

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MASSACHUSETTS**

---

---

IN THE MATTER OF: . Case #96-10123  
V & M. MANAGEMENT, INC. . Boston, Massachusetts  
Debtor . **July 21, 2004**  
9:32 a.m.

---

---

**TRANSCRIPT OF EVIDENTIARY HEARING ON:  
(#839) MOTION OF ALPHONSE MOURAD TO ALLOW ADMINISTRATIVE CLAIM  
BEFORE THE HONORABLE JOEL B. ROSENTHAL, JR., J.U.S.B.C.**

**APPEARANCES:**

For Alphonse Mourad:

LESTER E. RIORDAN, ESQ.  
81 Washington Street, Suite 8  
Salem, MA 01970

For Stephen Gray, Trustee:

JENNIFER L. HERTZ, ESQ.  
Duane Morris, LLP  
470 Atlantic Avenue Suite 500  
Boston, MA 02210

Electronic Sound Recording Operator: Mary L. Artesani

Proceedings Recorded by Electronic Sound Recording  
Transcript Produced by Certified Transcription Service

---

---

**GCI TRANSCRIPTION SERVICES**  
**210 Bayberry Avenue**  
**Egg Harbor Township, NJ 08234-5901**  
**1-609-927-0299 FAX 1-609-927-6420 1-800-471-0299**  
**e-mail - [irwingloria@comcast.net](mailto:irwingloria@comcast.net)**

---

---

1 (At Tape #1, Index #55. 9:32 a.m.)

2 MS. MAGEROWSKI: Please be seated. V&M Management,  
3 Incorporated. Case #96-10123. Please identify yourselves for  
4 the record.

5 MR. RIORDAN: Attorney Les Riordan for Alphonse  
6 Mourad.

7 MS. HERTZ: Good morning, Your Honor. Jennifer  
8 Hertz on behalf of Stephen Gray, the Creditors' Trustee.

9 THE COURT: Well, we have several matters on today.  
10 Why don't we start, Mr. Riordan, with your desire to withdraw.

11 MR. RIORDAN: Your Honor, that's fine. I would say,  
12 though, that I'm willing to argue the other motions for Mr.  
13 Mourad, so if you wanted to defer that --

14 THE COURT: Well, I'm just going to hear all the  
15 arguments, and I'll give you my decisions -- if any of them  
16 come from the bench, I'll give them to you at the end of the  
17 hearing, so --

18 MR. RIORDAN: Sure.

19 THE COURT: -- it doesn't really matter that much.  
20 Go ahead. Tell me why you want out.

21 MR. RIORDAN: Well, Your Honor, I was discharged.  
22 And some of this, I -- I -- I would indicate is relating to  
23 attorney-client discussions, which I think, if I should reveal  
24 them, I'd like to do that *in camera*.

25 THE COURT: No, I'm not asking you for any privilege  
26 information.

1 MR. RIORDAN: I understand, but I'm willing to do  
2 that *in camera*. Mr. Mourad has indicated in my view, in  
3 conversations with some of his past counsel, that he didn't  
4 agree with my approach to the case, particularly relative to  
5 your views on discovery, and that he told me I was off the  
6 case. But there are other reasons as well. I don't think,  
7 despite my understanding for the Court's desire to move this  
8 on, that I'm capable of getting up to speed in the time that  
9 the Court wants.

10 The Court has indicated that Mr. Mourad understands  
11 the rules and has filed motions and is aware of the process,  
12 and in light of the conflict, his lack of resources, his  
13 inability to meet his obligations regarding those -- even if I  
14 was willing to sacrifice a lot of my time without -- by  
15 providing those resources myself, I think is just unmanageable.  
16 I'm willing to help Mr. Mourad, but I think the environment,  
17 the time needed to get up here, and his desire that I not  
18 proceed under the strategy that I want to creates conflict.

19 THE COURT: Mr. Mourad, you do unders -- are you Mr.  
20 Mourad?

21 MR. MOURAD: Yes.

22 THE COURT: Please rise, please. You do understand,  
23 sir, that this matter is going to move forward promptly. Are  
24 you prepared to proceed *pro se* --

25 MR. MOURAD: Yes.

26 THE COURT: -- as you have in the past?

1 MR. MOURAD: Yes.

2 THE COURT: Very well. All right, I will, at the  
3 conclusion of this hearing, enter an order permitting you to  
4 withdraw, but if Mr. Mourad wants you to, and you are prepared  
5 to, I will permit you to argue today.

