

No.

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL S. HELMSTETTER, — PETITIONER

v.

DAVID HERZOG, ET AL.,--RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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## **QUESTIONS PRESENTED**

1. Did lower courts err when they ruled that a bankruptcy debtor did not have standing to object to settlement of his claims against third parties despite evidence that the bankruptcy estate would likely have a surplus?
2. Did lower courts deny due process to a bankruptcy debtor when they refused standing to hear the merits of his solvency?
3. Should this Court exercise supervisory authority to examine and remediate indicia of systemic and operational deficiencies presented in the bankruptcy court's valuation of a debtor's bankruptcy estate?

## **LIST OF PARTIES**

Michael S. Helmstetter, Petitioner/Debtor

David Herzog, Trustee/Appellee

Richard Ruscitti, Appellee

Kingdom Chevrolet, Inc., Appellee

## **RELATED CASES**

*In re Michael Helmstetter*, 19-28687 United States Bankruptcy Court for the Northern District of Illinois, Appealable order entered September 1, 2020.

*Helmstetter v. Herzog, et al.*, 20-CV-5485 United States District Court for the Northern District of Illinois, Memorandum Opinion and Order entered July 13, 2021, Judgment entered July 14, 2021.

*Helmstetter v. Herzog, et al.*, 21-2486 United States Court of Appeals for the Seventh Circuit, Opinion and Judgment entered August 11, 2022.

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**IN THE**  
**SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is reported at *In re Helmstetter*, 44 F.4th 676 (7th Cir. 2022).

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished: *Helmstetter v. Herzog*, 20 C 5485 (N.D. Ill. July 13, 2021).

The order of the United States Bankruptcy Court appears at Appendix D to the petition and is unpublished: *In re Helmstetter*, 19-28687, (N.D. Ill. BK Ct., September 1, 2020).

**JURISDICTION**

The date on which the United States Court of Appeals decided my case was August 11, 2022.

An extension of time to file the petition for a writ of certiorari was granted to and including January 8, 2023 on November 7, 2022 in Application No. 22 A 398.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. Const. Art. III (Appendix E)

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived

of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

11 U.S.C. §704 (Appendix F)

28 U. S. C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. § 1408

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or (2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

Federal Rules of Bankruptcy Procedure, Rule 1001

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

Federal Rules of Bankruptcy Procedure, Rule 6005

The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.

26 C.F.R. § 1.451-2 (Appendix G)

## **STATEMENT OF THE CASE**

This appeal seeks the reversal of appellate decisions from the United States Circuit Court for the Seventh Circuit, *In re Helmstetter*, 44 F.4th 676 (7th Cir. 2022), and United States District Court for the Northern District of Illinois, *Helmstetter v. Herzog*, 20 C 5485 (N.D. Ill. July 13, 2021), (hereinafter “Appellate Decisions” and “Appellate Courts”) each affirming a decision of the United States Bankruptcy Court for the Northern District of Illinois, *In re Helmstetter*, 19-28687 (N.D. Ill. BK Ct., 2020). (hereinafter “Bankruptcy Court”), which approved a settlement agreement proposed by the Trustee releasing for \$550,000 all of Debtor Appellant Michael Helmstetter’s (hereinafter “Helmstetter”) claims against Richard Ruscitti and Kingdom Chevrolet (hereinafter “Settlement Agreement” and “Debtor’s Claims” respectively). Debtor’s Claims were valued by two CPAs/Forensic Accountants at no less than \$11.9 million. *Helmstetter v. Herzog, et al.*, 20 cv 05485, DKT 16 -1, 16-2 (N.D. Ill., 2021) (Affidavits of Paul Rodrigues and Deborah J. Temkin, respectively) (Index H and I hereto). Helmstetter’s jurisdiction within the United States Bankruptcy Court for the Northern District of Illinois was based on 28 U.S.C. § 1408 in that his domicile, residence, and principal place of business were located within the Northern District of Illinois for the one hundred and eighty days immediately preceding the filing.

This case fundamentally arises from the failed business relationship between Helmstetter, at the relevant times an automotive executive based in the Chicago area, and Richard Ruscitti, a person having a number of business interests including a number of auto dealerships in the Chicago area. Helmstetter suffered a series of breaches of contract, obligations, and fiduciary duties; as well as defalcations inflicted by Richard Ruscitti. These

breaches and defalcations wrongfully converted from or deprived Helmstetter of funds and property interests estimated to be more than \$11.9 million. These funds included unpaid compensation, dividends, and distributions of more than \$4 million of liquid assets earned by Helmstetter and unpaid by Ruscitti.

### 1. DEBTOR'S CLAIMS

Helmstetter filed suit in 2014 both individually and derivatively on behalf of Kingdom Chevrolet, Inc. and Western Avenue Nissan, Inc. (hereinafter “Dealerships”) against Richard Ruscitti, individually and as an officer, director, and shareholder of the Dealerships, and the Dealerships (hereafter collectively as “Ruscitti”) *Helmstetter v. Ruscitti, et. al.*, Circuit Court of Cook County, Illinois, 2014 CH 20208. Helmstetter sued for Debtor’s Claims: specifically, remediation and damages for misfeasance, malfeasance, and nonfeasance; including but not limited to, acts of fraud, misrepresentation, breach of contract, and breach of fiduciary duties by Ruscitti.

The complaint details that on or about 2009 Ruscitti and Helmstetter entered into several business relationships. Among these were sharing ownership interests in the Dealerships. As part of these joint ventures, Helmstetter assumed responsibility for the day-day management of both Dealerships for sales, finance, and service. Helmstetter identifies that the remediation he seeks includes in part compelling Ruscitti to pay all dividends and other distributions due and owing to Helmstetter but not paid by Ruscitti.

The complaint details how during the period from 2009 to 2014 and continuing through the bankruptcy, Ruscitti inflicted and continues to inflict multiple acts of misfeasance, malfeasance and nonfeasance upon Helmstetter. Among these acts are the following:

1. Failing to pay Helmstetter appropriate compensation, including but not limited to dividends and distributions. Instead Ruscitti had these monies delivered to himself. Ruscitti then wrongfully converted these monies to his personal use. Ruscitti never informed Helmstetter of these monies and instructed others not to tell him;

2. Instructing company financial and accounting personnel to book and report to the Internal Revenue Service and the Illinois Department of Revenue that Helmstetter had received certain compensation, dividends and distributions; when Ruscitti knew that, in truth and in fact, Helmstetter had not received these monies. Further, Ruscitti knew that Helmstetter was unaware that these monies even existed;

3. Ruscitti reporting to the Internal Revenue Service and the Illinois Department of Revenue that Helmstetter had been paid compensation, dividends and distributions, when Ruscitti knew he had not received them resulting in a significant tax liability to Helmstetter;

4. Failing to inform Helmstetter of the distributions being made and that Ruscitti was wrongfully paying himself unauthorized revenues from the Dealerships; and

5. Failing to allow Helmstetter appropriate access to the business financial records necessary for him to responsibly monitor and manage his interests and the interests of the Dealerships.

Forensic accounting experts Paul Rodrigues and Deborah J. Temkin of The BERO Group, an established and well-respected CPA firm (hereinafter “BERO Group”), filed affidavits as part of the District Court appeal. *Helmstetter v. Herzog, et al.*, 20 cv 05485, DKT 16 -1, 16-2 (Index H and I). BERO Group accountants examined Helmstetter’s documents and calculated that Helmstetter’s Debtor’s Claims against Ruscitti totaled at least \$11.9 million. Furthermore, BERO Group accountants estimate claims of the bankruptcy

estate totaling approximately \$33 million with assets exceeding debts alleged by approximately \$20 million. *Id.* Affidavits from the BERO Group are neither contradicted by any significant, material or credible evidence of record nor opposing expert opinion.

BERO Group accountants' affidavits made the following conclusions:

- a. Examination to date of the limited financial records made available revealed that Helmstetter's Debtor's Claims against Ruscitti were reasonably valued at no less than \$11.9 million;
- b. Initial research into the financial backgrounds of both Ruscitti and Kingdom Chevrolet revealed that both appeared financially capable of paying Helmstetter's claimed amounts;
- c. The financial records made available for examination included only some, but not all, of the relevant years in the examination period;
- d. Examination of the financial records not yet produced for the additional years in the examination period may be anticipated to reveal that Helmstetter's Debtor's Claims against Ruscitti may significantly exceed \$11.9 million;
- e. Included in Helmstetter's Debtor's Claims of no less than \$11.9 million were an estimated \$4.1 million of compensation and distributions earned by Helmstetter but never paid by Ruscitti;
- f. Examination revealed that Helmstetter owned an uncontested 33% ownership in an auto dealership commonly known as Kingdom Chevrolet, Helmstetter's 33% share being valued at \$ 7,000,000;
- g. Examination did not reveal a reasonable basis to conclude that Helmstetter was hopelessly insolvent; and

h. Examination did not reveal a reasonable basis for Helmstetter to ever file bankruptcy. (Index H and I).

## 2. HELMSTETTER'S BANKRUPTCY FILING

Helmstetter's bankruptcy schedules listed a number of claims for damages arising from numerous acts of malfeasance, misfeasance, and nonfeasance from incompetent or corrupt service providers, including attorneys, accountants, financial lenders and advisors, and other business support services. *In re Michael Helmstetter*, 19-28687 DKT 131. These wrongful acts include but are not limited to mail fraud, wire fraud, breaches of contract obligations and fiduciary duties; and fraud in the inducement, as detailed herein. Among the most devastating damages inflicted by these incompetent or corrupt service providers was wrongfully convincing Helmstetter to unnecessarily file for Chapter 7 bankruptcy.

Pursuant to legal and accounting advice, Helmstetter filed Chapter 7 bankruptcy on October 19, 2019 in the Bankruptcy Court, *In Re Michael Helmstetter*, 19 B 28687. The assigned trustee hired both an attorney and a special counsel (collectively "Trustee") to assist him in the administration of Helmstetter's bankruptcy estate.

With respect to Helmstetter's Debtor's Claims, the Trustee entered into a conditional Settlement Agreement, subject to the approval of the Bankruptcy Court, to release all of Helmstetter's Debtor's Claims against Ruscitti and Kingdom Chevrolet for \$550,000 to be paid by Ruscitti. *In re Michael Helmstetter*, 19-28687 DKT 59. The Trustee executed this contingency agreement and presented it for approval to the Bankruptcy Court in August 2020, despite being briefed in April 2020 by the two CPA/Forensic Accountants from the BERO Group on their examination as described above. Helmstetter filed an objection to the approval of this Settlement Agreement and argued against approval before the Bankruptcy

Court. *In re Michael Helmstetter*, 19-28687 DKT 62, 74.

On September 1, 2020, The Bankruptcy Court approved the Settlement Agreement proposed by the Trustee and adopted his proposed findings and holdings, including that the Settlement Agreement was prudent, appropriate, and adequately supported both legally and factually. *In re Michael Helmstetter*, 19-28687 DKT 76. Notice of appeal was timely filed on September 15, 2020. *In re Michael Helmstetter*, 19-28687 DKT 79. Lacking funds, Helmstetter was unable to post bond or move for a stay pending appeal. The Settlement Agreement was executed among the Trustee and other parties, but not Helmstetter.

Helmstetter filed motions before the United States District Court to supplement the record, conduct special discovery, and to appoint a special master. *Helmstetter v. Herzog*, et al. 20-cv-0585, DKT 20. Those motions were targeted in part towards determining the facts, data, opinions, authorities, standards, and methodologies used by the Trustee in arriving at the findings and holdings he recommended to the Bankruptcy Court. *Id.*.. The scope of these motions included, but were not limited to, seeking the facts, documents, authorities, and methodologies and rationale the Trustee used in valuing Debtor's Claims, all Helmstetter's assets, the claims against his estate, and future financial solvency. Another objective was to put on the record the facts, documents, authorities, and methodologies and rationale the Trustee used in evaluating the reports of forensic accountants from the BERO Group.

On July 13, 2021, the District Court's decision denied all of the Helmstetter's motions and dismissed the appeal for lack of standing. *Helmstetter v. Herzog*, 20-5485, DKT 50-52. Helmstetter timely filed his notice of appeal to the 7th Cir. Court of Appeals on August 12, 2021. *Helmstetter v. Herzog*, 20-5485, DKT 53. The 7<sup>th</sup> Cir. Court of Appeals affirmed the District Court's dismissal based on a lack of standing without reaching

the merits of Helmstetter’s objection or matters of mootness raised by Trustee. Helmstetter timely files this Petition for Writ of Certiorari.

## **ARGUMENTS**

This Court should grant Helmstetter’s Petition for Writ of Certiorari because (1) Lower courts erred when they ruled that standing did not exist despite evidence that Helmstetter’s bankruptcy estate would likely have a surplus; (2) Lower courts denied due process to Helmstetter when they refused to hear the merits regarding Helmstetter’s solvency; and (3) This Court should exercise its supervisory authority to examine and remediate indicia of systemic and operational deficiencies presented in the Bankruptcy Court’s valuation of Helmstetter’s estate.

### **I. LOWER COURTS ERRED WHEN THEY RULED THAT STANDING DID NOT EXIST DESPITE EVIDENCE THAT HELMSTETTER’S ESTATE WOULD LIKELY HAVE A SURPLUS**

Appellate Courts denied standing to Helmstetter due to an incorrect valuation of the bankruptcy estate by the Trustee. The Trustee’s wrongful valuation resulted in a finding that the bankruptcy estate was insolvent and that no surplus could be distributed to Helmstetter. Appellate Courts denied standing to hear valuation arguments based on a perceived lack of pecuniary interest of Helmstetter. That perception was based on the bankruptcy court’s wrongful valuation. In fact, the BERO Group affidavits show that it was “likely” rather than “merely speculative” that the estate would have a surplus, as is required by case law. See *United States v. Windsor*, 570 U.S. 744, 757 (2013); *In re Stinnett*, 465 F.3d 309, 315 (7<sup>th</sup> Cir. 2006); and *In re Andreuccetti*, 975 F.2d 413, 416-17 (7<sup>th</sup> Cir. 1992).

“The requirements of Article III standing are familiar: ‘First, the plaintiff must have suffered an ‘injury in fact’ — an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent’, not ‘conjectural or hypothetical.’ ’ Second, there

must be a causal connection between the injury and the conduct complained of—the injury has to be ‘fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.’ Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *United States v. Windsor*, 570 U.S. 744, 757 (2013) (citing U.S. Const. Art. III) (also citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (footnote and citations omitted)).

In this case, the only issue of standing raised by the Appellate Decisions concern part three: that it must be “likely” rather than “merely speculative” that a favorable ruling would redress Helmstetter’s injury. *Windsor*, 570 U.S. at 757. The distinction between the two is addressed by case law.

In the bankruptcy context standing is narrower than Article III standing. *In re Stinnett*, 465 F.3d 309, 315 (7<sup>th</sup> Cir. 2006). However, all that is required is the showing of a pecuniary interest. *Id.* (“To have standing to object to a bankruptcy order, a person must have a pecuniary interest in the outcome of the bankruptcy proceedings.”). With regard to debtors, “If the debtor can show a reasonable possibility of a surplus after satisfying all debts, then the debtor has shown a pecuniary interest and has standing to object to a bankruptcy order.” *Id.* The purpose of this standard is one of judicial economy, efficiency, and a “swift and efficient administration of the bankrupt’s estate.” *In re Ray*, 597 F.3d 871, 874 (7<sup>th</sup> Cir. 2010). However, the *In re Ray* court also observed that “the requirements of due process outweigh those of judicial efficiency.” *Id.*

As stated by Judge Pallmeyer in her District Court opinion, “There is some debate regarding whether the Seventh Circuit’s characterization of ‘bankruptcy standing’ as a form of prudential standing survives the Supreme Court’s decision in *Lexmark Int’l, Inc. v. Static Control*

*Components, Inc.*, 572 U.S. 118 (2014).” *Helmstetter v. Herzog*, 20 C 5485, page 19. Judge Pallmeyer summarized the *Lexmark* opinion as follows:

The defendant agreed that the plaintiff had Article III standing but argued that the Court should “decline to adjudicate” the claim for “prudential” rather than constitutional reasons. [Lexmark] at 125–26. The Court refused that request. *See [Lexmark]* at 128. It reiterated that a federal court’s duty to decide cases that are within its jurisdiction “is virtually unflagging.” [Lexmark] at 126 (internal quotation marks omitted). The Court then explained that although it had used the term “prudential standing” in recent jurisprudence, the label was inapt because the Court had been using it to describe what was actually an issue of statutory interpretation: “whether a legislatively conferred cause of action encompassed a particular plaintiff’s claim.” *See [Lexmark]* at 126–28. The Court warned that “[j]ust as a court cannot apply its independent policy judgment to recognize a cause of action that Congress has denied . . . it cannot limit a cause of action that Congress has created merely because ‘prudence’ dictates.” [Lexmark] at 128.

To the extent that “bankruptcy standing” requires a pecuniary interest narrower than Article III standing, the *Lexmark* opinion may have expanded jurisdiction in this regard. *Id.* If such is the case, Helmstetter certainly meets the requirements of Article III standing because of the likelihood that a proper valuation of the bankruptcy estate would result in collection of a surplus. In any event, the jurisdiction imposed by the pecuniary interest standard must be assessed in light of its purpose of judicial economy and efficiency as explained in the opinion of *In re Ray*, 597 F.3d at 874, wherein “the requirements of due process outweigh those of judicial efficiency.”

In this case, the Appellate Courts were tasked to balance the purposes of judicial economy, efficiency, and a “swift and efficient administration of the bankrupt’s estate” against the injustice and due process violation to Helmstetter of selling Debtor’s Claims, credibly estimated at \$11.9 million to Ruscitti for \$550,000. *Id.* This is especially poignant given that Ruscitti himself is the perpetrator of the damages alleged in the Debtor’s Claims.

The case of *Andreuccetti* has similarities to the case at hand. *In re Andreuccetti*, 975 F.2d 413, 416-17 (7<sup>th</sup> Cir. 1992). In that case the debtors objected to a bankruptcy court’s ruling regarding a Chapter 11 reorganization plan. The reorganization plan that was adopted by the

*Andreuccetti* court dismissed state court litigation by the debtor against two of the largest bankruptcy creditors. *Id.* The *Andreuccetti* opinion overturned a district court finding that “the amount of debt was so great that they stood no realistic chance of emerging from bankruptcy with surplus assets.” *Id.* at 416. The *Andreuccetti* opinion went on to find that standing existed to hear the merits of debtor’s arguments. *Id.* at 417. In its opinion the Seventh Circuit stated:

The outcome of this litigation could potentially have a huge effect on the liabilities of the [debtors] and could give them a substantial surplus upon emerging from bankruptcy. Moreover, the compensatory and punitive damages claims in the state court counterclaims, if they had been litigated and not settled, as the [debtors] urge, could make it possible for the [debtors] to recover an amount sufficient to discharge their debts and also provide them with a surplus following bankruptcy. The reorganization plan effectively extinguishes that chance by settling the suits for less than what would be needed to create a surplus. The [debtors]' submission to the district court included allegations that the bankruptcy court failed to accord them sufficient opportunity to establish that the creditors' plan was inadequate and that the bankruptcy court's methodology in assessing the value of the state court lawsuits was flawed. Thus, the [debtors]' interest in gaining the possible surplus has been affected by the confirmation of the plan, and they possess a pecuniary interest that could be directly and adversely affected by the confirmation order. This alleged injury is sufficiently direct to allow for standing. We cannot hold that the [debtors]' contentions with respect to the bankruptcy court's treatment of these state counterclaims are so unmeritorious as to justify terminating the appeal without reaching the merits. *Id.* at 417.

In this case, Debtor’s Claims are similar to the claims of the debtors in *Andreuccetti*. *Id.* Helmstetter continues to assert that, but for the Trustee’s Settlement Agreement, the estate would have a surplus of millions. Helmstetter presented the Appellate Courts with affidavits of BERO Group accounts to support that assertion. (Index H and I). In fact, it seems that the Trustee’s argument for Helmstetter’s insolvency is “merely speculative” because Trustee presented no evidence to support its conclusions. Helmstetter’s argument cannot be the “merely speculative” argument when he is the only party presenting actual evidence to support valuation.

The Appellate Decisions heavily rely on the opinion of *In re GT Automation Group, Inc.* regarding bankruptcy standing which states that “Standing is lacking if it is merely ‘speculative’—as opposed to ‘likely’—that plaintiff’s injury would be redressed by a favorable

decision.”. 828 F.3d 602, 604 (2016). The *GT Automation Grp., Inc.*, opinion is clearly distinguished from the case at hand because, in that case, the party held to lack standing made no attempt to argue that the bankruptcy estate’s assets exceeded its liabilities. *Id.* at 605 (“Asked whether Arlington would get ‘even a dollar’ from a favorable decision, he responded, ‘Who knows?’ He urged that it was ‘theoretically possible’ that Arlington would benefit, but he could not describe this theory.”). In that case the distinction between “likely” and “merely speculative” was easily made. The opinion of *GT Automation Group* is clearly distinguished from the case at hand because Helmstetter presented evidence supporting solvency and has steadfastly argued that his estate should have a surplus.

