

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE: : Case No. 04-32079 (RG)
:
NORVERGENCE, INC., : Newark, New Jersey
: November 9, 2004
Debtor. : 10:13 A.M.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ROSEMARY GAMBARDELLA
CHIEF JUDGE, UNITED STATES BANKRUPTCY COURT

APPEARANCES:

For the Trustee: Forman, Holt & Eliades
MICHAEL HOLT, ESQ.
218 Route 17 North
Rochelle Park, New Jersey 07662

IFC Credit Corp.: Platzer, Swergold, Karlin, Levine,
Goldberg & Jaslow
BY: EVAN SALAN, ESQ.
1065 Avenue of the Americas
New York, New York

U.S. Express: Drinker, Biddle & Reath, L.L.P.
Leasing BY: MICHAEL POMPEO, ESQ.
500 Campus Drive
Florham Park, New Jersey 07932

Audio Operator: Juan Filgueiras

Transcriber: Isabel E. Cole
COLE TRANSCRIPTION AND RECORDING SERVICE
Certified Court Transcribers
P.O. BOX 1216
OCEAN GATE, NEW JERSEY 08740-1216
1-877-245-4876

Proceedings were electronically recorded, transcript produced
by transcription.

APPEARANCES:

CIT: Reed Smith, L.L.P.
BY: DEBORAH A. REPEROWITZ, ESQ.
One Riverfront Plaza
Newark, New Jersey 07102

Ameritech Corp.: Kelly & Brennan, P.C.
d/b/a SBC Capital BY: ANDREW J. KELLY, ESQ.
Services, Fraud 1011 Highway 71 - Suite 200
Victims' Group Spring Lake, New Jersey 07762

Hall, Estill, Hardwick, Gable
Golden & Nelson
BY: STEVEN D. CUNDRA, ESQ.
1120 20th Street, N.W.
Suite 700 - North Building
Washington, D.C. 20036

TAA, Inc. and Pelas: Weir & Partners, L.P.
Capital Management, BY: KENNETH E. AARON, ESQ.
Inc. and SIGMUND FLECK, ESQ.
1339 Chestnut Street
Philadelphia, Pennsylvania

Lakeland Bank,: Peretore & Peretore
Leasing Technologies BY: ANDREW SIEGEL, ESQ.
International 191 Woodport Road
Sparta, New Jersey 07871

BB&T Leasing Corp.: Bressler, Amery & Ross, P.C.
BY: GEORGE HIRSCH, ESQ.
325 Columbia Turnpike
Florham Park, New Jersey 07932

Interchange Capital: Scarinci & Hollenbeck, L.L.C.
BY: ROBERT LEVY, ESQ.
1100 Valleybrook Avenue
Lyndhurst, New Jersey 07071

APPEARANCES:

Popular Leasing USA: Frey, Petrakis, Deeb, Blum,
OFC Capital and Briggs & Mitts, P.C.
Partners Equity BY: INEZ MARKOVICH, ESQ.
Capital, Alpha 10 Melrose Avenue - Suite 430
Financial, Sultan Cherry Hill, New Jersey 08003
Bank, Crown Bank,
Commerce Commercial
Leasing, Dolphin
Capital, Information
Leasing, Irvin Business
Liberated Bank, Sterling
Bank, Preferred Capital,
Subica Worthington

DeLage Landen McCarter & English
Financial Services, BY: JAMES E. JACOBUS, ESQ.
Inc. 100 Mulberry Street
Newark, New Jersey 07102

Shulte, Roth & Zabel
BY: ALLAN GLICKMAN, ESQ.
and FRANK LaSALLE, ESQ.
919 Third Avenue
New York City, New York 10022

Colloquy

4

1 THE COURT: Good morning. You may be seated please.

2 Are there any applications to the calendar?

3 MR. SALAN: Yes, Your Honor.

4 THE COURT: I'll take those first.

5 MR. SALAN: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. SALAN: My name is Evan Salan, Platzer,
8 Swergold, Karlin, Levine, Jaslow. I represent a company
9 called IFC Credit Corporation. We made a Motion for Relief
10 from the Stay. I'd like to withdraw that Motion.

