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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter  
of  
BEAR STEARNS HIGH-GRADE STRUCTURED  
CREDIT STRATEGIES MASTER FUND, LTD.,

Case No. 07-12384

BEAR STEARNS HIGH-GRADE STRUCTURED  
CREDIT STRATEGIES ENHANCED LEVERAGE  
MASTER FUND, LTD.,

Case No. 07-12383

Debtors.

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August 9, 2007

United States Custom House  
One Bowling Green  
New York, New York 10004

Order to Show Cause for Preliminary  
Injunction.

B E F O R E:

HON. BURTON R. LIFLAND,

U.S. Bankruptcy Judge

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1 P R O C E E D I N G S :

2 MR. HODARA: Good morning, your Honor.

3 THE COURT: Good morning.

4 MR. HODARA: Fred Hodara of Akin Gump  
5 Strauss Hauer and Feld. Your Honor, with me this morning  
6 are my colleagues Abid Qureshi, who I think you know, and  
7 Lisa Beckerman of our firm. And, your Honor, with us as  
8 well this morning are the Joint Provisional Liquidators; we  
9 have Simon Whicker and Kristen Beighton.

10 Your Honor, the Joint Provisional  
11 Liquidators were appointed as such on July 31 by the Grand  
12 Court in the Cayman Islands for Bear Stearns High-Grade  
13 Structured Credit Strategies Master Fund, Ltd. and Bear  
14 Stearns High-Grade Structured Credit Strategies Enhanced  
15 Leverage Master Fund, Ltd. And over the course of our  
16 presentation this morning, I'll refer to the first of those  
17 funds as High-Grade and the second of those funds as  
18 Enhanced Leverage.

19 Your Honor, we are here on an order to show  
20 cause which was issued with a temporary restraining order  
21 as to why a preliminary injunction should not be granted.

22 The order to show cause and the TRO carved  
23 out expressly the provisions of the Bankruptcy Code and the  
24 actions available thereunder with respect to various  
25 financial contracts, repo agreements, swap agreements, and

1 so on. But other than that, it prevented actions against  
2 the assets of the funds of any nature. And that injunction  
3 was put in place by your Honor for a period of ten days.

4 We immediately served notice upon the entry  
5 by your Honor of that order on August 1st. And over the  
6 period of these nine or ten days since the giving of that  
7 notice, we have received no objections to the request for  
8 the entry of a preliminary injunction.

9 The objection deadline was August the 7th.  
10 And the fact that we've received no objections, does not  
11 mean that we have not received communications. In fact, we  
12 have heard from several of the major creditors of these  
13 funds, and proactively the Joint Provisional Liquidators  
14 have reached out to as many of the major creditors as they  
15 could over the course of this period. One of the reasons  
16 they are here in New York today and yesterday, and again  
17 they will be here tomorrow, is not just for this hearing  
18 but for the purpose of having these meetings with the  
19 various creditors.

20 As we have mentioned previously, there are  
21 not a huge amount of creditors or parties in interest of  
22 these funds. And over the course of our presentation this  
23 morning, we will go into more detail about the actual  
24 structure of the funds. But as I think your Honor knows  
25 from the papers and our prior discussions, what is before

1 your Honor are two master funds.

2 At the High-Grade level, there are three  
3 feeder funds that are the owners of the High-Grade master  
4 funds, so they are the only investors, so to speak, in the  
5 master fund. At the Enhanced Leverage level, there is one  
6 institutional investor that is the sole investor in that  
7 fund. And then each of the master funds has a series of  
8 institutional lender creditors of those funds. And so  
9 those are the parties with whom we have been in contact and  
10 with whom the JPLs have been meeting.

11 Now notwithstanding that we have received  
12 no objections, at least three of the institutional  
13 creditors are represented here in court today. And they  
14 will speak for themselves, but it is our understanding that  
15 they have no objection to the relief that's being  
16 requested.

17 Now, to be clear about what the relief is  
18 that the JPLs are requesting today, as your Honor knows, we  
19 have a hearing scheduled for August the 27th for  
20 recognition of the foreign proceeding. We have requested a  
21 preliminary injunction to take us out to the date of the  
22 recognition hearing. We had discussed with your Honor when  
23 we were before you previously the 20 day or ten plus ten  
24 day period available under Rule 65 for a temporary  
25 restraining order.

