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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 07-11448

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In the Matter of:

THE 1031 TAX GROUP, LLC,

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 20, 2007

4:10 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

1
2 **A P P E A R A N C E S :**

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20 **BY: MELANIE CYGANOWSKI, ESQ.**

21 **(TELEPHONICALLY)**

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BY: ROBERT HAMALTON, ESQ.

(TELEPHONICALLY)

P R O C E E D I N G S

1
2 MR. KINEL: Good afternoon, Your Honor, Norman Kinel
3 and I have Ira Sacks, Dreir LLP, here on behalf of the
4 plaintiffs.

5 THE COURT: Thank you, Mr. Sacks and Mr. Kinel.

6 MR. HAMALTON: On behalf of Colorado Capital Bank,
7 Your Honor, we have Robert Hamalton and Petro Jimenez of Jones
8 Day.

9 THE COURT: Okay.

10 MS. CYGANOWSKI: And on behalf of the committee
11 Melanie Cyganowski on Greenberg Traurig.

12 MR. HAMITON: All right. I think that's all we're
13 going to have. So, good afternoon to everybody. Mr. Jimenez
14 you had asked for a conference.

15 MR. HAMITON: Yes. And I say, Robert Hamalton. The
16 reason we ask was -- was just a very simple -- what we thought
17 would be a very simple question as to whether or not the Court
18 contemplates receiving evidence or having an evidentiary
19 hearing on the estimation motion on Monday. The reason we
20 wanted to -- to raise it to the Court now is, it isn't clear to
21 us whether or not that was contemplated by the debtor or the
22 plaintiff movement or the Court. And we have witnesses who are
23 prepared to testify if that's what happens on Monday. They'll
24 be coming from Colorado and we didn't want to bring them out to
25 New York unnecessarily if the only thing that was going to

1 happen on Monday was to have the -- a preliminary address of
2 the issues and scheduling an evidentiary hearing for some other
3 time. And so we thought if we could knock that off today we
4 could avoid having witnesses coming out from Colorado on Monday
5 unnecessarily. So that was the reason for -- for this
6 inquiry.

7 THE COURT: Okay. And just within the last half
8 hour, Dreier filed a reply brief on the estimation. I don't
9 know whether, Mr. Hamalton you've seen it yet?

10 MR. HAMITON: I have not seen it. I learned that
11 they had filed it, like, about three minutes before we did this
12 call.

13 THE COURT: Okay.

14 MR. HAMITON: I have not -- I have not reviewed it
15 yet. But, Mr. Jimenez did quickly skim-review it. And I'm not
16 sure if there's anything in there that address his question
17 directly.

18 THE COURT: Yeah. Other than -- and I reviewed it
19 very, very quickly just before coming down to court. And I
20 should say, we are transcribing the hearing. This is a hearing
21 on the record. So I reviewed it quickly and the debtors take
22 the position that no evidentiary hearing is required. Let me
23 say, I have review all of the papers with respect to the
24 estimation proceeding. And let me tell you what my
25 preliminary, preliminary thoughts are and then I'll each of you

1 a chance to respond. Preliminarily, it does seem to me that I
2 cannot resolve the estimation issues without an evidentiary
3 hearing of some type. In other words, that I can't resolve
4 estimation based solely on the papers that have been filed so
5 far. That's my preliminary view. Additionally, my preliminary
6 view is that the entire claim of Colorado Capital Bank is
7 unliquidated. The proofs of claim which CCB filed specified no
8 amount. They attach the -- the attachment or addendum which
9 lays out a claim for indemnification as the various contractual
10 provisions that may entitle it to indemnification. But again,
11 specifies no amounts that in the objection, which Colorado
12 Capital Bank filed contending that 611,000 is liquidated.
13 Putting it in a brief doesn't make it so. And so, it's my
14 preliminarily conclusion that the entire claim is unliquidated
15 subject to estimation under 502C. It does seem to me that --
16 at least preliminarily, that at most very limited discovery
17 would be required, and a summary proceeding sufficient and
18 appropriate in the circumstances for estimating the claim.
19 Based on my review of the briefs, it also appears to me that
20 Colorado Capital Bank bears the burden of proof, applying the
21 appropriate standard. But bears the burden of demonstrating
22 the amount of it's -- of its claim. Just in terms of my own
23 thinking, I mean, it breaks down as the briefs treat it, in
24 several components. One is the -- the legal fees. Most --
25 both what may have been incurred to date, which I think you say

