In the

Supreme Court of the United States

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GEORGE P. BAKER, et al.,

Petitioners,

vs

GOLD SEAL LIQUORS, INC.,

Respondent.

No. 73-804

Washington, D. C.
April 23, 1974

Pages 1 thru 28

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v. No. 73-804

GOLD SEAL LIQUORS, INC.,

Respondent.

Washington, D. C.,

Tuesday, April 23, 1974.

The above-entitled matter came on for argument at 2:10 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

PAUL R. DUKE, ESQ., 1138 Six Penn Center, Philadelphia, Pennsylvania 19104; for the Petitioners.

THEODORE J. HERST, ESQ., 125 South Clark Street, 17th floor, Chicago, Illinois 60603; for the Respondent.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 73-804, Baker against Gold Seal Liquors.

Mr. Duke, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF PAUL R. DUKE, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. DUKE: Mr. Chief Justice, and may it please the Court:

This case presents a single, somewhat simple issue, which, briefly stated, is whether or not a District Court has the power to enter a net judgment in a plenary action brought by the trustees of a railroad in reorganization, to collect pre-reorganization freight charges, and in which action the defendant has counterclaimed for pre-reorganization loss or damage to freight when the court supervising the reorganization of the debtor railroad has not permitted the settle-up or any other payment of such claims for loss and damages.

The record in this case is also relatively simple and consists almost entirely of a stipulation.

Very briefly, the Penn Central trustees, whose property had entered reorganization in June of 1970, pursuant to a direction in the initial order in that reorganization, to go out and collect the property of the debtor wherever they

may find it, sued in the District Court for the Northern District of Illinois to collect some $8200-some-odd in freight charges.

The defendant, Gold Seal Liquors, filed an answer which was essentially a general denial, but also filed a counterclaim for some $19,000-some-odd in loss or damage to shipment, all of which occurred prior to reorganization.

Thereafter a stipulation between the trustees and defendant Gold Seal, Gold Seal admitted its liability on freight charges in some $6999 and some-odd cents, and the trustees acknowledged liability on the pre-reorganization loss and damage claims in some $18,000-some-odd.

The trustees then moved for summary judgment. And they asked the District Court to enter separate judgments in the respective amounts, one on behalf of the trustees for their 6999 and one for Gold Seal for their 18,000.

The District Court indicated that it didn't believe it had been cited any authority which would justify the entry of separate judgments, but concluded that in any event it would be inequitable to enter separate judgments, so it entered a single net judgment.

The trustees thereafter appealed to the Seventh Circuit, and the Seventh Circuit affirmed. It thought the matter was presented to it as one of judicial comity, and went on to say that the matter of the adjudication of the claims in

the Illinois court was a matter of law.

It said the satisfaction of the resulting judgment is subject to the equitable principles generally applicable in a court of bankruptcy, and then directed that the resulting judgment be filed with the reorganization court for proof and allowance.

QUESTION: But that was the net judgment.

MR. DUKE: You're right, Your Honor. That's the trouble.

QUESTION: Yes.

MR. DUKE: When once it said resulting judgment, to say that the satisfaction of the resulting judgment is for the reorganization court, to me begs the question, because by affirming the net judgment they had already satisfied seven-eighteenths of Gold Seal's claim.

I think it can best be seen, if Gold Seal had sued the trustees for 19,000 in pre-reorganization loss and damage claims, the trustees defended and succeeded in showing it was only 18,000, I don't think anyone would contend that the Illinois District Court could take $7,000 of the trustees' property, which it could lay hands on in Chicago, apply it in partial payment of that judgment, and then now say: as to the remainder, you have to file that in Philadelphia and collect your $11,000.

We submit that that was the basic error. We believe

that it's perfectly clear that Section 77 of the Bankruptcy Act confers exclusive jurisdiction on the reorganization court for the disposition of property which comes into its possession, and also exclusive jurisdiction over the payment of pre-reorganization claims.

QUESTION: What do you concede to be the property of the debtor that was here involved?

MR. DUKE: This chose of action, Your Honor, for freight charges, which came into their possession on June 21st, 1970. Now, admittedly, they were not liquidated at that time.

We say the plenary action in the Illinois District Court liquidated those and it admitted an amount of some, almost seven -- 24 cents short of $7,000.

QUESTION: Well, do you disagree with Judge Friendly's treatment of this, the concept of property in Lehigh and Hudson case, and Judge Hand's language in the Roman case?

