

EXHIBIT T

1 UNITED STATES BANKRUPTCY COURT
 2 SOUTHERN DISTRICT OF NEW YORK
 3 Case No. 16-11700-smb
 4 Adv. Case No. 16-01085-smb
 5 ----- x
 6 In the Matter of:
 7 GAWKER MEDIA, LLC,
 8 Debtor.
 9 ----- x
 10 GAWKER MEDIA, LLC,
 11 Plaintiff,
 12 v.
 13 HUON et al,
 14 Defendants.
 15 ----- x
 16
 17 U.S. Bankruptcy Court
 18 One Bowling Green
 19 New York, NY 10004
 20
 21 July 19, 2016
 22 11:04 AM
 23
 24 B E F O R E :
 25 HON STUART M. BERNSTEIN

1 U.S. BANKRUPTCY JUDGE
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 4 Hearing re: TRIAL Motion for Preliminary Injunction and/or
 5 Extension of the Automatic Stay.
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 7 Hearing re: Pre-trial Conference.
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 25 Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

MR. GALARDI: Good morning, Your Honor.

THE COURT: Good morning.

MR. GALARDI: For the record, Gregg Galardi, on behalf of Gawker Media. Today, Your Honor, is the hearing on the Motion of the Debtors for Preliminary Injunction with respect to six matter.

Your Honor, by way of opening and by way of clarifications and hopefully expedite the hearing today, I thought I would start with where we stand and certain modifications the relief that we are going to be requesting that I think will facilitate matters having heard Your Honor loud and clear through a number of hearings and also, given where we are in the case now that this has been pending since the first day and where we are in the various matters.

So, what I thought I would do is start with the six litigations that we have sought the preliminary injunction in. One, Your honor, through those proceedings and suggested ways to deal with those.

And I think -- I think we'll still have the hearing -- I don't mean to try to make a drum roll to not have the hearing. But the first one, Your Honor, was the Blair matter, which is objected to and which the parties Your Honor has ordered certain discovery to be taken. I want to pass over that one.

The second, Your Honor, and I believe the person who has been advocating is pro se, is Huon, H-U-O-N --

THE COURT: He's pro se, but he's an attorney.

MR. GALARDI: That -- okay, pro se, but as an attorney and has in fact, filed an objection the relief requested. I don't know if he's here or appearing on the phone. But what we would -- what we would agree to, Your Honor, in light of the proceedings and just very briefly, Your Honor, I read in the paper that there was a dismissal of the case against, Gawker, defendant. There is an appeal that is pending before the 7th Circuit and that heard argument prior to the bankruptcy, we are -- we are prepared to withdraw our request to extend the stay with respect to that matter.

And, Your Honor, we are also prepared for the purposes for allowing the 7th Circuit to go forward with its hearing and decision on that matter and I think it may be before Judge Easterbrook, is to lift the stay and modify the stay for the purpose of that decision being rendered. Again, we think that's one of the decisions that you -- as we have alluded to, there's a hundred million dollars in damages. The sooner that, that matter is resolved, the better I think we are. So, with respect to our motion for preliminary injunction, we are withdrawing the request for the relief. And, Your Honor, if we want to put a separate

order in that says that the stay is lifted, solely for the purposes of allowing the judgment, the opinion to be rendered in the 7th Circuit, we can do that.

THE COURT: Is there anyone that objects to the Debtor's oral application to lift the stay to complete that case? The record should reflect there's no response. That motion is granted. Submit an order.

MR. GALARDI: Your Honor, now, the next format, and again, this goes to how Your Honor would like to proceed today. The next four matters, one is, Ashley Tarel (phonetic) v. Gawker Media; Thomas v. Gawker Media; Terms (phonetic) to Thomas v. Gawker Media; Iodary (phonetic) v. Gawker Media; and, Charles Johnson v. Gawker Media -- those have had in various stages a complaint filed, some have not been served. Some have been served. Some have at least a preliminary awaiting a schedule on briefing.

Your Honor, we have received no objections to the relief by any of those parties. Two of those parties along with Mr. Bollea, are members of the creditors' committee, so we're well aware of -- that they have in fact, appeared in the bankruptcy case. Your Honor, depending upon how Your Honor wants to proceed today, given that the relief is uncontested, we would request Your Honor to enter an order, or if Your Honor is not comfortable entering an order, we would either ask for that matter to be adjourned or we'll

come back to Your Honor on a separate order.

THE COURT: So, this -- these are the Tarel matter -- Thomas, Iodary and Charles Johnson, is it?

MR. GALARDI: Correct.

THE COURT: Is there anyone here in connection with those matters? And what is your proposal?

MR. GALARDI: Your Honor, since it's unopposed, we would ask that the injunction be issued and what we would propose is the Debtor only be issued for a finite period of time as I will get to, to September 3rd. The reason we chose September 3rd, Your Honor, is the following: the asset purchase agreement that we have as a stalking horse agreement, the deal must close no later than September 2nd, so we have chosen September 3rd as the day after that closing for which the stay would remain in place. And that's exactly 45 days from today, Your Honor.

THE COURT: When is the sale hearing?

MR. GALARDI: The sale hearing is August 18th.

THE COURT: Okay.

MR. GALARDI: So that builds in that extra 15 days.

THE COURT: Why -- why don't you do this to move us along? Send in a proposed order on notice to the litigants in those cases. If they object to the relief, then we'll deal with it.

1 MR. GALARDI: Thank you, Your Honor.

2 THE COURT: So, we're really just talking about
3 Bollea, is that right?

4 MR. GALARDI: So, so I think we are -- we are just
5 now talking about Bollea, Your Honor. And so, let me
6 approach the Bollea matter. They have in fact, as Your
7 Honor knows from the papers and the exhibits that have been
8 proposed, they do in fact, object to the relief requested
9 today. We believe that, that matter, as Your Honor, will
10 read from the papers is in an entirely different procedural
11 posture than the rest of the matters that I just went
12 through, which is why we've -- we've gone through to address
13 those separately. With respect to Bollea, we've heard Your
14 Honor, loud and clear and we are seeking, by way of this
15 motion, not -- no longer seeking any motion to an injunction
16 through the end of the cases or through a plan confirmation.
17 We are seeking --

18 THE COURT: I wouldn't grant that anyway.

19 MR. GALARDI: Your Honor, we have heard that loud
20 and clear and so, our proposed date is September 3rd, just
21 as it was in the other, which is, again, to provide the
22 timeframe for there to be a closing. Your Honor, you may
23 also recall from (indiscernible) we have sought the relief
24 under two sections of the Bankruptcy Code, § 105 and § 362.
25 Your Honor is familiar with the standards under 362 and 105

1 and as way of the opening, we are primarily proceeding under
2 105 to extend the stay to third parties. As Your Honor is
3 familiar with the standard, there are four elements that --
4 that are relevant to your determination.

5 I believe the case law is ambiguous as to whether
6 you have to satisfy all four or just simply three or
7 majority, but the fact of the matter is, we will be here
8 today and put on evidence to show that we satisfy all four
9 for the 105 Preliminary Injunction. In particular, those
10 elements are the likelihood of a successful reorganization.
11 As Your Honor knows, we are -- we are contemplating a sale
12 of substantially all the assets to be followed by a
13 plaintiff reorganization. Your Honor and I have had a
14 dialogue about to pursue that plan as soon as practical.
15 And this litigation is one of those, which we -- I think the
16 parties all agree one of these claims has to be determined
17 as to how you get distributions out of that plan. But we
18 all agree that is a litigation and a claim that has to be
19 finalized.

20 The second element is the irreparable harm element
21 and I'll come back to that because that is the issue that we
22 are also going to revise our requested relief with respect
23 to. The third is the balance of the harm and the fourth is
24 the public interest. Your Honor, with respect to the
25 irreparable harm standard, as you read the case law, there

1 are essentially three tests that have been put forth, though
2 they are not exclusive. There are three things that debtors
3 usually put forth in favor of showing irreparable harm.

4 One is the risk of collateral estoppel. Two is a
5 drain on the assets of the company and that is normally tied
6 to -- the company has an indemnification obligation and as a
7 result, the litigation will drain the assets of the company
8 and three, is that there is a significant burden of
9 distraction being put on the key employees of the company
10 with respect to the restructuring efforts. I believe the
11 Cal Pine (phonetic) determination that affirm the decision
12 said, "If I found a significant burden with respect of the
13 employees on a litigation, it did not have to reach the
14 other two elements."

15 Your Honor, with the testimony and so, the debtors
16 have determined that we have put forth all three bases as
17 independent bases to granting the relief. Your Honor, as
18 now has become absolutely clear, we are not going to rest.
19 Our motion today, on either the collateral estoppel or the
20 indemnification arguments, the reasons are quite simple.
21 While we believe collateral estoppel is applicable in the
22 circumstances and Your Honor will recall that the Bollea
23 counsel has said they'd like this action to go forward.
24 They'd like to bring (indiscernible) on the Court
25 allegations down in Florida. They would like to do -- take

1 a number of steps. And again, the company would be
2 prejudiced and does risk collateral estoppel. We don't
3 believe that, that --

4 THE COURT: There's already a judgment. What's
5 the collateral estoppel issue? In other words, these --

6 MR. GALARDI: There's a different proceeding, Your
7 Honor.

8 THE COURT: Most of these cases involve only
9 litigation.

10 MR. GALARDI: Sure.

11 THE COURT: Mr. Denton and the Debtor are already
12 down by a judgment and we have to do something about that
13 judgment and the only place you're going to be able to do it
14 is in the Florida court.

15 MR. GALARDI: And Your Honor, I think and maybe I
16 was not clear. There -- we have -- the collateral estoppel
17 has no effect, as Your Honor correctly says, with respect to
18 the judgment. There are all these ancillary proceedings
19 with respect to contempt that they want to proceed on and
20 that would be against the company. It'll be about Mr.
21 Denton. It's about the -- that's where we are. There is no
22 final judgment and that's where we think there's a
23 collateral estoppel. But for exactly the reasons Your Honor
24 just pointed out, we don't think an argument on collateral
25 estoppel is really a good argument in this case. Obviously,

1 the appeal can go on.
 2 The company will have to go on the appeal as well,
 3 so we'll be there to protect. And that's we've always said
 4 to the end of the sale. The collateral estoppel argument is
 5 not a good one. In this particular instance, it would have
 6 been a good one with respect to the other defendants and
 7 that's why we made. With respect to indemnification, Your
 8 Honor, we read Your Honor's opinion in Bitterman. We've
 9 read other opinions and there is a dispute among the parties
 10 whether the indemnification obligation is absolute and we
 11 could stand here and argue, what does it mean to be --

12 THE COURT: I've read it.

13 MR. GALARDI: -- whether or not it's absolute.
 14 Again, Your Honor, there's two reasons we're not going to
 15 pursue that basis as well today. First is, we've read Your
 16 Honor's opinion, an absolute. There's going to be a dispute
 17 about that. Second, because Your Honor, the indemnification
 18 obligations are critical. It will go to various claims
 19 through this case. In a preliminary injunction decision, we
 20 think it's inappro -- well, I would say it was
 21 inappropriate. It is unnecessary under these circumstance
 22 with the limited stay for 45 days that we are requesting to
 23 pursue that indemnification argument at this particular
 24 time.

25 More importantly, Your Honor, as Your Honor will

1 hear today, the fundamental point and I don't think there's
 2 going to be a factual dispute, Mr. Denton will be here to
 3 testify. In the event that Your Honor determines not to
 4 extend the stay for the 45 day period, Mr. Denton, and we
 5 understand Mr. Daulerio will, in fact, file Chapter 11
 6 thereby -- Chapter 11, Chapter 7, some proceeding under the
 7 Bankruptcy Code and the action will be stayed in any event
 8 and we will be able to deal with indemnification and other
 9 obligations at that time. So, Your Honor, we are resting
 10 today on simply the sole argument that with respect to the
 11 injunction, the relief requested is necessary and
 12 appropriate because there will be a danger or material
 13 adverse effect on the economics of the sale process and the
 14 reorganization efforts.

15 THE COURT: All right, but are you withdrawing
 16 your argument or not making your argument under 362 and go
 17 (indiscernible)?

18 MR. GALARDI: Going to take that in one second
 19 now.

20 THE COURT: All right, 'cause I thought you said
 21 you were not making that an argument.

22 MR. GALARDI: I said, we're making 105 first.

23 Now, let's talk about --

24 THE COURT: Oh, okay.

25 MR. GALARDI: -- 362, right because the case law

1 that I argued could be 362 or --

2 THE COURT: All right.

3 MR. GALARDI: -- 105 and with respect to 362, Your
 4 Honor, there -- again, not an emphasis, but the
 5 understanding is with respect to 362, there are really three
 6 grounds on which I've seen courts extend the stay on 362. I
 7 believe the third ground, again, though not an emphasis,
 8 very close to collateral estoppel is the identity of
 9 interest of the parties. And if you look at the Florida
 10 judgment, the Florida judgment, and I think Your Honors have
 11 read all the findings, there are findings against each and
 12 every one of the individuals as defendants and only in the
 13 punitive damage claim is it against the three, but then they
 14 checked the box on all three.

15 So, I don't think we need to make much of an
 16 argument that 362 may also be applicable because of the
 17 identity of the parties, but Your Honor, our argument -- and
 18 so, Your Honor can consider that, but the evidence will be
 19 with respect to the argument that there is a danger to the
 20 assets in the sale process.

21 THE COURT: What's the difference in the standards
 22 between 362 and 105?

23 MR. GALARDI: Your Honor --

24 THE COURT: I'm asking that rhetorically.

25 MR. GALARDI: Obviously, we have the burden to

1 show by the preponderance of the evidence for the
 2 preliminary injunction, the elements are satisfied under
 3 that. Your Honor, though it's excep -- I would like to say
 4 exceptional circumstances, I know the Queen E decision
 5 doesn't use the exceptional circumstances, so with respect
 6 to 362 and extending the stay, I actually believe it is a
 7 lower burden that shows that the debtors are, in fact, that
 8 there is an identity of interest and that it is the business
 9 judgment, but Your Honor may, you know, and since it's a
 10 rhetorical question, I understand Your Honor may disagree.

11 THE COURT: Well, first, it's actually, your plea
 12 says 105 was broader.

13 MR. GALARDI: Exactly, 105 is broader, which is
 14 why you can grant it even if you don't have that identity in
 15 interest and 105 exactly says that it's broader because
 16 that's, I think, is a Judge Brozman decision that says, it's
 17 not necessarily the case, but in order to grant the 105, you
 18 need to have all four elements. If I have all four elements
 19 -- if I see a threat to the reorganization by way of the
 20 reorganization efforts, the plan of reorganization and we're
 21 arguing in the context of a sale, then that by itself could
 22 justify a 105 injunction. We've tailored that to the
 23 evidence will be with respect to the sale process and with
 24 the other part of this, we're seeking a very limited
 25 injunction solely to the conclusion of the sale process at

1 this point.

2 THE COURT: That's it.

3 MR. GALARDI: Thank you, Your Honor. Oh, Your
4 Honor, may I say -- as two other things. I'm sorry. Just
5 one or two. Just so that we preliminarily and then I will
6 come back. With respect to our case, just so Your Honor
7 knows, we will have four witnesses. I know Your Honor may
8 have only been aware of three witnesses, given the dispute
9 over the discovery.

10 THE COURT: I have a list of four witnesses.

11 MR. GALARDI: That's fine, Your Honor. I just
12 wanted to make sure Your Honor was aware of that.

13 THE COURT: Okay, thank you.

14 MR. TABAK: Good morning, Your Honor. Dan Tabak
15 from Cohen & Gresser on behalf of Mr. Bollea. And as we've
16 already established, we're only here on the Bollea motion,
17 or the motion as it relates to Mr. Bollea. We're going to
18 present a more traditional opening to a hearing dealing with
19 the facts that you're going to hear and will address the
20 legal arguments later.

21 And what you're going to hear about today starts
22 in March of this year. There was a trial in Florida. It
23 lasted about three weeks. Mr. Denton attended every day of
24 the trial, as did Ms. Heather Dietrich, who's the president
25 and general counsel of Gawker. And as Mr. Denton will

1 testify, the company's operations did just fine even though
2 the two top executives were both away for three weeks. But
3 the company didn't do well in court. As Your Honor knows,
4 the jury found that Gawker, LLC, Mr. Denton and Mr. Daulerio
5 committed torts with the intent of harming Mr. Bollea and
6 they did not act in good faith. I'm going to try to cut out
7 the parts of my opening that deal with the indemnification,
8 as I understand that, that argument's not coming up.

9 The jury awarded the compensatory damages and
10 jointly and severally against all three and also awarded
11 punitive damages individually against each of the three.
12 After that, a hearing was scheduled in the Florida case for
13 May 25th to address, among other things, a motion for
14 judgment notwithstanding the verdict, a motion to remit the
15 damages award and a motion to set a bond. About 10 days
16 before that hearing, the Debtor hired Houlihan Lokey to find
17 -- financing and also, to get a stalking horse (phonetic)
18 bidder simultaneously. The Debtor also hired Opportune to
19 provide financial advice in the restructuring process.

20 At the May 25th hearing in the Florida court did
21 not get to the bond issue, so it set a new hearing date for
22 June 10th and the judgment had non-issued yet. You'll hear
23 today about some of the activity that took place just before
24 the June 10th hearing.

25 THE COURT: Why?

1 MR. TABAK: It sets the stage for what it -- for
2 what is happening here.

3 THE COURT: Look, I've read -- I've read the
4 papers. It sounded to me like Mr. Denton offered to pledge
5 his assets (indiscernible) and you came back and made a
6 counter-offer. Didn't take your assets, but you also can't
7 sell the assets and company -- I think you have to give
8 financial disclosure. Then, there's one other thing. It's
9 been a long time since I took contracts, but my recollection
10 is a counter-offer is a rejection of an offer. So, if
11 that's what you're going to tell me, I've read the papers
12 and you're just wasting your time.

13 MR. TABAK: That's not what we're doing.

14 THE COURT: (Indiscernible)

15 MR. TABAK: It's not that we accepted an offer.
16 We think the jud -- we think the Court should know what
17 happened in the sense that first, the Florida court did
18 order a stay. Now, I understand -- we now understand --

19 THE COURT: But I thought that the stay was
20 conditioned on the Debtor not selling assets.

21 MR. TABAK: And that's correct, Your Honor, and we
22 had no idea at that hearing that, that was -- that, that's
23 what I know understand standing here is the problem. But
24 that -- that was not something that we understood at the
25 hearing.

1 THE COURT: Well --

2 MR. TABAK: That's something that could have been
3 resolved at the hearing.

4 THE COURT: But it wasn't. So, let's move on to
5 where we are today.

6 MR. TABAK: Sure, but there are a couple of other
7 things that happened that week that we think are important,
8 including that the Debtors made a loan to Mr. Denton of
9 \$200,000.

10 THE COURT: So.

11 MR. TABAK: If it's for the express purpose of
12 hiring personal bankruptcy counsel.

13 THE COURT: So, what?

14 MR. TABAK: So, Mr. Denton has had personal
15 bankruptcy counsel for -- for about six weeks now. He's had
16 the opportunity to prepare for personal bankruptcy.

17 THE COURT: I've just been told that he's going to
18 file if I don't grant an objection, which may be the result
19 since we're talking about a limited -- a limited preliminary
20 injunction anyway, but -- so -- so the company lent him
21 \$200,000.

22 MR. TABAK: Okay, as long as we have it
23 established and that he's had personal bankruptcy counsel
24 for six weeks.

25 THE COURT: What -- what is the relevance in that

1 for what we're doing here?
 2 MR. TABAK: The relevance, Your Honor, is that the
 3 Debtor prepared Mr. Denton, but didn't prepare itself for
 4 personal bankruptcy, as we'll talk about later, none of the
 5 witnesses even understood what a consumer bankruptcy
 6 entails. And the burden of having a consumer bankruptcy
 7 here would be very minimal and it's going to be very minimal
 8 going forward through the sale process -- through the
 9 September 3rd date that they're asking for. We think it's
 10 only going to be a couple of -- it could be as little as two
 11 hours of Mr. Denton's time and that's what --

12 THE COURT: So, he files a Chapter 7, then his
 13 trustee will take over the stock of the holding company;
 14 will control the sale process presumably through his
 15 management -- his or her management rights, which will delay
 16 the sale, right? So, whether or not it takes five minutes
 17 to fill out a bankruptcy petition, the effect of a Chapter 7
 18 will have a delaying effect, won't it?

19 MR. TABAK: Well, we think he's going to file a
 20 Chapter 11.

21 THE COURT: So, now, we're going to engage in
 22 speculation on that today?

23 MR. TABAK: We think -- it's not our burden to
 24 prove what he's going to do, but we can hear what he's going
 25 to do. He intends to appeal the judgment and Florida and he

1 believes he's going to win. So --

2 THE COURT: That claim's going to have to go
 3 forward in Florida, one way or the other because that's the
 4 only place where it can ultimately be resolved.

5 MR. TABAK: That's right and that's why he's going
 6 want a Chapter 11, so if he wins in the appeal he can go
 7 forward.

8 THE COURT: I'm not going to speculate or hear
 9 speculation about whether he's going to file a proceeding is
 10 that type of proceeding he's going to file and what the
 11 nuances are. For all I know, he owns a farm and he's going
 12 to file a Chapter 12. I don't know. Are you going to tell
 13 me about that also?

14 MR. TABAK: Well, it's not in any of his financial
 15 disclosures, but maybe he does. We don't know what he
 16 really owns. I want to move on to what the Debtor's
 17 argument here --

18 THE COURT: Right.

19 MR. TABAK: -- it's limited now to the potential
 20 distraction from his work in the sale process, which you're
 21 going to hear about day-to-day work is that while Mr. Denton
 22 is at the top of the pyramid, each department within the
 23 company has its own head who's responsible for day-to-day
 24 operations. Mr. Denton, himself, says Ms. Dietrich is the
 25 person who holds everything together at the company. And

1 Mr. Denton will tell you that when he and Ms. Dietrich were
 2 out at the Bollea trial for about three weeks, the company
 3 ran just fine. So, he's not necessary for the day-to-day
 4 operations of the company.

5 Now, the Debtor argued in its brief that Mr.
 6 Denton is responsible for day-to-day oversight of bankruptcy
 7 counsel. Mr. Denton is going to tell you it's actually Ms.
 8 Dietrich, the general counsel, who's responsible. And that
 9 Mr. Denton has not reviewed any of the bankruptcy filings in
 10 any detail. So, that leaves the sale process and we
 11 understand that the sale process is really their strongest
 12 argument. And the sale process is being managed by Houlihan
 13 Lokey and they're getting paid a lot for it. You know, more
 14 than \$2 million even if there's no over bid. And once the
 15 no-shop period expires July 7th, it was Houlihan Lokey that
 16 made calls and contacted all of the potential bidders on the
 17 list.

18 Now, we think Gawker -- Mr. Holder -- Mr. Holden,
 19 the Chief Restructuring Officer, has primary responsibility
 20 for the sale process and this process that's coming up and
 21 actually, that we're in now, will be different from the May
 22 process in a number of significant ways. First, the outside
 23 professionals are not learning the company on the fly as
 24 they're trying sell it. They've had a couple of months to
 25 understand the company. They're also not simultaneously

1 looking for DIP lender in negotiating that loan, while also
 2 trying to juggle a sales process.

3 In the two months, they've done a great job.
 4 They've created a very robust data room that includes all
 5 the information that was provided to the stockholder's
 6 bidder, which as Your Honor knows had no diligence out. So,
 7 there's a tremendous amount of materials in that data room.
 8 So much so, that as of last night when we were able to take
 9 our final deposition, none of the potential bidders in this
 10 current process asked for anything of Mr. Denton or anybody
 11 else that's not in the data room. And while the witnesses
 12 will come up and they will speculate on Mr. Denton's role in
 13 the --

14 THE COURT: When are the -- when are the bids due?

15 MR. TABAK: The bids are due in mid-August. I
 16 believe it's August 15th if I have the date right.

17 THE COURT: Right.

18 MR. TABAK: 16th --

19 MALE: Auction's the 16th, bids are due the 15th.

20 THE COURT: Is the auction at your office?

21 MALE: Yes, it is Your Honor and the sale hearing
 22 the 18th. It was all scheduled (indiscernible).

23 MR. TABAK: Okay, while the witnesses will come
 24 here and speculate on Mr. Denton's role in the upcoming due
 25 diligence process, they'll almost compete to see who can put

1 his name in the most sentences. Nobody has asked for
2 anything from him yet. And you'll also hear that Ms.
3 Dietrich can address all the topics, the bidders might ask
4 for Mr. Denton about and there's also the five department
5 heads who have the most detailed knowledge of their
6 departments. So, there are plenty of other people who can
7 address any of these questions.

8 In short, Your Honor, what you will not hear is
9 that Mr. Denton is so indispensable that he cannot be
10 distracted by a personal bankruptcy that he intends to file
11 if this motion is denied. Thank you, Your Honor.

12 THE COURT: Thank you. Call your first witness.

13 MR. GALARDI: Your Honor, one procedural matter
14 before we do so. Ms. Dietrich is in the courtroom. She is
15 also the fourth witness on our list. I wou -- obviously,
16 the company would like her to be present for the testimony,
17 but I defer to Your Honor as to your preference with respect
18 to Ms. Dietrich.

19 THE COURT: Well, the company is entitled to have
20 a representative and I'll exclude the other witnesses if
21 that's what you're asking. Who's the representative?

22 MR. GALARDI: The representative of Ms. Dietrich,
23 the general counsel.

24 THE COURT: All right, then, the other witnesses
25 will be excluded.

1 MR. GALARDI: Thank you, Your Honor.

2 THE COURT: Let's just make sure all the other
3 witnesses --

4 MR. TABAK: Yes, Your Honor.

5 MR. GALARDI: We have taken care of that, Your
6 Honor, and Mr. Denton will be the first witness.

7 THE COURT: All right.

8 MR. GALARDI: And --

9 THE COURT: Mr. Denton?

10 MR. DENTON: Yes.

11 MR. HENNES: Your Honor, David Hennes, Esq. on
12 behalf of Gawker from Ropes --

13 THE COURT: Okay.

14 MR. HENNES: -- & Gray. We call Nicholas Denton
15 to the stand.

16 THE COURT: Raise your right hand, please. Do you
17 solemnly swear that the testimony you're about to give will
18 be the truth?

19 MR. DENTON: Yes.

20 THE COURT: Okay, please take a seat, state and
21 spell your name.

22 MR. DENTON: Nicholas Guido Anthony Denton.

23 DIRECT EXAMINATION

24 BY MR. HENNES:

25 Q Mr. Denton --

1 MR. HENNES: Good morning, Your Honor, may I
2 proceed?

3 THE COURT: Yes.

4 BY MR. HENNES:

5 Q -- are you familiar with Gawker Media, LLC and Gawker
6 Media Group, Inc., Mr. Denton?

7 A Yes, I am.

8 Q Do you have a role with both Gawker Media and GMGI, as
9 we call Gawker Media Group, Inc.?

10 A Yeah, I'm founder of the company and I'm CEO of GMGI
11 and Gawker --

12 THE COURT: Would you speak into the microphone
13 'cause you're a little hard to hear.

14 BY MR. HENNES:

15 Q Thank you.

16 A Is this better?

17 Q Yes, thank you. Can you please repeat your answer.

18 A I'm the founder of the company. CEO of GMGI, the
19 holding company and Gawker Media, LLC, the U.S. subsidiary.

20 Q What is the relationship between Gawker Media and GMGI,
21 Mr. Denton?

22 A GMGI is the holding company. It owns Gawker Media, LLC
23 and Hungarian subsidiary.

24 Q When did you found Gawker Media?

25 A I founded the company -- actually, out of my apartment

1 in 2002.

2 Q And at the time you did that in 2002, what was your
3 professional background?

4 A I had been a journalist for the Financial Times and the
5 Economist and then in London and San Francisco, I founded
6 two internet-based companies between 1997 and about 2001.

7 THE COURT: Sir, I'm getting a (indiscernible)
8 there's something with the microphone.

9 MR. HENNES: Yes.

10 MR. DENTON: Oh.

11 MR. HENNES: It's a little difficult.

12 MR. GALARDI: I can hear him.

13 THE COURT: Okay, all right. I mean, I can just
14 about see you.

15 BY MR. HENNES:

16 Q Mr. Denton, from the time you founded Gawker Media in
17 2002, can you briefly trace for the Court the evolution of
18 how the company has evolved.

19 A The idea of the company was to use new internet-based
20 publishing software to allow journalists to write freely and
21 reach a large audience on topics that people care about.
22 So, we launched a site called Gizmodo, a technology blog;
23 Gawker, which covered news; Jezebel which covers women's
24 issues. Currently, we have seven properties, more than 200
25 people working in the United States and Hungary. And I

1 think we are the only digital media company to grow to scale
2 without any outside investments. You know, just the talents
3 and the hard work of the journalists and those that support
4 them.

5 Q So, let's -- let's talk about your responsibilities in
6 that enterprise as you describe it. And I want to set aside
7 your role in the sale process for a moment. Focus --

8 A Mm-mm.

9 Q -- what you do as the CEO on the day-to-day basis. So,
10 as the CEO of Gawker Media, what does your job entail?

11 A The major departments report into me and I meet with
12 the department heads, with their teams. I work on the sales
13 sides, the technology sides, helping to set editorial
14 direction and then working with Heather Dietrich on the
15 operations and legal matters that have been particularly
16 time consuming recently.

17 Q Do you run the company on a day-to-day basis?

18 A I do, yes.

19 Q How would you describe your work with the five
20 department heads?

21 A It depends on what's going on. So, different
22 departments will be busy at different times. I usually have
23 at least weekly meetings with the department heads and will
24 check in on them during the course of the day, particularly,
25 if something -- if something's happening. You know, like,

1 last week there was a big event that was a boost to our
2 commerce, the then business development team and so, I spent
3 more time with them. For instance, last week, than I
4 normally would.

5 Q So, let's take each one of them at a time, if we could.

6 A Sure.

7 Q Let's talk about the sales department. If you could
8 explain what that is and what your role is in that
9 department.

10 A So, we're free to readers and dependent on advertising
11 and commerce for revenues. Advertising is the largest
12 single portion of the revenues, about 75 percent of the
13 total and so, the work with the sales department normally
14 involves looking at presentations, doing account reviews,
15 sometimes sending emails to clients or agencies at the
16 request of sellers. Sometimes taking meetings and the mix
17 is a little bit different now for various reasons, but
18 that's the usual focus when it comes to advertising sales.

19 Q Who is the head of the sales department?

20 A Mia Libby.

21 Q To whom does Ms. Libby report?

22 A She reports to me.

23 Q You mentioned the advertisers. Is interfacing with
24 advertisers an important part of your day-to-day job.

25 A It is. It depends on exactly which week we're talking

1 about. It's been more important in the last month --
2 particularly actually immediately after the bankruptcy
3 because of concerns that advertisers might have had about
4 the viability of the business and our ability to deliver on
5 contracts that we signed.

