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.

LEONARD S. LABRIOLA'S REQUEST FOR JUDGE ZITA WEINSHIENK AND MAGISTRATE JUDGE O. EDWARD SCHLATTER TO DISQUALIFY THEMSELVES FROM HEARING STERLING CONSULTING CORPORATION'S MOTION TO DISALLOW CLAIM OF LEONARD S. LABRIOLA AND TO ASSIGN THE MATTER TO ANOTHER JUDGE

I, Leonard S. Labriola, filing Pro Se, respectfully, and humbly pray that Judge Zita Weinshienk and Magistrate Judge O. Edward Schlatter disqualify their receivership court from hearing *Sterling Consulting Corporation's Notice of Disapproval of Claim of Leonard S. Labriola for Finance Committee Compensation and Motion to Disallow Claim* and to assign the matter to another judge because **THE RECEIVERSHIP COURT WILL NOT QUESTION THAT THE ACTS TAKEN BY THE RECEIVER WERE VALID AND PROPER, WHEREAS ANOTHER COURT IN ANOTHER JURISDICTION MIGHT**.

As grounds therefore, I submit the following:

1. In §93 of *Receiver's 28th Report* dated June 5, 1999 the person acting as receiver, Richard Block, states under penalty of perjury that it is his belief that:

> **"… the Receivership Court will not question that the acts taken by the receiver were valid and proper, whereas another court in another jurisdiction might."**

2. This report drew objections from many parties. A hearing was scheduled for June 25, 1999. Seemingly to make the receiver's point, the Court concurred with Mr. Block and ruled in favor of his assessment on June 23, 1999, despite having set the hearing for June 25.

3. One must assume that such acts taken by the receiver would include the following determination from his motion to disallow which states:

> "The receiver's determination that Mr. Labriola is not entitled to compensation for his work on the Finance Committee should not be disturbed. The receiver has made it in the reasonable exercise of its judgement, and there is not basis in law to alter it."

4. My right to compensation is guaranteed by a contract I entered into with Mr. Block that was further approved by this Court. My contract has a value verified by Richard Block of more than $1.5 million[1]. Mr. Block is now attempting to repudiate the contract. I submit that my contract is worth $2.7 million[1] and that it is binding upon the Receivership Court.

5. This matter will affect my family's future for generations. It deserves to be heard by a Court that is neutral, objective, and unbiased. In order for my contract to possibly prevail, the Court must do what it has heretofore refused to do: **respect my constitutional rights**.

6. **Herein lies the problem** – this receivership Court has refused to respect anyone's right to due process or equal protection. In this Court Mr. Block is not required to provide any

[1] *See 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 dated July 6, 1999*

substantiation or even specific allegation. His overall, personal, and arbitrary conclusion that I have caused damage will be sufficient for this receivership court to rule in favor of Mr. Block and against me. Further, as penalty for these vague and unsubstantiated charges, I am being penalized $2.7 million. This is Mr. Block's whim acting as my judge, jury, and executioner.

7. I have the right to be made aware of the specific charges of which I am being accused. I have the right to defend myself against whatever these specific charges are. I have the right to challenge the receiver's unilateral decision to impose and collect a $2.7 million fine. And **I have the right to defend myself in a forum that is neutral, objective, and unbiased**. The fundamental, constitutional rights of due process under the law and of equal protection for all citizens demand that I have my arguments heard in a venue that will at least allow for the possibility that my claim of innocence could be true.

8. **SUCH A FORUM IS CLEARLY AND DEMONSTRABLY NOT THIS RECEIVERSHIP COURT. THEREFORE THIS MATTER MUST BE MOVED.**

9. I recognize that Richard Block selected IMCOA as the purchaser of the assets of the Combined Estates. He verified that the IMCOA 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 pleading is an effort to demonstrate to Judge Weinshienk and Judge Schlatter that in order to protect my rights, another Court should hear this matter. Any references to the IMCOA sale or Eller contract are for example only to support this motion and not an effort to affect the status of the IMCOA sale in any way. Lest Richard Block assert otherwise, please see the attached article from the August 1999 issue of *Motorcyclist Magazine*.

10. Speaking further to the need for the disqualification of Judge Weinshienk and Judge Schlatter, as a natural outgrowth of the receiver's **power absent accountability** or **due**

process, the management of this receivership Court has become grossly **arbitrary** and **capricious**. Following are but four examples from many that are available.

A. **The Receivership Court is Arbitrary** – At the December 18, 1997 hearing to approve the Eller Purchase contract, Judge Weinshienk allowed two parties to ignore her orders and tender new bids ten days after the deadline for bidding had passed. Eller and its investors had relied upon these orders of her court before tendering over $750,000 to her receiver. I asked Judge Schlatter how Eller could rely upon future orders of this court if we were unable to rely upon the court's orders in this instance. Judge Schlatter candidly answered, **"You can't**."

On July 17, 1998 in Judge Schlatter's chambers, Richard Block made a hard commitment to extend the October 1, 1998 closing date to March 15, 1999 if Eller raised its mezzanine financing. Attorneys for Eller requested that a record be made of the agreement because "10-days from now the receiver will deny the agreement." Judge Schlatter refused, Eller raised the funds, Richard Block denied the agreement, and Eller was "instantly terminated" on October 6.

B. **The Receivership Court is Capricious** – In addition to the example in ¶2 above, about October 12, 1998 Mr. Block served Eller with a subpoena demanding documents. Eller attorneys immediately filed an objection. On **October 21st**, Judge Schlatter set a hearing to decide the matter for November 5th. On **October 22nd**, Judge Schlatter moved the date of the hearing to October 29th. On **October 23rd**, six-days prior to the re-scheduled hearing, Judge Schlatter ruled – Eller's objection denied, Mr. Block's demands granted.