MR. DUKE: Well, if Your Honor please, In re Roman was a straight bankruptcy case, where there is no right of setoff, and I think Judge Friendly's discussion in Lehigh and Hudson River distinguished it.

But, you see, in Lehigh and Hudson River, Your Honor, the setoff was accomplished prior to the entry of the order putting Lehigh and Hudson River in reorganization.

In other words, in that case they went in on April

-- I forget -- 16th of --

QUESTION: But what they're talking about there is the -- what is the property of the bankrupt.

MR. DUKE: That's right.

QUESTION: And I would think whether -- when the particular event occurred wouldn't have too much relevance so far as that definition is concerned.

MR. DUKE: Well, I think it would, Your Honor, to the extent that it goes to the issue of whether or not -- if you effectuated to settle prior to the entry of an order barring setoff, you may have raised a substantial adverse claim to the property. And I say that's the essential holding of Lehigh and Hudson River.

QUESTION: But that deals with the summary jurisdiction of the bankruptcy court rather than a plenary action.

MR. DUKE: That's right. And in here the plenary action sought to enforce the chose of action, i.e., the right to collect for these freight charge which came into the property -- came into the possession of the debtor and to the exclusive jurisdiction of the reorganization court when the Penn Central entered reorganization.

QUESTION: Well, do you think the bankruptcy court has the authority to tell the trustees that you can go into any District Court in the country and sue, and I'm going to immunize you against the normal consequences of litigation in

that court?

MR. DUKE: No, I think -- well, the normal consequences of litigation, Your Honor, I say, do not mean under 77 that the trustees have to risk their property, risk that an Illinois District Court will order the payment of these claims by netting out this judgment, simply because they go to collect their property.

QUESTION: Mr. Duke, the damage claims and the transportation charges all arose out of different shipments, did they not?

MR. DUKE: That's correct, Your Honor.

QUESTION: Would it make any difference if there was one damage claim and one transportation charge, and it was out of the same shipment?

MR. DUKE: Your Honor, that's a tougher question, obviously, and Lindell?, which is the original authority for, in effect, having counterclaims for damages litigated in freight charge actions, is not clear. It speaks in terms of setoff at one point, and in other terms of counterclaim.

But the law appears to be clear that a counterclaim for loss and damage, or a claim for loss and damage, let's not characterize what it is, is not a defense to the trustee's action for freight charges. It is a separate independent claim, which, for reasons of judicial economy and efficiency, can be litigated and prosecuted to judgment in the same action.

Now, it's perfectly clear that normally, when you have these two separate judgments, which liquidate these two independent claims, it would be foolish not to net the amount and enter a judgment.

We say the intervention of reorganization and the exclusive jurisdiction which Section 77(a) vests in the reorganization court for the payment of claims and over property of the debtor.

QUESTION: Well now, you've got two completely different points there. One of them is this, as I take it, that if the trustee had never sued, and the other railroad simply wanted to establish a claim for damages, would it have had to go to the reorganization court -- was this the liquidated claim that was filable as a claim?

MR. DUKE: No, it was not liquidated.

QUESTION: So it would have had to sue, just like it did here, the trustee in an appropriate court?

MR. DUKE: That's right, Your Honor.

QUESTION: But once it was established, the only way that it collects its claim would be to file it, --

MR. DUKE: Yes, sir.

QUESTION: -- otherwise it would be a preference to that creditor.

MR. DUKE: That's correct.

QUESTION: And that's what underlies the rule against

setoffs. But in ordinary bankruptcy, Section 68 expressly permits setoffs.

MR. DUKE: That's correct, Your Honor.

QUESTION: But in reorganizations, as I understand it, it's been held that 68 is not necessarily controlling.

MR. DUKE: And it is a matter for the expression of the court supervising reorganization.

QUESTION: And wherever setoff is allowed, it does effect a preference?

MR. DUKE: That's correct, Your Honor.

QUESTION: But the other point is, then, not only the -- whether -- well, you've answered my one question as to whether the other court had jurisdiction to give judgment to the claimant. And you say it did.

MR. DUKE: We did not contest the jurisdiction to litigate the claim.

QUESTION: That's right. So it's really the remaining point as to whether that claim may be satisfied out of a claim that the trustee had?

MR. DUKE: That's right, Your Honor.

QUESTION: I see.

