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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

TRIGON AP92-1050, 1052, 1053, 1274

Proceedings held before the HONORABLE MICHAEL J. KAPLAN, United States Bankruptcy Judge, taken in Part I of the United States Courthouse, 68 Court Street, Buffalo, New York, on December 1, 1993, commencing at 3:30 P.M.

APPEARANCES:

HODGSON, RUSS, ANDREWS,
WOODS & GOODYEAR,
BY: JOHN F. DONOGHER, ESQ.,
1800 One M&T Plaza,
Buffalo, New York 14203,
Appearing for Durell Industries.

DONALD P. SHELDON, ESQ.,
200 Olympic Towers,
Buffalo, New York 14202,
Appearing for Mahoney, Berg, Cornell.

DAMON & MOREY,
BY: WILLIAM F. SAVINO, ESQ.,
1000 Cathedral Place,
Buffalo, New York 14202,
Appearing for Steven Berg.

PHILLIPS, LYTLE, HITCHCOCK,
BLAINE & HUBER,
BY: JOHN HURLEY, ESQ.,
3400 Marine Midland Center,
Buffalo, New York 14203,
Appearing for Trustee.

PRESENT:

LINDA S. MULDOWNEY,
Court Reporter.

THE COURT: I understand that we're still waiting for Mr. Savino. I'll get started. Mr. Donogher, you're a new comer.

MR. DONOGHER: Mr. Graber sends his regrets, he took ill this afternoon. Miss Storie is in Rochester. We represent Durell Independent Industries who I understand served an objection to the proposed settlement and was not really part of the decision making process that we're here on.

THE COURT: That's right. All right. Is that working? Off the record.

(Discussion off the record.)

THE COURT: We're trying to make a tape back up of this with the assistance of transcription so I don't have to speak too slowly. This is -- the Court has considered the testimony offered in the matter -- in this matter in the Trigon proceedings and have considered the record, the arguments of counsel and the applicable law and makes the following findings and determination.

MR. SAVINO: My apologies, your Honor.

THE COURT: That's all right, Mr. Savino. I'm just about to begin. Let the record show that Mr. Savino is present. Were the other appearances

noted? Why don't you note your appearances.

MR. SHELDON: Donald B. Sheldon, attorney for Mahoney, Berg and Cornell.

MR. HURLEY: John Hurley appearing on behalf of William Lawson, Trustee.

MR. SAVINO: William Savino for Steven Berg and his two daughters.

MR. DONOGHER: John Donogher on behalf of Durell Industries.

THE COURT: As I was just indicating, after having considered all arguments, evidence, testimony and the entire record in this proceeding, the Court renders the following decision, makes the following findings and conclusions of law in accordance with the rules.

Now a Trustee in bankruptcy typically enters agreements to sell assets or to settle disputes in this court and they do so typically, subject to approval of the Bankruptcy Court, close quote. Pursuant to Bankruptcy Rule 9019, as to compromises and Bankruptcy Rule 2002 as to notices, notice goes out to creditors and if creditors object then either the Trustee withdraws his or her proposal or the Court rules. Typically the Court favors the business judgment of the Trustee over the objection of the creditor. Here the Trustee agreed to

settle claims against the debtor's principals and others for $175,000 which the Trustee received. That settlement was subject to this Court's approval. The Trustee effectively however, then subsequently withdrew his offer. Unlike the thousands upon thousands of similar previous instances in which settlements were withdrawn from by a Trustee and the other party acceded to that withdrawal and the lack of Court approval, the Defendants here assert that the Trustee must be held to the agreement and that is what is before the Court. This decision is and I regret to some extent the need for this, this decision is going to be lengthy, and will have an unusual structure because the issues before the Court arise out of interactions that occur constantly in this Court that are totally appropriate in substance, that are often sloppily handled in form, and thus require very careful explanation in this unusual instance in which it is the very sloppiness that has been turned upon itself and has been -- and raises the issues before the Court.

