

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 SECURITIES & EXCHANGE  
4 COMMISSION,

5 Plaintiff,

6 v.

04 Civ. 2322 (GEL)

7 UNIVERSAL EXPRESS, INC., et.  
8 al.,,

9 Defendants.

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New York, N.Y.  
October 12, 2007  
2:50 p.m.

10  
11 Before:

12 HON. GERARD E. LYNCH,

13 District Judge

14 APPEARANCES

15 BY: LESLIE HUGHES,  
16 BY: JULIE LUTZ,  
Attorneys for Plaintiff

17 STILLMAN & FRIEDMAN, P.C.  
18 Attorneys for Defendant Neuhaus  
19 BY: JOHN B. HARRIS

20 TIFFORD & TIFFORD, P.A.  
Attorneys for Defendants Altomare and Gunderson  
21 BY: ARTHUR W. TIFFORD,  
BY: LAWRENCE GARVEY

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1 APPEARANCES: (continued)

2 AKERMAN SENTERFITT, LLP  
Attorneys for Defendant Sandhu

3 BY: JJASON PICKHOLZ,  
BY: MARVIN PICKHOLZ

4

5 DILL DILL CAR STONBRAKER & HUTCHINGS, PC  
Attorneys for Defendant Mendiratta

6 BY: JOHN A. HUTCHINGS,  
BY: HARRY WISE

7

8 Also Appearing:

9 JANE MOSCOWITZ, Receiver

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14 (In open court; case called)

15 MS. HUGHES: Good afternoon, your Honor, my name is  
16 Leslie Hughes. I represent the plaintiff, United States  
17 Securities & Exchange Commission.

18 MS. LUTZ: Julie Lutz for plaintiff SEC.

19 THE COURT: Ms. Lutz, good afternoon.

20 MR. TIFFORD: Arthur W. Tifford on behalf of Mr.  
21 Altomare and Mr. Gunderson.

22 Your Honor, I don't know how to announce, relative to  
23 the corporation itself, since it is in receivership, but the  
24 receiver is here, in the event the Court needs to address the  
25 subject of any representation of the corporation itself.

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1 THE COURT: Okay. Good afternoon Mr. Tifford.

2 And I understand also that you have got an issue with  
3 respect to a conflict with, continuing to represent Mr.  
4 Gunderson. So I take it that that's an issue we may reach  
5 today as well

6 MR. TIFFORD: I do, your Honor. And Mr. Garvey,  
7 standing to my left, the Court's right, is here for Mr.  
8 Gunderson.

9 THE COURT: Mr. Garvey, good afternoon.

10 MR. GARVEY: Lawrence Garvey, potential incoming  
11 attorney for Mr. Gunderson. I have an appearance.

12 THE COURT: That might simplify things. If you are  
13 prepared to go forward representing Mr. Gunderson, and if Mr.  
14 Gunderson wants to be represented by you at this point, then  
15 there is not an issue, I have no problem approving the  
16 substitution, and don't need to worry about a conflict or no  
17 conflict. So long as there is no disagreement on the subject.

18 Mr. Tifford has made a motion, if Mr. Gunderson was  
19 unhappy with that situation, or didn't want to, or believed  
20 that Mr. Tifford should continue to represent him, we might  
21 have an issue. But I take it the SEC doesn't have a dog in  
22 this fight

23 MS. HUGHES: We do not, your Honor.

24 THE COURT: So, Mr. Garvey.

25 MR. GARVEY: If I may, your Honor, I don't think Mr.

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1 Gunderson has an issue. However, I am going to again request  
2 adjournment on behalf of this proceeding so I can get up to  
3 speed in the paperwork. I am at a severe disadvantage.

4 THE COURT: I think we can deal with that. There are  
5 different issues with respect to staying these proceedings.

6 I understand that there was an application made by Mr.  
7 Tifford, which I denied, which had to do with the possible  
8 existence of a grand jury investigation at this point. And,  
9 you know, you may want to revisit that at some point. But I  
10 think there is a narrower issue, which is as new counsel are  
11 coming in, you may well need more time to react to these  
12 proceedings.

13 And, you know, I think if we have to postpone  
14 consideration of matters with respect to Mr. Gunderson, that  
15 may very well be appropriate. We got a long agenda with a lot  
16 of different things on it.

17 So the first order of business is to clear up the  
18 representation issue.

19 You have got a notice of appearance, I don't think  
20 there is going to be an issue. Maybe it is appropriate. Is  
21 this in the form of a stipulation of substitution?

22 MR. GARVEY: I have that as well, ECF was down most of  
23 the day.

24 THE COURT: Yes. Welcome to the case.

25 Who else is here?

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1 MR. M. PICKHOLZ: Marvin Pickholz for George Sandhu.

2 MR. J. PICKHOLZ: Jason Pickholz, also for George  
3 Sandhu.

4 THE COURT: Mr. Pickholz, again, good afternoon.

5 MR. HARRIS: John Harris with Harry Wise for Mark  
6 Neuhaus.

7 MR. HUTCHINGS: Good afternoon, your Honor, John  
8 Hutchings for Defendant Mendiratta.

9 THE WITNESS: Harry Wise also on behalf of Mr.  
10 Mendiratta.

11 THE COURT: Mr. Pickholz, I thought that you weren't  
12 able to make it today. I thought I had postponed your  
13 application at your request.

14 Maybe I misunderstood what was going on here. I  
15 thought it was rescheduled.

16 THE LAW CLERK: We rescheduled for today.

17 THE COURT: So we accommodated your issues, that's why  
18 you are here. Okay, good.

19 Let me start. We are here initially on the SEC's  
20 motion for a contempt against certain defendants in this case.

21 On August the 30th the Court entered an order holding  
22 that the SEC had made its case for a finding of contempt, but  
23 giving the defendants Altomare, Gunderson and Universal  
24 Express, a final opportunity to appear today and show cause why  
25 they should not be held in contempt.



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1           That was six weeks ago, approximately.

2           In that time, the Court received no further written  
3 communication from those defendants until yesterday, rather,  
4 the 11th hour, when I received a request to adjourn this  
5 proceeding, as well as for Mr. Tifford to withdraw as the  
6 attorney for Mr. Gunderson.

7           I denied the motion for a stay, as I said earlier.

8           Before we turn to the substance of that hearing,  
9 though, I note that as to certain other defendants, this case  
10 is scheduled to go to trial next month. And I am glad  
11 everybody is here who is involved in that, because I wanted to  
12 find out what is happening with that.

13           I have gotten both a motion from Mr. Sandhu and then  
14 part of the basis for Mr. Tifford's request to adjourn this  
15 proceeding, both of which suggested that possibly the  
16 defendant, Mendiratta had switched tables in this proceeding.

17           And quite apart from those applications, since as far  
18 as I know, we have got a trial that's scheduled for not that  
19 many weeks in which Mr. Mendiratta is a defendant. I would  
20 certainly be interested to know who, if anyone, is going to  
21 trial.

22           So what do we know, Ms. Hughes?

23           MS. HUGHES: Your Honor, what we know is that Mr.  
24 Mendiratta submitted an offer of settlement to us on October 2.  
25 The process for the SEC to consider offers is that we write

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1 legal memoranda to our clients in Washington, D.C., that goes  
2 through a review process, it finally gets calendared and the  
3 commission says yes or no, we like that offer. That process  
4 takes six or eight weeks.

5 THE COURT: Well, they either take a little less than  
6 that or we are going to have a trial, despite a settlement that  
7 might well be acceptable. This trial has been scheduled for a  
8 long time. It is taking up a nice chunk of my calendar, I  
9 don't expect it to be adjourned. It is either going to happen  
10 or it is going to go away, as to one or more of these  
11 defendants.

12 So I would suggest trying to expedite that process

13 MS. HUGHES: I appreciate that, and we will.

14 THE COURT: And is it a part of the expectation of  
15 that possible settlement that Mr. Mendiratta is going to be a  
16 witness for the plaintiff?

17 MS. HUGHES: We anticipate that he will be a witness  
18 at trial, yes.

19 THE COURT: Okay, well, maybe then -- let me just try  
20 and deal with some other defendants here, then, as well.

21 Mr. Neuhaus, as to Mr. Neuhaus, summary judgment was  
22 granted on certain claims and not on others.

23 I take it that unlike the situation with what -- at  
24 one point we called the institutional defendants, the SEC wants  
25 to proceed against Mr. Neuhaus on those claims that are still

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1 open.

2 MS. HUGHES: Yes, your Honor. There was a fraud  
3 claim, a 10(b)5 claim that was not resolved on summary  
4 judgment. And you left open the issue of remedies depending on  
5 whether the fraud claim went one way or the other.

6 THE COURT: And that is still going forward for the  
7 trial.

8 MS. HUGHES: And we have not reached a resolution for  
9 him.

10 MR. HARRIS: May I be heard on that?

11 You haven't heard from me in the flurry of  
12 letter-writing activity in this case, and that's really been  
13 for a couple of reasons. One is, I don't believe that Mr.  
14 Mendiratta had anything in particular to say about my client.  
15 I think really to the contrary, he didn't know -- he knew very  
16 little about my client.

17 On the Mendiratta issue, while I grant you that it is  
18 a, one that causes some concern in terms of timing, from Mr.  
19 Neuhaus's point of view, I think that he would like to see if  
20 there is a resolution that's possible with the government.  
21 That's not a surprise, I am sure.

