

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN FRANCISCO
3 BEFORE THE HONORABLE HAROLD E. KAHN, JUDGE PRESIDING
4 DEPARTMENT NUMBER 220

5 ---000---

6 **JOSEPH GARZA, ET AL.,**)
7) CASE NO. CGC-05-438144
8 PLAINTIFFS,)
9 VS.)
10 **ASBESTOS DEFENDANTS (BP),**)
11 DEFENDANTS.)

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

13 **WEDNESDAY, DECEMBER 1, 2010**

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15 **APPEARANCES OF COUNSEL:**

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28 REPORTED BY: **LAVENA WARD, CSR #7077**
OFFICIAL COURT REPORTER

1 **WEDNESDAY, DECEMBER 1, 2010**

2 **MORNING SESSION**

3 **P R O C E E D I N G S**

4 **---000---**

5 **THE COURT:** THIS IS LINE 3 OF THE DISCOVERY CALENDAR
6 FOR DECEMBER 1, GARZA VERSUS ASBESTOS DEFENDANTS.

7 COUNSEL, STATE YOUR APPEARANCES, PLEASE.

8 **MR. COOK:** GOOD MORNING, YOUR HONOR.

9 DAVID COOK ON BEHALF OF THE PLAINTIFFS AND JUDGMENT
10 CREDITORS.

11 **MS. GAMBINO:** AND GOOD MORNING, YOUR HONOR -- I'M
12 SORRY, I DO THAT ALL THE TIME.

13 **MR. DUNN:** GOOD MORNING, YOUR HONOR.

14 NATHANIEL DUNN ALSO ON BEHALF OF THE JUDGMENT
15 CREDITORS.

16 **MS. GAMBINO:** EXCUSE ME.

17 MARY ELLEN GAMBINO ON BEHALF OF ASBESTOS CORPORATION
18 LIMITED.

19 **THE COURT:** SO, IN SOME RESPECTS, THE BULK OF THIS
20 MOTION SEEMS LIKE A REPRIEVE OF WHAT WE'VE GONE THROUGH
21 BEFORE.

22 **MR. COOK:** I WOULD AGREE WITH THAT.

23 **THE COURT:** I'M SORRY?

24 **MR. COOK:** I WOULD AGREE WITH THAT, WITH SOME SLIGHT
25 CHANCES, YES.

26 **THE COURT:** AND THEN IT WAS THE SLIGHT CHANGES THAT I
27 FOCUSED ON.

28 I, FRANKLY, DON'T SEE A DISTINCTION BETWEEN 102

1 CANADIAN BANKS AND FIVE CANADIAN BANKS. I THINK THAT MY
2 RULING THAT ASSIGNMENT -- THAT THE ASSIGNMENT PROVISION OF
3 THE ENFORCEMENT OF JUDGMENT STATUTES THAT ENCOMPASSES BANK
4 ACCOUNTS DISPOSES OF THE ISSUE HERE WITH REGARD TO THE 102
5 BANKS. AND TO THE EXTENT THERE IS NEED -- I THINK THERE
6 IS DEMONSTRATED NEED -- NEED REQUIRED TO DEMONSTRATE A
7 NEED BY THE GARZAS. I RECOGNIZE THAT WHEN YOU GO FROM
8 FIVE TO 102, IT'S POTENTIALLY VAGUER AND MORE UNCERTAIN;
9 BUT, I DON'T REALLY SEE THAT.

10 HOWEVER, THIS APPLICATION, AND MAYBE THE PRIOR ONE
11 DID TOO, BUT THIS ONE -- AT LEAST IT CAME TO MY ATTENTION
12 MORE CLEARLY -- SOUGHT TO DO TWO THINGS THAT STRUCK ME AS
13 OUTSIDE THE BOUNDS. FIRST, IT SOUGHT TO GO TO THE
14 CONTENTS OF SAFETY DEPOSIT BOXES, WHICH I DIDN'T SEE ANY
15 AUTHORITY FOR THAT THAT WAS ASSIGNABLE.

16 AND SECOND, IT PURPORTS TO REQUEST SEPARATELY
17 INCORPORATED ENTITIES -- SUBSIDIARIES. AND MY
18 RECOLLECTION IS THAT WHILE ALTER EGOS CAN BE ADDED
19 POSTJUDGMENT -- THAT IS, SUBSIDIARIES OR PARENTS OR
20 AFFILIATES CAN BE ADDED TO A JUDGMENT, UNLESS AND UNTIL
21 THEY ARE, THE ONLY PERSON OR ENTITY THAT'S RESPONSIBLE FOR
22 THE JUDGMENT IS THE JUDGMENT DEBTOR ITSELF.

