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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 11-15059(MG)

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In the Matter of:

MF GLOBAL HOLDINGS LTD.,

Debtor.

- - - - - x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

February 26, 2013
4:03 PM

B E F O R E :
HON MARTIN GLENN
U.S. BANKRUPTCY JUDGE

1 Hearing re: Conference RE: JP Morgan's Standing Motion.

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25 Transcribed by: Dawn South

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

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JONES DAY

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BY: BRUCE BENNETT, ESQ.

ALSO PRESENT:

JEFFREY S. MARGOLIN, ESQ.

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P R O C E E D I N G S

THE COURT: Please be seated. We're here in MF
Global Holdings Ltd., number 11-15059.

Who's going to begin? We're here for a conference
with respect to the JPMorgan standing motion and the issues
about discovery and scheduling, et cetera. Mr. Friedman,
are you going to -- oh, Mr. Reisman. All right.

MR. REISMAN: Good afternoon, Your Honor, Steven
Reisman with Curtis, Mallet-Prevost, Colt & Mosle LLP on
behalf of Knighthead Capital Management and likely on behalf
of the co-proponents for the plan.

And if I could just take a moment I think it'll be
helpful just to bring Your Honor up to speed from where we
are from last Tuesday with respect to one particular issue,
and then my suggestion for trying to in fact resolve that
issue with hopefully the consent of the parties and the
assistance of the Court.

Your Honor, on February 21st, which was last
Thursday at noon or before noon, at Your Honor's direction,
Jones Day, on behalf of the creditor co-proponents, served
JPMorgan with discovery requests with respect to the STN
motion. Those discovery requests went out and were received
by Simpson Thacher.

And on Sunday, just to fast forward -- so that's
Thursday -- on Sunday night Jones Day received word from

1 JPMorgan that the conflict waiver that Jones Day had in
2 place would not allow Jones Day to proceed with respect to
3 discovery against JPMorgan or with respect to the matters on
4 which JPMorgan sought relief with respect to the STN motion.
5 That's probably a better way of phrasing it, a more
6 articulate way.

7 That came even though JPMorgan served Jones Day
8 with their discovery requests with respect to the plan and
9 asked if they would accept service, and Jones Day did in
10 fact accept service on behalf of the co-proponents.

11 As a result of what happened on Sunday evening I
12 got a -- we were actually working on an involuntary filing,
13 I was in the office and there was an involuntary filed
14 against the client down in Kentucky and I was there and I
15 got an email late at night from Jones Day lawyers saying can
16 you step in tomorrow immediately with respect to the
17 discovery conference that Your Honor ordered to occur face
18 to face at the offices of Simpson Thacher. And I
19 immediately got in touch with my litigation partner who
20 works on restructuring matters with me, Mike Moscato, who's
21 behind me, and sent him an email, and that came in early the
22 next morning prepared and was at Simpson Thacher's offices
23 with respect to that discovery conference.

24 Unfortunately -- and this is just the realities of
25 the practice -- there are a number of co-proponents and we

1 need to be retained by all of them and we needed to clear
2 conflicts with respect to all of them. And we immediately
3 began that process to be retained by all of those co-
4 proponents.

5 We prepared an engagement letter, it went out
6 yesterday, which was Monday, to -- and it's gone out to the
7 various parties and we're waiting to hear back to act on
8 behalf of the co-proponents with respect to the discovery --
9 with respect to the discovery that was in fact served.

10 So as a result of the conflict issue that has
11 arisen the meet and confer took place as to plan issues
12 between Jones Day and Simpson Thacher, but could not take
13 place with respect to JPMorgan, Simpson Thacher, and anyone
14 on the other side with respect to the STN motion.

15 We're hopeful of stepping in that role extremely
16 quickly and are prepared to step into that role on an
17 extremely quick process.

18 I think what you're going hear today, Your Honor,
19 from Mr. Bennett -- and I don't want to steal his thunder in
20 any way -- but I believe you're going to hear from him that
21 everyone sort of listened to Your Honor's suggestion with
22 respect to confirmation of the plan and the time period that
23 Your Honor has allotted, and I believe that the parties are
24 generally amenable to moving it out to that time period in
25 April, the 16th, 17th, and 18th, that Your Honor in fact

1 suggested, which is approximately 11 days from when it was
2 originally scheduled.

3 What I would like to suggest, Your Honor, and if
4 Your Honor is amenable and the parties are in fact amenable
5 to it, is that we move the schedule with respect to the STN
6 motion. We're not looking to put it out past confirmation.
7 If Your Honor in fact rules on that at the motion to
8 continue when that date is scheduled we're fine with that,
9 but I'm not looking to get a leg up in any respect on JPM in
10 the -- JPMorgan in this situation.

11 What I'd like to suggest, Your Honor, is that on
12 March 6th we keep the chamber's conference that Your Honor
13 already has -- that Your Honor has already put aside for the
14 hearing on this motion. So we have a March 6th chamber's
15 conference. March 8th would be the deadline for JPMorgan to
16 produce documents in response to the discovery requests
17 which were already served. March 15th would be the deadline
18 for the creditor co-proponents to object to the standing
19 motion of JPMorgan. March 18th --

20 THE COURT: Hang on a second.

21 MR. REISMAN: I'm sorry.

22 THE COURT: Go ahead.

23 MR. REISMAN: March 18th JPMorgan's reply brief is
24 due. And some time during the week of March 19th, on a date
25 that's acceptable to the Court and assuming the parties,

1 we'll actually have the hearing on JPMorgan's standing
2 motion. Now --

3 THE COURT: You won't.

4 MR. REISMAN: Because you're busy on other --

5 THE COURT: I'm in a trial in ResCap.

6 MR. REISMAN: Is there another date between then
7 and April which Your Honor could in fact -- between the
8 confirmation date?

