its your asset doesn't necessarily make it so. We are conceding that point for these purposes, Judge, because whether they have a contractual right which is what we say they have, or a property right which is what they say they have to these funds, good for you. We're going to give you these funds. We don't intend not to give you these funds. We're fighting about nothing.

But we don't have to roll over just because Novell files a motion demanding that we jump through their hoops. They set up the hoops 12 years ago in the contract, Your Honor. They said, this is our property and we want you to say so, too. So the predecessor-in-interest is suppose to say, okay, okay, okay, we'll say its your property.

But did they set up a segregated account system? No. Did they set up an escrow? No. Did they say in the original contract you can hold our funds for three months and change, I don't know how many, 45 days past the end of the quarter, you can hold our funds. And it doesn't say, and therefore, you can't use those funds and then pay us 45 days at the end of the quarter. You can possess our funds. That was the setup.

So what's changed since then other than now we're monthly because there was an amendment and we all missed that one. Although the clients probably didn't miss it, the lawyers missed it. What's changed since then? Well, we're in bankruptcy now and we're in these dire financial straits. We

only have $9 million to cover this months $45,000 note. That's what it comes down to.

They're saying -- their basis for injunctive relief, the prejudice to them if they don't get this important ruling is that maybe on December 1st, the November money won't be there, the $41,000 that is there money, won't be there to pay them unless we set up procedures to cover that.

I thoroughly enjoyed the arguments of Mr. Lewis and Mr. Eaton and their friends and relatives this morning on a very important, you know, academically challenging issues that Your Honor dealt with. I'm embarrassed to say we're arguing over this. I think we should just simply deny it before I get into the rest of my story and let us take a lunch break and come back on something also academically challenging.

THE COURT: Mr. Lewis, you response, please.

MR. LEWIS: Your Honor, the odor you smell in the air is lunch which is just a moment or two off. Again, I revert to the question of if this is not money at risk, if the debtor's not worried about where its going to go, why is it holding onto it so fiercely. And the answer is, I think has to be, its holding onto it fiercely because its hoping to use the money along with its other money because it needs the money to operate. And then it will replace it as it comes in.

That's the risk we face. And if it happens and there isn't money at the end, it will be too late to do something

about that. That's our concern, Your Honor, and we're not asking to impose a really great burden on the debtor. Thank you.

THE COURT: Thank you.

MR. SPECTOR: All right. I'm getting help.

THE COURT: The rest of the story?

MR. SPECTOR: Not giving you the whole rest of the story. The papers really adequately state it. I mean, you talk about 365, if you're talking about analogous situations when an equipment lessor puts equipment into the debtors hands and says, but that's our equipment and not the debtors equipment, you don't entertain them when they come in and say give it back to us now because we're worried they're going to go out of business or they won't have the money to pay the lease payments. You don't do that when a warehouse -- a customer of a warehouse debtor has put its stuff in the warehouse and says well, now they're bankrupt, I want my goods out when they were told they have a contract to be there for nine months or six months.

I'm not going to go and argue the cases about that and I don't think I cited cases on that point. The point is Novell gets a monthly report of the debtor every month. If you ever see -- if Novell ever sees that we are so desperate that we don't have next months $41,000 based on a $500,000 annual divided by 12, we don't have that $41,667 available, well maybe

they should come running back on an emergency relief basis. But this is sill.

THE COURT: Thank you.

MR. SPECTOR: It's a DIP report.

THE COURT: Pardon me?

MR. SPECTOR: The form of the report is a DIP report.

THE COURT: The monthly operating report?

MS. JONES: Yes.

THE COURT: Yes. Well, I understand certainly Novell's concern. But there's been no breach of the relationship between the parties, no breach of -- the debtor has not breached its contractual obligations to Novell. There's no clear evidence of any irreparable harm here. And the Court is available to entertain an emergency application by Novell in the event a payment is -- a required payment is not promptly forthcoming. And I invite Novell to make such an application and I can assure Novell that the Court will entertain that emergency motion as it should immediately.

But at the moment, there is no evidence upon which the Court could, in effect, modify the contract and I think that certainly the debtor's arguments on the relationship with Section 105 under which Novell sought the relief and other provisions of the Bankruptcy Code is persuasive to me. And accordingly I am going to deny Novell's motion. Its denied, as I say, subject to necessity of making an emergency application.

And that is what the Court is here for and I'll be available.

MR. LEWIS: Thank you, Your Honor.

THE COURT: But as of today, I just don't see a basis upon which to modify the contractual relationship between these parties.

MR. SPECTOR: Thank you, Your Honor. We'll hand up the order. We'll send the order on Monday?

THE COURT: Very well. Is there anything else that we should consider perhaps on somewhat of a housekeeping basis? I know that we had I believe it was the retention of Boies Schiller, that application.

MS. JONES: Yes, sir. There are two other matters on the agenda I think we can deal with very quickly, Your Honor, as a matter of housekeeping. One, Your Honor is correct with respect to the retention of the Boies Schiller firm. Your Honor, we had a few more discussions with Mr. McMahon and I think what we'd like to do is go back and discuss it in a more fulsome manner --

THE COURT: Okay.

MS. JONES: -- and, Your Honor, continue that matter over until the November 16 hearing if that's okay with the Court.

THE COURT: That is perfectly acceptable.

MS. JONES: Also, Your Honor, with respect to the ordinary course professionals, Mr. McMahon has had the

opportunity to review the form of order and I understand is now satisfied with that order. I'd like to approach if I may?

THE COURT: Please. Thank you.

(Pause)

THE COURT: I'm signing the order.

MS. JONES: Thank you.

(Pause)

THE COURT: Mr. McMahon, yes, sir.

MR. MCMAHON: Your Honor, good afternoon.

THE COURT: Good afternoon.

MR. MCMAHON: One comment with respect to the order that I just want to note for the record. It expressly reserves the rights of our office and parties-in-interest who object to the employment and compensation of a specific ordinary course professional when they file an affidavit seeking to be retained. So notwithstanding the debtor's preview of the ordinary course professionals to come on Exhibit A, those rights are expressly reserved under the form of the order.

THE COURT: And I assume that is not agreed, necessarily, to by the debtor's, but understood that that -- that the U.S. Trustee is reserving its rights?

MS. JONES: Yes, sir.

THE COURT: Okay. Thank you. I've signed that order.

MS. JONES: Your Honor, I think that on the agenda

then, that just leaves the motion for relief of stay which we can take up after lunch.

THE COURT: Very well. All right. Let us recess until -- oh, excuse me.