6 Q You mentioned advertising is the company's number one
7 source of revenue.

8 A It is.

9 Q And what is that percentage?

10 A About 75 percent, as I said.

11 Q And what is the second largest source of revenue at the
12 company?

13 A Commerce, which is a property like, Gizmodo or
14 Litehacko (phonetic) or Katakoo (phonetic) which covers
15 video games. They have a high level credibility with
16 readers and consumers because our journalists are free to
17 write what they really believe. And we sell products which
18 journalist have been recommended -- who I've recommended.
19 We generate leads for merchants through platforms such as
20 Amonton (phonetic).

21 Q Can you explain to the Court what that means. I'm
22 trying --

23 A I -- I'm sorry.

24 Q -- generating leads through your website.

25 A So, for instance, last week, was what they call Amazon

1 Prime Day and there were a lot of special deals available on
2 Amazon for battery packs, laptops, smartphones and our
3 commerce team, an excellent group and excellent business --
4 our commerce team puts together articles recommending
5 particular deals saying, this is a good product at a good
6 price. And normally, we would get a commission, something a
7 little bit less than 10 percent on any sales generated. The
8 -- we did about \$7 million of business for our merchant
9 partners on Amazon Price Day on this special day with the
10 special deals. And of which \$600,000 was a contribution to
11 the Boston Y (indiscernible).

12 Q What percentage of the company's revenue comes from
13 commerce, Mr. Denton?

14 A It's the second largest after advertising as far as
15 categories of revenue. And it's about a quarter of the
16 revenues.

17 Q So, those are the two primary sources of revenue, sales
18 and commerce?

19 A Those are the two primary sources, yes.

20 Q Who is the head of the commerce department?

21 A Ryan Brown.

22 Q To whom does Mr. Brown report at Gawker?

23 A He reports to me now.

24 Q You mentioned a technology department. What is the
25 role of the technology department at Gawker?

1 A Technology -- we're an internet company -- an internet
 2 media company and just as a newspaper would have a printing
 3 press, so an internet media company has a technology
 4 department with software developers building the publishing
 5 system upon which our business very much depends and our
 6 editorial efficiency.

7 Q What is your role with respect to the technology
 8 department?

9 A I'm closely involved in technology -- I'm not a coder
 10 'cause I'm -- the success of Gawker Media came out of a
 11 fusion of journalistic expertise and pizzazz and a strong
 12 technology background. It gives us what I call editorial
 13 leverage. So, it helps our readers through their responses
 14 to articles, contributes to the vitality of a story. A
 15 debate about a particular topic, or a product, or the
 16 Republican Convention or whatever -- whatever the news is at
 17 the time. So, I like to think of the fact that we don't
 18 just have 107 content creators in the company. We have, in
 19 addition to them, we have about a hundred thousand monthly
 20 contributors to the stories. Readers who respond actually,
 21 on the pages -- on the stories themselves.

22 Q And do you play any special role with respect to the
 23 technology department in the company, sir?

24 A Yes, I would that I'm probably the leading source of
 25 idea for new conversation products.

1 Q Who is the head of technology at the company?

2 A Ian Fetti, who came to us from Google, is the chief
 3 technology officer.

4 Q To whom does Mr. Fetti report?

5 A He reports to me.

6 Q Let's talk about the editorial function of the company,
 7 Mr. Denton. What is your role with respect to that function
 8 or that department?

9 A I set the editorial ethos -- I'm a former journalist.
 10 The idea of the company, which is to create an honest
 11 conversation to support an honest conversation between
 12 writers and readers in the tone in which people actually
 13 talk and think. That editorial ethos is something that I've
 14 determined and something that I'm the guardian of.

15 Q Who runs the editorial function at Gawker?

16 A On a day-to-day basis --

17 Q Yes.

18 A John Cook, executive editor and he also works closely
 19 with Heather Dietrich when his story requires legal review.

20 Q To whom does Mr. Cook report?

21 A Mr. Cook reports to me.

22 Q And do you make individual editorial decisions at
 23 Gawker, Mr. Denton?

24 A No, I make suggestions. I'll send news links and --
 25 but I help to determine the direction, not just of the group

1 as a whole, but of each individual property and I work with
 2 Heather Dietrich and John Cook to select and interview and
 3 vet potential editors -- editors-in-chief of the individual
 4 properties. The editors-in-chief are the ones primarily
 5 responsible for the day-to-day editorial content reporting
 6 into John Cook, the executive --

7 Q So, there are editors-in-chief that report up to Mr.
 8 Cook?

9 A That's right.

10 Q And then Mr. Cook reports to you?

11 A Yes.

12 Q Is the fifth function or department at the company the
 13 operations department?

14 A Yes, it is. I mean, that formally is several
 15 departments. It's legal and people -- operations group and
 16 finance and facilities, but I group them all together as
 17 being operations.

18 Q And who is responsible for that function?

19 A Heather Dietrich is responsible for that function.

20 Q And what is Ms. Dietrich's position?

21 A She is president and general counsel of the company.

22 Q And to whom does Ms. Dietrich report as general
 23 counsel?

24 A She reports to me.

25 Q And to whom does Ms. Dietrich report as president?

1 A She reports to me.

2 Q Has the role of the legal department grown in the past
 3 year or so?

4 A You could that?

5 Q Could you explain to the Court why that is?

6 A As has been reported in the New York Times and other
 7 papers, the Silicon Valley billionaire, Peter Teal, has been
 8 funding a series of lawsuits against the company intended to
 9 deter critical coverage. And it's been a drain on the
 10 company's energy and financial resources.

11 Q Can you explain that in a little more detail how it's
 12 been a drain on the company's energy and financial
 13 resources?

14 A Well, I think we heard before about the fact that
 15 Heather Dietrich and I were both down in Florida for three
 16 weeks, beyond that, the -- we're dealing, you know, Heather
 17 deals with lawyers pretty much all the time. And I deal
 18 with lawyers probably about as much or as often as I deal
 19 with certain departments within the company.

20 Q Has this legal campaign added to your responsibilities
 21 as CEO on top of the management of the five departments
 22 you've already discussed?

23 A Yes, my plate is absolutely full.

24 Q Let's talk about personnel management for a second, Mr.
 25 Denton. What is your role with respect to personnel

1 management?

2 A In general, as I've explained, the hiring of somebody

3 below the level of department head, I would usually be

4 consulted on. The hiring of the department heads is

5 something that I do and the -- generally, the job of people

6 operations, maintaining employee morale, plusing (phonetic)

7 career paths for people has become rather more important in

8 the last couple of months. Actually, you could argue ever

9 since the trial because we've had to show people that they

10 have a good future at Gawker Media Group and that whatever

11 company buys the assets.

12 Q And when you say, we've had to show people that they

13 have a future at Gawker Media Group and to whomever buys the

14 assets, you mean, you've been involved in that?

15 A Yes, a lot.

16 Q Are you involved in marketing the company, Mr. Denton?

17 A I am, yes.

18 Q And I don't mean in the assets sale context, I mean, in

19 the general sense of marketing. What is your role with

20 respect to marketing?

21 A I am -- I am the chief -- we don't have a chief

22 marketing officer. I perform similar functions. I am the

23 company's chief spokesperson. We are a media company. We

24 exists because of the ideas that we put out, the ideas that

25 we can claim credit for, the ideas that get people coming

1 back to us and having a presence in the press, both the

2 traditional press and internet press, is absolutely vital --

3 vital to maintain in the confidence of advertisers, vital to

4 maintain the in the confidence of employees. And vital to

5 the sales process.

6 Q And how do you maintain that presence, Mr. Denton, that

7 presence in the press you just described?

8 A By being -- I think what word has been applied to me

9 loquacious. I have opinions, I express them. I promote

10 strongest articles on Twitter or social media. I talk to

11 journalists, both off the record and on the record. I am

12 present in the medium.

13 Q Can you just explain to the Court as we wrap this piece

14 of your testimony up? How your job has changed since the

15 bankruptcy, putting aside the asset sale?

16 A The job has changed in that the need to -- for care and

17 attention on the direct advertising sale side in particular,

18 has increased because we've needed to communicate to

19 advertisers that the company will deliver on all of the

20 agreements that it makes and that under new ownership, the

21 brands will be more secure and more detached from the

22 headlines that have caused advertisers concern. The

23 personnel management needs have increased because we've

24 needed to communicate confidence, not just through

25 advertisers, but also to employees to persuade them that

1 their jobs will be better and more secure under new

2 ownership. And talking out the prospects of a combination

3 with Ziff Davis and I expect -- oh, sorry, you do want me to

4 talk about the asset sales, but yeah, the demands of the job

5 have increased significantly since the bankruptcy.

6 Q So, now, let's talk about the asset sale, as you noted.

7 Is Gawker currently in the process of trying to sell its

8 assets?

9 A Yes, it is.

10 Q Are you involved in that process?

11 A Yes, I am, heavily.

12 Q And what is your role in that process?

13 A I usually -- well, it -- talking about the stalking

14 horse process or the -- just generally?

15 Q Well, why don't you -- is it easier for you to start

16 with the stalking horse process?

17 A Well, that's -- that's, what I'm most familiar with

18 because we haven't really begun yet on the in-depth

19 discussions with potential over bidders.

20 Q Okay.

21 A But if the stalking horse experience is a guide, it's

22 extremely time-consuming. I am usually the first person to

23 have the conversation with an outside bidder, preparing

24 materials, presentations -- like, the presentations that's,

25 you know, base presentation that we worked off is my making.

1 Updating the materials, numbers, putting together responses

2 to specific information requests from bidders, talking

3 through personnel issues with them, connecting them with the

4 right people at the company. I could go on, but I don't

5 want to bore you too much.

6 Q No, you're not boring me at all, Mr. Denton. How many

7 serious bidders were there in the stalking horse process?

8 A There were six parties in discussion, I would say,

9 three of them were serious.

10 Q And what was your role with those three serious

11 bidders?

12 A With -- I was deeply involved in the conversations with

13 all three. I had introductory conversations, I believe,

14 with all three. I think it was my main focus during the

15 periods of the stalking horse bid process.

16 Q How long did that process last?

17 A It depends on exactly how you measure it, but about a

18 month.

19 Q And in that month-long process, did you make

20 presentations to the bidders once they became serious?

21 A Yes, I did.

22 Q And how many presentations did you make during that

23 process?

24 A It depends exactly on how you define a presentation in

25 terms of meetings, of which information was communicated,

1 dozens.

2 Q And were all the presentations that you made the same

3 in those dozens of presentations?

4 A No, they weren't.

5 Q Okay, were they tailored for each individual

6 presentation?

7 A Yes.

8 Q And is that because each bidder requested something new

9 at each presentation?

10 A Yes, different bidders had different and have different

11 preoccupations and interests. Some want to dig into so that

12 the intricacies of sir (phonetic) change and traffic

13 referrals, you know. Others are more interested in plans

14 for video viewership growth. And so, it depends on who the

15 bidder is and exactly which of the executives from the

16 bidding party we were meeting with.

17 Q You mentioned earlier that technology was a particular

18 focus of yours. Was there anything during the stalking

19 horse process about technology and the company's technology

20 that the bidders were interested in?

21 A Yes, I think a lot of the bidders come to the company

22 with, yeah, some headlines in their head and the knowledge

23 that it's a rambunctious, fun, edgy operation with seven

24 much loved brands with star followings, but beyond that,

25 they don't all understand exactly the machine works. How we

1 did it, why it functions and the technology is a critical

2 part of that. That's a critical part of the explanation for

3 why we have the kind of audience that we have; why we've

4 actually managed to achieve profitability without any

5 outside investment and it's -- it's critical to communicate

6 that.

7 Q Is there anyone at the company that can explain the

8 company's technology as well as you?

9 A I don't believe so, no.

10 Q Let's talk about the stalking horse bidder, which is

11 Ziff Davis. What level of involvement did you have with

12 Ziff Davis?

13 A I met, communicated with Ziff Davis executives too many

14 times to count. I had the first conversation with their

15 chief strategy officer. I had the -- I was in the first

16 meeting with top executive team setup their internal

17 meetings, provided them -- I'm switchboard for most of the

18 requests on traffic, business, technology and other matters.

19 And I have been deeply involved in presenting -- presenting

20 the -- I wouldn't say pitching, I would say presenting the

21 company's best attributes in as compelling way I can.

22 Q Were you involved in the negotiation of the transaction

23 itself?

24 A Yes, I was.

25 Q And were you involved in pre-deal of the diligence

1 materials?

2 A Yes.

3 Q How much time during that month-long period that you

4 discussed, did that take out of your day in addition to your

5 other responsibilities?

6 A It was bursty (phonetic), but I'd say probably on

7 average during that -- during the most intense period of

8 that, at least half of my time.

9 Q Okay, so, now, let's go back to the assets sale process

10 that is now commenced. Are you involved in that process?

11 A I am. Yes.

12 Q Do you expect that the role that you played in the

13 stalking horse process will repeat itself once the bidders

14 become established?

15 A I do.

16 Q And has Gawker reached out to an initial set of

17 bidders?

18 A Yes, it has.

19 Q And without getting into the specifics because we --

20 that's not something that appropriate for this proceeding,

21 but is there a number or a group of parties that have

22 entered into NDAs or in the process of NDAs with the

23 company?

24 A Yeah, a large number has been -- has been put out, but

25 they -- the group -- the narrower group of people who are

1 actually in the process of entering into NDAs or have is

2 about 15 parties.

3 Q And how do you expect size-wise, the asset sale process

4 to compare to the stalking horse process?

5 A Well, if we go by the stalking horse process, in the

6 stalking horse process there were six names and the -- I

7 would say, the serious candidates were down to about three,

8 of which there were two term sheets, I think. And I expect

9 a similar proportion during the broader sales process, maybe

10 about half of the -- of those parties that do sign NDAs will

11 actually gets more deeply involved and get into the data

12 room and be demanding meetings and further information and

13 time with me and other executives.

14 Q Just to be specific, do you believe that there will be

15 more serious bidders involved during the asset sale process

16 and during the stalking horse process?

17 A I do, yes.

18 Q And by a factor of how many?

19 A I'd say at least two.

20 Q Let's talk about some of the people that you work with,

21 which we heard about in Mr. Bollea's opening presentation.

22 You've mentioned Ms. Dietrich and an you just remind the

23 Court what her roles are at the company?

24 A Ms. Dietrich is president and general counsel.

25 Q And when did she join Gawker?

1 A She joined Gawker about three years ago.

2 Q And to whom does she report?

3 A As I said, she reports to me.

4 Q I think I've asked you that already --

5 A Yes.

6 Q -- but thank you for indulging me. Let's turn, if you

7 don't mind, you should have two binders up there, Mr.

8 Denton. Do you see two binders?

9 A I do.

10 MR. HENNES: Your Honor, we'll be using Mr.

11 Bollea's binders --

12 THE COURT: Sure.

13 MR. HENNES: -- that have been distributed to the

14 Court and not our binders, given the restriction and the

15 arguments that are being made today.

16 BY MR. HENNES:

17 Q If you look at Exhibit Z, Mr. Denton. Please tell me

18 when you're there.

19 A Yes, I'm here.

20 Q Mr. Denton, Exhibit Z in Mr. Bollea's exhibit binder,

21 The New York Times article, written on June 12, 2016,

22 entitled Gawker's General Counsel Takes on A Leadership

23 Role. Are you familiar with this article?

24 A I am, yes.

25 Q Let's take a look at the second -- excuse me, second

1 page, second paragraph, last sentence. And I quote from the

2 article. It says, "Most general counsels work in obscurity,

3 but Ms. Dietrich, with the added responsibilities of

4 president, has taken on more of a leadership role as Mr.

5 Denton has pulled back from the day-to-day operations.

6 THE COURT: Where are you reading from?

7 MR. HENNES: I apologize, Your Honor. Page two of

8 five, first full paragraph, last sentence of that paragraph,

9 beginning, "Most general counsel..."

10 THE COURT: Oh, I see it, okay.

11 BY MR. HENNES:

12 Q Do you have that phrase in front of you there?

13 A I do, yes.

14 Q Let me ask you directly, have you pulled back from day-

15 to-day operations at the company?

16 A No, I haven't.

17 Q Then, why -- why would the article say that, if you

18 have an understanding?

19 A The company is --

20 THE COURT: How can he testify to that?

21 MR. HENNES: Withdrawn, Your Honor.

22 BY MR. HENNES:

23 Q Has Ms. Dietrich taken more of a leadership role?

24 A Yes, she has.

25 Q And can you explain to the Court why that is?

1 A The company is bigger than it was. Back in 2008, I

2 personally added to (indiscernible) .com, for instance. And

3 back in 2007, I was a writer for Valley Wag. When the

4 company was smaller, I was more hands-on when it came to

5 individual properties, even individual articles. The

6 company now has more than 200 people. It's part of good

7 management to hire the best people, give them responsibility

8 and to spread the load of management.

9 Q If you would look at the fourth paragraph, it quotes

10 you as saying, "The place would not run without Heather.

11 She's the person that holds everything together." Is that

12 an accurate statement?

13 A Heather Dietrich is an excellent, excellent executive

14 and yeah, I don't know that I could do without her. I think

15 she's the person most important to the company after me.

16 Q And would Ms. Dietrich be able to perform all of the

17 responsibilities that you perform as the CEO of the company?

18 A We're a team. I'm -- I'm great at some things.

19 Heather is great at some things. Even Fetti ICTO, it does

20 work that I couldn't possibly do. I think that's what's

21 called having an executive team.

22 Q I'd now like you to turn to what has been marked as

23 Exhibit D in Mr. Bollea's set of exhibits.

24 A That's D?

25 Q D, as in David, sir, or Denton.

1 A Ah, that photograph.

2 Q Yes, Exhibit D is a December 10, 2014 article from

3 Politico.com entitled, "Nick Denton steps down as Gawker

4 president. Names seven person managing board." Have you

5 seen this article before?

6 A Yes, I have.

7 Q And what was the basis for this article?

8 A He basis? The basis was that Heather Dietrich was

9 promoted to president of the company.

10 Q The mem -- and was there a memo that you distributed to

11 the company announcing that?

12 A Yes, there was.

13 Q Oh, the article opens by saying, "Gawker owner, Nick

14 Denton, is stepping down as president of Gawker and scaling

15 back his day-to-day involvement in running the company," he

16 announced in a memo to staff today. As we discussed with

17 The New York Times article, did you scale back your day-to-

18 day involvement with the company.

19 A No, I didn't.

20 Q Can you -- oh, we don't need to repeat. I think we've

21 covered that ground, Mr. Denton. Does the seven person

22 managing board mentioned in the article still exist at

23 Gawker?

24 A No, it doesn't. We --

25 Q Why -- why does it not exist?

1 A We felt it was just simpler just to refer to executive
2 management.

3 Q Let's talk about Mr. Holden.

4 A Mr. Holden is the chief restructuring officer.

5 Q And where is he from?

6 A He's from a company called Opportune.

7 Q What are Mr. Holden's responsibilities?

8 A This is a process that's -- I and we are not familiar
9 with and Mr. Holden is advising us on -- he's running the
10 financial -- finance function and he's advising us on how to
11 get through this sale process within bankruptcy.

12 Q And how long has Will Holden worked for Gawker?

13 A He's worked for us for about two months.

14 Q Mr. Denton, if you could now turn to Exhibit K of Mr.
15 Bollea's pre-marked exhibits.

16 A Yes.

17 Q Do you have an understanding of what this document is?

18 A Yes, it is an engagement letter between Gawker Media
19 and Opportune.

20 Q And what is the purpose of this document, Mr. Denton?

21 A It's to define the scope of Will Holden's work for the
22 company during this period.

23 Q On page one it says and this is under the heading Scope
24 of Services, Your Honor. "Opportune will provide the
25 following financial advisory services as requested and

1 directed by senior management and/or company's members,
2 managers board of directors or their equivalent." Do you
3 see that? Right under the heading of Scope of Services, Mr.
4 Denton.

5 A I'm sorry, which page am I on?

6 Q First page.

7 A Yes, I see it.

8 Q Does Mr. Holden provide advisory services to Gawker,
9 "as requested and directed by senior management?"

10 A Yes, he does.

11 Q To whom does Mr. Holden report at Gawker Media?

12 A He reports to me.

13 Q Does he report to anyone else?

14 A No, he doesn't.

15 Q Let's turn --

16 A Well, he reports to the board, but -- he reports to the
17 board.

18 Q As well as you?

19 A Yes.

20 Q From a management perspective, does Mr. Holden report
21 to anybody else?

22 A No, he doesn't.

23 Q Let's turn to page two under heading B, Mr. Denton. Do
24 you see the heading, Responsibilities?

25 A Yes, I do.

1 Q It says, "Subject to applicable bylaws, corporate
2 governance, processes and with the assistance of the
3 company's management, the CRO will have primary
4 responsibility for the following finance and accounting
5 functions and reorganization efforts. Do you see that?"

6 A I do, yes.

7 Q And is Mr. Holden the CRO listed in that phrase?

8 A Sorry?

9 Q Is Mr. Holden the CRO that's listed in that phrase?

10 A Yes, this is the contract regarding his role.

11 Q So, if you would look at Roman at four -- Roman at
12 four, which is B-4 under Responsibilities says --

13 A Mm-mm.

14 Q -- "coordinate and manage potential sales of company's
15 assets and/or development of disclosure statements or
16 proposed plan of reorganization, including negotiations with
17 stakeholders and counterparts," do you see that Mr. Denton?

18 A Yes, I do.

19 Q Does Mr. Holden have primary responsibility for
20 coordinating and managing the company's asset sale process?

21 MR. FISHER: Objection, leading.

22 THE COURT: Overruled.

23 MR. HENNES: Judge, shall I repeat the question?

24 THE COURT: The question can be answered, yes or
25 no.

1 BY MR. HENNES:

2 A No, he doesn't.

3 Q Who does?

4 A I do.

5 Q Does Mr. Holden play a role in the asset sale?

6 A Yes, absolutely. A very, very important role.

7 Q And what role does he play?

8 A He has been vital in coming up with the budgets and the
9 financial plan to get us through this period. Working with
10 DIP lenders, helping to consolidate information in
11 preparation for discussions with potential bidders. So,
12 he's -- he's a very important part of our team.

13 Q Let's talk about Houlihan Lokey for a moment, Mr.
14 Denton. Has the company retained Houlihan Lokey? Is this
15 financial (indiscernible)?

16 A Yes, it has.

17 Q Was Houlihan Lokey involved in the stalking horse
18 process?

19 A Yes, it was.

20 Q Is Houlihan Lokey involved in the current asset sale
21 process?

22 A Yes.

23 Q Has Houlihan Lokey, in each of those two processes,
24 stalking horse and asset sale been the same?

25 A Has --

1 Q Been the same? Has their role in the process been the
2 same?

3 A We're just about to enter into the second phase, so I
4 assume that their role would be the same, yes.

5 Q Do you have any reason to believe that it won't be the
6 same?

7 A I have no reason to believe that it will be -- that it
8 won't be the same.

9 Q Except for the number of bidders, which is going to be
10 the end of my question. What was Houlihan Lokey's role in
11 the stalking horse process?

12 A Houlihan Lokey -- Ziff Davis was their connection.
13 Mark Patrickoff's connection and so they brought Ziff Davis
14 into the process and they helped us to negotiate with Ziff
15 Davis and the other potential stalking horse bidders.

16 Q So, whom does Houlihan Lokey report in senior
17 management?

18 A They report to me.

19 Q How often did you interact with them during the
20 stalking horse process?

21 A Too many times to count.

22 Q Do you have any reason to believe that won't be the
23 same at the next phase of the asset phase sale begins?

24 A I'm not familiar exactly with what that process will
25 involve, but I don't assume it will be much different.

1 Q Mr. Denton, you've testified about the roles of Mr.
2 Dietrich, Mr. Holden and Houlihan Lokey. Could that group
3 collectively, Dietrich, Holden, Houlihan Lokey play the role
4 that you play in the asset sale, in your view?

5

6 A Not in such a way that would maximize value, I don't
7 believe, no.

8 Q And why is that?

9 A Because each group or person performs a key function,
10 an important function, but in terms of running the whole
11 process and being the primary face of the company -- I'm the
12 founder of the company. I started it out of my apartment.
13 I know where all the bodies are buried, and they kind of
14 want to speak to me.

15 Q Let's talk about the judgment in the Bollea case for a
16 moment, Mr. Denton. In that litigation, were you found
17 personally liable?

18 A I was, yes.

19 Q And was the company found liable?

20 A Yes, it was.

21 Q And was Mr. Daulerio found liable?

22 A Yes, he was.

23 Q What is the amount of the judgment for which you are
24 personally liable?

25 A I believe it's \$10 million in punitive damages and then

1 the \$115 million that I am joint and severally liable for.

2 Q Can you afford to pay the \$125 million in judgments
3 against you, Mr. Denton?

4 A No.

5 Q What will happen if the Bollea judgment was enforced
6 against you?

7 A I think, as I said before publically, I'll obviously
8 have to declare personal bankruptcy.

9 Q How do you expect that filing for personal bankruptcy
10 will affect your ability to perform the role of CEO?

11 A It's going to negatively impact my ability to perform
12 my function particularly at this period. Judging by the way
13 that all of this -- the Hogan litigation and all the other
14 related litigations have gone, I'd assume that the approach
15 will be as aggressive in my personal bankruptcy as it has
16 been in every other context. So far we've spent -- the
17 company's spent \$13 million defending the Hogan case. I
18 expect that my own personal bankruptcy will be anything but
19 straightforward.

20 Q Without a personal bankruptcy, Mr. Denton, is being CEO
21 of Gawker Media a full-time job?

22 A Yes, it is.

23 MR. HENNES: Your Honor, pass the witness.

24 MR. FISHER: Your Honor, Eric Fisher, on behalf of
25 Mr. Bollea.

1 CROSS-EXAMINATION OF MR. DENTON

2 BY MR. FISHER:

3 Q Good morning, Mr. Denton.

4 A Good morning.

5 Q You started Gawker in 2002? Is that right?

6 A That's right, yeah.

7 Q And you started it in your apartment?

8 A I did.

9 Q And it's grown many times since its founding, right?

10 A Yes, it has.

11 Q And that entire period of time until today, you'd been
12 the one running the business, right?

13 A Yes.

14 Q And you've done your best to set up a company that
15 functions well?

16 A I have, yes.

17 Q And you've tried to establish a good management
18 organization at the company?

19 A Yes, I have.

20 Q And you covered some of that in your direct testimony,
21 correct?

22 A We have discussed that, yes.

23 Q You have five different departments?

24 A Yes.

25 Q And each department has its own head?

1 A It does.

2 Q And there are seven different websites?

3 A Yes.

4 Q And each website has its own editor?

5 A Yes, that's right.

6 Q And those editors report to --

7 A Editor-in-chief. There are multiple editors but one

8 editor-in-chief.

9 Q Each of the seven websites has its own editor-in-chief?

10 A Yes.

11 Q And then each of those editors-in-chief report up to an

12 executive?

13 A Yes.

14 Q And you also spoke about Ms. Dietrick, the company's

15 president and general counsel. And you were shown a

16 newspaper article that quote you as saying, quote, "The

17 place would not run without Heather. She's the person who

18 holds everything together," closed quote. That is something

19 you said to the reporter, right?

20 A Absolutely, yes.

21 Q And you said that because it's true?

22 A I believe it to be true, yes.

23 Q She is a critical person in the company?

24 A She is absolutely a critical person in the company.

25 Q And she's a key person?

1 A I'd say she is the second most important person in the

2 company apart from me.

3 Q And you work in close partnership with her?

4 A I do.

5 Q And in particular, Ms. Dietrick is primarily

6 responsible for the day to day operations of Gawker Media,

7 correct?

8 A She's primarily responsible for legal, people

9 operations, other operations, facilities, and her time is

10 being very much consumed by the legal campaign that we've

11 been engaged in.

12 Q And when you use the word "legal campaign"...

13 A Yes.

14 Q ...which you used in your direct testimony, you're

15 talking about the Bollea litigation and other litigation?

16 A I am, yes.

17 Q And when you were asked on direct about whether more

18 and more of your time was taken up with legal matters, I

19 think you said somewhat sarcastically, "You could say that".

20 Do you remember that testimony?

21 A I don't specifically, no.

22 Q Okay. Well, I take it from your direct testimony that

23 in the period leading up to this bankruptcy proceeding, much

24 of your time was taken up with defending against what you

25 call this legal campaign. Is that fair to say?

1 A It's been a significant factor, yes.

2 Q And once this bankruptcy was filed, all of that

3 litigation came to a grinding halt, didn't it?

4 A It did. But the legal threats and complaints from

5 Charles Harder, the lawyer paid for by Peter Thiel

6 continued.

7 Q And when you refer to this -- you spoke in your direct

8 testimony about what you call your, quote, "editorial

9 ethos". Do you remember that phrase?

10 A Yes.

11 Q And is it fair to sum up your ethos as "When it doubt,

12 put it out"?

13 A As I think I said in the New Yorker radio interview

14 that you're talking about, I'd say that was a caricature of

15 the company's policy. Yes, we do believe that many stories

16 are sat upon by news organizations that should be put out

17 there, but all our stories should go past Legal and to...

18 Q And isn't anticipating litigation a byproduct of that

19 kind of editorial ethos, "When in doubt, put it out"?

20 A I'm sorry, could you say that...?

21 Q Yes. When you described to this New Yorker -- to David

22 Remnick of the New Yorker...

23 A Yes.

24 Q ...your editorial ethos as, quote, "When in doubt, put

25 it out"...

1 A I also explained -- and maybe you have -- I don't have

2 the transcript in front of me. But I also explained that

3 that was a caricature.

4 Q Is it a fair caricature of your --

5 A It's a caricature, which is that it rhymes, it's

6 memorable, and it represents -- yes, our desire to -- there

7 are many stories in this country and around the world which

8 are not told and which need to be told. And so, yes,

9 absolutely we do believe that the truth should be put out

10 there. We're constrained by the system and we're

11 constrained by the law.

12 Q And even before what you described as this legal

13 campaign, Gawker was exposed to all kinds of litigation that

14 resulted from stories that were put out on its websites,

15 right?

16 A The overwhelming majority of litigation and legal

17 threats, those that have been ginned up by Charles Harder,

18 the lawyer that Peter Thiel is paying for.

19 Q And whatever litigation there has been against Gawker

20 and whatever the sources of that litigation are, it's all

21 come to a halt as of June 10th, when the automatic stay in

22 this case came into place, correct?

23 A The actual lawsuits, yes. But as I said, the threats

24 have continued, including the threat on a very well-regarded

25 piece about Donald Trump's hair and its origins, which

1 Charles Harder took exception to.
 2 Q Mr. Denton, I'm going to try hard to ask you questions
 3 that are capable of being answered yes or no.
 4 A Okay.
 5 Q And your counsel will have an opportunity, I suspect,
 6 to ask you questions on redirect where you can elaborate.
 7 A Okay.
 8 Q Just getting back for a moment to the management
 9 structure of Gawker, I don't think you talked about Josh
 10 Albertson. Who is Mr. Albertson?
 11 A Josh Albertson is the chief operating officer, who now
 12 works closely with Will Holden from Opportune.
 13 Q And you described Mr. Holden of Opportune as reporting
 14 to you, right?
 15 A Yes.
 16 Q Each week... And Mr. Holden has worked for Gawker
 17 since, approximately, May 14, is that right?
 18 A It's about two months, yes.
 19 Q And how much time do you spend with Mr. Holden each
 20 week?
 21 A Not a huge amount. I probably see him a few times a
 22 week.
 23 Q But Mr. Holden does spend a lot of time with Mr.
 24 Albertson, right?
 25 A He does, yes.

