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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

U.S. Bankruptcy Court

One Bowling Green

New York, New York

October 12, 2007

2:00 p.m.

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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**FURTHER ARGUMENT RE: The Impact of Recent Developments  
Disclosed in the October 3, 2007 Letter From Dreier to the  
Court Relating to the Chapter 11 Petitions Filed by Three Okun  
Entities**

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## P R O C E E D I N G S

1  
2 THE COURT: Please be seated. We're here on number  
3 07-11448, The 1031 Tax Group. Mr. Traub.

4 MR. TRAUB: Good afternoon, Your Honor.

5 THE COURT: Good afternoon. To be brief we -- I  
6 believe this matter on the calendar today is a report on how we  
7 made out in the last couple of days. And I am pleased to  
8 report, and I'm going to defer to let Mr. Weber get through the  
9 details of it, which I believe he's willing to do. We now have  
10 a signed agreement from Mr. Okun and his wife subject to Court  
11 approval. The details -- I don't want to steal Mr. Weber's,  
12 thunder to transfer interests of all the material assets to the  
13 debtors' estates. The parties worked quite hard in the last  
14 couple of days to get there and we appreciate the imposition of  
15 the deadline to do that. I'd like to just say in terms of how  
16 we'd like to proceed is I'm going to keep my remarks limited to  
17 this, defer to Mr. Weber and then thereafter we'd like you to  
18 hear from Mr. Lukenda on his views now that we have reached  
19 this agreement.

20 THE COURT: Okay.

21 MR. TRAUB: I turn it over to Mr. Weber.

22 MR. WEBER: Thank you, Mr. Traub. Good afternoon,  
23 Judge.

24 THE COURT: Good afternoon, Mr. Weber.

25 MR. WEBER: We have been busy over the last couple of

1 days, Your Honor, and a lot of parties have been busy. A lot  
2 of parties have had meetings and discussions about trustees and  
3 litigation and we were invited to some of those meetings and  
4 did dutifully participate. This debtor-in-possession and the  
5 committee really focused on the two things that I mentioned to  
6 you the other day, Judge, value and control. We focused on it  
7 day and night. And as Mr. Traub says we have what I think is  
8 an excellent agreement. It's an agreement that in my view  
9 gives these estates the exact same position that they could  
10 possibly be in if they went the litigation route, prosecuted  
11 that litigation, run it, pierced through all the various veils  
12 and then executed on the assets.

13           The agreement is irrevocable and binding on Mr. Okun  
14 today. He signed it less than an hour ago. There are  
15 complexities in the agreement, Judge, with respect to taking  
16 these assets which we have described and the various ways to  
17 press assets into the estate. And accordingly, we await Court  
18 approval for that. And perhaps some further design as to take  
19 into a trust or what have you, that is a detail that we need to  
20 work out. From the Okun side its important for all to  
21 recognize that he has turned over these assets. The terms of  
22 the agreement runs through the terms of payment in full with  
23 applicable interest to every creditor in this estate. He gives  
24 absolute control right now to the CRO and the CRO is directed  
25 to or obligated -- obligated bad word -- is contemplated to

1 appoint an asset manager. That asset manager has, as chosen by  
2 the committee, is Abacus and Mr. Alan Cohen, he's been a  
3 trustee before this Court. That appointment will have to be  
4 approved by the Court and will come up in due course.

5 Among the other highlights of the agreement are that  
6 the control element here includes a power of attorney coupled  
7 with an interest with the ability of the asset manager and the  
8 CRO should they deem it appropriate in terms of realizing the  
9 goal of liquidating these assets in an appropriate way and  
10 appropriate timeframe to pay creditors to put those entities  
11 into their own Chapter 11 cases.

12 In connection with the West Oaks Mall, Chapter 11  
13 cases pending in Richmond, Virginia, there is an obligation on  
14 the part of the -- the grantors here, Mr. and Mrs. Okun, to use  
15 their best efforts immediately to transfer the venue of those  
16 cases to the Southern District of New York as related cases to  
17 these 1031 cases and to have them heard before Your Honor.

18 The agreement I think is a result, Your Honor, of  
19 significant efforts over a significant period of time. Chapter  
20 11 cases are frequently in stages. One of the things I think,  
21 Your Honor, that was very interesting to me in terms of these  
22 last negotiations was I came to a realization that Mr. Okun was  
23 counting on JPS too. And JPS didn't come through. I think  
24 that --

25 THE COURT: Could you speak a little louder. Yeah, I

1 apologize for the banging. Actually they're working on my  
2 courtroom which is right below this. And I don't want to slow  
3 them down, because I really would like to have my own  
4 courtroom. This is the proof that they're really working. So  
5 keep your voice up, Mr. Weber, thank you.

6 MR. WEBER: Distracted by thinking about you're  
7 getting a wonderful new courtroom I forgot where I was but --

8 THE COURT: I don't have these windows. I got these  
9 little portholes. But --

10 MR. WEBER: Oh, your upstairs?

11 THE COURT: No, one floor down. You have to start  
12 somewhere. Go ahead, Mr. Weber.

13 MR. WEBER: Your Honor, I should be complete as I can  
14 be. We have copies of the agreement that we can make available  
15 to parties in the Court, hand up to the Court should you so  
16 wish. We will immediately be going forward with a motion. The  
17 progress of this case, Your Honor, as you well know and as you  
18 allowed us was to try to get to a quick path to cash, we have  
19 not lost our focus on that. As I said Mr. Okun was looking at  
20 JPS and JPS supplying the cash that we need. The committee, I  
21 think its view, although it drew a significant amount of fire,  
22 also felt that we should tie Mr. Okun into a Plan B. The Court  
23 had some criticisms of Plan B, creditors had criticisms of Plan  
24 B, we negotiated with Mr. Okun before the hearing on the 9th,  
25 last Tuesday, to try to make the improvements that people said,

1 what they would find acceptable to Plan B, it was a  
2 progression. Through the context of that progression, through  
3 the loss of JPS, the realization that we were not there and we  
4 had run out of time vis-a-vis that plan, we kept the pressure  
5 up. The deadline that Your Honor set by having a hearing today  
6 kept the pressure up. It was a round the clock effort, there  
7 were efforts that were hampered at times because of  
8 disagreements with Mr. Okun's counsel and the potential  
9 withdrawal of their counsel. I could report to your that their  
10 counsel came back on board with were very zealous in  
11 representing him throughout the afternoon yesterday through the  
12 night and into this morning and into this afternoon. We  
13 believe that this is a tremendous achievement. As I indicated  
14 to you I believe it puts us in the position that these estates  
15 would be in had litigation taken place. The committee has  
16 debated it for a long time as to what different steps would be.  
17 The committee itself had looked at litigation, the committee  
18 itself had looked at involuntary petitions, the committee  
19 itself had looked at the appointment of a trustee, the  
20 committee to an individual, there are now remaining six parties  
21 on the committee, are behind this agreement, they approve the  
22 agreement. They urge the Court to allow this process to  
23 continue, urge the Court to allow us to bring the motion before  
24 the Court to share it with the creditors. As I said this is an  
25 irrevocable grant by Mr. Okun effective immediately. It's also

1 a grant by his wife who owns some of the assets effective  
2 immediately. Subject only to those things going back if its  
3 not approved. And subject -- you should be aware, that if it  
4 does go back the existing agreements that we have with Mr. Okun  
5 with respect to the escrow agreement that was a portion of Plan  
6 B and with respect to the trust on the so-called toys,  
7 reinvigorate and are in place.

8 The other things I should say here, Your Honor, to be  
9 complete is that the conveyance does not include some items.  
10 The conveyance does not include the two automobiles that were  
11 excluded from the toy trust, it does not include Mr. Okun's  
12 residence in Miami which would be subject to a Florida  
13 Homestead exemption in any event, and it does not include the  
14 residence that Mr. Okun has in Wolfeboro, New Hampshire, that  
15 residence is subject to a variety of liens. And we don't  
16 believe that there's very much equity in it. In that  
17 connection the customary contents of the homes would also be  
18 excluded from the conveyances. And in addition, on the Okun  
19 side, Your Honor, there is to be negotiated, has not yet been  
20 negotiated, but a living allowance to provide -- and we were  
21 very specific about it, shelter, food and what have you.

22 The other items that -- the other one item that is  
23 not in the form of a condition but something that we must use  
24 best efforts to do, is that to implement the liquidation  
25 through a plan which is my view that it has to be done by a

1 plan. That if we do that that the assets would be protected by  
2 an injunction.

3 Speaking of injunctions, Your Honor, there is a  
4 pending injunction that the Court has heard about in  
5 Massachusetts. At this time this conveyance is made subject to  
6 that and all other existing liens. And we are also in our  
7 motion to have approval of this going to be seeking relief from  
8 the Court under 105 to allow these assets to come into the  
9 estate at least free of the Massachusetts injunction.

10 I'm free obviously to answer any questions the Court  
11 has but I just wanted to give you what the committee views as  
12 very, very good news. And needless to say the committee urges  
13 the Court to allow us to continue the course to implement this  
14 to get these assets turned to cash as quickly and as  
15 efficiently as we can. Thank you.

16 THE COURT: Mr. Weber, when we ended on Tuesday I  
17 encouraged all interested parties to confer, to meet with Mr.  
18 Velez-Rivera. I see Ms. Adams is here. Has the U.S. Trustee's  
19 Office been involved in any of these discussions, Mr. Weber.

20 MR. WEBER: Your Honor, certain creditors had  
21 contacted the U.S. Trustee's Office seeking a meeting with the  
22 U.S. Trustee. What I'll describe as through the grapevine we  
23 learned of that. The debtors and the committee, whether  
24 inadvertently or otherwise, were not initially invited. We  
25 contacted the U.S. Trustee and asked for an invitation. Mr.

1 Velez-Rivera was gracious enough to extend one. We then  
2 learned that we were not invited to the beginning of the  
3 meeting. Mr. Fox and myself attended -- I don't know when they  
4 started, but we attended after the meeting began. There have  
5 been developments, improvements in the agreement that I just  
6 described to you. And during the course of that agreement I  
7 gave, to the best of my ability, a description of where we were  
8 in that agreement.

9 THE COURT: When was the meeting?

10 MR. WEBER: The meeting -- we appeared at the meeting  
11 at 2:15 yesterday afternoon, I don't know when it otherwise  
12 started.

13 THE COURT: That's fine.

14 MR. WEBER: I do know it continued after we were  
15 excused and I don't know how long it went on.

16 THE COURT: Have --

17 MR. WEBER: I can complete that, Your Honor. The  
18 request that was made of the debtor and the committee at the  
19 meeting yesterday was a request that we consent to an oral  
20 motion for the appointment of a trustee before Your Honor  
21 today. I told them, of course, I would bring that to the  
22 committee. And the committee was informed of that yesterday,  
23 informed of the progress last night, I believe. I believe our  
24 committee call last night was adjourned because we were  
25 continuing to negotiate with Mr. Okun's lawyers and I think the

1 committee call took place about 7 o'clock last night. It went  
2 for some period of time, it was adjourned and picked up again.  
3 We made no determination last night because we didn't have an  
4 agreement frankly, Judge. We got the agreement from Mr. Okun  
5 and I'm not so sure that I would be in a position to urge what  
6 I'm urging today. The committee met today and Mr. Okun's  
7 signature page came over the wire as the committee was  
8 deliberating.

