

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

REVSTONE INDUSTRIES, LLC,¹

Debtor.

Chapter 11

Case No. 12-13262 (BLS)

Hearing Date: February 6, 2013 at 10:30 a.m. ET

Related D.I. 134, 135, 146, and 147

**OMNIBUS REPLY OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS IN SUPPORT OF ITS (I) MOTION FOR ENTRY OF AN
ORDER, PURSUANT TO FED. R. BANKR. P. 2004 AND DEL. BANKR. L.R.
2004-1, DIRECTING ASCALON ENTERPRISES, LLC TO PRODUCE
DOCUMENTS AND TO APPEAR FOR DEPOSITION UPON ORAL
EXAMINATION AND (II) MOTION FOR ENTRY OF AN ORDER,
PURSUANT TO FED. R. BANKR. P. 2004 AND DEL. BANKR. L.R. 2004-1,
DIRECTING THE TRUSTEE OF THE SCOTT R. HOFMEISTER
IRREVOCABLE TRUST, MEGAN G. HOFMEISTER IRREVOCABLE
TRUST, AND JAMIE S. HOFMEISTER IRREVOCABLE TRUST TO
PRODUCE DOCUMENTS AND TO APPEAR FOR DEPOSITION UPON
ORAL EXAMINATION**

The Official Committee of Unsecured Creditors (the “Committee”) of Revstone Industries, LLC, the above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its undersigned proposed counsel, hereby files this reply² (the “Reply”) in support of its (i) Motion (the “Trusts Motion”) for Entry of an Order, Pursuant to Fed. R. Bankr. P. 2004 and Del. Bankr. L.R. 2004-1, Directing the Trustee of the Scott R. Hofmeister Irrevocable Trust, the Megan G. Hofmeister Irrevocable Trust, and the Jamie S. Hofmeister Irrevocable Trust (collectively, the

¹ The Debtor in this case is Revstone Industries, LLC (Tax I.D. No. 26-3837222).

² The Committee files this Reply as an omnibus reply, even though the Trusts Motion and Ascalon Motion are separate contested matters, because the objections thereto are substantively identical.

“Hofmeister Children’s Trusts”) to Produce Documents and to Appear for Deposition Upon Oral Examination [D.I. 134] and (ii) Motion (the “Ascalon Motion” and together with the Trusts Motion, the “Motions”) for Entry of an Order, Pursuant to Fed. R. Bankr. P. 2004 and Del. Bankr. L.R. 2004-1, Directing Ascalon Enterprises, LLC (“Ascalon”) to Produce Documents and to Appear for Deposition Upon Oral Examination [D.I. 135]. In support of the Reply, the Committee respectfully represents as follows:

FACTUAL BACKGROUND

A. The Trusts Motion

1. On January 18, 2013, the Committee filed the Trusts Motion. As detailed in the Trusts Motion, on December 21, 2012, proposed counsel to the Committee sent letters to each of the beneficiaries of the Hofmeister Children’s Trusts requesting a meet and confer regarding the production of documents primarily relating to relationship between and the flow of assets and funds through and from the Debtor, to Ascalon, and ultimately the Hofmeister Children’s Trusts. Trusts Motion ¶¶ 14, 25. As further detailed in the Trusts Motion, the Hofmeister Children’s Trusts did not provide documents in response, necessitating the filing of the Trusts Motion. *Id.* at ¶¶ 25–28.

2. On January 30, 2013, the trustee of the Hofmeister Children’s Trusts, Mr. Homer W. McClarty (the “Trustee”), filed his objection to the Trusts Motion (the “Trustee Objection”) [D.I. 146]. Until the Trustee filed the Trustee Objection, the Committee was unaware of the identity of the trustee of the Hofmeister

Children's Trusts.

