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OFFICE OF THE UNITED STATES TRUSTEE  
COMPONENT OF UNITED STATES DEPARTMENT OF JUSTICE

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In Re: Council for )  
Refractive Surgery, )  
 )No. 10-39240-B-11  
 )  
Debtor. )  
----- )

TRANSCRIPT FROM RECORDED PROCEEDINGS  
341 MEETING OF CREDITORS

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JASON BLUMBERG, Presiding

SACRAMENTO, CALIFORNIA

AUGUST 24, 2010

DIAMOND COURT REPORTERS  
(916) 498-9288  
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SACRAMENTO, CA 95814

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SACRAMENTO, CALIFORNIA, AUGUST 24, 2010

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MR. BLUMBERG: All right. This is the first meeting of creditors for Council for Refractive Surgery Quality Assurance, case number 10-39240, whose petition for Chapter 11 was filed on July 21st, 2010.

Today's date is August 24th, 2010. My name is Jason Blumberg. I am an attorney with the Office of the United States Trustee.

This meeting is being held pursuant to Section 341(a) of the Bankruptcy Code.

I will begin this meeting by examining the debtor's representative. Creditors will then be given an opportunity to ask questions of the debtor.

The debtor's representative's responses are required to be given under oath. Questions may relate only to the debtor's acts, conduct, property, liabilities, financial condition, or any matter which may affect the administration of the debtor's estate or the debtor's right to discharge.

More specifically, questions can relate to the operation of any business and the

1 desirability of this continuance, the source of  
2 any money or property acquired or to the acquired  
3 by the debtor for purposes of consummating a plan  
4 and the consideration given, or offered therefore,  
5 and any other matters relevant to the case or to  
6 the formulation of the plan.

7 All right. Before I get started with the  
8 usual litany of stuff, I just -- because we do  
9 have some people participating in this meeting  
10 over the phone, I just -- I'm just going to  
11 actually announce your names for the people over  
12 your phone as your appearance. And if I misstated  
13 it, just let me know.

14 So, over the phone we have Charles Cobal  
15 (phonetic) and Darrell Fruth (phonetic), who are  
16 the attorneys for Ms. Lauren L. Birch (phonetic).  
17 And Ms. Birch is present on the phone as well.

18 And, by the way, can you hear us?

19 MR. COBAL: Yes, we can hear you good.

20 MS. BIRCH: Yes.

21 MR. BLUMBERG: And just let us know if  
22 you can't hear us.

23 All right. Will the debtor's attorney  
24 please state his name for the record?

25 MR. HUGHES: Anthony Hughes.

1 MR. BLUMBERG: Okay. And will the  
2 debtor's representative please state his name?

3 MR. HAGELY: Glen Hagely.

4 MR. BLUMBERG: I'm going to write this  
5 phonetically.

6 Mr. Hagely, would you please raise your  
7 right hand? Do you swear or affirm that you'll  
8 tell the truth, the whole truth and only the  
9 truth?

10 MR. HAGELY: I do.

11 MR. BLUMBERG: Okay. Now what is your  
12 title?

13 MR. HAGELY: I'm the Executive Director  
14 of the debtor.

15 MR. BLUMBERG: Okay. Schedules and  
16 Statement of Financial Affairs have been filed in  
17 this case. My office did receive proof that the  
18 debtor-in-possession bank account has been set up.  
19 We did receive the financial statements you  
20 requested.

21 Mr. Hughes, I don't think you've applied  
22 for appointment. Is that correct?

23 MR. HUGHES: I completed it yesterday. I  
24 don't know if my staff served it yet --

25 MR. BLUMBERG: Okay. So --

1 MR. HUGHES: -- or filed it yet.

2 MR. BLUMBERG: So, it was either just  
3 filed or will be filed in the next day or so?

4 MR. HUGHES: Right.

5 MR. BLUMBERG: Okay.

6 Now, Teresa (unintelligible) she met with  
7 yesterday flagged an issue as far as insurance.

8 MR. HAGELY: Correct.

9 MR. BLUMBERG: Now, she says you don't  
10 have any, that the debtor doesn't have any  
11 insurance. Is that correct?

12 MR. HAGELY: That is correct.

13 MR. BLUMBERG: And why not?

14 MR. HAGELY: In the, more than ten years  
15 since the debtor has operated, we've attempted  
16 several times to be able to obtain a liability  
17 insurance policy. And in each of case of multiple  
18 carriers and brokers, we've been unable to find a  
19 insurance company that would be willing to insure  
20 our type of organization, even to the limitations  
21 of very basic liability only.

22 MR. BLUMBERG: So for the entirety of the  
23 corporation's existence there's been no liability  
24 insurance?

25 MR. HAGELY: That is correct.

1 MR. BLUMBERG: Okay. And is it a  
2 question of price or just no one is willing to  
3 offer a policy?

4 MR. HAGELY: We have never had anyone  
5 offer us insurance at any price.

6 MR. BLUMBERG: And when was the time you  
7 attempted to obtain liability insurance?

8 MR. HAGELY: Probably about two years  
9 ago.

10 MR. BLUMBERG: Well, because one of the  
11 obligations of a debtor in possession is to obtain  
12 reasonable insurance, under the circumstances, I  
13 would recommend you make one more try.

14 MR. HAGELY: Of course.

15 MR. BLUMBERG: Okay. For this case, and  
16 then we can go from there.

17 MR. HAGELY: What number of entities  
18 would you like me to contact to request insurance?

19 MR. BLUMBERG: You know, it's a question  
20 of reasonableness. You know, three. I don't know  
21 any insurance brokers. Just, you know, based on  
22 what you're telling me it sounds unlikely you're  
23 going to get anything, but, you know, what you  
24 want to do, be able to just report to the judge  
25 that you made a good faith effort and you weren't

1 able to obtain insurance. And I think that goes a  
2 long way towards establishing that there is no  
3 reasonable insurance that you can purchase.

4 All right. What I'm going to do now is  
5 ask questions about your bankruptcy -- or not  
6 your, the company's bankruptcy documents starting  
7 with the petition. So if you have a copy in front  
8 of you, we can just go through it.

9 MR. HAGELY: I have a copy in front of  
10 me now.

11 MR. BLUMBERG: Okay. Now is that the  
12 debtor's correct name on the petition?

13 MR. HAGELY: Yes, it is.

14 MR. BLUMBERG: Okay. And did you sign  
15 the petition, the schedules and the Statement of  
16 Financial Affairs?

17 MR. HAGELY: I signed as the executive  
18 director of the debtor.

19 MR. BLUMBERG: Okay. And who was the  
20 physical preparer of those documents?

21 MR. HAGELY: By the debtor's counsel --

22 MR. BLUMBERG: Mr. Hughes?

23 MR. HAGELY: -- Mr. Hughes.

24 MR. BLUMBERG: Mr. Hughes? Okay. And  
25 who provided Mr. Hughes with the information that

1 he used to prepare those documents?

2 MR. HAGELY: I did.

3 MR. BLUMBERG: Anyone else?

4 MR. HAGELY: (No audible response).

5 MR. BLUMBERG: Just you?

6 MR. HAGELY: Other than reports from our  
7 CPA, which were provided by me.

8 MR. BLUMBERG: Okay. And did you review  
9 the schedules and the Statement of Financial  
10 Affairs before you signed them?

11 MR. HAGELY: I did.

12 MR. BLUMBERG: Okay. And since you've  
13 filed these schedules and the Statement of  
14 Financial Affairs, have you become aware of any  
15 changes that need to be corrected?

16 MR. HAGELY: Not the need to be  
17 corrected at this time. I understand that the  
18 Internal Revenue Service may be providing a  
19 different number, but I have not received a  
20 confirmation if there will be any change.

21 MR. BLUMBERG: You're referring to the  
22 different numbers as far as the withholding tax  
23 claim?

24 MR. HAGELY: Correct.

25 MR. BLUMBERG: Okay. And when do you

1 think you'll have that information?

2 MR. HAGELY: I don't know. Have they  
3 filed a claim?

4 MR. HUGHES: Not that I know of, but I  
5 haven't checked.

6 MR. HAGELY: I suspect that when they  
7 officially and formally file a claim, we'll have a  
8 different number.

9 MR. BLUMBERG: So you just expect them to  
10 file a proof of claim --

11 MR. HAGELY: Yes.

12 MR. BLUMBERG: -- (unintelligible).

13 Okay. Has there been any indication that's going  
14 to be substantially different than the number --

15 MR. HAGELY: No.

16 MR. BLUMBERG: -- on the schedules?

17 MR. HAGELY: Probably not more than five  
18 percent off of the number we have now.

19 MR. BLUMBERG: Okay. Now, are the  
20 schedules and Statement of Financial Affairs an  
21 accurate statement of the debtor's assets and  
22 liabilities and financial affairs as of the  
23 petition date?

24 MR. HAGELY: To the best of my  
25 knowledge, they are.

1 MR. BLUMBERG: Okay. Has the company  
2 ever filed for bankruptcy before?

3 MR. HAGELY: No.

4 MR. BLUMBERG: Have you ever filed for  
5 bankruptcy before?

6 MR. HAGELY: Personally?

7 MR. BLUMBERG: Yes.

8 MR. HAGELY: Yes.

9 MR. BLUMBERG: And when was that?

10 MR. HAGELY: I believe it was 1990.

11 MR. BLUMBERG: A long time ago.

12 MR. HAGELY: Yes.

13 MR. BLUMBERG: All right. Now, who is  
14 going to prepare the monthly operator reports for  
15 the debtor in this case?

16 MR. HAGELY: It will be my  
17 responsibility. And the fiscal month of August  
18 has been filed, from the date of the filing of the  
19 petition to the end of the month.

20 MR. BLUMBERG: Right. I think I saw  
21 that.

22 What is the balance of the company's DIP  
23 account as of today?

24 MR. HAGELY: The exact number, I could  
25 get for you, but it's approximately \$800.

1 MR. BLUMBERG: Okay. Now, I understand  
2 that there's a second bank account that's still in  
3 existence.

4 MR. HAGELY: That is correct. The bank  
5 account that was in existence prior to the filing  
6 remains open. We have some automatic withdrawals  
7 that are set up for that account. Until I get  
8 those converted to the DIP account, I'm keeping a  
9 minimal balance in that account, and transferring  
10 from the DIP to that account as these charges come  
11 in. I am providing the bank statements for both  
12 accounts, and both accounts are included in all  
13 financial statements for the monthly report.

14 MR. BLUMBERG: Okay. And, so, would it  
15 be fair to say that as of today there's only a  
16 minimal balance in that second account?

17 MR. HAGELY: That's correct.

18 MR. BLUMBERG: Okay. Is the debtor  
19 current on its post-petition obligations, things  
20 like utilities, taxes, you know, you name it?

21 MR. HAGELY: We are current.

22 MR. BLUMBERG: Okay. Has the company  
23 made any payments to its counsel since the case  
24 began?

25 MR. HAGELY: No.

1           MR. BLUMBERG: All right. Just tell me  
2 about, if you could, the debtor's business, well,  
3 what the debtor does.

4           MR. HAGELY: The organization is a  
5 non-profit, tax exempt, public advocacy  
6 organization.

7           We have two primary purposes. One, is to  
8 inform the public about issues that relate to  
9 refractive surgery, such as lasik. We do that  
10 primarily through our website, through interviews  
11 with news media, through telephone calls and  
12 researching and providing answers for patients,  
13 and through interactive internet bulletin boards,  
14 websites, news groups.

15           The funding for the organization comes  
16 from certification fees. We evaluate patient  
17 outcomes of select doctors. If those outcomes  
18 meet our requirements, we will certify that that  
19 requirement has been met. We recertify the  
20 doctors each quarter based upon new information,  
21 including -- we have access to the National  
22 Practitioner's data bank, which is repository of  
23 all negative information about physicians. And  
24 that is -- we're actually on an automatic notice  
25 now. If any of the doctors that we have certified

1 have anything change, we're notified immediately.