Helmstetter’s arguments and evidence supporting valuation of the bankruptcy estate were never heard by the Appellate Courts. The Appellate Courts dismissed Helmstetter’s appeals citing a lack of standing—a jurisdictional issue. The merits of Helmstetter’s valuation was never heard. *In re Helmstetter*, 44 F.4th at 680 (“Because Helmstetter fails to demonstrate that he would be able ‘to realize any economic benefit from a potential reversal,’ he lacks standing...and we do not reach the merits of Helmstetter’s claim” (quoting *GT Automation Group*, 828 F.3d at 604)).

However, the Appellate Court’s findings of insolvency necessitated examining the value of the estate. In finding that it lacked jurisdiction the Seventh Circuit necessarily addressed fact issues valuing Helmstetter’s estate. For example, its opinion stated “Because Helmstetter’s assets do not exceed his conceded liabilities of \$20 million, Helmstetter cannot explain how it is ‘likely’ that any distribution from the estate will ultimately flow to him.” *Id.* It defies logic to explain how the Appellate Courts could make such a factual determination while at the same time denying Helmstetter jurisdiction to present evidence supporting his valuation of the estate.

The value of Helmstetter's assets were never established by the Trustee or the Appellate Courts.

The sole evidence of record valuing Helmstetter's assets consisted of the BERO Group affidavits. (Index H and I). Neither the Trustee nor the adverse parties produced evidence contradictory to those affidavits.

For Helmstetter to fight even for standing, the very right to be heard, seems inconsistent with our sense of justice. If Helmstetter leaves bankruptcy without a fair evaluation of his assets and creditors claims, he risks being deprived of tens of millions of dollars, despite sincere efforts to obtain competent and credible expert testimony. The concept of debtors ever losing standing in a bankruptcy related proceeding on its face seems at odds with the basic constitutional concepts of due process.

## **II. DUE PROCESS WAS DENIED WHEN LOWER COURTS REFUSED TO HEAR THE MERITS REGARDING HELMSTETTER'S SOLVENCY**

The Appellate Decisions denied Helmstetter jurisdiction to hear his valuation arguments on the merits. (Index A and C). The District Court denied Helmstetter's motions to supplement the record, conduct special discovery, and to appoint a special master. No oral arguments were heard. *Helmstetter v. Herzog*, 20 C 5485 DKT 50, 51. Helmstetter's motions were necessary for a determination of the facts, data, opinions, authorities, standards, and methodologies used by the Trustee in arriving at the findings and holdings he recommended to the Bankruptcy Court, including valuation of the Debtor's Claims and his alleged insolvency. *Id.*

The Fifth Amendment contains the "due process clause" guaranteeing that an individual will not be subject to the arbitrary deprivation "of life, liberty, or property without due process of law." U.S. Const. Amend. V. "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) "The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights

were denied we are governed by the substance of things and not by mere form." *Simon v. Craft*, 182 U.S. 427, 436 (1901) (citing *Louisville Nashville Railroad Co. v. Schmidt*, 177 U.S. 230 (1900)). The constitutional sufficiency of a hearing procedure was addressed by the opinion of *Goldberg v. Kelly* as follows:

The city's procedures presently do not permit recipients to appear personally with or without counsel before the official who finally determines continued eligibility. Thus a recipient is not permitted to present evidence to that official orally, or to confront or cross-examine adverse witnesses. These omissions are fatal to the constitutional adequacy of the procedure. 397 U.S. 254, 268 (1970).

In this case, Helmstetter was denied due process in that he was denied discovery on critical issues involving the value of his estate and valuation of the Debtor's Claims; did not have an opportunity to confront Trustee with oral argument; and was denied standing to be heard.

The opinion of *Mathews v. Eldridge* sets out procedural requirements for hearings in more detail. 424 U.S. 319 (1976).

These decisions underscore the truism that "[d]ue process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. *Arnett v. Kennedy*, [416 U.S. 134] at 167-168 [1974] (POWELL, J., concurring in part); *Goldberg v. Kelly*, *supra*, at 263-266; *Cafeteria Workers v. McElroy*, *supra*, at 895. More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: **First**, the private interest that will be affected by the official action; **second**, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and **finally**, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 334-335 (citing *Goldberg v. Kelly*, 397 U.S. at 263-271) (emphasis added).

In this case, first, the private interest affected by the Appellate Decisions is the deprivation of Helmstetter to the financial benefit of the surplus of the estate, estimated by the

BERO Group at \$20 million overall. *Helmstetter v. Herzog*, 20-5485, DKT 16-1 and 16-2 (Index H and I). With respect to just the Debtor's Claims at issue before the Court, Helmstetter would be denied the difference between the BERO Group's valuation of the Debtor's Claims at \$11.9 million and the Trustee's sale of those claims to Ruscitti for \$550,000. In addition to the financial deprivation suffered by Helmstetter he has a private interest in the adjudication of his own solvency and the ability to pay his creditors in full.

Second, the risk to Helmstetter of an erroneous deprivation of his multi-million dollar financial interest through the procedures used was that Trustee's Settlement Agreement was entered, despite Trustee's presentment of no evidence supporting his valuation of those assets. Implementing procedural safeguards requiring Trustee to evaluate Helmstetter's assets prior to sale would have been of tremendous value because the estate's value could have been maximized. The probable value of safeguarding Helmstetter's right to be heard is that he could properly litigate issues concerning his own solvency and the value of both the Debtor's Claims and the bankruptcy estate in general.

Finally, the government's interest in approving the Settlement Agreement without a proper evidentiary hearing was a rapid sale of Debtor's Claims. Trustee had received an offer of \$550,000 and its acceptance put an efficient and rapid end to his work on that portion of the bankruptcy. A proper valuation of the Debtor's Claims would likely necessitate litigation of those claims or finding a buyer willing to litigate Debtor's Claims. The government's interest in denying discovery and evidentiary hearing to Helmstetter concerning Trustee's valuation was also a rapid liquidation of the estate. Whatever the Trustee's interests in approving the Settlement Agreement were, the opinion of *In re Ray* would still demand that "the requirements

of due process outweigh those of judicial efficiency.” 597 F.3d at 874. Therefore, it cannot be said that Trustee’s interest in efficiency outweighs Helmstetter’s interests in due process.

When evaluating the factors set out in *Mathews v. Eldridge*, each factor weighs in favor of disapproving the Settlement Agreement. 424 U.S. 319. Helmstetter’s private interests were substantial, as were the interests to his creditors. The risk to Helmstetter of approval of the Settlement Agreement was substantial because no efforts were made to determine if the valuation was proper. The government’s interest in efficiency was minimal because the Trustee was already tasked with maximizing the value of the estate for the benefit of creditors and the debtor. All things considered, the due process balance weighs heavily in favor of disapproving the Settlement Agreement, granting Helmstetter a proper evidentiary hearing and the opportunity to discover evidence concerning valuation of his own bankruptcy estate.

**III. THIS COURT MUST EXERCISE ITS SUPERVISORY AUTHORITY TO EXAMINE AND REMEDIATE INDICIA OF SYSTEMATIC AND OPERATIONAL DEFICIENCIES PRESENTED BY THE BANKRUPTCY COURT’S VALUATION OF THE ESTATE**

The record of this case reveals significant indicia of material and significant systemic and operational deficiencies relating to the United States Bankruptcy Court for the Northern District of Illinois. Examples of these deficiencies include the following: (1) The record does not reveal reasonable efforts by the Bankruptcy Court and the Trustee to properly analyze and value Helmstetter’s assets, claims made against his estate, and financial solvency; and (2) Neither the record nor the Appellate Decisions reflect a reasonable process of analysis or an appropriate factual, legal, and logical predicate for key holdings, for example:

- a. Holding that Helmstetter is hopelessly insolvent and therefore lacks standing;

- b. Approval of the Settlement Agreement releasing Debtor's Claims against Ruscitti, which were estimated by the two CPA forensic accountants of the BERO Group as being at least \$11.9 million for \$550,000;
- c. Failure to act on repeated notifications that Helmstetter's assets included monies from compensation, dividends, and distributions earned by Helmstetter, reported to the taxing authorities but never paid by Ruscitti;
- d. Failure to invoke the doctrines of Constructive Receipt or Constructive Trust based on current law and tax statutes and regulations;
- e. Failure to recognize that any earned or declared monies, dividends, and distributions to Helmstetter were actually liquid assets of the estate held in constructive trust by Ruscitti;
- f. Failure to conduct a reasonable search for, examination, or valuation of compensation, dividends, and distributions earned by Helmstetter but never paid by Ruscitti;
- g. Failure to examine or review the valuation of Helmstetter's 33% equity interest in Kingdom Chevrolet despite BERO Group accountants estimating this asset at \$7 million. Similarly, the record does not reveal recognition that this asset has the potential to serve as financing collateral or operational capital; and
- h. Failing to reasonably consider the findings of the BERO Group accountants who found no reasonable basis for either 1) concluding that Helmstetter was hopelessly insolvent or 2) finding a just cause and predicate for him to ever file bankruptcy in the first place.

The actions of the Bankruptcy Court are at odds with the duties of a trustee to a debtor.

Among the fundamental and core principles of the bankruptcy system are the high levels of duty and responsibility that the Trustee and courts owe to debtors, their estates, and creditors. This foundational maxim is revealed throughout the Bankruptcy Code, rules and case precedence. See e.g. 11 U.S.C. §704.

“A bankruptcy trustee is a fiduciary of the estate's creditors, and his duty to collect and ‘conserve the assets of the estate and to maximize distribution to creditors’ is a fiduciary obligation.” *In re Melenyzer*, 140 B.R. 143, 154 (Bankr. W.D. Tex. 1992); *see, e.g.*, *United States v. Aldrich (In re Rigden)*, 795 F.2d 727, 730-31 (9th Cir. 1986) (citing *In re Benny*, 29 B.R. 754, 860 (Bankr.N.D.Cal. 1983) for the same proposition); *see also In re Central Ice Cream Co.*, 836 F.2d 1068, 1072 (7th Cir. 1987) (faulting trustee for taking easy settlement and noting failure to consider debtor’s residual interest as a shareholder). Further, even though the trustee has no obligation to investigate every matter that is brought to his or her attention, the trustee is statutorily required to look into charges of the concealment of assets, fraudulent conduct, and any other wrongdoing by the debtor or other third parties. *In re Melenyzer*, 140 B.R. at 155.

Procedures utilized by the Bankruptcy Court must operate within the framework of the general purpose of the Bankruptcy Act.

One of the primary purposes of the bankruptcy act is to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes." citing *Williams v. U.S. Fidelity G. Co.*, 236 U.S. 549, 554-555 [1915]... The various provisions of the bankruptcy act were adopted in the light of that view and are to be construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act. Local rules subversive of that result cannot be accepted as controlling the action of a federal court. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

“This Court has supervisory authority over the federal courts, and we may use that authority to prescribe rules of evidence and procedure that are binding in those tribunals.”

*Dickerson v. United States*, 530 U.S. 428, 437 (2000) (citing *Carlisle v. United States*, 517 U.S. 416, 426 (1996)). “However the power to judicially create and enforce nonconstitutional ‘rules of procedure and evidence for the federal courts exists only in the absence of a relevant Act of Congress.’” *Id.* (quoting *Palermao v. United States*, 360 U.S. 343, 353, n. 11 (1959)).

For the purposes of bankruptcy, statutory authority does not directly address procedures to be used in valuation of a bankruptcy estate. The Bankruptcy Code charges a trustee to “collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest” and “investigate the financial affairs of the debtor”. 11 U.S.C. § 704(a)(1 and 4). Therefore, the Bankruptcy Code did not legislate procedures for valuation of bankruptcy estates and the Supreme Court’s exercise of authority over the Bankruptcy Court in that regard would not run afoul of the rule set out in *Palermao*, 360 U.S. 343.

The Supreme Court has already set out the Federal Rules of Bankruptcy Procedure which are to be “construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.” Federal Rules of Bankruptcy Procedure, Rule 1001. Rule 6005 allows the trustee to employ an appraiser—which did not happen in this case. No Rules govern methods or procedures by which a trustee or bankruptcy court are to value assets of a debtor. Therefore, the Bankruptcy Code and Federal Rules of Bankruptcy Procedure are essentially silent with regard to how assets within the bankruptcy estate are to be valued other than to allow for a trustee to employ an appraiser—which the Trustee in this case did not do.

In any event, the valuation procedure must comport with the Bankruptcy Code whereby a trustee must “close such estate as expeditiously as is compatible with the best interests of parties

in interest" and "investigate the financial affairs of the debtor". 11 U.S.C. § 704(a)(1 and 4). In this case it cannot be said that liquidating Debtor's Claims, credibly valued at \$11.9 million, for \$550,000 was in the interest of Helmstetter or his creditors. Settling Debtor's Claims for that amount was likely to push the bankruptcy estate into insolvency, leaving Helmstetter to emerge penniless. Additionally, it cannot be said that the Trustee investigated the financial affairs of the debtor because no evidence of valuation was put forth to justify the Settlement Agreement. Certainly Trustee did not investigate the Debtor's Claims because he made no effort to turnover constructive trust assets held by Ruscitti as a result of unpaid compensation and distributions earned by Helmstetter but never paid by Ruscitti as set out in the Bero Group's affidavits. (Index H and I).

Furthermore, the procedures that were utilized cannot be said to have resulted in justice as required by Federal Rules of Bankruptcy Procedure, Rule 1001. The Bankruptcy Court seems to have set aside all other considerations in favor of a rapid resolution and liquidation of the estate, to the detriment of Helmstetter and likely his creditors. In this case, utilizing the supervisory authority set out in *Dickerson* would not conflict with the existing Bankruptcy Code or Federal Rules of Bankruptcy Procedure and is required by justice. 530 U.S. 428.

Supervisory authority over the Bankruptcy Court should require procedures by which the Trustee values the estate assets before liquidating them and procedures that demand the Trustee litigate or negotiate in a manner to maximize the value of the estate. In this case, nothing in the record indicates that the Trustee or the lower courts materially examined or considered either the expert reports of the BERO Group or the various attorney proffers reporting the findings and opinions of these reports to the Courts. See *Helmstetter v. Herzog*, 20-5485, DKT

20, 25, 62. Further there is no indication of any material efforts by the Trustee or the lower courts to independently obtain credible valuations of Helmstetter's assets or liabilities.

With respect to compensation, dividends and distributions not paid by Ruscitti to Helmstetter, both the Trustee and the lower courts were advised that these monies were current assets of the bankruptcy estate held in constructive trust by Ruscitti; and further that these funds could probably be recovered by the issuance of a judicial turnover order relatively quickly and inexpensively. As explained, by operation of law and the application of the doctrines of constructive receipt and constructive trust, at all relative times, in truth and in fact, Helmstetter was not insolvent. Rather at all relevant times under the law Helmstetter and later his estate were the rightful owners of millions of dollars in liquid assets held in the constructive trust by Ruscitti and his agents. See generally, 26 C.F.R. § 1.451-2 – Constructive Receipt of Income and *In re Miss. Valley Livestock, Inc.*, 745 F.3d 299, 304-307 (7th Cir. 2014).

The nature of the indica of possible systemic deficiencies noted by Helmstetter have potentially devastating consequences. At least two CPA/Forensic Accountants have reviewed the financial and corporate records available and reported that a) there is no reasonable basis for concluding that Helmstetter was or is financially insolvent and b) their examination did not reveal a reasonable basis for Helmstetter to have ever filed bankruptcy to begin with, however, the Trustee found that the estate was insolvent without justification. (Bero Group Affidavits, Index H and I). With these facts of record, it would be reasonable to expect that some form of prospective system revision may be examined.

The record reflects that Helmstetter suffered a series of injuries from multiple acts of misfeasance, malfeasance and nonfeasance. He suffered multiple acts of legal and accounting

malpractice, as reflected in his amended schedules. The Court has an overarching mandate to do justice and to avoid unjust results. Helmstetter is deserving of the exercise of that power.

The record as described herein reflects that Helmstetter entered bankruptcy by mistake and misfortune following what would turn out to be severely damaging legal and accounting advice. The Court has its supervisory powers to redress cases of severe injustice and accomplish the overarching objectives of achieving justice and avoiding unjust results.

At the end of the day, unless prior decisions of the lower courts are overturned the key beneficiary here is Ruscitti. Furthermore, if the reports of the BERO Group are correct there is a very significant chance, if not probability, that Ruscitti paid the \$550,000 Settlement Agreement for the release of what is estimated to be \$11.9 million in claims using Helmstetter's own money. Such a result, if proven true, is severely unjust. Furthermore, it would be damaging to the reputation of the judiciary and would harm the public's confidence in the judicial system. This court should use the supervisory authority over the lower courts set out in *Dickerson* to correct that injustice. 530 U.S. at 437.

### **REASONS FOR GRANTING THE PETITION**

1. Lower courts erred when they ruled that standing did not exist despite evidence that Helmstetter's bankruptcy estate would likely have a surplus.
2. Lower courts denied due process to Helmstetter when they refused to hear the merits regarding Helmstetter's solvency.
3. This Court should exercise its supervisory authority to examine and remediate indicia of systemic and operational deficiencies presented in the Bankruptcy Court's valuation of Helmstetter's estate.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: March 14, 2023

/s/ Michael T. Stanley

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## **APPENDIX A**

## In re Helmstetter

44 F.4th 676 (7th Cir. 2022)  
Decided Aug 11, 2022

No. 21-2486

08-11-2022

IN RE: Michael S. HELMSTETTER, Debtor-Appellant.

Nicola S. Tancredi, Attorney, Law Office of Nicola S. Tancredi, Oakbrook Terrace, IL, for Debtor-Appellant. Gregory K. Stern, Attorney, Chicago, IL, for David Herzog.

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Jackson-Akiwumi, Circuit Judge.

Nicola S. Tancredi, Attorney, Law Office of Nicola S. Tancredi, Oakbrook Terrace, IL, for Debtor-Appellant.

Gregory K. Stern, Attorney, Chicago, IL, for David Herzog.

Before Sykes, Chief Judge, and Kirsch and Jackson-Akiwumi, Circuit Judges.

Jackson-Akiwumi, Circuit Judge.

Chapter 7 Debtor Michael S. Helmstetter appeals the bankruptcy court's decision approving a settlement agreement entered into on behalf of his estate and executed by the estate's trustee. But because Helmstetter fails to show how it is likely—and not merely speculative—that his purported injury would be redressed by a favorable decision from this court, he lacks Article III standing to appeal the bankruptcy court's decision. Accordingly, we affirm the district court's judgment dismissing the bankruptcy appeal for lack of jurisdiction.

### I

In 2014, five years before Helmstetter voluntarily filed for Chapter 7 bankruptcy, he filed a lawsuit in state court against his former employers, Kingdom Chevrolet, Inc., and Western Avenue Nissan, Inc., and their majority shareholder, Richard Ruscitti (collectively, the "Kingdom Entities"). The Kingdom Entities then filed counterclaims and a separate lawsuit against Helmstetter in state court. The state court litigation between Helmstetter and the Kingdom Entities was automatically stayed when Helmstetter filed his bankruptcy petition in October 2019. At the time of the stay, the parties had only completed limited written discovery.

As expected, after Helmstetter filed his bankruptcy petition, an estate was created

678 containing all of his legal and equitable \*678 property interests, including the state court litigation. *See 11 U.S.C. § 541(a)(1)*. The bankruptcy court appointed David Herzog as trustee over Helmstetter's estate. Trustee Herzog's task was to "gather the estate's assets for pro rata distribution to the estate's creditors." *In re Teknek, LLC*, 563 F.3d 639, 645 (7th Cir. 2009) (citation omitted). To facilitate the distribution process, Helmstetter filed three schedules of assets and liabilities under penalty of perjury with the bankruptcy court. He filed his first set of schedules in November 2019 and his first amended set in April 2020. In both sets of schedules, Helmstetter valued his total assets at approximately \$8.5 million, which included his projected recovery in the state court litigation of

between \$5 million and \$7.5 million, and some "other assets" worth roughly \$1 million to \$3.5 million. In both sets of schedules, Helmstetter valued his liabilities between approximately \$6.5 million and \$10.5 million.

After Helmstetter filed the first amended schedules but before Helmstetter filed his second amended schedules, Trustee Herzog moved the bankruptcy court to approve a settlement agreement between the Kingdom Entities and Trustee Herzog, on behalf of the estate. Relevant to this appeal, the parties agreed to dismiss the state court litigation; the Kingdom Entities agreed to pay \$550,000 to Trustee Herzog for the benefit of the estate; and Trustee Herzog agreed to transfer to the Kingdom Entities the estate's interests, if any, in the Kingdom Entities and related companies.