11. I do need to speak further to the need for the disqualification of Judge Weinshienk and Judge Schlatter. I must also speak out about the **corruption**, **duplicity**, **ineptitude**, **hubris**, and **abject indifference** towards the constitutionally guaranteed rights of **due process and equal protection under the law** that have become the status quo of this receivership.

12. Following is a limited sampling of the intolerable conduct that has been running rampant in this receivership for far too long.

A. Corruption – Eller's purchase contract was approved on January 21, 1998. In February of 1998 Richard Block began incessantly threatening Eller with termination. Eller's directors and attorneys believed these threats stemmed from Eller's failure to offer Richard Block a "Transition Agreement", a contract for work after the close of the receivership. On April 7, 1998 this was confirmed when attorney for the receiver, Jack Tanner of Fairfield and Woods, told attorney for Eller, Jim Ghiselli of Holmes, Roberts, and Owen,

> "… he [Richard Block] also thinks that it [the Transition Agreement] may be the only way out of the current problem."

The board of Eller authorized the offer of a contract, which was tendered to Richard Block in the midst of an acrimonious conference in Judge Schlatter's chambers three weeks later. The threats of termination instantly ceased; every cause for termination so vociferously argued to Judge Schlatter less then 30-minutes earlier evaporated. Richard Block suggested the Transition Agreement be incorporated into the amendment that was to extend the purchase contract's closing date beyond October 1, 1998. Eller's attorneys failed to incorporate this Transition Agreement into the amendment. A separate contract was never tendered. Eller was terminated out of hand on October 6, 1998.

B. **Duplicity** – Richard Block "instantly" terminated Eller's contract to purchase the assets of the combined estates:

i. After testifying in open court that, since May of 1998, he had no expectation that the contract would be closed by the October deadline;

ii. hours after Richard Block, repeatedly assured attorneys for Eller that Eller was not at risk of default, never-mind instant termination;

iii. less than one week after the Honorable Magistrate Judge O. Edward Schlatter independently and repeatedly gave his word to attorneys for Eller that they were not at risk of default, never-mind instant termination;

iv. less then 10 days after the Honorable Magistrate Judge O. Edward Schlatter personally pressured attorneys for Eller not to file a pleading they had prepared in order to call attention to the conduct of Richard Block which, for months, had demonstrated nothing but abject bad faith;

v. despite having never made a single demand for payment;

vi. despite Richard Block's inability to deliver the very assets for which he was instantly terminating Eller for failing to hand-over $14 million in cash and $36 million in stock (9 million shares times $4 per share);

vii. despite Eller's 30-day right to cure, which was denied without comment;

viii. despite Eller's ability to deliver full payment within its 30-day cure period were the purchased assets to have been available for delivery to Eller; and

ix. while denying Eller all due process guaranteed under the law.

IMCOA, on the other hand, who had offered Richard Block a "wind-down" contract for $20,000 per month, and whose representatives were in the room with Richard Block and Judge Schlatter at the time of Eller's termination, was instantly installed as the new purchaser despite machinations to have it appear otherwise. Mere hours before termination, Block assured Eller that everything was just fine.

C. Ineptitude – 1) Despite a $30 million difference in value between the Eller and IMCOA contracts ($50 million Eller[2] vs. $19.55 million IMCOA), Judge Schlatter ruled that he found differences between the contracts to be insignificant.

2) In testimony in front of Judge Weinshienk, Judge Schlatter testified, "I do not believe that Mr. Block was in default of any provision of the [Eller Purchase] contract." In the very next sentence, Judge Schlatter testified that, "To the extent that there were things he [Mr. Block] was not able to provide, I think any remedy for those things is just for Eller to walk away. If they do not like the condition of the Kawasaki litigation [challenging the Indian Trademark], walk away." Judge Schlatter gave this testimony despite clear language in Eller's contract stating that in order for Mr. Block to close:

> "8.1.3. Seller [Mr. Block] shall be in the position to assign all of the Purchased Assets to Purchaser [Eller], including without limitation, the Trademark, free and clear of Liabilities."
>
> "8.1.4. The Trademark, when assigned, shall be uncontested in International Classes 12, 25, and 28 in the United States."

[2] $14 million in cash and $36 million in stock as determined by 9 million shares of Eller Industries times $4.00 per share. See attached *Stockmaster* Chart.

E. **Hubris** – One could not fabricate an example of hubris that better demonstrates the gross arrogance of this receivership than Richard Block's true argument, personally verified and ordered by this US District Court, that litigation against *ACE MOTORCYCLE* should be maintained in Colorado where his receivership court "will not question" anything Mr. Block says or does. To magnify this swaggering display of bravado, Mr. Block goes even further to assert, in the face of anyone who has ever challenged him, that this court will not question his actions even "where another court in another jurisdiction might." This should send shudders down the spine of anyone who values their foundational right to equal protection under the law.

F. **Abject Indifference** to **Equal Protection** and **Due Process –** Judge Weinshienk and Judge Schlatter have both entered "instant orders" at the whim of Richard Block, some of them devastating to the parties against whom they are entered, before those parties were even aware that there had been motions entered against them. At the same time, emergency, protective motions filed by parties other then Richard Block, sit on Judge Weinshienk's desk for weeks, sometimes even months.

13. This court has abdicated its obligation to even provide responsible judicial oversight. Their receiver, Richard Block, maintains their estate in a perpetual state of upheaval for no purpose other than maintaining his fees, almost $40,000 per month, and his virtually unlimited expense account which, in addition to paying his company's expenses and overhead, allows for him to travel (together with his wife) to such destinations as Germany, Greece, France, and Italy.