1 in the brief is 611,000 and what may be recoverable, or
2 appropriate in the future. So, I would envision any estimation
3 proceeding dealing with what's the reasonableness of the
4 attorney's fees that may have been and may still be incurred
5 for which CCB is entitled to indemnification under the various
6 written agreements. And that would require a showing that the
7 fees were incurred in connection with an indemnifiable event or
8 series of events. And that the -- and even if they were
9 incurred in connection with indemnifiable events that they're
10 reasonable in the circumstances and estimating them going
11 forward. And then, you also, Mr. Hamalton in -- in the claim
12 and in your brief talk about your -- CCB's potential liability.
13 Of course, you both agree that -- that you don't think CCB has
14 any liability but you go on to say how you're arriving at the
15 number. But I believe I need to hear evidence supporting all
16 of your factual support for your purported claims. So that --
17 those are my preliminarily views. Now, given the very tight
18 schedule that this proceeding is on and -- you know, it's clear
19 to me, at least, Mr. Kinel and Mr. Sacks that this issue is not
20 getting resolved on Monday if you were planning to include a
21 more precise amount in a disclosure statement assuming one were
22 approved. So, appropriate language would have to be placed in
23 the disclosure statement indicating what the status of the
24 estimation is and what the range of possible outcomes is. I
25 think the language in there now would not be sufficient. But I

1 think this needs to get resolved assuming for purposes of this
2 discussion and making clear, I don't know what the outcome will
3 be on Monday's hearing on the disclosure statement. But if a
4 disclosure statement is approved and if the confirmation
5 hearing goes forward on schedule, this estimation should be
6 completed before the confirmation hearing. Let me stop there.
7 Mr. Kinel, do you want to -- or Mr. Sacks, do you want to
8 address these issues?

9 MR. KINEL: Mr. Kinel. Thank you, Your Honor.
10 I'm -- I will address them briefly. We -- we filed our reply
11 brief this afternoon. We purposely tried to get it to the --
12 to the Court to -- to be out of Court as early as we could.
13 And unfortunately it wasn't as early as we wanted to. But the
14 point of our reply brief -- and I understand Mr. Hamalton
15 hasn't seen it yet, is that we -- we thought we could simplify
16 this matter considerably and avoid lengthy litigation,
17 discovery and hearings and intended costs by making certain
18 concessions or exceptions for purposes of getting to an end. I
19 think you can see it. And what we did in our brief is we -- we
20 took CCB's attorney fee number that is now provided to the
21 Court and said, assuming that that amount is ultimately allowed
22 and reasonable, and if it's entitled to indemnity and more and
23 more grievant, if you subtract from that the amount that CCB
24 owes to debtors and arrive at a fair estimation number. And,
25 obviously, we do not believe that -- there's any other

1 potential for CCB to have any liability as a result of being
2 sued by a third party which CCB agrees with, but, nonetheless,
3 thinks there should be some reserve for -- for that catchall.
4 But having said all that, nothing Your Honor has said is
5 problematic or -- or troubling to the debtor. We -- we think
6 that there is authority that we cited our briefs that the Court
7 could do this matter without an evidentiary hearing. But if
8 that's what the Court believes it's necessary, we can do that.
9 I'm not sure that the debtors would have any evidence to
10 present on their side. I think -- I agree Robert, the burden
11 is CCB's and other than perhaps demonstrating what we're
12 uttering. But I thought, was -- we did not want to have
13 additional unnecessary litigation costs and wanted to try to
14 get to an end here in a practical fashion. And I hope we -- we
15 hoped to accomplished in papers we sent forth today, than go
16 the road of a full evidentiary hearing or even a summary
17 evidentiary hearing, our position maybe somewhat different.

18 THE COURT: Well let me -- go ahead, Mr. Hamalton.

19 MR. HAMALTON: Thank you, Your Honor. And increasing
20 order of importance least of importance, the number in our
21 brief was 633 not 611. Not that 20,000 is going to matter to
22 everybody at the end of the day.