23 SO, IT STRUCK ME THAT WHEN THE REQUEST WAS ASKING FOR
24 SUBSIDIARIES THAT THAT WAS IMPROPER. WHEN IT'S ASKING FOR
25 SUBDIVISIONS, THAT'S FINE, BECAUSE A SUBDIVISION IS PART
26 OF THE SAME CORPORATION.

27 AND THEN, LASTLY, WHAT CAME TO MY ATTENTION, NO DOUBT
28 PURPOSEFULLY, WAS THIS "NOTICE OF FILING OF MEMORANDUM OF

1 GARNISHEE." I THINK I SAW A FEW OF THEM, BUT I CERTAINLY
2 SAW THE BANK OF NOVA SCOTIA, AND THAT'S WHAT I'M LOOKING
3 AT HERE. IT SUGGESTS THAT THE BANK OF NOVA SCOTIA WAS
4 SERVED WITH A NOTICE OF LEVY OR NOTICE OF ATTACHMENT AND A
5 WRIT. AND I THOUGHT THE WHOLE THEORY HERE -- AT LEAST, TO
6 MY RECOLLECTION -- IS THE WHOLE THEORY WHY I COULD EVEN
7 HAVE JURISDICTION TO SAY ANYTHING OR DO ANYTHING WITH
8 REGARD TO ASSETS THAT ARE OUTSIDE THE UNITED STATES IS
9 THAT THERE'S JURISDICTION OVER ACL, NOT THAT THERE IS
10 JURISDICTION OVER THE ASSETS OR THE HOLDER OF THE ASSETS.
11 AND THAT'S WHY I PHRASED MY TENTATIVE RULING, FRANKLY, IN
12 A VERY UNUSUAL MANNER BY USING THE PHRASE "SIGNIFICANT
13 LIMITATION."

14 I JUST HAVEN'T ADDRESSED THE ISSUE, I THINK. NOT
15 THAT I'VE SAID YEA OR NAE. I JUST BELIEVED THAT NO ONE
16 HAS PRESENTED TO ME AUTHORITY ONE WAY OR THE OTHER OR
17 ARGUED ONE WAY OR THE OTHER WHETHER AN ASSIGNMENT OF BANK
18 ACCOUNTS IN A COUNTRY OTHER THAN THE U.S. ALLOWS A
19 JUDGMENT CREDITOR TO SERVE A NOTICE OF LEVY OR A NOTICE OF
20 ATTACHMENT OR A WRIT. AND I THOUGHT THAT THAT RAISED
21 SUFFICIENTLY INTERESTING ISSUE OF LAW THAT IT SHOULD BE
22 ADDRESSED HEAD-ON RATHER THAN SIDEWAYS.

23 I THINK I'VE NOW TOLD YOU ALL THE THINKING BEHIND MY
24 TENTATIVE RULING EXCEPT TO INCORPORATE BY REFERENCE
25 EVERYTHING THAT WAS SAID PREVIOUSLY IN PREVIOUS HEARINGS
26 AND I'M NOT GOING TO BOTHER ALL OF YOU ABOUT THAT BECAUSE
27 I THINK YOU HAVE THE TRANSCRIPTS.

28 **MR. COOK:** YES, YOUR HONOR.

1 LET ME CYCLE THROUGH THE -- THE EASIEST ONES FIRST.
2 AND FOCUSING ON THE TENTATIVE RULING ABOUT --

3 **THE COURT:** YOU HAVE TO SPEAK LOUDER. I THINK YOU
4 HAVE A COLD AND IT'S A LITTLE HARDER TO HEAR YOU THAN
5 USUAL.

6 **MR. COOK:** YES, I AM SORRY.

7 JUST THE PRICE OF VISITING ADULT CHILDREN IN SEATTLE,
8 HOW'S THAT?

9 **THE COURT:** BUT HOW ABOUT CLOSER TO THE MICROPHONE?

10 **MR. COOK:** OKAY. HERE WE GO. OKAY.

11 **THE REPORTER:** THANK YOU, JUDGE KAHN.

12 **MR. COOK:** LET'S DEAL WITH THE FIRST ONE, WHICH IS
13 DIVISIONS OR SUBDIVISIONS AND THE ISSUE OF SUBSIDIARIES.

