EMC

ELLER MOTOR CORPORATION

February 19, 1999

SEVERAL PARAGRAPHS HAVE BEEN REDACTED OR REMOVED TO BE MORE APPROPRIATE FOR THE INTERNET.

Hello Folks,

Many of you have asked, while in various states of shock, "How could this have possibly happened?" For your benefit I have compiled all of my notes into a 100% accurate narrative of the sequence of events that will help you to understand how this tragedy unfolded. There is a whole lot more, but I shortcut a lot of it so that this didn't turn into a novel.

As many of you know, I had actually been involved with the effort to rebuild the Indian Motorcycle Company in one way or another since November of 1993 when my company, Eller Industries, Inc., purchased three private placement units of Indian Motorcycle Manufacturing Inc. (IMMI) of Albuquerque, New Mexico. In 1994 IMMI had begun to flounder, and after my concerted efforts to intervene and assist IMMI failed (I was briefly on the board of IMMI), I successfully petitioned the U.S. District Court through my company to place IMMI under receivership protection in April of 1995.

At that time I became involved in my individual capacity with the inner-workings of the receivership estate working daily with Richard Block, the receiver. I was not paid for this service, nor was I ever reimbursed for the considerable expenses I incurred. I was to receive 3% of the company if we were successful in restoring the trademark. This was another contract he simply repudiated out of hand. This was a contract made, approved by the court, and he simply changed his mind. Just like that. If you would like I can provide you with the outrageous details.

I incorporated Indian Motorcycle Acquisition Group, Inc. (IMAG) to personally develop the ability to acquire the trademarks in August of 1997. That fall I managed to raise $1 million at the 11th hour and 59th minute (divine intervention – believe me), and our bid was accepted on October 21, 1997.

Anita Menogan, a partner with Dorsey and Whitney, had been Eller's SEC and contract counsel since 1988, and was present during negotiations to define the final purchase and sale agreement. She was also present during all subsequent conferences and meetings.

The negotiations became quite acrimonious after I insisted on a date certain to close the receivership and refused to offer the receiver a "wind-down" contract for work after the receivership was closed.

In any event, somehow we managed to sign the definitive purchase and sale agreement on December 5, 1997. The material contract terms required that the Indian Motorcycle trademarks be delivered to Eller free and clear of all liens and encumbrances in trademark classes 12 (motorcycles), 25 (clothing), and 28 (toys) in the US. Eller was required to reimburse the receiver for his fees and expenses until closing, such expenses not to exceed $90,000 per month, complete the first $6 million in financing (called mezzanine) within 120 days, and tender $14 million and 9 million shares of Eller stock to the receiver for the payment of creditors and administrative contracts. The 9 million shares were to constitute 40% of all issued and outstanding shares of the company after the mezzanine of financing, and the closing date was set for October 1, 1998. The contract required that the hearing to secure the court's approval of the contract occur no later than December 15, 1997.

The contract required Eller to pay the receiver $583,000 as part of the contracting process. $100,000 was tendered with the bid, $100,000 one month later, and $383,000 was to be paid on December 16, the day after our contract was to have been approved by the court. The first major problem occurred a week later when the receiver made a spontaneous demand for an additional $181,627.34 to be paid by December 16. Far from part of the contract, this additional payment was never even contemplated. The receiver put us on notice that if he was to move forward, we had to make the payment.

Next came the hearing date to approve the contract. Not set for the day prior to the final payment as required by contract, it was scheduled for December 18, two days after this payment was due. The due date of December 16th was set to coordinate with the contract's approval, and I explained the problem with turning over more than one-half million dollars without assurances that our contract would be approved. I requested that the payment due date be moved to December 19. The receiver's position was that the contract demanded payment on December 16, and if his office did not receive $565,402.56 by that date he would consider our contract in default and accept new bids. He assured us that since the court ordered cut-off date for the submission of competitive bids had passed with no competing bids submitted, our bid was safe. I was uncomfortable with the situation, but with the receiver's assurances backed up by the orders of the court I tendered checks totaling $565,402.34 to the receiver on December 16, 1997. This brought to $765,402 the total paid to the receiver before the court even accepted our contract.

