

EXHIBIT 2

Unofficial Copy Office of Marilyn Burgess District Clerk

Hearing
January 16, 2024

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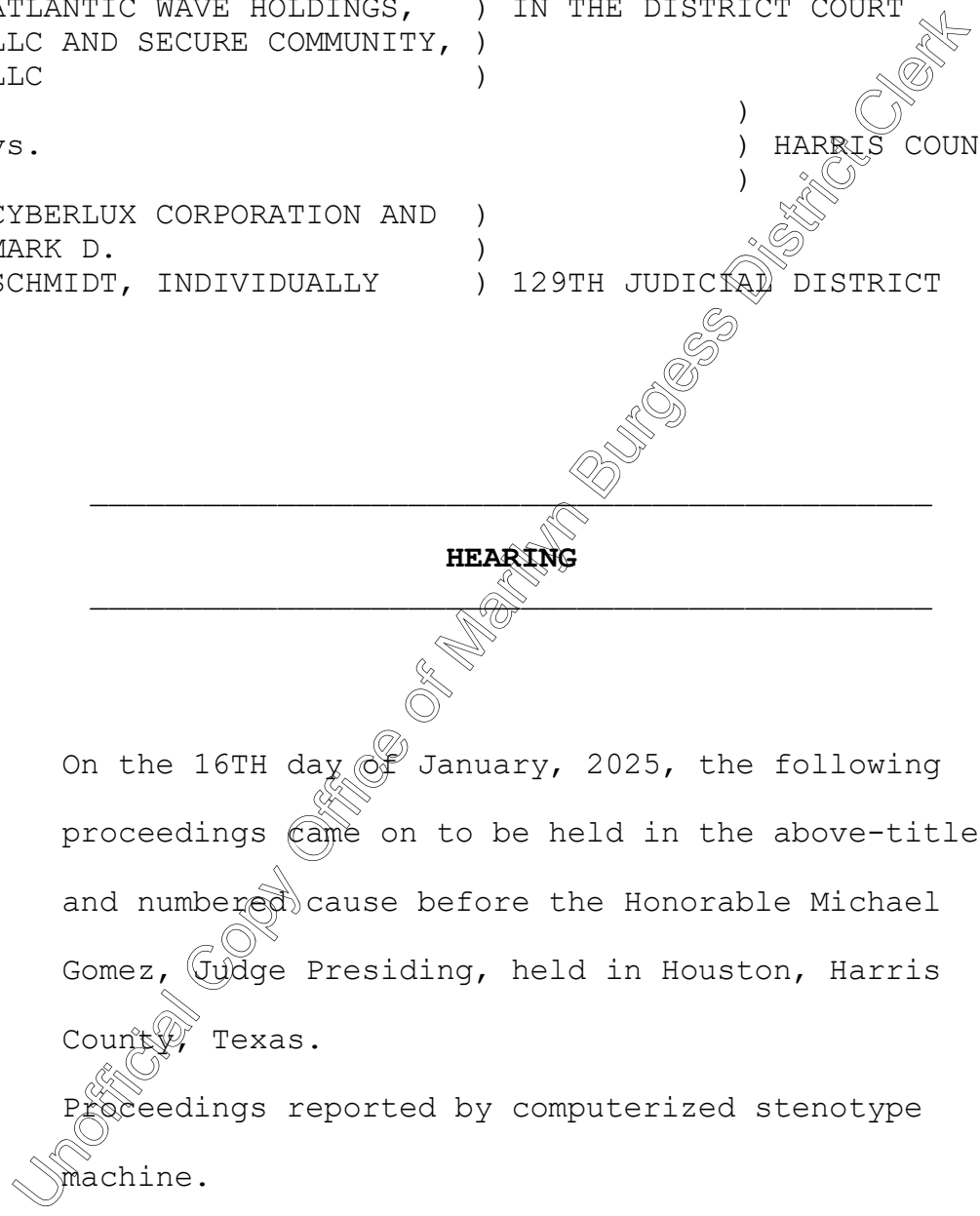
REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS,) IN THE DISTRICT COURT
LLC AND SECURE COMMUNITY,)
LLC)
vs.) HARRIS COUNTY, TEXAS
CYBERLUX CORPORATION AND)
MARK D.)
SCHMIDT, INDIVIDUALLY) 129TH JUDICIAL DISTRICT

HEARING

On the 16TH day of January, 2025, the following
proceedings came on to be held in the above-titled
and numbered cause before the Honorable Michael
Gomez, Judge Presiding, held in Houston, Harris
County, Texas.

Proceedings reported by computerized stenotype
machine.



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1 THE COURT: Court's on the record, Cause
2 No. 2024-48085, Atlantic Wave Holdings, LLC versus
3 Cyberlux.

4 Will everyone, please, introduce
5 themselves for the record?

6 MR. GRADY: Good afternoon, Your Honor.
7 Shawn Grady for Atlantic Wave Holdings. And my
8 co-counsel, Travis Vargo, is here, as well.

9 MR. PENNETTI: Alex Pennetti for Cyberlux
10 and Mark Schmidt.

11 MS. CLARK: Katharine Clark on behalf of
12 Cyberlux and Mark Schmidt.

13 THE COURT: So how can I help you today?

14 MR. VARGO: Well, I believe there's a
15 couple matters that are set for today. One is an
16 application of appointment of post-judgment receiver
17 under Texas C.P.R.C. 31.002, the turnover statute. And
18 the other one is a request for access to the premises.

19 In this case there's a written motion.
20 There's also ample evidence inside the docket that would
21 support the appointment of a receiver. The -- to the
22 extent that it's deficient, we would also ask for access
23 to a premises. Because in the debtor's response,
24 they're saying, Well, there's no evidence attached to
25 the application of what's at that premises.

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1 Well, so we said, Okay. Well, let's go
2 look at the premises. And then there's obviously
3 opposition to that, as well.

4 So I think what the Court is going to find
5 is that it falls within the purviews of the -- I think
6 it's the *Klinek* case that's the Fourteenth Court of
7 Appeals and its progeny, which really stands for the
8 proposition that when a judgment debtor starts to put up
9 roadblocks and hurdles to gain the information that
10 could be attached to an application to appoint receiver,
11 the equities of justice militate toward the appointment
12 of a receiver.

13 Because you can't, on one hand, block
14 someone from obtaining evidence for their application
15 and then, on the other hand, file a response that says
16 they have none.

17 In this instance, Judge, we have
18 supplemented to the docket their quarterly filings,
19 which establish and show that they have an interest in
20 the subsidiary, at least one. We have a witness that's
21 on Zoom that is present to authenticate it, if the Court
22 would indulge us and to the extent that you prefer not
23 to rely on the *Klinek* case.

24 And in addition to that, we would
25 establish that their discovery responses are nil. We

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1 sent out post-judgment discovery, and we got objections
2 and a Motion for a Protective Order to some of the
3 discovery. That is not an excuse to provide us
4 responses to the remainder of the discovery.

5 If someone -- if someone propounds 50
6 requests and you have objections to 22 of them, you
7 would still have an obligation to respond to the
8 remaining, you know, 18 or 28, whatever the math comes
9 to there -- 28. And in this instance that was not done.

10 Yet, they're here resisting a receiver;
11 and we would submit that the application should be
12 granted.

13 MS. CLARK: Your Honor, Katharine Clark on
14 behalf of Cyberlux Corporation.

15 We dispute the statements that are in the
16 papers before the Court today, in particular that go to
17 the heart of the matters with respect to the motion to
18 enter property and with respect to the receiver. But
19 I'd like to talk about the discovery first, because from
20 our prospective, that's a watershed issue here.

21 We -- it is true, the parties are in a
22 dispute with respect to discovery, primarily because
23 Cyberlux is a business that has contracts that involve
24 the United States Government, the Department of Justice,
25 and military operations in the Ukraine conflict. And so

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1 there's very sensitive information that the plaintiffs'
2 discovery touches.

3 And so we have a Motion for Protective
4 Order before the Court that is -- speaks directly to our
5 concern. Because the parties, try as we may, have not
6 been able to get to an agreement about what a protective
7 order might look like in this case.

8 We also, as part of that Motion for
9 Protective Order, have disputed the scope of this
10 discovery because it is not post-judgment. It is almost
11 exactly the duplicate of the discovery that's pending in
12 the active litigation matters in Virginia.

13 But in an effort to try to resolve
14 discovery and make progress, we've been willing to set
15 aside those issues with respect to scope and proceed
16 with discovery as long as we can get some form of
17 protective order that is relatively fulsome, Your Honor.
18 What we proposed is essentially the form from the
19 federal district court here in the Southern District of
20 Texas. And we just have not been able to get to an
21 agreement.

22 And so from our perspective, if we can get
23 to a resolution on the motions that are already fully
24 briefed before Your Honor and are on submission to
25 Your Honor, then we can have discovery proceed in

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1 earnest. And so that's our position with respect to
2 discovery.

3 With respect to the merits of these
4 motions --

5 THE COURT: So on discovery, there's
6 really no objection post -- vis-a-vis post-judgment,
7 right? You can't make objections as long as it relates
8 to post-judgment collection efforts, right?

9 So to the degree that doing merits on
10 something else, I can see how that might be an issue.
11 But if it's related to what do you own, the things that
12 I would assume that they're interested in, there really
13 is no objection that you can make, right?

14 So either you turn it over, or you don't.
15 And if you don't turn it over, then it's a problem. So
16 you can't hide your assets. To the degree that you're
17 hiding what you own, what you have, then it's a problem
18 because then it justifies the appointment -- well, I
19 don't think there's any problem with an appointment of
20 receiver.

21 I think the concern is on a Motion for
22 Turnover, right. And there is some case law that
23 makes -- that's problematic, right, in terms of turnover
24 orders and specificity and those things -- things of
25 that nature.

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1 But that being said, I do agree with the
2 concept that, Look, if you're not telling us what you
3 have and you're hiding your assets, then that
4 specificity requirement can't be met; and you can't
5 really hold the receiver responsible -- or the applicant
6 responsible for the failure to provide that information.
7 So it weighs against the denial of a Motion for
8 Turnover.

9 So that's just sort of -- so I agree with
10 those sort of guiding principles. So to the -- if the
11 issue is, Look, we're not willing to turn over because
12 we're concerned about them giving it to third parties, I
13 don't have a problem with that conceptually. I don't
14 know what the problem is on a protective order.

15 What's your issue?

16 MR. GRADY: Your Honor, I can speak to
17 this.

18 They did submit a protective order from
19 the Southern District. It has an attorney's eyes only
20 provision on there. And, you know, we don't -- I don't
21 understand this business, and I need -- my client needs
22 to see the documents, simple as that. But we have
23 made --

24 THE COURT: So why does your client need
25 to see the business?

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1 MR. GRADY: They need to see the documents
2 from, you know, their production, you know, to see -- to
3 make sense of it and to make decisions.

4 THE COURT: Why, from a collection
5 standpoint?

6 MR. GRADY: Well, for settlement purposes,
7 I think, mainly; but, also, I think --

8 THE COURT: I need to understand, like --
9 so I understand if we're -- again, if we're just talking
10 about your typical post-judgment discovery, which is,
11 you know, your financial statements, your bank accounts,
12 your stuff, then why would your client need to see that?

13 MR. GRADY: Well, to evaluate --

14 THE COURT: I mean, those actual
15 documents.

16 MR. GRADY: Well, I think to evaluate the
17 financial condition to determine the -- you know, the
18 value --

19 THE COURT: What's -- I mean, again --

20 MR. GRADY: You're telling me they don't.

21 THE COURT: I don't know why they need to
22 see those specific documents.

23 MR. GRADY: Right.

24 THE COURT: If they have ten gold coins,
25 why does your client need to see the document that says

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1 they have ten gold coins?

2 MR. GRADY: Right. And I guess some of it
3 I don't know exactly as far as the operations go. You
4 know, they manufacture drones; and so I don't know -- I
5 mean, financial statements, yes.

6 MR. VARGO: Judge, in this instance this
7 is a business that frankly we're lawyers and that we
8 don't know and our clients are engaged in a similar
9 industry. Giving client access to the documents would
10 provide -- at this point, in the absence of a receiver,
11 would provide --

12 THE COURT: Understood. Look, so I don't
13 have a problem with a receiver.

14 MR. VARGO: Yeah.

15 THE COURT: So I think you can get a
16 receiver today.

17 MR. VARGO: Okay.

18 THE COURT: So the issue is turnover,
19 right?

20 MR. VARGO: Certainly.

21 THE COURT: So the issue is -- you know,
22 and I know -- I know they're kind of two peas in a pod.
23 And the turnover order is the order that they turn over
24 nonexempt assets, right?

25 MR. VARGO: Correct.

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1 THE COURT: And generally -- the order
2 doesn't have to be specific, but the basis for the
3 order -- there's case law that says, You need to tell us
4 what those nonexempt assets are before you get that
5 turnover order, right?

6 MR. VARGO: Yep.

7 THE COURT: And then there's case law that
8 says --

9 MR. VARGO: Then the exceptions.

10 THE COURT: And then the exception. And I
11 don't know which Court of Appeals. But like if the
12 judgment debtor is hiding from you, won't respond to
13 discovery, then how the heck are you supposed to know,
14 right? So how are the heck are you supposed to identify
15 specific assets? They're obviously hiding something.

16 So that gives the -- that lends -- that
17 provides at least the legal basis to sort of relax that
18 requirement of specificity. And I may not be
19 elaborating the -- I may not be explaining the actual
20 legal threshold because I don't have the case in front
21 of me, but I think both sides are probably familiar with
22 it.

23 So I don't -- we don't need to spin our
24 wheels. Like, they just need to tell you what they
25 have. If they're not going to tell you what they have,

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1 I'll enter a turnover order; and you can go fight at the
2 Court of Appeals or mandamus. But I anticipate it's --
3 this is common sense. This is not hard.

4 So if they won't turn over the stuff
5 because you won't give them a protective order, give
6 them a protective order. If they're saying everything
7 is attorney's eyes only, we can come back and figure
8 those things out.

9 But if you're just -- again, if you need
10 to show it to your receiver, who I assume is someone who
11 has some sort of financial accounting or expertise, then
12 they probably have what they need. If there's something
13 specific that you need to know or see, then -- I just
14 don't see where your client really needs to get
15 involved, right?

16 I can understand from a liability
17 perspective, right, understanding causation, what kind
18 of business they're in, that kind of thing. But I don't
19 see why they need to see those documents.

20 MR. VARGO: With a receiver, the receiver
21 can go collect the judgment; and I believe that we agree
22 with you insofar as we wouldn't need to see the
23 documents because the receiver as a neutral can handle
24 those items.

25 Without a receiver, our client is in a

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1 position to assist us in figuring out how to target
2 assets to use to satisfy the judgment. So that's why we
3 would need to give our client access to documents
4 without a receiver.

5 But if the Court is inclined to grant the
6 turnover receiver, then clearly we don't need to -- our
7 client doesn't need to see documents. It would
8 alleviate all the concerns.

9 MS. CLARK: Yeah, I just need to
10 understand -- I'd like to make at least a more specific
11 record. Because from where I sit, I think we sit in --
12 we're of the same mind, that if we can get a protective
13 order, it breaks the law jam. We can go forward with
14 discovery.

15 We've had deposition dates scheduled
16 saying, Let's just get a protective order. We'll have
17 these depositions. We didn't get agreement on
18 protective order. Depositions didn't proceed.

19 So we're not resisting discovery for the
20 sake of resisting, Your Honor. We want to have this
21 discovery. We want to let this proceed with respect to
22 post-judgment collection. And that's why we brought the
23 motions before the Court, to try to break the law jam.

24 So if we can get past that today,
25 Your Honor, then what Cyberlux deserves is an

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1 opportunity to let them get this discovery; and if that
2 doesn't provide them the information that they need with
3 respect to the turnover, et cetera, then we can come
4 back. Their Motion for Turnover then becomes properly
5 supported.

6 But before today, and very different from
7 the *Klinek* case, Your Honor, we have not been so
8 resistant and obstreperous to this Court that we should
9 be sanctioned, essentially, with a receiver being
10 appointed.

11 THE COURT: Well, I don't want to conflate
12 two things. A receiver is different from a turnover
13 order. I understand that that prevents -- so I can
14 appoint a receiver; and then we get to custodia legis,
15 right? Everything becomes property of the Court. So
16 you -- you're basically -- that's what I want to get to.

17 We get that. You don't have to turn
18 anything over right now. They can identify the assets.
19 The receiver can come back, file a Motion for Turnover.
20 You own 20 planes. Turn those over, right? You can
21 identify those specific assets.

22 But I can appoint a receiver. The Court
23 always has the option to appoint a receiver. The
24 concern is and where the law is -- where there are
25 potential issues is the turnover. And there are

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1 specific statutes that deal with that, and there's
2 specific interpretations of those statutes that talk
3 about the turnover of specific nonexempt assets.

4 And before the Court orders that those
5 nonexempt assets be turned over, generally there has to
6 be some sort of showing, assuming that it's contested in
7 this case, right? And so I don't mind appointing a
8 receiver. Now, I don't know -- I mean, it will be
9 limited in terms of its powers; but they can get -- they
10 basically take this case from you, the post-judgment
11 case from you; and they'll be handling going forward.

12 But they're -- you know, they're
13 generally -- they'll set up the depositions. They'll
14 start doing post-judgment discovery, and then they'll be
15 imbued with certain powers. But I won't order the
16 turnover of certain assets at this point, if you want
17 that.

18 MR. VARGO: What assets would you turn
19 over if they weren't identified and if there's not a --
20 I'm a little lost. If you could maybe phrase it
21 differently, so I could at least educate -- counsel with
22 client on this.

23 THE COURT: Well, have you spoken to a
24 receiver?

25 MR. VARGO: I'm sorry?

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1 THE COURT: Have you spoken with your
2 receiver?