9 THE COURT: What -- are there any provisions in the  
10 agreement -- I guess in due course everyone will see it. But  
11 are there any provisions that will impact the agreement in the  
12 event a trustee is appointed?

13 MR. WEBER: Your Honor, I can tell that that was an  
14 agreement -- excuse me, that that was a request by Mr. Okun's  
15 lawyer and we denied that request, we did not include such a  
16 provision. I can tell you however that we're not seeking to  
17 tie the hands of the Court vis-a-vis a trustee. I do not know  
18 what Mr. Okun's reaction will be if -- let's put it this way  
19 judge, from my personal perspective if a trustee were to be  
20 appointed by this Court I would hope and urge that the trustee  
21 would attempt to pick up where we have gotten this and to  
22 see -- see it through. I don't know and cannot predict what  
23 Mr. Okun's reaction might be to that. And I can also tell the  
24 Court in all sincerity that Mr. Cohen, who I mentioned before  
25 of Abacus -- Your Honor, the committee did not rest or lose

1 focus throughout this process. When we came to a conclusion  
2 that there was going to be a Plan A and perhaps a Plan B  
3 because we wanted to keep Mr. Okun tied up we also started to  
4 think like hey, we ought to get somebody who's up to speed. We  
5 started to interview people. At the end of the day the  
6 committee interviewed four very capable firms for the position  
7 that if the time was contemplated to be the creditor  
8 representative as contemplated in the plan. As the plan  
9 slipped away as Your Honor is aware, we kept up the  
10 relationship with Mr. Cohen, we felt -- the committee felt  
11 after interviewing him and meeting with him, reviewing his  
12 credentials that Mr. Cohen had the skills that are appropriate  
13 to number 1, deal with Mr. Okun, number 2, to understand these  
14 assets and get the best out of it. I think that to some degree  
15 Mr. Cohen was an active participant in the negotiations with  
16 Mr. Okun that have taken place over the last couple of days. I  
17 think I announced that to the Court on Tuesday last.

18 THE COURT: Yes. I'm sure you saw it, one motion has  
19 been filed for the appointment of a Chapter 11 trustee and it  
20 included -- I'll refer to it as an objection to the fact that  
21 Mr. Cohen has been negotiating when he's not an estate  
22 representative, hasn't been approved by the Court --

23 MR. WEBER: He hasn't, Judge.

24 THE COURT: -- what's his authority to go off and do  
25 whatever he's doing. That's not a criticism from me that's a

1 summary of what I'm sure you've seen.

2 MR. WEBER: And I don't know that that's before the  
3 Court today, which is why I think it's made of whole cloth.  
4 Mr. Cohen at this juncture has no relationship vis-a-vis  
5 compensation. As a matter of fact the agreement that is here  
6 provides that his compensation will be determined and approved  
7 by the Court should this program that is outlined in this  
8 agreement go forward.

9 THE COURT: I just want to be -- come back to the  
10 question, I think you've answered it, but I just want as  
11 crisply as possible. There is -- there are no provisions in  
12 the irrevocable agreement that Mr. Okun has signed and  
13 delivered that would affect the enforceability of the agreement  
14 if a Chapter 11 trustee is appointed. Did I understand you  
15 directly?

16 MR. WEBER: There's no specific provision that does  
17 that, Judge. And I'm not beating around the bush. And I also  
18 don't want to give a road map to Mr. Okun because in reading it  
19 on the subway I had one of those moments where I said hmm, that  
20 was not the intention and there's not specific part of the  
21 agreement that says that.

22 THE COURT: Another question. Is there any provision  
23 that would affect the enforceability of the agreement if the  
24 case is converted to a Chapter 7?

25 MR. WEBER: Judge, again, there is no specific

1 agreement that says that. There's no specific portion of the  
2 agreement that says that. However, there is a portion of the  
3 agreement which I did describe to the Court that says we were  
4 to seek an injunction. And in seeking that injunction it says  
5 that we would use our best efforts to include that injunction  
6 in a plan. So one could extrapolate that if we're in a  
7 position where the Court decides today to convert the case to  
8 Chapter 11, you know, that I don't -- I would be uncomfortable  
9 if I were Mr. Okun or advising him saying that you can get out  
10 from under this irrevocable presentation.

11 THE COURT: I mean, if there's an 11 there still  
12 could be a creditors' committee, and the creditors' committee  
13 can still be making its best efforts to include in -- the  
14 result of an 11 is a plan, and the plan can include an  
15 injunction.

16 MR. WEBER: Yes.

17 THE COURT: So it's not necessarily inconsistent to  
18 have a trustee and the provisions you described.

19 MR. WEBER: I agree, Your Honor, but maybe I missed  
20 your point, I thought you enquired about Chapter 7.

21 THE COURT: That was the last question, that's  
22 correct. I first -- my series of questions were about if  
23 there's a Chapter 11 trustee and then the alternative which  
24 certainly wasn't asked for in the one motion filed so far is  
25 what happens if the case is converted to a 7.

1           MR. WEBER: And my answer if you'd like me to repeat  
2 it I can, Your Honor.

3           THE COURT: No, you answered that. I have a couple  
4 of other questions. I've certainly never seen the  
5 organizational documents for IPofA but it's certainly been  
6 described as an LLC. And I think I saw somewhere that Mr. Okun  
7 is the sole member, am I right on that?

8           MR. WEBER: Your Honor, I believe that is accurate.  
9 I'm kind of tired this morning -- this afternoon, and I don't  
10 have the organizational chart in front of me but I believe that  
11 is accurate.

12           THE COURT: We had an earlier series of hearings here  
13 about the governance of LLCs that ultimately led Mr. Okun  
14 resigning as the manager of all of the LLCs and as a director  
15 of the corporate entity in this case, in these cases, and  
16 ultimately in Mr. Moran -- you know, the state law formalities  
17 were ultimately followed and Mr. Moran was substituted for Mr.  
18 Okun as the manager. Are there provisions dealing with the  
19 governance of these other entities as to whether Mr. Okun  
20 resigns as the manager and how a new manger is selected and  
21 whether the organizational documents for those entities would  
22 be altered in such a way. When the issue arose here primarily  
23 from Mr. Velez-Rivera's arguments that Mr. Okun could change  
24 his mind. If he was the manager under state law he could  
25 change his mind and somehow replace Mr. Lukenda was the issue

1 at that point. And so -- I mean, these are not issues  
2 necessarily -- they're not going to be decided today but I  
3 just -- they are questions that certainly I have and others may  
4 have and they may get flushed out quickly in the next ensuing  
5 days. But I just -- do you know -- has that been addressed?

6 MR. WEBER: I do, Your Honor. And this document I  
7 should tell you is as simple a document as you can come up with  
8 so it's relatively easy for me to answer that question.

9 THE COURT: Okay.

10 MR. WEBER: There are control and management  
11 provisions in here in which he cedes controls in any management  
12 that he might have. There are additional and further assurance  
13 provisions in here in which he says irrevocably again that he  
14 will execute any documents that are required to do what Your  
15 Honor just said. And in addition, there was a power of  
16 attorney coupled with an interest being irrevocable that would  
17 allow Mr. Lukenda to do those things.

18 THE COURT: Okay. Thank you, Mr. Weber.

19 MR. WEBER: You're welcome.

20 THE COURT: Mr. Lukenda, do you want to speak to  
21 this?

22 MR. LUKENDA: James Lukenda, Chief Restructuring  
23 Officer for the 1031 Tax Group. Your Honor, I don't want to  
24 rehash the same ground that --

25 THE COURT: No. Only if you have something you want

1 to add.

2 MR. LUKENDA: I think the -- Mr. Moran is not able to  
3 be here today he has a -- he's been appointed a trustee in a  
4 matter for the State of New Hampshire and took possession of an  
5 abandoned factory today. So he sends his apologies. But Ed  
6 and I had a -- Ed Moran and I had a series of conversations  
7 over the past few days as we moved forward on this. And this  
8 has been very difficult bringing Mr. Okun to the table. I  
9 think the Court probably sensed the frustration when we were  
10 here on Monday and the testimony that was provided -- or  
11 Tuesday. I think where we stand now is we believe that we have  
12 delivered to this Court, to the creditors what we've been  
13 trying to deliver from the very beginning. And maybe it's not  
14 cash but it is the next best things as having an attachment to  
15 the assets that will generate the cash that will be repaid to  
16 creditors.

17 THE COURT: And no releases?

18 MR. LUKENDA: Pardon?

19 THE COURT: And no releases?

20 MR. LUKENDA: Yes, Your Honor. Absolutely. And we  
21 are willing, ready and able to go forward to realize that for  
22 the estate with the one caveat that we recognized that the  
23 Court may have other ideas about that and we're certainly not  
24 going to stand in the way of the Court if the Court should  
25 decide otherwise. But we do believe that we're in position to

1 continue to move this case forward in the best way, eliminate  
2 or avoid the time delays and so forth that may occur if a  
3 trustee is appointed.

4 THE COURT: Thank you, Mr. Lukenda.

5 MR. FRIEDMAN: Good morning, Your Honor. My name is  
6 Adam Friedman and I'm here on behalf of the ad hoc committee  
7 who, as Your Honor mentioned earlier, filed a motion last  
8 evening for the appointment of a Chapter 11 trustee or in the  
9 alternative to --

10 THE COURT: Try to keep your voice up.

11 MR. FRIEDMAN: Or in the alternative to terminate  
12 exclusivity. Significantly, Your Honor, our committee has  
13 approximately twenty million dollars of creditors in it. And  
14 we've taken a tally of the creditors in the room who are  
15 joining in our motion and support the relief requested in our  
16 motion.

17 THE COURT: Your motion is not on for today?

18 MR. FRIEDMAN: It is not on for today. I'm just  
19 advising the Court that that motion does have the support of  
20 approximately sixty million dollars of creditors based on our  
21 tally this morning. And I think that number is significant for  
22 a couple of reasons. One, we far exceed the creditor claims on  
23 the existing creditors' committee. And two, based on my math  
24 in the case that constitutes a block in any plan to the extent  
25 they were to oppose the plan. If not today I can say with

1 absolute it is very close if not assuredly a blocking position  
2 in this case. And that is material, I believe, for this entire  
3 backdrop of these proceedings. And I will get to their in a  
4 moment. We came to Court today, Your Honor, after a hearing  
5 three days ago in which the debtor stated on the record that  
6 they would not oppose the appointment of a trustee. Mr. Moran  
7 said that and I believe Mr. Lukenda echoed those concerns. And  
8 the reason they said that was clear. The case had promised a  
9 JPS loan, the committee was on board, the debtor was on board,  
10 that never happened. There never will be a JPS loan. A  
11 collateral package was promised -- not today, Your Honor, on  
12 the first day of the case and that that was going to be  
13 delivered in days. And at subsequent hearings kept going  
14 along. Days became months, months became a couple of more  
15 days --

16 THE COURT: Mr. Friedman, you're arguing your motion,  
17 that motion is not on the calendar for today.

18 MR. FRIEDMAN: I appreciate that, Your Honor. We are  
19 before Your Honor requesting today that the Court appoint that  
20 trustee. We believe you have the ability to do that.

