

1 THE COURT: Good afternoon. This is Judge
2 Starzynski.

3 MS. GONZALES: Good afternoon, Your Honor.
4 How are you?

5 THE COURT: Good, thanks.

6 This is the Furr's case and the reason that
7 we're having this in part was another letter that we
8 received recently with a bunch of copies of mail appended
9 to it by a few folks. Given the number of pensioners or
10 potential pensioners, I guess there was I guess
11 relatively few people who have actually complained.

12 It seemed to me that this is one of those
13 issues that could be of such a high profile, of so
14 intense concern by various people that it would be useful
15 to, in part for me to sort of track it a little more
16 closely than I would track other things that are going on
17 in the case.

18 And that's without in any way suggesting that
19 I have any concerns about how well the Trustee is doing
20 her job in this case or anything like that. I have no
21 such concerns whatever.

22 The issue more is to for me to be clear and
23 for the creditors of Furr's, particularly the
24 participants in the pension plan to have the comfort of
25 knowing that the matter is being carefully addressed,

1 being watched over by the Court as well.

2 That's basically the reason we're having this
3 hearing this afternoon.

4 And what I have got in front of me is a draft
5 of a notice that is going to be posted -- sent out to
6 folks and is going to be posted also on the Court's
7 website?

8 MS. GONZALES: That's correct; that's the
9 final.

10 THE COURT: What I have got is, this is a
11 memo and then what I have got is a two-page attached
12 notice which is the final?

13 MS. GONZALEZ: What you had is a draft of
14 the memo and notice of intent to terminate. Those are
15 both versions of the documents that are being mailed
16 either today or tomorrow.

17 THE COURT: Well, does that mean they
18 can't be changed at this point or is it a lot of work to
19 change them?

20 MS. GONZALES: Probably not a lot of work
21 but talking to the people at Towers Perrin, they were
22 already starting to stuff envelopes.

23 THE COURT: Okay. Well, the one thing
24 that struck me immediately -- I had some sort of
25 editorial thoughts, but I'll leave that up to you-all.

1 The one thing that did strike me was where it
2 talked about "our website" on the bottom of it, I guess
3 it just struck me this is really the Court's website and
4 it struck me also that it would be useful I guess to make
5 that clear to folks because by and large, many, many
6 people have no idea who's who in this process.

7 Is that too much of a difficulty?

8 Because we could presumably, if you were going
9 to post this on the website, there needs to be some kind
10 of coordination and some kind of introduction to this,
11 anyway, with respect to -- or were you thinking folks
12 would just go there, see a little sign that says, "If you
13 are a pensioner or have a claim to a pension, click
14 here," and they would just immediately go to this memo?

15 MS. GONZALES: Right. That's how I was
16 envisioning it, I guess.

17 When I talked to Mary this morning, it wasn't
18 really quite clear as to how it would be as far as the
19 linking on the website.

20 THE COURT: Let's clear up the problems
21 then through the link, okay.

22 MS. GONZALES: Okay.

23 THE COURT: If they are already stuffing
24 and sending them, that's fine. Okay.

25 But I think that with respect to the link,

1 when they get there, let's put something -- let's put
2 something on there to make clear it's the Court's website
3 and to, I guess, also put in some kind of -- well, we can
4 talk about the terminology of that.

5 Are you going to be available the next few
6 days in the process of getting this posted?

7 MS. GONZALES: Yes.

8 THE COURT: Let's just do that. I don't
9 think we need to spend any more time on the record
10 dealing with details like that. Okay.

11 MS. GONZALES: Okay.

12 THE COURT: Other than that, I was told
13 you actually spent something like an hour with one person
14 asking questions about the pension and all?

15 MS. GONZALES: Well, that was Mr.
16 Spencer's wife, because he's -- well, I have been
17 forwarded e-mails from him before and I spoke with her at
18 length and explained the whole process.