22 And the government has sent him certain forms, and I  
23 have talked to him about those forms. And I do expect that he  
24 will be in a position to submit those forms to the government  
25 shortly. So that perhaps the process that's begun with Mr.

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1 Mendiratta could conceivably begin with Mr. Neuhaus.

2 I don't think that from an enforcement point of view,  
3 the SEC already having a Section 5 judgment against Mr.  
4 Neuhaus, whether there is a great institutional interest in  
5 pursuing additional claims, when Mr. Neuhaus, quite frankly, is  
6 not a wealthy man at this point, you know. I don't know what  
7 the commission's view of that would be.

8 THE COURT: Well, there might be, and there might not  
9 be. But once again, I think the issue is expedition.

10 The SEC is, unlike many parties in litigation, they do  
11 have this bureaucratic process that sometimes makes it  
12 difficult to execute quick decisions.

13 So, you know, I have always been of the view that  
14 nothing that I can say encouraging settlement is anything like  
15 as valuable as setting a trial date and sticking to it. So we  
16 have got a trial date. And it is my hope that if anybody wants  
17 to avoid that trial, and is interested in reaching agreement,  
18 that they proceed to do so. And do it as quickly as possible.  
19 So that, you know, I know, what kind of trial I am going to  
20 have, if any. And so that the parties can avoid what is likely  
21 to be a considerable expense and burden preparing for trial, if  
22 there is a resolution that's possible.

23 MR. HARRIS: Your Honor, for a variety of reasons, I  
24 am keenly conscious of the time and expense involved in this  
25 matter. And it has been, actually, a longstanding issue in the



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1 case.

2           The one issue that I wanted to raise with your Honor,  
3 and it is raised somewhat in Mr. Sandhu's papers, is the issue  
4 of what appears to be a revived United States Attorney interest  
5 in this matter.

6           As you will recall, in 2004 there were a couple of  
7 stays granted. Then the United States Attorney did not come  
8 back and ask for another stay. And a period of, I believe,  
9 years passed, more than maybe two and a half years, and then I  
10 gather there were events that came to the U.S. Attorney's  
11 attention long after my client was uninvolved with the  
12 Universal Express that has managed to rekindle this.

13           Obviously, as we approach the trial, the existence of  
14 that continuing investigation poses problems for all of us on  
15 the defense side. Mr. Neuhaus, in particular, wasn't deposed  
16 in the course of the SEC investigation. And while they did  
17 take his testimony in the earlier investigative phase, he has  
18 not been called upon to testify in this case in the last four  
19 plus years. Thus, you know, involving the original U.S.  
20 Attorney investigation, and now what appears to be the revived  
21 one.

22           So I raise that issue only because I believe that, you  
23 know, there is a fairness issue to these defendants.

24           I respect the United States Attorney's rights to come  
25 in, to make an initial call that they wanted things stopped,

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1 and years later to come back and express additional interest.

2 But I did want to raise, for your Honor, the prospect  
3 of either a formal motion on that regard, or the desirability  
4 of postponing the trial for that reason, and other reasons that  
5 are brought forth today.

6 THE COURT: Well, you know, the United States Attorney  
7 may have interest in all sorts of aspects of this case. The  
8 SEC's contempt application is premised on the idea that conduct  
9 that was enjoined by the Court continue.

10 Now, I don't know whether any of that conduct might  
11 appear to be criminal to a diligent prosecutor, and I don't  
12 know whether that or something else revives the Justice  
13 Department's interest in the case.

14 But it does occur to me that if there is a specter of  
15 continuing activity, giving rise to renewed investigations, we  
16 may never be free of a grand jury in this case. And there is,  
17 it seems to me, a considerable public interest, and a private  
18 interest on the part of the shareholders and others who may  
19 ultimately benefit from sanctions or disgorgement that the SEC  
20 might collect from various parties, if the SEC's action is  
21 successful in having this matter brought to term.

22 That's a very powerful interest. The United States  
23 Attorney has -- is it this district that's doing this?

24 MS. HUGHES: Yes, your Honor.

25 THE COURT: Doing whatever they are doing.

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1           The United States Attorney knows where this courtroom  
2 is, presumably is aware of these proceedings, intervened once  
3 before to seek a stay, and has certainly not made known to this  
4 Court anything about a government interest, that is a Justice  
5 Department interest, in this matter. So I am completely in the  
6 dark as to what they might be doing, as I imagine the  
7 defendants are in the dark.

8           But it would take some fairly substantial tangible  
9 information about what they are doing and what is going on to  
10 further delay a case that was filed in 2004, in a matter where  
11 a trial has been scheduled for a very long time, where we  
12 proceeded all the way through discovery without objection from  
13 the Justice Department, except for the period of the stay early  
14 on in the case, or from any of the defendants where we  
15 proceeded through a summary judgment record. Again, as I  
16 recall it, without any objection from anybody that adjudicating  
17 the matter at that stage was somehow problematic. And that  
18 disposed of the case as to those people, that it is most likely  
19 that the Justice Department might be interested in pursuing  
20 those people.

21           Notwithstanding whatever the government was doing or  
22 not doing, if I recall, Mr. Altomare asserted privilege in this  
23 litigation, and nobody came to me and said, well, that's  
24 unfair, we shouldn't be doing this, or whatever.

25           So I am a little at a loss now at this 11th or 11th

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1 and a half hour. It is now suddenly time to call a halt to the  
2 proceedings based on what may or may not be some renewed  
3 interest in Universal Express by the Justice Department, where,  
4 for all I know, the thing that renewed that interest may well  
5 be things that have nothing to do with the people that are  
6 going to trial anyway.

7 So right now I am not very disposed to postpone this  
8 matter further on that basis. I certainly haven't seen  
9 anything to date that makes me think that should happen. But  
10 everyone's free to file formal motions and make a better record  
11 if they think that their rights are prejudiced by going  
12 forward.

13 I guess we will just leave it at that for the moment.  
14 But right now I have got a trial, I am looking to get it  
15 prepared for trial and have it go forward as scheduled against  
16 the remaining defendants in the case. Unless they either  
17 settle or persuade me by some motion or other, that the case  
18 should be put off. I think that's the most I can say at this  
19 point about that.

20 MR. HARRIS: Your Honor, I won't belabor the point.

21 THE COURT: I hear you. And I am sure Mr. Pickholz  
22 has more to say on this subject.

23 Before we go there, Ms. Hughes, just remind me, this  
24 is a bench trial, is that right?

25 MS. HUGHES: Yes, your Honor.



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1           THE COURT: Because we had a flurry of issues as to  
2 whether there would be a jury trial regarding the Altomare  
3 defendants. That went away once the SEC withdrew its further  
4 complaint there.

5           MS. HUGHES: Your Honor, you raised that issue on the  
6 April 16 pretrial conference and said, parties who wanted a  
7 jury trial at that time should make a motion. Which Universal  
8 Express, Mr. Altomare and Mr. Gunderson did. When we did  
9 dismiss our other, the remaining claims against them, there  
10 were no other parties that asserted, in April, wanting a jury  
11 trial.

12           THE COURT: Now Sandhu and Mendiratta are having a  
13 bench trial, and there is no issue as to that.

14           MS. HUGHES: That's correct.

15           THE COURT: And I hear nothing from any of those  
16 parties saying that's not correct.

17           MR. J. PICKHOLZ: That's correct for Mr. Sandhu.

18           THE COURT: Very good. Do we have a schedule on which  
19 the pretrial submissions are going to be made? Mr. Pickholz?

20           MR. M. PICKHOLZ: Your Honor, without trenching on the  
21 motion before you that Jason made, he's the one that is most  
22 familiar with the Mendiratta situation, but trying to think  
23 with the question of either staying this case or moving the  
24 trial date, we are facing virtually an impossible situation in  
25 terms of complying with your order for the following reason:

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1 A, I don't know what we could be joined with. I can't be  
2 joined with Mr. Mendiratta, apparently. I may not be joined  
3 with Mr. Neuhaus, I can't sit down and share strategies. And I  
4 don't know if I can stipulate to anything. And all of this is  
5 due on Monday.

6 With respect to why we are here at this 11th, if not  
7 13th hour, you, I think, said, that we proceeded to this point  
8 without objection. And that is correct. And the reason it is  
9 correct is because, as Mr. Harris said, the U.S. Attorney came  
10 in twice to stay this matter. They then withdrew from that  
11 position. But they are on the docket sheet and continue to get  
12 every piece of paper in this case, and never said a word.

13 What we didn't know, and couldn't raise with your  
14 Honor until now, was two things that have come up very  
15 recently. One is in Mr. Hutchings October 9 letter to your  
16 Honor, which goes into Jason's argument.

17 But at page 6 he says, Mr. Mendiratta, the informant  
18 to the United States Attorney's Office and the FBI -- now, I am  
19 going to let Jason deal with whether we are entitled to certain  
20 discovery, because we know there wouldn't be an informant  
21 unless there are agreements and understandings. We now know  
22 where he has been and where he is. He is going forward in this  
23 case, clearly. I can't talk to him because his interests and  
24 my client's are not the same.

25 In addition, last night at 7:30 we received an e-mail,

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1 I think Mr. Hutchings is going to clarify that with the Court,  
2 that even though you saw it in Jason's discovery motions, we  
3 were asking about agreements and understandings, and were told  
4 there were none.

