



1 THE CLERK: Taking up this Court's 10:00 set  
2 matter on Life Fund 5.1.

3 MR. GRAHAM: Good morning, Judge. Brian Graham  
4 here on behalf of the Group of Investors.

5 MR. BUCK: Good morning, your Honor. John Buck  
6 on behalf of the trustee Patrick Collins.

7 THE COURT: We have counsel on the phone?

8 MR. GRAUER: This is David Grauer, from the  
9 Securities Board.

10 Sue Phillips had a scheduling conflict, from  
11 the Attorney General's Office of Texas, and she asked  
12 me if I could sit in.

13 THE COURT: Welcome.

14 MR. GRAUER: Thank you.

15 THE COURT: I have a ruling to read into the  
16 record. It's about 20 pages, so you might want to sit  
17 down.

18 MR. GRAHAM: Thank you.

19 THE COURT: These bankruptcy cases are before me  
20 for ruling on the motion of chapter 11 trustee Patrick  
21 Collins under Bankruptcy Rule 9019 to approve his  
22 settlement with Vernon Jones, the receiver of W.  
23 Financial Group, Inc. A group of roughly 180 creditors  
24 (denominated for purpose of these cases as the "Group  
25 of Investors") filed a written objection, and the court

1 held an evidentiary hearing on the motion. For the  
2 following reasons, the motion will be granted and the  
3 settlement approved.

4 The facts are drawn primarily from the  
5 evidence at the hearing. Other background facts not  
6 reasonably in dispute come from papers filed in these  
7 bankruptcy cases. Collins was the only witness at the  
8 hearing. The objecting Group of Investors put on no  
9 witnesses of their own. I found Collins's testimony  
10 credible.

11 Collins is the trustee of the bankruptcy  
12 estates of several debtors that I will refer to  
13 collectively as "A&O." These debtors operated in the  
14 "life settlement industry," soliciting funds from  
15 individual investors to acquire life insurance  
16 policies. One of the debtors' former principals was an  
17 Adley H. Abdulwahab, also known as Adley Wahab. Also  
18 connected with the debtors and with Wahab in ways that  
19 are not yet clear was Russell Mackert, a Texas lawyer.

20 About the time Collins was appointed  
21 trustee, he learned that in 2008 the Securities &  
22 Exchange Commission had brought an action in the  
23 district court in Dallas, Texas ("the Texas action"),  
24 against, among others, Wahab and another entity with  
25 which Wahab was connected, W Financial Group, LLC, (or

1 WFG for short). The complaint in the Texas action  
2 alleged that the defendants had defrauded WFG investors  
3 of more than \$14 million. In November 2008, the  
4 district court had appointed Vernon Jones receiver of  
5 WFG's estate.

6 In October 2009, the district court entered  
7 an order holding Wahab and his wife in contempt. The  
8 contempt order expanded the receivership to include,  
9 among other things, the Wahabs' personal assets.  
10 Pursuant to the contempt order, Jones seized Wahab's  
11 residence in Spring, Texas, along with its contents.  
12 The house is currently being marketed for \$1.3 million  
13 and net proceeds from a sale are expected to be \$1  
14 million. Jones also located and froze an HSBC bank  
15 account in the Channel Islands, an account holding  
16 approximately \$735,000. As of October 2009, Jones had  
17 recovered and held additional funds totaling more than  
18 \$2 million.

19 On the same day it entered the contempt  
20 order, the district court in Dallas also entered an  
21 order granting the SEC's motion for summary judgment.  
22 The summary judgment order required the defendants in  
23 the Texas action to disgorge to the SEC approximately  
24 \$14.5 million and also pay civil penalties. The order  
25 gave Jones standing to collect the judgment on behalf

1 of the defrauded WFG investors. Wahab has filed a pro  
2 se notice of appeal from the contempt order.

3 On or about October 23, Jones was preparing  
4 to distribute to WFG investors \$2 million of the funds  
5 he had collected. The checks had been cut and were on  
6 their way out the door.