At the hearing to approve the company's contract two competitive bidders showed up to request that their bids be considered. Contrary to the receiver's guarantees, and contrary to the U.S. District Court order specifically prohibiting their consideration, the Court allowed the bids.

Over the next month we fought to have the court recognize the superiority of our bid. It was so demonstrated, and Eller's contract was approved on January 21, 1998. We did sustain serious damage by this exercise however. Investors were told that they could rely upon the orders of this court for assurance that the Indian Motorcycle trademarks were legitimate. Having learned that U.S. District Court orders could not be relied upon, initial investors lost confidence in the process and parties interested in filling the company's mezzanine financing refused to consider the investment any longer.

Eller met with noted motorcycle designer James Parker on February 3, 1998 and together we visited Roush Industries on February 25 to discuss the Indian motorcycle development program. Roush is the world's foremost automotive engineering and prototyping company. For example they provide engines for seven of the world's top ten NASCAR teams. Together, Parker and Roush would fulfill the company's motorcycle design, engineering, vehicle testing and prototyping needs.

Unfortunately, the Parker/Roush collaboration did not meet with the receiver's approval, and by mid-February the receiver had submitted yet another bill in the amount of $182,553 and had forbid Eller to use the Parker/Roush team.

On March 4 and 5 we met to discuss the bill submitted less that 30 days after the contract was approved and his problem with Eller's choice for motorcycle design team. Eller reminded the receiver of the contract's $90,000 cap on monthly fees and expenses, and explained that the contract held no provision allowing the receiver to interfere with Eller's motorcycle development program. The receiver's response was to refuse to accept anything but full payment, threaten termination unless it was tendered, and despite no authorizing contract language, threaten us with termination if we did not use the motorcycle designer he favored, Mr. Bruce Canepa.

Also, as an example of his agenda, the receiver requested a $2.4 million budget to fund battles for the Indian trademarks overseas. The receiver planned to establish a base of operations in Aliconte, Spain, a beautiful city on Spain's Mediterranean coast, from where he would launch his trademark battles in the various countries across Europe. Eller did not necessarily object to the demand, but requested an itemized justification for such an exorbitant budget, an analysis of the risks associated with the filing of lawsuits in each of the countries, and his analysis of the gain to be realized by the company from mounting such an expensive and risky campaign. He never responded to our request for information.

By the end of March these issues remained unresolved so a conference was scheduled with Magistrate Judge O. Edward Schlatter for April 20. On April 7, while picking up copies of our business plan and just-completed private placement documents, the receiver hand-delivered yet another bill to Eller in the amount of $198,068.43. Ten short weeks after the approval of Eller's contract, the receiver had already billed $380,621.43 for

his fees and expenses. Together with the additional invoice Eller was forced to pay in December, the receiver's demands totaled $562,248 despite specific contract terms that obligated Eller to pay a maximum of $90,000 for February and $90,000 for March.

At the April 20th conference in Judge Schlatter's chambers the receiver wanted to terminate Eller over the past-due balance, his disapproval of Parker's motorcycle designs, his disapproval of Eller's choice of motorcycle development team, and his claimed "lack of faith" in Eller's ability to build the company. Attorneys for Eller demonstrated the specific contract terms to Judge Schlatter only to have him say that if (Richard) Block (the receiver) was not happy, the contract did not matter. Fearing we had no choice at this early stage, Eller promised the Judge that it would pay the receiver's past due balance in full by May 21, and fly Mr. Parker to gain Mr. Canepa's approval of his vision for Eller's motorcycle development program. These promises bought Eller until May 8, which was when the next conference was scheduled.

On April 23 we flew Mr. Parker to meet with Mr. Canepa and gain his approval, and Eller raised its next one million dollars by selling two private placement units to the Cow Creek Band of Umpqua Tribe of Indians. This enabled the company to honor the commitment it had made to Judge Schlatter.

