

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 95-Z-777

ELLER INDUSTRIES, INC.

Plaintiff,

v.

INDIAN MOTORCYCLE MANUFACTURING INC, a New Mexico corporation,

Defendant,

v.

United States of America,

Intervenor.

**BRIEF IN SUPPORT OF DETERMINING THE VALUE OF FINANCE
COMMITTEE COMPENSATION FOR LEONARD S. LABRIOLA'S RESPONSE TO
STERLING CONSULTING CORPORATION'S NOTICE OF DISAPPROVAL OF
CLAIM OF LEONARD S. LABRIOLA FOR FINANCE COMMITTEE
COMPENSATION AND MOTION TO DISALLOW CLAIM**

I, Leonard S. Labriola, filing Pro Se, hereby provide for the Court's reliance, analysis of the value underlying my contract with this Court for compensation for services I provided while serving on its receiver's finance committee.

According to this Court's receiver, personified by Richard Block, the value of the administrative contract I hold with this court for service rendered while on the receiver's Finance Committee is \$1.5 million. The true value of this contract however, is better reflected by a value of \$2.7 million. As grounds therefore, I submit the following:

1. I recognize that Richard Block selected IMCOA as the purchaser of the assets of the Combined Estates. He verified that this Purchaser delivered equity “worth substantially more” to his beneficiaries and to holders of administrative contracts then would have Eller. The sale has been approved and closed. This brief is to provide the court with a basis for my assessment of my contract’s value. This is not an effort to affect the status of the IMCOA sale. Lest Mr. Block claim otherwise, see attached article from the August 1999 *Motorcyclist*.

2. On November 13, 1998, Richard Block verified in his *Receiver’s Special Report on the Termination of Eller Industries, Inc.*, on Page 7, ¶ 2 that 8.5 million shares of stock in Eller Industries, Inc. were worth \$18.9 million.

3. Richard Block’s verification that 8.5 million Eller shares were worth \$18.9 million would mathematically mean that 9 million Eller shares were worth \$20 million.

4. In footnote 2 on page 8 of *Sterling Consulting Corporation’s Notice of Disapproval of Claim of Leonard S. Labriola For Finance Committee Compensation And Motion To Disallow Claim*, the formula for my “3%” compensation is given as “7.5% of the equity that the receiver has to distribute”.

5. Since Eller was tendering 9 million shares to the estate, and since according to Richard Block’s verified calculations these shares were worth \$20 million, then my contract for 3% was worth 7.5% of \$20 million, or \$1.5 million.

6. This analysis is not limited to my particular claim. Any beneficiary with equity as a part of his or her claim is subject to this same analysis. Just use \$500,000 per percentage point. Five of the six “intervenor”, for example, whose claims Mr. Block now says are each worth \$105,000, had claims that, according to Richard Block under the Eller contract, were each worth \$750,000.

7. Mr. Block, however, performs his analysis on Eller's value prior to the news release that Mr. Robert Lutz had become involved with Eller. This event had a significant impact on the market's valuation of the company. According to a major article in the September 30, 1998 Wall Street Journal (6 days prior to Eller's termination):

“Call it the corporate jumpstart. Robert A. Lutz, the man who played a critical role in pulling Chrysler Corp. out of its financial crises early this decade, is taking on another stalled vehicle maker. [Eller Industries, Inc. as Indian]”

8. This brought the public's attention to Eller, increased investor confidence and excitement, and brought the public sale price of Eller stock to \$4.00 per share (see attached *StockMaster* chart). This made the 9 million shares that this Court's estate was to receive worth \$36 million. My 3% compensation, worth 7.5% of \$36 million, was to have been \$2.7 million.

9. This market value analysis applies to other beneficiaries as well. Just use \$900,000 per percentage point. Five of the six “intervenors” for example, whose claims Mr. Block now says are each worth \$105,000, had claims that were each worth, according to the open public market, \$1.35 million. Quite a difference, and perhaps the reason why they had objected so strenuously.

10. Of course, after Eller's termination, the price of its stock retreated significantly. However, given the quality and quantity of subsequent events, had Eller's contract not been terminated the value of these 9 million shares would likely have increased further, and with them, the value of my contract. (See attached summary of industry comments regarding Eller)

11. On page 8 of the *Receiver's Twenty-Sixth Report* dated November 23, 1998, 10 days after having performed the above analysis on November 13, 1998, Richard Block further verifies for this Court's reliance, that:

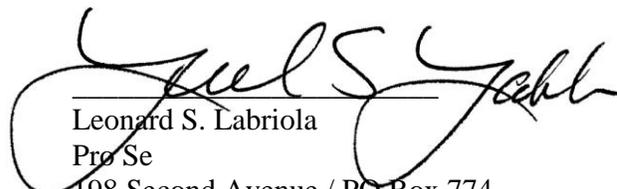
“The simple fact is that four percent of the ultimate Purchaser, plus the percentage of Common Stock available for Conversions [2.25 million shares] is worth substantially more than a maximum of 29%6 [sic] of Eller [9 million shares] or 16% of Hortitech.”

CONCLUSION

12. On November 13, 1998 Richard Block verified that my contract was worth \$1.5 million under the Eller contract. On November 23, 1998 Richard Block verified that the approved Purchaser delivered value “worth substantially more” than the Eller contract. Therefore, Mr. Block must have received “substantially more” value for my contract than the \$1.5 million represented by his verified analysis of Eller. Therefore, the receiver should be compelled to honor my contract with \$2.7 million which is “substantially more”.

13. If the court allows Richard Block to value my contract at less than \$2.7 million, Mr. Block should explain exactly how much more than Eller’s verified \$20 million he considered “substantially more”, and deliver the greater value pro-rata. If Richard Block values my contract at less than \$1.5 million, he should be compelled to report how inferior to Eller this contract is, and why he forced an inferior contract upon his estate over their objections.

Respectfully submitted this 6th day of July 1999.


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CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of July 1999, a true and correct copy of the foregoing document was deposited in the United States mail (or as otherwise indicated), postage prepaid, addressed as follows:

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District Court Magistrate Judge

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