

FULLBRIGHT & JAWORSKI THROWS SENIOR PARTNER UNDER THE BUS IN BRIBERY CONSPIRACY

Virgin Islands Chief District Court Judge Curtis Gomez, Friday, ordered Bankruptcy Judge Judith K. Fitzgerald to conduct disciplinary hearings arising from a recently uncovered witness bribery scheme involving Prosser's former butler (Arthur Stelzer) and former secretary (Eling Joseph) in three pending bankruptcy cases. The international law firms of Vinson & Elkins, Alvarez & Marsal, and Fulbright & Jaworski, among others, are accused of providing free legal services to material witness, Arthur J. Stelzer and Eling Joseph in exchange for their testimony against Jeffrey Prosser. Read the Retainer Agreement and secret e-mails below.

Just before Judge Gomez issued his Friday order, Fulbright & Jaworski's Dallas partner William Greendyke stated in Court that his firm had nothing to do with the payment of the bribes and that the bribes were paid personally and individually by partner Toby Gerber, Esq. and by Vinson & Elkins partner James J. Lee! Immediately upon learning of Judge Gomez's order, Vinson & Elkins partner James J. Lee demanded Judge Fitzgerald give him time to obtain a criminal defense lawyer to defend himself.

Demmansay has confirmed that Governor deWolf, Roosevelt "Touching Wives" David, Peanut, and Senator Hill will be called at the evidentiary hearing in District Court. Touching Wives works for RTFC for \$180,000 a year and is the liason between the law firm conspirators, the PSC, DOJ and deWolf. To read the pleadings, [click here](#). Coming soon: how Roosevelt "Touching Wives" David, Peanut, deWolf, Vinson & Elkins and Fulbright & Jaworski stole \$50 million in fees from Vitelco during the last 3 years in violation of law and without PSC approval.

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

Civil No. 2010-8

In re:

JEFFREY J. PROSSER,

Debtor.

Re: Chapter 11 Case No. 06-30009

JAMES P. CARROLL, CHAPTER 7
TRUSTEE OF THE BANKRUPTCY
ESTATE OF JEFFREY J. PROSSER

Plaintiff,

v.

JEFFREY PROSSER,

Defendant.

Re: Adv. Proc. No. 08-03011

STAN SPRINGEL, CHAPTER 11
TRUSTEE FOR INNOVATIVE
COMMUNICATIONS COMPANY, LLC,
AND EMERGING COMMUNICATIONS,
INC.,

Plaintiff,

v.

JEFFREY PROSSER,

Defendant.

Re: Adv. Proc. No. 08-03012

STAN SPRINGEL, CHAPTER 11
TRUSTEE FOR INNOVATIVE
COMMUNICATIONS COMPANY, LLC,

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

In Re:

**JEFFREY J. PROSSER,

DEBTOR.**

**Case No. 3: 06-bk-30009 (JKF)
Chapter 7**

D.C. APP. CIVIL NO. 2010-8

**JAMES P. CAROL, AS CHAPTER 7
TRUSTEE OF THE ESTATE OF JEFFREY
J. PROSSER**

PLAINTIFF/MOVANT,

V.

JEFFREY J. PROSSER,

DEFENDANT/RESPONDENT

**Adv. Proc. Nos. 07-03011
07-03012
08-03011
08-03012**

* ****

**MOTION FOR EVIDENTIARY HEARING TO DETERMINE WHETHER AN ORDER
SHOULD BE ENTERED IMPOSING SANCTIONS, DISQUALIFICATION AND/OR
REFERRAL FOR FURTHER DISCIPLINARY PROCEEDINGS AGAINST
PLAINTIFFS AND/OR CERTAIN ATTORNEYS**

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NOW COMES Appellant, Jeffrey J. Prosser, by and through the undersigned counsel, and respectfully moves this Honorable Court for an order directing that an evidentiary hearing be held to determine whether sanctions, disqualification and/or referral for further disciplinary proceedings should be made against the following persons and/or entities:

- Vinson & Elkins, counsel for the Chapter 11 Trustee, including, but not limited to, lead trial counsel James J. Lee;
- the law firm of Genovese, Joblove & Battista, P.A., counsel for Arthur J. Stelzer, including but not limited to attorneys Paul Battista and Theresa Van Vliet;

- Stan Springel, the Chapter 11 Trustee;
- James P. Carroll, the Chapter 7 Trustee;
- Fox Rothschild, LLP, counsel for the Chapter 7 Trustee.

The basis for this motion is set forth below, and include *inter alia*:

- a scheme involving the apparent bribery of a lay witness in these proceedings in violation of 18 USC §201 (c) (3), 18 USCS § 152, and the ABA Rules of Professional Conduct 1.2 (d), 3.3, 3.4 and 8.4 (the "Stelzer bribery scheme");
- aiding and abetting bribery in violation of 18 USC §2 (a);
- failure to report that reasonable grounds existed, in violation of 18 USCS § 3057 that a violation 18 USCS §§ 151 *et seq.* or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans had been committed, or that an investigation should be had in connection therewith by referral to the appropriate United States Attorney;
- violation of ABA Rules of Professional Conduct, including, but not limited to:
 - Rule 1.2 (d), and 3.3(a)(2) – counseling or assisting a client to engage in a crime;
 - Rule 3.4 - providing unauthorized value to a lay witness;
 - Rule 3.3 - violation of the duty of candor to the Court;
 - Rule 8.4 – engaging in criminal or unprofessional conduct;
 - Rule 7.3 - prohibiting direct contact with prospective clients (solicitation).

I. Factual Background

Stan Springel is the Chapter 11 Trustee in the two corporate bankruptcies related to Jeffrey J. Prosser's personal bankruptcy, identified as *In re. Innovative Communication Corporation*, V.I. Br. case no. 3:07-bk-30012 (JKF), and *In re. Innovative Communication Company, LLC*, V.I. Br. case no. 3:06-bk-30008(JKF).

Vinson & Elkins is the Chapter 11 Trustee's court-appointed counsel of record. Attorney James J. Lee is lead trial counsel for the Chapter 11 Trustee. He is a partner at Vinson & Elkins.

The Chapter 11 Trustee, through its attorneys Vinson and Elkins, and particularly Mr. Lee, has called Arthur J. Stelzer as a lay witness in these proceedings; and has used Stelzer's testimony in various adversary proceedings against Mr. Prosser, including, but not limited to, the objections to discharge adversary proceedings which are the subject of the appeal in this case.

At the exemptions hearing (held in June 2008) Mr. Stelzer testified, amongst other matters, that Mr. Prosser ordered the destruction of a hard drive on Mr. Prosser's personal home computer¹ and concealed a Rolex watch² from James Carroll, Trustee of the Chapter 7 estate of Jeffrey J. Prosser. The bankruptcy court specifically relied on Mr. Stelzer's testimony in concluding that Mr. Prosser has committed such "bad acts" warranting the disqualification of Mr. Prosser's statutory exemptions and discharge.

On January 12, 2010, Mr. Stelzer was deposed in anticipation of trial in these Discharge proceedings. *See* Deposition of Arthur J. Stelzer, taken January 12, 2010, Exhibit A hereto, hereinafter, "Stelzer Depo." Mr. Stelzer had also previously testified at the Exemptions proceedings against Mr. Prosser (hereinafter "Stelzer trial testimony").

Since the time of Mr. Stelzer's trial testimony against Mr. Prosser, evidence has been uncovered, showing that Arthur Stelzer:

- has a prior undisclosed criminal history involving drugs and theft;

¹ Mr. Prosser has vigorously denied the accusation that he made such direction to anyone, let alone Mr. Stelzer. Moreover, the volume of documents and computer records produced *from the hard drive* is overwhelming. The hard drive was, in fact, not destroyed. Moreover, the documents from the hard drive were analyzed and show that the computer belonged (and was used) primarily by Dawn Prosser as it contained Mrs. Prosser's personal data and communication, including communications with her attorney and some copies of unexecuted documents already provided to the Trustees. In other words, there is no motive for any such order or direction.

² Mr. Prosser also vigorously denied this accusation; he has turned over all watches, many of significantly more value than he owned at the time of the relevant petition, they were all insured and listed as insured.

- has lied in the past for personal pecuniary gain;
- has used Mr. Prosser's American Express card to make tens of thousands of dollars in personal purchases without permission or authority; and
- that he illegally accessed and downloaded Mr. Prosser's personal financial records. He then photocopied those records and faxed and mailed them to James J. Lee, Esq., the Chapter 11 Trustee's lead attorney in this case. At the time of Mr. Stelzer's conduct, he had been terminated from Mr. Prosser's and/or ICC's employ for more than six (6) months. Mr. Lee accepted those financial records, knowing that Stelzer had no authority for his conduct, and attempted to use those records against Mr. Prosser in these proceedings. Mr. Prosser's counsel have been attempting to bring these matters to Judge Fitzgerald's attention since August 2008, and to further depose Mr. Stelzer with regard thereto.

The January 12, 2010 of Arthur Stelzer was the first time that the Court would allow Mr. Stelzer to be deposed since these new matters have been learned³. The deposition was limited by the Court, however, to 3 hours and was presided over directly by Judge Fitzgerald who severely restricted questioning by Prosser's attorney at this discovery deposition, precluding most "discovery" questions as "irrelevant" (i.e. FRE 401) and/or lacking in "foundation" or too "overly broad" for deposition questions⁴.

³ Mr. Stelzer's deposition was taken specifically as the Chapter 11 Trustee notified the Court that Mr. Stelzer's testimony would be presented by the Chapter 11 Trustee at the upcoming Discharge trials. Stelzer depo, pg. 7, lines 10-13. Mr. Prosser's counsel made it clear on the record that Mr. Stelzer was being deposed only because the Chapter 11 Trustee, and hence all plaintiffs indicated they intended to present Mr. Stelzer as a witness at the upcoming Discharge trials and for no other reasons.

⁴ The subpoena for Stelzer's deposition clearly identified it as a discovery deposition, the information from which might also be used during the upcoming Discharge proceedings. Mr.

Upon cross-examination, however, Mr. Stelzer admitted, over vigorous objection from both Ms. Van Vliet (Mr. Stelzer's attorney at the deposition) and Mr. Lee, that Mr. Stelzer's legal fees are being paid by either Vinson & Elkins or one of the ICC companies (the debtor companies for which Stan Springel is the Chapter 11 Trustee). Since August 2008 (the time when Stelzer claimed his "free" legal fees started) neither the ICC Trustee nor his attorney disclosed to the Bankruptcy Court the fact that they had paid – and were continuing to pay – the legal fees of a lay witness. These legal fees include, according to Mr. Stelzer, legal services being provided to him by Genovese, Joblove & Battista, P.A. in the Prosser bankruptcy proceedings, as well as, in a separate, non-bankruptcy case captioned *Prosser v. Stelzer*, V.I.D.C. case number 1:09-cv-00065-TJS.

During his deposition, Mr. Stelzer further confirmed that he was first contacted by Paul Battista, an attorney whose services he did not solicit, and from whom he learned that either Vinson & Elkins (or one of the ICC companies) would pay for Mr. Battista's legal services to Mr. Stelzer. Mr. Battista solicitation to represent Mr. Stelzer occurred, according to Mr. Stelzer, in August 2008 in response to Mr. Stelzer's concern expressed in a phone call to Vinson & Elkins (Stelzer could not recall if he spoke to either Mr. Lee or Mr. Lee's associate, Richard London) in August 2008 that he, Stelzer, was being pursued by a private investigator and a

Prosser's counsel posited to the Court that while such objections might properly be raised on the record, for adjudication at trial in the event there was a subsequent attempt to use the objected to answers at the Discharge proceeding, that at a discovery deposition the objections were not a basis to prohibit the witness from answering. Counsel cited the Court to Fed. R. Civ. P. 32 (d)(3)(A) and *Sequoia Property and Equipment Limited Partnership v United States of America*, 2002 US District LEXIS 7541, in support of the proposition of law that under the federal rules at a discovery deposition an instruction not to answer is appropriate only with regard to privileged information. Counsel also objected to the number and extent of speaking objections in front of the witness. Regardless, the Court sustained the objections and ordered the witness did not have to answer the counsel's questions. The Court only once, after insistence by Mr. Prosser's counsel, asked the witness to leave the room during colloquy over objections.

process server acting on behalf of Mr. Prosser. The private investigator and a Florida process server were attempting to develop information regarding Mr. Stelzer's above-noted criminal history. In August 2008 the process server served Mr. Stelzer with a deposition subpoena for a deposition to be taken in August 2008⁵. At the time Mr. Stelzer was served with a subpoena for his deposition in August 2008, the Exemptions trial was ongoing; trial was scheduled to reconvene and consume the week of August 25, 2008⁶.

During the Jan. 12, 2010 deposition Mr. Stelzer testified that he did not ask Vinson & Elkins to represent him; he further testified that he did not ask Vinson & Elkins to obtain legal counsel for him. In fact, Mr. Stelzer testified that the only matter discussed during the August 2008 phone call with Vinson & Elkins was Stelzer's concern about the private investigator and the process server. Stelzer testified that he asked for nothing during this phone call and was simply told: "We'll get back to you." According to Mr. Stelzer's deposition testimony, Vinson & Elkins did not, as promised, "get back to him;" rather, Stelzer received a phone call from Mr. Battista offering to provide Mr. Stelzer free legal services against Mr. Prosser.

Prosser v. Stelzer was filed September 17, 2009.

Mr. Battista and his firm did, in fact, provide legal services to Mr. Stelzer beginning in August 2008 against Mr. Prosser in Mr. Prosser's personal bankruptcy proceedings. That representation continues. In addition, Ms. Van Vliet, another attorney at Genovese, Joblove & Battista, P.A. who represented Mr. Stelzer at the recent Stelzer deposition, has also been representing Mr. Stelzer in the Virgin Islands District Court case, *Prosser v. Stelzer, supra*. See,

⁵ Judge Fitzgerald quashed the August 2008 subpoena and refused a request for an evidentiary hearing on the information developed that Mr. Stelzer had violated federal law in cooperation with Mr. Lee.

⁶ It was anticipated that Mr. Stelzer was still subject to cross-examination and that he may be recalled by Plaintiffs as a rebuttal witness.

e.g., Doc. No. 20 in case number 1:09-cv-00065-TJS. Neither Mr. Battista nor Ms. Van Vliet are local attorneys admitted to practice in the US Virgin Islands.

Further, when questioned at the January deposition regarding what Stelzer understood he had to provide in exchange for either Vinson & Elkins or one of the ICC companies paying his legal fees, the witness stated that he had to testify at these proceedings. This answer was confirmed by Judge Fitzgerald who, in sustaining an “asked and answered” objection stated⁷:

"THE COURT: The witnesses (Mr. Stelzer's) answer is that if he's called, he's to come and testify and tell the truth. That's the answer to the question. Is there a new question?"

Stelzer Depo, page 130, ln 18-131, ln 9. (Explanation added.)

To date, other than acquiescing to requests of Prosser’s counsel that Mr. Lee provide certain follow-up information regarding the payment of legal fees for Mr. Stelzer, neither the Chapter 7 Trustee, the Chapter 11 Trustee, Vinson & Elkins, Fox Rothschild or counsel for Mr. Stelzer⁸ have taken any action with regard to Mr. Stelzer's disclosures referenced above.

Further, despite Mr. Stelzer’s January 12, 2010 disclosures regarding the payment of his legal fees and the *quid pro quo* of his testimony, Judge Fitzgerald entered an Order the very next day (January 13, 2010) granting summary judgment, in part, against Mr. Prosser. Specifically, Judge Fitzgerald ruled that Prosser and his counsel are collaterally estopped from arguing at the upcoming Discharge proceeding facts from Stelzer's prior testimony. Many of these “facts” were adduced *only* from Mr. Stelzer, without witness or documentary corroboration and include that

⁷ Mr. Lee also objected stating that Prosser’s counsels characterization of Mr. Stelzer’s testimony as admitting that he was to testify in exchange for free legal services was a mischaracterization of Mr. Stelzer’s testimony. Stelzer Depo, page 130, ln 18-131, ln 9. Obviously, it wa not.

⁸ Fulbright & Jaworski, counsel for the RTFC, nor Skadden, Arps, counsel for the Green Light Entities, have similarly taken no action despite express knowledge of the Stelzer bribery scheme.

“Mr. Prosser ordered the destruction of computer hard drives located at the Palm Beach Property in an effort to conceal information, records, and documents from the Trustees.” See, e.g., Doc. 115, case no. 3:07-ap-03011, filed January 13, 2010, pg 6. The subject of the computer hard drive was an issue previously testified to by Mr. Stelzer, the very witness whose testimony is now known by the Bankruptcy Court to be, potentially, the subject of a bribery scheme⁹.

Per the court’s January 13, 2010 Order, Mr. Prosser is precluded from offering any evidence challenging the Court’s findings in the Discharge trials. Specifically, the Bankruptcy Court stated that:

“**IT IS FURTHER ORDERED** that debtor is precluded for challenging these findings at trial on the objections to discharge.” See, e.g., Doc. 115, case no. 3:07-ap-03011, filed January 13, 2010, pg 6.

II. Stelzer Depo Excerpts

The matters addressed herein are of such seriousness that while the entire transcript of Mr. Stelzer's deposition is attached hereto as Exhibit A, actual quotation of specific excerpts from Mr. Stelzer's deposition relevant to this motion are set forth below for the court’s review.

Questions are being asked by Mr. Prosser’s counsel, Mr. Abood.

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Q. Mr. Stelzer, in any of the meetings that you
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- 1 had with the trustees, the other parties to the case,
- 2 their representatives, was there ever in your mind, any
- 3 understanding of a quid pro quo; in other words, you
- 4 cooperate with them, they'll cooperate with you?

⁹ To demonstrate that Mr. Stelzer’s testimony was of some moment to Judge Fitzgerald, i.e., significant and material, Judge Fitzgerald refers to Mr. Stelzer by name 72 times, not to mention the number of times she refers to Mr. Stelzer’s testimony without naming him specifically, in the decision denying Mr. Prosser’s exemptions, which is the same decision from which the findings of fact affirmed in the collateral estoppel order, Doc. 115, case no. 3:07-ap-03011, filed January 13, 2010, emanate. See, Doc 2613, case no. 3:06-bk-30009, filed October 9, 2009, the “Exemptions Order.”

5 A. No.

6 Q. When you were asked to testify, were you told
7 that you would be compensated for your testimony, for
8 your time?

9 A. No.

10 Q. Were you compensated for your time?

11 A. No.

...

24 Q. And you currently have private counsel, is
25 that correct?

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1 A. Correct.

2 Q. Ms. Van Vliet and Mr. Battista, is that
3 correct?

4 A. Ms. Van Vliet is my attorney.

5 Q. Mr. Battista was your attorney at one time, is
6 that correct?

7 A. Yes.

8 Q. You seem hesitant.

9 A. Some of the technical questions, I get -- yes,
10 he was my attorney.

11 MS. VAN VLIET: We'll stipulate that
12 Mr. Battista is one of the partners in this law
13 firm.

14 Q. Do you have a fee agreement with them?

15 A. Do I have a fee agreement with them?

16 Q. With your lawyers.

17 A. Yes.

18 Q. How much are you paying them per hour?

19 A. I don't know.

20 MR. LEE: I object. How is this relevant to
21 Mr. Prosser's discharge?

22 THE COURT: I don't know.

23 MR. ABOOD: These are always legitimate
24 questions of inquiry, your Honor.

25 THE COURT: The witness's agreement with his
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1 counsel to pay his fee?

2 MR. ABOOD: Yes.

3 THE COURT: I don't understand how this is
4 relevant to Mr. Prosser's discharge.

5 MR. ABOOD: May I proceed? They like to cut
6 me off before I get to the question that you're
7 ultimately wanting to hear and I can't get there.

8 THE COURT: I don't know whether Mr. Stelzer
9 has counsel because of his involvement in this case

10 or the other case in which he is being sued or some
11 other matter.

12 MR. ABOOD: Maybe I could ask those questions
13 without being interfered with.

14 THE COURT: The discharge, move to something
15 relevant.

16 MR. ABOOD: I am, your Honor.

17 BY MR. ABOOD:

18 Q. Do you have a written fee agreement with
19 Ms. Van Vliet's law firm?

20 MS. VAN VLIET: Object, not relevant to the
21 discharge proceedings before you.

22 THE COURT: Relevance, Mr. Abood?

23 Q. First of all, let me ask this, and I'll come
24 back to that question. Who is paying your legal fees?

25 MR. LEE: Same objection, your Honor. We
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1 know, your Honor, he's being represented in defense
2 of a lawsuit brought by Mr. Prosser in the Virgin
3 Islands and --

4 BY MR. ABOOD:

5 Q. I'm talking about here today. Who is paying
6 your legal fees for your legal representation in this
7 case? I don't care about some other case. Let me make
8 that clear. I'm asking about this case. Do you
9 understand that?

10 A. Today?

11 Q. **Today in this case and with regard to any**
12 **involvement with the Prosser bankruptcy, where anytime**
13 **you have used an attorney relative to the Prosser or the**
14 **corporate bankruptcies, my question to you is: Who paid**
15 **for your lawyer?**

16 A. **My understanding is either, I used the word**
17 **ICC, the entity, the company, or Vinson & Elkins.**

18 Q. **They're paying for your lawyer?**

19 A. **I didn't say that. I don't know whether it is**
20 **the company or --**

21 Q. **-- Vinson & Elkins?**

22 A. **I don't know.**

23 Q. **So to your understanding, just what you think,**
24 **not what some document might say, I'm just asking you**
25 **right now about what you think, okay? It is either the**

0123

1 **company or Vinson & Elkins that is paying for your**
2 **lawyers relative to this case?**

3 A. **To the best of my knowledge.**

4 Q. And that's true for not just today but
5 whatever prior use you had of attorneys relative to this
6 case and the Prosser bankruptcy, the ICC bankruptcies,
7 is that correct?

8 A. I think that holds true. You just gave me a
9 big balloon.

10 Q. Yes. It is a lot of different things. Let me
11 ask you this, have you personally paid for any of your
12 attorneys either for today or any of the prior
13 proceedings in these cases?

14 A. No.

15 Q. I'll ask you again, do you know how much your
16 attorneys are charging?

17 MS. VAN VLIET: Your Honor, at this point, I
18 object as to the relevance of my hourly rate or
19 Mr. Battista's hourly rate.

20 MR. ABOOD: I'll withdraw. Whatever it is, it
21 is.

22 BY MR. ABOOD:

23 Q. To the best of your knowledge, when was that
24 arrangement made? The arrangement I'm talking about is
25 the arrangement that either Vinson & Elkins or the ICC
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1 companies would pay for your lawyer or lawyers.

2 A. When I was first served documents by a process
3 server and a private investigator, I reached out.

4 Q. That would have been August of 2008, when you
5 got served a subpoena?

6 A. I was served a subpoena, I believe --

7 Q. -- from me?

8 A. From you.

9 Q. I'll represent to you that was about August of
10 2008.

11 A. Okay.

12 Q. Who did you reach out to?

13 A. I reached out to the only people I had ever
14 spoken to, Vinson & Elkins.

15 Q. Who specifically did you speak to?

16 A. It was either Rich London or Jim Lee.

17 Q. Do you recall which?

18 A. I don't recall which.

19 Q. Do you recall what you discussed?

20 MS. VAN VLIET: Your Honor, at this point I'll
21 object to the relevance.

22 THE COURT: I think this may be relevant, the
23 witness's perception of the case, so that is

24 overruled.

25 A. The question?

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1 BY MR. ABOOD:

2 Q. What did you talk about?

3 A. I had just had a very, what my wife and I felt
4 was an extremely intimidating encounter, and my wife and
5 I were frightened, so I called Jim Lee or Rich London to
6 tell them what had just happened.

7 Q. Did they offer to provide you with legal
8 counsel?

9 A. He said he would get back to me.

10 Q. And then whoever it was did get back to you?

11 A. I got a call from Paul Battista or I was given
12 his name to call, but I think he actually called me
13 first.

14 Q. What was the conversation?

15 MS. VAN VLIET: I'll object if that question
16 relates to the conversation between Mr. Stelzer and
17 Mr. Battista, as attorney/client privilege.

18 MR. ABOOD: Let me clarify, your Honor.

19 BY MR. ABOOD:

20 Q. At this point, my question is with regards to
21 whoever it was you were talking to from Vinson & Elkins,
22 whether it was Mr. London or Mr. Lee. You described
23 briefly that you felt you were scared because of the
24 service of the subpoena. Did you talk about anything
25 else?

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1 A. Just about the encounter and the private
2 detectives and that we were frightened, being followed
3 by private detectives. They were harassing me. I was
4 getting phone calls. They were at my door. They
5 followed me the next day, the day after the service.
6 One approached me in a parking lot and scared me to
7 death.

8 Q. Did you discuss anything else?

9 A. That's it.

10 Q. Did they tell you how they could help you?

11 A. Yes.

12 Q. What did they say?

13 A. That I should call you.

14 Q. That you should call me?

15 MR. LEE: Who is "they"?

16 A. Oh, no. I was talking about the private
17 investigator and the process server.

18 Q. No. My question is directed to your
19 conversation with either Mr. Lee or Mr. London.

20 A. No. Wait, back up then, because you just
21 asked me what they said, and I thought your reference
22 was to what the private investigator --

23 Q. No.

24 A. Then I answered incorrectly.

25 Q. Okay. What I'm asking you about is your
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1 conversation with either Mr. Lee or Mr. London, your
2 conversation with whoever that person was.

3 A. I told them I was served. We were
4 intimidated. We were frightened. I told them what,
5 mostly the private investigator, but the process server,
6 the dialogue and the conversation I had with them, and
7 he said, I'll get back to you, either Mr. Lee or Rich
8 London.

9 Q. Did they, whoever it was you were just talking
10 to at V&E, they said they would get back to you, right?

11 A. Yes.

12 Q. Did they ever get back to you?

13 A. Yes.

14 Q. Do you recall what you talked about when they
15 got back to you?

16 A. We didn't talk. I got a phone call either
17 saying that Paul Battista would either contact me or I
18 should contact Paul Battista. I don't know who got to
19 the other first. I may have called him and there was no
20 answer and he called me back.

21 Q. How did you come to the understanding that you
22 wouldn't have to personally pay for your legal fees?
23 Where did that impression come from?

24 MS. VAN VLIET: I object insofar as that may
25 involve communication from either Mr. Battista or
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1 I. If it came from anybody else, I have no
2 objection.

3 THE COURT: Do you want to consult with your
4 client to find out the answer? Because I don't
5 know how to rule, and until we hear the answer,
6 we're not going to know.

7 MS. VAN VLIET: He knows the answer.

8 So go ahead and answer.

9 Your Honor, Mr. Abood and Mr. Schoenbach are
10 consulting right now, so we're waiting.

11 A. The question was?

12 BY MR. ABOOD:

13 Q. How did you come to the understanding, what
14 led you to the understanding that you wouldn't have to
15 pay for your attorney fees?

16 A. Mr. Battista.

17 Q. Did you ever confirm that with Mr. Lee or
18 anyone from Vinson & Elkins?

19 A. No.

20 Q. What was your understanding of why they were
21 agreeing to pay for your legal fees?

22 MS. VAN VLIET: Your Honor, may I have a
23 moment to consult with my client?

24 THE COURT: Yes.

25 MR. ABOOD: I didn't ask him what was said.

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1 MS. VAN VLIET: Thank you. Go ahead.

2 THE WITNESS: Ask the question again.

3 (The requested portion of the record was read
4 by the court reporter.)

5 A. It was between Mr. Battista and I, the only
6 conversation was between Paul Battista and I.

7 MS. VAN VLIET: Then I instruct the witness
8 not to answer on attorney/client.

9 BY MR. ABOOD:

10 Q. Is it your understanding that perhaps Vinson &
11 Elkins is perhaps just fronting the fees, in other
12 words, paying them as they're incurred and that you
13 might have to pay them or some of them at some point in
14 time in the future?

15 A. I have no such understanding.

16 Q. Your understanding is you're never going to
17 have any personal responsibility for your legal fees
18 relative to these proceedings, is that correct?

19 A. I have no idea what you're talking about.

20 Q. Let me re-ask the question again.

21 A. I understand the question. The answer is no.
22 I have no knowledge of any such thing.

23 Q. The answer is that you have no understanding,
24 as you sit here today, you have no understanding that
25 you'll have any personal financial responsibility for

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1 your attorney fees relative to these proceedings, is
2 that correct?

3 A. That I will have any responsibility for my
4 fees? This goes to Paul Battista and I having a
5 conversation, so I can't --

6 **Q. Do you have any belief that you're ever going**
7 **to have to pay for any of the legal services personally?**

8 **A. My understanding was that it was either the**
9 **company or Vinson & Elkins.**

10 Q. Okay, I just wanted to make that clear.

11 There's a distinction, sir, and that's what I'm getting
12 at, as to whether Vinson & Elkins or the company is
13 simply paying them at this point so that you can stay
14 current with your lawyers, and that maybe at some point
15 in the future, you'll have to come up and repay that.

16 And you're saying you don't have any understanding --

17 A. My understanding is what I said before.

18 **Q. Okay. What is your understanding of what**
19 **you're to do in exchange for them paying for your fees?**

20 A. Just --

21 Q. -- provide testimony?

22 A. Well, if I'm called for whatever, just to come
23 tell the truth.

24 Q. And provide testimony?

25 MS. VAN VLIET: Objection, asked and answered.

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1 MR. LEE: Objection, mischaracterization of
2 the witness's testimony.

3 MR. ABOOD: It is a different question.

4 MR. LEE: You're putting words in his mouth.

5 MR. ABOOD: I am. It is a leading question.

6 THE COURT: The witness's answer is that if
7 he's called, he's to come and testify and tell the
8 truth. That's the answer to the question. Is
9 there a new question?

10 BY MR. ABOOD:

11 Q. Is it your understanding that if you're asked
12 to provide any documentation, that you're expected to
13 provide it?

14 MS. VAN VLIET: I'll object based on the
15 Court's previous ruling, insofar as it may relate
16 to the American Express records.

17 THE COURT: The question is too broad,
18 Mr. Abood. You're going to have to narrow the
19 question. Restate the question in a more narrower
20 context.

21 BY MR. ABOOD:

22 Q. Other than the American Express records --
23 first of all, do you know what I'm talking about when I
24 say the American Express records? You're shaking your
25 head.

0132

1 A. It is a big question.

2 Q. No. When I say the American Express records,
3 I'm talking about Mr. Prosser's statements of his
4 personal account that were provided to Vinson & Elkins
5 for the April and May 2008 time frame. When I say the
6 American Express records, that's what I'm talking about.

