

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 In Re: : 07-11448
5 THE 1031 TAX GROUP, LLC, :
6 Debtor. :
7 -----X
8 GERARD A. MCHALE, *not individually* :
9 *but solely in his capacity as* :
10 *Chapter 11 Trustee for The 1031* : 08-01644
11 *Tax Group, LLC, et al.,* :
12 Plaintiff, : One Bowling Green
13 v. : New York, New York
14 SERGIO S. ALVAREZ and MARGARET J. :
15 ALVAREZ, *as Trustees of the* : June 11, 2008
16 *Alvarez Family Trust,* :
17 Defendants. :
18 -----X

19 TRANSCRIPT OF HEARING REGARDING FEE APPLICATIONS,
20 AMENDED NOTICE OF HEARING TO CONSIDER FIRST INTERIM FEE
21 APPLICATIONS FOR ALLOWANCE OF COMPENSATION,
22 AND REIMBURSEMENT OF EXPENSES
23 BEFORE THE HONORABLE MARTIN GLENN
24 UNITED STATES BANKRUPTCY JUDGE

25 APPEARANCES:

26 For the Debtor: STEVEN E. FOX, ESQ.
27 Dreier LLP
28 499 Park Avenue
29 14th Floor
30 New York, New York 10022
31 For the Chapter 11 Trustee: ANGELINA LIM, ESQ.
32 JONATHAN L. FLAXER, ESQ.
33 Golenbock, Eiseman, Assor & Bell
34 437 Madison Avenue
35 New York, New York 10022

(Appearances continue on next page.)

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 APPEARANCES CONTINUED:

4 For the Official ALLEN G. KADISH, ESQ.
Committee of the Greenberg Traurig, LLP
5 Unsecured Creditors: 200 Park Avenue
PO Box 677
6 Florham Park, New Jersey 07932

7 For the U.S. Trustee: ANDREW D. VELEZ-RIVERA, ESQ.
Office of the U.S. Trustee
8 Southern District of New York
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9 New York, New York 10004

10 For U.F.H. Apartments: BERNARD S. FELDMAN, ESQ.
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11 Suite #410
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12 For Huron Consulting: JOSEPH SAMET, ESQ.
13 Baker & McKenzie
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15 JAY TEITELBAUM, ESQ.
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1 [Proceedings began at 11:04 a.m.]

2 THE COURT: All right. We're here in Number 07-
3 011448, 1031 Tax Group, here in connection with fee
4 applications and specifically the amended Notice of Hearing to
5 consider first interim fee applications for allowance of
6 compensation and reimbursement of expenses and then it details
7 which parties have sought -- which professionals have fought to
8 recover fees. There are numerous objections that have been
9 filed by the Chapter 11 Trustee, by the U.S. Trustee, by
10 counsel representing various exchangers and by many exchangers
11 having filed objections pro se.

12 Mr. Flaxer?

13 MR. FLAXER: Your Honor, [inaudible -- too far from
14 microphone].

15 THE COURT: Okay. Here's -- let me give some general
16 guidance about how I would like to have us proceed.

17 I first want to take up the issue of the proposal for
18 the payment of pre-Trustee fees, and followed by the discussion
19 of post-Trustee fees, and then we'll come back and talk about
20 the expenses, and we'll go through the expenses of each of the
21 parties that has sought to recover expenses.

22 We have the document camera set up, as I'm sure
23 you've seen, and it displays on each of the monitors on counsel
24 table. On my bench there's a large screen monitor as well.
25 When we talk about any specifics, the camera is quite easy to

1 use and if you've not used one before, you put the document
2 down and it's going to project. There is a button that allows
3 you to enlarge or reduce and it should be focused. But I think
4 through this initial discussion we probably we don't need to
5 use it, but when we get into some of the expenses I'm going to
6 want to see -- I've got a mound of paper sitting up here that's
7 been filed. It would be most helpful to me if when you talk
8 about a specific expense item or category expense items that
9 you put it up on the screen so that we can all see, rather than
10 having everybody rummaging through a lot of paper looking for
11 what we're talking about.

12 So, Ms. Lim, do you want to begin?

13 MS. LIM: Yes. Hi, Your Honor. This is Angelina Lim
14 and Jonathan Flaxer, co-counsel for Jerry McHale, Jr., as
15 Chapter 11 Trustee, who's present at counsel table. Also
16 present is Robert Davenport and John Sadella [Ph.] from
17 Deloitte, Your Honor, in the courtroom.

18 We're here today on the first interim fee application
19 for allowance of compensation and reimbursement for expenses
20 for the following professionals: Mr. Gerard A. McHale, Jr.,
21 the Chapter 11 Trustee, that's document number 1103; Golenbock
22 Eiseman, that's document number 1096; Johnson, Pope, Bokor,
23 Ruppel & Burns, that's document number 1100; Deloitte Financial
24 Advisory Services, LLP, that's document number 1098; Mr. Robert
25 Davenport's application is in document number 1102; Rivera

1 Gordermore & Company PA [Ph.] is in document number 1101;
2 Kauffman & Cannolly [Ph.], special counse -- Virginia counsel
3 to the Chapter 11 Trustee is contained in 1104; Green -- and
4 then those are what we term as the "Trustee Professionals."

5 And the pre-Trustee professionals are: Greenberg
6 Traurig, document number 1094; Dreier LLP, document number
7 1095; Huron Consulting Group, number 1091; Mesirow Financial
8 Consulting, LLC, document number 1093.

9 Your Honor, if you would like to go into the pre-
10 Trustee professionals issues then I believe that before I get
11 into the nitty-gritty of the little items and expenses
12 Mr. Gerard McHale would like to give you the big picture of
13 where -- how we got here today and with regards to this issue.

14 THE COURT: Thank you. Mr. McHale?

15 MR. MCHALE: Thank you, Your Honor. Good morning,
16 Your Honor. Certainly we leave the Court in a difficult
17 position this morning and we leave everyone in the Court in a
18 difficult position. I think it's safe to say that when we get
19 done today, no one is necessarily going to be happy. The
20 victims will not be happy. I don't think the professionals
21 will be happy. The Court will make the ultimate decision and I
22 don't know whether His Honor will be happy to do that but it's
23 certainly something -- a bridge that has to be crossed.

24 I think at arriving where we're at today, one of the
25 things I was trying to avoid as trustee is fighting over fees

1 at this point in time. I look at a fee fight to be somewhat of
2 a defensive fight in that all it does is preserve assets that
3 already exist in the estate. I think the resource of the
4 estate can better be used in offensive litigation, that is,
5 against the insurance companies, against the lenders, against
6 professionals, if necessary.

7 Realizing that the proposal to pay no fees to the
8 prepetition trustees may have -- prepetition professionals may
9 have resulted in or may still result in litigation currently, I
10 thought it best to come up with -- attempt to come up with some
11 solution that gives them current fees, but gives them those
12 current fees in a manner that we are not agreeing that the fees
13 are final. That is to say, it would be without prejudice if --
14 hearings at a future date.

15 In various negotiations with members of the pre-
16 Trustee professionals group, we discussed negotiated various
17 amounts and came up with a proposal for 1.7 million dollars to
18 be paid pari passu to those professionals based on their fees
19 to the time of the appointment of the Trustee and payment of
20 their expenses.

21 For the post-Trustee professionals, post-Trustee
22 professionals are requesting 60 percent of their fees and their
23 expenses. The total expenses sought -- and, again, I'm putting
24 up the fees just temporarily because I think that there will be
25 a fee fight, but I think the fee fight, per se, will be down

1 the line, the expenses initially requested were some
2 \$840,000.00 through some negotiations and through some clerical
3 corrections. That number has been reduced from \$840,000.00
4 down to about \$638,000.00.

5 THE COURT: \$18,000.00 of Lexus or Westlaw --

6 MR. MCHALE: I liked that, Your Honor.

7 THE COURT: -- got reduced down.

8 MR. MCHALE: \$180,000.00 to \$18,000.00.

9 THE COURT: \$180,000.00 down to \$18,000.00, right.

10 MR. MCHALE: That covered my whole fee, so I felt
11 good about that.

12 Again, I think the key from my perspective is I did
13 not want to litigate currently. I can't see getting into a
14 litigation contest at this time, taking the funds that belong
15 properly to the victims and using that in what I call
16 "defensive litigation." Certainly, that's my perception of
17 reality, not necessarily reality deferred to the Court and to
18 the U.S. Trustee's Office to get it -- the U.S. Trustee's
19 Office to give the Court its presentation, but I think in
20 trying to arrive at a workable solution, I think the solution
21 that I propose is, in fact, reasonable.

22 One of the things I do want to cover -- and I'll
23 cover this very quickly -- yesterday I believe we filed 363
24 motion for the sale of mineral rights in Shreveport, Louisiana,
25 and also a 60(b) motion. I do not want to over-emphasize that.

1 It's -- there's a possibility, slight possibility that we may
2 have a gas find on the property in Louisiana. I bring this up
3 because it will be probably on the Court's docket schedule --
4 or on the Court's docket site today. It will probably be on my
5 web site today. I don't want to over-emphasize that and I
6 don't want that to take away from today's hearing, which is the
7 focus of where we need to be and that's the fee issue.

8 Suffice it to say that we've gone through in the last
9 60 days some fact finding that would -- previously was totally
10 unknown. What started out as \$225.00 per acre land lease is
11 now up to \$10,800.00 per acre land lease on 190 acres, some two
12 million dollars, and 25 percent royalties. We are trying to
13 structure a potential sale and auction that would allow other
14 bidders for the same mineral rights. I think that's probably
15 all I need to say on that right now.

16 Again, it's very -- highly speculative and this court
17 has seen enough speculation in this case that it doesn't need
18 more. So I just want to get that out on the table so that
19 people are aware that it is out there, but I consider it to be
20 totally speculative at this point.

21 Thank you, Your Honor.

22 THE COURT: Thank you. Actually, Mr. McHale, I have
23 a couple of questions if you counsel doesn't mind me asking.
24 This is sort of -- not -- doesn't address remarks you've made,
25 but it goes to some of the fee issues --

1 MR. MCHALE: Yes, Your Honor.

2 THE COURT: -- that we'll address. In both Dreier
3 and Huron you have included in their fee applications fees for
4 the period after you were appointed --

5 MR. MCHALE: That is correct, Your Honor.

6 THE COURT: -- as the Trustee. And my question is,
7 did you -- let's deal specifically with Dreier first. What
8 services did you request of Dreier after you were appointed as
9 Trustee -- did you request services of Dreier? It looks like
10 Ms. Lim may prefer that she address the issue.

11 MR. MCHALE: Your Honor, I believe Dreier has agreed
12 to waive any fees after my appointment of Trustee.

13 THE COURT: Mr. Fox?

14 MR. FOX: Your Honor, again, my apologies. Steven
15 Fox on behalf of Dreier. Not intending to speak out of turn or
16 interrupt anybody.

17 Your Honor, what I understood, the arrangement was
18 that in the context of the compromised proposed with the
19 Trustee with regard to the pre-Trustee professional fees, the
20 post-Trustee appointment professional fees incurred by Dreier
21 will not be con -- included in that calculation of the pro-rata
22 distribution of the 1.7 million dollars if approved by the
23 Court. With respect to the post-Trustee appointment fees
24 incurred by Dreier, those will be dealt with at a later date
25 when and if relevant or germane.

1 THE COURT: So you haven't agreed to forego those.
2 You just agree to --

3 MR. FOX: We don't --

4 THE COURT: -- forego them for now.

5 MR. FOX: We have not -- the Trustee's counsel has
6 certainly indicated --

7 THE COURT: All right.

8 MR. FOX: -- to us, I believe, it's --

9 THE COURT: Let me just come back to my question,
10 then.

11 Mr. McHale, did you --

12 MR. MCHALE: I was --

13 THE COURT: I'm not holding you to what -- there is
14 an agreement or there is not an agreement, but did you request
15 services from Dreier after you were appointed as trustee?

16 MR. MCHALE: No.

17 THE COURT: All right.

18 MR. MCHALE: No, Your Honor.

19 THE COURT: Now, with respect to Huron, I think there
20 was approximately \$900,000.00 in post-Trustee fees. Did you
21 request services from Huron after you were appointed as
22 Trustee?

23 MR. MCHALE: Yes. Yes, I did, Your Honor. The
24 amount of the fees, certainly again we can debate that at some
25 point in the future --

1 THE COURT: I'm not --

2 MR. MCHALE: -- but, yes, I requested services.

3 THE COURT: -- inquiring about the amount but just
4 whether there were --

5 MR. MCHALE: Yes. It may -- it made economic sense
6 to have Huron continue in the closure of the plus or minus 40
7 or 50 open exchange contracts that existed and also to bring
8 the 1031 Group to a controlled landing, if you will.

9 THE COURT: Okay. I'll save other questions, but
10 I --

11 MR. MCHALE: Okay.

12 THE COURT: Those were specific questions I had for
13 you. Okay.

14 Ms. Lim, are you going to --

15 MR. MCHALE: Thank you, Your Honor.

16 THE COURT: -- resume?

17 Thank you, Mr. McHale.

18 MS. LIM: Your Honor, as my client has just outlined,
19 we came to a resolution with the -- what we call the pre-
20 Trustee professionals and the U.S. Trustee and certain other
21 creditors had opposed this settlement. Our position is
22 drafted -- our position as set forth in our response we do
23 think, Your Honor, gives sufficient flexibility under 331 to
24 grant the interim fee allowance without really awarding it or
25 having a determination or reasonableness because it is very

1 early in the case and the parties have agreed to bind
2 themselves. In other words, to allow these -- this payment to
3 be without prejudice or without any collateral estoppel, res
4 judicata or any kind of preclusive effect on the actual
5 substantive litigation of the fees until the end of the case.

6 So, Your Honor, as set forth in our response, we do
7 believe that we have the authority and at this point we believe
8 this is in the best interests of the estate.

9 I defer to the U.S. Trustee to bring his position.

10 THE COURT: Well, Ms. Lim, I have some --

11 MS. LIM: Sorry.

12 THE COURT: -- additional questions for you.

13 MS. LIM: Sure, Your Honor.

14 THE COURT: In the moving papers the Trustee takes
15 the position that if interim fees are awarded of 1.7 million
16 for the pre-Trustee period and 60 percent for the post-Trustee
17 period and all expenses pre and post-Trustee that the estate
18 would have sufficient funds remaining to pursue the potential
19 claims that are being investigated and -- I don't have any
20 evidence that supports that statement. What I have is, I don't
21 know, a statement of belief, expectation when I don't know what
22 it is that Mr. McHale intends to embark on or how expensive
23 that will be.

24 The premise of your -- that this amended application
25 is that these funds can be paid -- the amounts sought can be

1 paid out and sufficient funds will remain. How do I know
2 that's so?