Subsequently, Helmstetter filed his second amended schedules wherein he valued his total assets at \$43 million<sup>1</sup> and his liabilities at approximately \$20 million. His total assets included \$16 million for the estate's recovery in the state court litigation and \$24 million for other assets. The "other assets" valuation now included \$20 million from purported claims against third parties. Helmstetter's new valuations copied estimates from a report produced by accountants from The BERO Group. Helmstetter provided no evidence to support the estimates, and the report does not explain how the accountants reached the estimates or what methodologies they used. Helmstetter then objected to Trustee Herzog's motion to approve the settlement, arguing that the settlement was improper because it undervalued the state court litigation.

<sup>1</sup> Helmstetter actually valued his total assets at nearly \$60 million in the second amended schedules, but he revised that amount to \$43 million in his district court briefing.

The bankruptcy court held a hearing on Trustee Herzog's motion to approve the settlement. Relying on the second amended schedules and The BERO Group report, Helmstetter argued at the hearing that the state court litigation recovery was worth \$16 million, so the \$550,000 proposed settlement was insufficient. Trustee Herzog disputed Helmstetter's increased valuation of the state court litigation. He argued that Helmstetter wanted the estate to hire a new attorney who requested a 50 percent contingency fee to recover the projected \$16 million, so even accepting the \$16 million figure, the state court litigation recovery amount was much lower than Helmstetter's projections.

Over Helmstetter's objection, the bankruptcy court approved the settlement agreement, finding that it was fair and reasonable and that approving it was in the best interest of the estate.

Without seeking a stay of the bankruptcy court's order, Helmstetter appealed the bankruptcy court's decision to the district court, arguing that the bankruptcy court improperly approved the settlement agreement and undervalued the state court litigation. <sup>679</sup> He also filed a motion to supplement the record, to conduct discovery, and for appointment of a special master. Trustee Herzog moved to dismiss the appeal for lack of standing. He argued that Helmstetter did not have a reasonable expectation of recovering a surplus after the estate paid all creditors, therefore Helmstetter would not benefit from reversal of the bankruptcy court's order. Helmstetter countered that, based on The BERO Group report and the second amended schedules, the estate would have a \$20 million surplus after paying the creditors.

The district court granted Trustee Herzog's motion and denied Helmstetter's motion. Helmstetter timely appealed to this court. At some point before this appeal, Trustee Herzog and the Kingdom Entities executed the settlement agreement and dismissed the state court litigation.

## II

In this appeal, Helmstetter maintains that the bankruptcy court undervalued the estate's potential recovery from the state court litigation and erred in approving the settlement. He also challenges the district court's decision dismissing the matter for lack of jurisdiction and denying his request to supplement the bankruptcy court record. Trustee Herzog argues that Helmstetter lacks standing to bring this appeal for the same reasons advanced in the district court. Alternatively, Trustee Herzog argues that the appeal is moot, both equitably and under 11 U.S.C. § 363(m), because the settlement agreement is complete and the state court litigation has been dismissed.

Article III standing is jurisdictional, so if Helmstetter lacks standing, we lack jurisdiction to address the merits of this appeal. *See Nowlin v. Pritzker*, 34 F.4th 629, 632 (7th Cir. 2022). Accordingly, we start (and end) our analysis with Helmstetter's standing, and our review is *de novo*. *Id.*

"The test for standing is a familiar one: [a] plaintiff has standing only if he can allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Pavlock v. Holcomb*, 35 F.4th 581, 588 (7th Cir. 2022) (quoting *California v. Texas*, — U.S. —, 141 S. Ct. 2104, 2113, 210 L.Ed.2d 230 (2021)).

"Standing is lacking if it is merely 'speculative'—as opposed to 'likely'—that the plaintiff's injury would be redressed by a favorable decision." *In re GT Automation Grp., Inc.*, 828 F.3d 602, 604 (7th Cir. 2016) (quoting *United States v. Windsor*, 570 U.S. 744, 757, 133 S.Ct. 2675, 186 L.Ed.2d 808 (2013)). We have "noted that debtors often lack standing to challenge bankruptcy orders 'because no matter how the estate's assets are disbursed by the trustee, no assets will revert to the debtor[,]'" and therefore, it is unlikely that a favorable decision from this court would redress the debtor's injury. *Id.* at 604–05 (citation omitted). The party

invoking federal jurisdiction bears the burden of establishing standing. *See Pavlock*, 35 F.4th at 588.

Helmstetter fails to meet his burden because he provides only speculative support that he would recover from the estate after creditor distribution, such that reversing the bankruptcy court's decision would likely redress his injury. He argues that he would recover the estate's \$20 million surplus. But this "surplus" is based on The BERO Group's estimates of \$16 million from the state court litigation and \$20 million from purported claims against third parties. Critically, Helmstetter fails to provide any support for these estimates or The BERO Group's calculations. Indeed, at oral argument, Helmstetter's attorney could explain only that the estimates were based on records 680 available to \*680 The BERO Group. He could not articulate what methodologies The BERO Group used to produce the estimates, and he professed that he "can't speak to" how The BERO Group determined the value of the purported claims against third parties. Helmstetter's abstract notion of a "surplus" is insufficient to establish standing and confer jurisdiction upon this court. *See GT Automation*, 828 F.3d at 605 (holding that appellant failed to demonstrate Article III standing to appeal a bankruptcy court's decision where it was only "theoretically possible" for appellant to receive any benefit from the estate).

At most, Helmstetter's assets total \$15 million. This amount generously includes \$8 million in recovery from the state court litigation (after paying a 50 percent contingency fee to a new attorney).<sup>2</sup> The amount does not include any of the \$20 million in purported claims against third parties that Helmstetter fails to substantiate.<sup>3</sup> Because Helmstetter's assets do not exceed his conceded liabilities of \$20 million, Helmstetter cannot explain how it is "likely" that any distributions from the estate will ultimately flow to him. *See GT Automation*, 828 F.3d at 604. Because Helmstetter fails to demonstrate that he would be able "to realize any economic benefit

from a potential reversal," *id.* (quotation omitted), he lacks standing. Therefore, we affirm the district court's judgment dismissing the bankruptcy appeal, and we do not reach the merits of Helmstetter's claim or Trustee Herzog's arguments that the matter is moot.

<sup>2</sup> We say "generously" because the state court litigation was dismissed with prejudice in September 2021, which means Helmstetter cannot recover anything from the litigation.

<sup>3</sup> Indeed, at oral argument, Trustee Herzog's attorney highlighted that those claims have been monetized for less than \$40,000 and some claims sold for as little \$1.

AFFIRMED

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## **APPENDIX B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICHAEL S. HELMSTETTER, )  
Appellant, ) No. 20 C 5485  
v. ) Bankruptcy No. 19-28687  
DAVID HERZOG, Trustee, )  
RICHARD RUSCITTI, and ) Judge Rebecca R. Pallmeyer  
KINGDOM CHEVROLET, INC., )  
Appellees. )

**MEMORANDUM OPINION AND ORDER**

Appellant Michael S. Helmstetter was the minority owner and an employee of two car dealerships. A dispute between Helmstetter and the majority shareholder led to litigation in state court and ultimately to a Chapter 7 bankruptcy petition. Helmstetter filed the petition in October 2019. By August 2020, Appellee David Herzog, the appointed Trustee for the bankruptcy estate, had negotiated an agreement to settle the estate's disputes with the dealerships—Kingdom Chevrolet, Inc. ("Kingdom") and South Chicago Nissan, d/b/a Western Avenue Nissan ("Western Avenue")—and the majority owner, Richard Ruscitti. Over Helmstetter's objection, Bankruptcy Judge Jacqueline P. Cox granted Herzog's motion for approval of the settlement agreement and transfer of assets. Arguing that the Trustee undervalued his estate, Helmstetter appeals. For the reasons explained below, the court denies Helmstetter's motion to supplement the record and grants the Trustee's motion to dismiss the appeal for lack of standing.

**BACKGROUND**

**A. State Court Proceedings**

From the complicated and sometimes inconsistent record, the court gleans the following: Helmstetter is a former employee of Kingdom and claims to own at least 33 percent of the company. (See, e.g., Trustee Motion for Approval of Settlement of Disputes and Transfer of Assets ("Mot. to Approve Settlement"), Appellant Record on Appeal ("Appellant ROA") [11-2] at

PageID#: 428; BERO Report, Exs. B, C to Helmstetter Objection to Mot. to Approve Settlement, Appellant ROA at PageID#: 601.) Kingdom operates an automobile dealership in Chicago, Illinois. (Mot. to Approve Settlement at PageID#: 428.) The parties do not specify how or when Helmstetter's employment with Kingdom ended, but it appears that Ruscitti fired him sometime in 2014. (See BERO Report at PageID#: 601.) Kingdom is an S-Corporation (*id.*), meaning that it "pass[es] corporate income, losses, deductions, and credits through to [its] shareholders for federal tax purposes." (S Corporations, Internal Revenue Service, <https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations> (last visited July 12, 2021); see also Mot. to Approve Settlement at PageID#: 435–36 (indicating that Kingdom is a closely held corporation).) Ruscitti is the majority owner of Kingdom. (Mot. to Approve Settlement at PageID#: 429.)

Helmstetter also maintains that he has a 25 percent ownership interest in Western Avenue. (*Id.* at PageID#: 428.) Like Kingdom, Western Avenue is a closely held corporation of which Ruscitti is the majority owner and operates an automobile dealership in Chicago, Illinois. (*Id.* at PageID#: 429, 435–36.) Helmstetter is a former employee of Western Avenue, as well. (See BERO Report at PageID#: 614 (stating that "Ruscitti fired Helmstetter from Western Avenue Nissan" in August 2014).)<sup>1</sup>

Finally, Helmstetter claims that he has an ownership interest in two unidentified reinsurance companies (the "Reinsurance Companies"). (Mot. to Approve Settlement at PageID#: 428.) Ruscitti is a full or partial owner of the Reinsurance Companies and contends that Helmstetter has no ownership interest in them. (Proposed Settlement Agreement, Appellant ROA at PageID#: 440.) The Trustee eventually identified the Reinsurance Companies and, as it turns out, there are eight, not two. (Mot. to Approve Settlement at PageID#: 429 n.4.) Neither the number of companies nor their names are relevant to the outcome of this appeal.

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<sup>1</sup> Western Avenue is not an Appellee. Neither side explains why.

The falling-out between Helmstetter and the dealerships led to Helmstetter's filing an accounting action in state court (the "Chancery Action") against Ruscitti, Kingdom, and Western Avenue on December 17, 2014. (Proposed Settlement Agreement at PageID#: 439.)<sup>2</sup> Seeking to enforce his ownership interest in Kingdom and his claimed ownership interest in Western Avenue and the Reinsurance Companies, Helmstetter sought to compel examination of Kingdom and Western Avenue's books and records. (Mot. to Approve Settlement at PageID#: 429; Proposed Settlement Agreement at PageID#: 439.) On March 29, 2017, Helmstetter added claims alleging deprivation of corporate distributions and loss of corporate opportunities. (Proposed Settlement Agreement at PageID#: 439.) On June 22, 2017, Ruscitti, Kingdom, and Western Avenue filed counterclaims, asserting that Helmstetter engaged in misconduct while employed at Kingdom and/or Western Avenue. (*Id.*) According to the counterclaims, Helmstetter fraudulently approved a payment of more than \$700,000 for "unrealized advertising services"<sup>3</sup>; purchased a stolen vehicle for \$25,000 and attempted to resell it; and maintained an "improper relationship" with a subordinate who allegedly was stealing from the dealerships. (*Id.*) The bankruptcy record shows that Ruscitti, Kingdom, and Western Avenue seek \$1,383,596.69 in damages for the counterclaims. (Second Am. Schedules at PageID#: 536.) It is not clear from the bankruptcy record why the damages request substantially exceeds \$725,000.

On March 3, 2015, Kingdom and Western Avenue filed a separate lawsuit against Helmstetter in the Circuit Court of Cook County, asserting claims for breach of fiduciary duty and fraud (the "Fraud Action"). (*Id.*)<sup>4</sup> The bankruptcy record that Helmstetter provided to this court

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<sup>2</sup> That case is *Helmstetter v. Kingdom Chevrolet, Inc.*, Case No. 2014 CH 20208. (Proposed Settlement Agreement at PageID#: 439.)

<sup>3</sup> The parties do not explain what the "unrealized advertising services" were, why Helmstetter allegedly paid \$700,000 for them, to whom he allegedly paid that sum, or whether he had a relationship with the recipient.

<sup>4</sup> That case is *Kingdom Chevrolet, Inc. v. Helmstetter*, Case No. 2015 L 002134. (*Id.*)

does not contain further information about those claims.<sup>5</sup>

As of October 9, 2019, the Chancery and Fraud Actions (collectively, the “Circuit Court Litigation”) were nearly five years old, but discovery was not complete; the parties had exchanged some written discovery, but they had taken no depositions, nor had they engaged in expert discovery. (Mot. to Approve Settlement at PageID#: 433.) On October 9, 2019, Helmstetter filed his voluntary Chapter 7 bankruptcy petition. (*Id.* at PageID#: 427.) According to Helmstetter, he did so “[a]t least in part because of the costs and length of” the Circuit Court Litigation. (Helmstetter Appellant Br. [37] at 6.) The Chapter 7 filing resulted in an automatic stay of the Circuit Court Litigation. (Trustee Mot. to Dismiss at 2 (citing 11 U.S.C. § 362).)

## **B. Chapter 7 Proceedings**

Chapter 7 of the Bankruptcy Code “gives an insolvent debtor the opportunity to discharge his debts by liquidating his assets to pay his creditors.” *Law v. Siegel*, 571 U.S. 415, 417 (2014) (citing 11 U.S.C. §§ 704(a)(1), 726, 727). Filing a bankruptcy petition under Chapter 7 “creates a bankruptcy ‘estate’ generally comprising all of the debtor’s property.” *Id.* (citing 11 U.S.C. § 541(a)(1)). “The estate is placed under the control of a trustee, who is responsible for managing liquidation of the estate’s assets and distribution of the proceeds.” *Id.* (citing 11 U.S.C. § 704(a)(1) (providing that the trustee shall “collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest”)).

### **1. Procedural History**

On October 21, 2019, David Herzog was appointed as the Trustee in Helmstetter’s

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<sup>5</sup> The Trustee states that Helmstetter’s adversaries in the Circuit Court Litigation seek “\$700,000.00 and \$1,383,591.69” in damages. (Trustee Mot. to Dismiss [14] at 8.) Because the bankruptcy record states that the defendants in the Chancery Action seek approximately \$1.38 million in damages for the counterclaims, the court assumes that the request for \$700,000 relates to the fraud allegations—despite that \$700,000 appears to align with the conduct charged in the Chancery Action counterclaims rather than the Fraud Action.

Chapter 7 case. (Bankruptcy Court Docket, Appellant ROA at PageID#: 49). On November 4, 2019, Helmstetter filed the first of three sets of Schedules of Assets and Liabilities that he ultimately submitted to the Bankruptcy Court. (Original Schedules, Appellant ROA at PageID#: 139–212.) On March 10, 2020, the Trustee filed a motion under Federal Rule of Bankruptcy Procedure 2004 for leave to examine Helmstetter and collect documents Helmstetter had failed to provide regarding (among other things) his financial condition and the disclosures in the Schedules. (Rule 2004 Mot., Appellant ROA at PageID#: 310–17.) The Bankruptcy Court granted the motion on March 17, 2020. (Bankruptcy Court Docket at PageID#: 320.) When the Rule 2004 examination occurred is not clear from the record, but on April 9, 2020, Helmstetter filed the second iteration of his Schedules of Assets and Liabilities. (First Amended Schedules, Appellant ROA at PageID#: 321–90).

On August 11, 2020, the Trustee filed a motion for entry of an agreed order in which Helmstetter, Ruscitti, Kingdom, and the Trustee agreed that: (1) Helmstetter once owned at least 33 percent of the shares of common stock of Kingdom; (2) any transfers of said shares that Helmstetter claimed to have made are null;<sup>6</sup> and (3) pursuant to the Chapter 7 petition, the Trustee is the sole owner of Helmstetter’s 33 percent interest in Kingdom. (Mot. for Entry of Agreed Order at PageID#: 411–17; Agreed Order at PageID#: 418, 420.) The agreed order also provided that the Trustee “is the sole owner of . . . 25% of the stock of [Western Avenue].” (Agreed Order at 418, 420.) As Ruscitti and Western Avenue continue to deny that Helmstetter has any ownership interest in Western Avenue (see, e.g., Proposed Settlement Agreement at

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<sup>6</sup> According to the Trustee, Helmstetter “disclosed on his Schedules and Statement of Financial Affairs transfers within one year of the Petition Date of some or all of the shares of Kingdom and Western Avenue to three entities”: Zephyr 2020, Inc., which is a Nevada corporation solely owned by Helmstetter; the Helmstetter Family Trust; and the Helmstetter Children’s Trust. (Mot. for Entry of Agreed Order, Appellant ROA at PageID#: 415; see also Agreed Order, Appellant ROA at PageID#: 418.) The parties agree that the stock transfers were “never completed by being registered with the requisite stock registry of” the dealerships. (Agreed Order at PageID#: 418.)

PageID#: 440; Trustee Mot. to Dismiss at 7), the court understands the agreed order as providing that if a court later determines that Helmstetter did once own 25 percent of Western Avenue's stock, the Trustee would be the sole owner of that stock.

Also on August 11, 2020, the Trustee moved for approval of the settlement agreement challenged in this appeal, resolving claims between the Trustee, Kingdom, Western Avenue, and Ruscitti, and a transfer of assets under 11 U.S.C. § 363(f).<sup>7</sup> (Mot. to Approve Settlement at PageID#: 422–38; Proposed Settlement Agreement at PageID#: 439–50.) The settlement agreement would end the state court litigation. It called for release of all parties in the Circuit Court Litigation from all claims and counterclaims; required them to file pleadings dismissing the claims and counterclaims with prejudice; and directed the Trustee to release any other past, present, or future claims of the estate against Ruscitti, Kingdom, Western Avenue, the Reinsurance Companies, and any other entities that Ruscitti owns in whole or in part. (Proposed Settlement Agreement at PageID#: 440–42.) The settlement agreement would also require Ruscitti and/or Kingdom to pay \$555,000.00 “in good funds to the Trustee for the benefit of the Estate.” (*Id.* at PageID#: 441.) And it would require the Trustee to transfer to Ruscitti and/or Kingdom the Trustee’s rights, titles, and interests in Kingdom, Western Avenue, and the Reinsurance Companies—whether “real, apparent or disputed.” (Mot. to Approve Settlement at PageID#: 430; *see also* Proposed Settlement Agreement at PageID#: 441; 11 U.S.C. § 363(f) (permitting a trustee to sell property of the estate “free and clear of any interest in such property of an entity other than the estate” in certain circumstances).)<sup>8</sup>

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<sup>7</sup> The title of the Trustee’s motion to approve the settlement agreement suggests that the agreement resolves claims only for the Trustee, Ruscitti, and Kingdom. (See Mot. to Approve Settlement at PageID#: 422, 427.) But the agreement itself states that Western Avenue is also a party. (See Proposed Settlement Agreement at PageID#: 439.)

<sup>8</sup> The settlement agreement would also require the Trustee to release the estate’s interest in an entity called “Kingdom Advertising” and in a domain name, Westernavenissan.com. (Mot. to Approve Settlement at PageID#: 430; Proposed Settlement Agreement at PageID#: 440–41.) In the briefing submitted to this court, neither side discusses these provisions.

Some two weeks later, on August 26, 2020, Helmstetter filed his third set of Schedules of Assets and Liabilities. (Second Amended Schedules, Appellant ROA at PageID#: 475–559.) He also filed, on August 31, 2020, an objection to the Trustee’s motion for approval of the settlement agreement, discussed in more detail below. (Helmstetter Obj., Appellant ROA at PageID#: 590–95.) Bryan D. King, whose law firm (Brown, Udell, Pomerantz & Delrahim (the “Brown Firm”)) had represented Helmstetter in the Circuit Court Litigation, also objected. (See Brown Firm Obj., Appellant ROA at PageID#: 588-89; Original Schedules at PageID#: 146; Trustee Mot. to Dismiss at 6 n.3.) In its objection, the Brown Firm argued that the settlement agreement did not sufficiently advise the Bankruptcy Court of a secured claim it had filed against the estate for the work it had completed in the Circuit Court Litigation. (Brown Firm Obj. at PageID#: 588.)

After a telephone hearing on September 1, 2020, Judge Cox granted both motions. (See Sept. 1, 2020 Hr’g Tr. [39]; Order Approving Settlement, Appellant ROA at PageID#: 625–26; Order Entering Agreed Order, Appellant ROA at PageID#: 627.) This appeal, timely filed by Helmstetter on September 15, 2020, followed.<sup>9</sup> Helmstetter did not request a stay pending appeal or post a bond, but the Trustee has not yet executed the terms of the settlement agreement. (See Trustee Mot. to Dismiss at 2.)

