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2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK - CIVIL TERM - PART 35
-----X

4 In the Matter of the Liquidation of
5 HEALTH REPUBLIC INSURANCE OF
6 NEW YORK, CORP.,
-----X

7 Index # 450500/2016
8 MOTION

9 60 Centre Street
10 New York, New York 10007
11 February 17, 2017

12 B E F O R E:

13 HONORABLE CAROL EDMOND,
14 Justice.

15 A P P E A R A N C E S:

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Official Court Reporter

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THE COURT: Good morning.

MR. KIRSHNITZ: Good morning, Your Honor.

THE COURT: Let's hear the application.

MR. KIRSHNITZ: May I start?

THE COURT: Yes, please.

MR. KIRSHNITZ: So, Your Honor, what's before the Court this morning is the Liquidator's application for an order clarifying the approach when a member and a provider seek payment for the same covered services.

THE COURT: Either you are going to have to speak up because you are kind of --

MR. KIRSHNITZ: I apologize, but I have to ask the question, is Mr. Veach going to be permitted to appear at this hearing and participate in this hearing?

THE COURT: I will let anyone -- it's an open proceeding. All of the proceedings are open. Anyone can participate. I have no limitation, because there is no bases for a limitation. All of my proceedings in this and in other liquidation matters are all open. I always have it open.

Now, he is at the table because he is just aggressive, and it doesn't offend the Court, and you have got to let it go.

MR. KIRSHNITZ: Well, Your Honor, I apologize, but it is a distraction because it is a distraction.

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2 THE COURT: But it is not. You three are looking
3 here. I mean, his presence shouldn't be a distraction, and
4 he doesn't get to speak unless the Court allows it. So, it
5 really is not a distraction to the Court. And believe me,
6 and I want to make this clear, my intention is not to
7 micro-manage this liquidation but to make sure it moves in a
8 fair, equitable, reasonable way in the best interest of
9 those who have claims, those who are entitled to payment,
10 and to get the process, which is an unpleasant process, done
11 efficiently and effectively. Whoever participates to help
12 me get there is welcome. He will not get a formal title,
13 like he moved in the motion to say can I, may you, would the
14 Court designate me friend of the court? No. But it doesn't
15 hurt to hear from anyone. It's important. And I consider
16 whatever comes before me. But don't look at him then.

17 MR. KIRSHNITZ: I don't mean any disrespect to Mr.
18 Veach.

19 THE COURT: I understand.

20 MR. KIRSHNITZ: But the order to show cause invited
21 claimants and parties with an interest in the affairs of
22 Health Republic to show cause. He is neither of those.

23 THE COURT: And he has submitted no papers because
24 he cannot. But the order to show cause, like any other
25 proceeding, is an open proceeding. So because we understand
26 Mister -- at least the Court understands, Mr. Veach, for

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2 whatever his reasons, has chosen to be an active observer
3 and participant. It is not to the detriment of the
4 proceeding. It isn't. It really isn't. And if everything
5 is going as it should, what's the problem? If all that is
6 being done as it should be done, there is no problem. So,
7 let's move past that.

8 I'm listening. Go ahead.

9 MR. KIRSHNITZ: Well, Your Honor, and, again, I
10 mean no disrespect --

11 THE COURT: That's okay, and the record reflects
12 your point of view.

13 MR. KIRSHNITZ: Mr. Veach has no standing here.

14 THE COURT: I understand. But any citizen has a
15 standing to an open proceeding. So, because he happens to
16 be a citizen who is vocal and writes a lot, that doesn't
17 negate his ability to participate. It doesn't offend, and
18 it's not compromising your ability to perform. And you have
19 to have more faith that the Court really knows how to
20 control the courtroom. You have seen only the nicer Judge
21 Edmead, believe you me. So, let's go.

22 MR. KIRSHNITZ: So, Your Honor, I think we do want
23 to formally object to Mr. Veach participating in this
24 hearing --

25 THE COURT: Got it.

26 MR. KIRSHNITZ: -- appearing here.

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THE COURT: I got it. The record so reflects.
Go ahead.

