

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF PENNSYLVANIA

IN RE: . Case No. 04-27848  
. .  
ACR MANAGEMENT, LLC, .  
. USX Tower - 54th Floor  
. 600 Grant Street  
. Pittsburgh, PA 15219  
Debtors. .  
. May 31, 2005  
. . . . . 3:15 p.m.

TRANSCRIPT OF MOTION  
BEFORE HONORABLE M. BRUCE McCULLOUGH  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Creditor: Law Office of Michael J. Yurcheshen  
By: MICHAEL J. YURCHESHEN, ESQ.  
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Irvine, CA

Andrade & Associates  
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For the Debtor: Campbell & Levine, LLC  
By: SALENE MAZUR, ESQ.  
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1 THE COURT: We've got Number 04-27848, ACR  
2 Management, LLC.

3 MS. MAZUR: Good afternoon, Your Honor. Salene  
4 Mazur, I'm with Campbell and Levine. I'm here on behalf of the  
5 debtors.

6 MR. YURCHESHEN: Your Honor, Michael Yurcheshen, on  
7 behalf of the movant, Condon-Johnson, and we have on the phone  
8 -- I was supposed to have on the phone, the California  
9 representative of Condon-Johnson.

10 THE COURT: Yes, we've got a phone number here.

11 MR. YURCHESHEN: That would be, Your Honor, that  
12 would be Ms. Natalia Smith.

13 THE COURT: I've got Richard Andrade.

14 MR. YURCHESHEN: I know, they -- apparently Ms. Smith  
15 advised that Mr. Andrade is not feeling quite well. That's  
16 what I was advised, Your Honor.

17 THE COURT: Who are we supposed to ask for?

18 MR. YURCHESHEN: Ms. Natalia Smith.

19 UNIDENTIFIED SPEAKER: Good morning, Andrade and  
20 Associates.

21 THE COURT: Yes, Ms. Natalia Smith.

22 UNIDENTIFIED SPEAKER: May I tell her who's calling?

23 THE COURT: The Bankruptcy Court in Pittsburgh.

24 UNIDENTIFIED SPEAKER: One moment, please.

25 MS. SMITH: Good morning.

1 THE COURT: Hello, this is the Bankruptcy Court in  
2 Pittsburgh, is this Natalia Smith?

3 MS. SMITH: Yes, Your Honor.

4 THE COURT: And you represent Condon-Johnson?

5 MS. SMITH: Yes, Your Honor, and Kevin Bland's also  
6 here, and he's representing Condon-Johnson, as well.

7 MR. BLAND: Good morning -- good afternoon, Your  
8 Honor.

9 THE COURT: Okay, well, we've got three lawyers for  
10 -- poor Ms. Mazur is overwhelmed, here. Where are we?

11 MR. BLAND: Your Honor, if I may, I'll just explain  
12 what I'm -- if you need some background information, I was from  
13 the original incident, back in May of 2003, until about  
14 November of this year. So, if you need background, that's the  
15 only reason I'm here.

16 THE COURT: Okay. So, who wants to talk?

17 MR. YURCHESHEN: Your Honor, we have been consulting  
18 and conferring for a number of days, here, and basically, we've  
19 come to an agreement on almost all terms, except one specific  
20 one. And if I'm incorrect, counsel, please let me know.

21 We have agreed -- or the debtor has agreed -- to  
22 allow the proceedings, they have no objection to allowing the  
23 proceedings to go forward in California. Specifically, they're  
24 having trouble with discovery out there, inasmuch as the  
25 debtor's counsel out there has been attempting to block it,

1 based upon the bankruptcy. And the judge out there, I  
2 understand, wants to be reassured that this Court will not  
3 block the continuing progress of the discovery, which has been  
4 stalled for a while.

5           Number 2, I believe the debtor has -- debtors'  
6 counsel has agreed that whatever insurance policies cover the  
7 debtor directly, its own, and that would be appropriate,  
8 depending on the time that -- or depending on the verdict that  
9 might eventually come down, and the potential liability and  
10 cost coverage, that they have no objection to those policies  
11 being drawn down upon or used. Is that correct?

12           MS. MAZUR: Your Honor, it's Salene Mazur. He is  
13 correct, we have been talking for a number of days. I think  
14 the real issue, here, we -- we agreed to relief from this stay,  
15 but only relief that would be limited to the movants,  
16 Condon-Johnson -- Condon-Johnson is a co-defendant. And the  
17 plaintiff's Scripps Health, or Titan Corporation, they have not  
18 filed motions for relief from stay, against the debtor. So,  
19 the relief, here, we would hope that it would only be granted  
20 to Condon-Johnson, to do whatever they need to do, in the --

21           THE COURT: I can only grant it to people that ask  
22 it.

23           MS. MAZUR: Okay, I just want to clarify it.

24           MR. YURCHESHEN: And I don't represent anybody else,  
25 except Condon-Johnson, Your Honor.

1           THE COURT: We can only grant relief to the people  
2 who ask for it.

3           MS. MAZUR: I just wanted to clarify that, for the  
4 record.

5           THE COURT: Sure.

6           MS. MAZUR: And then, I think, without going into a  
7 full discussion of the background here, the debtors -- there  
8 was a contract between the debtors and Condon-Johnson.  
9 Pursuant to that contract, there was an indemnification  
10 provision, and a provision that required the debtors to become  
11 an additional insured on the policy, the Zurich Policy, of  
12 Condon-Johnson.