3 MS. LIM: Well, Your Honor, what everyone's looking
4 at right now is just the cash on hand that's the balance after
5 payment of the professional fees. But, Your Honor, there are
6 other assets that remain to be liquidated. We have -- without
7 getting into numbers -- we have certain Connecticut condos that
8 have to be liquidated. We have jewelry that need to be
9 liquidated. We have Montauk stock that needs to be liquidated.
10 We have certain balance of the toys, although we do admit that
11 that's not -- that's substantial. We also have a settlement in
12 the West Oaks Mall case, so approximately --

13 THE COURT: That settlement in the West Oaks Mall
14 case I've been waiting for a 9019. We had a discussion when
15 the Court was advised that Mr. McHale had reached an agreement
16 in principle with the Trustee in those Chapter 11 cases and
17 there have been no documentation presented. There was
18 discussion that there would undoubtedly be -- I raised the
19 issue of whether there would be a joint hearing with the
20 bankruptcy judge in those cases, but there's been complete
21 radio silence about that proposed settlement.

22 MR. FLAXER: I can help with that one, Your Honor.

23 THE COURT: Well, we'll come back to it, Mr. Flaxer.

24 MS. LIM: Okay. I will take care of the West Oaks
25 Mall settlement, Your Honor.

1 THE COURT: Can you -- I mean, do you -- do you have
2 a budget? Has Mr. McHale prepared a budget for anticipated
3 litigation expenses, administration expenses going forward?
4 You're proposing -- the proposal is that the post-Trustee fees
5 would be paid at a 60 percent rate and there certainly are
6 applications now for post-Trustee fees, even if it's approved
7 at the 60 percent rate for the fees -- fee applications that
8 are currently pending, it doesn't necessarily mean that same
9 percentage will apply if the circumstances of the case change
10 and there isn't sufficient -- it would appear there aren't
11 sufficient funds available.

12 But why am I supposed to simply accept the
13 proposition that pay this and there'll be enough left?

14 MS. LIM: Well, Your Honor, like I was mentioning, we
15 do have certain tangible assets that need to be liquidated and,
16 of course, there is, you know, intangible assets that
17 perhaps -- we haven't really perhaps spoken to the Judge about
18 this, but we do anticipate a tax refund on Mr. Okun's personal
19 taxes, approximately 1.5 million. We have, of course, the
20 litigation issues and that's just very hard to pin down, but I
21 think that we will be anticipating -- or a little over two
22 million hopefully in cash, you know, in addition.

23 THE COURT: What's the balance currently, 11 million?

24 MS. LIM: It's 11 million, Your Honor, \$11,115,000.00
25 give or take. If we do pay out as proposed and if you agree,

1 Your Honor, if you approve that, then I think there is a
2 balance of approximately 5.4 million with the tangible assets
3 coming in at approximately 1.7. So that's, you know,
4 another -- it might bring it up to about seven -- eight
5 million, Your Honor. Then we have, like I said, the tax refund
6 which might be another million five perhaps so it will bring it
7 down to about -- bring it back up to about nine million.

8 I'm not very good at math, Your Honor, so it's all
9 approximate.

10 THE COURT: Ms. Lim, am I correct that I don't have
11 any affidavits or declarations that have been filed as part of
12 the papers that are before me that support the statement you've
13 just made as to the -- you've said what the cash is and I've
14 heard the figure before, but as to the other tangible or
15 intangible assets I don't have any evidentiary basis to
16 conclude that the estate's value at the present time, using
17 that term loosely, is 15 million, 20 million. I don't know. I
18 don't know. I don't have any evidence. I have -- you've made
19 a statement recognizing that most of what you've said is sort
20 of speculation really. I don't know.

21 MS. LIM: Well, Your Honor, that's right, Your Honor.
22 We do not have an affidavit. It's hard to pin down the exact
23 number for litigation but Mr. McHale is here to give his
24 opinion. If you would like, Your Honor, I can put him on the
25 stand.

1 THE COURT: Well, I think I'm going to want to hear
2 from other people first and --

3 MS. LIM: Okay. But he's available, Your Honor, and
4 we'll be happy to put him on the stand to testify as to his
5 belief as what the value may be, Your Honor.

6 THE COURT: Okay. Anything else you want to add,
7 Ms. Lim?

8 MS. LIM: Sorry?

9 THE COURT: Anything else you want to add at this
10 point?

11 MS. LIM: No, Your Honor.

12 THE COURT: Okay. Let me -- before we -- before
13 Mr. Velez-Rivera speaks, let me ask whether there's anyone else
14 who wishes to speak in favor of the proposal to pay the 1.7
15 million dollars to professionals for the pre-Trustee period.

16 MR. FLAXER: If I may, Your Honor, just on behalf of
17 [inaudible].

18 THE COURT: All right. Mr. Flaxer, why don't you
19 come on up?

20 MR. FLAXER: Thank you, Your Honor. Jonathan Flaxer,
21 Golenbock Eiseman. I just wanted to observe for the Court in
22 connection with Your Honor's concern that speaking on behalf of
23 my own firm as practitioners in this area, we recognize that
24 many of the cases we take on have an inherent amount of risk.
25 We can put Mr. McHale on the stand, for example, and present

1 evidence to Your Honor that there are certain hard assets, if
2 you will, certain intangible assets which one can speculate a
3 value for -- the value for the tangible assets as more reliable
4 than the value for the intangible assets.

5 However, we have done preliminary analysis on a burn
6 rate in this case. There's no question that one possible
7 scenario in the short or intermediate term is that fees will
8 outstrip available assets. That -- I come back to my original
9 point, which is that my firm recognizes the inherent risk in
10 these cases. I believe this is true of the Trustee as other
11 professionals, but speaking on behalf of my own firm -- and
12 again, I say this with care and not to be reckless or make
13 unreasonable promises -- but we are prepared to keep working
14 despite the fact that there may be a point when the asset pool
15 as compared to the claims is problematic.

16 In fact, we came into this case with approximately
17 six -- seven million of assets, maybe eight, and already over
18 11 million of admin claims. So from day one in this case the
19 appointment of a trustee was done with the understanding and
20 with the premise that the case was putting aside objections to
21 the existing admin claims on paper, superficially
22 administratively insolvent. So the risk has been there from
23 day one.

24 THE COURT: Well, there seems to be a dispute, which
25 I don't share is a dispute, that -- where Dreier has certainly

1 argued and I think that Huron -- whoever has got a cell phone
2 had better turn it off.

3 [Cell phone continues to ring.]

4 THE COURT: Somebody have a cell phone? I guess a
5 state court judge was just censored because he threw 24 people
6 in jail because they wouldn't admit who had a cell phone, but
7 I'm not going to do that.

8 [Laughter.]

9 THE COURT: All right. Mr. Flaxer, would you agree
10 that the Court has -- under applicable law the Court has the
11 discretion to defer consideration of an interim fee award until
12 it becomes clear whether this estate is administratively
13 insolvent? Before you answer that, I -- what -- I was
14 interrupted by somebody's cell phone -- was that I think that
15 Dreier and I think Huron, maybe others, argued that, oh, it's
16 not correct that this estate is administratively insolvent. We
17 can't know that until the end of the case.

18 I beg to differ. There are claims asserted against
19 the estate for substantially more than the estate holds -- has
20 right now. My reading of the case is is that the Court does
21 have the discretion to defer consideration of interim fee
22 awards until the end of the case if the Court wanted, but
23 certainly until it's clear whether there's sufficient funds.
24 Do you agree with that?

25 MR. FLAXER: Yes. I have no doubt whatsoever that

1 Your Honor possesses that power and I think the issue of
2 whether the case is administratively insolvent is something you
3 can look at from a different perspective, but certainly at a
4 first level of analysis we haven't objected to the pending
5 administrative claims yet. As far as I recall, a claim is
6 deemed to be valid until an objection that's pending.

7 On the other hand, on the asset side there is more
8 fuzziness because it becomes almost an accounting exercise of
9 what's the proper way to, you know, if you will, mark the asset
10 to market or place a reasonable value on it.

11 THE COURT: You mean, 300 million as Mr. Okun
12 initially placed the value on it and versus 17.9 million, which
13 Mesirow in its application touts the Feldman affidavit that was
14 submitted in support of the transfer agreement that where they
15 say they placed the value of 17.9 million on the assets that
16 were subject to the transfer agreement, so 300 million, 17.9
17 million.

18 MR. FLAXER: That's -- and you've heard statements
19 from the Trustee from this perch and if he winds up on the
20 witness stand, you'll hear it again that the -- even the low
21 Mesirow number was probably optimistic. You know, I could, for
22 example, in the same line of thinking observe that, yes, but
23 there's a crime insurance policy with -- that's 30 million per
24 occurrence.

25 So that sounds nice, but obviously I'm probably not

1 going too far by saying that the insurance company asserts
2 defenses and, you know, that's a very, very big issue in this
3 case. But I'm going to speculate that there's value in that
4 policy, but I'm really not going to say any more than that.

5 THE COURT: Okay. Anything else you want to add at
6 this point?

7 MR. FLAXER: No, Your Honor.

8 THE COURT: All right. Anyone else want to speak in
9 support of the amended application?

10 Mr. Samet, I see you rising.

11 MR. SAMET: Good morning, Your Honor. Joseph Samet,
12 S-a-m-e-t, of Baker & McKenzie on behalf of Huron Consulting.

13 Your Honor, I've appeared before you in this matter
14 on a couple of occasions and have a little bit of history going
15 back to June and July of this matter, as well as in the recent
16 months.

17 THE COURT: Yeah, I think Mr. Velez-Rivera objected
18 to your firm's fees going back to the pre-Trustee period.

19 MR. SAMET: Right. And I can comment on that, but
20 that's the small piece of --

21 THE COURT: We'll get to that later.

22 MR. SAMET: -- the big picture.

23 Your Honor, we recognize that this is a very
24 difficult case. We recognize that there are 1031 exchangers
25 who have been badly hurt by Mr. Okun and what happened before

1 the filing of this petition. The professionals deeply
2 understand about that, but probably not to the extent of the
3 pain that the exchangers have incurred here. But these
4 professionals since the first day of the case and Huron, my
5 client in particular whom I can speak for, devoted substantial
6 time and effort throughout at all odd hours of the day and
7 night to do the best that they could do to bring some order
8 from chaos here to take a horrible set of circumstances and to
9 make the best of it. They worked day and night and weekends.

10 That's laid out in the fee applications and fee
11 statements that have been filed with the Court for Huron going
12 back to approximately October 23rd. And in the five-month
13 period that Huron put into this from May to October 23rd or so,
14 there was significant efforts and the backup is attached to the
15 fee application, the fee statements, as well as in the reply
16 that was submitted.

17 The professionals here are mindful of the 1031
18 exchangers and we are very mindful of what the Court has said
19 to the professionals and said to parties in interest in court.
20 So as a result of that and taking into account discussions with
21 the Trustee very serious negotiations took place to take into
22 account the strengths and weaknesses of the various parties'
23 positions and to take into account the 1031 exchangers
24 positions that they have put in writing, I do know that many
25 1031 exchangers have filed objections or statements.

1 At the same time under the U.S. Bankruptcy Code
2 professionals are not to work for nothing, assuming that there
3 are funds in the estate. Under the U.S. Bankruptcy law, the
4 professionals or anybody post-Chapter 11 who provide services
5 or goods or the professional services here are entitled to be
6 paid as administrative expense and for professionals in a
7 reasonable amount.

8 So each of these professionals was retained pursuant
9 to court order. Each of them came here on many, many days.
10 The Creditors' Committee put in papers indicating that there
11 were approximately 60 meetings in the course of a several-month
12 period during the course of the case before the Trustee came
13 in, so there was a very active Creditors' Committee and all the
14 parties were trying to do what was the best they can do in an
15 imperfect situation.

16 The people who have worked in this case are very
17 experienced professionals who have had successes in many other
18 cases and also from time to time, I'm sure, taken their lumps
19 or their clients have experienced that the result wasn't there,
20 but the professionals have put in their best efforts. We
21 believe strongly that the best efforts of these professionals
22 are here to do the work, to work with the exchangers.

23 Jim Lukenda, who is here, worked with and his staff
24 worked with the exchangers on a regular basis that is outlined
25 in these proceedings. We were dealt -- the creditors were

1 dealt a horrible hand by Mr. Okun, who languishes in jail, and
2 at the same time the professionals came in here. Okun was
3 ousted by the time of the filing of the petition. There were
4 some questions early on about the corporate governance in which
5 I was involved in the late May, June -- early June/July period,
6 corporate governance issues between the role of Huron and
7 CRO -- was CRO, as well as Mr. Moran, as well as the debtor
8 roll and Okun was ousted from the board. So Mr. Lukenda, as
9 well as Huron and Mr. Moran, were respected parties.

10 In fact, when we go back to the transcripts and the
11 state -- and also the reply of the U.S. Trustee on May 29 we
12 get statements in there including from the U.S. Trustee that in
13 no way, despite asking for a trustee, were they impugning the
14 integrity of Mr. Lukenda, Mr. Moran or anybody else. It's in
15 those papers and I have a copy of them with me.

16 THE COURT: I remember it well.

17 MR. SAMET: Okay. In addition to that, there were
18 times early on -- I think it's in the transcript -- where it
19 was clearly understood that if there was going to be a trustee,
20 at some point it was clearly understood with statements by
21 Mr. Flaxer and, in effect, by the U.S. Trustee's Office that
22 they understood that Huron would have a continuing role in the
23 Chapter 11 case even after the appointment of the Trustee.

24 THE COURT: Well, Mr. Samet, you -- in your papers
25 that you submitted you correctly point out that Huron was

1 retained under 363 and 105, rather than 327 and 328 of the
2 Bankruptcy Code. Alone among the professionals who've
3 submitted applications Huron arguably has a somewhat legal
4 position with respect to the issues before the Court currently.
5 Tell me -- but it does seem to me -- and correct me if I'm
6 wrong -- that -- I mean, Huron stepped in to provide the day-
7 to-day management and support staff for a company that had very
8 rapidly shed its employees. I think in your reply you put it
9 went from 70 employees to 15 or so. I don't remember if those
10 are the exact numbers, but I remember a substantial reduction.

11 So Huron provided the people who worked the
12 transactions to the extent there was work to be done on them,
13 but am I -- that part is correct, right?

14 MR. SAMET: I think the number is 70 down to 5.

15 THE COURT: Okay. Am I also correct that Huron also
16 had the role of financial advisor? I'm not questioning what
17 the retention was under -- you've attached the retention order
18 clearly as 64 -- 363 and 105, but in terms of function did
19 Huron also fill the role of the debtor's financial advisor in
20 connection with the Chapter 11 case?