3. In the Trustee Objection, the Trustee lodges three objections to the Trusts Motion. First, the Trustee contends that he recently was appointed as Trustee of the Hofmeister Children's Trusts and therefore needs "breathing room" before being subject to discovery under Rule 2004. Trustee Objection, page 1. Second, the Trustee argues that the discovery that the Committee seeks from the Hofmeister Children's Trusts is duplicative of discovery that the Committee seeks against other parties, and therefore should be restricted. Id., page 2. Third, the Trustee argues that the discovery that the Committee seeks under Rule 2004 is an "abuse" because, the Trustee contends, the Committee seeks information that it could not seek in pending state court litigation. Id., page 3.

B. The Ascalon Motion

4. On January 18, 2013, the Committee filed the Ascalon Motion. The Ascalon Motion details how, on December 21, 2012, proposed counsel for the Committee sent a letter to Ascalon's general counsel requesting to schedule a meet and confer regarding the production of documents relating mainly to the relationship between and the flow of assets and funds through and from the Debtor to Ascalon. Ascalon Motion ¶¶ 13, 25.

5. Ascalon has not agreed to schedule a meet and confer with the Committee. Id. ¶¶ 25–27. Instead of responding to the Committee's proposed counsel to discuss the Committee's discovery needs, Ascalon has filed the Ascalon Objection.

6. Parroting the Trustee Objection, Ascalon contends that the Ascalon Motion should be denied as duplicative.

REPLY

A. The Committee Properly is Seeking Discovery from Parties that Possess Discoverable Documents and Information

7. The Trustee and Ascalon each note that the Committee has filed motions seeking discovery under Rule 2004 from George Hofmeister and multiple entities that he controls. The Committee has been compelled to file these motions because of the refusal of the subjects of these motions to cooperate with the Committee in its discharge of statutory duties to investigate the assets, liabilities, and affairs of the Debtor.

8. In support of their objections, the Trustee and Ascalon each cite this Court's decision in In re Syntax-Brilliant Corp., 400 B.R. 21, 25 n. 3 (Bankr. D. Del. 2009). This citation is inapposite, at best. In Syntax-Brilliant, this Court denied the motion (the "Syntax-Brilliant Recusal Motion") of Mr. Ahmed Amr, acting pro se, to recuse The Honorable Brendan L. Shannon. In its discussion of the context in which the Syntax-Brilliant Recusal Motion was filed, this Court discussed Mr. Amr's prior motion to compel (the "Syntax-Brilliant Motion to Compel") the Chief Restructuring Officer of the debtor, Mr. Gregory Rayburn, to amend his affidavit filed in connection with the debtor's first day motions. Id. at **23–25. The court had denied the Syntax-Brilliant Motion to Compel too, finding that it lacked a legal basis and would serve no logical purpose. Id. at *25. In discussing its ruling on the

Syntax-Brilliant Motion to Compel, the court “noted that if Mr. Amr believed Mr. Rayburn committed perjury in submitting the Rayburn Affidavit, he could seek to take Mr. Rayburn’s deposition under oath and examine him regarding the veracity and completeness of the statements in his affidavit.” Id. At this point in the opinion, the Court inserts the footnote to which Ascalon cites. That footnote states:

The Official Committee is already investigating the events leading up to the bankruptcy filing. Accordingly, in the interests of avoiding duplication of effort, I noted that if the Movant’s request for an amended Rayburn Affidavit “were ... presented to this Court as a Rule 2004 motion for an opportunity to conduct an independent examination of Mr. Rayburn, I would likely deny that or carefully constrain the circumstances under which that examination could be taken.”

Id. n.3.

9. The posture of this case is in no respect similar to the hypothetical discussed in Syntax-Brilliant. Here, the Committee has asked the Court to grant the Motions in order to allow it to conduct an investigation under Rule 2004 of Ascalon, the entity that directly owns 100% of the membership interest in the Debtor, and the Hofmeister Children’s Trusts, which among them own 100% of the membership interest in Ascalon. This is in no respect comparable to a hypothetical request by a third party to investigate issues already being investigated by a committee. To the contrary, this dictum from Syntax-Brilliant suggests a deference to be given to a committee’s investigation when there is another party that may seek discovery on the same issues as the committee.

