No. 23-55252

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KIM H. PETERSON, individually, as Trustee of the Peterson Family Trust dated April 14, 1992, and as Trustee of the Peterson Family Trust dated September 29, 1983; KIM FUNDING, LLC; ABC FUNDING STRATEGIES, LLC,

Plaintiff-Appellants,

v.

KRISTA FREITAG, Receiver for ANI Development, LLC, AMERICAN NATIONAL INVESTMENTS, INC., and their subsidiaries and affiliates; UNITED STATES SECURITIES AND EXCHANGE COMMISSION; CHICAGO TITLE COMPANY, CHICAGO TITLE INSURANCE COMPANY, NOSSAMAN LLP, and MARCO COSTALES,

Defendant-Appellees.

On Appeal from the United States District Court
for the Southern District of California
Hon. Larry A. Burns, No. 19-cv-1628

APPELLANTS' REPLY IN SUPPORT OF EMEREGENCY MOTION FOR A STAY OF THE DISTRIBUTION ORDER PENDING APPEAL

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REPLY IN SUPPORT OF EMERGENCY MOTION

I. INTRODUCTION

The Receiver's Opposition to appellants' Emergency Motion for Stay must fail because it is premised on an improper standard for granting a stay. Though the Receiver fails to acknowledge it, under a flexible, "sliding scale" approach to the factors to be considered before issuing a stay, a strong showing of irreparable harm requires a lesser showing of likelihood of success on the merits, and vice versa. Here, contrary to the Receiver's assertion, appellants make the necessary showing of a fair prospect of success on appeal given their strong showing of irreparable harm. Nor does a modest delay in distributions to some claimants who have already received payments from direct settlements outweigh the prejudice to appellants or tip the public interest against a stay that will merely preserve the status quo. Thus, for all the reasons discussed, this Court should grant appellants a stay of the Distribution Order pending appeal.

II. DISCUSSION

A. The Receiver Ignores the Proper Standard Under Which the District Court and This Court Must Evaluate the Factors Underlying Issuance of a Stay

Given their strong showing of irreparable harm (discussed more in Section II.C, *infra*), appellants need only make a "threshold showing" on the remaining three factors articulated in *Nken v. Holder*, 556 U.S. 418 (2009), including their likelihood of success on the merits on appeal. *Leiva-Perez v. Holder*, 640 F.3d 962,

966 (9th Cir. 2011). Thus, they "need not demonstrate that it is more likely than not that they will win on the merits" or that success is "probable," but only that they have a "fair prospect" of success, "a substantial case on the merits," or that "serious legal questions are raised." *Id*. at 966–67; *accord Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020); *see also In re Neff*, No. 1:11-BK-22424-GM, 2020 WL 7047824, at *4 (Bankr. C.D. Cal. Aug. 4, 2020) (granting stay where petitioners demonstrated their claims would be equitably moot absent stay, and made threshold showing of likelihood of success on the merits); *Dunson v. Cordis Corp.*, No. 16-cv-03076-EMC, 2016 U.S. Dist. LEXIS 155168, at * 14 (N.D. Cal. Nov. 8, 2016) (holding that, where movant shows balance of hardship tips in its favor, stay may be granted on a "fair prospect" of success on appeal). The Receiver ignores this authority, asserting instead that appellants need to make a substantial showing of both likelihood of success on the merits and irreparable harm, as well as the remaining two factors, that is, injury to other parties and where the public interest lies. (Opp. at 5.) And against this erroneous backdrop, the Receiver advances incorrect arguments as to appellants' showing that should be rejected.

B. The Receiver's Assertion That Appellants Cannot Succeed on the Merits is Based on Her Subjective Investigation and Allegations, Not on Any Tribunal's Independent, Evidentiary Finding

The Receiver erroneously claims that appellants cannot make a strong showing on the merits of their appeal because they are allegedly "insiders" to the

Ponzi scheme. But it is undisputed that the state court proceedings were put on pause before any such findings could be made. Moreover, as the Receiver admits, she has brought an action against appellants for alleged fraudulent transfers and additional claims (Opp. at 2, n.1) which is in a holding pattern as the Receiver is seeking to amend her complaint to add claims stemming from an assignment from CalPrivate, a lender to the Peterson Parties (discussed more below). (Dkt. 49 in *Freitag v. Kim Funding*, S.D. Cal. No. 21-cv-1620.) Because no tribunal has heard evidence to independently adjudicate appellants' alleged insider status or liability to the Receivership Estate, the Receiver in unable to cite any support for her bullet-point assertions that such liability has been "established through documents and testimony in the state court actions and the Receiver's action against the Peterson Parties." (Opp. at 7.)

In reality, none of the alleged findings presented by the Receiver have been established, admitted into evidence, or found by any factfinder against appellants. Nor did the District Court make an *independent, evidence-based* "finding that the Peterson Parties were insiders who received substantial profits" before issuing the Distribution Order, as the Receiver asserts. (Opp. at 2.) Rather, without hearing argument or admitting evidence on this issue, the District Court adopted as a "finding" the Receiver's position that appellants are purported insiders to the Ponzi scheme and her accompanying recommendation that their claims be denied on that

ground. Indeed, the Receiver's internal "investigation and forensic accounting" preceding her subjective conclusion that appellants were alleged insiders to the scheme were never disclosed or tested in the underlying litigation, and allegations to that effect are pending in her related case, as she admits. (*Id*. at 2, n. 1.)

Moreover, while some of the assertions may have kernels of truth, they are taken out of context, and, when viewed in the correct light, do not support the conclusion that appellants were insiders. For example, Peterson freely admits that Cain was a close friend and that he relied on her to tell him the truth about the liquor license lending program, as the Receiver asserts. (Opp. at 7.) However, the Receiver omits that Peterson has stated under oath that he had no knowledge that Cain was running a Ponzi scheme through ANI (Dkt. 831-1 at ¶ 11), and that he strongly disputes the other allegations against him in the Receiver's action. Consistent with this, Cain never implicated Peterson in the Ponzi scheme; the DOJ never subpoenaed him to testify before the grand jury or charged him; and Peterson has never taken the Fifth in testifying about these issues in multiple depositions or voluntarily giving interviews to the DOJ and the SEC. (Dkt. 921 at 1.) As another example, whereas the Receiver asserts that appellants continued to raise funds from investors after a subpoena issued by the SEC at the start of its investigation and without disclosing the subpoena (Opp. at 7), Peterson can only assert, without waiving privilege, that he was given to understand there was no duty to disclose

the subpoena under the law. *See In re Lions Gate Entertainment Corp. Sec. Litig.*, 165 F.Supp.3d 1, 12 (S.D.N.Y. 2016) (noting that there is no generalized duty to disclose government investigation); *accord Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200, 1210 (9th Cir. 2016) (confirming that announcement of government investigation, without more, is insufficient to show loss under securities laws).

The District Court did not hold an evidentiary hearing on the assertions now in the Receiver's opposition and previously in her distribution motion—it did not even allow appellants to argue at the hearing on the distribution motion why their claims against the estate should be allowed notwithstanding allegations of their insider status. While courts can use summary proceedings in receivership cases and comport with due process, "summary" cannot mean "no process." Rather, those procedures must give more protection to creditors than allowing claims to be denied on a Receiver's say-so where the claimants do not even get to argue at the hearing. Before appellants' rights to recover against the estate dissipate in the face of the Receiver's imminent distribution, appellants should be allowed to maintain the status quo while they present their claims to this Court. If the District Court ultimately finds that appellants were not complicit and are not liable, there would be no basis to deny their claims against the estate, even under the Receiver's logic.

Further, any notion that appellants were insiders is implausible and defies credulity as Peterson *personally guaranteed* the bulk of the loans he solicited to

invest in what he later learned was Cain's Ponzi scheme. The Receiver's theory that Peterson continued entering into loan agreements and gave personal guarantees for over $100 million of principal to earn a few million dollars in fees while knowing that Cain was running a Ponzi scheme—an enterprise doomed to fail—is "nonsensical" and "bordering on the absurd." *Picard v. Citibank*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019) (finding implausible that bank would knowingly loan $400 million to be invested in criminal, fraudulent operation to earn $15 million in fees); *Buchwald Capital Advisors v. JPMorgan Chase*, 480 B.R. 480 (S.D.N.Y. 2012) (noting allegations that bank was motivated to continue lending to fraudulent operation to earn fees were implausible "since the loss of principal would have far outweighed the commissions earned on the loans"). In sum, contrary to the Receiver's position, appellants do "seriously dispute that they are insiders of the Ponzi scheme" (Opp. at 3) and, under the proper sliding scale approach, do make the necessary showing of a fair likelihood of success on appeal.

Finally, though the Receiver downplays the import of *Kruse v. SIPC*, 703 F.3d 422 (2d Cir. 2013), the fact remains that it is the most factually analogous case to the situation here. The Receiver has not presented a *single* case—nor does any "insider" case on which she relies involve facts—where a party placed its own

money[1] with a debtor, money for which it remains obligated to pay back to its own lenders, and a court upheld the denial of that party's claim against the debtors. *Kruse* and the absence of law supporting the Receiver's position to the contrary demonstrate that the Receiver is wrong.

C. Without Disputing that the Pending Appeal Will be Rendered Moot, the Receiver Erroneously and Unfairly Downplays the Imminent and Irreparable Harm Appellants Face

The Receiver does not dispute that appellants' appeal will be equitably moot without a stay, and that equitable mootness constitutes irreparable harm. Instead, the Receive argues that granting a stay here would lead to the "absurd" result that anyone, "even someone with no connection whatsoever to the Ponzi scheme," could assert a baseless claim in the receivership, appeal its denial, and obtain a stay of distribution to avoid the appeal from being rendered moot. (Opp. at 15.) But appellants *do* have an undisputed connection to the Ponzi scheme because they allege (and intend to establish) they were defrauded by it and the Receiver alleges they were purported insiders. Moreover, as discussed above, appellants' claim in the receivership is not "baseless," but raises serious issues on appeal. Thus, the

[1] *See United States v. Yates*, 16 F.4th 256, 273 (9th Cir. 2021) (noting that one loan was issued, it was the borrower's to "use as he wished" to invest, spend on himself, or make payments on others' loans); *accord In re Smith*, 966 F.2d 1527, 1533 (7th Cir. 1992) (noting that borrowed money is the borrower's own money).

Receiver's proposed hypothetical is so far-fetched from the facts here as to be unhelpful, not to mention unsupported by any cited authority.

Next, the Receiver's position that appellants cannot show irreparable harm because the distribution will reduce or extinguish their liabilities is belied by the record. For example, according to the Receiver, the settlement pays CalPrivate's outstanding money-in-money-out loss of $9.5 million, and therefore, reduces appellants' debt to CalPrivate. (Dkt. 974; Reply Decl. of Seanna Brown ("Reply Brown Decl."), Ex. 5 at 23:14–24.) However, the settlement also includes CalPrivate's assignment of its claims against appellants to the Receiver, which the Receiver intends to pursue after amending her pending complaint against appellants. (*Ibid*.; Dkt. 956 at 2–4.) Further, even after she distributes Receivership funds to CalPrivate, the Receiver intends to pursue the over $10 million that she estimates remains outstanding under the loan documents between CalPrivate and appellants against the Peterson Trust, which holds the title to Peterson's home. (Dkt. 956 at 2–4.) Appellants can think of no greater harm than the loss of Peterson's home combined with the loss of appellants' rights to meaningful appellate relief. Thus, as is clear from the Receiver's own filings, even after distribution of the Receivership funds, appellants' liabilities are not extinguished or meaningfully reduced; rather, they face the risk of ongoing, irreparable harm.

