

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

In re

COMPREHENSIVE CLINICAL  
DEVELOPMENT, INC., et al.,

CASE NO. 13-17273-BK-JKO,  
Chapter 7  
(JOINTLY ADMINISTERED)

Debtors.

\_\_\_\_\_ /

**NOTICE OF FILING REDACTED DEPOSITION TRANSCRIPT**

Margarita Morales-Perez, Stephen M. Krupa, David Eichler, John Docherty, and Joseph Riley (“**Movants**”), by and through their undersigned counsel, hereby gives notice of filing a copy of the redacted deposition transcript of Marc Barmat, Trustee, taken on December 16, 2015 in support of their *Joint Sur-Reply to Replies to Response and Opposition to Motions to Approve Settlements and Bar Orders* (Doc. No. 1056).

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court as set forth in Local Rule 2090-1(A).

Dated: February 5, 2016.

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served electronically upon all parties that have registered for CM/ECF service, including David C. Cimo, Esq. at [dcimo@gjb-law.com](mailto:dcimo@gjb-law.com) and Marilee A. Mark, Esq. at [mmark@gjb-law.com](mailto:mmark@gjb-law.com), Genovese Joblive & Battista, P.A., Special Litigation Counsel for the Trustee this 5<sup>th</sup> day of February, 2016.

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**In the Matter of:**  
Comprehensive Clinical Development

vs.

Steven Krupa

---

**MARC BARMAT**

*December 16, 2015*

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Comprehensive Clinical Development vs. Steven Krupa  
MARC BARMAT

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 FORT LAUDERDALE DIVISION

4 CASE NO: 13-17273-JKO  
5 Chapter 7  
6 (Jointly Administered)

7 In re:

8 COMPREHENSIVE CLINICAL  
9 DEVELOPMENT, INC., et al.,

10 Debtors,

11 -----/

12 DEPOSITION OF: MARC BARMAT  
13 (Noticed as Marc P. Barmat)

14 DATE: DECEMBER 16, 2015

15 TIME: 10:28 A.M. - 3:22 P.M.

16 TAKEN BY: COUNSEL FOR D&Os

17 PLACE: 2255 Glades Road  
18 Suite 337 West  
19 Boca Raton, Florida 33431

20 REPORTED BY: TONI MUSACCHIA, NOTARY PUBLIC,  
21 STATE OF FLORIDA

22

23

24

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25

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3 (December 2010 letter)

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6 (Exhibits were retained by Atty Vilmos)

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S T I P U L A T I O N S

24

25 It is hereby stipulated and agreed by and between  
counsel present for the respective parties, and the  
deponent, that the reading and signing of the  
deposition are hereby RESERVED.

1 P R O C E E D I N G S

2 \* \* \* \*

3 THE COURT REPORTER: Do you swear or affirm  
4 that the testimony you are about to give will be  
5 the truth, the whole truth, and nothing but the  
6 truth?

7 THE WITNESS: I do.

8 MARC BARMAT,  
9 having been first duly sworn, was examined and  
10 testified as follows:

11 MS. VILMOS: I am going to have you  
12 pre-mark these exhibits.

13 (Exhibits Numbers 1 through 35 pre-marked  
14 for identification.)

15 DIRECT EXAMINATION

16 BY MS. VILMOS:

17 Q. Good morning.

18 A. Good morning.

19 Q. Can you please state your name for the  
20 record.

21 A. Marc Barmat.

22 Q. Where are you currently employed?

23 A. Furr & Cohen.

24 Q. How long have you been a Chapter 7 Trustee?

25 A. Just over four years. From the time I was

1 appointed, I believe. I think November probably  
2 would have been -- November, December four years ago,  
3 I think, is when I got my first cases.

4 Q. How long have you been a practicing  
5 attorney?

6 A. I graduated law school in 1994. So since  
7 1994.

8 Q. I'm going to hand you what we've marked as  
9 Exhibit Number 1. And for identification purposes  
10 this is the motion of Chapter 7 Trustee to approve  
11 the Grant Thornton settlement.

12 Have you seen that document before?

13 A. Yes.

14 Q. Is it an accurate representation of the  
15 settlement terms between the Trustee and Grant  
16 Thornton?

17 A. Yes, the actual settlement is attached.

18 Q. Exhibit Number 2 is the motion to approve  
19 the McGladrey settlement with the settlement also  
20 attached.

21 Have you seen that motion and settlement?

22 A. Yes.

23 Q. Is that settlement -- does that settlement  
24 reflect the terms between the Trustee and McGladrey?

25 A. Yes.

1 Q. Has anything between the -- with the Grant  
2 Thornton and McGladrey settlement, any terms have  
3 changed since the execution of that settlement?

4 A. No.

5 Q. Exhibit Number 3 is the sworn testimony and  
6 declaration with regard to McGladrey.

7 Have you seen that document before?

8 A. Yes.

9 Q. Is that your signature on the last page of  
10 that document?

11 A. Yes.

12 Q. Are the statements that you made in this  
13 declaration accurate?

14 A. Yes.

15 Q. Is there anything that you would change?

16 A. No.

17 MS. MARK: For purposes of the record, I  
18 just wanted to point out that we reserve the  
19 right to supplement to the extent that the  
20 Trustee deems it necessary or appropriate prior  
21 to the evidentiary hearing and that we would  
22 comply per the Court's instruction.

23 MR. CIMO: Also on one of the declarations  
24 we did an --

25 MS. MARK: An amended -- that was Grant

1 Thornton. And we sent you an e-mail with that.  
2 It was -- our paralegal had uploaded a prior  
3 version that would -- but there was nothing  
4 substantively different. There were some typos  
5 and then we took the exact language from the  
6 setoff provision and put it in there.

7 MR. CIMO: For the record --

8 MS. MARK: I just want to make sure, for  
9 example, that the Grant Thornton one --

10 MR. REICH: Does the exhibits that you sent  
11 over prior to the deposition contain the amended  
12 proper one?

13 MS. MARK: A subsequent e-mail was sent  
14 after that to everybody and that is the correct  
15 one.

16 MR. REICH: That's the correct one?

17 MS. MARK: Yes.

18 MR. CIMO: Off the record.

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

21 BY MS. VILMOS:

22 Q. I handed you what we marked as Exhibit  
23 Number 4, which is the declaration with regard to  
24 Grant Thornton dated December 7, 2015.

25 Have you seen this document before?

1 A. Yes.

2 Q. Is that your signature on page nine?

3 A. Yes.

4 Q. Are the statements that you attest to here  
5 true and accurate?

6 A. Yes.

7 Q. Is there anything that you would change?

8 A. No, subject to what Ms. Mark stated earlier  
9 about the previous declaration.

10 Q. I'm handing you Exhibit Number 5, which is  
11 the first amended adversary complaint in the  
12 adversary case against the officer and the director  
13 defendants. It is dated -- a filing date of  
14 September 14, 2015.

15 Have you seen this document before?

16 A. Yes.

17 Q. Is that the adversarial lawsuit against the  
18 officer and director defendants that you filed on  
19 behalf of the estate?

20 A. Yes.

21 Q. Exhibit Number 6 is the claims register and  
22 it has a date on it of August 29, 2013 regarding case  
23 number 17273.

24 Have you seen that document before?

25 A. Yes.

1 Q. Was that one of the exhibits that you  
2 provided in addition to your declarations with regard  
3 to the settlement motion?

4 A. It's an exhibit from the Court's website  
5 and I believe it was included on our exhibit  
6 registry, yes.

7 Q. Do you know for what purpose you provided  
8 that with regard to the exhibit register for the 9019  
9 motions?

10 A. Potential use of the hearing; to show the  
11 administrative insolvency of the estate and whatever  
12 other reasons we might need it for. If it has to go  
13 litigation further.

14 Q. Exhibit Number 7, claims register with  
15 regard to case number 17282. That was listed on your  
16 exhibit register with regard to these motions as  
17 well. Do you know for what purpose you plan on  
18 utilizing that exhibit?

19 A. Potentially the same reasons as the other  
20 exhibit registry.

21 MR. REICH: The second case that's the  
22 Northwest case?

23 A. Yes.

24 Q. I'm going to hand you Exhibit Number 8. I  
25 will ask you just to identify it for the record.

1           A.     Adversary complaint to avoid and recover  
2     avoidable transfers and for other relief. Marc  
3     Barmat versus Grant Thornton. Case 15-01233, docket  
4     entry one.

5           **Q.     I'll hand you Exhibit Number 9. If you can**  
6     **identify that document?**

7           A.     Defendant Grant Thornton, LLP's answer and  
8     affirmative defenses to Plaintiff's adversary  
9     complaints in the Grant Thornton adversary  
10    proceeding. 15-1233, docket entry five.

11          **Q.     Same for Exhibit Number 10.**

12          A.     Plaintiff's initial disclosures in the  
13    Grant Thornton adversary. 15-1233, docket entry six.

14          **Q.     Exhibit Number 11.**

15          A.     Defendant Grant Thornton's motion for  
16    summary judgment in the Grant Thornton adversary.  
17    Same case, docket entry seven.

18          **Q.     Exhibit Number 12.**

19          A.     Same adversary proceeding. Docket entry  
20    eight. Grant Thornton's initial disclosures.

21          **Q.     Exhibit Number 13?**

22          A.     Same adversary complaint. Plaintiff's  
23    disclosure of expert testimony. Docket entry 10.

24          **Q.     Exhibit Number 14.**

25          A.     Same adversary proceeding. Grant



1 Thornton's disclosure of expert witness. Docket  
2 entry 11.

3 **Q. Exhibit Number 15.**

4 A. Same adversary proceeding. Plaintiff's  
5 response in opposition to Defendant Grant Thornton's  
6 motion for summary judgment and cross-motion for  
7 partial summary judgment with incorporated memo of  
8 law. Docket entry 14.

9 **Q. Exhibit Number 16.**

10 A. Same adversary proceeding. Grant  
11 Thornton's reply in support of its motion for summary  
12 judgment. Docket entry 34.

13 **Q. Exhibit Number 17.**

14 A. Same adversary proceeding. Grant  
15 Thornton's response in opposition to Plaintiff's  
16 cross-motion for summary judgment. Docket entry 35.

17 **Q. Exhibit Number 18.**

18 A. Same adversary proceeding. Plaintiff's  
19 reply memorandum of law in further support of his  
20 cross-motion for partial summary judgment. Docket  
21 entry 38.

22 **Q. Exhibit Number 19.**

23 A. Correspondence dated January 12, 2012.  
24 Filed -- docket entry 7-1 on Grant Thornton's  
25 letterhead to Mr. McGovern.

1 Q. Exhibit Number 20.

2 A. Correspondence dated January 30, 2012 on  
3 Grant Thornton letterhead directed to Ms.  
4 Morales-Perez. Docket entry 7-2.

5 Q. Exhibit Number 21.

6 A. Grant Thornton letterhead on February 28,  
7 2011 letter to Mr. McGovern. Docket entry 7-3.

8 MS. VILMOS: It appears that I marked --  
9 Exhibit Number 22 is also the officer and  
10 director adversary complaint. I marked it twice  
11 so we can just move along from that.

12 BY MS. VILMOS:

13 Q. Exhibit Number 23.

14 A. Appears be the printout of the docket on  
15 the CCD case, 13-17273.

16 Q. Exhibit Number 24.

17 A. Printout of docket on CCD Northwest,  
18 13-17282.

19 Q. Exhibit Number 25.

20 A. Docket from the adversary proceeding,  
21 15-01411.

22 MR. REICH: Which case is that?

23 THE WITNESS: Barmat v McGladrey.

24 BY MS. VILMOS:

25 Q. Exhibit Number 26.

1           A.     This is from Barmat v McGovern. Case  
2     number or adversary proceeding number 15-01232.

3           **Q.     Exhibit Number 27.**

4           A.     Docket from Barmat v Grant Thornton.  
5     Adversary proceeding number 15-01233.

6           **Q.     Exhibit Number 28.**

7           A.     Docket from Barmat v McGovern. Adversary  
8     proceeding 15-01232.

9           **Q.     I'm going to --**

10           MR. REICH: Is Exhibit Numbers 26 and 28  
11     the same document?

12           MS. VILMOS: I think that they are but  
13     they're formatted different. There was two of  
14     them in the FTP site so I printed both of them  
15     out.

16           THE WITNESS: That appears to be the case.  
17     They both go through ECF number 117. They're  
18     both in the same case.

19           MS. VILMOS: They're just formatted  
20     differently.

21           THE WITNESS: Yes.

22           MR. REICH: So Exhibit Numbers 26 and 28  
23     are the same and Exhibit Numbers 22 and 5 are the  
24     same, correct?

25           THE WITNESS: If you're asking me a

1 question, I'll check.

2 MR. REICH: I'm asking Nicolette that.

3 MS. VILMOS: That is correct.

4 BY MS. VILMOS:

5 Q. Exhibit Number 29 I'm keeping in the  
6 bucket. If you can identify that, please.

7 A. Case number 13-17282. Looks like ECF 1. I  
8 think it's the schedules and all the amendments to  
9 the schedules in general for CCD Northwest.

10 MR. REICH: When you say "schedules,"  
11 schedules --

12 THE WITNESS: Petition -- I mean, I can go  
13 through it. ECF one is the petition, ECF 25  
14 looks like the schedules and statement of  
15 financial affairs. ECF 33 looks like it's  
16 probably amended schedules and SOFA. Do you want  
17 me to go through each of these? SOFA is an  
18 acronym for statement of financial affairs.

19 Do you want me to go through them? ECF 34  
20 is global notes and statements of limitations,  
21 methodology and disclaimers regarding debtors'  
22 schedules of assets and liabilities and statement  
23 of financial affairs. Then it goes to ECF 36,  
24 list of creditors holding 20 largest unsecured  
25 claims - second amended. That looks like it.

1 Did you give -- is there a 27? Never mind,  
2 I got it. The paper is coming out.

3 MS. MARK: Off the record for one second.

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

6 THE WITNESS: Here is 29. And the same  
7 thing for 30.

8 BY MS. VILMOS:

9 **Q. If you can identify that?**

10 A. Number 30 is from case number 13-17273,  
11 docket entry one, which is the CCD petition. And  
12 then it goes to docket entry 100, which is the  
13 amended petition. Docket entry 101, global notes and  
14 statements of limitations, methodology and  
15 disclaimers regarding debtors' schedules of assets  
16 and liabilities on statement of financial affairs.  
17 Continuing on to ECF 163, which is -- the first page  
18 is the summary of schedules amended. It goes through  
19 to include amended schedules -- all the amended  
20 schedules. I shouldn't say "all." I believe all of  
21 the amended schedules. Then it goes to ECF number  
22 2010 list of creditors holding 20 largest unsecured  
23 claims - second amended. That appears to be it.

24 **Q. I believe 31 and 32 are duplicates probably**  
25 **for the same reasons. These are the claim registers.**

1 31 is for 17273 and 32 is for 17282. I believe we  
2 identified those already.

3 If you can identify --

4 MR. REICH: You said 31 is which case?

5 THE WITNESS: CCD. 32 is CCW Northwest.

6 MR. REICH: Claims register?

7 THE WITNESS: Correct.

8 MR. REICH: Is that another duplicate?

9 MS. VILMOS: I think that she's right.

10 MS. MARK: We had two separate ones. We  
11 had a GT exhibit register and a McGladrey exhibit  
12 register. Some of the documents relate to both.  
13 For example, the claim registers relate to both.  
14 So it was listed for both main case, the  
15 McGladrey one and then it was listed on the GT  
16 one.

17 BY MS. VILMOS:

18 Q. If you can identify Exhibit Number 33  
19 please.

20 A. Exhibit Number 33 is the first amended  
21 adversary complaint to avoid and recover avoidable  
22 transfers for damages and for other relief and demand  
23 for a jury trial in the McGladrey adversary  
24 proceeding, 15-1411, ECF number five.

25 Q. Exhibit Number 34?

1           A.     McGladrey adversary complaint to avoid or  
2     recover avoidable transfers and damages for other  
3     relief and demand for jury trial, ECF number one. 33  
4     is the first amended and 34 is the original.

5           **Q.     And Exhibit Number 35, please.**

6           A.     McGladrey adversary proceeding.  
7     Defendants' motion to dismiss the first amended  
8     complaint, ECF 15.

9           **Q.     Thank you. So I'm going ask this question**  
10    **as it relates to both settlements in the Grant**  
11    **Thornton and the McGladrey case that you have.**

12                **Do you -- are the settlements in your**  
13    **opinion fair and equitable as it relates to the**  
14    **officer and director defendants that we represent?**

15           A.     Yes. I mean, you're not part of the  
16     settlement except to the extent the bar order and I  
17     think the bar order is appropriate for the reasons  
18     set forth in my declaration and papers that were  
19     filed.

20           **Q.     Can you explain why you believe that it**  
21    **would be fair and equitable to the directors and**  
22    **officers -- or how is it fair and equitable?**

23           A.     It's a pretty broad question. I can go  
24     into each lawsuit I suppose if you want?

25           **Q.     That would be great.**

1           A.     So the Grant Thornton lawsuit was for  
2     recovery of avoidable transfers of approximately  
3     \$259,000.   The proposed settlement is \$175,000.   Even  
4     if it were a slam dunk I think 175 for 259 is  
5     certainly a settlement that falls well above the  
6     lowest range of reasonableness.

