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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

Judge Paul G. Hyman

In Re:

Case No. 97-25645-BKC-PGH

BARON'S STORES, INC.,  
Debtor.

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JOINT EMERGENCY MOTION BY BARON'S STORES AND NORMAN  
LANSON TO REOPEN CASE FOR CONSIDERATION OF NEWLY  
DISCOVERED EVIDENCE (586)  
EMERGENCY MOTION BY MERYL LANSON, PRO SE, TO REOPEN  
CASE FOR CONSIDERATION OF NEWLY DISCOVERED EVIDENCE OF  
ATTORNEY'S FRAUD ON THE COURT (587)  
JOINDER, NOTICE OF ADOPTION BY VARIOUS CREDITORS (605)  
MOTION FOR ADA ACCOMMODATION (609)

March 24, 2008

The above entitled cause came on for hearing before  
the HONORABLE PAUL G. HYMAN, the Chief Judge in the  
UNITED STATES BANKRUPTCY COURT, in and for the  
SOUTHERN DISTRICT OF FLORIDA, at 1515 North Flagler  
Drive, West Palm Beach, Palm Beach County, Florida, on  
March 24, 2008, commencing on or about 1:30 p.m., and  
the following proceedings were had:

Reported by: Jacquelyn Ann Jones, Court Reporter

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APPEARANCES:

KOZYAK TROPIN & THROCKMORTON

By: CHARLES W. THROCKMORTON, IV, ESQUIRE  
On behalf of Mark Cooper and  
Cooper and Wolfe, P.A.

KATZMAN WASSERMAN BENNARDINI RUBENSTIN, P.A.

By: STEVEN M. KATZMAN, ESQUIRE  
On behalf of Norman Lanson

LAW OFFICE OF ARTHUR MORBURGER

By: ARTHUR MORBURGER, ESQUIRE  
On behalf of Baron's Stores

LAW OFFICE OF REGGIE SANGER

By: REGGIE D. SANGER, ESQUIRE  
On behalf of Sonya Salkin and  
Malnik and Salkin, P.A.

STEPHENS LYNN SMITH

By: ROBERT M. KLEIN, ESQUIRE  
On behalf of Mr. Koplín (phonetic) and  
his P.A.

By: MICHELLE KERNER, ESQUIRE

On behalf of five creditors

JOSEPHS JACK MIRANDA, P.A.

By: LEWIS N. JACK, ESQUIRE  
On behalf of Sonya Salkin

Also Present:

Meryl Lanson, pro se  
Sonya Salkin  
Karin Huffer

1 THE COURT: Good afternoon. Please be  
2 seated. Baron's Stores. Why don't I take appearances  
3 for the record.

4 MR. KATZMAN: May it please the Court. My  
5 name is Steve Katzman from Katzman, Wasserman,  
6 Bennardini, Rubenstein, P.A. I represent Norman  
7 Lanson. Mr. Lanson is with us here today.

8 MR. MORBURGER: Your Honor, Arthur  
9 Morburger, representing Baron's Stores.

10 MS. KERNER: Michelle Kerner (phonetic). I  
11 have made a motion to appear pro hac vice on behalf of  
12 five of the creditors in the original bankruptcy.

13 THE COURT: Okay.

14 MS. LANSON: Meryl Lanson, pro se.

15 MR. THROCKMORTON: Good afternoon, Judge.  
16 Chuck Throckmorton. I represent Mark Cooper and  
17 Cooper and Wolfe, P.A.

18 MR. KLEIN: Robert Klein, Stephens, Lynn and  
19 Klein, et al, representing Mr. Koplín (phonetic) and  
20 his P.A.

21 MR. SANGER: Reggie Sanger on behalf of  
22 Sonya Salkin and Malnik and Salkin, P.A. With me is  
23 Lewis Jack, co-counsel, and in the courtroom is  
24 Ms. Salkin.

25 THE COURT: Okay.

1           First let's deal with Ms. Lanson's motion  
2 for accommodations. Ms. Lanson, tell me what it is  
3 you want.

4           MS. LANSON: I don't want to discuss this in  
5 front of all these counsel. That's what the clerks  
6 told me that it would be.