7 At some point after September 22, Collins  
8 had learned from Letha Sparks, an investigator and  
9 financial analyst at the Texas State Securities Board  
10 (or TSSB), that funds belonging to A&O appeared to have  
11 been transferred to WFG. On October 12, Collins was  
12 approached by Michael Dry, an Assistant U.S. Attorney  
13 in the Eastern District of Virginia who was conducting  
14 a criminal investigation of A&O. On October 20,  
15 Collins and Dry discussed the possibility of recouping  
16 the A&O funds from WFG. Efforts then were made to set  
17 up a conference call with Sparks, Dry, the SEC, and  
18 John Brannon, counsel to Jones. The call took place,  
19 but Brannon was unable to participate.

20 On Friday, October 23, Collins left Brannon  
21 a voicemail message and then sent him an e-mail  
22 message. In the e-mail, Collins identified himself as  
23 the chapter 11 trustee in the A&O bankruptcies.  
24 Collins also said that financial information he had  
25 recently obtained made it appear clear that the A&O

1 estates had "a substantial financial interest" in the  
2 WFG matters subject to the Texas receivership.

3 Therefore, Collins said, "I am asserting an interest in  
4 the WFG assets that are, or will be, part of your  
5 Receivership." Collins added that he was willing to  
6 share information about the financial relationships  
7 between A&O and WFG.

8 Two hours later, Brannon responded to  
9 Collins (as well as to Dry and the SEC) that Jones had  
10 stopped the distribution checks "before they went out  
11 the door today," and that based on the "strong  
12 recommendation" of the SEC and on the request of  
13 Collins and Dry, Jones would not distribute the checks  
14 until at least October 28 to allow the various parties  
15 to discuss Collins's assertions.

16 On Monday, October 26, Collins sent Brannon  
17 another e-mail attaching various affidavits,  
18 spreadsheets and other documents intended to support  
19 his claim as A&O trustee to an interest in the funds  
20 Jones held as WFG receiver. The e-mail asserted that  
21 transfers totaling more than \$12 million had been made  
22 from an A&O bank account to Mackert's IOLTA account.  
23 The e-mail also asserted that approximately \$2.2  
24 million in A&O funds had plainly been transferred to  
25 WFG, consisting of (1) \$281,000 transferred directly,

1 (2) \$500,000 transferred from the HSBC Channel Islands  
2 account, (3) \$402,000 transferred directly from  
3 Mackert's IOLTA account, and (4) another \$1 million  
4 transferred from Mackert's account to an entity called  
5 Prestige Title and then to WFG.

6 The next day, Brannon responded that it was  
7 simply not feasible to digest the A&O documents (some  
8 8,000 pages) and be ready for another conference call  
9 that afternoon. Brannon said that in order to "keep  
10 administrative costs at a minimum, and cut to the  
11 chase," Jones had agreed to propose a settlement with  
12 Collins. Under the proposal:

13 A. Jones would distribute \$2 million on hand  
14 to the WFG investors.

15 B. Jones would reserve \$250,000 in funds to  
16 be paid to Collins once the district court had entered  
17 a final and nonappealable order approving the  
18 settlement.

19 C. Jones would pay Collins 30% of any funds  
20 from the HSBC account on the same condition.

21 D. Jones would pay Collins 20% of the net  
22 proceeds from the sale of Wahabs' residence, again on  
23 the same condition.

24 E. Jones and Collins would execute a mutual  
25 and global release.

1           The e-mail emphasized that the WFG investors  
2 had spent more than \$2 million locating, identifying,  
3 recovering, maintaining and preserving the  
4 receivership's assets, that these costs were continuing  
5 to be incurred, that they were necessary, and that they  
6 qualified as recoverable administrative expenses.

7           Collins said the offer took him by surprise,  
8 that he hoped there might eventually be a settlement  
9 but had not expected an overture so soon. Several  
10 hours later, Collins responded with a counteroffer  
11 consisting of the following:

12           A. The same provision about Jones  
13 distributing \$2 million.

14           B. An increase to \$500,000 of the reserved  
15 funds Jones would pay to Collins.

16           C. An increase to 45% in Collins's recovery  
17 from the HSBC account.

18           D. An increase to 35% of Collins's recovery  
19 from the sale of the residence.

20           E. The same release.

21           F. An additional provision under which  
22 Collins could claim up to 20% of any future assets  
23 Jones collected, excluding assets already the subject  
24 of the settlement, and conditioned on Collins's ability  
25 to establish a nexus between the assets and A&O.