D. In Asserting Harm to the Approved Claimants, the Receiver Ignores the Distributions Already Been Made to Them

In arguing the third *Nken* factor, whether other interested parties will be "substantially" injured, the Receiver claims that issuing a stay would harm investors and creditors with approved claims who are still awaiting distributions. To support her assertion of "numerous" calls and emails" from elderly investors concerned about the stay motion, the Receiver attaches two emails—one from an investor who would like to put the funds anticipated from the distribution to use and one from investors in their late seventies asking when a distribution will be made. (Opp. at 16 & Ex. A; Dkt. 16.) But the Receiver omits that, as she admitted to the District Court, Cain's joint tortfeasor in the Ponzi scheme, Chicago Title, has already paid out over *$163 million* in settlements to 317 investors—which represents *over 96%* of losing investors in the Receivership estate. (Dkt. 796 at 6; *see also* Reply Brown Decl., Ex. 5 at 16:14–16 ["[I]t's a very high percentage of the investors that have received some portion of their loss through Chicago Title settlements."].) If the investors had not received any recoveries until now, the Receiver might have a point about the delay to be caused by issuing the requested stay. But considering the significant harm to appellants that they will get no appellate review and *zero* recovery absent a stay, the modest delay to a small group of claimants in achieving a *full* recovery does not constitute the type of "substantial" injury to other parties that warrants denying a stay.

E. Contrary to the Receiver's Assertion, Public Interest Does Not Favor a Prompt Recovery to Securities Fraud Victims at the Expense of Denying Appellants All Relief

The Receiver is right that "[t]his massive Ponzi scheme has caused enormous harm to hundreds of victims." (Opp. at 17.) But she ignores that this includes appellants, who were also defrauded to the tune of millions of dollars in loans that Peterson personally guaranteed to place with ANI and that he still owes notwithstanding the scheme's collapse. The Receiver's reliance on *FTC v. Kutzner* is also unavailing because the public interest was deemed to weigh against a stay sought by a party appealing summary judgment in the FTC's favor after the district court found there was "probable cause to believe" he had "violated and was likely to continue to violate the Federal Trade Commission Act through false representations regarding mortgage relief for consumers." No. SA CV 16-0999-DOC (AFMx), 2017 WL 11632849, at *2 (C.D. Cal. Dec. 18, 2017). But, as discussed, there has been no such finding here against appellants. Rather, because the balance of hardships tips strongly in appellants' favor, a stay to preserve the status quo pending appellate review is warranted.

F. The Bond Requested by the Receiver as a Condition of the Stay is Unnecessary and Inappropriate

The Receiver requests that, if this Court grants the stay, appellants be required to post a $3.15 million bond to protect allowed claimants from "potential lost interest, opportunity costs, and additional administrative expenses caused by

the delay in distribution." (Opp. at 19.) However, whereas a supersedeas bond is only available to protect a judgment creditor's ability to collect on a judgment after an appeal, the Distribution Order does not enter any judgment against appellants. *Wu v. Doucette*, No. EDCV07-01584-VAP(OPx), 2010 WL 3368118, at *1 (C.D. Cal. Aug. 25, 2010) (quoting Black's Law Dictionary 1479 (8th ed. 2004)). Rather, appellants have been denied distributions by the Receiver, who will retain the funds earmarked for distribution during appeal, meaning there is no risk the money will not be available after the appeal. *In re Neff*, 2020 WL 7047824, at *4 ("The fact that the Trustee is holding the money means that it is safe."). Moreover, even if a multi-million dollar bond was appropriate for claimants' alleged lost opportunity costs and the Receiver's unexplained administrative fees, courts do not require a bond from payees like appellants in a "precarious financial position" or where a bond would "put the [payee's] other creditors in undue jeopardy." *Pierce v. Santa Maria Joint Union High Sch. Dist.*, No. 2:11-CV-09463-SVWFMOX, 2013 WL 12174697, at *2 (C.D. Cal. Mar. 27, 2013) (citing *Olympia Equip. Leasing Co. v. W. Union Tel. Co.*, 786 F.2d 794, 796 (7th Cir. 1986)).

Improperly using information gained during confidential mediation discussions before United States Magistrate Judge Allison Goddard, the Receiver has herself repeatedly acknowledged the Peterson Parties' precarious financial situation in publicly-filed documents. (*See* Dkt. 795-1 at 19, 27–28 ["the Peterson

Parties' assets are insufficient to satisfy the Receivership estate's claims"]; Dkt. 860 at 18–19 ["Peterson's remaining assets are exceeded by his liability to the Receivership estate"].)[2] Requiring appellants to post a $3.15 million bond here would exacerbate their precarious financial situation and harm their creditors.

III. CONCLUSION

Appellants seek no more than an opportunity to have their day in court to establish that the Receiver wrongfully denied their claims based on suspicion and conjecture that they are insiders to a scheme that also defrauded them. Absent a stay, appellants will be equitably foreclosed from such review, to avoid which harm this Court should grant a stay and deny the Receiver's request for the bond.

Dated: April 21, 2023

Respectfully submitted,

NIDDRIE ADDAMS FULLER SINGH LLP
By: */s/ Rupa G. Singh*

BAKER & HOSTETLER LLP
By: */s/ Seanna R. Brown*

GRANT & KESSLER, APC
By: /s/ Miles D. Grant

TENCER SHERMAN LLP
By: /s/ Philip C. Tencer

Attorneys for Plaintiff-Appellants

[2] The District Court disregarded improper allusions to settlement discussions in the Receiver's briefing. (Brown Reply Decl., Ex. 5 at 29:19–30:3.)

REPLY DECLARATION OF SEANNA R. BROWN IN FURTHER SUPPORT OF MOTION

Under 28 U.S.C. §1746, I, Seanna R. Brown, declare as follows:

1. I am an attorney in good standing licensed to practice in New York, am admitted to this Court, and am the lead counsel for Appellants Kim H. Peterson, Kim Funding, LLC and ABC Funding Strategies, LLC (Appellants) in this appeal. I submit this reply declaration in further support of Appellants' Motion for A Stay of Distribution Pending Appeal. I would testify to the facts set forth in this declaration, if necessary.

2. Attached as **Exhibit 5** is a true and correct copy of the hearing transcript from the District Court's hearing on the Peterson Parties' Motion to Stay Distribution of Receivership Funds Pending Appeal, held on April 10, 2023 in the underlying action. Despite being requested shortly after the hearing, the transcript was only provided on April 20, 2023.

I declare under penalty of perjury that the foregoing is true and correct. Executed April 21, 2023 in New York, New York.

s/ Seanna R. Brown

Seanna R. Brown

Exhibit 5

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION .
.
PLAINTIFF, . NO.19-CV-1628
.
V. . APRIL 10, 2023
.
CHAMPION-CAIN, ET AL., . SAN DIEGO, CALIFORNIA
.
DEFENDANTS. .
. . . . . .

TRANSCRIPT OF MOTION HEARING

11:34:25 BEFORE THE HONORABLE LARRY A. BURNS
UNITED STATES DISTRICT JUDGE

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REPORTED BY STENOTYPE, TRANSCRIBED BY COMPUTER

11:34:25

SAN DIEGO, CALIFORNIA; APRIL 10, 2023; 11:30 A.M.

-OOO-

THE CLERK: CALLING NUMBER FIVE ON THE CALENDAR, 19CV1628, SECURITIES AND EXCHANGE COMMISSION VS. CHAMPION-CAIN, ET AL. COUNSEL, PLEASE STATE THEIR APPEARANCES FOR THE RECORD PLEASE.

MR. FATES: GOOD MORNING, YOUR HONOR. TED FATES ON BEHALF OF MS. FREITAG, THE RECEIVER, AND MS. FREITAG IS HERE AS WELL.

THE COURT: GOOD MORNING. IS THE MIC ON, TISH? YEAH, IT'S ON.

MR. YODER: GOOD MORNING, YOUR HONOR. MICHAEL YODER FOR CLAIMANT CAL PRIVATE BANK.

THE COURT: ALL RIGHT. GOOD MORNING.

11:35:08

THE CLERK: WOULD YOU LIKE THE COUNSEL ON THE VIDEO TO PLEASE STATE THEIR APPEARANCE?

THE COURT: YES.

MS. BROWN: GOOD AFTERNOON, YOUR HONOR. SEANNA BROWN OF BAKER HOSTETLER ON BEHALF OF ABC FUNDING, KIM FUNDING AND MR. PETERSON.

THE COURT: OKAY.

MS. WANNER: GOOD MORNING, YOUR HONOR. KATHRYN WANNER ON BEHALF OF THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. AND THANK YOU FOR THE COURTESY OF THE ZOOM APPEARANCE.

11:35:33 THE COURT: OF COURSE. OF COURSE. SO THIS MATTER IS ON TODAY FOR A MOTION TO STAY. PLAINTIFFS ARE SEEKING A STAY UNTIL THE APPEAL OF THE COURT'S ORDER APPROVING THE DISTRIBUTION PLAN PROPOSED BY THE RECEIVER CAN BE HEARD BY THE NINTH CIRCUIT. AS I UNDERSTAND IT, IT CAN BE AS MANY AS 18 MONTHS, EVEN THOUGH I THINK THERE'S AN INCLINATION TO ASK FOR AN EXPEDITED HEARING ON THIS. WHETHER THAT'S GRANTED, I HAVE NO IDEA WHAT THE CRITERIA ARE FOR GRANTING AN EXPEDITED HEARING ON A MATTER ARISING OUT OF A RECEIVERSHIP. I DON'T KNOW. BUT THE COURT HAS READ THE PAPERS FILED IN CONNECTION WITH THIS.

MS. BROWN, I THINK YOU'VE GOT THE LABORING OAR HERE SO I'M HAPPY TO HEAR FROM YOU FIRST.

MS. BROWN: SURE. THANK YOU, YOUR HONOR. I WANT TO THANK YOU AS WELL TO ALLOW ME TO APPEAR BY ZOOM. IT'S VERY

11:36:40 MUCH APPRECIATED. SO YOUR HONOR, TO GIVE A LITTLE BACKGROUND, WE ALSO THE REPRESENT THE TRUSTEE IN THE BERNARD MADOFF CASE IN THE BANKRUPTCY. FOR THE LAST 14 YEARS, WE'VE BEEN LITIGATING EVERY ISSUE RELATING TO PONZI SCHEMES, AS YOU CAN IMAGINE, AT EVERY LEVEL OF THE FEDERAL JUDICIARY.

SO GIVEN MY OTHER WORK, I DO UNDERSTAND WHAT THE RECEIVER'S MANDATE IS HERE; BUT I ALSO KNOW FROM DOING THIS WORK MYSELF THAT MR. PETERSON'S CLAIMS ARE REALLY QUITE UNIQUE. I'D LIKE TO START BY EXPLAINING WHAT MAKES THE CLAIMS DIFFERENT HERE BECAUSE I THINK THAT GOES TO THE LIKELIHOOD OF SUCCESS ON THE MERITS -- ONE OF THE FACTORS FOR A STAY -- AND WHEN I'M

11:37:20 DONE WITH THAT, I CAN TURN TO THE OTHER STAY FACTORS QUICKLY.

SO I KNOW YOUR HONOR HAS READ THE PAPERS. I'M NOT GOING TO BELABOR EVERYTHING THAT'S IN THEM. BUT TO SET A COUPLE OF PREDICATE FACTS, KIM FUNDING AND ABC FUNDING FILED CLAIMS AGAINST THE RECEIVERSHIP. THOSE CLAIMS WERE NOT FOR AMOUNTS OF COMMISSIONS, BONUSES, BACKPAY. THOSE CLAIMS WERE FOR THE LOANS THAT THE PETERSON PARTIES BORROWED AND MR. PETERSON PERSONALLY GUARANTEED. THE LOANS WERE REAL. THOSE AMOUNTS WERE STOLEN BY ANI, WAS ASSISTED BY CHICAGO TITLE.