7           THE COURT: The problem is, you filed it  
8 with the court, and it's on the docket, so -- I can  
9 tell you a couple of things.

10           Taping, filming in Federal Courts is totally  
11 prohibited. The Supreme Court has said it is not  
12 permissible. Okay. So as far as that's concerned,  
13 frankly, I don't understand why you would need that to  
14 participate in a hearing as it goes on.

15           MS. LANSON: Karin Huffer is here. She's my  
16 therapist. She would be in a better position to  
17 speak.

18           MS. HUFFER: Do you want me to --

19           THE COURT: Sure. Come up to the  
20 microphone. Why don't you sit next to this gentleman  
21 and pull the microphone over to her. Thank you.

22           MS. HUFFER: Can you hear me?

23           THE COURT: I can hear you fine. Thank you.

24           MS. HUFFER: It would be -- the purpose of  
25 the videotaping is to be able to give Meryl direct

1 feedback as to her performance. Most attorneys that  
2 come before the court, most people that have to  
3 testify in court, do some sort of rehearsal, they have  
4 training in that type of thing. And we're looking for  
5 proper access for Meryl.

6 If I could hook up galvanic skin responses  
7 and did a biofeedback or something, that would work  
8 well. But that would be more disruptive. And what  
9 we've done in other courts that's worked very well is,  
10 unobtrusively video the performance of Meryl, or the  
11 litigant.

12 THE COURT: And what are you going to do --

13 MS. HUFFER: Then we review that, and that  
14 is where we take the cues to help her be stronger in  
15 how she presents -- she's done this for 14 years, and  
16 is trying her best, but she is wondering what about  
17 her performance could she improve, as would any  
18 attorney.

19 And I'm an access designer basically, I'm a  
20 psychologist, and I come out of an education  
21 background where I design accommodations for people  
22 that are struggling in various agencies and court  
23 schools, et cetera. And it can make a world of  
24 difference. One little cue, for a child in a  
25 classroom, that if you can video for a little while,

1 that child, and not violate the rights of the other  
2 children, and you can sit with that child and go  
3 through those cues, you can help those people perform  
4 better. And that's the idea, to help her have full  
5 access.

6 THE COURT: Let me tell you, I believe  
7 what's going to happen here is, there will be one  
8 additional hearing on this, there will be an  
9 evidentiary hearing, and so I don't understand --

10 MS. HUFFER: An evidentiary hearing on what?

11 THE COURT: On the motions that are before  
12 me. This is a pretrial for --

13 MS. HUFFER: For accommodations.

14 THE COURT: No, ma'am.

15 MS. HUFFER: Oh, okay.

16 THE COURT: On the underlying motions that  
17 are alleging fraud. That's going to be it. There  
18 aren't a series of motions that I anticipate here. So  
19 I'm trying to figure out how that's, if she gets  
20 videotaped for the one hearing it's --

21 MS. HUFFER: No, it's not just for one  
22 hearing, it's forever. Once the accommodations are  
23 set, unless they are varied, they are then in place in  
24 the court, we hope, for her, and she can count on  
25 them, that those accommodations are there for her so

1 she can come in this courtroom with full access.

2 THE COURT: Have you ever done Federal  
3 Court?

4 MS. HUFFER: I've not done much Federal  
5 Court, and not much Bankruptcy Court, but I have done  
6 courts all over the country.

7 THE COURT: I understand that.

8 MS. HUFFER: And these work. They make a  
9 world of difference.

10 THE COURT: The dilemma is, in State Court  
11 they routinely film and videotape, and in fact,  
12 broadcast the proceedings. It's absolutely prohibited  
13 in Bankruptcy Court. Even phones with cameras are  
14 prohibited in Federal Court.

15 MS. HUFFER: Perhaps we could find a  
16 substitute.

17 THE COURT: Which is?

18 MS. HUFFER: Did you say video or -- would  
19 audio be acceptable?

20 THE COURT: Again, audio tapes are also  
21 completely prohibited in Federal Court, other than the  
22 official court reporter, who does have a recording of  
23 the proceedings, an oral recording of the proceedings.  
24 But there's only one official proceeding, and so  
25 again, that sort of mechanism is prohibited.

