

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA (RENO)

IN RE: . Case No. 13-52337-BTB  
. .  
DAVID M. SEMAS and . Chapter 11  
SUSAN O. SEMAS, .  
. 300 Booth Street  
. Reno, NV 89509  
Debtors. .  
. Thursday, December 3, 2015  
. . . . . 9:41 a.m.

**TRANSCRIPT OF JUDGE'S RULING RE:** DOC #414 AMENDED MOTION TO  
RECONSIDER BY JUDGE BRUCE T. BEESLEY FILED BY STEPHEN R. HARRIS  
ON BEHALF OF DAVID M. SEMAS, SUSAN O. SEMAS  
**BEFORE THE HONORABLE BRUCE T. BEESLEY**  
**UNITED STATES BANKRUPTCY COURT JUDGE**

APPEARANCES:

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1 (Proceedings commence at 9:41 a.m.)

2 THE COURT: -- in the case of David M. Semas and  
3 Susan Semas, Case Number 13-52337. Appearances, please.

4 MR. HARRIS: Your Honor, Steve Harris representing  
5 the debtors. And debtor David Semas is present.

6 MR. LUKAS: Good morning, Your Honor. Tim Lukas on  
7 behalf of CHEMEON and the Meilings.

8 THE COURT: Okay. Pursuant to a transcript that  
9 Judge Du -- of a proceeding Judge Du held some weeks ago, I've  
10 been asked by Judge Du to clarify the settlement in this case.

11 And it's a little confusing to do that because as all -- well,  
12 as most of you or some of you know, there was a several-hour  
13 settlement conference.

14 The result of the settlement conference was that  
15 Judge Zive placed a settlement on the record. Subsequent to  
16 that there was a proposed written order and the Meiling Group,  
17 the Metalast people, the Meiling Group rejected that and Judge  
18 Zive determined that the transcript was, in fact, the  
19 settlement. And I'll go into that a little more deeper.

20 Thereafter there were actions by the Meilings and the  
21 Metalast group to use the name "Metalast" as I -- the only ones  
22 I've saw it is there products were labeled "formerly known as  
23 Metalast." That resulted in a motion asking me to enforce the  
24 terms of the settlement and also to ask Judge Zive to do that.

25 Judge Zive indicated that although he said in the



1 documents that he would enforce a settlement, it was his  
2 understanding that he would enforce it up until it was approved  
3 by the Court. And when it was approved by the Court, both of  
4 us are of the opinion that it actually became a contract  
5 between the parties. It was not really something that was in  
6 the realm of the bankruptcy anymore.

7           Although I would have had jurisdiction, I declined to  
8 exercise supplemental jurisdiction. I'm not going to overturn  
9 that, but I am going to give my understanding of the settlement  
10 -- what I believe the settlement that I approved was. And I --  
11 which I think is -- satisfies Judge Du's request.

12           So, first off, there was a settlement conference,  
13 parties were both represented by capable counsel, and it lasted  
14 about six hours, at least according to the pleadings I've read.

15           There's -- one of the allegations was there was never  
16 actually a settlement that was placed on the record. But I --  
17 that's incorrect. There's just no merit to that contention.  
18 If you look at the transcript Page 4, starting on Line 23,  
19 Judge Zive says as follows:

20           "Following hours of good faith negotiation, the  
21 parties have entered into agreement. I've advised  
22 the parties that I will place the agreement on the  
23 record. Give counsel a chance to correct any errors  
24 I've made or notes -- or note any omissions that I  
25 have made, then I will ask the parties if they



1 understand the terms of the agreement and agree to be  
2 bound by the agreement. And of course, if they have  
3 any questions at that time, they should ask me. And  
4 I've also advised the parties that if the agreement  
5 is placed on the record, as I understand it, that  
6 they are bound immediately upon the completion of  
7 this hearing."

8 And dropping down to Line 14 on -- or 13 or 14 on  
9 Page 5, it says:

10 "But as between the parties, there's an agreement  
11 now. It is fully enforceable and that I would  
12 enforce it if necessary by use of contempt or any  
13 other remedy available to me and if each said they  
14 understood that and agreed."

