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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: : 07-11448  
 :  
THE 1031 TAX GROUP, LLC, : One Bowling Green  
 : New York, New York  
Debtor. : January 22, 2007  
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TRANSCRIPT OF MOTION FOR SALE OF YACHT  
BEFORE THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Trustee: JONATHAN FLAXER, ESQ.  
Golenbock, Eisenman, Assor, Bell  
& Peskoe, LLP  
437 Madison Avenue  
New York, New York 10022  
  
A. McHALE, ESQ.

For the Committee: ALLEN G. KADISH, ESQ.  
Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166

Court Transcriber: CARLA NUTTER  
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356 Eltingville Boulevard  
Staten Island, New York 10312

1 THE COURT: All right. Next is the 1031 Tax Group,  
2 07-11448. It's a Motion for Sale of the yacht.

3 Counsel, please make your appearances.

4 THE COURT: Good morning, Mr. Flaxer.

5 MR. FLAXER: Good morning, Your Honor. Jonathan  
6 Flaxer of Golenbock, Eisenman on behalf of the Trustee.

7 MR. KADISH: Good morning, Your Honor. Allen Kadish  
8 of Greenberg Traurig for the official committee of unsecured  
9 creditors.

10 THE COURT: Thank you.

11 MR. FLAXER: Your Honor, I'll note that Mr. McHale,  
12 the Trustee, is also here this morning.

13 THE COURT: Good morning, Mr. McHale.

14 MR. MCHALE: Good morning, Your Honor.

15 THE COURT: Mr. Flaxer, did Mr. Ochun sign the  
16 documents?

17 MR. FLAXER: Yes, he signed the documents and I'm  
18 told that they have agreed to the extension of the TRO and they  
19 expect to file papers on Thursday seeking to unwind the asset  
20 transfer agreement.

21 THE COURT: Mr. Flaxer, I know that the adversary is  
22 not on for a hearing this morning but this is a Court-initiated  
23 request. When the -- and I gather we're going to have a  
24 combined hearing on the preliminary injunction and on their  
25 soon-to-be filed motion to set aside the order approving the

1 transfer agreement -- I would like the Trustee to submit an  
2 order requiring that Mr. Ochun and Ms. Bellani appear  
3 personally at the hearing on the motions prepared to testify.  
4 So I want to order them both to appear if they bring on their  
5 motion to set aside the asset transfer agreement.

6 MR. FLAXER: Will do, Your Honor.

7 THE COURT: Thank you. Let's go on with this. Go  
8 ahead.

9 MR. FLAXER: Your Honor, just preliminarily, I have  
10 been given brief status reports and since it's been a while  
11 since the Trustee has been here I thought, perhaps, this  
12 morning he would give a status report. What's on the calendar  
13 this morning is the Trustee's motion to sell this 132 foot  
14 yacht. We have served the motion on our creditors, we have  
15 received no objections. We did receive an e-mail message from  
16 Mr. Velez-Rivera of the U.S. Trustee's Office indicating his  
17 non-opposition.

18 There were a few items in the text of the motion that  
19 were if you will left open which I can address; one was we said  
20 that he retention of the broker was being done  
21 contemporaneously -- I was careful not to say simultaneously --  
22 I actually have the order approved by the U.S. Trustee here  
23 with me so I can hand that up when we're done.

24 THE COURT: Okay.

25 MR. FLAXER: There was -- I don't have the written

1 lien search but I'm told by the yacht broker that the only lien  
2 is the Wachovia lien. We have as of this morning a signed  
3 stipulation with Wachovia whereby they've agreed to cap their  
4 claim at \$8.2 million. They've signed the stipulation. They  
5 need to be paid, however, by the end of this month in order for  
6 that agreement to stick so --

7 THE COURT: What's the total amount of their secured  
8 claim?

9 MR. FLAXER: It's \$8 million -- I have the numbers  
10 here -- we calculate it at \$8,386,551.00. So they're reducing  
11 their claim by approximately \$187,000.00.

12 THE COURT: Does that cover you for the costs of  
13 maintaining the yacht from the time you got it until now?

14 MR. FLAXER: The answer is really -- is no with a  
15 but. The sale would net \$111,000.00 of cash for the estate.  
16 We've already laid out approximately \$150,000.00 to keep this  
17 thing alive. There are \$239,000.00 of expenses that we're told  
18 exist. Mr. McHale is going through them very carefully to see  
19 exactly what they are and to make sure they're all owed. I'm  
20 going to guess that some of that will come down so we may  
21 actually net fifteen cents out of this but at least we got  
22 everybody paid.