9 It's just my suggestion that we have the discovery
10 issue, we're trying to step in.

11 THE COURT: Go ahead.

12 MR. REISMAN: We have the discovery issue, we're
13 trying to step in, you know, we'd like the opportunity to
14 take the discovery of JPMorgan and review the documents that
15 they'll produce in respect to what's already been
16 propounded, and hopefully this can all be done before
17 confirmation where you'll hear the argument on STN and the
18 motion to continue.

19 I also want to just point out one more thing for
20 Your Honor just as a matter of status, which is that there
21 is the issue. and it was mentioned last time. about the
22 possibility of STN status for Holdings to pursue claims
23 against Finco. And I don't -- this is not about burdening
24 the Court with litigation and motions, et cetera, that could
25 in fact be filed. I'd prefer to wait for Your Honor to rule

1 on the continuance motion and -- or the STN relief before
2 any action is taken with respect to potential standing by
3 Holdings against Finco.

4 THE COURT: Well, let me just say, the continuance
5 motion what, asked for this motion to be continued until the
6 confirmation hearing. It makes no sense in the context of
7 if it's going to be a contested evidentiary hearing over
8 JPMorgan's standing to prosecute Finco claims.

9 I read today Mr. Miller's submission with the
10 exchange of emails regarding the STN motion. It doesn't --
11 I mean it doesn't revolve the matters, but there was some
12 colloquy about what position had been of Morrison Foerster
13 when Mr. Pantaleo had contacted them, and it wasn't crystal
14 clear to me, but certainly Mr. Pantaleo or Mr. Friedman may
15 have something else to say about it, but Mr. Miller I've
16 read what was filed.

17 With -- depending on what the estimated length of
18 a hearing would be -- evidentiary hearing concerning the STN
19 motion, and may be that JPMorgan's position is no
20 evidentiary hearing is required, but you know, it's possible
21 that if the confirmation hearing moves, that the April 5th
22 date that was set for confirmation can be used as the date
23 for a hearing on the STN motion.

24 I'll tell you quite clearly it makes no sense to
25 -- I'm not going to leave this issue until the confirmation

1 hearing, okay? So to the extent that the continuance motion
2 asks for that that isn't going to happen. Scheduling is a
3 different issue, okay, when it's going to be.

4 But the more I thought about it when I read more
5 of the papers and everything, I mean leaving this issue for
6 confirmation didn't seem to me to make a lot of sense. I
7 don't know what other objections there'll be to confirmation
8 and what else will have to get resolved in the time of the
9 confirmation hearing, but I don't -- you know, using that
10 April 5th date sort of hinges on how many witnesses, the
11 written narrative direct, et cetera, and you know, until
12 you've gotten conflict issues sorted out and can meet and
13 confer about the specifics, about discovery, when the stuff
14 is going to be produced and all that, I mean I don't think
15 -- I have a feeling that none of you are in a position to
16 really intelligently speak to what you envision in an
17 evidentiary hearing to encompass.

18 And again --

19 MR. REISMAN: I would agree with that, Your Honor,
20 and that's why we're asking for the continuance along the
21 time period so that no one is prejudiced and then this will
22 get, as Your Honor would like, decided before -- decided
23 before the confirmation date, assuming some of those dates
24 are agreeable.

25 I'll turn it over to Mr. Bryce (sic).

1 THE COURT: Sure.

2 MR. FRIEDMAN: Bryce Friedman, Simpson Thacher &
3 Bartlett for JPMorgan. Just a couple things, Your Honor.

4 I think in our view it was important ,to the
5 extent possible, that the standing motion be resolved as far
6 in advance as possible of March 25th, because that is the
7 voting deadline. And our view is -- and we filed our
8 opposition papers to the motion to continue this morning --
9 and we explain in those papers that our view is the people
10 who are voting on the plan should have the opportunity to
11 know whether somebody is going to be pursuing this Finco
12 claim. And Your Honor anticipated our view correctly, and
13 we remain of the view that discovery, particularly of the
14 kind that the co-proponents are looking for on the standing
15 motion, isn't necessary.

16 Now, we appreciate the position that Curtis,
17 Mallet is in with respect to the conflict. I will note
18 however they have been in the case and on this issue for a
19 matter of weeks. This is not a particularly complicated
20 issue. They were here at the last hearing.

21 What I think we should do and what's most fair to
22 the entire constituency is if Your Honor is amenable let's
23 keep the March 6th date. Let's have a hearing on the
24 standing motion on the merits of the standing motion. If
25 Your Honor has that hearing and determines you can't decide

1 the issue without some additional limited discovery we'll go
2 forward and we'll get a date for an evidentiary hearing.
3 This is the way you might decide a -- let's just say a
4 dispositive motion in a regular civil case context. You
5 decide if there's issues of fact, you figure out what those
6 issues are, and you go litigate or have a trial on those
7 specific issues.

8 Our view, some of which we laid out in the papers
9 we filed today, is if you go through the tests necessary to
10 determine whether there's standing there's no problem here,
11 you don't need any facts.

12 And we can talk about how we're going to
13 characterize the trustee's view, but we think the trust's
14 position on the issue is significant and we should have an
15 argument on the merits of that issue on March 6th, that's
16 plenty of time for my colleagues at Curtis, Mallet to get up
17 to speed on the issue and that'll allow us to figure out if
18 we need to yet clog up the Court's calendar where another
19 trial before the confirmation hearing.

20 THE COURT: Well, I can tell you right now you're
21 not getting a trial before March 25th. If there has to be
22 an evidentiary trial it isn't happening before March 25th.
23 I'm away from March 7th through the I think the 13th.