14. This relinquishment of control and objective oversight by the Court is having the continuing and devastating effect of decimating the estate's value and leaving beneficiaries of their estate, me included, to suffer with the inevitable, and tragic, consequences[3].

15. This receivership Court has ignored foundational rights guaranteed every citizen of this country by the U.S. Constitution. Among the outrages are the **arbitrary seizure of property,** the **arbitrary garnishment of bank accounts, perjury, deliberate interference with business relationships, libel, slander, the denial of due process,** and **extortion**. These are the tools used by Richard Block all too well to achieve his ends, tools sanctioned and approved by both Judge Weinshienk and Judge Schlatter; tools used to serve ends that often seem to benefit no one but Richard Block himself. Examples of such behavior would be, and these are by no means meant to represent a complete list:

A. **Arbitrary seizure** – During my deposition as President of Eller Industries, Inc. on November 23, 1998, Richard Block, with Judge Schlatter's approval, surprised me with an instant demand that Eller's computers be immediately seized from my home and office. There was no motion filed or hearing held or evidence presented to support Richard Block's demand for their seizure. Only his statement to Judge Schlatter that he wanted the computers seized because I might erase files that may be subject to discovery at some later date. That assertion alone by Richard Block was sufficient for a private investigator to be empowered to go to my home and office to seize both of Eller's

[3] As a result of Richard Block's actions and judgments, according to the receiver's 28th report, 1) there is now not enough cash to pay all claims in full, 2) those receiving stock are receiving one-tenth the value offered by Eller, 3) even this reduced amount may be diminished further so as to fund the exorbitant expenses incurred each month in the name of "winding-down" this receivership, 4) attorney for the receiver, Jack Tanner, has stated that it is now only possible that the receivership could be closed by the end of the year, and 5) instead of "winding down" the receivership, despite the sale to IMCOA having closed, Richard Block is initiating new litigation in areas where the estate has no stake, or at best, a minimal interest.

computers. This left me with no information or tools with which to prepare for the hearing on the approval of the IMCOA sale two days later.

B. **Arbitrary Garnishment** - Despite strict laws governing the pre-judgment garnishment of property, despite not meeting any the requirements that must be met prior to such a garnishment, Judge Schlatter signed an order garnishing more than $1.3 million in Eller funds held in two separate banks. There was no judgment, no hearing, no evidence presented to support the garnishment, nor was Eller given an opportunity to defend itself. The only reason listed on the garnishment order signed by Judge Schlatter was that the receiver wanted the accounts garnished.

C. **Perjury** - Richard Block signs and verifies each receiver's report under penalty of perjury. The following quote comes from the Massachusetts Bankruptcy Trustee. Although his comment is clearly meant to characterize Mr. Block's reports generally, this came in response to Mr. Block's 26th report.

> "The tactic on the part of the receiver is obvious-- repeat the same story enough times without the opportunity for response by the adverse party until the Receiver's version of events, regardless of how improbable, takes on an aura of authenticity."

The examples of Richard Block's *misstatements* in receiver's reports are legion. In paragraph after contemptible paragraph, the *Receiver's Special Report on the Termination of Eller Industries, Inc.* weaves a fairy-tale from the imagination of Richard Block that is rife with **outright lies and distortions** clearly meant to serve no purpose other then the assassination of my character. Even true facts are framed so as to leave the Court with a false and sinister impression. The brazen temerity demonstrated by his verification of that report is testimony to the inevitable consequence of power absent accountability. This is what happens when the Court "will not question...".

D. **Interference with Business Relationships** – **1)** As early as Eller can tell, since April of 1998 **Richard Block was telling investors not to invest** in Eller.

2) On October 6, 1998 following his decree that Eller was terminated, Judge Schlatter attempted to co-opt the interest of Eller's partner, the Cow Creek Band of the Umpqua Tribe of Indians for the benefit of IMCOA. He personally told Mr. Shammel, attorney and representative for the Tribe, that Eller was out, but that the Tribe could still be in if they would partner with IMCOA. Judge Schlatter made this overture to the Tribe despite knowing that since July of 1998 the Tribe was anxious to invest $4 million into Eller and that Eller considered them to be an invaluable partner. The Tribe's refusal to accept Judge Schlatter's recommendation is testimony to the Tribe's integrity and honor.

E. **Libel** – In six-page rambling letter dated April 20, 1999 to Sue Shaffer, Chairperson of the Cow Creek Band of the Umpqua Tribe of Indians, Richard Block, without giving one specific example, states:

> "Even though you might wish to believe the contrary, Mr. Labriola has misrepresented substantially every fact upon which the Tribe has relied, and the decisions of the Court have confirmed this."

There is not one representation I have ever made to the Tribe that is not 100% truth. In addition, the Tribal board has gone to the extreme in their efforts to make certain that their investment decisions have been sound. Their decisions have been based upon objective fact, personal observations, and legitimate due diligence. The Court, on the other hand, has relied upon nothing other than Mr. Block's representations.

F. **Slander** – The Tribe had requested information regarding a business transaction of mine that had gone terribly awry in 1991 (further testimony to the Tribe's objective due diligence). I put them in contact with the person with whom the transaction took

place, and they were assured that the matter should not reflect negatively on their assessment of my integrity. I trusted Mr. Richard Block with this same information. He culled the more inflammatory aspects of the story, left out the exoneration, and used it to damage my reputation and relationship with associates who I greatly respect and admire.

