

EX A  
TX 4: James Hill

1 Q Are you familiar with the forbearance agreement  
2 that Mr. Maloof signed?

3 A I'm familiar with numerous drafts of it. Yeah.

4 Q Okay. Did that -- are you -- are you aware that  
5 the forbearance agreement refers to Mr. Rudd's  
6 engagement as CRO of Level Propane?

7 A I recollect that. Yeah. I mean it's been so long  
8 since I've seen that forbearance agreement, but I do  
9 recall that. Yeah.

10 Q Did you have any discussions with Mr. Maloof about  
11 the forbearance agreement?

12 A Oh, yeah. I mean we spent weeks negotiating that  
13 forbearance agreement against the banks, you know, with  
14 the banks threatening they were going to do something  
15 more drastic and I was pushing them off and trying to  
16 get a little more concessions. And actually, I think  
17 if you look at the first original proposed draft by the  
18 banks' attorneys who I believe then were Katten,  
19 Muchin, and then they moved over to Jenner. In the  
20 final draft there are some significant differences that  
21 are pro company. So yeah, we had conversations about  
22 it.

23 Q The attorneys at Jenner & Block, would that have  
24 been Denise Burns and Jeff Marwill?

25 A Yeah. Mostly Denise. I didn't have much contact

1 with Jeff. Very little contact with Jeff. Maybe I  
2 spoke to him once.

3 Q But you handled some of the more substantive  
4 negotiations with Denise Burns on the forbearance?

5 A Well, I spent a fair amount of time on the phone  
6 with Denise. I think Mike Primrose spent more time on  
7 the phone with Denise. And then we'd go back and talk  
8 to Bill, you know. The banks were very frustrated by  
9 how long we were dragging out the forbearance  
10 agreement, but, you know, we were doing what we thought  
11 was right for the company.

12 Q Ultimately at the end of the negotiation, a  
13 forbearance agreement was signed?

14 A Mm-hmm.

15 Q Was that signed upon your recommendation?

16 A I don't remember making the recommendation. I  
17 think it got to a point where the banks were simply not  
18 going to go any further and, you know, they were  
19 threatening foreclosing on assets, et cetera, which I'm  
20 not sure they would have done, but you never know. I  
21 mean I think the banks had gotten to a point where they  
22 were pretty disgusted with us. I think they were  
23 pretty disgusted with Bill and with Elliot, Walter and  
24 the entourage that Bill had. So, you know, I think we  
25 felt that we had gotten as far as we could. And, you

1 know, you never advise a client you must sign this. I  
2 mean that's a business judgment. But you can advise a  
3 client of the pluses and minuses of signing it and the  
4 consequences if he doesn't.

5 Q Did you have any discussions with Mr. Rudd  
6 regarding the forbearance agreement prior to its  
7 execution?

8 A Oh, I'm sure I may have talked to him about it.  
9 I'm sure I did talk to him about it. I don't think in  
10 great substance from the standpoint of the finer points  
11 of it, but I'm sure, you know, it was discussed. I  
12 don't think -- I don't think that he had any great  
13 input into it because frankly, it was really between us  
14 and the banks.

15 Q Did you have any discussions with Mr. Rudd about  
16 the billing arrangements between Benesch and Level  
17 Propane?

18 A Not until after the banks accepted him and Bill  
19 accepted him as the restructuring officer I guess they  
20 called it.

21 Q What were the nature of your discussions you had  
22 with Mr. Rudd about the billing arrangements after the  
23 execution?

24 A I really didn't have many discussions. It really  
25 became an issue once John was in there and it appeared

1 agreement was much as it had been before. It wasn't  
2 like there was a change in agreement, but with Bill  
3 Maloof you never knew because we were constantly  
4 concerned that given the turmoil of the company, would  
5 we continue to get paid. That with John Rudd in there  
6 and obviously the banks approving the payments, again  
7 that's the key. The banks have to approve these  
8 payments. That it was agreed that we would be paid on  
9 a weekly basis.

10 And it goes on to say the reason I'm sending this  
11 on to Mike Primrose, who was really the -- the other  
12 relatively senior person on the matter, that he be  
13 aware of this and that we make sure that we do get paid  
14 because of the volatility of the client.

15 Q Is there any comment on that E-mail from either  
16 you or Mr. Banks that we are way in the black with John  
17 Rudd as chief restructuring officer?

18 A It says we are way in the black. I don't really  
19 know what that means, but -- and meaning by John Rudd,  
20 just simply meaning that he was in agreement that the  
21 on-going agreement as to payment each week, which was  
22 the agreement, that that would continue as long as the  
23 banks approved it, of course. The banks had the  
24 ultimate say.

25 Q So your understanding of way in the black with

1 John Rudd --

2 BY MR. MOORE: It doesn't say that. Why  
3 don't you turn it around and read it.

4 A It doesn't say we're way in the black with John  
5 Rudd. There's an and.

6 Q Okay. We are way in the black and with John Rudd  
7 as chief restructuring officer.

8 A Yeah.

9 Q Again, what's your understanding of that sentence?

10 A What I just said.

11 Q If you have one.

12 A Which was that we will continue to be paid as we  
13 have been paid on a weekly basis with a replenishment  
14 of the retainer so we're not going to be at risk for  
15 significant fees in a very volatile company, obviously  
16 assuming that John Rudd would get approval from the  
17 bank to pay us each week, which of course he has to do.  
18 It's not his money.

19 BY MR. LABEDZ: Let's just take one  
20 short break and hopefully we can wrap it  
21 up.

22 (Off the record.)

