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6  
 7 UNITED STATES DISTRICT COURT  
 8 NORTHERN DISTRICT OF CALIFORNIA

10	CARPENTERS PENSION TRUST FUND FOR)	No. CV 08-1164 WHA
	NORTHERN CALIFORNIA,	)
11	Plaintiff,	) <b>STATUS REPORT &amp; REQUEST TO</b>
		) <b>CONTINUE CASE MANAGEMENT</b>
12		) <b>CONFERENCE ; AND ORDER</b>
	v.	)
13		) Date: August 4, 2011
14	MGM’S CABINET INSTALLATION	) Time: 3:00 p.m.
	SERVICES and MICHAEL GORDON	) Courtroom: 9, 19th Floor
15	MOXLEY,	) Hon. William H. Alsup
		)
16	Defendants.	)
		)
17		)

18 Plaintiff Carpenters Pension Trust Fund for Northern California provides the following  
19 information regarding the case management conference currently set for August 4, 2011.

20 1. A case management conference was held on June 16, 2011. Counsel appeared for  
21 Plaintiff Carpenters Pension Trust Fund for Northern California (“Pension Fund”). Michael  
22 Moxley appeared *in propria persona* for himself and MGM’s Cabinet Installation Services.

23 2. In this action the Pension Fund seeks to recover a withdrawal liability obligation  
24 arising under ERISA section 4201, 29 U.S.C. § 1381. While this matter was pending, Mr. Moxley  
25 filed for Chapter 7 bankruptcy protection. Among the debts sought to be discharged was the  
26 assessed withdrawal liability. The Pension Fund challenged the discharge of the withdrawal  
27 liability obligation in an adversary proceeding. The Bankruptcy Court denied the Pension Fund’s  
28 motion for summary judgment, finding that the withdrawal liability obligation did not come within

1 11 U.S.C. § 523(a)(4) and was properly subject to discharge. That decision was subsequently  
2 affirmed by the Honorable Richard Seeborg in *Carpenters Pension Trust Fund v. Michael Moxley,*  
3 *et al.*, U.S.D.C. Northern District No. 3:10-CV-756 RS, ECF No. 17.<sup>1</sup>

4 3. On April 29, 2011, the Pension Trust Fund filed an appeal of Judge Seeborg's order,  
5 *Carpenters Pension Trust Fund for Northern California v. Michael G. Moxley, aka MGM Cabinet*  
6 *Installation Services*, Ninth Circuit No. 11-16133. The Ninth Circuit scheduled a mediation  
7 conference for June 23, 2011. That conference was continued until July 11, 2011, and took place  
8 on that date.

9 4. Because the issue before the Ninth Circuit, i.e., the bankruptcy discharge of an  
10 assessment of withdrawal liability and the subsequent confirmation of that order by the District  
11 Court on appeal, is dispositive of the Pension Fund's ability to maintain this collection action, the  
12 Pension Fund requested a further Case Management Conference be scheduled so the parties could  
13 explore a global settlement of all issues with the Circuit Mediator and potentially schedule a date  
14 for mediation. The Court graciously granted that request.

15 5. During the July 11 mediation conference, the parties agreed to an informal  
16 exchange of documents containing financial information which would allow the Pension Fund to  
17 assess the possibility of a global settlement of all claims, including this action. The Pension Fund's  
18 information request is to be provided by Monday, July 25, 2011, after which Moxley/MGM is to  
19 provide responsive information. As a result of the exchange of information, the Circuit mediator  
20 vacated the briefing schedule set by the Ninth Circuit. A true and correct copy of the Circuit  
21 Mediator's Order is attached hereto as Exhibit 1 and incorporated herein by reference.

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23  
24 <sup>1</sup> The recent decision in *Stern v. Marshall*, 564 U.S. \_\_\_\_, 131 S.Ct. 63, 177 L.Ed.2d 1152, 201  
25 U.S. LEXIS 4791(June 23, 2011), may affect Judge Seeborg's approval of the Bankruptcy  
26 Court's decision. In *Stern*, the Supreme Court held a bankruptcy court lacked jurisdiction to  
27 enter a final judgment of nondischargeability because it was not an Article III court under the  
28 Constitution. While not an issue in this action, the *Stern* decision raises the potential for setting  
aside the bankruptcy court's discharge of the withdrawal liability debt on the grounds the  
bankruptcy court lacked jurisdiction to enter judgment based on non-bankruptcy law, in this  
case, ERISA.

1           6.       As represented to the Court on June 16, 2011, the Pension Fund remains committed  
2 to fully exploring the potential of a global resolution of the claims against Moxley and MGM's  
3 Cabinets, which would include this case. Given the dates set by the Ninth Circuit Mediator, a  
4 mediation session will not be scheduled or completed before the next case management conference  
5 on August 4, 2011. The Pension Fund anticipates a mediation date will be set during the next  
6 conference with the Ninth Circuit Mediator.

7           7.       For the foregoing reasons, the Pension Fund respectfully requests the August 4,  
8 2011 be continued for approximately 45-days, or until mid-September 2011, to allow the parties to  
9 attempt to resolve this matter through the Ninth Circuit's mediation program. Mr. Moxley has no  
10 objection to the August 4, 2011 case management conference being continued.

11 Dated: July 21, 2011

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ Roberta D. Perkins  
BLYTHE MICKELSON  
ROBERTA D. PERKINS  
Attorneys for Plaintiff Carpenters Pension Trust  
Fund for Northern California

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ORDER

19 The case management conference is CONTINUED to September 1, 2011, at 11:00 a.m.

20 Please file a case management statement at least seven days prior.

21 Dated: July 22, 2011.

