

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In re)	Case No. 12-37921-sgj7
)	Dallas, Texas
)	
JEFFREY BARON,)	
Debtor.)	
<hr/>		
In re)	Case No. 09-34784-sgj11
)	
ONDOVA LIMITED COMPANY,)	
)	February 13, 2013
Debtor.)	1:37 PM
)	
<hr/>		

TRANSCRIPT OF TRIAL HEARING (RE: related documents 52);
STATUS CONFERENCE (RE: related documents 1047)
BEFORE THE HONORABLE STACEY G. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE

Transcription Services:	eScribers
	700 West 192nd Street
	Suite #607
	New York, NY 10040
	(973) 406-2250

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

For the Debtor:

MARK STROMBERG, ESQ.
ALAN L. BUSCH, ESQ.
STROMBERG STOCK
5420 LBJ Freeway
Suite 300
Dallas, TX 75240

Petitioning Creditors:

GERRIT M. PRONSKE, ESQ.
MELANIE PEARCE GOOLSBY, ESQ.
PRONSKE & PATEL, P.C.
2200 Ross Avenue
Suite 5350
Dallas, TX 75201

Daniel J. Sherman,
Chapter 11 Trustee of
Ondova Ltd. Co.:

RAYMOND J. URBANIK, ESQ.
MUNSCH, HARDT, KOPF & HARR, P.C.
500 North Akard Street
Suite 3800
Dallas, TX 75201

Receiver Peter S. Vogel:

JEFFREY R. FINE, ESQ.
DAVID SCHENCK, ESQ.
DYKEMA GOSSETT PLLC
1717 Main Street
Suite 4000
Dallas, TX 75201

Carrington Coleman
Sloman & Blumenthal,
LLP:

J. MICHAEL SUTHERLAND, ESQ.
JENNIFER KNAPP, ESQ.
CARRINGTON COLEMAN SLOMAN &
BLUMENTHAL, LLP
901 Main Street
Suite 5500
Dallas, Texas 75202

Petitioning Creditor:

DEAN FERGUSON, ESQ.
LAW OFFICES OF DEAN FERGUSON
4715 Breezy Point Drive
Kingwood, TX 77345

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Jeffrey Baron (Ondova): STEPHEN R. COCHELL, ESQ.
THE COCHELL LAW FIRM, P.C.
7026 Old Katy Road
Houston, TX 77345
(TELEPHONICALLY)

Gardere Wynne Sewell: RICHARD M. ROBERSON, ESQ.
GARDERE WYNNE SEWELL LLP
1601 Elm Street
Suite 3000
Dallas, TX 75201

United States ERIN SCHMIDT, ESQ.
Department of Justice OFFICE OF THE UNITED STATES TRUSTEE
1100 Commerce Street
Room 976
Dallas, TX 75242

1 THE COURT: Be seated. All right. We're ready to
2 begin hearings we have in Jeff Baron's case, case number 12-
3 37921 and then we also have a status conference in Ondova,
4 case number 09-34784. Let's get appearances from lawyers in
5 the courtroom first.

6 MR. STROMBERG: Good afternoon, Your Honor, Mark
7 Stromberg on behalf of the alleged debtor. I'm here with Alan
8 Busch.

9 THE COURT: Okay. Welcome.

10 MR. PRONSKE: Good afternoon, Your Honor. Gerrit
11 Pronske and Melanie Goolsby for the petitioning creditor.

12 THE COURT: Okay. Good afternoon.

13 MR. URBANIK: Good afternoon, Your Honor. Ray
14 Urbanik from Munsch Hardt on behalf of Daniel J. Sherman,
15 Chapter 11 trustee, Ondova Ltd. Co.

16 MR. FINE: Good afternoon, Your Honor. Jeffrey Fine
17 of Dykema Gossett on behalf of the receiver, Peter Vogel. Mr.
18 Vogel is also in the courtroom, as is David Schenck, my
19 partner.

20 THE COURT: Okay.

21 MR. SUTHERLAND: Your Honor, in the Ondova case only,
22 not making an appearance in Baron just yet, Mike Sutherland
23 for Carrington Coleman, also my colleague Jennifer Knapp --
24 it's pronounced Knapp but it's K-n-a-p-p.

25 THE COURT: Okay.

1 MR. FERGUSON: Good afternoon, Your Honor. Dean
2 Ferguson, one of the petitioning creditors.

3 THE COURT: Okay. All right. On the phone, I think
4 we have Mr. Cochell; is that correct?

5 MR. COCHELL: Yes, Your Honor. Stephen Cochell
6 appearing on behalf of Jeffrey Baron in the Ondova matter
7 only.

8 THE COURT: All right. Let's start by making sure
9 we're all on the same page about what is going to occur today.
10 We have set oral arguments on the motion for summary judgment
11 filed by the petitioning creditors and the response filed by
12 Mr. Baron to that motion for summary judgment.

13 As I understood all of this, the sole issue that was
14 going to be argued today was the question of as a matter of
15 law, are the petitioning creditors not subject of a bona fide
16 dispute or are they? So, looking at Section 303 of the
17 Bankruptcy Code and the requirement there, that in order for
18 petitioning creditors to have standing to commence an
19 involuntary bankruptcy case, they must not have claims that
20 are either contingent or the subject of a bona fide dispute.

21 Looking at that issue, we were going to decide if as
22 a matter of law it's one way or another. We have affidavits
23 from the petitioning creditors and from the alleged debtor but
24 I think we should all be on the same page that we're only here
25 to argue and sort of summarize the summary judgment evidence

1 on that one standing issue and then we may or may not live
2 another day, depending on how the Court rules on that to go
3 forward on other issues under 303.

4 All right. So, I will start by asking petitioning
5 creditor's counsel and alleged debtor's counsel are we all on
6 the same page like I think we are on that? Mr. Pronske?

7 MR. PRONSKE: Your Honor, I would have to say yes to
8 that. When we were here at the last hearing, I don't think
9 that was necessarily our intention. I think we thought we
10 could prove the whole case with summary judgment but then the
11 order was submitted to you and Mr. Fine's office drafted the
12 order and it said the sole dispute to be determined is what
13 the Court just said it was.

14 And so although we had hoped for a more broad summary
15 judgment proceeding, Mr. Stromberg raised that issue and I
16 think he's right. And so, I think we have to concede that
17 we're here just on that one dispute.

18 Now what I think that means is -- and we've entered
19 into a stipulation with Mr. Stromberg, essentially to say that
20 what we are testing today is whether the papers create not
21 subject to a bona fide dispute as a matter of law, and then if
22 the petitioning creditors do not prevail on that, on the
23 summary judgment, then we would have to have a trial
24 essentially on both of the issues; bona fide dispute and
25 generally not paying debts as they come due.

1 THE COURT: All right. And I don't know who is going
2 to be taking the lead, Mr. Stromberg or Mr. Bush. You concur?

3 MR. STROMBERG: It will be me, Your Honor.

4 THE COURT: You concur that that's what we're here on
5 today?

6 MR. STROMBERG: That's correct.

7 THE COURT: All right. Let me ask you, we had a
8 motion to continue today's hearing filed and then the
9 stipulations Mr. Pronske mentioned were filed. Do I
10 understand correctly that the stipulations resolved your
11 motion to continue?

12 MR. STROMBERG: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. STROMBERG: To the extent that we're not trying
15 the question of insolvency today, if the Court enters an order
16 for relief, obviously then -- and grants the summary judgment,
17 then at the very least the issue of insolvency is an issue
18 that we believe is one that we were told specifically by the
19 Court's order would be tried at a later time, if the Court
20 found in favor of the petitioning creditors on the issue of
21 bona fide dispute.

22 So, the motion was filed in an abundance of caution
23 to preserve our right to put together a full evidentiary
24 record on the issue of insolvency. I believe that the
25 stipulation does not foreclose the petitioning creditors of

1 arguing that issue today because they indicated that they
2 wished to do so but I believe the Court's order does and we
3 objected on that basis.

4 So, if the issue that the Court is trying today is
5 limited to the question of what the papers from the district
6 court and/or the Court of Appeals and/or this court's rulings
7 in the Ondova matter say about whether or not these claims are
8 subject to bona fide dispute or not, limited to that, then
9 that obviates the need for a continuance and we can proceed
10 and move forward.

11 THE COURT: All right. Well, I am just going to
12 state here for the record, the Court's order setting this
13 involuntary petition for trial entered January 17, 2003 (sic),
14 states in the second decretal paragraph, "The sole legal issue
15 to be determined by the Court at the trial is whether the
16 claims of the petitioning creditors are subject to a bona fide
17 dispute with all evidentiary material to be presented solely
18 by affidavit."

19 So, if I was less than clear at our status conference
20 we had January 16th, I hope this order made it clear. So that
21 is what we'll do today.

22 MR. STROMBERG: Very well.

23 THE COURT: I have a housekeeping matter. Each of
24 you filed motions to strike portions of each other's summary
25 judgment evidence and I've looked at those in chambers. I do

1 not need oral argument. All of those objections are overruled
2 and the Court is considering the entire summary judgment
3 record presented by each side.

4 With that, Mr. Pronske, I will let you make the first
5 argument.

6 MR. PRONSKE: Thank you, Your Honor. Again, Gerrit
7 Pronske for the petitioning creditors. And Your Honor, I
8 think there were three potential rulings that we would have
9 sought from the Court and the first ruling would have been a
10 summary judgment based on both of the standards but I think
11 we're clear today that we're only on the one standard. So,
12 that does away with that potential ruling that we would
13 request.

14 The second ruling that we would request would be that
15 the Court find that as a matter of law, that Judge Ferguson's
16 orders and this court's order in the Ondova case are
17 sufficient to rule as a matter of law that there is no bona
18 fide dispute as to these petitioning creditor's claims. What
19 that would leave us then with is a -- basically a trial on --
20 only on the issue of whether the debtor is generally paying
21 his debts as they come due.

22 The third level of request if the Court is not
23 comfortable with Judge Ferguson's order for any reason -- for
24 one reason or another, the third level of request is that one
25 of the petitioning creditors which is my law firm, has an

1 additional order from this court in the Ondova case that we
2 would ask the Court independently from Judge Ferguson's order
3 to give binding effect under the law of collateral estoppel,
4 so that the Pronske & Patel claim would not be subject to bona
5 fide dispute in a partial summary judgment. And then what
6 that would leave us with at trial would be the necessity only
7 to find that the remaining seven petitioning creditors, that
8 two would remain standing with one dollar of claim each, I
9 think would be the -- where we would end up with that. But
10 that would, I think -- I think that reflects reality and that
11 would be a helpful ruling on a partial summary judgment. So
12 those would be basically the two levels that we would seek.

13 With respect to the first level, Your Honor, the
14 issue before the Court is whether Judge Ferguson's order which
15 was entered on May 18, 2011, is sufficient to -- is a
16 sufficient ruling to create the point that there is not a
17 substantial bona fide dispute as to the petitioning creditors'
18 claims.

19 The -- and we've likened this to this court's ruling
20 in the Henry S. Miller case, basically which holds that as --
21 under the facts of the case, if you've had a litigation and
22 there's no stay pending appeal, that -- and although it's not
23 a blanket ruling but that under the facts of this case, that
24 would qualify to not create a -- that the appeal would not
25 create a bona fide dispute.

1 And Mr. Stromberg has raised the issue that I think
2 is a bit of a red herring and it needs to sort of be, I think,
3 analytically sliced up a bit to make sense out of the
4 argument. He raises the issue that Judge Ferguson stopped the
5 enforcement or said that those fees should not be paid and
6 essentially what happened, Your Honor, is on May 18th, the
7 Judge ordered the fees paid. He later decided that -- as an
8 administrative matter, not on the motion for stay pending
9 appeal but as an administrative matter, that those fees would
10 not be paid. He later changed his mind about a year later and
11 he said it's okay to go ahead and pay them now. Then the
12 receiver filed a motion for clarification.

13 THE COURT: Now is that all on the record?

14 MR. PRONSKE: That -- what's in the record, that's
15 not in the record. What is in the record is his final order
16 which came subsequent to saying don't pay them, then pay them,
17 then there's a third order that again says don't pay them.
18 And that's the only order that's in the record because Mr.
19 Stromberg raised that in his response.

20 But without going past the record, Your Honor, what I
21 can say is that's not a stay pending appeal. It was not
22 raised as a motion for stay pending appeal and the reason I
23 think that's important is that from my reading of the law and
24 the cases relating to stay pending appeal, and specifically
25 with respect to the Fifth Circuit law on stay pending appeal,

1 is that of course there are four elements to a stay pending
2 appeal. The Fifth Circuit has said that the most important
3 element is the first one, which is, is there a likelihood of
4 success on the merits?

5 So if you want a stay pending appeal, there's a
6 judgment that's been entered against you and you want a stay
7 pending appeal, you have to go to the Court and file a motion
8 for stay pending appeal and you have to prove up those four
9 things. Most notably or most importantly, according to the
10 Fifth Circuit, you have to prove that there's a likelihood of
11 success on the merits.

12 The way that's defined in the Fifth Circuit is that
13 likelihood of success on the merits means there is a
14 substantial issue on appeal. Interestingly, the way you
15 defined bona fide dispute in the HSM case is almost the same
16 way. There's a substantial issue on an objective standard.

17 And so, if you go to the Court and you file a motion
18 for stay pending appeal and you win, implicit in that win is
19 that there's a bona fide dispute because you've received a
20 ruling from a court liken to an injunction under Rule 60 that
21 says that there is a bona fide dispute or there is a
22 likelihood of success on the merits.

23 We don't have that in this case. We basically have
24 Judge Ferguson as an administrative issue saying I don't want
25 these people paid right now because it had to do with the

1 amount of money that was in the case and what the other
2 administrative attorneys were being -- were charging and that
3 sort of thing.

4 THE COURT: So, was there a motion for stay pending
5 appeal --

6 MR. PRONSKE: No.

7 THE COURT: -- of the --

8 MR. PRONSKE: This was on his own -- on -- completely
9 done on his own.

10 THE COURT: Okay, because I've been told there were
11 dozens and dozens of appeals of district court orders and
12 presumably this May 2011 order was one of the many orders
13 appealed.

14 MR. PRONSKE: Yes.

15 THE COURT: But no motion for a stay pending appeal
16 ever --

17 MR. PRONSKE: No.

18 THE COURT: -- brought.

19 MR. PRONSKE: That's correct.

20 THE COURT: Okay.

21 MR. PRONSKE: And certainly there's nothing in the
22 record here but --

23 THE COURT: Mr. Urbanik is standing up.

24 MR. PRONSKE: Mr. Urbanik is telling me and I knew
25 this as correct also, there were seventeen motions for stay

1 pending appeal filed with the Fifth Circuit that were all
2 denied but I don't believe this one that was either filed or
3 filed and denied. I think it just was --

4 THE COURT: That's an important point. There's no
5 stay pending appeal per se.

6 MR. PRONSKE: Correct.

7 THE COURT: There's the order that Mr. Stromberg
8 referenced but there's no per se stay pending appeal.

9 MR. PRONSKE: That is correct.

10 THE COURT: Okay.

11 MR. PRONSKE: And Mr. Stromberg raises a case that
12 has an odd name to it, that -- Tesfamichael, in a footnote and
13 I didn't recall the name but I did read the case and -- for
14 the proposition that, you know, sort of a -- that by any name,
15 it's a stay or that the terms are all used sort of
16 interchangeably. And that's actually not what that case says.
17 That case very specifically says really the opposite of what
18 that footnote says. That case says that in that particular
19 case, it said that in -- the word enjoin and the word stay are
20 two different words and that some circuits view them the same
21 but in the Fifth Circuit they have distinct legal meanings.

22 And it was in reading that Tesfamichael case that it
23 dawned on me when the Fifth Circuit talks in that particular
24 case how important the standard of likelihood of success of
25 merits is to a stay pending appeal. It dawned on me that

1 that's really the -- to me, seems like the distinction. We
2 don't have a request for a stay pending appeal. We don't have
3 the court implicitly or explicitly ruling that there was a
4 likelihood of success on the merits. And so the existence of
5 that appeal without a stay pending appeal, in particular and
6 technically, really is of no effect.

7 We had a case in Judge Ferguson's court that was on
8 notice to everybody. It was tried. People testified. Mr.
9 Baron took the Fifth Amendment but that's, you know, sort of a
10 personal decision and there was certainly the fair -- full and
11 fair opportunity to litigate and the judge adjudicated the
12 claims of twenty-six law firms in very specific dollar
13 amounts.

14 So, based on that, Your Honor, we would ask that
15 those rulings mean something and the Fifth Circuit basically
16 said in its clarification of the reversal of the receivership
17 that was issued on December 31, 2012, that all of the orders
18 entered by Judge Ferguson prior to December 18th, the date of
19 their opinion, remain in place. And so there's nothing that
20 would invalidate that ruling. We don't know what the Fifth
21 Circuit is going to do with the receivership overall. They
22 have asked for briefs from Mr. Baron on the petition for
23 rehearing, which I am told is a sign that there's interest in
24 the Fifth Circuit and possibly hearing this en banc but the
25 short answer is nobody in this room knows what the Fifth

1 Circuit is going to do but what we do know is that they said
2 that all of the orders that were entered prior to December
3 18th are still in place.

4 And I think you have an order here that's in place
5 where the judge made a decision to, you know, pay lawyers,
6 don't pay lawyers, pay lawyers. He kept kind of going back
7 and forth but it's not a stay pending appeal and doesn't have
8 the significance of a stay pending appeal. The --

9 THE COURT: All right. Just to clarify, the order
10 again that Mr. Stromberg has argued essentially created
11 something like a stay, it was in response to a receiver's
12 motion; do I pay these fees that were previously allowed or
13 not and there was one ruling, don't pay them, then yes, pay
14 them. Then ultimately, the last standing ruling, June 18,
15 2012, is don't pay them.

16 MR. PRONSKE: Right. Prior to that, there was an
17 order where Judge Ferguson had said go ahead and pay the
18 lawyers and then the receiver filed a motion for clarification
19 wanting some specifics as to how that should be done and then
20 for some reason, Judge Ferguson came back and said well, let's
21 go ahead and not pay the lawyers until the appeal is resolved.

22 So, that's --

23 THE COURT: So your position is there is still an
24 unstayed order, final order, allowing claims. It may be
25 subject to an appeal but it's unstayed. I'm supposed to apply

1 an objective standard under Sims, not subject to the bona fide
2 dispute. I'm getting ahead to an issue I said wasn't going to
3 be heard today but I guess I'm dangling it out there. Is this
4 going to bear on is he generally not paying his debts as they
5 become due if I get past the standing issue.

6 MR. PRONSKE: I think, Your Honor, at that point --

7 THE COURT: If he said don't pay them.

8 MR. PRONSKE: You know, there is going to be -- I
9 mean, we have twenty-six law firms that are unpaid, each of
10 which filed affidavits with the district court and provided
11 testimony as to their claims being owing. There are a
12 substantial number of law firms and I believe that
13 constitutes, if not all or most of Mr. Baron's debts but
14 you're correct, Your Honor, if he disputes every one of those
15 claims, we're going to have to deal with that.

16 I mean it's going to have to get dealt with in some
17 form or fashion but -- yes, I mean I think that's all I can
18 say to that is -- I don't think he gets a pass because he says
19 I don't owe any of those twenty-six people that all worked
20 very hard and did good stuff and spent long hours working for
21 me; I don't owe them. Therefore, it goes away.

22 THE COURT: All right. That's not exactly what I was
23 getting at. I was getting at -- well again, I'm dangling an
24 issue out there that I said we weren't going to argue about
25 today but is he generally paying his debt -- not paying his

1 debts as they become due. I'm just thinking out loud if
2 there's an order saying I've allowed these fees but receiver
3 don't pay them -- receiver don't pay them yet. Let's see what
4 happen on the appeal.

5 Anyway, I am -- I guess we'll see about that issue.
6 But, all right, so going back I did also want to hit on
7 another thing you mentioned. You said in December of 2012
8 when the Fifth Circuit ruled it said all prior orders remain
9 in place. And you would say including this May 2011 order.

10 Do you not think there is any issue there about
11 whether these fees were subject to being revisited? I mean
12 there's language in there about the district court may have to
13 re-examine fees.

14 MR. PRONSKE: No, I absolutely don't think so on
15 that. I think that order -- and actually I read that opinion
16 again last night in full and I think it very clearly says that
17 the administrative fees that were generated by the receiver
18 during the pendency of the receivership would be paid
19 generally out of Mr. Baron's assets in the receivership and
20 because the receivership was a failed receivership because of
21 the reversal, that those fees have to be re-evaluated in light
22 of the improper receivership.

23 And I think the Circuit's very clear on that, that
24 that does not pertain to the former lawyers. All those claims
25 existed before the receivership.

1 THE COURT: Okay.

2 MR. PRONSKE: The next thing, Your Honor, that I want
3 to level -- that I want to go down to is with respect to the
4 Pronske & Patel claim because it has a couple of twists to it
5 that are a little bit different. And the first twist that is
6 a little bit different is that we had a second trial on those
7 fees or a court proceeding on those fees and that was in the
8 context of a substantial contribution motion brought in the
9 Ondova case.

10 And, Your Honor, the argument is going to be that
11 that order has a collateral estoppel effect which in the Fifth
12 Circuit doesn't require a final judgment. In fact, the Fifth
13 Circuit has been clear in the Chemetron case that we filed,
14 that it doesn't even necessarily require a judgment to be
15 issued. It essentially requires kind of a good common sense
16 view of whether the issue is -- there was a full and fair
17 opportunity to litigate and was there such litigation and a
18 resolution. And I think that that order qualifies under the
19 Fifth Circuit law, very clearly.

20 And in that particular case, although the fees were
21 sought against Ondova, they were based on fees that were owed
22 by Mr. Baron. Mr. Baron's -- all of the legal billings were
23 put into evidence showing that Mr. Baron owed those fees and
24 the argument to the Court was that Mr. Baron provided a
25 substantial contribution to the Ondova case which is what

1 503(b)(3) says -- (b)(3)(D) says, "A creditor of the bank
2 shows substantial contribution gets expenses paid and then
3 503(b)(4) says, "the lawyer gets their legal fees paid."

4 So they're the legal fees of Mr. Baron that were
5 adjudicated by this court to have been a substantial
6 contribution in the Ondova case.

7 Further, Your Honor, not only were the parties
8 aligned but Mr. Baron actually filed an objection in the
9 Ondova case as the ultimate owner of Ondova saying please
10 don't pay those fees and we object and here's the problems
11 with them. And then we had a trial and the fact that Mr.
12 Baron didn't get put on evidence doesn't mean he didn't have a
13 full and fair trial and it doesn't mean he didn't have a full
14 and fair opportunity to litigate. It was raised. He
15 litigated and the result of that hearing was obviously due in
16 part to the fact that he was not able to put on evidence but
17 that was because he violated a court order and didn't show up
18 for a court ordered deposition. And that doesn't mean that
19 there was not a full and fair opportunity to litigate.

20 So, I believe that order provides a different, unique
21 among the petitioning creditors, ruling that you know, we've
22 tried this twice now and we've gotten rulings from the Court.

23 And the third thing, Your Honor, interestingly that
24 goes I think to the bona fide dispute issue on the Pronske &
25 Patel claim is, you know, I am looking at the affidavit that

1 Mr. Baron filed to create a substantial dispute as to the
2 Pronske & Patel claim and it's paragraphs 33 through 40 of his
3 affidavit and there isn't a single statement in those
4 paragraphs that says that there's not money owing. He
5 disputes -- he says the claim for fees, which was the larger
6 claim. I think it was 241,000 dollar claim in the district
7 court was raised and that's what's on the bill but he does
8 admit that he -- it's kind of interesting because he -- until
9 this affidavit, took the position that he paid 75,000 dollars
10 as a flat fee which was something he started saying after he
11 hired Stan Broome (ph.), the first time we heard those words.
12 And for a while he said it's a flat fee and didn't know owe
13 anything over that and now he's taking the position that it
14 was a retainer which is what it was.

15 And he's saying that our firm did a lot of work,
16 worked long hours, was helpful, helped him, cared about him
17 and then he raises some issues where he says he didn't get
18 regular bills but he doesn't say that he doesn't owe the
19 money.

20 And I think that's significant because your case in
21 HSM says that you have to view this on an objective standard
22 and there's even a quote in the Sims case that you relied on
23 where it says, you know, the debtor doesn't just get to say I
24 don't have the money and sit down. There's got to be some
25 actual dispute that's raised on an objective basis and there

1 is nothing in paragraph 33 to 40 and I would challenge Mr.
2 Stromberg to find a single sentence in there that disputes
3 that there's money owed. I think the admission is there's
4 money owed. They just don't think it should be as much as it
5 is. But that -- they don't get to do that. They don't get to
6 just come in and say we don't -- he doesn't even say we don't
7 owe anything. He does on some of the other petitioning
8 creditors, I don't owe anything but he doesn't say that on the
9 Pronske & Patel bill.