MR. SPECTOR: Your Honor, Mr. Petrofsky may be on the phone still.

THE COURT: Oh, Mr. Petrofsky, are you still on, sir?

MR. PETROFSKY: Yes, I am, actually.

THE COURT: I'm trying to think of the best way to handle this from your standpoint. You can either call back in at 1:30 or I can just leave the line open for a bit.

MR. PETROFSKY: I think on that end, I'll find out from the Courtcall people, I think calling back in would work.

THE COURT: Okay. Then we will be returning at 1:30.

MR. PETROFSKY: Okay.

THE COURT: So you might call in maybe ten minutes earlier.

MR. PETROFSKY: Okay, thank you.

THE COURT: Thank you. We'll stand in recess then until 1:30. Thank you, counsel.

(Lunch recess)

THE COURT: Thank you, everyone. Please be seated. Good afternoon.

MR. LEWIS: Good afternoon, Your Honor.

THE COURT: Well, I think the next matter on the agenda is Novell's motion to life stay.

MR. LEWIS: Thank you, Your Honor. Adam Lewis again of Morrison and Foerster for Novell this time.

THE COURT: Yes, Mr. Lewis.

MR. LEWIS: Again. This is, I think, a pretty straightforward stay relief motion. There's certainly plenty of authority which we've discussed for stay relief under these circumstances. The obvious factors in favor are you have a court in Utah that's intimately familiar with the parties, the background, the underlying fact, all of which will have some bearing on the determination of the rest of the issues before that court.

Its obviously a far advanced piece of litigation. There's really no reason to have it redealt with or retried or any of those issues redecided in this court given the status of things in that court. Discovery is complete. Really all that remains is the trial. Trial briefing is done. Witnesses are done. Exhibit lists are done. People just have to show up with their witnesses for a few days in order to complete those proceedings.

There may be other things that can be done in connection with what remains to be decided short of a trial. There could be, for example, summary judgment motions on this issue or that issue that might also more streamline the outcome

and maybe even narrow what happens in the district court. Those are all possibilities and we've asked simply for sort of a blanket stay of relief to do what makes sense as any party would do were there no stay.

And so, the next question is why stay relief and why now. And the answer is that the issues that remain to be decided in the district court and also have to be decided before there can be any appeal, either side to what happens in the district court, intimately affect what the debtor's estate is, what there is to do, what the debtor could possibly propose as a plan, what the -- any proposed sale of assets could look like, what could or could not be sold especially free and clear.

All issues that, you know, when we filed the motion were obvious issues. The debtor has now made the point for us, in a sense, by filing its motion to sell where we filed our objections. That's been continued by the debtor, I guess, until the 16th.

THE COURT: Yes.

MR. LEWIS: But the fact remains that some of the very points we were making in our stay relief motion are illustrated by that sale motion. What do they have to sell? You know, what are people buying? What are they really going to pay for it? Can they sell it. Those kinds of questions. All are tied up with the question of what remains to be done in

the district court. And the sooner we're able to do that, the better off, I think, everyone will be. And --

THE COURT: Tell me how far Judge Kimball has gone in connection with the, if you will, Phase II of that Utah proceeding.

MR. LEWIS: Well, let me do this, Your Honor. Again, I'm going to perhaps defer to Mr. Jacobs who is much more intimately familiar with it. We do know there's a summary judgment decision that has decided the ownership of the copyrights.

THE COURT: Yes.

MR. LEWIS: Partial summary judgment. Its not yet appealable. Ownership of the copyrights and certain related issues. And what remains to be decided is allocation. If I can put this in a layperson's, that is a non-patent lawyer's terms.

THE COURT: Please.

MR. LEWIS: There's allocation -- that's right. We have to stick together. There's allocation of old -- of new products, so to speak, developed by the debtor that involves some old code and some new code and who owns what. And therefore, proceeds as well go to whom from those. There's the whole constructive trust issue that remains to be decided although Judge Kimball has found that the conditions for a constructive trust exists. And I can read the Court -- this is

on page 97 on his opinion which we've attached as an exhibit.

THE COURT: Yes.

MR. LEWIS: And what Judge Kimball says, this is beginning in the second full paragraph, "To prove a constructive trust cause of action, Novell must demonstrate the 'existence of a race (some property or some interest in property), the plaintiff's right to that race and the defendant's gain of the race by fraud, accident, mistake, undue influence or other wrongful conduct.'" And there's a citation to the Pegg case.

The court then goes on to say in the last most paragraph on that page, "In this case, the res is the XVRS -- SVRX royalties to which Novell retains all right, title and interest. This res is traceable to the monies received from Sun and Microsoft agreements. SCO's conduct also amounts to a breach of fiduciary duty convergent, unjust enrichment and breach of expressed contract, all of which are sufficient wrongful conduct to impose a constructive trust."

So what the judge, Judge Kimball has said plainly in his opinion, which I take to be law of good case, is that the criteria for the imposition of a constructive trust have been proven in the summary judgment motion. The only remaining issue is how much, that is the tracing, of the funds. But --

THE COURT: Well, the reason I asked the question I did --

MR. LEWIS: Yes.

THE COURT: -- and I'm not looking to interrupt to bring Mr. Jacobs up just yet because I want you to be able to complete your argument first, but what you've discussed so far is the significant impact of the remaining issues to be resolved, their impact upon the bankruptcy case.

MR. LEWIS: Yes, Your Honor.

THE COURT: So the question that obviously has to come to my mind is should the case from here forward proceed in Utah before Judge Kimball? Or should it be -- or should these issues be tried before me. And one of the issues I have, of course -- and particularly because of this significance of a constructive trust to the debtor's estate and its creditors.

So the question I've got is how much, if you will, ahead in the work is Judge Kimball than I might be?

MR. LEWIS: Well, Your Honor --

THE COURT: And when I say that I might be, at the moment, you know, I'm still at the beginning. But I don't know how far Judge Kimball has advanced on these issues.

MR. LEWIS: A fair question, Your Honor, and we did try to address it in the brief --

THE COURT: Yes.

MR. LEWIS: -- but I'll try to address it now as well. And I think the short answer is very far along. The passage I've just read you, just talking about the constructive

trust issue, remember there are other issues as well. The allocation issue of code and therefore of revenues from other licenses, those are separate issues from the constructive trust issue. But also those issues are underlaned (phonetic) by his findings about who owns the code and he's going to know what the code is all about. He's going to be the one who's in a position, therefore, to try and determine which pat of the code in these new licenses is really old code and which part is code that they were authorized to develop and did develop.

