there are, that we're going to be getting documents at the  
10 same time we're producing them, because I don't want to be  
11 delayed in the couple of depositions we've noticed. I hope  
12 we can do them on a similar type schedule. That's all I'm  
13 asking.

14 MR. HORTON: I will do the best I can, Your Honor.  
15 They waited an extra month before filing, and our responses  
16 are not even due until tomorrow. We'll make timely  
17 responses. He will not be surprised to find that there will  
18 be some objections.

19 JUDGE CHACHKIN: So where do we go from there? I  
20 want to -- do we have to have another session or what?

21 MR. DAVIS: I'm happy to take them up now, Your  
22 Honor.

23 JUDGE CHACHKIN: Maybe we could --

24 MR. DAVIS: While we're here, if you want do to it  
25 that way.

1 JUDGE CHACHKIN: Well, why don't we take a 10-  
2 minute break and take up any objections that you may have,  
3 since you're going to file tomorrow.

4 MR. DAVIS: I think that makes sense. We're here,  
5 let's just get it resolved.

6 JUDGE CHACHKIN: See to what extent we can resolve  
7 it.

8 MR. HORTON: I'll try, Your Honor, but the  
9 difficulty is that we're still putting the papers together.  
10 I don't have my drafts with me. We have various -- there  
11 are various things in which we have objections. We might be  
12 able to do some global stuff, I'm not sure we're going to be  
13 able to resolve everything, in part because I don't have all  
14 in mind everything that I have on my draft responses, which  
15 are still in the process of being worked out.

16 MR. DAVIS: They're due tomorrow. They've had  
17 them for two weeks. I think they've --

18 JUDGE CHACHKIN: Well, we could do one of two  
19 things. We could recess until two o'clock and take up these  
20 other matters, and see if we can't resolve it. If we can't,  
21 we can't. But if we could, if we could resolve it all  
22 today, then we --

23 MR. HORTON: I don't think coming back at two is  
24 going to help matters. And one of the difficulties -- and  
25 we're still working on interrogatories with our client. I

1 can tell you right now what I think the big issue is, on  
2 which we're going to make very major objections.

3 JUDGE CHACHKIN: All right. Well, we can take  
4 that -- excuse me. Let's just take a 10-minute recess, and  
5 then we'll take up -- so you'll have an idea of my thinking,  
6 and we can proceed from there.

7 MR. DAVIS: I think that's very helpful, Your  
8 Honor.

9 JUDGE CHACHKIN: All right. We'll be in recess.  
10 (Whereupon, a brief recess was taken.)

11 JUDGE CHACHKIN: All right. Let's go on the  
12 record. First of all, let's take the easiest thing first,  
13 and that is the -- apparently Cablevision wants to depose  
14 three individuals. Do you have any objection to those three  
15 individuals being deposed? Greenberg -- or just two  
16 individuals, I guess.

17 MR. DAVIS: Actually, a third one that we're --  
18 we've just prepared, which is an ESPN representative.  
19 There's two that we've already served them, and there's a  
20 third one that we have in mind.

21 MR. HORTON: I will have no objection to the first  
22 two, and I will certainly object to the third.

23 JUDGE CHACHKIN: Yes. What's the need for an ESPN  
24 representative?

25 MR. DAVIS: Well, really, one of the key issues in

1 this case is they've been for sale for years, and here  
2 they've in fact, sold themselves to ESPN, saying in various  
3 public statements that that's something they've wanted to do  
4 for a number of years. While they're simultaneously  
5 alleging in their very complaint in this case that they  
6 weren't for sale, and that they were offended that we would  
7 think they were for sale, and try to ask them a price. It's  
8 just absolutely, directly contrary to one another.

9 JUDGE CHACHKIN: What does that have to do with  
10 the issues in this case, though? I mean, it may be very  
11 interesting, but what does it have to do with the issues in  
12 this case?

13 MR. DAVIS: Well, very simple. They've alleged  
14 that they weren't for sale, and they were.

15 JUDGE CHACHKIN: But whether they were for sale or  
16 not, what does that have to do with the issues in this case?

17 MR. DAVIS: If they would like to stipulate that  
18 they've been shopping the sale of the company for the  
19 duration of the period, and that there have been numerous  
20 interested parties, including ESPN, that may take care of  
21 it.

