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Subject: My Day in Court!
Organization: Self

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For those of you who favored me with your prayers and good wishes, thank you! I am confident they helped. No matter what they say about my attorney, Rick Reynolds, he's not just a pretty face. He turned in a magnificent professional performance yesterday, to his everlasting credit, no matter how the judge finally rules in this case. Since I have been asked by several of you for a recount of my day in court, I will provide my interpretation with an apology for the length I know this will take.

For those who have not been following my bankruptcy case, it was considered pivotal for several reasons; the first reason being that I filed a detailed Disclosure of all my financial assets down to that last set of cuff links, the second, I was, as far as we know, the only BK Name to run a notice to policyholders of my BK in the most widely circulated insurance journal sure to reach those who purchase reinsurance policies, and third, I am under chemotherapy treatment for cancer making a London court venue most difficult for me. Should I lose in the critical motions filed by FF, i.e., the motion to dismiss, and the motion to preserve rights under the forum selection clause, the precedent for all other Names could be seriously damaging, especially so in light of the prior adverse rulings in other BK cases.

Those readers of my messages who have cases pending should have their attorneys phone (714- 474-6900) either Rick Reynolds, or Fred Turner who was in the courtroom, to learn more of the strategy that Rick employed most devastatingly to disconcert Gerber (FF), and to cause the judge to re-evaluate his tentative ruling to grant the motion to dismiss. I personally like both of my attorneys as good people, fun people, and dedicated professionals, but, regardless of my personal feelings, in my 45 years of business experience in and out of courtroom on both sides of cases, and sometimes as an expert witness, I have never seen a more highly focussed, tightly reasoned, and well presented dismantling and tearing down of an opponent's case item by item, line by line, all the while totally conversant with all of the citations and evidence on record. It was a truly masterful display of

command of the case and the courtroom, worthy of the best of Perry Mason.

Our hearing was set for 2:30 PM on Monday, the day of the week that Judge Ryan uses to schedule short reports of progress, acceptance of tentative rulings, and matters that usually can be dispensed with in ten or fifteen minutes. The Hearing was scheduled by a law clerk in FF's office, who must have given such an assurance to the judge's clerk that the case could be dealt with in limited time.

Judge Ryan is known as a judge who is never known to reverse his own tentative ruling, and Gerber knew and referred to that in his floundering attempt to recoup something, anything, from his tattered and gutted case, by then totally lacking admissible evidence. By the end of the day, 5:00 to 5:30 PM, Judge Ryan, was quite visibly angry at Gerber who had been put off stroke, and was completely unprepared for the kind of subtle and punishing attack Rick launched. It appeared that Gerber had expected to come in, make his normal well rehearsed little speech, and walk out in thirty minutes with the dismissal ruling in his pocket. He could not have been more surprised, caught unprepared, and off base. In a word, he was bewildered at what was happening to him.

Rick began by using his imposing stature and height (Gerber is a little man) to dominate the podium when introducing himself as representing Robert Lowry. While in command of the podium, he mentioned to the judge that he wished clarification on some points of the judges tentative ruling, and asked Judge Ryan how he would like to proceed with that preliminary clarification. Gerber, sensing no threat from that direction, and perhaps thinking such would help him move faster to the ruling for ruling for my dismissal, graciously gave his agreement for Rick to begin first, and to get such matters out of the way preliminary to his presentation. That was a masterful tactic on Rick's part, and a trap that Gerber willingly walked into. No one in the court room, including the judge, could possibly see what was coming at that moment, nor did the judge think that this would take more than a minute or two..

When allowed to proceed, Rick introduced the subject by quoting Judge Ryan (and the Court's) statements and instructions on evidentiary matters, and reminding the judge that all that had been submitted as evidence by FF was the one declaration by Holden as an employee of Lloyd's. All of the rest of their case consisted of declarations by their own attorneys (John Brewer), and allegations with no foundation or evidence. The judge agreed with this, except he ruled in favor admitting the declaration of John Brewer, to which Rick did not object, as he wanted Judge Ryan to focus on the Holden exhibit.