23 THE COURT: Okay. I would have thought a 132 foot  
24 yacht would have brought more than \$9 million but --

25 MR. FLAXER: Well, we had a supplemental affidavit

1 filed by Mr. McHale. One of the reasons we wanted to do that;  
2 one was there were some factual issues that needed to be  
3 clarified but Mr. McHale got a lot of calls saying how could  
4 this yacht that we were told was worth so much more sell for  
5 this amount and, perhaps, what I'll do maybe at this point is  
6 turn the floor over to Mr. McHale very briefly and then I'll  
7 resume.

8 MR. MCHALE: Good morning, Your Honor.

9 THE COURT: Good morning, Mr. McHale.

10 MR. MCHALE: Let me address this because I, too, have  
11 some concerns. Naturally, we're dealing with an unusual  
12 commodity with such a high price. Certainly, as Trustee I  
13 worry about am I getting a fair dollar? Let me just outline  
14 just a few quick facts for the Court and I won't take but a  
15 minute.

16 Ed Ochun bought this yacht originally in November  
17 2005 for \$5 million cash plus a \$2.5 million "trade-in." The  
18 boat that he traded was a 1990 Groward. He was given credit  
19 for \$2.5 million trade-in so let's call it \$11.5 million. It's  
20 not unusual in this type of boat brokerage business that the  
21 boat broker will agree that after a certain point of time the  
22 trade-in is not sold the boat broker will actually buy back the  
23 trade-in and that's exactly what happened in this case. The  
24 boat broker bought back the trade-in for \$1.4 million in  
25 December 2006, therefore, the actual price of the yacht if you

1 will when he first purchased it was only \$10.4 million.

2           In conjunction with this I had the same concerns so I  
3 went back and had a listing done of all yachts between 120 foot  
4 and 140 foot sold between -- as aged 1985 to 2001 because this  
5 is a 1993 -- there were seventeen yachts sold in the last year  
6 in that range. Of those, only one was a Hesson and those that  
7 we're dealing with are Hesson. It's a Dutch boat. That was a  
8 124 footer that was sold in France for \$8 million. Also, I  
9 researched the market a little bit and there is virtually a  
10 sister ship in Rhode Island listed for sale for \$9.9 million.  
11 The sister ship has three engines, this has two. Some would  
12 say the three engines are worth more and some would say the  
13 three engines are worth less but it's a 124 foot -- 92 --  
14 roughly the same type. It's listed for \$9.9 million. It's  
15 been on the market for a year with no offers.

16           So like Your Honor said, I was concerned, am I  
17 getting the right amount and then in candor as Your Honor  
18 knows, this cost about \$100,000.00 a month to just sit in the  
19 water.

20           THE COURT: I understand.

21           MR. MCHALE: So if we were to sit there for another  
22 six months hoping that somebody came by, certainly, that would  
23 mean that I'd have to net another \$600,000.00. Additionally,  
24 the typical yacht brokerage fee on a transaction like this is  
25 ten percent. I negotiated a five percent amount with the yacht

1 broker.

2           Also, I talked with two other major players in this  
3 market; Frasier Yachts and Woodson Oviat. Frasier Yachts  
4 indicated that while I might be light I probably wasn't light  
5 by more than \$500,000.00 or \$600,000.00, they'd love to have  
6 the listing but if I had a buyer, take the sale. Woodson Oviat  
7 commented the same thing and both Woodson Oviat and Frasier  
8 would have loved to have had the listing on this but felt that  
9 the best thing I could do was stop the bleeding so I hope that  
10 gives the Court some comfort that there was some good due  
11 diligence put into this before the offer was accepted.

12           THE COURT: Thank you, Mr. McHale.

13           MR. MCHALE: Thank you, Your Honor.

14           THE COURT: Mr. Flaxer, just let me ask you can I  
15 accept Mr. McHale's statement as a proffer of what he would  
16 testify to if he had been sworn?

17           MR. FLAXER: Yes, Your Honor.

18           THE COURT: Thank you. Thank you very much, Mr.  
19 McHale.

20           MR. FLAXER: Your Honor, what I propose to do with  
21 respect to this Wachovia stipulation is although, arguably,  
22 it's a compromise of sorts which would require a twenty day  
23 notice they're really just agreeing to take off a chunk of  
24 money so, perhaps, I'll just do that on three day's notice of  
25 settlement.