7 A. That's all you're referring to?

8 Q. Right.

9 A. And the question is?

10 Q. First of all, do you understand that?

11 A. I understand the question.

12 Q. Do you understand the definition? I just want
13 to make sure that you understand, when I say the
14 American Express records, all I'm talking about is those
15 two months' statements.

16 A. I didn't know that.

17 Q. Well, for right now, that's what I'm talking
18 about, for purposes of my next question.

19 A. Okay. What do you want to know from me?

20 Q. I haven't asked you the question yet. I just
21 want you to understand, when I say, because I'm going to
22 use that phrase "American Express records" in my next
23 question, so I want you to know what I mean when I say
24 the American Express records. Are we on the same page?

25 A. Okay.

0133

1 Q. So when I ask you the next question and I use
2 that phrase, the American Express records, you'll
3 understand that I'm just talking about the April and May
4 2008 American Express records from Mr. Prosser's
5 personal account?

6 A. Okay.

7 Q. Good. We're on the same page. Other than the
8 American Express records, is it your understanding that
9 if you're asked to provide any documents as part of
10 these proceedings, that you are to do that?

11 A. No. There are no -- no.

12 Q. Has anyone asked you to produce any documents
13 other than the American Express records, those two
14 months' statements?

15 A. When?

16 Q. At any time during your involvement in these
17 legal proceedings.

18 A. No.

19 Q. And the followup, have you provided any

20 documents other than the American Express records since
21 your involvement in these proceedings?

22 MS. VAN VLIET: I'll object. This is
23 repetitive of testimony that's already been gone
24 through in both the deposition as well as the trial
25 testimony with regard to questions not only from
0134

1 the Chapter 11 trustee, but also questioning by the
2 Chapter 7 trustee, and the provision of notations
3 and diaries and other records and receipts. It was
4 gone into in great detail.

5 I object as being repetitive and beyond the
6 scope of this Court's prior ruling in the
7 discharge.

8 THE COURT: Mr. Abood?

9 MR. ABOOD: The answer would take less than
10 the objection, your Honor.

11 THE COURT: That's not necessarily the case.
12 In any event, is it duplicative? Then it's been
13 asked and answered. Does this relate to
14 Mr. Prosser's conduct?

15 At this point the witness has testified before
16 about what types of documents or information he
17 has. So if it is repetitive, let's move to
18 something else. You're almost half an hour past
19 the time that this was supposed to end anyway. Is
20 it repetitive?

21 MR. ABOOD: I don't know the transcripts that
22 well, your Honor. And to the extent -- let me ask
23 it another way. I'll rephrase.

24 BY MR. ABOOD:

25 Q. Other than documents that you've already been
0135

1 asked about in all of these proceedings, have you
2 provided any other documents exclusive of the American
3 Express records?

4 A. No.

5 Q. In other words, for example, since the time
6 you testified, since last June?

7 A. No.

8 Q. Okay. Prior to the company or Vinson & Elkins
9 arranging for Mr. Battista and Ms. Van Vliet's law firm
10 to represent you, did you understand that Vinson &
11 Elkins was representing you?

12 A. No.

13 Q. Did you ever discuss with Vinson & Elkins

14 having an attorney represent you prior to the Battista
15 law firm coming on board?

16 A. No.

17 MR. ABOOD: May I have a moment your Honor,
18 just to review?

19 THE COURT: Yes.

20 (Off the record.)

21 BY MR. ABOOD:

22 Q. Mr. Stelzer, this phone conversation that you
23 had with either Mr. Lee or Mr. London, at that point in
24 time, you were scared, you've testified, right, that you
25 were scared?

0136

1 A. Correct.

2 Q. Is it fair to say that you were upset?

3 A. Yes.

4 Q. Did you ask them to help you?

5 A. No.

6 Q. Did you ask them to get you an attorney?

7 A. No.

8 Q. They offered that?

9 A. No.

10 Q. They offered to help you?

11 A. No.

12 Q. They said they would get back to you, that's
13 all they said?

14 A. That's correct.

15 Q. And the next thing you know, you got a call
16 from a lawyer?

17 A. Correct.

18 Q. What did you want from them when you called
19 them, them being Vinson & Elkins?

20 MS. VAN VLIET: Your Honor, I'll object, asked
21 and answered in this deposition.

22 MR. ABOOD: I don't think I've asked that.

23 Q. What did you want from them? That's the
24 question.

25 THE COURT: You can answer.

0137

1 A. I didn't want anything. I was frightened, and
2 that was the only person I knew to call.

3 Q. So you were calling for help?

4 A. I just called because my wife and I were at
5 home and we were being intimidated by these two people
6 at our door. I was frightened, and I called the only
7 person with an esquire behind his name that I knew.

8 Q. So you were looking for help, isn't that
9 correct?

10 A. No. I was calling to talk to somebody. Who
11 else was I going to call?

12 Q. If you weren't looking for help, why didn't
13 you just call a friend?

14 MS. VAN VLIET: Objection, arguing with the
15 witness, asked and answered.

16 THE COURT: That's argumentative, Mr. Abood.
17 You can restate the question.

18 BY MR. ABOOD:

19 Q. Why didn't you call someone other than Vinson
20 & Elkins?

21 A. This service, to the best of my knowledge, was
22 related to all of the proceedings going on involving
23 Mr. Prosser, so I called the only other person who would
24 understand who Mr. Prosser was. My friends don't know
25 who Mr. Prosser is.

0138

1 Q. You had a lawyer in the recent past in this
2 area, Mr. Lubin (phonetic), isn't that correct?

3 A. The recent past?

4 Q. I'm sorry, not the recent past. You used
5 Mr. Lubin relative to when you testified you turned
6 yourself in to the police department, correct?

7 A. It actually wasn't Mr. Lubin. It was his
8 firm, an associate. I don't recall his name.

9 Q. So you had attorneys here in the area, that
10 you had a relationship with?

11 A. Yes.

12 Q. But you didn't call them?

13 A. I didn't have a relationship with them.

14 Q. You didn't call that law firm?

15 A. No.

16 Q. You chose to call Vinson & Elkins?

17 A. I called the only person who would know who
18 Mr. Prosser was and what was going on.

19 Q. Did you call anyone else after that call,
20 about this incident with the process servers?

21 A. Did I call anyone else? No.

22 Q. You didn't think it was necessary for you to
23 call anyone else, correct?

24 A. I don't know what that question means.

25 Q. You didn't feel a need to call anyone else,

0139

1 right?

2 MS. VAN VLIET: Objection, irrelevant.

3 THE COURT: I'm not sure where you're going.
4 He said he didn't call anybody else. What is the
5 question? He felt no need to call anybody else.
6 He said no one else that he knew would understand
7 the circumstances. That is his testimony.

8 MR. ABOOD: He didn't quite say that, your
9 Honor. That's putting a lot into it. The record
10 will say what he said.

11 THE COURT: What he said is that his friends
12 didn't know Mr. Prosser, and Vinson & Elkins would
13 know Mr. Prosser and what was going on.

14 Is there more that you need to get into? You
15 are running late, and I'm still not sure that this
16 has to do with the discharge. To the extent it is
17 a credibility issue, you've substantiated that.

18 BY MR. ABOOD:

19 Q. Mr. Stelzer, other than your understanding
20 that your legal fees will be paid relative to these
21 proceedings, do you have any other understandings as to
22 what will be provided for you for your participation in
23 this case whatsoever? Are there any other
24 understandings or agreements whatsoever?

25 A. No, sir.

0140

1 Q. What about the legal -- **it has been indicated**
2 **by your attorney that you've been sued by Mr. Prosser in**
3 **another case. Is that correct, that you've been sued by**
4 **Mr. Prosser in another case?**

5 A. Yes.

6 Q. And Ms. Van Vliet is representing you in that
7 case, is that correct?

8 A. Yes.

9 Q. Who is paying the legal fees in that case?

10 MS. VAN VLIET: I'll object. It is irrelevant
11 to the discharge proceedings.

12 MR. LEE: Same objection, your Honor.

13 Q. Let me ask it more specifically. Are you
14 personally paying the legal fees in that case?

15 A. No, sir.

16 Q. Who is paying them, as you understand it? Is
17 it Vinson & Elkins and the ICC companies?

18 A. Same understanding.

19 THE COURT: Mr. Abood, I think your question
20 misstated what the witness said. He said his
21 understanding was either the company or Vinson &

22 Elkins, not the both, would be paying the fees. I
23 would like the record to be clear. Would you ask
24 the witness what his understanding is again.

25
0141

1 BY MR. ABOOD:

2 **Q. What is your understanding as to who is paying**
3 **your legal fees in that other case?**

4 **A. The company or Vinson & Elkins.**

5 MR. ABOOD: I have nothing further, your
6 Honor.

7 MS. VAN VLIET: He'll read.

Thereafter, the following exchange took place between counsel and the Court:

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8 **MR. ABOOD: Your Honor, at this point in time,**
9 **I would ask for a representation from Mr. Lee or**
10 **Mr. McFaul as to who is paying Mr. Stelzer's legal**
11 **fees.**

12 **MR. LEE: I'm not in a position to make such a**
13 **representation because I don't know.**

14 **MR. ABOOD: Mr. McFaul, do you know?**

15 **MR. McFAUL: No.**

16 **MR. ABOOD: Your Honor, without the necessity**
17 **of formal written discovery, can we have an**
18 **understanding that the Court will expect that**
19 **information be provided?**

20 **THE COURT: If the trustee can provide it.**
21 **Mr. Lee, is there information that indicates that**
22 **your firm will somehow have access to who is paying**
23 **the fee?**

24 **MR. LEE: I can make inquiry, your Honor. I'm**
25 **willing to do that. I'll do whatever the Court**

0142

1 **instructs.**

2 **THE COURT: All right. I'm instructing you to**
3 **find out, to the best of your ability, whether**
4 **either the company, whoever that is, or Vinson &**
5 **Elkins is paying Mr. Stelzer's counsel.**

6 MR. ABOOD: And how much, your Honor.

7 THE COURT: I think that how much is
8 irrelevant, isn't it? The issue is whether or not
9 the fees are being paid.

10 MR. ABOOD: If it is \$100 as opposed to
11 \$10,000 or something like that, I think the amount
12 is material.

13 I would analogize it to the kinds of questions
14 that are asked when we have experts on the stand.
15 We will always typically ask who is paying them and
16 how much. The reason that those questions are
17 allowed is because it goes to the weight and
18 credibility of the testimony being provided.

19 MR. LEE: The money doesn't go to Mr. Stelzer.
20 It doesn't have any effect. It is between he and
21 his lawyers, and I am sure the question goes to the
22 hourly rate being charged.

23 But how can we judge how much time is
24 required, because of what Mr. Prosser does? And it
25 may be necessary to respond to that in his Virgin

0143

1 Islands case, for example, or because of this
2 deposition that was taken here today, because of
3 Mr. Prosser.

4 MS. VAN VLIET: After all of this back and
5 forth among the parties here, if the Court wants me
6 to, I'm happy to supply something in camera to the
7 Court, because there are matters other than the
8 things that have been discussed here, obviously,
9 that I've gotten into with Mr. Stelzer, that
10 frankly have nothing to do with Mr. Prosser and
11 aren't being dealt with by Vinson & Elkins.

12 So I can't just submit my bills to the other
13 side, but I'm happy to give a total of -- which
14 frankly, we haven't billed anybody for. I just did
15 it kind of pro bono. And I'm happy to detail out
16 what, you know, the total fees, and I don't think
17 there's been any costs frankly, on what each of the
18 matters are, if the Court wants us to do that.

19 I can't really hand over my bills to anybody,
20 because my bills are detailed in terms of what
21 advice and conversations I've had.

22 Under 11th Circuit of Florida law, the fact of
23 who pays an attorney's fee and the amount, if you
24 will, is not privileged, so I would have no basis
25 to object on that, nor would I.

0144

1 I mean, if there's a relevancy objection that
2 you determine, I would live by the Court's ruling,
3 but I'm not asserting privilege to the amount or,
4 when eventually any bill is paid, who pays it.

5 **THE COURT: All right. Then if you will**
6 **submit simply a statement as to the total amount**

7 that your firm has acquired as a bill due, if it
8 hasn't yet been invoiced, and who you're sending
9 that bill to and expecting to be paid from, that
10 would be sufficient.

11 MR. ABOOD: That would include Mr. Battista?

12 MS. VAN VLIET: Yes.

13 MR. ABOOD: And it would include any services
14 rendered to Mr. Stelzer that are being paid for by
15 either the debtor companies or Vinson & Elkins?

16 MS. VAN VLIET: That is my understanding.

17 THE COURT: Yes.

18 MR. ABOOD: Because you made an allusion to
19 other things you're doing that is not being paid
20 for by --

21 MS. VAN VLIET: Right.

22 MR. ABOOD: I just wanted to clarify.

23 MS. VAN VLIET: And for the record, to my
24 knowledge, we haven't actually received anything.
25 We've accumulated work in process, but we haven't

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1 actually been paid, to the best of my knowledge, by
2 anybody for anything.

3 THE COURT: Fine. If you will simply submit a
4 statement as to the total amount and who the bill
5 is expected to be paid by.

6 MR. ABOOD: Given that, your Honor, I don't
7 see any reason for that to be in camera. As
8 counsel has indicated, it is not privileged.

9 MS. VAN VLIET: I just said, that part I don't
10 think is privileged, and I would be happy to
11 provide it. I wouldn't provide my actual bills in
12 camera.

13 MR. SCHOENBACH: The detail is privileged, not
14 the amounts.

15 MS. VAN VLIET: I think we're all on the same
16 page.

17 THE COURT: Anyone going to ask any questions
18 of Mr. Stelzer?

19 MR. PLATT: None from RTFC.

20 MR. LEE: None from the Chapter 11 trustee.

21 MS. KATZ: None from the Chapter 7 trustee.

22 THE COURT: I don't think Greenlight is a
23 party in these particular proceedings. I know
24 counsel is going to trial. Do you have any
25 questions at this time?

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1 MS. KIM: This is Christine Kim. No, we do
2 not have any questions at this time.

3 THE COURT: Do you have any questions for your
4 client, Ms. Van Vliet?

5 MS. VAN VLIET: No, ma'am.

6 MR. ABOOD: Your Honor, given the testimony --
7 and understand I'm just reacting to it. It has all
8 just come out, interestingly, for the first time.
9 I would like the Court to make an inquiry of
10 Mr. Lee as to how it is that he doesn't know what
11 this legal fee arrangement is, given Mr. Stelzer's
12 testimony that it was discussed with either him or
13 Mr. London, and Mr. Lee is lead counsel on this for
14 the debtor estates.

15 THE COURT: I don't have an understanding of
16 that. Mr. Lee?

17 MR. LEE: That was not his testimony. His
18 testimony with respect to me and Mr. London was
19 that he made contact when he was being harassed by
20 the investigators in the process of being served
21 with the subpoena, and then we said that we would
22 get back to him, and then Mr. Battista called him
23 or he called Mr. Battista.

24 That's independent of the arrangement on the
25 fees, and I personally have not had any involvement
0147

1 in that, and I can't confirm or deny exactly what
2 the witness said, and I don't intend to, unless I
3 have made an investigation and can speak from fact.

4 THE COURT: Okay.

5 MR. SCHOENBACH: Fair enough.

6 THE COURT: Anything further?

7 MR. ABOOD: One question, your Honor, the
8 29th, you've rescheduled certain things for the
9 29th, is that in Pittsburgh?

10 THE COURT: Yes. I think the date that says
11 something about the 27th in one order was a typo.
12 It should have always been the 29th. I was trying
13 to get the record corrected.

14 MR. ABOOD: Thank you.

15 THE COURT: Adjourned.

16 (The deposition was concluded at 12:39 p.m.)

III. LAW AND ARGUMENT

Title 18 USCS § 201 relating to Bribery of a Witness provides, in relevant part, that:

(c) *Whoever*—

...

(2) *directly or indirectly*, gives, offers, or *promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court*, ... or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) *directly or indirectly*, demands, seeks, *receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding*, or for or because of such person's absence therefrom;...

shall be fined under this title or imprisoned for not more than two years, or both.¹⁰
(Emphasis added.)

The Bribery Statute, referenced above, makes it a federal crime for anyone to provide and/or to accept anything of value in exchange for testimony. The fact that the testimony offered is “truthful” is without consequence (since, presumably all testimony is supposed to be truthful). *See, Centennial Mgmt. Servs. v. Axa Re Vie*, 193 F.R.D. 671 (D. Kan. 2000) (The essential element of a 18 U.S.C. § 201(c)(2) violation is that payment must be made "for" or "because of" the person's testimony.); *United States v. Blaszak*, 349 F.3d 881 (6th Cir. Ohio 2003) (In *Blaszak* the government offered no evidence that the subject witness attempted to provide false testimony on another party’s behalf. The Sixth Circuit specifically noted, however, that while the language

¹⁰ (d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or, in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 [18 USCS §§ 1503, 1504, and 1505] of this title.” 18 USC § 201.

in 18 USC §201 (b)(4) is identical to the language in 18 USC §201 (c)(3) except that subsection (b) requires a demand for compensation be corrupt and that compensation be resort received in return for being influenced. The court further noted specifically that subsection (c) does not require proof that the testimony the witness agreed to provide was false and the United States Court of Appeals for the Sixth Circuit expressly declined to read an additional falsity requirement into subsection (c). As such, Title 18 USC § 201(c)(3) clearly prohibits demanding or accepting anything of value in exchange for testimony. The Circuit Court specifically stated "Its (the statutes') meaning should be clear to a person of common intelligence because it is neither overly technical nor obscure.").

In enacting 18 U.S.C.S. § 201(c)(3), Congress expressly manifested its intent to protect the integrity of a broad range of proceedings at which government officials are empowered to hear testimony. The statute applies its prohibitions not only to witnesses who appear before any court but also to those appearing before any agency, commission or officer authorized by the laws of the United States to take testimony. If Congress intended § 201(c) to apply to hearings before administrative law judges appointed pursuant to legislative enactment, it also must have intended the statute to protect criminal trials in territorial courts before federally-appointed judges who are themselves officers authorized by the laws of the United States to take testimony.). *United States v. Kennings*, 861 F.2d 381 (3d Cir. V.I. 1988). To be clear:

It is improper to pay an occurrence witness any fee for testifying. Courts will not tolerate payments of any sum of money by an attorney to witnesses for the opposition to secure or influence testimony, whether it be for the purpose of securing truthful testimony or otherwise. (Emphasis added)

Golden Door Jewelry Creations v. Lloyds Underwriters Non-Marine Ass'n, 865 F. Supp. 1516 (S.D. Fla. 1994); *see also, Ward v. Nierlich*, 2006 U.S. Dist. LEXIS 97373, 14-15 (S.D. Fla. Sept. 20, 2006) (The prohibition against paying an occurrence witness a fee for testifying applies

with equal force to payment for truthful testimony as to payment for false testimony.). *Accord*, *Golden Door Jewelry Creations, Inc., et al. v. Lloyds Underwriters Non-Marine Association, et al.*, 865 F. Supp. 1516; 1994 U.S. Dist. LEXIS 15014; 8 Fla. L. Weekly Fed. D 437 (USDC S.D. FL. 1994); *The Florida Bar v. Jackson*, 490 So.2d 935 (Fla. 1986), *New York v. Solvent Chem. Co.*, 166 F.R.D. 284, 289-290 (W.D.N.Y. 1996).

Based on Mr. Stelzer's January 12, 2010 testimony, and particularly based on the fact that no one - not Mr. Lee, not Mr. McFaul, nor Ms. Van Vliet - denied or contradicted Mr. Stelzer's testimony whatsoever, it is clear that Mr. Stelzer has been provided something of value - the payment of his attorney fees in multiple litigations - specifically in exchange for his testimony. Judge Fitzgerald, in fact, so characterized Mr. Stelzer's testimony when she stated on the record:

“The witness's answer is that if he's called, he's to come and testify and tell the truth. That's the answer to the question.” Stelzer Depo, page 131.

At that juncture of the proceedings, Judge Fitzgerald, counsel for the Chapter 11 Trustee (Mr. Lee and Mr. McFaul), counsel for the RTFC (Fulbright & Jaworski), counsel for the Green Light Entities (Skadden, Arps, L. P.), counsel for the Chapter 7 Trustee (Fox Rothschild) and counsel for Mr. Stelzer all knew that Mr. Stelzer was being provided something of value -- something of significant value -- in exchange for his testimony. As attorneys, they were aware that there was an ongoing violation of federal criminal law. Mr. Stelzer's testimony can only be read as admitting bribery pursuant to 18 USC section 201 (c).

Yet, what did all these participants do? Judge Fitzgerald entered an Order the following day affirming her findings based on Mr. Stelzer's prior trial testimony and precluded Mr. Prosser from offering any evidence challenging those findings at the upcoming Discharge trials. Mr. Lee and Ms. Van Vliet have failed (for at least two weeks since the deposition) to provide to the Bankruptcy Court the information regarding the “arrangement” regarding legal fees for Mr.

Stelzer, notwithstanding the Court's direction to do so. The remaining attorneys at the deposition, i.e. counsel for the Chapter 11 Trustee (Vincent & Elkins), counsel for the RTFC (Fulbright & Jaworski), counsel for the Green Light Entities (Skadden, Arps), and counsel for the Chapter 7 (Fox Rothschild) all continue to turn a blind eye to Stelzer's testimony and its import. Notwithstanding their ethical obligations, they have done nothing to report the admitted bribery of a material witness which obviously taints these proceedings. Further, they all continue to rely on Stelzer's testimony, notwithstanding their awareness of his crime.

The American Bar Association *Code of Professional Conduct*, Rule 3.4 specifically prohibits an attorney from offering anything of value to an "occurrence" witness (i.e. lay witness) other than expressly provided by law. There is no law, statute, or case which countenances the payment of a lay or occurrence witness for appearing and testifying at trial, truthfully or otherwise. The rule, in relevant part, provides as follows:

Rule 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(b) . . . offer an inducement to a witness that is prohibited by law...

As noted in the case law previously quoted, it is simply impermissible to pay a lay or occurrence witness for the purpose of securing their appearance and testimony, truthful or otherwise, at trial.

Moreover, given the conduct of counsel, and the rulings of the Court at the January 12, 2010 Stelzer deposition, it is too late for counsel or the Court to now suggest that paying Mr. Stelzer's legal fees was somehow understood to be for a legitimate purpose, i.e. compensation for income Mr. Stelzer may have lost in preparing for or attending the deposition or other court proceedings. First there is no evidence that Mr. Stelzer is even currently employed. Regardless,

when Mr. Stelzer was asked the amount of his legal fees, counsel objected (Mr. Lee in particular) that such amounts were not relevant and the Court sustained those objections. After the deposition was concluded, when the question of how much Mr. Stelzer's fees were to date, objection was again raised by counsel and Judge Fitzgerald stated her opinion that the amount of the fees paid was not relevant.

To the extent there questions remain regarding *who* actually is providing the value to Mr. Stelzer, i.e. paying for or providing legal services, 18 USC § 2 makes clear that it matters not for purposes of establishing violation of federal criminal law.

18 USC § 2 provides as follows:

"(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." 18 USCS § 2

Mr. Stelzer unequivocally testified that it is Vincent & Elkins or one of the ICC companies that has agreed to pay Ms. Van Vliet and Mr. Battista's legal fees for representing Mr. Stelzer in the bankruptcy court and other non-bankruptcy court proceedings against Mr. Prosser. Given Ms. Van Vliet's statements on the record during Mr. Stelzer's testimony, it is evident that she and Mr. Battista are aware that they are providing Mr. Stelzer free legal services. Pursuant to 18 USC § 2 it matters not whether it is Vinson & Elkins or one of the ICC companies that has agreed to pay Genovese, Joblove & Battista, P.A., for providing Mr. Stelzer legal services.

Aiding and abetting establishes criminal liability of someone who assists in or facilitates another in the commission of a crime. To be held accountable as an aider and abettor, the

perpetrator must know of the criminal objective and do something to make it succeed. The essential element is knowledge, even if the participation of an aider or a better is relatively minor

Even if it is finally determined that it is not Vinson & Elkins who was responsible for paying Genovese, Joblove & Battista, P.A., for providing Mr. Stelzer legal services, and that it is rather one of the ICC companies, that is no excuse for Vinson & Elkins. Clearly, Mr. Stelzer has testified that it was Vinson & Elkins who he first contacted. They are the only ones who could have arranged the bribery scheme. Certainly, given the testimony, they are well aware of the bribery scheme. Even if one of the ICC companies was, in fact, responsible for payment of Mr. Stelzer's legal services as provided by Genovese, Joblove & Battista, P.A., clearly Vincent & Elkins was acting as the agent of the ICC companies, both of whom they represent in the bankruptcy court. See, e.g., *Coghlan v United States* (1945, CA8 ND) 147 F2d 233, cert den (1945) 325 US 888, 89 L Ed 2001, 65 S Ct 1569, reh den (1945) 326 US 805, 90 L Ed 490, 66 S Ct 14.(Attorney could be convicted of bankruptcy crime when he acts as agent of party to bankruptcy proceedings who committed the crime.)

American Bar Association, *Code of Professional Conduct*, Rule 1.2 specifically prohibits an attorney from counseling or assisting a client with regard to conduct the lawyer knows is criminal or fraudulent.

"Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer

...

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."

American Bar Association, *Code of Professional Conduct*, Rule 8.4 provides as follows:

"Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice; ..."

It is evident on the evidence before this Court that further investigation is warranted, if not outright referral for disciplinary proceedings, to wit: that Vinson & Elkins counseled its clients, the ICC companies, with regard to the Stelzer bribery scheme. Recall, Mr. Stelzer only called Vinson & Elkins. The next event, according to Mr. Stelzer is that Mr. Battista contacted him and offered him free legal services. According to the testimony, it is clear that Mr. Stelzer's understanding is that Genovese, Joblove & Battista, P.A. have been and will be providing him free legal services, paid for by either Vincent & Elkins or one of the ICC companies, and that, in exchange, Stelzer is to appear and testify as requested.

Moreover, is evident, and at least on the evidence before this Court justifies further investigation if not outright referral for disciplinary proceedings, that Genovese, Joblove & Battista, P.A., have not only counseled Mr. Stelzer but also actually participated with Mr. Stelzer in the Stelzer bribery scheme.

On the evidence before this Court there is clear justification for further investigation, if not outright referral for disciplinary proceedings, regarding Vinson & Elkins' violation of American Bar Association, *Code of Professional Responsibility*, Rules 8.4 (a), (b), (c), and (d).

On the evidence before this Court there is clear justification for further investigation, if not outright referral for disciplinary proceedings, regarding Genovese, Joblove & Battista, P.A.'s

violation of American Bar Association, *Code of Professional Responsibility*, Rules 8.4 (a), (b), (c), and (d).

Additionally, on the evidence before this Court there is clear justification for further investigation, if not outright referral for disciplinary proceedings, regarding Genovese, Joblove & Battista, P.A.'s violation of American Bar Association, *Code of Professional Responsibility*, Rule 7.3. Rule 7.3 essentially prohibits attorney solicitation of a potential client. Rule 7.3 provides as follows:

"Rule 7.3 Direct Contact With Prospective Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan."

Given the testimony of Mr. Stelzer, it is uncontroverted that when Mr. Stelzer contacted Vinson & Elkins. Mr. Stelzer did not ask Vinson & Elkins to represent him, did not ask them to do anything for him and certainly did not ask them to obtain an attorney for him. The next thing that Mr. Stelzer recalls following Vinson & Elkins statement that they would "get back to him" was that Mr. Battista called him and offered to provide him free legal services against Mr. Prosser.

On the evidence before this Court there is clear justification for further investigation, if not outright referral for disciplinary proceedings, regarding Genovese, Joblove & Battista, P.A.'s solicitation of Mr. Stelzer in violation of American Bar Association, *Code of Professional Responsibility*, Rule 7.3.

With regard to the conduct of the Chapter 7 Trustee and the Chapter 11 Trustee, and their respective counsel, it is important to note that the bankruptcy code specifically provides that when a Trustee has reasonable grounds to believe that there has been any violation of 18 USC §§ 151 *et seq.* they are required to report all the facts and circumstances of the case, including but not limited to the names of witnesses and the offense or offenses believed to have been committed to the United States Attorney.

18 USC § 3057 provides as follows:

"§ 3057. Bankruptcy investigations

(a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title [18 USCS §§ 151 *et seq.*] or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States Attorney thereupon shall inquire into the facts and report

thereon to the judge and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction." 18 USCS § 3057.

Mr. Stelzer testified that either Vinson & Elkins or one of the ICC companies (the corporate debtor estates or counsel for the Trustee of one of the debtor estates) who is responsible for paying Stelzer's attorneys at Genovese, Joblove & Battista, P.A. To the extent that it is one of the ICC companies who is responsible for providing payment of Mr. Stelzer's legal fees, there exists engagement of professionals and payment of those professionals' fees without prior disclosure to or approval of the Bankruptcy Court.

18 USC§ 152 makes it a criminal offense to pay for professional fees from assets of a bankruptcy estate without prior disclosure to and approval of the Bankruptcy Court.

"18 USC § 152. Concealment of assets; false oaths and claims; bribery

A person who—

...

(5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;

(6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

...

shall be fined under this title, imprisoned not more than 5 years, or both."

There has been no application in either of the corporate bankruptcies, or in Mr. Prosser's personal bankruptcy, to engage/employ Mr. Battista, Ms. Van Vliet or their firm, Genovese,

Joblove & Battista, P.A. by the Trustees or anyone else. To the extent it is one of the ICC companies who has to pay Mr. Stelzer's legal fees there is ample evidence before this Court to justify referral of Trustee Springel and his counsel Vinson & Elkins for further investigation, if not outright referral for disciplinary proceedings,.

In addition to the Stelzer bribery scheme addressed hereinabove, there are serious questions whether Stan Springel (the Chapter 11 Trustee), his attorneys, Vinson & Elkins, James Carroll (the Chapter 7 Trustee) and his attorneys, Fox Rothschild have violated their duty of candor to the Court.

With regard to Mr. Springel, he has been asked under oath specifically whether he has offered anything of value to Mr. Stelzer in exchange for Mr. Stelzer's testimony. During the trial on the objections of the Chapter 11 Trustee, the Chapter 7 Trustee, and the Greenlight Entities to Mr. Prosser's statutory exemptions, Mr. Springel specifically testified that there were no agreements, written or oral between him, the estate, or anyone working for him or under his direction with Mr. Stelzer. Transcript of the Trial Proceedings held August 27, 2008, pages 275-278.