So he's got the background for that already because of his decision -- the summary judgment decision he's already made. This Court would have to retrace all of those steps. I'm not sure what the purpose would be or whether that would really be appropriate because its been done. And its been done and has been fully and fairly litigated. And what we'd really be talking about here is essentially a second bite at the apple.

And I understand the interest in protecting debtor's estates, but even that interest, it seems to me, has some limitations in terms of fairness and a rational process that respects prior litigation which, after all, it's the debtor that brought this litigation. We didn't. And the parties may cross summary judgment motions so the debtor hoped to get a result of which it would not be complaining had it not lost so far, wouldn't be asking this Court to decide the rest of the

issues. It'd be happy to have it stay in Utah.

That shouldn't be the reason why this Court does or does not grant stay relief. It really comes down to forum shopping and that's just not appropriate.

Let's talk about the constructive trust for a moment. The passage I just read you, Your Honor, indicates that Judge Kimball has made findings on the factual predicates for everything about a constructive trust except applying the lowest intermediate balance rule to decide what the exact dollars are.

THE COURT: Yes.

MR. LEWIS: Now, the oldest intermediate balance rule is frequently a -- pretty much a mechanical thing. I know it can get a little tricky now and again. But even there, there would be some questions about what money is coming from which of the assets and some tracing that would presupposed some background in the proceedings. But in terms of them asking this Court to retry the constructive trust issue, which is really what the debtor is asking this Court to do, that it seems to me to be as wholly inappropriate.

He's already done that. He's already found that there's a res. He's found that the res is traceable to monies from the two -- the Microsoft and Sun licenses. He's found that. And he's found that the -- its traceable as a result of a breach of fiduciary duty, conversion, unjust enrichment and

breach of expressed contract. He's made these factual findings.

Why would this Court want to, or should it, reinvent that wheel that's been fully and fairly litigated before Judge Kimball? Now, the debtor may disagree with that result. Obviously does. And will, at someday, I assume, proceed with an appeal if we get that far. But that's a different (indiscernible) than this Court, exceeding to the debtor's request to allow you to, in effect, second guess what Judge Kimball did.

Because whether this affects the bankruptcy estate or not, the test for a constructive trust is the same. It doesn't change. Judge Kimball's applied that test and he's found that its satisfied. And it shouldn't matter, in theory, it shouldn't matter which judge applies the test. It should be applied in the same way at the same -- by any judge because it's the same test. There's no bankruptcy aura to the tests if this Court applies it. At least, I'm aware of -- unaware of any law that says that.

And so, the bottom line here is, Your Honor, this is far advanced. Judge Kimball has determined a whole lot, both in making rulings, but also in the process of making those rulings, he knows an awful lot about this case and the parties and the facts and the background.

We've had proceedings that have lasted four years. I

can't, of course, tell the Court it would take four years to do it all over again. But neither are we talking, Your Honor, about some little quick, mini-motion that this Court would preside over to decide whatever is left to be decided in that case, even just the constructive judgments. And there's no reason to redo that other than the debtor doesn't like the outcome. That's what appeals are for, Your Honor, not bankruptcies.

And so, I think in that sense, this is a case that should proceed as expeditiously as Judge Kimball can do so with stay relief here to resolve the rest of the issues by whatever means are appropriate, whether it's the further trial, whether it's partial summary adjudication on certain issues.

Maybe the parties will settle if stay relief is granted, I don't know. That might be an incentive to them to do that, too. But all of that remains to be seen. That would be the usual outcome following the granting of stay relief to complete litigation in another forum that's specialized litigation. We're talking patents here. That is before a judge that is wholly familiar, that's very far advanced with very little left to do. Literally very little left to do unless you're going to do it all over again.

And so, that would be the reasons for granting stay relief. And as I say, the motion that the debtor has filed with respect to its sale, its proposed sale of certain assets,

only illustrates the point. Even if the debtor withdraws that motion or the debtor revises the motion, the points are still the same. What has the debtor got to sell? What have people got to buy? What are over-bidders going to be looking at? You know, can the debtor sell property it doesn't even own? The case law, I think, on that is pretty darn clear that it can't. And until the debtor knows what it owns, it certainly can't sell that kind of stuff.

And in terms of a distraction from the debtor's current efforts, first of all, once again, I want to emphasize, there's not that much left to do if we do it in Judge Kimball's court because most of its been done and we won't be starting all over again.

You're talking about a five-day trial. A couple additional days, maybe, for preparation of a witness here and there, but not everybody's sitting around twiddling his thumbs in some hotel room for, you know, two weeks waiting from this trial to take place and waiting for his ten minutes with -- to be prepared for it. Again, Mr. Jacobs, I think, can probably speak more, and other counsel I'm sure will, to exactly what we can envision here.

THE COURT: And the timing is an obvious concern since --

MR. LEWIS: The timing is we don't know the answer on unfortunately, other than we won't know the answer until we're

free to find out the answer. And the longer it takes us to get this teed up, the further out the trial will be. Whatever that delay is going to be.

If we have stay relief now to go back to Judge Kimball and see what we can do about getting these issues resolved, I suppose if something developed that turned out to be a real problem for the debtor in terms of distractions, one, we might be able to make an arrangement with Judge Kimball to deal with that voluntarily; or two, if the debtor continues to be disaffected, it could come back here and ask for further relief.

But to speculate about the effect of this litigation on the debtor's management when we don't even really have anything in front of us yet is to let the tail wag the dog on the stay relief motion. That is the tail. This has to be decided. These issues have to be decided. I don't think anybody's arguing against that.

And more importantly here, these issues have to be decided because the estate needs to know and its creditors need to know in order to assess whatever the estate's planning to do what there is. Who owns what. What future income might be. To assess a sale price, you'd have to know those kinds of things or at least have some pretty good idea on them.

At some point, if there's a plan, we need to know who much money is in the till. That includes what the debtor may

be able to generate from the sale, but it also includes how much of the money is in that constructive trust. Those issues have to be decided, too. And sooner than later. This is not just some peripheral claim that some creditor really would like to have liquidated.

This is the claim of a party who's proceedings are, in that sense, essential to this case. Its not just another creditor. And for all of those reasons we think stay relief at this juncture so we can go back to Judge Kimball, see what we can do, do it with the least interference with everybody's interests and if an issue arises with the debtor, genuinely can make a case to this Court that a specific proceeding is a real problem for the debtor given exactly what its doing at that point, then the debtor can come back to this Court and ask for some further relief if they can't work something out with us and Judge Kimball.

Any other questions, Your Honor?

THE COURT: I don't think so. I would like to hear from Mr. Jacobs.

MR. LEWIS: Please, thank you, Your Honor.