15 So I'll get to this a little later, but later on in  
16 the -- near the end of the transcript, each of the Meiling  
17 parties was placed under oath. Each was asked if they  
18 understood the agreement. Each of them said yes. Mrs. -- I  
19 think it was Mrs. Meiling had a question about the name, which  
20 I'll get to in a little bit.

21 So one of the other content questions is does this  
22 apply to both trademarks and trade names. And I confess I am  
23 not an expert on the difference between trademarks and trade  
24 names, but it's my opinion that it does apply both to  
25 trademarks and trade names.



1           The term "trademark" is used throughout the  
2 transcript. But there's also some question concerning naming  
3 of properties which I -- and I believe it was a -- it was my  
4 intention and my understanding when I entered the -- an order  
5 approving this settlement that this settlement restricted the  
6 use of both trademarks and trade names.

7           A couple reasons for that. First, at Page 5, Line 24  
8 Judge Zive says:

9           "There -- that there is a trademark regarding the  
10 name 'Metalast,' there is a dispute regarding  
11 ownership. That dispute has been resolved as  
12 follows:"

13           I'm on Page 6.

14           "Metalast Surface Technologies, through the Meilings,  
15 will continue to use the mark for 90 days following  
16 entry of the order approving the settlement agreement  
17 by Judge Beesley, if he does approve it. At the end  
18 of that 90-day period, Metalast Surface Technology,  
19 the Meilings, and any other entity in which the  
20 Meilings have an interest, will no longer be able to  
21 use the name 'Metalast' in any fashion or manner  
22 whatsoever following the 90 days. The mark will be  
23 owned by Mr. and Mrs. Semas or an entity to which  
24 they -- or any entity in which they choose to  
25 transfer that mark."



1           So I read "no longer able to use the name Metalast in  
2 any fashion, in any manner whatsoever" following that 90-day  
3 period would include not only the trademark, but any use of the  
4 name "Metalast" for any purpose at all, which I believe would  
5 include the trade name.

6           But again, I am not an expert on trademarks and trade  
7 names, but I believe a fair reading of what Judge Zive said  
8 includes limits any use of the term "Metalast" at all. It can  
9 go on for 90 days. It cannot be used by any of the Meiling  
10 entities or the Meilings or anything they own thereafter. It's  
11 an absolute prohibition.

12           There was some additional comments made during the  
13 course of this that I don't -- I -- are not as clear. I mean,  
14 they're -- I think they're just instructive. But there was a  
15 question on -- there was a question by Mr. Harris about neutral  
16 releases on Page 8 of the transcript. And the Court said --  
17 Mr. Harris said they -- you have the mutual release language.

18           The judge said:

19           "Oh, I'm sorry. As the underlying predicate for all  
20 of this there's a pending adversary seeking relief  
21 under various claims for relief including non-  
22 dischargeability under three separate subdivisions of  
23 Section 523. The Meilings agree to dismiss that  
24 adversary with prejudice and waive any and all claims  
25 they have from the beginning of time through the date



1 of entering the settlement agreement and that they  
2 may have known or unknown, anticipated or  
3 unanticipated against Mr. and Mrs. Semas."

4 So I read that language to believe that any disputes,  
5 any claims, whether asserted in the complaint or not, that the  
6 Meilings or any of their entities may have against the Semases  
7 are resolved by this settlement. And the resolution of this  
8 settlement is set forth in this transcript. It involved a  
9 limited use of the Metalast name for a period of time. It  
10 allowed the exchange of some payments to be made, agreements  
11 not to object to the plan, but the key issue is the term  
12 "Metalast."

13 And Mr. and Mrs. Semas, on their part, agreed to  
14 release the Meilings and Metalast Surface Technologies from any  
15 claims they could have made, including the patent infringement  
16 case, but not limited to the patent infringement case. Any  
17 claims whatsoever from the beginning of time and until a  
18 settlement agreement is approved, known or unknown, anticipated  
19 or unanticipated, foreseen or unforeseen, it's a mutual  
20 release. So whatever disputes they had concerning anything,  
21 but particularly concerning the term "Metalast" was resolved by  
22 this agreement.