11 THE COURT: What number is it on the calendar?

12 MR. SALAN: Number 40; and, also, in conjunction
13 with that Motion?

14 THE COURT: Number 40?

15 MR. SALAN: Yeah.

16 THE COURT: I'm sorry. This is a NorVergence
17 matter?

18 MR. SALAN: Yes.

19 THE COURT: Okay.

20 MR. SALAN: In conjunction with that Motion --

21 THE COURT: There was a letter. . .

22 Can we have that letter? Oh, here it is.

23 Counsel, you said there's a letter submitted
24 yesterday?

25 MR. SALAN: Yes. Yes.

1 THE COURT: Yes.

2 MR. SALAN: Yes, Your Honor.

3 THE COURT: And are there other parties appearing on
4 that matter; the IFC Credit Corporation Motion for Relief from
5 the stay?

6 MALE VOICE: Your Honor --

7 THE COURT: Why don't I have the parties in the --
8 how many parties are here in NorVergence. That's to the
9 chagrin of everyone else that's waiting behind you. Let me,
10 let me just indicate since you see there, some folks are here
11 on other matters, I may try to get some of the shorter matters
12 and some of these other folks out so they don't have to wait
13 behind you all; but, certainly for purposes of this request
14 for withdrawal of the Motion, we can either take it up now or,
15 Counsel, are you going to be appearing on the other matters?

16 MR. SALAN: No, Your Honor.

17 THE COURT: Okay. Well, there is a request to
18 withdraw the IFC Motion. I don't know if all counsel in
19 NorVergence want to give me your appearances, if you wish to
20 be heard on the that limited request at this time or not. Is
21 there an objection to that request, or parties that wish to be
22 heard on it?

23 MR. HOLT: Good morning, Your Honor. Michael Holt
24 on behalf of the Trustee.

25 I think that there's really only a limited number of

1 people who, who --

2 THE COURT: Have an interest in that Motion.

3 MR. HOLT: -- have an interest in that particular
4 Motion.

5 THE COURT: Well, why don't those parties at least
6 give me your appearances, then I'm going to take the rest of
7 the appearances later in the morning.

8 MR. KELLY: Good morning, Your Honor. Andrew Kelly,
9 Kelly & Brennan, P.C., along with Steve Cundra from Hall,
10 Estill out of Washington, D.C. We're on behalf of the
11 NorVergence Fraud Victims' Group., and we filed an Objection
12 to the Motion.

13 MR. FLECK: Good morning, Your Honor. Sigmund Fleck
14 from Weir & Partners, along with my partner Ken Aaron. We're
15 here on behalf of Pelas Capital Management, d/b/a/ Walker
16 Forest.

17 MR. BROOK: Good morning, Your Honor. Randall Brook
18 from the Federal Trade Commission. We filed an Objection as
19 well.

20 MR. BIEHL: Good morning, Your Honor. Frederick
21 Biehl. We filed an Objection on behalf of Soriano Henkle.

22 THE COURT: Other appearances? Well, do other
23 parties in the case want to give me your appearances, maybe
24 that's easier. Let me have all the appearances in
25 NorVergence, then we're gonna separate these hearings out.

Colloquy

7

1 MS. REPEROWITZ: Good morning, Your Honor. Deborah
2 Reperowitz from Reed Smith representing the CIT Companies;
3 and, Your Honor, on the IFC Motion --

4 THE COURT: Yes?

5 MS. REPEROWITZ: -- we did not file any pleadings.
6 We were under the impression it was either going to be
7 adjourned or withdrawn.

8 THE COURT: Very good. Thank you.

9 MS. REPEROWITZ: Thank you.

10 THE COURT: Well, let me have the other appearances
11 of the parties.

12 MR. HIRSCH: George Hirsch, Bressler, Amery & Ross,
13 for BB&T Leasing. We don't have an interest in the IFC
14 Motion.

15 MR. LEVY: Your Honor, my name is Robert Levy from
16 the law firm of Scarinci & Hollenbeck, representing
17 Interchange Capital. We don't have an interest with respect
18 to that Motion.

19 MR. SIEGEL: Good morning, Your Honor. Andrew
20 Siegel, Peretore & Peretore, for Lakeland Bank, and we have no
21 interest in that Motion either.

