

09:14

1 like that.

2 We have had discussions with Knauf. They have  
3 suggested that this client switch to the cash-out, which due to  
4 the crushing prices of construction and whatnot the client is  
5 going to probably have to do, but we just wanted to make  
6 Your Honor aware of the situation.

7 THE COURT: We will talk about it, then, at the next  
8 meeting, July 18, if you can be on the phone and give me some  
9 status report so we can try to end up this aspect of the case.

10 MS. RICO: Yes, Your Honor. Thank you.

11 THE COURT: Anyone else?

12 With regard to the Esquire Bank matter, if the  
13 attorneys would meet me in the back in the conference room, we  
14 will talk about the matter. Thank you very much.

15 MR. YANCE: Your Honor, if I may be heard just a  
16 moment on the record.

17 THE COURT: Sure.

18 MR. YANCE: Tucker Yance from Mobile.

19 THE COURT: Sure.

20 MR. YANCE: I do believe there are some law firms  
21 that have joined into my motion regarding Esquire Bank that are  
22 listening on the phone. I also have a couple of things to say  
23 with regard to -- I believe you referred to it as a briefing  
24 schedule. I would like to have discussions on the record for  
25 the benefit of the attorneys that are on the telephone.

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1 THE COURT: Sure.

2 MR. YANCE: Forgive me. I'm not a frequent filer in  
3 this case, but it's my understanding that the submission date,  
4 as recognized and calendared by the Court, is the hearing date  
5 for the purpose of handling motions that do not have a specific  
6 and independent request for oral argument, and also that there  
7 will be no separate hearing on motions that do not contain a  
8 separate request for oral argument.

9 So be that as it may and coupling that with  
10 either of the local rules or Your Honor's Pretrial Order 1C,  
11 the deadline for a response to the motion regarding  
12 Esquire Bank has long since passed. According to the Court's  
13 local rules, there shall be no response. Today is the date for  
14 submission of the motion and it's unopposed. It's been joined  
15 in by several other law firms and so it's ripe for ruling.

16 Considering the disturbing -- and I understand  
17 it is disturbing -- nature of the motion itself and the  
18 immediacy that is clear on its face -- and the facts that are  
19 set forth in that motion are publicly available to this Court  
20 almost in their entirety -- I would say it would be  
21 appropriate -- even if Your Honor doesn't want to rule on my  
22 motion without giving an additional chance to respond, I  
23 believe it would be appropriate for a *sua sponte* regaining  
24 control of the \$200 million sitting in Esquire Bank under the  
25 circumstances. I personally can find no downside and only

09:18 1 upside for doing so. The only downside to doing so would be a  
2 detriment to Esquire Bank, as set forth in my motion, which is  
3 of no consequence in this case.

4 So even setting that aside, I want to point out  
5 that nearly every motion that has been filed in the attorneys'  
6 fee phase of this case has been met with a relatively rapid  
7 response by the fee committee, and this is regardless of  
8 whether such motion -- and often in absence of a setting of a  
9 hearing by the Court. A motion is filed and in due course it's  
10 responded to.

11 This motion, as I said, is extraordinarily  
12 troubling with regard to a lot of money belonging to a lot of  
13 people, and it's remained unopposed for almost a month. So I  
14 would suggest that that is an indicator that there is no really  
15 good response to this motion, and any attempt to ask for time  
16 to respond to it is an attempt to delay the payout.

17 THE COURT: Okay.

18 MR. YANCE: So I would ask again the Court either  
19 grant the motion or *sua sponte* regain control of the  
20 \$200 million sitting in the investments.

21 THE COURT: Let me hear from the other side.

22 What do you need time for and why haven't you  
23 responded in a month?

24 MR. HERMAN: May it please the Court. Russ Herman in  
25 response.



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1           There are a number of misstatements in  
2 Mr. Yance's motion. There are personal attacks in Mr. Yance's  
3 motion. There is ongoing requests for documents -- by folks  
4 who have joined with Mr. Yance -- from BrownGreer, and  
5 BrownGreer has responded with the assistance of Esquire Bank.

6           The issue is one in which we need a briefing  
7 schedule and a hearing. I am actually prepared today to make  
8 an oral response, but I am awaiting some critical information.  
9 My understanding --

10           **THE COURT:** He says you could have responded within a  
11 month. You haven't responded in a month.

12           **MR. HERMAN:** Well, Your Honor, we have received, over  
13 the course of this month, repeated requests for information  
14 from me, from Esquire Bank, and BrownGreer. We could hardly do  
15 that until the information stream was passed.

16           I also don't think, under the usual practice of  
17 this Court, when a counsel before this Court with 52 years of  
18 experience is attacked personally that that matter can be  
19 responded to without some thought.

