

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

IN RE: . Case No. 10-93904-BHL-11
. .
EASTERN LIVESTOCK CO., LLC, .
. 110 U.S. Courthouse
. 121 West Spring Street
. New Albany, IN 47150
Debtor. .
. March 12, 2012
. 10:25 a.m.

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE HONORABLE BASIL H. LORCH, III
UNITED STATES BANKRUPTCY COURT JUDGE

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1 COURTROOM DEPUTY: Bankruptcy court is now in
2 session.

3 THE COURT: Good morning. Be seated. All right,
4 we're on the record in Eastern Livestock. I'm not going to ask
5 the parties on the phone to restate their appearances. I have
6 a list here. I would ask, though, that before you speak, that
7 you identify yourself. Always remember keep your phone on mute
8 unless you're speaking, of course, and don't put us on hold
9 especially if your phone system plays music. I would ask the
10 attorneys in the courtroom to state the appearances please.

11 MR. TONER: Kevin Toner from Faegre, Baker, Daniels
12 for the trustee, Jim Knauer, who's also here with me. Terry
13 Hall is on the telephone and Sean White, special counsel to the
14 trustee, is also present.

15 MR. LaTOUR: Good morning, Your Honor. Randall
16 LaTour from Vorys, Sater, Seymour and Pease, representing Fifth
17 Third Bank. With me in the courtroom is my associate, Melissa
18 Giberson.

19 MR. DONNELLON: Good morning, Your Honor. Dan
20 Donnellon, Faruki, Ireland and Cox, for First Bank and Trust.

21 MR. LEVIN: Good morning, Your Honor. Elliot Levin,
22 Rubin and Levin, on behalf of Superior.

23 MR. BOWLES: Good morning, Your Honor. Chip Bowles,
24 Bingham, Greenebaum, Doll, for Superior Livestock and a list of
25 other creditors.

1 MR. AMES: Your Honor, John Ames, Bingham, Greenebaum,
2 Doll for Superior. I just like to say it to just practice it.

3 MS. DelCOTTO: Good morning, Your Honor. Laura Day
4 DelCotto appearing for Blue Grass Stockyards and other unpaid
5 cattle producers.

6 THE COURT: Is that their name or their status?

7 (Laughter)

8 MS. DelCOTTO: (indiscernible) save time.

9 THE COURT: All right.

10 MR. OYLER: Mike Oyler for Your Community Bank.

11 MS. BRYANT: Your Honor, Lisa Bryant on behalf of
12 People's Bank and Trust Company of Pickett County Tennessee.

13 MR. MEYER: Rob Meyer for Rosenbaum Feeder Cattle.

14 MR. SIMON: Fred Simon on behalf of Patsy and Thomas
15 Gibson.

16 THE COURT: All right. I have a proposed agenda.
17 Who wants to take me through that?

18 MR. TONER: I'm not sure if Terry Hall plans to do
19 that or not. Kevin Toner again.

20 THE COURT: Ms. Hall, do you want Mr. Toner to lead
21 the way?

22 MS. HALL: Again, Your Honor, the first item under
23 the proposed agenda and there have been some pleadings -- a
24 pleading filed with regard to the agenda (indiscernible) but no
25 new matters, simply additional responses to your existing

1 matters. First continued matter under Roman numeral II, the
2 motion to consolidate (indiscernible), to address that and it
3 may resolve additional items on the agenda.

4 THE COURT: All right.

5 MR. NEWBERN: Your Honor, this is Scott Newbern.
6 Would you like me to address that now?

7 THE COURT: Yes, Mr. Newbern.

8 MR. NEWBERN: We have been talking per the Court's
9 directions at the last omnibus hearing. I've been speaking to
10 counsel for Fifth -- counsel for the trustee. The trustee
11 asked that I compile a detailed accounting if you will on our
12 claims and we reached an agreement to consolidate all of the
13 various claims, as well. I filed a supplemental attachment of
14 that for the trustee and also Fifth Third Bank.

