

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James Starzynski

James Burke, Law Clerk
Jill Peterson, Courtroom Deputy

Joe Jameson Court Reporters
(505) 242-2809

Sara Edmonds X

Date:

Thursday, October 04, 2001

Re:

FURRS

No. 11-01-10779 SA

PH on Motion for Order Directing Immediate Payment of Accrued Post-Petition Health and Welfare Benefits - (FINAL HEARING OCTOBER 16, 2001 @ 1:30)

PH on Motion for Allowance as Administrative Expense and Payment of (a) Pension Contributions for July and Aug. 2001, (b) Health and Welfare Plan Contributions Measured by Work Done in Aug. 2001, (c) Unpaid wages, and Vacation and Severance Benefits, and (d) Grievance Liabilities - (BRIEFING SCHEDULE - REPLY DUE OCTOBER 22, 2001 AND RESPONSE DUE NOVEMBER 1, 2001)

PH on Post-Closing Cash Collateral Order - (FINAL HEARING SET OCTOBER 16, 2001 @ 1:30)

Attorney for Debtor: Robert Jacobvitz and David Thuma

Attorney for MetLife: Jennie Behles

Attorney for Heller: Paul Fish and William Keleher

Attorney for UCC: William Davis

Attorney for UST: Ron Andazola

Attorney for TOPCO and Valor: Dan Behles

Attorney for Furrs 4, 5, 7 and 9: John Farrow

Attorney for Local 540: Michael Four

Attorney for New Mexico United Food and Commercial Workers' Union: Mr. Youngdahl

Summary of Proceedings:

Exhibits X

Testimony X

(SEE ABOVE)

Ct: As a mark of respect to this court is those of you who have hats on remove them please. We started a little bit late because I wanted to make sure everyone got thru security. Will break before noon. Going to restart at 2:15. Prior commitments that were sched. These are prelim. hrgs. Final hrgs are set for Oct. 16. Explain what this proced. means. At prelim. hrg I don't take evid. Understand the issues and put on evid. at final hrg. What is going to happen today is we won't put on evid. A lot of evid. or sugg. to the court in paper form by two unions. At prelim. hrgs I will also listen to parties make a variety of evid. Ask if some iss. can be resolved w/o going to final hrg. Elim. iss. that don't have to be heard at that time. Are legal iss. I need to study before final hrg. It is unlikely I will be deciding most if not all the iss. pres. here today. Not to say the court cannot be addressed here today. Are a # of people here that would like to talk to the court. This is the time to do so. Can addr. court who has been effected. Are a # of people who may want to addr. the court. Don't understand how bankr. works and what has gone on in this case. I will say now I would apprec. it if you keep your present. brief. What I would do w/respect to today's proced. Summarize what has happened in this case and summarize how bankr. proced. works. Will ask where parties are w/respect to lenders money. Cash collateral. Also going to ask where parties are w/respect to health and welfare benef. Also w/respect to the Union's motion on severance pay. Only inquiry whet. the parties have been able to work something out. Directed to the lawyers. Don't want to hear argument. Going to hear from the various non-lawyers who are here first. May well be a # of you are fortunate to have other jobs and don't want to stay all day. I will listen to present. about cash coll. and severance pay. I would also sugg. if you want to understand what is going on in this procedure might want to stick around. Don't have to after you have addr. the court. When you come up state name and address and stake you have in this case. Former employee, creditor, etc. Not limited to employees. I need that info. bec. w/a few except. only those persons who are empl. are allowed to partic. in the court proceedings. The lawyers have done exactly what I have explained. Who they are and connect. to the case. # of e-mails to court about severance pay. Have been made into hard copies and placed in files. Have read all of those. # of phone calls to employees. We cannot return those calls. For me or someone from my staff to talk to you would be a private communications. What we call ex-parte. Why we haven't called you all back. Can write and e-mail. Read one that came in this morning from Larry Kasper and his spouse. My staff has told me that everyone of the callers has been polite and courteous. Wouldn't expect anything differ. Apprec. it. Makes things easier on the staff. Want to acknowl. that. Let me talk about background of case. Talk about structure where money comes from and how it has worked or not worked in this case. Ordinarily a debtor files a ch. 11 to pay some or all debts to creditors. Can liquid. itself to go out of business in a controlled manner. Assumpt. is if company cont. to oper. will make enough to pay it's bills. Furr's what losing a huge amount of money ea. week before it filed bankr. Feb. 8. Cont'd to lose money until management was replaced by Golleher and Mays. Obviously the hope at start of case was Furr's could keep oper. for awhile and pay something back to