1 THE COURT: That's fine.

2 MR. FLAXER: The proposed order on the yacht has --  
3 the only difference is I've inserted that standard language  
4 we've been putting in at the request of Cordell which simply  
5 reserves whatever rights they have and I believe has two "if  
6 any's" in it.

7 So, one more detail I also have from the U.S.  
8 Trustee, a retention order which they've approved to retain a  
9 broker to sell these three commercial condos we have up in  
10 Connecticut. So I actually have three orders to hand up.

11 THE COURT: Okay.

12 MR. FLAXER: By way of status on the legal side if I  
13 will, the lift stay motion which is on for Friday --

14 THE COURT: I understand that's been -- we got a call  
15 that you're continuing that again.

16 MR. FLAXER: I wanted to make sure you got a call on  
17 that.

18 That's all I have. I would turn the floor over to  
19 Mr. McHale to give the Court a status report.

20 THE COURT: Just update me on Richmond. What's going  
21 on in the proceedings in Richmond?

22 MR. FLAXER: The venue hearing is now scheduled for  
23 the 26th of February. Mr. McHale has a meeting scheduled with  
24 the secured lender. I'm not sure of the date. I'm sure he  
25 knows. It's coming up.

1 MR. MCHALE: It's Tuesday.

2 MR. FLAXER: And we're working two tracks. We're  
3 trying to come to some reasonable economic resolution with  
4 them.

5 THE COURT: With the secured lender.

6 MR. FLAXER: Yes, and with the --

7 THE COURT: And with the Trustee and Richmond.

8 MR. FLAXER: But we're trying to work it every way we  
9 can to try to get to the right person to get something done  
10 because obviously we always prefer peace to war but if it has  
11 to be war then it will be war.

12 THE COURT: With respect to the venue motion, is  
13 there still discovery? Is discovery completed? Each side took  
14 some discovery?

15 MR. FLAXER: I believe we've deferred the  
16 depositions.

17 THE COURT: Okay.

18 MR. FLAXER: Document discovery is completed and Mr.  
19 McHale's deposition has been adjourned and Mr. Luzinski's  
20 deposition has been adjourned but it's not clear whether that's  
21 really going to be needed ultimately.

22 THE COURT: Okay. Is there a sense whether there's  
23 value in the West Oaks properties?

24 MR. FLAXER: I'm going to leave that to Mr. McHale.  
25 He's the guy.

1           THE COURT: Go ahead, Mr. Kadish. Why don't you hold  
2 on a second, Mr. McHale. Let's deal with the boat first.

3           MR. KADISH: Your Honor, before we stray too far from  
4 the record on the boat sale, the committee filed an opposition  
5 and we feel like if we're in the same place that the Trustee  
6 is, we try to be at the same time supportive and also a little  
7 bit a burden around the neck of the Trustee to try to squeeze  
8 for the creditors the most that he can so here we are with a  
9 wasting asset that costs us a ton of money a month and we feel  
10 no choice but to stand behind the Trustee.

11           THE COURT: Thank you, Mr. Kadish.

12           MR. KADISH: Thank you, Your Honor.

13           THE COURT: Mr. McHale.

14           MR. MCHALE: Okay, Your Honor, let me just start with  
15 the West Oaks situation. I do have a meeting with the lender  
16 on Tuesday of next week. Is there equity in the property?  
17 Questionable. There definitely is some equity if there --  
18 there's a prepayment clause prior to a \$14 million prepayment  
19 penalty. If that \$14 million prepayment penalty is there,  
20 there's virtually no equity in the property. On the West Oaks  
21 situation we do have the Pennies Building which is a separate  
22 asset. What I would like to do is convince the lender that he  
23 should buy that asset. In addition to buying that asset I  
24 would like to try and cajole the lender into providing a carve  
25 out for some dollar amount guaranteed to the equity holders and

1 in addition in the eventual sale of the property for an amount  
2 in excess of what is due the lender. Certainly, the equity  
3 would flow to the equity holders.

4 I am very cognizant of the administrative costs that  
5 have been involved in this case. Every time I hear litigation  
6 the back of my neck, the hairs just pick up, and I really would  
7 like to avoid litigation on this. Mr. Luzinski, the Trustee,  
8 is a good Trustee. I may have some differences with his  
9 counsel but if we can get that property sold, the quicker the  
10 better. I don't know that I'm going to do any better job or  
11 any worse job than Mr. Luzinski is going to do but if we can  
12 avoid litigation and come to a peaceful settlement I think that  
13 would be in the best interest of the creditors.