G. **Denial of Due Process** - Immediately following the improper garnishment of Eller's funds, Eller's attorneys appealed Judge Schlatter's "Instant Order" to Judge Weinshienk and begged for a hearing on the matter. Despite the gross abuse of power demonstrated by the garnishment, weeks passed while Judge Weinshienk refused to listen to Eller's pleas. Eventually, Eller was forced to capitulate to the receiver's demands.

H. **Extortion** – With Eller's accounts garnished and Judge Weinshienk refusing to respond to Eller's pleas for a hearing, Eller was informed by Richard Block that if Eller paid the receiver $200,000 under the guise of settlement, its funds would be released. Eller paid $200,000 to the receiver, and its funds were released.

16. Indian Tribes, holders of administrative contracts, competitors in the marketplace, and even the court's own fiduciaries, the beneficiaries themselves; we have all had basic constitutional protections crumpled and tossed aside like so much parchment by the heavy hand of this arbitrary and capricious receivership court.

17. Spokes, Inc. is a company that entered into a licensing agreement with the receiver. They invested heavily, over one-million dollars, into the development of the business underlying that exclusive license. Mr. Onsager, Spokes' attorney, spoke eloquently at the November 25th hearing on the damage his client was sustaining because of Richard Block's refusal to honor their contract. His summation paints a picture that supports my position well.

"The importance here is regularity of process and adherence to the obligations of the estate. Best interests of creditors and best interests of the estate include perhaps first and foremost honoring the deals which the estate has done with people who do business with it during the receivership case. If that principle is violated, no one will do business with the receiver; and we believe that principle is being violated here."

18. This Court grants Richard Block the power to violate that very principle with impunity. This Court allows Richard Block to operate outside the laws that are set up to protect society from the very abuses dispensed by Mr. Block. That this Court refuses to require its receiver to honor his contracts is further reason why a fair hearing in this court is impossible.

19. This freedom from accountability is one of the major benefits of this receivership Court according Jack Tanner, attorney for Richard Block. In an effort to drum up business for his firm Fairfield & Woods, P.C. on the Internet, attorney Jack Tanner uses the arbitrary nature of this receivership court to illustrate the power that inures to the benefit of clients who retain his firm to establish a receivership. In a nation founded upon the rule and impartiality of law, he boasts that:

"There are virtually no statutes that control a receivership in a manner that the Bankruptcy Code and Bankruptcy Rules control a bankruptcy."

and

"A receivership judge, in appointing and subsequent orders, can set out virtually any procedure, rules, mechanisms, etc., that are appropriate under the circumstances."

20. He does paint a picture of justice in the image of, as one independent magazine observed, *Judge Roy Bean*. The sad truth is that attorney Tanner is correct. The arbitrary abuse of power encouraged by such unaccountable authority is inevitable, and the arbitrary abuse of power has been the hallmark of this receivership. That Jack Tanner admits that no statutes control this receivership and that the Judges in this Court do set-out arbitrary procedures and rules demonstrate the absolute need for this Court to disqualify itself in this matter.

21. To continue quoting from attorney Tanner's treatise on, or Internet advertisement for, receiverships, the arrogance bred by his wielding such arbitrary authority for over four years reveals itself in the following opinion posted by Jack Tanner:

> "The ability to select a receiver is one of the great aspects of receivership. The choice of fiduciary is not limited to a bunch of lawyers who didn't have enough clients so they became trustees, or lawyers who hope to learn how to practice bankruptcy law by serving as a trustee."

22. He then discusses the receiver's special relationship with the receivership court:

> "A receiver is not a party to the receivership action. As such, a receiver and its appointing judge can speak *ex parte*. (They might not want to, however – this is one of the many things that led to disaster in the *Yellow Cab* receivership.)"

23. Here attorney Tanner acknowledges the danger behind the allowance of *ex parte* communication. Unfortunately, this awareness has not diminished the enthusiasm with which Jack Tanner and Richard Block have taken advantage of this special privilege. By running rampant and unconstrained in this case, this same abuse of *ex parte* communication has in fact poisoned any opportunity for a fair hearing in Judge Schlatter's or Judge Weinshienk's court.

24. Judge Weinshienk herself scolds a member of her estate during a brief hearing on November 25th for simply calling and for encouraging other members of the estate to call her office. Here she acknowledges the unethical nature of *ex parte* communication.

> "And calling a judge is totally unethical. One may not do it. The attorneys can call the staff to get a time for setting, but there is to be no individual *ex parte* communication with the judge. Attorneys know that. I certainly hope Ms. Trocolli is not an attorney because if she were, there could be a grievance proceeding filed against her."

25. An example of the damage done to the objectivity of this Court by unchecked *ex parte* communication is found in Judge Schlatter's *Order Denying Motion to Remove Receiver* dated February 8, 1999. In his order he used as evidence to deny the motion:

> "It would not be fair to say that the receiver was hostile towards Eller. Indeed, during several private conversations with me, Mr. Block reiterated his desires to see a closing of the proposed deal between Eller and the Receiver."

26. Unfortunate for Eller, these discussions between Judge Schlatter and Mr. Block occurred in the intimacy of their private conversations. There, absent any voices speaking otherwise, Mr. Block was able to convince the judge that he was so inclined even though his true position, the position diametrically opposed to the one he represented to the judge, was clear to just about everyone else on the planet even remotely associated with the negotiations.