unsec. creds. Serious doubt whet. that goal will be met. Furrs has added expenses of ch. 11 costs. Lawyers, accts and invest. bankers. Hired routinely to repres. the creditors. UCC. These folks are necess. to help the dtr reorg. or go out of bus. Requires expertise to help the bus. reorg. or liquidate. Not for free. Expensive, but that is the reality. Result has been in short that Furrs went into Ch. 11. Owes more money to people to emp., accts for work during the bankr. Bankr. code says that bankr. opers. debts such as work that emp. did and not paid for. Call post-pet. debts. Incurred after bankr. pet. was filed. Bankr. code says those debts get repaid before any of the pre-pet. unsec. debts. Assumes there is enough money to pay it back. Heart of prob. we are looking as now. To understand that better we need to understand how bankr. works. At start of ch. 11 are creditors. Unsec., sec. and prior. creds. Sec. are lenders. Those are the people that loaned money to debtor. Ten of millions of \$. Took back sec. int. in Furrs such as mortgages. Have prior. creds. Example would be pre-pet. taxes that have not been paid. Unsec. that loaned money to debtor or food suppliers. Sold goods to Furrs and did not get paid for them. In NM it is frequently that employees are unsec. as well. My practice that in many cases filed the employees weren't paid. Show up on Friday and told the bus. just filed and would not get paid for a long time. One of the things that Furrs did on the first did was submit an order that said all the wages owed to empl. would cont. to get paid. Arrangement made that none of the cks that bounced. Were a few. Took awhile to get the financing in place. Not the typical case in this district. Found themselves unpaid. Are admin. creds. Prof. hired to work or workers not paid during the case and post-pet. taxes. Distrib. of money goes as follows. Sec. creds get coll. back or get back proper. pledged to them or get coll. back first. If any money left, admin. clms are paid in full. If not paid on pro rata basis. If any money left after the admin. clms are paid the prior. clms are paid. Then what is left goes to unsec. In this case it is looking like sec. creds won't get what they are owed. Sale is not sec. Going to be some money to pay admin. clms. Unfortunately not enough money to pay all admin. clms in full. Those that are truly admin. clms will be paid on a pro rata basis. Pay 1/2 of admin. clms. If you have a clm for \$3k, then what you will rec. if \$1,500. If not enough to pay all admin. clms in full none of the jr. clms get paid in full. Fact the sec. creds get paid back first is the law. Became the law a few yrs after William the Conqueror. Is an addit. wrinkle. Sec. creds coll. includes proc. of sale of coll. If sec. cred. has a lien on inventory of store the proc. belongs to sec. cred. That is the way the process works. Debtor is not allowed to use that money w/o permiss. of sec. cred. or order. Treated as new loan to debtor. Belongs to sec. cred. As case goes on that new borrowing needs to get repaid first. What you have heard is that the post-pet. borrowing was repaid to the lenders. \$15mil repaid back in Sept. Dtr says we don't have any cash and need to borrow from the lenders so we can do a # of things. Like iss. W2's and 1099's. Has been some borrowing I have already approved. Iss. pending before court today is dtr can borrow more money. When that money is borrowed will have to be repaid back from money paid into the estate. This is a brief and incomplete summary of how the bankr. process works. I don't usually sit up here and explain these things. In this case when there are so many people w/o an attorney or is an employee is why I have taken the time to do this today. Addr. a couple of other things. Is a widespread belief from e-mails that senior management are receiving large bonuses. Not explained fully. Give you brief summary. When I signed the order on Feb. 8 when the pet. was filed that prov. Furrs would pay empl. wages and benef. The pre-pet. wages and benef. there is a provis.

in that order. Docket #28. Prov. that the big severance pkgs that Furrs had promised to senior management would not be paid. If money down the road to pay that, then somebody could come to court and ask for those sums to be paid. If there is a req., the ntc will go out and people will have chance to obj. No bonuses have been paid. Two large pymts that have been made which is what people are thinking about. Mr. Tom Dahlen rec'd a pymt of \$30k when he left Furrs. That was not a bonus for work done. Was rather a pymt that the board of directors asked me to approve so he would not recruit any management folk to keep bus. running. Was a quit pro quo. Mr. Dahlen we need to make clear will not keep managers and return for that he was paid \$30k. Second, when I approved that transaction there was value in having those managers stay. Appeared there would be more money to distribute when end of case came up. I also approved a contract between dtr and Mr. Golleher and Mr. Mays. To be paid a monthly salary. Paid a signing on bonus of \$125k. Negot. for a share of the sale proceeds what was called a success bonus. Amt of that is supp. to be \$1.5mil. 1/2 of that has been paid. \$750k. Entire amt was to be paid Aug. 31. 1/2 in Sept. and other 1/2 on hold depending on what happens. Other than that I know of no other bonuses to anybody. Address \$1.5mil to Golleher and Mays. Mr. Golleher and Mr. Mays came in the end of Mar. and allowed the co. to stay open for another 5 mos. Allowed it to stay open rather than go dark. Lenders are entitled to ask bankr. court to allow them to recover their funds. In addit. the co. staying open kept thous. of people employed and resulted in Mil. of \$ for wages. These were pretty good jobs. If had choice of losing job and end of April would rather keep jobs til end of Aug. Was a real benef. bestowed upon co. by Golleher and Mays. Was a benef. to the employees. Is a reality of market place. Had set of skills and expertise they brought to the bus. Resulted in stores being sold for a lot more money. Had skills and expertise. Negot. a pymt recognizing that value. What success bonus is. Each empl. has rec'd most of the compens. that they were supp. to receive. Prob. w/severance pay, but addr. that. Deal w/rest of that. Mr. G. and Mr. M. had a special set of skills to negot. higher price for. That is life and the market. Nothing a bankr. judge can do to chg. that. Is reality that there is not enough money. Not enough money to pay everyone. Are hard choices to make. Gone thru priorities. Parties can actually work something out. Can go back to clients and work out a deal. If parties aren't able to work this out we are left w/me making decis. based on code. Whet. this case was in bankr. or not there would not be enough money to paid everybody everything they are owed. Had a message from an unsec. person who had a slip and fall. Furrs made a deal w/him. Not cover medical bills he has. Furrs filed bankr. and will not see \$350. Is unlikely to see \$350. UCC is hoping to recover some \$ to go to unsec. If able to make a recovery and get some money to unsec., good for them. Any money that comes in will have to go to admin. clms. No ques. that man suffered those injuries, but not enough money to pay those bills. Nothing about me being a bankr. judge gives me the key to the U.S. Mint. Is reality. Hear from lawyers and talk about sched. final hrg. Want to hear from anybody that would like to addr. court w/concerns.