1           Tell me about the biofeedback. I don't care  
2 if you do that.

3           MS. HUFFER: Let me look into how we might  
4 do that. So as long as it's unobtrusive, and it  
5 doesn't violate the federal regulations against  
6 taping --

7           THE COURT: Right.

8           MS. HUFFER: -- we can do it. Okay. Fine.  
9 Thank you.

10          THE COURT: I mean, you'll have to  
11 obviously, figure out how to accommodate that.

12          MS. HUFFER: Absolutely.

13          THE COURT: I don't mind trying to  
14 accommodate her in any way that is permissible.

15          MS. HUFFER: Okay, I appreciate that. Any  
16 other question while I'm --

17          THE COURT: No. Any other accommodations  
18 she's seeking?

19          MS. HUFFER: They were listed on her report.  
20 One is --

21          THE COURT: I mean, I didn't understand some  
22 of them.

23          MS. HUFFER: Is there one that you have a  
24 question about?

25          THE COURT: Well, I'm just trying to find

1 out from you and her which are the accommodations she  
2 needs, other than what I've just said is okay, which  
3 is, in essence, a biofeedback.

4 MS. LANSON: Your Honor, I would also like  
5 that when the misinformation is given in the court,  
6 when there's misinformation, I would like it  
7 immediately corrected. When I feel something -- that  
8 the Court is being misinformed, I want to correct  
9 it.

10 THE COURT: I don't know what you mean by  
11 that. When you create --

12 MS. LANSON: When I hear something that's  
13 not correct, I would like to say that I want that  
14 corrected on the record.

15 THE COURT: Ma'am, you will be able to be  
16 heard here, but you have no right to interrupt  
17 opposing counsel, or even counsel that represents your  
18 people that are in the same position as you. That's  
19 just too disruptive.

20 MS. LANSON: I would never do it during. I  
21 would take notes, and then after I would say I want  
22 the record corrected.

23 THE COURT: Well, frankly, when you say  
24 corrected, I will hear from you, vis-a-vis what you  
25 believe your view of those facts are. So the answer

1 is, you always have that right in a court proceeding.  
2 Just like if they hear you say something that they  
3 disagree with, they have a right to come in and say,  
4 Your Honor, what she said is incorrect.

5 MS. HUFFER: Your Honor, when it has to do  
6 with an accommodation, it isn't the argument that is  
7 going on, because of course, that's the case.

8 THE COURT: Right.

9 MS. HUFFER: This is when they might say  
10 something that is absolutely false, wrong, and Meryl  
11 has the proof that it's false, wrong, and that it  
12 would color your judgment.

13 THE COURT: Okay, ma'am, do you understand  
14 how court proceedings work? If this turns into an  
15 evidentiary hearing, they present their case, your  
16 client has a right to present her case that would  
17 contradict theirs, and then they have a right to rebut  
18 it, or vice versa. And so she has the right in an  
19 evidentiary setting to do that. So that's why I don't  
20 understand what you're asking me to do, other than her  
21 being -- allowing her to present her evidence.

22 MS. HUFFER: This is a wonderful question,  
23 because this is right where the disorientation that  
24 creates post traumatic stress disorder happens.

25 And I think you'll know it when you see it,

1 and I trust that between you and Meryl this will get  
2 worked out. You'll know when you see that if, for  
3 example, there was a case where somebody talked about  
4 placing a mirror in the back of a Jeep Cherokee.  
5 Well, the measurements obviously -- the mirror that  
6 was discussed wouldn't have fit in that area.

7 If Meryl has that kind of information, she  
8 needs to be able to provide it. That's the way --

9 THE COURT: Well, she would be entitled to  
10 do so, within the rules of evidence, in appropriate  
11 order of presenting testimony, yes, ma'am. That's  
12 what I was just, if they presented testimony in your  
13 example, that the mirror was three feet wide, and she  
14 knew it was two feet wide, they would present the  
15 testimony, I would hear it, she would then be able to  
16 present the testimony contradicting it.