MR. KIRSHNITZ: So, back to the relief.

THE COURT: Thank you.

MR. KIRSHNITZ: Actually, if I could just belabor the point a little, if you allow me to belabor the point a little bit further?

THE COURT: Of course.

MR. KIRSHNITZ: Mr. Veach --

THE COURT: Off the record.

(Whereupon, an off-the-record discussion was held.)

MR. KIRSHNITZ: The concern is this, Mr. Veach made a motion to appear as a friend of the court. That motion was briefed, argued and denied. Specifically, you denied his request to make a general intervention to direct the conduct of the proceeding. And, again, that was denied, but that is precisely what Mr. Veach is doing and has been doing. He has filed multiple letters on the court's docket. He is not a party, he is not a person with any interest that we are aware of in the proceeding. I mean, that is procedurally improper.

THE COURT: How is it procedurally improper to file a letter? Because if I get any letter from the public, I have an obligation to share it, especially if it's critical of the Court. But communications related to the case, we

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scan and upload.

So, where is the impropriety in letters being written to the Court on a matter before the Court? Where? It's not a CPLR violation. It's not an ethical violation. Wherein lies the violation? You see how much time we are taking up on a nonissue.

MR. KIRSHNITZ: I started this by apologizing, because it is a distraction from the relief that we are here for. This is a distraction for us.

THE COURT: But I want to see how it becomes a distraction for the relief you are asking for, because you need to ask, I need to opine, if he wishes and may get the ability to respond to whatever I say and may not. You know, the last letter that was written got no response.

MR. KIRSHNITZ: I appreciate that, Your Honor, but you have put into an important point about the writing of the letters. This last letter was, in essence, it purported to be in opposition to the relief that we are seeking here. Mr. Veach was denied general friend of the court status. If he wants to make his opinion known on this relief, he needs to make a motion on notice. To appear as friend of the court, he needs to include his brief, his proposed brief. He needs to have caselaw. He needs to include his affidavit. This is important, disclosing his interest in the matter at hand. He needs to show the parties are

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2 incapable of addressing that. He needs to show that there
3 are issues that the Court need to consider. None of that
4 happened. This is an end run around the friend of the court
5 requirements.

6 THE COURT: Only if the Court treats it as such,
7 which I have not and don't intend to do. I don't want to
8 give it that much credibility. Because when I choose to
9 ignore anything he submit or says, I do. And to give him
10 that much credibility, I would have to entertain all that he
11 puts forth, and I have no intention of doing that.

12 MR. KIRSHNITZ: I appreciate that, Your Honor. But
13 for the sake of the record, the Liquidator, again, we object
14 to Mr. Veach appearing at this hearing, participating in
15 this hearing and, certainly, in his current capacity from
16 continuing to send letters to the court's docket. And we
17 particularly object to the most recent letter, which, as I
18 said, we view as an end run around the requirements to
19 appear as a friend of the court.

20 THE COURT: It is so noted. Thank you.

21 Your application today.

22 MR. KIRSHNITZ: Yes, ma'am.

23 So, our starting point is that the Liquidator, of
24 course, intends to pay the claimant who is entitled to be
25 paid, whether that is the member or the provider. However,
26 the question was raised by a provider with claims in the

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proceeding that there may arise certain circumstances where certain provisions in the Health Republic insurance policies, specifically the anti-assignment clause, might complicate the Liquidator's determination.

Your Honor, you asked us to prepare an analysis. At the last conference with you, we discussed presenting that to the Court as a motion on notice with a request for relief, and that's what is here now.

And so, our analysis, which is in the application, it's Exhibit A of my affirmation, the application, concludes that Health Republic's policies expressly contemplate paying either the member or the provider, and the anti-assignment clause will not be an impediment to paying the proper claimant.

Now, I think the concern that was raised initially was there might arise situations where either the Liquidator or the Court would be called upon to alter the contracts in some way. And the analysis includes that that will not be necessary.