MR. DUKE: Your Honor has already indicated our second point, which is that through the procedure followed by the District Court here, this one loss and damage claimant has gotten payment on his claim, as contrasted with all other

loss and damage claimants, including loss and damage claimants who were brought in before Judge Fullam, shippers --

QUESTION: It's what would concededly happen in straight bankruptcy.

MR. DUKE: Oh, no question about it, Your Honor. Section 68 gives an automatic right to setoff in a straight bankruptcy. But in a reorganization --

QUESTION: Well, your policy against preference is just as strong in straight bankruptcy as it is in reorganization, isn't it?

MR. DUKE: Except, Your Honor, that Congress has, in effect, granted that preference through Section 68.

Here it's a court of equity, where it's been held that it's a matter of discretion for the reorganization court.

And I should make clear that the reorganization court, in denying setoff up till now for this type of claimant, has not done so forever and a day. He said: It's without prejudice to your claiming priority, when we get to the proof and allowance of claims.

I would finally suggest to Your Honors that there is another case quite similar to this one, which arose out of the Eastern District of Michigan, where we have that opinion as an addendum to our brief, we think it provides excellent evidence of the proper method for handling such problems.

In that matter, a suit for freight charges, counterclaims for damages, admittedly the court could not enter judgment on a counterclaim because it was on a motion for summary judgment and there were questions of law and fact raised. But that court indicated it would enter judgment for the trustees on their claim for freight charges, but the exclusive jurisdiction of the reorganization court prevented it from satisfying any judgment that it ultimately entered on the counterclaim for loss and damages, out of the property of the trustee, including the proceeds of this judgment.

QUESTION: Has that decision been appealed at all?

MR. DUKE: Your Honor, as far as I know, it has not, yet; although there have been indications that it will be.

I'd like to reserve additional time --

QUESTION: May I ask you a question first?

MR. DUKE: Yes, Your Honor.

QUESTION: What is the relevancy, if any, of Sections 31 and 67 of the Interstate Commerce Act?

MR. DUKE: That established, Your Honor, the jurisdiction to bring our action.

QUESTION: Yes.

MR. DUKE: The relevancy of those sections, as discussed in some of the opinions we cite, was whether or not a shipper could have effectuated the extinguishment of the

trustee's claims for freight charges, with a non-judicial netting of freight charges against -- loss and damage claims against freight charges.

The Third Circuit, in the -- what we have described as the shipper setoff case in this reorganization, affirmed an opinion by -- a judgment by Judge Fullam that such a netting out could not occur.

QUESTION: That's a non-judicial netting out?

MR. DUKE: Because the requirement of Section 67, Your Honor, that freight charges be paid in cash and that all shippers pay in the same form, prevented any -- and the general policy of the Act against secret rebate and secret arrangements prevented a shipper and a railroad from agreeing off the record, or outside the confines of the judicial proceeding, that they would net out their freight charges and loss and damage claims.

QUESTION: But this case is different because you don't have a netting out by the party who has a claim against the railroad?

MR. DUKE: That's right, Your Honor, and it didn't occur pre-reorganization. What we have here is litigation which established our right to $7,000, that's clear; litigation which liquidated his claims of $18,000; and then the court took one claim, it did them separately, and said, "We'll enter net judgment for eleven."

Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Mr. Herst.

ORAL ARGUMENT OF THEODORE J. HERST, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. HERST: Mr. Chief Justice, and may it please the Court:

I think that the basic question that runs through the entire thread of this case is exactly how much power Judge Fullam has, sitting in Philadelphia, by his orders to control the disposition of litigation in Illinois, and actually by examining the text of those orders, what he actually intended to do.

Coming first to the most important point, the matter of jurisdiction, there is no question that the court of bankruptcy, under Section 77(a), has exclusive jurisdiction of all of the debtor's property at the time of the filing of the petition. But we contend that this chose of action was not such property. We say there was no actual possession, there was no constructive possession, there was in fact a substantial adverse claim, because this railroad owed this company almost two and a half times the amount they claimed.

And it being an adverse claim, could be subject to disposition only by plenary jurisdiction, by a plenary suit, which the trustees did commence.

We state further that at this time there was no jurisdiction, no summary jurisdiction at any time over Gold Seal Liquors. We were outside the jurisdiction, we didn't even file a claim.

The trustees recorded from the books that they had the amount that was owed us and advised us by notice that a claimwas noted in the amount, in an approximate amount as to what we had.