20           I am not accusing Mr. Yance of anything other  
21 than, if he had these remarks, to release them publicly to a  
22 large number of firms without attempting to seal the record,  
23 that that's just not proper. Perhaps these folks do not  
24 understand that we have ongoing litigation against Taishan and  
25 that given the fact that the documents were also distributed on

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1 the record, accessible to the defense, it does not give us  
2 sufficient time. Now, all I'm asking for is a briefing  
3 schedule and a hearing date, with the Court's permission.

4 THE COURT: All right. I will do this. We will do  
5 both of them. I will get the \$200 million -- this is  
6 attorneys' fees. If it were claimants' money, it would be a  
7 different issue, but this is attorneys' fees. I will get those  
8 and put them in the registry of the Court.

9 I will issue an order *sua sponte*, but I will  
10 give you an opportunity to respond in a brief form. How much  
11 time do you need?

12 MR. HERMAN: A week.

13 THE COURT: Do you need any response?

14 MR. YANCE: I don't anticipate needing a reply, so to  
15 speak. However, of course, I don't know what's going to be  
16 said. A week would be sufficient, if I can have an extra week  
17 to reply.

18 THE COURT: Well, let's do two weeks and one week.  
19 That will give you an opportunity. Then we will set it for  
20 oral argument. If we need any evidence, let me know and I will  
21 arrange to have evidence.

22 MR. HERMAN: Your Honor, we do not object to moving  
23 the funds. We have been attempting to find out a number of  
24 issues with the clerk of court's funds as to whether the QSF in  
25 this case is going to be separated from other QSFs -- because

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1 as I understand it right now this is a national fund -- is the  
2 clerk of court going to make the type of monthly reports or  
3 bimonthly reports to BrownGreer and then to the Court-appointed  
4 CPA through BrownGreer, and what are the fees going to be. I  
5 think there are a number of issues, and we do not object moving  
6 it to the clerk of court in a safe place.

7 Also, there's some issue as to what happens with  
8 the interest on this fund. It's our position that whoever the  
9 depository is, the interest ought to be attributed to the fund  
10 itself. So we do ask that Your Honor, through Your Honor's  
11 means, take a look at that.

12 THE COURT: Okay. Anything else? Thank you very  
13 much. You have two weeks, and you have one week.

14 MR. HERMAN: Thank you, Judge.

15 THE COURT: Anything else from anybody? Danny, do  
16 you want to come up?

17 We had some people on the line to discuss this.  
18 They said they were working with you and they hoped to get the  
19 matter resolved by the next status conference sometime in July.  
20 The next one is July 18.

21 MR. DYSART: That's right, Your Honor. I apologize  
22 for being late to the conference. Apparently we had a mixup in  
23 schedules.

24 With respect to our motion, I have been in  
25 contact with just about everybody that have remaining claims.



09:26

1 There are a few that are unopposed that we can submit for  
2 extinguishment at this time. Those would be Rodney Litus and  
3 Ronni and Rodella Ervin. Those can be submitted without  
4 opposition as extinguished.

5 For the remaining claims --

6 **THE COURT:** Anybody on the line for either of those?

7 **MR. DYSART:** They are represented by David Durkee,  
8 Judge. I have spoken to David.

9 His other two claims, Mr. Dalsin and Mr. Russel  
10 or Graham, he is unopposed to having those at least pushed back  
11 to -- what I have discussed with all counsel is what we would  
12 like to do is have a deadline. These claims have been going on  
13 for years. Some of them have not had any activity for years.

14 What we talked about was potentially asking the  
15 Court to submit an August 1 deadline, to try to have those  
16 completed by August 1. If individual issues come up, then they  
17 can move to extend the time period as it may be.

18 With respect to Jake and the Knauf defendants --  
19 Jake at BrownGreer -- we would just like a deadline put in  
20 place for the remaining claims so that we are all working  
21 towards wrapping these up by August 1.

22 The only other one that is a little different  
23 would be Prime Homes. I have spoken to Patrick Montoya and  
24 Natalie Rico. I'm not sure if they were on the line --

25 **THE COURT:** They were.

09 28 1           MR. DYSART: -- but it's my understanding that they  
2 have agreed to switch to Option 3 for those claims, and that  
3 they can submit that by August 1 as well.

4           THE COURT: I will do that with August 1, but be here  
5 on July 18 to give me a status report and find out whether or  
6 not we need to move that date.

7           MR. DYSART: I will, Your Honor. Thank you.

8           THE COURT: All right, folks. Thank you very much.

9           THE DEPUTY CLERK: All rise.

10          (Proceedings adjourned.)

11                   \* \* \*

12                   CERTIFICATE

13           I, Toni Doyle Tusa, CCR, FCRR, Official Court  
14 Reporter for the United States District Court, Eastern District  
15 of Louisiana, certify that the foregoing is a true and correct  
16 transcript, to the best of my ability and understanding, from  
17 the record of proceedings in the above-entitled matter.

18  
19  
20                   /s/ Toni Doyle Tusa  
21                   Toni Doyle Tusa, CCR, FCRR  
22                   Official Court Reporter  
23  
24  
25