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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

IN RE: MICHAEL D. VICK,) Case No.
Debtor.) 08-50775-FJS

TRANSCRIPT OF PROCEEDINGS
Norfolk, Virginia
July 17, 2008

Before: THE HONORABLE FRANK J. SANTORO, JUDGE

Appearances:

On Behalf of the Debtor:

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On Behalf of Joel Enterprises:

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On Behalf of the Committee of Unsecured Creditors:

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23 On Behalf of Royal Bank of Canada:
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Also Present: Suzanne M. Myers, RMR, Court Reporter
Notary No. 240597
Tayloe Associates, Inc.
253 West Bute Street
Norfolk, Virginia

Also Present: Michael D. Vick (Via Telephone)

(Proceedings recorded by mechanical stenography, transcript produced by computer.)

1 (The proceedings commenced at 10:00 a.m.)

2 THE CLERK: Items 1 and 2, Michael Vick.

3 THE COURT: Good morning, everybody.

4 MR. GINSBERG: Morning, Your Honor.

5 MR. VICK: Morning, Your Honor.

6 THE COURT: Are counsel ready to proceed?

7 MR. CAMPSSEN: We are, Your Honor.

8 THE COURT: Thank you, Mr. Campsen.

9 Mr. Reeves, good morning.

10 MR. REEVES: Good morning, Your Honor.

11 THE COURT: I gather you're here on behalf of the
12 Committee of Unsecured Creditors?

13 MR. REEVES: Yes, Your Honor. We filed an
14 application this morning.

15 THE COURT: The Court has that in the file.

16 All right. We have two matters on the docket.

17 Robin, do you want to call the first one.

18 THE CLERK: Item 1, Michael Vick. This is a motion
19 for extension of time to file schedules and to authorize the
20 scheduling of a meeting of creditors.

21 THE COURT: Mr. Campsen?

22 MR. CAMPSSEN: Good morning, Your Honor. Paul Campsen
23 on behalf of the debtor, Michael Vick. Mr. Ginsberg, who is
24 co-counsel in this matter, is present by telephone, Your Honor.
25 And Mr. Mark Lichtenstein is seated to my right as well.

1 THE COURT: Good morning.

2 MR. LICHTENSTEIN: Good morning, Your Honor.

3 MR. CAMPSSEN: We had filed -- just as an
4 administrative matter, we had filed motions for admission pro
5 hac vice with the Court. I think we filed the orders, but I
6 think it was well after hours last night.

7 So I would like to move, if I could, from the podium
8 for their admission for purposes of today's hearing.

9 THE COURT: I don't imagine there is any opposition
10 to that.

11 MR. REEVES: No, Your Honor.

12 THE COURT: That motion is granted.

13 MR. GINSBERG: Thank, Your Honor.

14 MR. CAMPSSEN: The other motion before the Court, the
15 one here today, is the one to extend the schedules.

16 No objections have been filed to that motion, Your
17 Honor. The U.S. Trustee is in accord with the relief sought in
18 it.

19 We did ask in a motion for an extension of the 341
20 hearing. It appears, however, as we'll discuss --
21 Mr. Lichtenstein will discuss in a minute about the next
22 motion -- the parties have agreed on the day by which the
23 schedules can be filed, if the Court of course agrees to the
24 extension and permits that.

25 The date that the parties had selected, subject of

1 course to the Court's approval, would be August 19th.

2 If the schedules are filed by August 19th it appears
3 that the 341 will not need to be extended. Apparently
4 Mr. Whitehurst explained that it can be held as late as
5 September 5th.

6 So if the Court grants the motion to extend the time
7 for filing schedules we are asking -- instead of 30 days it
8 will be August 19th, which I believe is less than 30 days.

9 THE COURT: All right. Let's hear from the U.S.
10 Trustee on that, then.

11 Mr. Whitehurst, good morning.

12 MR. WHITEHURST: Morning, Your Honor. Thank you.
13 Ken Whitehurst for the United States Trustee.

14 On the matter of scheduling a 341 meeting, under Rule
15 2003, Your Honor, the rules allow the U.S. Trustee to schedule
16 a 341 meeting in a case in which -- which is located somewhere
17 where the U.S. Trustee does not regularly staff up to 60 days
18 after the case was filed.

19 The U.S. Trustee, as the Court knows, does not
20 maintain an office in Newport News where this case is pending.
21 So the U.S. Trustee deems that to mean they can schedule the
22 341 meeting out to September 5th, which would be 60 days after
23 the filing.

24 We have no objection to the extension of the
25 schedules to August 9th.

1 THE COURT: The 9th or 19th?

2 MR. WHITEHURST: I'm sorry. The 19th, Your Honor.

3 THE COURT: All right. Are there any other creditors
4 or parties in interest who wish to appear on the first matter
5 on the docket, which is the extension?

6 All right. We'll hold that in abeyance and see what
7 happens in a second, because obviously that will have some
8 impact on the debtor's ability to assemble the necessary
9 information and prepare the paperwork.

10 So why don't we call the next one.

11 THE CLERK: The second item is the amended motion to
12 appoint David Talbot as financial adviser.

13 MR. REEVES: Your Honor, we are pleased to announce
14 that we worked late in the evening last night, and we have a
15 proposal -- excuse me -- I hope I am speaking loud enough, but
16 we have a proposal that we are going to submit to the Court
17 that will allow for the interim appointment of Mr. Talbot,
18 subject to objections and a hearing at a later date.

