

United States Bankruptcy Court
NORTHERN DISTRICT OF ILLINOIS
219 S Dearborn Street
Chicago, IL 60604

FILED
JAN 25 2007
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Kenneth S. Gardner, Bankruptcy Clerk

Date 01/25/2007

Michael Dobbins, Clerk
United States District Court
Northern District of Illinois
219 S Dearborn Street
Chicago, IL 60604

Case Number 05 B 64075
Case Name Leo Stoller
Notice of Appeal Filed 01/05/2007
Appellant _____

Dear Sir:

Pursuant to **Bankruptcy Rule 8007** transmitted herewith is the Record on Appeal. The Record on Appeal consist of:

- Transmittal Letter and Civil Cover Sheet
- Designation
- Statement of Issues
- Transcript of Proceeding

- Supplemental to the Record
- Notice of Appeal
- Copy of Documents Designated
- Exhibits
- Expedited Notice of Appeal
- Certified Copy of Docket Sheet

Additional Items Included

Total Volumes Transmitted

The following items will be transmitted as a supplemental to the Record on Appeal

Appellee Designation of Contents for Inclusion in Record and Statement of
Issues for Pure Fishing and Transcript of Proceedings before The Honorable Jack B Schmetterer 12/12/2006 10:30 am

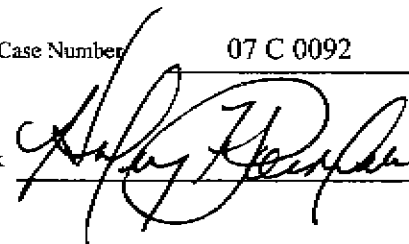
Previous D C Judge

Hibbler

Case Number

07 C 0092

By Deputy Clerk



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Case No. 05 B 64075
)
) Chapter 7
LEO STOLLER,)
) Honorable Jack B. Schmetterer
Debtor.)
) District Court Case No. 07-CV-0092

**STATEMENT AND RESERVATION OF RIGHTS OF PURE
FISHING, INC. IN LIEU OF COUNTER-DESIGNATION OF
ADDITIONAL ITEMS FOR RECORD ON APPEAL**

Pure Fishing, Inc, submits the following Statement and Reservation of Rights in Lieu of Its Counter-Designation of Additional Items for Record on Appeal:

BACKGROUND

1. On December 20, 2005 (the "Petition Date"), the Debtor in the captioned case filed a voluntary petition in this court for relief under Chapter 13 of the Bankruptcy Code. The Debtor's case was converted to a case under Chapter 7 on September 1, 2006 (the "Conversion Date"). A Trustee was duly appointed on September 6, 2006, to administer the Debtor's estate (the "Estate").

2. Since the Conversion Date, the Debtor has filed approximately four Notices of Appeal with the Clerk of the Bankruptcy Court, in which the Debtor endeavors to appeal approximately eleven separate orders entered by the Bankruptcy Court. On information and belief, the Debtor has indicated that he will continue to appeal every order of the Bankruptcy Court that he opposed, until he is able to reach a settlement of his bankruptcy case with the Trustee and creditors. On or about January 5, 2007, the Debtor filed the notice of appeal that gave rise to Appeal No. 07-0092.

3. Pure Fishing has already filed three motions to dismiss prior appeals filed by the Debtor. Briefing on those motions is ongoing. One motion alternatively seeks clarification of various appellate procedures. One of the grounds for seeking to dismiss the pending appeals is that the Notice of Appeal references more than one separate matter or order. The same issue is present in connection with the notice of appeal that commenced Appeal No. 07-0092.

4. In light of the pending motions to dismiss and the request for clarification, and to avoid additional confusion and procedural uncertainty, rather than submitting a counter-designation of the Record on Appeal in Appeal No. 07-0092, Pure Fishing hereby submits this Statement in Lieu of its Counter-Designation of Additional Items for the Record on Appeal, and thereby expressly reserves its right to supplement or amend this statement and to appropriately respond to any and all appeals and file any additional counter-designations after the Court rules on the pending motions to dismiss and/or provides clarification of the appropriate appellate procedure when, like here, the notice of appeal references more than one discrete matter.

Dated: January 17, 2007

Respectfully Submitted,

Pure Fishing, Inc.

By: /s/William J. Factor
One of Its Attorneys

William J. Factor (6205675)
Sara E. Lorber (6229740)
SEYFARTH SHAW LLP
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603
Tel: (312)346-8000
Fax: (312)269-8869
wfactor@seyfarth.com
slorber@seyfarth.com

Lance G. Johnson
ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19th Street, N.W., Suite 600
Washington, DC 20036
Tel: (202) 659-9076
Fax: (202) 659-9344

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on this 17th day of January, 2007, he caused a copy of the attached **Statement and Reservation of Rights of Pure Fishing In Lieu of Counter-Designation of Additional Items for Record on Appeal**, to be served upon the following persons via the manner indicated.

/s/ William J. Factor

Service List

(U.S. Mail prepaid)
Richard N. Golding
Law Office of Richard N. Golding,
500 North Dearborn Street
2nd Floor
Chicago, IL 60606

(U.S. Mail prepaid)
Stephen G. Wolfe
Assistant United States Trustee
Office of the United States Trustee
227 West Monroe Street
Suite 3350
Chicago, IL 60606

(U.S. Mail prepaid and email)
Leo Stoller
7115 W. North Avenue, #272
Oak Park, Illinois 60302

(U.S. Mail prepaid)
Richard M. Fogel
Janice Alwin
Shaw, Gussis, Fishman, Glantz,
Wolfson & Tobin LLC
321 North Clark Street
Suite 800
Chicago, Illinois 60610

(U.S. Mail prepaid)
William J. Barrett
Barack, Ferrazzano, Kirschbaum,
Perlman & Nagelberg, Llp
333 West Wacker Drive, Suite 2700
Chicago, Illinois 60606