3 MR. VARGO: Yes. It's Robert Berleth.

4 THE COURT: What does Berleth want?

5 MR. VARGO: I have not posed that
6 question. I posed, Are you willing to serve?

7 Yes.

8 He was thinking, like most receivers -- I
9 do receivership work, as well. So I'm very familiar
10 with it. You call somebody and says, Do you want a
11 Chapter 31 turnover receivership in Cause No. X?

12 What's the dollar amount?

13 It's seven figures.

14 Absolutely.

15 That was the conversation.

16 THE COURT: So I just need to know with
17 that guidance what you want to do. Do you want to get
18 the discovery? Do you want a receiver? You want both?
19 I'm not going to give you a turnover today, if they're
20 willing to provide discovery subject to a protective
21 order.

22 MR. VARGO: So even practicing in this
23 area, I'm not familiar with what you're referring to
24 about getting a receiver but not a turnover.

25 THE COURT: Typically, they're hand in

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1 hand; but I can give you everything but the turnover at
2 this point of the nonexempt assets. So I can appoint a
3 receiver to whatever it is that you want to do. Let's
4 see.

5 So under 31.002, the Court may, one, order
6 the judgment debtor to turn over nonexempt property,
7 right? That's one thing I can order.

8 MR. VARGO: Uh-huh.

9 THE COURT: Two, apply the property to the
10 satisfaction of the judgment. That's another thing I
11 can order. Or, three, appoint a receiver to the
12 authority to take possession of nonexempt property, sell
13 it, and pay the proceeds to the judgment creditor to the
14 extent required to satisfy the judgment, right?

15 So I can do those three things or, right?
16 So I can do a turnover order, I can apply property
17 satisfying the judgment, or I can appoint a receiver.
18 Usually you appoint a receiver and a turnover order.

19 MR. GRADY: So a receiver would not be
20 able to levy bank accounts, for example? Or would they,
21 in this order that you're --

22 THE COURT: I can't order the turnover --
23 so under -- I don't know. What year is this?

24 So under --

25 MR. VARGO: The statute hasn't changed

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1 since 2017, that I'm aware of. So it should be the same
2 one.

3 THE COURT: Under (h), a court may enter
4 or enforce an order under this section requires a
5 turnover of nonexempt property without identifying in
6 the order the specific properties subject to turnover,
7 right? So I don't have to identify the specific
8 property; but in order to get the turnover order, you
9 generally have to identify the specific property, right?

10 That's generally how the courts of appeals
11 have addressed it. So you generally have an affidavit
12 that said they have these nonexempt property that are
13 subject to turnover, and so I want an order -- a
14 turnover that says they have to turn it over, right?

15 And so I guess what I -- I think the
16 benefit -- what I think you can and generally I'm -- you
17 know what, why don't we do it this way. Why don't you
18 talk to your receiver and see what he wants to do and
19 then figure out if he wants to be appointed receiver,
20 but I don't grant a turnover.

21 MR. VARGO: I think his question at that
22 point is going to be, Well, then what am I doing; and
23 how am I compensated?

24 MR. GRADY: Can we pay him hourly? Could
25 we pay -- because if they can't seize anything, I was

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1 just thinking about the practical aspect of payment for
2 the receiver. And so if they're only in power to do
3 discovery -- but maybe we can pay them hourly to do that
4 if that -- you know, there's no rule against that. But
5 we need some financial compensation. But I think it
6 does solve the discovery probably totally.

7 MR. VARGO: Well, we wouldn't be paying
8 anybody by the hour, because the judgment debtors would
9 be paying them.

10 MR. GRADY: True.

11 THE COURT: Right.

12 MS. CLARK: Your Honor, if I may, I just
13 want to talk -- cite to a case that -- I think that the
14 Section 31.002(a), which is the preliminary subsection
15 of this statute that we're all talking about today, it's
16 the preliminary requirement to (b) and (c) and all that
17 come next.

18 And that requires that there be a showing
19 that there are nonexempt assets that can be levied. And
20 so I think that getting a receiver in this instance puts
21 the cart before the horse. I mean, we can have --

22 THE COURT: It says "or."

23 MS. CLARK: Excuse me?

24 THE COURT: It says "or."

25 MS. CLARK: In part (b), it does,

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1 Your Honor. But part (a) is just a sentence, full stop
2 with a period. And in *Tanner versus McCarthy*,
3 274 S.W.3d 311, 323, they talk about the fact that even
4 as to 31.002(h), that just because of the way that the
5 statute is written, it does not eliminate the
6 fundamental preliminary requirement that the conditions
7 of subsection 31.002(a) must first exist.

8 And that is an opinion out of the Houston
9 First District Court of Appeals in 2008.

10 MR. VARGO: And the exception to that is
11 Your Honor already stated with the *Klinek* case. And I
12 can give you the citation for purposes of the court
13 reporter is going to be -- hold on. Hold on.

14 THE COURT: Have you identified any
15 nonexempt property?

16 MR. VARGO: We are prepared to with our
17 witness, and it's on the docket. So --

18 THE COURT: I mean, you just have to give
19 me something.

20 MR. VARGO: Sure.

21 THE COURT: And the turnover would be
22 limited to whatever that thing is. But you get your
23 receiver.

24 MR. VARGO: It's --

25 THE COURT: I mean, it's -- I mean, you

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1 just got to tell me one thing.

2 MR. VARGO: Right. Just --

3 THE COURT: I mean, if the order says I
4 get to do more than one thing, you're going to have a
5 problem; but that gets us there.

6 MR. VARGO: Sure. It's going to be the
7 subsidiary named Catalyst Metalworks [sic], which has an
8 office and a manufacturing facility located at
9 21631 Rhodes Road, Spring, Texas 77388. This is a
10 21,450-square-foot facility with a renewable three-year
11 lease with one and a quarter years remaining.

12 THE COURT: So what are you seeking?

13 MR. VARGO: We're seeking a turnover of
14 that -- of the subsidiary.

15 THE COURT: So -- what kind of business
16 entity is it?

17 MR. VARGO: Well --

18 MR. GRADY: Manufacturer.

19 THE COURT: I mean, no, what kind of --

20 MR. GRADY: Yeah, it's an LLC, I believe,
21 Your Honor. Actually, I don't know that for sure.

22 Your Honor, this is a -- Plaintiffs'
23 Exhibit 2 is an operating report of Cyberlux, which is a
24 corporation. And as a corporation, it discloses its
25 income in this. This report is dated September 30th,

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1 2024. It is an operating income. So it is getting cash
2 flow. It's getting sales.

3 And so that is evidence -- some evidence,
4 more than a scintilla, that there is nonexempt property.
5 And so the income alone -- but they also disclose that
6 facility that's manufacturing drones, I presume, in
7 Spring, Texas.

8 And what page was that?

9 MR. VARGO: 28 of the PDF.

10 MR. GRADY: Page 28 or 18?

11 MR. VARGO: 18 of the document, PDF 28.

12 MR. GRADY: PDF 28.

13 MR. VARGO: It's on the Court's docket.

14 It was attached to the original petition to enforce
15 foreign judgment. And it was authenticated there.

16 MR. GRADY: The report, the quarterly
17 report is not.

18 MR. VARGO: No, no.

19 Yeah, plaintiff would like to offer that
20 today, Your Honor. We intend to offer that through our
21 witness.

22 MS. CLARK: Are you offering it now or --

23 MR. VARGO: Well, we need to call our
24 witness and -- if we may, Your Honor.

25 MS. CLARK: We have significant objections

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1 to that as evidence, Your Honor. It's a consolidated
2 statement on its face. The parties who created that are
3 not here, Your Honor. It's not a sworn document. It
4 can't be authenticated. It's not self-authenticating.
5 It's hearsay within hearsay. It's based on multiple
6 reports, again, on its face. It was prepared for a
7 different purpose.

8 If what we're talking about is admitting
9 that evidence just to show that we have a leased
10 facility in Spring, Texas, Your Honor, at the address
11 described, we can stipulate to that. And I can
12 stipulate to it from my own personal knowledge. I
13 personally prepared the amended lease for Cyberlux and
14 Catalyst related to that space.

15 THE COURT: And what do you have there?

16 MS. CLARK: They have -- there's a
17 declaration by our client, Your Honor, that demonstrates
18 that what's in their warehouse -- it's a big warehouse
19 facility. You know, they're noncontiguous; but there's
20 two warehouse units, wherein drones that have been
21 manufactured are stored.

22 And those drones are property of the
23 United States Government. They have been prepared
24 pursuant to a government contract, and there is an
25 inventory of those items. And, again, Your Honor, we

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1 are willing to have them come on property and look at
2 all these things; but we can't have that done without
3 notification to our landlord, the owner of our building,
4 and the U.S. Government or our contract counterparty.

5 So we'll stipulate that that is our
6 building in terms of pursuant to a lease and that there
7 are items inside that building, but it's our position
8 that that property cannot be levied. It can't be
9 executed upon. It cannot be taken, because it's not our
10 property. So that is our position, and we've been very
11 clear about that, Your Honor, before today.

12 MR. VARGO: So given the stipulation, we
13 move to appoint receiver. She just testified and
14 stipulated to the asset. It's the leased premises. A
15 lease is an asset.

16 MS. CLARK: I don't see how a lease is
17 something that can be -- you know, you can go and levy
18 against it; but for whatever it's worth, I mean, I -- it
19 is what it is, Your Honor. I just -- I don't think
20 that's what we're -- this is not productive in terms of
21 getting to an endpoint to the case, and so -- but yeah,
22 it's -- again, it's --

23 THE COURT: So -- hold on. We'll go off
24 the record for a second.

25 (Discussion held off the record)

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1 THE COURT: The Court is back on the
2 record.

3 So I've been tendered a copy of
4 Plaintiffs' first set of requests for admissions to
5 defendant.

6 Did they respond to that, the RFAs?

7 MR. PENNETTI: Sorry, Your Honor?

8 THE COURT: I'm assuming they responded to
9 the RFAs?

10 MR. PENNETTI: Judge, we have a Motion for
11 Protection pending. We asked for a hearing on that.
12 Mr. Grady didn't give us availability. Your first
13 availability when I asked for the hearing was actually
14 Monday of this week, and I never got a substantive
15 response on that. And then we engaged on a variety of
16 other motion --

17 THE COURT: So you haven't responded to
18 the RFAs?

19 MR. PENNETTI: No.

20 And, again, Your Honor, as Ms. Clark
21 pointed out, those are not standard post-judgment RFAs
22 anyways. They're outside the scope. The scope of
23 post-judgment discovery is relevant to the collection
24 efforts. And most of those, as you'll see, are not.

25 MR. VARGO: Admit that Cyberlux has not

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1 been awarded any direct contracts to the
2 U.S. Government, No. 8. So it sounds like an asset to
3 me. Just need one of these to create an asset, and they
4 didn't respond to any of them.

5 MS. CLARK: Respectfully, that would
6 create the absence of an asset. Yeah, these are not
7 post-judgment.

8 THE COURT: So is there -- are you
9 asserting that -- obviously, you mentioned that the
10 drones located at the leased premises are property of
11 the United States Government. The nature of these
12 discovery requests seem to suggest that you have -- that
13 there may be other concerns related to the United States
14 Government.

15 MS. CLARK: There may have been with
16 respect to the underlying litigation, Your Honor. That
17 I'm not privy to. I was not involved in the Virginia
18 litigation, which has restarted. There are four matters
19 pending in Virginia.

20 Like I say, this discovery is exactly the
21 discovery that's been propounded there. So I don't know
22 what it suggests. I think you can -- I have some
23 guesses when I read it; but I honestly don't know, Your
24 Honor. I --

25 THE COURT: But some of these aren't

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1 problematic, right? I mean, if you're trying to figure
2 out -- admit that Catalyst Machineworks is a
3 wholly-owned subsidiary of Cyberlux Corp.

4 MS. CLARK: Right.

5 THE COURT: That's not a problem.

6 MS. CLARK: No, it's not. And it's in
7 our -- that's in our disclosure. I mean, there's some
8 of this stuff that they know; and we -- Your Honor,
9 you're right, we should have responded to the things
10 that were not objectionable and --

11 THE COURT: And to the degree that you're
12 going to object, you should say, you know, it's merits
13 based -- it's --

14 MS. CLARK: Right. We put our objections
15 within our motions for protection. But, again, we
16 should have -- best practice would definitely have been
17 to do a separate document, Your Honor. But we have been
18 focused on trying to get them the deuces tecum and the
19 depositions, and that's where our areas of focus have
20 been in our conferences. But beyond that, Your Honor, I
21 understand.

22 THE COURT: And I understand some -- part
23 of it, too, is it may be dual purpose. I mean, some of
24 these can potentially be used in other litigation, but
25 that's not necessarily -- you talk about the Virginia

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1 litigation, and I'm not familiar with it.

2 But if you have -- if fraudulently
3 transferred assets, right, and they want to know what
4 you own, when you transferred it --

5 MS. CLARK: Yeah.

6 THE COURT: Misrepresentations that were
7 made regarding ownership or whatever, yeah, they
8 could -- that's not necessarily -- I mean, collection is
9 a very broad umbrella, because then he could --
10 potentially a receiver, they could file fraudulent
11 transfer claim against somebody else that you may have
12 transferred assets to that they would need that they
13 would be entitled to get discovery on those issues in
14 post-judgment discovery because it's about what you
15 owned --

16 MS. CLARK: Right.

17 THE COURT: -- and how you may have
18 misrepresented what you owned or how it was transferred
19 or -- so I don't know that that's necessarily a problem.
20 I think -- so on -- let me see.

21 MS. CLARK: But to the extent that they
22 are for this dual purpose, Your Honor, or with respect
23 to the substantive operations, the day-to-day operations
24 of the business, or anything else, that is why we asked
25 for -- okay. If we're going to go full scope, not

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1 really worry so much about what these questions ask but
2 get them the answers, then that's why the protective
3 order became the thing that was the most important.

4 And so, again, Your Honor, we've submitted
5 that. We've briefed it. It's before Your Honor, and --

6 THE COURT: So produce the last five years
7 tax returns, right, that's 2. Produce letters of
8 intent, asset purchase agreements. Produce documents of
9 sale of assets. Produce contracts. I don't know why
10 you would need security clearances.

11 What's the issue with the security
12 clearances?

13 MR. VARGO: Judge, I was affiliated with
14 this case a number of hours ago. So I couldn't tell
15 you, but what I can tell you -- what I can tell you
16 definitively, and more important than that, that's
17 obviously a misnomer. I don't believe that that is
18 probative for post-judgment discovery. It's not.

19 MR. GRADY: Well, I have a -- there's a
20 specific reason behind that one. They're claiming that
21 these drones, the U.S. Government has an interest; but
22 really they're just producing regular drones. They're
23 not, like, special -- you know, there's nothing special
24 about them. That's what I understand through my client.
25 I don't have any personal knowledge of this.

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1 And so we want to say, Okay. You keep
2 hiding behind this, you know, cloak of, like, Oh, this
3 is all secretive and the government is involved, but we
4 don't believe that to be the case at all. And so that's
5 what the discovery request -- as I understand it, that's
6 why it's there, to debunk what they're claiming to
7 protect themselves in post-judgment.

8 MR. VARGO: Where you were going earlier,
9 I mean, this pretty much -- it opens and it shuts fairly
10 quickly with RFA No. 7, Catalyst Machineworks is a
11 wholly-owned subsidiary of Cyberlux Corporation. That's
12 what we need the receiver over. Let's get to selling
13 it.

14 What we haven't heard at this hearing
15 today, and what I think Your Honor wants to hear is,
16 There's a judgment. How are you going to pay it? And
17 why shouldn't I appoint a receiver today? There are no
18 overtures that says, Here's the amount of money we're
19 willing to pay today. We don't need a receiver because
20 we have a plan to start paying you, and here's what
21 we're going to do.

22 We're not hearing that. What we're really
23 hearing is, Hold on. Let's mediate and talk about it
24 later. And besides talking about it later, let's
25 actually start to fight and re-litigate some sort of

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1 Virginia matter with all of the other stuff that has
2 nothing to do with financials.

3 As I stated earlier when I used the
4 hypothetical number of 50 requests and I said 22 of them
5 were -- let's just call it, don't need to be responded
6 to, they still could have responded to the 28. They are
7 not telling us where their assets are.

8 We have an asset right here that's ready
9 to be sold. We're not hearing, It's for sale. Okay?
10 We're not hearing, Why don't we jointly go sell this
11 together. You get your judgment payoff and pay us the
12 balance.

13 We're not hearing any of that. That's
14 what we should be hearing.

15 MS. CLARK: Well, Your Honor, as I've
16 said, we have paid this judgment down, from our
17 perspective, exactly in accordance with the settlement
18 agreement. The parties had litigation. They settled
19 the litigation. Part of the settlement said, Here's the
20 total we agree to settle, and we will pay it out over
21 time.

22 And we have done that. They don't agree.
23 They didn't like the timing on the payments. And so
24 they have commenced post-judgment discovery, collection
25 efforts. They've garnished bank accounts, half a

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1 million dollars worth. Maybe they've applied it to the
2 judgment. We can't tell because they keep saying,
3 Judgment is for a million, it's for 1.2, it's for 1.4.

4 They keep changing how much is owed to
5 them; but we have been making payments, Your Honor.

6 THE COURT: How much do they owe you?

7 MR. GRADY: Your Honor, my client witness
8 can testify to this and also about how they've been
9 evasive in their payments and how they've sold their
10 receivables to a factory company, when they didn't tell
11 us, in violation of the agreement we had.

12 Mr. Will Welter, he's the managing
13 director of Atlantic Wave, the plaintiff. He's on the
14 Zoom call; and he can testify directly to this,
15 Your Honor, if we can present him.

16 MR. VARGO: Off the cuff, I think I
17 remember reading it was 1.5, if I'm not confusing with
18 another case.

19 MR. GRADY: Yeah, I think that is
20 accurate.

21 THE COURT: 1.5 million?

22 MS. CLARK: There's a letter, Your Honor,
23 from counsel to Atlantic Wave in plaintiffs' filings
24 before Your Honor today. It was in their response, I
25 think they called it, at -- well, we don't have docket

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1 numbers in state court; but it was the last thing that
2 they filed before their witness and exhibit lists.