19 Mr. Lichtenstein is going to tell the Court what the
20 parties have agreed to and the related issues to that.

21 So I will turn it over to him, Your Honor.

22 THE COURT: That's great. Thank you.

23 MR. LICHTENSTEIN: Good morning, Your Honor. Mark
24 Lichtenstein, Crowell & Moring, representing the debtor,
25 Michael Vick.

1 Your Honor, as Mr. Campsen stated, I'm pleased to
2 report that we were able to work through the objections filed
3 by the Royal Bank of Canada, the United States Trustee, and
4 Joel Enterprises to obtain an interim resolution of
5 Mr. Talbot's retention as financial adviser. And, Your Honor,
6 I would like to summarize the general terms of that settlement
7 if I may.

8 THE COURT: That will be fine. Please.

9 MR. LICHTENSTEIN: Mr. Talbot will be appointed on an
10 interim basis. His hourly fee will be \$250 an hour, capped at
11 \$15,000 per month.

12 The schedules of assets and liabilities and the
13 statements of financial affairs will be filed by August 19th,
14 2008.

15 Objections to Mr. Talbot's final retention will be
16 due by August 22nd, 2008, and if such objections are filed
17 there will have to be a hearing date set, Your Honor.

18 There's an agreement that the 341A meeting will take
19 place not later than September 5th, 2008, and that's obviously
20 a matter that needs to be scheduled and logistically addressed.

21 Mr. Talbot's activities during this interim period
22 shall be prescribed as follows: Assisting in the compilation
23 and preparation of the schedules and statements of financial
24 affairs; conferencing with Mr. Vick and communicating with him
25 in connection therewith; meeting with creditors; gathering

1 data, files, and financial information as necessary to assist
2 in the administration of this case; investigation of financial
3 affairs and assets, including real estate, investments,
4 insurance issues; review of claims -- and it has been agreed
5 that certainly Mr. Talbot will not take any significant actions
6 personally.

7 That will be case determinative; however, that will
8 be without prejudice to the estate and Mr. Vick and his
9 attorneys taking actions as they deem necessary and appropriate
10 in the fiduciary interest of the estate.

11 THE COURT: Would you stop right there. What does
12 that mean?

13 MR. LICHTENSTEIN: Well, during that case, to the
14 extent that there needs to be, for example, a 542 motion for
15 turnover of documents being held by third parties, those sorts
16 of things can be pursued, Your Honor.

17 THE COURT: By whom?

18 MR. LICHTENSTEIN: By the debtor.

19 THE COURT: All right. Okay. Please proceed. Thank
20 you.

21 MR. LICHTENSTEIN: In addition, Your Honor, it is
22 agreed that the transfer of the vehicle will be conveyed to the
23 estate. Mr. Talbot shall have possession of it and will
24 confirm that it is insured, and any issues regarding the
25 vehicle will be addressed in that way and subject to further

1 resolution.

2 There will be an accounting with respect to the
3 \$35,000 that was transferred from the debtor's defined benefit
4 plan prior to the petition date, and that accounting will be
5 provided at least one week prior to the August 22nd, 2008
6 objection deadline.

7 No parties will waive any rights as a result of this
8 settlement in terms of -- in terms of the objections that are
9 currently filed by virtue of this interim settlement.

10 Mr. Talbot will be made available -- will be willing
11 to talk to the creditors as they wish during this period so
12 they can get to know him and become comfortable with him, and
13 he will attend the 341A meeting and be -- testify at that
14 meeting in his role as assisting the debtor.

15 THE COURT: All right.

16 MR. LICHTENSTEIN: In addition, Your Honor, the U.S.
17 Trustee has stated that as Mr. Talbot will be acting in this
18 role in the interim period he will not be operating of course
19 under the power of attorney.

20 And the existing objections, Your Honor, will be
21 carried over to the objection deadline if they were not
22 previously withdrawn.

23 THE COURT: All right. Is that it?

24 MR. LICHTENSTEIN: That's it, Your Honor.

25 THE COURT: The expectation is Mr. Vick will sign the

1 papers once they are completed?

2 MR. LICHTENSTEIN: Absolutely, Your Honor.

3 THE COURT: Mr. Vick's signature under oath and under
4 penalty of perjury will be part of the filing of the schedules
5 and the statement of affairs, et cetera?

6 MR. LICHTENSTEIN: Yes, Your Honor.

7 THE COURT: All right. Let's hear from the other
8 parties in the matter.

9 Are there other parties who wish to appear and
10 address the Court with respect to what has been represented?

11 Mr. Ackerly?

12 MR. ACKERLY: Good morning, Your Honor. Ben Ackerly.
13 I'm here on behalf of the creditor Joel Enterprises.

14 We filed an objection to the appointment of Mr.
15 Talbot.

16 THE COURT: Good morning, Mr. Ackerly.

17 MR. ACKERLY: We have reached an agreement with
18 respect to the interim appointment. I want to try to clarify
19 some points to make sure we are in agreement.

20 First off, Your Honor, we filed the objection because
21 we had serious questions about Mr. Talbot's qualifications
22 based upon the papers that were filed. We had questions
23 concerning his disinterestedness based upon the papers that are
24 filed and of course his experience in assisting a debtor in a
25 Chapter 11 bankruptcy all were reasons that we filed the

1 objection and all the reasons why we are reserving our
2 objection.

3 We are not withdrawing our objection. We are
4 reserving it for a final hearing if that is necessary with
5 respect to the permanent appointment of Mr. Talbot. But we
6 recognize the debtor's counsel needs some assistance in
7 preparing the schedules and statement of affairs in view of Mr.
8 Vick's incarceration, and it has been represented that Mr.
9 Talbot will be able to assist the debtor's counsel in preparing
10 the schedules.