(U.S. Mail prepaid)
Michael T. Zeller
Quinn Emanuel Urquhart Oliver & Hedges, Llp
865 South Figueroa Street, Tenth Floor
Los Angeles, CA 90017

(U.S. Mail prepaid)
Melvin J. Kaplan
Bennett A. Kahn
Melvin J. Kaplan & Associates
14 E. Jackson Blvd., Suite 1200
Chicago, IL 60606

1 THE CLERK: Stoller, 05-64075.

2 MR. STOLLER: Good morning, Judge. Leo
3 Stoller, debtor, pro se.

4 MS. ALWIN: Good morning, Your Honor. Janice
5 Alwin on behalf of the trustee.

6 MR. FOGEL: Good morning, Your Honor.
7 Richard Fogel, the trustee.

8 MR. BARRETT: Your Honor, William Barrett for
9 Google, Inc.

10 MR. FACTOR: Good morning, Your Honor.
11 William Factor and Lance Johnson for Pure Fishing.

12 THE COURT: As for Google, there is a motion
13 of Google, this is old business, for an order declaring
14 the proposed suit to be outside the scope of the stay.
15 Didn't I deal with that?

16 MS. ALWIN: Draft order to follow, Your
17 Honor.

18 MR. FOGEL: Draft order to follow for today.

19 THE COURT: Oh, is this the order here?

20 MR. BARRETT: Your Honor, if I --

21 THE COURT: Do you have an order?

22 MR. BARRETT: Yes. Google has the order.

23 MR. STOLLER: Your Honor, if I may say, this
24 is the motion that Google filed. I didn't receive this
25 until about two days ago and I filed --

1 THE COURT: This motion?

2 MR. STOLLER: This was a motion, the motion
3 we're talking about here, and it's about 300 pages. And
4 I didn't receive it until two days ago. And I filed an
5 objection.

6 THE COURT: I have not received any 300-page
7 motion, so I'm not passing on what you're talking about.

8 MR. STOLLER: This is the motion --

9 THE COURT: I can't help it. That is not
10 what I'm ruling --

11 MR. STOLLER: -- that you're ruling on today.

12 THE COURT: No, it isn't. The motion we're
13 talking about was presented here August 25th.

14 MR. STOLLER: That's this one.

15 THE COURT: And it's not 300 pages.

16 MR. BARRETT: Your Honor, if I may, the
17 motion with all the exhibits is a binder, motion --
18 document that the court has before it right now. I know
19 when we were here in August we had this complete binder
20 and it was offered to the court. The court at that time
21 had the complete set.

22 THE COURT: I see.

23 MR. BARRETT: We did serve -- we're very
24 careful, last August, about serving -- we had multiple
25 addresses for Mr. Stoller. I have one return package

1 here.

2 THE COURT: You have what and what?
3 According to the service list, it was addressed to
4 Mr. Stoller at 7300 West Fullerton, Elmwood Park.

5 Was that your home?

6 MR. STOLLER: No. That was a post office
7 mailing address which I have not used and discontinued.
8 And I've just first been notified of this motion, and I
9 filed a proper response to it with the court. And I
10 would like to be able to make an objection to the entry
11 of any order regarding the motion because I never had
12 it.

13 THE COURT: You're representing yourself.

14 MR. STOLLER: Yes.

15 THE COURT: I understand that. Now have you
16 filed a response to this?

17 MR. STOLLER: Yes, I have filed a response.

18 THE COURT: Have you served it?

19 MR. STOLLER: Yes, and I served it.

20 THE COURT: Did you get it?

21 MR. BARRETT: I saw it this morning in court.

22 THE COURT: You did not get it?

23 MR. BARRETT: Not before this morning.

24 THE COURT: Have you served it?

25 MR. STOLLER: Yes.

1 THE COURT: -- means delivered and how?

2 MR. STOLLER: I mailed it by first class
3 mail.

4 THE COURT: When?

5 MR. STOLLER: On the 9th of --

6 THE COURT: Three days ago?

7 MR. STOLLER: Three days ago.

8 THE COURT: Obviously nobody has received it.

9 MR. STOLLER: And I handed him a copy of it,
10 as he's handed me a copy of his response.

11 THE COURT: Counsel, did you receive it?

12 MR. BARRETT: Your Honor, I just saw it this
13 morning in court.

14 THE COURT: Yes or no to received it.

15 MR. BARRETT: I received it in the courtroom
16 this morning, yes.

17 THE COURT: Thank you. May I have a copy,
18 please.

19 MR. STOLLER: Yes.

20 MR. BARRETT: Your Honor, also at the time
21 that the motion was filed the debtor was represented by
22 Mr. Golding, who did receive a copy of this package.

23 THE COURT: I know, but Mr. Stoller has
24 listed on his bankruptcy schedules a certain address --

25 MR. BARRETT: I believe --

1 THE COURT: And that's the address that
2 you're entitled then to serve notice on unless and until
3 a change of address is filed.

4 Have you ever filed a change of
5 address?

6 MR. STOLLER: Yes, I have, Judge.

7 THE COURT: And when did you file that
8 address -- time, rather?

9 MR. STOLLER: Probably within the last 30
10 days.

11 THE COURT: Okay.

12 MS. ALWIN: Your Honor, there's no change of
13 address on the docket that I'm aware of.

14 THE COURT: Do you have a copy of your change
15 of address?

16 MS. ALWIN: And we have not received one.

17 MR. STOLLER: Yes. I don't have it with me,
18 but I did file it.

19 THE CLERK: I will check the docket.

20 THE COURT: Did you find it?

21 THE CLERK: I am checking it now.

22 THE COURT: We'll check the docket.

23 Trustee, have you looked at this order?

24 MS. ALWIN: Yes. The motion -- we have, Your
25 Honor. The order? Proposed order?

1 THE COURT: Order. Have you looked at this
2 order?

3 MS. ALWIN: I've looked at the proposed order
4 by -- yes, Your Honor. We have no objection.

5 THE COURT: You think that the claims that he
6 wishes to file arose after commencement of the
7 bankruptcy case?

8 MS. ALWIN: Yes, Your Honor.

9 MR. FOGEL: We had a hearing on this matter
10 last week and there was an objection to the settlement
11 motion raised by Mr. Stoller, which you overruled and
12 had it today for draft order to follow in connection
13 with that ruling.