10 And so, Your Honor, I don't think that their
11 affidavit even creates a substantial dispute or a bona fide
12 dispute. So, for those reasons, Your Honor, I will sit down
13 and let Mr. Stromberg talk and I want to congratulate him, too
14 or tell him in front of the Court, I think he did an
15 outstanding job, very scholarly papers and I was very --
16 enjoyed reading them from that stand point but I -- what we're
17 requesting of the Court is that we have a ruling that the
18 seven petitioning creditors who are on Judge Ferguson's order
19 are not subject to a bona fide dispute and if the Court does
20 not rule that way, we're asking that at least the Pronske &
21 Patel claim have that status, so that -- to narrow the issue
22 for trial substantially.

23 THE COURT: Okay. And before you sit down, again I
24 just want to clarify once again my understanding of the
25 record. The district court's order in May 2011 came out of a

1 receiver's pleading, a receiver's request for assessment and
2 disbursement of former attorney's claims. So a receiver teed
3 it up. I've been talking to these people. I've been trying
4 to mediate, resolve their claims, figure out who is owed what
5 and so he files a pleading to ask the district court to rule
6 on what the various claimants should be paid.

7 As I understand the record, it wasn't an ex parte
8 sort of thing at all. There was a notice to the parties-in-
9 interest including Mr. Baron. It looks like there were
10 twenty-two affidavits submitted prior to the hearing. It
11 looks like Mr. Baron, through counsel, filed a response and
12 affidavit refuting much of what the claimants swore to and
13 then there was a hearing. Several of the claimants, including
14 yourself, testified. You said there was live testimony.

15 MR. PRONSKE: With cross-examination from Mr.
16 Schepps, right.

17 THE COURT: Cross-examination from Mr. Baron's then
18 counsel and then Mr. Baron took the stand but invoked the
19 Fifth Amendment right not to testify and then actually he had
20 withdrawn his declaration, filed ahead of time, I guess. And
21 so, there was no separate evidence put on by Baron at that
22 hearing, just the cross-examination of counsel. And so then
23 the district court order was entered. It did preserve the
24 right of Mr. Baron to assert claims back against claimants but
25 in that event, it preserved the right to the claimants to ask

1 for more than 400 dollars an hour, because of that cap that
2 had been imposed and I guess there was also the right to maybe
3 ask for punitives by the claimants, as well.

4 MR. PRONSKE: That's correct.

5 THE COURT: All right. And it's your position that
6 does not in any way affect the finality of the order.

7 MR. PRONSKE: That's correct.

8 THE COURT: Okay.

9 MR. PRONSKE: In that it received its full and fair
10 opportunity to litigate and I think your recitation of the
11 facts is exactly right. I would add that when Mr. Baron was
12 cross-examining it was on the substantive issues with respect
13 to the particular claims.

14 THE COURT: Okay. All right.

15 Mr. Ferguson, I think was standing up.

16 MR. PRONSKE: Thank you.

17 THE COURT: No duplication, please.

18 MR. FERGUSON: No, Your Honor, I just wanted to --
19 what Mr. Pronske said about -- I agree with him that I think
20 that the summary judgment evidence, the standards of
21 collateral estoppel, would say that all of the petitioning
22 creditors, that that should be held not to be subject to a
23 bona fide dispute. But like Mr. Pronske, if you'll review the
24 declarations that I filed originally, the ruling of the Court,
25 my testimony during the hearing, and Mr. Baron's original

1 response to my declaration, as well as his response this time
2 around, he does not dispute that he owes me money. He
3 testified previously he thought that 5,000 dollars was fair,
4 not 75,000. But there's not a dispute as to the fact that he,
5 in fact, owes me money. It would just be a matter of the
6 magnitude of that.

7 And I believe that if the Court declines to go full
8 summary judgment on behalf of all the petitioning creditors
9 that like Mr. Pronske, based on Mr. Baron's filed
10 declarations, that I would also stand in partial summary
11 judgment as an unsecured creditor such that even if it's only
12 one dollar and Pronske & Patel's is 100,000 or whatever, as
13 long as we pass the threshold of the 14,425 dollars, I think
14 we now would have at least two of the three necessary
15 petitioning creditors.

16 THE COURT: Okay.

17 MR. FERGUSON: Thank you, Your Honor.

18 THE COURT: All right. Mr. Stromberg?

19 MR. STROMBERG: Thank you, Your Honor. Let me start
20 here where we left off. I believe that the notion of putting
21 in the summary judgment evidence, the declaration of each and
22 everyone of the petitioning creditors and our responding to
23 it, feeling the necessity to do so with a declaration from Mr.
24 Baron, both of these go outside the scope of the specific
25 issue which is whether or not prior orders of this court or of

1 the district court foreclose any argument with respect to bona
2 fide disputes.

3 So, basing a ruling on either the absence strangely
4 enough, of a specific declaration in Mr. Baron's affidavit
5 about owing money in any portion of it with respect to any of
6 the creditors is probably not appropriate at this time. It's
7 outside the scope of what the summary judgment is limited to
8 by this court.

9 With respect to Judge Ferguson's order, I think it's
10 really useful to look at it because everybody who has talked
11 about it up to this point has described it as a ruling,
12 adjudication, a finding, but when it comes to the
13 determination of these claims, it is nothing of the sort. I
14 know that I am new to this party and forgive me describing it
15 as such, but there is nothing in the language here in which
16 the Court suggests that it did anything other than create a
17 compromise, a voluntary process pursuant to which people could
18 come in and agree to waive portions of their claims, assuming
19 for the sake of argument that they weren't later contested by
20 Mr. Baron, that people could come in and have their claims
21 reduced on -- in terms of the hourly rate and forego
22 voluntarily, other claims that they may have, as long as it
23 wasn't contested by Mr. Baron.

24 It seems to me useful to think about how Judge
25 Ferguson was framing his orders as being an attempt to resolve

1 a particular thorny situation; an intelligent attempt to do
2 so, but not one that constitutes an adjudication in the sense
3 that he was wearing his judicial robes, making a specific
4 finding; this is how much these people are owed, this is a
5 final determination, this is exactly what they're entitled to
6 and all other claims of Mr. Baron are decided by that.

7 He doesn't do that any place in docket number 575,
8 not a single place and I've been through that order a number
9 of times. And the language that he does use is a voluntary
10 process. You get the benefits of number one, having your
11 claim reduced to a specific amount but paid by the receiver or
12 not and if you don't, then the receiver will not pay it. And
13 those people who sign the waivers voluntarily opted in to
14 accept the numbers that the judge had thrown out there for
15 them without specifically having had their claims adjudicated
16 and only in the event that they made the waiver and received
17 the payment and Mr. Baron didn't contest would any of this be
18 effective as a resolution of the claims.

19 Now the issue we're here to talk about, and this is
20 important, is whether or not these rulings such as they are,
21 constitute a judicial determination such that they would
22 foreclose bona fide disputes by Mr. Baron about the fees.

23 THE COURT: Okay. And to be clear, the title of the
24 document is "Findings of Fact, Conclusions of Law and
25 Order" --

1 MR. STROMBERG: That's correct.

2 THE COURT: -- "On Assessment and Disbursement of
3 Former Attorney's Fees."

4 MR. STROMBERG: That is absolutely correct.

5 THE COURT: And he heard a bunch of evidence.

6 MR. STROMBERG: That's correct. But the judge
7 doesn't go -- if you read the order itself, he doesn't go
8 through the evidence and say this is the amount of these
9 claims and I find -- which would be the most important part --
10 and I find that any disputes that are raised to those claims
11 are adjudicated against Mr. Baron; quite the opposite in his
12 duplicate paragraph 36 at the end of his order, he says those
13 claims and rights of Mr. Baron are reserved.

14 But not at a single place, notwithstanding the title
15 of the order --

16 THE COURT: The rights to bring counterclaims --

17 MR. STROMBERG: To bring counterclaims which would
18 include among them --

19 THE COURT: -- malpractice or whatever.

20 MR. STROMBERG: Fiduciary duty. And that's an
21 important one in its own right, Your Honor, because fiduciary
22 duty breaches, if they were to be found, would be claims that
23 would not only entitle Mr. Baron to potentially damages but
24 also to disgorgement under Texas law under Burrow v. Arce and
25 its progeny. So those would be direct claims that would have

1 a direct impact on whether or not the claims were owed what
2 they claimed.

3 But again, it's important that at not one place in
4 this order does the judge address defenses that Baron would
5 raise. In fact, what he does is he tells the receiver that
6 the receiver has the authority to waive his right to a jury
7 trial. The receiver has the authority to deal with the Baron
8 defenses such as they were and to resolve them if the
9 claimants enter into this voluntary waiver process.

10 So, Judge Ferguson for all of his intelligence in
11 attempting to resolve this thorny problem that had been
12 created by the procedural posture of the case, took off his
13 judicial robes for a moment and said this is how you can get
14 this done. These people should get paid and I've given them a
15 target number to shoot at. They can accept it or decline it.
16 If they accept it, and Mr. Baron challenges it, then they can
17 go after him for more money than what I already said. If Mr.
18 Baron does not challenge it, they will receive payment on
19 their claims and that's what he was contemplating.

20 THE COURT: But was it really a preservation of his
21 right to challenge it or simply a preservation of his right to
22 bring counterclaims? And let's use by comparison, what is the
23 old Fifth Circuit case that -- I think it was Coopers &
24 Lybrand from the old Southmark case where after final fee
25 applications in a Chapter 11 case, someone will stand up and

1 correct me if I am remembering this wrong, but then a
2 representative of the estate or maybe former shareholders sued
3 Coopers & Lybrand, a professional who had represented the
4 debtor for, you know, malpractice and whatnot and the Fifth
5 Circuit ultimately ruled collateral estoppel, res judicata.

6 MR. STROMBERG: I --

7 THE COURT: You should have raised that in connection
8 with the final fee application process.

9 MR. STROMBERG: Yes, there's a --

10 THE COURT: Order approving their fees basically
11 estopped any claims like this and what it appears to me, Judge
12 Ferguson may have been doing here is saying I'm not going --
13 you're not going to be Mr. Baron in the situation of these
14 plaintiffs against Coopers & Lybrand. You can bring
15 counterclaims, so therefore, you may have an off debt. But
16 the claims themselves are allowed, aren't they?

17 MR. STROMBERG: Again, Your Honor, when you look at
18 the language of the order, it's -- if anything is clear from
19 it, it's that he never -- Judge Ferguson never makes the
20 assessment in the way that it would be as if it were a
21 determination that these claims are allowed and defenses to
22 them are determined. If that language was in the order, I
23 would not have a leg to stand on.

24 I am familiar with the case law that you're talking
25 about. There's another case that percolated through the Fifth

1 Circuit. I want to say it was a Weil Gotshal claim in the
2 mid-2000s where the same issue about legal malpractice claims
3 was, you know, brought up and determined res judicata.

4 But that's not what we have here because in order for
5 that to have happened, you first have to have had a
6 determination -- remember what it is that the petitioning
7 creditors are asking Your Honor to do. They're asking you to
8 say because the Court decided these claims and the defenses,
9 Mr. Baron can't raise his defenses as bona fide disputes and
10 putting aside for the moment the fact that the Court expressly
11 reserved his counterclaims, the Court didn't make any such
12 decision on these claims. If parties were to come back and
13 say I wish to litigate my claims in full, then this order
14 didn't apply to them. They wouldn't have signed a waiver and
15 they wouldn't be paid by the receiver.

16 And bear in mind also that the rights that the
17 receiver had to compromise Mr. Baron's right to a jury trial
18 and to deal with the Baron defenses which the Court
19 specifically does address and gives those rights to the
20 receiver, those are rights that were vested in the receiver by
21 virtue of a court order that the Fifth Circuit Court of
22 Appeals one day before this case was filed, had vacated.

23 So to the extent that the receiver, because the Court
24 did not do it, he vested this power in the receiver -- to the
25 extent that the Court did not decide these things, he gave

1 that power to a receiver whose receivership it was on the day
2 before this case was filed, vacated by order of the Court of
3 Appeals.

4 So, the first question you have to get to when
5 deciding whether or not to impose res judicata or for that
6 matter, collateral estoppel effective to this, is to decide
7 whether or not we have a true judicial robe bearing
8 determination here, notwithstanding the credit that is due to
9 Judge Ferguson for attempting to resolve this thorny problem
10 in the way that he did, all of that aside, he didn't make the
11 kind of determination that would give rise to a res judicata
12 or a collateral estoppel effect to his orders.

13 As a practical matter, what you would be looking for
14 in this order -- put aside practical, as an objective matter,
15 what you would be looking for in this order to satisfy the
16 requirements of your ruling in Henry S. Miller and the Fifth
17 Circuit in the matter of Sims, is an objective identification
18 of a determination that these bona fide disputes had in fact
19 been judicially resolved rather than vesting that authority in
20 the receiver to compromise the claims, which is precisely the
21 wording that Judge Ferguson uses again and again. And that
22 didn't happen.

23 THE COURT: Well, okay, let's use by analogy or talk
24 about the analogy, what if you had a bankruptcy court order in
25 a rule 9019 context, a motion to approve a compromise and the

1 Court, you know, doesn't technically adjudicate the underlying
2 claims being compromised but looks at the risks and rewards,
3 and the fairness of what's proposed and enters an order
4 approving a compromise. Are you saying that wouldn't have any
5 binding, final effect for the world?

6 MR. STROMBERG: No, I am not saying that but I think
7 the context is different and in order for the Court to have
8 entered an adjudication, what I would be looking for in a 9019
9 order, would be a determination by this court that the
10 settlement agreement -- and I'll put this question aside for
11 the moment -- because the parties who would be settling the
12 claims presumably would have to have the authority to do that
13 and if it were later determined that they didn't have the
14 authority to do that, that would be an interesting question
15 but let's put that aside for the moment.

16 But assuming for the sake of argument that the
17 parties who were settling the claims had the authority to
18 settle, you would have both sides having agreed to a
19 settlement of their claims and that settlement being approved
20 by the Court on a fair and equitable standard under the TNT
21 and Matter of Oweko (ph.) standard and that's not what's
22 happening here either, okay? Because what they're looking for
23 Judge Ferguson's order to say is I rule that these claims are
24 in these amounts and therefore, in either directly or
25 indirectly forgo defenses to those claims as a consequence of

1 his ruling.

2 And instead what he did is he offered the claimants
3 the ability to choose to adopt those amounts and receive
4 certain benefits and protections for doing so. And if those
5 benefits and protections didn't protect them enough because a
6 counterclaim came after the fact, then they would not be bound
7 by his number. Okay?

8 So, for this to work the way that the petitioning
9 creditors want it to and the way their summary judgment
10 purports to have it work, is that the Court would have had to
11 have taken these compromises and judicially accepted them and
12 bear in mind that what would be compromised here is Mr.
13 Baron's rights. Those rights were vested in the receiver who
14 does not appear in this order specifically compromising those
15 rights, okay, but the Court would have said, all right, party
16 A and party B to make this analogous to 9019, have agreed that
17 they're going to settle their disputes between each other.
18 And that includes everything. And we have a comprehensive
19 settlement agreement and now I therefore adopt it, okay?

20 And then we come back to the fact that the receiver
21 was the party who was responsible for compromising the Baron
22 defenses and the receiver's authority, at least as of right
23 now, as of -- and as of the day more importantly, before the
24 petition was filed, that authority was not just thrown into
25 question but thrown out by the Court of Appeals.

1 And as Your Honor correctly points out, and as the
2 Fifth Circuit pointed out in the matter of Sims, and you point
3 out in Henry S. Miller, the date that counts is the date of
4 the filing. As of the date of the filing, the Court of
5 Appeals had ruled that -- and I would like to segue a little
6 bit into the Court of Appeals ruling, too. The Court of
7 Appeals had ruled that the receivership order and the
8 authority of the receiver that was given to it by Judge
9 Ferguson which was being deployed in docket number 575 to
10 settle or resolve these claims on behalf of Mr. Baron which
11 the Court goes to great pains to be able to point out, that
12 this is actually benefitting Mr. Baron, that that receiver's
13 authority was improperly delegated. Okay?

14 So the Court of Appeals does that and then it goes
15 on, on no less than five occasions, to say that the reason
16 that it is overturning the Court's order appointing the
17 receiver is because none of the creditors had money judgments,
18 final money judgments. That finding I've cited in my motion,
19 my response to the motion rather, five different times with
20 emphasis added, stating that none of the unsecured claims of
21 Baron's current and former attorneys had been reduced to
22 judgment. And the Court says that in no less than five times,
23 the Court of Appeals does.

24 THE COURT: Well that's talking about at the time the
25 receivership was created, right?

1 MR. STROMBERG: Well presumably, Your Honor, if that
2 issue was cured by docket number 575, then those -- then
3 perhaps at least -- and I don't know that it was but it looks
4 to me like it wasn't, then perhaps the Court of Appeals would
5 have taken that into account, too since that order was up for
6 appeal, as well.

7 So, it's hard for me to conclude after the Court of
8 Appeals has concluded that the creditors didn't have final
9 money judgments against Mr. Baron and the Court itself, the
10 district court itself didn't specifically say that it was
11 granting a judgment on each and every one of those claims but
12 rather making certain adjustments for a compromise process
13 that there was a final ruling for those purposes.

14 So, I think that that goes primarily but not
15 exclusively to the res judicata argument but it also goes to
16 the collateral estoppel argument because -- and the collateral
17 estoppel argument gets more heft even from the fact that the
18 receiver's authority to make these compromises on behalf of
19 Mr. Baron was overruled.

20 And I've cited the Court to a case that says
21 specifically that when the decision that is supposed to be
22 collateral estoppel is overturned on appeal, then as a matter
23 of law, that it's not entitled to a binding effect.

24 And, of course, then we get to the issue about the
25 stays because -- Your Honor has pointed out in the Henry S.

1 Miller case and it's instructive to look at the language that
2 was in your ruling, talking about whether or not cases that
3 resulted in judgments could still be the subject of bona fide
4 disputes. And there are no less than three of the special
5 circumstances that the Court cited that at least theoretically
6 would give rise to those disputes, those kinds of special
7 circumstances that would justify looking beneath the judgment.

8 I'll cite to three. One, a judgment entered against
9 a non-party; in this case, the Court of Appeals ruling in
10 favor of Mr. Baron in so far as the receivership was
11 concerned, was that Mr. Baron's assets were not the subject of
12 the underlying proceedings. They were seized in what sort of
13 amounts to a peripheral argument over attorneys in the case
14 but not as a consequence of the Netsphere and Ondova
15 litigation. And so his assets were seized outside of the
16 context of that and a receivership imposed for the purposes of
17 paying attorneys; number one.

18 Number two, where subsequent events cast doubt upon
19 the judgment's enforceability such as the posting of a bond.
20 Well, what does a bond do? A bond is put up to stay the
21 enforcement of the judgment while it is out on appeal. In
22 this case, and the Court -- both the district court and the
23 Court of Appeals have said that there will be no payments to
24 creditors until these matters are unwound, okay?

25 And that in effect prevents somebody from going out

1 and executing on the Court's judgments, such as they were, if
2 in fact, they were judgments. I mean presumably, either
3 against the receivership or as against Mr. Baron if these were
4 judgments, somebody could go execute on them; but nothing of
5 the sort.

6 Finally, some sort of appellate holding. I'll --
7 that suggested as inevitable that the judgment will be
8 reversed. I can't say what's inevitable or not. Nobody can.
9 But at least as of right now, the authority of the receiver to
10 make compromises on behalf of Mr. Baron was undermined
11 completely by the Fifth Circuit's initial panel ruling.

12 What happens after the fact probably is irrelevant
13 because on the day that this involuntary was filed, at the
14 very least, Mr. Baron had prevailed in that regard and the
15 receivership's authority had been set aside by the Court of
16 Appeals.

17 So at least three of the Court's special
18 circumstances that were cited in the Henry S. Miller case are
19 applicable to this specific case. So, I think it's helpful to
20 think about whether or not we have the kind of record here
21 with Judge Ferguson's rulings in the pendency of the case, in
22 docket number 575, that would justify actually saying these
23 people had been granted judgments, not simply suggestions as
24 to what the fees should be, that they could then opt into or
25 opt out of if they made a compromise with the receiver.

1 I'll point out one other thing about that, Your
2 Honor. The Federal Rules are fairly specific about what
3 constitutes a judgment and if there's going to be a final
4 judgment or a final determination that would be subject to
5 appeal during the pendency of the case, if it didn't dispose
6 of all issues and all parties.

7 Bear in mind, this receivership order came in the
8 context of the Netsphere litigation in which Mr. Baron's
9 personal assets were seized. Under 54(b) there's a specific
10 finding that is required under Fifth Circuit precedent. In
11 order for a court to make something that doesn't dispose of
12 all issues for all parties final for all parties and that
13 finding is embodied in Rule 54 and there was no such finding
14 made by Judge Ferguson.

15 So again, all of the indicia that would suggest
16 finality here, all of the indicia of what would be a judgment
17 here, all of the indicia of a specific factual determination
18 as would be necessary for collateral estoppel or res judicata
19 effect, putting aside the fact that this order was stayed not
20 once but twice, are not there.

21 Let me point out two other things really quickly with
22 respect to the Ondova order. Okay. As the Court knows, I am
23 late to this process, so I don't know whether it is, in fact,
24 the case that the bills that Mr. Pronske put forth that were
25 approved in the context of his substantial contribution claim

1 were in connection with work that he did on behalf of Baron or
2 not. What I can say is that's not in the record for this
3 summary judgment motion.

4 So, I can't tell myself and that's -- and as I
5 confess readily to Mr. Pronske when we spoke about this
6 yesterday, it's because I don't know. The Court has perhaps
7 some passing understanding of that but that's not in the
8 summary judgment record.

9 I would point out that Mr. Pronske points out,
10 however, that there was an objection to it and I am told now
11 though I didn't specifically cite this in my response that
12 there was, in fact, an appeal from the November 30, 2012
13 order. So, for what that's worth, I am told that that's the
14 case. I didn't have time to research that because I only
15 found out about it within the last twenty-four hours.

16 THE COURT: Okay.

17 MR. STROMBERG: So, for all these reasons, Your
18 Honor, it seems clear from a review of Judge Ferguson's order
19 that if he wanted this to be in effect a binding finding, he
20 could have done it in that way. He could have removed all of
21 the waiver provisions. He could have removed the opt-in, opt-
22 out provisions. He could have put himself instead of the
23 Court appointed receiver in charge of determining the claims
24 as opposed to having the receiver compromise them. He could
25 have done a lot of things that he didn't do that would have

1 foreclosed the argument that I am making now, that his order
2 is not a binding order. And to that extent, Your Honor, we
3 think we're entitled to have a trial on the merits of this
4 case.

5 I would also point out that to some degree at least,
6 I think that the orders of the Court of Appeals perhaps even
7 suggest a different result, that there are bona fide disputes
8 here as a matter of law. But that's not the issue before the
9 Court today on the motion for summary judgment.

10 Your Honor did set the other motions that were in
11 Jeff Baron's answer for hearing today, including the motion to
12 dismiss. That's not what we're arguing at this point. If the
13 Court wants to entertain argument on that, I will be happy to
14 do so.

15 THE COURT: Okay. Let me circle back to one of the
16 last arguments Mr. Pronske and Mr. Ferguson made --

17 MR. STROMBERG: Um-hum.

18 THE COURT: -- that even if the district court order
19 is not entitled to binding preclusive effect and does not
20 establish as a matter of law, a no bona fide dispute, that
21 there's at least 14,425 dollars of attorneys fees here in the
22 aggregate that's not in dispute.

23 MR. STROMBERG: Your Honor, I don't believe that's
24 the case. I think what they argued was from the absence -- if
25 I remember their arguments correctly and I believe I do, they

1 argued that what they would have liked to have seen in Mr.
2 Baron's affidavit which was not the issue before the Court
3 today, I stress, was a specific denial of owing any money.
4 And what they pointed out was the absence of that specific
5 denial. Okay?

6 So, I don't necessarily believe that that establishes
7 anything as a matter of law with respect to the judicial -- a
8 judicially binding character of these orders that were issued
9 by the Court of Appeals, by the district court or by this
10 court. That's the issue that's before us and to the extent
11 that the absence of a specific denial has any bearing at all
12 it wouldn't have any bearing on those issues.