11 We further understand that it will be debtor's
12 counsel who will be preparing the schedules, not Mr. Talbot,
13 and it will be Mr. Vick who will be signing the schedules.

14 The -- we are, as I said, in agreement to this being
15 an interim order, but we want it very clear on the record, Your
16 Honor, that it is without prejudice to our objection and
17 pursuing that objection and any other party who has filed an
18 objection or who files an objection making an objection to his
19 employment, specifically his qualifications and whether he
20 brings any added value to the estate.

21 We have concern that even employing him on an interim
22 basis entrenches him somehow in the case, and we hope that will
23 not be the case with the Judge or even with the parties, that
24 he will be in any way entrenched by this interim.

25 THE COURT: Let me address that right now. I can

1 assure you that he will not be entrenched on the basis of an
2 interim order from the Court's standpoint.

3 MR. LICHTENSTEIN: Thank you.

4 With respect to what he will be doing in the interim,
5 it is my understanding -- I thought counsel went a little
6 further than this -- but my understanding during the course of
7 this interim order is that Mr. Talbot's duties and
8 responsibilities will be limited to assisting counsel in
9 preparing schedules and statement of affairs.

10 We understand that subpoenas may need to be issued
11 and things like that to turn over property, but it is all in
12 connection with the preparation of the schedules and statement
13 of affairs.

14 So in this interim period what we are hopefully
15 focusing on is getting the most accurate schedules and
16 statement of affairs filed that can possibly be filed, and Mr.
17 Talbot will not be focused on other matters that a debtor in
18 possession might be focused on in a Chapter 11 case during this
19 interim period.

20 One of the conditions that we made -- and the debtor
21 has agreed to for our consent to this interim order -- is the
22 debtor will make Mr. Talbot available to us prior to the final
23 hearing to approve his appointment for purposes of meeting with
24 him, questioning him concerning his qualifications to actually
25 serve in the capacity for which he is being proposed.

1 So we want to confirm that we do have that
2 availability. We also requested -- and they have agreed and it
3 was stated on the record -- that Mr. Talbot would be available
4 at the 341 meeting to testify under oath.

5 This does not excuse Mr. Vick from being available at
6 the 341 meeting, but Mr. Talbot would be there to answer
7 questions under oath concerning schedules and statement of
8 affairs for which, you know, he is assisted.

9 I think, Your Honor, the other things have all been
10 touched on by Mr. Lichtenstein. But with those understandings,
11 Your Honor, we are in agreement to his interim employment. We
12 are of course reserving, as the bankruptcy code -- we are not
13 agreeing that his \$250 an hour, capped at \$15,000 a month, is
14 what he will actually receive.

15 That obviously is up to the Court as to what he would
16 actually receive during the interim period, and we want to
17 specifically reserve our objection to him receiving anything if
18 we can make a case there has been no benefit to the estate.

19 But we understand that the interim order will provide
20 his rate will be 250 an hour, capped at \$15,000 a month. We
21 want to reserve the right, as I think we have under the
22 statute, to object to his compensation.

23 THE COURT: So you want to reserve your statutory
24 rights, but the argument that you are not reserving is that he
25 shouldn't be paid anything?

1 MR. LICHTENSTEIN: We are not reserving that right,
2 that he should not be paid anything. We are not making that
3 argument. We are reserving the right to object based upon the
4 product.

5 THE COURT: As you have the right under the statute.
6 Understood.

7 MR. LICHTENSTEIN: Correct.

8 THE COURT: All right. Thank you.

9 MR. LICHTENSTEIN: Thank you.

10 THE COURT: Mr. Zemanian?

11 MR. ZEMANIAN: Pete Zemanian, for Royal Bank of
12 Canada.

13 Royal Bank also has an objection filed to the motion
14 to appoint. Royal Bank of Canada is fine with the notion of a
15 responsible person for Mr. Vick. Royal Bank of Canada is not
16 yet convinced Mr. Talbot is the right person for that job. He
17 may be, he may not be.

18 Royal Bank would like the committee as a whole to
19 have an opportunity to interview Mr. Talbot and get comfortable
20 with him.

21 THE COURT: Is Royal Bank fine with the idea of a
22 responsible person or a financial adviser?

23 MR. ZEMANIAN: I'm sorry, Judge. Tell me if you
24 would what you find that distinction to be.

25 THE COURT: Well, initially they, the debtor and

1 counsel for the debtor, initially filed a motion to appoint a
2 responsible person. I think that's docket entry 8, and then
3 that was subsequently withdrawn and amended with a motion to
4 appoint David Talbot as a financial adviser.

5 MR. ZEMANIAN: Judge, the entity we are envisioning
6 is really the hybrid of what has been described to you here,
7 which is a very limited scope. Those are the items that Mr.
8 Talbot would be handling in connection with review and
9 assisting the gathering of data, assisting with the preparation
10 of schedules and statement of financial affairs, and assisting
11 with any direction for turnover assets -- turnover proceedings
12 to find assets.

13 THE COURT: So in connection with the process as it
14 evolves, there's going to be a more precise definition of the
15 scope of employment that Mr. Talbot is going to undertake and
16 be approved to pursue?

17 MR. ZEMANIAN: Yes, sir. During his interim period
18 we understand it will be a fairly limited scope what he can
19 handle. And, frankly, given the plateful of work that needs to
20 be done, it's probably all one person can handle anyway.