14 THE COURT: Was this the case in which I said
15 that I'll reserve --

16 MR. FOGEL: Yes.

17 THE COURT: -- I was going to reserve
18 jurisdiction?

19 MR. FOGEL: You were reserving jurisdiction.
20 You were reserving the right to modify the order --

21 THE COURT: This order does not say -- this
22 proposed order doesn't say that.

23 MR. FOGEL: The order approving the
24 settlement --

25 MS. ALWIN: I have a copy if Your Honor needs

1 one.

2 MR. FOGEL: -- does say that. This order
3 is -- this is the order to modify the stay as a result
4 of the approval of that settlement.

5 MR. BARRETT: If I may eliminate some --

6 THE COURT: I see, to let them go forward.
7 All right, now I recall. The idea was I could withdraw
8 that which, in effect, wiped out his rights permanently
9 if this case gets dismissed. But in the meantime the
10 stay would be modified --

11 MR. FOGEL: Yes.

12 THE COURT: -- so that the suit could go
13 forward. I think that's what you're talking about.

14 MR. STOLLER: I would like to make an
15 argument to the contrary, which I have never, as far as
16 removing the stay.

17 THE COURT: Well, hang on a second, sir. All
18 right. What was that last thing you said?

19 MR. STOLLER: I would like to make an
20 argument against removing the stay and allowing them to
21 file a district court case against me.

22 THE COURT: Just a moment, please. Let me
23 have your big black book binder with all those exhibits.

24 Is there a proposed lawsuit attached to
25 this?

1 MR. BARRETT: Yes, Your Honor. The lawsuit
2 is Exhibit 1.

3 THE COURT: All right. Just for the record,
4 my clerk informs me that she finds no change of address
5 form filed by you, Mr. Stoller. If you wish to file
6 one, everybody is going to be bound by it. If you file
7 one and serve it on everybody, they'll be bound to give
8 you notice at your address. But right now your only
9 address on the record is 7300 West Fullerton.

10 MR. STOLLER: Okay, Judge.

11 THE COURT: Now what exhibit would I find
12 your proposed complaint, sir?

13 MR. BARRETT: Exhibit 1.

14 THE COURT: I'm on page two and it appears
15 you have a suit that refers to activity that took place
16 prior to the filing of the bankruptcy. Am I right?

17 MR. BARRETT: Your Honor, the suit does refer
18 to activity that took place prior to the filing, that's
19 right. That is necessary in order to state a claim
20 under the RICO statute.

21 THE COURT: Right. But, therefore, the order
22 I have been handed is not right.

23 MR. BARRETT: Well, Your Honor, to make a
24 claim under the RICO statute you need to allege two
25 things. You need to allege two predicate acts, that the

1 claims arise under two predicate acts. Those acts, at
2 least the second act occurred post-petition.

3 THE COURT: I'm not questioning what's right
4 to plead under that act. What I'm questioning is the
5 order you want me to approve. You say the claims of
6 Google first arose after the commencement of this case.
7 Evidently they did not.

8 MR. BARRETT: Your Honor, I have a time line.

9 THE COURT: There may be a good reason to
10 modify the stay, but since the activities you complain
11 of started before the case began, it seems to me that I
12 cannot use that reason.

13 MR. BARRETT: If I can just address that a
14 second, the claim that -- and I use the word activities,
15 the activities that gave rise to the claim, the actual
16 claim, occurred post-petition. The complaint does refer
17 to activities that occurred pre-petition as part of the
18 allegations about pattern racketeering activity. The
19 claim Google has, though, is not based on that historic
20 pattern. It must allege and plead that pattern to state
21 a RICO claim. I have a time line here if the court
22 would like to see it of the acts that relate to Google's
23 actual claim and how it fits in with the filing of the
24 case.

25 THE COURT: You have a history here. Like so

1 many people that come here you want to fire a shotgun
2 and give a huge history and then you give me a
3 pinpointed order that pretends as though the history
4 prior to the filing of the bankruptcy is not alleged.

5 MR. STOLLER: Are you addressing that to me,
6 Judge?

7 THE COURT: No.

8 MR. BARRETT: Your Honor, it is alleged. You
9 could never state a RICO claim in these circumstances
10 against the debtor.

11 THE COURT: All right. I have to have a
12 basis for modifying the stay because part of the
13 activity that you wish to sue on occurred
14 pre-bankruptcy.

15 MR. BARRETT: And, Your Honor, I could
16 address the alternative relief in the motion, which is
17 relief Google is seeking, which is injunctive relief for
18 false advertising; wrongful competition; and violation
19 of the RICO statute, which the predicate offense is mail
20 fraud, wire fraud, and extortion. That is the type of
21 relief most appropriately entered by the district court.

22 MR. STOLLER: I'd like to be able to --

23 THE COURT: You are arguing there is cause to
24 modify the stay.

25 MR. BARRETT: As an alternative, yes.

1 THE COURT: Okay. I'll entertain that
2 motion. Now I have already approved the settlement.

3 MS. ALWIN: Yes, Your Honor. An order has
4 been entered. Would you like a copy?

5 MR. BARRETT: And if I could just maybe
6 address some confusion. The settlement addresses claims
7 of Google against the estate and the assets administered
8 by the trustee. Today we are dealing with Mr. Stoller
9 as the individual debtor.