1 Q They sit together -- they sit together in a conference
 2 room?
 3 A No, they don't. Josh Albertson sits downstairs on the
 4 second floor and Will Holden sits in a conference room
 5 upstairs. Josh Albertson sometimes joins him, as do I, in
 6 the conference room.
 7 Q And does Mr. Holden work most closely on a day to day
 8 basis with Mr. Albertson?
 9 A I would say yes. And his other colleagues at
 10 Opportune.
 11 Q And as of mid-May, is it fair to say that Mr. Albertson
 12 together with Mr. Holden are primarily responsible for the
 13 financial operations of the business?
 14 A Yes, I would say that that's true. That they report to
 15 me the numbers, but in terms of actually kind of crunching
 16 through the numbers, working out how much we need to get
 17 through this process and, you know, what we're projecting to
 18 potential bidders, they're the ones that actually put
 19 together the numbers in detail.
 20 Q And Mr. Holden and his colleagues at Opportune manage
 21 the financial processes of the company currently?
 22 A The -- most of the financial processes are performed by
 23 the finance team under Josh Albertson. If you -- I'm not
 24 sure exactly what you're talking about. If you're talking
 25 about making sure that people get paid or that IOs are

1 properly registered, then that would be the in-house company
 2 finance team.
 3 Q Does Mr. Holden oversee the expenditures of cash for
 4 the company?
 5 A He is the -- I believe the final authority on them.
 6 Q And he was involved in developing business plans for
 7 the company?
 8 A He helped work through our numbers to come up with
 9 projections for the remainder of this year, yes.
 10 Q And that's what the company refers to as its business
 11 plan, right?
 12 A Well, those are the numbers that are part of the
 13 business plan. It's usually words as well.
 14 Q And Mr. Holden negotiates agreements on behalf of the
 15 company?
 16 A Which kind of agreements are you talking about?
 17 Q Vendor agreements, for example?
 18 A He would be involved with vendors, I believe, but I
 19 don't think he would ever negotiate any major agreements
 20 without working with the company's executives.
 21 Q And which executives would he work with in negotiating
 22 major agreements?
 23 A With myself, Heather Dietrick, and Josh Albertson.
 24 Q And you and Ms. Dietrick did attend the trial in
 25 Florida, the Bollea trial, correct?

1 A We did, yes.
 2 Q And that lasted, approximately, three weeks?
 3 A It did.
 4 Q And you were there essentially full time?
 5 A I did not leave the Tampa area for three weeks.
 6 Q And Ms. Dietrick was there full time as well?
 7 A I believe she didn't leave the Tampa area either.
 8 Q And during that period of three weeks, the company
 9 operated just fine, right?
 10 A The company functioned, yes.
 11 Q And in part that's because you've set up a pretty good
 12 management structure, right?
 13 A I would hope that any company under normal
 14 circumstances could function with a properly designed and
 15 hired executive team. There are also -- it is in the modern
 16 world rather easier to manage things remotely with
 17 smartphones, and laptops, and videoconferencing. It does
 18 make it a little bit easier.
 19 Q And you used all of that technology to help you manage
 20 while you were in Florida, right?
 21 A Yes.
 22 Q And you've set up the company so that it does not
 23 require your constant supervision, right?
 24 A I set up the company like any company is set up, with
 25 an executive management team, with good people responsible

1 for their departments. I'm responsible for how it all fits
 2 together.

3 Q And during the three weeks that you and Ms. Dietrick
 4 were in Florida for the trial, during that period of time
 5 you didn't have the help of Mr. Holden at Opportune, right?

6 A No, we did not.

7 Q Or his staff?

8 A No, we didn't.

9 Q And you didn't have an investment bank like Houlihan as
 10 part of your team as well, right?

11 A That's not true.

12 Q Was Houlihan engaged during the period of time that you
 13 were at the trial?

14 A No, they weren't.

15 Q Was there a different investment bank that you were
 16 working with during the trial?

17 A Yes, there was.

18 Q And what investment bank was that?

19 A I'm not sure whether I should... Should I say this?
 20 Is this confidential or not?

21 MR. HENNES: It's not confidential. You can
 22 answer the question.

23 A LionTree.

24 MR. HENNES: Your Honor, we would simply suggest
 25 that the transaction that was discussed not be discussed in

1 open court at this time, given the sale process.

2 THE COURT: Let's wait for the question.

3 MR. FISHER: Your Honor, I'm not interested in
 4 asking about that.

5 THE COURT: That's why (indiscernible).

6 MR. FISHER: Withdrawn, Your Honor.

7 THE COURT: Without prejudice, I assume.

8 Q And you said that in the event that this Court does not
 9 extend the stay to protect you against judgment enforcement
 10 efforts in the Bollea litigation, you'll have to file for
 11 personal bankruptcy, is that fair?

12 A Yes. I have two assets. I have my apartment or the
 13 equity in it and I have the stock in the company that I
 14 built. The stock in the company I built is not available
 15 for payment.

16 Q And so if you don't get the outcome that you hope to
 17 secure from this Court, you will file for personal
 18 bankruptcy?

19 A I will, yes.

20 Q And it's fair to say that that will be something of a
 21 distraction?

22 A I think so, yes.

23 Q And in the event that you are distracted by a personal
 24 bankruptcy, you still will have the same management team to
 25 fall back on, right?

1 A The management team is not affected by my personal
 2 bankruptcy.

3 Q And when you were in Florida, you told us you were
 4 there with Ms. Dietrick, you had also -- if you went through
 5 a personal bankruptcy, you would also be able to continue to
 6 count on Ms. Dietrick to help you manage the company, right?

7 A Yes, she is not involved in my personal bankruptcy. I
 8 think it would be disturbing to executives but they wouldn't
 9 be directly affected.

10 Q So, Mr. Denton, to sum up just on this topic of your
 11 management team, you agree that you have a well-qualified
 12 executive team to help you run the company?

13 A Yes, I do.

14 Q And you have five different department heads?

15 A Yes.

16 Q The company has a president, yes?

17 A Yes.

18 Q It has a chief operating officer?

19 A It does.

20 Q It has a chief technology officer?

21 A Yes, we have the full complement of executive roles.

22 Q And it now also has a chief restructuring officer?

23 A Yes.

24 Q It has the assistance of Houlihan Lokey?

25 A Yes.

1 Q The litigation that previously -- what you call the
 2 legal campaign that previously was taking up so much of your
 3 time, has, except for some continuing what you described as
 4 threats, come to a stop?

5 A I wouldn't say that. The fact that (indiscernible) was
 6 revealed after the -- after the trial, a couple of months
 7 after the trial, that has resulted in a lot of press
 8 attention, some criticism of Gawker, and some debates that
 9 we had to become part of as part of our marketing efforts.

10 Q So there continues to be a lot of press attention
 11 around what you call the legal campaign...

12 A Yes.

13 Q ...but you're aware that as a matter of law, the
 14 litigation against the companies cannot proceed during this
 15 bankruptcy, right?

16 A Yes, I am aware. Yes.

17 Q I'd like to ask you just a few questions about Houlihan
 18 Lokey's role. They are the company's exclusive financial
 19 advisor with respect to the sales process?

20 A Yes, they are.

21 Q And Houlihan is an excellent investment bank?

22 A Yes, they are.

23 Q You're working with Mark Patricof at Houlihan?

24 A Yes.

25 Q And he's a leading investment banker in the media

1 business, is that right?

2 A He's one of the very best media bankers, yes.

3 Q And you're also working with another managing director

4 there named Mr. Snellenbarger?

5 A Yes.

6 Q And Mr. Snellenbarger also has considerable experience

7 in asset sales and bankruptcy, right?

8 A Yes.

9 Q Are you familiar with how Houlihan will be compensated

10 for their services?

11 A In broad terms.

12 Q And what's your broad understanding of how they're

13 going to be compensated?

14 A Well, as we heard earlier on, they're going to get

15 about \$2 million.

16 Q And that's if the Ziff-Davis transaction closes, right?

17 A Yes.

18 Q And you're aware that if they succeed in obtaining

19 better offers for the company, their compensation may be

20 even higher, right?

21 A Yes. I think it's a pretty standard investment banking

22 arrangement.

23 Q And you're aware that this Court has approved bid

24 procedures and other related procedures in connection with

25 the upcoming auction of the company, right?

1 A Yes, I am.

2 Q You didn't review any of those motion papers before

3 they were filed, did you?

4 A Not in detail, no.

5 Q And in general, you haven't looked at any of the

6 bankruptcy filings with respect to any of the three Debtors

7 in this case in any great detail, correct?

8 A I've probably scanned some documents but no, I'm not a

9 lawyer and I rely on the advice of my colleagues and

10 counsel.

11 Q So, you did not review any filings in great detail?

12 A I agree.

13 Q And in terms of the person at the company who you rely

14 on for that kind of work, that's Ms. Dietrick, right?

15 A That is, yes. She is our general counsel.

16 Q So, when the motion papers in support of the

17 preliminary injunction that bring us here today described

18 you as the primary point of contact for the Debtors' legal

19 counsel in these Chapter 11 cases, that's not correct, is

20 it?

21 A Sorry. Say that again?

22 Q You're not the primary point of contact for the

23 Debtors' legal counsel in these Chapter 11 cases?

24 A I -- Heather Dietrick works with the counsel much more

25 often than I do. She is the general counsel.

1 Q And you're not the primary point of contact?

2 A No, I don't know exactly how you defined primary point

3 of contact. If you're referring to how much time -- you

4 know, or where the first call would go, I'd say the first

5 call would probably go to Heather Dietrick. If there were

6 any important decisions to be made, the matter would come to

7 me.

8 Q Mr. Denton, the other binder, not the exhibit binder,

9 but there's also a binder of deposition transcripts...

10 A Mm hmm?

11 MR. FISHER: Just those two binders. Your Honor,

12 I have deposition binders for you as well. If I may

13 approach?

14 THE COURT: Yes. Thank you.

15 MR. HENNES: Mr. Fisher, do you have a binder for

16 us?

17 MAN: Here. You can have mine.

18 THE COURT: Thank you.

19 MR. DENTON: Is it possible I can get another

20 water? Thank you.

21 Q Mr. Denton, a couple of weeks ago, your deposition was

22 taken in this matter, correct?

23 A Yes, it was.

24 Q And you were under oath?

25 A Yes.

1 Q Would you please in this binder turn to your

2 transcript, which is the first tab in the binder. And in

3 particular I'll direct your attention to Page 59, beginning

4 at Line 2. Just let me know when you get there. I'm going

5 to just read a question and an answer, and then ask you a

6 question. "Question: Who is the primary point of contact

7 between Gawker Media, which will include GMGI, Kinja, Gawker

8 Media, LLC -- who is the primary point of contact between

9 Gawker Media and Ropes & Gray? Answer: Heather Dietrick is

10 the primary contact with Ropes & Gray. As general counsel I

11 would expect that." Were you asked that question and did you

12 provide that answer?

13 A Yes, I believe I did.

14 Q And, Mr. Denton, you completed an errata sheet to this

15 deposition transcript, which we received yesterday. Are you

16 aware of that?

17 A Yes.

18 Q And this is not an answer that you corrected, right?

19 A No.

20 Q And in terms of the auction process, Houlihan is making

21 the initial approach to any potentially interested bidders,

22 correct?

23 A To the long lists, yes, Houlihan is making the initial

24 approach.

25 Q And then to the extent that there's interest, they're

1 filtering that interest, right?

2 A I wouldn't say --

3 THE COURT: What do you mean by -- don't answer.

4 What do you mean by filtering?

5 MR. FISHER: Your Honor, let me ask a different --

6 let me rephrase the question.

7 THE COURT: Okay.

8 Q To the extent that bidders express interest in the

9 company, Houlihan then brings that information back to the

10 company, right?

11 A Yes, they do.

12 Q And they assist you in setting up any meetings that may

13 be necessary?

14 A Yes.

15 Q And since the meetings involving Ziff-Davis, so

16 excluding those meetings, you haven't had any meetings with

17 any potentially interested bidders, correct?

18 A No, I haven't.

19 Q And Houlihan set up a data room in connection with the

20 sales process?

21 A Yes, they did.

22 Q And to the best of your knowledge, potentially

23 interested bidders are making the information in the data --

24 are accessing the information in the --

25 A Actually, you know, can I just revise -- revise my

1 previous answer?

2 Q Sure.

3 THE COURT: Go ahead.

4 A You were asking about kind of contact with other

5 parties. I wasn't allowed to have any meaningful contact,

6 but I did send courtesy kind of keep bidders warm kind of

7 emails to various parties.

8 Q All right, you weren't allowed to have any contact

9 until July 7th, when the Court approved the bid procedures?

10 A Yes.

11 Q And then after July 7th -- since July 7th, you are, in

12 fact, allowed to be involved in an active sales process?

13 A Yes.

14 Q But since July 7th, you haven't had any meetings with

15 any potentially interested bidders?

16 A Courtesy emails but we're waiting for the process to

17 play out.

18 THE COURT: What is a courtesy email?

19 MR. DENTON: Oh, that might be just -- there's one

20 particular bidder, somebody I'd met a couple of months ago,

21 I sent an email congratulating them on the success of their

22 video operation, and looking forward to meeting them and

23 talking with them in the near future. So, just keeping

24 people warm.

25 Q Turning, Mr. Denton, to the issue of your possible

1 personal bankruptcy filing. You've hired a bankruptcy

2 attorney?

3 A I have, yes.

4 Q And that attorney is your personal attorney, correct?

5 A Yes.

6 Q And the company has loaned money to you to pay for that

7 attorney?

8 A Yes, the company's advanced me money.

9 Q And you've used that money to pay your own personal

10 bankruptcy attorney?

11 A I transferred the money to the attorney, yes, as the

12 retainer.

13 Q And the loan that was made to you was made during the

14 week ending Friday, June 10th, correct?

15 A I believe so. I can't remember offhand.

16 Q It was made very shortly before the Gawker bankruptcy

17 filing, yes?

18 A It sounds plausible.

19 Q And sitting here today, you don't know the terms of

20 that loan?

21 A The terms?

22 Q You don't know the terms of that loan, do you?

23 A Could you define terms for me?

24 Q Yes. Do you know the specifics about when and how

25 you're required to repay the company for the \$200,000 loan?

1 MR. HENNES: Your Honor, objection. The loan and

2 its terms are not relevant to anything going forward.

3 THE COURT: Yeah, what's the relevance of this

4 line of questioning, Mr. Fisher?

5 MR. FISHER: Your Honor, I'm simply probing into --

6 -- or beginning to probe into what planning he's done with

7 respect to his own personal bankruptcy.

8 THE COURT: But what does that have to do with the

9 terms of the loan?

10 MR. FISHER: I'll move on, Your Honor.

11 Q Which of the three Gawker entities that are in

12 bankruptcy provided money to you to prepare for your

13 personal bankruptcy?

14 MR. HENNES: Objection, Your Honor. Same

15 objection.

16 THE COURT: Sustained.

17 Q How often have you met with your personal bankruptcy

18 attorney to prepare for a possible bankruptcy filing?

19 A I've met with him in person twice.

20 Q And from the period of time when the company extended

21 this loan to you to pay for your personal bankruptcy

22 attorney until July 7th, as you've said, the company was in

23 a no-shop period, right?

24 A Yes.

25 Q Did you use that time to prepare for the possibility of

1 your having to file bankruptcy?

2 A I've done some initial preparatory work, yes.

3 Q And do you have an understanding of how long it would

4 take you to file a petition for personal bankruptcy?

5 A I'm not an expert but I understand that the petition

6 isn't itself particularly complicated.

7 Q Have you -- are you aware that there's a credit

8 counseling requirement for personal bankruptcy?

9 A Yes, I am.

10 Q And have you met with a credit counselor?

11 A I've taken a credit counseling course.

12 Q And do you have a general understanding after you file

13 for personal bankruptcy, what would happen next in your

14 personal bankruptcy?

15 A I'd be dealing with all of this one step at a time.

16 So, I wouldn't say I know it in great detail.

17 Q Do you already have a bankruptcy petition ready?

18 A I believe that the lawyers may, yes.

19 Q And do you have all the information that you need to

20 file financial schedules in connection with that possible

21 personal bankruptcy?

22 A I think I have most of it, yes.

23 THE COURT: Do you recall signing a bankruptcy

24 petition?

25 MR. DENTON: I don't know, I'm afraid.

1 Q And if you were to file, would you be filing under

2 Chapter 11 or under Chapter 7?

3 A I'm not absolutely sure.

4 Q Do you have any understanding as to how a bankruptcy

5 filing would affect your equity interest in GMGI?

6 A I'm not a lawyer.

7 Q Do you have any reason to think that you would not be

8 able to -- do you have any reason to think that Gawker would

9 not be able to proceed with its asset sale during the

10 pendency of a personal bankruptcy for you?

11 A It would -- given that the task ahead of us right now,

12 which we're all trying to stay extremely focused on, is to

13 maximize value, the bankrupt -- personal bankruptcy would

14 damage my ability to ensure that outcome.

15 Q And that's the distraction of it?

16 A Yeah, the distraction of it, work, whatever litigation

17 actually ensues. Based on past experience, as I've said, I

18 expect everything really to be as aggressive as it possibly

19 could be.

20 Q But you understand that if you file for personal

21 bankruptcy, the litigation against you also comes to a halt,

22 right?

23 MR. HENNES: Objection. Mischaracterizes his

24 testimony, Your Honor.

25 THE COURT: Overruled. You raised this issue.

1 Q I'll repeat the question.

2 A Okay.

3 Q Do you understand that if you file for personal

4 bankruptcy, the litigation against you individually also

5 comes to a halt?

6 A Yes, I do.

7 Q And during a personal bankruptcy, you will be able to

8 continue to work, right?

9 A I will endeavor to, yes, absolutely.

10 Q And you'll be motivated to work hard?

11 A I will do my best to secure a future for the company's

12 employees and its brands, and to make the best of what has

13 been a difficult circumstance.

14 Q And also to make the most of your equity interest,

15 right?

16 A You know what? Right now, my only focus is actually to

17 get the company into safe hands and to sell it on behalf of

18 the employees who have actually built it into what it is.

19 Q Well, Mr. Denton, you think you're going to ultimately

20 succeed in getting the Bollea judgment vacated, right?

21 A I hope so, yes.

22 Q And if the judgment is vacated and there's a successful

23 sale, there will be a lot of money that flows to equity

24 holders of GMGI, right?

25 A That really depends on how much of that value is burned

1 up in proceedings like this.

2 Q And you own 30 percent of GMGI?

3 A I do, yes.

4 Q And so if the Ziff-Davis transaction closes and the

5 Bollea judgment is ultimately vacated, your equity will be

6 worth a lot of money, right?

7 A Again, I'm not sure how much the legal costs will be

8 between now and then. And I'm not sure exactly how many

9 cases that we will have to fight that have been ginned up by

10 Charles Harder.

11 Q But it's fair to say that even if you have to file for

12 personal bankruptcy, you'll be very motivated to try to help

13 the company realize as much value as possible

14 (indiscernible) sales process, right?

15 A I have a personal motivation as well as a motivation to

16 do the best by the company and its employees.

17 Q And just a point of clarification. I wanted to make

18 sure I understood an earlier answer. You're just not sure

19 whether or not you've already signed? I think this was

20 Judge Bernstein's question. You're not sure whether or not

21 you've signed a personal bankruptcy petition?

22 A I'm not sure, no.

23 Q You just don't know one way or the other? You don't

24 know one way or the other whether or not you've signed it?

25 A I can't remember whether that's one thing that I've

1 signed or whether I actually have to sign it like, actually
 2 on the day of which -- at which the petition is filed.
 3 Q And you don't know whether it's a petition under
 4 Chapter 7 or under Chapter 11?
 5 A I'm not absolutely sure. But I think it's Chapter 11,
 6 but I'm not absolutely sure so I didn't want to...say
 7 something I shouldn't.
 8 Q And -- I'm sorry. So you think it's Chapter 11 but
 9 you're not sure?
 10 A I think it's Chapter 11 but I don't want to say
 11 absolutely for sure.
 12 Q And, Mr. Denton, on June 9, 2016, so the Thursday
 13 before the Friday that these companies filed for bankruptcy
 14 protection, you made a motion to the Florida court to stay
 15 the Bollea judgment, right?
 16 MR. HENNES: Your Honor, same objection. This is
 17 going to the preexisting matters that occurred prior to the
 18 time that this motion was made.
 19 THE COURT: Where are you going with this?
 20 Mr. FISHER: Your Honor, I am going to the issue
 21 of whether the facts of the Florida proceeding were
 22 misstated to this Court.
 23 THE COURT: Go ahead. Overruled.
 24 Q And in connection with the June 9th motion to the
 25 Florida court, you pledged your interest in GMGI in lieu of

1 a bond, right?
 2 A Yes, I did.
 3 Q And the Florida court granted your request for a stay,
 4 right?
 5 A Under conditions that were not acceptable.
 6 Q But the court did grant your motion for a stay?
 7 A Yes, under conditions that I was advised the company
 8 should not go along with.
 9 Q So, when the papers in support of this preliminary
 10 injunction said that the Florida court denied the motion for
 11 a stay, that's not quite true, is it?
 12 A I'm not a lawyer. I can't really pass these various
 13 phrases. I think it's all pretty clear as to what really
 14 happened.
 15 Q Your layperson's point of view is that the stay was
 16 granted but with conditions that you found unacceptable?
 17 Fair?
 18 MR. HENNES: Objection, Your Honor. Misstates
 19 what happened in Florida. He testified he's not a lawyer
 20 and wasn't involved... Strike that.
 21 THE COURT: Why don't you just give me the order
 22 and give me the statement you think he made, and let's move
 23 on?
 24 Q Mr. Denton, would you please turn in your deposition
 25 transcript to Page 19?

1 A When we're talking about page numbers, are we talking
 2 about the page numbers at the bottom or...?
 3 Q No, I'm sorry. It's -- the page numbers are in the
 4 upper right hand corner.
 5 A Okay.
 6 Q So it's Page 19, Line 3. I'm going to just read a few
 7 questions and answers and then ask you a brief question.
 8 "Question: So, do you know whether or not the judge in
 9 Florida on June 10 granted a stay of execution? Answer: I
 10 was advised that the terms of the proposed stay were too
 11 onerous, that, quote-unquote, 'It would've given away the
 12 keys of the company' and, therefore, we decided that we
 13 should file for bankruptcy. And who advised you of that?
 14 Answer: Counsel advised us. Question: But do you know
 15 whether or not a stay was actually granted? Answer: I do
 16 believe it was." Were you asked those questions and did you
 17 provide those answers at your deposition a couple of weeks
 18 ago?
 19 MR. HENNES: Your Honor, objection. Improper
 20 impeachment. It's not inconsistent. He's testified he
 21 doesn't know one way or the other as a lawyer.
 22 THE COURT: Overruled. All right, he said that at
 23 the deposition. Then what?
 24 MR. FISHER: Your Honor, may I have just a few
 25 brief moments to confer with my co-counsel? And I may be

1 done or very close to done.
 2 THE COURT: Sure.
 3 MR. FISHER: Your Honor, I have no further
 4 questions at this time.
 5 THE COURT: Redirect?
 6 MR. HENNES: Briefly, Your Honor.
 7 REDIRECT OF MR. DENTON
 8 BY MR. HENNES:
 9 Q Mr. Denton, do you know one way or the other whether
 10 the judge in Florida actually entered an order on the
 11 judgment?
 12 A No, I don't.
 13 Q Do you know one way or the other whether that motion
 14 was granted or not granted?
 15 A No, I don't.
 16 Q Do you know one way or the other -- strike that. Was
 17 the proposal that you made or that Gawker, you, and Mr.
 18 Daulerio made actually accepted by Mr. Bollea?
 19 A No, it wasn't.
 20 MR. FISHER: Objection. Leading.
 21 THE COURT: It's not leading. Overruled.
 22 Q Were there conditions imposed to that proposal?
 23 A Yes, there were.
 24 Q And were those conditions acceptable to the company?
 25 A We were advised that they would not be acceptable or

1 they should not be accepted.

2 Q And was it those conditions that prompted the company's

3 bankruptcy filing?

4 A Yes, it was.

5 MR. HENNES: Your Honor, if I may, I'm happy to

6 hand up the order that was not entered but that was proposed

7 by --

8 THE COURT: Is it in the books?

9 MR. HENNES: It is not in the book, Your Honor.

10 I'm not going to ask Mr. Denton any questions about what

11 Your Honor asked (indiscernible).

12 Q And just a few other questions, Mr. Denton. When you

13 talked earlier --

14 THE COURT: Was the bankruptcy filed before the

15 judge got a chance to sign the order? Is that what

16 happened?

17 MR. HENNES: Yes, Your Honor, that's my

18 understanding.

19 Q When you talked about litigation earlier in the context

20 of the bankruptcy, Mr. Denton, were you talking about

21 preexisting litigation that had already been filed, or were

22 you talking about new litigation that would commence in the

23 context of the bankruptcy?

24 A Which bit of...were you referring to?

25 Q Well, you testified that you expected any bankruptcy

1 that you filed to have litigation and to be contested.

2 A Yes, I did.

3 Q Do you -- what did you mean by that?

4 A Simply that where Charles Harder and his team have had

5 the opportunity to make things complicated and expensive,

6 they've taken that opportunity.

7 Q So, does that mean you would expect they would file new

8 litigation in the context of your bankruptcy

9 (indiscernible)?

10 A I've been advised that's highly likely.

11 MR. HENNES: Thank you, Your Honor. No further

12 questions.

13 THE COURT: All right. You can step down. Thank

14 you.

15 MR. DENTON: Thank you.

16 THE COURT: Why don't we take a recess now until 2

17 o'clock?

18 MR. HENNES: Fine, Your Honor.

19 MR. FISHER: Okay, thanks.

20 (break)

21 THE COURT: Please be seated. Call your next

22 witness.

23 MR. HENNES: Good afternoon, Your Honor. Gawker

24 calls William Holden.

25 THE COURT: Raise your right hand, please. Do you

1 solemnly swear that the testimony you're about to give will

2 be the truth?

3 THE WITNESS: I do.

4 THE COURT: Please take a seat. Speak into the

5 microphone and state and spell your name.

6 THE WITNESS: Pardon?

7 THE COURT: State and spell your name, please.

8 THE WITNESS: William Holden, W-I-L-L-I-A-M,

9 Holden, H-O-L-D-E-N.

10 THE COURT: Okay, proceed.

11 DIRECT EXAMINATION

12 BY MR. HENNES:

13 Q Mr. Holden, good afternoon, let's talk a little bit

14 about your background. Where are you currently employed?

15 A I'm employed by Opportune, LLP.

16 Q What is Opportune?

17 A It is a consulting firm.

18 Q Does it have a particular area of consulting that it

19 specializes in?

20 A The area which I focus in at Opportune is their

21 financial and operational restructuring advisory services.

22 Q How long have you been employed by Opportune?

23 A Roughly five months since February of 2016.

24 Q What's your current position at Opportune?

25 A I'm managing director.

1 Q And as a manager director at Opportune, what does your

2 job entail?

3 A My job entails working with predominantly debtors and

4 companies that are going through some form of financial

5 operational distress and that of coming in as an advisor or

6 coming in as an officer of the company to help them guide

7 them through the financial restructuring or operational

8 restructuring process.

9 Q Where were you employed before Opportune, Mr. Holden?

10 A I was with Alvarez & Marsal for three years.

11 Q And what was your role at Alvarez & Marsal?

12 A It was the same as at Opportune. I provided financial

13 and operational restructuring advisory services.

14 Q What did you do before being employed by Alvarez &

15 Marsal?

16 A I had my own firm, the Boathouse Group, which did

17 exactly the same. We were providing operational and

18 financial advisory restructuring services. I did that for

19 approximately four years.

20 Q And prior to having your own firm, what did you do?

21 A Prior to my own firm, I had been working with an

22 investment bank, Greenhill, for two to three years,

23 predominantly just doing balance sheet restructures. And

24 prior to that, I had spent four to five years in exactly the

25 same role that I'm in right now, predominantly as an

1 operator, providing operational restructuring advisory
 2 services.

3 Q How long have you been working with companies on
 4 restructuring matters, Mr. Holden?

5 A Approximately 15 years.

6 Q And before that, what did you do?

7 A I started my career as an analyst at Merrill Lynch in
 8 their investment banking training program. I did that for
 9 approximately three years.

10 Q Will you please briefly describe for the Court your
 11 educational background?

12 A Undergrad degree in business administration that I got
 13 from Skidmore College, a Masters degree from Columbia
 14 Business School, my MBA.

15 Q In your career, how many restructurings have you worked
 16 on (indiscernible)?

17 A I worked on 25 to 30 restructurings.

18 Q And of those 25 to 30, how many been involved the sale
 19 of a company's assets?

20 A At least half of them have involved the sale of a
 21 company.

22 Q Let's turn to the Debtors in this case. Are you
 23 familiar with Gawker Media, LLC and Gawker Media Group,
 24 Inc.?

25 A Yes, I am.

1 Q Is Opportune engaged be either or both of them?

2 A Opportune is engaged directly by Gawker Media, Inc.,
 3 and all of its affiliates, which in this case includes
 4 Gawker Media, LLC.

5 Q And what has Opportune been engaged to do?

6 A We were initially engaged to come in and help determine
 7 contingency plans for the company, predominantly focused on
 8 the operational side. And then first thing to go after was
 9 the liquidity of the company, understanding the liquidity of
 10 the company and the treasury function, developing forecasts
 11 and models to be able to see what type of runway we had.

12 And we also were supporting both a sale process and a
 13 DIP raising process where we were the folks on the inside of
 14 the company, gathering, analyzing, providing data,
 15 supporting both those two processes.

16 Q You mentioned contingency planning. What were you
 17 contingency planning around?

18 A The immediate issue (indiscernible) company was a
 19 potential final judgment in relationship to the Bollea
 20 litigation.

21 Q When did you first start working at Gawker, Mr. Holden?

22 A I believe my first day was the 15th of May.

23 Q Is that of 2016?

24 A I apologize -- of 2016.

25 Q What was your title when you first started working at

1 Gawker?

2 A Engagement managing director.

3 Q Was that in a consultancy or in an officer capacity?

4 A That was in a consultancy capacity.

5 Q Did your title change at some point?

6 A Yes, we drafted or we entered into a new engagement
 7 letter I believe on June 6th. And that engagement letter
 8 basically put me in as an officer of the company as their
 9 chief restructuring officer.

