

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MASSACHUSETTS

IN THE MATTER OF: . Case #96-10123
V & M. MANAGEMENT, INC. . Boston, Massachusetts
Debtor . **July 21, 2004**
9:32 a.m.

**TRANSCRIPT OF EVIDENTIARY HEARING ON:
(#839) MOTION OF ALPHONSE MOURAD TO ALLOW ADMINISTRATIVE CLAIM
BEFORE THE HONORABLE JOEL B. ROSENTHAL, JR., J.U.S.B.C.**

APPEARANCES:

For Alphonse Mourad:

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For Stephen Gray, Trustee:

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1 (At Tape #1, Index #55. 9:32 a.m.)

2 MS. MAGEROWSKI: Please be seated. V&M Management,
3 Incorporated. Case #96-10123. Please identify yourselves for
4 the record.

5 MR. RIORDAN: Attorney Les Riordan for Alphonse
6 Mourad.

7 MS. HERTZ: Good morning, Your Honor. Jennifer
8 Hertz on behalf of Stephen Gray, the Creditors' Trustee.

9 THE COURT: Well, we have several matters on today.
10 Why don't we start, Mr. Riordan, with your desire to withdraw.

11 MR. RIORDAN: Your Honor, that's fine. I would say,
12 though, that I'm willing to argue the other motions for Mr.
13 Mourad, so if you wanted to defer that --

14 THE COURT: Well, I'm just going to hear all the
15 arguments, and I'll give you my decisions -- if any of them
16 come from the bench, I'll give them to you at the end of the
17 hearing, so --

18 MR. RIORDAN: Sure.

19 THE COURT: -- it doesn't really matter that much.
20 Go ahead. Tell me why you want out.

21 MR. RIORDAN: Well, Your Honor, I was discharged.
22 And some of this, I -- I -- I would indicate is relating to
23 attorney-client discussions, which I think, if I should reveal
24 them, I'd like to do that *in camera*.

25 THE COURT: No, I'm not asking you for any privilege
26 information.

1 MR. RIORDAN: I understand, but I'm willing to do
2 that *in camera*. Mr. Mourad has indicated in my view, in
3 conversations with some of his past counsel, that he didn't
4 agree with my approach to the case, particularly relative to
5 your views on discovery, and that he told me I was off the
6 case. But there are other reasons as well. I don't think,
7 despite my understanding for the Court's desire to move this
8 on, that I'm capable of getting up to speed in the time that
9 the Court wants.

10 The Court has indicated that Mr. Mourad understands
11 the rules and has filed motions and is aware of the process,
12 and in light of the conflict, his lack of resources, his
13 inability to meet his obligations regarding those -- even if I
14 was willing to sacrifice a lot of my time without -- by
15 providing those resources myself, I think is just unmanageable.
16 I'm willing to help Mr. Mourad, but I think the environment,
17 the time needed to get up here, and his desire that I not
18 proceed under the strategy that I want to creates conflict.

19 THE COURT: Mr. Mourad, you do unders -- are you Mr.
20 Mourad?

21 MR. MOURAD: Yes.

22 THE COURT: Please rise, please. You do understand,
23 sir, that this matter is going to move forward promptly. Are
24 you prepared to proceed *pro se* --

25 MR. MOURAD: Yes.

26 THE COURT: -- as you have in the past?

1 MR. MOURAD: Yes.

2 THE COURT: Very well. All right, I will, at the
3 conclusion of this hearing, enter an order permitting you to
4 withdraw, but if Mr. Mourad wants you to, and you are prepared
5 to, I will permit you to argue today.

6 MR. RIORDAN: Thank you, Your Honor.

7 THE COURT: All right, let's take -- let's take the
8 motion for change of venue.

9 MR. RIORDAN: Your Honor, for clarification, I
10 noticed on the order, you're speaking about my motion. This
11 isn't a rehearing on Mr. Mourad's motion. It was change of
12 venue to Boston, as opposed to the out of state, correct?