10 THE COURT: I understand. If we permit this
11 to go forward, of course, he can find some way, if he
12 can, to defend himself.

13 MR. BARRETT: That's right.

14 THE COURT: What this does is take it out of
15 the bankruptcy. The suits are also against Central
16 Manufacturing and Stealth.

17 MS. ALWIN: That has been resolved as part of
18 the settlement order.

19 THE COURT: As part of the settlement?

20 MS. ALWIN: Yes, Your Honor.

21 THE COURT: Mr. Stoller, I've read your
22 response. Is there anything you want to add to it?

23 MR. STOLLER: Yes, I do, Judge, is the fact
24 that all of the acts of which they're complaining of,
25 and I need at least two minutes for you to indulge me

1 because this is a very serious issue, what they're
2 complaining of is I wrote three settlement letters under
3 408 to try to resolve a registerability issue and I
4 brought a petition to cancel against Google's
5 registration based on the fact that it's generic or
6 descriptive. From those three acts, which all occurred
7 prior to the filing of the bankruptcy, they have
8 construed and concocted this very serious charge, the
9 RICO charge.

10 Under the trademark law, there is no
11 statutory reason why when we're dealing with just a
12 registerability issue, I didn't threaten their
13 customers, I didn't threaten -- only the cancelation of
14 their mark --

15 THE COURT: I've got to interrupt you and
16 tell you I'm not here to decide the merits of that.

17 MR. STOLLER: Okay, but I just want to point
18 that out. The other thing that's --

19 THE COURT: The only question is whether I
20 should modify the stay --

21 MR. STOLLER: Right.

22 THE COURT: -- so they can litigate against
23 you.

24 MR. STOLLER: And here's why I'm going to
25 suggest you shouldn't. The purpose of the stay is to

1 give a creditor a respite from litigation. We're trying
2 to resolve this bankruptcy issue. And I had a meeting
3 yesterday with the trustee and I think it's possible
4 that we'll be able to resolve the bankruptcy issue.

5 THE COURT: In the event the bankruptcy issue
6 were resolved, what would happen to the bankruptcy do
7 you think?

8 MR. STOLLER: What would happen would depend
9 on the ultimate resolution.

10 THE COURT: Yes.

11 MR. STOLLER: My hope is --

12 THE COURT: Might the bankruptcy be
13 dismissed?

14 MR. STOLLER: That it might be dismissed,
15 yes, and my creditors could be paid.

16 THE COURT: Well, but this particular
17 creditor, if the bankruptcy is dismissed, would be free
18 to sue you anyway, right?

19 MR. STOLLER: If the bankruptcy were to be
20 dismissed and I was able to regain control of my
21 corporations and be in business again, they could sue
22 me. However, the predicate acts of which they're
23 complaining about are no longer taking place because I'm
24 not in control of my business. For them to bring these
25 charges against me now when I am not pursuing the

1 petition to cancel, I'm not writing letters to them, the
2 trustee is in charge of the corporations --

3 THE COURT: Let me pause for that. Is one of
4 the corporations Central Manufacturing?

5 MR. STOLLER: Yes.

6 THE COURT: Which has some other names.

7 MR. STOLLER: Stealth Industries, Inc.

8 THE COURT: Stealth Industries, also
9 Rentamark.

10 MR. STOLLER: Correct.

11 THE COURT: Right?

12 MR. STOLLER: Right. In other words, what
13 relief they're seeking, Judge --

14 THE COURT: I understand. Let me ask the
15 trustee something. He wants to -- if we modify the stay
16 then, of course, Stoller can be sued but also these
17 corporations. Do you take the view that he has no right
18 to represent the corporations or hire a lawyer to
19 represent the corporations?

20 MR. FOGEL: I take that view, yes, because as
21 part of the settlement there is no relief being sought
22 against the estate or the entities. There is no
23 monetary relief being sought against them. And getting
24 back to whether we've talked many times, the entities
25 all appear to be Mr. Stoller, so that we're talking

1 about claims against the bankruptcy estate on the one
2 hand, we're talking about claims against Mr. Stoller as
3 an individual post-conversion living the rest of his
4 life, on the other hand. The second --

5 THE COURT: Yeah, but --

6 MR. FOGEL: -- part is what Google is going
7 after.

8 THE COURT: Central Manufacturing is a
9 corporate entity?

10 MR. STOLLER: Yes, in Delaware. Yes, Judge,
11 it is.

12 THE COURT: What do you think, Google?

13 MR. BARRETT: Your Honor, I understand the
14 court made a finding of fact at the conversion trial
15 finding that these entities were inseparable from
16 Mr. Stoller himself.

17 THE COURT: Well, they may be maybe
18 inseparable.

19 MS. ALWIN: The debtor has also failed to
20 produce --

21 THE COURT: In a piercing corporate veil
22 sense, but I was just asking whether or not it was
23 corporate entities.

24 MR. STOLLER: They are. I paid the franchise
25 fee for 20 years for each one of those corporations in

1 Delaware. They exist. All you have to do is go on the
2 computer and pull them up.

3 MS. ALWIN: Your Honor, as we've noted at
4 the --

5 MR. FOGEL: Your Honor, there is an entity in
6 Delaware called Central M-f-g, I want to say comma, Inc.
7 that is in good standing. I've not seen a document that
8 in any way, shape, or form connects Mr. Stoller to that
9 entity. He is not listed as the registered agent. The
10 State of Delaware does not identify corporate officers.
11 I have not seen a stock certificate. I've not seen a
12 record book.