15 Essentially, we've agreed to consolidate all of the
16 (indiscernible) claims within one proceeding. There are -- in
17 the (indiscernible) adversary proceedings, there are some
18 ancillary claims involving dishonored checks that we really
19 haven't had the opportunity to discuss. But other than that, I
20 think we understand where we're going. I've tried to outline
21 the issues again for the Court in a review motion.

22 I note that the counsel for Fifth Third and counsel
23 for trustee generally agree to the consolidation. I don't
24 think they have had the chance, or maybe they have at this
25 point, but they didn't have a chance prior to my filing to

1 review the actual motion paper although -- and I apologize to
2 the Court because I've been dealing with a very balky computer
3 in the last four to five days. But I think we have reached an
4 agreement.

5 THE COURT: All right, so go ahead, Mr. LaTour, you
6 can respond.

7 MR. LaTOUR: Well, Your Honor, this is mostly in the
8 nature of housekeeping. I think there are two motions to
9 consolidate in the air at this point. One was Docket Number
10 975 filed by Mr. Newbern a couple of months ago, maybe longer.
11 I think that one is essentially moot at this point having been
12 superseded by the newer one that was filed Sunday night which
13 is entitled, The Unopposed Florida Creditors Rule 7042 Motion
14 to Consolidate.

15 Mr. Newbern is correct in terms of the procedural
16 relief requested. Fifth Third does not object. I would like
17 to note for the record that Fifth Third does not agree with all
18 of his fact characterizations that doesn't go to the procedural
19 motion.

20 I do think, however, that if he's going to
21 consolidate issues in his objections to the trustee's report
22 which deals with who gets what dollars with respect to
23 particular transactions, that the currently pending answers in
24 Rush Creek should be amended to include those counts so that
25 everybody understands exactly what causes of action and what

1 counts any particular discussion is dealing with. Mr. Newbern
2 and I have discussed that previously. I believe he's in
3 agreement with that, but he can speak to that himself.

4 MR. NEWBERN: That's true, Your Honor. I've
5 overlooked mentioning to the Court. I believe it's in the
6 actual pleading and I did note that they did not have an
7 opportunity to review the document, as well. So no, I would
8 agree to amend whatever pleadings are necessary and file
9 (indiscernible) papers as may be required.

10 MR. TONER: The trustee is in agreement. 7042 seems
11 to be the right procedural technique and some amended
12 pleadings, I think, would help keep things on track in that
13 adversary.

14 THE COURT: All right. Well, as far as housekeeping
15 first, so the old motion, 975, we should show that as moot per
16 the revised motion. Do you agree with that, Mr. Newbern?

17 MR. NEWBERN: Yes, sir.

18 THE COURT: All right, and then I guess -- I mean
19 I've read the things that Mr. Newbern has filed and I want to
20 talk about the other one also, the -- has to do with the
21 confidentiality of the documents, but we'll come to that in
22 just a moment. But -- so the Rush Creek interpleader action
23 will now be expanded with the consent of the parties. It will
24 no longer be strictly in the nature of an interpleader action,
25 but the parties will be seeking a judgment in that action which

1 not only will resolve the disposition of the interpled funds
2 but will also resolve the various claims set forth by Mr.
3 Newbern's clients against the estate.

4 MR. TONER: I believe that's right, yes.

5 THE COURT: Is that what everyone's understanding is?

6 MR. TONER: There are contested objections to the
7 purchase money sales from cattle and those would be part of
8 that proceeding. It seems like there's quite an overlap of
9 legal arguments and facts.

10 THE COURT: There definitely seems to be an overlap.
11 I don't have any problem with that. I'm just saying that it
12 changes the nature, which I think the rule allows you to do,
13 but it changes the nature of the proceedings.

14 MR. LaTOUR: Yes, Your Honor, it does change the
15 nature of the proceedings. I think that the bulk of the issues
16 are whether or not the monies that are in contest are property
17 of the bankruptcy estate or not. But, yes, it is strictly
18 speaking going to change it from being solely interpleader
19 action to a broader adversary proceeding covering more issues.
20 You are correct.

21 THE COURT: All right, I thought that was where we
22 were all going and I think it makes sense in terms of judicial
23 economy. And one of the issues we've been trying to deal with
24 in this case all along is how to consolidate some of these
25 issues for resolution.