I can confirm that the order to show cause was noticed. According to your instructions, affidavits of posting and publication were filed upon the docket last night. I can also confirm that no opposition to the relief was received; far from it. So, the claimant who raised the issue, Northwell Health, concurs in the conclusions.

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Counsel is here; he can speak for himself.

THE COURT: It's a different Northwell today.

MR. NOONAN: It is.

THE COURT: It's a younger Northwell.

MR. NOONAN: Thank you for saying that.

THE COURT: Go ahead.

MR. KIRSHNITZ: Again, he is here; he can speak for himself. But Northwell's letter confirming that is at Exhibit B in my affirmation. Based on those facts, I would ask that the relief be granted.

THE COURT: Let me ask - I know it's in your papers, but it's making the record - what specific aspects of the papers made you reach the conclusion that there was no problem or there would be no impact or no anti-assignment provision that the Court should take note of?

MR. KIRSHNITZ: Well, as I said - I have the memo here with me. We can refer to it. I have the contracts here, if you want to refer to the actual language. This is on Page 3 of the legal analysis. And what it says is -- I will just read it.

THE COURT: Please.

MR. KIRSHNITZ: And, again, we have provided sample Health Republic contracts, both for individuals and for group plans. And so, here is the provision.

It reads: Who Receives Payment under This

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Contract: Payments under this contract for services provided by a participating provider will be made directly by us, insurer, to the provider.

So, that's the normal situation where the member had gone to in-network provider.

If you receive services from a nonparticipating provider, we reserve the right to pay either you or the provider regardless of whether an assignment has been made.

So, the contract itself expressly contemplates paying either the provider or the member, whichever one is the appropriate party to be paid.

THE COURT: Who decides who is appropriate?

MR. KIRSHNITZ: Well, in this instance, it's going to be the Liquidator.

THE COURT: Thank you. I'm just continuing for the record.

MR. KIRSHNITZ: And just to be clear, the appropriate party to be paid will be the one who is owed money under the policy.

THE COURT: Which ties us right back to, we know, if there are two parties seeking the same amount, which goes to the other process which we have set up, so that dovetails into the proper party, the Liquidator will determine. And if it appears that two parties claim the same pot, we have set up, in our discussions and what I have asked us to look

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2 at, a process by which it will be determined which of the
3 two parties is the appropriate party, and that process has a
4 review.

5 MR. KIRSHNITZ: Correct. And just to clarify a
6 little bit, the way that process would actually work is when
7 the claims are being reviewed, if there are these, quote
8 unquote, duplicate claims, those will be identified. Those
9 will have to be reviewed manually to determine who is the
10 proper party. And it's not always going to be the provider.
11 It may very well be the member.

12 Now, I would suggest that what we just discussed is
13 really sufficient to address the concerns that were raised.
14 But if there was an outlier situation where the
15 anti-assignment clause became an issue, two things; number
16 one, there is long-standing, well-established, and there are
17 caselaw that the policy behind it is where the loss has
18 occurred, where the event could rise to liability and the
19 policy has occurred. New York Public Policy is that the
20 policyholder should be able to assign her policy benefits
21 notwithstanding the anti-assignment clause.

22 And I would say, another point to be aware of this
23 -- and, again, this is on Page 5 of the memo, it's also a
24 provision of the contract. The provision that purports to
25 prohibit assignments reads after "prohibition:" However,
26 you may request us to make payment for services directly to

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your provider instead of you.

So, the bottom line is the concerns that were addressed, I think the legal analysis is that there won't be concerns.

THE COURT: Okay. Thank you. Let me hear from Northwell.

MR. NOONAN: Good morning, Your Honor. Again, Tommy Noonan for Northwell.

As counsel for the Liquidator indicated, the partner in this case, Timmy Butler, had sent a letter, which is attached to Exhibit B of the order to show cause, concurring with the conclusions of the memorandum specifically, for the record, that the Health and Public Policy authorized Liquidators to make direct payments to the providers and in the alternative, if the need should arise, under New York law, the Court may invalidate the anti-assignment provisions which might preclude payment to the providers.