13 THE COURT: Counsel --

14 MR. FOGEL: I've not seen a tax return. I've
15 not seen anything.

16 THE COURT: Are you abandoning or not
17 abandoning your claims by reason -- against these
18 entities, whatever they are, by reason of his stock
19 ownership therein, if he has any stock ownership or any
20 other interest? Are you abandoning the interest --

21 MR. FOGEL: No.

22 THE COURT: -- by reason of his relationship.

23 MR. FOGEL: No. I am holding onto all
24 property of the estate at the moment while I continue --

25 THE COURT: Why are you not abandoning, if

1 you think it is valueless for the estate --

2 MR. FOGEL: No. I'm not asserting a claim
3 against Google, which I think is valueless for the
4 estate.

5 THE COURT: Why are you not abandoning these
6 corporate --

7 MR. FOGEL: They may, in turn -- they may, in
8 fact, turn out to be companies. They may, in turn, turn
9 out to have assets.

10 THE COURT: If they are, are you going to be
11 defending them in the Google lawsuit that they proposed
12 to file?

13 MR. FOGEL: Not if they're not seeking any
14 monetary relief. I can't --

15 THE COURT: They seek relief against the
16 companies or with -- companies. They do.

17 MR. STOLLER: See, that's the rub, Your
18 Honor. I can't have attorneys represent my
19 corporations. They're going to consent to judgments
20 against my corporations. Then they're going to throw me
21 to the wolves, and I'm going to have to defend myself in
22 a RICO action for what I think is basically not RICOish.

23 On the other hand, I don't have an
24 attorney and I can't afford an attorney to represent
25 myself. So this is putting the debtor, in prejudicing

1 the debtor beyond what should be allowed under the law.
2 I can't represent my corporations with attorneys to
3 protect them and, therefore, I can't even represent
4 myself.

5 THE COURT: I understand. I'm perfectly
6 clear as to why you wanted the settlement which -- but
7 you're also, through this device, exposing the
8 corporations in which you claim an interest to damages
9 undefended. And I don't understand that unless you want
10 to abandon your interests in --

11 MR. STOLLER: And he's done that in every
12 case where I'm in litigation, Your Honor.

13 THE COURT: Mr. Stoller, wait please. Bear
14 with me one second.

15 MS. ALWIN: Your Honor, part of the
16 settlement was a release of claims.

17 THE COURT: Against who?

18 MS. ALWIN: Google and the estate and the
19 entities, so we've resolved it.

20 THE COURT: You mean, Google has released its
21 claims against the entities?

22 MS. ALWIN: That's my understanding, Your
23 Honor.

24 THE COURT: Counsel for Google, please?

25 MR. BARRETT: Your Honor, I'm looking at the

1 relevant language right now in the agreement. The
2 language is Google hereby releases and discharges
3 Stoller's bankruptcy estate and the trustee, as
4 representative of Stoller's bankruptcy estate, from any
5 and all claims.

6 THE COURT: Not the entities.

7 MR. BARRETT: It does not appear to
8 specifically include the entities.

9 MS. ALWIN: There are no claims against the
10 entities.

11 THE COURT: Counsel?

12 MS. ALWIN: If I misspoke, Your Honor, my
13 apologies, but my understanding is --

14 THE COURT: If it included the entities --

15 MS. ALWIN: -- there are no claims then.

16 THE COURT: -- then there's no reason for him
17 to file this shotgun suit.

18 MR. FOGEL: The suit was drafted before the
19 settlement was reached.

20 THE COURT: I know, but from what I just
21 heard, the entities are still liable and you want them
22 to go undefended even though you think that potentially
23 you may find out they had a value.

24 MR. STOLLER: That's correct, Your Honor.

25 MR. BARRETT: The relief sought by Google

1 against the entities in the settlement agreement is
2 injunctive relief.

3 THE COURT: I'm sorry. I was just looking at
4 this complaint. I always take these requests for relief
5 kind of seriously. You want treble damages. You want
6 punitive damages. You don't want -- you want much more
7 than an injunction against an entity that the trustee
8 wants to hold onto in case he can find some value there.
9 And yet the trustee does not intend to defend this,
10 defend the entities. I don't understand that. I'm not
11 sure I should modify the stay to permit -- to go after
12 the entities since the entities are part of the estate.

13 MR. FOGEL: I don't see how entry of
14 injunctive relief against the entities would affect
15 their value.

16 THE COURT: I assure you that punitive
17 damages would and treble damages would.

18 MR. FOGEL: It's my understanding that Google
19 was not going to be seeking monetary relief against the
20 entities and was only going to pursue Mr. Stoller. And
21 if I misunderstood the settlement then --

22 THE COURT: Counsel, is all you want to do is
23 to get the injunction against the entities?

24 MR. BARRETT: Your Honor, my understanding --
25 we're dealing with an issue I think that wasn't really

1 fully fleshed out in the settlement talks with the
2 trustee.

3 THE COURT: I know. And I know this draft
4 was prepared a long time ago.

5 MS. ALWIN: Yes.

6 THE COURT: I guess you had better think it
7 through; also me. I'm prepared -- I've approved that
8 settlement and it makes sense for the estate, but now
9 I've got to see whether the form of the order here makes
10 sense and the extent to which I permit him to go forward
11 with litigation makes sense.

12 MR. FOGEL: May we put this over so that
13 Mr. Barrett can confer with his lead counsel? And
14 perhaps the fix is to have a revised proposed
15 complaint --

16 THE COURT: Yes.

17 MR. FOGEL: -- that will not be seeking the
18 type of relief that we're talking about.

19 THE COURT: I think that may very well be.
20 Now, Mr. Stoller, based on your objection, it's going to
21 be overruled. I'll tell you why. There is good cause
22 here for allowing Google to go forward and sue you. As
23 to whether he should be allowed to sue the entities, I'm
24 not so sure, but there is good cause to allow him to sue
25 you because that has nothing to do with this estate and

1 suing you won't hurt the estate and, therefore, I should
2 not in any way bar him from going forward. There is
3 good cause. He has certainly got an issue that ought to
4 be resolved somewhere, and I don't see why it should be
5 resolved in bankruptcy court at all.