1           The burden that we will attempt to meet  
2 today your Honor, is the likelihood of success on the  
3 merits to warrant the grant of a preliminary injunction so  
4 that we don't have the issue of a mere additional ten day  
5 extension, but rather, if we can meet our burden, to have  
6 the preliminary injunction put in place to get us through  
7 the date of the recognition hearing itself.

8           I should say, your Honor, with this --

9           THE COURT: Is it your intention to have  
10 today's hearing and whatever evidence you put on to serve  
11 in connection with the August 27th recognition hearing as  
12 the platform of evidence necessary or as an ingredient  
13 necessary for the court to reach a conclusion on  
14 recognition, or is this purely for the purpose of  
15 maintaining an injunction through the recognition hearing,  
16 which, depending upon which side of the equation you go, or  
17 even a third side, automatic relief is requested, mainly of  
18 an injunctive nature. It's two kinds of injunction you are  
19 talking about.

20           And if it's your purpose today to have  
21 today's hearing control the litigation that may ensue in  
22 connection with the recognition hearing, I have a problem I  
23 with that.

24           MR. HODARA: I understand, your Honor.

25           And, no, it's not our intention to have it control at all.

1 But let me say this: That we felt --

2 THE COURT: You know, under Rule 65  
3 evidence presented for the purpose of granting a  
4 preliminary injunction becomes prima facie for purposes of  
5 an injunction hearing. And I don't know that I'm prepared  
6 to allow that to happen today.

7 MR. HODARA: I understand. Let me describe  
8 what we were intending and then we will take guidance from  
9 your Honor.

10 It seemed to us that to meet our burden for  
11 the grant of the preliminary injunction, that we should put  
12 on evidence about the potential harms to the funds.

13 THE COURT: No question; you are certainly  
14 entitled to do that.

15 MR. HODARA: And then with respect to  
16 likelihood of success on recognition of the foreign  
17 proceedings, as your Honor knows, we have moved for  
18 recognition of the proceedings either as foreign main or  
19 foreign non main proceedings. We were not intending  
20 today --

21 THE COURT: And there's a third category of  
22 non recognition.

23 MR. HODARA: Of course; and that's exactly  
24 the point. We think that our burden is simply to  
25 demonstrate that there's a likelihood that we are going to

1 be able to demonstrate that these proceedings should be  
2 recognized, and then whether it's foreign main or foreign  
3 non main remains to be seen. But either way, your Honor,  
4 would have the ability to extend the stay if they are  
5 recognized as --

6 THE COURT: I just want to make sure that  
7 there's no intention that today's hearing be the tail that  
8 wags the dog.

9 MR. HODARA: Understood.

10 THE COURT: Go ahead.

11 MR. HODARA: Thank you.

12 So, your Honor, before we get to the  
13 evidence itself, the last two things I wanted to comment  
14 on, again, are somewhat procedural. One of the creditors  
15 had asked us whether we would consent to an extension of  
16 the date of the recognition hearing to something in the  
17 order of September 10th. We reflected on that, and in and  
18 of itself we didn't have a problem with it as long as the  
19 preliminary injunction could stay in place that long. But  
20 the more we thought about the timing and the more we  
21 thought about our burden to consider whether there should  
22 be a chapter filing under 11 or 7 in the United States in  
23 order for these funds to get the benefits that are  
24 available under those portions of the Bankruptcy Code, the  
25 more it seemed to us that we should try to stay with the

1 earlier date so that we can keep the time frame tight and  
2 focused. So that is a question that was raised.

3 And I mention that in the context of the  
4 procedural issue that we've been looking at of whether it's  
5 possible for the JPLs to commence a Chapter 11 proceeding,  
6 even if they thought that were the appropriate thing to do,  
7 before recognition. And as we study Chapter 15 and Section  
8 1511(a) of the Bankruptcy Code, it seems very clear to us  
9 that it's only upon recognition that the JPLs are permitted  
10 to take such action. And there really is no other party  
11 such as the board of the funds that can now take that  
12 action because of the appointment of the JPLs in the  
13 Caymans.