## **2. Helmstetter’s Schedules of Assets and Liabilities**

Helmstetter’s Schedules of Assets and Liabilities are central to his appeal and the other motions before this court. As noted, Helmstetter has filed three different sets of Schedules, each under penalty of perjury. (See Original Schedules at PageID#: 211; First Am. Schedules at PageID#: 389–90; Second Am. Schedules at PageID#: 554.) Attorney J. Kevin Benjamin represented Helmstetter when he filed the Original and First Amended Schedules. (See Bankruptcy Court Docket, Appellant ROA at PageID#: 50, 52.) Helmstetter substituted Richard L.

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<sup>9</sup> The Brown Firm did not file an appeal.

Hirsh as his counsel in May 2020, and it was Hirsh who represented Helmstetter when he filed the Second Amended Schedules. (*Id.* at PageID#: 52, 53.) The Second Amended Schedules incorporate analysis from a third attorney (Nicola S. Tancredi) and two forensic accountants (hereinafter, the “BERO Group”). (See, e.g., Helmstetter Obj. at PageID#: 590–91.)

As shown in the following chart, Helmstetter’s estimates of the value of his total assets and liabilities, all furnished under oath, have varied significantly. The estimated value of his liabilities increased by millions of dollars from the time he filed his Original Schedules to the time of the First Amended Schedules and by millions more by the time of the Second Amended Schedules. His estimated assets are similar in the Original and First Amended Schedules, but have ballooned from some \$8 million in those schedules to nearly \$60 million in the Second Amended Schedules.

	All Assets	Kingdom Assets	Liabilities	Balance
<b>Original Schedules (Nov. 4, 2019)</b>	\$8,414,579.67	\$5,000,000.00	\$6,597,144.72	\$1,817,434.95
<b>First Amended Schedules (Apr. 9, 2020)</b>	\$8,415,919.67	\$7,500,000.00	\$10,652,390.01	(\$2,236,470.33)
<b>Second Amended Schedules (Aug. 26, 2020)</b>	\$59,840,319.27 (revised to \$43,000,000 in Helmstetter’s briefing on appeal)	\$18,500,000.00	\$19,978,842.25	\$39,861,477.01

(Trustee Mot. to Dismiss at 5–6 (providing chart); see Original Schedules at PageID#: 146, 148; Nov. 5, 2019 Summary of Assets and Liabilities, Appellant ROA at PageID#: 236–37; First Am. Schedules at PageID#: 325, 328, 330, 388; Second Am. Schedules at PageID#: 479, 483, 489; Aug. 26, 2020 Summary of Assets and Liabilities, Appellant ROA at PageID#: 574.)

Helmstetter has now dialed that inflation back in part. (Helmstetter Opp. to Trustee Mot. to Dismiss (“Helmstetter Opp.”) [25] at 11 n.5 (maintaining “certain sums [were entered] under different categories” in the Second Amended Schedules, which resulted in an “overstatement”).)

According to Helmstetter, the total value of his assets is \$43 million. (*Id.*) If that is true, the value of his assets exceeds his liabilities (according to the Second Amended Schedules) by some \$23 million—by the court’s calculation. Curiously, Helmstetter himself states that the balance is \$20 million. (See, e.g., *id.* (stating that despite the “overstatement” of the total value of assets, the BERO Group “stand[s] behind the estimated surplus of \$20 million”).)

At the time the Trustee negotiated the proposed settlement agreement and transfer of assets, Helmstetter had not yet filed the Second Amended Schedules, and the Trustee therefore relied on the information set forth in the First Amended Schedules. (See Helmstetter Obj. at PageID #: 590; Trustee Mot. to Dismiss at 6; Helmstetter Opp. at 9.)<sup>10</sup>

#### **a. Kingdom Assets**

As the court understands the Original Schedules, Helmstetter valued his potential recovery in the Circuit Court Litigation (where he sought to enforce his ownership interest in the dealerships) at \$5 million, a projected recovery he identified as the “Kingdom Assets.” (Original Schedules at PageID #: 146.) In the First Amended Schedules, it appears that Helmstetter identified the Kingdom Assets as (1) the Circuit Court Litigation (which he again valued at \$5 million) and (2) his alleged ownership interest in the Reinsurance Companies, which he valued at \$2.5 million. (First Am. Schedules at PageID #: 325, 328.) And in the Second Amended Schedules, Helmstetter again identified the Kingdom Assets as (1) the potential recovery in the Circuit Court Litigation, which he now valued at \$16 million and (2) his interest in the Reinsurance Companies, which he again valued at \$2.5 million. (Second Am. Schedules at PageID #: 479,

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<sup>10</sup> According to Helmstetter, attorney Tancredi tried to contact the Trustee by phone before the Trustee moved for approval of the settlement agreement, in an effort to present the BERO Group’s analysis of Helmstetter’s assets and liabilities. (Helmstetter Opp. at 5–6.) The court has found no reference to that telephone call in the record of the Bankruptcy Court proceedings, however, and therefore disregards it. See, e.g., *Diekemper v. Eggman*, No. 12-CV-1219-JPG, 2013 WL 1308976, at \*2 (S.D. Ill. Apr. 1, 2013), *aff’d sub nom. In re Diekemper*, No. 13-1843, 2013 WL 6438404 (7th Cir. Aug. 22, 2013) (when adjudicating a bankruptcy appeal, a district court can consider only documents that were presented to the bankruptcy court).

483.)

Helmstetter's valuation of the Circuit Court Litigation in the Second Amended Schedules is, thus, more than triple the amount at which he valued that same asset in the Original and First Amended Schedules. The court has located an asset-by-asset breakdown of the Circuit Court Litigation only in the BERO Report—which Helmstetter did not file with his Second Amended Schedules, and appears only as an exhibit to his objection to the proposed settlement agreement. The BERO Group prepared that report from an analysis of Kingdom's financial documents from May 2016 and earlier. (See BERO Report at PageID#: 601–11.)<sup>11</sup> Based on those documents, the BERO Group estimated that Kingdom owes Helmstetter \$12.7 million or more, comprising: \$7 million, which the BERO Group estimated is 33 percent of the present-day market value of Kingdom; \$1.1 million in unpaid salary and bonuses; \$3.1 million in "unpaid dividends"; \$1.5 million, which the BERO Group estimated is 33 percent of the "excess executive compensation" allegedly paid to Ruscitti in unspecified years; and several assets whose value the BERO Group did not estimate. (BERO Report at PageID#: 604–05.)

In its Report, the BERO Group does not explain specifically how its \$12.7 million figure rounds up to \$16 million. Perhaps the BERO Group was also counting Helmstetter's disputed 25 percent ownership interest in Western Avenue among the Kingdom Assets. The BERO Report analyzed Western Avenue's financial statements and tax returns dated December 2015 and earlier (again because Helmstetter reportedly did not have more current records at the time he filed his objection in the Bankruptcy Court). (See Helmstetter Obj. at PageID#: 593.) Based on those early documents, and assuming that Helmstetter has a 25 percent ownership interest in Western Avenue, the BERO Group estimated that Western Avenue owes Helmstetter \$4,082,000

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<sup>11</sup> When Helmstetter filed his objection in the Bankruptcy Court, he reportedly did not have access to Kingdom documents post-dating May 2016, but he did not say why. (See Helmstetter Obj. at PageID#: 593 (stating that the BERO Group relied on documents "produced to date" and on publicly available materials).) Helmstetter did not file the documents underlying the BERO Report in the Bankruptcy Court. (See *id.* at PageID#: 594.)

million or more, comprising: \$1.6 million, which the BERO Group estimated is 25 percent of the present-day market value of Western Avenue; \$1.1 million in unpaid salary and bonuses; \$1.3 million in “unpaid dividends,” which the BERO Group estimated is 25 percent of the “dividends paid to Ruscitti in 2015”; \$82,000, which the BERO Group estimated is 25 percent of “rent [paid] in excess of [Western Avenue’s] lease agreement”; and several assets whose value the BERO Group did not estimate. (BERO Report at PageID#: 615–16.)

The Kingdom- and Western Avenue-related assets described in the BERO Report total \$16.8 million.

**b. Other Assets**

Helmstetter’s “other” assets consist of all of his assets that are not part of the Kingdom Assets: \$3,414,579.67 in the Original Schedules and \$915,919.67 in the First Amended Schedules. Neither side explains the reason for the difference, but the court assumes that the answer lies in how Helmstetter counted his alleged interest in the Reinsurance Companies (*i.e.*, as an “other” asset or a Kingdom Asset). The parties do not discuss what kind of property comprised the “other” assets in the Original and First Amended Schedules.

In his third submission, Helmstetter’s valuation of his “other” assets grew from less than \$1 million to \$24.5 million: the Second Amended Schedules (as revised by Helmstetter in his briefing before this court) reported \$43 million in total assets including \$18.5 million in Kingdom Assets. Helmstetter told the Bankruptcy Court that the “other” assets include 23 “claims . . . against various third parties” that, according to Tancredi and the BERO Group, are worth approximately \$20 million. (Helmstetter Obj. at PageID#: 590–91.) Neither side discusses what kind of property comprises the remaining \$4.5 million in “other” assets.

In the objection he filed with the Bankruptcy Court, Helmstetter did not describe the claims he has against third parties. Instead, he simply attached to the objection a chart that he had previously attached to the Second Amended Schedules. (See Ex. A to Helmstetter Obj., Appellant ROA at PageID#: 596–600; Third-Party Claim Chart, Appellant ROA at PageID#: 555–

59.) That chart presents no basis for the \$20 million valuation. The first claim is a representative example: the chart identifies the parties and the purported causes of action, including “fraudulent financial accounting practices.” (Ex. A to Helmstetter Obj. at PageID#: 596.) The chart values that claim at \$7.5 million based on the following description: Claim by “Michael Helmstetter/New City Historic Auto Row, Inc.” against “FCA/Santander for damages caused by FCA/Santander by unordered vehicles forced onto New City Historic Auto Row, Inc., and for Santander forcing the dealership into default and alleged tortious interference by Santander in the dealership’s business operations.” (*Id.*) According to Helmstetter’s objection, New City Historic Auto Row, Inc. is “one of [his] dealerships.” (Helmstetter Obj. at PageID#: 592.) Without more context, there is no way to estimate the value of this claim, let alone contend that the value is as much as \$7.5 million, or discern whether Helmstetter would, in his individual capacity, be entitled to the full amount of any recovery.

Notably, although Helmstetter stated in the objection he filed with the Bankruptcy Court that he has 23 claims against third parties whose total value is \$20 million (see *id.* at PageID#: 591), the Third-Party Claim Chart lists more than 23 claims and values them at more than twice that amount—the Chart estimates that the total value of third-party claims exceeds \$40 million. In other words, it appears that Helmstetter is not counting everything in the chart as an “other” asset. The court can detect two reasons for this. First, one of the claims listed in the chart is the Circuit Court Litigation, valued at \$16.8 million. (See Third-Party Claim Chart at PageID#: 555; Ex. A to Helmstetter Obj. at PageID#: 596.) Helmstetter counts the Circuit Court Litigation (valued at \$16 million) as a Kingdom Asset in the Second Amended Schedules, so to treat it as an “other” asset—as he treats the 23 claims against third parties—would double count it. In fact, it appears that Helmstetter did just that when he stated in his Second Amended Schedules that his total assets are approximately \$59.8 million. As discussed above, Helmstetter later reduced that estimate by approximately \$16.8 million, to \$43 million. (See Helmstetter Opp. at 11 n.5.) Second, Helmstetter concedes that the statute of limitations has run for certain claims that are

listed in the chart. (See Helmstetter Obj. at PageID#: 591 (“The claims bar date having passed, only 23 claims have been filed and they total about \$20,000,000.”).) The court assumes that, because those claims are time-barred, Helmstetter is not planning to pursue them and therefore is not counting them as “other” assets.

#### **c. Liabilities**

As noted earlier, the scheduled value of Helmstetter’s liabilities tripled between the Original and Second Amended Schedules, and nearly doubled between the First and Second Amended Schedules. This court could not locate any explanation for the increases in the record that Helmstetter provided on appeal.

#### **3. Helmstetter’s Objection to the Motion to Approve the Settlement Agreement**

In the motion to approve the settlement agreement, the Trustee stated that he had “compared the value of the agreement with the costs, effort and risks associated with continuing” the Circuit Court Litigation. (Mot. to Approve Settlement at PageID#: 433.) He explained why the cost-benefit analysis led him to conclude that the settlement is in the estate’s best interest. (*Id.*) Helmstetter objected on the ground that the Trustee had not considered the Second Amended Schedules, which, according to Helmstetter, reflect “[t]he true, accurate and appropriate valuation of” his assets. (Helmstetter Obj. at PageID#: 590.) Helmstetter maintains that his assets are sufficient to pay all creditors and, after doing so, are “very likely” to leave him a surplus. (*Id.*) By contrast, he argued, the proposed \$555,000 payment to the estate contemplated under the settlement agreement would be insufficient even to pay his creditors. (*Id.* at PageID#: 593.)

Helmstetter informed the Bankruptcy Court that attorney Tancredi had sought the Trustee’s permission to pursue the Circuit Court Litigation, and was prepared to litigate Helmstetter’s other claims against third parties on behalf of the estate. (*Id.* at PageID#: 592.) It appears that Helmstetter did not disclose to the Bankruptcy Court how much Tancredi planned to charge for that work. As discussed below, the Trustee represented to the Bankruptcy Court that Tancredi had proposed charging a 50 percent contingency fee.

#### **4. Bankruptcy Court Hearing and Order on Motion to Approve Settlement**

During the September 1, 2020 hearing on the Trustee’s motion to approve the settlement agreement, the Trustee’s counsel stated that there is “no . . . cash in [the] estate” other than the \$555,000 it would receive under the agreement. (Sept. 1, 2020 Hr’g Tr. [39] at 3:11–13.) He also emphasized that the Circuit Court Litigation was filed in 2014; has not advanced beyond written discovery; and could “take many more years.” (*Id.* at 3:13–17.) He reiterated that the Trustee’s “duty is to quickly turn assets into cash to distribute to creditors.” (*Id.* at 3:18–19.)

Moreover, the Trustee’s counsel noted that there is “no real support” for Helmstetter’s contention that the potential recovery in the Circuit Court Litigation is \$16 million. (*Id.* at 8:24–9:3.) To recover that \$16 million, the estate would have to pay the Brown Firm for its prior work and hire Tancredi, “who wants a 50 percent contingent fee.” (*Id.* at 9:6–12; *see also* Mot. to Approve Settlement at PageID#: 434 (same).) According to the Trustee’s counsel, completing those steps would cut a \$16 million recovery to “something like \$4 million”—which would not come close to paying the \$20 million in liabilities recorded in the Second Amended Schedules. (Sept. 1, 2020 Hr’g Tr. at 9:14–16.) Finally, the Trustee’s counsel argued that, because the estate’s liabilities exceed its assets, Helmstetter lacked standing to object to the proposed settlement agreement. (See *id.* at 9:13–19.)

At the hearing on this motion, Helmstetter’s bankruptcy attorney, Hirsh, argued that the proposed settlement undervalued Helmstetter’s claims in the Circuit Court Litigation and would deny recovery for any unsecured creditors. (*Id.* at 4:22–5:1.) Citing the Second Amended Schedules, the Third-Party Claim Chart, and the BERO Report, Hirsh maintained that the estate’s assets could “probably” pay “the general unsecured creditors” and “even possibly [leave] a surplus” for Helmstetter. (*Id.* at 5:2–19; *see also id.* at 12:2–9 (similar).) Helmstetter’s counsel did not dispute that Tancredi proposed charging a 50 percent contingency fee for his work on the Circuit Court Litigation. (See generally *id.*)

The Bankruptcy Court granted the Trustee’s motion to approve the settlement agreement

on September 1, 2020. (Order Approving Settlement at PageID#: 625–26.) In a written order, the court stated that it had considered whether the estate could successfully litigate the claims involving Ruscitti, Kingdom, and Western Avenue. (*Id.* at PageID#: 626.) The court also stated that it had considered “the complexity, expense and likely duration of such litigation, the possible difficulties in collecting on any judgment which could be obtained and all other factors relevant to a full and fair assessment of the wisdom of the proposed settlement.” (*Id.*) “The most important factor,” the court stated, “is that the underlying litigation has been pending since 2014.” (*Id.* (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (setting forth factors a bankruptcy court should consider in determining whether a settlement is “fair and equitable”)).) The court concluded that the settlement agreement was fair, reasonable, and “in the best interests of the estate.” (Order Approving Settlement at PageID#: 626.) The court overruled Helmstetter’s and the Brown Firm’s objections without additional discussion. (*Id.*)

## DISCUSSION

On September 16, 2020, Helmstetter filed his notice of appeal of the Bankruptcy Court’s order approving the settlement agreement and transfer of assets [1]. On November 16, 2020, the Trustee filed a motion to dismiss the appeal [14]. The Trustee argues that because there is “no evidence” to support Helmstetter’s assertion that there will be leftover funds after the estate pays all creditors, Helmstetter would not benefit financially from reversal of the Bankruptcy Court’s order and therefore lacks standing to challenge it. (Trustee Mot. to Dismiss at 5.) On December 4, 2020, Helmstetter filed a motion “to supplement the record and for leave to file special interrogatories and requests to produce and for alternative relief” (“Helmstetter Mot. to Supplement”) [20]. For the reasons explained below, the court denies Helmstetter’s motion to supplement the record and dismisses the appeal.

### **A. Helmstetter’s Motion to Supplement**

In his motion to supplement the record, Helmstetter seeks leave to take “special discovery”

regarding the “factual or legal predicate” for the Trustee’s argument that Helmstetter cannot reasonably expect a surplus. (Helmstetter Mot. to Supplement ¶¶ 9, 12.) Specifically, Helmstetter asks for permission to serve interrogatories and requests for production of documents that would identify the factual and legal bases for the Trustee’s positions that (1) Helmstetter has nearly \$20 million in liabilities;<sup>12</sup> (2) the BERO Group’s estimate of the estate’s likely surplus (approximately \$20 million) is incorrect; and (3) the BERO Group’s analysis “should not be determinative.” (Proposed Interrogatories & Requests for Production, Ex. 1 to Helmstetter Mot. to Supplement [20-1] at 1–5, 6–8.) Assuming that the court grants Helmstetter permission to serve those discovery requests, Helmstetter asks the court to require the Trustee to file whatever responses he provides “as supplements to the record on appeal.” (Helmstetter Mot. to Supplement, Prayer for Relief.) In the alternative to supplemental discovery, Helmstetter asks the court to appoint a special master to “investigate” his solvency and to hold an evidentiary hearing on that issue. (*Id.* ¶¶ 18–19.)

The Trustee responds that Helmstetter’s motion should be denied because this court cannot properly consider evidence that was not before the Bankruptcy Court. The court agrees. “When considering an appeal from a bankruptcy court, district courts act as appellate courts. . . . As such, a district court considering a bankruptcy appeal may only consider evidence that was before the bankruptcy court and made part of the record.” *Diekemper*, 2013 WL 1308976, at \*2; see also *In re Loefgren*, 305 B.R. 288, 291 (W.D. Wis. 2003), aff’d, 85 F. App’x 522 (7th Cir. 2003) (similar).

By definition, the evidence that Helmstetter seeks was not before the Bankruptcy Court. Furthermore, Helmstetter does not dispute that he made no attempt to obtain the evidence in the bankruptcy proceedings, and he provides no explanation for his failure to do so. Finally,

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<sup>12</sup> Helmstetter’s challenge to the amount of his liabilities is puzzling because, in the Second Amended Schedules, he confirms that his liabilities are \$19,978,842.25. (Second Am. Schedules at PageID #: 574.) He has never revised that figure or stated that it is incorrect.

Helmstetter's contention that the Trustee did not make adequate attempts to gather and value his assets is unpersuasive, especially considering the Trustee's statement in his Rule 2004 motion that Helmstetter himself failed to cooperate with several requests for discovery concerning his assets and liabilities. (Rule 2004 Mot. at PageID#: 313.) Even without that, Helmstetter's argument is waived because he does not explain how the Trustee's efforts to gather and value his assets were deficient. (Helmstetter Reply to Mot. to Supplement [27] at 2; *see Uncommon, LLC v. Spigen, Inc.*, 926 F.3d 409, 425 (7th Cir. 2019) ("arguments that are underdeveloped, conclusory, or unsupported by law are waived" (internal quotation marks omitted)).)

Helmstetter's motion to take additional discovery and for alternative relief is denied. Helmstetter cites no authority for the proposition that the court can or should appoint a special master in this circumstance, and the court does not need an evidentiary hearing to understand the record.

