

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

)
United States Commodity Futures) File No. CV-09-3332
Trading Commission,) (MJD/FLN)
)
Plaintiff,)
)
vs.) Minneapolis, Minnesota
) August 12, 2014
Trevor Cook, et al.,) 11:00 a.m.
)
Defendants.)
)

)
United States Securities and) File No. CV-09-3333
Exchange Commission,) (MJD/FLN)
)
Plaintiff,)
)
vs.) Minneapolis, Minnesota
) August 12, 2014
Trevor Cook, et al.,) 11:00 a.m.
)
Defendants.)
)

)
United States Securities and) File No. CV-11-574
Exchange Commission,) (MJD/FLN)
)
Plaintiff,)
)
vs.) Minneapolis, Minnesota
) August 12, 2014
Jason Bo-Alan Beckman, et al.,) 11:00 a.m.
)
Defendants.)
)

BEFORE THE HONORABLE MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT JUDGE

(MOTIONS HEARING)

1 APPEARANCES

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24 Proceedings recorded by mechanical stenography;
25 transcript produced by computer.

1 Rachel Fleishman from Reid, Collins & Tsai, special counsel
2 to R.J. Zayed in his capacity as receiver. I'm joined in my
3 office by my colleagues Angela Somers and Anne Bahr.

4 THE COURT: Good morning.

5 MS. FLEISHMAN: Good morning.

6 THE COURT: Let's proceed.

7 MS. NORGARD: Thank you, Your Honor. Your Honor,
8 we're here today on the receiver's motion to approve the
9 auction of the receiver's claim in the PFG bankruptcy. And
10 the history of this action is set forth in our motion
11 papers, but it really is the very critical backdrop for the
12 motion that brings us here today. So for purposes of the
13 record, I would like to briefly summarize that history here.

14 The Court knows the Cook Ponzi scheme all too
15 well, and what's become evident in this case and perhaps not
16 surprisingly so is that Mr. Cook and his colleagues did not
17 operate in a vacuum. A crime of the magnitude such as
18 Cook's rarely and some would say never can be pulled off in
19 a world where everybody is obeying the rules.

20 Indeed, Cook's theft could have never been
21 achieved either in volume or duration if it weren't for the
22 others who helped him or at the very minimum willingly
23 ignored the burning red flags around everything he did.

24 Peregrine Financial Group, now known as PFG in
25 this lawsuit and elsewhere, was a financial firm out of

1 Chicago that was more than happy to do business with Cook.
2 And while Cook made reckless trades, amounting to almost
3 \$50 million in accounts that PFG allowed him to trade in and
4 control, PFG stood by and profited handsomely. Cook's
5 accounts were a major portion of PFG's business.

6 PFG was happy not to scrutinize Cook and Cook was
7 happy not to scrutinize PFG and this suited PFG well
8 because, as we later learned, it too was operating a massive
9 fraud on its customers.

10 When he was appointed by the Court, the receiver
11 engaged in an extensive investigation and analysis of Cook's
12 dealings with PFG and determined that those dealings and
13 those transactions were actionable as fraudulent transfers.

14 Given the nature and complexity and cost of
15 pursuing a case against an outfit like PFG, the receiver
16 determined it was in the best interest of the receivership
17 to partner with outside contingent fee counsel to pursue PFG
18 and that is the counsel on the phone appearing with us today
19 of Reid Collins.

20 With the Court's permission, the receiver engaged
21 Reid, Collins & Tsai to assist him in pursuing these claims
22 against PFG. And as the Court knows, the Reid Collins firm
23 has substantial experience in dealing with Ponzi schemes and
24 frauds.

25 Our lead counsel, Bill Reid, who is not on the

1 phone, but has worked with us extensively, is a former
2 assistant U.S. attorney. Rachel Fleishman, who is appearing
3 today, is an attorney with a long history of litigating
4 financial cases, including fraud and clawback claims of the
5 sort we're dealing with in the PFG case. And other members
6 of the Reid Collins team include Angela Somers, who has
7 appeared here, and Anne Bahr, both of whom have extensive
8 experience in bankruptcy and complex corporate bankruptcy
9 matters.