10. The Committee is unaware that any other party has sought discovery

from the Hofmeister Children's Trusts and Ascalon on the subject matter set forth in the Motions. Accordingly, none of the risk discussed in the Syntax-Brilliant dicta that Ascalon cites is present here.

11. A committee has the duty and obligation to investigate the affairs of a debtor. It is commonplace for a committee to seek discovery from a debtor's parent and the parent's parent. See In re Teleglobe Communications Corp., 493 F.3d 345, 354 n.6 (3d Cir. 2007) (Rule 2004 allows a party with an interest in the bankruptcy estate to conduct discovery into matters affecting the estate). In Teleglobe, for example, the committee and the debtors conducted an investigation of the debtors' parent company, Bell Canada Enterprises, Inc. ("BCE"). Id. at 353 (noting that "[t]he debtors . . . are the wholly owned United States subsidiaries of a Canadian telecommunications company formerly known as Teleglobe, Inc. ('Teleglobe') . . . and that Teleglobe was a wholly owned subsidiary of [BCE]"). Id. The committee and debtors "began exploring through Rule 2004 discovery the possibility of suing BCE for the manner in which it abandoned Teleglobe and the Debtors." Id. at 354. After this investigation, the committee and debtors sued BCE. Id.

12. The Trustee and Ascalon cite no authority for the proposition implicit in their objections that a party seeking valid discovery under Rule 2004 may not seek discovery from more than one party. Indeed, such a position is directly at odds with Rule 2004, which expressly provides that "[o]n motion of any party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004(a) (emphasis added).

13. The scope of a permissible examination under Rule 2004 includes:

. . . the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge . . . [T]he examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given therefor, and any other matter relevant to the case or to the formulation of a plan.

Fed. R. Bankr. P. 2004(b). As long as an entity possesses information of the type identified in Rule 2004(b), that entity may be compelled to participate in a Rule 2004 examination. The discovery that the Committee seeks from the Hofmeister Children's Trusts and Ascalon is entirely within the scope of examination permissible under Rule 2004. The Trustee and Ascalon do not contend otherwise.

14. Not surprisingly, neither the Trustee nor Ascalon contends that it lacks documents responsive to the requests set forth in the respective Motions. All of the categories of documents are of the type that one would expect the Debtor's direct and indirect parents to possess.

B. The Timing of the Motions is Proper

15. The Trustee contends that the timing of the Trusts Motion is premature because he has recently been appointed as trustee of the Hofmeister Children's Trusts. The Trustee urges the Court to engage in a balancing test to weigh his need for "breathing room" against the Committee's need for discovery. Trusts Motion, page 1. The Trustee cites no authority for the proposition that a party from whom discovery is sought under Rule 2004 is entitled to "breathing room" to

postpone responding to legitimate topics of inquiry. In fact, given the ongoing, pervasive control of Mr. Hofmeister at all levels of the Revstone enterprise discussed in the Trusts Motion, the need for discovery from the Hofmeister Children's Trust remains urgent.

16. Despite the fact that the Trusts Motion has been pending for more than two (2) weeks, the Trustee has not contacted proposed counsel to the Committee to discuss the discovery sought from the Hofmeister Children's Trusts or to request a timetable for production of documents and the scheduling of a deposition. Accordingly, the Trustee's arguments about the timing of the Trusts Motion should be given little credence.

C. The Committee's Pursuit of Discovery from the Hofmeister Children's Trust is Appropriate

17. The Trustee further argues that the proposed Rule 2004 examination of the Hofmeister Children's Trusts is "an abuse" because it seeks discovery that the Committee could not get in state court litigation. This argument lacks merit entirely, for at least two reasons.