Mr. Springel's testimony occurred on August 27, 2008, after Mr. Stelzer had been served with a notice of deposition from Mr. Prosser, and after the time which Mr. Stelzer indicated he had his conversation with Vinson & Elkins. In fact, by August 20, 2008 Mr. Battista was engaged and officially acting on behalf of Mr. Stelzer in resisting the Stelzer deposition subpoena. See e-mail exchange between counsel for Mr. Prosser and Mr. Battista dated August 20, 2008, Exhibit B hereto.

In other words, it appears that the agreement that Mr. Battista and his firm would provide free legal services to Mr. Stelzer was already in place at the time Mr. Springel testified there was no agreement with Mr. Stelzer whatsoever.

If, in fact, Trustee Springel was unaware of the agreement that attorney Battista would provide free legal services to Mr. Stelzer certainly his counsel Vinson & Elkins, particularly Mr. James J. Lee and/or Mr. Richard London were. They had affirmative knowledge of the “arrangement” to provide Stelzer’s free legal services and had an affirmative obligation to correct Mr. Springel's misstatement on the record. They did not -- and have not -- since August 2008. In fact, had Stelzer’s January 2010 deposition never revealed this “arrangement” it is certain that this secret would have remained deep and dark. It is no wonder why Mr. Lee and Ms. Van Vliet objected so vigorously at the Stelzer depo to questions concerning this issue.

American Bar Association, *Rules of Professional Conduct*, Rule 3.3 defines an attorney's obligation of candor with regard to representations made to the Court.

"Rule 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. ***If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.*** A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or

fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." (Emphasis added.)

Even if it could somehow be said that the Stelzer bribery scheme was not known at the time of Mr. Springel's testimony on August 27, 2008, a contention which stretches credulity, certainly that scheme became known to counsel thereafter and Rule 3.3 required correction of Mr. Springel's August 27, 2008 testimony.

Further evidencing Mr. Lee's and Ms. Van Vliet's lack of candor with the Court was their failure to speak up during the following exchange with Mr. Stelzer at his January 12, 2010 deposition.

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Q. Mr. Stelzer, in any of the meetings that you

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1 had with the trustees, the other parties to the case,
2 their representatives, was there ever in your mind, any
3 understanding of a quid pro quo; in other words, you
4 cooperate with them, they'll cooperate with you?

5 A. No.

6 Q. When you were asked to testify, were you told
7 that you would be compensated for your testimony, for
8 your time?

9 A. No.

10 Q. Were you compensated for your time?

11 A. No."

Neither Mr. Lee nor Ms. Van Vliet did anything to correct what they knew was Mr. Stelzer's false testimony.

With regard to Fox Rothschild, counsel for the Chapter 7 Trustee, Trustee Carroll's made the following representation to the Court during Mr. Stelzer's deposition,:

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15 **MS. KATZ:** Your Honor, this is Dana Katz for
16 the Chapter 7 trustee. I just want to object to
17 the entire assumption. **The Chapter 7 trustee has**
18 **in fact never spoken to Mr. Stelzer outside of**
19 **trial testimony during the exemptions proceedings,**
20 **so I'm not really sure what Mr. Abood is getting**
21 **at, but I just wanted to make that clear that there**
22 **have been no communications with Mr. Stelzer**
23 **whatsoever.**

24 **THE COURT:** I appreciate the fact that that's
25 the trustee's position.

Counsel for the Chapter 7 Trustee's assertion of fact was then contradicted by Mr Stelzer,
over argument from said counsel:

" 0108

5 BY MR. ABOOD:

6 Q. Did you talk to anyone other than Mr. Lee and
7 your counsel, Mr. Battista and Ms. Van Vliet, have you
8 talked to anyone else about providing your testimony in
9 these proceedings?

10 A. No. If you could ask the question again, I'm
11 sorry. I'm a little confused by the question.

12 Q. I think where we had left off before the break
13 was that you had indicated that you talked with counsel
14 for the trustee in December, and then just sometime
15 between December and your deposition in February, and
16 that you may have had a conversation with him about
17 providing trial testimony in June of '08. Do you recall
18 that testimony?

19 A. I recall that testimony.

20 Q. My question is, did you talk to anybody else?
21 There are lots of lawyers, different parties. Did you
22 talk to anyone from the Chapter 7 trustee's office about
23 your providing testimony, in June of '08?

24 A. Who is the Chapter 7 office?

25 Q. Mr. James Carol and his main attorneys, he has
0109

1 several.

2 A. I didn't talk to any of those people about any
3 kind of testimony.

4 Q. Or producing any paperwork whatsoever?

5 A. Or producing anything.

6 Q. The RTFC, the Rural Telephone Finance

7 Cooperative, and their attorneys, did you talk to anyone
8 from their offices?

9 A. No, sir.

10 Q. And then there's what we call the Greenlight
11 entities, those three hedge funds. Do you recall
12 whether or not you talked to anyone from their offices?

13 A. No, sir.

14 Q. So the only one you have a recollection of
15 talking to is someone from the Chapter 11 trustee, that
16 being Mr. Lee, is that correct?

17 A. I mean, I had a meeting with Mr. Carroll. I
18 had a dinner meeting, but I didn't talk about testimony.
19 You asked me if I talked about testimony. My answer is
20 no.

21 Q. When did you meet with Mr. Carroll, before you
22 testified in court?

23 A. Yes, and it might have even been -- I don't
24 recall the exact date.

25 MS. KATZ: This is Dana Katz. I just want to
0110

1 clarify, I think he might be referring to
2 Mr. Springel, but I'm not sure.

3 A. No.

4 Q. Do you know the difference between Mr. Carroll
5 and Mr. Springel?

6 A. Yes.

7 Q. You recall having dinner with Mr. Carroll?

8 A. Correct.

9 Q. Mr. Carroll, the Chapter 7 trustee?

10 A. What I call the personal bankruptcy, yes.

Obviously, counsel for the Chapter 7 Trustee thought it important to distance the Chapter 7 Trustee from any communications with Mr. Stelzer. Counsel for the Chapter 7 Trustee repeatedly stated on the record but there have been no communications between Mr. Stelzer and Mr. Carroll, even after Mr. Stelzer affirmatively testified that there had been such communications. Clearly, this is a matter for further investigation. Under the circumstances, it is reasonable to inquire what was motivating the Chapter 7's repeated attempts to distance themselves from Mr. Stelzer, attempts which occurred *before* Mr. Stelzer disclosed the bribery scheme.

Nearly every treatise discussing the relationship of the Bankruptcy Court to District Court states that the District Court has supervisory power over the Bankruptcy Court. This supervisory power has been affirmatively recognized in *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, (C.A.11 Fla. 1990), wherein the Eleventh Circuit noted that in order to ensure there are not egregious breaches of fiduciary duty and, likewise, to ensure that a bankruptcy judge does not abuse his or her discretion in such matters, the district court is available to review the bankruptcy court's actions. As the Court stated:

"In the present case, one or all of these safeguards broke down. ... The estate was administered four years ago, yet the parties continue to tie up judicial time and resources. All of these abuses should have been stopped long before the dispute reached this Court. Bankruptcy court judges have a judicial responsibility to closely monitor the administration of a bankruptcy estate, and particularly to prevent abuses by trustees and their attorneys. The district court in turn must oversee the bankruptcy court to insure that a misadministration of a bankruptcy estate, such as occurred in this case, does not happen." 908 F.2d at 884-85. (Citations Omitted).

Accord, *In re Parklane/Atlanta Joint Venture*, 927 F.2d 532, 538 (11th Cir. 1991), in which the 11th Circuit observed:

"The bankruptcy courts exist to provide debtors and creditors with a specialized forum for the prompt and speedy resolution of bankruptcy proceedings. There is no question that they perform a necessary and useful service by minimizing the dislocation suffered by individual debtors and creditors as well as the economy as a whole. Nevertheless, Congress has vested original jurisdiction over cases and proceedings under Title 11 in the district courts. See 28 U.S.C.A. § 1334(a)-(b) (West Supp.1990). The bankruptcy courts obtain jurisdiction over Title 11 cases or proceedings only by referral at the discretion of the district courts, and the district court may withdraw such reference for cause. See 28 U.S.C.A. § 157 (West Supp.1990). As discussed above, this is not a hollow requirement. Nevertheless, the cause prerequisite should not be used to prevent the district court from properly withdrawing reference either to ensure that the judicial power of the United States is exercised by an Article III court or in order to fulfill its supervisory function over the bankruptcy courts, cf. *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 884 (11th Cir.1990) (held the district courts responsible for overseeing the bankruptcy courts)."

Given the unique circumstances of this case, and particularly in light of the very clear evidence of a bribery scheme, violations of federal criminal statutes, and governing rules of ethical conduct, it is respectfully requested that this Court enter an Order directing that an evidentiary hearing be held to determine whether sanctions, disqualification and/or referral for further disciplinary proceedings and/or referral to the appropriate U.S. Attorney should be made against the following persons and/or entities :

- Vinson & Elkins, counsel for the Chapter 11 Trustee, including, but not limited to, lead trial counsel James J. Lee;
- the law firm of Genovese, Joblove & Battista, P.A., counsel for Arthur J. Stelzer, including but not limited to attorneys Paul Battista and Theresa Van Vliet;
- Stan Springel, the Chapter 11 Trustee;
- James P. Carroll, the Chapter 7 Trustee;
- Fox Rothschild, LLP, counsel for the Chapter 7 Trustee.

This Court has before it a bribery scheme perpetrated in the course of federal court proceedings involving entities worth hundreds of millions of dollars from which the Trustees and their respective counsel have reaped millions of dollars in fees. The actions complained of herein are neither speculative nor trivial. They are based on sworn testimony and the undisputed actions of those persons who should be further investigated and sanctioned.

At a minimum, the evidence set forth in support of this motion justifies this Court establishing a period of discovery, followed by an evidentiary hearing at which the Court can make a determination of the actions this Court deems appropriate.

Dated: January 26, 2010

Respectfully Submitted,

The Law Office of Norman A. Abood

/s/ Norman A. Abood

Norman A. Abood (OH. Sup. Ct. #0029004)
203 Fort Industry Square
152 N. Summit Street
Toledo, OH 43604
Phone: 419-724-3700
Fax: 419-724-3701
E-Mail: Norman@nabood.com
Admitted *Pro Hac Vice*

-and-

Robert F. Craig, PC

/s/ Robert F. Craig
Robert F. Craig (NE. Sup. Ct. #10819)
1321 Jones Street
Omaha, NE 68102
Phone: 402-408-6000
Fax: 402-408-6001
E-Mail: robert@craiglaw.org
Admitted *Pro Hac Vice*

-and-

Law Office of Lawrence H. Schoenbach

/s/ Lawrence H. Schoenbach
Lawrence H. Schoenbach (USVI Bar No. 770)
The Trinity Building
111 Broadway, 13th Floor
New York, NY 10006
Phone: 212-346-2400
Fax: 212-346-4665
E-Mail: schoenbachlawoffice@att.net

Attorneys for Jeffrey J. Prosser

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
 DIVISION OF ST. THOMAS AND ST. JOHN
 BANKRUPTCY DIVISION

 In re: Chapter 7
 JEFFREY J. PROSSER, Case No. 06-30009
 Debtor.

 GREENLIGHT CAPITAL QUALIFIED, Adv. Pro. 07-3001
 L.P., GREENLIGHT CAPITAL,
 L.P., and GREENLIGHT CAPITAL
 OFFSHORE, LTD.,
 Plaintiffs,
 vs.
 JEFFREY J. PROSSER,
 Defendant.

 ETC.

DEPOSITION OF
 ARTHUR STELZER
 TAKEN ON BEHALF OF THE DEFENDANT

Tuesday, January 12, 2010
 9:07 a.m. - 12:39 p.m.

200 East Broward Boulevard, Suite 1110
 Fort Lauderdale, Florida

Chloe Leroux, FPR

1 On behalf of RTFC:
 2 MARK A. PLATT, ESQ.
 3 GREG M. WILKES, ESQ.
 4 FULBRIGHT & JAWORSKI, LLP
 5 2200 Ross Avenue
 6 Suite 2800
 7 Dallas, Texas 75201-2784
 8 (214) 855-7172
 9 mplatt@fulbright.com
 10 gwilkes@fulbright.com
 11 BILL GREENDYKE, ESQ. (Via Speakerphone)
 12 JOHN CORNWELL, ESQ. (Via Speakerphone)
 13
 14 On behalf of the Greenlight entities:
 15 CHRISTINE W. KIM, ESQ. (Via Speakerphone)
 16 SKADDEN ARPS SLATE MEAGHER & FLOM
 17 One Rodney Square
 18 P.O. Box 636
 19 Wilmington, Delaware 19899
 20 (302) 651-3000.
 21 On behalf of the Chapter 7 Trustee:
 22 DANA S. KATZ, ESQ. (Via Speakerphone)
 23 FOX ROTHSCHILD, LLP
 24 100 Park Avenue
 25 Suite 1500
 New York, New York 10017
 (212) 878-7934
 dkatz@foxrothschild.com

- - -

I N D E X

Witness: Page:
 ARTHUR STELZER 19

N O E X H I B I T S M A R K E D

- - -

1 THE HONORABLE JUDITH K. FITZGERALD (Via Speakerphone)
 2
 3 APPEARANCES OF COUNSEL
 4 On behalf of Jeffrey J. Prosser:
 5 NORMAN A. ABOOD, ESQ.
 6 LAW OFFICES OF NORMAN A. ABOOD
 7 203 Fort Industry Square
 8 152 North Summit Street
 9 Toledo, Ohio 43604-2304
 10 (419) 724-3700
 11 norman@nabood.com
 12
 13 LAWRENCE H. SCHOENBACH, ESQ.
 14 LAW OFFICES OF LAWRENCE H. SCHOENBACH
 15 111 Broadway, 13th Floor
 16 New York, New York 10006
 17 (212) 346-2400
 18 schoenbachlawoffice@att.net
 19 On behalf of Arthur Stelzer:
 20 THERESA VAN VLIET, ESQ.
 21 PATSY ZIMMERMAN, ESQ.
 22 GENOVESE JOBLOVE & BATTISTA, P.A.
 23 200 East Broward Boulevard
 24 Suite 1110
 25 Fort Lauderdale, Florida 33301
 (954) 453-8012
 tvanvliet@gjb-law.com
 pzimmerman@gjb-law.com

On behalf of Stan Springel, Chapter 11 Trustee:
 JAMES J. LEE, ESQ.
 DUSTON McFAUL, ESQ.
 REBECCA PETEREIT, ESQ. (Via Speakerphone)
 VINSON & ELKINS, LLP
 2001 Ross Avenue
 Suite 3700
 Dallas, Texas 75201-2975
 (214) 220-7744
 jim.lee@velaw.com
 dmcfaul@velaw.com

1 Deposition of Arthur Stelzer
 2 January 12, 2010
 3
 4 MR. ABOOD: Norman Abood, attorney for Jeffrey
 5 J. Prosser.
 6 MR. SCHOENBACH: Lawrence Schoenbach for
 7 Jeffrey J. Prosser.
 8 MR. PLATT: Mark Platt for RTFC.
 9 MR. WILKES: Greg Wilkes for RTFC.
 10 MR. McFAUL: Duston McFaul for Stan Springel,
 11 Trustee.
 12 MR. LEE: Jim Lee for Stan Springel, Trustee.
 13 MS. ZIMMERMAN: Patsy Zimmerman for
 14 Mr. Stelzer.
 15 MS. VAN VLIET: Theresa Van Vliet for
 16 Mr. Stelzer, and Mr. Stelzer is present.
 17 Could we get the appearances of those
 18 attorneys appearing by phone.
 19 MS. KIM: Christine Kim of Skadden Arps for
 20 the Greenlight entities.
 21 MS. KATZ: This is Dana Katz for the Chapter 7
 22 Trustee.
 23 MR. GREENDYKE: Bill Greendyke for the RTFC.
 24 MR. CORNWELL: John Cornwell for the RTFC.
 25 MS. PETEREIT: Becky Petereit, Vinson &

1 Elkins, for the Chapter 11 Trustee.
 2 MS. VAN VLIET: Anyone else besides,
 3 obviously, Judge Fitzgerald?
 4 Judge, before we get started, on behalf of
 5 Mr. Stelzer, we have a motion in limine, I
 6 understand, from Mr. Abood, that he intends to make
 7 inquiry presumably as a method of impeachment of
 8 Mr. Stelzer, which is not only irrelevant to the
 9 proceedings, as the Court has outlined the
 10 permissible scope of this deposition, that being to
 11 explore issues relating to discharge and not rehash
 12 new ground, but also with regard to the prior
 13 arrest of Mr. Stelzer.

14 Those two incidents were the subject of a
 15 previous motion in limine granted by this Court
 16 prohibiting counsel for Mr. Prosser from going into
 17 those matters.

18 As the Court may recall, the first incident
 19 occurred in Florida in 1997. It was not a
 20 conviction. It was a nol pros by the State of
 21 Florida in 1997. Thus, under Federal Rule of
 22 Evidence 609, it is improper impeachment material.

23 The second incident, which took place in 1982
 24 in Texas, is similarly inadmissible -- I'm sorry,
 25 '79, but was vacated in 1982, is similarly

1 inadmissible under Federal Rule of Evidence 609 as
 2 impeachment material, as it is more than 10 years
 3 old.

4 As a practical matter, it was also vacated and
 5 dismissed, so it does not stand as a matter of
 6 criminal law under the Federal Rules of Evidence as
 7 an additional, and is, therefore, in addition to
 8 being time-barred, also inadmissible.

9 And, more importantly, there's the fact that
 10 the Court has already ruled on this. I inquired of
 11 Mr. Abood prior to the court reporter finalizing
 12 her setup, and he indicated that he does intend to
 13 go into them again.

14 So rather than interrupt the flow of things
 15 after things get started, I thought I would make
 16 the motion in limine now to ask you to, I guess,
 17 revisit the issue that you've already decided on.

18 MR. LEE: Your Honor, this is Jim Lee. Since
 19 I will be also supporting that motion, maybe I
 20 should go first?

21 THE COURT: Go ahead.

22 MR. LEE: We do support the motion on behalf
 23 of the Stan Springel Chapter 11 Trustee. Counsel
 24 has it correct. If you will recall, there was an
 25 effort to use this information during the

1 exemptions proceeding back in August, and we filed
 2 an emergency motion in limine with respect to what
 3 was designated as Jeff Prosser's Exhibit 156, which
 4 was the prior criminal record history, and stated
 5 basically what counsel stated, and we stand by
 6 that.

7 There's an additional issue here; which is,
 8 this deposition, as the Court stated at the status
 9 conference on the 14th, is with respect to the
 10 discharge action. We have already indicated that
 11 the intent to call Mr. Stelzer in the discharge
 12 action would be solely by means of his prior
 13 deposition testimony at the exemptions matter.

14 Therefore, this information, which can only be
 15 used for cross-examination and impeachment
 16 purposes, is not the subject of this deposition.
 17 This deposition has to do with the conduct of Jeff
 18 Prosser in the discharge action. It is not in this
 19 deposition going to be cross-examination.

20 So what we have is a collateral attack, if you
 21 will, on the prior testimony and the Court's
 22 findings with respect to the prior testimony of
 23 Mr. Stelzer, which combined with the improper use
 24 of the criminal record, would be really nothing
 25 different than a collateral attack, which is

1 totally irrelevant to discharge. So we support the
 2 motion.

3 THE COURT: Anyone else before I turn to
 4 Mr. Abood?

5 MR. PLATT: Your Honor, Mark Platt for RTFC.
 6 We support the motion as well. We agree with
 7 Mr. Lee that you've made it clear that this
 8 deposition is not to go over the same ground that
 9 we've already covered.

10 You specifically said in the December 14th
 11 hearing, that Mr. Stelzer has been deposed, has
 12 testified, and to the extent the questions have
 13 already been asked and answered, they've been asked
 14 and answered, and you're not going to allow them to
 15 rehash old ground and, in particular, ground that
 16 you've already ruled they can't cover. So we
 17 support the motion.

18 MS. KATZ: This is Dana Katz for the Chapter 7
 19 Trustee. We would also support the motion and just
 20 add that we believe this is the law in this case at
 21 this point, as the issue has previously been
 22 decided. Thank you.

23 THE COURT: Anyone else? Mr. Abood.

24 MR. ABOOD: Good morning, your Honor. First
 25 of all, looking at the federal Rules of Civil

1 Procedure and what we're here for today, this is a
2 discovery deposition. It has been noticed as such.
3 It has not been noticed as a de bene esse
4 preservation of trial testimony deposition.

5 THE COURT: Oh, I'm sorry. I thought that was
6 the point. I thought at the last hearing, I was
7 told that it was going to be both, because
8 Mr. Stelzer was outside the subpoena power of the
9 Virgin Islands Court, so this was all also for
10 trial.

11 MR. LEE: Absolutely, your Honor. That was
12 the whole basis that was argued, that they couldn't
13 get him by subpoena, so this was a trial
14 deposition.

15 MS. VAN VLIET: That's my recollection too,
16 your Honor, Theresa Van Vliet on behalf of
17 Mr. Stelzer.

18 MR. ABOOD: Unfortunately, I wasn't at the
19 hearing, so I'll defer to opposing counsel.

20 Regardless, in the taking of a deposition,
21 your Honor, they can make the objection, but first
22 of all, under Rule 32(d)(3)(A), as I'm sure you're
23 aware, objections to competency, relevancy, or
24 materiality of testimony are not waived by failure
25 to raise them during the taking of a deposition.

1 The purpose of this is not just for trial. It
2 is also for discovery. So I'm not aware that the
3 breadth of the deposition is limited by trial
4 concerns of relevancy. Those can be ruled upon
5 after the taking of the deposition by the Court in
6 determining what issues, what testimony to allow to
7 come in.

8 The case law in cite of that proposition, that
9 interpretation of 32(d)(3)(A), your Honor, I would
10 point the Court to Sequoia Property and Equipment,
11 Limited Partnership vs. United States of America,
12 2002 US District Lexis 7541. It is a 2002 case
13 dealing with objections during depositions.

14 Moreover, under the rules that they've cited,
15 under 609, the rule with regard to the use of
16 convictions, counsel did not point to the "unless"
17 provision of the rule; which is, unless the Court
18 determines that in the interest of justice, the
19 probative value of the conviction supported by
20 specific facts and circumstances substantially
21 outweighs its prejudicial effect.

22 The fact of the matter is, your Honor, that
23 one of the core issues surrounding Mr. Stelzer's
24 testimony is whether he is willing to lie for
25 pecuniary gain. We have already taken the

1 deposition of Brenda Conner, who was the employment
2 recruiter of Mr. Stelzer. She has testified that
3 Mr. Stelzer was asked if he was arrested or
4 convicted. She has testified that he denied any
5 prior arrests or convictions, including the arrest
6 arising out of his just-prior employer at the
7 Breakers.

8 What we're talking about here is not the
9 admission of a prior bad act. What we're talking
10 about is credibility, and your Honor is probably
11 well aware that credibility is never a collateral
12 attack, and we submit that under 403, that even
13 when the Court takes the time to consider this line
14 of inquiry for purposes of introduction at trial,
15 that the Court will find that it is probative. It
16 does go to credibility.

17 When you get to the point of determining
18 whether or not it is relevant for purposes of
19 admitting it at trial, as opposed to what I'm
20 suggesting is, you don't need to make that
21 determination here today, but when you get to that
22 point, you will see that under the facts and
23 circumstances, this line of inquiry is relevant.
24 It is probative, and it deals with the material
25 aspect of the testimony provided.

1 THE COURT: Okay. Rule 609 talks about
2 admissions of convictions, not anything else. So
3 to the extent that there was a nol pros arrest in
4 1997, that is not admissible, because Rule 609
5 doesn't provide for that fact.

6 To the extent that you're looking at a
7 conviction that is over 10 years old and was
8 vacated, I frankly don't know what the effect of
9 that is. I suppose that means there is no
10 conviction of record if it was vacated, but I don't
11 have the facts at hand to know it.

12 Regardless of that fact, Rule 609(c) talks
13 about the fact that if the conviction is more than
14 10 years old, unless the Court determines in the
15 interest of justice, that the probative value of
16 the conviction, supported by specific facts,
17 outweighs its prejudicial effect, let's see here,
18 but it is still not admissible unless you give the
19 notice that you're going to use it and so forth.

20 So that latter part, I think, at this point,
21 would not be material. I'm a little hard pressed
22 to see how -- I don't offhand recall what this
23 conviction was for, so I apologize. I just don't
24 know, but I'm a little hard pressed to see how a
25 conviction in 1979 vacated in 1982 is going to lead

1 to relevant or admissible evidence, and the purpose
2 of the discovery is to get you to relevant and
3 admissible evidence. This conviction itself is not
4 admissible.

5 I'll permit you to ask what the facts were
6 concerning this conviction, but that's it. I'm not
7 going to allow anything to go beyond this, because
8 I don't see how it is going to come in. If
9 something comes up in the course of describing what
10 the conviction was, then I'll hear additional
11 argument later, but that's all for now.

12 With respect to the 1997 nol pros, that's
13 absolutely not going to be admissible under any
14 circumstances, because it was never a conviction.
15 You're limited to the 1979 conviction that was
16 vacated in 1982 and to whatever the conviction was
17 for and the specific facts of that conviction, and
18 then I'll determine whether the circumstances
19 outweigh the prejudicial effect after that evidence
20 is in.

21 MS. VAN VLIET: Your Honor, this is Theresa
22 Van Vliet. I apologize, because I neglected to
23 tell you what it was for. It was for simple
24 possession of a trace amount of cocaine inside of a
25 vial or a bottle. That was what it was for. The

1 deponent served approximately two or three months
2 of probation, and the conviction was thereafter
3 vacated, which means, because I practiced criminal
4 law also, and although I'm not asking the Court to
5 take judicial notice of it, that means that the
6 conviction no longer stands, but that's what it was
7 for.

8 THE COURT: Well, then, if that's the case,
9 Mr. Abood, I'm a little hard pressed to see how
10 that has anything to do with credibility.

11 MR. ABOOD: Your Honor, apparently I haven't
12 made myself clear. Let me try again. The point is
13 that when Mr. Stelzer was recruited to begin
14 working for ICC, he came into the employment
15 through --

16 MR. LEE : Objection, your Honor. That
17 mischaracterizes the fact that he was never
18 employed by ICC, only by the Prossers, who then had
19 him paid by ICC.

20 THE COURT: This is not the purpose. If
21 you're going to take your time, you're limited to
22 noon, I think, for this deposition. It probably
23 should get started. You're permitted to go into
24 whatever hasn't been covered before.

25 MR. ABOOD: What I was trying to point out is

1 that he was asked by the recruiter, and this has
2 already been established by deposition testimony
3 attended by all counsel other than counsel for
4 Mr. Stelzer, but counsel for all of the parties in
5 the proceedings, and she specifically testified
6 that she asked Mr. Stelzer if he had ever been
7 arrested. She asked Mr. Stelzer if he had ever
8 been convicted, and her response to those was that
9 she had asked and that he had said no, and so that
10 goes to his credibility.

11 It's not so much that we're trying to show
12 he's a bad guy because he got convicted for cocaine
13 possession. And by the way, it was a ten-year
14 sentence that was set aside after two-plus years,
15 not just a couple of months. So it was a serious
16 conviction in the state of Texas, contrary to what
17 counsel said, but that's besides the point.

18 The point is whether or not he lied to the
19 recruiter and whether or not he lied for purposes
20 of personal financial gain. That's the key.

21 THE COURT: I don't think the underlying
22 facts concerning what the conviction or the arrest
23 were about are material, Mr. Abood. The issue is
24 whether or not he told the truth at a different
25 time, and you can certainly ask him about the

1 incident and what he was asked for when he was in
2 the process of being hired and what he answered. I
3 think that's how this should be limited.

4 The underlying facts concerning an arrest that
5 was nol pros and the conviction are not material.
6 It is the fact that they occurred that is material.

7 MR. ABOOD: That's correct. That was my
8 point.

9 THE COURT: You've got the documentary
10 evidence that substantiates what the chain of
11 events was concerning the nol pros and the
12 conviction. I don't think that is disputed at this
13 point. So if that's the case, you don't need to
14 get into the underlying facts.

15 That document is a record. Whether it is
16 admissible in trial is a different issue. I think
17 you can proceed to cross-examine Mr. Stelzer as to
18 what happened, if you choose to -- I'm not saying
19 you have to -- if you choose to, in that interview,
20 without getting into the facts of the conviction.

21 MR. LEE: Your Honor, this is Jim Lee. If I
22 could just briefly respond to one thing Mr. Abood
23 said and then raise another point to which is a
24 threshold issue.

25 Mr. Abood mischaracterized the testimony of

1 Ms. Conner. She talked solely about what her
2 policy is. She could not recall what specifically
3 occurred in connection with Mr. Stelzer's
4 interview.

5 Second and more importantly, this is all
6 focusing on Arthur Stelzer's conduct. I understood
7 this deposition was being taken in connection with
8 discharge for new matters. Discharge focuses on
9 the debtor's conduct. All the tests to whether or
10 not discharge is granted have to do with what the
11 debtor did or did not do post petition or transfers
12 the debtor may have made the year prior to
13 bankruptcy.

14 There has previously been opportunities at
15 deposition and at trial to cross-examine this
16 witness on all of these matters, and counsel has
17 had those opportunities, and now he wants to
18 impeach this witness when this witness is not being
19 called for anything different than he's already
20 testified to by stipulation of all of the parties,
21 that we're going to use his prior testimony where
22 he's been cross-examined.

23 THE COURT: I've already made rulings on this.
24 Could we please just get started with the
25 deposition. It is limited to new matters. If

1 Mr. Abood should ask about this interview,
2 Mr. Stelzer will tell him what he thinks happened.
3 Let's go forward with this deposition.