14 THE COURT: Are you and Mr. Luzinski able to speak  
15 directly or only through counsel?

16 MR. MCHALE: I am able to speak directly with Mr.  
17 Luzinski. His counsel has told my counsel that he cannot speak  
18 with Mr. Luzinski but that's neither here nor there. That's  
19 fine. No problem. But I have been talking to Mr. Luzinski  
20 again --

21 THE COURT: I think the two of you -- no offense to  
22 Mr. Flaxer or to counsel in Richmond -- I think you and Mr.  
23 Luzinski have the same -- I'm sure you all have the same object  
24 in mind but --

25 MR. MCHALE: And my attorneys have made it clear to

1 the lender's attorney that he can talk directly to me.

2 THE COURT: Thank you.

3 MR. MCHALE: Then, if I may if I can indulge the  
4 Court for just a bit?

5 THE COURT: Go ahead. Sure.

6 MR. MCHALE: One of the biggest problems that I have  
7 as Trustee is what I'm going to call the dichotomy of  
8 divergence of values that have been presented to me, to the  
9 Court and to the creditors. Certainly, any time I bring  
10 something to the creditors they always have that incredulous  
11 look that, well, why could it only be worth that much, we've  
12 been told it's worth X dollars. So I'll first talk on just the  
13 tangible assets and on the tangible assets, the real estate and  
14 the toys.

15 On the real estate, generally, the modus operandi was  
16 that Mr. Ochun would buy property. He generally paid full  
17 market price. He didn't really -- as far as I can see he  
18 didn't overpay but he paid full market price. Shortly after he  
19 would buy the property he generally would refi the property for  
20 an amount equal to or greater than the amount that he purchased  
21 the property for then, simultaneously or a little later, he'd  
22 enter into a master lease agreement and the master lease  
23 agreement was supported by an Ochun entity and generally did  
24 not really have economic support below that master lease and in  
25 many instances based on that master lease would again refinance

1 the property out even further or sell it to tenants-in-common,  
2 we call them the TICs. It does not appear that there's a lot  
3 of equity existing in any of these properties. Some of the  
4 properties do have marginal cash flow; Salina, the mall in  
5 Kansas, does have positive cash flow. As a matter of fact, the  
6 budget for this year is \$3 million. If I cap that \$3 million  
7 at a reasonable cap rate it should give me a value of somewhere  
8 in the \$40 million range since I owe Wachovia \$35 million,  
9 there should be equity there. Juella, a very small property,  
10 Mr. Ochun paid \$2.4 million for it. I have estimates of value  
11 in the \$3 million range. I have a first mortgage loan against  
12 that that bears interest at 37 percent. It does not appear  
13 that there's a lot of equity there. I'm striking a deal with  
14 the -- I'm trying to strike a deal with the mortgage lender to  
15 write his mortgage down to a \$2.8 million max, allow me to keep  
16 \$120,000.00 in rent, he pays the back taxes of approximately  
17 \$40,000.00 and any amount that the property is sold for in  
18 excess of \$2.8 million I would receive eighty percent and he  
19 would receive twenty percent. The purpose of the transaction  
20 is really to expedite the sale of the property and, again, to  
21 make sure that the administrative expenses don't exceed the  
22 value that's in the property.

23           Additionally, the properties generally were older  
24 properties. Columbus Works at Columbus, Ohio, a 1.3 million  
25 square foot building --

1 THE COURT: And that's the one where Cordell moved to  
2 lift the stay.

3 MR. FLAXER: That's one of them.

4 MR. MCHALE: Cordell has approximately a \$25 million  
5 mortgage. Interest on that is fifteen percent or five over  
6 prime, whichever is greater. The Columbus building is fifty  
7 years old, it's occupied by Lucent Alchitel. I have a meeting  
8 with Lucent the first week in February at their corporate  
9 offices in New Jersey. They are not going to renew the lease  
10 on the full 1.3 million square foot. We're negotiating where  
11 we stand. To complicate matters that property has been TIC'd  
12 out. I sometimes question whether I even have an equity  
13 position in that property and I'm dealing with the TIC's  
14 attorney's right now to try and determine who best should  
15 attend that meeting or who should attend that meeting and who  
16 should make decisions.