17 When she says corrected, I'm the person who  
18 decides whether it's two feet or three feet, using  
19 that example. She doesn't get to say it's two feet,  
20 and that be the bottom line. That's how evidence  
21 works.

22 So she will have a full opportunity to  
23 present whatever testimony or evidence, in an  
24 appropriate manner, that would contradict what she  
25 thinks were incorrect statements by the other side.

1 MS. HUFFER: Okay. If an advocate is with  
2 her, if she needs, sometimes it's important to have  
3 that ADA advocate there to help.

4 THE COURT: I don't mind if you sit next to  
5 her.

6 MS. HUFFER: Okay. Extend the deadlines  
7 sometimes, because sometimes intrusive thoughts are so  
8 great that you simply can't complete something timely.  
9 Now, I'm not asking for alterations of law, you  
10 understand that. I'm just saying whenever she can be  
11 granted a human touch as to understanding. She does  
12 suffer a disorder --

13 THE COURT: Frankly, I think I've done that  
14 in the past, and generally when I set hearings, I make  
15 sure everyone has time to be prepared for them. Now,  
16 again, within reason.

17 I don't know if you're talking about years,  
18 no, but days and weeks, I am reasonable as far as  
19 making sure everyone can be prepared for the  
20 appropriate hearing. Okay.

21 So if that's what you're asking, that is a  
22 matter of course with this Court. Okay.

23 MS. HUFFER: Are you Judge Hyman?

24 THE COURT: I am Judge Hyman.

25 MS. HUFFER: I'm Karin Huffer. Thank you

1 very much.

2 THE COURT: Sure.

3 MS. HUFFER: Any other question, I'll be  
4 here.

5 THE COURT: Now, does that resolve  
6 everything?

7 MS. HUFFER: I think so.

8 THE COURT: So the answer is, I'm going to  
9 grant your motion as it relates to biofeedback. You  
10 may present whatever, assuming it does not -- no  
11 videotaping or oral taping isn't involved, you may do  
12 that.

13 MS. LANSON: Thank you.

14 THE COURT: And ma'am, if you want to sit  
15 next to her even now, you may do so. This is just a  
16 pretrial, in essence, we're going to be scheduling  
17 some stuff. But you're welcome to sit next to her.  
18 Would you like that?

19 THE COURT: Good. Thank you.

20 Okay, let's get to the other issues.  
21 There's in essence, motions to reopen cases and  
22 joinders and what have you. Let's talk about how we  
23 are to going to tee this up.

24 MR. THROCKMORTON: Your Honor, Chuck  
25 Throckmorton. I've heard what you said about perhaps

1 having a hearing. What we would -- what we would  
2 really ask, and we've briefed this, both parties have  
3 briefed the legal issues extensively, I'm prepared to  
4 make a legal argument today that's very  
5 straightforward that the motions that we're here on,  
6 which are motions to say re-reopen, are legally  
7 barred, because the Court is incapable as a matter of  
8 law of granting the ultimate relief that they're  
9 asking for, which is to void the plan.

10 I hope that I can --

11 THE COURT: Because of substantial  
12 consummation.

13 MR. THROCKMORTON: Well, not substantial  
14 consummation -- well, that would be true as well.  
15 That's modification.

16 But they're asking to void the plan. And  
17 under 1144, that's barred. 1144, and we've cited case  
18 law to the Court, says that, first of all, the only  
19 way you can revoke confirmation, or void a plan, is if  
20 there's fraud. So that brings in their fraud on the  
21 court thing.

22 And then the Court -- Congress has said you  
23 can only do that for 180 days after confirmation,  
24 which takes us back to 1999.

25 Their end run around that is Rule 60(b)(4),

1 because we're saying that it's void. We've cited you  
2 chapter and verse over and over again that you can't  
3 do that, because 28 U.S.C. 2075 says that the  
4 procedural rules cannot abridge substantive rights.  
5 And the Courts have agreed with this.

