

## **REPRESENTATIVE CASES FOR HON. MITCHEL GOLDBERG**

### 1. Glen Ivy Time Share resorts:

This was a complex Ch. 7 BK case involving 16 different timeshare properties with 63,000 owners and over 250 Million in debt. The principal of the Company had been sued by many parties, including the State of Calif., lenders, and the Trustee in Bk and the matters were stagnating due to impasse with a number of litigations pending against him. Judge Goldberg was asked to participate in the most complex of the mediation's involving many groups of plaintiffs as well as many insurance companies. There were 5 groups of plaintiffs including two different class action counsel; timeshare representatives, bank lending representatives and the BK trustee. The initial problem with this group was their individual demands made any chance of a settlement highly unlikely. Through early negotiations they agreed to act as a "team" and that whatever the settlement amount, Judge Goldberg would conduct a future mediation to "divide the pot" in an agreeable manner. The "Defendant" groups consisted of: 17 individual defendants represented by 7 cumis counsel; 13 corporate defendants represented by 15 insurance companies including CGL and E&O carriers; 10 title company defendants and two separate title co defendants that reached special settlements later on to include the more than \$3 Million in estimated costs to do corrective title policies as a partial trade for cash payment into the settlement pot.

The negotiations in this action were very intense, requiring frequent separation of various carriers who would argue among themselves. Over 30 attorneys were in attendance for the full two day mediation sessions, and a little after midnight on day two, the parties were at impasse over \$25,000 apart on a mid 8 figure settlement. The case resolved with a mediator's proposal "guaranteeing the needed amount to plaintiff's team" by having the insurance companies deposit the settlement funds into interest bearing accounts with the interest going to the plaintiffs to insure the needed amount. The entire group of insurance companies agreed to this arrangement and the case was settled pending final documentation and court approval after appropriate CCP 877 notices. Due to delays by the insurance groups and cumis counsel arguing over a multitude of issues including fee disputes which Judge Goldberg ultimately resolved the final payout with the accumulated interest going to the plaintiff group exceeded the settlement amount by over \$1.8 million!

## 2. Consolidated Freight Co's:

This large Ch. 11 Bankruptcy involving almost \$1 Billion in asset distribution and an enormous amount of complex legal issues. The first issue that had to be resolved on 48 hours notice was what is called in the BK community "first day orders" (orders approving use of sufficient funds of money to pay payroll and other needed expenses in order for the company to continue operations. The critical issue is to insure the creditor is properly secured, and at the same time to also insure the debtor "did not give away the store". In this case the requested amount to conclude operations, including up to 30 days to complete orders in transit, and to pay closing down costs for more than 18,000 employees was \$250,000,000. Another issue dealt with the ire of various labor unions at the sudden termination of 15,000 employees (1 day notice for security reasons shortly after 9-11) and the termination of the pension and health plans for all the retirees of this 80 year old company. Such unique issues were:

- Interstate Commerce Act question of the priority of Account Receivables estimated to exceed \$100,000,000 owed to CF for short haul transportation both on road and by train. The litigation for just 7 days of receivables exceeded \$15 million and the result would mean either 100% to the RR industry or 20% to them if they were not secured on a trust fund theory.
- Sale of the Canadian operation and issues disputed regarding ownership and aspects of international law.
- Interpretation of retired employee rights to be considered "employees" for claims purposes- a unique question of first impression.
- Interpretation of a surety contract purchased by CF to secure a portion of \$100 million in self insurance for WC and PI liability claims and whether it shared draw downs proportionally with a Debtor deposit of funds into an irrevocable letter of credit or whether debtor could require the surety be drawn down first and the ILC last on a trust fund theory so any unused funds would go to the estate—a \$20 million dollar question.
- Management of over 1,200 preference law suits including cases with foreign companies which required Haig Convention understandings.
- Management of over 28,000 claims.
- Determination of whether PI law suits incurred both pre BK and the few incurred post BK, as the company wound down in transit deliveries at the time of BK, were covered under the companies partially self insured program (first \$3 million was self insured) and whether these were secured claims entitled to a distribution from restricted funds or whether they were general unsecured creditors to be paid approx 20% of their approved claims.

- Dispute with the Pension Benefit Guarantee Corporation (PBGC) on the methodology for evaluating the “deficiency” claim of the retirement plan of CF along with the Unions claim of deficiency of their plan. The initial claim was for approx \$800,000,000. Judge Goldberg approved a resolution for a claim of \$120,000,000. This was an extremely important issue as there remained, after payment of all priority claims, \$250,000,000 for distribution to unsecured creditors.