21 THE COURT: I don't today. 1104 requires notice and  
22 a hearing.

23 MR. FRIEDMAN: Your Honor, Mr. Moran at the last  
24 hearing --

25 THE COURT: Mr. Friedman, read the code, 1104

1 requires notice and a hearing.

2 MR. FRIEDMAN: Okay. We will get --

3 THE COURT: Your motion is not on for today.

4 MR. FRIEDMAN: Then I'll limit my statements in  
5 response to the presentation. What you heard today is that Mr.  
6 Okun agrees with Mr. Cohen being the estate representative.  
7 Sixty million dollars worth of creditors are in this court  
8 saying they will not agree to that.

9 THE COURT: Have you read the agreement yet?

10 MR. FRIEDMAN: I have not read the agreement.

11 THE COURT: So how can you stand there. You may be  
12 perfectly right in what you're saying but how can you stand  
13 there and tell me that what -- you know, what has changed from  
14 Tuesday to today is just unacceptable when you haven't seen it?

15 MR. FRIEDMAN: Because, Your Honor, it is premised on  
16 a foundational fact which is that the man described by Mr.  
17 Moran Tuesday this week is a pathological liar that should go  
18 to jail and is an embezzler is still involved in this process.  
19 And as you will see in this agreement -- you're right, I  
20 haven't seen it. He still will be involved in this process and  
21 is that same man that has been negotiating with Mr. Cohen to be  
22 his creditor trustee. We don't believe that that is right, we  
23 don't believe that that looks right. And we're here today  
24 saying --

25 THE COURT: I don't think anybody said that Mr. Okun

1 was negotiating with Mr. Cohen to be the creditor  
2 representative. I thought I heard that it was the committee  
3 that had done that. The committee and perhaps the debtors, but  
4 not Mr. Okun. What I heard was that Mr. Cohen is there meeting  
5 with Mr. Okun but I didn't hear that Mr. Okun was negotiating  
6 with anyone as to who would be a creditor representative.

7 MR. FRIEDMAN: Mr. Okun consents to Mr. Cohen in this  
8 position. Your Honor asked the relevant inquiry would this  
9 agreement be binding on a Chapter 11 trustee. And I heard the  
10 answer that there's no outs to this if a Chapter 11 trustee is  
11 appointed. I believe the case -- and we can schedule the  
12 hearing, but that trustee needs to be appointed, the debtor has  
13 agreed that they wouldn't fight the appointment of a trustee,  
14 the committee has said they wouldn't appoint it --

15 THE COURT: That wasn't what I heard Mr. Weber say.

16 MR. FRIEDMAN: I heard --

17 THE COURT: You know, the case -- Mr. Friedman, you  
18 may get a trustee, I'm not saying you're not going to get a  
19 trustee but, you know, we were here on Tuesday and the case has  
20 changed since Tuesday. It may be that the trustee is exactly  
21 what the case needs and that's exactly what will happen. But  
22 because what was said the case has changed and we'll see.

23 MR. FRIEDMAN: Your Honor, we will look at the  
24 agreement carefully. But to what end do we pursue this path  
25 when Mr. Weber said it is subject to a plan of apparently a

1 liquidation.

2 THE COURT: I don't think he said that.

3 MR. FRIEDMAN: I do.

4 THE COURT: He didn't say that.

5 MR. FRIEDMAN: He said that it was his view that this  
6 was subject -- this was going to be -- this is in Chapter 11, I  
7 assume there's going to be a plan.

8 THE COURT: No. I thought what he said was that the  
9 committees' view was -- and Mr. Weber can say it for himself.  
10 But what I heard him say was it was the committees' view and  
11 counsels' view that the most effective way to do the  
12 liquidation is through a plan. Mr. Weber, was that --

13 MR. WEBER: As always, Your Honor, you're accurate.

14 MR. FRIEDMAN: And I'm saying that that plan will not  
15 be approved.

16 THE COURT: How do you know, you haven't seen it.  
17 Mr. Friedman, you know -- Mr. Friedman, why don't you sit down.  
18 You come in here, you haven't seen an agreement, you get up you  
19 want to argue about a motion you filed that's not on for today,  
20 you prejudged without having looked at a piece of paper, you  
21 prejudged what it is -- I don't know what has been transferred  
22 to the estate, none of us do, maybe they do over there, nobody  
23 on this side of the room does. I haven't seen it, have you  
24 seen it?

25 MR. FRIEDMAN: I haven't seen the paper yet that's

1 signed.

2 THE COURT: Maybe you ought to read it before you say  
3 absolutely we're against it, that's what I'm hearing you say.  
4 Without looking at it you're against it. Is that your  
5 position?

6 MR. FRIEDMAN: It's our position that Mr. Okun has  
7 been far too involved in the control of this case. And we  
8 believe an independent fiduciary must be appointed. And absent  
9 that --

10 THE COURT: We'll hear your motion when its  
11 scheduled. Let me hear -- anybody? Mr. Flaxer, do you want to  
12 be heard?

13 MR. FLAXER: With trepidation.

14 THE COURT: Not with trepidation, Mr. Flaxer.

15 MR. FLAXER: Your Honor --

16 THE COURT: Just make your appearance.

17 MR. FLAXER: I'm sorry. Jonathan Flaxer of Golenbock  
18 Eiseman on behalf of four exchangers. It's a problem for all  
19 of us in this case the way things occur.

20 THE COURT: I agree.

21 MR. FLAXER: As of this morning there was a -- I'm  
22 not going to throw around numbers but there was a very large  
23 block of creditors who seeing everything that happened up to  
24 now in the case were firmly behind appointment of a trustee  
25 which is not pending before the Court now. Maybe the ground

1 has shifted again maybe it hasn't. I think what we need to do  
2 is pick a date when the motion for a trustee will be heard. I  
3 think they -- and I think I heard them say this, I think the  
4 debtor and the committee owe it to the other constituencies to  
5 circulate this agreement before the end of the day. And I  
6 agree with Your Honor, we certainly have to read it. And,  
7 again, I'm going to make some observations that may be helpful  
8 to the process and may help everybody. I think one problem  
9 that we perceive in this case is that we have, you know -- we  
10 come to a hearing and the ground shifts because somebody on the  
11 other side stands up and say ah hah, we have an agreement, it's  
12 signed, it's finished, it's almost finished, it's great and we  
13 all do whatever we do. One problem is that we now have  
14 agreements and grafted over agreements and I think we have to  
15 be very careful about which agreement now governs what is a  
16 innovation. You know, we've expressed a lot of concerns. One  
17 has been for example did the proposed plan that's now been  
18 abandoned did that supersede the guarantee, did that supersede  
19 the plan funding agreement. Now -- as of about two weeks ago,  
20 at a hearing -- I guess two hearings ago Mr. Traub stood up and  
21 announced that they had this master escrow agreement signed and  
22 this was now going to be, you know, the wonderful achievement.  
23 And, again, I hope my language doesn't sound overly -- overly  
24 sarcastic but being where we are in this case it's a very  
25 frustrating, painful process in --

1           THE COURT: Mr. Flaxer, it's been frustrating sitting  
2 here, okay, as the process is unfolding.

3           MR. FLAXER: Okay. I understand that -- I know none  
4 of their fees have a big -- granted, but at least they have a  
5 path. Our clients have been really the victim of -- to use Mr.  
6 Moran's word, embezzlement and they're going out-of-pocket more  
7 and more as this case goes the way it goes. I understand maybe  
8 we'll all conclude at the end of the day but that's the way it  
9 should have gone. Right now or at least as of 9 o'clock this  
10 morning there was enormous skepticism about that.

11           I want to get -- I want to briefly mention if only it  
12 helps us going forward. The master agreement that was  
13 announced in Court by Mr. Traub whenever, a couple of weeks  
14 ago, was supposed to provide for all the conveyancing document  
15 and all of the lien documents. When we read through it we  
16 found out some very troubling things. And, again, maybe these  
17 things are all fixed now but no liens were truly granted.  
18 These documents, which I'm not sure the actual implementing  
19 documents ever have been created yet but they all went into  
20 escrow. And it was clear that no liens even came into  
21 existence until the creditor representative at some point down  
22 the road worked through the whole process of whether taking an  
23 asset out of escrow was reasonable. I know the Court was very  
24 concerned about all that.

25           THE COURT: Can I interrupt you for just a second,

1 Mr. Flaxer. Is that agreement operative today?

2 MR. WEBER: I don't believe that it is, Your Honor.  
3 But the agreement that I described to the Court this afternoon  
4 would make it non-operative if the court approves the agreement  
5 that I described this afternoon. Now, if the Court does not  
6 approve it then we invigorate that agreement because  
7 something's better than nothing.

8 THE COURT: Okay.

9 MR. WEBER: While I'm up here, Your Honor, just one  
10 other thing that I probably should have mentioned about this  
11 agreement. At long last from Mr. Okun in this agreement we  
12 also negotiated and received a waiver of confidentiality which  
13 has been the bane of the existence of the committee.

14 THE COURT: How long is the agreement?

15 MR. WEBER: The agreement is seven days of schedules,

16 THE COURT: So -- thank you Mr. Weber, Mr. Traub. Go  
17 ahead, Mr. Flaxer. My suggestion is I'll here from a few more  
18 then we're going to take short break and I think you ought to  
19 read the agreement. I don't expect, you know, an instant  
20 agreement or not agreement but you ought to be able to read it  
21 and I'd like to read it as well.

22 MR. WEBER: We agree, Judge.

23 THE COURT: I think that will be meaningful. But go  
24 ahead, Mr. Flaxer.

25 MR. FLAXER: I'm going to short-circuit my remarks by

1 referring to something that Mr. Moran said. Which is a point  
2 that we have been trying to make. Which is -- I'll paraphrase,  
3 Plan B was burdened with hidden claw backs for Mr. Okun. And  
4 our problem --

5 THE COURT: And knew it wasn't going to work. And  
6 that was -- became fairly clear at the last hearing.

7 MR. FLAXER: I just hope, you know -- again, I  
8 haven't seen it yet so I'm still an advocate for getting an  
9 independent trustee. Having said that I hope its not a problem  
10 in this one. Your Honor, the committee spoke about how they've  
11 kept up the pressure and that's resulted in this new agreement.  
12 I just -- you know, we're going to take a little bit of credit  
13 on this side of the table if I may. I think that the pressure  
14 that we have kept up has been very instrumental and each so  
15 called achievement or advance or what have you. And, you know,  
16 I hope its true that it was drafted in a way that it doesn't  
17 prevent a Chapter 11 trustee. Because the way it should work,  
18 you know, under 323(a) we have the concept of a representative  
19 of the estate. The estate exists irregardless of who the  
20 representative is now. Right now it's Mr. Lukenda under the  
21 supervision of Mr. Moran. If a trustee gets appointed the  
22 trustee becomes the representative of the estate. Hopefully,  
23 what's been granted here is for the benefit of the estate so it  
24 makes no difference who the representative of the estate is.  
25 You know, I think there's a lot of complaints about Mr. Okun

1 "choosing," and I put that word in quotes, who he gets to  
2 negotiate. And I think its not clear either way but we tried  
3 to make this point back in early July, I think it was, that  
4 it's just not acceptable that Mr. Okun should in any way either  
5 choose he negotiates with or have a veto over who he does not  
6 negotiate with. But I just wanted to lay out some concepts and  
7 I think we ought to get a date, have a briefing scheduled in  
8 the meantime, we'll all look at this and see whether it changes  
9 anything.