10 So returning back to our timeline. After the
11 Court approved our working with contingent fee counsel, on
12 February 2012 the receiver filed suit against PFG to recover
13 at least \$48 million in fraudulent transfers that Cook made
14 to PFG.

15 The 50-page complaint, which alleged nine counts
16 of fraudulent transfers, laid out the very details of how
17 PFG ignored these burning red flags and extraordinary
18 irregularities that really surrounded everything that Cook
19 did with his transactions with PFG.

20 After we filed suit, PFG tried to bide its time
21 and filed a motion to transfer venue so that the case would
22 be heard in the Northern District of Illinois. The Court
23 denied that motion on June 22, 2012 and we immediately began
24 pushing for discovery and for depositions of key figures at
25 PFG, including its CEO, Russell Wasendorf.

1 Two weeks after this Court issued its order, the
2 true nature of PFG's business became the subject of national
3 headlines when the CEO, Wasendorf, made a failed suicide
4 attempt because, in his own words, PFG had been a fraud for
5 nearly 20 years.

6 PFG's bankruptcy quickly followed, along with CFTC
7 and criminal actions. And due to the bankruptcy that PFG
8 filed, this matter, the receiver's lawsuit in this court,
9 was stayed, leaving the bankruptcy as our venue to pursue
10 those claims.

11 At the time PFG went into bankruptcy the receiver
12 had a litigation claim, which is not in itself recoverable.
13 And with our case in this court administratively closed, our
14 only option for pursuing claims in PFG was in a bankruptcy
15 capacity and the receiver and his team went to work to
16 figure out how could we best get value from some very real
17 litigation claims that had not yet been proved to judgment.

18 This is actually an intricacy of the situation
19 that is an important one and it can be difficult to
20 understand for lawyers, but certainly for nonlawyers like
21 our investors, many of whom believe that we today standing
22 here have a \$48 million claim against PFG.

23 As I said and as the Court knows, the receiver had
24 a \$48 million litigation claim. However, that case really
25 ended before it began by virtue of the PFG bankruptcy. We

1 never had the opportunity to engage in discovery or much
2 less get to the point of judgment at the end of that case.

3 With the PFG bankruptcy, if we wanted to continue
4 pursuing that litigation claim we would have had to have
5 done so with PFG as a bankruptcy debtor and that is not an
6 ideal situation for a plaintiff in our shoes. Moreover, we
7 would still have to prove our claim.

8 If we did get to judgment, we would be left with a
9 general unsecured claim in the PFG bankruptcy and that is
10 exactly what we have as we stand here today, a general
11 unsecured claim.

12 And we would still face the same scenario were we
13 to have litigated that claim in the PFG bankruptcy that we
14 face here today, and that is a PFG bankruptcy estate that by
15 all accounts does not have the funds to pay all of its
16 debts.

17 From the onset the receiver, with the assistance
18 of the Reid Collins firm, engaged in an extensive
19 investigation, analysis, and negotiations with the PFG
20 bankruptcy trustee to convert our litigation claim into an
21 allowed claim, a dollar amount certain that we could, in
22 fact, collect on or attempt to collect on as the PFG
23 bankruptcy went forward.

24 This work went on for approximately a year and
25 after that time, with the help again of Reid Collins, the

1 receiver was able to negotiate a general unsecured claim in
2 the amount of \$10 million in the PFG bankruptcy, again, the
3 general unsecured claim being the very same thing we would
4 have had had we litigated that claim to judgment. This was
5 a very significant step in being able to recover anything at
6 all from the wild and very unexpected turns of the PFG
7 litigation.

8 So after that was achieved, the negotiation of the
9 \$10 million unsecured claim in the PFG bankruptcy, next came
10 the work to determine how best to monetize that claim; and
11 there were essentially two choices and still are. One, we
12 can hold the claim and wait to determine whether it would
13 ever be distributed from the PFG bankruptcy, in other words,
14 whether our claim would ever collect any distributions from
15 the bankruptcy trustee, or we can sell the claim.