17 The Shreveport property. This is the Louisiana  
18 warehouse facility, approximately 960,000 square feet. The  
19 building is forty years old. Currently it has approximately  
20 100,000 square foot used for film production services and  
21 175,000 square foot used by Land-O-Lakes and Plasterpac. The  
22 rent on the Land-O-Lakes lease is \$2.64 a foot and that's gross  
23 and on the Plasterpac it's \$2.15, I believe, also gross. So  
24 there's very little debt in there. Shreveport is also a  
25 property that was encumbered by Cordell. To give the Court a

1 feel for what the value might be, the original purchase of the  
2 Shreveport facility was done by Mr. Ochun for \$7.5 million. It  
3 was refied with Cordell for \$13.5 million. How much equity is  
4 there given that the property is losing about \$23,000.00 to  
5 \$25,000.00 a month is highly questionable. Also, this building  
6 is forty years old and requires a new roof.

7 THE COURT: That's the building with the leaky roof?

8 MR. MCHALE: That's the building with the leaky roof.  
9 The estimates I've received for the replacement -- they said  
10 it's beyond repair -- replacement is \$4.5 million.

11 Another probably excellent example of what I'm faced  
12 with here and what we're faced with here is the 5201 Building  
13 in Indianapolis, a warehouse facility. Mr. Ochun purchased it  
14 in November 2001 for \$3.3 million. Subsequently sold it to  
15 another Ochun entity in November 2004 for \$12.6 million and  
16 turned around and entered into a master lease with Crossroads,  
17 the logistics company, and sold it to the TICs for \$13.3  
18 million. The recent letters from the TICs indicate that they  
19 feel that if there is any value, the probable value is probably  
20 \$3.4 million to \$3.5 million, roughly what Mr. Ochun paid for  
21 it six years ago. The property is currently virtually vacant.  
22 There's one very small --

23 THE COURT: Is Crossroads operating? You're going to  
24 get to that. I'll wait.

25 MR. MCHALE: I was going to go to that, Your Honor.

1 THE COURT: No, no, just continue on.

2 MR. MCHALE: Crossroads was hemorrhaging. Crossroads  
3 had no real assets. The only assets that Crossroads had, the  
4 trucks and trailers were leased. It virtually had no fixed  
5 assets. The company was operating at a loss of approximately  
6 \$125,000.00 per week. Additionally, Crossroads was the master  
7 leaseholder on Shreveport, 5201, and a facility in Miami.  
8 Crossroads, in addition to not paying the leases was also,  
9 since they were in the master lease position taking rents from  
10 the subtenants to support the losses so in early November I  
11 folded the Crossroads operation, Your Honor.

12 It's certainly a problem in that the creditors have  
13 been at one point in time told that this valuable property --  
14 that JPS was going to come in here and provide unbelievable  
15 financing and as we all know it just has not happened. I guess  
16 to complicate things slightly further is that Mr. Ochun pretty  
17 much drained all the cash out of all the properties, had escrow  
18 problems and that the tenant escrows on the Salina Mall were  
19 taken, probably \$500,000.00. The Salina Mall last year made  
20 distributions to Mr. Ochun for \$1.7 million leaving virtually  
21 no cash on hand. All the properties are that way and I didn't  
22 get a property that had real operating cash available to it.

23 I guess therein lies my problems with the real  
24 estate. On the real estate --

25 THE COURT: But Mr. Ochun wants it all back. He

1 wants. He wants to unwind the agreement and get it all back.

2 MR. MCHALE: I would love to give it to him.

3 THE COURT: Or something.

4 MR. MCHALE: I have been in contact with some  
5 national brokers. I will be working with the national brokers.  
6 I would like to to the extent that I can solicit some stalking  
7 horse bids on some of these properties so that I can get the  
8 process moving as quickly as possible.

9 I'll address the toys, what's euphemistically been  
10 called the toys. I think, Your Honor, the progress that we're  
11 going to have sold the helicopter, \$860,000.00, netted better  
12 than \$800,000.00 to the estate. I sold one gulf stream jet for  
13 \$1 million and, again, it just highlights the problem. I have  
14 a call from a creditor and says, why would you sell it for \$1  
15 million? The gulf stream engine goes for \$1.3 million. I  
16 said, this plane needed two of them and the two of them had to  
17 be in by March 2008. We have the illusion of wealth but we  
18 don't have real wealth.

