

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In the matter of:)
)
SEERTECH CORPORATION)
ROLLTRONICS CORPORATION)
and VOLTAFLEX CORPORATION,) Case No. 06-31156
) Charlotte, NC
Consolidated Debtors) May 29, 2008, 9:54 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. CRAIG WHITLEY
UNITED STATES BANKRUPTCY JUDGE

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1 THE COURT: Seertech and VoltaFlex Corporations. Who
2 do I have here for that?

3 MR. MITCHELL: Your Honor, Rick Mitchell, trustee.

4 MR. BAIRD: David Baird, Your Honor.

5 THE COURT: All right, Mr. Baird. Gentlemen, what's
6 involved in the -

7 MR. MITCHELL: It is probably about five minutes.

8 THE COURT: Mr. Baird, how about you, do you think this
9 -

10 MR. BAIRD: I've got all day, Your Honor.

11 THE COURT: Pardon?

12 MR. BAIRD: I have got all the time you need.

13 THE COURT: No, I am asking how much do you think we
14 will need?

15 MR. BAIRD: Oh. Well, I have a number of questions for
16 the trustee, Your Honor, which might considerably take even a
17 half an hour.

18 THE COURT: Okay. Let's try to get some of the earlier
19 stuff out of the way, the shorter stuff out of the way.

20 (Whereupon the court heard matters in other cases from
21 9:55 a.m. until 10:38 a.m.)

22 THE COURT: Okay. Now let's back up to number seven,
23 Seertech and VoltaFlex Corporations, the final application,
24 special counsel compensation and the objection by Mr. Baird.
25 Let's see if we can get our hands on all of that.

1 MR. MITCHELL: Your Honor, Rick Mitchell, trustee and
2 attorney for the trustee. Actually there are three cases here
3 that have all been consolidated.

4 THE COURT: Right.

5 MR. MITCHELL: The Seertech Corporation case;
6 Rolltronics Corporation; and VoltaFlex Corporation. I have the
7 numbers of each one of those if you would like.

8 THE COURT: Well, if they have been consolidated, we
9 are working under the lead case name of Seertech; right?

10 MR. MITCHELL: The lead case is Seertech but various
11 documents have been filed in various cases by a number of
12 people and -

13 THE COURT: Recently?

14 MR. MITCHELL: Well, some have been filed recently and
15 some of them have been filed a while back, and I will try to
16 put that all in perspective as we go through whatever we are
17 dealing with now.

18 THE COURT: Okay.

19 MR. MITCHELL: If Your Honor will recall, this case
20 started out with Seertech Corporation being filed by Mr.
21 Johnson, and I am prepared to kill him for it.

22 THE COURT: All right.

23 MR. MITCHELL: I take it that Your Honor feels that
24 wouldn't be any great loss by your comment.

25 THE COURT: Pardon? I am sorry. I was looking, Mr.

1 Mitchell. What did you say?

2 MR. MITCHELL: Sorry, I just felt -

3 THE COURT: No, you tailed off at the end of your
4 statement and I didn't hear it.

5 MR. MITCHELL: I just made a funny at the court's
6 expense but nothing serious.

7 THE COURT: All right. Noted. I will put it down on
8 the record I chuckled. All right.

9 MR. MITCHELL: The Seertech Corporation was filed. I
10 quickly discovered that what was involved in this case was a
11 fraud and an ongoing fraud in the sale of stock, purportedly
12 with developmental technology and what have you, but what it
13 really was, was a scheme wherein we start a company, we sell
14 stock. When the stock fortunes start falling, we close that
15 company up; transfer the purported technology; and it just
16 keeps going on, and on, and on.

17 Eventually Rolltronics Corporation and VoltaFlex
18 Corporation were filed in bankruptcy on the west coast. We got
19 those moved here, consolidated them all. They all involve the
20 same bunch of people that went on, and on, and on, and on.

21 Early on in the case I had great hopes of being able
22 to do something that would benefit the creditors of these cases
23 and, as I got into it, it quickly became apparent that, in
24 order to do anything, it was going to cost an absolute fortune,
25 and we have put a ton of time in this case. Mr. Taylor has

1 been involved in the case. Mr. Stiles has been involved in the
2 case. And when we start talking about the amount of money that
3 has been spent in terms of fees, it is staggering.

4 We have totally brought into the estate somewhere
5 around thirty thousand dollars. Part of that was fifteen
6 thousand dollars in sanctions against one of the players that
7 was paid directly per court order, and then the rest was a
8 settlement of a preference case. So there is a little bit more
9 than fifteen thousand dollars, whatever is shown in the closing
10 in the case, and the fees would go many times what has been
11 available.

12 What became painfully obvious early on in the case,
13 and became more and more obvious as we went through this, is
14 exactly what we are seeing today. The creditors are saying you
15 need to do something about this, Mr. Trustee, it is wrong, but
16 we don't want to pay. And that is exactly the kind of attitude
17 that I have faced for a long time now. Frustration tended to
18 build and finally I just gave up. There is no where to go with
19 this case except to spend a quarter of a million dollars trying
20 to chase these people, which I can't afford to do. I will just
21 have to give up law practice because I can't afford to work for
22 these folks for nothing, but they don't mind that, I don't
23 think.

24 I am sitting here thinking, you know, this gentleman
25 is over here objecting to my trying to get this thing closed

1 and get out of it, and I am saying he has got a cause of action
2 against these people and these debtors and there is no
3 discharge and he can hire a lawyer and he can spend his quarter
4 of a million dollars chasing these folks. Why does he think I
5 should have to do it?

6 And that's kind of where we are, and we have had, oh,
7 five or six different objections filed and they all come down
8 to the trustee hasn't done his job because he hasn't
9 represented us for nothing. And of course there is just
10 nothing here that I can do anything with.

11 Now, we are talking about crooks. You remember this
12 thing we had with the state bar that was just awful and
13 sanctions entered against that, and then the sanctions of
14 course haven't been paid and they won't be paid.

15 But, be that as it may, the one thing that I did do in
16 this case was to say, in my closing motion, to say, Judge,
17 direct me who to turn the books and records over to because I
18 was concerned about the crooks getting the books and records.
19 But I haven't even had anything from any of the creditors with
20 reference to that, and I think it is because they recognize
21 that they will have to pay some money if they have to deal with
22 the records.

23 The only request I have had from records has been from
24 Mr. Sauvante, who was the head bad guy in the deal, and he
25 filed a motion in Rolltronics and the court entered an order,

1 but it needs to be a broader order in terms of whoever I am
2 supposed to get these to. But I have got these records. They
3 are available for anybody who wants them as long as the court
4 directs me to turn them over. I just need to get this case
5 filed and closed and gone. I have taken enough of a beating on
6 it.

7 THE COURT: Do you have a forecast of how much time in
8 terms of what your fees would be at this point in time, save
9 and apart from the trustee time?

10 MR. MITCHELL: I am sure we filed a fee application
11 that would have shown the whole thing, Your Honor.

12 THE COURT: Can you pull that up for me? There it is.

13 MR. MITCHELL: I didn't bring a copy of that with me,
14 but it would be one for Mr. Stiles and one for Mr. Taylor and
15 one for our firm.