14 So I don't want to leave the court with the  
15 impression that the JPLs have concluded they should be  
16 filing a Chapter 11 or that any decision in that regard has  
17 been taken. But the JPLs are considering those issues  
18 carefully, as is their duty, and that's the reason why we  
19 think on balance, we should stay with the date that your  
20 Honor had originally suggested of August 27, so that we can  
21 get to the recognition issue. And then at that point the  
22 JPLs can take --

23 THE COURT: What's your response date to  
24 your application for the recognition?

25 MR. HODARA: August the 21st, your Honor.

1 THE COURT: So you won't know until August  
2 21st whether you have on a contested hearing.

3 MR. HODARA: That's correct.

4 Your Honor, that's what I had in the way of  
5 preliminaries. The way we would propose to proceed today  
6 is to have Mr. Whicker provide testimony in support of the  
7 application to the preliminary injunction. And he's  
8 prepared to testify to those issues, or my colleague, Mr.  
9 Qureshi, is prepared to proceed by way of proffer.

10 THE COURT: Does anybody want to be heard  
11 with respect to the request for proffer?

12 There's no response. As long as the  
13 witness is here for cross examination by anybody who is  
14 interested, you may proceed by proffer.

15 MR. HODARA: Thank you, your Honor. I'll  
16 accede to Mr. Qureshi.

17 MR. QURESHI: Thank you, your Honor. For  
18 the record, Abid Qureshi of Akin Gump on behalf of the  
19 JPLs.

20 Your Honor, Mr. Whicker is seated directly  
21 behind me and available to be cross examined should anybody  
22 wish to do so or should the court wish to question him.

23 Your Honor, if called to the stand to  
24 testify under oath, Mr. Whicker would testify as follows:  
25 Your Honor, on the petition date, July 31st, 2007, we

1 submitted declarations in each of the Chapter 15 cases.  
2 One declaration from Mr. Kris Beighton, one of the JPLs,  
3 and a second declaration from Sandra Corbett, Cayman Island  
4 counsel to both of the foreign debtors.

5 Mr. Whicker has reviewed those declarations  
6 and would testify that the factual statements set forth in  
7 those two declarations concerning the foreign debtors are  
8 true to the best of his knowledge, information and belief.

9 Your Honor, Mr. Whicker is a partner in the  
10 restructuring practice and head of the advisory practice at  
11 KPMG where he has been employed since 1995. He would  
12 testify that he has substantial experience in liquidation  
13 proceedings, both provisional and official, including  
14 voluntary proceedings and proceedings under the supervision  
15 of the Cayman Islands court.

16 His primary experience is in administering  
17 liquidations, receiverships, controllers, controllerships  
18 of companies being wound up, and he has extensive  
19 experience in the Cayman Islands. He has been involved in  
20 over 300 liquidations both voluntary and court supervised  
21 in the Cayman Islands.

22 Your Honor, I'll now give a little bit of  
23 background that Mr. Whicker would testify to concerning the  
24 provisional liquidates in this case. The joint provisional  
25 liquidators have managed and controlled the foreign debtors

1 since their appointment on July 31 of 2007. Before such  
2 date, the foreign debtors were managed by their board of  
3 directors. The board of directors for each of the two  
4 funds was the same. Two of the members of the board of  
5 board of directors of each fund did reside in the Cayman  
6 Islands. The foreign proceedings that were commenced  
7 before the Cayman courts are the only insolvency  
8 proceedings other than these Chapter 15 cases that are  
9 pending with respect to these foreign debtors.

10 Based on his experience as a liquidator,  
11 Mr. Whicker would testify that it is his understanding that  
12 the intention of the Cayman court is that the proceedings  
13 that have been commenced in the Cayman Islands be the  
14 primary proceedings, and that these Chapter 15 proceedings  
15 be the ancillary proceedings.

16 As joint provisional liquidators, Mr.  
17 Whicker and Mr. Beighton are the only persons or entities  
18 authorized to act on behalf of the foreign entities. They  
19 have sueplanted the board of directors of both funds and  
20 responsibility for collecting assets, investigating  
21 actions, and preserving the assets of the foreign debtors.

22 Mr. Whicker would further testify that the  
23 provisional liquidators are officers of the Cayman court.  
24 They are required to be independent of management of the  
25 debtors, of their creditors, and they are required to

1 behave in an even handed fashion when dealing with  
2 creditors or groups of creditors. Provisional liquidators  
3 owe a fiduciary duty to all creditors and also bear  
4 personal liability for their actions under Cayman law.