6 MR. STOLLER: Well, none of the predicate
7 acts of which he's trying to seeking relief, or
8 allegedly seeking relief and, of course, I deny all the
9 allegations in the complaint, you know, it's like taking
10 the captain of a ship and saying -- I'm not doing
11 anything. You know, in other words, there is an
12 injunction by virtue --

13 THE COURT: Well, you can argue that to
14 whatever court this is before.

15 MR. STOLLER: But I'm just merely saying it
16 doesn't make any sense to shove me into an environment
17 when I'm in a bankruptcy proceeding, I'm trying to
18 resolve the bankruptcy, pay my creditors, and then I
19 would say, Judge, if I get out of this bankruptcy and I
20 pay my creditors and regain my corporations, I would
21 relish having the opportunity to defend it.

22 THE COURT: At least you should understand
23 that there is good cause to show why they should go
24 ahead and be able to sue you on a matter not affecting
25 the bankruptcy to get injunctions. Now as to how much

1 beyond that should I allow is the question that's still
2 open. Okay?

3 So when can we have you folks back
4 here?

5 MR. FOGEL: Your Honor, we have a pending
6 date in January, I think on the 11th, for some matters.
7 I don't know if there is a time between now and then
8 that we can get back before you. I'm going to be out of
9 town.

10 THE COURT: Well, I can find some time if you
11 tell me when you want to come back here.

12 MR. FOGEL: Wait, January 11th is the 341.

13 THE COURT: I can find some time. I will
14 just pick a date a week from now or 10 days from now.

15 MR. FOGEL: A week from now would work.

16 THE COURT: Okay. Date please?

17 THE CLERK: January 19th at 10:30.

18 THE COURT: January?

19 THE CLERK: I'm sorry, December.

20 THE COURT: December 19th at what, 10:30?

21 THE CLERK: 10:30.

22 THE COURT: For hearing on order and possible
23 limits to litigation -- to suit.

24 May I continue to borrow your big black
25 book, please?

1 MR. BARRETT: You you may, Your Honor.

2 THE COURT: I don't know what happened to my
3 copy.

4 Now did you, Mr. Stoller, get a full
5 set of this big black binder?

6 MR. STOLLER: I just received it, yes.

7 THE COURT: All right. There was a motion on
8 today, a trustee's motion to approve compromise of
9 Lanard Toys.

10 MS. ALWIN: Yes. I have a draft order to
11 follow, Your Honor.

12 THE COURT: May I have it please?

13 MS. ALWIN: Yes.

14 THE COURT: I've overruled the debtor's
15 objection.

16 MR. FOGEL: We've changed the language to
17 make it clear that the reference in that paragraph is
18 only to me on behalf of the estate and the related
19 entities and it's not applicable to Mr. Stoller.

20 THE COURT: Which paragraph are you talking
21 about?

22 MR. FOGEL: It's paragraph four of the --

23 THE COURT: The language in the agreement you
24 mean?

25 MR. FOGEL: Yes.

1 MS. ALWIN: Yes.

2 MR. FOGEL: Paragraph four of the agreement
3 is what Mr. Stoller's objecting to.

4 THE COURT: Okay.

5 MR. FOGEL: -- and make clear that I'm the
6 someone.

7 THE COURT: So we -- get a copy of this order
8 to Mr. Stoller, please.

9 MR. FOGEL: Yes, sir.

10 THE COURT: Now I also have Mr. Stoller's
11 motion for permission to allow him to represent himself
12 and his corporate entities before the Trademark Trial
13 and Appeal Board. What is the status of that?

14 MR. FOGEL: Your Honor, the status of the
15 matters before the -- they are, I guess the word is they
16 are frozen pending further determinations in the
17 bankruptcy case as to what ultimately happens. There
18 are, as you may recall Mr. Stoller said last week, you
19 know, over a thousand matters were filed to possibly
20 investigate whether or not there was a reason for him to
21 fight with any of the people that he was filing against.

22 I would say this motion is similar to
23 the motion that he filed a couple of weeks ago that you
24 denied where he sought a declaration either that I had
25 abandoned my interest in the portfolio or that he should

1 be allowed to join the entities and the estate in the
2 appeal of the Pure Fishing case. And I resisted the
3 motion. I resisted that motion at that time --

4 THE COURT: Is that procedure before the
5 Trademark Trial and Appeal Board --

6 MR. FOGEL: No.

7 THE COURT: -- Pure Fishing?

8 MR. FOGEL: Pure Fishing is pending in the
9 district court before Judge Lindberg. It has been
10 appealed to the Seventh Circuit by Mr. Stoller.

11 The matters before the Patent Trademark
12 Board involve a variety of other parties and, again,
13 until I have either reached some type of settlement with
14 Mr. Stoller or proceeded without settlement with
15 Mr. Stoller to deal with the intellectual property
16 portfolio, I am opposed to him being authorized to act
17 on behalf of the estate or on behalf of the entities.

18 THE COURT: What I can do is to keep this
19 alive and see what happens.

20 MR. FOGEL: I have no problem with entering
21 and continuance of this motion.

22 THE COURT: Because your view is that the
23 proceeding is frozen.

24 MR. FOGEL: Yes.

25 MR. STOLLER: Your Honor, the last time we

1 were here one of the attorneys presented an action. At
2 the Trademark Trial and Appeal Board -- and the last
3 time we were here you made your order in the Google case
4 predicated upon the fact that I may get my companies
5 back.

6 THE COURT: Mr. Stoller, the trademark
7 procedure, is it going forward now or is it frozen
8 temporarily?

9 MR. STOLLER: No. They're going to be
10 di'smissed and that's the urgency. All my actions at the
11 Trademark Trial and Appeal Board of which there are 30
12 cases many of which I have been involved in for 10 years
13 or more, Judge, are now all destined to be dismissed.