14 I WOULD -- I -- ALTHOUGH I RESPECTFULLY DISAGREE, BUT
15 FOR PURPOSES OF THIS RELIEF, I DON'T THINK IT'S A -- WE
16 HAVE A SUFFICIENT BASIS TO TEE UP OR EVEN IDENTIFY, QUOTE,
17 "SUBSIDIARIES OR SEPARATELY RELATED ENTITIES," AT THIS
18 POINT SITTING HERE. AND UNDER CASES INCLUDING *ABBEY OF*
19 *THE CHIMES* AND *DOW JONES V. ABBOTTE* -- YOU KNOW, A LARGE
20 BODY OF LAW WHICH SAYS, "HOW DO YOU AMEND JUDGEMENTS,
21 POST-JUDGEMENTS." AND ALL OF THAT EVIDENTIARY TRAIN OF
22 STUFF IS NOT HERE BEFORE YOUR HONOR.

23 SO, WE'RE NOT -- WE'RE NOT ABOUT TO GO DOWN THAT PATH
24 HERE. I -- I PERSONALLY OWNED *DOW JONES V. ABBOTTE*, WHICH
25 IS A REPORTED CASE. AND I KNOW WHAT TYPE OF EVIDENTIARY
26 MACHINERY WE WOULD NEED, AND IT'S JUST NOT -- I MAKE NO --
27 I MAKE NO OFFER WE MADE THAT OFFER --

28 **THE REPORTER:** "MADE THAT OFFER" WHAT? I'M SORRY.

1 **MR. COOK:** WE DON'T -- WE DON'T -- WE DON'T -- WE
2 DON'T MAKE AN OFFER OF PROOF -- OR WE DON'T OFFER THAT WE
3 MADE A SUFFICIENT EVIDENTIARY SHOWING ONE WAY OR ANOTHER.

4 ON THE OTHER HAND, AN ENTITY WHICH DOES HAVE WHAT YOU
5 CALL DIVISIONS OR SUBDIVISIONS WHICH IS ESSENTIALLY THE
6 SAME DEBTOR WITH ANOTHER NAME -- WHICH DOES HAPPEN, THAT
7 WOULD BE WITHIN THE CONFINES OF MY DEBTOR. AND A DIVISION
8 OR SUBDIVISION IT REPRESENTS THE SAME CORPORATE ENTITY IN
9 ITS COMMON BUSINESS TERM.

10 **THE COURT:** I AGREE WITH YOU.

11 **MR. COOK:** SO, LET ME MOVE ON TO THE NEXT ITEM HERE.

12 ALTHOUGH, AGAIN, I MIGHT DISAGREE WITH THE COURT HERE
13 ON SAFETY DEPOSIT BOXES HERE. NONETHELESS, SAFETY DEPOSIT
14 BOXES ARE THEIR EVEN UNIQUE CREATURE TO REACH. HOW'S
15 THAT? AND FOR PURPOSES OF AN ASSIGNMENT WHICH TALKS ABOUT
16 RIGHTS AND PAYMENT OF MONEY, ONE WOULD -- ONE WOULD
17 OBVIOUSLY PUSH BACK FROM THAT AND SAY, "WELL THERE'S
18 CONTENTS IN THE SAFETY DEPOSIT BOX, WHY IS THAT A RIGHT TO
19 PAYMENT OF MONEY?" AND AT THAT POINT, WE'RE NOT GOING TO
20 ARGUE ABOUT THAT ONE. THAT'S FOR ANOTHER DAY AT ANOTHER
21 ANALYSIS. HOW'S THAT?

22 **THE COURT:** THEN, WHAT ARE YOU ARGUING HERE?

23 **MR. COOK:** WELL, WE'RE ARGUING ABOUT TWO ITEMS HERE.
24 AND ALSO LET ME ADDRESS THE BANK OF NOVA SCOTIA HERE.

25 THOSE FIVE LARGEST BANKS DO HAVE A PRESENCE HERE IN
26 CALIFORNIA -- THAT IS, THEY HAVE OFFICES HERE. AND IN MY
27 NORMAL DUE DILIGENCE HERE WE'VE GOT OBVIOUSLY A WRIT OF
28 EXECUTION ISSUED BY THIS COURT, A WRIT. AND THEN WE

1 LEVIED ON -- THAT IS, SERVED WITH A NOTICE OF LEVY -- YOU
2 KNOW, ON THE NOTICE OF LEVY -- WRIT MEMORANDUM, YOU KNOW,
3 THROUGH THE SHERIFF'S OFFICE AND LAID PROCESS ON THEM.

4 **THE COURT:** IN CALIFORNIA.

5 **MR. COOK:** IN CALIFORNIA.

6 **THE COURT:** THAT'S PERMISSIBLE.