STATEMENT BY SHARON HOLT

(Applause)

Ct: Need not do that again. Is a courtroom. No doubt you feel as strongly as Ms. Holt does, but do not do that again please.

STATEMENT BY CAROLINE SNIPES

(Applause)

Ct: If you do that again, I will ask everyone who applauds to leave. This is a court of law.

STATEMENT BY BETTY SHAW

STATEMENT BY ALTAMIRA ARAGON

STATEMENT BY IRENE MARTINEZ

STATEMENT BY ROSEMARY ARMIJO

STATEMENT BY JOHN WOLFE

Ct: Facing is process by which you make sure front of can faces front.

W: Yes.

STATEMENT BY GRACIALA ALDEN

STATEMENT BY YOLANDA SANDOVAL

STATEMENT BY MARTHA LEIBERT

STATEMENT BY PETE SOWINTO

Ct: Anybody else who is not a lawyer that would like to address the court. Begin process of mech. on Oct. 16. I do want to say thank you very much for overcoming your nervousness to addr. the court. I appreciate you sharing that. It is a perspective for those of us on the bench and the lawyers never hear. Mr. Jacobvitz what is the thought w/respect to the hearing on Oct. 16. Let me back up. Has there been any agreement at this point between the dtr, the lenders, the unions w/respect to severance pay or are you still at lauger heads.

Thuma: If I could respond. Not aware of any agmt reached by parties or oblig. to pay. Do have money reserved for that. Have a bigger \$ issue whet. the co. is oblig. to pay all the sever. under the collective bargaining or pro rated. If court uses standard rule and pro rates if \$3mil. If in whole is \$13mil. No money to pay either amt right now. Don't have an agmt. To get an agmt not only have to agree on a #. Figure out what kind of discovery needs to be done. See if we can resolve a very diffic. iss. Very troubling. Will be hard to see our way out that will make anybody happy.

Ct: Have an idea about how long for presentation?

T: Have a final hrg on cash collateral. Not a final hrg set for the matter on health and welfare or vacation issue. Would discuss today when final hrg would be set.

Ct: Have a final hrg. 1/2 day set aside for Furr's. FH on stay relief by Pinnacle and Countrywide and Use of Cash Collateral. Only things that are set. I did not look at the calendar. I looked at the filings and maybe only thinking of cash collateral. Differ. understanding Mr. Four and Mr. Youngdahl.

F: Discuss how we proceed after today. Are prepared to go on Oct. 16. Are prepared to do that on the 16th.

T: I would think we need to talk about the \$750k set aside in reserve for health and welfare. Have a separ. discuss. about Health and Welfare iss. Get on track. Position of debtor is strange. Are understaffed. Winding down. Have evid. hrg in October. Pulled in differ. directions. Makes sense to have hrg in Oct. Defer to Mr. Fish and Ms. Behles. Make sense to do in October. Don't think that will be a lengthy hearing. Ltd proposal. Use \$600k in the next 3 weeks. Should be some time that afternoon.

Ct: Have an agmt?

T: We do.

Ct: Cont. minimal oper. in Oct.?

T: Yes.

Ct: Address iss. of timing. Want Mr. Youngdahl to talk first.

Y: Would agree we have two discreet issues. One is health and welfare and benefits. Second, is other union matters, severance, grievance. Our iss. is discreet. Came here to discuss legal issues. Have four witnesses. Also spoken to D. James who was senior vice-pres. for HR. Chairman of Health and Welfare. Ran pymts to the fund for many years. He has commun. that it is owed. Prepared to come down and testify. Prepared to give a short legal discuss. I do think from our side the health iss. needs to be resolved. Been told a # of the Furr's emp. are getting called from medical providers that when are they getting paid.

Ct: Had that discuss. last time. Makes sense - hear you saying this could be set and resolved on afternoon of 16th?

Y: Yes.

Ct: Ques. about documentation?

Y: No. Controlled by trust agmts. Interpretation by board of trustees that controls how these funds work. Misunderstanding by attys on how this works. Several other docs that will be important. Take two min.

Ct: Are clearly admissible. No ques. about that. Mr. Four you can come forward and addr. the court. The severance iss. - I read the briefs submitted so far and read declar. I skimmed thru all of the collect. bargaining agmts. Was a quick skim. Got that background behind me. That iss. may - two components. Legal iss. about what the effect is of contract being rejected. All benef. due in some pro rata share. Those seem to be legal ques. Ques.

about what #'s may be. May take some exploration. Not sure a big contest or fight about that. Not sure I could addr. it effect. on Oct. 16.

F: Overlapping test. Heard from emp. and info. Furrs sent to empl. Legal iss. of impact. Post-pet. oblig. We put our cards on table. Evid. before you is the test. you put on Oct. 16. Had intended to also put a # of emp. on to let you hear their stories and the promises made to them. Be a factual iss. as to \$ and cents owed. Add it is clear that we still don't have info. for local 540. Would want to supplement the record when we get the info. for 540. For resol. of empl. we need to get resolved as soon as possible.

Recess

Ct: Dealing w/admin. matters. Wrap up next 45 min. Mr. Four before we took break you were addr. court.

F: Sugg. we would like to wrap up on 16th. Prepared today for addit. legal argument. If want us to set forth our argument today.

Ct: Thought your brief was quite clear. I had the impress. the dtr had filed an imposing brief.

F: Filed brief in support of. Addr. these iss.

Ct: Hear from the lenders about sched. w/respect to cash collateral to begin with. Want to leap to microphone.

Fish: Have agmt on cash coll. w/dtr. Mr. Andazola asked we add \$5k for UST fees. Next 3 weeks of budget was attached. Will take us thru the end of Oct. Understand the comm. may oppose. The dtr has test. to supp. their applic. to use cash coll.