This Court will first note what all parties seem to agree is not before the Court and then the Court will focus upon some mischaracterizations that have been promoted by each side in these proceedings. These mischaracterizations involve the appropriateness of certain relationships between a Chapter 7 Trustee and

creditors. The appropriateness of considering certain kinds of evidence and inquiries such as this. The role of the judge as tryer of fact in such cases. The procedures followed by Chapter 7 Trustees in attempting settlements of controversies, and their procedures in enlisting the support of creditors in those efforts. And also raised is the ~~weight~~ way a Trustee performs his or her duties in the context of dealing with insiders and particularly the role of constructive notice or knowledge and inquiry notice with regard to the Trustee's dealings with insiders. Eventually and finally this decision will address the matter actually at hand and rule ultimately in the Trustee's favor on the matter at hand.

It is important first to note that we are not here to determine what constitutes grounds for relief from a settlement. Everyone here recognizes that when a Bankruptcy Trustee seeks to settle a controversy he or she needs Court approval and that Court approval requires notice to creditors and an opportunity for creditors to be heard. Initially, the Defendants here implied that creditors opposing the settlement could be heard only in Court. In other words, they argued that the Trustee must support the settlement and that the Court must probe the bonafides of the creditor's opposition without benefit of the Trustee's investigative efforts and judgment. The

Court rejected that position in its earlier decision in this matter. The Court declared that what one buys when one settles with a Chapter 7 Trustee on terms that are quote, subject to approval of the Court, close quote, is a commitment from the Trustee to move the compromise along in good faith toward approval, and also his or her commitment to be governed only by, one, good faith in their dealings with the other party to the settlement, and two, by the duty to act in furtherance of his or her trust which means for the benefit of creditors.

As Council for some of the Defendants stated at argument, after the settlement there is to be, quote, no ulterior motive, close quote, and no effort to gain, quote, special advantage, close quote, in the Trustee's actions and that is what is before the Court.

At argument Defendant's counsel argued that the Trustee here did not exercise independent judgment and therefore did not act in good faith. The suggestion also is that if the alliance -- that if there is an alliance between the Trustee and particular creditors who have an ax to grind against the principal insiders, then the Trustee somehow is also not faithful to his trust as well as not exercising good faith. The Court must clearly state a number of things that make the bankruptcy process work but that are typically unsaid and that are pertinent

to these arguments.

A, the Trustee's feduciary duty is to creditors, particularly unsecured creditors and not to the debtor's principals. Whatever duty he owes the principals in this case arises out of that settlement agreement, out of the tentative settlement that is at issue here and does not arise out of any statutory duty of the Trustee towards the principals. B, the offers by creditors to assure the Trustee that he or his counsel would receive their fees for accomplishing tasks that are most expeditiously performed in bankruptcy process are perfectly proper offers so long as it is understood that the offer is an offer to the estate not the Trustee personally, and that the offer is subject to Court approval both as to the amount to be compensated to the estate and the amount which is to be allowed to the Trustee and his counsel. Very often the task a Trustee is asked by creditors to perform are tasks that are most effectively and efficiently performed in Bankruptcy Court. We have seen this in selling collateral, settling title to assets, liquidating past, present or future claims. We have seen it as to personal injury claims as an expeditious way of resolving asbestosis claims, medical injury claims arising out of the use of the Delcon Shield and other processes for which the bankruptcy process provides an

expeditious way of dealing with disputes. And so long as the creditors and as long as it is understood that the contributions that a creditor is going to make towards achieving those tasks that are most effectively and efficiently performed in Bankruptcy Court is a proposal to the estate, there's absolutely nothing improper.

Now among experienced bankruptcy counsel like Mr. Lawson, Miss Storie, Mr. Hurley, Mr. Graber, Mr. Sheldon and Mr. Savino for that matter, and when I say for tht matter it's because the last two are on the opposite side of the argument and not to diminish that they are extremely experienced bankruptcy counsel. That basic truth is understood. That the proposal is to make a contribution to the estate and that it will be approved by the Court and that any allowance to the Trustee or counsel will be approved by the Court.

In exhibits like Respondent's number 7, 8, 12, 13 and 15, the sloppiness of which the Court speaks is evident. Because there was insufficient, if any, written acknowledgement of that underlying supposition that is always at work in these bankruptcy cases, that the offer is to the estate. And that it will be approved in both regards by the Court. As I will explain later however, I find that the absence of placing that at the forefront is not fatal to the Trustee's actions here.