SO WHEN MR. PETERSON IS GOING TO REPAY HIS LENDERS, HE LOOKED TO THE TWO ENTITIES THAT STOLE HIS MONEY -- ANI AND CHICAGO TITLE. BUT THE RULINGS OF THIS COURT, UNDER THE RULINGS, MR. PETERSON CAN'T RECOVER ANY FUNDS FROM ANI TO REPAY THE LENDERS AND HE CAN'T RECOVER ANY DAMAGES FROM CHICAGO TITLE

11:38:14 TO OFFSET ANY OF HIS LIABILITIES RELATED TO THIS SCHEME.

THE HEART OF THE CLAIMS DENIAL, IT SEEMS TO ME, IS A FINDING THAT THE PETERSON PARTIES BORROWED MONEY, BUT IT WASN'T REALLY THEIR MONEY, SO THE RECEIVER CAN IGNORE THE LOAN DOCUMENTS, GO AROUND THE PETERSON PARTIES AND PAY THE LENDERS DIRECTLY. SO I THINK AT THE OUTSET WE HAVE TO SAY THIS PREMISE IS WRONG. BORROWED MONEY IS THE BORROWER'S OWN MONEY. ONCE A LOAN IS ISSUED TO THE BORROWER, IT'S THEIRS TO USE AS THEY WISH. THE MONEY THAT HE BORROWED AND THE CLAIM FOR THAT BORROWED MONEY BELONGS TO THE PETERSON PARTIES.

AND I HAVE A COUPLE OF CITES THAT STAND FOR THAT

11:38:56 GENERAL PREMISE, YOUR HONOR, UNITED STATES VERSUS YATES, 16 FEDERAL 4TH 256, NINTH CIRCUIT 2021. SO WITH THAT PREMISE IN MIND, I WANT TO TURN TO THE RECENT MOVES BY THE RECEIVER RELATING TO CAL PRIVATE BECAUSE I THINK THEY'RE TELLING. WHEN SEEKING TO DENY THE PETERSON PARTIES' CLAIMS, THE RECEIVER CALLED THE LOAN DOCUMENTS BETWEEN CAL PRIVATE AND THE PETERSON PARTIES, ARTIFICES OF THE FRAUD, THAT THESE ARE TOOLS BEING USED UP TO USE MORE INVESTORS TO INVEST. BUT NOW THE RECEIVER HAS TAKEN AN ASSIGNMENT OF THOSE NOTES AND GUARANTEES, SUDDENLY THOSE LOANS DOCUMENTS ARE BINDING AND ENFORCEABLE AGREEMENTS.

SO THERE'S TWO POINTS I WANT TO MAKE HERE. THE FIRST ONE IS: IF THE BORROWED FUNDS WEREN'T THE PROPERTY OF THE PETERSON PARTIES, THEN HOW COULD THEY STILL OWE MONEY UNDER THE LOAN DOCUMENTS? I DON'T THINK THAT MAKES ANY SENSE AND I THINK
11:39:54 IT'S INCREDIBLY UNFAIR. THE SECOND POINT IS: THE LOAN DOCUMENTS ARE BEING IGNORED AS FRAUDULENT WHEN THE PETERSON PARTIES USE THEM TO SHOW THEIR LOSSES, BUT THEY'RE COMPLETELY VALID AND ENFORCEABLE AGREEMENTS WHEN THE RECEIVER WANTS TO USE THEM TO COLLECT MONEY UNDER THOSE SAME DOCUMENTS FROM THE PETERSON PARTIES. THE LOAN DOCUMENTS ARE NOT FRAUDULENT, AND I THINK THE RECEIVER'S RECENT ACTIONS TELL YOU THAT, AND THEY SUPPORT MR. PETERSON'S CLAIM FOR THE BORROWED MONEY WHICH IS HIS.

I'M JUST GOING TO TURN TO TWO OTHER FACTORS I WANT TO BRING TO THE COURT'S ATTENTION AS YOU'RE CONSIDERING THE

11:40:33 LIKELIHOOD OF SUCCESS ON THE MERITS. SO PUTTING ASIDE THE CLAIM ITSELF FOR A MOMENT, THE PETERSON'S HAVE LIABILITY RELATING TO THE NOTES AND GUARANTEES, ONE OF WHICH IS THE NOTE WITH CAL PRIVATE, AND THE RECEIVER SAYS THAT THE PETERSON PARTIES OWE THE RECEIVER A MINIMUM OF $12 MILLION. SO ANY WAY THAT YOU LOOK AT THIS, FROM MR. PETERSON'S VANTAGE POINT, HE IS NOT A NET WINNER BECAUSE BY THE TIME HE'S DONE PAYING THE NOTES AND THE GUARANTEES, HE WON'T HAVE PROFITED FROM ANI. HE'S ACTUALLY GOING TO BE REALLY FAR INTO THE RED.

SO AT THE VERY LEAST, MR. PETERSON IS ENTITLED TO AN OFFSET. FOR ANY AMOUNTS THAT HE PAYS ON THE LOAN OBLIGATIONS, THOSE AMOUNTS SHOULD REDUCE THE AMOUNTS HE OWES TO THE RECEIVER. AND IN FACT, THAT'S EXACTLY WHAT HAPPENED WHEN CHICAGO TITLE SETTLED WITH THE VICTIMS. THE RECEIVER WAS
11:41:31 REQUIRED TO OFFSET THE AMOUNTS THAT CHICAGO TITLE PAID IN FROM WHAT SHE WAS SEEKING TO RECOVER FROM CHICAGO TITLE; SO THE SAME SHOULD APPLY TO THE PETERSON PARTIES.

THE LAST POINT I WANT TO MAKE ABOUT THE UNEVEN TREATMENT FOR MR. PETERSON IS THERE WERE SOME PRIOR SETTLEMENTS THAT THIS COURT APPROVED BETWEEN CHICAGO TITLE AND SOME OF MR. PETERSON'S OTHER LENDERS. THIS IS IN JUNE 2021 AND THE DOCKET NUMBER FOR THE ORDER IS 682. SO THE COURT APPROVED THESE SETTLEMENTS, AND IN THOSE SETTLEMENTS, THE LENDERS HAD AGREED TO ASSIGN THEIR NOTES AND GUARANTEES TO CHICAGO TITLE. THE NOTES AND GUARANTEES BEING AGAINST MR. PETERSON. AND WHEN THE

COURT APPROVED THAT SETTLEMENT, IT DIDN'T ALLOW THE NOTES AND GUARANTEES TO BE ASSIGNED. IT SAID THAT THE LITIGATION SHOULD END. THIS ORDER ALSO RECOGNIZED THAT CHICAGO TITLE WAS ENTITLED TO AN OFFSET FOR THE AMOUNTS THAT IT PAID WHICH WOULD REDUCE THE RECEIVER'S CLAIM AGAINST IT.

SO I THINK THOSE FACTORS SHOW THAT MR. PETERSON IS BEING TREATED VERY INEQUITABLY HERE. HE HAS VALID CLAIMS AGAINST CHICAGO TITLE WHICH HE WANTS TO PURSUE WHICH HE'S SEEKING TO OVERTURN AND VALIDATE THOSE RIGHTS IN THE NINTH CIRCUIT RIGHT NOW SO THAT HE CAN RECOVER SOME OF HIS DAMAGES RELATING TO THIS SCHEME.

SO I JUST HAVE A COUPLE OTHER POINTS. I KNOW THAT THE COURT AND THE RECEIVER RELY ON THE INSIDER CASES IN DENYING THE CLAIMS OF THE PETERSON PARTIES. AND I WOULD LIKE TO SAY THAT THOSE CASES ARE ALL VERY DIFFERENT. TWO OF THE CASES DEAL WITH CLAIMS FOR COMMISSIONS, AND I THINK CLAIMS FOR COMMISSIONS ARE VERY EASY TO DISCARD HERE. THE CLAIMS THAT MR. PETERSON IS PUTTING FORWARD ARE NOT CLAIMS FOR COMMISSIONS. THESE ARE FOR NET LOSSES. THEY'RE ACTUALLY LOSSES THAT THE RECEIVER RECOGNIZES LOSSES SINCE SHE'S ALSO PAYING THEM OUT TO CAL PRIVATE, TO OVATION, TO THE OTHER LENDERS OF MR. PETERSON, AND THOSE TWO CASES ARE THE SEC VERSUS BASIC ENERGY AND SEC VERSUS PENSION FUND.

IN THE MERRILL SCOTT CASE, I'D LIKE TO NOTE THAT -- THAT CASE IS ACTUALLY VERY CONVOLUTED, BUT IT'S NOT

11:43:56 CLEAR WHAT THE CLAIMS WERE ACTUALLY FOR IN THAT CASE. IT DOESN'T APPEAR TO BE RELATING TO LOAN OBLIGATIONS, AND I WOULD ALSO NOTE THAT THE COURT DIDN'T ENTER IT'S FINDING UNTIL IT TOOK EXTENSIVE EVIDENCE, IT HAD A HEARING, NONE OF WHICH HAS HAPPENED HERE.

AND THEN WITH BYERS, THE ONE THING I'D LIKE TO BRING TO THE COURT'S ATTENTION IS THAT MANY OF THE PEOPLE THAT WERE EXCLUDED IN BYERS WERE PEOPLE THAT WERE INDICTED BY THE DOJ. MR. PETERSON WAS NOT INDICTED BY THE DOJ AND THERE WAS NO SUGGESTION HE WAS INVOLVED IN CRIMINAL ACTIVITY. THE SEC DID NOT BRING CLAIMS AGAINST HIM. THEY DEPOSED HIM AND DID NOT CHARGE HIM IN ANY WAY. HE MET FOR A VOLUNTARY INTERVIEW WITH THE DOJ. HE WAS NOT ASKED TO TESTIFY BEFORE A GRAND JURY. HE HAS NEVER TAKEN THE 5TH AMENDMENT IN ANY OF HIS DEPOSITIONS TO

11:44:52 DATE. SO I THINK HE'S CLAIMS STAND IN A MUCH DIFFERENT FOOTING THAN THE CLAIMS IN BYERS.

I THINK I'LL TURN NOW TO THE OTHER FACTORS QUICKLY. WE LAID OUT THE OTHER FACTORS FOR A STAY IN OUR PAPERS. IN TERMS OF IRREPARABLE HARM, THERE'S A DOCTRINE CALLED EQUITABLE MOOTNESS WHICH SAYS THAT AN APPELLATE COURT IS NOT GOING TO REVIEW AN APPEAL IF THE CIRCUMSTANCES HAVE SUBSTANTIALLY CHANGED. THIS HAPPENS OFTEN IN BANKRUPTCIES AND RECEIVERSHIPS WHERE THE FUNDS ARE DISTRIBUTED, SORT OF THE IDEA THAT YOU CAN'T GET THE TOOTHPASTE BACK INTO THE TUBE, AND SO THE COURT WILL DISMISS THE APPEAL AS MOOT.

11:45:35 AND NUMEROUS COURTS THAT WE CITE ON PAGES 10 AND 11 OF OUR MOTION HOLD THAT EQUITABLE MOOTNESS IS A SHOWING OF IRREPARABLE HARM, AND I WOULD SAY TO YOU THAT I THINK A STRONGER SHOWING ON THIS FACTOR CAN OFFSET, TO THE EXTENT THE COURT THINKS THAT ANY OF OUR ARGUMENTS ARE LESS STRONG, A STRONG SHOWING ON THIS FACTOR CAN OFFSET THE OTHERS ON THE SLIDING SCALE APPROACH THAT THE NINTH CIRCUIT TAKES WITH REGARD TO STAYS.

