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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

October 29, 2013

3:42 PM

B E F O R E :

HON MARTIN GLENN

U.S. BANKRUPTCY JUDGE

1 HEARING RE: (Doc no. 1580, 1689, 1690, 1691) Second Interim
2 and Final Fee Application for Approval and Allowance of
3 Compensation for Services Rendered and for Reimbursement of
4 Expenses Incurred by Dewey & Leboeuf LLP, Former Attorneys
5 for the Statutory Creditors Committee of MF Global Holdings
6 Ltd., et al. for Dewey & LeBoeuf, LLP, Creditor Comm. Aty.

7
8 HEARING RE: (Doe no. 1583, 1689, 1690, 1691, 1699) Fourth
9 Interim and Final Fee Application of Proskauer Rose LLP,
10 Attorneys for the Statutory Creditors' Committee of MF
11 Global Holdings Ltd., et al., for Approval and Allowance of
12 Compensation for Services Rendered and for Reimbursement of
13 Expenses for Proskauer Rose LLP, Creditor Comm. Aty.

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Transcribed by: Melissa Looney and Leigh David

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21 ALSO APPEARING TELEPHONICALLY:

22 LAURA R. FERBER
23 JOSEPH KRONBERG
24 JOHN SCHANNE
25 ANDREW SHANNAHAN

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

2 THE COURT: Please be seated. All right. We're
3 here on MF Global Holdings Limited, No. 11-15059. We're
4 here with respect to interim and final fee applications.
5 Who's going to begin?

6 Ms. Goldstein.

7 MS. GOLDSTEIN: Good afternoon, Your Honor. Thank
8 you first of all for accommodating us and having this on
9 October 29th prior to our October 31st, year end. It's
10 greatly appreciated.

11 THE COURT: Why does anybody care about that?

12 MS. GOLDSTEIN: The firm cares. I get called
13 every day.

14 Again, Irena Goldstein, Proskauer Rose. I'm here
15 on behalf of Proskauer as counsel to the statutory
16 Creditors' Committee and to the trustee of Dewey & Leboeuf
17 secured lender trust, which through the Dewey & Leboeuf plan
18 has the right to collect the receivable owned by MF Global.

19 We are here on the final application for
20 compensation and reimbursement of expenses of Proskauer and
21 Dewey. The total sought by Proskauer is \$5,032,772.73 of
22 fees and \$195,348.20 of expenses.

23 Of this amount \$520,015.50 of fees and \$13,068.68
24 were not subject to interim fee applications. Everything
25 else was before Your Honor and approved.

1 The total sought by Dewey is \$3,750,652.25 in fees
2 and \$79,268.26 of expenses. Of this amount, \$90,288 of fees
3 and \$161.79 of expenses were not subject to interim fee
4 applications.

5 Two objections were filed to Proskauer and Dewey's
6 final applications. The U.S. Trustee objected seeking
7 reductions related solely to the last interim period, not
8 subject to prior applications. Both Proskauer and Dewey
9 have agreed to reduce their requests by \$14,509.97 and
10 \$20,537 respectively. This amount reflects --

11 THE COURT: Please say that again.

12 MS. GOLDSTEIN: \$14,509.97 for Proskauer and
13 \$20,537 for Dewey. This amount reflects the reductions
14 requested by the U.S. Trustee and for example where there
15 were multiple attendees, they said that if we recalculated
16 it for three attorneys to be present, we would do that. So
17 we did do those calculations for both Dewey
18 and for Proskauer.

19 In addition the U.S. Trustee objected certain of
20 Dewey's fee entries as being vague and we offered to reduce
21 our fees that were identified as vague by 30 percent, which
22 is the general rule that the U.S. Trustee requires, which is
23 \$4,213.50.

24 In other words, both Proskauer and Dewey have
25 agreed to all of the U.S. Trustee's requests.

1 I will refer to Dewey and Proskauer as
2 collectively, Committee counsel. We have another objection,
3 obviously, Your Honor, which is the main event here. The
4 plan administrator's objection is focused upon services
5 provided by the Committee that had been subject to prior fee
6 applications before this Court and seeks Proskauer to reduce
7 its fees by \$1.75 million and Dewey by \$750,000.

8 If this Court were to approve the plan
9 administrator's requests, which we obviously hope you do not
10 do, both Proskauer and Dewey would have to return funds to
11 the estate. In addition, Dewey, as Your Honor is well aware
12 was subject to its own bankruptcy proceedings and confirmed
13 a plan. And technically any request by Dewey to pay back
14 money violates the plan injunction.

15 The plan administrator's objection to the
16 committee counsel's fee application is premised on two false
17 factual matters. Number one, the plan administrator says
18 that no one was monitoring the fees and two, the committee
19 counsel was merely duplicating services provided by the
20 Chapter 11 trustee's professionals. Both of these premises
21 are simply false.

22 First as Your Honor is well aware, this Court and
23 the U.S. Trustee have closely reviewed all fee applications.
24 Your Honor said as much during our last fee application
25 hearing. At each interim fee application, Committee counsel

1 reached an agreement with the U.S. Trustee on the amount of
2 reductions to be applied, which agreement was ultimately
3 accepted.

4 THE COURT: You're not saying that I'm bound by
5 what occurred at the interim fee applications?

6 MS. GOLDSTEIN: No, I'm not Your Honor. It's a
7 presumption of reasonableness.

8 THE COURT: Do you have a case that says that?

9 MS. GOLDSTEIN: Yes, actually Judge Bernstein's
10 decision of last week in Quigley (ph).

11 Second, the Committee reviewed all fees, mostly on
12 a weekly basis. Capstone, the Committee's financial advisor
13 prepared what was termed a cash update, which set forth cash
14 receipts, expenses and projected expenses. This included a
15 chart and I attached the chart itself, which is just an
16 excerpt from the report as it was (indiscernible - 01:32:33)
17 in my declaration, which shows what we were -- what the
18 Committee was doing. They were actively monitoring fees.

19 They were very concerned in this case because as
20 Your Honor will remember there was basically no cash in the
21 beginning. So it was a major concern to the Committee.

22 As set forth in our objection, Capstone also
23 prepared a more comprehensive report regarding professional
24 fees for the Committee. At the last hearing, Your Honor may
25 remember that the U.S. Trustee requested to see the report

1 in connection with her objection to Capstone's time
2 descriptions as being vague and repetitive. Ultimately Your
3 Honor did not require the report to be turned over.

4 I raise this not to just highlight the fact that
5 the Committee was closely monitoring fees, a task that it
6 believed was part of its responsibilities because it
7 demonstrates how little factual homework the plan
8 administrator did before filing its objection.

9 A simple review of transcripts from the fee
10 application hearings would have demonstrated that this Court
11 reviewed the fee applications in detail, the U.S. Trustee
12 reviewed the fee applications in detail and the committee
13 announced in open court that it also reviewed the fee
14 applications and monitored fees in these cases.

15 Daniel Irman (ph) the plan administrator's
16 declarant stated that an objective review of the
17 professional's time records did not indicate that any time
18 had been spent reviewing professional fees. While I can
19 understand that an objective review of Committee counsel's
20 and Capstone's time records would not reveal a category
21 called review of the professional's fee applications and
22 that Mr. Irman may not have known what a cash update was,
23 but what I cannot understand is why Mr. Irman, who I've
24 known for many, many years, or Mr. Bennett did not pick up
25 the phone and call me and ask.

1 Therefore the first premise upon which the plan
2 administrator's objection is founded, meaning no one was
3 monitoring our fees is false.

4 The second point raised by the plan administrator
5 is that the Committee counsel was duplicating the services
6 provided by Chapter 11 Trustee and the Chapter 11 Trustee
7 himself shouldn't have been doing much, besides monitoring
8 the SIPA trustee in connection with his role in the foreign
9 proceedings, particularly MF Global UK.

10 Frankly, this argument is nonsensical. First, the
11 notion that the Chapter 11 Trustee should just let the SIPA
12 Trustee do his bidding because the SIPA Trustee is a
13 fiduciary does not take into account that the SIPA Trustee
14 at times was adverse to the Chapter 11 estate. Moreover,
15 the funds that the SIPA Trustee was seeking from the UK came
16 ultimately in part from the chapter 11 debtors. There was a
17 real question as to who was entitled to those funds.

