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IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:)	Chapter 7
)	Bankruptcy No. 09-16841
MICHAEL R. MASTRO,)	
)	TRUSTEE’S SECOND ANNUAL
Debtor(s).)	REPORT TO CREDITORS

James F. Rigby, Jr., the duly elected trustee in the above-captioned case (“Trustee”), presents this Trustee’s Second Annual Report to Creditors.

A. Bankruptcy Filing.

On July 10, 2009, an involuntary bankruptcy petition was filed against Michael R. Mastro (“Mastro”), doing business as Mastro Properties. Mastro consented to a voluntary order of relief under Chapter 7 on August 21, 2009, and James Rigby was appointed as interim trustee. Rigby was later elected as the Trustee, over the objection of certain creditors. Those creditors filed an appeal of the election and the Ninth Circuit Bankruptcy Appellate Panel has confirmed Rigby as the duly elected Trustee.

The contents of the Trustee’s First Annual Report to Creditors dated October 28, 2010, are hereby incorporated herein.

B. Cash on Hand.

The Trustee is holding \$3,919,427.27 free of lien claims. This is calculated by taking the \$7,111,427.27 cash on hand and sequestering funds as follows: Dorssers’ claim on Medina property - \$2,500,000; Michael K. Mastro execution proceeds - \$387,000; Frontier Bank rent claim -

1 \$110,000; East West Bank settlement (approved but not paid) - \$155,000; and a preference
2 settlement deposit of \$40,000.

3 **C. Sale of Medina Residence and Other Properties.**

4 The Trustee has closed several property sales since the first annual report. Most noteworthy
5 is the sale of Mastro's waterfront house in Medina, Washington. The sale of that property was
6 closed and the estate received a net of \$8,358,990. There is one creditor remaining named Dorssers
7 who is making a secured claim against the proceeds and it has been necessary to sequester
8 \$2,500,000 to safeguard that claim.

9 The Trustee has also sold a property known as the Clark Land and received \$55,000 for the
10 estate from the secured creditor as a fee for that sale. The estate has sold a building lot in
11 Woodinville, which had been transferred to Mastro as collateral for a loan from Moore, and netted
12 \$88,808. The Trustee sold a promissory note from Plog for \$60,000. The Trustee has also settled
13 an outstanding claim with East West Bank which frees up \$155,000 from properties previously sold.

14 **D. Medina Residence Litigation.**

15 As the Trustee has maintained since the beginning of this case, the primary asset will most
16 likely be the sale of the Medina residence, which has come to pass. The Trustee initiated an action
17 against Mastro and others on September 29, 2009, just five weeks after his appointment, regarding
18 legal ownership of the Medina residence, purported liens claims against the property and other
19 claims related to the trusts. As is set forth in much more detail in Exhibit "A" attached hereto,
20 Mastro and the other parties vigorously defended the estate's claim of ownership free of liens to this
21 property until the trial started on April 19, 2011. On the first day of trial, Mastro's counsel appeared
22 and announced that Mastro would not present a defense at the trial and then left the courtroom. An
23 order was subsequently entered granting the estate a judgment against Mastro and his martial
24 community in excess of \$7 million relating to transfers in and out of various trusts and vesting the
25 residence and other property in the estate. The court has also entered an order denying Durst's
alleged secured claim in the approximate amount of \$12 million. The remaining claim against the

1 house is made by Dorssers, and when the trial concludes the Trustee expects that Dorssers' claim
2 will be denied. The Trustee has also brought claims of approximately \$2 million against Linda
3 Mastro and the Trustee is also seeking to recover the two diamond rings she claims as her separate
4 property. That trial should conclude in the early summer.

5 **E. Property Sales Pending.**

6 The Trustee presently has a sale pending for \$675,000 for the 15,000 square foot property
7 located at 600 West Mercer. The only liens against this property are taxes, so the costs of sale
8 should be minimal. The Trustee also has an offer pending in the amount of \$49,000 for 22 acres
9 adjacent to the White River. This property is subject to flooding and, therefore, is not suitable for
10 construction.