IN TERMS OF BALANCING THE EQUITIES, I NOTE THAT THE RECEIVER SAID IN HER PAPERS THAT SHE DOESN'T WANT TO DELAY DISTRIBUTIONS TO INVESTORS, AND I FULLY UNDERSTAND THAT CONCERN. BUT I WOULD SAY THAT THE RECEIVER -- SORRY -- THE VICTIMS HERE HAVE ALREADY RECEIVED SUBSTANTIAL DISTRIBUTIONS, MOSTLY FROM CHICAGO TITLE. SO IT'S NOT AS THOUGH THEY HAVEN'T

11:46:32 GOTTEN A PENNY OUT OF THIS PROCEEDING. THEY'VE ACTUALLY GOTTEN IN SOME CASE UPWARDS OF 70 TO 75 PERCENT OF THEIR CLAIMS ALREADY. SO WITH THAT, I THINK IT'S FAIR -- SINCE MR. PETERSON WOULD ESSENTIALLY BE DEPRIVED OF HIS APPELLATE RIGHTS, I DON'T THINK IT'S UNFAIR TO MAKE PEOPLE WAIT FOR THIS PARTICULAR DISTRIBUTION.

AND THEN ON THE PUBLIC INTEREST, I THINK IT'S REALLY IMPORTANT TO THE PUBLIC, GENERALLY, THAT THE PARTIES HAVE THEIR DAY IN COURT, AND IT'S EVEN MORE SO IMPORTANT HERE WHEN MR. PETERSON WAS DEPRIVED OF HIS DAY IN COURT AGAINST CHICAGO TITLE. SO, YOUR HONOR, FOR THESE REASONS WE ASK YOU TO GRANT A

11:47:12 STAY UNTIL WE CAN APPEAL THESE IMPORTANT ISSUES. IF YOU'RE NOT INCLINED TO DO SO, WE REQUEST YOU GRANT A SHORT STAY OF 60 DAYS TO ALLOW US TO SEEK A STAY FROM THE NINTH CIRCUIT. THANK YOU.

THE COURT: MS. BROWN, LET ME ASK YOU A COUPLE QUESTIONS BEFORE I HEAR FROM MR. FATES AND OTHERS ON BEHALF OF THE OPPOSITION TO THIS STAY. IT'S BEEN REPRESENTED AND I'VE ACCEPTED THROUGHOUT THAT IN THE COURSE OF ALL THE TRANSACTIONS MR. PETERSON -- I'M SORRY -- MR. PETERSON ACTUALLY MADE $12 MILLION; THAT WAS HIS PROFIT FROM THESE TRANSACTIONS. IS THAT DISPUTED?

MS. BROWN: THE $12 MILLION NUMBER IS NOT DISPUTED, BUT WE DO DISPUTE THEY'RE PROFITS BECAUSE FROM OUR PERSPECTIVE, YOU HAVE TO LOOK AT THE TOTALITY OF THE SITUATION FOR MR. PETERSON.

11:48:13 THE COURT: RIGHT. BUT IT DOES DIFFERENTIATE -- I KNOW YOU TAKE ISSUE WITH THE CHARACTERIZATION THAT HE WAS AN INSIDER AS OPPOSED TO ONE OF THE STANDARD INVESTORS, BUT IN THE LATTER CLASS, LATTER CATEGORY, I'M DEALING WITH PEOPLE WOULD HAVEN'T GOTTEN ANYTHING BACK YET. THERE WAS NO RETURN ON THEIR MONEY SIMULTANEOUSLY OR DURING THE COURSE OF THE FRAUD SCHEME BETWEEN 2012 AND 2018. I THINK THAT'S AN EQUITABLE FACTOR, DON'T YOU?

MS. BROWN: I DO THINK IT'S AN EQUITABLE FACTOR, YOUR HONOR. BUT AS I POINTED OUT, I DO THINK THAT MOST OF THE PARTICIPANTS IN THIS RECEIVERSHIP HAVE ALREADY RECEIVED

DISTRIBUTIONS. THIS IS --

THE COURT: DO YOU KNOW WHAT THE PERCENTAGE IS OF THE CLASS OF, I'LL CALL THEM VICTIMS IN THIS CASE, INVESTORS -- WHAT PERCENTAGE OF THE CLASS OF INVESTORS HAS RECEIVED DISTRIBUTIONS? THESE WOULD BE FROM THE PRIVATE SETTLEMENTS, RIGHT, THE ONES THAT WERE BROUGHT PRIVATELY AND ENTERED INTO WITH THE AGREEMENT OF THE RECEIVER.

MS. BROWN: I DON'T HAVE THAT NUMBER AT MY FINGERTIPS. I'M SORRY.

THE COURT: AT VARIOUS POINTS, IT'S BEEN POINTED OUT TO ME THAT OVERALL, THE OVERALL SETTLEMENT IS ALMOST APPROACHING ONE HUNDRED PERCENT. I GET ON AN INDIVIDUAL BASIS IT MIGHT BE 70 PERCENT. BUT OVERALL, IT'S 100 PERCENT MONEY IN/MONEY OUT BASIS. FORGET ABOUT LAWYERS FEES AND THINGS LIKE THAT. DO YOU DISPUTE THAT HERE?

MS. BROWN: THAT THE RECOVERIES BY THE RECEIVER ARE APPROACHING ONE HUNDRED PERCENT?

THE COURT: YEAH.

MS. BROWN: I CAN ONLY GO BY WHAT THE RECEIVER REPRESENTS.

THE COURT: HAVE YOU HAD DOCUMENTATION THAT VERIFIES THAT? HAVE YOU SEEN IT?

MS. BROWN: HAVE I SEEN THE RECEIVER'S BOOKS AND RECORDS? I HAVE NOT.

THE COURT: YEAH. BUT YOU HAVE SOLEMN

11:50:06 REPRESENTATIONS THAT ARE MADE TO THE COURT THAT THAT'S APPROACHING ONE HUNDRED PERCENT. I DON'T KNOW IF THEY'VE GIVEN ME AN EXACT FIGURE, BUT I THINK IT WAS FROM 95 TO 100 AND THEY WERE CONFIDENT IT WAS GOING TO GET TO 100 PERCENT IN A TOTAL RECOVERY BASIS. YOU SAID THAT YOU WERE, YOU WERE ACTIVELY INVOLVED IN MANY YEARS OF THE MADOFF CASE. ARE YOU AWARE OF ANY CASE WHERE A RECEIVER WAS ABLE TO ACHIEVE A RESULT LIKE THE ONE HERE, 95 TO 100 PERCENT?

MS. BROWN: THAT LEVEL OF RECOVERY IS VERY UNUSUAL IN PONZI SCHEMES, I WOULD AGREE WITH THAT; BUT MOST OF THOSE RECOVERIES CAME FROM CHICAGO TITLE.

THE COURT: SO WHEN YOU TAKE INTO CONSIDERATION THE LIKELIHOOD OF SUCCESS ON THE MERITS, I MEAN, I WOULD THINK AN APPELLATE COURT LOOKING AT THIS WOULD THINK THIS IS AN

11:50:58 EXTRAORDINARY RECOVERY THAT BENEFITS THE GREAT BULK OF PEOPLE WHO HAVE BEEN AFFECTED BY THIS. IT ACTUALLY BENEFITS MR. PETERSON TO SOME EXTENT BECAUSE HE'LL HAVE AN OFFSET -- OBVIOUSLY, IF THERE'S ANY FURTHER LIABILITY, HE'LL HAVE AN OFFSET OF THE AMOUNTS BEING PAID OUT.

YOU KNOW, MAYBE I'M BEING POLLYANNA ABOUT THIS. I DON'T FEEL DEFENSIVE ABOUT IT. BUT IT SEEMS PRETTY CLEAR TO ME THAT, GIVEN THE EXTRAORDINARY NATURE OF THE RECOVERY HERE, THAT AN APPELLATE COURT WOULD BE UNLIKELY TO UNDUE IT AND SAY, YEAH, WE THINK MR. PETERSON IS GOING TO PREVAIL ON THE MERITS HERE AND UNDO THIS DEAL BETWEEN CHICAGO TITLE AND THE RECEIVER. I

11:51:40 DON'T THINK THAT'S LIKELY. IF THE STANDARD IS LIKELIHOOD, I DON'T THINK IT'S LIKELY. DO YOU?

MS. BROWN: YOUR HONOR, I DO. I THINK THAT THE DEAL BETWEEN THE RECEIVER AND CHICAGO TITLE, I THINK THE LITIGATION SHOULD HAVE PROCEEDED. MANY PARTIES WERE VERY FAR ALONG IN THEIR CASES. THEY EXPENDED GREAT RESOURCES IN TERMS OF LEGAL FEES, WITH TIME. CHICAGO TITLE WOULD HAVE HAD TO PAY NOT JUST NET LOSSES BUT DAMAGES THAT THEY SHOULD PAY FOR THEIR ROLE IN THIS FRAUD. AND I THINK THAT CASE SHOULD GO FORWARD AND THAT'S ONE OF MR. PETERSON'S PRINCIPAL AIMS IN THIS APPEAL AND IN HIS CLAIMS AGAINST THE ESTATE.

THE COURT: ON THE ISSUE OF A STAY, ASSUMING THAT I DENY THE MOTION HERE, HOW LONG DID YOU ASK FOR FOR THE STAY TO PRESENT A REQUEST FOR STAY TO THE NINTH CIRCUIT? 60 DAYS, IS

11:52:45 THAT WHAT YOU SAID?

MS. BROWN: I DID SAY 60 DAYS.

THE COURT: YEAH. SEEMS TO ME, IF YOU LOSE ON THIS MOTION FOR RECONSIDERATION, YOU CAN GET PAPERS FILED WITH THE NINTH CIRCUIT PRETTY QUICKLY. I NOTE MY COLLEAGUE, OUR CHIEF JUDGE SABRAW JUST WIPED OUT THREE LONG-STANDING FIREARMS STATUTES AND GAVE THE ATTORNEY GENERAL TWO WEEKS TO APPEAL THE INJUNCTION THAT HE ISSUED TO THE NINTH CIRCUIT. PRETTY COMPLICATED CASE. THREE DIFFERENT STATUTES, A NEW LAW THAT HASN'T BEEN FULLY INTERPRETED. WHY WOULD YOU NEED MORE THAN TWO WEEKS TO GET YOUR MOTION FOR STAY IN THE NINTH CIRCUIT AND

11:53:23 LET A MOTION PANEL CONSIDER IT?

MS. BROWN: YOUR HONOR, WE CAN CERTAINLY PUT OUR PAPERS TOGETHER IN THE SAME TIME THAT THE OTHER CASE THAT YOU MENTIONED. TWO WEEKS IS NOT THE ISSUE. I DON'T KNOW WHETHER THE COURT WOULD RULE WITHIN TWO WEEKS SO THAT WAS PART OF MY REQUEST. SO IF YOUR HONOR WOULD LIKE TO HAVE PAPERS BE ON FILE QUICKER, I'M HAPPY TO DO ANYTHING THE COURT THINKS IS REASONABLE.

THE COURT: ALL RIGHT. ON BEHALF OF THE RECEIVER?

MR. FATES: THANK YOU, YOUR HONOR. EXCUSE ME. I SEEM TO HAVE COME DOWN WITH A COLD. SO I'M FIGHTING CONGESTION AND A COUGH TODAY. SO I'LL DO MY BEST.

THE COURT: WHERE IS DR. FAUCI WHEN WE NEED HIM?

MR. FATES: RIGHT. I'M TRYING NOT TO GET ANYBODY

11:54:14 SICK IN THE PROCESS. I WANT TO ADDRESS, FIRST OF ALL, THE LIKELIHOOD OF SUCCESS. I THINK THAT'S A KEY POINT HERE BECAUSE THE COURT'S, THE FOUNDATION OF THE COURT'S RULING ON THE DENIAL OF MR. PETERSON'S CLAIMS WAS THAT MR. PETERSON AND HIS ENTITIES WERE INSIDERS. NOT THAT THEY DIDN'T BORROW MONEY OR THAT THE LOANS WEREN'T REAL. NONE OF THAT. IT WAS THAT HIS RELATIONSHIP TO GINA CHAMPION-CAIN, TO THESE ENTITIES, THE DEALINGS THAT HE HAD, THE PROFITS THAT HE MADE, THE AMOUNT OF MONEY THAT HE BROUGHT IN AS A FUNDRAISER-RECRUITING PERSON PUT HIM IN A VERY DIFFERENT POSITION VIS-A-VIS THE PONZI SCHEME THAN THE OUTSIDE INVESTORS WHO WERE INVESTING THEIR OWN MONEY,

11:55:14 NOT SOMEBODY ELSE'S MONEY, AND LOST THAT MONEY.