10 Q When you were a consultant to Gawker, Mr. Holden, to
 11 whom at Gawker, did you report?

12 A I reported to Nick Denton.

13 Q As the chief restructuring officer at Gawker, Mr.
 14 Holden, to whom do you report?

15 A I report to Nick Denton.

16 Q In your time at Gawker, have you ever reported to
 17 anyone other than Nick Denton?

18 A No.

19 Q Let's talk a little bit about your role at Gawker in
 20 the context of being the chief restructuring officer. But
 21 first, when you were a consultant, what were your
 22 responsibilities?

23 A As consultant, it was predominantly treasury --
 24 managing the treasury or overseeing the treasury function.
 25 The other big work stream was supporting the sales, as well

1 as the DIP raising. I guess the third work stream was
 2 preparing for bankruptcy and preparing all the first-day
 3 motions, first-day orders, all the necessary declarations
 4 that go along with that, as well as the first-day affidavit.

5 Q And what are your responsibilities now as CRO?

6 A My role going from engagement managing director to
 7 chief restructuring officer, the work stream stayed the
 8 same. I believe the only real difference that happened was
 9 that I was now an authority in the company able to make a
 10 lot more decisions independently. There's a deluge of small
 11 and remedial types of tasks in terms of how you organize
 12 invoices, how you review different types of obligations that
 13 you may have. And as the officer of the company, I was able
 14 to have a little bit more independence and work a little bit
 15 more efficiently than as just an advisor.

16 Q Mr. Holden, do you know whether Gawker went through
 17 what's called a stalking horse bid process?

18 A That's the sale process that I was referring to
 19 earlier.

20 Q And did you play a role in that stalking horse process?

21 A Yes, I did. Predominantly I was the boots on the
 22 ground that was gathering a fair majority of all the
 23 information that was being supplied to a data room. I was
 24 also interacting with some of the potential bidders. It was
 25 all predominantly in a support role in arming Nick Denton

1 with what he needed in terms of facing all of the -- I think
2 it was six bidders that we had pre-petition.

3 Q Who led the asset sale process at Gawker? Excuse me,
4 strike that. Who led the stalking horse process at Gawker?

5 A It was Nick Denton who led the process.

6 Q And what was Mr. Denton's role in that process?

7 A He was the person that everyone wanted to talk to.
8 He's the one who all the bidders wanted to talk to. He was
9 the one who communicated the message of our company, the
10 story about the company. He was certainly involved in any
11 negotiations that were going on with the company -- sorry,
12 with the company and whoever the potential bidders were. He
13 was the one who was making decisions. He was intimately
14 involved.

15 Q Let's turn to the asset sale process that is now going
16 on at Gawker, Mr. Holden. Are you aware of that process as
17 well?

18 A Yes, I am.

19 Q And are you involved in that process?

20 A Yes, I am.

21 Q What role do you play in the asset sale process?

22 A Very similar to before, where I am managing and
23 compiling most of the data and information analyses. These
24 are typically asked for by Denton and others -- Houlihan
25 Lokey, who is the investment bank on the engagement -- and

1 compiling that information, putting together analyses,
2 checking for potential opportunities of analyses that we
3 could create into a certain extent validating and verifying
4 some of the information that's being provided.

5 Q At current, in general terms, where does that process
6 stand?

7 A As we filed, we went into a no-shop period for two
8 weeks approximately. And since that no-shop period has
9 ended, we have started going out and soliciting interest
10 from other bidders. Well, from certainly bidders who we had
11 pre-petitioned as well, as well as additional bidders.

12 Q With respect to the parties who ultimately are
13 interested in buying Gawker Media's assets, what is Mr.
14 Denton's role with respect to the bidders?

15 A Well, he has a -- it's a unique role in the context of
16 restructuring, because you're not selling a distressed
17 asset. You're selling a very healthy asset, in fact -- one
18 that does generate positive cash flow and one that has a
19 story that goes along with it. This is not a sale of assets
20 and bricks and mortar. This is a sale of a media brand.
21 And with a media brand, there's an extraordinary amount of
22 intangibles that go along with that. And that can be on the
23 themes that you have in the editorials that you write, with
24 the real goal of making sure that you're able to continue to
25 attract your customer base, your customer base being

1 basically your readership. That story is not something that
2 can be easily conveyed, unless you have sort of the intimate
3 knowledge and have been involved in it since its inception.

4 Q Based on your experience at Gawker, is there anyone
5 else at Gawker that could take the lead in place of Mr.
6 Denton?

7 A There is no one else at the company that I've seen that
8 can thread together all the various pieces and components of
9 the business into one cohesive story and discussion.

10 Q Do you expect Mr. Denton's role to differ in the asset
11 sale process than in the stalking horse process?

12 A It will. It will be much busier. Pre-petition, it was
13 a little bit more compacted in terms of timeframe. But we
14 had fewer bidders. And post, the process that we're in now,
15 it's the number of potential bidders has multiplied
16 significantly.

17 Q In your experience in restructurings and asset sales,
18 Mr. Denton, is the role that Mr. Denton's playing similar to
19 the role that a CEO would play at other companies?

20 A Absolutely. It is that role.

21 Q And based on what you've seen at Gawker during the
22 stalking horse process, what time commitment would you
23 expect from Mr. Denton during the asset sales process?

24 A It's an extensive amount of time. There is basically
25 three roles that he's playing right now. One is running the

1 day-to-day operations, maintaining the operations of the
2 company. The other is dealing with litigation that is
3 outside of -- or that is directly at him personally. And
4 the third is trying to sell this company. Trying to sell
5 this company means that you have to basically be on call
6 24/7. That's not only for the one-off questions that come
7 in from potential bidders that you need to get on the phone
8 and address right away, but it's also for the myriad of
9 meetings and phone calls and dinners that you need to be
10 having with all the potential interested CEOs.

11 Q Mr. Holden, has Houlihan Lokey been retained by Gawker?

12 A Yes, it has.

13 Q What is Houlihan Lokey's role in the asset sale?

14 A They're the investment bankers. The process I liken
15 them to more of a traffic cop or air traffic controller,
16 where they are the primary source of all information coming
17 in. It comes in through Houlihan. From Houlihan, it's
18 determined how best to respond to those inbound requests.
19 Sometimes they can reach into the data room to pull out
20 requests. Sometimes they reach to me to pull together
21 analyses. And then there's obviously the requests that come
22 in which are directly strictly to Nick Denton, which only
23 Nick Denton can respond to.

24 Q Could Houlihan Lokey replace Mr. Denton in this
25 process?

1 A You would not be able to -- without Nick Denton
 2 involved in this process, you would not be able to get the
 3 best value for these assets.
 4 Q Could some combination of you, Ms. Dietrick, and
 5 Houlihan Lokey replace Mr. Denton?
 6 A There's no combination of any people that could help
 7 you obtain highest and best value for this company through
 8 the sale process.
 9 Q Mr. Holden, do you think Mr. Denton's necessary to
 10 getting the best possible value for the company in the asset
 11 sales process?
 12 A He's critical to it.
 13 Q Why?
 14 A As I stated before, he knows things about this company
 15 that no one else knows. He understands where his mistakes
 16 were made in the past over the last 14 years of building
 17 this company. He knows what successes he's had. He's the
 18 one able to communicate those to people.
 19 There's a theme, there's a style about him, there's a
 20 leadership quality about him which provides that value to
 21 this media brand that neither Heather nor me nor Houlihan
 22 nor anyone else can really convey.
 23 Q Based on your experience at Gawker, Mr. Holden, if Mr.
 24 Denton was forced to file for personal bankruptcy, would
 25 that have an effect on the sale process?

1 MR. FISHER: Objection. Foundation.
 2 Q Mr. Holden, if there was an additional responsibility
 3 put on Mr. Denton that took away from his job as running the
 4 company in the asset sale, do you believe that that would
 5 have a positive or a negative impact on the asset sale?
 6 MR. FISHER: Objection.
 7 THE COURT: Overruled. The answer is pretty
 8 obvious. You can answer the question.
 9 A I don't see how adding more to his plate would make him
 10 able to perform better at obtaining the high investment
 11 value for the company.
 12 Q Mr. Holden, I'd like to draw your attention to what's
 13 been previously marked as Bollea Exhibit I in your binder.
 14 Yes, it's in one of those (indiscernible).
 15 MR. HENNES: Your Honor, Exhibit I.
 16 Q Mr. Holden, please tell me when you're there.
 17 A I'm there.
 18 Q Do you recognize this document?
 19 A Yes, sir.
 20 Q What is it?
 21 A It is the initial engagement letter that Opportune and
 22 Gawker Media entered into on May 14.
 23 Q And when is it dated?
 24 A It is dated as of May --
 25 Q You answered that question (indiscernible).

1 A You're welcome.
 2 Q I'd like to draw your attention to what's been
 3 previously marked as Bollea Exhibit K now.
 4 A Yes, sir.
 5 Q Do you recognize this document?
 6 A This is the engagement letter which replaced the prior
 7 engagement letter dated as of June 6, which changed my title
 8 from an engagement managing director to CRO.
 9 THE COURT: Did you say A?
 10 MR. HENNES: K, Your Honor. K like
 11 (indiscernible).
 12 Q Have you reviewed both letters?
 13 A Yes, I have.
 14 Q Which is the operative letter for your current
 15 engagement?
 16 A The operative letter is the Exhibit K.
 17 Q Is that the June 6 letter?
 18 A Yes, the June 6 letter, yes.
 19 Q Please turn to Paragraph 1 of the June 6 letter, Mr.
 20 Holden. Do you see that?
 21 A Yes.
 22 Q Under the heading Scope of Services, it states,
 23 "Opportune will provide the following financial advisory
 24 services as requested and directed by the company's senior
 25 management and/or company's members, managers, board of

1 directors, or their equivalent." Do you see that?
 2 A Yes, I do.
 3 Q Is that your understanding of the reporting function
 4 for your engagement?
 5 A Yes, sir.
 6 Q And who at the company will you be taking direction
 7 from?
 8 A I'm taking direction from Nick Denton.
 9 Q Will you turn to Page 2? Under the heading
 10 Responsibilities. Are you there, Mr. Holden?
 11 A Yes, I am.
 12 Q Pardon. It says, "Subject to applicable bylaws,
 13 corporate governance processes and with the assistance of
 14 the company's management, the CRO will have primary
 15 responsibility for the following finance and accounting
 16 functions and reorganization efforts." Do you see that?
 17 A Yes, I do.
 18 Q Are you the CRO listed in that paragraph?
 19 A Yes, I am.
 20 Q If you'll look at Paragraph 4, Subparagraph Romanette
 21 4, it then says, "Coordinate and manage potential sales of
 22 the company's assets and/or development of its
 23 (indiscernible) statements or proposal plan for the
 24 organization, including negotiations with stakeholders and
 25 counter partners." Do you see that?

1 A Yes, I do.

2 Q Mr. Holden, do you now have or have you ever had

3 primary responsibility for coordinating and management of

4 sale of Gawker Media's assets?

5 A I do not have primary responsibilities. It is,

6 however, one of my primary responsibilities.

7 Q Who has the primary responsibility for the sale of

8 Gawker Media's assets?

9 A Nick Denton has the primary responsibility.

10 Q So why does the --

11 A For the sale of the assets.

12 Q So why does the letter say that you have primary

13 responsibility?

14 A This may be overly broad or it may be poorly worded. I

15 certainly have a primary responsibility in terms of certain

16 aspects of the potential sale of the company's assets.

17 That's absolutely evident and clear. For the overall

18 arching process, that is not the case.

19 Typically, we write these letters to be fairly broad

20 upon coming into an engagement to account for anything that

21 we don't know about the situation, as we're fairly new to

22 the situation. We don't want to limit ourselves in any

23 potential ways.

24 Q Staying on Romanette 4, Mr. Holden, do you have primary

25 responsibility for negotiations with stakeholders and

1 counter partners?

2 A For some stakeholders and counter parties, absolutely.

3 Not for the potential bidders. My stakeholders and counter

4 parties that I deal with are typically more of the likes of

5 vendors or potential lenders or customers or employees.

6 Q Who has the primary responsibility at Gawker for

7 negotiating potential bidders?

8 A Nick Denton does.

9 Q Mr. Holden, I'd like to switch topics for a brief

10 moment and talk about the issue of the various litigations

11 that have been filed (indiscernible). Are you aware of the

12 Bollea litigations before?

13 A Yes, I am.

14 Q And in your capacity as chief restructuring officer,

15 are you aware of the amount of money that Gawker Media spent

16 on fees and costs in defending the Bollea litigation?

17 A For the Bollea litigation over the last three-plus

18 years, it has been approximately \$13 million that has spent

19 -- nine of that has come directly out of the company's

20 coffers. The balance \$4 million has come from insurance.

21 Q And what do you base that understanding on? Where do

22 you get that information?

23 A Based on the books and records of the company,

24 interviews with Heather Dietrick about various legal bills,

25 as well as conversations with outside counsel.

1 MR. HENNES: Your Honor, pass the Witness.

2 THE COURT: Yeah, cross-examination?

3 MR. FISHER: Eric Fisher on behalf of Mr. Bollea.

4 May I proceed, Your Honor?

5 THE COURT: Yes.

6 CROSS-EXAMINATION

7 BY MR. FISHER:

8 Q Mr. Holden, would you please turn to Exhibit R in the

9 exhibit binder?

10 A Yes, sir.

11 Q That's the declaration that you submitted in support of

12 the motion that brings us here today?

13 A Yes, sir.

14 Q And that's your signature on the final page of the

15 exhibit?

16 A Yes, sir.

17 Q And you signed this declaration on June 10, 2016?

18 A It is dated June 10. I assume that I signed it on June

19 10th as well.

20 Q And that's the same date that Gawker, LLC filed for

21 bankruptcy?

22 A That's correct.

23 Q And as of the date that you signed this declaration,

24 you had been working for the company for less than a month,

25 right?

1 A That's correct.

2 Q And in part, this declaration describes how the company

3 functions. Is that fair to say?

4 A That's correct.

5 Q This declaration doesn't even mention Opportune, does

6 it?

7 A I would have to review it thoroughly.

8 Q In addition to yourself, are there others from

9 Opportune who work for the Debtors?

10 A I have a team with me, yes.

11 Q And that's an Opportune team in particular that you're

12 talking about?

13 A That's correct.

14 Q How many Opportune individuals are working on this

15 engagement?

16 A I have two Opportune team members on site with me and

17 another back in Houston.

18 Q And are any of the members of your staff mentioned in

19 this declaration?

20 A I don't believe -- stand by. In Paragraph 2, I believe

21 I mentioned them. My employees working under my

22 supervision.

23 Q And to Paragraph 2 talks about the basis for the

24 knowledge on which you prepared this declaration. If that a

25 fair characterization of that paragraph?

1 A That's correct.

2 Q And so you mentioned Opportune employees as individuals
3 who provided you with information that helped you prepared
4 this declaration, right?

5 A They are part of the team that helped provide me for
6 information for this declaration.

7 Q This declaration doesn't talk at all about the role of
8 that Opportune is playing in the restructuring of these
9 Debtors, does it?

10 A I'd have to go through a review of it, if you want me
11 to do that.

12 Q That's all right, I'll move on. Houlihan Lokey is
13 engaged as the company's investment banker, right?

14 A That's correct.

15 Q Houlihan Lokey is not mentioned in this declaration,
16 are they?

17 A Again, I'd have to review the document. I'm not that
18 intimate with it.

19 Q Who prepared the declaration?

20 A I prepared it with my team, with the help of counsel,
21 as well as help from the company.

22 Q And you just don't, sitting here today, you don't
23 recall one way or the other whether this document that we're
24 looking at mentions Opportune?

25 A It's a very short document. I can read it very

1 quickly.

2 Q Why don't you just --

3 A My suspicion is that it does not.

4 Q If the Court will allow, why don't we take just a
5 couple of moments to take a quick look at it?

6 A That would be great.

7 So I see two places that I believe it's at least
8 mentioned indirectly. By virtue of me being the chief
9 restructuring officer and appointed as the chief
10 restructuring officer through my engagement letter, I would
11 think that that would indirectly rope Opportune into this.

12 Furthermore, it says on a --

13 Q I'm sorry, what were you referring to in particular?

14 MR. HENNES: Your Honor, if you'll let him finish
15 his --

16 THE COURT: I'm just wondering why we're spending
17 time on this particular (indiscernible).

18 MR. FISHER: Let me try to ask the question in a
19 different way.

20 THE COURT: Please do.

21 MR. FISHER: Forget my earlier question.

22 Q This declaration does not describe the role that
23 Opportune is playing with respect to these Debtors, correct?

24 A Describe the role that I'm playing? It indicates me as
25 the chief restructuring officer. Does that not describe my

1 role?

2 Q And as chief restructuring officer, you play an
3 important role in the treasury function of the company?

4 A I do.

5 Q And this declaration does not talk about Opportune's
6 involvement in the treasury function of the company, right?

7 A (Indiscernible). No, directly it does not reference
8 the treasury function.

9 Q And you're involved in the sales process?

10 A That is correct.

11 Q And this does not talk about your role or Opportune's
12 role in the sales process, right?

13 A Directly, I don't believe so.

14 Q And you're similarly involved in the bankruptcy process
15 directly, right?

16 A Yes.

17 Q And this declaration does not talk about Opportune's
18 role there either, right?

19 A It reference's my first-day declaration, which is all
20 about the bankruptcy process.

21 Q Houlihan Lokey, they play an important role in the
22 sales process?

23 A Yes.

24 Q Their role in the sale process is not mentioned in your
25 declaration, right?

1 A I don't have my declaration in front of me.

2 Q I refer to Exhibit R. That declaration that your
3 looking at right now, it does not discuss Houlihan Lokey's
4 role in the sale process, right?

5 A Do we not talk about the sales process at all in this
6 declaration?

7 Q Mr. Holden, the declaration talks about Mr. Denton's
8 role in the sales process, right?

9 A Correct.

10 Q But it doesn't talk about Houlihan's role in the sales
11 process, right?

12 A Houlihan Lokey's not mentioned in this declaration.

13 Q And it doesn't talk about Opportune's role in the sale
14 process?

15 A Haven't I already answered that already?

16 THE COURT: Just answer the question.

17 A Sorry. Directly, yes, it does. It mentions me as the
18 chief restructuring officer. It also mentions my first-day
19 declaration.

20 Q You work closely with Mr. Albertson?

21 A Yes, I do.

22 Q And he's the chief operating officer?

23 A Yes, he is.

24 Q And what are his functions at the company?

25 A He's the chief operations officer. I have not seen a

1 formal job description for him. He seems to be involved
 2 across the organization, primarily taking a real role with
 3 the finances and the accounting of the company. However, a
 4 heavy side on the sales side as well, is my suspicion. I
 5 don't watch him from day to day, so I'm not entirely sure of
 6 everything that he does in his day to day.
 7 Q And Mr. Albertson's role at the company is not
 8 discussed in this declaration, is it?
 9 A I'm going to assume that his name is not mentioned in
 10 here.
 11 Q And as of the date that you submitted this declaration,
 12 the Debtors had already engaged Opportune certainly, right?
 13 A Yes.
 14 Q And they had engaged Houlihan?
 15 A Yes.
 16 Q And both of you were working on the engagement, right?
 17 A Both of us were working for the company.
 18 Q And in terms of Houlihan's role with respect to the
 19 sales process, you described them as a traffic cop, is that
 20 right?
 21 A Correct.
 22 Q Air traffic controller?
 23 A Those were my words.
 24 Q How are they being compensated for that role?
 25 A They're being compensated on the ultimate value of the

1 sale of the assets.
 2 Q But they're not really bringing any value to the
 3 Debtors, right?
 4 A They are compensated based on an industry standard
 5 which relates to the value of the assets that are sold.
 6 When you ask whether or not they are bringing value to the
 7 transaction, it depends on who you're asking it from and the
 8 perception. I absolutely think that they are adding value
 9 to the process. It's not just the traffic cop that they are
 10 necessarily being, but they will also have a very important
 11 roles towards the end of this as we start evaluating
 12 different offers and understanding the economic implications
 13 of different bids that we get.
 14 Q And in terms of the sale process that the company is
 15 currently engaged in, Houlihan sources potential bidders for
 16 the company, right?
 17 A They will identify bidders. They will work to a
 18 certain extent with the bidders.
 19 Q So it's they will identify bidders. Is that what you
 20 mean?
 21 A They can find the names of bidders, yes. They can
 22 bring people to the table.
 23 Q And they interact with those potential bidders?
 24 A Yes, they will.
 25 Q And they coordinate information flow with those

1 potential bidders?
 2 A That will be the traffic cop role.
 3 Q And they attend meetings with those potential bidders?
 4 A That's correct.
 5 Q Can they handle any inbound expressions of interest
 6 that the company receives?
 7 A That's correct.
 8 Q And they set up a data room to assist in the sales
 9 process?
 10 A Setting up a data room for them is more of a technical
 11 matter. It's the populating of the data room and decisions
 12 about what goes into those data rooms that's the more
 13 sophisticated side to that.
 14 Q Is that something Mr. Denton does, decide what goes
 15 into the data room?
 16 A Certainly will have a role in that.
 17 Q So what's in the data room that Mr. Denton decided
 18 ought to be in the data room?
 19 A There are presentations that he's put together in the
 20 past. There are analyses that he's put together in the
 21 past. I can think of one thing specifically which started
 22 him scratching on a piece of paper in terms of how he wanted
 23 to outline a certain presentation and the slides. And so
 24 that evolved into I think what the CIM is today, those
 25 analyses that I've seen him scratch out both in Excel and on

1 pieces of paper which have evolved into the final output
 2 that we provided to bidders.
 3 Q And you mentioned the word CIM. What does that stand
 4 for?
 5 A It is an industry standard for Confidential Information
 6 Memorandum. This is not in fact a SIM in the traditional
 7 sense. This is more of a high level deck that's being used
 8 to market the company for initial bidders.
 9 Q And Mr. Denton played an important in putting together
 10 that high level deck?
 11 A Yes.
 12 Q And that deck is found in the data room?
 13 A That's correct.
 14 Q And potentially interested bidders have access to that
 15 deck?
 16 A Correct.
 17 Q And the expressions of interest that the company is now
 18 getting from buyers, those expressions of interest are
 19 coming from potential buyers with a lot of familiarity about
 20 the industry that Gawker is in, right?
 21 A I have no idea.
 22 Q Mr. Holden, there's another binder in front of you,
 23 which is a transcript binder. In that binder, would you
 24 please turn to the third tab? And I'm going to ask you
 25 please to turn to Page 11.

1 A Eleven on the small page or 11 on the big page?

2 Q If you go by the small page number, in the right-hand
3 corner, Line 19. We're going to just read a question and
4 answer to you.

5 Question: "Let's talk about the second stream that you
6 mentioned, the sourcing and managing of potential bidders
7 for assets. How is Mr. Denton involved in that process?"

8 Answer: "Again, it was very similar to the process of
9 talking to prospective lenders and far more so than his role
10 in talking with potential lenders. The potential lenders
11 are a simplified lenders, like looking backwards and
12 understanding what the cash flow is at the company, which is
13 not nearly as complicated as a buyer of the company who's
14 looking forward. So the conversations are much more in
15 depth, much more industry specific, much more complicated.
16 And typically the conversations with the buyers of the
17 company are people who have an extraordinary amount of
18 familiarity with the industry, whereas with lenders, it's
19 not. There are more technicians. They're more of lenders,
20 more of underwriters." Were you asked that question and did
21 you provide that answer at your deposition?

22 MR. HENNES: Objection, Your Honor. Improper
23 impeachment. It's not contradictory to what he testified to
24 on direct.

25 THE COURT: Well, the original question was

1 whether the buyers were more familiar (indiscernible) of the
2 industry. And I'm not sure of the answer.

3 THE WITNESS: May I?

4 THE COURT: Yes.

5 THE WITNESS: The initial question that you asked
6 about familiarity the buyers will have with this, I don't
7 know everyone, all of the potential bidders. I don't know
8 their backgrounds. I don't know necessarily who they are.
9 I know some of them have an extraordinary amount of industry
10 knowledge. I don't know if the likes of different private
11 equity shops that are more financial in the nature in the
12 way that they buy, whether or not they have an extraordinary
13 amount of technical knowledge of the industry.

14 And what I'm referring to here is Nick actually
15 providing his technical understanding and knowledge of the
16 industry, not so much as -- and that may be as much of a
17 teaching role here as it is a high level -- or
18 communications with others in the industry.

19 Q Would you turn back in your exhibit binder, please, to
20 Tab R, which is your declaration that we had been looking at
21 before.

22 MR. HENNES: Mr. Fisher, may I trouble you just to
23 speak up. I'm having a hard time hearing you with my --

24 MR. FISHER: I'm sorry, I'm sorry.

25 MR. HENNES: -- with my back to you.

1 MR. FISHER: Yes, I'll speak up.

2 Q Would you look at Paragraph 29 of this declaration,
3 please? The Paragraph 29 begins, "Moreover, Mr. Denton is
4 the primary point of contact for both the Debtor's legal
5 counsel and the financial professionals working with the
6 Debtor during these Chapter 11 cases."

7 The statement that Mr. Denton is the primary point of
8 contact for the Debtor's legal counsel, that's not correct,
9 is it?

10 A I'm not happy with that. I reviewed that subsequently
11 and it was not something that I was very comfortable with.
12 He's not the primary point of contract. He's involved in
13 any major decisions with the legal counsel, but I would
14 assume that he's not the first one from Ropes & Gray that is
15 called.

16 Q And would you say Ms. Dietrick was the primary point of
17 contract with Ropes & Gray?

18 A I would say that's true. And to expand on that for a
19 second, there are certain legal matters where I am the
20 primary point of contract on behalf of the company. So it
21 really depends on what legal matter, what legal issue you're
22 talking about. They're not going to call Nick Denton or
23 Heather Dietrick to figure out whether or not an obligation
24 is bifurcated properly between pre and post.

25 Q And is it fair to say that this declaration, Exhibit R,

1 that we're looking at, is intended to explain what role Mr.
2 Denton plays at the times?

3 A I don't think that's an entirely fair characterization.
4 This does not give the detail of his day to day and he's
5 involved with at the company day to day. I don't believe
6 that's the intention of his document.

7 Q Does it generally describe Mr. Denton's role at the
8 time?

9 A I'm not sure it entirely does that even. I think that
10 there's a lot more to Nick Denton's role at the company that
11 is not even touched on here.

12 Q As of June 10, 2016, when you submitted this
13 declaration, you had known Mr. Denton for less than a month?

14 A That's correct.

15 Q Now, would you turn to the Nick Denton section of this
16 declaration that starts at Paragraph 10?

17 A Yes.

18 Q Paragraph 10 talks about the founding of the company in
19 2002. You weren't there for that, right?

20 A No, I was not.

21 Q And Paragraph 12 talks about Mr. Denton's educational
22 background. You don't have any personal knowledge about Mr.
23 Denton's educational background, do you? Yes or no.

24 A No, I don't know anything about his academic
25 background, other than what I've been told.

1 Q And Paragraph 13 talks about the launch of Gawker.com.
 2 Again, you don't have any personal knowledge about that,
 3 right?
 4 A Sorry, the --
 5 Q Paragraph 13.
 6 A And what was the question?
 7 Q Oh, it talks about the launch of Gawker.com. You don't
 8 have any personal knowledge about the launch of Gawker.com?
 9 A No, I do not.
 10 Q And it refers to a class that Mr. Denton taught at
 11 Berkeley. You didn't take the class, did you?
 12 A No, I did not.
 13 Q And you don't know anyone who did?
 14 A No, I do not.
 15 Q And you talk about Mr. Denton's book, All That
 16 Glitters, his 1997 book. Did you read that book?
 17 A I did not read that book.
 18 Q And if you look at Paragraph 16 please, you state there
 19 that Mr. Denton makes significant editorial decisions. And
 20 then the paragraph continues. "In fact, since June 2016,
 21 Mr. Denton has not made a single editorial decision about
 22 whether or not to publish a particular piece." Did you know
 23 that?
 24 A I do not know that, nor is it something that I would
 25 necessarily know about.

1 Q So you don't know one way or the other about what
 2 editorial decisions Mr. Denton has or has not made?
 3 A I'm relying on information that I've gotten from the
 4 company, from my staff, from other people within the firm.
 5 Q What information did you get from the company about Mr.
 6 Denton's role in the editorial decision-making?
 7 A That I had a conversation, I had a discussion. I did
 8 my due diligence on what was in this declaration, while
 9 preparing it and while reviewing it.
 10 Q Who did you have a conversation with about Mr. Denton's
 11 role in the editorial decision-making?
 12 A I could have had it with numerous people. I could have
 13 had it with Heather. I could have had it with Josh. And I
 14 could have had it with any of the other people within the
 15 firm that I interact with.
 16 Q But who did you have it with?
 17 A I'm not sure.
 18 Q What is the basis for what you say about Mr. Denton in
 19 this declaration?
 20 A One of the reasons why people hire folks like me is
 21 because of our ability to get up to speed on situations and
 22 find the important pieces and get comfortable and familiar
 23 with them. So the conversations that I've had with Nick,
 24 conversations that I've had with Heather, with Josh, with
 25 other folks who are at the firm, or whether or not that's a

1 direct conversation about what Nick is or is not doing on a
 2 daily basis, or whether or not it's anecdotal information
 3 about how he may be involved in certain things and not
 4 involved in others, it's not always -- and the skill is
 5 actually to try and get it through softer channels, and get
 6 familiarity and comfort and understanding with it.
 7 There's nothing here that I read or that I put together
 8 that I was not comfortable with it. Some of it is factual.
 9 So it's not something that I would necessarily need to
 10 check. And I have no reason to believe that the information
 11 that's being given to me is not factual. When he graduated
 12 from college or when things were started or the existence of
 13 litigation or who's making decisions, I believe it to be
 14 factual.
 15 Q When Mr. Denton did not submit a declaration in support
 16 of the company's request (indiscernible)?
 17 A No, he did not.
 18 Q And Ms. Dietrick didn't submit a declaration in
 19 support, did she?
 20 A I don't believe that she did. I'm not sure.
 21 Q And both of them have more personal knowledge than you
 22 do about the role that Mr. Denton plays at the company,
 23 don't they?
 24 A Right, but we've already discussed that this isn't
 25 about --

1 Q Well, it's a yes or no question, sir. (Indiscernible).
 2 A So ask the question again, sorry.
 3 Q Yes. Does Mr. Denton have more personal knowledge
 4 about his role at the company than you?
 5 A Yes.
 6 Q Does Ms. Dietrick have more personal knowledge about
 7 Mr. Denton's role at the company than you?
 8 A Yes.
 9 Q Would you turn please to Paragraph 20 of your
 10 declaration?
 11 A Yes.
 12 Q The section heading that proceeds Paragraph 20 says The
 13 Actions. Do you see that?
 14 A Yes, I do.
 15 Q And this describes a series of litigations that the
 16 company's involved in?
 17 A That's correct.
 18 Q And you don't have personal knowledge about any of that
 19 litigation, do you?
 20 A Personal knowledge meaning? Sorry.
 21 Q Meaning that you have any firsthand information, as
 22 opposed to information that was conveyed to you by somebody
 23 else?
 24 A No, I have no firsthand source information I'm relying
 25 on. People at the firm are relying on Ropes & Gray. I'm

1 relying on (indiscernible) people I have no reason to assume
 2 that their judgment is inaccurate or misleading.
 3 Q And on Page 9, the first bullet point, that describes
 4 the Bollea allegation. Right? Do you see that?
 5 A Yes. That's correct.
 6 Q And at the very end of that section, two sentences from
 7 the end of that section, it says, quote, "The Court has
 8 refused to reduce the cash bond and denied Gawker Media's
 9 request to post stock or alternative collateral in lieu of
 10 the bonds. As of June 10, 2016, the judgments in the Bollea
 11 litigation became available for execution," close quote.
 12 Before you put that in your declaration, did you review
 13 the transcript from the Florida proceedings?
 14 A This was prepared --
 15 Q Again, Mr. Holden, it's a yes or no question. You'll
 16 have an opportunity to elaborate on your direct.
 17 A Oh.
 18 Q So the question is simply did you review the
 19 transcripts from the Florida Court in connection with
 20 swearing to those two sentences in your declaration?
 21 A No.
 22 Q Would you turn in the same binder to Tab Y, please? Is
 23 that the declaration you referred to as your declaration in
 24 support of the first-day motions?
 25 A Yes.

