

EX A
TX 14: Jeffrey Schwartz

1 Q Yeah, I'm just talking about your conversations
2 with Mark Schlachet.

3 A With Mark Schlachet. That Jim Hill had opened up
4 a file. That's with Elliot Lester. That's with Bill
5 Maloof. And was opening up a separate client, a new
6 client file and Mark was very upset about it and felt
7 that -- that billing attorney credit, that he was going
8 to be deprived of billing attorney credit for the --
9 for fees paid by Level Propane on a going forward
10 basis. He was terribly upset about that.

11 Q What did you say in response to his concerns?

12 A I told him to discuss it with Jim.

13 Q Do you know if he ever reached any -- or had any
14 discussions with Jim on that point?

15 A I was copied on some E-mails that have been
16 produced. And my clear impression is that Mark was
17 terribly dissatisfied and disgruntled with the outcome.
18 But it was -- Mark then told me that he was voluntarily
19 consolidating his client file, the client file that he
20 opened up with Jim's -- with the one that Jim had
21 opened up. So I thought that, well, you know, it's
22 kind of -- you know how things work in law firms. That
23 Mark was now producing his own resolution.

24 Q So from your perspective that issue had been
25 resolved?

1 Q Do you recall how much effort you put into the
2 potential reengagement of Level Propane on June 7th?

3 A What do you mean by effort?

4 Q In terms of the amount of time. Was it two quick
5 phone calls, one with Jeff Marwill and one with Charles
6 Sweet, or was it an extensive amount of phone calls
7 with --

8 A Yeah.

9 Q -- either --

10 A I mean I talked to both of them separately. And
11 someone sent me over the involuntary petitions and the
12 motions. And I remember that was toward the, you know,
13 in the afternoon, late afternoon, because it was faxed
14 over. And I had to read all this stuff and then I do
15 recall making some calls about securing the premises,
16 the corporate premises.

17 Q So you reviewed the involuntary petition and the
18 motions on the date of the filing?

19 A On June 7th.

20 Q Okay.

21 A Yep. I got a stack of paper on the fax and
22 started reading it. What is this?

23 Q Did you eventually meet with Charles Sweet?

24 A Yes, I did.

25 Q When did you meet with him?

1 if there were debtors-in-possession, is the bank going
2 to fund it. And he said yes, because they, you know,
3 they -- Sweet is a responsible person. They voted him
4 in under the voting powers and it's gonna -- they're
5 going to try and do an orderly liquidating 11. They're
6 standing ready to fund an orderly liquidating 11.
7 Because I don't want anything to do with something
8 that's just another, you know, catastrophe.

9 BY MR. WARNER:

10 Q The words you use there are will fund the firm
11 accordingly to wind up this mess?

12 A Right.

13 Q What did you understand you meant by that?

14 A That in a debtor-in-possession financing or cash
15 collateral usage there will be funding available for
16 debtor's professionals.

17 Q So you understood there would be a carve-out for
18 debtor-in-possession counsel?

19 A If there were a Chapter 11. If there was a
20 Chapter 11, that there would be a -- yes, that there
21 would be a carve-out.

22 Q And did you understand from your discussions with
23 Mr. Marwill that there would be no cap to that carve-
24 out?

25 A No.

1 of whether the bank's role was adversarial to the -- to
2 the corporations in the period leading up to the pre-
3 bankruptcy filing?

4 A Well, I knew the banks were creditors and I knew
5 there was financial distress and I knew there was a
6 chief restructuring officer.

7 Q And was it your understanding that the issues with
8 the bank group were one of the major issues facing the
9 corporation in its attempt to work things out outside
10 of bankruptcy?

11 A Yes.

12 Q And ultimately the debtor-in-possession financing
13 was arranged with Mr. Marwill's bank group, correct?

14 A That is correct.

15 Q And there was a carve-out in that original debtor-
16 in-possession financing for debtor counsel?

17 A That is correct.

18 Q And what was the nature of that carve-out? What
19 were the limits on that?

20 A I'm not sure as between the initial -- you know,
21 there's the interim order and the final order, but I --

22 Q Well, let's start with the initial.

23 A I don't remember the initial, although I do
24 believe that the final order provided a general carve-
25 out that was not capped, but that it be -- but it had -

1 that being engaged here was -- they'd never been
2 through a 327 retention before. They never -- didn't
3 know about affidavits. They knew about nothing. So
4 I'm trying to get them in the loop with the sale team.

5 Q Thank you.

6 A Thank you.

7 BY MR. LABEDZ: Would you mark this as
8 the next exhibit?

9 BY MR. SCHWARTZ: My hands are clean,
10 you know, but --

11 Q Mr. Schwartz, I'm showing you a document that's
12 been marked Examiner's Exhibit 34.

13 A Mm-hmm. Yes.

14 Q Have you ever seen that document before?

15 A Yes, I have.

16 Q When did you -- when's the first time you've seen
17 that -- when is the first time you saw that document?

18 A When is the first time I saw the doc -- this
19 document as executed? I think on the date it was
20 executed.

21 Q Did you -- well, for the record, what is the
22 document you're holding?

23 A It's the verified statement of proposed attorneys
24 and disclosure pursuant to 11 USC Sections 329 and 504
25 and Rules 2004(a), 2016(b) and 5002 of the Federal

1 Q And what I was curious about is in light of the
2 fact that much of the equipment that was the hard
3 assets of the company were subject to these alleged
4 leases, what was your view of what the bank's
5 collateral was, what its value was, what its risk and
6 benefits were in the chapter proceeding in the early
7 phases?

8 A Well, I had no view in June and I had no view in
9 July because I didn't know enough. I didn't have this
10 background to know. My understanding was that -- what
11 was always in the back of my head were these letters,
12 these expressions of interest, letters of intent,
13 whatever they were, that valued the enterprise; not the
14 assets, but the enterprise, in nine figures.

15 And so from being counsel to the debtor-in-
16 possession, I viewed my job to be, among other things,
17 to maintain some stability to the sale. And as I've
18 been through many, many times before, the assets get --
19 the business gets sold, the assets get sold and then we
20 clean up the case.

21 Q And when you speak of a sale, were you
22 anticipating that you would need to achieve a 363 free
23 and clear sale --

24 A Yes.

25 Q -- in order to maximize value?