THEY ARGUE THAT MR. PETERSON IS LIABLE TO THOSE INVESTORS AND SO HE HAS A CLAIM FOR THE AMOUNT THAT HE OWES THOSE INVESTORS. THAT JUST SHOWS THAT HE'S ASSERTING THE SAME CLAIM THAT THEY'RE ASSERTING. THERE'S NO DIFFERENCE. HE'S JUST SAYING, WELL, THEY LOST THIS MONEY AND THEIR LOAN DOCUMENTS, I BORROWED THIS MONEY, AND SO IT'S THE SAME CLAIM. WE'RE SAYING, HE'S CLEARLY AN INSIDER BASED ON HIS POSITION. THE FACTS ONE HUNDRED PERCENT SUPPORT HE'S AN INSIDER. IN FACT, I DON'T THINK HE SERIOUSLY ARGUES THAT THEY'RE NOT INSIDERS.

WHEN WE MADE THAT POINT IN THE PAPERS, THE RESPONSE WAS ESSENTIALLY, WELL, THESE INSIDER CASES ARE FROM OTHER CIRCUITS AND THE DEFINITION OF INSIDER IS SORT IF NEBULOUS.
11:56:11 AND WE SUBMIT THAT THAT DOESN'T RISE TO THE LEVEL OF A SERIOUS QUESTION FOR THEIR APPEAL. FOR THE COURT'S FINDING THAT THEY WERE INSIDERS IS ONE HUNDRED PERCENT SUPPORTED BY THE EVIDENCE IN THIS CASE. THE COURT'S DENIAL OF THEIR CLAIMS IS ENTIRELY APPROPRIATE AND THAT THEIR LIKELIHOOD OF SUCCESS IS ABOUT ZERO ON THE APPEAL.

I CAN'T IMAGINE THE NINTH CIRCUIT ESSENTIALLY TURNING THE CLAIMS SYSTEM THAT WAS SET UP HERE ON ITS HEAD AND SAYING THAT ALL OF THESE INVESTORS THAT SUFFERED LOSSES, THAT THEY DON'T HAVE CLAIMS ANYMORE BECAUSE THE PETERSON ENTITIES ARE GOING TO SORT OF TAKE THOSE CLAIMS AWAY FROM THEM AND THEN

11:57:00 RECEIVE THE VAST MAJORITY OF THE FUNDS THAT ARE CURRENTLY IN THE RECEIVERSHIP ESTATE. I MEAN, IT WOULD BE HUGE AMOUNTS OF DOLLARS THAT WOULDN'T GO TO THE INVESTORS BUT INSTEAD WOULD GO TO MR. PETERSON AND HIS ENTITIES.

THE COURT: IS IT CONTEMPLATED THAT MR. PETERSON IS GOING TO RECEIVE ANY OF THE MONEY TO BE DISTRIBUTED BY THE RECEIVER?

MR. FATES: ABSOLUTELY NOT. HE, AS YOU NOTED, IS A $12 MILLION NET WINNER AND SO THERE'S A PENDING ONGOING CLAWBACK CASE AGAINST MR. PETERSON FOR THAT MONEY.

THE COURT: WHAT PERCENTAGE OF THE INVESTMENT CLASS HAS ACTUALLY RECEIVED FUNDS THROUGH THE OTHER SETTLEMENTS AT THIS POINT, DO YOU KNOW? YOU CAN GIVE ME A BALLPARK FIGURE.

MR. FATES: IT'S A VERY HIGH PERCENTAGE OF THE

11:57:49 INVESTORS THAT HAVE RECEIVED SOME PORTION OF THEIR LOSS THROUGH CHICAGO TITLE SETTLEMENTS.

THE COURT: SO I GOT -- ATTACHED TO YOUR PAPERS WERE SOME E-MAILS OR NOTICES THAT PEOPLE IN THEIR TWILIGHT, 74/75, NEED THE MONEY AT THIS POINT. IS THAT THE EXCEPTION TO THE INVESTOR CLASS OR HAVE YOU GOTTEN THAT TYPE -- YOU KNOW, IT'S ONE THING TO SAY, I WANT ALL MY MONEY AND I WANT IT NOW, AND IT'S ANOTHER THING TO SAY, I NEED IT, I'VE BEEN DEPRIVED OF IT AND IT WILL REALLY BE A HARDSHIP TO WAIT ANOTHER POTENTIALLY 18 MONTHS.

MR. FATES: I THINK WHAT YOU'RE HEARING AND SEEING IN

11:58:28 THOSE E-MAILS, WHICH WE HEAR A LOT, ARE THE PEOPLE THAT ARE NOT THE INSTITUTIONAL-TYPE INVESTOR HERE. THEY'RE THE PERSONAL MOM-AND-POP-TYPE PEOPLE WHO ARE ELDERLY, INVESTED THEIR RETIREMENT SAVINGS INTO THIS, AND IT'S BEEN A HUGE HARDSHIP FOR THEM TO NOT HAVE ACCESS TO THAT MONEY.

THE COURT: GIVE ME AN IDEA, IN A PROTOTYPICAL CASE, IN THAT CATEGORY, HOW MUCH HAVE THEY ACTUALLY GOTTEN BACK FROM THEIR LOSS AT THIS POINT, ROUGH FIGURES, PERCENTAGE-WISE?

MR. FATES: THE SETTLEMENTS WITH CHICAGO TITLE RANGE FROM MAYBE 50 PERCENT ON THE LOW END TO 80 PERCENT ON THE HIGH END. SO SOMEWHERE IN THAT RANGE. AND THEY'RE OBVIOUSLY ANXIOUS TO SEE THE DISTRIBUTION FROM THE RECEIVERSHIP WHICH HAS BEEN LONG-AWAITED, AND THEY'VE KNOWN THERE IS MORE MONEY IN THE RECEIVERSHIP. WHEN THEY SETTLED WITH CHICAGO TITLE, THEY KNEW

11:59:22 THAT THERE WOULD BE FURTHER FUNDS COMING FROM THE RECEIVERSHIP AND THAT WAS UNDERSTOOD AS PART OF THEIR, OKAY, WE'LL GET THIS FROM CHICAGO TITLE, WE'LL HAVE ANOTHER DISTRIBUTION FROM THE RECEIVERSHIP AND IN THE END BE VERY CLOSE TO ONE HUNDRED PERCENT OF THEIR MONEY BACK. WE'RE STILL PROJECTING 90 TO 95 PERCENT RECOVERY.

THE COURT: MONEY-IN-MONEY-OUT BASIS?

MR. FATES: YES.

THE COURT: IS THAT ACROSS THE BOARD OR IS THAT JUST TO SOME OF THE INVESTORS REPRESENTED BY COUNSEL AND WERE ABLE TO MAYBE GET A --

11:59:52 MR. FATES: THAT IS ACROSS THE BOARD.

THE COURT: YOU EXPECT ACROSS THE BOARD THE RECOVERY TO INVESTORS TO BE SOMEWHERE BETWEEN 95 TO 100 PERCENT?

MR. FATES: SOMEWHERE BETWEEN 90 TO 95 PERCENT?

THE COURT: YOU'VE HANDLED PLENTY OF THESE CASES IN THE PAST?

MR. FATES: I HAVE, YES.

THE COURT: WHERE DOES THIS RECOVERY RATE IN COMPARISON TO OTHER RECEIVERSHIPS?

MR. FATES: THIS EXCEEDS ANYTHING THAT I'VE EVER BEEN INVOLVED IN OR EVEN READ ABOUT. YOU VERY RARELY HAVE A RECOVERY IN A PONZI SCHEME OF THIS MAGNITUDE.

THE COURT: YOU MENTIONED THAT THERE HAVE BEEN SETTLEMENT EFFORTS UNDERTAKEN BETWEEN THE RECEIVER AND MR.

12:00:42 PETERSON. I WANT TO STATE THAT NONE OF THAT AFFECTS THE DECISION I MAKE HERE, WHICH IS A DECISION ON LEGAL STANDARDS. MR. PETERSON OBVIOUSLY HAS THE RIGHT TO CONTEST THESE THINGS AND HAVE HIS DAY IN COURT, AS MS. BROWN MENTIONS.

SO I WANT TO BE CLEAR THAT EVEN THOUGH THAT'S ALLUDED TO IN THE PAPERS, WHATEVER THE SETTLEMENT DISCUSSIONS ARE, I'M NOT AWARE OF THEM AND IT'S NOT A FACTOR IN THE DECISION I MAKE TODAY. ANYTHING ELSE YOU WANT TO SAY TODAY, MR. FATES? DO YOU WANT TO HIT ON ANY OF THE OTHER THREE FACTORS?

MR. FATES: I DO. I JUST WANT TO HIT ON IRREPARABLE HARM. IN OUR PAPERS, WE POINTED OUT THAT THESE DISTRIBUTIONS

12:01:23 TO THE RECEIVER DON'T HARM MR. PETERSON.

THE COURT: HE GETS A CREDIT.

MR. FATES: HE BENEFITS FROM THEM BECAUSE IT REDUCES HIS LIABILITY TO --

THE COURT: YEAH, BUT HE'D BE IN THE POSITION OF HAVING TO FILE MULTIPLE LAWSUITS, RIGHT, AGAINST THE PEOPLE THAT ARE INVOLVED AND HAVE GOTTEN THE DISTRIBUTION, IF IT TURNS OUT THAT I'M WRONG AND THIS SHOULDN'T HAVE BEEN APPROVED, HE'D HAVE TO -- WHAT WOULD THE MECHANISM BE FOR GETTING THAT MONEY BACK IF THE NINTH CIRCUIT SAYS, OH, NO, JUDGE BURNS MADE A MISTAKE AND HE NEVER SHOULD HAVE APPROVED THIS?

MR. FATES: I WOULD AGREE THAT IF --

THE COURT: THAT'S A BIT OF A HARDSHIP --

MR. FATES: AS UNLIKELY AS IT IS THEY WERE TO SAY

12:02:04 THAT, THIS MONEY GOES OUT THE DOOR, GETS DISTRIBUTED, IT'S NOT GOING TO COME BACK. BUT I DON'T THINK THAT'S THE ENTIRE ANSWER TO THIS BECAUSE IF THAT'S ALL THAT MATTERED, THEN ANYBODY COULD MAKE A CLAIM AGAINST A RECEIVERSHIP ESTATE AND WITH NO MERITS WHATSOEVER AND THEN APPEAL AND GET A STAY BECAUSE THEY'RE GOING TO BE IRREPARABLY HARMED BY THE DISTRIBUTIONS. THAT'S WHY THERE'S MORE THAN ONE FACTOR HERE --

THE COURT: I GET IT. BUT IT'S A MATTER OF SCALE, AND HE HAS SUBSTANTIAL CLAIMS PROBABLY EXCEEDING THOSE OF ANY OTHER INVESTOR, RIGHT?

MR. FATES: WELL, HE DOESN'T HAVE ANY CLAIMS I WOULD

12:02:43 SAY. AND IN FACT, HE'S THE BIGGEST NET WINNER, FROM OUR PERSPECTIVE, $12 MILLION; SO HE HAS THE LARGEST EXPOSURE TO THE ESTATE OF ANYBODY. HIS CLAIM IS REALLY THAT OTHER INVESTORS LOST, AND HE'S TRYING TO ASSERT THEIR LOSSES AS HIS OWN. SO FROM OUR PERSPECTIVE, HE DOESN'T HAVE A CLAIM, HE DOESN'T HAVE A LIKELIHOOD OF SUCCESS. THIS DISTRIBUTION BENEFITS HIM IN THAT IT DOLLAR FOR DOLLAR REDUCES HIS LIABILITY TO THOSE INVESTORS. AND HE DOESN'T REALLY SERIOUSLY ARGUE THAT.