1                   On October 28, the next morning, Brannon  
2 responded to Collins's counteroffer with a  
3 counterproposal of his own. The counterproposal  
4 consisted of the following:

5                   A. The same provision about Jones  
6 distributing \$2 million.

7                   B. A provision under which Jones would  
8 reserve \$365,000 rather than \$500,000 for payment to  
9 Collins.

10                  C. A provision giving Collins 35% of the  
11 recovery from the HSBC account.

12                  D. A provision giving Collins 35% of the net  
13 sale proceeds from the sale of the residence.

14                  E. The same release.

15                  F. A provision allowing Collins to claim up  
16 to 20% of future assets Jones collected, excluding  
17 assets already the subject of the settlement, and  
18 excluding a variety of other assets as well.

19                  Brannon told Collins that he did not have  
20 \$500,000 to offer; the \$365,000 was reached because one  
21 of the largest policies in the A&O estate had a premium  
22 in that amount. Brannon also argued for reduced  
23 percentages on the HSBC account and the residence based  
24 on all of Jones's work and the late stage of the Texas  
25 action.

1           This final proposal was reduced to a term  
2 sheet dated October 28, 2009, that Collins signed and  
3 Brannon signed on behalf of Jones. Each provision was  
4 subject to the district court's and this court's entry  
5 of a final and nonappealable order approving the  
6 settlement. A motion has been filed with the district  
7 court in Dallas to approve the settlement, but the  
8 motion has not been scheduled for hearing.

9           The settlement itself is expected to bring  
10 approximately \$970,000 to the A&O estates, and possibly  
11 more. The \$970,000 consists of the \$365,000 reserve  
12 payment, \$257,000 from the HSBC account (35% of  
13 \$735,000), and \$350,000 from the Wahab residence (35%  
14 of \$1 million). There could possibly be more from the  
15 20% stake A&O has in assets Jones recovers down the  
16 road.

17           Collins testified that he weighed several  
18 considerations in entering into the settlement.

19           First, his likelihood of success was not as  
20 high as he would have liked. Although Collins was  
21 asserting to Jones that \$12 million in A&O funds had  
22 been transferred to WFG, he had no certainty the entire  
23 amount could be traced, and he later learned that the  
24 \$12 million figure was exaggerated. Collins originally  
25 believed \$12 million in A&O funds had been transferred

1 to WFG because \$12 million had been transferred from  
2 A&O accounts to Mackert's IOLTA account. Collins  
3 subsequently discovered that of the \$12 million  
4 transferred to the IOLTA account, \$4 million had gone  
5 to a Michael Oncale. Therefore, only \$8 million in A&O  
6 funds could arguably have been transferred from the  
7 IOLTA account to WFG.

8 Of that \$8 million, Collins said, he felt  
9 confident of his ability to trace only \$2.2 million to  
10 WFG. That \$2.2 million consisted of the transfers  
11 Sparks had identified, including the funds in the HSBC  
12 Channel Islands account and the funds funneled through  
13 Prestige Title. Jones was disputing Collins's ability  
14 to trace the funds and insisting that to have any claim  
15 on the \$2 million Jones was holding, Collins had to  
16 trace A&O funds to that \$2 million.

17 Collins also recognized that if he  
18 intervened in the Texas action, he could not recover  
19 100 cents on the dollar even as to those assets he  
20 could trace. Because the A&O funds formed part of the  
21 pool of assets subject to the WFG receivership, he  
22 could only recover a pro rata share of that pool. He  
23 recognized, as well, that if he intervened, his  
24 recovery from WFG would be reduced by an appropriate  
25 allocation of Jones's expenses to date.