5 In preparing to come today, Mr. Hutchings has found  
6 there was one.

7 I don't know what we can do in terms of even complying  
8 with the order for Monday. And I think we don't know who is  
9 going to be here and who is not going to be here.

10 So I think what we've asked for, and I think in part  
11 the SEC's agreed we would like to get the Monday date continued  
12 to a later time, but if you are not going to stay this case, I  
13 would ask the Court at least consider giving us maybe 60 days  
14 more to see how all this sorts out, to see if Neuhaus settles  
15 or Mendiratta settles.

16 I did speak to one of the assistants yesterday, who I  
17 know and learned that she may or may not be able to have a  
18 conversation with us because she is due to give birth on  
19 November 9. When I asked her about the document you say you  
20 heard mentioned in the brief, I was told she has come into the  
21 case recently, she doesn't know what I am talking about.

22 So where we are is, we need to complete his  
23 deposition, that's going to require rulings from you on issues  
24 that Jason will address. And we have a pretrial order that you  
25 asked for, to have on Monday, which I don't think we can do.

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1           THE COURT: I have no problem postponing the pretrial  
2 order for some period of time. And we will figure that out as  
3 we go forward.

4           But there is some aspects of what you say that I am  
5 not all that sympathetic to. In the sense that we set this  
6 trial date, what, six months ago?

7           MR. M. PICKHOLZ: Probably; before the summer.

8           THE COURT: In that order of magnitude of period.  
9 Now, throughout that period, I realize, of course, busy lawyers  
10 for very good reasons aren't preparing for trial six months in  
11 advance. But, you know, through all that period whether a  
12 particular defendant's interests are aligned with another  
13 defendant's interests, is a question that is there and is up in  
14 the air. And you either decide that you are cooperating with  
15 people or you are not. And you now know that you are not  
16 cooperating with Mr. Mendiratta, it sounds like, and you have a  
17 pretty good expectation that Mr. Neuhaus is likely not to be  
18 going to trial. At least that's the way I read what has been  
19 said.

20           Maybe that's not right. But I have not heard anything  
21 suggesting that there is some conflict. But that's the choices  
22 you have to make.

23           You know, it doesn't seem to me, it's always the case  
24 that any defendant in a multi-defendant trial, has the option  
25 of settling on the last day with the adversary. And each



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1 defendant has his her or its own interests, and acts  
2 accordingly.

3 And to the extent that defendants or plaintiffs make a  
4 choice to collaborate with each other, enter cooperative  
5 agreements with each other, they take the risk that somebody  
6 might bail out at the last minute.

7 So the fact that there might be fractures in the  
8 common front that might otherwise have been offered by  
9 defendants, just seems to me to be the way of the world and not  
10 anything that warrants adjourning the trial. We will find out,  
11 as we go forward.

12 And you are the only one left -- if you are the only  
13 one left standing, that's presumably because that is what's in  
14 your interest to be.

15 And Mr. Sandhu will have his trial. And the actions  
16 of other defendants may influence that decision.

17 Well, you have heard what one of them has done, you  
18 have heard what one of them is thinking of doing, you may be  
19 able to get counsel to tell you more. You have to make your  
20 decision accordingly.

21 We can put off the joint pretrial order, that's of  
22 less significance than the trial. If I have less time to  
23 prepare for trial, so be it. You know, I have other things to  
24 do. But trial date, I am sure you are all aware that trial  
25 dates are very valuable real estate in this court.

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1           At this time, this is your trial date, it has been  
2 reserved for you for six months. If it is put off, it will  
3 have to be put off for a substantial period of time because I  
4 have other trials scheduled to run into March. I have got  
5 nothing that I can do. I know from experience to get some  
6 other case tee'd up for trial in a few weeks because those  
7 lawyers will say we are all busy with other things. So this is  
8 your date. And I don't think anybody should be under any  
9 illusion that that date is going to go away unless some really  
10 compelling showing is made that it would be just unjust to go  
11 forward.

12           Now, I guess since we are sort of dealing with some of  
13 these issues, maybe I should hear from Mr. Pickholz, the  
14 younger, on this front.

15           Here is what I don't quite get. Mr. Mendiratta was -  
16 was there, giving a deposition. He's available. And he is  
17 talking about what all the facts are. Right? Of whatever he  
18 did or didn't do in this case. Isn't that -- you have had an  
19 opportunity to examine him about his role in this case, or not?

20           MR. J. PICKHOLZ: Well, your Honor, first of all, the  
21 SEC took this deposition by videotape intending to use it as  
22 his trial testimony for direct. I even raised that on the  
23 record at one point when Ms. Hughes tried to interrupt, and she  
24 didn't deny that. So I was on cross-examination.  
25 Cross-examination I am entitled to not only facts but

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1 impeachment, credibility, bias, interests, prejudice, prior  
2 consistent statements. And I was completely stonewalled at  
3 this deposition.

4 THE COURT: Let me pursue this for a second.

5 It is perfectly consistent with my rules for the  
6 direct testimony to be offered by deposition or by an  
7 affidavit, for that matter, if Mr. Mendiratta is going to  
8 testify for the plaintiff at a bench trial. But, of course, at  
9 the trial he will be here. And you will have a full  
10 opportunity to cross-examine him, as I understand it, and you  
11 know, please correct me if I am wrong about this, Mr.  
12 Mendiratta is within subpoena distance of the courthouse, and  
13 he can be available for trial. So I am not sure I understand.

14 Maybe I need to hear from Mr. Hutchings on this.

15 But as the facts have been represented to me, I don't  
16 see any reason why he would be able to decline to show up. It  
17 is not just a matter of is he willing to fly here but not  
18 there, if he is within a hundred miles of here, as I understood  
19 he was from you, he will be here and you will have every  
20 opportunity to cross-examine him completely.

21 MR. HUTCHINGS: Your Honor, if I may, on behalf of Mr.  
22 Mendiratta, at Mr. Pickholz's request, I obtained  
23 Mr. Mendiratta's authorization to accept service of a trial  
24 subpoena at trial. I don't see that his appearance at trial is  
25 an issue.

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1           THE COURT: There was some suggestion that maybe  
2 Mr. Mendiratta didn't want to be here, or maybe somebody  
3 thought he wouldn't be here for trial. But now we hear he will  
4 be. So there is no issue that this deposition is going to be a  
5 substitute for trial testimony such that Mr. Sandhu will not  
6 have an opportunity for cross-examination, other than what  
7 happened at the deposition. You've got your shot in full.

8           MR. J. PICKHOLZ: Actually, your Honor, we still won't  
9 have his documents. He testified -- testified that he gave  
10 documents to the United States Attorney's Office. He refused  
11 to identify what they were.

12           We asked the U.S. Attorney. They can't find them. We  
13 didn't get to ask him what they were. And we are not going to  
14 have those documents in time for trial. Those are his original  
15 documents we are talking about.

16           THE COURT: Let's get back to that.

17           Mr. Hutchings, production was made to a grand jury  
18 subpoena or to the government, but no copies were kept of what  
19 was given to the government?

20           MR. HUTCHINGS: Your Honor, there was no grand jury  
21 subpoena. Mr. Mendiratta made a voluntary proffer pursuant to  
22 a proffer agreement. The proffer agreement when he gave a  
23 deposition, I forgotten about, because I wasn't representing  
24 him at that time in the criminal matter, I discovered it when I  
25 was reviewing my files this week, and I spoke to Mr. Pickholz.



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1           The proffer agreement, just so we are clear, this is  
2 an issue, is only an agreement for Mr. Mendiratta to provide  
3 statements. And if he provides truthful statements, and the  
4 only agreement that the U.S. Attorney's Office will not use the  
5 agreement --

6           THE COURT: -- this is the standard queen-for-a-day?

7           MR. HUTCHINGS: Yes, it is the standard  
8 queen-for-a-day-one-and-a-half-page agreement. Nothing more  
9 than that.

10           So when we said there were no agreements, I asked him  
11 for one, I forgot about it, and I took Mr. Pickholz's question,  
12 did you ever agree to it, and those questions were specifically  
13 asked by Mr. Pickholz who -- the answer is no, and that is, in  
14 fact, the case.

15           THE COURT: But what I hear, maybe I misunderstood, I  
16 thought Mr. Pickholz, when he referred to documents, meant some  
17 kind of underlying documents that relate to the facts and  
18 transactions at issue in the case. Or not only -- were not  
19 only documents generated in the course of dealings between the  
20 United States Attorney and Mr. Mendiratta. Am I right about  
21 that?

22           MR. J. PICKHOLZ: That's correct. That is both, your  
23 Honor.

24           MR. HUTCHINGS: There is a question on the scope, the  
25 written request pertaining to Mr. Pickholz's letter which was

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1 documents provided to the U.S. Attorney's office, the FBI  
2 related to Mr. Sandhu and various entities, which I will  
3 characterize them as Mr. Sandhu's entity -- I won't, we will  
4 call them entities. And Mr. Mendiratta said he produced no  
5 documents relating to Mr. Sandhu and those entities. That's  
6 the case. He testified he never had any documents relating to  
7 Mr. Sandhu or those entities.

8 Now, Mr. Mendiratta, in terms of -- so I am not sure  
9 what the scope of the actual request is beyond that. If we are  
10 talking about documents other than relates to Mr. Sandhu.