13 THE COURT: Okay. Let me think through that a
14 minute.

15 MR. STROMBERG: Okay.

16 THE COURT: Their summary judgment evidence is eight
17 different declarations --

18 MR. STROMBERG: Right.

19 THE COURT: -- where these lawyers swear they were
20 engaged to do work for Jeff Baron and, you know, I did the
21 work and then they attached the billing statements. Here's
22 how much I am owed. And then by the way, here's the order of
23 Judge Ferguson that we think is entitled to preclusive effect
24 and then your response has a Jeff Baron declaration that they
25 say does not go to the level of refuting that anything and

1 everything is not due.

2 MR. STROMBERG: Even if it's true, Your Honor, again
3 we have a stipulation from counsel for the petitioning
4 creditors that the issue that's going to be before this court
5 today is going to be this legal issue about the effect of
6 prior rulings.

7 So I think that perhaps at an earlier time when the
8 motion was originally filed, it was going to be larger. It's
9 no longer that.

10 THE COURT: Okay, got you.

11 MR. STROMBERG: Thank you.

12 THE COURT: All right. Thank you.

13 All right. Mr. Pronske, you get the last word in
14 rebuttal.

15 MR. PRONSKE: Thank you, Your Honor. Your Honor, I
16 think the intent and the legal impact of the ruling of Judge
17 Ferguson is -- really is contained in Judge Ferguson's order
18 and I think Mr. Stromberg has attempted to characterize it in
19 a certain way that the order -- that it's not consistent with
20 what the order actually says. And I'll take a stab at
21 characterizing it myself.

22 I think this ruling is a complete ruling on
23 contractual claims and it preserves Mr. Baron's right, if he
24 wants to raise tort issues and then says if he does, that the
25 lawyers can then come back and they can raise their amounts

1 over 400 dollars.

2 I mean that's essentially what this order does. But
3 it is a full resolution of the contract claims and so I
4 suppose if we want to get even more analytically precise, this
5 court could make a ruling on a partial summary judgment that
6 this order approves and there is no subject -- there is no
7 bona fide dispute that can be raised as to these contractual
8 claims. And that that would then limit Mr. Baron to make a
9 bona fide dispute as to only tort issues.

10 And I will tell you what I think is the support for
11 that actually from the order, not with me characterizing it
12 but with Judge Ferguson's actual language characterizing it.
13 And, Your Honor, there's several paragraphs. Paragraph 23 of
14 his order, and I am reading from the May 18th order which the
15 Court correctly saw as findings of fact and assessments of the
16 claims and an actual determination of these claims.

17 In paragraph 23, he says there was a hearing and he
18 says, "At the hearing, the receiver offered into evidence
19 without objection to Baron and the Court admitted the
20 following evidence." And this is a concept that keeps coming
21 up in Judge Ferguson's writing here and in his mind obviously
22 that Baron didn't object. He didn't raise any evidence. He
23 didn't make any objections. And so I don't think the Court
24 had to go into a great analysis of what all these affidavits
25 said and whether they were valid or not because quite simply,

1 they were offered without any objection. The lawyers
2 testified and there was no competing evidence. So there was
3 really nothing for him to make specific findings about.

4 But we know from the next paragraph in the order that
5 he did look at all this evidence. In fact, he says in
6 paragraph 24, second sentence, "The Court has also
7 painstakingly reviewed this admitted evidence." So, we know
8 Judge Ferguson not -- didn't just pay lip service to it or
9 admit it as evidence and not look at it. He, in his own
10 findings says that he has painstakingly reviewed all of that
11 evidence.

12 The next paragraph is the paragraph that makes clear
13 that he's ruling on the contract claims. That's paragraph 25
14 and he says, "Although certain former Baron attorneys have
15 claimed entitlement to damages pursuant to punitive claims,
16 the Court recognizes that the receiver based the fourth motion
17 on purely contractual claims." And in each instance, the fee
18 claim is calculated by multiplying the number of hours
19 actually worked by the agreed upon hourly rate. And in some
20 cases, as described in the next paragraph, including the fee
21 cap reduction and the paragraph goes on.

22 But I think he makes clear here that what he's ruling
23 on is the contractual claims and then that's consistent with
24 paragraphs 35 and 36, which I will get to in a minute. But
25 those are basically the paragraphs where he says that if Mr.

1 Baron raises punitive damage claims, tort claims later, that
2 the lawyers are free to come back and raise their own punitive
3 claims and everyone can sort of have, you know, a tort war if
4 they want to later but this is resolving the contract claims
5 in the dollar amounts specifically in the order.

6 The next paragraph that I think is significant is
7 paragraph 26 and he makes a finding and that's under paragraph
8 G, which is entitled, "Baron's Failure To Controvert The
9 Admitted Evidence." So again, treating this like the trial
10 that it was, Baron had the opportunity to put on evidence and
11 failed to do so and the judge makes finding about that. And
12 he says "During the course of the hearing and with the
13 possibility of being cross-examined on the Baron declaration,
14 Baron withdrew the Baron declaration. Prior to making this
15 withdrawal, Baron was advised by the Court that the withdrawal
16 would result in the admitted evidence being uncontroverted
17 evidence. Nonetheless, Baron made the withdrawal despite
18 knowing its result."

19 So what this is saying very obviously, is there was a
20 declaration to refute. The Court said if you're going to put
21 a declaration up, you've got to get on the stand and testify
22 and he didn't want to do that because for well, whatever
23 reasons, he didn't want to do that, personal reasons. And so,
24 the Court found that significant and said, you know, if you're
25 not going to get on the stand, you're not going to testify to

1 this stuff, then I am going to admit this evidence and it's
2 going to be uncontroverted.

3 Now is that unfair? I suppose they could argue that
4 on appeal but that's not for this court to decide. Is that a
5 full and fair opportunity to litigate the issue? Of course it
6 is. Mr. Baron has a right to get on the stand and put his
7 money where his mouth is and to say yes, my declaration was
8 correct and you didn't do this and you didn't do this and you
9 didn't do this. And he doesn't want to get on the stand for
10 whatever reasons and the judge says, well, you know, if you
11 don't get on the stand, and you don't have any evidence; what
12 choice do I have but to award the fees in the requested
13 amounts.

14 In paragraph 27, the Court goes on and says that Mr.
15 Schepps filed a declaration and I think is, I think
16 significant. He says the Schepps -- "The Court finds that the
17 Schepps declaration does not contain any evidence to
18 contravene the admitted evidence."

19 So again, he's looking for are these valid contract
20 claims? Are these valid amounts? He says, Baron won't
21 testify and in the next paragraph he says the Schepps
22 affidavit doesn't do it. So, this is a well seasoned federal
23 district judge who has got evidence rules in mind and he is
24 saying is there a dispute here? No. Is there a dispute here?
25 No. Is there a dispute here? No. Is there something filed?

1 Yes, but it was withdrawn. Does Baron get on the stand? No.

2 Does the Schepps affidavit contravene these matters? No.

3 And so he goes on and in paragraph 28 he says a
4 number of witnesses appeared, offered themselves for
5 examination by Baron and Baron chose to not to call all these
6 witnesses and instead permitted all of the admitted evidence
7 to remain uncontroverted.

8 Next paragraph --

9 THE COURT: Let me just interrupt. I mean, I have
10 been struggling, I know like everyone has to put a label on
11 this order, to figure out what it's most like. I guess I am
12 starting to analogize that more than anything else, to the
13 context of, you know, sometimes in big Chapter 11s, we have a
14 fee examiner. You know, there's an overwhelming number of
15 professional fee applications in large amounts that go back
16 many years. Bankruptcy court may appoint a fee examiner to
17 look into this, to make a report for the Court. The Court can
18 either accept or reject the fee examiner's recommendations and
19 there's final fee application hearing. The Court hears
20 evidence. Among that evidence is the examiner's report and
21 the Court issues an order allowing fees and designated
22 amounts.

23 I mean, do you agree that maybe that's an appropriate
24 analogy. It's like Mr. Vogel was sort of a fee examiner for
25 the Court. He could accept or reject his recommendations and

1 he heard a lot of evidence and then this is sort of like a
2 final fee application hearing and order, with the exception I
3 mentioned of, you know, that whole Coopers & Lybrand case
4 whereas normally --

5 MR. PRONSKE: Right. It would cut off.

6 THE COURT: -- it would cut off future claims against
7 professionals.

8 MR. PRONSKE: Right.

9 THE COURT: This one didn't. Is that an appropriate
10 analogy or no?

11 MR. PRONSKE: I think you're right on, even with that
12 last comment you made and one of the things I think would be
13 very similar to the kind of order you're talking about in this
14 one is -- and I think this is what's important from sort of a
15 procedural stand point, is both of those orders would qualify
16 under the collateral order doctrine as distinct, final
17 resolutions of a particular issue that are appealable. They
18 are final resolutions of an issue that are appealable.

19 And, in fact, Mr. Baron appealed this order. Didn't
20 get a stay pending appeal or didn't ask for a stay pending
21 appeal but it was a final order that adjudicated and resolved
22 claims in specific dollar amounts with a trial with Mr. Baron
23 on the other side of the V, not putting on any evidence and
24 somehow using that strategically now but I mean the point was
25 it was a full and fair opportunity to litigate. It ends up

1 with a ruling that is a findings of fact and it determines all
2 of the claims. And that's a -- under the collateral order
3 doctrine, a final order that is distinctively appealable
4 within that case.

5 And, in fact, he did appeal that order in that case
6 and the Fifth Circuit has never ruled on that order and
7 certainly didn't dismiss it because it wasn't -- you know,
8 because it wasn't an interlocutory order and wasn't entitled
9 to be appealed. So, I think it is analogous, Your Honor.

10 And if I could just go through a couple of more
11 paragraphs, I think they're significant. The paragraph 28 of
12 the order -- actually I went through that. Paragraph 29 of
13 the order, and again, this is to me, Judge Ferguson looking
14 for Mr. Baron to controvert the evidence, showing again that
15 he's got that full and fair opportunity to litigate. Baron
16 filed a post-trial brief and filed specific evidence based
17 defenses on the evidence presented. He didn't want to get on
18 the stand but he is ready to have his lawyers keep fighting
19 and the Court says, "This brief includes no evidence to
20 controvert the admitted affidavit since it lacks any
21 declarations or any types of evidence."

22 And I think, you know, there's a pattern here from
23 Judge Ferguson's mind that's becoming very clear and that is
24 he's treating this like a trial. He's looking for things to
25 controvert. There's no Baron testimony. There's -- the

1 Schepps' testimony doesn't work. This trial brief doesn't
2 work. And they allowed the evidence to come in without
3 objection and he, as a trial judge, is looking for what does
4 the record show. And I think that's what his findings are all
5 about.

6 And then lastly, in paragraph 30, he says that Mr.
7 Baron then filed a document that he called a motion for leave
8 to supplement the record with newly discovered evidence and
9 for whatever reasons that are not apparent in this record and
10 I don't recall them, the judge says, "For the reasons stated
11 in a prior order from this court, the Court denied the first
12 motion for leave."

13 So again, Mr. Baron keeps trying to sort of sideways
14 get in there and keep and litigate this without putting on the
15 appropriate and the proper evidence. Judge Ferguson said none
16 of this works and we have basically uncontroverted evidence
17 because he didn't do what he needed to do to really make the
18 -- to controvert anything.

19 So we've got a -- not just a full and fair
20 opportunity to litigate but we had an actual trial where he
21 tried to contest this order in many, many different ways and
22 just didn't do it right. And the right way to do it would
23 have been to attack each one of these claims and say -- and to
24 get up on the witness stand or whatever -- to have an expert
25 or however he wanted to do it, and to say this claim is not

1 valid and here's why. And he did everything but that. He
2 didn't put on any evidence and that's why there's no analysis
3 of legal issues with respect to all these claims. There's
4 nothing to analyze. You've got uncontroverted numbers and the
5 judge makes a finding, these are the appropriate numbers and
6 orders that they be the numbers and that they be paid. And in
7 paragraph 35 says the following claims shall be paid.

8 And that's also I think paragraphs 35 and 36 and
9 actually there are two paragraph 35s, obviously erroneously
10 but I'm talking about the last paragraph 35 and paragraph 36
11 make it clear that the contract claims are what's being ruled
12 on. The tort claims are being preserved.

13 So at a minimum, Your Honor, we would ask this court
14 to rule that there's a partial summary judgment that would
15 prevent a substantive -- a bona fide dispute as to the
16 contract claims and then if Mr. Baron wants to raise tort
17 claims, I think Mr. Stromberg's right. I think this order
18 allows that to happen because this order clearly doesn't
19 foreclose those claims.

20 But then we'll have to have -- this court will look
21 at that on the objective standard that's provided for in Sims
22 and Henry S. Miller and that doesn't just mean Mr. Baron gets
23 to say I -- everybody malpracticed and therefore, I don't owe
24 anything which is sort of what happens but he is going to have
25 to make an objective showing as this court has said in HSM.

1 A couple of final notes, it struck me when Mr.
2 Stromberg was saying that a bond would prevent -- the filing
3 of a bond would prevent an involuntary under the -- this
4 court's Henry S. Miller ruling and of course, in that
5 situation, that's different also because you put up a bond,
6 there's a way to get paid and you don't need an involuntary
7 because you've got the whole amount is sitting there and if
8 you win your appeal, you get the prize.

9 And so, in that -- that obviously would make a big
10 difference but that's not like our situation here. I don't
11 think we fall under those exceptions and I think the Court's
12 heard enough from me. Thanks.

13 THE COURT: Okay.

14 MR. FERGUSON: Judge?

15 THE COURT: Very briefly.

16 MR. FERGUSON: Your Honor, just as a -- to be
17 helpful, I know that in going through briefs like this,
18 especially when there's -- each one's citing a bunch of cases
19 that the case law isn't always clear but I do think, I just
20 want to bring to the Court's attention the decision in
21 Chemetron Corp., v. Business Funds, Inc., 682 F.2d 1140, (5th
22 Cir. 1982) because I think it's very instructive on the facts
23 here. In that situation, you had a dispute between two
24 parties that went to -- through the trial court and the trial
25 court entered a judgment. And the plaintiff in that lawsuit

1 didn't like the judgment. So it went and it worked out an
2 agreement with the defendant and it settled but it said as a
3 condition of settlement, I want the settlement vacated. I
4 want all the findings of facts and conclusions of law
5 withdrawn.

6 They went to the trial judge. At first, he refused
7 to do it. And they said well, we're not going to do this
8 unless you actually go ahead and withdraw. He wanted -- and
9 so the trial court withdrew his findings of fact and
10 conclusions of law. Doesn't exist anymore.

11 A year later, another entity that was in a similar
12 situation to the original defendant which was a bank, was in
13 litigation with the same plaintiff and they sought to use
14 offensive -- the collateral estoppel offensively under the
15 Park Lane Hosiery case. The Fifth Circuit looked at it. The
16 other side argued wait a minute, this thing has been vacated.
17 You know, it was a compromise in settlement. You can't use a
18 compromise in settlement against us. And the findings of fact
19 were withdrawn and the Fifth Circuit said no. The question
20 you're looking at for use of -- offensive use of collateral
21 estoppel is whether there was a full and fair opportunity to
22 litigate this because we have so much litigation going on
23 these days, forcing parties to come in and spend hundreds of
24 thousands of dollars litigating the same issue over and over
25 again is exactly what collateral estoppel is meant to do.

1 Judge, we've been trying to get paid for three years
2 and we have been through attempted resolutions and
3 negotiations. The Court appointed -- the district court
4 appointed a receiver to take care of this and to try to come
5 in and be reasonable and then the judge looked at the fees and
6 said as Mr. Pronske said, from a contractual stand point, are
7 these reasonable? Does this make sense? We'll put aside the,
8 if you want to call it, crazy stuff, okay. Everybody
9 committed -- all twenty-two law firms committed malpractice.
10 All twenty-two law firms didn't do any work at all for me,
11 whatever that is. You know, and by the same token you said,
12 we'll set that aside and the stop here to stop the vexatious
13 litigation is well, if you just -- I can't just preserve those
14 claims. And remember, those claims weren't at that point in
15 time believed to go to Mr. Baron. They were to go to the
16 receivership. So if the receiver really thought he had a good
17 malpractice claim against one of those twenty-two law firms,
18 that would rebound to the benefit of all the creditors, if
19 they decided to bring it and recovered on it. And the judge
20 had all that to consider for him.

21 But, Your Honor, I think the Chemetron case is very
22 instructive. I just wanted to point that out. Of all the
23 cases cited by the parties, I think it's good law and I think
24 it's very close to the -- it's actually a step further than
25 the situation we have here.

1 The judgment hasn't been vacated and there was no
2 withdrawal of the findings of fact and conclusions of law but
3 still the fact that it had been litigated and the parties had
4 an opportunity to do so was dispositive of the issue.

5 THE COURT: Thank you.

6 MR. STROMBERG: Your Honor, if I may? I know it's a
7 little bit unorthodoxed but just this will be very quick.

8 THE COURT: Are you just going to point out another
9 case or something like that?

10 MR. STROMBERG: No, it's just something from the same
11 order that Mr. Pronske read from the docket number 575.

12 THE COURT: Okay.

13 MR. STROMBERG: It's instructive. The Court had
14 asked this question earlier about what it was that led to the
15 docket number 575 being issued and had pointed out that it was
16 the fourth motion of the receiver and in that context, at the
17 bottom of paragraph 7, at the top of paragraph 8, from page 5
18 of the docket number 575, this is what Judge Ferguson said.
19 "Nevertheless, although the receiver properly did not assume
20 the settlement obligations, the fourth motion the receiver
21 filed does effectively propose a settlement and compromise of
22 the former attorney claims that will benefit both Baron and
23 the claimants of the former attorney claims. This will be
24 described further in Section E. Through the receivership
25 order and particularly, the conservation obligations and the

1 instructions, the receiver was not required to collect or
2 offer evidence or make arguments to controvert the former
3 attorney claims," which the judge describes as the defense
4 obligation.

5 Apart from whatever unfairness the Court of Appeals
6 found and in particular, the notion that the receivership is
7 related to an extraneous matter to the -- though important
8 perhaps and to Judge Ferguson, extraneous to the subject
9 matter of the litigation and that the res seized was not the
10 res of the litigation, it's also important for the Court to
11 consider that.

12 It was through this proposed compromise and
13 settlement procedure that the receiver had brought to the
14 Court that the Court basically entered the findings and
15 conclusions it had.

16 THE COURT: Thank you.

17 MR. STROMBERG: Thank you.

18 THE COURT: I'm going to stop there. I'm going to
19 call you all back next week. We'll talk about Tuesday or
20 Wednesday which is the most workable in a minute and I am
21 going to give you a bench ruling on this sole issue that we've
22 argued here today but let's talk about a couple of things. We
23 have a status conference that I think Mr. Sutherland's client
24 requested for Ondova and I was frankly so busy getting through
25 the motion for summary judgment and the response, I haven't

1 really studied what all that request in Ondova is about. So,
2 I want to talk about that.

3 And then Mr. Fine, I also want to talk about a flurry
4 of pleadings that the receiver has filed in both the
5 bankruptcy court and the district court and figure out, do we
6 need to also set those for a hearing next week when we come
7 back for my ruling.

8 So, Mr. Sutherland, let me ask you first on Ondova.

9 MR. SUTHERLAND: If you would like to have the status
10 conference next week, Your Honor, I'm fully content to do
11 that. There's -- my request for a status conference was
12 really in response to a call that I got from the clerk of the
13 court about the status of some pleadings. I do want to get
14 that straightened out but there's nothing urgent today. If
15 Your Honor's mind is on this summary judgment -- I only sent
16 out the notice of the status conference this morning. So
17 that's very short notice. I don't mind coming back next week.
18 I don't mind arguing it today though if you want to get it out
19 of the way.

20 THE COURT: All right. Well, let me just hear what
21 it's about. I know that there were appeals in the Ondova case
22 of the confirmation order and maybe some ancillary orders and
23 I have not been too focused on pleadings regarding that appeal
24 because I didn't want to waste anyone's time thinking that
25 might all be moot. But if you all are concerned about

1 appellate deadlines and losing rights --

2 MR. SUTHERLAND: It's not all moot, Your Honor, but I
3 don't know that it's urgent.

4 THE COURT: Okay.

5 MR. SUTHERLAND: And you're right, there was
6 confirmation of the plan back in late November, before
7 Thanksgiving, I think. There were three notices of appeal
8 filed, all for somewhat different reasons and from different
9 angles. Two of those notices of appeal were transmitted to
10 the district court; those by Mr. Baron and those by Mr.
11 MacPeat's client is --

12 THE COURT: Netsphere.

13 MR. SUTHERLAND: -- Netsphere. And somewhere in the
14 timing, the Fifth Circuit's ruling came down on the 18th.
15 Judge Ferguson fairly promptly on his own, vacated the
16 companion order. Your Honor had the confirmation order and
17 the district court had the order authorizing the sale that
18 funded the plan. Judge Ferguson vacated the order authorizing
19 the sale that would have funded the plan and then closed,
20 dismissed, did something to administratively get rid of the
21 Baron appeal and the Netsphere appeal from the confirmation
22 order.

23 We appealed, a conditional appeal, I would say, that
24 has never been transmitted and then when the Fifth Circuit
25 order came down, I started working on a motion to vacate but

1 what really prompted the timing of the filing of the motion to
2 vacate was Judge Ferguson's order vacating the sale order that
3 would have implemented the confirmation.

4 I would much rather -- my thought was I would much
5 rather be accused of being premature than later be accused of
6 being too late. So what we have is we have an untransmitted
7 appeal from the confirmation order and a motion to vacate in
8 which I did invoke that Rule 8000 series thinking that it
9 would all be transmitted together. That's the issue. We can
10 address this next week though.

11 THE COURT: All right. Yes, I -- well I will say
12 that any phone call you got from the clerk's office wasn't
13 initiated at my end because --

14 MR. SUTHERLAND: I understand that.

15 THE COURT: -- I have actually been ignoring all of
16 that appellate activity regarding the confirmation order for a
17 couple of reasons, not just the potential mootness of it all
18 because of the Fifth Circuit ruling on the receivership, that
19 the automatic stay -- I mean there's technically an automatic
20 stay of Jeff Baron issues because of this involuntary, whether
21 it lives or dies.

22 MR. SUTHERLAND: And I'm sensitive --

23 THE COURT: Right now it's all stayed, so --

24 MR. SUTHERLAND: Although --

25 THE COURT: Let's defer the status conference to next

1 week and you all think about if there is some order that
2 everyone can agree to that tolls stays, you know, makes clear
3 that no appellate deadlines are in effect for anyone. I'm
4 happy to do so sort of a comfort order in that regard.

5 MR. SUTHERLAND: In a perfect world, Your Honor, I
6 think we would. I don't think there's going to --
7 realistically, I don't think there will be any such agreement.
8 I think you'll just have to hear everybody and decide that.
9 But I am happy to come back next week. There is nothing
10 urgent about it.

11 While I disagree with the receiver's position that
12 everything has to wait until the petition for rehearing is
13 granted or ruled upon, I am sure they feel the other way
14 around but I do think I would like to preserve the issue of
15 the motion to vacate the confirmation order. I don't want
16 that to be lost procedurally and unfortunately when the clerk
17 called me, that's what she was about to do, was to somehow or
18 another push a button to terminate my motion for not having a
19 setting, not having it transmitted and I -- the reason I asked
20 for a status conference is I don't want to have that
21 terminated just yet, as well.

22 THE COURT: All right. All right. Well, we'll hear
23 from others but none of that needs to be going forward and
24 there's an automatic stay and it just doesn't make any sense
25 with the Fifth Circuit activity still alive.

1 MR. URBANIK: Yes, Your Honor. Ray Urbanik for the
2 Trustee. That's why we thought our motion at docket 1051 to
3 extend all the deadlines on five appeals, three by Mr. Baron,
4 one by Carrington Coleman and one by Netsphere; the three by
5 Baron I believe have been docketed, the Netsphere and
6 Carrington Coleman have not but we agree with the Court that
7 543 and the bankruptcy would stay all of those appeals. I am
8 not sure that -- so but we can try to work out an order to
9 present to the Court next week.

10 THE COURT: All right.

11 MR. URBANIK: Thank you.

12 THE COURT: All right. Mr. Cochell, I think you are
13 on the phone just for this one issue. Did you have anything
14 you wanted to add?

15 MR. COCHELL: No, Your Honor. I believe it's been
16 covered by Mr. Sutherland and my colleague from Munsch Hardt.
17 And I will reserve for any future hearings that Your Honor may
18 hold on the issue.