27. There has already been one motion filed to recuse Judge Schlatter. Charles and Lois Mathre held an administrative contract in excess of $1 million and are now a member of the IMCOA group. They state in their *Motion for the Recusal of Magistrate Judge*, ¶12:

> "Numerous examples exist in this case of Magistrate Judge Schlatter's willingness to readily advance of the Defendant/Receiver's position against other parties. This conduct would cause a reasonable third party to question the impartiality of the Magistrate in this matter. These include, but are not limited to the following…"

28. But even as attorney Tanner warns of the dangers of *ex parte* communications between the receiver and his judge, he does not contemplate what must be an even more perilous relationship – that one being between the receiver's wife and the judge. Judge Schlatter himself admits to her influence at the hearing of November 25th:

> "I was informed, in fact, by Mr. Block's wife that this was going to be a difficult matter because they had a number of phone calls from people at their office indicating 'Where's our money? We want our money now.'"

29. Richard Block is not alone in his enjoyment of private and unfettered access to influence the judge who decides issues between he and his adversaries; his wife also pleads her husband's case to Judge Schlatter behind closed doors. Notwithstanding hundreds of estate members opposing her husband, "a number of callers" apparently carried more clout with Judge

Schlatter. Indeed, until the Judge's admission, who would ever have imagined that Mrs. Block had such an influence on the very Judge who decides the fates of those of us finding ourselves outside her husband's good graces? I don't believe that anyone was aware of these calls that the judge found so compelling. Who were these callers? Do we know that they were legitimate? Nevertheless, with all the authority *Honorable Magistrate* conveys, Judge Schlatter recited her *ex parte* comments to him into the record as if they had been evidenced by conclusive proof.

31. The extensive personal contact and the personal relationships that exist between Judge Schlatter and Mr. And Mrs. Block demand that he and Judge Weinshienk disqualify themselves and allow this matter to be heard by a Court that is neutral, objective, and unbiased.

32. There is no more significant or hotly contested order in all of 95-Z-777 then Judge Weinshienk's ruling of December 7, 1998. In this two-page order, Judge Weinshienk determined the results of a four-year receivership and the fate of almost two hundred motorcycle depositors, dozens of mom and pop entrepreneurs, investors, administrative contract holders, creditors, and the assets of the Combined Estates. In this order, she found that a $16 million bid – $19.55 million actually – was superior to a $50 million bid, she denied members of her own estate the opportunity to have their arguments heard, she overruled every objection despite hearing no evidence on the merits of objections coming from members of her own estate, holders of administrative contracts, the Cow Creek Band of Umpqua Tribe of Indians, and Eller. To support her determination, she gave the following basis:

> "As the Court emphasized during the hearing, it is not the province of the Court to second-guess the receivership. Instead, the Court determines whether the receiver is using sound business judgement and acting in the best interest of the Combined Estates."

33. The critical question concerns the manner in which Judge Weinshienk determines as to the receiver's judgments and actions.

> "In view of the more than 16 million dollars in cash offered by IMCOA, the existence of a newly manufactured Indian Motorcycle, and other favorable aspects of the IMCOA offer contained in the Receiver's 26th Report, the Court determines that the receiver is using sound business judgement and is acting in the best interest of the Combined Estates by accepting the IMCOA offer."

34. The basis for her determination was that Richard Block reported in Richard Block's 26th report that Richard Block was using sound business judgment and was acting in the best interest of the Combined Estates. She found further support for her determination in Judge Schlatter who also found that Richard Block was using sound business judgment and was acting in the best interest of the Combined Estates because, no doubt, he was assured personally by Richard Block. And if given the opportunity, and most likely she had, Mrs. Block would most certainly have found the same.

35 This result must be compared to the current events surrounding the sale of *Ascent Entertainment*, the corporate owner of the *Denver Nuggets*, *Denver Avalanche*, and the arena in which they will play. Several months ago, *Ascent Entertainment* was sold for $400 million. The result as reported by Gil Whiteley, June 21, 1999, AOL was:

> "The lawsuits filed by Ascent stockholders have been settled by the revocation of the sale to Bill and Nancy Laurie. The lawsuits alleged that Charlie Lyons [Chairman and CEO of Ascent Entertainment] didn't get top dollar [$400 million] for their asset and that he dealt himself a little too tightly into the Laurie's operation as well."

36. The arguments made by shareholders in Charlie Lyon's company are identical the arguments made by beneficiaries in Richard Block's estate. The only difference is that the shareholders were able to have their arguments heard in a venue that was neutral and unbiased.

37. As reported in the June 23, 1999 Denver Post, "Some sports-marketing experts say that the Nuggets, the Avs, and the arena could be worth as much as $550 million". $150 million more then the original contract. That the judge agreed to hear the objections was good.

38. Judge Weinshienk treated beneficiaries differently when they tried to "intervene."

> "We do have some motions to intervene [by beneficiaries of the estate], and I am going to deny those before I even hear from the attorney for the intervenors because I am sure we do not need intervenors."

39. These "intervenors" from the estate were having their assets sold just like the shareholders of Ascent were having their assets sold. The shareholders of Ascent received nothing more than for what the intervenors were pleading, and nothing more then for what I am requesting of the Court today: the ability to have evidence presented and arguments heard in a forum that is neutral, objective, and unbiased. These denied intervenors:

A. each trusted the receiver with at least $100,000,

B. each owns business operations worth millions to many tens of million of dollars,

C. each has superior business experience and their own money at stake, and

D. each had an approved receivership claim worth in excess of $1.3 million at the time.

40. These seasoned, experienced, and successful business people, who also spoke for hundreds more "mom and pop" members of the estate, wanted nothing more then to have an neutral, unbiased, and fair evidentiary hearing. This is all they wanted, yet they were denied. That Judges Weinshienk and Schlatter took Mr. Block's subjective word over so many members of their own estate is further evidence that my matter must be assigned to another judge.