1 Q Would you turn please to Paragraph 37 of your
 2 declaration? I just want to focus your attention on Page
 3 18, where that paragraph continues. There's a sentence that
 4 says, "Well, Gawker Media appeared before the trial court
 5 again on June 10, 2016. But the trial court refused to
 6 reduce the bond or allow the company to post its stock or
 7 alternative collateral in lieu of the \$50 million bond,"
 8 close quote. Do you see where I'm reading?
 9 A Yes, I do.
 10 Q And before including that sentence in your declaration,
 11 did you review any materials on the Florida allegation?
 12 A I believe this is the same question as before?
 13 Q Right, but being asked about a different declaration.
 14 So did you review any materials from the Florida litigation
 15 before you included that sentence in your declaration in
 16 support of the first-day motions?
 17 A No.
 18 Q Sorry to make you flip around so much, but if you could
 19 flip back to Exhibit R again, which is your declaration in
 20 support of this motion. Paragraph 26, which is on Page 12
 21 of your declaration.
 22 A Yes.
 23 Q You say there, quote, "The Debtor's indemnification
 24 obligations as to Mr. Denton and the individual defendants
 25 mean that in addition to having to pay for defense costs,

1 any judgments that are entered against Mr. Denton or the
 2 individual defendants would have a crippling effect on the
 3 Debtor's estates," close quote.
 4 MR. HENNES: Objection, Your Honor. As the Court
 5 is aware, we've withdraw indemnification as a basis for this
 6 motion. And obviously questions about indemnification are
 7 not relevant to this proceeding.
 8 THE COURT: What's the relevance?
 9 MR. FISHER: Your Honor, it goes to credibility at
 10 the time that this declaration was submitted. The
 11 indemnification was very much alive.
 12 THE COURT: I'll overrule the objection. You can
 13 answer the question.
 14 Q Mr. Holden, my question is that statement, that "any
 15 judgments entered would have a crippling effect on the
 16 Debtor's estates," that does not apply to the Bollea
 17 litigation, right?
 18 A Give me one moment. And your question is how does this
 19 relate to the Bollea litigation?
 20 THE COURT: I don't understand the question.
 21 Q As of the date when you submitted this declaration, the
 22 judgment in the Bollea litigation had already been entered,
 23 right?
 24 A Yes.
 25 Q And there no prospect of that judgment getting bigger,

1 was there?
 2 MR. HENNES: Objection. I couldn't hear the
 3 question, Your Honor.
 4 Q There was no prospect of the harm from the Bollea
 5 judgment getting bigger, was there?
 6 A There was the prospect of execution, which could have
 7 caused a crippling effect. Did I answer your question? I'm
 8 sorry.
 9 Q Well, my question -- the harm from the Bollea
 10 litigation had already happened, right? The judgment had
 11 been entered?
 12 A And help me with timing here (indiscernible)?
 13 Q Mr. Holden, I withdraw the question.
 14 THE COURT: Let me ask. Stop. What was the
 15 crippling effect that you were referring to in Paragraph 36?
 16 THE WITNESS: I mean, it was the filing of the
 17 company.
 18 THE COURT: I'm sorry, it was what?
 19 THE WITNESS: It was the filing of the company
 20 that is the crippling effect to --
 21 THE COURT: But the company had already filed when
 22 you --
 23 THE WITNESS: Okay, so --
 24 THE COURT: -- when you submitted this declaration.
 25 THE WITNESS: Okay, so I'm --

1 THE COURT: So what further crippling effect was
2 there?

3 THE WITNESS: I'm sorry, I -- okay. The
4 indemnification obligations -- sorry, and I'm messing up
5 what exactly we're referring to. This is in regards to the
6 indemnification applications. If Nick Denton were not
7 indemnified -- I believe that this is where you're heading --
8 -- if Nick Denton were not indemnified and were made to go --
9 and did not have a state to protect him, the reorganization
10 efforts beyond the filing that we've already done and the
11 reorganization efforts being, at this point, certainly the
12 sale of the assets, would be crippled.

13 Q Would you turn to Paragraph 28, please? Mr. Holden, in
14 that paragraph, you assert that a personal bankruptcy case
15 would be tremendously distracting to Mr. Denton, right?

16 A Yes.

17 Q You have yourself no experience with personal
18 bankruptcies, right?

19 A I have no experience with personal bankruptcies.

20 Q And in your career, you have not advised on any
21 personal bankruptcy matters?

22 A No, I have not.

23 Q You've only worked on corporate bankruptcies?

24 A That's correct.

25 Q And you don't really know what's entailed in a personal

1 bankruptcy, right?

2 A I do not have firsthand knowledge of what's entailed
3 technically from a personal bankruptcy.

4 Q And you do understand though that if Mr. Denton were to
5 file for personal bankruptcy, he could continue to function
6 as the company's CEO, right?

7 A It goes beyond the technical issues of personal
8 bankruptcy, which I'm referring to here.

9 Q But my question is simply he's not (indiscernible) from
10 operating as the company CEO just because he's in personal
11 bankruptcy, right?

12 A I don't believe there's anything in the bylaws, but I
13 would have to check, I guess, or ask someone to check for
14 me.

15 Q So sitting here today, do you have some concern that he
16 might be prohibited from being able to serve as CEO if he
17 were to file for personal bankruptcy?

18 A Now that you bring it up, I don't know. Should I be
19 worried? I'm not sure. I don't know.

20 Q You describe Mr. Denton as having three big-picture
21 duties at the company right now: the day-to-day running of
22 the company, the sale of the company, and we describe
23 personal litigation as a third duty. Do you recall that
24 testimony from your direct?

25 A Yes, I do. But I think you just characterized it a

1 little bit differently.

2 Q Well, you testified that those are his three duties,
3 right?

4 A Not at the company. I said that he has two duties with
5 the company and he's also dealing with personal litigation.

6 Q Okay. Then thank you for that clarification.

7 A You're welcome.

8 Q So he has two duties at the company?

9 A Right now, yes.

10 Q And if Mr. Denton were to file for personal bankruptcy,
11 but were to continue to function as CEO or provide direction
12 to you, would you follow his direction?

13 A Yes, I would.

14 Q Would you be willing to continue to report to him?

15 A Yes, I would.

16 Q And you do know that Mr. Denton has consulted with a
17 personal bankruptcy attorney, right?

18 A I'm aware of that.

19 Q And you were involved in providing him with a loan to
20 pay for his personal bankruptcy attorney?

21 A Yes, I was involved.

22 Q And coming back to what you say about the distracting
23 nature of a personal bankruptcy in your declaration --

24 A Can we step back for one second, just to clarify? The
25 loan for the personal bankruptcy, that loan was not only to

1 cover the cost of the lawyers for the personal bankruptcy,
2 but also for the potential litigation that would continue
3 post his own filing for bankruptcy.

4 Q And what are you referring to there?

5 A Well, the counter parties to all these lawsuits have
6 demonstrated just a willingness to try to roadblock and
7 obstruct and challenge, whether appropriately or
8 inappropriately, Mr. Denton on all fronts. So filing for a
9 personal bankruptcy and not getting the stay, we would
10 really assume that -- and it's appropriate, I think, to
11 assume that that would continue. And that would be a major
12 and massive distraction to him. So the loan to Mr. Denton
13 was not just for his own personal bankruptcy lawyer. It was
14 to help deal with some of those costs as well.

15 Q Okay. But from your experience in corporate
16 bankruptcy, you're generally familiar with how the automatic
17 stay works?

18 A Yes.

19 Q And you're aware that an individual filing for
20 bankruptcy also gets the benefit of an automatic stay,
21 right?

22 A I'm not an expert on personal bankruptcy.

23 Q You don't know whether an individual filing for
24 bankruptcy is protected from litigation claims against him
25 or her?

1 A Again, as you pointed out, I'm not an expert on
2 personal bankruptcy.

3 Q And before you submitted your declaration in support of
4 the TRO and a preliminary injunction, you didn't ask anyone
5 what the time demands of a personal bankruptcy are, did you?

6 A No, I did not. I made an assumption based on what I
7 know about the bankruptcy process.

8 Q And that's what you know about the corporate bankruptcy
9 process?

10 A That's correct.

11 Q And Mr. Holden, you consider yourself to work for Mr.
12 Denton, right?

13 A I work for the board. I report to Nick Denton. I work
14 for Nick Denton, as well as the senior management of the
15 company.

16 Q Would you turn please, in your deposition transcript,
17 to Page 6. Again, from the little numbers on the little
18 pages. Line 23, question: "And who do you work for?"
19 Answer: "I work for Nick Denton." Were you asked that
20 question? And did you provide that answer at your
21 deposition?

22 A Yes, I did.

23 MR. FISHER: Your Honor, if I could just have a
24 moment to confer with my clients?

25 THE COURT: Yes.

1 MR. FISHER: I have no further questions, Your
2 Honor.

3 THE COURT: Re-direct?

4 MR. HENNES: Briefly, Your Honor.

5 THE COURT: Go ahead.

6 RE-DIRECT EXAMINATION

7 BY MR. HENNES:

8 Q Mr. Holden, if you could just direct your attention to
9 Exhibit R, which Mr. Fisher spent a fair amount of time?
10 And turn to Paragraph 2. Could you read that paragraph for
11 the record, please?

12 A "Except as otherwise indicated, the facts set forth in
13 this declaration are based on my personal knowledge, my
14 review of relevant documents, information provided to me by
15 employees working under my supervision, or my opinion based
16 upon experience, knowledge, and information concerning the
17 operations of the Debtor and our industries as a whole."

18 Q Great, thank you. And in submitting this declaration,
19 were you relying on all of those sources in putting it for
20 the Court?

21 A Yes.

22 Q And when you were describing the litigations that you
23 were asked about, whom were you relying on in retelling
24 those facts?

25 A Predominantly relying on Heather Dietrick.

1 Q Was there anyone else other than Heather Dietrick?

2 A I may have reached out to Ropes on one or two things --
3 Ropes & Gray. But I believe that I can specifically recall
4 a number of conversations that I had with Heather about
5 those litigation matters.

6 Q You mentioned briefly and Mr. Fisher asked you a few
7 questions about a loan Mr. Denton was provided by the
8 company. You talked about litigation in connection with the
9 purposes for that loan. As you sit here today, do you know
10 whether that loan is the technical cover of litigation in
11 his personal bankruptcy or litigation outside that personal
12 bankruptcy?

13 A I'm not -- I actually don't think that I ever separated
14 in my head between whether or not it's inside or outside.

15 Q Would Mr. Denton be in a better position to talk about
16 what the purpose of that loan was for?

17 A He would be.

18 Q And would he be in a better position to tell the Court
19 what that loan has been used for?

20 A He would be, yes.

21 Q Thank you, Your Honor, no further questions.

22 THE COURT: You can step down. Call your next
23 witness.

24 MR. HENNES: Your Honor, Gawker calls Reid
25 Snellenbarger, who is outside the Courtroom.

1 [WITNESS IS SWORN IN]

2 MR. SNELLENBARGER: Reid Snellenbarger, R-E-I-D,
3 last name S-N-E-L-L-E-N-B-A-R-G-E-R.

4 THE COURT: Go ahead.

5 Q Thank you, Your Honor. Mr. Snellenbarger, good
6 afternoon. Where are you currently employed?

7 A Houlihan Lokey.

8 Q What is Houlihan Lokey?

9 A It's an investment bank that advises companies and
10 creditors.

11 Q How long have you been employed at Houlihan Lokey?

12 A Eleven (11) years.

13 Q What's your current position at Houlihan Lokey?

14 A I'm a managing director.

15 Q What is your job as managing direction at Houlihan
16 Lokey generally entail?

17 A Leading engagements and advising companies on M&A
18 finance and restructuring transactions.

19 Q Where you employed before Houlihan Lokey?

20 A Price Waterhouse Coopers.

21 Q Did you have a title at Price Waterhouse Coopers?

22 A I did.

23 Q What was that title?

24 A Vice President.

25 Q For how many years have you been an investment banker?

1 A Eighteen (18) years.

2 Q During your 18 years as an investment banker, have you
3 advised companies in Chapter 11 proceedings?

4 A I have.

5 Q Approximately how many times in those 18 years have you
6 advised companies in the Chapter 11 proceedings?

7 A Numerous, more than 25 to 50 probably.

8 Q I'm sorry.

9 A 25 to 50 probably.

10 Q 25 to 50. Have you advised companies in connection
11 with asset sales?

12 A I have.

13 Q Approximately how many times have you done that?

14 A Around the same number.

15 Q Are you familiar with Gawker Media, LLC and Gawker
16 Media Group, Inc.?

17 A I am.

18 Q Is Houlihan Lokey currently engaged by either of those
19 entities?

20 A We are.

21 Q How long have you been engaged?

22 A May 16th, 2016.

23 Q Are you directly involved in that representation?

24 A I am.

25 Q And who has engaged you to handle it, which entity?

1 A Gawker Media Group, Inc.

2 Q And does the engagement cover Gawker Media, LLC as
3 well?

4 A It does, yes.

5 Q Is anyone else at Houlihan Lokey involved in the Gawker
6 engagement?

7 A Yes.

8 Q Who?

9 A Mark Patricof, who's co-head of the Media Group at
10 Houlihan.

11 Q And do you have other junior professionals working for
12 you as well?

13 A We do.

14 Q Do you have an understanding of why the company engaged
15 Houlihan Lokey?

16 A I do.

17 Q And what is that understanding?

18 A They wanted to explore a sale, financing, restructuring
19 alternatives in the context of potential bankruptcies.

20 Q Now as an investment banker, does Houlihan Lokey have a
21 role in the day-to-day operations of Gawker Media?

22 A No.

23 Q Does Houlihan Lokey have a role in the Gawker Media
24 asset sale?

25 A Yes.

1 Q And what is that role?

2 A We are facilitating the sale process and advising and
3 assisting the company in that endeavor.

4 Q To whom does Houlihan Lokey report in assisting the
5 company with the asset sale?

6 A Nick Denton, the CEO.

7 Q And what are Houlihan Lokey's specific responsibilities
8 in connection with the asset sale?

9 A We are, as I said, facilitating the process, managing
10 diligence requests, filing them through the company,
11 drafting materials as necessary that are then modified by
12 the company, and overall advising and assisting the company.

13 Q Since mid-May, have you worked with Mr. Denton?

14 A I have.

15 Q Is Mr. Denton involved in the day-to-day operations of
16 the company?

17 A He is in a very extensive way.

18 Q And what have you observed about Mr. Denton to lead you
19 to the conclusion that he's involved in a very extensive
20 way?

21 A He's very hands on. He has a mastery of all the
22 details of the company. He's been -- has been and continues
23 to be a significant help with respect to detailed diligence
24 of the company by potential bidders in a very thorough way.

25 Q How would you describe Mr. Denton's role in the asset

1 sale process in general?

2 A Extensive. He has helped facilitate discussions with
3 potential bidders. He's had direct conversations with
4 potential bidders. You know, he's the face of the
5 organization. He's the one that people ask about the vision
6 of the company, the general performance, forecasting. And
7 then even in extensive detail, diligence questions, he has
8 been part of the most responsive, thorough of any employee
9 at the company.

10 Q In general, how often does Houlihan Lokey interact with
11 Mr. Denton?

12 A A daily basis.

13 Q And is Houlihan Lokey's primary resource at the
14 company?

15 A I would say so, yes.

16 Q Do you expect the frequency of your interaction with
17 Mr. Denton will increase or decrease over the next four to
18 six weeks?

19 A Likely increase. As the Court is aware, we were in a
20 no shop period up until July 7th. We then began contacting
21 potential bidders, some of which are (indiscernible), are
22 reviewing information, and now we're getting what I kind of
23 view as the next phase of diligence process, which we will
24 need Nick's help extensively.

25 Q Did Houlihan Lokey play a role in the stalking horse

1 process?

2 A We did.

3 Q Did Mr. Denton have a role in the stalking horse

4 process?

5 A He did.

6 Q What was Mr. Denton's role in the stalking horse

7 process?

8 A He led the negotiations on behalf of the company, and

9 then also led direct management meetings with the stalking

10 horse bidder. And even the fact then had several direct

11 calls to the stalking horse bidders if became comfortable

12 enough to call Nick on several occasions to address

13 diligence questions and resolve any issues or concerns.

14 Q How would you expect Mr. Denton's role in the asset

15 sale process to differ from the stalking horse process, if

16 at all?

17 A Not really materially. I mean, I expect that so much

18 of the Ziff diligence process, that it would be similar for

19 other bidders as well that want direct communication with

20 Nick, that want direct meetings with Nick, and then Nick

21 will heavily be involved in any kind of asset purchase

22 agreements.

23 Q Are there more or less potential bidders involved in

24 the asset sale process than in the stalking horse process?

25 A More.

1 Q By a factor of how many?

2 A Probably a factor of 10.

3 Q Would you expect Mr. Denton's role to increase,

4 therefore, as a result of the number of bidders being

5 increased?

6 A Absolutely.

7 Q How much of Mr. Denton's time do you think the sale

8 process will take over the next four to six weeks, Mr.

9 Snellenbarger?

10 A I mean, a significant amount of time. I mean, our view

11 is Nick really has two primary responsibilities: One is

12 leading and operating the company because he's still CEO and

13 it's very important for the sale process for the company to

14 continue performing well and so that's very important to us;

15 and then his other primary duty is to help us with, you

16 know, diligence, management meetings, et cetera with the

17 sale process. So a lot of time combined.

18 Q Do you think Mr. Denton is necessary to getting the

19 best possible value in the asset sale?

20 A I do.

21 Q Why?

22 A For the reasons I discussed previously. He probably

23 knows the most about the company. In a previous process,

24 bidders asked to talk to Mr. Denton directly. They want to

25 know his vision, his views on the company and its

1 projections. And he's very helpful with the diligence

2 process. You know, we have about four weeks left before our

3 qualified bid deadline, so it's going to be a significant

4 amount of work by everyone involved, and I think it would be

5 critical if Nick is focused and helpful here.

6 MR. HENNES: Pass the witness, Your Honor.

7 THE COURT: Cross-examination?

8 MR. VOGT: I'm Shane Vogt on behalf of Mr. Bollea.

9 CROSS EXAMINATION

10 Q Were you the co-head on the engagement in connection

11 with this case, correct?

12 A I am.

13 Q And the other co-head is Mark Patricof?

14 A That's correct.

15 Q And Mr. Patricof is an expert in the digital media

16 industry, is that correct?

17 A He co-heads the group. He has a significant amount of

18 experience in that space within investment banking.

19 Q And you're an expert in assisting companies in unique

20 and stressed situations, right?

21 A I have a lot of experience advising companies in

22 bankrupt situations.

23 Q And, in fact, Houlihan is the number one ranked M&A

24 firm in the tech media telecom industry for transactions

25 under \$20 billion, isn't it?

1 A I believe we are.

2 Q And there's two groups within the company that are

3 working on this engagement, right?

4 A Correct.

5 Q And within those groups, there's seven people total

6 that are working on the engagement at least.

7 A I believe that's right.

8 Q Including you and Mr. Patricof who are directors?

9 A Managing directors.

10 Q Managing directors. Opportune is also working on the

11 engagement, correct?

12 A That's correct.

13 Q And Mr. Holden is the chief restructuring officer.

14 A That's right.

15 Q And there's also a couple of other people within

16 Opportune that are working on the engagements. Were you

17 aware of that?

18 A I believe so.

19 Q And then within Gawker's team, excluding Mr. Denton,

20 there's five department heads, correct?

21 A I believe so.

22 Q There's chief technology officer, right?

23 A Yes.

24 Q There's a chief operating officer?

25 A Yes.

1 Q There's five editors-in-chiefs of the websites who are
2 primarily responsible for content, right?

3 A I believe so, but we haven't been significantly
4 involved with those.

5 Q There's also an executive editor, John Cook, right?

6 A I believe so, but we haven't been involved.

7 THE COURT: Let him finish the answer.

8 MR. VOGT: Sorry.

9 A I believe that's correct. But, again, we haven't been
10 directly involved with those professionals, those employees.

11 Q Sorry. And Miss Dietrick, President and General
12 Counsel. You're familiar with Miss Dietrick, as well,
13 correct?

14 A I am.

15 Q So by my count, that's approximately, excluding Mr.
16 Denton, 26 people that would be involved in the day-to-day
17 operations in the sale process; that's correct?

18 A I wouldn't say they're all involved in the sale
19 process. And, again, I would say of all those people, Nick
20 has been the most helpful, as well as influential in that
21 sale process.

22 Q But within his own company, he has approximately 16
23 people helping him, correct?

24 A I believe so.

25 Q And of those people, I mean, those are full-time

1 employees, right?

2 A I don't recall.

3 Q That's not part of the due diligence that you've
4 conducted, background on the employees of this company in
5 connection with the sale?

6 A We've done a general summary level of the employees.
7 But, again, our main involvement with Nick and senior
8 management.

9 THE COURT: Would you speak into the microphone,
10 please?

11 MR. SNELLENBARGER: Sure.

12 A I said, we've done a general summary level of the
13 employees. But with respect to our sale process or
14 assisting the sale process, our general interaction's been
15 with Nick and a few other senior management.

16 Q The other senior management would be Heather Deitrick,
17 correct?

18 A Correct.

19 Q And Miss Deitrick is the one primarily is responsible
20 for HR within the company, is that right?

21 A I believe she has some involvement.

22 Q And in your experience, at least dealing with the
23 Debtors over the past couple of months, are the people that
24 work in the executive and the management team qualified?

25 A I believe so.

1 Q They're hard working.

2 A I'd like, yes.

3 Q Do they seem to have maximizing the value of a sale in
4 mind when they're performing their tasks?

5 A The people that we've interacted with, I believe so.

6 Q Any reason to believe if Mr. Denton wasn't around, they
7 wouldn't still keep doing it?

8 A I don't know. That's a difficult question because,
9 like I said, Nick has been the face of the organization
10 since its inception. And from our perspective, the
11 extensive diligence that's been conducted by the stalking
12 horse bidder and that what we see coming up in this overbid
13 process has primarily been in by Nick.

14 Q And you mention the extensive due diligence that's been
15 conducted by the stalking horse, it's extensive, correct?

16 A It has been.

17 Q That's the due diligence that Ziff Davis has done.

18 A Yes.

19 Q And that due diligence was so extensive that they
20 entered into an asset purchase agreement that has no outs in
21 the due diligence, correct?

22 A That is correct.

23 Q And given your experience, your two decades of
24 experience in this industry, would you say that Ziff Davis's
25 due diligence before entering into that asset purchase

1 agreement was exhaustive?

2 A I think it satisfied their requirements, not require a
3 due diligence out in their agreement. But having said that,
4 they continue to conduct diligence as a, I would hope, want
5 to be prepared for an option. And this asset, this company
6 is unique. Each buyer has its own perspective, and we
7 expect other bidders to have a unique perspective too. And
8 generally expect that, although there is an extreme amount
9 of diligence is done and/or prepared, there will be unique
10 questions, meetings, et cetera required that would be above
11 and beyond what we've already prepared.

12 Q But you're assuming that at this point, right, because
13 none of the potential bidders have asked you for any
14 information, other than what's already been provided to Ziff
15 Davis, correct?

16 A That is correct. Having said that, you know, we're
17 only 10 days into the overbid process. People just signed
18 NDAs just on the data room. They're just getting their legs
19 underneath them, so to speak. As recently as this morning,
20 I received a call from one of the bidders on their NDA, who
21 said they would have a separate and extensive list of
22 diligence questions above and beyond what's in the data
23 room.

24 Q Let's talk about what's in the data room. The data
25 room includes due diligence that Houlihan Lokey conducted

1 itself, correct?

2 A I would say it's information that we received from the

3 company.

4 Q And in preparing for this engagement, you had to

5 actually conduct your own due diligence to become familiar

6 with the operations of the Debtors, correct?

7 A We did on a summary level basis.

8 Q Well, by the time Ziff Davis was identified as a

9 potential stalking horse bidder, you had a full and complete

10 understanding of the financial operations of the Debtor's,

11 didn't you?

12 A We had a good understanding of the financial situation.

13 Q You had a full and complete understanding, didn't you?

14 A To the best of our ability.

15 Q And in addition to your due diligence being in the data

16 room, the due diligence that Houlihan -- that Ziff Davis

17 conducted was in the data room as well, correct?

18 A That's right.

19 Q And when we're talking about that due diligence,

20 there's directories in that data room for financial

21 operations?

22 A That's right.

23 Q Historical operations?

24 A Yes.

25 Q Projections?

1 A Yes.

2 Q Metrics?

3 A Yes.

4 Q Advertising information?

5 A Yes.

6 Q Pro-forma analysis?

7 A Yes.

8 Q There's customer data and significant contracts?

9 A Subject to confidentiality issues.

10 Q There's information on vendors?

11 A Some.

12 Q And as of now, Mr. Holden is primarily responsible for

13 working with vendors and customers, isn't he?

14 A Among many others.

15 Q But he'd be a good source of information on the

16 customers and vendors of the company, right?

17 A He would.

18 Q There's also a 25-page confidential information

19 memorandum in there, in the data room, right?

20 A Correct.

21 Q And that provides detail about the Debtor's operations.

22 A It provides a summary level, a summary of the company

23 and its operations to assist bidders in getting up to speed

24 on a preliminary basis that candidly Nick helped

25 significantly weigh in on. That given the time that we had,

1 we thought it was a good idea to put something like that

2 together, get people started.

3 Q And Mr. Denton had significant involvement in preparing

4 that confidential information memorandum, correct?

5 A He did.

6 Q And it includes information about the company's

7 operations.

8 A It does.

9 Q Their prospects?

10 A Yes.

11 Q The editorial philosophy?

12 A Briefly.

13 Q The goals of the websites?

14 A Yes.

15 Q And one of the purposes of that is actually to get

16 bidders up to speed very quickly, isn't it?

17 A That's right.

18 Q Because this is a short process.

19 A Yeah, on a summary level basis. Again, I look at the

20 sale process, really it's kind of two phases: The

21 preliminary phase to get people up to speed on a preliminary

22 basis, get them excited, get them interested; and then

23 assuming they are, like Ziff Davis, will do a much deeper

24 dive on a very detailed basis and have many more incremental

25 detail questions in order to get to the point where they

1 could submit a qualified bid.

2 Q So to the extent that any of these potential bidders

3 have inquiries, your role would be to facilitate those

4 bidders, correct?

5 A Facilitate them through the company.

6 Q And you filter them out, right?

7 A Well, what we'd like to do is summarize and make sure

8 there's no duplicates, make sure that the questions aren't

9 already included in the data room. So all those that are

10 above and beyond that, we would then ask Nick and the

11 company to answer it.

12 Q So basically, you're just threading together all of the

13 information that the company has put out there to sort of

14 distill it down to give it to potential bidders, right?

15 A Yes, and then to the extent that is not already

16 provided, then we go to Nick and the company for additional

17 requests.

18 Q Throughout the two months you've been working on this

19 engagement, you've never heard Mr. Denton say that he will

20 not be able to perform his duties as CEO and to assist in

21 the sale if he files for personal bankruptcy, correct?

22 A It hasn't been discussed.

23 Q He's never mentioned that to you though, right?

24 A It hasn't been discussed.

25 Q In connection with the Ziff Davis asset purchase

1 agreement, Mr. Denton signed a consulting agreement,
 2 correct?
 3 A That's correct.
 4 Q Is that agreement for a two-year term?
 5 A I believe so.
 6 Q And it also includes a non-compete and non-solicitation
 7 provision in it?
 8 A I believe so.
 9 Q But the Gawker.com is excluded from that, correct?
 10 A I believe so.
 11 Q So Ziff didn't have any concerns about Mr. Denton being
 12 distracted on another website potentially while he was
 13 involved in that consulting engagement?
 14 A It wasn't discussed.
 15 Q Now that consulting agreement with Mr. Denton was a
 16 material inducement for Ziff Davis to sign the APA, correct?
 17 A Yeah. I mean, Ziff, when they were doing their
 18 diligence, they had many meetings with Nick, had many direct
 19 calls with Nick. I think they viewed him as a valuable
 20 component to the company.
 21 Q But I believe your term that you use in your
 22 declaration was, you talked about this yesterday, it was a
 23 material inducement for them to sign the asset purchase
 24 agreement, right?
 25 MR. HENNES: Objection. Declaration, Your Honor.

1 THE COURT: And so, you talk about this yesterday.
 2 Did you take his deposition yesterday?
 3 MR. VOGT: Yes, Your Honor.
 4 THE COURT: So is the question, did he say at his
 5 deposition that this was a material inducement?
 6 MR. VOGT: Yes, Your Honor.
 7 A I believe it's in my declaration.
 8 Q And you confirmed that yesterday at your deposition,
 9 correct?
 10 A That's right, that's correct.
 11 Q And so Mr. Denton's availability to perform this asset
 12 purchase agreement that was a material inducement is also
 13 important to Ziff Davis, correct?
 14 A I believe so.
 15 Q And if there was a possibility that Mr. Denton couldn't
 16 perform under that consulting agreement, you'd expect that
 17 that would have been disclosed to Ziff Davis, wouldn't you?
 18 A I believe so.
 19 Q And during the course of your engagement in this
 20 process, no one has ever expressed any concern to you that
 21 Mr. Denton couldn't perform under the consulting agreement
 22 if he was distracted by a personal bankruptcy happening.
 23 A We didn't discuss the personal bankruptcy dynamic. I
 24 think the general, still, tenet is that Ziff David wants Mr.
 25 Denton fully involved in the process.