19 THE COURT: Okay. All right. Mr. Fine, why don't
20 sort of preview for me these pleadings that you filed in the
21 district court and in the bankruptcy court, I guess last
22 night?

23 MR. FINE: Yes, Your Honor. There are actually two
24 types of pleadings that we filed. Two of them really speak to
25 the current situation in the Fifth Circuit and the desire of

1 the receiver to make sure that nothing occurs either in the
2 bankruptcy court or the district court that would moot or
3 upset jurisdiction of the Fifth Circuit while it is making
4 whatever determination it is going to make.

5 THE COURT: Okay. Now it was stated earlier on in
6 some of the pleadings that in late January, the Fifth Circuit
7 asked all parties to respond to the receiver's motion for
8 rehearing and set like a February 7th or 8th deadline for
9 responses. I know no one knows what they're going to do but
10 there's some suggestion that that -- some indication there
11 might actually be granted a rehearing.

12 MR. FINE: Actually, Your Honor, the request was to
13 parties other than the receiver, to respond to the receiver's
14 petition for en banc hearing. And you're correct, there was
15 that February 7th or 8th deadline for them to respond, which
16 they did and the various parties had different responses.
17 Carrington Coleman filed a response. Mr. Baron filed a
18 response.

19 And then the next step we assume will be either the
20 Fifth Circuit will grant the petition for en banc hearing
21 which my understanding -- and Mr. Schenck is here, he will
22 correct me if I am wrong, if I misstate this -- my
23 understanding is that if they grant that petition, then the
24 December 18th opinion is set aside and essentially it's as
25 though they're hearing a new appeal. And if I've misstated

1 that, Mr. Schenck will be sure to correct me on that. In any
2 event, the mandate has not issued.

3 THE COURT: Is there any normal timeframe to hear
4 from the Fifth Circuit, whether they're going to grant the
5 motion for rehearing?

6 MR. FINE: I would actually defer to my colleague on
7 that. My sense is that it will be a matter of weeks or so.
8 There's typically a hearing en banc in, I believe, March and
9 then one in June.

10 THE COURT: Okay.

11 MR. FINE: And so, they're not often granted but the
12 fact that the Fifth Circuit asked for responses, we think is
13 significant. And although I've on occasion dabbled in
14 appellate matters, Mr. Schenck does this for his -- that's
15 what he does and he tells me that it is substantive and it's
16 important that that was -- that that directive came from the
17 Fifth Circuit.

18 So, two of our pleadings, Your Honor, is our -- or
19 really address that issue; the one is just the notice to the
20 courts, both to the district court and to your court, Your
21 Honor, essentially advising you that things are happening in
22 the Fifth Circuit. We're very mindful of your advice some
23 months ago that we cannot take for granted that you know
24 necessarily what is happening in this case and other courts.

25 The other really speaks to an overall concern that we

1 have and that is that we think that if the receivership estate
2 were to be dismembered, then there may be an occurrence of a
3 situation in which the Fifth Circuit jurisdiction may be
4 mooted, I guess, it would -- for want of a better term. And
5 that would be very inappropriate.

6 There's many reasons we can think of that while an
7 appeal is pending in the Fifth Circuit, be very inappropriate
8 for any party to take any action to attempt to moot that
9 appeal, especially in a situation where the entire Fifth
10 Circuit and all of the resources of all of the judges is being
11 now turned to this appellate matter.

12 Secondly, since none of us really know what the Fifth
13 Circuit might do in this situation and it's entirely possible
14 that they may set aside the entirety of the December 18th
15 opinion, it may be inefficient at best -- it may be a use of
16 resources that we don't need to use. It may be expenditures
17 that are unnecessary to go and expend a lot of time and effort
18 to essentially adjudicate matters which may not become --
19 which may no longer be relevant depending upon what the Fifth
20 Circuit does.

21 And so, our concern is that we essentially present
22 that receivership view to both courts; one, that nothing be
23 done that would impede or impair the jurisdiction of the Fifth
24 Circuit and number two, that if there's something that we
25 could do to essentially abate or stay these matters, until

1 such time as we know what the Fifth Circuit is going to rule,
2 that may be an appropriate thing to do.

3 THE COURT: So, the receiver is asking for abatement
4 of these involuntary proceedings, as well as anything further
5 happening in the receivership?

6 MR. FINE: Well, that's in the wind-down plan and
7 status report that we filed, which is one of those two
8 pleadings I was referring to.

9 THE COURT: Uh-huh.

10 MR. FINE: Indeed, that's -- the gist of it is that
11 until such time as we know what the Fifth Circuit is going to
12 do, it may be appropriate for the receivership to continue to
13 maintain the integrity of the receivership's assets to do
14 those things to maintain the portfolio and so forth.

15 For there to be essentially an abatement of further
16 proceedings here, until we know what is going to happen, as
17 far as I know, the -- what I call the "catcher trustee" has
18 been arranged for. I don't know who that person is but
19 there's no reason that person is to stay quiescent anyways.
20 It's not really to do anything until such time as we know
21 whether or not there's a live involuntary.

22 We may spend a lot of time determining an involuntary
23 proceeding and then find out that the Fifth Circuit actually
24 rules in favor of the receivership and then the quandary that
25 we would have is then why would you need the involuntary.

1 What's the --

2 THE COURT: Well, or the flip side, I mean I had
3 raised the issue in January of could it moot the appeal if we
4 went forward in this involuntary and I ultimately decided
5 after the trial to enter an order for relief, is the Fifth
6 Circuit then going to say you know, why do I need to pass upon
7 the validity or not of the receivership? There's now this
8 replacement vehicle. So --

9 MR. FINE: And Your Honor, one of the responses to
10 the Fifth Circuit was by Mr. Sutherland's firm and that was
11 essentially and I -- you know, they certainly can speak for
12 themselves but that was essentially their argument. And we
13 think from the receivership side, that that would be highly
14 inappropriate to do at this point in time because it might
15 divest the Fifth Circuit of jurisdiction and we may have many,
16 many judges up there very -- not happy with the situation of
17 finding out that they've spent time to decide this issue, only
18 to find that then they have essentially been divested of
19 jurisdiction of the matter.

20 So, we don't -- I represent a receiver. We thought
21 it was appropriate to bring this to the attention of this
22 court and to the district court. I believe that you can then
23 make a decision as to what would be the appropriate action to
24 take. We are presenting what we believe to be a plausible way
25 to proceed and it's the way that we are advocating to the

1 Court to proceed. But it's ultimately a decision for this
2 court, and I assume for Judge Ferguson, as well, for the
3 district court, to decide whether or not you want to go
4 forward and potentially divest the Fifth Circuit of
5 jurisdiction or not.

6 THE COURT: Well --

7 MR. FINE: And that's --

8 THE COURT: -- I wish we could all be on the same
9 page. I know there's nothing more -- I mean, there's nothing
10 I would love more than to just abate this.

11 MR. FINE: Uh-hum.

12 THE COURT: Not waste any more court time, attorney
13 time -- you know, it sounds like it more than likely would be
14 June. I'm looking at Mr. Schenck. It's -- even if the Fifth
15 Circuit is going to grant en banc rehearing, there's no chance
16 it would be set on the March en banc docket, is there? I mean
17 we're at February 13th.

18 MR. SCHENCK: Your Honor, David Schenck for the
19 record. The en banc procedure has -- presents two options if
20 the en banc is granted; one, they could just decide the case
21 and issue an opinion. They don't have to have another
22 argument. They don't have to ask for more briefs. Or they
23 could say they want more briefing and they want to hear more
24 argument. We argued this thing for three hours at the panel.
25 I've never had an argument as long as that in my career.

1 So, I don't know what they would do but I think what
2 Mr. Fine is suggesting is that the receiver's position is that
3 there was an order entered by the district court which we were
4 obliged and we're happy to defend on a recommendation from
5 this court that we think is important. It involves uncleared
6 issues of law and other matters and we're concerned that we
7 need to defend the receivership estate, defend the continuing
8 jurisdiction in the district court and the Fifth Circuit over
9 that appeal and the en banc proceedings that we've initiated
10 there.

11 If the Fifth Circuit determines that the case should
12 be heard en banc and reverses or I am sorry, vacates the panel
13 opinion, affirms the receivership order, we would be in a
14 position, subject to whatever appeals are pending from this
15 court's confirmation of the plan to move forward.

16 If the Fifth Circuit denies rehearing or simply
17 leaves the panel opinion and its material effect in place,
18 then we would be in a position with the stay in place in this
19 court or in the district court over these proceedings with an
20 interim trustee in place, if I am understanding the bankruptcy
21 procedure to move forward at that time with whatever plans
22 with Mr. Baron, satisfying his legal obligation to his
23 creditors through the Bankruptcy Code.

24 THE COURT: All right. Am I wrong to think surely
25 everyone sees the wisdom of -- I'm not ruling today, I am

1 giving everyone a chance to look at these pleadings and take a
2 position. We may set this for hearing next week but I'll just
3 hear from the Chapter 11 Trustee. You're obviously a party
4 that's affected.

5 MR. URBANIK: Yes.

6 THE COURT: And then I don't know if Mr. Baron's
7 counsel is ready to weigh in or not but --

8 MR. URBANIK: Your Honor, these pleadings were very
9 surprising at us. We weren't advised or consulted at all on
10 them, so -- and I have not even had a chance to speak to Mr.
11 Sherman today about them. I am not even sure if he's seen
12 them.

13 I would be very -- because of my personal schedule,
14 but I think many constituents here should get the full twenty
15 days to review these pleadings and file responses, especially
16 eleven -- especially sixty-one in the Baron case, sixty-two in
17 the Baron case, which are, one motion to pay receivership
18 expenses and one status report and wind-down motion. We will
19 need some time to prepare a response to those two.

20 There are really thorny, complex issues including
21 something that's pretty fundamental that no one will say and
22 that is some of the orders issued by Judge Ferguson in
23 December and January may be void or voidable orders. Some of
24 the orders he issued may not -- may be of no effect because of
25 the automatic stay and the implications of Section 543.

1 So, so much of what these papers deal with are some
2 orders from Judge Ferguson post-decision. You know, we do
3 need to look at that issue of whether they are valid orders or
4 invalid orders. Besides the Ondova's estate, I am sure the
5 petitioning creditors would also like more time to respond to
6 the five or six pleadings filed by the receiver last night. I
7 think the relief requested goes too far. It's not consistent
8 what the Court discussed in January and I think some of the
9 legal and factual points made by the receiver are simply
10 incorrect. And many of these things do affect Ondova. We are
11 a co-plan proponent. We were the party that moved for the
12 creation of the receivership and it's a little unusual that
13 the receiver is hauling off and doing these things. These are
14 almost an end run around Section 543.

15 The Section 543 creates the architecture of how this
16 case should proceed, not the receiver of a receivership that
17 is superseded. So, Your Honor, we would like more time to
18 respond to the pleadings. We could have a status conference
19 next week.

20 THE COURT: Okay. I guess I am, you know, a person
21 who hears what he wants to hear and doesn't always hear
22 everything. I was really focused more than anything else on
23 abatement. I mean I realize that there are several pleadings
24 that were filed last night and but that -- I guess that was
25 the one thing I was really focused on. The arguments, the

1 statements Mr. Fine was making about not divesting the Fifth
2 Circuit of jurisdiction to fully and finally, you know,
3 consider the issues, so --

4 MR. URBANIK: We could address abatement at next
5 week's hearing, Your Honor. That would not be a problem.

6 THE COURT: Okay. Mr. Sutherland?

7 MR. SUTHERLAND: On the one hand, Your Honor, I do
8 want to stand by what I said earlier; I'm only appearing on
9 Ondova and not in Baron. The receiver's declaration was filed
10 only in Baron and not in Ondova and yet I'm cited in it and my
11 responses in the Fifth Circuit are cited in it. I just wanted
12 to make the Court aware as it pertains to the Ondova case and
13 the issues we're talking about there, that what we've done in
14 our response is we've laid these issues of this involuntary
15 out before the Fifth Circuit and we've suggested to the Fifth
16 Circuit not as a petitioning creditor but as somebody that
17 just wants to see judicial efficiency at operation here, is
18 that perhaps the receivership should be swallowed up by the
19 involuntary, just the opposite of what Mr. Fine is arguing.

20 I really don't think that I read the January 28th
21 letter from the Fifth Circuit asking for responses as broadly
22 as the receiver does. I can't see how you go on for pages
23 saying please file your responses by January the 7th, which --
24 February 7th, which by the way, we did. And those issues
25 including this issue of the so-called threat to so-called

1 divest the Fifth Circuit of jurisdiction is probably the
2 really wrong terminology to use. I don't see how you could
3 divest them of jurisdiction.

4 But that issue is right before them. It's right in
5 front of them. It's not in hidden. It's been counter-
6 pointed. So, if they want to protect their jurisdiction, Your
7 Honor, the Fifth Circuit is quite big enough to do that.

8 THE COURT: All right.

9 MR. PRONSKE: Your Honor, just one quick point, as
10 far as abatement is concerned, what we would essentially be
11 doing right now, we have a failed receivership until the Fifth
12 Circuit does something different and I would request that this
13 case not be abated based on we have a ruling from the Fifth
14 Circuit that we have a failed receivership. We have by the
15 appellate lawyer's own admissions here, a situation where the
16 Fifth Circuit rarely grants a petition for rehearing. Good
17 signal that they -- you know, that they asked for responsive
18 pleadings but that's not the same as granting the rehearing
19 and I would hate to see us lose the time of an abatement based
20 on what I think everybody is saying is at this point is a very
21 unlikely event and that we would keep this proceeding going.

22 And if the Fifth Circuit does vacate the December
23 order, then it would be appropriate to raise that abatement
24 issue perhaps at that point in time.

25 THE COURT: All right. Mr. Stromberg, are you

1 prepared to say what Mr. Baron's position is on abatement
2 here?

3 MR. STROMBERG: No, Your Honor, I am not and I think
4 if we were able to do that in seven days I might be better
5 situated to do that, bearing in mind that my role in this case
6 at least as far as I understood it, was for the limited
7 purposes of the involuntary.

8 But to the extent that Mr. Baron needs a spokesman
9 for that, I would need a little bit of time to digest this.
10 I, like the Court, saw these pleadings and what have you late
11 last night for the first time and I wasn't aware they were
12 coming. So, I don't have a position at this point.

13 I would like to just ask the Court before you leave
14 the bench, if we could go back to some of the Baron issues, if
15 we could. We can do that now or we can do that at some point
16 before we're done.

17 THE COURT: What Baron issues?

18 MR. STROMBERG: Well, there were two that I wanted to
19 raise because some of the things are going to be decided only
20 as a consequence of what the Court announces as your bench
21 ruling. And by the way, I spoke with Mr. Pronske while the
22 other Ondova things were going on and we're both available on
23 the 20th, which is Wednesday of next week and that --

24 THE COURT: Okay.

25 MR. STROMBERG: -- was when you indicated you want to

1 announce your bench ruling either Tuesday or Wednesday.

2 THE COURT: All right. So, Wednesday, February 20th.

3 Laura, do we still have morning and afternoon, that was

4 supposed to be trial week?

5 THE CLERK: Let me look at the calendar.

6 (Pause)

7 THE COURT: All right. Is 1:30 good for everyone?

8 MR. STROMBERG: As far as I know, Your Honor, that's

9 fine.

10 THE COURT: Okay. That's when we will come back for

11 the bench ruling and then --

12 MR. FINE: Your Honor, is the setting on Wednesday

13 solely on the ruling or is that when you're also going to be

14 setting the status conference?

15 THE COURT: I wanted to do the status conference. Is

16 there an issue?

17 MR. FINE: Well, Mr. Vogel would like to be present

18 and he's not available on --

19 MR. VOGEL: I'm not available on Wednesday or

20 Thursday, Your Honor.

21 THE COURT: Okay.

22 MR. FINE: If we're going to be spending quite a bit

23 of time on receivership related matters, I would ask if --

24 he's available on Tuesday, if the parties are.

25 MR. STROMBERG: Let me just check, Your Honor.

1 THE COURT: Okay.

2 MR. SUTHERLAND: Your Honor, just to clarify what
3 status conference on the motion to vacate the confirmation
4 order would be about, it really is not to argue --

5 THE COURT: Could you speak into the mic.

6 MR. SUTHERLAND: I'm sorry. It's really not to argue
7 the merits of the motion. It's just to decide whether this
8 court or the district court, because of the appeal, would be
9 the right to court hear it, where it should be docketed. And
10 then I suppose if it's in this court, whether we should have a
11 hearing soon or late. It's not going at all to the motion.
12 So, if Mr. Vogel wants to be here, that's fine. If the 20th
13 or the 19th works out for everybody, that's fine, too; but
14 really not a testimonial hearing or -- it's really a
15 housekeeping matter, which court -- how do we get it to the
16 right court and if it's this court, how do we -- when do we
17 have a hearing?

18 THE COURT: Are you talking about your -- the Ondova
19 matters?

20 MR. SUTHERLAND: The Ondova motion to vacate the
21 confirmation order.

22 THE COURT: Okay.

23 MR. SUTHERLAND: That's the status --

24 THE COURT: But they're more concerned about the --

25 MR. SUTHERLAND: Okay.

1 THE COURT: -- status conference and all the
2 receiver's pleadings filed last night.

3 MR. SUTHERLAND: Oh, their things. Well, that's a
4 different story, Your Honor. I thought we were talking about
5 just that one little thing.

6 THE COURT: No, no. Well, I am trying to be
7 efficient but does it make more sense now that I am thinking
8 through this, just to come back next Wednesday on the bench
9 ruling on bona fide disputes and then go ahead and give people
10 twenty-one days notice to respond substantively to the
11 motions? And then we come back twenty-one days plus on a real
12 hearing, as opposed to a status conference on the motions?

13 MR. URBANIK: That's what the Trustee would prefer.
14 I am giving a Webinar Tuesday, so it's hard for me to come
15 Tuesday.

16 THE COURT: Okay.

17 MR. URBANIK: But we would prefer the twenty-one
18 days.

19 THE COURT: Okay. Everyone good with that? I
20 assume, Mr. Baron it would be -- he would prefer more time
21 rather than less time?

22 MR. STROMBERG: Yes, but I will be here on the 20th
23 if that's when the --

24 THE COURT: Okay, all right.

25 MR. STROMBERG: -- Court's going to do your bench

1 rulings.

2 THE COURT: All right. Mr. Fine, any issue with
3 that?

4 MR. FINE: Your Honor, if what you're going to be
5 doing next Wednesday is just announcing your ruling and then
6 the parties can have -- all the parties can have time to
7 respond to what we filed, I can't really argue with giving
8 parties time to respond.

9 There are -- I did not really have an opportunity to
10 talk to you about the other two things that we filed which --

11 THE COURT: Okay.

12 MR. FINE: -- one of them was the application to pay
13 receivership expenses. That goes to past expenses through
14 December 31st and then the motion to or application or request
15 to clarify what we're supposed to do going forward. We've had
16 an order from Judge Ferguson about filing weekly statements
17 and we're simply asking for clarification. What are we
18 supposed to do going forward with filing our statements? We
19 know from the January 17th interim order, we know to come here
20 to file for receivership expenses but that really goes just to
21 the question of clarification of what are we supposed to do?

22 And so those two matters really have to do with
23 payment of receivership expenses; how do we bring them before
24 the Court.

25 THE COURT: Okay. So, I had previously ruled and

1 then made a report and recommendation and Judge Ferguson also
2 ruled that number one, the automatic stay in this involuntary
3 was lifted to allow all the Fifth Circuit Appellate
4 proceedings to go forward with regard to the rehearing and the
5 receivership order.

6 I had also lifted the stay to -- and waived 543, so
7 that the receiver could maintain the domain names and any
8 other reasonable overhead associated with maintaining the
9 domain names. I guess I wasn't clear about what you're
10 raising now, receivership --

11 MR. FINE: No, actually --

12 THE COURT: -- receiver fees and expenses or --

13 MR. FINE: Actually, Your Honor, in your order --

14 THE COURT: Okay.

15 MR. FINE: -- you actually are very clear. You say
16 that receivership -- requests for receivership expenses are to
17 be filed here with this court, which is what we've done and
18 that you would review them and then make a recommendation up
19 to Judge Ferguson. And as to the matter that I talked about
20 of clarification of the request for clarification, that's
21 really more of a ministerial or administrative matter, just
22 that we need to know our -- do you have the expectation that
23 we're supposed to file on a weekly basis, our invoices or is
24 that something that Judge Ferguson will clarify for us. He
25 had said previously in one of his prior orders that we were to

1 do that. Then he vacated scheduling deadlines. We simply
2 don't know what to do on that. We're just asking for
3 clarification on that going forward.

4 On the receivership expenses, it's clear from your
5 January 17th order, procedurally we've done the right thing.
6 We've filed it here and whatever way you would like to handle
7 that is -- that's up to the Court to decide whether you want
8 to give the parties an opportunity to hear the matter further.

9 As far as some of those expenses are concerned,
10 they've already been decided upon by Judge Ferguson, for
11 example, they -- Matt Morris' -- the expert's fees from the
12 confirmation hearing, our fees, there are expenses for Mr.
13 Nelson, who runs the portfolios and Mr. Cox (ph.) and Mr.
14 Eckles (ph.) that are also in that application. Those are the
15 only ones that have not already been decided by Judge
16 Ferguson.

17 So we really -- we're presenting it to you. You can
18 handle it in whatever way you think is appropriate. We don't
19 necessarily think that that needs to have a full twenty-one
20 day vetting. From the district court's point of view, those
21 types of receivership requests would be handled on a
22 ministerial basis.

23 MR. PRONSKE: Your Honor, can I just be heard
24 briefly?

25 THE COURT: Yes, two minutes. I am looking at my

1 calendar but go ahead and then Mr. Roberson, I see you
2 standing up.

3 MR. PRONSKE: Your Honor, just briefly, I think some
4 of the difficulty with this is that there's a Code structure
5 that works beautifully and was written for this procedure for
6 what's going on in this case. It was written exactly for
7 what's going on. And the requests are that that not be done
8 because what the Code says and I don't mean to start a
9 controversy but I am just telling you what the Code
10 specifically says, 543(c) says that this court makes
11 determinations on all the fees and then what's awarded is
12 awarded as an administrative expense in Section 503(b)(3)(E)
13 specifically says that says that custodians fees are
14 administrative expenses for the pre-bankruptcy custodian fees.
15 And under 503(b)(4), it says that the lawyers' fees are
16 treated the same way.

17 So, it's -- this court hasn't waived 543(c). This
18 court specifically has said that that's still part of the
19 process here and there's an automatic stay and I think that it
20 seems to me the procedure is really simple. You haven't
21 abated the case and we've got a procedure here that the
22 Bankruptcy Code's really clear on. We've got a Section 543
23 that's designed for bankruptcies over receiverships and the
24 procedure is very clear; you make the determinations of the
25 fees. There's -- it's an administrative expense application

1 and when you're awarding those, I would imagine you would look
2 at the same things that you look at when you're allowing
3 payment of other fees. In this case, the Dykema fees are
4 770,000 dollars which is about a third of the money or more
5 than a third of the money that's left. And so, I would
6 imagine that's an important thing.

7 And so it seems to me we've got a code structure that
8 works really well and I think the difficulty is we're trying
9 to figure out how to make that not work.

10 THE COURT: Mr. Roberson, did you have anything new
11 to add to that? In case people have forgotten, I was sort of
12 thinking out loud about all of this back on January 15th and
13 I'm not sure we've made too much progress --

14 MR. ROBERSON: Your Honor, I understand.

15 THE COURT: -- figuring out a template here.

16 MR. ROBERSON: I think the Court was thinking out
17 loud at the prior hearings and I think the Court went on to
18 think out loud with Judge Ferguson in between. The two courts
19 have created a framework that I think is clear and it protects
20 these assets. There's no risk that somebody's going to
21 dismember the receivership while there's a stay in place.
22 Presumably, this court or the district court would enforce
23 that stay.

24 As somebody has said, there's a chance that the
25 receivership maybe upheld. We don't know that that's a larger

1 or small chance. We can all speculate about that but in the
2 meantime, the receivership assets are protected. This court
3 made it clear that the stay is in place as to the entire
4 Netsphere litigation with the exception of the Fifth Circuit
5 appeal. So to come in here and argue that somehow that
6 framework is going to be disrupted, I personally don't see it.

7 Secondly, at the hearing, I believe it was on the
8 17th, the Court gave a limited right to the receiver to
9 continue to use the expenses and those were for the domain
10 names. Mr. Fine said well, Your Honor, there are other
11 expenses and you had a quizzical look on your face and I
12 believe the record will reflect you said what are they and I
13 think he said, expenses of employees, and office-related
14 expenses.