21 THE COURT: That does address one of the Court's
22 concerns. The scope of Mr. Talbot's proposed employment under
23 either the responsible person motion or the financial adviser
24 motion seems to be pretty broad.

25 MR. ZEMANIAN: Yes, sir.

1 THE COURT: I think Mr. Ackerly pointed it out in his
2 papers. It was extremely broad, and the Court -- gentlemen,
3 the Court will expect some further definition as to what Mr.
4 Talbot is and is not going to do. Because, without ruling on
5 it, I think the concerns expressed in some of the objections,
6 which essentially say he appears -- it appears he is going to
7 be running the case and perhaps direct -- a nonlawyer would be
8 directing lawyers in legal matters. That's of concern to the
9 Court.

10 So if I could suggest that you take some -- or make
11 some efforts to more specifically delineate what Mr. Talbot is
12 going to do. You've done a good job on the interim basis, but
13 certainly on the final basis as well, so that there is
14 certainty as much as there can be with respect to what the
15 scope of his engagement is, what his responsibilities will be,
16 and what the parties have a right to look to him to do.

17 Mr. Zemanian, please continue.

18 MR. ZEMANIAN: Judge, that's precisely the directive
19 we are appreciating to the Court or to the debtor. We think
20 Mr. Talbot may be the perfect man for the job, but we don't
21 know that. But he also may be -- if Mr. Ackerly's concerns
22 play out -- the wrong person for the job.

23 We don't know that. We think the committee who was
24 just committed this morning will be the best source for
25 personally looking into that and providing some guidance from

1 the perspective of creditors.

2 THE COURT: I'm sure there will be plenty of dialogue
3 on the point.

4 MR. ZEMANIAN: That is the position of Royal Bank,
5 Judge.

6 THE COURT: All right. Royal Bank is in agreement
7 with the interim appointment.

8 Do you concur with Mr. Ackerly that you reserve your
9 rights to object to the size of any fee that Mr. Talbot would
10 be entitled to but not to object to the concept that he is
11 entitled to some fee --

12 MR. ZEMANIAN: Yes, sir.

13 THE COURT: -- under the process?

14 MR. ZEMANIAN: Yes, sir.

15 THE COURT: All right. That's fine. Thank you.

16 The U.S. Trustee?

17 MR. WHITEHURST: Your Honor, thank you. I failed to
18 mention earlier that the United States Trustee, Clarkson McDow,
19 is actually present in the courtroom. He had a few things he
20 asked me to make clear to the Court.

21 THE COURT: Good morning, Mr. McDow.

22 MR. MCDOW: Good morning, Your Honor.

23 MR. WHITEHURST: Your Honor, Mr. McDow wanted me to
24 make clear first and foremost that Mr. Vick will appear at the
25 341. Mr. Talbot is not proceeding in this case on Mr. Vick's

1 behalf alone. This is Mr. Vick's Chapter 11 case, and Mr. Vick
2 will be the one expected to testify at the 341 meeting.

3 We certainly would hope Mr. Talbot would be there and
4 would expect him to assist the debtor in any way necessary to
5 explain his estate, but in the end it's the debtor's testimony
6 and the debtor's oath on the petition and the schedules. The
7 U.S. Trustee expects the debtor to be present for the 341.

8 Furthermore, the U.S. Trustee asked me to make clear
9 he opposes Mr. Talbot's -- the motion of the debtor to make Mr.
10 Talbot the responsible party -- the responsible person in this
11 case.

12 That's not something the U.S. Trustee thinks is
13 appropriate, and we understood the filing of the motion to
14 appoint him financial adviser to replace that motion, but to
15 the extent it doesn't on the record, the first motion should be
16 denied.

17 THE COURT: Well, let's deal with that right now.

18 Mr. Campsen or Mr. Lichtenstein, any opposition to
19 denying the motion which is at docket No. 8 and replacing it
20 with docket No. 23? I think that is what the papers say
21 anyway.

22 Anyone?

23 MR. LICHTENSTEIN: Your Honor, Mark Lichtenstein.
24 That was our understanding, that the motion to appoint Mr.
25 Talbot as financial adviser replaced entirely the prior motion.

1 THE COURT: All right. Then why don't you prepare an
2 order that says that. Secure the endorsement of the U.S.
3 Trustee and the proposed counsel for the committee.

4 Mr. Ackerly and Mr. Zemanian, I don't imagine you-all
5 need to be endorsing that. Let's clarify the record on that
6 point.

7 I think you were clear on item 23. You can make it
8 without prejudice so that it's not a determination or
9 disposition. Let's just clean it up.

10 MR. LICHTENSTEIN: Thank you, Your Honor.

11 MR. WHITEHURST: Your Honor, that being said, so long
12 as the order entered today is interim and everyone clearly
13 understands -- which I think they do -- that no one's rights
14 are prejudiced to object to Mr. Talbot's permanent employment
15 at a final hearing, the U.S. Trustee agrees with the terms that
16 have been presented.

17 We understand that he is going to retitle the car.
18 We understand that he is going to provide an accounting of the
19 \$35,000 that's been spent. And if we could ask that that
20 accounting be provided a week before the schedules are due so
21 that they can be reviewed, at least contemporaneously -- I'm
22 sorry -- a week before the objections would be due.