19 That was why we have been trying to come up
20 with a statement to put on the website and because we
21 knew after that first notice of intent to terminate went
22 out last April and the deal was to have participants'
23 statements out to them because the process is first, by
24 federal law, it is a pension benefit guaranteed fund so
25 we have to follow their procedures and their laws, you

1 have to let everybody know you are going to terminate the
2 plan.

3 Then you collect data, send out participants'
4 statements which lets everybody know exactly what dollars
5 and cents they are going to get at the end of every month
6 once they retire, once they become eligible.

7 We thought we would be able to get that done
8 by the end of November, but it just was not possible.
9 And so as people were calling the office through this
10 past fall, we have been trying to explain to everybody on
11 a piecemeal basis what was going on. And that was -- we
12 really need to get some kind of statement, we need to let
13 everybody know what's going on. We need to have
14 somewhere where they can go and just have an updated
15 status report on what is going on with the pension plan.

16 So, you know, Kathy Davis has been a real
17 trooper in working through, going through the files,
18 going through -- what we have to do is go through each
19 individual employee's file and get the data.

20 She worked pretty much full-time doing that
21 for six months and then found another job and had to just
22 do it in the evenings, you know, pull boxes from Iron
23 Mountain, go through trying to find the last data.

24 What we're down to now is 30 participants that
25 we just can't find the files and she has gone through

1 every single box where those people should have been.

2 Furr's management, I think, did an excellent
3 job of trying to get everything assembled the way it
4 should have been so it could be easily accessible, but
5 apparently these 30 files are just not where they should
6 have been.

7 Then you're looking for a needle in the
8 haystack and we only got this information about six weeks
9 ago.

10 So what we have to do is go through them or go
11 through those folks, try to find them, track them down
12 directly. And it is just -- it is either go through
13 every single one of 5300 boxes to try to find the files
14 or go the other way, try to get the information through
15 alternative sources.

16 That's where we are at. We're going -- I met
17 with the ERISA attorney and we had a telephone conference
18 with Towers Perrin who are the actuaries running numbers
19 for us. We're just going to contact them so we can get
20 releases to go through Social Security to get the
21 information that we need. Once we get the final
22 information on the 30 participants, then we can run the
23 numbers as far as the amount that each person should get
24 in their retirement.

25 THE COURT: Okay. Well, here's what my

1 thoughts have been when I was looking at this. Just
2 looking at the notice and things that you have explained
3 this afternoon, I think are really useful for folks.

4 I'm not going to ask you to change the notice
5 or anything like that. But, for example, all of the work
6 that you have done so far, what is obvious to me, I
7 think, is that the vast majority of people have no idea
8 about the amount of work that's involved or requirements
9 or anything.

10 People, first of all, don't know what's
11 actually required by law and they can't get a dime or
12 anything like that until this process is gone through
13 because the federal law is designed to make sure that
14 people's pension are protected.

15 Number two, it is a normal process.

16 Number three, it is a huge amount of work you-
17 all are working on and doing a lot of work and the delays
18 that are occurring, the fact they don't have their money
19 right now, which they are understandably concerned about
20 to some extent, are not your fault at all; that you're
21 just doing what needs to be done as quickly as can be
22 done. You have been working on it for a long time.

23 The problem is that I don't think that most of
24 these folks understand that and I am not at all clear
25 that it comes across in this notice.

1 My thinking in connection with this would be,
2 therefore, that when we set up the link, that we have not
3 only this material here but that we also say that I
4 conducted a hearing in connection with this and this was
5 the explanation that you gave and make available a
6 transcript of this hearing so that if somebody wants to
7 read the detail, they can do that.

8 My thought is is that without folks having
9 those additional reassurances, there are going to be a
10 number of additional calls and e-mails.

11 Well, more e-mails, that's no big deal for
12 you, but you may end up getting lots more calls and all
13 it takes is one or two of those one-hour phone calls, I
14 would think, to make things really hard on you-all.

15 So I think that that's what we ought to do in
16 terms of setting up this link so that everybody can have
17 the full amount of information about what is going on.