QUESTION: Why didn't you file a claim in the reorganization court?

MR. HERST: Well, we didn't file a claim in the reorganization, Your Honor, because we saw the lawsuit coming, and because, frankly, we were concerned as to what the effect of participating in Philadelphia would be.

QUESTION: Do you think it was -- did they just note the claim, or was it --

MR. HERST: Your Honor, what they did is they sent a notice -- if we look at the genesis of the lawsuit, the suit was filed in the end of 1970. Under date of February 1, 1971, to which was appended a statement of the account as of March 6, '71, a document which was received by my client at the end of June '71 -- I got it the following day -- they said: This notice does not constitute an admission that the amount set forth above or any other amount is due and owing to by the debtor, it is merely intended to notify you that

the records of the debtor indicate that the attached described claims have been heretofore been presented by you to the debtor and to advise you that a formal proof of claim need not be filed by you in these reorganization proceedings for these claims.

QUESTION: So it was a -- so, in effect, it was, really was an admitted liquidated amount?

MR. HERST: No, it was not, Your Honor. Because we filed --

QUESTION: Well, my question is -- my question is, do you think that that was subject to the filing of a proof of claim without a judgment? That's what I asked your colleague --

MR. HERST: Oh, I see what you mean, Mr. Justice White.

QUESTION: Because I asked your colleague whether or not this was filable as a claim in the bankruptcy court, without further liquidation.

Now, I had always thought that if you got a notice -- that if a creditor got a notice like that from the trustee, he was invited to file a claim, and that it was admitted in that amount.

MR. HERST: In that amount.

QUESTION: But, if that isn't true, then it wasn't liquidated.

MR. HERST: That is correct. That is correct.

And the amount was also different, the amount shown on this claim was different than the amount we originally claimed and the amount that counsel and I subsequently threshed out, which was embodied in the stipulation as the actual amount.

QUESTION: The $18,000?

MR. HERST: Yes, Your Honor.

QUESTION: The original amount was higher.

MR. HERST: Yes, Mr. Justice Stewart, --

QUESTION: Your original claim was higher.

MR. HERST: -- we actually claimed close to twenty thousand.

QUESTION: Right.

MR. HERST: Nineteen thousand and some figure.

QUESTION: And that that you just had in your hand and have read to us was a notice that you -- your client got --

MR. HERST: Yes.

QUESTION: -- from the debtor in reorganization.

MR. HERST: From the trustees.

QUESTION: Yes, from the trustees, saying -- what did it say -- we acknowledge the existence of a --

MR. HERST: No, they say it does not constitute an admission, but they simply state, to notify us that the attached described claims -- and actually they are statements

of account -- have been presented by us -- have been presented by you to the debtor, because we had made the claims under the provisions --

QUESTION: You made the claims prior to reorganization.

MR. HERST: Prior to reorganization, under the Interstate Commerce Act --

QUESTION: Right.

MR. HERST: -- a claim on the bill of lading, --

QUESTION: Right.

MR. HERST: -- Mr. Justice White.

QUESTION: Oh, I see. I see. Yes.

QUESTION: But then they say you need not file a claim. Now, what that means to me is that they will take account of that claim in preparation of the plan of reorganization.

MR. HERST: Yes. I would suggest --

QUESTION: Without the filing of the claim. That's an admitted claim that would be taken care of in the plan; that's the way I would --

MR. HERST: In that amount. I suppose that is the only way you could regard it.

Now, secondly, --

QUESTION: But it's not liquidated, I mean the amount is not agreed upon, was it?

MR. HERSET: No, Mr. Justice --

QUESTION: Or was not at that time.

MR. HERST: -- it was not agreed upon.

QUESTION: But I take it if that's all you wanted to claim, you wouldn't need to file a claim.

MR. HERST: I suppose if we would walk away, Mr. Justice Stewart, I mean there are a lot of ifs, Mr. Justice White -- in response to Mr. Justice Stewart's question, if we wanted, if we assumed that this was going to be a solvent situation, if we assumed that we sooner or later might get something, if we were satisfied with the approximate figure, all other things being considered, I assume we could walk away --

QUESTION: Yes. Right.

MR. HERST: -- and do nothing and, in the ordinary course, just watch it.

Secondly, -- well, we believe, continuing on the --

QUESTION: When would you take your first step?

MR. HERST: Sir?

QUESTION: When would you have to take your first step, with respect to your claim?