11 Additionally, the estate presently has 14 properties listed for sale. The properties include
12 three condominiums on Bainbridge Island. There is a building lot for sale in Silverdale. The estate
13 has 2.8 acres listed for sale in South Seattle as a multi-family building site with an asking price of
14 \$495,000. The estate also has 4.76 acres for sale in Olympia with an asking price of \$249,000. A
15 fixer house in Monroe is for sale with an asking price of \$149,000. The estate recently re-listed the
16 property located at 15025 State Route 2, Snohomish for \$160,000. When the estate brought a
17 motion to authorize a sale of that property over a year ago, the alleged secured creditor objected to
18 the sale and made a motion for relief from the stay. The court denied the Trustee's sale motion and
19 authorized the creditor to pursue a foreclosure. The Trustee appealed those rulings and won. The
20 creditor has been denied a secured status and the property is now re-listed for sale. The net sale
21 proceeds will be paid to the estate.

22 There are other properties presently involved in litigation. The Trustee is in the process of
23 clearing title to an 18,000 square foot commercial building pad in Duvall. The Trustee discovered
24 that the estate holds title free and clear to a commercial office building in Vancouver, Washington,
25 and is presently litigating with the assignee of the purported purchaser of the property from Mastro.

1 **F. Preference Actions.**

2 The Trustee is charged with the responsibility of recovering payments made to creditors for
3 antecedent, or preexisting, debt within the 90 days before the bankruptcy petition was filed
4 (“preference”). Preference is a concept built into the Bankruptcy Code and the idea is that payments
5 made to creditors during what the law presumes was a period of insolvency should be paid back for
6 distribution in the bankruptcy proceeding. The Trustee has recently filed over thirty separate
7 lawsuits making preference demands in excess of \$2.5 million. Defendants in preference actions
8 universally feel that the claims are unfair because they were owed what they were paid. Creditors
9 who did not receive payment on their debts within the 90 day period, however, take a different view.
10 Pursuing preferences is one of the least pleasant aspects of administering a bankruptcy estate, but
11 it is required by the Bankruptcy Code. At the same time, the Trustee has determined that several
12 recipients hold valid defenses to the preference claims or that the amounts are too small to justify
13 the expenses of litigation. A motion to abandon these claims has been filed. The Trustee expects
14 to file an additional dozen or so additional preference actions before the statute of limitations runs
15 on July 10, 2011.

16 **G. Michael K. Mastro Litigation.**

17 The Trustee initiated an action against Michael K. Mastro, the son of the debtor, and his
18 assorted LLC’s relating to life insurance transactions entered into by Mastro on December 8, 2009.
19 The Trustee initially obtained a judgment against Michael K. Mastro and it was during the course
20 of executing on that judgment that the Trustee discovered a significant amount of silver bullion
21 secreted in the walls of Michael K. Mastro’s residence. That judgment was obtained upon a motion
22 for summary judgment, which is a motion on the pleadings without the benefit of the court hearing
23 the testimony of the parties. Since that judgment was entered, the court of appeals has reversed the
24 judgment as to Michael K. Mastro, though not the LLC’s, and remanded the matter for trial. A trial
25 is set to start in late summer. Given the Trustee’s various other claims against Michael K. Mastro,
including a claim for approximately \$24 million in the action regarding the Medina house, based

1 upon Michael K. Mastro's involvement in property transfers in and out of the trust, the Trustee has
2 retained the net proceeds from the sale of the gold and silver recovered from Michael K. Mastro in
3 the amount of \$387,000.

4 **H. Thomas R. Hazelrigg, III.**

5 On March 9, 2010, the Trustee filed an adversary proceeding to collect amounts due on
6 various promissory notes from Thomas R. Hazelrigg III ("Hazelrigg") and others in an amount
7 exceeding \$70 million. The Trustee has already obtained judgments on several of the notes in
8 excess of \$12.5 million and a motion for summary judgment regarding an additional \$34 million is
9 presently pending. The details regarding this case can be found at Exhibit "B" attached hereto and
10 hereby incorporated herein.

11 Suffice it to say, Hazelrigg was Mastro's largest customer when it came to borrowing money.
12 Hazelrigg purports to be insolvent, which may or may not be true. Presently, in addition to pursuing
13 the additional judgments mentioned above, the Trustee is pursuing intense discovery to obtain
14 documents from parties who conducted business with Hazelrigg, including his children, to determine
15 if any assets are available for creditors.