Despite being contractually bound to support Eller's efforts, as soon as the receiver heard of the funding he immediately contacted the Tribe's representative to tell him that making the investment in Eller was a terrible mistake. He then renewed his threats of termination arbitrarily adding such causes as Eller's failure to introduce its new Indian Motorcycle before December 31, 1998 and his disapproval of Eller's internal capital structure. He objected to IMAG's ownership stake in the company and insisted that it be drastically reduced. Counsel for Eller again demonstrated to Judge Schlatter that there was no contract language giving the receiver any authority over any of these matters. Again, the Judge responded that if Block was not happy, the contract did not matter. Given that these new termination risks were not mentioned in Eller's private placement documents, our attorneys again put the brakes on our fund-raising efforts. We needed to build a motorcycle company so as to attract $18 million in five months, and the receiver was not making it very easy.

Next he claimed that IMAG's ownership stake in the company was somehow illegal, or a fraud perpetrated upon the estate, or somehow unethical or underhanded. The fact is that the IMAG transaction, especially my involvement in it, was an honest, internal transaction that was approved by the board of directors of Eller. Far from being hidden as the receiver claims, it was placed in the November 1997 proxy, by SEC specialist attorneys, and sent to every single Eller shareholder for them to support or reject. And most incredibly, especially in light of the receiver's sworn assertion that he did not know about

the structure until 2 months ago, he himself disclosed the transaction in his own 24th report last spring. But hey, the truth never slowed him down before – why should it now.

The receiver's attorney actually confirmed to Jim Ghiselli, a partner with Holmes, Roberts, and Owen and another of Eller's attorneys, that the refusal to offer the "wind-down" contract was the root of all the problems. After many unsuccessful efforts to resolve the differences with the receiver, board members and our attorneys talked me into offering the receiver his "wind-down" contract if no progress was made at the May 8 conference in Judge Schlatter's chambers. Being that we still needed to raise all the money, these individuals felt that we could either continue to fight with the receiver, remain stalled and ultimately fail, or give him what he wanted and begin moving forward.

The conference was contentious to say the least. Near the end of the whole day affair no progress was being made and things were getting almost violent. The judge called a 15 minute "cool-down" break, John Tuttle, partner with Dorsey and Whitney and yet another Eller attorney, brought the Receiver into the room in which I was cooling-down, and I offered him his wind-down contract for $30,000 per month for one year with a 20% buy-out clause to commence after the close of the receivership.

After fighting all day, his dire concerns over Eller's plans and his threats of termination instantly evaporated. When we reconvened, Block told Schlatter about the offered contract and told the judge that everything was now just fine. The judge knew that none of the issues about which we had been arguing so violently just 20 minutes earlier had changed, yet he did not even flinch. I was amazed.

In June of 1998 the receiver conducted the estate's business in Europe, at Eller's expense, where he went for three weeks (with his wife) to attend two meetings regarding the trademark. For the first time since mid-February however, Eller was free to move forward unencumbered. In June we signed contracts with Roush to begin our motorcycle development program. I contacted Bob Lutz who was retiring from his co-chairmanship of the Chrysler Corporation. After our meeting he agreed to serve as general consultant for Eller. I also met with Mr. David LeVan. Mr. LeVan was retiring from his successful tenure as CEO, President and Chairman of Conrail. His retirement resulted from the multi-billion dollar sale of Conrail to CSX. During subsequent meetings Mr. LeVan expressed his desire to serve as our CFO as well as to personally invest $5 million.

For the first time we had the opportunity to develop relationships with management talent and investment banking groups without the constant threat of termination. The addition of Mr. Lutz and Mr. LeVan to the Eller team expanded the company's profile tremendously. We had offers ranging from casual assistance to full-time commitment from no less than four members of Forbes Magazine's then-current list of Corporate America's Most Powerful People. These individuals brought Eller first person contact with the very

top levels in the investment banking community, and the credibility to be taken seriously. These leadership assets coupled with the excitement over the motorcycle's development and expected superiority in the marketplace was moving the company rapidly towards the valuations necessary to raise the capital required to close the purchase contract.

