

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

In re:)	
)	No. 09 B 32672
LIFE FUND 5.1, LLC, et al.,)	
)	Chicago, Illinois
)	March 2, 2011
Debtors.)	10:00 A.M.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

MR. JEREMY STILLINGS
on behalf of Chapter 11 trustee;

MR. BRIAN GRAHAM
on behalf of Group of Investors;

MR. BARRY CHATZ
MR. THOMAS YARDLEY
on behalf of Arnstein & Lehr;

MR. BRIAN AUDETTE
on behalf of Perkins Coie;

MR. MARC ROSENTHAL
on behalf of the trustee.

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1 THE CLERK: Life Fund 5.1, LLC.

2 MR. STILLINGS: Good morning, Your
3 Honor. Jeremy Stillings for the Chapter 11
4 trustee.

5 MR. GRAHAM: Good morning, Judge. Brian
6 Graham on behalf of Group of Investors.

7 MR. CHATZ: Good morning, Your Honor.
8 Barry Chatz and Thomas Yardley on behalf of
9 Arnstein & Lehr. Thank you.

10 MR. AUDETTE: Good morning, Your Honor.
11 Brian Audette on behalf of Perkins Coie.

12 MR. ROSENTHAL: Good morning, Your
13 Honor. Marc Rosenthal on behalf of the trustee.

14 THE COURT: Good morning.

15 MR. STILLINGS: Your Honor, we have
16 several items on the docket for today. There are
17 three fee applications before this court, two of
18 which have been briefed subsequent to objections.
19 Those are the applications of Perkins Coie and
20 Arnstein & Lehr.

21 THE COURT: Right.

22 MR. STILLINGS: The third application is
23 the second interim application of Proskauer Rose,
24 which is set for original hearing today.

25 THE COURT: I don't have that. Yes, I

1 do. I didn't look at that. I have so many fee
2 applications, I just stuck it in the stack.

3 MR. STILLINGS: Understood, Your Honor.
4 We've received no objections, written or otherwise,
5 to the application.

6 THE COURT: Right. I still have to look
7 at it.

8 MR. STILLINGS: Understood.

9 THE COURT: So it will go over to
10 another date to be determined.

11 MR. STILLINGS: One item that we can
12 probably handle rather expeditiously, Your Honor,
13 there's also a motion for 2004 exam, which we would
14 like to again continue as we consensually seek
15 discovery from the parties to the motion. If we
16 could set that to April 20th, which is the next
17 status hearing in the Chapter 11 cases.

18 THE COURT: 4/20.

19 MR. STILLINGS: Thank you.

20 And, finally, there is a motion
21 for entry of default judgment against Life Funds,
22 LP.

23 THE COURT: Right. I won't do this.
24 You don't have defaults against everybody. The
25 Seventh Circuit instructed in Home Insurance of

1 Illinois versus Adco, "In a suit against multiple
2 defendants, a default judgment should not be
3 entered against one until the matter has been
4 resolved as to all." That's at page 741,
5 154 F.3d 739. So can't do it, I'm afraid. So I'll
6 deny the motion without prejudice.

7 MR. STILLINGS: Your Honor, if I may, we
8 did brief that exact provision in the motion. Did
9 Your Honor consider the arguments made in the
10 motion with respect to that issue?

11 THE COURT: What I considered is what
12 the court of appeals tells me to do. So the motion
13 is denied without prejudice.

14 MR. STILLINGS: Thank you, Judge.

15 THE COURT: All right. We have two
16 other fee applications. The first is the Arnstein
17 & Lehr fee application. In December, I entered an
18 order asking that the matter be rebriefed. There
19 had already been an objection and a response to the
20 objection. And I made very clear, I thought, what
21 should be done when the matter was rebriefed. I
22 asked that the objection and the response have a
23 complete, cogent, and nonargumentative statement of
24 facts, and that each contain a complete legal
25 discussion fully supported with applicable legal

1 authority addressing all of the issues the parties
2 raised, and I didn't get that.

3 The objection continued to be
4 scattershot, overwrought with underdeveloped or
5 undeveloped arguments that were largely unsupported
6 by any authority. The investors have a propensity
7 for filing these kinds of papers. They seem to
8 believe that this is effective advocacy. I don't
9 know where they got that idea, but it isn't. So I
10 didn't find the papers particularly helpful.