7 **MR. COOK:** YEAH, BECAUSE THE BANK OF NOVA SCOTIA OR
8 THE ROYAL BANK OF CANADA AND CANADIAN IMPERIAL BANK OF
9 COMMERCE, AND I THINK -- JUST WHATEVER THEY ARE -- THE
10 BANK OF MONTREAL, WHICH I KNOW IS HERE FROM ANOTHER
11 CASE -- THEY ARE -- THEY ARE HERE, AND I KNOW THEY'RE HERE
12 BECAUSE "A", THEY HAVE THROUGH THE SECRETARY OF STATE --
13 YOU KNOW, THE DOW AND -- AND THEN THEY'RE HERE THROUGH THE
14 DEPARTMENT OF BANKING OF THE STATE OF CALIFORNIA.

15 **THE COURT:** I MADE A MISASSUMPTION, CLEARLY. I
16 THOUGHT YOU HAD SERVED JUDGMENT EXECUTION DOCUMENTS IN
17 CANADA.

18 **MR. COOK:** NO. NO, SIR.

19 **THE COURT:** THAT'S MY SIGNIFICANT LIMITATION. YOU
20 CAN'T SERVE JUDGMENT EXECUTION DOCUMENTS IN CANADA WITHOUT
21 US TEEING UP THE ISSUE AND DISCUSSING IT.

22 **MR. COOK:** WELL, LET ME MOVE ONTO THE NEXT ISSUE
23 HERE.

24 **THE COURT:** THERE MAY BE NO ISSUE HERE.

25 **MR. COOK:** WELL, THERE MIGHT BE.

26 SO, ANYWAY, THE ANSWER IS IT WAS -- JUST TO EDUCATE
27 THE COURT -- IT WAS OUT OF MY HANDS, PHYSICALLY. THE
28 CALIFORNIA WRIT ON A CALIFORNIA ENTITY, YOU HAD A

1 CALIFORNIA PRESENCE THAT CONFIRMS BY MULTIPLE LEVELS HERE
2 TO SATISFY MY OWN SENSE AND THE COURT SENSE AND EVERYBODY
3 ELSE'S SENSE.

4 OKAY. SO, LET'S MOVE ON TO THE NEXT ISSUE.

5 THE -- THE WAY THE TENTATIVE RULING CAME OUT, IS IT
6 SAYS, "DEFENDANT MUST ASSIGN ALL OF ITS RIGHTS." WHILE
7 THAT FOLLOWS THE -- THE FLAVOR OF THE STATUTE, THE PROBLEM
8 WITH THAT IS NOT THAT WE DISAGREE WITH IT. BUT, TYPICALLY
9 WHEN WE HAVE AN ASSIGNMENT ORDER, THE ASSIGNMENT ORDER, WE
10 SEEK TO SAY THESE RIGHTS ARE ASSIGNED BY VIRTUE OF THE
11 ORDER RATHER THAN AN ORDER DIRECTED TO THE DEFENDANT TO
12 EXECUTE A PIECE OF PAPER.

13 NOW, IN MY MANY TRAVELS --

14 **THE COURT:** LET ME STOP YOU HERE.

15 YOU ARE DOING A CLOSER READING THAN WHAT'S INTENDED.

16 **MR. COOK:** YES.

17 **THE COURT:** I DID NOT INTEND TO MAKE THE DISTINCTION
18 THAT YOU ARE NOW MAKING.

19 **MR. COOK:** OKAY. THAT'S WHY I RAISE THAT ISSUE.

20 **THE COURT:** LET'S MOVE ON.

21 **MR. COOK:** OKAY.

22 **THE COURT:** YOU ARE RIGHT, I DID NOT INTEND TO
23 REQUIRE THE DEFENDANT TO SIGN A PIECE OF PAPER. I
24 INTENDED THE ORDER TO BE THE ASSIGNMENT.

25 **MR. COOK:** OKAY.

26 NOW, LET ME MOVE ONTO THE LAST ISSUE. I'M SORRY TO
27 TO GO THROUGH THIS BUT, THERE'S A -- THERE'S A LOT OF
28 MOVING PARTS IN THESE THINGS HERE.

1 **THE COURT:** NO PROBLEM.

2 **MR. COOK:** OKAY.

3 NOW, THE LAST ONE IS -- LET ME JUST TELL YOU WHAT WE
4 DO AND THEN MAKE SURE WHAT WE DO CONFORMS WITH WHAT YOUR
5 THINKING IS.

6 WHEN WE GET AN ASSIGNMENT ORDER, WE DO TWO THINGS:
7 WE SERVE THE DEFENDANT, OBVIOUSLY, SAYING, "WHATEVER IT
8 IS" --

9 **THE REPORTER:** SIR, PLEASE SPEAK INTO THE MIKE.