16 **I. FRB, Inc.**

17 It came to the Trustee's attention that Mastro's interest in FRB, Inc. was valuable, although
18 it was listed on the bankruptcy schedules as having no value. In order to save an unencumbered
19 waterfront building lot in the State of New York from foreclosure, the Trustee filed that corporation
20 into its own bankruptcy. It then became necessary to clear title to the property because of a
21 discrepancy in the vesting documents. The Trustee just recently obtained a judgment clearing title
22 in FRB. The only liens against the property are for unpaid taxes. Presently, the Trustee is
23 attempting to assess the value of the property and determine the significance of a recent down zone
24 of the property. FRB additionally owns 360 acres in Northern California. The Trustee is presently
25 negotiating a sale of that property. There appears to be valid claims in the FRB case in the
approximate amount of \$500,000. There is an additional claim in the case which if not defeated will

1 consume much of the remaining value in the case. However, the Trustee is optimistic that this
2 suspect claim will be disallowed and that a significant amount of money will be paid by the FRB
3 estate to the Mastro bankruptcy estate.

4 **J. Claims.**

5 The bankruptcy schedules filed by Mastro indicate that he owes approximately \$325,000,000
6 in unsecured debt. This unsecured debt is separate from the debt which is secured by property. The
7 schedules set forth secured debt in the amount of \$340,762,453.24 and indicate that after applying
8 the value of the collateral to that debt the “secured creditors” would have unsecured claims in the
9 amount of \$84,637,377.20. The schedules also list priority debt such as wages in an amount of
10 \$117,098.00. The schedules list general unsecured debt, such as the Friends and Family member
11 debt and unsecured lines of credit, in the amount of \$240,116,738.55. The schedules therefore list
12 debt in the amounts of \$84,637,377.20, plus \$117,098.00, plus \$240,116,738.55, for a total of
13 \$324,871,213.75.

14 The Trustee estimates that the general unsecured claims ultimately allowed in this case will
15 approximate \$325,000,000. In order for a creditor to have a claim in the case, they must have filed
16 a claim prior to the claims bar date, which was December 11, 2009, and an order must be entered
17 allowing the claim. In order to simplify this process and make it more manageable, both for the
18 attorneys handling the matter and for the creditors who have filed claims, the Trustee is pursuing
19 the claims allowance and objection process in several batches. Presently, two proposed orders
20 allowing and disallowing claims have been entered and a third motion to allow and disallow claims
21 is pending. Additional motions to allow and disallow claims will follow. The Trustee expects to
22 have the claims process completed, except for those claims specifically involved in litigation, by late
23 summer or early fall.

24 **K. Distribution Forecast.**

25 Once the claims process has been substantially completed, the Trustee will be in a position
to make an initial distribution to creditors. The Trustee anticipates distributing approximately one

1 percent to the creditors near the end of the year 2011. This amount is subject to change, depending
2 upon the circumstances in the case during the fall. This will depend upon further success in the
3 litigation with Dorssers and recovering addition amounts from Linda Mastro and other defendants.
4 Additionally, there are other parcels of property for sale and several other lawsuits pending which
5 may impact the ability to make a distribution.

6 **L. Prognosis.**

7 The conclusion of the pending lawsuit regarding the Medina property, wherein claims against
8 Dorssers, Linda Mastro and Michael K. Mastro are still pending, will mark a substantial turning
9 point in the administration of the case. While there are numerous parcels of property to sell and
10 several significant lawsuits pending, the accrual of costs to administer the estate from that point
11 forward be reduced dramatically and the estate should be able to retain for distribution to creditors
12 a much greater portion of the property recovered and liquidated. It is anticipated that most of the
13 litigation, not including appeals, will come to a head during 2012.

14 The one significant unknown is the time and effort it will take to recover assets to satisfy the
15 Hazelrigg judgments. If there is going to be a payout in this case of more than two percent,
16 Hazelrigg will be the source of those funds. If the claims against Hazelrigg prove not to be
17 exceedingly productive, then the distribution to creditors is not likely to exceed two percent.

18 DATED this 6th day of June, 2011.

19
20
21 */S/ James Rigby*

22 _____
James Rigby, Trustee

Rigby v. Mastro, et al.
Adversary No. 09-01439

On September 29, 2009, the bankruptcy Trustee filed an adversary proceeding against Michael R. Mastro, his wife, and other parties in an effort to recover the assets that Mastro had transferred into various trusts before the bankruptcy was filed.