QUESTION: You wouldn't have to -- if you were satisfied with that amount, you wouldn't have to take any.

MR. HERST: That is correct. And in this particular case, Mr. Chief Justice, we never even thought of taking the first step, because we were being sued. By the time we got

this notice, we were in the District Court in Illinois, we had reached the pleading stage, we were litigating; so we never would have gone to --

QUESTION: So your first step would be, after that lawsuit was begun against you.

MR. HERST: Right. Whatever the results would be of a lawsuit would, in effect, be our claim. And therefore, our claim, in effect, by the lawsuit has been reduced to $11,000.

Secondly, I just think that this is an unwarranted extension of attempted summary jurisdiction of the reorganization court. But I don't think the reorganization court intended so to do.

There are two orders which we would have before us. The first order to examine is Order No. 1 entered by Judge Kraft in June of 1970.

QUESTION: Where is it, if you have it?

MR. HERST: Your Honor, that order is found in the Appendix, at page A22 and following.

That order is what might be called a typical stock order if there be such, because it's the usual order that has been entered in railroad reorganization cases. And the paragraphs conform to the statutory language.

The key paragraphs for this purpose would be found at page A31, paragraphs 9 and 10. These are found in most

reorganization cases, the first one to maintain the status quo is an injunction against interfering with the property of the debtor by garnishment, by levying, by interfering with liens. And, in our opinion, against voluntary setoffs.

Because all of the cases urged by the trustees in the courts below concerning this question involved voluntary setoffs. Actions of self help, some in aggravated circumstances.

In the Susquehanna case, the Court noted that what had happened was that the bank, by appropriating deposit balances, had seized the operating cash of the railroad. Equitable principles again. Justice Cardozo's rule in Lowden, whether or not 68 should apply. Obviously, in Susquehanna, from the facts, it shouldn't have applied, and didn't.

QUESTION: Lowden itself was that kind of a case, wasn't it?

MR. HERST: Exactly. Lowden was a loose case, in effect. Three questions were asked, and Justice Cardozo said the first two were general, and then, explaining why they were general, he said that you would have to have a very flexible rule.

QUESTION: And there the bank in Minnesota had, on its own initiative, setoff against the bonds, didn't it?

MR. HERST: Yes, Your Honor.

And in Order 571, the second order that I would

allude to, entered in the summer of 1972 by Judge Fullam. This involved shippers doing things by themselves, setting off their own claims; or alleging the existence of prior contractual arrangements with the debtor, which would allow them to setoff unilaterally.

There was no instance in that case of judicial action, and I don't think that Judge Fullam should be accused -- not that he is, but even considered to have intended that. Because in his Order 571, which is found at page 1a of our blue-covered brief, he extends his orders to "all persons, firms and corporations served with a copy of the petition" -- and we were never served. And he prohibits them from setting off or attempting to set off obligations.

We humbly suggest and submit that the litigation under the Federal Rules of Civil Procedure, of a compulsory counterclaim in a plenary suit is not the type of thing that Judge Fullam was talking about in Order 571.

If we want to find out what Congress actually intended in the legislation, I frankly have had not too much success in looking over the reports of the Committee on the Judicary, chaired by Representative Somers, the Subcommittee on Bankruptcy headed by Mr. Walter Chandler, about the time that section 77 was amended in 1935 and subsequent. We find much material on the modification of security interests, the amount of consent necessary to implement a plan, the need for

railroad reorganization legislation to supplant the vices of equity receiverships. But nothing on this one question.

But we do see one interesting thing. One indication of congressional intent. We find, first, in Section 77(l), subparagraph (l) of Section 77, the statement that the courts in reorganization have all the powers of district courts sitting in bankruptcy.

The creditor's rights are the same. The court's powers are the same.

And, secondly, in Section 77(j), we find the proviso to the effect that the courts are precluded from enjoining actions arising out of the operation of the railroads.

This proviso is reflected in the typical order. In the single Appendix, at page A31, lines 18 through 21 of paragraph 9, down near the bottom, the court reflects the statutory mandate and says: "provided that suits or claims for damages caused by the operation of trains, et cetera, may be prosecuted to judgment." Not stayed.

And the Michigan court recognized that to some extent, although I don't know what the value of it is, if you allow litigation of a counterclaim and you do not give effect to it in the usual manner. There is no indication, we submit, in the Act of Congress, of any intent to treat a counterclaim in this situation otherwise than as a usual regular and typical counterclaim.