Ct: Not do evid. today.

Fish: Ques. is whet. the court will enter order today pending fh on Oct. 16.

Ct: I see. Let's focus on cash collateral. Dtr intends to put on test. in supp. of that?

J: Depending if position of those that oppose the motion. Are prepared to pres. test.

Ct: Ms. Behles? Anything differ.?

Behles: No, not as cash coll. goes. Are iss. that effects the health and welfare iss.

Davis: You will recall that you mentioned that the dtr and lender will take up proposed budget. Express my apprec. on most of the concerns the comm. had. Are two or three we weren't able to addr. Bel. any oper. budget for Oct. should pay all the bills for Oct. If not, then the dtr would be gener. other bills outside budget w/o further diluting the adminis. pot. Or had some good news on amt of money avail. in prefer. recoveries. If budget doesn't pay all the bills, those other bills will dilute what is avail. for unsec. Make 3

examples. Budget for Oct. does not pay expenses for unsec. comm. Exp. for Pepper, Hamilton and Deloitte and Touche are much smaller. Audit. function.

Ct: How much is that?

D: Bills for mo. of Sept. is about \$21k. PH is about \$15k. DT is smaller than that. \$1k or \$2k. Court entered an order req. the dtr to pay the bills by comm. counsel promptly. That order has never been followed w/regard to that. We proposed that at lease the Sept. pymts be included in Oct. bill. \$21k for local counsel and a 1/3 for PH.

Ct: Is dtrs counsel getting paid currently?

D: Yes, \$50k in budget for JTW. Proposed it would be fair to pay 75% for Sept. in this budget, but the lenders declined to do that.

Ct: Want an extra \$38k - \$40k?

D: Yes, \$40k would cover it. Think the estate is incurring state tax oblig. while it is in wind down mode that are not prov. for in budget. Would arise on two scores. Various sales of pharmacy assets and store equip. Pharmacy assets might not be subj. to gross receipt tax. Dtr would have rec'd a non-taxable budget. I would think the dtr is incurring state gross receipt oblig. Mr. Mortenson can testify. Sale of equip. w/respect it is sold would be a taxable trans. Dtr may assert isolated trans. Sale of equip. for # of stores that have been sold. Doesn't fall under that exclusion. Reserves should be set aside for tax debt and come out of proc. of those sales.

Ct: Have a #?

D: No. Would be less than \$100k, but over \$50k. Last point would be - ticklish point. Is a \$76k retention proposed. W/regard to that there is a bonus that is not owed, but bonused to certain emp. who have cont'd working for employer. Out of coll. comes out of post closing coll. encumbrance of all these prefer. that would be possib. avail. for unsec. Concerned about converting a non-debt to an admin. prior. Gains \$76k that would not otherwise have a clm on.

Ct: Anything else?

D: No. Three points we had w/the budget.

Andazola: UST would reluctantly agree w/the 3 week budget for the dtr. Express reserv. about the cont'd payment of some admin. exp. and not others. We bel. at the end of this period that the wind down efforts to admin. the estate would be completed. Contend the matter be converted to ch. 7. Place in hands of ch. 7 trustee to admin. the estate and make sure there is equit. pymt of admin. exp. Pursue prefer. actions that would pay admin. exp. and have some overflow for unsec. creds.

Ct: Know status of iss. of W'2 and 1099's and taking care of pension and 401k plans?

A: Assured by dtr that the necess. work would be done and that would be the

raw info. that would allow a ch. 7 trustee to move in fairly comfortably to admin. those matters. Be a matter of process for the acctg firm.

Ct: What is the situation w/those categories of work?

J: My understanding is the dtr has made subst. progress. Done what it can to preserve that info. in a form that could be accessible by a trustee if conv. by end of this week. Cont. thru the end of the mo. On W2's it is unusual for co. to iss. W2's in Oct. Done by end of Jan. Dtr hasn't reconciled w/in 70% accuracy. Could be in a form accessed by trustee. Software is coming out in a week or two. Could iss. W2's. W/respect to the pension plan and 401k. Dtr has completed field audit. Sent out notices to active participants w/respect to what options they want to select for the funds. Send ntcs out to participants. Dtr has not yet filed a motion to engage a third party. If cont. to end of mo. the work on 401k plan can be handed off to a third party. W/respect to pension plan it is the same thing. Need to finish the W2's.

Ct: By Oct. 27?

J: Yes.

Ct: Same w/W2's? Would the dtr be able to use software w/respect to W2's so it is a manageable bundle if conv. by Oct. 28?

J: Yes. Give broader aspect of cash coll. motion. Dtrs object. is to complete those items of bus. The W2's, 1099's. Winding down pension plan, getting bus. records in shape. Preserving bus. records in a form access. by a third party w/o having to fire up the dtrs unstable and complicated computer system. Transfer into a form to be accessed. Take care of basic functions. Make sure the emp. get W2's and 1099's. Court may recall there is money in budget to pay third parties to complete the work once the dtr has completed their part. Clarify in order is that even if the dtr hasn't paid prof. first that \$290k would be avail. This order was the intent of the dtr.

Ct: \$290k for which experts?

J: Company that will take the co. data and iss. the W'2. Wind down the 401k plan and acctg firm that will pay the tax returns. Compiles info. from third parties.

Ct: Is a budget in amt of \$290k. Have access to 401k and pension plan and get tax returns prepared.

J: \$290k was part of Sept. budget that the court already approved. Sept. order wasn't clear enough that that money could be spent. Put something in this order to clarify that. Second job for dtr is to max. the possibility of getting the most money. A lot of admin. clms and a lot of people that have suffered hardships and deserve to get paid. No matter how much. The dtr takes serious to do what it can to optimize. One potential sense of recovery is potential prefer. clms. Developed a plan to deter. the potential in prefer. recoveries.