#### **B. Trustee's Motion to Dismiss**

In his motion to dismiss, the Trustee argues that Helmstetter lacks standing to appeal the Bankruptcy Court's order approving the settlement and transfer of assets, and that this court must therefore dismiss the appeal. As discussed here, the court agrees.

##### **1. Legal Standard**

A federal district court has jurisdiction to hear appeals from a bankruptcy court's "final judgments, orders, and decrees." 28 U.S.C. § 158(a)(1). The Bankruptcy Court's order approving the settlement agreement and transfer of assets was a final judgment because it resolved all disputes between the estate, Kingdom, Western Avenue, and Ruscitti. *See, e.g., Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 586 (2020) ("Orders in bankruptcy cases qualify as 'final' when they definitively dispose of discrete disputes within the overarching bankruptcy case."). A district court reviews a bankruptcy court's approval of a settlement "deferentially, for abuse of discretion." *In re Drs. Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). "The abuse of discretion standard recognizes that because of the bankruptcy judge's unique position,

second-guessing by appellate courts will do little to improve upon bankruptcy judges' decisions."

*Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586–87 (7th Cir. 1994) (internal quotation marks omitted). "Factual findings are reviewed for clear error; legal conclusions are reviewed de novo." *In re Drs. Hosp.*, 474 F.3d at 426; *see also*, e.g., *In re Jepson*, 816 F.3d 942, 945 (7th Cir. 2016). Likewise, although a bankruptcy court cannot simply "rubber stamp" a trustee's settlement decision, it must give "[s]ome deference . . . to the trustee's expertise." *In re Commercial Loan Corp.*, 316 B.R. 690, 698 (Bankr. N.D. Ill. 2004) (internal quotation marks omitted). This court will exercise jurisdiction to review the merits of Helmstetter's appeal only if he has standing to challenge the bankruptcy court's order. *See*, e.g., *In re GT Automation Grp., Inc.*, 828 F.3d 602, 604 (7th Cir. 2016). The burden is on Helmstetter to show that he does. *Id.* at 605.

In its bankruptcy jurisprudence, the Seventh Circuit has discussed both Article III standing and "bankruptcy standing." *See*, e.g., *id.* at 604–05 & n.1. To establish Article III standing, the plaintiff must show that he "has suffered an 'injury in fact,' which is 'fairly traceable' to the challenged action of the defendant, and which would 'likely' be redressed by a favorable decision." *Id.* at 604 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–62 (1992)). Mere speculation that a favorable decision would redress the injury is insufficient. *See GT Automation*, 828 F.3d at 604. "In the bankruptcy context," the Seventh Circuit has explained that "an appellant lacks standing if it is 'unable to realize any economic benefit from a potential reversal.'" *Id.* (quoting *In re Stinnett*, 465 F.3d 309, 315 (7th Cir. 2006)). Thus, in *GT Automation*, an unsecured creditor failed to demonstrate Article III standing where it could not say whether it "would get 'even a dollar' from a favorable decision"; argued only that it was "theoretically possible" that it could receive some financial benefit; did not know how many claims had been filed against the estate that would take priority over its own; and did not know the likelihood that the bankruptcy court would approve any of those claims. 828 F.3d at 605.

In decisions predating *GT Automation*, the Seventh Circuit has referred to "bankruptcy standing" as "'a form of prudential standing' . . . that is 'narrower than Article III standing.'" *GT*

*Automation*, 828 F.3d at 605 n.1 (quoting *In re Ray*, 597 F.3d 871, 875 (7th Cir. 2010); *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 607 (7th Cir. 1998)). The court in *Cult Awareness* stated that to establish “bankruptcy standing,” “a person must have a pecuniary interest in the outcome of the bankruptcy proceedings.” *Cult Awareness*, 151 F.3d at 607. It further explained that “[i]f the debtor can show a reasonable possibility of a surplus after satisfying all debts, then the debtor has shown a pecuniary interest and has standing to object to a bankruptcy order.” *Id.* at 608; *see also*, e.g., *Stinnett*, 465 F.3d at 315 (quoting same); *In re Andreuccetti*, 975 F.2d 413, 416 (7th Cir. 1992) (“A ‘person aggrieved’ by a bankruptcy order must demonstrate that the order diminishes the person’s property, increases the person’s burdens, or impairs the person’s rights.” (internal quotation marks omitted)).

There is some debate regarding whether the Seventh Circuit’s characterization of “bankruptcy standing” as a form of prudential standing survives the Supreme Court’s decision in *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). In *Lexmark*, the Court considered “the appropriate analytical framework for determining a party’s standing to maintain an action for false advertising under the Lanham Act.” *Id.* at 125 (internal quotation marks omitted). The defendant agreed that the plaintiff had Article III standing but argued that the Court should “decline to adjudicate” the claim for “prudential” rather than constitutional reasons. *Id.* at 125–26. The Court refused that request. *See id.* at 128. It reiterated that a federal court’s duty to decide cases that are within its jurisdiction “is virtually unflagging.” *Id.* at 126 (internal quotation marks omitted). The Court then explained that although it had used the term “prudential standing” in recent jurisprudence, the label was inapt because the Court had been using it to describe what was actually an issue of statutory interpretation: “whether a legislatively conferred cause of action encompassed a particular plaintiff’s claim.” *See id.* at 126–28. The Court warned that “[j]ust as a court cannot apply its independent policy judgment to recognize a cause of action that Congress has denied . . . it cannot limit a cause of action that Congress has created merely because ‘prudence’ dictates.” *Id.* at 128. In *GT Automation*, the Seventh Circuit flagged this discussion,

suggesting that it might affect whether “the standing analysis in bankruptcy cases involves any ‘prudential’ considerations.” 828 F.3d at 605 n.1. But because the case before the Seventh Circuit concerned only Article III standing, it left that question to another day. *See id.*

Here, Helmstetter advances only one theory of standing: that the estate will have a surplus after it pays all creditors, and that reversing the Bankruptcy Court’s order would permit him to collect the surplus. The Trustee, for his part, contends that Helmstetter offers only conjecture to support his theory. The parties’ dispute sounds in Article III. *See GT Automation*, 828 F.3d at 604 (appellant lacks standing if he is “unable to realize any economic benefit from a potential reversal” of the bankruptcy court’s order). Notably, the “pecuniary interest” test has the same focus; indeed, the Seventh Circuit cited it in articulating the Article III standard for bankruptcy cases. *See Stinnett*, 465 F.3d at 315 (“To have standing to object to a bankruptcy order, a person must have a pecuniary interest in the outcome of the bankruptcy proceedings.” (quoting *Cult Awareness*, 151 F.3d at 607); *GT Automation*, 828 F.3d at 604 (quoting same)). The parallels between the standards support a conclusion that where, as here, debtor standing turns only on the possibility of recovering a surplus, the framework for assessing Article III and “bankruptcy” standing is the same. At its core, it asks whether that possibility is too remote to support the exercise of the court’s jurisdiction. *See GT Automation*, 828 F.3d at 605 (“theoretical[ ] possib[ility]” that favorable decision would yield financial benefit is insufficient to confer standing); *Cult Awareness*, 151 F.3d at 608 (debtor must show a “*reasonable* possibility of a surplus” (emphasis added)). To establish that he has standing here, Helmstetter must show more than a remote possibility that he could recover a surplus if the Bankruptcy Court’s decision is reversed. It bears mention that in discussing both Article III standing and “bankruptcy” standing, the Seventh Circuit has observed that “[d]ebtors, *particularly Chapter 7 debtors*, rarely have” a pecuniary interest in the outcome of a bankruptcy court’s order “because no matter how the estate’s assets are disbursed by the trustee, no assets will revert to the debtor.” *Cult Awareness*, 151 F.3d at 607 (emphasis added); *GT Automation*, 828 F.3d at 604–05 (same).

## 2. Analysis

The Trustee argues that Helmstetter has offered “no evidence” that “the value of the assets and causes of action involved in the” settlement agreement—*i.e.*, all claims against Ruscitti, Kingdom, Western Avenue, and the Reinsurance Companies—exceeds his \$20 million in liabilities. (Trustee Mot. to Dismiss at 5.) He also argues that Helmstetter offers no support for the valuation of his claims against other third parties. (See *id.* at 9.) According to the Trustee, therefore, Helmstetter cannot show that he has a reasonable expectation of recovering a surplus after paying all creditors.

Helmstetter does not dispute that the estate has nearly \$20 million in liabilities. (See generally Helmstetter Opp.) Citing the Second Amended Schedules and the BERO Report, however, he maintains that the estate will have a surplus of approximately \$20 million after paying all creditors. (*Id.* at 11, 12; see also *id.* at 15 (stating that, according to the BERO Group, “it is unclear why Appellant filed bankruptcy at all”)).<sup>13</sup> As explained here, the court agrees with the Trustee that Helmstetter’s expectation in recovering a surplus is speculative, and that he therefore lacks standing to challenge the Bankruptcy Court’s order approving the settlement agreement and transfer of assets.

As the Trustee observes, Helmstetter’s valuation of the Kingdom Assets (including his purported interest in the Reinsurance Companies) increased from \$7,500,000 to \$18,500,000 between the First and Second Amended Schedules. (Trustee Mot. to Dismiss at 6.) According

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<sup>13</sup> Yet it was Helmstetter himself who filed the bankruptcy petition. Helmstetter also relies on the affidavit of Deborah J. Temkin, one of the BERO Group’s forensic accountants, for the proposition that his estate will have a \$20 million surplus. (Temkin Aff., Ex. 1 to Helmstetter Opp. [25-1].) The court strikes the Temkin Affidavit because Helmstetter did not present it to the Bankruptcy Court. See, e.g., *Diekemper*, 2013 WL 1308976, at \*2. In any event, the Temkin Affidavit does not help Helmstetter establish that his assets exceed his liabilities. Specifically, it states that the value of Helmstetter’s interests in Kingdom is approximately \$11.9 million—which is *less* than the \$12.7 million value set forth in the BERO Report. (See Temkin Aff. ¶¶ 14, 21–26; BERO Report at PageID#: 604–05.) The failure of Helmstetter and Temkin to acknowledge that inconsistency calls into question the reliability of the BERO Group’s analysis.

to the Trustee, the only explanation Helmstetter has offered for the increase is his assertion that attorney Tancredi could obtain a judgment in the Circuit Court Litigation of \$16 million or more. (See *id.*) The Trustee contends that the possibility of a \$16 million judgment is speculative for several reasons. First, he states that Helmstetter's 25 percent ownership interest in Western Avenue is "vigorously disputed" and argues that the state court will not necessarily find in Helmstetter's favor on that issue. (*Id.* at 7.) The fact that only minimal discovery had been completed in the Circuit Court Litigation before the automatic stay adds to the uncertainty on that issue. (See *id.*)

Second, the Trustee emphasizes that Helmstetter's undisputed 33 percent interest in the market value of Kingdom and his disputed 25 percent ownership interest in the market value of Western Avenue are not liquid assets. (See *id.* at 8.) Rather, they are minority shareholder interests in closely held corporations. (*Id.*) To liquidate those interests, Helmstetter would need to find a purchaser willing to become a business partner with Ruscitti. (*Id.*) That would, as the Trustee observes, limit the market of purchasers—particularly because Ruscitti has been embroiled in litigation with his former business partner—and depress the value of the shares. (*Id.*) In any event, Helmstetter would be unable to liquidate his minority shares until the Circuit Court Litigation concludes, which will not happen soon, if the pace of the litigation to date is any indication. These circumstances render it difficult to make an accurate estimate of the future market values of Kingdom and Western Avenue. (*Id.*)

Third, the Trustee points out that Ruscitti, Kingdom, and Western Avenue have adverse claims against Helmstetter in the Circuit Court Litigation for "\$700,000.00 and \$1,383,591.69." (*Id.*) The difficulty in predicting the outcome of the adverse claims "further diminishes the value of the estate's interests in" the Circuit Court Litigation, the Trustee argues. (*Id.* at 8–9.) In addition, there is the issue of the contingency fees: even if the estate recovers \$16 million in the

Circuit Court Litigation, the Trustee notes, it would have to pay a 50 percent contingency fee.<sup>14</sup> Finally, the Brown Firm would take a portion of the recovery as payment for its prior work<sup>15</sup> and the estate would owe “administrative costs and Trustee fees.” (*Id.* at 9–10.)

Helmstetter brushes these concerns aside, urging that the Trustee’s arguments lack “any credible, substantial or material factual predicate or evidentiary foundation” and are “contrary to the manifest weight of evidence.” (Helmstetter Opp. at 3.) The court disagrees. In advancing his arguments, the Trustee relies on evidence in the bankruptcy record, including the Original, First, and Second Amended Schedules; undisputed facts about how the Circuit Court Litigation progressed before the bankruptcy stay; undisputed facts about the corporate structures of Kingdom and Western Avenue; and attorney Tancredi’s undisputed proposal to charge a 50 percent contingency fee (including the BERO Group’s 25 percent fee) to pursue the Circuit Court Litigation. Furthermore, it is Helmstetter’s burden to establish that he has standing, *GT Automation*, 828 F.3d at 605, and Helmstetter does not adequately respond to the substance of the Trustee’s concerns about his asset valuations.

In his opposition brief, for example, Helmstetter again fails to dispute that Tancredi proposed charging a 50 percent contingency fee in the Circuit Court Litigation. Instead, Helmstetter states that “[e]ven assuming that a contingency fee of 50% . . . might have been initially proposed; there is no reasonable basis that this rate was mandatory.” (Helmstetter Opp. at 17.) The court declines Helmstetter’s invitation to “take judicial notice” that there are other lawyers available and that “it is reasonable to anticipate that a significant number of Plaintiff

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<sup>14</sup> The Trustee had characterized this as a 50 percent contingency fee payable to attorney Tancredi. In his reply, the Trustee explains that Tancredi proposed charging “a 25% contingent fee for his services and an additional 25% contingent fee for the services of the BERO Group.” (Trustee Reply [29] ¶ 4.)

<sup>15</sup> The Trustee states that the Brown Firm’s attorneys’ fees are “21%.” (Trustee Mot. to Dismiss at 9.) It is unclear whether this is a reference to a separate contingency fee that the Brown Firm would take from any recovery, or to the firm’s secured claim for work that it already completed.

attorneys would be available at mutually beneficial terms.” (*Id.*) To the contrary, the notion that other attorneys would be willing to propose more reasonable terms to pursue Helmstetter’s claims is purely speculative. On the record that Helmstetter has provided to this court, Tancredi is the only attorney who has offered to pursue the Circuit Court Litigation in place of the Brown Firm, and the only one who has valued the potential recovery from that litigation at \$16 million. And Tancredi’s request for such a substantial contingency (including the portion he may be sharing with the BERO Group) speaks volumes about his own confidence in the likely outcome. Assuming Tancredi could obtain a \$16 million judgment, the contingency fees would reduce the estate’s interest in the judgment to \$8 million.

The Trustee emphasizes that Helmstetter’s \$16 million valuation of this asset rests on several assumptions, including that Helmstetter will prevail on all claims in the Circuit Court Litigation; that the alleged present-day market values of Kingdom and Western Avenue will be the same when the Circuit Court Litigation concludes; and that Helmstetter will be able to find a buyer for his minority interests in those entities at their fair market prices. True, the Trustee cannot provide hard evidence that disproves Helmstetter’s assumptions. (See, e.g., Helmstetter Opp. at 10 (arguing that the Trustee “never filed any expert reports or . . . documentation” to show that the \$16 million valuation of the Kingdom Assets is incorrect).) But Helmstetter bears the burden of proof on this issue, and the absence of expert reports or documentation illustrates the Trustee’s point: whether Helmstetter has standing depends on events that may or may not occur. Case law supports the Trustee’s argument that the very types of assumptions he identifies undermine debtor standing. See, e.g., *Cult Awareness*, 151 F.3d at 608 (where debtor had to “win a very large [court] award . . . to have any chance at a surplus” and it was uncertain whether debtor would be able to “collect th[e] judgment, pay its litigation costs and attorneys’ fees, and have anything left over,” debtor did not show a “reasonable possibility of a surplus” sufficient to confer standing). Helmstetter has not distinguished *Cult Awareness*, nor has he addressed any other case law about debtor standing. His failure to show that the Second Amended Schedules (or the

BERO Report) account for these uncertainties casts serious doubt on the notion that he could recover \$16 million in the Circuit Court Litigation.

So, too, do several other aspects of the bankruptcy record. Chief among them is that Helmstetter swore to the accuracy of all three Schedules of Assets and Liabilities, yet offers scant support for the substantial increase in the estimated value of the Circuit Court Litigation from \$5 million in the first two Schedules to \$16 million in the third. The only explanation appears to be a change in counsel. In addition, Helmstetter presented inconsistent valuations of the Circuit Court Litigation in the same submission (\$16 million in the Second Amended Schedules versus \$16.8 million in the attached Third-Party Claim Chart); he initially double-counted, including both valuations toward his total assets; and in the September 1, 2020 hearing before the Bankruptcy Court, Helmstetter's new counsel stated only that it was "possibl[e]" that the funds in the estate could leave Helmstetter a surplus. (Sept. 1, 2020 Hr'g Tr. at 5:13–19.)

Even if Helmstetter could explain away these concerns regarding valuation of the Kingdom Assets, the Trustee contends that the value Helmstetter assigns to other claims against third parties is "unsubstantiated." (Trustee Mot. to Dismiss at 9.) Relatedly, the Trustee observes that Helmstetter provided no explanation in the bankruptcy record for the total increase in "other" assets from approximately \$3.4 million in the Original Schedules to \$41.3 million the Second Amended Schedules. (See *id.* at 6, 9.) (To reiterate, Helmstetter now states that the value of total assets is approximately \$43 million, see Helmstetter Opp. at 11, meaning that the purported total value of "other" assets is approximately \$24.5 million. Of that \$24.5 million, the claims against third parties purportedly comprise approximately \$20 million.)

Again, the court agrees with the Trustee. Helmstetter provides no support for his contention that his claims against third parties are worth \$20 million. As discussed above, the Third-Party Claim Chart contains no information that could substantiate the values Helmstetter assigns to each claim. In the Bankruptcy Court, moreover, Helmstetter did not explain whether he included those claims in the Original and First Amended Schedules; if so, how he valued the

claims; and if not, why not. The briefing Helmstetter has submitted to this court suffers the same deficiencies. The court concludes that Helmstetter's \$20 million valuation of claims against third parties is conjectural, and that he cannot properly rely on it to show that his assets exceed his liabilities. *Cf. GT Automation*, 828 F.3d at 605 (mere possibility that unsecured creditor could benefit from a favorable decision did not establish standing).

To summarize: Helmstetter concedes that the estate has approximately \$20 million in liabilities (\$19,978,842.25, to be precise). (Second Am. Schedules at PageID#: 574.) He contends that his total assets are \$43 million, comprising: the Kingdom Assets (the Circuit Court Litigation valued at \$16 million plus the purported interest in the Reinsurance Companies valued at \$2.5 million); claims against third parties valued at approximately \$20 million; and unspecified assets valued at \$4.5 million. Because Helmstetter's \$20 million valuation of his claims against third parties is speculative, the court will not count those claims among the estate's assets. For purposes of this ruling, the court will give Helmstetter the benefit of the doubt on the following issues: Tancredi could recover \$16 million in the Circuit Court Litigation (despite the many assumptions on which the \$16 million valuation relies); Helmstetter could recover his purported \$2.5 million interest in the Reinsurance Companies without litigation (despite that the interest is disputed and appears to be at issue in the Circuit Court Litigation); Helmstetter's estate has \$4.5 million in other assets (despite that Helmstetter makes no effort to explain that valuation to this court); the Brown Law firm's secured claim for its work on the Circuit Court Litigation is already recorded as a liability in the Second Amended Schedules; and the potential damages stemming from adverse claims against Helmstetter in the Circuit Court Litigation are already recorded as a liability in the Second Amended Schedules. After paying the 50 percent contingency fee, the estate's interest in the recovery from the Circuit Court Litigation would be no greater than \$8 million. The estate's total assets, therefore, are at most \$15 million: \$8 million plus \$2.5 million plus \$4.5 million. Fifteen million dollars falls far short of Helmstetter's \$19,978,842.25 in liabilities. Helmstetter has no reasonable expectation in recovering a surplus and would not benefit

financially from a reversal of the Bankruptcy Court's order.<sup>16</sup>

Helmstetter's constructive trust theory does not alter this conclusion. Citing the agreed order that the Bankruptcy Court entered on September 1, 2020 (see Appellant ROA at PageID#: 627), Helmstetter contends that the Trustee is judicially estopped from disputing that he has a 33 percent ownership interest in Kingdom and a 25 percent ownership interest in Western Avenue. (Helmstetter Opp. at 15–16.)<sup>17</sup> He argues that "earned but unpaid distributions and executive compensation" from Kingdom and Western Avenue became his property "by operation of law" as soon as Ruscitti received distributions and executive compensation from those entities. (*Id.* at 6–7, 17 (citing, *inter alia*, *United States v. Fletcher*, 562 F.3d 839, 843 (7th Cir. 2009) (discussing dispute between United States and taxpayer regarding the point at which a stock transaction counted as income) ("Income is 'received' not only when paid in hand but also when the economic value is within the taxpayer's control; this is known as constructive receipt."))).