2 MR. BLUMBERG: Okay. Now, so, then the  
3 only source of income for the debtor, if I'm  
4 understanding this correctly, is the certification  
5 fees?

6 MR. HAGELY: Certification and  
7 recertification fees. That's correct.

8 MR. BLUMBERG: Okay. And how much would  
9 that be for a doctor, per doctor?

10 MR. HAGELY: \$3,250 for the initial  
11 evaluation. \$1,250 per quarter thereafter. And  
12 there are circumstances where that'll vary. If  
13 there's multiple doctors in a practice, as an  
14 example, the second or third or fourth doctor will  
15 be at a different rate.

16 MR. BLUMBERG: Now, if I was a doctor who  
17 was engaged in this lasik area of practice and I  
18 wanted to be certified, would I pay you in advance  
19 for the certification or would I pay you after the  
20 certification was completed?

21 MR. HAGELY: You pay in advance a set  
22 fee. And it is not based upon whether or not you  
23 pass the certification.

24 MR. BLUMBERG: Okay. And then --

25 MR. HAGELY: The doctors who we've

1 certified, we do list on our website, we do  
2 promote them, because we want patients to go to  
3 the better doctors. However, there is no pay per  
4 (unintelligible), pay for referral or any quid pro  
5 quo whatsoever.

6 MR. BLUMBERG: Okay. And do doctors ever  
7 not have a satisfactory, I guess, review?

8 MR. HAGELY: There have been doctors who  
9 have applied for certification that have not met  
10 our requirements, therefore, they have not been  
11 certified. There have been doctors that have met  
12 our requirements, been certified, and then later  
13 been decertified when they no longer met our  
14 requirements.

15 MR. BLUMBERG: Okay. Now, how many  
16 doctors are certified right now? And I'm asking  
17 because I just want to get a sense of the income  
18 going forward for the debtor.

19 MR. HAGELY: Right now I believe there's  
20 13 to 15. I don't know the number off the top of  
21 my head.

22 MR. BLUMBERG: Okay. And do you have  
23 reason to believe that they'll continue to request  
24 the certification every quarter?

25 MR. HAGELY: I have -- there are reasons

1 that they may consider voluntarily dropping,  
2 primarily the attacks upon them by the creditors.

3 MR. BLUMBERG: Okay. Does the -- tell me  
4 a little how this -- the debtor (unintelligible)  
5 was started, if you can.

6 MR. HAGELY: Do you want the 25-cent  
7 tour or the full one dollar --

8 MR. BLUMBERG: The 25 cent --

9 MR. HAGELY: -- (unintelligible).

10 MR. BLUMBERG: -- tour will be fine.

11 MR. HAGELY: In --

12 MR. BLUMBERG: The thousand mile view.

13 MR. HAGELY: About 1997, I realized that  
14 people were more educated on how to buy a toaster  
15 than how to find a surgeon for this elective  
16 surgery.

17 I had been working in the industry since  
18 1982. I knew a lot of refractive surgeons, who  
19 are my friends. But even I didn't honestly know  
20 if they were any good, and if their patients were  
21 getting good results.

22 We felt that this is a valuable procedure  
23 that can be catastrophic in the hands of a poor  
24 surgeon. So, to help educate the public on how to  
25 find a surgeon, we felt that the independent

1 evaluation, by a patient advocacy, and the  
2 certification of that evaluation -- in addition,  
3 on our website we have a tremendous amount of  
4 information. I think we have about 3,000 pages at  
5 this time. We try to be very objective. We're  
6 not cheerleaders for refractive surgery. It's not  
7 for everyone.

8           We also published the 50 Tough Questions  
9 For Your Lasik Doctor, which include things like,  
10 "Have you ever been convicted of a felony?" Which  
11 is something you probably want to know about  
12 potential surgeons, but you probably wouldn't  
13 think to ask.

14           MR. BLUMBERG: Right. Okay. Does the  
15 debtor have any employees?

16           MR. HAGELY: I have been the only  
17 employee. I was a salaried employee until  
18 February, 2008, when funding had reduced to the  
19 point that it was no longer viable. And I offered  
20 to the trustees to become the volunteer executive  
21 director. I no longer receive a salary. I do  
22 receive benefits.

23           MR. BLUMBERG: And are those benefits  
24 taxed?

25           MR. HAGELY: To be honest, I have no

1 idea. I use the same CPA as -- for personal  
2 income taxes as the corporation does. So the --  
3 my CPA knows all the money that's going on, and he  
4 tells me how much I owe.

5 MR. BLUMBERG: Okay. And no one else is  
6 taking a salary at this point in time, correct?

7 MR. HAGELY: That's correct. We have  
8 occasionally hired independent contractors to do  
9 spot work, but we have never had a salaried  
10 employee, other than myself. And that ended in  
11 February, 2008.

12 MR. BLUMBERG: And are there any  
13 contractors being paid right now?

14 MR. HAGELY: No.

15 MR. BLUMBERG: Okay. Are you related, in  
16 any way, to any of the 13 to 15 doctors who are  
17 certified right now?

18 MR. HAGELY: I am not.

19 MR. BLUMBERG: Okay. Do you, or any of  
20 your family member or friends, do business with  
21 this debtor, besides your employment? Not your  
22 employment, but your volunteer services?

23 MR. HAGELY: Not that I know of. I  
24 would hope that if a relative was looking for a  
25 refractive surgery that they would use our

1 information and -- as a guide, and consider the  
2 surgeons we've certified, but I don't know of that  
3 directly. I, personally, had my refractive  
4 surgery with a surgeon that was certified by the  
5 organization.

6 MR. BLUMBERG: Okay. What I guess I'm  
7 saying, is no relatives or friends like provide  
8 services to the debtor, such as, you know,  
9 computer work or sell items to --

10 MR. HAGELY: No. My half-brother is a  
11 volunteer, trustee. He's the Secretary/Treasurer.  
12 All trustees have always been volunteers.

13 MR. BLUMBERG: How is it organized? How  
14 is the debtor organized? There's a board of  
15 directors?

16 MR. HAGELY: That's correct. A board of  
17 trustees.

18 MR. BLUMBERG: A board of trustees. So  
19 then they're the equivalent of a board of  
20 directors?

21 MR. HAGELY: Correct.

22 MR. BLUMBERG: Okay.

23 MR. HAGELY: They were the governing  
24 bond, and even they set policies. As the  
25 executive director, it's my responsibility to

1 follow the policy and make sure that the policies  
2 are implemented and report back to the board.

3 MR. BLUMBERG: Okay. Was any property  
4 transferred to insiders, officers, trustees, share  
5 holders, within the one year of the commencement  
6 of the case?

7 MR. HAGELY: No.

8 MR. BLUMBERG: Any property transferred  
9 to non-creditors within the one year of the case?  
10 And by non-creditors, I mean people like friends  
11 and relatives who aren't owed any money.

12 MR. HAGELY: No. But there's no real  
13 property in the organization. The assets are  
14 limited to computer and a few office supplies.

15 MR. BLUMBERG: Right. I noticed that.

16 All right. I guess, why don't you tell  
17 me why the company filed for Chapter 11. Again,  
18 it can be the at the (unintelligible) --

19 MR. HAGELY: The 25-cent tour?

20 MR. BLUMBERG: The 25-cent tour, yeah.

21 MR. HAGELY: We received a notification  
22 from the IRS that there were payroll withholding  
23 taxes due, which was quite a shock to both the CPA  
24 and to us. All have been paid. We received this  
25 notification recently. And we hadn't had an

1 employee since 2008.

2 But, apparently, what had happened is  
3 that I had missed a monthly payment sometime in  
4 2005 or 2006. And the following payments were  
5 applied to the oldest amount, as opposed to the  
6 quarter or month that we had requested.

7 So what happened is this continued until  
8 2008, when we stopped making payments because we  
9 no longer had employees. And the IRS suddenly  
10 realized, well, heck, they still owe us some  
11 money.

12 So when we received the notification, I  
13 notified the CPA. I cut the check, the employee  
14 checks, but I did not do the 940's and the other  
15 tax forms.

16 He researched it, and sure enough we had  
17 missed that payment. So we had a bill from the  
18 IRS for about \$5,000. And the organization at  
19 that time had roughly \$3500 in cash. And assets  
20 are not very liquidable or very valuable.

21 At the same time, we had been countersued  
22 by the creditor who's on the phone, Ms. Birch.  
23 And, additionally, creditor, Brent Hanson  
24 (phonetic), had notified of his intent to sue the  
25 organization, probably in a countersuit and a

1 personal loss litigation I have against him.

2           The countersuit that you show on your  
3 paperwork as Hagely v. Birch, was originally  
4 instigated as a personal litigation by me,  
5 personally. The organization was not involved in  
6 any manner against Ms. Birch because of her  
7 publication of my private information on her  
8 website, Lasik Disaster. That private information  
9 included Social Security number, bank account  
10 numbers, credit card numbers, samples of my  
11 signature, pretty much everything that would be  
12 necessary for identity theft.

13           The suit was brought in North Carolina  
14 under a law that had recently been enacted that I  
15 assisted in getting written and made into law.

16           Shortly after Ms. Birch was sued, she  
17 countersued me, personally, as -- well, she  
18 countersued me and she countersued the  
19 organization. But she countersued in a manner  
20 that tied me to the corporation. In other words,  
21 they're claiming that any of my acts as a person  
22 were acts of the organization.

23           MR. BLUMBERG: Are you being sued in your  
24 individual capacity?

25           MR. HAGELY: That's disputable. Our

1 position it that I'm being sued as an individual  
2 representing the organization. And that, I  
3 imagine, that's going to take either this court or  
4 North Carolina court to sort out.

5           And then just about the same time that we  
6 received a notification from the IRS, I received  
7 an e-mail from Mr. Hanson, who I am suing  
8 personally here in Sacramento and in Superior  
9 Court, for also publishing my personal identity.  
10 In fact, the same documents that Ms. Birch  
11 published, Ms. Birch and Mr. Hanson were  
12 housemates at one point in the --

13           MR. BLUMBERG: Uh-huh.

14           MR. HAGELY: -- in the past. I've also  
15 sued Mr. Hanson for defamation. He e-mailed to me  
16 the -- what is Exhibit A in his Motion for Relief  
17 of Stay, that there was about 300 and-some-odd  
18 pages of a countersuit naming me, everyone I've  
19 ever associated with, every surgeon who has ever  
20 been certified with the organization, everyone  
21 who's been a trustee, and I think just about  
22 anybody else that he could think of.

23           In fact, this pseudo countersuit has  
24 never been filed. There is no countersuit. But  
25 it was clear that he had made that threat.

1           So here we have a debt to the IRS that's  
2 greater than the assets that we have. We have a  
3 litigation, which is extremely expensive to  
4 defend, and we have threatened litigation, which  
5 would also be expensive to defend. So, the actual  
6 liability and the possible liabilities were  
7 greater than the assets.

8           It was a decision that either we'd have  
9 to shut down or we'd have to seek protection in a  
10 reorganization to allow us to repay the debt over  
11 a period of time. We do have revenue, providing  
12 we don't continue to lose the people that work  
13 with us due to these attacks. And we would be  
14 able to pay the IRS, we're certain. We don't know  
15 if there is actually any liability in this  
16 virtuous countersuit, and we don't know if  
17 Mr. Hanson will actually countersue or directly  
18 sue the corporation. But they are possibilities.

19           MR. BLUMBERG: All right. So let me just  
20 unpack this a little bit. As you explained to me  
21 -- and by the way, I'm just recharacterizing Mr.  
22 Hagely's testimony, I'm not adapting it or  
23 anything like that. So there's no really need to  
24 object to it at this point.

25           You sued Ms. Birch, in North Carolina,

1 essentially, for publishing your private  
2 information?

3 MR. HAGELY: That's correct. I sued  
4 personally. The organization was not -- the  
5 debtor was not involved at all.

6 MR. BLUMBERG: And you sued  
7 Mr. Hanson, personally, in Sacramento, basically,  
8 for the same thing? Is that correct?