16 THE COURT: Fourteen thousand and what for Stiles?

17 COURTROOM DEPUTY: (Inaudible)

18 THE COURT: Fifty-nine thousand, two eighty is Mr.
19 Mitchell's attorney's fees, and Mr. Taylor? It looks like
20 thirteen thousand, plus eight hundred of expenses. Okay. All
21 right.

22 Mr. Baird, you are here and present. Tell me first
23 what your relationship is to the debtors, for the record, and
24 then I will allow you to ask the trustee questions, and then I
25 will allow you to tell me what you think about the situation.

1 Okay.

2 MR. BAIRD: Okay. Thank you, Your Honor. My
3 relationship is I am a creditor. I was an investor in
4 VoltaFlex Corporation, which I quite agree with the trustee's
5 characterization of these companies. Unfortunately I invested
6 before I became aware of that fact. I was actually a
7 defendant. Strangely enough, given the circumstances, we ended
8 up being defendants rather than plaintiffs in a proceeding -

9 THE COURT: Are you part of the McMillan Group
10 effectively?

11 MR. BAIRD: That's correct, yes. But we did win a
12 judgment against the - their case was actually - let me think
13 of the right term. They dropped their case against us or we
14 continued with ours against them.

15 THE COURT: Right.

16 MR. BAIRD: And we did reach a settlement, of course,
17 to provide settlement in California, which the company was - in
18 fact Seertech, what ultimately became Seertech because there
19 were a number of corporate transactions leading to that, but
20 what ultimately became Seertech was to pay us back our
21 investment, plus they were supposed to give us stock just in
22 case that ever became worth anything.

23 THE COURT: Right.

24 MR. BAIRD: And Seertech stepped up basically as a
25 white knight, representing themselves as a bona fide company

1 who would get rid of all of the questionable practices of the
2 previous companies; find real investors, real financing, in
3 order to take some of these technologies forward. And, in
4 fact, there were valid technologies, which is why I invested in
5 the first place. One of which was supposedly licensed from
6 M.I.T., which the companies could have gone forward with.

7 So I am a creditor, to make a long story short, Your
8 Honor, and I am here because I believe I quite understand the
9 trustee's frustration. I have been through very similar myself
10 in dealing with these people, but I do believe it is premature
11 to close this case, and I would like to try and reach some
12 accommodation with the trustee and the court in order that the
13 cases can be held open and some progress made.

14 I would like to take issue with one of the statements
15 of the trustee where creditors expect him to work for nothing.
16 That is not correct. We in fact offered the trustee twenty-
17 five thousand dollars back in December of 2006 prior to him
18 launching an adversary proceeding against us and actually
19 subsequent to that, as well, asking him if he would like to
20 consider that adversary action, put his resources in going
21 after the bad guys and we would fund him to an initial amount
22 of twenty-five thousand dollars, but he refused that offer.

23 We have also offered him volunteer work. I am not
24 familiar with the details of a lot of your cases, Your Honor,
25 but I think this might be an unusual case in that we have a

1 very motivated, very qualified, very energized group of people
2 who have been taken advantage of by what the trustee refers to
3 as these crooks, and we are willing to roll up our sleeves and
4 continue to do an awful lot of work, which we have done
5 already, in trying to at least get a full accounting of what
6 has happened here, how much money was raised and what was the
7 disposition of that money.

8 We have done something very similar in the past in our
9 own core case in California, and we would be willing to bring
10 all of that expertise and experience to bear in this. But
11 whenever we offered that, in fact the trustee rejected it.

12 In spite of that, we still are willing to go forward.
13 I understand that one of my other creditors, Ms. McMillan, who
14 you just mentioned, has filed a Rule 2004 Exam motion in order
15 to come at this in a slightly different way without necessarily
16 tying up the resources of the trustee, and I think that, at the
17 very least, that should go forward and hopefully that would
18 provide one vehicle and there may be others, which I am
19 certainly willing to explore, in order that this case can be
20 kept open, at least to the point where there is some visibility
21 as to what happened.

22 But right now, it appears that what the trustee refers
23 to as crooks seems to have been able to stonewall successfully
24 and appear that, if the case was closed right now, the crooks
25 would get away with it without even - and I am certainly not

1 necessarily optimistic that there will ever be any assets to
2 distribute at the end of the day but, even if that is the case,
3 I would like, and I think that all of the creditors would like
4 to see a full accounting in terms of what money was raised
5 here, what is the disposition of that money, what assets do
6 exist because there is some intellectual property that might
7 have some value. I actually believe that it has. And, in
8 addition to that, not just intellectual property but there was
9 a physical representation of that property in a prototype which
10 was bandied around by these officers of the court at various
11 trade shows and, in fact, is the embodiment of the intellectual
12 property which -

13 THE COURT: Officers of the court, who are you talking
14 about?

15 MR. BAIRD: I am sorry, officers of the company.

16 THE COURT: Okay.

17 MR. BAIRD: Which I believe has some value. There were
18 also samples. Just this week I became aware of an e-mail from
19 a former CFO of Seertech in which he claims to have sent an e-
20 mail to Mr. Bachinsky saying why don't you send Ms. McMillan a
21 sample t-shirt from your inventory as a sign of goodwill. This
22 was a t-shirt which embodied some of the technology they were
23 trying to develop. Basically it makes advertising flash and
24 light up on t-shirts.

25 So I believe there are assets over and above just the

1 pure intellectual property which haven't been identified. And
2 it is also on the record, I understand, Your Honor, that eight
3 million dollars has been raised by these companies, in total.
4 A tiny fraction of that would have been spent on actual, valid,
5 business activities such as trying to develop the technology
6 and take it forward, and I think we would all be interested in
7 knowing where the balance of those funds went.

8 THE COURT: Did you have any questions for Mr.
9 Mitchell? You said something earlier -

10 MR. BAIRD: I have a number, Your Honor, but very
11 frankly I am not familiar with court procedures and whether it
12 is appropriate to ask them here. If everybody is in agreement,
13 I would love to do it but it is entirely up to you, Your Honor.

14 THE COURT: Give me a sample of what you want to ask
15 him.

16 MR. BAIRD: I would just like to know how he has
17 approached this case; what led him to consolidate the cases
18 from California; and what he has done with the data he got
19 there. Is there an itemized list of the books and records he
20 has received? Can that be made available to the creditors for
21 us to assess? Has he made a list of the assets of the company?
22 Does he know about this prototype that I am talking about?
23 Does he know about the potential inventory? Has he been able
24 to track down any of the funds that were raised? If not, what
25 are the obstacles to doing that? Has he been able to, as I

1 understand the statutes call for, been able to investigate the
2 finances of the company and what are the results of those
3 investigations, and really matters along those lines, Your
4 Honor.

5 THE COURT: Mr. Mitchell, let me ask one now. Have you
6 had any contact with the criminal authorities on this case?

7 MR. MITCHELL: I wrote a letter to the U.S. Attorney's
8 Office early on outlining all of this and never got a response.