5           Provisional liquidation describes the  
6 situation after presentation of a winding up petition where  
7 a liquidator has been appointed provisionally pursuant to  
8 Cayman law, but prior to the making of a winding up order.  
9 Mr. Whicker would testify that this is a interim measure  
10 designed to ensure that the status quo is maintained  
11 pending a full hearing of a winding up petition.

12           Your Honor, concerning the background of  
13 these two foreign debtors, Mr. Whicker would testify that  
14 both of the funds, both High-Grade and Enhanced, are open  
15 ended investment exempted limited liability companies, both  
16 of which were incorporated in the Cayman Islands and were  
17 designed for long term investors who were aware of the risk  
18 of loss of capital involved in these types of investments.

19           He would testify that the only investor in  
20 the Enhanced Fund is a large non US financial institution,  
21 and that the only investors in the High-Grade Fund were  
22 three funds controlled by Bear Stearns, two of which are  
23 Cayman entities, and one of which is a US entity. Mr.  
24 Whicker would also testify, your Honor, that the creditors  
25 of both of the funds are large international financial

1 institutions.

2           Your Honor, regarding the circumstances of  
3 leading to the filing of the petitions in the Cayman  
4 Islands, Mr. Whicker would testify as follows: First of  
5 all, those circumstances are generally similar with respect  
6 to both the enhanced fund and the High-Grade Fund.

7           Mr. Whicker understands that in  
8 approximately May of 2007, the foreign debtors began to  
9 suffer a significant devaluation of their asset portfolios.  
10 This devaluation lead to margin calls for many of the  
11 foreign debtors trading counterparties which the foreign  
12 debtors were unable to meet. As a result, Mr. Whicker  
13 would testify to his understanding that the counterparties  
14 issued default notices, exercised their control of assets  
15 of the various agreements and caused the foreign debtors to  
16 surrender repurchase rights.

17           The Enhanced Fund, your Honor, also  
18 received a redemption notice from its sole investor, again,  
19 the one large non US financial institution.

20           At the same time as these events occurred  
21 Mr. Whicker would testify to his understanding that there  
22 was a continued downward pressure on the relevant asset  
23 classes, the market continued to deteriorate, and the  
24 foreign debtor's assets were revalued.

25           As of today, your Honor, Mr. Whicker would

1 testify that nearly all of the secured counterparties have  
2 exercised control rights over the foreign debtor's assets  
3 that had been subject to repurchase agreements or over  
4 which such parties held security interest. The foreign  
5 debtors needed a breathing spell to avoid counterparties  
6 attempting to take action to attach the foreign debtor's  
7 remaining unencumbered liquid assets or asserting  
8 deficiency claims.

9                   As a result of that, your Honor, Mr.  
10 Whicker would testify that on July 30th of 2007, the board  
11 of directors of both of the Enhanced and High-Grade Funds  
12 passed a resolution authorizing both debtors to file  
13 petitions seeking an order that the foreign debtors be  
14 wound up under the provisions of the Companies Law of the  
15 Cayman Islands, and to apply for the appointment of the  
16 Joint Provisional Liquidators subject to the supervision of  
17 the Cayman court.

18                   Your Honor, on July 31, 2007, the Cayman  
19 court approved the appointment of the JPLs which authorized  
20 the foreign representatives to exercise the following  
21 powers as set forth in the Companies Law of the Cayman  
22 Islands to, among other things, your Honor, do any acts or  
23 things considered to be necessary for the protection of the  
24 assets or property of the debtors, to locate, protect,  
25 secure and take into their possession, all assets and

1 properties to which the foreign debtors appear to be  
2 entitled, to retain and employ professionals, including  
3 counsel, and also, your Honor, to take such action as may  
4 be necessary or desirable, to obtain the recognition of the  
5 appointment of the JPLs in any other relevant jurisdiction,  
6 and specifically the filing of the petition under Chapter  
7 15 of the United States Bankruptcy Code.

8           Your Honor, Mr. Whicker would testify that  
9 following the filing of the petitions in the Cayman  
10 Islands, the Cayman court exercised its jurisdiction to  
11 order that no action or proceeding be commenced or  
12 continued against either of the foreign debtors except by  
13 leave of the Cayman court and subject to any terms that the  
14 Cayman court imposed. So, in other words, the Cayman court  
15 imposed a stay on all actions against these debtors.