1           Second, Jones intended to distribute the \$2  
2 million immediately. Once that money was gone, Collins  
3 said, the WFG estate's liquidity would decrease  
4 dramatically, and his leverage with Jones would be much  
5 reduced. Jones also had a summary judgment order in  
6 hand (albeit not a judgment) on its face entitling him  
7 to collect \$14.5 million on behalf of the WFG  
8 investors, and he had the contempt order making Wahab,  
9 Wahab's wife, and certain Wahab entities the subject of  
10 the receivership. All Collins had was his tracing  
11 argument.

12           Third, for Collins to assert an interest in  
13 funds Jones held, Collins faced two hurdles. He had to  
14 convince the district court to permit him to intervene,  
15 and then he had to convince the court that he in fact  
16 had an interest in the receivership's funds, not to  
17 mention an interest larger than he would receive under  
18 the settlement. Whether he would even make it past the  
19 first hurdle was uncertain. The Texas action was  
20 already 18 months old, and the court had granted  
21 summary judgment to the SEC. Collins would be coming  
22 in rather late in the game.

23           Fourth, every procedural foray Collins made  
24 in the Texas action would be expensive. Both Collins's  
25 fees and Jones's fees would come out of the pot of

1 money recovered for investors, whether WFG investors or  
2 A&O investors. The parties would have spent  
3 significant fees fighting over what amounted to "a  
4 couple of million dollars," an amount that would be  
5 rapidly eaten up by administrative costs. Jones was  
6 quite litigious, as the docket in the Texas action  
7 demonstrated, and Collins could expect vigorous  
8 opposition from Jones as well as from the SEC which was  
9 supporting the receiver.

10 Fifth, at the time the settlement was  
11 negotiated, the A&O estates were "very cash-strapped,"  
12 Collins said. There was either no money or very  
13 little, and premiums on the policies were coming due.  
14 Collins described the financial status of the A&O  
15 debtors as "dire." The current status, he said, is  
16 "similarly dire."

17 Sixth, the U.S. Attorney's Office in  
18 Virginia was urging acceptance of the settlement  
19 because of its desire to work with Collins. Collins  
20 stood to gain information from the U.S. Attorney's  
21 investigation if that information reached a particular  
22 threshold allowing its disclosure. Refusing the  
23 settlement would risk losing the good will of the U.S.  
24 Attorney's Office.

25 For these reasons, Collins testified, the

1 settlement was in the best interest of the estate.

2 As all parties here recognize, the pivotal  
3 question in approving a bankruptcy settlement is  
4 "whether the settlement is in the best interests of the  
5 estate." In re Andreuccetti, 975 F.2d 413, 421 (7th  
6 Cir. 1992); In re Energy Co-op., Inc., 886 F.2d 921,  
7 927 (7th Cir. 1989). To answer that question, the  
8 court must compare "the settlement's terms with the  
9 litigation's probable costs and probable benefits."  
10 LaSalle Nat'l Bank v. Holland (In re Am. Reserve  
11 Corp.), 841 F.2d 159, 161 (7th Cir. 1987). Relevant  
12 factors the court should consider include the  
13 litigation's probability of success, its complexity,  
14 and its "attendant expense, inconvenience and delay."  
15 Id. Approval of a settlement is committed to the  
16 court's sound discretion. Andreuccetti, 975 F.2d at  
17 421; Energy Co-op., 886 F.2d at 926.

18 In exercising that discretion, the court  
19 need not -- indeed, should not -- decide the merits of  
20 the dispute. Energy Co-op., 886 F.2d at 927 n.6. On  
21 the other hand, the court must do more than note that  
22 the trustee "considered" particular claims. See Am.  
23 Reserve Corp., 841 F.2d at 163 (reversing settlement  
24 approval where bankruptcy court had merely taken note  
25 of what the trustee "considered"). The court's

1 appropriate role lies between these extremes. The  
2 court should "canvass the issues," Hicks, Muse & Co. v.  
3 Brandt (In re Healthco Int'l, Inc.), 136 F.3d 45, 51  
4 (1st Cir. 1998), for the purpose of assessing the  
5 strength of the claims the trustee wants to surrender,  
6 Am. Reserve Corp., 841 F.2d at 161-62.