In August 2008, Mastro placed his Medina residence, and two other houses (including a house in Clyde Hill) into an “irrevocable” trust. None of these properties was encumbered by any debt. Two months later, Mastro transferred his Medina residence into an offshore trust in Belize. He also placed diamond jewelry, a Rolls Royce, and cash in the Belizean trust. Mastro borrowed money against the two houses remaining in the irrevocable trust, and caused the loan proceeds to be disbursed from the irrevocable trust to his wife and to himself. Mastro placed two deeds of trust totaling \$15 million on his Medina residence without obtaining any funds in return.

When the bankruptcy Trustee was appointed, Mastro contended that all these assets were beyond the reach of his creditors, and that the Trustee had no power to reach the Belizean trust. Mastro contended that, even if the Trustee penetrated the Belizean trust, the Medina residence had no value to the creditors because of the \$15 million in liens. Mastro argued that he or his wife should continue to control his Medina residence or it should be sold for the benefit of six or seven friends of Mike Mastro and Tom Hazelrigg.

Mastro’s first line of defense was that the bankruptcy court had no

jurisdiction over the Belizean trust. With Mastro's encouragement, the Belizean defendants refused to answer the Trustee's allegations, arguing that only a Belizean court would have jurisdiction over them. If this argument had succeeded, the bankruptcy estate would have been blocked from recovering the assets in the offshore trust.

The Trustee's lawyers initiated discovery against the defendants and other parties who helped Mastro create the Belizean trust. The Trustee's efforts to conduct discovery were fiercely resisted. Despite this resistance, the Trustee was able to obtain sufficient information to present the jurisdictional issue to the court.

On December 28, 2009, the bankruptcy court ruled in the Trustee's favor on the jurisdictional issue. The Belizean defendants attempted to appeal the ruling. The Trustee opposed the appeal, and the request for appeal was denied.

Following resolution of the jurisdictional issue, the Trustee continued efforts to obtain discovery about the formation of Mastro's trusts, the assets held by the trusts, and whether the Mastros were using concealed assets to maintain their lavish lifestyle. Mastro and his associates resisted these efforts at every turn. For example, Mastro's wife testified that she was unable to recall luxury trips to New York, Switzerland, Italy and various ski resorts. Subpoenaed records subsequently showed that the trips Mrs. Mastro could not recall took place only months – and sometimes weeks – earlier. When the Trustee's lawyers attempted to question Mastro about his finances, he refused to answer based on his Fifth Amendment right not to incriminate himself.

Throughout this period, Mastro and his associates used various tactics to impede the Trustee's progress. These tactics included extensive objections to discovery requests, motions for orders to block or limit discovery, last-minute postponements of scheduled depositions, motions to appeal rulings in favor of the Trustee, a motion to transfer the adversary proceeding from the bankruptcy court to the district court, and a motion to intervene in the lawsuit by one of Mastro's friends. The Trustee's requests for information or cooperation from Mastro and his co-defendants have been ignored or rejected. The Trustee has been forced to serve dozens of subpoenas to obtain information from other sources because Mastro and his wife refused to provide the information themselves. The Trustee has been forced to file at least four motions to compel discovery, including motions against Mrs. Mastro and the Belizean defendants. These motions and subpoenas could have been avoided with reasonable cooperation.

In May 2010, the Trustee was successful in obtaining a ruling that Mastro's transfers of assets into trusts were invalid with respect to his creditors because the trusts were "self-settled." This ruling resolved issues that were the subject of extensive briefing and argument over the preceding two months. It was a critical ruling because it gave the Trustee control of the assets in the Mastro trusts. The ruling established the Trustee's authority to challenge the liens and other claims asserted against the assets. After the ruling, Mastro requested permission to file an immediate appeal. The Trustee opposed Mastro's attempt to appeal the ruling, and Mastro's request was denied.

At the time of the court's ruling in favor of the Trustee on the motion for partial summary judgment, the bankruptcy court also ruled that two diamond rings the

Trustee sought to recover were the separate property of Linda Mastro. The Trustee reserved his right to appeal this ruling. The Trustee contends that on the date of bankruptcy, the rings were the property of the Belizean trust rather than Linda Mastro.

Following the court's ruling regarding ownership of the trust assets, the Trustee pursued his efforts to eliminate the claims against the known trust assets, and to determine whether there were other concealed assets.