10 THE COURT: Thank you, Mr. Flaxer. Mr. Teitelbaum.

11 MR. TEITELBAUM: Good afternoon, Your Honor. Jay  
12 Teitelbaum, Teitelbaum & Baskin. Normally I stand up here and  
13 say on behalf of a bunch of exchange parties. Let me take a  
14 moment to just try to put some of my comments today in context,  
15 if I may. I represent seventeen people. John and Nancy  
16 Donkonics, Bob and Patty Hathaway, Janet Bowman (ph.), Tim  
17 Cowell (ph.), Miguel Littman (ph.). Let me stop at Mr. Littman  
18 for a second. I've alluded to parties that I represent and  
19 their plight. The Littman's weren't going to close at 1031,  
20 they were going to take the tax hit because they've have a kid,  
21 a 20 year old son, that doesn't have insurance that has medical  
22 problems and they needed that money to pay for his medical  
23 bills, that money is gone. Cynthia Rodriguez, stop with her.  
24 The money that's gone is the last dollar that her father left  
25 her in his will. Mr. Jonathan Schenck (ph.) is a client, Ms.

1 Almasco (ph.) is a client, Ms. Chen is a client. The Casseras  
2 who were counting on this money for their retirement are  
3 clients, that money is gone. Mr. Patton, a senior citizen  
4 living in Massachusetts also his retirement gone.

5 THE COURT: Mr. Teitelbaum, I'm going to interrupt  
6 you for this reason. I'm very aware and I have been from day  
7 one of this case that there are real people who are seriously  
8 hurt and impacted by this. And I think -- I understand its  
9 been your goal, I think it's been the creditors' committees'  
10 goal, and the debtors' counsel's goal, and Mr. Lukenda and Mr.  
11 Moran's goal to try and get a recovery for everybody. And  
12 we've moved this -- I've tried to move this case in a rapidly  
13 as possible when it looked like there was the possibility of  
14 trying to get money in as rapidly as possible. That hasn't  
15 happened, we are where we are today. I understand and I really  
16 do feel the plight of your clients and the other lawyers'  
17 clients and the many pro se's who couldn't afford to have  
18 lawyers. Okay. The real issue is we are where we are today  
19 where do we go now.

20 MR. TEITELBAUM: And, Your Honor, you're 100 percent  
21 right. And the reason that today is the first day that I've  
22 actually taken the time to do what I just tried to do is to put  
23 that answer -- an answer to that question in context. Because  
24 for better or worse since the beginning of this case I haven't  
25 endeared myself to a lot of the professionals or maybe not even

1 this Court and I spent some time trying to think about why. And  
2 its because of these people and the zealous advocacy for people  
3 as opposed to --

4 THE COURT: Mr. Teitelbaum --

5 MR. TEITELBAUM: Your Honor, I appreciate that if I  
6 may, I just would like --

7 THE COURT: Mr. Teitelbaum, no. Let's move on.

8 MR. TEITELBAUM: Your Honor, since the beginning of  
9 this case parties to this that have come to you have said we  
10 have a problem with Mr. Okun. What you're hearing from sixty  
11 million dollars worth of clients is this deal may be terrific  
12 but we have a loss of confidence in the parties that have  
13 brought the deal to us. If the deal is as good as it is it  
14 would be terrific with a Chapter trustee. And the point of  
15 today was to express that to you. And the point of today was  
16 also to report to you not, Your Honor, that certain creditors  
17 try to have kind of -- I think it may have been almost deluded  
18 to, a secret meeting with the U.S. Trustee, that wasn't the  
19 point. There were over fifty million dollars of creditors  
20 sitting at a table and we heard the essence of the deal. And I  
21 think Mr. Weber's correct that the deal probably got better  
22 since we heard it yesterday. But we were all there, we heard  
23 the deal. And our response to Mr. Weber was thank you go back  
24 to your committee and the debtor and tell them we want a  
25 trustee. Your Honor, nothing has changed since yesterday

1 afternoon, not a thing. And that's really the point that we  
2 need to make. Your Honor, I stand here today for my seven  
3 million dollars of clients, and Your Honor, as of this morning  
4 I have nine more individuals, some of whom are sitting back  
5 here, representing an additional nine million dollars of  
6 victims who have asked me to stand up here today and tell you  
7 they could deliver the greatest piece of work to us, we do not  
8 trust that Mr. Okun or the professionals in this case will  
9 carry it through and we want a trustee. Your Honor, that's the  
10 message. And if this document is irrevocable and maybe my  
11 hearing isn't as good and I'm maybe not as good a draft person  
12 as a lot of contract type lawyers, it seems to me pretty easy.  
13 Notwithstanding anything to the contrary the appointment of a  
14 trustee or the conversion shall have no impact on this  
15 agreement, I didn't hear that clause.

16 THE COURT: We're going to take a break in a few  
17 minutes and you'll all have a chance to look at it and we'll  
18 resume and I'll listen to some more and we'll plan out the next  
19 steps. Okay.

20 MR. TEITELBAUM: With that why don't we take a look  
21 at the agreement.

22 THE COURT: Mr. Velez-Rivera, I do want to hear.

23 MR. VELEZ-RIVERA: Your Honor, good afternoon.  
24 Andrew Velez-Rivera for the United States Trustee. Just to  
25 advise the Court at this point since we're going to take a look

1 at the deal all I'm going to ask you before the conclusion of  
2 the hearing is for a return date on a motion to appoint a  
3 trustee.

4 THE COURT: And let me ask you is your office going  
5 to file a motion for appointment of a trustee or conversion to  
6 a 7? I mean, I have a real question why -- at this stage of  
7 the case why a trustee versus a conversion, and there may be  
8 very good reasons so when -- and the motion that's been filed  
9 so far is for appointment of a trustee, eliminate  
10 exclusivity --

11 MR. VELEZ-RIVERA: We deliberated all the options,  
12 Your Honor, at this point -- I'm sorry. But certainly we  
13 thought of the conversion and we're still talking about that --  
14 that piece of it. But at a minimum we will seek the  
15 appointment of a Chapter 11 trustee.

16 THE COURT: Let me ask this and I know this came up,  
17 I think, at the last hearing. There are six members of the  
18 committee today, let's assume for sake of discussion that  
19 there's a trustee appointed that still leaves the issue of the  
20 size of the committee, the representation on the committee. Is  
21 your office undertaking any efforts to expand the committee?

22 MR. VELEZ-RIVERA: We are, Your Honor. We keep on --  
23 we're in the process of making an outreach and at the same time  
24 receiving input from the creditor community. We have the same  
25 considerations that we always have. And in addition, we have

1 some complications. Some of the good old factors that we  
2 looked at at the beginning we look at again, who has claims of  
3 what size and which estate for example. Some of the additional  
4 complications are for example -- it's actually at this point a  
5 little more difficult than it was at the beginning of the case.  
6 We often don't know who has claims still at this point in time.  
7 We have solicitation forms but a lot of those folks sold their  
8 claims or may be in the process of selling them. So the effort  
9 actually involves a one-by-one phone call by phone call  
10 campaign.

11 THE COURT: Okay. How quickly will -- and Ms. Adams  
12 is sitting hidden behind you now, would your office be in  
13 position to select a trustee if one were appointed?

14 MR. VELEZ-RIVERA: I think -- the best I can say at  
15 this point or maybe Ms. Adams can refine it a little is that I  
16 think we're poised to do it about as fast as we can. We did  
17 interview folks the last time we went down this path, that pool  
18 of folks presumably is still around, we'll have to re-canvass  
19 them as well to see if whether they're still interested. And  
20 in the meantime there may be new candidates I'm just not sure  
21 about that.

22 THE COURT: Okay. Anything else you want to add at  
23 this point, Ms. Adams?

24 MS. ADAMS: Your Honor, I just wanted --

25 THE COURT: Why don't you just make your appearance?

1 MS. ADAMS: Diana Adams, United States trustee for  
2 Region 2. At the end of the last hearing, Mr. Velez-Rivera  
3 advised me that the Court had basically said everybody should  
4 talk to us. And I told Mr. Velez-Rivera I was available every  
5 day this week except when I was -- no. Monday was a holiday --  
6 Tuesday I was available, Wednesday I was out of town and --

7 THE COURT: Tuesday was the hearing. We didn't get  
8 out of here until 5:30 on Tuesday, so --

9 MS. ADAMS: -- and Thursday I was available. No one  
10 from the creditors' committee contacted me. No one from the  
11 debtor contacted me. I don't believe they've contacted Mr.  
12 Velez-Rivera. Was contacted by the creditors, told them that  
13 we would set up the meeting but that we wanted to meet with  
14 everyone. And I believe Mr. Velez-Rivera delivered that  
15 message to the debtor and the creditors' committee were  
16 invited. About twenty minutes before they arrived, the  
17 creditors had asked to speak with us alone and so we met with  
18 them for about twenty minutes alone. So there were no secret  
19 meetings --

20 THE COURT: It's perfectly appropriate. I have --  
21 you know, I don't take anything otherwise from what's been  
22 said.

23 MS. ADAMS: With the -- I'm being faced with some  
24 very difficult issues with the committee. Actually, an issue  
25 that I'm not aware I've ever faced before where I have a

1 committee of only -- only twenty million in claims and I have  
2 another fifty or sixty million in claims that are not on the  
3 committee that seem to have opposing views. And we are looking  
4 into that.

5 One of the other issues we've had to face, as Mr.  
6 Velez-Rivera has pointed out, when he has called one by one  
7 each creditor to see if they're still interested, if they still  
8 have a claim. Several creditors have told us I want to be on  
9 the committee to find out what they know so I can sell my  
10 claim.

11 THE COURT: You will.

12 MS. ADAMS: So, we --

13 THE COURT: Go on to the next one on your list.

14 MS. ADAMS: I just wanted to let you know we did -- I  
15 think we had a very good meeting yesterday. And I appreciate  
16 the fact greatly that nobody broached who the trustee would be  
17 if one was ever appointed. But we will consult with the  
18 parties once our motion, which we hopefully will file on  
19 Monday, so that we do have -- we did talk about it in general  
20 that we would like to know the skill set they think is  
21 necessary, especially at this point in time, and the names.  
22 And I would say that we will make our decision immediately. In  
23 the past, the only issue I've ever run into is conflict and the  
24 person you call says no conflict and then they start checking  
25 and you have to go on to the next name on the list. But we

1 would be prepared to act, hopefully, within twenty-four hours  
2 if people respond to us with their recommendations.