23 There's a question -- pardon me. There's a question  
24 by a Mr. -- excuse me. Just a moment. There's a question by  
25 Mr. Burns, who it's my understanding is an intellectual



1 properties lawyer for -- as for a general term, who was engaged  
2 by the Semases. He says:

3 "I just want to clarify, Your Honor, it's agreed that  
4 the parties that the trademark is currently owned by  
5 the Semases and that they are -- no assignment is  
6 necessary to transfer any trademark rights."

7 And the Court says:

8 "At the same -- at the same time that, for the  
9 purposes only, is that recognized and that Metalast  
10 Surface and the Meilings have the right to use the  
11 mark without compensation in the ordinary course of  
12 their business for a period not to exceed 90 days  
13 following the entry of an order approving the  
14 settlement by Judge Beesley, correct?"

15 Mr. Burns says yes. The Court says, thank you, Your  
16 Honor. Ms. Chubb corrected the spelling or pronunciation of  
17 "Meilings." Okay. Ms. Chubb then says with respect to the  
18 trademark and so that that's blank, it was indiscernible  
19 apparently, Judge Zive responds. And this is on Page 9. I'm  
20 looking at Line 24:

21 "Whatever the -- whatever counsel for the parties  
22 believe is the most effective and efficient of  
23 accomplishing that clarification regarding ownership  
24 so there's no further dispute, I have no deception."

25 Ms. Chubb on Page 10, Line 3:



1 "I will -- I will represent to the Court, the  
2 Meilings and MST will make all efforts to get the  
3 Metalast name off everything. And I understand Mr.  
4 Semas has the need to fully cooperate with respect to  
5 anything that needs to be done in that regard."

6 So that reaffirms my belief that this applies to  
7 trade names, trademarks, common law rights to use, whatever  
8 they have, the counsel for this -- for the Meiling group said  
9 that they're going to use the efforts to get the name of  
10 Metalast off of everything. There's no qualification to that,  
11 it's everything.

12 The Court then says on Page 10, Line 12, it says:

13 "As part of the record there's a covenant of good  
14 faith with any contract."

15 And this is a contract.

16 "And part of that covenant of good faith is to  
17 cooperate."

18 And that's cooperate to get the main -- the -- get  
19 the -- any issue regarding the transition of the creditor for  
20 Metalast Surface Technologies to another name accomplished  
21 within 90 days. That would be Page 10, Lines 12 through 18.

22 And then the judge -- I'm just generally describing  
23 this. Starting at Page 12 the judge calls the parties forward  
24 and has them sworn. And they are sworn. And starting with Ms.  
25 Susan Semas, the Court asks her were you -- and you were



1 president -- present, sorry, when I explained that I considered  
2 this agreement to be binding upon you at that time, correct?

3 Ms. Semas -- Susan Semas says, "Yes."

4 "You understand the terms of the settlement?"

5 Mrs. -- Susan Semas says, "I do."

6 "And you agree to be bound by the terms of the  
7 settlement?"

8 Ms. Semas -- Susan Semas says, "Yes, I do."

9 Next, the Court calls Mr. David Semas, who has been  
10 sworn, says, "You were present when I placed in your counsel  
11 and the opposing counsel placed the terms of the settlement on  
12 the record. Is that correct?"

13 And Mr. David Semas's answer is yes.

14 Mr. David Semas was asked, "And did you understand  
15 those terms?"

16 Mr. David Semas answers, "Yes, I did."

17 "And you agree to be bound by those terms?"

18 "Yes, I do."

19 "And as with your wife, you present -- I'm sorry.  
20 And as with your wife, you were present when I described both  
21 on the record and before we went on the record that I consider  
22 this agreement to be binding upon the parties at this time and  
23 I would enforce it if necessary?"

24 And Mr. David Semas's answer is, "Yes, I do."

25 The Court says then, "Do either of you have any



1 questions."