Helmstetter does not explain what he means by "earned but unpaid distributions and executive compensation" from Kingdom and Western Avenue (see Helmstetter Opp. at 6, 17), so the court cannot discern how much money Helmstetter contends is in the supposed constructive trust. More important, Helmstetter concedes that litigation would be required to obtain whatever funds are in the constructive trust. (See Helmstetter Opp. at 13 ("[A]n experienced commercial litigator could reasonably be expected to successfully prosecute selected partial summary judgments requiring turn-over of those funds . . . from their respective constructive trusts . . .").) Accordingly, even assuming that the constructive trust contains all assets identified in the BERO

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<sup>16</sup> Using Helmstetter's inconsistent, \$16.8 million valuation of the Circuit Court Litigation would increase the estate's total assets by only \$400,000—not enough to alter the conclusion that Helmstetter's liabilities exceed his assets.

<sup>17</sup> The agreed order does not appear to resolve the dispute about Helmstetter's ownership interest in Western Avenue, so the court disagrees that Ruscitti and Western Avenue are judicially estopped from denying that Helmstetter has any such interest. But this does not influence the analysis of Helmstetter's standing.

Report (\$16.8 million, comprising, among other things, unpaid salary, bonuses, and dividends from Kingdom and Western Avenue), Tancredi's contingency fee would cut the estate's interest in the constructive trust to \$8.4 million. The estate's total assets would be \$15.4 million, still significantly less than the estate's liabilities.

The Trustee's alleged failure to challenge the BERO Report does not alter the analysis. (See Helmstetter Opp. at 15.) The Second Amended Schedules incorporate the BERO Group's assessment of Helmstetter's assets and liabilities. (See, e.g., *id.* at 9–10; *see also* Helmstetter Obj. at PageID#: 590–91.) The Trustee challenges the Second Amended Schedules, so his arguments necessarily address the BERO Group's conclusions. The court recognizes that the BERO Report post-dates the Second Amended Schedules and could, in theory, supplement or clarify the analysis underlying those Schedules. But Helmstetter does not explain whether that is the case. Moreover, nothing the court has seen in the BERO Report cures the defects that the Trustee identified in the Second Amended Schedules. The BERO Report, for example, does not reduce the value of the Kingdom Assets to reflect Tancredi's 50 percent contingency fee; does not account for the fact that Helmstetter could lose his claims in the Circuit Court Litigation; and does not present a plan for liquidating minority interests in Kingdom and Western Avenue at the market values estimated in the report. (See, e.g., Trustee Reply ¶¶ 2–5.) In a similar vein, the BERO Group used financial documents from 2016 and earlier to estimate the present-day market values of Kingdom and Western Avenue, and, in turn, to estimate the value of Helmstetter's interests in those entities. (See, e.g., *id.* ¶ 5 (observing same).) Like the asset valuations in the Second Amended Schedules, therefore, the asset valuations in the BERO Report are speculative.

In a last-ditch attempt to show that he has standing, Helmstetter argues that if the court "den[ies]" him standing, Helmstetter's creditors—who will lose "large sums" of money if the Bankruptcy Court's order is not reversed—"would petition for relief to either the Executive or Legislative Branches of government." (Helmstetter Opp. at 18.) The court is uncertain of the nature of these petitions, and Helmstetter does not advance a coherent legal argument that the

creditors could seek such relief. Nor are any avenues that may be available to Helmstetter's creditors relevant to Helmstetter's standing to challenge the Bankruptcy Court's order.

Helmstetter has not shown that he has standing to challenge the Bankruptcy Court's order approving the settlement agreement and transfer of assets. The court, therefore, grants the Trustee's motion and dismisses Helmstetter's appeal for lack of subject matter jurisdiction.

**CONCLUSION**

For the foregoing reasons, the court denies Helmstetter's Motion to Supplement the Record and For Leave to File Special Interrogatories and Requests to Produce and For Alternative Relief [20]; grants the Trustee's Motion to Dismiss Appeal for Lack of Standing By Appellant [14]; and dismisses Helmstetter's Appeal from U.S. Bankruptcy Court Case Number 19 B 28687 [1]. The Clerk is directed to enter judgment in favor of the Trustee.

ENTER:



REBECCA R. PALLMEYER  
United States District Judge

Dated: July 13, 2021

## **APPENDIX C**

UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
Plaintiff )  
v. )  
\_\_\_\_\_  
Defendant )  
\_\_\_\_\_  
)

Civil Action No. \_\_\_\_\_

**JUDGMENT IN A CIVIL ACTION**

The court has ordered that (*check one*):

the plaintiff (*name*) \_\_\_\_\_ recover from the defendant (*name*) \_\_\_\_\_ the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), which includes prejudgment interest at the rate of \_\_\_\_\_ %, plus post judgment interest at the rate of \_\_\_\_\_ % per annum, along with costs.

the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (*name*) \_\_\_\_\_ recover costs from the plaintiff (*name*) \_\_\_\_\_

other: \_\_\_\_\_

This action was (*check one*):

tried by a jury with Judge \_\_\_\_\_ presiding, and the jury has rendered a verdict.

tried by Judge \_\_\_\_\_ without a jury and the above decision was reached.

decided by Judge \_\_\_\_\_ on a motion for

Date: 07/14/2021

*CLERK OF COURT*

R. Franco

*Signature of Clerk or Deputy Clerk*

## **APPENDIX D**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In Re:	)	Case Number: 19-28687
MICHAEL S. HELMSTETTER	)	
	)	Chapter 7
	)	Honorable Jacqueline P. Cox
	)	
Debtor(s)	)	

**ORDER APPROVING THE SETTLEMENT AGREEMENT BETWEEN TRUSTEE AND  
KINGDOM CHEVROLET, INC., AND RICHARD RUSCITTI AND TRANSFER OF  
ASSETS PURSUANT TO SECTION 363(f) FREE AND CLEAR OF ALL LIENS,  
CLAIMS AND INTERESTS**

THIS CAUSE COMING ON TO BE HEARD ON David R. Herzog, Chapter 7 Trustee's Motion for Approval of Settlement Agreement of Disputes with Kingdom Chevrolet, Inc., and Richard Ruscitti and Transfer of At Least 33% of Shares of Stock of Kingdom Chevrolet, Inc., 25% of Shares of South Chicago Nissan d/b/a Western Avenue Nissan to Kingdom Chevrolet, Inc., And to Limit Notice to Twenty Largest Creditors, after notice and hearing, this Court having jurisdiction over the parties and subject matter hereto, having the Constitutional authority to enter the requested order, the subject matter of the Motion constituting a core proceeding for which this Court is able to adjudicate its merits and enter a dispositive order, and being fully advised in the premises;

**IT IS HEREBY ORDERED THAT:**

1. Notice of the Trustee's Motion is limited to (i) the United States Trustee, (ii) the Debtor, (iii) parties entitled to receive notice and (iv) the twenty largest creditors.
2. The Trustee's Motion is granted in its entirety as stated hereinafter.
3. The Settlement Agreement between the Trustee and Kingdom Chevrolet, Inc. ("Kingdom") and Richard Ruscitti ("Ruscitti") is approved and the Trustee is authorized to perform the obligations of the Trustee as required by the terms and conditions of the Settlement Agreement.
4. Kingdom and Ruscitti are each authorized and directed to pay in good funds the sum of \$555,000.00 to the Trustee in accordance with the terms and conditions of the Settlement Agreement.
5. The Trustee is authorized to transfer to Kingdom and Ruscitti the assets subject to the Settlement Agreement, free and clear of all liens, claims and interests pursuant to Section 363(f) in accordance with the terms and conditions of the Settlement Agreement, with all alleged liens

and interests thereon including the lien of Michael Pomerantz and/or Brown, Udell, Pomerantz & Delrahim, Ltd., transferred to the settlement consideration pending further orders of this Court determining the nature, extent, validity and amount of all such liens and interests.

6. Advertisement and further actions of the Trustee to solicit further offers from third parties to submit higher and better offers are waived for good cause shown; provided, however, the Trustee shall not, after the entry of this order, consider the acceptance of nor accept a higher consideration than stated in the Kingdom Settlement Agreement.

7. The court has availed itself of all of the facts necessary to make an intelligent and objective opinion of the probabilities of ultimate success should the claim(s) be litigated. In addition, the court has formed an informed, educated opinion of the complexity, expense and likely duration of such litigation, the possible difficulties in collecting on any judgment which could be obtained and all other factors relevant to a full and fair assessment of the wisdom of the proposed settlement. The most important factor is that the underlying litigation has been pending since 2014. *Protective Comm. for Indep. Stockholders of TMT, Inc. v. Anderson*, 390 U.S. 414,424 (1968). The court is persuaded to approve the settlement by the Trustee's assertions about the propriety thereof.

8. The court finds that the proposed settlement agreement is fair and reasonable and that its approval is in the best interests of the estate. The Motion to Approve Settlement is granted.

9. The objections at Dockets 73 and 74 are overruled.

Enter:



Honorable Jacqueline P. Cox  
United States Bankruptcy Judge

**Prepared by:**

Gregory K. Stern (Atty. ID #6183380)  
Monica C. O'Brien (Atty. ID #6216626)  
Dennis E. Quaid (Atty. ID #02267012)  
Rachel S. Sandler (Atty. ID #6310248)  
53 West Jackson Boulevard  
Suite 1442  
Chicago, Illinois 60604  
(312) 427-1558

## **APPENDIX E**

## U.S. Constitution Article III

### Section 1 - Judicial Power, Courts, Judges

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

### Section 2 - Judicial Power and Jurisdiction

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

### Section 3 - Treason

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## **APPENDIX F**

Section 704 - Duties of trustee

(a) The trustee shall-

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;

(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);

(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and

(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that-

- (A) is in the vicinity of the health care business that is closing;
- (B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and
- (C) maintains a reasonable quality of care.

(b)

(1) With respect to a debtor who is an individual in a case under this chapter-

(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

(B) not later than 7 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

(2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than-

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.

(c)

(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall-

(A)

(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

(B)

(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of-

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that-

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)

(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

## **APPENDIX G**

Section 1.451-2 - Constructive receipt of income

(a) General rule. Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions. Thus, if a corporation credits its employees with bonus stock, but the stock is not available to such employees until some future date, the mere crediting on the books of the corporation does not constitute receipt. In the case of interest, dividends, or other earnings (whether or not credited) payable in respect of any deposit or account in a bank, building and loan association, savings and loan association, or similar institution, the following are not substantial limitations or restrictions on the taxpayer's control over the receipt of such earnings:

- (1) A requirement that the deposit or account, and the earnings thereon, must be withdrawn in multiples of even amounts;
- (2) The fact that the taxpayer would, by withdrawing the earnings during the taxable year, receive earnings that are not substantially less in comparison with the earnings for the corresponding period to which the taxpayer would be entitled had he left the account on deposit until a later date (for example, if an amount equal to three months' interest must be forfeited upon withdrawal or redemption before maturity of a one year or less certificate of deposit, time deposit, bonus plan, or other deposit arrangement then the earnings payable on premature withdrawal or redemption would be substantially less when compared with the earnings available at maturity);
- (3) A requirement that the earnings may be withdrawn only upon a withdrawal of all or part of the deposit or account. However, the mere fact that such institutions may pay earnings on withdrawals, total or partial, made during the last three business days of any calendar month ending a regular quarterly or semiannual earnings period at the applicable rate calculated to the end of such calendar month shall not constitute constructive receipt of income by any depositor or account holder in any such institution who has not made a withdrawal during such period;
- (4) A requirement that a notice of intention to withdraw must be given in advance of the withdrawal. In any case when the rate of earnings payable in respect of such a deposit or account depends on the amount of notice of intention to withdraw that is given, earnings at the maximum rate are constructively received during the taxable year regardless of how long the deposit or account was held during the year or whether, in fact, any notice of intention to withdraw is given

during the year. However, if in the taxable year of withdrawal the depositor or account holder receives a lower rate of earnings because he failed to give the required notice of intention to withdraw, he shall be allowed an ordinary loss in such taxable year in an amount equal to the difference between the amount of earnings previously included in gross income and the amount of earnings actually received. See section 165 and the regulations thereunder.

(b) Examples of constructive receipt. Amounts payable with respect to interest coupons which have matured and are payable but which have not been cashed are constructively received in the taxable year during which the coupons mature, unless it can be shown that there are no funds available for payment of the interest during such year. Dividends on corporate stock are constructively received when unqualifiedly made subject to the demand of the shareholder. However, if a dividend is declared payable on December 31 and the corporation followed its usual practice of paying the dividends by checks mailed so that the shareholders would not receive them until January of the following year, such dividends are not considered to have been constructively received in December. Generally, the amount of dividends or interest credited on savings bank deposits or to shareholders of organizations such as building and loan associations or cooperative banks is income to the depositors or shareholders for the taxable year when credited. However, if any portion of such dividends or interest is not subject to withdrawal at the time credited, such portion is not constructively received and does not constitute income to the depositor or shareholder until the taxable year in which the portion first may be withdrawn. Accordingly, if, under a bonus or forfeiture plan, a portion of the dividends or interest is accumulated and may not be withdrawn until the maturity of the plan, the crediting of such portion to the account of the shareholder or depositor does not constitute constructive receipt. In this case, such credited portion is income to the depositor or shareholder in the year in which the plan matures. However, in the case of certain deposits made after December 31, 1970, in banks, domestic building and loan associations, and similar financial institutions, the ratable inclusion rules of section 1232(a)(3) apply. See § 1.1232-3A . Accrued interest on unwithdrawn insurance policy dividends is gross income to the taxpayer for the first taxable year during which such interest may be withdrawn by him.

## **APPENDIX H**

IN THE UNITED STATES  
DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF  
ILLINOIS EASTERN DIVISION

MICHAEL HELMSTETTER,	)	
	)	
Appellant,	)	Case No. 20-cv-5485
	)	
v.	)	Hon. REBECCA R. PALLMEYER
	)	
DAVID HERZOG, Trustee,	)	Appeal from U.S. Bankruptcy Court
RICHARD RUSCITTI and	)	Northern District of Illinois
KINGDOM CHEVROLET, INC.,	)	Case No. 19-28687
	)	
Appellees.	)	

**AFFIDAVIT OF PAUL RODRIGUES**

I, Paul Rodrigues, declare and state as follows:

1. I make this declaration based on my experience, including as a Certified Public Accountant, Certified Fraud Examiner and Certified in Financial Forensics, and my personal knowledge and understanding of the facts in this matter.
2. I am Chair of the Forensic Accounting practice at The BERO Group, located at N16 W23217 Stone Ridge Dr., Suite 150, Waukesha, WI 53188. The BERO Group is an expert witness testimony and consulting firm specializing in forensic accounting. The BERO Group is comprised of highly skilled professionals that include CPAs and CFEs who provide litigation support to attorneys and their clients in the areas of: commercial litigation (including breach of contract, tortious interference, franchise and dealership disputes, shareholder disputes, securities fraud); financial fraud (including fraud investigation, misappropriation, bribery and corruption, eDiscovery); valuations (including contractual damages claims and the valuation of privately held corporations); and intellectual property litigation.
3. I have performed forensic accounting investigations for approximately 28

years and have more than 30 years of experience in the accounting profession. I have worked extensively on bankruptcy litigation matters and on corporate liquidations, restructurings, and receiverships. My clients include commercial, local, state & federal government interests such as county and local law enforcement agencies, the US Department of Justice, Department of Labor, Office of Labor Racketeering & Fraud Investigations. I have been appointed as a forensic accounting examiner by the U.S. Bankruptcy Court and I have worked on cases in collaboration with the FBI and IRS Criminal divisions.

4. My duties currently include serving as an expert witness on accounting and tax matters, fraud and financial investigations, embezzlements, breach of fiduciary duty, breach of contract, gross negligence, shareholder and partner disputes, and calculating damages and providing consulting services for numerous litigation matters. I frequently give seminars and presentations to the legal community (for CLE purposes) and various trade associations. I have also written numerous articles for the American Bar Association, the Wisconsin Law Journal and other organizations. I currently serve as a subcommittee chair member of Internal Investigations for the American Bar Association's Section of Litigation - Criminal Litigation Committee.

5. In my role, I have overseen hundreds of forensic accounting matters. Over my career, I have partaken and testified in Federal and State court trials, Arbitrations, Depositions and Mediations relating to forensic accounting.

6. My expertise includes, but is not limited to, the calculation of lost profits and economic damages, locating hidden assets, identifying fraudulent transfers, tracing assets, and assessing business valuations, coordinating forensic computer imaging and eDiscovery efforts, and resolving minority shareholder disputes. In addition, I have

extensive experience with forensic accounting matters and automotive dealerships. I have attached my full CV as Exhibit 0.

7. In this matter, The BERO Group has performed a preliminary analysis of documents provided to us including, but not limited to, email communications, contracts and financial statements pertaining to Michael S. Helmstetter (“Helmstetter”) and Kingdom Chevrolet, Inc. (“Kingdom Chevrolet”).

8. I have read Helmstetter’s Notice of Objection and the Exhibits thereto and state that based on information and belief and, to the best of my knowledge at this time, they are correct.

9. At this time and based on the information with which we have been provided, we calculated to a degree of certainty that Helmstetter has a claim against Kingdom Chevrolet in the total of at least \$11.9million, which far exceeds the settlement amount of \$555,000.

10. Based on my professional judgment, the discrepancy between the valuations of \$11.9 million and \$555,000 demands further investigation. Details of the \$11.9 million follow.

11. Kingdom Chevrolet is an S-Corporation, in which Helmstetter has a 33% ownership interest.

12. The examination of documents provided to us has revealed no material dispute of facts as to Helmstetter’s ownership in Kingdom Chevrolet and Ruscitti does not dispute Helmstetter’s ownership interest.

13. As a 33% shareholder in Kingdom Chevrolet, Helmstetter has a 33% share in the assets and dividends of Kingdom Chevrolet.

14. With regard to the fair market value of Helmstetter’s share in Kingdom Chevrolet:

- a. We have calculated an estimated \$7 million representing Helmstetter's 33% share of the Fair Market Value of Kingdom Chevrolet.
- b. Our valuation is based on the financial statements of Kingdom Chevrolet from 2011 through May 2016, the latest financial statements that Helmstetter has available to him.
- c. Our valuation considers the following:
  - i. Latest available financial statements; and
  - ii. Independent, expert market reports on trends and outlooks in auto retail and dealership values, including Blue Sky valuation multipliers.
- d. We would need Kingdom Chevrolet's financial statements from June 2016 onwards and its tax returns for 2016 onwards to update our calculations.

15. With regard to an estimated \$1.1 million in unpaid salary and bonuses due to Helmstetter by Kingdom Chevrolet, we have based our estimate on two years of earnings, using Helmstetter's earnings prior to termination.

- a. We would need the payroll records of Helmstetter's replacement for 2014 onwards to update our calculation of his unpaid salary and bonuses.

16. With regard to an estimated \$3.1 million in unpaid dividends due to Helmstetter by Kingdom Chevrolet, we have based our estimates on Kingdom Chevrolet's financial statements from January 2011 through May 2016.

- a. Kingdom Chevrolet's financial statements for the period reflect dividends totaling approximately \$7.3 million.
- b. The 2014 and 2015 tax returns of Kingdom Chevrolet do not reflect any dividends paid in either year, despite dividends being recorded in the financial statements for those years.

- c. There is no readily ascertainable reason for the difference between the financial statements and the tax return.
- d. As an S Corporation, Kingdom Chevrolet is required to distribute dividends to its shareholders directly in proportion to their shareholding.
- e. Helmstetter received approximately \$1.04 million of this total, with the remaining \$6.26 million being paid to Ruscitti.
- f. Helmstetter did not receive the remainder of his appropriate pro rata share of the dividends.
- g. Helmstetter has not received any dividends from Kingdom Chevrolet since the termination of his employment.
- h. A proportionate share of any additional dividends declared by Kingdom Chevrolet beyond 2015 is also due to Helmstetter. We would need Kingdom Chevrolet's financial statements from June 2016 onwards to calculate this amount.

17. With regard to the Excess Executive Compensation and Falsified Rent and Mortgage Payments by Ruscitti:

- a. We have based our estimates on Kingdom Chevrolet's financial statements from January 2015 through December 2015.
- b. Kingdom Chevrolet's financial statements recorded executive compensation as approximately \$247,000 for the year ended December 31, 2015.
- c. The 2015 tax return of Kingdom Chevrolet showed approximately \$56,000 as paid to Ruscitti, with no other executives recorded.