1 Q But given that, throughout your involvement in this
 2 project, no one has ever expressed any concern that Mr.
 3 Denton will be unable to perform under the consulting
 4 agreement if he has to file for personal bankruptcy, right?
 5 A The particular personal bankruptcy term, no. I would
 6 just say that goes to Ziff and other potential bidders have
 7 expressed the desire to continue to have discussions, to
 8 talk to Nick and so forth. And so, from my view, it's just
 9 important that he stays with the company and stays focused.
 10 Q Has Mr. Denton ever expressed to you that he would quit
 11 if he had to file for personal bankruptcy protection?
 12 A We haven't had a discussion about that.
 13 Q Has he ever expressed to you that he wouldn't work as
 14 hard if he had to file for personal bankruptcy protection?
 15 A We haven't had a discussion about that.
 16 Q Are you aware that the Debtors had retained another
 17 investment banker before you were retained back in March,
 18 2016 time period?
 19 A Yes.
 20 Q Did that investment banker conduct any due diligence?
 21 A I don't know.
 22 Q So if they did, it wasn't provided to you, is that
 23 right?
 24 A That's right.
 25 Q And you don't know how Mr. Denton was involved in that

1 process, correct?
 2 A Right.
 3 Q You're aware that, at one point, the Debtors entered
 4 into a transaction with Columbus Nova.
 5 A Yes.
 6 Q Was extensive due diligence conducted in connection
 7 with that transaction?
 8 A I don't know, I wasn't involved.
 9 Q Was any of the due diligence conducted in connection
 10 with that transaction (indiscernible)?
 11 A I don't know how it was related. We had information
 12 about the company that was provided to us.
 13 Q So you don't know if there was a data room or anything
 14 like that in connection with Columbus Nova that may be down
 15 there?
 16 A There was a data room; but in what context and who for,
 17 it was unclear to us.
 18 Q Have you ever had access to that data room?
 19 A We've had access to a data room, yes.
 20 Q Have you had access to the data room or the one that's
 21 no due diligence was done?
 22 A I believe it was. But, again, it wasn't specified
 23 exactly was used for.
 24 Q Now Houlihan Lokey always makes the initial contact
 25 with potential bidders, doesn't it?

1 A We typically just, as an investment business process
 2 and sale, typically investment banker is the one that
 3 initially reaches out to potential parties to facilitate a
 4 teaser, an NDA process, et cetera.
 5 Q That may be typical, but in this particular instance,
 6 Houlihan Lokey always makes the initial contact with
 7 potential bidders, correct?
 8 A We did, as is typical with all of our processes?
 9 Q And that was actually a decision that Mr. Denton was
 10 involved in himself, correct, in the company?
 11 A Yes. But, again, it would be atypical for the company
 12 to make, you know, the initial calls to facilitate the NDA,
 13 et cetera.
 14 Q So if Mr. Denton were to say that he was the one making
 15 initial contact with bidders, that wouldn't be accurate,
 16 would it?
 17 A Well, I would say, though, having said that. In the
 18 stalking horse process, when we collaboratively kind of came
 19 up with the six or so parties to reach out to. Certain
 20 parties that Nick had better relationships with, he reached
 21 out and said, I want to introduce you to Houlihan Lokey and
 22 let's get a process started.
 23 Q And that was with the stalking horse process, correct?
 24 A Correct.
 25 Q That's not what occurred in connection with the

1 additional potential bidders after the no shopping, right?
 2 A That's correct.
 3 Q You should have a notebook up with there with Exhibits
 4 in it. Would you turn to Exhibit Z, please?
 5 A C, Mr. Vogt?
 6 Q Have you ever seen Exhibit Z?
 7 A C?
 8 Q C. It should be an article, Gawker's general counsel
 9 takes on leadership role?
 10 A I don't recall.
 11 Q This article is dated June 12th of 2016, which would be
 12 two days after the bankruptcy was filed.
 13 A Okay.
 14 Q Did the Debtors ever make you aware that they were
 15 giving an interview to "The New York Times"?
 16 A No.
 17 Q You'd agree with me that it's important to give
 18 accurate information publicly about the company operations
 19 during the bankruptcy process, correct?
 20 A As a general statement, yes.
 21 Q And you'd also agree with me that you don't want to
 22 mislead potential bidders by putting something out in the
 23 public that's not true.
 24 A No.
 25 Q And you'd also agree with me that if you know false

1 information has been put out publicly, you should correct
 2 that, especially when you're going through a bankruptcy sale
 3 process like the one you're engaged in, correct?
 4 A I believe so.
 5 Q If you could turn to the second page. Are yours double
 6 sided?
 7 A Yes.
 8 Q Okay. You see the second paragraph from the top where
 9 it says, since joining Gawker three years ago, it's that
 10 paragraph?
 11 A Yes.
 12 Q Okay. The second sentence there says: Most general
 13 counsels work in obscurity, but Ms. Deitrick, with the added
 14 responsibilities of president, has taken on more of a
 15 leadership role at Gawker, as Mr. Denton has pulled back
 16 from the day-to-day operations.
 17 MR. HENNES: Objection, Your Honor. The witness
 18 has already testified he's not familiar with the article.
 19 THE COURT: Sustained. The article's also not in
 20 evidence.
 21 MR. VOGT: I understand.
 22 Q To your knowledge, has Mr. Denton pulled back from the
 23 day-to-day operations?
 24 A In my opinion, no.
 25 Q Do you know whether or not Miss Deitrick manages much

1 of the company's editorial operations and has a formal role
 2 in editorial decisions?
 3 A I don't know.
 4 Q And you mentioned that Mr. Denton, you believe Mr.
 5 Denton was the public face of the company, correct?
 6 A He has been, yes.
 7 Q Do you know whether Miss Deitrick has been the one
 8 that's called on repeatedly to represent the company during
 9 periods of turmoil?
 10 A I don't know.
 11 Q Do you consider this bankruptcy proceeding to be a
 12 period of turmoil?
 13 A It's definitely in a difficult situation.
 14 Q One of the things that's mentioned in this article -- I
 15 know you haven't read it, but you talked about earlier with
 16 Mr. Denton, there's a quote attributed to him in which he
 17 says that, "The place would not run without Heather. She's
 18 the person that holds everything together."
 19 MR. HENNES: Objection, Your Honor. Same
 20 objection.
 21 MR. VOGT: It's already in evidence, Your Honor.
 22 THE COURT: It's not in evidence. He may have
 23 testified to it, but the article itself is not in evidence.
 24 What's the question for the witness?
 25 MR. VOGT: Well, I just want to know as an

1 inquirer.

2 THE COURT: He can't verify the article.

3 MR. VOGT: No, I'm not, Your Honor. It's
4 foundation for the question I'm about to ask.

5 THE COURT: What's the question?

6 Q As someone who also represents inquirers in asset sales
7 such as this, would the person who holds everything
8 together, would that be a critical person for you to talk to
9 in the due diligence process?

10 A As a general matter, not related to anything in this
11 article, yes.

12 Q If you could also turn to Exhibit D.

13 A I'm sorry, Mr. Vogt.

14 Q D.

15 A Thank you.

16 Q The benefit of your back. Have you ever seen this
17 article before?

18 A No.

19 Q Included within this article is a memo that Mr. Denton
20 wrote. Have you been provided with any memos written by Mr.
21 Denton in connection with the due diligence process?

22 A We've been provided some memos related to, just for my
23 own knowledge with respect to the company, the operations
24 process, et cetera.

25 Q Do you recall seeing any memos from Mr. Denton during

1 the December of 2014 time period involving a seven-person
2 managing board?

3 A I don't, no.

4 Q Were you aware that that happened?

5 A Vaguely, but not in detail, no.

6 Q One of the things that's mentioned in this memo is that
7 Mr. Denton states, "I believe you still need me to set a
8 broad direction and shake the company off of its drifting,
9 but to leave it alone when it's fine."

10 MR. HENNES: Objection, Your Honor. Foundation,
11 the witness said he's never seen this before, he has not
12 seen this memo, and Mr. Denton was here to discuss these
13 issues.

14 THE COURT: Without reading from the memo, why
15 don't you just ask him a question?

16 Q Is Mr. Denton's management philosophy that he sets a
17 broad direction for the company and he doesn't shake it up
18 as long as it's running along the status quo.

19 A I would say not currently, no. I think he's very
20 involved right now. That's all I can speak to.

21 Q Do you have any knowledge of whether or not in the
22 Summer of 2013 until December of 2014, Mr. Denton was away
23 from the company extensively for his honeymoon? No? How
24 did -- you're familiar with the company's historical
25 financial performance?

1 A On a summary -- on a summary level basis, yes.

2 Q And the 2013 to 2014 time period, how did the company
3 perform financially?

4 A I thought they performed adequately.

5 Q Did their revenues increase during that time period?

6 A I believe so.

7 Q Were their revenues the highest they've ever been
8 during that time period?

9 A I'd have to see the numbers again to recall.

10 Q As it now stands, there are no physical presentations
11 scheduled with any potential bidders, is that correct?

12 A Currently, no. But having said that, as I indicated
13 previously, you know, we're 10 days into the overbid
14 process. Bidders have just signed NDAs, just gotten the
15 data room. We expect those to occur in very short order the
16 next couple of weeks given where we are in the process.

17 Q And I believe your testimony earlier was that in
18 factors, the number of potential bidders has gone up 10-fold
19 from the initial stalking horse package.

20 A The number of parties contacted, that's correct.

21 Q Of those, how many have already signed NDAs?

22 MR. HENNES: Objection, Your Honor. We're just
23 concerned that the testimony here will be reported and may
24 impair the sale process in some way, shape, or form, and I
25 don't think that's in Mr. Vogt's interest.

1 MR. VOGT: No, it's not. I just--

2 THE COURT: He's just asking a week into the
3 process, how many NDAs have been signed?

4 MR. VOGT: Right.

5 THE COURT: You can answer the question.

6 A I believe 10 or so.

7 Q And there have already been some bidders that have
8 expressed that they're not interested in pursuing the
9 transaction, correct?

10 A That's correct.

11 Q That would be out of those 60, roughly 60.

12 A Correct.

13 Q And Mr. Denton's never indicated to you that if he
14 files for personal bankruptcy, he'll be unable to perform
15 his duties in connection with this sale, is that correct?

16 A We haven't had that discussion.

17 Q And whether Mr. Denton files for personal bankruptcy
18 protection is not something that potential bidders are even
19 focused on, is it?

20 A Again, I mean, given where we are in the process,
21 bidders are focused on the data room and the information
22 that we provided. My personal concern is that if we move
23 forward and they get into detailed diligence, detailed
24 meetings with them, that that may become an issue.

25 Q But as it stands now, any of the potential bidders who

1 have expressed interest, none of them have focused on
 2 whether or not Mr. Denton's going to file personal
 3 bankruptcy, correct?
 4 A Correct. But, again, I wouldn't expect that issue to
 5 be raised yet given where we are in the process.
 6 Q And none of the bidders have indicated to you that they
 7 won't bid if Mr. Denton files for personal bankruptcy
 8 protection, correct?
 9 A That's correct. But, again, given where we are in the
 10 process, that I wouldn't expect that issue to be raised yet.
 11 MR. VOGT: Can I have one second to confer, Your
 12 Honor?
 13 THE COURT: Yes.
 14 MR. VOGT: I have no other questions, Your Honor.
 15 THE COURT: Redirect?
 16 MR. HENNES: Your Honor, no redirect.
 17 THE COURT: You can step down. Thank you. Call
 18 your next witness.
 19 MR. HENNES: Your Honor, our last witness for call
 20 is Heather Deitrick.
 21 [WITNESS IS SWORN IN]
 22 MR. HENNES: Would you speak state and spell your
 23 name for the record?
 24 MS. DIETRICK: Sure. It's Heather Dietrick, D-I-
 25 E-T-R-I-C-K.

DIRECT EXAMINATION

1
 2 Q Ms. Dietrick, where are you currently employed?
 3 A Gawker Media, LLC.
 4 Q And how long have you worked at Gawker Media, LLC?
 5 A For a little over three years.
 6 Q What is your current position at Gawker Media, LLC?
 7 A I'm President and General Counsel.
 8 Q Do you also hold the position at Gawker Media Group,
 9 Inc., GMGI?
 10 A Yes, I do.
 11 Q And what position or positions do you hold at GMGI?
 12 A I'm President and General Counsel of GMGI.
 13 Q When you started at Gawker, what was your position?
 14 A I was counsel.
 15 Q And when did you become general counsel of Gawker
 16 Media?
 17 A I believe in December of 2013.
 18 Q And when did you become president of Gawker Media?
 19 A December of 2014. I will note, I need to correct in my
 20 deposition transcript. I just realized last night I had
 21 those dates mixed up.
 22 Q For the Court, would you please briefly describe your
 23 educational background?
 24 A Sure. I have a Bachelor of Arts from Georgetown
 25 University, 2003, and I have a JD-MBA from the University of

1 Michigan in 2007.
 2 Q Are you admitted to the bar, Ms. Dietrick?
 3 A Yes, I am.
 4 Q Which bar are you admitted to?
 5 A New York.
 6 Q Are you a member of the bar in good standing?
 7 A Yes, I am.
 8 Q Before joining Gawker roughly three years ago, where
 9 were you employed?
 10 A After law school, I went directly to the Law Firm of
 11 Heller Ehrman to their New York office. I then went to
 12 Goodwin Proctor to its New York office. I then clerked for
 13 the Honorable Sandra Townes in the Eastern District of New
 14 York. I then worked as the First Amendment Fellow at the
 15 Hearst Corporation, and then counsel at the Hearst
 16 Corporation for a short time before coming to Gawker Media.
 17 Q Turning to your responsibilities at Gawker, what are
 18 your responsibilities as the General Counsel of Gawker
 19 Media?
 20 A I manage the entire legal function of the company.
 21 That includes managing litigation, which is significant
 22 right now. It has been significant given the assault on the
 23 company by Peter Thiel. I manage the corporate function,
 24 contractual work, the legal team that we have in-house and
 25 outside counsel.

1 Q What are your responsibilities as the President of
 2 Gawker Media?
 3 A I manage our people, operations department; otherwise
 4 known as HR, or the people in culture department rather. I
 5 have a significant role in people management and growing and
 6 developing our people company-wide. I have a hand in
 7 editorial operational management and general company
 8 strategy.
 9 Q In your capacity as President of Gawker Media, to whom
 10 do you report?
 11 A Nick Denton.
 12 Q In your capacity as General Counsel for Gawker Media,
 13 to whom do you report?
 14 A Nick Denton.
 15 Q In your roles as general counsel and president, have
 16 you ever reported to anyone at Gawker Media other than Nick
 17 Denton?
 18 A None.
 19 Q In the bankruptcy process that the company is currently
 20 involved in, what role does Nick Denton play?
 21 A He is -- he makes major decisions in the bankruptcy. I
 22 am the point person for it for legal, as has been discussed
 23 today, but we bring major decisions to him. He is involved
 24 in adversary proceeding, as you see today, and general
 25 strategic decisions.

1 Q Does he review the day-to-day filings that go on in the
2 bankruptcy?

3 A He doesn't review every filing. I occasionally will
4 show him an entire filing or language in a filing if I have
5 a question about it or want some advice about it.

6 Q Let's talk about the asset sale process now, Ms.
7 Denton. Is Gawker Media currently --

8 A Deitrick.

9 Q I apologize for that. Is Gawker Media currently
10 engaged in a process whereby it's trying to sell its assets?

11 A Yes, it is. It's trying to sell its assets through the
12 363 process.

13 Q And when did that process begin?

14 A It started with looking for a stalking horse bidder in
15 May of this year. We then went into a no-shop period. That
16 period was lifted, I believe, on July 7th, and we are now
17 opened up in a full sale process.

18 Q Did you play a role in the stalking horse process?

19 A Yes, I did.

20 Q And what was that role?

21 A I collected information for our data room, and I
22 engaged with some potential stalking horse bidders.

23 Q What role did Mr. Denton play in the stalking horse
24 process?

25 A He took the lead on it. He was instrumental in not

1 only gathering, but slicing and dicing, data for the
2 stalking horse bidders. He also was the primary point of
3 contact for potential bidders and had dozens of
4 conversations. He also provided most, maybe it was five out
5 of six, of the potential stalking horse contacts.

6 Q Do you have a role in the asset sale process that's
7 going on now?

8 A Yes, I do.

9 Q And is that different from your role in the stalking
10 horse process in any respect?

11 A No, it's very similar.

12 Q Does Mr. Denton have a role in the asset sale process
13 that's going on now?

14 A Yes, he does.

15 Q And is that different than his role in the stalking
16 horse process?

17 A No. It's, again, very similar.

18 Q Who is leading the asset sale process at Gawker?

19 A Internally, Mr. Denton is.

20 Q And why is Mr. Denton leading that process?

21 A He's the person at the company who knows it the best.
22 He's its founder. He is the person who potential acquirers
23 want to talk to. He knows the industry better than anyone
24 in the company; and, therefore, understands how, especially
25 potential strategic, fit with our company, and how both

1 strategic and financial potential acquirers fit and what
2 they might find interesting about our business and how it
3 would work with their business.

4 Q In your mind, could you substitute for Mr. Denton in
5 those roles?

6 A Me personally?

7 Q Yes, you personally.

8 A Absolutely not.

9 Q Are you aware of anyone at Gawker who can substitute
10 for Mr. Denton in those roles you've just described?

11 A No, I do not.

12 Q Why not? Why couldn't someone substitute for Mr.
13 Denton?

14 A Nobody at the company knows every part of the business
15 as well as he does. You know, he's the founder. He is the
16 face of the business. He is the spokesperson. We don't
17 have an internal marketing function formally, but he is the
18 company's marketer even outside of the sale process; and,
19 therefore, knows every piece of it best.

20 Q Do you think that Mr. Denton is necessary to get the
21 best possible value for the company in the asset sale
22 process?

23 A Without a doubt.

24 Q Okay. And why is that?

25 A Again, he is the person that acquirers want to talk to.

1 Without him, we would not be able to convey as well what the
2 opportunity is for potential acquirers, tailor it to the
3 acquirers, provide them overall information about every
4 department and then detailed information about each
5 department, how it fits together, what the opportunity is
6 going forward for the business, description on how the
7 business has run in the past and where it's been. The
8 platform that the site is run on is a critical component to
9 the sale, and Mr. Denton conceived of and created -- not
10 technically created, he didn't code the platform, but he
11 conceived of and created the platform over the years with
12 our tech team. No one could speak to all of that like he
13 could.

14 Q Let's change topics for a moment, Ms. Dietrick. For a
15 lot of testimony today about what is included in Mr.
16 Bollea's Exhibits as Exhibit Z. Would you mind turning to
17 that?

18 A Hang on, this binder's been through the ringer. Okay,
19 yes.

20 MR. FISHER: Your Honor, we may have an extra
21 clean binder if it's helpful to the witness.

22 MS. DIETRICK: This one is sort of falling -- hang
23 on, it's just not together.

24 MR. HENNES: May I approach, Your Honor?

25 THE COURT: Yes.

1 MS. DIETRICK: That's great. I just made it a
2 little worse. Thanks.
3 Q C.
4 A Got it, "New York Times" article.
5 Q Yes, and the "New York Times" article was published on
6 June 12, 2016 is entitled, "Gawker's general counsel takes
7 on for leadership role." Do you see that?
8 A Yes, I do.
9 Q Are you familiar with this article?
10 A Yes, I am.
11 Q Are you the general counsel referenced in the title?
12 A Yes, I am.
13 Q Let's turn to the second paragraph on Page 2, the last
14 sentence that we've also had a bunch of testimony about
15 today. It states: Most counsel counsels work in obscurity,
16 but Ms. Dietrick, with the added responsibilities of
17 president, has taken on more of a leadership role at Gawker
18 as Mr. Denton has pulled back from the day-to-day
19 operations. Is this an accurate statement, Ms. Dietrick?
20 A It is and it isn't. I have indeed taken on a larger
21 leadership role. Mr. Denton has not pulled back from day-
22 to-day operations. He is in the office five days a week for
23 full workdays every single day every week, as he's been for
24 most of my time with the company.
25 Q Can you explain the nature of Mr. Denton's day-to-day

1 work at Gawker?
2 A Sure. It varies with the day, but he -- every
3 department head reports directly to him. So depending on
4 what is going on, he's working closely with whatever
5 department demands close work. He sets overall company
6 strategy. He sets sort of lower level in-the-weeds strategy
7 for departments. He is there every day managing the
8 business.
9 Q Does he play a role with the company's advertisers?
10 A Yes, he does. He is, I would say, the number one
11 person to reach out to advertisers. If they ever have an
12 issue, they're upset about a story, you know, we might
13 critically about a product that an advertise is advertising
14 about, and he'll reach out and discuss with them the value
15 of that kind of journalism. He has been the person to send
16 notes to advertisers since we filed for bankruptcy to let
17 them know we are here, we're still alive, we will make good
18 on our contracts with them, and has explained to them what a
19 stalking horse bidder is and how that should give them
20 security in working with us.
21 Q Ms. Dietrick, you said that the article was correct
22 because you have taken on more of a leadership role. Did I
23 get that correctly?
24 A Yes, that's right.
25 Q Can you explain to the Court why you've taken on more

1 of a leadership role?
2 A Sure. I have because, partially because of the
3 litigation campaign against the company has been very large
4 and dominant. And so, I have taken on a larger role as
5 litigation has grown against the company.
6 Q And what is the litigation campaign that you're
7 referencing?
8 A It's what Nick spoke about earlier today. Peter Thiel,
9 Silicon Valley billionaire, most recently known for being a
10 Trump delegate at the convention, has stated publicly in the
11 "New York Times", that he attempted to bring down the
12 company via a secret campaign of litigation. He backed the
13 Hulk Hogan case, and says he has backed other cases that he
14 has not revealed.
15 MR. HENNES: Thank you, Ms. Dietrick. Pass the
16 witness.
17 CROSS-EXAMINATION
18 Q Good afternoon, Ms. Dietrick.
19 A Good afternoon.
20 Q You testified that you have two positions at Gawker
21 Media, LLC, is that right?
22 A Yes.
23 Q You're the general counsel and the president, correct?
24 A Yes, that's right.
25 Q And I think we've now established you became the

1 president in December, 2013, is that right?
2 A Yes, that's right.
3 Q And the president before you was Mr. Denton, right?
4 A Yes, before I was president, Nick was CEO and
5 President. Mr. Denton was CEO and President.
6 Q And you took the president role from him.
7 A Yes.
8 Q And as president and general counsel of Gawker Media,
9 LLC, you have to know what goes on at the company, don't
10 you?
11 A Yes, I do.
12 Q You have to know about the company's plans for the
13 future, right?
14 A Yes, I do.
15 Q You have to know about the company's finances, correct?
16 A Just for parts of my roles, yes.
17 Q And what you don't know, you could ask Josh Albertson?
18 A For finance?
19 Q Finance.
20 A Yes, I could.
21 Q And you have to know about the company's editorial
22 philosophies, right?
23 A Yes, I do.
24 Q And you do keep up to date in all of these areas,
25 right?

1 A Yes, I do.

2 Q And as president, you have a significant role in the HR
3 function, the people operations, I think you call it.

4 A Yes, that's right, it reports directly to me.

5 Q And you also have an overall role and strategy in
6 various departments, right?

7 A Yes, that's right.

8 Q You have a significant role in editorial management,
9 correct?

10 A That's correct.

11 Q That includes direction of the websites?

12 A Along with Mr. Denton and our executive editor, the
13 three of us meet to discuss those larger directional issues,
14 yes.

15 Q And your role also includes direction of subsites,
16 right?

17 A That's correct.

18 Q It also includes strategies for increase in traffic on
19 the websites, right?

20 A To the extent we are discussing that at our editorial
21 meetings with the three of us, yes, all three of us discuss
22 ideas for traffic direction. I will say Nick makes the
23 final calls on those. I do not make the final calls on
24 whether we want to grow or subsite or shut it down, but the
25 three of us discuss it.

1 Q Just to step back. Have you shut down the subsite
2 since the bankruptcy started?

3 A Not since the bankruptcy started, no. We tried to be
4 fairly strict on seeing which ones work and which ones
5 don't, but we've only been in bankruptcy for a little over a
6 month.

7 Q So the answer to my question is no, you haven't shut
8 (indiscernible)?

9 A We have not, that I know of.

10 Q I'm going to ask you a couple of things. One, if you
11 could wait until I finish the question before you could
12 answer it, that would be helpful to all of us. And also,
13 could you answer if I ask you a question that could be
14 answered with a yes or no, could you try to answer it with a
15 yes or no, please?

16 A I will try, yes.

17 Q In order to perform your significant role in editorial
18 management, you have to know about Mr. Denton's vision for
19 the Gawker brands, is that right?

20 A Yes.

21 Q You're also well versed in the digital media industry,
22 isn't that right?

23 A Yes.

24 Q You know about your competitors?

25 A Yes, I do.

1 Q You follow industry statistics and data?

2 A Yes, I do.

3 Q You follow industry trends?

4 A Yes.

5 Q You know about online advertisers?

6 A Yes.

7 Q Trends in online advertising, right?

8 A Yes, I do.

9 Q Do you follow pricing?

10 A Of advertising?

11 Q Yes.

12 A I can't say I do that.

13 Q You understand the types of advertising there are?

14 A Yes, I do.

15 Q And you're also President of GMGI, is that right?

16 A Yes, I am.

17 Q And you're an owner of GMGI stock as well, is that
18 right?

19 A Yes, I am.

20 Q At this point, I think maybe everybody in the Courtroom
21 can memorize what's in Exhibit Z with regards to matter of
22 Mr. Denton is pulling back from his day-to-day role?

23 A Right.

24 Q Have you asked the "New York Times" to correct that?

25 A I have not.

1 Q And you were at the trial in Florida with Mr. Denton
2 for three weeks, is that right?

3 A Yes.

4 Q And the company ran without the two of you, right?

5 MR. HENNES: Objection, mischaracterized.

6 THE COURT: I thought you were going to object
7 because of the use of the word ran.

8 MR. HENNES: That too, Your Honor.

9 THE COURT: Why don't you be a little more
10 specific.

11 Q Sure. The company continued to operate even though
12 both of you were in Florida at the time, right?

13 A It did continue to operate, but we were in contact with
14 the company while we were down there.

15 Q But you were not day to day in the office, right?

16 A We were not in the office. We were both in Florida.

17 Q And you weren't calling anybody while the Court was in
18 session, were you?

19 A Yes, sometimes our department heads would ask for a
20 call with Nick, sometimes with me, sometimes with the both
21 of us to work something out. They attempted to do that as
22 infrequently as possible because the trial was a very big
23 deal for the company and they knew we were both focused on
24 it. But at least a dozen times, one or both of us spoke to
25 people in the company to settle some major issue.

1 Q Over the three-week period, right?

2 A That's right.

3 Q But not while you were sitting in the Courtroom, right?

4 You weren't having phone calls in the Courtroom, were you,

5 while Court was in session?

6 A No, we'd step out or do it at breaks. I was only

7 referring to daytime calls. I think that was your question

8 was. So when I said a dozen in three weeks, that was

9 daytime stepping out of Court. Then at nighttime, people

10 knew we were available and we both spoke to home base.

11 Q Mr. Denton took a sabbatical at some point in 2013 to

12 2014, is that right?

13 A I don't know. I believe he got married and went on a

14 honeymoon. I don't know if he took a sabbatical. I arrived

15 in May of 2013. I don't remember when he was married.

16 Q But you understand that he took a very long honeymoon,

17 right?

18 MR. HENNES: Your Honor, Mr. Denton was here. Mr.

19 Denton could have been asked about what his plans were.

20 MR. TABAK: I was asking the witness.

21 THE COURT: But it sounds like she doesn't know.

22 MS. DIETRICK: Yeah, I don't remember. I know he

23 went on a honeymoon. I don't know how long it was. It

24 might have been two weeks, it might have been three weeks, I

25 don't know.

1 Q As general counsel, you manage the full legal function

2 of the company, right?

3 A Yes.

4 Q And as general counsel, you review contracts that the

5 company enters into, right?

6 A Yes, I do. Or yes, sometimes. We have an in-house

7 legal team and it depends on what the contract is, but we

8 have people who could review contracts without me.

9 Q But you review significant contracts.

10 A Yes, that's right.

11 Q And that would have included the contracts with the

12 significant professionals working for the company in this

13 bankruptcy, right?

14 A Yes, that's right.

15 Q And you understand how important it is for contracts to

16 accurately reflect the terms of the agreements, don't you?

17 A Yes.

18 Q You wouldn't authorize the execution of contract to pay

19 a professional for services that the professional is not

20 actually (indiscernible), would you?

21 A No, I would not.

22 Q Let's talk a little bit about the sale process. One of

23 the things we've all heard that the Debtors to get a sale

24 process going was to hire Houlihan Lokey, is that right?

25 A That's right.

1 Q May 16th of this year, right?

2 A I don't remember the exact date, but, yeah, somewhere

3 around there.

4 Q I think Judge Bernstein actually remembers it from the

5 hearings. There was a May 25th hearing scheduled in the

6 Florida Court, is that right?

7 A Yes, that's correct.

8 Q The agenda for that hearing included a motion for

9 judgment, notwithstanding the (indiscernible).

10 MR. HENNES: Objection, Your Honor, relevance.

11 THE COURT: What is the relevance of this?

12 MR. TABAK: The relevance is going to be that they

13 hired Houlihan Lokey nine days before the hearings like

14 this.

15 THE COURT: So what?

16 MR. TABAK: Because of how much Houlihan Lokey did

17 in the initial stalking horse bid process.

18 THE COURT: Why don't you ask her what they did?

19 MR. TABAK: That'll be fine.

20 Q Instead of asking what they did, let me just ask first

21 what they're being paid. I think we've already heard from

22 the Court that the stalking horse is the follow-up bid.

23 They're going to get paid a little over \$2 million just for

24 the sale process, is that right?

25 A That's what we heard today, yes.

1 Q And they also get a flat fee of \$150,000 a month for

2 the first six months that they work, is that right?

3 A Yes. That fee is attributed to, I believe in the

4 agreement, restructuring work that they do, which Reid's

5 group is handling.

6 Q And that's on top of the work that they would get for

7 the sale process.

8 A That's right.

9 MR. HENNES: Objection, just to the phraseology of

10 the question.

11 THE COURT: Overruled.

12 Q Can you take a look in the binder, Exhibit CC, please?

13 Do you have Exhibit CC?

14 A I do.

15 Q If you could turn to Page, it's either 5 at the bottom

16 or you can look at 13 of 115 at the top.

17 A Okay.

18 Q And you see Paragraph 14 at the bottom?

19 A Yes, this is on Page 6 of mine. Are we on the same

20 document?

21 Q It should be, there's a Paragraph 14 on the bottom. Is

22 it the #5 at the bottom?

23 A It says the Court retains jurisdiction with respect to

24 all matters?

25 Q Are you in Exhibit CC?

1 A I think so, yes.

2 Q Let me see if we have another binder with a different

3 CC. Let me--may I approach to see if we're on the same

4 document?

5 THE COURT: Yes.

6 A This is 5, and Paragraph 14 is here -- 14, got it,

7 okay.

8 Q So now we're together, Page 5, and at the top, it's

9 Page 13 of 115. Do you see that?

10 A Yes.

11 Q This document, for the first page, this is a part of

12 the application for entry of an Order authorizing the

13 Debtors to retain Houlihan Lokey, is that correct?

14 A That is correct.

15 Q And in Paragraph 14, it says: The Debtors have

16 selected Houlihan Lokey as their investment banker based

17 upon, among other things, (a) the Debtor's need to retain an

18 investments banking firm to provide advice with respect to

19 restructuring. In this case, the advice you're looking for

20 relates to a 363 sale of assets, is that right?