15 There was no discussion about coming back in here to
16 ask for fees -- to this court to ask for fees. The order that
17 was drafted, Mr. Fine drafted it. I would agree with Mr.
18 Pronske, there's already a procedure in place under 503.
19 These are administrative expenses that ought to have full
20 notice and hearing. There's no reason to expedite
21 consideration of that. If the Court wants to expedite
22 consideration of an abatement, certainly the Court can do
23 that. But the rest of this stuff is routine, administrative
24 expense consideration and I would ask the Court to give it
25 full briefing.

1 THE COURT: All right. The Court is going to do
2 that. Mr. Fine, if you could just follow-up with my courtroom
3 deputy on a setting, twenty-one plus days out on your --
4 twenty-one plus three days out on your various pleadings and
5 then next Wednesday at 1:30, February 20th, 1:30, I will
6 simply have a bench ruling on the motion for summary judgment
7 issue from today and we will go ahead and have a status
8 conference, Mr. Sutherland, on the Ondova issue and I hope
9 maybe you all have worked out some sort of agreed form of
10 order with regard to the various deadlines and mechanics but
11 if you haven't, we'll try to hammer through that then next
12 Wednesday. Okay?

13 All right. Anything further then?

14 MR. STROMBERG: Sorry, I had that one more thing I
15 wanted to ask you about and then everybody jumped in.

16 THE COURT: Okay.

17 MR. STROMBERG: Erin Schmidt from the U.S. Trustee's
18 Office is here and she and I both thought that since --
19 because involuntary cases are a little unusual and this one is
20 most unusual, that we would request a little bit of guidance.
21 The Court had directed and the receiver had paid a 25,000
22 dollar retainer. We received that retainer and are holding
23 it. I asked Lisa Lambert, before we came here maybe last week
24 or the week before, whether or not the U.S. Trustee expected
25 us to file a 2016 disclosure, whether or not there was a fee

1 application process that we should go through, all of which
2 both of us scratched our heads and said we don't know. It
3 doesn't necessarily apply in the gap.

4 So, I wanted to get some guidance from the Court
5 about how you want me to handle that. We haven't drawn on it.
6 We haven't done anything with it. But, you know, that's
7 something that we thought perhaps we might get some guidance
8 from you on.

9 THE COURT: Do you need to file a 2016 statement in
10 the Bankruptcy Court?

11 MR. STROMBERG: Um-hum.

12 THE COURT: Disclosing the 25,000 dollars, where it
13 came from and who got it?

14 MR. STROMBERG: I would assume so but --

15 THE COURT: Yes.

16 MR. STROMBERG: -- the U.S. Trustee --

17 THE COURT: I think we know the answer to that.

18 MR. STROMBERG: Yes. The U.S. Trustee's position on
19 that was if the order for relief is entered, yes, you've got
20 to do that right away.

21 THE COURT: Okay.

22 MR. STROMBERG: And so, I wanted to know in this
23 period before we have an order for relief, if an order for
24 relief is coming, we don't know yet, but in this period, do
25 you want me to do it now or do you want me to wait until the

1 order for relief is entered?

2 THE COURT: Go ahead and do it now.

3 MR. STROMBERG: Okay.

4 THE COURT: I think we know what it says but --

5 MR. STROMBERG: Right, right. Well, I just told you

6 but --

7 THE COURT: All right. All right.

8 MR. STROMBERG: Thank you.

9 THE COURT: You can go ahead and do that and -- all
10 right, we will see you next Wednesday at 1:30 p.m.

11 MR. STROMBERG: Thank you, Your Honor.

12 (Whereupon these proceedings were concluded at 3:40 PM)

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RULINGS:	PAGE	LINE
Bench ruling Date set 2/20/13	84	5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

I, Linda Ferrara, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Linda Ferrara

February 20, 2013

LINDA FERRARA

DATE

AAERT Certified Electronic Transcriber CET**D 656

eScribers
700 West 192nd Street, Suite #607
New York, NY 10040

A	<p>26:12;27:2;33:8 adjustments (1) 36:12</p> <p>administrative (11) 11:8,9;12:24;13:2; 18:17;79:21;81:12, 14,25;83:19,23</p> <p>administratively (1) 59:20</p> <p>admission (1) 22:3</p> <p>admissions (1) 73:15</p> <p>admit (3) 21:8;45:9;47:1</p> <p>admitted (7) 44:19;45:7;46:9, 16;47:18;48:6;50:20</p> <p>adopt (2) 34:3,19</p> <p>advice (1) 64:22</p> <p>advised (2) 46:15;70:9</p> <p>advising (1) 64:21</p> <p>advocating (1) 67:25</p> <p>affect (2) 24:6;71:10</p> <p>affected (1) 70:4</p> <p>affidavit (11) 8:18;20:25;21:3,9; 22:11;23:12;26:4; 42:2;47:22;48:2; 50:20</p> <p>affidavits (4) 5:22;17:10;23:10; 44:24</p> <p>affirms (1) 69:13</p> <p>afternoon (7) 4:6,10,12,13,16; 5:1;75:3</p> <p>Again (19) 9:6;11:17;16:10; 17:23;18:16;22:23, 24;29:3;30:17; 32:21,21;39:15; 43:2;46:9;47:19; 50:13,14;51:13; 54:25</p> <p>against (12) 12:6;19:21;23:24; 28:11;30:14;36:9; 37:8;38:3,3;49:6; 54:18;55:17</p> <p>aggregate (1) 41:22</p> <p>ago (1) 64:23</p> <p>agree (6)</p>	<p>24:19;26:18; 48:23;61:2;62:6; 83:17</p> <p>agreed (4) 33:18;34:16; 45:19;84:9</p> <p>agreement (4) 33:10;34:19;54:2; 61:7</p> <p>ahead (11) 11:11;16:17,21; 17:2;23:20;54:8; 77:9;81:1;84:7;86:2, 9</p> <p>Alan (1) 4:7</p> <p>aligned (1) 20:8</p> <p>alive (1) 61:25</p> <p>alleged (3) 4:7;5:23;6:5</p> <p>allow (1) 79:3</p> <p>allowed (5) 16:12;18:2;30:16, 21;51:2</p> <p>allowing (3) 16:24;48:21;82:2</p> <p>allows (1) 52:18</p> <p>almost (2) 12:15;71:14</p> <p>although (7) 6:14;10:22;19:20; 45:14;56:19;60:24; 64:13</p> <p>always (2) 53:19;71:21</p> <p>Amendment (2) 15:9;23:19</p> <p>among (3) 20:21;28:18;48:20</p> <p>amount (4) 13:1;27:11;28:8; 53:7</p> <p>amounts (11) 15:13;33:24;34:3; 37:13;43:25;46:5; 47:13,20;48:15,22; 49:22</p> <p>analogize (1) 48:12</p> <p>analogous (2) 34:16;50:9</p> <p>analogy (4) 32:23,24;48:24; 49:10</p> <p>analysis (2) 44:24;52:2</p> <p>analytically (2) 11:3;44:4</p> <p>analyze (1)</p>	<p>52:4</p> <p>ancillary (1) 58:22</p> <p>and/or (2) 8:6,6</p> <p>angles (1) 59:9</p> <p>announce (1) 75:1</p> <p>announces (1) 74:20</p> <p>announcing (1) 78:5</p> <p>anymore (1) 54:10</p> <p>anyways (1) 66:19</p> <p>Apart (1) 57:5</p> <p>apparent (1) 51:9</p> <p>appeal (51) 10:22,24;11:9,21, 22,24,25;12:2,5,7,8, 14,18;13:5,15;14:1, 5,8,25;15:2,5,5;16:7, 8,21,25;18:4;36:6, 22;37:21;39:5; 40:12;47:4;49:20, 21;50:5;53:8;58:23; 59:7,9,21,21,23; 60:7;63:25;65:7,9; 67:3;69:9;76:8;83:5</p> <p>appealable (3) 49:17,18;50:3</p> <p>appealed (4) 13:13;49:19;50:9; 59:23</p> <p>Appeals (22) 8:6;13:11;31:22; 32:3;34:25;35:5,6,7, 14,23;36:4,8;37:9, 23;38:16;41:6;42:9; 57:5;58:21;62:3,7; 69:14</p> <p>appear (1) 34:14</p> <p>appearance (1) 4:22</p> <p>appearances (1) 4:4</p> <p>appeared (1) 48:4</p> <p>appearing (2) 5:6;72:8</p> <p>appears (1) 30:11</p> <p>appellate (8) 38:6;59:1;60:16; 61:3;64:14;65:11; 73:15;79:3</p> <p>applicable (1) 38:19</p>	<p>application (8) 30:8;48:19;49:2; 78:12,14;80:14; 81:25;85:1</p> <p>applications (2) 29:25;48:15</p> <p>apply (3) 16:25;31:14;85:3</p> <p>appoint (1) 48:16</p> <p>appointed (3) 40:23;55:3,4</p> <p>appointing (1) 35:16</p> <p>appropriate (11) 26:6;48:23;49:9; 51:15;52:5;66:2,12; 67:21,23;73:23; 80:18</p> <p>approve (1) 32:25</p> <p>approved (2) 33:19;39:25</p> <p>approves (1) 44:6</p> <p>approving (2) 30:10;33:4</p> <p>Arce (1) 28:24</p> <p>architecture (1) 71:15</p> <p>argue (7) 5:25;17:24;47:3; 76:4,6;78:7;83:5</p> <p>argued (7) 5:14;16:10;41:24; 42:1;54:16;57:22; 68:24</p> <p>arguing (4) 8:1;41:12;58:18; 72:19</p> <p>argument (18) 9:1,5;11:4;19:10, 24;26:1,19;33:16; 36:15,16,17;37:13; 41:1,13;67:12;68:22, 24,25</p> <p>arguments (5) 5:10;41:16,25; 57:2;71:25</p> <p>around (3) 25:2;61:14;71:14</p> <p>arranged (1) 66:18</p> <p>aside (11) 31:10;32:10,14; 33:10,15;38:15; 39:19;55:7,12; 63:24;65:14</p> <p>assert (1) 23:24</p> <p>assessment (3) 23:1;28:2;30:20</p>
----------	---	---	---	--

<p>assessments (1) 44:15</p> <p>assets (7) 18:19;37:11,15; 39:9;66:13;82:20; 83:2</p> <p>associated (1) 79:8</p> <p>assume (5) 56:19;63:19;68:2; 77:20;85:14</p> <p>assuming (2) 26:18;33:16</p> <p>attached (1) 42:21</p> <p>attack (1) 51:23</p> <p>attempt (3) 26:25;27:1;65:8</p> <p>attempted (2) 43:18;55:2</p> <p>attempting (2) 29:11;32:9</p> <p>attention (2) 53:20;67:21</p> <p>attorney (4) 56:22,23;57:3; 68:12</p> <p>attorneys (6) 13:2;35:21;37:13, 17;41:21;45:14</p> <p>attorney's (2) 23:2;28:3</p> <p>authority (13) 29:6,7;32:19; 33:12,14,17;34:22, 24;35:8,13;36:18; 38:9,15</p> <p>authorizing (2) 59:17,18</p> <p>automatic (6) 60:19,19;61:24; 70:25;79:2;81:19</p> <p>available (4) 74:22;75:18,19,24</p> <p>award (1) 47:12</p> <p>awarded (2) 81:11,12</p> <p>awarding (1) 82:1</p> <p>aware (2) 72:12;74:11</p> <p>away (3) 9:12;17:21;85:20</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>b3D (1) 20:1</p> <p>back (21) 16:6,20;18:6; 23:24;31:12;34:20;</p>	<p>41:15;43:25;46:2; 48:15;57:19;58:7, 17;59:6;61:9;74:14; 75:10;77:8,11; 82:12;83:15</p> <p>banc (10) 15:24;63:14,20; 64:8;68:15,16,19,20; 69:9,12</p> <p>bank (2) 20:1;54:12</p> <p>bankruptcies (1) 81:23</p> <p>Bankruptcy (12) 5:17,19;32:24; 48:16;58:5;62:7,21; 63:2;69:20,23; 81:22;85:10</p> <p>Baron (88) 4:22;5:6,12;15:9, 22;19:22,23,24;20:4, 8,12;21:1;23:9,11, 18,21,24;24:11; 25:24;26:20,23;27:6, 17,22;28:11,13,23; 29:4,7,16,18;30:13; 31:9,18;34:21;35:10, 12;36:9,19;37:10; 38:3,10,14;40:1; 42:20,24;44:8,19,22; 45:14;46:1,10,13,14, 14,15,17;47:6,20; 48:1,5,5;49:19,22; 50:14,15,25;51:7,13; 52:16,22;55:15; 56:22;59:10,21; 60:20;62:3,5;63:17; 69:22;70:16,17;72:9, 10;74:8,14,17;77:20</p> <p>Baron's (19) 4:2;17:13;18:19; 19:22;23:17;24:25; 25:9;26:4;31:17; 34:13;35:21;37:11; 39:8;41:11;42:2; 43:23;46:8;70:6; 74:1</p> <p>based (8) 9:10;15:14;19:21; 25:9;45:16;50:16; 73:13,19</p> <p>basically (9) 9:19;10:12,20; 12:23;15:15;30:10; 45:25;51:16;57:14</p> <p>basing (1) 26:3</p> <p>basis (4) 8:3;21:25;79:23; 80:22</p> <p>bear (4) 17:4;31:16;34:12; 39:7</p>	<p>bearing (4) 32:7;42:11,12; 74:5</p> <p>beautifully (1) 81:5</p> <p>become (3) 17:5;18:1;65:18</p> <p>becoming (1) 50:23</p> <p>begin (1) 4:2</p> <p>behalf (9) 4:7,14,17;5:6; 25:8;35:10;36:18; 38:10;40:1</p> <p>bench (8) 57:21;74:14,20; 75:1,11;77:8,25;84:6</p> <p>beneath (1) 37:7</p> <p>benefit (2) 55:18;56:22</p> <p>benefits (3) 27:10;34:4,5</p> <p>benefitting (1) 35:12</p> <p>Besides (1) 71:4</p> <p>best (1) 65:15</p> <p>better (2) 65:4;74:4</p> <p>big (3) 48:13;53:9;73:7</p> <p>bill (2) 21:7;22:9</p> <p>billing (1) 42:21</p> <p>billings (1) 19:22</p> <p>ills (2) 21:18;39:24</p> <p>binding (7) 10:3;33:5;36:23; 40:19;41:2,19;42:8</p> <p>bit (9) 11:2,3;19:5,6; 35:6;56:7;74:9; 75:22;84:20</p> <p>blanket (1) 10:23</p> <p>bona (30) 5:15,20;6:21,24; 7:21;8:8,16;9:17; 10:4,17,25;12:15,19, 21;17:1;20:24; 22:11,19;24:23; 26:1;27:22;31:9; 32:18;37:3;41:7,20; 44:7,9;52:15;77:9</p> <p>bond (6) 37:19,20,20;53:2, 3,5</p>	<p>both (13) 6:24;9:10;25:24; 33:18;37:22;49:15; 56:22;58:4;64:20; 65:22;74:22;84:18; 85:2</p> <p>bottom (1) 56:17</p> <p>bound (1) 34:6</p> <p>breaches (1) 28:22</p> <p>brief (3) 50:16,19;51:1</p> <p>briefing (2) 68:23;83:25</p> <p>briefly (3) 53:15;80:24;81:3</p> <p>briefs (3) 15:22;53:17;68:22</p> <p>bring (8) 28:16,17;29:22; 30:14;53:20;55:19; 67:21;78:23</p> <p>broad (1) 6:14</p> <p>broadly (1) 72:21</p> <p>Broome (1) 21:11</p> <p>brought (4) 13:18;19:8;31:3; 57:13</p> <p>bunch (2) 28:5;53:18</p> <p>Burrow (1) 28:24</p> <p>Busch (1) 4:8</p> <p>Bush (1) 7:2</p> <p>Business (1) 53:21</p> <p>busy (1) 57:24</p> <p>button (1) 61:18</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calculated (1) 45:18</p> <p>calendar (2) 75:5;81:1</p> <p>call (6) 48:5;55:8;57:19; 58:12;60:12;66:17</p> <p>called (2) 51:7;61:17</p> <p>came (10) 11:16;16:20; 22:25;34:6;39:7; 59:14,25;64:16;</p>	<p>84:23;85:13</p> <p>can (29) 8:9;11:21;17:17; 29:13,15,16;30:14; 38:8;40:2;43:25,25; 44:7;46:3;48:17; 60:9;61:2;62:8;65:6; 67:11,22;74:15,15; 78:6,6;80:17,23; 83:1,22;86:9</p> <p>cap (2) 24:1;45:21</p> <p>care (1) 55:4</p> <p>cared (1) 21:16</p> <p>career (1) 68:25</p> <p>Carrington (4) 4:23;62:4,6;63:17</p> <p>case (73) 4:2,2,4,21;5:19; 6:10;9:16;10:1,20, 21,23;12:15,23;13:1; 14:11,13,16,17,18, 19,22,24;15:7;19:9, 13,20,25;20:6,9; 21:20,22;29:12,23, 24,25;30:24,25; 31:22;32:2;36:20; 37:1,9,13,22;38:18, 19,21;39:5,24;40:14; 41:4,24;49:3;50:4,5; 53:19;54:15;55:21; 56:9;58:21;64:24; 68:20;69:11;70:16, 17;71:16;72:12; 73:13;74:5;81:6,21; 82:3,11</p> <p>cases (6) 11:24;37:2;45:20; 53:18;55:23;84:19</p> <p>cast (1) 37:18</p> <p>catcher (1) 66:17</p> <p>caution (1) 7:22</p> <p>certain (4) 34:4;36:12;43:19; 45:14</p> <p>certainly (5) 13:21;15:10;50:7; 67:11;83:22</p> <p>challenge (3) 22:1;29:18,21</p> <p>challenges (1) 29:16</p> <p>chambers (1) 8:25</p> <p>chance (5) 68:15;70:1,10; 82:24;83:1</p>
---	---	---	---	---

<p>changed (1) 11:10</p> <p>Chapter (4) 4:15;29:25;48:13; 70:3</p> <p>character (1) 42:8</p> <p>characterize (1) 43:18</p> <p>characterizing (3) 43:21;44:11,12</p> <p>charge (1) 40:23</p> <p>charging (1) 13:2</p> <p>check (1) 75:25</p> <p>Chemetron (3) 19:13;53:21;55:21</p> <p>choice (1) 47:12</p> <p>choose (1) 34:3</p> <p>chose (1) 48:5</p> <p>Cir (1) 53:22</p> <p>circle (1) 41:15</p> <p>Circuit (66) 11:25;12:2,10,12; 14:1,21,23;15:15,21, 24;16:1;18:8;19:12, 13,19;29:23;30:5; 31:1,21;32:17;35:2; 39:10;50:6;54:15, 19;59:24;60:18; 61:25;62:25;63:3,6, 20;64:4,12,17,22; 65:3,7,10,13,20,24; 66:1,11,23;67:6,10, 15;68:4,15;69:8,11, 16;72:2,11,15,16,21; 73:1,7,12,14,16,22; 79:3;83:4</p> <p>circuits (1) 14:20</p> <p>Circuit's (3) 18:23;38:11;59:14</p> <p>circumstances (3) 37:5,7;38:18</p> <p>cite (2) 37:8;40:11</p> <p>cited (7) 35:18;36:20;37:5; 38:18;55:23;72:10, 11</p> <p>citing (1) 53:18</p> <p>claim (15) 10:4,8;19:4;20:25; 21:2,5,6,6;22:21; 27:11;31:1;39:25;</p>	<p>45:18;51:25;55:17</p> <p>claimants (9) 23:6,12,13,24,25; 24:3;29:9;34:2; 56:23</p> <p>claimed (2) 29:2;45:15</p> <p>claims (76) 5:19;8:7,16;9:18; 10:18;15:12;16:24; 17:11,15;18:24;23:2, 4,24;24:13;26:13,18, 20,22;27:6,15,18; 28:9,10,13,22,25; 29:1,19;30:11,16,21; 31:2,8,12,13;32:20; 33:2,12,17,19,23,25; 35:10,20;36:11; 40:23;43:23;44:3,8, 16,16;45:13,15,17, 23;46:1,1,3,4;47:20; 49:6,22;50:2;51:23; 52:3,7,11,12,16,17, 19;55:14,14;56:22, 23;57:3</p> <p>clarification (8) 11:12;15:16; 16:18;78:17,21; 79:20,20;80:3</p> <p>clarify (5) 16:9;22:24;76:2; 78:15;79:24</p> <p>clear (21) 8:19,20;9:11; 18:23;19:13;27:23; 30:18;40:18;45:12, 22;50:23;52:11; 53:19;61:2;79:9,15; 80:4;81:22,24; 82:19;83:3</p> <p>clearly (3) 18:16;19:19;52:18</p> <p>clerk (3) 58:12;61:16;75:5</p> <p>clerk's (1) 60:12</p> <p>client (2) 57:23;59:11</p> <p>close (1) 55:24</p> <p>closed (1) 59:19</p> <p>Co (1) 4:15</p> <p>Cochell (5) 5:4,5,5;62:12,15</p> <p>Code (6) 5:17;69:23;81:4,8, 9;82:7</p> <p>Code's (1) 81:22</p> <p>Coleman (4) 4:23;62:4,6;63:17</p>	<p>collateral (15) 10:3;19:11;24:21; 30:5;32:6,12;36:16, 16,22;39:18;49:16; 50:2;54:14,20,25</p> <p>colleague (3) 4:23;62:16;64:6</p> <p>collect (1) 57:1</p> <p>comfort (1) 61:4</p> <p>comfortable (1) 9:23</p> <p>coming (5) 44:20;58:17; 74:12;83:15;85:24</p> <p>commence (1) 5:18</p> <p>comment (1) 49:12</p> <p>committed (2) 55:9,9</p> <p>common (1) 19:15</p> <p>companion (1) 59:16</p> <p>comparison (1) 29:22</p> <p>competing (1) 45:2</p> <p>complete (1) 43:22</p> <p>completely (2) 13:8;38:11</p> <p>complex (1) 70:20</p> <p>comprehensive (1) 34:18</p> <p>compromise (12) 26:17;31:17; 32:20,25;33:4; 36:12;38:25;40:24; 54:17,18;56:21; 57:12</p> <p>compromised (2) 33:2;34:12</p> <p>compromises (3) 34:11;36:18;38:10</p> <p>compromising (2) 34:14,21</p> <p>concede (1) 6:16</p> <p>concept (1) 44:20</p> <p>concern (2) 64:25;65:21</p> <p>concerned (6) 37:11;58:25;69:6; 73:10;76:24;80:9</p> <p>conclude (1) 36:7</p> <p>concluded (2) 36:8;86:12</p>	<p>Conclusions (5) 27:24;54:4,10; 56:2;57:15</p> <p>concur (2) 7:2,4</p> <p>condition (1) 54:3</p> <p>conditional (1) 59:23</p> <p>conference (15) 4:3;8:19;57:23; 58:10,11,16;60:25; 61:20;71:18;75:14, 15;76:3;77:1,12; 84:8</p> <p>confess (1) 40:5</p> <p>confirmation (12) 58:22;59:6,16,21; 60:3,7,16;61:15; 69:15;76:3,21;80:12</p> <p>congratulate (1) 22:13</p> <p>connection (2) 30:7;40:1</p> <p>consequence (3) 33:25;37:14;74:20</p> <p>conservation (1) 56:25</p> <p>consider (3) 55:20;57:11;72:3</p> <p>consideration (3) 83:21,22,24</p> <p>considering (1) 9:2</p> <p>consistent (3) 43:19;45:23;71:7</p> <p>constituents (1) 70:14</p> <p>constitute (1) 27:21</p> <p>constitutes (3) 17:13;27:2;39:3</p> <p>consulted (1) 70:9</p> <p>contain (1) 47:17</p> <p>contained (1) 43:17</p> <p>contemplating (1) 29:19</p> <p>content (1) 58:10</p> <p>contest (2) 27:17;51:21</p> <p>contested (2) 26:19,23</p> <p>context (8) 19:8;32:25;33:7; 37:16;39:8,25; 48:13;56:16</p> <p>contingent (1) 5:20</p>	<p>continuance (1) 8:9</p> <p>continue (4) 7:8,11;66:12;83:9</p> <p>continuing (1) 69:7</p> <p>contract (6) 44:3;45:13;46:4; 47:19;52:11,16</p> <p>contractual (5) 43:23;44:7;45:17, 23;55:6</p> <p>contravene (2) 47:18;48:2</p> <p>contribution (5) 19:8,25;20:2,6; 39:25</p> <p>controversy (1) 81:9</p> <p>Controvert (6) 46:8;50:14,20,25; 51:18;57:2</p> <p>Coopers (4) 29:23;30:3,14; 49:3</p> <p>co-plan (1) 71:11</p> <p>Corp (1) 53:21</p> <p>correctly (4) 7:10;35:1;41:25; 44:15</p> <p>counsel (7) 6:5,5;23:11,18,22; 43:3;70:7</p> <p>counter- (1) 73:5</p> <p>counterclaim (1) 34:6</p> <p>counterclaims (5) 28:16,17;29:22; 30:15;31:11</p> <p>counts (1) 35:3</p> <p>couple (5) 19:4;50:10;53:1; 57:22;60:17</p> <p>course (5) 12:1;36:24;46:12; 47:5;53:4</p> <p>COURT (306) 4:1,9,12,20,25;5:3, 8;6:2,13;7:1,4,7,13, 15,19;8:4,6,6,11,15, 23;9:2,9,15,22;10:1, 2,14;11:13;12:7,17, 20;13:4,7,10,11,15, 18,20,23;14:4,7,10, 15;3,7;16:9,23;17:7, 10,22;18:12;19:1,7, 24;20:5,17,18,22; 21:7;22:14,17,19,23; 23:5,17,23;24:5,8,</p>
--	--	--	--	---