16 At this point the receiver, again with the help of
17 Reid Collins, went to work researching and analyzing the PFG
18 bankruptcy and the market for the PFG bankruptcy claim. The
19 process was an extensive and complex one.

20 We were able to unearth numerous facts and legal
21 issues and analysis for the receiver to consider in this
22 question of how to best monetize the claim, and we analyzed
23 the entirety of the situation with all of this information
24 and with experts that we have engaged to help us sort
25 through these issues. We also discussed them at length with

1 the Court *in camera*.

2 Although the details of our analysis are
3 privileged, we weighed issues about the PFG bankruptcy such
4 as these:

5 There's a question about how much money is in the
6 PFG bankruptcy estate and whether it would ever be enough to
7 pay the claims that have been made against the PFG
8 bankruptcy estate, and we understand that the PFG estate has
9 claims on it far in excess of any assets they have to pay
10 those claims.

11 There's a question about where the receiver's
12 claim falls in terms of priority in terms of how any funds
13 that would be distributed, how those would be distributed to
14 us in the line of priority, in other words, whether our
15 claim would be paid out in *pari passu* or on the same
16 *pro rata* basis as other claims, such as secured customer
17 claims, or whether we would fall at the end of that line
18 after customer claims. There's a question about whether
19 there will be any other source of payment to fulfill
20 customer claims.

21 And of course there's a question about how long
22 all of this will take to shake out and how long it would be
23 before there's any financial realization at all from the PFG
24 bankruptcy trustee.

25 And of course, along with all those considerations

1 about the PFG bankruptcy itself, we also weighed
2 considerations about the receivership victims itself and the
3 state of the receivership as well, such as the age of our
4 victims.

5 The average age of our victims in this fraud is 67
6 years old. Over 91 percent are at least 50 years old and
7 82 percent of our victims are 55 years old and older. There
8 are only 12 victims and perhaps fewer than that now under
9 the age of 40. And many victims of this fraud have died
10 since the fraud imploded.

11 We also always consider the economic situation of
12 our victims. Almost three-quarters of the investors of this
13 fraud report that they have less than \$100,000 of annual
14 income and over 31 percent of our investors have annual
15 income less than \$50,000.

16 Every distribution that the receivership is able
17 to make makes a real difference in people's lives, and we
18 know this because the victims tell us. We've heard from
19 victims who were so grateful to receive a couple of hundred
20 dollars that they didn't expect so that they could pay a
21 heating bill or buy a refrigerator to replace one that had
22 been broken. Money that pales in comparison to what they
23 lost, but in the situation is a windfall to these folks has
24 meant a lot to each of the victims in this fraud.

25 In the end the question about whether to sell the

1 receiver's claim in the PFG bankruptcy was one of a bird in
2 the hand, take the money certain now, which we know will
3 inure to the great benefit of hundreds of victims, or take
4 the risk on a possible payout or the possibility of no
5 payout at all later.

6 In terms of dollars, if we were to hold the PFG
7 claim, the reward could be some portion of our \$10 million
8 general unsecured claim or it could be zero. If we auction
9 the PFG claim now, we have a guaranteed price of
10 \$1.355 million with the return of \$948,500 to investors and
11 that's after the 30 percent payment of the contingent fee to
12 counsel.

13 Your Honor, Trevor Cook spent enough time gambling
14 with these victims' money and after considering all of the
15 issues, the receiver has determined that it is in the best
16 interest of the victims of this fraud to sell this PFG claim
17 now and return the proceeds to the victims.

18 And so specifically what the receiver proposes in
19 the pending motion before the Court is to sell the PFG claim
20 at an auction next month. And the structure of the proposed
21 auction is very carefully and purposefully designed to be
22 fair, transparent, widely marketed, and accessible to all
23 legitimate bidders. Here are the details.