18 Do you have any problems with doing things
19 that way?

20 MS. GONZALES: No, no, I think that's a
21 good idea. We kind of tried to do that with the memo
22 because, you know, the notice of intent to terminate is
23 what's required by law, but the memo is just something we
24 have worked on to try to -- as a way of explanation as to
25 why they are getting another one because it is really not

1 typical that somebody would get a notice, a second notice
2 of intent to terminate.

3 We tried to do that, but I think, you know,
4 the ERISA attorney and myself, I think we are trying to
5 keep it as minimal as possible while explaining that,
6 yes, it has been a long, involved process and we tried to
7 keep it in straight English, not legalese.

8 But I understand your comments now because
9 what Ms. Panter put in there about the, I think it is the
10 distressed plan, that we still plan on filing, you know,
11 the standard termination, I think that could be expounded
12 upon because that's what everybody wants to know; is the
13 money still there.

14 Standard termination means there's money there
15 as opposed to a distressed termination, then the PBBB
16 would step in, it would be a whole entirely different
17 process.

18 All indications are that the money is there
19 and so I agree with you. I think that this should be
20 made clearer that no one is losing any money.

21 THE COURT: So that's in the transcript
22 right now.

23 So do you want to just send out this notice as
24 is or do you want to revise it?

25 It's up to you.

1 MS. GONZALES: Well, you know, let me call
2 Towers Perrin and see where they are at as far as
3 stuffing envelopes and maybe we can get it amended or
4 changed before it goes out.

5 THE COURT: Well, that's entirely your
6 decision. Okay.

7 Like I said, I had some other obviously
8 editorial thoughts in connection with it, but -- and I
9 guess I have basically expressed those. That's those
10 concerns that people know that you have been working on
11 it, this is required and that there are sufficient funds.

12 Those are actually the notes I have got right
13 here alongside the text as well as circling the other
14 word in connection with "our website," but we can deal
15 with the "our website" part in connection with the link.

16 But, you know, that's just what I had in mind.
17 So you make whatever decision you want to with respect to
18 whether you want to change the memorandum or send it out
19 today or whatever.

20 I do think it would be appropriate to include
21 a transcript later and so let's make it clear on the
22 Furr's website this hearing was conducted in connection
23 with this and if folks want to know about it, they just
24 need to click on the button, here's the stuff they need
25 to know.

1 I want to say one other thing, by the way, is
2 that spending an hour talking with somebody, you know,
3 that's just a lot of work and everything and it seems to
4 me that if you are doing things like that, whatever
5 you're getting out of this case, you're going to earn
6 every penny of it.

7 Is there anything else then we need to do this
8 afternoon?

9 MS. GONZALES: Well, if you would just
10 repeat the notes that you had made, just so I'm sure that
11 I cover them.

12 THE COURT: Oh, sure.

13 MS. GONZALES: If we're going to change
14 it.

15 THE COURT: Sure. One, that you have been
16 working on this for a while; that this is a normal and
17 required part of the process.

18 MS. GONZALES: All right.

19 THE COURT: That a standard termination
20 means that there are sufficient funds or something to the
21 effect that standard termination requires that plan
22 assets are sufficient to provide plan benefits.

23 I understand I think what she's saying when
24 she says that sentence, but I think to the average person
25 that doesn't say that there are, in fact, sufficient

1 funds or there appear to be sufficient funds.

2 Does that make sense?

3 MS. GONZALES: It does. And then it threw
4 me, because I keep asking this question and, of course,
5 the lenders keep asking this question, because the
6 earlier estimates were that there was going to be a
7 million dollar surplus in this plan.

8 The money has long been out of the stock
9 market. It has been in money market so the dollar amount
10 is not going down except for distributions to
11 participants.