2 Ms. Semas says, "No".

3 Mr. Semas says, "No."

4 The Court then calls Madylon Meiling. I apologize if  
5 I mispronounced her first name. This is at Page 14 of the  
6 transcript. Ms. Meiling had been previously sworn.

7 The judge asked Ms. Meiling, "Yes, have you heard the  
8 terms of the settlement that was placed on the record by and  
9 counsel?"

10 "Yes, Your Honor," is the answer.

11 "Do you understand that terms of the settlement -- of  
12 the agreement?"

13 Ms. Meiling answers, "Yes, Your Honor.

14 "Do you agree to be bound by those?"

15 Ms. Meiling answers, "Yes.

16 "And do you have authority to enter into this  
17 agreement on behalf of Metalast Surface Technology?"

18 Question: "Technology LLC?"

19 Answer: "Yes, I do.

20 "And do you agree that entity will be bound by the  
21 terms of the settlement agreement?"

22 Ms. Meiling says, "Yes.

23 "And you were present both before and after we were  
24 on the record when I explained that I would enforce the  
25 agreement before I consider it binding as -- but because I



1 consider it binding, as of this time between the parties and  
2 then subject to, of course, the approval of Judge Beesley. But  
3 as between the parties it would be binding now and I would  
4 enforce that if necessary."

5 And Ms. Meiling answers, "Yes.

6 "All right. Do you have any questions?

7 "Yes. When you related to the release -- yes -- I  
8 would like the release to include whatever new name we may use.

9 "Any what?

10 "The new name for the company.

11 "Of course.

12 "Thank you. We want that -- this to be as broad as  
13 possible. Thank you, Your Honor.

14 "That's what I said in the -- that's why I said 'any  
15 entities.'

16 "Thank you."

17 Dean Meiling is then sworn -- or Dean Meiling is then  
18 questioned. He has previously been sworn.

19 "Mr. Meiling, you heard the terms of the agreement  
20 that were placed on the record.

21 "Yes.

22 "Did you understand those terms?

23 "I did.

24 "Do you agree to be bound by those terms?

25 "I do.



1           "Do you have -- you -- do you have also -- do you  
2 also have the authority to act on behalf of Metalast Surface  
3 Technologies, LLC?

4           "Yes, I do.

5           "And do you agree that Metalast Surface Technologies,  
6 LLC will be bound by the terms of these agreement?

7           "Yes.

8           "And you also heard the Court, me, say that I would  
9 enforce the terms of this agreement because I consider it to  
10 binding as of this time?"

11           Mr. Meiling answers yes.

12           "Okay. Do you have any questions for me?"

13           Mr. Meiling says no.

14           Mr. Burns, who was one of the counsel for the Semas's  
15 as I understand it:

16           "Our concern, Your Honor, as to Mrs. Meiling's  
17 clarification, we want to make sure that there's no  
18 confusion in the marketplace and that the new mark  
19 that you adopt the new name is not confusingly  
20 similar."

21           And the Court said:

22           "Well, yeah, we talked about that. The name cannot  
23 be confusing in the marketplace. It has to be  
24 totally separate."

25           But the question that she had had was to ensure that



1 the settlement and release also applied to the new entity as I  
2 will -- as well as the old entity themselves personally,  
3 correct. Do I understand the question correctly? Yes, Your  
4 Honor. Okay. They'll come up with something that doesn't have  
5 the word Metalast in it. Metalast, Mrs. Meiling -- Ms. Meiling  
6 rather, correct.

7 Ms. Chubb:

8 "Well, Metalast includes the word metal. I don't  
9 think they should be precluded from using metal  
10 somehow."

11 The Court -- I'm not going to deal with that. So the  
12 Court says:

13 "I think this is an appropriate settlement and I wish  
14 you all the best of luck. I hope the sale closes, I  
15 hope the plan gets confirmed, and I hope you all get  
16 paid. Thank you very much."