7 There is a similar middle ground when it  
8 comes to how critically the court should scrutinize the  
9 trustee's settlement decision. The court cannot simply  
10 "rubber stamp" the decision and must do more than take  
11 the trustee's word that the decision is reasonable.  
12 Energy Co-op., 886 F.2d at 924. At the same time,  
13 settlement decisions are judgment calls. They are not  
14 "scientific," In re Apex Oil Co., 92 B.R. 847, 867  
15 (Bankr. E.D. Mo. 1988), or subject to any "rigid  
16 mathematical formula," Energy Co-op., 886 F.2d at 928,  
17 and they cannot be evaluated in "balance sheet"  
18 fashion, id.; In re Lee Way Holding Co., 120 B.R. 881,  
19 899 (Bankr. S.D. Ohio 1990).

20 Deference, then, must be given to the  
21 trustee's expertise. Healthco, 136 F.3d at 50 n.5; In  
22 re Eastwind Group, Inc., 303 B.R. 743, 750 (Bankr. E.D.  
23 Pa. 2004). The trustee's opinion that a settlement is  
24 in the estate's interest and should be approved is  
25 entitled to "substantial weight." In re Commercial

1 Loan Corp., 316 B.R. 690, 703 (Bankr. N.D. Ill. 2004).  
2 Only if the settlement "falls below the lowest point in  
3 the range of reasonableness" should the trustee's  
4 decision be disturbed. Id. at 697; see also Energy  
5 Co-op, 886 F.2d at 929; In re Telesphere  
6 Communications, Inc., 179 B.R. 544, 553 (Bankr. N.D.  
7 Ill. 1994).

8 Here, the proposed settlement between  
9 Collins and Jones, the WFG receiver, is well within the  
10 range of reasonableness. The settlement is not only in  
11 the best interest of the estate but is an excellent  
12 result if not an astounding one.

13 Although Collins did not identify it as  
14 such, the claim he would assert in the Texas action  
15 would be a claim for restitution of funds belonging to  
16 the A&O estates but transferred to WFG and commingled  
17 with funds belonging to the WFG estate. The evidence  
18 showed that the maximum total pot consisted of  
19 approximately \$22 million, that figure consisting of  
20 \$14 million attributable to WFG investors and \$8  
21 million arguably from A&O, rather than the \$12 million  
22 Collins initially believed. Collins's maximum  
23 recovery, then, would be no more than 36% of the funds  
24 in the receivership -- assuming he could trace all \$8  
25 million to WFG.

1           But Collins's assessment of the evidence, an  
2           assessment based heavily on the investigation and  
3           analysis of Letha Sparks at the TSSB, led him to  
4           believe that he could not trace that entire amount. At  
5           best, Collins concluded, and as Trustee's Exhibit Four  
6           details, he was confident he could trace \$2.2 million  
7           in A&O funds to WFG. Collins's maximum expected  
8           recovery, then, was around \$2.2 million, not \$12  
9           million or even \$8 million. From the evidence, it  
10          appears that Collins considered a massive amount of  
11          paper in reaching his conclusion, since he supplied  
12          Brannon with some 8,000 pages of documents. No one has  
13          suggested that his conclusion was incorrect or his  
14          investigation inadequate under the circumstances.

15          Collins also faced major substantive and  
16          procedural obstacles in recovering even the  
17          \$2.2 million. For starters, he had to put himself into  
18          a posture to assert his claim by injecting himself into  
19          the Texas action. The Texas action had already been  
20          pending for 18 months and had not only reached but  
21          passed the summary judgment stage. Delay in seeking  
22          intervention is an important factor under Rule 24,  
23          whether intervention is permissive or sought as of  
24          right. See Fed. R. Civ. P. 24(a), (b)(3); see also  
25          In re Nat'l Gypsum Co., No. Civ.A.3:94-CV-2452-R, 1999

1 WL 20952, at \*3-4 (N.D. Tex. Jan. 8, 1999). Collins  
2 stood a fair chance of being barred at the door.

3 And even if the district court permitted him  
4 to intervene, he had to persuade that court that he  
5 could in fact trace A&O funds to the WFG receivership.  
6 Collins was confident that he could trace some of those  
7 funds, but it is no secret that cases involving the  
8 tracing of funds can be complex, particularly when a  
9 large number of transactions is involved, see, e.g.,  
10 S.E.C. v. Sunwest Mgmt., Inc., No. 09-6056-HO, 2009 WL  
11 3245879, at \*9 (D. Or. Oct. 2, 2009), and complex cases  
12 are expensive to pursue. The volume of documents  
13 Collins sent to Brannon is testament to the kind of  
14 complexity involved here.

