No. 23-

IN THE

Supreme Court of the United States

JOSEPH G. WORTLEY,

Petitioner,

– v. –

JAMES JURANITCH, RICHARD TARRANT,
CHAD P. PUGATCH, RICE PUGATCH
ROBINSON SCHILLER, PA, BARRY MUKAMAL,
TRUSTEE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an insider's involuntary bankruptcy petition against his closely-held business for the express purpose of "breaking a deadlock" or to get a "business divorce" from another faction of insiders is a bad faith filing under the United States Bankruptcy Code?

RULE 29.6 STATEMENT

The Petitioner is Joseph G. Wortley ("Mr. Wortley"), an individual. Neither the Petitioner, the Respondents, nor the limited liability company at issue, Global Energies, LLC, is a publicly held company. No publicly held company owns 10% or more of their stock.

RELATED PROCEEDINGS

In re Global Energies, No. 10-bk-28935, United States Bankruptcy Court for the Southern District of Florida. Judgment entered September 27, 2011. Post-judgment relief denied May 29, 2012. Judgment on remand entered June 25, 2018.

Wortley v. Chrispus et al., No. 15-ap-1447, United States Bankruptcy Court for the Southern District of Florida. Judgment entered June 25, 2018.

Wortley v. Chrispus et al., No. 12-cv-61483, United States District Court for the Southern District of Florida. Judgment entered February 11, 2013. Post-judgment relief denied March 14, 2013.

Wortley v. Chrispus et al., No. 15-cv-61413, United States District Court for the Southern District of Florida. Judgment entered March 28, 2016.

Wortley v. Chrispus et al. No. 18-cv-61556 and 18-cv-61558 (consolidated), United States District Court for the Southern District of Florida. Judgment entered March 19, 2019. Judgment entered on remand on May 20, 2022.

Wortley v. Chrispus et al., No. 12-11160, United States Court of Appeals for the Eleventh Circuit. Judgment entered on April 26, 2012.

Wortley v. Chrispus et al., No. 13-11666, United States Court of Appeals for the Eleventh Circuit. Judgment entered August 15, 2014.

Wortley v. Chrispus, No. 14-10655 and 14-10873 (consolidated) United States Court of Appeals for the Eleventh Circuit. Judgment entered July 14, 2014 (dismissed).

In re: Joseph G. Wortley, No. 17-11429, United States Court of Appeals for the Eleventh Circuit. Judgment entered on June 7, 2017 (order denying writ).

In re: Chrispus Venture Capital, 19-11726, United States Court of Appeals for the Eleventh Circuit. Judgment entered December 16, 2019 (writ of mandamus).

Wortley v. Juranitch et al., 19-11816, United States Court of Appeals for the Eleventh Circuit. Judgment entered August 7, 2019 (dismissal).

Wortley v. Juranitch, No. 22-12021, United States Court of Appeals for the Eleventh Circuit. Judgment entered on April 26, 2023 (the decision sought to be reviewed).

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INTRODUCTION

Within the lower courts, confusion and conflict has arisen about what a bad faith bankruptcy is, including whether an involuntary bankruptcy petition can be used as a threat or a negotiating tool by an insider to break a deadlock or win a corporate control dispute with another insider. Through this petition, Mr. Wortley asks this Court to consider and decide once and for all whether an insider's use of an involuntary petition to "break a deadlock" against another faction is "intended by the Bankruptcy Code;" or whether it is bad faith *per se* to use a bankruptcy filing to gain a "tactical litigation advantage" against a business partner in this way.

If the sequence of decisions below is allowed to stand, "breaking a deadlock" will be prospectively considered to be a specially permitted use of a bankruptcy petition in the Eleventh Circuit. Other United States Courts of Appeals disagree, including *In re Integrated Telecom Express, Inc.*, 384 F.3d 108 (3d Cir. 2004). Lower courts in other circuits generally accept that it is bad faith to invoke bankruptcy merely to gain a "tactical litigation advantage." *See, e.g., In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994) ("Pursuant to 11 U.S.C. § 1112(b), courts have dismissed cases filed for a variety of tactical reasons unrelated to reorganization."); *In re Huckfeldt*, 39 F.3d 829, 832 (8th Cir. 1994) ("using bankruptcy as a 'scorched earth' tactic"); *Furness v. Lilienfield*, 35 B.R. 1006, 1013 (D. Md. 1983) ("The Bankruptcy provisions are intended to benefit those in genuine financial distress. They are not intended to be used as a mechanism to orchestrate pending litigation."); *In re Tr.*, 526 B.R. 668, 684 (Bankr. N.D. Tex. 2015) ("[T]his Court finds, that the Debtor had no good

faith reason to file its bankruptcy petition. Rather, the bankruptcy petition was filed as a litigation tactic . . . ."); *In re Original IFPC Shareholders, Inc.*, 317 B.R. 738, 750 (Bankr. N.D. Ill. 2004) ("[T]he question is really whether the debtor has presented a legitimate reorganizational objective within the scope of the Bankruptcy Code or rather has presented tactical reasons unrelated to reorganization[.]") (internal quote omitted); *In re HBA East, Inc.*, 87 B.R. 248, 259–60 (Bankr. E.D.N.Y. 1988) ("As a general rule where, as here, the timing of the filing of a Chapter 11 petition is such that there can be no doubt that the primary, if not sole, purpose of the filing was a litigation tactic, the petition may be dismissed as not being filed in good faith.").

Moreover, these holdings below expand the Article 1 bankruptcy courts' jurisdiction beyond Congressional intent. Until 2023, bankruptcy was not viewed as a proper means to resolve two-party civil disputes between warring business partners. *But see In re Hentges*, 351 B.R. 758 (Bankr. N.D. Okla. 2006) ("Generally, courts will find an improper use of the bankruptcy mechanism in cases of a two-party (or two-faction) dispute over the control of property or an entity."). Corporate law disputes over voting control are traditionally a matter of state law, and are properly resolved in state courts or Article 3 federal courts. *See, e.g. Chicago Title & Tr. Co. v. Forty-One Thirty-Six Wilcox Bldg. Corp.*, 302 U.S. 120, 127 (1937) (corporations law "is a matter exclusively of state power"); Fla. Stat. (2023) § 605.0702(1)(b)(5) (members of Florida limited liability companies should seek state court judicial dissolution if they are "deadlocked" with the other members). Accordingly, in *Jaffe v. Wavelength, Inc. (In re Wavelength, Inc.)*, 61 B.R. 614, 619 (9th Cir.

BAP 1986), the Bankruptcy Appellate Panel held that filing bankruptcy without proper authorization on behalf of the corporation by one faction of owners/directors (who were dissatisfied with a state court corporate dissolution proceeding pursued by the other faction) was improper use of bankruptcy, and bad faith. *See also In re Westerleigh Dev. Corp.*, 141 B.R. 38, 41 (Bankr. S.D.N.Y. 1992) ("The two feuding shareholders [of a 'deadlocked' corporation] may continue their state court actions and obtain appropriate relief without using the bankruptcy court as an additional weapon to resolve their disputes.").

Petitioner asks this Court to reaffirm the limited place for appropriate, good faith bankruptcy proceedings. In the proceedings below, the bankruptcy court should have recognized that the bankruptcy petitioners were using the Code to gain leverage in a dispute over the control over a closely-held company. Chrispus even offered to dismiss their petition, in writing, if Mr. Wortley acceded to their demands. Presented with these undisputed facts, the bankruptcy should have been dismissed so that the brewing civil dispute could be resolved using Florida state contract law and statutory provisions enacted for the exact purpose of resolving deadlocks. *See, e.g.* Fla. Stat. (2010) §§ 608.444, 608.449(2).[1] Despite bad faith bankruptcy jurisprudence in other circuits, the Eleventh Circuit has now held that *because* the bankruptcy petitioner insiders were using the Code to "break a deadlock" with Mr. Wortley, they actually acted in good faith. (Pet. App. at 10-12a).

1. *See also* Fla. Stat. (2023) § 605.0702(1)(b)(5).

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition this Court to grant certiorari review of the April 26, 2023 decision of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The subject of this petition is the April 26, 2023 court of appeals opinion, Docket No. 22-12021 (Pet App. 1a). Below that is the May 20, 2022 district court Order [D.E. 68] in Case No. 18-cv-61556 (S.D. Fla.) (Pet. App. 13a), and the June 25, 2018 bankruptcy court "Final Order on Remand" in Case Nos. 10-bk-28935-SMG [D.E. 1063] and 15-ap-01447-RAM [D.E. 477]. (Pet. App. 45a).

JURISDICTION

The judgment of the court of appeals was entered on April 26, 2023. Pet. App. 1a. On June 2, 2023, the court of appeals denied Petitioners' timely motion for rehearing. Pet. App. 198a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) (allowing review via "writ of certiorari granted upon the petition of any party to any civil or criminal case . . .").

RELEVANT STATUTORY PROVISIONS

At issue is the intent and purpose of the United States Bankruptcy Code, U.S. Code: Title 11, and Chapter 11 therein. Resolution of this case will also require reference to 11 U.S.C. §§ 303, 303(i),[2] 363(m), and § 1112(b).

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2. Section 303(i) provides:

> If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if

STATEMENT OF THE CASE

a. Nature of the case

This case always turned on whether members of a limited liability company could permissibly use Title 11 as a hardball negotiation tool to "break a deadlock" and obtain a business divorce on their unilateral terms. The bankruptcy and offer to dismiss it created leverage to alter their ownership positions relative to one another, thereby defeating any operating agreements, contractual arrangements by and between the members, and/or applicable state law. As the district court observed, "[t]his [appeal] is about whether an involuntary bankruptcy [petition] was filed in bad faith." Pet. App. 36a.

This case stems from the bankruptcy of a business known as "Global Energies, LLC" (herein "Global Energies"). Global Energies was formed by two individuals: Mr. Wortley and Respondent James Juranitch ("Juranitch"). Pet. App. 36–37a. Later, Respondent Richard Tarrant ("Tarrant") became involved in Global Energies when Respondent Chrispus Venture Capital, LLC ("Chrispus")—a company owned and controlled by Tarrant—made an investment in Global Energies in exchange for being admitted as a member to Global Energies, LLC. After Chrispus' investment in Global

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> the debtor does not waive the right to judgment under this subsection, the court may grant judgment– . . .
>
> (2) against any petitioner that filed the petition in bad faith, for--
>
> (A) any damages proximately caused by such filing; or
>
> (B) punitive damages.

Energies was made, Mr. Wortley held 32% of Global Energies' membership interests; Juranitch held 63%; and 5% was held by Chrispus. *Id.* at 36a, 47–48a.

Eventually, Tarrant, an insider/owner/creditor of Global Energies, LLC, acting through Chrispus, filed an involuntary bankruptcy petition against his own company on July 1, 2010. *Id.* at 36a. Tarrant and Chrispus' admitted intent of filing the bankruptcy petition was to persuade Mr. Wortley to give up enough of his equity interests to Chrispus or to otherwise restructure the equity interests of Global Energies to grant effective control to Chrispus and Juranitch and end the "deadlock." *Id.* at 75a (email from Chrispus to Wortley: "the involuntary bankruptcy petition will remain in place until such time as an agreement is reached")].

The lower courts took the position that Chrispus' petition was not filed in bad faith, because it was instead meant to resolve this "deadlock" and effect a "garden-variety business divorce" among the participants in a closely-held LLC. *See, e.g.,* Pet. App. 46a ("this case is a garden-variety business divorce"); Pet. App. 9–11a (Circuit Court holding that because Tarrant testified he was "attempt[ing] to resolve the deadlock" this meant the bankruptcy court's finding of good faith was appropriate)]. The Eleventh Circuit ultimately agreed. Wortley's position is that filing an involuntary bankruptcy petition as a negotiating tactic or to force the issue and get a "garden-variety business divorce" between business owners was bad faith *per se*.

b. Statement of the facts

The U.S. Court of Appeals was first introduced to Global Energies, and first opined upon this case, in *In re Glob. Energies, LLC*, 763 F.3d 1341 (11th Cir. 2014). Then, the court told of "business disagreements [that] undermined [Global Energies] and resulted in Tarrant and Juranitch's developing a plan to wrest Wortley's interest in Global from him by having Chrispus file an involuntary bankruptcy petition against Global." *Id.* at 1344. The facts were further explored in detail on remand, but the substance of what actually happened remains largely undisputed to this day.

On July 14, 2008, Wortley and Juranitch formed Global Energies. Wortley owned 23% of the company and Juranitch owned 77%. Pet. App. 47–48a. In May of 2009, Tarrant, acting through Chrispus and via the company's Amended Restated Operating Agreement (the "Agreement"), obtained a 5% interest in the company. *Id.* at 15–16a. The Agreement was written to require Wortley's approval for Global Energies to "enter into a sale, liquidate, dissolve, or wind-up" or to remove and appoint managers. *Id.* at 16a. Essentially, the Agreement gave Wortley the power to resolve deadlocks and take certain corporate actions by agreement with Juranitch. Tarrant's 5% interest in the company, in contrast, left Tarrant unable to make corporate decisions without the consent of *both* Wortley and Juranitch. *Id.*; *see also id.* at 50a ("Mr. Juranitch and Chrispus' combined 70% of Global Energies' shares was insufficient to break a deadlock, under the requirements of the [Operating] Agreement.").

Between March and May of 2010, Tarrant saw great prospects for Global Energies on the horizon. He was therefore interested in acquiring a greater share of the company. *Id.* at 16a. Around the same time, on May 12, 2010, Mr. Wortley "attempted to purchase 270,000 shares from Juranitch, which would effectively give Wortley" full control over Global Energies. *Id.* at 17a.; *see also id.* at 61a ("Mr. Wortley, knowing that Global Energies needed a cash infusion [tried to purchase Juranitch's shares]."). Juranitch declined to sell his shares, and instead, planned to associate with Chrispus/Tarrant and disassociate himself from Mr. Wortley. Juranitch removed the company's equipment and assets in the middle of the night without Mr. Wortley's knowledge or consent. *Id.* at 17a; *see also id.* at 57a ("Mr. Juranitch decided to remove the plasma torch heads . . . .").

Meanwhile, Tarrant and Juranitch formed a new company called Plasma Power, LLC. They used Global Energies' assets and employees and funding from Tarrant/Chrispus to continue to pursue opportunities using Global Energies' intellectual property. *See id.* at 87–91a. Plasma Power, LLC had obtained a commercial lease concurrently with Juranitch's removal of all of Global Energies' assets, and Global's assets were placed at Plasma Power's place of business. *See Id.* at 47a ("Mr. Tarrant and Mr. Juranitch formed a second company without [Wortley]."); *id.* at 62a ("'[Juranitch] had taken a lot of Global assets from the building and taken to parts unknown . . . .'") (quoting Wortley testimony); *id.* at 63a (Wortley believed that and Tarrant and Juranitch "were operating Global Energies together from afar."); *id.* at 98a ("Global Energies no longer had access to the technology.")].

In June and July of 2010, Tarrant, with Juranitch's input, began extending equity "restructuring" offers to Wortley. *Id.* at 17-18a. Wortley declined to give up his equity position that was granted to him by the parties' Amended Restated Operating Agreement for Global Energies. *Id.*

On July 1, 2010, Chrispus filed an involuntary bankruptcy against Global Energies. Chrispus then told Wortley that "the involuntary bankruptcy petition w[ould] remain in place until [Wortley agreed to a restructuring offer]." *Id.* at 75a. Viewing this as extortion, Wortley refused to give up his interests. *Id.* at 76a ("[A]s long as you are trying to extort me with the bogus Federal Court action, I see no reason to meet with you.") (quoting Mr. Wortley's email to Chrispus)].

In June of 2010, Juranitch and Chrispus were communicating about how to "save" the company by diminishing Wortley's voting and membership rights in the company. The plan was:

> 1. [Tarrant] communicates with [Wortley] on Tuesday when he is back, and requests a response on the offer that [Tarrant] extended Sunday night, which expired last Tuesday. [Tarrant] gives [Wortley] until the end of the business day.
>
> 2. If a meaningful response is received [Tarrant] and [Juranitch] start negotiating.... A two[-]day window is given to [Wortley] for a completed agreement.

> 3. If no meaningful response is received from [Wortley], Chrispus Ventures files for "Debtor in Possession" rights under Chapter 11 law on Wednesday....
>
> . . .

In re Glob. Energies, LLC, 763 F.3d 1341, 1345 (11th Cir. 2014); *see also id.* at 1350 ("[I]t would be clear error to interpret the[se] emails as showing anything other than that Tarrant and Juranitch conspired to have Chrispus file the bankruptcy petition in bad faith."). In fact, no bankruptcy was needed at all so long as Mr. Wortley caved to their demands.

After the bankruptcy had commenced "Tarrant and Juranitch both gave sworn testimony denying their plan to file an involuntary bankruptcy petition." *Id.* at 1346. In other words, Tarrant and Juranitch did not disclose that they had agreed in advance to use the bankruptcy as a negotiating tool against Wortley. As a result, "the Bankruptcy Court approved the sale of Global's assets to Chrispus[.]" Pet. App. at 20a.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ and review the decision of the court of appeals, because it conflicts with established precedent from other circuits and lower courts. This Court has identified two of the basic purposes of Chapter 11 as (1) "preserving going concerns" and (2) "maximizing property available to satisfy creditors." *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999); *accord Toibb v. Radloff*,

501 U.S. 157, 163–64 (1991) (discussing "the congressional purpose of deriving as much value as possible from the debtor's estate"). "Chapter 11 bankruptcy petitions [*should be*] subject to dismissal under 11 U.S.C. § 1112(b) unless filed in good faith" for one of the purposes identified by this Court. *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 118 (3d Cir. 2004). This "[r]equirement of good faith prevents abuse of the bankruptcy process by [partie]s whose overriding motive is to . . . . use [the bankruptcy code] to destroy and undermine the legitimate rights and interests" of other stakeholders. *Id.* at 119.

The bankruptcy court below expressly stated that it found that Chrispus made the petition against its own company in good faith to "break a deadlock" and to get a "garden variety business divorce." Pet. App. 46a (divorce); *id.* at 72a ("bankruptcy was an option because [of] the deadlock"); *id.* at 147a ("primary purpose in filing the involuntary was to [redistribute equity in Global Energies] and resolve the deadlock"). And the gist of the Eleventh Circuit's resulting affirmance is that "resolving a deadlock" or seeking a "garden variety business divorce" *is* an intended and permitted use of the bankruptcy code. But none of the lower court opinions cite any authority for this critical conclusion, because there is none.

The appropriate use or inappropriate misuse of the United States bankruptcy courts is at stake. *See United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.* (*In re Timbers of Inwood Forest Assocs., Ltd.*), 808 F.2d 363, 373 (5th Cir.1987) (en banc), *aff'd*, 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988) (stating that if a Chapter 11 plan does not have a rehabilitative purpose, the "statutory provisions designed to accomplish the reorganizational objectives

become destructive of the legitimate rights and interests of creditors").[3] If the decision below is allowed to stand, it will invite more litigants and bankruptcy attorneys to plot and threaten to file involuntary bankruptcy petitions as a nuclear option or threatened nuclear option in a negotiation. According to the Eleventh Circuit and the two lower courts, bankruptcy *can* be employed or threatened simply to undermine the rights of a shareholder, LLC member, or business partner in a manner that bypasses the operative written agreements and state laws of corporate governance. Bankruptcy is now permitted as a device in a two-faction "business divorce." Pet. App. 46a (divorce); Fla. Stat. (2010) § 608.449(2) (limited liability company members should seek dissolution in state court when the company is deadlocked or assets are being misappropriated).

Federal courts should be discouraging such behavior and dismissing such petitions, not blessing them as a legitimate use of Title 11. *In re Hentges*, 351 B.R. 758 (Bankr. N.D. Okla. 2006) ("Generally, courts will find an improper use of the bankruptcy mechanism in cases of a two-party (or two-faction) dispute over the control of property or an entity.").

The present decisions thereby give rise to a circuit split. Other circuits, including the Second and Third

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3. Wortley was also a creditor to Global Energies and had his creditor's interest destroyed in an addition to his equity interest. Pet. App. 110-11a (recounting how Wortley had a creditor's claim for $514,778.10, but recovered only $203,199)]; *see also In re Glob. Energies, LLC*, 763 F.3d 1341, 1345 (11th Cir. 2014) ("smoking gun email" discussing "eradicat[ing] the $200k note to [Wortley] and how [Wortley's] stock is dissolved").

Circuits, have held that gaining a tactical litigation advantage cannot be the aim of a chapter 11 filing. *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 118 (3d Cir. 2004); *In re C-TC 9th Ave. Partn.*, 113 F.3d 1304, 1309 (2d Cir. 1997) (affirming bankruptcy court's dismissal for bad faith when the bankruptcy court found the facts to be "that the primary function of the petition was to serve as a litigation tactic").

A. The Eleventh Circuit Decision Below

In the decision below, the Eleventh Circuit recited its own case law that "bad faith exists when a creditor uses a bankruptcy proceeding to accomplish objectives not intended by the Bankruptcy Code, such as taking over a debtor corporation and its assets . . . ." Pet. App. 10a. This, by itself, was a sound statement of law. But the circuit court noted the fact that the defendants filed a petition for bankruptcy to resolve a "deadlock" between the primary members of Global Energies. *Id.* at 11a. The principal of Chrispus, the petitioning creditor, himself had admitted that the petition was filed to break "the deadlock." *Id.* at 11a. The bankruptcy court, relying upon that testimony, held that the petition was filed to get a "garden-variety business divorce" and break "the deadlock," and therefore there was no bad faith in the filing of bankruptcy petition *ab initio*. *Id.* at 11a, 46a. The district court and the Eleventh Circuit affirmed based upon this reasoning. *Id.* at 10–11a. Each failed to cite to authority supporting the conclusion that it is good faith to put one's own company in bankruptcy to gain a tactical litigation advantage over the other insiders.

B. Third Circuit Holds That Gaining a Tactical Litigation Advantage is not a Good Faith Use of the Bankruptcy Code

In contrast to the Eleventh Circuit's holding that "breaking a deadlock" with another faction of insiders is an appropriate use of Chapter 11, the Third Circuit has held that it is bad faith when "the petition is filed merely to obtain a tactical litigation advantage." *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 120 (3d Cir. 2004) (citing *In re SGL Carbon Corp.*, 200 F.3d 154, 165 (3d Cir. 1999); *see also In re 15375 Meml. Corp. v. Bepco, L.P.*, 589 F.3d 605, 625 (3d Cir. 2009) ("Where 'the timing of the filing of a Chapter 11 petition is such that there can be no doubt that the primary, if not sole, purpose of the filing was a litigation tactic, the petition may be dismissed as not being filed in good faith.'") (quoting *In re SGL Carbon Corp.*, 200 F.3d at 165).

Integrated Telecom was a case where a tenant filed for Chapter 11 bankruptcy but then a "smoking gun" board resolution made clear that the petition was filed for the purpose of gaining a tactical advantage over its landlord in settlement negotiations; "a use of Chapter 11 that [the court] emphatically rejected." *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 125 (3d Cir. 2004). Integrated's board resolution described a strategy whereby it would offer to pay a fraction of what was owed to Integrated's landlord, and threaten the landlord with a bankruptcy filing if it did not accept. *Id.* at 113–15. The landlord declined to settle for less than it was owed, and the debtor made good on its threat.

At the time of the filing, the debtor was well-capitalized, but was nonetheless seeking to dissolve and

distribute its assets (including $105.4 million in cash) to its shareholders. *Id.* at 112. Dissolution would have meant breaking a lease agreement which would have created a massive liability to Integrated's landlord. The board's plan was to minimize this liability through (ab)use of the bankruptcy code. The Third Circuit "emphatically rejected" such a tactic, and explained:

> To be filed in good faith, a petition must do more than merely invoke some distributional mechanism in the Bankruptcy Code. It must seek to create or preserve some value that would otherwise be lost — not merely distributed to a different stakeholder — outside of bankruptcy. This threshold inquiry is particularly sensitive where, as here, the petition seeks to distribute value directly from a creditor to a company's shareholders.

In re Integrated Telecom Express, Inc., 384 F.3d 108, 129 (3d Cir. 2004); *but see* Pet App. 11a (Tarrant/Chrispus put Global in bankruptcy because they wanted to "reorganize" the equity structure of Global to "break the deadlock").

C. Applying the Third Circuit's Case Law to the Facts of Global Energies

In *Global Energies*, Chrispus threatened that the "bankruptcy would remain in place" for so long as Wortley refused to cede to Chrispus' demand for sufficient equity in the company. Pet. App. 75a. In *Integrated Telecom* the debtor threatened bankruptcy if the landlord would not accept a settlement offer for a fraction of what it was owed. 384 F.3d at 112. The Third Circuit holds such conduct to

be bad faith and an abuse of the bankruptcy code for the purpose of gaining a tactical litigation advantage. *Id.*

Elsewhere, the Third Circuit has held that "[w]here 'the timing of the filing of a Chapter 11 petition is such that there can be no doubt that the primary, if not sole, purpose of the filing was a litigation tactic, the petition may be dismissed as not being filed in good faith.'" *In re 15375 Meml. Corp. v. Bepco, L.P.*, 589 F.3d 605, 625 (3d Cir. 2009) (quoting *In re SGL Carbon Corp.*, 200 F.3d 154, 165 (3d Cir. 1999)).

In *Global Energies*, one insider (Juranitch) absconded with the company's assets and intellectual property. The other insider, Chrispus/Tarrant, wanted to continue to work with Juranitch and so it demanded that Wortley cede his equity to it. This demand was meant to bypass the company's operating agreement, state contract law, and state law procedures for resolving deadlocks in limited liability companies. *See* Fla. Stat. (2010) § 608.444 (distribution of assets upon dissolution); *id.* at § 608.449 (state court procedure for breaking deadlocks). The admitted conduct in *Global Energies* is bad faith under Third Circuit precedent, but the Eleventh Circuit has deemed it "good faith."

D. Use of the Bankruptcy Code by Insiders Seeking Business Divorces is Likely to Continue and Recur

In the lower courts, examples abound of cases in which shareholders attempted to use bankruptcy petitions as weapons against one another. "Many of these cases exhibit increasingly egregious attempts

to use § 303 of the Bankruptcy Code in 'bad faith' and with an improper purpose. Through the exploitation of powerful mechanisms and statutory ambiguities, the number of would-be creditors seeking to advance their improper agendas through the filing of an involuntary bankruptcy petition is undoubtedly growing." Timothy Bow, *Involuntary Petitions: Bad-Faith Motives and High Risks*, 31 Am. Bankr. Inst. J. 52, 52 (August 2012). "Involuntary petitions have frequently been used as a litigation tactic . . . or a means to wrest corporate control from a company's owners." *Id.*

Here, this Court has recently declined review of a case where the appellant sought damages and attorneys' fees after having an involuntary petition dismissed under facts notably similar to *Global Energies*. *See Matter of 8Speed8, Inc.*, 921 F.3d 1193 (9th Cir. 2019), *cert denied, Vibe Micro, Inc. v. SIG Capital, LLC*, 205 L. Ed. 2d 132 (Oct. 7, 2019). In that case, the debtor was a closely-held startup, the company was "deadlocked." *Id.* at 1196 (Bennett, J. dissenting) ("deadlocked governance"). There was no serious question that the bankruptcy itself was filed in bad faith; the issue was not even ultimately contested.

In another case, *ELRS Loss Mitigation, LLC*, 325 B.R. 604, 633 (Bankr. N.D. Okla. 2005), the filing was in bad faith because "the only real effect of an involuntary bankruptcy would be to wrest control of [the debtor] away from Vargas." Reciting notable similarities to the Global Energies case, the Oklahoma bankruptcy court stated:

> The Court believes that Pogue's pre-filing conduct was undertaken with the primary goal of regaining control of the business. Virtually

all of the settlement offers made by Pogue were directed to this end. In many ways, Pogue was successful; most of the assets of [the debtor] were placed within his custody. While the Court is not in a position to determine the exact thinking of Pogue in filing this case, one thing is clear. The entry of an order for relief under Chapter 7 of the Bankruptcy Code would remove Vargas from any control of the assets of [the debtor], including any claim which Loss Mitigation would have against Pogue and/or Loss Recovery. In the experience of the Court, a bankruptcy trustee is more likely to be selling assets on a liquidation, rather than a going concern, basis. Perhaps Pogue saw the filing of a Chapter 7 case as an easier path to his ultimate goal.

. . .

This case is in reality a two-party dispute between Pogue and Vargas. In the [*In re Harmsen*, 320 B.R. 188, 201, n. 36 (10th Cir. BAP 2005)] opinion, the Bankruptcy Appellate Panel for the Tenth Circuit noted in a footnote that where a voluntary petition could be dismissed on the basis of a lack of good faith were the debtor to seek resolution of a two-party dispute in bankruptcy court, an involuntary case should be dismissed where similar motivation is found on the part of the petitioning creditors. This Court has not hesitated to dismiss a bankruptcy brought voluntarily by a debtor where the case represents a two-party dispute. What is good

> for the goose is good for the gander. If a debtor may not seek to resolve its two-party dispute under the auspices of the bankruptcy court, there is no reason to allow a creditor to bring its two-party claim to the same court through the filing of an involuntary petition.

Id. at 633 (footnotes omitted); *compare* Pet. App. 71–77a (recounting multiple "settlement offers" made by Chrispus, including an offer to dismiss the bankruptcy petition if Wortley gave up equity).

In *In re Westerleigh Dev. Corp.*, 141 B.R. 38 (Bankr. S.D.N.Y. 1992), the debtor had two shareholders, each owning 50% of the company. *Id.* at 39. The two shareholders were at war over control of the debtor's assets, and the corporation was "deadlocked." *Id.* at 39–40. In dismissing the involuntary petition, *Westerleigh* held that "[t]he bankruptcy court should not be used by one shareholder to gain leverage over the other." *Id.* at 41. It is simply not proper for a company with two shareholders to be placed into bankruptcy by one shareholder over the objections of the other shareholder for purposes of winning a state law dispute. *See id.* at 40–41; *see also Matter of 8Speed8, Inc.*, 921 F.3d 1193, 1197 (9th Cir. 2019) ("the other 50% shareholder—intended to liquidate 8Speed8 contrary to Vibe Micro's position and inconsistent with its interests") (Bennett, J. dissenting), *cert denied*, *Vibe Micro, Inc. v. SIG Capital, LLC*, 205 L. Ed. 2d 132 (Oct. 7, 2019).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. The Court should review the decision of the court of appeals on its merits.

Respectfully submitted,

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August 31, 2023

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-12021
Non-Argument Calendar

IN RE: JOSEPH G. WORTLEY,

Debtor.

JOSEPH G. WORTLEY,

Plaintiff-Appellant,

versus

JAMES JURANITCH, RICHARD TARRANT, CHAD P. PUGATCH, RICE PUGATCH ROBINSON SCHILLER, PA, BARRY MUKAMAL, TRUSTEE, *et al.*,

Defendants-Appellees.

April 26, 2023, Filed

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:18-cv-61556-DPG

Before WILSON, JORDAN, and BRANCH, Circuit Judges.

PER CURIAM:

Joseph G. Wortley appeals the district court's order affirming the bankruptcy court's final order and judgment in favor of Defendants-Appellees. Wortley asserts that the district court erred in affirming the bankruptcy court, which found that Appellees filed the Chapter 11 bankruptcy petition in good faith. After careful review, we **AFFIRM**.

I. Factual Background

The facts of this case are well known to the parties at this point and are amply recounted in the district court's order. *See Wortley v. Tarrant (In re Global Energies, LLC)*, 2022 U.S. Dist. LEXIS 115194, 2022 WL 2276748, *1-3 (S.D. Fla. May 20, 2022). In short, Wortley, James Juranitch, and Richard Tarrant were business partners in Global Energies, LLC, a privately held corporation. Wortley invited Chrispus, Tarrant's corporation, to invest in Global Energies. Under the terms of the operating agreement, in the event of a deadlock between Wortley and Juranitch, a majority vote was required to remove or elect managers and to enter a sale, liquidate, dissolve, or wind-up Global Energies.

At some point, Wortley and Juranitch reached an impasse, which put Global Energies in a deadlock and

unable to continue operations. Tarrant and his financial advisor, Ron Roberts, extended offers to Wortley to restructure Global Energies and allow Wortley to keep a significant ownership interest, but he rejected the offers. Juranitch, Tarrant, and Roberts exchanged emails in which they developed a strategy to try to salvage Global Energies (Wortley referred to these emails as the "smoking gun" emails). Ultimately, they decided that Chrispus would file a Chapter 11 involuntary bankruptcy petition against Global Energies. The petition was filed on July 1, 2010.

Procedural Background

On October 7, 2010, Wortley moved to dismiss the bankruptcy case for being filed in bad faith, but he later withdrew his motion to dismiss. On November 30, 2010, the United States Bankruptcy Court for the Southern District of Florida approved the sale of Global Energies' assets to Chrispus. Wortley filed a second motion to dismiss for bad faith based on new evidence, which the bankruptcy court denied with prejudice after holding an evidentiary hearing.

Months later, during discovery in related state-court litigation, Wortley discovered the "smoking gun" emails and filed a motion for rehearing in the bankruptcy court based on newly discovered evidence demonstrating bad faith (the Rule 60(b) motion).[1] The bankruptcy court

1. This motion sought relief under Federal Rule of Civil Procedure 60(b)(2) and (3) from the bankruptcy court's denial of the second motion to dismiss.

denied the motion, and Wortley appealed to the district court. The district court affirmed, and Wortley appealed to this Court.

Finding that the bankruptcy court abused its discretion by applying the wrong legal standard to the Rule 60(b) motion, we reversed and remanded the case to the bankruptcy court with instructions. *See In re Global Energies, LLC*, 763 F.3d 1341, 1348 (11th Cir. 2014) (per curiam). Pursuant to our mandate, the bankruptcy court vacated its order denying Wortley's Rule 60(b) motion, granted the Rule 60(b) motion, vacated its order approving the sale of Global Energies' assets, and set Wortley's second motion to dismiss for rehearing.

In July 2015, Wortley filed an adversary bankruptcy proceeding against Tarrant, Jaranitch, Chrispus, Chad Pugatch, the Law Firm, and Plasma Power LLC. In July 2017, the bankruptcy court held an 11-day trial which addressed both the second motion to dismiss and claims from the adversary proceeding. On June 25, 2018, the bankruptcy court issued a 70-page final order, which denied the second motion to dismiss with prejudice. Final judgment was entered in favor of Appellees the same day.

Wortley appealed to the district court. In March 2019, the district court reversed and remanded after finding that the bankruptcy court failed to follow our mandate in *In re Global Energies*. In May 2019, Appellees appealed and petitioned this Court for a writ of mandamus. On December 16, 2019, we issued a Mandamus Order directing the district court to vacate its order remanding

to the bankruptcy court, finding that the bankruptcy court did not deviate from our mandate during its proceeding on remand. *See In re Chrispus Venture Capital, LLC*, 2019 U.S. App. LEXIS 37230, 2019 WL 13192053, *1 (11th Cir. Dec. 16, 2019). On May 20, 2022, the district court affirmed the bankruptcy court's final order and judgment. Wortley timely appealed.

II.

In bankruptcy cases, we act as a "'second court of review' and thus 'examines independently the factual and legal determinations of the bankruptcy court and employs the same standards of review as the district court.'" *Finova Capital Corp. v. Larson Pharmacy Inc. (In re Optical Techs., Inc.)*, 425 F.3d 1294, 1299-1300 (11th Cir. 2005) (quoting *In re Issac Leaseco, Inc.*, 389 F.3d 1205, 1209 (11th Cir. 2004)). We review the bankruptcy court's and district court's legal conclusions de novo, and we review the bankruptcy court's factual findings for clear error. *Id.* at 1300.

III.

On appeal, Wortley argues that the district court erred in affirming the bankruptcy court's final order. Specifically, Wortley challenges the bankruptcy court's finding that the Chapter 11 petition was filed in good faith. Wortley also argues that, pursuant to our mandate in *In re Global Energies*, the bankruptcy court should have reimbursed his attorneys' fees and costs; dismissed the bankruptcy; awarded damages; required accounting and

disgorgement; and ensured Appellees "do not profit from their misconduct."

The Appellees argue that the district court properly affirmed the bankruptcy court's final order and judgment because the bankruptcy court followed our mandate by holding an evidentiary hearing and—based on the law and evidence—correctly denied Wortley's claims of bad faith. We agree with the Appellees.

The Mandate

Before addressing the merits of Wortley's appeal, we turn first to our mandate in *In re Global Energies*. It is helpful to briefly summarize the law underlying appellate mandates:

> The [law of the case] doctrine is based on the premise that an appellate decision is binding in all subsequent proceedings in the same case unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice. A district court when acting under an appellate court's mandate, "cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon a matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded."

. . .

> The mandate rule is simply an application of the law of the case doctrine to a specific set of facts.

Litman v. Massachusetts Mut. Life Ins. Co., 825 F.2d 1506, 1510-11 (11th Cir. 1987) (footnotes and citations omitted).

Here, the bankruptcy court conducted an 11-day trial, during which it considered Wortley's claims of bad faith based on the newly discovered evidence.[2] Over the course of the trial, the bankruptcy court "admitted over 200 exhibits into evidence, heard argument from the parties, and heard testimony from" 14 witnesses. *Wortley v. Tarrant (In re Global Energies, LLC)*, No. 10 28935-RBR, 2018 Bankr. LEXIS 1917, 2018 WL 3121792, *1 (Bankr. S.D. Fla. June 25, 2018), *aff'd*, No. 10-BK 28935-SMG, 2022 U.S. Dist. LEXIS 115194, 2022 WL 2276748 (S.D. Fla. May 20, 2022). The bankruptcy court concluded after the trial that this was a rare case in which deviation from a mandate was justified because the court was presented with new and substantially different evidence on remand. 2018 Bankr. LEXIS 1917, [WL] at *33-35. At the original evidentiary hearing on Wortley's second motion to dismiss—which lasted one day—the bankruptcy court heard testimony from only two witnesses. Chrispus

2. The bankruptcy court held the trial and evidentiary hearing together and entered a duplicate opinion in the main bankruptcy case and adversary proceeding because the legal issues and factual findings were "intertwined in a manner that made any attempt at separation futile."

never presented any evidence or witnesses. At the trial, the bankruptcy court heard from 14 witnesses, considered significantly more evidence, and made more detailed factual findings. Thus, the bankruptcy court's finding of no bad faith after rehearing was appropriate in light of the new evidence and witness testimony it was presented with. *See Litman*, 825 F.2d at 1512 ("[T]here are cases wherein a seemingly specific mandate such as an order for a new [hearing] may wind up with a different result on remand."); *Friedman v. Market St. Mortg. Corp.*, 520 F.3d 1289, 1294-95 (11th Cir. 2008) (recognizing an exception to the law of the case doctrine where "the evidence on a subsequent trial was substantially different").

Contrary to Wortley's assertions, our mandate did not establish factual findings in the underlying bankruptcy case. As we have stated numerous times, a court of appeals cannot find facts. *See, e.g., United States v. Banks*, 347 F.3d 1266, 1271 (11th Cir. 2003) ("A court of appeals is not a fact finding body."); *United States v. Barnette*, 10 F.3d 1553, 1558 (11th Cir. 1994) ("It is not an appellate court's role to find facts."). Our mandate directed the bankruptcy court on remand to "conduct any hearings necessary in the exercise of all its powers at law or in equity and issue appropriate orders or writs." *In re Global Energies*, 763 F.3d at 1350. Importantly, we did not impose any remedies because we recognized "that Chrispus, Juranitch, Tarrant, and Pugatch have not had an appropriate hearing, which will be conducted before the bankruptcy court." *Id.*

In sum, the bankruptcy court complied with our mandate by holding an appropriate hearing, and its deviation in other respects was justified due to the presentation of new evidence.

The Bankruptcy Court's Findings

We now turn to the bankruptcy court's factual findings and legal conclusions over the course of the trial. On appeal, Wortley asserts that "there was no conceivable basis in this record to find a 'good faith' petition" and that "the district court erred in adopting the [bankruptcy court's] reasoning that the petition was filed in good faith." Appellees argue that the bankruptcy court, after considering all the evidence, found that the petition was not filed in bad faith—rather, it was filed to break the deadlock and reorganize Global Energies.

A review of the bankruptcy court's final order shows there was ample evidence to support its finding that the petition was filed in good faith. The bankruptcy court heard testimony from Wortley, Tarrant, and Juranitch, "which resulted in three facially plausible versions of the same story regarding the breakup of Global Energies." *In re Global Energies*, 2018 Bankr. LEXIS 1917, 2018 WL 3121792, *31. Thus, the bankruptcy court made credibility determinations as to the witnesses and found that Tarrant and Juranitch were credible, but that "Wortley's testimony lacked any and all credibility." *Id.* The bankruptcy court thoroughly explained its credibility determinations for Wortley, Tarrant, and Jurantich. 2018 Bankr. LEXIS 1917, [WL] at *32-33. As to Worley, the court found

him "not a credible witness because his testimony was inconsistent, non-responsive, self-serving, confusing, and argumentative." 2018 Bankr. LEXIS 1917, [WL] at *32. The court found the other witnesses credible because they were forthright when answering questions, thus the court gave substantial weight to their testimony. 2018 Bankr. LEXIS 1917, [WL] at *33.

