

FCC Received September 3, 1993, (after 5:00 p.m.)
Orna P. Bradshaw

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

MM Docket No. 93-135

THE PETROLEUM V. NASBY CORPORATION

Shelby, Ohio

RECEIVED

SEP - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DATE OF CONFERENCE: August 23, 1993

VOLUME: 1

PLACE OF CONFERENCE: Washington, D.C.

PAGES: 1-13

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In Applications of:
THE PETROLEUM V. NASBY CORPORATION
Shelby, Ohio

MM DOCKET NO. 93-135

The above-entitled matter came on for pre-hearing conference pursuant to Notice before Judge Luton, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on August 23, 1993, at 9:00 a.m.

APPEARANCES:

On behalf of The Petroleum V. Nasby Corporation:

ANN C. FARHAT, Esquire
1901 L. Street, N.W.
Washington, D.C. 20036

On behalf of Mass Media Bureau:

NORMAN GOLDSTEIN, Esquire
2025 M Street, N.W.
Suite #7212
Washington, D.C. 20554

I N D E X

1		
2		
3		Page No.
4	Statement by Mr. Goldstein	3
5	Statement by Ms. Farhat	4
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25	Conference Began: 9:00	Conference Ended: 9:15

FREE STATE REPORTING, INC.
 Court Reporting Depositions
 D.C. Area (301) 261-1902
 Balt. & Annap. (410) 974-0947

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE LUTON: May I have the appearances, please?

MR. GOLDSTEIN: Good morning, Your Honor, Norman Goldstein on behalf of the Chief of the Mass Media Bureau. And also representing the Chief although he's not here today will be James F. Shook.

JUDGE LUTON: Thank you.

MS. FARHAT: Good morning, Your Honor, Ann C. Farhat on behalf of the Petroleum V. Nasby Corporation.

JUDGE LUTON: Good morning. The hearing is scheduled for October the 18th. Is that date going to continue to be satisfactory?

MR. GOLDSTEIN: Your Honor, on Friday the 20th the Mass Media Bureau filed a request for production of documents and interrogatories. We had been in conversation with Ms. Farhat on behalf -- who is acting on behalf of Petroleum V. Nasby and seeing what types of -- what routine they may be following in this particular case, whether they were considering distress sale and alternative means for resolution of the proceeding. So we actually delayed the initiation of discovery until recently when we were advised that it did not appear that these alternative means were going to be initiated.

So, we would like I think for the purpose of developing a full and complete record a delay for a reasonable

1 period of time, whatever would comport with your schedule and
2 Ms. Farhat's. I mean, I'm not going to request an extension
3 of time. I, I just think that it will probably be better.

4 MS. FARHAT: Your Honor, would you like to hear from
5 me?

6 JUDGE LUTON: I would.

7 MS. FARHAT: Okay. It is true, Your Honor, that we
8 have had discussions in terms of trying to resolve this, this
9 case and I am hopeful that these dialogues can continue but
10 with respect to, to moving forward to the issues there are
11 certain matters which I believe we can stipulate relating to
12 at least the criminal convictions concerning Mr. Root -- but
13 as far as other matters concerning the case, those in my mind
14 of -- I don't know if it's a first impression, except in my
15 personal experience and in order to develop a record and, and
16 to pursue it I also would prefer a brief extension of the
17 October 18th date would clearly -- I wouldn't think much more
18 than 30 days would be required on that -- if it's possible.

19 JUDGE LUTON: Why would you request the extension?
20 The Bureau indicates it would like an extension because it has
21 just initiated discovery.

22 MS. FARHAT: Well, Your Honor, in terms of my --
23 besides the other press of business, I have to develop a
24 record myself in terms of proof if we do not resolve these
25 matters and, and my reading of the policy statements -- in the

1 interest of justice you can put forward pretty much the
2 showings that you need to put forward and that would require
3 me to develop in my opinion the record along the lines of --
4 expectances, Your Honor, and things of that nature.

5 JUDGE LUTON: Then the -- well --

6 MR. GOLDSTEIN: Your Honor, I would like to indicate
7 that the reason we did not initiate discovery was not a matter
8 of being lagging on our part, but it was a matter of
9 understanding that we had thought we reached with Ms. Farhat
10 that there were different ways of, of developing the record on
11 this matter. And in this vein I think also the rules require
12 that the request for admissions of fact be within 10 days of,
13 I believe, it's designation. I wonder if Your Honor would
14 allow us as we have our conversations with Ms. Farhat to
15 perhaps seek admissions of facts well -- obviously well beyond
16 that 10-day period for purposes of --

17 JUDGE LUTON: Simplifying, certainly.

18 MR. GOLDSTEIN: -- and simplifying the proceeding,
19 yes, sir.

20 JUDGE LUTON: That -- of course, certainly, I'd
21 consider that if the parties can -- well, requests for
22 admissions can be made of me at any time.

23 MR. GOLDSTEIN: And I --

24 JUDGE LUTON: -- pay too much attention to the
25 timeliness argument in our position unless it's really quite

1 substantial, put it that way.