22 MR. GLICKMAN: Good morning, Your Honor. Allan
23 Glickman, Shulte, Roth & Zabel for DeLage Landen. I'm here
24 with Jim Jacobus from McCarter & English, also for DeLage
25 Landen. We don't have an interest in the IFC Motion.

1 MR. LaSALLE: I'm Frank LaSalle from Schultz, Roth &
2 Zabel, also here on behalf of DeLage.

3 THE COURT: Are there other parties appearing
4 generally in the NorVergence matter?

5 MS. MARKOVICH: Good morning, Your Honor. Inez
6 Markovich of Frey, Petrakis, Deeb, Blum, Briggs & Mitts,
7 appearing on behalf of Alpha Financial, OFC Capital, Sultan
8 Bank, Commerce Commercial Leasing, Crown Bank, Dolphin
9 Capital, Information Leasing Corporation, Irvin Business
10 Finance, Liberated Bank, Preferred Capital, Popular Leasing
11 USA, Inc., Sterling Bank and Subica Worthington.

12 I have, my clients have no interest in that Motion.

13 THE COURT: You're here on another matter, yes.

14 MS. MARKOVICH: Thank you.

15 THE COURT: Okay.

16 MR. POMPEO: Good morning, Your Honor. Michael
17 Pompeo, Drinker, Biddle & Reath, on behalf of U.S. Express
18 Leasing. We have no interest in that matter.

19 THE COURT: Are there other parties that want to
20 give their appearance at this time?

21 Okay. Well, the letter that I received yesterday
22 indicated that Counsel who had filed opposition had been
23 advised, I don't know at what time these parties were advised.
24 Obviously, some parties have come from maybe some distance.

25 MR. SALAN: I made the phone calls yesterday

1 afternoon, Your Honor.

2 THE COURT: Okay.

3 MR. SALAN: As soon as, as soon as the decision was
4 made to --

5 THE COURT: The parties that filed opposition did
6 they receive those messages?

7 MR. BIEHL: I received it when I arrived in Newark
8 from Seattle last night.

9 MR. SALAN: Your Honor, we didn't get their
10 opposition till yesterday morning, either.

11 THE COURT: Okay.

12 MR. BIEHL: We FedExed it to you.

13 THE COURT: Okay. Well, did other parties have
14 that, just for my own purposes, was there difficulty?

15 MR. CUNDRRA: I received a call from Mr. Salan last
16 night. We, we decided to appear, Your Honor, primarily
17 because while we have no objection to them withdrawing the
18 Stay Relief Motion, which I believe is their right, we do, we
19 have filed an adversary proceeding seeking injunctive relief
20 that's almost identical to what's in the Objections, an of
21 course, the withdrawal is without prejudice to that.

22 THE COURT: Okay. Well, let me hear from the
23 parties that have filed opposition who would wish to appear,
24 in terms of what is before the Court, which is not the Motion
25 for Relief from the Stay at this point, but the request for

1 leave to withdraw the Motion.

2 MR. HOLT: Judge, Michael Holt on behalf of the
3 Trustee.

4 The Trustee has no opposition, as Mr. Kelly said, to
5 withdrawal of the Motion, as long as it's done without
6 prejudice to other matters that are pending. The exact same
7 issues as to, with regard to the enforceability of the
8 agreements in questions are before the Court in several
9 different adversary proceedings, and my understanding is that
10 Mr. Salan's point was that it would be premature to request
11 that this Court decide on the merits of his application by way
12 of a Motion for Stay Relief when there are, in fact, adversary
13 proceedings in place, and proper procedural safeguards, as
14 within the context of the adversary proceedings started by Mr.
15 Kelly's client, whereby these issues can be fleshed out.

16 So the Trustee has no opposition to withdrawal the
17 Motion, as long as it's without prejudice to any rights that
18 the estate or the others might have in the property in
19 question.

20 THE COURT: So you would ask that some form of Order
21 be submitted that makes that clear?

22 MR. HOLT: I think it's simple enough to say that
23 it's withdrawn without prejudice, but that works for the
24 Trustee.

25 THE COURT: Thank you.

1 Let me hear from other parties that are here
2 appearing on this particular Motion, if you wish to add
3 anything.

4 MR. CUNDRA: Your Honor, Steven Cundra appearing on
5 behalf of the NorVergence Fraud Victims' Group.

6 THE COURT: Yes.

7 MR. CUNDRA: We filed an Objection on the 18th of
8 October, and we filed an adversary seeking Declaratory
9 Judgment and injunctive relief on the 1st of November; and, we
10 have no objection to withdrawing it without prejudice and
11 litigating it in the adversary.