24 The auction itself would be held on September 16,
25 2014 at the offices of Reid Collins in New York. And we've

1 chosen that location because New York is really the nucleus
2 for the market for distressed assets, such as the PFG claim.
3 But we also recognize that there may be bidders from other
4 venues, other parts of the world that may want to
5 participate and for that reason --

6 THE COURT: If I could stop you there.

7 MS. NORGARD: Sure.

8 THE COURT: So the record is complete, just in
9 general terms -- you may have said it already, but say it
10 again dealing with these distressed assets, the way they are
11 being auctioned off, this whole stalking horse mechanism
12 that this Court didn't know about until you brought it to
13 its attention, so our victims can understand what we're
14 doing here. It's not another Ponzi scheme being perpetrated
15 on them, but this is an actual auction, that it's been going
16 on for years. This is the way distressed businesses have
17 been -- assets have been dealt with in bankruptcy. So why
18 don't you just explain it a little more just in general
19 terms.

20 MS. NORGARD: Certainly. Certainly. I'll start
21 with the more general question about the auction itself,
22 which is a very common vehicle in the market for distressed
23 assets and by that I mean claims in bankruptcies or other
24 sorts of claims that are not certain payouts. There is a
25 very variable element to the PFG claim and others like it.

1 That's why the term "distressed market" is one that is
2 commonly used around these.

3 And so, for example, in MF Global and other big
4 bankruptcies, what oftentimes happens is that entities or
5 individuals who hold claims in bankruptcies will auction
6 those claims off so that they can be purchased by others,
7 other investors, it's oftentimes institutional investors
8 such as hedge funds and others, so that the original holder
9 of the bankruptcy claim has a certain payout and then the
10 entity or individual who purchases the bankruptcy claim, the
11 hedge fund or other investor, then holds that claim. They
12 have paid for that claim and then would be able to collect
13 on it at a later date if, in fact, the claim is ever paid
14 out.

15 But auctions certainly are a normal and regular
16 vehicle that are used to monetize bankruptcy claims and
17 other distressed assets and they're very -- they are done in
18 various ways.

19 The way that we're choosing to propose to do it
20 here is by way of a live public auction, but they also are
21 sometimes held by mail bids or e-mail bids or -- there are
22 variances in how these auctions can take place, but we're of
23 the mind that doing so in a public, open, live forum is the
24 best, most transparent way to conduct the auction in this
25 sense.

1 Does that answer your question?

2 THE COURT: It does. It does.

3 MS. NORGARD: And I will move on to the stalking
4 horse bid because that's an important part of the whole
5 process that we're proposing to the Court today.

6 Before I do that, I would also in the vein of
7 making the claim and the availability of this claim known is
8 an important piece of how we're proceeding the marketing of
9 this claim and there will be more of this, but it already
10 has begun to a certain degree as a result of our research
11 into the market and trying to understand what the pricing of
12 our PFG claim might be.

13 And, again, Reid Collins through their network and
14 expertise has already talked to numerous brokers in an
15 attempt to gauge interest in pricing of that claim, and that
16 is how the stalking horse bid came to be known. Through
17 Reid Collins' work we were able to identify a bidder who was
18 able to put -- who was willing to say that it will pay a
19 minimum of \$1.355 million at an auction.

20 And so another way to think about that is that is
21 the opening bid at the auction. If we have others who are
22 at the auction and interested, they will -- other qualified
23 bidders will be able to bid beyond the \$1.355 million, but
24 the important point is that that is an absolute minimum that
25 we would collect at an auction and that agreement has been

1 struck.

2 Any bids that happen at the auction have to be in
3 increments of \$25,000 above the most recent bid, so 1.355
4 million. The next bidder would have to bid \$25,000 beyond
5 that. If there's another bid, it would have to be \$25,000
6 beyond that.

7 And, again, that structure is designed to make
8 sure that if there are interested bidders, that we really do
9 efficiently get to the highest bid that we can obtain for
10 this claim. But if nobody else shows up to this auction,
11 what we have is a guarantee of \$1.355 million.