It was at this time also that Eller decided to acquire Indian Motor Works to establish the beginnings of the company's antique Indian Motorcycle collection and involve the trademark in class 12 commerce. Indian Motor Works was a remanufacturer of original Indian Motorcycles.

Unfortunately, this reprieve was short lived. On July 7th, two weeks after the receiver returned from Europe, he again began threatening Eller with termination. Before learning that we would be held hostage by the threat of termination until mid-May, Eller agreed to have the remaining $4 million in mezzanine financing completed by June 21. Eller was two-weeks late, and another conference was set for July 16 in Judge Schlatter's chambers. The receiver's personal fees were averaging $35,000 per month. The only thing we could figure was that while he and his wife were overseas, he decided that our "wind-down" offer was a little light when compared to a perpetual receivership that paid him $35,000 per month to tool around Europe. The only explanation that made sense to us was that he just did not want this receivership closed.

In the background during this entire period was Kawasaki's raging litigation to destroy the trademark. In the spring of 1998 the receiver had sued Kawasaki for trademark infringement when Kawasaki announced the introduction of its *Drifter* model motorcycle. The Drifter model is styled much like a 1950 era Indian Chief. Kawasaki's defense was to argue that all Indian trademarks had been abandoned and were therefore in the public domain. If Kawasaki were to prevail, it would have destroyed the trademarks Eller had contracted to purchase.

When contrasted with the risk of losing the entire trademark, Eller saw very little damage being done by the *Kawasaki Drifter* and in June of 1998 instructed the receiver to settle the lawsuit. We informed the receiver that the former U.S. Ambassador to Japan and former U.S. Vice-President, Walter Mondale, was briefed and prepared to negotiate settlement terms on behalf of Eller. Not only did the receiver refuse, but he also failed to inform Eller that Kawasaki had already placed an acceptable settlement offer on the table. In addition, the receiver refused to brief Eller on any of the positive or negative developments of the lawsuit that could have resulted in the destruction of the very trademark for which I was expected to deliver $20 million in cash and 40% of the entire company. I have an affidavit from the receiver's assistant who was told by the receiver that as long as he continued to fight with Kawasaki I would never be able to raise the money to close.

At the July 7th meeting, the Cow Creek Band of Umpqua Tribe of Indians committed the $4 million. This commitment was contingent upon the receiver's agreement to extend the contract closing date to March 15, 1999, to finalize our Trademark Facilitation Agreement (TFA) which was going to established a cooperative licensing model for Indian trademarks between Eller and Native American tribes, to stop interfering in the affairs of Eller, and his agreement to shut down the receivership when the contract was closed. The receiver agreed.

This seemed way too easy. So given the receiver's track record the five Eller representatives in attendance (2 attorneys and 3 directors) all requested that either a written or audio taped record be made of the agreement. Judge Schlatter refused to allow an official record to be made, but assured all present that he would hold the receiver to his agreement. Despite our experience with Schlatter, Eller's attorneys refused my direction to insist on a record because "He's a judge!"

Meetings with Roush Industries in Michigan and with the Tribe in Oregon were scheduled for the following two weeks. The meeting at Roush went well. The progress being made on the project was beyond expectations and very impressive. Once in Oregon, however, the receiver changed the rules just prior to the meeting of the Tribal Council. Despite the commitments made by Mr. Block during the settlement conference, and despite Judge Schlatter's commitment to uphold those agreements, the receiver surprised me with a list of new concessions. Unless I agreed to these new concessions he would leave, not negotiate the final terms of the TFA, not attend the council meeting, and thereby cost Eller its mezzanine financing. As the funding was contingent upon his cooperation (for which he was obligated by contract to provide), we were, again, being held hostage.

The receiver's list of demands was: 1) Eller had to give the estate an additional 3% equity stake for a total of 43%; 2) mezzanine level was to be raised from $6 million to $10 million; 3) Eller had to agree that it would raise its closing funds through a public offering only. Eller would be prohibited from raising money via private placement, which was our plan. Of course the receiver knew that such an offering would take months and, since we could not even begin the process until after the Kawasaki litigation was resolved, push us beyond the March 15 extension; 4) from employment contracts to the approval of office leases the receiver would have the authority to review all actions taken by the company.