21 MR. SAMET: I think it's fair to say, but I'll
22 consult with Mr. Lukenda that they were -- he was the CRO, and
23 Mr. Vandebek was also in there, and then there was the
24 temporary staff, and that this was all done under 363 and
25 105 right --

1 THE COURT: Maybe my question wasn't clear. My
2 question in terms of the functional role -- I understand that
3 Mr. Lukenda was the CRO and Huron provided the staffing for
4 various business activities that had to be conducted, but my
5 question specifically is was Mr. Lukenda or Huron filling the
6 role of the financial advisor in the sense that Mesirow was
7 filling the role of financial advisor to the Committee.

8 MR. SAMET: Your Honor, let me try to answer it this
9 way. I have in front of me the final order that Your Honor
10 signed.

11 THE COURT: I'm not asking about an order.

12 MR. SAMET: I understand, I understand.

13 THE COURT: I've read the order. I read the order
14 over again this morning.

15 MR. SAMET: Huron played --

16 THE COURT: The function that Huron filled. Don't
17 tell me what the order says; I know what the order says.

18 MR. SAMET: Huron played the role of staff CRO and
19 did a fair amount of work as helping out in whatever
20 appropriate way it could with the financial aspects of this
21 debtor. There was no separate financial advisor to the debtor
22 and Mesirow had an extensive role as financial advisor to the
23 Committee.

24 THE COURT: Well, let me ask it this way, then.
25 There was a joint plan of reorganization and disclosure

1 statement was presented. In connection with the disclosure
2 statement and joint plan which had what euphemistically became
3 known as plan A and plan B did Huron fulfill a role in advising
4 Dreier on the feasibility on the potential value of the -- both
5 plan A and plan B hinged virtually entirely on Okun's nondebtor
6 assets, not on the paltry -- I mean, it had -- 1031 had no
7 business anymore. It was basically shut down. There was -- so
8 even there was an issue about 300 open exchange transactions,
9 but this case morphed fairly quickly into a case that focused
10 on what's the value of Okun's nondebtor assets.

11 My question really is the role that Huron played with
12 respect to that aspect of the case. There wasn't any business
13 to restructure at that point in terms of the exchange business.

14 MR. SAMET: Your Honor, Huron played a significant
15 role in the case including leading up and as part of that plan.
16 Mesirow played a more extensive part. I would suggest that in
17 terms of the breakup of the roles, because the Creditors'
18 Committee is extraordinarily active that we might be better off
19 hearing directly from Huron and Mesirow on the -- or counsel
20 for the debtor as to the breakdown of that kind of split.

21 THE COURT: Okay. Now, let me ask you, Mr. Samet. I
22 raise this question to Ms. Lim and it's the Court's concern --
23 I mean, I think the applications have sought to address it --
24 is why should I have any confidence that if I approve these
25 interim fee applications that sufficient funds will be left in

1 the debtor's estate now and for the foreseeable future to
2 permit the Trustee and his professionals to seek to recover the
3 30 million in insurance and whatever else. I mean, if your
4 client hopes to get paid more than it's being paid now and if
5 the exchangers hope to be paid anything, it's going to hinge on
6 what, if any, additional recoveries the Trustee is able to
7 secure through settlements or litigation or what have you.

8 Why should I have any confidence that the five
9 million that would be remaining in the estate currently will be
10 sufficient to carry this estate forward in trying to prosecute
11 claims and do whatever else needs to be done?

12 MR. SAMET: I think the answer, Your Honor, is that
13 the professionals talked with the Trustee. They considered the
14 status and facts of the case. Each of the professionals
15 recognized that their needed to be an appropriate sum left over
16 for the appropriate and forceful prosecution of the claims and
17 that five million so was collectively deemed to be a reasonable
18 amount so that the Trustee could be comfortable moving forward;
19 secondly, the professionals in -- agreeing to approximately 16
20 percent for the pre-October period.

21 THE COURT: Why don't you step back slightly from the
22 microphone? They're very sensitive.

23 MR. SAMET: For the pre-October period. We're
24 mindful of the concern Your Honor expressed and so with five
25 million dollars left over with the good and valuable work that

1 was done pre-October 23 where the professionals started off
2 with give or take \$100,000.00 in the estate, and then at around
3 the time that the Trustee was appointed it became seven or
4 eight and then it became now 11 million dollars, there's been
5 an upward flow of money into the estate. There are not other
6 material administrative expense claims out there, so it's the
7 professionals for the Trustee. The professionals on this side
8 of the table continued post-Trustee to work with the Trustee to
9 give him a very good administration transition to help get more
10 money into this estate.

11 And so with five million dollars there for the
12 Trustee to pursue crime insurance claims, to pursue any other
13 claims of the other property that the debtor has I think
14 collectively we believe that that was fair and reasonable. For
15 these professionals who were entitled subject to court approval
16 to be paid, including Huron, a regular basis beforehand that
17 the extreme compromise of 16 percent was appropriate and left
18 over a fair amount.

19 I did comment in paragraph seven of our papers for
20 Huron we didn't say that with regard to this case potentially
21 being administratively insolvent that the -- that it -- number
22 one, we've said it's right now not necessarily administratively
23 insolvent; and, number two, taking into account the various
24 objections that are pending and taking into account that there
25 are more assets to administer including a 30 million-dollar

1 crime policy, all we're saying is it's premature to determine
2 that this is an administratively insolvent case.

3 But the final point is, all of these professionals
4 heard Your Honor carefully and there will be as part of this
5 deal a preservation of objections. So there is always the
6 possibility that if this case becomes administratively
7 insolvent, if there is a problem down the road, and if Your
8 Honor deems it appropriate adjustments, disgorgement can be
9 made. So the cornerstone of this deal is objections are
10 preserved.

11 THE COURT: Let me ask you this, Mr. Samet.
12 Mr. Flaxer responded to my question. Do you agree the law
13 gives me the discretion to decide to defer an award of interim
14 fees until the end of the case or until there is substantial
15 recoveries in the case and it becomes apparent that there's
16 sufficient funds to pay?

17 MR. SAMET: We believe that Your Honor -- I'll speak
18 for myself. I believe that Your Honor has discretion on
19 interim applications and in terms of discretion we take into
20 account that this case started off with \$100,000.00 and now
21 it's got eight million dollars -- 11 million dollars in the
22 estate. We take into account the whole body of what has been
23 done. We take into account that in Chapter 11 it is normal for
24 all the professionals to be paid on a pro rata basis with the
25 Trustee not getting more than what the pre-Chapter 11 Trustee

1 professionals were getting. So we think that in the normal
2 case -- we understand this is not normal -- but in the normal
3 case, the Chapter 11 Trustee fees, in the rare case there's a
4 trustee, or/and the other professionals should get paid pro
5 rata. We could be coming in and saying everybody gets 60 cents
6 on the dollar. We'll share on a pro rata basis. We heard. We
7 listened. We tried to compromise. We tried to deal with Your
8 Honor's discretion. We tried to deal with the strong thoughts
9 and views and economics with a 1031 exchangers. I think that
10 these professionals have done a -- not only a significant work,
11 but have been very sensitive and mindful to try to do the right
12 thing in this case.

13 THE COURT: Thank you, Mr. Samet.

14 Anybody else wish to speak in support of the
15 application?

16 MR. FOX: Your Honor, good afternoon. Steven Fox on
17 behalf of Dreier, LLP.

18 THE COURT: It's still morning, but close.

19 MR. FOX: I was looking around. I figured it was
20 close. It had to be close.

21 Your Honor, very briefly, on behalf of Dreier, I echo
22 the comments offered by Mr. Samet on behalf of Huron. I think
23 without putting words in the mouths of the other pre-Trustee
24 professionals that we all share a common goal here of having
25 spent a considerable amount of time considering all of the

1 competing interests and concerns of the various constituencies
2 in the case. In that process and as a result of that process,
3 we worked very closely with Mr. McHale and his advisors in
4 trying to find a solution to a very difficult problem that
5 enables this case to go forward without the interruption, the
6 distraction, and additional regrettable expenses associated
7 with a battle over professional fees, which in the end -- as
8 Mr. McHale suggests -- only serves to dilute and diminish
9 available assets rather than enhance them.

10 The compromise that is proposed is one that we
11 believe is entirely reasonable under the circumstances. I
12 think in response to Your Honor's question about the concern
13 that you have about the financial condition of the estate going
14 forward to complete the tasks that the Trustee believes remain,
15 I think we have to -- I know Your Honor has raised a question
16 as to the evidentiary aspects of today's process, but I think
17 we do have to at some level give credence to the Trustee's
18 business judgment in that regard. Having relied upon and
19 consulted with his advisors, the Trustee, it is not the pre-
20 Trustee's professionals, but rather the Trustee is saying to
21 this court today, I believe that there is sufficient resources
22 both in hand today and anticipated to be received in the future
23 to support this compromise at this point in time.

24 As Mr. Samet suggested if the circumstances were to
25 change as we go down the road there is nothing in a

1 determination by this court today to -- in approving the
2 compromise as proposed that leaves any of the professionals in
3 this room, both pre-Trustee and post-Trustee appointment
4 professionals, immune from having this revisited. Great pains
5 were taken in arising at this compromise to ensure that all
6 rights of every party in connection with this case, both
7 Trustee professionals, pre-Trustee professionals, and
8 exchangers, and any other creditors secured or unsecured for
9 that matter to revisit this issue if the circumstances require.

10 THE COURT: Thank you, Mr. Fox.

11 MR. FOX: Thank you.

12 THE COURT: Anyone else wish to speak in support of
13 the application?

14 MR. KADISH: Your Honor, good morning. Allen Kadish,
15 Greenberg Traurig. We represent the Committee.

16 Your Honor, first thing I should say given that we're
17 gathered --

18 THE COURT: Do you represent the Committee?

19 MR. KADISH: We do represent -- we do represent the
20 Committee. We disagree with our Committee and that's -- on
21 this issue and that's the process that's --

22 THE COURT: Well, then you don't represent the
23 Committee in connection with the fee application because
24 they've made it clear they oppose it.

25 MR. KADISH: They've made it clear that -- you threw

1 me off my track, but let me start --

2 [Laughter.]

3 MR. KADISH: But let me start where I really wanted
4 to start because we have a lot of exchangers on the telephone
5 and we have some exchangers in the room.

6 THE COURT: Absolutely.

7 MR. KADISH: And it's important. Regardless, Your
8 Honor, of what you say -- and I know you're saying it with a
9 good spirit and a jest -- but we made --

10 THE COURT: I don't say that in -- I mean, the
11 Committee has twice now written to the Court posted on ECF not
12 opposing an ultimate fee application, but saying that fees
13 should not be awarded --

14 MR. KADISH: Right, right.

15 THE COURT: -- in the meantime.

16 MR. KADISH: And we understand their position.
17 Again, I'm going to stay on my track, Your Honor, and just
18 report to the creditors in the room and the creditors and
19 exchangers on the phone that Ms. Cyganowski has left our firm.
20 She'll start up with a new firm in another week or two, I
21 believe.

22 THE COURT: Actually, on Monday.

23 MR. KADISH: On Monday.

24 THE COURT: I saw her last night at a bankruptcy
25 event.

1 MR. KADISH: And I just want these folks to hear it
2 and know it because I know they made a unique connection with
3 her.

4 Having started where I wanted to start, Your Honor,
5 your point is right. We undertook the cause of the Committee
6 on behalf of the creditors. The Committee was unique. It's
7 large. Most of these people have personal losses, even the
8 corporate members of the corporate exchangers have losses that
9 are uniquely felt and not necessarily the ones that you and I
10 and those in the room come across in maybe a traditional
11 commercial case.

12 The Committee poured itself into its work and we
13 poured ourselves into their -- into the representation. The
14 Committee's goal from the beginning was to try to negotiate and
15 move forward with a negotiated transaction and that caused some
16 dissidence with some folks in the room today and on the phone.
17 It always had caused some dissidence with some in the creditor
18 population. That doesn't diminish the Committee's efforts that
19 were undertaken at the time and it doesn't diminish the efforts
20 that we took on the Committee's and on the creditors' behalf.

21 A lot of folks have commented today and it seems to
22 us like it's in a vacuum. Of course, we're enormously
23 sympathetic and we salute the creditors and we hold their same
24 goal, which is that they should recover here. The Committee
25 always knew that they would push for a transaction and if the

1 transaction couldn't be reached within a reasonable time that
2 we would end up in fact where we are today with an insurance
3 pursuit with maybe some asset sales and certainly with a
4 litigation effort the funding for which --

5 THE COURT: Let me stop you there for a minute.

6 MR. KADISH: -- was speculative.

7 THE COURT: Let me stop you there because -- and it's
8 not going to be the issue for today, but it will be the issue
9 ultimately on [inaudible]. I haven't heard or read anyone that
10 seriously contests a good faith or bona fides the Committee's
11 counsel or Mesirow its financial professionals. I think, you
12 know, the Committee's professionals put itself in a much more
13 difficult position in this case by being the co-proponent of
14 the disclosure statement and the plan, I should say. I should
15 put those in the plural because there was more than one. And
16 what ultimately will require a searching inquiry is what did
17 the debtor's professionals and the Committee's professionals
18 know and when did they know it, to use the -- Senator Howard
19 Baker's Watergate question for those who were around then and
20 remember it. And I suppose what should they have known
21 because, you know, both the U.S. Trustee and Mr. Teitelbaum
22 sitting in the back in the objection he filed, he certainly
23 quotes from statements that Mr. Traub made at hearings in the
24 1031 case.

25 Professionals weren't guarantors. I certainly don't

1 hold them to be guarantors, but on the other hand affirmative
2 representations were made, a joint disclosure statement and
3 plan were put forward. I've said this before at other
4 hearings. You know, for me one of the biggest disconnects in
5 this case is how we went from Mr. Okun's representation of 300
6 million dollars in value in nondebtor assets to Mr. Feldman's
7 affidavit in connection with the October -- the transfer
8 agreement where he said 17.9 million. Well, you know, and
9 that -- it suggested, oh, well, the market turned. The market
10 turned from 300 million to 17.9 million in a short time.

11 So ultimately there's going to have to be a very
12 searching inquiry. And your role -- when I say "your role,"
13 your firm's role -- you put yourself into a role by being a co-
14 proponent of a disclosure statement and plan. You know, it's
15 one thing when you have the -- I guess "luxury" is the wrong
16 term, but sort of sit back and shoot bullets at somebody else's
17 analysis and presentation, but when you put your name on the
18 document as a co-proponent, it signifies something else. You
19 can't just at that stage whether Mr. Samet would have it that
20 in connection with the disclosure statement and plan it was
21 really Mesirov that had the main role and much more so than
22 Huron, we'll have another day I guess when we'll figure that
23 out. As far as I'm concerned at this stage, we're all on the
24 line for it. That's why we're not going to go through this
25 exercise of doing through fee statements line by line and

1 trying to determine what the benefit of the estate was, but,
2 you know, I -- the Court does take to heart the objection
3 expressed by the co-chairs of the Committee on behalf of the
4 Committee opposing your firm's fee application. I'm not saying
5 that ultimately fees shouldn't be awarded; it shouldn't be done
6 now.