23 THE COURT: I think they said they would do it by
24 August 15.

25 MR. WHITEHURST: I apologize. I missed that, Your

1 Honor.

2 With that, the U.S. Trustee would not oppose the
3 interim order.

4 THE COURT: All right. Thank you.

5 Mr. Stefan?

6 MR. STEFAN: May it please the Court. Greg Stefan
7 for the United States.

8 THE COURT: Good morning.

9 MR. STEFAN: Good morning, Your Honor.

10 Your Honor, the -- I represent the Internal Revenue
11 Service in this matter, which claims a tax lien upon Mr. Vick's
12 assets.

13 Upon reviewing the initial motion to appoint a
14 responsible person and then the amended motion to appoint a
15 financial adviser, my client, the Internal Revenue Service,
16 became concerned because there was a representation that Mr.
17 Talbot would be granted a lien upon the Mercedes. The IRS
18 claims a lien on that Mercedes.

19 When I discussed that with counsel for Mr. Vick,
20 essentially they indicated that nothing which would grant Mr.
21 Talbot a lien -- which is not the ruling today or the agreement
22 today -- or any interest in the Mercedes, that if that had
23 occurred in the context of today's hearing nothing would
24 prejudice the IRS's right from asserting that its tax lien is
25 superior to any interest that Mr. Talbot may have in the

1 Mercedes.

2 Naturally what the IRS is going to do is wait until
3 the schedules come out, examine the assets of Mr. Vick, the
4 equity in it, and then we are going to make a determination
5 whether or not we are adequately protected, and then on a cost
6 benefit analysis we are going to determine whether or not we
7 are going to proceed against the Mercedes.

8 The agreement in fact that we had reached is in the
9 event the IRS is adequately protected, once we get a full
10 picture of the information, then we are not going to file a
11 motion for relief from stay against the Mercedes. But if we
12 are not adequately protected, nothing is going to prejudice the
13 IRS's rights to seek relief from stay so it can recover money
14 on behalf of the government.

15 THE COURT: So, in other words, the interim
16 resolution will simply maintain the status quo, and your rights
17 are totally unaffected by that except insofar as the argument
18 that ultimately Mr. Talbot wasn't engaged -- this is a
19 hypothetical.

20 If he is not engaged you waive the right to argue
21 that he is not entitled to any fee, rather you will leave the
22 amount of the fee to the discretion of the Court?

23 MR. STEFAN: Your Honor, we did not object to his
24 retention as an expert in this case. We were concerned about
25 our financial interest as a lien creditor.

1 THE COURT: Sure.

2 MR. STEFAN: You know, we were concerned that a
3 ruling by the Court today potentially could affect our rights
4 to enforce our lien.

5 THE COURT: There will be no such ruling.

6 MR. STEFAN: Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 Mr. Reeves, good morning.

9 MR. REEVES: Good morning, Judge Santoro. Thank you
10 for the opportunity.

11 As the Court I believe earlier alluded to, we have
12 filed an application to be engaged as counsel for the Official
13 Committee of Unsecured Creditors, which had an organizational
14 meeting on Tuesday that concluded late in the afternoon.

15 So basically they and we have been involved in this
16 case as such for only 24 hours. So we have no filing in these
17 proceedings.

18 Frankly, we spent yesterday in long negotiations
19 with -- very fruitful negotiations with counsel for the debtor
20 and with the objecting parties and of course polling members of
21 the committee.

22 So the decision the committee has made in this case
23 is thought out, well informed, and each of the committee
24 members has had an opportunity to make a decision, despite the
25 short period of time.

1 The committee supports the interim relief that is
2 being sought in this case. Like everyone else, we underline
3 the word "interim" and "nonprejudicial," et cetera.

4 To respond to a question that I think certainly is
5 coming from the Court, we believe that the fees that are
6 actually paid to Mr. Talbot for his work in this period are
7 subject to approval by the Court, but we do not take the
8 position that he should be paid nothing at all for his
9 services. We believe he should be paid in accordance with the
10 way the Court does its business.

11 With respect to what has been recited, there are a
12 couple matters that I would like to clarify for the record.

13 I understand, Your Honor, this is -- may seem
14 frustrating to you, but everybody has been working on a very
15 tight schedule. I have not heard anything to suggest a
16 fundamental disagreement, and we all have to work on getting an
17 order before you that accurately sets forth everybody's
18 expectations.

19 And I don't want to bore the Court with my mental
20 processes or the committee's. There are some things that I do
21 believe need some clarification.

22 Regarding the objection date, I think there may have
23 been a slip of the tongue by counsel for the debtor. Just to
24 be sure, the objection date for the retention of Mr. Talbot is
25 August 22nd, which would be three days after the agreed

1 deadline for the filing of the statement and schedule of
2 affairs.

3 I think we heard August 2nd, and I think that was
4 just a slip of the tongue or bad hearing on our part.

5 Secondly -- Mr. Campsen and I have had a side-bar
6 discussion on this during these presentations -- our
7 understanding and wish is that the final hearing on the
8 engagement of Mr. Talbot be scheduled as of this date and it be
9 scheduled for the date on which the Section 341 hearing is
10 scheduled, presumably to follow it, to have objections filed on
11 the -- no later than the 22nd, and then have to go through a
12 scheduling -- a scheduling argument is not what the committee
13 has in mind at all.

14 I think we all agree there will be a hearing set,
15 objections or no, and I would assume that the objections that
16 are already filed, if not supplemented or amended, will still
17 be in place for that hearing. I think that is critical to our
18 understanding of the deal. As I mentioned, the Court approval
19 of the fees is another part of it.