7                 In that particular case it's not your  
8     standard run of the mill avoidable transfer.   There  
9     were various defenses that were asserted by Grant  
10    Thornton and a motion for summary judgment.   They  
11    asserted a mediation defense that we failed to seek  
12    mediation before the lawsuit.   But even more  
13    important than that, the claims that we have against  
14    Grant Thornton are very complex.   They're not a  
15    standard fraudulent transfer.   In order to prevail  
16    against Grant Thornton they're going to assert that  
17    there were reasonable equivalent value.   In order to  
18    determine whether or not there was reasonable  
19    equivalent values, we have to get into all the  
20    intricacies of GAAP and GAAS and that will require a  
21    lot of time, effort and expense.   And, once again,  
22    the maximum amount we were potentially going to recover  
23    is 259, we're getting 175.

24                The bar order I think is appropriate  
25    because, again -- if you want me to pull out the



1 declaration I can go point by point. But generally  
2 we meet the Justice Oaks standards and we meet the  
3 Mumford standards set forth in the 11 Circuit  
4 opinion. The cases are interrelated. I don't think  
5 that the claims that the D&Os allege to have against  
6 Grant Thornton actually exist for several reasons.

7 First I think it's premature, not ripe in  
8 order for the D&Os to have a claim against Grant  
9 Thornton. It's not ripe because I will have to -- I  
10 will have to prevail against the D&Os first in order  
11 for their potential claim against Grant Thornton --  
12 Grant Thornton to ripen.

13 Above that, the claim for contribution and  
14 indemnity against Grant Thornton I don't think exists  
15 understood Florida law and under the pleading in this  
16 case. In order for there to be a claim for  
17 contribution under Florida Statutes -- actually, I  
18 take that back because Grant Thornton is not for  
19 breach of fiduciary duty. In order for the D&Os to  
20 have a claim for indemnity in this particular case  
21 against Grant Thornton they would have to show that  
22 they were -- that Grant Thornton was wholly  
23 responsible -- 100 percent responsible. By  
24 definition if I prevail against the D&Os and Judge  
25 Olson would have determined that there is some fault

1 on behalf of the D&Os.

2 The allegations against the D&Os and Grant  
3 Thornton arise out of the same facts essentially.  
4 We're alleging that the D&Os provided materially  
5 inaccurate information to the auditors, Grant  
6 Thornton and McGladrey. And based upon those  
7 allegations it's seems to me that it's impossible  
8 that there could be a circumstance where if I prevail  
9 against the D&Os that they can assert that Grant  
10 Thornton would be 100 percent responsible and  
11 therefore kick in the indemnity clause.

12 So based upon those facts in general as  
13 well as anything that I may have missed because I'm  
14 not looking directly at my declaration when I have  
15 all information at my fingertips. I think the  
16 settlement with Grant Thornton is incredibly fair and  
17 reasonable. It falls well within the Justice Oaks  
18 standards and the Mumford standards.

19 All the same arguments apply with regard to  
20 the McGladrey settlement with some additional. The  
21 lawsuit against McGladrey is for the professional  
22 negligence counts. In addition to the avoidable  
23 transfer of approximately \$666,000. The thing that  
24 distinguishes the McGladrey case from the others is  
25 that McGladrey is asserting the pari delicto defense,

1 which is a complete defense.

2 In my opinion I think we would prevail but  
3 I don't make the decisions, the judge makes the  
4 decisions. To me it would be a gamble to turn away  
5 \$175,000 settlement. Now mind you, I would love to  
6 have more \$175,000 in both cases. I hired very  
7 skilled and competent counsel and they reported to me  
8 we discussed everything. And we believe that, again,  
9 175 meets all the appropriate Justice Oaks standards  
10 and the Mumford standards.

11 We run the risk if were to go to trial of  
12 getting zero. And that's not a risk that I wanted to  
13 take on. This estate administratively insolvent. I  
14 need the \$350,000 for both settlements to fund the  
15 biggest asset that remains in this estate which is  
16 the cause of action against the officers and  
17 directors. And in order to do that that's going be  
18 expensive and I need the money to pursue that.

19 So when we look at the standards; Mumford,  
20 Justice Oaks, the facts as alleged in both complaints  
21 as well as against the D&Os I think it's fair and  
22 equitable. Of course I don't expect the D&Os to like  
23 it but it doesn't mean that I'm not meeting my  
24 fiduciary duties for both of these settlements that  
25 you're objecting to.

1           Q.     What did you allege was the wrong doing  
2     with regard to Grant Thornton, what did they do  
3     wrong?

4           A.     I mean, are you asking me do I -- did I  
5     memorize the complaint?

6           Q.     No. You can just tell me -- I mean, you  
7     filed the lawsuit. What was the alleged misconduct  
8     or omission?

9           A.     Grant Thornton was provided materially  
10    inadequate information by the officers and directors  
11    and Grant Thornton did not recognize that; did not do  
12    their duties in accordance with GAAP and GAAS and as  
13    a result they were paid \$259,000 and we don't believe  
14    they provided reasonable and equivalent value in  
15    exchange for that and therefore we believe it's  
16    avoidable.

17                   I will defer to the complaint in case I'm  
18    missing something. And if I said anything that's  
19    inconsistent with that, again, I'll defer to the  
20    complaint. My competent counsel prepared the  
21    complaint with consultation with me. This isn't a  
22    memory test but I think I somewhat fairly described  
23    it.

24           Q.     Same question from for McGladrey, what did  
25    you allege that they did wrong?

1           A.    Again, the same basic allegations but it  
2   included counts for professional negligence,  
3   accounting malpractice, as well as avoidance of  
4   fraudulent -- avoidance of transfers. I think there  
5   were a couple of other counts in that complaint as  
6   well, which I have to -- if you put complaint in  
7   front of me I'll defer to that.

8           **Q.    Does the settlement or the bar order**  
9   **benefit the directors and officers?**

10          A.    I don't know that that's a standard that it  
11   needs to benefit the officers and directors. I think  
12   it's consistent with the law, which is the 11th  
13   Circuit law.

14          **Q.    But is there a benefit?**

15               MR. CIMO: Objection to form.

16               THE WITNESS: That's -- my fiduciary duty  
17   is not to benefit the officers and directors.

18   BY MS. VILMOS:

19          **Q.    Is it fair and equitable to them**  
20   **specifically?**

21               MR. CIMO: Objection to form.

22               THE WITNESS: It's not fair and  
23   inequitable. I think one of the important  
24   things, again, that's described in detail in the  
25   papers is that the bar order does not prohibit

1 the officers and directors for alleging anything  
2 that they can under applicable non-bankruptcy law  
3 for a setoff. And, again, the exact language of  
4 the bar order is in my declaration. I can read  
5 it verbatim if you would like. But essentially  
6 they are not without recourse so to speak.

7 BY MS. VILMOS:

8 Q. Would the directors' and officers'  
9 contribution indemnity claims give them a greater  
10 benefit than a setoff claim?

11 MS. MARK: Objection to form.

12 MR. CIMO: Objection to form.

13 THE WITNESS: I don't believe that they  
14 have a contribution or indemnity claim.

15 BY MS. VILMOS:

16 Q. Assuming that they do?

17 MR. CIMO: Same objection.

18 THE WITNESS: In order for me to assume  
19 that, I would have to ignore the law. So  
20 maybe -- ask me the question again.

21 BY MS. VILMOS:

22 Q. Ignore what a law?

23 A. Florida Statutes, Florida case law.

24 Q. Regarding?

25 A. Contribution and indemnity claims.

1 Q. But let's assume that the Court finds that  
2 they have contribution and indemnity claims, would  
3 their contribution and indemnity claims be a greater  
4 benefit than setoff or does setoff provide the  
5 officers and directors a greater claim than  
6 contribution and indemnification?

7 MR. CIMO: Objection to the form.

8 THE WITNESS: I'll answer it this way. I  
9 assume what you're trying to say is that you  
10 think that their contribution and indemnity claim  
11 is worth more than 175. The bar order was  
12 drafted in such a way that it's consistent with  
13 11th Circuit law; Mumford specifically and all  
14 the cases that have followed Mumford as well as  
15 the other cases in this district that are  
16 referenced in the opposition to the reply in  
17 response to your opposition papers. So --

18 MR. REICH: I will object and move to  
19 strike the answer as being nonresponsive on the  
20 grounds that while you are an attorney and it's  
21 nice you want to issue a legal opinion here, Mr.  
22 Barmat, you're being asked factual questions and  
23 you should be answering factual answers. Your  
24 contact is as Trustee and not as a lawyer.

25 MR. CIMO: I object to the statement that's

1           made counsel from the Gray Robinson firm and move  
2           to strike his comment as being inappropriate and  
3           harassing my witness. Continue.

4   BY MS. VILMOS:

5           Q.    Let's talk about Mumford. So you indicate  
6           that the settlement follows Mumford, correct?

7           A.    Correct.

8           Q.    The settlement, both of them?

9           A.    Yes.

10          Q.    And in your declaration you indicate that  
11          the D&Os alleged right to assert indemnification and  
12          contribution are exactly the same type of claims that  
13          may be barred under Mumford; isn't that correct?

14          A.    Mumford dealt with those claims as well,  
15          yes, indemnity and contribution.

16          Q.    In Mumford were the indemnification and  
17          contribution claims asserted?

18                THE WITNESS: Do you have anything to say,  
19          Mr. Reich, about the question? I don't want to  
20          give a legal opinion. If you want me to give a  
21          legal opinion?

22                MR. CIMO: You don't need to ask Mr. Reich.  
23          Just answer the question.

24                MR. REICH: Just answer the questions that  
25          are asked.



1 MR. CIMO: That's what he's been doing.

2 You can answer the question. I object to  
3 the form.

4 THE WITNESS: Can you repeat the question?

5 MS. VILMOS: Yes.

6 BY MS. VILMOS:

7 Q. In Mumford were the objecting parties  
8 indemnification and contribution claims, were they  
9 asserted at the time that the settlement was  
10 approved?

11 A. Are you -- you're asking me factually in  
12 the Mumford case?

13 Q. Factually.

14 A. If you can provide me a case of the Mumford  
15 opinion I'll gladly review it. I read the Mumford  
16 opinion several times in the past. Do I remember  
17 every single thing about Mumford as I sit here right  
18 now? I don't. I know upon reading Mumford and  
19 comparing that to the facts in this particular case,  
20 I felt they were directly on point and I'll leave it  
21 at that.

22 Q. And do you recall in Mumford what the --  
23 was there a setoff issue in Mumford that was  
24 addressed?

25 A. Are you talking about the dollar for dollar

1 issue?

2 Q. Yes.

3 A. I recall that.

4 Q. Do you recall factually what the settlement  
5 terms were with regard to the dollar for dollar  
6 setoff?

7 MR. CIMO: Object to the form.

8 THE WITNESS: I am not sure I understand  
9 your question. Are you asking me how much did  
10 they settle for in Mumford?

11 BY MS. VILMOS:

12 Q. No, not the exact amount. But what was the  
13 rationale to provide the dollar for dollar setoff in  
14 Mumford?

15 A. Again, I'll defer to the opinion.

16 Q. Were the -- do you recall whether the  
17 settling parties had the ability to pay what the  
18 contribution and indemnification claims would be in  
19 Mumford?

20 A. I think there was an insurance policy in  
21 Mumford if I remember.

22 Q. Do you recall what the limitations were in  
23 Mumford -- the insurance limitations?

24 A. I'll pull this out of my elbow. I think it  
25 was like \$400,000. Am I right, do I have good

1 memory?

2 Q. You do have good memory.

3 Do you recall if there was an issue if or  
4 if the Court took into consideration the fact that  
5 there was only a \$400,000 policy in that case and  
6 that the contribution and indemnification claims  
7 would be more than \$400,000?

8 A. You appear to have Mumford in front of  
9 you so --

10 Q. I actually don't. I have the declaration  
11 in front of me.

12 A. That could be correct. But, again, if you  
13 allow me to look at the Mumford opinion, I'll confirm  
14 what you're saying.

15 Q. I mean would that be distinguishable in  
16 this case?

17 MR. CIMO: Objection to the form.

18 BY MS. VILMOS:

19 Q. We don't -- you admit in your declaration  
20 that Grant Thornton and McGladrey have the financial  
21 wherewithal to pay if you were to prevail the full  
22 amount that you're seeking; isn't that correct?

23 A. I think I admit that it's likely. I have  
24 not looked at either of their books and records but  
25 that is probably true that they would have the

1 financial ability.

2 Q. What is the approximate dollar amount in  
3 which you're suing the directors and officers for?

4 A. Millions.

5 Q. How many millions?

6 A. I'll take the insurance policy benefits.

7 Q. Okay. Is that -- are you only seeking the  
8 policy or are you seeking more than the policy?

9 A. We served --

10 MR. CIMO: Objection to the form.

11 THE WITNESS: We served offer of  
12 judgments/proposal for settlement I believe  
13 yesterday in the amount \$4.25 million. So we'll  
14 take \$4.25 million.

15 MR. REICH: Objection. Move to strike.  
16 The question was, what are you suing for and not  
17 what you'll take.

18 MR. CIMO: I object to motion the motion to  
19 strike.

20 MR. REICH: You can object all you want.

21 MR. CIMO: You can object to the form if  
22 you don't like the answer. The judge decides to  
23 strike it, not you.

24 BY MS. VILMOS:

25 Q. If you want to take a moment, the complaint

1 is one of the exhibits. I don't know if you want to  
2 look to see --

3 MR. CIMO: Let's take a moment, sure. Fish  
4 through this stack of two feet of documents.

5 THE WITNESS: We're talking about the D&O  
6 complaint you want me to look at?

7 MS. VILMOS: Yes. I think it's Exhibit  
8 Number 5.

9 THE WITNESS: Is the answer going to be  
10 there is no exact number in the complaint before  
11 I start looking? I think that's the answer,  
12 there is no exact number in the complaint. If  
13 you tell me it's different then I'll spend the  
14 time going through it. I don't think that I need  
15 to have an exact answer right now. We're  
16 still --

17 BY MS. VILMOS:

18 Q. There isn't an exact number. But I guess  
19 what I'm trying to ask is that you're asking for -- I  
20 believe what you asked for is a range of damages in  
21 there and I don't want to -- that's why I'm asking  
22 you to look because I don't want to -- the way that I  
23 read the complaint -- you can tell me if I'm wrong --  
24 I'll do it this way, I'm not trying to trick you --  
25 is that I believe that you're asking for whatever

1 damages that the company had as a result of the  
2 allegations against the D&Os, which would include the  
3 amounts filed in the claims registers?

4 A. That sounds accurate but I'll defer to my  
5 skilled counsel if that's incorrect.

6 Q. Do you know how much the claims are as we  
7 sit here today?

8 A. I believe I put that in my declaration. If  
9 not, you provided me with the -- you marked as an  
10 exhibit the claims register -- it look like  
11 Exhibit Number 6 is the CCD claims register, which  
12 has \$92 million in secured; 12 plus million of  
13 priority; 33,000, administrative. CCD Northwest --

14 MR. REICH: Did you say 33,000 or 33  
15 million?

16 THE WITNESS: Sorry, nine million. It  
17 doesn't put commas in there.

18 Again, I'll defer to the claims register.  
19 It looks like 9.2 million of secured; 1.2  
20 priority; 33,000 in administrative.

21 BY MS. VILMOS:

22 Q. Which is Exhibit Number 6?

23 A. Correct, I was looking at Exhibit Number 6.  
24 Exhibit Number 7, which is CCD Northwest or  
25 NW claims register shows 27 -- looks like 27 million

1 and change of total claims of which is comprised of  
2 8.7 secured, 16 million -- 16.2 priority and 26,000  
3 administrative.

4 Q. So you would agree that's more than the  
5 policy limits?

6 A. I would agree with you on that, correct.

7 Q. So if you prevail you would anticipate that  
8 the D&Os would have to come out of pocket to pay your  
9 judgment that you're seeking?

10 A. Yes, and perhaps the insurance company.

11 Q. And would you also agree with me then that  
12 to the extent that the D&Os would have contribution  
13 and indemnity claims that those would cover  
14 potentially more than a setoff of your two  
15 settlements with Grant Thornton and McGladrey?

16 A. Once again you're asking me to assume  
17 something which I think is inaccurate based upon the  
18 law. But those numbers are greater if it's a math  
19 question, yes.

20 Q. In the settlements with Grant Thornton and  
21 McGladrey who requested the bar order?

22 A. The defendants requested the bar order.

23 Q. So it was not something that you offered as  
24 part of the settlement?

25 A. I think that's correct. I was involved in

1 an overseeing respect. I have counsel who were doing  
2 the actual negotiating. But I certainly believe it  
3 was something they requested.

4 **Q. In your four years approximately as Trustee**  
5 **how many settlements have you entered into where you**  
6 **requested a bar order?**

7 A. This is the first case where it would have  
8 been appropriate. Did you say where I requested a  
9 bar order?

10 **Q. Correct.**

11 A. Well, I haven't requested a bar order.

12 **Q. Let me ask it this way then --**

13 A. This is the first case I've been involved  
14 in that's involved a bar order where I'm the Trustee.

15 **Q. As an attorney have you ever been involved**  
16 **in a settlement either with -- that had a bar order**  
17 **in it?**

18 A. If I say yes the follow up question would be  
19 what case perhaps. I don't recall. I know I never  
20 personally as an attorney litigated a bar order  
21 issue. Whether I have been involved in a case that  
22 had a settlement in which a bar order was included,  
23 it's possible but I don't have a specific  
24 recollection.