23 THE COURT: I misspoke.

24 MR. HAMALTON: Yeah. I just wanted to admit that
25 thought. Second, this is the first I have ever heard of -- of

1 the debtors arguing that we owe them money, other than in the
2 adversary proceeding that they filed or proceeding of
3 consequential damages. For them to raise it in a reply brief
4 and then say that it can be decided on the papers on Monday, I
5 think, to suggest that this is a practical solution. Deciding
6 it quickly is somewhat of a deceptive way of describing it. We
7 would certainly dispute entirely the argument that we owe them
8 any money for a marketing fee. And that is an issue that is
9 properly litigated in the adversary proceeding for which we
10 haven't even tou -- started discovery on. I would point out in
11 the briefs that you read, Your Honor, the debtor have taken
12 position that the marketing service agreement doesn't even
13 apply to meet the counts on the 419 account. And since it's
14 the marketing services agreement that would -- that's the only
15 source of any marketing fee. It isn't clear to me how they can
16 on the one hand say that we owe them a marketing fee under
17 marketing services agreement and then on the other side of the
18 mouth argue that the marketing services agreement doesn't apply
19 to the account that is -- at issue here. Certainly --

20 THE COURT: You can't have it both ways, Mr.
21 Hamalton. If you --

22 MR. HAMALTON: I agree that -- where I was going with
23 this, Your Honor, is to resolve that issue is going to resolve
24 some factual inquiry as to what was intended by the pardon's
25 here. Because -- and that discovery -- I think I'm going to

1 require some inquiry or depositions of the -- of the debtors
2 representatives that entered into these agreements which are
3 the case, who are out in Colorado. And they haven't been
4 deposed on this issue. But to -- and I understand that the
5 need to try and knock this off before the confirmation hearing
6 which is scheduled for, I think, October 17th, 18th or 18th and
7 19th. But there isn't a lot of time between now and then to
8 knock off all the issues that we're going to litigating the
9 marketing fee issue in connection with this -- with this issue.
10 Which I didn't even know was an issue in this proceeding until
11 just now. Because I didn't -- it wasn't raised in any papers
12 anywhere until just now. The --

13 THE COURT: Well, Mr. Hamalton in -- Mr. Hamalton in
14 the scheme of things the amount they're trying to set off on
15 the marketing agreement is -- I'll probably misspeak, it was
16 100 -- well, I guess where they say 300 --

17 MR. HAMALTON: Your Honor, 310,000 --

18 THE COURT: 310,000. And you're arguing that the
19 reserves should be 7 million plus. So, it's rounding errors in
20 this.

21 MR. HAMALTON: Perhaps, Your Honor. And while I
22 understand your initial inclination that -- that our entire
23 claim is unliquidated, I'm not sure we're ready to give up on
24 that argument yet. And this would -- this would go as an
25 important issue on the liquidated portion of our claim that we

1 would not only open that argument -- but in any event I -- if I
2 hear what you're saying we shouldn't let the tail wag the dog
3 here. And what I was trying to say is I understand the need to
4 try and see if we can knock this off before the confirmation
5 hearing. Having said that, there's not that many days between
6 now and the confirmation hearing. I would like to point out --
7 and I -- I understand that I'm treading on thin ice here, but
8 I -- my wife is expecting a baby. The due date is October 4th.
9 And I -- and I -- while I do anticipate -- or anticipating at
10 the confirmation hearing -- do anticipate to participate at the
11 hearing on Monday. There is -- there is going to be at least
12 some period of time where I'm not going to be available to --
13 to participate in an evidentiary hearing during the first week
14 in -- first ten days of October. And quite frankly, I'm not
15 replaceable. I'm the only litigator who has been on this case
16 for CCB that can handle it. Pedro's a bankruptcy attorney.
17 And I -- and I understand under the grand scheme of things, my
18 personal life isn't necessarily despositive. If it's a ten day
19 window -- or those ten days in October are kind of important to
20 me and I'm going to be some what -- I'm going to make some --
21 I'm pleading to the Court to be somewhat respectful of my need
22 to be here with my newborn baby.

23 MR. KINEL: If I can -- Mr. Kinel here --

24 THE COURT: No, let me -- let me hear from the com --
25 creditor's committee first.

1 MR. KINEL: I'm sorry.

2 THE COURT: Ms. Cyganowski?

3 MS. CYGANOWSKI: One of my problems and I apologize
4 for this. I'm having trouble right now and I've lost some of
5 the connection. But the basic position of the -- of the
6 committee is to urge the Court to do the summary proceeding as
7 possible. We agree whole heartily that -- that's going to be
8 exhausted before confirmation subject to the times of the
9 Court.