18 Further, the discussions among the Chapter 11
19 Trustee, The SIPA Trustee and the UK administrators were at
20 times very contentious. UK administrators objected to the
21 Chapter 11 Trustee's first claim and refused to cooperate
22 with the Chapter 11 Trustee in general. On top of that,
23 gaining access to the UK courts in a timely basis was
24 problematical, something which led Your Honor to offer to
25 speak directly with the UK court.

1 Ultimately Proskauer's UK professionals devised a
2 strategy that would allow the Chapter 11 Trustee to file a
3 direct claim against MFG UK. Proskauer presented the idea
4 to the Chapter 11 Trustee and his professionals and
5 ultimately after a lot of back and forth and arguing, the
6 Chapter 11 Trustee agreed to adopt the strategy as said by
7 the plan administrator to gain leverage in negotiations.

8 Proskauer and the Chapter 11 Trustee's
9 professionals thereafter worked closely together and had
10 weekly calls to ensure that everything remained on track and
11 to prevent duplication of services. In other words, the
12 work with the professionals complimented as opposed to
13 duplicated each other.

14 Ultimately, the strategy paid off. After a court
15 ordered close door sessions, which the Chapter 11 Trustee
16 participated, the UK administrators and the SIPA Trustee
17 reached an agreement. A condition precedent to that
18 agreement was the withdrawal by the Chapter 11 Trustee of
19 the direct claim. The direct claim basically plugged all
20 recoveries for everyone. The UK couldn't make any
21 distributions because it had to fully reserve. So clearly,
22 it was in the SIPA Trustee's best interest to get the
23 Chapter 11 Trustee to withdraw that claim so that
24 distributions could flow to MFGI.

25 To induce the Chapter 11 Trustee to withdraw the

1 direct claim, the SIPA Trustee agreed to allow the Chapter
2 11 debtors' claims in the total amount of \$1.2 billion plus
3 \$600 million of subordinated claims. Clearly, this was a
4 real benefit to committee's counsel's efforts.

5 The plan administrator disingenuously argues that
6 the debtors accumulated assets of \$64 million and the
7 results of the UK strategy were a \$29.7 million claim
8 against MFG UK and a \$25.8 million claim against other
9 foreign entities. This is frankly ludicrous.

10 As previously I just stated that there is an
11 allowed claim of \$1.2 billion at MFGI, a general unsecured
12 claim. In addition there were portions of that \$1.2 billion
13 -- I should step back -- were allowed securities claims that
14 had priority.

15 There will be a distribution to general creditors
16 of MFGI, so that's clearly additional funds that will be
17 coming into the estate.

18 More importantly, the disclosure statements which
19 were drafted in part by the plan administrator's counsel
20 states that in the aggregate, across the debtors, \$856
21 million to \$2.06 billion will be distributed to creditors.
22 So I don't know where this \$64 million comes from, if that's
23 what they've collected to date. But in their disclosure
24 statements, they clearly believe substantial more funds are
25 going to be coming into this estate.

1 Clearly the plan administrator is using whatever
2 numbers work to make their objection as opposed to using the
3 numbers that are actually in the disclosure statements. But
4 the fact that we achieved such excellent results isn't
5 really the standard.

6 As Your Honor stated in, in re Mesa Air Group 449
7 B.R. 441, 305 -- oh sorry, 505 -- the necessity and
8 reasonableness is determined from the perspective of the
9 time when the services were rendered.

10 At the time that they were rendered, the Chapter
11 11 Trustee was being stiff armed by both the SIPA Trustee
12 and the UK administrators. In that regard, I attached to my
13 declaration as Exhibits A and B, charts prepared by the
14 committees and the Chapter 11 Trustee's professionals
15 setting forth all the unanswered questions and documents
16 that we needed from both the UK and the SIPA Trustee. Those
17 charts were prepared in April 2012 and they demonstrate that
18 very little progress was being made by the Chapter 11
19 Trustee and his discussions with his so-called fiduciaries.

20 All that was really known was that a lot of money,
21 billions, went to the chapter 11 debtors to MFGI out to
22 Europe. We didn't know where those funds were, what they
23 were being used for, although we suspected. On top of that,
24 the SIPA trustee was alleging that there was over a billion
25 dollars of customer property that was not yet recovered.

1 Until December 2012, there was essentially no cash at the
2 Chapter 11 debtors, other than certain de minimis amounts
3 for distributions to could or to pay professionals.

4 The Committee's professionals worked hard as the
5 other professionals at the case at a time when it was
6 unclear if they'd ever be paid.

7 According to Judge Bernstein in his October 24th,
8 decision in the bankruptcy case of Quigley Company Inc.,
9 that's at 2013 BANKR Lexis 4465, Committee counsel has
10 established the presumptive reasonableness of their fee
11 requests through the interim application.

12 THE COURT: Where is -- where does he say that? I
13 see in Quigley, the Judge Bernstein talked about presumptive
14 validity of fees calculated in accordance with lodestar, but
15 I don't see where this presumptive validity based on interim
16 fee awards. It could be there and I'm just not --

17 MS. GOLDSTEIN: It is there. I read it today.

18 THE COURT: Okay.

19 MS. GOLDSTEIN: But I have to find it.

20 (Pause)

21 MS. GOLDSTEIN: Okay. This is on page 15 of the
22 slip opinion. I don't have --

23 THE COURT: Hold on. Let me find it. I have the
24 slip opinion in front of me.

25 All right, what does it say?

1 MS. GOLDSTEIN: It's at the first full paragraph
2 at the top.

3 THE COURT: Yes.

4 MS. GOLDSTEIN: Schulte and the Togot (ph) firm
5 established the presumptive reasonableness of their fee
6 requests through the 26th interim applications and with a
7 few exceptions discussed below, so did Kaplan (ph).

8 THE COURT: Okay. And does Judge Bernstein say
9 how the presumptive validity of the reasonableness of fee
10 applications of interim fee applications could be overcome
11 at the time of a final fee application? I see a lot of
12 discussion in his opinion about presumptive fees based on
13 lodestar formulas, but I don't see anything about where fees
14 are calculated in -- I would describe as the ordinary way.

15 You referred to my Mesa opinion, which is at 449
16 B.R. 441, and I think the language you were quoting is
17 actually at -- I don't think you had the right page number --
18 - 444. But that just deals with -- there I just dealt with
19 what -- yes you look at it as of the time the services are
20 provided, it's not an after the fact --

21 MS. GOLDSTEIN: Right.

22 THE COURT: -- look. But I mean the main thrust
23 of Judge Bernstein's Quigley decision, I don't think really
24 focuses on -- I mean it doesn't really -- I don't see where
25 he explained what one has to do to overcome the presumption

1 where interim fees have been awarded. Is there something
2 there?

3 MS. GOLDSTEIN: No. I think you're right. He
4 doesn't state that. He just says that the U.S. Trustee's
5 objections basically were overruled based on the foregoing
6 and he went through the time and the fact that when they
7 were proposing the plan, there was a question maybe they
8 could get it confirmed and then he -- based on the prior
9 interims and he concludes based on the forgoing, the U.S.
10 Trustee's two common objections to the reasonableness of the
11 Schulte Kaplan and Togut (ph) firm plan related fees and the
12 Schulte litigation firm fees are overruled.

13 THE COURT: Well look, Quigley had a very long
14 history and where the original plan after confirmation was
15 denied as a result of Mr. Weisfelder's (ph) objections. And
16 the plan was not confirmed and there ensued a fairly lengthy
17 period thereafter ultimately resulting in a revised plan
18 that was confirmed. Very different circumstance, I think,
19 than here, but I take your point. Go ahead.

20 But basically, the plan administrator says in its
21 papers that this presumption -- they use the work
22 presumption -- shouldn't be afforded respect because no one
23 was monitoring the fees. As --

24 THE COURT: Well, my -- I would take umbrage with
25 that because I don't know what my colleagues do and I know

1 what I do and I know what my chamber staff does. And we do
2 monitor the fees and we review interim applications in
3 detail. So whether that gives rise to a presumption or not,
4 I can't say, but I spent a lot of hours toiling over interim
5 fee applications before they get approved. And when there
6 are things in interim applications that I find troublesome,
7 I usually turn to Mr. Masumoto first, since he's usually the
8 one who's been here on them and I ask what the position of
9 the U.S. Trustee is and I frequently compliment the U.S.
10 Trustee for the care and attention it pays in reviewing fee
11 applications. And when it's reached a resolution of
12 disputes, I'm always mindful that I don't want to double
13 ding the applicant once a lump sum agreement has been
14 reached with the U.S. Trustee, which may cover many of the
15 things that have bothered me, then just tack onto it. But I
16 certainly inquire further and sometimes, as may be the case
17 here, there are things that I've identified that aren't
18 necessarily dealt with by the U.S. Trustee and I do deal
19 with them.