12 THE COURT: Thank you, Counsel.

13 MR. BROOK: Randy Brook for the Federal Trade
14 Commission.

15 I, my only concern is that this not be filed in a
16 sort period and I'm back on a plane here for the same issues.
17 If this will be resolved, and I think it, I think there are
18 other contexts, there's the adversary. The Federal Trade
19 Commission has filed a District Court action against
20 NorVergence. There are issues the Trustee has until the end
21 of December in which to decide on whether to accept or reject
22 those contracts. I would --

23 THE COURT: Well, let me just say I would hope that
24 in the future you don't have to get on a plane without knowing
25 that the matter's going to be withdrawn or adjourned, as the

1 case may be. So I'd just ask that Counsel, you know, endeavor
2 to, or redouble their efforts to make sure that doesn't
3 happen. But, what is your request?

4 MR. BROOKS: My, my, there are several contexts in
5 which some of these issues may be decided.

6 THE COURT: Yes.

7 MR. BROOKS: One of which is the Trustee has an
8 extension to accept or reject the, the rental agreement --

9 THE COURT: Yes.

10 MR. BROOKS: -- and I think that's something that
11 should be decided before the relief from stay. So with the
12 understanding that IFC will not turn around and try to
13 leapfrog that we have no objection.

14 THE COURT: Are there other parties that want to be
15 heard on the request to allow for the withdrawal of the
16 Motion?

17 Well, what is IFC's intentions in that regard, as to
18 timing, at this point? If this withdrawal is without
19 prejudice, obviously it could then be refiled ostensibly or a
20 request for a new hearing date. I assume the pleadings are
21 already on the docket and the responses.

22 MR. SALAN: IFC's position, Your Honor, is that
23 these issues, these preference, these issues of alleged
24 preference defenses are going to be raised any way in the
25 adversary Complaints. These issues are not the type that can

1 be decided on a summary proceeding.

2 THE COURT: Okay. So it's not IFC's intention, at
3 this time, to be renewing this Motion prior to the
4 determination of those issues that have been articulated and
5 are pending in other actions or proceedings?

6 MR. SALAN: Yes, Your Honor.

7 THE COURT: Okay. Thank you.

8 I will -- is there anyone else that wants to be
9 heard on this limited issue?

10 I'm going to grant the request of IFC to withdraw
11 the Motion for relief from the stay. The withdrawal of the
12 Motion will be without prejudice. I would suggest that a
13 simple Order can be submitted that simply states that. No
14 more, no less. So the moving party can submit the Order.

15 MR. SALAN: Thank you, Your Honor.

16 THE COURT: Okay, and if the matter were to be
17 brought in the future, obviously given the papers and
18 pleadings that are already in the record you would ask for a
19 relisting of the matter, unless there were a need to refile
20 the Motion to update the Court on matters or events that have
21 occurred in, in the interim, if that becomes an issue.

22 Okay. Thank you.

23 (Adjourned - 10:25 a.m. - Court hears other matters
24 and proceedings then continue at 11:57 a.m. as follows:)

25 THE COURT: Okay. In the NorVergence matter, I

1 thank Counsel for their patience. This calendar was a little
2 too long. Counsel's already give me their appearances, so I'm
3 not going to burden -- unless there's other appearances
4 Counsel wish o put on the record? Okay.

5 Counsel, do you wish to be heard?

6 MR. AARON: May I rise and address the Court?

7 THE COURT: Yes.

8 MR. AARON: It still is morning, isn't it Your
9 Honor?

10 THE COURT: Yes.

11 MR. AARON: Just noon. Kenneth Aaron. Weir &
12 Partners on behalf of the Pelas Company, Walker Forest.

13 Your Honor, we've had discussions with the various
14 objecting and moving parties with regard to the subpoenas. As
15 the Court may be advised through the Clerk's office, it is our
16 intention in the near future to file adversary actions on
17 behalf of our various clients with this Court with regard to
18 the various parties that were subject to these subpoenas. In
19 light of that intention, which the Court has been advised
20 about, we have advised each of these parties of that intention
21 and we have agreed that we would withdraw, all parties would
22 withdraw all their various actions pending before this Court
23 without prejudice. So we would withdraw the subpoenas. They
24 will withdraw their various Motions to Quash and --