3 And it's a letter from counsel, J. Chapman
4 Petersen, Esquire. And in that, he talks about the
5 actual amounts owed under the judgment as of
6 October 31st, 2024. For some reason they bifurcate the
7 amounts as between Atlantic Wave Holdings at \$453,859.17
8 and Strikepoint at \$394,504.20.

9 And then there's a line item for, quote,
10 legal fees for \$371,307.60, even though the judgment
11 that they're seeking to enforce specifically lists out
12 attorney's fees; and they're \$177,126.19. And that
13 amount, Your Honor, was paid within a month of the entry
14 of that judgment.

15 So they claim in total, in their filings
16 before Your Honor, that \$1,219,671.97 is due under the
17 judgment. That's what the letter says. And then in
18 their motion, with respect to turnover, they say that
19 the respondents owe a balance in the amount of
20 \$1,430,551.30.

21 So what is owed under the judgment? That
22 is a question. It is changing what they say that
23 they're owed, why they say they're owed it. And from
24 our perspective, Your Honor, it is roughly \$800,000.
25 I'd have to open my computer and get to that exact

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1 amount, but it is nowhere near \$1.5 million.

2 THE COURT: So what do you think you owe?

3 MS. CLARK: Let me see, I have it here.

4 Mr. Welter.

5 MR. WELTER: Yes, Judge. Good morning,
6 Judge.

7 THE COURT: Yeah, is --

8 MR. WELTER: Oh, are you asking me, Judge?

9 THE COURT: Are you affiliated -- is he
10 affiliated with somebody?

11 MR. GRADY: He's the managing director --

12 MR. WELTER: Yes, Judge.

13 MR. GRADY: Yes, of the plaintiffs'
14 entity -- plaintiff entities.

15 THE COURT: Okay.

16 MR. WELTER: Can you hear me, Judge?

17 THE COURT: Yes.

18 MR. WELTER: Okay. So, first of all, when
19 she talks about the -- when counsel talks about the
20 attorney's fees, that was for the initial litigation,
21 Judge. The \$300,000 plus is we are -- under the
22 settlement agreement, we are entitled to collect
23 attorney's fees in collecting the settlement agreement.

24 I also need to correct counsel. They are
25 not current on their payments. The reason Mr. Petersen

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1 wrote that letter is they wired partial payments in
2 November and December; and in the description they put,
3 Settlement of all litigation, to try to sneak it through
4 and try to say that they are up to date.

5 But to answer your question, Judge, our
6 figures, which have been calculated in California
7 litigation, Virginia litigation, and Texas litigation is
8 approximately \$1.4 million.

9 THE COURT: And when you say the payments
10 they made in November and December, I'm assuming you
11 didn't accept those payments?

12 MR. WELTER: They were wired, and we wired
13 them straight into the trust account of the San Diego
14 counsel. And we also sent a letter immediately saying,
15 These payments are not being accepted.

16 And keep in mind, Judge, they hadn't made
17 payments on one account that they owe us since October
18 of 2023. They haven't made payments on the other one
19 since May of 2024. And our attorney fees are just
20 outrageous because every time we try to -- yesterday,
21 for instance, we spoke to them; and they said that they
22 wanted to try to negotiate a settlement.

23 And when we tried to call them back and
24 get details on what they wanted to do, before we knew it
25 they had filed a notice with the court saying that we

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1 agreed to sit down and negotiate and we wanted to call
2 this hearing off.

3 And we've literally been chasing them now
4 since around November of 2023.

5 THE COURT: On the --

6 MR. WELTER: On the judgment, collecting
7 the judgment.

8 THE COURT: On those accounts that you're
9 talking about, are those subsumed in that 1.4?

10 MR. WELTER: Yes, correct, Judge. All in,
11 all fees, all outstanding is 1.4.

12 THE COURT: On the -- the -- so the
13 attorney's fees that were actually granted by the court,
14 that's what counsel was alluding to; but what you're
15 referring to is additional attorney's fees occurred in
16 post-judgment and collection efforts.

17 MR. WELTER: Correct, Judge. The
18 attorney's fees that the Virginia court put in the
19 judgment, those were for attorney's fees for the initial
20 litigation to get the judgment.

21 THE COURT: Has anybody reduced those
22 attorney's fees and --

23 MR. WELTER: They did make a payment --

24 THE COURT: I'm sorry. I'm sorry. Reduce
25 those attorney's fees into the form of a judgment or an

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1 order or anything like that?

2 MR. WELTER: It was. It was reduced to
3 the judgment in the Virginia court. The judge did put
4 the attorney's fees -- they liquidated them and put them
5 in the judgment.

6 THE COURT: You understand what I'm
7 saying, right?

8 MR. GRADY: Yes. Yes, Your Honor. Yeah.

9 THE COURT: So are -- you're claiming --
10 it sounds -- and I asked him to explain it. I don't
11 want him to go too long, because I don't know -- you
12 probably would want to control what he says.

13 But in terms of -- so it sounds like this
14 300,000-dollar figure is attorney's fees that he's
15 expended in the course of filing different lawsuits to
16 try to collect on this; is that right?

17 MR. GRADY: Yes. I think there's another
18 order. It's not been -- it's not part of this
19 domestication. I mean, we just have this judgment,
20 obviously, for this proceeding. But he's got another
21 order, as I understand it. I'm not a hundred percent on
22 that; but that there is an order that supports the award
23 of these additional attorney's fees that he's referring
24 to, Your Honor.

25 THE COURT: And the judgment in this case

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1 was for how much?

2 MR. GRADY: 1.572 -- \$1,572,500.

3 THE COURT: And is it still -- has it been
4 reduced in any way? I mean, have they made any payments
5 on it?

6 MR. GRADY: I'd have to defer on my client
7 on that one.

8 THE COURT: It sounds like they made
9 payments in California.

10 This is domesticated. Which -- is it out
11 of Virginia?

12 MR. GRADY: Right. Originally entered in
13 Virginia and domesticated in California and Texas.

14 THE COURT: So it's domesticated in two
15 different courts. And so you're trying to collect in
16 California and trying to collect in Texas. It sounds
17 like they made some payments in the Virginia litigation?
18 You mentioned they paid attorney's fees.

19 Has that already been accredited?

20 MR. WELTER: Yes, Judge. The judgment was
21 for \$1.5 million in principal. And then on top of that,
22 the Judge ordered \$178,000, I believe, in attorney's
23 fees. And on top of that, she ordered them to pay the
24 three times that they were sanctioned by her for not
25 producing any documents, not one document in the initial

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1 litigation.

2 And since that time, Judge, the same judge
3 in Virginia, which they claim is -- has entered a stay,
4 the same judge has entered an additional order, a fourth
5 order, Judge, for another 9,000-dollar sanction for
6 improper -- and we can provide that judgment to you, as
7 well, Judge.

8 THE COURT: Okay. So it's -- 1.572500 was
9 the amount of compensatory damages. There's 170 -- in
10 addition, there was another 177,000 in attorney's fees.
11 Plus sanctions, I guess, for about 4,000, roughly, and
12 another 7,000, roughly, and then you have interest.

13 And so out of all of that, we're down to
14 1.4. Is that where we're at, it looks like? Not
15 include --

16 MR. WELTER: That's correct, Judge.

17 THE COURT: Not including what they wired
18 to you in California. It sounds like you didn't accept
19 that.

20 MR. WELTER: No. We gave them credit for
21 that. We gave them credit. We wrote a letter saying,
22 We're not -- it cannot be used as a settlement, but
23 we're going to give you credit to the outstanding
24 balance.

25 THE COURT: Okay. So the 1.4 --

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1 MR. WELTER: We gave them credit.

2 THE COURT: So the 1.4 includes even those
3 payments made in November and December?

4 NMR. WELTER: Yes, Judge.

5 THE COURT: How much were those payments?

6 MR. WELTER: They made one payment for
7 approximately -- their payments were -- on one account,
8 their payment was roughly \$21,000 a month. On the other
9 account, it was roughly \$18,000 a month. So they made a
10 payment in November, on November 27th, for \$11,000. And
11 then they made -- on December 1st, they made a payment
12 of \$18,000.

13 But they completely ignore the other
14 account, which was due 20 -- roughly \$22,000. And that
15 has not been paid since -- they haven't paid on that
16 account since October of '23.

17 THE COURT: Okay. I just want to get
18 through the -- I think we're good, Mr. Welter. I was
19 just trying to get a background. I want to get through
20 the discovery real quick.

21 They -- do you have a copy of the
22 protective order?

23 MR. WELTER: Judge, can I say one thing
24 about the protective order?

25 THE COURT: Yes.

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1 MR. WELTER: So on the protective order --
2 and sorry if I'm -- I'm an attorney, as well, Judge, and
3 just running the business as managing director.

4 But on the protective order, we couldn't
5 disagree on it. So we went above and beyond. We said
6 that instead of saying -- requiring one party to say
7 this is confidential, you know, and the other party
8 disagrees, we said that we would, under Rule 11 of the
9 Texas -- we would agree that we would hold the entire
10 deposition, everything in the whole deposition,
11 confidential for 30 days, which would give them a chance
12 to come to your court, Judge, and ask them -- ask you to
13 make decisions on this, whatever issues they had, and
14 then any objections that they -- and we also offered
15 them, Judge, that if they weren't able to get a hearing
16 before the Court within 30 days, we would extend it as
17 long as they could get a hearing.

18 And it just made it so simple, because
19 they're tangling the three separate state litigations
20 together. And if we enter a protective order in this
21 case, it's going to wind up -- we're not going to be
22 able to admit it in another case, the documents.

23 So the easiest way was we gave them more
24 than they were asking. And we said the entire
25 deposition, everything in the deposition, will be held

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1 confidential. And we will -- it will be held
2 confidential for 30 days or longer until they can go to
3 the Court and ask for and receive the appropriate
4 remedies.

5 Does that make sense, Judge?

6 THE COURT: I think so.

7 Do you have a copy of theirs?

8 MR. GRADY: Yes, Your Honor, right here.

9 THE COURT: I know we talked about AEO.

10 Is there a specific issue you have with it?

11 MR. GRADY: Just -- I think it's just the
12 AEO.

13 THE COURT: So the added --

14 MR. GRADY: I think that it's designed --
15 so there's some -- it's kind of a little bit technical,
16 but it's from the federal court. So it references, you
17 know, ECF and filings done under seal. We probably
18 should -- but other than that, it's fine, Your Honor.

19 THE COURT: Hold on.

20 MR. GRADY: It's in Section 9. It
21 contemplates using PACER, basically, or the federal
22 filing system.

23 THE COURT: The -- I'm going to -- I don't
24 have my own form, but I will use the 125th's. I'm going
25 to print it out. I'll let you guys take a look at it

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1 and then see if you have any changes. It has
2 confidential and AEO.

3 I understand there may be some
4 disagreement on those designations, but we can probably
5 hammer that out if we need to. I just want to get
6 documents flowing to you as soon as possible.

7 (Brief pause)

8 THE COURT: I'm going to give you, like, a
9 few minutes to take a look at this. We'll go off the
10 record.

11 (Discussion held off the record)

12 (Recess taken)

13 THE COURT: Anything for the protective
14 order?

15 MR. GRADY: Yes. Yes, Your Honor.

16 So --

17 THE COURT: We're back on the record.

18 MR. GRADY: Your Honor, the language looks
19 fine. We discussed with our client -- they've had
20 protective orders with attorney's eyes only in the
21 California and, I believe, the Virginia litigation.

22 And the production has shown, you know,
23 records from overseas companies that are specific to
24 their industry; and their lawyers have -- because of
25 their lack of familiarity with the industry, they're

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1 unable to evaluate it and -- as they've come to
2 determine that it's a total sham.

3 And so they look at it. Yes, they're able
4 to see it. Of course, they see P&Ls and all these
5 reports; but they're not able to understand that these
6 entities are not real. So in order to make that
7 determination, our client requests that they can see
8 that so that they can evaluate are these --

9 THE COURT: When you say they're not real,
10 what do you mean?

11 MR. GRADY: I mean the companies are not
12 real, I guess, or the -- or it's a sham. Maybe they're
13 formed; but they're not actually, you know -- you know,
14 what the financials are saying is not real. I don't
15 know anything more than that, but -- but, yeah, I
16 wouldn't be able -- you know, if you gave me some
17 financials from an LLC in, you know, whatever, Columbia,
18 I'm not going to know anything about if it's real or
19 not. I mean --

20 THE COURT: Right. But a lot of that you
21 could run down -- okay. A lot of that you could run
22 down in a deposition. But on the AEO documents that you
23 received in the California litigation, did you get those
24 designations removed; or did you --

25 MR. GRADY: You know, I'd have to defer to

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1 Mr. Welter. I don't know. I don't have any knowledge
2 about it.

3 THE COURT: Okay. Besides the practical
4 issue, is there any other issue on them?

5 MR. GRADY: No -- no, Your Honor.

6 MR. PENNETTI: We're fine with it, Judge.

7 THE COURT: Okay. I'm going to go ahead
8 and enter the joint confidentiality order. If for some
9 reason you need to change the designation, we'll have a
10 meeting on it. It will be a test, right? I mean, I --
11 it's like everything else. We'll see what they
12 designate AEO. If they're designating everything AEO,
13 it's a problem, right? So let's just see what happens.
14 But you're going to get the documents.

15 Counselor?

16 MR. VARGO: Because I came out of a Judge
17 McFarland AEO nightmare case that was a saga of
18 seven years, particularly because this is a
19 post-judgment scenario, I would advocate for a reversal
20 on the burden relating to the attorney's eyes only.

21 Specifically, I'd submit to the Court that
22 I believe that the withholding party needs to file a
23 motion to designate as attorney's eyes only, file it
24 under seal with the Court, and set a hearing.

25 It puts the onus on them to be drafting

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1 motions because they're the ones withholding the
2 documents pursuant to whatever it is that they're saying
3 is so confidential and proprietary and that we shouldn't
4 have, as opposed to us continuing to expend resources on
5 these items.

6 THE COURT: Response.

7 MS. CLARK: Your Honor, I just -- we had
8 time out there. Nothing was proposed to us. I think I
9 understand what he's saying, but I would love to see
10 what it really looks like on paper. I mean, if the
11 bottom line is, is that you want us to come to court but
12 we can mark them and they're going to remain AEO for a
13 time, I don't have a problem with that, Your Honor.

14 I don't think there's any issue with that.
15 I think we would have the burden to show they're AEO at
16 the end of the day no matter what.

17 THE COURT: So I -- look, it's
18 post-judgment. I don't think I've had an AEO
19 post-judgment discovery --

20 MR. VARGO: Exactly.

21 THE COURT: -- issue, ever. So my
22 assumption is you're going to have very few AEO
23 documents, unless they involve something that is a trade
24 secret, a privilege of some sort, some sort of national
25 security issue.

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1 But, like, financial stuff, I can see
2 maybe confidential or something; but AEO, I think, is
3 going to be -- so if you're marking everything AEO and
4 they show up and say, Hey, they marked, you know, all
5 these documents, you know, AEO and there's nothing --
6 it's just, like, your financial statements, yeah,
7 it's -- that's going to be -- that's going to be a
8 problem. So --

9 MS. CLARK: Understood, Your Honor.

10 MR. VARGO: Like a sanctionable problem?

11 THE COURT: I'm hesitant -- I'm sorry?

12 MR. VARGO: Like a sanctionable problem?

13 THE COURT: Potentially. I mean, if we're
14 going to spend hours and hours trying to untangle a
15 mess, the default should be there needs to be a good
16 reason why these are marked AEO, because that's going to
17 be a rare occurrence.

18 Again, you know, we're talking about the
19 government and maybe there's government contracts and
20 maybe there's provisions in there regarding how you make
21 these drones or something, I don't know, but I don't
22 think you care.

23 Like, a lot of this stuff is -- you're not
24 going to come up and say, There's -- I want to know how
25 to make these drones. Why didn't they tell us, right?

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1 I want these unmarked as AEO, right? I assume that's
2 not going to be what you're going to show up and say,
3 They need to take the AEO designation on that part of
4 this document that they gave me, right?

5 You're going to be focused on assets.
6 You're going to be focused on transfers. You're going
7 to be focused on corporate governments. You're going to
8 be focused on their stuff, where it's at; leases;
9 agreements; you know, purchases; sales; things of that
10 nature; bank accounts.

11 That's where you're going to have an
12 issue, and so -- and you're going to want to be able to
13 show anybody who's going to do any forensic analysis. I
14 don't know who you're going to have to follow up on --
15 who's going to try to figure out what's going on with
16 this company and what they're doing here.

17 It's not a -- I mean, it's 1.4 million. I
18 know that's a lot, but it's not a lot a lot. Like, I
19 mean, I don't know -- I have cases where people own a
20 5-million-dollar piece of property, right? You're -- we
21 just need to kind of see what they have.

22 MR. VARGO: Can I make another suggestion?

23 THE COURT: Yes.

24 MR. VARGO: There's a reluctance to -- I
25 forgot if they called it a tax or a surplus or an

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1 inefficiency. Basically, the receiver's fee that's
2 going to go on top that's going to make this too much or
3 whatever, right? The whole purpose of discovery is to
4 identify the assets that we're going to use -- get, use,
5 sell to discharge the judgment.

6 We have an asset right here that's
7 unequivocally and undeniable through the admissions that
8 are in the record, an asset of the defendant. We would
9 move for a turnover of that subsidiary asset today.

10 THE COURT: We can get there; but I just
11 want to deal with this, unless you don't want discovery.

12 MR. VARGO: Well, I would like discovery,
13 too; but there's an asset right there that we can sell
14 soon, like --

15 MS. CLARK: Well, there's no evidence of
16 its marketability; but, I mean, I think we should get
17 through this discovery point. That's what we've been
18 trying to do, Your Honor.