12 THE COURT: And dealing with the people that are
13 bidding, is there a process of guaranteeing that they have
14 the finances to --

15 MS. NORGARD: Well, there is in terms of we have
16 any potential bidder has to sign the terms of sale and
17 understand and verify that in terms of -- and then they have
18 to at the end put down a 10 percent down payment for --
19 let's say a bidder other than our stalking horse bidder wins
20 or even stalking horse bidder. There has to be a 10 percent
21 down payment while we approve the auction sale.

22 And if for any reason that entity or outfit that
23 prevails with the highest bid at the auction fails to close
24 on the sale, we get to keep the 10 percent down payment, but
25 then go to the second highest bidder or the third highest

1 bidder.

2 So there's always the possibility that the highest
3 bidder somehow for whatever reason reneges on the bid, but
4 that doesn't leave us without recourse. We have the
5 option -- well, first of all, we have the right to keep the
6 down payment and then, secondarily, to go on to the next
7 highest bidder.

8 So I sort of went over perhaps too quickly the
9 mechanics of the auction itself, so I'll return to them just
10 so the record is complete as to how this all would work
11 itself out.

12 Returning back to the marketing period, as I
13 mentioned, we've already done some canvassing and some
14 premarketing of this claim, although not official
15 marketing.

16 If this Court approves the auction sale, notice of
17 the auction and its terms and conditions will be posted on
18 the receiver's website and ads will also be run in the *Star*
19 *Tribune* and on PR Newswire, which is a national outlet to
20 all sorts of various outlets, including those in the market
21 for distressed assets.

22 We continue to contact any and all parties who
23 have expressed interest in the claims and reach out really
24 to anybody who might be interested in participating in the
25 auction.

1 So we hope both by this public outreach through
2 the news media and our website and then through the personal
3 outreach through telephone calls and word on the street
4 through our counsel, especially New York, that we have
5 really canvassed the universe of potential outfits who are
6 interested in bidding on this claim.

7 As I mentioned, the qualified bidders must agree
8 to and execute the terms of sale, which have been submitted
9 to the Court with the papers here today, or be otherwise
10 qualified by the receiver.

11 And as I mentioned, the bidding would open with
12 the stalking horse bid of \$1.355 million with competing bids
13 in increments of 25,000. One point to add to that is when
14 the highest bid has been obtained, the stalking horse bidder
15 has the option to top the highest bid by paying an
16 additional \$50,000.

17 So, in other words, if the auction plays itself
18 out and somebody other than the stalking horse bidder has
19 placed the highest bid, the stalking horse bidder can at
20 that point say that it would like to bid \$50,000 on top of
21 that highest bid to take the claim. But that option, if the
22 stalking horse bidder chooses to exercise it, must occur on
23 the day of the auction itself. It's a close of business
24 sort of option.

25 And then after that, the successful bidder will

1 have one day to execute the Memorandum of Bid, that's at the
2 Reid Exhibit D-2, and then provide the 10 percent deposit to
3 be held until the closing.

4 A couple of other notes about the auction sale
5 that I think are important. First of all, there's no
6 expense to the receiver associated with this sale. As part
7 of the contingent fee agreement with the receiver, the Reid
8 Collins firm absorbs all costs of advertising and hosting
9 the auction and Reid Collins is paid out of the proceeds of
10 the sale. Again, if the sale nets \$1.355 million, that
11 minimum number, the Reid Collins firm's take is 406,500.

12 And I would make an important footnote here that
13 the work that the Reid Collins firm has done is to culminate
14 with this auction sale, but dates very far back to working
15 with the receiver and his team to work up that initial
16 lawsuit that was filed in this court against PFG before the
17 PFG bankruptcy events began to unfold.

18 I would also add on the point of costs that each
19 bidder bears its own costs of participating in the auction.

20 So after the auction there is a post auction
21 procedure. Again, with the goal of transparency and
22 involvement of this Court every step of the way, the
23 receiver will file a motion with the Court to authorize the
24 sale to the successful bidder.