25 THE COURT: Some of them are joinders or separate

1 Motions.

2 MR. AARON: Yes.

3 THE COURT: There's a Cross-Motion to Compel, I
4 believe brought on behalf of your client.

5 MR. AARON: Yes.

6 THE COURT: But we can go over the list, but I think
7 I have a handle on all, all that's been submitted.

8 MR. AARON: Your Honor, you also have a matter
9 that's scheduled in a case called Insight Financial. I think
10 they filed an Objection and a Motion to Quash that's scheduled
11 for the 23rd on the calendar.

12 THE COURT: Now certain of these subpoenas were
13 issued out of different Bankruptcy Courts.

14 MR. AARON: Yes, and we have some matters we --

15 THE COURT: Which raise some other issues, but maybe
16 we won't need to get to them.

17 MR. AARON: They're all identical, but they are,
18 there are, there is an action in Iowa, Southern District of
19 Iowa. There's a case going on in the Southern District of
20 Illinois, and we will so advise those Courts also.

21 THE COURT: So you intend to advise those courts
22 separately?

23 MR. AARON: All those courts similarly. We also
24 understand with regard to the Frederick Christian Academy,
25 which is a party that had brought, filed two of these

1 subpoenas, which we do not represent, they will, they have one
2 hearing that is scheduled with regard to Information Leasing
3 Corp. that is also on your 23rd calendar, Your Honor.

4 THE COURT: What date, I'm sorry, November?

5 MR. AARON: These are November 23rd.

6 THE COURT: Yes.

7 MR. AARON: There's two matters.

8 THE COURT: There's other matters, yes.

9 MR. AARON: Similarly related matters, and those
10 will be, we'll come, talk to those Counsel and seek to have
11 the same accommodations with them.

12 THE COURT: As of now, those matters are, are still
13 on the calendar, but the intention is to reach out to those
14 parties to see if --

15 MR. AARON: Yes.

16 THE COURT: -- similar agreements could be reached.
17 I assume those parties would then advise the Court, and advise
18 other parties, I would hope well in advance of the 23rd.

19 MR. AARON: Yes.

20 THE COURT: So maybe we could fix some dates by
21 which both the Court and the parties will be advised, so
22 there's no need --

23 MR. AARON: We will do that upon returning.

24 THE COURT: I'm sorry?

25 MR. AARON: We are trying to do that in the next two

1 days and advise all of them, and also advise the --

2 THE COURT: But I'd like to just set a time so
3 parties know whether those matters are going to be on the
4 calendar or going to be similarly withdrawn, and you can just
5 be the messenger, so to speak.

6 MR. AARON: I will do that, and Your Honor, I'll let
7 you know by the end of the week.

8 THE COURT: If I can suggest perhaps by --

9 MR. AARON: I would suggest by Friday we should be
10 able to advise the Court.

11 THE COURT: Well, that's fine. I was gonna -- if
12 not by Friday, by the 12th of November you believe?

13 MR. AARON: Absolutely.

14 THE COURT: If not, certainly no later than perhaps
15 November 17th.

16 MR. AARON: We will --

17 THE COURT: Yeah, the parties and everyone will be
18 advised.

19 MR. AARON: We will try to do that expeditiously.

20 THE COURT: And we can mark the calendars.

21 MR. AARON: Okay. And that's where we are, Your
22 Honor. We appreciate the Court's indulgence. We anticipate
23 the --

24 THE COURT: Well, I enjoyed the reading material.

25 MR. AARON: Well, it was, it was an educational

1 experience with regard to the law, subpoenas and, and 2004,
2 and --

3 THE COURT: I, I will certainly, happily accept this
4 resolution. I believe it's an appropriate one.

5 MR. AARON: Thank you.

6 THE COURT: Do other parties -- will this be, this
7 will be simply resolved by a withdrawal, maybe would a
8 withdrawal on the record suffice or would Counsel like to have
9 some kind of a short Order that just cleans it up. It needn't
10 be a very controversial one. Simply reflect the withdrawal,
11 which I, you know.