9 THE COURT: Okay. And, as I understand, a good bit of
10 this took place in California and elsewhere. One of a couple
11 things can happen here. The long and the short, Mr. Baird, is
12 one of the ironies of the American bankruptcy system is that
13 cases are administered through a private panel of trustees that
14 effectively are on a scavenger hunt. They get paid only if
15 they can find something, and they don't get paid if there are
16 no assets. And that really puts a crimp in what can be done
17 here.

18 Now, asking your questions, if we need to do this for
19 appeal purposes, there is some appropriate mechanism for that,
20 and I am obliged to let you ask your questions of the trustee.
21 If you are just interested in knowing, I will take about a five
22 to ten minute recess, talk to these other folks, and let you
23 and Mr. Mitchell have that conversation off-the-record, just
24 let you ask those questions.

25 If you are wanting to ask them for purposes of a

1 record on appeal, then we need to state those on the record.
2 But I will tell you my general experience - I am not saying I
3 am going to rule this way - but generally the problem you run
4 into in these cases is there is very limited money available,
5 particularly when you have a fraud case. And that being so, I
6 cannot force the trustee to go out and work for free
7 interminably for the hope that they might get a distribution to
8 creditors.

9 If there is no way to fund the activity - you just
10 said twenty-five thousand dollars. Mr. Mitchell said a quarter
11 of a million, a factor of ten. If there is no way to fund the
12 trustee's recovery attempts, then effectively they just can't
13 be made.

14 Now, the saving grace there is a closing of a
15 corporate bankruptcy case does not affect the discharge of the
16 liabilities. So the people that you are talking about, if they
17 want to go after these individuals after bankruptcy, they can.
18 You might want these records to help you. But given the
19 circumstances, it is going to be very difficult for me to force
20 him to continue to try to administer an estate in this
21 condition. Mr. Mitchell has gone to the well already in this
22 case and we have had quite a number of very heated hearings in
23 this and you have the benefit of having a trustee who is
24 extremely, I guess, aggressive and willing to take risks when
25 it comes to trying to recover in a fraud or a crook case, if

1 you will, and he is telling me that he can't see you to the end
2 of the road here.

3 So really you have the alternative, if you all want to
4 ask, as the investors, you want the records, then we will have
5 a short hearing on whether those records should be turned over.
6 Excuse me. We have that tee'd up. I can give the books and
7 records to the investors if you all want them. You are going
8 to have to transport them and do something with them. But the
9 long and the short of all of that is that I am going to be very
10 hard-pressed to make him stay in the case and litigate a case
11 which you all could do independently of the bankruptcy estate,
12 knowing that he would end up taking all of the risk if it turns
13 out to be a dry hole.

14 Do you want to ask him these questions? Do you all
15 want to talk about what those questions are?

16 MR. MITCHELL: Your Honor, I quite frankly at this
17 point in time, these folks have had information going on for
18 two years. He knows the answers to all of those questions.

19 THE COURT: Well, we are making a record here in a
20 court proceeding.

21 MR. MITCHELL: I understand that. If he wants to ask
22 me on the stand, I will be glad to respond.

23 THE COURT: Okay. So I will take that as you don't see
24 any point in just talking about it?

25 MR. MITCHELL: I really don't.

1 THE COURT: Mr. Baird, Mr. Mitchell suggests you
2 already know the answers to those questions.

3 MR. BAIRD: That's not the case, Your Honor. Otherwise
4 I wouldn't waste the court or Mr. Mitchell's time or my own,
5 frankly, in doing it; but if I may speak to a couple of the
6 points he made.

7 THE COURT: Please.

8 MR. BAIRD: First of all, in terms of the books and
9 records, Mr. Mitchell did enter into an agreement with us in
10 settlement of his adversary case against us in which he
11 undertook to turn over those books and records to us at the end
12 of the case. So -

13 THE COURT: All of the case records?

14 MR. BAIRD: Yes.

15 THE COURT: Is that correct?

16 MR. MITCHELL: What I did in that order, the
17 settlement, we agreed to make them available to inspect and
18 copy, and they made arrangements to come down but, because of
19 the history of this case and the way these folks abused us, we
20 decided and did have as a part of the settlement that there
21 would be a charge of eighty-five dollars an hour for a
22 paralegal to monitor their review of the records. When I
23 insisted that a deposit be made before they could look at the
24 records, they refused to make a deposit.

25 THE COURT: And Mr. Sauvante has also claimed the

1 records.

2 MR. MITCHELL: Yes, he has, Your Honor. If I may call
3 your attention to paragraph eight of my motion to - of the
4 final report. I tried to anticipate this problem with
5 reference to the records because I wanted the investors to have
6 them rather than the bad guys if the investors wanted them.
7 Unfortunately nobody has made a claim except for the bad guys,
8 but I suspect the court could treat it today as a claim being
9 made for those records and order me to turn those records over,
10 and I would be happy to. There are no -

11 THE COURT: I think the issue is tee'd up.

12 MR. MITCHELL: They are in a warehouse right over here.
13 They are ready. We can make an appointment. They could have
14 their people come and they could have them all.

15 MR. BAIRD: Your Honor, if I can speak to that again?

16 THE COURT: Yes.

17 MR. BAIRD: The last sentence of item three of that
18 settlement, which was in fact entered as an order by this
19 court, I believe -

20 THE COURT: Well, even if you have a settlement to that
21 effect, unless it was something that was approved with notice
22 to all creditors, I can't make that provision stick because the
23 case records are released at the end of the case and all of the
24 parties in the case have an interest in them. So preliminarily
25 I couldn't make a ruling even if it was stuck away in there

1 that would bind other parties.

2 That is part of what this motion is today, but I can
3 make a ruling based on it today. And he is not really opposed
4 to you guys getting the records, and I am not opposed to you
5 getting the records. You are going to have to pay for it. I
6 mean, in terms of taking physical possession.

7 MR. BAIRD: That's fine. We always understood that.

8 THE COURT: If the investors want them, we need a
9 designee put in an order and we will do that part of it.

10 MR. BAIRD: Okay.

11 THE COURT: But the bigger problem is I still have the
12 same problem and, if you wish to raise those questions for the
13 record, I will let you ask them. We are going to stand down
14 and let these other folks have their hearing first, though.
15 But at the end of the day, unless you can show me, Mr. Baird,
16 how the trustee could afford to bring this lawsuit, I am not
17 going to be able to force him to work for free.

18 MR. BAIRD: That's fine, and that's not our intention.
19 It never has been. I do possibly take issue with his
20 characterization that it is going to cost a quarter of a
21 million dollars. I think an awful lot can be achieved at a
22 very small fraction of that cost.

23 THE COURT: Good. Use your lawyer.

24 MR. BAIRD: Well, Your Honor, the court has some
25 options, legal options open to them, so at the very least -

1 THE COURT: Yeah, and one is to deny your objection and
2 close this case, realizing there is no harm done to anyone if
3 you get both the records, the opportunity to take the records
4 and there is no discharge either to the debtors or any third
5 party, so you still have your lawsuit rights. So I don't see
6 how the investors are prejudiced in this case. The only way I
7 could do this, and I know with Mr. Mitchell's past - I have
8 seen him in enough of these cases - he would be out there
9 trying to do it if he thought you could afford to do it, that
10 he could get paid to do it or even reasonably close.