Judge Ryan, in an attempt to get through this quickly, went through the document pointing out a whole series of lines and paragraphs in that exhibit which he, the judge, had ruled as inadmissible hearsay from Holden's internal statements. He was ready to close the book on that one when Rick pressed the judge who then looked closely at Holden's introductory statement which said, in effect, "the following testimony is from my personal knowledge, or (emphasis mine) that which I was told by employees and staff of Lloyd's". It was that "or" statement that ultimately resulted in the gutting of almost the entire testimony as evidence. The judge suddenly woke up at that point and began to listen to Rick most carefully. Together they went through the remaining paragraphs, line by line, throwing each one out by turn. When done, even Holden's statement of the amount I was supposed to owe Lloyd's was stricken, and essentially FF no longer had a case.

Rick had accomplished his initial objective in shredding the FF evidence at this point, and relinquished the podium to Gerber to begin his long delayed oral argument. It was clear that Gerber was much at loss to proceed, as his well prepared position and pitch had just been thrown into

complete disarray.

Gerber started by restating all of his prior arguments along the lines of his standard presentation which had been made previously ten days before to the same judge at the Bar date hearing. At this point the judge show visible irritation that this case was taking so long, said that he never should have scheduled for long oral arguments on a Monday, and told Gerber to move along and finish up. He complained that it was now past five o'clock and he and his clerk were delayed far too long, and there were three more cases behind us to be dealt with. He also said he had a train to catch.

Gerber had stated in the previous Hearing ten days before that he and Lloyd's took no issue and had no objection to my Disclosure statement, but then proceeded to object to a statement in my Disclosure where I named Lloyd's as a disputed creditor. At this Judge Ryan blew up, got red in the face, and told Gerber that he could not see where he was heading, that all such statements of mine were in support of Lloyd's case, and, in essence, to stop jerking him around and get on with it. Gerber wilted and apologized, realizing that he had now antagonized the judge.

Gerber moved on to his objection to our including the exhibits to Gene Goldman's Declaration as an exhibit in our response to FF's motion to dismiss, and to which Gerber took strong exception and asked to have thrown out. The judge seemed about to rule in favor of that objection until Rick pointed out that Gene Goldman's Declaration without the accompanying exhibits had been included by FF as an exhibit of their motion shown as evidence of a conspiracy to use the bankruptcy courts in avoiding the forum selection clause. The judge saw Gerber as asking for the part of a Declaration that he liked, and simultaneously asking the judge to throw out the half he didn't like. The judge frowned, and over ruled the that objection. By this time it was clear to all that Gerber was not making any points with this judge.

Gerber next went on to the issue of bad faith filing, and he used the financial statement in my Disclosure statement to prove that I was filing BK in bad faith because I showed enough liquidity to pay off fully Lloyd's claim (as evidenced in Holden's testimony) and all other creditors without financial distress to me. Rick objected, and countered by saying that we have no evidence before us of the amount Lloyd's or Equitas might be claiming as Holden's Declaration had been thrown out. He then went on to show that from figures in my Declaration, accepted by Lloyd's without objection, were the only evidence before the court in that matter, and he added them up from the Declaration and showed the Judge that they clearly showed that I was illiquid at the time of filing. Gerber let out a sigh, as said he would sit down in the interest of time, at which statement the judge seemed relieved.

Rich spent a few minutes reviewing the case for the judge, and citing a number of cases, but the one to catch the judges ear was the Siegel case which spoke to an unlimited indemnity creating a large unknown liability that was ruled a proper matter for bankruptcy in order for the debtor to get a fresh start.

After Rick sat down the Judge turned to Gerber and asked if he had any final comments. Gerber said a few sentences saying how he thought the judge was right on point in his tentative ruling, and hoping that he would confirm it, then asked the judge if there was anything the judge would like him (Gerber) to comment on. The judge said, yes, please comment on the Siegel case, at which Gerber's junior partner began a mad fumble in her briefcase, and Gerber looked disconsolate. I don't recall what he said, but it wasn't about the Siegel case, so the judge simply said he would take the motion

under submission.



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