- d. There is no readily ascertainable reason for the difference between the financial statements and the tax return.
- e. Helmstetter's share of the \$247,000 less \$56,000 is 33.33% of \$191,000, which amounts to \$63,666.
- f. We would need Kingdom Chevrolet's financial statements from June 2016 onwards and its tax returns for 2016 onwards to calculate any additional excess executive compensation paid by the dealership.

18. With regard to Kingdom Chevrolet's rent:

- a. Kingdom Chevrolet's financial statements from January 2015 through December 31, 2015 show rent paid of approximately \$593,000 which is \$209,000 in excess of rent of \$384,000 payable per Kingdom Chevrolet's lease agreement with Gillespie Properties, LLC dated November 30, 2009.
- b. Helmstetter's 33.33% share of the \$209,000 amounts to \$69,667.
- c. We would need Kingdom Chevrolet's financial statements from June 2016 onwards to calculate any additional excess rent paid by the dealership.

19. With regard to the mortgage payments by Kingdom Chevrolet:

- a. Kingdom Chevrolet made payments totaling approximately \$1.8 million on at least three mortgage loans, none of which Helmstetter either authorized or knew about.
- b. We could not identify the real estate or improvements that Kingdom Chevrolet used to secure these mortgage loans as the financial statements did not reflect any real estate.

- c. Kingdom Chevrolet's buildings and improvements were reflected at \$14,000 until the last mortgage loan was taken out in September 2015, when they increased by \$2 million.
- d. Kingdom Chevrolet's tax returns for the same period do not reflect any mortgage loans or mortgage interest.
- e. Helmstetter's 33.33% share of the mortgage payments amounts to \$600,000.

20. With regard to Helmstetter's share of the Reinsurance business of Kingdom Chevrolet:

- a. Helmstetter does not have access to reinsurance contracts entered into by Kingdom Chevrolet and any reinsurance companies, such as CNA, beyond 2009.
- b. We would need these contracts to determine Helmstetter's share of this business.
- c. We would also need the financial statements and tax returns of Kingdom Chevrolet from June 2016 onwards.

21. Additionally, we have conducted a preliminary analysis of the information of the claims which Michael Helmstetter has all against parties (including the specific claim addressed upon herein).

22. Our preliminary calculations show that his claims total approximately \$33 million<sup>1</sup>.

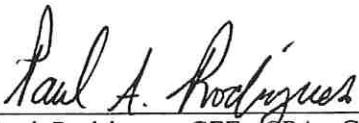
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<sup>1</sup> We have not received full discovery of all records for all years from all parties. We therefore reserve the right to revise our analyses and calculations based on new and additional material being received.

23. Commenting only on our preliminary accounting analysis to date, it appears that the Debtor's assets exceed debts alleged by approximately \$20 million<sup>2</sup>.

24. As a result, we have not seen a factual predicate upon which one might reasonably conclude the Debtor is insolvent.

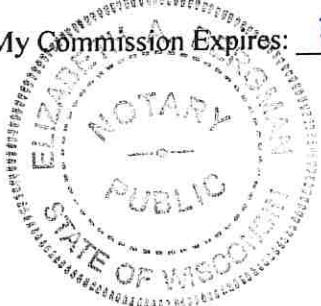
25. Our review to date raises the question as to why the Debtor filed bankruptcy at all. Again, due to the materiality of the discrepancy between our calculations and the Trustee's settlement, further investigation is warranted.

  
\_\_\_\_\_  
Paul Rodrigues, CFE, CPA, CFF, CGMA,  
MST

Subscribed and sworn to me on this 18 day of November, 2020.

Elizabeth A. Bergman  
Notary Public, State of Wisconsin

My Commission Expires: Feb. 22, 2021



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<sup>2</sup> We have not received full discovery of all records for all years from all parties. We therefore reserve the right to revise our analyses and calculations based on new and additional material being received.

## EXHIBIT 0

# BERO

## The BERO Group



### CURRICULUM VITAE

#### **Paul A. Rodrigues, CPA, CFE, CFF, CGMA, MST**

Senior Director

The BERO Group | p: 262-522-7927 c: 262-337-0458 |

e: par@berogroup.com

Paul A. Rodrigues has over 29 years of experience in the accounting profession. Paul has served as an accounting and tax expert witness or consultant in numerous forensic, fraud, and litigation engagements ranging from \$1 million to \$250 million and has testified in both Federal and State courts.

#### **Professional Experience**

Paul has been involved with potential or actual civil and criminal litigation, including but not limited to:

- Accounting expertise in the legal system
- Accounting malpractice
- Asset tracing
- Bankruptcy & Insolvency
- Business valuations
- Conflicts of interest
- Contract disputes
- Determination of lost profits and economic damages
- eDiscovery & Data Mining
- Forensic Imaging
- Internal control assessments
- Federal & state tax audits and issues
- Financial statement fraud
- Embezzlements
- Fraudulent transfers
- Generally Accepted Accounting Principles (GAAP)
- Generally Accepted Auditing Standards (GAAS)
- Generally Accepted Government Auditing Standards (GAGAS)
- Locating hidden assets
- Insurance claims
- Liquidations
- Minority shareholder disputes
- Over/Understatements of expenses and losses
- Over/Understatements of revenue and other income
- Partnership and LLC issues
- Corporate restructuring
- Seller misrepresentations
- Settlements and recovery structuring
- Shareholder and employee fraud
- Suspect Interviews & Investigations/Obtaining Confessions
- Tax Fraud
- Theft by Contractor

#### **Professional Qualifications**

- MST – Masters of Science Taxation, 1994
- CPA-Certified Public Accountant in WI since 1994
- CFE-Certified Fraud Examiner since 2008
- CFF-Certified Financial Forensics since 2008
- CGMA – Chartered Global Management Accountant

#### **Education**

UW-Milwaukee, 1994  
Milwaukee, WI  
Masters in Taxation  
President - Student Tax Association

UW-Madison, 1986  
Madison, WI  
BA, Majors: Economics, International Relations, minor in Finance



## **Relevant Experience**

- Litigation claims arising from fraud and occupational abuse within the banking, construction, real estate, manufacturing, retail, and professional service industries, including fraudulent financial reporting, embezzlements, and conflicts of interest.
- Litigation claims arising from accounting malpractice, minority shareholder and partner disputes, contract disputes, acquisition disputes, damages & lost profits, divestures and divorce matters.
- Litigation claims arising from internal audit failures.
- Corporate liquidations, restructurings, and receiverships.
- Litigation claims arising from bankruptcy matters.
- Coordinating forensic computer images and eDiscovery efforts.
- Federal and state tax fraud claims.
- Contested business valuations and seller misrepresentations.
- Fraud suspect investigations and interviews.
- Assist Special Agents with the US Department of Labor, Office of Labor Racketeering and Fraud Investigations, and the US DOJ.
- Assist Special Agents with the FBI and the Department of Justice US Attorney's Office.
- Appointment as forensic accounting examiner by the US Bankruptcy Court.
- Qualified as an Expert Witness in both Federal and State courts.

## **Seminars/Webinars**

- Panel, *Industry Summit: Fraud Prevention*, Associated Bank, ACG Wisconsin, Chortek LLP (10/08)
- Presenter, *Understanding Business Fraud*, Town Bank of Hartland, Hartland, WI (2/09)
- Presenter, *The Reality of Business Fraud*, First Business Bank-Milwaukee, Milwaukee, WI (5/09)
- Presenter, *Understanding Business Fraud*, Dewitt, Ross & Stevens; Town Bank of Madison, Madison, WI (5/09)
- Co-Presenter, *Reality of Business Fraud*, First Business Bank-Madison, WI (6/09)
- Co-Presenter, *Best Practices, Mitigating Asset Misappropriation*-Waukesha, WI (7/09)
- Co-Presenter, *Business Fraud*, Libertyville Bank-Libertyville, IL (9/09)
- Presenter, *The Reality of Business Fraud*, Milwaukee NARI Home Improvement Council, Wauwatosa, WI (9/09)
- Co-Presenter, *The Reality of Business Fraud*, Wisconsin Treasury Management Association (WTMA), Appleton, WI (9/09)
- Co-Presenter, *Business Fraud*, M3 Insurance Solutions for Business (9/09)
- Co-Presenter, *Fraud Protection Strategies*, Wells Fargo, Milwaukee, WI (10/09)
- Co-Presenter, *Fraud*, Northbrook Bank, Northbrook, IL (10/09)
- Co-Presenter, *Business Fraud*, NorthShore Bank, Skokie, IL (10/09)
- Co-Presenter, *Fraud*, DeWitt, Ross & Stevens, Town Bank, IRS, Brookfield, WI (10/09)
- Co-Presenter, *Understanding Fraud*, State Bank of Lakes, Antioch, IL (11/09)
- Co-Presenter, *Understanding Fraud*, Chase Bank, Brookfield, WI (11/09)
- Presenter, *Business Fraud*, Wisconsin Institute of Certified Public Accountants (WICPA) Conference, Waukesha, WI (11/09)
- Co-Presenter, *The Expert's Role in the Litigation Process*, AICPA Forensic and Valuation Services webinar (12/09)
- Co-Presenter, *The Reality of Business Fraud*, Brookfield Chamber Education Committee and University of Phoenix – Milwaukee Campus presented and sponsored seminar (4/10)

- Co-Presenter, *The Reality of Business Fraud*, University of Phoenix – Milwaukee, WI (4/10)
- Presenter, *Business Fraud*, The IMA Financial Group, Inc. – Milwaukee, WI (5/10)
- Presenter, *Understanding Business Fraud*, Town Bank & Fitzgerald, Clayton, James & Kasten – Hartland, WI (5/10)
- Co-Presenter, *The Reality of Business Fraud*, Wisconsin Treasury Management Association (WTMA), Waukesha, WI (9/10)
- Panel, *Business Fraud Roundtable*, Associated Bank, Waukesha, WI (11/10)
- Presenter, *Business Fraud Exposed*, Bank Mutual, Wauwatosa, WI (3/11)
- Presenter, *Fraud and Forensic Accounting*, Wisconsin Lutheran College, Wauwatosa, WI (5/11)
- Presenter, *Forensic Accounting: Identifying Fraud*, CLE class for Attorneys, Milwaukee Bar Association, Milwaukee, WI (6/11)
- Presenter, *Fraud Happens – A lot*, University Club, Milwaukee, WI (9/11)
- Presenter, *Bank Mutual's 2011 Fraud and Risk Management*, Wisconsin Club, Milwaukee, WI (11/11)
- Presenter, *Johnson Bank, Fraud and Risk Management*, Johnson Bank, Milwaukee, WI (2/12)
- Presenter, *Fraud Happens*, Milwaukee NARI Home Improvement Council, Wauwatosa, WI (5/12)
- Presenter, *Fraud Happens -A lot*, Windy City Summit, Chicago, IL (6/12)
- Presenter, *Fraud Happens -A lot*, NARI Council, Madison, WI (9/12)
- Presenter, *Fraud is Afoot Watson*, Maryland Association of CPAs, College Park, MD (4/13)
- Presenter, *Fraud Happens -A lot*, Windy City Summit, Chicago, IL (5/13)
- Presenter, *Analyzing Financial Statements*, CLE class for Attorneys, NBI, Madison, WI (6/13)
- Presenter, *Identifying Fraud, Analyzing Financial Statements CLE classes for Attorneys*, NBI, Madison, WI (6/13)
- Presenter, *Predictive Coding and eDiscovery, Preserving and Locating Critical ESI section, 2013 Construction Super Conference*, San Francisco, CA (12/13)
- Presenter, *Beware Fraud is Everywhere, Northeastern Wisconsin Chapter AITP (Association of Information Technology Professionals)*, Appleton, WI (2/14)
- Presenter, *Beware Fraud is Everywhere, Fidelity National Title Group Springfield, IL* (6/14)
- Presenter, *Forensic Accounting, Institute of Management Accountants*, Whitewater, WI (9/14)
- Presenter, *Dealership or Pirate Ship?*, ADAMM, Milwaukee, WI (4/18)
- Presenter, *Forensic Accounting & Red Flags*, HFTP, Milwaukee, WI (4/18)
- Presenter, *Using Technology to Find the Money*, Western District Bankruptcy Section, Madison, WI (5/18)
- Presentation, *Distressed or Defrauded? Finding the Money!* TMA, Milwaukee, WI (10/18)
- Presentation, *Tell Tale Signs of Fraud & Corruption*, League of WI Municipalities, WI Dells, WI (10/18)
- *Fraud Panel*, North Shore Bank, Milwaukee, WI (11/18)
- Presenter, *Business Fraud Perpetrators & Red Flags*, WIAFP (Wisconsin Association for Financial Professionals), Brookfield, WI (12/18)
- Presenter, *How to Spot a Liar: Techniques for Interviewing and Reading Body Language* Milwaukee ACFE Chapter, Milwaukee, WI (6/19)
- Presenter, *Forensic Accounting & Valuation for Divorce*, Sterling Law Group, Milwaukee, WI (10/19)
- Presenter, *Show Me the Money: Forensic Investigation and Business Valuation in Family Law Cases*, Milwaukee Bar, WI (10/19)

- *Presenter, What You Don't Know Can Hurt You: Detecting and Responding to Bad Actors on Your Campus, NACUA, Washington D.C. (10/19)*
- *Presenter, Internal Investigations, QBE Corporate Counsel, Sun Prairie, WI (10/19)*
- *Presenter, Using Technology to Find the Money, Stafford Rosenbaum LLP, Madison, WI (11/19)*
- *Presenter, Chasing the Money - Financial Failure or Fraud? State Bar of Wisconsin, Bankruptcy, Insolvency and Creditors' Rights Section, 15<sup>th</sup> Annual Retreat, Kohler, WI (02/20)*

## **Articles/Publications**

- *Don't Miss out on the New Tax Credit for Home Builders!*  
Building Blocks, Newsletter of the Metropolitan Builders Association (MBA)  
January 2007 Volume 3, Issue 1
- *The #1 Reasons Employees Commit Fraud*  
C&G Connection Newsletter April 2008 Issue
- *The #1 Method of Payroll Fraud*  
C&G Connection Newsletter May, 2008 Issue
- *How Can My Company Avoid Being A Victim Of Employee Theft?*  
co-author, BizTimes Milwaukee April, 2009
- *Who Do You Know Has Fraud?*  
C&G Connection Newsletter June, 2009 Issue
- *Investigations Best Practices* contributor, CPA Expert Winter 2010 Issue
- *Serving as an Expert Witness or Consultant*  
co-author, Practice Aid 10-1, AICPA Forensic and Valuation Services Section August 2010
- *Theft by Fraud in the Workplace*  
co-author, Wisconsin Law Journal October 2010
- *Strategic Approach for Maximizing Recovery in a Fraud Case*  
co-author, The Fraud Examiner Newsletter, Association of Certified Fraud Examiners January 2011
- *Auditing vs. Fraud Examination - What's the difference?*  
C&G Forensic Connection Newsletter, First Quarter 2011 Issue
- *The Mindset of a Fraud Examiner*  
C&G Forensic Connection Newsletter, Second Quarter 2011 Issue
- *Catching a Snake in the Grass*  
C&G Forensic Connection Newsletter, Second Quarter 2012 Issue
- *Avenues of Recovery*  
C&G Forensic Connection Newsletter, Third Quarter 2012 Issue
- *Catching a Snake in the Grass: Why an Impulse Reaction is Rarely the Best Strategy*, The Fraud Examiner Newsletter, Association of Certified Fraud Examiners October, 2012
- *Avenues of Recovery*  
C&G Forensic Connection Newsletter, Fourth Quarter 2012 Issue
- *Recovering Damages from Devious Perpetrators*  
American Bar Association, Section of Litigation, January 2013
- *To Catch a Thief*, Wisconsin Law Journal, Successful Litigation, April 2016
- *Internal Investigations Best Practices, Part I: Protocols*, American Bar Association, Section of Litigation, February 2019
- *Internal Investigations Best Practices, Part II: Interviews*, American Bar Association, Section of Litigation, September 2019

## **Specialized Education**

### AICPA - American Institute of Certified Public Accountants

09/2005 National Conference on Fraud and Litigation Services; Dallas, TX  
12/2016 National Conference on Construction and Real Estate; Las Vegas, NV  
11/2018 Forensic & Valuation Services Conference; Atlanta, GA

### ACFE - Association of Certified Fraud Examiners

02/2008 Exam Review Course; Austin, TX  
07/2008 19th Annual ACFE Fraud Conference; Boston, MA  
07/2009 20<sup>th</sup> Annual ACFE Fraud Conference; Las Vegas, NV  
07/2010 21<sup>st</sup> Annual ACFE Fraud Conference; Washington DC  
06/2011 22<sup>nd</sup> Annual ACFE Fraud Conference; San Diego, CA  
06/2012 23<sup>rd</sup> Annual ACFE Fraud Conference; Kissimmee, FL  
06/2013 24<sup>rd</sup> Annual ACFE Fraud Conference; Las Vegas, NV  
06/2014 25<sup>rd</sup> Annual ACFE Fraud Conference; San Antonio, TX  
06/2015 26<sup>th</sup> Annual ACFE Fraud Conference; Baltimore, MD  
06/2019 30<sup>th</sup> Annual ACFE Fraud Conference; Austin, TX

### CPE - Link

12/2012 The Yellow Book Interpreted, Generally Accepted Government Auditing Standards  
07/2014 Essential Skills for the Government Auditor, Governmental Auditing

### MBA - Milwaukee Bar Association

11/2011 Prosecution of Health Care Fraud and Abuse Cases, Milwaukee, WI  
11/2011 Fourth Annual E Discovery Conference, Milwaukee, WI

### WISBAR - State Bar of Wisconsin

12/2011 How to Understand and Analyze Financial Statements for Lawyers, Milwaukee, WI  
04/2012 Bridging the Valuation Gap: "Earnouts" & Other Techniques, Web  
04/2012 Construction Contracts: Anticipating the Unanticipated, Web  
06/2012 2012 Litigation, Dispute Resolution & Appellate Practice, Wisconsin Dells, WI

### ABA - American Bar Association

02/2012 iPad for Litigators  
02/2012 White Collar Crime Annual Conference, Miami, FL  
04/2012 Litigation Annual Conference, Washington DC  
09/2012 Fall Leadership Committee Workshop- Construction Litigation, St. Louis, MO  
04/2013 Litigation Annual Conference, Chicago, IL  
12/2013 Construction Super Conference, San Francisco, CA  
08/2014 Litigation Annual Conference, Boston, MA

### AGA - Association of Government Accountants

09/2014 Internal Control and Fraud Prevention Training, Washington, DC

## **Professional Memberships, Past and Present**

### ABA - American Bar Association

- Criminal Justice Section, Chair Internal Investigations
- Section of Litigation
- Construction Section Leadership Committee

### ACFE - Association of Certified Fraud Examiners

### AICPA - American Institute of Certified Public Accountants

- AICPA Litigation Services Task Force

- Past CFF Champion for the State of Wisconsin  
WICPA-Wisconsin Institute of Certified Public Accountants  
AGC-Associated General Contractors of America  
ASA-American Subcontractors Association  
Surety Association of Wisconsin  
MBA-Metropolitan Builders Association

**Federal Rule 26(a)(2)(B)**

**List of Cases in which, during the previous 4 years Testimony given at Trial or Deposition:**

- 11/20/09 - CR Meyer and Sons Company vs. Custom Mechanical, Case 31 110 Y 00156 07
- 04/21/10 - CAM Recycling & Materials, Inc., Debtor, United States Bankruptcy Court, Eastern District of Wisconsin, Case Number: 09-25303
- 08/24/10 - CR Meyer and Sons Company vs. Custom Mechanical, Case 31 110 Y 00156 07
- 09/30/10 - CR Meyer and Sons Company vs. Custom Mechanical, Case 31 110 Y 00156 07
- 12/09/10 - Raab Mechanical, Inc. and Rudolph Raab, v. MTM Mechanical Services, Inc. and Mark Swiecichowski, State of Wisconsin, Circuit Court, Waukesha County, Case No. 10-CV-01370
- 2/11/11 - Jendusa Engineering Associates, Inc., et al. v. Sarah Mulhern, et al., State of Wisconsin, Circuit Court, Waukesha County, Case No. 09-CV-1785
- 3/16/11 - Jendusa Engineering Associates, Inc., et al. v. Sarah Mulhern, et al., State of Wisconsin, Circuit Court, Waukesha County, Case No. 09-CV-1785
- 7/6/11 - Jendusa Engineering Associates, Inc., et al. v. Sarah Mulhern, et al., State of Wisconsin, Circuit Court, Waukesha County, Case No. 09-CV-1785
- 3/7/12 - Michael Brandt, Heidi Brandt, and Barbara Begale, vs. Joe's Crushing, LLC, Cream City Wrecking & Dismantling, and Joseph Tate State of Wisconsin, Circuit Court, Waukesha County, Case No.: 11-CV-00816
- 3/13/12 - Michael Brandt, Heidi Brandt, and Barbara Begale, vs. Joe's Crushing, LLC, Cream City Wrecking & Dismantling, and Joseph Tate State of Wisconsin, Circuit Court, Waukesha County, Case No.: 11-CV-00816
- 4/04/12 - U.S. Dept. of Justice, Office of the United States Trustee – Fisca Oil Co., Inc., Debtor, United States Bankruptcy Court, Eastern District of Wisconsin Case No.: 09-21519-PP
- 5/16/13 - U.S. Dept. of Justice, Office of the United States Trustee – Joseph G. Miller, Debtor, United States Bankruptcy Court, Eastern District of Wisconsin Case No.: 12-32487-MDM
- 7/9/13 - U.S. Dept. of Justice, Office of the United States Trustee – Joseph G. Miller, Debtor, United States Bankruptcy Court, Eastern District of Wisconsin Case No.: 12-32487-MDM
- 9/18/13 - U.S. Dept. of Justice, Office of the United States Trustee – Fisca Oil Co., Inc., Debtor, United States Bankruptcy Court, Eastern District of Wisconsin Case No.: 09-21519-PP
- 9/25/13 - U.S. Dept. of Justice, Office of the United States Trustee – Joseph G. Miller, Debtor, United States Bankruptcy Court, Eastern District of Wisconsin Case No.: 12-32487-MDM
- 11/14/13 - U.S. Dept. of Justice, Office of the United States Trustee – Joseph G. Miller, Debtor, United States Bankruptcy Court, Eastern District of Wisconsin Case No.: 12-32487-MDM
- 1/3/14 - State of Wisconsin Circuit Court Civil Division, Milwaukee County:
  - Pearl's Two, LLC Plaintiff, v. Ramkrishna Subedi Defendant, and Sunita KC Defendant, Case No: 12CV012268