11 I have had him in a couple of cases where he went for
12 a period of years not getting paid because it was a fraud
13 situation, he felt sympathy for the investors and because, at
14 the end of the day, he thought he could recover something. I
15 have to put some weight on the fact that he is not willing to
16 undertake this for twenty-five thousand or anything.

17 MR. BAIRD: Right. No, I quite agree. So if I may,
18 Your Honor, could I propose that we continue this case for,
19 say, sixty days. That will give you some time to address the
20 request of Ms. McMillan to have a Rule 2004 examination, which
21 I think is another way to come at this. During that period of
22 time, we would not ask the court or Mr. Mitchell to spend any
23 more time or resources on this. I think there are -

24 THE COURT: Who is Ms. McMillan proposing to depose?
25 It was the former principals, right? That's what I recall of

1 the motion.

2 MR. BAIRD: She submitted a list independently, Your
3 Honor, but I believe those were included, yes.

4 THE COURT: Right, and she also wanted them to produce
5 all of the records and I refused to sign that without a
6 hearing. The long and the short of it is you still have the
7 same problems. First of all, she has got to figure out some
8 way to get the records and the people she wants to depose in
9 the same place. Well, somebody has got to pay for that, and
10 the trustee has physical possession of the records. I am
11 trying to tell you that there are some real hurdles to granting
12 her motion. I don't see how that advantages the case. What
13 you are proposing is that she make the same sort of
14 investigation that you would do in discovery in a fraud
15 lawsuit. Well, you can do that. She can do that
16 independently.

17 What I am trying to get at is what is to be advantaged
18 to keep running this case, and all I can hear is that the
19 investors get somebody to do the work for free or -

20 MR. BAIRD: That's not the case, Your Honor.

21 THE COURT: Well, do you have two hundred and fifty
22 thousand you want to post? We will approve the fee
23 applications if the investors want to do that, and I will tell
24 Mr. Mitchell to press on and he can file fee applications and
25 we will pay them out of that.

1 MR. BAIRD: Right. Again, Your Honor, I don't believe
2 that is an accurate number and what it would cost to go
3 forward. I do believe that a creditor -

4 THE COURT: We will escrow the money.

5 MR. BAIRD: I do believe a creditor committee could be
6 formed who would be willing to put up some money in order to
7 achieve some tangible results from an investigation, whether it
8 be through the trustee's efforts or whether it be through a
9 Rule 2004 or whatever.

10 THE COURT: In Chapter 7, in America, we don't have
11 that mechanism. That's a Chapter 11, reorganization prospect,
12 and we don't have that scenario. The trustee is effectively
13 the creditor committee, if you will. And the long and the
14 short of it is I cannot force him to do that. It is almost
15 indentured servitude without the prospect of knowing at the end
16 of the day that there is a mechanism to pay him for his
17 reasonable time and services.

18 So if you are wanting to build a record for appeal,
19 that's fine. I am inclined to overrule your objection at this
20 point in time. But if you want to build that record, I may
21 change my mind at the end of the day and, if you need it for
22 appeal purposes, that's fine. But I have got a lengthy history
23 in these cases myself, having heard effectively efforts by the
24 trustee to compel the documents and to obtain the records and
25 the sanctions hearings involving the principals. And the long

1 and the short of it, it looks like to me, Mr. Baird, is you all
2 got swindled and you got swindled by some professionals and
3 they have moved on.

4 The only real recourse, I would think, is a criminal
5 prosecution. The trustee has recommended it to the U.S.
6 Attorney, and we don't have any jurisdiction over them in terms
7 of directing them that you will prosecute this and not that.

8 The long and the short of it is you would also have
9 your state criminal authorities. If these individuals
10 committed some sort of a criminal act in California, or
11 wherever these solicitations were made, then that still exists.
12 But really and truly, the scenario is pretty bleak at this
13 juncture for your recovery unless you are able to get some form
14 of restitution in a criminal proceeding.

15 Now you can bring a lawsuit but that, again, gets us
16 back to the same thing. If it is doable for much less, why
17 don't you want to do it using your own attorneys that you can
18 direct instead of a trustee who is not going to accept all of
19 your suggestions and do it in a forum which is more convenient
20 to the investors? Two of these companies are from California;
21 we are sitting here in North Carolina; and you are from Canada.
22 There is nothing very convenient about this.

23 MR. BAIRD: Well, this is the jurisdiction that was
24 chosen, Your Honor, so I had no choice in that.

25 But, Your Honor, I understand what you are saying and

1 maybe a criminal procedure might be something we can consider
2 in the future. But it just strikes me that at this point in
3 time, I do not believe, as I submitted in my motion, that the
4 trustee has fulfilled all of his obligations under the Code,
5 and I have actually tried to itemize those in my submission.

6 THE COURT: I read your submission and, unless you can
7 elicit some stronger evidence than what is put in the
8 submission, I don't agree with you. And in the end, that's the
9 circumstance.

10 As I said, I will keep an open mind. If you want to
11 ask the trustee those questions under oath, we will do it. We
12 are going to get this other case out of here first, though.
13 Otherwise, I am inclined to allow the trustee's request and
14 offer you a period of time for the investors to designate a
15 party to take possession of the records. Otherwise I am going
16 to have the trustee destroy them.

17 MR. BAIRD: If I may, Your Honor, one more point?

18 THE COURT: Uh-huh.

19 MR. BAIRD: Did Your Honor see in my submission that I
20 had not in fact been properly informed? I did not have the
21 full thirty days to respond.

22 THE COURT: You are here, aren't you?

23 MR. BAIRD: I am, Your Honor, but it wasn't -

24 THE COURT: Did you ask for a continuance before we
25 started?

1 MR. BAIRD: Pardon?

2 THE COURT: You didn't ask me for a continuance?

3 MR. BAIRD: No, Your Honor, but I am asking -

4 THE COURT: We are way beyond that.

5 MR. BAIRD: I am asking for one now. Would that be
6 possible?

7 THE COURT: Denied. I think in the end, Mr. Baird, you
8 are asking somebody to tote your water for you and he can't do
9 it unless he has some means to carry it, and I can't do that.

10 Now, if you are wanting, as I said, if you feel the
11 need, if you anticipate an appeal and want to ask your
12 questions of Mr. Mitchell on the record, I will keep an open
13 mind and may change my ruling at the end of them, but you are
14 going to have to have something really strong because, from my
15 experience in this case, the trustee has really made an effort
16 and expended a considerable amount of money with a great deal
17 more to come and no prospect that at the end of the day he will
18 recover one red cent.

19 MR. BAIRD: Yes, I would like to ask those questions.

20 THE COURT: All right. We will stand down for a moment
21 and finish this other hearing.

22 (Whereupon the court heard matters in other unrelated
23 cases from 11:07 a.m. until 11:20 a.m.)

24 THE COURT: All right. Let's back up. Seertech,
25 VoltaFlex and Rolltronics, consolidated case there. We will

1 return to that matter.