18. First, and most importantly, the Committee is not a party to any state court litigation – whether with the Debtor, the Hofmeister Children's Trusts, or any other entity. Consequently, the Trustee's reliance on cases discussing the pending proceeding rule should be outright discarded, as those cases are not relevant here. See Trustee Objection, page 3, citing Snyder v. Soc'y Bank, 181 B.R. 40 (S.D. Tex. 1994) (affirming order, inter alia, denying Rule 2004 discovery when state court

discovery procedures were available for discovery in state court action); In re Enron Corp., 281 B.R. 836 (Bankr. S.D.N.Y. 2002) (denying motion for discovery under Rule 2004 where movant sought discovery for use in pending non-bankruptcy action).

19. To avoid this result, the Trustee appears to conflate the Committee and Boston Finance Group, LLC (“BFG”), which is a creditor and member of the Committee. While BFG is involved in other non-bankruptcy litigation with the Debtor and certain of its affiliates, the Committee is not. The Trustee does not, and cannot, demonstrate how the pending proceeding rule is somehow imputed to an official committee of unsecured creditors, based solely on the fact that one member of that committee is involved in other litigation with a debtor.

20. The Trustee then resorts to mischaracterizing the Committee’s position when he states that “[t]he Committee is frank in its admission that it seeks information in a Rule 2004 exam of the Trusts that it allegedly could not get in state court litigation.” Trustee Objection, page 3. In so doing, the Trustee refers to an order entered in litigation pending in Kentucky between BFG and non-debtor affiliates of the Debtor. Trustee Objection, page 3. (The Committee was not a party in that litigation.) The Trustee inaccurately suggests that the order provides that BFG is “prohibited from taking discovery on the relationship between Mr. Hofmeister, the trust beneficiaries, the trust and/or the trustees” Id. However, the excerpt from the order that the Trustee reproduces is incomplete and entirely misleading to this Court. The ruling of the Kentucky court was expressly

conditional, and provides in full that:

The Court finds that **if** the Plaintiff is prohibited from taking discovery on the relationship between Mr. Hofmeister, the trust beneficiaries, the trust and/or the trustees, and limits the discovery to prohibit any inquiry prior to January 1, 2008, **then** the prior representation of the Plaintiff's counsel of George S. Hofmeister, Kay Hofmeister, the George S. Hofmeister Family Trust for the benefit of Megan Hofmeister, the George S. Hofmeister Family Trust for the benefit of Scott Hofmeister, and the George S. Hofmeister Family Trust for the benefit of Jamie Hofmeister will not be implicated in the case at bar.

See Order, attached to Trustee Objection (emphases added).³ The Court should not condone the Trustee's lack of candor with this Court by misleadingly providing an incomplete quote of a court order.

21. Second, the pending proceeding rule does not apply because even if the Committee had been a party to the underlying litigation (which it was not), no meaningful discovery was forthcoming from the trustee for the Hofmeister Children's Trusts during his deposition in that litigation. Specifically, at the September 26, 2012 deposition of Mr. Clemmens by BFG, Mr. Clemmens' counsel stated at the outset that "[a]ny questions that are asked about the Trust he will be firmly instructed not to answer those questions." Clemmens Tr., 6:12-14 (excerpts of which are attached hereto as Exhibit A). Then, after Mr. Clemmens requested a break in the deposition, Mr. Clemmens' counsel went back on the record to state that:

What I've just learned from Mr. Clemmens is that he has actually

³ The matter in that litigation was not on the permissible scope of BFG's deposition, but on the recusal of BFG's counsel, whose firm had represented Hofmeister in an unrelated matter many years ago.

resigned as Trustee as a result of this deposition and the circumstances of it. So he is not here in any capacity relating to representing the Trust. . . . [T]he trustee is only here as an individual.