13 THE COURT: Yes.

14 MR. RIORDAN: All right.

15 THE COURT: Yes, motion two for a change of venue to
16 the Eastern District of Massachusetts.

17 MR. RIORDAN: Correct.

18 THE COURT: Filed on June 15th, docket #1015.

19 MR. RIORDAN: All right, thank you, Your Honor.
20 Your Honor, our position -- and I should stress this -- this is
21 not in reference to the Court itself, but the location of the
22 proceedings. Mr. Mourad -- and I think this Court is aware
23 certainly -- Judge Kenner was aware, has certain issues
24 relating to both his resources and his personal health.

25 It seems to me at least relative to trial that that
26 should be conducted in Boston. I -- we're not expressing any

1 reservations about the sitting Judge or this Court; but for Mr.
2 Mourad to be transferred to the Western District simply because
3 he filed the motion for change of venue to out of state I think
4 is incorrect. The parties are all in Boston. The bankruptcy
5 rules themselves seem to suggest that the matter should be
6 heard in Boston, and we request your indulgence on that.

7 THE COURT: Well, I'm a little confused. At various
8 points in this case, and fairly recently, Mr. Mourad had asked
9 that this case go to Connecticut, Rhode Island, or I think it
10 was New Hampshire.

11 MR. RIORDAN: I think it was New York.

12 THE COURT: All of which are substantially further
13 away from Boston than Worcester.

14 MR. RIORDAN: I agree.

15 THE COURT: And those were denied. The case was
16 transferred here, had nothing to do, of course, with his
17 motion, and it basically had to do with Judge Kenner's pending
18 retirement; and now Worcester is inconvenient, but Rhode
19 Island, New Hampshire, and wherever were convenient. It seems
20 a little incongruous. Do you care to elaborate on that?

21 MR. RIORDAN: Yeah, I don't -- I don't think it
22 does, Your Honor, and I think they're different --

23 THE COURT: Why was -- why were those places more
24 convenient?

25 MR. RIORDAN: I don't know whether they were that
26 more convenient, but I think Your Honor knows, whether proper

1 or not, that Mr. Mourad -- and Judge Kenner -- had issues. Mr.
2 Mourad filed several recusal motions. Mr. Mourad was barred
3 from the Court. I don't know why Mr. Mourad filed the change
4 of venue to out of state other than the belief that the Court
5 itself in Massachusetts was not impartial enough to hear the
6 matter. I don't think it was based on location. I think it
7 was based on impartiality.

8 What I'm asking for is Your Honor's indulgence. When
9 there will probably be very little in terms of actual court
10 time outside of the actual trial, to allow Mr. Mourad to
11 conduct that trial in a courtroom in Boston.

12 THE COURT: Where does Mr. Mourad reside?

13 MR. RIORDAN: In Boston, Your Honor.

14 THE COURT: How did he get here today?

15 MR. RIORDAN: I believe -- I'd have to ask him -- I
16 would believe he --

17 THE COURT: Why don't you ask him.

18 MR. RIORDAN: Mr. Mourad, how did you get her today?

19 MR. MOURAD: I drove my daughter's car.

20 MR. RIORDAN: You drove your daughter's car. All
21 right.

22 MR. MOURAD: My daughter's car.

23 THE COURT: Does counsel want to be heard on the
24 other side?

25 MR. RIORDAN: May I make one other suggestion, Your
26 Honor?

1 THE COURT: Yes.

2 MR. RIORDAN: I think it would be appropriate to
3 decide the issue just relative to the trial and to take it
4 under advisement as well. Thank you.

5 THE COURT: Thank you.

6 MS. HERTZ: Your Honor, I think that with respect to
7 venue, if our motion for cross-judgment on the pleadings is
8 denied today, then we're going to trial. I can't foresee that
9 trial is going to take one more day, so in actuality, he'll
10 only have to travel here, you know, one or two more times. I
11 don't know that that is remarkably inconvenient.