10 **MR. COOK:** SORRY.

11 "WHATEVER YOU'VE GOT AS ASSIGNED TO US, PLEASE TURN
12 IT OVER," BLAH, BLAH, BLAH.

13 AND THEN, AS WE'VE NOW IDENTIFIED OBLIGATORS, WE TAKE
14 THE ASSIGNMENT ORDER HERE -- YOU KNOW, THIS THING HERE --
15 WITH A NICE LETTER WHICH SAYS, "IF YOU ARE HOLDING ANY
16 MONEY, DUE THE DOCUMENT DEBTOR, TURN IT OVER TO US." YOUR
17 NAME IS, YOU KNOW, ABC BANK, OR WHATEVER THE HECK IT WOULD
18 BE HERE.

19 SO, WE MAIL THESE THINGS OUT. THAT'S WHAT WE
20 ROUTINELY DO IN THIS CASE AND OTHER CASES HERE IN OUR
21 OFFICES. AND THAT -- AND THAT OBLIGATOR, YOU KNOW UNDER
22 THE ASSIGNMENT, CAN BE LOCATED HERE IN CALIFORNIA OR IT
23 COULD BE LOCATED ANYWHERE IN THE WORLD.

24 **THE COURT:** YOU ARE SENDING A LETTER WITHOUT COURT
25 PROCESS. I DON'T SEE HOW YOU ARE IMPLICATING THE COURT.

26 **MR. COOK:** I'M NOT.

27 **THE COURT:** SO, I WOULDN'T, AT LEAST FIRST BLUSH,
28 HAVE ANY PROBLEM WITH IT, BUT WE HAVEN'T DISCUSSED IT.

1 BUT, AS A GENERAL RULE, THE COURT HAS NO INTEREST IN
2 METHODS OF ENFORCEMENT OF JUDGMENT THAT DON'T INVOLVE THE
3 COURT PROCESSES.

4 **MR. COOK:** THAT'S CORRECT. AND -- AND WE VIEW AN
5 ASSIGNMENT, PARTICULARLY 708, AS WHAT WE CALL OUSTING THE
6 DEBTOR AND INSERTING THE JUDGMENT CREDITOR. SO, THE
7 JUDGMENT CREDITOR ACTUALLY BECOMES THE OBLIGEE UNDER THE
8 OBLIGATION AND UNDER TRADITIONAL ARTICLE IX -- YOU KNOW,
9 DIVISION 9, THE TRANSACTION, BLAH, BLAH, BLAH -- IS NOW
10 THAT WE HAVE AN INTEREST IN THIS WE, ALWAYS NOTIFY THE
11 OBLIGATOR, AND IT SAYS -- THE LETTER SAYS, IN SUMMARY,
12 "DON'T PAY THE DEBTOR, PAY US." OR WE CALL THEM AND WE
13 GET CALLS FROM PEOPLE SAYING, "I GOT THE LETTER."

14 WE SAY, "WHAT IS THIS LETTER?" WE CALL -- IT'S A,
15 "PAY ME ORDER. PAY ME, NOT THEM." THEY CALL IT A "PAY
16 ME" --

17 **THE REPORTER:** SIR, I'M SORRY, I'M NOT FOLLOWING YOU.

18 **MR. COOK:** THEY CALL IT "PAY ME." P-A-Y M-E. "PAY
19 ME ORDERS."

20 SO, THIS ONLY WORKS FOR ME IF I START SENDING THESE
21 LETTERS OUT. AND WHEN I READ YOUR TENTATIVE RULING HERE,
22 I WANT TO MAKE SURE THAT I WOULD NOT RUN AFOUL OF THE
23 COURT'S THINKING HERE THAT IF I SEND LETTERS OUT BECAUSE
24 IT'S A LETTER WITH THE ORDER AND IT SAYS, "DON'T PAY THEM,
25 PAY ME," THAT THAT WE DO NOT VIEW AS A LEVY BECAUSE A LEVY
26 IS WELL DEFINED. A LEVY IS LEGAL PROCESS UNDER THE
27 AUSPICES OF THE COURT SERVED BY A LEVYING OFFICER.

28 **THE COURT:** AND THAT'S EXACTLY HOW I USED THE WORD.

1 **MR. COOK:** I THOUGHT THAT, BUT I NEEDED TO RAISE THAT
2 ISSUE HERE.

3 **THE COURT:** I APPRECIATE YOU DOING THAT; MANY PEOPLE
4 DON'T DO THAT.

5 **MR. COOK:** NOW, ONE LAST THING: WE DO HAVE --

6 **THE COURT:** SO WHERE IS YOUR DISAGREEMENT WITH
7 ANYTHING I'VE DONE?