25 **Q. Did Grant Thornton or McGladrey explain to**



1     **you why they were requesting a bar order?**

2           A.     Grant Thornton and McGladrey did not speak  
3     directly to me, they would have spoken with my  
4     counsel.

5           **Q.     What claims are enjoined by the bar orders**  
6     **that are in the settlements?**

7           A.     I'll --

8           MR. CIMO:   Objection to form.

9           THE WITNESS:   I'll defer to the language in  
10     the bar orders.   But I believe they would enjoin  
11     the claims of your clients if that's what you're  
12     asking?

13     BY MS. VILMOS:

14           **Q.     Are there -- are you aware of any other**  
15     **third-party claims that have been threatened or that**  
16     **exist against Grant Thornton and McGladrey?**

17           MR. CIMO:   I'll instruct the witness not to  
18     answer to the extent it requires attorney/client  
19     privilege information about -- such potential  
20     activities.   If you don't have any information  
21     from that, you can answer.

22           THE WITNESS:   The only information I would  
23     have received would have been from my counsel.

24     BY MS. VILMOS:

25           **Q.     Not getting into conversations with your**

1 counsel, just in general, based on your opinion in  
2 entering into the settlement agreement, who would  
3 have claims against Grant Thornton and McGladrey?

4 MR. CIMO: I'll object to the question.

5 I'm objecting to the form at this time. I will  
6 instruct you not to answer it if this speculative  
7 questions continues. You can still answer.

8 THE WITNESS: As I sit here right now I  
9 don't know the answer.

10 BY MS. VILMOS:

11 Q. Can you think of anyone that would have  
12 claims against Grant Thornton and McGladrey that  
13 wouldn't belong to the estate?

14 MR. CIMO: Objection to the form.

15 THE WITNESS: That's relevant to this  
16 settlement?

17 MS. VILMOS: Yes.

18 THE WITNESS: Nothing comes to my head as I  
19 sit here.

20 BY MS. VILMOS:

21 Q. In negotiating the settlement, did you  
22 specifically consider whether or not the directors  
23 and officers would have contribution indemnification  
24 claims against Grant Thornton and McGladrey?

25 A. Once again I'll defer to counsel but we

1 talked about the terms of the settlement, it's  
2 applicability to Justice Oaks and Mumford.

3 Q. That really wasn't my question. My  
4 question was did you specifically take into  
5 consideration the officers and directors' claims  
6 against McGladrey and Grant Thornton when you were  
7 negotiating the settlement?

8 MR. CIMO: Objection to the form.

9 THE WITNESS: I think that's all part of  
10 the settlement; any potential indemnity and  
11 contribution claims, which as I testified to  
12 before, I don't think exist.

13 BY MS. VILMOS:

14 Q. Okay. But was it specifically discussed  
15 that there was a concern that the directors and  
16 officers had claims and therefore the bar order was  
17 necessary?

18 A. Are you asking me to disclose to you the  
19 conversations I had with my counsel?

20 Q. No, I'm not. You entered into a settlement  
21 that's been filed with the Court that you're asking  
22 for approval and as part of that you have to meet the  
23 Justice Oaks and the Mumford standards and you're  
24 asking -- you're telling the Court that it's a  
25 necessary part of the settlement and that Grant

1 Thornton and McGladrey would not enter into the  
2 settlement without it, correct?

3 A. That's correct.

4 Q. I am trying to under why.

5 A. Why they wouldn't enter it enter it?

6 Q. Yes.

7 A. Well, I assume you have to consult with  
8 them. It takes two to have a settlement. And they  
9 would not do the settlement without the bar order.

10 Q. They didn't articulate to you why?

11 A. Once again, I didn't personally speak with  
12 them. The negotiating and conversations would have  
13 been with my with my counsel and their counsel.

14 Q. You don't --

15 A. I mean, they don't want to pay the estate  
16 money and then potentially have to pay additional  
17 money. They went to pay money and be done.

18 Q. Be done with what?

19 A. With having to pay money with as it relates  
20 to CCD I suppose.

21 Q. But shouldn't you as the Trustee requesting  
22 the settlement and indicating that it's fair and  
23 equitable and necessary have an understanding as to  
24 why the bar order is necessary?

25 MR. CIMO: Objection to the form.

1 THE WITNESS: I think it's obvious and I  
2 think I testified to it. But if you're asking me  
3 to jump into the minds of Grant Thornton and  
4 McGladrey, I don't know that that's appropriate.  
5 Anybody, in general, would want a bar order so  
6 the terms of the bar order get applied and they  
7 don't have to engage in additional litigation or  
8 payments.

9 BY MS. VILMOS:

10 Q. But sitting here today you don't know of  
11 any particular litigation or payments in which Grant  
12 Thornton and McGladrey would be faced with?

13 MR. CIMO: Objection to the form.

14 THE WITNESS: Other than the D&Os?

15 MS. VILMOS: Correct.

16 THE WITNESS: You asked me that before and  
17 I -- as I'm sitting here I don't have any  
18 additional parties to --

19 BY MS. VILMOS:

20 Q. Is it then safe to assume that the bar  
21 order was requested specifically to bar the D&Os from  
22 their indemnification and contribution claims?

23 MR. CIMO: Objection to the form.

24 THE WITNESS: Once again, if I understand  
25 your question correctly, you're asking me to

1 speculate as to what Grant Thornton and  
2 McGladrey's rationale would be; is that what  
3 you're asking me?

4 BY MS. VILMOS:

5 Q. You're part of this settlement. I presume  
6 that you would have an understanding.

7 A. I can I tell you why I wanted to settle. I  
8 can't tell you why they would want to settle other  
9 than presuming or speculating.

10 Q. Okay, let's speculate.

11 MR. CIMO: Objection to the form.

12 THE WITNESS: They wanted to pay money to  
13 get this over with and not have to pay any more  
14 money in the future.

15 BY MS. VILMOS:

16 Q. And you do not believe that the officers  
17 and directors have valid contribution and  
18 indemnification claims, correct?

19 A. For the reasons set forth in the papers  
20 that were filed in this case by my counsel, yes.

21 Q. If the D&Os don't have contribution and  
22 indemnification claims would the bar order be  
23 necessary?

24 A. Necessary for who?

25 Q. For Grant Thornton and McGladrey.

1           A.    I think you're asking me again to speculate  
2    what they would feel is appropriate or necessary and  
3    I can't do that. I can tell you from my perspective.  
4    It was necessary because that's how I got the  
5    settlements, plural.

6           **Q.    So I would need to ask them?**

7           A.    You need to ask them what's in their mind  
8    as to why they entered into a settlement?

9           **Q.    Yes.**

10           MR. CIMO: Objection to the form.

11           THE WITNESS: Other than what's contained  
12    within the papers. I mean, they filed responses  
13    to your objection to the settlement. So if you  
14    wanted more information other than what's in  
15    their papers filed by their counsel, then I guess  
16    you have to do whatever you have to do.

17           BY MS. VILMOS:

18           **Q.    Do you know how much has been paid to**  
19    **professionals in this case to date?**

20           A.    In the Chapter 7 case?

21           **Q.    Yes.**

22           A.    I have a copy of the Form 2 that I can  
23    provide you which incidentally will be inconsistent  
24    with my declaration in one respect, which is Furr &  
25    Cohen from the previously approved fee application.

1 We got paid -- Furr & Cohen got paid some attorney  
2 fees. \$93,153.20 and that's in accordance with ECF  
3 number 1010, which were the remaining fees due under  
4 that order. So that would change the declaration to  
5 the extent that there would be \$93,000 less of a  
6 liability -- I'm sorry, less of cash -- yes, less a  
7 of cash and less of a liability.

8 **Q. Would entering into the settlements and**  
9 **receiving the payments pay any of the Chapter 11 or 7**  
10 **admins?**

11 A. It would go into the bucket. It will go  
12 into the bank account and it will be used consistent  
13 with the priorities set forth in the bankruptcy code  
14 and consistent with any needs that I have and they  
15 get court approved.

16 **Q. Okay. So right now are there more in**  
17 **expenses that need to be paid -- outstanding expenses**  
18 **than assets?**

19 A. The estate will remain administratively  
20 insolvent -- is that the question -- even upon  
21 receiving the \$350,000 if that gets approved -- if  
22 the settlements gets approved; is that your question?

23 **Q. Yes.**

24 A. Definitely administratively insolvent if  
25 we're talking about Chapter 11 admins, which is part



1 of administrative insolvency, so, yes.

2 Q. How is the estate benefitting from the  
3 settlements?

4 A. It's providing the estate money that will  
5 be used to go after the D&Os to pay necessary  
6 expenses. If we're going have to litigate this all  
7 the way that will be expensive and I need that money  
8 to do that.

9 MS. VALMOS: Let's take a recess.

10 (Whereupon, a brief recess was taken from  
11 11:26 a.m. to 11:55 a.m.)

12 BY MS. VILMOS:

13 Q. The two settlements with Grant Thornton and  
14 McGladrey, in each one of them \$61,250 comes off the  
15 top of the settlements to go to counsel; isn't that  
16 correct?

17 A. It's consistent with the Court approved  
18 arrangement in which they were employed, yes.

19 Q. So what is the total sum after the  
20 approximate \$120,000 getting paid to counsel that  
21 will go into the estate if these settlements are  
22 approved?

23 A. It would be 350,000 minus 61,000 and change  
24 minus the other 61,000 and change.

25 Q. And if that amount came into the estate

1     today what -- let me go back and ask you this: When  
2     you looked at the claim registers earlier, I don't  
3     recall if you told me what the amount of the  
4     unsecured claims are; can you check on that?

5           A.     What numbers are they?

6           MR. REICH: Exhibit Numbers 6 and 7.

7           MR. CIMO: Off the record.

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

10          THE WITNESS: Referring to claims register  
11     ECF number six from CCD, secured claims are 9.2  
12     million; priority, 1.2 million; and  
13     administrative 33,000.

14          MR. REICH: The question was unsecured.

15     BY MS. VILMOS:

16          Q.     Unsecured?

17          A.     I can't give you a number. I can only  
18     break it down as the claims register breaks it down.

19          Q.     Okay.

20          A.     So --

21          MR. REICH: Let me ask you a question:  
22     Compared to that, what's the total amount of  
23     claims?

24          THE WITNESS: The total amount of claims  
25     including secured priority and administrative as

1 set forth in the claims register 23.4 million.

2 MR. REICH: And the number on the  
3 Northwest?

4 THE WITNESS: Exhibit Number 7 claims  
5 register from CCD Northwest shows a total amount  
6 of claims of 27.7 million.

7 MR. REICH: Just to short circuit real  
8 quick.

9 MS. VILMOS: Go ahead.

10 MR. REICH: And if you subtract the secured  
11 priority and admin claims that are listed on  
12 there that will leave you with the unsecured  
13 numbers in each of those cases?

14 THE WITNESS: I do not believe that's  
15 correct. I believe that's incorrect. I believe  
16 that if you added secured priority administrative  
17 it would equal the total claims but --

18 MR. REICH: It's your testimony there is no  
19 unsecured --

20 THE WITNESS: No, that's not my testimony.  
21 Actually, I think you might be correct. But if  
22 you give me a calculator I will confirm that.

23 MR. REICH: You don't have to give me an  
24 exact number, just confirm that's how you  
25 understand it.

1 THE WITNESS: Under the -- the claims  
2 register where it has the 27.7 million.

3 MR. CIMO: You want to add it up?

4 THE WITNESS: I think you might be correct,  
5 Ivan, because when I added in CCW Northwest, the  
6 secured priority administrative -- assuming that  
7 I added them correct it came out to 25 million  
8 and change. And so that would leave me to  
9 believe that it's roughly 2 million -- 2 plus  
10 million of unsecured I think.

11 BY MS. VILMOS:

12 Q. So you agree with me that getting the  
13 approximate \$230,000 into the estate if these  
14 settlements were to be approved would not be enough  
15 to pay any of the unsecured, priority secured or  
16 admins?

17 A. I would disagree when it comes to admins.  
18 But I don't know the answer because it's premature to  
19 know that right now.

20 Q. You had testified earlier that if the bar  
21 order is entered that the D&Os would still maintain  
22 recourse; is that correct?

23 A. The language of the bar order allows for  
24 the D&Os to make arguments that are allowable under  
25 available nonbankruptcy law for setoffs. There's

1 more thorough detailed language that I can read  
2 verbatim if you would like me to but that's  
3 essentially what it says.

4 **Q. And is it your opinion that approximately**  
5 **the \$230,000 that we would be entitled to in setoff**  
6 **is fair and equitable when faced with \$60 million**  
7 **worth of claims?**

8 MR. CIMO: Objection to the form.

9 THE WITNESS: Aside from whether I accept  
10 or don't accept the premise of the question, I  
11 think the settlements are fair and equitable. So  
12 you can put whatever caveats there are. If it's  
13 consistent with what's happening in this case  
14 when it comes to total amounts of claims  
15 including admins, et cetra, the answer is, yes,  
16 it is fair and equitable in my business judgment  
17 and professional opinion.

18 BY MS. VILMOS:

19 **Q. What about specifically with regard to the**  
20 **directors and officers?**

21 MR. CIMO: Same objection.

22 THE WITNESS: I don't believe that the  
23 standard of approval of the settlements are  
24 whether it's fair or whether -- well, I can't  
25 tell you whether the officers and directors are

1 going to like it. I assume they're not going to  
2 like it but it doesn't mean that this doesn't  
3 meet the standards that are appropriate -- that  
4 have been put forth in the 11 Circuit opinion and  
5 all the cases that have followed it, as well as  
6 all the other cases that have taken place in the  
7 Southern District that are referenced in our  
8 paper. I believe both these settlements fall  
9 well above the lowest range of reasonableness as  
10 set forth in Justice Oaks, Mumford and all the  
11 other applicable case law.

12 BY MS. VILMOS:

13 Q. As it specifically relates to the bar  
14 orders that you're seeking in this case, what is the  
15 unusual circumstance that would authorize a bar order  
16 to be entered in these two settlements?

17 MR. CIMO: Objection to the form.

18 THE WITNESS: The settlements wouldn't  
19 exist as they do but for the bar order because  
20 they were a required element. I mean, I'll  
21 defer if you want me to look at my declarations?

22 MS. VILMOS: Sure.

23 THE WITNESS: Repeat the question, please.

24 BY MS. VILMOS:

25 Q. What is the unusual circumstance that

1       **authorizes a bar order in these two settlements?**

2                   MR. CIMO: Objection to the form.

3                   THE WITNESS: Unusual circumstance? I  
4       don't specifically remember that that's one of  
5       the factors. If I'm wrong, I'll defer to my  
6       declaration. But an unusual circumstance?

7       BY MS. VILMOS:

8           **Q.     Extraordinary circumstance.**

9                   MR. CIMO: Same objection.

10                  THE WITNESS: I'm re-reading the Justice  
11       Oaks and Mumford elements factors and as I set  
12       forth in the declaration and I think as I  
13       testified to and your question again is what is  
14       the extraordinary circumstance?

15       BY MS. VILMOS:

16           **Q.     Let me rephrase it. Is there an unusual or**  
17       **extraordinary circumstance that warrants a bar order**  
18       **in these two settlements?**

19           A.     I wouldn't --

20                  MR. CIMO: Objection to the form.

21                  THE WITNESS: I wouldn't have a settlement  
22       without the bar order. I think that's the  
23       circumstance that's requiring the bar order.

24       BY MS. VILMOS:

25           **Q.     But other than that factor there's no other**

1     **reason?**

2           A.     There's --

3                   MR. CIMO:   Same objection.

4                   THE WITNESS:   The reason that it's in there  
5                   is because it's -- it was requested and there  
6                   wouldn't be a settlement without them.   The  
7                   reason why it's appropriate are set forth in my  
8                   declaration in all the papers and I think that I  
9                   testified as to why they're consistent with the  
10                  applicable case law.

11    BY MS. VILMOS:

12           **Q.     But you agree with me that just because the**  
13           **settling party request it that doesn't mean that it's**  
14           **warranted in every case?**

15                   MR. CIMO:   Objection to form.

16                   THE WITNESS:   I imagine there's  
17                   hypothetically some cases where it wouldn't be  
18                   appropriate.   In this case I think it's  
19                   appropriate.

20    BY MS. VILMOS:

21           **Q.     And you would also agree with me that**  
22           **there -- that the settlement and bar orders do not**  
23           **benefit the directors and officers in any way?**

24                   MR. CIMO:   Objection to the form.

25                   THE WITNESS:   I don't know if there's not



1 any way. I imagine in the pending adversaries  
2 that we're seeking to settle; McGladrey and Grant  
3 Thornton, I suppose, can make some counterclaims  
4 or cross-claims -- not cross-claims,  
5 counterclaims or they can implead or whatever the  
6 appropriate method would be, they can bring the  
7 D&Os into those cases I suppose somehow and this  
8 would stop that. I'm just thinking of what  
9 benefits there could be and this resolves that.

10 BY MS. VILMOS:

11 Q. If they did bring in the directors and  
12 officers we would have a right to cross-claim against  
13 them, wouldn't we?