As to the filing of the Chapter 11 petition, the bankruptcy code does not define "bad faith." Thus, "courts have used different approaches to determine whether a petition was filed in bad faith." *Gen. Trading Inc. v. Yale Materials Handling Corp.*, 119 F.3d 1485, 1501 (11th Cir. 1997). Our circuit recognizes three tests: the improper purpose test, the improper use test, and the test modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure.

> Under the improper purpose test, "bad faith exists where the filing of the petition was motivated by ill will, malice or the purpose of embarrassing or harassing the debtor." . . .
>
> Under the improper use test, bad faith exists when a creditor uses a bankruptcy proceeding to accomplish objectives not intended by the Bankruptcy Code, such as taking over a debtor corporation and its assets. . . .
>
> Finally, under the test modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure, bad faith exists, where a filing party (1) fails to

> make a reasonable inquiry into the facts and the law before filing and (2) files the petition for an improper purpose. The first prong, reasonable inquiry, is an objective one.

In re Global Energies, 763 F.3d at 1349 n.5 (citations omitted).

In its final order, the bankruptcy court stated that it "failed to find any evidence that Chrispus filed the involuntary Chapter 11 bankruptcy petition in bad faither under the Eleventh Circuit's tests." *In re Global Energies*, 2018 Bankr. LEXIS 1917, 2018 WL 3121792, *37. The bankruptcy court found that the "primary purpose in filing the involuntary petition was to reorganize Global Energies and resolve the deadlock between the primary members." *Id.* This finding was supported by witness testimony: "Tarrant testified that he wanted to reorganize Global Energies, keep Mr. Wortley involved, and make Mr. Wortley whole." *Id.* Tarrant further testified that he and Roberts "attempted to resolve the deadlock between the parties before and after the bankruptcy filing; the 'smoking gun' emails revealed an intent to reorganize; and the Trustee testified there was 'potential' to reorganize but a sale of the assets was the best outcome." *Id.*

Under the clearly erroneous standard—which is "highly deferential"—we must uphold "factual determinations so long as they are plausible in light of the record viewed in its entirety." *Underwriters at Lloyd's, London v. Osting-Schwinn*, 613 F.3d 1079, 1085 (11th Cir. 2010) (quotations and citation omitted). After

reviewing the record and the bankruptcy court's thorough 70-page order, we are convinced that its factual findings were plausible. The bankruptcy court considered all the evidence that was presented during the trial, made plausible factual determinations, and applied the correct law to the bad faith claims.

Wortley appears to fundamentally misunderstand the function of our mandate in *In re Global Energies*. He repeatedly asserts that our mandate established that, based on the facts, the petition was filed in bad faith and that the bankruptcy court disregarded our mandate by not imposing sanctions on Appellees or awarding Wortley fees and costs. However, as explained above, our mandate instructed the bankruptcy court to hold a hearing and explicitly refrained from imposing remedies because Appellees had not had an appropriate hearing. *In re Global Energies*, 763 F.3d at 1350. Based on the new evidence presented at trial, the bankruptcy court contextualized the "smoking gun" emails and ultimately determined that Chrispus did not file the Chapter 11 petition in bad faith. We see no reason to disturb the bankruptcy court's thorough and well-reasoned order.

We find no error in the bankruptcy court's factual findings or its legal conclusion that the Chapter 11 petition was filed in good faith. The district court properly affirmed the bankruptcy court's final order and judgment. Accordingly, we affirm.

AFFIRMED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FILED MAY 20, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NOs.: 1:18-cv-61556-GAYLES
1:18-cv-61558-GAYLES

Bankruptcy Case Nos. 10-bk-28935-SMG
15-ap-01447-RAM

IN RE

GLOBAL ENERGIES, LLC,

Debtor.

JOSEPH G. WORTLEY,

Appellant,

v.

RICHARD TARRANT, JAMES JURANITCH, CHRISPUS VENTURE CAPITAL, LLC, CHAD P. PUGATCH, RICE PUGATCH ROBINSON & SCHILLER, P.A., and PLASMA POWER, LLC,

Appellees.

ORDER

THIS CAUSE comes before the Court following the United States Court of Appeals for the Eleventh Circuit's Order granting Appellees', Chrispus Venture Capital, LLC ("Chrispus"), Richard Tarrant ("Tarrant"), James

Juranitch ("Juranitch"), Chad Pugatch ("Pugatch"), and Rice Pugatch Robinson & Schiller, P.A. (the "Law Firm"), petition for writ of mandamus (the "Mandamus Order") [ECF No. 55].[1] *See also In re: Chrispus Venture Capital, LLC*, Case No. 19-11726 (11th Cir. Dec. 16, 2019). This bankruptcy appeal originally came before the Court on Appellant Joseph G. Wortley's ("Wortley") Notice of Appeal and Statement of Election (the "Appeal") [ECF No. 1], which appealed the United States Bankruptcy Court for the Southern District of Florida's: (1) Final Judgment in Favor of Defendants (the "Final Judgment"), *Adversary Proceeding* [D.E. 478]; and (2) Final Order on Remand (the "Final Order"), [ECF No. 1 at 9-78]; *Bankruptcy Proceeding*, [D.E. 1063]; *Adversary Proceeding*, [D.E. 477].[2] The Court has reviewed the Final Order, the parties' Initial Briefs and Post-Mandamus Memoranda, and the record and is otherwise fully advised. For the reasons that follow, the Final Order is affirmed.

---

1. This bankruptcy appeal involves the following two related bankruptcy cases, which were originally before Bankruptcy Judge Raymond B. Ray: (1) *In re: Global Energies, LLC*, Case No. 10-bk-28935-SMG (Bankr. S.D. Fla. July 1, 2010); and (2) *Wortley v. Tarrant*, 15-ap-01447-RAM (Bankr. S.D. Fla. July 10, 2015). To ensure clarity, the Court cites to entries on its docket as "[ECF No.]", entries on the Bankruptcy Court's docket in the bankruptcy proceeding as "*Bankruptcy Proceeding*, [D.E.]", and entries on the Bankruptcy Court's docket in the adversary proceeding as "*Adversary Proceeding*, [D.E.]".

2. The Final Order may also be found at: *In re Global Energies, LLC*, No. 15-ap-01447-RBR, 2018 WL 3121792 (Bankr. S.D. Fla. June 25, 2018).

BACKGROUND

The factual background underlying this bankruptcy proceeding has been detailed ad nauseam by the Bankruptcy Court, this Court, and the Eleventh Circuit. The Court briefly reiterates the relevant factual background and procedural history, which it takes from the Final Order.[3]

I. Factual Background

In 2008 and 2009, Wortley, Juranitch, and Tarrant came together as business partners to form Global Energies, LLC ("Global Energies"), a privately held corporation. [ECF No. 1 at 10]. Specifically, on July 14, 2008, Wortley and Juranitch formed Global Energies, with Wortley owning 23% of the company and Juranitch owning 77%. *Id.* at 11. Wortley was the "business guy" responsible for bringing business and capital to the company, while Juranitch was the "technical guy" responsible for bringing in technology and making it work. *Id.* On May 29, 2009, at Wortley's invitation, Chrispus—Tarrant's corporation[4]—invested in Global Energies and gained a 5% ownership interest. Wortley and Juranitch's ownership interests also

---

3. Neither party disputes the Bankruptcy Court's finding of facts or argues that clear error exists in the Bankruptcy Court's recitation of the facts.

4. Tarrant owned 93% of Chrispus and his financial advisor and partner, Ron Roberts, owned 7%. [ECF No. 1 at 12 n.6]. The two acted on behalf of Chrispus either unilaterally or jointly throughout the bankruptcy proceeding. *Id.*

shifted such that Wortley owned 32% of Global Energies and Juranitch owned 63%. *Id.* at 12.

Wortley and Juranitch remained responsible for managing Global Energies' operations and a consensus between the two was required in order to contract with others for business. *Id.* Under the terms of the Amended Restated Operating Agreement (the "Agreement"), if a deadlock occurred between Wortley and Juranitch, a 75% majority vote of the members was needed "to remove a Manager or elect new Managers." *Id.* (citation omitted). Similarly, a 75% majority vote of Global Energies' members "was needed to cause Global Energies to enter into a sale, liquidate, dissolve, or wind-up." *Id.* at 12-13. An automatic dissolution of Global Energies could only be triggered (1) by a sale of substantially all the assets, (2) by a 75% majority vote, or (3) if dissolution were otherwise provided by law. *Id.* at 13. Thus, "Wortley's cooperation and [32%] share of Global Energies were required to solve a deadlock between . . . Mr. Wortley and Mr. Juranitch" because "Mr. Juranitch and Chrispus' combined [68%] of Global Energies' shares was insufficient to break a deadlock, under the requirements of the Agreement." *Id.* While Wortley, Tarrant, and Juranitch viewed Global Energies as a valuable investment, "Global Energies had no concrete value on paper[,]" "never legally owned any patents[,]" "had no revenue in 2008, 2009, or 2010," and "had a negative cash flow at all times leading up to May 13, 2010." *Id.* at 14.

Although Global Energies did not realize any value, Wortley and Tarrant nevertheless sought to increase their

ownership interests in Global Energies. *Id.* at 15. Between March and May 2010, Tarrant—through Chrispus—attempted to acquire an additional 5% ownership interest in Global Energies; however, that plan did not come to fruition due to Wortley and Juranitch's subsequent breakup. *Id.* On May 12, 2010, Wortley attempted to purchase 270,000 shares from Juranitch, which would effectively give Wortley a controlling interest in Global Energies. *Id.* at 15-16. Wortley threatened Juranitch with "dire consequences"—including "cut[ting] off all credit cards, all insurance, all payroll" and no longer funding the company—if Juranitch did not immediately agree to the purchase. *Id.* at 16. The following day, Wortley again demanded that Juranitch agree to the purchase, reiterating his threats if the proposed contract for purchase was not signed. *Id.* Juranitch refused to sign. *Id.* As a result of the dispute between Wortley and Juranitch, Global Energies was in a deadlock and needed to be reconstituted. *Id.* at 21.

In the months following the breakup, Tarrant and Ron Roberts ("Roberts"), through Chrispus, attempted to negotiate a deal between the parties to reorganize Global Energies while also exploring the possibility of filing for bankruptcy. *Id.* at 26. On June 1, 2010, Tarrant retained Pugatch as bankruptcy counsel for Chrispus. Pugatch determined that bankruptcy was an option because the parties were deadlocked and the company's closure prevented operations outside of bankruptcy. *Id.* Pugatch further determined that an involuntary bankruptcy, specifically under Chapter 11, filed by Chrispus was the only viable way to file for bankruptcy because of the

Agreement's 75% majority vote requirement. *Id.* Chrispus, however, wanted to attempt negotiations and not file an involuntary bankruptcy petition immediately. *Id.*

In June and July 2010, Tarrant and Roberts extended four offers to Wortley to restructure Global Energies and allow Wortley to keep a significant ownership interest. *Id.* Each offer differed in proposition, ranging from Tarrant buying Wortley out or vice versa, splitting Global Energies based on the area of business, or replacing Wortley with another individual to be his representative. *Id.* at 27-29. Wortley rejected every offer that was made to him. As a result, the negotiation efforts concluded, and the deadlock continued. *Id.* at 29.

II. The "Smoking Gun" Emails

During the course of the negotiations, Juranitch, Tarrant, and Roberts exchanged several emails in which they developed a strategy for approaching Global Energies' future in conjunction with other companies they developed following the breakup. *Id.* These "smoking gun" emails, which were sent between June 17 and 19, 2010, were fully reproduced in the Final Order. *Id.* at 29-32.

On June 17, 2010, Juranitch emailed Tarrant and copied Roberts in an email that detailed a step-by-step plan for Global Energies' survival. *Id.* at 30. In that email, Juranitch proposed that the parties negotiate "in earnest to resurrect Global [Energies] and move back into [its] Deerfield [office] under the new plan" if Wortley provided a reasonable response to the offer before him. *Id.* If

Wortley did not provide a meaningful response, Juranitch proposed that Chrispus file an involuntary bankruptcy petition under Chapter 11. He further proposed that, following the appointment of a trustee —and "in keeping with Chrispus's desire to make Global Energies profitable and get its primary debt repaid"—Plasma Power LLC, a company formed by Tarrant and Juranitch, would provide Global Energies with a limited license to use its patent-pending technology in order to pursue potential jobs and continue its sales efforts. *Id.*

On June 18, 2010, Tarrant responded to Juranitch's email expressing his agreement with the strategy. *Id.* at 31. On June 19, 2010, Roberts confirmed the plan and noted that "[i]f we are successful in our reorganization plan then Global [Energies] will continue to operate . . . ." *Id.* That same day, Juranitch emailed Pugatch and copied Tarrant, Roberts, and others and reiterated the parties' plan going forward, including the creation of new entities that would transact with Global Energies if it became viable again. *Id.* at 31-32.

III. The Bankruptcy Proceedings

On July 1, 2010, Chrispus filed an involuntary bankruptcy petition under Chapter 11 against Global Energies. *Id.* at 44; *Bankruptcy Proceeding*, [D.E. 1]. Wortley did not initially object to the bankruptcy proceedings and even supported the appointment of the Trustee. [ECF No. 1 at 44-45]. On October 7, 2010, Wortley filed his first Expedited Motion to Dismiss Case as Having Been Filed in Bad Faith (the "First Motion to Dismiss").

[ECF No. 1 at 49]; *Bankruptcy Proceeding*, [D.E. 54]. On November 18, 2010, Wortley moved to withdraw his First Motion to Dismiss, without prejudice, *Bankruptcy Proceeding*, [D.E. 90]; as a result, the Bankruptcy Court denied the First Motion to Dismiss, without prejudice, on November 30, 2010, [ECF No. 97]. On November 30, 2010, the Bankruptcy Court approved the sale of Global's assets to Chrispus, *Bankruptcy Proceeding*, [D.E. 98], overruling Wortley's objections, *Bankruptcy Proceeding*, [D.E. 85]. On March 21, 2011, Wortley filed his second Motion to Dismiss Chapter 11 Case for Bad Faith Based on New Evidence of Conspiracy and Misrepresentations ("Second Motion to Dismiss"). *Bankruptcy Proceeding*, [D.E. 128]. The Bankruptcy Court held an evidentiary hearing on the Second Motion to Dismiss and thereafter denied it with prejudice on September 27, 2011. *Bankruptcy Proceeding*, [D.E. 399].

Several months later—during discovery in a related state-court action[5]—Wortley discovered the "smoking gun" emails. [ECF No. 1 at 51-55]. On April 23, 2012, Wortley filed a Motion for Rehearing Due to Newly-Discovered Evidence (Concealed by Chrispus) Produced in an Unrelated Case Affirmatively Demonstrating Bad Faith and Conspiracy to Accomplish Bad Faith Involuntary Filing (the "Rule 60(b) Motion"), which sought relief from the denial of the Second Motion to Dismiss based on Federal Rule of Civil Procedure 60(b)(2) and

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5. On October 28, 2010, Wortley filed a lawsuit in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against Tarrant, Chrispus, Juranitch, Roberts, and Plasma Power LLC. *See Wortley v. Tarrant*, 50-2010-CA-027345-XXXX-MB.

(3) because of the "smoking gun" emails. *Bankruptcy Proceeding*, [D.E. 465]. On May 29, 2012, the Bankruptcy Court denied the Rule 60(b) Motion. [ECF No. 482]. On June 8, 2012, Wortley appealed that denial to the district court. *Bankruptcy Proceeding*, [D.E. 486]. On February 11, 2013, United States District Judge Kathleen M. Williams affirmed the Bankruptcy Court's order. *See Wortley v. Chrispus Venture Capital LLC*, No. 12-CIV-61483, [ECF No. 24] (S.D. Fla. Feb. 11, 2013).

On April 9, 2013, Wortley appealed Judge Williams' order affirming the Bankruptcy Court's denial of the Rule 60(b) Motion. *See Wortley*, No. 12-CIV-61483, [ECF No. 31] (S.D. Fla. Apr. 9, 2013). On August 15, 2014, the Eleventh Circuit reversed the order and remanded the case to the Bankruptcy Court with instructions. *See In re Global Energies, LLC*, 763 F.3d 1341 (11th Cir. 2014) (per curiam). Specifically, the Eleventh Circuit found that the Bankruptcy Court applied the wrong legal standard when considering the Rule 60(b) Motion and, as a result, abused its discretion in denying the Rule 60(b) Motion. *Id.* at 1347-50. The Bankruptcy Court subsequently vacated its order denying the Rule 60(b) Motion, granted the Rule 60(b) Motion, vacated its order approving the sale of Global's assets to Chrispus, and set the Second Motion to Dismiss for rehearing. [ECF No. 1 at 56-57]; *Bankruptcy Proceeding*, [D.E. 987 & 1046].

On December 12, 2014, Wortley filed a Statement of Relief Sought based on the Eleventh Circuit's findings in *In re Global Energies, LLC. Bankruptcy Proceeding*, [D.E. 724]. On July 10, 2015, following months of discovery and

motion practice, Wortley filed an adversary proceeding against Tarrant, Juranitch, Chrispus, Pugatch, the Law Firm, and Plasma Power LLC after seeking leave from the Bankruptcy Court. *Adversary Proceeding*, [D.E. 1]. *See also Bankruptcy Proceeding*, [D.E. 819 & 881]. In the adversary proceeding, Wortley attempted to establish derivative standing to seek avoidance of the sale, damages from the sale, dismissal of the bankruptcy petition, and damages under 11 U.S.C. § 303(i) (the "303 claims"). The Bankruptcy Court dismissed the 303 claims but allowed the remainder of the claims to go forward.[6] *Adversary Proceeding*, [D.E. 85].

On July 11, 2017, the Bankruptcy Court began an eleven-day trial to address the Second Motion to Dismiss and the remaining claims brought in the Adversary Proceeding, which concluded on October 26, 2017. *See* [ECF No. 1 at 9-10]. On June 25, 2018, the Bankruptcy Court issued its 70-page Final Order denying the Second Motion to Dismiss with prejudice. *Bankruptcy Proceeding*, [D.E. 1063]; *Adversary Proceeding*, [D.E. 477]. In its Final Order, the Bankruptcy Court found that the involuntary bankruptcy petition was not filed in bad faith, granted judgment in favor of Appellees on all remaining counts in the adversary proceeding, and denied fees and costs to all parties. *Id.* That same day, the Final

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6. Wortley appealed the dismissal of his 303 claims to the district court. *Wortley v. Pugatch*, Case No. 15-CIV-61413 [ECF No. 1] (S.D. Fla. Mar. 28, 2016). That appeal was ultimately dismissed as premature because the Bankruptcy Court's dismissal of the 303 claims was not a final order from which the district court would have jurisdiction to consider the bankruptcy appeal. *Id.* at *4.

Judgment was entered in favor of Appellees. *Adversary Proceeding*, [D.E. 478].

IV. The Instant Appeal

On July 9, 2018, Wortley filed the instant appeal of the Final Order. [ECF No. 1]. That same day, Wortley also filed an appeal of the Final Judgment that was entered in connection to the Final Order, which came before then-Chief District Judge K. Michael Moore. *See Wortley v. Juranitch*, No. 18-CIV-61558, [ECF No. 1] (S.D. Fla. July 9, 2018). On July 11, 2018, this Court accepted transfer and consolidated the two appeals. [ECF No. 7]. On September 17, 2018, Wortley filed his Initial Brief.[7]

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7. Appellant raised the following issues on appeal in his Initial Brief:

1. Whether the bankruptcy court dutifully and faithfully carried out the Mandate of the Court of Appeals in Case No. 13-11666.

2. Whether, consistent with the Mandate, the lower court could refuse to dismiss the bankruptcy, refuse to reimburse Wortley's attorneys' fees and costs, refuse to award damages, refuse to require any accounting and disgorgement, and refuse to ensure that the appellees do not profit from their misconduct.

3. Whether, consistent with the Mandate, the lower court could value the Debtor at Zero as of the date of filing of the collusive involuntary bankruptcy Petition, when (a) the Debtor realized a minimum of $750,000 asset from an insider bidder; (b) that same insider has since invested $25 million into

[ECF No. 24]. On November 6, 2018, Appellees filed their Initial Brief.[8] [ECF No. 29]. On December 4, 2018, Wortley

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the Debtor's business; and (c) unrebutted expert testimony valued the business at $20,000,000.

4. Whether the bankruptcy court could refuse to require full disclosure of the operations of the appellees' continuing ventures relating to the Debtor, as was necessary to carry out the Mandate and to ensure that no profit results therefrom.

[ECF No. 24 at 11-12].

8. Appellees raised the following issues on appeal in their Initial Brief:

1. Whether Wortley's interpretation of the Eleventh Circuit's opinion is contrary to binding precedent as well as contrary to Wortley's own Rule 60(b) motion, which simply sought a rehearing on his underlying motion to dismiss the bankruptcy proceedings.

2. Whether the Bankruptcy Court properly refused to award Wortley's attorney's fees where (1) the Eleventh Circuit Court itself expressly concluded that *entitlement* to any attorney's fees had to be made by the trial court on remand, (2) there is no statutory or other basis for an award of fees, (3) Wortley is not the ultimate prevailing party, and (4) the Bankruptcy Court found there was no "bad faith" warranting such a fee (which is a finding Wortley has not challenged on appeal).

3. Whether the Bankruptcy Court correctly denied Wortley's claim for damages after determining (1) the bankruptcy filing was not the proximate cause of his alleged damages, (2) Wortley's expert

filed his Reply Brief. [ECF No. 35]. On March 19, 2019, the Court issued an Order reversing and remanding the Bankruptcy Court's Final Order (the "Remand Order"), reasoning that the Bankruptcy Court failed to follow the Eleventh Circuit's mandate in *In re Global Energies, LLC*. [ECF No. 36]. On April 22, 2019, the Court denied Appellees' Joint Motion for Reconsideration, [ECF No. 37], and Appellant's Rule 8022 Motion to "Rehear" Its Remand Instructions and Retain Jurisdiction, [ECF No. 38]. [ECF No. 41].

On May 6, 2019, Appellees filed their Notice of Appeal and petition for writ of mandamus. [ECF No. 43]. On December 16, 2019, the Eleventh Circuit issued its Mandamus Order, which directed this Court "to vacate its order remanding the matter to the bankruptcy court based on the application of the mandate rule." [ECF No. 55 at 3]. On October 31, 2020, the Court granted the parties leave to file post-mandamus briefing. [ECF No. 65]. On November 3, 2020, Wortley filed his Post-Mandamus Memorandum. [ECF No. 66]. On November 10, 2020, Appellees filed their Post-Mandamus Memorandum. [ECF No. 67].

> conceded his damages' testimony was flawed and speculative, and (3) Global had no value whatsoever both at the time of the filing of the bankruptcy and at the time of the alleged "conspiracy."

[ECF No. 29 at 15-16].

LEGAL STANDARD

The district court has jurisdiction to hear appeals from final judgments and orders of bankruptcy courts, pursuant to 28 U.S.C. § 158(a). "In reviewing bankruptcy court judgments, a district court functions as an appellate court." *Rush v. JLJ Inc.* (*In re JLJ Inc.*), 988 F.2d 1112, 1116 (11th Cir. 1993). The district court reviews the bankruptcy court's findings of fact for clear error and its conclusions of law *de novo*, and it cannot make independent factual findings. *See Torrens v. Hood* (*In re Hood*), 727 F.3d 1360, 1363 (11th Cir. 2013); *Englander v. Mills* (*In re Englander*), 95 F.3d 1028, 1030 (11th Cir. 1996).

DISCUSSION

The Court begins by addressing the Eleventh Circuit's mandate in *In re Global Energies, LLC* and then reviews the Bankruptcy Court's actions in light of the Eleventh Circuit's mandate and its Mandamus Order. Ultimately, the Court finds that the Bankruptcy Court's Final Order and Final Judgment should be affirmed.

I. *In re Global Energies, LLC* and the Eleventh Circuit's Mandate

In *In re Global Energies, LLC*, the Eleventh Circuit considered Wortley's "appeal[] [of] the district court's judgment affirming the bankruptcy court's summary denial of his motion for relief from judgment under Rule 60(b) of the Federal Rules of Civil Procedure." 763 F.3d at 1344. There, the Eleventh Circuit "review[ed] the

bankruptcy court's denial of [the Rule 60(b)] motion . . . for abuse of discretion"; that is, whether the bankruptcy court "made a clear error of judgment" or "applied the wrong legal standard[.]" *Id.* at 1347 (citations and internal quotation marks omitted). The Eleventh Circuit explained that under Rule 60(b)(2)[9]—one of the two grounds Wortley raised in his Rule 60(b) motion—Wortley would need to demonstrate that: "(1) the new evidence was discovered after the judgment was entered, (2) he had exercised due diligence in discovering that evidence, (3) the evidence was not merely cumulative or impeaching, (4) the evidence was material, and (5) the evidence was likely to produce a different result." *Id.* (citations omitted). The Eleventh Circuit also noted that, even if the movant had previously raised the same *issue*, "[w]hat matters is whether the movant presents new *evidence* to support the motion, in addition to satisfying the other criteria of Rule 60(b)(2)." *Id.* at 1348 (citation omitted; emphasis added).

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9. Rule 60(b) states, in relevant part that:

> (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding**. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> ...
>
> > (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b) . . . .

Fed. R. Civ. P. 60(b)(2).

The central issue on the appeal of Judge Williams's order was whether the bankruptcy court abused its discretion by "applying the wrong legal standard to Wortley's Rule 60(b)(2) motion." *Id.* at 1347. It was not, as Wortley's Initial Brief and Post-Mandamus Memorandum suggest, to decide the outcome of Wortley's Second Motion to Dismiss the bankruptcy petition altogether. While the Eleventh Circuit's interpretation of the "smoking gun" emails certainly suggests the outcome Wortley seeks, the Eleventh Circuit interpreted those emails without the benefit of an evidentiary hearing to contextualize them and solely for the purposes of determining whether Wortley had satisfied the Rule 60(b)(2) factors.

In its opinion, the Eleventh Circuit stated:

> On remand, the bankruptcy court shall grant Wortley's Rule 60(b)(2) motion and vacate its order approving the sale of Global's assets to Chrispus. This should be without prejudice to any innocent third parties, whose rights and interests are derived and dependent upon the sale. The bankruptcy court then shall conduct any hearings necessary in the exercise of all its powers at law or in equity and issue appropriate orders or writs, including without limitation orders requiring an accounting and disgorgement, orders imposing sanctions, writs of garnishment and attachment, and the entry of judgments to ensure that Chrispus, Juranitch, Tarrant, and Pugatch do not profit from their misconduct and abuse of the bankruptcy

> process. The bankruptcy court shall vacate the sanctions imposed upon Wortley and ensure that he is fully compensated for any and all damages, including awarding Wortley attorneys' fees and costs. The only reason that this court does not impose any of these remedies is that Chrispus, Juranitch, Tarrant, and Pugatch have not had an appropriate hearing, which will be conducted before the bankruptcy court.

Id. at 1350. Thus, that mandate only required the Bankruptcy Court to: (1) grant Wortley's Rule 60(b)(2) motion; (2) vacate the order approving the sale of Global's assets to Chrispus; (3) conduct necessary hearings and issue appropriate orders or writs; and (4) vacate the sanctions imposed on Wortley and ensure that he be compensated for any damages. *Id.* Notably, the Eleventh Circuit did not impose any remedies itself because "Chrispus, Juranitch, Tarrant, and Pugatch *have not had an appropriate hearing, which will be conducted before the bankruptcy court.*" *Id.* (emphasis added). Therefore, on further consideration, it is clear that the Bankruptcy Court had the authority—indeed, the obligation—to conduct further proceedings, including the proceedings which resulted in a final judgment in favor of Appellees. Any remaining doubt about the Bankruptcy Court's actions was dispelled by the Eleventh Circuit's Mandamus Order, which concluded the Bankruptcy Court did not deviate from the mandate. [ECF No. 55 at 3].

II. The Involuntary Bankruptcy Petition Was Not Filed in Bad Faith[10]

"11 U.S.C. § 1112 lays out a non-exclusive list of reasons a court should consider dismissal of a chapter 11 case, including 'for cause'. 'For cause' includes the filing of a bankruptcy case in bad faith." *In re Arm Ventures, LLC*, 564 B.R. 77, 82 (Bankr. S.D. Fla. 2017). "When determining whether a chapter 11 case should be dismissed as a bad faith filing," the court considers "factors that evidence an intent to abuse the judicial process and the purposes of the reorganization provisions." *Id.* (quoting *Albany Partners, Ltd. v. Westbrook* (*In re Albany Partners, Ltd.*), 749 F.2d 670, 674 (11th Cir. 1984)). Although the Eleventh Circuit "has not settled on one test for determining when a bankruptcy petition is filed in bad faith," there are "three recognized tests: the improper purpose test, the improper use test, and the test modeled on Rule 9011 of the Federal

10. Wortley now concedes, as he must, that the Court cannot reverse the Bankruptcy Court's Final Order based solely on the mandate rule. [ECF No. 66 at 2]. However, the issues Wortley raised in his Initial Brief [ECF No. 24] pertained only to whether the Bankruptcy Court improperly disregarded and deviated from the Eleventh Circuit's mandate. He argued the bankruptcy petition must be dismissed pursuant to the mandate because the Eleventh Circuit found it was brought in bad faith. In other words, Wortley disputed the Bankruptcy Court's decision on the sole ground that it conflicted with his interpretation of the Eleventh Circuit's mandate; he did not present any other independent arguments to rebut the Bankruptcy Court's conclusion that the bankruptcy petition was not filed in bad faith. Nevertheless, because the issue was raised in the parties' Post-Mandamus Memoranda [ECF Nos. 66-67], the Court briefly addresses Wortley's argument that the Court should overturn the Bankruptcy Court's decision on the merits.

Rule of Bankruptcy Procedure." *In re Global Energies, LLC*, 763 F.3d at 1349-50.

Under the improper purpose test, "bad faith exists where the filing of the petition was motivated by ill will, malice or the purpose of embarrassing or harassing the debtor." *Gen. Trading Inc. v. Yale Materials Handling Corp.*, 119 F.3d 1485, 1501 (11th Cir. 1997). Under the improper use test, "bad faith exists when a creditor's actions amount to an improper use of the Bankruptcy Code as a substitute for customary collection procedures." *Id.* (citations and internal quotation marks omitted). "[U]nder the test modeled on Rule 9011 of the Federal Rule of Bankruptcy Procedure, bad faith exists[] where a filing party (1) fails to make a reasonable inquiry into the facts and the law before filing and (2) files the petition for an improper purpose." *In re Global Energies, LLC*, 763 F.3d at 1349 n.5.[11]

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11. The Bankruptcy Court also considered the *Phoenix Piccadilly* factors when it considered whether the involuntary bankruptcy petition was filed in bad faith. [ECF No. 1 at 69-72]. *See also Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va.* (*In re Phoenix Piccadilly, Ltd.*), 849 F.2d 1393 (11th Cir. 1988). The *Phoenix Piccadilly* factors are "a number of subjective factors in determining whether a dismissal for bad faith is appropriate" recognized by the Eleventh Circuit when determining bad faith. *In re Arm Ventures, LLC*, 564 B.R. at 82 (discussing *Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va.* (*In re Phoenix Piccadilly, Ltd.*), 849 F.2d 1393 (11th Cir. 1988)). However, "the *Phoenix Piccadilly* factors are appropriate guidelines for consideration when evaluating whether a Chapter 11 petition in a *single asset real estate case* was filed in bad faith." *In re State St. Houses, Inc.*, 356 F.3d 1345, 1347 (11th Cir. 2004) (per curiam). Because this bankruptcy proceeding is not a single asset real estate case, the Court shall not consider the *Phoenix Piccadilly* factors.

Having reviewed the Bankruptcy Court's factual findings and the parties' arguments, the Court concludes that the involuntary bankruptcy petition was not filed in bad faith. First, with respect to the improper purpose test, no evidence was presented to suggest the Appellees were motivated by ill will or malice, or were attempting to harass Wortley, when Chrispus filed the involuntary bankruptcy petition. *See Gen. Trading Inc.*, 119 F.3d at 1501. Rather, several attempts were made to end the deadlock and resurrect Global Energies into a profitable venture; only when those attempts failed was the involuntary bankruptcy petition filed. *See* [ECF No. 1 at 26-29, 44]; *Bankruptcy Proceeding*, [D.E. 1]. Indeed, the Bankruptcy Court made a specific finding, which the parties do not contest, that "Chrispus' primary purpose in filing the involuntary [bankruptcy] petition was to reorganize Global Energies and resolve the deadlock between the primary members." [ECF No. 1 at 70-71]. Based on the evidence adduced during trial, the Court finds no clear error with this finding of fact. Moreover, the Bankruptcy Court found Tarrant testified credibly that Chrispus did not file the bankruptcy petition with the intent to get rid of Wortley, whom Tarrant considered a friend. *Id.* at 72.

With respect to the improper use test, there is similarly no evidence that Chrispus "use[d] a bankruptcy proceeding to accomplish objectives not intended by the Bankruptcy Code, such as taking over a debtor corporation and its assets." *In re Global Energies, LLC*, 763 F.3d at 1349 n.5. To the contrary, the offers made to Wortley during the failed negotiations would have given

him full control of Global Energies, given him a portion of Global Energies' business, or allowed him to appoint a representative to replace him. *See* [ECF No. 1 at 26-29, 44]; *Bankruptcy Proceeding*, [D.E. 1]. Further, once a Chapter 11 trustee was appointed, all parties had the opportunity to make offers to purchase the assets of Global Energies. Wortley did not make an offer. After Chrispus negotiated a deal with the trustee to purchase the assets, Chrispus extended a final offer to Wortley to instead permit him to purchase the assets on the same terms, but Wortley refused. *See* [ECF No. 1 at 47]. Given these facts, the Court concludes Chrispus did not improperly use the involuntary bankruptcy proceeding to attempt a takeover of Global Energies and its assets.

Finally, as to the test modeled on Rule 9011 of the Federal Rule of Bankruptcy Procedure, the Bankruptcy Court's findings of fact show that Tarrant—the majority owner of Chrispus—conducted a thorough investigation of the allegations Wortley and Juranitch raised during the breakup; sought the advice of counsel and hired Pugatch to assist in exploring options for reviving Global Energies; and attempted negotiations with Wortley to resolve the deadlock. [ECF No. 1 at 21-29]. Thus, a reasonable inquiry was made before filing the involuntary bankruptcy petition. *See In re Global Energies, LLC*, 763 F.3d at 1349 n.5. Moreover, as the Court has explained, the evidence, viewed collectively, does not reflect that Chrispus filed the bankruptcy petition for an improper purpose. Rather, Chrispus filed the petition with the intent to reorganize Global Energies and resolve the deadlock between its managing members.

In short, while the "smoking gun" emails viewed in isolation may be construed to suggest bad faith in filing the involuntary bankruptcy appeal, the Bankruptcy Court properly contextualized the emails. The Bankruptcy Court properly conducted an evidentiary hearing and issued its Final Order consistent with the evidence and the law. The Court concludes that the involuntary bankruptcy appeal filed by Chrispus against Global Energies was not filed in bad faith. Therefore, the Court affirms the Bankruptcy Court's Final Order and Final Judgment.

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The United States Bankruptcy Court for the Southern District of Florida's Final Order on Remand, *Bankruptcy Proceeding*, [D.E. 1063], *Adversary Proceeding*, [D.E. 477], is **AFFIRMED**.

2. The Clerk is directed to administratively **CLOSE** this action, and any pending motions are **DENIED as moot**.

DONE AND ORDERED in Chambers at Miami, Florida, this 20th day of May, 2022.

/s/ Darrin P. Gayles
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DATED MARCH 19, 2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case Nos. 18-cv-61556-GAYLES
18-cv-61558-GAYLES

Bankruptcy Case Nos. 10-28935-RBR
15-01447-RBR

IN RE GLOBAL ENERGIES, LLC,

Debtor.

JOSEPH G. WORTLEY,

Appellant,

v.

RICHARD TARRANT, JAMES JURANITCH, CHRISPUS VENTURE CAPITAL, LLC, CHAD P. PUGATCH, RICE PUGATCH ROBINSON & SCHILLER, P.A., AND PLASMA POWER, LLC,

Appellees.

March 19, 2019, Decided
March 19, 2019, Entered on Docket

ORDER

THIS CAUSE comes before the Court on Appellant Joseph G. Wortley's Notice of Appeal from the Bankruptcy Court. [ECF No. 1]. The Court has reviewed the parties' briefs and the record and is otherwise fully advised. For the reasons discussed below, the Bankruptcy Court's Final Order on Remand is reversed and remanded for further proceedings consistent with the Eleventh Circuit's Mandate in *In re Global Energies, LLC*, 763 F.3d 1341 (11th Cir. 2014).

I. BACKGROUND

This appeal is about whether an involuntary bankruptcy petition was filed in bad faith. The facts are fully set out in the Eleventh Circuit's Opinion in *In re Global Energies, LLC*, which the Court adopts and incorporates into this Order. The following procedural history is relevant to this appeal.

On July 1, 2010, Chrispus Venture Capital, LLC ("Chrispus")[1] filed an involuntary bankruptcy petition against Global Energies, LLC ("Global"). *See also In re Global Energies, LLC*, 10-28935-RBR ("Bankruptcy Case") [Bnkr. ECF No. 1]. At that time, Appellant Joseph Wortley ("Wortley") and Appellees Richard Tarrant ("Tarrant")—through Chrispus—and James Juranitch

1. Chrispus had a 5% share of Global. Richard Tarrant was a 93% shareholder of Chrispus. All actions taken by Tarrant, or Chrispus co-shareholder Ron Roberts, were on behalf of Chrispus as a shareholder of Global.

("Juranitch") owned Global. Wortley did not initially object to the bankruptcy proceedings and even supported the appointment of the Trustee. *In re Global Energies*, 763 F.3d at 1345. Wortley later began to suspect that the petition had been filed in bad faith. *Id.* To that end, on October 7, 2010, Wortley filed his first Expedited Motion to Dismiss Case as Having Been filed in Bad Faith ("First Motion to Dismiss"). *Id.* However, because Wortley did not have any direct evidence of bad faith or collusion between Chrispus/Tarrant and Juranitch, he voluntarily moved to withdraw his motion. *Id.* at 1346. After Wortley withdrew his motion,[2] the bankruptcy court approved the sale of Global's assets to Chrispus, overruling Wortley's objections. *Id.* On March 21, 2011, Wortley filed his second Motion to Dismiss Chapter 11 Case for Bad Faith Based on New Evidence of Conspiracy and Misrepresentations ("Second Motion to Dismiss"). *Id.* The bankruptcy court held an evidentiary hearing on the Second Motion to Dismiss and thereafter denied it with prejudice on September 27, 2011. *Id.*

Several months later—during discovery in a related state-court action[3] —Wortley discovered new evidence[4] of bad faith and filed a Rule 60(b) motion for relief. *Id.* at 1347.

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2. The bankruptcy court granted the request and denied the motion without prejudice. *In re Global Energies, LLC*, 763 F.3d 1341, 1346 (11th Cir. 2014).

3. *Wortley v. Tarrant, et al.*, 50-2010-CA-027345-XXXX-MB.

4. Wortley discovered an email thread between Appellees. The relevant portion of the email thread is copied in *In re Global Energies*, 763 F.3d at 1345.

The bankruptcy court denied Wortley's request for relief and Wortley appealed to the district court. *Id.* The district court affirmed the bankruptcy court's order. *Id.*; *See also Wortley v. Chrispus*, No. 12-cv-61483-KMW, (S.D. Fla. Mar. 14, 2013). Wortley then appealed the district court's order. On August 15, 2014, the Eleventh Circuit reversed the district court's order and remanded the case to the bankruptcy court with instructions ("the Mandate"). *In re Global Energies*, 763 F.3d at 1350.