19 MR. VARGO: Well, marketability is a
20 different issue. It has value, and we would like to
21 recognize the value to discharge our judgment.

22 THE COURT: Understood.

23 I don't want to get sidetracked. I'm
24 just -- we're talking about stuff -- to the degree that
25 it's post-judgment and you need -- you're going to get

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1 compensated with attorney's fees, I'll award attorney's
2 fees to the degree that they -- it's post-judgment.
3 They should be complying. They should be giving you
4 stuff.

5 To the degree that you have to spend time,
6 write motions, do that thing, I'm going to award
7 attorney's fees, right? So you're going to get that
8 back to the degree you can get any of that back.

9 But we're spending a lot of time talking
10 about hypotheticals. Let's see what they do, and then
11 we talk about what happens. So I'll go ahead and enter
12 that order, and then we can move on discovery and then
13 we can move on to this other stuff.

14 So the Court -- what are the -- so what's
15 the outstanding discovery? So you have your first
16 request, and then you have -- you want to do an
17 inspection, and then you wanted to do depositions.

18 MR. GRADY: Yes, Your Honor.

19 THE COURT: What did you want to deal with
20 first?

21 MR. GRADY: Depositions.

22 THE COURT: So who are you looking to do
23 depositions of?

24 MR. GRADY: Three witnesses; Neill
25 Whiteley, Phil Tucker, and Mark Schmidt. Mark Schmidt

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1 is a party defendant, judgment debtor.

2 THE COURT: Mark Schmidt.

3 What's the concern about Mark Schmidt?

4 MS. CLARK: Your Honor, we -- there's not
5 a concern. We've tried to come up with dates.
6 Mr. Schmidt does travel internationally as part of his
7 business, given the conflicts overseas right now and the
8 nature of this business.

9 So we have asked that his deposition be
10 scheduled virtually, which I think is what is in their
11 Motion to Compel Depositions, Your Honor, is that all
12 depositions would be virtual. That's a change. They
13 want to have it in person. So that's been difficult to
14 arrange, Your Honor; but there's no issue with
15 Mr. Schmidt, now that we've got the protective order in
16 place, Your Honor.

17 THE COURT: What's his schedule?

18 MS. CLARK: I'm sorry. Say that again,
19 Your Honor.

20 THE COURT: What's his schedule?

21 MS. CLARK: What is his schedule? I don't
22 know; and he is overseas right now, Your Honor. So I
23 think he's -- it's the middle of the night, but I can
24 try to contact someone at the offices and get some
25 dates. Everything that we've proposed, I believe, were

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1 outside the range of the dates we had proposed in
2 January.

3 THE COURT: So I understand he's overseas;
4 but, like, generally, when does he come back? Where
5 does he live? What's the --

6 MS. CLARK: Your Honor, I don't know where
7 he lives. I believe that he is on the East Coast. The
8 company is in North Carolina. I believe he lives in or
9 around that area, but I don't know that. That's a
10 complete -- I'm just guessing. I don't speak with
11 Mr. Schmidt. That's not my client contact.

12 THE COURT: Who's your client contact?

13 MS. CLARK: I speak with their outside
14 in-house counsel, Mr. Charles Watts. And so I have
15 access to Mr. Watts. I don't know how much access he
16 has to his schedule immediately, but he could tell me
17 the answers to the questions you're asking.

18 THE COURT: When would you like his
19 deposition?

20 MR. GRADY: In the next 30 days,
21 Your Honor. And we would like it in person, as well.

22 MS. CLARK: I just think that's going to
23 be difficult, but -- I mean, and I don't understand the
24 necessity, especially given what we've lived through
25 through COVID. A deposition is a deposition, but --

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1 THE COURT: Is there a reason why you want
2 it in person?

3 MR. VARGO: My personal experience is that
4 I watch coaching go on and witness manipulation through
5 Zoom depositions.

6 MS. CLARK: Your Honor, I'm sorry. I have
7 to object because he has maligned not only at my client
8 this entire hearing on baseless accusations, but me
9 personally. I'm an officer of the court. I practice in
10 state court. I practice in federal court. That's not
11 the kind of lawyer that I am.

12 So I object to the way that he's
13 characterizing me as a lawyer and our client here today.
14 We're going to conduct ourselves pursuant to the rules
15 in any deposition that is scheduled.

16 MR. VARGO: I'm not sure what she heard,
17 and I wasn't referring to her. I said my prior
18 experience in another case led me to a desire to have
19 in-person depositions. I've never met these people in
20 my life. I've frankly never even heard their names
21 before today, and I have no reason to believe that they
22 have any issues going on ethically. So I'm not casting
23 any aspersions or direction.

24 THE COURT: Besides the coaching, do you
25 have any other issues? And I get it, right. You don't

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1 know who's in the room. There's all these other issues.
2 The -- this is kind of -- it's not a liability, right?
3 So we're just trying to get information, what you own,
4 that kind of stuff.

5 And so, it's not necessarily about trying
6 to get the words right. I mean, it's about -- and
7 that's going to be used at trial in front of a jury to
8 convince them that this person violated a legal duty,
9 right? So those concerns are probably not as important.

10 MR. VARGO: I understand. You asked why,
11 and I was answering the question.

12 THE COURT: I get it. And I'm not naive.
13 But here, outside that general concern, is there any
14 other need?

15 MR. GRADY: No, Your Honor. That's the
16 main concern.

17 THE COURT: Okay. Assuming this person is
18 not local, they're -- they don't live here. If you
19 want -- it sounds like it may be a little bit of a
20 burden for them to appear. I assume you want them to
21 appear here in person; is that right?

22 MR. GRADY: Yes, Houston, Your Honor.

23 THE COURT: You're pretty sure he can
24 appear via Zoom within the next 30 days?

25 MS. CLARK: Yes, Your Honor. I can't

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1 imagine why we couldn't find a time and a date in
2 30 days that we can present him. We've been able to do
3 that each time we've gone out looking for dates.

4 THE COURT: Okay. And let me table
5 whether it's in person or not for a moment.

6 Who are the other two folks?

7 MR. GRADY: Neill Whiteley and Phillip
8 Tucker.

9 THE COURT: Whiteley. And what's his
10 relationship to the case?

11 MR. GRADY: So there's been some confusion
12 or -- you know, we asked opposing counsel, you know,
13 their capacities and were told different things at
14 different times. I've got notes.

15 THE COURT: I'm sorry. Whiteley's
16 relationship, again, is what?

17 MR. GRADY: Well, we believe that they're
18 executives of Cyberlux and that they're represented by
19 same counsel over here.

20 THE COURT: Is that true?

21 MS. CLARK: No, Your Honor. And
22 Mr. Pennetti knows the details.

23 MR. PENNETTI: It's been our understanding
24 they've been consultants. I've conveyed that
25 consistently ever since this started. Both of them were

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1 represented by us until -- I think it was January 6th,
2 which was a -- I'm sorry, January -- let me look at my
3 calendar, Judge. I don't want to get this wrong.

4 THE COURT: Early this year?

5 MR. PENNETTI: It was Jan 5 is when they
6 retained independent counsel, and I found out about
7 that. So they have their own counsel now, but we
8 represented them up until then.

9 THE COURT: Okay. And then on -- these
10 are pending, right? These motions are pending?

11 MR. PENNETTI: Correct.

12 THE COURT: What's the concern --
13 understanding that they're not here, or it doesn't look
14 like they're here --

15 MS. CLARK: Here today or you mean in the
16 area? They are actually local.

17 MR. PENNETTI: I think they might be local
18 to Houston.

19 MS. CLARK: Yeah, they are.

20 THE COURT: Okay. What's the concern
21 about their appearance?

22 MR. PENNETTI: In person?

23 THE COURT: No, for depo.

24 MR. PENNETTI: Oh, I don't think there is
25 one. It was just the protective order issues.

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1 THE COURT: Okay. So you're fine with
2 both of them?

3 MR. PENNETTI: Yeah.

4 THE COURT: Okay. So 30 days, they can
5 appear in person?

6 MR. PENNETTI: I don't see why not.

7 THE COURT: Okay. So we'll order all
8 three in 30 days. The two local folks, they'll be in
9 person; and Mr. Schmidt via video deposition. If it
10 turns out it's a problem, he's not cooperative, then you
11 can come back and say, I want an in-person depo. So
12 that will be the -- that will be the potential sanction.

13 What's next?

14 MR. GRADY: Written discovery. We've got
15 requests for production, request for admissions. I
16 believe we have interrogatories, too.

17 MR. PENNETTI: That's right.

18 THE COURT: So I have RFAs 1 through 31.
19 Any of these you find highly problematic that you can't
20 answer yes or no?

21 MR. PENNETTI: Based on my recollection,
22 no. But let me -- I don't remember any that are highly
23 problematic. The ones that I point out, No. 9
24 references a government contract. And while I think my
25 clients did reference that contract online, I'm not sure

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1 to the extent that there's any confidentiality regarding
2 cancellation of the contract. So, I mean, that's the
3 only piece that I point out.

4 THE COURT: Right. I mean, I don't think
5 they're going to spend a lot of time on this. It's just
6 a question of --

7 MR. PENNETTI: No.

8 THE COURT: They're just trying to see if
9 you can admit certain facts. You can only use "yes"
10 answers, typically.

11 MR. PENNETTI: Yeah.

12 THE COURT: So you can't really use --

13 MR. PENNETTI: I think we're okay, Judge.

14 THE COURT: Okay. So we're good on the
15 RFAs.

16 On the request for production, you have
17 18; is that right? Or am I missing a page?

18 MR. PENNETTI: 18.

19 THE COURT: Any of these that are a
20 problem?

21 MR. PENNETTI: The tax returns, Judge.

22 And then --

23 THE COURT: Why are the tax returns a
24 problem?

25 MR. PENNETTI: Confidentiality. I mean, I

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1 agree with you they're entitled to the financial
2 statements and other documents that show assets, but tax
3 returns would be confidential.

4 MR. VARGO: There's nothing confidential
5 about tax returns in a post-judgment instance. He's
6 talking about pre-judgment.

7 THE COURT: Yeah, they're entitled to your
8 tax returns, assuming they're a defendant.

9 MR. VARGO: Correct.

10 MS. CLARK: I mean, we have objections
11 that are made to these pending before Your Honor. And I
12 don't know if you're wanting us to go through those
13 objections, if they're per the rules or --

14 THE COURT: You didn't file any objections
15 to these, right? You didn't respond with objections?

16 MS. CLARK: Yes -- we did respond with
17 objections, Your Honor, in our pleadings, yes. And very
18 specifically, especially with respect to requests for
19 production and the interrogatories. Because we
20 understood that those were their most important asks.
21 So, yes, we have responded to these with our objections.

22 THE COURT: There are no objections to
23 these specific requests that you served on the other
24 side; is that right?

25 MR. PENNETTI: That's right.

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1 THE COURT: Okay. I understand you filed
2 a Motion for Protection saying, Hey, we don't want to
3 produce documents; and we object to some of this stuff.
4 But you didn't file -- that doesn't count.

5 MS. CLARK: Well, okay, but we did not
6 serve it --

7 THE COURT: The only thing that counts
8 is --

9 MS. CLARK: We did not serve it on them in
10 that format, Your Honor; but they got served with our
11 response that had a detailed objection to these requests
12 per the rules.

13 THE COURT: The only thing that counts is
14 responses to requests for production and the objections
15 that you make therein.

16 MS. CLARK: Okay.

17 THE COURT: If you didn't do that, then
18 you didn't object. It's not any motions you file with
19 me. It's the actual objections you made to their
20 discovery requests.

21 MR. PENNETTI: Judge, I understand. The
22 only note I'd make is under 192.6, it expressly says a
23 Motion for Protection, we're not waiving objections.
24 That's expressly in the rule.

25 MR. VARGO: But there are no objections.

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1 MR. PENNETTI: Again, by filing a Motion
2 for Protection, you don't waive your objections. That's
3 what I'm saying is in the rule.

4 MR. VARGO: Right. And the rule would
5 contemplate a circumstance where you file a Motion for
6 Protection to object to these other objections, too. We
7 didn't see any of those objections.

8 THE COURT: Where in 192.6?

9 MR. PENNETTI: I'm pulling it up, Judge.
10 Sorry for the delay.

11 192.9(a). It's the fifth line, end of the
12 sentence.

13 THE COURT: I understand it says you don't
14 waive it, but it doesn't say that you've asserted it.
15 So filing a motion doesn't waive anything, but it sure
16 as heck doesn't assert anything either, right?

17 MR. PENNETTI: Well, I agree with that.

18 THE COURT: I mean, at least on the face
19 of -- based on that statement.

20 MR. PENNETTI: Based on that statement;
21 but based on that statement, it doesn't require us to
22 assert anything because of the motion pending, so long
23 as we have basis -- bases.

24 MR. VARGO: I think 197, 198 require you
25 to assert the objection, whatever the Texas rule

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1 relating to RFPs is.

2 196.3, subject to any objections stated in
3 the response. There's none stated in the response.

4 196.3(a), time for production on RFPs.

5 THE COURT: Understood. And the rules
6 kind of work together, and I could -- for example, RFAs,
7 the effect of not filing a response means you've
8 admitted them being admitted. I'm fine with the late
9 response on the RFAs.

10 Generally, it's required that you file a
11 response. So the protection and the motion doesn't --
12 you can't assert you -- I mean, you can; but it's
13 supplement to whatever you've asserted in your response
14 to the actual discovery requests. It's not in lieu of,
15 generally.

16 Now, there may be specific instances and
17 certain circumstances where you may be okay, like time,
18 manner, place, that kind of thing. Maybe you get to do
19 that. But, generally, if you have a substantive
20 objection to the actual motion -- to their discovery
21 response, you need to put it in the discovery response.

22 You can't just not file anything and then
23 file a motion or serve a response and say, I made a
24 motion. I didn't want to produce documents because I'm
25 objecting to this stuff. That's not going to be

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1 sufficient.

2 And so that being said, is there something
3 here that you have an issue with that you would like the
4 court to address?

5 MR. PENNETTI: Not at this time.

6 THE COURT: Okay. So you're fine with
7 producing documents responsive?

8 MR. PENNETTI: Yes.

9 THE COURT: Okay. So it looks like we're
10 good with 18.

11 Do we have anything else?

12 MR. GRADY: The site inspection.

13 THE COURT: Where are we on the site
14 inspection?

15 MR. PENNETTI: The only thing I'd say is
16 what's important with that is we'd have to have some
17 sort of protocol. It can be very basic, a record of
18 who's there, whether there's going to be photographs,
19 videos taken, a provision for exchange of those, and
20 then the fact that the inspection and anything
21 collected -- data collected there is subject to the
22 protective order, and that's all we ask.

23 And, again, I think we're generally fine
24 with that, so long as the real property owner and the
25 owner of the property and if we give them notice, I

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1 think that's fine.

2 THE COURT: So why does the landlord need
3 to know?

4 MR. PENNETTI: So I would say as a
5 practical perspective liability, I think the landowner
6 would want to know of third parties who aren't tenants
7 on the property; but that's just --

8 THE COURT: I mean, don't -- you're saying
9 that when somebody visits, you let the landlord know?

10 MR. PENNETTI: Well, I would characterize
11 it differently from a visit, Judge, but point taken.

12 THE COURT: The only reason I -- I'm fine
13 with you -- if you give the landlord notice. What I'm
14 concerned with is if the landlord says no, right? And
15 then we're going to come back and say, Well, the
16 landlord said he didn't want them on the property.

17 Well, I don't know why that would be an
18 issue. I would need to know why -- I guess you can tell
19 whoever you want that these folks are going to come
20 subject to a -- or pay a visit subject to an order, if
21 you want. But just like any invitee, it seems out of
22 the ordinary to say, Hey, we got to get the landlord's
23 permission for someone who's going to -- to visit our
24 property.

25 Definitely the tenant because they're the

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1 owner -- excuse me, they're the occupier and they have a
2 leasehold interest and a possessory interest on the
3 property. And so I've had at the reverse, where someone
4 has a suit against the landlord; and I'm, like, We need
5 to let the tenant know. We need to see if they have an
6 objection before we go in their apartment or the
7 warehouse. Because that's their stuff.

8 But I don't really see -- I don't really
9 see that as a --

10 MR. PENNETTI: Well, again, we're not
11 opposed to the inspection. We'd just -- we'd like a
12 reasonable protocol. That's all.

13 MR. VARGO: Can we specifically enumerate
14 what the protocol is again?

15 MR. GRADY: Well, so in our order we do
16 provide some provisions that -- photographs and videos,
17 limit it to three hours. We would ask to get it done
18 very soon in case, you know, they could theoretically
19 move, you know, property out in advance of the
20 inspection.

21 And so we feel -- and we do feel that's a
22 potential real risk. My client is concerned about that,
23 certainly. And so we'd like to get it done immediately,
24 like tomorrow. I mean, we're just going to walk around
25 and take photos; and there's no -- you know, no risky

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1 business here. I mean, it's just --

2 THE COURT: Right. And this is not
3 someone's house, right?

4 MR. PENNETTI: Right.

5 THE COURT: Where they live.

6 MR. GRADY: Right. Yeah.

7 THE COURT: This is --

8 MR. GRADY: There's no invasion of their
9 dirty laundry or whatever, yeah. So we just -- you
10 know, we just want to make sure and see what's in there
11 and that's it and get out.

12 MR. PENNETTI: I think that's generally
13 okay. We just want it to be subject of the protective
14 order in terms of what pictures and photos are taken for
15 purposes of whatever property in there might be subject
16 to a -- is subject to a government subcontract. That's
17 really it.

18 The only thing I'd ask in timing, Judge,
19 I'm probably going to be asked to go in person. I live
20 up in the DFW area. And next Sunday, I leave for
21 New York for expert depositions. I return Thursday
22 morning. So I'd ask that we not schedule it during that
23 time frame, but otherwise --

24 MR. GRADY: Well, Your Honor, he -- I
25 mean, you don't need counsel there. And that gives them

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1 time to move the stuff, which is exactly our concern --
2 reason for having it done quickly.