12 Also, I think it's either you travel to Boston and
13 hold a hearing there, or we travel here. I -- we're absolutely
14 opposed to having this reassigned to yet another Judge. I
15 think that there has been enough delay as it is, so we're very
16 opposed to changing venue, and I don't think that asking Mr.
17 Mourad to travel here once or twice more is substantially
18 inconvenient.

19 THE COURT: All right. There will be no change of
20 Judge. If we go to trial, I'll arrange that the trial will
21 take place in Boston. The order that is outstanding with
22 respect to Mr. Mourad being barred from the 11th Floor of the
23 O'Neill building remains in effect. I will issue an order when
24 trial is scheduled permitting him to appear there that day.
25 Other than that, all pleadings are to be filed here. All other
26 proceedings with respect to this case will take place here.

1 So venue remains in the Western Division, but the
2 trial will take place in Boston.

3 [Pause]

4 THE COURT: All right. I'll hear the Creditors'
5 Trustee on the motion for judgment on the pleadings.

6 MS. HERTZ: Your Honor, this case was remanded on
7 two very narrow and specific issues, namely, one, whether the
8 estate was administered negligently, causing Mourad's tax
9 liability or increasing his liability, and, two, whether Mr.
10 Mourad has asserted this claim in a timely fashion.

11 There are two very relevant things which render the
12 remand moot. First of all, the Creditors' Trustee has set
13 forth in his pleading that pursuant to the plan there was a
14 transfer of all of the debtor's estate's remaining property to
15 the creditors' trust -- excuse me, creditors' trust.
16 Therefore, even if this Court were to allow Mr. Mourad's late
17 administrative claim, there are no remaining assets in the
18 estate to satisfy any such claim.

19 Secondly, under the plan there was a specific
20 exculpation provision which precludes any negligence claims
21 against the Creditors' Trustee. Accordingly, with respect to
22 the negligence claim upon which -- which has been remanded, the
23 plan specifically precludes Mr. Gray's liability under any such
24 claim.

25 THE COURT: Well, the exculpation is in the
26 Creditors' Trust, correct? Yes?

1 MS. HERTZ: Correct.

2 THE COURT: All right, so -- so your claim is that
3 you can't get him as Creditors' Trustee because there's an
4 exculpation clause, and you can't get him as -- as Trustee of
5 the Chapter 11 estate because all the money has been disbursed.

6 MS. HERTZ: Correct.

7 THE COURT: Is that your argument?

8 MS. HERTZ: The -- there's adequate evidence on --
9 in the pleadings of this case, all of which are duly noted in
10 the record and referred to in the omnibus opposition we filed
11 by docket; so in addition to the fact that you ruled last time
12 that there would be no further evidence --

13 THE COURT: No. I ruled there would be no further
14 discovery.

15 MS. HERTZ: -- or discovery -- discovery. So I
16 think that the -- the -- any evidence that would be submitted
17 at trial is already on -- in the record before this Court.
18 So --

19 THE COURT: Fine. Why does that -- why is that
20 necessarily so? I mean, he could bring in witnesses.

21 MS. HERTZ: Yes, but in order to prove a claim of
22 negligence, which is exculpated by the plan, in order to
23 prove--

24 THE COURT: That may be --

25 MS. HERTZ: -- that his claim wasn't timely filed,
26 when there's on funds in the estate, there is no estate. So

1 even assuming that everything he said is true, there's no
2 recourse for him.

3 THE COURT: Okay. I understand your argument.

4 MS. HERTZ: So for that reason we moved for judgment
5 on the pleadings. Thank you.

6 THE COURT: Counsel or Mr. Mourad, whoever is going
7 to argue this?

8 MR. MOURAD: I would like to respond to that, Your
9 Honor.

10 THE COURT: Well, one of -- you don't get to double-
11 dip. One of you gets to argue the motion.

12 MR. RIORDAN: May I have a moment with Mr. Mourad?

13 THE COURT: Sure.

14 [Pause]

15 MR. RIORDAN: I'll argue it, Your Honor. Thank you
16 for your indulgence.

17 Your Honor, on the points that counsel has made, I
18 would point out in the first instance that I think these claims
19 have been stated in a manner such as to indicate gross
20 negligence or intentional conduct; and I believe it's the
21 Trustee's claim that, in fact, the course of action he took
22 relative to the S status and relative to the tax credit were
23 designed to enhance the estate for the creditors. So -- so I
24 believe we've implicated more than just basic negligence; but
25 in any event, Mr. Mourad didn't have any standing to object to
26 the clause which limits it to negligence, and we would take a

1 -- just the position that without that standing he -- the
2 clause is inapplicable to him.