11 THE COURT: I hope you folks are able to negotiate  
12 that. But what I am hearing, Mr. Pickholz, is a  
13 representation, you know, you may be entitled to get that in  
14 written form, but it is a representation on record to the Court  
15 that there are no documents responsive to your subpoena. And  
16 that sounds like that.

17 What else is there that you need from Mr. Mendiratta  
18 in order to be properly prepared to face this testimony if you  
19 have already heard -- I don't know that I am going to quote Ms.  
20 Hughes, maybe I ought to ask her -- if you already heard what  
21 is his direct testimony for trial in full at this deposition?  
22 If you have had at least some opportunity to cross-examine him  
23 already about the substance of his dealings or nondealings with  
24 your client, or with Universal Express, and you now know that  
25 he is, if not yet a -- yet a cooperating government witness,

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1 that he is hoping to be such? What else am I going to learn at  
2 cross-examination about his relationship with the government?  
3 Or what else do you need in order to be fully prepared to test  
4 his credibility with whatever it is he has to say?

5 MR. J. PICKHOLZ: Well, we put it in the papers, your  
6 Honor, I am not going to rehash them, but there have been at  
7 least three sets of notes and memos from proffer and joint  
8 proffer sessions with the U.S. Attorney's Office, identified in  
9 both the brief and Ms. Hughes's declaration, and Mr. Beck's,  
10 they said they are -- we are not asking for the mental thoughts  
11 about those facts, but we are entitled to see -- first of all,  
12 was he consistent in his story. We are also entitled to see if  
13 there is anything in there that goes to impeachment,  
14 credibility, whatnot.

15 THE COURT: Just to be very clear, you are talking  
16 about notes taken by representatives of the SEC not of the  
17 United States Attorney?

18 MR. J. PICKHOLZ: That's right, your Honor.

19 THE COURT: Well, let's clear that up.

20 Ms. Hughes, is there some set of notes, and if so,  
21 what is the objection to producing them?

22 MS. HUGHES: Your Honor, there are three sets of notes  
23 that we are talking about. One is a memoranda that Hugh Beck  
24 made of a -- made with Mr. Hutchings and Mr. Dill, where they  
25 made a proffer with Mr. Dill. And they made a proffer about

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1 what Mr. Mendiratta might say.

2 Those notes and meeting occurred about two or three  
3 weeks before we filed our complaint. That's protected by the  
4 attorney work product, it is in anticipation of litigation. It  
5 is not Mr. Mendiratta's statement, it is the statements of his  
6 attorneys. So I am not sure how Mr. Pickholz gets that in any  
7 situation.

8 The second set of notes are Mr. Beck meeting Mr.  
9 Mendiratta during his queen-for-the-day with the U.S.  
10 Attorney's Office here in New York. He does not take notes  
11 during the course of that meeting, he makes a memo a week  
12 later.

13 THE COURT: After-the-fact memo?

14 MS. HUGHES: This is roughly what they said. Again,  
15 in anticipation of litigation, Mr. Beck's recollection of what  
16 was said, not a verbatim statement.

17 The third set of notes, Ms. Lutz and I met with Mr.  
18 Mendiratta on June 6. Mr. Hutchings talked a little bit about  
19 settlement. We wanted to meet with Mr. Mendiratta to see what  
20 he would say as a witness. We took notes of those. That was  
21 for preparation for the deposition, preparation for the trial.

22 Again attorney work product.

23 If we are in a civil case, Mr. Pickholz attends the  
24 deposition, has the ability to cross-examine for a couple of  
25 hours, asks a multitude of questions. I can't see how he is



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1 harmed in not having access to our work product.

2 THE COURT: I think one way to cut to the chase of  
3 this, is to get me, for in-camera examination, these various  
4 materials. And also a copy of the depositions so I have some  
5 idea of what these statements relate to or don't relate to.  
6 And I will make a judgment as to whether this is attorney work  
7 product.

8 But, Mr. Pickholz, I take it you are not volunteering  
9 to turn over to the SEC all of your notes and memos about  
10 interviews you did with witnesses. I would think that any  
11 competent lawyer or investigator working for lawyers is  
12 instructed to lard their memoranda with lots of musings about  
13 strategy and credibility of the witnesses, and what the witness  
14 can do for you, such that the memos are not verbatim statements  
15 of the witness, but are the lawyers' work product. And that's  
16 the way I did it. That's the way every lawyer I ever heard of  
17 does it.

18 So I would be kind of surprised if these memos in  
19 particular, and probably the notes too, don't look an awful lot  
20 like work product. And then the issue will be some necessity  
21 that overrides the work-product privilege. And that may turn  
22 on, you know, let's just say you can be sure that if the memo  
23 says black and the deposition says white, you will be seeing  
24 that. But otherwise I think you have had your shot at the  
25 witness.

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1           Now, if there is something more specific, we may get  
2 there yet. But as I read it, the big story here is, apparently  
3 people were taken by surprise by the fact that Mr. Mendiratta  
4 switched sides here, and now that you know it, well, I guess  
5 you are along the way to whatever cross-examination is  
6 appropriate for someone in that situation.

7           MR. J. PICKHOLZ: Your Honor, two quick comments on  
8 the documents.

9           When we do an in-camera review acceptable to us, if  
10 you look at -- when you look at Ms. Hughes's declaration that  
11 she submitted, paragraph three talks about the very meeting she  
12 had with Mr. Mendiratta. First thing is, she admits that it  
13 was to consider a proffer by Mr. Mendiratta of information that  
14 he could testify about if he were called as a witness at trial  
15 by the SEC.

16           I intended to use the information to take Mr.  
17 Mendiratta's deposition and prepare to present his testimony at  
18 trial.

19           With regard to the notes, these notes contain factual  
20 statements. I didn't only ask about -- one of the things I  
21 asked about was who have you consulted with about your  
22 deposition. Did anyone tell you what was going to be asked.  
23 His lawyer is Mr. Hutchings, not Ms. Hughes.

24           So I would ask your Honor to keep that in mind, that I  
25 did specifically ask those questions. And I was told no.

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1 THE COURT: That's going to be something that bears on  
2 the man's credibility.

3 If we've got, you know, if he testifies and, among  
4 other things says, gee, I said this at the deposition, but that  
5 was inaccurate, you know, apparently you now know it is  
6 inaccurate, you can confront him with that. And, you know,  
7 that's something that, if that's the way it plays out, I will  
8 be in a position to consider as to how it affects his  
9 credibility.

10 But it sounds like, you know, that -- that is, he told  
11 you he didn't have such meetings.

12 Again, Ms. Hughes, I am not accepting this as fact, it  
13 may -- we will see what actually happens at the deposition, but  
14 hypothetically he said at the deposition, I never had any  
15 meetings with anybody except my lawyer. And you now have a,  
16 certainly, a good-faith basis to suggest that that was false.  
17 What more do we need? We know that now. And so I think we  
18 have presumed this issue. Unless there is anything else that  
19 we need to worry about, I think we can turn to the contempt  
20 side of things.

21 MS. HUGHES: Your Honor, may I just raise one thing?  
22 Plaintiff's request talked about four documents. The fourth  
23 had to do with our settlement correspondence with Mr.  
24 Hutchings, as Mr. Mendiratta's attorney. And his argument  
25 didn't address that.

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1 I don't know whether your Honor wants to review those  
2 in-camera also, or not.

3 Our position is, they are not admissible.  
4 Inconsistent statements in settlement discussions, under 408  
5 don't come in.

6 THE COURT: Yes, settlement discussions are  
7 privileged, in effect, under federal rules.

8 Again, unless somebody has something further to say  
9 about it, I think we have exhausted this subject. I think I  
10 have ruled on what remains an open issue, that I am going to  
11 look at these things to verify whether they are work product.  
12 And if they are not, one kind of thing might happen, if they  
13 are, then, you know, I will see whether I need any further  
14 explanation on whether there is something in there that makes  
15 it unfair for it to be withheld, or that trumps the  
16 work-product privilege.

17 At this point that's the only relief that I am  
18 granting with respect to the Mendiratta situation. All right.

19 MR. HUTCHINGS: If I may just address the Court  
20 briefly before the Court moves on to the contempt issue.

21 Would it be appropriate for, at least the parties that  
22 are potentially having to go to trial here, to discuss the  
23 pretrial submission date?

24 THE COURT: Yes, right. What can we do? The trial  
25 date is November 20 something.



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1 MS. HUGHES: 26th, your Honor.

2 We had proposed everyone having the materials to you  
3 by November 5.

4 THE COURT: If that's fine with the parties, that's  
5 fine with me.

6 Let me just try and focus for a moment on the trial  
7 preparation.

8 It is probably premature to get a better estimate of  
9 how long the trial is going to last because that will be  
10 profoundly affected if some of the parties are no longer  
11 parties defendant. I generally can handle bench trials very  
12 efficiently. I try to read the direct testimony before the  
13 witness takes the stand, so that I am prepared to understand  
14 the cross.

15 That is, it is done, the documents will all be  
16 submitted, hopefully the parties will have worked out whatever  
17 objections there are to documents in the pretrial order  
18 process, so that I will know whether there is something I need  
19 to rule on. And, you know, it tends to move rapidly.

20 To do that efficiently requires homework by people,  
21 mostly me, mostly me up to the trial, mostly you before that.  
22 I need to know what issues I need to be thinking about.