6 The substantive right is the time bar of  
7 Section 1144, which is also parenthetically reinforced  
8 by Bankruptcy Rule 9024, which says, if you are going  
9 to bring the equivalent of a 60(b) motion, it  
10 incorporates that 1144 time bar, so that the -- the  
11 bankruptcy rules actually recognize this.

12 But at any rate, 60(b)(4), the judgment is  
13 void, doesn't work, because it would trump the  
14 substantive law of Section 1144.

15 On top of that, and independently of that,  
16 is res judicata, because they reopened this case on  
17 fraud on the court grounds before we had a three day  
18 trial, Your Honor entered a 39 page opinion that  
19 found, not only ruled against them, but found no  
20 evidence of fraud on the court, and that's been now  
21 affirmed by the District Court.

22 I recognize that the -- what they're  
23 alleging now is a different kind of fraud on the court  
24 than what they said before, but it goes to -- it goes  
25 to a provision in the plan that they say was

1 absolutely crucial, the absolute lynchpin of the plan,  
2 yet they couldn't have figured out that it wasn't in  
3 there for ten years.

4           We don't need to get that far down, even to  
5 res judicata, because our position, Judge, is going to  
6 be, the law under 350(b), backing up to that, that's  
7 the first statute we look at, reopening a case under  
8 350(b).

9           The law on that is, they have the burden,  
10 the longer the period of time has been, the greater  
11 the burden is. And I would submit, it's as great as  
12 it possibly could be, since they've reopened the case  
13 on fraud on the court grounds once already, and we are  
14 now almost ten years beyond the plan. And that's  
15 number one.

16           They have to have compelling reasons to do  
17 it. And the Court has to be capable of granting the  
18 relief that they're asking for. And our position, at  
19 its most fundamental level is, 1144 closes the door,  
20 absolutely, 60(b)(4) doesn't get them back in the  
21 door.

22           And so after going through everything we  
23 have been through, we should not even have to have an  
24 evidentiary hearing on this.

25           Very hesitatingly, I guess I would say, if

1 Your Honor is inclined to have more hearings beyond  
2 today, then --

3 THE COURT: Let me hear from them.

4 MR. THROCKMORTON: Okay.

5 THE COURT: See if they think it's teed up  
6 properly as far as the initial legal issue.

7 MR. THROCKMORTON: Thank you.

8 MR. KATZMAN: Steve Katzman for Norman  
9 Lanson, and we're all making the arguments together  
10 and adopting one another's argument.

11 THE COURT: I saw that.

12 MR. KATZMAN: Judge, if we were here on a  
13 motion for summary judgment, we would be responding to  
14 a motion for summary judgment.

15 We're here in response to a court order  
16 that, as we understood it, was to establish  
17 essentially a scheduling order on the pending motion  
18 to reopen case. So procedurally, I don't think they  
19 have the right vehicle for us to be going down this  
20 path.

21 That said, we are happy to address the  
22 merits, or lack thereof, of each of their arguments at  
23 this time, if that would be of assistance to the  
24 Court.

25 It's true that the parties have briefed

1 these issues, because we felt we had to file a reply  
2 to their response. I don't think their surreply was  
3 authorized by the rules, but that's beside the  
4 point.

5 So if the Court is inclined to address the  
6 merits of what I don't think is proper for us to  
7 consider procedurally today, I will go ahead and do  
8 that, but I don't really, as I understand your order,  
9 think that's what we're here for.

10 THE COURT: This is the pretrial. But now,  
11 having said that, are the issues appropriately  
12 addressed and briefed where I could decide them, based  
13 on the pleadings, the initial issue?

14 MR. KATZMAN: I believe that some of the  
15 issues that they raise involve questions of law that  
16 you could decide, and some of the issues that they  
17 raise, such as those invoked by their filing a notice  
18 of relying on certain evidence, involve questions of  
19 fact, that you would not be able to resolve today.

20 THE COURT: Okay. Now, the first category,  
21 would that be dispositive of your motion one way or  
22 the other?

23 MR. KATZMAN: Not at all. And that's  
24 because of the fundamental misconception of the other  
25 side, which is, they seem to feel that the only relief

1 that we are seeking is to have you void the plan under  
2 Rule 60(b)(4). That is one of three grounds for the  
3 motion.