14 MR. CIMO: Objection to the form.

15 THE WITNESS: That's up to you guys.

16 BY MS. VILMOS:

17 Q. But that right would exist?

18 MR. CIMO: Same objection.

19 THE WITNESS: You're talking about  
20 indemnity and contribution?

21 MS. VILMOS: Yes.

22 THE WITNESS: I would stand on my testimony  
23 before as to the appropriateness of that.

24 BY MS. VILMOS:

25 Q. I'm using your hypothetical. If the

1 lawsuits continued then perhaps Grant Thornton and  
2 McGladrey would have the right to bring us into their  
3 adversaries?

4 A. In theory I suppose that's an option.

5 Q. And in theory under your scenario then we  
6 would have the right to defend and bring our own  
7 claims against them?

8 MR. CIMO: Objection to the form.

9 THE WITNESS: If they're permissible under  
10 law.

11 BY MS. VILMOS:

12 Q. So other than, I guess, taking away any  
13 rights that they may have to bring us into their  
14 lawsuit, is there -- what benefit do you see that the  
15 settlements provide those directors and officers?

16 MR. CIMO: Same objection.

17 THE WITNESS: It's providing a benefit to  
18 my estate. If -- I'll leave it to the officers  
19 and directors to decide whether they think  
20 there's any benefits to it.

21 BY MS. VILMOS:

22 Q. I'm asking specifically for your opinion.

23 A. Other than what I testified to, I can't  
24 think of anything else as I sit here right now.

25 MS. VILMOS: Thank you. I have no further

1 questions.

2 (Whereupon, a luncheon recess was taken  
3 from 12:07 p.m. to 1:29 p.m.)

4 CROSS EXAMINATION

5 BY MR. REICH:

6 Q. Good afternoon, Mr. Barmat, how are you?

7 A. Great, how are you?

8 Q. We know each other. We practiced in cases  
9 together before, correct?

10 A. I know who you are, Ivan.

11 Q. We had cases before?

12 A. I think we had one maybe.

13 Q. Now, in your role as a Chapter 7 Trustee,  
14 you are the Chapter 7 Trustee of two legal entities  
15 in this case called CCD and CCD NW -- abbreviated  
16 names?

17 A. Correct.

18 Q. Stands for Comprehensive Clinical  
19 Development and the Northwest version, correct?

20 A. Yes.

21 Q. So when I talk about CCD, I'll be saying  
22 CCD. And when I just say Northwest or NW, I'll be  
23 talking about Northwest.

24 A. I understand.

25 Q. Is it your understanding that CCD NW is

1 known is Charles River as you remember?

2 A. That sounds familiar, yes.

3 Q. And that CCD NW at one time was acquired by  
4 CCD, correct?

5 A. CCD NW was acquired by CCD. I'm not saying  
6 that that's incorrect but I can't confirm that.

7 Q. In the three complaints -- the operative  
8 complaints for purposes of what we discussed; which  
9 would be the D&O complaint, which is Exhibit Number 5  
10 to this deposition; the Grant Thornton adversary  
11 complaint, which is Exhibit Number 8 to this  
12 deposition; the McGladrey complaint, which is  
13 Exhibit Number 33 to this deposition. It references  
14 to what's known as the Charles River acquisition; are  
15 you familiar with what the Charles River acquisition  
16 is?

17 A. Yes.

18 Q. In fact, it's also been referred to at  
19 times as what's known as Project Ginger; are you  
20 familiar with that term?

21 A. That's not ringing a bell. I'm not saying  
22 you're wrong. I don't have everything in my  
23 immediate memory.

24 Q. Now, this case was not originally a Chapter  
25 7, correct?

1 A. Correct.

2 Q. It was converted?

3 A. Correct.

4 Q. So prior to this conversion of this case  
5 there was a creditors' committee in this case,  
6 correct?

7 A. That's my understanding.

8 Q. And creditors committees engage in certain  
9 discovery under Rule 2004; are you aware of that?

10 A. I don't dispute it.

11 Q. Well, as part -- when the case was turned  
12 over to you, following conversion, did you acquire  
13 the discovery materials of the creditors committee?

14 A. I don't specifically recall.

15 Q. Are you aware there were in the range of  
16 about 20 depositions under 2004 taken during the  
17 course of these examinations?

18 A. I couldn't have given you that number but I  
19 won't dispute it.

20 Q. Were you aware that was a substantial  
21 number of depositions taken?

22 A. Generally aware. The case went on for a  
23 period of time amount -- not that long a period of  
24 time but there was a lot of stuff going on. Of  
25 course, I wasn't actively involved at that time but I

1        hadn't been appointed.

2            Q.     I understand that. What I'm trying to find  
3        out is as part of your normal duties as a Chapter 7  
4        Trustee, particularly in the post conversion context,  
5        you endeavor to obtain your hands on all discovery  
6        materials of either the debtor or of the committee to  
7        go forward as part of your ongoing investigation,  
8        correct?

9            A.     Only if I thought it was necessary or  
10        appropriate for a particular reason. It's possible I  
11        would assume -- if you want me to assume -- a lot of  
12        it had to do with it probably the purchase of the  
13        assets that was fait accompli by the time I was there  
14        so it really wouldn't have been that -- or I wouldn't  
15        have needed to know all the intricacies of that.

16           Q.     So at the time of the Chapter 7 conversion  
17        were all of the hard assets -- in other words non --  
18        we will call them non causes of action. When I say  
19        "hard," I'm including tangibles like intellectual  
20        properties and things like that -- non cause of  
21        action type assets, had they already been sold?

22           A.     There was an early phase and a late phase  
23        which was substantially the business and they were  
24        both sold during the Chapter 11.

25           Q.     Preceding the conversion, before you took

1 over?

2 A. Before I took over.

3 Q. So when you took over the assets of the  
4 estate were comprised of the potential causes of  
5 action; is that correct?

6 A. Yes. Whether there were some small  
7 assets -- I can't tell you unless you want me to  
8 look. But certainly the substantial assets were  
9 these three lawsuits and the incredibly difficult  
10 task figuring out to what do with 14,000 boxes of  
11 clinical trial records. I don't know if you want me  
12 to get into the specifics of that but if necessary I  
13 can get into that. I some had receivables -- I am  
14 looking at my Form 2 that I collected from my quick  
15 glance and I had a lawsuit that was settled not too  
16 long ago with UnitedHealthcare Services for \$85,000.

17 Q. Not only do you have the causes of action  
18 that you actually asserted, UnitedHealthcare and  
19 these three lawsuits, do you also have any other  
20 potential causes of action that might exist out there  
21 as well?

22 A. Any cause of action other than the  
23 bankruptcy estate would be mine as the Trustee.

24 Q. As part of your job as the Trustee it's  
25 your job to investigate the validity of those causes

1 of action and potentially the -- estate, correct?

2 That's your normal job as the Trustee?

3 A. Of course. Myself individually or through  
4 professionals that I hire to --

5 Q. That was my next question. In many  
6 instances you hire professionals to assist you in  
7 that regard; is that correct?

8 A. True.

9 Q. I've known you for a while. You're --  
10 besides being a Chapter 7 Trustee, you're a  
11 well-known bankruptcy lawyer in this community --  
12 that's your primary area of practice?

13 A. I'm a bankruptcy lawyer and I'm a  
14 bankruptcy Trustee.

15 Q. Correct. And your firm also is primarily a  
16 known as a bankruptcy firm?

17 A. That's fair. Although we do other things.

18 Q. Correct. It's my understanding the general  
19 counsel to the Trustee in this case -- and I don't  
20 mean the adversaries -- I'm talking about the general  
21 counsel Trustee in the main case is the Furr & Cohen  
22 firm, correct?

23 A. Correct.

24 Q. Mr. Wernick is, I guess, handling most of  
25 that work?



1 A. Mostly I would say, that's fair to say.

2 Q. And then for your particular litigations  
3 you retained outside special counsel, which in the  
4 case of these three cases is the Genovese, Joblove  
5 firm including Mr. Cimo and Ms. Mark; is that  
6 correct?

7 A. Yes. There were some adversaries that --  
8 at least the one, UnitedHealthcare that we -- that  
9 Furr & Cohen internally handled.

10 Q. You did, okay. You hired the Genovese firm  
11 because of their unique skills and talents with  
12 respect to these types of case -- the more complex --

13 A. Mr. Cimo --

14 Q. -- account malpractice, D&O cases.  
15 Mr. Cimo's office has a reputation?

16 A. Mr. Cimo, Ms. Mark and the Genovese firm  
17 have a very good reputation for handling D&O claims  
18 and that was certainly one of the factors I used in  
19 retaining them.

20 Q. Right. I mean and you also retained as  
21 part of this bankruptcy process, you have other  
22 professionals to assist you in your duties including  
23 the retention of accountants, right?

24 A. Capilla.

25 Q. Mr. Soneet Capilla?

1 A. Soneet Capilla and his firm.

2 Q. Soneet Capilla & Mukamal?

3 A. Originally it wasn't Capilla & Mukamal but  
4 it is now.

5 Q. Correct. In assessing the strengths and  
6 weaknesses of the various cases you utilized the  
7 service of both counsel -- special counsel and your  
8 experts; is that correct?

9 A. Of course.

10 Q. Including evaluation of settlements as  
11 well, correct?

12 A. Of course.

13 Q. And if in your role as Trustee you also  
14 serve the role of the -- even though they're  
15 nonoperating because they're now Chapter 7 -- you  
16 serve the role of officers, directors, management of  
17 the company -- you make all executive decisions with  
18 respect to the affairs of these two corporate  
19 entities; am I correct?

20 MR. CIMO: Objection to the form.

21 THE WITNESS: As you said in your question,  
22 it's a Chapter -- it's nonoperating Chapter 7 so  
23 I don't think that is applicable.

24 BY MR. REICH:

25 Q. It's still -- they're still corporations,

1 correct?

2 A. I am the bankruptcy Trustee of the  
3 bankruptcy estate of those two corporations.

4 Q. You are the ultimate decision maker of  
5 decisions made on these two corporations from the  
6 motion you became appointed the Trustee, correct?

7 MR. CIMO: Objection to the form.

8 THE WITNESS: My roles are dictated by the  
9 bankruptcy code and I'm a fiduciary of these  
10 corporations. I'm not -- I don't want to just  
11 blankly say yes to what you're saying because I  
12 don't completely comprehend the scope of what --

13 BY MR. REICH:

14 Q. I'm trying to find out -- for example, you  
15 made your decision to hire the Genovese, Joblove  
16 firm, correct?

17 A. As stated, yes.

18 Q. Do you have to run it by anybody else, the  
19 board of directors or --

20 A. I make the final decision.

21 Q. You make the final decision. Same thing  
22 with the hiring of Mr. Capilla?

23 A. I make the final decision.

24 Q. Same thing with respect to bringing the  
25 lawsuits, am I correct?

1 A. I make the final decision.

2 Q. With respect to settlement of the lawsuits;  
3 same thing, you make the final decision?

4 A. Yes.

5 Q. And in your decision making process you  
6 retain professionals to assist you in that regard,  
7 correct?

8 A. Yes.

9 Q. And, in fact, has there been a -- is the  
10 Capilla firm also doing the tax work for the estate?

11 A. Yes.

12 Q. So you retained them to do the tax work?

13 A. Yes.

14 Q. And you recognize that operating companies  
15 also retain accounting firms to do tax work, correct?

16 A. Is your question do operating companies  
17 retain accountants to do tax work?

18 Q. Yes.

19 A. I believe that's a fair general statement.

20 Q. It's a fair general statement that they  
21 also retain accounting firms to do audits; is that  
22 correct?

23 A. Yes.

24 Q. To help them supplement those areas where  
25 the company may be deficient; is that correct?

1           A.    I suppose there could be a multitude of  
2 reasons why any company would hire any accountant or  
3 auditor.

4           Q.    Sometimes they hire accounting firms to do  
5 due diligence on transactions; is that correct?

6           A.    I believe that's correct.

7           Q.    Sometimes they hire law firms to assist  
8 with due diligence; is that correct, on transactions?

9           A.    That seems logical to me.

10          Q.    Okay. Now with respect to these companies,  
11 CCD and CCD NW, do you know who the law firm was that  
12 was hired to do the due diligence with respect to the  
13 Charles River transaction?

14          A.    Not off the top of my head, no.

15          Q.    Would you -- if I told you that the -- that  
16 it was DLA Piper did the due diligence with respect  
17 to that transaction, would that refresh your  
18 recollection?

19          A.    Sounds familiar now that you mentioned DLA  
20 Piper.

21          Q.    DLA Piper was the due diligence counsel for  
22 CCD and the acquisition of what's now CCD NW, Charles  
23 River, correct?

24          A.    I don't know that to be incorrect. It  
25 sound correct.

1 Q. Are you also aware that CCD retained Grant  
2 Thornton to conduct the due diligence on the exact  
3 same transaction; were you aware of that?

4 A. That sounds correct.

5 Q. In fact, I'll ask you to look at what's  
6 DE73 in the Grant Thornton adversary case, it's  
7 Exhibit Number 15 of yours, which would also make it  
8 in this --

9 A. Exhibit Number 21.

10 Q. Exhibit Number 21 in this case, which is a  
11 February 28, 2011 letter.

12 Can you tell me what that letter is?

13 A. It's a Grant Thornton letter to  
14 Mr. McGovern regarding proposed acquisition of  
15 Charles River Clinical Services Northwest, Inc.,  
16 dated February 28, 2011.

17 Q. And do you see the scope of work there?

18 A. I believe that's what I just read -- you  
19 mean the -- I do see it, yes.

20 Q. And there's Exhibit A to the scope of work,  
21 do you see that? It would say page 25 of 29 at the  
22 top.

23 A. Proposed work plan?

24 Q. Yes. All the way through page 27; do you  
25 see that?

1 A. Yes, I'm looking at it.

2 Q. And what's the difference -- what's  
3 Comprehensive Neuroscience, Inc.?

4 A. As I sit here I don't recall.

5 Q. And Charles River Clinical Services  
6 Northwest, Inc., is what's now known as CCD NW?

7 A. I believe that's true.

8 Q. And is Comprehensive Neuroscience, Inc. now  
9 known as CCD?

10 A. I think that's true but I'll defer to the  
11 pleadings. But I think that's true.

12 Q. And says on page 24 of 29 of this  
13 document -- do you see the signature of Mr. John  
14 McGovern, chief executive officer dated March 3, 2011  
15 for Comprehensive Neuroscience, Inc.?

16 A. I see page 24 of 29 and what you described,  
17 yes.

18 Q. Does that refresh your recollection as to  
19 whether Comprehensive Neuroscience is the same  
20 company as what is now known as CCD?

21 A. I think that's true.

22 Q. Now, in the adversary complaint against  
23 what I call the D&Os, which is Exhibit Number 5 --  
24 I'm not going to get into the details of it -- but  
25 there is great number of allegations that the D&Os

1     breached their respective fiduciary duties with  
2     respect to the Charles River transaction; you aware  
3     of that?

4           A.     I think that's one of the allegations  
5     against them, correct.

6           Q.     And in the Grant Thornton complaint,  
7     Exhibit Number 8 -- I'll ask you to pull out  
8     Exhibit Number 8.

9           A.     I will.

10          Q.     Docket entry one in the Grant Thornton case  
11     15-01233.

12          A.     I'm looking at it.

13          Q.     Can you turn to paragraph nine, please.

14          A.     I'm looking at it.

15          Q.     Now, this is a one count complaint under  
16     statutory avoidance counts; is that correct?

17          A.     Yes.

18          Q.     It's based upon a legal theory that Grant  
19     Thornton did not provide the debtor with reasonably  
20     equivalent value for its services, okay --

21                 MR. CIMO:  Objection to the form.

22                 MR. REICH:  I'm looking and it says lack  
23     reasonably -- okay, it's fine.

24     BY MR. REICH:

25          Q.     For not -- based upon Grant Thornton's



1 failure to among other things adequately or properly  
2 audit the debtors financial statement for the year  
3 ending 2011 based upon the acts and omissions of the  
4 debtors former officer and directors and/or control  
5 persons as alleged in that certain adversary  
6 proceeding -- which I'll say is the D&O case --  
7 pending in the above caption to the administrative  
8 bankruptcy case; you see that, sir, right?

9 A. Yes, I do.

10 Q. It says what Grant Thornton didn't do is  
11 properly audit the financial statement for the year  
12 ending 2011; do you see that?

13 A. I do.

14 Q. You do not sue -- can you tell me why you  
15 do not sue Grant Thornton for negligence for  
16 professional malpractice like you do in the McGladrey  
17 complaint, which is Exhibit Number 33?

18 MR. CIMO: I am going to object to the form  
19 and instruct the witness not to answer to the  
20 extent it's inquiring on attorney/client  
21 privilege information or work product of your  
22 professionals.

23 BY MR. REICH:

24 Q. I'll you to the extent it doesn't. Was  
25 there a reason why you only sued Grant Thornton on an

1 avoidance count when in McGladrey you sued them for  
2 both an avoidance count and for professional  
3 negligence?

4 MR. CIMO: Same instruction.

5 THE WITNESS: To answering that question  
6 will require me to violate the privilege that was  
7 just announced by Mr. Cimo.

8 BY MR. REICH:

9 Q. Is there a reason that you as the Trustee  
10 did not sue Grant Thornton in this complaint for its  
11 conduct with respect to the due diligence that it  
12 conducted on CCD's behalf -- or at time which I guess  
13 called Comprehensive Neuroscience -- with respect to  
14 the Charles River transaction.

