

1 Transcript of a discussion between Douglas J. Pick of Douglas J. Pick & Associates and David O'Donnell,
2 president of Next Factors, Inc. related to Worldcom, Inc., et al., 02-13533 (AJG) U.S. Bankruptcy Court
3 Southern District of New York.
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5 David: Eric said you wanted to talk about the MCI motion that we are planning where we want to bring up
6 conflicts and disparity of treatment.
7

8 Doug: Yea, he showed me a copy of a motion he did.
9

10 David: In which I think he did a great job on.
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12 Doug: He did a very, very nice job. He did. But this is all allegations not supported by anything.
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14 David: What allegation is there?
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16 Doug: The whole thing is based upon surmise. There is no proof of anything.
17

18 David: Well we didn't allege anything, we are asking for a Disclosure of Conflict.
19

20 Doug: Yea, but the way this is written, as I recall, and I read it. There are certainly allegations being made that
21 conflicts existed between multiple professional law firms.
22

23 David: We said that there "might be", and we would like to know for sure.
24

25 Doug: I know, I hear you.
26

27 David: I think the court should know. Also there has been very incorrect... the treatment of Next Factors hasn't
28 been right. They threatened us.
29

30 Doug: Well I understand, and I read these papers and I know the judge well enough, you don't make accusations
31 against Weil Gotshal and the others, that somehow, somehow, they had this secret agenda with various
32 investment houses. So as to direct, which I think is your issue, if I recall correctly. To direct the trading of
33 claims to these investment houses.
34

35 David: No, no. I don't think there is anything along those lines in there.
36

37 Doug: Isn't that what you are alleging? Isn't that what your basis behind this motion is?
38

39 David: No, we just want to know what their process is for determining distributions on claims. Which I think we
40 are entitled to know, any creditor should be entitled to know what claims were allowed and what claims were
41 paid and when they were paid. I think the court is supposed to be an open book and we are entitled to know. At
42 the same time I am asking for that information, and I think part of the process is that they are improperly
43 handling Next in terms of trying to extort settlements and releases, which I am not sure why they would need
44 releases from Next Factors other than, the only other thing I can think of is that, we weren't one of the claims
45 traders who was a beneficiary of that inter-creditor agreement.
46

47 Doug: I disagree with you. I read these papers, it definitely alleges potential conflicts of interest that exists
48 between the various professional firms and the hedge funds. And that they have some kind of secret agenda
49 between them.
50

51 David: There is no allegation of a secret agenda. And we are suggesting that there could be conflicts and we
52 want them to update and disclose. If there is none, great.
53

1 Doug: Well, you can't just say that. In the papers you are clearly making that allegation and you can't just walk
2 into to court and say, "well if there are none, just tell us there are none." It is just the way the papers are
3 phrased? No. You have nothing to support it other than "surmise and a gut-feeling and what is right, and what is
4 wrong."

5
6 David: What have they disclosed so far?

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8 Doug: It doesn't matter what they have disclosed or not disclosed, David. What I am telling you is, that the way
9 the papers are drafted, it creates a scenario of an accusation based on surmise.

10
11 David: I don't see how there is an accusation there when what we are saying is...well there is an accusation, the
12 accusation is, is they are not handling the distribution on claims to Next appropriately, including, I guess an
13 element of extortion.

14
15 Doug: Okay, the element of extortion...

16
17 David: Which was when they threatened to object to all of claims if we didn't sign this release.

18
19 Doug: Those are negotiations. When you go to an element of extortion like that (we'll use your words). That's
20 settlement negotiations and they have a right to do that.

21
22 David: Up to a point, I think they do, to a point. I believe there is a phrase or a term of art, "extortion of a
23 settlement". I am not saying that they have hit that level in this instance. But you are not allowed to extort a
24 settlement from people.

25
26 Doug: They are not, they are telling you straight out, "You don't want it? Walk!" "We will go litigate it, go
27 walk."