11 The investors raised a number of
12 arguments. Some were more general and address
13 themselves to the application as a whole, and then
14 there were specific line item objections to, I
15 might add, every single entry on the application.

16 I can dispense with each of the
17 broader objections that were raised. The first is
18 that Arnstein had an allegedly undisclosed advance
19 retainer. Arnstein was paid \$32,500 prepetition,
20 but there is no indication that this was a retainer
21 in connection with the bankruptcy case. It was
22 paid for prepetition services, according to a
23 statement of financial affairs, question 9, and
24 according to the Rule 2016(b) statement, and
25 according to what Mr. Yardley had to say at the 341

1 meeting. The affidavit from Mr. Gesas that was
2 submitted with the application for retention said
3 that there had been no advance retainer. The
4 payment was also disclosed.

5 If there is a reason to believe
6 that this was an advance retainer in the case, the
7 investors do not supply it. All the investors do
8 is raise questions, and Arnstein has answered those
9 questions to my satisfaction.

10 The investors next assert that
11 Arnstein had some sort of adverse interest to the
12 debtors because they represented Shepherd Capital
13 Management prepetition. As we all know, Shepherd
14 sued the debtors in the state court seeking a
15 declaratory judgment. The judgment that was sought
16 was one that Shepherd had authority to file the
17 bankruptcy cases for the debtors as their manager.
18 That same objection was raised and was specifically
19 overruled when Arnstein's application for retention
20 was granted. These are the same questions about
21 the propriety of the bankruptcy case that the
22 investors had repeatedly raised, and apparently
23 continue to want to raise even though we're a
24 year-and-a-half into the case. They give me no
25 reason whatever to revisit that question now, and

1 I'm not going to.

2 The investors also assert that
3 Arnstein was representing Mr. Mackert himself, who,
4 of course, was the manager of Shepherd. But,
5 again, there's no indication that that was true,
6 and saying it does not make it so.

7 The investors also assert that
8 it's not proper to represent both a debtor company
9 and its officers, but they failed to explain or
10 elaborate on the point even though I gave them a
11 second opportunity to do it. The Tauber on
12 Broadway case they cite doesn't state any sort of
13 general rule, and the facts bear no resemblance to
14 the facts here. As it happens, Mr. Mackert was not
15 an officer of any of the debtors, as far as I can
16 tell, and neither was Shepherd. So the point is so
17 badly argued that I consider it waived.

18 Then there's the question of
19 whether the action that was filed by the trustee in
20 which Shepherd and Mackert are named as defendants
21 somehow makes a difference here. But, again, it's
22 not explained. There is no authority. I consider
23 that argument to be waived as well. You're just
24 going to have to do better, Mr. Graham.

25 Finally, there's an argument about

1 some sort of secret agreement between Mackert's
2 counsel to gain his cooperation in connection with
3 the bankruptcy case. No support has been offered
4 for that. It makes no sense at all, and it's
5 waived.

6 Then we come to the fees
7 themselves. It's a little hard to take seriously
8 anybody who would object to every single entry on a
9 fee application. And I have to say that the
10 objections that were made were not particularly
11 interesting or persuasive to me. That there was a
12 conflict? No. The theory, again, between most of
13 these is that the bankruptcy was just a bad idea,
14 or that it was filed without authority. You know,
15 that's water under the bridge as far as I'm
16 concerned.

17 The notion that every single entry
18 here, all the services were simply not beneficial,
19 that's an assertion made with respect to every
20 single entry. You know, that's just a nonstarter.

21 As far as duplication, you have to
22 specify what was duplicative. So I generally
23 discounted that since there was no indication,
24 except where it was evident to me.

25 There is an argument made that

1 there were multiple lawyer conferences. You know,
2 I practiced law, and I've been in a big firm, and I
3 understand that lawyers have to talk to each other.
4 It is, I grant you, subject to abuse. There was no
5 indication here that it was abused.

6 That said, my own review,
7 unassisted by the investors, disclosed that,
8 indeed, there was a lot of time, and there were
9 quite a number of entries that were simply
10 deficient, and I have made a rather sizable
11 reduction in fees. What I have done is I have
12 taken the Exhibit 2 to the objection, and where
13 there's an objection column, I have either crossed
14 out the objection where I overruled it, or I
15 circled the basis, or I added the basis on which
16 the fees were objectionable. And then to the right
17 of that column, I have indicated the dollar amount
18 of the reduction.