4 MR. ABOOD: Would you swear in the witness,
5 please.

6 THEREUPON,

7 ARTHUR STELZER,
8 having been first duly sworn or affirmed, was examined
9 and testified as follows:

10 THE WITNESS: Yes.

11 DIRECT EXAMINATION

12 BY MR. ABOOD:

13 Q. For the record, sir, would you state your true
14 name.

15 A. **Arthur Stelzer, middle initial J,
16 S-t-e-l-z-e-r.**

17 Q. Do you have a middle name? The J stands for?

18 A. **Jacob.**

19 Q. What is your residence address?

20 A. **1104 Silverleaf Oak Court, Palm Beach Gardens,
21 Florida 33410.**

22 Q. How long have you resided at this address?

23 More than 10 years?

24 A. **Yes, sir.**

25 Q. More than 15 years?

1 A. **Somewhere.**

2 Q. Somewhere in that range?

3 A. **Yes, sir.**

4 Q. So sometime in the mid to late '90s, does that
5 sound right?

6 A. **Yes, sir.**

7 Q. Where did you live before that?

8 A. **In a rental apartment in West Palm Beach.**

9 Q. Are you married, sir?

10 A. **Yes.**

11 Q. What is your wife's name?

12 A. **Kathleen, K-a-t-h-l-e-e-n.**

13 Q. How long have you been married?

14 A. **22 years approximately.**

15 Q. Any children, sir?

16 A. **Yes.**

17 Q. Names?

18 A. **Joshua.**

19 Q. How old is Joshua?

20 A. **23, 24.**

21 Q. Is Kathleen his natural mother?

22 A. **No.**

23 Q. Does Joshua live in the South Florida area?

24 A. **I don't know where Joshua lives.**

25 Q. Is Kathleen employed?

1 A. **Yes.**

2 Q. Where?

3 A. **Morgan Stanley Smith Barney.**

4 Q. How long has she worked there?

5 A. **33 years.**

6 Q. Do you know her job position?

7 A. **Registered associate.**

8 Q. Is she a securities dealer?

9 A. **Licensed, yes.**

10 Q. Does she manage funds for people?

11 A. **No.**

12 Q. Generally what does she do?

13 A. **She works for one of the brokers in house,
14 taking care of administrative matters.**

15 Q. You just heard the -- well, let me ask you
16 this. When did you first become aware that either ICC
17 or Mr. Prosser was looking to hire someone?

18 A. **Could you rephrase the question?**

19 Q. You at some point became employed by ICC or
20 Mr. Prosser, depending on how counsel at this table
21 would characterize it, correct?

22 A. **Yes.**

23 Q. And what job position was that?

24 A. **For a valet for Mr. Prosser.**

25 Q. When did you first become aware that there was

1 a job position as a valet for Mr. Prosser available?

2 **A. Summer before my employment which I believe is**
3 **2002, July, August.**

4 **Q.** You've lived at the Silverleaf Oak Court
5 address for the number of years that we've discussed.
6 Have you had the same phone number the whole time?

7 **A. The same home phone number the whole time,**
8 **yes, sir.**

9 **Q.** Do you have a fax at home?

10 **A. I do.**

11 **Q.** How long have you had that approximately?

12 **A. Less than the number of years we've lived**
13 **there. I don't know, 10 years, I'm guessing.**

14 **Q.** Okay. Approximately. And does that fax work
15 off of your home phone number?

16 **A. Yes, it does.**

17 **Q.** Where did you work before you began employment
18 with Mr. Prosser or ICC?

19 **A. I was unemployed at the time.**

20 **Q.** How long had you been unemployed?

21 **A. I don't recall, a year. I don't recall at the**
22 **time.**

23 **Q.** Approximately a year, something like that?

24 **A. A year, maybe two.**

25 **Q.** Where had you worked immediately before

1 starting work for -- for purposes of the deposition, so
2 I don't have to keep saying ICC or Mr. Prosser, I'm
3 going to refer to the employment position as being with
4 ICC, is that all right?

5 **A. Actually no. I worked for Mr. Prosser.**

6 **Q.** Who did you get your paychecks from?

7 **A. I believe I was paid by one of the corporate**
8 **entities.**

9 **Q.** They weren't checks that were issued
10 personally by Mr. Prosser, correct?

11 **A. Right.**

12 MR. LEE: Your Honor, this is Jim Lee. I want
13 to cite to the Court's comment made during the
14 hearing of December 14th, where the Court said,
15 quote, the issues may be different, but the
16 testimony to the extent the man has already
17 testified in deposition and at trial, the testimony
18 will not be different. Rehashing the same
19 testimony is not permitted. That's abusive and I'm
20 not going to permit it. If there's additional
21 testimony, you can certainly ask it. That's at 66
22 from the transcript.

23 The subject matter of everything that's been
24 asked today has already been covered in either his
25 deposition and/or, and I think it is mostly and,

1 his testimony in the exemptions trial. This is
2 exactly what the Court said should not happen.

3 THE COURT: Could you get to some new material
4 that has not been covered, Mr. Abood?

5 MR. ABOOD: I'm trying to get there as quickly
6 as I can, your Honor. I'm just setting up some
7 context.

8 BY MR. ABOOD:

9 **Q.** Did you work at the Breakers?

10 **A. Yes.**

11 **Q.** Do you recall how long?

12 **A. Two, three years, I don't recall exactly, a**
13 **couple of years.**

14 **Q.** What were the circumstances of your leaving
15 the Breakers?

16 **A. I was terminated.**

17 **Q.** For what reason, as you understood it?

18 MS. VAN VLIET: Objection, relevance,
19 inadmissible evidence under 608(b).

20 MR. ABOOD: You may answer.

21 MR. LEE: The judge is here.

22 I thought, your Honor, you were going to rule
23 on these?

24 THE COURT: I am, but I need to go to the
25 rule, so just a second, please.

1 MR. ABOOD: Objections can be made and rulings
2 can be entered at a later point in time. This is
3 not the courtroom.

4 MR. LEE: Your Honor, the purpose of the
5 deposition, as requested by Mr. Craig, was to do
6 what would occur in trial because they couldn't
7 subpoena the witness and force him to be there, and
8 your Honor agreed to sit in on this deposition and
9 make rulings so that we could treat it as though it
10 was at trial.

11 MR. ABOOD: Your Honor, maybe I'm confused.
12 My understanding is that, and I will state this
13 affirmatively on the record, we have not waived
14 Mr. Stelzer's or any other witness's appearance at
15 trial. It is our understanding that transcripts
16 could be used for the purpose that transcripts are
17 typically used, that is to impeach witnesses that
18 are presented at trial.

19 MR. PLATT: No.

20 MR. LEE: NO.

21 MR. ABOOD: And that they intend Mr. Stelzer
22 to testify, they need to produce him at trial.

23 THE COURT: My understanding is that to the
24 extent that the evidence has already been
25 introduced in another proceeding, it does not have

1 to be repeated and in fact it won't be repeated.

2 To the extent that I've already made findings,
3 those findings are findings of fact that are
4 findings of fact. How they apply in the context of
5 a discharge objection may be different from how
6 they apply in the context of an exemption or
7 turnover matter. But nonetheless, the facts are
8 the facts.

9 With respect to this specific objection, I
10 don't know at this point where the question is
11 leading. The objection is to, why was Mr. Stelzer
12 terminated? 608(b) talks about specific instances
13 of the conduct for purpose of attacking or
14 supporting the witness's character for
15 truthfulness.

16 I have no idea what the answer to this
17 question is going to be and whether it is or isn't
18 designed to lead to relevant and admissible
19 evidence.

20 To the extent that this deposition is also for
21 discovery purposes, related to the discharge
22 issues, and Mr. Abood, they're quite correct, the
23 discharge issues focus on Mr. Prosser's conduct,
24 not on some other witness's conduct, so we need to
25 get there.

1 If that's what this is going to be about, I
2 will permit this question to be asked subject to
3 ruling as to whether or not it is relevant and
4 admissible under Rule 608(b) after it is testified
5 to. I don't know at this point what the answer is.
6 So the objection is overruled temporarily at least.

7 MS. VAN VLIET: Thank you.

8 MR. LEE: Just to finish the loop on the
9 comment, Mr. Craig at page 56 of the transcript
10 said, referring to Mr. Stelzer and in responding to
11 the Court about this deposition, quote, he's
12 outside the subpoena power of the Court, we
13 believe, so we have to call him by way of
14 deposition at the time of trial.

15 That was what the purpose of this exercise was
16 about. That's how it was represented to the Court
17 and that's how we proceeded, not that this was a
18 discovery deposition, but that this was because
19 they couldn't call him as a live witness.

20 THE COURT: My understanding was that if they
21 decide to call Mr. Stelzer, that it would have to
22 be by deposition, and as a result, this deposition
23 would be used for trial purposes.

24 But I also, somewhere in that transcript,
25 thought that Mr. Craig indicated that it was for

1 additional discovery, but so far, I'm not finding
2 out what that additional discovery is, but it is
3 early.

4 So to the extent that is for discovery, this
5 objection is overruled. Whether it is admissible
6 will depend on a whole lot of things, not the least
7 of which is the answer.

8 MS. VAN VLIET: Thank you, your Honor.

9 BY MR. ABOOD:

10 Q. What was your understanding as to the
11 circumstances to why you were terminated?

12 A. A guest complaint.

13 Q. Do you recall what the complaint was about?

14 A. A guest wrote a letter that said that he asked
15 me to fill up a prescription late one evening. I told
16 him I had to go after my 11:00 shift was over, and it
17 required that I drive up to Riviera Beach, which is
18 almost a half an hour from the hotel, that I would then
19 be half an hour back after the time it took to fill the
20 prescription, and then it would take me, after that, an
21 hour to get home.

22 He handed me whatever, I don't recall, more
23 money than the price of the prescription as a gratuity.
24 I came back to the hotel, gave him the prescription.

25 Two weeks later, I believe, to the best of my

1 knowledge, he wrote a letter to the hotel saying he felt
2 that he overpaid for the prescription, which was less
3 money than the gratuity amount that he gave me.

4 Q. Can you tell us whether or not you recall any
5 incident involving payment for fishing trips by guests
6 at the Breakers relative to your termination?

7 A. No.

8 Q. Is it no that you don't recall, or no that it
9 never happened?

10 A. Ask me the question again, sir.

11 Q. Let me ask you this, do you recall being
12 interviewed by the Palm Beach Police Department relative
13 to guest complaints that they had paid you for fishing
14 trips or trip, and the money was never paid to the ship
15 captains for those fishing trips?

16 MR. LEE: Objection, form, assumes facts not
17 in evidence.

18 THE COURT: Mr. Stelzer, for discovery
19 purposes, you may answer that question, but this
20 does seem to be getting into Rule 608(b), where the
21 answers are not going to be admissible at trial.

22 Nonetheless, to the extent this is for
23 discovery, you may answer, sir.

24 THE WITNESS: What was the question?

25 MR. ABOOD: Could you read it back.

1 (The requested portion of the record was read
2 by the court reporter.)

3 **A. No.**

4 BY MR. ABOOD:

5 **Q.** Were you arrested by the Palm Beach Police
6 Department on or about 1997?

7 MS. VAN VLIET: For trial purposes, your
8 Honor, I'll object under 608 and 609 based on the
9 Court's prior ruling. This is the nol pros
10 incident, but I understand the distinction between
11 the Court's ruling on trial issues and discovery
12 issues.

13 MR. LEE: Join.

14 THE COURT: For trial purposes, the conviction
15 does not appear -- I'm sorry, there was no
16 conviction, so that evidence is not admissible.
17 For discovery, I'll let it go on.

18 MR. SCHOENBACH: Your Honor, this is
19 Mr. Schoenbach, and we understand your Honor's
20 ruling. Obviously, there's no conviction. It may,
21 however, be a prior bad act and, therefore,
22 admissible under 403. We simply wish to reserve
23 the right to make that argument at a subsequent
24 date.

25 THE COURT: The fact of an arrest is not a

1 subsequent bad act. If you want to get into the
2 conduct, you may; but the arrest itself is not
3 evidence of a bad act, and it is not impeachable as
4 I understand it. But I've already made a ruling
5 with respect to the nol pros. Go ahead.

6 THE WITNESS: Please, could you repeat the
7 question.

8 MR. ABOOD: Could you read that back.

9 (The requested portion of the record was read
10 by the court reporter.)

11 **A. No. I turned myself in on advice of my
12 counsel, if that takes away the no.**

13 BY MR. ABOOD:

14 **Q.** You turned yourself into who?

15 **A. To the West Palm Beach Police Department.**

16 **Q.** What was your understanding of the reason you
17 were turning yourself in?

18 **A. It was in regards to some payments made by
19 guests for fishing trips.**

20 **Q.** How is what you just described different from
21 what I asked you about a minute ago?

22 MS. VAN VLIET: Objection, improper
23 impeachment. The prior question was, did it have
24 to do with his termination, and counsel didn't
25 establish the time period.

1 THE COURT: All right. You can back up,
2 Mr. Abood.

3 BY MR. ABOOD:

4 **Q.** This situation where you turned yourself in,
5 was it your understanding that you were being accused of
6 stealing from guests at the Breakers?

7 THE COURT: Mr. Abood, I'm sorry, I can't hear
8 you.

9 MR. ABOOD: I asked him whether or not it was
10 his understanding, Mr. Stelzer's understanding,
11 that he was being accused of stealing from guests
12 at the Breakers.

13 **A. There was money missing from the concierge's
14 desk at the Breakers.**

15 BY MR. ABOOD:

16 **Q.** And you understood that that accusation was
17 being made against you?

18 **A. Yes.**

19 **Q.** And that was one of the underlying reasons why
20 you turned yourself in?

21 **A. Yes.**

22 **Q.** Is it your testimony that the incident that
23 we've just talked about regarding the accusation of
24 stealing from guests at the Breakers relative to fishing
25 trips, had nothing to do with your termination?

1 **A. To the best of my recollection, correct.**

2 **Q.** What leads you to that conclusion?

3 **A. I had already been terminated.**

4 **Q.** You had already been terminated before this
5 situation came up regarding the fishing trips?

6 **A. Correct.**

7 **Q.** How long had you been terminated
8 approximately?

9 **A. That was ten years ago, a number of weeks, two
10 to four or six.**

11 **Q.** Weeks?

12 **A. Yes, sir.**

13 **Q.** Do you remember interviewing with Brenda
14 Conner for employment by Mr. Prosser or ICC?

15 **A. Yes.**

16 **Q.** And do you remember the company that she
17 worked for?

18 **A. Yes.**

19 **Q.** What was the name?

20 **A. Distinctive Staffing.**

21 **Q.** Do you recall what city that interview took
22 place in?

23 **A. Palm Beach.**

24 **Q.** Was there anyone else present when she
25 interviewed you, as best you recall?

- 1 **A. As best I recall, no.**
 2 **Q.** Do you recall her asking you about your
 3 general background?
 4 **A. Yes.**
 5 **Q.** Do you recall her asking you about your
 6 employment history?
 7 **A. Yes.**
 8 **Q.** Did you describe for her that you had worked
 9 at the Breakers?
 10 **A. Yes.**
 11 **Q.** Did you tell her the circumstances of your
 12 termination?
 13 **A. Wasn't asked.**
 14 **Q.** Did you offer it?
 15 **A. No.**
 16 **Q.** Do you recall being asked about prior arrests
 17 by Ms. Conner?
 18 **A. No.**
 19 **Q.** Do you recall being asked about prior
 20 convictions by Ms. Conner?
 21 **A. No.**
 22 **Q.** Did you fill out any forms when you applied
 23 for a position through Ms. Conner?
 24 **A. I don't believe so. I don't recollect so.**
 25 **Q.** So if I understand your testimony, when you

- 1 interviewed with her, she didn't ask you about the
 2 circumstances of your termination by your immediately
 3 preceding employer, correct?
 4 **A. Correct.**
 5 **Q.** She didn't ask you about your arrest record,
 6 correct?
 7 **A. Correct.**
 8 **Q.** She didn't ask about any convictions, correct?
 9 **A. Correct.**
 10 **Q.** What did she ask you about?
 11 MS. VAN VLIET: Objection, relevance.
 12 THE COURT: Overruled for discovery, and as I
 13 said, until this all pieces together, I don't know
 14 about the relevance for trial, but for now, it is
 15 overruled.
 16 BY MR. ABOOD:
 17 **Q.** As best you recall, what did she ask you
 18 about?
 19 **A. The entire conversation was about how to**
 20 **construct a resumé for her to submit for employment.**
 21 **Q.** Did you construct a resumé for employment?
 22 **A. She constructed a resumé for employment.**
 23 **Q.** Do you still have a copy of that?
 24 **A. I don't know that I originally ever had a copy**
 25 **of it.**

- 1 **Q.** Did you ever see it?
 2 **A. Have I? I'm sorry, I don't understand.**
 3 **Q.** Let me go back. Was a resumé constructed?
 4 **A. A resumé was sent to the company.**
 5 **Q.** Do you recall which company?
 6 **A. ICC or whatever the title would have been.**
 7 **Q.** And on that resumé, did it indicate whether or
 8 not you had any history of arrests?
 9 **A. Not to my knowledge.**
 10 **Q.** Did it indicate any history of convictions?
 11 **A. Not to my knowledge.**
 12 **Q.** Did it indicate that you had worked at the
 13 Breakers?
 14 **A. Yes, to my knowledge.**
 15 **Q.** Did it indicate the circumstances of your
 16 termination from the Breakers?
 17 **A. Not to my knowledge.**
 18 **Q.** Do you have any history of drug use, sir?
 19 **A. No, sir.**
 20 **Q.** Is your home phone (561) 775-1345?
 21 **A. Yes, sir.**
 22 **Q.** That's the number you testified you've had
 23 since you moved into that house on Silverleaf?
 24 **A. Yes, sir, to the best of my knowledge.**
 25 **Q.** I just asked you and you indicated you have no

- 1 history of drug use. Is that even back in Texas?
 2 **A. If you could define the question. If you**
 3 **could be more specific.**
 4 **Q.** Did you ever use cocaine?
 5 **A. Yes, sir.**
 6 **Q.** So what did you mean when you answered my
 7 question a minute ago that you had no history of drug
 8 use?
 9 MS. VAN VLIET: Objection, improper
 10 impeachment under 608(b) and improper under 609,
 11 403, and inadmissible under 404(b).
 12 THE COURT: Mr. Abood, this seems not to be
 13 relevant and not admissible under any of those
 14 rules.
 15 MR. ABOOD: Well, these are answers that he's
 16 just given now, and they appear to be inconsistent,
 17 and I'm asking for an explanation, if there is one,
 18 because that goes to his credibility today.
 19 I just asked him if he had a history of drug
 20 use, and he said no. I asked him if he had used
 21 cocaine, and he said yes. That has the appearance
 22 of being inconsistent, your Honor.
 23 THE COURT: Well, it does. The fact that he's
 24 used cocaine, however, is not going to be, as I
 25 understand it, admissible. The type of specific

1 conduct that that involves, I think is not a
2 credibility issue. But an explanation of those two
3 answers is probably advisable.

4 THE WITNESS: What is the question I'm
5 answering?

6 BY MR. ABOOD:

7 Q. I understood your testimony in the last few
8 minutes to be, on the one hand, that you had no history
9 of drug use, on the other hand, you've conceded that
10 you've used cocaine in the past. That sounds to me to
11 be inconsistent. I'm asking you, is there a difference
12 in your mind between those two questions, and if so,
13 what is it?

14 A. In my mind, your question is, do I have a
15 history of drug use? To me, means do I have a habitual,
16 continuing habit of doing cocaine or any drug on a
17 constant, consistent, if not daily basis, as a drug
18 user? So my answer was no.

19 Q. Okay. I did not mean that in the way you
20 understood it, and I appreciate you clarifying it. I
21 wasn't asking you if you were a habitual drug user. I
22 was asking you if you've ever done drugs, and you
23 answered that, correct?

24 A. Yes.

25 Q. Are you familiar with an Armani store in Palm

1 Beach?

2 MS. VAN VLIET: Objection. This is all old
3 ground that's been covered in both the deposition
4 and at the trial; thus, it is beyond the scope of
5 not only the trial portion of this, but the
6 discovery portion of it, at least as I understand
7 the Court's prior ruling.

8 MR. LEE: We join in that objection.

9 THE COURT: Mr. Abood, wasn't this already
10 covered?

11 MR. ABOOD: No. This is what I wanted to
12 cover, and by the prior rulings, I was never
13 allowed to inquire into Mr. Stelzer's familiarity
14 and use of accounts at the Armani store in Palm
15 Beach.

16 THE COURT: Somebody show me where in the
17 transcript, where it was covered in the depositions
18 of the trial.

19 MR. LEE: I guess that is 262, several lines.
20 It runs, actually, starting with 255, about whether
21 or not he was permitted to use the Amex for
22 personal use.

23 Returning items to the Armani store was
24 covered in his deposition at 201, lines 1 through
25 25, whether or not he was charged an item and then

1 returned the item to collect for cash was covered
2 in the trial transcript, 262, 4 through 8.

3 I mean, there are numerous examples, and as
4 the Court will recall, we had a lot of argument
5 about this, about the use of the private
6 investigators, the flashing of the badge to the
7 store clerk, and the stakeout at Mr. Stelzer's
8 house, and all those things that came up.

9 MS. VAN VLIET: I have an additional grounds
10 for objection, and that is that, based on
11 Mr. Prosser's response to our motion to dismiss the
12 civil complaint that has been filed against
13 Mr. Stelzer by Mr. Prosser in the District Court in
14 the Virgin Islands, Mr. Prosser's counsel in that
15 case has made it clear that, quote, the plaintiff
16 will provide the Court -- that is the District
17 Court in the Virgin Islands -- with a copy of any
18 portion of Mr. Stelzer's deposition that relates to
19 the Virgin Islands proceedings.

20 Based on this response to the motion to
21 dismiss that was filed late yesterday in the Virgin
22 Islands, it has become patently obvious that this
23 is a discovery fishing expedition in that case as
24 well, and we would ask that that case, which
25 revolves solely around the American Express issue

1 and the records and the use of the American
2 Express, which has already been gone into ad
3 nauseam in this proceeding in a deposition and in
4 the exemptions trial, be quadranted off as an area
5 that Mr. Abood cannot further go into.

6 Because quite frankly, not only does it
7 violate this Court's prior guidance during the
8 status conference, but it now becomes obvious,
9 based on Mr. Prosser's counsel in that proceeding
10 response and Mr. Abood's questions, that this is
11 merely a way to get around the procedural
12 requirements in the District Court.

13 If they survive the motion the dismiss down
14 there, I concede that they will be able to depose
15 Mr. Stelzer. But that's for a different place and
16 a different time, and the District Court down there
17 can take care of it. This should not be used as an
18 end-run around the procedures there.

19 THE COURT: The objection is sustained. This
20 is information that has been covered before, and
21 the focus of the discharge objection is on
22 Mr. Prosser's conduct.

23 So far you haven't asked this witness about
24 what he knows about Mr. Prosser's conduct, and I
25 think that is what's relevant. So this has been

1 covered before and it is not proper to cover it
2 again.

3 MR. ABOOD: Your Honor, I didn't have an
4 opportunity to respond to counsel's objections. If
5 I may?

6 THE COURT: Go ahead.

7 MR. ABOOD: First of all, as has been
8 extensively briefed, I think in at least three
9 different briefs from Mr. Prosser's side, the
10 issues in the exemptions trial are wholly different
11 than the issues in a discharge trial, and because
12 something might have been touched upon in an
13 exemptions trial, because of the distinction
14 between the issues, we're not required in an
15 exemptions trial to fully examine everything that
16 is touched on for purposes of exemptions because
17 that portion of the testimony might be used in some
18 future proceeding.

19 There's nothing in the rulings that indicate
20 that there was an agreement or an order, that prior
21 testimony could be used to the exclusion of
22 subsequent testimony.

23 I don't think Mr. Craig when he cross-examined
24 Mr. Stelzer during trial, or I forget who
25 cross-examined him at his deposition, that they

1 were dealing with the discharge proceedings, as has
2 been briefed, your Honor. This conduct has nothing
3 to do with exemptions.

4 THE COURT: It has nothing to do with the
5 discharge. This is conduct of Mr. Stelzer that
6 you're talking about, not conduct of Mr. Prosser.

7 MR. ABOOD: That's an interesting
8 characterization, your Honor, that everybody keeps
9 trying to make. But, in fact, I'm asking him about
10 issues concerning his credibility.

11 THE COURT: You may be, but this issue
12 concerning his credibility and the use of the
13 American Express, what was taken back and whether
14 he got cash and whether he purchased items on his
15 own and how he returned things, was examined in
16 that trial. The testimony is already of record.
17 It has been covered and this is not a redo.

18 Move to something that hasn't been covered,
19 Mr. Abood.

20 MR. ABOOD: You mean because we have
21 additional evidence, in other words, the actual
22 records from Armani, you're not going to allow me
23 to inquire?

24 THE COURT: I don't know what additional
25 evidence may or may not exist at this point in

1 time. I thought all of the evidence concerning the
2 documents was introduced before.

3 MR. ABOOD: No.

4 THE COURT: So what additional evidence is it
5 that you're suggesting?

6 MR. ABOOD: You can see from the Court's
7 docket, and I don't expect you to look at it or to
8 have memorized it, but you'll see that subpoenas
9 were issued on the record to Armani for their store
10 records regarding Mr. Stelzer's account.

11 We obtained those and we attempted to use
12 those. That was the big skirmish back at the time
13 when I last attempted to depose Mr. Stelzer, and
14 you rejected that attempt, saying that Mr. Stelzer
15 had been released from the stand. His testimony
16 was closed for purposes of that trial. There was
17 no ruling that the evidence was the Armani records
18 would be excluded for all purposes or for purposes
19 of use at a subsequent trial.

20 What is going on here, your Honor, is they're
21 attempting to limit the testimony from Mr. Stelzer
22 and the cross-examination from Mr. Stelzer solely
23 to that which was developed during the exemptions
24 trial which, as we have briefed and you have not
25 yet had an opportunity to rule on, is wholly

1 different from the issues involved in discharge.

2 And the questions go specifically to whether
3 or not there was misuse of that account, whether or
4 not there's still money outstanding, and
5 subsequently -- I mean, I can make a proffer if
6 you're ruling against me, but we will be inquiring
7 into what the trustees have inquired of Mr. Stelzer
8 regarding the outstanding amounts that may be
9 available from Armani and whether or not that
10 impacts on his credibility in these proceedings.

11 MR. LEE: Your Honor, this is Jim Lee. The
12 misuse of the account or any of those things, if it
13 in fact exists, has nothing to do with
14 Mr. Prosser's conduct as to whether or not he's
15 entitled to a discharge.

16 As the Court just pointed out, they can ask
17 Mr. Stelzer about conduct of Mr. Prosser if they
18 wish, or Mr. Prosser can testify, but to have
19 Mr. Stelzer get confronted with the records of
20 Armani, which Mr. Stelzer can't identify or
21 authenticate anyway, which has already been
22 covered, has nothing to do with discharge. It is
23 just an attack on the witness.

24 MR. ABOOD: Your Honor, one last point here so
25 I can maybe try to crystalize this, the issues

1 involved regarding Mr. Prosser's conduct vis-à-vis
2 Mr. Stelzer are simply Mr. Stelzer's word against
3 Mr. Prosser's word, to a large extent. For example
4 with regard to the hard drive, that's just
5 Mr. Stelzer saying that he was told --

6 THE COURT: No, Mr. Abood, there was
7 corroborating testimony with respect to the hard
8 drive, and that's not just Mr. Stelzer's word
9 against Mr. Prosser's. This is not about a hard
10 drive. This is about Armani. You said a lot of
11 words, none of which told me how this is relevant.

12 MR. ABOOD: It all goes to credibility.

13 THE COURT: You said you had additional
14 evidence. What additional evidence is there?
15 That's what I'm trying to get to, because I thought
16 that all of the documents had been introduced for
17 trial.

18 MR. ABOOD: No. I have the records of
19 Mr. Stelzer's account at Armani.

20 THE COURT: What do you mean Mr. Stelzer's
21 account? You mean the American Express card that
22 he was provided by Mr. Prosser or by ICC?

23 MR. ABOOD: No. These are records of an
24 account in Mr. Stelzer's name at the Giorgio Armani
25 store in West Palm Beach.

1 THE COURT: Okay, and how is that relevant to
2 Mr. Prosser's discharge?

3 MR. ABOOD: It shows the use of Mr. Prosser's
4 American Express account and the sub-accounts. And
5 quite frankly, your Honor, the analysis of this
6 account, to get to the bottom of it, shows that
7 there was \$53,000 in returned items.

8 According to our analysis, there were
9 outstanding credits at the time of the conversion
10 of the case. Those would be monies that are
11 obviously discoverable by the trustee.

12 I would like to know if that has been
13 discussed, and if that played into the decision of
14 the trustee to either pursue that or not to pursue
15 that, if it has anything to do with the testimony
16 in this case.

17 THE COURT: It has nothing to do with the
18 discharge. If that's a different issue in
19 discussion you folks might have, that's a different
20 matter. This is a discovery and trial deposition
21 related to the discharge.

22 So to that extent, whatever returns or refunds
23 or whatever they were, doesn't appear to be
24 relevant. This is conduct related to Mr. Prosser.

25 There is, I agree, an issue as to every

1 witness who testifies, credibility that can be
2 explored, but I'm lost how this is relevant to that
3 issue.

4 MR. ABOOD: May I explain?

5 THE COURT: Go ahead.

6 MR. ABOOD: If there is money owed by
7 Mr. Stelzer that the trustee could recover from him
8 and the trustee chooses not to pursue that
9 recovery, and Mr. Stelzer is a material witness,
10 those are issues that we think are for the Court's
11 consideration in determining whether to give
12 credibility to his statements and to what extent,
13 to what weight. In other words, is he financially
14 motivated to color his testimony for the trustees
15 so they don't sue him?

16 THE COURT: There are an awful lot of
17 assumptions built into that statement.

18 MR. ABOOD: They are assumptions based on
19 documents and facts.

20 THE COURT: I haven't seen those documents and
21 facts. If they're relevant to Mr. Prosser's
22 discharge, you may, I guess, attempt to introduce
23 them then. But I'm a little confused as to how
24 refunds that Mr. Stelzer may owe to the estate, if
25 in fact they exist at all, are relevant to

1 Mr. Prosser's discharge.

2 MR. ABOOD: They're relevant because
3 Mr. Stelzer is being told by the trustees that
4 Mr. Stelzer's testimony will be used to support the
5 allegations of bad acts against Mr. Prosser. That
6 raises his credibility.

7 MR. LEE: Objection.

8 THE COURT: I have not seen evidence that
9 Mr. Stelzer has been told any such thing by the
10 trustee. If you want to substantiate that first,
11 Mr. Abood, then perhaps. If in fact he's motivated
12 to lie because the trustees suggested to him to
13 lie, certainly that is relevant and you may pursue
14 that.

15 MS. KATZ: Your Honor, this is Dana Katz for
16 the Chapter 7 trustee. I just want to object to
17 the entire assumption. The Chapter 7 trustee has
18 in fact never spoken to Mr. Stelzer outside of
19 trial testimony during the exemptions proceedings,
20 so I'm not really sure what Mr. Abood is getting
21 at, but I just wanted to make that clear that there
22 have been no communications with Mr. Stelzer
23 whatsoever.

24 THE COURT: I appreciate the fact that that's
25 the trustee's position.

1 Mr. Abood, if you want to pursue what
2 instructions, if any, Mr. Stelzer has been given by
3 the trustees, you can ask. If you can lay a
4 foundation that shows me this series of terrible
5 events, Mr. Abood, then it may be relevant. So far
6 it is not.