8 **MR. COOK:** I DON'T THINK I HAVE ANY DISAGREEMENT, BUT
9 IN LOOKING AT YOUR TENTATIVE RULING AND LOOKING AT WHAT WE
10 WANT TO DO AND THEN UNDERSTANDING THAT THE WAY THIS THING
11 -- YOU KNOW, I'M THE PERSON TO ENFORCE IT TO MAKE SURE
12 THERE'S CLARITY, LET ME ALSO HAND TO -- SO EVERYBODY HAS
13 THE SAME COPY -- IF I CAN HAND TO THE CLERK OF SOMETHING
14 HERE WHICH I'M GOING TO BRING TO COURT'S ATTENTION HERE.
15 IF I CAN HAND THIS TO -- MAY I APPROACH, YOUR HONOR?

16 **THE COURT:** SURE.

17 **MR. COOK:** NOW, THIS DOCUMENT HERE --

18 **THE COURT:** THIS WAS FILED WITH THE EQUIVALENT OF THE
19 CANADIAN SECURITIES --

20 **MR. COOK:** RIGHT --

21 **THE COURT:** OR THE CANADIAN STOCK EXCHANGE?

22 **MR. COOK:** YES. IT'S CALLED A -- THEY CALL IT A
23 "SEDAR," S-E-D-A-R -- WHICH IS THE EQUIVALENT TO OURS
24 CALLED "EGAR," BY THE WAY, JUST FOR THE COURT'S RECORD --
25 COURT'S BENEFIT -- THIS DOCUMENT HERE IS DATED
26 NOVEMBER 18, 2010. SO, AS WE LIKE TO SAY -- THAT'S ON
27 PAGE 9 -- THE INK IS STILL WET HERE.

28 AND MY GRIEVE HERE IN THIS CASE IS IT GOES BACK TO

1 SOME OF THE PRIOR DISCOVERY HERE. AND MY GRIEVE HERE IS
2 THAT THE STATEMENT ON TOP OF PAGE 5:

3 "DURING THE QUARTER THE COMPANY RECEIVED AN
4 AMOUNT OF \$950,000 FOR REDEMPTION OF INSURANCE
5 POLICY RIGHTS COMPARED TO \$86,000 FOR THE SAME
6 PERIOD 2009. THE MAJOR PART OF THIS AMOUNT WAS
7 NOT SUBJECT TO ANY RESTRICTION."

8 THAT'S FILED WITH THE PUBLIC AND WE PRESUME IT'S
9 TRUE. IT'S FILED BY MY DEBTOR, THEREFORE, ADMISSIBLE.

10 AND I REPRESENT TO YOU WE GOT THIS OUT OF THE
11 WEBSITE, SO WE PRESUME IT'S -- THEIR SAFE.

12 SO, AS THIS IS A ROLLING CASE -- WHAT WE CALL
13 "ROLLING ENFORCEMENT" HERE IN FRONT OF YOUR HONOR BECAUSE
14 WE HAVE A DISCOVERY ORDER HERE, PRIOR MOTIONS HERE, I'M
15 THINKING TO MYSELF, YOU KNOW, "I'VE ASKED FOR ALL OF THESE
16 ASSETS IN PRIOR DISCOVERY. HAD THIS BEEN IDENTIFIED, I
17 WOULD HAVE LEVIED ON THAT INSURANCE POLICY. I MIGHT HAVE
18 REACHED THAT \$950,000 HERE. APPARENTLY, THERE IS AN ASSET
19 OR ASSETS OUT THERE WHICH ARE SUBJECT TO ENFORCEMENT,
20 REASONABLE RATIONAL ENFORCEMENT OUT OF THIS COURT."

21 **THE COURT:** SO, RIGHT NOW IT'S NOT CLEAR TO ME WHAT
22 YOU ARE DOING. ARE YOU ARGUING A MOTION THAT HASN'T BEEN
23 FILED?

24 **MR. COOK:** NO.

25 **THE COURT:** ARE YOU ARGUING A MOTION THAT HAS BEEN
26 DECIDED? BECAUSE, I DON'T THINK YOU ARE ARGUING THE
27 MOTION THAT WE HAVE TODAY.

28 **MR. COOK:** NO. I'M JUST POINTING OUT TO THE COURT

1 THE FOLLOWING -- BECAUSE AS THE COURT HAS HEARD EVERY
2 MOTION IN THIS CASE, THAT -- I'M ACTUALLY JUST EXPRESSING
3 A LITTLE GRIEVE HERE, HOW'S THAT? THAT'S THERE'S MONEY TO
4 BE HAD IN THIS CASE.