3 I would add that --

4 THE COURT: Whoa, whoa, whoa, whoa, whoa, whoa. I'm
5 not sure I understand. That -- the exculpation clause was in
6 the creditor's trust, which was authorized under the terms of
7 the plan.

8 MR. RIORDAN: He didn't have standing to object to
9 the plan.

10 THE COURT: Why didn't he?

11 MR. RIORDAN: That's what Judge Kenner's ruling -- I
12 disagree with it, but he didn't have standing.

13 THE COURT: All right.

14 MR. RIORDAN: In fact, Judge Kenner's order -- and
15 this is reflected in the First Circuit opinion, is that Mr.
16 Mourad didn't have any equity; and this -- this lies at the
17 heart of really the pure legal issue that we're dealing with on
18 the issue of taxes. I understand that Mr. Mourad's issue is
19 over and above the tax issues, but what the Court has done
20 here, in a very sort of odd situation, and where there isn't a
21 lot of law on this, has said, "You have no equity, you have no
22 standing, you have no ability to destroy an S status. The S
23 status remains intact," allowing the transfer away of the tax
24 credit, but at the same time burdening him with the tax
25 liability.

26 So it's our position is that as a matter of due

1 process -- and if Mr. Mourad can't object to a specific clause,
2 he shouldn't be held accountable to it.

3 As far as the funds are concerned, I would make two
4 points about that: My understanding is, is that at the time
5 this -- the pre-trial order was entered, that the Trustee
6 identified \$121,000 worth of assets. I don't know what's
7 happening with those assets since. I know counsel indicates
8 that there is nothing left. Counsel doesn't have an affidavit
9 or any evidence indicating that, so, you know, without
10 disclosure it's hard to fathom what's there.

11 But I think we also have to remember that the Trustee
12 is taking actions that impact potential claims, and for the
13 Trustee to take the position that he's distributed assets of
14 the estate and then can take actions relative to tax returns,
15 one of them being the 1997 return in this case, and I
16 understand it's not before the Court, but other returns that he
17 apparently doesn't have any authority to enter, he does that at
18 his own risk, in our view, under the law.

19 I would also state to Your Honor that particularly
20 from my point of view, that there is a hard construct to get
21 past here for me, and that's that Judge Kenner ordered the
22 estate closed, except for this pleading, which creates, I
23 think, some difficulty in addressing different aspects. It
24 seems to me then that the Trustee was on notice as to his
25 limited duties relative to the estate on the date of that
26 order, and also on notice that he needed to preserve funds for

1 Mr. Mourad's claim. So on that aspect of the opinion, we
2 believe that the motion should be denied.

3 I would also add that in my view -- and I've cited
4 the rule relative to the summary judgment -- but in my rule
5 this motion, with the exception of the inclusion of a tax
6 opinion, is no more than a 12(b)(6) motion. I mean,
7 essentially, this would go back to the First Circuit where it
8 is ruled that he made adequate claims, whatever the problems
9 with the drafting of those or the agreement with that is.

10 So I would submit that the attachment of the tax case
11 adds nothing to the case. The case is under appeal. It's
12 under appeal by right of statute from an administrative court
13 in which a jury trial is not permitted, and the judgment, in my
14 view, under the law, is not final until the First Circuit
15 rules.

16 For the Court's information, our brief is done --
17 this is a case that I've taken from Mr. Mourad. I have
18 followed through on the reply brief. I'm sorry. The
19 opposition would be due I believe this week, and a reply
20 shortly thereafter.