WHAT HE SAYS IS CAL PRIVATE BANK, I'M STILL GOING TO OWE MONEY POTENTIALLY ON THE LOAN FROM CAL PRIVATE BANK AND SO THIS DISTRIBUTION DOESN'T ELIMINATE MY ABILITY TO THAT INVESTOR. BUT THAT'S NOT THE STANDARD HERE. IT REDUCES, CERTAINLY, AND THAT'S A BENEFIT. SO IT'S IRREPARABLE HARM IS WHAT HE HAS TO SHOW, AND HE CAN'T SHOW THAT. SO WE WOULD

12:03:46 SUBMIT THAT THERE'S NO LIKELIHOOD OF SUCCESS, NO IRREPARABLE HARM, NO BASIS FOR A STAY. I MEAN, THE OTHER FACTORS WE THINK OBVIOUSLY --

THE COURT: REMEMBER, YOU'RE TALKING ABOUT THE NINTH CIRCUIT AS THE REVIEWING COURT.

MR. FATES: WELL, EVEN THE NINTH CIRCUIT I THINK IS GOING TO SAY NO TO THIS ONE.

THE COURT: ALL RIGHT. ANYTHING ELSE, MR. FATES?

MR. FATES: NO, THANK YOU, YOUR HONOR.

THE COURT: MR. YODER?

MR. YODER: YES, YOUR HONOR. WITH THE COURT'S

12:04:17 PERMISSION, JUST FIVE QUICK POINTS. AS YOU KNOW, I REPRESENT CAL PRIVATE. THE MOTION TO STAY HERE REALLY DOESN'T EXTEND TO CAL PRIVATE. CAL PRIVATE DIDN'T LOAN MONEY TO PETERSON, ABC FUNDING, OR KIM FUNDING. IT WAS TO RECEIVERSHIP ENTITY, NUMBER ONE. SO THEY'RE SAYING THEY'RE TRYING TO GET THIS MONEY BACK; IT DOESN'T APPLY TO CAL PRIVATE.

NUMBER TWO, EVEN IF IT DID, THE SETTLEMENT PAYMENT THAT CAL PRIVATE WOULD RECEIVE IS LARGELY COMING FROM CHICAGO TITLE. AS YOUR HONOR KNOWS, WE OPPOSED IT. YOUR HONOR DENIED OUR OBJECTION TO THAT. WE RESPECT THAT. AND WE'VE NOW MADE OUR PEACE WITH THE RECEIVER. BUT THE BOTTOM LINE IS THAT PAYMENT, WHICH WE HAVE NOT RECEIVED, CAL PRIVATE HAS RECEIVED ZERO SO FAR, NOT WITHSTANDING SPENDING MILLIONS OF DOLLARS IN ATTORNEY FEES, WHICH WE DO BELIEVE IS WHAT PROMPTED CHICAGO

12:05:10 TITLE TO ENTER INTO THIS SETTLEMENT WITH THE RECEIVER.

THE COURT: TELL ME THE AMOUNT OF WHAT YOUR SETTLEMENT IS.

MR. YODER: IT'S ESSENTIALLY FOR THE CHICAGO TITLE PAYMENT WHICH IS A LITTLE OVER $9.5 MILLION -- THAT'S ALL COMING FROM CHICAGO TITLE -- PLUS 500,000 ESSENTIALLY FOR THE ASSIGNMENT OF THE CLAIMS AGAINST MR. PETERSON. BUT THE POINT IS THAT BENEFITS MR. PETERSON. THAT PAYMENT THAT COMES TO CAL PRIVATE THEY WILL BE ABLE TO CLAIM AS AN OFFSET OR DEDUCTION ON THE RECEIVER'S PURSUIT OF THE ASSIGNED CLAIMS. CERTAINLY DOESN'T IRREPARABLY HARM THEM AT ALL. AND AS I SAID, IN TERMS

12:05:49 OF IRREPARABLE HARM, CAL PRIVATE HAS RECEIVED ZERO SO FAR, HAS RECEIVED ZERO.

THE OTHER POINT IS THAT IF THE SETTLEMENT WERE UNWOUND, THE RECEIVER DOESN'T GET TO KEEP A CHICAGO TITLE SETTLEMENT PAYMENT THAT'S EARMARKED FOR CAL PRIVATE. IT GOES BACK TO CHICAGO TITLE. IT IS NOT GOING TO GO TO PETERSON IN ANY EVENT UNDER ANY SET OF CIRCUMSTANCES. SO COMPLETELY SEPARATE.

AND THE LAST POINT I WOULD MAKE, YOUR HONOR, IS THAT, AS YOUR HONOR KNOWS, YOU CONDITIONALLY OVERRULED OUR OBJECTIONS TO THE PLAN OF DISTRIBUTION BASED UPON OUR TENTATIVE SETTLEMENT WITH THE RECEIVER. SO TO THE EXTENT THIS SETTLEMENT ISN'T APPROVED AND ISN'T ALLOWED TO GO FORWARD, IT OPENS THAT AS WELL AS OUR APPEAL OF THE CHICAGO TITLE ORDER, AND WE ACCEPTED THE 12:06:40 COURT'S RULINGS, WE MADE OUR PEACE WITH THE RECEIVER. SO I WOULD ASK YOUR HONOR THAT NO STAY SHOULD EXTEND TO THE CAL PRIVATE SETTLEMENT WITH THE RECEIVER, EVEN A TEMPORARY STAY. IT SHOULD BE CARVED OUT AND THAT SHOULD BE ALLOWED TO GO FORWARD, AND I APPRECIATE THE TIME.

THE COURT: ALL RIGHT. SEC HAVE ANY POSITION ON ANY OF THIS?

MS. WANNER: JUST BRIEFLY, YOUR HONOR, JUST AS TO THE COMMENT ABOUT THE SEC HAVING TO TAKE IN TESTIMONY OF ANY WITNESSES. OBVIOUSLY, I CAN'T DISCLOSE ANY CLIENT CONFIDENTIALITY OR WORK PRODUCT AS TO THE DECISIONS MADE OR NOT

12:07:24 MADE BY THE COMMISSION IN CHARGING DECISIONS.

THE COURT: ALL RIGHT. MS. BROWN, ANYTHING IN REBUTTAL OR RESPONSE?

MS. BROWN: I JUST HAVE A COUPLE QUICK POINTS, MAYBE STARTING WITH THE MORE STRAIGHTFORWARD ONES FIRST. ON THE SETTLEMENT DISCUSSIONS, I WANT TO RAISE THE FACT -- I APPRECIATE YOUR HONOR SAYING IT'S NOT GOING TO INFLUENCE YOUR DECISION. I'M VERY GLAD TO HEAR THAT BECAUSE THOSE SETTLEMENT DISCUSSIONS WERE CONFIDENTIAL, AND I THINK THE RECEIVER VIOLATED THAT CONFIDENTIALITY BY BOTH PUTTING MR. PETERSON'S FINANCIAL POSITION IN A PUBLICLY FILED DOCUMENT AND DISCUSSING THE CONTENT AND POSITION OF THE PARTIES IN SETTLEMENT. THOSE WERE CONFIDENTIAL, AND THEY SHOULD HAVE REMAINED SO.

THE SECOND POINT THAT I'D LIKE TO TALK ABOUT IS I'M
12:08:14 GLAD THAT BOTH CAL PRIVATE AND THE RECEIVER HAVE COME ON THE RECORD SAYING THAT THE PAYMENT FROM THE RECEIVER WILL REDUCE ANY LIABILITIES OF MR. PETERSON. WHEN YOU LOOK AT THE RECEIVER'S PAPERS, THE NOTE TO CAL PRIVATE WAS FOR 12.5 MILLION. THE RECEIVER'S PAYMENT TO CAL PRIVATE IS, I DON'T HAVE THE EXACT NUMBER BUT IT'S OVER TEN MILLION. YET, THE RECEIVER SAYS THERE'S STILL $10 MILLION OWED ON THAT NOTE. SO I WASN'T SURE WHERE THE NUMBERS WERE COMING FROM, BUT I'M GLAD TO HAVE IT CONFIRMED THAT THE RECEIVER'S PAYMENT DOES IN FACT REDUCE ANY OBLIGATIONS UNDER THAT NOTE.

THE COURT: MS. BROWN, LET ME CLARIFY SOMETHING. YOU

12:08:56 SAID THE PAYMENT FROM THE RECEIVER TO CAL PRIVATE IS OVER 10. I THOUGHT MR. YODER SAID IT'S NINE MILLION PLUS 500,000 FOR THE ASSIGNMENT. SO 9.5 MILLION TOTAL. IS THAT WHAT YOU SAID, MR. YODER?

MR. YODER: YES, YOUR HONOR. IT'S 9.5 MILLION WHICH IS THE CHICAGO TITLE PORTION OF THE SETTLEMENT PLUS AN ADDITIONAL 500,000 AND THEN THERE'S A PERCENTAGE THAT WOULD GO TO CAL PRIVATE DEPENDING UPON HOW THE RECEIVER'S CLAIMS COME ABOUT --

THE COURT: OKAY. I NOW UNDERSTAND. GO AHEAD, MS. BROWN.

MS. BROWN: THEN ON IRREPARABLE HARM, MR. PETERSON AND THE PETERSON ENTITIES ARE IN FACT THE BIGGEST CREDITORS. THIS IS THE BIGGEST CLAIM. SO I UNDERSTAND THAT ADMINISTERING

12:09:46 RECEIVERSHIPS YOU DON'T WANT SOME SMALL CREDITOR TO THROW A MONKEY WRENCH INTO THE WORKS AND HOLD UP EVERYTHING. BUT MR. PETERSON'S CLAIMS ARE SUBSTANTIAL. HE HAS SUBSTANTIAL LOSSES, AND I THINK THAT JUSTIFIES HIM SEEKING A STAY IN THESE CIRCUMSTANCES.

THE COURT: ON THE ISSUE THOUGH -- I THINK MR. FATES RAISED THAT IN REFERENCE TO THE IRREPARABLE HARM, AND YOU KNOW, REGARDLESS OF THE AMOUNT, THE PRINCIPAL IS, LOOK, YOU LET THIS MONEY GO; WE CAN'T PULL IT BACK AT ANY POINT REGARDLESS OF THE AMOUNT. IT'S A MATTER OF SCALE AGAIN. BUT I THINK THE IRREPARABLE HARM ARGUMENT IS PROBABLY THE SAME REGARDLESS OF

12:10:24 THE AMOUNT INVOLVED. WE'RE NOT GOING TO BE ABLE TO GET THIS BACK. MAYBE SOMEONE CAN SAY, NO, IT WILL BE A LOT EASIER TO GET BACK $300,000 FROM INVESTORS THAN IT WOULD BE THE AMOUNT OF MONEY THAT MR. PETERSON IS CLAIMING. MAYBE THAT'S SO. BUT I'M NOT SURE THE AMOUNT OF MONEY MAKES A DIFFERENCE, A HUGE DIFFERENCE ON THAT POINT.