15 Collins faced financial obstacles as well.  
16 The estates he was administering were "cash-strapped"  
17 and in "dire" circumstances, giving him essentially  
18 nothing to finance a litigation fight with Jones.  
19 Jones, meanwhile, was willing to fight, and fight hard,  
20 if it came down to it. Jones also had the backing and  
21 resources of the United States in the form of the SEC.  
22 Collins was also aware that should he prevail, the  
23 costs of doing so (as well as the costs of Jones) would  
24 take a big bite out of whatever he recovered, making  
25 any victory more likely than not a Pyrrhic one.

1           There was also some urgency to achieving a  
2 settlement. The urgency stemmed in part from the  
3 cash-poor nature of the A&O estates, but, as Collins  
4 testified, it also stemmed from Jones's intent to  
5 distribute \$2 million to WFG investors, that \$2 million  
6 constituting the better part of the cash he was  
7 holding. Once that happened, Collins's leverage with  
8 Jones as well as his ability to generate cash for the  
9 A&O estates (among other things to preserve the life  
10 insurance policies constituting the principal assets of  
11 the estate) would be severely diminished.

12           In agreeing to the settlement, finally,  
13 Collins was banking to some extent on gaining  
14 additional information that might conceivably lead to  
15 additional recoveries. He testified that the U.S.  
16 Attorney's Office in the Eastern District of Virginia  
17 was pushing the settlement in part because the Office  
18 was investigating the A&O debtors and was hoping to  
19 work with Collins. Agreeing to the settlement  
20 preserved the goodwill of that Office and enhanced the  
21 likelihood of gaining useful information down the road.

22           To sum up, Collins had a fair claim for \$2.2  
23 million but faced real problems in gaining access to  
24 the district court to assert the claim as well as in  
25 proving the claim, and the prospect of significant

1 litigation expense from an opponent with better  
2 resources and, as Collins put it, "an 18-month  
3 head-start." He chose to settle the claim for  
4 \$972,000, almost half of the claim, not to mention  
5 potential recoveries down the road. He agreed to the  
6 settlement quickly because the estates he is  
7 administering need the money. And he achieved the  
8 settlement, amazingly enough, with little more than a  
9 few e-mails, and telephone calls. In effect, \$972,000  
10 fell into Collins's lap, surprising even him. It is  
11 hard to find any sort of fault with a result like that;  
12 it certainly cannot be termed unreasonable.

13 The objecting Group of Investors does find  
14 fault with the settlement, though, on several grounds.  
15 The main objection is that Collins gave up a  
16 \$12 million claim to get \$972,000, and even the  
17 \$972,000 is not yet in hand, subject to contingencies  
18 such as the Wahab appeal and the sale of the Wahab  
19 residence. The Group of Investors insists that Collins  
20 should have struck a "better deal."

21 But whether a "better deal" could have been  
22 struck is not the standard under Rule 9019. The  
23 standard is whether the deal that Collins did in fact  
24 strike was outside the range of reasonable settlements.  
25 And in determining whether that standard has been met,

1 the Group of Investors is wrong to think of Collins's  
2 claim as a claim to \$12 million -- or even \$8 million.  
3 Collins's claim is instead a claim to a pro rata share  
4 of the funds in the WFG receivership. See Sunwest  
5 Mgmt., 2009 WL 3245879, at \*10 (noting that assets of  
6 federal receiverships are usually distributed to  
7 investors pro rata); S.E.C. v. Credit Bancorp, Ltd.,  
8 No. 99 Civ. 11395 RWS, 2000 WL 1752979, at \*14-15  
9 (S.D.N.Y. Nov. 29, 2000), aff'd, 290 F.3d 80 (2d Cir.  
10 2002). The size of Collins's claim accordingly depends  
11 on (1) the A&O funds he can trace to WFG, and (2) the  
12 total potential assets of the receivership.