This order to show cause and the resolution arose out of a previous objection from Northwell. It was negotiated with the Liquidator, as far as I understand, particularly with concerns arising from Northwell being an out-of-network provider, so that payments could be made directly to them.

As counsel for the Liquidator said, the appropriate

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2 party would be who is owed the money under the policy. And
3 this maybe more of an aside, in other circumstances, we
4 find, at least as a non-participating provider, that while
5 the policies often give the insurer the option to pay either
6 the provider or the member, it is often sent to the member
7 first, forcing Northwell as a non-participating provider to
8 essentially chase the money from the member.

9 We felt, considering at least with our client,
10 looking at the procedure proffered by the Liquidator that we
11 wanted some clarity to make sure the Liquidator could make
12 the payments directly to the provider notwithstanding any
13 internal policies of Health Republic that we may or may not
14 be aware of based on previous circumstances with not just
15 Health Republic but just previous --

16 THE COURT: I understand that everyone understood
17 from last fall and early winter you needed the primature of
18 the Court order saying you are not in violation, so that you
19 could feel comfortable going forward. That's why the Court
20 asked to you do it by motion.

21 MR. NOONAN: Correct.

22 THE COURT: To get analysis of the anti-assignment
23 possibility so that when you act, you are acting in
24 accordance to order as opposed to on your own, sua sponte,
25 just saying well, we can do it, because it protects the
26 Liquidator and the liquidation process when, whatever the

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determination is, it is made by order of the Court. I get it.

MR. NOONAN: The clarity was important to us. The fact that, as the Liquidator said, the money going to the person owed, whether it's the person in our case who provided the services. So, we felt that was important. We felt that after the objection was made between the memorandum and where we are now that we have made good progress to make sure the work is done.

And absent any questions from the Court, I think that's about it.

THE COURT: Off the record.

(Pause in the proceedings.)

THE COURT: Now, you sent a letter on this issue.

MR. VEACH: Yes, Your Honor.

THE COURT: As a member of the public, I'm listening.

MR. VEACH: Your Honor, this motion was entirely unnecessary.

THE COURT: The Court asked for it. The Court directed that you make it. Do you understand that I ordered that they make this by motion?

MR. VEACH: I understand that Your Honor ordered them to make this motion without having seen the memo. Had we seen the memo --

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THE COURT: The memo?

MR. VEACH: The memo from Weil. Had we seen the memo from Weil, we would have known what these gentlemen just said. The policy clearly provides that the Liquidator standing in the shoes --

THE COURT: One second.

(Pause in the proceedings.)

THE COURT: Okay, continue.

MR. VEACH: Had we seen the Weil memo, the Weil memo indicate in the very first paragraph that the Liquidator is standing in the shoes of the company to pay the provider or can pay the patient. That has always been the case. That was the case in the original policy. Now, we have POMCO, Truven and Alvarez & Marsal looking at these claims. If they --

THE COURT: That's not the --

MR. VEACH: If they look at this claim, they will look at this claim and the Liquidator will decide shall I pay the provider or should I pay the patient? If there is an objection, the patient, if somebody objects, they will come to court.

THE COURT: You are repeating the process. We all know that it was put in place. That process was put in place months ago. And the ability for review I have just gone over, I thought, as an aside to the application.

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2 In other words, we know there is a process in
3 place. But for the assuredness that in making these
4 determinations with respect to assignment that the
5 Liquidator had the stamp of you are not going to have a
6 conflict in law or from a claimant that you violated the
7 contract by doing this by the Court so ordering that this is
8 not anti-assignment.