The Eleventh Circuit found that the bankruptcy court either applied the wrong legal standard and/or made clear errors of judgment and abused its discretion in applying the proper standard when ruling on Wortley's Rule 60(b) motion. *Id.* at 1347-48.[5] Applying the proper legal standard, the Eleventh Circuit held that Wortley sufficiently demonstrated "that (1) the new evidence was discovered after the judgment was entered, (2) he had exercised due diligence in discovering that evidence, (3) the evidence was not merely cumulative or impeaching, (4) the evidence was material, and (5) the evidence was likely to produce a different result." *Id.* at 1347. Wortley's Rule 60(b) motion was based on the emails he discovered through the state-court litigation. The Eleventh Circuit found that the emails had been wrongfully withheld from Wortley—despite his due diligence—by Tarrant, Juranitch, and Chrispus-attorney, Chad Pugatch, who on multiple occasions "actively obstructed Wortley's efforts to obtain evidence of [their] plan to file for involuntary

5. "Instead of considering whether the [emails] were *new evidence*, the court asked whether Wortley had presented a *new issue* in his Rule 60(b)(2) motion." *Id.* at 1347 (emphasis added).

bankruptcy."[6] *Id.* at 1348. Ultimately, the Eleventh Circuit's Mandate was entered as follows:

> On remand, the bankruptcy court shall grant Wortley's Rule 60(b)(2) motion and vacate its order approving the sale of Global's assets to Chrispus . . . . The bankruptcy court shall then conduct any hearings necessary in the exercise of all its powers at law or in equity and issue appropriate orders or writs, including without limitation orders requiring an accounting and disgorgement, orders imposing sanctions, writs of garnishment and attachment, and the entry of judgments to ensure that Chrispus, Juranitch, Tarrant, and Pugatch do not profit from their misconduct and abuse of the bankruptcy process. The bankruptcy court shall vacate the sanctions imposed upon Wortley and ensure that he is fully compensated for any and all damages, including awarding Wortley attorney's fees and costs.

Id. at 1350.

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6. As to Tarrant and Juranitch, the court found that each denied, under oath, "any plan to file a bankruptcy petition in bad faith," statements which "now appear to be blatantly false." *In re Global Energies, LLC*, 763 F.3d at 1348-49. As to Pugatch, the court found his actions "troubling" where he represented Tarrant at the deposition where Tarrant falsely testified as to his conversations with Juranitch regarding the petition. *Id.* at 1349.

The bankruptcy court properly vacated the Sale Order and the sanctions imposed on Wortley—ironically—for filing his Second Motion to Dismiss in bad faith. [Bnkr. ECF Nos. 987, 696]. The additional actions that followed the remand arise out of the bankruptcy court's fundamental misreading of the Mandate.

On December 12, 2014, Wortley filed a Statement of Relief Sought based upon his understanding of the Eleventh Circuit's Opinion. [Bnkr. ECF No. 724]. Several months of motion practice followed and relief was granted. Ultimately, Wortley filed a Motion for Adversary Proceeding [Bnkr. ECF No. 819], which was granted in part. [Bnkr. ECF No. 881]. Wortley then filed an adversary proceeding against the Appellees wherein he attempted to establish derivative standing to seek avoidance of the sale, damages from the sale, dismissal of the bankruptcy petition, and damages under 11 U.S.C. § 303(i) (the "303 claims"). *See Wortley v. Tarrant, et al.*, 15-01447-RBR, 2018 Bankr. LEXIS 1917("Adversary Case") [Adv. ECF. No. 1]. The bankruptcy court dismissed the 303 claims but allowed the remainder of the claims to go forward. [Adv. ECF No. 85]. Wortley appealed the dismissal of his 303 claims to the district court. In dismissing the appeal, United States District Judge William J. Zloch found that the appeal was premature as the order dismissing the 303 claims was not a final order granting the district court jurisdiction "because it allowed further litigation of Wortley's claims." *See Wortley v. Pugatch, et al.*, No. 15-cv-61413, at * 4 (S.D. Fla. Mar. 28, 2016).[7] Finally,

7. In his order dismissing Wortley's appeal, Judge Zloch briefly discussed the appellate history of this case and noted that "the Eleventh Circuit held that [Chrispus's] petition was indeed

the bankruptcy court conducted an eleven-day trial to address the Second Motion to Dismiss and the claims brought in the Adversary Proceeding. At the end of that trial, the bankruptcy court entered a 70-page Final Order on Remand [Bnkr. ECF No. 1063] [Adv. ECF No. 477] denying the Second Motion to Dismiss with prejudice finding that the petition was not filed in bad faith; granting judgment in favor of Appellees on all remaining counts in the Adversary Proceeding; and denying fees and costs to all parties.

II. LEGAL STANDARD

The district court has jurisdiction to hear appeals from final judgments and orders of bankruptcy judges pursuant to 28 U.S.C. § 158(a). "In reviewing bankruptcy court judgments, a district court functions as an appellate court." *Rush v. JLJ Inc.* (*In re JLJ Inc.*), 988 F.2d 1112, 1116 (11th Cir. 1993). The district court reviews the bankruptcy court's findings of fact for clear error and its conclusions of law *de novo*, and it cannot make independent factual findings. *See Torrens v. Hood* (*In re Hood*), 727 F.3d 1360, 1363 (11th Cir. 2013); *see Englander v. Mills* (*In re Englander*), 95 F.3d 1028, 1030 (11th Cir. 1996).

III. DISCUSSION

"A trial court, upon receiving the mandate of an appellate court, may not alter, amend, or examine the

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filed in bad faith, reversed the Bankruptcy Court's denial of Wortley's motion to reconsider, and remanded with instructions that Wortley's motion to dismiss be granted." *Wortley v. Pugatch, et al.*, No. 15-cv-61413, at * 2 (S.D. Fla. Mar. 28, 2016).

mandate, or give any further relief or review, but must enter an order in strict compliance with the mandate." *Piambino v. Bailey*, 757 F.2d 1112, 1119 (11th Cir. 1985) (citing *In Re Sanford Fork & Tool Co.*, 160 U.S. 247, 255, 16 S. Ct. 291, 40 L. Ed. 414 (1895). "The trial court must implement both the letter and the spirit of the mandate, taking into account the appellate court's opinion, and the circumstances it embraces." *Id.* (internal citations omitted). This principle, known as the "mandate rule," cannot be disturbed unless "the presentation of new evidence . . . dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice." *Id.* at 1120 (internal citations omitted). This applies to all issues decided by the appellate court either "expressly or by necessary implication." *Id.* The importance of this doctrine cannot be understated; our justice system does not work when lower courts disregard the clear instructions of an appellate court. *See generally Litman v. Massachusetts Mut. Life Ins. Co.*, 825 F.2d 1506, 1511-12 (11th Cir. 1987).

The Court finds that the bankruptcy court failed to comply with the Eleventh Circuit's Mandate. The Eleventh Circuit clearly held that the new evidence showed that "Tarrant and Juranitch conspired to have Chrispus file the bankruptcy petition in bad faith," and that "the bankruptcy court could and *should have dismissed Chrispus's petition* for bad faith." *In re Global Energies, LLC*, 763 F.3d at 1350 (emphasis added). Based on this clear Mandate, the bankruptcy court was not permitted, much less required, to conduct an eleven-day trial into the merits of Wortley's Second Motion to Dismiss. This

was not a matter of "first impression" as suggested by the bankruptcy court, but instead one that had been decided by the Eleventh Circuit on appeal.[8] *Id.*

The bankruptcy court went to great lengths to establish that it was permitted to deviate from the Mandate according to one of the narrow exceptions to the mandate rule. *See Piambino*, 757 F.2d at 1120. The bankruptcy court determined that the mandate rule should not apply because it was presented with new evidence during the eleven-day trial. [Adv. ECF No. 477 at 59]. In so finding, the bankruptcy court correctly noted that following appeal a trial court may address "as a matter of first impression, those issues not disposed of on appeal." *Id.* (quoting *Piambino*, 757 F.2d at 1119). However, the bankruptcy court erred in finding that dismissal of the petition was a matter of first impression here and, further, that the "Mandate did not require—impliedly or expressly—the [bankruptcy court] to grant the Second Motion to Dismiss and dismiss the bankruptcy case." *Id.* (internal citations to the record omitted). *See supra*, Section I. It was error for the bankruptcy court to ignore the Eleventh Circuit's clear and unambiguous Mandate and to justify doing so based on new evidence obtained in a trial it should never have conducted.

IV. CONCLUSION

Because the Court holds that the bankruptcy court failed to follow the letter and spirit of the Eleventh Circuit's Mandate, it is hereby

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8. *See also supra* note 7.

ORDERED AND ADJUDGED that the Order and Final Judgment of the bankruptcy court [Adv. ECF No. 477] [Bnkr. ECF No. 1063] is **REVERSED and REMANDED** for actions consistent with the Mandate. Specifically, the bankruptcy court shall grant Wortley's Second Motion to Dismiss for bad faith based on the new evidence and shall conduct an appropriate hearing to determine the amount of attorney's fees to be awarded to Appellant, as well as a determination as to an amount of damages owed to him. The bankruptcy court shall conduct any appropriate hearings such as those identified by the appellate court that would ensure that "Chrispus, Juranitch, Tarrant, and Pugatch do not profit from their misconduct and abuse of the bankruptcy process." This action shall be **CLOSED** for administrative purposes, and all pending motions are **DENIED as moot**.

DONE AND ORDERED in Chambers at Miami, Florida, this 19th day of March, 2019.

/s/ Darrin P. Gayles
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

APPENDIX D — OPINION OF THE UNITED STATES BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF FLORIDA, DATED JUNE 25, 2018

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA,
www.flsb.uscourts.gov
Fort Lauderdale Division

Case No. 10-28935-RBR,
Chapter 7

In re: GLOBAL ENERGIES, LLC,

Debtor.

June 25, 2018, Decided

FINAL ORDER ON REMAND

THIS MATTER came before the Court for an eleven-day trial, which concluded on October 26, 2017,[1] upon the remaining counts in Mr. Joseph G. Wortley's Complaint [D.E. 1, Adv. Proc.], Defendants' affirmative defenses to the Complaint, and the Motion to Dismiss Case for Bad Faith Based on New and Additional Evidence of Conspiracy and Misrepresentations [D.E. 128, Main] (the "Second Motion to Dismiss"), and the Mandate of the United States Court of Appeals for the Eleventh Circuit (the "Eleventh Circuit").

1. The trial dates occurred on July 11, 12, 13, and 14, 2017; August 15, 16, and 23, 2017; September 5, 2017; and October 10, 11, and 26, 2017. The dates were nonconsecutive to accommodate the parties' and Court's schedules.

The Court entered this Final Order on Remand to resolve the disputes raised in the Mandate.[2]

I. FINDINGS OF FACT

During the eleven-day trial, the Court admitted over 200 exhibits into evidence, heard argument from the parties, and heard testimony from four witnesses for the Plaintiff's case in chief, nine witnesses for the Defendants' case in chief, and three rebuttal witnesses for the Plaintiff. [D.E. 1, 455, 456, 457, 458, Adv. Proc.; D.E. 128, Main].[3] This matter was tried on the facts without a jury or an advisory jury; thus, the Court found the following facts specially and states its conclusions of law separately, and judgment shall be entered forthwith. Fed. R. Civ. P. 52(a), 58.[4]

A. Mr. Wortley's Animosity Towards Mr. Tarrant and Mr. Juranitch Formed the Basis of the Case.

The crux of this case is a garden-variety business divorce between the owners of Global Energies, a privately held corporation. The owners — Mr. Wortley, Mr. Juranitch,

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2. The Court entered a duplicate of this opinion in both the main bankruptcy case and the adversary proceeding because the issues of law and factual findings relating to the Eleventh Circuit's Mandate, Complaint [D.E. 1, Adv. Proc.], and Second Motion to Dismiss [D.E. 128, Main] are intertwined in a manner that made any attempt at separation futile.

3. On the record during Mr. Wortley's rebuttal case, Mr. Wortley waived the attorney-client privilege. Trial Tr. Vol. IX, 2042.

4. Fed. R. Civ. P. 52(a) and 58 are made applicable to these proceedings through Fed. R. Bankr. P. 7052 and 7058.

and Mr. Tarrant — were friends before the founding of Global Energies. In 2008 and 2009, Mr. Wortley brought Mr. Tarrant and Mr. Juranitch together as business partners to form Global Energies; Mr. Wortley's friendships with both men became the foundation for the business. Trial Tr. Vol. III, 524-25. Mr. Wortley and Mr. Juranitch were "very good friends" and confidants, and Mr. Wortley even introduced Mr. Juranitch to his wife. Trial Tr. Vol. III, 516. Mr. Wortley and Mr. Tarrant met through their participation in local social clubs where they became close friends who played golf together. Trial Tr. Vol. III, 524, 727-28, 603-04, 606. After the separation of the owners, Mr. Wortley friendships with Mr. Tarrant and Mr. Juranitch ended, and Mr. Tarrant and Mr. Juranitch formed a second company without him. The central figure in this case is Mr. Wortley, and it is the opinion of the Court that Mr. Wortley's personal animosity and rancor towards Mr. Juranitch and Mr. Tarrant has fueled this case far beyond the rational stopping point of a traditional bankruptcy case. *See* discussion *infra* Section I.U.1.

B. Mr. Wortley and Mr. Juranitch Formed Global Energies, and Mr. Wortley Invited Mr. Tarrant and Chrispus to Invest as a Member of Global Energies.

On July 14, 2008, Mr. Wortley and Mr. Juranitch went into business together and formed Global Energies. Exs. D2-A; P-1.[5] Mr. Wortley and Mr. Juranitch were Members of Global Energies with Mr. Wortley owning 23% and

5. Organizational system for the exhibits: "P" represents Mr. Wortley; "D1" represents Mr. Tarrant and Chrispus Venture Capital, LLC; "D2" represents Mr. Pugatch and the Law Firm, Rice Pugatch Robinson Schiller, PA; and "D3" represents Mr. Juranitch.

Mr. Juranitch owning 77% of Global Energies. *Id.* Mr. Wortley contributed $23,000.00 in initial capital, and Mr. Juranitch contributed his "intellectual property rights of the Invention entitled 'Recycling and reburning Carbon Dioxide in an energy efficient way'" and his "research and development work and intellectual property rights in and ownership to the work that has been done in the field of Production of Biofuels and/or Capturing Carbon Dioxide (CO2) from the atmosphere or production facilities." *Id.* at Section 2.1a. Mr. Wortley "was the business guy, responsible for business and bringing in money," and Mr. Juranitch "was [the] technical guy, responsible for bringing in technology and making it work." Trial Tr. Vol. III, 506-08; Vol. VI, 1252; Vol. IX, 1922 ("Joe [Wortley], you were business, I [Mr. Juranitch] was technical.").

After the initial formation, Mr. Wortley and Mr. Juranitch increased their respective contributions. Mr. Juranitch signed a Consulting Agreement pledging his consulting services on a "full-time, exclusive basis" in the areas of biofuels and CO2 Sequestration (i.e. Global Energies' specific areas of technology) in exchange for $100,000 per year. Trial Tr. Vol. VI, 1317; Ex. D2-B. The parties expected the Consulting Agreement to remain in effect from September 1, 2008 through April 13, 2011. *Id.* On April 17, 2009, Mr. Wortley executed the Master Promissory Note ("Mr. Wortley's Note") and Master Security Agreement, in which Mr. Wortley agreed to loan Global Energies $200,000 with 8% interest in exchange for a security interest in Global Energies's accounts and "all worldwide right, title and interest in or to all Intellectual Property related to Patents Issued, Pending and/or Filed in the future, owned in whole or in part by Debtor." Exs. P-4; P-5.

In May of 2009, Mr. Tarrant invested in Global Energies at Mr. Wortley's invitation. On May 29, 2009, the parties signed the Amended Restated Operating Agreement (the "Agreement"), which gave Mr. Tarrant's corporation,[6] Chrispus Venture Capital, LLC ("Chrispus"), a 5% ownership interest in exchange for a $25,000 cash investment. Exs. D1-D; D2-H; P-7; Trial Tr. Vol. IX, 1952-53. Under the Agreement, Mr. Wortley owned 32%; Mr. Juranitch owned 63%; and Chrispus owned 5% of Global Energies. Exs. D1-D; D2-H; P-7 at Exhibit A. On May 29, 2009, Chrispus loaned Global Energies one million dollars at a 6% interest rate, which Chrispus invested in Global Energies in ten monthly installments of $100,000.00.[7] Trial Tr. Vol. IX, 1953; Exs. D2-J; P-6. Mr. Tarrant received the title of "Vice Chairman;" however, although this title afforded Mr. Tarrant credibility with potential customers, Mr. Tarrant had no decision-making authority, and he was not a "managing member or manager." Trial Tr. Vol. IX, 1954-55; Vol. X, 2321 (Mr. Tarrant testified that he "had no authority. I had 5 percent — I had no authority. Only you [Mr. Wortley] and Jim [Juranitch] together.").

Under the Agreement, Mr. Wortley and Mr. Juranitch (as the Board of Managers) managed the operations of

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6. Mr. Tarrant owned 93% of Chrispus, and Mr. Ron Roberts owned 7%. Trial Tr. Vol. IX 1951-52. "Ron Roberts is my [Mr. Tarrant's] financial advisor and partner." Trial Tr. Vol. IX, 1952. The partners used Chrispus as an "investment vehicle for new companies and opportunities." Trial Tr. Vol. IX, 1951-52. Mr. Tarrant and Mr. Roberts both acted on behalf of Chrispus either unilaterally or jointly throughout this case.

7. Interest payments were due yearly on May 29th. Exs. D2-J; P-6.

Global Energies, and "any matter within the authority of the managers shall be decided by the majority vote of the Board." Exs. D1-D; D2-H; P-7 at Section 5.1. Consensus between Mr. Juranitch and Mr. Wortley was required to "contract with any persons or entities for the transaction of the business of the Company." *Id.* at Section 5.4. If a deadlock occurred between Mr. Juranitch and Mr. Wortley, the Members needed a 75% majority vote of the Members to remove a Manager or elect new Managers. *Id.* at Section 5.2 and Definitions. A 75% majority vote of the Members was needed to cause Global Energies to enter into a sale, liquidate, dissolve, or wind-up. *Id.* at Section 5.5. Dissolution of Global Energies could only be triggered automatically by 1) a sale of substantially all assets, 2) a 75% majority vote, or 3) if dissolution were otherwise provided by law. *Id.* at Section 8.1. Neither Chrispus nor Mr. Tarrant held an office, managerial role, or other significant role in Global Energies. *Id.*; Trial Tr. Vol. IX, 1960. Thus, Mr. Wortley's cooperation and 30% share of Global Energies were required to solve a deadlock between the Managers — Mr. Wortley and Mr. Juranitch. Trial Tr. Vol. III, 527; V, 1025, 1028 (Mr. Wortley testified: "for either of, Mr. Wortley or for Mr. Juranitch to do anything significantly, such as filing a bankruptcy, . . . would require the consent of both of us."). Mr. Juranitch and Chrispus' combined 70% of Global Energies' shares was insufficient to break a deadlock, under the requirements of the Agreement.

C. The Members Recognized the Potential for Increased Value, but the Value was Never Realized.

Between May 2009 and May 2010, Global Energies entered an exciting period with multiple potentially lucrative projects. Exs. P-61 (Mr. Juranitch explained that "Plasmawool revenues could be high"); P-62 (Mr. Juranitch described Plasmawool as a "high value/profit product"); P-63 (Mr. Juranitch described proposed projects in North Carolina and Iowa to turn waste into energy); P-65 (describing plans for a proposal to open "3 plants at around 750 million" and new markets "we never thought of"); P-69 (regarding the Iowa Deal "[t]here is no contract but prospects are very good"); P-8 (Mr. Juranitch informed the other parties of his estimations for profit by stating "the numbers are staggering and we are not yet attacking our most lucrative markets").

Mr. Juranitch created Global Energies' products and managed Global Energies' day-to-day operations, while Mr. Wortley and Mr. Tarrant financed Global Energies' operations. *Id.* During the summer of 2009, Mr. Wortley and Mr. Tarrant discussed financing options for Global Energies; Mr. Wortley introduced Mr. Tarrant to Mr. Michael McCarty during a game of golf where Mr. McCarty pitched the idea of a possible merger with another company — Synthesis Energies Systems (SES). Trial Tr. IX, 1957-58; Exs. D1-D2; P-99. Mr. Tarrant rejected a merger with SES in an email to Mr. Wortley. *Id.* Mr. Tarrant thought SES was "a trainwreck that would consume [Global Energies] if we owned/ran," and he believed they "produce[d] very dirty energy and we [Global Energies] could be labelled as bad guys." *Id.* Mr. Tarrant's

testimony at trial on multiple days was consistent with the email sent to Mr. Wortley.[8] *Id.* Ultimately, even Mr. Wortley admitted that SES was a "disaster." Trial Tr. Vol. IV, 763-64.

Although Mr. Wortley, Mr. Tarrant, and Mr. Juranitch believed Global Energies to be a valuable investment, Global Energies had no concrete value on paper. Global Energies never legally owned any patents.[9] Global Energies had no revenue in 2008, 2009, or 2010, and Global Energies had a negative cash flow at all times leading up to May 13, 2010. Trial Tr. Vol. V, 1015-16. Global Energies never had a signed contract nor a single customer. Trial Tr. Vol. III, 664; Vol. V, 1028. Mr. Wortley admitted that Global Energies needed a cash infusion because Global

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8. Mr. Tarrant testified that SES was a "trainwreck," and he rejected the merger with SES because he "determined that it was dirty energy that they [SES] were producing, and even if that was a good business from a profit and loss standpoint, I knew it would kill our business trying to sell clean energy, if we got this other company that's doing the dirty stuff in China." Trial Tr. Vol. IX, 1958-60. On cross-examination by Mr. Wortley, Mr. Tarrant again testified consistently that he refused to agree that SES would have benefitted Global Energies, even if they had $90 million in cash. Trial Tr. Vol. X, 2214-17 (Mr. Tarrant referred to SES as a "walk," and noted that "it didn't make any difference" because SES used dirty power and that association would have damaged Global Energies' business.).

9. Mr. Wortley believed that Global Energies owned patents, but he failed to adequately research the status of Global Energies' patents. Trial Tr. Vol. VI, 1187 ("As far as patents or so forth, I know what I believed they [Global Energies] owned, and I have not sat and looked at a - - the document that Mr. Mukamal [the trustee] had for assets that he had received.").

Energies had no cash in its bank accounts.[10] Trial Tr. Vol. III, 741, 811-12. By the end of April 2010, Global Energies ad used all of the loan proceeds from Chrispus and could not pay its bills or Mr. Juranitch's salary.[11] Trial Tr. Vol. V, 1029; Vol. IX, 1960; Vol. X 2335. Global Energies had used approximately $50,000.00 of Mr. Juranitch's own money to pay bills and employees prior to the breakup of the company.[12] Trial Tr. Vol. IX, 1899-900. Mr. Wortley acknowledged that Global Energies had access to "sources of capital" and could potentially obtain financing through

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10. Mr. Wortley gave inconsistent testimony to the Court on whether Global Energies had cash. Mr. Wortley refused to admit that Global Energies did not have cash in its accounts, and he incorrectly tried to equate having cash to having access to capital on multiple occasions. Trial Tr. Vol. V, 1044, 1113-1114; Vol. VI, 1189, 1191. Additionally, Mr. Wortley refused to testify as to whether Global Energies had cash. Mr. Wortley was asked, "it was out of cash prior to May 17?", and Mr. Wortley responded: "I don't know. I can't testify to that." *Id.* Shortly thereafter, Mr. Wortley agreed that he could testify to whether Global Energies had cash. *Id.*

11. Mr. Tarrant and Mr. Juranitch believed that Mr. Juranitch was no longer bound by the Consulting Agreement because Global Energies could no longer pay him, and the consideration had evaporated. Trial Tr. Vol. X, 2335; Vol. IX, 1896, 1926. Mr. Juranitch was last paid by Global Energies on May 8, 2010. Trial Tr. Vol. IX, 1926. The Court refrained from opining on the validity of the Consulting Agreement because the validity of that document is an issue for the state court, and the validity of the Consulting Agreement had no effect on this Court's instant decision.

12. Mr. Tarrant reimbursed Mr. Juranitch for the $50,000.00 as a private person, not from the proceeds of the company or Mr. Wortley. Trial Tr. Vol. IX, 1901-02.

Mr. McCarty, Deutsche Bank,[13] Mr. Wortley and Mr. Tarrant; however, the only realistic sources of funding were Mr. Wortley and Mr. Tarrant. Trial Tr. Vol. III, 741, 811-12; Vol. IV, 811-12; Vol. V, 1030.

Despite the unrealized value of Global Energies, both Mr. Wortley and Mr. Tarrant became enamored with increasing their ownership interests in Global Energies and sought to renegotiate the division of equity. On March 4, 2010, Mr. Ron Roberts (Mr. Tarrant's "financial advisor and partner") first suggested to Mr. Tarrant that Chrispus acquire an additional 5% for $28,396.62 in light of the potential deals with North Carolina and Wisconsin. Ex. P-66; Trial Tr. Vol IX, 1952. After discussing the idea of using the potential Iowa deal to trigger the "contingency paragraph in [the] purchase agreement" to purchase additional shares, Mr. Roberts informed Mr. Tarrant on May 10, 2010 that he would "try to acquire up to a total of 10% on behalf of Chrispus." Exs. P-69; P-70. That same day, Mr. Tarrant suggested using the handwritten option agreement to purchase additional 10% in the negotiations. Ex. P-71. Finally, Mr. Tarrant executed a handwritten contract expressing intent to "exercise my option to purchase 67,611 shares of Global Energies @ $.42 per share for a total purchase price of $28,396.62." Trial Tr. Vol. X, 2334; Exs. D2-O; P-11. This handwritten contract

13. Mr. Wortley testified that the parties never attended the meeting with Deutsche Bank, which caused this Court to find that Deutsche Bank was an inviable source of funding. Trial Tr. Vol. III, 621; Vol. V, 1032; Vol. VI, 1180.

never became effective due to the intervening events that followed.[14] *See* discussion *infra* Sections I.D, I.E.

D. Global Energies' Members Experienced a Breakup Causing the Death of Global Energies.

According to Mr. Juranitch's testimony, on May 12, 2010, Mr. Wortley was upset about not receiving enough information regarding Global Energies from Mr. Juranitch; however, Mr. Juranitch had provided Mr. Wortley with periodic, monthly reports, including a report on April 2, 2010, and Mr. Wortley received the same information as everyone else involved in Global Energies' business. Trial Tr. Vol. VI, 1308; Ex. P-63. At the May 12, 2010 meeting, Mr. Wortley presented Mr. Juranitch with a proposed contract for Mr. Wortley to purchase 270,000 shares from Mr. Juranitch for "$10 and other valuable consideration." Trial Tr. Vol. VI, 1265; Ex. D3-P21. If signed, the proposed contract would give Mr. Wortley a "controlling interest" in Global Energies. *Id.* Mr. Juranitch credibly and consistently testified regarding how Mr. Wortley commanded Mr. Juranitch to sign the proposed contract "immediately," without consulting an attorney. Trial Tr. Vol. VI, 1266, 1392. If Mr. Juranitch refused to sign, then Mr. Wortley threatened Mr. Juranitch with "dire consequences" because Mr.

14. Mr. Tarrant intended to invest the second one million dollars in Global Energies when he signed the document on May 10, 2010; however, Mr. Tarrant never released the second one million dollar investment, as promised on May 10, 2010, because of an adverse material change: Mr. Wortley "[blew] up the company." Trial Tr. Vol. X, 2211-12, 2331-32.

Wortley would "cut off all credit cards, all insurance, all payroll," and the "company wouldn't be funded." Trial Tr. Vol. VI, 1266, 1268. Mr. Juranitch testified that Mr. Wortley threatened the same "dire consequences" in the event that Mr. Juranitch discussed the proposed contract with Mr. Tarrant. Trial Tr. Vol. VI, 1268. Mr. Juranitch refused to sign the proposed contract because he required time to consider the contract and contact an attorney. *Id.*

The following day on May 13, 2010 around 9:30 A.M., Mr. Wortley arrived at Global Energies' facilities, removed Mr. Juranitch from a business meeting, and "insisted [Mr. Juranitch] sign [the proposed contract] and give him controlling interest." Trial Tr. Vol. VI, 1269. Mr. Wortley reiterated his threat to shut off company funding and credit cards. *Id.* Mr. Wortley stressed that signing the proposed contract was more important than any other company project, including the potential deal in Iowa. *Id.* Mr. Juranitch responded by reiterating that he wanted to consult an attorney before signing, and Mr. Wortley again insisted that he sign immediately without consulting counsel. *Id.* When Mr. Juranitch refused to sign and walked away, Mr. Wortley followed Mr. Juranitch "screaming that he was turning off all credit cards, . . . and shutting down the company funding." Trial Tr. Vol. VI, 1270, 1363. Mr. Juranitch testified that he "had no reason to doubt" that Mr. Wortley intended to cut the credit cards off. Trial Tr. Vol. VI, 1363. Without the credit cards, Mr. Juranitch could not "go to a plasma conference . . . that happened once every two years," and he could not interview and entertain a "key guy for interviews" who was scheduled to arrive later that evening. *Id.* According to Mr. Juranitch,

both the plasma conference and interview were "key to our [Global Energies'] success." *Id.*

After Mr. Wortley's reaction, Mr. Juranitch believed Mr. Wortley was "melting down," and Mr. Juranitch began to worry about Global Energies and its employees. *Id.* In a moment of prescience, Mr. Juranitch recalled how Mr. Wortley had previously bragged to him about "trying to force his will on another company he was involved in, and he had locked out all the employees." Trial Tr. Vol. VI, 1271. Mr. Juranitch believed that Mr. Wortley would repeat this behavior and lock him and the employees out of the facility. *Id.* This greatly concerned Mr. Juranitch because he kept a large amount of personal property at the facility — enough to fill "a 4800 square foot warehouse," including items he inherited from his recently deceased father. Trial Tr. Vol. VI, 1271-72.

On that same day, Mr. Juranitch decided to inform the employees "that something was desperately wrong," and "[t]hey needed to get their personal stuff out." Trial. Tr. Vol. VI, 1272. Additionally, Mr. Juranitch requested their help in removing his own personal items. *Id.* Later that evening, Mr. Juranitch and the employees removed his personal items (i.e. approximately 99% of the items removed) and a small amount of company property (i.e. approximately 1%) from the facility. Mr. Juranitch, with the assistance of other employees, removed *de minimis* items including "plasma torch heads," "two analyzers," and "a printer thrown in by mistake." Trial Tr. Vol. VI, 1273, 1275. Mr. Juranitch decided to remove the plasma torch heads because the plasma torch heads "had less

than a week of life," until the parts corroded. Trial Tr. Vol. VI, 1274. If the plasma torch heads were not properly serviced, then they "would go to catastrophic failure, [and] it would destroy the equipment and potentially hurt all the employees." *Id.* Mr. Juranitch turned over all of Global Energies' property to the Chapter 11 Trustee, Mr. Mukamal, during the course of the bankruptcy.[15] Trial Tr. Vol. VI, 1273; *see* discussion *infra* Section I.M.

When Mr. Juranitch returned to give Mr. Wortley the keys to the building, Mr. Juranitch discovered that "[t]he doors were locked, [and his] keys didn't work." Trial Tr. Vol. VI, 1275. Mr. Juranitch testified that, after this experience, he would never work with Mr. Wortley again. Trial Tr. Vol. VI, 1276. In response to Mr. Wortley's question concerning whether Mr. Juranitch could continue working for Global Energies, Mr. Juranitch explained that he could not continue because "there was no insurance; the credit cards were cut off; . . . there was no payroll; [and he] was locked out of the building." Trial Tr. Vol. VI, 1393. Prior to this time, Mr. Juranitch testified that he would never have considered walking out. Trial Tr. Vol. VI, 1275.

E. Mr. Wortley's Version of the Breakup Events Failed to Rebut Mr. Juranitch's Account

Mr. Wortley's depiction of these events generally comported with Mr. Juranitch's account; however, Mr. Wortley's depiction painted himself in a more favorable

15. The bankruptcy case was filed on July 1, 2010. [D.E. 1, Main].

light. Mr. Wortley testified that he usually follows an "80/20" rule, where he, as the investor, receives 80% of the company, and the inventor receives 20% of the company. Trial Tr. Vol. V, 1031. However, Mr. Wortley deviated from his "80/20" rule and signed an operating agreement giving himself 23% and Mr. Juranitch 77% of the company. Trial Tr. Vol. III, 509; Vol. V, 1031. Mr. Wortley deviated from his "80/20" rule because he found that " Mr. Juranitch's presentation to me [Mr. Wortley] in '08 was so good," and Mr. Wortley believed Mr. Juranitch was close to sealing a deal in Wisconsin.[16] *Id.* Mr. Wortley explained that Mr. Juranitch was "an integral part of the company," "a very important piece of the puzzle," and "the technologies that Mr. Juranitch brought to the party were [sic] the main thrusts of Global Energies." Trial Tr. Vol. V, 1014; Vol. VI, 1150-51. Without Mr. Juranitch, Mr. Wortley testified that "[i]t would have been difficult" for Global Energies to survive.[17] Trial Tr. Vol. V, 1014. Ultimately, the Wisconsin deal never came to fruition, and Mr. Juranitch began to pursue opportunities in Iowa on behalf of Global Energies. Trial Tr. Vol. VI, 1178.

During this time, Mr. Wortley became upset with Mr. Juranitch. Trial Tr. Vol. V, 1031-32; Vol. VI, 1178. First, Mr. Wortley testified that he did not understand why

16. Once the parties signed the Operating Agreement, this ownership split was modified, but Mr. Juranitch still received the lion's share of the company. *See* discussion *supra* Section I.B.

17. Mr. Wortley testified that he "didn't have the skills" that Mr. Juranitch possessed, and he could "only think of one person" who could fit Mr. Juranitch's role with Global Energies. Trial Tr. Vol V, 1014.

the "Iowa [deal] was on the front burner, and Wisconsin [deal] was gone" because he was uninformed on the progress happening. Trial Tr. Vol. III, 543, 658, 661-62; Vol. VI, 1178. Mr. Wortley wanted an explanation from Mr. Juranitch. Trial Tr. Vol. III, 543. Second, Mr. Wortley was upset with Mr. Juranitch because he felt that the ownership distribution needed to be changed. Trial Tr. Vol. III, 545; Vol. V, 1033-34. Mr. Wortley "felt that Mr. Tarrant was entitled to more [and] . . . Mr. Juranitch was entitled to less." *Id.* (Mr. Wortley thought that the initial distribution was unfair because it was "based on something [the failed Wisconsin Deal] that turned out not to be true."). Third, Mr. Wortley was upset with Mr. Juranitch because Mr. Juranitch either would not or could not make time in his schedule to meet with Deutsche Bank and pitch Global Energies' technology to them. Trial Tr. Vol. III, 621. Mr. Juranitch testified that he did not refuse the Deutsche Meeting, and Mr. Wortley cancelled the Deutsche Meeting, not him. Trial Tr. Vol. VI, 1307. Regardless, Global Energies' financial situation exacerbated the tension between Mr. Juranitch and Mr. Wortley. *See* discussion *supra* Section I.C.

Mr. Wortley asked Mr. Juranitch to meet on May 12, 2010. According to Mr. Wortley, the purpose of the May 12th meeting was to discuss the Iowa deal and the ownership distribution (including Mr. Tarrant's desire for a larger percentage and Mr. Juranitch's failure to finalize the deal in Wisconsin). Trial Tr. Vol. III, 545-46, 621-22. At the May 12th meeting, Mr. Wortley asked Mr. Juranitch for an explanation and information, and Mr. Juranitch explained that he could not discuss it because he

was busy working on Global Energies' projects. Trial Tr. Vol. III, 741. Mr. Wortley, knowing that Global Energies needed a cash infusion, made a demand or proposal that Mr. Juranitch sign over "a significant portion of his equity . . . until certain conditions were met."[18] Trial Tr. Vol. V, 1031. If Juranitch had signed over the shares, Mr. Wortley would have had a controlling interest in Global Energies; however, Mr. Juranitch refused. Effectively, Mr. Wortley had presented Mr. Juranitch with an ultimatum: sign over a significant portion of your equity in exchange for continued financing, or "tell me what the heck is going on."[19] Trial Tr. Vol. VI, 1178-79; Vol. V, 1053 ("I needed to find out, as a managing member, what the heck happened."). Mr. Wortley disingenuously argued that he did not demand a 51% interest in Global Energies; rather, Mr. Wortley claimed he used the demand merely as a "negotiating tactic." Trial Tr. Vol. VI, 1392. After being presented with the demand and ultimatum, Mr. Wortley alleged that Mr. Juranitch "stormed out" and "said I'll come back and I'll see you on Monday the 17th and we'll talk about it." Trial. Tr. Vol. III, 546.

The next morning on May 13, 2010, Mr. Wortley "felt that [he] had to get a further understanding with Mr.

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18. Mr. Wortley initially stated that he had asked Mr. Juranitch to place the shares "in escrow;" however, he admitted on cross examination that Mr. Wortley had asked Mr. Juranitch to sign the shares over to him with the option to purchase them back for a nominal sum, if his conditions were met. Trial Tr. Vol. V, 1031, 1057.

19. Mr. Wortley admitted no other documents exist that propose that Mr. Juranitch transfer equity to any party other than Mr. Wortley. Trial Tr. Vol. VI, 1185.

Juranitch," so he visited Mr. Juranitch at the Deerfield office. Trial Tr. Vol. III, 546. Mr. Wortley described Mr. Juranitch as "belligerent" during the May 13th meeting. *Id.* Mr. Wortley testified that, at that time, he told Mr. Juranitch, "Don't spend any money until you tell me what's happening." Trial Tr. Vol. III, 548. When Mr. Wortley visited the Deerfield Office on May 14, 2010, he discovered that the "stuff was gone." Trial Tr. Vol. III, 549. Mr. Wortley stated: " Mr. Juranitch . . . was off the reservation, he had taken a lot of Global assets from the building and taken to parts unknown, and taken all of the employees to parts unknown, and I wanted him to come back." Trial Tr. Vol. III, 556, 622; Vol. V, 1038 (Mr. Wortley stated that five employees left with Mr. Juranitch). Mr. Wortley explained that his phrase — "off the reservation" — meant that Mr. Juranitch refused to talk to him multiple times and refused to meet on May 17, 2010. Trial Tr. Vol. V, 1041. Mr. Wortley believed that Mr. Juranitch had a fiduciary duty to "come and talk" with him. Trial Tr. Vol. V, 1071. Thus, Mr. Wortley directed Mr. Sweetapple, one of his employees, to write a letter to Mr. Juranitch requesting that he come back. Trial Tr. Vol. III, 573. After discovering that Mr. Juranitch had moved out of the Deerfield Office, Mr. Wortley believed that Mr. Juranitch and Mr. Tarrant had "[taken] all of the company on the evening of May" 12th, so Mr. Wortley changed the locks at the Deerfield Office and cut off the company credit cards, "until Mr. Juranitch came back to

the table."[20] Trial Tr. Vol. III, 594; Vol. IV, 813-14; Vol. V, 1036-37, 1094. However, as a result of these events, Mr. Juranitch refused to work with Mr. Wortley anymore, and Mr. Wortley failed to reinstate these measures, even when " Mr. Juranitch came back to the table" during negotiations. Trial Tr. Vol. V, 1042; *see* discussion *infra* Section I.G.

Mr. Wortley believed that Global Energies was not closed and out of business, and he testified that he thought Global Energies was still operating as of May or June 2010. Trial Tr. Vol. III, 573, 587; Vol. IV, 734; Vol. V, 1046-47. Mr. Wortley believed that Mr. Tarrant "took Jim's [Juranitch] side," and that they were operating Global Energies together from afar. Trial Tr. Vol. IV, 743. Mr. Wortley believed Global Energies to be operating because there was another presentation given in Iowa. Trial Tr. Vol. III, 587; *see* discussion *infra* Section I.F. Mr. Wortley stated, "Global [Energies] was in Mr. Juranitch's and Mr. Tarrant's minds, still operating, although they were trying to also operate Plasma Power." *Id.* However, Mr. Wortley admitted that he had no personal knowledge of whether Global Energies was still operating after May 12, 2010, and Mr. Wortley failed to produce any evidence to support his beliefs that Defendants continued to operate Global Energies. *Id.*

Mr. Wortley admitted that Global Energies was deadlocked at this time because Mr. Juranitch and Mr.

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20. Mr. Wortley gave inconsistent testimony on whether he cut off the company credit cards; however, he ultimately admitted that he did, in fact, cut off the company credit cards. Trial Tr. Vol. VI, 1179, 1181.

Wortley were in a dispute. Trial Tr. Vol. VI, 1207-08. Mr. Wortley admitted that Global Energies needed to be reconstituted; however, Mr. Wortley also admitted there was "probably not" a way to reconstitute Global Energies because Mr. Juranitch refused to work with Mr. Wortley again. Trial Tr. Vol. VI, 1164, 1175. The Court refused to afford any weight to Mr. Wortley's depiction of the events, to the extent they diverged from Mr. Juranitch's account, because the Court found that Mr. Wortley's testimony lacked credibility. *See* discussion *supra* Section I.U.1.