15 MR. CIMO: Same instruction.

16 THE WITNESS: Same response.

17 BY MR. REICH:

18 Q. I'll also ask you is there a reason you did  
19 not sue DLA Piper with respect to their due diligence  
20 with respect to the Charles River transaction?

21 MR. CIMO: Same instruction.

22 THE WITNESS: Same response.

23 BY MR. REICH:

24 Q. Now, what I gather from this is that you  
25 made a conclusion based upon advice of counsel and

1 work product that you chose not to pursue them -- I  
2 don't want to get into why, okay? But you will admit  
3 that the complaint against Grant Thornton does not  
4 include challenging the work that it performed in the  
5 due diligence as reflected in the exhibit that we  
6 were looking at -- Exhibit -- sorry, DE73 is  
7 Exhibit Number 21; is that correct?

8 MR. CIMO: Objection to the form. You can  
9 answer.

10 THE WITNESS: I believe \$259,333 that was  
11 received, that is the subject of this complaint,  
12 would include the work that was performed by  
13 Grant Thornton, which I believe would include  
14 what you were just talking about.

15 BY MR. REICH:

16 Q. So the 259,000 that's set forth in  
17 paragraph eight and these various checks and wire  
18 transfers would include the services performed with  
19 respect to the due diligence that Exhibit Number 21  
20 covers; is that correct?

21 A. I believe that to be true.

22 Q. But the complaint in paragraph nine is that  
23 the lack of reasonably equivalent service value was  
24 not provided as it relates to the audit, not with  
25 respect to the due diligence; is that correct?

1 MR. CIMO: Objection to the form.

2 THE WITNESS: Paragraph nine says what  
3 paragraph nine says.

4 BY MR. REICH:

5 Q. So paragraph nine says that Grant  
6 Thornton -- the reason there is no lack of reasonable  
7 equivalent value is it didn't adequately and properly  
8 audit the debtor's financial statement for the year  
9 ending 2011 based upon the acts and omissions of the  
10 D&Os as set forth in the D&O case -- if I'm  
11 paraphrase rather than repeating it again -- is it an  
12 accurate paragraph?

13 A. I'm going to stick with the language in  
14 paragraph nine.

15 Q. Now, let me ask you this question: In the  
16 case against my client, the former CFO of the  
17 company, and against the other officers -- I'm sorry,  
18 the other officers, Mr. McGovern and the directors --  
19 Mr. Crinchlow and Ms. Vilmos' clients -- you stated  
20 that they have not done -- they breach their  
21 fiduciary duties or improperly handled their duties  
22 to the company by virtue of having done the Charles  
23 Recover Transaction; is that correct?

24 MR. CIMO: Objection to form.

25 THE WITNESS: That was one.

1 BY MR. REICH:

2 Q. Amongst other things that was one of them,  
3 correct?

4 A. Correct.

5 Q. And you did not sue Grant Thornton for  
6 their work as related to providing the due diligence  
7 on that transaction and you did not -- is that's  
8 correct?

9 MR. CIMO: Objection to the form.

10 THE WITNESS: I don't believe that's  
11 correct.

12 BY MR. REICH:

13 Q. You did sue them for the work they  
14 performed as related to the due diligence?

15 A. Grant Thornton?

16 Q. Yes.

17 A. I believe that's part of the \$259,000.

18 Q. You're suing them for the return of their  
19 fees, okay? But are you actually -- but you're  
20 stating in paragraph nine that the reason they are to  
21 return all those fees is because you didn't do a good  
22 job on the audit. You don't say anything about not  
23 doing a good job on the due diligence; is that  
24 correct?

25 MR. CIMO: Objection to the form.

1 Mischaracterizes what the complaint says. You  
2 need to read the paragraph and not try to  
3 mischaracterize what it say.

4 THE WITNESS: It does say all or certain of  
5 the services it provided to one or both, et  
6 cetera. And then it says among other things, et  
7 cetera. I think --

8 BY MR. REICH:

9 Q. So it's your testimony here today here  
10 today that that lawsuit covered the due diligence as  
11 well? Their malfeasance with respect to the  
12 conducting of due diligence was covered within the GT  
13 lawsuit?

14 MR. CIMO: Objection to the form.

15 BY MR. REICH:

16 Q. Is that --

17 A. Those are your words.

18 Q. That's my question and I'm looking for your  
19 answer.

20 MR. CIMO: If that's the question, I object  
21 to the form. You can answer.

22 THE WITNESS: The complaint is for recovery  
23 of avoidable transfers up to \$259,000 -- 259,333  
24 as alleged in the complaint. Services that were  
25 provided for -- in exchange for the 259,335,

1 we're seeking the avoidance of those payments.

2 BY MR. REICH:

3 Q. So it's your position that the McGladrey --  
4 sorry, strike that. That the GT lawsuit that you are  
5 settling, subject to the pending settlement motion,  
6 is intended to cover claims under this complaint that  
7 were made relating to GT's failure to perform its  
8 duties -- the due diligence as set forth in  
9 Exhibit Number 21?

10 MR. CIMO: Objection to the form.

11 THE WITNESS: Exhibit 21.

12 BY MR. REICH:

13 Q. The retention -- due diligence retention  
14 for Charles River?

15 A. It's not a complicated complaint so the  
16 complaint stands for itself.

17 Q. I'm asking you a question. Is your -- is  
18 the lawsuit -- I'll ask you two questions; one about  
19 the lawsuit and one about the settlement, okay?

20 Is the lawsuit intended to cover the  
21 malfeasance on Grant Thornton's part with respect to  
22 failure to perform the services on Exhibit Number 21?

23 A. I think so, yeah. Well, it's for the  
24 recovery of avoidable transfers. We did not get  
25 reasonable equivalent value in exchange for the

1 services provided as set forth in the complaint.

2 Q. Which services?

3 MR. CIMO: Objection to the form.

4 BY MR. REICH:

5 Q. I'll make it easier, go to Exhibit Numbers  
6 19 --

7 MR. CIMO: You're not making it easy.

8 BY MR. REICH:

9 Q. Exhibit Numbers 19 and 20 are two retainer  
10 exhibits.

11 MR. CIMO: I'm trying to understand the  
12 relevance of this to the 9019 factors. If you're  
13 going to tie it in, that's great. I'm trying to  
14 understand how this has anything to do with  
15 approval of the settlement. I'll let you keep  
16 going.

17 MR. REICH: I'll explain it to Judge Olson.

18 MR. CIMO: You don't need to yet but get  
19 him on the phone and see what he has to say about  
20 this.

21 MR. REICH: You have a complaint against my  
22 client --

23 MR. CIMO: You don't need to explain now.

24 MR. REICH: Fine.

25 MR. CIMO: At some point we will give him a



1 call and you can explain to him.

2 BY MR. REICH:

3 Q. Look at Exhibit Number 19, which is 7-1 or  
4 DE71, which is also Exhibit Number 13 in your exhibit  
5 register.

6 A. The answer is I think that all the service  
7 provided that are referenced in 7.1, 7.2 and 7.3 are  
8 covered within the allegations of our complaint.

9 Q. Including the tax services that would be  
10 provided under Exhibit Number 20?

11 A. There's three separate retainer agreements  
12 and I believe they're all included within the  
13 allegations. And I know that they had affirmative  
14 defenses with regard to the language contained in  
15 these -- in these three retainer agreements.  
16 Affirmative defenses as well as motion for summary  
17 judgment that dealt with it.

18 Q. Exhibit Number 19 is the 2011 audit  
19 retention; is that correct?

20 A. Exhibit -- which one?

21 Q. Exhibit Number 19.

22 MR. CIMO: Objection to the form. The  
23 document speaks for itself.

24 MR. REICH: I am asking him what his  
25 understanding --

1 THE WITNESS: It's the January 12, 2012  
2 letter and --

3 MR. REICH: If Mr. Cimo would like you to  
4 read what the scope of services are just --

5 MR. CIMO: I think the document speaks for  
6 itself. I mean, we can waste time --

7 MR. REICH: I know we can.

8 THE WITNESS: There was three; there was  
9 tax, there was an audit and there was --

10 BY MR. REICH:

11 Q. Due diligence?

12 A. Due diligence.

13 Q. Is 19 the audit one, is 20 the tax one?

14 A. It look like -- yes, 19 is audit.

15 Q. 20 is tax and 21 is due diligence; am I  
16 correct?

17 MR. CIMO: Let the record reflect the  
18 witness is flipping through the pages of the  
19 document to read it.

20 MR. REICH: Is that an objection?

21 MR. CIMO: No.

22 MR. REICH: Speaking objection is improper.

23 MR. CIMO: There is no video. He is going  
24 through the pages so he can read it, which you  
25 can do too. We'll stipulate that's what it is.

1 THE WITNESS: There you go.

2 MR. CIMO: We stipulate that that's what it  
3 says.

4 BY MR. REICH:

5 Q. You mentioned before -- so 19 through 21  
6 are all included within the services of which you  
7 complained in paragraph nine of the GT complaint?

8 A. Paragraph nine is not the entire complaint.  
9 But, yes, in general.

10 Q. Where in there are you complaining about  
11 the tax services that were provided?

12 MR. CIMO: Objection to the form. Asked  
13 and answered. This is inappropriate. Paragraph  
14 nine speaks for itself. He read to you the  
15 language that says it's not limited.

16 MR. REICH: After your speaking objection,  
17 are instructing him not to answer.

18 MR. CIMO: I am going to --

19 MR. REICH: Fine.

20 MR. CIMO: I'm not doing it now but I'm  
21 telling you this is starting to harass him  
22 because he already answered your question.

23 BY MR. REICH:

24 Q. Where in the complaint does it say you're  
25 complaining for the tax services that were provided?

1           A.     Paragraph 8 is \$259,355, that encompasses  
2     the services that were provided by GT. Paragraph 9  
3     says the lack of reasonably equivalent value as  
4     provided by GTL in regard to all or certain of all or  
5     certain of the service it provided to one or both  
6     debtors for the GTL transfers based upon its failure  
7     to among other things adequately or properly audit  
8     the debtors financial, et cetera. There are caveats  
9     in there. It says all or certain of the services.  
10    It says among other things.

11           **Q.     Is the among other things inclusive of the**  
12    **due diligence and the tax services?**

13           A.     Inclusive of all the services that were  
14    provided in exchange \$259,335, which, I believe, is  
15    inclusive of the three scopes of services referenced  
16    in 19, 20 and 21.

17           **Q.     Okay. With respect to the Charles River**  
18    **transaction, what was it that GT did wrong in**  
19    **providing due diligence services as it relates to**  
20    **what my client, the former CFO, and the officers --**  
21    **and Mr. McGovern and the other directors do?**

22           MR. CIMO: I'll instruct the witness not to  
23    answer because now you're taking a substantive  
24    deposition of this witness. You can get the  
25    judge to give you information on that.

1 MR. REICH: The fact of the matter is this  
2 is about --

3 MR. CIMO: I don't care what you say it's  
4 about.

5 MR. REICH: Are you going to instruct him  
6 not to answer?

7 MR. CIMO: If the Court orders him to  
8 answer, he will. Right now you're taking a  
9 substantive deposition and I am objecting. If  
10 the Judge disagrees --

11 MR. REICH: What is it that --

12 MR. CIMO: I am not arguing with you.

13 MR. REICH: You have to prove the  
14 reasonableness of the settlement, okay.

15 MR. CIMO: We're going to.

16 MR. REICH: You are? You haven't yet but  
17 that's besides the point.

18 MS. MARK: We will see about that.

19 MR. REICH: GT was supposed to provide due  
20 diligent services, okay? You're claiming you  
21 sued them for the recovery of the work they did  
22 under those services, okay? You're settling for  
23 them for the failure to properly do the due  
24 diligence of the services. I'm trying to get to  
25 your analysis of that and how it relates to my

1 clients -- my client.

2 MR. CIMO: That wasn't question you asked.

3 The question you asked was substantively a  
4 question about liability. This goes to the very  
5 underlying basis of the lawsuit.

6 MR. REICH: You can't --

7 MR. CIMO: I'm instructing the witness not  
8 to answer at this time. If the Court orders --

9 MR. REICH: Mark that.

10 MR. CIMO: If the Court orders him to  
11 answer it, we'll bring him back and he will  
12 answer it.

13 You're now going into substantive areas  
14 which are not within the scope of the borrower or  
15 the 9019 motion.

16 BY MR. REICH:

17 Q. Let's ask the question. If my client had  
18 relied upon Grant Thornton's services in conducting  
19 the due diligence on the Charles River transaction  
20 and my client was found liable in the case against  
21 her for not doing her duties well as alleged against  
22 her, would you not think that my client could rely  
23 upon Grant Thornton's due diligence reports and  
24 services to make a contribution or potential  
25 indemnity claim against them?

1 MR. CIMO: Objection to the form. You can  
2 answer if you can.

3 THE WITNESS: I think after second or third  
4 not in your question I got confused. So you may  
5 have to rephrase it.

6 MR. REICH: You want me to rephrase it, I  
7 will rephrase it.

8 BY MR. REICH:

9 Q. If Grant Thornton didn't do a good job in  
10 its due diligence wouldn't my client be able to  
11 assert a contribution and indemnity claim against  
12 them in the event it was found liable in a case based  
13 on the allegations against her with respect to  
14 Charles River?

15 MR. CIMO: Objection to the form. You may  
16 answer if you can.

17 THE WITNESS: Under the terms of the bar  
18 order there are certain provisions that provide  
19 some protection that I believe are available for  
20 your client.

21 BY MR. REICH:

22 Q. My question wasn't in terms of the  
23 borrower, my question was without the borrower. If  
24 there was no borrower -- in fact, if you never even  
25 sued Grant Thornton or you never settled Grant

1 Thornton, would my client be able to assert against  
2 Grant Thornton contribution and indemnity claims --

3 MR. CIMO: Objection to the form.

4 BY MR. REICH:

5 Q. -- if they were -- if she was found liable  
6 for her malfeasance with respect to the Charles River  
7 transaction?

8 MR. CIMO: Objection.

9 BY MR. REICH:

10 Q. Is a case against us?

11 MR. CIMO: Objection to the form. You  
12 answer if you can.

13 THE WITNESS: You can assert any claim that  
14 you're interested in asserting. It will be up to  
15 the Judge to determine whether it's a valid  
16 claim.

17 BY MR. REICH:

18 Q. Did you or your counsel have an opportunity  
19 to review the various deposition transcripts that  
20 were obtained from either the debtor or the committee  
21 prior to the conversion?

22 A. I didn't personally review any of those  
23 deposition transcripts as far as I can remember and I  
24 don't know specifically whether my counsel did or  
25 didn't.



1           Q.     Okay. Same thing with the documents that  
2     were produced in connection with the then Chapter 11  
3     case?

4           A.     When the case was first converted to a 7 I  
5     looked at a lot of stuff. I in no way can remember  
6     or testify as to what exactly I looked at. As far as  
7     what my counsel looked at, I don't know exactly --  
8     specifically everything that they looked at.

9           Q.     In these two cases were claims bar dates  
10    set?

11          A.     Corporate cases they're set automatically.  
12    It's not like in an individual case where you have to  
13    file a notice to get a claims bar deadline.

14          Q.     Do you know what claims bar dates in both  
15    of these cases are?

16          A.     If I look at the claims register I can tell  
17    you.

18          Q.     That will be on exhibits -- I believe  
19    Exhibit Number 6 and 7.

20          A.     For the CCD case the last date to file  
21    claims is 12/31/13. And on the CCD Northwest it  
22    doesn't say. There you go, that's my answer.

23          Q.     Have these cases been administratively  
24    consolidated?

25          A.     They were administrative consolidated

1 during the course of the Chapter 11.

2 Q. Have they ever been subsequently  
3 consolidated?

4 A. No, I don't believe so.

5 Q. So both CCD and CCD NW have different  
6 creditors; is that correct?

7 MR. CIMO: Objection to the form.

8 THE WITNESS: That would require me to go  
9 and cross reference them right now.

10 BY MR. REICH:

11 Q. I'm not saying there's not crossover  
12 creditors but I'm saying they have their own  
13 independent obligations and debts?

14 MR. CIMO: Objection to the form. You can  
15 answer if you can.

16 THE WITNESS: There -- I mean, there are  
17 two separate estates and there are two separate  
18 sets of claims that were filed.

19 BY MR. REICH:

20 Q. With respect to the GT settlement did you  
21 do any allocation of the \$175,000 between CCD and CCD  
22 NW?

23 A. No. CCD NW reported no distribution that  
24 was filed in that case. If it has to be withdrawn at  
25 some point for any more particular reason and

1 reopened then that can happen.

2 Q. So when the monies comes into this -- if  
3 this settlement is approved, and the 175,000 per case  
4 net of attorney's fees -- 61,000 in attorney's fees --  
5 comes into respective cases, it will only come into  
6 CCD case; is that correct?

7 A. Yes.

8 Q. And so the creditors of CCD NW will not be  
9 getting any monies as a result of these settlements;  
10 is that correct?

11 MR. CIMO: Objection to the form.

12 THE WITNESS: That remains to be seen.

13 BY MR. REICH:

14 Q. Why does it remain to be seen? What can  
15 happen to change that?

16 A. If for some reason it became appropriate to  
17 reopen the CCD Northwest case then that would change  
18 it.

19 Q. Do you have any potential to reallocate the  
20 net proceeds of the settlement into CCD NW?

21 MR. CIMO: Objection to the form. I will  
22 instruct you not to answer to the extent it  
23 requires you to give your work product or your  
24 thought process on how you're going to do  
25 something in the future or advice of counsel.