10 THE COURT: Okay. Here's what we're going to do.
11 We're going to have a one day summary proceeding on Monday
12 October 15th, beginning at 9:30 AM. With a total of six hours
13 of hearing time, split evenly three hours each. The parties
14 shall confer today or tomorrow to agree on limited discovery
15 needed for purposes of the estimation hearing. Unless CCB
16 convinces me otherwise they bear the burden of proof regarding
17 the estimation of its claim. I would expect, you know, among
18 the discovery, Mr. Hamalton, is promptly as possible you'll
19 provide with Mr. -- Mr. Kinel and Mr. Sacks with the billing
20 information supporting all fees incurred to date. If it needs
21 to be redacted, it needs to be redacted. You can work out -- I
22 assume you'll work out whatever support you have for the
23 estimates you provided, Mr. Hamalton, that you included in your
24 objections in seeking the various reserves. What the support
25 for that is. Each part -- each side will submit written

1 declarations or affidavits in support of their respective
2 positions no later than 5 PM Thursday, October 11th. All
3 declarants are to be present in court and available for cross-
4 examination at the hearing. If you -- I don't know what
5 discovery took place in the adversary. I don't know whether
6 any of the testimony already taken -- Mr. Hamalton, your client
7 was deposed on some issues I take it?

8 MR. HAMALTON: Yeah. On some of the issues but not
9 on others. The McCabes were deposed on some issues but not
10 others that we would want to depose them on -- on the terms of
11 these agreements.

12 THE COURT: So I don't know whether there is relevant
13 deposition testimony that's already been taken. If there
14 are -- each side can submit depo -- you know, deposition
15 excerpts in support of their respective positions. If you
16 can't agree on what discovery to take -- you know, I want you
17 to agree -- agree by, you know, we have a hearing on Monday. I
18 assume all will be present. And we'll try and work out any
19 differences. Now I don't know whether this -- you know, it
20 affects me. I leave very early tomorrow because of the start
21 of the Jewish holiday. And it may affect others as well. So
22 either try and see if you can resolve, after we get off the
23 call, discovery issues or talk first thing in the morning, or,
24 you know, on Monday. If there are -- you know, if there are
25 discovery disputes -- I mean, I really have in mind very

1 limited discovery, an estimation, a summary estimation
2 proceeding is not a trial. And I don't have to determine who
3 ultimately will prevail and what amounts. I mean, I -- you've
4 each set out -- I don't think you disagree about the various
5 approaches that courts have taken to estimating claims and I
6 have not decided what the most appropriate is here. But I
7 think the elements of CCB's claim are, you know, fairly set
8 out. It's the detail that needs to be provided. Now, with
9 respect to the debtor's position that there are amounts 300 and
10 some odd thousand owed under the marketing agreement, you know,
11 reading it in the reply brief was the first time I saw anything
12 about that. I don't know whether that is or is not appropriate
13 for this estimation proceeding. If it's -- you know, they'd be
14 entitled to set it off from whatever you'd be entitled. I
15 suppose that would come in not to be ultimately resolved but
16 estimated it -- you know, some determination made about it.
17 But I'm going to leave it to you to decide that. Let me ask,
18 have you all tried to work this out?

19 MR. HAMALTON: Your Honor, we have engaged in
20 settlement negotiations. We have an offer that's been
21 outstanding for -- for two or three weeks now. It hasn't been
22 responded to.

23 MR. SPEAKER: Your Honor, I will -- I will agree with
24 half of Mr. Hamalton's statements. There has been some
25 discussions. We have been unable to resolve it.

1 THE COURT: I know that none of you probably view Ms.
2 Cyganowski as a disinterested observer in this. But --

3 MS. CYGANOWSKI: Coming to -- just a second, Your
4 Honor, I hoped -- regrade my efforts --

5 MR. HAMALTON: Okay. Your Honor, and I -- I should -
6 - we are certainly willing and hope to try and resolve this
7 consensually. But I also think that the time table you just
8 set forth works fine for us. The only discovery that -- that
9 we would think we need to take is exactly what we said in our
10 brief, which is a short depo of the -- of Shirley and Dan
11 McCabe, which would, you know, take about -- total -- it would
12 be less than a day for both of them.