9 MR. VEACH: The contract is clear, Your Honor.

10 THE COURT: If it were clear, I would not know.
11 Your saying the contract is clear is of less than no moment,
12 if I can say it, with all due respect. Because I'm not
13 going to say it is clear, because that's what the Court
14 does. It's either clear as a matter of law or -- there is
15 one extreme, clear and unambiguous as a matter of law.
16 There is another extreme. What is it? Ambiguous. Okay.
17 But there is sometimes a gray. And to make sure that this
18 can continue to proceed and no confusion with respect to a
19 potential gray, an order of the Court is appropriate. And
20 not, well, it's clear to you but it may not be clear to
21 somebody else. And they should not have to proceed with a
22 doubt, at least to the degree that the Court will so order
23 it. You see, the purpose is to set it up so the Court will
24 make an order, and then it sets up. If somebody has an
25 objection to this clarity of a finding, they can appeal.
26 And that's the process to protect all of the interests and

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2 to limit any potential claim that something was done
3 improper. That's why it is not uncommon for the Court to
4 invite a motion so that the Court can say it is or it is
5 not. That's the process. That's with respect to this order
6 to show cause. That's why the Court felt it was necessary.

7 MR. KIRSHNITZ: Your Honor, may I make a comment?

8 THE COURT: Sure. And that portion about you can
9 pay this one or that one, if it was that simple, they would
10 not have set up and I would not have set up a review process
11 for where potential multiple claimants or assignment may
12 exist.

13 Nobody is understanding this? Is anybody getting
14 this? Am I not being clear? No, really, because you are
15 all looking at me like I'm speaking French. Are you getting
16 it?

17 MR. KIRSHNITZ: I get it.

18 MR. VEACH: Your Honor, what they are asking you to
19 do is rule on a hypothetical. There is no evidence that
20 anybody is filing duplicate claims, that the Liquidator
21 can't figure it out, that Truven can't find it. There is
22 absolutely no evidence as to any issue or problem here. The
23 Liquidator will pay the provider or --

24 THE COURT: Say it three times because you think I
25 didn't hear it the first two.

26 MR. VEACH: We just spent money unnecessarily.

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THE COURT: Anything else?

MR. KIRSHNITZ: Your Honor, can I just comment on that?

THE COURT: If you choose to.

MR. KIRSHNITZ: On the letter.

THE COURT: I thought I did a good job, but feel free.

MR. KIRSHNITZ: A very good job.

I think you will search in vain on that level - I'm not going to call it opposition - the complaint against the relief. The letter appears to agree with the analysis that was done. The complaint appears to be that --

THE COURT: It was unnecessary.

MR. KIRSHNITZ: That this was done at all. And I am going to return to this again.

THE COURT: By the way, that's not a complaint as to you; that's a complaint as to the Court. So, you should sit back because the criticism is that the Court directed an order that you do this useless process that's costing money. So, it's a criticism of the Court, not of you. And I can handle it. I can take it.

MR. KIRSHNITZ: Understood. And I apologize for going back to this again, but this shows responsibly why it is improper for somebody with no interest in these proceedings to inject themselves. Mr. Veach can be very

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cavalier about asking that this relief not be granted.

THE COURT: And how could I not respond in a way -- first of all, again, let the public speak. But give me a little credit for figuring out when it's blowing hot air and when it is something I should consider. For example, when Mr. Veach reminded me, which I -- let me just say off the record.

(Whereupon, a discussion was held off the record.)

THE COURT: Back on the record.

So, when I get a piece of communication that say, by the way, remember you said you wanted to check on the expenses, it was so far out of my head, you know. I was still focused on some other things. I said oh, yeah, I have got to do that, I said I want to do that, but it's a good thing. But when he sends a letter and says this is unwarranted, I won't tell you what I thought as far as the horse and coming in on the horse.

MR. KIRSHNITZ: Yes, Your Honor.

THE COURT: Okay, I will let it go at that. So, give us a little credit. We can figure it out up here, this side of the table. I have no substantive objection that even raises the spectre of concern for the Court on this application, and the application is granted in its entirety. That's the order to show cause before the Court.

MR. KIRSHNITZ: Thank you, Your Honor.

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THE COURT: Now, off the record.

(Whereupon, a discussion was held off the record.)

THE COURT: Back on the record.