<p>14,17,24;25:7,16,18, 25;26:1,8,16;27:23; 28:2,5,16,19;29:20; 30:7,10;31:8,10,11, 18,21,21,23,25;32:2, 23,24;33:1,7,9,20; 34:10,15,25;35:4,6, 6,11,14,22,23,24; 36:4,7,9,10,20;37:5, 9,22,22,23;38:15; 39:11,22;40:6,16,23; 41:6,9,13,15,18,18; 42:2,9,9,10,13,16,19; 43:4,10,12;44:5,15, 19,23;45:6,16;46:15, 20,24;47:4,14,16; 48:9,16,17,17,19,21, 25;49:6,9;50:19; 51:11,11;52:13,20, 25;53:13,15,24,25; 54:9;55:3,3;56:5,8, 12,13;57:5,10,14,14, 16,18;58:5,5,13,20; 59:4,10,12,17;60:11, 15,23,25;61:22;62:6, 9,10,12,19,21,21; 63:2,2,5;64:3,10,20, 20;66:3,9;67:2,22, 22;68:1,2,3,6,8,12, 12;69:3,5,8,19,19, 24;70:6;71:8,20; 72:6,12;73:8,25; 74:10,13,17,20,24; 75:2,7,10,15,21; 76:1,5,8,8,9,10,15, 16,16,18,22,24;77:1, 6,16,19,24;78:2,11, 24,25;79:12,14,17; 80:7,25;81:10,17,18; 82:10,15,16,17,22, 22;83:2,8,16,21,22, 24;84:1,1,16,21; 85:4,9,10,12,15,17, 21;86:2,4,7,9</p> <p>courtroom (3) 4:5,18;84:2</p> <p>courts (4) 64:20,24;65:22; 82:18</p> <p>Court's (16) 7:19;8:2,6,12; 9:16;10:19;22:25; 35:16;38:1,17;53:4, 11,20;69:15;77:25; 80:20</p> <p>covered (1) 62:16</p> <p>Cox (1) 80:13</p> <p>crazy (1) 55:8</p> <p>create (6) 6:20;10:16,24,25;</p>	<p>21:1;26:16</p> <p>created (4) 16:10;29:12; 35:25;82:19</p> <p>creates (2) 22:11;71:15</p> <p>creation (1) 71:12</p> <p>credit (1) 32:8</p> <p>creditor (4) 4:11;20:1;25:11; 72:16</p> <p>creditors (29) 5:2,11,15,18,23; 6:22;7:20,25;8:16; 9:7,25;10:7;20:21; 22:8,18;24:22;25:8, 15,22;26:6;31:7; 34:9;35:17;36:8; 37:24;43:4;55:18; 69:23;71:5</p> <p>creditors' (1) 10:17</p> <p>creditor's (2) 6:5;9:18</p> <p>cross-examination (3) 23:15,17,22</p> <p>cross-examined (1) 46:13</p> <p>cross-examining (1) 24:12</p> <p>cured (1) 36:2</p> <p>current (2) 35:21;62:25</p> <p>custodian (1) 81:14</p> <p>custodians (1) 81:13</p> <p>cut (2) 49:5,6</p>	<p>34:23;38:13;80:20</p> <p>days (8) 54:23;70:15;74:4; 77:10,11,18;84:3,4</p> <p>deadline (2) 63:8,15</p> <p>deadlines (5) 59:1;61:3;62:3; 80:1;84:10</p> <p>deal (4) 17:15;29:7;31:18; 71:1</p> <p>dealt (1) 17:16</p> <p>Dean (1) 5:1</p> <p>debt (2) 17:25;30:15</p> <p>debtor (5) 4:7;5:23;9:20; 21:23;30:4</p> <p>debtor's (1) 6:5</p> <p>debts (5) 6:25;9:21;17:4,13; 18:1</p> <p>December (9) 15:17,18;16:2; 18:7;63:24;65:14; 70:23;73:22;78:14</p> <p>decide (10) 5:21;31:25;32:6; 47:4;61:8;67:17; 68:3,20;76:7;80:7</p> <p>decided (8) 11:7;27:6;31:8; 55:19;67:4;74:19; 80:10,15</p> <p>deciding (1) 32:5</p> <p>decision (7) 15:10;16:5;31:12; 36:21;53:20;67:23; 68:1</p> <p>declaration (14) 23:20;25:1,21,23; 26:4;42:24;46:13,14, 20,21;47:7,15,17; 72:9</p> <p>declarations (4) 24:24;25:10; 42:17;50:21</p> <p>decline (1) 29:15</p> <p>declines (1) 25:7</p> <p>decretal (1) 8:14</p> <p>defend (3) 69:4,7,7</p> <p>defendant (2) 54:2,12</p> <p>defense (1)</p>	<p>57:3</p> <p>defenses (9) 29:4,8;30:21;31:8, 9,18;33:25;34:22; 50:17</p> <p>defer (2) 60:25;64:6</p> <p>defined (2) 12:12,15</p> <p>degree (1) 41:5</p> <p>delegated (1) 35:13</p> <p>denial (3) 42:3,5,11</p> <p>denied (3) 14:2,3;51:11</p> <p>denies (1) 69:16</p> <p>depending (2) 6:2;65:19</p> <p>deployed (1) 35:9</p> <p>deposition (1) 20:18</p> <p>deputy (1) 84:3</p> <p>described (3) 26:11;45:20;56:24</p> <p>describes (1) 57:3</p> <p>describing (1) 26:14</p> <p>designated (1) 48:21</p> <p>designed (1) 81:23</p> <p>desire (1) 62:25</p> <p>despite (1) 46:17</p> <p>determination (13) 26:13;27:5,21; 30:21;31:6;32:8,11, 18;33:9;39:4,17; 44:16;63:4</p> <p>determinations (2) 81:11,24</p> <p>determined (5) 6:12;8:15;30:22; 31:3;33:13</p> <p>determines (2) 50:1;69:11</p> <p>determining (2) 40:23;66:22</p> <p>dies (1) 60:21</p> <p>difference (1) 53:10</p> <p>different (15) 14:20;19:5,6; 20:20;33:7;35:19; 41:7;42:17;51:21;</p>	<p>53:5;59:8,8;63:16; 73:12;77:4</p> <p>difficulty (2) 81:4;82:8</p> <p>digest (1) 74:9</p> <p>direct (2) 28:25;29:1</p> <p>directed (1) 84:21</p> <p>directive (1) 64:16</p> <p>directly (1) 33:24</p> <p>disagree (1) 61:11</p> <p>disbursement (2) 23:2;28:2</p> <p>Disclosing (1) 85:12</p> <p>disclosure (1) 84:25</p> <p>discovered (1) 51:8</p> <p>discussed (1) 71:8</p> <p>discussion (1) 83:15</p> <p>disgorgement (1) 28:24</p> <p>dismember (1) 82:21</p> <p>dismembered (1) 65:2</p> <p>dismiss (2) 41:12;50:7</p> <p>dismissed (1) 59:20</p> <p>dispose (2) 39:5,11</p> <p>dispositive (1) 56:4</p> <p>dispute (35) 5:16,20;6:12,17, 21,24;7:21;8:8,17; 9:18;10:5,17,25; 12:15,19,21;17:2; 20:24;21:1,25;22:11, 12,19;24:23;25:2,4; 41:20,22;44:7,9; 47:24,24,25;52:15; 53:23</p> <p>disputes (13) 17:14;21:5;22:2; 26:2;27:22;28:10; 31:9;32:18;34:17; 37:4,6,41;7:7;9</p> <p>disrupted (1) 83:6</p> <p>distinct (2) 14:21;49:16</p> <p>distinction (1) 15:1</p>
--	--	--	--	---

<p>distinctively (1) 50:3</p> <p>district (29) 8:5;13:11;17:10; 18:12;21:6;22:25; 23:5,23;26:1;36:10; 37:22;41:18;42:9; 47:23;55:3;58:5; 59:10,17;62:21; 63:2;64:20;67:22; 68:3;69:3,8,19;76:8; 80:20;82:22</p> <p>divest (4) 67:15;68:4;73:1,3</p> <p>divested (1) 67:18</p> <p>divesting (1) 72:1</p> <p>docket (9) 27:7;35:9;36:2; 38:22;56:11,15,18; 62:2;68:16</p> <p>docketed (2) 62:5;76:9</p> <p>doctrine (2) 49:16;50:3</p> <p>document (2) 27:24;51:7</p> <p>dollar (7) 10:8;15:12;21:6; 25:12;46:5;49:22; 84:22</p> <p>dollars (9) 21:9;24:1;25:3,13; 41:21;44:1;54:24; 82:4;85:12</p> <p>domain (3) 79:7,9;83:9</p> <p>done (12) 13:9;16:19;29:14; 40:20,25;65:23; 72:13;74:16;79:17; 80:5;81:7;85:6</p> <p>doubt (1) 37:18</p> <p>down (6) 19:3;21:24;22:12, 23;59:14,25</p> <p>dozens (2) 13:11,11</p> <p>drafted (3) 6:11;83:17,17</p> <p>drawn (1) 85:5</p> <p>due (7) 6:25;9:21;17:5; 18:1;20:15;32:8; 43:1</p> <p>duplicate (1) 28:12</p> <p>duplication (1) 24:17</p> <p>during (4)</p>	<p>18:18;24:25;39:5; 46:12</p> <p>duty (2) 28:20,22</p> <p>Dykema (2) 4:17;82:3</p> <p style="text-align: center;">E</p> <p>earlier (4) 43:7;56:14;63:5; 72:8</p> <p>Eckles (1) 80:14</p> <p>effect (15) 10:3;15:6;19:11; 32:12;33:5;36:23; 37:25;39:19;40:19; 41:19;42:23;43:5; 61:3;69:17;70:24</p> <p>effective (2) 27:18;32:6</p> <p>effectively (1) 56:21</p> <p>efficiency (1) 72:17</p> <p>efficient (1) 77:7</p> <p>effort (1) 65:17</p> <p>eight (1) 42:16</p> <p>either (10) 5:20;14:2;26:3; 33:22,24;38:2; 48:18;63:1,19;75:1</p> <p>element (1) 12:3</p> <p>elements (1) 12:1</p> <p>eleven (1) 70:16</p> <p>else (2) 48:12;71:22</p> <p>embodied (1) 39:13</p> <p>emphasis (1) 35:20</p> <p>employees (1) 83:13</p> <p>en (10) 15:24;63:14,20; 64:8;68:15,16,19,20; 69:9,12</p> <p>end (4) 10:9;28:12;60:13; 71:14</p> <p>ends (1) 49:25</p> <p>enforce (1) 82:22</p> <p>enforceability (1) 37:19</p>	<p>enforcement (2) 11:5;37:21</p> <p>engaged (1) 42:20</p> <p>enjoin (1) 14:19</p> <p>enjoyed (1) 22:16</p> <p>enough (4) 26:4;34:5;53:12; 73:7</p> <p>enter (2) 29:9;67:5</p> <p>entered (14) 6:18;8:13;10:15; 12:6;15:18;16:2; 23:23;33:8;37:8; 53:25;57:14;69:3; 85:19;86:1</p> <p>enters (2) 7:15;33:3</p> <p>entertain (1) 41:13</p> <p>entire (3) 9:2;65:9;83:3</p> <p>entirely (1) 65:13</p> <p>entirety (1) 65:14</p> <p>entitle (1) 28:23</p> <p>entitled (7) 27:5;36:23;41:3, 19;42:23;46:8;50:8</p> <p>entitlement (1) 45:15</p> <p>entity (1) 54:11</p> <p>equitable (1) 33:20</p> <p>Erin (1) 84:17</p> <p>erroneously (1) 52:9</p> <p>especially (4) 53:18;65:9;70:15, 16</p> <p>essentially (16) 6:19,24;11:6; 16:10;19:15;44:2; 63:24;64:21;65:18, 21,25;66:15;67:11, 12,18;73:10</p> <p>establish (1) 41:20</p> <p>establishes (1) 42:6</p> <p>estate (4) 30:2;65:1;69:7; 71:4</p> <p>estopped (1) 30:11</p> <p>estoppel (13)</p>	<p>10:3;19:11;24:21; 30:5;32:6,12;36:16, 17,22;39:18;54:14, 21,25</p> <p>even (14) 19:14;21:22;22:6, 11;25:11;36:17; 41:6,18;43:2;44:4; 49:11;68:14;70:10, 11</p> <p>event (4) 23:25;27:16;64:2; 73:21</p> <p>events (1) 37:18</p> <p>everybody (8) 15:8;26:10;52:23; 55:8;61:8;73:20; 76:13;84:15</p> <p>everyone (8) 25:22;46:3;48:10; 61:2;69:25;70:1; 75:7;77:19</p> <p>evidence (44) 5:25;8:25;19:23; 20:12,16;23:21; 24:20;25:21;28:5,8; 42:16;44:18,20,22; 45:2,5,7,9,11;46:9, 10,16,17;47:1,11,17, 18,23;48:6,20,20; 49:1,23;50:14,16,17, 19,21;51:2,8,15,16; 52:2;57:2</p> <p>evidentiary (2) 7:23;8:17</p> <p>ex (1) 23:7</p> <p>exactly (5) 17:22;24:11;27:5; 54:25;81:6</p> <p>examination (1) 48:5</p> <p>examiner (3) 48:14,16,24</p> <p>examiner's (2) 48:18,20</p> <p>example (1) 80:11</p> <p>exception (2) 49:2;83:4</p> <p>exceptions (1) 53:11</p> <p>exclusively (1) 36:15</p> <p>execute (1) 38:4</p> <p>executing (1) 38:1</p> <p>exist (1) 54:10</p> <p>existed (1) 18:25</p>	<p>existence (1) 15:4</p> <p>expectation (1) 79:22</p> <p>expected (1) 84:24</p> <p>expedite (2) 83:20,21</p> <p>expend (1) 65:17</p> <p>expenditures (1) 65:16</p> <p>expense (3) 81:12,25;83:24</p> <p>expenses (17) 20:2;70:18;78:13, 13,20,23;79:12,16; 80:4,9,12;81:14; 83:9,11,13,14,19</p> <p>expert (1) 51:24</p> <p>expert's (1) 80:11</p> <p>explicitly (1) 15:3</p> <p>expressly (1) 31:10</p> <p>extend (1) 62:3</p> <p>extent (6) 7:14;31:23,25; 41:2;42:10;74:8</p> <p>extraneous (2) 57:7,8</p> <p style="text-align: center;">F</p> <p>F2d (1) 53:21</p> <p>face (1) 83:11</p> <p>fact (27) 19:12;20:11,16; 25:4,5;27:24;29:5; 31:10;32:18;34:6, 20;36:17;38:2,12; 39:19,23;40:12; 44:15;45:5;49:19; 50:1,5;54:9,18;56:2, 3;64:12</p> <p>facts (5) 10:21,23;24:11; 53:22;54:4</p> <p>factual (2) 39:17;71:9</p> <p>failed (4) 18:20;46:11; 73:11,14</p> <p>Failure (1) 46:8</p> <p>fair (14) 15:10,11;19:16; 20:13,14,19;24:9;</p>
--	---	--	---	--

25:3;33:20;47:5; 49:25;50:15;51:19; 54:21 fairly (2) 39:2;59:15 fairness (1) 33:3 fall (1) 53:11 familiar (1) 30:24 far (7) 37:10;66:17;71:7; 73:10;74:6;75:8; 80:9 fashion (1) 17:17 favor (3) 7:20;37:10;66:24 February (6) 63:8,15;68:17; 72:24;75:2;84:5 Federal (2) 39:2;47:22 fee (14) 21:10,12;29:24; 30:8;45:17,20;48:14, 15,16,18,19,24;49:2; 84:25 feel (1) 61:13 feeling (1) 25:23 fees (38) 11:5,7,9;16:12; 18:2,11,13,17,21; 19:7,7,20,21,23; 20:3,4,10;21:5; 27:22;28:3;30:10; 38:24;41:21;47:12; 48:21;55:5;79:12; 80:11,12;81:11,13, 14,15,25;82:3,3; 83:16,16 FERGUSON (40) 5:1,2;11:4;12:24; 15:18;16:17,20; 24:15,18;25:17; 26:25;29:10;30:12, 19;32:9,21;35:9; 39:14;41:16;42:23; 43:17;45:8;50:13; 51:15;53:14,16; 56:18;57:8;59:15, 18;68:2;70:22;71:2; 78:16;79:1,19,24; 80:10,16;82:18 Ferguson's (15) 9:15,23;10:2,14; 15:7;22:18;26:9; 33:23;38:21;40:18; 43:17;44:12,21; 50:23;60:2	fide (30) 5:15,20;6:21,24; 7:21;8:8,16;9:18; 10:5,17,25;12:15,19, 21;17:1;20:24; 22:11,19;24:23; 26:2;27:22;31:9; 32:18;37:3;41:7,20; 44:7,9;52:15;77:9 Fiduciary (2) 28:20,21 Fifth (70) 11:25;12:2,10,12; 14:1,21,23;15:9,15, 20,24,25;18:8;19:11, 12,19;23:19;29:23; 30:4,25;31:21; 32:16;35:2;38:11; 39:10;50:6;54:15, 19;59:14,24;60:18; 61:25;62:25;63:3,6, 20;64:4,12,17,22; 65:3,7,9,12,19,23; 66:1,11,23;67:5,10, 15;68:4,14;69:8,11, 16;72:1,11,15,15,21; 73:1,7,11,13,16,22; 79:3;83:4 fighting (1) 50:18 figure (4) 23:4;48:11;58:5; 82:9 figuring (1) 82:15 file (8) 12:7,17;70:15; 72:23;78:20;79:23; 84:25;85:9 filed (45) 5:11,11;7:8,9,22; 8:24;11:12;14:1,2,3; 16:18;17:10;19:13; 20:8;21:1;23:11,20; 24:24;25:9;31:22; 32:2;34:24;38:13; 43:8;47:15,25;50:16, 16;51:7;56:21;58:4; 59:8;62:20,24;63:17, 17;66:7;71:6,24; 72:9;77:2;78:7,10; 79:17;80:6 files (1) 23:5 filing (6) 35:4,4;53:2;60:1; 78:16,18 final (20) 11:15;16:24; 19:12;27:5;29:24; 30:8;33:5;35:18; 36:8,13;39:3,4,12; 48:19;49:2,16,18,21;	50:3;53:1 finality (2) 24:6;39:16 Finally (2) 38:6;72:2 find (7) 9:15;10:7;22:2; 28:9,10;66:23;67:18 finding (11) 26:12;27:4;35:18; 39:10,13,13;40:19; 46:7,11;52:5;67:17 Findings (11) 27:24;44:15;45:3, 10;50:1;51:4;54:4,9, 18;56:2;57:14 finds (1) 47:16 FINE (31) 4:16,16;58:3; 62:19,23;63:12;64:6, 11;66:6,10;67:9; 68:7,11;69:2;72:1, 19;75:9,12,17,22; 76:12,13;78:2,4,12; 79:11,13,15;83:10, 17;84:2 Fine's (1) 6:11 firm (3) 9:25;21:15;67:10 firms (6) 15:12;17:9,12; 55:9,10,17 first (13) 4:5;9:4,9;10:13; 12:3;19:5;21:11; 31:5;32:4;51:11; 54:6;58:8;74:11 five (5) 35:15,19,22;62:3; 71:6 flat (2) 21:10,12 flip (1) 67:2 flurry (1) 58:3 focused (3) 58:23;71:22,25 following (2) 44:20;52:7 follow-up (1) 84:2 footnote (2) 14:12,18 forcing (1) 54:23 foreclose (4) 7:25;26:1;27:22; 52:19 foreclosed (1) 41:1	forego (1) 26:21 forgive (1) 26:14 forgo (1) 33:25 forgotten (1) 82:11 form (2) 17:17;84:9 former (9) 18:24;23:2;28:3; 30:2;35:21;45:14; 56:22,23;57:2 forth (3) 16:7;39:24;66:14 forward (11) 6:3;8:10;61:23; 67:4;68:4;69:15,21; 78:15,18;79:4;80:3 found (5) 7:20;28:22;40:15; 46:24;57:6 four (2) 12:1,8 fourth (3) 45:16;56:16,20 framework (2) 82:19;83:6 framing (1) 26:25 frankly (1) 57:24 free (1) 46:2 front (2) 22:14;73:5 full (20) 7:23;15:10;18:16; 19:16;20:13,13,19; 24:9;25:7;31:13; 44:3;47:5;49:25; 50:15;51:19;54:21; 70:14;80:19;83:19, 25 fully (2) 58:10;72:2 fundamental (1) 70:21 funded (2) 59:18,19 Funds (1) 53:21 Further (7) 20:7;55:24;56:24; 66:4,15;80:8;84:13 future (2) 49:6;62:17	gave (2) 31:25;83:8 generally (5) 6:25;9:20;17:4,25; 18:19 generated (1) 18:17 Gerrit (2) 4:10;9:6 gets (5) 17:18;20:2,3; 36:17;52:22 gist (1) 66:10 given (2) 29:14;35:8 gives (1) 31:19 giving (3) 70:1;77:14;78:7 goes (12) 17:21;20:24; 35:11,14;36:14,15; 45:21;47:14;48:3; 71:7;78:13,20 Good (13) 4:6,10,12,13,16; 5:1;17:20;19:15; 55:16,23;73:16; 75:7;77:19 Goolsby (1) 4:11 Gossett (1) 4:17 Gotshal (1) 31:1 grant (4) 63:20,23;64:4; 68:15 granted (6) 38:23;61:13; 63:11;64:11,23; 68:20 granting (2) 36:11;73:18 grants (2) 7:16;73:16 great (2) 35:11;44:24 guess (10) 17:3;18:5;23:20; 24:2;48:11;62:21; 65:4;71:20,24;79:9 guidance (3) 84:20;85:4,7
H				
hammer (1) 84:11				
hand (1) 72:7				
handle (3)				