Id., 7:13–17, 18–19. Accordingly, even if the Committee had been a party to that action, there is no basis upon which the Trustee may truthfully assert that Mr. Clemmens gave meaningful testimony as a trustee of the Hofmeister Children’s Trust.

D. The Trustee and Ascalon Have Not Served the Committee with their Objections

22. The Trustee Objection and Ascalon Objection contain certificates of service stating that each of the objections “was served by me upon other counsel in this case by the Court’s ECF system on the date appearing hereon.” The Committee has not consented to service by ECF notices, and, therefore, the Trustee Objection and Ascalon Objection have not been properly served on the Committee. See Bankr. Del. L.R. 5005-4 (providing, in relevant part, that “by registering and becoming a registered CM/ECF user, one is not consenting to service under these Rules, Fed. R. Bankr. P. 7005, the Fed. R. Civ. P. or any other rule pertaining to service”). Having failed to serve the Trustee Objection and Ascalon Objection on the Committee, the Hofmeister Children’s Trust and Ascalon should be found not to have effectively objected to the Motions, and the Court should grant such Motions as if no objections have been made.

WHEREFORE the Committee respectfully requests entry of an Order (I) granting the Motions and overruling the Objections, (II) directing Ascalon

and the Hofmeister Children's Trusts to (a) produce all documents within their possession, custody, or control that are responsive to the categories set forth on the Document Requests attached to the respective Motions as Exhibit A, on a rolling basis following the entry of an order granting the Motions, so as to be completed no later than February 27, 2013; and (b) make a representative or representatives available for examinations as indicated in the Motions on a date that is mutually convenient for Ascalon, the Hofmeister Children's Trusts, and proposed counsel for the Committee, but by no later than March 13, 2013, and (III) granting the Committee such further relief as is just.

Dated: February 1, 2013

**WOMBLE CARLYLE SANDRIDGE
& RICE, LLP**

/s/ Matthew P. Ward

Steven K. Kortanek (DE Bar. No. 3106)
Mark L. Desgrosseilliers (DE Bar No. 4083)
Matthew P. Ward (DE Bar No. 4471)
222 Delaware Avenue, Ste. 1501
Wilmington, DE 19801
Telephone: (302) 252-4320
Facsimile: (302) 661-7738
E-mail: skortanek@wcsr.com
E-mail: mdesgrosseilliers@wcsr.com
E-mail: maward@wcsr.com

*Proposed Counsel for the Official Committee of
Unsecured Creditors of Revstone Industries,
LLC*

EXHIBIT "A"

BOSTON FINANCE GROUP VS POWER-TEC
MANUFACTURING, LLC, ET AL

NELSON E. CLEMMENS

September 26, 2012

Prepared by

NetworkReporting
— STATEWIDE COURT REPORTERS —

Depos@NetworkReporting.com
Phone: 800-632-2720
Fax: 800-968-8653
www.networkreporting.com

Let us assist you GLOBALLY for all of your deposition needs.

RECEIVED

SEP 27 2012

Per _____

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

BOSTON FINANCE GROUP, LLC, a
Florida limited liability
company,

Plaintiff,

v

File No. 12-28975-CK

HON. PHILIP E. RODGERS, JR.

POWER-TEC MANUFACTURING, LLC, a
Michigan limited liability company,
US TOOL & ENGINEERING, LLC, a Delaware
limited liability company, REVSTONE
INDUSTRIES, LLC, a Delaware limited
liability company, REVSTONE TOOL &
ENGINEERING, LLC, a Delaware limited
liability company f/k/a Omega TG, LLC,
POWER-TEC MANUFACTURING, LLC, a Delaware
limited liability company, SALEEN, LLC,
a Delaware limited liability company,
REVSTONE TRANSPORTATION, LLC, a Delaware
limited liability company f/k/a Cerion,
LLC, CONTECH FORGINGS, LLC, a Delaware
limited liability company, and SPARA,
LLC, a Delaware limited liability company,

Defendants.