F. Mr. Tarrant Managed the Fall Out After the Breakup Between Mr. Wortley and Mr. Juranitch.

During the breakup between Mr. Wortley and Mr. Juranitch, Mr. Tarrant was out of the country in France. Trial Tr. Vol. IX, 1943, 1960-61. On May 14, 2010, while Mr. Tarrant was in France, Mr. Wortley emailed Mr. Tarrant first to report that he had "turned off the $ to Jim [Juranitch] until issues resolved- he may try to run to you in order that he can seek approval of his foolish ways . . . please let me know if he crys to you."[21] Ex. D1-V7; Trial Tr. Vol. IX, 1973-74 (Mr. Tarrant testified that he believed that Mr. Wortley had ceased providing funding to Global Energies upon his receipt of this email).

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21. Mr. Wortley stated that he had received an email from Mr. Tarrant telling him to "be cool" almost immediately after the May 12 meeting with Mr. Juranitch. Mr. Tarrant explained that this "be cool" email was unrelated to the breakup events because Mr. Tarrant "had no idea that that [May 12 Meeting] happened." Trial Tr. Vol. X, 2220. Mr. Tarrant believed that the "be cool" email was in response to a separate voicemail from Mr. Wortley. *Id.*

On May 15, 2010, Mr. Juranitch emailed Mr. Tarrant second to report, "Joe [Wortley] has gone through a major melt down that has put your investment at great risk." Ex. D1-N5.[22]

On May 17, 2010, Mr. Wortley emailed Mr. Tarrant multiple times to set up a meeting time and stated that Mr. Juranitch had "absconded with [Global Energies'] assets to parts unknown" and that Mr. Juranitch was "so far off the reservation." Exs. D1-E; D1-G; *see supra* p. 12. On that same day, Mr. Juranitch told Mr. Tarrant that "all Hell [had] broken loose," but he was still "[w]orking flat out on Iowa . . . to make up significant ground." Ex. P-17 (full email); P-73 (page one only). During this time, Mr. Juranitch attempted to keep Global Energies afloat and maintain progress on the ongoing projects. Exs. P-29 (reporting to Mr. Tarrant the final pricing for the Iowa project); P-74 ("We have been busy at Global working with Duke, Progress, and Alliant"). Mr. Tarrant testified that Global Energies was "dead" and "on its last breath." Trial Tr. Vol. IX, 1997-98. Mr. Tarrant and Mr. Juranitch were "trying to keep it floating, so, when we brought it back to life, . . . the public wouldn't know that we had this spat." Trial Tr. Vol. IX, 1997.

Mr. Tarrant testified that he received these emails while he was in France. Trial Tr. Vol. IX, 1961-62, 1965. Although Mr. Tarrant was better friends with Mr. Wortley than Mr. Juranitch at that time, Mr. Tarrant testified

22. Mr. Juranitch denied having spoken with Mr. Tarrant between May 10 and May 12; the first communication was the email on May 15th. Trial Tr. Vol. VI, 1357-58.

that he was "very surprised that . . . somebody [Mr. Juranitch] would just walk out." Trial Tr. Vol. IX, 1962-63. Mr. Tarrant testified that he was confused by the emails, specifically the email from Mr. Wortley claiming that Mr. Juranitch was "off the reservation." Trial Tr. Vol. IX, 1964; Ex. D1-G. Mr. Tarrant recalled thinking to himself "what have I got myself into here" and "what the heck is going on here?" Trial Tr. Vol. IX, 1964. Mr. Tarrant understood that Mr. Wortley and Mr. Juranitch were not getting along because of "something about a personal car that Jim [Juranitch] was supposed to be delivering to Joe" Wortley, but for Mr. Tarrant, these events did not "add up" to such drastic results. Trial Tr. Vol. IX, 1964; Vol. X, 2217-18 (May 14th was the first time that Mr. Tarrant understood the seriousness of the problems between Mr. Wortley and Mr. Juranitch). *See infra* note 57 and accompanying text. The emails from both Mr. Juranitch and Mr. Wortley caused Mr. Tarrant to become concerned about his one million dollar investment in Global Energies. Trial Tr. Vol. IX, 1964-65.

Upon Mr. Tarrant's return to the United States on either May 18 or 19, 2010, Mr. Wortley met Mr. Tarrant at the airport. Trial Tr. Vol. IX, 1967; Vol. III, 594; Vol. IV, 742; Vol. V, 1063. During this meeting with Mr. Tarrant, Mr. Wortley accused Mr. Juranitch of improperly charging personal expenses to Global Energies and authorized Mr. Tarrant to investigate Mr. Wortley's allegations against Mr. Juranitch. *Id.* In addition, Mr. Wortley gave Mr. Tarrant a binder of documents (including a copy of the consulting agreement, operating agreement, etc.) and a new key to the Deerfield Office because Mr. Wortley had

changed the locks. *Id.* Mr. Tarrant asked Mr. Wortley if he could go over Global Energies' books and records, and Mr. Wortley authorized Mr. Tarrant to proceed with his own investigation of the bookkeeping. Trial Tr. Vol. III, 622. Mr. Wortley believed he had delegated authority to Mr. Tarrant to settle the dispute between Mr. Wortley and Mr. Juranitch and "get the thing squared around and have Jim [Juranitch] back and the operations going." Trial Tr. Vol. III, 594; Vol. IV, 742; Vol. X, 2320-21. Mr. Wortley testified that he believed Mr. Juranitch's complaints were a "manufactured fight." Trial Tr. Vol. III, 594. Mr. Wortley told Mr. Tarrant that he would not "put any money in." Trial Tr. Vol. IV, 742; Vol. V, 1046 (Mr. Wortley testified that he "certainly was not going to put additional funds in [to Global Energies] until Mr. Juranitch came back," and he told Mr. Tarrant he did not expect him to invest additional funds either.). Then, Mr. Wortley left the country for a vacation in the Bahamas with his family for two weeks through June 6 or 7th, 2010. Trial Tr. Vol. III, 594-95, 622.

Mr. Tarrant then spoke with Mr. Juranitch on May 18th or 19th to hear his side of the story. Trial Tr. Vol. IX, 1967-69. Mr. Juranitch informed Mr. Tarrant about problems in the company, including the fact that Global Energies was "out of money," and Mr. Wortley had "cut off credit cards and cut off funds overall." Trial Tr. Vol. IX, 1968. Mr. Tarrant then emailed Mr. Wortley to report what Mr. Juranitch had told him, describing the experience as being "caught in a food fight between two supposed adult businessmen." Trial Tr. Vol. IX, 1969; Exs. D1-I; D2-A4. Mr. Wortley advocated a "let him

stew in the mess he created" strategy in his email to Mr. Tarrant. Exs. D1-I; D2-A4. This did not sit well with Mr. Tarrant because he was concerned about the fate of Global Energies' employees and believed it wrong "to throw them out on the streets" on the heels of the last recession.[23] Trial Tr. Vol. IX, 1972; Exs. D1-I; D2-A4.

After speaking with both Mr. Wortley and Mr. Juranitch, Mr. Tarrant did not know whom to trust and became confused by the events unfolding before his eyes. Trial Tr. Vol. IX, 1975-76. Mr. Tarrant was leaning towards trusting Mr. Wortley because they were better friends, but Mr. Tarrant was adamant about not taking sides. Trial Tr. Vol. IX, 1975-76; Exs. D1-I; D2-A4. At one point, Mr. Tarrant considered the possibility that Mr. Juranitch and Mr. Wortley were "in cahoots" to harm him, especially after he discovered evidence of a separate company, unknown to him, called GE Research and Development.[24] Trial Tr. Vol. IX, 1976-78; Ex. D1-H7. As

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23. Mr. Wortley claimed that at the end of May, he "wrote letters to every employee's home address, saying your check is here at 637 Jim Moran Boulevard, please come and get it, and tell us where you are. None of them did respond." Trial Tr. Vol. III, 623. Mr. Wortley described this effort as an attempt to pay the employees of Global Energies; however, the Court notes that Mr. Wortley's actual position was "very clear." Ex. D1-L. According to an email sent from Mr. Wortley to Mr. Tarrant on May 23, 2010, Mr. Wortley required "any employee that wants a paycheck . . . to write about their involvement in the 'theft in the night,'" referring to any efforts to help Mr. Juranitch remove his personal property and the plasma torches parts on May 12, 2010. Ex. D1-L.

24. GE Research and Development was a company unknown to the Court. GE Research and Development was not a party to this

authorized by Mr. Wortley, Mr. Tarrant conducted his own investigation to determine which party — Mr. Wortley or Mr. Juranitch — was truthful. Trial Tr. Vol. IX, 1976.

To investigate Global Energies's bookeeping, Mr. Tarrant asked Mr. Roberts and Mr. Dan Wyland (a forensic accountant) to review Global Energies' books and records. Trial Tr. Vol. IX, 1980-81; V, 1063. Both men visited the offices in Deerfield where the books were kept and spoke with Mr. Wortley's employees, who kept the books.[25] Trial Tr. Vol. IX, 1981. Mr. Tarrant, Mr. Roberts, and Mr. Wyland discovered that Mr. Juranitch had charged personal expenses to Global Energies' accounts; however, these expenses were offset by payroll, and Global Energies actually owed Mr. Juranitch money at the time of their investigation.[26] Trial Tr. Vol. IX, 1982. The investigation also uncovered a journal entry for a $48,000.00 payment from Global Energies to Liberty,

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case, and it was only mentioned briefly in two exhibits admitted into evidence — Mr. Tarrant's email to Mr. Juranitch and the proposed contract Mr. Wortley presented to Mr. Juranitch. Exs. D1-H7; D3-P21.

25. The bookkeepers were employees hired by Mr. Wortley's company, Liberty. Trial Tr. Vol. IX, 1981.

26. Mr. Juranitch had charged a trip to France on company credit cards, which he claimed was sanctioned by Mr. Wortley because the company credit cards had been used for the preceding two years to pay business and personal expenses. Trial Tr. Vol. VI, 1362-66. Mr. Juranitch stated that he never reimbursed Mr. Wortley for the trip to France because "the company [Global Energies] owed me [Mr. Juranitch] close to $50,000.00 at that time." Trial Tr. Vol. VI, 1367-68.

Mr. Wortley's company.[27] Trial Tr. Vol. IX, 1983. Mr. Tarrant's accountants concluded that Mr. Wortley had misappropriated $48,000.00 in company funds. Trial Tr. Vol. IV, 742-43; Vol. V, 1064.

Mr. Tarrant became upset at Global Energies' sloppy bookkeeping and commingling of personal and business expenses. Trial Tr. Vol. IX, 1982-83; Vol. X, 2173. Mr. Tarrant was "upset and bewildered" by the missing funds, and he emailed Mr. Wortley to report that he found funds missing from Global Energies' accounts. Trial Tr. Vol. IX, 1983, 1985; Ex. D1-M. Mr. Tarrant testified, "if that money [the $48,000 that Mr. Wortley removed] were there in May, when you were threatening Jim [Juranitch] because there was no funds, or cutting off funds, you would have gotten through the payroll, that would have been enough, that

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27. Mr. Tarrant testified that Mr. Wortley claimed that the "nice round" payments to Liberty from Global Energies, including the $48,000, were for services performed by Liberty employees or payments on Mr. Wortley's grid note. Trial Tr. Vol. X, 2332. Mr. Wortley also testified that he did not embezzle any funds because the payments were made under his "grid note." Trial Tr. Vol. IV, 742; Vol. V, 1066. Mr. Tarrant has "never heard" of a grid note, but he understood from Mr. Wortley that it meant Mr. Wortley "could take money out anytime [he] want[ed], and [he] could put it back in as long as the company needed it." *Id.* Mr. Wortley admitted that the $48,000.00 was not applied to his grid note, as shown on his proof of claim. Trial Tr. Vol. V, 1068-69; D1-Y11. The Court has already ruled on the validity of the $48,000. In the Order Granting Chapter 11 Trustee's and Chrispus Venture Capital, LLC's Objections to Claim No. 1, the Court allowed Mr. Wortley's claim in the reduced amount of $203,193.57, which subtracted the $48,000 as a "reimbursement recognized by Wortley in the Claim." [D.E. 422 at 3, 6, 10-28935]; *see* discussion *infra* Section I.N.

48, to get us through the payroll. My million dollars would have kicked in, and nothing like this would be going on, for that 48,000, it killed the company." Trial Tr. Vol. X, 2331.

Mr. Tarrant found himself "stuck in the middle of something, [he] never wanted to be in the middle of," and Mr. Tarrant wanted his million-dollar investment back. Trial Tr. Vol. IX, 1987, 1989; Ex. D1-N. Global Energies was broke, deadlocked, and shutdown; neither Mr. Tarrant nor Mr. Wortley — the only realistic sources of funding — were willing to invest any additional funds, including Mr. Tarrant's second million dollars. Trial Tr. Vol. VI, 1276, 1291-92; Vol. IX, 1987-88; Vol. X, 2337, 2334-35, 2338, 2340 (Mr. Tarrant testified that the breakup "between Mr. Juranitch and Mr. Wortley . . . basically put the company out of business" and "killed the company"). Mr. Wortley even stated that he did not believe Global Energies should borrow additional funds. Trial Tr. Vol. X, 2334-35. Mr. Tarrant testified that Global Energies was different after the breakup because it was "dead," and Tarrant believed that his risk had increased because "it would be crazy to put money into the company." Trial Tr. Vol. X, 2337.

G. Mr. Tarrant and Mr. Roberts — Acting on Behalf of Chrispus — Attempted Negotiations to Reorganize Global Energies While Preparing for a Bankruptcy Filing.

Over the next two months, Mr. Tarrant and Mr. Roberts, as the principals of Chrispus, attempted to negotiate a deal between the parties to reorganize Global Energies, while exploring the option of filing

for bankruptcy. Trial Tr. Vol. X, 2322. On June 1, 2010, Mr. Tarrant retained Mr. Chad Pugatch as bankruptcy counsel on behalf of Chrispus. Trial Tr. Vol. VII, 1408. Mr. Pugatch determined that a bankruptcy was an option because the deadlock among the Members and closure of the company prevented operation outside of bankruptcy. Trial Tr. Vol. VII, 1411. Mr. Pugatch further determined that Global Energies' Operating Agreement prevented a voluntary filing because the Operating Agreement required both managers to agree for any action to be taken or a supermajority of the members to file for bankruptcy, and Mr. Tarrant and Mr. Juranitch's interests together were insufficient. Trial Tr. Vol. VII, 1412-13; *see* discussion *supra* Section I.B. Thus, Mr. Pugatch determined that an involuntary filing, with Chrispus as the petitioning creditor, was only viable way to file the bankruptcy because Chrispus had an undisputed note and satisfied the creditor requirements. Trial Tr. Vol. VII, 1414-15, 1417. Mr. Pugatch recommended a Chapter 11 proceeding because it would satisfy Chrispus and Mr. Tarrant's objective to save the company, unlike a Chapter 7 that would have liquidated Global Energies. Trial Tr. Vol. VII, 1414. Mr. Pugatch prepared the Involuntary Petition, and Mr. Roberts signed it as a representative of Chrispus on June 8, 2010. [D.E. 1 at 2]. Mr. Pugatch testified that, although the Involuntary Petition was signed and ready to be filed, Chrispus wanted to attempt negotiations and not file the Involuntary Petition immediately, so Mr. Pugatch held onto the Involuntary Petition and did not recommend a time for filing it. Trial Tr. Vol. VII, 1417, 1419.

Mr. Tarrant and Mr. Roberts, without the aid of Mr. Pugatch, extended four offers to Mr. Wortley to

restructure Global Energies and allow Mr. Wortley to keep a significant ownership interest.[28] Trial Tr. Vol. VI, 1290, Vol. VII, 1410. First, on June 8, 2010, the same day Mr. Roberts signed the Involuntary Petition, Mr. Tarrant emailed Mr. Wortley and issued his first offer to buy Mr. Wortley out for $200,000 (i.e. the amount of Mr. Wortley's investment) or allow Mr. Wortley to buy him out. Trial Tr. Vol. IX, 1990; Ex. D1-N. Mr. Wortley testified at trial that he refused Mr. Tarrant's offer to buy him out, and he refused to buy Mr. Tarrant out. Trial Tr. Vol. V, 1078; Vol. IX, 1990; Ex. D1-N.

Second, on June 13, 2010, Mr. Tarrant issued another offer to restructure Global Energies that would "divide the baby." Trial Tr. Vol. IV, 734-35; Vol. V, 1078. This second offer proposed that Mr. Wortley would receive the coal side of Global Energies' business and allow Mr. Tarrant and Mr. Juranitch to go forward with "things other than coal." Trial Tr. Vol. IX, 1990-91; Ex. D1-O. Mr. Wortley believed that this offer would have taken Mr. Wortley "completely out of management," changed the ownership, "split the baby" where Mr. Wortley would get part of Global Energies, and require Mr. Wortley to hold Mr. Juranitch and Mr. Tarrant harmless. Trial Tr. Vol. IV, 734-35; Vol. V, 1078. Mr. Wortley testified at trial that he turned down this proposal. Trial Tr. Vol. IX, 1992; Vol. IV, 758-59; Vol. V, 1080.

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28. Mr. Pugatch testified that he was not involved in negotiations with Mr. Wortley; however, Mr. Pugatch stated that he was copied on some of the emails relating to the negotiations. Trial Tr. Vol. VII, 1410.

After the second offer, Mr. Tarrant decided to remove himself from the fighting in order to attempt to preserve his friendships with Mr. Wortley and Mr. Juranitch. Trial Tr. Vol. IX, 1992. Mr. Tarrant did not have enough authority to force an agreement between the two men, and they "wouldn't get along." Trial Tr. Vol. X, 2322, 2283 (testifying that it was "not hard to read between the lines, you two guys [Mr. Wortley and Mr. Juranitch] hated each other."). Around June 22, 2010, Mr. Tarrant "turned it all over to Ron Roberts" and asked Mr. Roberts to "just take care of this." Trial Tr. Vol. IX, 1992; Ex. D2-Z.

Three days prior to the bankruptcy filing, Mr. Roberts extended a third offer to Mr. Wortley, which proposed a new structure for Global Energies. Trial Tr. IX, 1994; Ex. D1-P. Under the third offer, Mr. Wortley would be replaced by Mr. Wortley's "right-hand person, Bill Gates, as his representative on the board of the company," or someone else of Mr. Wortley's choosing. Trial Tr. Vol. IX, 1995; Vol. V, 1082; Ex. D1-P. Mr. Juranitch testified that he would have worked with Mr. Gates as a surrogate for Mr. Wortley. Trial Tr. Vol. VI, 1295. The split of shares would be restructured to align with the additional capital necessary to fund Global Energies' operations. Trial Tr. Vol. IX, 1995; Vol. X, 2337 (Mr. Tarrant believed he would be entitled to more equity because he "would have had to put a lot more money in to fund the company."). The adjustment in the equity of Global Energies upset Mr. Wortley, even though Mr. Wortley was the party that initially demanded that the equity be restructured. Trial Tr. Vol. VI, 1392; *see* discussion *supra* Sections I.C, I.D, I.E.

On June 30, 2010, Mr. Roberts followed up on the third offer, and Mr. Wortley admitted that he failed to respond to Mr. Roberts' follow-up email. Trial Tr. Vol. V, 1083-84; Ex. D1-Q. One day later on July 1, 2010, Chrispus, at the direction of Mr. Roberts, filed the Chapter 11 Involuntary Petition, which Mr. Roberts signed as the Managing Member for Chrispus. [D.E. 1, Main]. On that same day, Mr. Roberts emailed Mr. Wortley to notify him of the bankruptcy filing "due to the significant impasse created by the existing operating agreement, and the close down of all operations of Global Energies, and the apparent lack of willingness to restructure." Trial Tr. Vol. V, 1085; Ex. D1-R, P-41.

After the bankruptcy filing, Chrispus continued to attempt negotiations with Mr. Juranitch and Mr. Wortley through Mr. Roberts. On July 14, 2010, Mr. Roberts emailed Mr. Gates to explain, "the involuntary bankruptcy petition will remain in place until such time as an agreement is reached" and attached the proposals for restructuring the company. Trial Tr. Vol. V, 1087; Ex. D1-T. On July 16, 2010, Mr. Roberts left a voicemail for Mr. Gates, who was Mr. Wortley's representative, which summarized the terms of the latest restructuring proposal. Trial Tr. Vol. V, 1089; Ex. D1-U. Mr. Tarrant testified "Ron [Roberts] was trying to make this thing work, trying to get it restructured, trying to get back on track. He was trying anything and everything." Trial Tr. Vol. X, 2268; Vol. VI, 1281 (Mr. Juranitch agreed that Chrispus tried everything to reconcile before filing for bankruptcy).

On July 21, 2010, Mr. Roberts reached out to Mr. Wortley, Mr. Bill Gates, and Mr. Juranitch requesting a response from Mr. Gates concerning the third offer. Exs. D1-Z7, D1-V, D3-V4. Mr. Juranitch returned to the negotiation table and replied:

> It seems dumb to shoot the golden geese known as Global Energies. Joe, you many times have shown me how short life is on a tape measure. Is it really worth all the conflict? Bill, I had hoped you would engage in some sort of negotiations. Joe and Bill, I hate to see the two of you destroy any chance of this company becoming a success. It doesn't seem rational.

Id. At trial, Mr. Wortley described Mr. Juranitch's reply as the "first kind words that I heard from him in a long time." Trial Tr. Vol. V, 1093. Even these "kind words" could not persuade Mr. Wortley to respond to the offer, so Mr. Roberts reached out again to suggest a meeting. *Id.* Mr. Wortley refused the offer when he replied, "Ron, as long as you are trying to extort me with the bogus Federal Court action, I see no reason to meet with you." *Id.*

The efforts to negotiate dissolved, and the deadlock persisted. Mr. Wortley admitted on cross-examination that Mr. Juranitch and he could not agree, and that that state of affairs has continued since 2010 to the present time. Trial Tr. Vol. IV, 806. The parties ultimately began to blame each other for the deadlock. Mr. Juranitch testified, "You [Mr. Wortley] blew up the company." Trial Tr. Vol. VI, 1391. Mr. Wortley blamed Mr. Juranitch for

the breakup: " Mr. Juranitch had significant problems, and Global had significant problems as a result." Trial Tr. Vol. V, 1043, 1046-47 ("He [Mr. Juranitch] destroyed the company."), 1074 ("This is a very serious action that my co-managing member took, and it was up to him to resolve the issues, not me"); Vol. V, 1061 (" Mr. Juranitch exploded it."). Mr. Tarrant testified, "You two guys [Mr. Wortley and Mr. Juranitch] screwed it up." Trial Tr. Vol. X, 2339. Tellingly, neither Mr. Juranitch nor Mr. Wortley blamed Mr. Tarrant, Mr. Roberts, or Chrispus (i.e. the parties who filed the involuntary petition) for the breakup of the company.

H. Mr. Juranitch and Mr. Pugatch Explained the "Smoking Gun" Emails and Provided Context for Planning Process Behind the Bankruptcy Filing.

During the negotiation process, Mr. Juranitch, Mr. Tarrant, and Mr. Roberts emailed several times to develop a "strategy" for how to approach Global Energies' future in conjunction with the future of the other companies they were developing. The thread of "smoking gun" emails sent between June 17 and 19, 2010 reproduced below[29] evidence the communications to develop such a "strategy." On Thursday, June 17, 2010, Mr. Juranitch emailed Mr. Tarrant and copied Mr. Roberts on that email stating:

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29. The Court elected to reproduce the "smoking gun" emails in their entirety without alterations, except to add emphasis on certain sections because mere excerpts of "smoking gun" emails have proved misleading in prior hearings.

Appendix D

Hello Rich,

The following is my humble attempt at presenting a strategy for Global Energies / Plasma Power starting next week. If you and Ron agree with the memo, I recommend we have Chad Pugatch review it, and add his insight. The plan is:

1. Rich communicates with Joe on Tuesday when he is back, and requests a response on the offer that Rich extended Sunday night, which expired last Tuesday. Rich gives Joe until the end of the business day.

2. If a meaningful response is received Rich and Jim start negotiating *in earnest to resurrect Global and move back into Deerfield under the new plan*. A two day window is given to Joe for a completed agreement.

3. If no meaningful response is received from Joe, Chrispus Ventures files for "Debtor in Possession" rights *under Chapter 11 law* on Wednesday. At that time hopefully Chrispus Ventures becomes the trustee as the primary debtor, and the Debtor in Possession. I assume a judge will have to grant this situation.

4. As soon as a judge grants Chrispus the trustee position (hopefully in a week) Plasma Power LLC grants Global Energies (for additional debt to be used in later negotiations)

a limited license to use its patent pending Feedwater technology to pursue the Iowa Job and other potential jobs specifically called out such as WE energies. This would be in keeping with *Chrispus's desire to make Global Energies profitable and get its primary debt repaid*. It also allows us to continue the sales effort with no drop in continuity. Robert Kain to be consulted on the limited license agreement, and his opinion as to its highest defendable value.

5. As soon as positive data is generated from Plasma Power's bench test next week, Jim is to begin the patent process on the feedwater system under the Plasma Power flag. Jim or Chrispus will assume the cost to file the patent. If desired the patent could be assigned to Plasma Power. Again Robert Kain should be consulted in this are.

6. It would seem that we should generate an operating agreement and any other relevant paperwork needed to formalize Plasma Power LLC as soon as possible (Next week) since the company is about to get a significant value in the form of the feedwater patent associated with it. The company is also wishing to do business in the form of granting licenses. Finally the company may have to stand up to a legal battle from Joe and needs to dot its I's and cross its T's. We may need to talk to Chad or his delegate about this and verify it is a meaningful step

> in this battle, and what specifically should be executed.
>
> 7. I am not clear how the Debtor in Possession eradicates the $200k note to Joe and how Joe's stock is dissolved. If this is accomplished in a bidding war to buy the complete assets of Global including the patents by its debtors then that is clear. If on the other hand the Debtor in Possession is to dissolve the company as an end game then we need to start spinning Plasma Power at this time. It may also become Global Plasma Power etc. I think we need to have this memo reviewed and a conference call with Chad to fill in the blanks at this point.
>
> J^2

Exs. P-37 at 3-4, D1-I4, P-83 (emphasis added). The next day on Friday, June 18, 2010, Mr. Tarrant responded to Mr. Juranitch's email and copied Mr. Roberts saying: "Lots to noodle...I agree in general but I doubt the patents are worth anything, either Globals or PPs.. I suggest you and ron pursue this strategy while I am here but keep me posted..." *Id.* (alterations in original). On Saturday, June 19, 2010, Mr. Roberts also responded to Mr. Juranitch's email and copied Mr. Tarrant and Mr. Tom Moody stating:

> Rich/Jim: I agree we conference at the earliest convenient time once Rich arrives back in VT. I can be in VT to meet with you Rich on Tues (I am planning on being in VT on Weds &

> Thurs anyway). I have Tom Moody working on the appropriate documents (operating agreement, loan docs, non-compete agreement, confidentiality agreements, etc) and hope to have drafts by Monday or Tuesday at the latest.
>
> Jim, as to your point 7, yes, Joe will have the opportunity to out bid us in the bankruptcy. *If we are successful in our reorganization plan then Global will continue to operate* otherwise the spin will have to be on Plasma power. I do like the idea of "Global Plasma Power". Lets have Tom (your brother Jim) search the www for conflicts at the same time getting Tom Moody to register the name. If we get the name we can just request a name change from the IRS and keep our current tax id.
>
> Jim lets you and I confer on Monday morning and follow up as necessary.
>
> Thanks
>
> Ron.

Exs. P-37 at 2-3, D1-I4, P-83 (emphasis added).

Later that day, on Saturday, June 19, 2010, Mr. Juranitch emailed Mr. Pugatch and copied Mr. Roberts, Mr. Tarrant, Mr. Tom Juranitch, Ms. Priscilla Boehme, and Mr. Alan Reynolds stating:

Hello Chad,

I would appreciate your review of my e-mail (first one at the bottom), and your insight into item 7. I think “I almost understand” but Ron and I would appreciate a conference call on Monday if you have time.

If you could also comment on Ron’s memo I would appreciate it.

Finally I think we are pulling together a solid plan to go forward. The plan is as follows;

1. Plasma Power LLC will from this point forward have all feedwater, steam, syngas fuel feed, and simple cycle steam electrical generation patents, systems, developments, and licenses. The feedwater system seems to be taking off with instant acceptance in the market. We will want to limit this companies liability as much as possible because of the value of its IP. We will starting next week promote to the customer base the name of Plasma Power LLC for the products and systems noted above. As soon as Tom Juranitch gets successful testing accomplished on Plasma Power’s (P^2) technology, patents will be filed and assigned to P^2.

2. *Global Energies LLC will if it becomes viable again have all reactor systems, CO2 processing,*

and combined cycle generation systems, including all existing patents, licenses, and developments up to the date that company was operational (May 20, 2010). These systems are significantly more complex and follow a different technical direction. They also offer some different options to the market place. If the company continues, follow on technology related to these original concepts and pending patents will remain in the company, with the possible exception of "In Situe" work (Yet another market).

3. Another new company will be formed called Global Plasma Power LLC. *This company will purchase licenses from Plamsa Power LLC or Global Energies LLC to build facilities using their technology.* In other words it accepts the liability of building actual facilities. Once built if we own the facilities each location will be registered in its own Newco LLC.

These original 3 companies (Global Energies, LLC, P^2, Global Plasma Power LLC) will represent different entities to the market place with different responsibilities and liabilities. The lineage and purpose should be easy for our customer base to understand. Please let me know if there are any holes in this logic. If not we will start executing next week. This also allows us to move forward with the new companies and new ideas now, independent of

> how the Global Energies battle turns out. As you know time is always critical in sales.
>
> J[2]

Exs. P-37 at 2, D1-I4, P-83 (emphasis added).

Mr. Juranitch testified that he was not a party to the bankruptcy appeal that gave rise to this case, and this was his first opportunity to explain the events.[30] Trial Tr. Vol. VI, 1282-83. When questioned on his first email to Mr. Tarrant and Mr. Roberts, Mr. Juranitch explained that he wrote the email because he hoped the differences between the parties could be worked out, and he wanted to help with the negotiations. Trial Tr. Vol. VI, 1281, 1289. Mr. Juranitch testified that he wanted the company to be resurrected, and he understood that a bankruptcy would only be filed if all other efforts to resurrect the company failed. Trial Tr. Vol. VI, 1281. Mr. Juranitch stated that he had no understanding of bankruptcy; he had never been involved in a bankruptcy prior to the instant case; and he did not know the definition of an involuntary bankruptcy. Trial Tr. Vol. VI, 1279-81. Mr. Juranitch

30. The Court notes that Mr. Juranitch testified at the original hearing on the Second Motion to Dismiss [D.E. 128, Main] on September 20, 2011; however, Mr. Juranitch was called as an adverse witness during the Plaintiff's case in chief. [D.E. 440, Main]; *see* discussion *infra* Section I.P. Further, Mr. Juranitch was not asked any questions concerning the "smoking gun" emails, and he provided no testimony on the "smoking gun" emails. [D.E. 440 at 131-196, Main]. The Court finds that Mr. Juranitch has not had the opportunity to provide direct testimony on the "smoking gun" emails and events that occurred after September 20, 2011.

stated that Paragraphs 3 and 7 of his email demonstrated his "ignorance in the bankruptcy system" and show that he was "an engineer trying to understand the bankruptcy system." Trial Tr. Vol. VI, 1279-80. Mr. Juranitch simply wanted "someone to pull it [Global Energies] together." Trial Tr. Vol. VI, 1380. For this reason, Mr. Juranitch asked about having a trustee in the case from the beginning, and he only believed Chrispus might be the trustee because he did not understand bankruptcy. Trial Tr. Vol. VI, 1380. The Court found Mr. Juranitch's credible testimony regarding this email plausible because the emails, taken as a whole, reflect a desire to resurrect or restructure Global Energies and continue operations.

In addition to Mr. Juranitch's testimony, the Court heard Mr. Pugatch's testimony on the subject of the "smoking gun" emails. Mr. Pugatch explained that, after receiving the request from Mr. Juranitch, he reviewed the "smoking gun" emails and responded to the emails to set up a conference call with Mr. Roberts and Mr. Juranitch to clear up the confusion. Trial Tr. Vol. VII, 1426-27; Ex. D2-H5. Mr. Pugatch testified that he told Mr. Juranitch, "his interpretation of what he put in here [the "smoking gun" emails] was very wrong, and I wanted to make sure it was clarified." Trial Tr. Vol. VII, 1423. Mr. Pugatch informed the Court that Mr. Juranitch's email was completely incorrect because Mr. Juranitch "didn't understand the terminology," which was very common for laypeople with no bankruptcy experience, like Mr. Juranitch. Trial Tr. Vol. VII, 1424-25. Mr. Pugatch testified that Mr. Juranitch's email was wrong because the parties never planned to move for Chrispus to be

the Debtor-In-Possession because this result would have been impossible under the Bankruptcy Code, which only allowed Global Energies to be the Debtor-in-Possession. Trial Tr. Vol. VII, 1424. Further, Mr. Pugatch explained that Chrispus always wanted a trustee appointed because of the deadlock between the members. *Id.* Mr. Pugatch supported his testimony by explaining that, after Chrispus filed the Involuntary Petition, Chrispus quickly moved for the appointment of a trustee due to the deadlock that existed before and after the filing. Trial Tr. Vol. VII, 1431; Ex. D2-F2.

Regarding the alignment of the parties, Mr. Pugatch testified that he did not think Mr. Tarrant and Mr. Juranitch's interests were completely aligned, but Mr. Pugatch acknowledged that Mr. Tarrant and Mr. Juranitch were speaking to each other and "working together to salvage the company." Trial Tr. Vol. VII, 1411. Mr. Pugatch admitted on the record that Mr. Juranitch and Mr. Tarrant had sided together because Mr. Juranitch had the technology, and Mr. Wortley offered little actual value to the company. Trial Tr. Vol. VII, 1487. Mr. Pugatch explained that the parties had a right to talk, and the fact that the parties were talking and had formed Plasma Power was openly disclosed in the record beforeMr. Wortley. Trial Tr. Vol. VII, 1487; VIII, 1832. Mr. Pugatch maintained that there were good faith reasons for filing the bankruptcy, and any cooperation between Mr. Tarrant and Mr. Juranitch was irrelevant. Trial Tr. Vol. VII, 1487.

After having reviewed the "smoking gun" emails and heard the explanations on the context behind the emails,

this Court determined that, although paragraph seven of Mr. Juranitch's email referenced "eradicate[ing] the $200k note to Joe and how Joe's stock is dissolved," the emails revealed the parties' intention to reorganize Global Energies. Exs. P-37, D1-I4, P-83. First, Mr. Juranitch's original email explained that "Rich and Jim [would] start negotiating in earnest to resurrect Global and move back into Deerfield under the new plan," Chrispus would file bankruptcy under Chapter 11 to reorganize, and "Chrispus's desire[d] to make Global Energies profitable and get its primary debt repaid." Exs. P-37 at 3-4, D1-I4, P-83. Second, Mr. Roberts' response emphasized, "If we are successful in our reorganization plan then Global will continue to operate." *Id.* at 2-3. Finally, Mr. Juranitch's second email, discussing their business plans, incorporated Global Energies as a key part of the business plan, which showed that Defendants did not intend to liquidate Global Energies. *Id.* at 2. After reviewing the evidence, this Court cannot fault the Defendants for their attempts to reach a settlement and resolve deadlock, even if their attempts ultimately failed.

I. Mr. Tarrant and Mr. Juranitch Formed Plasma Power with Novel Technologies, and They Failed to Profit from either the Bankruptcy Filing or Plasma Power.

After the breakup, Mr. Tarrant and Mr. Juranitch formed Plasma Power. Mr. Tarrant testified that they had to form Plasma Power because "we were stuck with employees." Trial Tr. Vol. X, 2167. According to Mr. Juranitch, the employees chose to leave with him; Mr.

Juranitch did not ask them to follow him; and they were at home, not working for Global Energies elsewhere. Trial Tr. Vol. IX, 1936-38. Chrispus was paying Global Energies' former employees because Mr. Tarrant "had to pay them, somebody had to pay them. You can't just throw them out." Trial Tr. Vol. X, 2167; *see supra* note 23 and accompanying text. After Mr. Wortley locked the employees out of Global Energies' facilities, Chrispus began paying the employees, and Mr. Tarrant "started a company [Plasma Power] just to hold them and see where this whole thing came out." Trial Tr. Vol. X, 2167-68. Eventually, Mr. Tarrant and Mr. Juranitch began moving forward with Plasma Power. *Id.*

During negotiations and the time leading up to the bankruptcy filing, Mr. Tarrant testified that they were trying to "keep both [Plasma Power and Global Energies] afloat." Trial Tr. Vol. X, 2168, 2282-83 "We were trying to juggle all of this stuff so we don't kill Global Energies, but we still keep moving forward with Plasma Power." *Id.* Mr. Tarrant stated that Plasma Power and Global Energies used different technologies, so "for certain technologies, that Global [Energies] was more attuned to, we'd use that, and for other situations, we'd use Plasma [Power]." Trial Tr. Vol. X, 2168. "At one time, we even talked about having a parent company called Global Plasma Power, but we were trying to keep everything — we were juggling, keeping things going." Trial Tr. Vol. X, 2168; *see* discussion *supra* Section I.H. "*We didn't want Global to go away.*" Trial Tr. Vol. X, 2168 (emphasis added).

The parties agreed that neither Plasma Power nor Global Energies ever had a binding contract with any

municipality, county, state, or private agency to build a plant. Trial Tr. Vol. X, 2170, 2174; Vol. VI, 1353; *see* discussion *supra* Section I.C. Although, Plasma Power did have a Memorandum of Understanding with the City of Marion, Iowa and received a down payment in the amount of $95,000 from Marion, Iowa under that garbage contract in December 2010. Trial Tr. Vol. IV, 725; Vol. X, 2162, 2180-81, Vol. VI, 1367, 1378 (Mr. Juranitch recalled receiving the $95,000 check, but he did not recall why they received it); Ex. P-93. Despite this inability to land a contract, Mr. Tarrant is still putting money into Plasma Power because he "hope[s] to profit." Trial Tr. Vol. X, 2177-78.

Mr. Juranitch explained that there were multiple projects involving the state of Iowa. Trial Tr. Vol. VI, 1298. The first Iowa project was in late 2008 or early 2009 and involved "sequestering CO2 working with Alliant Energy using Global technology to suck the CO2 out of their exhaust of that coal power plant." Trial Tr. Vol. VI, 1298. The second Iowa project was the subject of the breakup in May of 2010, and it failed because of competition with Alliant. Trial Tr. Vol. VI, 1299-300, 1377. The Iowa deal could have brought in a profit margin of 5.2 million dollars; however, the project did not sell. Trial Tr. Vol. VI, 1376; Ex. P-29. After these two projects failed, Mr. Juranitch made another, separate pitch to Iowa under the name Global Plasma Power. Trial Tr. Vol. VI, 1300. This new pitch was outside of Global Energies' operating agreement, and Mr. Juranitch intended to license the pitch to Global Energies, if the pitch was successful and Global Energies was resurrected. Trial Tr. Vol. VI, 1300, 1391; *see* discussion *supra* Section I.H. Mr. Juranitch denied

using any of Global Energies' technology to make this third pitch. Trial Tr. Vol. VI, 1300.

Dr. Ryan P. O'Connor provided credible, expert witness testimony[31] regarding whether the Plasma Power patents and patent applications were "somehow a re-filing or a continuation of . . . any Global Energies' patent applications." Trial Tr. Vol. IV, 683. Dr. O'Connor concluded, "There were no patents or patent applications that were transferred from Global [Energies] to Plasma [Power]." Trial Tr. Vol. IV, 687. Further, Global Energies only had one patent application, entitled "Recycling and Reburning Carbon Dioxide in an Energy Efficient Way," assigned to it and recorded with the patent offices. Trial Tr. Vol. IV, 687. That patent application has lapsed, is inactive, and has been abandoned. Trial Tr. Vol. IV, 687-88; Vol. VI, 1340; Vol. IX, 1927.Mr. Juranitch assigned no other patents to Global Energies. Trial Tr. Vol. IV, 688.