1 All right, then the next matter is the trustee's --
2 excuse me, the Florida creditor's motion to seal reply to
3 trustee's response and notice of filing of evidentiary
4 materials. And I was handed that envelope this -- or a couple
5 of envelopes this morning. I think what I read this morning
6 was that the bank had not -- at least at the time you filed
7 that, had not finalized their position as to certain other
8 materials that you wish to submit, I mean whether or not they
9 wish for them to remain sealed and subject to the
10 confidentiality order. Is that still the position or what's
11 your position, Mr. LaTour?

12 MR. LaTOUR: Your Honor, Mr. Newbern and I have not
13 had the opportunity to go over those materials so, no, we have
14 not finalized that issue. I'd like to continue that, if we
15 could.

16 THE COURT: All right. Do you have any problem with
17 continuing that, Mr. Newbern?

18 MR. NEWBERN: Your Honor, I don't really have a
19 problem continuing. I would note for the Court that these
20 documents and papers were submitted to the Court before the
21 last omnibus hearing and the end of February I e-mailed Mr.
22 LaTour and sent a letter to that effect asking for what the
23 basis for his objection to the confidentiality were. And I
24 basically am trying to follow the (indiscernible) protective
25 order that requires us to take these steps. But I don't see

1 any basis at this point in those documents being --

2 THE COURT: All right, I'll ask that the parties in
3 the next week or so deal with that. I think Mr. LaTour might
4 have been involved in a deposition or two in the last --

5 MR. NEWBERN: No doubt, Your Honor.

6 THE COURT: -- few days or maybe even longer. So,
7 yes, I'd ask that you do that. And obviously, the Court can
8 look at the documents either way so it's just a matter of
9 whether or not they're going to remain under seal, correct?

10 MR. NEWBERN: Yes, sir.

11 THE COURT: Yes, so it's not like it would in any way
12 hamper my opportunity to look at them if -- when that becomes
13 necessary. I haven't yet, by the way. All right.

14 UNIDENTIFIED SPEAKER: (Indiscernible)

15 THE COURT: The next -- yes, I'll continue that to
16 the next omnibus if it's not resolved on April 23rd.

17 MR. LaTOUR: Your Honor, can I ask a question about
18 that?

19 THE COURT: Yes.

20 MR. LaTOUR: My understanding is these are papers in
21 support of the motion to consolidate that Mr. Newbern and I
22 just agreed to consolidate.

23 THE COURT: Yes, they are papers in support of the
24 motion to consolidate, but I suppose that you'll want to use
25 them also in the -- as to the merits of your positions. Is

1 that right, Mr. Newbern?

2 MR. NEWBERN: It is indeed, Your Honor.

3 THE COURT: That kind of was my assumption.

4 MR. NEWBERN: (indiscernible)

5 THE COURT: Yes, so we're not really talking about
6 the consolidation at this point, but you still want to use
7 them?

8 MR. NEWBERN: Yes, sir.

9 THE COURT: All right, okay. April 23rd.

10 MR. NEWBERN: Thank you, Your Honor.

11 THE COURT: Motion for a protective order, that's
12 something that's been pending for some time.

13 MR. LaTOUR: Your Honor, that particular motion is
14 going to occur throughout this agenda because it was filed in
15 each of the adversary proceedings.

16 THE COURT: Right.

17 MR. LaTOUR: It was initially how to deal with the
18 discovery contemplated by the Rule 2004 motion and then the
19 other adversary matters. The 2004 motions have been largely
20 dealt with. The remaining protocol Mr. Donnellon and I intend
21 to address in the next cycle here and we think we'll have
22 something for the April 23 omnibus, but we don't have that
23 ready yet.

24 THE COURT: All right. Well, there's already been an
25 order that granted in part -- left open other aspects as to the

1 successor deposition, so I think we'll leave all those matters
2 where they are unless someone has a suggestion as to any of
3 those that need to be further addressed this morning.