24 MR. BENNETT: Your Honor, if I may be heard
25 briefly?

1 THE COURT: Yeah, just -- no. My first day back
2 is March 14th. I have a ResCap trial starting on the 18th;
3 that's not moving. I got a room filled with boxes of
4 documents for this trial.

5 Let me hear from Mr. Bennett, you want to say
6 something.

7 MR. BENNETT: I just want to make it a little
8 easier for Your Honor. I think the March 25th date, or 26th
9 date, I can't remember which is the voting deadline, is a
10 total red herring.

11 A disclosure statement went out as Your Honor
12 knows with everything in it that JPMorgan wanted to see in
13 it and that's supposed to be the document and that's
14 supposed to be the information creditors are supposed to use
15 to vote to decide whether to object or accept the plan.

16 The idea that they want to have something going on
17 in this court to change the mix of information that is
18 before creditors is not exactly what is contemplated by
19 1125.

20 So I think if Your Honor thinks the right thing to
21 do is to hear it before confirmation, which we disagree, we
22 think that this is a waste of time and money if the plan is
23 confirmed, but if Your Honor wants to hear it before
24 confirmation the 6th date -- the 5th date, which is a
25 Friday, is fine. I don't -- if it's going to be an

1 evidentiary hearing it's going to be less than a full day,
2 and --

3 THE COURT: All right.

4 MR. BENNETT: -- there's nothing about the plan
5 process that requires accelerating this --

6 THE COURT: I guess the 6th is a Wednesday, that's
7 the --

8 MR. BENNETT: We're talking about April 5th is the
9 dates --

10 THE COURT: Oh, April 5th, yeah.

11 MR. BENNETT: -- the date that's being cleared.

12 THE COURT: Right, okay.

13 Well, go ahead, Mr. Friedman, did you -- no, hold
14 on Mr. Reisman --

15 MR. REISMAN: I'm sorry.

16 THE COURT: -- Mr. Friedman was speaking and he
17 was interrupted and I want to give him a chance to say
18 whatever he wants to say.

19 MR. FRIEDMAN: I think it would be helpful if we
20 got some guidance from Your Honor with respect to the merits
21 of the -- had the opportunity to discuss with Your Honor on
22 the 6th as we've scheduled the merits of the standing
23 motion, because I think that there is a disagreement that
24 we'll have to come back to Your Honor on -- and maybe the
25 6th is the day we can do that as Mr. Reisman suggested --

1 over what an evidentiary hearing would properly look like in
2 connection with a motion like the standing motion.

3 So I would request that we keep the 6th date for a
4 substantive discussion of the standing motion, and to the
5 extent that my colleagues feel like they don't have anything
6 that they need at that point to defeat our motion we can
7 talk about it then. Because we have not yet gotten that --
8 because of perhaps the conflict issues we haven't got the
9 details --

10 THE COURT: Sure.

11 MR. FRIEDMAN: -- of that discussion.

12 THE COURT: No one of that side of the room should
13 think I'm just going to say we're going to have an
14 evidentiary hearing unless somebody really persuades me that
15 there are disputed material issues of fact that need to be
16 resolved in order for the Court to decide the standing
17 motion.

18 I mean when we were here last time I accepted at
19 face value the position of the co-proponents that there were
20 factual issues that the Court would have to resolve, and it
21 may be that there are with respect to the STN motion. The
22 gist of which that I came away from the hearing with was
23 that the co-proponents contend that JPMorgan is conflicted
24 because of -- conflicted from being given standing to pursue
25 Finco's claims because of -- my words, not anybody's words

1 -- the many hats it wears with respect to MF Global. Okay?
2 I know don't whether that's right or not, okay, that was the
3 gist of what I came away with from the last hearing.

4 And so I sent you all off to meet and confer,
5 exchange the discovery requests to try and focus in on what
6 are those issues.

7 I understand this conflict issue has come up, it's
8 necessitating that different counsel move forward on behalf
9 of the creditor co-proponents. Okay.

10 Mr. Reisman, do you have any indication of when
11 this conflict issue will be resolved?

12 MR. REISMAN: Your Honor, there's no --

13 THE COURT: The longer it takes -- you know, I
14 mean I'm not going wait --

15 MR. REISMAN: -- there's no -- I mean just so you
16 know, the issue arose Sunday night.

17 THE COURT: I understand.

18 MR. REISMAN: We were brought in the case --

19 THE COURT: It's a question. I'm just asking a
20 question.

21 MR. REISMAN: Sure. We were brought in the case
22 basically one week before. We haven't been involved for
23 weeks.

24 THE COURT: Lucky you.

25 MR. REISMAN: But let me answer your -- I

1 understand that actually, I was called over the weekend.

2 THE COURT: You loved to get the call.

3 MR. REISMAN: There's no doubt about that, Your
4 Honor, so let the record reflect that, clearly.

5 (Laughter)

6 MR. REISMAN: Thank you.

7 But, Your Honor, I mean we got the engagement
8 letter out immediately, it's a number of co-proponents.

9 THE COURT: Yeah.

10 MR. REISMAN: So I need to get in touch, some
11 people have called even as we were on our way down to court
12 with some questions on the letter, the letter is very
13 straightforward in that regard, and I'm hopeful that we'll
14 be able to get it resolved in the next couple of days. It
15 may take a day or two because of the 18 different parties
16 that there are. I kind of take it like a JPMorgan bank
17 agreement, you either sign the letter as it's presented, I'm
18 not going to make individual changes for one --

19 THE COURT: I almost hate to ask this but I'm
20 going to ask it any way. Did you do a conflicts check? Do
21 you have a --

22 MR. REISMAN: Your Honor, we did -- we did do a
23 conflicts check and we asked for a waiver with respect to
24 particular issues that there are there, but this is not a
25 court retention and we did do a conflicts check immediately,

1 it kept people up quite late on -- quite late on Monday.