21 So one of the core issues of this case will be
22 resolved by the First Circuit within I think a reasonably brief
23 time. It is my view that a lot of this case is susceptible to
24 motions for summary judgment, and that the Court should, in
25 scheduling, provide the opportunity for that, because they do
26 present interesting --

1 THE COURT: It's been how many years of opportunity?

2 MR. RIORDAN: Well, Your Honor, you've made your
3 ruling on discovery. I -- I --

4 THE COURT: The final pre-trial was filed two years
5 ago, counsel.

6 MR. RIORDAN: Your Honor -- Your Honor -- this is
7 not an area -- I understand your position. I respect your
8 position. I understand the need to do it, but I also ask you
9 to consider --

10 THE COURT: Well, right now I'm hearing the motion
11 for judgment on the pleadings, counsel.

12 MR. RIORDAN: Well, all's I'm indicating to Your
13 Honor is that I do think on some of these issues, some very
14 interesting issues, in fact, that this is susceptible to a
15 motion for summary judgment or a partial motion for summary
16 judgment and Your Honor may want to consider that as a device
17 to try to limit the issues and, in fact, limit the trial.

18 THE COURT: Well, the issues are very limited. The
19 BAP's already told us what the issues are.

20 MR. RIORDAN: Well -- and I think we've submitted an
21 memo today to determine that. I think you're right.

22 THE COURT: And I will give you a ruling before you
23 leave today on what I think, based on what I've examined of the
24 record, what the Trustee -- assuming we're going forward with
25 what the Trustee has said, and what you've said; and I will --
26 before we leave today there's going to be a trial.

1 MR. RIORDAN: I understand that.

2 THE COURT: And we'll schedule it.

3 MR. RIORDAN: I understand.

4 THE COURT: Fine.

5 MR. RIORDAN: I understand that if Mr. Mourad -- I'm
6 just indicating that I think some of the issues can be cut
7 down, and I think -- I think certainly that it may be I'm
8 premature before Your Honor's ruling on the specific issues.
9 So I submit on my papers on that, sir. Thank you.

10 THE COURT: Thank you. Anything further?

11 MS. HERTZ: I don't know exactly how to respond to
12 those various allegations. I would just like to reiterate that
13 this was remanded on two very narrow issues, and I think
14 Attorney Riordan is yet again attempting to have this explode
15 into a myriad of issues which are not before you. And so I'm
16 not going to take into account everything he said in response
17 to that, but I think that it's very important that this does
18 not get out of control.

19 THE COURT: All right. I am going to deny the
20 motion for judgment on the pleadings. I think there are facts
21 well enough pled, that if true, taking reasonable inferences in
22 the claimant's favor, do state an appropriate, do state a
23 claim. Whether it can be proved is something else again.

24 I'm not considering this as a motion for summary
25 judgment but just a motion of judgment on the pleadings; and
26 based on my review of the pleadings and hearing of argument, I

1 find that there is -- the pleadings are sufficient, and the
2 matter is not moot, and I'm denying that motion.

3 That leaves us the motion -- well, let me take care
4 of the denial first. [Pause] I'm denying their motion, but
5 I'm also denying your motion to strike it. It's moot. It
6 doesn't mean anything. It's meaningless.

7 I now have a motion of Mr. Mourad for reconsideration
8 of the Court's order precluding discovery. I'll hear argument
9 on that, briefly.

10 MR. RIORDAN: Your Honor, I'm happy to submit that
11 on the paper. I mean, I think you made your position clear.
12 The only two points I think we make is that this is a case
13 where you had someone *pro se*. Your rules require a mandatory
14 scheduling conference, and I think on -- without implying
15 anything regarding individuals here, that the pre-trial order
16 in this case can be read to indicate that discovery was not
17 going to be permitted at all.

18 That -- that would be the view. It seems to me that
19 the Court had an affirmative duty to hold that conference and
20 to permit -- to create a scheduling order for discovery. There
21 is no doubt they didn't do it; but other than that, we'll
22 submit on the papers, Your Honor.