THE COURT: Thank you, Mr. Lewis. Because what I'm really interested in is, Mr. Jacobs, is the timing and a sense of how complicated the issues are that remain to be tried or at least resolved by a court even on the summary judgment.

MR. JACOBS: I think that the most accurate answer on

your latter question, Your Honor, is those of us who have been living with the case thing that now its pretty simple because we have worked through many of these issues. The hardest issues were addressed by Judge Kimball's summary judgment ruling. And I think what you're probably thinking is, okay, if I take the summary judgment ruling and I pick up from there, what would I really have to do.

THE COURT: Correct.

MR. JACOBS: And the -- so it may be helpful to know that Judge Kimball decided 11 motions after the summary judgment ruling. One I think was a motion for reconsideration, the SCO file.

THE COURT: Yes.

MR. JACOBS: So that's already -- that presumably would be stable. There were some seven in limine motions and then three other motions I just got a tally from my office. So there was -- so there are a lot of trial-related motions that Judge Kimball decided that have the affect of clarifying for the parties what the evidentiary issues were going to be, what the expert testimony issues would be limited to. And as the trial was approaching, it was getting clearer and clearer exactly what we were going to do at that trial. The trial was getting shorter and shorter.

In fact, I think we were all thinking four days at the most by the time the trial was ready to go. The exact

sequence was we were going to start the trial on Monday and SCO went into bankruptcy on Friday. So we were all gathered for the trial to begin. That's how far along we were.

THE COURT: Okay.

MR. JACOBS: And it was a bench trial. So it was not -- we had -- he had -- one of the motions he decided after the summary judgment ruling is that our claims are fundamentally equitable and not legal. There was some shaping of the pleadings that lead to that ruling.

And so the two big issues for trial, and I think this is important, Your Honor, to understand where the constructive trust issue fits. The two big issues for trial were, one, a question whether SCO had the authority to enter into an agreement with Sun and Microsoft that led to SCO's collection of a lot of money that we claim is ours. Its an authority issue.

And then the second issue is having entered into those license agreements, having collected a lot of money, and then having entered into about a million dollars worth of what we might call miscellaneous license agreements, how much of that money should be apportioned to Novell under Judge Kimball's view of the way the asset purchase agreement works. So it was an apportionment trial which was going to decide the, if you will, the gross amount of Novell's claim from your vantage point as a creditor in the bankruptcy.

Then there was going to have to be subsequent phase in which we would address the exact amount of the constructive trust. We anticipated doing that on motion. The two are severable in that sense. What Judge Kimball would be deciding is the gross amounts, if we went back to him for trial. And then we would be going back to him and saying, okay, apply the lowest intermediate balance rule and figure out how much is in the bank account that's traceable and that's our constructive trust. That is, we think, fairly mechanical.

So that's where we were. That's where we would be if you lifted the stay. If your -- if the focus -- the focus of their opposition is the constructive trust.

THE COURT: Yes.

MR. JACOBS: And which is sort of -- which is interesting because they really didn't resist the question of whether we should be back to him for an apportionment trial or a trial, or perhaps we're thinking now a motion for summary judgment on this authority question. The focus was the constructive trust.

You could lift the stay for an apportionment trial and to decide that authority question. And then we can come back to you and we can decide what to do about the construction trust after that's done.

THE COURT: Thank you. That was helpful, Mr. Jacobs. I appreciated it. Mr. Lewis, have you completed your

presentation?

MR. LEWIS: I did, Your Honor, thank you.

THE COURT: All right. Thank you. Mr. Spector.

MR. SPECTOR: Your Honor, I've been listening now for 23 minutes, two different lawyers, two able lawyers, and I haven't yet heard how Novell is being harmed by allowing the debtor what every other debtor gets in Chapter 11, a breathing spell from litigation so it can do its Chapter 11. And I think that's probably because they can't show that they are in harm by waiting a few more months.

They keep telling us, let's go. This is for your own interest. This is for your own good. Don't you want to know what you have to sell? Don't you want to know what your plan is going to look like? Thanks, but we don't need their help. We have our own ideas of how we're going to come out of bankruptcy and how we're going to file the plan and how we're going to sell certain assets and do other things of a reorganization nature that will help us get creditors paid. And you know what? Maybe, if we win the litigation, get stockholders paid because they're in this game, too.

Let me plainly state what we believe the status of the litigation in Utah is. And you know, I don't quibble with able counsel from Novell. They really have it pretty close to what we would agree.

In the court's summary judgment ruling, it delivered

to what the Novell reply brief euphemistically called the software community.

THE COURT: Yes.

MR. SPECTOR: The -- what it wanted to do, the big issue being who owns the Unix and Unixware copyrights. The court decided that question. It's a big question.

THE COURT: Yes.

MR. SPECTOR: It's the question that the software community thinks there's a public interest in, okay. What they don't think there's a -- and again, that's my argument. I'll wait for my argument. Point two, it also ruled that the requisite wrongful act to set up a constructive trust existed in the form of SCO's breach of its contract. The Novell agreement was a contract between Novell and Santa Crux Operations which is a predecessor for SCO, of SCO. And it was a very difficult contract.

I think -- and, Your Honor, we are not trying to retry the case, but to speak fairly, anybody looking at that contract would think that Santa Crux operations bought the copyrights from Novell. There's a body of evidence that would suggest that it did. The judge ruled otherwise. That's the law of the case. We have to live with that until and unless its reversed on appeal.

Nevertheless, based on years of experience and never having been told otherwise, SCO understood that it had the

rights to do what it did, sold certain rights to Sun Microsystems and Microsoft Corporation. Those funds, it turns out in retrospect, were received because apparently SCO got it wrong. They didn't have the rights that Novell claims that it owned. And therefore, that was the wrongful act.

Now, the judge, in his opinion, called it conversion, called it breach of fiduciary duty, called it mopary (phonetic). Whatever, it was bad enough to be the wrongful act it has to find, the court has to find in order to even set up an argument for constructive trust.

But let us be clear. On the same page that Mr. Lewis asked you to look at, page 97, the court stated, "The Court denies SCO's motion for summary judgment" --

THE COURT: Yes.

MR. SPECTOR: Pardon me. The Court denied both Novell's and SCO's motions regarding the constructive trust issue. So Novell's motion for the imposition of a constructive trust was denied. So please, don't tell me that the judge set up a constructive trust. He didn't. He was asked to and didn't.

That doesn't mean that the court didn't already make certain findings of fact, as Mr. Lewis put it or Mr. Jacobs put it, I forget who, with regard to the predicates coming up with that.