19 THE COURT: How many more planes are there?

20 MR. MCHALE: I have one more. I have the lear jet.  
21 The lear is a 1975/25. For those familiar with the airplane  
22 market I guess we refer to the 25 as a rocket and one of the  
23 reasons why we refer to it as the rocket is it's a fairly loud  
24 plane but, more importantly, it eats up fuel to the rate of  
25 about 425 gallons an hour. It's just not what we would call an

1 economical plane. This one is a high hour [sic] plane and a  
2 high hour since hot section [sic]. I have an offer for  
3 \$400,000.00 that came in yesterday afternoon. Our asking price  
4 was \$650,000.00. I have not made a decision yet as to whether  
5 to take that or not.

6 The autos. I have no secured all of the autos in  
7 southwest Florida. Last week we did pick up the Rolls Royce,  
8 the Lambergheni, the Porsche and the Bentley.

9 THE COURT: Now, with respect to the Rolls Royce did  
10 Mr. Ochun turn that -- there was the issue that it wasn't  
11 listed in Schedule B to the asset purchase agreement.

12 MR. MCHALE: I realize that but we had the title and  
13 the title clearly was to Mr. Ochun. The cars that we picked up  
14 in Miami on Friday were -- except for the Nascars -- the Rolls  
15 Royce, a 2006, with 1,200 miles on it. The Continental is a  
16 2005. The Bentley is a 2005 with 8,700 miles, I believe, it is  
17 on it. The Lambergheni is a 2006, a little over 2,000 miles on  
18 it. But when I take the landscape --

19 THE COURT: But those cars you're holding pending  
20 further order of the -- the ones you picked up last week are  
21 subject to further order of the --

22 MR. MCHALE: Pending further order of the Court but  
23 in candor, Your Honor, I will be e-baying those. I will have  
24 someone very familiar with the e-bay market on those cars.

25 THE COURT: We're not going to take long to resolve

1 the issues with respect to those cars.

2 MR. MCHALE: That's correct, Your Honor. Also, I  
3 think if one steps back and looks at the forest, even though  
4 these are nice cars and even though they make great press I  
5 think, realistically, we'll net \$1.2 million to \$1.4 million  
6 from these and I don't think -- if I'm wrong by \$100,000.00 one  
7 way or another, so be it, but I don't think there's a real  
8 issue on what I would call the toys.

9 I am planning on spending \$20,000.00 in cosmetics on  
10 those probably in the next thirty days. Of that \$20,000.00,  
11 however, \$8,000.00 is related to the Range Rover vehicle. The  
12 Range Rover vehicle was in an accident when it was with Mr.  
13 Ochun, has about \$6,000.00 to \$8,000.00 in damages. It is a  
14 supercharged, virtually brand new Range Rover.

15 THE COURT: Was there insurance?

16 MR. MCHALE: No. By the way, Your Honor, all the  
17 vehicles are presently insured but, no, it was not insured.  
18 There was no claim turned in, there was no accident report  
19 turned in. What happened is that apparently they were bringing  
20 the Silverado and the Range Rover either back to Miami or from  
21 Miami back to New Hampshire and one driver ran into the other  
22 driver so I actually have two damaged vehicles as a result of  
23 that accident.

24 I guess that brings us down to the intangibles and  
25 probably the good thing about the intangibles -- contingent

1 assets -- is there are contingent assets and I feel there is  
2 value in the contingent assets. The bad news is with the  
3 administrative costs that have been incurred on this case to  
4 date, I'm afraid it's going to look even worse going forward.

5           We do have claims against the insurance  
6 companies/bonding companies. We're working on those right now.  
7 We're looking at lender conduct; what did the lenders know, did  
8 the actions of the lenders aid in continuing Mr. Ochun's  
9 ventures? We are going to look at off shore funds and have  
10 proposals from three firms right now to look into off shore  
11 financing activities, off shore asset transfers. Certainly,  
12 we'll be looking at preferential and fraudulent transactions.