Ct: Cost is built into budget?

J: Yes. Deter. that w/in 90 day period of bankr. they rec'd pymts of \$90k. 90 vendors rec'd pymts. Dtr was under a lot of pressure under that period to bring vendors more current. Dtr bel. there is some potential to be some signif. clms. Dtrs belief that if we cont. for the next 3 weeks it will be diffic. for a ch. 7 trustee to perform that screen. It really req. certain individ. who are familiar w/system and accts. Other potential for recovery for admin. clms is the ch. 7 surcharge. Not something the dtr can pursue. Is a possibility. The lenders have expressed an interest of discuss. whet. a ch. 11 liquid. plan would be reasonable in exchange for settling all iss. I don't know if that is feas. or not. Those are the dtrs perspective. Potentially avail. to pay admin. clms. Best int. of estate to allow dtr to perform. Might help all concerned.

Ct: Dtr plans to have that prefer. screen done by Oct. 27?

J: Yes. Increasingly more diffic. for dtr to keep remain. staff together. W/these periodic cash coll. hrgs and not knowing from one week to the next whet. the dtr will be in bus. it creates uncertainty among the employees. Work has been delayed bec. of people leaving. Reas. for the retention is to give these remaining emp. incentive to stay thru end of Oct. W/o that our concern is there will a # of emp. who cont. to leave. Upset abil. to perform these tasks. Dtr needs to finish what it needs to do. After end of Oct. the estates bus. will be concluded. May be those lenders might want to hire or pay for those emp. Max. value to sec. creds. Comm. concerns for pymt of comm. prof. Something we talked about specifically. Refer to lenders. W/respect to gross receipt taxes is the princ. sales that will gener. from pharmacy equip.

Four: We were not part of process of reviewing the most recent cash coll. budget. Given copy this morning. In light of discuss. the Union understands there needs to be an oper. budget. Not hard for us to object as an incentive to keep people working. They were promised an incentive to stay and work. Still not sched. for hrg. Clms are still up in air. Obj. on that basis. Like to see itemized budget.

Ct: If I approve that and folks don't have access to pension plans, won't that be a problem?

F: Yes. Exh. 2 has severance pymts for emp. Wondering if that means \$14k in addit. to salary is a sever. to keep him there.

Ct: Dtr should be able to sit down and talk to you about it. Wanted a list of sever. recipients are. I presume that is what this is.

F: Don't know. Differ. figure.

Ct: Mr. J. said they reduced that from 76 to 70. Put exh. 1 and exh. 2 into the record.

Thuma: Good idea.

Ct: Have obj. W/o obj. exh. 1 and 2 will be admitted.

Youngdahl: If these folks are being given a bonus to work w/Heller and MetLife

we obj. to that. If stay on to work on 1099's and 401k, we agree w/that. If I misheard that I apologize.

Ct: I didn't hear that. If that is their position, they should stand up and say that.

Behles: That is not their position. May have heard me say I asked Mr. T. if certain of the records that were in court last time could be introduced to figure out where we were on health benef. iss. Asked if we had been able to get to those. If a person worked for a certain time period, they need to be paid. If that isn't the way the acctg was done, don't want to be paid twice. Just asking for records. Discovery function.

Ct: Anything more on cash coll. motion?

Fish: Respond to UCC atty fee iss. Ques. whet. Mr. M. was getting some of this retention bonus. It appear he gets nothing.

J: That is correct.

Ct: Are there more copies of this? If not, we can make them and have them when we get back this afternoon. Exh 1 for Oct. 01. Have numerous exh. 1's.

Fish: Retention or sever. Dtr req. it and didn't obj. to it. It appears the dtr needs it to perf. various functions. Gross receipt tax - just heard about it. Not asked for money on gross receipt tax. Doesn't sound like it should be owed. There is a distinction between JTW fees and the UCC fees. That is the carve out approved by court last hrg.

Ct: Whose phone was that? You need to leave. Distracts from bus. at hand.

Fish: Differ. category bec. a differ. carve out. Heard a lot in past weeks of lenders being accused of preferring one admin. clm over another. UCC bill is inapprop. to pay. The DIP financing order carve out specif. we will not pay the clms of lenders. Most if not all of money was contesting our clms. DT were going to test. about lease iss. Should not be allowed to enforce rights under DIP financing order. Those were fine argum. for him to make. No prob. When he does that, we do not bel. it would be approp. for this cash coll. order or any other. Plenty of money to pay Mr. Davis. That would be wonderful. Do oppose.

Ct: Anything else w/respect to cash coll.? Seems to me the proposed cash coll. budget could be approved w/those 3 items left in air. W/respect to GRT. Sale hasn't taken place yet. Time to get non-trans. certif. Not arisen right now. Don't know if not approp. to pay GRT right off top of funds. Not something that needs to be dealt w/. W/respect to UCC fees for prof. the iss. that runs thru my mind is this whole ques. of disgorgement. Got a situation and pro ration. Situation where emp. have rec'd some of their money and G and M have rec'd some, but not all their money. Not enough money to go around. Be a big discount that applies to everybody. Don't know where that will cut off and how much more money the Unsec. will be entitled to. Let this ride this time around and approve this budget w/o req. unsec. to be paid. Davis firm is a bigger hit and smaller hit for folks in Detroit. Makes sense rather than make a ruling that they are not req. to pay it. Defer to sometime

down the road. W/respect to retention iss. I am concerned w/that. In position to bargain more so than anybody else. Looking at this list I don't know how important all of these folks are. I don't know whet. we could defer this iss. to 16th or deal w/this afternoon. My ques. is what should we do w/this retention iss.? Lenders don't care right. Mr. Davis it is you and Mr. Four and Mr. Youngdahl and dtr.