2 Mr. Mitchell, let's get you sworn and then we will let
3 Mr. Baird ask his questions.

4 (RICHARD M. MITCHELL, WITNESS, SWORN)

5 THE COURT: What we will do here is Mr. Mitchell is now
6 acting as a witness, in addition to his role as trustee and
7 counsel for the trustee. So, Mr. Baird, I am going to allow
8 you to ask the questions and Mr. Mitchell to respond to them,
9 and then I will ask Mr. Mitchell if he wants to say anything in
10 addition of an evidentiary nature, and then we will conclude
11 his testimony and talk again as basically litigants or, excuse
12 me, as representatives, attorneys and the like.

13 All right. Go ahead and ask your questions.

14 MR. BAIRD: Okay. Thank you very much, Your Honor.
15 Thank you, Mr. Mitchell.

16 DIRECT EXAMINATION

17 BY MR. BAIRD:

18 Q. Mr. Mitchell, when you were appointed as the trustee
19 for the Seertech bankruptcy, did you develop a plan in terms of
20 how you would handle that case? A plan of attack, let's say.

21 A. That question assumes that I knew what was going on
22 when the case was filed, which is just not the case. We
23 started delving into it, trying to figure out what was going
24 on. It appeared that there was a corporation that had been
25 formed and, as a result of a lawsuit against the former

1 corporation, it had ended up with a big judgment against it and
2 purportedly the judgment was the reason that they had to file
3 the bankruptcy case, and there were some payments that I
4 thought were preferential, sixty thousand dollars, to the
5 plaintiffs in those lawsuits. I think you were one of them -
6 or the defendants in the lawsuits who eventually in a
7 counterclaim got a judgment.

8 As time went on, I began to realize what we were
9 dealing with, that it was a scheme and plan. The scheme and
10 plan involved - I can't remember the term that they used but it
11 was a very glib term for a pre-revenue technology, we are
12 developing pre-revenue technology and we get investment and,
13 when we bring this to market, we are going to have a fortune.
14 At first, I thought we were dealing with patents. Then I
15 discovered that we weren't dealing with patents; we were
16 dealing with licenses for patented goods.

17 Then it became apparent to me that there had been
18 prior organizations that had all dealt pretty much with the
19 same patented items. They had all been licensed. They had all
20 been licensed from the same people. The licenses were
21 forfeitable under certain circumstances. As the corporations
22 failed because they couldn't raise more money, the patents were
23 forfeited and a new corporation was started and the realm went
24 on, and on, and on.

25 Did I develop a plan? No. It is an emerging thing as

1 you learn more and more facts. This kind of thing is like
2 investigating a mystery.

3 Q. Right. No, I quite understand. But using your
4 experience, for example, coming into any bankruptcy case - and
5 I realize this one, you know, took some unexpected twists and
6 turns as you delved further into it - but would it be fair to
7 say that, in approaching any bankruptcy, you would go in, you
8 know, with a determination to see if there are financial
9 records up-to-date, including a balance sheet and income
10 statements, if there are any, cash flow statements, a list of
11 assets, whether they be patents or whether they be real
12 property. You know, a determination of bank accounts showing
13 what the flows of money had been. So would those be standard
14 items that you would normally expect to undertake as a trustee?

15 A. That is a hard question to answer. Obviously you
16 have got to get in the books and records but the first thing
17 you do is look at the schedules and statement of affairs that
18 have been filed by the debtor. We rely on honest people filing
19 bankruptcy cases and, when we run into dishonest people, it
20 creates a major problem. The honest people will file and
21 honestly you can look at schedules, you can get a good idea as
22 to assets, you can get a good idea as to liabilities. You know
23 what has been going on, and then you can work off of those.

24 In a case like this, when you get the schedules, we
25 have to assume they are accurate to begin with, and then you

1 start finding holes. That's when you start looking at other
2 things. That's the reason Mr. Stiles was involved in the case.
3 Mr. Stiles was a forensic accountant who has got all kinds of
4 designations from fraud designations and what have you,
5 Certified Public Accountant. He looked at the books and
6 records and, of course, he is the one who assisted me in
7 spotting what was going on, the continuing rolling from one
8 corporation to the other.

9 Yeah, we looked at all of that stuff. And was it
10 accurate? No. Was it misleading? Yes. Was it done
11 intentionally? In my opinion, it certainly was.

12 As far as assets are concerned, what does a pre-
13 revenue technology have? It has got the technology it is
14 working on. It has got some desks. It has got some computers
15 and that is pretty much it. The hard assets, the desks,
16 computers and that kind of thing, were worth nothing literally.

17 So then you start looking at the technology. Well, I
18 talked to people who were interested in buying patents and what
19 have you and then, when we really got to digging into it and
20 found out there were licenses that purportedly had been
21 forfeited, that meant that I was involved in or would have to
22 be involved in significant litigation in the court to determine
23 ownership of that stuff. And knowing that these people had
24 been doing this forever, all I could see was dollar signs.

25 And let me point out to you it is not like we haven't

1 done anything. My firm has put fifty-nine thousand dollars
2 into this thing and, between Stiles and John Taylor, there is
3 another almost thirty, and we are talking about upwards of
4 eighty-five to ninety thousand dollars in time that has been
5 spent in this case. That is not just looking at it and saying,
6 oh, there is nothing here. That's chasing really hard to find
7 out if there was somewhere we could go with it, and there is
8 not. There is no money there. Nobody has been willing to come
9 forward. Nobody has been willing to assist financially and,
10 without that, there is nothing we could do.

11 You know, I am perfectly happy at this point in time
12 to go forward with the litigation if your group wants to come
13 up with enough money to pay the outstanding fees to this point.
14 I will file a lawsuit and see what we can do about it. But,
15 you know, that's ninety thousand bucks. You can't keep going
16 forever. My resources just aren't there.

17 And, you know, I think you hit the nail on the head.
18 Is there any assurance that there is going to be anything there
19 at the end of the day? No. But you want vindication. You
20 want to know what went on. You want to know that these guys
21 are crooks. Well, listen, I have called them crooks. Out of
22 every breath I say, they are. And I sat on this very stand and
23 was cross-examined about a statement I made as to whether or
24 not Mr. Sauvante was a crook, and I said I don't remember
25 making that statement but he is, so I probably did.

1 Now, what else am I going to do? We get to the end of
2 the day. I put another hundred thousand dollars or more in
3 time in this case and find out that they are crooks and we
4 can't recover anything from them. I just can't do that. I am
5 financially unable to do that.

6 THE COURT: Okay. Let's do it with a question and
7 answer and that way we won't get into argument and delay the
8 proceeding.

9 MR. BAIRD: Let me respond very briefly that I would
10 not ask you to do that and -

11 THE COURT: No, no, no. You are asking questions right
12 now.

13 MR. BAIRD: Okay. Fair enough.

14 THE COURT: We will argue at the end.

15 BY MR. BAIRD:

16 Q. In those investigations, were you able to determine
17 how much money had been raised by - specifically by Seertech,
18 which is the newest entity of this chain of entities?

19 A. Oh, it was probably seven to eight million dollars
20 but, when you look at Rolltronics and VoltaFlex and some of the
21 other, that is only part of the incarnations of this outfit.
22 It probably goes four or five times that much money.