23 MS. HERTZ: Your Honor, Mr. Mourad's late
24 administrative claim was filed in September of 1998. I believe
25 that at the time the pre-trial memo -- pre-trial order entered
26 he was represented by counsel. There has been no instance in

1 the last six years of when the pre-trial order entered
2 seeking clarification or otherwise with respect to discovery,
3 and it's only upon Attorney Riordan's appearance six years
4 after the order entered that evidence is now sought. I think
5 that that certainly precludes Mr. Mourad.

6 Secondly, with respect to the motion, it certainly
7 doesn't satisfy the standards for reconsideration in the
8 District of Massachusetts, which is mistake, inadvertence,
9 surprise, excusable neglect, or newly discovered evidence.
10 None of those grounds are alleged or pled.

11 THE COURT: Thank you. I'm going to deny the motion
12 for reconsideration. I agree with Ms. Hertz that it doesn't
13 meet the standards. I also believe that there was more than
14 adequate time at several points during this if discovery was
15 desired or needed, and I am denying the motion, and I'm
16 entering a written decision on the record, which you folks will
17 receive in due course.

18 All right, that leaves the -- according to my list,
19 -- well, also on the list for today was the motion to change
20 venue to another state. I'm denying that. We've already had
21 the argument on that.

22 MR. RIORDAN: Your Honor, as a point of
23 clarification, it was my understanding Judge Kenner did deny
24 that.

25 THE COURT: I couldn't find anything on the record,
26 but in case she didn't, I am.

1 MR. RIORDAN: All right.

2 THE COURT: Okay? With the papers moving around,
3 there may have been some docketing issues, but you really
4 weren't asking for that anyway, and I'm denying that.

5 So this is the final pre-trial. I've read the pre-
6 trial submissions. I've read the BAP decision, and I believe
7 that there are two issues, and only two issues, that I have to
8 deal with coming out of the BAP -- two issues to be tried.
9 Mr. Mourad's allegations that Gray administered the estate
10 negligently, causing or increasing Mr. Mourad's tax liability.
11 That's one. The other one is whether Mr. Mourad had cause to
12 file his administrative claim late. All the other issues, it
13 seems to me, have been addressed or outside the scope of this
14 contested matter. So those are the two issues that we are
15 going to try.

16 I am prepared to schedule trial right now. I hope
17 you folks have your calendars with you. Can I -- I know you
18 looked at some dates.

19 [Pause]

20 THE COURT: Based on my reading -- I know that the
21 pre-trial statement, which was entered when there were many
22 more issues, or at least Mr. Mourad thought there were many
23 more issues at the time, before the BAP decision -- or maybe it
24 was after -- I don't know -- had 22 witnesses. Do we still
25 think that that's the number of witnesses that we're going to
26 have?

1 MR. RIORDAN: Your Honor, I think that question
2 actually should be addressed to Mr. Mourad.

3 THE COURT: Mr. Mourad. How much -- how many
4 witnesses do you think you're going to need on those two
5 issues?

6 MR. MOURAD: I'll have to go with the list I gave
7 you, Your Honor, but possibly about 12 to 14 witnesses.

8 THE COURT: All right. Unfortunately, it's very
9 difficult with my schedule to put together consecutive days.
10 So the first day of trial will be September 13th -- Monday,
11 September 13th. Monday, September 13th at ten a.m. at the
12 courthouse in Boston on the 11th Floor. I'm not sure which
13 courtroom we'll be using, but it will be posted when you get
14 there. Bring your calendars with you for that trial, and we'll
15 -- after we see how far we get that day, if we need additional
16 days, we'll schedule them at that time. Ms. Hertz.

17 MS. HERTZ: Your Honor, would you permit me a few
18 minutes to call Mr. Gray to make sure that he is available on
19 that date?