6 MR. RIORDAN: Thank you, Your Honor.

7 THE COURT: All right, let's take -- let's take the  
8 motion for change of venue.

9 MR. RIORDAN: Your Honor, for clarification, I  
10 noticed on the order, you're speaking about my motion. This  
11 isn't a rehearing on Mr. Mourad's motion. It was change of  
12 venue to Boston, as opposed to the out of state, correct?

13 THE COURT: Yes.

14 MR. RIORDAN: All right.

15 THE COURT: Yes, motion two for a change of venue to  
16 the Eastern District of Massachusetts.

17 MR. RIORDAN: Correct.

18 THE COURT: Filed on June 15<sup>th</sup>, docket #1015.

19 MR. RIORDAN: All right, thank you, Your Honor.  
20 Your Honor, our position -- and I should stress this -- this is  
21 not in reference to the Court itself, but the location of the  
22 proceedings. Mr. Mourad -- and I think this Court is aware  
23 certainly -- Judge Kenner was aware, has certain issues  
24 relating to both his resources and his personal health.

25 It seems to me at least relative to trial that that  
26 should be conducted in Boston. I -- we're not expressing any

1 reservations about the sitting Judge or this Court; but for Mr.  
2 Mourad to be transferred to the Western District simply because  
3 he filed the motion for change of venue to out of state I think  
4 is incorrect. The parties are all in Boston. The bankruptcy  
5 rules themselves seem to suggest that the matter should be  
6 heard in Boston, and we request your indulgence on that.

7 THE COURT: Well, I'm a little confused. At various  
8 points in this case, and fairly recently, Mr. Mourad had asked  
9 that this case go to Connecticut, Rhode Island, or I think it  
10 was New Hampshire.

11 MR. RIORDAN: I think it was New York.

12 THE COURT: All of which are substantially further  
13 away from Boston than Worcester.

14 MR. RIORDAN: I agree.

15 THE COURT: And those were denied. The case was  
16 transferred here, had nothing to do, of course, with his  
17 motion, and it basically had to do with Judge Kenner's pending  
18 retirement; and now Worcester is inconvenient, but Rhode  
19 Island, New Hampshire, and wherever were convenient. It seems  
20 a little incongruous. Do you care to elaborate on that?

21 MR. RIORDAN: Yeah, I don't -- I don't think it  
22 does, Your Honor, and I think they're different --

23 THE COURT: Why was -- why were those places more  
24 convenient?

25 MR. RIORDAN: I don't know whether they were that  
26 more convenient, but I think Your Honor knows, whether proper

1 or not, that Mr. Mourad -- and Judge Kenner -- had issues. Mr.  
2 Mourad filed several recusal motions. Mr. Mourad was barred  
3 from the Court. I don't know why Mr. Mourad filed the change  
4 of venue to out of state other than the belief that the Court  
5 itself in Massachusetts was not impartial enough to hear the  
6 matter. I don't think it was based on location. I think it  
7 was based on impartiality.

8           What I'm asking for is Your Honor's indulgence. When  
9 there will probably be very little in terms of actual court  
10 time outside of the actual trial, to allow Mr. Mourad to  
11 conduct that trial in a courtroom in Boston.

12           THE COURT:     Where does Mr. Mourad reside?

13           MR. RIORDAN:    In Boston, Your Honor.

14           THE COURT:     How did he get here today?

15           MR. RIORDAN:    I believe -- I'd have to ask him -- I  
16 would believe he --

17           THE COURT:     Why don't you ask him.

18           MR. RIORDAN:    Mr. Mourad, how did you get her today?

19           MR. MOURAD:     I drove my daughter's car.

20           MR. RIORDAN:    You drove your daughter's car. All  
21 right.

22           MR. MOURAD:     My daughter's car.

23           THE COURT:     Does counsel want to be heard on the  
24 other side?

25           MR. RIORDAN:    May I make one other suggestion, Your  
26 Honor?

1 THE COURT: Yes.

2 MR. RIORDAN: I think it would be appropriate to  
3 decide the issue just relative to the trial and to take it  
4 under advisement as well. Thank you.