23 So my only real concern with postponing the pretrial  
24 order and other document submissions until three weeks before  
25 the trial, is not for me to be able to read all the testimony.

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1 That probably won't come up until, I won't get to that until  
2 right before the trial.

3 What I really need is to know whether there are legal  
4 issues, motions in limine, that have to be addressed,  
5 substantial differences of agreement, differences of opinion  
6 about what testimony is going to be admissible and whatnot.

7 If there are deposition excerpts that are going to be  
8 offered, or something like that, the parties can go through  
9 them and tell me, if there is some disagreement about what  
10 needs to be offered. There shouldn't be too many. It is,  
11 after all a bench trial. We are not worried about protecting a  
12 jury.

13 If the objection is that's irrelevant, well, if it is  
14 irrelevant, it is not going to persuade me of anything. So we  
15 don't really need to worry too much about whether it forms a  
16 part of the record or doesn't form a part of the record.

17 If the argument is it doesn't prove anything, well, we  
18 will probably waste more time arguing about it than the  
19 evidence would be worth in the long run anyway.

20 So it is my hope that the parties will be able to  
21 present me with a record in an efficient way. And if that is  
22 done, if there aren't too many disputes for me to resolve,  
23 November 5 will be fine. And if it slips a week, that will be  
24 fine too. But if there are going to be disagreements, I need  
25 enough time to understand what they are, and resolve them, so

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1 when we go to trial, the trial will proceed smoothly. So  
2 November 5 is your date.

3 And with that understanding, you will do what you can  
4 to meet it. And you will be in a better position than I to  
5 know whether you -- whether it is desirable to put it off  
6 further or, you know, whether that's safe or whether it is  
7 going to be necessary to get it to me. And you will need to do  
8 a lot of homework before then to know whether there are  
9 disputes.

10 Which, again, puts a further premium on the settlement  
11 issue. If there are parties who are prepared to settle, I  
12 realize the Commissioners are very busy and all that, but  
13 somebody's got to fish or cut bait on these matters. And, you  
14 know, I never worked with the SEC, I never worked for the SEC,  
15 I don't know how they do these things. But it is a little hard  
16 for me to believe that somebody in the know won't know, with a  
17 considerable degree of certainty, before there is an actual  
18 vote taken by people who have bigger things on their mind than  
19 this, whether any settlements that have been proposed by the  
20 parties are likely to be accepted.

21 So let's try to give these various parties, I guess  
22 Mr. Neuhaus has to make his one decision first, but once he  
23 does, if he wants to settle, or Mr. Mendiratta already has made  
24 a proposal, you know, we all understand that it is subject to  
25 final approval by the commission. And it ain't over till it's

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1 over. But let's not pretend that we don't know or we won't  
2 know by some point what is the extremely likely outcome of any  
3 such proposal.

4 All right. Now, to the contempt issue --

5 MR. J. PICKHOLZ: Your Honor, could we just get a date  
6 for when the SEC will provide those documents to you? Because  
7 it is going to affect our pretrial order.

8 THE COURT: It is not really. But you are going to  
9 get it to me, like, yesterday or tomorrow.

10 MS. HUGHES: Your Honor, I can send it out on Monday.  
11 You will have it by Federal Express on Tuesday.

12 THE COURT: Yes, of course. And I will be out of town  
13 Monday through Wednesday, so I will actually see it on  
14 Thursday.

15 MR. J. PICKHOLZ: We also asked, and we will ask  
16 again, for an order if the U.S. Attorney's Office does find Mr.  
17 Mendiratta's documents, to turn them over.

18 THE COURT: I thought I was told there weren't any  
19 documents. That's what I thought we heard.

20 MR. HUTCHINGS: There are no documents that were given  
21 by Mr. Mendiratta to the U.S. Attorney relating to Mr. Sandhu,  
22 Spiga Iigazure I-I-G-A-Z-U-R-E Capital. There were three  
23 entities of Mr. Sandhu that the written document request  
24 pertained to.

25 MR. J. PICKHOLZ: We also heard some sworn testimony



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1 that there were no agreements --

2 THE COURT: -- okay, so he is a liar, what can I do  
3 about it? When we get to the trial, you will have a witness  
4 who says what he says under oath, and it will either be the  
5 truth or it won't be the truth.

6 But I have a representation from counsel that there  
7 were no such documents turned over to the United States  
8 Attorney. He didn't say there were no documents turned over to  
9 the United States Attorney, there might have been documents, I  
10 don't know that beyond the scope of your subpoena, or their  
11 case as it relates to Mr. Sandhu. I haven't heard a  
12 representation about that.

13 But I have heard a representation about what matters.

14 This is how discovery works, as we all know. You  
15 serve a subpoena or document demand and somebody says, there  
16 ain't no documents. Now, they are held to that.

17 If it later turns out that -- all kinds of things can  
18 happen. But that's what it is. I can't get blood from a  
19 stone. I can't make the United States Attorney produce  
20 documents that the assistant doesn't know where they are and  
21 Mr. Hutchings says doesn't exist.

22 We're done with the question of documents.

23 Now turning to the contempt issue as to the corporate  
24 defendant Universal Express.

25 I have appointed a receiver. And as I understand the

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1 receiver's report, the receiver has taken various actions  
2 detailed in the report, including, I believe, instructing Mr.  
3 Tifford no longer to pursue this case on behalf of the  
4 corporation. Whatever else that does to this litigation, does  
5 it not mute the SEC's request for a contempt finding or  
6 contempt sanctions against the corporation?

7 MS. HUGHES: It does, your Honor.

8 THE COURT: Okay. So the corporation is out of this  
9 application.

10 Now, with respect to Mr. Altomare, Mr. Tifford, is  
11 there something that we are going to hear today on behalf of  
12 Mr. Altomare in the form of argument or testimony or both?

13 MR. TIFFFORD: Your Honor, I have an announcement to  
14 make to the Court, which I make in good faith, and I hope  
15 satisfies the Court's approach to the issue of contempt. Or  
16 the potential for contempt.

17 I discussed it briefly with SEC counsel before today's  
18 session began. And I believe it focuses on your Honor's own  
19 words in Section 6 at page 21 of the August 30 order.

20 If I may quote it to the Court -- although knowing the  
21 Court's vast resources of memory recall --

22 THE COURT: -- I happen to have the document in front  
23 of me.

24 MR. TIFFFORD: You probably have the section in mind.

25 If I may, approximately halfway down the first

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1 paragraph, I am beginning with a carry on thought, but I know,  
2 since it is your Honor's, it's complete reference is in mind.

3 I quote: As such, instead of immediately finding all  
4 three defendants in contempt, a judgment of this, a judgment --  
5 this record will aptly support, the Court will give the  
6 defendants one last opportunity to comply with the order, or to  
7 rebut the SEC's strong case for a finding of contempt. Period.  
8 Close quote.

9 Hoping that my powers of perception were correct, and  
10 are correct, I interpreted your Honor's language as exactly  
11 contained on that page in that section. And it caused me to  
12 undertake certain action which otherwise might have been  
13 missed. The announcement which is the culmination of that  
14 action was presented first to the SEC counsel. I now make it  
15 to the Court.

16 THE COURT: I am all ears.

17 MR. TIFFORD: This precluded was to not milk the  
18 scene. It was to properly frame that which follows.

19 THE COURT: I understand that. I am milked. Tell me  
20 what the announcement is.

21 MR. TIFFORD: Mr. Altomare, through various resources,  
22 is prepared to deliver today, in fact I have the check in my  
23 possession, a payment of \$30,000 on account of the \$1,419,025  
24 of disgorgement. I understand there is some prejudgment  
25 interest that must be added to that. But the disgorgement

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1 amount per the order and your Honor's March 8 final judgment is  
2 a million four nineteen and twenty-five dollars.

3 In addition to the \$30,000 payment, he is prepared to  
4 commence a monthly installment on the 15th of each month  
5 beginning November 15, with a minimum monthly payment of  
6 \$10,000. Or 20 percent of his gross earnings, whichever is  
7 greater.

8 So the floor of the monthly installment is \$10,000.  
9 It may rise to a greater amount if 20 percent of his gross  
10 revenues -- earnings comes to more than \$10,000.

11 In addition, he is working on raising anywhere from  
12 1.5 million to slightly more, depending on the exact interest  
13 calculation that is applicable based on postjudgment interest  
14 on the original 1.419 million. He needs about another 30 to 45  
15 days to see. If there is, sources will lend him those funds.

16 And in addition to that, Mrs. Altomare and Mr.  
17 Altomare own, as tenants by the entirety, a condominium  
18 apartment in the Boca Raton area.

19 They have placed that on the market. The equity in  
20 that is approximately -- within a range of 300,000 to \$800,000.

21 Mrs. Altomare has authorized me to state to the Court,  
22 and I have asked her to attend to confirm that, my announcement  
23 on the record before documents are signed by her.

24 She is prepared to and has authorized me to express  
25 her consent to abandon and waive her interest in the net



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1 proceeds of the sale of that condominium property owned as  
2 tenants by the entirety.

3 Under Florida law, a tenancy by the entirety is a  
4 unique form of ownership enjoyable by husbands and wives only.  
5 It functions in the nature of a joint tenancy with right of  
6 survivorship. But under Florida law it's one step up from  
7 that.