THE COURT: Correct.

MR. SPECTOR: And we don't agree with them of course.

THE COURT: Right.

MR. SPECTOR: But we agree that if Your Honor would -- were to take any part of this case and move on from there, you would have to start from those findings of fact. We don't ask you to reexamine them or second guess them.

The court also said with respect to the constructive trust issue that the res is, as stated by counsel, the royalties received by SCO from the Sun Microsystems and Microsoft Corporation agreements. And perhaps the million dollars worth of miscellaneous sales as well.

One of the reasons it did not grant summary judgment on the constructive trust issue in favor of Novell, and you know, if you've read that opinion --

THE COURT: I have.

MR. SPECTOR: -- there's precious little that we can take out of that and see if it was something that we could live with. The one thing that we did get there is the court denied the constructive trust summary judgment motion by Novell. One of the reasons why is the court says, well, there's a res but I don't know what size of a res.

What Mr. Jacobs didn't fully explain and I apologize because I'm probably the last one that ought to be trying this, but in what SCO licensed to Sun Microsystems and Microsoft Corporation, and I may be using that term "licensed" broadly

and I hope I have license to do so, is some of that product really was, and everybody, I think, agrees, some of that was SCO's product. And because this is in code, some of it may be attributable to Novell.

THE COURT: Right.

MR. SPECTOR: So there's a portion of it, we'll call the questioned royalties, that the judge will have to determine goes to Novell and maybe some of it stays with SCO. So the court couldn't, didn't grapple in the summary judgment with that allocation or apportionment as they put it.

THE COURT: Correct.

MR. SPECTOR: Okay. So the court denied summary judgment. And for reasons the court probably didn't know about, but had it known, it probably would have said, and the second reason why is those funds that SCO got in 2003 I'm sure were long since spent. The company was losing money forever, right? Except maybe the year 2003 when it got that money. But that money's gone. The res is gone.

Of course, that money went -- it was money. It went into a bank account. And since that bank account received those funds, new monies from customer sales and a $40 million recapitalization occurred. So maybe some of those funds could still be there using the lowest intermediate balance test and the court didn't know because it really wasn't teed up, it wasn't really addressed. There really wasn't any discover or

argument on the issue of how the lowest intermediate balance test would apply in this case. And so that would be another reason, if he knew about it, that Judge Kimball would have said, well, I can't grant summary judgment here.

The trial was set to being on September 14th, was, as stated by Novell in its motion, intended to decide nothing more than how much of the royalties received by SCO are royalties to which Novell was entitled. In Novell's September 14th trial brief to the court, prepping the court on how we perceive this case should be handled from hereon, they said, in essence, the tracing issue is a discreet issue and we should cover it after we finish the five-day trial on the apportionment and the authority issues that Mr. Jacobs just talked to us about. That was their suggestion and that's what would have happened because that wasn't teed up for the five-day trial.

So Your Honor, this gets me to the answer that you were asking before. What is it for this Court to do if the Court were inclined to do anything with regard to this case? Well, we would say, you take everything that precedes, we grit our teeth and bear it, and then you say, okay, there's going to be a constructive trust in the amount of whatever its been determined elsewhere, whatever that number is. And here's how much of that is now being held by SCO. And that's how much, through the lowest intermediate balance test, that's how much would be potentially set asideable, if that were a word, for

Novell.

This Court could do that. It doesn't need to reinvent the wheel. It doesn't have to pour through 1500 pages of summary judgment briefing or anything else. It's a simply -- its not simply at all. A statement of the issue is simple, but the actual going through it is not simple at all. It is evidence specific. It's difficult because the funds were originally placed four years ago, going on five years ago, I guess. So it would take some time. But it would take time wherever it is. And it's not even proposed to be part of the five-day trial anyway.

So, that's where the status, I believe, of the Novell litigations in Utah are all about right now. And as I said before, we don't contest it, I've said it enough times.

THE COURT: Now, you mentioned that I would essentially take the allocation determined -- is that how you stated it? Determined elsewhere.

MR. SPECTOR: Yeah, we're not asking you to do that, Your Honor.

THE COURT: Okay.

MR. SPECTOR: I mean, we're not being ridiculous. They're right. Its simply, we don't fight everything. They're right. We wouldn't ask this of Your Honor, to go and try to disassemble the string of code and then determine how much of that was Novell's source and how much of that was SCO's. We

wouldn't put you through that. So, if there's going to be a trail --

THE COURT: But it's a timing issue is what you're basically saying.

MR. SPECTOR: Well, that's one thing. If -- I've already discussed why -- well, I haven't discussed wholly why the constructive trust issue is important that it be separated out even though Novell already did separate it out. But we think it ought to be separated out and tried here. But the timing issue is the other issue.

I'll go to that first since Your Honor raised it. Novell has multiply stated that SCO is trying to avoid certainty or finality and they're the engines of finality and certainty. If you'll only let us get to Judge Kimball and we can have this five-day trial, it would be wonderful. We would have the finality that's necessary and then the debtor would know.

Well, excuse me, the debtor would then know? All it would know is some portion of those evil questioned royalties really do belong to Novell. A dollar amount would be established. It's a liquidation of a claim, that's what it is. Because the judge already made the major determination of who owns that code, that software. Who owns the copyrights for that, I should say.

That's the major issue in the case. That's the issue

of public interest. That's the issue. If they want finality, they should have stipulated to a 54(b) certification and we would be already arguing our appeals to the Tenth Circuit. If they were really interested in finality and certainty, we wouldn't heard Mr. Jacobs this morning and say, well, you know, really, the way it ought to go is we ought to go back to Switzerland, try the arbitration, then come back to Utah, fit that result into the Utah litigation. Then -- of course, we would have already had a five-day trial on allocation. Then there are other issues that have to be decided based on what happened in Switzerland. And then, we can have our appeal go up.

If we go down that pathway, Judge, we don't get certainty in our lifetime, or we'll be a lot older. Why not do it the way bankruptcy courts and debtor's-in-possession do it in Delaware all the time and New York all the time and lots of other places all the time.

We know this litigation. We proceed in Chapter 11 which is a breathing spell from litigation. We come up with a plan that will resolve if not the litigation in a way that the opponents would be satisfied, at least we say, here's the alternative, Judge. If the company, the debtor, wins this litigation, this is what we're going to do with the proceeds. If we lose the litigation, stockholders are going to most likely be wiped out and what remains are going to go to Novell

if it gets a money judgment, which I was told, in order to get -- and this is an side -- I was told that in order to get the waiver of the jury trial that was -- is a big issue recently, in September, they waived, Novell waived their money damages claim. And I'll stand corrected if counsel wants to correct me on that. Is that incorrect?