28
29 David: They can litigate it if they truly intend...you can't threaten to do something if they don't truly intend to do
30 it.

31
32 Doug: Why not?

33
34 David: That is illegal.

35
36 Doug: That is not illegal.

37
38 David: It is illegal to threaten something if you don't intend to do it.

39
40 Doug: It is illegal to threaten to put somebody in jail by an attorney. But I can come at you and say, "if you don't
41 do what I am saying...."

42
43 David: You are threatening a lawsuit.

44
45 Doug: "I am going to sue you." Done all the time.

46
47 David: Yea, you can check into that.

48
49 Doug: Yea I can. The same thing holds true when I say "I am going to kill you" It doesn't mean that I am going
50 to kill you.

51
52 David: You can't threaten to kill someone, it is definitely not allowed.

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54 Doug: It's done all the time, "I see you, I'm going to kill you." Everyone knows it is not meant literally.

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David: My impression would be that's crossing the line. Anyway, I am not an attorney for these finer points. So what I clearly allege that happened, and I don't think it is even disputed by the other side is that they made threats regarding our claims and that they are taking too long and they are asking for releases that they are not entitled to.

Doug: All I know is that they've taken the posture, if I recall, talking to Eric, that said, "if you don't want to settle fine, we just litigate everything. Litigate everything.

David: But they are not litigating everything.

Doug: No that's what they said, there is your threat. There is your extortion - I'll litigate everything.

David: Okay.

Doug: What's wrong with that?

David: I think that is not proper. But if...

Doug: So then you go for sanctions.

David: Well then, we are not even asking for sanctions. We are just asking the court to direct them to disclose information. What their policy is. Because if this is their policy for everybody, then that's fine.

Doug: It is just not a proper vehicle for the relief that you seek, to take well respected law firms...

David: Who says that they are well respected?

Doug: They are.

David: If I recall correctly the Southern District of New York found a situation where Weil Gotshal failed to disclose their prior representation in the Leslie Faye case. They paid a couple of million dollars for it.

Doug: And as a result of that, they are now in the bottom of the barrel?

David: I didn't say that.

Doug: They are one of the most profitable law firms today.

David: Well profitable is another issue. That is something maybe for Elliot Spitzer to look at. That is not my point.

Doug: They are.

David: But whether or not they are well respected... I will agree that they are respected and feared and that they make lots of money. But I think that you would have to agree that there has been at least one situation where they did not properly act in terms of disclosing conflicts.

Doug: And....what is the significance of a mistake in life? They got a chief bankruptcy Judge Brozman, sanctioned. I know the case, everyone knows the case.

David: I thought Brozman was given high regard by other attorneys for that. I think that sanction was kind of light because they only paid a fraction of the cost that the estate was damaged and they didn't give back any of their additional fees. They didn't disgorge all of their fees.

1
2 Doug: Then the judge doesn't think it was horrid as to sanction them further.

3
4 David: Further than that. Maybe it was the first time. These are details that I don't know. But I also wouldn't
5 hold the policing of other attorneys by other attorneys to any kind of standard to be respected. I think the police
6 do a better job with an internal affairs department of policing other police officers and I know that there is great
7 statistics kept by police departments and the FBI of crimes committed by police officers. I know of nothing in
8 analogous in terms of attorneys.

9
10 Doug: There is! You can check any one of us.

11
12 David: Bar Associations have nothing to do with criminal matters, it is civil type stuff and it's membership in the
13 Bar. There is very little teeth and there is also rules in place to protect all the attorneys involved. It is not a
14 public thing, it is not a criminal action, it's really odd. I am not aware of any activity on the part of Bars in
15 anyway be analogous to the type of policing that is done of police forces.

16
17 Doug: You know, I'm not going to fight with you over it. Maybe you are right. Maybe lawyers should be better
18 policed...I don't know. I think they are, I think we are under tremendous scrutiny.