1 Other than you can answer.

2 THE WITNESS: I think to answer that would  
3 require me to -- I'll follow my attorney's  
4 instructions.

5 MR. CIMO: I am not instructing you not to  
6 answer.

7 THE WITNESS: I am asserting the privilege.

8 BY MR. REICH:

9 Q. You're saying you can't answer without  
10 invading due privilege; is that your answer?

11 MR. CIMO: Objection. I didn't just raise  
12 due privilege.

13 BY MR. REICH:

14 Q. Other than attorney/client work product?

15 A. Ask the question again.

16 MR. CIMO: It would help if you rephrase.

17 THE WITNESS: My settlement -- this  
18 settlement that's before the Court --

19 MR. REICH: Both GT and McGladrey?

20 THE WITNESS: All the same answers would  
21 apply to my analysis whether it was just the CCD  
22 case or the CCD NW case.

23 BY MR. REICH:

24 Q. What is that analysis?

25 A. If the CCD NW case didn't exist and those

1 creditors didn't exist and those creditors didn't  
2 exist, the same analysis would exist just based upon  
3 the claims register for CCD.

4 Q. What I'm trying to ascertain is how much of  
5 the 175 net in each case is going to CCD NW  
6 creditors, that's what I'm trying to ascertain. Can  
7 you answer that question without invading the  
8 privilege?

9 MR. CIMO: I want to object to the form. I  
10 think he's already answered that. I thought you  
11 were going --

12 MR. REICH: You're objecting to everything.

13 MR. CIMO: That's not true.

14 He did tell you he wasn't sure right now  
15 and that he may reopen that estate at a later  
16 date, that's my recollection.

17 BY MR. REICH:

18 Q. What would cause you to reopen that estate?

19 MR. CIMO: Object to the form of the  
20 question. You can re-answer.

21 THE WITNESS: As I sit here, I can't tell  
22 you.

23 BY MR. REICH:

24 Q. Reopening the estate means you're going to  
25 get new assets, correct?

1 MR. CIMO: Objection to the form.

2 THE WITNESS: Not necessarily.

3 BY MR. REICH:

4 Q. If you get a recovery against our clients  
5 you might reopen CCD NW?

6 MR. CIMO: Objection to the form.

7 THE WITNESS: Anything is possible.

8 BY MR. REICH:

9 Q. Right now you have not received any money  
10 as a result of the D&O case and both cases are  
11 administratively insolvent, correct?

12 A. I know for sure your client hasn't paid  
13 anything and the cases are administratively  
14 insolvent, yes.

15 Q. When you allocate the 175 per case -- per  
16 settlement, is it your testimony that the entire  
17 amount is going to be allocated into the CCD estate?

18 MR. CIMO: Objection to the form.

19 THE WITNESS: It's premature for me to  
20 answer that. I don't have the answer right now.

21 BY MR. REICH:

22 Q. I'm trying to figure out when you're  
23 approving settlement for the benefit of the  
24 creditors, CCD and CCD NW, which are two bankruptcy  
25 estates that have not been subsequently consolidated,

1     how are you going to ascertain how that money will  
2     flow down to the creditors of those respective  
3     estates?

4             MR. CIMO: Object to the form.

5             THE WITNESS: I am not sure I need to have  
6     that answer right now. As I understand it this  
7     deposition is scheduled to determine whether  
8     these settlements are appropriate under the  
9     applicable standards. I think, in fact, the  
10    notice says that. I am not here to testify what  
11    distribution is ultimately -- the specifics of  
12    the distribution. So I can't tell you --

13    BY MR. REICH:

14            Q.    You answered Ms. Vilmos' question before,  
15    the monies would come in after the payments of the --  
16    the contingency payments to the Genovese firm are  
17    going go to the payment of the administrative  
18    expenses; is that correct?

19            A.    I can't tell you that exactly. But  
20    certainly they're not going to go to the general  
21    unsecured which is what I think the question was.

22            Q.    And that is -- okay.

23            A.    It may go to experts against your client.

24            Q.    Now secured creditors, whatever claims they  
25    have remaining, are they now unsecured as a result of

1     **the sale of the assets?**

2             MR. CIMO:  Objection to the form.  Only to  
3     the extent that it requires you to divulge any  
4     confidential or privilege information or  
5     discussions with your general counsel about these  
6     issues.  Otherwise, you can answer.

7             THE WITNESS:  I have not done claims -- I  
8     haven't done claims objections.  So there may be  
9     proper and appropriate bases to object to the  
10    claims that are pending right now.

11  BY MR. REICH:

12            **Q.    Have the secured creditors in these cases**  
13 **been paid anything as of yet other than whatever they**  
14 **were entitled to as a result of the asset sales that**  
15 **occurred preconversion?**

16            A.    I didn't pay secured creditors --

17            **Q.    I said in these cases and that's --**

18            A.    In the Chapter 11.

19            **Q.    Well, I said preconversion sale.**

20            A.    Preconversion sale in the Chapter 11?

21            **Q.    Yes.**

22            A.    The assets were sold for less --

23            **Q.    It's the same case it's just a converted**  
24 **case.**

25            A.    In the Chapter 11, early -- in the late



1 phase assets were sold for roughly \$5 million, which  
2 I believe all went to Oxford.

3 Q. So Oxford being a secured creditor,  
4 correct?

5 A. Correct.

6 Q. With some carve outs, correct?

7 A. Some carve outs.

8 Q. Was Oxford paid in full on its claims?

9 A. No.

10 Q. And Oxford has not received any monies  
11 other than what it received as a result of those two  
12 sales; is that correct?

13 A. I'm holding some money in an earmarked  
14 account with I think about \$23,000 in it that may or  
15 may not end up going to Oxford.

16 Q. Will any monies be going to the priority  
17 creditors?

18 A. I don't know.

19 Q. Right now you said you know for sure that  
20 the general unsecured are not going to see any?

21 A. There currently exists -- there's 23,000 in  
22 one account and that's the Oxford escrow account and  
23 there's 31,000 approximately in the other account --  
24 the other estate account. Hopefully there will be  
25 350,000 minus Genovese's contingency fee that will go

1 into that account and I can't tell you where that  
2 money will go may go because it may go to experts.  
3 You guys may call me tomorrow and say you're going to  
4 accept the \$4.25 million settlement and then this  
5 money will be used to pay other people.

6 Q. Okay.

7 MR. REICH: For the record, I'm going move  
8 to strike all references to the settlement the he  
9 made throughout the deposition and ask they be  
10 redacted from the transcript. Will you  
11 stipulate --

12 MR. CIMO: I have no objection.

13 MR. REICH: It occurred throughout this  
14 deposition.

15 MR. CIMO: Well, it wasn't -- we're happy  
16 to do that.

17 MR. REICH: We'll have a transcript.

18 MR. CIMO: This should not be filed with  
19 the Court without a redaction.

20 MR. REICH: Correct. Any references to --  
21 for the court reporter's purposes purpose, any  
22 reference to any offers of judgment, including us  
23 discussing it now and what we're doing about it  
24 now should be redacted from the transcript.

25 MR. CIMO: Or the word settlement.

1 MR. REICH: Settlement or offer of judgment  
2 or anything --

3 MS. VILMOS: No.

4 MR. REICH: Only the settlement -- not the  
5 settlement with McGladrey, not the settlement  
6 with GT -- go off the record for a second.

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

9 BY MR. REICH:

10 Q. When Mr. Cimo and Ms. Mark's firm was  
11 retained by yourself, it was subject to approval by  
12 the bankruptcy court, correct?

13 A. Yes.

14 Q. And the terms of that retention were  
15 disclosed to the bankruptcy court, correct?

16 A. Yes.

17 Q. And they were approved as counsel, correct?

18 A. Yes.

19 Q. Were they approved by the individual basis?  
20 In other words you had to go to the Court for each of  
21 these litigations or just in general for all these  
22 litigations collectively?

23 A. I think there was only one.

24 Q. One for all the litigations?

25 A. I think that's true, yes.

1 Q. So the terms of -- so the Genovese firm is  
2 getting paid a contingency fee; is that correct?

3 A. Yes.

4 Q. What's the percentage amount for the  
5 contingency fee?

6 A. I think it's 35 but I'll defer to --

7 Q. Which would be the same amount whether it's  
8 the GT case, the McGladrey case or the D&O case,  
9 correct?

10 A. I believe that's true.

11 Q. So when you said before to Ms. Vilmos that  
12 you needed the money to pay for counsel to litigate  
13 against us --

14 A. That's not what I said.

15 MR. CIMO: Objection to the form.

16 BY MR. REICH:

17 Q. What did you say?

18 A. The cost and expenses associated with the  
19 continuing litigation. There's expert witnesses that  
20 will have to be retained -- they cost money.

21 Q. Expert witnesses have been retained,  
22 correct?

23 MR. CIMO: Objection to form.

24 THE WITNESS: There will be additional --

25 if you're talking about Mr. Capilla and his firm?

1 MR. REICH: Yes.

2 THE WITNESS: I need more than Mr. Capilla  
3 and his firm in my view.

4 BY MR. REICH:

5 Q. Are you familiar with a transaction  
6 known -- referred to as the CMT spinoff; do you know  
7 what that is?

8 A. Not specifically. But, again -- I mean,  
9 there's a lot of stuff that I looked at and reviewed  
10 and discussed. I don't remember every single thing.

11 Q. Okay. You charge in the complaint against  
12 the D&Os they're somehow liable with respect to that  
13 transaction. Do you know when that transaction  
14 occurred?

15 MR. CIMO: I'll object to this line of  
16 questioning. Unless you can tell me how it  
17 relates to 9019 motion and the bar order. If you  
18 can, I will happy to let you keep going.

19 MR. REICH: Well, I'll tie into the audits.

20 MR. CIMO: You did that with the prior  
21 ones.

22 MR. REICH: I did it before with respect to  
23 the due diligence.

24 MR. CIMO: If you ask him whether the  
25 services involved regarding CMT are somehow

1 involved in any of these lawsuits, his answer, I  
2 think, is going to be yes. We can truncate this.

3 I am going object to the substantive  
4 questions that go to the merits of the case. He  
5 was not prepared for that to testify today. He  
6 was prepared to the 9019 motion, your objections  
7 and the bar order relief.

8 MR. REICH: Let me ask a question broadly  
9 rather than drilling --

10 MR. CIMO: Try it that way and then we'll  
11 try to narrow it down.

12 MR. REICH: I'll try to do it that way.

13 BY MR. REICH:

14 Q. If conduct of the two accounting firms were  
15 relied upon by the D&Os and upon that reliance the  
16 D&Os acted in a certain way that leads to them being  
17 liable to you under the D&O case, okay, without the  
18 borrower would the D&Os have the ability to assert  
19 claims -- any sort of claims against the accounting  
20 firms?

21 MR. CIMO: Objection to the form. You can  
22 answer if you can.

23 THE WITNESS: I think your client can  
24 assert whatever claims they chose to. Whether  
25 they're appropriate under Florida law or

1 applicable law will be for a judge to determine.  
2 I also think that the facts as you set them forth  
3 in your question is not consistent with the  
4 allegations. For the most part since we're  
5 talking generally, the D&Os are the one who  
6 provide the information to the auditors who do  
7 the auditing. Now, I understand that that's not  
8 the full and complete summary of everything that  
9 we're talking about but that certainly a part of  
10 it.

11 BY MR. REICH:

12 Q. You say that -- you opened it up -- that we  
13 provided the information to the auditors, in the case  
14 of the due diligence, which is within the scope of  
15 what you sued GT for and the scope of the settlement  
16 with GT, the due diligence was of an outside entity  
17 so that the information flow would not be going from  
18 the D&Os to Grant Thornton but it will be going from  
19 Grant Thornton and Piper back to the D&Os; am I  
20 correct or am I wrong?

21 MR. CIMO: Objection to the form.

22 BY MR. REICH:

23 Q. Am I correct or wrong?

24 MR. CIMO: Same objection. If you can  
25 answer this question, be my guess.

1 THE WITNESS: I don't think I can answer  
2 that question.

3 BY MR. REICH:

4 Q. How do you understand due diligence works?

5 MR. CIMO: I'll object and I'll instruct  
6 the witness not to answer because you're now  
7 going back into the substance of the lawsuit.

8 Mark the question. If the Judge orders him  
9 to answer it, we'll bring him back to answer it.  
10 Again, we do not want questions that are designed  
11 to get into the substance of the allegations  
12 against your clients or against the parties we  
13 settled with.

14 BY MR. REICH:

15 Q. Do you know which lawsuit was filed first;  
16 the D&O cases or accounting cases?

17 MR. CIMO: The record speaks for itself.

18 BY MR. REICH:

19 Q. Do you know?

20 A. I have to look.

21 Q. In fact, the Grant Thornton case makes  
22 specific reference in paragraph nine to the D&O case;  
23 am I right? We went over that before; am I correct?

24 A. If you want me to pull --

25 Q. You --



1 A. Paragraph nine.

2 Q. We only talked about it maybe 20 minutes  
3 ago.

4 A. If you're telling me that the D&O case was  
5 filed first then if that's what the record  
6 reflects --

7 Q. That's not my question. My question was:  
8 Does the Grant Thornton case make specific reference  
9 to the D&O case?

10 MR. CIMO: We will stipulate that it does.

11 THE WITNESS: Yes.

12 MR. REICH: You'll stipulate, Counsel.

13 BY MR. REICH:

14 Q. Does the McGladrey case make specific  
15 reference throughout to certain malfeasances of the  
16 D&Os that were not picked up by McGladrey in the  
17 course of their audit?

18 MR. CIMO: We will stipulate -- not what  
19 you said. We will stipulate that the McGladrey  
20 complaint makes references to the D&O complaint  
21 and the allegations in there. It says what it  
22 says.

23 MR. REICH: Off the record.

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

1 MR. CIMO: We don't use the word  
2 malfeasance by the way, you did.

3 BY MR. REICH:

4 Q. I'll hand you what I will now mark as  
5 Exhibit Number 36.

6 (Exhibit Number 36 marked for  
7 identification.)

8 BY MR. REICH:

9 Q. This would be Exhibit Number 36 here,  
10 Exhibit Number 6 to your exhibit register in the  
11 McGladrey case. It's a December 2010 letter. It's  
12 also docket entry 15-1 in the McGladrey case.

13 Do you recognize this to be the McGladrey  
14 retention for the 2010 audit?

15 A. That's what it appears to be, yes.

16 Q. Do you see where the scope of services are  
17 on here and that would be -- under audit services; do  
18 you see that section?

19 A. I'm looking at.

20 Did you want me to read it?

21 Q. Have you looked at it?

22 A. In the past, not in the --

23 Q. Is it your understanding that the audit  
24 services that are set forth in this exhibit are to  
25 cover for year 2000 auditing of the internal controls

1 of the debtors?

2 MR. CIMO: Objection to the form.

3 THE WITNESS: Say that one more time.

4 BY MR. REICH:

5 Q. The internal controls -- throughout the D&O  
6 complaint you talk about there's lack of certain  
7 internal controls and in the McGladrey suit you sue  
8 them for not picking up these controls; is that a  
9 fair assessment of what the McGladrey suit says?

10 MR. CIMO: Objection to the form. I will  
11 instruct the witness not to answer. That  
12 completely mischaracterizes what the document  
13 says. The document speaks for itself. If you  
14 ask him a specific question about a specific  
15 paragraph, I'll allow him to answer.

16 And I have the McGladrey complaint here to  
17 show him.

18 MR. REICH: We have the McGladrey complaint  
19 which is exhibit --

20 MR. CIMO: Exhibit Number 33.

21 BY MR. REICH:

22 Q. And this is the operative  
23 McGladrey complaint -- the first amended -- DE5 in  
24 the McGladrey case?

25 MR. CIMO: We stipulate that as the

1           operative one that was pending at the time of  
2           settlement.

3                   MR. REICH:   Okay.

4   BY MR. REICH:

5           Q.    Do you see in subpart B starting on page 4  
6   of paragraph 16 --

7           A.    What page?

8           Q.    Page 4.

9           A.    Thank you.

10          Q.    Paragraph 16 through 24 there is a  
11   discussion about the secured facility officer of  
12   financial; do you see that, \$5 million credit  
13   facility?

14          A.    Right.  It went from \$5 million and then it  
15   went up to 7 plus million.

16          Q.    What is it that you assert that McGladrey  
17   failed to pick up or do or somehow violated its  
18   professional duties to the debtor with respect to the  
19   Oxford credit facility?

20          A.    I will defer to this complaint in its  
21   entirety.

22          Q.    What's your under understanding of what  
23   McGladrey failed to do?

24                   MR. CIMO:  Do you want to read the  
25   complaint before you answer?

1 THE WITNESS: Yes.

2 MR. CIMO: Why don't we take a break --

3 BY MR. REICH:

4 Q. You can read the complaint and tell us what  
5 it was with respect to the Oxford Credit Facility  
6 that McGladrey failed to do?

7 A. Generally they violated -- they didn't  
8 comply with GAAP and GAAS, which are complicated  
9 things. I'm not an accountant, I'm not an auditor.  
10 I understand that these are the allegations. In  
11 order to approve them we would need GAAP and GAAS,  
12 experts -- standard of care experts. We're settling  
13 right now for a fair and reasonable amount as to the  
14 benefit of the estate. If I'm going to get into all  
15 of the intricacies of every single allegation in this  
16 complaint it's going to take discovery, it will  
17 deplete the assets of the estate and that is not  
18 appropriate for this estate in my business judgment.  
19 So you can ask me specifics about what he said, she  
20 said and what he did or didn't do and I'll probably  
21 give you the same general answer.