12 But when I asked the question, those numbers
13 were all run at the end of 2000, we have not done a 5500
14 tax return for year 2001 because we didn't have the data.
15 So I mean, I don't know if I can just unequivocally say
16 because what the actuaries are telling me is that the
17 money that's in the surplus, if there is, is based upon a
18 variety of factors such as, what we have to do in order
19 to wrap this up is they purchase annuities for each
20 participant and that it gets rolled over and based on the
21 interest rates then is how much money we're going to have
22 left over.

23 So I don't know, I mean, I think that the
24 standard termination language in there is a lawyer term
25 that's probably meant to be ambiguous for a reason. And

1 indications are now that we're proceeding under standard
2 termination, there has been no indication that it is
3 going to be anything but that.

4 THE COURT: Why don't you say something
5 like that? Can you say that?

6 MS. GONZALES: Yes. Yes, I could.

7 THE COURT: I don't want to put you in a
8 difficult position. You know, the language of the notice
9 of intent to terminate, the first paragraph says intend
10 to terminate the Furr's pension plan in a standard
11 termination. The law requires that we provide you with
12 written notice of proposed termination. In order to
13 terminate the plan, assets must be sufficient to provide
14 all plan benefits. Okay.

15 Then it says if it doesn't occur, the Chapter
16 7 Trustee will notify you in writing.

17 That, I mean, I assume that that's the
18 standard legal kind of notice that you need to give.

19 Do you think that that precludes you from in
20 this additional document saying that, you know, all the
21 indications so far or, you know, based upon the last
22 check that we did, there were sufficient funds to provide
23 the plan benefits and we don't have any indication so far
24 that there aren't?

25 MS. GONZALES: Yes. Well, that's

1 certainly something that can go in there.

2 THE COURT: Do you feel comfortable saying
3 that?

4 I mean, if it's a violation of the law or
5 something, let's not do it, but --

6 MS. GONZALES: No, and I feel comfortable
7 saying something like that.

8 THE COURT: The other thing that you did
9 very wisely, it seems to me, when you pulled -- well, it
10 sounds like it was wise -- seems to me it would be
11 extremely reassuring if folks know way back that the
12 funds were pulled out of the market, put into money
13 market accounts so they are essentially cash and have
14 been for a while.

15 I don't know if you can disclose that or not.
16 I would think that you could, but I would think that
17 would be the kind of thing that will provide a lot of
18 reassurance to people.

19 MS. GONZALES: Yes, that's a good point.

20 THE COURT: Again, I am really honestly
21 not trying to do your job, but --

22 MS. GONZALES: I'll trade with you.

23 THE COURT: Your job is way much harder
24 than mine; not even close; I'm sorry.

25 And I think that's basically it, I guess.

1 So those were the thoughts that I had and
2 other than that where it says "our website," just
3 Bankruptcy Court website or something like that.

4 MS. GONZALES: Okay. All right. Let me
5 try to get the mailer.

6 THE COURT: Let me just say one other
7 thing while we're still on the record.

8 You said earlier you are trying to provide a
9 minimal statement in this memorandum.

10 What you mean, I assume, by that is something
11 that would be short but complete so that people would be
12 more inclined to read it rather than being put off by a
13 five- or ten- or 20-page document.

14 MS. GONZALES: Right. And that's because
15 I have spoken with quite a few of these people on the
16 phone and the hour was the one where the woman was really
17 trying to understand everything that was going on and
18 asked a lot of questions.

19 Most of the folks that I talk to really just
20 want to know if the money is there and it is safe.

21 THE COURT: That makes sense to me.

22 I do appreciate -- I think that when you spend
23 that time explaining to folks in some detail, giving them
24 that assurance, that's really admirable. That's what we
25 all need to be doing, so thank you.

1 Okay. Well, I won't hold you up any longer.
2 Thank you very much for sending this stuff over so I
3 could look at it.

4 MS. GONZALES: Okay. And you will see
5 what comes out if we update it, the status reports as
6 well.

7 THE COURT: Okay. Great. Thanks. Take
8 care. Merry Christmas.

9 (The Hearing was concluded at 2:10 p.m.)

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