19
20 David: Well with Sarbanes-Oxley, it's has upped a notch. But that is more in the public company, you know
21 securities trading firms. I don't see anything in terms of the bankruptcy courts. I know many instances where
22 there is evidence of stuff that crossed (I would think) clearly the line in terms of 18 US Code Section 3057 and I
23 haven't seen US trustees involved or judges involved act on it. Maybe they have acted and I am just not aware of
24 investigations that are ongoing. I think I am entitled to the information anyway, to have them state their policy.
25 They are not telling me directly what their policy is. So we are asking the court to tell us what their policy is. As
26 far as the conflicts go. I am involved in the bankruptcy industry and going to conferences and I get a feeling for
27 how claims are paid to other claims traders. In fact, I used to work for Bear Stearns.

28
29 Doug: I know that.

30
31 David: And I also worked for a hedge fund. And, I know other people. I get a feeling for how things are, so it is
32 not like I am some Al Sharpten coming out of nowhere. Or someone coming in and saying "Oh you guys are
33 doing such and such". I have been involved in the industry and I know that there are a lot of by-side distressed
34 players who hire attorneys. I just like them to do a conflict check. In fact, I am involved in a case where debtor's
35 counsel was representing a debtor and concurrently the senior lender, the secured lender, the largest equity
36 holder and the claims trader that bought the majority of claims in the case, a competitor of mine, who was the
37 first one buying claims in the case. And they were buying things before sales information was disclosed on the
38 docket. So I don't know how they got the information. So there are situations where there might be questions of
39 disclosure, but I think you should view this more as something which Next Factors is going to be asking in
40 many cases, up front, where we are going to say, "hey we want you to update your conflict check". At each time
41 where we think there are problems. This isn't just, "I'm picking on Weil Gotshal," I mean that would be silly. If
42 you want me to give you some other districts where Next Factors has issues where we've pointed out conflict
43 issues. I could let you know that. This isn't out of the blue, this is the largest bankruptcy case ever. Isn't it in US
44 World Com?

45
46 Doug: Yes.

47
48 David: You know, it is a huge case. I think we are entitled to this information. If the judge doesn't want to give it
49 to me, that is fine, but I think the business community would be interested in knowing why the judge doesn't
50 want the lawyers to update their conflict checks. This is going to be news or it is not going to be news. The only
51 way it is not going to be news is if they update their checks and there is no problems. If the judge doesn't allow
52 it, it is going to be news. If I have to jump through many different hoops before the conflict disclosure is made,
53 it is going to be news. Between you and me, maybe I already have some communications with Elliott Spitzer's

1 office. It is a big animal. But what I am asking for, I think is very straight forward. Now if you think we should
2 tweak the language in some way, I would be amenable to consider that. But I want to ask for that information.
3

4 Doug: I am very uncomfortable. I read the motion, I didn't like the motion. I understood the motion. But I think
5 the allegations are allegations, they are not based upon any facts. There is no....
6

7 David: I'm not sure what allegation you are talking about?
8

9 Doug: I am looking for a memo, I'm looking for a smoking gun, I am looking for something more than, "I want
10 you guys to do a conflict search and tell me if there is anything inappropriate in your dealings with these hedge
11 funds."
12

13 David: You are saying that I am looking for a memo?
14

15 Doug: No, I said I am looking for a memo. I want something that supports these papers.
16

17 David: Well, what is there to support? If we are asking them to update their conflict check?
18

19 Doug: We are not in a position to take that position, or ask anyone to update their conflicts check.
20

21 David: No one is allowed to ask attorneys to update their conflicts checks?
22

23 Doug: No, that is internal. You do your own conflicts check. And if turns out there is a problem, the judge will
24 address it. But I have no right to go to a Weil Gotshal, Piper Rudnick...
25

26 David: Can you send me a memo that explains what either case law or statutes prohibits one party from asking
27 that the court ask others to do. I thought...my overall impression of bankruptcy is that everyone is essentially
28 entitled to information.
29