2 So I'm hopeful in the next couple of days, Your
3 Honor.

4 THE COURT: Well, let me --

5 (Pause)

6 THE COURT: So I take it the creditor
7 co-proponents have not yet filed an objection to the
8 JPMorgan STN motion.

9 MR. REISMAN: Your Honor, it's due tomorrow, and
10 the reason why it's not going to be filed tomorrow is
11 because there's no discovery that's --

12 THE COURT: I'm just --

13 MR. REISMAN: The answer is your assumption is
14 correct.

15 THE COURT: Okay.

16 MR. FRIEDMAN: May I just add on that?

17 THE COURT: Go ahead, Mr. Friedman.

18 MR. FRIEDMAN: Again, we're interested in keeping
19 this moving as well. So since Mr. Reisman has indicated --

20 THE COURT: Well, you've got the upper hand right
21 now because you're got opposition with their hand at least
22 one and maybe two hands tied behind their back.

23 MR. FRIEDMAN: Well, that's a good position for my
24 opposition to be in.

25 (Laughter)

1 THE COURT: No, you created it by saying that
2 Mr. Bennett had a conflict that wasn't waived -- that you
3 weren't -- you know, I'm not faulting you, but your client
4 wouldn't waive the conflict and they said no we couldn't --
5 Jones Day couldn't do it, so it can't file an opposition to
6 your motion, and you know, here we are.

7 MR. FRIEDMAN: When I proposed --

8 THE COURT: Oh, you want to go ahead on March 6th
9 any way.

10 MR. FRIEDMAN: No, what I was --

11 THE COURT: That's what -- you know, you've got
12 one hand and maybe two tied behind their backs.

13 MR. FRIEDMAN: Well, I offered to Mr. Moscato this
14 morning actually that in order to try and address this, and
15 if Your Honor is willing, to get the opposition brief early
16 next week before the 6th we're happy to forego our reply,
17 again, just so we can get -- we can keep the 6th and keep
18 things moving along, particularly given Your Honor's trial
19 schedule.

20 THE COURT: You know, you'll probably be shocked
21 to know that the reason I want objections a week before a
22 hearing is because I actually read them and do research and
23 study them. So getting briefs two days before a hearing is
24 not something I'm doing handstands about, okay?

25 MR. FRIEDMAN: Okay. Well, then I understand, if

1 that's not acceptable to Your Honor then we'll have to find
2 another solution.

3 THE COURT: Mr. Reisman, you want to say something
4 else?

5 MR. REISMAN: If we're going the move it to the --
6 if we're going to move it to the 16th, the confirmation
7 date, it's only moving all of the dates basically
8 confirmation by 11 days and the motion by 11 days and
9 everything will be decided prior to confirmation, which
10 is --

11 THE COURT: Maybe.

12 MR. REISMAN: Well, yeah, I understand that.

13 (Pause)

14 THE COURT: Okay. Before I -- give me a sense of
15 what is the discovery that -- has JPMorgan asked for
16 discovery from you?

17 MR. REISMAN: JPMorgan has not asked for discovery
18 from us. Sorry. JPMorgan has not asked for discovery from
19 us in connection with the STN motion. There is discovery
20 from us that is pending in connection with plan
21 confirmation.

22 THE COURT: I'm sorry, your voice trailed off.

23 MR. REISMAN: I'm sorry. JPMorgan has not asked
24 for discovery from us.

25 THE COURT: That part I heard, it was the -- you

1 said in connection with something else.

2 MR. REISMAN: In connection with plan confirmation
3 they have served us with discovery.

4 THE COURT: Mr. Friedman, what -- and you served
5 them with discovery -- Mr. Bennett had served them with
6 discovery in connection with the STN motion.

7 MR. REISMAN: Correct, Your Honor.

8 THE COURT: Mr. Friedman, why don't you address --
9 what's your position about the discovery that's been
10 requested --

11 MR. FRIEDMAN: Sure.

12 THE COURT: -- by counsel that's now conflicted
13 out?

14 MR. FRIEDMAN: Sure. Here are the issues.
15 There's two things going on. One is the confirmation
16 discovery and one is the STN discovery.

17 We're trying to take issues off the table by
18 acknowledging that we're going to be giving some discovery
19 in connection with the confirmation hearing that also they
20 are requesting in connection with the STN motion. So we
21 will be in a position to provide it pretty soon.

22 THE COURT: What does that mean?

23 MR. FRIEDMAN: Well, we're gathering the
24 information now. There's five categories of information
25 that they've asked for in the STN motion, a lot of which we

1 think is not relevant to the STN issues, and as I've
2 articulated already --

3 THE COURT: Let's assume it is, when are you going
4 to be able to produce it?

5 MR. FRIEDMAN: Well, given what they've asked
6 for --

7 THE COURT: And I'm not ruling, I'm just --

8 MR. FRIEDMAN: Yeah.

9 THE COURT: -- just assume -- because my view
10 about discovery, you know, if it's going to be either for
11 the -- if discovery and the STN motion overlap I'm going to
12 be pretty unsympathetic about --

13 MR. FRIEDMAN: Absolutely, and that's why we're
14 going to give -- we're going to give that -- we're going to
15 give that information and a lot of it I think is not going
16 to -- and we've given some of it already.

17 So they've asked for information about the bank's
18 interest in the loan, what do we hold in terms of the bank
19 debt? We sent them the register, we will send them the
20 register again, but that's information that we are going to
21 provide them.

22 They asked for what claims JPMorgan has against
23 the estates. We filed our proof of claims --

24 THE COURT: Can you tell me how much you still
25 hold in the loan?

1 MR. FRIEDMAN: It's a little in excess of
2 \$70 million, I believe.

3 We -- they've asked what claims we've filed
4 against the estates. We filed the claims against the
5 estates and we'll give that back to them.