9 MR. HAGELY: That is correct.

10 MR. BLUMBERG: And the debtor was not a  
11 plaintiff in either of those lawsuits?

12 MR. HAGELY: No.

13 MR. BLUMBERG: Okay.

14 MR. HAGELY: Not initially.

15 MR. BLUMBERG: Is the debtor a plaintiff  
16 now in any of those lawsuits? A plaintiff, not a  
17 defendant.

18 MR. HAGELY: When Ms. Birch countersued  
19 the debtor of cross-complaint, that has since been  
20 dismissed by the North Carolina Court.  
21 Additionally, I withdrew my complaint in the North  
22 Carolina Court.

23 So the only thing that's happening in the  
24 Hagely v. Birch, is Ms. Birch is suing the debtor.

25 MR. BLUMBERG: Okay. So where things

1 stand right now in North Carolina, just so I'm  
2 clear, is your affirmative complaint has been  
3 dismissed?

4 MR. HAGELY: The debtor's --

5 MR. BLUMBERG: The debtor is being  
6 countersued. Are you still suing --

7 MR. HAGELY: No.

8 MR. BLUMBERG: -- in North Carolina?  
9 Okay.

10 MR. HAGELY: No.

11 MR. BLUMBERG: And --

12 MR. HAGELY: The debtor is not suing  
13 in --

14 MR. BLUMBERG: -- the only thing  
15 act --

16 MR. HAGELY: -- North Carolina. And  
17 I'm, personally, not suing --

18 MR. BLUMBERG: The only thing --

19 MR. HAGELY: -- in North Carolina.

20 MR. BLUMBERG: The only thing that's  
21 active in North Carolina now is Ms. Birch is suing  
22 against this debtor. Is that correct?

23 MR. HAGELY: That's correct.

24 MR. BLUMBERG: And do you know, what are  
25 the size of the damages she's seeking?

1 MR. HAGELY: No, I do not.

2 MR. BLUMBERG: Okay. And then what is  
3 the status of the action in Sacramento? Is that  
4 still -- I understand that the counterclaim, you  
5 don't believe, has been filed. But is that  
6 lawsuit still progressing?

7 MR. HAGELY: It is.

8 MR. BLUMBERG: Okay. And the debtor,  
9 however, is not a plaintiff in that lawsuit,  
10 correct?

11 MR. HAGELY: That's correct.

12 Additionally, after I dismissed the --  
13 there were two separate publications of my  
14 identity; one in 2006, and one in 2007. 2006, was  
15 when I brought the litigation against Mr. Hanson.  
16 It was believed, at the time, that he was the only  
17 person involved.

18 2007, was when Ms. Birch published the  
19 documents on the website that she owns and  
20 controls. In the discovery of the 2007, against  
21 Ms. Birch, it was learned that she had funded the  
22 website where Mr. Hanson had originally published.  
23 And this is a website that was posted in Panama  
24 with a domain registrar in Thailand with falsified  
25 ownership information.

1           MR. BLUMBERG:   Okay.   But, you know, just  
2 so I'm absolutely clear, the pending lawsuits do  
3 not represent any source of income for this  
4 debtor, only source of claims against the debtor.  
5 Is that correct?

6           MR. HAGELY:   That's absolutely correct.

7           MR. BLUMBERG:   Okay.   And what type of  
8 plan do you think this debtor is going to file?  
9 And by that I mean bankruptcy plan.   And  
10 Mr. Hughes can answer that question.

11           MR. HUGHES:   We have talked with the  
12 IRS, and they seem amenable to pretty much any  
13 plan that will pay them off.   They, of course, a  
14 primary creditor, and we do pay them in full.

15                        In my proposed budget, I proposed a  
16 payment of 240 a month.   That may be altered  
17 somewhat depending on what the final number is.  
18 240 a month would pay the IRS off in approximately  
19 two years.

20                        There is no projection on a repayment of  
21 any of the litigation claims, because there are no  
22 judgements at this time.

23           MR. BLUMBERG:   And when do you think the  
24 debtor will be in a position to file a plan?

25           MR. HUGHES:   It shouldn't take very

1 long. It should be a pretty simple plan. So,  
2 within a couple months.

3 MR. BLUMBERG: The debtor doesn't own any  
4 real properties; is that correct?

5 MR. HAGELY: That is correct.

6 MR. BLUMBERG: And the debtor's address,  
7 8453 Everglade Drive, in Sacramento

8 MR. HAGELY: It's --

9 MR. BLUMBERG: Is that your address?

10 MR. HAGELY: It is 8543.

11 MR. BLUMBERG: 8543?

12 MR. HAGELY: That is my personal  
13 residence. We have always -- I've always had the  
14 home office.

15 MR. BLUMBERG: Okay.

16 MR. HAGELY: And we have used either my  
17 address or the CPA's address. But usually my  
18 address.

19 MR. BLUMBERG: And does the debtor pay  
20 rent to you for the use of your residence?

21 MR. HAGELY: Yes.

22 MR. BLUMBERG: And how much is that?

23 MR. HAGELY: I believe it's \$855 a  
24 month.

25 MR. BLUMBERG: Okay. And is that

1 consistent with the past history of the debtor?

2 MR. HAGELY: Yes. That amount was  
3 determined, I think, about four years ago. It was  
4 based upon A-List property rates and the square  
5 footage that is used. And it has not changed  
6 since that time.

7 MR. BLUMBERG: Okay. Does the debtor own  
8 any other corporations or other entities or  
9 partnerships or anything like that?

10 MR. HAGELY: No.

11 MR. BLUMBERG: Okay. Does the debtor  
12 have any accounts receivable?

13 MR. HAGELY: Yes.

14 MR. BLUMBERG: From whom, and how much?

15 MR. HAGELY: I don't have that schedule  
16 handy. I believe the amount is around 30,000.  
17 Some of that debt is quite old.

18 MR. BLUMBERG: And this would essentially  
19 be what, the fees, recertification?

20 MR. HAGELY: Recertification fees that  
21 had not been paid by multiple entities. And I  
22 know that I had that schedule somewhere. And I'm  
23 sure that we have filed it with you. But I just  
24 don't have it at my fingertips. I apologize.

25 MR. BLUMBERG: Well, it's not listed on

1 Schedule B.

2 MR. HAGELY: Do you have the August  
3 monthly report?

4 MR. BLUMBERG: I don't. I don't have it  
5 in front of me. But, you're probably going to  
6 need to amend Schedule B and add \$30,000 to your  
7 (unintelligible) sixteen, because that's what  
8 creditors look at most frequently.

9 MR. HAGELY: Very well.

10 MR. BLUMBERG: Is the debtor owed any  
11 other money?

12 MR. HAGELY: No.

13 MR. BLUMBERG: Just getting back to the  
14 \$30,000 of accounts receivable, and I apologize, I  
15 don't have the most recent operator form in front  
16 of me. Do you have any sense of the  
17 collectibility of that debt?

18 MR. HAGELY: Based on past history, I  
19 would suspect that with little arm twisting and  
20 using the fact that we're not in bankruptcy,  
21 probably about a third of that would be available.

22 If we had to sell the receivables to a  
23 collection agency, I would expect that we'd get  
24 between 10 and 15 percent.

25 MR. BLUMBERG: And have you looked into

1 selling the receivable?

2 MR. HAGELY: Not seriously. The reason  
3 I come up with that number is I'm solicited to  
4 sell receivables all the time. And that seems to  
5 be the number they look for.

6 MR. BLUMBERG: Okay. All right. Now the  
7 debtor owns several internet domain names; is that  
8 correct?

9 MR. HAGELY: That's correct.

10 MR. BLUMBERG: (Unintelligible) --

11 MR. HAGELY: Domains and websites.

12 MR. BLUMBERG: Domains and websites.

13 MR. HAGELY: Uh-huh.

14 MR. BLUMBERG: Now the usaeyes.org and  
15 complicatedeyes.org, is that the two main ones?

16 MR. HAGELY: Those are the two main  
17 ones, yes.

18 MR. BLUMBERG: Okay. What do you think  
19 those domain -- internet domains, what do you  
20 think they're worth? And I apologize 'cause my  
21 internet terminology is poor, so bear with me.  
22 What do you think those domains --

23 MR. HAGELY: As reported in the  
24 Schedule B, the -- we have a limitation on the  
25 transfer of this particular asset under

1 Section 214 of the California Revenue and Taxation  
2 Code, and under the Revenue Procedure  
3 822 1982 ICV367, as applies to a 501(c)(6)  
4 Organization. The assets of the organization upon  
5 wind-down can only be transferred to a 501(c)(6)  
6 non-profit tax-exempt organization that is  
7 involved in, essentially, the same type of work we  
8 were doing in patient advocacy related to eye  
9 care.

10 To our knowledge, there are no other  
11 organizations that are like us. If we were to  
12 sell the assets, we would be violating our tax  
13 exempt status that would violate us back to the  
14 inception of the organization, and we would be  
15 responsible for taxes on all revenues that we've  
16 received since 2002.

17 MR. BLUMBERG: Okay. A couple questions  
18 there. First off, let's put aside the transfer  
19 restrictions.

20 MR. HAGELY: Uh-huh.

21 MR. BLUMBERG: Any sense on what the  
22 value of those domain names are independent of  
23 transfer restrictions?

24 MR. HAGELY: No. I haven't had them  
25 evaluated. It would certainly be valuable to

1 someone who wanted to sell lasik, because we have  
2 a relatively good positioning in search engines.  
3 If you do Google lasik, we're on the first page.  
4 If you Google lasik doctor, we're number one  
5 position. And I'm sure that would be a value to  
6 someone who wanted it for a for-profit purpose.

7 But since we can't sell it for a  
8 for-profit purpose without violating our  
9 tax-exempt status, it means that we have extremely  
10 limited potential in buyers.

11 MR. BLUMBERG: Okay. Now, I apologize,  
12 'cause I don't know a heck of a lot about these  
13 tax issues. But, if I understand you correctly,  
14 what you're saying is that once a non-profit  
15 acquires an asset it essentially can never unload  
16 the asset?

17 MR. HAGELY: It can unload the asset,  
18 but it has to be consistent with the bylaws of the  
19 organization, and the bylaws of the organization  
20 must be consistent with both the, in California  
21 with the State tax code, and with the Federal tax  
22 code. And that consistency is that the assets can  
23 only go to another non-profit of the same, in our  
24 case, a 501(c)(6) non-profit, as opposed to a  
25 (c)(3), which is a charitable organization.

1           And it has to be done very carefully,  
2 because, if not, the IRS will nail you for income  
3 taxes all the way back to infinity.

4           MR. BLUMBERG: And the consequence, just  
5 as you said, of not transferring these assets in  
6 accordance with the requirements you just  
7 mentioned, is that the IRS will serve all the  
8 income taxes that otherwise would have been --

9           MR. HAGELY: Plus penalties and  
10 interest.

11          MR. BLUMBERG: Okay.

12          MR. HAGELY: Both the State and the  
13 Federal.

14          MR. BLUMBERG: Okay. Now, the other  
15 websites, same situation, I think you indicated.  
16 What would the value of the websites be without  
17 the transfer restrictions?

18          MR. HAGELY: Well, the websites, as we  
19 pointed out, they have the same transfer  
20 restrictions. The websites are primarily dated.  
21 It's very specific to the public benefit services  
22 we provide, such as certification to surgeon,  
23 objective information about refractive surgery.  
24 Unless someone is involved in that particular  
25 industry, it's going to be a limited value.

1 The (unintelligible) --

2 MR. BLUMBERG: The websites are -- when  
3 you say the websites, that's actually the content  
4 on the --

5 MR. HAGELY: The content.

6 MR. BLUMBERG: -- on the domain?

7 MR. HAGELY: Correct.

8 MR. BLUMBERG: What about trademarks, are  
9 there any trademarks?

10 MR. HAGELY: The trademark -- USAEyes  
11 and CRSQA are owned by the organization.

12 MR. BLUMBERG: Any sense of their value  
13 in an unrestricted context?

14 MR. HAGELY: Not a clue, to be honest.

15 MR. BLUMBERG: Okay. Now

16 (unintelligible) --

17 MR. HAGELY: I would say that there --  
18 whatever value a normal trademark might have would  
19 probably be significantly diminished by the fact  
20 that both of the creditors, the debtor's  
21 creditors, have spent a vast amount of time and  
22 effort in diminishing the reputation of the  
23 organization using the trade names CRSQA, Counsel  
24 for Refractive Surgery Quality Assurance and  
25 USAEyes.