When the adversary proceeding was filed, there were two deeds of trust, totaling \$15 million, against the Medina residence. The holder of one of the deeds of trust (in the amount of \$3 million) reconveyed the deed of trust shortly after being named as a defendant in the adversary proceeding. The named beneficiary of the larger deed of trust (in the amount of \$12 million) was a Monaco company named Concept Dorssers. That company is owned by Harry Dorssers, a friend of Mastro and Hazelrigg. During discovery, the Trustee's lawyers were able to obtain testimony that one of the documents on which Dorssers relies was created after the bankruptcy was filed, rather than nine months earlier as stated on the document. Nonetheless, Mastro and Dorssers continue to insist that the \$12 million deed of trust is valid.

In June 2010, the Trustee uncovered evidence of a secret bank account maintained by the Mastros. Documents obtained in response to the Trustee's subpoenas to banks and credit card companies revealed the existence of a previously undisclosed bank account at JP Morgan Chase. The Mastros ran nearly \$1 million through the secret account. They used the account to pay for their Bentley and Rolls Royce and their trips to Europe and other expenses of their lavish lifestyle. The

bankruptcy court concluded that the Mastros perjured themselves by denying that any such account existed.

The Trustee followed up on information provided by JP Morgan Chase and, in August 2010, obtained records showing that Mastro made secret purchases of gold totaling more than \$330,000 between March 2009 and January 2010.

In August 2010, Mastro filed a motion seeking to limit his personal liability for the value of property he (and his wife) should have turned over to the Trustee, and for other losses the Mastros have caused the bankruptcy estate. The Trustee opposed Mastro's motion. On September 24, the court denied Mastro's motion. The court ruled that, in addition to recovering the houses and other property, the Trustee is entitled to pursue a personal judgment against Mastro and his wife based on claims in excess of \$6 million.

In August 2010, the Trustee sold the Clyde Hill house (one of the houses Mastro transferred into the "irrevocable" trust) pursuant to authorization of the bankruptcy court. The sale of the Clyde Hill house produced net proceeds of \$1,769,470.18. Defendant Avatar Income Fund I LLC asserted a claim to all the net sale proceeds based on a deed of trust on the Clyde Hill house. The Trustee held the proceeds of the sale pending a ruling by the court on Avatar's claim.

Also in August 2010, defendants Concept Dorssers and Avatar Income Fund I LLC filed summary judgment motions seeking to enforce deeds of trust on the Medina residence (Dorssers), and the proceeds of sale of the Clyde Hill house (Avatar).

The Trustee filed opposition to both motions, arguing that the Concept Dorssers and Avatar deeds of trust are invalid. The Trustee also filed cross-motions for summary judgment against Dorssers and Avatar.

On October 27, 2010, the court denied all pending summary judgment motions. Trial was scheduled to begin on March 8, 2011.

In December 2010, the court approved the Trustee's proposed sale of the Medina residence. The sale closed on December 8, 2010, with net proceeds of approximately \$8,359,000. Concept Dorssers asserted a claim to the proceeds based on the \$12 million deed of trust. Another creditor, Terry Durst, asserted a claim to the proceeds of the Medina residence on the theory that he was a beneficiary of the \$12 million deed of trust executed in favor of Concept Dorssers. The amount of the Durst claim exceeded \$10 million.

On December 13, 2010, Concept Dorssers filed a motion requesting that Durst be made a party to the adversary proceeding. Mastro and Durst joined in the motion, arguing that Durst should be permitted to assert a secured claim against the Medina residence as part of the adversary proceeding. The Trustee opposed the motion, arguing that Durst's claim had no merit, that the bankruptcy court and the District Court had denied previous efforts by Durst to join the case, and that permitting Durst to join would delay the trial date. After reviewing the parties' positions, the court scheduled a separate evidentiary hearing on Durst's claim to have a secured interest in the Medina residence. The evidentiary hearing was scheduled for February 25, 2011.

On February 14, 2011, Mastro's attorney advised the Court that Mastro had suffered a traumatic head injury and would be unable to attend or participate in the trial. Counsel for Mastro and defendant Linda Mastro requested a substantial continuance of the trial date and filed a motion for appointment of a guardian ad litem for Mastro. The Trustee did not oppose the appointment of a guardian ad litem, but did oppose any significant delay in the trial.

On February 17, 2011, the Trustee entered into a settlement agreement with defendant Avatar Income Fund I LLC. The agreement provided that the bankruptcy estate would be paid \$750,000 from the proceeds of the sale of the Clyde Hill house. The remainder of the sale proceeds would go to Avatar. Judge Barreca approved the settlement by order dated March 24, 2011.