C, cooperation between the Trustee and creditors is not only not inappropriate, but it is to be encouraged. It was clear in the correspondence that the note for example, was to be recovered for the benefit of the estate. If the recovery of the note should also benefit Durell then even the principals of the debtor would likely not care and not complain were it not for the fact that Durell was engaged in efforts independent of the note that were antagonistic to the principals. At its most base level the present dispute is one in which the principals of a bankrupt corporation are at odds with entities and persons who believe that they are owed substantial sums, they don't like one another. That the principals feel beset by the fact that the Trustee who enjoys special status under the Bankruptcy Code is allied with enemies against them, that is the bankruptcy process. The basest characterization of the complex matter before the Court is that the Court must insure that the process is not abused. That does not mean quote, fairness, close quote, to the principals in a balancing sense. The principals controlled a corporation that ended up in bankruptcy with some major claims unpaid. Their activities are subject to close scrutiny. The Court must insure only that the process of scrutiny proceeds in accordance with law and within the bounds of

propriety. It is because of the sloppiness that the Defendants feel themselves aggrieved and that the significance of Respondent's Exhibit number 34 must be diminished, that is the letter by Mr. Berg of September 30, 1992 to Mr. Lawson. In its earlier decision in this case this Court did not hold that the Trustee had no right or authority to enter into a settlement agreement until the Court approved his proposal. The Court could have held that. If it had, then there would be, arguably be no detrimental reliance, no substantial performance, nothing before the Court, none of the things that are said to be represented by Respondent's exhibit number 34.

The supposition -- there is a supposition however that drives the bankruptcy process that there really is nothing agreed unless and until the Court approves it. That supposition is what makes sales, private sales by bankruptcy Trustees possible, abandonments and settlements. That is the supposition that is being called into question here and that the Court ruled on earlier, holding that a settlement agreement with the principals is not nothing, it does buy them something. And that is what is to be explored. There would be no need for this inquiry if a better practice had been followed, and this is another aspect of the sloppiness that has caused this matter to be brought to this Court.

The Court is going to ask the United States Trustee to encourage the Chapter 7 Trustees to utilize what the Court considers a better practice in the matter of compromising disputes. The better practice would be for the Trustee to seek authority to enter the settlement before he in fact enters it, as opposed to entering the settlement, quote, subject to Court approval, close quote. In my view the Trustee should be informing the other party to the dispute that he or she will propose the compromise to creditors and that he or she will enter the settlement after creditors have had an opportunity to comment and only if no objections are received, only if no adverse information is produced and only if the Court approves. It is because of what I view as the better practice, that I indicated to counsel for the Trustee that I did not agree with him, that my ruling regarding discovery of the correspondence between him and the Trustee would pose problems in other cases. This discovery problem will arise only in instances in which the Trustee has entered into a compromise subject to Court approval, then elects not to recommend the proposal to the Court and the other party then insists upon the right to see the information upon which the Trustee's based his decision. Although my ruling with the documents were not protected by the work product

privilege would be no different in other settings, I cannot envision other inquiries in which such correspondence would be relevant and it is unlikely that the type of discovery dispute involved here will ever again arise if what I believe to be the better practice regarding settlement is followed.

Now we begin to address the merits. The Defendant's motion to dismiss the complaints in these adversary proceedings is denied, and it is found that the Trustee has not inappropriately withdrawn from the settlement and that he is not bound thereby. The motion to dismiss what was premised on the Defendant's belief that these proceedings had been fully and finally settled or foreclosed by the Trustee's receipt and deposit of $175,000. In accord with the -- a settlement agreement that was made subject to approval of this Court but which the Trustee elected not to bring before the Court for approval. Rather he adjourned the hearing on approval of the settlement from time to time, eventually amended the complaints against certain Defendants and filed a further complaint against certain of them and against others. In its earlier decision the Court could have directed that the compromise be brought before the Court if the Defendant so wished, and let the Trustee oppose it. But the Court instead offered of the Defendants the right to

see on the record the information that caused the Trustee to decide not to propose the settlement to the Court. The Defendants decided to exercise that right and to the best of the Court's knowledge they did so of their own free will. The Court did not direct that all of the bases of the Trustee's decision be spread upon the public record, it did not direct that the Trustee obtain Court approval to withdraw from the compromise. This brings the Court to the next mischaracterization that needs to be addressed.