1 MR. BLUMBERG: Are there any other  
2 non-profit organizations who do anything like what  
3 the debtor does? You might have answered that  
4 question. I just blanked out. Is there any  
5 other --

6 MR. HAGELY: There is. There are  
7 physician owned, or I should say, physician  
8 controlled and operated organizations, the  
9 International Society for Refractive Surgery,  
10 which is now a part of the American Academy of  
11 Ophthalmology. They don't even certify anymore.  
12 ISRS Doctor's Certification program a few years  
13 ago. There is one organization, whose name  
14 escapes me right now, that is physician owned --  
15 not owned, of course, physician governed and  
16 operated, that does certification, but they don't  
17 certify lasik, they certify PRK (phonetic).

18 Ours is different in that we look at all  
19 refractive surgery, meaning surgery for the  
20 correction of vision as a class. We don't define  
21 one or the other.

22 MR. BLUMBERG: Okay.

23 MR. HAGELY: And I'll be honest, I don't  
24 even know if that organization still exists.

25 MR. BLUMBERG: So this organization is

1 kind of the -- kind of influencing.

2 MR. HAGELY: As far as we know, this is  
3 the first time that any patient organization has  
4 evaluated outcomes and certified those outcomes.

5 MR. BLUMBERG: Has the debtor made any  
6 payment to its creditors in the last 90 days, in  
7 the 90 days preceding the commencement of this  
8 case?

9 MR. HAGELY: To the creditors listed  
10 here?

11 MR. BLUMBERG: Any creditors.

12 MR. HAGELY: Well, we pay our normal  
13 bills, yes.

14 MR. BLUMBERG: So just your normal,  
15 ordinary course expenses?

16 MR. HAGELY: Right. The only thing that  
17 was, I shouldn't say unusual, but we paid our CPA  
18 that we owed him for quite some time. And we paid  
19 him \$1200 to bring him up to date.

20 MR. BLUMBERG: And when was that? Was  
21 that within the 90 days?

22 MR. HAGELY: It was. And that was  
23 probably six months old.

24 MR. BLUMBERG: Okay. I think that would  
25 probably need to go into an amendment of item

1 three of the Statement of Financial Affairs.

2 MR. HAGELY: Okay. Yeah, the invoice  
3 that we paid was at least six months old.

4 MR. BLUMBERG: And that would be Mark  
5 Bell (phonetic)? Mark Bile (phonetic)?

6 MR. HAGELY: Beal (phonetic).

7 MR. BLUMBERG: Beal (phonetic).

8 MR. HAGELY: Correct.

9 MR. BLUMBERG: So, Kenneth Hagely is your  
10 half-brother?

11 MR. HAGELY: That is correct.

12 MR. BLUMBERG: Okay. And he's currently  
13 the Secretary/Treasurer of this debtor?

14 MR. HAGELY: Correct.

15 MR. BLUMBERG: Okay. And then who is  
16 Robert Buffington (phonetic)?

17 MR. HAGELY: Robert Buffington is a  
18 semi-retired optometrist, lives here in  
19 Sacramento.

20 MR. BLUMBERG: So his interest is  
21 essentially professional, given his background?

22 MR. HAGELY: Well, professional, and he  
23 is -- he, too, is also not much of a fan of  
24 refractive surgery. And he has seen several  
25 patients who have had poor outcomes that could

1 have been avoided if they'd had better  
2 evaluations.

3 I first met Dr. Buffington  
4 (phonetic) -- a patient that had contacted me that  
5 had had surgery with a surgeon that we're not  
6 affiliated with was having some very serious  
7 problems that they weren't able to help him. I  
8 arranged for him to -- through several sources,  
9 Dr. Buffington's name kept coming up. I arranged  
10 for him to be evaluated by Dr. Buffington. I took  
11 the patient there, and went through the exam with  
12 him. We were able to give the patient some  
13 relief. And Dr. Buffington, of course, wanted to  
14 know who the heck I was sitting there with this  
15 patient, why would I bring him in. And after  
16 explaining what we did, he suggested that he may  
17 want to participate. And then later became  
18 trustee.

19 MR. BLUMBERG: Okay. Now, Jack Holiday  
20 (phonetic) and Keith Gross (phonetic), have they  
21 received any money from the debtor in the last  
22 year?

23 MR. HAGELY: No. None of the trustees  
24 have ever been paid anything other than expenses.  
25 And to be honest, I don't know that there's

1 actually even been expenses that we paid. With  
2 the exception of me, of course.

3 MR. BLUMBERG: So the only compensation,  
4 so I'm clear -- I'm using compensation loosely.  
5 But the only compensation you've received from the  
6 debtor since February of 2008 is the rent of a  
7 room in your residence?

8 MR. HAGELY: Correct.

9 MR. BLUMBERG: And benefits. Is that  
10 correct?

11 MR. HAGELY: Correct.

12 MR. BLUMBERG: And do you know what the  
13 benefits run about a year as far as expense?

14 MR. HAGELY: The medical insurance, just  
15 the basic insurance policy is 1,033 a month.

16 MR. BLUMBERG: Okay.

17 MR. HAGELY: There is also a life  
18 insurance policy. It's a -- I don't even want to  
19 call it a gold-plated plan. It's probably not the  
20 best term used. But they pay all the medical  
21 expenses. So if there are co-payments, the  
22 organization would commonly pay co-payments.

23 MR. BLUMBERG: So I'm looking at the  
24 profit and loss statement for the debtor for the  
25 period covering January through December of 2009.

1 And it shows insurance payments for that period of  
2 \$20,779.52 Does that sound about right?

3 MR. HAGELY: That does sound about  
4 right.

5 MR. BLUMBERG: Okay. That's all the  
6 questions that I can think of right now. So, if  
7 the creditors on the phone want to ask some  
8 questions, feel free to.

9 But, again, the focus of these  
10 proceedings are to kind of locate assets for  
11 creditors and things of that nature. It's not  
12 necessary to litigate your dispute or to engage in  
13 some kind of discovery that's better done in the  
14 course of a deposition, in an adversary proceeding  
15 or in a pending State Court proceeding.

16 So, with that, go ahead.

17 MR. FRUTH: Thank you very much. This is  
18 Darrell Fruth (phonetic) on behalf of the  
19 creditor, Ms. Birch. And we appreciate the  
20 opportunity to participate here today.

21 I think I understand that purpose that  
22 you were to limit our questioning to. I would be  
23 remiss if I didn't just state for the record that  
24 we do object to the characterization of the  
25 proceedings that were provided by the

1 representative of the debtor. And I won't go into  
2 those details. Um --

3 MR. BLUMBERG: Can I stop you right  
4 there?

5 MR. FRUTH: Yes.

6 MR. BLUMBERG: You represent  
7 Ms. Birch; is that correct?

8 MR. FRUTH: That is correct.

9 MR. BLUMBERG: Do you know, and this is  
10 my account, do you know if Mr. Hanson has actually  
11 filed a countersuit in the Sacramento proceeding?

12 MR. FRUTH: I don't believe -- to my  
13 knowledge, he has not.

14 MR. BLUMBERG: Okay.

15 MR. FRUTH: But I'm not certain of that.

16 MR. BLUMBERG: Okay. Sorry to interrupt.  
17 Please --

18 MR. FRUTH: No, that's fine. So, you  
19 know, we don't intend to try to litigate the  
20 issues. But I think it is helpful to just  
21 elaborate a little bit, for just 30 seconds, on  
22 the procedural posh (phonetic) that we find  
23 ourself at here.

24 MR. BLUMBERG: Sure.

25 MR. FRUTH: Because the debtor

1 representative started to explain that. And, just  
2 want to make sure you understand that basically  
3 what's going on is he has brought some claims  
4 against Ms. Birch in North Carolina, and those  
5 claims have been dismissed.

6           The claims that remain in North Carolina  
7 are claims that Ms. Birch has against both the  
8 entity, the debtor here, and then in its personal  
9 capacity, the representative.

10           And, so, we see the bankruptcy primarily  
11 as a vehicle to forge that progress. The case was  
12 set for trial in September. And for this  
13 bankruptcy, we see primarily as a tool to just  
14 prevent us from obtaining judgement in a timely  
15 manner.

16           MR. BLUMBERG: Now, do you view this  
17 bankruptcy as staying any other pending action as  
18 against Mr. Hagely, personally, or is it so round  
19 up together?

20           MR. FRUTH: You know there's -- we've  
21 looked at that, and there's some kind of  
22 complicated strategy issues that we are trying to  
23 deal with, kind of evidentiary and litigation  
24 strategy issues that I can say that at the  
25 automatic stay, they definitely complicate the

1 case against both the individual and the entity.

2 MR. BLUMBERG: Okay.

3 MR. FRUTH: So, I guess, I would  
4 like -- I have some questions and concerns that  
5 I've heard about the testimony I've heard in terms  
6 of how the debtor is being run, and it seems to me  
7 like the plan that was referred to earlier is a,  
8 in a conversation, is something that we could --  
9 is something that could probably be accelerated.  
10 And I want to just talk a little bit about ways  
11 that we could do that.

12 You know, one thing you've talked about  
13 was the amount of insurance that was being paid  
14 for the one volunteer. And it seems like if that  
15 were just -- if those funds were reallocated in a  
16 way rather than paying gold-plated insurance  
17 proceeds, you know, that it could -- the debt to  
18 the IRS could be quickly paid off.

19 But the most, I think, useful way for us  
20 to proceed is just for me to ask some questions,  
21 'cause that's --

22 MR. BLUMBERG: Yeah. Yeah.

23 MR. FRUTH: -- (unintelligible).

24 MR. BLUMBERG: So, yeah, just feel free  
25 to start firing them away.

1           MR. FRUTH: Okay. So, first question is,  
2 trying to figure out how many positions are being  
3 certified in 2010. I think I heard earlier that a  
4 number was somewhere in the range of 12 to 15. Is  
5 that what you had said earlier?

6           MR. HAGELY: That is correct. And, hello  
7 to you. We have not talked before or  
8 corresponded. It's good to meet you. But, yes,  
9 that is correct, between 12 and 15. I apologize,  
10 I do not have the correct number.

11           MR. FRUTH: Okay. And so the -- there  
12 are 24 surgeons listed on the usaeyes.org website  
13 that are members of CRSQA. But what about these,  
14 the 9 or 10 that are not -- or that, I guess, the  
15 14 to -- the 9 to 14 surgeons who are listed, but  
16 are not being claimed as sources of income?

17           MR. HAGELY: I don't know the exact  
18 number of physicians that are listed at the  
19 website. However, there should be no physicians  
20 listed there that are not certified. So I'll  
21 assume that there are 24 individual surgeons that  
22 are listed.

23           Several surgeons are multiple surgeons in  
24 a single facility. When there are multiple  
25 surgeons in a facility, the recertification fees

1 are less for those individuals.

2 We have also had situations where, due  
3 specifically to actions by the creditors, we've  
4 had doctors who have threatened to terminate their  
5 association with us. And to be able to keep them,  
6 we have had to reduce the recertification fees.

7 So, if there are 24 doctors listed at the  
8 website, that does not mean that there is 24  
9 doctors time \$1,250 per quarter.

10 MR. FRUTH: Okay. All right. And so, I  
11 guess, what you're saying is that based on what's  
12 on the website, there doesn't need to be any  
13 restatement of the figures that you provided in  
14 your various schedules?

15 MR. HAGELY: No, not at all. All of the  
16 funds that are received for certification,  
17 recertification fees, or any source, are deposited  
18 directly into the, well, now to the debtor in  
19 possession account, and have always deposited  
20 directly into the corporation account. Those  
21 funds are always kept separate and are reported in  
22 our financial statements.