21 MR. HENNES: Your Honor, objection, foundation.

22 THE COURT: Well, the witness didn't -- did you

23 ask the witness if she prepared the document?

24 Q Did you review this document before it was filed?

25 A I'm not positive. I usually review our legal documents

1 before they are filed, but I'm not positive that I reviewed

2 this one, but that would be typical, so I can't say for

3 sure.

4 Q Let me ask you this way. Are you looking for advice

5 from Houlihan Lokey that relates to a 363 sale of assets?

6 THE COURT: You being the Debtors.

7 Q You being the Debtors.

8 A Yes. We hired Houlihan in particular for their

9 additional experience on restructuring.

10 Q In the document first be Houlihan's extensive

11 experience and excellent reputation in providing investment

12 banking services in complex Chapter 11 cases.

13 MR. HENNES: Objection, foundation, Your Honor.

14 THE COURT: Yeah, you know, I don't know why

15 you're asking her about this. You have the witness who

16 executed this document. She said she's not sure if she'd

17 seen the document, so why don't you ask her what she thinks

18 the paragraphs mean.

19 Q Sure. Have you seen the agreement by which Houlihan

20 Lokey was hired?

21 A I believe so, yes.

22 Q Could you turn to Page 42 of 115 of this document?

23 A Okay.

24 Q And is that the agreement under which Houlihan Lokey

25 was hired?

1 A Yes.

2 Q And if you look at Paragraph 1, you'll see services

3 listed. Do you see that?

4 A I do.

5 MR. HENNES: Objection, Your Honor, same

6 foundation. The agreement was executed by Mr. Denton. Mr.

7 Denton was here and we are asking witnesses about documents

8 that they didn't sign.

9 THE COURT: What's the question that you want to

10 ask the witness about this document?

11 Q And is that the agreement by which we (indiscernible)?

12 A Yes.

13 Q And if you look at Paragraph 1, which is services

14 listed, do you see that?

15 A I do.

16 MR. HENNES: Objection, Your Honor. Same

17 foundation. The agreement was executed by Mr. Denton. Mr.

18 Denton was here and we are asking witnesses about documents

19 that they didn't sign.

20 THE COURT: What's the question you want to ask

21 the witness about the stock --

22 MR. TABAK: The witness has already testified

23 she's reviewed this contract. I'm just going to ask little

24 --

25 MS. DIETRICK: You asked if I had --

1 MR. TABAK: I don't believe that's the case.

2 MS. DIETRICK: Yeah, you asked if I had seen it.

3 I said yes. I don't know if I've reviewed every word of it.

4 MR. TABAK: Sure. I did ask if you --

5 THE COURT: What is your question?

6 Q The question is if you look little (i)(3), analyzing

7 instruction and various potential transaction scenarios and

8 the potential impact of these scenarios on the value of the

9 company and recoveries of those stakeholders impacted

10 potential transactions, and providing strategic advice with

11 respect to any such transactions --

12 A I'm sorry. Which page are you on, (i)(3)...?

13 Leave me alone

14 A Oh, yes, okay.

15 Q (Indiscernible) --

16 A And analyzing and structure?

17 Q -- read in Paragraph 14, that's why I tried it there.

18 A Analyzing and structuring potential transaction

19 scenarios?

20 Q Yes.

21 A What was your question?

22 Q The transactions that are described in this, that

23 Houlihan Lokey is providing services for, are those in

24 connection with the 363 sale transaction?

25 MR. HENNES: Objection.

1 THE COURT: If she knows.

2 A Let me read the whole -- let me read the paragraph from
3 the beginning.

4 THE COURT: Well, put that aside. To your
5 knowledge --

6 MS. DIETRICK: Yeah.

7 THE COURT: Was Houlihan Lokey retained, among
8 other things to analyze and structure various potential
9 transaction scenarios, specifically the 363 sale process,
10 and the potential impact of these scenarios on the value of
11 the company and the recoveries of those stakeholders
12 impacted by any potential transaction, and he provided
13 strategic advice?

14 MS. DIETRICK: Yes. I believe they were.

15 THE COURT: Okay.

16 Q Was Houlihan Lokey also hired by the company to assist
17 the company in evaluating indications of interest and
18 proposals regarding any transactions to current and/or
19 potential lenders, equity investors, the buyers, and more
20 strategic partners?

21 A Yes, they were.

22 Q And were they hired also to -- this will be Number 6,
23 if you read along -- assist the company with the structuring
24 and negotiation of any transactions, including participating
25 in negotiations with creditors involved in any transactions?

1 A Yes, there were. Well, let me revise that. I don't
2 know what they're negotiating with creditors, so I believe
3 this is the scope of everything they could provide for the
4 company. I don't -- I can't say today that they have
5 negotiated with creditors or other parties involved. Oh, if
6 you're considering other parties, potential acquirers, then
7 yes.

8 Q So they have negotiated with potential acquirers, is
9 that right?

10 A By negotiated -- yes, yeah, that's right. And when
11 we're talking about the stalking horse, they've done that.

12 Q Well, another set of professionals that the Debtors
13 hired is Opportune, is that right?

14 A Yes.

15 Q And Mr. Holden comes from Opportune, correct?

16 A Yes, he does.

17 Q Would you turn to Exhibit K in the binder?

18 A Okay.

19 Q And do you recognize Exhibit K as the current agreement
20 with Opportune?

21 A Yes, I do.

22 Q And if you look on the fourth page of the document, can
23 you tell us who signed it for Gawker Media Group, Inc.?

24 A I did.

25 MR. TABAK: I'd like to move Exhibit K into

1 evidence, Your Honor.

2 THE COURT: Any objection?

3 MR. HENNES: No objection, Your Honor.

4 THE COURT: Received.

5 Q And you reviewed this contract in your capacity as
6 general counsel, is that right?

7 A That's correct.

8 Q And this is the one that makes Mr. Holden the chief
9 restructuring officer, is that right?

10 A Yes, it is.

11 Q And his duties are addressed in the last page -- the
12 last paragraph -- excuse me -- on the first page, is that
13 right?

14 A Yes, that's correct.

15 Q And the second duty that's listed is working on the
16 company's reorganization efforts and evaluation, development
17 negotiation and implementation of activities surrounding
18 such restructuring efforts, including but not limited to
19 Chapter 11 proceedings, is that correct?

20 A That's correct.

21 Q And Mr. Holden has those duties, right?

22 A Sorry, I'm just re-reading. Yes, I think he does some
23 -- some part of that list, if not all at various points.
24 That's correct.

25 Q And could you turn to the next page, please? And on

1 the top under B, it lists responsibilities, do you see that?

2 A Yes.

3 Q And it says, subject to applicable bylaws or for
4 governance processes or with the assistance of company's
5 management, the CRO will have primary responsibility for the
6 following financial accounting functions and reorganization
7 efforts and wants these to include but not be limited to.
8 Do you see that?

9 A. Yes.

10 Q And if you look at Number 4, we see coordinate and
11 manage potential sales of the company's assets and/or
12 development of disclosure statements for proposed plan of
13 reorganization, including negotiations with stakeholders and
14 counterparties. Do you see that?

15 A Yes, I see it.

16 Q So, Mr. Holden has primary responsibility at Gawker for
17 coordinating and managing potential sales of the company's
18 assets. Is that right?

19 A I would think the distinction between this from a
20 process perspective and these things from a substantive
21 perspective, so yes, from a process perspective, he is -- he
22 does some of these things on this list. He's not managing
23 the sale from a substantive perspective. I believe Mr.
24 Denton is doing that. But he is certainly working with
25 Houlihan on managing the process.

1 Q Is there anything in this document that says that he's
2 not managing the process from a substantive perspective?

3 MR. HENNES: Objection.

4 A I don't know. I'd have to read the whole document. I
5 --

6 THE COURT: Stop. There's an objection. There's a
7 difference between what the document says and what it does,
8 and what everybody does, okay? This is an investment
9 banker's debtor.

10 MR. TABAK: I understand --

11 THE COURT: They will do everything if you believe
12 this guy.

13 Q Ms. Dietrick, do you recall that you signed --

14 THE COURT: Rather than ask her about his
15 responsibilities, ask what he does, and ask what Denton
16 does.

17 MR. TABAK: Well, and with the aspects that --

18 Q Ms. Dietrick, you signed the application to hire
19 Opportune, is that right?

20 A I'm not certain. Do you have it to show me?

21 Q I don't know if we have it in the exhibit list. You'll
22 represent to me that you signed it.

23 A Okay.

24 MR. HENNES: Objection, Your Honor.

25 THE COURT: Sustained. Just ask the question.

1 Q Did you ever tell -- did you ever tell any creditors
2 that Opportune was not performing the full roles -- did not
3 have full primary responsibility of the company for
4 coordinating and managing potential sales of company assets,
5 or the development of disclosure statements or proposed plan
6 of reorganization, including negotiations with stakeholders
7 and counterparties?

8 MR. HENNES: Objection, Your Honor.

9 THE COURT: Overruled.

10 A I don't believe I've spoken to creditors at all. So
11 no, I haven't told them that Will Holden is not doing
12 anything on this list.

13 Q But did you ever file any documents in the bankruptcy
14 case that said that Will Holden was not doing everything on
15 this list?

16 A I wouldn't see why it was necessary to, so no, I have
17 not.

18 Q Do you understand that when creditors would read this
19 contract, they would read the terms in the contract and not
20 some unwritten terms that you might have in your head?

21 MR. HENNES: Objection. Calls for speculation.

22 THE COURT: Overruled.

23 A I believe that when people read this --

24 THE COURT: A creditor reading this document would
25 not be aware of any subjective understanding that you have

1 (indiscernible).

2 MS. DIETRICK: Yeah, that's fair. But I believe
3 that they would read this as scope of the CRO could do.

4 THE COURT: And they're speculating.

5 (Laughter)

6 Q And in fact, it doesn't say what the CRO could do, but
7 it says to include, but not be one of the two. Isn't that
8 what it actually says?

9 A That is what it says.

10 Q Let's talk about your participation in this whole
11 process. Let's start with the scope of the process. As of
12 your deposition there were about 50 potential bidders
13 identified in the process. Is that right?

14 A That's right.

15 Q And you learned about that number of bidders from
16 Houlihan Lokey, is that right?

17 A Yes.

18 Q And you expect to meet with some of the bidders, is
19 that right?

20 A Yes.

21 Q And when you meet with them, you're capable of
22 describing company operations to them, correct?

23 A That's correct.

24 Q You can describe editorial operations, right?

25 A That's correct.

1 Q And given your role as president and general counsel,
2 you can describe the company's business strategy and vision
3 to bidders, isn't that right?

4 A Bidders would not typically -- at least in the stalking
5 horse process -- ask me those questions because they want to
6 hear from Nick. They want to hear what was Nick's vision
7 for this company.

8 Q And my question is actually you could have described it
9 for them, right?

10 A The company's business and vision?

11 Q Yeah, there's a strategy and vision. You could
12 describe it to bidders, couldn't you?

13 A I could make an effort at it, yes.

14 Q You could describe the company's technology to bidders,
15 couldn't you?

16 A No.

17 Q But if you couldn't, you would -- you would talk
18 (indiscernible) the chief technology officer, right?

19 A If Mr. Denton was not available and this scenario, I
20 would go to a chief technology officer, that's correct.

21 Q And he could describe it for bidders, couldn't he?

22 A He could. He could not describe the vision for the
23 platform, but he could describe the steady state of the
24 platform. He couldn't describe where it came from, because
25 he's relatively new to the company.

1 Q But he can describe what's --

2 A He could describe the nuts and bolts of how the

3 platform works, absolutely.

4 Q And you could describe the company's sales operations

5 to potential bidders, couldn't you?

6 A To some extent, I could.

7 Q And what you couldn't (indiscernible) then, correct?

8 A She could again describe the nuts and bolts, I think.

9 It would be difficult without Mr. Denton to describe sales

10 strategy.

11 Q You don't think that their head of sales can describe

12 sales strategy? Is that what you're telling us?

13 A I think she could, but I think Nick is the person who

14 sets sales strategy and I think he would be better at it,

15 though she is excellent.

16 Q And she could describe it to --

17 A She could.

18 Q You know Mr. Denton very well, is that right?

19 A I do.

20 Q You understand that if he filed for personal

21 bankruptcy, he could still go to work every day, right?

22 A I believe so.

23 Q So you haven't bothered to come up with a contingency

24 plan for the company if Mr. Denton does file for personal

25 bankruptcy, have you?

1 A A contingency plan for what?

2 Q For the company if Mr. Denton files for personal

3 bankruptcy.

4 A I have not.

5 Q And you haven't even discussed with Mr. Denton what

6 would happen to the company if he filed for personal

7 bankruptcy, have you?

8 A I have not.

9 Q You in fact don't have any knowledge of how a personal

10 bankruptcy case proceeds, is that right?

11 A I don't have any personal knowledge, but I've spoken at

12 length with our counsel, but I don't have any personal

13 knowledge. I've never filed for bankruptcy myself and I

14 haven't handled one as an attorney.

15 Q When did you speak with your counsel about this?

16 A I don't recall specifically, on multiple occasions.

17 Q All since your deposition, isn't that right?

18 A No, I had spoken to them before my deposition as well.

19 Q Do have the other book that has the depositions?

20 A Yes.

21 Q It looks like you are the second tab. Do you see that?

22 A Yes I do.

23 Q Can you turn to page numbered 95 on the top right?

24 A Yup. I'm there.

25 Q And I'm just going to read the question and answer and

1 ask you if those appeared at your depos -- by the way your

2 deposition was taken July 6th, right?

3 A That's correct.

4 Q And you swore to tell the truth in your deposition?

5 A Yes.

6 Q And you submitted corrections to your deposition after

7 you read it carefully, right?

8 A That's correct.

9 Q On page 95 line 20 you were asked, "Do you have any

10 knowledge of how a personal bankruptcy case proceeds? And

11 the answer was, "No, I don't have specific knowledge." When

12 you were asked that question and you gave that answer --

13 MR. HENNES: Objection, Your Honor.

14 THE COURT: Ask what she testified to. Why are we

15 time on this?

16 MR. TABAK: She testified that she had knowledge,

17 that she spoke to counsel about it. She had not spoken to

18 counsel as of her deposition July 6th.

19 MR. HENNES: Objection --

20 MS. DIETRICK: I can actually --

21 MR. HENNES: Hold on.

22 MS. DIETRICK: Oh yeah. Go ahead.

23 MR. HENNES: Thank you.

24 THE COURT: Objection is sustained. Move on to

25 another topic. She answered that question.

1 Q You personally reviewed the TRO papers that were filed

2 in this adversary proceeding, is that right?

3 A Yes, I believe so.

4 Q It's part of your job as general counsel, isn't it?

5 A That's correct.

6 Q And you were instructed not to answer the question at

7 your deposition as to who the ultimate decision makers were

8 in filing this motion so I'm going to ask you now. Who were

9 the ultimate decision makers in filing this motion?

10 MR. HENNES: Objection, Your Honor. I still

11 maintain that this is irrelevant to any issue at play in

12 this motion.

13 THE COURT: Well, but the argument is that Denton

14 is not a necessary, there are other people who can do what

15 you claim only he can do. So, I'll overrule the objection.

16 A I believe Nick and I both spoke to counsel about that

17 particular document.

18 Q Nick was involved in the decision to file this -- the

19 adversary proceeding, is that right?

20 A That's correct.

21 Q You knew the motion that was going to be filed was to

22 be filed ex parte, is that right?

23 A I believe so.

24 Q You knew that the Court would rely on what you put in

25 your papers, right?

1 MR. HENNES: Objection, Your Honor. We're back to
2 the same issues that we have already objected to and Your
3 Honor has already found are not relevant to this and we've
4 already given the documents.

5 THE COURT: What are you trying to show?

6 MR. TABAK: I'm going to show Your Honor that
7 there are a number of statements in the Debtor's papers that
8 are simply 100 percent false.

9 THE COURT: As they pertain to this motion or
10 collateral matters?

11 MR. TABAK: As they pertain -- in the motion
12 papers here are (indiscernible) to what happened in Florida.
13 And because it was an ex parte proceeding we are not here to
14 correct the record. It goes to the unclean hands argument,
15 Your Honor. Courts have repeatedly said that a party
16 seeking --

17 THE COURT: Let me ask a question. If Denton were
18 really critical to the success of the sale, without
19 condoning what occurred in Florida, do you think it would
20 matter what occurred in Florida?

21 MR. TABAK: We're not talking about what occurred
22 in Florida. We're talking about what occurred in this
23 proceeding. The papers that were filed here.

24 THE COURT: What do you contend is a misstatement,
25 without arguing with the witness.

1 MR. TABAK: Sure.

2 THE COURT: What do you contend is a misstatement?

3 MR. TABAK: The statement that's in the brief at
4 paragraph 20, and these appear at a number of different
5 places, the bond to stay execution of the judgment pending
6 appeal is \$50 million for each of the Bollea litigation
7 defendants. In fact, bond was never set in Florida. The
8 court has refused to reduce to reduce the cash bond and
9 denied Gawker Media's request to post stock or alternative
10 collateral in lieu of the bonds.

11 That's incorrect. The court actually agreed to a
12 stay --

13 THE COURT: But it was subject to other
14 conditions. You know, you're quibbling at this point. I
15 thought the evidence was Mr. Denton authored or proposed to
16 pledge his stock in the holding company. Mr. Bollea came
17 back and said that's fine, but I want one, two and three,
18 which is a counteroffer.

19 The Court agreed with Mr. Bollea and at that point
20 Mr. Denton made the decision that it was in the best
21 interests of the company to file a bankruptcy.

22 MR. TABAK: The issue is not a contract issues.
23 The issue is that the court in Florida said that it would
24 stay the execution. The papers that were filed here say
25 that Mr. Bollea can executed immediately. Those were in

1 fact -- those were not true statements that were made to
2 this Court.

3 The papers here say that Mr. Bollea's counsel did
4 not agree to a temporary stay of execution. We'll show you
5 in Exhibit -- which I can move into evidence -- that in fact
6 Mr. Bollea's counsel had agreed to a stay of execution.

7 THE COURT: How does this bear though on the
8 issues that are raised by the motion for the preliminary
9 injunction?

10 MR. TABAK: It bears because of the doctrine of
11 unclean hands. Somebody comes to court and seeks equitable
12 relief. They can't make false statements in their
13 application.

14 We have already gone from June 10th until now
15 without the possibility of seeking execution because of what
16 happened on June 10th when we weren't in this court and we
17 couldn't tell Your Honor --

18 THE COURT: That's not true.

19 MR. TABAK: -- the statements --

20 THE COURT: You agreed to the continuation of the
21 stay. You could have gotten an immediate trial.

22 MR. TABAK: Some of the agreements the
23 continuation of the stay were for the convenience of
24 counsel.

25 THE COURT: It doesn't matter. You could have

1 said after 10 days I don't consent to the extension to the
2 TRO. If I said I entered it anyway it would become a
3 preliminary injunction presumably and you could appeal.

4 So don't tell me that you have been prevented from
5 execution because of anything they said on the first day.
6 Yes, they got a TRO on the first day.

7 MR. TABAK: Your Honor, we haven't seen a case
8 with unclean hands where a court has permitted the equitable
9 relief to continue. We haven't seen a single one from the
10 Debtors.

11 It's undisputed. There were statements in their
12 application that also were made. They have never been
13 corrected. And frankly, Your Honor. We have never seen a
14 case that allows equitable relief under those circumstances.

15 MR. HENNES: Your Honor, as the author of the
16 document, I could say that all of those statements we still
17 believe are true actually with respect to this. And I can
18 go through them point by point.

19 THE COURT: I'll hear you in closing argument. I
20 have the goods. Why don't we leave this for closing
21 argument? Whatever the briefs say they say.

22 MR. TABAK: One last --

23 THE COURT: Unless there's some factual -- some
24 facts you want to establish that you need for your closing
25 argument that you can only establish through her without a

1 document.

2 MR. TABAK: First I'd like to move into evidence,

3 it's a transcript from the Florida court from that day.

4 THE COURT: Any objection?

5 MR. HENNES: What's the basis, Your Honor?

6 THE COURT: He wants to show that a misstatement

7 was made to this Court based on what transpired in Florida.

8 MR. HENNES: Yes, Your Honor, the evidentiary

9 basis.

10 MR. TABAK: The evidentiary basis, we actually

11 have an agreement in writing with Mr. Winograd that all the

12 documents that were attached to Mr. (indiscernible)'s

13 declaration, they would not object to the authenticity of

14 those documents.

15 MR. HENNES: Correct.

16 MR. TABAK: So, if this is an authenticity

17 objection, it's been waived.

18 THE COURT: I think there's a relevance objection.

19 MR. HENNES: And a hearsay objection.

20 MR. TABAK: The other relevance, Your Honor, is --

21 THE COURT: So they have to bring the court

22 reporter in (indiscernible) the transcript?

23 MR. HENNES: Your Honor, I'm just waiting for Mr.

24 Tabak to articulate the basis for his proffered

25 admissibility.

1 MR. TABAK: The other basis with admissibility is

2 we're talking about what would happen if this Court doesn't

3 grant a stay. The Florida court was perfectly willing to

4 grant the stay.

5 THE COURT: But wasn't one of the conditions of

6 the stay that assets couldn't be sold?

7 MR. HENNES: And that's what you've been told, but

8 it's only the assets of Mr. Denton and Mr. Daulerio that

9 couldn't be sold. For the assets of the company -- in fact

10 if you look at paragraph --

11 THE COURT: Where is the --

12 MR. HENNES: It's the -- you're right. It's not in

13 the binder, Your Honor. They didn't put it in actually. We

14 handed it up. They didn't attach it to their declaration.

15 MR. TABAK: And I'll direct you to paragraphs 1G

16 and 1H.

17 THE COURT: Doesn't G say that without prior court

18 approval, the defendants, which would include Gawker --

19 MR. TABAK: But then --

20 THE COURT: -- shall not dissipate any assets that

21 may otherwise be subject to execution by the Plaintiff.

22 MR. TABAK: And then paragraph 1H says

23 notwithstanding paragraph 1G in the event of any potential

24 sale --

25 THE COURT: It talks about potential sales though

1 so they have to give you notice.

2 MR. TABAK: But all they have to give us is

3 notice. We don't have a veto right. All we get is notice.

4 THE COURT: But the implication is that they can't

5 sell the assets without the approval of the Court. That's

6 how I read this. I've heard enough about this really.

7 MR. TABAK: Thank you, Your Honor. We have no

8 further questions. Can I actually confer with counsel

9 please?

10 THE COURT: Sure.

11 MR. TABAK: No further questions, Your Honor.

12 THE COURT: Redirect?

13 MR. HENNES: None, Your Honor, thank you.

14 THE COURT: You can step down. Thank you. Do you

15 have any further witnesses?

16 MR. HENNES: We have no further witnesses, Your

17 Honor.

18 THE COURT: Does Mr. Bollea have any further

19 witnesses?

20 MR. BOLLEA: No, Your Honor.

21 THE COURT: Both sides rest?

22 MR. HENNES: Yes, Your Honor.

23 MR. FISHER: Yes.

24 THE COURT: Does Mr. Bollea rest?

25 MR. BOLLEA: Yes, Your Honor.

1 THE COURT: We'll take a 10-minute recess and then

2 I'll (indiscernible).

3 (Recess)

4 THE COURT: Go ahead.

5 MR. GALARDI: Your Honor, thank you again. For

6 the record, Greg Galardi.

7 I'm going to first respond to what is the comments

8 about the papers, Your Honor. I do that for two reasons;

9 one, I am the author of the papers and two, I do think it

10 goes ultimately to one of the issues raised in the substance

11 of the objections.

12 First, Your Honor, we have handed up to Your Honor

13 -- the controversial statement, Your Honor, is in our key

14 sentences is on page 15, which has been pointed out a number

15 of times today.

16 THE COURT: Page 15 of the moving memorandum?

17 MR. GALARDI: 15 of our moving papers in the

18 single-spaced Bollea v. Gawker Media paragraph.

19 THE COURT: Right.

20 MR. GALARDI: And it says -- the first sentence

21 says, "The bond to stay execution of the judgment pending

22 appeal is \$50 million for each of the Bollea litigation

23 defendants. Your Honor, the question is, is that correct?"

24 One, I'm not a Florida law person, but I have been

25 advised by Florida law. I would note, and I honestly can't

1 remember whether Your Honor took the transcript in, but at
2 page 38 of the transcript, the Court specifically says so
3 the choice is basically a bond of \$150 million. Our
4 understanding is because of joint and several liability
5 under Florida law each person would have to post a \$50
6 million bond -- \$50 million being the cap.

7 The Court I think understood that and then went to
8 the choice of you can't do that. That's the first
9 statement.

10 Your Honor, with respect to the second statement,
11 Your Honor hit the nail on the head as soon as you came in
12 today, and we have to agree.

13 The Court has refused to reduce the cash bond. I
14 don't think there's a dispute about that, and denied Gawker
15 Media's request to post stock or an alternative collateral.

16 We made a request, whether it's a contract or
17 otherwise. That request was rejected both by Bollea's
18 counsel and by the Court. And, Your Honor, I just want to
19 point out things that are in that specific order because
20 Your Honor is -- has gone to the paragraphs, I don't want to
21 belabor it.

22 But on paragraph 3 of the proposed order, on page
23 3 paragraph E, which is 1E, it says, "The Plaintiff shall
24 immediately be entitled to take any and all steps necessary
25 and appropriately to perfect his rights as a judgment

1 creditor and to establish and perfect his judgment lien of
2 priority as a creditor of the Defendants including, without
3 limitation, recording and rerecording a final judgment in
4 any jurisdiction." And it goes on, Your Honor.

5 I mentioned this to Your Honor the first day that
6 I was here. I know Mr. Winograd was down with your Court.
7 The fact of the matter, as soon as they became a judgment
8 creditor, despite a stay, they were going to be a judgment
9 creditor, you have all sorts of issues, as Your Honor is
10 well aware, even if I could void that judgment, DIP finance
11 -- all of those issues.

12 So they refused it. That was one condition. Your
13 Honor can look at F with the discovery conditions. Your
14 Honor has already pointed out G that says, "Without prior
15 Court approval", that is, the Florida court, we couldn't do
16 that. We couldn't sell the assets. That's all the
17 defendants and it says notwithstanding H. In H it says
18 "Notwithstanding 1G" we had to give 14 notice. But you
19 still had to go back to the Court.

20 And, by the way, we go back to paragraph 3, the
21 order is entered without prejudice to Mr. Bollea's right to
22 seek additional security and or a good and sufficient bond
23 at any time.

24 So, Your Honor, with respect to the statements, we
25 stand by the statements. They are true. We don't have any

1 -- didn't have any intention to mislead the Court.

2 But I think Your Honor, going more now to the
3 substance and what this all shows. I started the hearing
4 saying we were going to proceed under 105 and we were going
5 to proceed on the importance of Mr. Denton to the sale
6 process.

7 As I mentioned at the outset, there are four
8 requirements for a 105 extension of the injunction, the
9 first of which, I believe, is uncontested. It's whether
10 there is a likelihood of a successful reorganization. I
11 think no one disputes the fact that there is an asset sale,
12 that there is a stalking horse and that there is an auction
13 process, that the Debtors are proceeding in good faith.

14 We had heard from Your Honor that we have a time
15 to file the plan. We modified the stalking horse bid to do
16 that. There is a process that says on the 15th bids are
17 due, the 16th there is an auction, the 18th is the sale
18 hearing, that we have a likelihood of successful
19 reorganization. It is a plan of liquidation in all
20 likelihood because of the circumstances, but I think that
21 condition is unquestionably and undeniably satisfied.

22 I'm going to step over -- I'm going to go now to
23 the irreparable harm, Your Honor. As I started to hearing
24 today I said we were going to rest on one aspect and that's
25 Mr. Denton's being valuable and central to the bankruptcy.

1 Every witness today, and Your Honor has sat
2 through the witnesses and maybe you took better notes than I
3 did as I saw Your Honor writing. But let's go through Mr.
4 Holden.

5 Mr. Holden clearly testified that Mr. Denton was
6 necessary to maximize value. He used the words intangible.
7 He used the knowledge of the company. He talked about the
8 history. He said he knows where the bodies are buried. And
9 as he testified, and I understand there was cross-
10 examination, Mr. Holden's job is to get up to speed quickly,
11 to understand the business and Mr. Holden's opinion was that
12 in order to maximize value, Mr. Denton was necessary.

13 Mr. Snellenbarger got on the stand and --
14 THE COURT: Assuming -- assuming I agree with you
15 --

16 MR. GALARDI: Yes.

17 THE COURT: -- what's the evidence that if he has
18 to file the Chapter 11, which seems to be the only issue in
19 this case, that the Debtor won't be able to maximize value
20 between now and September 3rd?

21 MR. GALARDI: And Your Honor, that's why I went
22 through the first point because here is the extent of their
23 testimony and why -- why did you file a 7? Your Honor,
24 asked the question, so a 7 -- Your Honor understands the --

25 THE COURT: It doesn't sound like he's going to

1 file a 7.

2 MR. GALARDI: Correct.

3 THE COURT: Although he took credit --

4 MR. GALARDI: So let's take the letter. Your
5 Honor, no one on their side has testified and the issue here
6 is Your Honor has already seen how much litigation goes. So
7 it is a two-party dispute arguably. Your Honor is very
8 familiar with bad faith filing litigation, motions to
9 dismiss. I point even to this order with respect to the
10 assets and the bona fides.

11 There is a motion to lift stay. There is, as Your
12 Honor has heard, and what the entire motivation for
13 adjourning, and then we had the dispute as to the scope of
14 the order to bring proceedings back to Florida to seek
15 contempt.

16 There is no guarantee that any of that litigation
17 will not occur in the next 45 days and the fact of the
18 matter is --

19 THE COURT: What if he files a Chapter 11, let's
20 say? That litigation would be stayed, wouldn't it?

21 MR. GALARDI: Well, not that litig -- look, the
22 litigation down in the Florida court will be stayed.
23 Potential bad faith filing litigation, motion to dismiss,
24 motion to lift stay all can be filed immediately in a
25 Chapter 11 to bring the litigation and to first, incur those

1 expenses and two, to move for the litigation back to the
2 Florida court.

3 All of that is litigation that will be a potential
4 distraction to Mr. Denton and the company within the next 45
5 days. Why take that risk? Why for the creditors, when you
6 can in fact have Mr. Denton be available -- That's why we
7 shorted the stay for a 45-day period.

8 All we are hearing is we want Mr. Denton to file
9 bankruptcy. For what purpose? It's not clear.

10 THE COURT: You have to deal with this Florida
11 judgment. Not only Mr. Denton, but the Debtor.

12 MR. GALARDI: Sure.

13 THE COURT: How are you going to do that?

14 MR. GALARDI: Your Honor, again, without getting
15 into the details of settlement discussions, what we would --

16 THE COURT: Forget about settlement. Let's say we
17 don't want to settle.

18 MR. GALARDI: Okay. Your Honor, we're going to
19 come to this Court at the conclusion of the sale with a
20 motion to lift stay so that the company can proceed in the
21 Florida court and the appeal court and Mr. Denton will be
22 part of that as will the other defendant.