5 THE COURT: Thank you.

6 MS. HERTZ: Your Honor, I think that with respect to  
7 venue, if our motion for cross-judgment on the pleadings is  
8 denied today, then we're going to trial. I can't foresee that  
9 trial is going to take one more day, so in actuality, he'll  
10 only have to travel here, you know, one or two more times. I  
11 don't know that that is remarkably inconvenient.

12 Also, I think it's either you travel to Boston and  
13 hold a hearing there, or we travel here. I -- we're absolutely  
14 opposed to having this reassigned to yet another Judge. I  
15 think that there has been enough delay as it is, so we're very  
16 opposed to changing venue, and I don't think that asking Mr.  
17 Mourad to travel here once or twice more is substantially  
18 inconvenient.

19 THE COURT: All right. There will be no change of  
20 Judge. If we go to trial, I'll arrange that the trial will  
21 take place in Boston. The order that is outstanding with  
22 respect to Mr. Mourad being barred from the 11<sup>th</sup> Floor of the  
23 O'Neill building remains in effect. I will issue an order when  
24 trial is scheduled permitting him to appear there that day.  
25 Other than that, all pleadings are to be filed here. All other  
26 proceedings with respect to this case will take place here.

1           So venue remains in the Western Division, but the  
2 trial will take place in Boston.

3           [Pause]

4           THE COURT:   All right.  I'll hear the Creditors'  
5 Trustee on the motion for judgment on the pleadings.

6           MS. HERTZ:   Your Honor, this case was remanded on  
7 two very narrow and specific issues, namely, one, whether the  
8 estate was administered negligently, causing Mourad's tax  
9 liability or increasing his liability, and, two, whether Mr.  
10 Mourad has asserted this claim in a timely fashion.

11           There are two very relevant things which render the  
12 remand moot.  First of all, the Creditors' Trustee has set  
13 forth in his pleading that pursuant to the plan there was a  
14 transfer of all of the debtor's estate's remaining property to  
15 the creditors' trust -- excuse me, creditors' trust.  
16 Therefore, even if this Court were to allow Mr. Mourad's late  
17 administrative claim, there are no remaining assets in the  
18 estate to satisfy any such claim.

19           Secondly, under the plan there was a specific  
20 exculpation provision which precludes any negligence claims  
21 against the Creditors' Trustee.  Accordingly, with respect to  
22 the negligence claim upon which -- which has been remanded, the  
23 plan specifically precludes Mr. Gray's liability under any such  
24 claim.

25           THE COURT:   Well, the exculpation is in the  
26 Creditors' Trust, correct?  Yes?

1 MS. HERTZ: Correct.

2 THE COURT: All right, so -- so your claim is that  
3 you can't get him as Creditors' Trustee because there's an  
4 exculpation clause, and you can't get him as -- as Trustee of  
5 the Chapter 11 estate because all the money has been disbursed.

6 MS. HERTZ: Correct.

7 THE COURT: Is that your argument?

8 MS. HERTZ: The -- there's adequate evidence on --  
9 in the pleadings of this case, all of which are duly noted in  
10 the record and referred to in the omnibus opposition we filed  
11 by docket; so in addition to the fact that you ruled last time  
12 that there would be no further evidence --

13 THE COURT: No. I ruled there would be no further  
14 discovery.

15 MS. HERTZ: -- or discovery -- discovery. So I  
16 think that the -- the -- any evidence that would be submitted  
17 at trial is already on -- in the record before this Court.  
18 So --

19 THE COURT: Fine. Why does that -- why is that  
20 necessarily so? I mean, he could bring in witnesses.

21 MS. HERTZ: Yes, but in order to prove a claim of  
22 negligence, which is exculpated by the plan, in order to  
23 prove--

24 THE COURT: That may be --

25 MS. HERTZ: -- that his claim wasn't timely filed,  
26 when there's on funds in the estate, there is no estate. So

1 even assuming that everything he said is true, there's no  
2 recourse for him.