4 Okay, new matters. Ms. Hall, you want to take over
5 again?

6 MS. HALL: Yes, Your Honor. Items 3, 4 and 5 under
7 new matters all have to deal with the trustee's settlement with
8 People's Bank of Pickett County. I think Mr. Raluy, I thought
9 I heard his name. There's certainly someone on the phone
10 representing -

11 MS. BRYANT: Your Honor, Lisa Bryant on behalf of
12 People's Bank of Pickett County.

13 THE COURT: I don't think they'll be able to hear
14 you, Ms. Bryant.

15 MS. HALL: Essentially, Your Honor, the trustee and
16 the bank have reached an agreement related to a potential
17 settlement of a piece of real estate, part of some collateral
18 given by -- a loan to Mr. Gibson by People's Bank. We had a
19 motion to approve the compromise and settlement. No objections
20 were filed. We had a motion allowing us to sell the property
21 and split the proceeds -

22 THE COURT: And then a --

23 MS. HALL: -- a settlement agreement and we have an
24 employment application to allow us to (indiscernible).

25 THE COURT: You're cutting out. If you're on a

1 speaker, maybe you should get off the speaker phone. You're
2 cutting out quite a bit.

3 MS. HALL: Sorry. All right. Essentially, Your
4 Honor, we've got a motion to settle between --

5 THE COURT: Yes, I heard enough to know what the
6 three motions are. So there's no objection by anyone, right?

7 MS. BRYANT: Your Honor, there is one minor detail.
8 On Friday evening, Dustin DeNeal and my law partner Tony Raluy
9 worked out a minor amendment to the motion to compromise. It
10 should not affect any creditors. I don't know if this is --
11 Kevin, are you familiar with this?

12 MR. TONER: Yes, yes.

13 MS. BRYANT: All right.

14 MR. TONER: That's all accurate. We discovered
15 another note in Eastern's records and the settlement agreement
16 needed to make it clear that no one -- no director officer of
17 Pickett County Bank was been released in their official
18 capacity and claims against any individuals at the bank who may
19 -- who have notes to Mr. Gibson or Eastern are not part of this
20 release. And so the new settlement agreement captures that.

21 THE COURT: All right.

22 MS. BRYANT: And, Your Honor, it just provides that
23 they are only being -- the bank officers are only being
24 released in their official capacity and they're -- I notice on
25 the certificate of service it does say this was served on

1 January 30th. I guess we need to change the service date. But
2 other than that, the amendment to the motion to approve the
3 compromise and settlement is accurate.

4 THE COURT: All right.

5 MS. BRYANT: So should we just file that today,
6 change the service date? Or I guess Dustin is the one that
7 prepared it.

8 THE COURT: Just put the corrected -- or the amended
9 form of the settlement agreement in the order or refer to it --
10 were you going to attach it or --

11 MS. BRYANT: It was -- let's see, the amendment says
12 that, specifically, the trustee replaces Exhibit A attached to
13 the settlement motion, Exhibit A being the settlement agreement
14 --

15 THE COURT: That's fine. Just file --

16 MS. BRYANT: -- with Exhibit A attached hereto.

17 THE COURT: Just file it then and I'll show that the
18 motion is granted and the settlement agreement is approved as
19 amended by the parties. I'll show the motion for the auction
20 sale is granted. And the application to employ the auctioneer
21 is approved.

22 MS. BRYANT: Your Honor, I think that that is all
23 that is before the Court with regard to my client, so is there
24 anything else with regard to Peoples Bank?

25 UNIDENTIFIED SPEAKER: I'm not aware of anything.

1 THE COURT: All right.

2 MS. BRYANT: All right, I will see you some time.

3 THE COURT: Thank you.

4 MS. BRYANT: All right, thank you, Your Honor.

5 THE COURT: Next, Ms. Hall?

6 MS. HALL: Next, Your Honor, is an application to
7 employ Kroger, Gardis & Regas as special counsel for the
8 trustee to allow them to essentially (indiscernible) proposed
9 fee application, take over some of the (indiscernible)
10 litigation matters (indiscernible) reflection of the notes on
11 an hourly basis and/or contingency fee basis. No objections
12 have been filed and asking to approve that application.