They were absurd, but, after consulting with corporate counsel and directors, and after all agreed that the judge would probably go back on his word and not hold the receiver accountable (which in the end proved correct), I had no choice but to agree to the concessions. I figured it was better to live to fight the battle another day.

I was prepared to sign the amendment as agreed, but we were again surprised when Eller attorneys received draft one of the Contract Amendment. Instead of having the shares

divided up among hundreds of estate beneficiaries at closing, the 43% of all Eller stock was to be delivered to the receiver, in the name of the receiver, within 30 days of signing the amendment. This was unacceptable as it would have made him Eller's single largest shareholder and put him in control of the company.

Our attorneys returned their version of the amendment to the receiver without this new term included. This brought us to conferences in Judge Schlatter's chambers again and again, and was running up Eller's legal bills into the hundreds of thousands of dollars.

At one such conference on September 11, 1998, I gave a presentation of Eller's progress to Judge Schlatter, Richard Block (receiver), Jack Tanner (receiver's counsel), and several attorneys who represented over 230 members of the estate. From our motorcycle development program and the recognized credibility of James Parker and Roush Industries, to our brand and retail development associations with Tattoo and the Addis Group; from the resumes, track records and published accolades written about Eller's stellar management bullpen, to the public unveiling of our prototype, detailed market study and public relations effort scheduled for the following month, I did not want to leave doubt in anyone's mind about the progress we had made, and the tremendous value that was being developed for all involved, including members of the estate who were going to own 40% of the company.

Also present was Eller advisor, Matt Arnold, a Harvard g4raduate whose resume included advisory work directly for Jack Welsh, CEO of GE. Mr. Arnold's presentation explained the financial and business models that had been constructed to outline the company's future. He described the meetings he had attended with investment-bankers nearing commitments to finance Eller's future and why the few problems left were being exacerbated by the receiver's demands, e.g., without exception, they believed that Eller had already paid too much for the receivership assets which reinforced as unacceptable the receiver's demand that Eller now pay even more.

Mr. Shammel also informed Judge Schlatter that the Tribe's bank had prepared $4 million to be wired into Eller's account immediately upon the receiver's verbal agreement to sign the contract amendment. However, during over ten hours in the judge's conference room trying to nail down an agreement with the receiver, the ball was being moved around so much that finding middle ground was simply impossible. No sooner would Eller agree to a negotiated contract point then the receiver would move the contract point.

Mr. Shammel was to leave the next day and would not be available again for at least two weeks. He sought Judge Schlatter's assurance that he would not return to find Eller terminated, and again affirmed the Tribe's $4 million commitment. Before breaking up for the day Judge Schlatter assured Mr. Shammel and two of Eller's attorneys that he considered Eller's investment into this effort to be extensive, and that he was not going to allow Eller to

be terminated; as he put it, he would not "cut the umbilical cord". His assurance was that Eller was safe from termination.

The contract's closing date was still set for October 1, but with the on-going Kawasaki litigation the date was expected to come and go without affect. Still, to be safe, on September 28 Eller's attorneys were prepared to file a pleading that formally called the receiver's lack of good faith to the attention of the court, and formally requested that the court intervene. Before filing however, and without my knowledge, Eller's attorneys Ghiselli and Menogan discussed the proposed pleading with Judge Schlatter. At that time, Judge Schlatter instructed Eller's attorneys not to file the pleading, he again promised Eller's attorneys that he would not default Eller, and he instructed them to fax the proposed pleading to the receiver and his attorney. Judge Schlatter had again made hard commitments to Eller's attorneys that our contract would not be terminated. When I heard of this I was livid and instructed the attorneys, Menogan and Ghiselli, to file the damn pleading. They refused because of Schlatter's instruction.