7 This is about Mr. Prosser's conduct, and
8 despite however many sidetracks are going to be
9 pushed on the record, the reality is it's about
10 Mr. Prosser's conduct, and that's what I'm going to
11 focus on, and that's what the testimony is going to
12 focus on.

13 I don't see how what you have proffered is
14 calculated to lead to relevant or admissible
15 evidence, but if you can lay a chain for it to show
16 me that it is, then you can pursue it.

17 MR. ABOOD: Thank you, your Honor. That's
18 what I'm attempting to do.

19 BY MR. ABOOD:

20 **Q.** I'm going to hand you what has been previously
21 marked as JP 136.

22 MS. VAN VLIET: Your Honor, I'll object for
23 the record. JP 136 are the very Armani store
24 records that we just discussed. There has been no
25 predicate laid that any of these assumptions of

1 promises of beneficial treatment by any trustee in
2 this case ever took place. It is impermissible.
3 It is beyond the scope of this court's order and
4 the court's ruling just a second ago.

5 THE COURT: I think I said you had to lay a
6 foundation with respect to whether or not
7 Mr. Stelzer has in fact been given these
8 instructions, to show me how this is going to be
9 admissible. These documents, I believe, have
10 already been introduced at trial.

11 So if you can lay a foundation, Mr. Abood, I
12 will let you go at it. Otherwise, this is covered
13 in the prior trial, and this deposition is not to
14 repeat that information.

15 MR. ABOOD: To my recollection, and I don't
16 have all of the trial transcripts in front of me,
17 but to my recollection, I attempted to introduce
18 these documents and you rejected them. They have
19 not been introduced at trial. If counsel knows to
20 the contrary, let me know. To my knowledge, the
21 Armani records have not been introduced and
22 accepted as exhibits in any trial.

23 THE COURT: I don't have a recollection of
24 specific exhibits, so I don't know. Counsel?

25 MR. LEE: Your Honor, I likewise cannot recall

1 specifically. I believe that we argued they were
2 inadmissible then, the way we're arguing they're
3 inadmissible now, because this witness cannot
4 authenticate them, and they had nobody there from
5 Armani to authenticate them. So they were hearsay
6 and, I believe, we lodged such an objection.

7 MS. VAN VLIET: Judge, just for the record, I
8 don't have an objection if Mr. Abood asked
9 Mr. Stelzer, has the trustee promised you anything
10 monetarily or otherwise in return for your
11 testimony? I don't have an objection to that
12 question, which would lay a predicate, but that
13 question hasn't been asked by anybody yet.

14 THE COURT: I think that's what I ruled.

15 MR. ABOOD: Your Honor, that is just a matter
16 of strategy, as to how we would get to that
17 question. First of all, I've been trying to lay
18 the evidentiary basis upon which to ask that
19 question, that there are items out there that would
20 be items of exposure for Mr. Stelzer. May I
21 proceed?

22 THE COURT: You can proceed.

23 BY MR. ABOOD:

24 **Q.** Mr. Stelzer, did you have an account at
25 Armani?

1 MS. VAN VLIET: Same objection, your Honor.

2 THE COURT: Mr. Stelzer's account at Armani is
3 not relevant to Mr. Prosser's discharge.

4 **Q.** The American Express card that you obtained
5 through Mr. Prosser, did you use that to make purchases
6 at the Armani store?

7 MS. VAN VLIET: Same objection, your Honor,
8 with regard to previously gone into and beyond the
9 scope of this proceeding.

10 THE COURT: Asked and answered at the
11 exemptions or turnover trial, I believe.

12 MS. VAN VLIET: As well as in the deposition.

13 MR. ABOOD: May he answer?

14 THE COURT: Laying the foundation, yes, he can
15 answer yes or no.

16 MR. ABOOD: Thank you.

17 BY MR. ABOOD:

18 **Q.** Did you use the American Express card that you
19 got through Mr. Prosser or ICC, at the Armani store?

20 **A. Yes.**

21 **Q.** Did you use it for purchases on your account?

22 MS. VAN VLIET: Same objection.

23 MR. ABOOD: May he answer?

24 THE COURT: If you're trying to get to
25 information about a civil suit, this isn't the

1 place for it.

2 MR. ABOOD: It is not what I'm doing, your
3 Honor. I've explained what I'm doing.

4 THE COURT: So far you haven't laid a
5 foundation, and until you do, this line of
6 questioning is closed. Lay a foundation.

7 Your foundation was that he will have been
8 compromised as a witness because he will have
9 received instructions from a trustee that would
10 somehow then lead to a monetary impact. The very
11 first foundation is whether he received those
12 instructions.

13 I'm hard pressed to see where this is going.
14 So until you lay a foundation, this line of
15 questioning is not permitted. Lay the foundation
16 first.

17 MR. ABOOD: Your Honor, if Arthur Stelzer used
18 the American Express card at the Armani store and
19 he used it for personal gain, then it may be
20 incumbent upon Arthur. There may be a motivation
21 for him to accuse Jeff to cover up Arthur Stelzer's
22 own theft.

23 As you know, this trustee has sought return of
24 all funds used to pay for the American Express
25 cards from Mr. Prosser.

1 THE COURT: No, I don't know that, actually.

2 MR. ABOOD: That was, I think, the subject of
3 the turnover trial. I'll withdraw that.

4 MR. LEE: That is so incorrect.

5 MR. ABOOD: Your Honor, if he has incidents
6 that caused him to compromise his testimony, I'm
7 allowed to inquire into that. It is not just as
8 simple as saying, did the trustee tell you to lie?
9 Who in the world is ever going to say, oh, yeah
10 they told me to lie?

11 If that's the predicate for asking questions
12 about underlying acts, then no one would ever get
13 to the underlying acts, because no one in the first
14 question is going to admit, oh, yes, they told me
15 to lie.

16 THE COURT: People do make that admission.
17 You know they make that admission. You practiced
18 that area of law. People tell the truth.

19 MR. ABOOD: Not always, your Honor.

20 THE COURT: That's true, not always.

21 MR. ABOOD: That's the area of inquiry. I
22 mean, I'll abide by your order, and if you order me
23 not to go down that path, I will make a proffer. I
24 would just like to proceed.

25 THE COURT: All right. Make the proffer.

1 MR. ABOOD: The proffer, your Honor, is that
2 Mr. Stelzer made purchases at Giorgio Armani, which
3 are all verified by the printout from JP 136, which
4 we would use to refresh Mr. Stelzer's recollection
5 as to particular transactions, that based upon that
6 course of conduct with Armani, there were
7 \$53,000-and-change in credit slips issued to
8 Mr. Stelzer.

9 There are transactions, your Honor, where on
10 day one during the use of the account, \$1,000-plus
11 of merchandise is purchased. The very next day, it
12 is returned for credit, but it was purchased on the
13 American Express card, and when it was returned, it
14 wasn't credited on the American Express card.
15 Credit slips were issued to Mr. Stelzer.

16 The documents will show, they will help
17 refresh Mr. Stelzer's recollection, that on a
18 number of occasions, he used those credit slips to
19 purchase additional items. Nevertheless, at the
20 end of the day, there is \$53,000 in credits.

21 We submit, your Honor, that that would be
22 evidence that Mr. Stelzer was using the account for
23 personal gain; that he is at risk; that he has
24 exposure with a trustee; that they could seek to
25 recover that from him; and that that would be a

1 motivation for him to color his testimony to
2 support the trustee's positions against
3 Mr. Prosser. That is our proffer, your Honor.

4 THE COURT: And he is going to testify about
5 the discharge in what capacity? How is this
6 related to Mr. Prosser's discharge issues?

7 MR. ABOOD: That's up to the trustees, your
8 Honor. We're calling him on cross-examination.
9 We're not submitting him as our witness. We're
10 simply defending against -- exploring on discovery
11 what it is that goes into his credibility, his
12 background, so that we're prepared to respond at
13 trial.

14 There is a motion pending. The Court has not
15 ruled that the exemptions proceedings are admitted
16 to the discharge cases. I think you just scheduled
17 that for hearing on January 29th, and we haven't
18 even had a chance to respond to that.

19 THE COURT: There is a response, but frankly,
20 I think it is going to be moot based on other
21 rulings that I'm going to be making, but maybe not.
22 We'll see.

23 In any event, how this relates to this
24 witness's truthfulness or untruthfulness is the
25 issue. You can't use specific instances of conduct

1 unless they are probative of truthfulness or
2 untruthfulness.

3 MR. ABOOD: It goes to motive to fabricate,
4 your Honor. That is my proffer.

5 MS. VAN VLIET: More importantly, in addition
6 to everything that you've already discussed and in
7 addition to the fact that this is yet another
8 aspect of the Virgin Islands case, which we're
9 seeing a little end-run attempted, he cannot --

10 MR. ABOOD: Your Honor, I don't even know what
11 that is all about.

12 MS. VAN VLIET: You represent the same person,
13 I mean, come on.

14 In addition to that, you can't use under
15 608(b), extrinsic evidence, which would be these
16 Giorgio Armani records, to impeach Mr. Stelzer.
17 Putting aside the fact that --

18 MR. ABOOD: That is nonsense.

19 MS. VAN VLIET: It is not nonsense.

20 MR. ABOOD: I can use anything to refresh a
21 witness's recollection.

22 MS. VAN VLIET: But unfortunately, the witness
23 has said he doesn't recall anything, number one.

24 THE COURT: Counselors, we're going to do this
25 ladylike and gentlemanly. We are not going to

1 bicker. Now, just stop it and get back to the
2 point, please, in the deposition.

3 MS. VAN VLIET: The point is, he can't use
4 this without laying the predicate that the Court
5 noted to begin with, this being the Giorgio Armani
6 records, that predicate being, if it is relevant to
7 this discharge proceeding, that there's been some
8 promise of beneficial treatment by the trustee to
9 Mr. Stelzer to, in effect, fabricate or color
10 testimony against Mr. Prosser.

11 THE COURT: I agree about the foundation.

12 Lay the foundation, Mr. Abood, and then you
13 can proceed.

14 BY MR. ABOOD:

15 **Q.** When were you terminated from employment by
16 ICC or Mr. Prosser?

17 THE COURT: Mr. Abood, I'm sorry, I can't hear
18 you.

19 MR. ABOOD: I asked Mr. Stelzer, when was he
20 terminated from employment with the ICC or
21 Mr. Prosser?

22 MR. PLATT: Objection, asked and answered.

23 BY MR. ABOOD:

24 **Q.** Do you recall?

25 **A.** Yes.

1 **Q.** When?

2 **A.** **October 2007.**

3 **Q.** Who terminated you? Do you remember who the
4 person was?

5 **A.** **Yes, I do.**

6 MR. LEE: This has been covered ad nauseam in
7 both of the depositions and at trial.

8 MR. ABOOD: It's just background in context,
9 your Honor.

10 THE COURT: It has, yes. This is just setting
11 background. This is absolutely not prejudicial to
12 anybody.

13 Mr. Abood, move it along. It has been asked
14 and answered.

15 Go ahead, Mr. Stelzer. You can answer.

16 THE WITNESS: The question was?

17 BY MR. ABOOD:

18 **Q.** Who terminated you?

19 **A.** **Byron Smyl.**

20 **Q.** At the time you were terminated, you were owed
21 some money from your employment, is that correct, for a
22 couple of weeks of work?

23 **A.** **Correct.**

24 **Q.** And it is true, is it not, that Mrs. Prosser
25 wrote you a check to cover that couple of weeks of

1 employment that you hadn't been paid by the trustee, is
2 that also correct?

3 **A.** **I don't know what you're referring to.**

4 **Q.** Did you receive a check from Mrs. Prosser
5 after you were terminated by Mr. Smyl?

6 **A.** **I'm sorry, could you ask me that question
7 again?**

8 **Q.** Did you receive a check written by
9 Mrs. Prosser's account after you were terminated by
10 Mr. Smyl?

11 **A.** **But the previous question was, did
12 Mrs. Prosser --**

13 MS. VAN VLIET: Just answer the question.

14 **A.** **Yes.**

15 **Q.** What was your understanding of what the check
16 was for?

17 **A.** **For continued services.**

18 **Q.** You mean services rendered by you after your
19 date of termination?

20 **A.** **Correct.**

21 **Q.** After your date of termination by Mr. Smyl, I
22 should say?

23 **A.** **Correct.**

24 **Q.** After that check was given to you, did you
25 continue to -- first of all, is it your testimony, sir,

1 that after you were terminated by Mr. Smyl, you
2 continued to work for the Prossers?

3 **A. I received a check from Mrs. Prosser for**
4 **Mr. Prosser, for continuing to do little things for**
5 **them.**

6 **Q.** Okay. Let me step back a second. Is it your
7 testimony that you understood you were employed by the
8 Prossers?

9 **A. No.**

10 **Q.** You understood that you were employed by one
11 of the corporations, is that your testimony, prior to
12 your being terminated by Mr. Smyl?

13 **A. I was employed by Mr. Prosser.**

14 **Q.** So did you understand that Mr. Smyl worked for
15 Mr. Prosser?

16 **A. No.**

17 **Q.** So when Mr. Smyl came out and terminated you,
18 what made you think you were being terminated by the
19 Prossers?

20 MR. LEE: Objection to form, assumes facts not
21 in evidence concerning the conduct of Mr. Smyl.
22 All Mr. Smyl has ever been shown to have done is
23 cut off his payment by the company.

24 MR. SCHOENBACH: That is not his testimony.
25 We'll rely on the record. We would like to

1 proceed.

2 THE COURT: The objection is overruled.
3 You may answer.

4 MR. LEE: We're being tag-teamed by counsel
5 now. I understood that Mr. Abood was representing
6 Mr. Prosser. Are we going to have multiple counsel
7 for each party?

8 THE COURT: No, we're not going to have
9 multiple counsel for each party. At this point,
10 Mr. Abood will ask the questions, to which you can
11 object.

12 Go ahead, Mr. Stelzer. You can answer the
13 question.

14 THE WITNESS: Please ask me the question
15 again.

16 MR. ABOOD: Read back the question.

17 (The requested portion of the record was read
18 by the court reporter.)

19 **A. I don't understand the question.**

20 BY MR. ABOOD:

21 **Q.** When Mr. Smyl terminated you, what job did you
22 think he was terminating you from?

23 **A. Working for Mr. Prosser.**

24 **Q.** Okay. But if you worked for Mr. Prosser --
25 let me ask you this. You understood that Mr. Smyl was

1 not working for Mr. Prosser, correct?

2 **A. Correct.**

3 **Q.** Did you think that when Mr. Smyl terminated
4 you, that he had the authority to terminate you from
5 your job working for Mr. Prosser?

6 **A. Yes.**

7 **Q.** Why?

8 **A. Because at the time, to my knowledge,**

9 **Mr. Smyl, using an expression I don't know the**
10 **legal term, was in charge of everything.**

11 **Mr. Prosser had been removed. I believe**

12 **Mr. Prosser had already been removed from the company,**
13 **to the best of my knowledge, as his title had been -- he**
14 **was terminated, I believe, before me. I believe that's**
15 **correct.**

16 **Q.** "He" being Mr. Prosser?

17 **A. He being Mr. Prosser.**

18 **Q.** So your understanding when Mr. Smyl terminated
19 you, was that you were being terminated from your
20 position of employment working for Mr. Prosser, is that
21 correct?

22 **A. Correct.**

23 **Q.** And if I understood what you said a few
24 minutes ago, you continued to do a few little things for
25 the Prossers after that, is that correct?

1 **A. Correct.**

2 **Q.** And Mrs. Prosser wrote you a check after you
3 were terminated by Mr. Smyl, correct?

4 **A. Correct, on the instructions of Mr. Prosser.**

5 **Q.** Okay. And your understanding was that you
6 were being paid for those other little things that you
7 had continued to do?

8 **A. I don't know if paid is the right expression.**
9 **I was given a little money and that it would allow him**
10 **to still call me and ask me some questions about things.**

11 **Q.** At the time that you were terminated by
12 Mr. Smyl, was there any outstanding payroll owed you by
13 the company or Mr. Prosser for your employment?

14 **A. The company owed me, I believe, a week or**
15 **maybe two weeks.**

16 **Q.** Wasn't there like a two-week holdback?

17 **A. It may have been a two-week holdback.**

18 **Q.** Something like that?

19 **A. Yes, something close to that.**

20 **Q.** How many times did Mrs. Prosser give you a
21 check?

22 **A. On two occasions.**

23 **Q.** When was the last occasion as you recall?

24 **A. I don't have that information in front of me.**
25 **I believe I testified to this before, to the best of my**

1 **belief, within the month, maybe within the two or three**
2 **weeks after I was terminated.**

3 **Q.** October or November, somewhere in that time
4 frame?

5 **A. I was terminated in October, no later**
6 **probably. Again, without having anything in front of**
7 **me, I would say no later than probably mid-November.**

8 **Q.** We're talking about 2007, correct?

9 **A. Yes, sir.**

10 **Q.** After mid-November 2007, you didn't do any
11 more little jobs for the Prossers, did you?

12 **A. Yes, I did.**

13 **Q.** What little jobs did you do?

14 **A. Mr. Prosser would call me.**

15 **Q.** For what?

16 **A. He called me to ask me to come by the house to**
17 **take care of some matters for him. He called me to ask**
18 **me to have coffee before my deposition, that he would**
19 **like to talk to me about my deposition.**

20 **Q.** Did you understand when he called you to talk
21 to you about your deposition, that he was calling you in
22 your capacity as an employee?

23 **A. No.**

24 **Q.** He was calling you as somebody you knew, that
25 you had a relationship with in the past, is that

1 correct? Strike that.

2 Let me ask you this. Did you expect to get
3 paid for that conversation or the time you spent talking
4 to Mr. Prosser?

5 **A. No.**

6 **Q.** Did you expect to get paid for any services or
7 any conversations that you had with Mr. Prosser after
8 mid-November 2007?

9 **A. No.**

10 **Q.** Is it fair to say that you understood your
11 employment relationship with Mr. Prosser was terminated
12 certainly as of mid-November 2007?

13 **A. October 16, I believe was the date.**

14 **Q.** And your expectation of getting compensated
15 for anything that you might do, that ended at least as
16 of mid-November 2007, is that correct?

17 **A. No. It ended October 16th.**

18 **Q.** So the checks you got from Mrs. Prosser, you
19 didn't expect to get?

20 **A. Ask the question again.**

21 **Q.** The checks that you got from Mrs. Prosser, as
22 I think you said, at Mr. Prosser's request, for the
23 things that you did post-termination by Smyl, is it your
24 testimony you didn't expect to get those checks?

25 **A. The question is a little convoluted. I**

1 **received two checks upon Mr. Prosser's request, from**
2 **Mrs. Prosser. They weren't for anything specific. They**
3 **were just two checks.**

4 MR. LEE: Your Honor, this is Jim Lee. I want
5 to object to this line of questions. For one, it
6 has nothing to do with Mr. Prosser's conduct
7 regarding discharge, but what it clearly has to do
8 with involves the basis for which the motion to
9 disqualify and for sanctions was filed against
10 Vincent & Elkins, the trustee, and me in connection
11 with the exemption proceedings, which motion is
12 currently on appeal at the District Court by
13 Mr. Prosser.

14 And their whole argument has been based upon
15 whether or not Mr. Stelzer was still in the employ
16 and, therefore, authorized to access the American
17 Express accounts.

18 This is also the basis of the litigation filed
19 in the District Court against Mr. Stelzer. It is
20 the basis of complaint filed by Mr. Prosser in the
21 West Palm Beach Police Department, for which the
22 detective has interviewed me as recently as
23 December, and it is the basis of the second amended
24 RICO complaint, which Mr. Prosser sought leave to
25 join myself, my firm, and Mr. Stuart (phonetic),

1 among others.

2 So this is a backdoor way of doing
3 inappropriate discovery that has not one thing to
4 do with Jeffrey Prosser's conduct as a debtor and
5 whether or not he is entitled to discharge, and we
6 strenuously object.

7 MS. VAN VLIET: I also object. This started
8 out as laying a predicate for questions with regard
9 to whether the trustee had promised Mr. Stelzer
10 anything beneficial in return for coloring or
11 spinning his testimony against Mr. Prosser.

12 While I didn't object to that initial
13 question, because it was not prejudicial and merely
14 background, although it had been gone into before,
15 now it seems we're way afield of that and indeed
16 going into areas that appear to be more designed
17 to, at least for Mr. Stelzer's perspective, to
18 back-door the District Court proceedings in the
19 Virgin Islands, where there are motions to dismiss.

20 THE COURT: I don't have a question before me,
21 Mr. Abood. Ask a question. But this information
22 was covered in large part at the trial before.
23 Please, let's get to something that is relevant to
24 the discharge.

25 MR. ABOOD: Your Honor, I submit that this is

1 relevant to the discharge matters. I think that
2 question of Mr. Stelzer's employment relationship
3 and his relationship with Mr. Prosser is of course
4 relevant to the discharge trial.

5 BY MR. ABOOD:

6 **Q.** When did you first meet Mr. Lee?

7 MR. LEE: How does this have anything to do
8 with discharge, your Honor?

9 THE COURT: I don't know.

10 What is the relevance?

11 MR. ABOOD: It goes to the conduct of the
12 parties in the case. It goes to Mr. Stelzer's
13 testimony. It goes to documents that have been
14 submitted to the Court.

15 THE COURT: What is the relevance to the
16 discharge trial? It can go to a lot of things that
17 have already been produced into evidence.

18 If you're going to lay a foundation for
19 alleged improper conduct by the trustee in
20 promising Mr. Stelzer some benefits, then you can
21 pursue it. Otherwise, it is not relevant. If
22 that's where you're going, Mr. Abood, then get
23 there.

24 MR. ABOOD: I just asked when he first met
25 him.

1 THE COURT: It has nothing to do with
2 Mr. Prosser's discharge unless you're going to
3 substantiate some motivation by this witness to act
4 favorably on behalf of the trustees in this case as
5 opposed to on behalf of Mr. Prosser. If that's
6 where you're going, get to the point. I want an
7 assurance that that's where you're headed. If it
8 is related to something else, it is not relevant.

9 MR. LEE: It was also covered in the
10 deposition and at trial.

11 MR. ABOOD: It wasn't covered in the
12 deposition.

13 MR. LEE: It absolutely is disclosed in the
14 deposition.

15 THE COURT: Give me transcript cites if that's
16 the case.

17 MR. ABOOD: Your Honor, I'll move on.

18 BY MR. ABOOD:

19 **Q.** Did you ever discuss with Mr. Lee providing
20 Mr. Prosser's --

21 THE COURT: Pardon me. I'm making a ruling.

22 Mr. Stelzer, you may answer the question if
23 you recall, unless Mr. Abood wishes to withdraw it.
24 If he does, he can say so.

25 MR. ABOOD: Thank you.

1 BY MR. ABOOD:

2 **Q.** When did you first meet Mr. Lee?

3 **A. Sometime after I was dismissed from my job.**

4 **Q.** On or about December of 2007, does that ring a
5 bell?

6 **A. I can't recall now two years later, the exact
7 date.**

8 **Q.** If Mr. Lee represents that it was on or about
9 December 2007, would you disagree with that?

10 **A. I probably wouldn't disagree with Mr. Lee's
11 recollection of the date.**

12 **Q.** At some point in time, did you discuss
13 providing Mr. Prosser's American Express account records
14 to Mr. Lee?

15 MS. VAN VLIET: Objection. Your Honor, this
16 goes beyond the scope of the discharge proceeding.
17 It is obviously and clearly calculated to go into
18 matters that have been raised in the District Court
19 proceeding in the Virgin Islands. It is improper
20 under 608, not 609, it's not a conviction, and it
21 is improper under --

22 THE COURT: Move on, Mr. Abood, to something
23 that is relevant to the discharge. What Mr. Lee
24 and Mr. Stelzer discussed about transferring
25 documents between themselves is not related to

1 Mr. Prosser's discharge. That's sustained.

2 MR. ABOOD: May I have a moment, your Honor?
3 I need to think about what you just ruled.

4 THE COURT: Yes. I'll terminate the call and
5 call back in ten minutes, 10 to 11.

6 (A short break was taken.)

7 THE COURT: Proceed.

8 BY MR. ABOOD:

9 **Q.** Can you tell us what, if any, conversations
10 you had with anyone about your providing any testimony
11 in the Prosser or the ICC proceedings?

12 MS. VAN VLIET: I'll object. Obviously,
13 you're excluding any conversations he may have had
14 with myself or Mr. Battista?

15 MR. ABOOD: No.

16 MS. VAN VLIET: Well, then I'll object and
17 instruct the witness not to answer on the grounds
18 of attorney/client privilege.

19 MR. ABOOD: For the moment, yes.

20 THE WITNESS: The question is?

21 BY MR. ABOOD:

22 **Q.** What conversations, if any, did you have with
23 anybody other than your current counsel or Mr. Battista,
24 about providing testimony or any documents, evidence,
25 whatsoever, relative to Mr. Prosser or the ICC

1 proceedings?

2 MS. VAN VLIET: Your Honor, that question I'll
3 object to, insofar as it relates to conversations
4 relating to the American Express records, which
5 were the subject of the questions that were asked
6 previously before the break, in which the Court
7 sustained the objection to.

8 Other documents that have not been testified
9 to previously, I do not have an objection.

10 MR. ABOOD: For the record, those documents
11 have never been testified to.

12 THE COURT: What I understood you were trying
13 to show the witness were documents that apparently
14 are records of Armani, correct? How can this
15 witness verify records of Armani?

16 MR. ABOOD: That was past.

17 THE COURT: You haven't asked him a question
18 that says, does he have a recollection? And I
19 apologize, if I'm misunderstanding this, because I
20 don't have them here in front of me. I don't
21 understand how this witness can testify to those
22 documents.

23 MR. ABOOD: I didn't ask him to. I just asked
24 him what, if any, conversations he had with anybody
25 about him providing testimony or evidence in these

1 or the related corporate proceedings.

2 THE COURT: That's a very broad question.

3 MR. ABOOD: Yes, it is very broad.

4 MR. LEE: I object because a lot of this has
5 been covered in his deposition and his trial
6 previously and also because, with respect to the
7 American Express records that were accessed by
8 Mr. Stelzer, they were the subject of the motion to
9 disqualify, which is now on appeal, it is not
10 within the scope of the discharge. It cannot be
11 within the scope of the discharge because of the
12 fact Mr. Prosser has already taken it up on appeal.

13 THE COURT: I don't know whether it can be the
14 scope of a trial that hasn't taken place, but it
15 doesn't seem to be very relevant to Mr. Prosser's
16 activities concerning the discharge.

17 With respect to this conversation issue, the
18 witness may answer the question, obviously not
19 answering with respect to conversations with his
20 counsel. This is not to invade the attorney/client
21 privilege, and we'll see where it goes from there.

22 You may answer, Mr. Stelzer.

23 THE WITNESS: Please read the question back.

24 (The requested portion of the record was read
25 by the court reporter.)

1 **A. I was told at some point there could be a**
2 **deposition that I might be called to testify at or to**
3 **speak at. I was to be deposed.**

4 **Q.** Who told you that?

5 **A. Jim Lee.**

6 **Q.** When?

7 **A. Sometime after we initially met.**

8 **Q.** And you recall the deposition that you gave in
9 February '08?

10 **A. The deposition given in West Palm Beach at the**
11 **Marriott hotel? Yes, sir.**

12 **Q.** Have you given more than one deposition in
13 these cases?

14 **A. No, sir.**

15 MR. LEE: Doing it right now.

16 **Q.** Other than today.

17 **A. Prior to today, only one deposition.**

18 **Q.** So it was sometime between your initial
19 meeting with Mr. Lee and your February '08 deposition,
20 you had another conversation with Mr. Lee about the
21 possibility of your having to give a deposition, is that
22 correct?

23 **A. Yes.**

24 **Q.** Did you discuss with Mr. Lee the contents or
25 the subject matter of the deposition?

1 **A. No.**

2 **Q.** Other than your conversation with Mr. Lee,
3 have you spoken to anyone else about providing
4 testimony -- again, other than your current counsel and
5 Mr. Battista, anyone else about your providing your
6 testimony or documents or any other evidence in this
7 case, or these cases, I should say?

8 **A. No, pretty broad question. No.**

9 **Q.** Did you speak to anyone that you understood
10 was acting on behalf of the trustees prior to your
11 coming here today?

12 **A. Can you ask that again?**

13 **Q.** Did you speak to anyone that you understood
14 was acting on behalf of either, let me change the
15 question, either the trustees or Greenlight or RTFC, any
16 of the people here at the table, the parties here at the
17 table, did you talk to anybody other than your lawyers,
18 about your testimony here today?

19 **A. No.**

20 **Q.** Did you look at any documents in preparation
21 for your testimony here today?

22 **A. Only my own transcript of my deposition.**

23 **Q.** Who gave that to you?

24 **A. I've had that, and also my court testimony.**

25 **Q.** The transcript from your testimony?

1 **A. The transcript of my court testimony.**
 2 **Q.** That testimony was in June of 2008?
 3 **A. Is that the correct date? I'm just asking.**
 4 **Yes.**
 5 **Q.** So as I understand your testimony, other than
 6 your initial conversation with Mr. Lee on or about
 7 December '07, and some conversation with Mr. Lee between
 8 December of '07, and your deposition of February of '08,
 9 you had no other conversations with Mr. Lee, is that
 10 correct?
 11 **A. With Mr. Lee?**
 12 **Q.** With Mr. Lee.
 13 **A. We met a couple of times, but no other**
 14 **conversation about the deposition, if that is what your**
 15 **question was.**
 16 **Q.** No, my question isn't just about the
 17 deposition. It is about providing any testimony,
 18 documents, any evidence whatsoever in these proceedings.
 19 **A. No, sir.**
 20 **Q.** You had a couple of meetings. What meetings
 21 are you recalling now?
 22 **A. I get confused.**
 23 **Q.** Take your time.
 24 **A. I was introduced to Mr. Lee. We spoke a**
 25 **couple of times about -- general questions about my**

1 **employment period, and then he informed me at some point**
 2 **of possibly another meeting or just another**
 3 **get-together, that there was a possibility I would be**
 4 **called for a deposition, and then at some point, I did**
 5 **get a phone call saying yes, there was a deposition.**
 6 **Q.** After that did you have any meetings or
 7 conversations with Mr. Lee, after your deposition?
 8 **A. No, sir. I'm sorry, ask the question again.**
 9 **Q.** After your deposition, February of 2008, after
 10 that point in time, have you had any conversations with
 11 Mr. Lee?
 12 **A. Yes.**
 13 **Q.** When?
 14 **A. I can't give you the date, in regard to my**
 15 **court appearance in Saint Thomas.**
 16 **Q.** What did you discuss at that time?
 17 **A. He told me there was a possibility that I**
 18 **would be called for a court appearance in Saint Thomas,**
 19 **that he wasn't certain and he would let me know.**
 20 **Q.** Did you talk about anything else?
 21 **A. No, sir.**
 22 **Q.** Did you talk about the subject matter of your
 23 testimony?
 24 **A. No, sir.**
 25 **Q.** Did you talk about whether you would be

1 presenting any documents in support of your testimony?
 2 **A. No, sir.**
 3 **Q.** Did you talk about supplying him with any
 4 other documents whatsoever?
 5 MS. VAN VLIET: Your Honor, at this point, I'm
 6 going to object. Again, these are well beyond
 7 background questions to the extent that it seeks to
 8 get information about the American Express
 9 record --
 10 MR. ABOOD: Your Honor, can we have this
 11 discussion outside the presence of the witness?
 12 Obviously this is a speaking objection.
 13 THE COURT: Yes, but this is the deposition
 14 that you called, and I'm not sure what is improper
 15 about the speaking objection. Is there something
 16 you want to proffer that you don't want the witness
 17 to hear?
 18 MR. ABOOD: Yes. This whole argument, I don't
 19 want the witness to hear. Unless if she wants to
 20 make an objection, and you rule not to make a
 21 narrative response, I'm asking this be taken
 22 outside the presence of the witness.
 23 THE COURT: I'm not familiar with that kind of
 24 a concept in a deposition, and I will consider it
 25 if there are other objections.