20 Regarding the scope -- this discussion of the
21 turnover orders, we had this discussion yesterday. The point
22 that I believe we agreed on is -- and this relates as well,
23 Your Honor, to the question of financial adviser versus being
24 alter ego for the debtor -- is that Mr. Talbot will not be
25 directing the lawyers about what they do in terms of turnover

1 orders or any other positive action that they take in their
2 administration of the case.

3 The client in this case is Mr. Vick. The lawyers
4 respond to Mr. Vick, not to Mr. Talbot. I don't think there's
5 any disagreement on that, but I want to make it as clear as
6 possible.

7 In terms of availability, Mr. Talbot has assured us,
8 meaning the committee, that he will be available for
9 discussions, and as it were informal voir dire. He has been
10 very forthcoming about that and has never wavered from that.

11 I understand he's made similar undertakings to other
12 individual creditors in the case as you heard here today. We
13 will of course work with everyone to make that as efficient as
14 possible in terms of expense and drain on time.

15 With that said, Your Honor, which is more
16 supplement -- definitely supplementary, not new terms or
17 anything that I'm in disagreement, the committee endorses the
18 interim order as the best pragmatic thing to do at this time.

19 THE COURT: Thank you, Mr. Reeves.

20 Is Mr. Talbot here?

21 MR. ACKERLY: Yes, he is, Your Honor. He is in
22 court.

23 THE COURT: Mr. Talbot, good morning.

24 MR. TALBOT: Good morning, sir.

25 THE COURT: Thank you for coming this morning.

1 Mr. Campsen, Mr. Lichtenstein, do you have anything
2 else that you would like to add to this this morning?

3 MR. LICHTENSTEIN: Just, Your Honor, a few
4 confirmatory things.

5 Your Honor, on behalf of the debtor of course Mr.
6 Vick will sign the schedules and statements.

7 We recognize that this interim relief is without
8 prejudice to later objections.

9 Mr. Talbot will be available to the creditors as set
10 forth by Mr. Reeves and as advised to the various creditors we
11 have spoken with and will be available at the 341A hearing.

12 THE COURT: Okay.

13 MR. LICHTENSTEIN: Thank you, Your Honor.

14 THE COURT: Thank you.

15 The Court -- in reviewing the papers, the Court had
16 some concerns, basically all of which have been addressed in
17 the resolution -- in the interim resolution, which I commend
18 everybody for. I think that is really good work.

19 The Court was concerned about the -- an accounting of
20 the \$35,000. That was raised in everybody's objection. I
21 gather that's going to be provided.

22 Let's try to make this case as transparent as
23 possible in terms of financial disclosures, the ins and outs of
24 the money. There's no point in arguing over that. It is what
25 it is, and let's deal with that.

1 The Court was concerned about the situation with the
2 automobile. There's a lot to do in this case. There are a lot
3 of perhaps significant issues, and having the case revolve
4 around a car doesn't strike me as being one of them. So let's
5 try to watch out for that.

6 But that did point out a couple of other things.
7 Number one was the very broad scope of the proposed engagement.
8 The Court would urge, without ruling on it, that you define the
9 scope of Mr. Talbot's engagement more specifically.

10 Again, it was, as pointed out in the objecting
11 papers, very broad and very difficult to follow. I understand
12 that there will be more information provided with respect to
13 education, degrees, experience. All that can be done through
14 dialogue and communication.

15 The issues with respect to the postpetition transfer;
16 the broad form power of attorney; the extremely large,
17 open-ended scope of the engagement caused the Court to have
18 concerns about the judgment that was being brought to bear in
19 terms of managing the process, managing the process.

20 This has to be a team effort from the debtor's
21 perspective. But as you can see from the papers in opposition,
22 it's difficult to ascertain the level of involvement of the
23 attorneys and who ultimately is making recommendations on legal
24 matters when the situation is admittedly in the very early
25 stages of the process but so muddied up.

1 I would urge you to be careful about that. I'll just
2 use one case in point as an example.

3 Mr. Ackerly, your client has a judgment, does it not?

4 MR. ACKERLY: Yes, sir.

5 THE COURT: Is that judgment final?

6 MR. ACKERLY: Yes, sir.

7 THE COURT: Mr. Campsen, would you explain to me then
8 rhetorically -- I'm not going to grill you on it, but would you
9 explain to me on what basis a final judgment is scheduled as a
10 disputed claim in this case?

11 MR. CAMPSSEN: There are questions about whether
12 the -- the judgment is in fact final, but there are questions
13 about whether there was any value given in that judgment and
14 whether there are other avenues that we can attack that
15 judgment, sort of a postjudgment attack on the judgment and the
16 amount of that judgment.

17 THE COURT: Well --

18 MR. CAMPSSEN: Those issues are being ferreted out at
19 this point.

20 THE COURT: Well, you can understand the Court's
21 concern and perhaps confusion when on the one hand the
22 papers -- the moving papers for Mr. Talbot, et cetera start
23 talking about how the bankruptcy filing is precipitated by the
24 docketing and collection activities of the judgment creditor,
25 which suggested to the Court that the judgment was final, and

1 on the other hand the judgment is disputed.

2 That's a tough position to take.

3 MR. CAMPSSEN: I understand, Your Honor. The judgment
4 was final. Joel Enterprises' counsel had sent out copies of
5 that judgment to various courthouses to record it so that it
6 became a judgment against assets located in those
7 jurisdictions.

8 The 90-day preference period was about to run. The
9 bankruptcy was precipitated in order to stop the 90-day period
10 from running so the judgment could be attacked on two levels:
11 Number one, a preference action to avoid the lien that was
12 created by the recordation of the judgment. And, number two,
13 to attack through the bankruptcy court and the mechanisms
14 available in the bankruptcy court the underlying judgment or
15 the amount of that judgment.