MR. JACOBS: That is incorrect.

MR. SPECTOR: Okay. Then they would have a claim in the estate if they should win. I just wanted to clarify that.

So if we -- if the plan was to, say, we'll look at the alternatives. If we lose the litigation, Novell wins. They'll have a claim and here's how we'll deal with their claim as well as everybody else's, okay. That isn't unusual. Northwest just pulled a plan like that. There's -- our firm represents a creditor with a very, very large antitrust claim and that's going to go to trial post-confirmation in Detroit. There are other creditors with large claims like that. They're going to go to trial post-confirmation in wherever. One of them also is in Detroit. That Your Honor I'm sure knows, that that is not terribly unusual.

We propose that we should be given the same opportunity and not have this case chopped up into little trials all over the world. Switzerland, Utah, then come back here and try to fit that into a plan.

When would we be fitting those results into the plan?

The day after Judge Kimball rules on that five-day trial? Well, that's not final. You know darn well, we'd want to appeal that if we can. It may be that Judge Kimball's going to agree with Novell, oh, I'm sorry, we don't have the result of the SUSE arbitration in Switzerland. I can't send this up for appeal yet.

We'd be here forever waiting for that day. We don't think creditors, stockholders or the Court should be held hostage to that type of trial schedule. We should proceed with our Chapter 11 and we shouldn't be held up by that type of litigation.

THE COURT: But Novell says you're about to sell our property.

MR. SPECTOR: Well, you know, its very difficult when you have to deal with generalities because sometimes exceptions and specifics overrule them. You know, he says that -- counsel stated that you can't -- its well-known, the law's plain, you can't sell what you don't own.

THE COURT: Right.

MR. SPECTOR: Sometimes that's true. I know a lot of Chapter 7 trustees who sold causes of action of -- ridiculous causes of action to people. There's really nothing there. I've seen quit claim deeds and personality quit claim deeds type in realty. You buy whatever it is we have. We have with us today some folks that have some interest in this issue. Mr.

Scott McNutt, counsel from San Francisco representing York Capital Management.

THE COURT: Hello, Mr. McNutt.

MR. SPECTOR: He flew in because he saw the kind of bad-mouthing his client received on the backhand meant for us and would be happy to address the Court on that particular issue if the Court were willing to listen to more of that.

THE COURT: Yes, I would be. Yes, thank you.

MR. SPECTOR: Oh, I'm sorry.

THE COURT: Mr. Rosner.

MR. ROSNER: For the record, Fred Rosner, Duane Morris.

THE COURT: Yes.

MR. ROSNER: I'd just rise to introduce Mr. McNutt of McNutt and Litteneker who's admission pro hoc vitae, we'll file the appropriate papers.

THE COURT: That's fine, Mr. Rosner.

MR. ROSNER: Thank you.

THE COURT: Thank you, sir. Mr. McNutt, welcome.

MR. MCNUTT: (Attorney not near microphone) Thank you, Your Honor. I represent York Capital. York Capital is the leading investment fund. It has many, many millions of dollars in assets. York's Private Equity Fund specializes in turnarounds in general and software businesses in particular. York had devoted substantial time and resources for achieving a

transaction along the lines of the term sheet attached as an exhibit in the sales procedure motion that's just been continued from this date to the 16th.

Since 2005, York has followed SCO's struggles and has dedicated a team of investment professionals with deep software experience to analyze the value in the SCO business, the SCO/Unix business, the (indiscernible) business and to try to take apart and put back together the different, many different moving pieces in a high technology, software kind of business with 35 years of history, maybe more since this Unix product was conceived in the early 60s.

Essential to achieving York's objective to acquire Unix is the assembly of the experienced management team, York has committed substantial resources, identified management teams. That team has extensively participated in due diligence and would be spread equal and prepared to take over the Unix business if we are the successful bidder at the auction sale of the assets.

THE COURT: Okay. Thank you. Thank you, Mr. McNutt.

MR. SPECTOR: Thank you, Your Honor. And York Capital Management is one. There are others and we're going to get into that when we get to the bid procedures motion.

THE COURT: Of course.

MR. SPECTOR: The only thing I want to say is there's been an extreme amount of due diligence. This case, the Novell

case is a matter of wide public -- I don't want to say interest, but at least, its like notoriety we'll say. And a lot of people in the so-called software community have been following it for years. And a lot of the other bidders out there know that there's a terrible decision out of Utah in the case and they didn't -- it didn't stop them from coming and trying to purchase the assets. You'll hear all the details of that when that comes before you.

So can a debtor sell what it doesn't own? I think we'll leave that to the marketplace. Let the buyers come in and say, you know what, Judge, whatever it is they own, we'll take a chance and we'll pay a few million dollars on that change. So that -- and we'll get to that issue also.

But if the question was, Judge, what do we have to get to make it marketable to people like York Capital Management? Do we have to get the imprimatur of -- and the reversal of Judge Kimball's ruling? If we need to do that before we can sell it, well, we're talking a long way.

Now, I may have misspoken when I said after the five-day trial we might have to wait for SUSE's arbitration. That's just by way of argument about Novell's position because that's the position they espoused this morning. Judge Kimball, I am told, actually has stated, at least he has officially ruled in an order, he basically stated, I'm told, that when our 54(b) motion was denied and the judge sustained their objection to

that, he said, well, when the five-day trial is over, we may think otherwise.

So it may be possible that if the stay were lifted or if, after the plan is confirmed, we would have a trial in the five-day -- you know, the allocation issue, that apportionment issue. Perhaps the judge will, indeed, give us a 54(b) certification to go up on appeal at that point.

But right now, where we are with the real reorganization engines going, with 363, 4 and 5 relief and a plan behind it, all coming to the fore in the next month or so, we don't want to be distracted. And most debtors-in-possession wouldn't be forced to distracted to go back to the litigation hell-hole they came from. We do want a resolution. We have to have a resolution. But we don't think this is the time for that resolution.

The constructive trust issue argument, I spoke about earlier, briefly. But I have to reiterate that the issue is one of the exclusive jurisdiction, not concurrent jurisdiction. But the bankruptcy court has exclusive jurisdiction over property of the estate under 28 USC Section 1334. Implicit in that is the determination whether something is or is not property of the estate.

We are not asking Your Honor to do the apportionment issue. We're not asking Your Honor to do a lot of the technical question issues that will be in the Utah case. But

we are asking this Court, if there's going to be an issue about the constructive trust tracing, that this court, which is the court you would expect to be the one to do it.