1 MR. ABOOD: May I suggest that --
 2 THE COURT: -- unless there was a foundation
 3 laid, and so far, there hasn't been one. To the
 4 extent that there's an issue that comes up about
 5 the American Express records, you have to
 6 substantiate what you told me you were going to
 7 substantiate; which is, the witness's testimony is
 8 compromised. I haven't heard any of that yet.
 9 MR. ABOOD: Can we do this outside the
 10 presence of the witness? As the Court is well
 11 aware, during depositions, there are to be no
 12 speaking objections, just like in a courtroom. And
 13 if objections are made, relevancy, materiality are
 14 never waived, so they can always be brought up
 15 later. The objections are simply to form.
 16 And the procedure is, in front of a witness
 17 anyway, you simply say "objection, form," and that
 18 would put me, as the questioner, on notice as to
 19 maybe I should correct my questions or I may not.
 20 And unless it is privileged, there is no basis to
 21 instruct a witness not to answer.
 22 So that's the rules on deposition, and the
 23 case I cited to you earlier clearly spells that
 24 out. So with regard to the fact that we're getting
 25 into other things, I would like to --

1 THE COURT: I haven't had the chance to read
2 any cases you cited to me, since you cited them to
3 me in the course of the deposition, and I haven't
4 yet had an opportunity to go look. Do I need a
5 recess to go read that case? I don't know what the
6 case is about. I haven't read it.

7 MR. ABOOD: It is about objections during
8 depositions.

9 THE COURT: If you want me to read it, then I
10 need a recess.

11 MR. ABOOD: No, your Honor. My question is,
12 can we argue this outside the presence of the
13 witness?

14 THE COURT: I'll do it on this occasion. I'm
15 not doing it again. If you have an objection, make
16 it, and then I will make a ruling. This argument
17 is going on on infinitum for no point. This is
18 supposed to be a limited deposition to get beyond
19 the testimony that the witness has already given,
20 and so far it hasn't done that.

21 So please, if you would get to something
22 relevant to the discharge, we wouldn't have these
23 long discussions. We wouldn't be having these
24 issues.

25 This is not a deposition for any other action

1 that this witness and Mr. Prosser may be involved
2 in. It is only for this discharge proceeding. It
3 is to supplement whatever evidence is already of
4 the record in the trials that have taken place
5 before me and for no other purpose. So if there's
6 another purpose, go do the deposition notice in
7 those cases and not in this one.

8 Ask Mr. Stelzer to be excused for one moment
9 so that I can hear whatever this argument is.

10 (The Witness left the room.)

11 MS. VAN VLIET: May the record reflect the
12 witness is out of the room.

13 Your Honor, what I was about to say, to the
14 extent that these questions deal with the provision
15 or discussion about the American Express records, I
16 object based on the Court's prior ruling.

17 THE COURT: I don't know what prior ruling.

18 MS. VAN VLIET: I'm sorry. I'm referring to
19 the one you made before the break, which said that
20 the discussion of Mr. Stelzer's provision of the
21 American Express records and the whole background
22 of that relating to his access to them, which is
23 the subject of the case in the Virgin Islands,
24 apparently some motion for sanctions, and which has
25 been discussed as being irrelevant to the discharge

1 proceedings is, I believe the specific language you
2 used prior to the break, is foreclosed, in terms of
3 questioning in this proceeding. That was the
4 ruling I was referring to.

5 THE COURT: Unless and until there is a
6 foundation made, okay.

7 Mr. Abood, what is it that you want to
8 discuss?

9 MR. LEE: Your Honor, if I could, so Mr. Abood
10 could respond to all of us at once, it might be
11 more efficient. It dovetails with what
12 Ms. Van Vliet just argued; which is, there has not
13 been a single question in this whole line of
14 questioning since the break, that has anything to
15 do with the conduct of Mr. Prosser; which is, what
16 is the subject of discharge?

17 Everything has had to do with the conduct of
18 Mr. Stelzer and his conduct in connection with
19 Mr. Lee.

20 We know that Mr. Prosser filed a motion to
21 disqualify for sanctions with respect to that very
22 conduct, which the Court heard and which is now the
23 subject of an appeal. We know that that is not the
24 basis of anything claimed with respect to the
25 objection to discharge by any of the parties.

1 We also know, as Ms. Van Vliet indicated, that
2 there is a separate proceeding by Mr. Prosser
3 against Mr. Stelzer in the United States Virgin
4 Islands Court, which deals with that subject
5 matter, and it is also the subject of a proposed
6 second amended complaint in the RICO action.

7 So that, coupled with the statement of
8 Mr. Prosser's counsel in his paper filed yesterday
9 in response to the motion to dismiss, that they
10 would supplement using the deposition testimony of
11 Mr. Stelzer today, shows that the purpose of this
12 discovery is not for discharge, but is to deal with
13 unrelated litigation, and that is the basis of our
14 objection. That's not what the Court permitted
15 this deposition to proceed on.

16 MR. SCHOENBACH: Your Honor, this is
17 Mr. Schoenbach, if I may. I can very well
18 understand that only one lawyer --

19 THE COURT: I thought Mr. Abood was
20 representing Mr. Prosser for this?

21 MS. VAN VLIET: Double-teaming.

22 MR. SCHOENBACH: Mr. Abood and I both
23 represent Mr. Prosser, and Mr. Abood is conducting
24 the examination of the witness. What we're doing
25 here, it has nothing to do with the examination of

1 the witness, Judge. He has left the room. This is
2 simply making argument to your Honor.

3 THE COURT: Well, I understood that generally
4 speaking, the persons who were making the
5 objections and responding to them, because this is
6 a response to an objection, as I understand it,
7 should come from Mr. Abood.

8 Mr. Schoenbach, because there is no jury here
9 and this is not the time for fact finding, I'm
10 going to hear you on this occasion, but talk to
11 Mr. Abood, and do it the way that the rules suggest
12 it should be done, which is the person asking
13 questions should be making the objections, but I'll
14 hear you now, because I'm not really sure what this
15 is all about anyway.

16 MR. SCHOENBACH: Judge, on behalf of
17 Mr. Prosser, we wish to inquire about the Amex
18 records, specifically the two American Express
19 records that belonged to Mr. Prosser that we
20 believe and have filed papers accordingly,
21 Mr. Stelzer stole.

22 THE COURT: Filed papers where?

23 MR. SCHOENBACH: The motion for sanctions that
24 we filed, that was the subject --

25 THE COURT: This is a discharge proceeding.

1 If you want discovery in those trials or those
2 matters, go to those courts and get the
3 depositions. I'm not going into that issue for
4 that reason now.

5 MR. SCHOENBACH: Your Honor, if I may be
6 heard?

7 THE COURT: I have heard you.

8 MR. SCHOENBACH: I would like to finish, if I
9 may, so there is a complete record. We assert that
10 this conduct goes to the very reasons why
11 Mr. Stelzer would testify the way he has. It goes
12 to his motive and bias to testifying in the
13 discharge proceeding as well as prior proceedings.

14 THE COURT: I told Mr. Abood to lay a
15 foundation, and so far, I don't have one. There
16 are all kinds of possibilities, assuming that the
17 facts that Mr. Abood put of record in his proffer
18 before are correct, and I don't know anything about
19 the facts.

20 Assuming they're correct, there are all kinds
21 of explanations for why things can happen, and
22 Mr. Abood's is plausible. There could be other
23 plausible explanations too. He has to lay a
24 foundation that indicates that somehow this witness
25 has been compromised, my word, not his, and that is

1 what I have been attempting to give him lead to do,
2 and it hasn't happened so far.

3 MR. SCHOENBACH: Also, while we're on the
4 record, to draw your attention to this, and I'm sure
5 it will come up, Mr. Abood will be inquiring of
6 Mr. Stelzer about conversations concerning what
7 I'll call the American Express issue, between
8 Mr. Stelzer, Mr. Lee, and Mr. Battista, who was
9 Mr. Stelzer's attorney at the time. The reason --

10 THE COURT: How does it relate to
11 Mr. Prosser's discharge?

12 MR. SCHOENBACH: It goes to the motive for
13 Mr. Stelzer to testify the way he has. It goes to
14 motive and bias and credibility. If Mr. Stelzer --

15 THE COURT: The issue goes to the motive and
16 credibility if the witness has somehow or other
17 been, in my words, compromised, which is what
18 Mr. Abood started his proffer with. I have been
19 giving him latitude to permit him to substantiate
20 that there has been either some promise of action
21 or inaction or monetary gain, which is what he said
22 he was going to get to, and it hasn't happened.

23 If he lays that foundation, he can get into
24 this. But it is not relevant to the discharge and
25 this witness's credibility unless he substantiates

1 that there is in fact some evidence or some motive
2 for bias, and it hasn't happened yet.

3 To the extent that it is relevant in some
4 other action somewhere else, that is not before me.
5 You go to those courts and get depositions.

6 MR. SCHOENBACH: Judge, we agree that it has
7 nothing to do with this proceeding, and that's not
8 why we seek to offer. Assuming that the foundation
9 is laid, that there is some issue as to motive or
10 bias or promise of some reward, there will be a
11 question concerning conversations that Mr. Stelzer
12 had between he and his attorney.

13 We assert that Mr. Stelzer has waived the
14 attorney/client privilege, because in the motion
15 that we brought last October, Mr. Battista, who was
16 then representing Mr. Stelzer, sent an e-mail to
17 Jim Lee. That e-mail then was offered in the
18 proceeding to support Mr. Lee's position and
19 presumably Mr. Stelzer's position, that no
20 wrongdoing occurred.

21 The specific e-mail was from Paul Battista.
22 It was sent on Tuesday, December 2, 2008, to Jim
23 Lee. It was filed in this case on October 9, 2008,
24 entered the same day. It is under Case No. 3:06 BK
25 30009. It is Document No. 2156-2. It is page 18

1 of 26. It is labeled Exhibit B. It is a fairly
2 short e-mail, but it says as follows --
3 THE COURT: Wait. I need you to back up. It
4 is filed where?

5 MR. SCHOENBACH: It is filed in Case No. 3:06
6 BK 30009 with your initials. It is Document
7 2156-2, filed on October 9th of '08, entered the
8 same day, and it is described as Exhibit A, Part 2.
9 It is page 18 of 26. I'm reading on the header
10 across the top.

11 THE COURT: Who filed this?

12 MR. SCHOENBACH: I believe Mr. Lee did as part
13 of his response to our motion. It is labeled as
14 Exhibit B. If it makes it easier, we could just
15 fax it to you now, Judge.

16 THE COURT: The witness isn't there. You can
17 tell me what it is that this is about.

18 MR. SCHOENBACH: Sure. It says, and I'm
19 quoting:

20 Jim, per my discussions with Arthur last
21 night, he said the following: One, he had an Amex
22 black card in his name, which was an additional
23 card on Prosser's black card. Two, he was an
24 authorized user on the account. Three, he had his
25 own separate log-in and password on the account,

1 which included access to all of the cards on the
2 account including Prosser's.

3 Four, the card was turned back to Prosser when
4 he left the employment. Five, Prosser apparently
5 never took him off the account, as he always has
6 had access through his own personal log-in and
7 password since then. Six, he checks the account
8 periodically because he doesn't trust Prosser and
9 thinks that he may be charging stuff under Arthur's
10 name (the cardholder is liable.)

11 He is also concerned about what Prosser might
12 do and Arthur charged \$700,000 per year for Prosser
13 on the card. Seven, even when Arthur opens his own
14 personal gold card on Amex on line, a black card
15 account pops up and can be accessed.

16 Please let me know how things go today.
17 Thanks, Paul.

18 THE COURT: And Mr. Stelzer authorized this
19 communication?

20 MR. SCHOENBACH: I have no idea if Mr. Stelzer
21 authorized it or not. It is a statement, however,
22 by Mr. Stelzer's representative made during the
23 course of the representation. It would clearly be
24 admissible under 801(d)(2)(A) as a statement.

25 THE COURT: It wouldn't waive the

1 attorney/client privilege if Mr. Stelzer authorized
2 it, and that's what this started out at.

3 MR. ABOOD: No, Judge, if I may. It does
4 waive the attorney/client privilege. Whether or
5 not Mr. Stelzer authorized it, it clearly waives
6 the privilege. Whether Mr. Stelzer has an action
7 against Mr. Battista for waiving Mr. Stelzer's
8 privilege, that is a different issue.

9 But the privilege is waived when the agent for
10 the client speaks on his behalf and makes
11 admissions about what --

12 THE COURT: Mr. Schoenbach, in any event, the
13 issue is that, all this says is that he charged
14 \$700,000 a year on the account for Mr. Prosser, and
15 then his own account, apparently, still shows
16 charges that are coming forward. What does that
17 have to do with Mr. Prosser's discharge?

18 You folks are trying to do something, I don't
19 know what, for some other litigation. This is not
20 related to Mr. Prosser's conduct and Mr. Prosser's
21 discharge.

22 I'm at a loss. I don't even know if the
23 trustees are going to call or anybody is going to
24 call Mr. Stelzer in this case. So to the extent
25 that this is impeachment, it may or may not be

1 relevant to something Mr. Stelzer has to say. I'm
2 at a loss to understand how this is related to the
3 discharge.

4 MR. LEE: I agree. Here is what is more
5 troubling, the very document that Mr. Schoenbach
6 just read from was part of the record in the motion
7 to disqualify sanctions and to dismiss in the
8 exemptions proceeding that we argued in October a
9 year ago.

10 Mr. Prosser has appealed that ruling. The
11 Court denied that motion, and Mr. Prosser currently
12 has a pending appeal of that ruling. And now in
13 the guise of a discharge action, he is attempting
14 to do discovery concerning Mr. Stelzer's conduct
15 and my conduct that is directly covered by that
16 motion now on appeal to the District Court.

17 Nothing could be more inappropriate. This
18 Court, in fact, no longer has jurisdiction with
19 respect to that motion. It is on appeal. And it
20 is highly inappropriate to try a backdoor discovery
21 related to that motion. That was already ruled on
22 by this Court in this matter.

23 MS. VAN VLIET: And on another related -- and
24 I know I've said this, but this is precisely what
25 the case is about in the District Court in the

1 Virgin Islands, and I note that Mr. Schoenbach,
2 when he was making his argument previously, perhaps
3 by a manner of a Freudian slip, acknowledged that
4 this line of questioning had, and I quote, nothing
5 to do with this case, being the one that we're in
6 on now.

7 MR. SCHOENBACH: Judge, this has to go to the
8 extent that the person who claims that
9 Mr. Prosser -- let me rephrase this.

10 The trustee has an obligation at the discharge
11 proceeding to prove certain facts, bad faith, if
12 you will, by Mr. Prosser. We understand that part
13 of the evidence adducing that bad faith on
14 Mr. Prosser's part, will come from this witness.
15 If it doesn't, then this is all a waste of time and
16 we need not be here.

17 But I don't have a representation by the
18 trustee, the 11 or the 7 or any other party, that
19 Mr. Stelzer or his prior testimony will not be
20 admitted.

21 Now, if they wish to do that, we can end this
22 right now. But hearing silence, I suspect that
23 Mr. Stelzer will be a witness. Whether it is
24 through testimony, live testimony, deposition
25 testimony, or prior deposition or trial testimony,

1 he is going to be a witness, and we have every
2 right as representatives of Mr. Prosser to attack
3 this witness's credibility.

4 THE COURT: You do to the extent that it is
5 relevant and hasn't been done before. If it is
6 already part of the record, I'm not doing it again.

7 MR. SCHOENBACH: I hear you, and, Judge, we
8 have never inquired of Mr. Stelzer concerning the
9 American Express records, because --

10 THE COURT: You had the opportunity to do
11 it --

12 MR. SCHOENBACH: No, Judge.

13 THE COURT: -- because this was an issue in
14 the exemptions or turnover, one or the other of
15 these trials, I don't recall, where Mr. Stelzer
16 testified. He was subject to cross-examination.

17 And American Express records were discussed in
18 that trial, so I'm still confused as to how this is
19 related to the discharge.

20 MR. SCHOENBACH: Let me try and clarify this
21 for your Honor. Mr. Stelzer testified in the
22 exemptions proceeding in early June of 2008. These
23 documents concerning the American Express records
24 in terms of, and let me be specific, they are the
25 Jeff Prosser financial records of April and May of

1 2008, were never offered in court during the
2 exemptions proceeding, not these records.

3 THE COURT: Testified in June of '08?

4 MR. SCHOENBACH: In fact, I believe it was the
5 week of June 9th of '08.

6 MR. ABOOD: Clarify what records you're
7 talking about.

8 MR. PLATT: You're wrong.

9 MR. SCHOENBACH: I'm talking about only the
10 eight pages, which are four pages of American
11 Express records of Mr. Prosser for April of '08 and
12 May of '08.

13 MR. LEE: In February of '08, Mr. Stelzer
14 testified in his deposition that he monitored the
15 American Express card and the activity on that
16 card. Mr. Prosser's lawyers were present, chose
17 not to examine him on the topic at that time.

18 I can give the Court the cite to that
19 deposition transcript, if the Court --

20 MS. VAN VLIET: Actually, Judge, the testimony
21 about monitoring the American Express records is at
22 page 205 of the deposition, lines 18 through 22.

23 Where Mr. Prosser's counsel says she has no
24 cross-examination on anything Mr. Stelzer said, is
25 at page 239, lines 16 through 21.

1 MR. SCHOENBACH: Let me clarify something.

2 MR. LEE: I want to finish, please, your
3 Honor. Then as part of the proposed potential
4 exhibits that could be used with respect to the
5 exemptions trial, all those statements were
6 included, and you will recall that they were
7 included in the records prior to the start of trial
8 in June. Then Mr. Prosser testified.

9 And then in August, at the start of the second
10 proceeding, they filed a motion to disqualify based
11 on those records. So they again chose not to
12 examine Mr. Stelzer even though they had possession
13 of those records at that time.

14 But most importantly, your Honor, those are
15 the subject of other proceedings, specifically the
16 motion to disqualify me and to dismiss, which is on
17 appeal.

18 THE COURT: It may be, Mr. Lee, but the issue
19 is, with respect to the discharge, isn't on appeal,
20 and if they're relevant to that information, they
21 can be pursued if somebody is going to call
22 Stelzer.

23 What I'm having difficulty seeing is how this
24 is relevant to the discharge proceeding, and I'm
25 still not getting it. If somebody could please

1 explain that to me, that would be helpful.
 2 MR. LEE: That was what I was trying to
 3 connect to next. With respect to the discharge
 4 where you're talking about the post-petition
 5 conduct of Mr. Prosser and whether or not it was in
 6 bad faith, then what Mr. Stelzer or I did post
 7 petition is not germane to it. That was the last
 8 step I was trying to make to it.

9 THE COURT: The point that Mr. Schoenbach and
 10 Mr. Abood are trying to make, that I haven't heard
 11 a foundation yet, is that somehow Mr. Stelzer may
 12 have been -- again, I'm using the word
 13 "compromised" as a shorthand, I don't mean to be
 14 making that as finding, but I think you all
 15 understand what I'm saying, that he may have some
 16 evidence of bias or reason to be biased in favor of
 17 the trustees and against Mr. Prosser, because of
 18 some relationship, some conversation, some deal
 19 that has been struck with the trustee.

20 There are, however, the RTFC, the Chapter 7
 21 trustee, who are also parties who have their own
 22 separate causes of action, and I have heard nothing
 23 about how this may affect Mr. Stelzer's testimony
 24 with respect to them.

25 I have an offer, which so far hasn't been

1 contested by the Chapter 7 trustee's counsel, that
 2 says that he, the Chapter 7 trustee, hasn't even
 3 spoken to Mr. Stelzer other than through the trial
 4 proceedings themselves, and I haven't heard from
 5 the RTFC with respect to that issue.

6 I am still at a loss as to how this is
 7 relevant to the discharge proceeding. But if it is
 8 relevant as to credibility, it could be pursued.
 9 I'm having trouble seeing how it is relevant,
 10 because -- and I understand the documents that they
 11 are looking at, these are not records of
 12 Mr. Stelzer, and I don't see how he is going to be
 13 able to authenticate or deal with records of
 14 another enterprise that are not his records, and no
 15 one has made any of these links.

16 I'm going back to what I said before, and you
 17 folks are now bound to a half hour for the
 18 deposition, so you may want to get something
 19 relevant to the discharge on the record, because so
 20 far, I'm not seeing much, that if there is a
 21 foundation laid, it can be pursued. Until there is
 22 a foundation laid, it is not going to be pursued.

23 MR. PLATT: Your Honor, Mark Platt for the
 24 RTFC. RTFC has had no contact with Mr. Stelzer
 25 other than the contact of his deposition and his

1 trial testimony here today in this second,
 2 repetitive deposition.

3 MS. VAN VLIET: Based on the Court's ruling,
 4 may I go get the witness?

5 MR. ABOOD: There is no ruling.

6 MR. SCHOENBACH: Judge, Mr. Schoenbach again.
 7 Can I just clarify one issue?

8 THE COURT: Yes.

9 MR. SCHOENBACH: Ms. Van Vliet read correctly
 10 from the transcript of the deposition regarding the
 11 American Express records, but that deposition
 12 occurred in February '08. The records that we are
 13 discussing, the records that Mr. Abood wishes to
 14 inquire, were generated in April and May of '08,
 15 and thereafter provided by Mr. Stelzer to Mr. Lee
 16 sometime after that, presumably in late May or
 17 early June of '08.

18 THE COURT: And they were part of the trial
 19 testimony as I recall.

20 MR. SCHOENBACH: No, Judge.

21 THE COURT: Now, whether they came into
 22 evidence or not, I don't remember, but I do
 23 remember having a discussion specifically about
 24 those.

25 MR. SCHOENBACH: And your Honor kept them out.

1 THE COURT: Well, then they were kept out.
 2 How do they have any relevance to Mr. Prosser's
 3 post-petition conduct?

4 MR. SCHOENBACH: As I said, this witness
 5 presumably will accuse Mr. Prosser of wrongdoing,
 6 something that your Honor might want to consider in
 7 determining whether Mr. Prosser should be granted
 8 his discharge.

9 The fact that this witness may have committed
 10 a crime is something that your Honor should
 11 consider. Whether your Honor considers it and
 12 rejects it --

13 THE COURT: Mr. Schoenbach, those are wild
 14 leaps. The testimony was, at the various
 15 proceedings -- and again, I apologize, I can't say
 16 which one, because I don't have transcripts in
 17 front of me here. The testimony indicates that
 18 Mr. Stelzer would return items for Mr. Prosser.
 19 Sometimes he would get credit slips. Sometimes
 20 there were other means --

21 MR. ABOOD: We're not talking about that,
 22 Judge.

23 THE COURT: Mr. Abood's comment was that the
 24 facts are going to show that Mr. Stelzer ended up
 25 with \$53,000 that should have been Mr. Prosser's.

1 But Mr. Stelzer has already testified about the
2 process by which he either got credit slips and
3 sometimes used credit slips to purchase other items
4 and sometimes didn't, and there were a variety of
5 instances and occasions on which different
6 companies treated things differently. I can't sit
7 here without the transcript and --

8 MR. SCHOENBACH: All of that is correct, your
9 Honor, but we have moved on from that. We wish to
10 focus on the American Express records, specifically
11 what we assert is the unauthorized downloading,
12 printing, and providing of Mr. Prosser's financial
13 records, the American Express records for these two
14 months, to the trustee in bankruptcy.

15 THE COURT: That's the issue that is on
16 appeal. I don't think I have any jurisdiction with
17 respect to that at this point. If I need to defer
18 Mr. Stelzer's testimony until there's a ruling on
19 appeal and I can find out whether or not it is
20 going to be determined to be relevant here, I will
21 do that. I will defer it.

22 That discovery is apparently relevant to some
23 other proceeding that is not before me. It is very
24 attenuated with respect to this proceeding, other
25 than that it may affect Mr. Stelzer's credibility

1 to the extent that Mr. Stelzer's credibility is
2 not already attacked through various means.

3 MR. SCHOENBACH: Your Honor, if I may. I
4 agree with you that it obviously relates to another
5 proceeding. That is a proceeding against Mr. Lee,
6 not against Mr. Stelzer.

7 MS. VAN VLIET: That is precisely --

8 MR. SCHOENBACH: Wait. Mr. Stelzer is an
9 active participant in that, but the motion that is
10 on appeal seeks to sanction Mr. Lee and his firm.

11 THE COURT: And there is also a civil suit
12 pending against Mr. Stelzer, apparently for the
13 same alleged transaction.

14 MS. VAN VLIET: Precisely the same.

15 THE COURT: I am not permitting this inquiry
16 at this time. If it is necessary to defer a
17 portion or all of Mr. Stelzer's testimony to allow
18 this to take place later, after there are rulings
19 in those proceedings, that's what I will do. But I
20 am not opening up discovery for unrelated
21 proceedings in this matter.

22 Go to those courts and get the deposition
23 subpoenas or whatever subpoenas you need. I am not
24 opening it up here, when I think it is very
25 attenuated to the discharge issues.

1 Mr. Stelzer's credibility has been attacked
2 every which way, perhaps not with respect to this
3 specific issue. Somebody will have to point me to
4 the transcript, I don't know.

5 I've heard the testimony. I've heard the
6 proffer. I understand what you're attempting to
7 do. It seems to me it is more relevant to
8 proceedings that are not before me than the
9 proceedings that are before me.

10 As I said, if I need to defer anything to do
11 with Mr. Stelzer or only a portion of things to do
12 with Mr. Stelzer until a later date, I'll do that.
13 You folks can argue to me which, if any, portions
14 of Mr. Stelzer's testimony, however it is going to
15 come in, that I should hear, subject to whatever
16 period of deferral and whatever deference should be
17 given to reopening this issue at a later date.

18 Now, move on to something else. You have 25
19 minutes.

20 MR. SCHOENBACH: Judge, I appreciate that.
21 Thank you. My only concern is that in three weeks,
22 we have a trial before your Honor, and I don't know
23 that the other proceedings, particularly the
24 appeal, will have been decided; so that, if
25 Mr. Stelzer's testimony has to be delayed because

1 of this issue regarding Mr. Stelzer's credibility
2 vis-a-vis Mr. Prosser's American Express record,
3 then that is fine with us, and we'll defer on the
4 trial issues as well.

5 THE COURT: Whether I have to defer some or
6 all, I said, would be the subject of your
7 appropriate motions. This issue, I am not going to
8 hear now. I am foreclosing this line of inquiry,
9 because it seems to me that it is relevant to two
10 other matters that are pending in other courts and
11 is discovery intended to get to information in
12 those cases that are not before me and not to the
13 discharge issue.

14 Impeaching the witness's credibility, number
15 one, even with respect to these alleged bad acts,
16 still has to be determined by the Court to be
17 probative of the truthfulness or untruthfulness of
18 this particular witness.

19 In the event that you substantiate some, I'll
20 call it facts, I don't know what else to say at the
21 moment, by Mr. Stelzer, that clearly may be
22 probative of his character for truthfulness or
23 untruthfulness, you can brief that issue too, but
24 meanwhile, if I need to hear the rest of
25 Mr. Stelzer's direct or whatever, we're going to go

1 as far as we can, but I will not close
2 Mr. Stelzer's testimony if he's called as a witness
3 on these issues until this area is done.

4 Would you folks like a recess to see whether
5 you want to pursue this inquiry now or have it be
6 deferred?

7 MR. SCHOENBACH: Three minutes, your Honor.
8 If may I make one suggestion, your Honor? As long
9 as the witness is here, to inquire certainly the
10 factual underpinnings for what we seek to bring
11 out, because --

12 THE COURT: Mr. Schoenbach, somebody on behalf
13 of Mr. Prosser filed something in another court
14 that said this transcript was going to be used for
15 that purpose, and I'm not going to permit it.

16 MR. SCHOENBACH: Ms. Van Vliet suggested that,
17 and I don't know that it is true, and I certainly
18 can't say that it is false. I just don't know.

19 But I was going to suggest, as long as the
20 witness is here, is that we conduct the inquiry,
21 and that your Honor seal these records and direct
22 all counsel to this deposition to refrain from
23 using this in any way whatsoever, until the issue
24 is subsequently resolved.

25 At least this way, the witness is here, he

1 gets to answer the questions, and it can't be used
2 anywhere else, even in this proceeding, until your
3 Honor makes a decision.

4 MS. VAN VLIET: On behalf of Mr. Stelzer, I
5 object to that for a variety of reasons. First of
6 all, if it is an issue of making him available
7 again to counsel should the Court, upon reviewing
8 any decision on appeal in the sanctions issue or
9 decisions by the District Court in the Virgin
10 Islands on the motion to dismiss, should you deem
11 that this area is relevant to the discharge
12 proceedings, on behalf of Mr. Stelzer, I assure the
13 Court that we will make him available for further
14 inquiry consistent with whatever the Court's orders
15 are at such a point in time.

16 Number two, based on the fact that counsel
17 just accused my client, in his argument to you, of
18 committing a, quote/unquote, crime, by accessing
19 those records, I would have to, quite frankly,
20 instruct him not to answer any such questions right
21 now until I can go thoroughly brief it.