23 MR. FRUTH: Okay. The CRSQA tax returns  
24 showed some amounts that were paid for storage  
25 expenses?

1 MR. HAGELY: That is correct. We --

2 MR. FRUTH: And this

3 (unintelligible) --

4 MR. HAGELY: We have st -- I'm sorry. I  
5 interrupted.

6 MR. FRUTH: Well, there's storage  
7 expenses that ranged from 1200 to close to \$4,000  
8 a year over the last, let's see, one, two, three,  
9 five years. What's being stored?

10 MR. HAGELY: Well, what was being stored  
11 was a secure off-site storage facility where the  
12 records that we had used to evaluate and certify  
13 surgeons were being held securely.

14 My home is relatively secure, but I  
15 wanted something more secure for anything that  
16 would have patient information.

17 And, also, our backups of our computer  
18 information, which thankfully we did have, because  
19 we just had a computer crash and those backups  
20 saved our bacon.

21 You will also notice that the current  
22 amounts are significantly less. We've gone to a  
23 smaller off-site facility that assists.

24 I don't think there's any office  
25 furniture or anything like that in there. We need

1 very little.

2 MR. FRUTH: That was going to be my  
3 question, is that I just wanted to ask you if  
4 there were any assets that were being stored that  
5 were not listed on the schedule that you've  
6 provided?

7 MR. HAGELY: Certainly not liquid assets.  
8 And the -- again, we have a CPA that handles all  
9 of this. Assets that we receive, the payment for  
10 them comes out of the account, the same account as  
11 the revenue comes in. The CPA gets that  
12 information. Any time there's anything of  
13 significance, he's asking me about it. Any time  
14 it is something that would be depreciated over a  
15 period of time, I notate it. And it all would be  
16 listed there.

17 So, we have no assets that are not  
18 accounted for, to my knowledge. Assets, meaning  
19 office equipment, things like that.

20 And, of course, the patient records have  
21 no real value. And we are going through the  
22 process of destroying the ones that are more than  
23 two years old.

24 MR. BLUMBERG: Are you subject to any  
25 kind of legal requirements by California?

1           MR. HAGELY: Absolutely. We are subject  
2 to HIPPA, which is the Health Insurance  
3 Portability and Privacy Act, I think, is what it  
4 stands for. H-I-P-P-A. And the HIPPA is a  
5 Federal Regulation that controls medical  
6 information, how we interact with the doctors, how  
7 we receive information about patients, how we  
8 contact patients.

9           MR. BLUMBERG: What about your  
10 maintenance of the records, is that subject to  
11 that?

12           MR. HAGELY: Actually, HIPPA is  
13 surprisingly lax in the area of maintenance of  
14 records for our purposes.

15           MR. BLUMBERG: Okay.

16           MR. HAGELY: Because all we receive --  
17 we now use a patient survey system evaluation.  
18 Previously, we used a chart data. And the chart  
19 data we had was duplicate of what was in the  
20 physician's actual chart. And we never had the  
21 patients -- we would have an ID number so we could  
22 trace back a patient for our auditing purposes,  
23 but we never had the patient's name or address or  
24 anything other than a arbitrary identification  
25 number that only the doctor would know who the

1 patient was.

2 MR. BLUMBERG: Those are blind records?

3 MR. HAGELY: These are blind. These are  
4 almost double-blind records.

5 MR. BLUMBERG: Okay.

6 MR. HAGELY: But we do keep them so that  
7 if there's at any time that we need to reevaluate  
8 the patients -- I'm sorry, the doctor's initial  
9 certification, we have them available. If we  
10 receive a patient complaint, we want to know if  
11 that record came through. And if we ever have any  
12 reason to doubt the integrity of the surgeon, we  
13 can pull these records out. And we have the  
14 authority, with our agreement with the surgeons  
15 and under our HIPPA agreement, that we can go in  
16 with our records and demand that they provide us  
17 the actual charts, so that we can go through each  
18 and verify the information.

19 MR. BLUMBERG: Okay.

20 MR. FRUTH: Well, that actually leads me  
21 to a question about whether there are other  
22 potential creditors.

23 Have you had an attorney give your  
24 organization any kind of an evaluation of your  
25 HIPPA compliance?

1 MR. HAGELY: Yes, we did. We had an  
2 attorney give us an evaluation of the necessary  
3 HIPPA requirements, and constructed a HIPPA  
4 agreement for us to negotiate -- actually, have  
5 signed by all the doctors that we work with.

6 MR. FRUTH: Okay. And so you're kind of  
7 certifying to us today that you are compliant with  
8 all HIPPA regulations?

9 MR. HAGELY: To the best of our  
10 knowledge and ability, we are a hundred percent  
11 compliant with all HIPPA regulations, and we have  
12 never had a legitimate HIPPA complaint.

13 We have had complaints filed by the  
14 creditors that had -- that were, in my view,  
15 malicious, but certainly meritorious.

16 MR. FRUTH: All right. But you had  
17 listed a few receivables in your small business  
18 monthly operating report.

19 MR. HAGELY: That's correct.

20 MR. FRUTH: And I can't really understand  
21 the code that's used there. Can you help me  
22 understand like what does FRI mean?

23 MR. HAGELY: The reason there is a code  
24 there is because your client and her former  
25 housemate, the other creditor, have a habit of

1 twisting things around and publishing information  
2 about the people that have associated with our  
3 organization. The reason codes are used there is  
4 because I didn't want Ms. Birch and Mr. Hanson to  
5 publish, on their multiple websites, that Dr. John  
6 Doe doesn't pay his bills for certification or  
7 other such information.

8 I will provide the code information to  
9 the court, as requested. And it identifies  
10 individual persons. But I have not identified the  
11 individual persons' names.

12 Furthermore, we have not had the  
13 opportunity to verify the accuracy of the  
14 receivables information. There may be disputable  
15 amounts. Yet another reason why a person's name  
16 should not be made public in the method and -- the  
17 methodology that the creditors have used in the  
18 past.

19 MR. FRUTH: Well, I guess, Jason, we're  
20 going to need, obviously, to get the names of the  
21 people that the debtor thinks owes them money. We  
22 can't really evaluate a plan or really be able to  
23 do much in bankruptcy at all unless we have a good  
24 clear understanding of the money that's owed to  
25 the debtor, and, you know, so we can understand

1 all the sources of income and then where the  
2 money's going. So (unintelligible) --

3 MR. BLUMBERG: I'm not sure as the -- of  
4 the -- where the things stand procedurally right  
5 now, you have a right to those documents.

6 You've -- if you can start a contestant  
7 matter, you could request those documents in  
8 discovery. But, as it stands right now, I'm not  
9 sure you would necessarily have a right to those  
10 documents in the context of this bankruptcy case.  
11 If they file a plan --

12 MR. FRUTH: Yeah, that -- I mean, that's  
13 -- one thing is I have -- I don't practice  
14 bankruptcy, but I thought part of what we're doing  
15 here is to try to help make sure that the plan  
16 they file is going to meet the creditor's needs  
17 and --

18 MR. BLUMBERG: Well, the specifics of how  
19 -- of whether a plan is -- I think what you're  
20 talking about is whether a plan is feasible or  
21 not.

22 MR. FRUTH: That's exactly right.

23 MR. BLUMBERG: And the specifics of that  
24 doesn't come up until actually, in most cases, it  
25 can be short circuited. But the specifics of that

1 doesn't come up until a plan is filed, and the  
2 plans proponent is seeking to get it confirmed.

3           In that context, what you would see is  
4 a -- you might see a general discussion of the  
5 accounts receivable attributing some kind of value  
6 to it.

7           At that point, you know, you're free to  
8 object to the plan because it's not feasible or  
9 should the -- approve of the disclosure statement,  
10 'cause it doesn't contain enough information to  
11 assess the value of the accounts receivable.

12           And that would trigger what's called a  
13 contested matter, and would give you rights to  
14 request documents in traditional, you know, Rule  
15 26 discovery. But --

16           MR. FRUTH: Yeah.

17           MR. BLUMBERG: -- the posture of the case  
18 right -- that's a long way of saying it. The  
19 posture of the case right now, I'm not sure if --  
20 even if I had it whether I could give it to you.  
21 And --

22           MR. FRUTH: (Unintelligible) that,  
23 because I just hope you realize that if they're  
24 say -- if, you know, saying that there's \$11,000  
25 owed by some FRI, you know, I have no way to know

1 if that's a good debt or a bad debt. And so it's  
2 kind of hard to object about the reasonableness --

3 MR. BLUMBERG: I -- I --

4 MR. FRUTH: -- of \$240 a month when there  
5 could be someone that makes \$2 million a year that  
6 owes \$11,000 --

7 MR. BLUMBERG: Right. And that's --

8 MR. FRUTH: -- (unintelligible) we're not  
9 going to collect it. So --

10 MR. BLUMBERG: That could -- you're  
11 right. That's not necessarily an unreasonable  
12 position. But it's -- it might be a little bit  
13 premature.

14 MR. FRUTH: (Unintelligible).

15 MR. BLUMBERG: But, I'm sorry to  
16 interrupt.

17 MR. FRUTH: No, that's fine. I guess if,  
18 you know --

19 MR. BLUMBERG: I'm sorry. I'm just  
20 saying is that I can't turn it over to you, I  
21 don't think. And I can't require that the debtor  
22 do turn it over to you. Obviously, you  
23 (unintelligible) and remedies that you have.  
24 So --

25 MR. FRUTH: Sure. Exactly. And we're

1 not here to figure all that out. So, I understand  
2 that.

3 Is there any reason -- well, I guess,  
4 maybe you talked about this, Jason, the fact that  
5 these receivables listed on the operating report  
6 don't seem to be listed in the Schedule B. And is  
7 that what you're saying needs to be amended to  
8 reflect that?

9 MR. BLUMBERG: Yeah. I requested an  
10 amendment to Schedule B to reflect the outstanding  
11 receivables as of the date of the commencement of  
12 the case.

13 MR. HAGELY: Darrell, it's my  
14 understanding that Jason requested it. My  
15 attorney has noted it. And we will have that  
16 filed very quickly.

17 MR. FRUTH: I appreciate that.

18 MR. HAGELY: It was an oversight that  
19 definitely should have been in there. And we'll  
20 make sure that it gets updated.

21 MR. FRUTH: All right.

22 MR. HAGELY: Darrell, if I may, you're  
23 reading from the August report that did list the  
24 accounts receivable?

25 MR. FRUTH: Actually, I'm actually

1 referring to some notes that I took earlier. So,  
2 I don't recall whether I --

3 MR. HAGELY: Okay.

4 MR. FRUTH: -- (unintelligible) the most  
5 recent one, or if it was one of the  
6 (unintelligible) earlier.

7 MR. HAGELY: Okay. I believe that we  
8 did put it into the August report. And, as a  
9 fact, I think that's why it came to the attention  
10 of the examiner yesterday. So, you know,  
11 obviously, we're not trying to hide it. It was an  
12 oversight that it wasn't in the Schedule B. And  
13 we voluntarily reported it as a part of the  
14 monthly activities.

15 MR. FRUTH: I appreciate that. And,  
16 we're not trying to impute any intentional --  
17 anything intentional be done at all. We just want  
18 to make sure everything's accurate. So, I  
19 appreciate your help in getting that squared away.

20 MR. HAGELY: As do we want everything to  
21 be accurate.

22 MR. FRUTH: All right. So, in the past,  
23 we had noted that CRSQA had alleged violations of  
24 copyright that it claimed to own.

25 MR. HAGELY: That is correct.

1 MR. FRUTH: When I looked at the  
2 Schedule B, the one that I looked at, didn't have  
3 any copyrights listed on that schedule. Is that  
4 something that you've remedied already?

5 MR. HAGELY: That would be inclusive of  
6 the websites themselves, meaning the data on the  
7 websites.

8 Any copyrights we have would be the items  
9 that are on the website. And those copyrights  
10 would -- you know, the website itself is  
11 copywritten.