3 THE COURT: Thank you very much.

4 MS. ADAMS: Thank you, Your Honor. Before we take  
5 the recess, there are two other things I'd like to get on the  
6 record. Mr. Hamilton, can you -- or maybe -- I guess Mr. Kinel  
7 --

8 MR. HAMILTON: Mr. Kinel's on the phone, by the way.

9 THE COURT: Mr. Kinel's on the phone? Maybe, Mr.  
10 Hamilton -- we have a -- as I think has been on the record and  
11 was in the notice -- the order that I posted, the estimation  
12 proceeding was scheduled for trial for Monday. We agreed that  
13 the 9019 motion for approval of the settlement would be taken  
14 up first and the estimation proceeding would follow immediately  
15 thereafter. Yesterday I received a telephone call from Mr.  
16 Sacks, Mr. Kinel, Mr. Hamilton, Mr. Jimenez regarding the  
17 estimation proceeding. And I just -- without going into  
18 detail, I think we ought to get something on the record so  
19 everybody's aware of at least what I think is happening now on  
20 Monday.

21 MR. HAMILTON: Thank you, Your Honor. Robert  
22 Hamilton of Jones Day on behalf Colorado Capital Bank. We did,  
23 in fact, advise the Court -- geez, was it only yesterday --  
24 that we had reached an agreement of settlement with the  
25 debtors. The settlement that we've reached resolves the

1 estimation motion that was filed by the debtors. It is  
2 contingent on the Court's ruling, on the pending 9019 motion,  
3 with respect to the other -- a group of exchangers who had  
4 deposited at Colorado Capital Bank and as everybody that's  
5 involved in the case knows that proceeding has continued to  
6 Monday. So the parties have agreed to postpone and the Court  
7 has accepted our request to postpone the hearing that had been  
8 scheduled on the estimation motion in contemplation of a ruling  
9 on a motion to approve our settlement if the underlying 9019  
10 motion that is going to be heard Monday morning is approved.

11 THE COURT: I think that's sufficient for now.

12 MR. HAMILTON: I'm happy to put on the record --

13 THE COURT: No, I don't think you need to. I mean,  
14 that's sufficient now.

15 MR. HAMILTON: And I know Mr. Sacks wants to update  
16 the Court on developments with respect to the pending 9019  
17 motion.

18 THE COURT: Yeah. I was getting a little concerned  
19 when nothing is on the -- I haven't seen this amended  
20 settlement agreement.

21 MR. HAMILTON: I don't know where that stands, Your  
22 Honor, because when I left my office the revision was still  
23 being circulated among the settling exchangers. I can report  
24 to the Court, though, as the Court has inquired before, that  
25 the one objection to the 9019 other than the committee has been

1 resolved. Mr. Alexander, who represents the DeMelos, and I  
2 have worked on it yesterday and I got an e-mail from him  
3 walking into court saying that I could represent to the Court  
4 based on the information we had provided to him that that  
5 objection has been resolved.

6 I cannot indicate when the revised settlement  
7 agreement on the 9019 will be filed. It was being circulated.  
8 I do expect to be circulating probably over the weekend the  
9 drafts of the stipulation and the 9019 with respect to the  
10 Colorado Capital agreement.

11 THE COURT: I'm more concerned --

12 MR. HAMILTON: I understand.

13 THE COURT: The hearing Monday morning at 9:30 on a  
14 9019 settlement -- and I'm sure Mr. Teitelbaum wants to see it  
15 as well because he withdrew his objections based on the  
16 representations that were made as to the terms of it. But  
17 it's, in my view, important we go forward. But I'm not going  
18 forward without actually seeing what it is I'm supposed to  
19 approve if I approve it.

20 MR. HAMILTON: I do not know --

21 MR. HERMAN: Your Honor, this is Ira Herman speaking.

22 THE COURT: How are you, Mr. Herman? How is Orlando?

23 MR. HAMILTON: I hope it's raining.

24 MR. HERMAN: You know, I wish I could get outside and  
25 work if I'm working on this (indiscernible) -- I'm sorry, on

1 this 9019.

2 THE COURT: Well, hopefully your kids are enjoying  
3 the attractions at least in the meantime.

4 MR. HERMAN: I left my ten year old daughter, Jen,  
5 and my wife are just -- you know, at MGM today. And yesterday  
6 we spent the whole day at the Magic Kingdom and they saw the  
7 Halloween parade twice. So I have very happy youngsters.

8 THE COURT: All right. So where are we on the  
9 agreement.

10 MR. HERMAN: I think the core group of settling  
11 exchangers that reviewed the text and we recommend to the  
12 entire group that the text is appropriate, we can go forward  
13 with it. So, with that said, I think that the Dreier firm can  
14 post the agreement on the ECF. 'Cause if it's going to change  
15 at all, I don't think it's substantive, Judge.

16 THE COURT: Okay.

17 MR. HERMAN: I think all the substantive changes have  
18 been made. You know, there's a large group of settling  
19 creditors that have to take a look at this.

20 THE COURT: Thank you very much, Mr. Herman.

21 MR. SACKS: Your Honor, may I ask if Mr. Watson is on  
22 the phone because that would save me sending him an e-mail?

23 THE COURT: I guess you got to send him an e-mail.

24 OPERATOR (TELEPHONICALLY): Your Honor, this is the  
25 operator. Mr. Watson is on the phone. He requested a

1 (indiscernible) line.

2 MR. WATSON (TELEPHONICALLY): Hello?

3 THE COURT: He's on now, Mr. Sacks.

4 MR. SACKS: I just wanted to make sure --

5 MR. WATSON: I heard, yes. Thank you.

6 MR. SACKS: Okay.

7 THE COURT: Thank you very much, Mr. Watson.

8 MR. WATSON: Thank you, Your Honor.

9 THE COURT: Ms. Cyganowski or Mr. Weber, has the  
10 situation changed with respect to the committee's objection?

11 MS. CYGANOWSKI: It has, Your Honor. The committee  
12 was -- Melanie Cyganowski, counsel for the committee, Greenberg  
13 Traurig. The committee was concerned about several issues not  
14 least of which was the linkage to CCB and what resolution might  
15 happen there. And clearly, with that resolution, the committee  
16 endorses and supports the proposed settlements as they have  
17 been represented to us. Like you, we're anxious the  
18 documentation. I was extended a draft yesterday. I don't know  
19 if that's been changed and subject to that documentation, if  
20 the agreements are as they've been represented the committee  
21 will support them.

22 THE COURT: And somebody, please be sure to get Mr.  
23 Teitelbaum a draft as soon as possible.

24 MR. HERMAN: Your Honor, it's Ira Herman again.

25 MS. CYGANOWSKI: Thank you, Your Honor.

1 MR. HERMAN: I could represent to the Court that the  
2 agreement since yesterday has not substantially changed.  
3 Principally, what has happened since yesterday is one sentence  
4 was added to clarify what the intention of one of the  
5 provisions were. And that is the provision involving future  
6 distribution of 5734 is confirmed.

7 THE COURT: Okay. If Mr. Watson is still on the  
8 phone, please immediately e-mail Mr. Teitelbaum a copy so he  
9 shouldn't have to wait for it to get posted on ECF to see it.  
10 Because he had substantial objections to the agreement. He  
11 withdrew the objections based on the representations as to the  
12 altered terms but it's important that he have plenty of  
13 opportunity to review it.

14 MR. TEITELBAUM: Thank you, Your Honor.

15 THE COURT: Let me just say, and we'll take a recess  
16 immediately thereafter, at the hearing on Monday on approval of  
17 the settlement, I still have, even accepting the revised terms  
18 as I understood them to be represented, I still have questions  
19 about the settlement and about -- so no one should think that  
20 it's foreordained that the settlement's going to be approved  
21 even in the absence of objections. What I would like to hear  
22 on Monday morning is what accounts -- I realize the money is  
23 now in the DIP account at JP Morgan, but I'd like to know  
24 what -- I look back at the order, the consent order, on  
25 transferring the funds from Colorado Capital Bank today. I'd

1 like to know what the -- what is the account origin of the  
2 funds that are being utilized in the settlement. I mean,  
3 generally my understanding is the prior settlements dealt with  
4 funds that were in segregated accounts, or FBO accounts. I  
5 don't know what, if any, portion of the funds that are coming  
6 back -- that would come back to the estate if the settlement is  
7 approved. I assume most of it is from the 419 and the 790  
8 account. I don't know whether any portion of it -- and I  
9 couldn't -- in going through papers today with my law clerks,  
10 we couldn't figure out whether how much, if any, of the money  
11 comes out of accounts that had names of -- if any had names of  
12 nonsettling parties. And that's something I do want to hear  
13 about on Monday. Okay.

14 It's -- essentially it's two minutes to three. Let's  
15 take a break until -- I don't expect we're going to go very  
16 long after the break but let's take a break until twenty after.  
17 If you decide you need more time than that, and I encourage  
18 everybody to speak, just knock on the door. I'll stay in Judge  
19 Peck's chambers.

20 MR. TRAUB: Can I hand up a copy to Your Honor?

21 THE COURT: I'm sorry?

22 MR. TRAUB: May I hand up a copy?

23 THE COURT: Yes, please. I'd like to see it.

24 UNIDENTIFIED SPEAKER (TELEPHONICALLY): Your Honor,  
25 is it possible for those of us on the telephone to get

1 contacted so we could get copies of that agreement?

2 THE COURT: That I can't -- I don't know how to do  
3 that.

4 UNIDENTIFIED SPEAKER (TELEPHONICALLY): Maybe someone  
5 through their counsel who can direct us to somebody.

6 THE COURT: Well, we'll still be on the phone with  
7 them. Okay. We're in recess until twenty after.

8 MR. HAMILTON: Thank you.

9 MR. TEITELBAUM: Thank you, Your Honor.

10 (Recess from 3:00 p.m. to 3:22 p.m.)

11 THE COURT: Please be seated. All right. We're back  
12 on the record. I'm sure you've worked everything out in the  
13 few minutes that we've been apart from each other.

14 MR. FRIEDMAN: Your Honor, on behalf of the --

15 THE COURT: Make your appearance again.

16 MR. FRIEDMAN: Thank you. Adam Freedman for the ad  
17 hoc committee. Our client does not agree with this agreement.  
18 We do not believe that it states it is binding if a trustee is  
19 appointed. We believe it is relatively silent on that issue.  
20 We believe that this agreement only gives rights to the CRO or  
21 to the asset manager that Mr. Okun had some input in selecting.  
22 And we believe, frankly, that this dictates the term of a  
23 possible future plan with provisions that plans must require  
24 and we will be seeking a trustee. We would like return date  
25 for our motion. We believe that disagreement --

1 THE COURT: Excuse me, we're in session. So anyone  
2 speaking on the phone, either put your phone on mute or be  
3 quiet. Thank you. Go ahead, Mr. Friedman.

4 MR. FRIEDMAN: We will continue to speak with the  
5 estate constituents to see if this agreement can be improved.  
6 But as sort of a foundational point, we also believe that this  
7 is the very kind of agreement that the trustee should be  
8 negotiating and binding the estate to.