6 They asked what claims the estates have against
7 us. I mean the person to ask is the trustee there. I'm not
8 sure why --

9 THE COURT: Or one of the people sitting in the
10 room behind you.

11 MR. FRIEDMAN: Exactly. They've asked that
12 category of discovery for us, I'm not exactly sure why.

13 And then they've asked for two categories where we
14 get into trouble and have a disagreement about. And those
15 two categories are basically our relationships with non-
16 debtors, meaning other MF Global entities, and what the as
17 Your Honor put it hats that JPMorgan may have worn with
18 respect to non-debtor entities may have been.

19 They ask for documents turned over in the course
20 of the SIPA trustee's investigation.

21 And they ask for --

22 THE COURT: I always used to take the position
23 when I was representing clients in securities cases and they
24 were asked to produce whatever you gave to the SEC in the
25 SEC investigation that that was not a proper request, but

1 some judges have a different view of it.

2 MR. FRIEDMAN: Judges may have different views of
3 that, and they're -- and that is our -- that is the view
4 that Your Honor used to take that we are taking here for a
5 variety of reasons, similar to and we have other ones in
6 addition to those that I'm sure Your Honor asserted when you
7 were in private practice.

8 The fact is, even if they're going to argue about
9 conflicts, that JPMorgan may or may not have, one of the
10 things I asked in our meet and confer is articulate for me
11 the imaginary conflict we have that would prevent me as
12 JPMorgan from adequately pursuing Finco's claim?

13 I can't do it any worse than they have, they've
14 settled it for zero. There is no relationship that I could
15 have that would force me to lay down.

16 The case law that talks about conflicts of
17 interest talks about situations in which the person who has
18 standing to pursue the claim is so conflicted that they're
19 essentially going to lay down and do harm to the estate in
20 terms of what the claim is worth.

21 There is no conflict that they have even
22 theoretically articulated that would present that situation
23 here.

24 I submit that nothing -- any relation --

25 THE COURT: But it might be that if -- because

1 you've asked for authority not just to prosecute the
2 claimant but to settlement the claims, and I could -- I'm
3 speculating -- but I mean I could envision with so many
4 debtors and non-debtor entities that your calculation about
5 if we get this much from this one and this much from this
6 one how are we going to -- what -- just, you know, arraying
7 these recoveries from the different entities how are we
8 going to maximize our recoveries?

9 MR. FRIEDMAN: Well, two issues to that. One, it
10 can't be less than zero. I can't do -- I can't sell it for
11 less than zero, that's the proposal on the table. And the
12 second is we're going to bring that to the Court. And it's
13 going to be out there, it's going to be approved under the
14 -- under the standards about whether it is fair and
15 reasonable and it's going to be decided whether the
16 settlement is appropriate in light of the circumstances at
17 issue when the settlement is reached. And whether or not
18 that settlement is appropriate at that time will be decided
19 on that basis.

20 The question of whether the claim is going to
21 disappear, and nobody has stood up to prosecute it, there is
22 no conceivable conflict that has been articulated or we
23 could have with respect -- certainly with respect to a non-
24 debtor that would influence that decision.

25 And so even were we --

1 THE COURT: So it's going to take you -- you
2 estimate how long will it take you to prosecute the claims
3 of Finco against the others?

4 MR. FRIEDMAN: One of the things we have said is
5 if -- we want to be practical about it.

6 THE COURT: This is a battle of you want to settle
7 on different terms than the co-proponents have proposed to
8 settle on. I mean is that -- that's really what this --

9 MR. FRIEDMAN: Well, ultimately, yes.

10 THE COURT: You're not really going to litigate
11 these to conclusion are you?

12 MR. FRIEDMAN: Well, we certainly would like the
13 opportunity to litigate it and we have --

14 THE COURT: Are you really going to litigate these
15 to conclusions? That's your -- that's what you're setting
16 out to do?

17 MR. FRIEDMAN: We want --

18 THE COURT: I don't know who you're going to
19 settle with, but that's different.

20 MR. FRIEDMAN: Well, I think -- well, that's
21 another -- that's one of the other things. I mean I think
22 you heard last week that there's going to be an application
23 from one of the other creditors of Holdings to defend the
24 claim, and I think that that really illustrates what this
25 is, which is essentially a dispute that --

1 THE COURT: Well, this is an inner creditor fight,
2 I mean, you know, if --

3 MR. FRIEDMAN: And so are we going to try and
4 litigate this case before confirmation to completion?

5 THE COURT: You're not going to.

6 MR. FRIEDMAN: No, we're not, and we acknowledge
7 that.

8 THE COURT: You might try but you're got going to.

9 MR. FRIEDMAN: We're not going to do that. But we
10 think it's an important part of the --

11 THE COURT: Not if Mr. Bennett succeeds in
12 confirming a plan that settles their claims.

13 MR. FRIEDMAN: That's absolutely correct. But I
14 think it's an important part of the calculus of both the
15 individuals who are voting on the plan and the Court in
16 considering the application for confirmation and what any
17 ultimate confirmation order says.

18 THE COURT: Well, I'll listen to your arguments
19 and I'll see what the briefs say, but I was inclined to
20 think that Mr. Bennett is right, the disclosure statement
21 was approved, it says what each parties respective position
22 is, and time will tell who was right. The creditors who are
23 voting on it sophisticated, they'll read it, they'll know
24 that there are these very mark differences and it would make
25 a difference in recoveries, you know, from different of the

1 debtors.

2 MR. FRIEDMAN: Well, nobody is disputing the
3 adequacy of the disclosure statement, and 1125 is a floor by
4 which a disclosure statement must pass, but I don't think
5 anybody should reasonably dispute the notion that there is
6 more information out there, and of course there is every
7 day, that could adequately or help inform --

8 THE COURT: I think the only thing that the -- I
9 don't know of any cases that say that people who are being
10 solicited to vote -- you're not even allowed to send
11 information to them other than what's in the disclosure
12 statement. You can't do it. It's impermissible. Am I
13 wrong on that?

