

EX A  
TX 7: Jeff Marwil

1                   You have to work backwards. If you get  
2 into the end of September/early October time frame,  
3 all of the competitors have already started locking  
4 in propane purchases, hedging propane purchases,  
5 taking delivery on propane purchases, and moving the  
6 propane into the various locations so that they can  
7 start to deliver to customers.

8                   It was our view, the agent's view, that  
9 you either sell and get it closed before the start of  
10 the season, and the end of September/early October is  
11 the start of the season, or you wait until after the  
12 season to do it, and we were not prepared to fund  
13 that next season.

14                   Bill Maloof was a man that was not  
15 trusted at all by the bank group, that routinely  
16 misled the bank group, and routinely broke promises  
17 made to the bank group, and ultimately sabotaged the  
18 sale process to the point where we felt we had to  
19 take the drastic remedy of exercising our voting  
20 rights.

21                   Q.       Was the exercise of the voting rights,  
22 in your experience, an unusual step?

23                   A.       Yes. But when you're dealing with a  
24 business that's borrowed \$84 million and you know

1 Sweet saying he's my guy?

2 Q. The latter.

3 A. I don't know. I have no idea.

4 Q. I'm showing you what's been marked  
5 previously as Examiner's Exhibit 119. I ask you to  
6 take a moment to familiarize yourself with it.

7 For the record, it's a three-page  
8 document; fax transmittal sheet on the first page,  
9 and a two-page letter following dated June 7, 2002  
10 from Mr. Possinger to Mr. Schwartz, and on the third  
11 page you are carbon copied.

12 A. Okay.

13 Q. There's a fax trailer at the top of each  
14 page dated June 7, 17:58. Do you see that?

15 A. Yes.

16 Q. Is it fair to say that by this date and  
17 time lawyers at Jenner & Block were aware that  
18 Benesch Friedlander was acting on behalf of the  
19 debtor?

20 A. You know, I guess it is what it is. I  
21 mean, I don't know what you mean by is it fair to  
22 say. I mean, this is a letter that we wrote. It  
23 went to Benesch and it certainly purports to indicate  
24 from our standpoint we thought that Jeffrey was

1 counsel for the Level Propane entities.

2 Q. Okay. After June 7, 2002, briefly  
3 describe if you can the process by which Benesch  
4 Friedlander was formally retained as counsel for the  
5 debtor.

6 MR. LAYDEN: To the extent you know.

7 THE WITNESS: Whatever motions were  
8 filed were filed. There was a court hearing. There  
9 were objections, I think, and the court order.

10 BY MR. FINGER:

11 Q. Okay.

12 A. I mean, it's whatever the public record  
13 shows.

14 MR. LAYDEN: Kevin, I take it you're  
15 asking about the retention that was the subject of  
16 extensive briefing and the Court's order in  
17 September 2002?

18 MR. FINGER: Yes.

19 MR. LAYDEN: As differentiated from the  
20 immediate retention by Mr. Sweet?

21 MR. FINGER: Yes. Mr. Marwil had  
22 distinguished between the formal retention to the  
23 Court and then --

24 THE WITNESS: I think there was an

1 Attorney General settlements. I think it might have  
2 been. I just remember that was the rationale as I  
3 recall.

4 Maloof at some point, and again I don't  
5 know what the source of this is, I remember hearing  
6 it, had threatened Rudd's life or threatened him  
7 physically. So Rudd left and his people left.

8 We wanted the continuity of Rudd in the  
9 company if we could get it. And in negotiating with  
10 Maloof in order to get him to agree not to contest  
11 our voting rights and not to put us in a position  
12 where we don't know who's controlling this bankruptcy  
13 because we've exercised the voting rights that we  
14 thought we had the right to -- he might contest it.  
15 We could end up in state court somewhere. It could  
16 take weeks if not months to resolve, and in the  
17 meantime we've got a floundering debtor and a failed  
18 business. It was very important from our perspective  
19 to button that up and get this bankruptcy case going  
20 and get it stabilized.

21 And there was a negotiation about how to  
22 get it stabilized. And the result of that  
23 negotiation with Bill Maloof and his counsel was that  
24 he wouldn't object to us engaging Rudd as our