20 But I -- the fee applications at MF Global were
21 all -- the interim applications were all scrutinized by me
22 and my chamber staff. Go ahead.

23 MS. GOLDSTEIN: Which leads me to their
24 alternative request, which is if --

25 THE COURT: There's not going to be a fee

1 examiner. Don't even deal with that.

2 MS. GOLDSTEIN: Okay.

3 THE COURT: There's not going to be a fee
4 examiner.

5 MS. GOLDSTEIN: Anyway, so I feel that Proskauer
6 and Dewey have worked really hard. They've established the
7 reasonableness of their fees; these were approved in prior
8 interim applications. It was reasonable for them to provide
9 the services at the time and in fact, in hindsight, they
10 turned out to be extremely useful because we have a global
11 deal of which the Chapter 11 Trustee participated by
12 agreeing to withdraw its claim and get these allowed claims
13 at MFGI. And what's not clear, but it's stated in my
14 declaration, the Committee was obviously kept up to date on
15 negotiations and we made additional requests and the Chapter
16 11 Trustee went back to the SIPA Trustee and we got some of
17 what we asked for -- not all of it, but some of it -- which
18 increased the recovery to creditors and we've worked really
19 hard. So to now, years later --

20 THE COURT: What do you think you accomplished
21 that the Chapter 11 Trustee would not have accomplished once
22 the Chapter 11 Trustee was appointed?

23 MS. GOLDSTEIN: It was our professionals, Your
24 Honor, that created this direct claim. But the Chapter 11
25 Trustee filed a claim that was disallowed as being

1 duplicative of MFGI's claim in the UK. We then went back to
2 the drawing board to think of ways that he could file his
3 own claim and thereby have standing in the UK proceeding and
4 have leverage in negotiations. And we presented our
5 findings to the Chapter 11 Trustee and there was a lot of
6 discussions going back and forth between the professionals
7 and with the Chapter 11 Trustee and his business
8 professionals. And ultimately, they adopted that strategy.
9 So that is clearly a clear benefit to the estate. And would
10 he have gotten there anyway? I don't know. He wasn't there
11 at the time when we presented to him our ideas for bringing
12 a direct claim, which ultimately, we believe, added
13 significant value for these debtors. It's the only thing
14 that gave the Chapter 11 Trustee leverage.

15 THE COURT: Go ahead.

16 MS. GOLDSTEIN: That's it, Your Honor.

17 THE COURT: Okay. Thank you, Ms. Goldstein.

18 MS. GOLDSTEIN: Thank you.

19 THE COURT: Mr. Masumoto, do you want to go next?

20 MR. MASUMOTO: Brian Masumoto for the Office of
21 the United States Trustee. Good afternoon, Your Honor.

22 From the standpoint of the U.S. Trustee, I just
23 wanted to make it clear that in our discussions we've had
24 discussions with the committee counsel prior to the hearing.
25 We did not specifically agree on any settlements with

1 respect to the U.S. Trustee's objections, primarily because
2 we weren't sure as to the sequence in which Your Honor would
3 address the various issues and we did not want to prejudice
4 any positions regarding the issues raised with respect to
5 the appointment of a fee examiner.

6 Since Your Honor has indicated that no fee
7 examiner will be appointed --

8 THE COURT: There's not going to be a fee examiner
9 here.

10 MR. MASUMOTO: I understand Your Honor. And so
11 from our standpoint, I guess our only concern is that to the
12 extent that the objections of the plan administrator will
13 essentially subsume the objections that were raised by the
14 U.S. Trustee, I'll defer to Your Honor as to whether or not
15 you want to address the specifics. It is clear, as
16 indicated, that essentially in our discussions with
17 Committee counsel that based upon the objections that we
18 filed, in essence, there has been a -- by in large a full
19 concession on the issues.

20 THE COURT: But one area where I still have
21 questions and I'll give Ms. Goldstein another chance after
22 Mr. Bennett argues, but as you know, Mr. Masumoto, one of
23 the areas that I frequently have focused on is the amount of
24 fees incurred in preparing fee applications. And in Mesa
25 and in Borders I addressed it in written opinions. In Mesa

1 I didn't adopt a hard cap, but I discussed the 3 to 5
2 percent range. In other cases on the record, but not in a
3 written opinion, I've indicated the larger the fee
4 application, the smaller the percentage should be. I said
5 that often enough and it's in transcripts.

6 There are other -- some other broad guidance that
7 I've given, I think some of which is reflective in the
8 reductions that have been agreed upon. I sort of have a
9 presumptive rule, not to charge for more than three
10 attorneys in any meeting. And I think a specific factual
11 showing supporting attendance of additional attorneys would
12 be required to overcome that presumption.

13 With respect to the range for fees for preparing
14 fee applications while I've previously concluded the fees in
15 connection with preparation of the fee applications should
16 ordinarily not exceed 3 to 5 percent during the period --
17 and that's in Mesa and in Borders, I have said from the
18 bench that the larger the fee application the smaller the
19 percentage of the fees. And I am concerned here that with
20 respect to Proskauer, which it's large application --
21 interim fee application, it exceeds 5 percent. It does, Ms.
22 Goldstein. It does.

23 MS. GOLDSTEIN: I'm not disagreeing.

24 THE COURT: And even if it was at 5 percent, is
25 that appropriate under the circumstances? Here, a portion

1 of the fees in the last period were preparation of the final
2 fee application and I think there was only about \$8500
3 that's attributable to the final fee app that's included in
4 this last interim period. And as for Dewey -- let's see,
5 \$12700 to work on the final fee applications. That puts
6 Dewey's application still around 10 percent.

7 So I'm concerned. In your discussions, have you -
8 - with Proskauer and Dewey's representatives, is that an
9 area where you -- have you discussed specifically the amount
10 of fees charged for preparation of fee applications?

11 MR. MASUMOTO: No, Your Honor. We didn't. In the
12 area of sort of the Mesa standard or for fee application
13 preparation, unfortunately we do have some sort of ambiguity
14 in that area. If I could sort of explain part of the
15 problem. When we look at an interim, frequently we get the
16 response from the debtors that it is distorted if there is a
17 fluctuation in the fees between interim periods, because not
18 all the fees for a particular interim directly relate to the
19 preparation of the fees that are currently being presented.
20 Like for example, presumably at the time the current fee
21 application was filed, it would not include work that may be
22 done for -- that may -- I'm sorry that may include in fact
23 work that being done for fee applications that were prepared
24 for the subsequent interim application. So you would find a
25 particular distortion if you look at it on an interim basis.

1 So arguably --

2 THE COURT: And I have taken that into account at
3 times. When I've raised the questions about it, I've been
4 satisfied if their -- it reflected work done in a different
5 period.

6 MR. MASUMOTO: Yes. And so from our standpoint --
7 and part of the problem is when we're doing it in an
8 isolated interim basis, sometimes it's hard to make a
9 complete -- to take into account all the different
10 adjustments that have occurred. Ideally, I would say that
11 in fact, if the Mesa standard were to apply strictly at the
12 finals -- at the very final, you would probably have a
13 consistent application to be able to determine what the
14 correct percentage is.

15 I think if my recollection served and my colleague
16 actually worked on it, I believe for the final interim
17 period, we did not see a particular problem. Now, we didn't
18 compare it with the overall because trying to determine what
19 adjustments were made in the prior interims would perhaps
20 not be a fair reflection overall.

21 So frankly, Your Honor, you're absolutely correct
22 that in this context, because of the difficulties we had
23 making agreements on the interim level; we did not
24 specifically address the overall percentage for the fee
25 application preparation for the entire period of the case.

1 It is, from our standpoint, a little bit of a conundrum and
2 we felt that it was unfair for us not to -- to target them
3 individually and then also at the end, sort of as a double
4 hit.

