

R. A. Marmon - Direct

1 situations. And I have found that while a lawyer will
2 take almost any case if you pay him, any case if you pay
3 him, my lawyers always do better if they really believe
4 what I'm saying and not my emotional response to it.

5 MR. HAYS: Your Honor, we're objecting
6 to go this line of questioning. He's getting back into
7 Mr. McTear's presence during this alleged conversation for
8 the reasons that Your Honor previously ruled on. We would
9 object and move to have this portion struck.

10 MR. STONE: Your Honor, I'm trying to
11 establish a fact of a conversation that occurred. It was
12 -- it was the conversation in which Mr. McTear was
13 involved. I'm not attempting to -- to introduce the memo.
14 It -- it's -- it's really just trying to establish that
15 this call occurred and that he was told the same things.

16 MR. HAYS: Mr. McTear's presence is
17 irrelevant. The Court previously ruled on this.

18 THE COURT: Yes, but the conversation's
19 not.

20 MR. HAYS: Admit -- admitted, Your
21 Honor.

22 THE COURT: So what are you objecting
23 to?

24 MR. HAYS: I'm objecting to the
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1 A. Based on my experience, and Mr. Craig's
2 testimony, who admits this - I can't imagine that his
3 counsel let him admit it - that he took a loan, as stated
4 in Mr. -- confirmed in Mr. Sach's deposition -- affidavit
5 -- took a loan in lieu of compensation. He was entitled
6 to a bonus, and he conspired, in my opinion and based on
7 my experience working with enforcement and corporate
8 finance, he conspired with the so-called alleged
9 compensation committee, which was never formed, to -- to
10 Mashinsky's knowledge legally, to defraud the Internal
11 Revenue Service and to cause Arbinet to file incorrect tax
12 returns.

13 What's worse is that this sham happened
14 when the company was raising money. Understand what
15 happens when you convert earned income to a loan. Earned
16 income is deducted as an expense. It lowers your net
17 worth. It reduces the earnings. If you don't report it,
18 if you report what is an earning as a loan, it never gets
19 to the income statement. This is exactly what IRS and the
20 government and the Securities and Exchange Commission is
21 dealing with in many of the cases across the country.
22 Compensation disguised as loans.

23 Now, if that isn't bad enough, this
24 exposes the company and its directors to the draconian
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1 references to Mr. McTear as being present to the --
2 attempting to back-door credibility of this conversation
3 with Mr. McTear being present.

4 THE COURT: All right.

5 A. I would like to explain why I did this.
6 I told Alex that I would not proceed with the case, even
7 the 220 case, unless he was willing to say exactly to my
8 attorney what he had said to David and I. That is what I
9 told him, and that's why I arranged the conversation.

10 MR. HAYS: Objection, Your Honor.

11 THE COURT: Overruled.

12 BY MR. STONE:

13 Q. Mr. Marmon, did you read the depositions
14 in this case?

15 A. Yes, I did.

16 Q. In fact, you attended at least one.

17 A. Yes, sir.

18 Q. Do you still, after hearing the -- the
19 testimony of the defendant's witnesses, suspect that
20 mismanagement has occurred?

21 A. I -- I know now, as -- mismanagement has
22 occurred. I even more strongly believe that mismanagement
23 has occurred, and it is much worse than I thought.

24 Q. Why is that?

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1 remedies available to the Internal Revenue Service. You
2 may not convert compensation to a loan, not do the
3 withholding -- and I don't know this for a fact; but if
4 Mr. Craig did not include that three-quarters of a million
5 dollars in his income tax return, in his 1040 for the year
6 2001, I believe the IRS would be quite interested in
7 taking a look at this return, given Mr. Sach's and now Mr.
8 Craig's sworn testimony.

9 Moreover, we found out that Mr. Craig
10 has another loan, and this one is really a corker. He was
11 loaned between 2 and \$300,000 in order to exercise options
12 -- this is Mr. Craig's testimony --

13 MR. HAYS: Objection, Your Honor. This
14 is irrelevant. This was disclosed in the S-1 that was
15 filed that Mr. -- that Mr. Marmon knew about before he
16 filed the case. He didn't make any -- any allegations
17 about this in his complaint, and it's irrelevant.

18 A. That's not true.

19 MR. STONE: It's not relevant at all --
20 it's not irrelevant at all, Your Honor. This forms the --
21 part of the basis for our suspicion of mismanagement.

22 THE COURT: Was it alluded to in any of
23 the pretrial papers?

24 MR. STONE: We didn't know about it,
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