30 Doug: You disclose. That is internal, you disclose internally.
31

32 David: The responsibility is on the attorneys to disclose to the court.
33

34 Doug: That's right.
35

36 David: Okay. I could understand it. But I don't understand how one party can't ...
37

38 Doug: ...ask another party to disclose more?
39

40 David: No, we'll want to update. Here is the issue. There are over fifty claims buyers. A lot of times the claims
41 buyers will be - you know - "XYZ claims buying", but they are actually owned by, let's say, by Bear Stearns,
42 Bear Stearns Government Securities or Oppenheimer or Amrock or whatever. So, it might be possible that the
43 professionals did conflict checks at the start of the case and then there were fifty claims traders and they weren't
44 aware that there was a claims trader who came in. But that is one reason why the conflicts check might be out of
45 date. Another reason could be that there could be funds that are buying under different names. So maybe there is
46 a process that needs to be done generally where if a fund hires attorneys and then they start buying under
47 another name, they need to update their attorneys as to the other names that they are buying under. Maybe it is
48 not the responsibility of the attorney to guess or to know stuff that they don't know. But it is an issue.
49

50 Doug: Yea, it could be an issue. But the way you address it is not the way it is being addressed here.
51

52 David: Why do you say that?
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54 Doug: Because we have no right to tell Weil Gotshal how to improve internal.....

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David: We are not telling Weil Gotshal how to do it. We are asking the court to direct attorneys to update their conflict checks. Which is something they were supposed to have done anyway.

Doug: It doesn't matter. That is internal. No outside counsel has the right....

David: It is not internal.

Doug: It is internal.

David: It is disclosed publically to the court.

Doug: Internally it is disclosed publically to the court. That is the attorneys on-the-job has to do his conflicts check and submit an affidavit. If the affidavit is ultimately proved inaccurate or wrong, you can get sanctioned. But it is not my job to go to Weil Gotshal and say, "I want you to tell me..."

David: It is not your job and I am not suggesting that you do it.

Doug: Well, I read that in these papers.

David: Next Factors is asking the Court to do it.

Doug: Well I am counsel.

David: Right.

Doug: And if my name is put on these papers, it's me, suggesting to you as counsel that you are correct in the request that you are making of the court to intervene to that issue.

David: If there is some basis in fact or law for us to ask the court for the relief.

Doug: That's right. I don't think there is any basis in fact or law to ask for the relief.

David: Then give me a memo to that effect.

Doug: Yea, I don't mind.

David: Because that memo is going to be read by many.

Doug: I don't care, I really don't care.

David: I think the easiest way out.

Doug: I'm not looking for an easy way out.

David: Well, the easiest way out is to have this motion filed. If you want to generate me a memo that is going to try to explain why in fact or law....I've sort of been in the industry for awhile, and I could probably turn on my computer and point out a number of cases where there is people, creditors, committees, mad that the Chinese Wall was insufficient in another firm, you know because they might of been buying the debt. I've seen orders where the court says that anyone who is buying or selling stock of the bankrupted company is restricted or have to get approval first. I mean I've seen things that go way outside the bounds. The only difference I see here is that, what is involved is other attorneys and it sort of has that flavor of one attorney protecting or not wanting to be seen as interfering with other attorneys' ways of making money without regard what might be involved in the