5 THE COURT: Well, in comparison with Mr. Bennett's
6 objection this is --

7 MR. MASUMOTO: I agree.

8 THE COURT: -- peanuts.

9 MR. MASUMOTO: I agree, Your Honor, and that's why
10 from our standpoint, we were reluctant to -- or unwilling to
11 commit to the committee that we had resolved all the fee
12 objections. But in terms of the objections that we did
13 file, specifically on those issues, counsel is correct
14 essentially it was a full concession of the objections that
15 we raised.

16 THE COURT: Thank you, Mr. Masumoto.

17 Mr. Bennett?

18 MR. BENNETT: Good afternoon, Your Honor.

19 THE COURT: So all that time I spent reviewing fee
20 applications was an utter waste of time.

21 MR. BENNETT: That's not what I think we're
22 saying, Your Honor. And we may be able to short circuit
23 this. We don't know, Your Honor, whether when you reviewed
24 the fee applications you thought you were reviewing fee
25 applications that had already been looked at by relevant

1 business people, including a trustee and by committee
2 representatives and that there already had been a review for
3 the big picture as to whether what was being done was
4 appropriate, reasonable, from the cost effective basis.

5 If you assumed that anyone else was doing anything
6 on these fee applications before they got to you, I think we
7 can demonstrate that you were mistaken.

8 THE COURT: You think Mr. Masumoto was wasting his
9 time when he and his colleagues --

10 MR. BENNETT: No. I --

11 THE COURT: -- spent a lot of time reviewing fee
12 applications and when they believed it was appropriate,
13 asked questions or -- and usually resolved their objections?

14 MR. BENNETT: I don't think they were wasting
15 their time. I think as to the things they focused on, they
16 did excellent work. I don't know what Mr. Masumoto believed
17 that when he gets a fee application whether it's already
18 been the subject of some form of review and people are
19 paying attention to what things are costing (indiscernible -
20 01:57:10) estate.

21 My directions from the board are very clear. We
22 know that Your Honor devoted time and the U.S. Trustee
23 devoted time and attention to the fee applications. And if
24 you came to these fee applications believing and expecting
25 that you were the first and last line of defense, both of

1 you, this is over, we're done. I'll cede the podium and we
2 won't go further. We understand that people did work on
3 this. I think from the perspective of the board and we've
4 talked very carefully about what I would say to you today.
5 Is that when the board got the stack of final fee
6 applications they were trying to figure out what their role
7 should be. They thought the numbers were very large.

8 THE COURT: They are. They're very large.

9 MR. BENNETT: And the first -- so the first
10 question that they asked -- they asked it first of the
11 management employees that are there, they said, well what
12 was done with these during the case. And the answer they
13 got from the people who were there was, well we didn't have
14 participation in what was done. And the next thing they
15 asked was well can we figure out what other people did. And
16 so we took a look at the fee applications. We figured
17 that's the best place to find where people were doing work
18 in the case.

19 And in our objection we told you what my office
20 reported to the board that we basically had a half hour
21 billed by Mr. Free (ph) and time by other people on their
22 own fee applications, but we couldn't find anyone who had
23 taken the responsibly of even reading, much less commenting
24 on, thinking about and having discussion. And then we took
25 the same look at the Committee fee applications. And while

1 we wouldn't expect to see Committee lawyers looking at them,
2 we would have seen evidence of dialog if the committee
3 members were expressing concerns and thinking about what
4 things were costing. And we found nothing.

5 And by the way we then got their reply papers.
6 And I think their reply papers, Your Honor, are much more
7 instructive for things they don't say than what they do say.
8 And going on what the papers say as opposed to what was
9 represented to Your Honor from the podium. Paragraph 7 and
10 8 of the reply are the parts that talk about what the
11 committee did to supervise committee expenses. And they say
12 two things. They talk about cash collateral monthly budgets
13 setting forth actual and projected fees and expenses. Well
14 you and I both know that's a line item or two. And then
15 they say that was distributed to some parties in interest,
16 not everybody. Then it says that same material was further
17 encapsulated. Encapsulated means summarized or compressed.
18 It certainly doesn't mean more detail in reports that were
19 provided to the committee.

20 And then we were told that weekly telephone calls
21 "reported exactly what they were doing", which is a
22 paragraph of Ms. Goldstein's more specific declaration,
23 which says; "professional activities" were discussed.
24 Here's what wasn't in any of the -- either the reply or the
25 declaration given to you and there's no evidence of it in

1 the fee applications.

2 It doesn't seem like a committee member saw a
3 bill. It doesn't seem like a committee member saw a monthly
4 fee statement. It doesn't sound like a committee member saw
5 an interim fee application or the final fee application. It
6 doesn't sound like that any committee member discussed fees
7 as distinguished from what was being done. And we surely
8 don't have anything like, our clients look carefully at the
9 monthly bills and they had a question or two or a complaint
10 and there was an adjustment. There was nothing like that
11 anywhere.

12 And by the way, there was no declaration from a
13 committee member about anything. Now, again, if Your Honor
14 expects that and if it's your expectation in reviewing fees
15 that you're it, and that's fine with us --

16 THE COURT: No, I view myself --

17 MR. BENNETT: -- and the board will feel relieved
18 --

19 THE COURT: No, I -- stop. I view myself as the
20 last line of defense, if you will -- defense may be the
21 wrong word for it, but I'm the one who has to approve or
22 disapprove fee applications. Do you have any case authority
23 that says that members of the committee -- some or all
24 members of the committee have to review the fee applications
25 of committee counsel before they are submitted to the Court?

1 MR. BENNETT: I do not have such authority. I
2 would think it is --

3 THE COURT: It might be a decent rule, but I --
4 and I don't know of authority that says that's the law.

5 MR. BENNETT: I would think clients should take an
6 interest.

7 THE COURT: They should.

8 MR. BENNETT: And if they don't, it's a problem.
9 And I think in any event, the trustee should take an
10 interest and if they don't, it's a problem.

11 THE COURT: You know, because --

12 MR. BENNETT: There are two issues here, clearly,
13 that's --

14 THE COURT: Stop for a minute.

15 MR. BENNETT: -- this is one of them.

16 THE COURT: Because the time spent comparing a fee
17 application is compensable within reasonableness. Time
18 spent editing or revising fee statements is not. In my
19 view time spent -- and there's some authority for this
20 that's cited that time spent responding to objections to fee
21 application is not compensable. I would add, unless the
22 objections are frivolous or nearly so. But I don't know --
23 it might be good practice to make sure that the fee
24 applications are reviewed by some or all of a committee or
25 in the case of -- I'm not sure who would review the Chapter

1 11 Trustee's fee application, but when it was a debtor in
2 possession, clients usually review fee applications. But I
3 don't know -- point me to some cases that say that that's a
4 requirement.

5 MR. BENNETT: I can't while I'm standing here
6 today.

7 THE COURT: All right.

8 MR. BENNETT: But I do ask -- if Your Honor does
9 not want me to go on and the board believes --

10 THE COURT: No, I want you to go on. Go ahead.

11 MR. BENNETT: Okay. Well here's what the board
12 found.

13 THE COURT: Look, there's a lot of money in this
14 fee application. I'm not -- okay. I get sticker shock
15 every time I look at the fee applications in these large
16 cases. MF Global has been no exception to that. In the
17 case of the SIPA Trustee, SIPC does a very good job in
18 reviewing fee applications. But it's a different role they
19 have.

20 MR. BENNETT: Well, Your Honor, so let's focus on
21 some big picture things. And so I do want to make the point
22 though that after finding that no one had gone before -- at
23 least from their predecessors hadn't done things, the board
24 decided that they should do some work. And they focused on
25 only major categories. They didn't try to duplicate what I

1 think Your Honor did or what the U.S. Trustee did with
2 respect to making sure the right number of people were at
3 meetings. They looked at where was the bulk of the money
4 spent. And one of the big areas where the money was spent
5 by many professionals but particularly by Proskauer Dewey
6 was in connection with the foreign affiliates and in
7 connection with this litigation claim.

8 Now to aid our discussion, I have a very short
9 demonstrative because I think it will help us not be
10 confused. With your permission, Your Honor, I'll approach?