On February 25, 2011, Judge Barreca conducted a one-day evidentiary hearing on Durst's claim to have a secured interest in the Medina residence. Durst testified at the hearing and was cross-examined by counsel for the Trustee.

On March 4, 2011, Judge Barreca rejected Durst's claim of a secured interest in the Medina residence. On March 8, Judge Barreca denied the motion by Concept Dorssers to join Durst in the adversary proceeding. Durst is seeking to appeal Judge Barreca's rulings. The Trustee is opposing Durst's attempts to appeal.

On March 15, 2011, the Court appointed former Supreme Court Justice Faith Ireland to act as Guardian Ad Litem for Michael R. Mastro in the adversary proceeding. The Court re-scheduled the trial to begin on April 18, 2011, and to continue on selected dates through July 2011. The trial is to the Court without a jury.

On March 29, 2011, the Guardian Ad Litem filed a motion to employ legal counsel and asked the Court to order the Trustee to set aside \$100,000 of funds from the bankruptcy estate to pay the Guardian Ad Litem's fees and the fees of her legal counsel. The Trustee opposed the Guardian Ad Litem's motion, arguing that her fees should be paid by the debtor, not by the bankruptcy estate. The Court denied the Guardian Ad Litem's motion by order entered April 11, 2011.

The Trustee requested medical records regarding Mastro's condition from the Guardian Ad Litem. Initially, she refused to provide such records. On April 15, 2011, the Trustee was able to obtain medical records relating to Mastro's condition pursuant to an agreed order entered by Judge Barreca.

The parties engaged in a settlement mediation on April 18, 2011. The mediation was unsuccessful.

Trial began on April 19, 2011. At the beginning of trial, Mastro's counsel announced that Mastro would not present a defense at trial. Negotiations followed regarding the appropriate remedy given Mastro's position.

On April 25, 2011, Mastro and the Guardian Ad Litem, through their counsel of record, stipulated to entry of judgment against Mastro for all relief sought by the Trustee. The stipulated judgment voided Mastro's transfer of houses, jewelry and other property into trusts in August and September 2008, and awarded monetary judgment against Mastro and his marital community in excess of \$7 million relating to transfers into and out of the Mastro trusts, and for failing to turn over property to the Chapter 7 Trustee. Mastro also was ordered to turn over property belonging to the

bankruptcy estate, including gold, jewelry, and furnishings, fixtures and wine from the Medina residence.

Believing that Mastro was competent to testify, the Trustee filed a motion on May 2, 2011 seeking, among other things, an independent medical examination of Mastro, and an order requiring the Guardian Ad Litem to explain why her services should not be terminated. Three days later, the Guardian Ad Litem admitted that Mastro was competent to testify, and asked to be removed as Guardian Ad Litem. Judge Barreca entered an order terminating the Guardian Ad Litem's responsibilities on May 6, 2011.

On May 9, 2011, the Trustee received confirmation from Mastro's attorneys that Mastro intended to refuse to answer questions at trial by invoking his Fifth Amendment right not to incriminate himself.

The trial is continuing on the dates scheduled by the Court. The Trustee has called witnesses, including the debtor's wife, Linda Mastro, and the debtor's son, Michael K. Mastro. The Trustee also has submitted transcripts of depositions taken of Mastro and Hazelrigg in which they have repeatedly declined to answer the Trustee's questions based on the Fifth Amendment.

The Trustee recently filed motions asking the court to set aside the earlier summary judgment ruling in favor of Linda Mastro regarding ownership of two diamond rings, and to preserve the rings and other assets pending final judgment in the case. The Trustee's motions are scheduled to be heard on June 10, 2011.

Trial presently is recessed until June 17. When trial resumes on that date, the Trustee's counsel will continue with his examination of Linda Mastro.

Rigby v. Hazelrigg, et al.
Adversary No. 10-01134

On March 9, 2010, the bankruptcy Trustee filed an adversary proceeding to collect amounts due on promissory notes and guaranties executed in favor of Michael R. Mastro by three obligors: Thomas R. Hazelrigg, III, Scott Switzer, and Centurion Financial Group, LLC. The amount due on the promissory notes and guaranties exceeds \$70 million. The Trustee has already obtained judgments on several of the notes. The judgments total in excess of \$12.5 million.