J: Same budget on Sept. 21.

Ct: Exh. 2.

J: correct. Dtr would like to get it resolved today. If delay decis. til 11 days of expir. of term you defeat the purpose. Dtr will call Mr. M. to testify. Tell court who all these people are and what they are doing and why retention money is important.

D: Important to get done quickly.

Y: We agree w/Mr. Davis.

A: Nothing on this iss.

Ct: Come back at 2:15 this afternoon to resolve this matter. Make sense to consider approv. this budget on an interim basis and have fh by 27th or 16th. That is my inclination. Will hear retention iss. this afternoon. Inclined to approve this budget as is subject to deter. what happens. Leaves us for sched. pymt of health and welfare plan. Any reas. not to do on 16th?

Behles: I have two concerns. Whet. dtr can produce discovery wise docs. that are needed for that hrg when that completing all these other things. Concerned whet. they can do that. Being able to get these docs and preparing for hrg on 16th. We need to see them by then.

Ct: This motion has been pending for weeks or months?

Behles: Filed the end of Sept. Not heard til today this bus. about trust agmts. If get acctg docs, will resolve few ques. MetLife has.

Ct: Can dtr produce these docs? Have an idea what you are looking for?

Behles: Sheet showed hours worked and what month. Nearly 48 of these sheets that already exist. Matter of finding them.

Ct: How long to produce this stuff? Is the iss. here - not talking about pymt. Talking about rights. Not sure we need to have the \$ and cents.

Behles: Deter. the right - if these are sums that are owed for time they worked, they ought to be paid.

Ct: I have to tell you this doesn't seem to be that hard an iss. to figure out. Have you looked at docs attached. One that says made in Aug. for July?

Behles: Yes I have. I thought if I could compare those docs I could get answer to my ques. Haven't been able to get them.

Y: Can prov. people power to get whatever needs to be done so Mr. Behles can get what she needs.

Ct: Good offer. Ques. is whet. the dtr needs it.

T: In storage. Iron Mountain has them in storage. Not clear how much work it would take.

Ct: How much work would it be to get this year's stuff?

M: 400 pgs per mo. Is that what you are talking about?

B: I saw a report last time about 1/2 inch thick.

Ct: If can use the help of Mr. Y. you can. I have to think the iss. is still simple enough. The docs to be produced could be prod. soon enough to go to trial on the 16th.

B: Deter. the allow. of the claim.

Ct: Iss. of allow. has to come first. Prob. is going to be like everything else how much money will be allocated. What will not happen on the 16th is a ck showing up. I can't do that. I can give you a hrg as quickly as possible.

Y: If successful, what the time frame might be?

Ct: I don't know. The dtr has no money right now, period. The time frame would be infinite. What needs to be dealt w/is to wrap up.

Y: Thought \$750k was set aside.

Ct: Forgotten about that.

F: Sever. will be heard on 16th.

Ct: Not set.

F: Will set this afternoon.

Ct: Yes.

Behles: Constitutes cash coll. Either be resolved on 16th or at another time.

Ct: \$750k is set aside. Why I only sched. this for one morning. Come back at 2:15. Will wrap up procedure and test. and sched. of sever. pay.

Y: Severance on 16th?

Ct: It is. Do a ntc. Knowing all counsel are reas. I'm sure you won't bother the court w/discovery disputes.

Recess

Ct: Everybody got a copy of exh. 1 and 2. Budget we are talking about. Make

avail. to follow along. Two things on docket. Sugg. we talk about sched. iss. on admin. iss. by Unions. Is there discovery Mr. J. and Mr. F.?

J: From the dtrs perspective there is threshold legal issues. Applied assumpt. of collect. bargaining agmt. Promising to stay by offering sever. pay. Dtrs position is to pro rate the years of service. Dtr proposes that we trade the m/for a m/for summ. judg. and file a resp. For example, if the clms of the promises to the emp. then the facts are much simpler. Dtr needs to conduct a review of what happened.

Ct: Involve filing a brief?

J: For purp. of summ. judg. Two legal iss. Not req. much evid. Also sugg., not like health and welfare iss. where money has been preserved in an acct. Sooner they get paid, reduces hardship. Get that resolved as soon as reasonably possible. Dtr doesn't have funds to make pymts. Divert resources away to focus on this iss. Threshold legal iss. depending on how resolved may simplify the iss.

Ct: Your thought Mr. Four?

F: I think it does make a differ. when these clms get paid. Makes a differ. Should be done as soon as possible. Treat as summ. judg. if speed up the process. Put cards on table. Still need info. w/respect to the Texas local. Gener. estimates. Can make w/o further discovery. Would try to get those docs. Interested in working out to get heard as soon as possible to hear our case.

Ct: Legal iss. that need to get resolved. Contractual agmt. No dispute about that. Not been rejected. Legal iss.

F: Our position that by making these extra promises entered into extra oblig. Legal iss. Pro rata on how the sever. is distributed. Reasons why it shouldn't be ltd. Separ. reasons for that. Facts are distinguishable. Allowed as admin. clm based on theory is compens. Our collect. bargaining agmt doesn't say that.

Ct: Seems to me it would make sense to get presented and out of way w/o doing discovery. Get before court more quickly.

F: Our brief is in. Reply.

Ct: Not sure talking about counter affidavits.

J: Mr. T. has read the papers. Want to reserve right.

