EXHIBIT A

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

GRIFFIN TRADING COMPANY, INC.,	)	No. 98B41742
	)	Chicago, Illinois
Debtor.	)	
---------------------------------	)	
LEROY INSKEEP, not individually but as Trustee for GRIFFIN TRADING COMPANY, INC.,	)	
Plaintiff,	)	No. 01A00007
vs.	)	
FARREL J. GRIFFIN and ROGER S. GRIFFIN, et al.,	)	January 26, 2005
	)	10:30 a.m.
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BRUCE W. BLACK

APPEARANCES:

For Debtor:	Mr. Matthew Lydon; Mr. Matthew Wawrzyn;
For the U. S. Trustee:	Ms. Catherine Steege; Mr. Peter Siddiqui;

THE CLERK: Griffin Trading Company, Inskeep versus Griffin.

MR. LYDON: Good morning, Your Honor. Matt Lydon and Matt Wawrzyn, Winston and Strawn, on behalf of the Griffins.

MS. STEEGE: Good morning, Your Honor. Catherine Steege and Peter Siddiqui on behalf of the trustee.

THE COURT: Good morning, all. You can have a seat. I will give you an oral decision in the matter.

This is an adversary complaint, most of which has been ruled on in various motions for summary judgment before the trial, which was conducted back in September. Only one part of Count IV was the subject of the trial, and Count IV alleges breach of fiduciary duty and four elements to that cause of action, two of them were determined in the trustee's favor through a partial summary judgment motion. The trial has been conducted. The parties have argued on paper and I've reviewed the matters and now been fully advised in the matter. I conclude that the trustee has met the burden of proof for the cause of action alleged in Count IV. And the following will be my findings of fact and conclusions of law. I will enter a written judgment later today.

First of all, the stipulated facts 1

through 16 in the joint pretrial statement are accepted and have been considered and won't be recited now. In spite of the time that's transpired in this case and despite of the reams of paper that have been devoured and the time that's been spent in court, this is really a simple case. It comes down to what did the defendants do, what did they know, and what did they not do that they should have done on September 22, 1998.

Both defendants, Farrel Griffin and Roger Griffin, were in control of the debtor. Both defendants knew that the debtor had to segregate the customers' money and couldn't use one customer's money to pay another customer's debts or to pay the debtor's debts. Although I've determined that the case hinges on actions on September 22nd, some of the prior actions are illuminating in some way.

The September interchange between Farrel Griffin and Mr. Szach regarding the London computer and the glitch in that computer I don't believe proves any gross negligence prior to the 22nd of December, but it's one of several things that should have made the defendants know immediately on December 22, 1998 when the problem arose that they had to take charge; that they could no longer delegate to their employees.

I also believe that the Plaintiff's Exhibit 9, the report that was hand-delivered to the debtor on December 15th of 1998, was a significant document. It pointed out that the excess segregated funds that the debtor maintained were, quote, "extremely low" end quote. Again, that fact doesn't prove negligence, but it is something that the defendants are charged with knowing, even though they testified that they didn't read that report until after the bankruptcy was filed. But as the controlling stockholders, officers, and directors, they are charged with knowledge of that document. They are charged with knowledge of the corporation's financial documents and with knowledge of the corporation's financial condition, and all of those things should have influenced their actions on the 22nd of December.

Prior to December 22, 1998, the defendants' risk management procedures and actions running the debtor were within their business judgment parameters. The defendants adequately formulated procedures to limit risks and delegated the oversight of those procedures within the scope of their business judgment. Although Mr. Park exceeded his creating boundaries several times prior to December of 1998, I do not believe that the evidence proves that the defendants knew or should have known of those excesses before December 21, nor do I believe the evidence proves that the defendants knew or should have known of their subordinates' failure to implement some of the risk management procedures that they had articulated.

I believe the evidence that I've just recited, the things prior to December 22nd, are instructional as to the evidence presented about the actions and motivations of the defendants on December 22nd. The defendants clearly knew risk management and safety procedures were imperative in their business. The defendants repeatedly describe the events of December 21 and 22 as a debacle. Once they became aware of and involved with the debacle, their duties changed.

It's clear that the defendants understood the overwhelming importance of what they learned on the morning of December 22nd. Once they became aware of the situation, coupled with the fact that they knew as much or as little about the situation as anyone else, their knowledge and their subsequent actions involved them in the situation to such an extent as to eliminate Mr. Szach as a intermediary or insulation to their own responsibility. Any reliance that the defendants may have had in their business judgment to rely on Mr. Szach became moot when the circumstances unfolded on December 22nd and when the defendants involved themselves so intimately with the facts and control of the situation. Consequently, the business judgment rule that the defendants rely on simply provides no defense to the defendants or their conduct on December 22, 1998.

I find that Farrel Griffin got to his Chicago office on December 22, 1998 between 6:00 and 7:00 o'clock in the morning, Chicago time. I find that he and Roger Griffin were on the telephone essentially all day on a continuing conference call. And I find that what Farrel Griffin knew, Roger Griffin knew. And I find that Roger Griffin, although he was removed from the Chicago office, was required to be in charge just as Farrel Griffin was, and being on vacation was no excuse to provide him a defense because the problems were in London and both defendants had telephone access to the London office on an equal basis. I find that Farrel Griffin realized early on December 22nd that the debtor would have to file bankruptcy; that is, he knew that the risk management devices had failed. That knowledge is reflected in his deposition which was the Defendants' Exhibit 2. It's pages 63 through 65.