3 THE COURT: Okay. I understand your argument.

4 MS. HERTZ: So for that reason we moved for judgment  
5 on the pleadings. Thank you.

6 THE COURT: Counsel or Mr. Mourad, whoever is going  
7 to argue this?

8 MR. MOURAD: I would like to respond to that, Your  
9 Honor.

10 THE COURT: Well, one of -- you don't get to double-  
11 dip. One of you gets to argue the motion.

12 MR. RIORDAN: May I have a moment with Mr. Mourad?

13 THE COURT: Sure.

14 [Pause]

15 MR. RIORDAN: I'll argue it, Your Honor. Thank you  
16 for your indulgence.

17 Your Honor, on the points that counsel has made, I  
18 would point out in the first instance that I think these claims  
19 have been stated in a manner such as to indicate gross  
20 negligence or intentional conduct; and I believe it's the  
21 Trustee's claim that, in fact, the course of action he took  
22 relative to the S status and relative to the tax credit were  
23 designed to enhance the estate for the creditors. So -- so I  
24 believe we've implicated more than just basic negligence; but  
25 in any event, Mr. Mourad didn't have any standing to object to  
26 the clause which limits it to negligence, and we would take a

1 -- just the position that without that standing he -- the  
2 clause is inapplicable to him.

3 I would add that --

4 THE COURT: Whoa, whoa, whoa, whoa, whoa, whoa. I'm  
5 not sure I understand. That -- the exculpation clause was in  
6 the creditor's trust, which was authorized under the terms of  
7 the plan.

8 MR. RIORDAN: He didn't have standing to object to  
9 the plan.

10 THE COURT: Why didn't he?

11 MR. RIORDAN: That's what Judge Kenner's ruling -- I  
12 disagree with it, but he didn't have standing.

13 THE COURT: All right.

14 MR. RIORDAN: In fact, Judge Kenner's order -- and  
15 this is reflected in the First Circuit opinion, is that Mr.  
16 Mourad didn't have any equity; and this -- this lies at the  
17 heart of really the pure legal issue that we're dealing with on  
18 the issue of taxes. I understand that Mr. Mourad's issue is  
19 over and above the tax issues, but what the Court has done  
20 here, in a very sort of odd situation, and where there isn't a  
21 lot of law on this, has said, "You have no equity, you have no  
22 standing, you have no ability to destroy an S status. The S  
23 status remains intact," allowing the transfer away of the tax  
24 credit, but at the same time burdening him with the tax  
25 liability.

26 So it's our position is that as a matter of due

1 process -- and if Mr. Mourad can't object to a specific clause,  
2 he shouldn't be held accountable to it.

3           As far as the funds are concerned, I would make two  
4 points about that: My understanding is, is that at the time  
5 this -- the pre-trial order was entered, that the Trustee  
6 identified \$121,000 worth of assets. I don't know what's  
7 happening with those assets since. I know counsel indicates  
8 that there is nothing left. Counsel doesn't have an affidavit  
9 or any evidence indicating that, so, you know, without  
10 disclosure it's hard to fathom what's there.

11           But I think we also have to remember that the Trustee  
12 is taking actions that impact potential claims, and for the  
13 Trustee to take the position that he's distributed assets of  
14 the estate and then can take actions relative to tax returns,  
15 one of them being the 1997 return in this case, and I  
16 understand it's not before the Court, but other returns that he  
17 apparently doesn't have any authority to enter, he does that at  
18 his own risk, in our view, under the law.

19           I would also state to Your Honor that particularly  
20 from my point of view, that there is a hard construct to get  
21 past here for me, and that's that Judge Kenner ordered the  
22 estate closed, except for this pleading, which creates, I  
23 think, some difficulty in addressing different aspects. It  
24 seems to me then that the Trustee was on notice as to his  
25 limited duties relative to the estate on the date of that  
26 order, and also on notice that he needed to preserve funds for

1 Mr. Mourad's claim. So on that aspect of the opinion, we  
2 believe that the motion should be denied.

3 I would also add that in my view -- and I've cited  
4 the rule relative to the summary judgment -- but in my rule  
5 this motion, with the exception of the inclusion of a tax  
6 opinion, is no more than a 12(b)(6) motion. I mean,  
7 essentially, this would go back to the First Circuit where it  
8 is ruled that he made adequate claims, whatever the problems  
9 with the drafting of those or the agreement with that is.

10 So I would submit that the attachment of the tax case  
11 adds nothing to the case. The case is under appeal. It's  
12 under appeal by right of statute from an administrative court  
13 in which a jury trial is not permitted, and the judgment, in my  
14 view, under the law, is not final until the First Circuit  
15 rules.