16           Your Honor, with respect to the contacts  
17 that both the Enhanced and High-Grade Funds have with the  
18 Cayman Islands, Mr. Whicker would testify as follows: That  
19 the foreign debtors are both incorporated in and have their  
20 registered offices in the Cayman Islands. Mr. Whicker  
21 would testify as to his understanding that Cayman law  
22 provides that Cayman entities be liquidated in accordance  
23 with the provisions of the Companies Law of the Cayman  
24 Islands.

25           Your Honor, with respect to the High-Grade

1 Fund, again, Mr. Whicker would testify that that fund has  
2 only three investors, all Bear Stearns entities, two of  
3 which are registered in the Cayman Islands, and one of  
4 which is a US entity. With respect to the Enhanced  
5 Leverage Fund, again, Mr. Whicker would testify that that  
6 fund has only one investor, which is a large financial  
7 institution based in the United Kingdom.

8           Again, your Honor, with respect to the  
9 board, each fund has the same board of directors, a five  
10 member board, two of which reside in the Cayman Islands.  
11 The foreign debtors pre-filing attorneys, the Walkers Law  
12 firm and their pre-filing auditors, Deloitte and Touche,  
13 are both located in the Cayman Islands. In addition,  
14 certain of the auditing work performed by Deloitte and  
15 Touche was performed in the Cayman Islands.

16           Your Honor, the foreign debtors have bank  
17 accounts in both the United States and the Cayman Islands.  
18 The Cayman Islands accounts were established to be a  
19 depository for receivables that would otherwise have been  
20 deposited into the accounts of the foreign debtors prime  
21 broker.

22           At this time, your Honor, Mr. Whicker would  
23 testify as to his understanding that the accounts located  
24 in the Cayman Islands hold most, if not all of the  
25 remaining unencumbered assets of the both of the foreign

1 debtors.

2                   Your Honor, the foreign debtors also have  
3 contacts with other non US jurisdictions. For example,  
4 your Honor, the foreign debtors investor registries are  
5 maintained by the foreign debtors administrator, an entity  
6 known as PFPC, Inc., which is a Massachusetts entity that  
7 holds the investor registries at its offices in the  
8 Republic of Ireland.

9                   Your Honor, certain of the foreign debtors'  
10 accounts receivables are also located in various  
11 jurisdictions throughout Europe. And certain  
12 counterparties to repurchase agreements and other security  
13 agreements with the foreign debtors are also located in non  
14 US jurisdictions.

15                   Your Honor, with respect to the relief  
16 being requested here today and the effect that the failure  
17 to receive such relief would have on both of these funds,  
18 Mr. Whicker would testify as follows: That various  
19 creditors have already undertaken actions with respect to  
20 the foreign debtors' assets, including placing margin  
21 calls, issuing default notices, accelerating repurchase  
22 dates. In addition, the sole investor in the Enhanced Fund  
23 has issued a redemption notice.

24                   Given the media attention surrounding the  
25 commencement of the Cayman Islands proceedings and these

1 Chapter 15 cases, further creditor action is likely. Your  
2 Honor, Mr. Whicker would testify that the foreign debtors  
3 have received calls and letters from their creditors  
4 inquiring about the foreign debtors' status and suggesting  
5 that the creditors will seek to obtain the return of their  
6 assets held by the foreign debtors.

7 Mr. Whicker further understands that it is  
8 possible that the creditors could seek, and given their  
9 precarious financial situation, receive pre-judgment  
10 attachment of assets located in the United States, which  
11 would be disruptive to the orderly liquidation of assets  
12 that is to occur in the Cayman Islands; such action, Mr.  
13 Whicker would testify, would also unfairly advantage  
14 creditors that take such action in US courts and could  
15 result in a race to the courthouse and the piecemeal and  
16 disorderly distribution of the assets of these estates.

17 In fact, your Honor, just this week Mr.  
18 Whicker learned that a class action lawsuit had been  
19 commenced in the Supreme Court of the State of New York  
20 against the foreign debtors administrator and one of the  
21 feeder funds, among other defendants. The action was not  
22 commenced against either of the foreign debtors, but the  
23 concern is that such actions might be in the future. And  
24 indeed the attorneys representing the punitive class in the  
25 action filed in state court have filed notices of

1 appearance in these Chapter 15 cases.