7 Do you agree that the Court has the discretion to
8 defer an award of interim compensation until it becomes clear
9 as to what assets will be available in the estate to pay it?

10 MR. KADISH: It's my turn. Your Honor, the Court has
11 wide discretion on fee issues and scheduling and, in fact,
12 we're here on the Trustee's proposal because --

13 THE COURT: The Trustee initially objected to the
14 fees --

15 MR. KADISH: Right.

16 THE COURT: -- across the board, the pre-Trustee
17 professionals. And there were, I guess, two meetings with the
18 Court where I made it clear at those sessions that I wasn't
19 going to deal with the merits of any of those applications
20 other than the presence of an open courtroom with all parties
21 having the right to be present, but there were those sessions.
22 You did negotiate with the Trustee and his professionals and
23 you did come up with a proposal before the Court today. So --
24 but the Trustee did start out as opposing an award of any
25 interim fees for the reasons that until you know what more

1 money is in the estate, the Trustee needs the funds to be able
2 to prosecute claims. That's why I put -- my question is,
3 why -- you know, why should I credit the five million that
4 would be left -- approximately five million is enough?

5 MR. KADISH: Well, there are lots of answers, Your
6 Honor, and they're all before us. One is the Trustee is the
7 fiduciary here and his recommendation is entitled to some
8 significant weight; two is you've heard about some additional
9 expected recoveries in the short term that ought to be given
10 weight as well; and third -- and, Your Honor, really not
11 least -- we've talked about this on the record and, as the
12 Court indicated, we've talked about it off the record. We all
13 embarked about a job and we think we've brought the conclusion
14 of that to the Court and we think we've done it in a way that's
15 respectful to the exchangers and those folks who've lost --

16 THE COURT: You're in a different position than the
17 other -- than most of the others because you bridged both the
18 pre-Trustee period and the Committee still exists and you're
19 still counsel for the Committee, so you have -- part of your
20 application is for fees and expenses for the post-Trustee
21 period.

22 MR. KADISH: True. And all I'm saying, Your Honor,
23 is in the last several months since this fee application
24 process has begun, you know, to be awfully frank, you've sent
25 us to do a job and, Your Honor, you've sat with us on the

1 record and off the record and we think we've delivered. We
2 think the Trustee has been true to his word. It was a rough
3 negotiation. It was not pleasant for anyone. Mr. McHale is
4 exactly right. No one is going to be happy whatever happens
5 today, but we think we've done it in as responsive -- in a way
6 that's responsive to the Court, and that's respectful to the
7 creditors, and that provides Mr. McHale with the resources that
8 he and others need to go forward and bring more assets in.

9 THE COURT: Okay.

10 MR. KADISH: You know, the last point, Your Honor, as
11 much as you have authority to control your docket and deal with
12 fee issues, you know, most courts at least in the reported
13 decisions that are traditional now for 25 years don't require
14 the professionals to entirely finance a case. The courts
15 recognize that lawyers and financial advisors and others have
16 clients with pursuits and points of view and I think in this
17 job we live that very much out loud, very much in front of the
18 court in, you know, hearings that were conducted frequently and
19 openly. Your Honor, when a motion was scheduled in this court
20 it was never any objections, motion granted, next matter. Your
21 Honor, there was always a status report. There was always a
22 good discussion of things that were going on. There was always
23 broad attendance in the room and often on the phone. This is a
24 case that was -- I've said it before -- that was really lived
25 out loud in front of the Court and the creditors.

1 The point you raised about the plan is really
2 consistent with the U.S. Trustee's appointment of a large
3 committee of folks that they thought and frankly we thought
4 were representative of the creditor population. These folks
5 were active. They were responsible. They were adamant. They
6 approached their duties seriously and on behalf of the whole
7 and, you know, they worked very hard as did we.

8 So I think, you know, we're not supposed to finance
9 the case in full. We think financing --

10 THE COURT: Well, I think there may be a distinction
11 between expenses and fees for that reason.

12 MR. KADISH: That --

13 THE COURT: To deal with expenses.

14 MR. KADISH: Your Honor, that's not what the case law
15 provides, I don't think.

16 THE COURT: You know, the cases and I guess the
17 Tedesco case from the Southern District is sort of one of the
18 key cases, 14 B.R. 354 (B.R. SDNY 1981), all your -- in the
19 cases that follow it and Collier's certainly points to Tedesco
20 as setting out the appropriate rule, basically, that the Court
21 can defer fees until the end of the case or until it becomes
22 clear what assets will be available. So that's not breaking
23 ground. Agree?

24 MR. KADISH: Sure.

25 THE COURT: Okay.

1 MR. KADISH: Sure.

2 THE COURT: All right. Thank you, Mr. Kadish.

3 MR. KADISH: Last point, Your Honor. In the last few
4 days in the context of the look/see into the detailed expenses
5 we submitted an additional report to the Court and the Trustee
6 and parties. Since then we've negotiated with the Trustee and,
7 as Ms. Lim reported in a letter that was docketed the other
8 day, we've agreed to an additional concession that would
9 encompass, you know, we hope any other objections to --

10 THE COURT: Well, I have some questions when we get
11 to the expenses.

12 MR. KADISH: -- our disbursements.

13 THE COURT: We'll deal with that.

14 Anyone else who wants to speak in support of the
15 application? All right. Ms. Lim, you're going to have to
16 wait, right? I'm going to hear those that object.

17 Mr. Velez-Rivera?

18 MR. VELEZ-RIVERA: Thank you, Your Honor. Andrew
19 Velez-Rivera for the United States Trustee. Your Honor, you
20 don't need to ask me whether the Court has the discretion to
21 defer fees. We entered that back in our brief, pages 27
22 through 28. The Tedesco case goes back over 27 years. It
23 stands for itself.

24 Your Honor, the -- it's extremely difficult to
25 prepare for a hearing like this trying to find a silver lining

1 in all of this, but there is one and it is the extent to which
2 creditors and exchangers have participated in the bankruptcy
3 process. As Your Honor knows from many empty courtrooms,
4 creditors don't always show up and it's rare that they do.
5 This time they have shown up. Counting the group filings there
6 are over 50 individual exchangers not as post institutions who
7 can hire somebody else to write to the Court who have taken it
8 upon themselves to let you know their feelings about the fee
9 applications today. Uniformly, they would like you to either
10 disallow the fees on an interim basis or perhaps defer them
11 particularly with respect to the pre-Trustee professionals to
12 later on in the case. That is my client's position as well.

13 The community has spoken very loud. It has spoken
14 very uniformly and in particular the Committee, which wrote to
15 you twice letting you know, first of all, that they preferred a
16 total disallowance of fees, which the extreme position among
17 the many that are before you today and later on they wrote you
18 again letting you know that they hadn't changed their minds
19 after they had thought about it some more and looked on -- at
20 some papers. If anything, the exchanger community doesn't want
21 to have to go through the process of speculation and fuzziness.
22 We've been through that already in this case and we don't need
23 to do that again.

24 They would like for you -- and it is also my client's
25 position to err on the side of conservatism saving the estate's

1 resources from -- for litigation on the prime insurance
2 policies. It's a very simple position.

3 THE COURT: Let me ask you, Mr. Velez-Rivera. I want
4 to ask you about those things that are not in here. You
5 clearly took the position that the Court should defer
6 consideration that interim compensation for fees to the pre-
7 Trustee professionals. You didn't say anything about expenses.

8 MR. VELEZ-RIVERA: Oh, expenses as well, Your Honor.
9 We would like you to defer consideration of --

10 THE COURT: Certainly you didn't say that.

11 MR. VELEZ-RIVERA: I thought we did but if we didn't,
12 I'm making it clear now. I'm sorry.

13 THE COURT: Why should the pre-Trustee professionals
14 be made to finance the actual expenses that they incur in
15 connection with their work?

16 MR. VELEZ-RIVERA: For the same reasons, Your Honor,
17 that we're asking you to defer consideration of the fees. The
18 expense that were incurred relate back to services, the
19 tangible benefits of which we don't see yet. It's a very
20 simple analysis in that regard.

21 The -- our position would leave in the estate about
22 somewhere just short -- shy of nine million dollars in the
23 estate. People -- reasonable people can differ about what a
24 reasonable amount of money to leave in the estate at this time
25 is. We -- my client doesn't want to penalize the folks, the

1 post-Trustee professionals who are working at this point in the
2 case to secure more assets for the estate.

3 THE COURT: How do you distinguish between the pre-
4 Trustee professionals and the post-Trustee professionals with
5 respect to fees and/or expenses? I take it that the U.S.
6 Trustee is not opposing interim fees to the post-Trustee
7 professionals. Am I correct?

8 MR. VELEZ-RIVERA: That's correct.

9 THE COURT: And am I correct since you were silent on
10 it the papers that the 60 percent figure that's been proposed
11 is acceptable to the Trustee -- U.S. Trustee?

12 MR. VELEZ-RIVERA: We have no objections to the 60
13 percent of fees which the Trustee and his professionals have
14 asked for. That's right.

15 THE COURT: How does the Court go about justifying
16 drawing a distinction between the pre and post-Trustee
17 professionals in awarding interim compensation?

18 MR. VELEZ-RIVERA: Section 331, Your Honor, in the
19 case law derived from it gives the Court broad discretion. You
20 can split fees temporally. You can split the fees among
21 professionals. You can split the fees according to task.
22 There, again, how best to do it in this case is a matter of
23 subjective judgment. The United States Trustee elected to make
24 a distinction between the folks, as I mentioned before, who are
25 servicing the estate at this point, vis-a-vis the ones whose

1 services are the subject of some controversy in the Court who
2 have largely ceased functioning at this point.

3 THE COURT: Let me ask you specifically about Dreier
4 with respect to the post-Trustee services that they perform and
5 for which certainly their application included fees. In your
6 review you indicated that they failed to obtain approval for
7 retention. Is it your position -- and I know Mr. McHale said
8 he didn't request the services, but let me ask you to assume
9 for a moment that the Trustee or his representatives have
10 requested services, transitional services by Dreier. Would
11 that, in your view, be compensable?

12 MR. VELEZ-RIVERA: In the absence of an employment
13 order probably not, Your Honor.

14 THE COURT: Do you have any authority for that?

15 MR. VELEZ-RIVERA: The Lamey [Ph.] case, Your Honor.
16 It's in our brief.

17 THE COURT: What is it that -- I mean, they
18 certainly -- Dreier had been retained by order of the Court, an
19 order that the Court signed, the 327. Was there an order that
20 ended that?

21 MR. VELEZ-RIVERA: I don't believe, Your Honor.
22 Perhaps it's not --

23 THE COURT: They weren't just volunteers who perform
24 services that are now seeking to recover for it. They have
25 been properly retained over your office's objection. But they

1 nevertheless were retained. What is it that -- is it automatic
2 that upon the appointment of a Chapter 11 trustee that counsel
3 for the debtor in possession is no longer an appropriate court-
4 approved professional?

5 MR. VELEZ-RIVERA: Your Honor, they -- let me split
6 this up a couple of ways. Dreier was not retained by the
7 Chapter 11 Trustee pursuant to an employment order after the
8 appointment of the Chapter 11 Trustee, so it's our position
9 that with respect to those services assuming that one can
10 figure out which of Dreier's post-Trustee services were
11 performed at the behest of the Trustee.

12 THE COURT: Well, he says none, but that's
13 differently factually.

14 MR. VELEZ-RIVERA: And then moving on to services
15 which -- with transitional services perhaps there could be a
16 subset of services for which the firm can be employed, but it
17 would be an extremely small universe of fees with respect to
18 services done purely to assist the transition.

19 THE COURT: Now, Mr. Samet --

20 MR. VELEZ-RIVERA: The case law talks about that.

21 THE COURT: -- made the point in his papers that
22 Huron was retained under 363 and 105. It puts them on
23 different footing. You in your paper said --

24 MR. VELEZ-RIVERA: Yeah.

25 THE COURT: -- there's no basis for compensating them

1 for post-Trustee services. Mr. McHale acknowledged while there
2 may be difference of opinion about the amount that he, in fact,
3 did request the services. Again, you didn't have a chance to
4 reply in writing to Mr. Samet's point about 363 and 105. Would
5 you agree that Huron stands on different footing with respect
6 to the post-Trustee services it performed versus Dreier, for
7 example?

8 MR. VELEZ-RIVERA: I'd have to agree to that, Your
9 Honor. Yeah.

10 THE COURT: Any other points you want to make,
11 Mr. Velez-Rivera?

12 MR. VELEZ-RIVERA: No. Thank you, Your Honor.

13 THE COURT: Who else wants to speak in opposition to
14 the fees? Please come on up to the -- Mr. Cogan, am I right
15 about that? Just identify yourself for the record.

16 MR. COGAN: Yes. Your Honor, my name is Barry Cogan,
17 C-o-g-a-n, and I stand to speak --

18 THE COURT: You're a 1031 exchanger who has regularly
19 appeared --

20 MR. COGAN: Thank you, sir.

21 THE COURT: -- in many hearings in the Court.

22 MR. COGAN: As I said, my name is Barry Cogan and I
23 stand and speak in the matter of the 1031 tax group, Case 07-
24 11448-MG. Let me express my sincere appreciation to you for
25 the opportunity to address you in the matter of the objections

1 to the fees and expenses submitted in this case by Dreier,
2 Greenberg Traurig, GT, Huron and Mesirow. I have prepared this
3 statement and shall read it so that I can be concise, accurate,
4 and to the point. My statement shall not exceed more than six
5 to seven minutes.

6 THE COURT: Go ahead, Mr. Cogan.

7 MR. COGAN: My wife, Sandra Cogan, and I had
8 \$502,922.00 stolen from us by Edward Okun. Our proof of claim
9 number is number 210. I'm sure you may recall both of us as
10 we've been to almost every proceeding held in your courtroom as
11 you just indicated. The trauma of this theft has been with us
12 24 hours a day, seven days a week from May 14th and continues
13 every day and will for many years to come.

14 We came to your first proceeding on June 11, 2007,
15 exactly one year to the date of this proceeding where there
16 were approximately 75 to 100 people, 90 percent were lawyers
17 and forensic accountants, and 10 percent were victims. The
18 victims eventually combined forces and called themselves TWV,
19 train wreck victims, as we surely became convinced we had been
20 in a financial train wreck.

21 For almost one year we continually heard from three
22 of the firms -- Dreier, GT and Huron -- that they were working
23 very hard to see that as much as 75 to 80 percent of our stolen
24 funds would likely be returned to us. The fourth firm Mesirow
25 joined this group sometime in the fourth quarter of 2007.