25 And then the closing on the sale would occur no

1 later than 10 days after this Court approves that sale. And
2 as I mentioned before, if for whatever reason the successful
3 bidder fails to close, the terms allow the receiver to
4 retain that 10 percent deposit and then move on to the next
5 highest bidder.

6 MS. FLEISHMAN: With respect -- this is Rachel
7 Fleishman from New York. I just want to jump in to offer a
8 correction for the record. It's 30 days rather than 10.

9 MS. NORGDARD: Thank you, Rachel.

10 MS. FLEISHMAN: You're welcome.

11 MS. NORGDARD: So that is a correction on the point
12 of the closing. The closing -- after this Court approves
13 the sale, there would be a 30-day window for the closing to
14 actually occur.

15 Rachel, do you have anything else to add, or
16 Angela, on the mechanics of the auction or any of the other
17 points that we raised in the path to getting where we are
18 today?

19 MS. FLEISHMAN: If the Court will permit, I have
20 just a couple of points of amplification for the record.

21 THE COURT: Please.

22 MS. FLEISHMAN: Thank you, Judge Davis. Rachel
23 Fleishman.

24 The first point I want to make is just to amplify
25 something Tara said about the litigation risk of our claim

1 once PFG filed bankruptcy. I think that's a very important
2 point and I just want to amplify what Ms. Norgard said about
3 the fact that the litigation risk of our claims did not go
4 away when PFG filed bankruptcy.

5 And the process that we engaged in from early 2013
6 through March 2014, when Reid Collins was negotiating with
7 the PFG trustee's counsel, was the same kind of process that
8 would have happened in the litigation if we had been in a
9 dialogue with PFG at that point, that once there was the
10 trustee in place for PFG, that trustee was every bit as
11 adversarial to us in terms of our litigation claims as PFG
12 itself would have been.

13 And so that 10 million number that we arrived at
14 on the allowed claim reflected more than a year of
15 negotiation back and forth on the very issues we would have
16 litigated in this court, and that was an extended dialogue
17 on legal and factual issues. And it went on that long
18 because we really were like litigation adversaries with the
19 PFG trustee. So that's point number one.

20 Point number two is I just wanted to put into the
21 record a little bit more detail on stalking horse. The
22 first time I heard someone say that with a New York accent I
23 thought the word was stocking, like s-t-o-c-k. It's
24 stalking horse.

25 This is a colorful phrase, but for your record,

1 Your Honor, you can look up the phrase "stalking horse bid"
2 in things like Investopedia and other financial
3 dictionaries.

4 I don't know what the providence of the term is
5 originally, but it is widely and uniformly used to describe
6 an initial bid on a bankrupt company's assets from an
7 interested buyer by the bankrupt company. And the idea is
8 that the stalking horse bid sets the bar so that bidders
9 can't come into an auction and sit there and lowball the
10 price.

11 So the analysis that the receiver went through
12 with his counsel at Carlson Caspers, assisted by the Reid
13 Collins firm, was in determining at what point a stalking
14 horse bid made financial sense because it was setting the
15 bar high enough, based on what we had learned from a market
16 canvas, that the receiver was comfortable that he had taken
17 care of limiting the risk of a lowball bid. This stalking
18 horse bid is an attractive bid in our view. So that's the
19 purpose of it, to eliminate a lowball purchase price.

20 And we're confident that even if the results of
21 the auction was that the purchaser is the stalking horse at
22 the amount of the stalking horse bid, the receiver has
23 accomplished a wonderful result for the people he
24 represents.

25 And then the third point I want to make very, very

1 quickly is that the Reid Collins firm's work goes all the
2 way back to August of 2011. That's when we first were
3 signed up in our engagement letter. That's when we began
4 our analysis of the facts here. From August of 2011 through
5 February we analyzed, together with Carlson Caspers, the
6 underlying facts here.