12 And I believe that my recollection of the  
13 copyright violations with the creditors was a  
14 republication of a portion of our website.

15 But I actually believe that the majority  
16 of the copyright violations, with which I was  
17 aware, was other company's copyrights and not our  
18 own. But I was aware of them.

19 As an example, republication of a  
20 copywritten magazine article that I became aware  
21 of, but I didn't own the magazine, or the debtor  
22 didn't own the magazine.

23 MR. FRUTH: Okay.

24 MR. HAGELY: So the short answer is  
25 copyrights are inclusive of the website, which is

1 a separate listing of the domains.

2 MR. FRUTH: So, I guess what I'm getting  
3 at is, you're telling me that CRSQA doesn't own  
4 any copyrights that aren't on your Schedule B,  
5 which would include your listing of various  
6 websites?

7 MR. HAGELY: I believe that's completely  
8 accurate. I can't think of anything that we do  
9 not have published on the website to which we  
10 would have a copyright.

11 The only thing I can think of that is not  
12 on our website would perhaps be the HIPPA  
13 agreement, which I do not believe we copyrighted,  
14 and the business agreement for the certification  
15 with the surgeons. And I'm sure that we have not  
16 copywritten that.

17 And everything else that we have --  
18 virtually everything else that we have is on the  
19 website.

20 MR. FRUTH: Okay. I guess there's  
21 another issue that came up about patient lists,  
22 the customer list?

23 MR. HAGELY: Those are two different  
24 things.

25 MR. FRUTH: Okay. Well, let's talk about

1 them both then, because apparently at usaeyes.org  
2 there is supposed to be a collection of people who  
3 are interested in lasik surgery. And we shouldn't  
4 see that listed as an asset that was a customer  
5 list asset.

6 MR. HAGELY: We do not maintain a list  
7 of individuals who are interested in refractive  
8 surgery.

9 MR. FRUTH: Okay. So, the statement on  
10 the website about letting people know if a doctor  
11 becomes certified in their area, you don't have  
12 any way to contact those people?

13 MR. HAGELY: No. What we do is publish,  
14 on the website, the contact information of a  
15 surgeon who becomes certified.

16 MR. FRUTH: So when it says, "Please  
17 complete this form," that information is not  
18 collected by the organization?

19 MR. HAGELY: Oh, you're talking about  
20 the personal referral form.

21 That referral form, if we do not have a  
22 currently certified surgeon, receives a canned  
23 response that, unfortunately, the organization  
24 does not have someone certified anywhere near  
25 them. Please use our 50 Tough Questions for your

1 Doctor. And although there may be a couple of  
2 those that are still in the inbox, we don't keep  
3 them. We certainly don't maintain them as a list  
4 of people to contact.

5 MR. FRUTH: Okay. So what you say is you  
6 have some kind of policy to destroy that  
7 information, and unless something comes in within  
8 a certain period of time you would not maintain  
9 that referral list?

10 MR. HAGELY: There is no referral list.  
11 The standard operating procedure, when there's a  
12 request for a personal referral, is to provide the  
13 information of a doctor who is in the person's  
14 community. If there is not a doctor in the  
15 person's community, we tell the patient that there  
16 isn't, and we suggest that they use our 50 Tough  
17 Questions for your Lasik Doctor to help evaluate a  
18 potential surgeon. And then commonly those are  
19 deleted. There is no purposeful list maintained  
20 of patients who would like to have refractive  
21 surgery.

22 MR. FRUTH: Okay. It looked like you had  
23 listed a value of zero dollars for some of the  
24 domain names that the trustee was asking you about  
25 a little bit earlier. In particular, I'm talking

1 about usaeyes.info, usaeyes.net, usaeyes.biz, and  
2 usaeyes.us.

3 MR. HAGELY: That's correct.

4 MR. FRUTH: I understood that you told  
5 the trustee that you did not know the value, the  
6 kind of the unencumbered value of those websites.  
7 And yet it seems like you've place a value on it  
8 here. And I just wanted to clarify that point.

9 MR. HAGELY: If you look at the Schedule  
10 B, there is a clarification as to why it is valued  
11 at zero. And that is that it is encumbered.

12 An unencumbered? No, I do not know an  
13 unencumbered, because it is in fact encumbered.

14 MR. FRUTH: And by encumbered, what I'm  
15 talking about is your earlier statements that you  
16 believe that only certain third parties would be  
17 able to make use of those websites.

18 And, I guess, what I'm getting at is, it  
19 sounds to me like you had not identified any such  
20 third party or had talked to them about what  
21 they'd be willing to pay for those websites. And  
22 I just want to clarify that the zero is not based  
23 on any conversations you've had with third  
24 parties.

25 MR. HAGELY: We have found -- we have

1 not made an extensive search. But I am familiar  
2 with most of the organizations that are involved  
3 in eye care, at least in California.

4 We do not know the new 501(c)(6)  
5 Organization involved in patient advocacy for eye  
6 care. If one comes to our attention we would  
7 certainly be interested in what they'd be able to  
8 provide if we were to shut down the organization.

9 But, of course, the organization is  
10 internet based. To give up the website, and the  
11 web, or the web domains would be the same as a  
12 retail store tearing down its building.

13 The organization would not be able to  
14 function without those domains and those websites.

15 MR. FRUTH: Yeah. And that -- I guess  
16 I wanted to ask a little bit about that as well.  
17 'Cause one thing we want to do is make sure that  
18 the property that the debtor owns now is being  
19 kind of cared for and is being taken care of in a  
20 way that's going to retain value for any -- to  
21 satisfy any potential judgements down the road.

22 So, I wanted to ask you a little bit  
23 about your qualifications for --

24 MR. HAGELY: (Laughing). I --

25 MR. FRUTH: -- (unintelligible).

1           MR. HAGELY: I apologize for laughing,  
2 Darrell. You are worried that -- if I may  
3 restate. You're stating a concern that the value  
4 of the website and the value of the domain is  
5 being properly cared for by me. But at the same  
6 time, your client is making --

7           MR. FRUTH: I see. That's not the  
8 proper --

9           MR. HAGELY: -- several specific --

10          MR. FRUTH: -- not the proper  
11 characterization of my question. So if you could  
12 answer, what is your -- please describe your  
13 qualifications for, you know, running the  
14 organization. In terms of what's your education,  
15 what is your qualification for being the person  
16 that should be running this?

17          MR. HAGELY: Qualification is that I was  
18 the founder that came up with it. And I'm the  
19 person who executes the policy of the board of  
20 trustees.

21          MR. FRUTH: Okay. So, you don't have any  
22 educational background in like lasik training or  
23 anything like that?

24          MR. HAGELY: No. I'm a researcher.  
25 That's about all.

1 MR. FRUTH: Where did you attend college?

2 MR. HAGELY: I attended American River  
3 College for a limited period of time. I do not  
4 have a college degree.

5 MR. FRUTH: Okay. So you're not licensed  
6 to practice medicine?

7 MR. HAGELY: No, I am not. The people  
8 we have had, and we currently have, eye care  
9 professionals on the governing board of trustees.  
10 The advisory committees that developed our  
11 methodology for evaluating surgeons included  
12 surgeons and optometrists.

13 The facilitation of those policies that  
14 are set by the people who have all the letters  
15 after their names is what I do. I don't create  
16 the policy. I do participate. I'm on the board,  
17 of course, but my job is to implement that policy  
18 and do it to the satisfaction of the board of  
19 trustees.

20 MR. FRUTH: And you did this on a  
21 volunteer basis is what you told me before. What  
22 is your career? What are you doing right now to  
23 make a living?

24 MR. HAGELY: I'm not.

25 MR. FRUTH: Okay. So you're unemployed?

1           MR. HAGELY:   More precisely, I'm  
2 unemployable.  If you Google my name, you will see  
3 several pages of comments that the creditors have  
4 said about me.  You will find that recruiters and  
5 employers are not terribly interested in hiring  
6 someone who's accused of HIPPA violations, who's  
7 accused of criminal endeavors, who is accused of  
8 paying \$100,000 for a Russian mail order bride and  
9 other such comments that have emanated from the  
10 creditors.

11           MR. FRUTH:   The doctors that are paying  
12 certification fees, have they ever paid you  
13 anything personally?

14           MR. HAGELY:   I'm trying to think.  Let's  
15 see.  I think that last doctor that I had  
16 consulted for terminated his agreement earlier  
17 this year.

18           I had consulted for Robert Maloney, who  
19 is no longer certified by the organization.

20           MR. FRUTH:   Okay.  How many doctors have  
21 you personally consulted for or with?  Or, I guess  
22 consulted for is the the right term.

23           MR. HAGELY:   (Inaudible).  I'm going to  
24 just take a very wide description of consulted  
25 for.

1 I assisted Jay Bansal with some search  
2 engine optimization, but I didn't actually get  
3 paid for that. I simply facilitated it for him.  
4 Mr. Bansal -- Dr. Bansal is still certified with  
5 the organization. The only person that's coming  
6 to mind that I actually consulted for individually  
7 was Robert Maloney, who is no longer certified.

8 MR. FRUTH: Okay. So, just to be clear  
9 here, you have not -- so the only doctor that you  
10 received money for -- the only doctor you've  
11 received money from while you were involved with  
12 this organization is Dr. Maloney?

13 MR. HAGELY: To the best of my  
14 recollection, that's correct. And that was some  
15 time ago. In fact, if I recall, it was before I  
16 became a volunteer. And so that would be before  
17 February of 2008.

18 MR. FRUTH: Okay. And at that point you  
19 were doing work kind of separate from your work  
20 for the debtor, and you're getting paid for that  
21 separate work? Is that what I understand?

22 MR. HAGELY: That would be correct.  
23 Search engine optimization, mostly reputation  
24 management, trying to fight the internet attacks  
25 on the reputation of the people that are

1 affiliated with the debtor.

2 MR. FRUTH: Okay. So if anybody said  
3 they paid you money, they would be lying,  
4 basically?

5 MR. HAGELY: I don't know that, because  
6 I can only recall Dr. Maloney. There may have  
7 been someone else that I do not recall. And I  
8 wouldn't go so far as to call someone a liar based  
9 upon my faulty memory.

10 MR. FRUTH: Okay. I just wanted to -- I  
11 mean, again, we're just --

12 MR. HAGELY: I actually have a very good  
13 memory. It's just short.

14 MR. FRUTH: I understand. We're just  
15 trying to figure out -- we just want to make sure  
16 that all the assets have been accounted for here.  
17 So that's kind of our goal.

18 MR. HAGELY: Well, there's a --

19 MR. FRUTH: (Unintelligible).

20 MR. HAGELY: One of the reasons that  
21 this is going to be so limited is that there's  
22 this very strong conflict of interest for me to do  
23 any consulting that may be interpreted to be  
24 assisting selling refractive surgery.

25 And, for that reason, the only kind of

1 consulting I could use was really, you know, like  
2 I said, defensive, the internet reputation side of  
3 things. So it was somewhat limited.

4 MR. FRUTH: Okay. And the home office  
5 that's paid for by the organization, that's --  
6 it's not used by you personally to do any of this  
7 consolidating; is that right?

8 MR. HAGELY: Well, the search engine  
9 authorization is done primary computer access. I  
10 would have used the corporate computer access for  
11 that purpose.

12 MR. FRUTH: Okay. So you were using the  
13 corporate assets to then make income on your own?

14 MR. HAGELY: To the extent that I was  
15 using an internet connection, yes, that would be  
16 correct.

17 MR. FRUTH: Okay.

18 Jason, I think we'd probably want to have  
19 your or someone delve into that a little bit just  
20 to make sure that, you know, all the corporate  
21 assets --

22 MR. BLUMBERG: Why? What do you want him  
23 not --

24 MR. FRUTH: -- (unintelligible).

25 MR. BLUMBERG: You want him not to use

1 the computer anymore? Is that what you're saying?