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31. Dr. O'Connor has an extensive educational background in chemical engineering having graduated summa cum laude with a bachelors of science degree in chemical engineering from the University of Notre Dame and completed a Ph.D. in chemical engineering at the University of Minnesota. Trial Tr. Vol. IV, 680. Dr. O'Connor is admitted to the patent bar, has been admitted to the American Institute of Chemical Engineers for twenty-three years, and has a practice as a patent agent drafting and reviewing patents for his clients for the past eleven and a half years. Trial Tr. Vol. IV, 680-82, 699-700. There was no objection at trial to allowing Dr. O'Connor to testify as an expert, and the court admitted his expert testimony. Trial Tr. Vol. IV, 683. Dr. O'Connor charged his "standard hourly rate for patent prosecution, $360 an hour" and spent around 100 hours on the case for a total approximate price of $36,000.00. Trial Tr. Vol. IV, 705. Dr. O'Connor agreed that his fees were not contingent upon the outcome of the case. Trial Tr. Vol. IV, 706, 716.

Regarding Plasma Power's patents, Dr. O'Connor testified that his "final conclusions were that *nothing in the Plasma Power portfolio is in any way some sort of continuation or re-filing of anything in the Global Energies portfolio*." Trial Tr. Vol. IV, 698 (emphasis added). Plasma Power has one issued patent and ten families of patent applications. Trial Tr. Vol. IV, 688. None of the Plasma Power patents or patent applications were assigned or transferred from Global Energies. Trial Tr. Vol. IV, 689. Dr. O'Connor testified that Plasma Power's patent and patent applications were not informally transferred from Global Energies, and the Plasma Power technology was not a mere continuation of Global Energies' technology. Trial Tr. Vol. IV, 690. The Plasma Power technology, patents, and patent applications *do not relate* to Global Energies' technologies. Trial Tr. Vol. IV, 691-92. Dr. O'Connor concluded that Plasma Power's technologies were "entirely new technologies," and "there is absolutely no overlap." Trial Tr. Vol. IV, 692, 696. Dr. O'Connor opined that it was "remarkable, even in a case where technologies are different, that there is not some overlap somewhere, you know, even a .1 percent overlap, but here there was *absolutely zero*." Trial Tr. Vol. IV, 710 (emphasis added). Even Mr. Wortley admitted that he has "*no proof*" of Plasma Power using the same technology as Global Energies, and Mr. Wortley failed to provide the Court with any evidence to rebut Dr. O'Connor's expert testimony. Trial Tr. Vol. VI, 1206 (emphasis added).

Mr. Richard A. Pollack, a certified public accountant licensed in the state of Florida, provided credible, expert

witness testimony[32] regarding his analysis of "the books and records of . . . Plasma [Power, LLC] and Axenic [Power, LLC][33] . . . and [determination of] whether there were any profits that were made, and whether there were any distributions of profits to Richard Tarrant or to Chrispus." Trial Tr. Vol. VI, 1219-20. Mr. Pollack reviewed the books and records, ledgers, QuickBooks, tax returns, etc. and spoke with Mr. Roberts, Mr. Kevin Gabralt, Mr. Juranitch, and Ms. Priscilla Boehme to make his determination. Trial Tr. Vol. VI, 1222-23. Mr. Pollack's assignment was limited to the years 2010 through 2016 for Plasma Power and 2012 through 2016 for Axenic. Trial Tr. Vol. VI, 1224.

Mr. Pollack testified that neither Plasma Power nor Axenic ever generated a profit. Trial Tr. Vol. VI, 1225. Plasma Power generated losses of "approximately $12 million," and Axenic generated a loss of "approximately $12 million" — creating a combined loss of $24 million.

32. Mr. Pollack is a Certified Public Accountant, who has worked with the Berkowitz Pollack accounting firm for twenty-six years as a director of the firm in charge of the forensic and business valuation section. Trial Tr. Vol. VI, 1216-17. Mr. Pollack graduated *cum laude* with a bachelor's degree in business administration from the University of Miami, and he graduated *cum laude* with a master's degree in finance from Florida International University. Trial Tr. Vol. VI, 1217. Mr. Pollack belongs to the American Institute of Certified Public Accountants and the Florida Institute of Certified Public Accountants, and he has testified in multiple bankruptcy courts as an expert witness. Trial Tr. Vol. VI, 1218.

33. Axenic Power, LLC is an additional company started by Mr. Tarrant and Mr. Juranitch.

Trial Tr. Vol. VI, 1225-26. Plasma Power and Axenic only made one disbursement, which Mr. Tarrant received as "a $2,900.00 expense reimbursement." Trial Tr. Vol. VI, 1226. Mr. Pollack determined that "there were no significant customers;" "there were no contracts with any customers;" and "as a result, there was no evidence of any repayment." Trial Tr. Vol. VI, 1227. The $24 million value attributed to Chrispus' notes had an actual value of zero. Trial Tr. Vol. VI, 1227. Neither Chrispus nor Mr. Tarrant received a profit from the investments in Global Energies, Plasma Power, or Axenic.[34] Trial Tr. Vol. VI, 1227-28, 1230. Mr. Pollack's expert testimony is consistent with the testimony of Mr. Tarrant and Mr. Juranitch. Mr. Tarrant testified that he had made zero profit from the transaction, and he had lost "over $25 million."[35] Trial Tr. Vol. X, 2176. Mr. Juranitch also testified that he has not profited from the filing of the bankruptcy.[36] Trial Tr. Vol. VI, 1306-07.

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34. Any income received during this time reduced to a net loss once the companies books were taken together. Trial Tr. Vol. VI, 1230-31.

35. The Court finds that Mr. Tarrant's testimony on his estimate of a $25 million loss close enough to the $24 million loss cited by Mr. Pollack to be considered consistent.

36. Mr. Juranitch has been and is currently employed by Plasma Power. Trial Tr. Vol. IX, 1887. He does not receive a salary from Plasma Power; instead, he takes a loan. Between all three of the companies for which he works, the loan is $370,000 per year. Trial Tr. Vol. IX, 1890.

J. Global Energies had a Value of Zero at the Time of the Bankruptcy.

Mr. Wortley's expert witness, Mr. Michael McCarty provided testimony[37] primarily regarding the valuation of Global Energies. Trial Tr. Vol. II, 317-18, 322-23. Mr. McCarty claimed that forming an analysis of the valuation of Global Energies was "a little unusual" because he did not have access to "extensive discovery;" there was no . . . financial performance, no forecast, no post-bankrupt analysis." Trial Tr. Vol. II, 320. As a result, Mr. McCarty's valuation for Global Energies is limited to "late April, early May of 2010." Trial Tr. Vol. II, 320. Mr. McCarty concluded that:

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37. The Court notes that Mr. McCarty has been "a full-time investment banker" for forty to forty-two years. Trial Tr. Vol. II, 299. Mr. McCarty graduated with honors from Vanderbilt University with an undergraduate degree in physics, and he graduated from the Wharton School at the University of Pennsylvania with an MBA in finance. Trial Tr. Vol. II, 297. Mr. McCarty has worked for a "series of major investment banks," including Citicorp, Dillon Reed, SG Warburg, and others. Trial Tr. Vol. II, 299-300. Mr. McCarty testified that he had served as the "deal captain," which is the lead position, for multiple small and large transactions. Trial Tr. Vol. II, 304-05. Approximately twenty-five percent of Mr. McCarty's business dealt with the energy sector. Trial Tr. Vol. II, 306. Mr. McCarty has produced approximately one hundred valuation models for alternative energy companies. Trial Tr. Vol. II, 309. Mr. McCarty has testified as an expert in approximately a dozen cases regarding investment banking. Trial Tr. Vol. II, 314. There was no objection at trial to allowing Mr. McCarty to testify as an expert, and the court admitted his expert testimony. Trial Tr. Vol. II, 316-17.

The value of Global in May 2010 using an appropriate third party comparable company such as SES who was available to complete an arm's length transaction with Global at that date is in my opinion at least $20 million. Additionally, I believe given the prudent use of funds to continue the development of the Global technology and experienced managers from SES the upside value available to the owners of Global could have been perhaps multiples of that static value as of June 2010. A proxy for that upside current value should be the calculated May 2010 value of $20 million translated to the current time using the appropriate discount rate or earnings rate of the Appellant of 35%. Doing this calculation results in a translated current value of Global to be approximately $70 million. However, as a capital markets and merger expert I would expect the minimum value that should be attributed to the Appellant would be his ownership percentage pre filing (32%) times the determined 2010 value of $20 million for Global plus the appropriate earning rate from that date to the current time.

This May 2010 value is further confirmed by Tarrant's investment in June 2009 at $20 million, comparable series B pre-revenue financings, SES early financings and value post major contract completion by Global discounted back to 4/10 prior to the bad acts of the defendants.

> The 2010 Transaction Value for Global, in my opinion, must be interpreted not as a bad faith bankruptcy filing as occurred in July 2010 but rather as a market-priced Transaction and one that could be completed, which could have been done at arm's length by sophisticated participants absent the filing. The 2010 Transaction, including its structure and timing, was validated by the history of SES from 2007-2009 including investment by over 100 institutions involving $180 million in investments in the SES. The valuation is further confirmed by the discussion that I personally had with Wortley, Tarrant, SES and other investors and interested parties and the methodologies explained earlier of Tarrant's investment, earlier SES rounds of financing, comparable pre-revenue round of financings and the future potential of Global Energies. This all leads me to the conclusion of $20 million for the unimpeded value of Global Energies in May 2010 prior to the bad conduct of the defendants and the bad faith filing of bankruptcy.

Trial Tr. Vol. II, 360-62; Ex. P-122 at 21; D.E. 378 at 21-22. In summary, Mr. McCarty testified that the current value of Global Energies is $70 million and that Mr. Wortley's share of the company is worth $20 million.[38]

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38. The Court observed that Mr. McCarty's estimation of $20 million for Mr. Wortley's share of the company matches Mr. Wortley's proof of claim [3-1] for the amount of $20 million exactly. *See* discussion *supra* Section I.N.

The Court disregarded Mr. McCarty's valuation because the Court found that Mr. McCarty's valuation was unreliable, speculative, irrelevant, and revealed Mr. McCarty's bias and prejudice. The valuation was irrelevant because it only pertained to the period of late April to early May — approximately two months before the filing of the bankruptcy.[39] Trial Tr. Vol. II, 320. Mr. McCarty believed there was no difference in the value of the company between May and June 2010 because he believed the breakup events in May left the valuation unaffected. Trial Tr. Vol. II, 436. Mr. McCarty thought, "The prospects for the company should have been the same." Trial Tr. Vol. II, 436. While Mr. McCarty failed to incorporate the breakup, Mr. McCarty admitted that the breakup and Mr. Juranitch's departure (with the knowledge and technology necessary to operate Global Energies) would have been important for a potential merger partner to consider before investing in Global Energies. Trial Tr. Vol. II, 427. The Court found that the relevant time for determining the value of Global Energies was the time of the filing of the bankruptcy on July 1, 2010, and Mr. McCarty's valuation disregarded key events in the month of May that affected that valuation.

Even if the Court found the valuation relevant, the Court found that Mr. McCarty's valuation was unreliable and unreasonably speculative. First, Mr. McCarty

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39. The Court notes that Mr. McCarty's Expert Report states that his findings were for the month of June 2010; however, Mr. McCarty modified this on the stand and testified that the valuation was actually for the month of May 2010. Trial Tr. Vol. II, 436; D.E. 309 at 10.

admitted that his valuation was speculative. Trial Tr. Vol. II, 441, 451. Second, Mr. McCarty based the valuation on a hypothetical merger with another company — SES — that never occurred, never moved past the speculative state, and was rejected by Mr. Tarrant, a member of Global Energies. Trial Tr. Vol. II, 451-52; Ex. P-122 at 10; *see* discussion *supra* Section I.C. By basing the valuation on a hypothetical merger, the valuation incorporated capital that was actually unavailable to Global Energies.

Third, Mr. McCarty testified that his valuation depended upon Global Energies having "access to the technology;" however, Global Energies no longer had access to the technology. Trial Tr. Vol. II, 446-48; *see* discussion *supra* Sections I.B, I.C, I.D, I.E. Mr. McCarty had no knowledge of whether Global Energies actually had access to or ownership of the technology. Trial Tr. Vol. II, 448. Mr. McCarty did not know how many patents Global Energies owned, never conducted a patent search, and would not normally do a such search for technology company valuation. Trial Tr. Vol. II, 430-32. Mr. McCarty's disregard for whether Global Energies — an alternative energy company — had access to the alternative energy technology makes Mr. McCarty's valuation completely unreliable.

Fourth, Mr. McCarty failed to consider the objectives of the investors — Mr. Tarrant and Mr. Juranitch — because he never spoke with Mr. Juranitch and he only briefly conversed with Mr. Tarrant. Trial Tr. Vol. II, 435. By failing to consider the investors' objectives, Mr. McCarty disregarded the supermajority requirement in

Global Energies' Operating Agreement, "which basically required both managing members to approve." Trial Tr. Vol. II, 449; *see* discussion *supra* Section I.B. In order for the merger with SES to occur and become relevant to the valuation, Mr. McCarty needed the agreement of both managing partners — Mr. Wortley and Mr. Juranitch. *Id.* Mr. Mr. McCarty had "seen mergers fall apart because of a disagreement between shareholders." Trial Tr. Vol. II, 451. Incredibly, Mr. McCarty was not aware of the deadlock in Global Energies when preparing his expert report. Trial Tr. Vol. II, 383.

Even if the Court could find the valuation relevant and reliable, the Court would still refrain from utilizing Mr. McCarty's opinion because his testimony revealed his bias in favor of Mr. Wortley and prejudice against the Defendants. First, Mr. McCarty disclosed that he and Mr. Wortley are long-time friends because they met while golfing in Bermuda in 1996. Trial Tr. Vol. II, 393-94. Second, Mr. McCarty is not a neutral party because Mr. McCarty disclosed in his testimony and outlined in detail in his demonstrative exhibit how Mr. Wortley had approached Mr. McCarty early in 2009 with the intent to hire him as an investment banker for Global Energies. Trial Tr. Vol. II, 323-24; D.E. 378 at 17. Mr. Wortley requested that Mr. McCarty aid in the negotiations for a merger to provide additional capital, and Mr. McCarty suggested the merger between Global Energies and SES, for whom Mr. McCarty served as an investment banker. Trial Tr. Vol. II, 327-28; *see* discussion *supra* Section I.C. Mr. McCarty had an engagement letter and a draft agreement with Global Energies, but Mr. McCarty never

contracted to work with Global Energies. Trial Tr. Vol. II, 328-29, 378-79. On July 20, 2010, Mr. Wortley contacted Mr. McCarty to let him know that the deal would not happen because of the bankruptcy filing. Trial Tr. Vol. II, 345-46. Mr. McCarty considered Global Energies "to be a potential client," and Mr. McCarty had a personal interest in encouraging a merger between Global Energies and SES. Trial Tr. Vol. II, 326. Finally, Mr. McCarty revealed his prejudice against the Defendants because he based his value of Global Energies on the "bad acts of defendants" and assumed that the bankruptcy case was filed in bad faith. Trial Tr. Vol. II, 361, 418. Further, Mr. McCarty's personal opinions were included in his valuation because he incorrectly believed that the value of Mr. Wortley's ownership was taken away from him "as part of the filing of the bankruptcy process." Trial Tr. Vol. II, 422.

The most salient portion of Mr. McCarty's testimony is Mr. McCarty's admission that the value of Global Energies was zero, if Global Energies had not been transferred to another party and operations were shut down after the managing members' breakup in May. Trial Tr. Vol. II, 444. At the time of the bankruptcy filing on July 1, 2010, Global Energies' operations were shut down; the managing members were deadlocked; Global Energies did not have ownership of or access to the necessary technology; Global Energies had no capital or cash; none of the parties were willing to invest additional capital; and Global Energies never merged with another entity. *See* discussion *supra* Sections I.C, I.D., I.F. Thus, the Court found that the value of Global Energies, at the time of the filing of the bankruptcy, was zero.

K. Chrispus had Good Faith Purposes for Filing the Involuntary Petition.

Mr. Tarrant testified consistently on direct examination, cross examination, and re-cross examination that "[t]he purpose of the filing [was] to get it [Global Energies] into a position where we could move on and do something with it, and reorganize it, restructure it, whatever bankruptcy is." Trial Tr. Vol. X, 2155-56, 2259-60 ("Our goal was to restructure Global [Energies] and keep it going"), 2265 ("I still hadn't given up on trying to put this thing back together"), 2285 ("Restructure, reorganize it, get it going."), 2339 ("We tried to resurrect it [Global Energies]."). Mr. Tarrant testified, "The farther we went on, the more problems we were having in terms of ever seeing Global [Energies] come back, but we didn't want to give up on it quite yet." Trial Tr. Vol. X, 2283.

Mr. Tarrant and Mr. Roberts began looking into the possibility of a bankruptcy around May 27, 2010. Ex. P-33. Mr. Tarrant met with Mr. Pugatch prior to the filing "to look into bankruptcy, because the company was dead, and broke, and so we had to figure out what to do with it." Trial Tr. Vol. X, 2154. Mr. Tarrant did not know much about bankruptcy (including the difference between Chapter 7 and 11 bankruptcies), and he "had nothing to do with that kind of decision," referring to the technical aspects of filing a bankruptcy case. Trial Tr. Vol. X, 2154-55. Mr. Tarrant never intended to remove Mr. Wortley from Global Energies through the bankruptcy. Trial Tr. Vol. X, 2225. When asked directly by Mr. Wortley if Mr. Tarrant had a "plan to get rid of me [Mr. Wortley]," Mr.

Tarrant responded, "No, not at all. Not at all . . . . You're my friend, you got me into this." *Id.*

Mr. Wortley testified inconsistently when he speculated as to the purpose of the bankruptcy filing. Mr. Wortley testified that the "petition was not filed because of payments to creditors. It was filed only because they couldn't get me to restructure the way they wanted to." Trial Tr. Vol. III, 614. Mr. Wortley believed that "Mr. Juranitch had agreed with certain of these [negotiation] proposals," but "I [Mr. Wortley] did not agree with any of the proposals." Trial Tr. Vol. III, 623. Mr. Wortley testified that Mr. Roberts informed him that because "I [Mr. Wortley] would not change the stock ownership, that they filed an involuntary." Trial Tr. Vol. IV, 744. Later, Mr. Wortley stated that the "reason they filed [the Involuntary Petition] was the non-payment of the interest, and there was no notification given to me [Mr. Wortley] that that was there, and when it did happen I sent a check." Trial Tr. Vol. IV, 744. Then, Mr. Wortley testified that he thought "Mr. Tarrant was using the bankruptcy to get Jim [Juranitch] back to the table." Trial Tr. Vol. IV, 817.

The initial filings in the bankruptcy case (i.e. the Involuntary Petition [D.E. 1, Main] and the Motion for Appointment of Chapter 11 Interim Trustee [D.E. 4, Main]) alleged that Global Energies was "generally not paying such debtor's debts as they become due" and "the Board and Members [were] deadlocked and [could not] manage Global [Energies]." [D.E. 1 at 1; 4 at 2]. After hearing the evidence and testimony concerning the purpose of the filing, this Court found that these statements made in the

initial filings were correct, and the reasons for the filing of the bankruptcy were: 1) Global Energies was not paying the debts as they became due, and 2) the parties were hopelessly deadlocked. (Mr. Wortley even admitted that the parties were deadlocked. *See* discussion *supra* Section I.E. Mr. Tarrant, Mr. Roberts, and Chrispus formed the more neutral party, who sought consistently to resolve the deadlock, restructure Global Energies, and provide a cash infusion through the Trustee's sale of the assets.

L. Commencement of Bankruptcy and State Court Cases

On July 1, 2010, Petitioning Creditor Chrispus filed a Chapter 11 Involuntary Petition for Global Energies, [D.E. 1, Main] and the Court entered the Order Granting Ex-Parte Motion for Entry of Order for Relief Against Global Energies on August 3, 2010. [D.E. 13, Main]. Mr. Wortley never contested the Chapter 11 Involuntary Petition or appealed the entry of the Order for Relief. Although Mr. Tarrant was involved with discussions prior to the filing regarding the possibility of bankruptcy, Mr. Tarrant had delegated the authority to make decisions regarding Global Energies to Mr. Roberts. Trial Tr. Vol. X, 2292-94, 2336. Neither Mr. Tarrant nor Mr. Juranitch knew that the Petition had been signed by Mr. Roberts and filed with the Court. Trial Tr. Vol. X, 2292-94, 2336, 2269. Mr. Wortley informed Mr. Tarrant of the bankruptcy. Trial Tr. Vol. X, 2295.

At the time of the bankruptcy filing, Global Energies was in default on both Chrispus' Note and Mr. Wortley's

Note.[40] Trial Tr. Vol. V, 1060-61. Mr. Wortley claimed that he did not know that Mr. Roberts had signed the involuntary bankruptcy petition on June 8, 2010, and he did not know that Mr. Roberts was demanding interest on the Note. Trial Tr. Vol. III, 623; Vol. V, 1115 (Mr. Tarrant and Mr. Wortley did not discuss the interest payment). After Mr. Wortley discovered the demand for interest payment, he "went and . . . got a check and sent it to them." Trial Tr. Vol. III, 623; Vol. V, 1115-17 (The funds for the interest payment came from Mr. Wortley's personal funds, not Global Energies' assets, because Global Energies did not have any funds). Mr. Wortley disingenuously claimed that this action "showed my willingness to put money into Global, *it's just that Mr. Juranitch had to ask for it*." Trial Tr. Vol. III, 623; Vol. V, 1046 (Mr. Wortley wanted Mr. Juranitch to come to him and request money for Global Energies.) (emphasis added); *but see* discussion *supra* Section I.F. Mr. Roberts refused to accept the interest payment from Mr. Wortley because it was a "postpetition payment on unsecured debt." Trial Tr. Vol. III, 624. The Trustee requested turnover of the check, after it was returned to Mr. Wortley; Mr. Wortley complied; and the Trustee cashed the check. Trial Tr. Vol. III, 624-25.

The debt owed to Chrispus was "never . . . disputed." Trial Tr. Vol. V, 1111. Under the Chrispus Note, if the borrower (i.e. Global Energies) admits in writing that it cannot pay debts as they come due, then a default is

40. Mr. Wortley filed a UCC Statement to secure his Note in June of 2010. Trial Tr. Vol. V, 1060-61.

triggered.[41] Trial Tr. Vol. V, 1112. Global Energies' Chief Engineer admitted in writing that Global Energies could not pay its expenses for three weeks leading up to May 12, 2010. Ex. D1-H. When confronted with these facts, Mr. Wortley replied that he "interpret[ed] it [the Chrispus Note] differently." Trial Tr. Vol. V, 1113. Mr. Wortley believed that "if the CEO of a company decides he's not going to pay anybody ... that does not qualify under this clause." Trial Tr. Vol. V, 1114. In the same breath, Mr. Wortley admitted that Global Energies did not have cash to pay the expenses. Trial Tr. Vol. V, 1113. Mr. Wortley felt justified in withholding payment/cash for employees and other expenses because of Mr. Juranitch's actions. Trial Tr. Vol. V, 1113.

Six days after the filing of the Petition, Chrispus filed a Motion to Appoint Trustee [D.E. 4, Main], Mr. Wortley agreed to the appointment of a trustee [D.E. 12, Main], and the parties entered an Agreed Order Authorizing and Directing Appointment of a Chapter 11 Trustee [D.E. 16, Main]. Trial Tr. Vol. V, 1053. On August 18, 2010, the Court approved the appointment of Barry E. Mukamal as Chapter 11 Trustee (the "Trustee"). [D.E. 34, Main].[42]

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41. Under the Chrispus Note, presentment is waived, which means Chrispus had no duty to provide notice of the default. Trial Tr. Vol. V, 1114.

42. Even after the bankruptcy petition was filed, Mr. Juranitch forwarded opportunities, such as the Poultry Waste or Poultry Buyer opportunity, for Global Energies to Mr. Gates, Mr. Tarrant, and the Chapter 11 Trustee; Mr. Juranitch testified that these were efforts to resurrect Global Energies. Trial Tr. Vol. VI, 1296; Exs. D1-S, P-87. Mr. Juranitch forwarded the Poultry Buyers' request to the

On October 28, 2010, Mr. Wortley filed a lawsuit in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "State Court") against Richard R. Tarrant, Chrispus, James C. Juranitch, Plasma Power LLC, and Ronald Roberts. *Wortley v. Tarrant*, 50-2010-CA-027345-XXXX-MB. The State Court Complaint alleged constructive fraud, constructive trust, abuse of process, and breach of fiduciary duty against Mr. Tarrant; and conspiracy to defraud against Mr. Juranitch. *Id.* at 5. The factual allegations raised by Mr. Wortley in the Complaint mirror the allegations raised in his motions to dismiss the bankruptcy case for bad faith. At the time of entry of this order, the State Court case remains open, and Mr. Wortley has stayed the proceedings as of May 4, 2015 until the bankruptcy case is fully determined. Mr. Wortley testified that he would have filed the State Court lawsuit regardless of the filing of the bankruptcy or any discovery disputes that occurred during the course of the case. Trial Tr. Vol. V, 1136-37. This Court's decision is limited to the federal bankruptcy proceedings; Mr. Wortley's state court remedies, if any, remain available to him for pursuit.

M. The Court Approved the Sale of Global Energies' Assets to Chrispus, Vacated the Sale Upon Remand, and Approved the Abandonment of the Assets to Mr. Wortley.

The Trustee administered the case, brought the assets Mr. Juranitch removed back and elected to file motions to

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Trustee specifically because Global Energies had the technology to satisfy the request, and Plasma Power did not. Trial Tr. Vol. V, 1105.

reject the lease agreement for Global Energies' equipment [D.E. 39, Main] and approve bidding procedures to sell Global Energies' assets at auction [D.E. 51, Main]. Trial Tr. Vol. V, 906; Ex. D2-S4. Mr. Wortley testified that he "hoped" the Trustee would "maximize" the value of Global Energies, make Global Energies profitable, sell Global Energies, or get it "operating." Trial Tr. Vol. IV, 808. Mr. Wortley admitted that the Trustee did just as he had hoped. Trial Tr. Vol. IV, 808 ("The Trustee did do that.").

The Trustee testified that Global Energies remained shut down during the entire time that he served as the Chapter 11 trustee. Trial Tr. Vol. V, 907. The Trustee testified that there was "potential," but Global Energies "was an inoperative company that had no funding, had no intellectual property that I was able to monetize at the time." Trial Tr. Vol. V, 920. The Trustee denied being discouraged from trying to realize any value out of the company by Mr. Pugatch's Law Firm or Chrispus, and Mr. Pugatch testified that he discussed the background of the case with the Trustee and his counsel and explained to them that the "goal was to try to bring the company back to life." Trial Tr. Vol. VII, 1435; Vol. V, 921-22. The Trustee had examined Global Energies and "determined that the most reasonable scenario would be to sell the Global Energies' assets in an effort to maximize the value of those assets and to fully satisfy all known creditors."[43]

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43. The Trustee testified and Mr. Wortley agreed that Mr. Wortley had told the Trustee that he wanted time to come up with financing options for Global Energies; however, Mr. Wortley never followed through on producing the financing options. Trial Tr. Vol. IV, 814-15, V, 907-08; VII, 1436; Ex. D2-S4. Although Mr. Wortley

[D.E. 51 at 3, Main]; Trial Tr. Vol. V, 909; Vol. VII, 1437; Ex. D2-S4. Over Mr. Wortley's objection, the Court approved the bidding procedures and set a sale date for November 15, 2010. [D.E. 44, 70, 85, Main].

The Trustee solicited offers to purchase Global Energies' assets from Chrispus and Mr. Wortley simultaneously. Trial Tr. Vol. X, 2155; Vol. V, 909-10; VII, 1437; Ex. D2-S4. Only after the Trustee solicited offers did Chrispus submit a bid, at the direction of "Rob [Roberts] and/or me [Mr. Tarrant]. Trial Tr. Vol. X, 2155; Vol. VII, 1437-38; Ex. D2-S4. Mr. Tarrant, Mr. Roberts, and Chrispus made an offer to purchase the assets because "it was clear that the Trustee needed cash to keep going, and I [Mr. Tarrant] also wanted to give Mr. Wortley his money." Trial Tr. Vol. X, 2156. Mr. Tarrant testified that he did not care about the actual assets because he hoped that "if he [Mr. Wortley] was at least made whole, maybe he would go away and not add us to his litigation list." Trial Tr. Vol. X, 2156. Although the Trustee solicited offers from both sides, no other party submitted a competing bid by the deadline of November 10, 2010 [D.E. 98 at 5, Main], and Mr. Wortley admitted that he did not make an offer. Trial Tr. Vol. IV, 819; Vol. V, 909, 911; Ex. D2-S4.

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had had many conversations with Mr. McCarty to organize a merger with SES or otherwise produce financing opportunities for Global Energies, Mr. Wortley chose not to contact Mr. McCarty. *See* discussion *supra* Section I.C. Unrelated to Mr. Wortley's promise to produce financing options, the Trustee testified that he met with an investment banker multiple times about marketing Global Energies, but the Trustee never entered into a contract with the investment banker. Trial Tr. Vol. V, 919-20.

After negotiating a higher price than the initial offer of $500,000, the Trustee testified that Chrispus agreed to purchase Global Energies' assets in exchange for $750,000. Trial Tr. Vol. IV, 820; Vol. V, 910. As a part of the deal, Chrispus agreed to subordinate its claim to ensure all other parties (including Mr. Wortley) were paid first, and, if the claims exceeded $750,000, Chrispus agreed to pay off the remainder of the claims. Trial Tr. Vol. IV, 820-21. The Trustee "determined that Chrispus' bid was the highest and best offer presented for the purchase of the Acquired Assets." Ex. D2-S4. Prior to the approval and closing of the sale, the same deal was offered to Mr. Wortley (i.e. Chrispus' fourth and final offer), and Mr. Wortley admitted that he turned down the offer. Trial Tr. Vol. IV, 821-22.

After notice and a hearing, the Court approved the sale of Global Energies' assets to Chrispus for the purchase price of $750,000 (which was negotiated by the Trustee), found that Chrispus "acted in good faith, [was] an arms-length purchaser of the Acquired Assets and shall be entitled to the protections afforded a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code," and overruled Mr. Wortley's objection to the sale.[44] [D.E. 98 at 4, 8, 9, 10, Main]. The Trustee's Report of Sale [D.E. 192, Main] states that "[t]he Trustee received the total purchase price of $750,000 . . . from Chrispus Venture Capital, LLC," and the closing occurred "on or

44. By the time the Court approved the sale of Global Energies' assets, the parties had filed the Schedules [D.E. 57, Main], and Mr. Wortley had filed a Supplement to the Schedules [D.E. 76, Main] for the Court and Trustee's review.

about January 3, 2011." [D.E. 192 at 1, Main]; Trial Tr. Vol. V, 911. "The transfer of the Debtor's assets [from the Trustee to Chrispus] began on January 5, 2011 and was completed on January 7, 2011." *Id.* Out of the $750,000.00 purchase price, the Trustee testified that he was able to pay the entire balance of the administrative expenses and creditor claims, including Mr. Wortley's claim. Trial Tr. Vol. V, 912. The docket indicates that the Sale Order was never appealed and is now a final order.

Pursuant to the Final Order [D.E. 707, Main] from the Eleventh Circuit, the Court vacated the Sale Order [D.E. 98,Main] on January 31, 2017 by granting the Trustee's Expedited Motion to Abandon Certain Assets of the Estate [D.E. 860]. [D.E. 987, Main]. Mr. Tarrant no longer has possession of the assets. Trial Tr. Vol. X, 2177. Pursuant to the Court's Order, the assets "which were the subject of the Sale Order [were] abandoned to the Debtor," and Mr. Wortley was to take possession of the assets, pending further order of the Court. [D.E. 987 at 2,Main]. The Court had no knowledge of whether Mr. Wortley had taken possession of the assets at the time of entry of this Order.

N. The Trustee Paid Mr. Wortley's First Proof of Claim [1-1] and Only Mr. Wortley's Second Proof of Claim [3-1] for 20 Million Dollars Remains Unpaid.

On December 17, 2010, Mr. Wortley filed his first proof of claim [Claim 1-1] in the amount of $514,778.00 for services performed, money loaned, and other bases. The Trustee and Chrispus filed objections to Mr. Wortley's

Claim 1-1 [D.E. 123, 126, Main], and Mr. Wortley filed a Response [D.E. 143, Main]. After an evidentiary hearing, the Court denied Mr. Wortley's *ore tenus* Motion to Amend the Proof of Claim and sustained the objections — allowing Mr. Wortley's claim in the amount of $203,193.57 and disallowing the remainder. [D.E. 219, 266, 396, 422, Main]. Mr. Wortley appealed this decision to the U.S. District Court for the Southern District of Florida (the "District Court") [D.E. 424, Main] and voluntarily dismissed the appeal on February 24, 2012. [D.E. 454, Main; D.E. 9, 11-cv-62749-KAM].

During the pending litigation over Mr. Wortley's Claim, the Court authorized an interim distribution, to which Mr. Wortley agreed, which "[paid] the Unsecured Creditors the full amount of their claims as reflected on the Schedules and . . . all outstanding administrative fees incurred through May 31, 2011." [D.E. 351, Main]. Due to the pending litigation over the allowed amount of Mr. Wortley's claim and Mr. Wortley and Chrispus' agreement with the Trustee to subordinate their claims until all administrative claims were paid in full [D.E. 326 at 3, Main], Mr. Wortley did not receive a distribution at that time. *Id.* Per the agreement, the Court has since authorized Mr. Wortley's allowed Claim 1-1 to be paid in full in the amount of $203,193.57. [D.E. 987 at 2, Main].

On June 18, 2015, Mr. Wortley filed a second proof of claim [Claim 3-1] in the amount of $20,000,001.00. Claim 3-1 stated that the basis for the claim was "11 U.S.C. § 303(i)(2) — refer to Notice of Filing Proposed Revised Complaint for Relief on Remand [Docket No. 853] for

more detail."[45] [Claim 3-1 at 1]. Mr. Wortley asserted that his damages on remand exceeded $20 million. *Id.*; *see supra* note 38 and accompanying text. Chrispus filed an Objection to Mr. Wortley's second proof of claim. [D.E. 994, Main]. The Court denied Chrispus' Objection without prejudice and did not make a determination that Mr. Wortley's Claim 3-1 is "valid or allowed." [D.E. 1002, Main]. The Trustee testified that the only unpaid claim is Mr. Wortley's new claim for $20 million.[46] Trial Tr. Vol. V, 912.

O. The Court Denied Mr. Wortley's First Motion to Dismiss [D.E. 54, Main].

On October 7, 2010, Mr. Wortley filed his first Expedited Motion to Dismiss for Bad Faith [D.E. 54, Main] (the "First Motion to Dismiss"). The only parties to that dispute were Mr. Wortley and Chrispus. At the hearing on November 10, 2010, counsel for Mr. Wortley and Chrispus proffered all evidence and stipulated to the admissibility of exhibits. [D.E. 94, 95, Main]. The Court did not hear live testimony from any of the parties, and the Trustee informed the Court of the status of the case. The Court took the matter under advisement and gave counsel time to submit proposed orders. [D.E. 88 at 66-68, Main]. During this time, Mr. Wortley's counsel withdrew [D.E.

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45. The Court dismissed Mr. Wortley's Section 303 claim, which is the only purported basis for Claim 3-1. *See* discussion *infra* Section I.S.

46. The Court has yet to determine whether Mr. Wortley's $20 million claim is allowed and timely.

90, Main] the First Motion to Dismiss [D.E. 54, Main], and Chrispus' counsel objected to the withdrawal [D.E. 92, Main]. On November 30, 2010, the Court entered an Order Denying Motion to Dismiss Case [D.E. 97, Main], and the docket indicates that this order was never appealed and is now a final order.

P. The Court Ordered a Directed Verdict Denying Mr. Wortley's Second Motion to Dismiss [D.E. 128, Main].

On March 21, 2011, Mr. Wortley filed his Second Motion to Dismiss [D.E. 128, Main]. At the status conference on May 4, 2011 [D.E. 167, Main], the Court held an evidentiary hearing and heard Chrispus' Motion for Summary Judgment and/or to Quash Joseph G. Wortley's Motion to Dismiss Chapter 11 Case for Bad Faith Based on New and Additional Evidence of Conspiracy and Misrepresentations [D.E. 147, Main] and accompanying objections and responses [D.E. 154, 155,Main]. The Court denied Chrispus' Motion for Summary Judgment [D.E. 205, Main] and set the Second Motion to Dismiss [D.E. 128, Main] for an evidentiary hearing [D.E. 229, 268, 314, Main].

At the one-day evidentiary hearing on September 20, 2011, the Court considered the Second Motion to Dismiss [D.E. 128, Main] and Supplement [D.E. 343, Main]. [D.E. 314, 440 at 216, Main]. The Court heard Mr. Wortley's case in chief, which included live testimony from two witnesses — Mr. Wortley [D.E. 440 at 22, Main] and Mr. James Juranitch [D.E. 440 at 131, Main]. After Mr.

Wortley rested his case in chief, Chrispus' counsel moved for a directed verdict under Bankruptcy Rule 7052 [D.E. 440 at 197, Main]. The Court stated the following findings on the record:

> The case was filed as an involuntary petition on July 1, 2010. The operations apparently stopped May 13, 2010, and were never resumed. I do not give credibility to Wortley's allegations of bad faith. He is bound by his actions or inactions on the involuntary petition, the appointment of a trustee and sale. Wortley was represented by counsel. He could have contested the involuntary petition. He could have contested the appointment of a trustee. He knew of the operations of the debtor having ended, if you will, May 13th or 14th, 2010. The state court litigation that commenced in October 2010 shows knowledge and intent. At the trustee's sale of November 15, 2010, Wortley participated, Wortley objected. Wortley did not bid, Wortley did not appeal. The parties are bound by the final order of the Court on the sale. There is no evidence or proof of bad faith. Everything was known or disclosed to the party. I will grant the motion for directed verdict.

[D.E. 440 at 216-17, Main]. On September 27, 2011, the Court entered the Order Granting Petitioning Creditor Chrispus Venture Capital, LLC's *Ore Tenus* Motion for Judgement on Partial Findings and Order Denying Motion to Dismiss Case [D.E. 399, Main] (the "Order

Denying the Second Motion to Dismiss"). The Order Denying the Second Motion to Dismiss [D.E. 399, Main] summarily granted the *ore tenus* motion and denied the Second Motion to Dismiss [D.E. 128, Main] "based on the Court's oral findings and conclusions as stated on the record." [D.E. 399, Main]. Because of the directed verdict, Mr. Pugatch never put on any witness testimony in the case, never put on a case, never made a final argument, and never argued the issues on the merits. Trial Tr. Vol. VII, 1485-86.

On October 4, 2011, Mr. Wortley filed the Notice of Appeal of the Order Denying the Second Motion to Dismiss [D.E. 399, Main], appealing the order to the District Court. [D.E. 404, Main]. On April 26, 2012, the District Court entered a Final Order dismissing the appeal because Mr. Wortley failed to timely file a brief. [D.E. 455, Main; D.E. 19, 11-62747-KMM]. Mr. Wortley appealed the District Court's order dismissing to the Eleventh Circuit, and the Eleventh Circuit also dismissed that appeal on April 26, 2012 because Mr. Wortley "failed to file an appellant's brief and record excerpts within the time fixed by the rules." *Joseph Wortley v. Chrispus Venture Capital, LLC*, 12-11160 (April 26, 2012).

Q. Mr. Wortley Discovered the "Smoking Gun" Emails through the State Court Case.

Throughout this case, the parties have engaged in multiple discovery disputes; the most notable of these is Mr. Wortley's accusation that Mr. Chad Pugatch and his Law Firm, Rice Pugatch Robinson & Schiller, P.A.,

allegedly withheld the "smoking gun" emails. Trial Tr. Vol. Vol. I, 108; VIII, 1689-90. On April 12, 2011, *twenty-two days* after Mr. Wortley filed his Second Motion to Dismiss [D.E. 128, Main], Mr. Wortley executed a subpoena against Chrispus, which requested written communications from Mr. Roberts to multiple other individuals between April 1, 2010 and July 31, 2010. [D.E. 169 at 9-11, Main]. On April 21, 2011, *thirty-one days* after Mr. Wortley filed his Second Motion to Dismiss [D.E. 128, Main], Mr. Wortley served the April 21, 2011 Request for Production of Documents upon Chrispus Venture Capital, LLC, which requested email communications from Mr. Tarrant to multiple individuals since January 1, 2010. [D.E. 156 at 9-12, Main]. The timing of these discovery requests indicated to the Court that Mr. Wortley prematurely filed the Second Motion to Dismiss [D.E. 128, Main] prior to obtaining the new evidence that he alleged he already possessed.

Chrispus moved for a protective order from these discovery requests because, although the requests themselves were not identical to the state court requests, the documents to be produced would be the same, and Chrispus wanted to produce them only once, in a single court. [D.E. 156, 169, Main]; Trial Tr. Vol. VII, 1475-76, VIII, 1763. On May 12, 2011 and June 27, 2011, the Court entered two protective orders [D.E. 211, 327, Main], which Mr. Wortley never appealed and are now final orders. Trial Tr. Vol. VII, 1475-76. Because discovery relating to the aforementioned requests was foreclosed in the bankruptcy court, the following discovery dispute proceeded in the state court.