80:6,18;85:5 handled (1) 80:21 happen (4) 18:4;32:22;52:18; 66:16 happened (2) 11:6;31:5 happening (4) 33:22;64:21,24; 66:5 happens (2) 38:12;52:24 happy (5) 41:13;61:4,9; 67:16;69:4 hard (3) 17:20;36:7;77:14 Hardt (2) 4:14;62:16 hate (1) 73:19 hauling (1) 71:13 heads (1) 85:2 hear (10) 58:20;61:8,22; 64:3;68:23;70:3; 71:21,21;76:9;80:8 heard (7) 17:3;21:11;28:5; 49:1;53:12;69:12; 80:23 hearing (28) 6:8;7:8;15:24; 20:15;23:10,13,22; 24:25;41:11;44:17, 18;46:12;48:19; 49:2;58:6;63:14,20, 25;64:8;70:2;72:5; 76:11,14,17;77:12; 80:12;83:7,20 hearings (3) 4:2;62:17;82:17 hears (2) 48:19;71:21 heft (1) 36:17 held (1) 24:22 helped (1) 21:16 helpful (4) 10:11;21:16; 38:19;53:17 Henry (7) 10:20;32:16;35:3; 36:25;38:18;52:22; 53:4 here's (4) 20:10;42:21,22; 52:1	herring (1) 11:2 hidden (1) 73:5 highly (1) 67:13 himself (1) 40:22 hired (1) 21:11 hit (1) 18:6 hold (1) 62:18 holding (2) 38:6;84:22 holds (1) 10:20 Honor (80) 4:6,10,13,16,21; 5:1,5;6:7;7:3,12;9:6, 7;10:13;11:6,20; 15:14;17:6,14;19:2, 10;20:7,23;22:10,12; 24:18;25:17,19; 28:21;30:17;31:7; 35:1;36:1,25;39:2; 40:18;41:2,10,23; 43:2,15,15;44:13; 50:9;52:13;53:16; 55:21;56:6;58:10; 59:2,16;61:5;62:1, 15,17,23;63:12; 64:18,21;67:9; 68:18;70:8;71:17; 72:5,7;73:7,9;74:3; 75:8,12,20,25;76:2; 77:4;78:4;79:13; 80:23;81:3;82:14; 83:10;86:11 Honor's (1) 58:15 hope (2) 8:20;84:8 hoped (1) 6:14 Hosiery (1) 54:15 hour (1) 24:1 hourly (2) 26:21;45:19 hours (5) 17:20;21:16; 40:15;45:18;68:24 housekeeping (2) 8:23;76:15 HSM (3) 12:15;21:21;52:25 hundreds (1) 54:23	I	33:25 inefficient (1) 65:15 inevitable (2) 38:7,8 initial (1) 38:11 initiated (2) 60:13;69:9 injunction (1) 12:20 insolvency (3) 7:15,17,24 instance (1) 45:17 instead (3) 34:2;40:22;48:6 instructions (1) 57:1 instructive (4) 37:1;53:22;55:22; 56:13 integrity (1) 66:13 intelligence (1) 29:10 intelligent (1) 27:1 intent (1) 43:16 intention (1) 6:9 interchangeably (1) 14:16 interest (2) 15:23;23:9 interesting (2) 21:8;33:14 Interestingly (2) 12:14;20:23 interim (2) 69:20;78:19 interlocutory (1) 50:8 interrupt (1) 48:9 into (11) 6:19;19:23;29:9; 34:24;35:6;36:5; 38:24;44:18,24; 48:17;76:5 invalid (1) 71:4 invalidate (1) 15:20 invoices (1) 79:23 invoke (1) 60:8 invoked (1) 23:18 involuntary (16) 5:19;8:13;38:13;	53:3,6;60:20;66:4, 21,22,25;67:4;72:14, 19;74:7;79:2;84:19 involves (1) 69:5 irrelevant (1) 38:12 issue (58) 5:13,21;6:1,15; 7:17,17,20,24;8:1,4, 14;9:20;10:14;11:1, 4;12:14,16,24;17:2, 5,24;18:5,10;19:16; 20:24;22:21;25:25; 27:19;31:2;36:2,24; 41:8;42:2,10;43:4,5; 47:5;49:17,18; 54:24;56:4;57:21; 60:9;61:14;62:13, 18;64:19;67:3,17; 68:21;71:3;72:25; 73:4,24;75:16;78:2; 84:7,8 issued (7) 15:17;19:15;42:8; 56:15;64:2;70:22,24 issues (20) 6:3,24;21:17; 24:12;39:6,12; 42:12;43:24;44:9; 48:21;52:3;60:20; 69:6;70:20;72:3,13, 14,24;74:14,17
		J	January (11) 8:13,20;63:6;67:3; 70:23;71:8;72:20, 23;78:19;80:5;82:12 Jeff (5) 4:2;41:11;42:20, 24;60:20 Jeffrey (2) 4:16;5:6 Jennifer (1) 4:23 job (1) 22:15 Judge (65) 9:15,23;10:2,14; 11:4,7;12:24;15:7, 11,18;16:5,17,20; 22:18;26:9,24; 27:14;28:6;29:4,10; 30:11,19;32:9,21; 33:23;35:8;38:21; 39:14;40:18;42:23; 43:16,17;44:12,21; 45:8;46:11;47:10, 23;50:13,23;51:3,10, 15;52:5;53:14;54:6; 55:1,5,19;56:18;	

57:3,8;59:15,18; 60:2;68:2;70:22; 71:2;78:16;79:1,19, 24;80:10,15;82:18 judges (2) 65:10;67:16 judgment (42) 5:10,12,25;6:10, 15,23;7:16;8:25;9:2, 10;10:5,11;12:6; 19:12,14;24:20;25:8, 11,21;26:7;34:9; 35:22;36:11;37:7,8, 21;38:7;39:3,4,16; 40:3,8;41:9;42:16; 44:5;52:14;53:25; 54:1;56:1;57:25; 58:15;84:6 judgments (8) 35:17,18;36:9; 37:3;38:1,2,4,23 judgment's (1) 37:19 judicata (6) 30:5;31:3;32:5,11; 36:15;39:18 judicial (6) 27:3,21;29:13; 32:7;42:7;72:17 judicially (3) 32:19;34:11;42:8 jumped (1) 84:15 June (3) 16:14;64:9;68:14 jurisdiction (11) 63:3;65:3,23; 67:15,19;68:5;69:8; 72:2;73:1,3,6 jury (2) 29:6;31:17 justify (2) 37:7;38:22	knowing (1) 46:18 knows (3) 15:25;39:22;63:9	7:2 least (12) 7:17;22:20;25:14; 34:22;36:3;37:5; 38:9,14,17;41:5,21; 74:6 leave (5) 9:19;10:6;51:7,12; 74:13 leaves (1) 69:17 led (1) 56:14 left (2) 25:20;82:5 leg (1) 30:23 legal (11) 8:14;14:21;19:22; 20:3,4;31:2;43:5,16; 52:3;69:22;71:9 less (5) 8:19;35:15,22; 37:4;77:21 letter (1) 72:21 level (5) 9:22,24;10:13; 19:3;42:25 levels (1) 10:12 lifted (2) 79:3,6 light (1) 18:21 liked (1) 42:1 likelihood (6) 12:3,10,13,22; 14:24;15:4 likely (1) 68:13 liken (1) 12:20 likened (1) 10:19 limit (1) 44:8 limited (5) 8:5,8;26:7;74:6; 83:8 lip (1) 45:8 Lisa (1) 84:23 litigate (12) 15:11;19:17; 20:14,19;24:10; 31:13;47:5;49:25; 50:15;51:14,20; 54:22 litigated (2) 20:15;56:3	litigating (1) 54:24 litigation (10) 10:21;19:17; 37:15;39:8;54:13, 22;55:13;57:9,10; 83:4 little (9) 19:5,6;35:5;56:7; 71:12;74:9;77:5; 84:19,20 live (3) 6:1;23:14;66:21 lives (1) 60:21 long (5) 17:20;21:16; 25:13;26:22;68:25 longer (2) 43:9;65:19 look (13) 26:10;30:17;37:1; 45:5,9;48:17;52:20; 70:1;71:3;75:5;82:1, 2;83:11 looked (3) 8:25;54:15;55:5 looking (15) 5:16,21;20:25; 32:13,15;33:8,22; 37:7;47:19;50:13, 24;51:3;54:20; 68:14;80:25 looks (4) 23:9,11;33:2;36:3 lose (1) 73:19 losing (1) 59:1 lost (1) 61:16 lot (5) 21:15;40:25;49:1; 65:17;66:22 loud (4) 18:1;82:12,17,18 love (1) 68:10 Ltd (1) 4:15 Lybrand (4) 29:24;30:3,14; 49:3	79:8 makes (8) 30:19;45:12,22; 46:7,11;52:5;61:2; 81:10 making (8) 4:22;5:8;27:3; 36:12;41:1;46:14; 63:3;72:1 malpractice (5) 28:19;30:4;31:2; 55:9,17 malpracticed (1) 52:23 mandate (1) 64:2 many (9) 13:12;48:16; 51:21,21;65:6;67:15, 16;70:14;71:10 March (2) 64:8;68:16 Mark (1) 4:6 material (2) 8:17;69:17 Matt (1) 80:11 matter (30) 5:6,14,22;6:21; 8:7,23;9:15,17;11:8, 9;25:5;32:6,13,14, 17;33:21;35:2; 36:22;41:8,20;42:7; 57:7,9;64:7;65:11; 67:19;76:15;79:19, 21;80:8 matters (9) 37:24;48:2;64:14; 65:18,25;69:6; 75:23;76:19;78:22 may (32) 6:1,1;10:15;11:6; 13:12;16:24;18:9, 12;22:25;26:22; 30:12,15;44:14; 48:16;56:6;62:17; 65:2,3,14,15,15,16, 18,19;66:2,12,22; 67:15;70:2,23,24,24 maybe (7) 24:2;30:2;48:23; 58:22;82:25;84:9,23 mean (20) 15:15;17:9,16,17; 18:11;20:12,13,18; 38:2;44:2;48:9,23; 49:24;52:22;60:19; 67:2;68:9,16;71:23; 81:8 meanings (1) 14:21 means (2)
K			M	
keep (3) 50:18;51:14;73:21 keeps (2) 44:20;51:13 kept (1) 16:6 kind (6) 16:6;19:15;21:8; 32:11;38:20;49:13 kinds (1) 37:6 Knapp (2) 4:23,24 K-n-a-p-p (1) 4:24 knew (1) 13:24	label (1) 48:10 lacks (1) 50:20 laid (1) 72:14 Lambert (1) 84:23 Lane (1) 54:15 language (7) 18:12;26:15;27:9; 30:18,22;37:1;44:12 large (1) 48:15 larger (3) 21:5;43:8;82:25 last (14) 6:8;16:14;18:16; 40:15;41:16;43:13; 49:12;52:10;62:21; 71:6,24;74:11;77:2; 84:23 lastly (1) 51:6 late (6) 39:23;59:6;60:6; 63:6;74:10;76:11 later (10) 7:19;11:7,10,10; 26:19;33:13;46:1,4; 54:11;60:5 Laura (1) 75:3 law (29) 5:15,22;6:21;9:15, 17,25;10:3;11:23,25; 15:12;17:9,12; 19:19;27:24;28:24; 30:24;36:23;41:8, 20;42:7;53:19;54:4, 10;55:9,10,17,23; 56:2;69:6 lawsuit (1) 53:25 lawyer (1) 20:3 lawyers (12) 4:4;16:5,6,6,18,21; 18:24;42:19;43:25; 45:1;46:2;50:18 lawyers' (1) 81:15 lawyer's (1) 73:15 lead (1)		MacPeat's (1) 59:11 magnitude (1) 25:6 maintain (3) 66:13,14;79:7 maintaining (1)	

<p>opposed (2) 40:24;77:12</p> <p>opposite (3) 14:17;28:11;72:19</p> <p>opt (2) 38:24,25</p> <p>opt- (1) 40:21</p> <p>opted (1) 27:13</p> <p>opt-in (1) 40:21</p> <p>options (1) 68:19</p> <p>oral (2) 5:10;9:1</p> <p>order (131) 5:17;6:11,12;7:15,19;8:2,12,20;9:16,23;10:1,2,14;11:15,17,18;13:12;14:7;16:4,9,17,24,24;18:2,9,15;19:11,18;20:17,20;22:18,25;23:23;24:6;26:9;27:8,25;28:7,12,15;29:4;30:10,18,22;31:4,13,21;32:2,14,15,24;33:3,7,9,23;34:14;35:7,16;36:5;39:7,11,19,22;40:13,18;41:1,2,18;42:22;43:17,19,20;44:2,6,11,14,14;45:4;46:5;48:11,21;49:2,13,16,19,21;50:2,3,5,6,8,12,13;51:11,21;52:17,18;56:11,25;58:22;59:16,16,17,18,22,25;60:2,2,7,16;61:1,4,15;62:8;67:5;69:3,13;73:23;76:4,21;78:16,19;79:5,13;80:5;83:16;84:10;85:19,23,23;86:1</p> <p>ordered (2) 11:7;20:18</p> <p>orders (21) 9:16;13:11,12;15:17;16:2;18:8;25:25;26:25;32:12;41:6;42:8;49:15;52:6;58:22;70:22,23,24;71:2,3,4;79:25</p> <p>original (2) 24:25;54:12</p> <p>originally (2) 24:24;43:8</p> <p>others (1) 61:23</p> <p>other's (1) 8:24</p>	<p>ought (1) 83:19</p> <p>out (47) 11:3;17:3,24;18:1,19;22:25;23:4;27:14;34:25;35:1,2,3,11;36:25;37:21,25;38:25;39:1,21;40:9,9,15,22;41:5;42:4;48:11;54:1;55:22;56:8,15;58:5,14,16,18;62:8;66:23;67:17;72:15;76:13;82:9,12,15,16,18;84:3,4,9</p> <p>outside (3) 25:24;26:7;37:15</p> <p>outstanding (1) 22:15</p> <p>over (8) 21:13;37:13;44:1;54:24,24;69:8,19;81:23</p> <p>overall (2) 15:21;64:25</p> <p>overhead (1) 79:8</p> <p>overruled (2) 9:1;36:19</p> <p>overturned (1) 36:22</p> <p>overturning (1) 35:16</p> <p>overwhelming (1) 48:14</p> <p>owe (7) 17:19,21;21:12,18;22:7,8;52:23</p> <p>owed (8) 19:21,23;22:3,4;23:4;27:4;29:1;42:22</p> <p>Oweko (1) 33:21</p> <p>owes (2) 25:2,5</p> <p>owing (4) 17:11;21:4;26:5;42:3</p> <p>own (7) 13:8,9;28:21;45:9;46:2;59:15;73:15</p> <p>owner (1) 20:9</p>	<p>11:5,7,10;12:25;18:18;20:2,3;21:9;23:6;27:11;29:14;31:15;52:6,7;53:6;55:1;84:21</p> <p>pains (1) 35:11</p> <p>painstakingly (2) 45:7,10</p> <p>panel (4) 38:11;68:24;69:12,17</p> <p>papers (4) 6:20;8:5;22:15;71:1</p> <p>paragraph (28) 8:14;22:1;28:12;44:13,17;45:4,6,12,12,13,20,21;46:6,7,7;47:14,21;48:3,8;50:11,12;51:6;52:7,9,10,10;56:17,17</p> <p>paragraphs (7) 21:2,4;44:13;45:24,25;50:11;52:8</p> <p>Park (1) 54:15</p> <p>part (3) 20:16;28:9;81:18</p> <p>parte (1) 23:7</p> <p>partial (5) 10:5,11;25:10;44:5;52:14</p> <p>particular (8) 14:18,23;15:5;19:20;24:13;27:1;49:17;57:6</p> <p>particularly (1) 56:25</p> <p>parties (19) 20:7;31:12;33:11,17;39:6,12,12;53:24;54:23;55:23;56:3;63:7,13,16;75:24;78:6,6,8;80:8</p> <p>parties-in- (1) 23:8</p> <p>partner (1) 4:19</p> <p>party (7) 26:14;34:15,16,21;65:8;70:3;71:11</p> <p>pass (3) 17:18;25:13;67:6</p> <p>passing (1) 40:7</p> <p>past (3) 11:20;17:5;78:13</p> <p>Patel (6) 10:4;19:4;20:25;21:2;22:9,21</p> <p>Patel's (1)</p>	<p>25:12</p> <p>pattern (1) 50:22</p> <p>Pause (1) 75:6</p> <p>pay (21) 11:11,16,16,17;16:5,6,6,12,13,13,15,17,21;17:7;18:3,3;20:10;27:12;45:8;70:17;78:12</p> <p>paying (6) 6:25;9:20;17:4,25,25;37:17</p> <p>payment (4) 27:17;29:18;78:23;82:3</p> <p>payments (1) 37:23</p> <p>pendency (3) 18:18;38:21;39:5</p> <p>pending (25) 10:22;11:8,21,22,24,25;12:1,5,7,8,18;13:4,15;14:1,5,8,25;15:2,5;16:7,8;49:20;20:65;7:69;14</p> <p>people (12) 12:25;15:8;17:19;23:3;26:17,20;27:4,13;29:14;38:23;77:9;82:11</p> <p>per (2) 14:5,8</p> <p>percolated (1) 30:25</p> <p>perfect (1) 61:5</p> <p>perhaps (9) 36:3,4;40:6;41:6;43:7;57:8;72:18;73:24;85:7</p> <p>period (2) 85:23,24</p> <p>peripheral (1) 37:13</p> <p>permitted (1) 48:6</p> <p>person (3) 66:18,19;71:20</p> <p>personal (4) 15:10;39:9;46:23;70:13</p> <p>personally (1) 83:6</p> <p>pertain (1) 18:24</p> <p>pertains (1) 72:12</p> <p>Peter (1) 4:17</p> <p>petition (8) 8:13;15:22;34:24;</p>	<p>61:12;63:14,20,23;73:16</p> <p>petitioning (28) 4:11;5:2,11,15,18,23;6:4,22;7:20,25;8:16;9:7,18,25;10:7,17;20:21;22:7,18;24:21;25:8,15,22;31:6;34:8;43:3;71:5;72:16</p> <p>ph (2) 21:11;33:21;80:13,14</p> <p>phone (3) 5:3;60:12;62:13</p> <p>place (14) 15:19;16:3,4;18:9;27:7,8;28:14;29:3;69:17,18,20;82:21;83:3,18</p> <p>plaintiff (2) 53:25;54:13</p> <p>plaintiffs (1) 30:14</p> <p>plan (5) 59:6,18,19;66:6;69:15</p> <p>plans (1) 69:21</p> <p>plausible (1) 67:24</p> <p>pleading (2) 23:1,5</p> <p>pleadings (18) 58:4,13,23;62:20,24;63:6;64:18;66:8;70:1,8,15;71:6,18,23;73:18;74:10;77:2;84:4</p> <p>please (3) 20:9;24:17;72:23</p> <p>plus (3) 77:11;84:3,4</p> <p>pm (2) 86:10,12</p> <p>point (25) 10:16;14:4;17:6;22:16;26:11;35:2,11;39:1,21;40:9;41:5,12;49:15,24;55:6,14,22;56:8;67:14;73:9,20,24;74:12,15;80:20</p> <p>pointed (5) 35:2;36:25;42:4;56:15;73:6</p> <p>points (3) 35:1;40:9;71:9</p> <p>portfolio (1) 66:14</p> <p>portfolios (1) 80:13</p> <p>portion (1)</p>
---	--	--	---	---

26:5 portions (2) 8:24;26:18 position (12) 16:23;21:9,13; 24:5;61:11;69:2,14, 18;70:2;74:1,12; 85:18 possibility (1) 46:13 possible (1) 65:13 possibly (1) 15:24 post-decision (1) 71:2 posting (1) 37:19 post-trial (1) 50:16 posture (1) 29:12 potential (3) 9:8,12;60:17 potentially (2) 28:23;68:4 power (2) 31:24;32:1 practical (2) 32:13,14 pre-bankruptcy (1) 81:14 precedent (1) 39:10 precise (1) 44:4 precisely (1) 32:20 preclusive (2) 41:19;42:23 prefer (3) 77:13,17,20 premature (1) 60:5 prepare (1) 70:19 prepared (1) 74:1 present (3) 62:9;65:21;75:17 presented (3) 8:17;9:3;50:17 presenting (2) 67:24;80:17 presents (1) 68:19 preservation (2) 29:20,21 preserve (4) 7:23;23:23;55:13; 61:14 preserved (2) 23:25;52:12	preserves (1) 43:23 presumably (5) 13:12;33:12;36:1; 38:2;82:22 pretty (1) 70:21 prevail (1) 6:22 prevailed (1) 38:14 prevent (3) 52:15;53:2,3 prevents (1) 37:25 preview (1) 62:20 previously (4) 16:12;25:3;78:25; 79:25 primarily (1) 36:14 prior (11) 15:18;16:2,16; 18:8;23:10;25:25; 43:6;46:14;51:11; 79:25;82:17 prize (1) 53:8 probably (3) 26:6;38:12;73:1 problem (3) 29:11;32:9;72:5 problems (1) 20:10 procedural (2) 29:12;49:15 procedurally (2) 61:16;80:5 procedure (8) 57:13;68:19; 69:21;81:5,20,21,24; 83:18 proceed (4) 8:9;67:25;68:1; 71:16 proceeding (4) 6:15;19:7;66:23; 73:21 proceedings (7) 37:12;66:4,16; 69:9,19;79:4;86:12 process (8) 26:17;27:10;29:9; 30:8;36:12;39:23; 81:19;85:1 professional (2) 30:3;48:15 professionals (1) 49:7 progeny (1) 28:25 progress (1)	82:13 prompted (1) 60:1 promptly (1) 59:15 pronounced (1) 4:24 PRONSKE (55) 4:10,11;6:6,7;7:9; 9:4,6,7;10:4;11:14; 13:6,8,14,17,19,21, 24;14:6,9,11;16:16; 17:6,8;18:14;19:2,4; 20:24;21:2;22:9,20; 23:15;24:4,7,9,16, 19,23;25:9,12;39:24; 40:5,9,41;16:43;13, 15;49:5,8,11;55:6; 56:11;73:9;74:21; 80:23;81:3;83:18 proper (1) 51:15 properly (1) 56:19 proponent (1) 71:11 propose (1) 56:21 proposed (2) 33:3;57:12 proposition (1) 14:14 protect (2) 34:5;73:6 protected (1) 83:2 protections (2) 34:4,5 protects (1) 82:19 prove (3) 6:10;12:8,10 provided (3) 17:10;19:24;52:21 provides (1) 20:20 provisions (2) 40:21,22 punitive (3) 45:15;46:1,2 punitives (1) 24:3 purely (1) 45:17 purports (1) 34:10 purposes (3) 36:13;37:16;74:7 pursuant (2) 26:17;45:15 push (1) 61:18 put (18)	7:23;19:23;20:12, 16;23:21;32:14; 33:10,15;37:20; 39:24;40:22;46:10, 20;47:6;48:10;52:2; 53:5;55:7 putting (5) 25:20;31:10; 39:19;49:23;51:14 Q qualifies (1) 19:18 qualify (2) 10:24;49:15 quandary (1) 66:24 quick (2) 56:7;73:9 quickly (1) 39:21 quiescent (1) 66:19 quite (4) 28:11;44:25;73:7; 75:22 quizzical (1) 83:11 quote (1) 21:22 R raise (9) 29:5;31:9;43:24, 25;44:22;46:2; 52:16;73:23;74:19 raised (11) 6:15;11:1,19,22; 20:14;21:7,25; 28:10;30:7;44:7; 67:3 raises (4) 11:4;14:11;21:17; 46:1 raising (1) 79:10 rarely (1) 73:16 rate (2) 26:21;45:19 rather (6) 32:19;35:19; 36:12;60:4,5;77:21 Ray (2) 4:13;62:1 read (5) 14:13;18:15;28:7; 56:11;72:20 readily (1) 40:5 reading (4)	11:23;14:22; 22:16;44:14 ready (3) 4:1;50:18;70:7 real (1) 77:11 realistically (1) 61:7 reality (1) 10:10 realize (1) 71:23 really (36) 14:17;15:1,6; 26:10;29:20;39:21; 43:17;45:3;51:17; 55:16;58:1,12;60:1; 62:24;64:19,25; 65:12;66:20;70:20; 71:22,25;72:20; 73:2;76:4,6,14,14; 78:7,9,20,22;79:21; 80:17;81:20,22;82:8 reason (8) 9:23,24;11:22; 16:20;35:15;61:19; 66:19;83:20 reasonable (3) 55:5,7;79:8 reasons (10) 22:12;40:17; 46:23,23;47:10;51:9, 10;59:8;60:17;65:6 rebound (1) 55:18 rebuttal (1) 43:14 recall (2) 14:13;51:10 receive (2) 29:18;34:3 received (4) 12:19;24:9;27:16; 84:22 receiver (51) 4:17;11:12;16:18; 18:2,3,17;23:2; 27:11,12;29:5,6,7; 31:15,17,20,20,23, 24;32:1,20;34:13,20; 35:8,17;38:9,25; 40:23,24;44:18; 45:16;55:4,16;56:16, 19,20;57:1,13;58:4; 63:1,13;66:3;67:20; 71:6,9,13,16;72:22; 79:7,12;83:8;84:21 receiver's (12) 16:11;23:1,1; 34:22;35:12;36:18; 61:11;63:7,13;69:2; 72:9;77:2 receivership (47)
---	---	---	--	--