22 So trying to make the record on those issues
23 in the next now 20 minutes that we have left in
24 this proceeding is, I suggest, an effort in
25 futility.

1 THE COURT: That's fine. He can be brought
2 back in the event that it is necessary, and I'll
3 defer this line of questioning. You folks can
4 brief for me how much, if any, of Mr. Stelzer's
5 testimony should be deferred, pending whatever the
6 outcomes are in those other proceedings.

7 Okay, folks, move on to a new area.

8 MS. VAN VLIET: May I bring the witness back
9 in now?

10 THE COURT: Yes.

11 (The Witness entered the room.)

12 MS. VAN VLIET: May the record reflect, the
13 witness is back in the room.

14 MR. ABOOD: So, your Honor, to paraphrase, you
15 don't want any questions about the Amex records
16 that were produced for the April and May --

17 THE COURT: That is not an accurate
18 paraphrase. I made a ruling. You can find out
19 from counsel what I ruled.

20 MR. ABOOD: Can you read back the last
21 question, because, quite frankly, I don't think the
22 objection had anything to do with the question.

23 (The requested portion of the record was read
24 by the court reporter.)

25 MR. ABOOD: Your Honor, may he answer that

1 question?

2 THE COURT: No, not the extent that it
3 includes the Amex records, for the reasons I've
4 just put on the record.

5 BY MR. ABOOD:

6 **Q.** Did you talk to anyone other than Mr. Lee and
7 your counsel, Mr. Battista and Ms. Van Vliet, have you
8 talked to anyone else about providing your testimony in
9 these proceedings?

10 **A. No. If you could ask the question again, I'm
11 sorry. I'm a little confused by the question.**

12 **Q.** I think where we had left off before the break
13 was that you had indicated that you talked with counsel
14 for the trustee in December, and then just sometime
15 between December and your deposition in February, and
16 that you may have had a conversation with him about
17 providing trial testimony in June of '08. Do you recall
18 that testimony?

19 **A. I recall that testimony.**

20 **Q.** My question is, did you talk to anybody else?
21 There are lots of lawyers, different parties. Did you
22 talk to anyone from the Chapter 7 trustee's office about
23 your providing testimony, in June of '08?

24 **A. Who is the Chapter 7 office?**

25 **Q.** Mr. James Carol and his main attorneys, he has

1 several.

2 **A. I didn't talk to any of those people about any**

3 **kind of testimony.**

4 **Q.** Or producing any paperwork whatsoever?

5 **A. Or producing anything.**

6 **Q.** The RTFC, the Rural Telephone Finance

7 Cooperative, and their attorneys, did you talk to anyone

8 from their offices?

9 **A. No, sir.**

10 **Q.** And then there's what we call the Greenlight

11 entities, those three hedge funds. Do you recall

12 whether or not you talked to anyone from their offices?

13 **A. No, sir.**

14 **Q.** So the only one you have a recollection of

15 talking to is someone from the Chapter 11 trustee, that

16 being Mr. Lee, is that correct?

17 **A. I mean, I had a meeting with Mr. Carroll. I**

18 **had a dinner meeting, but I didn't talk about testimony.**

19 **You asked me if I talked about testimony. My answer is**

20 **no.**

21 **Q.** When did you meet with Mr. Carroll, before you

22 testified in court?

23 **A. Yes, and it might have even been -- I don't**

24 **recall the exact date.**

25 MS. KATZ: This is Dana Katz. I just want to

1 clarify, I think he might be referring to

2 Mr. Springel, but I'm not sure.

3 **A. No.**

4 **Q.** Do you know the difference between Mr. Carroll

5 and Mr. Springel?

6 **A. Yes.**

7 **Q.** You recall having dinner with Mr. Carroll?

8 **A. Correct.**

9 **Q.** Mr. Carroll, the Chapter 7 trustee?

10 **A. What I call the personal bankruptcy, yes.**

11 **Q.** I understand you may not recall the exact

12 date. My question is trying to peg it with regard to

13 events. Do you recall testifying in court, that was in

14 June of '08?

15 **A. Yes.**

16 **Q.** Do you recall whether or not the dinner was

17 before you testified?

18 **A. Not in relation to the court appearance, but**

19 **yes, it was in a period long before that.**

20 **Q.** Was it before your deposition?

21 **A. It could have been before my deposition.**

22 **Q.** Did you talk to Mr. Carroll during the dinner?

23 **A. We had dinner.**

24 **Q.** Who else was there?

25 **A. Mr. Carroll and I.**

1 **Q.** Do you recall where it was?

2 **A. Yes.**

3 **Q.** What did you talk about?

4 **A. Dinner, we talked about dinner and how my life**

5 **was just in general.**

6 **Q.** Did he ask you any questions about your

7 involvement with Mr. Prosser?

8 **A. Just as an employee.**

9 **Q.** Did he ask you about your involvement with

10 Mr. Prosser for the time period after you were

11 terminated by Mr. Smyl?

12 **A. No.**

13 **Q.** So the only things you talked about with

14 Mr. Carroll were historical things dealing with your

15 employment while you were employed with Mr. Prosser or

16 the company?

17 **A. Yes, and even historical may categorize it too**

18 **much, but yes, just general, light conversation.**

19 **Q.** What was your understanding why he asked you

20 to dinner?

21 **A. He was a trustee of part of the bankruptcy.**

22 **Q.** What kind of things did you talk about?

23 **A. The wine we had for dinner.**

24 **Q.** Anything else?

25 **A. We talked about what it was like to work for**

1 **Mr. Prosser, Mrs. Prosser, and the children, general,**

2 **really general chitchat.**

3 **Q.** Did you discuss any issues regarding the hard

4 drive?

5 **A. No.**

6 **Q.** Did you discuss any records regarding

7 financial documents?

8 **A. No.**

9 **Q.** At that point in time, if you recall, had

10 anyone told you that you might be testifying at trial?

11 **A. I didn't know about actually testifying at**

12 **trial until much closer to the trial date.**

13 **Q.** After you gave your deposition?

14 **A. Long after the deposition.**

15 **Q.** Other than your attorneys, Mr. Battista and

16 Ms. Van Vliet, I've just gone through in my prior

17 questions all of these other people, did you talk to any

18 of them about your testimony here today?

19 **A. Any of the people you just mentioned?**

20 **Q.** Yes, RTFC, Greenlight entities, the Chapter 7

21 trustee, and including the Chapter 11 trustee.

22 **A. No.**

23 **Q.** It has been indicated that you charged

24 approximately \$700,000 a year on the company's Amex

25 accounts, is that correct?

1 MS. VAN VLIET: Objection, your Honor, based
2 on the Court's ruling a moment ago when we took the
3 break.

4 THE COURT: Mr. Abood, I made rulings about
5 this. Move on to something else, please.

6 BY MR. ABOOD:

7 **Q.** In your conversations with representatives of
8 the Chapter 11 trustee, which includes, obviously,
9 Mr. Lee, Mr. McFaul, anybody else from their office, or
10 any of the other attorneys that we've talked about for
11 Mr. Carroll, the RTFC, the Greenlight entities, was
12 there ever any discussion about things that you might
13 owe back to either the Chapter 11 or the Chapter 7
14 estates? Do you understand my question?

15 **A. No is the answer. If I understand your**
16 **question, the answer is no.**

17 **Q.** Did they ever bring up to you whether or not
18 your salary was, in their view, something that they
19 could, if they chose to, to try to get back from you?

20 **A. Never had such a conversation.**

21 **Q.** Are you aware that litigation has been filed
22 against other people who worked for Mr. Prosser seeking
23 to recover monies that were paid to them for work that
24 they had done?

25 MS. VAN VLIET: Objection, relevance.

1 THE COURT: You can answer. These are not
2 trial rulings. This is for discovery. You may
3 answer that question as a discovery answer.

4 **A. Yes.**

5 BY MS. VAN VLIET:

6 **Q.** Which ones do you recall?

7 **A. It is from an article in the VI Source,**
8 **something I read on the VI Source.**

9 **Q.** Did you have any concern that the Chapter 7 or
10 the Chapter 11 trustee might try to seek recovery of
11 monies from you?

12 **A. It never occurred to me.**

13 **Q.** Never crossed your mind?

14 **A. Never crossed my mind.**

15 **Q.** Never had a discussion with anybody about
16 that?

17 **A. Never had a discussion with anybody about**
18 **that.**

19 **Q.** And when I say anybody, I mean anybody, not
20 just the lawyers and the parties. Anybody?

21 **A. Never had a conversation in regard to that**
22 **matter at all, never.**

23 **Q.** Did you ever think about it?

24 **A. No.**

25 **Q.** Mr. Stelzer, earlier today, you were sitting

1 here when Mr. Lee made a comment that you worked for
2 Mr. Prosser and not for the companies. Do you recall
3 that?

4 **A. Yes, sir.**

5 **Q.** As a matter of fact, in the course of your
6 duties, you made reservations for Mr. Prosser, is that
7 correct?

8 **A. Correct.**

9 **Q.** You arranged meetings. You testified to all
10 this, right?

11 **A. Yes.**

12 **Q.** And those were business meetings, a lot of
13 them or most of them, weren't they?

14 **A. No.**

15 **Q.** Did you ever schedule business meetings?

16 **A. Yes.**

17 **Q.** Did you ever schedule business trips?

18 **A. Yes.**

19 **Q.** Did you ever help in making the hotel
20 arrangements for business trips, as you understood it?

21 **A. Yes.**

22 **Q.** And that was in places around the world, is
23 that correct, all of those things?

24 **A. In many places, yes.**

25 **Q.** Not just in the Virgin Islands, correct?

1 **A. Correct.**

2 **Q.** Not just in South Florida, correct?

3 **A. Correct.**

4 MR. PLATT: Objection, your Honor. This has
5 already been covered in prior testimony
6 extensively.

7 THE COURT: I think it has, Mr. Abood.

8 BY MR. ABOOD:

9 **Q.** To your knowledge, has Mr. Prosser ever in
10 fact purchased something that somebody has sought for
11 you to personally pay for?

12 THE COURT: Mr. Abood, could you repeat that?

13 MR. ABOOD: Let me restate, your Honor.

14 **Q.** To your knowledge, has Mr. Prosser ever
15 purchased something where you have been asked to pay the
16 bill from your personal funds?

17 **A. My personal funds?**

18 **Q.** Correct.

19 **A. I'm sorry, there's a qualified answer to it.**

20 **Yes, but it happened in the beginning of my employment**
21 **where I was being reimbursed from the company and it was**
22 **late, so Mr. Prosser wrote me a personal check to**
23 **reimburse me. It only happened once, to the best of my**
24 **knowledge, in the very beginning of my employment.**

25 **Q.** Other than that, you have no recollection of

1 that occurring again?

2 **A. What?**

3 **Q.** Of Mr. Prosser buying something that you had
4 to ultimately pay for yourself?

5 **A. When you say that I ultimately had to pay for
6 it myself, I don't understand what that means. You mean
7 with my American Express card, with credit cards?**

8 **Q.** No. Money that came from you, not using a
9 company credit card.

10 **A. For expenses? I don't know what you're
11 asking. I'm sorry, I apologize.**

12 **Q.** Do you know what it means when I say -- here,
13 let me put it this way. When I say to you that
14 something was ultimately paid for by you, I mean
15 something that you were never reimbursed for by the
16 company or Mr. Prosser. That's a definitional thing.
17 Do you understand?

18 **A. I understand better now what you're asking.**

19 **Q.** I think you've indicated that there was an
20 occasion earlier on in your employment where something
21 was purchased by Mr. Prosser. You paid for it out of
22 your funds, and then Mr. Prosser paid you back?

23 **A. Correct.**

24 **Q.** In my definition, that would, quite frankly,
25 be something that was not ultimately paid for out of

1 your funds. At the end of the day, ultimately, that
2 means you have more or less money when the dust clears
3 and all of the accounts are cleared. Do you follow me?

4 **A. I follow you. It is just I don't --**

5 **Q.** Is it fair to say that if it occurred, it was
6 so infrequent, you don't remember it now?

7 **A. If I understand correctly what you're asking
8 me, if I understand correctly, it is so infrequent, I
9 don't have any recollection right now about what -- I'm
10 not even sure what you're talking about seriously.**

11 **Q.** I don't know how to make it more clear.

12 **A. I apologize. Out of my pocket, so to speak?**

13 **Q.** Right, using money from your paycheck or your
14 wife's money.

15 **A. For Mr. Prosser?**

16 **Q.** Right, that you never got paid back for.

17 **A. It is possible, maybe shampoo.**

18 **Q.** But you have no specific recollection?

19 **A. I have no recollection of such a thing.**

20 **Q.** So certainly you don't have a recollection of
21 it occurring to some sort of magnitude, a lot of money
22 in other words, is that correct?

23 MS. VAN VLIET: Objection, asked and answered.

24 **A. To the best of my recollection, yes.**

25 **Q.** Mr. Stelzer, in any of the meetings that you

1 had with the trustees, the other parties to the case,
2 their representatives, was there ever in your mind, any
3 understanding of a quid pro quo; in other words, you
4 cooperate with them, they'll cooperate with you?

5 **A. No.**

6 **Q.** When you were asked to testify, were you told
7 that you would be compensated for your testimony, for
8 your time?

9 **A. No.**

10 **Q.** Were you compensated for your time?

11 **A. No.**

12 **Q.** Do you recall where you were when you
13 testified, what location?

14 **A. The deposition?**

15 **Q.** No, the trial.

16 **A. In Saint Thomas.**

17 **Q.** Who paid for your trip?

18 **A. The ticket was provided by the trustees.**

19 **Q.** Did you have an attorney at that time?

20 **A. I did not have an attorney at that time.**

21 **Q.** How long did you stay in the Virgin Islands on
22 that trip?

23 **A. Overnight.**

24 **Q.** And you currently have private counsel, is
25 that correct?

1 **A. Correct.**

2 **Q.** Ms. Van Vliet and Mr. Battista, is that
3 correct?

4 **A. Ms. Van Vliet is my attorney.**

5 **Q.** Mr. Battista was your attorney at one time, is
6 that correct?

7 **A. Yes.**

8 **Q.** You seem hesitant.

9 **A. Some of the technical questions, I get -- yes,
10 he was my attorney.**

11 MS. VAN VLIET: We'll stipulate that

12 Mr. Battista is one of the partners in this law
13 firm.

14 **Q.** Do you have a fee agreement with them?

15 **A. Do I have a fee agreement with them?**

16 **Q.** With your lawyers.

17 **A. Yes.**

18 **Q.** How much are you paying them per hour?

19 **A. I don't know.**

20 MR. LEE: I object. How is this relevant to
21 Mr. Prosser's discharge?

22 THE COURT: I don't know.

23 MR. ABOOD: These are always legitimate
24 questions of inquiry, your Honor.

25 THE COURT: The witness's agreement with his

1 counsel to pay his fee?

2 MR. ABOOD: Yes.

3 THE COURT: I don't understand how this is
4 relevant to Mr. Prosser's discharge.

5 MR. ABOOD: May I proceed? They like to cut
6 me off before I get to the question that you're
7 ultimately wanting to hear and I can't get there.

8 THE COURT: I don't know whether Mr. Stelzer
9 has counsel because of his involvement in this case
10 or the other case in which he is being sued or some
11 other matter.

12 MR. ABOOD: Maybe I could ask those questions
13 without being interfered with.

14 THE COURT: The discharge, move to something
15 relevant.

16 MR. ABOOD: I am, your Honor.

17 BY MR. ABOOD:

18 Q. Do you have a written fee agreement with
19 Ms. Van Vliet's law firm?

20 MS. VAN VLIET: Object, not relevant to the
21 discharge proceedings before you.

22 THE COURT: Relevance, Mr. Abood?

23 Q. First of all, let me ask this, and I'll come
24 back to that question. Who is paying your legal fees?

25 MR. LEE: Same objection, your Honor. We

1 know, your Honor, he's being represented in defense
2 of a lawsuit brought by Mr. Prosser in the Virgin
3 Islands and --

4 BY MR. ABOOD:

5 Q. I'm talking about here today. Who is paying
6 your legal fees for your legal representation in this
7 case? I don't care about some other case. Let me make
8 that clear. I'm asking about this case. Do you
9 understand that?

10 A. **Today?**

11 Q. Today in this case and with regard to any
12 involvement with the Prosser bankruptcy, where anytime
13 you have used an attorney relative to the Prosser or the
14 corporate bankruptcies, my question to you is: Who paid
15 for your lawyer?

16 A. **My understanding is either, I used the word**
17 **ICC, the entity, the company, or Vinson & Elkins.**

18 Q. They're paying for your lawyer?

19 A. **I didn't say that. I don't know whether it is**
20 **the company or --**

21 Q. -- Vinson & Elkins?

22 A. **I don't know.**

23 Q. So to your understanding, just what you think,
24 not what some document might say, I'm just asking you
25 right now about what you think, okay? It is either the

1 company or Vinson & Elkins that is paying for your
2 lawyers relative to this case?

3 A. **To the best of my knowledge.**

4 Q. And that's true for not just today but
5 whatever prior use you had of attorneys relative to this
6 case and the Prosser bankruptcy, the ICC bankruptcies,
7 is that correct?

8 A. **I think that holds true. You just gave me a**
9 **big balloon.**

10 Q. Yes. It is a lot of different things. Let me
11 ask you this, have you personally paid for any of your
12 attorneys either for today or any of the prior
13 proceedings in these cases?

14 A. **No.**

15 Q. I'll ask you again, do you know how much your
16 attorneys are charging?

17 MS. VAN VLIET: Your Honor, at this point, I
18 object as to the relevance of my hourly rate or
19 Mr. Battista's hourly rate.

20 MR. ABOOD: I'll withdraw. Whatever it is, it
21 is.

22 BY MR. ABOOD:

23 Q. To the best of your knowledge, when was that
24 arrangement made? The arrangement I'm talking about is
25 the arrangement that either Vinson & Elkins or the ICC

1 companies would pay for your lawyer or lawyers.

2 A. **When I was first served documents by a process**
3 **server and a private investigator, I reached out.**

4 Q. That would have been August of 2008, when you
5 got served a subpoena?

6 A. **I was served a subpoena, I believe --**

7 Q. -- from me?

8 A. **From you.**

9 Q. I'll represent to you that was about August of
10 2008.

11 A. **Okay.**

12 Q. Who did you reach out to?

13 A. **I reached out to the only people I had ever**
14 **spoken to, Vinson & Elkins.**

15 Q. Who specifically did you speak to?

16 A. **It was either Rich London or Jim Lee.**

17 Q. Do you recall which?

18 A. **I don't recall which.**

19 Q. Do you recall what you discussed?

20 MS. VAN VLIET: Your Honor, at this point I'll
21 object to the relevance.

22 THE COURT: I think this may be relevant, the
23 witness's perception of the case, so that is
24 overruled.

25 A. **The question?**

1 BY MR. ABOOD:

2 Q. What did you talk about?

3 A. **I had just had a very, what my wife and I felt**
4 **was an extremely intimidating encounter, and my wife and**
5 **I were frightened, so I called Jim Lee or Rich London to**
6 **tell them what had just happened.**

7 Q. Did they offer to provide you with legal
8 counsel?

9 A. **He said he would get back to me.**

10 Q. And then whoever it was did get back to you?

11 A. **I got a call from Paul Battista or I was given**
12 **his name to call, but I think he actually called me**
13 **first.**

14 Q. What was the conversation?

15 MS. VAN VLIET: I'll object if that question
16 relates to the conversation between Mr. Stelzer and
17 Mr. Battista, as attorney/client privilege.

18 MR. ABOOD: Let me clarify, your Honor.

19 BY MR. ABOOD:

20 Q. At this point, my question is with regards to
21 whoever it was you were talking to from Vinson & Elkins,
22 whether it was Mr. London or Mr. Lee. You described
23 briefly that you felt you were scared because of the
24 service of the subpoena. Did you talk about anything
25 else?

1 A. **Just about the encounter and the private**
2 **detectives and that we were frightened, being followed**
3 **by private detectives. They were harassing me. I was**
4 **getting phone calls. They were at my door. They**
5 **followed me the next day, the day after the service.**
6 **One approached me in a parking lot and scared me to**
7 **death.**

8 Q. Did you discuss anything else?

9 A. **That's it.**

10 Q. Did they tell you how they could help you?

11 A. **Yes.**

12 Q. What did they say?

13 A. **That I should call you.**

14 Q. That you should call me?

15 MR. LEE: Who is "they"?

16 A. **Oh, no. I was talking about the private**
17 **investigator and the process server.**

18 Q. No. My question is directed to your
19 conversation with either Mr. Lee or Mr. London.

20 A. **No. Wait, back up then, because you just**
21 **asked me what they said, and I thought your reference**
22 **was to what the private investigator --**

23 Q. No.

24 A. **Then I answered incorrectly.**

25 Q. Okay. What I'm asking you about is your

1 conversation with either Mr. Lee or Mr. London, your
2 conversation with whoever that person was.

3 A. **I told them I was served. We were**
4 **intimidated. We were frightened. I told them what,**
5 **mostly the private investigator, but the process server,**
6 **the dialogue and the conversation I had with them, and**
7 **he said, I'll get back to you, either Mr. Lee or Rich**
8 **London.**

9 Q. Did they, whoever it was you were just talking
10 to at V&E, they said they would get back to you, right?

11 A. **Yes.**

12 Q. Did they ever get back to you?

13 A. **Yes.**

14 Q. Do you recall what you talked about when they
15 got back to you?

16 A. **We didn't talk. I got a phone call either**
17 **saying that Paul Battista would either contact me or I**
18 **should contact Paul Battista. I don't know who got to**
19 **the other first. I may have called him and there was no**
20 **answer and he called me back.**

21 Q. How did you come to the understanding that you
22 wouldn't have to personally pay for your legal fees?
23 Where did that impression come from?

24 MS. VAN VLIET: I object insofar as that may
25 involve communication from either Mr. Battista or

1 I. If it came from anybody else, I have no
2 objection.

3 THE COURT: Do you want to consult with your
4 client to find out the answer? Because I don't
5 know how to rule, and until we hear the answer,
6 we're not going to know.

7 MS. VAN VLIET: He knows the answer.
8 So go ahead and answer.

9 Your Honor, Mr. Abood and Mr. Schoenbach are
10 consulting right now, so we're waiting.

11 A. **The question was?**

12 BY MR. ABOOD:

13 Q. How did you come to the understanding, what
14 led you to the understanding that you wouldn't have to
15 pay for your attorney fees?

16 A. **Mr. Battista.**

17 Q. Did you ever confirm that with Mr. Lee or
18 anyone from Vinson & Elkins?

19 A. **No.**

20 Q. What was your understanding of why they were
21 agreeing to pay for your legal fees?

22 MS. VAN VLIET: Your Honor, may I have a
23 moment to consult with my client?

24 THE COURT: Yes.

25 MR. ABOOD: I didn't ask him what was said.

1 MS. VAN VLIET: Thank you. Go ahead.

2 THE WITNESS: Ask the question again.

3 (The requested portion of the record was read
4 by the court reporter.)

5 **A. It was between Mr. Battista and I, the only
6 conversation was between Paul Battista and I.**

7 MS. VAN VLIET: Then I instruct the witness
8 not to answer on attorney/client.

9 BY MR. ABOOD:

10 **Q.** Is it your understanding that perhaps Vinson &
11 Elkins is perhaps just fronting the fees, in other
12 words, paying them as they're incurred and that you
13 might have to pay them or some of them at some point in
14 time in the future?

15 **A. I have no such understanding.**

16 **Q.** Your understanding is you're never going to
17 have any personal responsibility for your legal fees
18 relative to these proceedings, is that correct?

19 **A. I have no idea what you're talking about.**

20 **Q.** Let me re-ask the question again.

21 **A. I understand the question. The answer is no.
22 I have no knowledge of any such thing.**

23 **Q.** The answer is that you have no understanding,
24 as you sit here today, you have no understanding that
25 you'll have any personal financial responsibility for

1 your attorney fees relative to these proceedings, is
2 that correct?

3 **A. That I will have any responsibility for my
4 fees? This goes to Paul Battista and I having a
5 conversation, so I can't --**

6 **Q.** Do you have any belief that you're ever going
7 to have to pay for any of the legal services personally?

8 **A. My understanding was that it was either the
9 company or Vinson & Elkins.**

10 **Q.** Okay, I just wanted to make that clear.
11 There's a distinction, sir, and that's what I'm getting
12 at, as to whether Vinson & Elkins or the company is
13 simply paying them at this point so that you can stay
14 current with your lawyers, and that maybe at some point
15 in the future, you'll have to come up and repay that.

16 And you're saying you don't have any understanding --

17 **A. My understanding is what I said before.**

18 **Q.** Okay. What is your understanding of what
19 you're to do in exchange for them paying for your fees?

20 **A. Just --**

21 **Q.** -- provide testimony?

22 **A. Well, if I'm called for whatever, just to come
23 tell the truth.**

24 **Q.** And provide testimony?

25 MS. VAN VLIET: Objection, asked and answered.

1 MR. LEE: Objection, mischaracterization of
2 the witness's testimony.

3 MR. ABOOD: It is a different question.

4 MR. LEE: You're putting words in his mouth.

5 MR. ABOOD: I am. It is a leading question.

6 THE COURT: The witness's answer is that if
7 he's called, he's to come and testify and tell the
8 truth. That's the answer to the question. Is
9 there a new question?

10 BY MR. ABOOD:

11 **Q.** Is it your understanding that if you're asked
12 to provide any documentation, that you're expected to
13 provide it?

14 MS. VAN VLIET: I'll object based on the
15 Court's previous ruling, insofar as it may relate
16 to the American Express records.

17 THE COURT: The question is too broad,
18 Mr. Abood. You're going to have to narrow the
19 question. Restate the question in a more narrower
20 context.

21 BY MR. ABOOD:

22 **Q.** Other than the American Express records --
23 first of all, do you know what I'm talking about when I
24 say the American Express records? You're shaking your
25 head.

1 **A. It is a big question.**

2 **Q.** No. When I say the American Express records,
3 I'm talking about Mr. Prosser's statements of his
4 personal account that were provided to Vinson & Elkins
5 for the April and May 2008 time frame. When I say the
6 American Express records, that's what I'm talking about.

7 **A. That's all you're referring to?**

8 **Q.** Right.

9 **A. And the question is?**

10 **Q.** First of all, do you understand that?

11 **A. I understand the question.**

12 **Q.** Do you understand the definition? I just want
13 to make sure that you understand, when I say the
14 American Express records, all I'm talking about is those
15 two months' statements.

16 **A. I didn't know that.**

17 **Q.** Well, for right now, that's what I'm talking
18 about, for purposes of my next question.

19 **A. Okay. What do you want to know from me?**

20 **Q.** I haven't asked you the question yet. I just
21 want you to understand, when I say, because I'm going to
22 use that phrase "American Express records" in my next
23 question, so I want you to know what I mean when I say
24 the American Express records. Are we on the same page?

25 **A. Okay.**

1 **Q.** So when I ask you the next question and I use
2 that phrase, the American Express records, you'll
3 understand that I'm just talking about the April and May
4 2008 American Express records from Mr. Prosser's
5 personal account?

6 **A. Okay.**

7 **Q.** Good. We're on the same page. Other than the
8 American Express records, is it your understanding that
9 if you're asked to provide any documents as part of
10 these proceedings, that you are to do that?

11 **A. No. There are no -- no.**

12 **Q.** Has anyone asked you to produce any documents
13 other than the American Express records, those two
14 months' statements?

15 **A. When?**

16 **Q.** At any time during your involvement in these
17 legal proceedings.

18 **A. No.**

19 **Q.** And the followup, have you provided any
20 documents other than the American Express records since
21 your involvement in these proceedings?

22 MS. VAN VLIET: I'll object. This is
23 repetitive of testimony that's already been gone
24 through in both the deposition as well as the trial
25 testimony with regard to questions not only from

1 the Chapter 11 trustee, but also questioning by the
2 Chapter 7 trustee, and the provision of notations
3 and diaries and other records and receipts. It was
4 gone into in great detail.

5 I object as being repetitive and beyond the
6 scope of this Court's prior ruling in the
7 discharge.

8 THE COURT: Mr. Abood?

9 MR. ABOOD: The answer would take less than
10 the objection, your Honor.

11 THE COURT: That's not necessarily the case.
12 In any event, is it duplicative? Then it's been
13 asked and answered. Does this relate to
14 Mr. Prosser's conduct?

15 At this point the witness has testified before
16 about what types of documents or information he
17 has. So if it is repetitive, let's move to
18 something else. You're almost half an hour past
19 the time that this was supposed to end anyway. Is
20 it repetitive?

21 MR. ABOOD: I don't know the transcripts that
22 well, your Honor. And to the extent -- let me ask
23 it another way. I'll rephrase.

24 BY MR. ABOOD:

25 **Q.** Other than documents that you've already been

1 asked about in all of these proceedings, have you
2 provided any other documents exclusive of the American
3 Express records?

4 **A. No.**

5 **Q.** In other words, for example, since the time
6 you testified, since last June?

7 **A. No.**

8 **Q.** Okay. Prior to the company or Vinson & Elkins
9 arranging for Mr. Battista and Ms. Van Vliet's law firm
10 to represent you, did you understand that Vinson &
11 Elkins was representing you?

12 **A. No.**

13 **Q.** Did you ever discuss with Vinson & Elkins
14 having an attorney represent you prior to the Battista
15 law firm coming on board?

16 **A. No.**

17 MR. ABOOD: May I have a moment your Honor,
18 just to review?

19 THE COURT: Yes.

20 (Off the record.)

21 BY MR. ABOOD:

22 **Q.** Mr. Stelzer, this phone conversation that you
23 had with either Mr. Lee or Mr. London, at that point in
24 time, you were scared, you've testified, right, that you
25 were scared?

1 **A. Correct.**

2 **Q.** Is it fair to say that you were upset?

3 **A. Yes.**

4 **Q.** Did you ask them to help you?

5 **A. No.**

6 **Q.** Did you ask them to get you an attorney?

7 **A. No.**

8 **Q.** They offered that?

9 **A. No.**

10 **Q.** They offered to help you?

11 **A. No.**

12 **Q.** They said they would get back to you, that's
13 all they said?

14 **A. That's correct.**

15 **Q.** And the next thing you know, you got a call
16 from a lawyer?

17 **A. Correct.**

18 **Q.** What did you want from them when you called
19 them, them being Vinson & Elkins?

20 MS. VAN VLIET: Your Honor, I'll object, asked
21 and answered in this deposition.

22 MR. ABOOD: I don't think I've asked that.

23 **Q.** What did you want from them? That's the
24 question.