16 For the Court's information, our brief is done --  
17 this is a case that I've taken from Mr. Mourad. I have  
18 followed through on the reply brief. I'm sorry. The  
19 opposition would be due I believe this week, and a reply  
20 shortly thereafter.

21 So one of the core issues of this case will be  
22 resolved by the First Circuit within I think a reasonably brief  
23 time. It is my view that a lot of this case is susceptible to  
24 motions for summary judgment, and that the Court should, in  
25 scheduling, provide the opportunity for that, because they do  
26 present interesting --

1 THE COURT: It's been how many years of opportunity?

2 MR. RIORDAN: Well, Your Honor, you've made your  
3 ruling on discovery. I -- I --

4 THE COURT: The final pre-trial was filed two years  
5 ago, counsel.

6 MR. RIORDAN: Your Honor -- Your Honor -- this is  
7 not an area -- I understand your position. I respect your  
8 position. I understand the need to do it, but I also ask you  
9 to consider --

10 THE COURT: Well, right now I'm hearing the motion  
11 for judgment on the pleadings, counsel.

12 MR. RIORDAN: Well, all's I'm indicating to Your  
13 Honor is that I do think on some of these issues, some very  
14 interesting issues, in fact, that this is susceptible to a  
15 motion for summary judgment or a partial motion for summary  
16 judgment and Your Honor may want to consider that as a device  
17 to try to limit the issues and, in fact, limit the trial.

18 THE COURT: Well, the issues are very limited. The  
19 BAP's already told us what the issues are.

20 MR. RIORDAN: Well -- and I think we've submitted an  
21 memo today to determine that. I think you're right.

22 THE COURT: And I will give you a ruling before you  
23 leave today on what I think, based on what I've examined of the  
24 record, what the Trustee -- assuming we're going forward with  
25 what the Trustee has said, and what you've said; and I will --  
26 before we leave today there's going to be a trial.

1 MR. RIORDAN: I understand that.

2 THE COURT: And we'll schedule it.

3 MR. RIORDAN: I understand.

4 THE COURT: Fine.

5 MR. RIORDAN: I understand that if Mr. Mourad -- I'm  
6 just indicating that I think some of the issues can be cut  
7 down, and I think -- I think certainly that it may be I'm  
8 premature before Your Honor's ruling on the specific issues.  
9 So I submit on my papers on that, sir. Thank you.

10 THE COURT: Thank you. Anything further?

11 MS. HERTZ: I don't know exactly how to respond to  
12 those various allegations. I would just like to reiterate that  
13 this was remanded on two very narrow issues, and I think  
14 Attorney Riordan is yet again attempting to have this explode  
15 into a myriad of issues which are not before you. And so I'm  
16 not going to take into account everything he said in response  
17 to that, but I think that it's very important that this does  
18 not get out of control.

19 THE COURT: All right. I am going to deny the  
20 motion for judgment on the pleadings. I think there are facts  
21 well enough pled, that if true, taking reasonable inferences in  
22 the claimant's favor, do state an appropriate, do state a  
23 claim. Whether it can be proved is something else again.

24 I'm not considering this as a motion for summary  
25 judgment but just a motion of judgment on the pleadings; and  
26 based on my review of the pleadings and hearing of argument, I

1 find that there is -- the pleadings are sufficient, and the  
2 matter is not moot, and I'm denying that motion.

3           That leaves us the motion -- well, let me take care  
4 of the denial first. [Pause] I'm denying their motion, but  
5 I'm also denying your motion to strike it. It's moot. It  
6 doesn't mean anything. It's meaningless.

7           I now have a motion of Mr. Mourad for reconsideration  
8 of the Court's order precluding discovery. I'll hear argument  
9 on that, briefly.

10           MR. RIORDAN: Your Honor, I'm happy to submit that  
11 on the paper. I mean, I think you made your position clear.  
12 The only two points I think we make is that this is a case  
13 where you had someone *pro se*. Your rules require a mandatory  
14 scheduling conference, and I think on -- without implying  
15 anything regarding individuals here, that the pre-trial order  
16 in this case can be read to indicate that discovery was not  
17 going to be permitted at all.

18           That -- that would be the view. It seems to me that  
19 the Court had an affirmative duty to hold that conference and  
20 to permit -- to create a scheduling order for discovery. There  
21 is no doubt they didn't do it; but other than that, we'll  
22 submit on the papers, Your Honor.