14 THE COURT: Mr. Stoller, do you have anything
15 to back up your contention that they're about to be --

16 MR. STOLLER: Yes.

17 THE COURT: I don't mean Stoller. Trustee,
18 do you have anything that shows that they're frozen as
19 opposed to actively considering dismissal?

20 MS. ALWIN: I believe it's the order attached
21 to Google's response.

22 MR. JOHNSON: Your Honor, if I may interject
23 a moment on the Trademark Trial and Appeal Board
24 procedure. An opposition is filed by a party who
25 believes they will be harmed by the granting of a

1 trademark registration. There is an alternative
2 proceeding available. If that registration has already
3 been granted, the one aggrieved can seek to have the mar
4 canceled. The two are procedurally identical, merely a
5 difference in posture as to whether the application has
6 been registered or whether the registration will be
7 canceled.

8 MR. STOLLER: What happened the last time we
9 were here, the board issued an order which was tendered
10 to you. In that order the Trademark Trial and Appeal
11 Board dismissed a case which the trustee entered into an
12 agreement to dismiss the case with and I merely filed a
13 notice before the Trademark Trial and Appeal Board,
14 Judge, to advise them that the case was on appeal and
15 not to -- to put them in the stay position.

16 The board issued a decision saying,
17 "Stoller has no authority to respond," and then
18 dismissed the action. That single decision which was
19 tendered to you last time is now being used by all my
20 opponents so that all of my decisions, all of the 30
21 pending oppositions will be dismissed based on that
22 board decision. I need to go back to the TTAB. I went
23 in good faith and tried to contact Mr. Fogel and asked
24 him if he would give me authority so I could go back to
25 the board and say, "No, I do have the authority."

1 I'm not looking to litigate the cases
2 over there. I'm merely looking to advise the board that
3 we are -- that these decisions are on appeal and they
4 should be stayed pending my appeal.

5 THE COURT: What decisions are on appeal?

6 MR. STOLLER: Pardon me?

7 THE COURT: What was handed to me now is a
8 letter from the Patent Trademark office to you dated
9 July 14, '06.

10 MR. STOLLER: That's just a sanction order.
11 That has nothing to do --

12 THE COURT: It determines that you have not
13 made a showing that you have a colorable claim of
14 damages justifying the extension request that you filed.

15 MR. STOLLER: You're being -- there is an
16 attempt to confuse the court. That decision, that was a
17 sanction order based on my filing a series of requests
18 to -- requests for extensions of time to file in
19 opposition. That does absolutely nothing with the 30
20 pending initiated opposition proceedings. The
21 criticality of it is if I'm going to get my companies
22 back, I want my oppositions in the same position they
23 were at the time this proceeding began.

24 Mr. Lance Johnson's allegation to you
25 that I could then now go back and refile 30 or 40 cases,

1 pay those filing fees, and then litigate under the
2 theory that a petition to cancel is the same as an
3 opposition is not the case. There is a different
4 standard.

5 All I want is that the board suspend
6 everything, like the trustee said, pending the
7 resolution of these issues so that if we can reach an
8 amicable resolution, I pay my creditors, I get my
9 companies back, everything is stayed. Right now the
10 board has said, "Stoller has no authority." I've
11 received letters from other counsel using that last
12 decision by the board and they're going to dismiss all
13 30 of them which would never allow me to be made whole
14 again.

15 THE COURT: Trustee, have you filed anything
16 in that proceeding?

17 MR. FOGEL: Yes, and let me clarify it there.
18 I think maybe what Mr. Stoller is looking for may, in
19 fact, be available to him. After Judge Lindberg entered
20 his opinion in the Pure Fishing case in the district
21 court dealing with the Stealth marks that Mr. Stoller
22 has the fights with before the Patent Trademark Board, I
23 entered into a joint motion to dismiss in opposition
24 without prejudice.

25 THE COURT: Pertaining to Pure?

1 MR. FOGEL: Pertaining to another entity.

2 THE COURT: Just one?

3 MR. FOGEL: I believe one.

4 MR. STOLLER: He entered three of them. He
5 dismissed three of my cases.

6 MR. FOGEL: I thought only one of them had
7 actually been --

8 THE COURT: Has it been dismissed?

9 MR. STOLLER: Three.

10 MR. FOGEL: I believe one of them has. And
11 as soon as Mr. Stoller filed his notice of appeal of the
12 Pure Fishing action, I decided to stand still and take
13 no actions before the Patent and Trademark Board.

14 THE COURT: Mr. Stoller, let me ask, are
15 these cases where you claim some interest in what other
16 people say are their trademarks or patents?

17 MR. STOLLER: It's a claim where my company
18 held rights and does the 35 Stealth federal trademark
19 registrations. We have 35.

20 THE COURT: Mr. Stoller, are these
21 proceedings where you claim an interest in certain
22 trademarks that other companies are using?

23 MR. STOLLER: I claim an interest in the
24 trademarks that I own, 35. A company will file an
25 application for a trademark.

1 THE COURT: You don't want to answer my
2 question.

3 MR. STOLLER: I am answering it.

4 THE COURT: No, you're not. I asked you
5 whether you're claiming rights in trademarks that other
6 companies are using.

7 MR. STOLLER: Yes, I am.

8 THE COURT: And do you contend that you used
9 the -- that you obtained the trademarks first?

10 MR. STOLLER: I have 35 that I've obtained
11 since 1981.

12 THE COURT: First, before they started to use
13 them?

14 MR. STOLLER: Yes. And these cases are not
15 being dismissed by the board summarily. They're motions
16 to dismiss. They're being litigated. And I need to be
17 able to defend my trademarks.