14 MR. FRIEDMAN: But --

15 THE COURT: Am I wrong on that?

16 MR. FRIEDMAN: Not as far as I know, but I think
17 that people are not oblivious to what happens in this court
18 and in the world, and that's an important part of people's
19 consideration. If you had a company who, for example, was
20 in business and there was a development I think, which this
21 company is not and it's going to a (indiscernible -
22 00:34:29) plan, and there was a development that was
23 relevant to their decision on how to vote --

24 THE COURT: So there's going to be an amended
25 disclosure statement that's going to go out to them? You

1 can't send information out in connection with solicitation
2 of votes if it's not in the disclosure statement.

3 MR. FRIEDMAN: Okay, I don't dispute that.

4 THE COURT: And I approved the disclosure
5 statement and I'm not inclined to want to have to go through
6 it again.

7 MR. FRIEDMAN: Understandable. Understandable.
8 So that is our view and those are our areas of disagreement.

9 I think that a lot of the information that we are
10 going to get them in confirmation, we are working as we
11 speak and we're going to roll out information this week and
12 next week and do our best that we can to get it completed in
13 the next 14 days or so.

14 THE COURT: I'm not sure I got an answer to this
15 question. Given the requests that were made, if the Court
16 were to order you to produce everything that's been
17 requested, how long would it take you to do that?

18 MR. FRIEDMAN: I don't know the answer to that
19 question, Your Honor, given that --

20 THE COURT: Can you give me a good faith estimate?
21 Have you asked your client for the documents?

22 MR. FRIEDMAN: We've asked -- we've started the
23 process --

24 THE COURT: Because you're going have to review
25 the documents. You know, I mean they've made requests,

1 you're supposed to, you know, get the documents from your
2 client, if you think you got a good faith basis to object to
3 production you'll tell me, but how long do you -- what's a
4 good faith estimate of how long it's going take -- you want
5 to go ahead on March 6th. I want to know good faith
6 estimate of when you will produce all of the documents that
7 have been requested of JPMorgan?

8 MR. FRIEDMAN: I think it would take a number of
9 weeks.

10 THE COURT: How many?

11 MR. FRIEDMAN: At least a month given the size and
12 the over breath of the requests we received.

13 And I think, Your Honor, if it's going to be the
14 case that we're going to have to have an evidentiary hearing
15 on the --

16 THE COURT: I don't know whether we're going to
17 have to have an evidentiary hearing.

18 (Pause)

19 THE COURT: Are you prepared to make a rolling
20 production?

21 MR. FRIEDMAN: Of course.

22 (Pause)

23 THE COURT: Okay. In connection with the JPMorgan
24 STN motion all document production shall be completed by
25 5 p.m. March 11th -- Monday, March 11th. All depositions,

1 if any -- you know, depositions, if any, shall be completed
2 by 5 p.m. Friday, March 15th. Objections to the STN motion
3 are due Wednesday, March 20th, 5 p.m. Reply, if any,
4 Wednesday, March 27th at 5 p.m. The hearing on the STN
5 motion will be on Friday, April 5th at 10 a.m.

6 Mr. Friedman, I understand this is an aggressive
7 schedule, you're anxious to have this heard and decided as
8 soon as possible. Your firm can supply as many troops as
9 as necessary to complete the document production by
10 March 11th, and I expect the document production will be on
11 a rolling basis and that both sides will use good faith in
12 trying to produce documents as soon as possible.

13 By 5 p.m. Monday, April 1st the parties will
14 deliver to chambers two copies of all exhibits they
15 anticipate using at the hearing on April 1st.

16 JPM as the moving party shall use -- number all
17 exhibits numerically. Objectors shall use letters such that
18 all exhibits will, you know, have a unique identifier. We
19 don't have a reporter who marks exhibits.

20 That same April 1st date any declarations that'll
21 be used for the case in chief shall be included. You know,
22 when I'm setting this deadline of Monday, April 5th, I want
23 a full package of trial materials -- April 1st, excuse me --
24 Monday, April 1st. So I expect that direct testimony be in
25 the form of written narrative form. Work out with opposing

1 counsel, once we know who that is, when you can exchange it
2 so you'll -- you ought to get them before. I mean if you're
3 going to take depositions you ought to know what somebody is
4 going say. This is a very truncated schedule, but you want
5 this heard quickly.

6 That same April 1st date I want to be sure I've
7 got all -- any memoranda of law. They all should be in by
8 then, right? But any memoranda of law, if there are motions
9 in limine to exclude evidence, everything has got to be in
10 court by noon on Monday -- excuse me -- 5 p.m. Monday,
11 April 1st. 5 p.m. on all that. If I said noon I take that
12 back. Everything is by 5 p.m. Monday, April 1st.

13 If there are deposition designations, counter-
14 designations, they're all due then as well. I don't allow
15 full deposition transcripts to just be dumped in, there's
16 got to be designations and counter-designations and any
17 objections due then as well.

18 I'm going to move that April 1st date. That's --
19 April 1st and 2nd are the last two days of Passover. I
20 won't be here and I don't expect anybody who observes --
21 anybody else or your associates, anybody working on that
22 with respect near holidays. So everything that I said would
23 be due on Monday, April 1st at 5 p.m. will be due on
24 Wednesday, April 3rd at noon.

25 Let me just make sure I didn't -- I set as the

1 deadline for the reply briefs March 27th at 5:00 p.m.,
2 that's the second day of Passover, so I'm moving that to
3 March 28th at 5 p.m.