7 Your Honor will remember that when the receiver
8 filed this case in February of 2012, the receiver saw these
9 claims and, assisted by Reid Collins and Carlson Caspers,
10 filed these claims even where the CFTC had not taken any
11 similar action on behalf of the victims to recover monies in
12 this fashion.

13 And so we think it's important that all the
14 victims of the Cook Ponzi scheme know that the work that has
15 led to this motion on this day and that will lead to the
16 auction sale on September 16th has taken years, that the
17 claims that were asserted by the receiver in this action are
18 novel claims. There is no other receiver in the state of
19 Minnesota who has ever tried to use the Minnesota Uniform
20 Transfer Act in this way.

21 And so on so many levels we think that this is a
22 wonderful result that the receiver is going to offer for the
23 estate he represents no matter what the conclusion of the
24 auction is, whether it's the stalking horse bidder taking it
25 at the stalking horse bid or whether there are higher bids

1 and it eventually goes to a higher bid.

2 Those are my points, Your Honor. Thank you.

3 THE COURT: Thank you.

4 MS. NORGDARD: Your Honor, between what my
5 co-counsel, Ms. Fleishman, explained and what I've presented
6 to the Court today as well as what's in our papers
7 associated with this motion, those are the details of the
8 auction and the path that got us here today.

9 And as what's become sort of the normal turn of
10 events, as with everything that Trevor Cook touched, the
11 money lost to PFG too ended up in a twisted web of lies and
12 deceit that to our great misfortune will never fully be
13 recovered.

14 And so after considering all of the facts and the
15 law that surround the situation, all of our options for how
16 to monetize this claim and bring value to the victims and
17 who our victims are and what their situation is, the
18 receiver has determined that it is in the best interest of
19 the receivership victims to sell his claim at an auction
20 sale as we have described.

21 If the Court has any further questions, I would be
22 happy to answer them, as would my co-counsel.

23 THE COURT: All right. Anything else from
24 co-counsel on this matter?

25 MS. FLEISHMAN: No, Your Honor. Thank you.

1 THE COURT: Anything from the government?

2 MR. BIRKENHEIER: Yes, Your Honor. Your Honor,
3 the Securities and Exchange Commission supports the motion
4 of the receiver. We believe that the receiver and his
5 counsel have done a commendable job in first obtaining the
6 allowed claim given the circumstances in which they found
7 themselves.

8 And then moving to the question of reducing or
9 monetizing that claim now, the role of the receiver in any
10 case is not to speculate on the value of assets that can
11 increase or decrease, but to act prudently to preserve the
12 value that they have.

13 The truth is that this asset is not too different
14 from an investment in a stock, which can go up or can go
15 down. And by monetizing it now the receiver, we think, is
16 very prudently and wisely avoiding the risk of the downside,
17 the downside risk that they face, and have through the
18 stalking horse bid found a very adequate floor and in the
19 long run is the path to follow for the benefit of the
20 victims.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 Anything further?

24 MS. NORGARD: Nothing further from the receiver,
25 Your Honor.

1 THE COURT: I have reviewed everything. We've had
2 a number of conversations regarding this. You submitted an
3 *in camera* memorandum to the Court regarding this matter that
4 is under seal because it's privileged material. The Court
5 has an understanding of what is taking place and I will sign
6 the order.

7 MS. NORGDARD: Thank you, Your Honor.

8 THE COURT: Anything further on this matter?

9 MR. BIRKENHEIER: Not from the government, Your
10 Honor.

11 THE COURT: All right. Again, Mr. Receiver, I
12 want this wrapped up as quickly as possible.

13 MR. ZAYED: We're working on it.

14 THE COURT: We're running out of money.

15 MR. ZAYED: We're working on it.

16 THE COURT: Anything further?

17 MS. NORGDARD: No, Your Honor.

18 THE COURT: Thank you.

19 (Court adjourned at 11:35 a.m.)

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I, Lori A. Simpson, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/ Lori A. Simpson

Lori A. Simpson, RMR-CRR