3 MR. PENNETTI: I don't really think this
4 is a --

5 THE COURT: Where's the warehouse?

6 MR. GRADY: In Spring, Texas.

7 THE COURT: And it's a warehouse, right?

8 MR. PENNETTI: That's right.

9 THE COURT: Can you describe it for me,
10 please?

11 MR. PENNETTI: It's a --

12 MS. CLARK: It's two units at an
13 industrial complex in the Spring, Texas area that -- I
14 can't remember the square footage, but they're
15 relatively large. I bet it would take a little while to
16 walk it, if that helps Your Honor. It's, like, Unit A
17 and D; and they're not contiguous. That's what I know.
18 I have not visited the site, but I've seen pictures.

19 THE COURT: Is it -- are people officed
20 there, or is it just a storage warehouse?

21 MR. PENNETTI: Predominantly storage.

22 MS. CLARK: I think -- yeah, I think at
23 one time it had manufacturing capability; but at this
24 point my understanding is that it's primary storage of
25 the produced product.

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1 THE COURT: So that's where they store
2 things. No business goes on there?

3 MS. CLARK: Yeah, they store the product
4 that is subject to the contract, right. That's my
5 understanding. I've never been there. I don't know,
6 but that's my understanding.

7 THE COURT: So there's no one officing
8 there?

9 MS. CLARK: No, I think there is someone
10 who offices there, Your Honor.

11 MR. PENNETTI: I don't know.

12 MS. CLARK: I do.

13 THE COURT: So there may be someone who
14 offices there?

15 MS. CLARK: Right. Right. I think they
16 have a little -- for example, I don't know where
17 Mr. Tucker and Mr. Whiteley office; but my understanding
18 is that if someone were to office there, it would be
19 those two gentlemen. So I don't know if they have a
20 hybrid situation. I just don't know those details,
21 Your Honor.

22 THE COURT: And you said it's two units?

23 MS. CLARK: Yes, Your Honor.

24 THE COURT: A and D?

25 MR. PENNETTI: Two separate buildings.

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1 THE COURT: Okay.

2 MS. CLARK: I believe it's A and D. I
3 didn't negotiate the lease. So -- but yeah, whatever
4 they are; but there's two.

5 THE COURT: Okay. So them visiting
6 wouldn't really be a disruption.

7 MS. CLARK: I don't think it's a
8 disruption to the operations, as we know them,
9 Your Honor, at all. I think the concern is it's a
10 government issue. We want to make sure we're not
11 breaching anything as it relates to the government. We
12 don't want to get sideways, but -- so that's our issue
13 with notice.

14 THE COURT: So they want to go tomorrow.

15 MS. CLARK: I've lost track of what day we
16 are.

17 THE COURT: Thursday.

18 MR. PENNETTI: Your Honor, if the client
19 approves, I can --

20 THE COURT: Can you call your client?

21 MR. PENNETTI: Sure.

22 THE COURT: If it's just a storage area --

23 MR. PENNETTI: No, I understand.

24 THE COURT: You want to take a five-minute
25 break to call?

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1 MR. PENNETTI: If you don't mind, Judge.

2 THE COURT: Yeah. Let's see if we can get
3 it done tomorrow.

4 You're available tomorrow?

5 MR. GRADY: Yes, Your Honor.

6 MR. VARGO: Somebody is going to be there.

7 MR. GRADY: Yeah, somebody, for sure.

8 Yeah.

9 THE COURT: I mean, that's what you asked
10 for.

11 MR. GRADY: Right. No, we will make sure
12 that -- yeah, no problem. Yeah, absolutely.

13 THE COURT: Counsel, I apologize. If for
14 some reason he's not available, kind of figure out why
15 and then what the availability is after. And then I
16 don't know what that is. I'm assuming it's sometime
17 next week. I understand that you may have some issues.

18 You said when? This Sunday you're
19 leaving?

20 VENIREPERSON: I leave Sunday, and I
21 return Thursday morning.

22 THE COURT: Do you have -- I assume you
23 have co-counsel or --

24 MS. CLARK: We could find someone who
25 might be able to come, Your Honor. We don't have a huge

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1 office in Dallas, but we have a few other people who we
2 could ask who are familiar a little bit with this case.

3 THE COURT: Okay.

4 MR. PENNETTI: I'll make the call, Judge.

5 THE COURT: Okay. We'll take a short
6 break.

7 (Recess taken)

8 MR. PENNETTI: Judge, I texted, e-mailed,
9 and called him twice. He hasn't responded yet.

10 THE COURT: Counselor, did you want to say
11 anything?

12 MR. VARGO: I sit all day. It's a habit
13 to want to stand up.

14 THE COURT: Do you see any issue with --
15 if I do it within the next three business days; is that
16 fine?

17 MR. GRADY: That's fine, Your Honor.

18 THE COURT: Like, Friday or early next
19 week sometime?

20 MR. PENNETTI: I think we can work that
21 out.

22 THE COURT: Okay.

23 MR. GRADY: Your Honor, there's one thing
24 that I -- it's my fault. There's two additional
25 witnesses. We didn't notice them yet. We were

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1 discussing dates with the other side. They're important
2 witnesses; Charles Watts, Chuck Watts, and Jimmy
3 Robinson, too. So we -- and that's it. That's all the
4 depositions. I forgot to mention those. My apologies.

5 THE COURT: That's fine. But you haven't
6 noticed them yet, right?

7 MR. GRADY: We have not. We were
8 discussing dates and trying to arrange it.

9 THE COURT: I'll just see if you folks can
10 work it out, and then the assumption is that they'll
11 provide you dates soon. And then you'll find a date
12 within the next -- within a reasonable time period.

13 MR. GRADY: Okay.

14 THE COURT: If they don't provide dates,
15 then we can have a conversation about it. But I'll let
16 you work together first.

17 MR. GRADY: Will do, Your Honor.

18 THE COURT: Okay. Let me go ahead and --
19 how much time did you need to respond to the discovery
20 requests?

21 MR. PENNETTI: Judge, may I have
22 two weeks?

23 THE COURT: Is that fine? Fourteen days?

24 MR. GRADY: Fourteen days, calender days?

25 THE COURT: Yes.

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1 I'm going to put January 29th. For the
2 inspection, by January 29th -- oh, I'm sorry. By
3 January 22nd.

4 Okay. So we are -- you requested a writ
5 of execution. Have you -- have you tried to --

6 MR. GRADY: We got possession of it, and I
7 believe it got FedEx'd to the constable in Spring, you
8 know, in the jurisdiction of the Spring warehouse. And
9 so it should be --

10 MR. VARGO: Just say no.

11 MR. GRADY: Huh?

12 MR. VARGO: Just say no.

13 MR. GRADY: What? No?

14 MR. VARGO: No, it hasn't been executed.

15 MR. GRADY: Oh, it hasn't been -- oh, I'm
16 sorry. I'm sorry. It hasn't been executed. I'm
17 getting a little tired. Sorry.

18 THE COURT: Okay. So you have an
19 application for turnover after judgment to appoint
20 receiver. We talked a little bit about why before. So
21 you have an outstanding -- or you believe an outstanding
22 judgment debt for about 1.4 million; is that right?

23 MR. GRADY: Yes, Your Honor.

24 THE COURT: Why is it that you need a
25 receiver?

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1 MR. GRADY: Well, the other side has shown
2 that they have been evasive with discovery; but, also --
3 of course, we have discovery orders today; but more
4 importantly, they've dissipated assets. They had an
5 agreement in place with us that they would give us a
6 percentage of the receivables; and then without telling
7 us, they sold that to a factory company.

8 THE COURT: So was this agreement the
9 settlement agreement on the Virginia judgment?

10 MR. GRADY: Exactly, Your Honor.

11 THE COURT: When was that entered into?

12 MR. GRADY: It was entered into, I think,
13 current -- around the time of the judgment, which is in
14 June of '23. And then I was informed by my client, who
15 could speak in greater detail, but that they learned
16 about this either in October or November about the
17 sale -- they had sold the receivables to the factor much
18 earlier in '24, I believe in March, and then -- but we
19 did not find out until late, you know, in the fall.

20 THE COURT: So you entered into a
21 settlement agreement June 15th?

22 MR. GRADY: Yes, that sounds right,
23 Your Honor.

24 THE COURT: Okay. So right after you got
25 the judgment, or right around?

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1 MR. GRADY: Yeah, around the time. I
2 think that's --

3 THE COURT: Because it says the judgment
4 was entered on June 23rd.

5 MR. GRADY: Right. That sounds accurate,
6 Your Honor.

7 MR. VARGO: Well, in response to your
8 question, one of the reasons we would need a receiver,
9 as counsel pointed out, there's an issue with potential
10 marketability. And given that's the case, number one,
11 it would behoove us to put a receiver in place that was
12 able to assist with the marketing efforts.

13 They've expressed grave concern relating
14 to these alleged confidential issues, attorney's eyes
15 only type scenarios. I can't think of any better
16 scenario than to have a court-appointed receiver,
17 neutral, selling the assets that they're complaining
18 about that are in need of this heightened protection.

19 THE COURT: Okay. And so what are those
20 assets that you have identified that you think they're
21 subject to turnover?

22 MR. VARGO: Well, for one, it's the
23 subsidiary that owns the contents of this facility that
24 we're going to inspect. That would be the low hanging
25 fruit. Beyond that, obviously, a receiver makes it much

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1 more economical to levy accounts as opposed to filing,
2 you know, however many garnishment lawsuits with service
3 on banks, liability for attorney's fees, banks, et
4 cetera. That's an issue.

5 Obviously, the dollar amount is seven
6 figures. It's not 50 grand. Those are just a couple
7 reasons why a receiver would be really helpful.

8 THE COURT: Response.

9 MS. CLARK: Your Honor, I'm not sure what
10 we're talking about when we say "receiver." Because if
11 we're talking about under the turnover statute, as I
12 stated -- and maybe it's just for the record because
13 Your Honor has a different view of the world, and that's
14 fine.

15 But under 31.002(a), those requirements in
16 the section of the statute of 31.002(a) must be
17 demonstrated, including with respect to nonexempt
18 property and the concerns that the Court has with
19 respect to a turnover order. And that is what the
20 statute says, and that is what the case law requires.

21 The relief allowed by Section 31.002(b),
22 therefore, may be granted only when the conditions of
23 Section 31.002(a) exists. And that's in the case that I
24 cited, Your Honor, earlier, which is *Tanner versus*
25 *McCarthy*, 274 S.W.3d 311. And we cite to that case in

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1 our papers.

2 And so, Your Honor, if we're talking about
3 the receivership under the turnover statute, we believe
4 that the predicate has not been laid. We believe
5 there's no evidence. There's no evidence of nonexempt
6 assets. While there may be evidence with respect to a
7 lease in Spring, Texas, that holds property, there's no
8 evidence with respect to whether that property is
9 nonexempt, whether they've attempted levy, whether they
10 can execute on it. It's just not before Your Honor
11 today. And so we would say that this request for
12 receiver is extremely premature.

13 And when I look, Your Honor, to their
14 proposed order appointing a receiver, it doesn't seem to
15 me that what they're really asking for is a turnover
16 receiver. What they're asking for is a receiver who
17 will come in and take over the business, including
18 changing the locks, including opening the mail,
19 including messaging every single creditor that we might
20 have or excuse me, vendor that we might have that
21 would owe us money, et cetera.

22 So they want to be able to, essentially,
23 take over the business, run it for the purpose only of
24 liquidating to this judgment, and no matter whether they
25 have evidence of what we have or don't have, et cetera.

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1 And I think, Your Honor, that is highly inappropriate,
2 far outside the turnover statute. And so we don't think
3 a receiver of any kind is needed.

4 The other thing, Your Honor, is that with
5 respect to, like, if we're talking about efficiency,
6 which I'm not aware of a receiver being able to be
7 appointed for efficiency sake, but if that's the case,
8 these -- this is not their first time trying to look for
9 assets of Cyberlux.

10 They have issued garnishments. They have
11 garnished -- I think I mentioned this at the top of the
12 hearing -- half a million dollars in money that our
13 client needed to operate its business. So they have
14 already been doing a lot of this work. They already
15 have access to the banks, as far as I understand, know
16 where they are.

17 This is a process that's -- they're just
18 repeating here in Texas, we believe, for harassment.
19 But nevertheless, Your Honor, I just don't see how a
20 convenience argument makes any sense when we're talking
21 about receivership.

22 And if Mr. Welter does come back to the
23 virtual stand, Your Honor, he has told Cyberlux that
24 it's his intention to put them out of business. And we
25 think that's what's really going on with respect to a

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1 receiver. And if you look at their form of receivership
2 order, that's what I see.

3 So we absolutely believe that there is no
4 evidence in this record that would support a receiver of
5 any kind, not a receiver with respect to the turnover
6 statute, and not for the purposes of simple convenience.

7 MR. VARGO: So with that, Judge, I don't
8 think --

9 MR. WELTER: That's not true, Judge.

10 THE COURT: No one has asked you anything,
11 Mr. Welter. So --

12 MR. WELTER: I'm sorry.

13 MR. VARGO: I think that counsel just made
14 a wonderful argument for having a receiver. What she
15 just said, just to repeat it, was that our client has
16 gone to great lengths to collect judgments
17 unsuccessfully against these people; and she --

18 MS. CLARK: That is not what I said. That
19 is not what I said. \$500,000 is not insignificant
20 effort.

21 THE COURT: Counselor -- will you please
22 let him finish, Counselor?

23 MR. VARGO: I let her speak.

24 I'm sorry, Judge.

25 She made it very clear that my client had

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1 worked tirelessly to discharge judgments and done so at
2 a very great expense unsuccessfully. That is a hallmark
3 of a receivership.

4 As far as the evidence that's on -- that's
5 on file, we covered this probably ad nauseam by now; but
6 RFA No. 7, this is a subsidiary. It is in the record.
7 We're even getting ordered to go look at the assets of
8 the entity that is the asset.

9 It shocks the conscience at this point
10 that we could even make the argument that there's
11 nothing being discussed that would satisfy 31.002,
12 because she clearly stipulated that there was a lease on
13 the record. It is a contractual right. A contractual
14 right is an asset.

15 There is discussion and an admission in
16 the record that the subsidiary company is an asset of
17 the judgment debtor. We know where the assets are. We
18 know what they are. We're seeking a turnover of the
19 assets that can be liquidated for discharge of the
20 judgment. It's really just that simple.

21 And as I stated before -- and, obviously,
22 if this is the direction that Your Honor wants to go --
23 we are scheduling depositions and inspections to go
24 identify additional assets that we can go take when we
25 already have evidence here today of an asset that we can

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1 go take and use and sell for the discharge of the
2 judgment.

3 I would submit that we don't have to do
4 that. If they want to pay the judgment, we can provide
5 them a payoff. If they don't want to pay the judgment,
6 then that's what the legal process is for; and that's
7 why we're here today.

8 There have been zero overtures of payment.
9 Instead, what we're hearing is contesting the amount
10 that's due, Motions for Protection, and scheduling other
11 items of inspections or depositions in the future to
12 continue identifying assets but not actually doing
13 anything to sell them to satisfy this judgment.

14 THE COURT: And so what evidence do you
15 have to support?

16 MR. VARGO: RFA No. 7 is an admission that
17 their subsidiary company is an asset of the defendant.
18 That's all we need for today. We're even having
19 discussions and admissions of stipulations. This is
20 their asset. It is their company. It's their
21 subsidiary company. We have a receiver in the
22 courtroom. That should be the end of the inquiry.

23 If they want to the pay the judgment,
24 let's give them seven days to pay the judgment. If they
25 don't want to pay the judgment, then let's get the legal

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1 proceedings rolling.

2 I understand that they may not want to pay
3 some receiver fees. I understand that they may not want
4 to pay the judgment, but they have legal remedies.
5 They're not exercising them. They're exercising delay
6 tactics.

7 THE COURT: Would you like to call anybody
8 to testify in support of the application?

9 MR. VARGO: Certainly.

10 What's his name?

11 MR. GRADY: William Welter, managing
12 director of plaintiff entities.

13 THE COURT: Mr. Welter, are you there?

14 MR. WELTER: Yes, Judge. Before we get
15 started, I'm having a problem with hearing. So can you
16 hear me?

17 THE COURT: Yeah -- hold on. I guess
18 while we're waiting for him to log back on, on your
19 application, do you have any evidence to support the
20 application?

21 MR. VARGO: That's the evidence we're
22 putting on right now at the hearing.

23 THE COURT: Okay. So you don't have
24 anything that's been filed for the Court to consider?

25 MR. VARGO: We have the discovery

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1 responses, which is the admission of the same company
2 that's the subsidiary that he's going to authenticate
3 these records as a belt and suspenders.

4 So there's the admission, and we're
5 putting on a witness to authenticate the quarterly
6 report.

7 THE COURT: Right. But --

8 MR. VARGO: The quarter report says the
9 subsidiary is their company. The owning of that company
10 is a nonexempt asset. And it's the same RFA is
11 referring to the same company.

12 MS. CLARK: Your Honor, I'm still not
13 clear how they're going to get this statement that is
14 the quarterly report into the report. But what we're
15 talking about is Catalyst, and is it a subsidiary. Yes,
16 it is. It is a subsidiary.

17 If the only thing they're asking for a
18 receiver over is our interest -- is Cyberlux' interest
19 in Catalyst and that's all we're here about today, I
20 need to understand it.

21 Is that what they're asking the Court for
22 that? That's the limited ask? Because their
23 receivership order is so much more broad; and that's
24 maybe where I'm misunderstanding, Your Honor.

25 MR. VARGO: Well, under the plain language

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1 of 31.002, we don't have to identify every single asset
2 that we're trying to use to discharge the judgment.