MR. BROWN: WELL, I MEAN, IT DOES TO THE EXTENT THE RECEIVER HAS RESERVES OR HAS NOT FULLY DETERMINED ALL THE CLAIMS. THERE MIGHT BE ENOUGH OF A POT THAT THERE'S NOT A CONCERN THAT THEY WOULD BE ABLE TO PAY THE INVESTOR. I THINK GIVEN THE SIZE OF MR. PETERSON'S CLAIMS, THERE'S REALLY NO WAY TO GET IT BACK INTO THE TUBE. THOSE CLAIMS ARE GONE --

THE COURT: HOW MANY OF THOSE ARE SUPER-SIZED CLAIMS, MS. BROWN? BECAUSE I CAN IMAGINE AT SOME POINT IF HE WERE TO

12:11:22 WIN THE APPEAL, IF THE STAY IS NOT GRANTED AND IT PLAYS OUT AND THE MONEY IS DISTRIBUTED, HE WOULD GO AFTER SOME PEOPLE THAT GOT HUGE AMOUNTS OUT OF THE SETTLEMENT BUT PROBABLY WOULDN'T BOTHER WITH AN INDIVIDUAL INVESTOR. IT WOULDN'T BE WORTH THE TIME AND EFFORT. DO YOU HAVE AN IDEA OF HOW MANY OF THESE ARE HUGE, SUBSTANTIAL CLAIMS THAT ARE GOING TO BE PAID OUT?

MS. BROWN: I DON'T HAVE BALLPARK NUMBERS, BUT THERE ARE OBVIOUSLY INSTITUTIONAL PARTIES THAT WOULD RECEIVE DISTRIBUTIONS IF THE ORDER WAS NOT STAYED AND CERTAINLY HE WOULD PURSUE THOSE PARTIES. AS TO THE SMALLER INDIVIDUALS, I CAN'T SAY TODAY WHAT WE WOULD DO, BUT IT'S ALWAYS ON THE

12:12:08 TABLE.

THE COURT: DO YOU HAVE AN IDEA, MR. FATES, ON THE RECEIVERSHIP DISTRIBUTION AMOUNT, HOW MANY ARE BULK AMOUNTS GOING TO BIG ENTITIES, WHAT PREJUDICE, AS OPPOSED TO THE MA-AND-PA INVESTOR THAT WE TALKED ABOUT EARLIER?

MR. FATES: I DON'T KNOW THE ANSWER TO THAT. I'M SORRY. WHAT I CAN SAY IS THERE ARE ABOUT 300 OR SO INVESTORS WITH ALLOWED CLAIMS.

THE COURT: WHAT'S THE LARGEST AMOUNT, ROUGHLY, OF THOSE CLAIMS?

MR. FATES: PROBABLY CAL PRIVATE BANK AT THIS POINT BECAUSE THEY HAVEN'T RECEIVED ANYTHING. SO THEY HAVE A $9.5 MILLION CLAIM.

THE COURT: ARE THERE OTHER SIMILARLY-SITUATED

12:13:00 INVESTORS OR INSTITUTIONS THAT WOULD BE AT ABOUT THAT LEVEL TOO? I'M JUST TRYING TO FIGURE OUT THE SCALE OF WHAT THE CONSEQUENCE WOULD BE IF THE STAY IS DENIED AND ULTIMATELY MR. PETERSON PREVAILS AND HAS TO CLAWBACK MONEY OR SUE PEOPLE.

MR. FATES: I DON'T HAVE A SENSE WHAT THAT WOULD BE OTHER THAN TO SAY IT'S ABOUT 300 PEOPLE AND THE CLAIMS VARY.

THE COURT: DO YOU KNOW WHAT PERCENTAGE ARE INSTITUTIONAL INVESTORS AS OPPOSED TO INDIVIDUAL INVESTORS?

MR. FATES: NOT VERY MANY INSTITUTIONS BECAUSE THE LARGEST INSTITUTIONS IN TERMS OF THE CLAIM SIZE HAVE SETTLED ONE HUNDRED PERCENT WITH CHICAGO TITLE SO THEY'RE ALREADY OUT

12:13:46 OF THE PICTURE. CAL PRIVATE IS PROBABLY THE BIGGEST INSTITUTIONAL INVESTOR LEFT.

THE COURT: ON THE BASIS OF THE INDIVIDUAL INVESTORS, CAN YOU GIVE ME A BALLPARK OF WHAT THEIR AMOUNT OF LOSS IS? IS THERE AN AVERAGE AMONG INDIVIDUAL INVESTORS?

MR. FATES: TODAY, IT'S ABOUT $40 MILLION LEFT OF UNCOMPENSATED INVESTOR LOSSES.

THE COURT: RIGHT. BUT YOU CAN'T TELL ME ON AN INDIVIDUAL BASIS WHAT A SINGLE INVESTOR ON AVERAGE WOULD BE CLAIMING AT THIS POINT?

MR. FATES: NO. IT WOULD VARY QUITE LARGELY.

THE COURT: WHAT WAS THE MINIMUM THAT AN INVESTOR HAD TO MAKE TO GET INTO THIS?

MR. FATES: I DON'T THINK THERE WAS ACTUALLY. IN A
12:14:43 LOT OF SCHEMES THERE ARE THOSE KINDS OF MINIMUMS, BUT IN THIS CASE, I THINK THERE WERE INVESTMENTS AS SMALL AS MAYBE $20,000, $30,000.

THE COURT: MS. BROWN, GO AHEAD. I INTERRUPTED YOU. I KNOW YOU WERE IN THE PROCESS OF MAKING REBUTTAL POINTS.

MS. BROWN: I APPRECIATE IT. I ONLY HAVE TWO MORE POINTS. ON THE INSIDER POINT, I KNOW WE KIND OF KEEP GOING BACK AND FORTH, DOES AN INSIDER MEAN BAD FAITH, NOT BAD FAITH. I WOULD ENCOURAGE YOUR HONOR TO, FOR ONE THING, LOOK AT THE TYPE OF CLAIMS THAT ARE BEING ASSERTED. I THINK A CLAIM FOR COMMISSION IS VERY DIFFERENT THAN THE TYPE OF CLAIM WE HAVE

12:15:26 HERE. I THINK CLAIMS BY PEOPLE WHO WERE INDICTED, EMPLOYED, FAMILY MEMBERS, I THINK THOSE ARE VERY DIFFERENT TYPES OF CLAIMS. I HAVEN'T FOUND A CASE WHERE A PARTY WAS EXCLUDED WHEN THE PARTY HAD PERSONALLY GUARANTEED OBLIGATIONS, DEBTS THAT THE RECEIVERSHIP RECOGNIZES IS REAL, AND THAT'S WHAT THE CLAIM WAS FOR.

I DO THINK THAT'S A DISTINGUISHING FACTOR HERE. IT'S NOT JUST ABOUT RECOVERING SOME MONEY THAT MR. PETERSON'S ANI OWED HIM UNRELATED TO THE ACTUAL LOSSES. THIS WAS MONEY THAT WAS STOLEN BY ANI. THAT'S THE FORMATION OF THE CLAIM. THE LAST POINT I HAVE TO SAY IS, I KNOW WE KEEP SAYING $12 MILLION OF PROFITS, BUT THE WAY YOU CALCULATE PROFITS IS YOU LOOK AT ALL THE MONEY THAT GOES IN AND ALL THE MONEY THAT GOES OUT. AND MR. PETERSON HAS OBLIGATIONS OF MANY, MANY MILLIONS OF
12:16:23 DOLLARS, CERTAINLY MORE THAN 12 MILLION THAN THE RECEIVER SAYS HE RECEIVED. AND ON THAT BASIS, HE DIDN'T PROFIT. HE'S STILL IN THE RED WHEN IT COMES TO THIS SCHEME. SO I DON'T THINK IT'S FAIR TO CALL HIM A NET WINNER. I THINK YOU HAVE TO LOOK AT HIS CIRCUMSTANCES AND THE TOTALITY OF WHAT HIS OBLIGATIONS ARE AND WHAT HE PAYS OUT.

THE COURT: ON YOUR LAST POINT, WHAT ABOUT THE AMOUNT OF CREDITS HE'LL RECEIVE AS A RESULT OF THE DISTRIBUTION IF THE SETTLEMENT GOES THROUGH? THAT HAS TO BE ADDED TO THE 12 MILLION THAT HE GOT UPFRONT, RIGHT, AS AN OFFSET?

MS. BROWN: I WOULD THINK SO, YES.

12:17:03 THE COURT: WHAT'S THAT TOTAL, DO YOU KNOW?

MS. BROWN: THE TOTAL OF THE --

THE COURT: IF YOU ADD THE CREDITS THAT HE'LL GET, IF THE RECEIVERSHIP'S SETTLEMENT WITH CHICAGO TITLE GOES THROUGH, HE'LL HAVE AN OFFSET AGAINST ANYONE THAT RECEIVED THAT PLUS THE 12 MILLION UPFRONT; WHAT'S THE TOTAL NUMBER OR BALLPARK NUMBER?

MS. BROWN: OF WHAT REMAINS OWED?

THE COURT: YEAH, OF WHAT CREDIT HE'LL HAVE. HE'S GOT 12 MILLION THAT HE MADE, AND THEN THERE'S GOING TO BE CREDITS, HE'LL ACCRUE CREDITS BECAUSE THE RECEIVER IS GOING TO PAY OFF SOME OF THESE INVESTORS, AND HE'LL HAVE AN OFFSET AS TO ANYTHING HE MAY ULTIMATELY OWE IF THE CASE ADJUDICATED AGAINST HIM; I'M TRYING TO GET AN IDEA OF THE TOTAL AMOUNT, THE 12 MILLION-PLUS IN OTHER WORDS. DO YOU HAVE AN IDEA ON THAT?

12:17:51 MS. BROWN: I DON'T. IT DEPENDS ON WHAT THE RECEIVER PAYS, TO WHO AND HOW MUCH. THAT'S THE WAY WE'D HAVE TO CALCULATE THAT.

THE COURT: OKAY. ALL RIGHT. ANYTHING MORE FROM ANYONE? THE COURT HAS, AS I SAID, READ THE PAPERS CAREFULLY. LET ME SAY ONCE AGAIN THERE WAS AN ALLUSION TO SETTLEMENT DISCUSSIONS. I HAVE TOTALLY DISREGARDED THAT, IN FACT, STOPPED READING AT ONE POINT BECAUSE, GENERALLY SPEAKING, THE COURT ADJUDICATING LEGAL MATTERS SHOULD NOT BE AWARE OF ANY SETTLEMENT DISCUSSIONS, AND I'M AWARE OF THAT. SO I SAY DEFINITIVELY, NONE OF THAT HAS ANYTHING TO DO WITH THE RULING I

12:18:32 MAKE TODAY, NOR DID I KNOW ABOUT ANY OF THAT BEFORE THE MOST RECENT ROUND OF BRIEFING SO IT HASN'T AFFECTED ANYTHING IN THE PAST.

I'M AWARE OF THE KEN FACTORS THAT HAVE BEEN ARGUED BY BOTH SIDES. ON THE LIKELIHOOD OF SUCCESS ON THE MERITS, THE COURT FINDS THAT THE MOVING PARTY HERE, MR. PETERSON, HAS NOT ESTABLISHED A SUBSTANTIAL CASE FOR RELIEF ON THE MERITS. I'M NO EXPERT ON THIS, AND I WOULD DEFER TO MS. BROWN WHO APPARENTLY HAS HANDLED A LOT OF THESE CASES AND ALSO TO MR. FATES AND THE RECEIVER, BUT THIS IS AN EXTRAORDINARY RECOVERY.

I'VE DONE COMPARABLE THINGS WITH BANKRUPTCY DISTRIBUTIONS AND RESTITUTION IN CRIMINAL CASES; NOBODY EVER GETS CLOSE TO ONE HUNDRED PERCENT BACK. FROM THE VERY BEGINNING OF THIS CASE, I IMPLORED THE RECEIVER TO MOVE

12:19:39 EXPEDITIOUSLY AND MOVE EFFICIENTLY, AND THEY HAVE DONE THAT.