- Sunita H. KC and Ramkrishna Subedi, Plaintiffs v. The Zira Corporation, Defendants/Third Party Plaintiffs, v. Talik KC Third Party Defendant, Case No. 12CV002758
- 1/30/14 - U.S. Dept. of Justice, Office of the United States Trustee – Joseph G. Miller, Debtor, United States Bankruptcy Court, Eastern District of Wisconsin Case No.: 12-32487-MDM
- 7/2/14 - Six Star, LLC v. City of Milwaukee, Eastern District of Wisconsin, Case No. 10-C-893
- 9/25/14 - Scott Smith and Alpha Cargo Technology, LLC, Plaintiffs, v. Greg Kleynerman and Red Flag Cargo Security Systems, LLC, Defendants. State of Wisconsin Circuit Court Civil Division, Milwaukee County, Court File No. 11CV 018551.
- 2/18/15 - Six Star, LLC v. City of Milwaukee, Eastern District of Wisconsin, Case No. 10-C-893
- 5/20/15 - Community Care Resources, Inc. and Community Care Programs, Inc., Plaintiffs, v. Greenwich Insurance Company, Meicher CPAs, LLP, Formerly Meicher & Associates, LLP, Defendants, Case No. 14 CV 1368, Case Code: 30103 and 30703
- 5/27/15 - Community Care Resources, Inc. and Community Care Programs, Inc., Plaintiffs, v. Greenwich Insurance Company, Meicher CPAs, LLP, Formerly Meicher & Associates, LLP, Defendants, Case No. 14 CV 1368, Case Code: 30103 and 30703
- 7/7/15 - Dodge Street Anesthesiologists, P.C. and Dr. Nikolaos Koutsonikolis v. Dr. Mark Bainbridge, Case No:01-14-0000-1841
- 7/8/15 - Dodge Street Anesthesiologists, P.C. and Dr. Nikolaos Koutsonikolis v. Dr. Mark Bainbridge, Case No:01-14-0000-1841
- 6/6/18 – Wangard Advisors LLC v. Schenck S.C. & Mark Vance, 2017CV002140 Case Codes: 30301
- 6/12/18 – Rudolph Raab d/b/a Raab Investments, and R&W Lodging, LLC v. Michael Wendel, et al, Case No.2:16-cv-01396-WED
- 7/25/18 – Sadoff & Rudoy Industries LLP v. Sterling W. Kienbaum, Fox Valley Iron, Metal & Auto Salvage, Inc., Gibson Iron Metal & Auto, Inc., et al, Case No. 16-CV-538, Case Code:30106
- 10/23/18 – Faith Technologies, Inc. vs Horizon Construction Group, Inc., Case No. 01-17-0006-3953
- 11/8/18 - In RE the marriage of Monica Anna Powers and Paul William Powers Waukesha County Case Number 2009FA001640
- 02/12/20 - U.S. Dept. of Justice, Office of the United States Trustee – Greg Kleynerman Debtor, United States Bankruptcy Court, Eastern District of Wisconsin Case

## Compensation Hourly Rates – As of January 1, 2020

Standard rate \$400/hour

### Employment History:

The BERO Group, LLC Senior Director and Chair of the Forensic Accounting Practice Waukesha, WI	2015-Present
Chortek LLP (FKA Chortek & Gottschalk, LLP) Public Accounting Firm, Principal Forensic Accounting and Litigation Support Services Waukesha, WI	2007-2015
VanderBloemen Rodrigues & Assoc. LLC Public Accounting Firm, Member Waukesha, WI	2004-2007
Schenck On-Site, LLC Public Accounting Firm, Managing Member Milwaukee, WI	2003-2004
Tax Compliance Group, LLC Consulting Firm, Managing Member Oconomowoc, WI	2002-2003
Jefferson Wells International (FKA AuditForce, Inc.) Consulting Firm, Sr. Tax Manager, Tax Director, National Tax Director Milwaukee, WI	1995-2001
Schenck Business Solutions SC (FKA Aronson Schroeder & Co., Inc.) Public Accounting Firm, Tax Senior/Manager Milwaukee, WI	1994-1995
Kolb + Co. (FKA Kolb Lauwasser, LLP) Public Accounting Firm, Tax Senior Milwaukee, WI	1992-1994
Price Waterhouse Coopers, LLP (FKA Price Waterhouse, LLP) Public Accounting Firm, Tax Associate Milwaukee, WI	1992
UW-Milwaukee Teaching Assistant, Financial Accounting Milwaukee, WI	1990-1992
Old Republic Risk Management Staff Accountant Brookfield, WI	1989-1991

## **APPENDIX H**

IN THE UNITED STATES  
DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF  
ILLINOIS EASTERN DIVISION

MICHAEL HELMSTETTER,

Appellant, ) Case No. 20-cv-5485  
v. ) Hon. REBECCA R. PALLMEYER  
DAVID HERZOG, Trustee, ) Appeal from U.S. Bankruptcy Court  
RICHARD RUSCITTI and ) Northern District of Illinois  
KINGDOM CHEVROLET, INC., ) Case No. 19-28687  
Appellees. )

**AFFIDAVIT OF DEBORAH J. TEMKIN**

I, Deborah J. Temkin, declare and state as follows:

1. I make this declaration based on my experience, including as a Chartered Accountant (South Africa), and as a Certified Fraud Examiner, and my personal knowledge and understanding of the facts in this matter.
2. I am a Director at The BERO Group, located at 200 W Jackson Boulevard, Suite 1300, Chicago 60606. The BERO Group is an expert witness testimony and consulting firm specializing in forensic accounting. The BERO Group is comprised of highly skilled professionals that include CPAs and CFEs who provide litigation support to attorneys and their clients in the areas of: commercial litigation (including breach of contract, tortious interference, franchise and dealership disputes, shareholder disputes, securities fraud); financial fraud (including fraud investigation, misappropriation, bribery and corruption, eDiscovery); valuations (including contractual damages claims and the valuation of privately held corporations); and intellectual property litigation.
3. I have performed forensic accounting investigations for approximately 20 years and have more than 25 years of experience in litigation support and in the

accounting profession. My duties currently include supporting The BERO Group's expert witnesses on accounting matters, fraud and financial investigations, embezzlements, breach of fiduciary duty, breach of contract, gross negligence, shareholder and partner disputes, and calculating damages and providing consulting services for numerous litigation matters. I frequently give seminars and presentations to the legal community (for CLE purposes) and various trade associations.

4. My expertise includes, but is not limited to eDiscovery, performing forensic accounting reviews, locating hidden assets, identifying fraudulent transfers, tracing assets, and assessing business valuations, coordinating forensic computer imaging, and resolving minority shareholder disputes. I have attached my Biography as Exhibit 0.

5. In this matter, The BERO Group has performed a preliminary analysis of documents provided to us including, but not limited to, email communications, contracts and financial statements pertaining to Michael S. Helmstetter ("Helmstetter") and Kingdom Chevrolet, Inc. ("Kingdom Chevrolet").

6. I have read Helmstetter's Notice of Objection and the Exhibits thereto and state that based on information and belief and, to the best of my knowledge at this time, they are correct.

7. At this time and based on the information with which we have been provided, we calculated to a degree of certainty that Helmstetter has a claim against Kingdom Chevrolet in the total of at least \$11.9million, which far exceeds the settlement amount of \$555,000.

8. Based on my professional judgment, the discrepancy between the valuations of \$11.9 million and \$555,000 demands further investigation. Details of the \$11.9

million follow.

9. Kingdom Chevrolet is an S-Corporation, in which Helmstetter has a 33% ownership interest.

10. The examination of documents provided to us has revealed no material dispute of facts as to Helmstetter's ownership in Kingdom Chevrolet and Ruscitti does not dispute Helmstetter's ownership interest.

11. As a 33% shareholder in Kingdom Chevrolet, Helmstetter has a 33% share in the assets and dividends of Kingdom Chevrolet.

12. With regard to the fair market value of Helmstetter's share in Kingdom Chevrolet:

a. We have calculated an estimated \$7 million representing Helmstetter's 33% share of the Fair Market Value of Kingdom Chevrolet.

b. Our valuation is based on the financial statements of Kingdom Chevrolet from 2011 through May 2016, the latest financial statements that Helmstetter has available to him.

c. Our valuation considers the following:

i. Latest available financial statements; and  
ii. Independent, expert market reports on trends and outlooks in auto retail and dealership values, including Blue Sky valuation multipliers.

d. We would need Kingdom Chevrolet's financial statements from June 2016 onwards and its tax returns for 2016 onwards to update our calculations.

13. With regard to an estimated \$1.1 million in unpaid salary and bonuses due to Helmstetter by Kingdom Chevrolet, we have based our estimate on two years of earnings, using Helmstetter's earnings prior to termination.

- a. We would need the payroll records of Helmstetter's replacement for 2014 onwards to update our calculation of his unpaid salary and bonuses.
14. With regard to an estimated \$3.1 million in unpaid dividends due to Helmstetter by Kingdom Chevrolet, we have based our estimates on Kingdom Chevrolet's financial statements from January 2011 through May 2016.
  - a. Kingdom Chevrolet's financial statements for the period reflect dividends totaling approximately \$7.3 million.
  - b. The 2014 and 2015 tax returns of Kingdom Chevrolet do not reflect any dividends paid in either year, despite dividends being recorded in the financial statements for those years.
  - c. There is no readily ascertainable reason for the difference between the financial statements and the tax return.
  - d. As an S Corporation, Kingdom Chevrolet is required to distribute dividends to its shareholders directly in proportion to their shareholding.
  - e. Helmstetter received approximately \$1.04 million of this total, with the remaining \$6.26 million being paid to Ruscitti.
  - f. Helmstetter did not receive the remainder of his appropriate pro rata share of the dividends.
  - g. Helmstetter has not received any dividends from Kingdom Chevrolet since the termination of his employment.
  - h. A proportionate share of any additional dividends declared by Kingdom Chevrolet beyond 2015 is also due to Helmstetter. We would need Kingdom Chevrolet's financial statements from June 2016 onwards to calculate this amount.

15. With regard to the Excess Executive Compensation and Falsified Rent and Mortgage Payments by Ruscitti:

- a. We have based our estimates on Kingdom Chevrolet's financial statements from January 2015 through December 2015.
- b. Kingdom Chevrolet's financial statements recorded executive compensation as approximately \$247,000 for the year ended December 31, 2015.
- c. The 2015 tax return of Kingdom Chevrolet showed approximately \$56,000 as paid to Ruscitti, with no other executives recorded.
- d. There is no readily ascertainable reason for the difference between the financial statements and the tax return.
- e. Helmstetter's share of the \$247,000 less \$56,000 is 33.33% of \$191,000, which amounts to \$63,666.
- f. We would need Kingdom Chevrolet's financial statements from June 2016 onwards and its tax returns for 2016 onwards to calculate any additional excess executive compensation paid by the dealership.

16. With regard to Kingdom Chevrolet's rent:

- a. Kingdom Chevrolet's financial statements from January 2015 through December 31, 2015 show rent paid of approximately \$593,000 which is \$209,000 in excess of rent of \$384,000 payable per Kingdom Chevrolet's lease agreement with Gillespie Properties, LLC dated November 30, 2009.
- b. Helmstetter's 33.33% share of the \$209,000 amounts to \$69,667.
- c. We would need Kingdom Chevrolet's financial statements from June 2016 onwards to calculate any additional excess rent paid by the dealership.

17. With regard to the mortgage payments by Kingdom Chevrolet:

a. Kingdom Chevrolet made payments totaling approximately \$1.8 million on at least three mortgage loans, none of which Helmstetter either authorized or knew about.

b. We could not identify the real estate or improvements that Kingdom Chevrolet used to secure these mortgage loans as the financial statements did not reflect any real estate.

c. Kingdom Chevrolet's buildings and improvements were reflected at \$14,000 until the last mortgage loan was taken out in September 2015, when they increased by \$2 million.

d. Kingdom Chevrolet's tax returns for the same period do not reflect any mortgage loans or mortgage interest.

e. Helmstetter's 33.33% share of the mortgage payments amounts to \$600,000.

18. With regard to Helmstetter's share of the Reinsurance business of Kingdom Chevrolet:

a. Helmstetter does not have access to reinsurance contracts entered into by Kingdom Chevrolet and any reinsurance companies, such as CNA, beyond 2009.

b. We would need these contracts to determine Helmstetter's share of this business.

c. We would also need the financial statements and tax returns of Kingdom Chevrolet from June 2016 onwards.

19. Additionally, we have conducted a preliminary analysis of the information of the claims which Michael Helmstetter has all against parties (including the specific claim addressed upon herein).

20. Our preliminary calculations show that his claims total approximately \$33 million<sup>1</sup>.

21. Commenting only on our preliminary accounting analysis to date, it appears that the Debtor's assets exceed debts alleged by approximately \$20 million<sup>2</sup>.

22. As a result, we have not seen a factual predicate upon which one might reasonably conclude the Debtor is insolvent.

23. Our review to date raises the question as to why the Debtor filed bankruptcy at all. Again, due to the materiality of the discrepancy between our calculations and the Trustee's settlement, further investigation is warranted.



Deborah J. Temkin

Subscribed and sworn to me on this 18 day of November, 2020.



Notary Public, State of Wisconsin  
My Commission Expires: Feb 22, 2021



<sup>1</sup> We have not received full discovery of all records for all years from all parties. We therefore reserve the right to revise our analyses and calculations based on new and additional material being received.

<sup>2</sup> We have not received full discovery of all records for all years from all parties. We therefore reserve the right to revise our analyses and calculations based on new and additional material being received.

## EXHIBIT 0



## CURRICULUM VITAE

### **Deborah J. Temkin, CA (SA), CFE, MMI**

#### Director

The BERO Group | p: 312.847.1124; 262.522.7925 c: 630.336.7027 |  
e: [dtemkin@berogroup.com](mailto:dtemkin@berogroup.com)



Deborah J. Temkin has over 25 years of experience in the accounting profession, almost all of it in the litigation support arena, including the field of eDiscovery. Deborah is a Chartered Accountant (South Africa) and a Certified Fraud Examiner (CFE) and holds a Masters in International Management. Deborah is also an International Member of the American Institute of Certified Public Accountants and is the Director of the Chicago Chapter of Women in eDiscovery.

#### **Professional Experience**

Deborah has been involved with potential or actual civil and criminal litigation, including but not limited to:

- CA (SA) – Chartered Accountant South Africa (since 1994)
- MMI – Masters in International Management (2006)
- CFE – Certified Fraud Examiner (since 2018)
- AICPA – International Member (2020)

- Accounting expertise in the legal system
- Accounting malpractice
- Anti-Fraud Programs and Controls (COSO)
- Asset misappropriation
- Asset tracing
- Bankruptcy & Insolvency
- C-Suite Fraud
- Conflicts of interest
- Contract disputes
- Determination of lost profits and economic damages
- Divorce and post-divorce
- Document Review
- eDiscovery
- Estates and Trusts
- Financial statement fraud
- Foreign Corrupt Practices Act investigations
- Fraud Response Plans
- Fraud Risk Assessments
- Embezzlements
- Fraudulent transfers
- Locating hidden assets
- Minority shareholder disputes
- Over/Understatements of expenses and losses
- Over/Understatements of revenue and other income
- Partnership and LLC issues
- Seller misrepresentations
- Shareholder and employee fraud
- Suspect Interviews



## **Relevant Experience**

- eDiscovery Program Leader for a Fortune 100 Corporation, managing their global and US eDiscovery programs and projects for litigation, FCPA investigations and internal investigations
- Design of eDiscovery programs
- Design and deployment of eDiscovery workstreams, including the use of text analytics and metadata analytics in eDiscovery of litigation and investigations
- Deployment of eDiscovery tools and methodologies in uses other than litigation and investigations
- Defensible deletion and records and information management consulting
- Assisting in deploying legal holds and coordinating complex forensic collections
- Cross-Border eDiscovery specialist
- eDiscovery specialist in handling PII, SPI, HIPAA and other data privacy risks
- Investigations into Foreign Corrupt Practices Act violations
- Internal investigations, including C-Suite investigations
- Investigations in conjunction with bankruptcy claims
- Litigation claims arising from fraud and occupational abuse within the manufacturing, retail, healthcare, consumer business, higher education and professional service industries, including fraudulent financial reporting, embezzlements, and conflicts of interest.
- Litigation claims arising from accounting malpractice, minority shareholder and partner disputes, contract disputes, acquisition disputes, disputes about trusts and estates, and divorces

## **Sample Seminars and Webinars**

- *Presenter, Antifraud Programs and Controls, Institute of Internal Auditors, National Conference on Fraud, FL (4/08)*
- *Presenter, Antifraud Programs and Controls, Institute of Internal Auditors, Long Island, NY (7/08)*
- *Presenter, Antifraud Programs and Controls, Institute of Internal Auditors All-Star Conference, Las Vegas, NV (10/08)*
- *Facilitator and Trainer, Deloitte University (various internal trainings) 2012-2016*
- *Presenter, Cross Border eDiscovery, Chicago Bar Association, 4/15 Chicago, IL*
- *Presenter, Forensic Accounting & Valuation for Divorce, Sterling Law Group, Milwaukee, WI (10/19)*
- *Presenter, Show Me the Money: Forensic Investigation and Business Valuation in Family Law Cases, Milwaukee Bar, WI (10/19)*
- *Presenter, Internal Investigations, QBE Corporate Counsel, Sun Prairie, WI (10/19)*
- *Panel Moderator – The Gender Wage Gap and Negotiating for Yourself, RelativityFest, Chicago, IL (10/19)*
- *Presenter, Using Technology to Find the Money, Stafford Rosenbaum LLP, Madison, WI (11/19)*

## **Professional Memberships, Past and Present**

ABA - American Bar Association (Affiliate Member)

ACAUS – Association of Chartered Accountants in the US

ACFE - Association of Certified Fraud Examiners

AICPA - American Institute of Certified Public Accountants (International Member)

CBA - Chicago Bar Association (Affiliate Member)

DCBA - DuPage County Bar Association (Affiliate Member)  
SAICA - South African Institute of Chartered Accountants  
Women in eDiscovery, Chicago Chapter (Director)

### **Compensation Hourly Rates – As of January 1, 2020**

Standard rate \$350/hour

### **Employment History:**

The BERO Group, LLC Director Chicago, IL and Waukesha, WI	2019-Present
Complete Discovery Services Inc. Director	2018-2019
Temkin Maritz Owner	2017-2018
Northwestern Mutual Representative	2016-2017
Deloitte Transactions and Business Analytics, LLP Senior Manager and Chicago Document Review Services Leader	2012-2016
Deloitte Financial Advisory Services, LLP Senior Manager and US India FAS PMO Leader	2008-2011
Deloitte Financial Advisory Services, LLP Senior Manager and Antifraud Co-Leader	2006-2008
Sabbatical – lived in The Netherlands, part-time student, volunteer	2004-2006
Deloitte & Touche, LLP (Chicago) Manager, Litigation and Dispute Services	1998-2003
Deloitte & Touche, LLP Manager, Forensic and Investigative Services	1995-1998
Deloitte & Touche, LLP Senior Consultant, Audit	1992-1994