4 All right, so just so we're clear. Documents --
5 document production completed by March 11th at 5 p.m.
6 Deposition, if any, completed by March 15th at 5 p.m.
7 Objections by Wednesday, March 20th at 5 p.m. Replies
8 March 28th at 5 p.m. Complete package of all trial-related
9 materials Wednesday, April 3rd at noon. Hearing Friday,
10 April 5th at 10:00.

11 And it may well be, I understand, Mr. Friedman,
12 you're going to argue that the facts are -- none of the
13 facts are relevant, but we're going to get -- we're not
14 going do this. If I had the hearing and decide that and
15 then there's got to be facts you're all going to go off so
16 just let's do it now. I told you everything you need to
17 deliver and everything will be delivered to chambers that
18 same April 3rd at noon.

19 I believe I indicated at the last hearing on
20 Fridays we have a full stop at 5 o'clock. It may well be
21 because of sequestration that everything -- any hearings in
22 the court will end promptly at 5 o'clock in any event.

23 Mr. Friedman, did you have anything else you want
24 to raise?

25 MR. FRIEDMAN: No, Your Honor.

1 THE COURT: If you've got a document request that
2 you -- if you haven't -- you know, if you're going to serve
3 a -- I don't know who you're going to serve because we don't
4 know who the counsel is at this point, but send them to both
5 Mr. Bennett and to Mr. Reisman, okay?

6 MR. FRIEDMAN: Right. To the extent we have
7 requests of them or objections that we still have yet to
8 resolve we'll do that whenever they get their retention
9 issues resolved in the next couple days.

10 (Pause)

11 THE COURT: My practice with respect to discovery
12 disputes. if I haven't indicated previously. is that the
13 parties meet and confer in an effort to resolve. If they've
14 done that and can't resolve it they need to arrange a
15 telephone conference with the Court. I don't want anything
16 in writing.

17 I've listened to counsel, and in the last six
18 years I can only think of three occasions when I've asked
19 for letter briefs. I've generally -- and those telephone
20 conferences are usually within a day of when the request is
21 made.

22 Because I will be away from March 7th through the
23 13th in a time zone that's two hours earlier I'm not anxious
24 to be -- have to deal with things while I'm away, but I
25 will, because we're on a very compressed time schedule.

1 So you ought to -- in your calculus of this assume
2 that any telephone conferences would probably be at
3 6 o'clock New York time, 4 o'clock where I am.

4 Mr. Friedman, I know you indicated that -- these
5 weren't your words -- but you thought that the requests that
6 you received were overbroad or not relevant. You need to be
7 pretty confident of that position if you're going to decline
8 to produce documents. It's one thing for what's
9 discoverable, another thing what might be admissible at a
10 hearing.

11 If you assert objections and you decline to
12 produce documents and we have a hearing and I order it
13 produced you may be having people work all night to produce
14 them.

15 So you can decide whether you really want to fight
16 it out at the discovery level or you want to fight it out as
17 to the admissibility of evidence at a hearing.

18 The parties ought to try and stipulate to as many
19 facts as possible. I have a feeling that the disputed facts
20 may be fairly narrow, that there may be many facts that you
21 could stipulate to.

22 (Pause)

23 THE COURT: Maybe it was wishful thinking on my
24 part. Somebody told me the last time you were here that you
25 had been engaged in discussions and negotiations to try and

1 resolve these issues. Is there any hope that that's going
2 to happen, Mr. Friedman?

3 MR. FRIEDMAN: I always have that hope --

4 THE COURT: Yeah, I'm sure.

5 MR. FRIEDMAN: -- particularly on the schedule
6 that --

7 THE COURT: What's real?

8 MR. FRIEDMAN: I think all the lawyers here at the
9 table have each others phone numbers and know each other
10 very well --

11 THE COURT: Well, I'm sure that that's true, but
12 that's not an answer to my question. Are there any
13 discussions that -- are there any ongoing discussions?

14 MR. FRIEDMAN: I'm not aware of any and neither is
15 anybody on this side of the room, Your Honor.

16 THE COURT: Mr. Bennett?

17 MR. BENNETT: There are currently no ongoing
18 discussions. There were between the last hearing and this
19 hearing but they've stopped.

20 THE COURT: Mr. Reisman?

21 MR. REISMAN: Your Honor, I could add this color
22 to it, which is that in the context of this hearing in
23 looking at emails from parties there are suggestions of an
24 effort to try and resolve this with JPMorgan, and this may
25 be news to them and I think maybe even news to Mr. Bennett,

1 but I'm trying to keep abreast of what's going on with
2 respect to the conflict issues and getting the engagement
3 letter signed up at the same time as listening to the
4 hearing, and there were -- there was an email that passed by
5 with respect to an effort to resolve matters with JPMorgan.
6 And I will make a personal effort in trying to resolve that
7 given the aggressive schedule which we're under and trying
8 to get this case to a successful confirmation.

9 THE COURT: Mr. Miller?

10 MR. MILLER: Just as an aside.

11 There was -- as was put in footnote in our
12 pleading filed this morning there was a request at the last
13 hearing of Knighthead to have STN standing. Mr. Mayer has
14 not spoken with me further regarding that. I assume that if
15 they make such a motion we'll use a similar time frame as
16 was just laid out regarding that request, because we have
17 the dates, but again, I leave it to someone to approach the
18 trustee and ask for formal standing and then file a motion.

19 THE COURT: Does it make sense to have a mediator
20 meet with the parties to try and resolve this issue?

21 Mr. Pantaleo, you're shaking your head modestly up
22 and down, not too strongly.

23 MR. PANTALEO: Your Honor, I think it does if we
24 can do it without throwing everything off.

25 THE COURT: No, we're not going to throw the

1 schedule, the schedule is going to go forward.