13           One of the things that we are currently working on is  
14 the tracing of funds and it is an ungodly task. The work that  
15 has been done to date, we do not want to reinvent the wheel so  
16 we're taking the work that's been done by Huron Consulting --  
17 Ed Miserow -- to make sure that our efforts are not duplicative  
18 but on the other hand the work performed to date certainly  
19 would not be adequate to get us over the threshold of bringing  
20 any actions and that's not to be critical of the work performed  
21 by Huron or Miserow. There's well over 300 bank accounts. The  
22 records are virtually non-existent. They were dealing from  
23 bank statements, in some instances canceled checks. The  
24 companies did not maintain books and records. It's a sorry  
25 situation. We have obtained the documents from JPS Capital,

1 we've obtained the documents from Kluger Peritz and have been  
2 to Kluger Peritz' offices on discovery matters.

3           We just this week received the Penta documents. Your  
4 Honor may recall Penta was the firm that was brought in by the  
5 Kluger Peritz firm to try and determine what the notes payable  
6 from Ochun should have been. Those documents have been turned  
7 over to the investigative arms of the government and we just  
8 got those this week. Also, we now have in our possession in  
9 digital form all of the documents that were turned over to  
10 federal investigators and if there are going to be any  
11 recoveries of substance in this case I'm afraid it is going to  
12 be in the contingent asset area. I don't see much in any other  
13 areas.

14           THE COURT: Okay.

15           MR. MCHALE: Also, I guess we are looking for other  
16 participants. Certainly, while Mr. Ochun may have pulled this  
17 off on his own it would seem that there should be other people  
18 that knew or should have known what was going on here and we  
19 will be looking at the conduct from the post-petition date to  
20 pre-trustee date to see what Mr. Ochun did in that period.

21           THE COURT: Thank you, Mr. McHale.

22           MR. MCHALE: Thank you, Your Honor.

23           THE COURT: Mr. Kadish, do you want to add anything?

24           MR. KADISH: Your Honor, just briefly that this  
25 committee has been exceptionally active and aggressive.

1 Unfortunately, they're all dispersed and today will be the  
2 first day that we have a bunch of the committee members coming  
3 in from around the country to meet with Mr. McHale this  
4 afternoon. He's met with the co-chairs, I believe, and some  
5 individual members but we thought that a face-to-face sit down  
6 would be useful and so I just want the Court to know that we've  
7 been operating as efficiently as possible but we though a face-  
8 to-face sit down would be in order and we're doing that today.

9 THE COURT: Thank you, Mr. Kadish.

10 Mr. Flaxer, pursuant to the order I entered on the  
11 2004 exams have you taken any testimony or just document  
12 subpoenas at this point?

13 MR. FLAXER: So far just documents.

14 THE COURT: What's the status of Cordell's appeal of  
15 the approval order and the asset transfer agreement? Do you  
16 know?

17 MR. FLAXER: There's a stipulation, I believe, on the  
18 timing of the various briefs.

19 THE COURT: Which Judge is that before?

20 MR. FLAXER: Actually, no, I actually don't know. I  
21 see on February 28th our brief is due.

22 THE COURT: I would just ask to move it along if you  
23 could determine before whom the appeal is pending and just  
24 advise my chambers of that.

25 MR. FLAXER: Sure. I'm sure I've heard it at some

1 point and it probably went in and out.

2 THE COURT: Okay. That's fine.

3 MR. FLAXER: I will do that.

4 THE COURT: All right. Anything else?

5 MR. FLAXER: Not for today, Your Honor.

6 THE COURT: All right. The order retaining the  
7 marine broker -- the motion is approved and the order approving  
8 the sale of the yacht will also be approved.

9 MR. FLAXER: Thank you, Your Honor.

10 THE COURT: With respect to -- just coming back to my  
11 request that notice be given that Mr. Ochun and Ms. Bellani be  
12 present in court at the hearing, I assume they'll have to file  
13 their motion under 60(b) to set aside the order approving the  
14 asset transfer agreement in the main case. I just want to be  
15 sure that the creditors in the main case know that I've ordered  
16 that Mr. Ochun and his wife be present in court for the hearing  
17 in the event anyone wants to examine him.

18 MR. FLAXER: I could serve a notice of entry of that  
19 order on all creditors.

20 THE COURT: Yes, that would be helpful.

21 Thank you very much, Mr. Flaxer, Mr. Kadish, Mr.  
22 McHale. Nice to see you again.

23

24

25

1           MR. FLAXER: Thank you, Your Honor. I have three  
2 orders.

3           THE COURT: Okay. Why don't you hand them to my law  
4 clerk. All right.

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I certify that the foregoing is a transcript from an electronic sound recording of the proceedings in the above-entitled matter.

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CARLA NUTTER

Dated: January 29, 2008

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