2 MR. GOLDSTEIN: And as, as to the question of
3 applying the renewal expectancy concept, I -- that's the first
4 time I've heard that theory proffered and I, I have no
5 thoughts on it. Just does not appear to me to be the
6 appropriate concept to apply here. Because it's -- my
7 experience has been that it's strictly applied in a
8 comparative renewal proceeding.

9 JUDGE LUTON: This is a different kind of case. I
10 am not certain about whether it's correct or not. Ms. Farhat
11 indicates that she is -- may not be entirely sure either but
12 she's looking at it, considering it right now.

13 MS. FARHAT: Right, Your Honor, and I didn't mean it
14 in a classic legal sense --

15 MR. GOLDSTEIN: In a mitigation sense?

16 MS. FARHAT: Yeah, in a mitigation sense, Your
17 Honor, and that's, to me though, to liken it to the amount of
18 work involved that may require that depth of --

19 JUDGE LUTON: Okay. This is --

20 MS. FARHAT: -- so that's why I, I just don't want
21 you to think -- I think I know what I'm doing. I just use
22 that term as a means to liken it to the amount of work that
23 may be involved.

24 JUDGE LUTON: All right. This is a different kind
25 of case, different from the run-of-the-mill case that, that we

1 see. That is why the dates -- well, I suppose that is why the
2 dates are, are set just as, as they have been, just as though
3 this were, were a comparative case which it most certainly is
4 not. I had to set some date so October 18 seemed like a good
5 one. Had this been a comparative case that would have been
6 the date on which we'd go to hearing.

7 MR. GOLDSTEIN: How about something like November
8 30th, Your Honor?

9 JUDGE LUTON: That, that's a month and a half.

10 MR. GOLDSTEIN: I just -- because the week before
11 that I think was Thanksgiving week and I don't know if you
12 wanted to get into --

13 MS. FARHAT: As far as that date, Your Honor, it's a
14 problem for me in that my, my family is not here and I was
15 going to be out of town for Thanksgiving.

16 MR. GOLDSTEIN: Make it the week before
17 Thanksgiving? You want to go the week before Thanksgiving?

18 JUDGE LUTON: That will be the --

19 MR. GOLDSTEIN: The 16th.

20 JUDGE LUTON: 16th, on Tuesday?

21 MS. FARHAT: That's November, right?

22 JUDGE LUTON: Uh-huh.

23 MS. FARHAT: That's fine, Your Honor.

24 JUDGE LUTON: Okay. We will change the hearing date
25 then from October the 18th until November the 16th so as to --

1 involve the parties and I guess to decide how this case is
2 going to proceed. The alternative arrangements that you
3 referred to have -- have they, Mr. Goldstein, or have they? I
4 mean, is any of that stuff still a possibility?

5 MS. FARHAT: I hope so, Your Honor. I just was
6 briefly talking to Mr. Goldstein before the -- before you
7 walked in this morning. One, one area -- I think distress
8 sale is not a possibility for a number of reasons, Your Honor,
9 but we're still hopeful that we might be able to possibly even
10 have a meeting with Mr. Goldstein and people in his shop to
11 consider other alternatives so that there wouldn't be a need
12 for a hearing. But --

13 JUDGE LUTON: All right.

14 MS. FARHAT: And there -- based on our earlier
15 discussions and the little bit of guidance that they've
16 provided at least from my position I think we're, we're going
17 to have to have a little more flexibility for that --

18 JUDGE LUTON: Okay.

19 MS. FARHAT: But it's not rejected, I don't think.

20 JUDGE LUTON: Things are still in the talking stage?

21 MS. FARHAT: Yes.

22 JUDGE LUTON: All right.

23 MS. FARHAT: As far as I'm concerned I hope --

24 JUDGE LUTON: Okay. Then the hearing will be set
25 for November 16th. Since the case isn't very well formed yet

1 in the minds of the parties, or at least that's my impression,
2 maybe you can't answer this question, but what I want to know
3 is whether in a case such as this written testimony likely to
4 be useful, do you think? Can you know that at the present
5 time?

6 MS. FARHAT: I'm assuming, Your Honor, that some of
7 my case will, will be written but I'm also assuming that in
8 terms of mitigation that I would want to present approximately
9 three to four witnesses as well.

10 JUDGE LUTON: Okay. Then I'll set dates for the
11 submission of written draft cases.

12 MR. GOLDSTEIN: Your Honor, as far as that's
13 concerned, the Bureau does have, you know, obviously a plan
14 and a theory in mind. I mean, as far as I'm concerned we
15 would meet any initial burdens of proceeding by production of
16 the, the indictments, the pleas and the sentences -- and stage
17 with issue one, as far as the unauthorized transfer control
18 issues, the applications for transfer of control contain
19 admissions which I think Ms. Farhat would acknowledge as to
20 the fact that it was after the actions took place because they
21 requested nunc pro tunc approval of transactions that have
22 taken place.