During the relevant time in the state court, Mr. Thomas U. Graner represented Mr. Wortley until approximately August 2011 when Mr. Wortley fired Mr. Graner and hired Mr. Raymond "Ray" Kramer.[47] Mr. Pugatch's Law Firm represented Mr. Tarrant in the state court action, and Mr. Steven Lippman, Mr. George Zinkler, and Mr. Pugatch were the attorneys assigned to the case. Trial Tr. Vol. VII, 1468. Mr. Lippman was the partner assigned to the state court case, and Mr. Pugatch was the partner in the bankruptcy case.[48] Trial Tr. Vol. VII, 1495-96, 1468-69. Mr. Zinkler was the associate who assisted in both the state and bankruptcy court cases. Trial Tr. Vol. VII, 1496.

In the state court case, Mr. Wortley served a first request for production upon Mr. Tarrant, and on April 29, 2011, Mr. Tarrant responded to the request and listed the "smoking gun" emails on the privilege log. Ex. D2-D3, D2-U3 at 3; Trial Tr. Vol. VIII, 1682, 1695, 1702. On March 22, 2011, Mr. Wortley amended his state court

47. When Mr. Kramer testified as a rebuttal witness, Mr. Kramer testified that Mr. Wortley paid him for his time to testify at the first day of trial, when Mr. Wortley called him as a witness in his case in chief. Trial Tr. Vol. IX, 2049-50. The Court notes that Mr. Kramer appeared as a fact witness, not an expert witness. Further, Mr. Kramer testified that he did not have access to his emails relating to this case because they were archived and the process to recover them had not been undertaken. Trial Tr. Vol. IX, 2057.

48. Mr. Lippman and Mr. Pugatch testified that Mr. Lippman kept Mr. Pugatch apprised of the events in the state court case and involved Mr. Pugatch in some of the decision-making as needed. Trial Tr. Vol. VII, 1495-96, 1469.

complaint to add additional parties and served a second request to produce upon Mr. Tarrant. Ex. D2-H3. Mr. Lippman and Mr. Zinkler testified that the parties agreed to a procedure for producing the documents; they agreed to make the hard copies of the documents available to opposing counsel for inspection and copying, rather than delivering the documents to opposing counsel. Trial Tr. Vol. VII, 1502, 1514, 1477; Vol. VIII, 1698-99. Mr. Zinkler, as counsel to Mr. Tarrant, requested additional time to comply with the request, and Mr. Wortley's attorney, Mr. Graner, agreed to an extension through June 13, 2011. Trial Tr. Vol. VIII, 1700. Mr. Zinkler responded by the deadline of June 13, 2011. *Id.*; Ex. D2-I4.

For the second request for production, Mr. Lippman was the primary attorney responsible for production, and Mr. Lippman and Mr. Zinkler together reviewed all of the responsive documents, which were kept in Mr. Lippman's office. Trial Tr. Vol. VIII, 1701, 1713. The documents were divided into three categories: yes, no, and maybe. The "smoking gun" emails were placed in the maybe category because Mr. Lippman and Mr. Zinkler were unsure whether they should be produced due to a possible clam for privilege. Trial Tr. Vol. VIII, 1702. Because they were uncertain, Mr. Lippman and Mr. Zinkler consulted with Mr. Pugatch about whether to produce the "smoking gun" emails in June 2011. Trial Tr. Vol. VIII, 1703. Mr. Pugatch directed them to produce the "smoking gun" emails, and Mr. Lippman agreed with the decision. Trial Tr. Vol. VIII, 1703; Vol. VII, 1517-18, 1478-79. Mr. Lippman represented to the state court that the documents were produced, according to the procedure agreed to by the parties, in

June of 2011. Trial Tr. Vol. VIII, 1737-38, 1746; Vol. VII, 1522-23; Ex. D2-D5 at 2.

Despite production of the documents in June of 2011, Mr. Wortley's counsel failed to inspect, copy, or pick up the three boxes of documents, including the "smoking gun" emails until nine months later in March 2012. Trial Tr. Vol. I, 78-79, 126, Vol. VII, 1480-81, Vol. VII, 1516, 1520-21, 1766, 1769, 1774. During this time, Mr. Zinkler and Mr. Lippman testified that there were no changes made to the documents and the documents picked up in March 2012 were the same as the ones made available as of the September 2 email. Trial Tr. Vol. VIII, 1712; Vol. VII, 1516, 1521. After receiving the documents in March of 2012, Mr. Wortley discovered the "smoking gun" emails within two days. Trial Tr. Vol. I, 120.

Defendants Mr. Pugatch and the Law Firm presented ample evidence of the efforts to remind Mr. Wortley's counsel and multiple opportunities of which Mr. Wortley's counsel failed to avail themselves. First, the state court set a special hearing on Mr. Wortley's motion to compel for September 9, 2011; however, Mr. Kramer and his Law Firm cancelled this hearing, and the parties agreed to resolve the discovery issues without the intervention of the state court. Trial Tr. Vol. I, 99-100, 102-03; Vol. VIII, 1705-07; Vol. VII, 1505; Vol. VIII, 1774; Vol. IX, 2045. Second, Mr. Lippman emailed Mr. Wortley's new counsel, Mr. Kramer and his Law Firm, to advise them of the documents and let them know the documents were ready for pickup a total of four times — September 2011, November 2011, December 2011, and March 2012. Trial

Tr. Vol. I, 118; Vol. VIII, 1707, 1748-49; Vol. VII, 1503, 1508, 1510-12; Ex. D2-N4, D2-U4, D2-V4, D2-W4, D2-X4, D2-Y4, D2-A5, D2-B5, D2-C5. Mr. Lippman testified that he emailed Mr. Kramer and Mr. Kramer testified that he received the September 2, 2011 email; Mr. Lippman sent this email as a courtesy because Mr. Wortley had recently retained Mr. Kramer. Trial Tr. Vol. I, 74; Vol. VII, 1481; Vol. VIII, 1732, 1774.

The Court has also reviewed multiple excuses from Mr. Wortley's counsel for why they did not obtain the documents, including the "smoking gun" emails until March 2012. First, Mr. Wortley has had multiple attorneys throughout the litigation in bankruptcy and state court.[49] During the relevant time of the discovery dispute, Mr. Wortley substituted Mr. Kramer for Mr. Graner's counsel in August of 2011, which caused understandable confusion about the status of discovery. Trial Tr. Vol. V, 81, 88, 89-91. Second, Mr. Wortley's prior counsel, Mr. Graner, represented in state court that they were requesting these documents for the purpose of the bankruptcy proceeding. Mr. Wortley's new counsel, Mr. Kramer was not involved in the underlying bankruptcy;[50] thus,

49. According to court records maintained through CM/ECF, Mr. Wortley has had twenty attorneys in the bankruptcy case — fourteen attorneys in the main case and six attorneys in the adversary proceeding. The Court refrained from listing the attorneys in this Order; however, the Court found all of Mr. Wortley's counsel to be highly qualified and competent attorneys.

50. Mr. Kramer was involved in the state court proceedings and some of the bankruptcy appeals, but he never represented Mr. Wortley in the underlying bankruptcy case. Trial Tr. Vol. I, 124-25.

Mr. Kramer was unaware of the bankruptcy protective orders, the bankruptcy proceedings and bankruptcy trial set for the end of September 2011, and that Mr. Wortley's prior counsel had requested the documents for use at the September 2011 bankruptcy trial. Trial Tr. Vol. I, 124-25; Vol. VIII, 1706-07; Vol. IX, 2052, 2053. Mr. Kramer testified that, if he had known this information, he would not have agreed to cancel the September 9th hearing on the motion to compel. Trial Tr. Vol. IX, 2052. Although the documents had been available since June 2011, Mr. Kramer filed another motion to compel, which the state court noticed for hearing in February 2012; thus, Mr. Kramer believed that he was "diligent in trying to get the documents," even though he made no effort to reset this motion for an earlier date or otherwise collect the documents. Trial Tr. Vol. I, 81-86; Vol. IX, 2059.

Third, Mr. Kramer, Mr. Zinkler, Mr. Lippman, and Ms. Patricia Metlika (Mr. Kramer's paralegal) testified about a miscommunication between September and November 2011 regarding whether the documents were available for pickup, the amount of the documents (i.e. 1 banker box versus 3 banker boxes of documents), and the status of cataloguing or BATES stamping the documents.[51] Trial Tr. Vol. I, 74, 76, 77, 78, 98-99, 101-02, 109, 120, 123-24; VIII, 1709-11, 1738, 1751-52; Vol. VII, 1515; Vol. IX, 2005-07, 2009, 2012-13, 2014-15, 2018, 2028; Ex. D2-A5. All four parties testified credibly; however, the accounts from these parties do not align, which is understandable because

51. Mr. Kramer testified that there was no agreement between the parties to BATES stamp the documents. Trial Tr. Vol. I, 95.

the Court heard their testimony approximately six years after the events took place. The Court found that a simple miscommunication regarding the documents occurred between the parties because Mr. Kramer testified that he never spoke directly with Mr. Lippman or Mr. Zinkler about the documents, and all communications were passed through Mr. Lippman's paralegal, Ms. Metlika. Trial Tr. Vol. I, 101-02, 123-24, 129-30; Vol. VIII, 1731, 1737; Vol. IX, 2044. The Court found that there was no bad faith because this miscommunication was, at the very most, merely reckless on the part of all of the attorneys involved.

R. On Remand, the Court Granted Mr. Wortley's Motion for Rehearing [D.E. 465, Main].

On April 23, 2012, three days before the Eleventh Circuit dismissed the appeal of the Order Denying the Second Motion to Dismiss [D.E. 399, Main], Mr. Wortley filed the Motion for Rehearing Due to Newly-Discovered Evidence (concealed by Chrispus) Produced in an Unrelated Case Affirmatively Demonstrating Bad Faith and Conspiracy to Accomplish Bad Faith Involuntary Filing [D.E. 465, Main] (the "Motion for Rehearing") of the Order Denying the Second Motion to Dismiss [D.E. 399, Main]. The Motion for Rehearing [D.E. 465, Main] only requested a rehearing of the Second Motion to Dismiss [D.E. 128, Main] based on Fed. R. Civ. P. 60(b)(2) and (3).

The Court heard the Motion for Rehearing [D.E. 465, Main] and the Response [D.E. 477, Main] on May 24, 2012 [D.E. 466, Main]. On May 29, 2012, the Court entered the Order Denying Interested Party, Joseph Wortley's

Motion for Rehearing Due to Newly-Discovered Evidence (Concealed by Chrispus) Produced in an Unrelated Case Affirmatively Demonstrating Bad Faith and Conspiracy to Accomplish Bad Faith Involuntary Filing [D.E. 482, Main] (the "Order Denying Motion for Rehearing") "for all the reasons stated on the record."

On June 8, 2012, Mr. Wortley filed a Notice of Appeal [D.E. 486, Main] of the Order Denying Motion for Rehearing [D.E. 482, Main] to the District Court. The District Court entered a Final Order [D.E. 615, Main] affirming the Court's Order Denying Motion for Rehearing [D.E. 482, Main]. D.E. 615, Main; *Wortley v. Chrispus Venture Capital, LLC (In re Glob. Energies, LLC)*, No. 12-61483-Civ, 2013 U.S. Dist. LEXIS 196473 (S.D. Fla. Feb. 11, 2013). The District Court denied Mr. Wortley's motion for reconsideration of that Final Order. [D.E. 30, 12-61483-KMW]. Thus, Mr. Wortley appealed the District Court's Final Order [D.E. 615, Main] to the Eleventh Circuit. [D.E. 31, 12-61483-KMW]. The Eleventh Circuit ultimately issued a Final Order, reversed the District Court's Final Order, and remanded the case to this Court with a Mandate. D.E. 707, Main; *Wortley v. Chrispus Venture Capital, LLC (In re Glob. Energies, LLC)*, 763 F.3d 1341 (11th Cir. 2014). Per the Eleventh Circuit's instruction in the Mandate [D.E. 707, Main], the Court vacated the Order Denying Motion for Rehearing [D.E. 482, Main], granted Mr. Wortley's Motion for Rehearing [D.E. 465], and set the Second Motion to Dismiss [D.E. 128, Main] for rehearing. [D.E. 1046, Main].[52]

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52. The Court acknowledges that the Order Vacating the Order Denying Motion for Rehearing [D.E. 1046] was long overdue.

S. Mr. Wortley Commenced the Adversary Proceeding to Pursue Damages Claims and Bring All Parties Under the Jurisdiction of this Court.

Upon remand, the Court issued a Scheduling Order [D.E. 719, Main] outlining the Court's plan for setting status conferences for briefing on the issues, requiring the parties to attend mediation, and requiring Mr. Wortley to file a pleading "stating the relief requested, including any request for sanctions, the basis for such relief, and any claimed damages or remedies." [D.E. 719 at 1, Main]. On December 12, 2014, in response to the Court's Scheduling Order [D.E. 719, Main], Mr. Wortley filed a Statement of Relief Sought as Awarded by the Eleventh Circuit Judgment of August 15, 2014 [D.E. 724, Main] (Mr. Wortley's "Statement of Relief Sought"). In

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However, the Court would also note, "the parties [had] been proceeding in the main case and the adversary case as if [such action] had been granted." [D.E. 1046 at 2]. Additionally, the Court took special steps to minimize any potentially harmful effects of the procedural error by "providing reasonable opportunity for the parties to supplement the record with additional evidence to support their claims, if necessary." *Id.* The parties took every advantage of this extra leeway by filing multiple documents and other supporting evidence, admitting additional evidence excluded from the original exhibit registers, and taking a full eleven days to present evidence and testimony at trial. The parties failed to use an additional day, October 27, 2017, that the Court set aside for trial; the parties rested their cases and insisted that the additional day was unnecessary. Further, the Court recognized that Mr. Wortley was proceeding *pro se*, and the Court made "allowances for Mr. Wortley because he's appearing *pro se*." Trial Tr. Vol III, 618; IV, 793. Indeed, the Court bent over backwards to permit Mr. Wortley to present his case in the manner that he wished, within the confines of the Rules.

this Statement of Relief Sought, Mr. Wortley provided an itemized list of requests for "sanctions awards and damages . . . to be awarded to Wortley because the Eleventh Circuit has explicitly awarded those sanctions awards and damages." [D.E. 724 at 4, Main]. The itemized list included profits realized (including the value of Global Energies, lost profits, future value of Global Energies, unjust enrichment, etc.) by Chrispus, Tarrant, Juranitch, Pugatch, and Law Firm; professional fees received by Pugatch and Law Firm; attorney's fees and costs from the bankruptcy, state court, and appellate litigation; and punitive damages. *Id.* at 4-6.

Over the next four months, the parties engaged in a frenzy of discovery and motion practice. This litigation culminated in Mr. Wortley filing a Revised Statement of Relief [D.E. 821, Main] and the Motion for Entry of an Order Pursuant to Bankruptcy Code §§ 105(a) and 503(b)(3)(B) Granting Leave, Standing, and Authority to Commence, Prosecute, and, if appropriate, Settle Certain Causes of Action on Behalf of the Global Energies' Estate [D.E. 819, Main] (the "Motion for Adversary Proceeding"). Mr. Wortley wanted to establish derivative standing and commence an adversary proceeding by filing a complaint seeking avoidance of the sale, damages from the sale, dismissal of the Petition, and damages under 11 U.S.C. § 303(i). *Id.* The Revised Statement of Relief explained that the complaint and adversary proceeding would define all issues to be briefed and argued by the parties, resolve the dispute as to whether all parties were subject to the

jurisdiction of the Court, and consolidate litigation.[53] All parties, including the Trustee, filed responses to the Motion for Adversary Proceeding [D.E. 846, 847, 848, Main], and Mr. Wortley filed an omnibus reply [D.E. 853, Main] and a revised complaint [D.E. 853, Main]. The Court entered the Order Granting in Part the Motion for Entry of an Order Granting Leave, Standing, and Authority to Prosecute Actions on Behalf of the Estate and Denying Revised Statement of Relief Sought on Remand and Motion for Entry of Case Management Order [D.E. 881, Main] (the "Order Granting in Part Motion for Adversary Proceeding").[54] The Court allowed Mr. Wortley to commence the adversary proceeding; however, the Court refused Mr. Wortley's request for derivative standing to bring a § 303 action. [D.E. 881, Main].[55]

On July 10, 2015, Mr. Wortley commenced the adversary proceeding by filing the Complaint against Mr. Tarrant, Mr. Juranitch, Chrispus, Mr. Pugatch, the Law Firm, and Plasma Power (the "Defendants"). [D.E. 1, Adv. Proc.; D.E. 894, Main]. This adversary proceeding brought

53. The Revised Statement of Relief promised that Mr. Wortley would stay the state court proceeding, which was ongoing, and abate all discovery practice in the main case in favor of transferring such litigation to the adversary proceeding. [D.E. 821, Main].

54. Mr. Wortley appealed the Order Granting in Part Motion for Adversary Proceeding [D.E. 881, Main] by filing a Notice of Appeal [D.E. 888, Main], and the District Court dismissed that appeal. [D.E. 956, Main; D.E. 17, 15-61413- WJZ].

55. The Court's dismissal of Mr. Wortley's Section 303 Claim eliminated Mr. Wortley's basis for his Claim 3-1. *See* discussion *supra* Section I.N.

all of these parties under the jurisdiction of the Court. Mr. Wortley's Complaint alleged fourteen counts [D.E. 1 at 3-6], and Defendants' Answers asserted twenty-eight affirmative defenses [D.E. 95, 99, 97, 112, Adv. Proc.]. On December 4, 2015, the Court entered an Order Granting and Denying In Part Defendants' Motions to Dismiss and Denying the Motion to Amend [D.E. 85, Adv. Proc.], which dismissed Counts V (Dismissal of Involuntary Petition), VI (Recovery of Damages in Connection with Dismissal of Involuntary Petition), VII (Payment of Mr. Wortley's Allowed Claim), IX (Transfer of Defendants' Membership Interests in, and Accounting and Disgorgement of Defendants' Additional Profits from Plasma Power), XI (Reimbursement of Plaintiffs' Attorneys Fees and Costs), XIII (Attachment of Defendants' Property), and XIV (Amendment of Pleadings). [D.E. 85 at 10, Adv. Proc.]. On January 31, 2017, the Court entered an Order Granting Motion to Abandon [D.E. 987, Main], which resolved Counts I (Avoidance of Sale), II (Recovery of Avoided Sale), III (Preservation of Transfer), IV (Equitable Subordination of Defendants' Interests in Global Energies), and VII (Payment of Mr. Wortley's Allowed Claim). On February 16, 2017, the Court entered the Order Granting and Denying In Part Plaintiff's Motion to Strike [D.E. 181, Adv. Proc.], which allowed only Chrispus, Plasma Power, and Tarrant's First and Fifth Affirmative Defenses; Mr. Juranitch's Third and Fourth Affirmative Defenses; and Mr. Pugatch and the Law Firm's First, Ninth, and Twelfth Affirmative Defenses. The Court struck all other affirmative defenses. *Id.*

On May 23, 2017, the Court entered the Order Granting Plaintiff's Motion for Leave to File an Amended

Adversary Complaint [D.E. 280, Adv. Proc.]. Plaintiff's Amended Complaint included eight counts: Count I — Avoidance of Sale (against Chrispus pursuant to 11 U.S.C. § 549(a)); Count II — Recovery of Avoided Sale (against Chrispus pursuant to 11 U.S.C. § 550(a)); Count III — Preservation of Transfer (pursuant to 11 U.S.C. § 551); Count IV — Equitable Subordination of Defendants' Interests in Global Energies (against Tarrant, Juranitch, and Chrispus pursuant to 11 U.S.C. § 510(c)(1)); Count V — Equitable Disallowance of the Chrispus Claim (against Chrispus); Count VI — Accounting and Disgorgement of Defendants' Legal Fees (against Pugatch and Rice Pugatch Robinson Schiller, PA); Count VII — Reimbursement of Plaintiff's Excess Costs, Expenses, and Attorney's Fees (against Pugatch and RPRS pursuant to 28 U.S.C. § 1927); Count VIII — Enforcement of Mandate (against Tarrant, Chrispus, Juranitch, and Pugatch pursuant to the Mandate). [D.E. 232-1, Adv. Proc.]. Counts I, II, III, and IV of the Amended Complaint reiterate counts from the original Complaint that the Court's Order Granting Motion to Abandon [D.E. 987, Main] resolved. Defendants filed answers to the Amended Complaint, which incorporated the remaining affirmative defenses to the original complaint. [D.E. 327, 328, 330, Adv. Proc.]. Thus, at trial, the Court considered the following remaining issues:

1. Four counts of the Amended Complaint [D.E. 232-1]: Count V — Equitable Disallowance of the Chrispus Claim (against Chrispus); Count VI — Accounting and Disgorgement of Defendants' Legal Fees (against Pugatch and RPRS); Count VII — Reimbursement

of Plaintiff's Excess Costs, Expenses, and Attorney's Fees (against Pugatch and RPRS pursuant to 28 U.S.C. § 1927); Count VIII — Enforcement of Mandate (against Tarrant, Chrispus, Juranitch, and Pugatch pursuant to the Mandate).

2. Defendants' affirmative defenses; and

3. The Second Motion to Dismiss [D.E. 128, Main].[56]

T. The Evidence Revealed Mr. Wortley was the Only Party to Benefit from the Bankruptcy.

Mr. Wortley claimed that his damages on remand exceeded $20 million [Claim 3-1 at 1]; however, the evidence presented to this Court revealed that Mr. Wortley did not sustain any damages and was, in fact, the only party to benefit from the filing of the bankruptcy. Although the Court heard ample expert testimony from Mr. Steven Davis and Mr. Charles Throckmorton concerning Mr. Wortley's abundant attorney's fees, Mr. Wortley failed to provide any evidence of his damages from either the filing of the bankruptcy or any alleged discovery misconduct. Mr. Wortley received a benefit from the filing of the bankruptcy; the Trustee paid Mr. Wortley's allowed claim in full from the funds received by Mr. Tarrant's purchase of the assets, while Chrispus' claim remains subordinated and outstanding. [D.E. 987 at 2, Main]; *see*

56. Mr. Wortley's Complaint and Amended Complaint included a request for jury trial; however, the parties entered an Agreed Order Granting Defendants' Motion to Strike Jury Trial Demand [D.E. 106, Adv. Proc.].

discussion *supra* Section I.N. This Court has determined that the value of Global Energies at the time of filing the bankruptcy was zero; thus, it is unlikely that Mr. Wortley would have received payment on his note, if the company had remained outside of the bankruptcy system. Further, the decision of this Court is limited to the bankruptcy proceeding, so Mr. Wortley may still pursue any available state court remedies.

U. The Court Determined the Credibility of the Parties.

The Supreme Court of the United States has explained, "The trial judge's major role is the determination of fact, and with experience in fulfilling that role comes expertise." *Anderson v. Bessemer City*, 470 U.S. 564, 574, 105 S. Ct. 1504, 1512, 84 L. Ed. 2d 518 (1985) (holding that "when a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error."). The Court heard testimony from Mr. Wortley, Mr. Tarrant, and Mr. Juranitch, which resulted in three facially plausible versions of the same story regarding the breakup of Global Energies. Thus, the Court relied upon determinations of the credibility of these three parties when making the findings of fact above and determining which version of the story was more credible. For the reasons explained below, this Court found the testimony of Mr. Tarrant and Mr. Juranitch credible and Mr. Wortley's testimony lacked any and all credibility.

1. Mr. Wortley Lacks Credibility.

Mr. Wortley is not a credible witness because his testimony was inconsistent, non-responsive, self-serving, confusing, and argumentative. First, Mr. Wortley gave inconsistent statements throughout the trial. Trial Tr. Vol. VI, 1393 (Mr. Wortley stated that Mr. Juranitch was not locked out of the building; however, Mr. Wortley admitted that "it [Mr. Jurantich's key to the building] did not work because I [Mr. Wortley] changed the locks . . ."). For example, Mr. Wortley testified that "Mr. Juranitch removed Global's assets in the middle of the night, and [] Global Energies never received compensation for those assets." Trial Tr. Vol. V, 1050. Mr. Wortley further stated, "It's never been proven in seven years, that there was any compensation paid to Global Energies for any of the assets that were taken from the 637 Jim Moran Boulevard." Trial Tr. Vol. V, 1050. However, mere moments later, Mr. Wortley admitted that those very assets were returned to the trustee and sold, and the money received in exchange from Mr. Tarrant was used to pay the claims, including his own. Trial Tr. Vol. V, 1051-52. Mr. Wortley's inconsistent, and often absurd, statements throughout trial multiplied the proceedings and caused unnecessary controversy as to facts that could have been stipulated to by the parties.

In addition to inconsistent statements, Mr. Wortley exuded an argumentative demeanor throughout the trial. The Court had to instruct Mr. Wortley to refrain from argumentative behavior when questioning witnesses and answering questions from opposing counsel. Trial Tr. Vol. X, 2339. Mr. Wortley argued with witnesses, talked

over their answers, and cut off their responses. Trial Tr. Vol. X, 2183-2187, 2286 (Mr. Wortley argued with the witness about their interactions with newspaper outlets concerning coverage of this case.); Vol. VIII, 1788, 1876 (Mr. Wortley argued multiple times with Mr. Pugatch and stated "I think what you're saying is ridiculous"). On several occasions, Mr. Wortley gave glib, non-responsive answers, rather than straightforwardly answering opposing counsels' questions. Trial Tr. Vol. VI, 1211 ("You're ridiculous. You are ridiculous."); Vol. VI, 1188 ("We are a capitalist society."); Vol. V, 1122 ("Lazarus."). The Court was forced to instruct Mr. Wortley to refrain from throwing documents at a witness. Trial Tr. Vol. X, 2252 (When Mr. Wortley threw documents at Mr. Tarrant, Mr. Tarrant responded, "Don't throw that at me," and the Court instructed, "Please, don't throw the document, Mr. Wortley.").

The Court found that Mr. Wortley's testimony and his lines of questioning revealed personal motive and animus for pursuing this litigation, which damaged Mr. Wortley's credibility. *See* discussion *supra* Section I.A. First, Mr. Wortley placed a significant amount of weight on the friendships between the parties. Trial Tr. Vol. IV, 735-37, 738-40, 745-46. Second, Mr. Wortley stated that he had forwarded the 11th Circuit Opinion to a news reporter in Mr. Tarrant's hometown in Vermont, and the Court found that Mr. Wortley intended to disparage Mr. Tarrant's reputation in his hometown where his family resides. Trial Tr. Vol. X, 2183-2187. Third, Mr. Wortley testified that he created a website, which summarized Mr. Wortley's depiction of the bankruptcy events, for the

explicit purpose of directing friends and associates there when they asked for Mr. Wortley's side of the story. Trial Tr. Vol. IV, 728. Finally, Mr. Wortley derogatorily referred to Mr. Juranitch multiple times as merely an employee of Global Energies, despite Mr. Juranitch undisputedly being a managing member of the company.[57] Trial Tr. Vol. V, 1022-24, 1045, 1053 ("He [Mr. Juranitch] was an employee of the company."). This fact alone demonstrates a personal animus; however, Mr. Wortley further demeaned Mr. Juranitch when Mr. Wortley testified consistently that he believed the employees were property or assets of Global Energies. Trial Tr. Vol. VI, 1161, 1164 (Mr. Wortley testified that the employees were not returned to the Trustee; he stated that Global Energies owned the employees; and he stated that he knew "that a company has legal ownership of . . . its employees."). The testimony of a person who believes people are property cannot be credible; thus, the Court gave no weight to Mr. Wortley's testimony.

Even more compelling, counsel for Chrispus adduced evidence on cross-examination of a specific instance of Mr. Wortley's character for untruthfulness — a finding from the United States Court of Appeal for the First

57. Mr. Juranitch testified that, in addition to his responsibilities as a managing member of Global Energies, Mr. Wortley "used [him] as a lackey." Trial Tr. Vol. VI 1264. Mr. Wortley asked Mr. Juranitch to work on personal projects for him, including "retitl[ing] his jet ski, fix[ing] his boat, set[ting] up a service program for his airplane," and other miscellaneous tasks. *Id.* Mr. Juranitch stated that this made him feel "really annoyed" and described it as "very distractive, very upsetting." *Id.*

Circuit (the "First Circuit") that Mr. Wortley committed civil fraud.[58] Trial Tr. Vol. XI, 2364-73; *see* Fed. R. Evid. 608(b). Trial Tr. Vol. XI, 2365; Ex. D1-Z11; *Wortley v. Camplin*, 333 F.3d 284, 291 (1st Cir. 2003). At the trial level, "[t]he jury found that Wortley committed federal securities law fraud and awarded Camplin $265,000 in damages." *Id.* On appeal, Mr. Wortley argued that "there was insufficient evidence that he acted with the requisite state of mind to meet the scienter requirement." *Id.* at 294. The First Circuit rejected Mr. Wortley's argument and affirmed the jury finding that Mr. Wortley provided untruthful testimony because "[o]nce the jury found, as it permissibly did on the evidence, that Wortley had effectively promised to indemnify Camplin, it was easy to conclude from his own testimony that he never intended to keep the promise." *Id.* at 295, 299. This Court found this evidence of prior untruthful testimony and civil fraud to be the most compelling evidence of Mr. Wortley's lack of credibility.

2. Mr. Tarrant Testified Credibly.

Mr. Tarrant answered the questions posed to him forthrightly. The Court found that Mr. Tarrant was a credible witness and gave substantial weight to his testimony.

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58. Regarding the First Circuit opinion, Mr. Wortley lied on the record about opposing counsel, Mr. Goldberg's, statement that he would explore the First Circuit opinion and not the Trafford case on cross. After Mr. Pugatch vouched for Mr. Goldberg's honesty, Mr. Wortley admitted to telling a half-truth when he stated, "That is actually somewhat correct." Trial Tr. Vol. XI, 2369-70.

3. Mr. Juranitch Testified Credibly.

Mr. Juranitch answered the questions posed to him forthrightly. The Court found that Mr. Tarrant was a credible witness and gave substantial weight to his testimony.

4. Mr. Pugatch Testified Credibly.

Mr. Pugatch answered the questions posed to him forthrightly. The Court found that Mr. Pugatch was a credible witness and gave substantial weight to his testimony.

II. CONCLUSIONS OF LAW

"A trial court, upon receiving the mandate of an appellate court, may not alter, amend, or examine the mandate, or give any further relief or review, but must enter an order in strict compliance with the mandate." *Piambino v. Bailey*, 757 F.2d 1112, 1119 (11th Cir. 1985) (citing *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255, 16 S. Ct. 291, 293, 40 L. Ed. 414 (1895)). "Although the trial court is free to address, as a matter of first impression, those issues not disposed of on appeal, it is bound to follow the appellate court's holdings, both expressed and implied." *Id.* (internal citations omitted). This Court appreciates the ramifications for a trial court that "fails to fully implement the mandate," and, in such a case, the legal system permits "the aggrieved party [to] apply to the appellate court for enforcement, by petitioning for a writ of mandamus." *Id.* at 1120; *see Winn-Dixie Stores,*

Inc. v. Dolgencorp, LLC, No. 15-12990, 881 F.3d 835, 2018 U.S. App. LEXIS 2325, *12-28 (11th Cir. Jan. 31, 2018).

The mandate rule is a "specific application of the 'law of the case' doctrine," which means the mandate rule is subject to the same limitations as the "law of the case" doctrine. *Piambino*, 757 F.2d at 1120 (citing *Greater Bos. Television Corp. v. FCC*, 463 F.2d 268, 279, 149 U.S. App. D.C. 322 (D.C. Cir. 1971); *Cleveland v. Fed. Power Comm'n*, 561 F.2d 344, 348, 182 U.S. App. D.C. 346 (D.C. Cir. 1977)) ("The law of the case doctrine is not an 'inexorable command'"). Because the mandate rule is subject to limitations, the "mandate rule is not absolute." *I.T.N. Consolidators, Inc. v. N. Marine Underwriters Ltd.*, 699 F. App'x 880, 883 (11th Cir. 2017). The trial court shall adhere to the mandate rule, unless the trial court discovers (1) new evidence, (2) "an intervening change in the controlling law dictat[ing] a different result," or (3) "the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice." *Piambino*, 757 F.2d at 1120 (citing *Westbrook v. Zant*, 743 F.2d 764, 768-69 (11th Cir. 1984)); *Baumer v. United States*, 685 F.2d 1318, 1320 (11th Cir. 1982)).

When the trial court is presented with new evidence on remand, the new evidence must be "substantially different" to justify a deviation from the mandate rule. *Ash v. Tyson Foods, Inc.*, 664 F.3d 883, 891 (11th Cir. 2011) (citing *Friedman v. Mkt. St. Mortg. Corp.*, 520 F.3d 1289, 1295 (11th Cir. 2008)); *United States v. Robinson*, 690 F.2d 869, 873 (11th Cir. 1982). "New" and "substantially different" evidence exists when the proceedings on remand

included "the testimony of a number of witnesses who had not testified at the first trial."[59] *Ash*, 664 F.3d at 892. A deviation from the mandate rule may also be justified when the trial court makes "more detailed findings of fact" than the original findings. *Robinson*, 690 F.2d at 873.

In the instant case, the Eleventh Circuit reversed and remanded with instructions and issued the Mandate to this Court. The Mandate stated as follows:

> On remand, the bankruptcy court shall grant Wortley's Rule 60(b)(2) motion and vacate its order approving the sale of Global's assets to Chrispus. This should be without prejudice to any innocent third parties, whose rights and interests are derived and depend upon the sale. The bankruptcy court then shall conduct any hearings necessary in the exercise of all its powers at law or in equity and issue appropriate orders or writs, including without limitation orders requiring an accounting and disgorgement, orders imposing sanctions, writs of garnishment and attachment, and the entry of judgments to ensure that Chrispus, Juranitch, Tarrant, and Pugatch do not profit from their misconduct and abuse of the bankruptcy

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59. Even if the appellate court's mandate does not require the trial court to entertain an evidentiary hearing, the trial court has the discretion to hold such a hearing, especially when "facts are bitterly contested and credibility determinations must be made." *Grigsby & Assocs. v. M Sec. Inv.*, 635 F. App'x 728, 735 (11th Cir. 2015) (quoting *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1312-13 (11th Cir. 1998)).

> process. The bankruptcy court shall vacate the sanctions imposed upon Wortley and ensure that he is fully compensated for any and all damages, including awarding Wortley attorneys' fees and costs. The only reason that this court does not impose any of these remedies is that Chrispus, Juranitch, Tarrant, and Pugatch have not had an appropriate hearing, which will be conducted before the bankruptcy court.

In re Glob. Energies, LLC, 763 F.3d at 1350.

In compliance with the Mandate, the Court vacated the Sale Order [D.E. 98, Main], which did not affect any "innocent third parties."[60] D.E. 987, Main; *In re Glob. Energies, LLC*, 763 F.3d at 1350. Second, the Court granted Mr. Wortley's Rule 60(b)(2) motion,[61] which vacated the Order Denying Motion for Rehearing [D.E. 482, Main]. [D.E. 1046, Main]. By granting the Rule 60(b)(2) motion, the Court granted Mr. Wortley's request for rehearing of the Second Motion to Dismiss. *Id.* The Court refrained from immediately granting the Second Motion to Dismiss and dismissing the bankruptcy case without

60. Chrispus, as the purchaser, had not sold the assets to any third parties, allowing Chrispus to return the assets to the custody of the Trustee without impacting any other party. The Trustee subsequently abandoned the assets to Mr. Wortley. *See* discussion *supra* Section I.L.

61. The Court recognizes its error in not granting the Rule 60(b)(2) motion immediately and has taken appropriate steps to rectify this procedural error. *See supra* note 52 and accompanying text.

an appropriate hearing for three reasons:

1) Mr. Wortley's Rule 60(b)(2) motion did not request that relief [D.E. 482, Main];

2) The Court's reading of the Mandate revealed that the Eleventh Circuit did not hold (expressly or impliedly) that this Court must grant the Second Motion to Dismiss; and

3) The Mandate required the Court to afford "Chrispus, Juranitch, Tarrant, and Pugatch . . . an appropriate hearing." *In re Glob. Energies, LLC*, 763 F.3d at 1350.

As directed by the Mandate, the Court "conduct[ed] any hearings necessary in the exercise of all its powers at law or in equity" and gave "Chrispus, Juranitch, Tarrant, and Pugatch . . . an appropriate hearing." *In re Glob. Energies, LLC*, 763 F.3d at 1350. Rather than merely holding a non-evidentiary hearing, the Court found that an evidentiary hearing, at least, was necessary because the "facts [were] bitterly contested, . . . credibility determinations must be made," and the adversary proceeding brought all of the parties under the Court's jurisdiction. *Grigsby*, 635 F. App'x at 735 (quoting *McDonald's Corp.*, 147 F.3d at 1312-13) (finding that the trial court could hold an evidentiary hearing, even if the mandate did not require such a hearing); *see* discussion *supra* Section I.S. Importantly, the parties elected to pursue an adversary proceeding, which culminated in an eleven-day trial. *See* discussion *supra* Section I.S. The Court in its discretion heard both the Second Motion to

Dismiss [D.E. 128, Main] and the Amended Complaint [D.E. 232-1, Adv. Proc.] simultaneously because the factual issues were intertwined. *See supra* note 2. The Court gave Mr. Wortley a significant amount of leeway during the trial because he was proceeding *pro se. See supra* note 52 and accompanying text.

As discussed above, this Court "enter[ed orders] in strict compliance with the mandate" as required by Eleventh Circuit precedent. *Piambino*, 757 F.2d at 1119 (citing *In re Sanford Fork & Tool Co.*, 160 U.S. at 255). However, after the conclusion of the eleven-day trial and consideration of the evidence, the Court found that this case presents the rare occasion where the mandate rule should not apply, at least in part. First, Eleventh Circuit precedent acknowledges that the Court "is free to address, as a matter of first impression, those issues not disposed of on appeal." *Id.* (internal citations omitted). The Mandate did not require — impliedly or expressly — the Court to grant the Second Motion to Dismiss [D.E. 128, Main] and dismiss the bankruptcy case. The Mandate only required the Court to grant the Rule 60(b)(2) motion, which requested a *rehearing* of the Second Motion to Dismiss.[62] This Court, as directed, has granted the Rule 60(b)(2) motion. [D.E. 1046, Main].

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62. Mr. Wortley filed a writ of mandamus with the Eleventh Circuit requesting immediate dismissal and damages, and the Eleventh Circuit denied Mr. Wortley's writ of mandamus — without requiring responses from either defendants or this Court — rather than ordering this Court to immediately dismiss the case or administer other relief.

Even if the Eleventh Circuit impliedly required dismissal, the mandate rule cannot apply because the eleven-day trial uncovered "new" and "substantially different" evidence. *Piambino*, 757 F.2d at 1120 (citing *Zant*, 743 F.2d at 768-69; *Baumer*, 685 F.2d at 1320); *Grigsby & Assocs.*, 635 F. App'x at 735 (quoting *McDonald's Corp.*, 147 F.3d at 1312-13). First, at the original one-day evidentiary hearing on the Second Motion to Dismiss [D.E. 128, Main], the Court heard only Mr. Wortley's case-in-chief including the testimony of two witnesses, Mr. Wortley and Mr. Juranitch. *See* discussion *supra* Section I.P. After considering Mr. Wortley's case-in-chief, the Court entered a directed verdict, which meant that Chrispus never had the opportunity to present its case, enter evidence, or produce witnesses. *See* discussion *supra* Section I.P. Contra, at the eleven-day trial, the Court heard testimony from fourteen witnesses — Mr. Wortley, Mr. Juranitch, Mr. Tarrant, Mr. Raymond Kramer, Mr. Steven Davis, Mr. Michael McCarty, Mr. Ryan O'Connor, Mr. Barry Mukamal, Mr. Richard A. Pollack, Mr. Chad Pugatch, Mr. Steven Lippman, Mr. Charles Throckmorton, Mr. George Zinkler, and Ms. Patricia Metlika. "[T]he testimony of a number of witnesses who had not testified at the first trial" constitutes "new and substantially different evidence." *Ash*, 664 F.3d at 892. Here, the Court heard the testimony of twelve witnesses, who had not previously testified at the first trial, including a key party — Mr. Tarrant, who was a principal of the petitioning creditor, Chrispus. This fact alone justifies a deviation from the mandate rule, under *Ash*. *Id.*

Second, the Court found the *Robinson* case particularly instructive. In *Robinson*, "the prior panel relied upon

what . . . turned out to be, after the proceedings on remand, an erroneous view of the facts." *Robinson*, 690 F.2d at 872. The magistrate judge's original findings were too vague and permitted the appellate court to make an assumption of the case that was ultimately incorrect. *Id.* at 873. "After conducting a new evidentiary hearing on remand, as mandated by the prior panel, the magistrate entered more detailed findings of fact," and the second panel "decline[d] to adhere to the prior panel's ruling." *Id.* Here, the Court's original findings of fact were a mere paragraph, and it was possible for the prior panel to make assumptions that produced an "erroneous view of the facts." *Id.* at 872; *see* discussion *supra* Section I.P. The Mandate required an "appropriate hearing," and after conducting the eleven-day trial and hearing both sides of the case, the Court's instant findings of fact are more detailed than the original findings and focus on the credibility of the parties and the details surrounding the filing of the bankruptcy. *Id.* at 873. For these reasons, the Court found that the unique circumstances of this case justify a deviation from the mandate rule.