5 AND I HAVE GRIEVE WITH THE DEFENDANT HERE, BECAUSE
6 THE DEFENDANT'S OBSTRUCTION ON THAT PRIOR DISCOVERY
7 PREVENTED ME FROM REACHING THOSE FUNDS.

8 THAT'S MY GRIEVE.

9 **THE COURT:** GOT IT. NOTED.

10 OKAY. MS. GAMBINO.

11 **MR. COOK:** THANK YOU.

12 **MS. GAMBINO:** THANK YOU, YOUR HONOR.

13 I GUESS I'LL START WITH THE LAST POINT THAT
14 MR. COOK --

15 **THE COURT:** LET ME JUST ASK: ARE YOU CONTESTING ANY
16 PORTION OF THE TENTATIVE RULING?

17 **MS. GAMBINO:** NO.

18 **THE COURT:** THEN, I THINK WE'RE DONE.

19 **MS. GAMBINO:** WELL, I WOULD LIKE TO CLARIFY THE LAST
20 COMMENTS. AND I WOULD ASK THE COURT TO DISREGARD WHAT
21 MR. COOK SAID ABOUT ASBESTOS CORPORATION THAT WAS BASED ON
22 THIS DOCUMENT. THIS IS A DOCUMENT FROM THE INTERNET, AND
23 THAT IS IT HAS NOT NOT BEEN AUTHENTICATED. THEIR
24 REFERENCE IS TO A COMPANY CALLED "LAB." THERE'S
25 REFERENCES TO "ASBESTOS CORPORATION LIMITED," AND IT HAS
26 NOT BEEN ESTABLISHED THAT WE ARE TALKING ABOUT THE SAME
27 COMPANY. NOT ONLY THAT, THIS HAS BEEN AVAILABLE TO
28 MR. COOK AND, YOU KNOW, IT SAYS WHAT IT SAYS. IF THIS HAS

1 LED HIM TO BELIEVE THAT THERE'S SOME INSURANCE MONEY
2 AVAILABLE, THEN -- THEN HE CAN -- HE CAN TAKE WHATEVER
3 STEPS ARE NECESSARY TO TRY TO OBTAIN THAT MONEY.

4 SO, THAT BEING SAID, I THINK THAT --

5 **THE COURT:** NOW YOU'VE GOT ME CURIOUS.

6 ARE YOU TELLING ME THAT THE "ASBESTOS CORPORATION
7 LIMITED" THAT'S REFERENCED IN THIS DOCUMENT IS NOT THE
8 SAME ASBESTOS CORPORATION LIMITED WHO IS YOUR CLIENT?

9 **MS. GAMBINO:** I'M TELLING YOU THAT THIS IS NOT --
10 THIS IS NOT SOMETHING THAT HAS BEEN -- BEEN BRIEFED OR
11 DISCUSSED.

12 MY UNDERSTANDING IS THAT THERE WAS AN ASBESTOS
13 CORPORATION LIMITED THAT WAS IN OPERATION THROUGH 1986.
14 AT SOME POINT THEY BECAME -- AND I DON'T WANT TO -- I
15 DON'T WANT TO MAKE REPRESENTATIONS THAT I'M INCORRECT
16 ABOUT -- BUT SOME AT POINT THEY BECAME PARTNERS WITH OTHER
17 COMPANIES AND FORMED A GROUP CALL "LAB," L-A-B. AND I
18 UNDERSTAND AT SOME POINT THAT COMPANY WENT BANKRUPT AND
19 THERE WERE NEW COMPANIES FORMED. AND I APOLOGIZE FOR NOT
20 HAVING MORE INFORMATION ON THAT, BUT UP TO THIS POINT, I
21 HAVE NOT BEEN PROVIDED WITH THAT INFORMATION.

22 **THE COURT:** IT SOUNDS LIKE THERE MAY BE THIS POST-
23 JUDGMENT ALTER EGO MOTION DOWN THE ROAD IN MR. COOK'S
24 CONTINUING BATTLE OF INCHES. BUT, THAT REMAINS TO BE
25 SEEN.

26 **MR. COOK:** JUST ONE -- ONE -- ONE INCH AT A TIME.

27 I PROVIDED --

28 **THE COURT:** WAIT A MINUTE.