11 THE COURT: Yeah. Give me one and give my law
12 clerks --

13 This case is no different than the usual. I may
14 ask Mr. Miller some questions as well, but no lawyer has
15 ever liked to object to the other counsel's fees because
16 what goes around comes around. It's a problem in a lot of
17 cases where the debtor doesn't want to object to the
18 committee's counsel, the committee's counsel doesn't want to
19 object to the debtor's counsel fees and set off warfare.
20 It's something that --

21 MR. BENNETT: And the board -- Mr. Irvin who is

22 THE COURT: -- it's bothersome.

23 MR. BENNETT: -- at Alvares and Marcel (ph)

24 understands that and I certainly understand that. And this
25 was not --

1 THE COURT: Careful what you say now --

2 MR. BENNETT: -- lightly.

3 THE COURT: -- because somebody will take this
4 transcript the next time you're presenting a fee
5 application.

6 MR. BENNETT: I am absolutely careful -- I'm being
7 careful about that, Your Honor.

8 Your Honor, this chart shows where people are on
9 the map and shows some of the numbers that were discussed.
10 The statutory creditors' committee is on the very top. They
11 asserted claims -- they represented claims against both MF
12 Global Holdings, Inc., and MF Global Finance, USA which
13 you've heard of before as Fenco (ph), identified as Fenco.
14 Fenco in turn point to books, records, and schedules
15 asserted claims against MF Global Inc., and MF Global Inc.,
16 according to its books and records asserted claims against
17 MF Global United Kingdom, MFG UK and we put two money bags
18 there because that's where the money is that we've been
19 discussing today, it was all the way down there.

20 THE COURT: It was a lot of money.

21 MR. BENNETT: It was a lot of money there.

22 THE COURT: And without a resolution of the
23 dispute between the three estate fiduciaries we'd be back --
24 we -- you wouldn't be standing where you are now.

25 MR. BENNETT: That is no doubt true, Your Honor,

1 and I'm going to avoid commenting on how it is that the
2 settlement arose, except to point out some facts that are
3 clearly of record, which is that there wasn't a three party
4 interstate settlement to the end. It was two parties that
5 made a deal; it was MFGI and MFG UK. There was in fact a
6 separate agreement that was a condition which was the
7 litigation that was started had to go away because it was
8 gumming up the works.

9 What I'm going to try to do, Your Honor, is to
10 follow the rules of Keen (ph) and the other cases, which
11 said looks at things the way they were at the time that the
12 litigation was commenced and try to see what we can see from
13 that perspective.

14 Your Honor, I want to take this two ways -- one
15 way. Statutory creditors' committee is getting a lawyer.
16 The lawyer is coming in to talk to the statutory committee.
17 And they have to recognize that they represent claims
18 against MFGH or Holdings, they represent claims against
19 Fenco. They don't represent claims against Global and they
20 don't represent claims against the MF Global United Kingdom.

21 Clearly, it's in the interest of MF Global
22 Holdings, limited and of MF Global Finance for things to go
23 right down there. The question is what exactly can a lawyer
24 do to influence that.

25 I would say, Your Honor, that the -- that if we

1 fast forward that discussion, if the discussion was, well,
2 in a budget that's going to turn out to be between eight and
3 nine million dollars, you're going to spend \$3.5 million
4 trying to influence a battle, essentially between two
5 trustees, one at MF Global Inc. and one at MFG UK. In
6 normal circumstances, you wouldn't get hired. It's a little
7 bit distant from what the clients have. And they just don't
8 have standing and don't have the ability to do a lot. You
9 might want to try to find a less expensive way to proceed.

10 But of course that isn't what happened. So let's
11 analyze what did happen. The plan was to litigate so that
12 standing could be created and a place at the table could be
13 found. Okay. So let's analyze what it is that they
14 decided to do. And there are three things that we have to
15 talk about. We have to talk about what the claim is that
16 they were asserting, what the consequences on other
17 recoveries that claim would be and how costly the adventure
18 would be. So part one, what was the claim?

19 The claim was that MF Global Holdings or Fenco or
20 both were the entity that really made payments to MFG UK,
21 not MF Global Inc. The theory was that it was MF Global
22 Holdings Credit facility and Fenco's credit facility that
23 was the source of the money and the fact that it was booked
24 as advances to MF Global Inc. and booked as payments to MF
25 Global United Kingdom should be irrelevant and disregarded

1 and as to some big chunk of money -- I can't remember the
2 exact number, but I'm thinking it was in the \$50, \$460
3 million range, these are direct claims that can be asserted
4 by the parent company, notwithstanding that it's not on the
5 books and records and notwithstanding that that's actually
6 not the funds flow.

7 The assertion also was that this claim was
8 entitled to priority in the UK case because the making of
9 the payments was somehow a fraudulent transfer, not a
10 fraudulent transfer by the debtor in the UK case, a
11 fraudulent transfer by the person making the payments who is
12 not a debtor in the UK case. It will not surprise Your
13 Honor that such a theory has never been the basis of a
14 lawsuit in the UK that the Court has approved before. But
15 that created more expense because there was a need for
16 barristers and queens counsel which I think Your Honor knows
17 are older and more expensive barristers in order to help
18 this theory become created.

19 THE COURT: And they are even more expensive than
20 lawyers such as yourself.

21 MR. BENNETT: Even more expensive than lawyers
22 such as ourselves. Now what's the next thing you have to
23 think about in this case? What's the consequence -- I'll
24 put it this way, can you win 100 cent dollars and he answer
25 is no, you can't win 100 cent dollars because if the claim

1 is that MF Global Finance and MF Global Holdings, it's not a
2 claim at MF Global Inc. and Fenco, of course, is the largest
3 creditor of MF Global Inc. and the estimates are and there's
4 still bans, because there are unresolved claims that at the
5 end of the day, somewhere between 15 and excuse me 75 and 85
6 percent of the action is going to be represented by Fenco
7 and the rest is going to be represented by other creditors.

8 So in fact, if you thought you had a great claim
9 at the MFGI, excuse me, at the MFGH and at the Fenco level
10 against the UK. You can't win net 100 cent dollars, because
11 what you get to some degree is that priority claim we'll
12 deal with in a second. You're just taking money that you
13 get out of MF Global Inc and putting it in your own pocket.

14 MR. BENNETT: So one of the things the cases tell
15 us to focus on is does the claim really make sense, but also
16 and what are the merits and what are the facts related to
17 the claim, but also asks what can you get out of it? And if
18 you read the Keene case and I don't know if you did, this is
19 the Berlack (phonetic) cab fare problem that you don't
20 really have a claim that you can get very much with under
21 the -- under this particular scenario.

22 But now let's look at the next point. What do you
23 have to do to pursue this claim and what do you settle off
24 to do so? Well, the lawyers who show up, the lawyers who
25 choose me, solicitors and barristers who show up are

1 solicitors and barristers for MF Global, United Kingdom.

2 Well, MF Global United Kingdom's administrator is
3 writing the chapter, whose pocket is it coming out of?

4 Well, people long believed that MF Global UK was solvent or
5 close to solvent. If it's solvent, the diagram on your
6 right shows that the person who paid the bill is the parent.

7 If it's not solvent, the person who pays a big part of the
8 bill is MFGI, another entity that the parent has a claim
9 against. So either all or a lot of the attorneys' fee bill
10 incurred by commencing this lawsuit by MF Global United
11 Kingdom, the guy on the bottom is coming out of the parent
12 creditors' hyde.

13 MF Global, Inc. shows up too through solicitors
14 and barristers. Why are they there? Because the
15 consequence of this claim is to take a claim that MF Global,
16 Inc. thinks is theirs and they want to take it away and make
17 it a claim of MF Global Holdings Limited and MF Global
18 Finance USA. We just reviewed that MF Global, Inc.
19 something like 80 percent of the action in the unsecured
20 claims is FINCA. So who's paying effectively the cost for
21 the solicitor and barrister that shows up in England to
22 represent MF Global, Inc. because its ox is being gored too
23 by this adventure? MF Global Holdings and its creditors.

24 MF Global Holdings of course is represented
25 because they're the ones who are creating standing,

1 solicitors and barristers, and the committee of course who
2 is coordinating but didn't exactly stands down. We're
3 talking about 3.5 million not including Queen's counsel
4 fees. They have people -- most of the time two full time
5 lawyers it looks like paying attention to this.