Ct: Sum. judg. would be if the facts are as they say then do they still have a cause of action. That would be the way to approach.

F: No factual dispute those docs were sent.

Ct: Becomes operative fact. Be 20 days.

F: 14th.

Ct: 21st. How soon can you get a resp. in? Anybody else want to join in this fight?

Davis: We think the comm. is repres. by the dtr and the lenders.

Behles: Have an unsec. clm. Don't know if we want to prov. a separ. brief or provide research to Mr. J. Prob. prov. him w/materials.

Ct: If want to join in, do on same sched.

J: Propose Oct. 22.

Ct: Ordinarily allowed 20 days. Not sure that I will be able to get to it. Have reply.

F: Want oppor. to reply.

Ct: Got 10 days.

F: Get resolved asap. Get it in w/in a day or two.

Ct: Inclined to do the 22nd.

F: As we go so does the money.

Ct: Don't anybody has allocated money for this right now. Ques. is where the money comes from. Have deadline on 15th for decisions that need to go to AO. Wouldn't be able to work on it til then.

F: Get reply in by that Friday.

Ct: Have 10 days by our local rules. Thurs. that following week. If sooner, fine.

F: Sched. hrg.?

Ct: Treat as m/summ. judg. Do sched. order Mr. Jacobvitz. Cash Collateral. My staff atty pointed out that the numbers don't add up. Sub-total #'s may be incorrect.

J: Mr. D. pointed that out. Reduce by \$1k instead of \$6k.

Ct: Have Mr. Mortensen testify.

TESTIMONY OF STEVEN MORTENSEN (sworn)

Ct: Let me ask a few ques. Exh. 2. The right hand column says SEV. Thous. of \$.

M: Rounded to nearest thous.

Ct: Thomas Moss is director of HR. Sched. to leave Nov. 30, 2001. Receive a pymt of \$5k.

M: Orig. sched. To work thru Nov. 30. If he remains w/co. thru Nov. 27, he will rec. that pymt.

Ct: Caroline Novis.

M: Fri. Nov. 26 is last day for all these individ.

CROSS EXAMINATION BY WILLIAM DAVIS

J: No redirect.

D: Like to move admiss. to one exh. Could argue w/some closing stmts. Exh. A. Had compilation made of history. Move into admission.

Ct: Let me ask w/respect to retention issue? Not w/respect to argument. Just evid. Not putting on more evid.

J: No.

Ct: Nobody else? Have argum. on retention issue. Is that all? Rather argue retention issue or want to argue separately. Have proposed exh. A. Acct summary. Shows total val. of service that David and Pierce has gener. so far. What has been paid to date.

D: Only purpose is that it is relevant to disgorgement. Only purpose.

Ct: Objections?

F: Related to court's decis. earlier that this would be deferred. Only if defer UCC's req. If defer, don't need this exhibit.

Ct: Think what Mr. D. wants to do is to say bec. there is a ques. of how much money is generally going to be avail. to pay admin. exp. to defer or say the iss. of whet. the budget ought to be deferred to a later point. Had fundamental ques. along line how much money will be avail. to pay admin. exp. generally. Didn't want to get into that iss. I understand Mr. D. would like a review of that based on comments I made. Took our comments this morning as opening stmt.

Ct: Fair enough.

D: Maybe court could use addit. info. on that.

Ct: Iss. isn't closed by any means. Paying UCC would violate the dtr in possess. financing order. If want to argue this other iss., ought to be able to do so.

F: Will w/draw obj.

Ct: Will admit exh. A. If finds the computer made a mistake, then free to raise that later on.

D: UCC rests.

Ct: Anybody want to put on an evid. case? Do closing?

Fish: If argue disgorgement, \$247k worth of admin. clms.

Ct: Not arguing disgorgement.

F: Whet. he is getting 50% of bills. So far from - so low. Seem to me we have - court would need to consider totality of admin. exp. \$1.5mil for GRT. Figure out some way court could quickly take ntc of those. Have fee applic. by Mr. D. co-counsel somewhere approach. \$1mil. Therefore, no chance of disgorgement.

Ct: I'm not worried about it. Will listen to argum. and go from there. Go ahead and argue this a little bit.

J: I bel. the only iss. the court needs to decide is the retention line item in budget. Don't bel. anybody has obj. to any aspect of motion.

Ct: Good point. Obj. to retention being plugged in at \$75k?

D: Comm. w/draws w/respect to retent. for taxes. Comm. continues it's fees.

J: Unless court wants me to addr. it.

Ct: Think we are o.k. Asked ques. that satisfy my concerns.

J: Comm. fees - pres. to court. Will defer to those that are arguing the iss.

D: Get cash coll. order approved for next 3 weeks. W/regard to the compens. of the comm. profess. two things are important. Is an emerg. cash coll. order. Move forward during this next mo. UCC prof. still have oblig. they have to undertake in order for this dtr to properly function. Still pres. motions for pharmacy equip., rej. leases and selling equip. Have to be undertaken to cont. in oper. for Sept. and Oct. These are necess. functions. Should the UCC not do anything and not lend voice for approp. of this budget. Important the voice of UCC be heard. At least a repres. to review all the motions. Refer to fact the UCC repres. those faceless thous. of emp. who have pre-pet. clms and trade vendors. Repres. voices of all those people. Everyone is compens. except UCC counsel. Puts at unfair disadvantage. Way not to cont. this case. Dtr and lenders should pay for serv. rendered in Sept. Purpose of my exh. were to show if disgorgement were a concern look at pymts rec'd. About \$102k. Serv. rendered are \$125k. Comm. local counsel has rec'd less than 50% of serv. bill w/regard to Pepper Hamilton. Far lower.