1 **MS. GAMBINO:** I THINK, AS FAR AS ALL OF THE ISSUES
2 THAT ARE RAISED TODAY, MY UNDERSTANDING IS THAT THEY ARE
3 ALL SUBMITTED BY THE PLAINTIFFS; THAT THERE REALLY WAS NO
4 DISAGREEMENT WITH THE TENTATIVE RULING. THERE WAS THE ONE
5 ISSUE ON THE WAY -- THE PHRASING OF THE TENTATIVE RULING
6 WAS THAT -- LET'S SEE -- "DEFENDANT MUST ASSIGN ALL ITS
7 RIGHTS IN ANY BANK ACCOUNTS." AND I HAVE NO OBJECTION TO
8 THAT -- TO THAT WORDING AS LONG AS IT REMAINS THAT WAY.
9 AND THE SUPPORT FOR THAT IS IN THE CODE SECTION 708.510
10 WHERE IT SAYS THAT THE COURT MAY ORDER THE JUDGMENT DEBTOR
11 TO ASSIGN TO THE JUDGMENT CREDITOR OR TO A RECEIVER,
12 ETCETERA, ETCETERA.

13 AND IN MY -- MY, YOU KNOW, POSITION IS THAT THAT THE
14 COURT HAS AUTHORITY TO ASSIGN -- TO -- TO ORDER THE
15 JUDGMENT DEBTOR TO ASSIGN THE RIGHTS, BUT CANNOT ORDER THE
16 RIGHTS ASSIGNED OTHERWISE. AND I ACTUALLY THINK THAT WE
17 ALL AGREE ON THAT.

18 **THE COURT:** I THINK WE'RE DANCING ON THE HEAD OF A
19 PIN, HERE.

20 **MR. COOK:** I WOULD -- YOUR HONOR, THE EXPERIENCE IN
21 THIS IS THAT THE -- THAT -- FIRST OF ALL, ACL WILL NEVER
22 EXECUTE AN ASSIGNMENT. WE'LL JUST BE HERE THROUGH MORE
23 PROCESS. AND THE POWER TO ORDER AN ASSIGNMENT IS THE SAME
24 AS THE COURT HAVING A POWER TO MAKE THAT ASSIGNMENT. IT'S
25 INHERENT IN THAT.

26 **THE COURT:** I AGREE. I AGREE WITH THAT BECAUSE IT
27 MAY BE THAT THERE ARE TWO STEPS, OR MAYBE THAT I ORDER THE
28 JUDGMENT DEBTOR TO ASSIGN, BUT THEN IF THE JUDGMENT DEBTOR

1 DOESN'T ASSIGN, I CERTAINLY CAN ORDER THE CLERK OF THE
2 COURT TO ASSIGN ON BEHALF OF THE JUDGMENT DEBTOR. AND, I
3 THINK THAT INSTEAD OF GOING THROUGH A TWO-STEP PROCESS,
4 MIGHT AS WELL JUST DO IT ALL IN ONE STEP.

5 I DON'T ASCRIBE TO THE WAY THAT 708.510 IS WRITTEN.

6 SO, I'M GOING TO -- TO THE EXTENT THERE'S AN
7 OBJECTION, OVERRULE THE OBJECTION OF ACL, AND I AM MAKING
8 THE ASSIGNMENT.

9 **MR. COOK:** OKAY. THANK YOU, YOUR HONOR.

10 **THE COURT:** SO, YOU WANT TO PUT ALL THIS IN A
11 PROPOSED ORDER AND --

12 **MR. COOK:** ACTUALLY, I HAVE A PROPOSED ORDER HERE
13 WHICH I'VE HANDED TO MS. GAMBINO. SO, AS WE DO EARLY,
14 WE'LL GO OUT IN THE HALLWAY AND CHAT ABOUT IT AND
15 HOPEFULLY COME TO TERMS --

16 **THE COURT:** I'LL BE BACK IN ABOUT TEN MINUTES.

17 **MS. GAMBINO:** THANK YOU, YOUR HONOR.

18 **MR. COOK:** THANK YOU, VERY MUCH, YOUR HONOR.

19 **(WHEREUPON THE PROCEEDINGS WERE CONCLUDED.)**

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1 STATE OF CALIFORNIA)
2) SS.
3 COUNTY OF SAN FRANCISCO)
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5 I, LAVENA WARD, Certified Shorthand Reporter and Official
6 Court Reporter of the Superior Court of the State of
7 California, hereby certify:

8 That the foregoing contains a true, full and correct
9 transcript of the proceedings given and had in the within-
10 entitled matter, and was reported by me at the time and
11 place mentioned, and thereafter transcribed by me into
12 longhand typewriting, and that the same is a correct
13 transcript of the proceedings.

14
15
16 DATED: December 14, 2010
17 San Francisco, California

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21 LAVENA WARD, CSR. #7077
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