A. The Court Found No Evidence of a Bad Faith Filing to Support Dismissal of the Bankruptcy.

Under 11 U.S.C. § 1112(b)(1), "on request of a party in interest, . . . the court shall . . . dismiss a case . . . for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."[63] Although

63. Although the main bankruptcy case, In re Global Energies, LLC, has since been converted to a Chapter 7 proceeding [D.E.

§ 1112(b)(4) of the Bankruptcy Code recites a laundry list of potential types of "cause,"[64] the Eleventh Circuit precedent found that "there is no particular test for determining whether a debtor has filed a petition in

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616, 10-28935], the main bankruptcy case was originally filed as an involuntary Chapter 11 proceeding [D.E. 1, 10-28935] and was a Chapter 11 proceeding at the time Mr. Wortley lodged his Second Motion to Dismiss [D.E. 128, Main]. Thus, the Court employed a Chapter 11 dismissal analysis.

64. [T]he term "cause" includes (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; (B) gross mismanagement of the estate; (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public; (D) unauthorized use of cash collateral substantially harmful to one or more creditors; (E) failure to comply with an order of the court; (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter; (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor; (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any); (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief; (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court; (K) failure to pay any fees or charges required under chapter 123 of title 28; (L) revocation of an order of confirmation under section 1144; (M) inability to effectuate substantial consummation of a confirmed plan; (N) material default by the debtor with respect to a confirmed plan; (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

bad faith."[65] *In re Phx. Piccadilly, Ltd.*, 849 F.2d 1393, 1394 (11th Cir. 1988); *Gen. Trading v. Yale Materials Handling Corp.*, 119 F.3d 1485, 1501 (11th Cir. 1997). A court's "determination of cause under § 1112(b) is 'subject to judicial discretion under the circumstances of each case,'" and "[t]he equitable nature of this determination supports the construction that a debtor's lack of 'good faith' *may* constitute cause for dismissal." *In re Albany Partners, Ltd.*, 749 F.2d 670, 674 (11th Cir. 1984) (emphasis added); *In re Balboa St. Beach Club, Inc.*, 319 B.R. 736, 740 (Bankr. S.D. Fla. 2005) (finding that the courts decide motions to dismiss for bad faith "on a case by case basis"). The Eleventh Circuit found that "the courts may consider any factors which evidence 'an intent to abuse the judicial process and the purposes of the reorganization provisions' or, in particular, factors which evidence that the petition was filed 'to delay or frustrate the legitimate efforts of secured creditors to enforce their rights.'" *Piccadilly*, 849 F.2d at 1394 (quoting *In re Albany Partners, Ltd.*, 749 F.2d at 674)[66] .

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65. Mr. Wortley argued that the "Badges of Fraud" applied to the instant case; however, the Court found the "Badges of Fraud" inapplicable because the case requires a determination of whether a bad faith filing occurred, and it does not include a fraudulent transfer. *See Gen. Trading v. Yale Materials Handling Corp.*, 119 F.3d 1485 (11th Cir. 1997).

66. The Eleventh Circuit held that "the guidelines set forth by this Court in *In Re Phoenix Piccadilly, Ltd.*, 849 F.2d 1393 (11th Cir.1988) and *In re Albany Partners, Ltd.*, 749 F.2d 670 (11th Cir.1984) have not been modified by the Bankruptcy Reform Act of 1994." *State St. Houses, Inc. v. N.Y. State Urban Dev. Corp. (In re State St. Houses, Inc.)*, 356 F.3d 1345, 1347 (11th Cir. 2004).

The Eleventh Circuit provided the following "non-exhaustive" factors, which are "not to be rigidly applied," as guidance for lower courts:

> (i) The Debtor has only one asset, the Property, in which it does not hold legal title;
>
> (ii) The Debtor has few unsecured creditors whose claims are small in relation to the claims of the Secured Creditors;
>
> (iii) The Debtor has few employees;
>
> (iv) The Property is the subject of a foreclosure action as a result of arrearages on the debt;
>
> (v) The Debtor's financial problems involve essentially a dispute between the Debtor and the Secured Creditors which can be resolved in the pending State Court Action; and
>
> (vi) The timing of the Debtor's filing evidences an intent to delay or frustrate the legitimate efforts of the Debtor's secured creditors to enforce their rights.

Id. at 1394-95; *State St. Houses, Inc. v. N.Y. State Urban Dev. Corp. (In re State St. Houses, Inc.)*, 356 F.3d 1345, 1346-47 (11th Cir. 2004). A finding that "there is no realistic possibility of an effective reorganization" would support the conclusion that the debtor "seeks merely to delay or frustrate the legitimate efforts of secured

creditors to enforce their rights." *In re Albany Partners, Ltd.*, 749 F.2d at 674.

The Eleventh Circuit has also provided three other recognized tests for bad faith: "the improper purpose test, the improper use test, and the test modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure." *In re Glob. Energies, LLC*, 763 F.3d at 1349-50 (citing *Gen. Trading v. Yale Materials Handling Corp.*, 119 F.3d 1485, 1501-02 (11th Cir. 1997)). "Under the improper purpose test, 'bad faith exists where the filing of the petition was motivated by ill will, malice or the purpose of embarrassing or harassing the debtor.'" *Id.* at 1349 n. 5 (quoting *Gen. Trading*, 119 F.3d at 1501-02). "Under the improper use test, bad faith exists when a creditor uses a bankruptcy proceeding to accomplish objectives not intended by the Bankruptcy Code, such as taking over a debtor corporation and its assets." *Id.* "[U]nder the test modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure, bad faith exists, where a filing party (1) fails to make a reasonable inquiry into the facts and the law before filing and (2) files the petition for an improper purpose." *Id.* As this Court found in prior precedent, all tests for bad faith seek to determine whether there is a "presence of an honest intention and a real need and ability on the part of the debtor to effectuate the aim of reorganization, even if this involves a total liquidation of the debtor's assets." *In re Balboa St. Beach Club, Inc.*, 319 B.R. at 743.

Here, the Court has failed to find any evidence that Chrispus filed the involuntary Chapter 11 bankruptcy petition in bad faith under the Eleventh Circuit's tests

— the *Piccadilly* factors, the improper purpose test, the improper use test, and the test modeled on Rule 9011. The Court has found that Chrispus' primary purpose in filing the involuntary petition was to reorganize Global Energies and resolve the deadlock between the primary members. *See* discussion *supra* Sections I.H, I.K. The Court based this finding of fact on the facts as a whole, especially the following specific facts. Chrispus filed the involuntary petition under Chapter 11 of the Bankruptcy Code (rather than Chapter 7); Mr. Tarrant testified that he wanted to reorganize Global Energies, keep Mr. Wortley involved, and make Mr. Wortley whole; Mr. Tarrant and Mr. Roberts attempted to resolve the deadlock between the parties before and after the bankruptcy filing; the "smoking gun" emails revealed an intent to reorganize; and the Trustee testified there was "potential" to reorganize but a sale of the assets was the best outcome. *See* discussion *supra* Sections I.G, I.H, I.K, I.M.

1. The *Piccadilly* Factors

Under the *Piccadilly* factors,[67] the Court acknowledged that some of the factors indicating bad faith have been satisfied. Namely, Global Energies did not own any patents and had very few tangible assets; Global Energies had few employees; Global Energies had few unsecured creditors with claims that were smaller than the secured creditors; and the primary financial problem

67. The *Piccadilly* factors may not apply in the instant case because the *Piccadilly* case can be easily distinguished based on the facts; however, the Court has included an analysis utilizing this test out of an abundance of caution.

was a dispute between Global Energies and Chrispus, a secured creditor. However, the Court emphasized that the *Piccadilly* factors are "non-exhaustive" and "not to be rigidly applied." *Piccadilly*, 849 F.2d at 1394 (quoting *In re Albany Partners, Ltd.*, 749 F.2d at 674). The thrust of the *Piccadilly* test is to find evidence of "'an intent to abuse the judicial process and the purposes of the reorganization provisions' or, in particular, . . . evidence that the petition was filed 'to delay or frustrate the legitimate efforts of secured creditors to enforce their rights.'" *Id.*

Although a few of the *Piccadilly* factors may have been satisfied, the Court failed to find any evidence of an "intent to abuse the judicial process" or "delay or frustrate the legitimate efforts of the secured creditors to enforce their rights." *Id.* The Court found that Chrispus, a secured creditor, filed the involuntary petition for the purpose of reorganizing Global Energies and resolving the deadlock for the benefit of the creditors and parties involved. *See* discussion *supra* Section I.K. In fact, Chrispus and Mr. Tarrant seem to have acted altruistically to ensure employees of Global Energies were paid in full and subordinated Chrispus' own claim to ensure the claims of all other creditors, including Mr. Wortley, were paid in full. *See* discussion *supra* Sections I.I, I.M. Chrispus filed a Chapter 11 involuntary petition, which was uncontested by Mr. Wortley, and filed a motion for the appointment of a trustee, who made the decision to liquidate Global Energies' assets after attempting to reorganize the company. *See* discussion *supra* Sections I.L, I.M. These actions showed that Chrispus operated with the intent to utilize the judicial process for the benefit of the creditors,

not to abuse the process or delay or frustrate their rights. The Court found Mr. Wortley's testimony to the contrary lacked the credibility necessary to rebut these facts. *See* discussion *supra* Section I.U.1; *Anderson v. Bessemer*, 470 U.S. at 574.

2. The Improper Purpose Test

"Under the improper purpose test, 'bad faith exists where the filing of the petition was motivated by ill will, malice or the purpose of embarrassing or harassing the debtor.'" *In re Glob. Energies, LLC*, 763 F.3d at 1349 n. 5 (quoting *Gen. Trading*, 119 F.3d at 1501). As the majority owner of Chrispus, Mr. Tarrant testified credibly that the purpose of the filing was to reorganize and resolve the deadlock. *See* discussion *supra* Sections I.K, I.U.2. This testimony indicates that Chrispus was not "motivated by ill will, malice or the purpose of embarrassing or harassing" Global Energies because Chrispus' intent was to reorganize or resurrect Global Energies after the breakup between Mr. Wortley and Mr. Juranitch. *See* discussion *supra* Section I.K.; *In re Glob. Energies, LLC*, 763 F.3d at 1349 n. 5 (quoting *Gen. Trading*, 119 F.3d at 1501).

The improper purpose test is designed to prevent a filing designed to harm the debtor, not an owner or manager of the debtor; however, to the extent that Mr. Wortley is a managing member of Global Energies, this Court still would not find that Chrispus filed with an improper purpose to embarrass or harass Mr. Wortley. When asked directly by Mr. Wortley if Mr. Tarrant had

a "plan to get rid of me [Mr. Wortley]," Mr. Tarrant responded: "No, not at all. Not at all . . . . You're my friend, you got me into this." Trial Tr. Vol. X, 2225. Mr. Tarrant's credible testimony demonstrates that Chrispus did not file the bankruptcy for an improper purpose towards Mr. Wortley. *See supra* Section I.U.2. Mr. Wortley's testimony to the contrary lacked the credibility necessary to rebut these facts, and Mr. Wortley's own testimony revealed his personal animus towards Mr. Tarrant and his own intention to harass Mr. Tarrant by disparaging Mr. Tarrant's reputation in his hometown where his family resides. *See* discussion *supra* Section I.U.1; *Anderson v. Bessemer*, 470 U.S. at 574.

3. The Improper Use Test

"Under the improper use test, bad faith exists when a creditor uses a bankruptcy proceeding to accomplish objectives not intended by the Bankruptcy Code, such as taking over a debtor corporation and its assets." *In re Glob. Energies, LLC*, 763 F.3d at 1349 n. 5 (quoting *Gen. Trading*, 119 F.3d at 1501). In this bankruptcy, Chrispus moved immediately for the appointment of a Chapter 11 trustee and did not seek to have Chrispus named as the trustee. *See* discussion *supra* Section I.L. Further, when the Trustee solicited offers to purchase the assets of Global Energies, all parties to the case had the opportunity to make an offer, and Chrispus made a final offer to Mr. Wortley to take the deal that Chrispus had negotiated with the Trustee, which Mr. Wortley refused. *See* discussion *supra* Section I.M. Chrispus and Mr. Tarrant had no need to attempt a takeover of Global Energies because

Global Energies had a value of zero at the time of filing the bankruptcy, and they had already started a separate company, Plasma Power. *See* discussion *supra* Sections I.H, I.I. Ultimately, Chrispus and Mr. Tarrant never profited from any of these businesses or the bankruptcy filing, and only Mr. Wortley benefitted. *See* discussion *supra* Sections I.H., I.I., I.T. Based on this evidence, the Court cannot find bad faith under the improper use test because Chrispus did not use the bankruptcy to attempt a takeover of Global Energies and its assets. Further, Mr. Wortley's testimony to the contrary lacked credibility. *See* discussion *supra* Section I.U.1; *Anderson v. Bessemer*, 470 U.S. at 574.

4. The Test Modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure

"[U]nder the test modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure, bad faith exists, where a filing party (1) fails to make a reasonable inquiry into the facts and the law before filing and (2) files the petition for an improper purpose." *In re Glob. Energies, LLC*, 763 F.3d at 1349 n. 5 (quoting *Gen. Trading*, 119 F.3d at 1502). First, Mr. Tarrant, as a majority owner of Chrispus, conducted a thorough examination of Global Energies' books and records with the assistance of Mr. Roberts and a forensic accountant. *See* discussion *supra* Section I.F. Additionally, Mr. Tarrant and Mr. Roberts consulted the advice of counsel prior to filing the bankruptcy. *See* discussion *supra* Sections I.G, I.H. The Court found this investigation and the use of an attorney to be more than reasonable inquiry into the facts and law before filing the

bankruptcy. Second, Chrispus did not file for an improper purpose, as the Court has found. *See* discussion *supra* Sections I.G., I.H, II.A.2. Under this two-prong test, the Court cannot find that Chrispus filed the involuntary petition in bad faith. Any testimony from Mr. Wortley to the contrary lacked the necessary credibility to rebut these facts. *See* discussion *supra* Section I.U.1; *Anderson v. Bessemer*, 470 U.S. at 574.

5. Conclusion

The Court must decide whether a filing was done in bad faith on a case-by-case basis. In this case, the facts, taken as a whole, support a finding of the "presence of an honest intention and a real need and ability on the part of the debtor to effectuate the aim of reorganization, even if this involves a total liquidation of the debtor's assets." *In re Balboa St. Beach Club, Inc.*, 319 B.R. at 743. Global Energies was deadlocked due to the actions of its managing-members (especially Mr. Wortley), and the Operating Agreement provided no relief for breaking the deadlock. *See* discussion *supra* Sections I.B, I.D, I.G. After three offers to Mr. Wortley to resolve the deadlock, Chrispus, a member of Global Energies with no management authority, made a decision to file bankruptcy in the hopes of reorganizing Global Energies and resolving the deadlock. *See* discussion *supra* Sections I.G., I.K. This Court found that Chrispus filed with an "honest intention," and Global Energies had a "real need and ability" to reorganize, even if the ultimate result was "total liquidation." *In re Balboa St. Beach Club, Inc.*, 319 B.R. at 743. The Court holds that Chrispus did not file the

involuntary petition in bad faith because Chrispus filed for the purpose of reorganizing Global Energies due to deadlock between the managing members. The Court limits this holding to the instant set of facts as outlined in excruciating detail in Part I of this order. To the extent that Mr. Wortley's testimony contradicts this Court's findings and holdings, the Court found Mr. Wortley's testimony to lack credibility. *See* discussion *supra* Section I.U.1; *Anderson v. Bessemer*, 470 U.S. at 574.

B. The Court Found No Evidence of Bad Faith in Either the Filing of the Bankruptcy or Discovery Practice to Support Mr. Wortley's Requested Sanctions Against the Defendants.

The remaining counts of the Amended Complaint [D.E. 232-1] requested varying levels of sanctions against the Defendants based on the Mandate and expected findings of bad faith conduct. *See* discussion *supra* Section I.S. Count V requested equitable disallowance of the Chrispus Claim. [D.E. 232-1 at 33-35]. Count VI requested an accounting and disgorgement of Mr. Chad Pugatch and his Law Firm's legal fees. *Id.* Count VII requested reimbursement of Plaintiff's excess costs, expenses, and attorney's fees against Mr. Pugatch and Law Firm, pursuant to 28 U.S.C. § 1927. *Id.* Finally, Count VIII requested the Court to enforce the Mandate against Mr. Tarrant, Chrispus, Mr. Juranitch, and Mr. Pugatch by "award[ing Mr.] Wortley all of his damages, attorneys' fees, costs, and interests, to be paid by Defendants, jointly and severally." *Id.*

For Counts V and VIII, Mr. Wortley argued that the Mandate required this Court to enter sanctions against all Defendants because the Eleventh Circuit allegedly found that Chrispus filed the Involuntary Petition in bad faith. [D.E. 232-1 at 33-35]. As explained above, this Court analyzed the Second Motion to Dismiss [D.E. 128, Main] as an issue of first impression, and, in the event that it is not an issue of first impression, the Court determined that the "new" and "substantially different" evidence heard at the eleven-day trial cannot and does not support a finding of bad faith. *See supra* Part II, Section II.A. Thus, without a finding of bad faith to unlock the Court's inherent power to sanction, the Court cannot sanction the Defendants. *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1223 (11th Cir. 2017) (citing *Sciarretta v. Lincoln Nat'l Life Ins. Co.*, 778 F.3d 1205, 1212 (11th Cir. 2015)). Further, even if the Court found bad faith, Mr. Wortley failed to provide evidence of his damages, and the evidence at trial proved that Mr. Wortley was the only party to benefit from the bankruptcy filing. *See* discussion *supra* Section I.T.

For Counts VI and VII, Mr. Wortley sought sanctions specifically against Mr. Pugatch and the Law Firm based on the Eleventh Circuit's Mandate to this Court to "ensure that . . . [Mr.] Pugatch do[es] not profit from [his] misconduct and abuse of the bankruptcy process." *In re Glob. Energies, LLC*, 763 F.3d at 1350. The Eleventh Circuit made a finding that Mr. Pugatch "actively obstructed Wortley's efforts to obtain evidence of the plan to file for involuntary bankruptcy" and withheld the "smoking gun" emails from Mr. Wortley. *Id.* at 1346,

1348-49. The Eleventh Circuit refrained from entering sanctions against Mr. Pugatch and his Law Firm because Mr. "Pugatch ha[d] not had an appropriate hearing, which will be conducted before the bankruptcy court." *Id.* at 1350. As mandated by the Eleventh Circuit, this Court conducted an appropriate hearing, i.e. the eleven-day trial, on the issues. *See* source cited *supra* note 59. Although the Eleventh Circuit seemed to squarely decide the issue of discovery misconduct, this Court determined that the mandate rule cannot apply to the discovery misconduct issue. *See supra* Part II. The eleven-day trial was the first trial on the discovery misconduct issue, the first time Mr. Pugatch and the Law Firm were parties to the litigation, and the first time Mr. Pugatch and his associates were able to testify before the Court. The Court found Mr. Pugatch to be a credible witness,[68] and the testimony and evidence revealed at this trial was new and substantially different from the facts before the Eleventh Circuit on appeal. *See supra* Part II; *Ash*, 664 F.3d at 891 (citing *Friedman*, 520 F.3d at 1295); *Robinson*, 690 F.2d at 873.

"Courts have the inherent power to police those appearing before them."[69] *Purchasing Power, LLC*, 851

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68. Mr. Pugatch credibly testified that he did not profit from the bankruptcy because the only compensation Mr. Pugatch and his Law Firm received was compensation for legal work billed to his client, Chrispus, and the billing ended after the Eleventh Circuit issued the Mandate. Trial Tr. Vol. VIII, 1817; *see supra* Section I.U.4.

69. The inherent power is the only valid basis for consideration of sanctions in this case because Mr. Wortley's Section 303 claim was dismissed, invalidating the associated fee-shifting statute, and Mr. Wortley failed to raise any other fee-shifting statute that may apply. *See* discussion *supra* Section I. The Mandate is an invalid basis for

F.3d at 1223 (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46, 111 S. Ct. 2123, 2133, 115 L. Ed. 2d 27 (1991); *Sciarretta*, 778 F.3d at 1212). This inherent power permits a court to sanction a party or attorney who has committed misconduct; however, the inherent power may only be "unlocked" by a "finding of bad faith." *Id.* (citing *Sciarretta*, 778 F.3d at 1212). The Eleventh Circuit held that "recklessness alone does not satisfy the inherent powers standard; there must be more." *Id.* at 1225. If a court found bad faith misconduct that rose above the level of recklessness, then "the court can shift only those attorney's fees incurred because of the misconduct at issue." *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186, 197 L. Ed. 2d 585 (2017).

Here, the Court considered Mr. Wortley's allegations that Mr. Chad Pugatch and the Law Firm engaged in discovery misconduct and purposefully withheld the "smoking gun" emails from him. The Court found that the evidence revealed that — because the Court entered a protective order forcing the discovery to be produced in state court — the discovery dispute occurred in the state court, not the bankruptcy court. *See* discussion *supra* Section I.Q. Mr. Pugatch and the Law Firm were not "appearing before" this Court when the alleged discovery misconduct occurred; thus, this Court cannot have jurisdiction to sanction Mr. Pugatch and the Law Firm when the conduct occurred in a different court. *See Purchasing Power, LLC*, 851 F.3d at 1223 (citing *Chambers*, 501 U.S. at 46).

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awarding fees because the Court has determined that the mandate rule cannot apply to the issue of discovery misconduct.

To the extent that this Court does have jurisdiction over the allegations, the Court found that the delay in producing the "smoking gun" emails was justifiable or excusable, and the alleged misconduct only rose to the level of recklessness, at the most. *See* discussion *supra* Section I.Q. First, Mr. Zinkler, Mr. Lippman, and Mr. Pugatch explained that they withheld the "smoking gun" emails in the beginning because they believed the "smoking gun" emails were privileged. *See supra* p. 45. Indeed, the "smoking gun" emails were listed on the first privilege log in the state court case. *See supra* p. 45. Second, after Mr. Pugatch and his Law Firm determined that they were not going to raise a claim of privilege for the "smoking gun" emails, the Court found that "smoking gun" emails were produced, according to the agreed procedure, in June 2011. *See supra* p. 45-46. Mr. Wortley's counsel — Mr. Kramer and Mr. Graner — failed to retrieve the "smoking gun" emails until March 2012. *See supra* p. 45-46.

The Court excused the delay in retrieval of the "smoking gun" emails because Mr. Wortley substituted counsel during this time, which caused delay and confusion, and there was a miscommunication between Mr. Kramer's law firm and Mr. Pugatch's law firm. *See supra* p. 47. Although the procedure of waiting for opposing counsel to retrieve the discovery may not be the best practice, the Court found that Mr. Pugatch and his Law Firm did not commit any discovery misconduct in bad faith. Additionally, the Court found no evidence of bad faith conduct by Mr. Pugatch and his Law Firm during the course of the bankruptcy, including the filing of the bankruptcy case. Thus, because the evidence could

not support a finding of bad faith, the inherent power cannot be unlocked, and the Court cannot find in favor of Mr. Wortley and sanction Mr. Pugatch or the Law Firm. *Purchasing Power, LLC*, 851 F.3d at 1223 (citing *Sciarretta*, 778 F.3d at 1212).

Accordingly, it is

ORDERED as follows:

1. In the main case, the Second Motion to Dismiss [D.E. 128, Main] is **DENIED** with prejudice, and the bankruptcy will remain instated. The Trustee is **DIRECTED** to take any remaining action necessary to administer and close the bankruptcy case.

2. In the adversary proceeding, the Court finds in favor of the Defendants as to all remaining counts. The Court will not award damages or attorney's fees to either Mr. Wortley or the Defendants. All pending motions in the adversary proceeding are **DENIED** as **MOOT**. The Clerk is **DIRECTED** to **CLOSE** the adversary proceeding.

ORDERED in the Southern District of Florida on June 25, 2018.

/s/ Raymond B. Ray
Raymond B. Ray, Judge
United States Bankruptcy Court

APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DATED MARCH 28, 2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-61413-CIV-ZLOCH
10-28935-BKC-RBR

JOSEPH G. WORTLEY,

Appellant,

vs.

CHAD P. PUGATCH, *et al.*,

Appellees,

IN RE: GLOBAL ENERGIES, LLC,
F/K/A 714 TECHNOLOGIES, LLC,

Debtor.

March 28, 2016, Decided
March 28, 2016, Entered on Docket

ORDER

THIS MATTER is before the Court upon the Motion To Dismiss Appeal (DE 5), filed herein by Appellees Chrispus Capital, LLC, Richard Tarrant, and Ronald Roberts (collectively, "Appellees"). The Court has carefully reviewed the entire record herein and is otherwise fully advised in the premises.

By the instant Motion (DE 5), Appellees urge this Court to dismiss the above-styled appeal for lack of jurisdiction. The crux of Appellees' position is that the order on appeal is a non-final order, and that the Court consequently does not have jurisdiction to hear such appeal under 28 U.S.C. § 158(a)(1). The Court agrees, and for the reasons that follow, will dismiss the instant appeal.

The underlying bankruptcy case began with Appellee Chrispus Capital, LLC's, involuntary Chapter 11 petition against Debtor Global Energies, LLC (hereinafter "Debtor"), on July 7, 2010. Appellant Joseph G. Wortley, one of Debtor's managing members and equity holders, filed a motion to dismiss the case, arguing that Chrispus Capital, LLC, (another of Debtor's equity holders) had filed the involuntary petition in bad faith. The Bankruptcy Court denied Wortley's motion without prejudice. Citing new evidence, Wortley then filed a second motion to dismiss the case, again arguing that the involuntary petition was filed in bad faith. Again, the Bankruptcy Court denied Wortly's motion, this time with prejudice. Wortley then filed a motion to reconsider, citing more evidence that came to light after the Bankruptcy Court's denial of Wortley's second motion to dismiss. After the Bankruptcy Court denied Wortley's motion to reconsider, Wortley appealed—first to the District Court, then to the Court of Appeals.

On appeal, the Eleventh Circuit held that Chrispus Capital, LLC's, petition was indeed filed in bad faith, reversed the Bankruptcy Court's denial of Wortley's motion to reconsider, and remanded with instructions that

Wortley's motion to dismiss be granted. The Eleventh Circuit further instructed the Bankruptcy Court to "conduct any hearings necessary in the exercise of all its powers at law or in equity and issue appropriate orders or writs, including without limitation orders requiring accounting and disgorgement, orders imposing sanctions, writs of garnishment and attachment, and the entry of judgments to ensure that Chrispus, Juranitch, Tarrant, and Pugatch do not profit from their misconduct and abuse of the bankruptcy process." *In re Global Energies, LLC,* 763 F.3d 1341, 1350 (11th Cir. 2014).

Notably, between Wortley's first and second motions to dismiss, the Bankruptcy Court approved the sale of Debtor's assets to Chrispus Capital, LLC. Thus, after the Eleventh Circuit's remand, Wortley filed a motion for "leave, standing, and authority to commence, prosecute and, if appropriate, settle certain causes of action on behalf of the debtor's estate." Among others, Wortley sought to prosecute actions for avoidance of the sale of Debtor's assets and damages therefor, equitable subordination of Appellees' interests, dismissal of the bankruptcy case and damages in connection therewith (the "§ 303 Claims"), payment of Wortley's claim, and equitable disallowance of Chrispus Capital, LLC's claim.

The Bankruptcy Court granted in part and denied in part Wortley's motion. As to the § 303 Claims, the Bankruptcy Court found that it lacked authority to allow Wortley to pursue those claims on behalf of the Debtor's estate. The Bankruptcy Court therefore denied Wortley's motion with respect to the § 303 Claims. However, the

Bankruptcy Court authorized Wortley to pursue each of the other claims he raised on behalf of the Debtor's estate. Wortley appealed, and Appellees moved this Court to dismiss the appeal for lack of jurisdiction.

In bankruptcy cases, district courts have jurisdiction to hear appeals from the bankruptcy court. As relevant here, a district court's jurisdiction over such appeals is limited to "final judgments, orders, and decrees."[1] 28 U.S.C. § 158(a)(1)(2015). The familiar concept of finality applies in the bankruptcy context, much in the same way it does in other contexts. Thus, "[a]s with other types of cases, a final order in a bankruptcy proceeding is one that ends the litigation on the merits and leaves nothing for the court to do but execute its judgment." *In re Culton,* 111 F.3d 92, 93 (11th Cir. 1997).

Of course, a bankruptcy proceeding, by its nature, is an amalgamation of various disputes and controversies. The concept of finality is therefore more flexible in the bankruptcy context than in others. *See Jove Eng'g, Inc. v. IRS,* 92 F.3d 1539, 1548 (11th Cir. 1996)(internal citation omitted). To that end, a bankruptcy-court's order is considered final when it "completely resolve[s] all of the issues pertaining to a discrete claim, including issues as to the proper relief." *In re Atlas,* 210 F.3d 1305, 1308 (11th Cir. 2000). "[T]he separate dispute being assessed," rather than the bankruptcy case as a whole, "must have

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1. Wortley concedes that if the Bankruptcy Court's order is not a final order under § 158(a)(1), no other bases would support this Court's jurisdiction over the instant appeal. The Court therefore addresses only finality under § 158(a)(1).

been finally resolved and leave nothing more for the bankruptcy court to do." *In re Charter Co.,* 778 F.2d 617, 621 (11th Cir. 1985).

The non-final nature of the Bankruptcy Court's order here is readily apparent. Wortley's motion sought derivative standing to bring several claims on behalf of the estate. Indeed, Wortley's motion included, as an exhibit, the complaint he intended to file on behalf of the estate if the motion were granted. The Bankruptcy Court's order allowed Wortley to proceed with all of the claims in that complaint except the § 303 Claims. In that regard, the Bankruptcy Court's order was akin to dismissing some (but not all) of a party's claims. It ended the litigation of some issues, but assured that litigation of other issues would continue. *Cf. Steffen v. Menchise (In re Steffen),* 500 Fed. Appx. 877, 880-81 (11th Cir. 2012)(finding conditional order dismissing bankruptcy non-final where it left case open until conditions were fulfilled) ; *In re Donovan,* 532 F.3d 1134, 1137 (11th Cir. 2008)(concluding that an order denying motion to dismiss in bankruptcy case was not a final order) ; *State Treasurer of State of Michigan v. Barry,* 168 F.3d 8, 11 (11th Cir. 1999)(holding that an order granting partial summary judgment was not final where it left claims pending for resolution).

Wortley contends that the Bankruptcy Court's order was final because it "disposed of the discrete issue of whether Mr. Wortley could bring the Section 303 Claims derivatively under the Bankruptcy Code." True enough, but that is not the standard. The finality that § 158(a)(1) speaks of is finality of "claims" or "disputes," not issues.

E.g., Atlas, 210 F.3d at 1308; *Charter Co.,* 778 F.2d at 621. The Bankruptcy Court's order was not a final order because it allowed further litigation of Wortley's claims. Consequently, this Court does not have jurisdiction over the above-styled appeal.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. The Motion To Dismiss Appeal (DE 5), filed herein by Appellees Chrispus Capital, LLC, Richard Tarrant, and Ronald Roberts, be and the same is hereby **GRANTED**;

2. The above-styled cause be and the same is hereby **DISMISSED**.

3. The Clerk of the United States District Court for the Southern District of Florida is hereby **DIRECTED** to close the above-styled cause; and

4. To the extent not otherwise disposed of herein, all pending Motions are hereby **DENIED** as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 28th day of March, 2016.

/s/ William J. Zloch
WILLIAM J. ZLOCH
United States District Judge

APPENDIX F — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED AUGUST 15, 2014

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

August 15, 2014, Decided

No. 13-11666

D.C. Docket Nos. 0:12-cv-61483-KMW;
10-28935-BKC-RBR.

IN RE GLOBAL ENERGIES, LLC,

Debtor.

JOSEPH G. WORTLEY,

Interested Party-Appellant,

versus

CHRISPUS VENTURE CAPITAL, LLC,

Petitioning Creditor-Appellee.

Appeal from the United States District Court for the
Southern District of Florida.

(August 15, 2014)

Before FAY, Circuit Judge, and HODGES* and HUCK,** District Judges.

PER CURIAM:

Joseph G. Wortley appeals the district court's judgment affirming the bankruptcy court's summary denial of his motion for relief from judgment under Rule 60(b) of the Federal Rules of Civil Procedure. Wortley asserts that, under Rule 60(b), new evidence wrongfully withheld by opposing parties, misrepresentations made by opposing parties, or both, entitled him to relief from the bankruptcy court's earlier denial of his motion to dismiss the involuntary bankruptcy petition filed by Chrispus Venture Capital, LLC.

I.

Wortley, James Juranitch, and Richard Tarrant shared ownership in Global Energies, LLC before its bankruptcy. Wortley and Juranitch personally owned their stakes, while Tarrant held his through Chrispus, the appellee, in which he had a 93% ownership interest. The three partners formed Global to market a plasma technology that Juranitch had developed. In mid-2010, business disagreements undermined that partnership

* Honorable Wm. Terrell Hodges, United States District Judge for the Middle District of Florida, sitting by designation.

** Honorable Paul C. Huck, United States District Judge for the Southern District of Florida, sitting by designation.

and resulted in Tarrant and Juranitch's developing a plan to wrest Wortley's interest in Global from him by having Chrispus file an involuntary bankruptcy petition against Global.[1] That plan was hatched, or at least captured, in emails exchanged between Tarrant, Juranitch, and Chrispus's bankruptcy attorney, Chad Pugatch, in June 2010 (the "June 17-19 emails"). Writing to Tarrant on June 17, two weeks before Chrispus's bankruptcy petition was filed, Juranitch said:

> The following is my humble attempt at presenting a strategy for Global Energies/Plasma Power starting next week. If you and Ron [Roberts, Chrispus's primary officer,] agree with the memo, I recommend we have Chad Pugatch review it, and add his insight. The plan is:
>
> 1. [Tarrant] communicates with [Wortley] on Tuesday when he is back, and requests a response on the offer that [Tarrant] extended Sunday night, which expired last Tuesday. [Tarrant] gives [Wortley] until the end of the business day.

1. "Although bankruptcy cases often are commenced on the debtor's own initiative, Section 303 of the Bankruptcy Code allows creditors in some instances to hale a debtor into bankruptcy court by filing an involuntary petition." *Trusted Net Media Holdings, LLC v. Morrison Agency, Inc. (In re Trusted Net Media Holdings, LLC)*, 550 F.3d 1035, 1040 (11th Cir. 2008) (en banc) (internal quotation marks omitted).

2. If a meaningful response is received [Tarrant] and [Juranitch] start negotiating . . . . A two[-]day window is given to [Wortley] for a completed agreement.

3. If no meaningful response is received from [Wortley], Chrispus Ventures files for "Debtor in Possession" rights under Chapter 11 law on Wednesday. . . .

. . . .

6. . . . Finally the [new company, Plasma Power LLC] may have to stand up to a legal battle from [Wortley] and needs to dot its I's and cross its T's. . . .

7. I am not clear how the Debtor in Possession eradicates the $200k note to [Wortley] and how [Wortley's] stock is dissolved. If this is accomplished in a bidding war to buy the complete assets of Global including the patents by its debtors than [sic] that is clear. If on the other hand the Debtor in Possession is to dissolve the company as an end game then we need to start spinning Plasma Power at this time. It might also become Global Plasma Power etc. I think we need to have this memo reviewed and a conference call with [Pugatch] to fill in the blanks at this point.

Wortley's Mot. for Reh'g. for Newly Discovered Evidence (hereinafter "Wortley's Mot. for Reh'g"), Ex. D at 2. Tarrant replied: "I agree in general . . . . I suggest you and [Roberts] pursue this strategy." Wortley's Mot. for Reh'g, Ex. F at 5. On June 19, Juranitch sent the plan to Pugatch who reviewed it and scheduled a time to discuss it with Juranitch, Roberts, and Tarrant. No agreement with Wortley was reached, and Chrispus filed an involuntary bankruptcy petition against Global on July 1, 2010.

Wortley took no initial action to oppose the bankruptcy petition and even approved the appointment of a trustee. He later began to suspect collusion by Tarrant and Juranitch, particularly when Chrispus showed interest in bidding on Global's assets at the bankruptcy sale. Acting on those suspicions, Wortley moved under 11 U.S.C. § 1112(b) to dismiss the bankruptcy petition as having been filed in bad faith.[2] The bankruptcy court held an emergency evidentiary hearing; at that point, Wortley could proffer only circumstantial evidence in support of his motion. Chrispus had not turned over the June 17-19 emails, despite Wortley's request for all documents containing communications about Global between Juranitch, Tarrant, and Pugatch.[3] Pugatch, a recipient of some of the June

2. Under 11 U.S.C. § 1112(b), a bankruptcy court may dismiss a case for "cause," *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 674 (11th Cir. 1984); "cause" includes filing a petition in bad faith, *Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.)*, 849 F.2d 1393, 1394 (11th Cir. 1988).

3. In addition to being relevant to Wortley's claim, the June 17-19 emails were covered by the description of at least two types of documents that he requested:

17-19 emails, represented to the bankruptcy court that "all responsive documents" had been produced. Wortley's Mot. for Reh'g, Ex. H. He asserted no privilege that would have allowed Chrispus to withhold the missing emails or put Wortley on notice that the emails existed.

Weakening Wortley's case further was the fact that Tarrant and Juranitch both gave sworn testimony denying their plan to file an involuntary bankruptcy petition. When asked under oath whether he had "any conversations with Juranitch about filing an involuntary [bankruptcy]," Tarrant answered "no." Tarrant Dep. at 53. Juranitch similarly testified that he had not learned of Chrispus's plan to file an involuntary bankruptcy petition until "shortly after they filed it or right when they were going to do it." Juranitch Dep. at 103. Pugatch, who is a partner in what Wortley admits is a "respected Ft. Lauderdale bankruptcy firm," Appellants's Br. at 24, lent his weight to those statements before the bankruptcy court, saying "[t]hroughout the entire process, representatives of Chrispus . . .[had] the stated purpose of trying to salvage

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> 1. All Documents and correspondence between Chrispus and James Juranitch which relate to the Debtor. This request specifically includes correspondence between [Pugatch] and Juranitch, Tarrant and Juranitch, and Roberts and Juranitch.
>
> 2. All Documents and correspondence between Chrispus and James Juranitch which relate to Plasma Power LLC. This request specifically includes correspondence between [Pugatch] and Juranitch, Tarrant and Juranitch, and Roberts and Juranitch.

Wortley's Mot. for Reh'g, Ex. G at 8.

[Global] . . .all with the goal of saving the monetary investment," Tr. of Evidentiary Hr'g (Nov. 10, 2010) at 62-63. Pugatch, of course, knew better. He knew Juranitch and Tarrant sought to "eradicate[]" Wortley's promissory note and "dissolve[]" his stock. Wortley's Mot. for Reh'g, Ex. D at 2. With no direct evidence for his claim, Wortley asked to withdraw his motion to dismiss, and the bankruptcy court granted that request without prejudice. Between the time when Wortley filed that motion and withdrew it, the trustee sold Global's assets to Chrispus; after the motion to dismiss was withdrawn, the bankruptcy court approved the sale.

About a year later, Wortley renewed his motion to dismiss the bankruptcy case based on new evidence. He had identified emails between Tarrant and Juranitch that appeared to show that they had colluded to do business without him before filing for bankruptcy. Those emails were not the ones from June 17-19, however, because those were still being withheld from Wortley, despite his earlier discovery requests. Like the evidence that Wortley had proffered earlier, the new emails, to which Wortley did have access, only circumstantially supported the claim that Chrispus had filed the involuntary bankruptcy petition in bad faith. Finding the evidence to be insufficient to support Wortley's claims, the bankruptcy court dismissed his motion with prejudice.[4]

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4. Wortley appealed the denial of his second motion to dismiss to the district court. That appeal later was dismissed, apparently because of his failure to file a brief timely. Wortley notes that an unopposed motion for enlargement of time was pending at the time of the dismissal. Regardless, the outcome of that appeal or Wortley's other abandoned appeals does not impact our decision.