16 So I know there's some confusion there, but there is
17 some madness -- there is some sanity in the madness of those
18 positions.

19 THE COURT: All right. That's fine.

20 My point in asking the question really -- you may sit
21 down. I'm not trying to pin you down on that issue.

22 My point in asking that question is to -- is to
23 urge -- is to urge the debtor's team to maintain balance -- you
24 are representing a fiduciary -- but to also bring independent
25 legal judgment to the process.

1 The potential sideshow that we could have had in
2 terms of this automobile being a postpetition transaction and
3 potentially derailing the engagement of Mr. Talbot, who
4 otherwise appears to be qualified -- I'll leave that to further
5 development, but appears to be qualified and enjoys the trust
6 and confidence of the debtor. The Court wants to be sure it
7 gives due deference to the debtor's business judgment.

8 This potential issue with the car, again, I don't
9 want to turn this into a car case, but it just -- it was just
10 astounding to watch it unfold. I would urge you to look at the
11 Pillowtex case out of the Third Circuit, which is very closely
12 on point in terms of the facts in this case, especially in
13 terms of the allegation of either a preferential transfer for
14 which there is no explanation or a postpetition transfer and
15 assess the potential impact of that on Mr. Talbot's employment.

16 The better part of wisdom I think is suggested by the
17 papers as submitted by Joel Enterprises, which is just: Let's
18 just approach it with a balanced -- in a balanced fashion.

19 The car only represents an economic asset, and let's
20 figure out what to do with the economic asset, but that seemed
21 to be getting other parties derailed.

22 All of which is to say the Court expects the matter
23 to be handled in a transparent fashion, expects independent
24 judgment to be brought to bear by leading counsel who are
25 representing the fiduciary, after due input from the financial

1 adviser.

2 And certainly the final decisions are to be made by
3 the debtor, consistent with his obligations as a fiduciary
4 before the Court.

5 I will anticipate an interim order. I think it is,
6 as Mr. Reeves suggested, a good idea to have a hearing.

7 Mr. Whitehurst, any idea when the 341 is?

8 MR. WHITEHURST: Your Honor, it was my hope that Mr.
9 Reeves wouldn't bring that up, because of the logistical
10 nightmare of setting a 341 and a hearing on the same day in
11 this case.

12 We have a tentative date set of -- I believe it was
13 the 29th of August, but it's not set in stone at this point
14 because of the logistics we have setting up with getting Mr.
15 Vick available by telephone, getting a space available to have
16 it, as we anticipate some interest in the hearing.

17 And if it is set on the same day we believe we could
18 start that in the morning, but we don't know how long it will
19 take. I do not presume to hold this Court's hearings up with a
20 341 meeting, but I would prefer not to set them within hours of
21 one another.

22 I understand for the convenience of the parties it
23 will be best because we will have people flying in, but I can't
24 say for sure that is the date we will have it. All I can say
25 is we intend to have it before September 5th, and if we have to

1 have it in the normal meeting room, we will.

2 THE COURT: Where are we having it? That was my next
3 question.

4 MR. WHITEHURST: We have been discussing having it in
5 this courtroom, in part to take advantage of the Court's
6 facilities, with security and the telephone and everything
7 else.

8 As Your Honor knows, the 341 room in Newport News is
9 not nearly as big, and the door opens right into the meeting
10 room and would be a -- if there is a lot of interest in the
11 hearing -- we don't know how to gauge that. I'm hoping by the
12 turnout this morning it won't be much, but there's obviously
13 been a lot of public interest in the case.

14 THE COURT: Do you anticipate using the audiovisual
15 videoconferencing facilities?

16 MR. WHITEHURST: We anticipate using the telephone at
17 this point. We certainly would enjoy using the
18 videoconference, but I'm not sure that Leavenworth has the
19 capability, and I'm not sure that it is necessary.

20 THE COURT: Well, the other thing is the officials at
21 Leavenworth have been very cooperative and they have indicated
22 they will do anything they can to facilitate the process, but
23 the gentleman who is responsible for that is usually off on
24 Fridays.

25 And I know Newport News is usually a Friday hearing,

1 but I don't -- and the 29th is a Friday.

2 MR. WHITEHURST: It's the only date available that
3 the Court has given us for use of this facility.

4 THE COURT: All right. Is it going help you if I set
5 the date for the 341 hearing for you?

6 MR. WHITEHURST: I would prefer Your Honor did not.

7 THE COURT: All right. I'll respect that. I know
8 this case is not the typical case.

9 What are the parties' wishes with respect to a final
10 hearing on the Talbot application?

11 Mr. Reeves, I think it makes sense to have a hearing
12 set now so that we are all working against a constant deadline.

13 I'm going to set the final hearing on the Talbot
14 application -- well, that 29th is Labor Day weekend, is it not?

15 MR. REEVES: Yes, Your Honor, it is the Friday before
16 Labor Day.

17 THE COURT: All right. We don't want to make it --
18 that's -- we don't want to do that either.

19 Oh, that's me tapping on the microphone. We don't
20 want to do that either.

21 All right. We have to have the 341 hearing by
22 Friday, September 5. This room isn't available for you Friday,
23 September 5. I'm in the courtroom that day.