13 THE COURT: Anybody want to be heard on that?

14 MR. KNAUER: I could speak to that briefly, Judge.

15 THE COURT: I mean anybody against it?

16 (No audible response)

17 THE COURT: I'll show it's approved. Elmore matter,
18 trustee's motion to stay deadlines in the Elmore contested
19 matter.

20 MS. HALL: Mr. Toner can address that --

21 MR. TONER: Yes.

22 MS. HALL: -- both that one and Coffeyville.

23 MR. TONER: Right. Kevin Toner for the trustee.

24 Your Honor, we have deadlines in those matters requiring the
25 parties to stipulate as to facts and set forth remaining issues

1 to be resolved as part of the contested matters. Those were
2 right on the heels of Your Honor's ruling on constructive trust
3 issues. We believe those are the only real defenses -- only
4 real objections asserted in those contested matters. We're
5 waiting to hear from the objectors whether they're done or not
6 and so it seemed appropriate to -- for the attorneys to work
7 out a new schedule that move those deadlines off a bit so that
8 they could make up their mind about what happens next.

9 THE COURT: All right, have you asked for new
10 deadlines or just to stay the deadlines?

11 MR. TONER: To stay those deadlines that were just on
12 us this week and allow us to follow these new deadlines that we
13 proposed.

14 THE COURT: All right, I'll grant both of those
15 motions. All right, in the adversary proceedings, we'll start
16 with Downs.

17 MR. TONER: Again, Kevin Toner for the trustee. In
18 the Downs matter, we were coming up on pretty much the same
19 deadlines so an attorneys' conference was held about a week
20 ago. We agreed that it would be appropriate for Laurel
21 Livestock to do its voluntary disclosures under the rules and
22 for us to provide other documents that have been obtained
23 informally so that the attorneys could get together and if we
24 can't work out this case, move it to mediation if that makes
25 sense. We're not proposing moving the deadline for dispositive

1 motions or the trial date in the case. But some of these early
2 pretrial deadlines, we ask that those be rescheduled just a bit
3 to allow that to take place.

4 THE COURT: All right.

5 MS. DelCOTTO: Your Honor, the other matter that's
6 showing on the agenda in Downs is Blue Grass Stockyards' motion
7 about some documents that were sealed. There's the identical
8 motion in Friona. I've talked to Mr. LaTour and we would just
9 like to continue those to April 23 so we can have some
10 substantive discussions about those.

11 THE COURT: All right, I'll show that's continued to
12 April 23rd. The motion -- the matter that you spoke about, the
13 deadlines, I don't see that on the agenda, but that is -- is
14 that a pending motion or just something that you all --

15 MR. TONER: That's a good question. I believe there
16 was a joint motion that we submitted.

17 MS. DelCOTTO: I don't know whether the order has
18 been entered. There was an agreed entry and joint motion.

19 THE COURT: Well, we'll check for it and make sure
20 that it is entered.

21 MR. TONER: If not, we'll resubmit the order.

22 THE COURT: Very good. All right, Superior.

23 MR. LaTOUR: Your Honor, the only item on the agenda
24 is that echoing -

25 THE COURT: Yes.

1 MR. LaTOUR: -- matter that we've already disposed
2 of.

3 THE COURT: So every time that pops up, should we
4 just bump it to the 23rd?

5 MR. LaTOUR: Yes, sir.

6 THE COURT: All right. Friona? That's -- the first
7 is the matter we just discussed. Then there is a --

8 MS. DelCOTTO: I believe that's also continued, Your
9 Honor.

10 THE COURT: That's also the confidentiality matter so
11 we'll bump that to the 23rd. I think there's been some
12 discussion among the attorneys and maybe with my staff about
13 also showing on the agenda the matters that are under
14 advisement in the various adversaries. I don't do that in an
15 attempt to embarrass the Court, but rather to -- just to make
16 sure that we're -- I mean, just keeping track of everything in
17 this case is a nightmare as I'm sure you all know.

18 MR. TONER: I imagined they weren't included so as
19 not to embarrass the Court. We'll get them on there.

20 THE COURT: Well, I want them included. I'm not
21 embarrassed. The -- I mean not yet. You know, these are some
22 interesting and complex matters that have been raised and
23 novel, to say the least. So yes, I would want them.