4 One ground of the motion was that it is  
5 newly discovered evidence which affects the witness'  
6 credibility and should have been available to you to  
7 consider when you issued your ruling on the fraud on  
8 the court allegation that was based on the retention  
9 motions and affidavits. Because that ruling by you  
10 essentially was, I heard the lawyers, and I believe  
11 them.

12 And if you knew that there were other things  
13 they did in this very same bankruptcy that you might  
14 find were not honest, or credible, or trustworthy,  
15 that very well could affect your evaluation of their  
16 credibility in the underlying action. That's argument  
17 one. That has nothing to do with voiding the plan.

18 Argument two is, this is an independent  
19 fraud on the court, having nothing to do with the  
20 retention affidavits in motion, but rather having to  
21 do with misrepresenting to the Court that the debtors  
22 had signed off on an amended plan of liquidation that  
23 eliminated certain rights reserved to them to bring  
24 certain claims.

25 And the Court should be adjudicating

1 factually whether that fraud on the court occurred.  
2 Once that adjudication occurs, under the E-toys  
3 (phonetic) decision, which Your Honor relied upon in  
4 denying the motion for summary judgment that the  
5 defendants brought the last time, you have wide  
6 latitude as to what remedy you find appropriate.

7           In addition, if you were to make such a  
8 factual finding, the State Court in the malpractice  
9 case might very well fashion a remedy, such as an  
10 estoppel, or striking of certain defenses, that seven  
11 years later, have now first been asserted in reliance  
12 on an amended plan that mysteriously no longer has a  
13 provision that my clients both have submitted  
14 affidavits, was in the plan they agreed to, and they  
15 never agreed to its removal.

16           And those are separate and apart from the  
17 question of what I'll call the Write Out (phonetic)  
18 case, which is whether, or in fact, where you have a  
19 constitutional due process argument, such that you're  
20 claiming a plan is void, that that is separate from  
21 the Section 1144 claim which may have a one year bar.

22           The parties have briefed that, and we could  
23 argue more about that, but our position is that Write  
24 Out stands on its face and says, if there's a  
25 constitutional due process claim, and here that's what

1 we're making, that there was no notice to the debtor,  
2 that that provision had been removed, and they had no  
3 reason to know of that issue until just a couple of  
4 months ago when this gets filed in the State Court  
5 malpractice action for the first time in seven years.

6 If, in fact, there is a due process issue,  
7 then there is no time limitation. And the Write Out  
8 case also cites to and relies upon several other  
9 cases, including some federal treatises.

10 The case they cite in their surreply, In Re  
11 Logan, doesn't dispute Write Out. In a footnote it  
12 simply says, the Write Out Court has drawn a certain  
13 distinction. But the Logan case didn't involve any  
14 argument that the plan was void. It simply argued  
15 that there was a dispute as to whether a revocation  
16 could occur.

17 Declaring a plan void, and as Write Out  
18 explained, having a new hearing on whether or not the  
19 plan should be adopted or not, is different from a  
20 revocation of a plan.

21 The Write Out Court is very clear on that,  
22 and it's the only case that either side has really  
23 been able to cite to you that specifically deals with  
24 the distinction between a Rule 60(b)(4) claim, and a  
25 Section 1144 revocation claim.

1           THE COURT:  And how do you suggest that the  
2 matter get teed up?

3           MR. KATZMAN:  Your Honor, because there are  
4 certain factual disputes, I believe that the Court  
5 should schedule a period for discovery where there  
6 would be document requests and responses and  
7 depositions, and set it for final hearing within 180  
8 days.

9           THE COURT:  Anyone else on that side wish to  
10 be heard?

11          MS. LANSON:  Yes, I would like to be  
12 heard.

13          THE COURT:  Okay.  Now, only on the  
14 procedural matter, Ms. Lanson, not the substantive  
15 issue.  The substantive issue, I mean the alleged  
16 fraud, the alleged misrepresentation to you, and the  
17 other people on your side are factual disputes, so I  
18 don't need to hear any argument on that today.