1 Time after time all of these firms came into your
2 courtroom, Your Honor, and assured you and everyone else that
3 they were very close to a fair and equitable solution. What a
4 shock, Your Honor, when their "fair and equitable solution"
5 involved either having JPS later to be clearly rejected as not
6 even willing to show you their bank book or Edward H. Okun
7 himself taking the remaining assets and promising to return to
8 the train wreck victims their stolen money. These solutions
9 were so poor that you yourself, Your Honor, told these firms
10 their plan could not succeed and would not be approved by those
11 of us whose funds were stolen.

12 Independent buyout firms seeing the futility of these
13 plans continued to decrease their offerings to pennies on the
14 dollar. To add insult to us, everything was extremely
15 secretive and we were constantly told we could not be privy to
16 what was being done. Now for the ultimate betrayal. These
17 four firms -- Dreier, GT, Huron and Mesirow -- continued to
18 tell us they had nothing but our best interests at heart: (a)
19 expense \$332.00 for lunch with no documentation; (b) expense
20 dinners for the same date by the same person for \$55, \$84, and
21 \$44.00; (c) expense \$317.00 for two people at lunch with no
22 documentation; expense the lunch with one guest from one of the
23 firms and the four companies only to have the same person
24 expense his own lunch. There was an expense of \$3,379.00 at
25 the Grand Hyatt Hotel with no documentation; expense \$1,213.00

1 with no documentation at the Marriott Hotel and Resort;
2 expense, believe it or not, Your Honor, two prescriptions at
3 Walgreen's for \$79.00; expense \$575.00 for a Christmas dinner
4 and finally, expense a round trip flight from Sarasota, Florida
5 to Richmond, Virginia for an unbelievable \$1,313.73 and a
6 separate expense on that same day for over \$500.00 for limo
7 trips. These final expenses are particularly egregious as the
8 individual asked my wife and I to testify before the IRS in
9 Washington, D.C., and said that the two tanks of gasoline
10 needed to make the round trip from New Jersey to Washington,
11 D.C. would not be reimbursed.

12 These firms have billed outrageously not only these
13 excessive expenses but fees for services that we -- TWVs never
14 saw any benefit from. Their work product produced no
15 successful results. On the contrary, they left Mr. McHale with
16 the necessity to employ other firms to start to work from
17 scratch. It has left the TWVs confused as to why we should be
18 paying for these fees twice.

19 We all know what happened here, Your Honor. These
20 firms considered it was business as usual, lavish dining out,
21 excessive travel, first class overnight stays. I'm not so
22 naive to fail to understand the way these four firms approach
23 the bankruptcy gravy train. What these four firms failed to
24 realize, however, was that the victims were not large
25 corporations who were going to routinely pass along fees and

1 expenses, but small individuals who watch every penny,
2 especially since they had their hard-earned funds stolen and
3 expected accountability from the firms charged with the
4 responsibility of getting the stolen funds back.

5 Simply stated, sir, these firms thought there would
6 be no accountability. Your Honor, I'd like to say for the
7 record you were not on the scene when Edward Okun stole the 160
8 million dollars from 320 victims, but this reckless behavior by
9 these four firms is now on your watch and certainly you can do
10 the right thing and reject these fees and expenses which were
11 so outrageously spent not to protect the TWVs but to further
12 damage them.

13 Therefore, Your Honor, we humbly reject you approve
14 no fees or expenses until this case has been seen to its
15 completion. This should allow the Trustee the opportunity to
16 use the very few remaining funds for the retrieval of any funds
17 still left in this case. Thank you, Your Honor, for your time
18 and attention you've given to me and to all the other
19 exchangers.

20 THE COURT: Thank you, Mr. Cogan.

21 Anyone else wish to speak in opposition to the fee
22 applications? We'll deal with the expenses separately
23 thereafter.

24 Mr. Feldman?

25 MR. FELDMAN: Good afternoon, Your Honor. Bernard

1 Feldman representing U.F.H. Apartments. I'm going to be very
2 brief, Your Honor. From the outset many creditors who were
3 represented by counsel came before the Court and suggested that
4 a trustee should, in fact, be appointed and it was a proper
5 entity to administer this matter for the benefit of the
6 creditors. It took us several months to get there. We're
7 there.

8 For that reason, my client, of course, has no
9 objection for the payment of fees to the Trustee and his
10 corresponding professionals. I'd just note one item as an
11 observation and that is with respect to the last item or the
12 last monthly statement that was filed by the Trustee that I
13 could glean for the month of February. To my recollection it
14 demonstrated that there was interest income of about \$33,000.00
15 and there was accruing expense of \$1,440,000.00. So,
16 therefore, for the month alone of February there was a loss of
17 about 1.4 million dollars.

18 Having said that, Your Honor, we understand that
19 there is a certain amount of carrying charges in order to have
20 the case properly administered. Hopefully, we can maximize the
21 recovery through the efforts of the Trustee.

22 The only comment that I have with respect to counsel
23 for the debtor and counsel for the Creditors' Committee and
24 their supporting professionals is that rather than to consider
25 their claim to be a liability, it may very well ultimately be

1 that after an investigation to answer the questions that this
2 court properly closed about 40 minutes ago, what they knew and
3 when they knew it, it may very well be that this may be another
4 asset of the estate. I think that it would be a grave error
5 and an injustice to award any fees at this time to entities to
6 whom they may be indebted to this estate.

7 I -- it is very -- it's with great difficulty that I
8 say that. I've been practicing law for 38 years and having
9 been practicing bankruptcy -- in the bankruptcy area for in
10 excess of 35 years, I think that professionals are indeed
11 entitled to recover fees for services rendered provided that
12 they were done in good faith and provided that they, in fact,
13 resulted in a benefit. I can't answer either of those
14 questions as I stand here today and, thankfully, I may never
15 have to answer that question. That's your function, Judge.

16 THE COURT: Mr. Feldman, do you see a distinction
17 between fees and expenses?

18 MR. FELDMAN: I do, Your Honor. I do. Certainly
19 when anybody practices in this area -- I'm using the
20 vernacular -- that they take flyers sometimes in cases and they
21 take a risk that they may not be compensated for services
22 rendered, out-of-pocket fees and expense -- out-of-pocket
23 expenses provided that they are legitimate and provided that
24 they were necessary in order to fulfill the function certainly
25 stands separate and apart in my mind and I do not believe that

1 professionals should be required to fund their work in that
2 respect. But as to the fees, I think that there's a much
3 greater burden, Your Honor, and I think that there's got to be
4 some causal connection even with the expenses.

5 I thank you so much.

6 THE COURT: Thank you, Mr. Feldman. Anyone else wish
7 to speak in opposition to fee application? Mr. Teitelbaum,
8 please come up.

9 MR. TEITELBAUM: Good afternoon, Your Honor. Jay
10 Teitelbaum, Teitelbaum Baskin. Very briefly.

11 Now, Your Honor, we filed a joint objection with
12 Mr. Feldman and several creditors have joined that objection
13 and referenced it so that there are a number.

14 Unfortunately, we do stand here today with an
15 insolvent estate. The expenses and the fees of the pre-
16 Trustee -- and that's all I'm addressing is the pre-Trustee
17 professionals -- exceed the assets of the estate and that
18 doesn't even include 503 applications that a lot of
19 professionals file which chose, you know, to wait till the end
20 of the day. There are those applications actually on file.

21 I ask you here today, Your Honor, to exercise your
22 discretion which I agree you absolutely have on an interim
23 application to say not now. We need to see how this all shakes
24 out and, Your Honor, I respectfully disagree with one of the
25 premises of the 9019 proposal which is it is to avoid

1 litigation. But, Your Honor, interim -- on an interim basis
2 denying the application there really isn't any litigation and
3 it will maybe come up at the end of the day but it's --

4 THE COURT: I don't consider this to be a 9019
5 application.

6 MR. TEITELBAUM: I -- then I --

7 THE COURT: I consider this to be a consensual
8 application for award of interim fees so I --

9 MR. TEITELBAUM: Yeah.

10 THE COURT: -- maybe we're quibbling about -- I don't
11 know that there's a difference --

12 MR. TEITELBAUM: No.

13 THE COURT: -- Mr. Teitelbaum.

14 MR. TEITELBAUM: Then again, though, with respect
15 it's one of the premises of this consensual resolution is to
16 avoid litigation, I don't think we get there anyway under the
17 theory that --

18 THE COURT: It would only be deferring it.

19 MR. TEITELBAUM: -- you would have any discretion.

20 The --

21 THE COURT: It would only defer it.

22 MR. TEITELBAUM: That's right. And if -- and I agree
23 wholeheartedly with Mr. Flaxer, Ms. Lim, and Mr. McHale. Now
24 is not the time to be doing the fighting over the fees. Now is
25 the time to figure out where are the assets. Look, we all

1 stood here. We heard 300 million; we heard 17 million. We
2 heard Mr. Flaxer say that may even be optimistic. We need to
3 see if we can find the money before more dollars go out of the
4 estate. That's all I'm really here to ask you to do, Your
5 Honor, which is to wait until the end of the date and there is
6 some certainty.

7 THE COURT: Let me ask this question of Mr. Feldman
8 and that's the distinction between fees and expenses.

9 MR. TEITELBAUM: Your Honor, I agree with what
10 Mr. Feldman said. I said -- and I would also -- I'll even, you
11 know, volunteer. While I recognize there is case law out there
12 that professionals and experienced professionals who undertake
13 assignments without prior approval to corporate or volunteers,
14 there is a theory of unjust enrichment and just basic fairness,
15 so -- and this may be a factual issue that has to be, you know,
16 vetted out down the road.

17 But to the extent -- and I would state, to the extent
18 that the Trustee and his professionals solicited, accepted,
19 wanted help that -- to me that's appropriate, but for those of
20 us that were here from the beginning and said, you know, this
21 isn't the way we think this case should go, we think the
22 Trustee's fees is an appropriate thing to implement
23 immediately. That's where we are and that's why we're not
24 objecting to the Trustee's fees. I mean, there is a need for
25 professionals to be compensated, but there's also a need to

1 demonstrate some benefit. Unfortunately, Your Honor, we're
2 standing here today and I can't point to a single benefit as a
3 result of the pre-Trustee professionals. I can point to the
4 Trustee and his professionals having to redo work that -- or do
5 for the first time work that was either allegedly done or
6 should have been done and that's why the Trustee's
7 professionals have worked so hard and tirelessly. Thank you,
8 Your Honor.

9 THE COURT: Thank you. Anyone else wish to speak in
10 opposition to the fee application? Please come on up here.
11 We've got -- before you speak, Mr. Velez-Rivera, and I'm also
12 going to give an opportunity to those people who were on the
13 phone after anyone in the courtroom has had an opportunity to
14 speak, because we do have quite a few people on the phone.

15 Yes. If you could just identify yourself.

16 MS. SLUSH: Hi. I'm Bonny Slush and I'm one of the
17 victims. I'm one of the people who filed an application
18 against -- a protest against the fee applications. I had no
19 intention of speaking today but I was here, and I was
20 listening, and I am worried about not having enough money to go
21 after the people that we need to go after -- in order to get
22 some return.

23 The original fee applications are -- were 16 million
24 dollars. Now, we've whittled it down, but if these fee
25 applications were that much how much is it going to cost for us

1 to file the -- more lawsuits and that was one thing I had to
2 say and the other thing about the applications is they say that
3 they were working for us, working real hard and having all
4 these meetings. During that time, Mr. Okun was going through
5 our money. I don't know how much it costs to fly a jet. I
6 know how much it costs to keep a 30-foot boat; I can't even
7 possibly imagine how much it costs to keep 132-foot boat. He
8 was paying mortgages. He was paying in two different places.
9 I don't know what else. He was buying jewelry for his wife.
10 There was five months in there that we did nothing, got
11 nothing, that he spent a lot of money, and I think all that
12 money should come off of their fee applications.

13 THE COURT: Thank you, Ms. Slush.

14 Anyone else in the courtroom wish to speak in
15 opposition to the fee applications?

16 Mr. Velez-Rivera, briefly.

17 MR. VELEZ-RIVERA: Just very briefly, Your Honor.
18 You had asked me before about the distinction between post-
19 Trustee fees and the pre-Trustee fees a little earlier. I
20 should have underscored them, but I'll do it now. The -- my
21 office intends to do significant amount of discovery with
22 respect to the pre-Trustee fees, which is one of the reasons we
23 also make that distinction. We'll do it closer to the end of
24 the case, Your Honor, for the obvious reasons.

25 THE COURT: Not now.

1 MR. VELEZ-RIVERA: Hopefully not if we all get lucky.
2 Thank you.

3 THE COURT: Thank you. All right.

4 MR. FOX: Your Honor, if I may just for purposes of
5 clarifying the record because I know you've asked this question
6 twice before, I'm not quite sure you've gotten the answer that
7 satisfies you. With regard to the Dreier post-Trustee
8 appointment fees I just want to be clear. Dreier is not
9 requesting any compensation today under the --

10 THE COURT: Oh, I understand that, Mr. Fox.

11 MR. FOX: Okay. I just wanted to speak --

12 THE COURT: It's not -- there seemed to be some
13 difference of view. You've made your position clear that
14 you're not waiving Dreier's right later in the case to seek
15 compensation for whatever post-Trustee services you've
16 performed. Do I have that right?

17 MR. FOX: Yes, Your Honor, though I just want to be
18 clear, we're not -- we understand that there's a proposed
19 compromise on the table which compensates the post-Trustee
20 appointment professionals. We just want to be clear. We are
21 not considering ourselves as part of that group today.

22 THE COURT: And I understood that. Thank you,
23 Mr. Fox.

24 MR. FOX; Thank you, Your Honor.

25 THE COURT: All right. Is there anyone who wishes --

1 any of the proponents of he application wish to speak further?
2 Briefly, Ms. Lim.

3 MS. LIM: Your Honor, Angelina Lim, Your Honor. I
4 just want to make the record clear that the Trustee in settling
5 or coming up with a consensual 1.7 million payment with a pre-
6 Trustee fees, we don't necessarily agree with the
7 characterization today by the pre-Trustee professional about
8 whether they benefitted the estate or not benefitted the
9 estate.

10 THE COURT: Well, I understand you're reserving all
11 your rights with respect to that.

12 MS. LIM: That's -- Your Honor, we just wanted to
13 make that clear including affirmative claims, Your Honor.

14 THE COURT: All right. I understand that.

15 Let me ask. Is there anyone on the phone who wishes
16 to be heard in opposition to the fee applications?

17 All right. It's 25 -- 22 minutes to 1:00. What I
18 intend to do is to take about a ten-minute recess and then
19 we're going to resume on the subject of expenses. Okay. And
20 what I'd like to do with respect to the expenses is reverse the
21 order and hear the objections first and see if we can narrow
22 down. I know there has been -- at least with the Chapter 11
23 Trustee further agreement with respect to reduction of some of
24 the expenses. It's not clear to me whether there are still
25 disputed items. I know the U.S. Trustee takes the position

1 that no expenses should be awarded although the objection that
2 Ms. Velez-Rivera filed does specifically identify items --
3 specific items that they object to, so what I'd like to do is
4 hear from the objectors, maybe in the next few minutes. I
5 don't mean to interrupt your break as well, but just work out
6 the order in which you want to speak to it. Okay.