23 Q. And were you able to determine what the disposition
24 of that money was, certainly over a relatively short time frame
25 before the bankruptcy?

1 A. Oh, yeah. We have been through all of the records.
2 It is there in the records.

3 Q. And are those available to the court or specifically
4 to the creditors?

5 A. I tried my best to give them to the creditors and
6 nobody bothered to respond to me.

7 Q. Well, we can take issue with that later on. So were
8 you able to determine why Seertech chose to file bankruptcy at
9 the time they did because, just to set the conditions for that
10 question, we believe that they had raised about two hundred and
11 fifty thousand dollars just in the six months time frame
12 between April and June and they filed for bankruptcy in July,
13 which is strange. Clearly they weren't short of money since
14 they had just raised that amount of money.

15 A. Oh, no. The money went out just as fast as it came
16 in, and the reason for filing was stupidity.

17 Q. Could you elaborate on that? Why do you think they
18 were just stupid?

19 A. Because the case should have never been filed. If
20 Mr. Bachinsky had had any idea what would occur because of the
21 filing, he would have never filed the case.

22 Q. And is there some ability that you have or the court
23 has in order to reject a filing that you believe has been made
24 improperly?

25 A. I don't understand your question.

1 THE COURT: Can we dismiss a case? Is that what you
2 are saying?

3 MR. BAIRD: If that's the correct legal term, yes, Your
4 Honor.

5 THE COURT: A case that shouldn't have been filed, does
6 the court have a way to dispose of it?

7 MR. BAIRD: Right.

8 THE COURT: Right. Yeah, that's a dismissal. Do you
9 want to answer the question?

10 THE WITNESS: Certainly the court can dismiss the case.
11 The effect of closing it, what I propose to do, is exactly the
12 same. You can tack on either label you want to, the end result
13 is going to be the same.

14 BY MR. BAIRD:

15 Q. Did you file any adversary proceedings in -

16 A. The only adversary proceeding I filed was to recover
17 preferences.

18 Q. And who were those filed against?

19 A. The McMillan Group. You were one of those people.

20 THE COURT: Basically the investors?

21 THE WITNESS: It is a group of the investors that had
22 been sued, ended up getting a judgment on the counterclaim and
23 received certain payments based on that judgment.

24 Q. Did you pursue any of the insiders at all because the

25 -

1 A. No. The purpose of bringing that lawsuit was to try
2 to get some funds into the estate to finance other litigation.
3 It was not successful. We settled for fifteen thousand
4 dollars.

5 Q. Do you recall that that same group of investors
6 offered you money as an alternative to pursuing that adversary
7 case in December of 2006 in order to at least start an
8 investigation against the bad guys?

9 A. The twenty-five thousand dollars that you talked
10 about but, by the time we had gotten to that point, we were
11 owed more than twenty-five thousand dollars. I wasn't willing
12 to take that little pittance and try to go forward and put
13 another hundred thousand dollars in it.

14 Q. And you already determined at that time that that is
15 what it would take to make any progress whatsoever?

16 A. Lawsuits are incredibly expensive and particularly,
17 when you are chasing thieves, it is very, very difficult, and
18 these people were spread all over the whole country.

19 Q. Okay. So back to the assets. Do you have a list of
20 the assets that the company did own?

21 A. All of that is in the records of the company.

22 Q. And who has access to those?

23 A. If you will read paragraph eight of my closing -

24 THE COURT: He does now but he wants to give them to
25 the investors.

1 THE WITNESS: I want to give them to the investors. I
2 tried to tee it up so I could give it to the investors.

3 Q. Okay. Well, frankly the investors believe they
4 already had claim to that because of the settlement that they
5 made with you in -

6 A. I think the judge has already said to you -

7 THE COURT: Gentlemen, you are having an argument
8 again and that's not what we are doing. Mr. Baird, you ask
9 questions and, Mr. Mitchell, you answer questions. We will
10 argue about it at the end.

11 MR. BAIRD: Fair enough. Okay.

12 BY MR. BAIRD:

13 Q. So the intellectual property, I believe you initially
14 had it estimated as potentially being worth a million dollars;
15 is that correct?

16 A. I don't know where that number would have come from.

17 Q. We believe we have seen that in the documentation at
18 some point in time.

19 A. Well, you may believe it -

20 THE COURT: Sustained. You just ignored what I just
21 told you. Ask him questions. Don't argue with him.

22 MR. BAIRD: I am sorry, Your Honor.

23 Q. Have you ever had an estimate that the intellectual
24 property might be worth a significant value?

25 A. I had discussions with an agent who buys and sells

1 patents and brokers patents. We didn't come down to any
2 numbers but, when we started determining that what we were
3 looking at were licenses for patents, not patents, that the
4 debtor didn't own any patents, and neither did Rolltronics and
5 neither did VoltaFlex. They had licenses to develop these
6 patents from the various people involved in the management of
7 the company, and those licenses purportedly had terminated and
8 lapsed by virtue of various defaults by the debtor and its
9 predecessors. So you assume that we had patents and we didn't.

10 Q. Did you ever see any patent assignment documents that
11 the inventors had granted the rights to the company?

12 A. Yes, sir.

13 Q. And were those current in your opinion?

14 A. There were defaults. There were defaults.

15 Q. There were defaults in the -

16 A. Under the assignment agreements and licenses.

17 Q. Did you ever have an opportunity to examine the
18 settlement agreement that the investors had made with one of
19 the predecessor companies in California which called for the
20 patents to be transferred without any recourse to the Seer
21 Group, as it was called at that time, which ultimately became
22 the Seertech Corporation?

23 A. Yes, sir, I saw the agreement.

24 Q. So was it your opinion that on the basis of that
25 undertaking, which was of course a supervised agreement, and on

1 the basis of the subsequent assignments of the patents, which
2 in fact should have been redundant but in fact backed up that
3 court supervised agreement in California, that the company had
4 inarguable rights to the intellectual property?

5 A. No. My opinion was you have been defrauded again.

6 THE COURT: How so?

7 THE WITNESS: Because if there was supposed to be some
8 kind of straightforward assignment of the ownership of these
9 patents, it never occurred.

10 THE COURT: Okay. Go ahead.

11 Q. At what point in time did you decide to consolidate
12 the California bankruptcy cases, Rolltronics and VoltaFlex?

13 A. Well, Sauvante filed the two cases in California, and
14 knowing that they were predecessors in interest from my mind,
15 they were exactly the same company. It was just another sham
16 for the fraud, Seertech was, and these were filed there. I
17 talked to the bankruptcy trustee out there and it seemed to
18 both of us to be in proper form to get those cases transferred
19 here and make a motion to consolidate the cases.

20 Q. And you did that; did you?

21 A. I did that, yes.

22 Q. And were they consolidated?

23 A. Yes, they were after notice to the creditors and
24 without objection.

25 Q. And as a result of that consolidation, did you

1 receive any additional documentation?