22 Q. But so -- if it's not appropriate to ask  
23 those questions --

24 A. I didn't say it wasn't appropriate.

25 Q. If it was appropriate for you to spend

1 estate money to pursue these and find out the answers  
2 as to was wrong with the Oxford Credit Facility then  
3 my question is -- I ask you that same exact question  
4 with respect to the D&Os?

5 MR. CIMO: Objection. We move to -- I'm  
6 not going to move to strike. I'll instruct the  
7 witness not the answer. It's not a question.  
8 It's just harassing at this point.

9 BY MR. REICH:

10 Q. My question is -- it says that paragraph 22  
11 from after March 2011 the company is not in  
12 compliance with certain financial covenants, okay?  
13 What were those financial covenants that warrant  
14 them?

15 A. Are you familiar with in pari delicto?  
16 That's a full defense.

17 Q. You --

18 A. I run the risk of getting zero in this  
19 case. I run the risk of spending lots and lots of  
20 money that I don't have in the estate in order to get  
21 to trial. There's no guarantee that I'm going to win  
22 this lawsuit. I think I have a strong argument. I  
23 think I have strong counsel. Every case -- I think  
24 what you're arguing is that every single case should  
25 just go to trial. That's not how the bankruptcy

1 system operates, it's not what the case law states  
2 when it comes settlement under 9019. I don't have  
3 to --

4 MR. CIMO: Let him finish, please. Thank  
5 you.

6 THE WITNESS: I don't have to cross every  
7 "T" and dot every "I" because in order to do so  
8 depletes estate assets, which I don't have.  
9 Everything that is presented to me at this time  
10 based upon everything that's in front of me,  
11 which I believe gives me enough information to  
12 enter into the settlement for the benefit of this  
13 estate.

14 BY MR. REICH:

15 Q. Was there something that supported the pari  
16 delicto defense that was latterly presented to you  
17 with respect to the Oxford Credit Facility? Were  
18 there certain facts that were presented to you that  
19 made you consider that possibly the pari delicto  
20 defense would be sustainable?

21 MR. CIMO: Object to the form. To the  
22 extent you had conversations with counsel or work  
23 product information in formulating any such  
24 belief. Other than that you can answer.

25 THE WITNESS: I did not speak with them

1 personally, my counsel would have. But I did  
2 have benefit of seeing the pleadings or the  
3 motions and the opposition that were filed just  
4 as you have. And they certainly asserted that  
5 with tenacity.

6 BY MR. REICH:

7 Q. What is your understanding of what they're  
8 asserting that the D&Os didn't do properly with  
9 respect to Oxford Credit --

10 A. My understanding would either come from  
11 conversations I had with counsel or what they set  
12 forth in -- it's the docket that you and I can  
13 retrieve equally.

14 Q. How is the debtor harmed by the McGladrey  
15 failure to pick up in the audit the things that you  
16 allege against them in this complaint with respect to  
17 the Oxford Credit Facility?

18 MR. CIMO: I will object to the form. To  
19 the extent it requires you to divulge work  
20 product or information that you learned through  
21 counsel. I am not going to instruct you not to  
22 answer even though we're substantively getting  
23 into the substance of the case.

24 MR. REICH: Substance of which case?

25 MR. CIMO: Any of the cases. I am not



1           instructing him not to answer.

2                   THE WITNESS: I'll defer to the filing in  
3           this case deepening insolvency is certainly one  
4           of the issues.

5   BY MR. REICH:

6           Q.    So you're claiming that the opinion of the  
7   Oxford Credit Facility led to a deepening insolvency  
8   of the debt; is that your position?

9           A.    I think that's described in the complaint  
10   and the papers that have been filed.

11          Q.    With respect to Part C starting on page  
12   six, Charles River acquisition, paragraphs 25 through  
13   37 of the McGladrey complaint. I will ask the same  
14   question about -- what was the harm in the Charles  
15   River acquisition as a result of McGladrey not  
16   picking things up on its 2010 audit?

17                  MR. CIMO: Same objection. You can answer  
18   if you can.

19          A.    In addition to what's alleged here? I  
20   mean, you can read it just like I can read it,  
21   Mr. Reich.

22          Q.    Let me ask you this: With respect to all  
23   three of the complaints; the D&O complaint, the  
24   McGladrey complaint, and the GT complaint; do you  
25   personally have personal knowledge of anymore

1 specificity as to the bad conduct of either the D&Os  
2 or the accounting firms other than as set forth in  
3 these three respective complaints?

4 MR. CIMO: I will object to form and  
5 instruct you not to answer to the extent that you  
6 also knowledge that you gained from your  
7 conversations with your lawyers.

8 THE WITNESS: Any additional information I  
9 would have obtained would have been through  
10 conversations with my attorneys.

11 BY MR. REICH:

12 Q. Is there anything that you would have been  
13 able to testify to in a court of law on the ultimate  
14 merits of any of those cases that are more specific  
15 than what's set forth in those three complaints?

16 MR. CIMO: Objection to the form. Same  
17 instruction.

18 MR. REICH: It wouldn't be the same  
19 instruction because you're just telling him he  
20 can't talk about his attorney/client.

21 BY MR. REICH:

22 Q. Other than attorney/client privilege, which  
23 you can't talk about, is there any more detail that  
24 you have that you can talk about in a court of law?

25 MR. CIMO: I'll object to the form. He

1           showed you a proof of claim register, he showed  
2           you a Form 2. There is other stuff he knows,  
3           which he has personal knowledge of, which doesn't  
4           go to the underlying case and that's why I  
5           objected to the form -- or wasn't around when  
6           these transactions happened.

7           THE WITNESS: And you saw my declaration.  
8           It's not just me regurgitating what's in the  
9           complaint.

10          BY MR. REICH:

11           Q.     So the harm to the estate on all these  
12           transactions is --

13           A.     All of what transactions?

14           Q.     All the transactions set forth in these  
15           three complaints.

16           A.     Okay.

17           Q.     The conduct; either the acts or omissions  
18           that are complained of in these three complaints.  
19           The end of the day, the ultimate harm is the amount  
20           of the debt that is burdened on these entities as  
21           reflected in the claims registers in --

22           MR. CIMO: Objection to the form.

23           Mischaracterizes what each of the lawsuits  
24           actually allege.

25           THE WITNESS: The complaints are what the

1 complaints are. The allegations in there are the  
2 allegations. The damages alleged in there are  
3 the damages alleged in there. Deepening  
4 insolvency is, yes, certainly one of them.

5 BY MR. REICH:

6 Q. What is the measure for the deepening  
7 insolvency?

8 MR. CIMO: I'll object and instruct the  
9 witness not to answer. We're now getting into  
10 again the substance of the case. If the Court  
11 orders him to answer, we'll bring him back to  
12 answer the question.

13 BY MR. REICH:

14 Q. My question is a fundamental fairness  
15 question. Your testimony before, as I understand it,  
16 is the fairness and equitableness of these borrowers,  
17 okay, is measured by its fairness and equitableness  
18 to the estate and not to the enjoined parties; is  
19 that correct?

20 MR. CIMO: Objection to the form.

21 BY MR. REICH:

22 Q. Is that your understanding?

23 A. There's ample case law out there, Mr.  
24 Reich.

25 Q. I don't care about your source, that's your

1 understanding.

2 MR. CIMO: Let him answer. I object to the  
3 form.

4 THE WITNESS: My understanding is  
5 consistent with the ample case law that's out  
6 there with regard to borrowers. I didn't sit  
7 there and read every case in preparation for this  
8 deposition. But Mumford and all the cases that  
9 follow it and all the cases from the Southern  
10 District that are cited in the papers that my  
11 counsel filed, that's what I rely on.

12 If you going to --

13 BY MR. REICH:

14 Q. Let me get this right and it will probably  
15 end up more as a question for your counsel but I'll  
16 ask you it. You're not going to answer any questions  
17 today that go to the substantive nature of what  
18 McGladrey or Grant Thornton did or did not do with  
19 respect to conduct of the D&Os; is that correct?

20 MR. CIMO: Objection to the form.

21 THE WITNESS: You want me to regurgitate  
22 the stuff that's in writing that's before all of  
23 us? I mean, if you want me to sit here and read  
24 aloud the papers that were filed. I think that  
25 would be a pretty big waste of time but if that's

1           what you want me to do.

2       BY MR. REICH:

3           Q.     Well, every time I tried to inquire between  
4     the actions alleged against our clients, the D&Os,  
5     and the conduct of the accounting firms as it relates  
6     to the D&Os I've been met with an objection by your  
7     counsel effectively telling you not to answer, okay,  
8     that it's going to the substance of the lawsuits and  
9     that we can't acquire into it.

10               My question to you is are you not going to  
11     answer today any questions that go into the  
12     relationship between the D&Os and the accounting  
13     firms with respect to the conduct of the D&Os that  
14     perform the basis of the D&O suit?

15               MR. CIMO: I am going to object to the  
16     form. And state other than what's in your  
17     declaration, other than what's in the actual  
18     lawsuits and all the pleadings filed in relation  
19     to the lawsuits and I don't know what you  
20     discussed with counsel. I really can't instruct  
21     you to answer anything else if there isn't  
22     anything else.

23               THE WITNESS: Any answer I give would be  
24     contained in the complaint, my declaration, any  
25     of the responses or the motion that was filed and

1 in not that it would have been through  
2 conversations I had with my counsel.

3 BY MR. REICH:

4 Q. So other than conversations with your  
5 counsel in support of these motions, you're relying  
6 totally upon your declaration, the complaints, the  
7 responsive pleadings and motions, the exhibit  
8 registers, claims -- everything that's in the exhibit  
9 register, okay, all the claims registers in these  
10 cases, no testimony from anybody else; is that  
11 correct?

12 MR. CIMO: That is correct. We have no  
13 other witness other than Mr. Barmat.

14 MR. REICH: There is no other witness other  
15 than Mr. Barmat?

16 MR. CIMO: Correct.

17 MR. REICH: And you're relying on what's on  
18 your pleading and responses to our objection and  
19 that's it?

20 MR. CIMO: I will stipulate that's it, yes.

21 MS. VILMOS: Can we take a break?

22 (Whereupon, a brief recess was taken.)

23 MR. REICH: We seem to have a dispute here  
24 between the parties as to the scope of what this  
25 witness can answer with respect to the Mumford

1 factors. The particular issue is the likelihood  
2 of non-settling defendants to prevail on the  
3 barred claim. It is our belief that we're  
4 entitled to ask questions of the Trustee about  
5 him meeting his burden with respect that issue.  
6 Their argument is it's not their burden, they say  
7 it's our burden and they have not allowed the  
8 Trustee to answer questions with respect to the  
9 relationship between the D&Os and the accounting  
10 firms on the potential barred claims that would  
11 be asserted by them.

12 MR. CIMO: I do not agree with your  
13 characterization.

14 MR. REICH: What?

15 MR. CIMO: I do not disagree. Let's bring  
16 it to the Judge. I am not going to agree to your  
17 mischaracterization of what happened here. We  
18 already told you multiple times, we're relying  
19 upon the complaints, we're relying upon his  
20 declaration, we're relying upon the exhibits that  
21 we provided to you. We have nothing else to add.  
22 If you don't like answer, I can't do --

23 MR. REICH: I can't ask questions about  
24 what you deem as substance?

25 MR. CIMO: We have the answers in our



1 complaint. I am not going to argue with you,  
2 Ivan. I told you if the Court orders us to  
3 answer we'll come back and we will try to be as  
4 least inconvenienced as possible.

5 MS. MARK: I want to put you one thing on  
6 the record. I know he said that was -- you said  
7 mischaracterizes. The issue was not whether the  
8 Trustee would testify as to whether there's any  
9 strength in viability with respect to their  
10 purported indemnification contribution claims.  
11 He did address that at the very beginning of this  
12 deposition when he spoke about the Florida law  
13 relating to contribution and indemnification.

14 What we said we would not allow Mr. Reich  
15 to do is to inquire into the underlying substance  
16 and damage model and other liability issues  
17 relating to the D&O action and then separately  
18 even the other actions because settlements are  
19 not about getting to the merits. If we wanted to  
20 try this case we would have gone to trial. We  
21 decided it was in the estates best interest to  
22 settle the case -- the Trustee decided. That is  
23 what is at issue here and not determining if the  
24 case went to trial what would have happened.  
25 Analyzing the benefits, risk and coming to a

1 rational business decision which is what the  
2 Trustee did.

3 MR. REICH: Have you rested on your closing  
4 argument?

5 MS. MARK: You're the one mischaracterizing  
6 what the issue is.

7 MR. REICH: The reality is this: You're  
8 not allowing us to get testimony --

9 MS. MARK: He did testify to that.

10 MR. CIMO: I disagree. Finish up your  
11 deposition and ask your questions.

12 MR. REICH: We are not closing the  
13 deposition. We'll go back to the Court to see  
14 whether the witness will be --

15 MR. CIMO: He's here. If you have anything  
16 more to ask him, ask him. And on a question by  
17 basis we'll decide what we think he can answer.

18 MR. REICH: Every time we tried to  
19 inquire --

20 MR. CIMO: That's not true. It's not every  
21 time, he answered hundreds of questions during  
22 this deposition. I only asked him not to answer  
23 a few of them -- a handful compared to the amount  
24 of questions you asked. If you asked appropriate  
25 questions we would be moving more quickly but

1           you're not asking appropriate questions.

2                   But you're free to ask him whatever you  
3           want. He's here and he's here until the seven  
4           hours are up.

5   BY MR. REICH:

6           **Q.    You state QuickBooks is an appropriate**  
7           **accounting software program within your complaints --**  
8           **multiple complaint.**

9                   MR. CIMO: Which complaint?

10                  MR. REICH: The McGladrey complaint.

11                  MR. CIMO: Can you show him which  
12           particular paragraph so he can confirm that  
13           that's true. If you ask him by specific  
14           paragraphs then we can have an understanding of  
15           what's being asked.

16   BY MR. REICH:

17           **Q.    Let me back up. Let's do this. On the**  
18           **McGladrey complaint in docket five in the McGladrey**  
19           **case talks about the Care Management Technology**  
20           **spinoff; you familiar with the Care Management**  
21           **Technology spinoff?**

22                  MR. CIMO: Let us know what paragraph.

23                  MR. REICH: Paragraph 38 through 43.

24                  THE WITNESS: To extent it's alleged in the  
25           complaint I am. I don't have firsthand personal

1 knowledge.

2 BY MR. REICH:

3 Q. Paragraphs 43 you allege that failure to  
4 the former D&Os to cause the reversal and unwinding  
5 of the spinoff prior to the petition date constitute  
6 a breach of fiduciary duty as well; do you see that?

7 A. What paragraph?

8 Q. Paragraph 43.

9 A. I was looking at 42, sorry.

10 Paragraph 43 reads, the failure of the  
11 former D&Os to cause the reversal and winding of the  
12 spinoff prior to the petition date constitute a  
13 breach of fiduciary duty as well. That's what it  
14 says.

15 Q. How is it -- what could have McGladrey have  
16 done to have the D&Os unwind the Care Management  
17 Technology spin off?

18 MR. CIMO: Objection to the form.

19 Mischaracterizes what that paragraph says and  
20 what it means. You can answer if you can.

21 I am not instructing you not to answer.

22 MR. REICH: I'll rephrase it.

23 BY MR. REICH:

24 Q. Did Care Management -- did McGladrey advise  
25 the D&Os to unwind the Care Management Technology

1     **spinoff?**

2           A.     Did McGladrey advise the former D&Os -- say  
3     the question one more.

4           **Q.     Did McGladrey advise the former D&Os to**  
5     **unwind the Care Management Technology spinoff?**

6           A.     If you're asking for my personal knowledge,  
7     I don't recall. If it's in the complaint then yes.

8                   Are you asking me to read through every  
9     paragraph?

10          **Q.     Are you alleging that they failed to advise**  
11     **the directors and officers of the company to reverse**  
12     **the spinoff?**

13          A.     I'm alleging everything that's in the  
14     complaint and I didn't put the complaint to my  
15     memory. So that's my answer. I certainly read it  
16     before it was filed. I read it since it's been  
17     filed. But I didn't put everything to memory?

18          **Q.     What could the D&Os have done if McGladrey**  
19     **had advised them to unwind the spinoff; what steps**  
20     **needed to be taken?**

21                   MR. CIMO: Objection to the form. I am  
22     only going to instruct you to answer to the  
23     extent it requires you to reveal work product or  
24     attorney/client privilege information.

25                   THE WITNESS: In order for me answer it, it

1 would reveal work product or attorney/client  
2 privilege information.

3 MR. REICH: Wow, you answered that so  
4 quickly.

5 MR. CIMO: My job is to make sure privilege  
6 is maintained, Ivan. I'm sure you would do the  
7 same thing if you were on my side of the table  
8 otherwise you would not be doing your job.

9 BY MR. REICH:

10 Q. So it's your testimony today you don't know  
11 whether McGladrey advised the D&Os as to reversal of  
12 the spinoff?

13 MR. CIMO: Objection to the form. You are  
14 now harassing the witness. I will instruct him  
15 not to answer that because we already told you  
16 what -- he said what his answer was based on my  
17 objection and he has nothing more to add based  
18 upon that objection.