We had remained quiet about the progress we had been making by keeping only the court and those close to the company aware of our progress. The receiver had dealt with us so erratically, we did not want to excite the market needlessly or risk embarrassing the high profile individuals associated with Eller by having them dragged publicly into the receivership fiasco. At this point I knew that I had to raise awareness of our efforts to try to get a little public scrutiny, so once we again received Judge Schlatter's commitment, on September 29 we put out the first press release regarding Eller's progress. The press release concerned the addition of Bob Lutz to Eller's team and generated press coverage from coast to coast, including the Wall Street Journal on September 30, 1998. This resulted in the market sending the price of Eller stock up to $4.00 per share for total Eller market capitalization of $90 million.

This brought the value of the 9 million shares being tendered pursuant to the purchase contract to $36 million. Together with the $20 million cash component, the total value of Eller's contract was now $56 million and heading north fast. Together with the judge's repeated commitments we believed the extraordinary value of our bid made Eller's position unassailable and, legitimately, it was. Prior to the press release, top investment-bankers had placed Eller's valuation between $50 million and $80 million. This demonstration of the investing public's keen interest gave additional confirmation that once our prototype was unveiled at the events scheduled to begin on October 18th, the value of Eller would soar to well over $100 million.

The next conference was scheduled for Tuesday, October 6 in Judge Schlatter's chambers. On Monday, October 5, the receiver spent hours on the telephone with several of Eller's attorneys, primarily Jim Ghiselli. The receiver adamantly and repeatedly assured them that he had a plan to "break the log-jam", and that they should rest assured that

everything would be resolved at the conference scheduled for the next day. Based upon these assurances, Eller signed a three-year lease tripling its office space, and a six-year lease for retail space.

However, on October 6, 1998, the very next day, despite Judge Schlatter's multiple commitments, despite the receiver's repeated assurances, despite the heated litigation with Kawasaki, and despite specific contract language that clearly prohibited the receiver from doing so, he faxed to Eller his Notice of Termination a mere three hours prior to the conference scheduled in front of Judge Schlatter.

Magically, representatives from the new purchaser were present at this conference. The new purchaser was IMCOA, Indian Motorcycle of America whose president was Murray Smith. At this conference Judge Schlatter personally affirmed the termination and personally invited the Tribe that had been backing Eller to join with IMCOA.

This sequence of events made clear in our opinions the motive behind the receiver's abject bad faith during the prior months of fruitless negotiations. He had already decided to do his deal with this new group, and was using us to squeeze better terms from them for himself. Once the article in the Wall Street Journal hit, and knowing that our prototype was to be unveiled on October 18th, he knew that time was up and he had to terminate us immediately. The article came out on Wednesday, he sandbagged us on Monday, and he terminated us on Tuesday without once making a demand for payment. He knew that if faced with termination we could have escrowed as much cash as it would have taken. He could not let that happen.

Eller and most members of the estate objected strenuously to the termination based upon many factors. Uppermost among them were 1) the receiver could not deliver the trademarks. The on-going Kawasaki litigation might very well have rendered the trademarks worthless. 2) The competing bid was vastly inferior. This new bid would leave the estate with 4% (four percent) of the Indian Motorcycle Company vs. Eller's offer of 40%. 3) There was never a demand for payment. Not only was there never a demand, on October 5, the day immediately prior to the termination, the receiver assured attorneys for Eller that the extension was to be approved the next day. 4) Eller's contract provided for a 30-day right to cure. If the receiver had resolved the Kawasaki litigation and had made a demand for payment based upon the original October closing date, we had firm commitments that would have enabled us to close. 5) The new bidder offered the receiver a $240,000 contract as part of their bid, and, most importantly, had agreed not to terminate the receivership. This enabled the receiver to continue billing the estate over $35,000 per month indefinitely in addition to the paychecks he was to receive from IMCOA.

