

Judge orders Redstone to testify

The mogul must give a deposition in the trial to determine his mental competency

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Media mogul Sumner Redstone will have to provide testimony in an upcoming trial to determine whether he is mentally competent, a dramatic turn in the high-profile case that his lawyers had been fighting to prevent for months.

Los Angeles County Superior Court Judge David J. Cowan on Monday ruled that the 92-year-old controlling shareholder of CBS Corp. and Viacom Inc. must give a 15- to 30-minute deposition at his Beverly Park mansion. The surprise decision comes just days before the trial is due to begin.

Cowan's ruling could have major ramifications in the bitter dispute and could prompt both sides to resume settlement talks that had collapsed last month. A resolution would spare Redstone, who struggles to speak intelligibly, the embarrassment of testifying in a case that has exposed deep dysfunction in his family and raised questions about the media empire he controls.

The deposition -- which could occur later this week -- will be videotaped and played for Cowan



Sumner Redstone (Lawrence K. Ho / Los Angeles Times)

at the trial, which is scheduled to begin Friday. However, the public and media will not be allowed in the courtroom during Redstone's videotaped testimony, Cowan said.

Redstone's deposition had been sought by attorneys for Manuela Herzer, his former companion who was removed from a position of power at Redstone's home in October. She filed a lawsuit in late November, alleging that Redstone was not mentally competent to make decisions concerning his healthcare, describing the once powerful titan as a "living ghost" who is prone to crying spells.

Lawyers for Redstone and his associates have painted a dramatically different picture. They say the mogul is in command of his faculties, and that they have carried on in-depth conversations with him. Redstone has participated in corporate votes at Viacom and CBS, and lawyers also have produced lengthy emails that Redstone allegedly had dictated, making it difficult for the judge to determine whose account is most credible.

Cowan had previously ruled that Redstone would not have to testify because of his severe

speech impediment and declining health.

But during a hearing Monday, the judge said there was no way for him to make an informed decision regarding Redstone's capacity without hearing from the mogul himself.

"His appearance is of the utmost significance," Cowan ruled. "He is not a peripheral witness."

Redstone's lead attorney, Gabrielle Vidal, tried to object during Monday's hearing, saying the deposition would be too stressful and could compromise the mogul's condition. "Stress and anxiety could be harmful in the extreme for him," Vidal told the judge.

Cowan agreed that he didn't want to do anything that would worsen Redstone's condition.

"At the end of the day, it is his health that should not be jeopardized in any way," he said.

During the proposed deposition, a lawyer representing each side will be allowed to question Redstone for up to 15 minutes. The judge said he considered a 30-minute time limit, or as little as five minutes for each side, but determined that 15 minutes would provide a "meaningful" glimpse into the situation.

Several observers were surprised that the case has not been settled before now, given the intense scrutiny on Redstone's family and the questions about his involvement in the affairs of Viacom and CBS.

An earlier effort to settle the case, which would have provided

Herzer with about \$25 million, collapsed last month. The sticking points included a demand by Herzer that a handful of members of Redstone's household staff be fired, and that Redstone family members -- including people who claim to be family members -- not sue her in the future, according to people close to the talks but not authorized comment publicly.

Settling the case for under \$30 million would be a relative "drop in the bucket" for Redstone, said Lloyd Greif, president and chief executive of the downtown investment banking firm Greif & Co. Redstone is worth an estimated \$5 billion.

"All of the tea leaves say there is a question of his mental competency," Greif said.

He said Redstone's lawyers would have little incentive to take the case to trial because the proposed deposition could undermine their case by showing the mogul's frailty.

"This ruling likely will be the straw that breaks the camel's back," he said.

Herzer's attorney, Pierce O'Donnell, agreed that Cowan's ruling could help restart settlement talks.

"It should," he said in the hallway outside Cowan's courtroom after Monday's hearing. "Fifteen minutes should be more than enough for me to establish, what I think I can establish, which is, tragically, he does lack capacity."

Vidal expressed appreciation that Redstone's deposition would not be made public.

"We appreciate the court's continued protection of Mr. Redstone's privacy and dignity," she said in a statement.

During the hearing, Vidal told Cowan she wanted to consult with Redstone's doctors before scheduling the deposition.

The trial, should it go forward, is expected to span about seven days and delve into Redstone's interactions with his doctors, nurses and his daughter, Shari Redstone, the vice chairwoman of CBS and Viacom who has had a tumultuous relationship with Redstone over the years.

Shari Redstone is listed on the witness list, along with Viacom Chief Executive Philippe Dauman and the mogul's longtime attorney, David Andelman. Redstone's doctors and nurses and even his Paramount Pictures chauffeur, Isileli Tuanaki, are also expected to testify.

Herzer's lawyers have even said that they might call Redstone's ex-wife, Paula Fortunato, whom he divorced in 2008.