22 JUDGE CHACHKIN: Well, I understand that. But  
23 what does that have to do with the issues in this case? Are  
24 they claiming that somehow -- I assume they're not alleging  
25 in their complaint that this has -- that their sale to ESPN

1 has something to do with your decision, your alleged  
2 decision not to carry them unless they agreed to provide you  
3 with a financial interest, or gave you exclusive rights, are  
4 they?

5 MR. HORTON: It's quite the opposite, Your Honor.  
6 The statute is clear enough. We have a right to sell  
7 ourselves, or not sell ourselves, or inquire about selling  
8 ourselves. They don't have a right to say "You have to sell  
9 to us. " They've asked questions, both about our sale to  
10 ESPN -- and I'll say a little bit more about that factually  
11 in a moment -- and generally whether we had any discussions  
12 about sales or investments by others.

13 I'm mystified by this. It's a matter of complete  
14 irrelevance. We can sell ourselves, or not. The point is  
15 they can't demand that we sell to them. This is so far  
16 afield, I truly am mystified by it.

17 MR. DAVIS: Well, Your Honor, if they've been on  
18 the market and in negotiations to sell themselves to  
19 numerous prospective bidders, doesn't that fully explain why  
20 we were interested to participate as a bidder? Which is  
21 really what they allege in the complaint. That so and so  
22 from Cablevision said, "Are you for sale? What's the  
23 price?"

24 JUDGE CHACHKIN: Well, there's no dispute that you  
25 were interested, and that apparently an agreement might have

1 -- that you discussed these subjects. The question is  
2 whether you made this a condition of sale. That's the  
3 issue.

4 MR. DAVIS: But they need to then withdraw the  
5 allegation that there was an impropriety in our inquiring  
6 about this, once or more than once. They allege that there  
7 was something wrong that we were raising this. That's the  
8 problem. And if they would admit that there's nothing at  
9 all wrong, that it was appropriate, then fine. But they  
10 don't allege that. They allege the opposite.

11 The problem is the complaint, not that they were  
12 shopping themselves to various bidders. We agree, that's  
13 perfectly legal. The fact that they sold themselves to ESPN  
14 is lawful. No one's saying there's anything wrong with it.  
15 The point is, it refutes the allegation that there was  
16 something wrong with us, Cablevision, asking the price as  
17 well.

18 MR. HORTON: There's no such allegation, Your  
19 Honor.

20 JUDGE CHACKIN: That's right. Where is this  
21 allegation?

22 MR. DAVIS: Well, the allegation, it's replete  
23 through there. That at the next meeting somebody from  
24 Cablevision asked if they're for sale, and then at the next  
25 meeting they had a meeting and they asked if they were for

1 sale. The complaint just goes all the way -- the complaint  
2 should be limited to the allegation that we're discussing in  
3 this proceeding, that they were refused carriage because  
4 they didn't sell themselves to us. That's a four paragraph  
5 or five paragraph complaint. It goes on for page after page  
6 after page of inquiries by Cablevision about them  
7 potentially being for sale.

8 And they want to now depose -- and they've been  
9 allowed to depose -- nine people about whether Cablevision  
10 was interested in buying them. So it's all part of the same  
11 thing.

12 MR. HORTON: I'm still mystified, Your Honor. The  
13 fact -- they are allowed to inquire if they had an interest  
14 in buying us, and to ask about it. They can't demand that  
15 we sell ourselves. Now, if I had a letter from Chuck Dolan  
16 which says to Mr. Greenberg, "this is to inform you that  
17 unless you sell yourself to me you will never get coverage  
18 on my network," I'd have produced that. Obviously, you've  
19 had a chance to read the complaint, and it is that a course  
20 of conduct over a period of many, many, many months made it  
21 absolutely clear -- this is our contention -- that they were  
22 not prepared to carry us unless we gave them exclusive  
23 rights, or sold ourselves.

24 That eventually -- you know, you keep butting your  
25 head up against the same wall, and with the same result, and

1 you, Your Honor, as the trier of fact, can reach a  
2 determination as to what that means. The fact that we may  
3 have had -- the mere fact that they asked us, you know, that  
4 doesn't -- that does not as an isolated event mean that they  
5 violated the law. The question is what's the totality of  
6 the relations between the two parties? And whether we had  
7 discussions with somebody else, or ultimately sold ourselves  
8 to somebody else, is totally irrelevant to that.