Ct: Saying estimate 20% of serv. rendered.

D: DT filed their fee applic. today. Not reviewed it. Wanted to bring to court's attn. two iss. Doesn't come into play. Unfair to have all the counsel repres. the various interests and then hobble. Harder and harder to find a recovery for unsec. Should pay exp. the dtr incurs to move forward. They don't like the positions the UCC have taken. Not approp. to hobble those repres. Best int. to cont. this case. Lenders should be agreeable to pay those expenses. Ask that our Sept. bill should be paid 75%. Included in the cash coll. order.

Ct: \$21k for Davis and Pierce.

D: 100% of exp. and 75% of fees and taxes.

Ct: Have you rec'd those funds. Not rec'd total of 75% of services rendered today.

D: No. One pymt repres. 75% for first two mos. and another pymt in Aug. Pro rated it. Rec'd \$102k.

Ct: What's my auth. to allow that this money be used.

D: Approved by court w/following modif. Did w/Golleher and Mays iss. Think the court could make the same observ. W/that amend. court could approve budget.

Ct: Clear understanding the lenders and dtr did not so amend the budget, the budget wouldn't be approved. Understand that?

D: The core iss. is is it fair for lender and dtr oper. for another 3 weeks that their budget cannot handle. CC budget that says we will addr. a certain amt of exp. and not other exp. less important. Fatal flaw in budget.

Ct: Going on w/respect to taxes. Same thing w/sever. pay. That iss. hasn't been resolved.

D: Will be same. Raise iss. w/respect to GRT. Thought they created that oblig. Estate is not creating more debt. New debts estate is creating should be handled in cc order. Not handle all the new debt. Don't like exp. of UCC. Code says the UCC is a critical part. Let comm. do those monitoring functions. Create new UCC exp. If not willing to addr. those, shouldn't move forward.

Fish: From the first order of Mar. 14 order on DIP financing the lenders insisted that the lenders cc would not be used to contest clms of lenders. In parag. 3.

Ct: Clearly this oblig. could be paid - the \$21k for Davis and Pierce. Still more than enough unpaid funds. Worked ag. lenders int. Assuming we take these #'s.

F: Correct. If look at earlier times, is \$21k over \$102k paid that would not fall in that category. Larger iss. - lenders have not consented. Trying to call counsel to get differ. resol. of this matter. Not been able to. Lenders are not agreeable. Could talk about percept. lenders have.

Ct: Would be an argum. - not focusing on UCC at this point. W/flurry of fee applic. that iss. will undoubtedly be on the table. Respect to everything.

F: In 3 weeks we will know about these preferences. Iss. is 30 day rule. T his dtr seems to be paying partial pymts. Stringing people out. I think that there will be plenty of money to pay admin. clms. Right they are entitled to admin. clms. Could be the 50% to Mr. D. is a lot more than that. This is a 3 week deal. Prob. conv. at end of that time. If I could get them, most likely

their answer would not chg.

Ct: Resp. to Mr. D. argum. that the lenders are picking and choosing who gets paid.

F: Validity w/regard to JTW. Those people are bringing hard \$. Negot. liquor licenses. Pharmacy sales. Not preferring Skadden, Arps. Is valid. to extent we are recog. who is bringing in the hard \$. Need to pay the people who are working in acctg dept. Not preferring some law firm like Skadden who isn't doing anything for the estate.

Ct: Don't see a policy iss. floating around here. Hired by estate that they ought to get paid on an interim basis.

F: Raises diffic. that we face that is quite possibly admin. All bankr. officials know it is a risk. Should people be paid their 75%. Estate doesn't have it.

Ct: Thru end of June.

F: By then the handwriting was on the wall. Needed to keep stores operating.

Ct: Isn't that the argum. w/respect to val. and serv. provided.

F: No. Just in general. Agree we need to keep acctg dept. working. Bet Skadden's isn't a whole lot differ.

J: Skadden has not rec'd any funds.

F: Lenders have not obj. to S. fee applic.

Four: Similar promises were made to union employees. Will give this to you if you stick around for another 3 weeks.

Ct: Does the UST want to comment on this.

A: No comment other than reiterate the agmt by dtr and lender to reserve \$5k due at end of quarter.

Fish: Correct.

Ct: Glad you reminded me. Would have ordered it anyway. Make final comments? Proposing to take a 10 min. recess and then come back and give you a decision.

RECESS

Ct: Informed over break that \$15k would be approved for UCC fees to be allocated by those 3 entities.

D: Allocated to Davis and Pierce.

Ct: Any obj. from D and T and Mr. C. Not hearing any that will be done. Retention figure of \$76k is reduced to \$75k. Addit. \$15k to go to D. and Pierce and addit. \$5k to be used for paying UST fees. Correct?

B: Yes. \$15k is out of carve out. Not truly an addition. Truly out of carve out.

Ct: Mar. 14 DIP financing order.

B: Correct.

Ct: I find at the conclus. of this matter and argum. made by counsel that it is approp. to approve this oper. budget for the mo. of Oct. as set out in Exh. 1 purs. to sec. 363 and 364 of the bankr. code on an emerg. basis. Make these find. bec. I find it is clear that w/o this pymt the estate and lenders and the former employees and few remain. employees and all the admin. clmts would suffer immed. and irreparable harm if not put into effect immed. Will have a final hrg - finding is also made purs. to rule 4001 (b) (2) of the FRBP. Will have a final hrg on Oct. 16, 2001 at 1:30 p.m. Reserved or deal w/other iss. as to sched. Other ques. or other matters that need to come before the court?

J: Have a form of order. Can present it to court after recess.

Ct: Can use this courtroom if you need it.