17 So my interpretation based on the transcript from  
18 Judge Zive, some of which the experts I -- excerpts I read is  
19 as of the date that was placed on the record, there was a  
20 settlement. Any efforts to change the settlement would be  
21 inappropriate unless they are through agreement. If there's no  
22 agreement, there's litigation.

23 The term Metalast is not to be -- I understand this  
24 to mean that the term Metalast is not to be used by any Meiling  
25 entity or Metalast Surface Technology to -- not -- I'm sorry,



1 Metalast Surface Technologies or any other Metalast entity.  
2 Judge Zive was very clear. The parties acknowledged it. The  
3 parties were represented by good counsel. They're stuck with  
4 it, and it applies both to trademarks and trade names and any  
5 other use of the term Metalast for any purpose whatsoever.  
6 That's -- that is the agreement that I approved in court.

7 So that's the agreement Judge Zive placed on the  
8 record. That's my clarification for Judge Du. I don't know if  
9 it's -- if you want to do an order on that. I think it's  
10 probably easier for you to just get a transcript of that, but I  
11 don't know. Mr. Lukas?

12 MR. LUKAS: Well, that was going to be my very first  
13 question, Your Honor. We're on a motion for reconsideration  
14 and it's --

15 THE COURT: In front of me? Yeah, but that's not  
16 what Judge Du directed me to do.

17 MR. LUKAS: Well, I understand, Your Honor. If  
18 that's the case, then I get a due process right in terms of  
19 what Judge Du's request is. So to -- and understand she asked  
20 this Court to put on the record the understanding. And I think  
21 a transcript, it's a procedure and process by which this Court,  
22 I think it's clarified as a settlement as a specific time.

23 The Court's not revisiting, not setting aside its  
24 prior order, but the transcript that is here can be utilized,  
25 whatever Judge Du believes he needs to utilize it for.



1 THE COURT: That's what I would think.

2 MR. LUKAS: Okay. The other issue is that this Court  
3 is not opining that the Ninth Circuit law as interpreted by  
4 Steppenwolf is inapplicable to this settlement whatsoever.

5 THE COURT: I have no idea.

6 MR. LUKAS: I want to make that clear because we have  
7 controlling precedent. The other issue is that this Court in  
8 terms of the settlement in no way was setting aside any other  
9 set of federal statutes that requires labeling or the way  
10 things are done.

11 THE COURT: I'm not making any decisions with respect  
12 to anything that is in the matter pending before Judge Du. All  
13 I'm doing is telling Judge Du more specifically what -- the  
14 settlement I approved and what I believed that settlement was.

15 MR. LUKAS: And as this Court would also I think be  
16 of the opinion of these at least absurd results are also not an  
17 intent of this settlement --

18 THE COURT: I'm making no --

19 MR. LUKAS: -- itself.

20 THE COURT: I'm making no decision on that. I would  
21 make a decision, though, that the parties were represented by  
22 capable counsel. The parties --

23 MR. LUKAS: Absolutely, Your Honor.

24 THE COURT: The parties absolutely agreed to this on  
25 the record. The parties are educated -- I don't know about





1 they're educated, but they're sophisticated business people.

2 MR. LUKAS: Uh-huh.

3 THE COURT: That was quite clear. This was a lengthy  
4 bankruptcy. It was hotly contested. It was well-represented,  
5 but I'm not making any decisions that are pending in front of  
6 Judge Du. I'm only --

7 MR. LUKAS: Well --

8 THE COURT: -- clarifying the order that came out of  
9 this court.

10 MR. LUKAS: Right. And that's exactly right. And  
11 the opinions and the settlements as another controlling  
12 authority would not -- should not lead to absurd results.

13 THE COURT: I'm making no decision on that.

14 MR. LUKAS: Oh, and -- or any other, which should not  
15 promote fraud --

16 THE COURT: I'm not making any decision on any of  
17 those things. Those are all before Judge Du.

18 MR. LUKAS: And that's the clarification. I  
19 understand how this Court views what it sees in the transcript,  
20 and to the extent that we have particular rights since there's  
21 no ruling, just kind of -- just --

22 THE COURT: I'm not --

23 MR. LUKAS: -- a transcript.

24 THE COURT: I'm not ruling on those. I specifically  
25 decided not to exercise what jurisdiction I had. I think this



1 -- that those issues are properly before the U.S. District  
2 Court or the State Court. I don't know. Probably either or  
3 both have some jurisdiction, but I'm not deciding those. All  
4 I'm deciding is what I believe the settlement was.