Prior to the bankruptcy, Mastro lent more than \$34 million to Hazelrigg, and to entities with which Hazelrigg was affiliated. Hazelrigg's business partner, Scott Switzer, guaranteed more than \$22 million of Hazelrigg's promissory notes to Mastro. Switzer also granted Mastro a deed of trust against Switzer's multimillion dollar residence as security for some of the debt.

On June 24, 2009, Mastro and his business partner, John Mastandrea, signed an agreement purporting to transfer a number of promissory notes from Mastro to Mastandrea. The Hazelrigg notes were among the notes Mastro purported to transfer to Mastandrea. The agreement further purported to release Hazelrigg from all liability to Mastandrea on the Hazelrigg notes. The agreement provided that Mastro was assigning the notes to Mastandrea "on condition that no collection action against Thomas R. Hazelrigg III is commenced on any obligation he owes or guaranteed."

The Trustee challenged the purported asset transfers from Mastro to Mastandrea, alleging that they were avoidable as preferential and fraudulent transfers.

Faced with the Trustee's claims, Mastandrea stipulated to entry of an agreed judgment avoiding any purported transfer or assignment of assets from Mastro to Mastandrea under the June 24, 2009 agreement. On March 25, 2010, the Court entered an Agreed Judgment re-vesting in the bankruptcy estate all assets purported to be transferred or assigned from Mastro to Mastandrea, including the Hazelrigg notes.

On April 20, 2010, the Trustee filed an Amended Complaint to name additional parties.

In response to motions by Hazelrigg, Switzer and other defendants, the Bankruptcy Court dismissed certain claims in the Trustee's Amended Complaint. The Court ruled that only persons who actually benefited from the transfers could be sued by the Trustee, and that other persons could not be held liable based on claims of aiding and abetting or conspiracy. The Court ruled that some of the Trustee's fraudulent transfer claims lacked sufficient detail, but allowed the Trustee to file a Second Amended Complaint to add more detail, which the Trustee did on September 10, 2010.

On July 9, 2010, the Trustee filed a motion seeking summary judgment against Hazelrigg, Switzer and Centurion Financial based on the promissory notes and guarantees. These defendants argued that the motion was premature and that they did not owe the amounts alleged. On August 11, the Court continued the hearing on the Trustee's summary judgment motion for 90 days to permit discovery on the Trustee's claims.

In November 2010, the Trustee renewed his summary judgment motion on two of the six Hazelrigg promissory notes. Hazelrigg opposed the motion, but the

Court rejected Hazelrigg's defenses. On December 13, 2010, the Court entered partial summary judgment against Hazelrigg in the amount of \$9,524,405.

The Trustee sought and obtained another summary judgment on a third Hazelrigg note. On February 2, 2011, the Court entered judgment against Hazelrigg, Switzer, and Centurion Financial in the amount of \$3,020,829.

The Trustee recently filed a summary judgment motion seeking judgment on the remaining three Hazelrigg notes. The Trustee's motion seeks judgment against Hazelrigg for an additional \$64 million. The motion also seeks judgment against Centurion Financial for \$45 million of that amount. The motion is scheduled for hearing on June 10, 2011.

The Trustee has made numerous document requests in this proceeding, most of which have been met with extensive objections from defendants. Consequently, the Trustee sought and obtained several orders compelling discovery. The Court has entered orders requiring Switzer, Centurion Financial, Hazelrigg, and two of Hazelrigg's adult children to produce documents requested by the Trustee. The Trustee's requests are designed to obtain information relevant to the Trustee's claims and to uncover information about Hazelrigg's assets. Hazelrigg has taken the position that he has no assets, but the Trustee is continuing his efforts to uncover assets to satisfy the judgments in this case.

The Trustee has taken depositions of Hazelrigg and Centurion Financial. During his deposition, Hazelrigg repeatedly refused to answer questions based on his Fifth Amendment right not to incriminate himself.

The Trustee has filed a motion seeking a continuance of the July 5, 2011 trial date on the remaining claims in the case. The Trustee is requesting a six-month continuance due to defendants' delay in producing documents, and in order to investigate claims by SAME Investments Co., LLC, a Hazelrigg creditor who recently intervened in the case. The Trustee's motion for continuance is scheduled for hearing on June 10, 2011.