2 So, your Honor, any such litigation  
3 commenced in the United States, Mr. Whicker would testify,  
4 would be disruptive to the Cayman Islands proceedings and  
5 would undermine the priority scheme established under  
6 Cayman law concerning distributions to creditors.

7 THE COURT: It's not intended that  
8 injunction works in favor of the feeder funds?

9 MR. QURESHI: It is not, your Honor, the  
10 injunction that we are requesting is limited to the two  
11 foreign debtors.

12 Your Honor, again, if called to testify  
13 under oath, Mr. Whicker would swear to the accuracy of that  
14 testimony. And I now tender him for any cross examination.

15 THE COURT: Do you want to stand up Mr.  
16 Whicker?

17 Denise, would you swear in the witness,  
18 please?

19 S I M O N L C W H I C K E R, called as a  
20 witness, having been first duly sworn by the  
21 Notary Public, Denise Nowak, was examined and  
22 testified as follows:

23 THE COURT: Mr. Whicker, do you adopt the  
24 comments and statements of counsel as your own?

25 MR. WHICKER: Yes, I do, your Honor.

1 THE COURT: The proffer is accepted.  
2 Does anybody wish to examine Mr. Whicker?  
3 There's no response. You may sit down,  
4 sir, except I have a few questions.

5 The assets that are under your punitive  
6 control, Mr. Whicker, have any been turned over to you as  
7 yet?

8 MR. WHICKER: Yes, they have, your Honor.  
9 They are held in a bank account in the name of the --

10 THE COURT: Would you describe and quantify  
11 those assets?

12 MR. WHICKER: We have approximately 15.4  
13 million dollars in the name of High-Grade, and  
14 approximately 2.4 million dollars in the Enhanced Leverage  
15 Fund. Your Honor, those are the --

16 THE COURT: Of those sums, Mr. Whicker, how  
17 much was turned over subsequent to the filing in the  
18 Caymans?

19 MR. WHICKER: All of it, your Honor.

20 THE COURT: So what was in the accounts at  
21 the time you took over?

22 MR. WHICKER: Nothing, your Honor.

23 THE COURT: Nothing, very well. Thank you,  
24 sir.

25 Does anybody else want to examine the

1 witness?

2 There's no response. You may sit down.

3 MR. HODARA: Thank you, your Honor.

4 (Whereupon, the witness was excused)

5 MR. HODARA: We have no further evidence  
6 for the hearing.

7 And before I sum up, can I ask whether  
8 there are any other parties that would like to be heard so  
9 that we can respond to the extent they have any concerns or  
10 issues.

11 THE COURT: Is there anybody who wishes to  
12 be heard?

13 MS. PRIMOFF: Yes, your Honor. Madlyn  
14 Primoff of Kaye Scholer for several Merrill Lynch entities.

15 We have no objection to the preliminary  
16 injunction sought, and, in fact, we endorse it. There is  
17 some language at the top of page 4 of the proposed order  
18 that read literally seems to enjoin creditors from  
19 commencing an involuntary proceeding before this court.  
20 And to the extent that the provisional liquidators  
21 themselves say that they are contemplating a Chapter 7 or  
22 Chapter 11 filing likewise, we don't think that anything in  
23 this preliminary injunction order should preclude creditors  
24 from exercising their rights you under Section 303 before  
25 this court, should they choose to do so.

1           MR. HODARA: Your Honor, the language of  
2 the proposed order, I believe would in fact prevent the  
3 filing of a involuntary proceeding, because it would, like  
4 I believe most stays in this circumstance, prevent the  
5 commencement of legal proceedings; and I think that an  
6 involuntary proceeding would be such a proceeding. And I  
7 think that that injunction would make eminent sense,  
8 because we are talking about a limited period of time.  
9 During that time the idea is for the assets and the affairs  
10 of thee funds to be left in place without the kind of  
11 dislocation that would be affected by legal proceedings,  
12 including the commencement of an involuntary proceeding.

13                   So, yes, it would be our intention in the  
14 language that we have in the draft and we think appropriate  
15 that for this limited period of time.

16           THE COURT: This may be called a  
17 preliminary injunction, but actually it's an extension of  
18 the stay in reality.