41. Since Richard Block's recommendation was the only basis for Judge Weinshienk's decision, he must have had clear and convincing evidence that compelled him to fight so vigorously against the most brilliant members of his own estate to force them to accept a contract they did not want. As Judge Weinshienk and Judge Schlatter relied upon Mr. Block's reasoning without question, they must believe that Mr. Block's reasoning is neutral, wise,

objective, and unbiased. If this belief is still unwavering, they will retain their unquestioning confidence in Mr. Block, and be unlikely to disqualify themselves in this matter. So we must examine Richard Block's decision-making processes.

42. No prudent, responsible businessman would have evaluated the Eller and IMCOA bids without seeking independent corroboration. Particularly in this situation because 1) Richard Block is more lawyer than businessman, 2) the most experienced members of his estate were opposing the bidder that Mr. Block selected, and 3) the bidder Mr. Block selected had also offered Mr. Block a contract for $20,000 per month. This glaring conflict of interest must surely have compelled him to seek the advice of experts who were not only capable, but also unbiased.

43. During a deposition of Richard Block on November 23, 1998 he was asked from whom he sought advice and assistance to help make the decision upon which the Court relied.

A. Griffiths McBurney – Griffiths McBurney is, according to Mr. Block, "I believe they're related to the merchant banker that's capitalizing the transaction [for IMCOA]."

B. John Albrecht – John Albrecht sits on the board of directors of IMCOA.

C. Burt Bondy – Mr. Bondy 1) Was a member of the receiver's finance committee, 2) owned a very successful motorcycle dealership, 3) invested briefly in receivership certificates[4], and 4) was consistent and most vociferous in his belief that the members of the estate needed to be "flushed" in order for the company to move forward.

D. His attorneys – Mr. Block does not specify which ones.

E. Himself – "I do not know that I can list everyone I have spoken to, but mostly – and I'll tell you a great percentage of this, to me it's a very simple analysis. I relied on my own business judgement and I did what I thought was necessary to make sure that I did not have anyone that I thought was reputable and intelligent telling me I was wrong."

44. While refusing to listen to the enormously successful members of her own estate, members that Richard Block apparently determined to be neither reputable nor intelligent, Judge Weinshienk ended up relying, to a significant degree, upon the opinion of IMCOA in her ruling against the members of her own estate, in favor of IMCOA.

45. In the single most important ruling in all of 95-Z-777, this Court relied upon Mr. Block who 1) was offered a $20,000 per month contract from IMCOA and 2) relied upon the advise from IMCOA that he should recommend if IMCOA. One can have no expectation other than this Court will rely upon the advice of Mr. Block to rule in favor of Mr. Block. This kind of incestuous, circular reasoning makes a fair hearing in this Court absolutely impossible.

46. I can expect no more neutral, fair, or objective hearing than that which Judge Zita Weinshienk afforded her own estate at the hearing that sealed their fate. Despite strenuous, vociferous, and widespread objection to what was taking place, she

A. She refused to move the day of the hearing to any day other then the day before Thanksgiving. The setting of this date was no accident. This is a nationwide receivership. Dozens of members of the estate from across the country were prepared to attend the hearing so that their comments on and

[4] Unlike the $1.1 million plus in receiver's certificates represented by the "intervenors" whose dollars remain in the receivership to this day, Mr. Bondy demanded a refund of his investment weeks later. One of the intervenors, Martha Dickson, refunded Mr. Bondy his money.

questions about the sale to IMCOA could be heard and answered. They were prohibited from doing so however, by the ultimately predictable unavailability of flights on the single busiest travel day of the entire year. Yet, she refused to reschedule the hearing for even a few days before, or a few days after, the holiday weekend.

B. refused to allow more than three hours to hear arguments.

C. She refused to allow evidence, testimony, or cross-examination. The weight of the decision, the complexity of the issues, the objective and mathematical nature of the arguments, and the respect, experience, and personal stakes of those objecting, all demanded and deserved a full evidentiary hearing. They were all denied.

D. And while so many with significantly greater experience, so much at stake, and no possible ulterior motive were strenuously objecting to Richard Block's recommendations, she made her decisions based solely upon the notions of one man, Richard Block.

47. In his motion to disallow my claim, Mr. Block expects this court to find me "guilty as charged" of vague and unspecified charges and then strip me of a $2.7 million contract. He expects this court, AGAIN, to look at nothing other than his word, his integrity, and his subjective determination that, in this matter, I deserve such punishment. As this court relies EXCLUSIVELY upon Mr. Block's judgements and actions WITHOUT QUESTION, we must briefly examine Mr. Block.

48. This is obviously a very sensitive area, but since the variety of parties making arguments regarding the wisdom and credibility of Richard Block fill the record with their

assessments there is no need for me to comment further on this personally. These are a handful of samples only, but the Court should know that the record is full of consistent sentiment.

49. **Judge Henry Boroff, United States Bankruptcy Judge for the District of Massachusetts**. In his *Memorandum of Decision and Order Confirming Sale of Debtor's Assets,* January 13, 1999, the Honorable Judge Henry J. Boroff states, among other such comments:

> "For example… the [receiver's] Motion alleged that this Court ordered the Receiver to file the Motion with the District Court. That was not true."
>
> * * *
>
> "The Receiver has, to date, on more then one occasion, seemingly failed to observe its commitments and representations to the Trustee and to this Court, and has attempted to goad a jurisdictional dispute between the District Court and this Court."