13 THE COURT: Yeah. And I --

14 MR. HAMALTON: And that's the only discovery we think
15 we would need to take. And everything else you set forth is
16 perfectly doable for us including the ev -- the evidentiary
17 hearing on the 15th. And we will work with Melanie and with
18 the debtor's counsel to see if we can negotiate a resolution
19 prior to the 15th.

20 MR. KINEL: Your Honor, the only comment I would make
21 is Mr. Sacks and I are, to the extent that there is going to be
22 any discovery in connection with a confirmation. Frankly, if
23 it's going to be the product of myself and Mr. Sacks and
24 perhaps one or two lawyers here. So I just -- you know, I'm
25 sure Mr. Hamalton will take note of that and if some problems

1 arise in terms of scheduling because we don't know today as we
2 sit here what other depositions or other discovery might be
3 required or imposed upon us on or about the same exact period
4 of time.

5 THE COURT: I appreciate that, Mr. Kinel. And, you
6 know, it's a necessity that -- not on my part, on really the
7 debtor's part that's forced this very expedited schedule on
8 everything. And -- but, you know, it's something that
9 everybody is going to have work around.

10 MR. KINEL: Absolutely, Your Honor. I mean, it -- I
11 just -- I just wanted to put that out there --

12 THE COURT: Okay.

13 MR. KINEL: -- because we don't have twenty
14 litigators either in our firm working on this case. We have a
15 few Your Honor has seen. And so just wanted -- we're happy to
16 abide by the schedule and do everything we possibly can in
17 order to help.

18 THE COURT: Mr. Hamalton, when -- when do you think
19 you would be able to provide Mr. -- he may not be able to
20 answer this now but I'll ask it anyway. When do you think
21 you'll be able to provide Mr. Kinel with the backup on the
22 fees?

23 MR. HAMALTON: Well, I didn't know we were going to
24 have to do that, they hadn't asked for it. But we will do it.
25 You're right, Your Honor, there will be redactions and carry

1 like a fee outside thing promptly that we're going to have to
2 do.

3 THE COURT: Right.

4 MR. HAMALTON: Because we are in litigation with
5 them. And a lot of our work has been on that litigation.
6 Pedro, you're the one that's going to do it. How long do you
7 think we need to do it? Pedro?

8 MR. JIMENEZ: Yeah, I know. I'm here.

9 THE COURT: Well, what -- you know, put it this way,
10 whether Mr. Kinel is interested or not, you're not going to
11 prove up your -- you're not going to carry your burden at an
12 estimation proceeding where fees are a major component without
13 putting some form of that in evidence.

14 MR. HAMALTON: No. We -- we anticipate of doing
15 that, Your Honor. And in fact, we intended to have a witness
16 do that and a breakdown of our -- our fees and exactly what
17 they were for. We anticipated doing that --

18 THE COURT: Right.

19 MR. HAMALTON: -- and having that at whatever
20 evidentiary hearing you set. And we'll have one -- we'll have
21 something like that for you on October 15th. Now, what I'm
22 hearing thought is -- you know, we had bills that we had --
23 that have been submitted to the client as well as the other
24 firm, the Colorado firm has sent bills to the client. And
25 if -- what is being asked for are redacted versions of those

1 bills, that is something that is different that we had
2 anticipated creating for the hearing. And for the hearing, we
3 anticipated creating a, sort of, fee outside the thing that
4 sort of breaks down and categorizes the work and the hours on
5 each -- on each subject matter. Which isn't how the bills are
6 submitted.

7 THE COURT: Right.

8 MR. HAMALTON: And so if -- I mean, we were going to
9 create a summary exhibit that categorized everything and broke
10 it down so you can access the reasons for all the fees. If
11 what you're asking us to do is also produced towards the
12 discovery, redacted versions of the bills that I have
13 submitted, that's an additional process that -- because it
14 involves, you know, heavily redacting each -- each line entry
15 by area attorney. It's going to take a little longer to do.

16 THE COURT: Well, I doubt whether requiring redacted
17 each line entry. It does require a careful scrutiny and
18 redaction. I'm going to step out of that issue and -- for now.
19 And I'm going to hope that -- that you and Mr. Kinel or Mr.
20 Sacks can work out what it is you'll give them and when.
21 Because look, they may very well wish to depose someone from
22 your firm, Mr. Hamalton. One or more people about -- you know,
23 about the fees.