DEPOSITION OF NELSON E. CLEMMENS

Taken by the Plaintiff on the 26th day of September, 2012,
at 100 Monroe Center, Grand Rapids, Michigan, at 9:00 a.m.

APPEARANCES:

For the Plaintiff:

MR. ANDREW JOHN BLODGETT (P68259)
Smith Haughey Rice & Roegge, PC
101 N. Park Street, Suite 100
Traverse City, Michigan 49684
(231) 929-4878

Page 1

NetworkReporting
— STATEWIDE COURT REPORTERS —

800-632-2720

BOSTON FINANCE GROUP VS POWER-TEC MANUFACTURING, LLC, ET AL

DEPOSITION OF NELSON E. CLEMMENS

1 For the Plaintiff:

MR. CRAIG S. NECKERS (P24349)
Smith Haughey Rice & Roegge, PC
100 Monroe Center Street, NW
Grand rapids, Michigan 49503
(616) 458-4251

4 For the Defendants:

MS. NICOLE R. GRAF (P55474)
(via telephone)
Brandt Fisher Alward & Pezzetti
1241 E. 8th Street
Traverse City, Michigan 49696
(231) 941-9660

8 For the Hofmeister
Trusts and Trustee:

MS. SARA G. LACHMAN (P67523)
Miller Johnson
250 Monroe Avenue, NW, Suite 800
Grand Rapids, Michigan 49503
(616) 831-1789

11 Also Present:

Jonathan Golden (via telephone)

12 RECORDED BY:

Mary J. Johnston, CER 6744
Certified Electronic Recorder
Network Reporting Corporation
Firm Registration Number 8151
1-800-632-2720

BOSTON FINANCE GROUP VS POWER-TEC MANUFACTURING, LLC, ET AL

DEPOSITION OF NELSON E. CLEMMENS

1	TABLE OF CONTENTS	
2		PAGE
3		
4	Examination by Mr. Neckers	6, 65
5	Examination by Ms. Graf	60
6	Examination by Ms. Lachman	66

7	EXHIBIT INDEX	
8		PAGE
9	Deposition Exhibit 1 marked	8
10	(9-21-12 Turner E-Mail)	
11	Deposition Exhibit 2 marked	15
12	(Kentucky Order)	
13	Deposition Exhibit 3 marked	19
14	(Organizational Chart)	
15	Deposition Exhibit 4 marked	26
16	(Organizational Chart)	
17	Deposition Exhibit 5 marked	35
18	(Organizational Chart)	

1 Grand Rapids, Michigan

2 Wednesday, September 26, 2012 - 9:22 a.m.

3 REPORTER: Do you solemnly swear or affirm that
4 the testimony you're going to give today will be the truth?

5 MR. CLEMMENS: Yes.

6 MR. NECKERS: The record should reflect this is
7 the deposition of Nelson Clemmens. It's taken pursuant to
8 Supplementary Proceedings Act and also the Court Rule that
9 relates to proceedings supplementary to judgement. Mr.
10 Clemmens is in Grand Rapids this morning to have his
11 testimony taken and also present with him is Attorney
12 Lachman who I think wants to say something for the record
13 before we actually get into the meat of this.

14 MS. LACHMAN: I do. Thank you. I'm Sara Lachman.
15 I'm here on behalf of the three trusts: the Megan G.
16 Hofmeister Irrevocable Trust dated June 17, 2004; the Scott
17 R. Hofmeister Irrevocable Trust dated June 17, 2004; the
18 Jamie S. Hofmeister Trust dated June 17, 2004. And I'm also
19 here to represent Mr. Clemmens in his capacity as Trustee of
20 those trusts. And I'd like to place my objections to this
21 deposition on the record. I asserted these objections prior
22 to the start of the deposition, but for clarity I'd like to
23 restate them here. The Michigan State Court has no personal
24 jurisdiction over the Trusts or the Trustee, all of which
25 are Kentucky residents.