9 Now, the one thing that I would add, as I believe  
10 that this question is called for, although that I'm not  
11 sure. They have a lot of interrogatories and I don't have  
12 them, all nine. But I will make this clear, that there was  
13 apparently -- and I've forgotten the date -- it was around  
14 1994. Apparently there was some sort of contact between  
15 either ESPN or Disney, I'm not sure who the contact was. It  
16 was not followed up on, died on the vine.

17 The ultimate sale which occurred has been the  
18 subject of some publicity of my client to ESPN. That  
19 occurred after this complaint was filed, the discussions,  
20 the negotiations and the initial contact that led to that,  
21 all occurred after the complaint in this case was filed. We  
22 exercised, post-complaint, our right to sell ourselves.  
23 That's a right that we have. We just have a right not to  
24 insist that we sell ourselves to them.

25 And the fact that we may have either looked into

1 exercising that right, or may in fact have done it,  
2 particularly at a time which is past all the relevant time  
3 period is a matter of surpassing irrelevance. I cannot  
4 conceive what this has to do with our claim that the  
5 totality of our context with them -- and that's what you  
6 started this hearing two-plus hours ago, saying isn't that  
7 what's really relevant? Well, on this issue that is what's  
8 really relevant, is what's the totality of the circumstances  
9 between these two parties, as to whether they were insisting  
10 that we sell to them.

11 And it matters not that we might have had  
12 discussions with others, and that we in fact ultimately,  
13 although after all the relevant time period, did sell  
14 ourselves to others. This has nothing to do with this case.

15 MR. DAVIS: Well, there's a couple of responses to  
16 that. Number one, a lot of this is news to me, and I'm  
17 hearing for the first time here. If it's true, we can do  
18 the discovery and that's what they'll tell us, rather than  
19 just getting it from counsel as to when they were for sale,  
20 and when these contacts did take place.

21 But number two, more importantly, as it gets to  
22 the entire proceeding rather than the simple facts of the  
23 company being sold, I'm reading -- looking at their  
24 complaint right now.

25 JUDGE CHACHKIN: What are you looking at?

1 MR. DAVIS: Look, for example, at Paragraph 11,  
2 all right? And we'll take -- this is exactly what I'm  
3 talking about. This goes to what they want to do in  
4 discovery.

5 JUDGE CHACHKIN: All right.

6 MR. DAVIS: Paragraphs 11 and 12, they talk about  
7 a meeting on Pages 5 and carried over to Page 6, with  
8 somebody from Rainbow. This person, Mr. Sapan, has no  
9 involvement in whether they get carried or not carried.  
10 Completely irrelevant to whether they get carried or not  
11 carried. He works for Rainbow, which is a programming arm.  
12 They have allegations here that Mr. Sapan said that Rainbow  
13 might be interested in buying them.

14 All I'm saying here is if what they're saying is  
15 correct now, about them being sold, why are we going to  
16 depose Mr. Sapan? For what? I have no idea why we're doing  
17 it.

18 MR. HORTON: Your Honor, I have to confess I  
19 couldn't follow that. I will state that, with respect to  
20 the allegation in Paragraph 11, there was an instance, which  
21 is alleged right here, in which in the course of an inquiry  
22 by another party, Liberty, about the possibility of  
23 investment, that the question of whether Cablevision might  
24 somehow be brought into that came up. We've alleged that in  
25 our complaint, and he has asked questions in his discovery

1 about that. And I do not object to that discovery, because  
2 it involves Cablevision.

3 MR. DAVIS: Now, let me be clear. I'll make  
4 myself clear because there seems to be some confusion. They  
5 have an allegation that there was a meeting with Mr. Sapan  
6 of Rainbow, where Mr. Sapan inquired about buying them.  
7 They then want to depose Mr. Sapan. I'm saying, given that  
8 we're all agreeing that it's perfectly acceptable for  
9 Rainbow to inquire about purchasing them, what's the point  
10 of deposing Mr. Sapan? He had no involvement in whether  
11 they were launched on any system he carried. He works for  
12 Rainbow.

13 MR. HORTON: I thought we resolved earlier, Your  
14 Honor. He can dispute this as a matter of law when we get  
15 to that point. In the meantime he's going to give me some  
16 further discovery on this Rainbow versus Cablevision.