Eller's litigation attorney up until this point was Jim Ghiselli. He was introduced to me by the receiver, worked with me to put together the paperwork to initiate the receivership

in the first place, and, together with Anita Menogan, was present during all of the conferences with Schlatter. Immediately after the termination however, the receiver conflicted him out. What that means is that because he had done work for the Receiver in the past, he was unable to now do work for us, even though he had been our attorney for the prior 4 years and was present during all those conferences. So at the point at which I needed litigation counsel most, I had no one. Bob Lutz put me in touch with the head of Chrysler's legal department who recommended Jim Britt of Hall and Evans. That is when he and Bruce Menk, both Hall and Evans partners, were retained.

Shortly following the notice of termination, the Cow Creek Band of Umpqua Tribe of Indians invested an additional $2 million into Eller. No one believed that the court would actually approved Eller's termination. It was illegitimate and the competing offer was vastly inferior. After the receiver learned of the investment, he claimed that the money belonged to the receivership (figure that one out). The receiver sent threatening letters to the Banks that held the company's funds demanding that they freeze Eller's accounts. I first learned of this activity when the first checks started bouncing. Before our attorneys could remove the freeze, Judge Schlatter formally ordered a pre-judgment garnishment on Eller's bank accounts.

Because of this we added a garnishment specialist from Hall and Evans to the team (yes, there is such a specialty). There are five hard and fast tests that must be satisfied before a court can issue a pre-judgment garnishment; all of them, not just one of them. After all, this is the seizing of private property without due process. Well, not for this court. Despite these specific and rigorous legal tests, Judge Schlatter's order cited not one single legitimate reason for the garnishment. The only reason, literally, as written on the face of the Federal Court Order, was that the receiver wanted the $2 million garnished; so garnish the accounts. Period.

The company had payroll to meet and bills to pay, so an emergency appeal of this order was filed with Judge Zita Weinshienk. This appeal explained that there was no legitimate authority or grounds for the garnishment. Weeks went by; and then months; and Judge Weinshienk continued to ignore the appeal. She never even responded.

At this time, the non-legal Eller team was preparing for the prototype unveiling and press conference in Michigan. We moved the date to November 7th because of the need to focus on the termination effort. In fact, during the September 11 conference with Schlatter mentioned earlier, I explained in detail the intention, timing and content of the six-day event during which the prototype would be unveiled first to the members of the estate, then to the members of the financial and automotive press, and then, during the following week, to each of the major motorcycle publications. Eller had provided an all expense paid trip for each of the major motorcycle magazine editors to spend one full day alone with us at Roush to

individually explore every detail of Eller's motorcycle design and development program. It was a very exciting time.

The first event was to be a complex marketing event involving hundreds of members of the Indian Motorcycle estate and others from various motorcycle enthusiast groups. Especially in the environment that had developed after the receiver's letter of termination, it was important for the members of the estate to see Eller's vision for the Indian Motorcycle Company for themselves and to make their own informed decision as to between Eller and IMCOA/CMC.

Unfortunately, around 4pm on November 5th, two days prior to the event, the receiver faxed to Roush an order signed by Judge Weinshienk prohibiting even the members of her own estate from seeing the new prototype. The following day we, including at least 5 of Eller's attorneys, tried to convince the receiver to at least allow a viewing by members of his estate. He waited until the very end of the day to say no. Members of the Eller team were on the phone late into the night making hundreds of calls to those invited to warn them that the prototype was not going to be unveiled. Still, press reports counted as many as two hundred supporters who came to the Detroit event, some from as far away as California, New York, and Florida. Roush was prohibited from attending, but over the next two days members of the press and members of the estate got to meet and ask questions of Bob Lutz, James Parker and others from the Eller team.

Fortunately, our media-relation specialist thought it important to get images of the prototype into the hands of the press well prior to the event. Even though we had to cancel each of the daily events scheduled for the following week, the press had images of the prototype. From magazine covers to multi-page color stories, their published reactions were more positive than the company could ever have imagined.

The final blow came when, giving only two weeks warning, the hearing to confirm Eller's termination and approve the new contract was scheduled for three hours on Wednesday, November 25, 1998. This was the day before Thanksgiving, so requests to move the hearing date a few days earlier or a few days later poured in from members of the estate wanting to attend. Predictably, securing travel arrangements with less than two weeks notice for the single busiest travel day of the year was virtually impossible. Judge Weinshienk refused. Still, many members did come. Some drove, and some, unable to return, spent their Thanksgiving in Denver, away from their families.