19          MS. LANSON:  So wait until --

20          THE COURT:  If I decide evidence is  
21 necessary, I will certainly hear from you and the  
22 other side.  This side, the other side, believes that  
23 there is no evidence necessary, so I'm just trying to  
24 figure out how to tee it up.

25          MS. LANSON:  I'm a little confused, Your

1 Honor.

2 THE COURT: That's okay. I understand. Mr.  
3 Throckmorton.

4 MR. THROCKMORTON: Judge, unfortunately,  
5 this is exactly what they want. They want to litigate  
6 with us for the rest of all of our natural lives. And  
7 that's what we've been trying to avoid by pointing out  
8 to the Court that the relief that they're asking for  
9 is barred.

10 Now, before we embark upon their program of  
11 discovery, and discovery motions, and depositions and  
12 a trial, then if Your Honor is not prepared to rule on  
13 the legal issues today, which we think are clear, then  
14 we would want the opportunity to have a properly set  
15 up summary judgment procedure so that we can  
16 demonstrate to the Court, or if I'm unsuccessful in  
17 doing it today, that these claims are legally  
18 barred.

19 I mean, the plan was confirmed in November  
20 '98 --

21 THE COURT: Let's go back. Have you cited  
22 every case you need for me to rule on your proposition  
23 that it's a pure legal issue to be decided on the  
24 pleadings?

25 MR. THROCKMORTON: I believe so, yes, sir.

1 THE COURT: Okay. In your briefs, have you,  
2 on that issue, if I agree with them, cited all the  
3 appropriate cases? And I'm not saying I've agreed  
4 with them.

5 MR. KATZMAN: The answer is no, because in  
6 response to their surreply, there are cases they cite  
7 that we've yet to be able to brief and respond to.

8 THE COURT: How long do you need to do that?

9 MR. KATZMAN: I would think no more than ten  
10 days, Your Honor.

11 THE COURT: Okay. Do that. Everyone else  
12 agree with that? Okay.

13 So I'll give them ten days to reply to your  
14 surrebuttal, and then I'll issue an order one way or  
15 the other. And included within the order will be  
16 whether, if I see that there are factual issues that  
17 need to be fleshed out, I'll deal with that.

18 MR. KATZMAN: In effect we're treating it  
19 like it was a -- their response was a motion for  
20 summary judgment.

21 THE COURT: Yes, sir.

22 MR. KATZMAN: I understand what we're  
23 doing.

24 THE COURT: And your response is to reply to  
25 that. Yes, ma'am.

1 MS. KERNER: Yes. I don't believe that  
2 you've addressed my motion for joinder, at least not  
3 directly.

4 THE COURT: Any objection?

5 MR. THROCKMORTON: No, Your Honor.

6 THE COURT: Okay. So the answer is, I'll  
7 grant that request.

8 MS. KERNER: Thank you.

9 THE COURT: Everything taken care of on that  
10 side?

11 MS. KERNER: Yes. My appearance as well, I  
12 thought you had already addressed that.

13 THE COURT: Right.

14 THE COURT: Ten days to file a reply to  
15 their last, whatever you want to call it, surbrief.

16 MR. KATZMAN: I'm not quite sure what the  
17 caption will be, but I understand the mission.

18 THE COURT: Fine. Thanks. Anything else  
19 while we're here? Good. Thank you.

20 MR. THROCKMORTON: Thank you.

21 THE COURT: You're welcome.

22 (The proceedings were concluded.)  
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C E R T I F I C A T E

The State of Florida        )  
County of Palm Beach        )

I, JACQUELYN ANN JONES, Court Reporter,  
certify that I was authorized to and did  
stenographically report the foregoing hearing; and  
that the transcript is a true record of my  
stenographic notes.

I further certify that I am not a relative,  
employee, attorney or counsel of any of the parties,  
nor am I a relative or employee of any of the parties'  
attorney or counsel connected with the action, nor am  
I financially interested in the action.

In witness whereof I have hereunto set my  
hand and seal this 8th day of September, 2008.

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JACQUELYN ANN JONES

Commission No. CC 995956

Expires Feb 18, 2009