13           So, as of today, Zurich has been picking up the  
14 defense's cost, and has been representing Maxim in this State  
15 court action. There is some concern as to whether the  
16 debtors's insurance policies would come into play at all, and  
17 as far as our position is, that only the Zurich policy, or any  
18 other applicable policy on which the debtors are an additional  
19 insured, those are the only relevant policies. But we have  
20 come to the conclusion that that issue may just be for another  
21 day. I think there's a question, in terms of the  
22 interpretation of the contract between the movant and the  
23 debtors.

24           So, we would agree that the relief from stay be  
25 limited to any applicable insurance, including Zurich, and even

1 the debtors' insurance policies, to the extent they are  
2 applicable.

3           The problem that we have been resolving, of course,  
4 is a problem regarding a proof of claim that Condon-Johnson  
5 would want to file, to the extent that their recovery is not  
6 covered by insurance. And I suggested that --

7           THE COURT: They didn't file a proof claim?

8           MS. MAZUR: They did not, Your Honor, because we had  
9 scheduled Condon-Johnson on our schedules, the address, though,  
10 was an incomplete address, so they did not receive the notice  
11 of the bar date. We did not have the plaintiff's Scripps  
12 Health, or Titan Corporation on our schedules, either, and so  
13 they, also, did not receive notice of the bar date. However,  
14 they should have been on notice of our bankruptcy case. My  
15 client informs me that she received a copy of the complaint, it  
16 was after the June 14th petition date. She received it  
17 sometime in September. I think, however, that the complaint  
18 was filed -- if I'm not incorrect -- on August 18th, 2004.

19           And in those cases, she informed me that Kirkland and  
20 Ellis had hired a local counsel to file suggestions of  
21 bankruptcy in the case. So, they should have been on notice of  
22 the bankruptcy case, however, we didn't receive an official  
23 notice of the bar date. So, they have not yet filed proof of  
24 claim. But even if we were going to agree to allow them to do  
25 it now, we certainly don't agree with the debtors' self-insured

1 retention, for -- I think the policy is under Liberty, as a  
2 carrier - they have a \$500,00 self-insured retention for  
3 defense costs, and also for liability.

4           So, we -- in light of -- we think that the Zurich  
5 policy is the applicable policy, and also, we're disputing any  
6 liability of the debtors, rising out of the incident. We  
7 wouldn't agree to a proof of claim for 500 - for a million  
8 dollars, Your Honor. So - but in my discussions with counsel  
9 for Condon-Johnson, they tell me that there is a mediation  
10 scheduled, in August, I believe, but they think that the trial  
11 will not take place for two or three years, in order to  
12 liquidate the claim. So, Your Honor, this claim, too, is -- if  
13 they were to file the claim, we would have objected to it,  
14 anyway, in our ninth omnibus objection to litigation claims.

15           So, that's where we are, Your Honor. We basically  
16 don't know what to do with regard to the proof of claim, we  
17 can't come to a resolve regarding it.

18           MS. SMITH: Your Honor, if I may, Natalia Smith,  
19 here.

20           THE COURT: Sure.

21           MS. SMITH: In Superior Court, we have a trial date  
22 set, for September of 2004 -- I mean, I'm sorry, 2005.  
23 However, the Superior Court judge would like to know whether we  
24 can proceed against Maxim, and he will then push the trial date  
25 out, probably sometime in December or early January. We will,



1 as far as this lawsuit it concerned, we will be done with the  
2 lawsuit, probably the early part of next year.

3           The issue -- basically, what counsel is saying here  
4 is she's not agreeing to anything we don't already, kind of,  
5 have. The issue, here, is that Liberty policy, and we wanted  
6 to, I guess, agree to file a proof of claim, only to the amount  
7 of that million dollar deductible. So, our proof of claim  
8 would be limited to that million dollars, potential deductible,  
9 which is -- on the issue of the insurance policies, which  
10 insurance policy will pay out, either Liberty or Zurich, the  
11 bottom line issue is going to be who is going to pay for that  
12 deductible. So, we want to be able to file proof of claim for  
13 that million dollars, in the event that Condon-Johnson has to  
14 help Maxim pay for the deductible.

15           THE COURT: You haven't filed a proof of claim yet?

16           MS. SMITH: We didn't, Your Honor, because we were  
17 never provided with notice as to any of the bankruptcy  
18 proceedings.

