

Attachment A

Excerpt from October 12, 2007 hearing.

7acPsecM

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----X

3 SECURITIES & EXCHANGE
4 COMMISSION,
5
6 Plaintiff,

v.

04 civ. 2322 (GEL)

6 UNIVERSAL EXPRESS, INC., et.
7 al.,,
8 Defendants.

9 -----X

New York, N.Y.
October 12, 2007
2:50 p.m.

10
11 Before:

12 HON. GERARD E. LYNCH,
13
14 District Judge

15 APPEARANCES

16 BY: LESLIE HUGHES,
17 BY: JULIE LUTZ,
Attorneys for Plaintiff

18 STILLMAN & FRIEDMAN, P.C.
Attorneys for Defendant Neuhaus
19 BY: JOHN B. HARRIS

20 TIFFORD & TIFFORD, P.A.
Attorneys for Defendants Altomare and Gunderson
21 BY: ARTHUR W. TIFFORD,
BY: LAWRENCE GARVEY

22

23

24

25

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

□

7acPsecM

1 APPEARANCES: (continued)

2 AKERMAN SENTERFITT, LLP
 Attorneys for Defendant Sandhu
 3 BY: JJASON PICKHOLZ,
 BY: MARVIN PICKHOLZ
 4

5 DILL DILL CAR STONBRAKER & HUTCHINGS, PC
 Attorneys for Defendant Mendiratta
 6 BY: JOHN A. HUTCHINGS,
 BY: HARRY WISE
 7

8 Also Appearing:

9 JANE MOSCOWITZ, Receiver
 10
 11

14 (In open court; case called)

15 MS. HUGHES: Good afternoon, your Honor, my name is
 16 Leslie Hughes. I represent the plaintiff, United States
 17 Securities & Exchange Commission.

18 MS. LUTZ: Julie Lutz for plaintiff SEC.

19 THE COURT: Ms. Lutz, good afternoon.

20 MR. TIFFORD: Arthur W. Tifford on behalf of Mr.
 21 Altomare and Mr. Gunderson.

22 Your Honor, I don't know how to announce, relative to
 23 the corporation itself, since it is in receivership, but the
 24 receiver is here, in the event the Court needs to address the
 25 subject of any representation of the corporation itself.

SOUTHERN DISTRICT REPORTERS, P.C.
 (212) 805-0300

□

3

7acPsecM

1 THE COURT: Okay. Good afternoon Mr. Tifford.

2 And I understand also that you have got an issue with
 3 respect to a conflict with, continuing to represent Mr.

1 Now, if there is something more specific, we may get
2 there yet. But as I read it, the big story here is, apparently
3 people were taken by surprise by the fact that Mr. Mendiratta
4 switched sides here, and now that you know it, well, I guess
5 you are along the way to whatever cross-examination is
6 appropriate for someone in that situation.

7 MR. J. PICKHOLZ: Your Honor, two quick comments on
8 the documents.

9 When we do an in-camera review acceptable to us, if
10 you look at -- when you look at Ms. Hughes's declaration that
11 she submitted, paragraph three talks about the very meeting she
12 had with Mr. Mendiratta. First thing is, she admits that it
13 was to consider a proffer by Mr. Mendiratta of information that
14 he could testify about if he were called as a witness at trial
15 by the SEC.

16 I intended to use the information to take Mr.
17 Mendiratta's deposition and prepare to present his testimony at
18 trial.

19 With regard to the notes, these notes contain factual
20 statements. I didn't only ask about -- one of the things I
21 asked about was who have you consulted with about your
22 deposition. Did anyone tell you what was going to be asked.
23 His lawyer is Mr. Hutchings, not Ms. Hughes.

24 So I would ask your Honor to keep that in mind, that I
25 did specifically ask those questions. And I was told no.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

□

28

7acPsecM

1 THE COURT: That's going to be something that bears on
2 the man's credibility.

3 If we've got, you know, if he testifies and, among
4 other things says, gee, I said this at the deposition, but that
5 was inaccurate, you know, apparently you now know it is
6 inaccurate, you can confront him with that. And, you know,
7 that's something that, if that's the way it plays out, I will
8 be in a position to consider as to how it affects his
9 credibility.

10 But it sounds like, you know, that -- that is, he told
11 you he didn't have such meetings.

12 Again, Ms. Hughes, I am not accepting this as fact, it
13 may -- we will see what actually happens at the deposition, but
14 hypothetically he said at the deposition, I never had any
15 meetings with anybody except my lawyer. And you now have a,
16 certainly, a good-faith basis to suggest that that was false.
17 What more do we need? We know that now. And so I think we
18 have presumed this issue. Unless there is anything else that
19 we need to worry about, I think we can turn to the contempt
20 side of things.

21 MS. HUGHES: Your Honor, may I just raise one thing?
22 Plaintiff's request talked about four documents. The fourth
23 had to do with our settlement correspondence with Mr.
24 Hutchings, as Mr. Mendiratta's attorney. And his argument
25 didn't address that.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

29

7acPsecM

1 I don't know whether your Honor wants to review those
2 in-camera also, or not.

3 Our position is, they are not admissible.
4 Inconsistent statements in settlement discussions, under 408
5 don't come in.

6 THE COURT: Yes, settlement discussions are
7 privileged, in effect, under federal rules.

8 Again, unless somebody has something further to say
9 about it, I think we have exhausted this subject. I think I
10 have ruled on what remains an open issue, that I am going to
11 look at these things to verify whether they are work product.
12 And if they are not, one kind of thing might happen, if they
13 are, then, you know, I will see whether I need any further
14 explanation on whether there is something in there that makes
15 it unfair for it to be withheld, or that trumps the
16 work-product privilege.

17 At this point that's the only relief that I am
18 granting with respect to the Mendiratta situation. All right.

19 MR. HUTCHINGS: If I may just address the Court
20 briefly before the Court moves on to the contempt issue.

21 Would it be appropriate for, at least the parties that
22 are potentially having to go to trial here, to discuss the
23 pretrial submission date?

24 THE COURT: Yes, right. What can we do? The trial
25 date is November 20 something.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

30

7acPsecM

1 MS. HUGHES: 26th, your Honor.
2 We had proposed everyone having the materials to you
3 by November 5.

4 THE COURT: If that's fine with the parties, that's
5 fine with me.

6 Let me just try and focus for a moment on the trial
7 preparation.