Page 4

25 In addition, my understanding is that this is
Page 5

BOSTON FINANCE GROUP VS POWER-TEC MANUFACTURING, LLC, ET AL

DEPOSITION OF NELSON E. CLEMMENS

1 improper and unnecessary as Boston Finance has already
2 scheduled a deposition of the Trustee to take place in
3 Kentucky in late October after Fayette County Circuit
4 Court's stay has listed. Lastly, I'd like to note that the
5 Trustee is appearing here under very serious individual
6 duress. He is appearing against very stern instructions by
7 counsel to not appear here for this deposition for all of
8 the reasons that I have stated above. To the extent that he
9 is here this morning, I take that to be a breach of his
10 duties and we are in the process of working to remove him as
11 Trustee for those breaches.

12 Any questions that are asked about the Trust he
13 will be firmly instructed to not answer any of those
14 questions. Thank you.

15 MR. NECKERS: I'm not going to argue the merits of
16 any of these complaints or objections here. It's not the
17 appropriate place to do that. Your objections are noted.

18 NELSON E. CLEMMENS

19 having been called by the Plaintiff and sworn:

20 EXAMINATION

21 BY MR. NECKERS:

22 Q I'm going to have marked as Exhibit Number 1 an e-mail from
23 Mr. Joel Turner and, Mr. Clemmens, who is Joel Turner?

24 A He represents my primary company, AmWest Entertainment, as
25 corporate counsel and has served to provide other

Page 6

1 thoroughbred, equine legal counsel for me.

2 THE WITNESS: And if I could, please, listening to
3 Trust counsel, there may be -- and I don't know the
4 appropriate way to do this, but I need to inform her of
5 something, if she and I could just circle for 30 seconds and
6 be back on.

7 MR. NECKERS: By all means. Let's go off the
8 record while Mr. Clemmens confers with Trust counsel.

9 (Off the record)

10 MS. LACHMAN: Mr. Neckers, it would probably be
11 helpful for everybody if I went on the record to say this.
12 It's been a fast and furious 12 or 16 hours since I got
13 Notice of this deposition. What I've just learned from Mr.
14 Clemmens is that he has actually resigned as Trustee as a
15 result of this deposition and the circumstances of it. So
16 he is not here in any capacity related to representing the
17 Trust. Again, it goes without saying, he had already been
18 instructed to not appear so the Trustee is here only as an
19 individual, but that's important for you to know now, too,
20 that he is no longer in that capacity. I can get those
21 documents to you, if necessary, but I just don't have them,
22 as I said, just learning that.

23 MR. NECKERS: Mr. Clemmens, are you willing to
24 proceed here this morning?

25 MR. CLEMMENS: As an individual to the extent I
Page 7

1 feel I'm not creating a legal liability when I first
2 received the subpoena that we're here on today. I didn't
3 have the dynamics of yesterday and really Monday starting.
4 It was a matter of -- and it always has been -- of seeking
5 to be cooperative. Both Revstone and Boston Finance Group
6 are valued relationships and I would like to be as
7 constructive and cooperative as I can. I certainly feel I
8 sought to do that on the business side. On the legal side,
9 I'm not as -- I'm not versed. I'm not -- you know, I came
10 to be helpful.

11 There was -- and yesterday, as the day developed
12 into the evening, there was clearly a conflict of interest
13 and that's what led to the resignation and just with all the
14 various things going on between the parties. I want to see
15 both parties do well.

16 (Deposition Exhibit 1 marked)

17 MR. NECKERS: Let me just state for the record
18 that I have had marked as Clemmens Deposition Exhibit Number
19 1 an e-mail message that I received on the 21st of September
20 from Joel Turner who has been identified by Mr. Clemmens as
21 an attorney with whom he is familiar. That will speak for
22 itself, but fundamentally it is the basis upon which we
23 issued the subpoena duces tecum here which was that Mr.
24 Clemmens through Mr. Turner advised me that that's what he
25 wanted. Mr. Turner then said that he had provided this to

Page 8

1 Mr. Clemmens and he, being Mr. Clemmens, acknowledged
2 receipt and to my knowledge he intends to appear on the
3 scheduled date and at the time set forth in the Notice.