8 She is prepared to announce the confirmation of my  
9 statement that she abandons and consents to the abandonment of  
10 her interest in the proceeds of the sale.

11 Under Florida law, the proceeds of the sale of a  
12 tenancy by the entirety passes -- derives from the original  
13 tenancy. So husband and wife could move into a bank account  
14 title, the tenancy by the entirety, the proceeds of the sale.  
15 She is abandoning that. She is here to confirm that.

16 From my understanding of their joint resources, this  
17 offer is made in good faith.

18 I suggest to the Court that it is substantial. I  
19 suggest to the Court it is as good as they can do, based on  
20 information at my disposal.

21 In addition, Ms. Hughes raised a second subject, and  
22 that was the portion of your Honor's order that bars Mr.  
23 Altomare from continuing as an officer or director of a company  
24 whose shares are a subject 12 reporting to the SEC.

25 That subject, frankly, escaped me until Ms. Hughes

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1 raised it. I was traveling on the supposition that the  
2 appointment of the receiver, the creation of the receivership  
3 rendered moot that aspect of your Honor's order.

4 In the event it is not formally completely legal and  
5 moot, Mr. Altomare has authorized me to announce, and he is  
6 here to confirm, that he withdraws with prejudice, from any  
7 authorship of Universal Express. And will abide by your  
8 Honor's order with respect to any other corporate entity that  
9 falls within the umbrella of your Honor's language.

10 THE COURT: All right. I don't know whether I need to  
11 hear from Mr. or Mrs. Altomare. If they are here, and they are  
12 not objecting to what you just said, I think as attorney --  
13 well, maybe, Mrs. Altomare, you are not attorney of record for  
14 her -- I take it you do represent her?

15 MR. TIFFFORD: I have authority to make this  
16 announcement.

17 Ms. Altomare, will you please stand? I have the  
18 privilege of introducing you to his honor, Judge Lynch.

19 THE COURT: Good afternoon, Mrs. Altomare.

20 Are Mr. Tifford's statements accurate?

21 MRS. ALTOMARE: Absolutely, yes.

22 THE COURT: I guess, while we are at it, if Mr.  
23 Altomare wants to confirm as well.

24 MR. TIFFFORD: Mr. Altomare, His Honor Judge Lynch.

25 MR. ALTOMARE: I also concur.

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1 THE COURT: Thank you very much, Mr. Altomare.

2 So now, I guess, the question for Ms. Hughes to  
3 respond to, is, let me -- maybe before I ask you, it has seemed  
4 to me that the appointment of the receiver moots, to a  
5 considerable degree, at least certain aspects of the contempt  
6 request. That is, as I have understood it. And you can  
7 correct me if I am wrong, the plaintiff's application was for  
8 an order of contempt, an order to get the defendants to comply  
9 with the Court's order. And there was a request for certain  
10 sanctions, including very severe sanctions to comply, to obtain  
11 that compliance.

12 At the same time, though, the SEC also sought the  
13 appointment of the receiver.

14 The receiver was appointed and took control of the  
15 company, at least to the extent that the contempt application  
16 was based on a showing that Mr. Altomare continued to issue  
17 stock in Universal Express, continued to operate Universal  
18 Express, those things, those events are over for the future,  
19 given the appointment of the receiver.

20 So it had rather seemed to me, and perhaps I also  
21 overlooked the issue of Mr. Altomare's potential involvement as  
22 an officer of other companies, that much of the contempt  
23 application with respect to him as it relates to Universal  
24 Express is, again, I don't know whether mooted is exactly the  
25 right word, like Mr. Tifford, I am not sure if it is

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1 technically moot, but insofar as the goal of the contempt  
2 application was to compel Mr. Altomare to comply with those  
3 aspects of the Court's order that related to his involvement in  
4 Universal Express, that there was no longer a need for that.  
5 So that it had seemed to me, and again I am just putting this  
6 out so you will know what I was thinking, that the principal  
7 remaining issue was the financial aspect of the relief order by  
8 the Court.

9 Let me say one other thing with respect to that.

10 The receiver's report suggested to me that there may  
11 well be evidence that Mr. Altomare took from Universal Express  
12 considerable compensation over the past year, and presumably  
13 before. But I am interested in the recent events which might  
14 suggest that he does have assets that would be more substantial  
15 than what Mr. Tifford puts on the table here.

16 And just doing a quick calculation, \$10,000 a month,  
17 we are talking about a 20-year mortgage here, if those are the  
18 payments the disgorgement has occurred.

19 So I don't know whether that is satisfactory to the  
20 SEC in terms of the financial issues. But I put those things  
21 out as a reaction pending hearing what the SEC thinks it is or  
22 should be entitled to at this stage. In light of Mr. Tifford's  
23 proposal.

24 MS. HUGHES: Your Honor, coming in to this today, and  
25 prior to meeting with him, certainly we continue to have a



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1 concern that Mr. Altomare never resigned as an officer and  
2 director. And if he is now making that representation formally  
3 to the Court, then that would comply with that aspect of the  
4 order.

5 THE COURT: I take it that's what Mr. Tifford was  
6 saying, there is no fancy footwork here, that's encompassed  
7 within what you said.

8 MR. TIFFORD: Yes, indeed.

9 MS. HUGHES: As to whether or not Mr. Altomare could  
10 issue more unregistered stock, certainly by placing the  
11 receiver in control of the company, that conduct has stopped.

12 Mr. Altomare has penned many, many, many press  
13 releases. And whether or not he is an officer of the  
14 corporation or not, he certainly would have the ability to  
15 issue a press release to correct the various fault statements  
16 which the Court found.

17 And right after your Honor issued the decision, Mr.  
18 Altomare penned a press release on September 4, 2007. So he  
19 certainly has had the ability, and that certainly predates when  
20 the receiver came into being, but the ability to address the  
21 public, address the shareholders and advise them that he's made  
22 multiple fault statements, which the Court has found.

23 THE COURT: Yes, but is there some relief that I  
24 ordered that he is not supposed to make some press release? I  
25 don't recall. Maybe I did, I don't know.

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1 MS. HUGHES: No, your Honor, there is not. There is  
2 not in your order something that says he's going to put out a  
3 press release.

4 But how does he correct the false statements? His  
5 choice would be file an amended 10Q or 10K. File an 8K, which  
6 is a current event kind of statement.

7 Well, the SEC and -- at the point the receiver gets  
8 appointed, he doesn't have the ability to do that. So how else  
9 do you get the information out there?

10 I think it is reasonable to put, to ask him to put out  
11 a false -- statement about the company not operating world  
12 press, not having revenues from that. That, in fact, he and  
13 the company are part of the lawsuit that the SEC brought. That  
14 he has been removed as an officer and as of this day has  
15 resigned as an officer of the company.

16 THE COURT: I don't know that that is either something  
17 that I ordered that he was supposed to do such that he would be  
18 in contempt for not doing it. Nor am I sure that there is a  
19 basis for me to direct him to make such public statements.

20 What I rather have in mind is, I mean, the SEC has  
21 some considerable resources here. To the extent of correcting  
22 the false statements, there are documents that have been filed  
23 in this case by the SEC, by the defendants. There are opinions  
24 of the Court, there are orders. This is the transcript of  
25 today's proceedings.

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1           I don't see any reason why the SEC couldn't put all  
2 the stuff on a website.

3           Now, I am aware that there are people out there who,  
4 in the public, who may have a false perception of this  
5 litigation. I don't know where they got it. Or whose  
6 statements did or didn't foster it. People have a right to  
7 their opinions, whether I think they are correct or not, it is  
8 a free country. If people believe that Mr. Altomare was  
9 treated unjustly, they are entitled to believe that.

10           However, if there is available a resource at which  
11 people can judge for themselves what the actual findings of the  
12 Court have been, can judge for themselves what the result of  
13 the litigation has been, can understand and readily find  
14 whether Mr. Altomare is or is not an officer of this company,  
15 can see that here in open court he has resigned from this  
16 company, I don't know what more there is. Can see the  
17 receiver's report as to what assets did or did not exist when  
18 the receiver took over the company.

19           I don't know that I am aware of any requirement that  
20 someone who was adjudged to have committed securities fraud is  
21 required to go out on, take out an ad in the New York Times and  
22 say, mea culpa, or say, here are the true facts about all the  
23 things that I was found to have put out falsely.

24           The adjudication is there. He has whatever legal  
25 remedies he has to contest them, if he decides to do that.

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1           The true facts, as the Court has found them, as the  
2 receiver has reported them, as the SEC has contended they are,  
3 are out there. And people will make their own judgements. And  
4 I don't know that there is a need to, or legal authority to  
5 insist that Mr. Altomare not only disassociate himself from the  
6 company, but also make any statement at all. He has no  
7 authority anymore to make any statements on behalf of the  
8 company, he is away from the company.

9           That's my reaction.

10           MS. HUGHES: Then, your Honor, let me turn to the  
11 financial issue.

12           While I like the fact that he is making an offer to  
13 put some money into the registry of the court and comply with  
14 the order, I think that he has failed to make a clear showing  
15 about his financial inability to make a much more substantial  
16 payment.

17           Mr. Altomare has failed to produce, and in response to  
18 our request for production, financial statements, bank records,  
19 various documents that would show where the money has gone over  
20 the last six -- now it is eight months.