23           MS. HERTZ: Your Honor, Mr. Mourad's late  
24 administrative claim was filed in September of 1998. I believe  
25 that at the time the pre-trial memo -- pre-trial order entered  
26 he was represented by counsel. There has been no instance in

1 the last six years of when the pre-trial order entered  
2 seeking clarification or otherwise with respect to discovery,  
3 and it's only upon Attorney Riordan's appearance six years  
4 after the order entered that evidence is now sought. I think  
5 that that certainly precludes Mr. Mourad.

6           Secondly, with respect to the motion, it certainly  
7 doesn't satisfy the standards for reconsideration in the  
8 District of Massachusetts, which is mistake, inadvertence,  
9 surprise, excusable neglect, or newly discovered evidence.  
10 None of those grounds are alleged or pled.

11           THE COURT: Thank you. I'm going to deny the motion  
12 for reconsideration. I agree with Ms. Hertz that it doesn't  
13 meet the standards. I also believe that there was more than  
14 adequate time at several points during this if discovery was  
15 desired or needed, and I am denying the motion, and I'm  
16 entering a written decision on the record, which you folks will  
17 receive in due course.

18           All right, that leaves the -- according to my list,  
19 -- well, also on the list for today was the motion to change  
20 venue to another state. I'm denying that. We've already had  
21 the argument on that.

22           MR. RIORDAN: Your Honor, as a point of  
23 clarification, it was my understanding Judge Kenner did deny  
24 that.

25           THE COURT: I couldn't find anything on the record,  
26 but in case she didn't, I am.

1 MR. RIORDAN: All right.

2 THE COURT: Okay? With the papers moving around,  
3 there may have been some docketing issues, but you really  
4 weren't asking for that anyway, and I'm denying that.

5 So this is the final pre-trial. I've read the pre-  
6 trial submissions. I've read the BAP decision, and I believe  
7 that there are two issues, and only two issues, that I have to  
8 deal with coming out of the BAP -- two issues to be tried.  
9 Mr. Mourad's allegations that Gray administered the estate  
10 negligently, causing or increasing Mr. Mourad's tax liability.  
11 That's one. The other one is whether Mr. Mourad had cause to  
12 file his administrative claim late. All the other issues, it  
13 seems to me, have been addressed or outside the scope of this  
14 contested matter. So those are the two issues that we are  
15 going to try.

16 I am prepared to schedule trial right now. I hope  
17 you folks have your calendars with you. Can I -- I know you  
18 looked at some dates.

19 [Pause]

20 THE COURT: Based on my reading -- I know that the  
21 pre-trial statement, which was entered when there were many  
22 more issues, or at least Mr. Mourad thought there were many  
23 more issues at the time, before the BAP decision -- or maybe it  
24 was after -- I don't know -- had 22 witnesses. Do we still  
25 think that that's the number of witnesses that we're going to  
26 have?

1 MR. RIORDAN: Your Honor, I think that question  
2 actually should be addressed to Mr. Mourad.

3 THE COURT: Mr. Mourad. How much -- how many  
4 witnesses do you think you're going to need on those two  
5 issues?

6 MR. MOURAD: I'll have to go with the list I gave  
7 you, Your Honor, but possibly about 12 to 14 witnesses.

8 THE COURT: All right. Unfortunately, it's very  
9 difficult with my schedule to put together consecutive days.  
10 So the first day of trial will be September 13<sup>th</sup> -- Monday,  
11 September 13<sup>th</sup>. Monday, September 13<sup>th</sup> at ten a.m. at the  
12 courthouse in Boston on the 11<sup>th</sup> Floor. I'm not sure which  
13 courtroom we'll be using, but it will be posted when you get  
14 there. Bring your calendars with you for that trial, and we'll  
15 -- after we see how far we get that day, if we need additional  
16 days, we'll schedule them at that time. Ms. Hertz.

17 MS. HERTZ: Your Honor, would you permit me a few  
18 minutes to call Mr. Gray to make sure that he is available on  
19 that date?

20 THE COURT: Sure. I've got another matter --

21 MS. HERTZ: Okay. I know that Mr. Jalbert is --

22 THE COURT: Tell them I require his presence.

23 MS. HERTZ: He's our star witness.

24 THE COURT: I understand. And we're giving him  
25 almost eight weeks' notice, so I expect he'll be able to adjust  
26 his schedule accordingly. But rather than have to chase people

1 down afterwards, why don't you take a few minutes, go call him,  
2 and I'm going to ask Mr. Mourad and Mr. Riordan to stay here,  
3 so that if that's a problem, we know -- any problem, as far as  
4 you know, with that date, Mr. Mourad?