4 I've had no further communication from Mr. Turner.
5 I have had communication from a Mr. Bullock who represents
6 some or all of the Defendants in this action. He says he
7 does not represent Mr. Clemmens in any respect. He
8 represents the Defendants and it is on that basis that we
9 have prepared and gone forward here. It is not in any way,
10 shape or fashion intended to poke a stick in the eye of the
11 Kentucky courts. It is not intended in any shape, manner or
12 fashion as a matter of duress on the part of the attorneys
13 for Boston Finance Group, this office, any of the Boston
14 Finance Group personnel. It is simply a matter that we
15 believe under a lot of circumstances that Mr. Clemmens has a
16 great deal of information that is important to us in these
17 post-judgement proceedings.

18 Mr. Clemmens is, was a defendant in a case brought
19 by Limbright in which the court in the Eastern District of
20 Kentucky made certain findings of fact about the way these
21 trusts and other Hofmeister trusts had been used by the
22 Hofmeisters. Any lawyer worth his salt would -- in our
23 situation -- would want to know what Mr. Clemmens knows. It
24 is for that reason that we have tried to cooperate with Mr.
25 Turner and Mr. Clemmens and we appreciate your being here.

Page 9

1 We appreciate that you are on the horns of some dilemma
2 here, but that's just the way it is. It doesn't mean that
3 you are here, in my judgement, under duress.

4 So to the extent that at any time a question that
5 I ask you choose not to answer, you can tell me you don't
6 want to answer it. That's up to you. I can't force you to
7 do anything, Mr. Clemmens. I can't even force you to stay
8 here. But now that you're here, I'd like to begin this
9 process. You may, Ms. Lachman, have a standing objection to
10 anything that -- if you want to state your objection, you
11 can have that standing objection now because I don't want to
12 pay the extra transcript cost for every time for you to say
13 objection.

14 MS. LACHMAN: I'll actually be instructing him to
15 not respond if there are any questions about the Trusts.
16 Certainly, you handle it how you'd like, but you might be
17 interested in asking him exactly what he means by duress or
18 what I mean by duress.

19 MR. NECKERS: Let's go back -- let's go forward
20 here with Mr. Clemmens.

21 Q I want to ask you some questions about this Trust
22 resignation right out of the chute. Have you formally
23 resigned as the Trustee of what I will call the children's
24 trusts?

25 A Yes, I have.

Page 10

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2013, the foregoing document was served via CM/ECF on all registered parties and via electronic mail and Hand Delivery or overnight mail on the following parties:

Laura Davis Jones
David M. Bertenthal
Timothy P. Cairns
Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
Wilmington, DE 19801

Jane Leamy
Office of the United States Trustee
844 King Street, Suite 2207
Wilmington, DE 19801

Homer W. McClarty
Morgan & McClarty PC
19785 W 12 Mile Rd. #331
Southfield, MI 48076
hwmccclarty@morganmcclarty.com

Kenneth R. Beams
Kenneth R. Beams PLLC
3338 Prairie Ave.
Royal Oak, MI 48073
kennethbeams@gmail.com

Sheldon S. Toll
Sheldon S. Toll PLLC
2000 Town Center, Suite 2100
Southfield, MI 48075
lawtoll@comcast.net

Evan O. Williford
The Williford Firm LLC
901 N. Market Street, Suite 800
Wilmington, DE 19801
evanwilliford@thewillifordfirm.com

Under penalty of perjury, I declare that the foregoing is true and correct.

Dated: February 1, 2013

/s/ Heidi E. Sasso

Heidi E. Sasso