9 THE COURT: Thank you, Mr. Friedman. Mr. Flaxer?

10 MR. FLAXER: Your Honor, I mean, you've taken a look  
11 at it so no doubt you've noticed that there's a provision that  
12 makes it binding on successors and assigns. But there's other  
13 very troubling language that Mr. Friedman pointed out that very  
14 specifically designates the so-called asset manager as the  
15 party to carry out certain functions. As a fancy lawyer, I can  
16 think up a way to reconcile appointing a trustee and making  
17 this all work together. But I don't think that's the type of  
18 process we should all be engaging in. I really come out the  
19 same place as Mr. Friedman. This is probably fixable with a  
20 few tweaks in which case the assets can be conveyed to the  
21 estate. A trustee can be appointed and get the benefit of this  
22 agreement in which case something really significant and  
23 positive could be accomplished but we're not quite there yet  
24 because of the ambiguities that are in the agreement.

25 So, you know, I will confer with my client in light

1 of this agreement. My suspicion is that they will probably  
2 direct me to join in motions for the -- join in the motion for  
3 a trustee or in the motions. But we'd love to see it fixed.

4 THE COURT: Okay. Mr. Teitelbaum, do you want to be  
5 heard?

6 MR. TEITELBAUM: Thank you, Your Honor.

7 THE COURT: Just make your appearance.

8 MR. TEITELBAUM: Jay Teitelbaum, Teitelbaum & Baskin.  
9 I'm not going to repeat the comments. The agreement appoints  
10 who Mr. Okun wants to have running the show. By way of  
11 example, Section 4.3, only the asset manager is appointed as  
12 attorney-in-fact. It's a problem, Your Honor --

13 THE COURT: Let me ask you this. And I should ask  
14 Mr. Weber this but -- because I'm not making a decision on  
15 trustee today. That ought to be clear to everybody. But I  
16 don't see anything -- in my quick read of the agreement, if a  
17 Chapter 11 trustee was appointed -- I mean, I do have some  
18 questions about because it does speak of the CRO. I don't know  
19 whether if a trustee was appointed is there going to be a CRO  
20 or is there not going to be a CRO? But I didn't see anything  
21 in here that would prevent -- and I guess the original proposal  
22 was Mr. Lukenda was going to be the asset manager. Is there  
23 anything that prevents the trustee, if there were a trustee,  
24 appointing himself or herself as the asset manager? I mean,  
25 I -- what I saw in Exhibit E is a proposal to appoint Abacus

1 advisors as the asset manager. If that was not approved, I  
2 didn't see anything that would -- if Mr. Lukenda remains as CRO  
3 then someone else is appointed.

4 MR. TEITELBAUM: Yeah, it's right here. Yeah, Your  
5 Honor, Section -- maybe we're reading it a little bit  
6 differently but Section 3(b) on page 3, and it is subject to  
7 the approval of this Court, but Abacus is duly appointed as the  
8 asset manager. What we don't want to get involved in is an  
9 issue of intent.

10 THE COURT: I understand.

11 MR. TEITELBAUM: I mean, parties are specifically  
12 identified here and, you know, all of a sudden the game is  
13 changed. I've represented DIP lenders my whole career and the  
14 argument always -- Your Honor, you're putting a trustee in a  
15 DIP case. We're out because we know who we're dealing with.  
16 It's the same thing. So I -- again, the clause that I was  
17 alluding to earlier is nowhere in this document. And let me  
18 just say, and I really don't want to get into the nitty gritty  
19 of the document because there are really fundamental problems,  
20 but some of the nitty gritty demonstrates the problem. For  
21 example, Mr. Okun gets a living allowance. Based on what? Two  
22 huge homes. I mean, to people who have lost their life  
23 savings, that's not going to be unacceptable.

24 THE COURT: Well, Mr. Teitelbaum, be real about it.  
25 I mean, if a trustee is appointed, do you think you're going to

1 have a piece of cake to just take all these assets from?

2 MR. TEITELBAUM: No. I don't. But I think the  
3 trustee --

4 THE COURT: Do you really think so?

5 MR. TEITELBAUM: No, I don't. But I think a trustee  
6 and I think what was stated earlier was that the pressures that  
7 came from this side of the courtroom throughout the case have  
8 gotten us to where we are and helped to get us to where we are.  
9 I think, and it' my fervent belief, that a trustee would do  
10 better and different deal because, frankly, Mr. Okun doesn't  
11 have much of a choice but to negotiate. Your Honor, this deal,  
12 on behalf of the creditors that I represent -- obviously, I  
13 have to show it to them but my recommendation is this doesn't  
14 do it.

15 THE COURT: Thank you, Mr. Teitelbaum. Mr. Velez-  
16 Rivera?

17 MR. VELEZ-RIVERA: Andrew Velez-Rivera for the United  
18 States trustee. Your Honor, my client's quick reading of it  
19 and mine does raise some concerns. It does have elements of  
20 the sub-rules of plan, for example. It has the allusion of Mr.  
21 Okun having selected a Chapter 11 trustee at the extreme.

22 THE COURT: Where do you see that?

23 MR. VELEZ-RIVERA: The provisions that are internally  
24 inconsistent --

25 THE COURT: I'm sorry. Just show me where do you see

1 that?

2 MR. VELEZ-RIVERA: The conveyance, Your Honor. I  
3 think it was 3(b). 4(1). 3(b) combined with 4(1), Your Honor.  
4 The agreement gives the impression that it isn't enforceable  
5 unless the assets are delivered to a specific individual of Mr.  
6 Okun's approval. And I understand the committee may have  
7 brought Mr. Cohen to the table on this one. But that raises  
8 some concerns.

9 THE COURT: Thank you.

10 MR. MOORMAN: Good afternoon, Your Honor. William  
11 Moorman from Craig and Macauley on behalf of Newton Bayard  
12 Limited Partnership. My client is the entity that has the  
13 injunction in Massachusetts. To be very clear on the record,  
14 my client has no intention of waiving his rights or his  
15 remedies under that injunction. We believe that there have  
16 been serious already at the injunction throughout this case and  
17 perhaps this transaction itself violates the injunction but I  
18 think that's for another day.

19 A couple of comments about the agreement. I read it  
20 in a limited amount of time. I think there are inherent  
21 problems with the asset manager CRO concept. We're very  
22 troubled -- we were told that Mr. Okun met with Mr. Cohen, the  
23 intended asset manager and that he was comfortable with Mr.  
24 Cohen. I don't want Mr. Okun to be comfortable. It think none  
25 of the creditors want him to be comfortable. That's the last

1 thing he deserves. He doesn't deserve to have a Florida, a  
2 home in New Hampshire, two automobiles. I don't know what  
3 automobiles they are, if they're his Ferraris or his minivan, I  
4 have no idea.

5 THE COURT: The Ferraris are on the list coming over.

6 MR. MOORMAN: There's multiple Ferraris. I'm not  
7 sure we got all of them. I also think this could only be done,  
8 Your Honor -- this type of agreement could only be done in a  
9 plan. And if that's the case, what we're talking about here is  
10 more delay.

11 THE COURT: These are non-debtor assets, at least as  
12 of today. When you say they can only be done in a plan, I  
13 don't follow that. I mean, if these were debtor assets you'd  
14 be right but until you're able to get hands on them, they're  
15 not debtor assets.

16 MR. MOORMAN: Your Honor, what I see coming before  
17 you is some motion seeking approval for the debtor to take  
18 title to substantial assets.

19 THE COURT: And do you think that your clients would  
20 be better off if these assets came into the estate directly,  
21 held in a trust where the estates have the right?. Would you  
22 be better off then than you are today?

23 MR. MOORMAN: I think it would be better off if a  
24 trustee litigated with Mr. Okun 0

25 THE COURT: You really think so?

1 MR. MOORMAN: Yes, I do. I absolutely do.

2 THE COURT: Then you'll be back here in three years  
3 and we'll still be talking about it.

4 MR. MOORMAN: That's fine by -- Your Honor, that's  
5 fine with my client if that's the case.

6 THE COURT: Well, maybe it's fine with your client  
7 but I'm not so sure that everybody in the courtroom is going to  
8 be better off if three years from now you'll still fighting  
9 with Mr. Okun and appeals and everything else.

10 MR. MOORMAN: I think rather than see this agreement  
11 go into effect, that's what my clients would prefer and I  
12 wouldn't be surprised if other clients or other people who were  
13 defrauded by Mr. Okun would prefer that.

14 But I think the bottom line is there is a crisis of  
15 confidence here and I think that as other people are  
16 requesting, we need a hearing on a motion for appointment of a  
17 trustee.

18 THE COURT: You're going to get a hearing.

19 MR. MOORMAN: Then a trustee can look at this  
20 agreement, a trustee can negotiate with Mr. Okun and a trustee  
21 can decide what is in the best interest of the estate.

22 THE COURT: Mr. Traub?

23 MR. TRAUB: Yes. Even my ex-wife didn't hate me this  
24 much. But in any event, what we're attempting to do, Your  
25 Honor, is -- I figure, give everyone something to feast on.

1 But in any event, Your Honor, the agreement says what it says.  
2 You'll interpret how ever you wish to interpret it. To the  
3 extent you have questions of interpretation, Mr. Okun's counsel  
4 will be present to clarify whatever it is, if you set a hearing  
5 on it. What we had intended to do, okay, was -- we know you're  
6 going to set a hearing for motion for a trustee. What Mr.  
7 Weber said was we were going to file a motion to implement it  
8 so the Court has the power to do this. You can decide whether  
9 they want to or not or how ever you decide whether you want to  
10 deal with it -- is to make a motion to approve the agreement,  
11 to make it active, make it in the same time or a day before the  
12 motion for the trustee and let everybody have everything at the  
13 table at the same time. That was our intention. To just sit  
14 in limbo with this, I am astounded, I really am astounded.

15 THE COURT: Leave the astounded out. Just --

16 MR. TRAUB: Okay. I'm not astounded. I feel really  
17 good to have produced this in the last couple of days. I feel  
18 really good to Mr. Weber and his colleagues to produce this in  
19 the last couple of days. If it's not as good as other people  
20 want it, I don't get it. Can we have a hearing on this at the  
21 same time as --

22 THE COURT: You're going to.

23 MR. TRAUB: Good.

24 THE COURT: Okay.

25 MR. TRAUB: That's all I ask.

1           THE COURT: But the -- in my very quick read of the  
2 agreement, my concerns are whether you have -- whether the form  
3 of the agreement. And this is not personal as to you and I'm  
4 sure you and Mr. Weber negotiated the best agreement you could  
5 in the time available to do it. And that's really the question  
6 of whether through design of Mr. Okun or otherwise an agreement  
7 has been negotiated that isn't going to work if there's a  
8 trustee appointed. Okay? I'm concerned on this very quick  
9 read by -- and this was way early in the case. I remember Ms.  
10 Adams saying the appointment of a trustee doesn't necessarily  
11 mean you won't have a CRO. A lot has changed since then as to  
12 what the needs of the case are but, you know, it builds the  
13 restructuring officer in to this agreement such that what  
14 happens if you don't have a restructuring officer. Is this  
15 agreement -- if what happened on the date -- and the date is  
16 going to be, I'll tell you all right now --

17           MR. TRAUB: Good.

18           THE COURT: -- shortened time because the U.S.  
19 trustee, Mr. Velez-Rivera, that he'll be ready to file a motion  
20 on Monday. Tuesday, October 23rd at 10 a.m. in Judge Gonzales'  
21 courtroom. We'll continue to play musical courtrooms. But I  
22 have his courtroom that day.