3 It's --

4 MS. CLARK: I think I've said it twice for
5 the record, but I'll just remind Your Honor that the
6 case law is very clear that 31.002(a) has to be complied
7 with before the Court can enter an order assisting the
8 judgment creditor or else it can be dismissed as an
9 abuse of discretion.

10 And so there has to be not just evidence,
11 but I believe the court says substantive -- evidence of
12 substantive and probative character. That is what is
13 required in order to support this type -- the turnover
14 order and the receivership order. They go -- as you
15 said earlier, Your Honor, they go hand in hand.

16 MR. VARGO: And that would be an admission
17 and a quarterly report that they originated and adopted
18 and published.

19 MS. CLARK: Your Honor, if they're asking
20 for it to be admitted as evidence, I have objections;
21 and I'll state those.

22 THE COURT: Mr. Welter?

23 I'm sorry? Hold on a second.

24 (Brief pause)

25 THE COURT: Mr. Welter?

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1 MR. WELTER: Yes, Judge. Can you hear me?

2 THE COURT: I can. I think -- can you
3 speak up?

4 MR. WELTER: When counsel speaks from the
5 table, I can hear them fine. It's just when they stand.
6 Someone just opened up the whole courthouse view. So I
7 can now see the whole courtroom. And when they stand
8 up, for some reason maybe they're too far from the
9 microphone.

10 THE COURT: Yeah, the microphones are in
11 front of them.

12 But you're not getting any reverb, and you
13 can hear me?

14 MR. WELTER: I can hear you fine, Judge.

15 THE COURT: Can we test?

16 Counsel, can you --

17 MR. VARGO: Yes. Can you hear me?

18 MR. WELTER: Yes.

19 MR. VARGO: Outstanding.

20 MR. WELTER: Whoever just spoke, I can
21 hear.

22 MR. PENNETTI: Can you hear us?

23 MR. WELTER: Yes.

24 THE COURT: Okay. Let's -- it's supposed
25 to be piping through here, through the Court's speakers.

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1 It's not doing that. I'm not sure why. And so I'm
2 outputting what he's saying through the laptop speakers.
3 I think Mr. Welter is getting a little bit of that.
4 We're getting a little bit of reverb.

5 But in any event, let's see if we can make
6 that work for right now.

7 MR. VARGO: Certainly.

8 Are we ready to proceed?

9 THE COURT: Yes.

10 MR. VARGO: Let's see if we can make it
11 work.

12 Do we need to swear in the witness?

13 THE COURT: Hold on a second. Let me...

14 (Discussion held off the record)

15 (Witness duly sworn)

16 THE COURT: You may proceed, Counselor.

17 **WILLIAM WELTER,**

18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 BY MR. VARGO:

21 Q Please state your name.

22 A William Welter.

23 Q Mr. Walter, what is your affiliation to this
24 matter?

25 (Technical difficulties)

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1 THE WITNESS: I'm sorry, Judge. The
2 reverb just started really bad again. Can I try to call
3 in -- just to call in, because that worked perfectly?

4 THE COURT: That's fine. Let's try that.

5 THE WITNESS: Let me try to do that.

6 (Brief pause)

7 THE COURT: If this doesn't work, and I
8 think it might not work either, we'll just call you.

9 MR. WELTER: I can hear you perfectly,
10 Judge, now.

11 THE COURT: I know, but there may be some
12 reverb on our side.

13 You want to try it, Counselor.

14 Q (By Mr. Vargo) What is your affiliation with
15 this case?

16 (Technical difficulties)

17 (Brief pause)

18 Q (By Mr. Vargo) Okay. You're on a speakerphone
19 and you're pointed toward the gallery. The judge is
20 behind you. So make sure you're speaking up for the
21 court reporter and the Judge, please.

22 A Okay.

23 Q All right. What is your affiliation to this
24 case?

25 A I am the legal counsel and also the managing

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1 director.

2 THE COURT: Can he introduce himself for
3 the record, please?

4 MR. VARGO: Yes.

5 Q (By Mr. Vargo) Just introduce yourself, as far
6 as the company affiliation, et cetera.

7 A Okay. My name is William Welter. And I am on
8 the side of Atlantic Wave Holdings and Secure Community.

9 Q And that's the judgment creditor, correct?

10 A Yes.

11 Q All right.

12 THE COURT: What is his position there?

13 Q (By Mr. Vargo) And what is your position there,
14 sir?

15 A I am the managing director, and I'm also the
16 legal counsel.

17 Q All right. In preparation for today, are you
18 familiar with the documents that were filed on
19 January 16, 2025, titled Plaintiffs' Hearing Exhibit
20 List and Exhibits Atlantic that are three pages and 66
21 pages?

22 A I am.

23 Q All right. Could you please turn to Exhibit 2
24 of the 66-page PDF document that was filed with the
25 Court, please?

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1 A Okay.

2 Q And tell us what you're looking at.

3 A The disclosure statement pursuant to the
4 Pink -- Pink basic disclosure guidelines, Cyberlux
5 Corporation.

6 Q Okay. Hold on just a moment.

7 THE COURT: You have a copy of that, I'm
8 assuming?

9 MR. VARGO: I do. It's filed in the
10 record. It's the 66-page document.

11 THE COURT: Does opposing counsel have a
12 copy?

13 MR. PENNETT: We have a copy.

14 MR. VARGO: All right.

15 MS. CLARK: Well, Your Honor, excuse me.
16 My confusion is just that the document I have is labeled
17 Exhibit 3, and he just said Exhibit 2. Think we're
18 talking about the same thing, but I just want to
19 double-check. I apologize.

20 MR. VARGO: Yeah, no problem. Here you
21 go. On the docket, it's the one that's 66 pages.

22 MS. CLARK: Okay. Thank you.

23 MR. VARGO: Yes.

24 Q (By Mr. Vargo) Okay. Sir, so on -- let me pull
25 this thing back up.

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1 All right. On page 10 of the PDF, it
2 says, Exhibit 2, amended quarterly report 9/30/24; is
3 that right?

4 A Page 10, did you say?

5 Q Yes, page 10 of the PDF.

6 A Okay. I don't have the PDF, but I have the
7 document.

8 Q All right.

9 A It's Cyberlux Corporation, that front page, I
10 think you're referring to.

11 Q Yes. Okay. So that's the next page, which is
12 page 11 of 66.

13 Can you tell us what document you're
14 looking at?

15 A It's the disclosure statement pursuant to the
16 Pink basic disclosure guidelines, Cyberlux Corporation,
17 amended quarterly report for the period ending
18 September 30, 2024, filed on November 14th, 2024.

19 Q Did where did you obtain this document?

20 A From the OTC Markets.

21 Q All right. Can you -- for those of us in the
22 courtroom that aren't familiar with that, can you
23 explain what the OTC Markets are?

24 A The OTC Markets is a pseudo-governmental
25 agency, quite like the NASDAQ or The Dow would be,

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1 except the OTC Markets regulate a different market,
2 which is pretty much what they call penny stocks.

3 Q And so when you said you got it from the
4 OTC Markets, did you physically go there; or how did you
5 come into possession of the document?

6 A I went to OTC Markets website, and I downloaded
7 the -- and printed the annual report.

8 Q And can you explain in a little bit more detail
9 how you went about doing that?

10 A Okay. So you go -- you go to -- first of all,
11 it's a penny stock. So -- and they're on the OTC
12 Markets. So you go to the OTC Market website. And then
13 in the upper left-hand corner, you will type in the
14 ticker symbol, which is C-Y-B-L. And you'll hit
15 "enter."

16 And that will bring you to a whole
17 separate section that's dedicated just to that ticker.
18 And there's a menu where you can choose a variety of
19 actions. If you go -- I think it's the fifth one over,
20 it's "disclosures." And you punch on that, and then
21 you -- the screen populates with all of their filings.

22 They're required to make filings every
23 quarter, no more than 45 days after the end of each
24 quarter.

25 Q As -- in connection with your business, are you

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1 familiar with filing and researching these types of
2 documents?

3 A Yes.

4 Q And after you looked this disclosure statement
5 up on the website, what did you do with it to get it in
6 front of the Court?

7 A I believe Mr. Grady downloaded it himself from
8 the website and then I also sent him a copy, but I
9 believe the copy from the website -- the OTC Markets
10 website comes out much clearer. You'd have to ask him
11 which one he used, whether it was mine or whether it was
12 his.

13 Q I understand.

14 A Same document, though.

15 Q So let's turn to -- in my PDF, it's page 28;
16 but on the disclosure, it is page 18 of 46.

17 Can you turn to that one, please?

18 A Okay. I'm there.

19 Q All right. And it says, Issuer's facilities.

20 Can you tell us, who is the issuer in this
21 document?

22 A Cyberlux Corporation.

23 Q Is that the judgment debtor?

24 A Yes, that's the judgment debtor, correct.

25 Q All right. So can you tell us what's helpful

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1 or important concerning Section 5 on page 18 of 46?

2 A Well, it -- in this section, it details the
3 different companies that are involved with Cyberlux. It
4 talks about their -- what is located at each facility.
5 And primarily to Texas, it says, Catalyst Machine
6 has its offices and manufacturing facilities located at
7 21631 Road, Spring, Texas 77488.

8 And then it goes on to say, This is a
9 21,450-foot square-foot facility, with a renewable
10 three-year lease, with one and a quarter year remaining.

11 Q Is this document a true and correct copy of the
12 disclosure that you downloaded from the OTC's website?

13 A Yes.

14 Q All right. I see the next paragraph down there
15 refers to "our Datron World Communications subsidiary."

16 Is that what it says there?

17 MS. CLARK: Your Honor, I object. The
18 document speaks for itself --

19 A That is correct.

20 MR. CLARK: -- and it's not in evidence,
21 Your Honor.

22 THE COURT: That's fine.

23 MR. VARGO: I move to admit the
24 disclosure.

25 THE COURT: You're seeking to move what,

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1 specifically?

2 MR. VARGO: The disclosure, I move to
3 admit it into evidence for purposes of the hearing.

4 THE COURT: So you're moving to admit as,
5 I'm assuming, your Exhibit --

6 MR. VARGO: My Exhibit 2 that's on the
7 docket.

8 THE COURT: You want to call it Exhibit 2?

9 MR. VARGO: Let's call it Exhibit 2.

10 THE COURT: Okay. Plaintiffs' Exhibit 2,
11 which is the -- hold on one second. Let me get the --
12 the amended quarterly report for the period ending
13 September 30th, 2024; is that right?

14 MR. VARGO: Yes.

15 THE COURT: And this is disclosure
16 statement pursuant to the Pink basic disclosure
17 guidelines?

18 MR. VARGO: Yes.

19 THE COURT: Any objections?

20 MS. CLARK: Yes, Your Honor. We object to
21 this being admitted into evidence. The -- I'm not
22 quibbling with the source of this document. I think
23 that the plaintiffs have shown chain of custody with
24 respect to this particular document and where it came
25 from.

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1 The issue with it being admitted into
2 evidence is that it's hearsay, and it's hearsay within
3 hearsay. It's a document that's signed, but it's not
4 sworn. It's a document that expressly is a report
5 that's based on a summary of information.

6 And in particular, when we get to the
7 financial statements, Your Honor, it's consolidated
8 information, which this document discloses is related to
9 not only Cyberlux, which is the judgment debtor, but
10 also multiple subsidiaries.

11 So it is impossible, from the face of this
12 document, for purposes of this hearing, to understand
13 who owns what. And it's hearsay within hearsay. They
14 have not presented an exception to that, Your Honor. It
15 should not be admitted for today's purpose.

16 It will confuse the trier of fact, which
17 is you, Your Honor, because it is something that we can
18 look at; but it's impossible to discern its full
19 import --

20 THE COURT: Okay. So just --

21 MS. CLARK: -- from the face of it.

22 THE COURT: So hearsay -- the concern with
23 hearsay is the truth of the matter asserted. Here, this
24 is a public filing, right --

25 MS. CLARK: Your Honor --

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1 THE COURT: -- on a market that's
2 certified on the -- I guess OTC Market or Pink Sheet. I
3 know there's different markets, but over-the-counter
4 market. And I don't know -- I guess this is a public
5 exchange?

6 MR. VARGO: Yes.

7 THE COURT: They're regulated by the
8 security -- I guess that's a different issue. I'm not
9 familiar. But at the very least, it's certified, right,
10 by Mark Schmidt?

11 MS. CLARK: Yes, Your Honor.

12 THE COURT: And David Downing?

13 MS. CLARK: Of course.

14 THE COURT: And it says, Based on my
15 knowledge, this disclosure statement does not contain
16 any untrue statements of material fact, right?

17 MS. CLARK: Absolutely, Your Honor.

18 The issue is -- from my perspective, is
19 that this is a summary of information that none of us
20 here in the courtroom, the lawyers, have seen. And so
21 it's hard for me to defend against the data that's in
22 here, whether it's true or not. It's backward looking,
23 and it's consolidated.

24 And so for today's purpose, what their
25 burden is, is to show what assets this particular

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1 judgment debtor owns. And this document does not show
2 that, if we're talking about the financial statements.
3 It is made for a different purpose.

4 And that's why I think it's confusing,
5 Your Honor. This is made to comply with GAAP, and it's
6 made to comply with the disclosures that the OTC Markets
7 require. And so it's not the laser precision that this
8 type of, let's appoint a receiver and get someone to
9 come and take your stuff, is designed for.

10 And that's my concern, Your Honor.

11 THE COURT: Understood. I don't think
12 there's -- I don't think the trustworthiness here is an
13 issue.

14 MS. CLARK: I don't -- yes. I didn't mean
15 to suggest that.

16 THE COURT: So the hearsay objection is
17 overruled. I understand you have a concern about the
18 weight and perhaps that it's unfairly prejudicial --

19 MS. CLARK: Yes.

20 THE COURT: -- because we don't completely
21 understand what this stuff means and -- but that's
22 something we can talk about and you'll have an
23 opportunity to elaborate on.

24 You can continue.

25 So Plaintiffs' Exhibit 2 is admitted into

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1 evidence.

2 (Plaintiffs' Exhibit No. 2 was
3 offered and admitted into evidence)

4 MR. VARGO: Thank you.

5 For purposes of the witness, pass the
6 witness.

7 THE COURT: Nothing else?

8 MR. VARGO: No, Judge.

9 MS. CLARK: I need to come up there,
10 right, Your Honor?

11 THE COURT: Yes, please.

12 **CROSS-EXAMINATION**

13 BY MS. CLARK:

14 Q All right. Are you able to hear me?

15 A I am.

16 MS. CLARK: Oh, it's here. I see.

17 Q (By Ms. Clark) With respect to the -- you just
18 talked about the facility listed in the disclosure
19 statement in Spring, Texas, right?

20 A I'm a little confused. If I can ask you a
21 question. I heard earlier that you referenced this
22 facility as a warehouse, but in the company -- this is a
23 document that's -- the company provided to the OTC to
24 tell them where their products are manufactured. It
25 says that there's a 21,450 --

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1 MS. CLARK: Your Honor, I'm going to
2 object as nonresponsive.

3 THE COURT: Sustained.

4 She hasn't posed a question. So until
5 then, please don't say anything.

6 THE WITNESS: Okay.

7 Q (By Ms. Clark) I just wanted to direct your
8 attention to what you were just talking to your counsel
9 about, and that was a statement in the disclosures with
10 respect to the -- an address reference.

11 Do you remember talking to your attorney
12 about that, sir?

13 A For the address of Cyberlux or their Spring,
14 Texas, facility?

15 Q Spring, Texas, sir.

16 A Yes, I remember that.

17 Q I'm trying to go get to that page.

18 Have you ever visited the facility in
19 Spring, Texas?

20 A I have not.

21 Q So you don't know what's inside it, right?

22 A I do not. We've been trying to find out for
23 about a year and -- with no -- no --

24 MS. CLARK: Your Honor, I'm going to
25 object again as nonresponsive.

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1 THE COURT: Please just answer the
2 question.

3 THE WITNESS: Sorry, Judge.

4 Q (By Ms. Clark) You don't know what's inside the
5 facility, right?

6 A No.

7 Q Same with respect to Datron World
8 Communications, that was listed at a 995 Joshua Way,
9 Vista, California.

10 Have you ever visited that facility?

11 A No.

12 Q Do you know what's inside that?

13 A No.

14 Q Now, I believe that you stated that you're
15 familiar with the Virginia amended final order and
16 judgment, right?

17 A I am.

18 Q And in that order, it talks about an amount of
19 \$1,572,500 being due, correct?

20 A Let me get a copy of that so I can answer you,
21 if you don't mind waiting for just a second.

22 MS. CLARK: Your Honor, I'm not sure if we
23 can show that with the way that this is all working out;
24 but we --

25 THE COURT: I think he has a copy.

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1 MS. CLARK: Okay. Okay.

2 THE COURT: The amended and final order.

3 So --

4 MS. CLARK: Okay.

5 A I'm having trouble finding it, but I know the
6 judgment pretty well. And if you want to -- I don't
7 want to hold you up any further. If you want to go
8 forward. I cannot find a copy on my computer of the
9 judgment for some reason.

10 Q (By Ms. Clark) Well, sir, so within the
11 judgment it talks about specifically that there is an
12 amount of \$177,126.19 for reasonable attorney's fees.

13 Do you remember that part of the judgment?

14 A I do.

15 Q Okay.

16 MR. VARGO: Objection, relevance.

17 THE COURT: It's overruled.

18 I'll let her --

19 MR. VARGO: All right.

20 THE COURT: -- for right now.

21 Q (By Ms. Clark) And you were talking with the
22 Court earlier. My understanding is that that amount of
23 \$177,126.19 has been paid; is that true?

24 A I don't mean to interrupt you, but I have found
25 a copy of it.

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1 Q Okay. Good.