Now, on an unrelated topic, remember I said I wanted to have -- first of all, I want to thank you for sending me what I requested, the flowchart. I'm sorry it wasn't in color, but that's okay. Children need things in color and diagrams. But it's very -- I am going to tell you what actually happened. I started reading, and not Mr. Palmisano --

(Whereupon, a document was handed to the Court.)

THE COURT: Oh, my gosh. If you think I'm not keeping it, you are so wrong. But I started reading what you submitted with January 25th, and I started complaining vociferously to my law secretary this is not the way I wanted it, this is not what I wanted, I wanted lines that go like this, what's this, why does it go like this? And she kept looking at me, and she kept turning the pages, and she got to here and held it up like this, and I said, okay. Shut me down.

Thank you. That is what I was looking for.

MR. KIRSHNITZ: And the narrative, which is posted on the docket, is very helpful.

THE COURT: This is great. This is exactly what I wanted. But what I want to say, two things; one, I don't

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2 know if I told you how frequently I wanted this updated.
3 Did I say that in the last transcript how frequently I
4 wanted you to continue to update and add and show the
5 different milestones? But if I have not, what I am going to
6 order now is that I want you to update the milestones once a
7 month or every five weeks. How often?

8 MR. KIRSHNITZ: Well --

9 THE COURT: Because things are going to change.
10 You are saying "to be determined," but there are certain
11 things to be determined that we can start plugging in as it
12 occurs. Do you see what I mean?

13 MR. KIRSHNITZ: I do. So, the timeline you are
14 looking at there, the timeframes that are set out, the
15 projected timeframes, those are all cooperative right now.
16 Again, I would suggest that when something changes, we would
17 update the --

18 THE COURT: No, I don't want to wait for you to
19 tell me something has changed. What I want you to do is
20 update, I was thinking, once a month. I'm going to say
21 every five weeks. I want an updated chart and I want to
22 know if anything has changed. In other words, I want an
23 update report and an update January 25th, meaning where you
24 have those descriptions, and then you give me a flow. Do
25 you follow?

26 MR. KIRSHNITZ: I do.

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2 THE COURT: Because then I want to see if things
3 are happening. And this is the easiest way for me to stay
4 on top of it, and I know that I will look for something.
5 Every five weeks I will get something sent to me in color
6 and description.

7 MR. KIRSHNITZ: And, again, that is posted on the
8 public website. Everybody can see it.

9 THE COURT: It's posted in color?

10 MR. KIRSHNITZ: Of course. I am just going back to
11 the transparency that we have in this proceeding.

12 THE COURT: This is the most transparent
13 liquidation in the history of New York State.

14 MR. VEACH: By far.

15 THE COURT: Liquidations I understand. And, again,
16 I am not trying to micro-manage, but it's a big liquidation
17 and I want to be careful. So, thank you.

18 Update every five weeks. That's one.

19 Two, not the motion, because that's done. It's
20 granted. I did want to schedule a hearing because I don't
21 want to wait until October to know where expenses are.
22 Remember way, way back in October I said I want to have in
23 early 2017 a little -- I want to have some explanation of
24 where the expenses are, where the money is going, how it is
25 being spent. It is going to basically -- you will get to
26 understand I am a blowup chart person for a lot of

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description and understanding. I want to know what is going on, where the money has gone and where it is. So, I want to have a hearing, not a big hearing, a little hearing.

MR. KIRSHNITZ: Your Honor, number one, I would say the expenses are posted on the website that's updated every month, the actual and necessary expenses under the administrative expenses that are occurring now. What's in the projected timeline now and what would be our normal practice would be to present the Court with a formal report which includes an analysis of the administrative expenses, and that's projected to be in the fourth quarter of this year.

THE COURT: I understand but, you know, I said this from day one I want that earlier, not later. It may be a formal report in October. I want an interim report with explanation where I can actually talk back to you. We can talk back and forth. I can ask questions I can understand. That's why I am saying I know the formal is October, but I made it clear way back, I know in October of 2016 I made it clear I wanted to have an early interim report. And I may be able to see something on the website, but I can't have a conversation with the website, and I want to have a conversation about expenses.