19 In some instances, though not
20 many, I had partners doing paralegal work. I
21 reduced the rate to the lowest paralegal rate.
22 There was quite a bit of time that I found simply
23 beyond the scope of the retention post appointment
24 of the trustee, and so I did have to make a large
25 reduction. And the amount of the reduction in the

1 fees is \$29,886.50. I did not make any reduction
2 in the expenses. So the total compensation I am
3 allowing is \$61,787.35, consisting of \$56,957.50,
4 and the entire amount of the expenses.

5 The investors also argue that, at
6 best, this should be an interim award, it should be
7 only allowed on an interim basis, and it shouldn't
8 be paid. I don't see any basis to do that. And,
9 in fact, I am ordering the trustee to pay Arnstein
10 this amount immediately. That will be the order.

11 MR. CHATZ: Your Honor, thank you so
12 much for taking the time. We very much appreciate
13 it.

14 THE COURT: That's my job.

15 Next we have the Perkins Coie
16 application, and on that, I read the papers. Once
17 again, we have this scattershot objection in which
18 the investors simply throw up everything against
19 the wall to see what will stick. There's a price
20 for doing that. The price is that we have lots of
21 factual issues.

22 We have issues about the
23 reasonableness of the rates. We have issues about
24 the experience of counsel. We have issues about
25 whether it was appropriate for Mr. Collins to be

1 selected as the trustee and what the reasons for
2 that selection were.

3 We have factual issues about the
4 condition of the debtors and their files on the
5 petition date. The investors say this case was
6 handed to the trustee "on a silver platter."

7 Mr. Collins asserts that the case was a disaster.

8 We have issues about whether any
9 investigation was even necessary here and whether
10 it benefited the estate. The investors say no
11 investigation was necessary or beneficial.

12 Mr. Collins says all of it was necessary and
13 beneficial.

14 There are questions about the
15 Aviva insurance adversary. The investors say it
16 was filed only because of a trustee mistake, and
17 Mr. Collins says that's not true, there was no
18 mistake.

19 We have questions about whether
20 the trustee "assisted" other government agencies
21 and whether the assistance was appropriate. The
22 investors say there was assistance that was not
23 appropriate, and Mr. Collins says otherwise.

24 We have questions about whether
25 the trustee's analysis of the insurance policies

1 was necessary. The investors say no, Mr. Collins
2 says yes.

3 We have questions about whether
4 communications with the investors were necessary.
5 The investors say no, interestingly. Mr. Collins
6 says yes.

7 We have questions about, I don't
8 know how it's pronounced, the Boutte litigation,
9 B-O-U-T-T-E, and was the trustee's involvement
10 required and what it consisted of. Factual
11 questions require an evidentiary hearing. So we
12 are going to have to go to trial on this, and the
13 investors can decided just how much of this they
14 really want to make an issue of.

15 If Perkins goes to trial on this,
16 Perkins will be awarded fees for having to pursue
17 its fee application, unless, of course, I disallow
18 the whole amount, which is quite unlikely. So the
19 investors will ultimately be paying for the defense
20 of the fee application.

21 What I am going to do is put this
22 over for a week, and the investors can decide
23 exactly how serious they are about all of this and
24 what they really want to pursue. So I'll see you
25 on the 9th at 10:00.

1 MR. STILLINGS: Your Honor, is the 9th
2 also a good date to continue the Perkins -- I'm
3 sorry, the Proskauer Rose application?

4 THE COURT: That's going to go to
5 April 20th so that I can take a look at it.

6 MR. STILLINGS: Sure. Thank you, Your
7 Honor.

8 THE COURT: I apologize for not noticing
9 it sooner. At a certain point, the paper just
10 becomes overwhelming.

11 See you next week.

12 MR. GRAHAM: The 9th at 10:00 A.M.?

13 THE COURT: Yes, sir.

14 MR. CHATZ: Thank you again, Your Honor.

15 MR. STILLINGS: Thank you, Your Honor.

16 MR. ROSENTHAL: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 (Which were all the proceedings
19 had in the above-entitled
20 cause, March 2, 2011.)

21 I, GARY SCHNEIDER, CSR, RPR, CRR, DO HEREBY CERTIFY
22 THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT
23 OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.
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