17 MR. DAVIS: No, no. But you're still --

18 MR. HORTON: And it hasn't got a thing to do with  
19 whether or not he should be entitled to go looking around  
20 into our discussions with ESPN or XYZ.

21 MR. DAVIS: Your Honor, the Rainbow witnesses that  
22 they've noticed depositions, and it's been ordered that  
23 they're entitled to them, solely go to purchase and not  
24 carriage. There's no allegation that these persons --

25 JUDGE CHACKIN: That's not true, according to

1 Paragraph 22.

2 MR. DAVIS: All right. Let's take a look there.

3 Well, I don't even know what 22 means. Did Josh Sapan  
4 allegedly said he wanted to buy them.

5 JUDGE CHACHKIN: No.

6 MR. DAVIS: And that what? And that Rainbow --

7 JUDGE CHACHKIN: Sapan was adamant about wanting  
8 an equity interest in CSN, and would not agree to carry the  
9 service until Cablevision obtained an ownership interest in  
10 CSN.

11 MR. DAVIS: I see that's what it says. It makes  
12 no sense, because Rainbow doesn't carry anyone.

13 JUDGE CHACHKIN: Well, we'll just have to see what  
14 the evidence shows. But there's a reason for, obviously,  
15 deposing Mr. Sapan.

16 MR. DAVIS: Well, but the same exact point that we  
17 want to depose them on. Which is was the company for sale,  
18 was it being shopped, where the --

19 JUDGE CHACHKIN: What difference does it make?  
20 What difference -- the issues here deal with whether  
21 Cablevision or one of its affiliates demanded, as a  
22 condition for carriage, that you sell it to them.

23 MR. DAVIS: It makes all the difference in the  
24 world. He's just said -- Mr. Horton's just said in his  
25 prior answer that he's now represented to the Court when the

1 negotiations took place. They were after the complaint,  
2 they're even now still putting facts at issue.

3 JUDGE CHACHKIN: Oh, no, no. He's saying just the  
4 opposite. He's saying that the decision to sell to ESPN  
5 occurred after all these events took place, so how could  
6 that be possibly relevant to the events in question here?

7 MR. HORTON: But even if it occurred before --

8 MR. DAVIS: That's the point.

9 MR. HORTON: Even if it occurred before, it would  
10 still be a matter of complete irrelevance.

11 JUDGE CHACHKIN: I understand. But it's so far  
12 removed from the events that took place here, what basis  
13 could it have bearing on the issues in this case?

14 MR. DAVIS: Well, I think if we -- and it's a long  
15 complaint.

16 JUDGE CHACHKIN: We're only trying one case at a  
17 time. If you want to allege that -- if someone makes an  
18 allegation that ESPN demanded that they provide carriage on  
19 the -- and ESPN doesn't have any stations, they're not a  
20 carriage system, cable system to start with. But whatever.  
21 There's no issue here, and it's already -- Mr. Horton has  
22 made clear, the mere fact that you inquired about whether or  
23 not Classic Sports would give you a financial interest, give  
24 Cablevision a financial interest, or give you exclusive  
25 rights, is not a violation of the law. And nobody contends

1 it is.

2 MR. DAVIS: Well, can we get them to agree that  
3 they were entertaining offers from cable operating --

4 JUDGE CHACHKIN: But it's irrelevant what they  
5 were entertaining. But it doesn't matter if there were such  
6 inquiries going on, it doesn't matter. What matters is if  
7 at some point these discussions emanated, resulted in a  
8 situation where I could find that there was a demand. That  
9 these are the conditions, and if you don't agree to these  
10 conditions we won't carry you. That's all, that's what the  
11 issues deal with.

12 The fact that Cablevision expressed interest is  
13 not -- it didn't violate the law, that's irrelevant. The  
14 question is whether these discussions finally concluded, or  
15 one could reach the conclusion that the end result of all of  
16 these discussions taken together is that there was a demand  
17 made. That's what these issues concern.

18 MR. DAVIS: Well, let me make a proposal, then, on  
19 the depositions, which is where we started. Why don't we do  
20 the two depositions of the two players that they've  
21 identified as being involved on their side of the table?  
22 There's only two that they've identified, Mr. Greenberg and  
23 Mr. Bedol. And then re-evaluate at that point whether based  
24 on what the testimony is from those two gentlemen, whether  
25 there's a need to depose anyone from ESPN.