6 So in the vernacular of Keene, we have a case to
7 start with that begins with factual challenges and legal
8 novelty. You can't get hundred cent dollars for it because
9 some of the money that you're possibly getting, you're
10 taking out of your own pocket and for the privilege of doing
11 it, you get to pay four sets of barristers and solicitors
12 directly or indirectly. What a deal.

13 THE COURT: So let me ask you this. I take it you
14 don't believe that the services that were provided were
15 reasonably likely to benefit the estate?

16 MR. BENNETT: That's correct, Your Honor.

17 THE COURT: It sounds to me that your disagreement
18 is with the strategy chosen by the counsel who did what they
19 did. Is that a fair statement?

20 MR. BENNETT: The counsel that did what it did and
21 -- exactly, I mean, it's -- it is a -- it -- Your Honor,
22 even they have said that the best way they can describe the
23 case was it was an effort to get a seat at the table.

24 THE COURT: And they did.

25 MR. BENNETT: There were millions of dollars in

1 those --

2 THE COURT: And they did, didn't they?

3 MR. BENNETT: No, they didn't. That negotiation
4 was in the ended deal between MF Global, Inc. And MFG UK.

5 THE COURT: Sure. But there were two separate
6 agreements, one of which required my approval, one which if
7 I remember correctly didn't. And how is it that you divorce
8 the two? It was -- while it was structured as two separate
9 agreements, there -- they were inextricably tied at that
10 point.

11 MR. BENNETT: You know the fact the Keene court
12 ended with a -- the Keene case ended with an agreement also.

13 THE COURT: The fact that the -- one or more of
14 the parties was unwilling to sign onto a single agreement
15 that resolved all claims, but they were willing to do it in
16 two separate agreements that in effect resolved everything.

17 Are you saying that that tells me that I shouldn't
18 approve fees for the strategy that was chosen? You may have
19 done it differently. I -- that's not -- that's not the
20 standard. You have to agree with that, right?

21 MR. BENNETT: I agree with that and we did do it
22 differently as is in their application. But, Your Honor,
23 the Keene court ended with a settlement as well. It was a
24 global settlement. What the Keene court observed is that
25 the case -- that the Keene 27 case, the first one reviewed

1 in the opinion resulted in a full release, no recovery on
2 account of that claim. That is exactly, exactly what
3 happened here. That the -- and that one by the way, the
4 court compensated less than 20 percent of the amount of fees
5 requested as -- for that incident. It's --

6 THE COURT: As I recall, this case was at close to
7 a near loggerheads because it was 770 million or thereabouts
8 tied up in the UK. And that without a substantial portion
9 of those funds being repatriated to the US the SIPA estate
10 could not -- would be a very long way from compensating all
11 of the customer claimants. And any separate deal -- yeah,
12 I don't know -- I'm not sure a separate deal could have been
13 cut between the SIPA trustee and the UK because the Chapter
14 11 estate -- you can poo-poo it but you know you're here
15 because you represent the distributing trustee from the
16 Chapter 11 estate. It got money ultimately out of this
17 resolution, correct?

18 MR. BENNETT: Your Honor, I'm here because --
19 because my clients recognize with some help from me but with
20 mostly on their own that it didn't matter what deal that the
21 MFGUK and MFGI cut, that they cooperated in any way, it was
22 over. That there was enough money and it's proving to be
23 the case that MF -- that MF Global, United Kingdom is going
24 to repatriate all of the money that went, all the customer
25 money that went, because it's got a hundred cent case and

1 that the -- all of the fighting was just a loss of money.

2 THE COURT: Boy, when did that become clear? It
3 sure wasn't clear when I was living with this case. And
4 then --

5 MR. BENNETT: And, Your Honor, in the --

6 THE COURT: -- and it was -- and it -- there -- it
7 was, you know --

8 MR. BENNETT: -- in our substantial contribution
9 fee application we included as an exhibit a presentation
10 that was made to all fiduciaries that made this exact point.
11 It was delivered in the first -- in the last week of August,
12 first week of September of '12, right about the time
13 although we didn't know it, Your Honor had ordered a pay
14 mediation to start.

15 THE COURT: Yes. Yes. I --

16 MR. BENNETT: And --

17 THE COURT: -- ordered a mediation before my
18 colleague catch back. And that's because the three
19 bankruptcy administrators were at complete loggerheads, you
20 know, would a resolution on the same or different terms
21 ultimately have been reached? I don't know. I'm not going
22 to second guess whether it would or wouldn't have. But I
23 know where the case was from my perspective and I was pretty
24 close to it at the time that I appointed Judge Peck. And,
25 you know, the parties were all represented by able counsel,

1 were able to come to a resolution and it may be because the
2 UK wound up recognizing that it had plenty of money and
3 that it was, I don't -- you know, if it's 100 percent case
4 great.

5 MR. BENNETT: If Your Honor is satisfied, the
6 board is satisfied.

7 THE COURT: No, I'm just -- I'm giving you a
8 chance, Mr. Bennett. Look I'm -- I am troubled by the --
9 not just in this case, but in other large cases, the amount
10 of the fees. This case is no exception to that. Okay. The
11 fees were very high. Every time I reviewed interim fee
12 applications, I was concerned about it.

13 MR. BENNETT: Well, and we're pointing out to Your
14 Honor that first of all, it is just as likely a -- I'm going
15 to be very careful here, because I don't want to go beyond
16 the record. It is just as possible that the loggerheads
17 were made worse and not better by the existence of this
18 massive lawsuit that had located everybody. That lawsuit
19 that the parties now concede was about getting seats at the
20 table.

21 THE COURT: Look, what's always --

22 MR. BENNETT: And it was a very expensive, very
23 expensive effort that itself couldn't meet the criteria that
24 the Keene court set out at its outset. So if it was filed
25 for an ulterior motive and Your Honor finds that the

1 ulterior motive was proper and that it generated a
2 reasonable result, as I said before, the board doesn't want
3 to create difficulty where there is no difficulty.

4 THE COURT: -- look, the determination of
5 reasonableness shouldn't be made with the benefit of
6 hindsight. It's made as of the time the service is
7 performed. Do you agree with that standard?

8 MR. BENNETT: I agree. And I believe that here if
9 you look at the interrelationships between the entities, the
10 fact that the stated claim for basically an effort to grab a
11 claim that you owned 80 percent of the parent company had
12 good reason believe it owned a big percentage. It doesn't
13 want to fixate on 80. And circumstances where it's grabbing
14 money that the trustee, the MFGI trustee was going to get
15 for them anyway, where by looking at the corporate chart and
16 where the money is moving the parent company's ultimately
17 paying most of the legal fees for most of the parties.

18 THE COURT: Gee, you make it sound so easy. I
19 wonder why I didn't see any of this at the time that this
20 was all going on, you know?

21 MR. BENNETT: Your Honor, I don't know whether
22 anyone -- frankly, I don't know whether people did see it.
23 I don't know whether they just looked -- whether -- I don't
24 know whether the lawyers in Keene saw the difficulties that
25 the court in Keene decided should have been looked at and it

1 should have affected the conduct in that case.

2 I think here it's a matter of structure. It's a
3 matter of what the economic realities were. It's a matter
4 that this particular aspect of the services performed could
5 not have led to a spectacular result and was going to cost a
6 huge amount of money and did cost a huge amount of money.

7 THE COURT: Do you agree that there couldn't be a
8 resolution of this case in any time on a reasonable time
9 horizon if the disputes with the UK were not resolved?

10 MR. BENNETT: I believe that the disputes between
11 the MFGI and the UK were important to be resolved. I think
12 that any resolution that they came to that looked at
13 objectively from the MFGH level and the FINCA level was
14 going to be a good idea. And I think that whether they had
15 a big litigation claim or not, they were going to consent to
16 it.

17 And, Your Honor, I think another element here --

18 THE COURT: I don't say it's the case here, but in
19 -- many, multi-jurisdiction cases, I've usually heard how
20 difficult it is to deal with bankruptcy administrators in
21 the UK. I mean in Lehman were huge litigations in the UK.
22 And I guess Mr. Giddens (phonetic) was involved in those
23 because he was also the SIPA trustee in Lehman. And I guess
24 I spent a lot of time reading well over 100 page opinion
25 from the high court in London that resolved some of those

1 issues.