50. In that same document, Judge Henry J. Boroff discusses the position of the **United States Trustee**, whose comments would seem to speak volumes:

> "Finally, the UST insists that the escrow account [*set up to pay claims of the bankruptcy*] be secured pursuant to 11 U.S.C. § 345 and urges that the account not be subject to any control of the receiver."

51. **Steven M. Rodolakis, Trustee of the Massachusetts Bankruptcy Court**. Mr. Rodolakis and Richard Block share the same objective, i.e., to gain the maximum value possible via the sale of the assets owned by the Combined Estates. In his *Response by Trustee of Massachusetts Bankruptcy Cases to Receiver's Twenty-Sixth Report,* dated December 4, 1998 (a report verified by Mr. Block) he states, among many other complaints:

> "The Receiver has used the Twenty-Sixth Report as a pulpit (cloaked in judicial immunity) for attacking parties who have adopted positions adverse to the Receiver and for disseminating only the Receiver's view of the needlessly acrimonious controversies in which the Receiver perpetually finds itself."
>
> * * *
>
> "The Receiver seems to be employing revisionist history."

"That problems have arisen is a predictable result of the Receiver's all-out effort to avoid its obligations under the Coordinated Sale Agreement…"

* * *

"Accordingly,… the report should not be deemed an order of the Court inasmuch as various factual assertions therein have not been subject of appropriate evidentiary analysis."

52. The Trustee is consistent with most everyone in this case in seeking an appropriate evidentiary analysis before an order is entered. A member of the IMCOA group, Charles and Lois Mathre, in their *Objection to the Receiver's Twenty-Fifth Report,* dated October 1, 1998, state, among many other complaints:

"The receiver intends to bill the estate retroactively and prospectively for the use of an Internet site at the rate of $1500 per month. This request would be laughable if it weren't such an obvious abuse."

53. These comments are <u>but a few</u> that have been culled from documents filed in opposition to or in reluctant agreement with Richard Block. They are not the merits of the cases or the arguments involved with these cases that are eliciting the strongest comments. Rather, it is the character and actions of Mr. Block that has elicited these consistent commentaries.

54. There are many other pleadings by many other parties including a motion filed to remove Richard Block as receiver. The motion, as affirmed by Judge Schlatter in his ruling denying the motion, was not comprised of spurious allegations. There is a rich harvest of similar comments and assessments of Richard Block that can be farmed. I would expect, however, that the point has been made.

55. Which leaves us with one very important question, "How many would have to be lying, for Mr. Richard Block to be telling the truth?"

CONCLUSIONS

56. Whereas, I, Leonard S. Labriola, am a US citizen protected by the rights afforded me by the US Constitution including the right to due process, including the presumption of innocence until PROVEN guilty, and the right to equal protection under the law;

57. Whereas, over the course of this receivership, this Court has demonstrated its exclusive reliance upon Mr. Richard Block's unilateral judgements in rendering its rulings while denying those opposing Richard Block any due process protections afforded by law;

58. Whereas, it has been clearly demonstrated that while following this methodology of dispensing justice the receivership court has been arbitrary and capricious;

59. Whereas the receiver is now asking that this court not disturb his unilateral and arbitrary decisions to overturn this court's order, refuse to deliver promised compensation for years of service to this receivership, and penalize me $2.7 million;

60. Whereas, the receivership court under Judge Weinshienk and Judge Schlatter has, on June 23, 1999, reaffirmed that:

> **"… the Receivership Court will not question that the acts taken by the receiver were valid and proper, whereas another court in another jurisdiction might."**

61. Whereas, one must assume that such acts taken by the receiver would include these unilateral and arbitrary decisions; and

62. Whereas, Richard Block is asking the Court to do all this based solely on the integrity of his word and without questioning the vague and unsubstantiated charges against me.

THEREFORE:

I humbly and respectfully pray that Judge Zita Weinshienk and Magistrate O. Edward Schlatter forgive and overlook the length, obvious naiveté, inevitable misuse of terminology, and whatever other errors in form undoubtedly exist in this Pro Se pleading;

I humbly and respectfully pray that Judge Zita Weinshienk and Magistrate O. Edward Schlatter insist that any "facts" contained within Mr. Block's response to this motion be made subject to independent verification and evidentiary procedure;

I humbly and respectfully pray that Judge Zita Weinshienk and Magistrate O. Edward Schlatter afford me the opportunity to vindicate myself against the vague and fabricated charges publicly leveled against me by their receiver by allowing my arguments to be decided by a neutral and objective Court; and

I humbly and respectfully pray that Judge Zita Weinshienk and Magistrate O. Edward Schlatter, servants of the public interest, entrusted with the power to decide my fate, recognize their compromised objectivity and severe bias in favor of my accuser, their receiver personified by Richard Block, and agree to disqualify themselves from hearing this matter so that I may enjoy the protections afforded me by our constitution of due process and equal protection under the law.

Respectfully submitted this 6th day of July 1999.