5 MR. LUKAS: And fair enough, Your Honor. So the  
6 motion will -- or the order will stand; the motion for  
7 reconsideration is denied.

8 THE COURT: Yes.

9 MR. HARRIS: Your Honor, Steve Harris.

10 THE COURT: I think what --

11 MR. HARRIS: I --

12 THE COURT: I think what I had was a motion to  
13 enforce the settlement agreement.

14 MR. LUKAS: Which was originally not -- yeah, and  
15 this is --

16 THE COURT: Right. And then there was a --

17 MR. LUKAS: -- a reconsideration now.

18 THE COURT: Then a motion to reconsider my decision  
19 not to enforce the settlement agreement. That's not the reason  
20 for this hearing. The reason for this hearing is Judge Du  
21 requested that I clarify what the order that I approve --

22 MR. LUKAS: And that's why I --

23 THE COURT: Which is --

24 MR. LUKAS: -- just put the --

25 THE COURT: -- what I've done.



1 MR. LUKAS: -- the caveat. That's not what the  
2 notice was on --

3 THE COURT: No, that's not what the notice was. This  
4 -- my -- this -- I mean, this is in the context of that. But  
5 what Du -- Judge Du requested after a hearing was she wanted  
6 more clarity as to what this Court decided in terms of this  
7 settlement. **And I made it as clear as possible.**

8 MR. LUKAS: Fair enough, you know, but we had briefed  
9 to counsel's request, not to Judge Du's request. That's all I  
10 just -- I don't know if it will mean anything, frankly, because  
11 it could come back to this Court. I assume if it came back in  
12 any procedural manner would have it -- the same clarification,  
13 if you will, in the record. And I understand. I understand  
14 the efficiency of that. I just need to -- well --

15 THE COURT: I'm not deciding --

16 MR. LUKAS: -- for the purposes of what --

17 THE COURT: -- anything --

18 MR. LUKAS: -- whatever --

19 THE COURT: -- that's in front of --

20 MR. LUKAS: -- purpose --

21 THE COURT: -- Judge Du.

22 MR. LUKAS: -- it may be, Your Honor. It's to make  
23 my objection on the record.

24 THE COURT: I'm simply responding to the request I got  
25 from the U.S. District Court.



1 MR. LUKAS: Fair enough.

2 MR. HARRIS: Your Honor, I would like an order of  
3 clarification for Judge Du to --

4 THE COURT: Okay.

5 MR. HARRIS: -- refer to.

6 THE COURT: That's fine. You draft it, run it by  
7 Mr. Lukas.

8 MR. LUKAS: I just have to object, Your Honor.  
9 There's no proper motion or procedure that dictates that.

10 THE COURT: There's an order from the District Court  
11 that asked me to do this, which I am doing. So you prepare an  
12 order, you can sign off. You can fight about it, but you're  
13 better off coming to me. And you will attach a copy of this  
14 transcript to the order.

15 MR. LUKAS: In whatever particular order that's --  
16 that dictated the clarification in this matter, just so I know,  
17 so the record is clear. I'm not saying, Your Honor, I don't --  
18 I don't know what my clients may want to do with it. I don't  
19 know what we made with it. Because you're right, and  
20 everything is in front of the District Court --

21 THE COURT: Right.

22 MR. LUKAS: -- it's just the manner to which they may  
23 use it and the manner to which we were here today. This was a  
24 continuation. And I understand from what the Court said before  
25 that you were going to talk to Judge Du and --



1 THE COURT: And I did.

2 MR. LUKAS: -- Judge Zive.

3 THE COURT: And I told you what I was going to do was  
4 I was not going to rule on the -- I was not going to reconsider  
5 my motion -- my order, not -- I was not going to reconsider  
6 the request that I enforce the settlement.