AND TO SAY, WELL, THEY REALLY DIDN'T DO ENOUGH, WHEN THE NET AMOUNT IS GOING TO BE SOMEWHERE BETWEEN 90 TO 95 PERCENT, MAYBE EVEN EXCEEDING THAT, KIND OF FLIES IN THE FACE OF HOW WELL THEY HAVE COMPLIED WITH THE COURT'S ASPIRATION THAT THIS THING NOT DRAG OUT AND THAT LEGAL FEES NOT EAT INTO THE RECOVERY THAT ALL OF THOSE WHO ARE VICTIMS OF THE FRAUD MIGHT HOPE FOR.

I THINK THAT GIVEN HOW EXTRAORDINARY THIS IS, AND MS. BROWN, I DON'T WANT TO HOLD YOU TO THIS, BUT THIS IS A VERY HIGH AMOUNT OF RECOVERY, AS YOU ACKNOWLEDGE, AND I RESPECT YOUR

12:20:16 EXPERIENCE IN THE MADOFF CASE WHERE I DON'T THINK THEY GOT CLOSE TO THIS PERCENTAGE OF RECOVERY, I THINK IT'S VERY DIFFICULT TO SAY THAT AN APPELLATE COURT WILL SAY, NO, THE JUDGE ABUSED HIS DISCRETION BY APPROVING THIS SETTLEMENT; AFTER ALL, IT BENEFITED A GREAT NUMBER OF PEOPLE.

AND THEN THERE'S THE MATTER, OF COURSE, OF MR. PETERSON'S STATUS, AS MR. FATES POINTS OUT, I FOUND TO BE AN INSIDER DIFFERENTLY SITUATED THAN THE BULK OF THE INVESTORS; I CAN'T THINK OF ANYONE ELSE BESIDES MR. PETERSON WHO MADE MONEY DURING THE COURSE OF THE SCHEME, OTHER THAN MS. CHAMPION-CAIN, OF COURSE, WHO IS THE DEFENDANT, AND HER ENTITIES. BUT I CAN'T THINK OF ANYONE ELSE THAT PROFITED, AND IF THEY DID, NOT NEARLY TO THE AMOUNT OF $12 MILLION. I THINK THAT'S ONE OF THE EQUITABLE CONSIDERATIONS HERE TOO.

12:21:09 I DON'T KNOW PERCENTAGES OF PEOPLE WHO REALLY NEED THE MONEY. MS. BROWN, YOU MADE A GOOD POINT THAT THERE'S BEEN SOME DISTRIBUTION AND SOME PEOPLE HAVE THE MONEY, BUT THE RECEIVER HAS ATTACHED CORRESPONDENCE WITH SOME OF THE INDIVIDUAL RECEIVERS THAT SAY, LOOK, WE'RE IN OUR TWILIGHT NOW, WE'RE IN OUR MID-70S AND WE NEED THIS MONEY, WE COUNTED ON THIS MONEY. AND IN SOME CASES, I AM AWARE INVESTMENTS WERE MADE THROUGH RETIREMENT ACCOUNTS, AND I THINK THAT HAS TO BE TAKEN INTO CONSIDERATION AS WELL. IF THIS IS DELAYED 18 MONTHS OR LONGER, IT'S A REAL HARDSHIP ON THOSE FOLKS. SO BALANCING THE HARDSHIPS, I CAN'T SEE THAT MR. PETERSON'S CASE IS

12:21:49 SUBSTANTIALLY MORE COMPELLING THAN THAT OF THESE INDIVIDUAL INVESTORS WHO NEED THE MONEY TO GET BY.

SO ALL OF THOSE HAVE LED ME TO MAKE THIS FINDING, THAT MR. PETERSON HAS NOT MADE A SUBSTANTIAL CASE ON THE MERITS THAT HE IS LIKELY TO SUCCEED ON HIS APPEAL. THAT'S NOT TO UNDERMINE THE LEGAL ARGUMENTS YOU'VE MADE. YOU HAVE LEGAL ARGUMENTS. IT'S NOT UP TO ME AT THIS POINT TO RE-JUDGE THOSE. I MADE A DECISION ON THEM WHEN I APPROVED THE FIRST SETTLEMENT IN THE FIRST INSTANCE OVER OBJECTIONS, AND I ADHERE TO THAT.

IN TERMS OF IRREPARABLE HARM, AGAIN, IT'S HARD FOR ME TO FIND ON MR. PETERSON'S BEHALF. I ACKNOWLEDGE THAT HAVING A HUNDRED TENTACLES OUT THERE THAT YOU HAVE TO GO AFTER IF HE PREVAILS WOULD BE MORE DIFFICULT THAN JUST ONE OR TWO ENTITIES WHERE THE LAWSUIT COULD CONTINUE, BUT THAT ALSO SEEMS VERY

12:22:46 UNLIKELY TO ME. I THINK THE BULK OF THE PEOPLE THAT ARE GOING TO RECEIVE THIS, CAL PRIVATE ASIDE, I THINK THE BULK OF THE INVESTORS WHO ARE GOING TO RECEIVE DISTRIBUTION FROM THE RECEIVER ARE GOING TO BE SMALL FISH IN THE PARLANCE, PEOPLE THAT EVEN IF HE HAD AN OPPORTUNITY TO GO AFTER, OR MR. PETERSON DID, THAT HE WOULDN'T, IT WOULDN'T BE WORTH THE CANDLE TO DO SO. SO I DON'T SEE THE SCALE OF THE PROBLEM OR THE HARM BEING CONSIDERABLE TO HIM.

AGAIN, I'M MINDFUL ALSO THAT HE'S GOING TO BENEFIT FROM THIS IN TERMS OF A CREDIT WHICH HAS TO BE ADDED TO THE AMOUNT OF MONEY BY WHICH HE'S ALREADY BENEFITED. SO I DON'T

12:23:27 THINK THE HARM IS, I DON'T THINK HE'S MADE A SHOWING THAT THE HARM IS IRREPARABLE.

IN TERMS OF INJURY TO OTHER INTERESTED PARTIES, I'VE TOUCH ON THAT ALREADY. I THINK THERE WILL BE HARM TO SOME OF THE INVESTORS BY FURTHER DELAY IN THIS CASE. FOR SOME OF THEM, THE MONEY HAS BEEN TIED UP SINCE WHAT THEY FIRST INVESTED AND THE WHOLE THING BROKE WITH THE SEC'S ACTION AGAINST ANI AND CHAMPION-CAIN IN 2018, 2019. SO EVERYTHING'S EFFECTIVELY BEEN FROZEN BY THEN, AND WE'RE TALKING ABOUT FIVE YEARS ALREADY, AND THE IDEA OF ADDING ANOTHER COUPLE OF YEARS BEFORE THE APPELLATE PROCESS PLAYS OUT, I DON'T THINK THAT'S FAIR TO THE INVESTORS WHO NOW HAVE IN MIND THAT AT LEAST THEY'LL GET THEIR MONEY BACK. THEY'VE LOST USE OF IT, AND SOME OF THEM HAVE INCURRED LEGAL FEES TO GET TO THIS POINT, BUT I DON'T THINK IT'S FAIR OR

12:24:23 EQUITABLE THAT THEY BE REQUIRED TO WAIT.

TO MR. YODER'S POINT, I AGREE TOO; HE WAS ADVOCATING AGAINST APPROVAL OF THE SETTLEMENT ON BEHALF OF CAL PRIVATE, AND THE COURT RULED AGAINST HIM. THEY WENT ON AND ACCEPTED THE COURT'S RULING AND ENTERED INTO A SETTLEMENT AND NOW THEY WANT TO BE PAID. I DON'T DISAGREE WITH THEM THAT THE TIME FOR THEM TO GET THEIR MONEY BACK, THEY ARE A BANK AFTER ALL, PUT IT BACK TO USE, IS NOW AND NOT 18 MONTHS OR LONGER. SO FOR ALL THOSE REASONS, THE COURT DECLINES TO GIVE A STAY.

FORTUNATELY, FOR MR. PETERSON AND YOU, MS. BROWN, I'M NOT THE LAST WORD. I DO THINK THE TIME TO SEEK A STAY OF THIS

12:25:09 COURT'S APPROVAL OF THE SETTLEMENT, PENDING MR. PETERSON'S APPEAL, CAN BE ACCOMPLISHED WITHIN TWO WEEKS. I DON'T THINK YOU NEED 60 DAYS. I'M NOT GOING TO CUT IT THIN BY SAYING I'M GOING TO EXTEND THE STAY AND ALL, BUT CAL PRIVATE, TWO WEEKS IS TWO MORE WEEKS AND WE'LL HAVE AN ANSWER ONE WAY OR ANOTHER WHETHER THE COURT ABUSED ITS DISCRETION IN DENYING A STAY, BUT I REALLY FIND THAT MR. PETERSON HAS NOT MET HIS BURDEN AS HE MUST TO HAVE A STAY GRANTED AT THIS POINT AND THE STAY IS DENIED FOR THOSE REASONS, EXCEPT FOR TWO WEEKS.

SO TODAY IS APRIL 10TH SO YOU'LL HAVE UNTIL APRIL 24TH TO SEEK AND OBTAIN A STAY FROM THE NINTH CIRCUIT. THEREAFTER, IF NO STAY IS GRANTED OR NO STAY IS SOUGHT BETWEEN NOW AND THE 24TH, THE RECEIVER IS FREE TO MAKE THE DISTRIBUTION ACCORDING TO THE SETTLEMENT. THANK YOU ALL FOR YOUR TIME.

12:26:10 APPRECIATE THE BRIEFING, AS I SAID. ANYTHING ELSE?

MS. BROWN: THANK YOU, YOUR HONOR.

MR. FATES: ONE QUESTION FOR YOU. THE -- DISTRIBUTION PROCESS, TO GET THERE, HAS A COUPLE STEPS. ONE OF THEM IS A NOTICE OF THE INTERIM DISTRIBUTION WHICH WE WOULD FILE WITH THE COURT AND THEN GOES OUT TO ALL OF THE CLAIMANTS.

THE COURT: IS THERE ANY REASON YOU CAN'T FILE THAT IMMEDIATELY?

MR. FATES: THAT'S WHAT I WANTED TO ASK. WE WANT TO START THAT PROCESS.

12:26:44

THE COURT: I THINK YOU SHOULD. I THINK YOU SHOULD EXPEDITE IT. OBVIOUSLY, IF THE STAY COMES, THEN YOU'LL HAVE TO SEND SOME OTHER COMMUNICATION OUT SAYING, WELL, THE APPELLATE COURT PUT A HOLD ON THIS TEMPORARILY, BUT YES, I THINK THAT PROCESS SHOULD BEGIN NOW.

MR. FATES: WE'LL DO THAT THEN. THANK YOU.

THE COURT: THANK YOU, ALL. WE'RE IN RECESS.

(MATTER CONCLUDED.)

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

I HEREBY CERTIFY THAT I AM A DULY APPOINTED, QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE UNITED STATES JUDICIAL CONFERENCE.

DATED: APRIL 20, 2023, AT SAN DIEGO, CALIFORNIA.

/S/ JULIET Y. EICHENLAUB
JULIET Y. EICHENLAUB, RPR, CSR
OFFICIAL COURT REPORTER
CERTIFIED SHORTHAND REPORTER NO. 12084

CERTIFICATE OF SERVICE

I am a citizen of the United States, over the age of 18, and not a party to this action. My business address is 225 Broadway, 21st Floor, San Diego, California 92130. I certify that, on April 21, 2023, I electronically filed the foregoing APPELLANTS' REPLY IN SUPPORT MOTION FOR EMERGECY STAY OF THE DISTRIBUTION ORDER PENDING APPPEAL and REPLY DECLARATION OF SEANNA R. BROWN IN SUPPORT OF THE MOTION (including attached Exhibit) with the Ninth Circuit Clerk of the Court by using the appellate CM/ECF system.

I certify that all participants in the case are registered appellate CM/ECF users and that service will be accomplished by the appellate CM/ECF system on appellees' counsel of record.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that that this declaration was executed on April 21, 2023 at San Diego, California.

s/ Rupa G. Singh
Rupa G. Singh