1 process. If you want to talk more tomorrow, I know it is the end of the day today...I am going to get the
2 information one way or another.
3
4 Doug: Why don't you take our papers and give it another law firm. I mean, you do like the papers. I don't mind,
5 just change the name.
6
7 David: What is your concern?
8
9 Doug: I don't like the accusations being made. I don't want to put our name to this set of papers.
10
11 David: Okay, I'm not sure, I haven't seen one accusation. You are saying that our asking for the information is
12 an accusation? I don't see that as an accusation.
13
14 Doug: Let me ask you a different question. We're not the only lawyers, right? I mean you do like the set of
15 papers, right? So we have ghost-written papers for someone else. What is wrong with that? You could probably
16 convince another lawyer to take these papers and submit it. You are very good at the art of persuasion.
17
18 David: Well if you want to spend your time finding a lawyer...
19
20 Doug: No. I am not going to spend my time finding a lawyer.
21
22 David: Well do you think I am going to spend my time doing it?
23
24 Doug: Well, I don't care. I am just telling you I don't approve....
25
26 David: Well you should care.
27
28 Doug: I don't understand that point at all. I do care. That is why I am saying we are not signing these papers. I
29 do care.
30
31 David: I think you are making things harder for yourself.
32
33 Doug: I don't see how, I don't see how I am making things harder for myself. Sorry, if you could explain that to
34 me, I'm all ears.
35
36 David: I am entitled to this information, do you doubt I am entitled to make the request of the court to have
37 people update their conflict checks?
38
39 Doug: Yes.
40
41 David: You doubt that.
42
43 Doug: Yes.
44
45 David: Okay, I guess you are going to do a memo to that effect. You are aware of situations where committee
46 members have sought motions regarding chinese walls existing at other committee members?
47
48 Doug: That is because they know for a fact of a conflict. Not because they believe or sense....
49
50 David: I've seen it where there are no facts presented.
51
52 Doug: Sorry. I've never seen a paper that is based on innuendo and surmise.
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54 David: What innuendo am I speaking....

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Doug: It is filled with innuendo.

David: So, I think I understand you and if I show you one firm who has bought claims in the case and is not currently on one of the professional's conflict checks.

Doug: I'm sorry, you lost me. One firm that has bought claims.....

David: If I show you one claims buyer, who bought claims at a time in the MCI case, when they weren't on an attorneys' conflict check and I can also show you that this attorney appeared for that same buyer or their affiliate concurrently in another case, i.e. they are accepting money from them, then you have no problem with these papers.

Doug: No, you are wrong because you have got to show me that the claims buyer paid them money to represent them in the case. A guy out there, a claims buyer who buys claims in a hundred cases is not going to disqualify Weil Gotshal from a hundred cases. Because Weil Gotshal represented them in one matter. I don't buy that. If in World Com you can show me that one of the claims buyers, hedge fund, had a relationship and was paid in the relationship in the World Com matter and that wasn't disclosed, that's different.

David: In the World Com matter, in the World com...that is not what a conflict check is about.

Doug: In this particular case...

David: The conflict is if they are accepting money from a party in the current case related to other work in another case.

Doug: Well I'm sorry I don't see your argument.

David: You've never seen that in a conflict check? You are not aware that a conflict check refers to whether or not there is a relationship with a party in the current case somewhere else. You think it would only be if they were also representing a creditor in the same case?

Doug: I am well aware of conflict checks. We do it here. Also, I will surprise you by telling you that we've been doing it for twenty-five years and we haven't been doing it for twenty-five days. I am telling you now, I've read these papers and it is filled....there is no way on God's green earth that I am going to sign this.

David: I just told you, I could present to you what sounds like you need. If I give you that evidence, you are ready to file these papers?

Doug: No, I am not.

David: Why?

Doug: Because you and I have a difference of opinion with respect to the law and the facts.

David: No, no, I thought I just gave you what you asked for! You said that it is based on innuendo. You have two questions to answer then, why you won't file it as is, and why you won't file it if it is no longer innuendo and I give you facts.

Doug: Do you have another law firm that you deal with?