Throughout the evidentiary hearing in this matter and even in a November 4, 1993 letter from one of the Defendant's counsel to the Court after the close of evidence, the Defendants assert that the Court's evidentiary rulings permitting the various documents alleged by the Trustee to have influenced his decision were erroneous. In the recent letter counsel argues that quote, the Court's allowing the Trustee to use exhibits that are grossly violative of the Federal Rules of Evidence invites further use in the future upon the same as well as other specious grounds, close quote. He states that quote, admission of improper evidence taints all further proceedings in this matter and acts as a virus in the official record affecting negatively the Defendant's chances of fair adjudication of the Trustee's

claims against them, close quote. That letter asked only that the letter be included in the Court's record of this evidentiary hearing for the purposes of clarification. It shall be so included and the Court has ordered it to be docketed. The Court again now as it has throughout this proceeding, emphasizes that the truth or falsity of any allegations made against any of the Defendants in any exhibit offered by the Trustee has not been at issue or adjudicated in anything that has occurred in this courtroom to date. They remain allegations only. Federal Rule of Evidence Rule 801(c) states quote, hearsay is a statement, comma, other than one made by the Declarant while testifying at the trial or hearing, comma, offered in evidence to prove the truth of the matter asserted, close quote. The truth of what Mr. Measer, that's M-E-A-S-E-R, or Mr. Jackson or Ms. Storie or Mr. Hurley or Mr. March or anyone else had to say about any of the Defendants is not at issue here. Has not been at issue in the matter currently before the Bar. As the advisory committee to the Federal Rules of Evidence stated in 1972, quote, if the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted and the statement is not hearsay, period, close quote. That committee cited the case of Emich,

E-M-I-C-H, Motors found at 181 Federal 2nd page 70, it's a 1950 case from the 7th Circuit and it was cited as an example of the proposition that I just quoted. There, General Motors had been held liable for treble damages for an alleged conspiracy to restrain trade arising out of GM's cancellation of various dealers' franchise contracts. GM had at trial, offered sixty complaint letters from customers to prove that the cancellations were based on the complaint letters. The trial court rejected those letters as hearsay except those whose, quote, writers could be brought in to identify them, period, close quote. The Circuit reversed saying, quote, we agree with the Defendants that the complaint letters received by them should have been admitted, not for their testimonial use to prove the facts contained therein, but to show the information on which they acted. This the Court said is a well established exception, the Court said to the hearsay rule, close quote. In other words, here, where it is Mr. Lawson's state of mind that is at issue, the evidence is not hearsay at all. Even if Mr. Jackson's state of mind were at issue, his out of court statements though hearsay, would be admissible to show his state of mind, but they would not be admissible to explain Mr. Jackson's state of mind. For that proposition you may analogize the matter to the Second

Circuit Court of Appeals' decision in Greater New York Live Poultry at 47 Federal 2nd 156. The Defendants vigorously complain of the fact that these unproven allegations have been spread upon the public record that they had hoped to avoid. If that is so, to a great extent that is a self inflicted wound. In preparation of this evidentiary hearing the Defendants availed themselves of the subpoena powers of the Court. They were free at all times prior to this evidentiary hearing and at all times during this evidentiary hearing to see what they wanted to see and to simply withdraw their motion. I did not rule that the Trustee needed Court approval to withdraw from the settlement. The Defendants themselves put the Trustee to his proofs. Consequently the Court has seen no due process infirmity in the Court's rulings.

As to the Defendant's counsel's assertions that the admitted evidence negatively affects the Defendant's chances for a fair adjudication of Trustee's claims against them, the Court can only assure the Defendants that the Court is not an impressionable jury. Day in and day out, from morning till night, this Court deals with unproven allegations and treats them for exactly that. We make evidentiary rulings everyday. Examining closely and then excluding evidence and yet upon that very

evidence we are the finders of the fact. As expressed at trial, that is what judges are paid to do. The allegations here are by no means unusual and I am not prejudiced by them against the Defendant. That judges are not so prejudiced is recognized in such rules as Evidence Rules 1101(d)(1) which permits a judge to examine any and all evidence not bound by the rules of evidence when the Court is called upon to make preliminary rulings as to the admissibilty of evidence.