23           MR. TRAUB: When will you guys be ready?

24           THE COURT: It was for a file that Mr. Kinel was  
25 supposed to do on another case that was settled. So I have the

1 courtroom. So, Tuesday, October 23rd at 10 a.m. I will hear  
2 the trustee motions. I will hear the motions relating to this  
3 agreement.

4 But, you know, my concern is that -- I don't fault  
5 anyone for the way it's drafted. But, look, there's a serious  
6 issue about -- and let me just say, with respect to the trustee  
7 motions, you don't all have to brief it -- the law. You don't  
8 have to brief the law. We've been through the trustee motion.  
9 I really do understand the law under 1104 and I think that --  
10 you know, I really view this as an issue under 1104(a)(2), best  
11 interest of the creditors. I don't really -- the motion that  
12 is -- you know, that was filed deals with (a)(1) and (a)(2).  
13 Do what you want but, you know, this is going to rise or fall  
14 on (a)(2) and I don't need the law. Okay? And I don't need  
15 thirty page briefs. Okay?

16 The -- I'm just concerned -- I mean, look, despite  
17 what I've heard from the creditors' side of the table, I think  
18 you're all missing something if you don't think that this  
19 estate would be better off with all these assets conveyed than  
20 having to go fight for them the next three years to accomplish  
21 what's in this piece of paper if it doesn't create other  
22 problems. Okay? If it doesn't create other problems. So,  
23 somebody come up with -- I don't know what I'm going to do on a  
24 trustee motion.

25 MR. TRAUB: I don't either. Obviously.

1           THE COURT: But -- and I don't know what I'm going to  
2 do on this either because if a trustee is appointed, I don't  
3 want them hamstrung. I don't want to be litigating for the  
4 next two months over the issue of whether the conveyance  
5 happens, doesn't happen, et cetera. But, you know, my concerns  
6 come from the fact that Mr. Lukenda, as CRO, is an integral  
7 part of this. What happens if there's a trustee and there is  
8 no CRO? I raised the issue and Mr. Teitelbaum corrected me  
9 on -- or Mr. Flaxer about the asset manager. If there's great  
10 resistance to Abacus as the asset manager, then there are other  
11 asset managers. You know, I'm not sure a trustee is the  
12 appropriate person to be administering all these non-debtor  
13 assets. And it's going to raise the question under this  
14 agreement, assuming the three cases already in the eastern  
15 district of Virginia wind up in this court as related cases, is  
16 there going to be a trustee motion in those cases. And are  
17 there -- do you need separate trustees because there's a  
18 conflict between the positions of creditors in the two estates.  
19 Those seem to me not easy issues to deal with. But I'm  
20 concerned, Mr. Traub -- and I do commend your side of the  
21 table, you and Mr. Weber, for getting this done in the days  
22 since. No one said it's perfect but I do have some problems  
23 about it.

24           Look, between now and the time this comes on, I wish  
25 you could each talk to each other and whatever the outcome on

1 the trustee motion that you figure out how to make this work.  
2 This doesn't seem to -- the only thing I don't see in here is  
3 any releases, I don't see anything that precludes further  
4 negotiations with Mr. Okun to make it better. What I see is --  
5 you know, they say don't look a gift horse in the mouth. On  
6 the other hand, some of these assets may be so distressed  
7 that -- I think you raised the question on Tuesday, Mr. Weber,  
8 about abandoning some of these because you don't want them.  
9 But I'm concerned about -- the most information available about  
10 these assets, I think, comes from Mr. Lukenda and his people  
11 and Meserow and their people who spent considerable time  
12 that -- you may have already looked at some of these assets  
13 but, you know, whoever running the show has got to get on top  
14 of it very quickly.

15 MR. TRAUB: I just wanted to say thank you for your  
16 kind words. It's been a long couple of days. We hear your  
17 questions. Rather than labor and address them, we hear them  
18 and we'll be prepared to address them.

19 THE COURT: Okay. All right. Now let's just talk  
20 about --

21 MR. TEITELBAUM: Your Honor, if I may for one -- just  
22 procedurally. Just not substantively. Procedurally, which  
23 is --

24 THE COURT: Hold on. Whoever is on the phone is  
25 either speaking or has someone speaking in the room. Put your

1 phone on mute or get off the phone. Go ahead, Mr. Teitelbaum.

2 MR. TEITELBAUM: Your Honor, Jay Teitelbaum.  
3 Procedurally, you know, how, if I understand how these motions  
4 are, the two requests that I would make is first with respect  
5 to the agreement or an amended agreement, there are references  
6 in this agreement to other agreements that all agreements be  
7 filed together so we have the -- there's a reference in here to  
8 a plan funding, master agreement. If everything could be put  
9 together --

10 THE COURT: I think the plan funding agreement was --

11 MR. TEITELBAUM: Well --

12 MR. WEBER: They're all filed, Judge, but we'll put  
13 them together again.

14 THE COURT: That's fine.

15 MR. TEITELBAUM: If --

16 MR. WEBER: Judge, here's the thing that I was going  
17 to say in that regard is we'll take this agreement and post it  
18 on the committee's website so every creditor in the world can  
19 see it.

20 THE COURT: Okay.

21 MR. TEITELBAUM: There was that piece of it that all  
22 the agreements be put together -- there was one other point  
23 that I just lost the train on but that -- I now remember, Your  
24 Honor, and Your Honor referenced it. There was a mention  
25 earlier today that the confidentiality has gone away. The fact

1 of the matter is that we really haven't seen the underlying  
2 data regarding any of these assets. And I'm going to make the  
3 request out in court since the confidentiality no longer  
4 appears to be applicable, or if I misunderstood someone will  
5 correct me, that we now have access to the critical documents  
6 relating to these assets. The valuations, the appraisals,  
7 whatever it is that's there, we haven't seen it. And so, if  
8 between now and whenever a motion is available that that be  
9 available --

10 THE COURT: I don't know whether -- is that subject  
11 to the approval of the agreement? Does that come into play?

12 MR. WEBER: It seems to -- it seems to me, Judge,  
13 that the portion of the agreement that is irrevocable now, as  
14 to Mr. Okun, is the conveyance. The rest of the agreement is  
15 subject to approval of the Court. That's an unfortunate way  
16 that it is. That was not negotiated, Judge. It's just the way  
17 that I interpret what we did at 3 and 4 in the morning.

18 THE COURT: Let me read that paragraph myself right  
19 now. Hold on.

20 MR. WEBER: Your Honor, I could make another  
21 suggestion.

22 THE COURT: I don't --

23 MR. WEBER: I mean, what the other suggestion would  
24 be is that --

25 THE COURT: Why is the conveyance operative but the

1 waiver not? I don't see that in there.

2 MR. WEBER: It's back in the conveyance paragraph.  
3 It says that it's operative on the signing and the whole  
4 document is operative -- let me find the words. It's  
5 irrevocable and operative on the signing.

6 MS. CYGANOWSKI: On 17, first sentence. Oh, no, it's  
7 Obligations Under This Agreement, 7.2.

8 MR. WEBER: "7.2 shall be irrevocable upon the  
9 execution of the agreement." I guess you could interpret that  
10 there are waivers -- Judge, I do have another way of solving  
11 it. I mean --

12 THE COURT: You know, I think -- no. Mr. Weber --

13 MR. WEBER: Yeah? I think if you look at 7.2, the  
14 first sentence, it might be --

15 THE COURT: Mr. Weber, the Court is ruling.

16 MR. WEBER: Good.

17 THE COURT: I have concluded based on my review of  
18 the agreement that confidentiality has been waived.

19 MR. WEBER: Thank you, sir. There is one issue with  
20 that. Okay? No, Judge, you know --

21 THE COURT: Go ahead and tell me, Mr. Weber. No, Mr.  
22 Weber, I --

23 MR. WEBER: The ad hoc committee has several members  
24 on it.

25 THE COURT: Yes.

1 MR. WEBER: We started to share information with the  
2 ad hoc committee. The ad hoc committee counsel indicated that  
3 they would sign a confidentiality agreement and certain of  
4 their members agreed to be restricted so they could get that.  
5 Other of their members said that they wanted to continue to  
6 trade and did not want to be restricted.

7 THE COURT: They're not going to get it.

8 MR. WEBER: Thank you, sir.

9 THE COURT: It's as simple as that. I'm not going to  
10 have -- and I assume the U.S. trustee believes in that position  
11 as well?

12 MR. VELEZ-RIVERA: My client appreciates that.

13 THE COURT: Okay. Mr. Friedman? If your clients --  
14 no -- no one who doesn't sign a confidentiality agreement is  
15 getting the information. The confidentiality -- the Court has  
16 ruled that confidentiality has been waived pursuant to the  
17 agreement. I consider it to be, nevertheless, proprietary  
18 sensitive information that no one who is trading should have  
19 access to.

20 MR. WEBER: Thank you, Judge.

21 THE COURT: Okay? I assume for those who are willing  
22 to sign a simple confidentiality agreement, they'll get the  
23 information.

24 MR. WEBER: That's correct.

25 THE COURT: Mr. Velez-Rivera, is that consistent with

1 the policies of your office?

2 MR. VELEZ-RIVERA: It generally is, Your Honor.

3 THE COURT: Okay. Thank you very much. Yes?

4 Please. Identify yourself by name.

5 MS. KOGAN: Sandra Kogan, a creditor.

6 THE COURT: Yes?

7 MS. KOGAN: Does that include creditors who are  
8 not --

9 THE COURT: Yes. You don't --

10 MS. KOGAN: -- represented by attorney?

11 THE COURT: If you're prepared to sign the  
12 confidentiality agreement, you have the ab -- the same rights  
13 as any other party or lawyer in the case. You've been here at  
14 every hearing that I can remember.

15 MS. KOGAN: I've been here at every hearing, yes.

16 THE COURT: It's very nice to see you again.

17 MS. KOGAN: Thank you.

18 THE COURT: Okay. So -- but it is -- let me  
19 emphasize, and I think it should be clear to everyone, this is  
20 sensitive information and no one should be trading on it. And  
21 so, if you sign a confidentiality agreement, it's going to be  
22 enforced.

23 MR. TEITELBAUM: Your Honor, just -- I'm just  
24 confused. The confidentiality is limited to the issue of  
25 trading but not to the use of the information for other

1 purposes in the course of litigation.