24 MR. TONER: Arranged by adversary proceeding?

25 THE COURT: And if in any adversary proceeding

1 there's a summary judgment fully briefed that's under
2 consideration -- I think we know them all. I sure hope none
3 have slipped under the radar, but our pending motions, I think
4 we know those also. I guess we'll try to put pending motions
5 on already, yes.

6 Okay, moving on. And then there was Mr. Newbern's
7 notice of appearance and motion to intervene.

8 MR. NEWBERN: Yes, Your Honor.

9 THE COURT: Do you still want to intervene in Friona?

10 MR. NEWBERN: I've agreed with Fifth Third counsel
11 and with the trustee counsel to withdraw that motion --

12 THE COURT: All right.

13 MR. NEWBERN: -- on the proviso that we can
14 accomplish the same thing without so much attorney and legal
15 expenses associated with an intervention because I really don't
16 have a dog in the fight for those funds. It may become
17 necessary to change that view later down the road, I'm not
18 sure. I hope not. But, for the time being, that motion has
19 been withdrawn.

20 THE COURT: Okay, I'll show the motion is withdrawn
21 in open court. I have a question and the clerk's office may
22 already know the answer to this question and the attorneys may
23 already know the answer to this question. But as things are
24 now, if you're not in the Rush adversary, for example, like Mr.
25 Newbern -- he will be in the Rush adversary but not in the

1 Friona adversary -- if you wanted to receive notice of an -- of
2 the pleadings in the adversary, could you do so?

3 UNIDENTIFIED ATTORNEY: By entering an appearance,
4 Your Honor.

5 UNIDENTIFIED ATTORNEY: Only with an appearance, Your
6 Honor. That's what happened to me --

7 THE COURT: Right. That's what I thought generated
8 this. I wouldn't mind in this case because there are issues
9 that affect parties in going back and forth and in the interest
10 of due process to set something up with the clerk's office to
11 allow anybody that's entered an appearance in anything in
12 Eastern to enter an appearance. Now, that does not mean
13 they'll be filing pleadings. I'm not -- you know, they're
14 going to -- if they're going to be a party, that's a whole
15 different step. I'm not talking about them being a party.

16 COURTROOM DEPUTY: On the CM/ECF, you can set up your
17 utilities to have certain case numbers and receive all notices
18 of case activity but you have to put those specific cases into
19 your utilities under user name.

20 THE COURT: All right. I'm informed that under
21 CM/ECF, you can -- under your utilities --

22 COURTROOM DEPUTY: Yes.

23 THE COURT: -- you can list every adversary number
24 that you want to receive notice -- that you want to be noticed
25 in, but -

1 COURTROOM DEPUTY: Yes, enter account information,
2 user information.

3 THE COURT: Send her account information, user
4 information. So, apparently, we have the electronic ability to
5 do that. And if any of you encounter a problem doing that, let
6 us know and we'll try to take down any electronic barriers that
7 might exist. Yes, Mr. LaTour?

8 MR. LaTOUR: Your Honor, just one more housekeeping
9 thing. Mr. Newbern did file a written withdrawal of the motion
10 Docket Number 411 in the Friona adversary.

11 THE COURT: Oh, he's already done that?

12 MR. LaTOUR: Yes, filed it today on the 12th.

13 THE COURT: All right, well --

14 MR. LaTOUR: -- so that has been taken care of.

15 THE COURT: -- we'll show it's withdrawn -- his
16 motion is withdrawn. All right, in Innovative. Motion of
17 Fifth Third. That's the same motion. We'll show that's
18 continued to 4/23. Anything else about the status of that that
19 we need to know, Mr. Toner? No?

20 MR. TONER: I'm not aware of anything.

21 THE COURT: Rush Creek. The Florida Creditors Rule
22 7042 motion, that is -- has been -- that's going to be
23 submitted on an agreed entry which the Court will enter an
24 order granting, is that correct?