MR. KIRSHNITZ: Understood. There is more to the court report than just the formality and the normal

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2 practice, and that is what we do in all of our cases.
3 That's what was done in the Galaxy Insurance Liquidation,
4 which you supervised, but it's more than the formality of
5 the report. The report is going to put the expenses in the
6 context of what has happened in liquidation up to that time,
7 but you are going to see the expenses and you are going to
8 be able to see the activities that are associated with the
9 expenses. You are going to see the result of the expenses.
10 It will have more detail than what is there now, which is
11 already more detail.

12 THE COURT: I just want an interim presentation.

13 MR. KIRSHNITZ: So, Your Honor --

14 THE COURT: Don't make me say it, don't make me go
15 down that formal road.

16 MR. KIRSHNITZ: I am not going to, Your Honor.

17 THE COURT: I would really appreciate it if you
18 give me an interim presentation.

19 MR. KIRSHNITZ: Your Honor, if you feel you need
20 something different from the normal practice, I think what
21 we would ask, and we will work with you on this, but that we
22 put in place a reasonable process for that.

23 THE COURT: Okay.

24 MR. KIRSHNITZ: The idea that there would be
25 hearings --

26 THE COURT: Not hearings.

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MR. KIRSHNITZ: Parties to come in.

THE COURT: It's a presentation. Again, strike hearing, not a hearing, presentation, an interim presentation of what you would do in October of 2017 or early 2018, an interim presentation of, as you say, expenses in the context of what it went for, how it resulted, not a hearing, presentation, just you and whomever you need to join you to make that presentation to the Court.

MR. KIRSHNITZ: This is important because it's not an adversarial process.

THE COURT: No, I want to understand. It's not adversarial. I want to get a clear understanding of where it is in little bites to see where it is, what's going on, where is money being expended, how is it applied, has it had a result. To me, it's harmless.

Let me ask you, why not?

MR. VEACH: Mm-hmn.

THE COURT: Did I ask you to comment or even agree in "mm-hmn?" Be quiet. Go ahead.

MR. KIRSHNITZ: Your Honor, I wasn't disagreeing. What I was saying to you was we would request that we implement a reasonable process for this purpose.

THE COURT: Okay. I am going to direct Mr. Palmisano to be your contact person.

Off the record.

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(Whereupon, a discussion was held off the record.)

THE COURT: Back on the record.

Set it up with him.

MR. KIRSHNITZ: Specifically, to the extent the Court would be interested in getting into individual expenses or individual invoices, these could reflect attorney/client privilege.

THE COURT: I'm looking for categories, categories and areas of expenses. And if I think I need something more, I know how to go in camera. I understand that, but I'm not looking for billing records, daily billing records, no, no. I'm looking for categories of expenses and how it was used, as you say, what I would see at the end, but I'm looking for it interimly.

I am going to request that you work with Mr. Palmisano and that I see what you would be able to do as a presentation. I'm looking to see this late April. I'm in February? I'm looking to have this put before the Court in late April. And Mr. Palmisano will give you his contact information. Work directly with him, and you will let me know if you have issues or problems or answers that you need in order to do this with him. But I am not asking for anything -- okay, maybe that it is extraordinary in the normal course of liquidation, but it's not extraordinary to me. So, it's just not. I don't want to be blind-sided or

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1 surprised at the end of 2017 with some - and I'm sure this
2 would never be the case - ballooned expenses, and then the
3 look is back to me. You are overseeing this liquidation,
4 how did this happen? How did this happen on your watch?
5 And I don't need that kind of inquiry if I can get an
6 interim presentation of what is going on with respect to
7 expenses, costs, applications and results. All right. And
8 I understand your reluctance to step outside of the box of
9 the normal presentation with respect to a liquidation, but I
10 am going outside of the box.