2 THE COURT: Yeah. For litigation, it's fair game.

3 MR. TEITELBAUM: Okay. So it should be a simple  
4 one --

5 THE COURT: I don't expect to see everything --

6 MR. TEITELBAUM: Well, it'll be whatever's relevant.  
7 I'm just --

8 THE COURT: Mr. Teitelbaum --

9 MR. TEITELBAUM: In other words, if I want it --

10 THE COURT: Yes. You're going to follow the  
11 standards.

12 MR. TEITELBAUM: -- and I represent to the committee  
13 or the debtors that it's going to be reviewed by me and I'm not  
14 showing it to my clients, theoretically, I don't have to sign  
15 the confidentiality agreement.

16 THE COURT: Would you work with Mr. Weber and Mr. --  
17 Mr. Fox, you want to be heard on this?

18 MR. FOX: Your Honor, if I could just say, there is a  
19 form that we have prepared. There is a form we have shared  
20 with respect to lenders. There is a form that the committee  
21 has signed. It contains all the necessary and standard  
22 provisions for dealing with confidential information.

23 THE COURT: Stop. We'll have a hearing on Monday.  
24 You ought to be able to work this out by Monday.

25 MR. WEBER: I hope so.

1 THE COURT: If you have a problem with it, raise it  
2 on Monday.

3 MR. TEITELBAUM: I'll just them to send me the form.

4 THE COURT: You may not be planning to be here but  
5 I'll be here with 1031. You ought to be able to work this out  
6 and solve this issue.

7 MR. TEITELBAUM: If they'll send me the form of the  
8 agreement --

9 THE COURT: Okay.

10 MR. TEITELBAUM: -- then I'll take a look at it. But  
11 I'm just -- I'm not sure if confidentiality has been waived why  
12 there's still a confidentiality agreement.

13 THE COURT: All right.

14 MR. FOX: Just to clarify, Your Honor, it's  
15 confidentiality as between Mr. Okun and the information he's  
16 provided the estates and the committee. We have never  
17 intended -- a confidentiality as between the estates and any  
18 other third party would be waived. That is just -- that frees  
19 the estates to share information that previously weren't at  
20 liberty to share.

21 THE COURT: Yes. All right. Let me ask this  
22 question. I'm going to hear both motions on the same day.  
23 Please, with respect to this new Okun agreement, please address  
24 how, if at all, this agreement can be -- remain operative if  
25 and when a trustee is appointed. So does it make a difference,

1 for example -- let me ask you this, Mr. Weber. Assuming the  
2 agreement is approved, what are the steps that are required to  
3 be taken then?

4 MR. WEBER: Your Honor, I believe that the steps that  
5 would be taken would be essentially three-fold. Either the  
6 debtor-in-possession and the committee or the trustee and the  
7 committee would then go through all of the various assets and  
8 determine which ones were to come into whatever vehicle we  
9 determined was appropriate mindful of the liabilities attended  
10 to them, mindful of the liens that might be on them and mindful  
11 of whether or not we've dealt with the Massachusetts injunction  
12 to allow that to happen.

13 Secondly, I believe that we would make sure that  
14 there was an appointment of an asset manager. That asset  
15 manager might be Abacus. Apparently, there are some problems  
16 with Abacus. It could be somebody else in my view.

17 THE COURT: I think the problem is, is that anybody  
18 that gets proposed who has met with Mr. Okun at all suddenly  
19 has a tank, rightly or wrongly.

20 MR. WEBER: Well, my expectation, Your Honor, is that  
21 whoever the asset manager is better had meet with Mr. Okun

22 THE COURT: I appreciate --

23 MR. WEBER: -- for some significant period of time to  
24 understand some of these assets. In any event, the next step,  
25 I think, Your Honor, would be a stabilization step. And I

1 think one that has to take place very quickly. Assuming that  
2 these assets come into the estate or controlled by the estate  
3 in whatever vehicle that is with whatever asset manager that is  
4 or trustee that there is or appointed themselves as the asset  
5 manager, needs to get some financing. Okay? Needs to get some  
6 financing so that bills can be paid, so that the lights can  
7 stay on, so that mortgagees can be dealt with.

8           And then the next step, I think, Your Honor, would be  
9 a two-fold step. It would be as simple as possible as I can  
10 see by the liquidating plan in which the assets would be  
11 liquidated in the context of that plan because it would  
12 probably take a period of time. And that in connection with  
13 that step, the asset manager would start that liquidation.

14           THE COURT: Okay. I would ask all parties to address  
15 which motion should be ruled on first. They're both going to  
16 be heard the same day and I don't think it really matters which  
17 order I hear them in but which one do I rule on first. Because  
18 I think that -- I think a respectable argument could be made  
19 that no ruling should be -- if a trustee is appointed, no  
20 ruling should be made until a trustee is appointed. On the  
21 other hand, if this agreement does not preclude a trustee for  
22 going back to renegotiate, are you better off with this  
23 agreement approved and these assets in hand rather than having  
24 a trustee go off -- if there's a trustee, go off and start  
25 negotiation and find out a month from now we still don't have

1 an agreement and you'll spend the next three years litigating.

2 So, I hope, without prejudging any issue, I think --  
3 don't jump to the conclusion that you do not want this  
4 agreement approved. You may not. That's going to be -- I'll  
5 hear briefs and argument about it. But don't start out, as  
6 some of you did today, by just saying, you know, anything  
7 that's proposed you're rejecting because you may be better off  
8 with this in hand if it's not precluding you from doing other  
9 things that you think should be done. And that really goes for  
10 your side if no trustee is approved.

11 MR. WEBER: Understood, Your Honor. Thank you.

12 MR. TEITELBAUM: One last question on the agreement.  
13 Between now and the 23rd, does this agreement obligate Mr. Okun  
14 or anyone else not to transfer, encumber or do anything with  
15 any of the assets or is it fair game that these things can  
16 disappear between now and the 23rd?

17 MR. WEBER: My interpretation of the agreement is  
18 that he would be in violation of the agreement if he did that.  
19 There is no specific language that says that except for the  
20 fact that his conveyance is irrevocable and takes place  
21 immediately.

22 THE COURT: Okay. Anybody else want to be heard?

23 MR. MILLER: Your Honor, if I may. Can we have a  
24 deadline by which the motion seeking approval of the agreement  
25 will be filed?

1 THE COURT: When are you going to be able to file it,  
2 Mr. Weber?

3 MR. WEBER: Let me -- Tuesday, close of business,  
4 Judge.

5 THE COURT: That's fine.

6 MS. FISCHER: And opposition papers?

7 THE COURT: I'm sorry, Ms. Fischer?

8 MS. FISCHER: Any opposition papers?

9 THE COURT: Yes. Yeah.

10 MR. MUELLER (TELEPHONICALLY): I'm attending the  
11 hearing by telephone. May I be heard very briefly?

12 THE COURT: Yes, you may. And make your appearance.

13 MR. MUELLER: Well, Your Honor, my name is Michael  
14 Miller. I'm an attorney in Richmond, Virginia with the law  
15 firm of Christian & Barton. I represent three members of the  
16 creditors' committee which consists of six creditors so I  
17 represent fifty percent of the committee members, two of which  
18 are the second and third largest creditors in the case.

19 Your Honor, I just want to make two observations.  
20 The first is I want to echo your very astute observation that  
21 the agreement that the committee and the debtors have worked  
22 very, very hard to reach -- whether it would be after months or  
23 even perhaps years of litigation and that, as you pointed out,  
24 people already had a prejudgment on the agreement that it's  
25 unacceptable and I want people to realize -- to read it with an

1 open mind and to realize all we've achieved.

2 The second observation I want to make is that there  
3 have been several comments that people have lost confidence in  
4 the professionals and the committee and I have to tell you we  
5 have worked around the clock. I have never been privileged to  
6 work with such dedicated committee members who have literally  
7 put their lives on hold. We've met literally daily.  
8 Professionals have worked literally around the clock. I'm sure  
9 Mr. Weber, Mr. Kadish, Ms. Cyganowski, Mr. Kinel, Mr. Traub  
10 have been putting in fifteen hour days for several months now  
11 and it has been very arduous and difficult path and to hear  
12 that people have lost confidence in the efforts of these  
13 professionals and these committee members -- they just do not  
14 know what we've been through and the work that has gone into  
15 this. And I just -- someone who has been involved in this for  
16 the past five months, I have to tell you that they have worked  
17 tirelessly through what has been a very frustrating process and  
18 they need to be commended for their efforts. Thank you, Your  
19 Honor. That's all I have to say.

20 THE COURT: Okay. Anyone else on the phone wish to  
21 be heard? Okay. I realize this is a tight schedule. Frankly,  
22 the approval of this agreement doesn't strike me as a heavy law  
23 issue. So I expect that most of the arguments will be over the  
24 equities of it. If the motion is filed by 5 p.m. on Tuesday,  
25 October 16th, I would like the objections by Friday, October

1 19th at 5 p.m. I realize that's a relatively short time but,  
2 again, I could be wrong and you'll come up with some law that  
3 I'm not aware of. But I think that's what I'm going to set.  
4 I'm going to set it for Friday the 19th. The hearing is  
5 Tuesday, October 23rd at 10 a.m. on both motions.

6 Mr. Velez-Rivera, you're going to file your trustee  
7 motion on Monday, correct?

8 MR. VELEZ-RIVERA: That's right, Your Honor. When  
9 would objections to that be due?

10 THE COURT: I'm going to have objections to that also  
11 on Friday, October 19th at 5:00. Again, I don't see this as a  
12 heavy -- as I've urged you. I mean, the law has been briefed  
13 on trustee motions before so -- and if you want to brief it  
14 further, focus on 1104(a)(2) rather than (a)(1) for cause.

15 MR. FLAXER: Your Honor, I mean, I think the other  
16 interesting legal issue that both sides may have to tangle with  
17 is contract law issues about how you interpret this agreement  
18 and how it would work if a trustee were appointed.

19 THE COURT: I agree with that. I agree with that.

20 MR. VELEZ-RIVERA: Your Honor, I may be going too far  
21 but I'll say it anyway. I don't want to waive my rights.

22 THE COURT: Go ahead, Mr. Velez-Rivera.

23 MR. VELEZ-RIVERA: Could we file reply papers no  
24 later than, say, 5 p.m. Monday on the 22nd, if need be?

25 THE COURT: On which issue?

1 MR. VELEZ-RIVERA: We will exercise our discretion  
2 wisely.

3 THE COURT: On which issue?

4 MR. VELEZ-RIVERA: On the trustee motion or either  
5 one.

6 THE COURT: You don't need to.

7 MR. VELEZ-RIVERA: Thank you.

8 THE COURT: You don't need to. Anything you'd say in  
9 your reply you'll say at the hearing.

10 MR. VELEZ-RIVERA: Okay.

11 THE COURT: I think -- just because we've been  
12 through one round of the trustee motion, I think I have a  
13 pretty good handle on the law on 1104(a)(1) and (a)(2). So --  
14 okay. We are in recess.

15 ALL: Thank you very much, Your Honor.

16 THE COURT: And I will see some of you on Monday  
17 morning at 9:30.

18 (Proceedings concluded at 3:59 p.m.)  
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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Confidentiality pursuant to the agreement has been waived	74	18

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

I, Esther Accardi, 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.

\_\_\_\_\_

October 16, 2007

Signature of Transcriber

Date

Esther Accardi  
typed or printed name