25 UNIDENTIFIED ATTORNEY: That's correct.

1 THE COURT: The motion of Fifth Third, that's going
2 to be continued 4/23 and the trustee's response to Mr.
3 Newbern's motion is resolved by the agreement that's being
4 submitted.

5 UNIDENTIFIED ATTORNEY: That's right.

6 THE COURT: In Fredin Brothers, same on the Fifth
7 Third's motion, 4/23. All right. Anything else before we move
8 to the related cases that anyone wants to bring to the Court in
9 the Eastern matter?

10 (No audible response)

11 THE COURT: East-West Trucking, trustee's first
12 omnibus objection to claims and notice of response deadline.

13 COURTROOM DEPUTY: That was continued this morning to
14 4/23.

15 THE COURT: That's been continued this morning to
16 4/23. Who's on for East-West? Is anybody on for East-West?

17 (No audible response)

18 THE COURT: That's the case that Mr. Walro's trustee
19 in?

20 COURTROOM DEPUTY: (indiscernible).

21 THE COURT: Everything has been continued?

22 COURTROOM DEPUTY: Yes, it's all (indiscernible).

23 THE COURT: All right, then I won't go any further
24 into East-West. We'll show everything continued to 4/23. In
25 the matter of Thomas and Patsy Gibson, I show trustee's motion

1 for third extension of time to file complaint objecting to
2 discharge with the debtor's objection.

3 MR. SIMON: Yes, Judge. Fred Simon appearing for the
4 Gibsons. And the motion -- or the objection has been filed to
5 six such motions for continuance. And I think for the record
6 it was just a matter of putting that objection in. I'm not
7 here to argue strenuously in favor of the objection, Judge, but
8 they -- it's been a year and they'd like to reach the end of
9 this. But for the record, we filed six objections to similar
10 motions.

11 THE COURT: Yes, those are in. Yes, I think all
12 those motions are set forth. I mean, I've denied these
13 objections before because it is a big complicated matter but I
14 think you're right. At some point, everyone is going to have
15 to make their determination. How far out are we going on these
16 extensions? I don't recall. How far out are they seeking,
17 most people ?

18 MR. SIMON: Six months, Your Honor.

19 THE COURT: All right.

20 MR. SIMON: The change in circumstance is that Mr.
21 Gibson has been criminally indicted --

22 THE COURT: I know that.

23 MR. SIMON: -- and we're waiting on those proceedings
24 so we're kind of at the mercy of that process before we can
25 really dig in very deeply on these issues.

1 THE COURT: Why is that? Because he can't answer --
2 he won't answer questions or I mean, is he taking the Fifth or
3 why -- I mean I don't -- I mean it would seem to me like if he
4 was criminally indicted and you've read the indictment, that
5 that might, in fact, supply a basis for non-dischargeability
6 that someone might want to raise. Oftentimes, those coincide.

7 MR. SIMON: Your Honor, I'd agree that that would get
8 us past the colorable basis to file the complaint in the Rule
9 11 issue, but it certainly doesn't answer the question whether
10 he committed the criminal conduct or not until he's convicted.
11 And some of the bases for objection of discharge is going to
12 depend on that determination.

13 Now, in a case that's already starving for resources,
14 if the government is going to do the heavy lifting, many of us
15 are inclined to let them do it and then file a shorter
16 complaint objecting to discharge rather than a lengthier one
17 complete with the discovery cost. But, you know, if you want
18 to tell us this is the last extension, I understand.

19 THE COURT: No, I'm not going to say it's the last
20 extension. I'm going to say when this six months is up, I'm
21 going to look at it. I'm going to want a little more
22 information and not be inclined to just summarily grant the
23 extensions at that time. That's not to say there won't be good
24 reasons. And I understand your concern about the expense, but,
25 you know, the summary judgment motions reflect -- and all the

1 facts that have been stipulated to so far, go into a course of
2 activity that everybody seems to be pretty much aware of.

3 Now, we haven't heard Mr. Gibson's side of these
4 issues. In fact, I don't think I've ever even seen Mr. Gibson
5 and that may remain true throughout this case. I don't know.
6 But I'm going to show those motions for extension are granted
7 over objection and that would apply to trustee's
8 (indiscernible) objection, the First Bank's objection, trustee
9 Knauer's motion, U.S. trustee's motion, Fifth Third's motion
10 and Blue Grass Company's motion. Those are all granted and a
11 six-month extension is entered.