2 A. Oh, yes, we got records on those firms, as well.

3 Q. And did you or your associated partners go through
4 those records?

5 A. Yes, sir, we did.

6 Q. And did they show any - did they elucidate the
7 situation whatsoever?

8 A. They showed exactly the same pattern that we saw in
9 Seertech.

10 Q. And they didn't show any modification to the assets
11 or to the situation as you saw it?

12 A. Well, there were different names and labels that kept
13 popping up and there could be a different product or it might
14 be the same product under another name but the players were all
15 the same.

16 Q. I see. Now in your motion you seek to abandon all
17 property. What property specifically can you tell us does the
18 debtor own?

19 A. I don't think the debtor owns anything at this point
20 in time other than its books and records.

21 Q. So you believe the intellectual property is even in
22 doubt and you wouldn't make a claim to that?

23 A. I keep telling you I don't believe there is any
24 intellectual property. I don't believe there ever was.

25 Q. Because it was done by licenses as opposed to

1 ownership?

2 A. Yes. Now, that's not to say that you couldn't go
3 through all this web of paper work and reach that intellectual
4 property with a lawsuit if the court believed, or the jury
5 believed, or whoever tried it, that what I am saying is in fact
6 true.

7 Now, would it be worth anything at the end of the day?
8 They never made any money, never, and this scheme went on for
9 six to eight years.

10 Q. But they raised a lot of money; correct?

11 A. They raised a lot of money but my personal opinion is
12 that all of these purported patents and all were nothing more
13 than a smokescreen for raising money. Their business was not
14 developing technology; it was raising money.

15 Q. Have you entered into an agreement with any parties
16 to abandon the books and records to them at the conclusion of
17 the case?

18 A. Absolutely not, and that is what I keep talking about
19 today.

20 MR. BAIRD: Your Honor, could I reference the trustee
21 to an agreement that we signed with him.

22 THE COURT: Yeah, you can show it to him.

23 MR. MITCHELL: And I don't recall that and, whatever it
24 says, just read it to the court.

25 MR. BAIRD: Okay. I will. Your Honor, this is an

1 order issued by this court. It is titled, "Order Approving
2 Settlement Agreement," in bankruptcy case number 06-31156,
3 filed September 20, 2007.

4 THE COURT: All right.

5 MR. BAIRD: And basically the court approves the
6 settlement agreement reached between the trustee and in that
7 adversary proceeding.

8 THE COURT: Okay.

9 MR. BAIRD: And the attached settlement agreement, on
10 page four at the end of paragraph three, says, and I quote:

11 "After the substantively consolidated Chapter 7 cases
12 are closed, the trustee shall abandon all documents
13 and records of the consolidated debtors that are in
14 his possession to the rescission group."

15 The rescission group being the name given to that
16 group of investors.

17 THE COURT: Right.

18 THE WITNESS: I didn't recall that, but that is
19 perfectly fine, and I tried to cover that again in the closing
20 to make sure that that happened.

21 THE COURT: Is the rescission group defined in this?
22 In that order -

23 MR. BAIRD: In that particular document?

24 THE COURT: Is that a defined term?

25 MR. BAIRD: I believe in general it is. Whether it is

1 in this specific document -

2 THE COURT: We can identify who those people are, okay.
3 Thank you.

4 THE WITNESS: I didn't recall that. That's fine. I
5 would love for you to have the books.

6 MR. BAIRD: Okay.

7 BY MR. BAIRD:

8 Q. Can you help us understand why you filed an adversary
9 proceeding against the particular group that you did and not
10 against some of the other officers and directors who had
11 received preference payments substantially in excess of what
12 the group had received and, of course, they go back a year?

13 A. You were the easiest target and I was trying to raise
14 some money to litigate. And it turns out that we just ended up
15 spinning our wheels and spending more even suing you than we
16 recovered. And had I had any idea that would have happened, I
17 would have never sued you. I would have closed the case back
18 then. But I had hopes that we could do something and it just
19 turned out to be not the case.

20 Q. Did you ever enter into a settlement with Mr.
21 Bachinsky?

22 A. Yes, we did.

23 Q. Can you tell us what the terms were?

24 A. I don't recall the terms. It is a matter of the
25 public record here in the court through settlement.

1 Q. And as a layman, can you help me understand how you
2 would enter into a settlement when there was no adversary
3 proceeding?

4 A. I don't recall the circumstances. If you want to
5 look at the record, then you will have to, or if you want to
6 have me go back through the record and review it, I will, but
7 I am just not prepared to answer that today.

8 Q. Just so I have an understanding, would it be fair to
9 say that there was some negotiation between yourself and Mr.
10 Bachinsky without any legal process being in place where he
11 agreed to pay fifteen thousand dollars; is that ultimately what
12 it boils down to?

13 THE COURT: Would that have to do with Mr. Bachinsky
14 being held in contempt?

15 THE WITNESS: I believe it did, Your Honor.

16 THE COURT: That's what happened.

17 THE WITNESS: I think you are right. I have so many of
18 these things -

19 THE COURT: The order speaks for itself, but the long
20 and the short of it was that there was a show cause motion that
21 went on for a great deal of time with Mr. Bachinsky, and I am
22 looking at the order now, and it basically is resolving
23 disputes out of the trustee's motion for him to appear and show
24 cause, and it directs him to pay the sum of fifteen thousand
25 dollars to Rick Mitchell basically as a payment for the

1 professionals for the work done in conjunction with that
2 motion. It goes on and does a lot of other things but we don't
3 need to ask evidentiary questions about an order that is in the
4 file. It says what it says, okay. We are not in a 2004 exam
5 or discovery mode here.

6 THE WITNESS: Now that the judge reminded me, that
7 didn't have anything to do with Mr. Bachinsky's liability to
8 you or anybody else in this case. It had to do with his
9 behavior in the case.

10 BY MR. BAIRD:

11 Q. In addition to the books and records, which one might
12 conceive are paper based, at least that is my first view of it,
13 did you ever receive any computers from any of the officers and
14 directors of the company?

15 A. Not to my recollection.

16 Q. You didn't receive two computers from Mr. Bachinsky?

17 A. I may have. I just don't recall.

18 THE COURT: I remember something to that effect. It
19 seems to me that there was a question about possession of
20 computers found in his house. I am not the witness here, but
21 I think we have plowed this ground in a prior proceeding and
22 there was something to that effect.

23 THE WITNESS: My recollection is now that we got a hold
24 of those computers or got dumps off of those computers and took
25 all of the information from them.

1 Q. So you have all of the contents of the -

2 A. It would be in the records that we have.

3 Q. And with the experts that you have associated with
4 you, would you have been able to go through and to take any
5 deleted files or apparently nonexistent files that are in fact
6 there on the computers?

7 A. The answer to that is, no, that is a very expensive
8 and difficult process that takes experts that we didn't have
9 any funds to hire.

10 Q. Okay. Back to your motion again, when you are
11 referring to the receipts of the estate being fifteen thousand,
12 eight hundred and twelve dollars and sixty-one cents, there is
13 a footnote that says fifteen thousand were received from this
14 adversary proceeding, but it refers to it as being a sanction.
15 Can you qualify for me what sanction -

16 THE COURT: I just answered that for you. I ordered it
17 as a part of the settlement of the show cause proceeding. It
18 was a sanction for an individual who was being accused with
19 contempt. Move on.