7 So why -- we'll resume in ten minutes to 1:00.

8 [Recess taken.]

9 THE COURT: Be seated.

10 MS. LIM: Your Honor, Angelina Lim. Before we move
11 on to expenses, Your Honor, I neglected to inform the Court
12 that we reached a settlement with Cornell [Ph.]. They had
13 objected to any payment of expenses or fees and we have
14 resolved that by putting language in the order that we've
15 circulated yesterday.

16 So with that being said, we don't have to deal with
17 Cornell but there remains an objection and I don't believe he's
18 actually on the phone. Mister -- Newton Baird [Ph.] actually
19 objected to payment.

20 THE COURT: Mr. Moorman, are you on the phone?

21 MR. MOORMAN: Yes, Your Honor. I --

22 MS. LIM: Okay. I'm sorry.

23 MR. MOORMAN: -- was waiting until we talked about
24 expenses.

25 THE COURT: Okay.

1 MR. MOORMAN: Happy to address --

2 MS. LIM: All right. I don't know how you want to --

3 THE COURT: I have the roster [inaudible].

4 MS. LIM: Oh, I see, Your Honor.

5 THE COURT: So [inaudible].

6 MS. LIM: Yes. So when you said "objection," I
7 didn't know if you wanted to address that first before
8 expenses.

9 THE COURT: No, I want to wait.

10 MS. LIM: Or shall we do expenses?

11 THE COURT: Well, I -- Mr. Moorman, your objection is
12 to expenses?

13 MR. MOORMAN: Essentially, Your Honor, again, William
14 Moorman for Newton Baird Limited Partnership. It would be an
15 objection that relates to payment of fees or expenses. That's
16 why I waited. It's simply -- to put it very simply, the
17 objection is that no fees or expenses should be paid absent
18 payment of the remaining \$50,000.00 administrative expense
19 claim of my client.

20 THE COURT: All right. Thank you, Mr. Moorman.

21 Go ahead, Ms. Lim.

22 MS. LIM: And, Your Honor, our response to that is
23 set forth in our reply. Your Honor, our position is that he
24 was to be paid -- Newton Baird LLP was supposed to be paid a
25 substantial distribution, don't allow administrative expenses,

1 and at this point, Your Honor, we don't believe that that is
2 the appropriate time. It is not a substantial distribution.

3 THE COURT: Okay. Let's go on to the expenses.

4 MS. LIM: Okay. Your Honor, we had objected
5 extensively to expenses by -- reference to certain date and
6 time and amounts to Dreier LLP's out-of-pocket expenses
7 document 1179. Greenberg Traurig --

8 THE COURT: Just give me a second here.

9 MS. LIM: Sorry.

10 THE COURT: All right. Go ahead, Ms. Lim.

11 MS. LIM: Okay. And continuing, we also objected to
12 Greenberg Traurig and Mesirov's expenses, certain expenses as
13 well as Huron Consulting LLP's expenses, Your Honor. That was
14 in keeping with our proposed settlement or proposed payment to
15 professionals, so we only concentrated our efforts of the
16 expenses.

17 Subsequent to our objection we've had conversations
18 with the various parties and have come to a settlement of -- of
19 course, not binding on any party to the multiple expenses that
20 we had objected to.

21 THE COURT: I think it's fair to say that you reached
22 an agreement to withdraw your objections as to certain of the
23 expenses included in the various applications.

24 MS. LIM: That's correct, Your Honor.

25 THE COURT: Would that be a good statement? Okay.

1 MS. LIM: So we've withdrawn our kind of objections
2 based upon reductions agreed to by the parties. Greenberg has
3 agreed to reduce its expenses by \$5,000.00 so the amended
4 expenses would be \$62,884.73. Dreier has agreed to reduce its
5 expenses to \$180,597.00 and that's an agreed-upon reduction of
6 \$164,597.00 based predominantly, as you mentioned, on the
7 Westlaw charges -- on the reduction of the Westlaw charges.

8 THE COURT: Well, they just corrected a mistake.

9 MS. LIM: Right. They corrected a mistake.

10 THE COURT: Right.

11 MS. LIM: And Huron has agreed to reduce its expenses
12 by \$25,941.64 leaving the amended expense requests of
13 \$239,561.69. That, in large part, was because we also objected
14 to the payment of Baker McKenzie's fees at some point to, I
15 guess, when they were litigating the Trustee issue early in a
16 case and the additional \$5,000.00 was for miscellaneous other
17 things that we thought was a reasonable compromise.

18 THE COURT: Ms. Lim, here's my problem. Okay. I
19 understand that you agreed to withdraw your objections to
20 expenses where there's been basically a round number
21 adjustment, but the Court's role is to scrutinize the expense
22 both fees which we're not going to deal with the specifics, but
23 the expenses we are -- the Court's role is to scrutinize the
24 expenses very carefully. I made it clear before today that I
25 was going to do that and when you sort of -- I'm not saying

1 it's inappropriate to agree that, okay, we'll make a \$5,000.00
2 downward adjustment, I don't know where it is, I mean, where
3 it's coming from, what items are in, what items are out, are
4 there -- because I certainly -- when I went through it and I
5 had help from my law clerks and my interns, and they've been
6 pouring over all of these expense reports, and there were, you
7 know, clearly items that seemed quite questionable. I mean,
8 the U.S. Trustee has objected to specifics. There's the issue
9 about the \$20.00 per meal cap. I know that Golenbock has
10 adjusted its application to reflect that. But when you say,
11 well, we've reached an agreement to withdraw our objections,
12 they've reduced their expense claim by \$5,000.00, where does
13 that leave me? How do I know what's in, what's out? I mean,
14 one of the -- you know, let's just take Greenberg Traurig.

15 Not to pick on Greenberg Traurig but, you know, in
16 going through the details of the fee application for
17 October 24, 1997 there's a Grand Hyatt Hotel bill of \$3,379.07.
18 In their further submission, you know, they attach a copy of
19 the hotel bill. The hotel is in Jersey City and it's \$629.00 a
20 night. That's pretty good for a hotel in Jersey City. I
21 understand that hotels in Manhattan cost a lot. Maybe not as
22 much as every -- that many of the law firms are seeking to
23 recover as expenses. I know Dreier -- you know, they had some
24 Manhattan hotel bills for \$330.00. That -- given I haven't
25 been staying in Manhattan hotels recently, but that seems

1 certainly in the ballpark of a business-level hotel in
2 Manhattan.

3 So when I see Jersey City for \$629.00 a night, I'm
4 saying, what's Greenberg Traurig doing having somebody stay in
5 Jersey City in the first place. If they were staying there to
6 save some money it would be one thing, but when it's -- you
7 know, was it a suite? What -- I can't tell. All I see is
8 \$629.00 a night, but now you come to an agree -- an
9 understanding about withdrawing objections and I don't know
10 what's -- what you've done.

11 MS. LIM: Your Honor, we do have a careful review.
12 We did file our objections specifically items and I think we
13 made a decision -- a business decision that they were pretty
14 much -- the requested reduction was about approximately the
15 amount that we had objected to or the -- you know, the value of
16 the items that we objected to. That was on a rough value, of
17 course, not on an item-by-item basis but that was the Trustee's
18 business decision that amounted to about -- approximately what
19 was objected to.

20 THE COURT: And I understand that because you could
21 wind up spending more money --

22 MS. LIM: That's correct.

23 THE COURT: -- reviewing -- that's the other side.
24 It's the balance. You spend more money in terms of the time it
25 takes to go through these -- and I'm not blaming you for having

1 voluminous expense reports. I haven't been in any expenses
2 reimbursed so far in the case. Naturally, the very active case
3 in the expenses are quite substantial.

4 MS. LIM: Yes. But our object --

5 THE COURT: I'm a little bit of a loss here.

6 MS. LIM: Well, our initial objections are -- the
7 three objections filed by the Trustee do have Excel sheets,
8 spreadsheets, and they do list the expenses that we've objected
9 to specifically. We did not point to a page number because
10 they were voluminous but every objection, Your Honor, either
11 has a reference to the date or as to the amount.

12 THE COURT: Okay. So let's take Greenberg Traurig.

13 MS. LIM: Okay.

14 THE COURT: And what's the amount -- what was the
15 amount that you objected to?

16 MS. LIM: The total expenses questioned, Your Honor,
17 amounted to \$25,043.19 as set forth in Exhibit A.

18 THE COURT: Why don't you put Exhibit A on the
19 screen, first page?

20 MS. LIM: Yes, Your Honor. Okay. Maybe that's the
21 wrong way.

22 THE COURT: Okay. So tell me, what did you do --
23 now, they came back -- and "they" being Greenberg Traurig --
24 came back and explained various of the expenses provided in
25 more detail; correct?

1 MS. LIM: That's correct, Your Honor.

2 THE COURT: And then what did you do to resolve -- to
3 try and resolve your objection to the Greenberg Traurig expense
4 claim?

5 MS. LIM: As I recall, Your Honor, Greenberg took off
6 certain expenses that were questioned and provided certain
7 explanation regarding the questioned items. For example, I
8 believe they reduced all the fee -- all the meals to \$20.00. I
9 think we had objected to --

10 THE COURT: Well, when you say they reduced all of
11 the meals to \$20.00 --

12 MS. LIM: Okay.

13 THE COURT: Just bear with me for a minute, okay?

14 MS. LIM: Maybe a simpler one --

15 THE COURT: Well --

16 MS. LIM: I'm sorry.

17 THE COURT: Just wait.

18 MS. LIM: Sorry.

19 THE COURT: Okay. In the response of Greenberg
20 Traurig, which is dated June 5, 2008, tabs two and three
21 provide details about meals.

22 MS. LIM: Your Honor, maybe I could take a simpler --

23 THE COURT: No, let me --

24 MS. LIM: -- way --

25 THE COURT: -- ask my question.

1 MS. LIM: Okay. Sorry, Your Honor.

2 THE COURT: Okay. So, you know, for June 12, 2007 it
3 shows Manzia Catering [Ph.]. It totals \$179.64 and the comment
4 is "meeting." It doesn't say how many people attended the
5 meeting. Again, I'm not intending to pick on Greenberg
6 Traurig. This is an example. Okay. The guidelines say \$20.00
7 per person, but I don't know how many people attended a
8 meeting, so what did you do -- I mean, was this just a rough
9 cut adjust and said, okay, reduce your -- you worked out an
10 agreement they'd reduce their expenses by X dollars and you
11 were satisfied?

12 MS. LIM: Well, Your Honor, we actually looked at
13 some of the actual receipts provided as well and come of it was
14 rough justice and some of it we actually called and questioned.
15 I think there was, for example, somebody went and bought a
16 bottle of wine, a glass of wine and said, look, you know, the
17 state --

18 THE COURT: In this case it probably wasn't strong
19 enough, but --

20 [Laughter.]

21 MS. LIM: So there were some instances where we went
22 back and -- with Greenberg and we voiced, you know, that we
23 still had concerns and at the end of the day with Greenberg it
24 was kind of a rough justice.

25 They did agree to take away the expenses that were

1 incurred before they were hired as committee, you know,
2 counsel. That was one of the easier ones that I was going to
3 go to, but I guess I can, you know, better speak if they wish.

4 THE COURT: Well, Mr. Kadish is standing --

5 MS. LIM: Oh, I see. I apologize.

6 THE COURT: -- behind you, so it's --

7 MS. LIM: Then maybe they should speak as to their
8 expenses.

9 THE COURT: Well, this is just an example. I'm not
10 intend -- I'm not intending to pick on Greenberg Traurig for
11 this. I'm not suggesting that their expense -- you know, what
12 they're seeking was improper in any way.

13 MR. KADISH: Your Honor --

14 THE COURT: It just makes it very hard for the Court
15 to scrutinize it.

16 MR. KADISH: Your Honor, and I don't have to displace
17 Ms. Lim for a second. Let me see if I can do it from this
18 microphone.

19 I got a call the other day following our responses
20 and following the -- providing us some backup. I called from
21 Ms. Lim and Mr. McHale and we were prepared to page through. I
22 got the feeling that Mr. McHale and Ms. Lim were prepared to
23 page through and, indeed, we started that. And the discussion
24 sort of led to we can save the professional fees of the
25 discussion and further fight by an agreed concession which we

1 honestly quickly agreed to save everyone the fee and the -- you
2 know, and the time and the effort.

3 So, you know, that -- Your Honor, it doesn't address
4 each specific item. We've tried to address as many of the
5 specific items in our response as we could reasonably do within
6 the time. We frankly were figuring that, you know, as in most
7 cases if you show a concession beyond the items that were under
8 dispute that that would be the fair way to go.

9 THE COURT: Okay. I'm not suggesting that that is
10 necessarily improper.

11 MS. LIM: Well, Your Honor, our settlement in a way
12 binds other people so if they have --

13 THE COURT: When you say "settlement" --

14 MS. LIM: I'm sorry.

15 THE COURT: -- you're withdrawing your objection.

16 MS. LIM: Our withdrawal doesn't necessarily mean
17 that other people who have other objections --

18 THE COURT: I understand. I understand that.

19 MS. LIM: -- may not speak.

20 THE COURT: Mr. Velez-Rivera, do you want to be
21 heard? This is more -- because this sort of carries through,
22 the -- I think Mr. McHale and his professionals in good
23 faith -- and I was impressed both by the objection that your
24 office filed -- that you filed, Mr. Velez-Rivera, initially and
25 also that the Chapter 11 Trustee's professionals filed. They

1 scrutinize both -- you know, you scrutinized the applications,
2 in many cases identified exactly the same expense that you
3 questioned. You know, there's -- there were different ones
4 that were picked up and despite the fact that your objection
5 that you filed never used the word "expenses," only objected to
6 fees, but we'll -- let's assume that you object to the fees.
7 You say you object to the fees. You did what -- you go out and
8 deal with a specific objection. Can you tell me what the --
9 have you had any consultation with Mr. Flaxer and Ms. Lim
10 regarding how they've come to an understanding with the various
11 applicants in trying to resolve the expense -- the objections
12 as to specific expanses?