Around that same time, in related state-court litigation, Wortley finally obtained the June 17-19 emails appearing to show both that Juranitch and Tarrant colluded in filing for involuntary bankruptcy and that they had testified falsely about that plan in their earlier depositions. Notably, the emails were produced not by Pugatch—who had received and known of them—but by the attorney who was defending Tarrant and the others against Wortley's state-law claims. Wortley then filed a Rule 60(b) motion for relief in the bankruptcy court based on those newly discovered emails. The bankruptcy court summarily denied that motion and decided that no remedy was available to Wortley. As grounds for that denial, the court noted that Wortley's evidence of bad faith "doesn't change anything," the issue already had been raised, the "bankruptcy is done," "Wortley had his day in court," and, even if Chrispus had improperly withheld evidence from Wortley, it would not matter because "[Wortley] knew that [Juranitch, Tarrant, Roberts, and Pugatch] were all talking." Tr. of Hr'g on Mot. to Reconsider (May 24, 2012) at 10, 18, 22. On appeal, the district court affirmed and reasoned Wortley's new evidence was insufficient to warrant Rule 60(b) relief. Wortley appeals the judgment of the district court.

II.

As the second court to review the judgment of the bankruptcy court, we review it independently of the district court. *Senior Transeastern Lenders v. Official Comm. of Unsecured Creditors (In re TOUSA, Inc.)*, 680 F.3d 1298, 1310 (11th Cir. 2012). We review the bankruptcy

court's denial of a motion for relief from judgment under Rule 60(b) for abuse of discretion. *See Frederick v. Kirby Tankships, Inc.*, 205 F.3d 1277, 1287 (11th Cir. 2000). If the bankruptcy court "has made a clear error of judgment, or has applied the wrong legal standard," we will conclude that it has abused its discretion in denying a Rule 60(b) motion. *See Ameritas Variable Life Ins. Co. v. Roach*, 411 F.3d 1328, 1330 (11th Cir. 2005) (per curiam). Wortley cites two grounds on which he was entitled to relief under Rule 60(b): first, under Rule 60(b)(2), he had discovered new evidence of the bad-faith filing; second, under Rule 60(b)(3), he was entitled to relief from the judgment as a result of fraud, misrepresentation, or misconduct by Chrispus. Regarding Rule 60(b)(2), Wortley needed to demonstrate that (1) the new evidence was discovered after the judgment was entered, (2) he had exercised due diligence in discovering that evidence, (3) the evidence was not merely cumulative or impeaching, (4) the evidence was material, and (5) the evidence was likely to produce a different result. *See Waddell v. Hendry Cnty. Sheriff's Office*, 329 F.3d 1300, 1309 (11th Cir. 2003); *Branca v. Sec. Benefit Life Ins. Co.*, 789 F.2d 1511, 1512 (11th Cir. 1986) (per curiam). Wortley's motion satisfied each of those criteria.

The bankruptcy court reached the opposite conclusion by, at least in part, applying the wrong legal standard to Wortley's Rule 60(b)(2) motion. Instead of considering whether the June 17-19 emails were new evidence, the court asked whether Wortley had presented a new issue in his Rule 60(b)(2) motion. Because Wortley previously had suspected bad faith by Chrispus and had raised that issue

in his motions to dismiss, the court held that the June 17-19 emails suggesting collusion did not warrant Rule 60(b)(2) relief. In the court's words, Wortley "had his day in court." Tr. of Hr'g on Mot. to Reconsider (May 24, 2012) at 22. But parties who request relief under Rule 60(b)(2) are not barred from it simply because they rely on issues that had been litigated earlier. In fact, in the context of Rule 60(b)(2) motions, that is commonplace. *See, e.g., Branca*, 789 F.2d 1511 (granting Rule 60(b)(2) relief, where the movant offered new evidence on the previously litigated issue of whether an insured man had died); *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525 (8th Cir. 1996) (same, where the previously litigated issue was whether a company had failed to make required disclosures); *Estate of Kraus v. Comm'r*, 875 F.2d 597 (7th Cir. 1989) (same, where the previously litigated issue was whether a drafting mistake had occurred in a trust document); *Chilson v. Metro. Transit Auth.*, 796 F.2d 69 (5th Cir. 1986) (same, where the previously litigated issue was whether an employee had been unlawfully discharged). What matters is whether the movant presents new evidence to support the motion, in addition to satisfying the other criteria of Rule 60(b)(2). *See Waddell*, 329 F.3d at 1309. By applying the wrong legal standard to Wortley's Rule 60(b)(2) motion, the bankruptcy court abused its discretion. *See Ameritas Variable Life Ins. Co.*, 411 F.3d at 1330.

Even if the bankruptcy court's statements can be construed as applying the standards of Rule 60(b)(2), it made clear errors of judgment and abused its discretion in applying those standards. *See id.* (holding that a court abuses its discretion by making clear errors of judgment).

For example, the bankruptcy court's statement that Wortley "knew that [Juranitch, Pugatch, Roberts, and Tarrant] were all talking" could be construed as a finding that Wortley's evidence was not new, that Wortley failed to exercise due diligence in discovering the June 17-19 emails showing those discussions, that the emails were cumulative or impeaching, or some combination of those three things. Tr. of Hr'g on Mot. to Reconsider (May 24, 2012) at 22. The court's statement that Wortley's evidence "doesn't change anything" could likewise be construed as a finding that the evidence was neither material nor likely to produce a different result in the bankruptcy. *Id.*

Under any of those possible interpretations of the bankruptcy court's statements, however, the court committed clear errors of judgment. First, Wortley discovered the June 17-19 emails in March 2012, well after the bankruptcy court denied with prejudice his motion to dismiss the bankruptcy petition. Second, before March 2012, Wortley did exercise due diligence in trying to discover the messages and had asked for precisely those types of emails in his initial document request to Chrispus. Although the email messages were indisputably responsive to that request, relevant to Wortley's claims, and nonprivileged, Chrispus did not produce them. Because they were not listed on a privilege log, Wortley did not know the messages existed. He tried to obtain the same evidence through depositions of Juranitch and Tarrant, but both men denied any plan to file a bankruptcy petition in bad faith, sworn denials that now appear to be blatantly false.

All the more troubling is that Pugatch, a sworn officer of the court, actively obstructed Wortley's efforts to obtain evidence of the plan to file for involuntary bankruptcy. He and his associate falsely responded to Wortley's November 2010 discovery request by saying that "all non-privileged documents responsive to [Wortley's requests]" had been produced. Wortley's Mot. for Reh'g, Ex. H at 3. Clearly, some significant non-privileged and responsive documents had been withheld. Pugatch also represented Tarrant at the deposition, where Tarrant falsely testified that he had had no conversations with Juranitch about filing an involuntary bankruptcy petition. Having participated in the June 17-19 email discussions about the involuntary bankruptcy petition, Pugatch knew that testimony was false, yet he did nothing to correct it or to remedy the earlier failure to produce the June 17-19 email messages. The rules regulating attorney conduct of the Florida Bar required him to do so. *See* R. Reg. Fla. Bar 4-3.3(a)(2) ("A lawyer shall not knowingly fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client."); *id.* at (a)(4) ("A lawyer shall not knowingly offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false."). In sum, the parties, who had the evidence that Wortley needed to substantiate

his claims, blocked his access to it and deliberately prevented him from finding it. Wortley eventually obtained the emails from a different attorney as part of another lawsuit, but that does not diminish Wortley's due diligence or his adversaries' apparent malfeasance in the litigation that led to this appeal.

Third, far from being cumulative or impeaching, the June 17-19 emails were direct evidence of the plan and intent of Tarrant and Juranitch to have Chrispus file a bankruptcy petition in bad faith. While this court has not settled on one test for determining when a bankruptcy petition is filed in bad faith, the June 17-19 emails show bad faith by Chrispus under all three recognized tests: the improper purpose test, the improper use test, and the test modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure.[5] *See Gen. Trading, Inc. v. Yale*

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5. Under the improper purpose test, "bad faith exists where the filing of the petition was motivated by ill will, malice or the purpose of embarrassing or harassing the debtor." *Gen. Trading Inc.*, 119 F.3d at 1501. Filing an involuntary bankruptcy petition deliberately to gain advantage in a business dispute is considered an improper purpose, *see Basin Elec. Power Coop. v. Midwest Processing Co.*, 769 F.2d 483, 486-87 (8th Cir. 1985), as is filing an involuntary bankruptcy petition in order to take control of a corporation or its assets, *see In re Better Care, Ltd.*, 97 B.R. 405, 412 (Bankr. N.D. Ill. 1989). The June 17-19 emails indicate that Chrispus had both of those purposes in mind, when it filed its involuntary bankruptcy petition.

Under the improper use test, bad faith exists when a creditor uses a bankruptcy proceeding to accomplish objectives not intended by the Bankruptcy Code, such as taking over a debtor corporation and its assets. *See Gen. Trading Inc.*, 119 F.3d at 1501; *In re Better*

Materials Handling Corp., 119 F.3d 1485, 1501-02 (11th Cir. 1997). In fact, it would be clear error to interpret the emails as showing anything other than that Tarrant and Juranitch conspired to have Chrispus file the bankruptcy petition in bad faith.

Fourth, the June 17-19 emails were material to Wortley's claims. As we have explained, the messages clearly show that Tarrant, Juranitch, and Chrispus acted in bad faith in filing the involuntary bankruptcy

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Care, Ltd., 97 B.R. at 411-12. As the June 17-19 emails show, Chrispus used the Bankruptcy Code in that very way.

Finally, under the test modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure, bad faith exists, where a filing party (1) fails to make a reasonable inquiry into the facts and the law before filing and (2) files the petition for an improper purpose. *Gen. Trading Inc.*, 119 F.3d at 1502. The first prong, reasonable inquiry, is an objective one. *See id*. Based on the record before us, Chrispus did not make an objectively reasonable inquiry into the law and facts before filing its petition. A reasonable party would not believe that the Bankruptcy Code permits it to use a bankruptcy proceeding to rid itself of business partners. *See Cedar Shore Resort, Inc. v. Mueller (In re Cedar Shore Resort, Inc.)*, 235 F.3d 375, 379 (8th Cir. 2000) (noting that the Bankruptcy Code's purpose is "'to restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders'") (quoting H.R. Rep. No. 595 (1975), *reprinted in* 1978 U.S.C.C.A.N. 6179). The second prong, improper purpose, is also satisfied by Chrispus's filing. As noted, Chrispus filed the involuntary bankruptcy petition for the improper purpose of prevailing over Wortley in a business dispute and taking control of Global's assets while eliminating Wortley's interests. *See Gen. Trading Inc.*, 119 F.3d at 1501.

petition. Fifth, the June 17-19 emails were likely to produce a different result on Wortley's motion to dismiss the bankruptcy petition. Under 11 U.S.C. § 1112(b), a bankruptcy court is permitted to "dismiss a case for 'cause,'" *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 674 (11th Cir. 1984), including for bad faith on the part of the filer, *Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.)*, 849 F.2d 1393, 1394 (11th Cir. 1988). On that basis, the bankruptcy court could and should have dismissed Chrispus's petition for bad faith had the truth been known. Alternatively, the bankruptcy court could have revisited Global's sale, reversed the determination that the sale occurred in good faith, and voided the sale. *See* 11 U.S.C. § 363(m); Fed. R. Civ. P. 60(b)(5), (d)(3). By clearly erring in its application of Rule 60(b)(2) under the facts of this case, the bankruptcy court abused its discretion.[6] *See Ameritas Variable Life Ins. Co.*, 411 F.3d at 1330.

On remand, the bankruptcy court shall grant Wortley's Rule 60(b)(2) motion and vacate its order approving the sale of Global's assets to Chrispus. This should be without prejudice to any innocent third parties, whose rights and interests are derived and dependent upon the sale. The bankruptcy court then shall conduct any hearings necessary in the exercise of all its powers at law or in equity and issue appropriate orders or writs, including without limitation orders requiring an

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6. Having concluded that the bankruptcy court abused its discretion in denying Wortley's Rule 60(b)(2) motion, we need not reach his alternative contention that the bankruptcy court abused its discretion in denying his request for relief under Rule 60(b)(3).

accounting and disgorgement, orders imposing sanctions, writs of garnishment and attachment, and the entry of judgments to ensure that Chrispus, Juranitch, Tarrant, and Pugatch do not profit from their misconduct and abuse of the bankruptcy process. The bankruptcy court shall vacate the sanctions imposed upon Wortley and ensure that he is fully compensated for any and all damages, including awarding Wortley attorneys' fees and costs. The only reason that this court does not impose any of these remedies is that Chrispus, Juranitch, Tarrant, and Pugatch have not had an appropriate hearing, which will be conducted before the bankruptcy court.

REVERSED AND REMANDED WITH INSTRUCTIONS.

APPENDIX G — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FILED FEBRUARY 11, 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-61483-Civ-WILLIAMS

Case No. 10-28935-RBR
Chapter 11 (Involuntary)

IN RE: GLOBAL ENERGIES, LLC,

Debtor.

JOSEPH WORTLEY,

Appellant,

vs.

CHRISPUS VENTURE CAPITAL, LLC,

Appellee.

ORDER AFFIRMING BANKRUPTCY COURT'S ORDER OF MAY 25, 2012

This appeal arises from an involuntary bankruptcy entitled *In re Global Energies, LLC*, 10-28935 (Bankr. S.D. Fla), which was brought under Chapter 11 of the Bankruptcy Code. Joseph Wortley ("Appellant" or "Wortley"), an interested party in the Chapter 11 proceeding, appeals from the Bankruptcy Court's Order

Denying Wortley's Motion for Rehearing Due to Newly-Discovered Evidence (Concealed by Chrispus) Produced in an Unrelated Case Affirmatively Demonstrating Bad Faith and Conspiracy to Accomplish Bad Faith Involuntary Filing dated May 25, 2012 ("Order").[1]

Appellant argues that the Bankruptcy Court erred when it denied his Motion for Rehearing because Appellant presented allegedly new evidence demonstrating that the Creditor and Debtor conspired to file the involuntary bankruptcy proceeding in bad faith. According to Wortley, the Bankruptcy Court abused its discretion in (i) failing to consider this allegedly new evidence and (ii) refusing to permit Wortley to prove that the involuntary action was commenced in bad faith. [D.E. 20 at 13].

I. Background

A. The Bankruptcy Proceeding

On July 1, 2010, Chrispus Venture Capital LLC (the "Creditor") filed an involuntary petition in the Bankruptcy Court, seeking relief on behalf of Global Energies, LLC (the "Debtor"). [Bankr. D.E. 98, ¶ 1].[2] Wortley, a manager and creditor of the Debtor, appeared as an interested party in the involuntary bankruptcy proceeding. [Bankr.

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1. After reviewing the parties' briefs and the record in this case, the Court does not find oral argument to be necessary.

2. Citations to the Bankruptcy Docket in underlying case number 10-28935-Bankr. appear in the format [Bankr. D.E. ##]. Citations to this Court's docket appear in the format [D.E. #4].

D.E. 10]. The Creditor filed a motion for appointment of a chapter 11 interim trustee, to which Wortley consented. [Bankr. D.E. 98, ¶ 2]. Accordingly, the Bankruptcy Court granted the parties' agreed order to appoint a trustee. [*Id.*] The Trustee reviewed the Debtor's business records and determined that the interests of creditors would be best served by a sale of the Debtor's assets through a Court approved auction and sale pursuant to Section 363 of the Bankruptcy Code. [*Id.* ¶ 6]. The Creditor made a formal offer to purchase the Debtor's assets, and after extensive negotiations the Trustee and the Creditor entered into an Asset Purchase Agreement. [*Id.* ¶ 7]. The Court approved the procedures proposed by the Trustee for selling the Debtor's assets and established a deadline of November 10, 2010 for submission of competing bids. [*Id.* ¶¶ 9-12]. No competing bids were submitted. [*Id.* ¶ 14]. Consequently, on November 30, 2012, the Bankruptcy Court approved and authorized the sale to the Creditor pursuant to the Asset Purchase Agreement. [*Id.* ¶ 38].

B. Wortley's Challenges to the Bankruptcy Proceeding

Although Wortley initially consented to the appointment of a Trustee, he subsequently made several attempts to challenge the bankruptcy proceeding. First, Wortley filed a Motion to Dismiss Case for Bad Faith, in which he argued that shareholders and officers of the Creditor and Debtor had colluded to commence the involuntary bankruptcy proceeding in bad faith. [Bankr. D.E. 54]. The parties engaged in discovery

regarding this issue.[3] [D.E. 21 at 7; D.E. 23 at 5, 8]. The Bankruptcy Court held a full day evidentiary hearing ("first evidentiary hearing") on Wortley's Motion to Dismiss, during which Wortley had the opportunity to present any evidence of communications between the Debtor and Creditor regarding the commencement of the involuntary bankruptcy. [Bankr. D.E. 98, ¶ 22]. Thereafter, Wortley withdrew his Motion to Dismiss, but incorporated the grounds he raised in that motion, along with the record of the first evidentiary hearing, in an objection to the Trustee's motion to approve the sale to the Creditor. [Bankr. D.E. 98, ¶¶ 23-24]. The Bankruptcy Court overruled Wortley's objection and approved the sale, finding that although the Debtor and Creditor had discussed commencing the involuntary bankruptcy, Wortley had presented insufficient evidence to establish that the case was commenced in bad faith. [Bankr. D.E. 98, ¶ 35].

Wortley then filed a second Motion to Dismiss based on alleged "new" evidence that the Debtor and Creditor had colluded to commence the involuntary bankruptcy in bad faith. [Bankr. D.E. 128]. The Bankruptcy Court held another full day evidentiary hearing on September 20, 2011 ("second evidentiary hearing") in which Wortley was given the opportunity to present this "new" evidence. [*See* Bankr. D.E. 314]. After considering the evidence and

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3. Appellant concedes that evidence of communications between Creditor and Debtor was disclosed during discovery. However, Appellant claims that the evidence he received was insufficient to establish that Debtor and Creditor conspired to file the involuntary bankruptcy in bad faith. [D.E. 23 at 5-6, 8].

the parties' arguments, the Bankruptcy Court denied Wortley's second Motion to Dismiss on September 27, 2011. [Bankr. D.E. 399].

Wortley appealed the denial of his second Motion to Dismiss to this Court. [Bankr. D.E. 404]. Although he was granted several extensions to file his initial brief, Wortley failed to timely file his initial brief and the appeal was dismissed. [Bankr. D.E. 455]. Wortley appealed the dismissal to the Eleventh Circuit, where he also failed to timely file his initial brief. [D.E. 22-2, 22-3]. Accordingly, the Eleventh Circuit dismissed his appeal on April 17, 2012. [D.E. 22-3].

Just six days later, on April 23, 2012, Wortley filed a Motion for Rehearing in the Bankruptcy Court. [Bankr. D.E. 465]. Wortley contended that rehearing was warranted because he had discovered additional "new" evidence in a separate state court action. Significantly, this action is one that he had filed in October 2010 against several individuals involved in the involuntary bankruptcy. [*Id.* ¶ 1; *see also* Bankr. D.E. 95 at 5]. According to Wortley, this latest "new" evidence demonstrated that the officers and shareholders of the Debtor and Creditor had conspired to commence the involuntary bankruptcy in bad faith. [Bankr. D.E. 465 ¶ 2]. The Bankruptcy Court held a hearing on the motion for rehearing on May 24, 2012. [*See* D.E. 22-4]. On May 25, 2012, the Bankruptcy Court denied Wortley's motion for rehearing. [Bankr. D.E. 482]. This appeal followed.

II. Discussion

This Court reviews a bankruptcy court's denial of a motion for rehearing for abuse of discretion. *See Kellogg v. Schreiber*, 197 F.3d 1116, 1119 (11th Cir. 1999). Appellant argues that the Bankruptcy Court abused its discretion by "refusing to consider the evidence presented" by Wortley in his motion for rehearing and by "refusing to permit Wortley to prove that the involuntary filing was in bad faith and for an improper purpose." [D.E. 20 at 13]. As an initial matter, the Court notes that the Bankruptcy Court held a hearing on Wortley's motion for rehearing in which the parties were given the opportunity to present and make arguments regarding the allegedly "new" evidence at issue. [*See* D.E. 22-4]. Thus, the Bankruptcy Court properly considered the evidence presented by Wortley. Accordingly, the Court finds that Wortley's contention that the Bankruptcy Court abused its discretion by refusing to consider the new evidence is without merit.

The Court now turns to Wortley's assertion that the Bankruptcy Court abused its discretion by "refusing to permit Wortley to prove that the involuntary filing was in bad faith and for an improper purpose." [D.E. 20 at 13]. Wortley contends that the Bankruptcy Court should have applied Rule 60(b) to determine if the "newly discovered evidence warrants relief from judgment."[*Id.*] Wortley submits that "all of the requirements to justify rehearing of Joseph Wortley's Motion to Dismiss for Bad Faith Filing have been met" under Rules 60(b)(2) and 60(b)(3). [D.E. 20 at 14].

Rule 60(b)(2) provides for relief from a final judgment if there is "newly discovered evidence that . . . could not have been discovered in time to move for a new trial." Fed. R. Civ. P. 60(b)(2). Under Rule 60(b)(2), "a movant must meet a five-part test: (1) the evidence must be newly discovered since the trial; (2) due diligence on the part of the movant to discover the new evidence must be shown; (3) the evidence must not be merely cumulative or impeaching; (4) the evidence must be material; and (5) the evidence must be such that a new trial would probably produce a new result." *Waddell v. Hemerson*, 329 F.3d 1300, 1309 (11th Cir. 2003). The requirements of Rule 60(b)(2) must be strictly met. *Id.*

Appellant has failed to meet the requirements of this five part test in several key respects. Most importantly, Wortley has failed to establish that the evidence on which he relied in his motion for rehearing is, in fact, new. Although Wortley may not have been in possession of the exact evidence he cited in his motion for rehearing, he concedes that "there were 'similar' emails produced" in the bankruptcy proceeding. [D.E. 23 at 8]. Thus, evidence of the alleged conspiracy was previously available to Wortley and Wortley relied on this evidence in (i) his first motion to dismiss, (ii) his objection to the sale to the Creditor, and (iii) his second motion to dismiss. The allegedly "new" evidence presented in the motion for rehearing is simply cumulative of the evidence already presented to the Bankruptcy Court. And cumulative evidence is not "new" for the purposes of Rule 60(b)(2).

Moreover, it is unclear what relief would have been available to Wortley if the Bankruptcy Court had granted his motion for rehearing. Under Rule 60(b)(2), the evidence must be such that a new trial would probably produce a new result. *Waddell*, 329 F.3d at 1309. As the Bankruptcy Court noted, the trustee "marketed the property on the open market. The property was sold. Those are all final orders. . . . The bankruptcy is done." [D.E. 22-4 at 9, 11]. Wortley's purported "new" evidence does not and cannot change the outcome of the bankruptcy, and a new trial will not produce a different result.[4] Accordingly, the Court finds that the allegedly "new" evidence is insufficient to meet the standard of Rule 60(b)(2).

Rule 60(b)(3) provides relief from judgment in the event of fraud, misrepresentation or misconduct by an opposing party. Under Rule 60(b)(3), "the moving party must prove by clear and convincing evidence that the adverse party obtained the verdict through fraud, misrepresentations, or other misconduct." *Waddell*, 329 F.3d at 1309. Wortley argues that Creditor's counsel withheld the emails at issue, and that this constitutes misconduct sufficient to require relief from judgment under Rule 60(b)(3). The Court disagrees. Wortley himself concedes that similar emails were disclosed in the bankruptcy proceeding. Consequently, Wortley knew that the Creditor and Debtor had discussed the commencement

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4. As the bankruptcy court noted, Wortley is not without a remedy if some fraud were perpetrated. Indeed, Wortley has filed suit in state court against several of the individuals involved in filing the involuntary bankruptcy. It was this action that purportedly yielded the "new" evidence at issue.

of an involuntary bankruptcy, and indicated this fact to the Bankruptcy Court. Moreover, Wortley consented to the appointment of a trustee, and failed to bid when the Debtor's assets were offered for sale. Thus, even if some fraud did occur, it was hardly the means by which a final order was obtained in the involuntary bankruptcy.[5] *See Waddell*, 329 F.3d at 1309.

Wortley also argues that "James Juranitch, Ronald Roberts and Richard Tarrant [managing members of the Debtor and Creditor] gave false testimony, under oath, concerning their knowledge and involvement in the alleged conspiracy to accomplish a bad faith filing of the Involuntary Chapter 11 proceedings." [D.E. 23 at 3]. However, Mr. Juranitch testified that he could not remember when he learned that the Creditor was going to file an involuntary bankruptcy. [D.E. 20-1 at 4]. Mr. Roberts similarly testified that he did not recall whether Mr. Juranitch knew beforehand about the filing of the involuntary bankruptcy. [D.E. 20-1 at 14]. And Mr. Tarrant testified that he did not "believe" he had spoken to Mr. Juranitch about the filing of an involuntary bankruptcy prior to the commencement of the action and that he did

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5. The subject matter of the involuntary bankruptcy presumably is different than the subject matter of the state court litigation (in which Wortley discovered the allegedly new evidence). Thus, the Court would expect that the discovery requests were different in each case. [*See* D.E. 21 at 21]. While the discovery requests in the state litigation are not before this Court, the Court does not believe that the fact that different discovery requests in different actions resulted in production of allegedly different documents is necessarily indicative of fraud.

not know if Juranitch was involved in the discussions about whether to file the bankruptcy. [D.E. 20-1 at 7]. These statement are hardly unequivocal. Consequently, the Court does not find the evidence of "false testimony" that Appellant has submitted to be clear and convincing; rehearing was not appropriate under Rule 60(b)(3).

Appellee contends that Wortley's arguments regarding Rule 60(b) are inapposite because the proper standard for determining whether rehearing is warranted is Federal Rule of Civil Procedure 59. Under Rule 59, "[o]nly three grounds are available to support the motion: (1) manifest error of fact; (2) manifest error of law; or (3) newly discovered evidence." *In re Investors Fla. Aggressive Growth Fund*, 168 B.R. 760, 768 (Bankr. N.D. Fla. 1994). If a motion for rehearing is based on newly discovered evidence, "the court should not grant the motion absent some showing that the evidence was not [previously] available." *Mays v. United States Postal Serv.*, 122 F.3d 43, 46 (11th Cir. 1997). This is because a motion for rehearing "is not a vehicle to re-argue issues resolved by the court's decision or to make additional argument on matters not previously raised by counsel." *In re Investors Florida Aggressive Growth Fund, Ltd.*, 168 B.R. at 768. It is unclear from the record which standard the Bankruptcy Court applied. However, this Court finds that Appellant has failed to establish that the Bankruptcy Court abused its discretion whether it applied Rule 59 or Rule 60—rehearing simply was not warranted.

As discussed above, although Appellant may not have had access to the same emails on which he relies

here, Appellant concedes that he had "similar" evidence demonstrating that the Creditor and Debtor communicated regarding the filing of the involuntary bankruptcy. Moreover, Appellant had several opportunities to litigate the issue of the alleged conspiracy between Debtor and Creditor to file the involuntary bankruptcy in bad faith. In reviewing the allegedly "new" evidence, the Bankruptcy Court noted that Wortley "approved of the appointment of the Trustee," "had an opportunity to litigate," raised the same issues early on in the bankruptcy proceeding,[6] and that Wortley "had several days in court, including appeals . . . [and] he knew that [the Creditor and Debtor] were all talking. He knew the purpose of the Chapter 11. He consented to the Chapter 11 Trustee. The Chapter 11 Trustee did his job. He sold the business." [D.E. 22-4 at 10-11, 13, 23]. Thus, Wortley's motion for rehearing appears to be nothing more than an attempt to re-argue the same issues that were already resolved by the Bankruptcy Court. Rule 59 does not permit such relief. Accordingly, rehearing was not warranted.

In sum, the Court finds that the Bankruptcy Court did not abuse its discretion in denying Wortley's motion for rehearing. Wortley had more than sufficient opportunity to litigate these issues in the Bankruptcy Court, and he concedes that the allegedly "new" evidence on which he now relies is similar to the evidence he relied on below.

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6. The bankruptcy court further noted that "it was raised, 'This is a conspiracy between the parties to do the involuntary petition.' . . . I understood that, but nevertheless they consented to the appointment of a Trustee." [D.E. 22-4 at 13].

Appendix G

The Bankruptcy Court's Order Denying Interested Party, Joseph Wortley's Motion for Rehearing Due to Newly-Discovered Evidence (Concealed by Chrispus) Produced in an Unrelated Case Affirmatively Demonstrating Bad Faith and Conspiracy to Accomplish Bad Faith Involuntary Filing dated May 25, 2012 is hereby **AFFIRMED**. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers, at Miami, Florida, this 11th day of February, 2013.

/s/ Kathleen M. Williams
KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

APPENDIX H — ORDER DENYING MOTION FOR REHEARING OF THE UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF FLORIDA, FORT LAUDERDALE DIVISION, FILED MAY 29, 2012

ORDERED in the Southern District of Florida on May 25, 2012.

/s/ Raymond B. Ray
Raymond B. Ray, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

Case No. 10-28935-RBR

Chapter 11
(Involuntary)

IN RE:

GLOBAL ENERGIES, LLC, F/K/A
714 TECHNOLOGIES, LLC,

Debtor.

Appendix H

ORDER DENYING INTERESTED PARTY, JOSEPH WORTLEY'S MOTION FOR REHEARING DUE TO NEWLY-DISCOVERED EVIDENCE (CONCEALED BY CHRISPUS) PRODUCED IN AN UNRELATED CASE AFFIRMATIVELY DEMONSTRATING BAD FAITH AND CONSPIRACY TO ACCOMPLISH BAD FAITH INVOLUNTARY FILING

THIS CAUSE came before the Court on May 24, 2012 at 9:30 a.m. upon Interested Party, Joseph Wortley's Motion for Rehearing Due to Newly-Discovered Evidence (Concealed by Chrispus) Produced in an Unrelated Case Affirmatively Demonstrating Bad Faith and Conspiracy to Accomplish Bad Faith Involuntary Filing (the "Motion for Rehearing") [DE #465], and the Court having reviewed the record in this case, having reviewed and considered Chrispus Venture Capital, LLC's Response to the Motion for Rehearing [DE #477], having reviewed and considered the record from the United States District Court for the Southern District of Florida, as well as the record from the United States Court of Appeals for the Eleventh Circuit, having heard the arguments of counsel, and for all of the reasons stated on the record, it is:

ORDERED and ADJUDGED:

The Motion for Rehearing is **DENIED**.

###

APPENDIX I — ORDER OF THE UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF FLORIDA, FORT LAUDERDALE DIVISION, FILED SEPTEMBER 27, 2011

ORDERED in the Southern District of Florida on September 27, 2011.

/s/ Raymond B. Ray
Raymond B. Ray, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

Case No. 10-28935-RBR

Chapter 11
(Involuntary)

IN RE:

GLOBAL ENERGIES, LLC, F/K/A
714 TECHNOLOGIES, LLC,

Debtor.

Appendix I

ORDER (1) GRANTING PETITIONING CREDITOR CHRISPUS VENTURE CAPITAL, LLC'S *ORE TENUS* MOTION FOR JUDGMENT ON PARTIAL FINDINGS AND (2) DENYING INTERESTED PARTY JOSEPH G. WORTLEY'S MOTION TO DISMISS CHAPTER 11 CASE FOR BAD FAITH BASED ON NEW AND ADDITIONAL EVIDENCE OF CONSPIRACY AND MISREPRESENTATIONS

THIS MATTER came before the Court for an evidentiary hearing on September 20, 2011 at 10:00 A.M. upon Interested Party Joseph G. Wortley's ("Wortley") Motion to Dismiss Chapter 11 Case for Bad Faith Based on New and Additional Evidence of Conspiracy and Misrepresentations (DE #128) (the "Dismissal Motion"), Wortley's Supplement to Motion to Dismiss (DE #343) and Chrispus Venture Capital, LLC's ("Chrispus") Response to Joseph G. Wortley's Supplement to Motion to Dismiss (DE #348) (as limited by this Court's Order Continuing Evidentiary Hearing on Wortley's Motion to Dismiss (DE #314)). After the conclusion of Wortley' s case and after Wortley rested, Chrispus made an *Ore Tenus* Motion for Judgment on Partial Findings pursuant to Federal Rules of Bankruptcy Procedure 7052(c). The Court, having heard argument of counsel and having considered the record including all testimony and evidence presented by Wortley and Chrispus, finds Wortley failed to meet his burden of proof in support of the Dismissal Motion. Accordingly, and based on the Court's oral findings and conclusions as stated on the record and incorporated herein by reference pursuant to Federal Rules of Bankruptcy Procedure 7052(a)(1), it is:

ORDERED AND ADJUDGED:

1. Chrispus Venture Capital, LLC's *Ore Tenus* Motion for Judgment on Partial Findings is GRANTED.

2. The Dismissal Motion is DENIED with prejudice.

###

APPENDIX J — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, DATED JUNE 2, 2023

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-12021

In re: JOSEPH G. WORTLEY,

Debtor.

JOSEPH G. WORTLEY,

Plaintiff-Appellant,

v.

JAMES JURANITCH, RICHARD TARRANT, CHAD P. PUGATCH, RICE PUGATCH ROBINSON SCHILLER, PA, BARRY MUKAMAL, Trustee, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:18-cv-61556-DPG

Order of the Court

Before WILSON, JORDAN, and BRANCH, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant Joseph G.Wortley is DENIED.

APPENDIX K — RELEVANT STATUTORY PROVISIONS

11 USC § 303

§ 303. Involuntary cases

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title [11 USCS §§ 701 et seq. or 1101 et seq.], and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title [11 USCS §§ 701 et seq. or 1101 et seq.]—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least $10,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable

under section 544, 545, 547, 548, 549, or 724(a) of this title [11 USCS § 544, 545, 547, 548, 549, or 724(a)], by one or more of such holders that hold in the aggregate at least $10,000 of such claims;

(3) if such person is a partnership—

(A) by fewer than all of the general partners in such partnership; or

(B) if relief has been ordered under this title [11 USCS §§ 101 et seq.] with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; or

(4) by a foreign representative of the estate in a foreign proceeding concerning such person.

(c) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (b) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (b) of this section.

(d) The debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to a petition under this section.

(e) After notice and a hearing, and for cause, the court may require the petitioners under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.

(f) Notwithstanding section 363 of this title [11 USCS § 363], except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States trustee to appoint an interim trustee under section 701 of this title [11 USCS § 701] to take possession of the property of the estate and to operate any business of the debtor. Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and delivering to the trustee, if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if—

(1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount; or

(2) within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

(i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—

(1) against the petitioners and in favor of the debtor for—

(A) costs; or

(B) a reasonable attorney's fee; or

(2) against any petitioner that filed the petition in bad faith, for—

(A) any damages proximately caused by such filing; or

(B) punitive damages.

(j) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section—

(1) on the motion of a petitioner;

(2) on consent of all petitioners and the debtor; or

(3) for want of prosecution.

(k)(1) If—

(A) the petition under this section is false or contains any materially false, fictitious, or fraudulent statement;

(B) the debtor is an individual; and

(C) the court dismisses such petition,

the court, upon the motion of the debtor, shall seal all the records of the court relating to such petition, and all references to such petition.

(2) If the debtor is an individual and the court dismisses a petition under this section, the court

may enter an order prohibiting all consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in section 603(d) of that Act [15 USCS § 1681a(d)]) that contains any information relating to such petition or to the case commenced by the filing of such petition.

(3) Upon the expiration of the statute of limitations described in section 3282 of title 18 [18 USCS § 3282], for a violation of section 152 or 157 of such title [18 USCS § 152 or 157], the court, upon the motion of the debtor and for good cause, may expunge any records relating to a petition filed under this section.

Appendix K

11 USC § 363

§ 363. Use, sale, or lease of property

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title [11 USCS § 552(b)], whether existing before or after the commencement of a case under this title.

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332 [11 USCS § 332], and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

(2) If notification is required under subsection (a) of section 7A of the Clayton Act [15 USCS § 18a(a)] in the case of a transaction under this subsection, then—

(A) notwithstanding subsection (a) of such section [15 USCS § 18a(a)], the notification required by such subsection to be given by the debtor shall be given by the trustee; and

(B) notwithstanding subsection (b) of such section [15 USCS § 18a(b)], the required waiting period shall end on the 15th day after the date of the receipt, by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, of the notification required under such subsection (a) [15 USCS § 18a(a)], unless such waiting period is extended—

(i) pursuant to subsection (e)(2) of such section [15 USCS § 18a(e)(2)], in the same manner as such subsection (e)(2) applies to a cash tender offer;

(ii) pursuant to subsection (g)(2) of such section [15 USCS § 18a(g)(2)]; or

(iii) by the court after notice and a hearing.

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title [11 USCS § 721, 1108, 1183, 1184, 1203, 1204, or 1304] and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section—

(1) in the case of a debtor that is a corporation or trust that is not a moneyed business, commercial corporation, or trust, only in accordance with nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation or trust; and

(2) only to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362 [11 USCS § 362].

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362 [11 USCS § 362]).

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

> **(1)** applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> **(2)** such entity consents;
>
> **(3)** such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> **(4)** such interest is in bona fide dispute; or
>
> **(5)** such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(g) Notwithstanding subsection (f) of this section, the trustee may sell property under subsection (b) or (c) of this section free and clear of any vested or contingent right in the nature of dower or curtesy.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(i) Before the consummation of a sale of property to which subsection (g) or (h) of this section applies, or of

property of the estate that was community property of the debtor and the debtor's spouse immediately before the commencement of the case, the debtor's spouse, or a co-owner of such property, as the case may be, may purchase such property at the price at which such sale is to be consummated.

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compensation of the trustee, of such sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(l) Subject to the provisions of section 365 [11 USCS § 365], the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, 12, or 13 of this title [11 USCS §§ 1101 et seq., 1201 et seq., or 1301 et seq.] may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of

the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is

subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

(p) In any hearing under this section—

(1) the trustee has the burden of proof on the issue of adequate protection; and

(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

11 US § 1112

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter [11 USCS §§ 1101 et seq.] to a case under chapter 7 of this title [11 USCS §§ 701 et seq.] unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter [11 USCS §§ 1101 et seq.]; or

(3) the case was converted to a case under this chapter [11 USCS §§ 1101 et seq.] other than on the debtor's request.

(b)(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 [11 USCS §§ 701 et seq.] or dismiss a case under this chapter [11 USCS §§ 1101 et seq.], whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) [11 USCS § 1104(a)] of a trustee or an examiner is in the best interests of creditors and the estate.

(2) The court may not convert a case under this chapter to a case under chapter 7 [11 USCS §§

701 et seq.] or dismiss a case under this chapter [11 USCS §§ 1101 et seq.] if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title [11 USCS §§ 1121(e) and 1129(e)], or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court

from meeting the time limits established by this paragraph.

(4) For purposes of this subsection, the term "cause" includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter [11 USCS §§ 1101 et seq.];

(G) failure to attend the meeting of creditors convened under section 341(a) [11 USCS § 341(a)] or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure timely to provide information or attend meetings reasonably requested by

the United States trustee (or the bankruptcy administrator, if any);

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28 [28 USCS §§ 1911 et seq.];

(L) revocation of an order of confirmation under section 1144 [11 USCS § 1144];

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

(c) The court may not convert a case under this chapter [11 USCS §§ 1101 et seq.] to a case under chapter 7 of this title [11 USCS §§ 701 et seq.] if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.

(d) The court may convert a case under this chapter [11 USCS §§ 1101 et seq.] to a case under chapter 12 or 13 of this title [11 USCS §§ 1201 et seq. or 1301 et seq.] only if—

(1) the debtor requests such conversion;

(2) the debtor has not been discharged under section 1141(d) of this title [11 USCS § 1141(d)]; and

(3) if the debtor requests conversion to chapter 12 of this title [11 USCS §§ 1201 et seq.], such conversion is equitable.

(e) Except as provided in subsections (c) and (f), the court, on request of the United States trustee, may convert a case under this chapter to a case under chapter 7 of this title [11 USCS §§ 701 et seq.] or may dismiss a case under this chapter [11 USCS §§ 1101 et seq.], whichever is in the best interest of creditors and the estate if the debtor in a voluntary case fails to file, within fifteen days after the filing of the petition commencing such case or such additional time as the court may allow, the information required by paragraph (1) of section 521(a) [11 USCS § 521(a)],

including a list containing the names and addresses of the holders of the twenty largest unsecured claims (or of all unsecured claims if there are fewer than twenty unsecured claims), and the approximate dollar amounts of each of such claims.

(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.