2 A Of the judgment.

3 Q I'm at part C on -- I believe it's the second
4 page.

5 A Okay.

6 Q Do you see the --

7 A It starts off with that "The plaintiffs"?

8 Q Yes.

9 A Okay. Yes, I do see that.

10 Q Okay. And so that amount, that \$177,126.19, is
11 it your testimony that that amount has been paid?

12 A I believe it has.

13 Q What about the next line down that talks
14 about -- it talks about them as sanctions, \$3,895 and
15 300 -- excuse me, \$6,842.50.

16 Do you see those amounts?

17 A I know for sure those have been paid, because
18 the Judge ordered those paid.

19 Q Okay. And so are you familiar with a
20 J. Chapman Petersen?

21 A I am. He's one of our attorneys in Virginia.

22 Q Okay. And are you aware of a letter that he
23 wrote to a Jimmy F. Robinson on January 22nd, 2024?

24 A I am.

25 Q Okay. So -- and did you -- do you know that

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1 your counsel used that -- attached that letter in a
2 filing in preparation for today's proceeding?

3 A He did not prepare it for today's proceedings.

4 Q I'm sorry. I meant your Texas counsel had
5 submitted it to the Court, along with the filing for
6 today's proceeding.

7 Do you know that?

8 A He submitted it for today's hearings, but he
9 did not prepare it for today's hearings.

10 Q And if I said that, I misspoke. That was not
11 my intention. Okay.

12 A That's okay.

13 Q So -- and in that letter -- have you seen that
14 letter?

15 A I have.

16 Q Okay. And in that letter, it has a breakdown.
17 And before it gives the breakdown, it says, The actual
18 amounts owed under the above judgment as of
19 October 31st, 2024, is as follows. And then it gives
20 this breakdown.

21 Did you provide a breakdown of amounts to
22 Mr. Petersen?

23 A No. There's two points. I worked with
24 Mr. Petersen's office. I also worked with
25 Mr. Keathley's [phonetic] office, but the -- I think

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1 where you're off on the numbers is that -- those numbers
2 are as of October 31st, number one. And they didn't
3 include the interest, and they didn't include the
4 ongoing attorney's fees.

5 So I think that's where your numbers may
6 be off a little bit. Because those numbers are as at
7 October 31st everything that we could tabulate, and
8 they're not as January 16th.

9 Does that make sense?

10 Q I hear what you're saying, but I want to
11 understand. The reason I asked about whether you're
12 familiar -- well, are you familiar with the line items
13 in terms of the amounts owed, how it's broken down in
14 this letter dated December 2nd from Mr. Petersen?

15 A Yes, I am.

16 Q Okay. And so there's a line item that says,
17 Legal fees, \$371,307.66. Do you see that -- or do you
18 know that -- that number was listed?

19 A I take your word for it. I don't have the
20 document, but that sounds about right.

21 Q Okay. Where is this \$371,307.60 in the form of
22 order from Virginia that we looked at?

23 A It's not. Where you'll find that is in the
24 settlement agreement, where it says that upon breach, we
25 are allowed attorney's fees for -- to collect the -- on

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1 the judgment.

2 MS. CLARK: Your Honor, I pass the
3 witness.

4 MR. WELTER: Judge, can I add one thing to
5 that last sentence?

6 THE COURT: No.

7 MR. WELTER: All right. Thank you.

8 THE COURT: Did you have any questions?

9 MR. VARGO: No, Judge.

10 THE COURT: Okay. Any other witnesses or
11 any other evidence?

12 MR. VARGO: No.

13 THE COURT: Okay.

14 Okay. So what -- so where are we at now?

15 MR. VARGO: Plaintiffs move for entry of
16 an application to appointment a receiver.

17 MS. CLARK: Obviously, Your Honor -- or
18 would you like to hear my argument about why it
19 shouldn't be awarded?

20 THE COURT: Yes, please.

21 MS. CLARK: Your Honor, we object to the
22 appointment of a receiver. The statutory prerequisites
23 of 31.002 have not been met. Mr. Welter testified he
24 had no knowledge of the property that's located in
25 Spring, Texas, or at the Datron facility.

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1 And there's no other evidence,
2 Your Honor -- before Your Honor with respect to what
3 property Cyberlux would have that is not subject to
4 other levy or attachment and is in need of aid from this
5 Court by virtue of appointment of a receiver.

6 And the statute is very specific on what
7 it needs. The case law is pretty strenuous that a
8 requirement has to be met. It can't just be a generic
9 list of property. It needs to be what property is
10 there, how do you know it, what is -- is it exempt.
11 Those are the things that need to be shown, Your Honor.
12 And -- and that's for turnover.

13 And if you don't meet the standard for
14 turnover, then you're not going to be able to get a
15 receiver. And that is what we would say with respect
16 to -- with respect to the appointment of a receiver
17 under the turnover statute.

18 What we have, Your Honor, is --
19 essentially, is arguments of counsel. And the cases are
20 very clear, we cite them in our papers, that that is not
21 enough.

22 Your Honor, I also would like to say that
23 if you are going to appoint a receiver, that the order
24 has to be -- just like anytime a receiver is appointed,
25 it must be very specific. And the statute language is

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1 very clear and direct on what the receiver needs to --
2 the language around a receiver.

3 It's -- appoint a receiver with the
4 authority to take possession of the nonexempt property,
5 sell it, and pay the proceeds to the judgment creditor
6 to the extent required to satisfy the judgment.

7 So knowing what is nonexempt property is
8 important. Understanding what amount is outstanding
9 pursuant to the judgment is important. So that if a
10 receiver is appointed, he or she can do their job, and
11 the receivership report needs to be specific.

12 The order that's been proposed by
13 plaintiffs is exceedingly broad. It talks about all
14 property, bring it to me, marshal your assets, and then
15 I'll decide what to do with it. And that's just not the
16 situation we're here in. We are going to have
17 discovery, Your Honor. It's in a very short period.
18 And we're going to get on with it.

19 And so we think that there is not a basis
20 under the statute to appoint a receiver under the
21 turnover statute, and there's not a general basis for a
22 receiver. That's a very serious act, Your Honor. And
23 so we would just ask that you deny their application.

24 MR. VARGO: This isn't a new judgment.
25 They've had time to pay it. They've had time to make

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1 some payment. That hasn't happened. There's a place
2 for relief. It's the United States Bankruptcy Court.
3 They're welcome to go seek that relief if they want to.

4 They have the assets. They don't qualify.
5 They don't want to give the assets. They don't want to
6 sell their assets. And they don't want to satisfy the
7 judgment. We're here for delays so that we can continue
8 putting off satisfying the judgment.

9 As counsel put it, this judgment creditor
10 did an exhaustive amount of garnishments on banks
11 unsuccessfully to satisfy the judgment. This is
12 stereotypical time that you would need a receiver. The
13 assets that are identified are in Exhibit 2. It's on
14 page 18 of 46. We need not go any further. It's in
15 evidence.

16 Catalyst Machineworks is a subsidiary.
17 Datron World Communications, a subsidiary.

18 THE COURT: What are -- what kind of
19 entities are those corporations?

20 MR. VARGO: Well, whether they're
21 corporations or they're LLCs, even --

22 THE COURT: Don't you need a charging
23 order for LLC?

24 MR. VARGO: Yes, but they would still be
25 enough to satisfy the turnover requirement. And in that

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1 instance, under the case law, a receiver is the perfect
2 vehicle to monitor the charging order, because the
3 judgment creditor is not in a position to do so.

4 THE COURT: Do you know what kind of -- I
5 mean, I can look it up right now at the Secretary of
6 State. I mean, somebody has got to know.

7 MS. CLARK: Your Honor, I believe Catalyst
8 is an LLC. I don't know about Datron. And I don't know
9 whether those assets are available for attachment or
10 not. I don't know if those assets are pledged. I can't
11 tell from this disclosure. I read the whole thing on
12 the plane, because we didn't get even notice that they
13 wanted to use this exhibit until this morning.

14 So what it says -- it says what it says in
15 the document. But whether they can use them for -- and
16 monetize them, we don't know that today. Are we going
17 to know that in 30 days? Yes. And so there will be a
18 lot more for a receiver, if one is going to be
19 appointed, to do when he or she can be directed with
20 actual facts about whether it can be sold, is it pledged
21 to someone else.

22 I'm not saying that it is, Your Honor.
23 And I'm not trying to quibble. But this is what I view
24 as the statute requirement, and so that's why I'm
25 pointing it out.

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1 THE COURT: So they just got to show that
2 you own some property, right? Not readily ex- --

3 MR. VARGO: We have to establish that they
4 own property.

5 THE COURT: -- executable. Then the
6 burden shifts to them to show that it's exempt.

7 MR. VARGO: To which they're a business
8 entity, and Chapter 42 doesn't identify exempt property
9 for that.

10 MS. CLARK: That's not the only statute
11 that applies here, Your Honor. That is just not.

12 MR. VARGO: Well, then what exception are
13 they availing themselves under?

14 MS. CLARK: If these are pledged assets,
15 for example, then they're going to be exempt from
16 execution. And so I --

17 THE COURT: But I don't have any evidence
18 of that.

19 MS. CLARK: Well, Your Honor, actually you
20 do with respect to Datron. And that's in this
21 disclosure statement. It talks about that there are --
22 it indicates that -- I'm sorry, Your Honor. I have to
23 find where it was.

24 MR. VARGO: Respectfully, just because
25 something has a lien doesn't mean you can't execute on

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1 it. It means that you execute on it and satisfy the
2 secured lender. We can't just execute on it and not pay
3 off the secured lender. That's how you execute on
4 secured property.

5 MS. CLARK: I think it depends on what the
6 documents say, Your Honor, and how it's pledged, who
7 holds the stock, for example. It's just complicated.
8 And what I'm trying to avoid is a bunch of, Well, who
9 has possession or where's it going to be and what do we
10 do with it and once they get it, what happens.

11 I think that there needs to be some sort
12 of order so that Cyberlux can continue to operate its
13 business and have money that it needs to operate and
14 also, by operating, generate funds that can continue to
15 pay on the judgment. Because the testimony was that the
16 amount -- that the judgment has been reduced. That's
17 what the testimony was.

18 THE COURT: So, I mean -- and I'm not
19 insensitive to potential turnover or receivers hampering
20 your ability to operate as a going concern and
21 potentially pay off. I know the receiver would be
22 sensitive to that. Everybody wants to get paid.

23 So -- but I guess the issue is, is what's
24 the plan. So to the degree they say, Look, we have a
25 going concern. A receiver comes in or there's a

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1 turnover, it's going to disrupt; and then we're not
2 going to have anything to pay. And it's going to be a
3 problem.

4 But I don't think those discussions have
5 been had, right?

6 MS. CLARK: No. We've been spending all
7 our time just trying to get ready for today, and we -- I
8 think the parties -- the most they could do is say,
9 Let's try mediation and --

10 THE COURT: And I'm not --

11 MS. CLARK: So, no, I don't think the
12 discussions have been had.

13 THE COURT: I understand, Counselor. And
14 I appreciate that you've just been brought on; but this
15 is not a new judgment for your client, right? So I'm
16 not -- I'm talking about your client when I --

17 MS. CLARK: Yes. No, no, no.

18 THE COURT: And I'm not --

19 MS. CLARK: That's what I was speaking to,
20 whose talked about it.

21 THE COURT: And I appreciate your position
22 as counsel being difficult, but I'm trying to -- we're
23 really just talking about the judgment debtor here, what
24 have they done since the judgment was entered --

25 MS. CLARK: Right.

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1 THE WITNESS: -- back in 2023 or in
2 2025 --

3 MS. CLARK: Right.

4 THE COURT: -- and these -- they've
5 obviously been engaged in collection efforts for a
6 while.

7 MS. CLARK: Excuse me. I didn't hear
8 that, Your Honor.

9 THE COURT: They've obviously been in --
10 undertaking collection efforts for a while. They have
11 proceedings in California.

12 MS. CLARK: Right.

13 THE COURT: And so none of this is new.
14 The -- or a surprise. It's just trying to figure out,
15 like, what's the plan to start making arrangements to
16 work this out. There was an initial settlement
17 agreement.

18 MS. CLARK: Yes.

19 THE COURT: It sounds like that fell
20 through.

21 MS. CLARK: Well, our position is the
22 opposite; and that's why we have opposed the enforcement
23 here and in California. And in California, the judge
24 has stayed enforcement. So our position is, is that the
25 parties have a settlement agreement. The order simply

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1 facilitates that.

2 THE COURT: Right. But it's out of
3 Virginia.

4 MS. CLARK: Exactly. Exactly. And
5 there's multiple proceedings pending there, yes.

6 THE COURT: And so if Virginia says, Hey,
7 this is -- you know, there's a problem with my judgment,
8 then the court obviously will suspend here --

9 MS. CLARK: Understood.

10 THE COURT: -- because that's what I'm
11 relying on; but until that happens, there's no way for
12 this Court to navigate, you know, those sorts of issues
13 when this is not a domestic judgment out of this court.

14 So all I can do is take a foreign judgment
15 that's currently not superseded and allow the normal
16 legal process to pave through. We probably have enough,
17 you know. The issue is it gets a little bit
18 problematic. If that's all we have, then that's all we
19 can turn over. And so I would need to have an amended
20 order presented to the Court regarding that specific --

21 MR. VARGO: So specific to the Datron and
22 the other entity that are identified?

23 THE COURT: Correct, whatever you have
24 evidence for.

25 MR. VARGO: Okay.

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1 THE COURT: The -- the other thing is I
2 think there's been some recent case law regarding
3 receiver fees that you might want to take a look at.

4 MR. VARGO: I'm familiar. It's a
5 presumptive fee, and there's a subsequent hearing.

6 THE COURT: Yeah.

7 MR. VARGO: He needs to talk about his
8 time and the factors.

9 THE COURT: Yeah. So I don't know if
10 that's been -- the order has been changed to reflect
11 that.

12 MS. CLARK: Right now, Your Honor, it
13 speaks to a 25 percent cap to be earned on everything
14 that is taken and sold. And the case law, as I recall,
15 Your Honor, talks about the resume being required of the
16 receiver to understand their qualifications to even
17 serve and then to look at what is appropriate, because
18 it has to be reasonable.

19 And so right now I do not think that the
20 order, as it's written, takes into account that case
21 law.

22 MR. VARGO: We'll file an amended order,
23 and we'll address those two items. If she's got
24 concerns about the qualifications, can I call Mr.
25 Berleth to talk about his qualifications?

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1 MS. CLARK: It's not my request. So my
2 concern is there's no evidence right now. But, yeah,
3 Your Honor, as I said, I have serious concerns about the
4 form of order in general, the way that it's been
5 presented.

6 THE COURT: Is there -- is there other
7 things in the order that you have concerns about?

8 MS. CLARK: Yes.

9 THE COURT: We talked a little bit about
10 discovery, and you've agreed to produce that within the
11 next 14 days.

12 MS. CLARK: Yes.

13 THE COURT: To the degree that the order
14 discusses that, it needs to be amended to reflect the
15 current understandings from this hearing regarding the
16 discovery requests.

17 Is there anything else?

18 MS. CLARK: Your Honor, can I ask a
19 clarifying question about that? Because I -- I think
20 that the discovery is pursuant to motions that are
21 pending, and I had envisioned that we would submit -- or
22 review an order from the motions with respect to
23 discovery that were previously pending, and then that's
24 where the order to produce would come in and that the --
25 with respect to this order appointing receiver and to

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1 compel discovery, that the discovery piece would be
2 struck from this receiver order that they have proposed.

3 THE COURT: I mean, it really doesn't
4 matter to me. I don't know if it matters to you.

5 MS. CLARK: Okay. Well, I just --

6 MR. VARGO: Well, the document request
7 that's attached to the turnover order, I can appreciate
8 that perhaps Your Honor wants to limit the turnover for
9 now to the two entities that have been identified as far
10 as the nonexempt property; but I don't think we ought to
11 clip the receiver's wings to identify new nonexempt
12 property and participate in some discussions and in
13 discovery with the judgment debtor that would be helpful
14 to discharge the judgment.

15 THE COURT: I agree. I guess the question
16 is -- you already have pending discovery. The Court has
17 just ordered it. I don't know where the overlap is. I
18 don't know what, you know -- and I have a bunch of
19 windows open. So I was looking at it, and I moved away.
20 I can go back and look through it.

21 I assume there's some overlap; and it may
22 say it needs to be produced in five days, that kind of
23 thing. But maybe we can kind of figure out -- if that's
24 duplicative of what's already been ordered, we've
25 already had discussions on that.

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1 MR. VARGO: I can cut out any duplicative
2 stuff; but, I mean, I would submit that the RFPs that
3 are attached -- I say "RFPs," the requests for documents
4 related to the debtor that we ordered be produced, this
5 is, you know, elementary-type stuff. Where are your
6 bank accounts? What are your assets?

7 THE COURT: Right. And so I understand
8 there's a continuing obligation and whatnot. That's
9 fine. Why don't you take a look at that. And you can
10 take a look at the form.

11 MR. VARGO: I can condense it and cut it
12 down and obviously send an MS Word to your staff so you
13 can -- with copy to counsel, of course.

14 MS. CLARK: Your Honor, I really think
15 it's important to go through this order. Because this
16 is an extreme remedy to have a receiver appointed to
17 just come in and open our mail, change our locks.

18 THE COURT: So is that the plan, or what's
19 the plan?

20 And so why don't you introduce yourself
21 for the record.

22 MR. BERLETH: Your Honor, may I approach?

23 THE COURT: Yes.

24 MR. BERLETH: My name is Robert Berleth.
25 I'm the proposed receiver. I am a member in good

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1 standing of the Texas Association of Turnover Receivers.
2 I am also a member of good standing in the National
3 Association of Federal Equity Receivers. I've been a
4 receiver exclusively for nearly my entire law practice.

5 This Court has appointed me. Many other
6 courts in both this building and the federal courthouse
7 across the street -- or down the street have appointed
8 me. I exclusively practice in receivership and
9 collections law.