21           In fact, your Honor, we have a document that within  
22 the last two weeks he has sold a variety of jewelry for over  
23 \$500,000. And I don't see that he is tendering that to the  
24 court.

25           I guess the other issue I would raise with your Honor



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1 is, when the receiver was going through various documents, she  
2 found an e-mail from Mr. Altomare where he indicates he would  
3 like to relocate to Dubai, to operate a business there. So I  
4 think that the concerns I have with the plan are that he is a  
5 flight risk, that he would give us the check today and that we  
6 don't get anymore.

7 My understanding is that they have two homes, so I am  
8 glad that they would like to put one up for sale, and we'd  
9 welcome the proceeds being paid into the registry of the court,  
10 but I think he needs to do more than make an offer to pay us  
11 \$10,000 a month over the next couple of years.

12 THE COURT: Mr. Tifford, would you like to respond to  
13 that?

14 MR. TIFFORD: Yes. Bank records were produced, they  
15 may be blurred in the fax transmission, but I know my  
16 secretarial staff worked very diligently with Ms. Hughes on  
17 getting clear documents delivered to the SEC office in Denver.

18 Secondly, if any jewelry was sold, it certainly wasn't  
19 Mr. Altomare's jewelry, it was Mrs. Altomare's jewelry. And  
20 they had expenses, they have expenses. He has not worked for  
21 gainful employment for X number of weeks or months. A number  
22 of his paychecks toward the end were not negotiated, were not  
23 cashed.

24 Until he sells this condominium apartment, the  
25 mortgage payments on it have to be maintained, otherwise the

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1 bank ends up being the winner and not the disgorgement fund.

2 The other home they occupy is heavily mortgaged.

3 Those papers were presented to the SEC. If those mortgage  
4 payments are not maintained, then the very little equity left  
5 in that home is lost.

6 Mrs. Altomare stepped up to the plate to abandon and  
7 waive her interests in the proceeds of the sale, which can  
8 generate, as I said, anywhere from 300 to 800,000 in net  
9 proceeds.

10 MS. HUGHES: Mrs. Altomare also, apparently, had, is  
11 on the payroll to a rather substantial degree with duties that  
12 are unclear.

13 THE COURT: Maybe this is not as hard an issue as it  
14 might seem.

15 I don't think that it is for the Court to bargain or  
16 to, you know, in effect, settle this situation. Maybe that at  
17 some point the SEC is prepared to settle at some level or  
18 something. But that's their problem.

19 Mr. Altomare has been ordered to do certain things.  
20 As I have already indicated, it seems to me that many of those  
21 things, with or without Mr. Altomare's voluntary compliance,  
22 have been accomplished. What remains is to satisfy a judgment.

23 Now, I am very loathe to incarcerate somebody to make  
24 him comply with a financial judgment if there is some prospect  
25 that the financial judgment may be complied with.

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1           I think in light of the receiver's report -- I have  
2           substantial questions as to whether a \$10,000 a month payment,  
3           even assuming it were forthcoming, is in the ballpark, I don't  
4           know what the apartment is or isn't really worth, and whether,  
5           what the market is, and whether it can be sold and how long it  
6           would take to sell. But what does seem to me is that the  
7           defendant is offering a very modest downpayment on this  
8           judgment. Is offering a, possibly, substantial downpayment in  
9           the form of the real estate.

10           It may be, I don't know that the SEC does this, I know  
11           the U.S. Marshals do it in cases of forfeiture, I know that the  
12           Justice Department does it in revoking people's bail, maybe a  
13           solution with respect to the apartment is to sign it over to  
14           the SEC and let them sell it. And, you know, it would be  
15           appropriate for the defendant to pay attention to whether they  
16           are selling it well, and what they are getting for it, or just  
17           to have it appraised and then have them bear the risk of the  
18           market. And if there is a good-faith appraisal, and a certain  
19           amount of money is conveyed by conveying the apartment, then we  
20           don't have to worry about the defendant's good faith in making  
21           the sale.

22           I think there are things that can be done in light of  
23           this proposal, that would put Mr. Altomare much further along  
24           the way in a much more verifiable way toward satisfying this  
25           judgment.

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1           I don't know who is going to lend him a million and a  
2 half dollars, or where he can find some of the money that may  
3 have been taken out of Universal Express. I don't know whose  
4 jewelry it was or who is prepared to pay what on it. I don't  
5 know at this point whether the financial statements that have  
6 been made are satisfactory in terms of demonstrating that this  
7 is the best that can be done.

8           So it seems to me that an appropriate course of action  
9 is to wait and see. And put this matter over, as it relates to  
10 Mr. Altomare, for 30 days or 60 days, or till after this trial.  
11 And see whether either the SEC can demonstrate, based on some  
12 real evidence that assets are being dissipated or disappearing,  
13 or that Mr. Altomare is failing to provide full and accurate  
14 financial information that would satisfy the Court that this is  
15 the best he can do, or whatever might emerge in 30 or 60 days  
16 as the best he can do. And to pursue these matters with  
17 respect to the capital he is trying to raise, or the apartment  
18 will prove to be real or ephemeral. And if they prove to be  
19 real, then it may well be that the Court will be satisfied that  
20 Mr. Altomare is doing the best he can do to comply with the  
21 order.

22           And the Court's suggestion that compliance take place,  
23 or at least the good-faith efforts toward compliance be  
24 demonstrated will be satisfied.

25           Or it may be that given the opportunity to further



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1 investigate, or given what does or doesn't happen with some of  
2 these representations, the SEC may be in a position to  
3 demonstrate that the defendant isn't, in good faith, trying to  
4 comply. And I think we will know that a lot better as some of  
5 these events take place.

6 So I think that's my inclination, that is not neither  
7 to declare that, gee, thanks for the 30,000, and Mr. Altomare  
8 is now in compliance, or to say, off with you, because you  
9 haven't done what you can do. I don't know what the answer to  
10 that is.

11 I think we may need, at some point, if the parties  
12 don't agree that there has been some reasonable effort at  
13 compliance, we may have to have some kind of hearing. But at  
14 this point I am satisfied to say the following, in my mind one  
15 of the principle issues with respect to contempt was getting  
16 the prospective relief complied with, to stop what the SEC made  
17 a substantial showing was a continuing series of violations, a  
18 continuing pattern of fraud. I think that's been accomplished.

19 Now, that does not mean that the financial terms do  
20 not matter. Quite the contrary. But it does mean that phase  
21 one of what seemed most urgent to me, has largely been taken  
22 care of. And I don't think either party came here today, I  
23 certainly didn't come here today, prepared to have an  
24 evidentiary hearing about the state of Mr. Altomare's finances.  
25 And I think this has been sprung on us. I don't complain about

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1 it. It's a good thing to have sprung on us, but I don't think  
2 we are in any position to try to evaluate the good faith and  
3 adequacy of these financial matters today. Hopefully we will  
4 at some future point.

5           Could we have at least a control date in mid December?  
6 Maybe it needs -- Ms. Hughes, you are going to have a lot on  
7 your hands with respect to the trial. Should we make it after  
8 the holidays?

9           MS. HUGHES: That would be good, your Honor.

10           THE COURT: Let's make it the very beginning of  
11 January.

12           THE LAW CLERK: January 4.

13           THE COURT:: Okay --

14           THE LAW CLERK: -- no, you are out. January 11.

15           THE COURT: What time?

16           THE LAW CLERK: At 2:30.

17           THE COURT: At 2:30. Let's say by January 4 I will  
18 get some kind of position papers. You will talk to each other  
19 and find out whether we have got issues or we don't have  
20 issues, or what that proceedings may be may depend on where the  
21 parties are. But I appreciate that there has been at least  
22 some effort to comply.

23           I guess that's one other thing on my agenda, which has  
24 to do with the receiver's report. I have already approved the  
25 receiver's sale of the business --

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1 MS. MOSCOWITZ: It is a lung express fund, so I have  
2 been calling it LE.

3 THE COURT: I don't know that there is any other  
4 relief that the receiver has actually sought.

5 Is there anything else that is on your plate that I  
6 need to be concerned with?

7 MS. MOSCOWITZ: There is one thing I wanted to bring  
8 up, your Honor.

9 I am in negotiations, some more completed than others,  
10 on a couple of the other subsidiaries. And, of course, nobody  
11 wants to assume the huge liabilities, so people have made  
12 proposals to purchase the assets such as they are, like a list  
13 of customers, a domain name, and I have made provision, pending  
14 your Honor's approval, to sell some of those subsidiaries, to  
15 sell just the assets. To me I know that means there is lot of  
16 creditors that are going to be left in the lurch.

17 I wanted to present that to your Honor, because those  
18 creditors are going to be left in the lurch, this way we are  
19 leaving some assets to some of the Universal Express employees.

20 THE COURT: I understand that will be done in due  
21 course.

22 I did want to say just two things about the receiver's  
23 report, on the public record.

24 One is that the receiver has documented that at the  
25 time she took control of this company, the bank accounts of

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1 Universal Express contained less than \$100,000, which was  
2 inadequate to meet even the next week's payroll. It also  
3 appeared from the records of the company, as reported by the  
4 receiver, that there were 39 billion shares of stock in  
5 Universal Express outstanding. And that, apparently, the only  
6 income that had been received of any substance was from the  
7 sale of stock. And the most significant outflow, other than  
8 for advertising was, as far as appears, to Mr. Altomare. Those  
9 are, so far as the receiver has reported them, the financial  
10 facts about Universal Express.