20 MR. BAIRD: Excuse me, Your Honor. There are two
21 different amounts of fifteen thousand dollars here, okay. One
22 paid by Bachinsky and one paid by us. I am referring to the
23 amount paid by us in settlement.

24 THE COURT: By you?

25 MR. BAIRD: Yes.

1 THE COURT: Go ahead.

2 MR. BAIRD: By us as a settlement of an agreement. So
3 is -

4 THE WITNESS: But your question involved a sanction.
5 But whatever we show as receipts in the estate would be
6 included the fifteen thousand we settled with the rescission
7 group.

8 BY MR. BAIRD:

9 Q. Right. The point of my question is to determine is
10 that a proper characterization of that payment, to call it a
11 sanction against our particular group?

12 A. No, and it is not a sanction.

13 Q. Can I refer you to the motion?

14 THE COURT: What difference does it make? He got a
15 settlement recovery on a preference action out of your group.
16 He got a sanction against Mr. Bachinsky, and that's all the
17 dollars in the estate.

18 MR. BAIRD: The settlement against us, Your Honor -

19 THE COURT: You are wasting my time right now, sir.
20 Let's move on.

21 MR. BAIRD: That is not my intention, Your Honor. We
22 don't want to be characterized as being sanctioned in this
23 matter.

24 THE COURT: Well, what you are doing is trying to do
25 discovery in the case that you might have done earlier on by a

1 2004 exam of the trustee in the first two years of the case,
2 and now here at the end, where we are ready to close it, you
3 are wanting to do a deposition, and I am not going to permit
4 it, sir. Let's move on.

5 MR. BAIRD: Okay. Those are all of the questions I
6 have, Your Honor.

7 THE COURT: Mr. Mitchell, any rebuttal?

8 MR. MITCHELL: No, Your Honor.

9 THE COURT: You may step down. I reiterate my earlier
10 ruling. How much time do you need to try to get your group
11 together, sir, to take possession of those records if you so
12 desire?

13 MR. BAIRD: Can Mr. Mitchell tell me what the volume of
14 these records are?

15 THE COURT: Can you tell us that?

16 MR. MITCHELL: Maybe fifty to a hundred boxes.

17 MR. BAIRD: Banker's boxes?

18 MR. MITCHELL: Yes. Maybe less but we have a warehouse
19 with those records in there. It is not going to take that
20 long, no matter what.

21 MR. BAIRD: Is there a listing that we could have
22 access to, to show us what those are?

23 THE COURT: This is an all or nothing. You either get
24 all of them or you get none of them.

25 MR. BAIRD: Would it be reasonable to give us thirty

1 days?

2 MR. MITCHELL: Sure.

3 MR. BAIRD: Okay.

4 THE COURT: Thirty days it is. Put that in your order.
5 Otherwise the trustee's motion is approved. The objection or
6 objections - there were some pro se letters faxed in, some of
7 which constituted - they were all similar in nature, but some
8 of them were effectively pleadings and some were just simply
9 correspondence.

10 MR. MITCHELL: Your Honor, in order to ease my pain a
11 little bit, could I ask the court to prepare an order on this?

12 THE COURT: When are you all trying to get this closed?
13 We are trying to finish an order now in Parker, so you will
14 understand how much is involved and how all-encompassing that
15 is. Yes, we will do the order then.

16 Let me just say this, Mr. Baird: I think you have kind
17 of gone to the goat man for wool here.

18 MR. BAIRD: Could you repeat that, Your Honor?

19 THE COURT: It is a euphemism. It says going to the
20 goat man seeking wool.

21 MR. BAIRD: Okay.

22 THE COURT: No one in this courtroom disputes that your
23 group was bilked. Mr. Mitchell said so. I have said so in
24 writing. The problem is what is the redress. The trustee, in
25 my opinion, based on what I have observed and with the working

1 knowledge of bankruptcy cases and what's doable and what's not
2 doable, he has gone miles beyond where any other reasonable
3 trustee would have gone, trying to get a recovery for your
4 group and others and creditors generally. He has come up with
5 a dry hole. He has come up unsuccessful on that, and he has
6 done it by making himself a creditor effectively that is not
7 going to get paid. And as a bankruptcy judge, I have a lot of
8 frustration with that because in some circumstances I would
9 love to have an FBI agent, a government employee, trustee,
10 someone who can do all of these things without regard to costs
11 because some things just need doing. I would love to have an
12 assistant U.S. Attorney who does nothing else but bankruptcy
13 fraud prosecutions, but the system just doesn't accommodate all
14 of that. Those resources don't exist.

15 So what we have is a system where private individuals,
16 mainly attorneys, take it upon themselves primarily from sense
17 of civic good, and also for financial remuneration, to do
18 trustee work. But the long and the short of it is they can
19 only do that if there is a wherewithal to compensate them
20 because they pay rent and staff and all of the other expenses
21 that any other law firm or accounting firm does. And so they
22 have to do what they can with the circumstance.

23 As I said, both Mr. Mitchell and I think that your
24 group have been defrauded - it appears that way, at least. I
25 haven't tried that case, but that is what it looks like to me

1 - by the people that run these entities. And Mr. Mitchell has
2 referred the matter over to the United States Attorney's
3 Office, suggesting that he thought there was a criminal fraud
4 here. And I don't know where that is but that is at their
5 election. They have limited resources, too. They try the
6 cases that they think are most necessary and sometimes they
7 don't try cases or seek indictments where they don't think it
8 is possible, and sometimes they seek indictments from the Grand
9 Jury that are secret proceedings and they conceivably might
10 have in this case and not gotten indictments, in which case
11 none of us would know it.

12 But the long and the short of it here is, if you want
13 to go after these principals as an investor group, you can
14 still do it. You have just got to make your own arrangements
15 for an attorney to prosecute that and the financial
16 arrangements to do so, but I don't have the ability to ask Mr.
17 Mitchell to wreck himself financially out on a search for
18 assets that, in all likelihood, is not going to be fruitful
19 and, even if it is, would be financially impossible for him to
20 muster. I just can't do it. I don't have the wherewithal. I
21 don't have a money machine in the back of the courtroom where
22 I can just authorize a distribution to Mr. Mitchell to fund
23 those expenses.

24 You and he have a difference of opinion as to how much
25 this is going to cost. Well, I am obliged to respect his

1 business judgment in this scenario and, in my own personal
2 experience and knowing what has gone before in this case, I
3 believe you are talking multiples of hundreds of thousands of
4 dollars to get to the end of any such litigation and execution,
5 even if you get to that point.

6 Is it right? No, but effectively you folks trusted
7 these individuals and you did so to your detriment and it is
8 not Mr. Mitchell's job to guarantee you a distribution on it.
9 I just can't do that.

10 So that's effectively where we are coming out at the
11 end of the day. I understand how you feel. I would be upset
12 about it, too, but my suggestion to you is get your group to
13 take possession of these records from Mr. Mitchell, find
14 yourself a lawyer and pool together your resources to go after
15 them if you feel that's appropriate and use the records to do
16 so.

17 Court is in recess.

18 (Off the record at 11:52 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Patricia Basham

Patricia Basham, Transcriber

Date: June 2, 2008