13 MR. VELEZ-RIVERA: We have, Your Honor. And indeed
14 some of the -- just by what I told you earlier some of the
15 discrete items that my office pointed out have been so called
16 taken care of in Ms. Lim's withdrawal of her objection, but
17 there are a few that remain and perhaps -- and they may have
18 been taken care of. This is what I --

19 THE COURT: And maybe we ought to turn the floor over
20 to you, then, because I take it that with respect to --
21 Ms. Lim, is it fair to say that with respect to all of the
22 applicants that Mr. McHale has resolved [inaudible] --

23 MS. LIM: Yes, Your Honor. That's fair to say.

24 THE COURT: All right. Mr. Velez-Rivera, go ahead.

25 MR. VELEZ-RIVERA: Thank you. Your Honor, I think

1 that -- let me just -- I can take them on a firm-by-firm basis.
2 With respect to Greenberg Traurig, the only -- the line item
3 remaining to which my office was still having an objection as
4 of yesterday morning very early was over time clerical charges,
5 but I understand late in the day -- and I did get the copy of
6 the letter where the firm agreed to a further reduction of
7 \$5,000.00 -- that is about \$70.00 short of the objection we had
8 so I think we can safely withdraw our objection to that
9 category of expense and --

10 THE COURT: Let me ask -- let me ask it more broadly.
11 Do you withdraw your objection as to the Greenberg Traurig
12 expenses as adjusted as described by Ms. Lim?

13 MR. VELEZ-RIVERA: I can do that, Your Honor.
14 Assuming it counts -- assuming it includes a letter dated
15 yesterday, I can do that.

16 THE COURT: Can someone answer that? I don't know
17 what that means, Mr. Velez-Rivera.

18 MR. FOX: Ms. Lim sent a letter to the Court and it
19 was docketed identifying the reductions.

20 THE COURT: Right. So what's your -- what is your --

21 MR. VELEZ-RIVERA: We can withdraw our objection to
22 Greenberg's expenses on that basis.

23 THE COURT: Okay. So we've got that. I'm not saying
24 I'm approving it yet, but I'm saying as to the specific line
25 item objections, you've withdrawn -- the U.S. Trustee withdraws

1 her objections to the Greenberg Traurig expense reimbursement
2 application as revised.

3 MR. VELEZ-RIVERA: She does, Your Honor.

4 THE COURT: Okay.

5 MR. VELEZ-RIVERA: With respect to Dreier if it
6 hasn't been taken care of yet, we still have an outstanding
7 objection to clerical and overtime charges as well.

8 THE COURT: Ms. Lim, did you reach any resolution
9 with Dreier with respect to their expense reimbursement
10 application?

11 MS. LIM: Your Honor, we agreed to withdraw our
12 objections to Dreier's expenses when we reviewed their
13 response. So they --

14 THE COURT: And their response enlightened me
15 certainly on a lot of the questions I had.

16 MS. LIM: Right, so we did not have additional issues
17 with them or additional settlements with them.

18 THE COURT: It's fair to say, then, that Mr. McHale
19 withdraws his objection to the Dreier expense reimbursement
20 application. Is that correct?

21 MS. LIM: That's correct. Based upon their
22 reduction, their voluntary reduction --

23 THE COURT: And that amount again is how much?

24 MS. LIM: They've reduced it to \$180,476.51.

25 THE COURT: Okay. And without me going back to all

1 these papers that is a reduction of how much?

2 MS. LIM: One --

3 THE COURT: Mr. Fox?

4 MS. LIM: 164, \$598.28 [Ph.].

5 THE COURT: That didn't make sense. Say that again.

6 MS. LIM: Okay.

7 THE COURT: What is the amount by which they have
8 reduced?

9 MS. LIM: They have reduced their expenses by
10 \$164,598.28.

11 THE COURT: Okay. \$164,598.28.

12 MS. LIM: That's correct, Your Honor. That's
13 correct.

14 THE COURT: Mr. Velez-Rivera?

15 MR. VELEZ-RIVERA: And of that amount, Your Honor, we
16 would still have an objection. We would contend that it needs
17 to be reduced by \$2,197.00 further.

18 THE COURT: That's the overtime expense?

19 MR. VELEZ-RIVERA: Yes.

20 THE COURT: All right. Mr. Fox, do you want to
21 address the overtime expense? Do you want -- first, let me
22 ask, Mr. Velez-Rivera, could you -- overtime expenses if
23 properly justified are permitted under the guidelines, correct?

24 MR. VELEZ-RIVERA: I understand that, Your Honor.

25 THE COURT: I just want to make sure we're on common

1 ground.

2 MR. VELEZ-RIVERA: We are.

3 THE COURT: And your objection is that circumstances
4 justifying overtime has not been established?

5 MR. VELEZ-RIVERA: Exactly, Your Honor. At least not
6 based on what we saw.

7 THE COURT: All right. Mr. Fox?

8 MR. FOX: Your Honor, briefly. As Your Honor and
9 other interested parties in this case, including the U.S.
10 Trustee, witnessed over the course of our five months of
11 participation at the outset of the cases, so -- many of the
12 items that came before the Court, in addition to those items
13 that were not before the Court but nevertheless of great
14 importance to the administration of the estates, took place on
15 extraordinarily expedited time frames. The Colorado Capital
16 Bank litigation, Your Honor set a scheduling hearing matters
17 that required expedited disposition of matters.

18 The result of the expedited nature in which both the
19 litigation, the plan related matters and others frequently
20 called upon us to retain staff after hours, weekends and the
21 like in order to meet both court-established deadlines, as well
22 as the deadlines established by the specific circumstances of
23 the cases. Each of the additional overtime charges we believe
24 are entirely reasonable and were necessary under the
25 circumstances of the cases as they existed at that time. We

1 believe in our judgment that the incurrence of those expenses
2 and the utilization of those people on an overtime basis was
3 entirely justified.

4 With respect to the concept of overtime, Your Honor,
5 it is not a matter of our overhead as our firm is structured.
6 We believe the time charges were specific and they are
7 reasonable under the circumstances.

8 THE COURT: Well, then -- okay, there's an entry for
9 August 14, 2007, \$89.81. It's on page 81 of Exhibit 6.

10 MR. FOX: You say page 81, Your Honor?

11 THE COURT: Page 81 [inaudible].

12 MR. FOX: And the date again, Your Honor? I
13 apologize.

14 THE COURT: August 14, 2007.

15 MR. FOX: Yes, Your Honor.

16 THE COURT: Why don't you put it on the screen so
17 others can see it? You can -- you don't have to rip it apart.

18 MR. FOX: It's velabound [ph.], Your Honor. It's the
19 only way the fold works.

20 THE COURT: All right.

21 MR. FOX: That it would sit flat.

22 THE COURT: If you enlarge -- there's a button for
23 zooming. We don't need to look at the whole page. We still
24 look at -- okay. On counsel table and the screens it certainly
25 shows up.

1 So on -- I think you [inaudible]. Okay. It's the
2 August 14. It's X, Y, Z, invoice number 1272891 working late,
3 T. Watson \$89.91.

4 MR. FOX: Yes, Your Honor. X, Y -- that's a car
5 service. That's not overtime. X, Y, Z is our car service that
6 we use after hours.

7 THE COURT: All right. So then let's go to June 13,
8 2007. We'll see if we can find the page for it. Look at the
9 June 15 -- page 75, June 15, 2007. I suppose "OT SUPP" is
10 overtime support?

11 MR. FOX: I believe that's correct, Your Honor.

12 THE COURT: Working late. \$202.50. What is it
13 that -- the thing with overtime, which I agree properly
14 supported can be justified, but there's nothing that -- you
15 know, I'm not suggesting that that was the case here. Okay.
16 But a lawyer who picks up a matter at 3:00 in the afternoon and
17 works on it until 5:30 and then says, oh, I need paralegal or
18 secretarial support tonight to do -- to deal with it if the
19 lawyer had dealt with it at 9:00 in the morning, it wouldn't
20 have required overtime support. In my view overtime is not
21 justified.

22 How is Mr. Velez-Rivera to know whether those
23 overtime matters you've listed are ones that under the
24 guidelines would justify compensation for overtime?

25 MR. FOX: Your Honor, it is our practice as a firm

1 and as individual attorneys to review these items at the time
2 of charge. Most of the individuals, as you've witnessed
3 firsthand, most of the individuals from our firm who were
4 involved in this case were fully invested almost to the
5 exclusion of most other matters. That was particularly true in
6 connection with the various litigation matters that were
7 undertaken. Most of the overtime charges that I'm aware of
8 were -- incurred in connection with those litigation matters in
9 support of providing late-night service, late night
10 topographical, and late night other support services to our
11 staff.

12 THE COURT: One of the things that Mr. Velez-Rivera
13 objected to, which we're not going to get to today, the U.S.
14 Trustee has objected to the fact that \$70,460.50 of lawyer time
15 was spent drafting monthly fee statements, even though one was
16 served and that's in connection with this. Tell me what the
17 process was for -- just focusing on the expenses for
18 determining which items you were going to include and which
19 ones you would exclude from this application.

20 MR. FOX: Painstaking process, Your Honor. The --
21 and it was replicated again once we had the benefit of both the
22 U.S. Trustee's and the Chapter 11 Trustee's objections which
23 highlighted additional line items that had not only identified
24 some clerical errors that we had not previously caught but
25 otherwise had identified areas where we may not have been in

1 strict compliance with the local guidelines.

2 We have adjusted our application to bring all those
3 items in our view back into compliance with local guidelines
4 and otherwise correct clerical errors. My partner, Ms. Macari
5 [Ph.], was personally invested in reviewing time records and
6 expense items as well as in the preparation of our response and
7 we believe that the time charges associated with those reflect
8 the level of detail and the amount of time that we expended in
9 trying to accomplish that which the local guidelines would
10 require in terms of bringing our fee requests into compliance
11 with local custom and rules.

12 It is a lot of time and the time will come when we're
13 going to have to talk about whether or not it in itself is
14 compensable or reasonable under the circumstances and we'll be
15 certainly prepared to address any questions parties may have at
16 that time.

17 THE COURT: I'm sorry to interrupt you, Mr. Fox. Did
18 you -- you obviously had discussion with Ms. Lim and
19 successfully were able to resolve these expense issues with --
20 such that Mr. McHale has withdrawn his objection. Did you make
21 an effect -- had you made an effect to do that with Mr. Velez-
22 Rivera? I'm not faulting you if you didn't. That's a
23 question.

24 MR. FOX: The answer is no, Your Honor, because
25 frankly the -- as we reviewed the two objections at least as it

1 relate to our expense requests, they were, I believe, identical
2 in terms of both the items that were addressed and the specific
3 objections to those items. It was our view based upon our
4 discussions and the -- with the trust -- Chapter 11 Trustee
5 that the resolution with those items serve to bring us into
6 compliance with the guidelines, which seem to be the source of
7 the trust -- the U.S. Trustee's concerns.

8 THE COURT: Mr. Velez-Rivera, your -- do I understand
9 that there's a \$2,100.00 issue that remains for you?

10 MR. VELEZ-RIVERA: That's right, Your Honor.

11 THE COURT: So what -- with respect to this item,
12 what -- I'm not going to rule from the bench today on any of
13 this. I would ask, Mr. Fox, that you and Mr. Velez-Rivera in
14 the next day or two try and discuss and see if you can resolve
15 this issue.

16 MR. FOX: It will be my pleasure to share the data
17 with the U.S. Trustee, Your Honor.

18 THE COURT: And if you can just notify me as to what
19 the resolution has been and modest -- certainly a very modest
20 item in connection with the size of the expense application.

21 MR. FOX: It would be our pleasure, Your Honor.
22 Thank you.

23 MR. VELEZ-RIVERA: We'll do that, Your Honor.
24 Thanks.

25 THE COURT: All right. So let's deal next with

1 Huron. Well, let me ask first. Ms. Lim, have you resolved
2 issues about your objection with respect to Huron --

3 MS. LIM: Yes, Your Honor.

4 THE COURT: -- expenses? Why don't you report on it
5 and then Mr. Samet can speak to it? Just give me one second.

6 MS. LIM: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. LIM: Your Honor, we have come to a resolution
9 with Huron and have withdrawn our objections. They have
10 voluntarily reduced their expense request by \$25,941.64.

11 THE COURT: And what is the balance that's being
12 sought?

13 MS. LIM: The balance being sought is \$239,560 --
14 \$239,561.69.

15 THE COURT: Okay.

16 MS. LIM: And in large part, Your Honor, that
17 \$20,000.00 came from --

18 THE COURT: \$25,941.64 --

19 MS. LIM: Yes. The \$20,000.00 came from one line
20 item, which was the legal fees expended to contest the Trustee.

21 THE COURT: Okay. And the balance?

22 MS. LIM: And the balance was just a hodgepodge, Your
23 Honor. Just a rough estimate of what we thought our
24 objections, the value was.

25 THE COURT: Okay. Mr. Velez-Rivera?

1 MR. VELEZ-RIVERA: Your Honor, the -- actually, I'm a
2 little bit remiss because I never got -- I'm speaking with
3 respect to Baker and McKenzie's legal fees. I did mean to call
4 Mr. Samet and get his time records and I never quite got around
5 to doing that for which I have to apologize.

6 THE COURT: But the issue is --

7 MR. VELEZ-RIVERA: But the issue is still open. I
8 believe those charges were for more than \$20,000.00.

9 MR. SAMET: Your Honor, in connection with the reply
10 that we served by hand on the U.S. Trustee's Office, the time
11 records were attached and served on the various parties and the
12 Court.

13 THE COURT: Okay. What was the figure for your legal
14 fees?

15 MR. SAMET: Your Honor, Your Honor has agreed to
16 reduce the amounts from the original request of -- I believe it
17 was \$265,503.00. Then subsequently reduced by \$1,000.00
18 approximately and now down to \$239,561.00. That reflects
19 significant discussion with the Trustee and his counsel, Huron,
20 and we believed that the expenses requested were perfectly
21 appropriate in accordance with the guidelines and that we gave
22 appropriate backup. In addition to the backup provided, we
23 believed that as a contractual matter Huron was entitled to it.

24 Nevertheless, we -- Huron has agreed to reduce to
25 \$239,561.00.

1 THE COURT: Why don't you just -- Mr. Velez-Rivera's
2 question was what was the amount of Baker McKenzie's fees that
3 were --

4 MR. SAMET: The amount was \$22,485.29.

5 THE COURT: All right. Mr. Velez-Rivera?

6 MR. VELEZ-RIVERA: Your Honor, I probably shouldn't
7 quibble about that one since it may have been resolved. We can
8 withdraw our objection of legal fees.

9 THE COURT: But the question is -- I -- my question
10 is a broader one.

11 MR. VELEZ-RIVERA: Yes.

12 THE COURT: Do you continue to have an objection to
13 the amount that Huron is seeking reimbursement of expenses as
14 adjusted pursuant to the agreement of Mr. McHale?

15 MR. VELEZ-RIVERA: Having heard what I just heard,
16 no. Your Honor, I can -- that leaves us with what Ms. Lim
17 described as the "hodgepodge of expenses." We don't know
18 what's included and what's excluded in the figure, which is
19 probably about \$5,900.00 that remains. We -- I can identify
20 for the Court some specific items to which we have outstanding
21 objections. What I don't know is whether those objections add
22 up to that \$5,900.00 difference.