Judge Goldberg was also responsible for the management of professional fee applications. Because this is an expense paid “from first funds” he had to review every application with the aide of the US Trustee to insure reasonableness in the process. Even with all the litigation and need for multiple levels of professionals from attorneys, accountants, tax experts, real estate sales commissions (234 distinct properties); truck liquidators (34,000 tractor tailors), preference litigation counsel etc. the attorney fees were only 4.5% (\$45,000,000) of the total assets of the liquidated estate over the 7 years this case took to process.

3. Multi day mediation of an inter-family dispute regarding the right to operate an ongoing entertainment and education program and to determine the distribution of business profits after the fathers death, valued in low seven figures over time.

4. Extended 2 day mediation of a multi property estate and the amount to be paid to unsecured creditors based on short and long term profits and disputed expert evaluations on cap rates, projected profit growth as well as evaluation on discounts for minority interests in a number of the commercial properties. Settled for a long term distribution of up to \$64 million.

5. Four discrete mediation’s of an entertainment companies claims by third parties to property as well as the disputed right to ownership of some of the master recordings and the name of highly visible company.

6. Two day mediation of a nine year contested divorce proceeding where one party filed BK on the eve of trial. Issues concerned division of property (Approx. \$22 Million), sanction awards as well as unpaid and future spousal support and attorney fees. Case was meaningful not only in size, but also in the fact that the settlement ended many years of costly animus which allowed the parties to show respect and dignity toward each other.

7. Quad injury case with the “last remaining carrier” who had refused to settle for policy limits. Major parties had paid in excess of \$9 million for the disputed liability case. But the carrier for the supply co who sold a cab modification part that cost less than \$50, and who had the least exposure would not pay the \$50,000 policy limit! Eight years later after many experts had already given their opinion some of which said the plaintiff, who was on a ventilator, would not even live to the date, Judge Goldberg conducted the mediation. The supplier had filed BK before another judge for unrelated reasons and the trustee did not want to have to deal with an assignment of claims if at all possible. After two days of mediation, including comments from reconstruction experts of the accident and longevity of life experts, the carrier agreed to settle the bad faith issue for \$3,000,000 in new money (above the \$9 million paid 8 years earlier from all other carriers).

8. Mediation and settlement of a “bad faith involuntary BK filing” by a plaintiff who had won a fraudulent misrepresentation case against husband CPA and financial advisor and a defense judgment against wife on her cross complaint which included an award of attorney fees. Plaintiffs in underlying state court action were defendants in the BK case. The CPA husband was not a party to case but was a real party in interest. Many complex issues existed, including the animus and loss of friendship between these two former best friends and neighbors. The pain of the actions caused by plaintiff’s CPA husband caused some highly emotional thinking, including the filing of the involuntary BK against the wife who they thought was hiding assets. After dismissal of the BK as a bad faith involuntary the assigned BK Judge retained jurisdiction over damages which Judge Goldberg mediated. Thinking on both sides was clouded by emotion and both attorneys had great difficulty in client control. Case settled in a logical context on all issues. The key to movement was allowing the wives to deeply vent their hurt to the mediator. They were the best of friends for so long and the pain was as deeply felt as a death by some form of misconduct. Each needed to feel that some one understood where they were at in their individual feelings; a necessity to get to resolution.

9. Board of Directors summarily fired their Cantor after 40 years of service as his voice was giving out and no longer created the inspiration this aging Temple wanted. The Cantor sued the Synagogue for wrongful termination and won a \$450,000 Judgment plus \$300,000 in attorney fees which was recorded. The Temple filed BK and the chief Judge assigned the matter to Judge Goldberg for mediation. Key to settlement was recognition. Board members agreed to apologize to the Cantor and to underwrite, at their own cost, a gala fund raising retirement party to honor the Cantor for his 40 years of devoted service to the temple. They also agreed to install an appropriate plaque, at their cost, reflecting this honor. The Cantor's attorney agreed to substantially reduce his fees for representing the Cantor. The Cantor chose to receive only the amount of lost retirement income had this been done right which was less than \$50,000. The fund raiser post settlement was a huge success since there were no costs involved and it paid off the balance owed to the attorney so the lien was removed. The value of "RESPECT."