So who is it that's asking for or is seeking forum shopping? Not us. We never said that the apportionment issue should come here and you should try the case over again. We never said that. Who's asking for forum shopping is Novell asking this Court to advocate its role as the arbiter of what is and is not property of the estate and run off to Utah and have the judge who hasn't begun to focus on the issue.

In the 102 page decision, there was one word, it was this "traceable to", but it was not in the context of tracing. On page 97, I think he says the bad act was traceable to the royalties that were recovered. That isn't the same issue of how do you trace it to what's in the hands of SCO at the present time. It was never addressed.

I understand that there hasn't really been any focus by the parties in the discovery process to do any of the work necessary to do the tracing. And so I'll say it again, that is an issue for this Court. Judge Kimball is no farther ahead than this Court is. This Court has greater expertise, I would surmise, in doing the exercise as do most bankruptcy courts because the issue comes up in a lot of context in bankruptcy. And we see no good reason why that should go off to Utah for trial.

Now, they could be arguing now, well, we never really said that. We just want the apportionment. But they said both ways. Almost embarrassed to say they want the constructive trust tracing issue to be done in Utah because in the motion they never say it. We had to clarify that.

THE COURT: Yes.

MR. SPECTOR: They say in footnotes and other places, well, we want -- and all other issues, too. Well, all other issues will come up after the five-day trial because they said, it's a discreet issue, after the apportionment is done, then we can consider the tracing issue. Well, there are other issues as well. They want all the issues, including the tracing issue, tried in Utah. They're seeking the forum shopping.

(Pause)

MR. SPECTOR: I may have covered this before, but Novell is trying to confuse the Court, I don't think it got away with it, on what is in the public interest. I think I may have covered this before. The public interest was in deciding who owned the software or the copyrights.

THE COURT: Correct.

MR. SPECTOR: Not in how much of a royalty claim they can monetize.

THE COURT: That's right.

MR. SPECTOR: SCO and its outside counsel firmly believe that the district court ruling is seriously wrong. Our

opinion, of course, doesn't carry a lot of water. It's the opinion of the Tenth Circuit that matters.

This litigation is an enormous asset of the estate. Although SCO believes that the Novell ruling leaves various causes of action against IBM intact, IBM and Novell have argued, no, it basically guts our case against IBM. You haven't heard anything about IBM yet.

THE COURT: No.

MR. SPECTOR: But its another major litigation. And I'm sure that given one outcome of today's ruling, we may be seeing them a week later. The IBM litigation could bring hundreds of millions of dollars to the estate for creditors and for stockholders. If -- what Novell and IBM, therefore, jointly are trying to do in all -- in our estimation, it should be plain, is to seek the demise of SCO before they can get their day in court, the Tenth Circuit. And after Tenth Circuit, remand to -- for a new trial or a trial.

We think that's the end game. We think that they don't want this case to ever see a real trial with a real -- well, maybe it won't be a jury. Maybe it will be reversed on appeal and there will be a jury. That may be one of the issues. But that's really the game plan here is to kill the case anyway they can because then we won't ever get our rights and the benefits for the stockholders and creditors before a court.

So we think the Court should deny the motion for these reasons and the reasons stated in our response.

THE COURT: Thank you, Mr. Spector. Mr. Lewis.

MR. LEWIS: Thank you, Your Honor. There's a lot that's just been said that just has no basis in anything that anybody has said. The alleged scheme between IBM and Novell is pure fantasy. If IBM wanted to be here, they would be here today.

And further more, by asking for stay relief to litigate the case, we're not trying to kill the case before it can be litigated. We're trying to get the case litigated. I mean, that's just nonsense. Its foolishness.

We're glad to hear that SCO has changed what its position is. We've just heard that SCO, oh, no, we just want to try the tracing issue. That's not what SCO said in its brief. And let me read you, Your Honor, this is from page 19 of their brief. "This Court therefore should make" -- "This Court should, therefore, make any determination as to what or what is not property of the estate and if a constructive trust can be imposed and in what amount."

They were asking this Court to redo the constructive trust issue. But evidently they've abandoned that now and that's fine because we don't think the Court should and they evidently agree. But let's not kid ourselves about what they were arguing. They were arguing this Court should do that

because they think of this Court as a more favorable forum. And that is the point I want to make because it also reflects on the motives for a lot of their arguments. They think this Court is a forum.

Its not a question of what's a more favorable forum. It's a question of who is familiar with this case and what studying up would be need -- to do in order to do what remains to be done. If the Court wants to do the tracing issue, as such, once everything else is done, if its that important, I guess that's what will happen. We don't see why Judge Kimball shouldn't just do that, too.

Debtor said its pretty much mechanical. I think I agree. I think I said that. There can be complications. I think we can trust Judge Kimball to do that notwithstanding the debtor's disagreement with Judge Kimball's rulings. Not surprising, they lost and lost badly. But I understand that.

But the fact remains, most of what remains to be done really should be done by the judge who is familiar with the case and there's no reason not to let him just do the mechanical tracing thing.

If you look at the case law in the lowest intermediate balance, there is -- there are, of course, cases in bankruptcy court. But there are also just scads of cases in the district courts and in other courts. And there are articles all over the place on the lowest intermediate balance.

Normally, its not rocket science. It is what it is. There can be tricky questions. Judges know those tricky questions do come up occasionally and have to make some decisions. But just because the debtor lost in front of Judge Kimball has no reason to say to this Court, well, we should really have you do that instead.

In term to the harm to us, remember, too, there is also the question of what's happening to the money in the meantime. We've just heard counsel say, well, gee, there's -- we don't think there's anything left. Well, I wonder how that happened, Your Honor. And if the issue of a constructive trust gets delayed and they claim it's a million dollars or less and we claim its more, what's going to happen when that money isn't there at the end. Where's it going to go? Are we going to hear more tracing arguments? Well, we had a million dollars when we filed this case, Your Honor, but you know, we successfully resisted stay relief. We spent all that money in the meantime. We've got lots more money in from other things. We got the sale money. And all that money's gone. All the rest of it, whatever was there.

I don't want to be hearing that when the time comes. Lets get the issue decided now while the bank account is discernible. And what we -- and we know what's in it. And we can -- don't add another six or eight months or a year to the tracing problem.

So, in terms of the harm -- and then the public harm, yes, the major issue about who owns the copyright has been decided. But there are other public interest issues like how much of the other code which somebody might choose to try to license belongs to whom? Some of those licenses from SCO to someone else where the allocation issue, the apportionment issue was still alive, what are those people going to do in the meantime about trying to sublicense or relicense or defend themselves. There are more interests here at stake than simply the estate's interest.