I find that the defendants should have realized that their risk management devices were not in place as ordered, and I find that they should have realized that they had to check on any instructions they gave that day, to implement them themselves, and to assume total control of the situation. I also find that it became the defendants' duty at this point to inform themselves as much as possible of the situation and to then begin to take action based upon that information.

I quote from the Smith and Gorkom, G-o-r-k-o-m, case in the Delaware Supreme Court in 1985 at 488 Atlantic 2d 858 at 872. Quote, "Fulfillment of the fiduciary function requires more than mere absence of bad faith or fraud. Representation of the financial interests of others imposes on a director an affirmative duty to protect those interests and to proceed with a critical eye in assessing information of the type and under the circumstances present."

The defendants bore that responsibility and cannot deflect it to others. There are a couple of areas where the defendants' credibility has been called into great question. It seems to me very unlikely that the defendants would not have learned of the first margin call from their employees in the London office. The size of the margin call, the emergency nature of the events, the defendants' experience in these matters, including margin calls, all suggest that the defendants would inquire as to any margin calls and, indeed, as they testified, they did expect one.

Following Farrel Griffin's phone call to Mees Pierson on December 22nd, their protestation that they did not know of the first margin call rings completely hollow. The defendants are not credible on this point. It's a strange reason to believe that people in their position would call the bank that had issued a margin call of that size and not discuss the margin call and yet discuss the company's financial position and the company's need for, quote, "more time" end quote.

The defendants' duties to their creditors, including their customers, included maintaining strict observance of the customers' segregated accounts. The Commodity Exchange Act regulates their handling of money deposited by their customers. Section 4 (d)(2) of the Act which is found at 7 U.S.C. Section 6 (d)(A)(2) provides that a commodity, or a futures commission merchant, shall treat all money received from customers to margins, trades, or contracts of the customer as belonging to the customer. And then it says, "Specifically, such money shall be separately accounted for and shall not be used to margin or guarantee the trades or contracts or to secure or extend the credit of any customer or person other than the one for whom the same are held."

The companion federal regulation, Regulation 1.20 (c), provides essentially the same thing. This is what the defendants testified they knew. Yet after they learned of, or should have learned of the margin call and subsequent to the order to their bank to transfer the funds, their clear duty was to take steps to stop the payment before their bank executed the transfer. Instead, they took no action to prevent the transfer in spite of the fact that it's clear that the transferred funds came from monies held by the company on behalf of other customers from the company. And Defendants' Exhibit 4, paragraph 51, finds that the testimony reflected that and is simply not subject to doubt.

I do not believe that the evidence proves that the defendants knew that the five million Deutsche mark wire transferred in advance of the order for that was placed by Mr. Rose in the London office, but I do find that the evidence proves that they knew about it while there was still time to stop it. It is simply incredible that Mr. Rose would not have volunteered the information to Farrel Griffin at the outset. And it is also incredible that the defendants didn't ask Mr. Rose about any margin calls.

And I conclude that the law allowed the defendants to abort the wire transfer up until the time that the money was actually transferred. Section 5/4 A-211 (b) of the Uniform Commercial Code provides the operative rule of law. I also conclude that nothing in the Szach consent order, S-z-a-c-h, nothing in those consent orders precludes the trustee from proceeding with this litigation. The trustee is not collaterally estopped. And the fact that the CFTC has not charged Farrel and Roger Griffin with anything simply proves nothing regarding this case.

In short, my decision is that the defendants' failure to discover and stop the wire transfer paying the margin call constituted gross negligence and constituted a violation of their fiduciary duties to their creditors; that is, to their customers. The transfer of the money to Mees Pierson should not have been made and was in violation of the applicable statutes and regulations.

I conclude that the amount of the transfer was the amount of damage to the estate and the transfer was the proximate cause of damage to the estate.

I also conclude that the trustee is

entitled to prejudgment interest and I've calculated that amount to be $1,704,997.36. That's figuring 35 days since December 22nd, which was the date Ms. Steege's computations were made. The trustee is also awarded costs of this proceeding. Judgment will be entered in favor of the trustee for the principal sum of $2,985,074.63. Adding the interest, the total amount is $4,690,071.99.

As I've indicated, I will enter a written judgment in that amount today.

MS. STEEGE: Thank you, Your Honor.

THE COURT: Thank you, all.

(Which were all the proceedings had in the above-entitled cause as of January 26, 2005.)

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	Chapter 7
	)	Bankruptcy Case No. 98 B 41742
	)	Honorable Bruce W. Black
GRIFFIN TRADING COMPANY, INC.,	)	
	)	
Debtor.	)	
	)	
	)	
LEROY G. INSKEEP, TRUSTEE,	)	Adv. Case No. 01 A 7
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
FARREL J. GRIFFIN AND ROGER S. GRIFFIN,	)	
	)	
Defendants.	)	

JUDGMENT

At the conclusion of a trial on September 27, 2004, a decision on count IV of this adversary proceeding was taken under advisement, subject to the parties submitting written arguments. The arguments having been received and considered, the court now being fully advised in the premises, and the court having recited oral findings of fact and conclusions of law in open court, JUDGMENT IS ENTERED in favor of the plaintiff and against the defendants, Farrel J. Griffin and Roger S. Griffin, in the amount of $2,985,074.63, plus prejudgment interest of $1,704,997.36, for a total of $4,690,071.99, plus costs.

This concludes this adversary proceeding.

Entered: January 26, 2005

Bruce W. Black

Bruce W. Black, Bankruptcy Judge