25 THE COURT: You can answer.

1 **A. I didn't want anything. I was frightened, and**
 2 **that was the only person I knew to call.**
 3 **Q.** So you were calling for help?
 4 **A. I just called because my wife and I were at**
 5 **home and we were being intimidated by these two people**
 6 **at our door. I was frightened, and I called the only**
 7 **person with an esquire behind his name that I knew.**
 8 **Q.** So you were looking for help, isn't that
 9 correct?
 10 **A. No. I was calling to talk to somebody. Who**
 11 **else was I going to call?**
 12 **Q.** If you weren't looking for help, why didn't
 13 you just call a friend?
 14 MS. VAN VLIET: Objection, arguing with the
 15 witness, asked and answered.
 16 THE COURT: That's argumentative, Mr. Abood.
 17 You can restate the question.
 18 BY MR. ABOOD:
 19 **Q.** Why didn't you call someone other than Vinson
 20 & Elkins?
 21 **A. This service, to the best of my knowledge, was**
 22 **related to all of the proceedings going on involving**
 23 **Mr. Prosser, so I called the only other person who would**
 24 **understand who Mr. Prosser was. My friends don't know**
 25 **who Mr. Prosser is.**

1 **Q.** You had a lawyer in the recent past in this
 2 area, Mr. Lubin (phonetic), isn't that correct?
 3 **A. The recent past?**
 4 **Q.** I'm sorry, not the recent past. You used
 5 Mr. Lubin relative to when you testified you turned
 6 yourself in to the police department, correct?
 7 **A. It actually wasn't Mr. Lubin. It was his**
 8 **firm, an associate. I don't recall his name.**
 9 **Q.** So you had attorneys here in the area, that
 10 you had a relationship with?
 11 **A. Yes.**
 12 **Q.** But you didn't call them?
 13 **A. I didn't have a relationship with them.**
 14 **Q.** You didn't call that law firm?
 15 **A. No.**
 16 **Q.** You chose to call Vinson & Elkins?
 17 **A. I called the only person who would know who**
 18 **Mr. Prosser was and what was going on.**
 19 **Q.** Did you call anyone else after that call,
 20 about this incident with the process servers?
 21 **A. Did I call anyone else? No.**
 22 **Q.** You didn't think it was necessary for you to
 23 call anyone else, correct?
 24 **A. I don't know what that question means.**
 25 **Q.** You didn't feel a need to call anyone else,

1 right?
 2 MS. VAN VLIET: Objection, irrelevant.
 3 THE COURT: I'm not sure where you're going.
 4 He said he didn't call anybody else. What is the
 5 question? He felt no need to call anybody else.
 6 He said no one else that he knew would understand
 7 the circumstances. That is his testimony.
 8 MR. ABOOD: He didn't quite say that, your
 9 Honor. That's putting a lot into it. The record
 10 will say what he said.
 11 THE COURT: What he said is that his friends
 12 didn't know Mr. Prosser, and Vinson & Elkins would
 13 know Mr. Prosser and what was going on.
 14 Is there more that you need to get into? You
 15 are running late, and I'm still not sure that this
 16 has to do with the discharge. To the extent it is
 17 a credibility issue, you've substantiated that.
 18 BY MR. ABOOD:
 19 **Q.** Mr. Stelzer, other than your understanding
 20 that your legal fees will be paid relative to these
 21 proceedings, do you have any other understandings as to
 22 what will be provided for you for your participation in
 23 this case whatsoever? Are there any other
 24 understandings or agreements whatsoever?
 25 **A. No, sir.**

1 **Q.** What about the legal -- it has been indicated
 2 by your attorney that you've been sued by Mr. Prosser in
 3 another case. Is that correct, that you've been sued by
 4 Mr. Prosser in another case?
 5 **A. Yes.**
 6 **Q.** And Ms. Van Vliet is representing you in that
 7 case, is that correct?
 8 **A. Yes.**
 9 **Q.** Who is paying the legal fees in that case?
 10 MS. VAN VLIET: I'll object. It is irrelevant
 11 to the discharge proceedings.
 12 MR. LEE: Same objection, your Honor.
 13 **Q.** Let me ask it more specifically. Are you
 14 personally paying the legal fees in that case?
 15 **A. No, sir.**
 16 **Q.** Who is paying them, as you understand it? Is
 17 it Vinson & Elkins and the ICC companies?
 18 **A. Same understanding.**
 19 THE COURT: Mr. Abood, I think your question
 20 misstated what the witness said. He said his
 21 understanding was either the company or Vinson &
 22 Elkins, not the both, would be paying the fees. I
 23 would like the record to be clear. Would you ask
 24 the witness what his understanding is again.
 25

1 BY MR. ABOOD:

2 **Q.** What is your understanding as to who is paying
3 your legal fees in that other case?

4 **A. The company or Vinson & Elkins.**

5 MR. ABOOD: I have nothing further, your
6 Honor.

7 MS. VAN VLIET: He'll read.

8 MR. ABOOD: Your Honor, at this point in time,
9 I would ask for a representation from Mr. Lee or
10 Mr. McFaul as to who is paying Mr. Stelzer's legal
11 fees.

12 MR. LEE: I'm not in a position to make such a
13 representation because I don't know.

14 MR. ABOOD: Mr. McFaul, do you know?

15 MR. McFAUL: No.

16 MR. ABOOD: Your Honor, without the necessity
17 of formal written discovery, can we have an
18 understanding that the Court will expect that
19 information be provided?

20 THE COURT: If the trustee can provide it.
21 Mr. Lee, is there information that indicates that
22 your firm will somehow have access to who is paying
23 the fee?

24 MR. LEE: I can make inquiry, your Honor. I'm
25 willing to do that. I'll do whatever the Court

1 instructs.

2 THE COURT: All right. I'm instructing you to
3 find out, to the best of your ability, whether
4 either the company, whoever that is, or Vinson &
5 Elkins is paying Mr. Stelzer's counsel.

6 MR. ABOOD: And how much, your Honor.

7 THE COURT: I think that how much is
8 irrelevant, isn't it? The issue is whether or not
9 the fees are being paid.

10 MR. ABOOD: If it is \$100 as opposed to
11 \$10,000 or something like that, I think the amount
12 is material.

13 I would analogize it to the kinds of questions
14 that are asked when we have experts on the stand.
15 We will always typically ask who is paying them and
16 how much. The reason that those questions are
17 allowed is because it goes to the weight and
18 credibility of the testimony being provided.

19 MR. LEE: The money doesn't go to Mr. Stelzer.
20 It doesn't have any effect. It is between he and
21 his lawyers, and I am sure the question goes to the
22 hourly rate being charged.

23 But how can we judge how much time is
24 required, because of what Mr. Prosser does? And it
25 may be necessary to respond to that in his Virgin

1 Islands case, for example, or because of this
2 deposition that was taken here today, because of
3 Mr. Prosser.

4 MS. VAN VLIET: After all of this back and
5 forth among the parties here, if the Court wants me
6 to, I'm happy to supply something in camera to the
7 Court, because there are matters other than the
8 things that have been discussed here, obviously,
9 that I've gotten into with Mr. Stelzer, that
10 frankly have nothing to do with Mr. Prosser and
11 aren't being dealt with by Vinson & Elkins.

12 So I can't just submit my bills to the other
13 side, but I'm happy to give a total of -- which
14 frankly, we haven't billed anybody for. I just did
15 it kind of pro bono. And I'm happy to detail out
16 what, you know, the total fees, and I don't think
17 there's been any costs frankly, on what each of the
18 matters are, if the Court wants us to do that.

19 I can't really hand over my bills to anybody,
20 because my bills are detailed in terms of what
21 advice and conversations I've had.

22 Under 11th Circuit of Florida law, the fact of
23 who pays an attorney's fee and the amount, if you
24 will, is not privileged, so I would have no basis
25 to object on that, nor would I.

1 I mean, if there's a relevancy objection that
2 you determine, I would live by the Court's ruling,
3 but I'm not asserting privilege to the amount or,
4 when eventually any bill is paid, who pays it.

5 THE COURT: All right. Then if you will
6 submit simply a statement as to the total amount
7 that your firm has acquired as a bill due, if it
8 hasn't yet been invoiced, and who you're sending
9 that bill to and expecting to be paid from, that
10 would be sufficient.

11 MR. ABOOD: That would include Mr. Battista?

12 MS. VAN VLIET: Yes.

13 MR. ABOOD: And it would include any services
14 rendered to Mr. Stelzer that are being paid for by
15 either the debtor companies or Vinson & Elkins?

16 MS. VAN VLIET: That is my understanding.

17 THE COURT: Yes.

18 MR. ABOOD: Because you made an allusion to
19 other things you're doing that is not being paid
20 for by --

21 MS. VAN VLIET: Right.

22 MR. ABOOD: I just wanted to clarify.

23 MS. VAN VLIET: And for the record, to my
24 knowledge, we haven't actually received anything.
25 We've accumulated work in process, but we haven't

1 actually been paid, to the best of my knowledge, by
2 anybody for anything.

3 THE COURT: Fine. If you will simply submit a
4 statement as to the total amount and who the bill
5 is expected to be paid by.

6 MR. ABOOD: Given that, your Honor, I don't
7 see any reason for that to be in camera. As
8 counsel has indicated, it is not privileged.

9 MS. VAN VLIET: I just said, that part I don't
10 think is privileged, and I would be happy to
11 provide it. I wouldn't provide my actual bills in
12 camera.

13 MR. SCHOENBACH: The detail is privileged, not
14 the amounts.

15 MS. VAN VLIET: I think we're all on the same
16 page.

17 THE COURT: Anyone going to ask any questions
18 of Mr. Stelzer?

19 MR. PLATT: None from RTFC.

20 MR. LEE: None from the Chapter 11 trustee.

21 MS. KATZ: None from the Chapter 7 trustee.

22 THE COURT: I don't think Greenlight is a
23 party in these particular proceedings. I know
24 counsel is going to trial. Do you have any
25 questions at this time?

1 MS. KIM: This is Christine Kim. No, we do
2 not have any questions at this time.

3 THE COURT: Do you have any questions for your
4 client, Ms. Van Vliet?

5 MS. VAN VLIET: No, ma'am.

6 MR. ABOOD: Your Honor, given the testimony --
7 and understand I'm just reacting to it. It has all
8 just come out, interestingly, for the first time.

9 I would like the Court to make an inquiry of
10 Mr. Lee as to how it is that he doesn't know what
11 this legal fee arrangement is, given Mr. Stelzer's
12 testimony that it was discussed with either him or
13 Mr. London, and Mr. Lee is lead counsel on this for
14 the debtor estates.

15 THE COURT: I don't have an understanding of
16 that. Mr. Lee?

17 MR. LEE: That was not his testimony. His
18 testimony with respect to me and Mr. London was
19 that he made contact when he was being harassed by
20 the investigators in the process of being served
21 with the subpoena, and then we said that we would
22 get back to him, and then Mr. Battista called him
23 or he called Mr. Battista.

24 That's independent of the arrangement on the
25 fees, and I personally have not had any involvement

1 in that, and I can't confirm or deny exactly what
2 the witness said, and I don't intend to, unless I
3 have made an investigation and can speak from fact.

4 THE COURT: Okay.

5 MR. SCHOENBACH: Fair enough.

6 THE COURT: Anything further?

7 MR. ABOOD: One question, your Honor, the
8 29th, you've rescheduled certain things for the
9 29th, is that in Pittsburgh?

10 THE COURT: Yes. I think the date that says
11 something about the 27th in one order was a typo.
12 It should have always been the 29th. I was trying
13 to get the record corrected.

14 MR. ABOOD: Thank you.

15 THE COURT: Adjourned.

16 (The deposition was concluded at 12:39 p.m.)

17 MR. LEE: E-tran.

18 MR. PLATT: Order.

19 MS. VAN VLIET: Order.

20 MR. ABOOD: Order.

21 - - -

1 CERTIFICATE OF OATH
2
3 STATE OF FLORIDA)
4 COUNTY OF BROWARD)
5

6 I, the undersigned authority, certify that ARTHUR
7 STELZER personally appeared before me and was duly
8 sworn.

9 WITNESS my hand and official seal this 12th day of
10 January, 2010.
11
12
13

14 _____
15 Chloe Leroux
16 Notary Public - State of Florida
17 My Commission No: DD 931631
18 Expires: 10/07/2013
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REPORTER'S DEPOSITION CERTIFICATE

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STATE OF FLORIDA)
COUNTY OF BROWARD)

I, Chloe Leroux, Florida Professional Reporter and Notary Public in and for the State of Florida at Large, certify that I was authorized to and did stenographically report the deposition of ARTHUR STELZER; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 14th day of January, 2010.

Chloe Leroux, FPR

From: Battista, Paul J. [pbattista@gjb-law.com]

Sent: Wednesday, August 20, 2008 4:18 PM

To: Norman Abood

Cc: bob@craiglaw.org; Jenna Taub; schoenbachlawoffice@att.net; Lee, Jim; London, Richard

Subject: RE: Arthur Stelzer

Thank you for the email. I am not sure when you tried to reach me in the office, but I have retrieved and returned all of my calls through about 1:00 pm today when I had to leave for a meeting.

Yes, I know that you represent Mr. Prosser and I have been made aware of the results of the proceedings in the Virgin Islands. However, I am unaware of a ruling by the court that would authorize you to take Mr. Stelzer's deposition after the close of discovery in the case and after he has been deposed once and been on the stand for an extended period of time. If there is an order or a portion of the transcript that allows his second deposition, then please forward it to me asap. Otherwise, as I understand it, there is no basis to take Mr. Stelzer's deposition in any of the proceedings in the Virgin Islands. If I am missing something, then please let me know.

Paul Battista

From: Norman Abood [mailto:norman@nabood.com]

Sent: Wednesday, August 20, 2008 3:16 PM

To: Battista, Paul J.

Cc: bob@craiglaw.org; 'Jenna Taub'; schoenbachlawoffice@att.net

Subject: Arthur Stelzer

Paul:

I have called your office to speak with you directly, but as yet to no avail. I wanted to communicate with you regarding Mr. Stelzer as soon as possible. As you may know, I represent Jeffrey Prosser.

You also should know that the deposition notices you sought to quash were resolved by court proceedings yesterday in the underlying Br. Case. Mr. Stelzer's notice was quashed and Mrs. Stelzer's notice was withdrawn.

Please advise whether you will accept service on Arthur's behalf of another deposition subpoena to avoid service on Arthur personally. I indicated to the Court that we would ask for your consent to this procedure to alleviate Arthur's discomfort with the service process.

Please let me know as soon as possible as we are confronting very tight time frames.

I look forward to hearing from you.

Best regards,

Norman A. Abood
203 Fort Industry Square
152 N. Summit Street
Toledo, Ohio 43604-2304
Ph: 419.724.3700
Fx: 419.724.3701
C: 419.490.8068

CONFIDENTIALITY NOTICE

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**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

In Re:

**JEFFREY J. PROSSER,

DEBTOR.**

**Case No. 3: 06-bk-30009 (JKF)
Chapter 7**

D.C. APP. CIVIL NO. 2010-8

**JAMES P. CAROL, AS CHAPTER 7
TRUSTEE OF THE ESTATE OF JEFFREY
J. PROSSER**

**Adv. Proc. Nos. 07-03011
07-03012
08-03011
08-03012**

PLAINTIFF/MOVANT,

V.

JEFFREY J. PROSSER,

Rel. Doc. No.: 3

DEFENDANT/RESPONDENT

* ****

**SUPPLEMENT TO
MOTION FOR EVIDENTIARY HEARING TO DETERMINE WHETHER AN ORDER
SHOULD BE ENTERED IMPOSING SANCTIONS, DISQUALIFICATION AND/OR
REFERRAL FOR FURTHER DISCIPLINARY PROCEEDINGS AGAINST
PLAINTIFFS AND/OR CERTAIN ATTORNEYS; ADDITION OF PARTIES**

NOW COMES Appellant, Jeffrey J. Prosser, by and through the undersigned counsel, and respectfully files this supplement to Appellant's previously filed "*MOTION FOR EVIDENTIARY HEARING TO DETERMINE WHETHER AN ORDER SHOULD BE ENTERED IMPOSING SANCTIONS, DISQUALIFICATION AND/OR REFERRAL FOR FURTHER DISCIPLINARY PROCEEDINGS AGAINST PLAINTIFFS AND/OR CERTAIN ATTORNEYS,*" being Doc No 3, filed Jan. 26, 2010 in this case. Therein, Appellant sought an evidentiary

hearing to determine whether sanctions, disqualification and/or referral for further disciplinary proceedings should be imposed or made against the certain named persons and/or entities

Attached hereto as Exhibits A and B are true and accurate copies of the below described documents:

- **Exhibit A** E-mail from James J. Lee dated Jan. 26, 2010 attaching the August 12, 2008 Fee Agreement between Genovese, Joblove & Battista, P.A., counsel for Arthur J. Stelzer and Arthur J. Stelzer and his Kathleen Stelzer with explanation that Vinson & Elkins-attorneys for Stan Springel Chapter 11 Trustee, , Alvarez & Marsal-a consulting firm in which Mr. Springel is a principal and which Mr. Springel caused to be hired by VITELCO and from which he receives hundreds of thousands of dollars in undisclosed personal income from the fees paid Alvarez and Marsal by Vitelco and other ICC subsidiaries, and Fulbright & Jaworski-attorneys for ICC's principle secured creditor, RTFC, are each paying 1/3 of Mr. Stelzer's legal fees to Genovese, Joblove & Battista, P.A.,

- **Exhibit B** Genovese, Joblove & Battista, P.A., August 12, 2008 Fee Agreement with Arthur J. Stelzer and his Kathleen Stelzer wherein its is detailed as follows:

“We understand that Vinson & Elkins will attempt to have our fees and expenses paid for through the bankruptcy estate of Innovative Communication Corporation. If they are not able to accomplish such payment through the bankruptcy estate, then we understand that they have agreed to pay our fees on your behalf.”

In the Motion for Evidentiary Hearing, etc, it was unclear who was paying for the free legal services being provided to Mr. Stelzer by Mr. Battista and Ms. Van Vliet. That issue is now resolved as is the question of the date representation actually began. What remains unclear is who exactly made these arrangements.

Accordingly, Appellant respectfully renews its request for an order directing that an evidentiary hearing be held to determine whether sanctions, disqualification and/or referral for further disciplinary proceedings should be imposed or made against the following persons and/or entities:

- Vinson & Elkins, counsel for the Chapter 11 Trustee, including, but not limited to, lead trial counsel James J. Lee;
- the law firm of Genovese, Joblove & Battista, P.A., counsel for Arthur J. Stelzer, including but not limited to attorneys Paul Battista and Theresa Van Vliet;
- Stan Springel, the Chapter 11 Trustee;
- James P. Carroll, the Chapter 7 Trustee;
- Fox Rothschild, LLP, counsel for the Chapter 7 Trustee;
- Alvarez and Marsal; and
- Fulbright & Jaworski

Appellant asks that discovery and a hearing be scheduled to determine specifically whether some or all of the foregoing persons or firms have been engaged in:

- a scheme involving the apparent bribery of a lay witness in these proceedings in violation of 18 USC §201 (c) (3), 18 USCS § 152, and the ABA Rules of Professional Conduct 1.2 (d), 3.3, 3.4 and 8.4 (the "Stelzer bribery scheme") by some or all of the above named persons or firms;
- aiding and abetting bribery in violation of 18 USC §2 (a);
- failure to report that reasonable grounds existed, in violation of 18 USCS § 3057 that a violation 18 USCS §§ 151 *et seq.* or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans had been committed, or that an investigation should be had in connection therewith by referral to the appropriate United States Attorney;
- violation of ABA Rules of Professional Conduct, including, but not limited to:
 - Rule 1.2 (d), and 3.3(a)(2) – counseling or assisting a client to engage in a crime;
 - Rule 3.4 - providing unauthorized value to a lay witness;

- Rule 3.3 - violation of the duty of candor to the Court;
- Rule 8.4 – engaging in criminal or unprofessional conduct;
- Rule 7.3 - prohibiting direct contact with prospective clients (solicitation).

Dated: January 26, 2010

Respectfully Requested,

The Law Office of Norman A. Abood

/s/ Norman A. Abood

Norman A. Abood (OH. Sup. Ct. #0029004)

203 Fort Industry Square

152 N. Summit Street

Toledo, OH 43604

Phone: 419-724-3700

Fax: 419-724-3701

E-Mail: Norman@nabood.com

Admitted *Pro Hac Vice*

-and-

Robert F. Craig, PC

/s/ Robert F. Craig

Robert F. Craig (NE. Sup. Ct. #10819)

1321 Jones Street

Omaha, NE 68102

Phone: 402-408-6000

Fax: 402-408-6001

E-Mail: robert@craiglaw.org

Admitted *Pro Hac Vice*

-and-

Law Office of Lawrence H. Schoenbach

/s/ Lawrence H. Schoenbach

Lawrence H. Schoenbach (USVI Bar No. 770)

The Trinity Building

111 Broadway, 13th Floor

New York, NY 10006

Phone: 212-346-2400

Fax: 212-346-4665

E-Mail: schoenbachlawoffice@att.net

Attorneys for Jeffrey J. Prosser

From: Lee, Jim [jimlee@velaw.com]

Sent: Tuesday, January 26, 2010 11:35 AM

To: Norman Abood

Cc: Gerber, Toby L.; Van Vliet, Theresa; Platt, Mark A.; Wilkes, Greg; Stewart, Daniel; McFaul, Duston; Petereit, Becky L.; Stassen, William; Pbattista@gib-law.com; Greendyke, Bill; Cornwell, John; Springel, Stan; Smyl, Byron; jkf@pawb.uscourts.gov

Subject: RE: Outstanding Questions

Attachments: Exchange.PDF

Mr. Abood,

Attached is a copy of the executed retainer agreement between the Stelzers and their counsel which I secured from Ms Van Vliet following Mr. Stelzer's recent deposition. My inquiries reveal that neither New ICC, the Chapter 11 Trustee, or V&E had involvement in the negotiation of the retainer agreement, nor were they aware of its specific terms until Mr. Stelzer's recent deposition and the subsequent receipt of the agreement. My inquiries further reveal that payment of the Stelzers' legal fees with respect to the matters referenced in the retainer agreement are made pursuant to an oral agreement between Vinson & Elkins, Alvarez & Marsal and Fulbright & Jaworski, with each paying 1/3rd.

Jim Lee

James J. Lee

Partner

Vinson & Elkins LLP

Trammell Crow Center

2001 Ross Avenue, Suite 3700

Dallas, TX 75201-2975

Tel 214.220.7744

Fax 214.999.7744

jimlee@velaw.com

From: Norman Abood [mailto:norman@nabood.com]

Sent: Thursday, January 21, 2010 5:06 PM

To: Lee, Jim; Stewart, Daniel; McFaul, Duston; Petereit, Becky L.

Cc: bob@craiglaw.org; 'Lawrence Schoenbach'; 'Jeffrey Prosser'

Subject: Outstanding Questions

Counsel:

As yet, Mr. Stewart has not proffered a meaningful response to the question of the effect of the Belize resolution on Vitelco's ability to upstream funds to New ICC in light of the PSC Agreements and orders. I raised this question in the summer of 2009, at the August Omnibus.

As the Court sated, if an answer is not provided I may re-address this question through the Court. Refusal to answer by tomorrow, Friday Jan. 22, 2010, will result in my bringing this matter to the Court's attention.

Please advise the answer.

Additionally, as the court directed at the conclusion of Mr. Stelzer's deposition, Mr. Lees is to advise details of the agreement re payment of Mr. Stelzer's legal fees:

Specifically the court has required response to : Who is paying, or who has agreed to pay Mr. Stelzer's legal fees to the Battista law firm,

Please provide the details of the agreement, including a copy if it is in writing, and if not in writing, please advise of the following:

Who initiated the agreement;

When was the agreement initiated and with whom;

What are the complete details of the agreement?

What did V&E or ICC understand they were getting in return for the agreement to pay Stelzer's legal fees.

Additionally, please provide the following:

What was the purpose of entering into the agreement;

Is the Battista firm representing Mr. Lee, V&E, or anyone from V&E relative to criminal investigations related to Mr. Stelzer and/or the Prosser or ICC cases, and if so, when was the agreement to so represent made;

Why wasn't the agreement re, payment of Mr. Stelzer's fees previously disclosed to the court;

Why do you (V&E) believe the agreement re, payment of Mr. Stelzer's fees is legal;

Why do you (V&E) believe the agreement re, payment of Mr. Stelzer's fees did not have to be disclosed to the court.

Hopefully you will respond without the necessity of further process.

We look forward to hearing your response.

Norman A. Abood
203 Fort Industry Square
152 N. Summit Street
Toledo, Ohio 43604-2304
Ph: 419.724.3700
Fx: 419.724.3701
C: 419.490.8068

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Thank You.

GENOVESE
JOBLOVE &
BATTISTA,

P.A.

Attorneys at Law

Paul J. Battista, Esq.
Telephone: 305-372-2457
email: pbattista@gjb-law.com

August 12, 2008

Via Email

Arthur and Kathleen Stelzer
1104 Silverleaf Oak Ct.
Palm Beach Gardens, FL 33410

Re: Legal Representation

Dear Arthur and Kathleen:

We are pleased that you have decided to engage Genovese Joblove & Battista, P.A. (the "Firm") in connection with the pending deposition notices that you received related to the bankruptcy proceedings involving Jeffrey Prosser. Consistent with the rules of professional responsibility which govern all attorneys, it is the Firm's practice to advise clients in writing of the terms and conditions under which we undertake a representation.

First, to protect both of us and to comply with our professional obligations, this engagement is subject to clearance of any conflicts of interest with present or former clients of the Firm. We have performed a conflict check regarding any potentially adverse parties and have determined that no conflict exists at this time. However, in order to help us in the future, if you become aware of additional potential adverse parties, then please provide us with the name of any such person or entity as soon as possible.

I will have primary responsibility for this engagement, and will use other attorneys and legal assistants in our Firm in the best exercise of our professional judgment. The fees and expenses for our representation will be based on the provisions set forth herein and in our Standard Terms and Conditions, which are annexed to and made a part of this letter agreement. My hourly rate is \$500. Where possible, we will utilize attorneys and paraprofessionals with lower billing rates.

We want to assure you that we will endeavor to serve you effectively and strive to represent your interests efficiently. To advance these goals, you agree to disclose fully and accurately all pertinent facts and keep us apprised of all developments in this matter. You further agree otherwise to cooperate fully with us and to be available to attend such meetings as are appropriate. During the course of our representation, we may express opinions regarding issues for which we are being engaged or various courses of action and the results that might be anticipated. Any such statement made by myself or by any partner, associate, of counsel or employee or agent of our Firm, is intended to be an expression of opinion only, based on information available to us at the time, and

STANDARD TERMS AND CONDITIONS OF ENGAGEMENT

1. **Fees:** We take into account many factors in billing for services rendered. The principal factor is our schedule of hourly rates, and most statements for services are the product of the time worked (in units of tenths of an hour) multiplied by the hourly rates for the attorneys and legal assistants who did the work. The client will be billed for all time spent on its behalf, including without limitation conferences, telephone calls, drafting, research, and travel.

It is impossible to determine in advance how much time will be needed, since that depends on many things beyond our control. Any figures we give you for the cost of all or part of our engagement are merely estimates.

Our schedule of hourly rates for attorneys and other members of the professional staff is based on years of experience, specialization in training and practice, level of professional attainment, and overhead costs. Currently our hourly rates range from \$100 for legal assistants to \$525 for our most senior partners. We reconsider our schedule of hourly rates annually, and may revise them at that time. If we change our rates, the new rates will go into effect only upon notice to the client. Upon request, we will provide a client with the rates of those professional staff working on an engagement.

2. **Costs:** It is usually necessary for us to incur, as agent for our clients, expenses for items such as filing fees, travel, lodging, meals, toll telephone calls, photocopying, facsimiles ("fax"), and courier services. Many engagements require substantial amounts of costly ancillary services such as outside duplication services and computerized legal research. The client is responsible for all costs incurred on the client's behalf. In order to allocate these expenses fairly and to keep our hourly rates as low as possible for those matters which do not involve such expenditures, these items are separately itemized on our statements as "costs advanced" or "disbursements".

Major out-of-pocket expenses, including outside fees and expenses (such as printing costs, filing fees, etc.), will not be advanced by us unless special arrangements are made in advance. They will be billed directly or forwarded to our client.

3. **Billing:** Fees and expenses will be billed monthly. Payment is due within thirty (30) days of presentation of the statement, unless we agree otherwise in writing.

4. **Late Payments:** We are confident that our clients make every effort to pay us promptly. Occasionally, however, a client has difficulty in making timely payment. To avoid burdening those clients who pay their statements promptly with higher fees reflecting the added costs we incur as a result of clients who are delinquent, we reserve the right to impose an interest/service charge of one percent per month for late payments. In no event will the service charge be greater than permitted by applicable law.

5. **Non-Payment of Fees and Costs:** Failure to pay any statement rendered when due will constitute a default. In the event of a default, you agree that in our discretion we may immediately cease all legal services on your behalf or discontinue our representation (subject to our ethical obligations and any other applicable provision of law). In the unlikely event that we are

required to institute legal proceedings to collect fees and costs owed by the client, the prevailing party will be entitled to reimbursement of its reasonable attorneys' fees and other costs of collection.

6. **Termination**: The client has the right to terminate our representation by written notice at any time. In that case, the client is not relieved of the obligation to pay for all services rendered and costs incurred on its behalf prior to receipt of such notice. We have the same right to terminate our engagement, subject to an obligation to give the client reasonable notice to arrange alternative representation.

7. **Applicable Law**: The laws of the State of Florida will govern the interpretation of this agreement, including all rules or codes of ethics which apply to the provision of services by us.

8. **Payment by Others**: Sometimes another party to a transaction agrees to pay our client's legal fees, or a court may order our client's adversary to pay all or a part of its legal fees and costs. However, in such case our client remains primarily liable for payment of all fees and costs. Any amounts received from others will be credited to the client's account.

PSC 2000 Series 2410
Personal Printer/Fax/Copier/Scanner

Log for
Stelzer
15617751345
Jan-00-00 00:00AM

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Jan 00	00:00AM	Fax Sent	13053492310	0:42	3	OK

.....
facsimile transmittal

To: Paul J. Battista, Esq. **Fax:** 305-349-2310

From: Arthur & Kathleen Stelzer **Date:** 8/12/2008

Re: Engagement Letter **Pages:** 3 including cover

CC:

Urgent For Review Please Comment Please Reply Please Recycle

.....
Notes: Paul – here’s the signed Engagement Letter. If you need the original, please let us know.

Thanks.

.....
Kathleen & Arthur.....