13 Put in this context, the numbers crunch like  
14 so. WFG investors were evidently defrauded out of  
15 \$14 million. Assuming Collins can in fact trace  
16 \$8 million of A&O funds to WFG, the total potential  
17 assets of the receivership would be \$22 million  
18 (\$14 million plus \$8 million). Collins would then have  
19 a claim to 36% of the assets Jones recovered (since  
20 \$8 million is 36% of \$22 million). Collins would stand  
21 to receive \$8 million from Jones only if Jones in fact  
22 recovered all \$22 million. If Jones recovered less,  
23 Collins would stand to receive 36% of that lesser  
24 amount. So if, in the end, Jones only recovered \$5  
25 million, for example, Collins would have a claim for

1       only \$1.8 million, and so on.

2                   But all this assumes Collins could in fact  
3 trace \$8 million. Collins doubted he could, testifying  
4 he could only trace \$2.2 million with confidence. If  
5 so, the total possible assets of the WFG receivership  
6 would be \$16.2 million (\$14 million plus \$2.2 million),  
7 and Collins would have a claim to no more than 14% of  
8 the assets Jones recovered (since \$2.2 million is 14%  
9 of \$16.2 million). If Jones recovered less, Collins  
10 would stand to receive only 14% of that lesser amount.  
11 So if Jones only recovered \$5 million, for example,  
12 Collins would have a claim for only \$700,000.

13                   Viewed from this correct perspective,  
14 Collins's maximum claim (based on his testimony about  
15 the tracing he was confident could be performed) is not  
16 \$12 million but \$2.2 million. And even that assumes  
17 that Jones will recover the entire \$16.2 million -- the  
18 entire \$14 million attributable to the WFG investors  
19 and the entire \$2.2 million Collins says he can trace.  
20 If he does not, Collins's maximum claim decreases  
21 accordingly.

22                   What also has to be considered -- in  
23 addition to the pro rata nature of the distribution  
24 from the receivership, the possibility of a  
25 less-than-full recovery, and Collins's tracing problems

1 -- are Jones's costs to recover the WFG funds as well  
2 as the costs of Collins and Jones to litigate with each  
3 other in the Texas action. Those costs would come off  
4 the top, reducing any recovery for A&O investors still  
5 further.

6 To say, then, that in settling the case  
7 Collins is somehow giving up a sure \$12 million to get  
8 a dubious \$972,000 is to mistake the nature of the  
9 receivership case. In fact, Collins is giving up a  
10 \$2.2 million claim, one dependent both on his own  
11 tracing ability and on Jones's full recovery of  
12 \$14 million (without any litigation costs), in exchange  
13 for \$972,000. Part of the settlement amount is indeed  
14 subject to contingencies that might reduce the amount,  
15 as the Group of Investors notes. But the settlement is  
16 equally subject to contingencies that might increase  
17 it, namely the right to 20% of certain future  
18 recoveries. And, of course, \$365,000 of the settlement  
19 will be paid to Collins outright, with no contingencies  
20 of any kind.

21 The Group of Investors next objects that  
22 Collins moved too quickly in reaching the settlement.  
23 They question his "need for speed," asking what the  
24 rush was and arguing that expediency is not a reason  
25 for settlement.

1 Collins adequately explained what the rush  
2 was. At the very time he was making overtures to the  
3 receiver and asserting the A&O claim, Jones was on the  
4 verge of distributing \$2 million to WFG investors.  
5 That \$2 million represented most of the money Jones had  
6 on hand. Once that money was distributed, Jones would  
7 no longer have as much reason to deal with Collins  
8 (since Collins would be no threat to hold up the  
9 distribution). By the same token, Collins would lose  
10 an opportunity to lay claim to some of the money on  
11 hand precisely because it no longer was. Collins,  
12 meanwhile, was acutely aware of the A&O estates' dire  
13 financial circumstances and the importance of bringing  
14 in cash to allow those estates to be administered.