5 MR. MOURAD: No, no problem at all, Your Honor.

6 THE COURT: Fine.

7 MR. MOURAD: Thank you.

8 THE COURT: Why don't you go out and call him. And  
9 I'm also going to -- since the pre-trials were so long ago, I'm  
10 going to require that the parties file and circulate an updated  
11 witness list so that that'll force you folks to do one thing,  
12 at least, is to look at your witness list and pare it down, if  
13 necessary.

14 MS. HERTZ: Your Honor, we listed two witnesses, and  
15 I know that those aren't changing. Not --

16 THE COURT: But you think you need --

17 MS. HERTZ: -- increasing or decreasing.

18 THE COURT: Okay, that's fine. So, Mr. Mourad,  
19 you've heard that they're not changing their witness list, "to  
20 submit updated witness list no later than" -- all right, Mr.  
21 Mourad, you're directed to submit a -- file and circulate an  
22 updated witness list no later than September 1<sup>st</sup>.

23 MR. MOURAD: Thank you, Your Honor.

24 THE COURT: All right, we'll take a brief recess on  
25 this matter to permit counsel to reach the Trustee, confirming  
26 his availability. I'll take the -- do we have a matter on at

1 ten?

2 CLERK: (unclear)

3 THE COURT: All right, I'll take my ten o'clock  
4 matter. It should only take a few minutes. Report back to me  
5 as soon as you can. Very well. Thank you.

6 MR. RIORDAN: Thank you, Your Honor.

7 MS. HERTZ: Thank you.

8 [Off the record at Tape #1, Index #1895. 10:02 a.m.]

9 \* \* \* \* \*

10 [On the record at Tape #1, Index #2290. 10:10 a.m.]

11 THE COURT: All right, let's take care of the V&M  
12 matter first. It should only take a moment. Ms. Hertz.

13 MS. HERTZ: Mr. Gray has -- is in trial on September  
14 13<sup>th</sup>, and I have the days of September that are blacked out for  
15 him.

16 THE COURT: Okay. Blacked -- you mean, he's  
17 available or he's not available.

18 MS. HERTZ: That he's not available.

19 THE COURT: Okay.

20 MS. HERTZ: They are trial-related dates --

21 THE COURT: Okay.

22 MS. HERTZ: -- which could change, but he is not  
23 available the 13<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, and 27<sup>th</sup>.

24 THE COURT: Okay, let's see.

25 [Pause]

26 THE COURT: All right, how's Friday the 24<sup>th</sup>.

1 MR. RIORDAN: Mr. Mourad is available that date,  
2 Your Honor.

3 MS. HERTZ: That's perfect, Your Honor.

4 THE COURT: I expect when you appear on that day,  
5 either Mr. Gray will be with you, or you will have his calendar  
6 for the following several weeks so that if we need more than  
7 one trial day, you'll know what his schedule is.

8 MS. HERTZ: Yes.

9 THE COURT: Okay. So September 24<sup>th</sup>, ten a.m., in  
10 Boston. Thank you.

11 MS. HERTZ: Thank you, Your Honor.

12 THE COURT: Oh, by the way, the order that I'm  
13 entering on the -- the reconsideration denial also denies the  
14 stay that was requested in that motion.

15 MS. HERTZ: Thank you, Your Honor.

16 THE COURT: Very well, thank you all.

17 MR. RIORDAN: Thank you, Your Honor.

18 (End at Tape #1, Index #2435. 10:11 a.m.)

19 \* \* \* \* \*

20 I certify that the foregoing is a true and accurate  
21 transcript from the electronically sound recorded record of the  
22 proceedings.

---

**GLORIA C. IRWIN**  
**Certified Transcriber NJ AOC200**  
**Federal CET #122**

**Date**

**GCI TRANSCRIPTION SERVICES**  
210 Bayberry Avenue  
Egg Harbor Township, NJ 08234-5901  
609-927-0299 1-800-471-0299  
FAX 609-927-6420  
e-mail [irwingloria@comcast.net](mailto:irwingloria@comcast.net)