2 So let's just say it appears that --

3 MR. BENNETT: Your Honor, it sounds like you're
4 satisfied with the board.

5 THE COURT: No. I --

6 MR. BENNETT: The board does not want -- the board
7 is certainly not going to appeal the decision of this Court
8 and we're --

9 THE COURT: Feel free. I mean (indiscernible).

10 MR. BENNETT: No, it certainly not. It is -- it
11 is a -- they did this because they thought it was their
12 responsibility. If Your Honor is convinced that it's not
13 their responsibility, that this Court has performed a more
14 than adequate review which was certainly one of the things
15 that we thought was a possibility at this hearing, then
16 they're satisfied. They've done their job. You have surely
17 done your job. Professionals are going to be thrilled.

18 THE COURT: Look, I'm not -- look. While I take
19 the job seriously about reviewing applications, I sometimes
20 feel like I'm looking for, you know, the nits. It's very
21 hard at the time you review an application to put it in a
22 context, to understand how these very large fees relate to
23 things in the real world that are going on in the case at
24 the time.

25 Would I be happy if there was careful and serious

1 review of professional fee applications by a debtor, by a
2 creditors committee, or others? The experience with fee
3 examiners in cases and I've not had any in my cases, but
4 I've certainly talked with colleagues who have had fee
5 examiners. Nobody's particularly happy with them. You know,
6 if the goal is to reduce fees by 10 percent because that'll
7 make life -- everybody's life so miserable in getting there,
8 well, maybe that's a good thing. I, you know, I don't
9 particularly think so, but maybe -- I wish fees were 10 or
10 20 percent less, that's not the issue.

11 Let me hear from other counsel. Mr. Miller, I do
12 want to hear from you. And my specific question is what, if
13 anything did you or your colleagues or the Chapter 11
14 trustee do to review fee applications submitted by counsel
15 to the creditors committee?

16 MR. MILLER: The Chapter 11 trustee and his
17 professionals reviewed all of the applications. Do they not
18 appear in their own fee applications? Correct. Because I
19 believe that it is your rule and many other Southern
20 District judges' rules that you can't be compensated for
21 reviewing someone else's fee applications.

22 What I can say is we were living on a very tight
23 budget. We had \$20 some-odd million at the outset of the
24 case and cash collateral that was not permitted to be used
25 for fees. For more than a year the professionals worked

1 without any prospect of payment.

2 Mr. Bennett's statements are not correct. The --
3 KPMG illustrative outcomes that were regularly coming out
4 did not show solvency and they got progressively better the
5 same way the SIPA trustees started with a \$1.6 billion
6 shortfall and that continued for well over a year even
7 though I was the first one to stand up and say as my client
8 stood before Congress, to say there is going to be enough
9 money to pay the customers.

10 THE COURT: Well you kept saying customers are
11 going to be paid in full. I was skeptical about that too.

12 MR. MILLER: Well, I think that on November 5th,
13 they will.

14 THE COURT: I think I asked that question to you.

15 MR. MILLER: So, you know, there were a number of
16 discussions that I had with Mr. Venestadt (phonetic) and Ms.
17 Goldstein that Mr. Free (phonetic) had with the chairperson
18 of the creditors committee regarding the buildup of fees.
19 It was made clear -- I have many conversations with
20 Mr. Bennett as he was representing the ad hoc group.
21 Mr. Bennett, to his credit from day one of his involvement
22 questioned how much people are spending and he has raised
23 those points before about whose dollars are being spent.
24 And I don't dispute that there comes a cost to break --
25 there came a cost to break the loggerheads. We were getting

1 --

2 THE COURT: And why do you believe the judgment to
3 have MF Global Holdings assert the claims that it did assert
4 in the UK was reasonable at the time it was done?

5 MR. MILLER: We absolutely needed to do it. We
6 would not be here if we didn't do it.

7 THE COURT: And why is that?

8 MR. MILLER: Because we were getting absolutely
9 no information from them. We were basically tossed aside,
10 not just by KPMG, but also by the SIPA trustee. I know
11 Mr. Margolin is sitting behind me and he's probably shaking
12 his head. But the fact is we were not getting information
13 from the SIPA trustee. We did not have a deal on our \$1.2
14 billion in claims and we were sitting being told by some of
15 the SIPA trustees people, there's no there there. That was
16 repeated. There is a \$1.6 billion shortfall. Your claims
17 are getting nothing.

18 We had to do everything in our power to get the
19 leverage to force the parties together. And the big
20 breakthrough was when Your Honor sent us to mediation and
21 Judge Peck made it very clear that he was going to listen to
22 all the sides and then give his view. And not to divulge
23 any mediation secrets, but met with the parties. There was
24 some yelling and screaming when we were all together, and in
25 the end it became clear that there was a deal to be had.

1 And we, the Chapter 11 debtors were going to be substantial
2 beneficiaries from the deal. It was the first time we got
3 live real time information regarding the possible solvency
4 in the UK. It was the first time we figured out that there
5 was going to be money to pay customers and I think it was
6 the first time that Mr. Ginz (phonetic) actual admitted that
7 with plugging the shortfall on a reallocation motion there
8 could be enough money to pay everyone.

9 So I can't say how many Proskauer or Dewey
10 attorneys should have been on each call or anything like
11 that. I mean that was for their clients to decide. Mr.
12 Free and Ms. Becker, the chairperson of the committee had
13 face-to-face discussions regarding things like that. I
14 believe that the fees did come down after some of those
15 discussions, but it was not the Chapter 11 trustee's
16 position to tell or to demand Proskauer or Dewey to stand
17 down. I mean they had clients who were giving them
18 instructions. I think the only reason we don't have
19 declarations from any of the committee members as I've heard
20 from some of them is that this was being done on short
21 notice so that Proskauer could its year end.

22 I mean to the extent of the other fee applications
23 that are on and objected to by the plan administrator, we'd
24 be happy to set forth declarations of committee members as
25 well as of the Chapter 11 trustee.

1 THE COURT: But as you stand there, you're
2 representing that in fact you or your colleagues and the
3 Chapter 11 trustee did review the fee applications of
4 committees counsel?

5 MR. MILLER: Yes.

6 THE COURT: Okay. All right. Does anyone want to
7 speak for the SIPA trustee? so that Proskauer could its
8 year end.

9 I mean to the extent of the other fee applications
10 that are on and objected to by the plan administrator, we'd
11 be happy to set forth declarations of committee members as
12 well as of the Chapter 11 trustee.

13 THE COURT: But as you stand there, you're
14 representing that in fact you or your colleagues and the
15 Chapter 11 trustee did review the fee applications of
16 committees counsel?

17 MR. MILLER: Yes.

18 THE COURT: Okay. All right. Does anyone want to
19 speak for the SIPA trustee? You're going to tell me you
20 don't have a dog in this hunt, I guess, but.

21 MR. MARGOLIN: Your Honor, that's exactly what I'm
22 going to tell you.

23 THE COURT: Make your appearance.

24 MR. MARGOLIN: Jeffrey Margolin; Hughs, Hubbard
25 and Reed for the SIPA trustee. Your Honor, this is a

1 dispute in the holding company Chapter 11 case. And we
2 believe the record in the SIPA proceeding in the matter that
3 is before the Court next week stands for itself regarding
4 the accomplishment that the SIPA trustees may have there.

5 THE COURT: Well, but I guess the only thing I
6 would ask you about is a fair --

7 MR. MARGOLIN: Yes?

8 THE COURT: -- and I'm not asking you to talk
9 specifically about fees, but Mr. Bennett has challenged the
10 strategy that Holding has followed with respect to the claim
11 in the UK. I don't know where -- are you able to address
12 that at all? I mean I -- from my perspective when it
13 happened there was a reason I appointed a mediator. Things
14 seemed to be at loggerheads and without resolving the issue
15 about whether there was going to be a distribution in my
16 lifetime from the UK, the parties said -- I mean what there
17 was -- I don't remember what month that was.

18 I remember there was a trial scheduled for six
19 months or nine months away which would have been this past
20 April, there was going to be a trial in the UK. I don't
21 know what, you know, how long that would have taken and when
22 that would have gotten resulted in a final decision, but can
23 you shed any light on -- without getting into the
24 negotiations of the agreement specifically.