Now, the debtor says, well, gee, we don't need anybody to tell us how to run our case. Your Honor, I submit that may not be true in general and probably is not true in this case. If you look at the motion that was filed for sale, in my opinion, it was an ill-advised motion. Maybe there's all this activity behind it that we haven't been told about until we heard today that there allegedly is. Why wouldn't you include that? This is a motion that was filed out of the clear blue by a debtor that said its main interest was in coming out at the other end as an operating company. That's not where we're going apparently and we're talking about sale that's basically going to set the course of this case.

Now, maybe the debtor wants to retain control over who it gets to negotiate with and so on. But other parties-in-interest, and we're not the only ones, might like to know more

about what's going on, might like to have a more responsible process, might want to know what else there is in the estate and what can be sold.

York has gotten up here today and said, we've looked at this and we're comfortable buying it. We don't know what other parties feel about it. Maybe York's the only one that thinks that way, but other creditors might say we'd really like to have some further exposure here on a reasonable basis, not on a short notice basis. I don't want to argue the sale motion here, but the point is, in terms of how this case is conducted and whether there should some additional checks on that and whether people might want to have some knowledge about the outcome of this litigation, that is for today. And my points are really directed at that.

Even the York comments, we're told they've been looking at this for a long time, they tell us. But they haven't even been able to reach an asset purchase agreement which we were told was going to be available for the 6th in their motion and apparently, may or may not be available by the 16th. We'll see about that when the time comes.

So there are other larger interests that I think this Court ought to take into consideration when deciding this stay relief motion, interests that might like to see something more definitive develop with respect to the litigation and what its outcome will be and what's going to be in the till before they

decide on whether to approve a sale. Or decide what position to take on a proposed sale.

And that's why there's a larger public interest in this as well, as well as the interest of other parties in what they have that they can license or sublicense. Until those apportionment issues are decided, they're not in a -- they're holding up not only their own boat, they're holding up a lot of boats. And the public interest, it seems to me weighs on the side of opening up the locks and letting that water flow so that we know where we stand.

And if some of this can be done by summary judgment, that won't be all that distracting. We've all prepared summary judgment motions and we harass our clients to read a draft and we harass our clients to look at draft declarations if we need them. But that isn't having people sitting around, twiddling their thumbs, doing nothing at all. And as Mr. Jacobs said, they were literally ready to go. We have four or five days. And we're probably not talking about four or five days tomorrow. I'm sure Judge Kimball's not going to crook his finger and wag it at us and say, you all come on in, we'll try this tomorrow.

But if we don't get stay relief today, we're just going to be that much further down the road and I, again, I submit, Your Honor, give a stay relief today. Let's get these issues tried. There's no secret about our wanting to do the

tracing in the district court as well. If the Court wants to do that, that's fine. We're not concealing that as the debtor has somewhat disingenuously suggested in its argument. We've always said that openly, that we want to do whatever it takes to finish that litigation. That would include that.

And if that problem develops, let us come back before this Court and deal with that problem. But if we don't at least open the flood gates, then we'll be having these arguments and having to deal with all those problems -- these problems in six months or a year or two years. Thank you, Your Honor.

THE COURT: Thank you, Mr. Lewis.

MR. SPECTOR: You know, sometimes when you're in litigation, you wind up saying things and you say, oh, gee, did I really say that then, I didn't mean it. And Novell previously told Judge Kimball that he ought to grant an immediate injunction to freeze those funds because you know what happens if they go into bankruptcy, we'll never be able to get them because there's no right to them there.

They now say, and they're probably right, they overstated their case at that point because there is relief in the bankruptcy court in that case. However, its putting the cart before the horse to say its their money and therefore, the Court should immediately lift the stay so they can run off and get their money. It doesn't work that way either.

You know, lifting the stay is a serious matter. I know I don't -- I don't want to sound pedantic. The Court knows that lifting the stay is a serious matter.

THE COURT: Certainly.

MR. SPECTOR: We've been in bankruptcy six weeks, Your Honor, six weeks. This is a serious matter. We knew it was coming. On the first day they told us it was coming and we were gearing up for it frankly from that first day when they put us on notice.

But we were doing other things. We were doing the business-type things that you want a debtor to do. We were out there -- when we walked out of court, we got phone calls from people saying let's do business. And one of them is now in court through counsel. There are others that thought there was some promise in this company. We stated we owe it to our customers that there be a stable business to continue running the Novell operating system.

One of the things that actuated the board of directors to choose York, and it could have chosen others as well, is that they have a confidence this is a company of heft and they will be responsible to the customers and feel comfortable -- the board of directors feel comfortable that McDonald's will still be able to sell hamburgers and maybe missiles will still be able to get to their targets and the like because those are the things that the Unix platform

provide.

So this is all consistent. They try to point out in their reply we're being inconsistent, we want -- we never said we were going to keep the Unix business forever. We told you a lot about the future. The Unix business is a legacy business. There are people out there that think they can make something out of it. The board of SCO thinks maybe reorganization and Chapter 11 is a good way to look -- to get rid of the past and look to the future. And we're vesting money, as you can tell from the agreement, which you haven't seen yet, that there will be money being used to the future investment of ME, Inc. and the things that come with that.

So, this is what reorganization is about. That's what we are about. And we don't think its asking too much to ask the Court to allow us the breathing spell to get this off the ground. I believe that's all I have, Your Honor.

THE COURT: Thank you. Thank you, Mr. Spector.

MR. LEWIS: I have nothing further, Your Honor, thank you.

THE COURT: Nothing further? I'm going to take this one under advisement and I won't take long because I recognize that to take long is to deny the relief you've requested and I'm certainly not about to do that. But I would like to just give the matter a little bit more thought based upon the helpful arguments, go back and look at the record a little bit

and I'll issue an opinion as quickly as I can here.

MR. LEWIS: Thank you, Your Honor.

MR. SPECTOR: Thank you, Your Honor. We appreciate the care and attention.

THE COURT: Absolutely. And with that --

MR. LEWIS: We appreciate the time you've allotted to us, too.

THE COURT: Pardon me?

MR. LEWIS: We appreciated as well the time you've allotted to these matters as well.

THE COURT: Absolutely. They're important matters and its an important case. And I appreciate counsels hard work on the papers. They were just excellent and very helpful. And I thank you and good day.

ALL ATTORNEYS: Thank you, Your Honor.

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

I, Susan Holcomb, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Susan Holcomb Date: November 13, 2007

Susan Holcomb AAERT CET **00273

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