10 So their fears of the receiver coming in
11 and, you know, kicking in doors and changing locks is --
12 while the language is there, is grossly misinterpreted.
13 The reality is, is that a good receiver many times can
14 facilitate the settlement payments. I can find some
15 assets and say, Look, here you've got these assets. If
16 you want to, you know, turn these assets over or we can
17 leverage them to regain the settlement and start working
18 on that again.

19 I've worked on many, many settlements.
20 I'm working on one for Judge Garrison and Judge Roth
21 right now on a very complex six-style case -- or six
22 separate cases that are all coming together and working
23 conglomerate.

24 So I pride myself on also working quasi
25 mediator and trying to get these parties together and

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1 get this case back on track without the need for
2 hearings with multiple lawyers long after the sun has
3 gone down.

4 And then also I'd like to apologize about
5 the way I'm dressed. My --

6 THE COURT: That's fine.

7 MR. BERLETH: We were upstairs with
8 Ms. Brown for her admittance today. She's a good friend
9 of mine. My son is a good friend of her son's. And
10 I've been out the -- we were doing some construction
11 equipment inventory today as a receiver. So I'm wearing
12 some work boots and pants, and I apologize for my
13 attire.

14 THE COURT: That's fine.

15 So I guess the present intention is not to
16 the take over the business or the property?

17 MR. BERLETH: Correct. I will work with
18 counsel for the debtor. I work with counsel for the
19 creditor. I will bring everybody together, Hey, look,
20 this is what I need. This is the documentation I'm
21 going to expect.

22 If the creditor says, Hey, Look, we just
23 want to get back on the payment plan and the debtor has
24 a way of doing that, then I can come back to His Honor
25 with an agreed order hopefully in a few weeks.

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1 If the debtor, you know, digs in and
2 starts hiding, moving, liquidating, pilfering assets,
3 then I have the language necessary by His Honor's order
4 that I can actually go and turn on a dime. And that's
5 one of the advantages of the receiver, is I don't have
6 to come back and wait 30 days for a hearing; and while
7 they pilfer or secret or disguise assets, I can turn on
8 a dime and take those assets right then. And that's the
9 big advantage of a receiver.

10 I'm hoping that's not the case. I want to
11 work with counsel. I want to get this case done and off
12 of your bench.

13 THE COURT: Counselor.

14 MS. CLARK: I don't have -- I mean, what
15 is the fee that you would be seeking in this case?

16 MR. BERLETH: My fee is assigned by the
17 Court. If I can solve it very quickly -- I had a case
18 just a few weeks ago where I literally sent two letters;
19 and the fee proposed at 25 percent would have been,
20 like, \$350,000. And I greatly, greatly reduced that.
21 The Court would have reduced it if I hadn't. So the
22 Court will always have the final say on my fee.

23 I am your arm, Your Honor. I work for
24 you. If you say I earned a penny, I earned a penny. If
25 you say I earned a million dollars, well, I appreciate

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1 that. But the fees are what the Court and what I can
2 prove up to the Court.

3 THE COURT: And just so we -- so your fees
4 are on top of the underlying debt?

5 MR. BERLETH: My fees are assessed as
6 costs of court. And so the costs of court would be in
7 addition to. However, many times in a settlement, it
8 turns out that the creditor is actually the one paying
9 the receiver because they want to go back on the
10 settlement; and the creditor ends up paying the
11 receiver.

12 THE COURT: So, and if there are
13 insufficient assets to satisfy the judgment, right -- so
14 let's say the judgment is a million dollars, and the
15 assets -- the only assets that you're able to locate are
16 \$500,000. So at that point how are your fees worked
17 out?

18 MR. BERLETH: In that instance, I would
19 come back to the Court and I would say, Judge, I found a
20 500,000-dollar asset. I want to sell it. I'm expecting
21 my fee to be 125. I have agreed to reduce it to \$75,000
22 with His Honor's approval. Here's an agreed order from
23 the creditor, from the debtor -- sorry, vice versa, but
24 from the debtor, from the creditor. And they have
25 agreed to liquidate this asset, and that will solve this

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1 problem.

2 THE COURT: So they would get 425, you
3 would get 75.

4 MR. BERLETH: If they want to fight about
5 it and they want to drag us up and down the appellate
6 ladder four times -- you know, I can tell you from
7 personal experience that is the exact same order that I
8 use in 90 percent of my cases. It's been up and down
9 the appellate ladder more times than I could count.

10 Most of the appellate law that you're
11 going to find challenging that order has my name on it.
12 So I'm comfortable with the language in that order. I'm
13 comfortable with all of the, you know, reasonableness of
14 that order. And it's been used by, almost verbatim,
15 federal courts and state courts in this county and
16 around the state nearly verbatim.

17 THE COURT: Anything else?

18 MS. CLARK: Not for this gentleman, no.

19 MR. VARGO: No, Judge.

20 THE COURT: Thank you, Counselor.

21 MR. BERLETH: May I be excused,

22 Your Honor?

23 THE COURT: Yes. Have a good day.

24 So I'm going to --

25 MS. CLARK: Your Honor, can I please make

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1 a record with respect to objecting to this form of
2 order? Because I was not done, and I really want a
3 record on this.

4 THE COURT: Okay. So before you do that,
5 the Court is going to grant the application and appoint
6 a receiver. We need to -- we talked about fixing the
7 order and amending it to address the concerns that were
8 raised before. And so what the Court currently has is
9 not what I'm going to enter.

10 I don't know specifically what your
11 objection -- if you have additional objections than
12 we've already discussed.

13 MS. CLARK: Yes.

14 THE COURT: Yes, you want to go ahead and
15 elaborate on those?

16 MS. CLARK: Yes, I would, Your Honor.

17 The receiver statute states that the Court
18 may appoint a receiver with the authority to take
19 possession of the nonexempt property, sell it, and pay
20 the proceeds to the judgment creditor to the extent
21 required to satisfy the judgment.

22 That's what the statute says. This order
23 does not do that. This order allows the receiver lots
24 of powers. And, basically, he can go on a wild goose
25 chase, look at everything. What's the point of the

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1 discovery that we just spent three hours on,
2 essentially?

3 He can go -- he's going to get all
4 documents or records, including financial records
5 related to any property not described in this form of
6 order that is in the actual or constructive possession
7 or control of the respondents. He's going to get all
8 financial -- and that's with respect to Mr. Schmidt, who
9 they haven't presented any evidence of any assets. So
10 Mr. Schmidt needs to be struck in the order.

11 He's supposed to collect records on all
12 financial bank accounts, et cetera, all securities, all
13 real property, all safety deposits, all cash, all
14 negotiable instruments, all causes of action, all
15 contract rights, all accounts receivable, and tangible
16 property.

17 So I thought what we were talking about,
18 Your Honor, is that this receiver is going to talk to --
19 look at the assets they presented proof of, which is
20 with respect to a lease at the facility in Spring,
21 Texas, and the Datron -- the ownership of a subsidiary
22 by the name of Datron.

23 This talks about anything in the whole
24 wide world, and he's going to be able to take custodia
25 legis of that. I don't think that they have met that on

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1 this record, Your Honor. I think that well exceeds the
2 statute.

3 And then with respect to additional
4 powers, Your Honor, in addition to the powers of the
5 receiver set forth herein, the receiver shall have the
6 following rights, authority, and power with respect to
7 the respondent's property.

8 So he can collect all accounts receivable,
9 all rents due. He can change the locks. He can open
10 any mail. He can redirect delivery of the mail. He can
11 endorse and cash all checks. He can hire a real estate
12 broker.

13 I mean, that is not what we've been
14 talking about today. This is a general receiver over
15 the business. And I don't care if he's going to decide
16 to exercise his power or not. That's not what this
17 turnover statute requires.

18 And so if -- it's just not -- it's not in
19 compliance with the statute, this form of order. And it
20 is very oppressive to our client's ability to run its
21 business. So --

22 THE COURT: So do you have a case that
23 says this form of order is a problem?

24 MS. CLARK: Your Honor, I have the
25 statute. I have the case -- let me find my case. I do

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1 have a case with respect to the specificity required in
2 the order.

3 THE COURT: So we talked a little bit
4 about what specifically the turnover needs to apply to
5 just so we don't have an issue on its face.

6 In terms of -- she did raise a point
7 regarding Mr. Schmidt. We didn't have anything on
8 Mr. Schmidt; is that right?

9 MR. VARGO: The turnover is just against
10 the company. It's not against Mr. Schmidt.

11 THE COURT: Okay. So he's going to be
12 removed?

13 MR. VARGO: Yes.

14 THE COURT: So they're only seeking a
15 turnover regarding the company. So in the amended order
16 he'll be removed.

17 MS. CLARK: A turnover order that does not
18 identify specific nonexempt property that's subject to
19 the order -- this is in the *Burns versus Miller* case
20 that talks about the order needing to be specific,
21 starting from what property in particular the receiver
22 has power over, not a free ranging where can I find any
23 property anywhere in the world, then decide what to do
24 with it. And so that is 948 S.W.2d, 317.

25 THE COURT: We talked about that. I

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1 wanted them to limit it. That doesn't change the
2 discovery issue, though.

3 MS. CLARK: Your Honor, I don't disagree
4 with that. I just wanted to -- on the discovery piece,
5 as I've said, we want to give them discovery. We have
6 our protective order. You've given us two weeks. I
7 just don't -- when things are blended together, I feel
8 like it creates ambiguity when there doesn't have to be.

9 THE COURT: Right.

10 MS. CLARK: But I don't mean to --

11 THE COURT: But this order shouldn't be a
12 surprise, right? I mean, these orders kind of read the
13 same. And so there's cases -- I mean, there's probably
14 some cases that deal with this. But if you can find a
15 case that says, Hey, they can't change the locks, then
16 I'll take it out. I mean --

17 MS. CLARK: What does that have to do with
18 getting the property -- changing the locks, what does it
19 have to do with getting the property and selling it?
20 That's where I'm having a problem, these extra powers
21 that you would have when you take over a business, not
22 just when you secure the property.

23 This form of receiver order looks like
24 what I would write when I take a debtor out of
25 possession or when I take a business owner out of its

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1 ability to run its business. That's how this reads, and
2 that's not what we're doing here.

3 We are talking about two assets that they
4 say that they've identified and giving free range and
5 power over everything anywhere in the world that this
6 company might have and having the receiver guess what he
7 might want to do with that.

8 THE COURT: Counselor.

9 MR. VARGO: Well, you heard Mr. Berleth
10 say there's an easy way and there's a hard way. He's
11 trying to get the easy way. He's seeking their
12 cooperation. Obviously, if he has to come back to seek
13 additional authority every time, by the time he gets the
14 additional authority, the opportunity is gone. That
15 doesn't mean that he has to exercise the authority
16 immediately.

17 As far as the locks, I mean, as she just
18 stated, taking a debtor out of possession, yes, it's
19 specifically tailored to a situation where you have a
20 warehouse storage facility and things may go missing
21 pretty quickly. Until he assesses the threats at the
22 premises that he has been entrusted with, he may need to
23 change the locks. That doesn't mean that he wouldn't
24 say, Okay, here's what we're looking at.

25 I mean, if he shows up and there's a

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1 reasonably small amount of property that's going to be
2 sold that's not going to satisfy the judgment, he needs
3 to absolutely sequester that, keep it safe, and make
4 sure that he has the ability to sell it.

5 Many times things might weigh a lot. A
6 transport could be crazy. I can tell you personally
7 that I went to South Texas one time and dealt with 23
8 locomotives. I had to get a special court order out of
9 Harris County to specifically sequester the property in
10 place and hold an auction within 48 hours.

11 Well, there was a lot of heavy equipment.
12 It was 2 miles from the border. All types of
13 circumstances come up that would require very heightened
14 authority. In this instance, that doesn't mean he has
15 to use it.

16 MS. CLARK: We're not talking about --
17 they identified leasehold rights and stock. We are not
18 talking about the property that's inside it, which they
19 state is owned by a subsidiary, we state is owned by the
20 government. So we're talking about stock. We're
21 talking about leasehold rights. So that's where I have
22 the issue.

23 THE COURT: Right.

24 Mr. Berleth, you're not going to sell
25 government property, right?

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1 MR. BERLETH: Your Honor, you know, my
2 history is military. I formally held a top secret
3 clearance. I'm familiar with what the military and the
4 government's, you know, property rights are. And I have
5 no intention of going across those lines.

6 And, again, and just to kind of assuage
7 some of the fears of the debtor here, you know, there's
8 three steps to selling a real property. The first is,
9 is that, you know, I would have to come back to you and
10 say, Okay, Judge, I found this real property. I'm going
11 to ask to engage a broker. Let's just say it's a boat,
12 real property --

13 THE COURT: Understood. Here, they're
14 potentially about -- there's drones that potentially
15 they have --

16 MR. BERLETH: Yeah, I'm familiar with
17 Cyberlux.

18 THE COURT: Yeah. So I think -- you know,
19 I'm being a little bit rhetorical; but I -- to the
20 degree if the Court felt that you were exceeding or
21 being unreasonable, these folks can come back and say,
22 Look --

23 MR. BERLETH: Absolutely.

24 THE COURT: -- Mr. Berleth is -- he's run
25 amuck and he's crossing lines, he's being unreasonable

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1 and it's a problem, and, you know, they can obviously
2 come back and say there's issues here and the powers
3 that the Court has granted have been abused, right? And
4 they're free to come back and identify that.

5 My understanding is that you obviously --
6 you have these powers, but that's not the first --
7 that's not what the present intent is to go in there and
8 create issues. You want to make sure that this debtor
9 is able to do whatever they need to do to pay the debt,
10 keep their business.

11 But you -- we also understand that they
12 haven't paid it up to this point; and so they need to
13 understand that you're serious about working this out
14 and that if they don't, then there may be some
15 consequences. And you may have to do things that are --
16 that they may not like for you to do.

17 MR. BERLETH: Correct, Your Honor.

18 THE COURT: But, you know, that's a
19 function of, you know, debt collection. But that's not
20 the first, maybe not the second or the third, but it may
21 ultimately be what needs to happen. And to the degree
22 that you have to undertake these steps where you take
23 these things over or take possession of things, you're
24 obviously very -- you're sophisticated enough to know
25 that there may be security interests, liens, other

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1 property interests. They deal with the government. The
2 government may have some interest, and you don't want to
3 run afoul of any of those potential issues.

4 And so I assume you're going to try to
5 clear all that up and make sure you're doing the right
6 thing as it relates to that kind of property.

7 MR. BERLETH: Correct, Your Honor. I have
8 not been as successful in this courthouse by being
9 unreasonable.

10 THE COURT: Again, and some of this is
11 rhetorical; but we're just having this conversation on
12 the record so there's no misunderstandings. And you --
13 I'm sure you're -- I'm sure this is not anything that is
14 a problem; but just so we're clear, we've had this
15 discussion before and so there's no surprises. And I'm
16 sure you'll try to do everything in an appropriate way
17 going forward.

18 So with that, I think we're spinning our
19 wheels a little bit.

20 MS. CLARK: Your Honor, respectfully, I do
21 not want to walk out of this courtroom without
22 understanding the order with respect to the receiver.
23 Does he have to have a bond? What is the language going
24 to look like so that I can inform my client, at a
25 minimum, how to get ready for the disruption that is

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1 about to occur at their business and so that we can
2 decide what proper legal remedy we're going to seek.

3 And so I just don't want to leave it to,
4 Okay, they'll e-mail the Court an order. The Court sees
5 it. The Court signs it. It may or may not hit the
6 electronic docket. Sometimes it takes us a week to even
7 see an order.

8 So I do not want to leave this courtroom
9 without seeing this order. It's a very, very extreme
10 remedy. And for us to ask to have an order written
11 out -- if we're going to interlineate it, fine. I would
12 ask for a recess so that we can go through. They can do
13 that, present it to Your Honor; and we can see what it
14 looks like today.

15 Because I don't -- I know how it is when
16 we get out of the courtroom, especially these hearings
17 that are so long, and we all forget exactly where these
18 tweaks are supposed to be and somebody heard it one way,
19 another person heard it another. So that is my chief
20 concern, especially if we're going to have these wide
21 range of powers.

22 So I hear what the receiver is saying. I
23 totally respect that but I also understand what my job
24 is going to be and I need to be able to do that.

25 THE COURT: I've heard your request.

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1 We're not going to stay here and interlineate an amended
2 order.

3 You will need to submit an amended order,
4 and you'll need to submit it to the other side. And I
5 ask that you confer --

6 MR. VARGO: Sure. Yes.

7 THE COURT: -- and -- on that order, just
8 kind of identify any changes you made, and then give
9 them an opportunity to provide any feedback. But once
10 you've done that, you can submit it.

11 And then if you have any objections, you
12 can submit those objections.

13 How long is it going to take, do you
14 think, to amend the order?

15 MR. VARGO: I believe we'd have the
16 amended order tomorrow and circulate it to them.

17 THE COURT: Okay. And then I'll give you
18 until Monday to make any objections. And then at that
19 point the Court will enter the order by Tuesday.

20 MS. CLARK: Thank you, Your Honor. I
21 appreciate that.

22 THE COURT: Is there anything else?

23 MR. GRADY: No, Your Honor.

24 MR. VARGO: I'll be down here tomorrow. I
25 promise to bring it by.

Hearing
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THE COURT: Sounds good. Have a good day.

(END OF TODAY'S PROCEEDINGS)

Unofficial Copy Office of Marilyn Burgess District Clerk

Hearing
January 16, 2024

1 STATE OF TEXAS

2 COUNTY OF HARRIS

3

4 I, Jennifer Gajevsky, Official Court Reporter in and
5 for the 129th District Court of Harris, State of
6 Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription
8 of all portions of evidence and other proceedings
9 requested in writing by counsel for the parties to
10 be included in this volume of the Reporter's Record
11 in the above-styled and numbered cause, all of which
12 occurred in open court or in chambers and were
13 reported by me.

14 I further certify that this Reporter's Record of the
15 proceedings truly and correctly reflects the
16 exhibits, if any, offered by the respective parties.

17

/s/ Jennifer Gajevsky

18

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