12 MR. AARON: Can I submit for everyone, or does
13 everyone want to file their own?

14 THE COURT: I would prefer it be one Order that
15 captures the various, the Motion, well there's several
16 Motions, joinders. It will just refer to those matters that
17 were all brought together by the original Motion of CIT Group.

18 Well, let me hear from other -- thank you, Counsel.
19 Let me hear from other parties. Thank you, Mr. Aaron.

20 MS. REPEROWITZ: Your Honor, I just wanted to say
21 that obviously all of, we reserve all of CIT's rights with
22 respect to everything. The withdrawal is without prejudice to
23 our rights, and we understand that their intention is to file
24 adversary proceedings here, but we are in no way consenting to
25 the filing of those actions or to the jurisdiction of this

1 Court over this action, et cetera.

2 THE COURT: Right. And I assume the Order would
3 have some language that indicates it's without prejudice, and
4 if the parties also want to indicate in there that all parties
5 are reserving their rights. You know, there's boilerplate
6 language could be put in the Order.

7 MR. HIRSCH: Your Honor, I would like to have it
8 clear on the record that the withdrawal is effective
9 immediately.

10 Can you confirm that, Counsel?

11 THE COURT: Yes.

12 MR. AARON: Your Honor, if the Court would so Order
13 that, we --

14 THE COURT: Yeah, I will so order it.

15 MR. HIRSCH: Okay, and that includes my client, the
16 subpoena directed to my client, BB&T.

17 MR. AARON: I assume BB&T filed an Objection?

18 MR. HIRSCH: Yes, we filed a Motion.

19 MR. AARON: As to all, all --

20 MR. HIRSCH: Finally, I just want to not that the,
21 that the withdrawal is unilateral and the only agreement
22 between the parties is that the withdrawal, pending withdrawal
23 of the Motions that follows, would be without prejudice to
24 everybody's rights. That is the only agreement that was
25 reached.

1 THE COURT: That's what I understood the application
2 to be, and that's what's been approved and would be granted.

3 Thank you. But other Counsel can certainly be
4 heard. They've been here all morning.

5 MR. HIRSCH: Just a clarification. It's my
6 understanding speaking with Mr. Fleck that it's all the
7 subpoenas that were issued by Mr. Fleck are being withdrawn?

8 MR. FLECK: That's correct. The only complicating
9 factor here is that there are Counsel that are not present
10 here today that are present in the, in the remote
11 jurisdictions --

12 THE COURT: Yes.

13 MR. FLECK: -- in the remote Districts, Illinois and
14 Iowa, and we'll need to get in touch with them to make sure
15 that they're all on board with what we discussed and agreed to
16 here today. I don't see that that's going to be --

17 MR. HIRSCH: With regard to GE and ABB, we agree
18 that those are withdrawn.

19 MR. FLECK: That's correct.

20 MS. REPEROWITZ: I'm sorry. Now, I'm a little
21 confused because CIT had only one subpoena issued out of this
22 Bankruptcy Court, one out of Massachusetts and one out of
23 Pennsylvania.

24 MR. HIRSCH: They're all withdrawn.

25 MS. Reperowitz: They're all withdrawn.

1 MR. HIRSCH: That's right. There are, there are
2 other lawyers for other clients --

3 MS. REPEROWITZ: Understood now.

4 MR. HIRSCH: -- other entities.

5 MS. REPEROWITZ: Understood. Such as the hearings
6 that are on for the 23rd here that don't involve --

7 THE COURT: Those don't involve any of the Objectors
8 today --

9 MR. HIRSCH: That's correct, Your Honor.

10 THE COURT: -- or the Respondents today.

11 MR. HIRSCH: At least not in this court. There are
12 hearings in Illinois later today, but the same resolution
13 is. . .

14 THE COURT: Okay. Thank you.

15 Is there any other, are there any other parties that
16 want to either have that clarified or put any other statements
17 on the record?

18 MS. MARKOVICH: I would like to clarify a couple of
19 matters for the record.

20 Your Honor, as you're aware, our firm represents 12
21 of the leasing companies and banks. Some of those entities
22 were similarly served by subpoenas by the firm of Weir &
23 Partners, in connection with this bankruptcy case, but on
24 behalf of different Bankruptcy or District Courts, and which
25 is what I want to clarify for the record that those subpoenas

1 are similarly being withdrawn effective as of today, as, just
2 as the subpoenas that were issued on behalf of this Bankruptcy
3 Court.