19 BY MR. REICH:

20 Q. Do you know based upon your own  
21 investigation as Trustee of the affairs of CCD and  
22 CCD NW, what steps -- first whether McGladrey ever  
23 advised the D&Os to reverse the CMT spinoff?

24 MR. CIMO: Objection to the form.  
25 I am not going to instruct you not to

1 answer.

2 THE WITNESS: The information for me to  
3 answer that question would have been obtained  
4 through attorney/client privilege.

5 BY MR. REICH:

6 Q. With respect to upon your own investigation  
7 and knowledge as to the Trustee of CCD and CCD NW  
8 what --

9 A. Maybe I can short circuit this if you will  
10 allow me to? The investigation into the allegations  
11 in this complaint are conducted by my counsel. I  
12 didn't personally. I listened to them, they report  
13 to me. When it comes to the specifics of what's in  
14 the complaint, my counsel took depositions and my  
15 counsel reviewed lots of records and they reported to  
16 me.

17 Q. So as the client and the ultimate  
18 decision maker in this case your entire source of  
19 knowledge about the matters in the three complaints  
20 that we're discussing all derive from information  
21 provided to you by your counsel; is that correct?

22 MR. CIMO: Objection to the form.

23 I'm not going to instruct you but I am  
24 objecting to the form.

25 THE WITNESS: There's probably other

1 information that I would have received. Can I  
2 sit here and tell you what it is? No. This case  
3 has been going on for a long time. It's a big  
4 case and there is a lot of things that took  
5 place. So I'm not going to foreclose myself and  
6 say 100 percent came through my counsel. But as  
7 I sit here, I can't think of anything else other  
8 than from my counsel.

9 BY MR. REICH:

10 Q. It's your testimony that whatever knowledge  
11 you have regarding the acts and omissions of the D&Os  
12 or the accountants came to you through your counsel  
13 and you have no independent knowledge beyond that?

14 MR. CIMO: If counsel is not limited to me  
15 and also includes his general counsel, I'm not  
16 going to object.

17 THE WITNESS: I will rely on my statement  
18 and not your restatement of my statement.

19 BY MR. REICH:

20 Q. So what is the source of your knowledge  
21 regarding the acts and omissions of the D&Os and the  
22 accountants as set forth in these three complaints?

23 A. I am fairly certain that we discussed that  
24 about 10 times. I have nothing else to add other  
25 than --



1 Q. So is it only the attorneys?

2 MR. CIMO: Objection to the form.

3 BY MR. REICH:

4 Q. Both your general counsel and your special  
5 counsel?

6 MR. CIMO: Same objection.

7 THE WITNESS: Do you want to have the court  
8 reporter read back my testimony. I am not trying  
9 to be difficult, Mr. Reich. But you know you  
10 asked that and you know I answered that.

11 BY MR. REICH:

12 Q. Do you know the date my client was hired by  
13 CCD?

14 A. No.

15 Q. Do you know the relationship between the  
16 date my client was hired and the date of the Care  
17 Management Technology spinoff?

18 A. As I sit here I couldn't tell you any of  
19 the dates.

20 Q. And part of your job as a Trustee in a  
21 bankruptcy, you're charged with taking possession of  
22 the information -- on the conversion of the case --  
23 the debtors' assets -- on the debtors' books and  
24 records as well as the deposition transcripts and  
25 documents that were produced in the course of

1     **discovery in that case, were you not?**

2                   MR. CIMO:  Objection to the form.

3                   THE WITNESS:  I don't know that I'm charged  
4     with possession of the deposition transcripts.  
5     But people were actively involved in the Chapter  
6     11 that I wasn't involved in that deal with  
7     issues that may or may not be relevant to what  
8     I'm doing here.  So I'm not going to agree with  
9     the entire premise of your question.

10  BY MR. REICH:

11                Q.    I'll ask you the same question.  I'm going  
12   to ask you, am I going to get the same response if I  
13   ask you about subpart F to the McGladrey complaint,  
14   paragraphs 50 through 71 regarding the failure to  
15   adequately maintain and account for clinical trial  
16   records.  Any questions that I ask you about that,  
17   you're going to totally rely on the complaint and  
18   that all other sources of information that you have  
19   would be based upon what your counsel provided you?

20                MR. CIMO:  I'll object on "F" because I  
21   know that general counsel was involved in that  
22   process before me.

23                MR. REICH:  I just asked about counsel.

24                THE WITNESS:  The entire debacle of the  
25   clinical trial records I was represented by my

1 law firm. I was a witness to a lot of it. So  
2 that was really not the handling of the records  
3 and the ultimate protocol that was approved by  
4 the Court. I had more involvement than I  
5 did. Mr. Cimo wasn't really directly involved in  
6 that.

7 BY MR. REICH:

8 Q. That's good. Let me ask you a question  
9 about -- let's talk about the clinical trial records  
10 for a second, okay?

11 It's your allegations that, what, McGladrey  
12 did not properly pick up in their audits the problems  
13 with the clinical trial records that describe there?

14 MR. CIMO: Objection to the form. If you  
15 have a specific allegation in the complaint you  
16 want to show him, would you please show him.

17 MR. REICH: Every time I go specific, you  
18 say go general. Every time I go general, you say  
19 go specific.

20 MR. CIMO: I'm not buying it, Ivan. Don't  
21 go that road. You're mischaracterizing what the  
22 complaint says. I object to the form.

23 THE WITNESS: I defer to the allegations in  
24 the complaint.

25 BY MR. REICH:

1 Q. Is it your contention that McGladrey failed  
2 to pick up deficiencies in the maintenance of the  
3 clinical trial records?

4 MR. CIMO: Objection to the form.

5 THE WITNESS: I defer to the allegations in  
6 the complaint.

7 BY MR. REICH:

8 Q. Who was it at CCD who is in charge with  
9 maintaining the clinical trial records and the  
10 procedures for doing so?

11 MR. CIMO: I am going to object. I  
12 instruct the witness not to answer.

13 Again, we're going into specific questions  
14 that go to the merits of the case which the  
15 settlements were designed to avoid. Moreover,  
16 the burden is clearly on your clients to  
17 establish whether these claims have merit. And  
18 it's not his job to prove up your case. And  
19 moreover, he already testified that he doesn't  
20 think the claims have merit and he has nothing  
21 more to add in that regard. I'll instruct him  
22 not to answer at this time.

23 However, if the Court concludes Mr. Barmat  
24 has to come back and answer we'll be happy to  
25 bring him back and answer your question.

1 THE WITNESS: I will add one thing further  
2 to what Mr. Cimo said and that is some of that  
3 information that I would have received would have  
4 been received through my general counsel as well  
5 as he was way more actively involved than I was.

6 BY MR. REICH:

7 Q. I assume you were to answer the same  
8 question if I was asking you about the adequacy of  
9 the cash control system at CCD, you would answer the  
10 same questions?

11 MR. CIMO: Object to the form. You have to  
12 ask him so we have a clear record of what you're  
13 asking.

14 Every issue is different become some  
15 involve general counsel and some don't.

16 MR. REICH: Okay.

17 MR. CIMO: Make the record clear for when  
18 we go to the Judge.

19 BY MR. REICH:

20 Q. What materially inadequate information was  
21 provided to third-parties or others set forth in  
22 subpart G starting on page 18 paragraph 72 through  
23 86?

24 A. I'll reiterate my answers. I rely on the  
25 allegations in the complaint, my declaration, all the

1 exhibits that are referenced herein and  
2 communications between my counsel and I, they're  
3 privileged.

4 Q. Same thing -- same question with respect to  
5 subpart H; the failure to implement and follow  
6 adequate safeguards and controls in regards to the  
7 business operation related to its functions as set  
8 forth in subpart H starting on page 22, paragraphs 87  
9 through 88?

10 A. Same answer.

11 Q. That would be the same answer with respect  
12 to subpart I -- subpart I, paragraphs 89 through  
13 93 -- squandered prepetition sale opportunities and  
14 subsequent delay and failure to timely implement and  
15 effectuate a prebankruptcy sale process; would that  
16 be the same answer?

17 A. It would be.

18 Q. Would that be the same in subpart J,  
19 paragraphs 94 through 100 regarding the audits and  
20 other services performed by McGladrey?

21 A. Same answer.

22 Q. Would the same thing be with respect to  
23 subpart K, Grant Thornton audit set forth in  
24 paragraphs 101 and 102, same answer?

25 A. Yes, sir.

1 Q. Would it be the same with respect to  
2 subpart M, the act and omissions in debtors'  
3 management as set forth in paragraphs 106 to 108?

4 A. Yes.

5 Q. Would that be the same thing with respect  
6 to the issue regarding damages to the claims against  
7 the debtors' estate as set forth in subpart P,  
8 paragraphs 111 and 112 of this complaint?

9 A. Yes.

10 Q. Would that be the same with respect for  
11 every allegation within the McGladrey complaint with  
12 respect to the failures of McGladrey to pick up  
13 certain acts and omissions on part of the D&Os?

14 MR. CIMO: Which paragraphs?

15 MR. REICH: Paragraph 27, paragraph 28.

16 MR. CIMO: Under C, Charles River? I  
17 thought you already asked about Charles River?

18 MR. REICH: I said the entire complaint.  
19 I'm going through paragraph 34, paragraph 36,  
20 paragraph 37, paragraph 43, paragraph 49,  
21 paragraph 50, paragraph 59, paragraph 72,  
22 paragraph 73, paragraph 74, paragraph 75,  
23 paragraph 76.

24 THE WITNESS: Now you're going over  
25 paragraphs that you already asked specifically --

1 MR. REICH: Hold on. Mr. Cimo asked for  
2 specific paragraphs and I am not done with the  
3 question.

4 MR. CIMO: I thought you were going to  
5 point to a section. I didn't know you were going  
6 to cherry pick.

7 MR. REICH: You asked for specifics.

8 MR. CIMO: This is ridiculous. He already  
9 answered a lot of these questions so...

10 MR. REICH: Paragraph 90, paragraph 94,  
11 paragraph 96, paragraph 97, paragraph 98,  
12 paragraph 103, paragraph 106, paragraph 107,  
13 paragraph 108, paragraph 109, paragraph 110,  
14 paragraph 120. Actually, just all of count one  
15 and all of count two.

16 MR. CIMO: Objection to the form. You can  
17 answer.

18 THE WITNESS: What was the question?

19 MR. REICH: Great objection. The first  
20 part of the objection was it was to general --

21 MR. CIMO: Ask the question.

22 I didn't tell you the basis of the  
23 objection. Proceed, counsel.

24 MR. REICH: The question is -- can you read  
25 back the last question?



1 BY MR. REICH:

2 Q. The answer you just gave before, would it  
3 be the same answer with respect to the McGladrey's  
4 failure to detect and correct or whatever charges you  
5 made against them with respect to the audit for  
6 picking up or not picking up the acts and omissions  
7 of the D&Os as set forth in the specific paragraphs I  
8 just mentioned?

9 A. Am I relying upon the same things that I  
10 said I was relying upon?

11 Q. The same answer, exactly.

12 A. Yes. All the documents, all the exhibits  
13 and advice of counsel -- or communications of  
14 counsel.

15 Q. Nothing beyond those?

16 A. No.

17 Q. And with respect to the GT complaint, I  
18 would ask you that same question -- I believe that's  
19 docket entry one and in particular I'll reference to  
20 paragraph nine of that complaint?

21 A. Do you remember what exhibit it was in  
22 this?

23 Q. It's part of the first exhibit that I asked  
24 you about today.

25 A. The Grant Thornton --

1 THE WITNESS: Did we have the first  
2 amended --

3 MR. CIMO: I don't think we did.

4 THE WITNESS: I'm looking about  
5 Exhibit Number 8.

6 BY MR. REICH:

7 Q. The adversary -- the operative adversary  
8 complaint in Exhibit Number 8.

9 A. I wanted to make sure we didn't have the  
10 first amended.

11 Q. No, we didn't. Grant Thornton -- in there  
12 the only allegations and we have gone through and I  
13 ask you the same exact questions with respect to  
14 Grant Thornton in paragraph nine?

15 Would your answer be the same as the last  
16 answer with respect to McGladrey in those specific  
17 paragraphs as it is with respect to paragraph nine in  
18 Exhibit Number 8?

19 A. The answer would be contained in all the  
20 documents that we referenced and/or through  
21 communications with my counsel.

22 MR. REICH: Again, we're not going to  
23 conclude this deposition today. We'll continue  
24 it and get a ruling from the Court as to whether  
25 Mr. Barmat is required to answer what Mr. Cimo

1 described as substantive questions.

2 MR. CIMO: Let's just take a break before  
3 we go down that road. Maybe you can rephrase to  
4 try to get answers -- go off the record.

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

7 MR. REICH: We will reserve further  
8 questions until we get a ruling from the Court on  
9 this issue.

10 MS. MARK: Also just e-mail -- if you're  
11 going to seek to depose him for more than the one  
12 day that we agreed to you then you're going to  
13 need to get relief from the Court for that as  
14 well.

15 MR. CIMO: I think we have more than enough  
16 time to finish.

17 MR. CRINCHLOW: For the record, how much  
18 time did we take on record time?

19 THE COURT REPORTER: We started at 10:28  
20 a.m. and we had a lunch break from 12:07 p.m. to  
21 1:29 p.m.

22 MS. VILMOS: I will order it.

23 MR. CIMO: We will take a copy since it's  
24 ordered.

25 MS. VILMOS: We need to look at the

1 transcript for the redactions.

2 MR. CIMO: If you guys take the lead on the  
3 redactions and let us know what you want out,  
4 Ivan.

5 (The deposition concluded at 3:22 p.m.)

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CERTIFICATE OF OATH

3

4

STATE OF FLORIDA

5

COUNTY OF PALM BEACH

6

7

I, TONI MUSACCHIA, Shorthand Reporter and

8

Notary Public, State of Florida, certify that MARC

9

BARMAT, personally appeared before me and was duly

10

sworn.

11

12

WITNESS my hand and official seal this 16th

13

day of December, 2015.

14

15

16

*Toni Musacchia*

17

TONI MUSACCHIA

18

Notary Public - State of Florida

19

Commission No. FF 911505

20

My Commission Exp. September 18, 2019

21

22

23

24

25

## 1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF PALM BEACH

4 I, Toni Musacchia, Shorthand Reporter and  
5 Notary Public, State of Florida, HEREBY CERTIFY that  
6 I was authorized to and did stenographically report  
7 the deposition of MARC BARMAT, that a review  
8 transcript WAS requested; and the foregoing  
9 transcript, pages 7 through 137, is a true and  
10 accurate record of my stenographic notes.

11 I FURTHER CERTIFY that I am not a relative,  
12 employee, attorney, or counsel of any of the parties,  
13 nor am I a relative or employee of any of the  
14 parties' attorneys or counsel connected with the  
15 action, nor am I financially interested in the  
16 action.

17 Dated this 16th day of December, 2015.

18

19

20

*Toni Musacchia*

21

Toni Musacchia, Court Reporter  
State of Florida at Large

22

23

24

25

Comprehensive Clinical Development vs. Steven Krupa  
MARC BARMAT

140

1 ERRATA SHEET

2 IN RE: Comprehensive Clinical Development, Inc.,  
et al.

3 CASE NO: 13-17273-JKO

4 DEPONENT: MARC BARMAT

	Page	Line	Should Read	Reason
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12 Under penalties of perjury, I declare that I have  
13 read the foregoing document and that the facts stated  
14 are true.

15

16

17 \_\_\_\_\_  
Date MARC BARMAT

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Comprehensive Clinical Development vs. Steven Krupa  
MARC BARMAT

141

1 December 16, 2015

2 GENOVESE, JOBLOVE & BATTISTA  
3 100 Southeast Second Street, 44th Floor  
4 Miami Florida 33131  
ATTN: DAVID C. CIMO, Esq.  
MARILEE A. MARK, Esq.

5 IN RE: DEPOSITION OF MARC BARMAT  
6 TAKEN ON December 16, 2015  
In re: Comprehensive Clinical Development,  
Inc., et al.

7 Dear Counsel,

8 This letter is to advise you that the transcript  
9 taken in the above-referenced deposition has been  
transcribed. Please contact our office at (800)  
10 275-7991 to make arrangements to read and sign or  
sign below to waive review of this transcript.

11 It is suggested that the review of this  
transcript be completed within 30 days of your  
12 receipt of this letter, as considered reasonable  
under Federal Rules\*; however, there is no Florida  
Statute to this regard.

13 The original of this transcript has been  
forwarded to the ordering party and your errata, once  
14 received, will be forwarded to all ordering parties  
for inclusion in the transcript.

15 Sincerely,  
16

17 Toni Musacchia  
Orange Legal

18 cc: NICOLETTE VILMOS, ESQUIRE; DAVID A. CRICHLLOW,  
19 ESQUIRE; ELAN A. GERSHONI, ESQUIRE; IVAN J. REICH,  
ESQUIRE

20 Waiver:

21 I, \_\_\_\_\_, hereby waive the reading and  
22 signing of my deposition transcript.

23

24 \_\_\_\_\_  
MARC BARMAT DATE

25 \*Federal Civil Procedure Rule 30(e)/Florida Civil  
Procedure Rule 1.310(e)



Comprehensive Clinical Development vs. Steven Krupa  
MARC BARMAT

Index: \$120,000..88

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