24 Robin, is the courtroom available for us on
25 Wednesday, September the 3rd? Or does the District Court,

1 Magistrate Court have it reserved for then?

2 THE CLERK: It looks like there are jury trials on
3 September 3rd, but whether that would be in Courtroom 1 --

4 THE COURT: Anything else? Let's avoid that.

5 We're going to adjourn the hearing on Talbot. I'll
6 just put it September 5th. We are going to adjourn.

7 Assuming everybody is available, we are going to
8 adjourn this hearing -- well, let me back up.

9 The Court will approve the interim resolution
10 suggested but will look for formalization of that by a fully
11 endorsed order, including Mr. Reeves' endorsement as proposed
12 counsel for the committee.

13 So you-all work together and put together an order
14 and send it in, but make sure you get the necessary
15 endorsements on that.

16 The Court will then set a final hearing on the
17 engagement or the proposed engagement of Mr. Talbot on
18 September 5, at eleven, in this courtroom, September 5 at
19 eleven.

20 Mr. Whitehurst, I will not direct when you set the
21 341 hearing, but obviously you will have to schedule it around
22 that.

23 MR. WHITEHURST: Your Honor, if I may, I think -- I
24 was just consulting with Mr. McDow about it. We are going to
25 do our best to have this on the 29th. Obviously the concern is

1 with Leavenworth. I think we will know within the next week.

2 If it please Your Honor, if we set it for the 29th
3 and the Court wants to schedule the hearing for the afternoon
4 of the 29th once we will file -- because we will file the
5 notice of the 341 with the Court as soon as we can.

6 If the Court wants to move the hearing up a week it
7 is still the week before Labor Day. We can't change that, but
8 if everybody is here --

9 THE COURT: Not even with the full might of the U.S.
10 Trustee?

11 MR. WHITEHURST: Or the full might of the Court.

12 THE COURT: All right.

13 How does everybody feel about having a hearing on the
14 Friday afternoon before Labor Day?

15 Mr. Reeves?

16 MR. REEVES: Your Honor, we want to cooperate with
17 everyone. We just didn't want this to go on too long. I think
18 the September 5th scheduling the Court has done maximizes
19 everything, I truly do. That works for us.

20 We just didn't want it to have to start up all over
21 again, particularly with the difficulty in getting times.

22 THE COURT: Is everybody available on the 5th?

23 Mr. Ackerly?

24 MR. ACKERLY: Yes, sir.

25 THE COURT: Mr. Stefan?

1 MR. STEFAN: Yes, Your Honor.

2 THE COURT: Mr. Zemanian?

3 MR. ZEMANIAN: Yes, sir.

4 THE COURT: Mr. McDow?

5 MR. MCDOW: Yes, Your Honor.

6 THE COURT: Mr. Campsen?

7 MR. CAMPSEN: I am, Your Honor.

8 THE COURT: Mr. Lichtenstein?

9 MR. LICHTENSTEIN: Yes, Your Honor.

10 THE COURT: How about Mr. Ginsberg?

11 MR. GINSBERG: I think I am available, but I think
12 for Mr. Vick's sake we need to figure out if there's an
13 alternative. We are having a very, very difficult time hearing
14 anybody but Your Honor.

15 THE COURT: We'll try -- we have our IT people here.
16 We'll try to figure something out for your benefit, even if it
17 means we have to bring some more microphones in.

18 MR. GINSBERG: That would be great.

19 Thank you, Your Honor.

20 THE COURT: We'll figure something out. Obviously
21 Mr. Vick and you, Mr. Ginsberg, need to hear everybody.

22 It is being -- we do have a court reporter, and there
23 is a permanent transcript of it being made, but that is not as
24 good a substitute as actually hearing it in real time. So we
25 will try to figure something out for you.

1 I happen to have the benefit of two microphones and a
2 loud voice, so that probably doesn't hurt.

3 We'll see.

4 MR. GINSBERG: Thank you. I appreciate it.

5 THE COURT: All right. September 5, at eleven
6 o'clock for the final on the Talbot application.

7 If the matter -- the Court will convene a hearing
8 whether the matter is resolved or not. It will leave it to the
9 discretion of the parties to make the hearing cost effective
10 for the estate, which is if Mr. Talbot needs to be here, he
11 should be. If he doesn't, his presence is not required.

12 I did want him here this morning.

13 Are there any questions?

14 All right. Thank you, then.

15 MR. GINSBERG: Your Honor, I have a question for some
16 of the people in the courtroom. I know we are supposed to be
17 here for an interview with the U.S. Trustee.

18 Do we just stay on this line?

19 THE COURT: I don't know. I imagine you do.

20 Everybody stay on this line? Is that what we are
21 going to do, Robin?

22 THE CLERK: For a few minutes, just stay on this
23 line, please.

24 MR. GINSBERG: Thank you very much.

25 THE COURT: All right. I'm going to adjourn, and

1 then you can convene your meeting.

2 MR. GINSBERG: Thank you, Judge Santoro.

3 THE COURT: All right.

4 (The proceedings were concluded at 10:45 a.m.)

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COURT REPORTER'S CERTIFICATE

I, Suzanne M. Myers, RMR, Court Reporter, certify that I recorded verbatim by stenotype the proceedings in the captioned case before the Honorable FRANK J. SANTORO, Judge of said Court, Newport News, Virginia, on July 17, 2008.

I further certify that to the best of my knowledge and belief, the foregoing transcript constitutes a true and correct transcript of the said proceedings.

Given under my hand this 22nd day of July, 2008, at Norfolk, Virginia.

/s/Suzanne M. Myers

Suzanne M. Myers, RMR, Notary Public

Notary No. 240597