2 MR. FRUTH: Well, I mean, I -- all

3 I'm --

4 MR. BLUMBERG: Well, let me tell

5 you --

6 MR. FRUTH: -- saying is --

7 MR. BLUMBERG: -- the corporation and the

8 business assets are --

9 MR. FRUTH: So, you're using business

10 assets --

11 MR. BLUMBERG: -- aren't business assets

12 that you'd use --

13 MR. FRUTH: He's using business

14 assets --

15 MR. HAGELY: Wait. Wait. I'm --

16 MR. BLUMBERG: I'm sorry. Let --

17 MR. HAGELY: I'm hearing two people,

18 Darrell.

19 MR. BLUMBERG: I'm sorry. Let me --

20 Darrell, let me -- I'll just continue. The

21 corporation's assets are the corporation's assets.

22 MR. HAGELY: Right.

23 MR. BLUMBERG: You used the corporation's

24 assets. The corporation is probably entitled to a

25 reasonable compensation for that. I don't know

1 what that would be for going on line.

2 Anthony, you'll have to -- I mean, that's  
3 something to be -- that's right, that's something  
4 to be aware of it.

5           You know what it is, Darrell? It's kind  
6 of -- it's tricky in this situation, 'cause I  
7 don't know. What we're talking about is a  
8 computer in his house, right?

9           MR. FRUTH: I guess so. And the office  
10 they, you know, are using.

11           MR. BLUMBERG: Yeah. I mean, you know, I  
12 don't know. I assume there's no -- is there a  
13 rental agreement between the company and yourself?

14           MR. HAGELY: There's no written rental  
15 agreement, no. The board approved the amount, and  
16 that was all we did.

17           MR. BLUMBERG: And is there anything that  
18 limits your ability to use the premises, the  
19 office that is on your house when -- for not  
20 company business?

21           MR. HAGELY: No, there's no limitations  
22 at all. I'm able to use it for company business.  
23 And, in fact, I use the rest of the house for  
24 company business. I, in fact, just a little bit  
25 ago, I got buzzed on the mobile phone. A patient

1 is asking for information.

2 MR. BLUMBERG: Well --

3 MR. HAGELY: And, additionally, whenever  
4 I travel, I will use a cloud access so that I can,  
5 actually, from anywhere that there's internet  
6 access, I am able to get to the corporate computer  
7 so that I can respond to patient concerns, and I  
8 can manage the organization in that matter.

9 MR. BLUMBERG: Okay. I think that the  
10 counsel's point, that you need to be sensitive to  
11 using corporate assets for personal purposes, is a  
12 legitimate concern.

13 MR. HAGELY: And most certainly any  
14 corporate asset that would be -- that would limit  
15 the debtor's ability to function as a business, I  
16 would agree wholeheartedly. And to my knowledge,  
17 I have never done so.

18 I don't believe that, as an example,  
19 receiving personal e-mail on the corporate dial-up  
20 actually is costing the organization or limiting  
21 the organization in any fashion, nor can I  
22 comprehend what that value might be.

23 MR. BLUMBERG: I mean, Darrell, are these  
24 the type of concerns that you're thinking of, or  
25 is there something greater?

1           MR. FRUTH: Well, I mean, I had two  
2 things in mind. First was if the corporate  
3 assets -- if the debtor's assets were being used  
4 to generate income, it wasn't going to the debtor,  
5 then that's a big concern of ours as creditors,  
6 because that's basically a fraudulent  
7 conveyance -- or I don't know the right word, but  
8 it would be evading, you know -- it would be  
9 robbing the debtor of income that it shouldn't.

10           MR. BLUMBERG: But now we're -- but  
11 we're -- just so I'm clear, we're talking about  
12 the computers, the internet, the trade name,  
13 the --

14           MR. HAGELY: Oh, no, no, not the trade  
15 name. Certainly not the trade name.

16           MR. BLUMBERG: Are you using any assets  
17 that belong to the corporation for your personal  
18 purposes?

19           MR. HAGELY: Computer and internet  
20 access. And the circumstances that Darrell is  
21 talking about, which was when I did consulting for  
22 Dr. Maloney, were over two and a half years ago.

23           MR. BLUMBERG: Are you generating any  
24 income today by using any of the corporate  
25 assets --

1 MR. HAGELY: No, not at all.

2 MR. BLUMBERG: -- (unintelligible)

3 assets?

4 MR. HAGELY: Not at all.

5 MR. FRUTH: And I guess that would

6 include contacts that are made through the

7 organization, you know, with these various

8 doctors, that there would be some value to the

9 organization, to the debtor for that as well.

10 And if there's no -- I mean, it sounds  
11 like there's no income coming to Mr. Hagely right  
12 now. But, you know, we just wanted to look into  
13 that.

14 MR. HAGELY: Darrell, is it my  
15 understanding that your concern is that if I was  
16 to make a contact -- as an example, the  
17 organization commonly pays for me to attend  
18 medical conventions, which I do. And if I meet a  
19 doctor there who does not want to become  
20 certified, but would like to use my services in  
21 some other capacity, you are concerned that, at  
22 that point, I am using corporate assets?

23 MR. FRUTH: That's exactly the concern.  
24 We want to make sure that the corporation is being  
25 compensated for any money that is being -- that,

1 you know, that any income that you are generating  
2 by using our dollars to go out and get business.  
3 That is exactly the concern.

4 MR. HAGELY: Well, there is -- I have  
5 two responses to that. One, is that to the best  
6 of my recollection, the last time I was paid as  
7 consultant by anyone affiliated with the  
8 organization was in 2008. So, we're certainly  
9 going back, I think, a little bit broader than the  
10 scope of the trustee.

11 Furthermore, because we are a non-profit  
12 organization, we have a higher level of  
13 responsibility in regard to the use of the debtor  
14 assets. The guideline that I have always used has  
15 been the regulations under the Internal Revenue  
16 Service for a 501(c)(6) Organization.

17 I've always felt, and I would submit to  
18 you, that meeting the regulations that the IRS  
19 puts upon the debtor is going to be consistent  
20 with the needs and concerns of the creditors and  
21 of the Department of Justice.

22 MS. BIRCH: I have a question. This is  
23 now Birch.

24 MR. HAGELY: Hello, Nell (phonetic).

25 MS. BIRCH: Mr. Hagely, your organization

1 is a 501(c)(6) Organization.

2 MR. HAGELY: That's correct.

3 MS. BIRCH: Isn't it true that a  
4 501(c)(6) Organization is a trade organization?

5 MR. HAGELY: A 501(c)(6) is commonly the  
6 code that trade organizations come under. As an  
7 example, the National Football League is a  
8 501(c)(6).

9 When we originally founded the  
10 organization, we submitted for a 501(c)(3).  
11 A (c)(3), and I believe that you know this,  
12 because if I recall you are part of a (c)(3). A  
13 (c)(3) is a charitable organization, commonly  
14 receives charitable donations. Those donations  
15 are tax deductible by the donor.

16 When we submitted our application to the  
17 IRS, we submitted our revenue model, our revenue  
18 model being exclusively certification fees.

19 MS. BIRCH: And a trade organization, I  
20 read the entire IRS description. And --

21 MR. HAGELY: Yes. But we did not submit  
22 our application as a trade organization.

23 MS. BIRCH: Well, that's what a 501(c)(6)  
24 is.

25 MR. HAGELY: We could around in circles

1 on this. A trade organization can be a  
2 501(c)(6) --

3 MR. BLUMBERG: Well --

4 MR. HAGELY: -- but a 501(c)(6) --

5 MR. BLUMBERG: -- can I stop you there?  
6 Is there -- I don't mean to cut you off. I just  
7 want to get to -- could you get to the meat, the  
8 heart of the matter, 'cause --

9 MR. FRUTH: Part of, I think, what we  
10 need to figure out is what organizations would be  
11 the proper -- what third party might be able to  
12 receive the domain names here.

13 MR. BLUMBERG: Okay. Then go ahead.

14 MR. FRUTH: And, so, I think, you know,  
15 we're trying to figure out what it is that --  
16 where these domain names might be able to be  
17 transferred, because we don't want to accept the  
18 representations that were made earlier that  
19 there's -- well --

20 MR. BLUMBERG: Sure.

21 MR. FRUTH: -- that there may be other  
22 third party that can receive these. So --

23 MR. BLUMBERG: Right. Okay.

24 MR. FRUTH: Either (unintelligible) can  
25 be put into a business.

1           MR. HAGELY: It seems like that would be  
2 a challenge that would be best made in a  
3 adversarial motion.

4           We are a 501(c)(6). Whether Ms. Birch  
5 wants to perpetuate that we're a trade  
6 organization or that we are a patient advocacy  
7 organization really has no bearing whatsoever on  
8 the value of the organization.

9           The IRS has its rules on the transfer of  
10 assets, if we shut down the organization. And the  
11 bylaws of the organization that are very specific,  
12 that were accepted by the IRS in our application,  
13 make it quite clear.

14           Of course, this is only if we were to  
15 shut down the organization. We do not have any  
16 intent of shutting down the organization. The  
17 purpose of the reorganization of Chapter 11 is so  
18 that we can continue to do business, so that we  
19 can continue to generate revenue, so that we can  
20 pay our creditors.

21           MR. FRUTH: Okay. That's actually really  
22 useful, which is -- just to be clear here. So, if  
23 you're not going to shut the business down, you  
24 can transfer the website to pay the debts to the  
25 creditors, like Mrs. Birch?

1 MR. HAGELY: To use the example that I  
2 did previously, what you're suggesting would be  
3 the same as a retail store tearing down its  
4 building and continuing to attempt to do business.

5 The organization is internet based.  
6 People get the information about the organization  
7 through the internet, through our websites. The  
8 information that we provide them is the non-profit  
9 purpose of the organization. So, the idea of  
10 transferring the domain or the websites to any  
11 third party is suggesting that the organization be  
12 shut down.

13 MR. BLUMBERG: Just so I'm clear. Is  
14 there any circumstance, under your understanding  
15 of the law, in which you can transfer the domain  
16 assets without incurring the tax penalty, whether  
17 you shut down or intend to keep running? Does it  
18 make a difference?

19 MR. HAGELY: If we keep running, we would  
20 only be able to receive the amount that it cost  
21 us, actual costs, to create the asset. And it can  
22 only go to a 501(c)(6) that is related to patient  
23 advocacy in the eye care field.

24 MR. BLUMBERG: So, is it fair to say  
25 under any circumstance you will be subject -- the

1 debtor will be subject to a penalty unless it is  
2 sold to a 501(c)(6) entity? Is that what you're  
3 saying?

4 MR. HAGELY: That is involved in eye  
5 care -- patient advocacy in the eye care field.  
6 It can't be just a 501(c)(6). We can't transfer  
7 it to the National Football League --

8 MR. BLUMBERG: Right.

9 MR. HAGELY: -- just because they're a  
10 501(c)(6). Did somebody not pay their light bill?

11 Darrell, we've just gone dark in the  
12 room.

13 MR. FRUTH: Well, you guys want to wait  
14 till that --

15 MR. HAGELY: No.

16 MR. BLUMBERG: No.

17 MR. HAGELY: We're back on.

18 MR. FRUTH: Okay. Well, I guess, Jason,  
19 what I'm getting at is, it sounds like -- well,  
20 one thing, we have information that suggests that  
21 quite a bit of money has been put into these  
22 websites or these domain names. We've seen  
23 listings of, you know, 1400, 1500 dollars being  
24 paid to arbitration forums, et. cetera, to  
25 maintain the rights of these domain names.

1           And, so, given the size of the debts  
2 here, it seems to me like if we could find another  
3 non-profit entity that could receive these domain  
4 names that there would likely be just enough  
5 proceeds from that transfer to cover the debt, at  
6 least the current debt. And, so, that's just  
7 something to keep an eye on while we're  
8 (unintelligible) --

9           MR. BLUMBERG: Yeah. And you certainly  
10 have the right to -- you know once exclusivity is  
11 up, to propose your own plan or to object to a  
12 plan that doesn't --

13           MR. HAGELY: (Inaudible).

14           MR. BLUMBERG: -- propose that.

15           But, you know, we've been going on kind  
16 of long now. So do you --

17           MR. FRUTH: I'm actually pretty close to  
18 finishing up. If you can just give me like five  
19 more minutes --

20           MR. HAGELY: Darell --

21           MR. FRUTH: -- (unintelligible).

22           MR. HAGELY: Darrell, I believe that we  
23 cut off Ms. Birch. Dr. Birch, did you have any  
24 other questions?