_____

Leonard S. Labriola
Pro Se
198 Second Avenue / PO Box 774
Niwot, Colorado 80544

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:

District Court Senior Judge
The Honorable Zita Weinshienk
United States District Court
1929 Stout Street
Denver, Colorado 80294

District Court Magistrate Judge
The Honorable O. Edward Schlatter
United States District Court
1929 Stout Street
Denver, Colorado 80294

Receiver
Richard A. Block, President
Sterling Consulting Corporation
91 East Dartmouth Avenue
Englewood, Colorado 80110

Attorneys for Massachusetts Bankruptcy Trustee
Todd Blakely, Esq.
Sheridan Ross & McIntosh
1700 Lincoln Street, Suite 3500
Denver, Colorado 80203

Attorneys for Sterling Consulting Corporation, as Receiver for IMMI
John M. Tanner, Esq.
Fairfield and Woods, P.C.
1700 Lincoln, #2400
Denver, Colorado 80203

Attorney for Receiver and Trustee
Edward A. Prince, Esq.
Cushman, Darby & Cushman
9th Floor, East Tower
1100 New York Avenue, N.W.
Washington, D.C. 20005

Attorney for Cow Creek Band of Umpqua Tribe of Indians
David J. Stephenson, Esq.
Brauchli-Snyder, P.C.
1401 Walnut Street, Suite 400
Boulder, Colorado 80302-5332

Glen E. Keller, Esq.
Geoffrey H. Simon, Esq.
Davis Graham & Stubbs LLP
370 – 17th St., #4700
Denver, Colorado 80202-5647

Attorney for Preferred Putative Shareholders
Kenneth B. Siegel, Esq.
Sherman and Howard
DC Box 12
633 Seventeenth Street, Suite 3000
Denver, Colorado 80202-3601

James R. Cage, Esq.
Berryhill Cage & North
1433 Seventeenth St.
Denver, Colorado 80202

Attorneys for John Petito, Martha Dixon, Rook Everil, Marcia Taylor, Richard Bascianni, and John Nicholson
Allan L. Hale, Esq.
Monica A. Woods, Esq.
Hale Hackstaff Tymkovich ErkenBrack and Shih, L.L.P.
1675 Broadway, Suite 2000
Denver, Colorado 80202

Attorneys for Charles and Lois Mathre and American Indian Motorcycle Company, Inc.
Lee M. Kutner, Esq.
Rubner & Kutner, P.C.
303 East 17th Avenue, Suite 500
Denver, Colorado 80203

Attorney for Scott Kajiya and Jaime Ruis
Peter C. Freeman, Esq.
Freeman & Gelbart
1551 North Tustin Avenue, Suite 720
Santa Ana, California 92701

Attorney for Bikers Dream, Inc.
Emanuel C. Grillo, Esq.
Christy & Viener
620 Fifth Avenue
New York, NY 10020

Attorneys for Michael Mandelman
James H. Hahn, Esq.
Law Office of James H. Hahn
1120 Lincoln Street, Suite 809
Denver, Colorado 80203-2137

Attorney for Edward A. Leal
Gary C. Moschetti, Esq.
Hatch & Moschetti, LLP
1775 Sherman Street, Suite 2820
Denver, Colorado 80203

Trustee
Stephan M. Rodolakis, Esq.
Mark S. Foss, Esq.
Peters, Massad & Rodolakis
255 Park Avenue, Suite 1100
Worcester, Massachusetts 01609

Attorney for United States of America
Noreene C. Stehlik, Esq.
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, DC 20044

Attorneys for A.B. Goldberg
P. Scott Lowery, Esq.
1999 Broadway, #3800
Denver, Colorado 80202

Marcella T. Clark, Esq.
303 E. 17th Ave., #700
Denver, Colorado 80203

Attorney for Michael Payne
Brad W. Schacht, Esq.
Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 17th Street, Suite 1600
Denver, Colorado 80202

David C. Roos, Esq.
Berliner, Zisser, Walter & Gallegos
1700 Lincoln, Suite 4700
Denver, Colorado 80203-4547

Attorneys for Former Chapter 11 Debtor
Robert S. Adler, Esq.
Seder and Chandler
339 Main Street, Suite 300
Worcester, Massachusetts 01608-1585

Attorney for Hilmi Sevimli
Christopher C. Noble, Esq.
Bushnell on the Park
100 Wells Street
Hartford, Connecticut 06103

Attorneys for Michelle Marie Lean
Douglas M. Tisdale, Esq.
Baker & Hostetler
303 East Seventeenth Avenue, Suite 1100
Denver, Colorado 80203-1264

Attorney for Benny Singer
Nancy D. Miller, Esq.
Law Offices of Nancy D. Miller, P.C.
1600 Broadway, Suite 2312
Denver, Colorado 80202

Attorneys for A.B. Goldberg, First Entertainment, Inc., Morton B. Lempel, and Harvey Rosenberg
Edward T. Ramey, Esq.
Isaacson, Rosenbaum Woods and Levy
633 – 17th St., #2200
Denver, Colorado 80202

Attorney for Charles and Loise Mathre
And American Indian Motorcycle Co., Inc. and Mr. Glen Pierce
Daniel N. Dawes, Esq.
Graham & James LLP
650 Town Center Dr., 6th Floor
Costa Mesa, California 92626-1925

Attorney for Benny Singer
John V. Del Gaudio, Jr., Esq.
John V. Del Gaudio, Jr. & Associates
221 N. LaSalle St., #638
Chicago, Illinois 60601

Indian Tabac Cigar Co., Inc.
Rakcsh Patel
314 – 6th Ave.
Venice, California 90291

Attorney for AAA Sign Company
Geoffrey S. Race, Esq.
Wells, Anderson & Race, LLC
1700 Broadway, #1850
Denver, Colorado 80290-1801

Attorney for American Motorcycle Technology, Inc.
Janice M. Finch, Esq.
Finch & Associates, LLC
950 S. Cherry St., #1000
Denver, Colorado 80222

Attorney for Hortitech, Inc.
Peter R. Nadel, Esq.
Gorsuch Kirgis LLP
Tower 1, Suite 1000
1515 Arapahoe St.
Denver, Colorado 80202

Attorney for Eller Industries
Bruce A. Menk, Esq.
Hall & Evans, L.L.C.
1200 – 17th Street, #1700
Denver, CO 80202

_____