The case books are full of actions against a debtor controlling persons by bankruptcy Trustees. On the one extreme cases involve unscrupulous but clever insiders of the bankrupt business whose cooperation might be necessary for the Trustees to know all the truth regarding the financial affairs of the business and those might be instances in which principals deceive or pressure the Trustee into releases of their personal liability at relatively modest cost. At the other extreme, irate creditors with no one to blame but themselves for their losses manipulate the Trustee to extort money from whatever insiders are bound by statute to cooperate with the Trustee. As indicated above not a single allegation or accusation against any Defendant in this case has been proven or disproven. When the truth becomes record if ever, it might prove the circumstances

involved in these adversary proceedings to lay somewhere along this spectrum. Currently at Bar is only the question of whether it lies at the latter end of that spectrum. The manipulative end at which the insiders are the victims, did the victims receive all they were entitled to under their agreement with the Trustee, that he act in good faith toward them in moving the compromise toward approval while at the same time being faithful to his trust. The Defendants placed focus upon the question of whether the information relied upon by the Trustee in his determination not to propose the compromise to the Court was in fact new evidence. That might well bear on good faith. That well placed focus has however decayed to an effort to inquire of what could have been found among the information possessed by the Trustee prior to the compromise. That inquiry on the other hand, turns out to be misplaced. The Defendants utilized notions of constructive notice, inquiry notice and constructive knowledge in an effort to establish that the information which came to the Trustee after notice of his intentions was sent to creditors was in fact not new information that it could be found among the information arrayed before him prior to the settlement. Principals of constructive this or inquiry that are of dubious applicability to the inquiry here which is simply whether

the Trustee acted in good faith after he entered into the settlement agreement. Constructive notice and inquiry notice are useful in certain court contexts, contract contexts and some statutory contexts. Good faith on the other hand, deals with genuine knowledge and motivation not with what could have been discovered or what might have escaped one's attention earlier. Nonetheless, let us assume for the sake of argument that the information available to the Trustee prior to the settlement bears circumstantially on the issues at hand and at least on the Trustee's credibility. Even then we must be careful not to expand those notions of constructive and inquiry notice beyond their useful meaning or beyond their well understood role in jurisprudence. Constructive notice, for example, has been described as notice which is presumed because of the fact that a person has knowledge of certain facts which should impart to him or lead him to knowledge of the ultimate fact, close quote. You'll find that at 58 AmJur 2nd, the article on notice, section 9. The important thing to focus upon is the notion of an ultimate fact or the existence of a particular fact in question in a given controversy. The Defendants believe that the Trustee knew prior to the settlement of all of the alleged write-offs, advances and other transactions, that he after the settlement made the subject of his

amended complaint and new complaint. Perhaps those write-offs and other transactions had appeared in documents brought to the Trustee's attention. But the ultimate fact, the real issue that is to be adjudicated ultimately in these adversary proceedings is whether there was anything improper in those write-offs and transactions and the real issue, the ultimate fact at least for the present purposes is whether they were at least questionable. Similarly, as to the doctrine of the inquiry notice, it has been said that quote, although one who has notice of facts sufficient to put him on inquiry is deemed to have notice of all facts which reasonable inquiry would disclose, this rule does not impute notice of every conceivable fact, comma, however remote, comma, that could be learned from inquiry, close quote. You'll find that in the same AmJur article on notice at section 16. It's further said there that the rule of regarding inquiry notice only applies when the means of knowledge are at hand and the party charged with notice has a duty to pursue an inquiry.

A Chapter 7 Trustee in what could well be a no asset case not does not have the duty to employ accountants and other experts to examine each transaction with skepticism and a presumption of irregularity. The investigation contemplated by 11 U.S.C. 704 is one which requires the

Trustee to employ sound judgment, not one which requires him to exhaust all possibilities of improper conduct by a debtor or its principals. A concientious Chapter 7 Trustee is not charged with knowledge of the potential impropriety of all transactions that are duly recorded in the books and records of the debtor, where such impropriety is not suggested by those books or records or by other information than before the Trustee.

The debtors make much of the fact that the preliminary general ledger of April 20, 1990 which is Trustee's Exhibit 1, antedated the alleged evidence of alleged instructions regarding changes. Respondent's exhibits 38 and 39 dated May 11, 1990 and May 16, 1990, and antedated the alleged source of Mr. Measer's alleged conclusions contained in Trustee's Exhibit 4 that were based on a May 2nd 1990 general ledger history. The Defendants argue that the Trustee had the quote, before, hyphen, the, hyphen, alleged changes, close quote, picture not an, quote, after hyphen, the, hyphen, alleged changes, close quote, picture, and that thus the information alleged regarding changes was irrelevant to the Trustee's proper good faith concerns. This argument fails for at least one simple reason. It is not the content of the alleged instructions that is pertinent to the current inquiry, it's the existence of change

instructions that was important.