With the hearing set for November 25th, it was not until late on November 23rd that the receiver first disclosed the details of the new purchase contract. This gave any party with a stake or interest in the outcome only two days, exactly 40 hours actually, to do their analysis of the new contract vs. the Eller contract prior to the hearing.

Coincidently, also on November 23rd, Judge Schlatter authorized the receiver to seize all Eller computers. The receiver claimed that the computers might contain information pertinent to an inquiry that he might want to make of Eller at some point in the future. He told the judge that he feared Eller might erase such information. Again, our attorneys told the judge that he had no legal authority for such a seizure of private property, but the judge ordered the computers seized anyway. A private investigator was waiting outside my home to seize the laptop, and then waited at the office to get the desktop. As a result, I had no tools or information to conduct comparison or specific analysis of this new contract prior to the hearing.

As difficult as all this is to believe, it is all true and verifiable by partner attorneys from Dorsey & Whitney, Holmes, Roberts and Owen, Hall and Evans, and Davis, Graham & Stubbs. We certainly didn't lack for legal horsepower, for all the good it did.

On Wednesday, November 25th, Judge Zita Weinshienk conducted her hearing. At this hearing Eller, the Cow Creek Band of Umpqua Tribe of Indians, lawyers representing approximately 70% of her own estate, and the holder of the largest Indian trademark license with a multi-million dollar investment into its licensing program all objected to the IMCOA contract and moved that Eller's contract be supported. In fact the courtroom was packed by members of the estate who were able to get there traveling from as far away as New York, Illinois, and Texas. They all verbally supported Eller and objected to the receiver and the new purchaser. Those in support of the new contract were Murray Smith, president of IMCOA, the receiver, and their attorneys.

The entire hearing to determine the fate of this internationally famous American icon, the hopes and dreams of hundreds of people, and tens of millions of our dollars lasted 3 hours. At the beginning of the hearing Judge Weinshienk told us, from the bench, to keep it short because she had a Judge's luncheon to attend. It is on the record – I am not making this up.

No evidence, no testimonies save that given Judge Schlatter, no cross-examination, nor was any analysis of the competing bids permitted. Judge Schlatter's testimony was factually inaccurate and misleading and very negative towards Eller and me personally. Eller's attorneys, at least five of them around the table, would not object despite my prompting because "He's a judge!"

Afterward, I went to Judge Schlatter and said to him that if his testimony represented what he believed, he was terribly misled. I assured him that he should not worry however, that the truth would come out eventually. His response was to give me a glare that tore the rose colored glasses from my face. He looked at me cold as ice, and just sneered as told me, and I quote, "No, it won't". Up until that very moment, despite all that had transpired, I still believed in the system.

On December 4 the receiver offered to lift the garnishment if I paid him $200,000. So after having given no legitimate reason for the garnishment in the first place, if I wanted my $2 million back I needed to pay him $200,000. Having no choice the money was paid, and without any further action or comment, on December 17 Judge Zita Weinshienk removed the pre-judgment garnishment.

On December 7 (what a coincidence that is), in an order that took all of a page and a half, senior federal Judge Zita Weinshienk overruled all objections from the majority of her own estate, the Tribe, the largest Indian trademark licensee, and from Eller, she terminated the Eller contract, and approved the new contract between the receiver and IMCOA. She cited no reason other than it was not for her to question the judgment of the receiver.

On Thursday, December 31, 1998, the majority of the estate, the Tribe, the largest Indian trademark licensee and Eller jointly filed a massive, three-inch thick Writ of Mandamus, which was a fancy and emergency appeal of the Judge's ruling. Three work days later, on Wednesday, January 5, 1999, it was denied. They could not have even read the material in that short a time.

And then it was over.

Best wishes, and with regrets,

Leonard S. Labriola