15 An opportunity for settlement presented  
16 itself when Brannon declined to examine the mountain of  
17 documents under which Collins had buried him and  
18 instead suggested everyone "cut to the chase." Collins  
19 recognized a golden opportunity when he saw one and  
20 wisely took it because such an opportunity might not  
21 occur again. But before he signed an agreement, he  
22 somehow managed to cut an even better deal through some  
23 quick negotiation, gaining several hundred thousand  
24 dollars more for the A&O estates. There was nothing  
25 remotely expedient about Collins's decision to reach

1 the settlement he did. The decision was brilliant.

2 The Group of Investors also questions  
3 Collins's reliance on the analysis of Letha Sparks,  
4 asking what expertise she could have. Trustee's  
5 Exhibit 9, an affidavit from Sparks filed in the Texas  
6 action, details her expertise. According to the  
7 affidavit, Sparks has been an Investigator/Financial  
8 Analyst with the TSSB's Enforcement Division for the  
9 last eleven years. In that capacity, she investigates  
10 securities fraud and analyzes financial transactions in  
11 bank records and related documents. She has been a  
12 Certified Public Account since 1981 and a year ago  
13 received a certification in financial forensics from  
14 the American Institute of Certified Public Accountants.  
15 She has provided investigative services to the FDIC,  
16 the RTC, as well as private companies and attorneys in  
17 connection with federal and state civil actions in  
18 Texas, Pennsylvania, and New Jersey. She has been  
19 employed as an Assistant Professor of Accounting at  
20 three universities, including Temple University in  
21 Philadelphia, and she has served as an adjunct  
22 accounting professor at two other universities. These  
23 seem to be adequate qualifications to perform a  
24 reliable analysis of the transactions involving A&O and  
25 WFG.

1           Next, the Group of Investors expresses  
2 concerns about the scope of the release in the  
3 settlement agreement. "For example," the Group of  
4 Investors writes in its objection, "it is possible that  
5 Mr. Mackert, through whose client trust account the A&O  
6 money passed, could be released."

7           It is difficult to find any basis for such a  
8 reading in the proposal for the release itself. The  
9 proposal appears in paragraph (f) of the term sheet.  
10 Trustee's Exhibit 8. That paragraph says Jones and  
11 Collins, on behalf of themselves and their estates,  
12 shall enter into a global release of any claims "they  
13 may have against the other parties to this Agreement."  
14 The only parties to the agreement are Jones and  
15 Collins. In other words, Jones and Collins will be  
16 releasing each other, not Mackert or anyone else. The  
17 Group of Investors' concerns about the release are  
18 misplaced.

19           Finally, the Group of Investors stresses due  
20 process in connection with Collins's request to approve  
21 the settlement: The importance of a record and court  
22 approval, the need to ensure that people with an  
23 interest in the settlement are protected through notice  
24 and an opportunity to be heard, and the need to avoid  
25 secret deals. All undeniable, and the Group of

1 Investors is quite right to remind us of these critical  
2 constitutional values. Equally undeniable, however, is  
3 that a hearing has been held after proper notice, that  
4 parties in interest have had an opportunity to be heard  
5 and have been heard, and that there have been no secret  
6 deals. All process that was due has been provided.  
7 There must still be court approval, of course, and that  
8 comes next.

9 Based on the evidence, I find that the  
10 proposed settlement between Collins and the receiver of  
11 W. Financial Group, Inc., is reasonable and in the best  
12 interest of the estate.

13 The motion of chapter 11 trustee Patrick  
14 Collins to approve the settlement with Vernon Jones,  
15 receiver of W. Financial Group, Inc., is granted. That  
16 will be the order.

17 Thank you, gentlemen. Thank you counsel on  
18 the phone.

19 MR. GRAHAM: Thank you, Judge.

20 (Which were all the proceedings had  
21 in the above-entitled cause,  
December 18, 2009.)

22 I, CAROL RABER, C.S.R., DO HEREBY CERTIFY  
23 THE FOREGOING IS A TRUE AND ACCURATE  
24 TRANSCRIPT OF PROCEEDINGS HAD IN THE  
25 ABOVE-ENTITLED CAUSE.