12 COURTROOM DEPUTY: Put them on the same day?

13 THE COURT: Yes. Let's just set a date. Now, have
14 you all submitted orders? I mean, I don't think it's fair to
15 the Gibsons -- I think it would be fair to have one date that
16 everything is extended to. Was that what was sought?

17 UNIDENTIFIED ATTORNEY: I believe they were all
18 separate, Judge.

19 THE COURT: So when did they run now?

20 MS. HALL: The requested date, Your Honor, was August
21 28th, 2012.

22 THE COURT: I'm sorry, I can barely hear you.

23 MS. HALL: The phone connection is bad. August 28th
24 of this year is 180 days from the current extension.

25 THE COURT: Okay, I see. Okay, I've just been handed

1 something that had the dates for every motion. Some just said
2 -- it looks like 9/4 was the most common date picked so let's
3 say they're all extended to September 4th at this point. So if
4 you need to resubmit an order with that date in it -- some of
5 them just said 180 days, some said the 28th. Let's say --

6 COURTROOM DEPUTY: I can do the order.

7 THE COURT: Oh, never mind. We don't need orders.
8 Kristin will do the orders and we'll make them all September
9 4th. Thank you. All right. Anything further today?

10 MR. WHITE: Yes, Your Honor. Sean White, special
11 counsel.

12 THE COURT: Yes.

13 MR. WHITE: At the December omnibus hearing, the
14 Court ordered special counsel to submit a preliminary report
15 within 90 days. Our report is due tomorrow. We would ask the
16 Court's indulgence to have a short extension of time until
17 Friday of this week. We were in a 2004 examination until 6
18 p.m. in Cincinnati on Friday and have conducted twelve 2004
19 examinations over the last three weeks and we would ask the
20 Court's indulgence to have a short extension of time to submit
21 that preliminary report to the Court until Friday.

22 THE COURT: Yes, those took longer than I think maybe
23 anybody anticipated so I'll give you to a week from Friday to
24 submit that.

25 MR. WHITE: I should probably add, Judge, that the

1 report we're going to file is not a final report --

2 THE COURT: I understand.

3 MR. WHITE: -- because we're still awaiting some
4 documents and we still have some examinations to complete.

5 THE COURT: Well then, you really don't need any
6 additional time to do the preliminary submission then?

7 MR. WHITE: To Friday would be sufficient to do the
8 preliminary.

9 THE COURT: All right. Yes, Mr. LaTour?

10 MR. LaTOUR: Out of abundance of caution to make sure
11 we're all on the same understanding, I hear Mr. White
12 indicating when he's going to tender a report to the Court. I
13 don't want people to walk away assuming that that means I have
14 agreed to everything he's asked for.

15 THE COURT: Oh, no, I understand that completely.

16 MR. LaTOUR: Okay, thank you, Your Honor.

17 THE COURT: This was your -- no, I understand that.

18 MR. LaTOUR: Thank you, Your Honor.

19 THE COURT: All right, anything further this morning?
20 Mr. Bowles, you're not going to try to further complicate
21 matters?

22 MR. BOWLES: For once, Your Honor, no.

23 THE COURT: I appreciate that.

24 MR. BOWLES: Judge, we can talk about the NCAA.

25 THE COURT: We can talk about that. We're just happy

1 to be there. I'd rather be in Louisville like Kentucky is, but
2 we're in Portland. Although I don't think they did Kentucky
3 any huge favors giving them UConn in the second round. That's
4 interesting. All right, we are adjourned. Thank you, all.

5 * * * * *

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

9 I, MARY POLITO, court approved transcriber, certify
10 that the foregoing is a correct transcript from the official
11 electronic sound recording of the proceedings in the
12 above-entitled matter, and to the best of my ability.

13
14
15 /s/ Mary Polito

16 MARY POLITO

17 J&J COURT TRANSCRIBERS, INC.

DATE: March 26, 2012

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