7 MR. LUKAS: Right. It's not exercising the  
8 jurisdiction over the settlement.

9 THE COURT: I decided not to exercise jurisdiction  
10 over the settlement. I was asked --

11 MR. LUKAS: Fair enough.

12 THE COURT: -- by Judge Du to clarify the settlement,  
13 which I have now done. I want Mr. Harris to prepare an order  
14 indicating what the clarified settlement was, and I would like  
15 -- and so there's no confusion about this, I would like a copy  
16 of the -- I would like the transcript of these proceedings  
17 attached to it.

18 MR. HARRIS: I'll order that.

19 THE COURT: Thank you.

20 MR. LUKAS: Right.

21 THE COURT: Sir? Counsel, please come forward to  
22 make your appearance.

23 MR. HOY: Thank you, Your Honor. Good morning.  
24 Michael Hoy. I represent the Metalast defendants in the  
25 District Court action. And I was before Judge Du when she went



1 on the record and asked what was going on in the Bankruptcy  
2 Court. I would just ask for maybe a little bit more  
3 clarification on this record to include what order by the  
4 District Court this Court is responding to.

5 THE COURT: I was responding to a transcript -- the  
6 direction that was given in a transcript in open court that was  
7 provided to me, that I read. I spoke with Judge Du. She said  
8 -- I just -- I actually spoke with Judge Zive and Judge Du  
9 about what it is people -- what it is the Courts wanted  
10 clarified because I think there was some confusion as to what  
11 was happening.

12 Because the -- Judge Du referred to both the  
13 settlement judge and the bankruptcy judge as though they were  
14 the same people. I think that may not have been entirely clear  
15 to her that Judge Zive had conducted the settlement conference,  
16 placed the statement on the record, and I was the one who  
17 approved the settlement. I think that she was not clear about  
18 that.

19 I think there were representations being made by  
20 counsel that were not entirely consistent with what had  
21 actually occurred in the Bankruptcy Court as between Judge Zive  
22 and myself, and I think that her request was to clarify that.

23 MR. HOY: Thank you.

24 THE COURT: That's all I'm doing.

25 MR. HOY: And so when Mr. Harris drafts a proposed



1 order, we can recite or we can refer back to the District  
2 Court's transcript as the genesis of this.

3 THE COURT: That was the reason I did this, yes.

4 MR. HOY: Thank you.

5 MR. LUKAS: Well, and I understand that, Your Honor,  
6 because that's the order and why I referenced that's not what  
7 the order was. I understand what the transcript said, but  
8 that's not what the Court ordered.

9 THE COURT: I -- it's what the transcript said. I  
10 went --

11 MR. LUKAS: Fair enough. No, I understand that, Your  
12 Honor. That's why I think Mr. Hoy wanted the basis of it --

13 THE COURT: Judge Du is the boss of me, so --

14 MR. LUKAS: -- and I'm looking at the order going  
15 that's all that he --

16 THE COURT: No, it's the transcript.

17 MR. LUKAS: I understand.

18 THE COURT: And I --

19 MR. LUKAS: Fine.

20 THE COURT: I think there was some lack of clarity in  
21 the District Court as to how this was proceeding because most  
22 of the lawyers who are here now weren't here when this  
23 happened, so that can lead to confusion. And I think she  
24 wanted some clarity, and I think -- I hope I provided that.

25 MR. HARRIS: Thank you, Your Honor.



1 THE COURT: Okay. We'll be in recess. Thank you,  
2 you guys.

3 MR. LUKAS: Thank you, Your Honor.

4 THE CLERK: All rise.

5 (Proceedings concluded at 10:08 a.m.)

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

*Lisa Luciano*

LISA LUCIANO, AAERT NO. 327      DATE: December 15, 2015  
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I, Ilene Watson, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

*Ilene Watson*

ILENE WATSON, AAERT NO. 447      DATE: December 15, 2015  
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