23 What's going to be the big issue, and just to
24 preview it, is once the company is in that litigation, we
25 would like to move to expedite the appeal and proceed as

1 fast as possible because of all of the allocation and
2 distribution proceedings.

3 What we are concerned about, and one of the
4 reasons we didn't deal with the indemnity today, is the
5 costs and expenses of all the ancillary litigation that we
6 believe will go on in the advancement provisions. We want
7 to tee that up for Your Honor. We want to tee it up with
8 either the sale or right after the sale so we can proceed on
9 an expedited basis, on a cost-effective basis.

10 That's the only way to go -- proceed in that
11 litigation. Your Honor, we can't challenge that judgment in
12 this Court. We've had that conversation since the very
13 first day we were here. It's different in kind than all the
14 other litigations. That's why we wanted a 45-day stay,
15 let's be focused on that, prepare the papers to go forward
16 and make a proposal to Your Honor that the company, and we
17 talked to the committee about lifting the stay to proceed to
18 trial.

19 It will also give us an opportunity to seek -- to
20 expedite the proceedings down in the Florida court because I
21 think -- I don't believe they want to do anything to delay
22 the appeal process either because everybody's got to move
23 that forward.

24 THE COURT: What prevents Mr. Denton voluntarily
25 or involuntarily from encumbering his assets between now and

1 then?

2 MR. GALARDI: As a technical matter, Your Honor, I
3 don't believe there's anything other than it is an
4 individual that has \$150 million judgment, which any
5 encumbrance I believe you'll have issues of fraudulent
6 conveyance that will all be litigated and I don't think Mr.
7 Denton has any intention to do so, but there's no order that
8 says thou shalt not encumber your assets in the ordinary
9 course.

10 Your Honor, you've heard about a loan. I will
11 actually -- maybe it's --

12 THE COURT: Mr. Denton, and I recognize you don't
13 represent Mr. Denton, but --

14 MR. GALARDI: Correct.

15 THE COURT: -- is he prepared to agree to an
16 injunction that he won't transfer or encumber his assets
17 between now and September 3rd without (indiscernible) court
18 right now?

19 MR. GALARDI: I believe that if that is the
20 condition for getting that 45 days, having talked to Mr.
21 Denton and his counsel, that will be no issue and I can see
22 that as a --

23 Well, Your Honor, he offered to pledge the stock
24 and whether that's the same thing --

25 THE COURT: No, that's --

1 MR. GALARDI: But it's not. That's why I didn't
2 say that.

3 THE COURT: But if he pledges the stock and
4 nothing happens within 90 days and then he files bankruptcy,
5 that pledge won't be a preference.

6 MR. GALARDI: Correct.

7 THE COURT: So it may prejudice other creditors.

8 MR. GALARDI: Correct, that's why, Your Honor --
9 but with respect to a provision in this order that
10 conditions an extension of the stay to Mr. Denton and,
11 frankly, you know, we've lost track of Mr. Daulerio, but he
12 --

13 THE COURT: Well, there's no evidence of Mr.
14 Daulerio's significance in this case and I would not grant
15 an injunction (indiscernible).

16 MR. GALARDI: Your Honor, the only issue with
17 respect to -- so let me go back to Mr. Denton and then I'll
18 go to Mr. Daulerio.

19 With respect to Mr. Denton, I believe that -- and
20 again, speaking from the company's perspective -- we would
21 have a similar interest in not actually having those shares
22 pledged because I wouldn't want a default and have some
23 other person for the exact reason Your Honor pointed for
24 Chapter 7.

25 I would be comfortable, I can certainly reach out

1 to his counsel, but if that's one of the conditions that
2 Your Honor would impose in extension of the stay, based on
3 my conversations with Mr. Denton's counsel and based on my
4 conversations with Mr. Denton, I don't believe that that
5 order is at all objectionable for him.

6 Let me go to Mr. Daulerio. Your Honor, the simple
7 issue with respect to Mr. Daulerio, and I understand there
8 has not been specific evidence with Mr. Daulerio --

9 THE COURT: I don't think his name has been
10 mentioned until you just mentioned it.

11 MR. GALARDI: It was mentioned in the papers with
12 respect to him, Your Honor. We were relying essentially on
13 the indemnification provisions, but I understand that we
14 withdrew that.

15 With respect to Mr. Daulerio, you have two
16 defendants going forward. He's not a current employee. It
17 has not been submitted as evidence, but he is represented by
18 the same counsel in the Florida action. Your Honor, we just
19 think it would be unfair to have it go forward against him.
20 He is the writer. I understand, Your Honor, that there is
21 no evidence specifically with respect to him. We couldn't
22 put on evidence, but we would ask at the very least, Your
23 Honor, if you're inclined not to include the extension of
24 the injunction to him, then we would simply request a 10-day
25 delay in your order such that he can seek relief in the

1 Florida court.

2 THE COURT: I think it's 14.

3 MR. GALARDI: 14 days. Well, I'm not sure on this
4 if it's subject to the automatic stay of 14 days when you
5 have a preliminary injunction. That was why I was -- my
6 procedure is not that great on that particular one.

7 THE COURT: Have you thought about agreeing to
8 relief from the stay just so the appeal can be prosecuted
9 because all that's going to happen is (indiscernible). It's
10 not going to interfere with anything.

11 MR. GALARDI: Your Honor, again without getting --
12 we actually have proposed it. Because of the ancillary
13 litigation it's not been accepted.

14 THE COURT: I'm just talking about the appeal.

15 MR. GALARDI: Yes, exactly. That's exactly what
16 we have proposed since early on in this case. It has not
17 been accepted and I will tell you more than this lawyer and
18 some others have been frustrated because, Your Honor, that
19 is exactly what we want to do. And it is just briefing. It
20 wouldn't be the distraction. It wouldn't be all of those
21 efforts, which is now why I think I have to come to you in
22 emotion in the next instance to ask Your Honor and let them
23 oppose it.

24 THE COURT: Okay.

25 MR. GALARDI: So, Your Honor, with respect to the

1 functions, with respect to Mr. Denton, I think Your Honor
2 jumped to the conclusion, one, is that the only testimony,
3 the only evidence that they are offering up is that somehow
4 Mr. Denton's role as the founder, as the person with the
5 most knowledge, as the primary person for the advertiser, as
6 the person that wants to have a sale -- one, that his role
7 can in fact be handled by the management team that he's put
8 together, which is an excellent management team. He admits
9 it and he spoke with pride as to that management team.

10 As to getting the higher value, the testimony was
11 clear that each of the participants, including Mr. Denton,
12 believed that value would be maximized with him involved.

13 As to his -- the speculation that he can simply do
14 this as a -- if he files a bankruptcy, Your Honor, the
15 speculation is just that.

16 There is no representations that there won't be
17 this litigation, and indeed, the lengths to which the
18 parties have gone to put Mr. Denton into bankruptcy, and
19 I've mentioned the litigation, which Your Honor is well
20 aware is a potential litigation, the fact that we put in the
21 papers and you've heard today about the campaign against the
22 company and the campaign against Mr. Denton, we believe that
23 those are the kinds of distractions that 45 days can -- you
24 can have a period whereby no one should incur those -- in
25 those 45 days, Mr. Denton should not be subjected to that.

1 As I've mentioned to Your Honor, after that 45
2 days, we understand where Your Honor is, we understand what
3 would be -- what we will request and what Mr. Denton does
4 will be between he and his counsel.

5 With respect to the balance of the harms, Your
6 Honor, we don't see any harm to Mr. Bollea of waiting 45
7 days to pursue his avenue. What is clear is, there is a
8 risk, a risk that the company is not --

9 THE COURT: Won't Mr. Denton file bankruptcy at
10 that point?

11 MR. GALARDI: There is a likelihood that he files
12 bankruptcy. Again, Your Honor, he said that if it's lifted,
13 he's going to file bankruptcy. There may be a way to get a
14 stay down in Florida, I can't decide that, I don't know
15 that, but if he doesn't get a stay and that judgment is
16 entered and they're going to exercise the rights, I'm not
17 Mr. Denton's counsel, but I know enough to know that he said
18 he's going to file bankruptcy at that point.

19 But at that point, it's a much different issue, as
20 Your Honor acknowledges, with respect to the company. Easy
21 to move down with a different company, we've closed it.
22 I've used September 3rd not the auction date because there's
23 a sale and a closing and there isn't a transition. They
24 have raised the issue of the consulting agreement, but
25 again, the consulting agreement is not really the Debtor's

1 concern because it's post-closing. We do want it to close,
2 but we were aware of that. And finally --

3 THE COURT: Didn't your reply brief refer to post
4 -- a need for an injunction post-closing?

5 MR. GALARDI: Well, and Your Honor, that's why we
6 withdrew that request.

7 THE COURT: Okay.

8 MR. GALARDI: That's why I went to the September
9 3rd, you know, because again, depending on what happens in
10 this auction process on August 18th, facts can change.

11 What we know is that at least now with this deal,
12 it's September 3rd. We understand all of the exceptional
13 circumstances, unusual circumstances or otherwise, should we
14 ever come back to you on those, but that's not today.

15 What we think is, get us through the sales process
16 and as the last factor is, it's not just the balance of
17 harms to the reorganization versus the temporary stay of 45
18 days, there's the public interest in, again, the
19 restructuring, the sale of assets, the maximization of value
20 for all creditors, including Mr. Bollea, should he have a
21 good, valid judgment, versus the timeframe and the period of
22 time to delay.

23 And this is also the -- the delay in enforcing his
24 rights. This is also an interesting case because, I have
25 said it to Your Honor since the very first day, we will be

1 going back into Florida.

2 This is not a venue shift type of litigation,
3 where we're staying it and trying to bring it here. We
4 understand Your Honor doesn't have the jurisdiction to go
5 and challenge that judgment. So for those reasons, we would
6 ask Your Honor to grant our relief.

7 THE COURT: Okay.

8 MR. TABAK: Thank you, Your Honor. Let me say,
9 Your Honor, this is the first time I've heard any discussion
10 about a relief from the stay just for the Florida appeal.

11 THE COURT: Well, let's just -- let's assume that
12 both sides agree to relief from the stay so that the appeal
13 can go forward, because it's got to go forward at some point
14 in order for that -- for there to be a final judgment one
15 way or the other. Is that part of an acceptable resolution
16 of this motion?

17 MR. TABAK: It's part of an acceptable resolution
18 --

19 THE COURT: And what else?

20 MR. TABAK: Well, we would like the opportunity to
21 protect our judgment. As Your Honor said, there's nothing
22 to prevent --

23 THE COURT: What is it that you -- (indiscernible)
24 beyond an injunction in which he agrees not to transfer,
25 encumber his assets or incur indebtedness outside of the

1 ordinary course of business, what else is there?

2 MR. TABAK: We don't know what's been transferred
3 or encumbered before. We don't -- we don't have that
4 information and the clock runs on the preference period as
5 Your Honor recognized.

6 THE COURT: Well, I guess you can file an
7 involuntary bankruptcy petition if that's your concern.

8 MR. TABAK: We're only one here. And let me --
9 but let me address the bigger issue. The question was,
10 well, there have been no representations made that we won't
11 file a motion to dismiss his bankruptcy, we won't make some
12 other motions. We're not going to file a motion to dismiss
13 his bankruptcy.

14 Let me put that representation on the record. Let
15 me put another representation on the record. We won't make
16 a motion to lift the stay until the sales process is done.
17 And you know, I think the stay will be lifted as everybody
18 agrees eventually --

19 THE COURT: So if he files a bankruptcy tomorrow,
20 what will you do? What, if anything, will you do to protect
21 your rights in that bankruptcy?

22 MR. TABAK: Your Honor, this is actually their
23 burden to show what would happen in bankruptcy --

24 THE COURT: I'm asking you a question.

25 MR. TABAK: Well, then we --

1 THE COURT: I'm asking you --

2 MR. TABAK: -- we won't do anything. We will wait

3 --

4 THE COURT: You won't seek two thousand --

5 MR. TABAK: -- until the 45 --

6 THE COURT: You won't seek 2004 exams and you

7 won't make a motion for relief from the stay and you won't

8 make a motion to dismiss?

9 MR. TABAK: We won't do any of those until the

10 sales process is over. After the sales process is over --

11 THE COURT: So, if that's the case, why not just

12 accept it in order, a provision that says he won't transfer

13 his assets or incur debt outside the ordinary course of

14 business, get on with the sale. I think if all the parties

15 are prepared to agree to relief from the automatic stay to

16 prosecute the appeal, you should do that sooner rather than

17 later, because who knows how long that's going to take? And

18 just be done with it.

19 MR. TABAK: Because as I said, Your Honor, we

20 don't know what rights we're giving up.

21 THE COURT: But how are you going to find that out

22 if you don't do anything?

23 MR. TABAK: We don't -- we don't need to find that

24 out right now. If he files for an involuntary -- if he,

25 excuse me, files for a voluntary bankruptcy, it's going to

1 be Chapter 11, there will be very, very little happening in

2 that Chapter 11 case before the sales process is over.

3 The petition, Your Honor has seen many petitions.

4 20 questions, six pages, and then a couple signature pages.

5 These are, you know, credit counseling, we'll leave that to

6 the side, he already has a certificate.

7 The only two other things that might happen are

8 that he would need to file schedules. We will not oppose a

9 motion to extend the filing of the schedules to a sufficient

10 period after the sales process.

11 And on the last thing, a 341 meeting of creditors,

12 that just needs to be set a reasonable time after the

13 petition date. That can be well after the sales process as

14 well. There is absolutely no burden on him for filing for

15 bankruptcy at this point with our representations that we

16 aren't making any of these motions. It's their burden to

17 show that there would be harm to the Debtor. Not to Mr.

18 Denton, by the way, harm to the Debtor.

19 The very limited things that we are talking about

20 will take less than two hours until the sales process is

21 over. They have not shown that if Mr. Denton does that,

22 that there is any harm whatsoever to the Debtor's estate.

23 That's their burden.

24 Now, I can -- I can go forward and tell you, they

25 haven't shown -- even if he doesn't file for personal

1 bankruptcy, they haven't shown irreparable harm here. We

2 look at the -- the day-to-day operations.

3 He spent three weeks in Florida not being actively

4 involved in the day-to-day operations. He'll still be able

5 to make a few phone calls, just as he did from Florida. Ms.

6 Dietrick will be fully available now. She's the president,

7 she touches all the operations.

8 THE COURT: What about the sales process, and I

9 know you're going to tell me he hired all these

10 professionals, but the bidders still want to talk to him.

11 MR. TABAK: Absolutely, and he'll have plenty of

12 time. He pulls back from the day-to-day operations as,

13 frankly, they've told the press that he's done, multiple

14 times --

15 THE COURT: Well, I'm not sure that's evidence --

16 MR. TABAK: And he --

17 THE COURT: -- in this case.

18 MR. TABAK: I think the fact that -- the fact,

19 though, is that he has pulled back, he was -- the Florida

20 trial is evidence, that he spent three weeks in Florida not

21 being actively involved day-to-day. Also, Ms. Dietrick

22 wasn't. She's here now. She can be fully actively involved

23 in the day-to-day. They can meet -- they can meet with the

24 bidders --

25 THE COURT: Explain to me -- it sounds like you

1 want to force him to file bankruptcy. Just tell me why

2 that's significantly important in this calculus of whether

3 or not a preliminary injunction should issue.

4 MR. TABAK: We -- what we care about is not

5 whether he files or doesn't file. But as Your Honor said,

6 we don't know what he's been doing before -- you know,

7 before now. We can lose our rights if there -- if there

8 have been any preferences. We don't want to lose our

9 preference rights.

10 As you said, really, the only other option is to

11 take discovery of him. Wouldn't that be so much worse?

12 Your option was, what if we file an involuntary bankruptcy

13 for him? Wouldn't that be so much worse than just having

14 him file for bankruptcy and we freeze the date when the

15 preference period starts or ends. That's so much better

16 than the other alternatives of us trying to take discovery

17 now to find out if he has -- if he had been encumbering

18 assets, transferring assets. That's a much better option

19 for everybody involved.

20 That would have -- what we're talking about would

21 have less than two hours of impact on the sales process. I

22 think Your Honor, that's a much better solution than leaving

23 us without any knowledge of what's been going on, and

24 potentially losing our rights. We had no evidence here.

25 It's their burden.

1 No evidence of what assets he's encumbered. We
2 know, if you look at Exhibit O, which is the -- the Florida
3 hearing, that he planned to lease out his apartment. That
4 could affect the ability to sell the apartment. We don't
5 know if these things that happened.

6 So, we are left with a naked judgment, no
7 protection. The alternative, file for involuntary
8 bankruptcy for him. I think we all agree, that's not what
9 we're looking for here. Try and get the 2004 discovery,
10 that's the opposite of what the Debtor wants, that's not
11 what we want. We want just the protection, if he files for
12 bankruptcy now, we have the 90 days going back.

13 THE COURT: Okay.

14 MR. TABAK: If Your Honor would like, I can
15 address the -- the rest of the arguments --

16 THE COURT: Go ahead.

17 MR. TABAK: But -- and that's the key to the
18 balance of the harms here. There's no harm to the Debtor.
19 There's harm to Mr. Bollea, but we understand it's not
20 pleasant or Mr. Denton to file for bankruptcy, but that's
21 not the standard here. In the public interest, Your Honor,
22 I'm loath to go back to this, but there were two other
23 statements that we mentioned that simply --

24 THE COURT: You're loath but you will?

25 MR. TABAK: But I have to. I've got to make a

1 record. Paragraph 66 of their brief, Plaintiff in the
2 Bollea litigation has refused to agree even to a brief
3 temporary stay of execution of judgements. Your Honor,
4 Pages 4 and 5 of Exhibit O, the book, Mr. Bollea agreed to a
5 stay --

6 THE COURT: With conditions.

7 MR. TABAK: -- no, from June 7th to June 10th --

8 THE COURT: Let me ask you a different question.

9 Is it in the public interest to maximize the value of the
10 Debtor, shall it has a going concern preserve jobs?

11 MR. TABAK: It is, but there's no evidence
12 whatsoever that Mr. Denton filing for bankruptcy will have
13 any impact whatsoever on that. That's the issue here. They
14 have not met their burden of showing that there's any impact
15 whatsoever on that.

16 And if you listen to what the witnesses said, Ms.
17 Dietrick was probably clearest. There's no one person who
18 can tell a buyer all the things that Mr. Denton does, but
19 there are plenty of people who can combine to tell all of
20 those things. And when you look at -- I don't appreciate
21 you chuckling, by the way.

22 MAN: Nobody's chuckling.

23 THE COURT: No one chuckled.

24 MR. TABAK: When you look at what the specific
25 things that they said, that he knows where the skeletons are

1 buried, I don't even know what that means. They had no
2 specific information, not one witness gave you a specific
3 set of information that Mr. Denton could provide the buyer,
4 that couldn't be provided by someone else at the company.

5 THE COURT: Unless the buyer wants to talk to Mr.
6 Denton.

7 MR. TABAK: Sure, and he will have time to do
8 that. If he -- there is nothing that prevents him from
9 talking to a buyer if he's filed for personal bankruptcy.
10 There's no evidence whatsoever that suggests he wouldn't be
11 able to. And that's really the key issue here.

12 I understand he doesn't want to file for personal
13 bankruptcy, but he's trying to get the protections of the
14 bankruptcy without the burdens, and at the expense of Mr.
15 Bollea. And the public interest was expressed by the jury
16 in Florida. Punitive damages are an expression of public
17 interest and it's akin to what Your Honor said in the
18 Biderman case.

19 We have an intentional tortfeasor who's trying to
20 take advantage of the judgment creditor who was the victim
21 of the intentional tort. Equity sides with the victim, not
22 with the person who committed the intentional tort. Thank
23 you, Your Honor.

24 THE COURT: Thank you.

25 MR. GALARDI: Can I just respond very quickly,

1 Your Honor?

2 THE COURT: Yeah. How do you address their
3 concern? Because it sounds like there's a substantial
4 possibility that Mr. Denton would have to file for personal
5 bankruptcy whether it's tomorrow or it's September 4th. And
6 their concern is, he may have made preference --
7 preferential transfers. I suppose there's always the
8 question of a fraudulent transfer, and by delaying the
9 filing date, you are shortening the reachback.

10 MR. GALARDI: Your Honor, well, you don't shorten
11 the reachback, you just change the reachback.

12 THE COURT: Well, you -- you can lose
13 transactions.

14 MR. GALARDI: You can lose transactions and you
15 gain transactions, so it's not -- it's not as if -- first of
16 all, I don't know what payments he's made in the 90 days. I
17 know he has made representations in the Court regarding his
18 payments and information.

19 He actually, I believe, gave some financial
20 statements recently to you. Maybe I was wrong, but there
21 was that -- Your Honor, there is nothing I can say to say if
22 you rule 45 days forward, you lose that same 45 days of
23 potential payments. You gain 45 days. With respect to the
24 statements made by counsel that I just want to -- want to
25 say a few things. One, they kept saying Mr. Denton wants

1 the benefit.
2 It's clear, it's not Mr. Denton that wants the
3 benefit. It is the company that wants the benefit, and it
4 wants the benefit to maximize value. It also said no one
5 testified that there was any information that Mr. Denton
6 can't -- they couldn't be given by another person.

7 What I think the testimony was clear was, you
8 could get pieces of the information but the story to be
9 told, the vision to be had, the actual way in which, for
10 example, the technology is to be put together and interface,
11 though he was not the technology coding person, he was the
12 other person that interacted, that cannot be described by
13 anybody else at the company.

14 THE COURT: I agree with you that he's important
15 to the process, but the question is, how is the Debtor
16 irreparably harmed if the injunction is denied and
17 presumably he files a Chapter 11, for example?

18 MR. GALARDI: Because, Your Honor, the question is
19 one, is the Debtor harmed? Yes, because one, Mr. Denton
20 will be in bankruptcy, you will have a CEO in bankruptcy.
21 That clearly has an effect -- even if it were true that they
22 say we will stand down from everything, that's a fact, that
23 an individual is going to be in bankruptcy and have issues
24 to go, and he's going to be talking to the buyers.

25 He's made a clear public statement, the buyers are

1 already knowing that at some point he will likely have to
2 file bankruptcy if this matter's not resolved.

3 But it's the different thing to have that CEO and
4 send that message right now to the company that your CEO is
5 now filing personal bankruptcy because of what? Because of
6 a litigation, I understand they have the judgment, the
7 company believes quite strongly, will be reversed on appeal,
8 and when Mr. Denton has received informa -- has received and
9 the company has received about it is protected speech by
10 courts of appeal.

11 Two, the fact of the matter is, yes, he will work
12 as hard. You saw Mr. Denton. He is committed to the
13 company, he's committed to the management team, but the mere
14 fact is, if he is not involved on a daily basis in the next
15 45 days because of distractions, because of other creditors
16 that may take certain actions in that bankruptcy, we could
17 lose the ability to maximize value.

18 What do they lose in the 45 days? The speculative
19 claim that there were preferences in the last 90 days that
20 somehow 45 days will not become right. They will have
21 avenues that they could pursue those claims. But I can't --
22 I can't stand here as a representative of the Court and say
23 that that time period is not going to change. If that's the
24 only harm, versus the estate losing potential -- having an
25 individual's time and effort taken away from maximizing

1 value, the balance upon the public interest as well as the -
2 - the harm to the Debtors squarely falls in the Debtor's
3 favor to granting the temporary 45 stay.

4 THE COURT: Thank you.

5 MR. GALARDI: Thank you.

6 MR. TABAK: Just -- just two quick things. One
7 thing, I apologize, Your Honor, I've forgotten something.

8 THE COURT: Okay.

9 MR. TABAK: In September of 2010, Mr. Denton
10 transferred a number of GMGI shares to a trust. We're
11 getting towards the six-year statute of limitations with the
12 New York lookback.

13 THE COURT: When in 2010 was that?

14 MR. TABAK: Excuse me?

15 THE COURT: When in 2010?

16 MR. TABAK: September of 2010, I cannot tell you
17 the date. When we were coming in here, September was not an
18 issue, so I didn't look at the specific date. That's
19 obviously a very important issue because I think it was a
20 large number of GMGI shares. So that's a very important
21 issue. So it's not just a preference lookback, there's a
22 fraudulent conveyance lookback that we're looking at as
23 well.

24 And just briefly, Mr. Snellenbarger testified that
25 no bidders cared if Mr. Denton might file for personal

1 bankruptcy.

2 But I mean, this is another extremely significant
3 issue. It's a fairly large percentage of the GMGI shares
4 were transferred, my understanding, in September of 2010.
5 Mr. Denton's creditors shouldn't lose the ability to bring a
6 fraudulent conveyance proceeding on that, because he has
7 been allowed to delay for three months in filing for
8 bankruptcy because we're going back to June 10th.

9 THE COURT: Thank you.

10 MR. TABAK: Thank you, Your Honor.

11 THE COURT: You know, this is an unusual case.
12 Generally, when a company seeks a 105(a) injunction to
13 protect officers and employees, it's based on the argument
14 that they're going to have to submit to depositions or
15 they're going to have to participate in the litigation
16 process. That's -- that's all over and done with in
17 Florida.

18 The only thing, aside from the motions that I've
19 heard, Mr. Bollea wants to make in Florida relating to
20 sanctions and things like that, the only thing that's really
21 going forward in Florida at this point is an appeal, and
22 that's something lawyers take care of.

23 Having said that, in order to enter an injunction
24 under Section 105(a), the Court applies a modified test,
25 which involves four facts.

1 One, whether there is a likelihood of the
2 successful reorganization, whether there is imminent,
3 irreparable harm to the estate in the absence of an
4 injunction, whether the balance of harm tips in favor of the
5 moving party, and whether the public interest weighs in
6 favor of an injunction. And in evaluating these factors,
7 the Court takes a flexible approach that no one factor is
8 determining it. That's from Judge Schindler's decision in
9 Calpine.

10 The record supports a finding that there is a
11 likelihood of successful reorganization. It may ultimately
12 depend on Mr. Bollea's vote, I recognize, since he controls
13 the unsecured class. But there's also the possibility of
14 cram down, I don't know what other classes there are.

15 It seems likely there's going to be a substantial
16 amount of money, a large pot of money, at the end of this
17 process to be divided up amongst the creditors, and
18 possibility equity, depending on events that unfold.

19 The final point, or the last fact of whether the
20 public interest weighs in favor of the injunction, I've
21 indicated that I think it does. Certainly selling --
22 selling Gawker as a going concern would maximize value, it
23 would preserve jobs and that's all in the public interest.

24 Two elements that I have questions about are
25 whether there is -- the Debtor has demonstrated that there's

1 imminent, irreparable harm to the estate in the absence of
2 an injunction, and whether the balance of harm tips in favor
3 of the moving party, the Debtor.

4 I heard for the first time on the last point that
5 there was a September 2010 transfer of stock by Mr. Denton
6 into a trust. There is a six-year reach back under the New
7 York Debtor Creditor Law and there is a possibility that if
8 he doesn't file that, although a creditor could challenge
9 that now theoretically, no one has, that the ability to
10 challenge that transfer may be lost.

11 But getting to the imminent, irreparable harm, I
12 agree with the Debtor that Mr. Denton is important to this
13 process. Regardless of the number of professionals that the
14 Debtor may hire to manage the Debtor, to manage the sale
15 process, the evidence supports a finding that the bidders
16 are in all likelihood going to want to talk to Mr. Denton.

17 That said, the evidence that is forcing him to
18 file a bankruptcy or a Chapter 11, particularly in light of
19 the representation by Mr. Bollea that they'll stand down
20 until after the sale, didn't suggest to me that there is no
21 -- or the Debtors have failed to show imminent, irreparable
22 harm should he file a Chapter 11.

23 If he files a Chapter 11, the obviously litigation
24 is adversary proceedings objecting to the dischargability of
25 these various court debts, which are put off to 60 days

1 after the date first set for the Section 341 meeting, which
2 is 30 to 45 days after the petition date, so we're talking
3 about complaints that are going to be filed, you know, 90
4 days out or something like that.

5 I suppose that a creditor could file a motion --
6 could make a motion -- another creditor could make a motion
7 to dismiss the case as a bad faith filing, but he's got
8 \$140-million-dollar judgment against him.

9 He's certainly in debt and that doesn't sound to
10 be -- doesn't sound like a very significant motion. The
11 parties can seek relief from the automatic stay, I suppose,
12 to continue the tort litigation.

13 The likelihood of the success of that motion at
14 the beginning of the case is small. So, under the
15 circumstances, and based upon the evidence, I'm going to
16 deny the Debtor's motion to extend the preliminary
17 injunction to Mr. Denton.

18 I've already commented on the co-defendant.
19 There's no evidence of any distraction with respect to that.
20 I would suggest the parties stipulate immediately to relief
21 from the automatic stay to continue the appeal that's
22 collateral litigation doesn't advance the ball at all in
23 Florida, and liquidate this claim once and for all.

24 That is my ruling, and you can submit an order to
25 that effect.

1 MR. GALARDI: Your Honor, just briefly, since I
2 didn't have a chance to look at it, may we ask -- and if
3 it's 14 days, for 14 days for that order to be effective?

4 I'm not sure what the -- the ruling on that objection is,
5 whether it's an immediately effective order --

6 THE COURT: A motion denying the preliminary
7 injunction -- where are you? What is the effect of the stay
8 on an order denying --

9 MR. GALARDI: There is no stay. You're right,
10 Your Honor. So what I would just ask for Your Honor to give
11 us is a -- is a five-day stay --

12 THE COURT: So you can file a notice of appeal?

13 MR. GALARDI: Well, I'm not sure we'll file a
14 notice of appeal, Your Honor.

15 THE COURT: Do you have any objection to the five-
16 day stay?

17 MR. TABAK: Your Honor, we'd like to hear the
18 reason for the stay. I mean, if it's to file a notice of
19 appeal, it shouldn't take five days, and we just don't see
20 the -- we'd like to hear the reason and then we can respond
21 to that.

22 MR. GALARDI: Your Honor, it simply is that we're
23 going to have to convey to Mr. Denton and have those --
24 those take various steps. They may want to go down to the
25 Court of Appeals to seek a stay in the Court of Appeals with

1 respect to the appeal --

2 THE COURT: I'll tell you what I'll do.

3 MR. GALARDI: Sure.

4 THE COURT: Settle an order on notice denying the

5 motion for preliminary injunction.

6 MR. GALARDI: Okay. Thank you, Your Honor.

7 THE COURT: Okay? Thank you.

8 MR. TABAK: Thank you, Your Honor.

9 MR. GALARDI: Thank you, Your Honor.

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C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing

4 transcript is a true and accurate record of the proceedings.

5

6 **Sonya Ledanski Hyde**

7 Digitally signed by Sonya Ledanski Hyde
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25 Date: July 21, 2016