23 BY MR. LABEDZ: Back on the record.  
24 Could I have this marked as the next  
25 exhibit, please?

1 phone for some of that, but I didn't really talk to the  
2 banks' principals. So, you know, I mean I think that  
3 at one point had been discussed as something they might  
4 do, but I wasn't aware at that point that they were  
5 getting ready to do anything. I mean obviously I knew  
6 things weren't good and it couldn't continue the way it  
7 was going, but, you know, what exactly they were going  
8 to do, I wasn't sure.

9 Q What's the time frame of those discussions?

10 A I really couldn't tell you. I mean it was -- it  
11 was -- it was in early summer. I mean that's about as  
12 best I can do. Again, you know, I'm not being evasive.  
13 I just -- I work on a lot of different things and this  
14 is one thing I work on and I wasn't spending fifteen  
15 (15) hours a day on this, so -- there were other people  
16 more involved than I was.

17 Q Do you recall what bank attorneys you had those  
18 discussions with?

19 A Oh, these discussions, I mean, gosh, this was a  
20 discussion that occurred, you know, off and on, and not  
21 in any detail in the conversations I was involved in  
22 since several months before. Just that, you know, we  
23 might have to do this or we might have to do that.  
24 There were all sorts of various things they said they  
25 might do because obviously they're trying to bring

1 pressure to bear on the company.

2 Q Were you aware -- and again, we're in the June 5th  
3 time frame. Do you recall any requests from Mr. Maloof  
4 about requests for any work product that Benesch had  
5 performed for Level Propane?

6 A I remember hearing -- I don't think he contacted  
7 me directly. It was very odd with Bill. I mean Bill  
8 was somebody who would ask you to have a meeting and  
9 never show up the entire day. So I remember hearing  
10 probably from Bill, Bill Schonberg or Mike Primrose,  
11 that he was requesting to look at documentation  
12 relating to a potential filing, a bankruptcy filing. I  
13 did hear that a couple of times.

14 Q And you had that contact, you said, with Mike  
15 Primrose or someone else?

16 A Yeah. You know, Mike or Bill. One or the other.

17 Q When you say Bill, Bill --

18 A Bill Schonberg.

19 Q Bill Schonberg?

20 A Yeah.

21 Q And did you recommend any course of action with  
22 respect to that?

23 A No, because frankly, I didn't know the status of  
24 anything that had been done. I mean I didn't review  
25 any kind of filings or anything like that on the

1 not be a sound business decision for the firm to  
2 proffer those documents?

3 A Well, I wasn't -- no, no. I said --

4 BY MR. MOORE: That's the second time  
5 you've mischaracterized his testimony.

6 A I said it wasn't a sound business decision for  
7 Level Propane.

8 Q I'm sorry. Sound business --

9 A Not a sound business decision for Level Propane.

10 Q Okay, thank you. Thank you for clearing that up.

11 A Sure.

12 Q Is there any other reasons that you wouldn't have  
13 proffered that?

14 A No.

15 Q No other reasons that you recall?

16 A No other reasons.

17 Q Okay. Let me show you another document marked  
18 Examiners Exhibit No. 23, and tell me whether or not  
19 you've ever seen that document?

20 A Yeah. This is a document that was prepared for my  
21 signature in which the firm made a decision that based  
22 on Bill Maloof's insistence, I guess, for lack of a  
23 better term, that Level Propane commenced the sale of  
24 pre-buys, of which I'm not an expert, so I'm not going  
25 to get into a great definition of pre-buys. But my

1 understanding is basically it's obligating the company  
2 to perform certain delivery arrangements to customers  
3 that based on a legal condition of the company --  
4 excuse me, the financial condition of the company, it  
5 could not necessarily fulfill. And there are some  
6 regulations on this both in Ohio and in other states  
7 from the standpoint of when you can actually contract  
8 with consumers for these pre-buys. I believe we did  
9 some research on this and we felt strongly, I know,  
10 because I talked to a couple of people including Mike  
11 Primrose about it. We advised Bill Maloof that this  
12 was not something that the company should be doing.  
13 Probably in violation of the Ohio Consumer Sales  
14 Practice Act. And Bill Maloof's response was I'm going  
15 to do it anyway. That we have to do it. And I think  
16 ultimately, like any firm in this situation where you  
17 advise your client of the law and the client says I  
18 don't care about the law, I'm going to go ahead and do  
19 it anyway, you know, you make a business decision that  
20 if the client's going against advice as to what is  
21 legal and what it can do, that you should no longer be  
22 its counsel. So this letter was prepared for me and I  
23 signed it.

24 Q Just so we're clear, does that document have your  
25 signature on it?

1 A No.

2 Q But do you believe that -- this document has the  
3 stamp of the firm on it. Do you believe that document  
4 was sent?

5 A I presume it was sent. Yeah. I have no reason to  
6 think it wasn't sent.

7 Q And based on your review of that document and your  
8 recollection of Document Exhibit No. 23, which is the  
9 June 6th letter, 2002, to Bill Maloof terminating the  
10 representation and your recollection as you sit here  
11 today, do you have any concerns about the timing of the  
12 termination of the representation?

13 A No.

14 Q Do you have, in light of Mr. Maloof's request for  
15 Chapter 11 papers on June 5th, do you believe that that  
16 would have changed your decision to terminate the  
17 representation on June 6th?

18 A No.

19 Q Is the -- as you sit here today, is there any  
20 other reason you can recall for Benesch's termination  
21 of the Level Propane engagement on June 6th?

22 A No.

23 BY MR. LABEDZ: Can we mark this as the  
24 next exhibit?

25 Q Mr. Hill, I'm going to show you what's been marked