20 THE COURT: Sure. I've got another matter --

21 MS. HERTZ: Okay. I know that Mr. Jalbert is --

22 THE COURT: Tell them I require his presence.

23 MS. HERTZ: He's our star witness.

24 THE COURT: I understand. And we're giving him
25 almost eight weeks' notice, so I expect he'll be able to adjust
26 his schedule accordingly. But rather than have to chase people

1 down afterwards, why don't you take a few minutes, go call him,
2 and I'm going to ask Mr. Mourad and Mr. Riordan to stay here,
3 so that if that's a problem, we know -- any problem, as far as
4 you know, with that date, Mr. Mourad?

5 MR. MOURAD: No, no problem at all, Your Honor.

6 THE COURT: Fine.

7 MR. MOURAD: Thank you.

8 THE COURT: Why don't you go out and call him. And
9 I'm also going to -- since the pre-trials were so long ago, I'm
10 going to require that the parties file and circulate an updated
11 witness list so that that'll force you folks to do one thing,
12 at least, is to look at your witness list and pare it down, if
13 necessary.

14 MS. HERTZ: Your Honor, we listed two witnesses, and
15 I know that those aren't changing. Not --

16 THE COURT: But you think you need --

17 MS. HERTZ: -- increasing or decreasing.

18 THE COURT: Okay, that's fine. So, Mr. Mourad,
19 you've heard that they're not changing their witness list, "to
20 submit updated witness list no later than" -- all right, Mr.
21 Mourad, you're directed to submit a -- file and circulate an
22 updated witness list no later than September 1st.

23 MR. MOURAD: Thank you, Your Honor.

24 THE COURT: All right, we'll take a brief recess on
25 this matter to permit counsel to reach the Trustee, confirming
26 his availability. I'll take the -- do we have a matter on at

1 ten?

2 CLERK: (unclear)

3 THE COURT: All right, I'll take my ten o'clock
4 matter. It should only take a few minutes. Report back to me
5 as soon as you can. Very well. Thank you.

6 MR. RIORDAN: Thank you, Your Honor.

7 MS. HERTZ: Thank you.

8 [Off the record at Tape #1, Index #1895. 10:02 a.m.]

9 * * * * *

10 [On the record at Tape #1, Index #2290. 10:10 a.m.]

11 THE COURT: All right, let's take care of the V&M
12 matter first. It should only take a moment. Ms. Hertz.

13 MS. HERTZ: Mr. Gray has -- is in trial on September
14 13th, and I have the days of September that are blacked out for
15 him.

16 THE COURT: Okay. Blacked -- you mean, he's
17 available or he's not available.

18 MS. HERTZ: That he's not available.

19 THE COURT: Okay.

20 MS. HERTZ: They are trial-related dates --

21 THE COURT: Okay.

22 MS. HERTZ: -- which could change, but he is not
23 available the 13th, 15th, 16th, 20th, 21st, 22nd, and 27th.

24 THE COURT: Okay, let's see.

25 [Pause]

26 THE COURT: All right, how's Friday the 24th.

1 MR. RIORDAN: Mr. Mourad is available that date,
2 Your Honor.

3 MS. HERTZ: That's perfect, Your Honor.

4 THE COURT: I expect when you appear on that day,
5 either Mr. Gray will be with you, or you will have his calendar
6 for the following several weeks so that if we need more than
7 one trial day, you'll know what his schedule is.

8 MS. HERTZ: Yes.

9 THE COURT: Okay. So September 24th, ten a.m., in
10 Boston. Thank you.

11 MS. HERTZ: Thank you, Your Honor.

12 THE COURT: Oh, by the way, the order that I'm
13 entering on the -- the reconsideration denial also denies the
14 stay that was requested in that motion.

15 MS. HERTZ: Thank you, Your Honor.

16 THE COURT: Very well, thank you all.

17 MR. RIORDAN: Thank you, Your Honor.

18 (End at Tape #1, Index #2435. 10:11 a.m.)

19 * * * * *

20 I certify that the foregoing is a true and accurate
21 transcript from the electronically sound recorded record of the
22 proceedings.

GLORIA C. IRWIN
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