19           MS. PRIMOFF: I don't think it's  
20 appropriate, as a matter of US public policy, to enjoin  
21 creditors from exercising their rights under Section 303 of  
22 the Code.

23                   And if your Honor wants to make sure that  
24 people don't go in and commence involuntaries and in  
25 Arizona or Texas over whatever jurisdictions they might

1 look to, I can appreciate that. But we would ask that  
2 creditors rights, should they choose to exercise them to  
3 commence an involuntary proceeding before your Honor,  
4 should be preserved.

5 THE COURT: Well, I'm not going to preserve  
6 on a venue basis such a right. But clearly for purposes of  
7 this preliminary injunction, which is of a very limited  
8 force and nature, and of course there is the potential, as  
9 many here realize, that after the 27th the possibility  
10 exists for either the joint liquidators or creditors to do  
11 a voluntary or involuntary. Chapter 15 has lots of  
12 provisions that talk about the consequences of these types  
13 of actions.

14 But for purposes of maintaining the status  
15 quo, I agree with the applicant here, that the stay should  
16 be broad enough, but short enough to deal with the  
17 situation that we have before us.

18 MR. HODARA: Thank you, your Honor.

19 THE COURT: Does anyone else want to be  
20 heard?

21 MR. HODARA: Very briefly, then, your  
22 Honor. I think that the testimony of Mr. Whicker evidences  
23 the bases of concern for the potential for harm to the  
24 funds if the stay is not left in place and the preliminary  
25 injunction entered for this limited period of time. The

1 kind of action that we just heard about, which we  
2 understand was only a hypothetical example, is something  
3 that could actually happen in the absence of the stay. The  
4 suggestion that theoretically it could happen in any number  
5 of jurisdictions is of concern of us.

6           There are there are receivables, your  
7 Honor, and they are in various places in the world,  
8 particularly in Europe, that we would be concerned with,  
9 and this goes to the point that your Honor was discussing  
10 with Mr. Whicker concerning the funds in the new bank  
11 accounts. While those accounts are new, the receivables  
12 were old, and those receivables existed some in the United  
13 States, some outside of the United States. As we have  
14 gotten deeper into our understanding of the assets of the  
15 funds, we have come to understand that in fact some of  
16 these assets are not in the United States, particularly in  
17 the form of the receivables that we are talking about, and  
18 they are for significant sums, as the court has heard in  
19 terms of what has been collected thus far.

20           And so for the reasons that were described  
21 by Mr. Whicker in the proffered testimony concerning the  
22 potential for piecemeal litigation, a race to the  
23 courthouse and a frustration of the hoped for equitable  
24 distribution scheme that's available under the Cayman  
25 proceedings and would be available as well if there were a

1 parallel proceeding in the United States commenced in due  
2 course. We believe that the continuation of the stay and  
3 the entry of the preliminary injunction is appropriate.

4 THE COURT: Does anyone else want to be  
5 heard?

6 Well, clearly a case has been made for and  
7 granted the preliminary injunction for the principle  
8 purpose of preservation of assets for appropriate  
9 distribution to the creditors. During this period the  
10 assets of the fund are and should be protected against  
11 diminution, and the record before the court today  
12 demonstrates that. It's a preliminary injunction for a  
13 limited period, which period should end following the  
14 determination of the applications for recognition.

15 I'll entertain an order.

16 MR. HODARA: Thank you, your Honor. May I  
17 approach?

18 THE COURT: Yes.

19 MR. HODARA: Thank you, your Honor.

20 May I consult with one of the creditors for  
21 one moment month before I ask you to sign that?

22 THE COURT: Certainly.

23 (Counsel conferring)

24 THE COURT: There's only one order here.

25 MR. HODARA: Okay, your Honor. Thank you.

1 THE COURT: You submitted for Enhanced, and  
2 I think you intended for both of the funds to be protected.

3 MR. HODARA: There are two funds; that is  
4 correct. Thank you, your Honor.

5 THE COURT: I've approved the orders on  
6 both funds. I don't know if it's a Harbinger, but I just  
7 ran out of ink.

8 Thank you all.

9 MR. HODARA: Thank you, your Honor. And  
10 thank you for seeing us all before your vacation.

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STATE OF NEW YORK            }  
  }     ss.:  
COUNTY OF WESTCHESTER    }

I, Denise Nowak, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
DENISE NOWAK