23 THE COURT: Okay. The only thing -- the difficulty
24 is I think that -- I'm not faulting the U.S. Trustee or her
25 objections, but the resolution that the Trustee has requested

1 is -- I think this was my term first -- rough justice because
2 they could spend another \$10,000.00 in legal fees going through
3 each item. So I don't know that it -- I'd be surprised -- I
4 was surprised at the reduction being computed to \$25,941.64
5 suggesting a precision that I don't know where it came from.

6 MR. MCHALE: Your Honor, may I --

7 THE COURT: Go ahead, Mr. McHale.

8 MR. MCHALE: I would appreciate that, Your Honor,
9 because your terminology is exactly on target, "rough justice."
10 It really isn't the \$20,000.00 or the \$20,500.00. If we take a
11 look deeper into Baker McKenzie then we get into the argument
12 of how much of Baker McKenzie's work was compensatable.

13 THE COURT: Mr. Samet is worth every penny. You
14 know, it's --

15 MR. MCHALE: As opposed to getting into that, if the
16 number was \$15,000.00, if the number was \$17,000.00, I did do
17 what I'll call "rough justice" on it and say -- and I think
18 Mr. Samet will agree that they did not like my rough justice,
19 but I thought that was the best way to handle it at the time,
20 Your Honor. I did think in light of the hourly rates that were
21 going on here it was best to cut that rough justice and, if you
22 would, get out of Dodge.

23 THE COURT: It brings me back, Mr. Velez-Rivera.
24 Mr. Lukenda, I know you're -- you seem to be anxious to say
25 something, but --

1 MR. LUKENDA: James Lukenda for Huron Consulting.
2 Your Honor, just your specific question about the exactitude of
3 the number. The \$25,000.00 was the give-and-take with the
4 Trustee. In responding to the objections initially there were
5 a couple of items which I agree that the Trustee had a point
6 and took those exact items off the table, so --

7 THE COURT: That's the \$941.64 --

8 MR. LUKENDA: Correct. Exactly. Yes, sir.

9 THE COURT: So, Mr. Velez-Rivera, I'm not sure -- I
10 mean, I started out with a question when we talked about
11 Greenberg Traurig because we went through in great detail every
12 line item. Then I hear, you know, well, they've agreed --
13 we've withdrawn our objection because they're reducing it by
14 \$5,000.00. So what's in there? It makes it hard to see that.
15 On the other hand, the cost of the professionals in doing it
16 would exceed the reduction, so where are you on your objection
17 is what I want to know.

18 MR. VELEZ-RIVERA: Your Honor, I still have some line
19 items that remain. What I don't know is whether the line items
20 are in the vicinity of what I think are about \$6,000.00 left.
21 I think that rather than have everybody incur further expenses
22 just -- it's -- seeing whether our objections are taken care of
23 we can withdraw our remaining objections.

24 THE COURT: Thank you, Mr. Velez-Rivera.

25 MR. VELEZ-RIVERA: You're welcome, Your Honor.

1 THE COURT: Okay. So we have Mesirow.

2 MS. LIM: Your Honor, we --

3 THE COURT: Do you have any objections?

4 MS. LIM: We actually just have one objection. We
5 questioned a flight that was \$1,128.00 and Mesirow agreed to
6 withdraw that, so we were settled.

7 THE COURT: Mr. Velez-Rivera?

8 MR. VELEZ-RIVERA: We had no objections.

9 THE COURT: Okay. Now, I guess we still need to deal
10 with the post-Trustee expenses. I only want to hear
11 objections. No objections, Mr. Velez-Rivera?

12 MR. VELEZ-RIVERA: I think they're all taken care of
13 by now, Your Honor.

14 THE COURT: Okay. And I know with respect to
15 Golenbock that you worked out whatever objections you had with
16 Golenbock. Am I correct?

17 MR. VELEZ-RIVERA: That's correct, Your Honor. It
18 was a clerical expense --

19 THE COURT: And there were some other
20 professionals --

21 MR. VELEZ-RIVERA: -- which the firm agreed to
22 reduce.

23 THE COURT: -- that Mr. McHale had retained and
24 you're satisfied with respect to those as well?

25 MR. VELEZ-RIVERA: That's correct, Your Honor.

1 THE COURT: All right. Does anyone who has not
2 spoken yet wish to be heard on the issue of expense
3 reimbursement?

4 MR. MOORMAN: Your Honor, William Moorman again. I
5 don't know if the Court wants to address our limited objection
6 or not at this time.

7 THE COURT: I'm mindful of your objection,
8 Mr. Moorman. I read it yesterday. I'm not ruling from the
9 bench now. I'll certainly keep in mind your objection. You
10 want to say something further, go ahead.

11 MR. MOORMAN: I'll try to be brief, Your Honor.
12 Again, our position is that whether it is fees or expenses
13 being paid we anticipate that whatever amount the Court orders
14 is likely to be something that we would consider to be a
15 substantial distribution. The order that we have that granted
16 allowance of the substantial contribution claim states that the
17 remaining \$75,000.00 is to be paid at such time as there is a
18 substantial distribution to other allowed Section 503
19 administrative expense claims.

20 Whether it's fees or expenses, once allowed we
21 believe we are entitled to be paid and in a way this is simply
22 reserving our rights.

23 THE COURT: Let me ask, Mr. Moorman. Of the 16
24 million dollar approximately in fee applications that were
25 filed if the -- with respect to the pre-Trustee fees if the

1 Court approved the current application to award 1.7 million,
2 you would consider that to be a substantial payment of
3 administrative expenses toward the 16 million? You've
4 already -- your client collected how much of its total?

5 MR. MOORMAN: The total allowed is \$125,000.00;
6 \$50,000.00 was paid upon Your Honor's approval of the
7 stipulation.

8 THE COURT: Right, so you would have gotten a
9 substantially higher per -- even if the application were
10 approved, the applications that are before the Court today were
11 approved in full, your client would have received a much more
12 substantial percentage of its administrative claim than anybody
13 else in the case; correct?

14 MR. MOORMAN: Well, I don't think that's correct,
15 Your Honor. I think that there had been other administrative
16 expense claimants who have been paid in full. For example,
17 brokers for real estate brokers for planes, brokers for a boat,
18 but I don't think putting it into the same category as
19 professionals is the right way to look at it. I think that we
20 should be put in the category of other administrative expense
21 claimants who have been paid. I assume that there has been
22 ongoing payment of normal administrative expense payments and
23 when we have the stipulation that Your Honor approved, what we
24 contemplated was once there was a payment of any substantive
25 professionals, that was the time that we would have to be paid.

1 But I think that even if the pre-Chapter 11 Trustee
2 professionals were not paid at all, once the payment is made of
3 expenses, the pre- or post-Chapter 11 Trustee professionals or
4 once a payment of fees is paid to the post-Chapter 11 Trustee
5 professionals, that is where we are supposed to be paid.

6 I don't think there's a case where we should have to
7 wait to see if this case is administratively insolvent at the
8 end of the day. If that was the case then I think the order
9 would have been written differently. It would have said end of
10 the case or it would have required final orders. It's not
11 written that way. It simply says "allowance." Under Section
12 331 or 503 no fees or expenses can be paid unless they have
13 been allowed, so I -- I think it's really --

14 THE COURT: Well, that's not exactly correct because
15 with the -- if the interim fees are awarded under the current
16 stipulation, there's no determination being made about
17 reasonableness. It's all subject to recapture, but I have your
18 point, Mr. Moorman.

19 MR. MOORMAN: I understand that. I just think that
20 they are still being allowed before they can be paid.

21 THE COURT: All right.

22 MR. MOORMAN: That -- you know, at this point of the
23 case, quibbling over \$50,000.00 raises other issues regarding
24 should any amounts be paid frankly because of administrative
25 insolvency possibility. So I was a little bit surprised that

1 there was the response filed to our objection, but Your Honor
2 understands the point. You know, and I guess I've made the
3 point that I would like to make.

4 THE COURT: Thank you, Mr. Moorman. Does anybody
5 else wish to be heard, anyone else on the phone?

6 MS. HUNTER: Yes, I'd like to be heard.

7 THE COURT: All right.

8 MS. HUNTER: Hi. This is -- can you hear me?

9 THE COURT: Yes, please identify yourself.

10 MS. HUNTER: This is Anita Hunter in California. I'm
11 kind of -- I'm surprised you're going through this much detail
12 in court over these because all of the expenses were reviewed
13 by a lot of victims also. They submitted these to -- with
14 two -- the U.S. Trustee and to the Trustee to review also --
15 free of charge reviewing all of this. Since the professionals
16 at Huron, Dreier, GT, Mesirov, they're familiar with all these
17 Bankruptcy Codes. For them to say that they didn't know local
18 Codes is ridiculous. I mean, we can go through them and just
19 hearing how much is allowed we can make the determination of
20 whether these expense reports are valid or not.

21 So for them to make the claims of excessive meals,
22 prescriptions, limos, overtime charges --

23 THE COURT: I think the prescriptions have been
24 dropped out.

25 MS. HUNTER: Okay. Well, just the idea of these all

1 is really attempted robbery from the estate because they know
2 what's allowed and they just submitted them anyway. I think if
3 they're training through their companies is to go ahead and
4 submit them without review is just like go ahead and see if it
5 gets, you know, paid. Let's just see if the Court will notice
6 it. So I'd like to, you know, reiterate; deny all the payments
7 to this professionals who basically have tried to cheat the
8 estate from any -- the only recovery that we possibly have in
9 sight.

10 Some have said that there would be enough to cover
11 future litigation in the estate if these fees were allowed, but
12 I see two problems with that: One, we haven't seen a budget
13 for the projected fees of any other litigation; but also if 11
14 million dollars is supposed to be enough to cover any future
15 litigation of a projected, very complicated case litigation
16 over an unknown period of time, then how is it that the current
17 applicants could get nothing accomplished with 20 million
18 dollars in past fees over a defined nine to 12-month period of
19 time?

20 So I just think that it's not acceptable to try to
21 get away with these things merely to have the victims or the
22 very busy U.S. Trustee on the taxpayer dimes going through
23 thousands of entries. Once the trust is broken how can we ever
24 trust that these bills are correct or, even worse, trust that
25 the work that they did was for the best interests of the

1 estate? They have proven untrustworthy. How do you, Your
2 Honor, penalize the robbers for trying to pull the wool over
3 our eyes and your eyes? It is not -- there needs to be a
4 strong message made here or the cycle goes on and on. We are
5 not done with this case yet and if you approve anything, then
6 they say they got away with this.

7 We, as the victims, did not know what is allowed in
8 bankruptcy rules either, but some of the victims reviewed these
9 very easily and submitted them to the Trustee and the U.S.
10 Trustee and said these are not allowed. You yourself said they
11 did a very good job of that. I know for a fact that those are
12 done by victims submitting those to the Trustee and the U.S.
13 Trustee, so I want you to throw back all of these -- throw back
14 all these expenses to everyone, put it off to the end, and it's
15 not -- because it's not the job of the U.S. Trustee or any
16 other victim to dissect these invoices because the trust has
17 withered away. If no one trusts these invoices they're true
18 and accurate, the only -- which are the only means of -- means
19 countless hours will have to be spent auditing, now they're
20 spending your tax dollars, too.

21 I suggest that every professional who has been found
22 to be greatly stealing from this estate be banned from future
23 work on these cases and -- [child crying]-- that's my two-year-
24 old -- and while they're all going out to dinners and lunches
25 and the Hyatt and everything, I'm with my two-year-old

1 listening on the phone here because of their -- you know, of
2 all of their expenses like they're going through. I have to
3 get off. Thank you.

4 THE COURT: Thank you very much, Ms. Hunter. Does
5 anyone else on the phone or in the courtroom wish to be
6 heard on the issue of expense reimbursement?

7 Okay. Ms. Lim, I'm going to take the matter under
8 submission, but I would like to receive a declaration or
9 affidavit from Mr. McHale with respect to the estimate of the
10 current value of the estate. I understand -- we know what the
11 cash is, around 11 million. You've indicated -- you identified
12 in your opening remarks some additional assets and I understand
13 not all of this is certain but I raised a question right at the
14 outset of your argument that -- do I have any evidentiary basis
15 on which to conclude that there's sufficient funds in the
16 estate after the payment of the amounts that are being sought
17 to permit the estate to go forward, to permit Mr. McHale to go
18 forward with the anticipated litigation and other things that
19 are likely to be required.

20 I need to have a -- I at least believe I need to have
21 more than -- I'm not questioning your representations about it.
22 We're not going to do it with live testimony now, so Ms. Lim or
23 Mr. McHale, when -- realistically when can we have that
24 affidavit filed -- declaration filed?

25 MS. LIM: Your Honor, we have a question. Is there a

1 possibility of having Mr. McHale's declaration or affidavit
2 filed under seal? The litigation targets may be a little
3 sensitive.

4 THE COURT: Well, I think you can exclude frankly the
5 litigation. I mean, look, the insurance has been identified
6 openly in court all along. I mean, what's the crime policy,
7 what, 30 or 32 million dollars? I'm mindful -- I'm also
8 mindful of Section 107 of the Bankruptcy Code dealing with
9 confidentiality. I'm not going to just have you -- I don't
10 want this stuff spread all over the record either, but you --
11 I'm not simply going to enter an order permitting -- here's
12 what I would suggest. Put in a public affidavit what you feel
13 comfortable being able to put in the public affidavit. If
14 there are additional things that you feel you want to include,
15 just file a short application. Obviously, you can't identify
16 the particulars of it, but I do need -- under 107(b) I need an
17 application before I will permit the sealing of an affidavit.
18 I understand the sensitivity of the information.

19 Mr. McHale, is that something you're able to live
20 with?

21 MR. MCHALE: Yes, I think that is, Your Honor. Thank
22 you very much.

23 THE COURT: When do you think you can have -- I -- I
24 guess I should ask Ms. Lim. When -- what's a reasonable time
25 to have you submit an affidavit?

1 MR. MCHALE: Friday.

2 THE COURT: Friday would be fine. You know, post it
3 on ECF. I will allow until next Wednesday at 5:00. If anybody
4 has an absolutely burning desire that they feel they need to
5 file something in addressing what Mr. McHale puts in his
6 affidavit -- I don't think I'm going to need it, but -- and
7 then so the matter -- once that affidavit or declaration has
8 been filed, the matter will stand submitted.

9 MS. LIM: Thank you, Your Honor.

10 THE COURT: All right. All right. Okay. We're
11 adjourned and resume court with the Lexington matter at 2:00.

12 [Proceedings concluded at 1:53 p.m.]

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

Ruth Ann Hager

Dated: December 23, 2008