15:16,21;18:18,19, 20,20,22,25;32:1; 35:7,25;37:10,16; 38:3;39:7;55:16; 56:24;57:6;60:18; 65:1,22;66:5,12,24; 67:7,13;69:7,13; 70:17;71:12,16; 72:18;73:11,14; 75:23;78:13,20,23; 79:5,10,16,16;80:4, 21;82:21,25;83:2	rehearing (10) 15:23;61:12;63:8, 11;64:5;68:15; 69:16;73:16,18;79:4	research (1) 40:14	revisited (1) 18:11	36:13;37:2,9;38:11; 43:16,22,22;44:5; 45:13,22;50:1;53:4; 57:21;58:7;59:14; 60:18;69:25;73:13; 74:21;75:1,11,13; 77:9;78:5;84:6
receiverships (1) 81:23	reject (2) 48:18,25	reserve (1) 62:17	rewards (1) 33:2	rulings (8) 8:6;9:8;15:15; 20:22;27:20;38:21; 43:6;78:1
receivership's (2) 38:15;66:13	related (2) 57:7;75:23	reserved (2) 28:13;31:11	rid (1) 59:20	run (1) 71:14
recitation (1) 24:10	relating (1) 11:24	resolution (3) 19:18;27:18;44:3	right (74) 4:1;5:3,8;6:4,16; 7:1,7,23;8:11;12:25; 16:9,16;17:22;18:6; 23:16,19,24,25;24:2, 5,11,14;25:18;28:21; 29:6,21,21;31:17; 34:15,22;35:25; 38:9;42:18;43:12,13, 23;47:6;49:5,8,11; 51:22,22;52:17; 58:20;59:5;60:11, 23;61:22,22;62:10, 12,19;69:24;73:4,4, 8,11,25;75:2,7;76:9, 16;77:24;78:2;80:5; 83:8;84:1,13;85:20; 86:5,5,7,7,10	runs (1) 80:13
recognizes (1) 45:16	relied (1) 21:22	resolved (4) 7:10;16:21;32:19; 49:21	rights (9) 28:13,16;31:16,19, 20;34:13,13,15;59:1	S
recommendation (3) 69:4;79:1,18	relief (7) 7:16;67:5;71:7; 85:19,23,24;86:1	resolving (1) 46:4	rise (2) 32:11;37:6	sake (2) 26:19;33:16
recommendations (2) 48:18,25	remain (4) 10:8;15:19;18:8; 48:7	resources (2) 65:10,16	risk (1) 82:20	sale (3) 59:17,19;60:2
record (20) 7:24;8:12,9;3; 11:13,14,15,15,18, 20;13:22;22:25; 23:7;38:20;40:2,8; 51:4,8,9;68:19;83:12	remember (3) 31:6;41:25;55:14	respect (10) 10:13;11:25;19:3; 24:12;26:1,5,9; 39:22;42:7;52:3	risks (1) 33:2	same (14) 5:9,24;6:6;12:15; 14:20;31:2;54:13, 24;55:11;56:10; 68:8;73:18;81:16; 82:2
recovered (1) 55:19	remembering (1) 30:1	respond (8) 63:7,13,15;71:5, 18;77:10;78:7,8	robe (1) 32:7	satisfy (1) 32:15
red (1) 11:2	removed (2) 40:20,21	responding (1) 25:22	Roberson (4) 81:1;82:10,14,16	satisfying (1) 69:22
reduced (3) 26:21;27:11;35:21	replacement (1) 67:8	response (15) 5:11;11:19;16:11; 23:11;25:1,1,3;35:19; 40:11;42:24;57:25; 58:12;63:17,18; 70:19;72:14	roles (2) 27:3;29:13	saw (2) 44:15;74:10
reduction (1) 45:21	report (5) 48:17,20;66:7; 70:18;79:1	responses (8) 63:9,16;64:12; 67:9;70:15;72:11,21, 23	role (1) 74:5	saying (15) 11:16;12:24;18:2; 20:9;21:10,15; 30:12;33:4,6;38:22; 46:19;47:24;53:2; 72:23;73:20
re-evaluated (1) 18:21	represent (1) 67:20	responsible (1) 34:21	room (1) 15:25	schedule (1) 70:13
re-examine (1) 18:13	representative (1) 30:2	responsive (1) 73:17	routine (1) 83:23	scheduling (1) 80:1
referenced (1) 14:8	represented (1) 30:3	rest (1) 83:23	rule (10) 9:17;12:20;22:20; 23:5;32:25;33:23; 39:13;52:14;60:8; 66:1	Schenck (7) 4:18;63:21;64:1, 14;68:14,18,18
referring (1) 66:8	request (13) 9:13,14,22,24; 15:2;23:1;58:1,11; 63:12;73:12;78:14; 79:20;84:20	result (4) 20:15;41:7;46:16, 18	rules (4) 6:2;39:2;47:23; 66:24	Schepps (6) 23:16;47:15,16,17, 21;48:2
reflect (1) 83:12	requested (3) 47:12;57:24;71:7	resulted (1) 37:3	ruling (45) 9:9,12,14;10:11, 16,19,23;12:20;15:3, 20;16:13,14;20:21; 22:17;24:24;26:3, 11;32:16;34:1;35:6;	Schepps' (1) 51:1
reflects (1) 10:10	requesting (1) 22:17	retainer (3) 21:14;84:22,22		Schmidt (1) 84:17
refused (1) 54:6	requests (3) 79:16;80:21;81:7	reversal (2) 15:16;18:21		scholarly (1) 22:15
refute (1) 46:20	require (2) 19:12,14	reversed (1) 38:8		scope (2) 25:24;26:7
refuting (2) 23:12;42:25	required (2) 39:10;57:1	reverses (1) 69:12		scratched (1) 85:2
regard (4) 38:14;61:4;79:4; 84:10	requirement (1) 5:17	review (4) 24:23;40:18; 70:15;79:18		se (2) 14:5,8
regarding (2) 58:23;60:16	requirements (1) 32:16	reviewed (2) 45:7,10		seasoned (1)
regular (1) 21:18	requires (1) 19:15			
	res (8) 30:5;31:3;32:5,11; 36:15;39:18;57:9,10			

47:22 seated (1) 4:1 second (4) 8:14;9:14;19:6; 45:6 Secondly (2) 65:12;83:7 Section (7) 5:16;56:24;70:25; 71:14,15;81:12,22 seek (1) 10:12 seems (5) 15:1;26:24;40:18; 81:20;82:7 sees (1) 69:25 segue (1) 35:5 seized (4) 37:12,15;39:9; 57:9 sense (7) 11:3;19:15;27:2; 55:7;61:24;64:7; 77:7 sensitive (1) 60:22 sent (1) 58:15 sentence (2) 22:2;45:6 separate (1) 23:21 series (1) 60:8 service (1) 45:8 set (10) 5:10;38:15;41:10; 55:12;58:6;63:8,24; 65:14;68:16;70:2 setting (5) 8:12;61:19;75:12, 14;84:3 settle (3) 33:18;34:17;35:10 settled (1) 54:2 settlement (11) 33:10,19,19; 34:19;54:3,3,17,18; 56:20,21;57:13 settling (2) 33:11,17 seven (3) 10:7;22:18;74:4 seventeen (1) 13:25 Several (3) 23:13;44:13;71:23 shall (1)	52:7 shareholders (1) 30:2 Sherman (2) 4:14;70:11 shoot (1) 29:15 short (2) 15:25;58:17 show (2) 20:17;51:4 showing (3) 19:23;50:14;52:25 shows (1) 20:2 sic (1) 8:13 side (5) 9:3;49:23;54:16; 67:2,13 sides (1) 33:18 sideways (1) 51:13 sign (2) 15:23;27:13 signal (1) 73:17 signed (1) 31:14 significance (1) 16:8 significant (6) 21:20;46:6,24; 47:16;50:11;64:13 similar (2) 49:13;54:11 simple (1) 81:20 simply (8) 29:21;38:23; 44:25;69:16;71:9; 78:17;80:1;84:6 Sims (5) 17:1;21:22;32:17; 35:2;52:21 single (4) 21:3;22:2;27:8; 28:14 sit (3) 21:24;22:12,23 sitting (1) 53:7 situated (1) 74:5 situation (13) 27:1;30:13;53:5, 10,23;54:12;55:25; 62:25;65:3,9,13; 67:16;73:15 six (1) 71:6 sixty-one (1)	70:16 sixty-two (1) 70:16 sliced (1) 11:3 small (1) 83:1 so-called (2) 72:25,25 sole (4) 5:13;6:12;8:14; 57:21 solely (2) 8:17;75:13 somebody (4) 37:25;38:4;72:16; 82:24 somebody's (1) 82:20 somehow (3) 49:24;61:17;83:5 someone (1) 29:25 sometimes (1) 48:13 somewhat (1) 59:8 somewhere (1) 59:13 soon (1) 76:11 sorry (3) 69:12;76:6;84:14 sort (21) 5:25;11:2;13:3; 14:14,15;15:9;23:8; 26:13;37:12;38:5,6; 46:3;48:24;49:1,14; 51:13;52:24;61:4; 62:20;82:11;84:9 sought (3) 9:9;19:21;54:13 sounds (1) 68:13 Southmark (1) 29:24 speak (4) 62:24;67:11; 70:10;76:5 speaks (1) 64:25 special (3) 37:4,6;38:17 specific (15) 15:12;25:24;26:4; 27:3,11;38:19;39:2, 9,17;42:3,4,11;45:3; 49:22;50:16 specifically (13) 7:18;11:24;14:17; 27:15;31:19;34:14; 36:10,21;40:11; 46:5;81:10,13,18	specifics (1) 16:19 speculate (1) 83:1 spend (2) 54:23;66:22 spending (1) 75:22 spent (2) 17:20;67:17 spoke (2) 40:5;74:21 spokesman (1) 74:8 stab (1) 43:20 Stan (1) 21:11 stand (16) 22:16;23:18; 25:10;29:25;30:23; 46:21,25;47:6,9,11; 48:1;49:15;50:18; 51:24;55:6;72:8 standard (8) 9:11;12:16;14:24; 17:1;21:21;33:20, 21;52:21 standards (2) 9:10;24:20 standing (8) 5:18;6:1;10:8; 13:23;16:14;17:5; 24:15;81:2 start (4) 5:8;6:4;25:19;81:8 started (2) 21:10;59:25 starting (1) 48:12 state (1) 8:12 stated (2) 51:10;63:5 statement (2) 21:3;85:9 statements (4) 42:21;72:1;78:16, 18 states (1) 8:14 stating (1) 35:20 status (20) 4:3;8:19;22:21; 57:23;58:9,11,13,16; 60:25;61:20;66:7; 70:18;71:18;75:14, 15;76:3,23;77:1,12; 84:7 stay (41) 10:22;11:8,21,22, 24,25;12:1,5,6,8,18;	13:4,15,25;14:5,8, 15,19,25;15:2,5; 16:7,8,11;37:20; 49:20,20;60:19,20; 61:24;62:7;65:25; 66:19;69:18;70:25; 79:2,6;81:19;82:21, 23;83:3 stayed (2) 39:19;60:23 stays (2) 36:25;61:2 step (2) 55:24;63:19 Stephen (1) 5:5 still (7) 16:3,23;37:3;56:3; 61:25;75:3;81:18 stipulation (3) 6:19;7:25;43:3 stipulations (2) 7:9,10 stop (3) 55:12,12;57:18 stopped (1) 11:4 story (1) 77:4 straightened (1) 58:14 strangely (1) 26:3 strategically (1) 49:24 stress (1) 42:3 strike (1) 8:24 STROMBERG (61) 4:6,7;6:15,19;7:2, 3,6,12,14;8:22;11:1, 19;14:7,11;16:10; 22:2,13;25:18,19; 28:1,4,6,17,20;30:6, 9,17;33:6;36:1; 40:17;41:17,23; 42:15,18;43:2,11,18; 53:2;56:6,10,13; 57:17;73:25;74:3,18, 25;75:8,25;77:22,25; 84:14,17;85:11,14, 16,18,22;86:3,5,8,11 Stromberg's (1) 52:17 struck (1) 53:1 structure (2) 81:4;82:7 struggling (1) 48:10 studied (1) 58:1
--	--	---	---	---

stuff (4) 17:20;47:1;55:8; 83:23	sure (8) 5:8;61:13;62:8; 63:1;64:1;70:11; 71:4;82:13	45:2	5:9,14;6:20;7:5, 15:8;1,4,21;9:11; 17:3,25;41:9,11; 42:3;43:5;57:22; 58:14,18;69:25; 70:11;84:7	70:14
subject (17) 5:15,20;6:21;8:8, 16;10:4;16:25;17:1; 18:11;22:19;24:22; 37:3,11;39:4;44:6; 57:8;69:14	surely (1) 69:24	testify (4) 23:19;46:21,25; 47:21	today's (1) 7:8	twenty-four (1) 40:15
submitted (2) 6:11;23:10	surprising (1) 70:9	testimonial (1) 76:14	together (2) 7:23;60:9	twenty-one (6) 77:10,11,17; 80:19;84:3,4
subsequent (2) 11:16;37:18	SUTHERLAND (21) 4:21,22;58:8,9; 59:2,5,13;60:14,22, 24;61:5;62:16;72:6, 7;76:2,6,20,23,25; 77:3;84:8	testimony (5) 17:11;23:14; 24:25;50:25;51:1	token (1) 55:11	twenty-six (3) 15:12;17:9,19
substantial (11) 10:17;12:14,16; 17:12;19:8,25;20:2, 5;21:1;22:11;39:25	Sutherland's (2) 57:23;67:10	testing (1) 6:20	told (6) 7:18;13:10;15:23; 40:10,13;86:5	twenty-two (4) 23:10;55:9,10,17
substantially (1) 22:22	swallowed (1) 72:18	Texas (1) 28:24	tolls (1) 61:2	twice (2) 20:22;39:20
substantive (3) 24:12;52:15;64:15	swear (1) 42:19	Thanks (1) 53:12	took (4) 15:9;21:9;23:18; 29:12	twist (1) 19:5
substantively (1) 77:10	swore (1) 23:12	Thanksgiving (1) 59:7	top (1) 56:17	twists (1) 19:4
success (6) 12:4,11,13,22; 14:24;15:4	T	theoretically (1) 37:5	tort (6) 43:24;44:9;46:1,3; 52:12,16	two (21) 10:8,12;14:20; 25:14;37:18;39:21; 52:9;53:23;59:9; 62:23,24;64:18; 65:24;66:7;68:19; 70:19;74:18;78:10, 22;80:25;82:18
sued (1) 30:2	talk (8) 22:13;27:19; 32:23;57:19,22;58:2, 3;78:10	Therefore (5) 17:21;30:15; 33:24;34:19;52:23	transmitted (4) 59:9,24;60:9; 61:19	types (3) 50:21;62:24;80:21
sufficient (3) 9:17;10:15,16	talked (2) 26:10;79:19	thinking (6) 18:1;58:24;60:8; 77:7;82:12,16	treated (1) 81:16	U
suggest (2) 39:15;41:7	talking (9) 23:3;30:24;35:24; 37:2;49:13;52:10; 72:13;76:18;77:4	third (6) 9:22,24;11:17; 20:23;82:4,5	treating (2) 46:9;50:24	Uh-hum (1) 68:11
suggested (2) 38:7;72:15	talks (1) 14:23	thorny (4) 27:1;29:11;32:9; 70:20	trial (24) 6:23;8:13,15;9:19; 10:6;19:6;20:11,13; 22:22;29:7;31:17; 41:3;46:9;49:22; 50:24;51:1,3,20; 53:24,24;54:6,9; 67:5;75:4	ultimate (1) 20:9
suggesting (1) 69:2	target (1) 29:15	thought (9) 6:9;25:3;55:16; 60:4;62:2;67:20; 77:4;84:18;85:7	trusted (1) 7:19;15:8;20:22; 51:21	ultimately (4) 16:14;30:5;67:4; 68:1
suggestion (1) 63:10	technically (3) 15:6;33:1;60:19	thousand (1) 54:24	tried (4) 32:7;43:2	Um-hum (2) 41:17;85:11
suggestions (1) 38:23	teed (1) 23:2	threat (1) 72:25	trustee (8) 4:15;62:2;66:17; 69:20;70:3;77:13; 84:24;85:16	uncleared (1) 69:5
suggests (1) 26:16	telling (2) 13:24;81:9	three (11) 9:8;25:14;37:4,8; 38:17;55:1;59:7; 62:3,4;68:24;84:4	Trustee's (2) 84:17;85:18	uncontroverted (5) 46:16;47:2;48:7; 51:16;52:4
summarize (1) 5:25	tells (2) 29:5;64:15	threshold (1) 25:13	try (3) 55:4;62:8;84:11	under (20) 6:3;10:3,21,23; 12:20;17:1;19:18; 28:24,24;33:20;39:9, 10;46:7;49:16;50:2; 53:3,11;54:14; 81:15;83:18
summary (27) 5:10,12,25;6:10, 14,23;7:16;8:24;9:2, 10;10:5,11;24:20; 25:8,10,21;26:7; 34:9;40:3,8;41:9; 42:16;44:5;52:14; 57:25;58:15;84:6	template (1) 82:15	thrown (3) 27:14;34:24,25	trying (7) 7:14;8:4;23:3; 51:13;55:1;77:6; 82:8	underlying (2) 33:1;37:12
superseded (1) 71:17	term (1) 65:4	Thursday (1) 75:20	turned (1) 65:11	undermined (1) 38:10
supplement (1) 51:8	terminate (1) 61:18	timeframe (1) 64:3	Tuesday (5) 57:19;75:1,24; 77:14,15	understood (2) 5:13;74:6
support (1) 44:10	terminated (1) 61:21	times (3) 27:9;35:19,22	twenty (1)	unfair (1) 47:3
suppose (3) 44:4;47:3;76:10	terminology (1) 73:2	timing (2) 59:14;60:1		unfairness (1) 57:5
supposed (7) 16:25;36:21;75:4; 78:15,18,21;79:23	terms (2) 14:15;26:21	title (2) 27:23;28:14		unfortunately (1)
	Tesfamichael (2) 14:12,22	TNT (1) 33:20		
	testified (4) 15:8;23:14;25:3;	today (21)		

61:16 unique (1) 20:20 unless (1) 54:8 unlikely (1) 73:21 unnecessary (1) 65:17 unorthodoxed (1) 56:7 unpaid (1) 17:9 unsecured (2) 25:11;35:20 unstayed (2) 16:24,25 untransmitted (1) 60:6 unusual (3) 71:12;84:19,20 unwound (1) 37:24 up (22) 10:9;11:3;12:8; 13:23;20:17;23:3; 24:15;26:11;29:25; 31:3;36:5;37:20; 44:21;46:21;49:25; 51:24;53:5;67:16; 72:18;79:18;80:7; 81:2 upheld (1) 82:25 upon (6) 37:18;45:19; 61:13;65:19;67:6; 80:10 upset (1) 63:3 URBANIK (12) 4:13,14;13:23,24; 62:1,1,11;70:5,8; 72:4;77:13,17 urgent (3) 58:14;59:3;61:10 use (11) 27:9;29:22;32:23; 54:13,17,20,20; 65:15,16;73:2;83:9 used (1) 14:15 useful (2) 26:10,24 uses (1) 32:21 using (1) 49:24	61:15;73:22;76:3,20 vacated (8) 31:22;32:2;54:3, 16;56:1;59:15,18; 80:1 vacates (1) 69:12 vacating (1) 60:2 valid (5) 44:25;47:19,20; 52:1;71:3 validity (1) 67:7 various (4) 23:6;63:16;84:4, 10 vehicle (1) 67:8 vested (3) 31:20,24;34:13 vesting (1) 32:19 vetting (1) 80:20 vexatious (1) 55:12 view (5) 14:20;19:16; 21:21;65:22;80:20 violated (1) 20:17 virtue (1) 31:21 Vogel (6) 4:17,18;48:24; 75:17,19;76:12 void (1) 70:23 voidable (1) 70:23 voluntarily (2) 26:22;27:13 voluntary (3) 26:17;27:9;29:9	war (1) 46:3 waste (2) 58:24;68:12 way (24) 5:22;12:12,14,16; 22:20;24:6;30:20; 32:10;34:8,9;40:20; 42:22;43:19;51:22; 53:6;58:19;61:13; 67:24,25;72:24; 74:21;80:6,18;81:16 ways (1) 51:21 wearing (1) 27:3 Webinar (1) 77:14 Wednesday (11) 57:20;74:23;75:1, 2,12,19;77:8;78:5; 84:5,12;86:10 week (14) 57:19;58:6,10,17; 60:10;61:1,9;62:9; 70:2;71:19;74:23; 75:4;84:23,24 weekly (2) 78:16;79:23 weeks (1) 64:7 week's (1) 72:5 weigh (1) 70:7 Weil (1) 31:1 Welcome (1) 4:9 weren't (4) 17:24;26:19; 55:14;70:9 whatnot (1) 30:4 what's (11) 11:14;21:7;33:3, 21;38:8;49:14; 52:11;67:1;81:6,7,11 whereas (1) 49:4 Whereupon (1) 86:12 whole (3) 6:10;49:3;53:7 whose (1) 32:1 win (3) 12:18,18;53:8 wind-down (2) 66:6;70:18 wisdom (1) 69:25 wish (2)	31:13;68:8 wished (1) 8:2 withdraw (1) 54:8 withdrawal (4) 46:15,15,17;56:2 withdrawn (4) 23:20;48:1;54:5, 19 withdrew (2) 46:14;54:9 within (2) 40:15;50:4 without (7) 11:20;15:5;27:15; 44:19;45:1;51:2,14 witness (1) 51:24 witnesses (2) 48:4,6 word (3) 14:19,19;43:13 wording (1) 32:21 words (2) 14:20;21:11 work (11) 21:15;34:8,10; 40:1;42:20,21;51:1, 2;55:10;62:8;82:9 workable (1) 57:20 worked (5) 17:19;21:16; 45:19;54:1;84:9 working (2) 17:20;59:25 works (4) 51:16;76:13;81:5; 82:8 world (2) 33:5;61:5 worth (1) 40:13 writing (1) 44:21 written (2) 81:5,6 wrong (4) 30:1;63:22;69:24; 73:2	0 09-34784 (1) 4:4 1 1:30 (4) 75:7;84:5,5;86:10 100,000 (1) 25:12 1051 (1) 62:2 11 (3) 4:15;29:25;70:3 1140 (1) 53:21 11s (1) 48:13 12- (1) 4:2 13th (1) 68:17 14,425 (2) 25:13;41:21 15th (1) 82:12 16th (1) 8:20 17 (1) 8:13 17th (3) 78:19;80:5;83:8 18 (2) 10:15;16:14 18th (7) 11:6;15:18;16:3; 44:14;59:14;63:24; 65:14 1982 (1) 53:22 19th (1) 76:13
V	W	Y	2	
vacate (7) 59:25;60:2,7;	wait (3) 54:16;61:12;85:25 waive (2) 26:18;29:6 waived (2) 79:6;81:17 waiver (4) 27:16;29:9;31:14; 40:21 waivers (1) 27:13 wants (7) 41:13;43:24; 52:16;71:21;72:17; 76:12;83:21	year (2) 11:10;54:11 years (2) 48:16;55:1 yesterday (1) 40:6	2003 (1) 8:13 2011 (4) 10:15;13:12;18:9; 22:25 2012 (4) 15:17;16:15;18:7; 40:12 2016 (2) 84:25;85:9 20th (5) 74:23;75:2;76:12; 77:22;84:5 23 (2) 44:13,17 24 (1)	

45:6 241,000 (1) 21:6 25 (1) 45:13 25,000 (2) 84:21;85:12 26 (1) 46:7 27 (1) 47:14 28 (2) 48:3;50:11 28th (1) 72:20 29 (1) 50:12	54 (1) 39:13 543 (6) 62:7;70:25;71:14, 15;79:6;81:22 543c (2) 81:10,17 54b (1) 39:9 575 (7) 27:7;35:9;36:2; 38:22;56:11,15,18 5th (1) 53:21			
3	60 (1) 12:20 682 (1) 53:21			
3:40 (1) 86:12 30 (2) 40:12;51:6 303 (2) 5:16;6:3 31 (1) 15:17 31st (1) 78:14 33 (2) 21:2;22:1 35 (4) 45:24;52:7,8,10 35s (1) 52:9 36 (4) 28:12;45:24;52:8, 10 37921 (1) 4:3	7 (1) 56:17 75,000 (2) 21:9;25:4 770,000 (1) 82:4 7th (4) 63:8,15;72:23,24			
4	8			
40 (2) 21:2;22:1 400 (2) 24:1;44:1	8 (1) 56:17 8000 (1) 60:8 8th (2) 63:8,15			
5	9			
40 (2) 21:2;22:1 400 (2) 24:1;44:1	9019 (3) 32:25;33:8;34:16			
5 (1) 56:17 5,000 (1) 25:3 503 (1) 83:18 503b3 (1) 20:1 503b3E (1) 81:12 503b4 (2) 20:3;81:15				