23 So, as far as we're concerned, I mean we could
24 present our side of the case in a documentary fashion.

25 JUDGE LUTON: Without live witnesses. You don't

1 need --

2 MR. GOLDSTEIN: In the docket -- yeah, our side, but
3 I would certainly assume that if Ms. Farhat was presenting
4 witnesses it would be indispensable for us to have the
5 opportunity for cross-examination of these witnesses.

6 JUDGE LUTON: Oh, I don't think there's any question
7 about that.

8 MR. GOLDSTEIN: Yeah.

9 JUDGE LUTON: Going to need the dates for the
10 submission then of written testimony.

11 MR. GOLDSTEIN: Want to go off the record for a few
12 minutes?

13 JUDGE LUTON: I don't think so. Go right through
14 this. The hearing is going to be set for the 16th about
15 submi-- exchanging -- let's see, written testimony -- how
16 about November the 4th?

17 MR. GOLDSTEIN: Your Honor, since the following week
18 is a short week, why don't we make it November 1st?

19 JUDGE LUTON: November 3rd?

20 MR. GOLDSTEIN: November 1st.

21 JUDGE LUTON: Oh, 1st, that's on a Monday. That be
22 all right, Ms. Farhat?

23 MS. FARHAT: No, Your Honor. That's --

24 JUDGE LUTON: That'll be okay?

25 MS. FARHAT: Yeah.

1 JUDGE LUTON: Okay, we'll ask then that exhibits,
2 that means written testimony will be exchanged November the
3 1st, about two weeks in advance of the hearing. I don't think
4 we need any other dates.

5 MR. GOLDSTEIN: Witness notification. There's no
6 preliminary engineering.

7 JUDGE LUTON: Right. Sometime between the 1st and
8 the 16th?

9 MR. GOLDSTEIN: How about the 8th?

10 JUDGE LUTON: All right. That'll --

11 MR. GOLDSTEIN: For witness notification?

12 JUDGE LUTON: -- give you a week to look at the
13 witness admissions and then on November the 8th name the
14 witnesses that are to be examined. All right. Hearing
15 November 16th, names of witnesses November the 8th, change of
16 direct cases November 1. And the Bureau has burden of
17 proceeding on the first issue --

18 MR. GOLDSTEIN: I believe so.

19 JUDGE LUTON: -- should expect to, to meet with
20 documentary showings.

21 MR. GOLDSTEIN: The, the Bureau has the burden with
22 the initial presentation of the evidence with respect to issue
23 one?

24 JUDGE LUTON: First proceeding.

25 MR. GOLDSTEIN: I read it a little differently.

1 JUDGE LUTON: How do you read it?

2 MR. GOLDSTEIN: -- paragraph 13, Your Honor. It's
3 pretty much one and the same, burden of proceeding. And as a
4 practical matter, what we're trying to -- we're, we're -- we
5 have requested our cert-- court-certified copies of the
6 documents with, with the convictions and I trust that that
7 will be sufficient.

8 JUDGE LUTON: Okay. I don't --

9 MR. GOLDSTEIN: I don't think there's --

10 JUDGE LUTON: -- call it burden of proceeding there
11 I suppose, but I, I don't see that they really call it
12 anything any different -- they do --

13 MR. GOLDSTEIN: Right, I think the ess--
14 essentially it's one and the same.

15 JUDGE LUTON: I think so, okay. All right. Is
16 there anything else?

17 MR. GOLDSTEIN: Not at the moment, Your Honor, but I
18 assume that we can have -- contact you formally or informally
19 together if there is any procedural issues with regard to
20 discovery, Your Honor.

21 JUDGE LUTON: Absolutely.

22 MR. GOLDSTEIN: Sure.

23 MS. FARHAT: Your, Your Honor, we will try to
24 stipulate facts -- so that there won't be a lot of --

25 JUDGE LUTON: Unnecessary movement -- some, some of

1 the facts are pretty clear. All right. And with respect to
2 discovery the request for admissions, that can still be made,
3 that can still be made.

4 MR. GOLDSTEIN: Thank you, Your Honor.

5 JUDGE LUTON: Objections can be made, too, but
6 timeliness of them I won't pay much attention to. Thank you
7 very much. We'll be in recess.

8 (Whereupon, the hearing concluded at 9:15 a.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

APPLICATIONS OF PETROLEUM V. NASBY CORPORATION

Name

MM DOCKET NO. 93-135

Docket No.

WASHINGTON, D.C.

Place

AUGUST 23, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 13, inclusive, are the true, accurate and complete transcript prepared from the reporting by BARBARA J. LORD in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

Sept. 2, 1993
Date

James H. Lowell
James H. Lowell, Transcriber
Free State Reporting, Inc.

Sept. 3, 1993
Date

Diane S. Windell
Diane S. Windell, Proofreader
Free State Reporting, Inc.

Sept. 2, 1993
Date

Barbara J. Lord
Barbara J. Lord, Reporter
Free State Reporting, Inc.

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area 261-1902
Balt. & Annap. 974-0947