18 Now the only thing I'm looking for,
19 Judge, the only thing here is to go back to the board
20 and say, "No, they should be stayed." I should have the
21 right to write them a letter and say they should be
22 stayed pending what appeals you said, the Pure Fishing
23 appeal and my appeal in this case. That's all I'm
24 looking for.

25 THE COURT: Let me say to the trustee, it may

1 very well be that Mr. Stoller is misusing his rights
2 under the patent system. It may very well be that it
3 would be a better world if he were stopped. I am not
4 here to make that decision. It may very well be that
5 some other court or agency ought to make that decision.
6 I just don't think that if the trustee is not claiming
7 any property rights that the bankruptcy should be used
8 to prevent Mr. Stoller from litigating whatever he
9 thinks his rights are. So I'm a little troubled by --

10 MR. FOGEL: I'm a little troubled, too. But
11 if he would show me any documents, if he would give me
12 any cooperation along the lines that would enable me to
13 make intelligent decisions --

14 THE COURT: He has this problem because he's
15 asserted the Fifth Amendment. He's not cooperated with
16 you and he complains that you're moving slowly and are
17 not proceeding to take some dispositive action that will
18 allow him to get back control of his business. And, of
19 course, I understand that once a trustee is faced by a
20 proper assertion of a Fifth Amendment, if it be proper,
21 that does slow the trustee down. I understand that on
22 the other side as well. But, generally speaking, one
23 may punish themselves by asserting the Fifth Amendment,
24 but one may not be punished for asserting the Fifth
25 Amendment properly.

1 MR. FOGEL: Your Honor, I --

2 THE COURT: Now where are we here? What I'd
3 like to see happen is that whatever you do and whatever
4 I do freezes the proceedings.

5 MR. FOGEL: That's what I'm trying to do.
6 I'm trying to maintain the status quo. I am not seeking
7 dismissal of any matters, and I will be happy to
8 notify --

9 THE COURT: I want you to think about that as
10 to how we can arrive at that as opposed to allowing him
11 to represent his agencies or himself in matters.

12 MR. FOGEL: I can't stop him from
13 representing himself.

14 THE COURT: Yes, you can, because the claim
15 is a claim of the estate.

16 MR. FOGEL: Well, if it's a claim of the
17 estate, then it's mine to assert.

18 THE COURT: Yes, it is. And you could
19 abandon it, or you could assert it, or you could try to
20 freeze it while you evaluate it.

21 MR. FOGEL: That's what I'm pretty much doing
22 I believe. I'm not doing things with any prejudice.
23 Anything I've done to date has been without prejudice.

24 THE COURT: Until you abandon it.

25 MR. FOGEL: And I'm not going to do anything

1 else before the Patent Trademark Board until either I
2 reach settlement with Mr. Stoller or until the appeal
3 before Judge Lindberg is litigated out.

4 THE COURT: Okay. But basically on his
5 motion I think you ought to take the view you're either
6 going to prosecute those claims, or abandon them, or ask
7 that they be frozen.

8 MR. FOGEL: That's what I'm telling you. I
9 want them to be frozen for now.

10 THE COURT: If they are frozen, then I'm
11 certainly not going to let him represent an asset of the
12 estate that you have not been able to evaluate yet.

13 MR. FOGEL: I'm happy to notify the general
14 counsel of the patent --

15 THE COURT: I'm fully aware also of a dilemma
16 that it seems to me you probably have. If you suspect
17 that a lot of these claims that he has made are phony,
18 you probably don't want to be asserting them if that's
19 your belief.

20 MR. FOGEL: Thank you, Judge.

21 THE COURT: And so you have a dilemma because
22 you can't evaluate. So you're reluctant to abandon and
23 you're reluctant to prosecute.

24 MR. FOGEL: I will say that I did have a good
25 conversation with Mr. Stoller yesterday. And I don't

1 know where it will go, but I'm going to talk to him
2 again. So I'd like to maybe put this over and I will
3 represent to Mr. Stoller and to the court --

4 THE COURT: -- the 19th to see if we can
5 approach this problem that way.

6 MR. FOGEL: Fine.

7 MR. STOLLER: Your Honor, could I make one
8 suggestion? In this one case we only have about 20
9 days. I would like to talk to Mr. Fogel.

10 THE COURT: Well, 7 days is shorter than 20.

11 MR. STOLLER: I'm saying in terms of
12 notifying the board that this one action shouldn't be
13 dismissed, I'd like to be able to --

14 THE COURT: You say you have 20 days, but
15 I'll be back here on the 19th with you and let's see
16 what we can do.

17 MR. STOLLER: Okay.

18 THE COURT: The debtor's response to a motion
19 of Pure Fishing to extend the date, this was filed
20 December 5. Haven't I --

21 MR. FOGEL: You ruled on it.

22 THE COURT: -- ordered -- I ruled on that.

23 MR. FOGEL: You entered that order. There is
24 one last matter for today. As part of the objection
25 that Mr. Stoller filed to one of the settlement motions,

1 he asked that I be disqualified as trustee.

2 THE COURT: I thought I ruled on that.

3 MR. FOGEL: You did.

4 THE COURT: I thought I orally ruled on that.

5 MR. FOGEL: It was draft order to follow so
6 that we could draft an order that I believe reflects
7 what you said that he didn't show cause to remove me.

8 THE COURT: Right.

9 MR. STOLLER: I would like to have a copy of
10 that, too.

11 THE COURT: Yes, please. Get him a copy of
12 that. I've signed that. I'll see you folks on the
13 19th.

14 MR. FOGEL: Thank you very much.

15 MR. STOLLER: Thank you, Judge.

16 (Which were all the proceedings
17 had in the above-entitled cause
18 as of December 12, 2006.)
19
20

21 I, Barbara A. Casey, do hereby
22 certify that the foregoing is
23 a true and accurate transcript
24 of proceedings had in the
25 above-entitled cause.