25 MR. MARGOLIN: Your Honor, I think that you've --

1 you've encapsulated what transpired. There was a lack --
2 for a better word -- of movement that there was as lengthy
3 discovery and briefing schedule leading to a trial I think
4 that was supposed to begin before the UK out of court in
5 April and that based on the efforts through the mediation as
6 you mentioned with Judge Peck and Your Honor's efforts there
7 was able to get the progress which ultimately resulted in
8 the agreement that was approved by the Court last January.

9 THE COURT: Is any -- there were two separate
10 agreements. I had to approve one --

11 MR. MARGOLIN: Yes.

12 THE COURT: -- which I did. I mean it's unfair to
13 -- unfair question to ask you. It didn't seem to me --
14 frankly, it didn't make a difference to me that it was done
15 in two separate agreements. If some of the parties insisted
16 that they not be part of one single master agreement. Were
17 they linked? In other words, did everything have -- in
18 order for there to be agreements did there have to be an
19 agreement that resolved all issues in near me?

20 MR. MARGOLIN: Your Honor, I'm not going to go
21 back and like a Monday morning quarterback that. The result
22 is what has been transpired. I do know that they do
23 dismissal of the Chapter 11 trustee's claims against the UK
24 was one of the conditions precedent, I believe of the UK
25 settlement getting -- becoming finalized and effectuated.

1 THE COURT: Okay. All right. That's a fair
2 statement. Thank you, Mr. Margolin.

3 MR. MARGOLIN: Thank you.

4 THE COURT: Mr. Miller, you need something else?

5 MR. MILLER: Your Honor, Mr. Margolin did say
6 something that sparked a point. I mean there was no -- we
7 ended up not having any discovery on the claim that was
8 filed and we did not incur the legal costs of discovery and
9 motion process. It was all cut short by the deal. So that
10 was not -- those funds were not spent.

11 THE COURT: Right. Ms. Goldstein, do you want to
12 reply briefly? Because of sequestration we have to stop at
13 5:00 o'clock so we're getting close.

14 MS. GOLDSTEIN: I understand. I just have a few
15 points. First, Mr. Bennett's right. I could have been more
16 disclosive in my declaration. Everything that was sent to
17 this Court was sent to the client. So our monthly fee
18 statements went to the client, our fee applications went to
19 the client and there's only one exception to that and that's
20 the first Dewey Ballantine fee application which we -- like
21 it was a Herculean effort to while they were packing our
22 boxes and moving us out of Dewey, we got that fee up on file
23 because we felt that it was our duty as partners at Dewey to
24 preserve things. And we had discussions with the committee
25 about it and they were annoyed, but ultimately they

1 understood why we did it.

2 As to why my fee applications don't show time
3 entries, that says client annoyed by size of fees, I think
4 that's self-explanatory. When they have concerns we address
5 them. We adapt our professional what we're doing to them.
6 But there were fulsome discussions about what we were doing.
7 And also that Capstone report that was the subject of the
8 last interim application actually did go through each
9 project area so what we had called pockets of value and said
10 what is the percentage of the fees related to that
11 particular category. And that was the committee asked for
12 that report so that they could understand if money was being
13 spent in the best way possible.

14 Finally, with respect to this whole UK strategy,
15 we've known from the beginning that Mr. Bennett was not a
16 fan of the CK strategy. Now part of the issues were that
17 his clients, the bond holders, many of whom held claims in
18 the UK. So from their perspective, they were paying for it
19 everywhere because they were creditors at the UK. There
20 were creditors in the US. They probably had some claims in
21 MFGI and so they were from their perspective not happy in
22 their position as creditors of the UK.

23 Well that's not who we represent them as. We
24 represented them as general unsecured creditors at the
25 Chapter 11 debtors. And we had to do what we thought was

1 necessary to maximize value and that's what we did. We
2 adopted this strategy. We discussed it with the Chapter 11
3 trustee and ultimately we believe firmly that that's what
4 created the value here.

5 THE COURT: All right. Okay.

6 MS. GOLDSTEIN: Oh, one other point, Your Honor.
7 If you want to reduce our fees, just by the amount of fee
8 application, that's fine by us.

9 THE COURT: All right. First let me say, I think
10 that Mr. Bennett has acted completely appropriately in
11 raising the issues that he's raised with respect to the
12 final fee applications. And while there may be a
13 presumption of correctness or presumption of reasonableness
14 of fees that are approved in an interim fee application, and
15 I'm not necessarily signing on to precisely the way that
16 Judge Bernstein said. I'm not either disagreeing or
17 agreeing that that's the -- that that's the formulation.

18 But I'll assume whether it's a presumption or
19 what, I think because certainly when I award interim fees, I
20 try to do it carefully and I do review the fee applications
21 carefully, not just for the specific line items, but try to
22 get a sense of the bigger picture.

23 But whether services are necessary is determined
24 from the perspective of the time in which the services were
25 rendered and here I'm really just paraphrasing my Mesa

1 decision. And you determine whether the services are
2 necessary if the -- services are necessary if they benefit
3 the estate. And the test considers whether services
4 provided were reasonable likely to benefit the estate. It's
5 an objective test considering the services that are
6 reasonable lawyer would have performed in the same
7 circumstance. Reasonable lawyers, good lawyers has been
8 true in this case could easily adopt different strategies
9 and decide to pursue different strategies.

10 But the determination of reasonableness should not
11 be made in hindsight but as of the time when the services
12 were provided. Under Keene, the Court does have an
13 independent duty to review applications and evaluate the
14 compensation requested. It's a responsibility that this
15 Court takes seriously.

16 Having reviewed these applications and have
17 considered the arguments that Mr. Bennett makes why the
18 final fee application should be reduced even though interim
19 fee applications were approved, I have tried to apply the
20 standard of the reasonableness of the services from the
21 perspective of the time when the services were performed.

22 The fees in this case have been very high and it's
23 not just in this case, it's -- you can say some people would
24 call it a problem and some people would say it reflects the
25 complexity and necessity of the work that lawyers perform in

1 cases such as MF Global.

2 It was certainly true that earlier in these cases
3 was some specific case in the Chapter 11 case, the picture
4 for creditors was I think it's fair to say fairly bleak.
5 Mr. Miller was one of the few people early on who kept
6 saying that he thought that the commodities customers were
7 going to be paid in full. Certainly as to domestic
8 customers, that's true. As to the foreign accounts, we'll
9 see. With reallocation of some of those issues remain to be
10 decided by the Court. There are some objections to that.

11 I think the result in both the SIPA case and the
12 Chapter 11 case is under the circumstances is turning out to
13 be reasonably good. I think the professionals work is to be
14 applauded for getting to that.

15 So I'm going to go ahead and approve the interim
16 and final applications. With respect to the interim
17 application, it's with the amounts that both Dewey and
18 Proskauer have agreed to reduce. I raised the questions
19 about the amount of time spent in preparing fee
20 applications. I'm mindful of the issues that Mr. Masumoto
21 (phonetic) raised and it's something -- it's one of the
22 reasons I just haven't adopted the very hard and fast rule
23 of no more than 3 percent or 5 percent because that may work
24 in some cases, but in others it just clearly doesn't because
25 of different time periods and that sort of thing.

1 I am concerned and I do think that the larger the
2 fee application, the smaller the percentage should be. In
3 terms of these applications themselves, the dollars we're
4 talking about if I were to reduces by a percent or two
5 really is not -- that's not what the real issue is here.

6 So I am -- I'm not going to make the further
7 reduction. With the reductions that have been agreed upon
8 that the applicants have agreed to make, I'm going to
9 approve the applications. I'm also going to approve the
10 final fee applications. Just a minute.

11 MS. GOLDSTEIN: Thank you, Your Honor.

12 THE COURT: We're adjourned.

13 (Proceedings concluded at 4:57 p.m.)

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	RULINGS			
			Page	Line
1				
2				
3	Second Interim and Final		55	19
4	Fee Application for Approval			
5	and Allowance of Compensation			
6	for Services Rendered and for			
7	Reimbursement of Expenses Incurred			
8	by Dewey & Leboeuf LLP,			
9				
10	Fourth Interim and Final		55	19
11	Fee Application of			
12	Proskauer Rose LLP,			
13	for Approval and Allowance of			
14	Compensation for Services			
15	Rendered and for Reimbursement of Expenses			
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C E R T I F I C A T I O N

I, Melissa Looney, certify that the foregoing transcript is
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Melissa
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