11 The other fact about the receiver's report that was of  
12 some concern to me, and it became a basis of a motion by  
13 Mr. Sandhu, was that the receiver had received various  
14 threatening communications from individuals claiming to be  
15 shareholders of Universal Express.

16 I can certainly understand why shareholders would be  
17 upset, given that all of this money has poured into the  
18 company, and the company has never showed any profit. Never,  
19 as far as appears, given anything back to anybody but Mr.  
20 Altomare.

21 Why they should be upset at the receiver, it seems to  
22 me a little bit mysterious, to the extent that there is no  
23 money there, after these investments were made. That's not the  
24 fault of the SEC or the receiver or the Court. That's got to  
25 do with how the money was handled by Universal Express and its



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1 officers.

2           But I am concerned at any threat made to officers of  
3 the Court acting at the Court's direction. And those  
4 communications have been turned over to the United States  
5 Marshal Service for whatever investigation they think is  
6 appropriate.

7           It is also worth saying in that regard that I have  
8 received a fair number of communications from people who  
9 purport to be shareholders of Universal Express, many of them  
10 are strong supporters of Mr. Altomare and believe that he has  
11 been treated unjustly in these proceedings.

12           I don't know, of course, I just get the mail order, in  
13 this case the electronic mail, I don't know who they are really  
14 from or just what they are really thinking. It's just what has  
15 been conveyed to me. Some of them are from detractors of Mr.  
16 Altomare, who urge a stronger action by the Court.

17           I just want to make a couple of things clear.

18           First, everything that I have received personally has  
19 been what I regard as perfectly appropriate expressions of  
20 opinion by the people expressing the opinion. As I said  
21 before, it is a free country, people are entitled to their  
22 opinions, they are entitled to express their opinions, they are  
23 entitled to communicate those opinions to public officials,  
24 including Judges. None of those communications were things  
25 that I regarded as threatening or inappropriate, or violent or

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1 nasty, or anything. They were people expressing what they  
2 thought. Quite different from the communications that were  
3 attached to the receiver's report.

4           However, I think it is important to say on the record,  
5 both with respect to the parties and with respect to members of  
6 the public, that a Court, unlike other public bodies, unlike  
7 Congressmen or politicians, is not in a position to respond to  
8 or to take action based on what are, in effect, letters to the  
9 editor. I am not influenced, I can't be influenced. My oath  
10 of office prohibits me from being influenced by what the  
11 general public thinks. I can't take action on accusations or  
12 complaints or positions that are taken by members of the  
13 general public, and not taken by parties in this litigation.

14           To the extent that Mr. Altomare, or any other party to  
15 the case, has complaints about the rulings of the Court, or has  
16 positions to take with respect to this litigation, they are  
17 here, they are represented, they are entitled to make whatever  
18 arguments they want to make to the Court.

19           If they don't make an argument, as far as the Court is  
20 concerned, the fact that some member of the public thinks they  
21 should make that argument, or the fact that some member of the  
22 public believes there is some legal theory that the Court  
23 should take action on, I am sorry, but that's just not my  
24 business. I will not be influenced by such communications. I  
25 am not allowed to be influenced by such communications.

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1           However, to the extent that the parties to the case do  
2 not take certain positions, I should think that a reasonable  
3 member of the public would draw an inference from that as to  
4 the merit of that position. And if there are conflicts of  
5 interest on the part of any party to the case, well, all of  
6 these litigants have very experienced, very sophisticated  
7 lawyers. And if that's a point they want to make, or something  
8 they want to bring to the Court's attention, they are entitled  
9 to do it.

10           If they don't do it, I don't have anything to act  
11 upon. And members of the public who maybe think I should,  
12 might want to reconsider whether their information is accurate,  
13 if the parties to the case don't pursue such issues.

14           I think it speaks volumes with respect to what has  
15 taken place today, that various defendants, including Mr.  
16 Altomare, had the opportunity to present any testimony or any  
17 argument that they wanted to make with respect to the SEC's  
18 showing, or with respect to the receiver's report, or anything  
19 else that's in the record of the court. And the record is what  
20 it is as to the positions that were taken here today.

21           Now, I think the only person that leaves me to have  
22 concerns about is Mr. Gunderson. And Mr. Garvey have, I think,  
23 maybe the -- we have a date for further proceedings with  
24 respect to Mr. Altomare, maybe we should put Mr. Gunderson's  
25 case over to the same date.

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1 MR. GARVEY: Yes.

2 THE COURT: And that will give you the opportunity to  
3 speak to your client and assess his situation, and decide  
4 whether any applications are to be made on his behalf, or how  
5 he should respond to the August 30 order.

6 Ms. Hughes, am I right that, roughly speaking, Mr.  
7 Gunderson stands in the same position today, vis-a-vis  
8 Universal Express, as Mr. Altomare? That is to say, that the  
9 receiver, having taken over, he is no longer affiliated with  
10 Universal Express -- maybe something needs to happen, I don't  
11 know whether the receiver has fired him or whether he has  
12 resigned, Gunderson.

13 MR. GARVEY: He is no longer working for the company.

14 THE COURT: Once again, I think, Mr. Garvey, you will  
15 assess where you think things stand.

16 I think it would be helpful for all concerned, for Mr.  
17 Gunderson not to wait until the 11th hour of the next deadline  
18 to discuss with the SEC what, if any, showing is going to be  
19 made of compliance, or objection to the Court's order, or  
20 whatever else is going to happen. So that maybe we can -- we  
21 will be in a better position to resolve that situation one way  
22 or the other in January, rather than to have that get put over  
23 for 60 days because it is a last-minute development with  
24 respect to Mr. Gunderson. But I think that matter will also be  
25 put over till January 11.



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1           Is there anything else that we need to do here today?

2           MR. TIFFORD: Just a minor cleanup, your Honor, three  
3 points.

4           One, may I look forward to your Honor's order formally  
5 allowing my withdrawal from the case?

6           THE COURT: With respect to Mr. Gunderson?

7           MR. TIFFORD: Yes, sir.

8           THE COURT: Right. Sure. If you want a written order  
9 I am happy to --

10          MR. GARVEY: I have paperwork here today, if you will  
11 so order it, that will be fine.

12          THE COURT: If you got an order, I can sign it.

13          MR. TIFFORD: Yes, sir.

14          The second point I must mention, the subject of flight  
15 risk, both Mr. and Mrs. Altomare's faith kind of preclude their  
16 sojourning to Dubai for the remainder of their lives, or  
17 anything in which they would have anything but a very limited  
18 visitor's visa, if ever.

19          In my subtlety is a sufficient message for all  
20 concerned.

21          Second, Mrs. Altomare, I believe, has shown remarkable  
22 courage and support in agreeing to abandon property right under  
23 the Florida law. She should be commended not questioned.

24          Third, as far as the money is concerned, the figures I  
25 announced as being fixed were fixed, they were not a proposal.

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1 I am going to deliver the \$30,000 check as ordered by the  
2 Court.

3 THE COURT: I did assume that, Mr. Tifford, that that  
4 was something that was going to happen. And I also, maybe the  
5 word proposal was ill-chosen, I take it, I assume the good  
6 faith of you and Mr. Altomare with respect to marketing the  
7 apartment and everything else.

8 Why I referred to it as a proposal is that the most  
9 tangible parts of it, the biggest numbers that were mentioned  
10 in your discussion are things that are contingent by their  
11 nature. I suggested some possibilities as ways of making them  
12 less contingent, but that's really up to the parties to  
13 discuss. We will find out in due course what happens in that  
14 regard.

15 Similarly, with respect to the flight issue, I  
16 certainly, as I said, have no basis at this point for believing  
17 that assets are fleeing abroad or people are fleeing abroad, or  
18 anything like that.

19 Ms. Hughes mentioned that possibility. It is entirely  
20 fair for you to respond and refute that. But one way or the  
21 other, it goes over my head, it is until and unless. And this  
22 is one of the things that may or may not show up in January.  
23 Until and unless I have further information suggesting that  
24 there is -- there are assets disappearing, or there are other  
25 assets that aren't being attached, but they should be, or that

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1 there has been some falsehood or some concealment, it is what  
2 it is. And we will find out more by January as to whether, as  
3 I said, Mr. Altomare is in a position to demonstrate that he  
4 has, in good faith, done his best to comply, or whether the SEC  
5 is in a position to demonstrate that he is deficient in some  
6 way, or the Court should take some action, or whether, we don't  
7 even have to hear about it because everyone is satisfied by  
8 that point.

9 So I appreciate why you say what you say. I think you  
10 have every right to say it. But I just want to assure you, it  
11 is not, at some level, necessary. Okay. Thank you all.

12 MR. M. PICKHOLZ: Just one matter, your Honor.

13 Probably over an hour ago you mentioned you wanted to  
14 get a copy of the Mendiratta deposition. And I would just  
15 point out, in our moving papers, that whole deposition is in as  
16 Exhibit A. And Exhibit B is a letter that we originally had  
17 written memorializing request for documents. And those are  
18 cross-references of pages of documents.

19 THE COURT: That's very helpful. So I have already  
20 got the deposition, you just need to give me the questioned  
21 work product and I will have a cross-reference to it.

22 Thank you all.

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