4 THE COURT: I think Counsel's referring to the fact
5 that some of the subpoenas were, that were the subject of
6 these matters were issued out of other bankruptcy, in other
7 districts.

8 MS. MARKOVICH: That is correct, Your Honor.

9 MR. AARON: Your Honor, maybe, maybe I -- there are,
10 as Your Honor's aware, we filed subpoenas out of the
11 jurisdictions where those parties --

12 THE COURT: Yes.

13 MR. AARON: -- were located.

14 THE COURT: Yes.

15 MR. AARON: Many of these parties chose to bring
16 these matters before Your Honor.

17 THE COURT: Yes.

18 MR. AARON: And to the extent these, they were
19 represented by these lawyers and the parties that are here,
20 we're not making a distinction between those, whether they
21 were filed out of the District Court of Massachusetts or they
22 were filed out of this court. To the extent that they filed
23 Motions to Quash or otherwise in this Court, we are so
24 withdrawing.

25 Whether they are out of Massachusetts or Iowa or

1 wherever, we just, we just don't take, make the assumption
2 that we can have Your Honor enter an Order that would effect
3 the jurisdiction of the Southern District of Iowa.

4 THE COURT: No, nor do I intend to do that. The
5 parties can still spread an agreement on the record to the
6 extent that they have to implement these other agreements
7 before other Districts, that they're intention is to so move,
8 whether it be in this Court in this District or in the
9 appropriate Districts in Massachusetts or other jurisdictions.
10 No, I am not going to enter Orders that impeded on the
11 jurisdiction of my colleagues.

12 MR. AARON: I appreciate that, Your Honor. But that
13 is --

14 THE COURT: But the agreements do reach not only the
15 subpoenas issued out of this Court but out of other similarly
16 situated courts.

17 MR. AARON: As regard to those parties that brought
18 those actions in this Court?

19 THE COURT: I think that's what Counsel wanted
20 clarification on.

21 MR. AARON: Thank you.

22 THE COURT: Thank you very much. I'll -- and there
23 will be an appropriate Order that reflects the Court's
24 acceptance of the withdrawal of these various Motions without
25 prejudice. Thank you.

1 There was also, I just wanted, there was another
2 matter on the calendar which involved a Motion to Compel
3 Rejection of Lease or Executory Contract brought by New York
4 Store Fixture Company. There had been opposition, and I
5 believe, we were advised by Counsel for Irwin Business Finance
6 Corporation that the matter had been settled. Are you aware
7 of that?

8 MR. HOLT: Judge, the Trustee didn't file any
9 opposition to that Motion. It, it involved a Motion by a
10 former customer of the Debtor, New York Fixture Company, to
11 compel the rejection of a lease, which lease had been assigned
12 pre-petition by the Debtor, and our position was that while
13 there's no, the estate has no interest in that lease to either
14 assume or reject, which was the opposition that was filed by
15 the assignee, I was not told that a Consent Order was gonna be
16 submitted, but it really, the estate --

17 THE COURT: I think a letter just went out
18 yesterday. So you may have just have received it. Mr.
19 Forman, who is here, appears to be copied on the letter from
20 Mr. Gruen. I'll show you the letter.

21 It indicates that a Consent Order will be submitted,
22 in any case. I assume the Trustee will be copied on any such
23 Consent Order for your review.

24 MR. HOLT: Yeah, that's fine, Your Honor. The
25 estate, as I said, the estate really has no interest in the

1 lease in question and doesn't take a position regarding the
2 issue.

3 THE COURT: Okay. Thank you, all. Have a good day.
4 (Adjourned 12:09 p.m.)

I N D E X

Motion by Mr. Salan	9	Granted: 13
Response by Mr. Holt	10	
Response by Mr. Cundra	11	
Response by Mr. Brooks	11	
Response by Mr. Salan	12	

CERTIFICATION:

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Isabel E. Cole
Isabel E. Cole
COLE TRANSCRIPTION AND RECORDING SERVICE

Dated: December 18, 2004