24 MR. HAMALTON: I look forward to it, Your Honor.

25 THE COURT: I'm sure you do. I'm sure you do. But,

1 look, they took the position in their papers that work is --
2 that was done was unnecessary for the purposes for which
3 indemnification might be available. That isn't to say that
4 your firm hasn't acted wholly appropriately to defend the
5 interests or represent the interests of Colorado Capital Bank.
6 But that doesn't mean everything that your firm has done would
7 be subject to indemnification under the applicable agreements.

8 MR. HAMALTON: Oh, I would agree with that, Your
9 Honor. But -- that they're going to be -- the debts were set
10 forth in the papers, first you have to decide whether or not
11 the matter is within the scope of the indemnification. And
12 that is something that I think both parties agree can be done
13 on the papers. It's just the matter of construing the contract
14 and the language of -- indemnification language. You know, I
15 don't think you need additional evidence on that. And then --
16 then the second question under Colorado law is, if it's within
17 the scope of the indemnification were the fees incurred in good
18 faith, i.e. whether or not they're reasonable or not, or
19 whether they're incurred in good faith. And that requires
20 something similar to a fee app review. You don't have -- you
21 know, a benefit of a state standard but you still have a good
22 faith standard. And that's going to require us to submit
23 something and be available to answer the questions with Court.
24 And I guess be deposed if that's what the debtors want to --

25 THE COURT: Well, look, I'm going to step out of it.

1 You need to work this out with Mr. Kinel and Mr. Sacks. I was
2 just -- I think in trying to think through -- after reading the
3 papers and looking at the limited time available and thinking
4 what the issues were, that certainly came to mind. You'll try
5 and work out something that you can all agree on.

6 MR. HAMALTON: Okay.

7 THE COURT: Let me ask, with -- having had this
8 telephone hearing this afternoon, are -- does either side
9 believe there's any issues that need to be dealt with on the
10 record on Monday with respect to estimation?

11 MR. HAMALTON: Not for CCB, Your Honor. We think
12 it -- you've answered everything and we can just focus on the
13 hearing of the 15th unless we can settle before then.

14 THE COURT: Mr. --

15 MR. KINEL: Your Honor, I agree to the extent we can
16 incur before Monday on issues that need the Court's guidance.
17 Perhaps we will -- we would raise it, but after that, I think
18 we have our direction and don't need -- don't see the reason to
19 burden the Court's calendar with witnesses.

20 THE COURT: Okay. It maybe that before we get to the
21 15th I will -- I mean I scratched out some notes on this pad
22 about what I wanted you all to do before and when to do it.
23 You know, try and agree on -- on any other details about the
24 procedures for the hearing on the 15th. I will -- you know,
25 within limits if the two of you agree on how the summary

1 proceeding should go forward, I'm likely to agree to it. I
2 tried to -- I do want to read, at least, the direct proof in
3 not -- if possible over the weekend. That's why I gave you the
4 Thursday at 5 o'clock to submit, you know, the direct proof.
5 But that may not be everything. I mean, I think -- and when
6 I'm saying the declarations obviously I mean any exhibits that
7 you're going to use in support of the declarations and things
8 like that. But we can talk further maybe with it -- not on
9 Monday but at a telephone conference somewhere along the way
10 before we get -- try and agree on that between you. And I hope
11 that -- I hope you'll all try and work this out. I mean, I
12 think this is -- I understand, Mr. Hamalton, that your client
13 wants to preserve it's -- you know, protection in all that.
14 But Ms. Cyganowski, do your best.

15 MS. CYGANOWSKI: I will. I will.

16 THE COURT: Anything else anybody wants to add?

17 MR. HAMALTON: No, I think you covered it, Your
18 Honor.

19 THE COURT: Okay.

20 MR. KINEL: Thank you very much, Your Honor.

21 THE COURT: We're adjourned.

22 MR. KINEL: Thank you.

23 MS. CYGANOWSKI: Thank you.

24 (Time noted: 4:41 PM)

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C E R T I F I C A T I O N

I, Shara Gilbert, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

September 25, 2007

Signature of Transcriber

Date

_Shara Gilbert_____

typed or printed name