25           MS. BIRCH: Not at the moment.

1 MR. HAGELY: Thank you.

2 MR. FRUTH: All right. Still, I just had  
3 a couple questions about some outlays here. On  
4 the small business monthly operating report, in  
5 the banking statements there were some Visa  
6 purchases that went to, one person was Brady  
7 Remenblesky (phonetic). Did you authorize that  
8 amount to be sent to Brady Remenblensky?

9 MR. HAGELY: I'm sorry, but I don't  
10 recognize the name. What was the dollar amount?

11 MR. FRUTH: It was \$120.

12 MS. BIRCH: He works at Buffington  
13 Eyecare.

14 MR. HAGELY: Oh. Thank you, Dr. Birch.  
15 Yes, I authorized that.

16 MR. FRUTH: Okay. And what was that for?

17 MR. HAGELY: That was for a vision exam.  
18 And it was paid as a part of the health and dental  
19 and vision care benefits that are provided to me.

20 MR. FRUTH: So, why were you -- why was  
21 the entity paying it if the insurance pays for all  
22 that stuff?

23 MR. HAGELY: We do not have a vision  
24 care policy that would allow us to use Dr.  
25 Buffington.

1           Actually, I don't believe we have a  
2 vision care policy at all.

3           MR. FRUTH:    Okay.

4           MR. HAGELY:   I think that's correct.  I  
5 don't believe that we have vision care policy at  
6 all.

7           MR. FRUTH:    Okay.  And, so, what you were  
8 doing was you were using the company's -- you were  
9 using company funds to pay for your personal  
10 health care?

11          MR. HAGELY:   Correct.

12          MR. BLUMBERG:  I think we've already  
13 asked --

14          MR. HAGELY:   Yes.

15          MR. BLUMBERG:  -- about that.  Can you  
16 move on with the next one?  I'm sorry to -- you've  
17 got --

18          MR. FRUTH:     But, no, I just --

19          MR. BLUMBERG:  -- (unintelligible).

20          MR. FRUTH:     -- (unintelligible).  I  
21 understood that they were -- that the entity was  
22 paying something like \$20,000 a year to provide  
23 what was described as kind of gold-plated  
24 insurance.  I didn't realize that in addition to  
25 that it also writing checks, you know, for

1 direct -- you know, it's basically being --  
2 providing insurance services directly to them.

3 MR. HAGELY: Darrell, let me clarify  
4 that. The \$20,000 in 2008, I believe it was, it  
5 includes not only insurance premiums, but it  
6 includes any of the co-payment amounts that would  
7 have been paid. So, if this service had been  
8 provided in 2008, it would have been included in  
9 that 20,000.

10 MR. FRUTH: Oh, I see. Okay. That's  
11 very helpful.

12 MR. HAGELY: Certainly.

13 MR. FRUTH: Helps a lot, actually. All  
14 right. I think -- let me just sit and review my  
15 notes. I think I've asked most of the questions  
16 that I was hoping to get answers to.

17 I guess, just to clarify, you've listed  
18 all the credit cards that the entity has?

19 MR. HAGELY: The debtor has never had  
20 credit. We have a Visa Debit card that  
21 withdrawals money from the account that now is the  
22 debtor in possession account.

23 We have never needed credit. We've never  
24 had credit. We've never had a credit card. I  
25 think we may have had a -- like a Texaco gas card

1 at one point, but it's never been used. And I  
2 don't even know if it's active. In fact, I'm  
3 pretty sure it's not.

4 MR. FRUTH: Okay.

5 MR. HAGELY: Most certainly, we don't  
6 owe them anything.

7 MR. FRUTH: All right. And who is the  
8 accountant that you used, or that the entity uses?  
9 (Unintelligible) but --

10 MR. HAGELY: Certainly. The accountant  
11 that we use or the CPA that we use is Mark Beal  
12 (phonetic).

13 MR. FRUTH: Okay. All right. Let me  
14 just check a couple things here.

15 MS. BIRCH: One thing, Darrell?

16 MR. FRUTH: Yes? Yes, Ms. Birch?

17 MS. BIRCH: (Unintelligible).

18 MR. FRUTH: (Unintelligible).

19 MS. BIRCH: (Unintelligible).

20 MR. FRUTH: Oh, right. Yeah. I see what  
21 you're saying. So, one thing that we noticed was  
22 a large amount of expenses in the last two weeks  
23 of July, which coincide with about the time that  
24 the filing was -- you know, the bankruptcy filing  
25 was made. And there are checks 3386 through 3393,

1 and they total somewhere around \$8,000.

2 Can you give us a sense of what that, or  
3 where that money was going?

4 MR. HAGELY: I do not have those books  
5 in front of me. So I'm afraid I'm not going to be  
6 able to respond to that with any clarity.

7 If you give me the exact dollar amounts,  
8 I might recall.

9 MR. FRUTH: Yeah. And just to keep it  
10 quick. One was for \$1200.

11 MR. HAGELY: \$1200 would have gone to the  
12 CPA, Mark Beal (phonetic). Jason discussed that,  
13 and we are providing an amendment to add that  
14 information to the filing.

15 MR. FRUTH: Okay. 250?

16 MR. HAGELY: Don't recall.

17 MR. FRUTH: 1710.

18 MR. HAGELY: That sounds like two months'  
19 rent.

20 MR. FRUTH: Okay.

21 MR. HAGELY: Yes.

22 MR. FRUTH: 1,033?

23 MR. HAGELY: That would be medical  
24 insurance.

25 MR. FRUTH: 2,000?

1 MR. HAGELY: That would be our attorney.

2 MR. FRUTH: That was prefiling?

3 MR. HAGELY: Correct.

4 MR. FRUTH: Okay.

5 MR. HAGELY: And that has been reported.

6 MR. FRUTH: Okay. And then 1,039?

7 MR. BLUMBERG: That's the filing fee for  
8 the bankruptcy.

9 MR. FRUTH: Okay.

10 MR. BLUMBERG: I'm sorry I --

11 MS. BIRCH: 500?

12 MR. BLUMBERG: -- interrupted.

13 MR. HAGELY: Thank you, Jason. It took  
14 me a while to figure that one out, too.

15 MR. FRUTH: And this \$500 is also --  
16 right about that same time, does that ring a bell?

17 MR. HAGELY: 500 going out or 500 coming  
18 in?

19 MR. FRUTH: Going out.

20 MR. HAGELY: No, I afraid it did not ring  
21 a bell.

22 MR. FRUTH: Okay.

23 MR. HAGELY: I told you, Darrell, I have  
24 a good memory, but it's short.

25 MS. BIRCH: Will we get a statement

1 clarifying this?

2 MR. BLUMBERG: I'm not sure you will. I  
3 have to check with -- this is Jason  
4 (unintelligible). I have to check with our  
5 bankruptcy analyst. But if she's satisfied with  
6 the level of information on the monthly operating  
7 report then, I think, we're probably going to take  
8 it. But, I don't know for now.

9 MR. HAGELY: Ms. Birch, what additional  
10 information, specifically, would you be  
11 requesting?

12 MS. BIRCH: Well, ideally, we would like  
13 to know -- that was 7,700 they spent by check in  
14 two weeks. And if you prorated that amount out  
15 annually, that would be 186,720 on a yearly basis.  
16 So it seems like a lot of money going out in the  
17 last two weeks of July, right before you filed  
18 bankruptcy.

19 MR. HAGELY: I apologize. But I'm not  
20 seeing a question there or a specific --  
21 specifically what you're looking for.

22 I am responsible to provide these monthly  
23 reports to the analyst here who is supposed to be  
24 an unbiased party. And it is verifying what I  
25 provide against the bank statements, and also has

1 the full power of the Department of Justice behind  
2 her for compliance. And if she felt there was  
3 anything that was inappropriate, she could  
4 recomment and start the process of having the  
5 Chapter 11 ended. That's a pretty high level of  
6 scrutiny.

7 MR. FRUTH: All right. I don't think I  
8 have any other questions, unless you think I'm  
9 missing something, Ms. Birch.

10 MS. BIRCH: Not at this time.

11 MR. FRUTH: Okay. I appreciate the  
12 opportunity to participate, and look forward to  
13 doing what we need to protect our rights in this  
14 matter.

15 MR. BLUMBERG: That's good. I'm just  
16 going to circle back. Darrell and Ms. Birch, can  
17 you tell me, and this would help with my  
18 understanding of the case, how much your seeking  
19 as far as damages in the action in North Carolina?  
20 Are you at liberty to say that?

21 MR. FRUTH: Ms. Birch, if we haven't made  
22 a demand or we haven't stated that, then I don't  
23 know that I'd want to just throw it out on the  
24 table right now.

25 MR. BLUMBERG: Okay. That's fair enough.

1 Okay. I just want to circle back to the  
2 amendments and the documents that my office needs.  
3 We need the amendment to Schedule B to disclose  
4 the existence of the accounts receivable.  
5 Preferably, it would be a good idea to break up  
6 the accounts receivable between those that you  
7 think are collectable and those that you think are  
8 not collectable. And I'm talking 10,000 versus  
9 20,000, as opposed to a level of detail beyond  
10 that.

11 In the Statement of Financial Affairs,  
12 item three, we request that you disclose the  
13 transfer to the CPA, the pre-petition transfer to  
14 the CPA.

15 And, finally, my office needs a copy of  
16 the authorization of the debtor that authorized  
17 the filing of this bankruptcy case.

18 MR. HAGELY: Anthony, you have that.

19 MR. HUGHES: Okay.

20 MR. BLUMBERG: And --

21 MR. HAGELY: The minutes of the board  
22 meeting.

23 MR. HUGHES: Okay. (Unintelligible).

24 MR. HAGELY: That's what you're looking  
25 for?

1 MR. BLUMBERG: Yeah. We need that.

2 MR. HAGELY: Yeah.

3 MR. BLUMBERG: And, as a related point to  
4 that, we need the amendment to the bylaws, by  
5 which the trustees or, I guess, the --

6 MR. HAGELY: The current --

7 MR. BLUMBERG: That -- yeah --

8 MR. HAGELY: -- members of the --

9 MR. BLUMBERG: -- (unintelligible). Yes.

10 MR. HAGELY: -- board of trustees, yes.  
11 I believe that the analyst gave us until the 27th  
12 to provide that. I'm trying to get in touch with  
13 one of the trustees, who I believe is on vacation.  
14 And I preferred that this be a unanimous, rather  
15 than --

16 MR. BLUMBERG: Right.

17 MR. HAGELY: -- majority. So, if we're  
18 going to have a problem with that, we'll notify --

19 MR. BLUMBERG: So --

20 MR. HAGELY: -- the analyst if it will  
21 be beyond the 27th of this month.

22 MR. BLUMBERG: All right. So for now,  
23 the authorization to file the amendment to the  
24 bylaws will be provided by the 27th, which you'll  
25 contact us if there's going to be a problem with

1 that?

2 MR. HAGELY: Right.

3 MR. BLUMBERG: And then the amendments to  
4 Schedule B and the Statement of Financial Affairs,  
5 what's a reasonable date that that can be filed?

6 MR. HAGELY: Anthony will be --

7 MR. BLUMBERG: Two weeks?

8 MR. HUGHES: Uh-huh. That's fine.

9 MR. BLUMBERG: Okay. So that would  
10 be -- what's today, Tuesday? So, two weeks from  
11 the 24th. So, I guess, that's around September  
12 7th. Okay.

13 I have no further questions. And I am  
14 going to conclude this meeting. Thanks everybody.

15 MS. BIRCH: Thank you.

16 (341 Meeting was then concluded)

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Dated this 13th day of September, 2010,  
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ANDREA HAWLEY

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