The Trustee did act in good faith and in furtherance of his trust and did exercise independent judgment when he elected not to recommend the settlement to the Court for approval. The Court finds that in totality sufficient grounds existed for the Trustee to make that decision when after the Trustee was told that Jackson had made allegations, allegations that are still unproven, that Mr. Berg had directed changes to the books and records, not just of one of the debtor's subsidiaries, but to the books and records of the debtor, and after the Trustee engaged in consultation with a certified public accountant who assessed the possible significance of those allegations and after the Trustee had discussions with Mr. Berg, and discussions also with Mr. Jackson, the Trustee consulted with a major beneficiary of the trust which he was administering, Sovran Bank, that's S-O-V-R-A-N, and learned that -- was told that Sovran would oppose the compromise on the basis of those allegations and investigations. Prior to those events which were a response to the Trustee's appropriate notice of intent under the pertinent bankruptcy rules, the Trustee was justified in premising his actions upon an assumption that the books and records that formed the foundation of the compromise. Prior to those events he

had been justified in premising his actions on an assumption that the books and records that formed the foundation of the compromise were all that they were and that those books and records were not just accurate, but that they reflected appropriate and proper management decisions. Assuming for the sake of argument that the preliminary general ledger that Mr. Lawson examined reflected all the write-offs, advances and other transactions challenged by Jackson, the Trustee prior to the notice and the responses thereto had no operative reason to consider any of these transactions to be questionable until Jackson, a former employee of a subsidiary of the debtor, labeled them as questionable. I stress the word operative. Trustees are not thrilled to learn of new alleys that they are duty bound to explore. They certainly ought not to have to presume such alleys to exist, but once a major creditor claims to give credence to an allegation then the Trustee well serves his trust and does not violate his duty towards the Defendants to reconsider his position. Thus, even if those transactions were duly disclosed in the documents and even if the Court restates its holding in terms of new evidence or elements I find that the new elements injected into the relationship between the Trustee and the Defendants as a consequence of the responses to the

notice required by the rules were one, that some transactions that might be duly reflected on the Trigon books are alleged by certain parties who claim inside information, to be challengeable transactions and the fact that those persons who make those claims may have inappropriate axes to grind, the Court considers to be irrelevant for current purposes. Number two, that Mr. Berg did not deny directing some changes to be made in the developments of the general ledger from a preliminary ledger, but the Trustee then found Mr. Berg's explanations to be unconvincing. Number three, that some changes allegedly directed to be made were purportedly declared by a certified public accountant hired by the Trustee to be quote, outside ordinary accounting principals, close quote, and to be significant in terms of the financial affairs of the debtor that would be represented by the books and records affected thereby. And number four, the Trustee concluded that Sovran was convinced by these unproven allegations that the compromise was not in Sovran's best interest and that the compromise would be opposed by Sovran on that basis. The argument that the Defendants gave the Trustee, the fore picture, before the settlement, is unavailing since he had no reason to know there was an after picture. Even if it turns out that the after picture adds nothing and

that the Defendants must prevail on the merits of the complaints and the Trustee will have lost the settlement monies currently on the table, the Trustee was nonetheless justified in withdrawing from the settlement. The Defendant's motion to dismiss is denied. As to the Defendant's motion for more definite statement in the adversary proceeding number -- the one against -- I believe it was against the Bishopsgate -- the Defendant's motion for more definite statement is granted. Having examined the complaint, I too could not find clear statements of what was being alleged in most of the causes of action set forth and found that most of what was alleged were alleged in a conclusory form. Mr. Hurley may submit an Order denying the Defendant's motion to dismiss. Mr. Savino and/or Mr. Sheldon -- I don't remember who was representing who, Mr. Savino may submit an Order granting the motion for more definite statement. Court stands in recess.

MR. SAVINO: Thank you, Your Honor.

I hereby certify that the foregoing is a correct transcription of the proceedings recorded by me in this matter.

Linda S. Muldowney

Linda S. Muldowney