11 Anything else?

12 MR. VEACH: Your Honor, to what extent can the
13 public look at these materials as they come in for the
14 presentation?
15

16 THE COURT: Not at all, no.

17 MR. VEACH: Would we be allowed to attend the
18 presentation?

19 THE COURT: My courtroom proceedings are always
20 open, always open. But you and no one else should
21 anticipate that they will sit there and get to do an
22 inquiry, you won't, no. It's just me and Mr. Palmisano.

23 MR. KIRSHNITZ: And I would just note that for
24 these presentations, we are going to have to protect
25 privileged information.

26 THE COURT: Of course.

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MR. KIRSHNITZ: Work product, investigations of third parties and, potentially, you can even see private claimant information in the expenses.

THE COURT: He is at your disposal.

MR. KIRSHNITZ: We are going to have to make sure those are preserved.

THE COURT: Of course. But keep in mind, if the Court request, I can see anything in camera, in camera.

MR. KIRSHNITZ: Absolutely.

THE COURT: All of those concerns, the Court's ability to look past that, exist in camera, but I am not trying -- again, I am not trying to do anything adversarial either. I just want to make sure at the end of the day when this is done, you know, the front page of the Law Journal doesn't say where was the judge? Was she sleeping that day when they took 90 percent of the money and paid each other? I am not going to be that one. That's all. I'm just protecting Mr. Palmisano's job and flank here. Really, I have done as much as I can to project that I am not trying to hurt anybody. I'm just trying to get this done in the best and fairest way possible.

Anything else today?

MR. VEACH: Your Honor, do we have a date in April?

THE COURT: Mr. Palmisano is going to work that out. He is your contact. Work it out. And my target is

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1
2 that I would like to see this by the end of April. I would
3 like to have that presented to me by then. Okay, folks?

4 MR. VEACH: Would that be on the docket, the date?

5 THE COURT: Of course. Everything is uploaded. I
6 mean, what's on the calendar is on the calendar.

7 MR. VEACH: The balance sheet is as September 30,
8 2016, could we have an update?

9 THE COURT: Did we ever talk about how often that
10 would be updated? It sounds like something I have said,
11 that how often the --it sounds like something we have talked
12 about; that is, updating the numbers?

13 MR. NOONAN: I'm sorry, I wasn't there.

14 MR. KIRSHNITZ: I can say this, Your Honor,
15 initially you had us post our balance sheet. It was
16 unaudited. It was put together by our finance people. I
17 can say this, audited financials will be --

18 THE COURT: The second quarter is, the month? The
19 second quarter constitutes?

20 MR. KIRSHNITZ: March to June. We brought in a
21 financial auditing firm to reconcile the books. We will
22 have audited financials posted in the --

23 THE COURT: In the second quarter?

24 MR. KIRSHNITZ: Yes.

25 THE COURT: In the second quarter?

26 MR. KIRSHNITZ: Yes.

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1
2 THE COURT: Thank you. Great.

3 Now, I think I am done for the day.

4 Did you have something you wanted to ask?

5 MR. VEACH: No, Your Honor. The expense summary,
6 there is a lag on the expense summary. We are up to
7 December. We are up to 5.9 million, but I thought that
8 these were to be posted by the middle of the previous month.

9 THE COURT: Do I have something where I said that?
10 No.

11 MR. VEACH: I thought there was a pledge from --

12 THE COURT: No, no. Look at the transcript and
13 show me.

14 MR. VEACH: I will go back.

15 THE COURT: You know what I'm saying? Only tell me
16 what I have said, because I know I cannot remember it all,
17 even though I know there is a transcript here. I have
18 already only -- first of all, there is an audit group in
19 place, and I want them to be able to do their job. And I'm
20 not going to make them function on an expedited basis for
21 you defendants that I don't see yet.

22 MR. KIRSHNITZ: I mean, this is the precise thing
23 that we shouldn't have to respond to.

24 THE COURT: I didn't ask you to.

25 MR. KIRSHNITZ: The expenses are updated every
26 month.

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THE COURT: Thank you. And did that hurt? It didn't hurt a bit.

Transcript is so ordered.

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.


ALDORINE WALKER

Senior Court Reporter