2 MR. PANTALEO: No, I think it does. I mean this
3 is -- this is -- the question is how much of an intercompany
4 claim should be allowed? That's the question. That's it.

5 THE COURT: So look, you've got your litigation
6 forces --

7 MR. PANTALEO: Right.

8 THE COURT: -- deployed, and Mr. -- well, it won't
9 be Mr. Bennett -- but somebody else has got their litigation
10 forces deployed, there are other people who can meet and try
11 and resolve this.

12 Look, you know, Mr. Margolin is sitting back row,
13 Mr. Miller is over there, there are other issues with JPM
14 that are very important to having this case moved forward
15 and having creditors paid. I'm not suggesting the issues
16 are links, but somehow, you know, when -- sometimes when
17 some issues fall into place others fall into place very
18 quickly. So there's a lot at stake here.

19 MR. BENNETT: Your Honor, I have no objection at
20 all to the objection of mediation. I do want to assure that
21 when -- if or when this proceeds to mediation we define more
22 clearly the words "this issue."

23 Because one of the problems that we are certainly
24 having, and I think it's more than just an issue of
25 vocabulary, is that JPMorgan wants to speak of this as an

1 issue that relates solely to a single intercompany claim and
2 what is the amount of it. And I think as I explained to the
3 Court at the last hearing, the settling of the intercompany
4 claims is kind of one settlement that completes several. It
5 completes -- there always was the allowance of both prongs
6 of the bank claim both against Finance USA and Holdings ltd.
7 That goes off the table if the intercompany settlement goes
8 away because it's going to be challenged by unhappy
9 bondholders.

10 The separateness of debtors as to which no issue
11 was raised in the plan and they're separate, this is
12 confirmed as an issue which will be examined and likely the
13 subject of inquiry by bondholders.

14 So it -- what people have to understand, we've
15 said it in our papers, it will be part of our case in chief
16 at the confirmation hearing, is that trying to pick out this
17 one piece of the plan and say just fix this one or this is
18 the only point up for grabs is a very artificial and
19 incomplete way of looking at this problem.

20 And I just want to make sure that if a mediator
21 comes in that he can decide what the appropriate scope is,
22 whether it really is just something narrow or whether there
23 are other issues that would have to be resolve as well. If
24 you push too hard on one another one is going to break.
25 That's my only qualification on the subject of mediation.

1 MR. PANTALEO: Your Honor --

2 THE COURT: Go ahead, Mr. Pantaleo.

3 MR. PANTALEO: -- a mediator will decide whatever
4 the scope is. I can't speak because I've never heard the
5 admission before until we raised this one issue, but if
6 there are other issues that's all in the mix of whatever
7 comes out of the mediation (indiscernible - 00:58:44).

8 My only -- I have a problem in terms of my own
9 schedule, so we need to do this pretty quickly.. I'm going
10 to be in Norway from March 8th to March 15th.

11 THE COURT: It's a better trip than mine.

12 MR. PANTALEO: You'll be in warmer weather I'm
13 sure.

14 THE COURT: I don't think so.

15 MR. PANTALEO: I'm going to be --

16 (Laughter)

17 THE COURT: All right, we won't get into that
18 anymore.

19 (Laughter)

20 THE COURT: All right. You'll be in colder
21 weather, okay. Probably darker too.

22 MR. PANTALEO: And I'm happy to make myself
23 available by telephone if I need to. This ought to get
24 addressed if it can get addressed. If not then obviously
25 nothing (indiscernible - 00:59:37).

1 (Pause)

2 THE COURT: Mr. Bennett, are you so conflicted out
3 of this that you can't even have a discussion with
4 Mr. Pantaleo about these issues or what is the --

5 MR. BENNETT: I think if there's going to be a
6 mediation there are three -- at least three parties that
7 have to be involved. One is Mr. Pantaleo on behalf of
8 JPMorgan, one is Mr. Tom Mayer on behalf of Knighthead,
9 which is a very large bondholders, and I should probably be
10 there as a technical consultant to kind of get this through
11 the plan. But it is really those two parties that should be
12 working with each other to get this resolved.

13 Mr. Miller has also volunteered to act as a
14 technical consultant.

15 THE COURT: So what I'd like you to do when we
16 recess shortly is one or more of you contact Mr. Mayer. Are
17 you free tomorrow afternoon, Mr. Pantaleo?

18 MR. PANTELEO: Yes.

19 THE COURT: Mr. Bennett, are you still going to be
20 in New York or are you headed out of town?

21 MR. BENNETT: I'm -- I am here tomorrow afternoon.
22 I have a commitment, it can be moved.

23 THE COURT: Okay.

24 MR. BENNETT: I'd prefer early afternoon, but I
25 could -- if it's early afternoon then everything stays

1 together nicely.

2 THE COURT: Mr. Miller, you're available?

3 MR. MILLER: I'm available.

4 THE COURT: Okay. See if Mr. Mayer is available
5 at 1:30 and we will -- so Mr. Pantaleo, Mr. Bennett,
6 Mr. Miller, Mr. Mayer, Mr. Reisman if he -- he ought to be
7 included in that as well. We will meet in chambers. I will
8 not act as a settlement mediator since I may be -- but we'll
9 at least have a discussion about how to proceed.

10 I think if it proceeds -- you know, if it's clear
11 the litigation track will go forward the issue is there are
12 enough players involved that -- I won't even call it a
13 settlement -- a resolution track can move forward as well.

14 So let's -- let me just check one other calendar
15 now that I've committed myself to this. Yeah, tomorrow at
16 1:30 in my chambers, okay? All right, I appreciate it.

17 All right, we're adjourned. Thank you very much.

18 (Whereupon these proceedings were concluded at 5:06 PM)

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a true and accurate record of the proceedings.

AAERT Certified Electronic Transcriber CET**D-408

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Date: February 27, 2013