And we don't think that the bar against setoff is a bar against litigation of this sort.

Now, from a policy point of view, I suppose we are concerned about discrimination, discriminating against various classes of creditors. But I think, Your Honors, that discrimination is the route of the judicial process, because, as jurists and as lawyers, we discriminate when we try to separate the relevant from the irrelevant facts in every situation.

And I think when we look at the situation in this particular case, when we see the congressional intent in Section 77(j), I don't think that the result is an outrageous result. I think that the courts below did substantial justice in this case.

Because we were not typical creditors, we were not customers of this railroad, profiting by our business dealings with them, we were the patrons of this railroad. My client, along with many, many others, made this railroad run by giving it business; and the more business we gave it, up to the end, the more we were injured.

And I think, basically, that in this suit that the courts below did the proper thing.

I checked, myself, because I was concerned, keeping in mind the Lowden record, the records of the courts, of the principal center in the Seventh Circuit, those in Illinois,

in Cook County, Illinois, and I found a total of only three cases where there were counterclaims filed. None particularly pleaded in detail. One in the State court, two in the federal court, of which one is being removed.

There is no plethora of cases that would cause a problem to these trustees in the administration of the railroad. It isn't the existence of cases like this involving a little company that have brought the railroad to the pass that it is right now, where it may not even be reorganize-able.

But, I think as a matter of law that the decisions are correct. I think that the decisions of prior courts sustain our position, and a reading of the orders themselves would indicate that they were not intended to have the effect urged by counsel.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Herst.

Do you have anything further, Mr. Duke?

REBUTTAL ARGUMENT OF PAUL R. DUKE, ESQ.,

ON BEHALF OF THE PETITIONERS.

MR. DUKE: Just one or two things, Your Honor. And of course the number of suits is not of record. We find it difficult to understand the check Mr. Herst made, because there are many more than three, there are at least 20 or 25. And in Chicago alone, counterclaims pleaded amount to about $850,000. That does not include other places in the Seventh

Circuit.

What is of record is that in the reorganization proceeding, as a part of the stipulation, it is agreed -- or in the affidavit in support of the motion, that of the time of that motion there were some 9600 claimants, separate claimants, with loss and damage claims in this reorganization who had filed loss and damge claims in an amount of approximately $29.6 million.

QUESTION: But have they been filed in the reorganization court?

MR. DUKE: Your Honor, the procedure to which Mr. Herst -- the notice which he received was a notice prescribed by Judge Fullam pursuant to Order 164. This is a big reorganization, and to try to get everybody to file.

So what they did, and what Mr. Herst got, and that's referred to in the stipulation also, was a notice saying: Look, here's what we've got on file for you. We've got about $17,000 worth of loss and damage claims; we've already approved. We've got another couple thousand under investigation. If you don't agree with that, you file a proof of claim; write in, we'll give you the papers, you file a proof of claim.

But unless you --

QUESTION: Somewhat like an accountant, when he's auditing, that you're a potential claimant, you just want to

verify, really, the amount of --

MR. DUKE: That's right. It was unusual, Mr. Justice Rehnquist, in this extent. We indicated to him that we've got a couple thousand we haven't even finished investigating yet. We may allow those, we might not allow them, but we'll notify you when we get finished.

Of course, when we finished and notified him, if we had disallowed him, he would then have an opportunity.

QUESTION: But you also went on and said: If you don't object to this amount, you needn't file a claim.

Which, as far as I'm concerned, meant that you would take that amount into consideration in forming a plan.

MR. DUKE: The amount that we had approved, --

QUESTION: Yes.

MR. DUKE: -- Your Honor. We hadn't -- although it begins by saying, "We don't admit these amounts, the total amounts, but here's the way it breaks down."

QUESTION: Yes. You would have a very tough time in making a plan if you didn't provide for him after having said that.

MR. DUKE: Oh, we have to, Your Honor. If we ever get to him, and if we ever get to unsecured --

QUESTION: Unsecured creditors.

MR. DUKE: -- creditors, sure. Although, as to $7,000, the result of the entry of the net judgment is he's

gotten paid seven-eighteenths of his claim.

QUESTION: Well, it might be worth a penny.

MR. CHIEF JUSTICE BURGER: Very well.

The case is submitted. Thank you, gentlemen.

[Whereupon, at 2:41 o'clock, p.m., the case in the above-entitled matter was submitted.]

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