19           THE COURT: Well, you know about it, now.

20           MS. SMITH: Yes, we did, Your Honor, but we were --  
21 the bar date had come and gone by the time we were notified.

22           MR. YURCHESHEN: Your Honor, in our motion -

23           MS. SMITH: But counsel said, we didn't get copies of  
24 the first plan, second plan, or -- we just got copies of the  
25 third plan.

1 THE COURT: Yes, but when you find out about a  
2 bankruptcy, you file a proof of claim, and worry about whether  
3 you're authorized to do it later.

4 MR. BLAND: I think Michael speaks to it better than  
5 we can.

6 MR. YURCHESHEN: In our motion, Your Honor, we gave  
7 you requests for recognizing that a proof of claim had not been  
8 filed. We requested the Court's authorization to do so, within  
9 the context of the request with the State, because it's --  
10 related.

11 THE COURT: I don't think you need court approval to  
12 file a proof of claim.

13 MR. YURCHESHEN: Are you doing something against the  
14 rules, Your Honor, when you file a proof of claim, and you know  
15 the bar date's passed, or do you have to ask permission, first?

16 THE COURT: If you know you didn't get a copy of the  
17 notice. I'm not going to get into the mumbo-jumbo about  
18 entering an order authorizing you to file a proof of claim,  
19 because then somebody will say I have approved the amount of  
20 the claim. Just go ahead and file a proof of claim, and if the  
21 debtor wants to object to it, then they'll object to it, which  
22 is the ordinary way proofs of claim are dealt with.

23 MR. YURCHESHEN: I understand, Your Honor.

24 THE COURT: So, proof of claim, you can file.

25 MS. SMITH: Okay.

1 THE COURT: And the debtor has a right to object.  
2 Now, with respect to which insurance policy applies, that's  
3 well out of my bailiwick.

4 MS. SMITH: Okay, Your Honor, we just want to make  
5 sure that the relief, here, doesn't bar us in any way, from  
6 possibly, I guess, dealing with a deductible on the proof of  
7 claim issue. But you're saying that we should just go ahead  
8 and file a proof of claim and deal with it then.

9 THE COURT: If the debtor wants to object, they can  
10 object.

11 MS. SMITH: Okay.

12 THE COURT: So, then, what else do we have on this  
13 one, that I can do anything about.

14 MS. SMITH: The order -- I would just need an order  
15 saying that we can proceed with discovery in the Superior Court  
16 lawsuit, out here in California.

17 THE COURT: Ms. Mazur?

18 MS. MAZUR: Your Honor, I can revise the proposed  
19 order, to reflect that the relief from stay would be limited to  
20 allowing the movant to liquidate their claims, and recover from  
21 any applicable insurance coverage, including Condon-Johnson's  
22 and the debtors'. And I'll indicate on there that, provided,  
23 however, they can file a proof of claim. I can submit a  
24 proposed order to Your Honor, but I just -- we will,  
25 undoubtedly, object to this claim, so I guess we'll just fight

1 that on another day.

2 THE COURT: Yes.

3 MS. SMITH: Your Honor, I guess my only request would  
4 be that, it's clear from her proposed order that, on the issue  
5 of the insurance, this would -- there has been a ruling with  
6 prejudice, to our future filing of that proof of claim. She's  
7 saying she's limiting it to the Zurich policy, and obviously,  
8 we're going to have an issue with the --

9 THE COURT: She says whatever the applicable policies  
10 are.

11 MR. YURCHESHEN: She's agreeing, basically, that  
12 whatever the applicable policies are.

13 THE COURT: She's not deciding, she's neither  
14 deciding, nor limiting.

15 MS. SMITH: Okay, thank you.

16 THE COURT: Okay, is that what I understand, Ms.  
17 Mazur?

18 MS. MAZUR: That's fine.

19 THE COURT: I don't mean to put words in your mouth,  
20 is that -

21 MS. MAZUR: No, no, that's true.

22 MR. YURCHESHEN: That's what we had talked about  
23 prior to the hearing, Your Honor.

24 THE COURT: Okay, so we'll look from an order from  
25 Ms. Mazur, okay?

1 MS. MAZUR: Thank you, Your Honor.

2 MR. YURCHESHEN: Thank you, Your Honor.

3 MR. BLAND: Thank you, Your Honor.

4 MS. SMITH: Thank you, Your Honor.

5 THE COURT: Now, we have Document Number 1733.

6 MS. MAZUR: Your Honor, we filed a stipulation  
7 resolving this matter. I believe it's with respect to  
8 Ascension Parish.

9 THE COURT: Right.

10 MS. MAZUR: It's a stipulation and agreed order, and  
11 we would respectfully request that you enter that order.

12 THE COURT: Okay.

13 MS. MAZUR: Thank you, Your Honor.

14 THE CLERK: Close the record?

15 THE COURT: Close the record.

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

I, KAREN CARELLA, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in eh above-entitled matter, and to the best of my ability.

/s/ Karen Carella

Date: July 1, 2005

KAREN CARELLA

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