David: No, not in New York, not for New York matters. I have for Delaware, California, Texas and Florida. No one else in New York. So I will look forward to that memo covering the two incidents. Because we are talking

1 about "as is", and then also if I gave you actual evidence. right, so I will look forward to getting that memo or if
2 you want to tell me again tomorrow, either way.
3
4 Doug: You want a memo that you will pay us for, saying that we have no right to conduct an internal conflicts
5 check.
6
7 David: No not you. That is not a memo for you giving an explanation to yourself of something.
8
9 Doug: I'm not giving an explanation to myself.
10
11 David: This motion needs to be filed.
12
13 Doug: We are not filing it.
14
15 David: If you are going to give some reason that is not filed, that is up to you. But I think you need to explain
16 why you are not filing it and I also offered to give you what you said you needed. You said you need "X" and I
17 said I would give you "X" and you said you still wouldn't file it after getting "X".
18
19 Doug: David, let me say it differently, "I will not put my name on these set of papers, I will not."
20
21 David: I am not asking you to put your name on it.
22
23 Doug: Well, what are you asking me? Are you asking Eric to put his name on it?
24
25 David: Eric has his name on it.
26
27 Doug: Oh, so you are asking Eric to put his name on it?
28
29 David: Eric's name is on it.
30
31 Doug: So you are asking Eric to sign it?
32
33 David: Eric is ready to sign it and the only reason why he isn't is because you said you didn't want it done.
34
35 Doug: Okay let me say, "I will not authorize Eric to sign these papers, I will not give him my permission, I will
36 not"
37
38 David: You know, I think you are making things difficult for yourself, but you are going to need to explain why
39 asking for attorneys to update their conflicts.
40
41 Doug: No, the issue....
42
43 David: It is not in fact or law. And also when you said you couldn't do it because there is no evidence, and if I
44 gave you the evidence that you still wouldn't do it.
45
46 Doug: You and I read it differently.
47
48 David: I also gave you the opportunity to go to the point to find out which words, which specific language you
49 didn't like, and you declined.
50
51 Doug: I appreciate it. We are not going to sign this.
52
53 David: I think you are making things very difficult for yourself and we will see how things go.
54

1 Doug: Okay.
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3 David: But I think the ball is still in your court.
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5 Doug: Nope, I'm telling you now, honestly...
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7 David: You need to start covering the bases for yourself, because you are venturing out here.
8
9 Doug: Are you threatening us?
10
11 David: Excuse me? Threatening what?
12
13 Doug: Me.
14
15 David: With what?
16
17 Doug: I don't know?
18
19 David: Not that I am aware of.
20
21 Doug: Okay, maybe I just misheard what you were saying.
22
23 David: No, I'm telling you that you need to cover the bases for yourself.
24
25 Doug: Okay, we are very careful on conflict checks, very careful.
26
27 David: Good. I'm not referring to conflict checks, I am referring to making sure that the actions you take are for
28 your client and not to protect other attorneys.
29
30 Doug: We don't protect other....
31
32 David: If you recall, I think there was an issue which caused you to decline to perform actions in the Footstar
33 case, which in a letter advising you, you know talking about that issue, went to you. And you saw that
34 correspondence, right?
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36 Doug: I will tell you this David...
37
38 David: So this looks like another instance....
39
40 Doug: Then David fire me!
41
42 David: No, no. This looks like another instance....
43
44 Doug: No. Because I am tired of it. I have told you before and I will tell you again. There are no strings attached
45 to my arms and there are no strings attached to my legs.
46
47 David: Especially when you want to protect opposing counsel.
48
49 Doug: Do you think we are trying to protect Weil Gotshal because they need our protection!
50
51 David: I didn't say Weil Gotshal, by the way. How many professionals, there are like a dozen of them.
52
53 Doug: Okay, you think a dozen law firms out there with lawyers of fifty or more need our protection? Fine. If
54 that is what you want to believe, fine. That we are protecting them, fine.

Transcript of discussion between Douglas J. Pick and David O'Donnell

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2 David: That is the way it looks.
3
4 Doug: Okay, it is what it is. I can't change me.
5
6 David: That's the way I think it will look to your average American, is the same way.
7
8 Doug: Okay, then that's the way it looks.
9
10 David: Okay, well I am glad we are in agreement on that.
11
12 Doug: Alright.
13
14 David: Talk to you later.
15
16 Doug: Okay, bye.